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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RESERVE SYSTEM

12 CFR Part 220

[Regulation T]

Credit by Brokers and Dealers; List of Foreign Margin Stocks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; determination of applicability of regulations.

SUMMARY: The List of Foreign Margin Stocks (Foreign List) is composed of certain foreign equity securities that qualify as margin securities under Regulation T. The Foreign List is published twice a year by the Board.

EFFECTIVE DATE: September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Peggy Wolffrum, Securities Regulation Analyst, Division of Banking Supervision and Regulation, (202) 452–2837, or Scott Holz, Senior Counsel, Legal Division, (202) 452–2966, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD) at (202) 452–3544.

SUPPLEMENTARY INFORMATION: Listed below is a complete edition of the Board's Foreign List. The Foreign List was last published on February 23, 1999 (64 FR 8711), and became effective March 1, 1999.

The Foreign List is composed of foreign equity securities that qualify as foreign margin stock under Regulation T by meeting the requirements of section 220.11 (c) and (d). Additional foreign securities qualify as margin securities if they are deemed by the Securities and Exchange Commission (SEC) to have a "ready market" under SEC Rule 15c3–1 (17 CFR 240.15c3–1) or a "no-action" position issued thereunder. This includes all foreign stocks on the Financial Times/Standard & Poor's Actuaries World Indices.

There are no additions to the Foreign List. The following nine stocks are being removed because they no longer substantially meet the provisions of section 220.11(d) of Regulation T:

Hong Kong
PEREGRINE INVESTMENT HOLDINGS LTD.
HK $.60 ordinary shares

Japan
KURIMOTO, LTD.
¥ 50 par common
KYUDENKO CORPORATION
¥ 50 par common
MEIDENSHA CORPORATION
¥ 50 par common
NISSAN FIRE & MARINE INSURANCE CO., LTD.
¥ 50 par common
SANYO SECURITIES CO., LTD.
¥ 50 par common
TOKYO SOWA BANK, LTD.
¥ 50 par common
TOKYO TATEMONO CO., LTD.
¥ 50 par common
TOSHIBA CERAMICS CO., LTD.
¥ 50 par common

Public Comment and Deferred Effective Date

The requirements of 5 U.S.C. 553 with respect to notice and public participation were not followed in connection with the issuance of this amendment due to the objective character of the criteria for inclusion and continued inclusion on the Foreign List specified in 220.11(c) and (d). No additional useful information would be gained by public participation. The full requirements of 5 U.S.C. 553 with respect to deferred effective date have not been followed in connection with the issuance of this amendment because the Board finds that it is in the public interest to facilitate investment and credit decisions based in whole or in part upon the composition of the Foreign List as soon as possible. The Board has responded to a request by the public and allowed approximately a one-week delay before the Foreign List is effective.

List of Subjects in 12 CFR Part 220

Brokers, Credit, Margin, Margin requirements, Investments, Reporting and recordkeeping requirements, Securities.

Accordingly, pursuant to the authority of sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and 78w), and in accordance with 12 CFR 220.2 and 220.11, there is set forth below a complete edition of the Foreign List.

Germany
GEHE AG
Ordinary shares, par DM 50
HOECHST AG
Ordinary shares, par DM 50

Japan
AIWA CO., LTD.
¥50 par common
AKITA BANK, LTD.
¥50 par common
AOMORI BANK, LTD.
¥50 par common
ASATSU INC.
¥50 par common
BANDAI CO., LTD.
¥50 par common
BANK OF KINKI, LTD.
¥50 par common
BANK OF NAGOYA, LTD.
¥50 par common
CHUDENKO CORP.
¥50 par common
CHUGOKU BANK, LTD.
¥50 par common
CLARION CO., LTD.
¥50 par common
DAIHATSU MOTOR CO., LTD.
¥50 par common
DAINIPPON SCREEN MFG. CO., LTD.
¥50 par common
DAIWA KOSHO LEASE CO., LTD.
¥50 par common
DENKI KAGAKU KOGYO CO., LTD.
¥50 par common
EIGHTEENTH BANK, LTD.
¥50 par common
FUTABA CORP.
¥50 par common
FUTABA INDUSTRIAL CO., LTD.
¥50 par common
HIGO BANK, LTD.
¥50 par common
HITACHI CONSTRUCTION MACHINERY CO., LTD.
¥50 par common
HITACHI SOFTWARE ENGNEERING CO., LTD.
¥50 par common
HITACHI TRANSPORT SYSTEM, LTD.
¥50 par common
HOKKOKU BANK, LTD.
¥50 par common
HOKUETSU BANK, LTD
¥50 par common
HOKUETSU PAPER MILLS, LTD.
¥50 par common
IYO BANK, LTD.
¥50 par common
JACCS CO., LTD.

¥50 par common
JAPAN AIRPORT TERMINAL CO., LTD.
¥50 par common
JAPAN SECURITIES FINANCE CO., LTD.
¥50 par common
JUROKU ANK, LTD
¥50 par common
KAGOSHIMA BANK, LTD.
¥50 par common
KAMIGUMI CO., LTD.
¥50 par common
KATOKICHI CO., LTD.
¥50 par common
KEISEI ELECTRIC RAILWAY CO., LTD.
¥50 par common
KEIYO BANK, LTD.
¥50 par common
KIYO BANK, LTD.
¥50 par common
KOMORI CORP.
¥50 par common
KONAMI CO., LTD.
¥50 par common
KYOWA EXEO CORP.
¥50 par common
MAEDA ROAD CONSTRUCTION CO., LTD.
¥50 par common
MATSUSHITA SEIKO CO., LTD.
¥50 par common
MAX CO., LTD.
¥50 par common
MICHINOKU BANK, LTD.
¥50 par common
MUSASHINO BANK, LTD.
¥500 par common
NAMCO, LTD.
¥50 par common
NICHICON CORP.
¥50 par common
NICHIMEN CORP.
¥50 par common
NIHON UNISYS, LTD.
¥50 par common
NIPPON COMSYS CORP.
¥50 par common
NIPPON TRUST BANK, LTD.
¥50 par common
NISHI-NIPPON BANK, LTD.
¥50 par common
NISHI-NIPPON RAILROAD CO., LTD.
¥50 par common
NISSAN CHEMICAL INDUSTRIES, LTD.
¥50 par common
OGAKI KYORITSU BANK, LTD.
¥50 par common
Q.P. CORP.
¥50 par common
RINNAI CORPORATION
¥50 par common
RYOSAN CO., LTD.
¥50 par common
SAGAMI RAILWAY CO., LTD.
¥50 par common
SAIBU GAS CO., LTD.
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SAKATA SEED CORP.
¥50 par common
SANKI ENGINEERING CO., LTD.
¥50 par common
SANTEN PHARMACEUTICAL CO., LTD.
¥50 par common
SHIMADZU CORP.
¥50 par common
SHIMAMURA CO., LTD.
¥50 par common
SUMITOMO RUBBER INDUSTRIES, LTD.
¥50 par common
SURUGA BANK, LTD.
¥50 par common
TAIYO YUDEN CO., LTD.
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TAKARA STANDARD CO., LTD.
¥50 par common
TAKASAGO THERMAL ENGINEERING CO.
¥50 par common
TAKUMA CO., LTD.
¥50 par common
TOHO BANK, LTC.
¥50 par common
TOHO GAS CO., LTD.
¥50 par common
TOKYO OHKA KOGYO CO., LTD.
¥50 par common
TOKYO TOMIN BANK, LTC.
¥500 par common
UNI-CHARM CORP.
¥50 par common
USHIO, INC.
¥50 par common
YAMAHA MOTOR CO., LTD.
¥50 par common
YODOGAWA STEEL WORKS, LTD.
¥50 par common

List of Foreign Margin Stocks

By order of the Board of Governors of the Federal Reserve System, acting by its Director of the Division of Banking Supervision and Regulation pursuant to delegated authority (12 CFR 265.7(f)(10)), August 20, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–22114 Filed 8–25–99; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 541, 545, 560, 561

[No. 99–34]

RIN 1550–AB21

Letters of Credit, Suretyship and Guaranty

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is amending its regulations to clarify that a Federal savings association may act as guarantor under section 5(b)(2) of the Home Owners' Loan Act (the "HOLA"). Additionally, OTS is modifying restrictions on suretyship and guaranty agreements issued under this section. The rule also clarifies that a Federal savings association holds authority to issue letters of credit and makes related technical amendments. OTS is also amending various lending related definitions to either clarify definitions or remove unnecessary or outdated definitions.

EFFECTIVE DATE: October 1, 1999.

FOR FURTHER INFORMATION CONTACT: William J. Magrini, Senior Project Manager, (202) 906–5744, Supervision Policy; Raynette Gutrick, Attorney, (202) 906–6265, Regulations and Legislation Division or Karen Osterloh, Assistant Chief Counsel, (202) 906–6639, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

On September 18, 1998, OTS issued a Notice of Proposed Rulemaking ("NPR") clarifying a Federal savings association's authority to act as guarantor under section 5(b)(2) of the HOLA (64 FR 49874). The proposed rule included restrictions on suretyship and guaranty agreements issued under this authority. OTS also proposed revisions clarifying that Federal savings associations may issue letters of credit. Finally, OTS sought comment on whether it should adopt a regulation to address the escrow authority of Federal savings associations.

This document finalizes the proposed changes, clarifies or removes various related definitions that are outdated or unnecessary, and makes other technical amendments.

II. Summary of Comments

The public comment period on the NPR closed on November 17, 1998. Two Federal savings associations, two trade associations, a Federal Home Loan Bank, and one individual filed comments on the NPR.

Four commenters addressed OTS's proposal clarifying the guaranty authority for Federal savings associations and proposing restrictions on suretyship and guaranty agreements under section 5(b)(2) of the HOLA. Two commenters supported the proposed changes and two commenters suggested clarifications.

Two commenters supported the clarification of the authority of Federal savings associations to issue letters of credit. Three commenters opposed the issuance of a regulation addressing the escrow authority of Federal savings associations. OTS has addressed the specific comments in the section-by-section discussion below.

III. Section-by-Section Discussion

A. Suretyship and Guaranty [1]

Section 5(b)(2) of the HOLA provides "[t]o such extent as the Director may authorize in writing, a Federal savings association * * * may be surety as defined by the Director.* * *" [2] OTS's current regulation at 12 CFR 545.103 authorizes Federal savings associations to act as surety under this section, subject to specified conditions.

Neither section 5(b)(2) of the HOLA nor current 545.103 address a Federal savings association's authority to issue a guaranty.[3] Nonetheless, OTS and its predecessor, the Federal Home Loan Bank Board ("FHLBB"), have recognized that the authority of a Federal savings association to act as guarantor is subsumed within section 5(b)(2) of the HOLA.[4] To clarify this point, OTS proposed to specifically authorize Federal savings associations to act as guarantors. OTS also proposed to move the portion of the regulation authorizing surety and guaranty agreements under section 5(b)(2) of the HOLA from part 545 to the lending and investment regulation at part 560.

Currently 545.103 imposes various conditions on the exercise of a Federal savings association's authority under section 5(b)(2) of the HOLA. Under these conditions, a Federal savings association may enter into a surety agreement only if its performance under the agreement would create an obligation authorized for investment and it takes and maintains a perfected security interest in described collateral. In addition, the current rule treats the obligation under the surety agreement as a loan to the principal under the loans-to-one-borrower limits and loans to insider restrictions.

OTS proposed several modifications to these existing conditions. First, OTS proposed to revise the collateral requirements to reflect changes to the Office of Comptroller of the Currency's (OCC) related regulation on surety and guaranty agreements.[5] Second, OTS proposed to add a new provision requiring the association to limit its obligations under the surety or guaranty agreement to a fixed amount and a specified duration. The proposed rule also added definitions of the terms suretyship and guaranty agreement.[6]

Four commenters addressed the proposed surety and guaranty regulation. Two supported the proposed changes. Two other commenters suggested clarifications and changes. These two commenters argued that the text of the proposed rule assumes that all guaranties are repayable and, thus, treats all guaranty agreements as if they were loans. The commenters noted that many guaranty-type arrangements issued by savings associations are not repayable. As examples of such arrangements, the commenters cited letters of credit, recourse transactions, and various other corporate undertakings in financial transactions. The commenters urged OTS to adopt a rule recognizing the standard market practice of non-repayable guaranties and similar arrangements, and clarifying that these practices are not subject to the conditions contained in the proposed rule.

OTS did not intend to deprive Federal thrifts of any existing authority. Rather, like the existing rule, this provision is intended to address only repayable guaranty and surety agreements issued under section 5(b)(2) of the HOLA.[7] Federal savings associations hold other authority to issue other guaranties and guaranty-like arrangements. For example, a Federal savings association may sell loans with recourse,[8] issue letters of credit and other independent undertakings,[9] and act as a surety for public deposits.[10] Further, a Federal savings association may execute signature guaranties,[11] may act as a surety with respect to its lost or destroyed Government National Mortgage Association (GNMA) certificate,[12] and may offer performance guaranties on low down payment mortgage loans that it originates or purchases and insures with a private mortgage insurer.[13] OTS did not intend to limit these authorities or to subject these authorities to the conditions contained in the proposed rule.

OTS has revised its final rule to clarify this point. The final rule clarifies that a Federal savings association may enter into a repayable suretyship or guaranty agreement under section 5(b)(2) of the HOLA, subject to the conditions listed in § 560.60.

As noted in the NPR, OTS modeled its rule on the OCC's rule on surety and guaranty agreements at 12 CFR 7.1017. The OCC's regulation states that:

> A national bank may lend its credit, bind itself as a surety to indemnify another, or otherwise become a guarantor, if: (a) The bank has a substantial interest in the performance of the transaction involved * * *; or (b) The transaction is for the benefit of a customer and the bank obtains from the customer a segregated deposit that is sufficient in amount to cover the bank's total potential liability.

One commenter observed that the proposed rule incorporated paragraph (b), but did not incorporate paragraph (a) of the OCC's rule. Thus, the commenter noted that OCC does not require a national bank to collateralize the transaction or meet collateral requirements listed in paragraph (b), if the bank holds a substantial interest. The commenter, therefore, asserted that OTS has imposed more rigorous

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[1] Letters of credit and other independent undertakings are discussed in Section III. B. below.

[2] 12 U.S.C. 1464(b)(2).

[3] Under a suretyship agreement, the surety is bound with its principal to pay or perform an obligation to a third party. Black's Law Dictionary 1441–42 (6th ed. 1990). Under a guaranty agreement, on the other hand, the guarantor agrees to satisfy the obligation of the principal to another only if the principal fails to pay or perform. *Id.* at 705.

[4] *See e.g.*, 48 FR 23032, 23043 (May 23, 1983) (stating that section 5(b)(2) of the HOLA empowers the FHLBB to authorize by regulation the issuance of suretyship devices by Federal savings associations for the purpose of guarantying the obligations of others); FHLBB Op. Assoc. Gen. Counsel (July 5, 1983) (permitting the association to act as surety or guarantor under section 5(b)(2) of the HOLA). *See also* 12 CFR 545.16(a)(3) ("surety" means surety under real and/or personal suretyship, and includes guarantor).

[5] 12 CFR 7.1017, as amended by 61 FR 4849 (February 9, 1996).

[6] The agency proposed to delete certain provisions of existing § 545.103. For example, current § 545.103(c) states that if a Federal savings association is required to perform under the suretyship agreement, it must treat the amount advanced as an extension of credit, subject to investment limits and other restrictions applicable to such an extension of credit. OTS has deleted this paragraph because it duplicates § 560.31(a).

[7] *See* FHLBB Op. Gen. Counsel (March 5, 1985) (Section 545.103 "addresses the situation where the association for a fee backs the obligation of another to a third party; the party contracting for the association to pledge to pay its debt would be liable to the association for repayment should the association have to make payment to the third party under the surety agreement.")

[8] *See* 47 FR 4049, 4051 (January 28, 1982).

[9] *See* today's final rule at § 560.50.

[10] 12 CFR 545.16.

[11] *See* FHLBB Op. Gen. Counsel (August 11, 1981) ("The authority to guarant[y] customer signatures is both implied in and incidental to the express objects and powers of Federal associations as set forth in the HOLA and the Federal charter.").

[12] *See* FHLBB Op. Gen. Counsel (March 5, 1985) ("This is a form of offering the association's assets generally in support of its obligations which appears to be incidental to its authority to enter into the GNMA transaction and to give security.").

[13] *See* OTS Op. Chief Counsel (October 2, 1998) (This activity "is subsumed within the residential real property lending authority of Federal savings associations in section 5(c)(1)(B) of the [HOLA], and is a power incident to this authority.").

requirements than OCC, causing the thrift charter to be less attractive than the national bank charter.

OCC appears to have included the "substantial interest" provision to clarify the authority of national banks in light of judicial precedent limiting their ability to issue guaranties for others based on a lack of express authority to national banks to guarantee the acts of third parties.[14] Despite this limitation, national banks may provide guaranties that are "entered into for the furtherance of their own rights or as an incident to the transaction of business."[15] Interpretative Ruling 7.1017 was "intended to provide a general statement of this incidental powers exception to the general prohibition against national banks' entering guarantees."[16] Because the HOLA expressly authorizes thrifts to enter into suretyship and guaranty agreements,[17] it is unnecessary to include a similar clarification in OTS's authorizing rule.

Moreover, OTS believes that a new paragraph incorporating incidental powers concepts would duplicate other existing OTS regulations. Like national banks, federal savings associations hold powers incident to their express powers, as set forth in the HOLA.[18] OTS regulations at 12 CFR 544.1 and 552.3 already state that a Federal savings association may "exercise all the express, implied, and incidental powers conferred" by the HOLA. In light of this general recognition of incidental powers under the HOLA, OTS has not restated the widely recognized incidental powers concepts in this authorizing rule.

In the proposed rule, OTS asked whether the OTS rule should specifically authorize other types of suretyship, guaranty, or similar arrangements beyond those covered in the proposed rule. One commenter recommended that OTS adopt a rule based on the OCC's former rule at 12 CFR 7.7015 (1996), which permitted a national bank to engage in check guaranty plans under which it will honor checks drawn on it up to a certain amount. OCC determined that this arrangement is essentially a credit agreement and, therefore, a permissible activity.

OTS believes that the HOLA expressly authorizes these check guaranty plans. A check guaranty plan is an arrangement where an institution holds out to the public that it will honor checks drawn upon it up to a certain amount by a depositor who displays a check guaranty card. A check guaranty plan is, in essence, an agreement by a Federal savings association to pay deposits out of an account or extend credit up to a predetermined amount to a depositor when insufficient funds are available to honor a check drawn on a depositor's account.[19] In the latter case, such a commitment to lend is within the express powers of Federal savings associations under section 5(c)(1)(A) of the HOLA, which permits a Federal savings association to make "loans specifically related to transaction accounts."[20] OTS regulation at 12 CFR 560.30, which implements this section of the HOLA, specifically states that transaction account loans include overdrafts.[21] Thus, the HOLA and OTS regulations already authorize a Federal savings association to offer a plan that provides a line of credit on the customer's checking account. Since a Federal savings association may make overdraft loans, it is not necessary to expressly authorize check guaranty plans in the revised suretyship and guaranty provisions.[22]

Today's final rule also includes several changes to the proposed rule. First, OTS has moved the conditions on the exercise of this surety and guaranty authority from its proposed location at § 560.115 to the authorizing provision at § 560.60.[23] Second, OTS has made minor clarifying revisions to the text of the rule. For example, OTS has revised the provision addressing real estate collateral at § 560.60(c)(1)(i) to require an evaluation or appraisal of real estate consistent with OTS appraisal regulation at 12 CFR 564.3. OTS has also replaced the phrase "prior mortgage" in § 560.60(c)(1)(i) with the phrase "any existing senior mortgages" to clarify this provision.

B. Letters of Credit and Other Independent Undertakings

Proposed 560.50 would clarify that Federal savings associations are authorized to issue letters of credit, and may issue such other independent undertakings as are approved by OTS, subject to restrictions in existing 560.120.[24] Three commenters addressed proposed 560.50. Two of these commenters supported OTS's proposal. The third commenter submitted information regarding international practices relating to standby letters of credit. Today's final rule adopts proposed 560.50 without change.

Today's final rule also makes several technical and clarifying revisions to 560.120, a related rule on Letters of Credit and Other Undertakings to Pay Against Documents. First, OTS has redrafted paragraph (a) to be more concise. Second, OTS is revising footnote 1 to indicate that the U.N. General Assembly adopted in 1995 and the United States signed in 1997, the United Nations Convention on Independent Guarantees and Standby Letters of Credit. Third, OTS is revising 560.120(b)(2)(ii) to clarify that the precautions on allowing credit assessments when an independent undertaking is renewed apply only to automatic renewals. Discretionary renewals implicitly allow the savings association to make any necessary credit assessment before renewing. Fourth, OTS is updating a telephone number in footnote 1.

OTS did not address these changes in the NPR. Because these changes are technical, rather than substantive, OTS has concluded that notice and public comment on these changes is unnecessary and contrary to the public interest.[25]

C. Escrow Accounts

In the NPR, OTS requested comment on the escrow authority of Federal savings associations. OTS has long recognized that the authority of Federal savings associations to make loans includes the authority to establish an escrow account in connection with a loan.[26] However, OTS questioned whether it should clarify the scope of Federal savings associations' authority to handle escrow accounts that are not related to loans. OTS did not propose any new regulatory text on escrow accounts. Rather, it requested comment on this issue. OTS specifically asked commenters to address whether OTS should place any restriction on the exercise of the escrow authority.

Three commenters opposed the adoption of any regulation addressing the escrow authority of Federal savings associations. These commenters argued that current guidance in the escrow area is sufficient.[27] Commenters also feared that additional restrictions on the exercise of escrow authority, particularly for escrow accounts related to loans, could lead to confusion with other regulations.[28]

In light of these comments, OTS will not adopt a regulation on escrow authority in this rulemaking. OTS will continue to answer any questions that arise in this area on a case-by-case basis.

IV. Related Definitions

In connection with today's final rule, OTS has removed or revised certain lending-related definitions in parts 541 and 561 and elsewhere. These revisions fulfill, in part, promises made in the final lending and investment regulation in 1996. In that rulemaking, OTS recognized that its regulations include similar, but not identical, terms in various regulatory provisions. OTS indicated that it would review its definitions and would minimize or eliminate the potential for confusion in a later rulemaking.[29]

OTS did not address the possibility of these changes in the NPR. Nonetheless, OTS has concluded that additional notice and public comment on these changes is unnecessary and contrary to the public interest.[30] OTS has not made any substantive revisions in this final rule. Rather, OTS has simply removed some unused terms, and made other minor technical or clarifying changes to other definitions. OTS has made the following revisions:

A. Guaranteed Loan, Guaranteed Obligation, and Insured Loan

The current OTS rules at Parts 541 and 561 include one definition of "guaranteed obligation" (561.21), two definitions of "guaranteed loan" (541.13 and 561.20), and two definitions of "insured loan" (541.17 and 561.25). The FHLBB originally adopted these definitions between 1949 and 1968 to implement various lending and investments authorities then applicable to Federal savings associations.[31] Neither OTS nor the FHLBB substantively revised these definitions after 1971. OTS merely adopted these definitions without change when it transferred and re-codified FHLBB regulations in 1989.[32]

The current definitions of the cited terms conflict. For example, 541.13 defines "guaranteed loan" as a loan guaranteed under the Servicemen's Readjustment Act of 1944 or chapter 37 of title 38, United States Code, as amended. Section 561.20, on the other hand, defines "guaranteed loan" as a loan guaranteed under "(a) The Servicemen's Readjustment Act of 1944 or chapter 37 of title 38, United States Code; (b) The New Communities Act of 1968; (c) Section 221 or section 224 of the Foreign Assistance Act of 1961, as in effect prior to December 30, 1969; or (d) section 221 or section 222 of the Foreign Assistance Act of 1961, as in effect on December 30, 1969, and thereafter." The two definitions of insured loans are similarly inconsistent.[33] These inconsistencies have arisen over time as the statutes and regulations affecting savings associations have been reorganized and recodified.

OTS regulations use the three cited terms only in the lending and investment chart at 560.30. This chart expressly cross-references the explicit statutory citation for each type of guaranteed loan, guaranteed obligation, or insured loan. These cross-references completely and accurately define the scope of the lending and investment authority of Federal savings associations. Accordingly, OTS has concluded that these definitions are unnecessary and potentially confusing, and has deleted these provisions.

B. Open-End Consumer Credit and Closed-End Consumer Credit

The current rules at 561.36 and 561.10 define open-end consumer credit and closed-end consumer credit by a cross-reference to Regulation Z (12 CFR 226.2). OTS regulations use these two phrases only in 560.3 (definition of consumer loan). Accordingly, OTS has deleted the definitions of open-end and closed-end consumer credit, and has revised 560.3 to include appropriate cross-references to Regulation Z.

OTS has also made a minor technical change to the definition of consumer loan at 560.3. The existing consumer loan definition excludes "credit extended in connection with credit cards and bona fide overdraft loans." OTS excluded these loans to reflect the fact that credit card loans and overdraft loans are not subject to the 35 percent of asset limitation applicable to consumer loans under section 5 of the HOLA.[34] OTS notes, however, that other types of loans may meet the technical definition of consumer loan at 560.3, but may also be made without limitation under other sections of the HOLA. Examples include educational loans and home improvement loans.[35] OTS has revised the rule to indicate that the term consumer loan does not include credit extended in connection with credit card loans, bona fide overdraft loans, and other loans that the savings association has designated as made under investment or lending authority other than section 5(c)(2)(D) of the HOLA.[36]

C. Residential Real Estate and Related Definitions

OTS has also made minor revisions to the definition of residential real estate and related definitions. Two changes consolidate defined terms. For example, 541.3 defines the phrase "combination of home and business property" as a home used in part for business. OTS

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[14] *See* OCC Unpublished Interpretative Letter (June 4, 1993) citing *Dunn* v. *McCoy*, 113 F.2d 587, 588 (3d Cir. 1940); *Kimen* v. *Atlas Exch. Nat'l Bank*, 92 F.2d 615, 617 (7th Cir. 1937), cert. denied, 303 U.S. 650 (1938); *Border Nat'l Bank* v. *American Nat'l Bank*, 282 F. 73, 77 (5th Cir.), cert. denied and appeal dismissed, 260 U.S. 701 (1922); *Bowen* v. *Needles Nat'l Bank*, 94 F. 925, 927 (9th Cir. 1899), cert. denied, 176 U.S. 682 (1900).

[15] OCC Interpretative Letter 376 (October 22, 1986), citing *Dunn*, 113 F.2d at 589.

[16] OCC Unpublished Interpretative Letter (June 4, 1993).

[17] *See* 12 U.S.C. 1464(b)(2) and *infra* notes 2–4 and accompanying text.

[18] *See* OTS Op. Acting Chief Counsel (March 25, 1994) at 7–8 and (October 17, 1994) at 4–5.

[19] OCC reached a similar conclusion that check guaranty plans are essentially a loan commitment. *See* 12 CFR 7.7015 (1996).

[20] 12 U.S.C. 1464(c)(1)(A). Moreover, section 12 of the HOLA expressly authorizes a Federal savings association to advertise, subject to OTS regulations.

[21] While loans on transactional accounts under section 5(c)(1)(A) of the HOLA are not subject to percentage of assets limitation, OTS implementing regulation indicates that "[overdrafts] on commercial deposit or transaction accounts shall be considered to be commercial loans for the purposes of determining the association's percentage of assets limitations." 12 CFR 560.30, footnote 20.

[22] OTS notes that OCC removed the interpretive ruling on check guaranty plans from its regulations in 1996 because the ruling was unnecessary or repetitive. 61 FR 4849, 4860 (February 9, 1996).

[23] OTS originally placed these conditions in subpart B of part 560 to ensure that similar guaranty and surety agreements by state-chartered savings associations would be subject to cited conditions. A state-chartered savings association may not engage as principal in any type of activity that is not permissible for a Federal savings association, unless the FDIC has made certain determinations regarding the risk of the transactions. *See* 12 U.S.C. 1831e(a) (1989). Accordingly, this purpose will be preserved by placing the restrictions in the authorizing provision at § 560.60.

[24] The broad scope of the term "independent undertakings" and its recent evolution require close supervision and review when such undertakings fall outside the more traditional activities generally known as letters of credit. OTS approval may take the form of legal opinions, general guidance, or case-by-case approvals, depending on how the undertakings are presented to the agency. *See* 63 FR 49874, 49875–76 (September 18, 1998).

[25] *See* 5 U.S.C. 553(b)(B).

[26] *See* 61 FR 50951, 50961 (September 30, 1996).

[27] *See* 61 FR 50951, 50961 (September 30, 1996)(the authority to hold escrow accounts related to loans); OTS Regulatory Handbook: Trust Activities, § 140 (1992) and Op. Chief Counsel (October 17, 1995) (the authority to engage in fiduciary activities involving non-discretionary activities such as escrow or safekeeping services or acting as a custodian or paying agent); and OTS Op. Chief Counsel (August 19, 1998) (the authority to hold an escrow account for funds representing down-payments on vacations for a Federal savings association customer, a vacation organizer).

[28] *See e.g.*, the Real Estate Settlement Procedures Act at 12 U.S.C. 2601 et seq. and the implementing regulations at 24 CFR 3500 et seq.

[29] *See e.g.*, 61 FR 50951, 50953, 50959 (September 30, 1996).

[30] *See* 5 U.S.C. 553(b)(B).

[31] *See* 14 FR 3981 (July 16, 1949); 23 FR 9891 (December 23, 1958); 33 FR 16555 (November 14, 1968).

[32] 54 FR 49411 (November 30, 1989).

[33] *Compare* 12 CFR 541.17 *with* 12 CFR 561.25.

[34] *See* 61 FR 50951, 50959 (September 30, 1996). A Federal thrift's aggregate investments in consumer loans, corporate debt securities, and commercial paper are subject to a 35 percent of assets limitation.

[35] 12 U.S.C. 1464(c)(1)(J) and (c)(1)(U).

[36] *See* 12 CFR 560.31.

regulations use this phrase twice—once in the definition of residential real estate at 541.23 and once in the definition of home loan at 560.3. The final rule deletes 541.3 and modifies 541.23 and 560.3 accordingly.

Similarly, 541.4 defines the phrase "combination of residential real estate and business property involving only minor or incidental business use" as residential real estate for which no more than twenty percent of the total appraised value of the real estate is attributable to the business use. OTS regulations use this phrase only in the definition of residential real estate at 541.23. OTS has deleted 541.4 and has revised 541.23 to include the phrase.

In addition, 541.23 currently defines residential real estate, in part, as "homes (including condominiums and cooperatives)." OTS has clarified the parenthetical phrase to include "a dwelling unit in a multi-family residential property such as a condominium or a cooperative." [37]

D. Miscellaneous Definitions

Section 561.23 defines the term "home mortgage." OTS regulations use this term only within the phrase "home mortgage loan" in part 563e—Community Reinvestment. OTS has separately defined "home mortgage loan" for part 563e by a cross-reference to the Federal Reserve Board's Regulation C—Home Mortgage Disclosure.[38] Since OTS rules do not use the term "home mortgage" elsewhere, OTS has deleted this definition as superfluous.

OTS regulations define the phrase "normal lending territory" at 561.32, but do not use this term anywhere. This definition appears to be a remnant of provisions found in former section 5(c) of the HOLA, which generally restricted real estate lending by a Federal savings association to property located in the state in which the association's home office was located, or within 100 miles of the home office.[39] OTS has deleted this term as unnecessary.

The rules define "cooperative housing development" at 541.6. This term, however, is also not used in OTS regulations. OTS has, therefore, deleted this definition.

OTS rules at 561.11 define "closing date" as "any annual or semiannual closing date." Three OTS regulations use this term. The cited definition is clearly inapplicable in two of these regulations. *See* 12 CFR 563b.7(g)(5) (the closing date of a public offering) and 12 CFR 567.4(a)(4) (the closing date for a response to a notice of intent to issue a capital directive). The remaining regulation at 563b.3(f)(5) uses closing date within the phrase "annual closing date." OTS, therefore, has removed this term as superfluous.

V. Executive Order 12866

The Director of OTS has determined that this final rule does not constitute a "significant regulatory action" for the purpose of Executive Order 12866.

VI. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, OTS certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Today's final rule will not impose any additional burdens or requirements on small entities. Rather, the final rule simply clarifies the authority of Federal savings associations to act as guarantor and to issue letters of credit. This final rule also streamlines lending related definitions or removes unnecessary or outdated definitions. While the final rule also restricts the circumstances under which savings associations may enter into surety and guaranty agreements, the restrictions are the minimum necessary for safe and sound operations and should not impose a significant burden on small savings associations.

VII. Unfunded Mandates Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. OTS has determined that the final rule will not result in expenditures by state, local, or tribal governments or by the private sector of $100 million or more. Accordingly, this rulemaking is not subject to section 202 of the Unfunded Mandates Act.

List of Subjects

12 CFR Part 541

Savings associations.

12 CFR Part 545

Accounting, Consumer protection, Credit, Electronic funds transfers, Investments, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 560

Consumer protection, Investments, Manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities.

12 CFR Part 561

Savings associations.

Accordingly, the Office of Thrift Supervision amends chapter V, title 12, Code of Federal Regulations as set forth below:

PART 541—DEFINITIONS

1. The authority citation for part 541 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464.

§§ 541.3, 541.4, 541.6, 541.13, 541.17 [Removed]

2. Sections 541.3, 541.4, 541.6, 541.13, and 541.17 are removed.

3. Section 541.23 is revised to read as follows:

§ 541.23 Residential real estate.

The terms *residential real estate* or *residential real property* mean:

(a) Homes (including a dwelling unit in a multi-family residential property such as a condominium or a cooperative);

(b) Combinations of homes and business property (*i.e.*, a home used in part for business);

(c) Other real estate used for primarily residential purposes other than a home (but which may include homes);

(d) Combinations of such real estate and business property involving only minor business use (*i.e.*, where no more than 20 percent of the total appraised value of the real estate is attributable to the business use);

(e) Farm residences and combinations of farm residences and commercial farm real estate;

(f) Property to be improved by the construction of such structures; or

(g) Leasehold interests in the above real estate.

PART 545—[AMENDED]

PART 560—LENDING AND INVESTMENT

4. The authority citation for part 560 continues to read as follows:

[37] OTS has made a related change to the definition of home loan at 12 CFR 560.3.

[38] *See* 12 CFR 563e.12(l), which cross-references 12 CFR 203.2.

[39] 12 U.S.C. 1464(c)(1976).

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1701j–3, 1828, 3803, 3806; 42 U.S.C. 4106.

§ 545.103 [Redesignated as § 560.60]

5. Section 545.103 is redesignated as § 560.60 and revised to read as follows:

§ 560.60 Suretyship and guaranty.

Pursuant to section 5(b)(2) of the HOLA, a Federal savings association may enter into a repayable suretyship or guaranty agreement, subject to the conditions in this section.

(a) *What is a suretyship or guaranty agreement?* Under a suretyship, a Federal savings association is bound with its principal to pay or perform an obligation to a third person. Under a guaranty agreement, a Federal savings association agrees to satisfy the obligation of the principal only if the principal fails to pay or perform.

(b) *What requirements apply to suretyship and guaranty agreements under this section?* A Federal savings association may enter into a suretyship or guaranty agreement under this section, subject to each of the following requirements:

(1) The Federal savings association must limit its obligations under the agreement to a fixed dollar amount and a specified duration.

(2) The Federal savings association's performance under the agreement must create an authorized loan or other investment.

(3) The Federal savings association must treat its obligation under the agreement as a loan to the principal for purposes of §§ 560.93 and 563.43 of this chapter.

(4) The Federal savings association must take and maintain a perfected security interest in collateral sufficient to cover its total obligation under the agreement.

(c) *What collateral is sufficient?* (1) The Federal savings association must take and maintain a perfected security interest in real estate or marketable securities equal to at least 110 percent of its obligation under the agreement, except as provided in paragraph (c)(2) of this section.

(i) If the collateral is real estate, the Federal savings association must establish the value by a signed appraisal or evaluation in accordance with part 564 of this chapter. In determining the value of the collateral, the Federal savings association must factor in the value of any existing senior mortgages, liens or other encumbrances on the property, except those held by the principal to the suretyship or guaranty agreement.

(ii) If the collateral is marketable securities, the Federal savings association must be authorized to invest in that security taken as collateral. The Federal savings association must ensure that the value of the security is 110 percent of the obligation at all times during the term of agreement.

(2) The Federal savings association may take and maintain a perfected security interest in collateral which is at all times equal to at least 100 percent of its obligation, if the collateral is:

(i) Cash;

(ii) Obligations of the United States or its agencies;

(iii) Obligations fully guaranteed by the United States or its agencies as to principal and interest; or

(iv) Notes, drafts, or bills of exchange or bankers' acceptances that are eligible for rediscount or purchase by a Federal Reserve Bank.

6. Section 560.3 is amended by revising the definitions of "Consumer loans" and "Home loans" to read as follows:

§ 560.3 Definitions.

* * * * *

Consumer loans include loans for personal, family, or household purposes and loans reasonably incident thereto, and may be made as either open-end or closed-end consumer credit (as defined at 12 CFR 226.2(a) (10) and (20)). Consumer loans do not include credit extended in connection with credit card loans, bona fide overdraft loans, and other loans that the savings association has designated as made under investment or lending authority other than section 5(c)(2)(D) of the HOLA.

* * * * *

Home loans include any loans made on the security of a home (including a dwelling unit in a multi-family residential property such as a condominium or a cooperative), combinations of homes and business property (*i.e.*, a home used in part for business), farm residences, and combinations of farm residences and commercial farm real estate.

* * * * *

7. Section 560.50 is added to subpart A to read as follows:

§ 560.50 Letters of credit and other independent undertakings—authority.

A Federal savings association may issue letters of credit and may issue such other independent undertakings as are approved by OTS, subject to the restrictions in § 560.120.

8. Section 560.120 is amended by revising the first two sentences of paragraph (a) and paragraph (b)(2)(ii) to read as follows:

§ 560.120 Letters of credit and other independent undertakings to pay against documents.

(a) *General authority.* A savings association may issue and commit to issue letters of credit within the scope of applicable laws or rules of practice recognized by law. It may also issue other independent undertakings within the scope of such laws or rules of practice recognized by law, that have been approved by OTS (approved undertaking).[1] * * *

(b) * * *

(2) * * *

(ii) In the event that the undertaking provides for automatic renewal, the terms for renewal should allow the savings association to make any necessary credit assessment prior to renewal;

* * * * *

PART 561—DEFINITIONS

9. The authority citation for part 561 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a.

§§ 561.10, 561.11, 561.20, 561.21, 561.23, 561.25, 561.32, 561.36 [Removed]

10. Sections 561.10, 561.11, 561.20, 561.21, 561.23, 561.25, 561.32, and 561.36 are removed.

Dated: August 19, 1999.

By the Office of Thrift Supervision.

Richard M. Riccobono,

Deputy Director.

[FR Doc. 99–21993 Filed 8–25–99; 8:45 am]

BILLING CODE 6720–01–P

[1] Samples of laws or rules of practice applicable to letters of credit and other independent undertakings include, but are not limited to: the applicable version of Article 5 of the Uniform Commercial Code (UCC) (1962, as amended 1990) or revised Article 5 of the UCC (as amended 1995) (available from West Publishing Co., 1/800/328–4880); the Uniform Customs and Practice for Documentary Credits (International Chamber of Commerce (ICC) Publication No. 500) (available from ICC Publishing, Inc., 212/206–1150; the United Nations Convention on Independent Guarantees and Standby Letters of Credit (adopted by the U.N. General Assembly in 1995 and signed by the U.S. in 1997) (available from the U.N. Commission on International Trade Law, 212/963–5353); and the Uniform Rules for Bank-to-Bank Reimbursements Under Documentary Credits (ICC Publication No. 525) (available from ICC Publishing, Inc., 212/206–1150).

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–149]

RIN 2115–AA97

Safety Zone: Decker Wedding Fireworks, Western Long Island Sound, Rye, NY

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Decker Wedding fireworks display located on Western Long Island Sound. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic on a portion of Western Long Island Sound.

DATES: This rule is effective from 8:30 p.m. until 10 p.m., on September 25, 1999. There is no rain date for this event.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4193.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM and for making this regulation effective less than 30 days after **Federal Register** publication. Due to the date the Application for Approval of Marine Event was received, there was insufficient time to draft and publish an NPRM and publish the final rule 30 days before its effective date. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to close the waterway and protect the maritime public from the hazards associated with this fireworks display.

Background and Purpose

On August 4, 1999, Bay Fireworks submitted an application to hold a fireworks program on the waters of Western Long Island Sound, Rye, NY. The fireworks program is being sponsored by David Decker. This regulation establishes a safety zone in all waters of Western Long Island Sound within a 360 yard radius of the fireworks barge, in approximate position 40°56′34″N 073°41′23″W (NAD 1983), approximately 450 yards west of Milton Point, Rye, New York. The safety zone is in effect from 8:30 p.m. until 10 p.m. on Saturday, September 25, 1999. There is no rain date for this event. The safety zone prevents vessels from transiting a portion of Western Long Island Sound and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. This safety zone will have negligible impact on the area because boaters can safely transit around the zone to the south. The zone does not block access to any portion of Western Long Island Sound other than the area comprised by the zone itself. Public notifications will be made prior to the event by marine information broadcasts and the Local Notice to Mariners.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(0) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Th[i]s finding is based on the minimal time that vessels will be restricted from the zone, that vessels may still transit through Western Long Island Sound during the event, and advance notifications which will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain *Federal mandates*. A Federal mandate is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This final rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–149 to read as follows:

§ 165.T01–149 Safety Zone: Decker Wedding Fireworks, Western Long Island Sound, Rye, New York.

(a) *Location.* The following area is a safety zone: All waters of Western Long Island Sound within a 360 yard radius of the fireworks barge, in approximate position 40°56′34″N 073°41′23″W (NAD 1983), approximately 450 yards west of Milton Point, Rye, New York.

(b) *Effective period.* This section is effective from 8:30 p.m. until 10 p.m. on September 25, 1999. There is no rain date for this event.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a US Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: August 18, 1999.

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 99–22175 Filed 8–23–99; 5:08 pm]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL–6423–8]

Oklahoma: Incorporation by Reference of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Under the Resource Conservation and Recovery Act of 1976, as amended (RCRA), the EPA may grant States Final Authorization to operate their hazardous waste management programs in lieu of the Federal program.

The EPA uses part 272 of Title 40 Code of Federal Regulations (CFR) to provide notice of the authorization status of State programs and to incorporate by reference those provisions of the State statutes and regulations that are part of the authorized State program. Thus, EPA intends to revise and incorporate by reference the Oklahoma authorized State program in 40 CFR part 272. The purpose of this action is to incorporate by reference into the CFR the currently authorized State hazardous waste program in Oklahoma. This document incorporates by reference provisions of State hazardous waste statutes and regulations and clarifies which of these provisions are included in the authorized and Federally enforceable program. In addition, today's document corrects technical errors made in the table of authorities published in the September 22, 1998 (63 FR 50528) authorization notice for Oklahoma.

DATES: This action is effective on October 25, 1999 without further notice unless EPA receives relevant adverse comments by September 27, 1999. If adverse comments are received, EPA will publish a timely withdrawal of the immediate final rule or identify the issues raised, respond to the comments and inform the public that the rule will not take effect. The incorporation by reference of certain Oklahoma statutes and regulations was approved by the Director of the Federal Register as of October 25, 1999 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Written comments referring to Document Number OK99–2 should be sent to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD-G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, phone (214) 665–8533. Copies of Oklahoma program revisions and materials which EPA used in evaluating the revisions are available for inspection and copying from 8:30 a.m. to 4 p.m. Monday through Friday at the following addresses: State of Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma 73101–1677, Phone number: (405) 702–7180 and EPA Region 6 Library, 1445 Ross Avenue, Dallas, Texas 65202, Phone number: (214) 665–6444.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD-G), Multi-Media Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–8533.

SUPPLEMENTARY INFORMATION:

I. Corrections

A. Corrections to the September 22, 1998 (63 FR 50528) Authorization Document

There were typographical and effective date errors in the table published as part of the September 22, 1998 (63 FR 50528) authorization document for Oklahoma. The affected entries for that table are as follows:

1. All references to "Sec. 2–7–104" are corrected to "Sec. 2–2–104";

2. All references to the permanent effective date of "June 1, 1997" are corrected to "June 2, 1997";

3. Specific to Checklist 137 (Item 3), a. the reference to "Sec. 2–7–107(10)" is corrected to "Sec. 2–7–107A(10)";

b. the phrase "and (60 FR 242) January 3, 1995" should be inserted after "September 19, 1994;

4. Specific to Checklist 140 (Item 5), the phrase "and (60 FR 25619) May 12, 1995" should be inserted after "April 17, 1995";

5. Specific to Checklist 141 (Item 6), the reference to "emergency effective date 1, 1996" is corrected to "emergency effective date August 1, 1996."

II. Incorporation By Reference

A. Background

Effective December 13, 1993 (58 FR 52679) and July 14, 1998 (63 FR 23673), EPA incorporated by reference Oklahoma's then authorized hazardous waste program. Effective November 23, 1998 (63 FR 50528), EPA granted authorization to Oklahoma for additional program revisions. In this document, EPA is incorporating the currently authorized State hazardous waste program in Oklahoma.

The EPA provides notice of its approval of State programs in 40 CFR part 272 and incorporates by reference therein the State statutes and regulations that are part of the authorized State program under RCRA. This effort will provide clearer notice to the public of the scope of the authorized program in Oklahoma. Such notice is particularly important in light of Hazardous Waste and Solid Waste Amendments of 1984 (HSWA), Public Law 98–616. Revisions to State hazardous waste programs are necessary when Federal statutory or regulatory authority is modified. Because HSWA extensively amended RCRA, State programs must be modified to reflect those amendments. By incorporating by reference the authorized Oklahoma program and by amending the CFR whenever a new or different set of requirements is authorized in Oklahoma, the status of Federally

approved requirements of the Oklahoma program will be readily discernible.

The Agency will only enforce those provisions of the Oklahoma Hazardous Waste Program for which authorization approval has been granted by EPA.

B. Oklahoma Authorized Hazardous Waste Program

The EPA is revising the incorporation by reference of the Oklahoma authorized hazardous waste program in subpart LL of 40 CFR part 272. The State statutes and regulations are incorporated by reference at 40 CFR 272.1851(b)(1) and the Memorandum of Agreement, the Attorney General's Statement and the Program Description are referenced at § 272.1851(b)(5), (b)(6) and (b)(7), respectively.

The Agency retains the authority under sections 3007, 3008, 3013 and 7003 of RCRA to undertake enforcement actions in authorized States. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and the Federal Administrative Procedure Act rather than the authorized State analogues to these requirements. Therefore, the Agency does not intend to incorporate by reference for purposes of enforcement such particular, authorized Oklahoma enforcement authorities. Section 272.1851(b)(2) of 40 CFR lists those authorized Oklahoma authorities that are part of the authorized program but are not incorporated by reference.

The public also needs to be aware that some provisions of the State's Hazardous Waste Program are not part of the Federally authorized State program. These non-authorized provisions include:

(1) Provisions that are not part of the RCRA subtitle C program because they are "broader in scope" than RCRA subtitle C (see 40 CFR 271.1(i)); and

(2) Federal rules for which Oklahoma is not authorized, but which have been incorporated into the State regulations because of the way the State adopted Federal regulations by reference.

State provisions which are "broader in scope" than the Federal program are not incorporated by reference for purposes of enforcement in 40 CFR part 272. Section 272.1851(b)(3) of 40 CFR lists for reference and clarity the Oklahoma statutory and regulatory provisions which are "broader in scope" than the Federal program and which are not, therefore, part of the authorized program being incorporated by reference. "Broader in scope" provisions will not be enforced by EPA; the State, however, will continue to enforce such provisions.

Oklahoma has adopted but is not authorized for the Federal rule regarding delisting published on July 15, 1985 (50 FR 28702); and the Federal rules published in the FR on October 5, 1990 (55 FR 40834); February 1, 1991 (56 FR 3978); February 13, 1991 (56 FR 5910); April 2, 1991 (56 FR 13406); May 1, 1991 (56 FR 19951); December 23, 1991 (56 FR 66365); February 18, 1992 (57 FR 5859), December 6, 1994 (59 FR 62896); May 19, 1995 (60 FR 26828); and June 29, 1995 (60 FR 33912). Therefore, these Federal amendments included in Oklahoma's adoption by reference at 252:200–3–2(2) through 252:200–3–2(11) of the Oklahoma Administrative Code, are not part of the State's authorized program and are not part of the incorporation by reference addressed by today's FR document.

Since EPA cannot enforce a State's requirements which have not been reviewed and approved according to the Agency's authorization standards, it is important that EPA clarify any limitations on the scope of a State's approved hazardous waste program. Thus, in those instances where a State's method of adopting a Federal law by reference has the effect of including unauthorized requirements, EPA will provide this clarification by: (1) incorporating by reference the relevant State legal authorities according to the requirements of the Office of Federal Register; and (2) subsequently identifying in § 272.1851(b)(4) any requirements which while adopted and incorporated by reference, are not authorized by EPA, and therefore are not Federally enforceable. Thus, notwithstanding the language in the Oklahoma hazardous waste regulations incorporated by reference at § 272.1851(b)(1), EPA would only enforce the State provisions that are actually authorized by EPA. With respect to HSWA requirements for which the State has not yet been authorized, EPA will continue to enforce the Federal HSWA standards until the State receives specific HSWA authorization from EPA.

C. HSWA Provisions

As noted above, the Agency is not amending 40 CFR part 272 to include HSWA requirements and prohibitions that are immediately effective in Oklahoma and other States. Section 3006(g) of RCRA provides that any requirement or prohibition of HSWA (including implementing regulations) takes effect in authorized States at the same time that it takes effect in non-authorized States. Thus, EPA has immediate authority to implement a HSWA requirement or prohibition once it is effective.

A HSWA requirement or prohibition supercedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (50 FR 28702, July 15, 1985). Because of the vast number of HSWA statutory and regulatory requirements taking effect over the next few years, EPA expects that many previously authorized and incorporated by reference State provisions will be affected. The States are required to revise their programs to adopt the HSWA requirements and prohibitions by the deadlines set forth in 40 CFR 271.21, and then to seek authorization for those revisions pursuant to 40 CFR part 271. The EPA expects that the States will be modifying their programs substantially and repeatedly. Instead of amending the 40 CFR part 272 every time a new HSWA provision takes effect under the authority of RCRA section 3006(g), EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's 40 CFR part 272 incorporation by reference. In the interim, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority. This will be particularly true as more State program revisions to adopt HSWA provisions are authorized.

III. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this rule from the requirements of E.O. 12866.

B. Executive Order 13045

Executive Order 13045, "Protection of Children From Environmental Health Risks and Safety Risks," applies to any rule that: (1) the OMB determines is "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

C. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA provides to the OMB a description of the prior consultation and communications the agency has had with representatives of tribal governments and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

This rule is not subject to E.O. 13084 because it does not significantly or uniquely affect the communities of Indian tribal governments. Oklahoma is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that EPA implements in Indian country within the State.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by the UMRA, that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

The EPA has determined that sections 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. This rule merely incorporates by reference existing requirements with which regulated entities must already comply under State and Federal law. Costs to State, local and/or tribal governments already exist under the Oklahoma program, and today's action does not impose any additional obligations on regulated entities. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action because it contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate treatment, storage, and disposal facilities, this codification incorporates into the CFR Oklahoma's requirements which EPA already authorized under 40 CFR part 271. Small governments are not subject to any additional significant or unique requirements by virtue of today's action.

E. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The EPA has determined that this codification will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the State requirements authorized by EPA under 40 CFR part 271. The EPA's codification does not impose any additional burdens on these small entities.

Pursuant to the provision at 5 U.S.C. 605(b), the Agency hereby certifies that this codification will not have a significant economic impact on a substantial number of small entities. This codification incorporates by reference Oklahoma's requirements which have been authorized by EPA under 40 CFR part 271 into the CFR. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

F. Submission to Congress and the Comptroller General

. The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

G. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 272

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This document is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 24, 1999.

Jerry Clifford,

Acting Regional Administration, Region 6.

For the reasons set forth in the preamble, 40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for part 272 continues to read as follows:

Authority: Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

Subpart LL [Amended]

2. Subpart LL is amended by revising § 272.1851 to read as follows:

§ 272.1851 Oklahoma State-Administered Program: Final Authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), the EPA granted Oklahoma final authorization for Base program effective on January 10, 1985. Subsequent program revision applications were approved effective on June 18, 1990, November 27, 1990, June 3, 1991, November 19, 1991, November 29, 1993, December 21, 1994, April 27, 1995, March 14, 1997, July 14, 1998, and November 23, 1998.

(b) State Statutes and Regulations.

(1) The Oklahoma statutes and regulations cited in this paragraph are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(i) The EPA Approved Oklahoma Statutory Requirements Applicable to the Hazardous Waste Management Program, November 1998.

(ii) The EPA Approved Oklahoma Regulatory Requirements Applicable to the Hazardous Waste Management Program, November 1998.

(2) The following statutes and regulations concerning State procedures and enforcement, although not incorporated by reference, are part of the authorized State program:

(i) Oklahoma Hazardous Waste Management Act, as amended, 27A Oklahoma Statute (O.S.) 1997 Edition, effective August 30, 1996, sections 2–2–104, 2–7–102, 2–7–104, 2–7–105 (except 2–7–105(27), 2–7–105(29) and 2–7–105(34)), 2–7–106, 2–7–107, 2–7–108(B)(2), 2–7–110(A), 2–7–113.1, 2–7–115, 2–7–116(A), 2–7–116(G), 2–7–116(H)(1), 2–7–123, 2–7–126, 2–7–129, 2–7–130, 2–7–131 and 2–7–133.

(ii) The Oklahoma Administrative Code, Title 252, Chapter 200, 1996 Edition, effective July 1, 1996: subchapter 1, section 252:200–1–1(b); subchapter 11, section 252:200–11–2; and subchapter 13, sections 252:200–13–1 and 252:200–13–3.

(iii) The Oklahoma Administrative Code, Title 252, Chapter 200, 1997 Supplement, effective June 2, 1997: subchapter 3, sections 252:200–3–2(1), 252:200–3–4(b)(1)–(3) and 252:200–3–4(b)(16).

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(i) Oklahoma Hazardous Waste Management Act, as amended, 27A Oklahoma Statute (O.S.) 1997 Edition, effective August 30, 1996, sections 2–7–119 and 2–7–121.

(ii) The Oklahoma Administrative Code Title 252, Chapter 200, 1996 Edition, effective July 1, 1996: subchapter 8.

(iii) The Oklahoma Administrative Code, Title 252, Chapter 200, 1997 Supplement, effective June 2, 1997: subchapter 13, section 252:200–13–4; subchapter 17; and 252:200 appendices B and C.

(4) *Unauthorized State Provisions:* The State's adoption of the Federal rules listed below, while incorporated by reference at § 272.1851(b)(1), is not approved by EPA and are, therefore, not enforceable:

Federal requirement	Federal Register reference	Publication date
Delisting	50 FR 28702: Amendments to 260.22(a) through 260.22(e).	07/15/85
Toxicity Characteristics; Hydrocarbon Recovery Operations	55 FR 40834, 56 FR 3978, 56 FR 13406.	10/05/90, 02/01/91, 04/02/91
Toxicity Characteristics; Chlorofluorocarbon Refrigerants	56 FR 5910	02/13/91
Administrative Stay for K069 Listing	56 FR 19951	05/01/91
Amendments to Interim Status Standards for Downgradient Ground-water Monitoring Well Locations.	56 FR 66365	12/23/91
Administrative Stay for the Requirement that Existing Drip Pads Be Impermeable.	57 FR 5859	02/18/92
Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers (Rules 154.1 and 154.2).	59 FR 62896, 60 FR 26828	12/06/94, 05/19/95
Removal of Legally Obsolete Rules	60 FR 33912	06/29/95

(5) *Memorandum of Agreement.* The Memorandum of Agreement between EPA Region VI and the State of Oklahoma, signed by the EPA Regional Administrator on August 4, 1998, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) *Statement of Legal Authority.* "Attorney General's Statement for Final Authorization," signed by the Attorney General of Oklahoma on January 20, 1984 and revisions, supplements and addenda to that Statement dated January 14, 1988 (as amended July 20, 1989); December 22, 1988 (as amended June 7, 1989 and August 13, 1990); November 20, 1989; November 16, 1990; November 6, 1992; June 24, 1994; December 8, 1994; March 4, 1996; and April 15, 1997, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(7) *Program Description.* The Program Description and any other materials submitted as part of the original application or as supplements thereto are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

3. Appendix A to part 272, State Requirements, is amended by revising the listing for "Oklahoma" to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

Oklahoma

The statutory provisions include:

Oklahoma Hazardous Waste Management Act, as amended, 27A Oklahoma Statute 1997 Edition, effective August 30, 1996, sections 2–7–103, 2–7–108(A), 2–7–108(B)(1), 2–7–108(B)(3), 2–7–108(C), 2–7–110(B), 2–7–110(C), 2–7–111(A), 2–7–111(B) (except the last sentence and the phrase," recycling" in the first sentence), 2–7–111(C)(2)(a) (except the phrase "Except as provided in subparagraph b of this paragraph" and the word "recycling" in the first sentence), 2–7–111(D), 2–7–111(E) (except the word "recycling" in the first sentence), 2–7–112, 2–7–116(B) through 2–7–116(F), 2–7–116(H)(2), 2–7–118(A), 2–7–124, 2–7–125 and 2–7–127.

Copies of the Oklahoma statutes that are incorporated by reference are available from West Publishing Company, 610 Opperman Drive, P. O. Box 64526, St. Paul, Minnesota 55164–0526.

The regulatory provisions include:

The Oklahoma Administrative Code, Title 252, Chapter 200, 1996 Edition, effective July 1, 1996: subchapter 1, sections 252:200–1–1(a) and 252:200–1–2; subchapter 3, sections 252:200–3–5 and 252:200–3–6; subchapter 5, sections 252:200–5–3 and 252:200–5–5; subchapter 7, sections 252:200–7–1 through 252:200–7–4; subchapter 9 (except 252:200–9–2, 252:200–9–6 and 252:200–9–7); subchapter 11, sections 252:200–11–1 (except the phrases "or off-site recycling" and "(TSDRs)"), 252:200–11–3(a) (except the word "recycling"), 252:200–11–3(b) through 252:200–11–3(d), 252:200–11–4(a)(1) (except the phrases "Except as otherwise provided in this section" and "or recycling"), 252:200–11–4(a)(5) (except the phrase "For the purposes of this section"), 252:200–11–4(b) through 252:200–11–4(e); and subchapter 13, sections 252:200–13–2 introductory paragraph, 252:200–13–2(1) and 252:200–13–2(2) first sentence.

The Oklahoma Administrative Code Title 252, Chapter 200, 1997 Supplement, effective June 2, 1997: subchapter 3, sections 252:200–3–1, 252:200–3–2 (except 252:200–3–2(1)) and 252:200–3–4(a) and 252:300–3–4(b)(4)–(15); subchapter 5, sections 252:200–5–1, 252:200–5–4 and 252:200–5–6; and subchapter 9, section 252:200–9–2.

Copies of the Oklahoma regulations that are incorporated by reference can be obtained from The Oklahoma Register, Office of Administrative Rules, Secretary of State, 101 State Capitol, Oklahoma City, Oklahoma 73105.

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[FR Doc. 99–21936 Filed 8–25–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CRF Part 52

[CC Docket No. 95–116; FCC 99–151]

Telephone Number Portability

AGENCY: Federal Communications Commission.

ACTION: Policy statement.

SUMMARY: This document addresses issues raised on reconsideration of the First Report and Order relating to interim number portability. First, the Commission affirms its earlier conclusion that it has the authority to establish cost recovery guidelines for interim number portability. Second, the Commission rejects claims that the cost recovery guidelines for interim number portability set forth in the *First Report and Order* are arbitrary and capricious, or constitute an unconstitutional taking. The Commission denies the request that these cost recovery guidelines be applied retroactively. The Commission also affirms its earlier decision to adopt general cost recovery guidelines for interim number portability while allowing states flexibility to continue using a variety of cost recovery approaches that are consistent with its guidelines. The Commission also clarifies issues relating to terminating access charges, billing system modifications, and certain cost recovery allocators, as each of these issues relates to interim number portability.

DATES: Effective September 27, 1999.

FOR FURTHER INFORMATION CONTACT: Rhonda Lien or Janet Sievert at (202) 418–1520, Competitive Pricing Division, Common Carrier Bureau.

SUPPLEMENTARY INFORMATION: This summarizes the Commission's Fourth *Memorandum Opinion and Order on Reconsideration* in CC Docket No. 95–116, *In re Telephone Number Portability*, FCC 99–151, adopted June 23, 1999 and released July 16, 1999. The file in its entirety is available for inspection and copying during the weekday hours of 9:00 a.m. to 4:30 p.m. in the Commission's Reference Center, 445 12th St. SW., Room CY–A257, Washington DC, or copies may be purchased from the Commission's duplicating contractor, ITS Inc., 1231 20th St. NW., Washington DC 20036; (202) 857–3088.

Analysis of Proceeding

I. Introduction

The Commission adopted the *First Report and Order and Further Notice of Proposed Rulemaking*, 61 FR 38605 (July 25, 1996) in this docket, which implemented the provisions of section 251 of the Communications Act of 1934, as amended, that relate to telephone number portability. *In re* Telephone Number Portability, CC Docket No. 95–116, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8352 (1996) (*First Report and Order*). Specifically, section 251(b)(2) requires that all local exchange carriers (LECs) provide, "to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." 47 U.S.C. 251(b)(2). Section 251(e)(2) provides that "the costs of establishing * * * number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission." 47 U.S.C. 251(e)(2). The Communications Act of 1934, as amended ("the Act" or "the 1996 Act") defines "number portability" as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another." 47 U.S.C. 153(30). In the *First Report and Order*, the Commission determined, among other things, that it has authority under section 251 to promulgate rules regarding long-term and currently available (or "interim") number portability, as well as to establish cost recovery methods for each.

Twenty-two parties filed petitions for reconsideration or clarification of the *First Report and Order*. Nineteen parties filed oppositions to or comments on the petitions, and 16 parties filed reply comments. On March 6, 1997, the Commission adopted a *First Memorandum Opinion and Order on Reconsideration*, 62 FR 18280 (April 15, 1997) in this proceeding, addressing a number of these issues. *In re* Telephone Number Portability, CC Docket 95–116, *First Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 7236 (1997). A *Second Memorandum Opinion and Order on Reconsideration*, 63 FR 68197 (Dec. 10, 1998) clarified that all LECs must discontinue using interim number portability in areas where a long-term number portability method has been implemented. *In re*

Telephone Number Portability, CC Docket 95–116, *Second Memorandum Opinion and Order on Reconsideration*, 13 FCC Rcd 21,204 (1998). The item also clarified that Remote Call Forwarding (RCF) and Flexible Direct Inward Dialing (DID) are not the exclusive methods of providing interim number portability that LECs are obligated to provide on a transitional basis. Instead, LECs may implement any technically feasible method of interim number portability comparable to RCF and DID. The Commission also held that a LEC is required to implement the specific method of interim number portability requested by a competing carrier, provided that provision of the requested method is not unduly burdensome. A *Third Memorandum Opinion and Order on Reconsideration*, CC Docket No. 95–116, 13 FCC Rcd 16,090 (1998) denied a petition for reconsideration that sought modification to the long-term number portability deployment schedule. In its *Third Report and Order* on number portability, 63 FR 35150 (June 29, 1998), CC Docket No. 95–116, 13 FCC Rcd 11,701 (1998), the Commission adopted rules governing recovery of the costs of long-term number portability. In this *Fourth Memorandum Opinion and Order on Reconsideration*, the Commission addresses issues raised by petitioners relating to cost recovery for interim number portability.

II. Background

3. In the *First Report and Order*, the Commission exercised its authority to prescribe requirements governing the LECs' duty to provide number portability. After determining that section 251(b)(2) requires LECs to provide number portability in the short term, the Commission prescribed that such number portability be provided through Remote Call Forwarding (RCF), Flexible Direct Inward Dialing (DID), or other comparable methods. The Commission based this finding on its conclusion that section 251(b)(2), by referring to the provision of number portability "to the extent technically feasible," creates a dynamic requirement that allows for changes in the methods by which a LEC provides the required number portability. Accordingly, the Commission concluded that because RCF, DID, and other comparable measures currently are technically feasible number portability methods, section 251(b)(2) requires LECs to provide number portability through such methods. The Commission stated that, upon receipt of a specific request from another telecommunications carrier, a LEC must provide number portability through such measures as soon as reasonably possible, until such time as the LEC implements a long-term database method for number portability in that area.

4. In light of its finding that the Communications Act requires LECs to provide interim number portability, the Commission also determined that it must adopt cost recovery principles for interim number portability measures pursuant to section 251(e)(2). The Commission concluded that section 251(e)(2) "gives us specific authority to prescribe pricing principles that ensure that the costs of establishing number portability are allocated on a 'competitively neutral' basis." Applying section 251(e)(2) to interim number portability, the Commission concluded that it should adopt guidelines that the states must follow in mandating cost recovery mechanisms for interim number portability measures.

5. Section 251(e)(2) requires that "the costs of establishing number administration and number portability be borne by all telecommunications carriers on a competitively neutral basis." 47 U.S.C. 251(e)(2). In the *First Report and Order*, the Commission determined that the costs of currently available (referred to here as interim) number portability are those "incremental costs incurred by a LEC to transfer numbers initially and subsequently forward calls to new service providers." The Commission also determined that for purposes of interim number portability, the phrase "all telecommunications carriers" was to be read literally, and included "any provider of telecommunications services," including incumbent LECs, new LECs, commercial mobile radio service (CMRS) providers, and interexchange carriers (IXCs).

6. The Commission also set forth two criteria with which any cost recovery method must comply in order to be considered competitively neutral. First, "a 'competitively neutral' cost recovery mechanism should not give one service provider an appreciable, incremental cost advantage over another service provider, when competing for a specific subscriber." Second, the cost recovery mechanism "should not have a disparate effect on the ability of competing service providers to earn normal returns on their investments." In the *First Report and Order*, the Commission provided some examples of methods currently in use that would comply with these criteria. Such methods include, but are not limited to: allocating incremental costs based on (a) the number of ported numbers, (b) the number of active telephone numbers, (c) the number of active telephone lines, (d) gross telecommunications revenues net of charges paid to other carriers; and (e) each carrier bearing its own costs. The Commission further stated that requiring new entrants to bear all of the costs of interim number portability, measured on the basis of incremental costs, would not comply with the statutory requirements of section 251(e)(2). In setting forth these criteria, however, the Commission left to the states the determination of the specific cost recovery mechanism to be utilized. On May 5, 1998, the Commission adopted a *Third Report and Order* that resolved numerous issues regarding the means by which carriers will bear the costs of providing long-term number portability. The Commission found that section 251(e)(2) expressly and unconditionally grants the Commission authority, and requires the Commission, to ensure that all telecommunications carriers bear the costs of providing number portability for interstate and intrastate calls on a competitively neutral basis. The Commission concluded that section 251(e)(2) addresses both interstate and intrastate matters and overrides the reservation of authority of section 2(b) to the states over intrastate matters. Thus, the Commission determined that section 251(e)(2) authorizes it to provide the distribution and cost recovery mechanism for all the costs of providing long-term number portability. The Commission determined that an exclusively federal recovery mechanism for long-term number portability "will enable the Commission to satisfy most directly its competitive neutrality mandate."

II. Reconsideration Issues

A. Commission Authority To Require Interim Number Portability

1. Background

7. In the *First Report and Order*, the Commission required LECs to provide interim number portability, based on the 1996 Act's requirement that LECs provide number portability "to the extent technically feasible." The Commission based this conclusion on the language of section 251(b)(2), which states that LECs have "[t]he duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the Commission." Several carriers challenge the Commission's finding that the 1996 Act provides authority for the Commission to order LECs to provide interim number portability.

2. Discussion

8. The Commission reaffirms its earlier conclusion that it has authority to require that number portability be implemented "to the extent technically feasible" and that its authority under section 251(b)(2) encompasses all forms of number portability. Section 3(30) of the Act defines number portability as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another." This definition is not limited to any one technical method of number portability. Nor is the duty of LECs pursuant to section 251(b)(2), to provide number portability "to the extent technically feasible . . . in accordance with requirements prescribed by the Commission," limited to long-term number portability. The Commission acknowledges that some ambiguity exists regarding the statutory mandate to require the provision of interim number portability, because, while sections 251(b) and 3(30) refer to the provision of "number portability," section 271(c)(2)(B) refers to both "regulations pursuant to section 251 to require number portability" and "interim number portability" to be provided by Bell Operating Companies (BOCs) until the Commission issues such regulations." *See* 47 U.S.C. 251(b)(2), 271(c)(2)B)(ix), 153(30). The Commission finds, however, that its earlier interpretation of section 251(b)(2), that is, requiring all LECs to provide number portability to the extent technically feasible, is consistent with, and necessary to effectuate, Congress's goal to promote competition in the provision of local telecommunications service. Indeed, prior Commission decisions reflect its understanding of Congress's intent, stated in the *First Report and Order*, that number portability is a dynamic concept that allows for changes in the methods by which LECs provide it. Additionally, in placing number portability obligations within section 251, which is concerned overall with the development of competitive local markets, Congress recognized the importance of number portability to the development of local competition. Because the statutory language, like the language in the House bill, requires LECs to provide number portability "to the extent technically feasible" and according to requirements prescribed by the Commission, rather than "when technically feasible," the Commission does not believe that this legislative history suggests an intent by Congress to prevent the Commission from requiring LECs to provide "interim," "currently available," or "transitional" number portability until "true" number portability becomes available.

9. The Commission finds unpersuasive BellSouth's contention that, because Congress considered including a specific reference to interim number portability, but did not adopt it in section 251(b), the lack of such language demonstrates that the Commission is without jurisdiction in this area, in particular regarding language set forth in section 261 of Senate Bill 652. This language was not included in the final version of the legislation. Because the legislative history provides no explanation for the deletion of this language, it is subject to various interpretations, and the Commission is not persuaded that BellSouth's is the most reasonable among them. *See Mead Corp.* v. *Tilley*, 490 U.S. 714, 723 (1989); *Rastelli* v. *Warnder*, 782 F.2d 17, 23 (2d Cir. 1986). The Joint Explanatory Statement of the Conference Report states that all differences between the Senate Bill, the House Amendment, and the substitute reached in conference are noted therein "except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes." Because the Joint Explanatory Statement does not address the omission of section 261 of the Senate Bill from the final legislation, the more logical inference from the quoted statement is that Congress regarded the change as an inconsequential modification rather than a significant alteration. This view is supported by two additional facts noted above: first, the statement in the Joint Explanatory Statement that section 251 "incorporates provisions from both the Senate Bill and the House Amendment;" and second, the statements from the House Report suggesting that the Commission's authority to prescribe requirements for number portability extends both to interim number portability, which is being provided now, and to long-term number portability, which will "be deployed when it is technically feasible."

10. This reading of the term "number portability" to include all forms of number portability, whether interim or long-term, also is more consistent than BellSouth's reading with Congress' goal of fostering competition in the local exchange marketplace. Congress recognized that number portability is essential to meaningful competition in the provision of local exchange services, and the record in this proceeding demonstrates that customers are reluctant to switch carriers if doing so requires that they give up their current telephone numbers. Nor is this view inconsistent with the distinction between "interim number portability" and "section 251 number portability" referenced in section 271(c)(2)(B)(ix). The legislative history of the 1996 Act does not explain why Congress decided to refer specifically to interim number portability only in section 271(c)(2)(B)(ix). In the absence of such an explanation, and given the broad definition of number portability in section 3(30) and the legislative history described above, it seems unlikely that Congress's reference to interim number portability in section 271(c)(2)(B)(ix) was intended to narrow the concept of number portability as used elsewhere in the statute.

11. Contrary to BellSouth's assertion, in the *First Report and Order*, the Commission did not rely on section 271(c)(2)(B)(xi) as the basis for requiring all LECs to provide interim number portability. Rather, the Commission merely referred to section 271(c)(2)(B)(xi) as offering further support for its interpretation of section 251(b)(2). In addition, the Commission explained that its interpretation of section 251(b)(2) would prevent a BOC seeking interLATA authorization, pursuant to section 271 of the Act, from being able to avoid providing number portability during the time between the adoption of the Commission's number portability rules and the implementation of long-term number portability measures. *See* 47 U.S.C. 271. Under BellSouth's interpretation, a BOC could refuse to offer interim number portability from the time of the adoption of the *First Report and Order* until the actual implementation of long-term number portability, yet still be in compliance with the number portability checklist requirement set forth in section 271. The Commission believes that a more logical interpretation of these sections is that, in providing for both types of number portability, Congress did not intend for there to be such a time lag but instead required the provision of interim number portability until long-term number portability is in place.

B. Commission Authority To Establish Cost Recovery Guidelines for Interim Number Portability

1. Background

12. In the *First Report and Order*, the Commission asserted jurisdiction over interim number portability and established cost recovery guidelines for interim number portability measures for the states to implement. Several commenters assert that the Commission lacks authority to promulgate cost recovery guidelines for interim number portability.

2. Discussion

13. The Commission upholds its earlier decision and affirms its authority to establish cost recovery guidelines for interim number portability measures. Its interpretation of the statute finds support in the language of the 1996 Act, is consistent with the Act's underlying goals, and is consistent with the conclusions reached in the *Third Report and Order*.

14. The Commission finds that sections 251(b)(2) and 251(e)(2) grant it explicit authority over, respectively, the provision of and the recovery of costs associated with number portability. 47 U.S.C. 251(b)(2), (e)(2). The Commission finds that its authority under section 251(e)(2), as with section 251(b)(2), is not limited to long-term number portability, since the statutory definition of number portability draws no distinction between interim and long-term number portability. Section 3(30) of the Act defines number portability as "the ability of users of telecommunications services to retain, at the same location, existing telecommunications numbers without impairment of quality, reliability, or convenience when switching from one telecommunications carrier to another. 47 U.S.C. 153(30). This definition is not limited to one technical method of providing number portability. Similarly, sections 251(b)(2) and 251(e)(2) refer only to the provision and cost recovery of "number portability," but do not limit the term "number portability" to long-term measures. As discussed above, given the broad definition of number portability in section 3(30), it seems unlikely that Congress's reference to interim number portability in section 271(c)(2)(B)(ix) was intended to narrow the concept of number portability as used elsewhere in the statute, such as in sections 251(b)(2) and 251(e)(2). In addition, the Commission finds that its interpretation of section 251(b)(2), requiring all LECs to provide interim number portability, is consistent with, and necessary to effectuate Congress's goal to promote competition in the provision of local telecommunications service.

15. The Commission also notes that its conclusion that it has statutory authority over interim number portability, regardless of whether it is characterized as an intrastate or interstate service, and the establishment of cost recovery rules for interim number portability, is consistent with its holdings in the *Third Report and Order*. There, the Commission concluded that the express and unconditional grant of authority of section 251(e)(2) to the Commission grants us the authority to ensure that carriers bear the costs of providing number portability on a competitively neutral basis for both interstate and intrastate calls. Section 251(e)(2) states that carriers shall bear the costs of number portability "as determined by the Commission," and does not distinguish between costs incurred in connection with intrastate calls and costs incurred in connection with interstate calls. Thus, the Commission concludes for interim number portability, as it did in the *Third Report and Order* for long-term number portability, that section 251(e)(2) addresses both interstate and intrastate matters and overrides the reservation of authority to the states over intrastate matters contained in section 2(b). 47 U.S.C. 152(b). *See Iowa Utils. Bd.* v. *FCC*, 120 F.3d at 792, 794 and n.10, 795 and n.12, 802 and n.23, 806. *See also In re* Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96–98, *First Report and Order*, 61 FR 45476 (August 29, 1996), 11 FCC Rcd 15,499 at 15,548 and n.155 (1996), *vacated in part, aff'd in part, Iowa Utils. Bd.* v. *FCC*, 120 F.3d 753 (8th Cir. 1997), *rev'd in part, aff'd in part and remanded sub nom. AT&T Corp.* v. *Iowa Utils. Bd.*, 119 S.Ct. at 730.

16. The Commission is not persuaded that it lacks jurisdiction over cost recovery for interim number portability measures because the states have historically regulated the retail provision of RCF and DID. The states' regulation of rates for these services when provided on a retail basis does not preclude an express Congressional grant of authority to this Commission under section 251(e)(2) to regulate the cost recovery for interim number portability. Section 251(e)(2) states that carriers shall bear the costs of number portability "as determined by the Commission," and does not distinguish between costs incurred in connection with intrastate calls and costs incurred in connection with interstate calls.

17. The Commission disagrees with Bell Atlantic's claim that, because section 251(e)(2) refers to the costs of "establishing" number portability and there is nothing to "establish" with respect to interim number portability, the Commission is without authority to adopt cost recovery guidelines for the provision of interim number portability. In arguing that there is nothing to "establish" regarding interim number portability, Bell Atlantic defines the term "establish" narrowly, *i.e*, limiting the meaning of "establish" to physically upgrading the public switched telephone network or creating databases necessary for customers to retain their telephone numbers when switching carriers. To give full effect to the pro-competitive objectives of the 1996 Act, the Commission concludes that the term "establish" should be read more broadly. Although the functionalities necessary to provide interim number portability already exist in most public switched telephone networks, additional actions are necessary to implement interim number portability in a manner useful to new entrants. The actions required to establish interim number portability and the associated costs vary according to where the call originates in a carrier's network. The provision of interim number portability results in switching and transport costs, and may include some small non-recurring costs, such as administrative costs. Because additional actions are required by LECs in the provision of interim number portability, the Commission finds that the process of transferring numbers and subsequently forwarding calls is what "establishes" (*i.e.*, "creates" or "brings into existence") interim number portability for use by new entrants.

18. In addition to disagreeing with Bell Atlantic's narrow interpretation of the term "establish" in section 251(e)(2), the Commission also finds that it would be contrary to Congressional intent to conclude that the Commission's authority to impose a competitively neutral cost recovery mechanism is limited to long-term number portability. Congress imposed a number portability requirement on all LECs, and directed the Commission to adopt a competitively neutral cost recovery mechanism, in order to give new entrants a realistic opportunity to compete against incumbent LECs for local exchange customers. 47 U.S.C. 251(e). Mandating a number portability requirement without ensuring a competitively neutral cost recovery mechanism could significantly handicap the ability of new entrants to win customers, whether the method of porting numbers is long-term or interim. In the *First Report and Order*, the Commission concluded that, because interim number portability costs will be small and incurred for a relatively short period, requiring carriers to bear their own costs would meet its competitive neutrality guidelines. The Commission specifically prohibited incumbent LECs from shifting all of their costs onto new entrants, however. Because both carriers would be competing for the same customer, the new provider may be forced to charge higher prices due to its need to recover the incumbent LEC's incremental costs of number portability, while the customer would face no additional charges if it stayed with the incumbent LEC. Thus, the Commission concludes that Bell Atlantic's interpretation—that the Commission has authority under section 251(e)(2) to impose a competitively neutral cost recovery mechanism for long-term number portability, but lacks such authority over interim number portability—will not promote competition.

19. The Commission similarly is not persuaded by Bell Atlantic's claim that cost recovery for interim number portability must be subject to negotiation between carriers, and that the Commission therefore lacks authority to establish cost recovery guidelines. Bell Atlantic's argument is based on language in the Senate Report discussing section 261 of Senate Bill 652, which states that interconnection agreements reached under section 251 must, if requested, provide for interim number portability, including the method by which it will be provided, and the amount of compensation. As discussed above, section 261, as it appeared in Senate Bill 652, distinguished between interim and final number portability, but was ultimately dropped from the final version of the 1996 Act. The Commission finds unpersuasive Bell Atlantic's interpretation of the legislative history. *See Helvering* v. *Hallock*, 309 U.S. 106, 119–20 (1940); *Brennan* v. *Midwestern United Life Insurance*, 259 F. Supp. 673 (1966); *Women Involved in Farm Economics* v. *USDA*, 682 F. Supp. 599 (1988).

20. The Commission rejects BellSouth's assertion that the Commission lacks authority to depart from cost-causative pricing principles. As the Commission explained in the *Third Report and Order*, Congress imposed a number portability requirement on all LECs, and directed the Commission to adopt a competitively neutral cost recovery mechanism, in order to give new entrants a realistic opportunity to compete against incumbent LECs for local exchange customers. A cost causative basis for pricing number portability could defeat the purpose for which number portability was mandated. Mandating a number portability requirement without ensuring a competitively neutral cost recovery mechanism could significantly handicap the ability of new entrants to win customers, whether the method of porting numbers is long-term or interim, because they could be forced to bear all incremental costs of number portability and pass those costs onto customers in the form of higher prices.

21. Finally, the Commission rejects BellSouth's contention that the Commission based its jurisdiction to order interim number portability on pre-1996 Act provisions and is therefore precluded from relying on section 251(e)(2) for jurisdiction to determine cost recovery for such interim measures. To the contrary, in the *First Report and Order* the Commission concluded only that sections 1 and 202 of the Communications Act provide a pre-existing and independent basis for its jurisdiction to require the provision of interim number portability methods. The Commission did not rely solely on sections 1 and 202 as a basis for jurisdiction, and hereby clarifies that, although it finds that sections 1 and 202 provide an additional statutory basis on which it may require interim number portability, it has independent authority to do so by virtue of sections 251(b)(2) and 251(e)(2) of the Act.

22. The Commission reiterates its earlier finding, as discussed above, that section 251(e)(2) addresses both interstate and intrastate matters, and overrides section 2(b)'s reservation of authority to the states over intrastate matters. Although the Commission asserts federal jurisdiction over interim number portability and affirms its authority to establish cost recovery guidelines for interim number portability measures, it denies requests that it generally preempt state number portability cost recovery policies. Instead, the Commission affirms its earlier conclusion that states may continue to utilize various cost recovery mechanisms as long as they meet the Commission's competitive neutrality guidelines. This cost recovery approach is different than the one adopted in the *Third Report and Order* for long-term number portability cost recovery, in which the Commission adopted an exclusively federal cost recovery mechanism. The Commission notes that in the *Third Report and Order*, it found that section 251(e)(2) authorizes the Commission to provide the distribution and recovery mechanism for all the costs of providing long-term number portability, but did not interpret the statute to require the adoption of an exclusively federal recovery mechanism for all forms of number portability. Instead, an exclusively federal cost recovery mechanism for long-term number portability was adopted for several policy reasons that are inapplicable to interim number portability. The Commission determined in the *Third Report and Order* that an exclusively federal cost recovery mechanism for long-term number portability will enable it "to satisfy most directly its competitive neutrality mandate and will minimize the administrative and enforcement difficulties that might arise where jurisdiction over long-term number portability divided." Additionally, an exclusively federal cost recovery mechanism for long-term number portability obviates the need for state allocation of the shared costs of the regional database, a task that would likely be complicated by the database's multistate nature.

23. Although the Commission has determined that the Commission's authority to provide the distribution and recovery mechanism for all number portability costs extends to long-term and interim number portability, it does not find it necessary to establish an exclusively federal recovery mechanism for interim number portability. Instead, it will continue to permit states to provide for cost recovery in accord with the competitive neutrality standards adopted in the *First Report and Order*, and elaborated here, for the following reasons. First, the Commission believes that adopting an exclusively federal cost recovery mechanism would be very disruptive to existing interim number portability cost recovery. States have been providing for interim number portability cost recovery since 1996. Also, cost recovery for interim number portability has been determined through existing interconnection agreements, as incumbent LECs are required by section 251(c) to provide for interim number portability in their interconnection agreements. 47 U.S.C. 251(c). The Commission notes that federal courts have upheld the interim number portability cost recovery guidelines established in *the First Report and Order. See, e.g., Southwestern Bell Telephone* v. *AT&T, 1998 WL 657717*4* (D.Tex. 1998); *see also US WEST Communications* v. *MFS Intelnet*, 35 F. Supp. 2d 1221, 1236 (D.Or. 1998).

Second, the Commission believes that disruption of existing cost recovery mechanisms is not warranted because interim number portability will remain in place for a very limited period of time. Interim number portability was replaced by long-term number portability in the 100 largest MSAs by the end of 1998, and is subsequently being replaced in other switches in which a bona fide request for number portability has been received. Third, the Commission believes that a cost allocation method that requires LECs to bear their own costs of interim number portability is competitively neutral, as individual carrier's costs will be small and no shared costs or database costs must be allocated. As previously indicated, to the extent that RCF, DID and other comparable methods are used to provide currently available number portability, and the capability for currently available number portability already exists in the incumbent LEC network, only the short-run incremental costs are properly attributed to interim number portability. Having already provisioned their switches with enough capacity to carry all of their respective customers' incoming and outgoing calls, the Commission does not expect incumbent LECs to incur additional costs with respect to switch capacity when a customer chooses to port its number to a new service provider and the incumbent LEC must forward calls using interim number portability methods. As a result, the Commission expects little or no change in the level of incumbent LECs switching and transport costs per ported number.

24. As stated in the *First Report and Order*, if a carrier believes that a LEC's pricing provisions for number portability violate the Commission's competitive neutrality guidelines or violate a state-mandated cost recovery mechanism, it may be able to seek relief from its state commission. If the carrier is not able to obtain relief in this way, or if a state has not yet adopted a cost recovery mechanism for cost recovery of interim number portability measures, it may be able to bring action against the LEC in federal district court pursuant to section 207 for damages or file a section 208 complaint with this Commission against another carrier alleging a violation of the Act or the Commission's rules. Alternatively, if a carrier believes that a state has not properly applied the statute or Commission rules, or if a state's cost recovery mechanism is not competitively neutral because it improperly burdens new entrants with interim number portability costs, it may file a request for declaratory ruling with the Commission or otherwise seek court review of the state cost recovery mechanism.

C. Cost Recovery Guidelines

1. Background

25. In the *First Report and Order*, the Commission established two criteria with which any cost recovery method must comply in order to be considered competitively neutral. First, "a 'competitively neutral' cost recovery mechanism should not give one service provider an appreciable, incremental cost advantage over another service provider, when competing for a specific subscriber." Second, the cost recovery mechanism "should not have a disparate effect on the ability of competing service providers to earn normal returns on their investments." In setting forth these criteria, however, the Commission left to the states the determination of the exact cost recovery mechanism to be utilized. Several carriers have challenged the Commission's cost recovery guidelines.

2. Discussion

26. The Commission rejects the claims of those carriers that assert that its cost recovery guidelines are arbitrary, capricious, or plain error. Number portability promotes competition by allowing customers to switch carriers easily without having to change their telephone numbers. In the *First Report and Order*, the Commission explained that the Commission departed from cost causation principles with respect to interim number portability because, "[d]epending on the technology used, to price number portability on a cost-causative basis could defeat the purpose for which it was mandated." As the Commission stated in the *Third Report and Order*, pricing number portability on a cost-causative basis could defeat Congress's purpose of removing barriers to local competition because the nature of the costs involved with some number portability solutions might make it economically infeasible for some carriers to compete for a customer serviced by another carrier. If it is assumed that the customer who ports his or her number is the cost causer, and all of the costs associated with forwarding a call are placed on the customer who switches carriers, customers who want to retain their telephone numbers could be deterred from switching carriers due to increased costs. This result is wholly contrary to the pro-competitive intent of sections 251(b)(2) and 252(e)(2) regarding the provision of number portability.

27. Additional economic and policy considerations also support the Commission's decision not to follow strict principles of cost causation in this specific context by imposing all interim number portability costs on new entrants. First, all customers benefit from number portability because number portability promotes competition, lower prices, increased choices, and greater innovation. In addition, other customers will benefit to the extent that they need not search for a customer's new number when that customer switches carriers. Since number portability generates an externality from which all customers benefit, the porting customers should not pay the full economic costs. Moreover, as discussed in the *First Report and Order* and *Third Report and Order*, if the costs are placed entirely on one carrier or group of carriers, "the new entrant's share of the cost [could be] so large, relative to its expected profits, that the entrant would decide not to enter." Preventing new, efficient entrants from offering service because of costs associated with number portability would directly contravene one of the 1996 Act's primary purposes, namely to encourage local exchange competition.

28. Furthermore, the Commission agrees with MCI that the costs of number portability should not be viewed narrowly as simply costs of entry, but more broadly as costs of creating a competitive environment that will benefit all consumers. In the *Third Report and Order*, the Commission concluded that applying principles of competitive neutrality to long-term number portability cost recovery would ensure that the cost of number portability does not undermine the goal of the 1996 Act to "promote a competitive environment" for the provision of local communications services. Similarly, the Commission concludes that requiring incumbent LECs to share in the costs of providing both interim and long-term number portability is in the public interest and will contribute to the development of competition in the local exchange market.

29. BellSouth asserts that the cost recovery guidelines for interim number portability are "vague and ambiguous," and that the Commission failed to define the phrases "appreciable cost advantage" and "normal return." As applied to its cost recovery guidelines, the Commission clarifies that, when the Commission used the phrase "appreciable cost advantage" the Commission meant a difference in costs that, if reflected in retail prices, would cause a not-insignificant number of customers to change, or decline to change, carriers. The Commission also finds that a "normal return" in economic terms is the return sufficient to assure confidence in the financial integrity of the company so as to maintain its credit and attract capital. Normal return in this context does not guarantee that all firms will be profitable and, hence, remain in the industry. Rather, this concept means that number portability costs imposed on a particular carrier should not be so significant, by themselves, as to drive existing carriers out of the market or make continued operations unprofitable, or deter the entry of carriers that, but for the number portability costs, would have entered the market.

30. The Commission finds no merit to BellSouth's suggestion that the Commission's definition of, and criteria for, competitive neutrality, are novel or unprecedented. The "competitively neutral" principles established in the *First Report and Order* were drawn from well-accepted principles of economic theory. To be competitive, a firm must be able to offer a particular customer a service/price package which that customer finds comparable to that offered by other carriers, and it must be able to do so while earning a normal rate of return. In making business decisions, firms are concerned with both the short-run and the long-run. In the short-run, firms are concerned with their ability to compete, while in the long-run firms are concerned with remaining in the market. The first criterion of the competitive neutrality test addresses the short-run concern, in that carriers cannot compete effectively if one carrier has an appreciable, incremental cost advantage over other carriers. The second criterion addresses the concern that the cost recovery mechanism should not have a disparate effect on the ability of competing service providers to earn normal returns on their investments.

31. The Commission also rejects arguments that the methods currently suggested in the *First Report and Order* fail to meet the second criterion of competitive neutrality, which states that "[the allocation mechanism] should not have a disparate effect on the ability of competing service providers to earn normal returns on their investments." As applied to interim number portability, the methods for allocating the costs of interim number portability suggested in the *First Report and Order*, including allocation according to a carrier's number of active lines or number of active telephone numbers, meet the criteria established for competitive neutrality. Given the relatively small incremental costs of interim number portability, the Commission concludes that using either number of telephone lines or number of active telephone numbers as the basis for allocation also meets the second criterion. Although that carrier's costs for number portability go up relative to other carriers, it also receives the corresponding revenues generated by the new customer. One characteristic of these rules is that the costs allocated to particular carriers increase with the size of the carrier so that smaller carriers will not be driven from the market. In creating the competitive neutrality criteria, the Commission also was guided by the 1996 Act's objectives. Number portability and competitively neutral cost recovery are necessary to fulfill the 1996 Act.

32. The Commission also rejects BellSouth's argument that it is arbitrary and capricious to use transitional measures as an incentive to adopt long-term number portability as quickly as possible. As discussed above, the Commission finds that it has jurisdiction over number portability, and that number portability is a dynamic, not static, concept. Section 271 of the Act explicitly states that BOCs must provide "interim telecommunications number portability" until "the date by which the Commission issues regulations pursuant to section 251 to require number portability." While the costs of long-term number portability will be greater than those of interim number portability, carriers will be able to recover their costs through two separate federally-tariffed charges, and end-user and query service charge.

33. The Commission disagrees that it is interfering with existing state-mandated interim number portability cost recovery mechanisms. As the Commission stated in the *First Report and Order*, the Commission provides flexibility for the states to determine their own cost allocation mechanisms, subject to the guidelines set forth in the *First Report and Order*. If a state previously determined its cost allocation scheme without taking section 251(e)(2) into account, that state must now ensure that its method comports with the 1996 Act and the Commission's implementing regulations.

34. The Commission disagrees with AirTouch's assertion that carriers that do not serve customers with ported numbers, such as wireless carriers, should not be required to share in the cost of number portability because such carriers do not benefit from number portability. The Commission looks to section 251(e)(2) of the Act, which plainly requires that the costs of establishing number portability be borne by "all telecommunications carriers on a competitively neutral basis as determined by the Commission." 47 U.S.C. 251(e)(2). This interpretation is consistent with the *Third Report and Order*, wherein the Commission concluded that the provisions of section 3 of the Act, when read together, define "all telecommunications carriers" as all persons or entities other than aggregators that charge to transmit information for the public without changing the form or content of the information, regardless of the facilities they use. Applying the statutory definition to section 251(e)(2), the Commission concluded that the way all telecommunications carriers bear the costs of providing number portability—including incumbent LECs, competitive LECs, CMRS providers, IXCs, and resellers—must be competitively neutral as determined by the Commission. The Commission has exercised its statutory mandate by articulating criteria for states to use in adopting cost recovery mechanisms. As the states develop cost recovery mechanisms pursuant to the statutory mandate, carriers will bear their own costs or states may allocate costs in a competitively neutral fashion on all telecommunications carriers that does not unduly burden any particular carrier or group of carriers.

35. The Commission finds no merit in SCLP and SCI's claim that requiring CMRS providers to contribute to number portability would have a "disparate effect" on their ability to earn a normal rate of return. These carriers have failed to present any evidence to support their claim that contributing to the costs of interim number portability would have such an effect. As noted in the *First Report and Order*, a disparate effect may be said to exist when a "new entrant's share of the [interim number portability] costs may be so large, relative to its expected profits, that the entrant would decide not to enter the market." With respect to existing carriers, the Commission clarifies that a disparate effect under its definition would exist if that carrier or class of carriers would be driven from the market, while other carriers would not, as a result of number portability costs. These carriers' unsupported allegations that contributing to the costs of interim number portability would have a disparate effect are insufficient to support their request for a blanket exemption for all CMRS carriers.

36. The Commission also disagrees with SCLP and SCI's assertion that its

First Report and Order demonstrates an intent that the costs of interim number portability be placed on non-cost causers only where necessary to preserve competitive neutrality. In making this claim, SCLP and SCI rely on the word "relevant" in the Commission's statement that "states may apportion the incremental costs of interim measures among relevant carriers by using competitively neutral allocators." In using the term "relevant carriers," the Commission intended to reflect that differing cost recovery mechanisms, all of which could satisfy its competitively neutral mandate, might encompass all, or a subset of all, telecommunications carriers, depending on the specifics of the cost recovery mechanism.

37. In the *First Report and Order*, the Commission concluded that, in choosing the phrase "all telecommunications carriers," Congress intended to include all types of carriers in the cost recovery mechanism because, unlike the requirement to provide number portability which applies solely to local exchange carriers, the requirements relating to number portability cost recovery apply to "all telecommunications carriers on a competitively neutral basis." The term "telecommunications carrier" is defined in the Act as "any provider of telecommunications services. * * *" 47 U.S.C. 153(44). The Commission adopted a literal reading of the statutory requirement and of the statutory definition of "telecommunications carriers." While the Commission's interpretation prevents an incumbent LEC from recovering its costs entirely from the new entrant, such an incumbent LEC may be able to recover its incremental interim number portability costs via the state-adopted allocation mechanism from "all telecommunications carriers" if a state implements such a cost recovery mechanism. Since the carrier providing the call forwarding itself falls within the category of "all telecommunications carriers," the carrier providing the forwarding is prevented by statute from recovering all of its costs from other carriers. States could also permit incumbent LECs to recover any remaining costs in some other manner, *e.g.*, from end-users.

38. The Commission affirms its finding that a "mechanism that requires each carrier to pay for its own costs of interim number portability measures" is competitively neutral and would constitute an acceptable cost recovery scheme that states could adopt. First, no significant capital costs are incurred by the carrier winning the customer or by the carrier losing the customer. Thus, the cost recovery mechanism does not give one service provider an appreciable, incremental advantage over another service provider when competing for the same customer. Second incumbent LECs should still be able to earn a normal return, as the anticipated costs of interim number portability measures are relatively small.

39. The Commission disagrees with BellSouth's argument that "having determined that the costs of [interim number portability] will be incurred solely by the incumbent LECs," it was arbitrary and capricious for the Commission to determine that requiring each carrier to bear its own costs does not operate to the competitive disadvantage of the incumbent LECs. The Commission also disagrees with Bell Atlantic's argument that the *First Report and Order* was not competitively neutral because the Commission denied Bell Atlantic the ability to recover incremental costs of interim number portability. As a threshold matter, these carriers are incorrect when they assert that the Commission determined that the costs of providing interim number portability will be incurred solely by incumbent LECs. Although finding that "initially, the costs of providing interim number portability will be incurred primarily by the incumbent LEC, because the incumbent LECs currently hold the vast majority of numbers in use," the *First Report and Order* imposed interim number portability requirements on all local exchange carriers. The Commission finds that it would be competitively neutral for carriers to pay their own incremental interim number portability costs, that is, to absorb the costs themselves or pass the costs onto their own retail customers. Additionally, the Commission has not foreclosed incumbent LECs from recovering all of their incremental costs of interim number portability, but has permitted each state to adopt a cost recovery mechanism, consistent with its competitive neutrality guidelines. The *First Report and Order* does not deny any carrier the right to recover costs, but, rather adopts guidelines that states must follow in implementing a cost recovery mechanism.

40. The Commission also concludes that the assertion by Bell Atlantic and Cincinnati Bell that new entrants should be required to bear all the costs of interim number portability is not consistent with the pro-competitive intent of sections 251(b)(2), 252(e)(2), and the 1996 Act as a whole. As the Commission stated in the *Third Report and Order*, the Commission has interpreted the Congressional mandate of competitive neutrality to require the Commission to depart from cost-causation principles when necessary to ensure that the cost of number portability borne by each carrier does not significantly affect any carrier's ability to compete with other carriers. The Commission specifically prohibited incumbent LECs from shifting all of their costs onto new entrants, however. Despite the fact that such incremental costs are small, shifting all of an incumbent LEC's costs of interim number portability to a new entrant could result in a cost so large, "relative to expected profits," that the new entrant would decide not to enter the market. As the Commission stated in the *First Report and Order*, imposing the full incremental cost of interim number portability solely on new entrants would place them at an "appreciable, incremental cost disadvantage relative to another service provider when competing for the same customer" and would, therefore, violate the first criteria of the competitive neutrality mandate.

41. The Commission is not persuaded by BellSouth's contention that the cost allocation mechanisms discussed in the *First Report and Order* guarantee the profitability of the new entrants. Number portability facilitates the development of competition among local providers. Through its competitive neutrality criteria and state-determined cost allocation mechanisms, the *First Report and Order* removes a potential barrier to entry that could result from high rates or charges that incumbent LECs potentially could impose for interim number portability on new entrants that possess their own switches. It does not guarantee that a new entrant will be profitable or be able to compete successfully in the market.

42. GTE suggests a third criterion, that "a cost recovery mechanism must not influence a customer's selection of his or her service provider." While the Commission agrees with GTE that a cost recovery mechanism should not influence a customer's selection of his or her service provider, this criterion is effectively embodied in the first prong of its competitive neutrality test and, thus, the Commission sees no need to revise that test.

D. Alternative Allocators for Cost Recovery of Interim Number Portability

1. Background

43. In the *First Report and Order*, the Commission provided a list of examples of allocators for interim number portability cost recovery that would meet the Commission's criteria for competitive neutrality. The Commission stated, for example, that a cost allocator based on a carrier's number of active telephone numbers, or a carrier's relative number of presubscribed customers, would meet its competitive neutrality guidelines. Several parties ask the Commission to approve additional allocators, or take exception to cost allocators deemed to be competitively neutral by the Commission in the *First Report and Order*.

2. Discussion

44. In the *First Report and Order*, the Commission provided a non-exhaustive list of examples of allocators for interim number portability cost recovery that would meet the Commission's criteria for competitive neutrality. The Commission disagrees with GTE's argument that a federally-mandated cost pooling mechanism needs to be implemented. For the reasons discussed in the *First Report and Order*, the Commission believes that states should be able to adopt various cost recovery mechanisms based on its competitive neutrality guidelines. The Commission is not, however, precluding states from selecting cost pooling as a cost recovery mechanism, nor is the Commission determining that cost pooling is not competitively neutral for the recovery of interim number portability costs. Although in the *Third Report and Order* the Commission rejected pooling of carriers' long-term number portability costs as a mechanism for recovery of these costs because pooling mechanisms, in general, reduce carrier incentives to provide service efficiently, states may find that these disadvantages are not as significant when pooling is used as a mechanism for the recovery of interim number portability costs. Because the costs of interim number portability are relatively small, given that incumbent LECs have already provisioned their switches with the capacity to provide the services needed for interim number portability, creating incentives for carriers to provide service efficiently may be less of a concern. The Commission allows states to utilize various cost recovery mechanisms, and states will make the decision as to whether they will choose pooling as a recovery mechanism and impose cost accounting and distribution mechanisms on carriers.

45. In clarifying that the list of potential allocators referenced in the *First Report and Order* is not exhaustive, the Commission also affirms that a cost recovery mechanism based on a carriers' gross revenues is an acceptable means of allocating costs among carriers. Financial measures, including gross revenues, are developed for different uses, such as for tax filings, annual reports, and SEC filings, and are readily available for this use. Additionally, such an allocator does not disparately affect the incremental costs of winning a specific customer or group of customers. A LEC with a small share of the market's revenues would pay a percentage of the incremental costs of interim number portability that is small enough that it will have no appreciable affect on its ability to compete for that customer. Accordingly, utilizing a gross revenues allocator does not violate the Commission's competitive neutrality guidelines.

46. It appears that carriers' concerns with some of the allocators approved by the Commission are focused on its second criterion, on whether losing a customer affects a firm's "normal return." Losing a customer will necessarily affect a firm's revenues and subsequent return on investment. The *First Report and Order* did not intend to change that. Rather, as stated in the *Third Report and Order*, the second prong of the competitive neutrality test does not guarantee any particular rate of return, but merely states that an allocator should not disparately affect a carrier's ability to earn a normal return. The Commission also stated that allocating costs on an active telephone number basis would meet the second criteria, because it should not give any carrier a cost advantage, relative to its competitors.

47. In a written *ex parte* presentation to the Commission, AT&T summarized a number of existing state cost recovery mechanisms in effect at that time. In one method, cost elements required for interim number portability are attributed to the requesting carrier, which is deemed the cost causer, and must be borne by that entity. This method allocates all incremental costs of interim number portability to the new entrant. The Commission reiterates its earlier conclusion in the *First Report and Order* that a cost recovery mechanism that imposes the entire incremental costs of interim number portability on a facilities-based new entrant violates its competitive neutrality criteria. New entrants subjected to such a cost recovery mechanism may pursue one of the enforcement options discussed above.

48. NYNEX suggests that allocating costs on the basis of total telecommunications retail revenues is competitively neutral and should be permitted as an allocator. The Commission agrees with NYNEX that such an allocation may meet its competitive neutrality guidelines because, as with allocators based on gross telecommunications revenues, it would not give one service provider an appreciable, incremental cost advantage over another service provider. Under this allocation method, a LEC with a small share of the market's revenues would pay a percentage of the incremental cost of number portability that will be small enough to have no appreciable affect on its ability to compete for a customer.

49. In sum, the Commission reaffirms its determination to allow each state to determine the appropriate cost recovery mechanism for its jurisdiction as long as it meets its competitive neutrality criteria. The Commission recognizes that, in the *First Report and Order*, the Commission tentatively concluded that a cost recovery mechanism for interim number portability that assesses charges based on a carrier's gross revenues less charges carriers paid to other carriers would meet its competitive neutrality guidelines, while in the *Third Report and Order*, the Commission declined to utilize this allocator for long-term number portability cost recovery. The Commission notes, however, that interim number portability and long-term number portability, as implemented pursuant to industry-wide discussions, have very different cost characteristics. A cost recovery method that is appropriate for one may not be suitable for the other. Although the Commission has established one particular cost recovery mechanism for long-term number portability, the Commission declines to issue an exclusive list of acceptable cost recovery methods for interim number portability from which the states may choose to adopt. States are free to adopt an appropriate cost recovery method pursuant to the competitive neutrality criteria.

E. Takings

1. Background

50. Several petitioners claim that its cost recovery guidelines for interim number portability do not ensure adequate compensation and therefore constitute an unlawful taking under the Fifth and Fourteenth Amendments to the Constitution.

2. Discussion

51. The Commission rejects the claim that the cost recovery guidelines for interim number portability established in the *First Report and Order* violate the Fifth Amendment's mandate that no private property shall be "taken for public use without just compensation."

See U.S. Const. amend. V. As discussed below, the Commission concludes that the petitioners' takings claim is premature. More importantly, in examining its cost recovery guidelines in light of criteria articulated by the Supreme Court, the Commission finds that the petitioners' takings claim fails on the merits.

52. In the *First Report and Order*, the Commission clearly stated that, although its guidelines govern state allocation of costs of interim number portability, it is the responsibility of the states to adopt specific cost recovery mechanisms. Although petitioners have broadly stated that they believe that incumbent LECs will not receive adequate compensation as a result of the guidelines established in the *First Report and Order*, they have not shown the actual impact of the guidelines based on state orders. The Commission concludes, therefore, that, absent an actual rate order under which the impact of the cost recovery guidelines can be evaluated, the petitioners' takings argument is premature. This conclusion is consistent with *FPC* v. *Texaco Inc.*, in which the Supreme Court held that "[a]ny broadside assertion that indirect regulation will be confiscatory is premature. The consequences of indirect regulation can only be viewed in the entirety of the rate of return allowed on investment, and this effect will be unknown until the Commission has applied its scheme in individual cases over a period of time." *FPC* v. *Texaco Inc.* 417 U.S. 380, 391–92 (1974).

53. Assuming arguendo that the petitioners' takings claim is not premature, the Commission finds it without merit. The Supreme Court has made clear that "government may execute laws or programs that adversely affect recognized economic values," *Penn Central* v. *City of New York*, 438 U.S. 104, 124 (1978), and that "given the propriety of governmental power to regulate, it cannot be said that the Takings Clause is violated whenever legislation requires one person to use his or her assets for the benefit of another." *Connolly* v. *Pension Benefit Guaranty Corp.*, 475 U.S. 211, 222 (1986). In fact, "government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law." *Pennsylvania Coal Co.* v. *Mahon*, 260 U.S. 393, 413 (1922). Despite the conclusory assertion of Cincinnati Bell to the contrary, its guidelines will not result in a significant economic impact on incumbent LECs. As noted in the *First Report and Order*, "the capability to provide number portability through interim methods, such as RCF and DID, already exists in most of today's networks, and no additional network upgrades are necessary." The incremental costs associated with the utilization of pre-existing network functionality for purposes of interim number portability are relatively small.

54. In *Duquesne Light Co.* v. *Barasch*, the Supreme Court rejected a takings claim on the grounds that it was permissible to preclude certain costs from inclusion in an electric utility's rate base because the overall rate was within constitutional requirements. *Duquesne Light Co.* v. *Barasch*, 488 U.S. 299 (1989). A rate is too low for constitutional purposes, according to the Court, if it is "so unjust as to destroy the value of [the] property for all the purposes for which it was acquired." The Court held that "'[i]t is not the theory, but the impact of the rate order which counts.' . . . The Constitution protects the utility from the net effect of the rate order on its property. Inconsistencies in one aspect of the methodology have no constitutional effect on the utility's property if they are compensated by countervailing factors in some other aspect."

55. In determining that the overall impact of the rate order was not constitutionally objectionable and that the takings clause was not violated, the Court in *Duquesne Light Company* took note of the fact that "[n]o argument has been made that these slightly reduced rates jeopardize the financial integrity of the companies, either by leaving them insufficient operating capital or by impeding their ability to raise future capital. Nor has it been demonstrated that these rates are inadequate to compensate current equity holders for the risk associated with their investments. . . ." Similarly, no showing has been made that the cost recovery guidelines at issue here will "jeopardize the financial integrity" of incumbent LECs, nor has a showing been made that the cost recovery guidelines will result in state rate orders that are inadequate to compensate LECs "for the risk associated with their investments."

56. Having already provisioned their switches with enough capacity to carry all of their customers' incoming and outgoing calls, incumbent LECs should incur no additional costs with respect to switch capacity when losing customers and using RCF to provide number portability. Although RCF will require additional switch capacity—and an increase in transport costs—to process incoming calls, this effect is offset by the fact that the incumbent LEC will no longer handle the outgoing calls originated by the ported customer. As a result, little or no change in the level of incumbent LEC switching and transport costs per ported number should occur. The Commission concludes, therefore, that the additional incremental costs of interim number portability to incumbent LECs will be extremely small. Additionally, incumbent LECs may be able to recover some portion of their costs from other carriers through state-mandated cost recovery mechanisms. Additionally, as discussed above, if a carrier believes that a LEC's pricing provisions for number portability violate the Commission's competitive neutrality guidelines or violate a state-mandated cost recovery mechanism, a carrier has a variety of ways it may seek relief.

57. Moreover, as the Supreme Court has stated, "[t]hose who do business in the regulated field cannot object if the legislative scheme is buttressed by subsequent amendments to achieve the legislative end." Based on the extensive public debate that preceded enactment of the 1996 Act, it cannot be said that investors lacked adequate notice of possible changes to the Communications Act, including the number portability requirement at issue here. Indeed, while courts have readily found that a taking has occurred when interference with property rights can be characterized as a physical invasion or permanent appropriation, such a finding has not been reached when the challenged interference arises from a public program adjusting the benefits and burdens of economic life to promote the common good. The Commission's number portability cost recovery guidelines, which are designed to facilitate local telephone competition and thereby benefit all consumers of telecommunications services, falls squarely into the latter category. In short, the petitioners have failed to demonstrate that the Commission's cost recovery guidelines violate the Fifth and Fourteenth Amendments.

F. Retroactive Application of Cost Recovery Guidelines for Interim Number Portability

1. Background

58. ACSI asks the Commission to allow new entrants to recover retroactively number portability costs paid to incumbent LECs in excess of that required pursuant to the guidelines set forth in the *First Report and Order*. Specifically, ACSI requests that the Commission provide for a true-up of rates paid in excess of those required pursuant to the *First Report and Order* as far back as February 8, 1996, the date the 1996 Act became effective, or the date number portability was first provided to the new entrant, whichever is later.

2. Discussion

59. The Commission denies ACSI's request that its cost recovery rules for interim number portability be applied to number portability provided prior to the adoption and effective date of those rules. In section 251(e)(2) of the Act, Congress required that "the cost of establishing. . . number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission." The plain language of this section demonstrates that, while establishing the parameters on how number portability costs are to be allocated and who should pay such costs, Congress intended that specific cost recovery rules were to be established by the Commission at some point in time following the enactment of the 1996 Act. The Commission rejects ACSI's argument that, because the number portability provision became effective on February 8, 1996, ACSI is merely seeking to have the Commission give effect to this pre-existing requirement. Section 251(e)(2) is not self-executing, but is dependent on Commission action. The Commission sees no basis in the record for applying the rules adopted pursuant to section 251(e) retroactively.

60. The Commission's cost recovery guidelines for interim number portability became effective August 26, 1996, however, and the Commission agrees that it may be appropriate for states to provide a true-up of interim number portability costs from that date through the effective date of a state-approved cost recovery program. To provide the states with the flexibility during the interim period to continue using a variety of cost recovery approaches, the Commission did not adopt a fixed cost recovery mechanism. Instead, it adopted guidelines for the states to follow in mandating cost recovery for interim number portability. The Commission recognizes, however, that a significant period of time may have elapsed before each state adopted a cost recovery mechanism for interim number portability. Thus, absent a true-up from the effective date of the *First Report and Order*, the benefits of a competitively neutral cost recovery mechanism for interim number portability may be lost for many new entrants if they have been paying cost recovery amounts in excess of what would be allowed under the competitive guidelines of the *First Report and Order*. The Commission notes that several state arbitration decisions have adopted a true-up approach pending the adoption of a state-approved cost recovery mechanism. The Commission strongly encourages states to review their cost recovery mechanisms. Consistent with its competitive neutrality principles, the Commission encourages states to adopt a true-up of amounts paid for interim number portability between August 26, 1996 and the date the state-approved cost recovery program takes effect, to the extent such amounts exceed what would have been paid under the state-approved plan, had it been in effect.

G. Terminating Access Charges

1. Background

61. In the *First Report and Order*, the Commission stated that terminating access charges for calls forwarded from an incumbent LEC to a competing provider through the use of a interim number portability method should be shared between the incumbent LEC, which is the donor switch and the terminating switch carrier. A "donor" switch is the end office switch to which the called telephone number was originally assigned. The Commission stated that the "overarching principle" in such billing arrangements was that carriers were to share in the access revenues for a ported call, because neither the incumbent LEC forwarding carrier nor the terminating carrier provides all the facilities used to terminate a ported call. The Commission also held that incumbent LECs and new entrants should assess their terminating access charges on IXCs through meet-point billing arrangements. MCI asserts that, regardless of what type of billing arrangement is adopted, IXCs should not be charged increased access charges as a result of the additional call routing and associated costs necessary to terminate a call to a ported number under interim number portability measures.

2. Discussion

62. IXCs currently pay LECs access charges for terminating calls on LEC switches. In a competitive local exchange market, an IXC terminating a call to a long distance customer that has ported his or her number to a new entrant will terminate the call to the incumbent LEC's switch, which then will forward it to the new entrant's switch utilizing interim number portability measures. Under this scenario, incumbent LECs and new entrants both provide facilities used to terminate calls to ported numbers using interim number portability. In the *First Report and Order*, the Commission required both forwarding and terminating carriers to assess charges on IXCs for terminating access through meet-point billing arrangements. In requiring that these revenues be shared, the Commission left to the carriers whether "each issues a bill for access on a ported call, or whether one of them issues a bill to the IXCs covering all of the transferred calls and shares the correct portion of the revenues with the other carriers involved." The Commission further provided that, if carriers determine it more efficient to issue individual bills, the forwarding carrier must "provide the terminating carrier with the necessary information to permit the terminating carrier to issue a bill."

63. The Commission finds that the additional costs that local exchange carriers may incur should not be included in the access charges paid by IXCs for terminating long-distance calls because any additional routing and transport costs that are a result of interim number portability are incremental costs of providing number portability. Such costs may be recovered through a local number portability cost recovery mechanism, or borne by the local exchange carrier that forwards the call, as determined by the state, on a competitively neutral basis. Because they are telecommunications carriers, IXCs may be required to contribute to the costs of interim number portability through the cost recovery mechanism adopted by state commissions. The Commission clarifies that, to prevent double recovery on the part of the terminating switch carrier, new entrants receiving a portion of access charges from IXCs for terminating calls may not also impose terminating charges on the incumbent LEC.

64. As discussed in the *First Report and Order*, carriers may incur incremental costs for forwarding calls when utilizing interim number portability. MCI requests that the Commission clarify what is included in these incremental costs and, thus, what should be shared by all carriers on a competitively neutral basis. The incremental costs of providing number portability via RCF, DID, or other comparable technically feasible measures are the costs that the forwarding carrier incurs in forwarding the call that it would not incur if it did not forward the call. As mentioned in the *First Report and Order*, such costs may differ depending on where the call originates within the network, and on the type of technology utilized to forward the call. Thus, the Commission

declines to list each potential additional cost that may be incurred and who should be allowed to bill for those incremental costs.

65. Finally, the Commission notes that it has "not foreclose[d] arrangements in which one exchange carrier bills the entire amount [of access charges] and remits the other exchange carrier its share." The *First Report and Order* does not require that the carrier that owns the donor switch and the carrier that owns the terminating switch each issue a separate bill to the IXC. The *First Report and Order* states that "it is up to the carriers whether they each issue a bill for access on a ported call, or whether one of them issues a bill to the IXCs covering all of the transferred calls and shares the correct portion of the revenues with the other carriers involved." Thus, either the carrier that owns the donor switch or the carrier that owns the terminating switch may bill the entire amount of access charges and remit to the other local exchange carrier its share of the invoiced charges. In short, the *First Report and Order* does not prohibit carriers who mutually agree from sending one bill to the IXC and then splitting the access charges appropriately between themselves.

H. Modification of Billing Systems to Accommodate the Sharing of Access Charges in Meet-Point Billing Type Arrangements

1. Background

66. In the *First Report and Order*, the Commission concluded that meet-point billing between neighboring incumbent LECs provides the appropriate model for the proper access billing arrangement for interim number portability. In complying with the Commission's directive that forwarding and terminating carriers share access revenues received from IXCs for ported calls through meet-point billing arrangements, GTE argues that LECs should not be required to modify their billing systems.

2. Discussion

67. The *First Report and Order* did not specify whether carriers must modify their billing systems in order to accommodate the requirement that access charges be shared in meet-point billing type arrangements. It requires that the forwarding carrier provide "the necessary information to permit the terminating carrier to issue a bill," but does not specify whether carriers have to make modifications in their billing systems in order to do so. The Commission agrees with GTE and Time Warner that it would not be cost effective to require carriers to modify their billing systems to accommodate interim number portability. It does not require carriers to modify their billing systems to track and record the details of every call. It does require, however, that carriers adopt some method of implementing its requirement to share terminating access revenues, by, for example, providing information about PIU (percent interstate usage), traffic samples, or total access charges per line.

68. If carriers cannot agree on appropriate meet-point billing arrangements, the Commission agrees that this issue may be included in mediation or arbitration before a state commission, or be subject to other dispute resolution processes chosen by the carriers involved. The Commission rejects GTE's suggestion, however, that parties seek informal assistance from the Commission as a means of resolving meet-point billing arrangement disputes. Also, if a meet-point billing arrangement dispute arises in the context of an interconnection request made pursuant to section 251, the 1996 Act clearly places the responsibility for arbitration and/or mediation of unresolved issues on the state commissions.

IV. Supplemental Regulatory Regulatory Flexibility Analysis

69. As required by the Regulatory Flexibility Act (RFA), *see* 5 U.S.C. 601 *et seq.* (the RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104–121, 110 Stat. 847 (1996) (CWAAA); Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *First Report and Order*. In addition, the Commission sought comments on the proposals included in the Initial Regulatory Flexibility Analysis (IRFA) in the *First Report and Order*. The Commission incorporated a Final Regulatory Flexibility Analysis in the *Third Report and Order*. The additional Regulatory Flexibility Analysis in this *Fourth Memorandum Opinion and Order* is as follows:

70. *Need for and Objectives of Action:* The Commission, in compliance with sections 251(b)(2), 251(d)(1), and 251(e)(2) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, adopted rules and procedures in the *Third Report and Order* that are intended to ensure the implementation of telephone number portability with the minimum regulatory and administrative burden on telecommunications carriers. Congress has recognized that number portability will lower barriers to entry and promote competition in the local exchange marketplace. To prevent the cost of number portability from itself becoming a barrier to local competition, section 251(e)(2) requires that "[t]he cost of establishing telecommunications numbering administration arrangements and number portability shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission." The Commission issued this *Fourth Memorandum Opinion and Order* to address issues relating to cost recovery for interim number portability. Interim number portability utilizes an interim method to allow consumers to change carriers while retaining their telephone numbers before long-term number portability becomes available.

71. *Summary of Significant Issues Raised by the Public Response to the FRFA:* There were no comments submitted specifically in response to the Regulatory Flexibility Analysis. In the *Third Report and Order*, the Commission adopted rules and regulations to ensure that the way all telecommunications carriers, including small entities, bear the costs of number portability does not significantly affect any carrier's ability to compete with other carriers for customers in the marketplace. This *Fourth Memorandum Opinion and Order* addresses issues relating to cost recovery for interim number portability. It affirms the Commission's conclusion that it has the authority to establish cost recovery guidelines for interim number portability. Second, the Commission rejects claims that the cost recovery guidelines for interim number portability set forth in the *First Report and Order* are arbitrary and capricious, or constitute an unconstitutional taking. The item denies the request that these cost recovery guidelines be applied retroactively. The item affirms the Commission's earlier decision to adopt general cost recovery guidelines for interim number portability while allowing states flexibility to continue using a variety of cost recovery approaches that are consistent with its guidelines. Finally, the item clarifies issues relating to terminating access charges, modification of billing systems, and the competitive neutrality of certain cost recovery allocators, as each of these issues relates to interim number portability.

72. *Description and Estimate of Number of Small Businesses to Which Actions Will Apply:* The Regulatory Flexibility Act generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act. *See* 15 U.S.C. 632. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). *Id.* According to SBA's regulations, entities engaged in the provision of telephone service may have a maximum of 1,500 employees in order to qualify as a small business concern. *See* 13 CFR 121.201. This standard also applies in determining whether an entity is a small business for purposes of the RFA.

73. As described in the previous Regulatory Flexibility Analysis contained in the *Third Report and Order*, the Commission's rules governing number portability cost recovery apply to all telecommunications carriers, including incumbent LECs, new LEC entrants, and IXCs, as well as cellular, broadband PCS, and covered SMR providers. Small incumbent LECs subject to these rules are either dominant in their filed of operations or are independently owned and operated, and, consistent with the Commission's prior practice, are excluded from the definition of "small entities" and "small business concerns." *See In re* Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order*, 11 FCC Rcd 15499, 16144–45, 16149–50 (1996), *vacated in part, aff'd in part, Iowa Utils. Bd.* v. *FCC*, 120 F.3d 753 (8th Cir. 1997), *rev'd in part, aff'd in part and remanded sub nom. AT&T Corp.* v. *Iowa Utils. Bd.*, 119 S.Ct. (1998). Accordingly, the Commission's use of the terms "small entities" and "small businesses" does not encompass small incumbent LECs. *Local Competition Order*, 11 FCC Rcd at 16,150. Out of an abundance of caution, however, for regulatory flexibility analysis purposes, *see* 13 CFR 121.902(b)(4), the Commission will consider small incumbent LECs within this analysis and use the term "small incumbent LECs" to refer to any incumbent LECs that arguably might be defined by the SBA as "small business concerns."

74. Insofar as the Commission's rules apply to all telecommunications carriers, they may have an economic impact on a substantial number of small businesses, as well as on small incumbent LECs. The rules may have an impact upon new entrant LECs and small incumbent LECs, as well as cellular, broadband PCS, and covered SMR providers. Based upon data contained in the most recent census and a report by the Commission's Common Carrier Bureau, the Commission estimates that 2,100 small entities could be affected: The Commission has derived this estimate based on the following analysis.

75. According to the 1992 Census of Transportation, Communications, and Utilities, there were approximately 3,469 firms with under 1,000 employees operating under the Standard Industrial Classification (SIC) category 481—Telephone. *See* U.S. Dept. of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities (issued May 1995). Many of these firms are the incumbent LECs and, as noted above, would not satisfy the SBA definition of a small business because of their market dominance. There were approximately 1,350 LECs in 1995. Industry Analysis Division, FCC, Carrier Locator: Interstate Service Providers at Table 1 (Number of Carriers Reporting by Type of Carrier and Type of Revenue) (December 1995). Subtracting this number from the total number of firms leaves approximately 2,119 entities which potentially are small businesses which may be affected. This number contains various categories of carriers, including small incumbent LECs, competitive access providers, cellular carriers, interexchange carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. Some of these carriers, although not dominant, may not meet the other requirement of the definition of a small business because they are not "independently owned and operated." *See* 15 U.S.C. 632(a)(1). For example, a PCS provider that is affiliated with a long distance company with more than 1,500 employees would not meet the definition of a small business. Another example would be if a cellular provider is affiliated with a dominant LEC. Thus, a reasonable estimate of the number of "small businesses" affected by this item would be approximately 2,100.

76. *Description of Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rules:* The *Fourth Memorandum Opinion and Order* provides guidance regarding issues relating to cost recovery for interim number portability. This *Fourth Memorandum Opinion and Order* affirms the Commission's conclusion that it has the authority to establish cost recovery guidelines for interim number portability. Second, the Commission rejects claims that the cost recovery guidelines for interim number portability set forth in the *First Report and Order* are arbitrary and capricious, or constitute an unconstitutional taking. This item denies the request that these cost recovery guidelines be applied retroactively. This item affirms the Commission's earlier decision to adopt general cost recovery guidelines for interim number portability while allowing states flexibility to continue using a variety of cost recovery approaches that are consistent with its guidelines.

77. *The Fourth Memorandum Opinion and Order* also confirms an earlier Commission decision that a cost recovery mechanism based on a carrier's gross revenues is an acceptable means of allocating costs among carriers. It states that no additional recordkeeping will be required for this option of recordkeeping, because such gross revenue reporting is readily available through such things as tax filings, annual reports and SEC filings, which are developed for other purposes. The item does not require carriers to adopt any one billing arrangement for sharing costs when they forward calls while utilizing interim number portability. The item allows carriers to determine the best method of splitting these costs between them, but requires them to adopt some method of sharing terminating access revenues. Additionally, it affirms the Commission's earlier determination that meet-point billing between neighboring incumbent LECs provides the appropriate model for the proper access billing arrangement for interim number portability, but states that carriers are not required to modify their billing systems to track and record the details of every call.

78. *Steps Taken to Minimize Impact on Small Entities Consistent With Stated Objectives:* The record in this proceeding indicates that the need for customers to change their telephone numbers when changing local service providers is a barrier to local competition. Requiring number portability, and ensuring that all telecommunications carriers bear the costs of number portability on a competitively neutral basis, will make it easier for competitive providers, many of which may be small entities, to enter the market. The Bureau has attempted to keep regulatory burdens on all local exchange carriers to a minimum to ensure that the public receives the benefits of the expeditious provision of service provider number portability in accordance with the statutory requirements. For example, the *Fourth Memorandum Opinion and Order* affirms the Commission's earlier determination that meet-point billing

between neighboring incumbent LECs provides the appropriate model for the proper access billing arrangement for interim number portability, but states that carriers are not required to modify their billing systems to track and record the details of every call. Such determination recognizes that number portability will cause some carriers, including small entities, to incur costs that they would not ordinarily have incurred in providing telecommunications services, but attempts to keep such costs to a minimum.

79. *Report to Congress:* The Commission will send a copy of this *Fourth Memorandum Opinion and Order*, including this supplemental RFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. *See* 5 U.S.C. 801(a)(1)(A). A copy of the *Third Report and Order* and this supplemental FRFA (or summaries thereof) will be sent to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 604(b).

80. *Paperwork Reduction Act:* This *Fourth Memorandum Opinion and Order* provides guidance regarding issues relating to cost recovery for interim number portability. The *Third Report and Order* concluded that carriers may recover the portion of their number portability joint costs that is demonstrably an incremental cost incurred in the provision of number portability. *Third Report and Order*, 13 FCC Rcd at 11,740, para. 73. The *Third Report and Order* also requires incumbent LECs that choose to recover their carrier-specific costs directly related to providing number portability to use federally-tariffed end-user charges. *Id.* at 11,776. The Commission also concluded that carriers may identify only those incremental overheads that they can demonstrate were incurred specifically in the provision of number portability. *Id.* at 11,740. In this *Fourth Memorandum Opinion and Order*, the Commission affirms its earlier decision that it has the authority to establish cost recovery guidelines for interim number portability. Second, the Commission rejects claims that the cost recovery guidelines for interim number portability set forth in the *First Report and Order* are arbitrary and capricious, or constitute an unconstitutional taking. This item denies the request that these cost recovery guidelines be applied retroactively. The item affirms the Commission's earlier decision to adopt general cost recovery guidelines for interim number portability while allowing states flexibility to continue using a variety of cost recovery approaches that are consistent with its guidelines. The item also confirms an earlier Commission decision that a cost recovery mechanism based on a carrier's gross revenues is an acceptable means of allocation costs among carriers. The item states that no additional recordkeeping will be required for this option of recordkeeping, because such gross revenue reporting is readily available through such things as tax filings, annual reports and SEC filings, which are developed for other purposes. The item does not require carriers to adopt any one billing arrangement for sharing costs when they forward calls while utilizing interim number portability. The item allows carriers to determine the best method of splitting these costs between them, but requires them to adopt some method of sharing terminating access revenues. Additionally, the item affirms the Commission's earlier determination that meet-point billing between neighboring incumbent LECs provides the appropriate model for the proper access billing arrangement for interim number portability, but states that carriers are not required to modify their billing systems to track and record the details of every call. These information collection requirements are contingent upon approval of the Office of Management and Budget (OMB).

V. Ordering Clauses

81. Accordingly, *it is ordered* that pursuant to authority contained in sections 1, 2, 4(i), 201–205, 215, 251(b)(2), 251(e)(2), and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 201–205, 215, 251(b)(2), 251(e)(2), and 332, and Parts 1, 20 and 52 of the Commission's rules, 47 CFR 1.106, 20, and 52, the Petitions for Reconsideration and/or Clarification *are granted* to the extent indicated herein and otherwise *are denied*.

82. *It is further ordered* that the Motion to Accept Late-filed Comments of Telecommunications Resellers Association and the Motion to Accept Late-Filed Reply Comments of US WEST *are granted*.

83. *It is further ordered* that the Commission's Office of Public Affairs Reference Operations Division *shall send* a copy of this *Memorandum Opinion and Order* including the supplemental Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 52

Communications, Common Carriers, Telecommunications, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–22131 Filed 8–25–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61, 63 and 69

[CC Docket No. 98–131; FCC 99–173]

1998 Biennial Regulatory Review

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: Section 11 of the Communications Act of 1934, as amended (Act), requires that the Commission, in every even-numbered year beginning in 1998, review all regulations that apply to the operations and activities of any provider of telecommunications service and determine whether any of these regulations are no longer necessary in the public interest as the result of meaningful economic competition between providers of the service. As part of its 1998 biennial regulatory review, the Commission revised part 61 to, among other things, eliminate several rules that no longer seem to serve any useful purpose, and to reorganize part 61 to clarify which rules apply to which carriers.

DATES: Effective September 27, 1999.

FOR FURTHER INFORMATION CONTACT: Judy Nitsche, Chief, Tariff and Pricing Analysis Branch, Competitive Pricing Division, Common Carrier Bureau, (202) 418–1540.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order and First Order on Reconsideration, adopted July 13, 1999, and released August 3, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th St., S.W., Washington, D.C. 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, 1231 20th St., N.W., Washington, D.C. 20036.

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, as

amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104–121, 110 Stat. 847 (1996) (CWAAA), and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) in the NPRM in this docket. The Commission sought written public comment on the proposals in the Notice of Proposed Rulemaking (NPRM), 63 FR 49520 (September 16, 1998), including comment on the IRFA. The Commission has prepared this Final Regulatory Flexibility Analysis (FRFA) of the possible significant economic impact this order might have on small entities, in conformance with the RFA.

Need for and Objectives of Rules

The Telecommunications Act of 1996 requires the Commission in every even-numbered year beginning in 1998 to review all regulations that apply to the operations or activities of any provider of telecommunications service and to determine whether any such regulation is no longer necessary in the public interest due to meaningful economic competition. Our objective is to repeal any rules in 47 CFR 61 that are no longer necessary in the public interest, as required by section 11 of the Communications Act of 1934, as amended.

Summary of Significant Issues Raised by the Public Comments to the IRFA

Only one party, NTCA, submitted comments directly in response to the IRFA. NTCA claims that the definition of "small business" in the Commission's IRFA does not comply with the RFA.[1] NTCA claims further that the Commission's IRFA resulted in inadequate consideration of whether the tariffs of small incumbent LECs should be subject to a different minimum effective period than the tariffs of large incumbent LECs.[2] We find that NTCA is mistaken on both its assertions.

The Commission has determined consistently that incumbent LECs are not "small entities" within the meaning of the RFA, and NTCA cites no legal authority that causes us to question this conclusion. Furthermore, regardless of the correct interpretation of the term "small entities" in this context, we included small dominant incumbent LECs in our IRFA. Therefore, NTCA has no basis to assert that the IRFA was inadequate. Second, all dominant LECs, including small dominant LECs, have market power by definition. As a result, these carriers do not face sufficient competition to enable their customers to switch to another carrier if they believe that they revise their rates too frequently. In addition, excessive rate churn could make it difficult or impossible for customers to determine the rates in effect on any given day, which in turn would make difficult for a customer to file a complaint against a carrier. NTCA provides no explanation as to why rate churn committed by a small LEC affects customers any differently than rate churn committed by a large LEC.

Although no party other than NTCA commented directly in response to the IRFA, we have kept small entities in mind as we considered the more general comments filed in this proceeding, as discussed below.

Description and Estimate of Number of Small Entities to Which the Rules Will Apply

In the NPRM, the Commission stated that the proposals under consideration, if adopted, would affect all telecommunications carriers regulated by the Commission. The United States Bureau of the Census (Census Bureau) reports that, at the end of 1992, there were 3497 firms engaged in providing telephone service, as defined therein, for at least one year. United States Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities, Establishment and Firm Size, at Firm Size 1–123 (1995) (1992 Census). This number contains a variety of different categories of carriers, including LECs, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 3497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not independently owned or operated. 15 U.S.C. 632(a)(1).

In the NPRM, Commission also explained that dominant carriers are not small businesses for IRFA purposes because they are dominant in their field of operation. We have found incumbent LECs to be "dominant in their field of operation" since the early 1980s, and we consistently have certified under the Regulatory Flexibility Act, 5 U.S.C. 605(b), that incumbent LECs are not subject to regulatory flexibility analysis requirements because they are not small businesses. In order to remove any possible issue of Regulatory Flexibility Act compliance, however, the NPRM tentatively concluded that dominant carriers should be included in this IRFA. NTCA also argues that small dominant carriers should be included in the Regulatory Flexibility Act analysis. No one else commented on this issue.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

In this document, we adopt several revisions to 47 CFR 61 that reduce the regulatory burdens placed on all telecommunications common carriers, including common carriers. The remaining rule revisions generally re-state existing requirements in clearer terms. Consequently, we project that this Order imposes no significant new reporting, recordkeeping, or other compliance requirements on small carriers.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

In this proceeding, we have taken several steps to minimize the economic impact of our existing 47 CFR 61 rules on all carriers, including small carriers. For example, we have substantially relaxed our posting requirements, we have eliminated our minimum notice requirements for nondominant carriers, and we have expanded carriers' ability to submit tariff filing fees electronically. We also decided against requiring carriers to separate their domestic and international tariffs when the record revealed that such a requirement would have been burdensome. Finally, we limited the Internet posting requirement to incumbent LECs who choose to establish web sites.

Report to Congress

The Commission will send a copy of this order, including the FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 801(a)(1)(A). A summary of this Report and Order and this FRFA will also be published in the **Federal Register**, 5 U.S.C. 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

Summary of Report and Order

In the Telecommunications Act of 1996 (1996 Act), Congress directed the Commission in every even-numbered year beginning in 1998 to review all regulations that apply to the operations or activities of any provider of telecommunications service and to determine whether any such regulation is no longer necessary in the public interest due to meaningful economic competition. See 47 U.S.C. 161. As part

[1] NTCA Comments at 2–4.

[2] NTCA Comments at 4.

of the 1998 biennial regulatory review, the Commission has conducted a review of the tariffing requirements contained in 47 CFR 61 of its rules and other related requirements.

This document revises and removes several 47 CFR 61 rules, as well as certain 47 CFR 63 and 69 rules that are interrelated with 47 CFR 61, to eliminate those that no longer serve any useful purpose, or are duplicative, and to improve their organization.

Ordering Clause

Accordingly, *it is ordered*, pursuant to sections 4(i), 4(j), 201–205, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 201–205, 303(r), 403, and section 553 of Title 5, United States Code, that revisions to 47 CFR 61, 63, 69, *are adopted* as set forth below.

It is further ordered, pursuant to sections 4(i), and 201–205 of the Communications Act, 47 U.S.C. 154(i), and 201–205, and 47 CFR 1.108, that revisions to 47 CFR 61.17(c) *are adopted* as set forth in below.

It is further ordered that the provision of this Order will be effective 30 days after a summary of this Order is published in the **Federal Register**.

List of Subjects

47 CFR Part 61

Communications common carriers, Tariffs.

47 CFR Parts 63 and 69

Communications common carriers, Tariffs.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 61, 63, and 69 as follows:

PART 61—TARIFFS

1. The authority citation continues to read as follows:

Authority: Secs. 1, 4(i), 4(j), 201–205, and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 154(j), 201–205, and 403, unless otherwise noted.

§§ 61.1 through 61.3 [Amended]

2. Designate §§ 61.1 through 61.3 as subpart A and add a subpart heading entitled "Subpart A—General" immediately preceding § 61.1.

3. Revise § 61.2 to read as follows:

§ 61.2 General tariff requirements.

(a) In order to remove all doubt as to their proper application, all tariff publications must contain clear and explicit explanatory statements regarding the rates and regulations.

(b) Tariff publications must be delivered to the Commission free from all charges, including claims of postage.

(c) Tariff publications will not be returned.

4. Remove the undesignated center heading "Definitions" immediately preceding § 61.3.

5. Amend § 61.3 by revising paragraphs (e), (f)(3), (m), (w), and (y), to read as follows:

§ 61.3 Definitions.

* * * * *

(e) *Base period.* For carriers subject to §§ 61.41–61.49, the 12-month period ending six months prior to the effective date of annual price cap tariffs. Base year or base period earnings shall exclude amounts associated with exogenous adjustments to the PCI for the lower formula adjustment mechanism permitted by § 61.45(d)(1)(vii).

* * * * *

(f) * * *

(3) The related revenues of which are reflected in a Price Cap Index.

* * * * *

(m) *Contract-based tariff.* A tariff based on a service contract entered into between a nondominant carrier and a customer.

* * * * *

(w) *Price Cap Index (PCI).* An index of prices applying to each basket of services of each carrier subject to price cap regulation, and calculated pursuant to § 61.45.

* * * * *

(y) *Price cap tariff filing.* Any tariff filing involving a service subject to price cap regulation, or that requires calculations pursuant to §§ 61.45, 61.46, or 61.47.

* * * * *

6. Remove the undesignated center headings "GENERAL RULES" and "Rules for Electronic Filing" immediately preceding § 61.13.

§§ 61.13 through 61.17 [Amended]

7. Designate §§ 61.13 through 61.17 as subpart B and add a subpart heading entitled "Subpart B—Rules for Electronic Filing" immediately preceding § 61.13.

8. Amend § 61.14 by revising paragraph (b) to read as follows:

§ 61.14 Method of filing publications.

* * * * *

(b)(1) In addition, except for issuing carriers filing tariffing fees electronically, for all tariff publications requiring fees as set forth in part 1, subpart G of this chapter, issuing carriers must submit the original of the cover letter (without attachments), FCC Form 159, and the appropriate fee to the Mellon Bank, Pittsburgh, PA at the address set forth in § 1.1105 of this chapter.

(2) Issuing carriers filing tariffing fees electronically must submit the Form 159. The issuing carrier may submit the Form 159 in either of the methods set forth in paragraphs (b)(2)(i) or (b)(2)(ii) of this section:

(i) Issuing carriers submitting tariffing fees electronically may submit a paper copy of the Form 159, and the original transmittal letter to the Secretary of the Commission in lieu of the Mellon Bank, or;

(ii) Issuing carriers submitting tariffing fees electronically may submit a copy of the Form 159 electronically as an associated document with their tariff filing publication. In this instance issuing carriers must provide an electronic signature on their letter of transmittal in accordance with section 1.52 of this chapter.

(iii) Regardless of whether the Form 159 is submitted pursuant to paragraph (b)(2)(i) or (b)(2)(ii) of this section, the Form 159 should display the Electronic Audit Code in the box in the upper left hand corner marked "reserved." Issuing carriers should submit these fee materials on the same date as the submission in paragraph (a) of this section.

* * * * *

9. Amend § 61.17 by revising paragraph (c) to read as follows:

§ 61.17 Method of filing applications for special permission.

* * * * *

(c) In addition, if a carrier applies for special permission to revise joint tariffs, the application must state that it is filed on behalf of all carriers participating in the affected service. Applications must be numbered consecutively in a series separate from FCC tariff numbers, bear the signature of the officer or agent of the carrier, and be in the following format:

Application No. _____
(Date)_____
Secretary
Federal Communications Commission
Washington, DC 20554.

Attention: Common Carrier Bureau (here provide the statements required by § 61.152).

(Exact name of carrier)_____
(Name of officer or agent)_____
(Title of officer or agent)_____

10. Remove the undesignated center heading "General Rules for Domestic and International Nondominant Carriers" immediately preceding § 61.20.

§§ 61.20 through 61.24 [Amended]

11. Designate §§ 61.20 through 61.24 as subpart C and add a subpart heading entitled "Subpart C—General Rules for Nondominant Carriers" immediately preceding § 61.20.

12. Add § 61.18 to subpart C to read as follows:

§ 61.18 Scope.

The rules in this subpart apply to all nondominant carriers.

§§ 61.20 through 61.24 [Redesignated as §§ 61.19 through 61.23]

13. Redesignate §§ 61.20 through 61.24 as §§ 61.19 through 61.23.

14. In newly redesignated § 61.19, revise paragraphs (b) and (c) to read as follows:

§ 61.19 Detariffing of domestic, interstate, interexchange services.

* * * * *

(b) Carriers that are nondominant in the provision of domestic, interstate, interexchange services are permitted to file tariffs for dial-around 1+services. For the purposes of this paragraph, dial-around 1+calls are those calls made by accessing the interexchange carrier through the use of that carrier's carrier access code.

(c) Carriers that are nondominant in the provision of domestic, interstate, interexchange services are permitted to file a tariff for such interstate service applicable to those customers who contact the local exchange carrier to designate an interexchange carrier or to initiate a change with respect to their primary interexchange carrier. Such tariff will enable the interexchange carrier to provide service to the customer until the interexchange carrier and the customer consummate a written agreement, but in no event shall the interexchange carrier provide service to its customer pursuant to such tariff for more than 45 days.

15. In newly redesignated § 61.20, revise paragraphs (b)(1) and (c) to read as follows:

§ 61.20 Method of filing publications.

* * * * *

(b)(1) In addition, except for issuing carriers filing tariffing fees electronically, for all tariff publications requiring fees as set forth in part 1, subpart G of this chapter, issuing carriers must submit the original of the cover letter (without attachments), FCC Form 159, and the appropriate fee to the Mellon Bank, Pittsburgh, PA at the address set forth in § 1.1105 of this chapter. Issuing carriers submitting tariffing fees electronically should submit the Form 159 and the original cover letter to the Secretary of the Commission in lieu of the Mellon Bank. The Form 159 should display the Electronic Audit Code in the box in the upper left hand corner marked "reserved." Issuing carriers should submit these fee materials on the same date as the submission in paragraph (a) of this section.

* * * * *

(c) In addition to the requirements set forth in paragraphs (a) and (b) of this section, the issuing carrier must send a copy of the cover letter with one 3½ inch diskette or CD–ROM containing both the complete tariff and any attachments, as appropriate, to the Secretary, Federal Communications Commission. In addition, the issuing carrier must send one diskette or CD–ROM of the complete tariff and a copy of the cover letter to the commercial contractor (at its office on Commission premises), and to the Chief, Tariff and Pricing Analysis Branch. The latter should be clearly labeled as the "Public Reference Copy." The issuing carrier should file the copies required by this paragraph so they will be received on the same date as the filings in paragraph (a) of this section. In cases where the a single diskette or CD–ROM does not provide sufficient capacity for the carrier's entire tariff filing, the issuing carrier may submit two or more diskettes, or two or more CD–ROMs, as necessary.

16. In newly redesignated § 61.21, revise paragraph (a)(1) to read as follows:

§ 61.21 Cover letters.

(a)(1) Except as specified in § 61.32(b), all publications filed with the Commission must be accompanied by a cover letter, 8.5 by 11 inches (21.6 cm × 27.9 cm) in size, and must be plainly printed in black ink. All transmittal letters should briefly explain the nature and purpose of the filing and indicate the date and method of filing of the original cover letter, as required by § 61.20(b)(1) of this part.

* * * * *

17. Immediately after newly redesignated § 61.21, remove the undesignated center heading "Specific Rules For Domestic and International Nondominant Carriers".

18. In newly redesignated § 61.22, revise paragraph (a), redesignate paragraph (c) as paragraph (c)(1), and add paragraphs (c)(2) and (e) to read as follows:

§ 61.22 Composition of tariffs.

(a) The tariff must be submitted on a 3½ inch (8.89 cm) diskette, or a 5 inch CD–ROM, formatted in an IBM-compatible form using either WordPerfect 5.1, Microsoft Word 6, or Microsoft Word 97 software. No diskettes shall contain more than one tariff. The diskette or CD–ROM must be submitted in "read only" mode. The diskette or CD–ROM must be clearly labelled with the carrier's name, Tariff Number, software used, and the date of submission. When multiple diskettes or CD–ROMs are submitted, the issuing carrier shall clearly label each diskette in the following format: "1 of __", "2 of __", etc.

* * * * *

(c) * * *

(2) Any issuing carrier submitting an individual tariff that requires ten or more diskettes that wishes to revise its tariff is permitted to do so by filing a diskette containing only those pages on which the changed material is located. Any such carrier shall file a current effective version of its entire tariff on the first business day of each month. For purposes of this paragraph, "business day" is defined in § 1.4(e)(2) of this chapter.

* * * * *

(e)(1) For contract-based tariffs defined in § 61.3(m), a separate letter of transmittal may accompany each tariff filed, or the above format may be modified for filing as many publications as may be desired with one transmittal letter. The transmittals must be numbered in a series separate from transmittals for non-contract tariff filing. Numbers must appear on the face of the transmittal and be in the form of "CTT No. _____", using CTT as an abbreviation for contract-based tariff transmittals, or some similar form that indicates that the transmittal is a contract-based tariff transmittal. Contract-based tariffs must also be numbered in a series separate from non-contract-based tariffs. Numbers must be in the form of "CT No. _____", using CT as an abbreviation for contract-based tariffs, or some similar form that indicates that the tariff is a contract-based tariff. Each contract-based tariff must be assigned a separate number. Transmittals and tariffs subject to this paragraph shall be filed beginning with the number "1" and shall be numbered consecutively.

(2) Composition of contract-based tariffs shall comply with §§ 61.54 (b) through (i).

(3) Contract-based tariffs shall include the following:

(i) The term of the contract, including any renewal options;

(ii) A brief description of each of the services provided under the contract;

(iii) Minimum volume commitments for each service;

(iv) The contract price for each service or services at the volume levels committed to by the customers;

(v) A general description of any volume discounts built into the contract rate structure; and

(vi) A general description of other classifications, practices and regulations affecting the contract rate.

19. In newly redesignated § 61.23, revise paragraph (c) to read as follows:

§ 61.23 Notice requirements.

* * * * *

(c) All tariff filings of domestic and international non-dominant carriers must be made on at least one day's notice.

20. Add § 61.25 to subpart C to read as follows:

§ 61.25 References to other instruments.

In addition to the cross-references permitted pursuant to § 61.74, a non-dominant carrier may cross-reference in its tariff publication only the rate provisions of another carrier's FCC tariff publication, provided that the following conditions are met:

(a) The tariff being cross-referenced must be on file with the Commission and in effect;

(b) The issuing carrier must specifically identify in its tariff the cross-referenced tariff by Carrier Name and FCC Tariff Number;

(c) The issuing carrier must specifically identify in its tariff the rates being cross-referenced so as to leave no doubt as to the exact rates that will apply, including but not limited to any applicable credits, discounts, promotions; and

(d) The issuing carrier must keep its cross-references current.

21. Add a subpart D to part 61, consisting of § 61.28, to read as follows:

Subpart D—General Tariff Rules for International Dominant Carriers

§ 61.28 International dominant carrier tariff filing requirements.

(a) Any carrier classified as dominant for the provision of particular international communications services on a particular route due only to a foreign carrier affiliation pursuant to § 63.10 of this Chapter shall file tariffs for those services on at least one day's notice without cost support.

(b) Any carrier classified as dominant for the provision of particular international communications services on a particular route for any reason other than a foreign carrier affiliation pursuant to § 63.10 shall file tariffs for those services pursuant to the notice and cost support requirements for tariff filings of dominant domestic carriers, as set forth in subpart E of this part.

(c) Other than the notice and cost support requirements set forth in paragraphs (a) and (b) of this section, all tariff filing requirements applicable to all carriers classified as dominant for the provision of particular international communications services on a particular route are set forth in subpart C of this part.

§§ 61.32 through 61.52, 61.54, 61.58 and 61.59 [Amended]

22. Designate §§ 61.32 through 61.52, 61.54, 61.58, and 61.59 as subpart E and add a subpart heading entitled "Subpart E—General Rules for Dominant Carriers" immediately preceding § 61.32.

23. Add § 61.31 to subpart E to read as follows:

§ 61.31 Scope.

The rules in this subpart apply to all dominant carriers.

24. Amend § 61.32 by revising paragraph (b) to read as follows:

§ 61.32 Method of filing publications.

* * * * *

(b) In addition, except for issuing carriers filing tariffing fees electronically, for all tariff publications requiring fees as set forth in part 1, subpart G of this chapter, issuing carriers must submit the original of the transmittal letter (without attachments), FCC Form 159, and the appropriate fee to the Mellon Bank, Pittsburgh, PA, at the address set forth in § 1.1105 of this chapter. Issuing carriers submitting tariffing fees electronically should submit the Form 159 and the original cover letter to the Secretary of the Commission in lieu of the Mellon Bank. The Form 159 should display the Electronic Audit Code in the box in the upper left hand corner marked "reserved." Issuing carriers should submit these fee materials on the same date as the submission in paragraph (a) of this section.

* * * * *

25. In § 61.33, revise the first sentence of the introductory text of paragraph (a), remove and reserve paragraph (h)(2), and redesignate the note following paragraph (h)(2) as a note to § 61.33, to read as follows:

§ 61.33 Letters of transmittal.

(a) Except as specified in § 61.32(b), all publications filed on paper with the Commission must be numbered consecutively by the issuing carrier beginning with Number 1, and must be accompanied by a letter of transmittal, A4 (21 cm x 29.7 cm) or 8½ by 11 inches (21.6 cm x 27.9 cm) in size.

* * *

* * * * *

§ 61.35 [Removed]

26. Remove § 61.35.

§ 61.36 [Removed]

27. Remove § 61.36.

28. Amend § 61.38 by revising paragraph (a), removing and reserving paragraph (b)(3), and adding paragraph (g) to read as follows:

§ 61.38 Supporting information to be submitted with letters of transmittal.

(a) *Scope.* This section applies to dominant carriers whose gross annual revenues exceed $500,000 for the most recent 12 month period of operations or are estimated to exceed $500,000 for a representative 12 month period. Local exchange carriers serving 50,000 or fewer access lines in a given study area that are described as subset 3 carriers in § 69.602 of this chapter may submit Access Tariff filings for that study area pursuant to either this section or § 61.39. However, the Commission may require any carrier to submit such information as may be necessary for a review of a tariff filing. This section (other than the preceding sentence of this paragraph) shall not apply to tariff filings proposing rates for services identified in § 61.42 (d), (e), and (g).

* * * * *

(g) On each page of cost support material submitted pursuant to this section, the carrier shall indicate the transmittal number under which that page was submitted.

29. Amend § 61.39 by revising paragraph (a) and by adding paragraph (f) to read as follows:

§ 61.39 Optional supporting information to be submitted with letters of transmittal for Access Tariff filings effective on or after April 1, 1989, by local exchange carriers serving 50,000 or fewer access lines in a given study area that are described as subset 3 carriers in § 69.602.

(a) *Scope.* This section provides for an optional method of filing for any local exchange carrier that is described as subset 3 carrier in § 69.602, which elects to issue its own Access Tariff for a period commencing on or after April 1, 1989, and which serves 50,000 or fewer access lines in a study area as determined under § 36.611(a)(8) of this chapter. However, the Commission may require any carrier to submit such information as may be necessary for a review of a tariff filing. This section (other than the preceding sentence of this paragraph) shall not apply to tariff filings of local exchange carriers subject to price cap regulation.

* * * * *

(f) On each page of cost support material submitted pursuant to this section, the carrier shall indicate the transmittal number under which that page was submitted.

§ 61.41 [Amended]

30. In § 61.41, remove and reserve paragraph (a)(1).

31. Amend § 61.42 by removing and reserving paragraphs (a), (b) and (c), by removing the semicolons at the end of paragraphs (d)(1), (d)(2), and (d)(3) and, in their place, adding periods, by adding a sentence at the end of paragraphs (d)(1), (d)(2), (d)(3), (d)(4), and (d)(6), and by revising the first sentence of paragraph (g) to read as follows:

§ 61.42 Price cap baskets and service categories.

* * * * *

(d) * * *

(1) * * * For purposes of §§ 61.41 through 61.49 of this chapter, this basket shall be referred to as the "common line basket."

(2) * * * For purposes of §§ 61.41 through 61.49 of this chapter, this basket shall be referred to as the "traffic-sensitive basket."

(3) * * * For purposes of §§ 61.41 through 61.49 of this chapter, this basket shall be referred to as the "trunking basket."

(4) * * * For purposes of §§ 61.41 through 61.49 of this chapter, this basket shall be referred to as the "interexchange basket."

* * * * *

(6) * * * For purposes of §§ 61.41 through 61.49 of this chapter, this basket shall be referred to as the "marketing expense basket."

* * * * *

(g) New services, other than those within the scope of paragraph (f) of this section, must be included in the affected basket at the first annual price cap tariff filing following completion of the base period in which they are introduced.

* * *

32. Revise § 61.43 to read as follows:

§ 61.43 Annual price cap filings required.

Carriers subject to price cap regulation shall submit annual price cap tariff filings that propose rates for the upcoming tariff year, that make appropriate adjustments to their PCI, API, and SBI values pursuant to §§ 61.45 through 61.47, and that incorporate new services into the PCI, API, or SBI calculations pursuant to §§ 61.45(g), 61.46(b), and 61.47 (b) and (c). Carriers may propose rate, PCI, or other tariff changes more often than annually, consistent with the requirements of § 61.59.

§ 61.44 [Removed and Reserved]

33. Remove and reserve § 61.44.

34. § 61.45 is amended as follows:

a. Revise paragraphs (b) and (c);

b. Revise paragraph (d)(1)(iv);

c. In paragraph (f), remove the words "paragraph (c)" and add, in their place, the words "paragraphs (b) and (c)"; and

d. Revise paragraphs (i) and (j)(2).

e. Remove paragraphs (k) and (l).

§ 61.45 Adjustments to the PCI for local exchange carriers.

* * * * *

(b)(1)(i) Adjustments to local exchange carrier PCIs, in those carriers' annual access tariff filings, for the traffic-sensitive basket described in § 61.42(d)(2), the trunking basket described in § 61.42(d)(3), and the marketing expense basket described in § 61.42(d)(6), shall be made pursuant to the following formula:

$PCI_t = PCI_{t-1}[1 + w(GDP–PI – X) + \Delta Z/R]$

Where

GDP–PI = the percentage change in the GDP–PI between the quarter ending six months prior to the effective date of the new annual tariff and the corresponding quarter of the previous year,

X = 6.5%,

ΔZ = the dollar effect of current regulatory changes when compared to the regulations in effect at the time the PCI was updated to PCI_{t-1}, measured at base period level of operations,

R = an amount calculated by multiplying base period quantities for each rate element in the basket by the price for that rate element at the time the PCI was updated to PCI_{t-1}, inclusive of the products of base period quantities for each PICC established in § 69.153 of this Chapter and the portion of that PICC that is associated with the basket, and summing the results,

w = R + ΔZ, all divided by R,

PCI_t = the new PCI value, and

PCI_{t-1} = the immediately preceding PCI value.

(ii) Adjustments to local exchange carrier PCIs for the interexchange basket described in § 61.42(d)(4), in those carriers' annual access tariff filings, shall be made pursuant to the following formula:

$PCI_t = PCI_{t-1}[1 + w(GDP–PI – X) + \Delta Z/R + \Delta Y/R]$

Where

w = R – (access rate in effect at the time the PCI was updated to PCI_{t-1}, multiplied by base period demand) + ΔZ, all divided by R,

X = 3.0 percent,

ΔY = (new access rate – access rate at the time the PCI was updated to PCI_{t-1}) × (base period demand), and all other terms are defined in paragraph (b)(1)(i) of this section.

(2) Adjustments to local exchange carrier PCIs, in tariff filings other than the annual access tariff filing, for the traffic-sensitive basket described in § 61.42(d)(2), the trunking basket described in § 61.42(d)(3), the interexchange basket described in § 61.42(d)(4), and the marketing expense basket described in § 61.42(d)(6), shall be made pursuant to the formulas set forth in paragraph (b)(1) of this section, except that the "w(GDP–PI – X)" component of those PCI formulas shall not be employed.

(c)(1) In the event that a local exchange carrier imposes a per-minute carrier common line charge pursuant to § 69.154 of this chapter, and subject to paragraphs (c)(2) and (c)(3) of this section, adjustments to local exchange carrier PCIs in the annual access tariff filing for the common line basket designated in § 61.42(d)(1) shall be made pursuant to the following formula:

$PCI_t = PCI_{t-1}[1 + w[(GDP–PI – X – (g/2))/(1+(g/2))] + \Delta Z/R]$

Where

GDP–PI = the percentage change in the GDP–PI between the quarter ending six months prior to the effective date of the new annual tariff and the corresponding quarter of the previous year,

X = productivity factor of 6.5%,

g = the ratio of minutes of use per access line during the base period, to minutes of use per access line during the previous base period, minus 1,

ΔZ = the dollar effect of current regulatory changes when compared to the regulations in effect at the time the PCI was updated to PCI_{t-1}, measured at base period level of operations,

R = an amount calculated by multiplying base period quantities for each rate element in the basket by the price for that rate element at the time the PCI was updated to PCI_{t-1}, inclusive of the products of base period quantities for each PICC established in § 69.153 of this Chapter and the portion of that PICC that is associated with the common line basket, and summing the results,

w = R + ΔZ, all divided by R,

PCI_t = the new PCI value, and
PCI_{t-1} = the immediately preceding PCI value.

(2) Adjustments to local exchange carrier PCIs, in tariff filings other than the annual access tariff filing, for the common line basket described § 61.42(d)(1), shall be made pursuant to the formulas set forth in paragraph (b)(1) of this section, except that the "w[(GDP–PI—X—(g/2))/(1 + (g/2))]" component of that PCI formula shall not be employed. In non-annual price cap filings, g will be equal to 0.

(3) The formula set forth in paragraph (c)(1) of this section shall be used by a local exchange carrier only if that carrier is imposing a carrier common line charge pursuant to § 69.154 of this chapter. Otherwise, adjustments to local exchange carrier PCIs for the common line basket designated in § 61.42(d)(1) shall be made pursuant to the formula set forth in § 61.45(b)(1)(i).

(d) * * *

(1) * * *

(iv) Changes to the level of obligation associated with the Universal Service Fund obligation described in Part 54 of this chapter;

* * * * *

(i)(1)(i) Notwithstanding the provisions of paragraphs (b) and (c) of this section, and subject to the limitations of paragraph (j) of this section, including but not limited to the Δ Z reductions discussed in paragraph (j)(2), any price cap local exchange carrier that is recovering interconnection charge revenues through per-minute rates pursuant to § 69.124 or § 69.155 of this chapter shall target, to the extent necessary to eliminate the recovery of any residual interconnection charge revenues through per-minute rates, any PCI reductions associated with the common line and traffic sensitive baskets, designated in §§ 61.42(d)(1) and (2), that result from the application of the formulas in paragraphs (b) and (c) of this section.

(ii) As specified in paragraph (j)(2) of this section, any price cap local exchange carrier that is targeting PCI reductions to the residual interconnection charge pursuant to paragraph (i)(1)(i) of this section shall exclude the Δ Z/R component of the PCI for the trunking basket designated in § 61.42(d)(3) from those calculations.

(iii) Any local exchange carrier that is targeting PCI reductions to the residual interconnection charge pursuant to paragraph (i)(1)(i) of this section shall not make any adjustment to its PCIs for the common line and traffic sensitive baskets, designated in §§ 61.42(d)(1) and (2) respectively, as a result of the application of the formulas in paragraphs (b) and (c) of this section, other than the adjustments resulting from calculation of the "Δ Z/R component of those formulas.

(iv) The reductions described in paragraph (i)(1)(i) are to be made after the adjustment is made to the PCI for the trunking basket designated in § 61.42(d)(3) resulting from the application of the formulas in paragraphs (b) and (c) of this section.

(2) Notwithstanding the provisions of paragraph (b) of this section, and subject to the limitations of paragraph (j) of this section, any price cap local exchange carrier that is recovering interconnection charge revenues through per-minute rates pursuant to § 69.155 of this chapter shall target, to the extent necessary to eliminate the recovery of any residual interconnection charge revenues through per-minute rates, any PCI reductions associated with the basket designated in § 61.42(d)(6) that result from the application of the formula in § 61.45(b), but excluding from the calculations the Δ Z/R component, with no adjustment being made to the PCIs for the basket designated in § 61.42(d)(6). This adjustment, including any adjustment due to the Δ Z/R component, will be made after any adjustment made pursuant to paragraph (i)(1) of this section.

(3) [Reserved]

(4) Effective January 1, 1998, the reduction in the PCI for the trunking basket designated in § 61.42(d)(3) that results from paragraphs (i)(1) and (i)(2) of this section shall be determined by multiplying the PCI for the trunking basket by one minus the ratio of the sum of the dollar effects of the PCI reductions otherwise applicable to the common line, traffic-sensitive, and marketing expense baskets, to the revenues applicable to the trunking basket.

(j) * * *

(2) Exclude the amount of any exogenous adjustments permitted or required for the common line, traffic sensitive baskets, and marketing baskets, defined in §§ 61.42(d)(1), (d)(2), and (d)(6), from the retargeting adjustment to the PCI for the trunking basket defined in § 61.42(d)(3). Any such exogenous adjustments shall be reflected in the PCIs and SBIs in the same manner as they would have been reflected if there were no targeting.

35. Amend § 61.47 to revise paragraph (e), remove and reserve paragraphs (f), (g), and (h) to read as follows:

§ 61.47 Adjustments to the SBI; pricing bands.

* * * * *

(e) Pricing bands shall be established each tariff year for each service category and subcategory within a basket. Each band shall limit the pricing flexibility of the service category, subcategory, or density zone, as reflected in the SBI, to an annual increase of a specified percent listed in this paragraph below, relative to the percentage change in the PCI for that basket, measured from the levels in effect on the last day of the preceding tariff year. For local exchange carriers subject to price cap regulation as that term is defined in § 61.3(x), there shall be no lower pricing band for any service category or subcategory.

(1) *Five percent:*

(i) Local switching (traffic sensitive basket)

(ii) Information (traffic sensitive basket)

(iii) Database Access services (traffic sensitive basket)

(iv) 800 Database Vertical Services subservice (traffic sensitive basket)

(v) Billing Name and Address (traffic sensitive basket)

(vi) Local switching trunk ports (traffic sensitive basket)

(vii) Signalling Transfer Point Port Termination (traffic sensitive basket)

(viii) Voice grade (Trunking basket)

(ix) Voice grade density zones (Trunking basket)

(x) Tandem-Switched Transport density zones (Trunking basket)

(xi) Audio/Video (Trunking basket)

(xii) Total High Capacity (Trunking basket)

(xiii) DS1 subservice (Trunking basket)

(xiv) DS1 density zones (Trunking basket)

(xv) DS3 subservice (Trunking basket)

(xvi) DS3 density zones (Trunking basket)

(xvii) Wideband (Trunking basket)

(2) *Two percent:*

(i) Tandem-Switched Transport (Trunking basket)

(ii) Signalling for Tandem Switching (Trunking basket)

(3) *Zero percent:* Interconnection charge (Trunking basket)

(f)–(h) [Reserved]

* * * * *

§ 61.48 [Amended]

36. Amend § 61.48 by removing and reserving paragraphs (a) through (h), and by removing and reserving paragraph (i)(3)(ii).

37. Amend § 61.49 to revise paragraphs (a), (c), and (g)(1)(ii), remove and reserve paragraphs (f)(1) and (i)(1), and add new paragraph (l) to read as follows:

§ 61.49 Supporting information to be submitted with letters of transmittal for tariffs of carriers subject to price cap regulation.

(a) Each price cap tariff filing must be accompanied by supporting materials sufficient to calculate required adjustments to each PCI, API, and SBI pursuant to the methodologies provided in §§ 61.45, 61.46, and 61.47, as applicable.

* * * * *

(c) Each price cap tariff filing that proposes rates above the applicable band limits established in §§ 61.47 (e) must be accompanied by supporting materials establishing substantial cause for the proposed rates.

* * * * *

(f)(1) [Reserved]

* * * * *

(g) * * *

(1) * * *

(ii) Estimates of the effect of the new tariff on the traffic and revenues from the service to which the new tariff applies, the carrier's other service classifications, and the carrier's overall traffic and revenues. These estimates must include the projected effects on the traffic and revenues for the same representative 12 month period used in paragraph (g)(1)(i) of this section.

* * * * *

(l) On each page of cost support material submitted pursuant to this section, the carrier shall indicate the transmittal number under which that page was submitted.

§ 61.50 [Removed and Reserved]

38. Remove and reserve § 61.50.

39. Remove the undesignated center heading entitled "Specific Rules for Tariff Publications" immediately before § 61.51.

§ 61.51 [Removed and Reserved]

40. Remove and reserve § 61.51.

§ 61.53 [Redesignated as § 61.83]

41. Redesignate § 61.53 as § 61.83.

42. Amend § 61.54 by revising paragraph (b)(3), redesignating paragraph (c)(1) as paragraph (c)(1)(i), adding paragraph (c)(1)(ii), redesignating paragraph (c)(3) as paragraph (c)(3)(i), adding paragraph (c)(3)(ii), and revising paragraph (i)(3), to read as follows:

§ 61.54 Composition of tariffs.

* * * * *

(b) * * *

(3) *Expiration date.* Subject to § 61.59, when the entire tariff or supplement is to expire with a fixed date, the expiration date must be shown in connection with the effective date in the following manner. Changes in expiration date must be made pursuant to the notice requirements of § 61.58, unless otherwise authorized by the Commission.

Expires at the end of ____ (date) unless sooner canceled, changed, or extended.

* * * * *

(c) * * *

(1) * * *

(ii) Alternatively, the carrier is permitted to number its tariff pages, other than the check sheet, to reflect the section number of the tariff as well as the page. For example, under this system, pages in section 1 of the tariff would be numbered 1–1, 1–2, etc., and pages in section 2 of the tariff would be numbered 2–1, 2–2, etc. Issuing carriers shall utilize only one page numbering system throughout its tariff.

* * * * *

(3) * * *

(ii) On each page, the carrier shall indicate the transmittal number under which that page was submitted.

* * * * *

(i) * * *

(3) Items which have not been in effect 30 days when brought forward on revised pages must be shown as reissued, in the manner prescribed in § 61.54(i)(1). The number and original effective date of the tariff publication in which the matter was originally published must be associated with the reissued matter. Items which have been in effect 30 days or more and are brought forward without change on revised pages must not be shown as reissued items.

§ 61.55 [Removed]

43. Remove § 61.55.

§ 61.56 [Redesignated as § 61.86]

44. Redesignate § 61.56 as § 61.86, and revise it to read as follows:

§ 61.86 Supplements.

A carrier may not file a supplement except to suspend or cancel a tariff publication, or to defer the effective date of pending tariff revisions. A carrier may file a supplement for the voluntary deferral of a tariff publication.

§ 61.57 [Redesignated as § 61.87]

45. Redesignate § 61.57 as § 61.87, and revise it to read as follows:

§ 61.87 Cancellation of tariffs.

(a) A carrier may cancel an entire tariff. Cancellation of a tariff automatically cancels every page and supplement to that tariff except for the canceling Title Page or first page.

(1) If the existing service(s) will be provided under another carrier's tariff, then

(i) The carrier whose tariff is being canceled must revise the Title Page or the first page of its tariff indicating that the tariff is no longer effective, or

(ii) The carrier under whose tariff the service(s) will be provided must revise the Title Page or first page of the tariff to be canceled, using the name and numbering shown in the heading of the tariff to be canceled, indicating that the tariff is no longer effective. This carrier must also file with the Commission the new tariff provisions reflecting the service(s) being canceled. Both filings must be effective on the same date and may be filed under the same transmittal.

(2) If a carrier canceling its tariff intends to cease to provide existing service, then it must revise the Title Page or first page of its tariff indicating that the tariff is no longer effective.

(3) A carrier canceling its tariff, as described in this section, must comply with § 61.22 or §§ 61.54(b)(1) and 61.54(b)(5), as applicable.

(b) When a carrier cancels a tariff as described in this section, the canceling Title Page or the first page of the canceled tariff must show where all rates and regulations will be found except for paragraph (c) of this section. The Title Page or first page of the new tariff must indicate the name of the carrier and tariff number where the canceled material had been found.

(c) When a carrier ceases to provide service(s) without a successor, it must cancel its tariff pursuant to the notice requirements of § 61.23 or § 61.58, as applicable, unless otherwise authorized by the Commission.

46. Amend § 61.58 as follows:

a. Revise paragraph (a)(2);

b. Revise paragraph (a)(3);

c. Remove and reserve paragraphs (b), (c), and (d);

d. Amend paragraph (e) by revising the paragraph heading, redesignating paragraph (e)(3) as paragraph (e)(4), and adding new paragraph (e)(3); and

e. Remove and reserve paragraph (f).

§ 61.58 Notice requirements.

(a) * * *

(2)(i) Local exchange carriers may file tariffs pursuant to the streamlined tariff filing provisions of section 204(a)(3) of the Communications Act. Such a tariff may be filed on 7 days' notice if it proposes only rate decreases. Any other tariff filed pursuant to section 204(a)(3) of the Communications Act, including those that propose a rate increase or any change in terms and conditions, shall be filed on 15 days' notice. Any tariff filing made pursuant to section 204(a)(3) of the Communications Act must comply with the applicable cost support requirements specified in this part.

(ii) Local exchange carriers may elect not to file tariffs pursuant to section 204(a)(3) of the Communications Act. Any such tariffs shall be filed on at least 16 days' notice.

(iii) Except for tariffs filed pursuant to section 204(a)(3) of the Communications Act, the Chief, Common Carrier Bureau, may require the deferral of the effective date of any filing made on less than 120 days' notice, so as to provide for a maximum of 120 days' notice, or of such other maximum period of notice permitted by section 203(b) of the Communications Act, regardless of whether petitions under § 1.773 of this chapter have been filed.

(3) Tariff filings proposing corrections or voluntarily deferring the effective date of a pending tariff revision must be made on at least 3 days' notice, and may be filed notwithstanding the provisions of § 61.59. Corrections to tariff materials not yet effective cannot take effect before the effective date of the original material. Deferrals must take effect on or before the current effective date of the pending tariff revisions being deferred.

* * * * *

(b)–(d) [Reserved]

(e) *Non-price* cap carriers and/or services. * * *

* * * * *

(3) Alascom, Inc. shall file its annual tariff revisions for its Common Carrier Services (Alascom Tariff F.C.C No. 11) on at least 35 days' notice.

* * * * *

(f) [Reserved]

Revise § 61.59 to read as follows:

§ 61.59 Effective period required before changes.

(a) Except as provided in § 61.58(a)(3) or except as otherwise authorized by the Commission, new rates or regulations must be effective for at least 30 days before a dominant carrier will be permitted to make any change.

(b) Changes to rates and regulations that have not yet become effective, *i.e.*, are pending, may not be made unless the effective date of the proposed changes is at least 30 days after the scheduled effective date of the pending revisions.

(c) Changes to rates and regulations that have taken effect but have not been in effect for at least 30 days may not be made unless the scheduled effective date of the proposed changes is at least 30 days after the effective date of the existing regulations.

§ 61.67 through 61.74 [Amended]

48. Designate §§ 61.67 through 61.74, and redesignated §§ 61.83, 61.86, and 61.87, as subpart F, and add a subpart heading entitled "Subpart F—Specific Rules for Tariff Publications of Dominant and Nondominant Carriers" immediately preceding § 61.67.

49. Add § 61.66 to subpart F to read as follows:

§ 61.66 Scope.

The rules in this subpart apply to all carriers, unless otherwise noted.

§ 61.67 [Removed]

50. Remove § 61.67.

51. Revise § 61.69 to read as follows:

§ 61.69 Rejection.

When a tariff publication is rejected by the Commission, its number may not be used again. This includes, but is not limited to, such publications as tariff numbers or specific page revision numbers. The rejected tariff publication may not be referred to as either cancelled or revised. Within five business days of the release date of the Commission's Order rejecting such tariff publication, the issuing carrier shall file tariff revisions removing the rejected material, unless the Commission's Order establishes a different date for this filing. The publication that is subsequently issued in lieu of the rejected tariff publication must bear the notation:

In lieu of —, rejected by the Federal Communications Commission.

§ 61.71 [Removed]

52. Remove § 61.71.

53. Revise § 61.72 to read as follows:

§ 61.72 Public information requirements.

(a) Issuing carriers must make available accurate and timely information pertaining to rates and regulations subject to tariff filing requirements.

(b) Issuing carriers must, at a minimum, provide a telephone number for public inquiries about information contained in its tariffs. This telephone number should be made readily available to all interested parties.

(c) Any issuing carrier that is an incumbent local exchange carrier, and chooses to establish an Internet web site, must make its tariffs available on that web site, in addition to the Commission's web site.

54. Add new paragraphs (e) and (f) to § 61.74 to read as follows:

§ 61.74 References to other instruments.

* * * * *

(e) Tariffs may reference other FCC tariffs that are in effect and on file with the Commission for purposes of determining mileage, or specifying the operating centers at which a specific service is available.

(f) Tariffs may reference technical publications which describe the engineering, specifications, or other technical aspects of a service offering, provided the following conditions are satisfied:

(1) The tariff must contain a general description of the service offering, including basic parameters and structural elements of the offering;

(2) The technical publication includes no rates, regulatory terms, or conditions which are required to be contained in the tariff, and any revisions to the technical publication do not affect rates, regulatory terms, or conditions included in the tariff, and do not change the basic nature of the offering;

(3) The tariff indicates where the technical publication can be obtained;

(4) The referenced technical publication is publicly available before the tariff is scheduled to take effect; and

(5) The issuing carrier regularly revises its tariff to refer to the current edition of the referenced technical publication.

§§ 61.131 through 61.136 [Amended]

55. Remove the undesignated center heading "Concurrences" immediately before § 61.131.

56. Designate §§ 61.131 through 61.136 as subpart G, and add a subpart heading entitled "Subpart G—Concurrences" immediately preceding § 61.131.

57. Amend § 61.132 by adding two sentences at the end of the section, to read as follows:

§ 61.132 Method of filing concurrences.

* * * Nondominant issuing carriers shall file revisions reflecting concurrences in their tariffs on the notice period specified in § 61.23 of this part. Dominant issuing carriers shall file concurrences in their tariffs on the notice periods specified in § 61.58(a)(2) or § 61.58(e)(1)(iii) of this part.

§§ 61.151 through 61.153 [Amended]

58. Remove the undesignated center heading "Applications for Special Permission" immediately preceding § 61.151.

59. Designate §§ 61.151 through 61.153 as subpart H, and add a subpart heading entitled "Subpart H—Applications for Special Permission" immediately preceding § 61.151.

60. Amend § 61.153 by revising paragraph (b) to read as follows:

§ 61.153 Method of filing applications.

* * * * *

(b) In addition, except for issuing carriers filing tariffing fees electronically, for all special permission applications requiring fees as set forth in part 1, subpart G of this chapter, the issuing carrier must submit the original of the application letter (without attachments), FCC Form 159, and the appropriate fee to the Mellon Bank, Pittsburgh, PA at the address set forth in § 1.1105 of this chapter. Issuing carriers submitting tariffing fees electronically should submit the Form 159 and the original cover letter to the Secretary of the Commission in lieu of the Mellon Bank. The Form 159 should display the Electronic Audit Code in the box in the upper left hand corner marked "reserved." Issuing carriers should submit these fee materials on the same date as the submission in paragraph (a) of this section.

* * * * *

§§ 61.171 through 61.172 [Amended]

61. Remove the undesignated center heading "Adoption of Tariffs and Other Documents of Predecessor Carriers" immediately preceding § 61.171.

62. Designate §§ 61.171 through 61.172 as subpart I, and add a subpart heading entitled "Subpart I—Adoption of Tariffs and Other Documents of Predecessor Carriers" immediately preceding § 61.171.

§§ 61.191 through 61.193 [Amended]

63. Remove the undesignated center heading "Suspensions" immediately preceding § 61.191.

64. Designate §§ 61.191 through 61.193 as subpart J, and add a subpart heading entitled "Subpart J—Suspensions" immediately preceding § 61.191.

65. Revise § 61.191 to read as follows:

§ 61.191 Carrier to file supplement when notified of suspension.

If a carrier is notified by the Commission that its tariff publication has been suspended, the carrier must file, within five business days from the release date of the suspension order, a consecutively numbered supplement without an effective date, which specifies the schedules which have been suspended.

PART 61—[AMENDED]

66. In addition to the amendments set forth above, in 47 CFR part 61, remove the words "Chief, Tariff Review Branch" and add, in their place, the words "Chief, Tariff and Pricing Analysis Branch" in the following places:

a. Section 61.32(c);
b. Section 61.33(a)(3);
c. Section 61.38(c)(1);
d. Section 61.49(g)(2)(i);
e. Section 61.153(c).

PART 63—EXTENSION OF LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

67. The authority citation continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 201–205, 403, and 533, unless otherwise noted.

68. Amend § 63.10 by revising paragraph (c)(1) to read as follows:

§ 63.10 Regulatory classification of U.S. international carriers.

* * * * *

(c) * * *

(1) File international service tariffs pursuant to § 61.28 of this chapter.

PART 69—ACCESS CHARGES

69. The authority citation continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

§ 69.2 [Amended]

70. In § 69.2, remove and reserve paragraph (tt).

71. Amend § 69.3 to revise paragraph (a), revise the introductory text of paragraph (e), revise paragraph (e)(6), revise paragraph (f), revise paragraph (h), revise the introductory text of paragraph (i), and to remove and reserve paragraph (j), to read as follows:

§ 69.3 Filing of access service tariffs.

(a) Except as provided in paragraphs (g) and (h) of this section, a tariff for access service shall be filed with this Commission for a two-year period. Such tariffs shall be filed with a scheduled effective date of July 1. Such tariff filings shall be limited to rate level changes.

* * * * *

(e) A telephone company or group of telephone companies may file a tariff that is not an association tariff. Such a tariff may cross-reference the association tariff for some access elements and include separately computed charges of such company or companies for other elements. Any such tariff must comply with the requirements hereinafter provided:

* * * * *

(6) A telephone company or companies that elect to file such a tariff shall notify the association not later than December 31 of the preceding year, if such company or companies did not file such a tariff in the preceding biennial period or cross-reference association charges in such preceding period that will be cross-referenced in the new tariff. A telephone company or companies that elect to file such a tariff not in the biennial period shall file its tariff to become effective July 1 for a period of one year. Thereafter, such telephone company or companies must file its tariff pursuant to paragraphs (f)(1) or (f)(2) of this section.

* * * * *

(f) (1) A tariff for access service provided by a telephone company that is required to file an access tariff pursuant to § 61.38 of this Chapter shall be filed for a biennial period and with a scheduled effective date of July 1 of any even numbered year.

(2) A tariff for access service provided by a telephone company that may file an access tariff pursuant to § 61.39 of this Chapter shall be filed for a biennial period and with a scheduled effective date of July 1 of any odd numbered year. Any such telephone company that does not elect to file an access tariff pursuant to the § 61.39 procedures, and does not participate in the Association tariff, and does not elect to become subject to price cap regulation, must file an access tariff pursuant to § 61.38 for a biennial period and with a scheduled effective date of July 1 of any even numbered year.

(3) For purposes of computing charges for access elements other than Common Line elements to be effective on July 1 of any even-numbered year, the association may compute rate changes based upon statistical methods which represent a reasonable equivalent to the cost support information otherwise required under part 61 of this chapter.

* * * * *

(h) Local exchange carriers subject to price cap regulation as that term is defined in § 61.3(x) of this chapter, shall file with this Commission a price cap tariff for access service for an annual period. Such tariffs shall be filed to meet the notice requirements of § 61.58 of this Chapter, with a scheduled effective date of July 1. Such tariff filings shall be limited to changes in the Price Cap Indexes, rate level changes (with corresponding adjustments to the affected Actual Price Indexes and Service Band Indexes), and the incorporation of new services into the affected indexes as required by § 61.49 of this chapter.

(i) The following rules apply to the withdrawal from Association tariffs under the provision of paragraph (e)(6) or (e)(9) of this section or both by telephone companies electing to file price cap tariffs pursuant to paragraph (h) of this section.

* * * * *

§ 69.111 [Amended]

72. Amend § 69.111(g)(4), by removing the reference "§ 61.43(e)(2)(v)" and adding, in its place, the reference "§ 61.42(e)(2)(v)", and by removing the reference "§ 61.43(e)(2)(vi)" and adding, in its place, the reference "§ 61.42(e)(2)(vi)".

§ 69.113 [Amended]

73. In § 69.113(c), remove the reference "§ 61.3(v)" and add, in its place, the reference "§ 61.3(x)".

§ 69.114 [Amended]

In § 69.114(a), remove the reference "§ 61.3(v)" and add, in its place, the reference "§ 61.3(x)".

75. Amend § 69.153, by revising paragraphs (c)(1), (d)(1)(i), and (d)(2)(i), to read as follows:

§ 69.153 Presubscribed interexchange carrier charge (PICC).

* * * * *

(c) * * *

(1) One twelfth of the sum of annual common line revenues and residual interconnection charge revenues permitted under our price cap rules divided by the historical base period local exchange service subscriber lines in use during such annual period, minus the maximum subscriber line charge calculated pursuant to § 69.152(d)(2); or * * *

* * * * *

(d) * * *

(1) * * *

(i) One twelfth of the annual common line, residual interconnection charge, and § 69.156(a) marketing expense revenues permitted under our price cap rules, less the maximum amounts permitted to be recovered through the recovery mechanisms under §§ 69.152, 69.153(c), and 69.156(b) and (c), divided by the total number of historical base period non-primary residential and multi-line business subscriber lines in use during such annual period; or * * *

(2) * * *

(i) One twelfth of the annual common line, residual interconnection charge, and § 69.156(a) marketing expense revenues permitted under parts 61 and 69 of our rules, less the maximum amounts permitted to be recovered through the recovery mechanisms under §§ 69.152, 69.153(c) and (d)(1), and 69.156(b) and (c), divided by the total number of historical base period multi-line business subscriber lines in use during such annual period; or

* * * * *

[FR Doc. 99–21721 Filed 8–25–99; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST–99–6158, Amdt. 1–301]

Organization and Delegation of Powers and Duties; Delegation to the Commandant, United States Coast Guard

AGENCY: Office of the Secretary, DOT.
ACTION: Final rule.

SUMMARY: The Secretary of Transportation is delegating to the Commandant of the United States Coast Guard, authority to implement and enforce measures to prevent the introduction and spread of aquatic nuisance species (ANS) into the waters of the United States.

DATES: Effective: August 26, 1999.

FOR FURTHER INFORMATION CONTACT: Lt. Mary Pat McKeown, Office of Operating and Environmental Standards (G–MSO), (202) 267–0500, United States Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001.

SUPPLEMENTARY INFORMATION: In 1990, Congress passed the Nonindigenous Aquatic Nuisance Prevention and Control Act (NANPCA) (Pub. L. 101–646) (codified at 16 U.S.C. 4701–4751). NANPCA authorized the Secretary of Transportation, as Secretary of the Department in which the Coast Guard was operating, to implement regulations to prevent the introduction and spread of aquatic nuisance species (ANS) into the waters of only the Great Lakes. In 1992, the Secretary of Transportation delegated to the Coast Guard his authority under NANPCA to implement ANS regulations for the Great Lakes. In 1996, Congress amended NANPCA by passing the National Invasive Species Act (NISA), (Pub. L. 104–332). NISA authorized the Secretary of Transportation, as Secretary of the Department in which the Coast Guard was operating, to implement regulations to prevent the introduction and spread of aquatic nuisance species into ALL waters of the United States by issuing voluntary guidelines which are to become mandatory if voluntary compliance proves ineffective. Thus, NISA simply expanded to include all waters of the United States, the authority previously granted under NANPCA for the Great Lakes only. The Secretary of Transportation is amending the existing delegation of authority to the Commandant of the Coast Guard to include NISA's additional authority to implement ANS requirements for all waters of the United States.

We publish this rule as a final rule effective on the date of publication. Since this amendment relates to the Departmental management, organization, procedure, and practice, notice and comment are unnecessary under 5 U.S.C. 553(b). Furthermore, since this amendment expedites the Coast Guard's ability to meet the needs of its conservation and enforcement obligations, the Secretary finds good cause, under 5 U.S.C. 553(b) and 5 U.S.C. 553(d)(3), that notice and public comment on the rule are unnecessary and that this rule should be made effective on the date of publication.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, part 1 of title 49, Code of Federal Regulations, is amended to read as follows:

PART 1—[AMENDED]

1. The authority citation for Part 1 continues to read as follows:

Authority: 49 U.S.C. 322; Pub. L. 101–552, 28 U.S.C. 2672, 31 U.S.C. 3711 (a)(2).

In § 1.46, paragraph (ww) is revised to read as follows:

§ 1.46 Delegations to Commandant of the Coast Guard.

* * * * *

(ww) Carry out the functions and exercise the authority vested in the Secretary by 16 U.S.C. 4711, which pertain to establishing and enforcing regulations to prevent the introduction and spread of aquatic nuisance species into the Great Lakes and other waters of the United States through the ballast water of vessels. This authority may be redelegated.

* * * * *

Issued in Washington, DC this 18th day of June, 1999.

Rodney E. Slater,
Secretary of Transportation.

[FR Doc. 99–22212 Filed 8–25–99; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

49 CFR Part 1121

[STB Ex Parte No. 527 (Sub-No. 2)]

Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings

AGENCY: Surface Transportation Board.
ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board) is modifying the regulations concerning exemption and revocation proceedings. This rule clarifies when additional information or public comment will be sought in response to a petition for a class exemption or a petition for an individual exemption.

EFFECTIVE DATE: September 25, 1999.

FOR FURTHER INFORMATION CONTACT: John Sado, (202) 565–1642. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: In a notice of proposed rulemaking served and published in the **Federal Register** on June 25, 1999 (64 FR 34185) (NPR), the Board proposed revisions to our exemption regulations at 49 CFR 1121.4(c) to clarify when we would seek additional information or public comment in response to a petition for a class exemption or a petition for an individual exemption. In response to changes resulting from the ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803 (1995) (ICCTA), the Board had modified its rail exemption procedures in *Expedited Procedures for Processing Rail Rate Reasonableness, Exemption and Revocation Proceedings*, Ex Parte No. 527 (STB served Oct. 1, 1996) (*Expedited Procedures*), *modified* by decision served Nov. 15, 1996, *aff'd sub nom. United Transp. Union-Ill. Legis. Bd.* v. *Surface Transp. Bd.*, 132 F.3d 71 (D.C. Cir. 1998). As a result, the regulations at 49 CFR 1121.4(c) state:

> If the impact of the proposed exemption cannot be ascertained from the information contained in the petition or accompanying submissions, or significant adverse impacts might occur if the proposed exemption were granted, or a class exemption is sought, the Board will:
>
> (1) Direct that additional information be filed; or
>
> (2) Publish a notice in the **Federal Register** requesting public comments.

In our NPR, we noted that, in our decision in *San Joaquin Valley Railroad Company—Abandonment Exemption—In Kings and Fresno Counties, CA*, STB Docket No. AB–398 (Sub-No. 4X) (STB served Mar. 5, 1999), slip op. at 7, we indicated that the rule could be interpreted as requiring the Board to seek comments where a class exemption is sought, and whenever the impact of a proposed individual exemption cannot be determined or if there would be significant adverse impacts if an exemption were granted. While stating that the filing of additional comments would be sought for class exemption requests, we indicated that we believed we had the discretion to determine whether additional evidence was needed in individual exemption proceedings. *Id.*

Consequently, we issued our NPR proposing to modify § 1121.4(c) to make clear how we would treat petitions for class exemptions and individual exemptions. When a class exemption is sought, we proposed to require that additional information or public comments be filed before granting the new class exemption. We also proposed to modify the rule to indicate that, although we retain the discretion to do so, we are not required to seek public comment when we deny a class exemption petition. Finally, we proposed to modify the rule to indicate that, where the impact of an individual exemption could not be determined from the petition, or if significant adverse impacts might occur if the individual exemption were granted, we had the discretion to seek additional information or comment.[1]

The American Short Line and Regional Railroad Association (ASLRRA) filed the only comment in response to the NPR. No comments were filed opposing the substance of the rule. ASLRRA seeks clarification concerning proposed 49 CFR 1121.4(c)(2). Because 49 CFR 1121.1 indicates that the procedures under part 1121 "also apply to notices of exemption,"[2] ASLRRA expresses its concern that the proposed rule could be read to apply to notices of exemption filed under an already-existing class exemption. This, ASLRRA contends, could be read as requiring the publication of the notice in the **Federal Register** requesting comments, an "unintended result that would undercut the effectiveness of these very important notice filing provisions."

We will adopt the substance of the proposed rule, but clarify it to indicate that the notice and comment requirement pertains to petitions for class exemptions, and not to notices of exemption filed pursuant to an existing class exemption. Specifically, we will adopt a revised version of § 1121.4(c)(2), replacing the language proposed in our NPR ("If a class exemption is sought, the Board will publish a notice in the **Federal Register** requesting public comments before granting the class exemption. The Board may deny a request for a class exemption without seeking public comments.") with the following: "If a petition for a new class exemption is filed, the Board will publish a notice in the **Federal Register** requesting public comments before granting the class exemption. This requirement does not pertain to individual notices of exemption filed under existing class exemptions. The Board may deny a request for a class exemption without seeking public comments." This is in conformance with our NPR at 3, which stated that we were "modify[ing] § 1121.4(c) to make clear the treatment that will be accorded petitions for class exemptions and individual exemptions."

In our NPR, we indicated that the proposed rule would not have a significant economic impact on a substantial number of small entities. No one addressed this issue, and we certify that the final rule will not have a significant economic impact on a substantial number of small entities.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1121

Administrative practice and procedure, Rail exemption procedures, Railroads.

Decided: August 19, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,
Secretary.

For the reasons set forth in the preamble, title 49 chapter X, Part 1121 of the Code of Federal Regulations is amended to read as follows:

PART 1121—RAIL EXEMPTION PROCEDURES

1. The authority citation for part 1121 is revised to read as follows:

Authority: 49 U.S.C. 10502 and 10704.

2. In § 1121.4, paragraph (c) is revised to read as follows:

§ 1121.4 Procedures.

* * * * *

(c)(1) If the impact of the proposed individual exemption cannot be ascertained from the information

[1] Our NPR proposed that 49 CFR 1121.4 read:

(c)(1) If the impact of the proposed individual exemption cannot be ascertained from the information contained in the petition or accompanying submissions, or significant adverse impacts might occur if the proposed exemption were granted, the Board may, in its discretion:

(i) Direct that additional information be filed; or

(ii) Publish a notice in the **Federal Register** requesting public comments.

(2) If a class exemption is sought, the Board will publish a notice in the **Federal Register** requesting public comments before granting the class exemption. The Board may deny a request for a class exemption without seeking public comments.

[2] Notices of exemption are filed under the Board's class exemption procedures that exempt a transaction as a class from the statutory prior approval requirements. These procedures are generally a simpler, more expedited method of proceeding than filing a petition for exemption.

contained in the petition or accompanying submissions, or significant adverse impacts might occur if the proposed exemption were granted, the Board may, in its discretion:

(i) Direct that additional information be filed; or

(ii) Publish a notice in the **Federal Register** requesting public comments.

(2) If a petition for a new class exemption is filed, the Board will publish a notice in the **Federal Register** requesting public comments before granting the class exemption. This requirement does not pertain to individual notices of exemption filed under existing class exemptions. The Board may deny a request for a class exemption without seeking public comments.

* * * * *

[FR Doc. 99–22125 Filed 8–25–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 990506120–9220–02; I.D. 082399B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS closes the commercial fishery for king mackerel in the exclusive economic zone (EEZ) in the western zone of the Gulf of Mexico. This closure is necessary to protect the overfished Gulf king mackerel resource.

DATES: The closure is effective 12:01 a.m., local time, August 25, 1999, through June 30, 2000.

FOR FURTHER INFORMATION CONTACT: Mark Godcharles, 727–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, NMFS implemented a commercial quota for the Gulf of Mexico migratory group of king mackerel in the western zone of 1.05 million lb (0.48 million kg) (63 FR 8353, February 19, 1998).

Under 50 CFR 622.43(a), NMFS is required to close any segment of the king mackerel commercial fishery when its quota has been reached, or is projected to be reached, by filing a notification at the Office of Federal Register. NMFS has determined that the commercial quota of 1.05 million lb (0.48 million kg) for Gulf group king mackerel in the western zone will be reached on August 24, 1999. Accordingly, the commercial fishery for Gulf group king mackerel in the western zone is closed effective 12:01 a.m., local time, August 25, 1999, through June 30, 2000, the end of the fishing year. The boundary between the eastern and western zones is 87°31'06" W. long., which is a line directly south from the Alabama/Florida boundary.

Until July 1, 2000, no person aboard a vessel, other than a vessel operating as a charter vessel or headboat, for which a commercial permit for king or Spanish mackerel has been issued may fish for or retain king mackerel in or from the western zone in the EEZ. A vessel for which a charter vessel/headboat permit and a commercial king mackerel permit have been issued is operating as a charter vessel or headboat (for-hire vessel) when it carries a paying passenger or when more than three persons are aboard, including captain and crew. A person aboard a vessel operating as a charter vessel or headboat may fish for or retain king mackerel in or from the western zone under the bag and possession limits of 50 CFR 622.39(c)(1)(ii). However, beginning September 20, 1999, the bag limit is zero for captain and crew on for-hire vessels (64 FR 45457, August 20, 1999).

During the closure, king mackerel taken from the western zone in the EEZ, including those harvested under the bag and possession limits, may not be purchased or sold. This prohibition does not apply to trade in king mackerel from the western zone that were harvested, landed ashore, and sold prior to the closure and were held in cold storage by a dealer or processor.

Classification

This action is taken under 50 CFR 622.43(a) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 23, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–22176 Filed 8–23–99; 4:57 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 981014259–8312–02; I.D. 081199A]

Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Adjustments to the 1999 Summer Flounder Commercial Quota

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Commercial quota adjustment for 1999.

SUMMARY: NMFS issues a listing of final adjustments to the 1999 commercial summer flounder state quotas. This action complies with the regulations that implement the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) that require landings in excess of a given state's individual commercial quota be deducted from that state's quota for the following year. The intent of this action is to continue the rate of rebuilding of the overfished stock of summer flounder in 1999 as described in the FMP's objectives, while also taking into account 1998 overages of state quotas.

DATES: Effective August 26, 1999, through December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fisheries Policy Analyst, (978) 281–9273.

SUPPLEMENTARY INFORMATION:

Background

NMFS published a document in the **Federal Register** on April 15, 1999 (64 FR 18582) announcing preliminary adjustments to the 1999 summer flounder commercial quotas. Further adjustment is necessary in this notification due to late data received from the States of Connecticut, Maryland, Virginia, and North Carolina.

The final 1998 landings and resulting overages for all states are given in Table 1. The resulting adjusted 1999 commercial quota for each state is given in Table 2. In Table 3, the adjustment has been made to maintain the incidental component of the commercial quota at 32.7 percent of the total (as recommended in the final specifications).

TABLE 1.—SUMMER FLOUNDER FINAL 1998 LANDINGS AND OVERAGES BY STATE

State	1998 Quota		Final 1998 Landings		1998 Overage	
	Lb	Kg[1]	Lb	Kg[1]	Lb	Kg[1]
ME	4,791	2,173	5,626	2,552	835	379
NH	51	23	.....	.....	.....	.....
MA	721,899	327,448	709,387	321,773	.....	.....
RI	1,742,583	790,422	1,716,463	778,575	.....	.....
CT	250,457	113,605	262,732	119,173	12,275	5,568
NY	763,419	346,281	823,093	373,349	59,674	27,068
NJ	1,858,363	842,939	1,862,800	844,952	4,437	2,013
DE	(14,534)	(6,593)	(11,205)	(5,083)	(25,739)	(11,676)
MD	199,876	90,662	224,092	101,646	24,216	10,984
VA	2,362,877	1,071,783	2,615,750	1,186,484	252,873	114,701
NC	3,049,589	1,383,270	2,980,683	1,352,015	.....	.....
Total[3]	10,939,371	4,962,013	11,189,421	5,075,436	328,571	149,038

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.
[2] Parentheses indicate a negative number.
[3] Total quota and total landings do not equal overage because they reflect positive quota balances in several states.

TABLE 2.—SUMMER FLOUNDER FINAL ADJUSTED 1999 QUOTAS

State	1999 Initial Quota		1999 Adjusted Quota	
	Lb	Kg[1]	Lb	Kg[1]
ME	5,285	2,397	4,450	2,018
NH	51	23	51	23
MA	757,842	343,751	757,842	343,751
RI	1,742,583	790,422	1,742,583	790,422
CT	250,791	113,757	238,516	108,189
NY	849,680	385,408	790,006	358,341
NJ	1,858,363	842,939	1,853,926	840,927
DE	1,977	897	(25,739)	(11,675)
MD	226,570	102,770	202,354	91,786
VA	2,373,569	1,076,633	2,120,696	961,932
NC	3,044,589	1,381,002	3,044,589	1,381,002
Total	11,111,300	5,039,999	10,729,274	4,866,717

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.
[2] Parentheses indicate a negative number.

TABLE 3.—FINAL SUMMER FLOUNDER 1999 STATE QUOTAS AND INIDENTAL CATCH ALLOCATIONS

State	Percent share	Directed		Incidental Catch		Total	
		Lb	Kg[1]	Lb	Kg	Lb	Kg
ME	0.04756	2,995	1,358	1,455	660	4,450	2,018
NH	0.00046	34	16	17	8	51	23
MA	6.82046	510,028	231,345	247,814	112,407	757,842	343,751
RI	15.68298	1,172,758	531,954	569,825	258,468	1,742,583	790,422
CT	2.25708	160,521	72,811	77,995	35,378	238,516	108,189
NY	7.64699	531,674	241,163	258,332	117,177	790,006	358,341
NJ	16.72499	1,247,692	565,944	606,234	274,983	1,853,926	840,927
DE	0.01779	(17,322)	(7,857)	(8,417)	(3,818)	(25,739)	(11,675)
MD	2.03910	136,184	61,772	66,170	30,014	202,354	91,786
VA	21.31676	1,427,228	647,380	693,468	314,552	2,120,696	961,932
NC	27.44584	2,049,008	929,415	995,581	451,588	3,044,589	1,381,002
Total	100.00000	7,220,801	3,275,300	3,508,473	1,591,416	10,729,274	4,866,717

[1] Kilograms are as converted from pounds, and may not necessarily add due to rounding.
[2] Parentheses indicate a negative number.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 20, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–22214 Filed 8–25–99; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 64, No. 165

Thursday, August 26, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Forage Production Crop Provisions; and Forage Seeding Crop Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Forage Production Crop Insurance Provisions and Forage Seeding Crop Insurance Provisions, and delete Forage Production Winter Coverage Endorsement. The intended effect of this action is to provide policy changes to better meet the needs of the insureds, and to restrict the effect of the current Forage Production and Forage Seeding Crop Insurance Regulations to the 2000 and prior crop years.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business September 27, 1999 and will be considered when the rule is to be made final. The comment period for information collection under the Paperwork Reduction Act of 1995 continues through October 25, 1999.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. (Comments may be sent via Internet to pddirector@rm.fcic.usda.gov). A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., CDT, Monday through Friday except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: Richard Brayton, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be exempt for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), the information collection and recordkeeping requirements included in the proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send your written comments to the Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW, Washington DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are soliciting comments from the public concerning our proposed information collection and record keeping requirements. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission responses.)

The collections of information for this rule revise the Multiple Peril Crop Insurance Collections of Information 0563–0053 which expires April 30, 2001.

Title: Multiple Peril Crop Insurance (Forage Production and Forage Seeding).

Abstract: This rule improves the existing forage production and forage seeding policies. Forage production is revised by: allowing optional units; changing the cancellation and termination dates in California, Nevada and Utah; requiring the insured to report all forage acreage on or before each date specified in the Special Provisions; changing dates when insurance attaches and when insurance ends; extending dates in some counties in California to allow year round coverage; clarifying that insurance is not available for damage or loss of production that occurs after removal from windrow; allowing forage to be direct marketed; and including optional unit procedures in the event of a loss.

Forage seeding is revised by: adding cancellation and termination dates for California and South Dakota; requiring the insured to report all insurable forage seeding acreage on or before each acreage reporting date specified in the Special Provisions; specifying in all states and in California, unless otherwise specified in the Special Provisions, forage damaged before the final planting date must be replanted to the extent that the forage has less than a 75 percent stand; allowing a replant payment in California, unless otherwise specified in the Special Provisions, on any acreage planted to the insured crop that is damaged by an insurable cause of loss occurring within the insurance period to the extent that less than 75 percent of normal stand remains; allowing increased replanting payments if specified in the Special Provisions; and removed the 10 percent planted acreage requirements. The revisions are effective for the 2001 and succeeding crop years.

Purpose: The purposes of this proposed rule are to clarify existing crop provisions and methodology for calculating losses and provide additional coverage benefits and an improved risk management tool for forage producers in all regions of the country.

Burden statement: The information that FCIC collects on the specified forms will be used in offering crop insurance coverage, determining program eligibility, establishing a production guarantee or amount of insurance, calculating losses qualifying for a payment, etc. The burden hours have decreased because many forage

producers have canceled their forage coverage.

Estimate of Burden: We estimate that it will take insured producers, a loss adjuster, and an insurance agent an average of .6 of an hour to provide the information required by the forage provisions.

Respondents: Insureds, insurance agents, and loss adjusters.

Estimated annual number of respondents: 9,276.

Estimated annual number of responses per respondent: 2.1.

Estimated annual number of responses: 19,250.

Estimated total annual burden of respondents: The total public burden for this proposed rule is estimated at 5,941 hours.

Recordkeeping requirements: FCIC requires records to be kept for three years, and all records required by FCIC are retained as part of the normal business practice. Therefore, FCIC is not estimating additional burden related to recordkeeping.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12612

It has been determined under section 6(a) of the Executive Order 12612, Federalism, that this rule does not have sufficient implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, every producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Background

FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by amending 7 CFR 457.117 Forage Production Crop Insurance Provisions effective for the 2001 and succeeding crop years. The changes to the provisions for insuring forage production are as follows:

1. Add definitions for "direct-marketing" and "windrow" for clarification. Revise the definition of "cutting" to eliminate reference to livestock feed. This change allows forage production coverage on forage grown for any use. For example, in some areas of the country, forage processing plants will process the leaves for high value animal feed and use the stems as fuel to generate electricity. Revise the definition of "crop year" for simplification. Delete the definitions for fall planted and spring planted as unnecessary because forage is insurable after the year of establishment not after planting and is designated by the calendar year is which the forage is normally harvested.

2. Remove provisions which state that optional units are not applicable and redesignated the following sections. This change will allow optional units in accordance with the provisions in the Basic Provisions. This change is being made to increase participation in the insurance program.

3. Redesignated section 4—Revise the cancellation and termination dates from September 30 to October 31 in California, Nevada, and Utah. This change was made to be consistent with actuarial filing and contract change dates that are similar to other crop policies in the region.

4. Redesignated section 5—Require the insured to report all forage acreage on or before each date specified in the Special Provisions. Currently, insureds with multiple crops can report forage production acreage on the last acreage reporting date in accordance with 6(a) of the Basic Provisions. In some cases, this is after the billing date for forage production insurance coverage.

5. Redesignated section 6—Deleted the provisions that required that forage crop be grown for livestock feed only. Currently, only forage grown for livestock feed is insurable but there are other commercial uses for forage.

6. Redesignated section 7—Revise the dates insurance attaches and ends because the Forage Production Winter Coverage Endorsement is eliminated and winterkill is now allowed as an insurable cause of loss. Extended dates in California counties except for Lassen, Modoc, Mono, Shasta, and Siskiyou to allow year round coverage. Forage is planted year round in these California counties, and the current policy does not reflect standard farming practices in these areas.

7. Redesignated section 8(b)—Clarify that insurance is not available for damage or loss of production that occurs after the removal from windrow.

8. Redesignated section 9—Added provisions that require the producer to give notification if the crop is going to be direct marketed so production to count can be established. These notices are consistent with other crop policies that permit direct marketing.

9. Redesignated section 10—Revise provisions to include optional unit procedures in the event of a loss. These changes are consistent with other crop policies that allow optional units. Added examples of settlement of claim to section (b).

10. FCIC also proposes to eliminate the Forage Production Winter Coverage Endorsement (7 CFR 457.127) effective for the 2001 and succeeding crop years. Winterkill will be an insurable cause of loss under the proposed Forage Production Crop Insurance Provisions.

FCIC also proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by amending 7 CFR 457.151 Forage Seeding Crop Insurance Provisions effective for the 2001 and succeeding crop years. The changes to provisions for insuring forage seeding are as follows:

1. Section 1—Revise the definition of "harvest" to eliminate the reference "with the intention of using it for livestock feed." This change allows forage seeding coverage on forage seeded for any use. For example, in some areas of the country, forage processing plants will process the leaves for high value animal feed and use the stems as fuel to generate electricity.

2. Section 5—Add cancellation and termination dates for California and South Dakota in response to producer requests to make insurance available in these states. Currently, forage seeding insurance is not offered in these states.

3. Add a new section 6 to require the insured to report all insurable forage seeding acreage on or before each date specified in the Special Provisions and redesignated the following sections. Currently, insureds with multiple crops can report forage seeding acreage on the last acreage reporting date, which, in some cases, is after the spring billing date for forage seeding.

4. Redesignated section 7(b)—Delete the reference to "intended for harvest as livestock feed." Currently, only forage that was intended for harvest as livestock feed was insurable but there are other commercial uses for forage. This change makes coverage available for forage regardless of its intended use.

5. Redesignated section 8—In California, unless otherwise specified in the Special Provisions, add provisions to specify any acreage damaged anytime during the crop year to the extent that acreage has less than 75 percent of a normal stand must be replanted unless it cannot be replanted and reach a normal stand within the insurance period. Forage is planted year round and replanting provisions as stated in the current policy do not reflect standard farming practices. Therefore, any acreage damaged anytime must be replanted to the extent it has less than 75 percent of a normal stand, unless it can not be replanted and reaching a normal stand within the insurance period.

6. Redesignated section 11(a)—For California, unless otherwise specified in the Special Provisions, add provisions to allow a replanting payment on acreage planted to the insured crop that is damaged by an insurable cause of loss occurring within the insurance period to the extent that less than 75 percent of a normal stand remains. This change makes replanting payments available anytime during the insurance period due to year round planting. Currently, a replanting payment is allowed only if the Special Provisions for the county designate both fall and spring final planting dates.

7. Redesignated section 11(b)—Change the words "liability" to "indemnity." This change is consistent with other crop policies. Added provisions to allow a different calculation for replanting payments if specified in the Special Provisions. This change will allow FCIC to address higher costs of forage seed and replanting expenses in certain areas of the country.

8. Redesignated section 13—Add an example of a claim for indemnity. Removed as unnecessary from paragraph (a)(3) the addition of 10 percent of the planted acres for the insured acreage to the total acres with an established stand.

List of Subjects in 7 CFR part 457

Crop insurance, Forage production, Forage seeding, Reporting and recordkeeping requirements.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(1), 1506(p).

2. Amend § 457.117 as follows:

a. Revise the heading.

b. Revise the introductory text.

c. Delete the definitions in Section 1 of "Fall planted" and "Spring planted," add definitions of "Direct marketing" and "Windrow," revise the definitions of "Cutting" and "Crop year" to read as follows.

d. Delete Section 2 and redesignate sections 3 through 12 as 2 through 11.

e. Revise newly designated Section 4.

f. Revise newly designated Section 5.

g. Revise paragraph (a) of newly designated section 6.

h. Revise newly designated Section 7 introductory text, paragraph (a), paragraph (b) introductory text, and paragraph (b)(6).

i. Revise newly designated Section 8 paragraph (b).

j. Revise newly designated Section 9.

k. Revise newly designated Section 10 paragraph (a) and add "Example 1" and "Example 2" following paragraph (b)(7).

The revisions and additions to section 457.117 read as follows:

§ 457.117 Forage production crop insurance provisions.

The Forage Production Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

1. *Definitions.*

* * * * *

Crop year—The period within which the forage production is normally grown, which is designated by the calendar year in which the forage is normally harvested.

Cutting—The severance of the forage plant from its roots.

Direct marketing—Sale of the forage crop directly to consumers without the intervention of an intermediary such as a wholesaler, shipper, buyer, or broker. An example of direct marketing is selling directly to other producers.

* * * * *

Windrow—Forage that is cut and placed in a row.

* * * * *

4. *Cancellation and Termination Dates.*

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are:

State and county	Cancellation/ termination date
California, Nevada and Utah	October 31.
All other states	September 30.

5. *Report of Acreage.*

In lieu of the provisions of section 6(a) of the Basic Provisions, a report of all insured acreage of forage production must be submitted on or before each forage production acreage reporting date specified in the Special Provisions.

6. *Insured Crop.*

(a) In accordance with section 8 of the Basic Provisions, the crop insured will be all the forage in the county for which a premium rate is provided by the actuarial documents:

(1) In which you have a share; and

(2) That is grown during one or more years after the year of establishment.

* * * * *

7. *Insurance Period.*

In lieu of the provisions of section 11 of the Basic Provisions:

(a) Insurance attaches on acreage with an adequate stand for the calendar year following the year of establishment for:

(1) All California counties except Lassen, Modoc, Mono, Shasta and Siskiyou.....December 1;
(2) Lassen, Modoc, Mono, Shasta and Siskiyou Counties California, Colorado, Idaho, Nebraska, Nevada, Oregon, Utah and Washington.....April 15;
(3) Iowa, Minnesota, Montana, New Hampshire, New York, North Dakota, Pennsylvania, Wisconsin, Wyoming, and all other states.....May 22;
(4) Lassen, Modoc, Mono, Shasta and Siskiyou Counties California, and all other states.....October 16;
(5) All California counties except Lassen. Modoc, Mono, Shasta and Siskiyou.....December 1.

(b) Insurance ends at the earliest of:

* * * * *

(6) The following dates of the crop year:

(i) California counties of Lassen, Modoc, Mono, Shasta and Siskiyou, and all other states.....October 15;
(ii) The last day of the 12th month after the insured crop initially planted in all California counties except Lassen, Modoc, Mono, Shasta and Siskiyou.

* * * * *

8. *Causes of Loss.*

* * * * *

(b) In addition to the causes of loss specifically excluded in section 12 of the Basic Provisions, we will not insure against damage of loss of production that occurs after removal from the windrow.

9. *Duties in the event of Damage or Loss.*

In addition to the requirements of section 14 of the Basic Provisions, the following will apply:

(a) You must notify us within 3 days of the date harvest should have started if the insured crop will not be harvested;

(b) You must notify us at least 15 days before any production from any unit will be sold by direct marketing unless you have records verifying that the forage was direct marketed. Failure to give timely notice that production will be sold by direct marketing will result in an appraised amount of production to count of not less than the production guarantee per acre if such failure results in our inability to make the required appraisal;

(c) If you intend to claim an indemnity on any unit, you must notify us at least 15 days prior to the beginning of harvest if you previously gave notice in accordance with section 14 of the Basic Provisions so that we may inspect the damaged production. You must not destroy the damaged crop until after we have given you written consent to do so. If you fail to meet the requirements of this section, and such failure results in our inability to inspect the damaged production, all such production will be considered undamaged and will be included as production to count; and

(d) You must notify us at least 5 days before grazing of insured forage begins so we can conduct an appraisal to determine production to count. Failure to give timely notice that the acreage will be grazed will result in an appraised amount of production to count of not less than the production guarantee per acre.

10. *Settlement of Claim.*

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) * * *

(7) * * *

Example 1:

Assume you have a 100 percent share in 100 acres of type A forage in the unit, with a guarantee of 3.0 tons per acre and a price election of $65.00 per ton. Due to adverse weather you were only able to harvest 50.0 tons. Your indemnity would be calculated as follows:

1. 100 acres type A × 3 tons = 300 ton guarantee;
2 and 3. 300 tons × $65 price election = $19,500 total value guarantee;
4 and 5. 50 tons production to count × $65 price election = $3,250 total value of production to count;
6. $19,500 value guarantee − $3,250 = $16,250 loss; and
7. $16,250 × 100 percent share = $16,250 indemnity payment.

Example 2:

Assume you also have a 100 percent share in 100 acres of type B forage in the same unit, with a guarantee of 1.0 ton per acre and a price election of $50.00 per ton. Due to adverse weather you were only able to harvest 5.0 tons. Your total indemnity for forage production for both types A and B in the same unit would be calculated as follows:

1. 100 acres × 3 tons = 300 ton guarantee for type A; and
100 acres × 1 ton = 100 ton guarantee for type B;
2. 300 ton guarantee × $65 price election = $19,500 total value of the guarantee for type A; and
100 ton guarantee × $50 price election = $5,000 total value of the guarantee for type B;
3. $19,500 + $5,000 = $24,500 total value of the guarantee;
4. 50 tons × $65 price election = $3,250 total value of production to count for type A; and
5 tons × $50 price election = $250 total value of production to count for type B;
5. $3,250 + $250 = $3,500 total value of production to count for types A and B;
6. $24,500 − $3,500 = $21,000 loss; and
7. $21,000 loss × 100 percent share = $21,000 indemnity payment.

* * * * *

§ 457.127 [Removed]

3. Section 457.127 is removed and reserved.

4. Amend 457.151 as follows:

a. Revise the introductory text.

b. Revise the definition in Section 1 of "harvest".

c. Revise Section 5.

d. Redesignate section 6 through 13 as 7 through 14.

e. Add a new Section 6 Report of Acreage.

f. Revise newly redesignated Section 7 paragraph (b).

g. Revise newly redesignated Section 8.

h. Revise newly designated Section 11 introductory text, paragraph (a), and paragraph (b).

i. Revise newly designated Section 13 paragraph (a)(3) and add an example following paragraph (a)(6).

The revisions and additions to section 457.151 read as follows:

§ 457.151 Forage seeding crop insurance provisions.

The Forage Seeding Crop Insurance Provisions for the 2001 and succeeding crop years are as follows:

* * * * *

1. *Definitions.*

* * * * *

Harvest—Severance of the forage plant from its roots. However, acreage that is grazed will not be considered harvested.

* * * * *

5. *Cancellation and Termination Dates.*

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are:

State & county	Cancellation/termination dates
California, Nevada, New Hampshire, New York, Pennsylvania and Vermont.	July 31;
Montana, Minnesota, North Dakota, South Dakota and Wyoming.	March 15.

6. *Report of Acreage.*

In lieu of the provisions of section 6(a) of the Basic Provisions, a report of all insured acreage of forage seeding must be submitted on or before each forage seeding acreage report date specified in the Special Provisions.

7. *Insured Crop.*

* * * * *

(b) That is planted during the current crop year, or replanted during the calendar year following planting, to establish a normal stand of forage;

* * * * *

8. *Insurable Acreage.*

In addition to the provisions of section 9 of the Basic Provisions:

(a) In California counties Lassen, Modoc, Mono, Shasta, Siskiyou and all other states, any acreage of the insured crop damaged before the final planting date, to the extent that such acreage has less than 75 percent of a normal stand, must be replanted unless we agree that it is not practical to replant; and

(b) In California, unless otherwise specified in the Special Provisions, any acreage of the insured crop damaged anytime during the crop year to the extent that such acreage has less than 75 percent of a normal stand must be replanted unless it cannot be replanted and reach a normal stand within the insurance period.

* * * * *

11. *Replanting Payment.*

In lieu of the provisions contained in section 13 of the Basic Provisions:

(a) A replanting payment is allowed if:

(1) In California, unless specified otherwise in the Special Provisions, acreage planted to the insured crop is damaged by an insurable cause of loss occurring within the insurance period to the extent that less than 75 percent of a normal stand remains and the crop can reach maturity before the end of the insurance period;

(2) In Lassen, Modoc, Mono, Shasta, Siskiyou Counties California, and all other states:

(i) A replanting payment is allowed only whenever the Special Provisions designate both fall and spring final planting dates;

(ii) The insured fall planted acreage is damaged by an insurable cause of loss to the extent that less than 75 percent of a normal stand remains;

(iii) It is practical to replant;

(iv) We give written consent to replant; and

(v) Such acreage is replanted the following spring by the spring planting date.

(b) The amount of the replanting payment will be equal to 50 percent of the amount of indemnity determined in accordance with section 13 unless otherwise specified in the Special Provisions.

* * * * *

13. *Settlement of Claim.*

(a) * * *

(1) * * *

(2) * * *

(3) Multiplying the total acres with an established stand for the insured acreage of each type and practice in the unit by the amount of insurance for the applicable type and practice;

(4) * * *

(5) * * *

(6) * * *

Example:

Assume you have 100 percent share in 30 acres of type A forage in the unit, with an amount of insurance of $100.00 per acre. At the time of loss, the following findings are established: 10 acres had a remaining stand of 75 percent or greater. You also have 20 acres of type B forage in the unit, with an amount of insurance of $90.00 per acre. 10 acres had with a remaining stand of 75 percent or greater. Your indemnity would be calculated as follows:

1. 30 acres × $100.00 = $3,000 amount of insurance for type A
20 acres × $90.00 = $1,800 amount of insurance for type B;
2. $3,000 + $1,800 = $4,800 total amount of insurance;
3. 10 acres with 75% stand or greater x $100 = $1,000 production to count for type A
10 acres with 75% stand or greater × $90 = $900 production to count for type B;
4. $1,000 + $900 = $1,900 total production to count;
5. $4,800 − $1,900 = $2,900 loss;
6. $2,900 × 100 percent share = $2,900 indemnity payment.

* * * * *

Signed in Washington, D.C., on August 11, 1999.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 99–21991 Filed 8–25–99; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV99–905–3 PR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Limiting the Volume of Small Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on limiting the volume of small red seedless grapefruit entering the fresh market under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida. The marketing order is administered locally by the Citrus Administrative Committee (committee). This rule would limit the volume of size 48 and/or size 56 red seedless grapefruit handlers could ship during the first 11 weeks of the 1999–2000 season beginning in September. This rule would establish the base percentage for these small sizes at 25 percent for the 11 week period. This proposal would provide a sufficient supply of small sized red seedless grapefruit to meet market demand, without saturating all markets with these small sizes. This rule would help stabilize the market and improve grower returns.

DATES: Comments must be received by September 10, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698 or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: (941) 299–4770, Fax: (941) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 690–3919, Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698 or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

This proposal is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

The order provides for the establishment of grade and size requirements for Florida citrus, with the concurrence of the Secretary. These grade and size requirements are designed to provide fresh markets with citrus fruit of acceptable quality and size. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of growers, handlers, and consumers, and is designed to increase returns to Florida citrus growers. The current minimum grade standard for red seedless grapefruit is U.S. No. 1, and the minimum size requirement is size 56 (at least 3 5/16 inches in diameter). Section 905.52 of the order provides authority to limit shipments of any grade or size, or both, of any variety of Florida citrus. Such limitations may restrict the shipment of a portion of a specified grade or size of a variety. Under such a limitation, the quantity of such grade or size that may be shipped by a handler during a particular week would be established as a percentage of the total shipments of such variety by such handler in a prior period, established by the committee and approved by the Secretary, in which the handler shipped such variety.

Section 905.153 of the regulations provides procedures for limiting the volume of small red seedless grapefruit entering the fresh market. The procedures specify that the committee may recommend that only a certain percentage of sizes 48 and/or 56 red seedless grapefruit be made available for shipment into fresh market channels for any week or weeks during the regulatory period. The regulation period is 11 weeks long and begins the third Monday in September. Under such a limitation, the quantity of sizes 48 and/or 56 red seedless grapefruit that may be shipped by a handler during a regulated week is calculated using the recommended percentage. By taking the recommended weekly percentage times the average weekly volume of red grapefruit handled by such handler in the previous five seasons, handlers can calculate the volume of sizes 48 and/or 56 they may ship in a regulated week.

This proposed rule would limit the volume of small red seedless grapefruit entering the fresh market for each week of the 11 week period beginning the week of September 20. This rule would limit the volume of sizes 48 and/or 56 red seedless grapefruit entering the fresh market for each of the 11 weeks at 25 percent. This would allow the committee to start the season at the most restrictive level allowed under § 905.153, and if conditions warrant, to release greater quantities of size 48 and/or size 56 small red grapefruit as more information becomes available. The committee at its meeting on April 6, 1999, recommended this action, by a unanimous vote. This action is similar to those taken in the previous two seasons (1997–98 and 1998–99).

For the seasons 1994–95, 1995–96, and 1996–97, returns for red seedless grapefruit had been declining, often not returning the cost of production. On-tree prices for red seedless grapefruit had fallen steadily from $9.60 per carton (4/5 bushel) during the 1989–90 season, to $3.45 per carton during the 1994–95 season, to a low of $1.41 per carton during the 1996–97 season.

The committee determined that one problem contributing to the market's condition was the excessive number of small sized grapefruit shipped early in the marketing season. In the 1994–95, 1995–96, and 1996–97 seasons, sizes 48 and 56 accounted for 34 percent of total shipments during the 11 week regulatory period, with the average weekly percentage exceeding 40 percent of shipments. This contrasts with sizes 48 and 56 representing only 26 percent of total shipments for the remainder of the season. While there is a market for early grapefruit, the shipment of large quantities of small red seedless grapefruit in a short period oversupplies the fresh market for these sizes and negatively impacts the market for all sizes.

For the majority of the season, larger sizes return higher prices than smaller sizes. However, there is a push early in the season to get fruit into the market to take advantage of the high prices available at the beginning of the season. The early season crop tends to have a greater percentage of small sizes. This creates a glut of smaller, lower priced fruit on the market, driving down the price for all sizes. Early in the season, larger sized fruit commands a premium price. In some cases, the f.o.b. price is $4 to $6 a carton more than for the smaller sizes. In early October, the f.o.b. price for a size 27 averages around $10.00 per carton. This compares to an average f.o.b. price of $5.50 per carton for size 56. By the end of the 11 week period covered in this rule, the f.o.b. price for large sizes drops to within $2 of the f.o.b. price for small sizes.

In the three seasons prior to 1997–98, prices of red seedless grapefruit fell from a weighted average f.o.b. price of $7.80 per carton to an average f.o.b. price of $5.50 per carton during the period covered by this rule. Even though later in the season the crop sized to naturally limit the amount of smaller sizes available for shipment, the price structure in the market had already been negatively affected. During those three seasons, the market did not recover, and the f.o.b. price for all sizes fell to around $5.00 to $6.00 per carton for most of the rest of the season.

The committee believes that the over shipment of smaller sized red seedless grapefruit early in the season contributes to below production cost returns for growers and lower on-tree values. An economic study done by the University of Florida—Institute of Food and Agricultural Sciences (UF–IFAS) in May 1997, found that on-tree prices had fallen from a high near $7.00 per carton in 1991–92 to around $1.50 per carton for the 1996–97 season. The study projected that if the industry elected to make no changes, the on-tree price would remain around $1.50 per carton. The study also indicated that increasing minimum size restrictions could help raise returns.

To address this issue, the committee voted to utilize the provisions of § 905.153, and establish a weekly percentage of size regulation during the first 11 weeks of the 1997–98 and 1998–99 seasons. The initial recommendation from the committee was to set the weekly percentage at 25 percent for each of the 11 weeks. As more information on the crop became available, and as the season progressed, the committee met several times and adjusted its recommendations for the weekly percentages. The committee considered information from past seasons, crop estimates, fruit size, and other information to make its recommendations. The Committee has since used this regulation to the betterment of the industry. Prices have increased, and movement has been more stable. Actual weekly percentages established during the 11 week period during the 1997–98 season were 50 percent for the first 3 weeks, and 35 percent for the other 8 weeks. Actual weekly percentages established during the 11 week period during the 1998–99 season were 37 percent for the first 3 weeks, and 32 percent for the other 8 weeks.

In making its recommendation for the upcoming season, the committee reviewed its experiences from the past seasons. The committee believes establishing weekly percentages during the last two seasons was successful. The committee examined shipment data covering the 11 week regulatory period for the last two regulated seasons and the three prior seasons. The information contained the amounts and percentages of sizes 48 and 56 shipped during each week and weekly f.o.b. price figures. During the 11 week period, the regulations were successful at helping maintain prices at a higher level than previously, and sizes 48 and 56 by count and as a percentage of total shipments were reduced.

In comparison with f.o.b. prices from the 1996–97 season, for weeks when pricing information was available (weeks 6 through 11), last season's numbers were higher in five of the six weeks. The average f.o.b. prices for these weeks were $6.28 for the 1996–97 season, $6.55 for the 1997–98 season, and $7.63 for the 1998–99 season. Total fresh shipments for the 1998–99 season are estimated at 14.6 million cartons of red grapefruit.

The committee was concerned that the glut of smaller, lower priced fruit on the early market was driving down the price for all sizes. There was a steep decline in prices for larger sizes in previous seasons. During the six weeks from mid-October through November, prices for sizes 23, 27, 32, and 36 fell by 28, 27, 21, and 20 percent, respectively, during the 1996–97 season, the last season prior to establishing percentage size regulations. Prices for the same sizes fell only 13, 11, 14, and 11 percent, respectively, during the same period last season with regulation. In fact, prices for all sizes were firmer during this period for last season when compared to the 1996–97 season, with the weighted average price dropping only 11 percent during this period as compared to 22 percent during the 1996–97 season.

An economic study done by Florida Citrus Mutual (Lakeland, Florida) in April 1998, found that the weekly percentage regulation had been effective. The study stated that part of the strength in early season pricing appeared to be due to the use of the weekly percentage rule to limit the volume of sizes 48 and 56. It said that prices were generally higher across the size spectrum with sizes 48 and 56 having the largest gains, and larger sized grapefruit registering modest improvements. The rule shifted the size distribution toward the higher priced, larger sized grapefruit which helped raise weekly average f.o.b. prices. It further stated that sizes 48 and 56 grapefruit accounted for around 27 percent of domestic shipments during the same 11 weeks during the 1996–97 season. Comparatively, sizes 48 and 56 accounted for only 17 percent of domestic shipments during the same period in 1997–98, as small sizes were used to supply export customers with preferences for small sized grapefruit.

The committee recommended that the weekly percentage of size regulation should be set at 25 percent for the 11 week period. Members believe that the problems associated with an uncontrolled volume of small sizes entering the market early in the season would recur without this action. The committee thought that to provide the most flexibility, the weekly percentage should be set at 25 percent for each of the 11 weeks in the regulated period. The committee believes it is best to set regulation at the most restrictive level, and then relax the percentage as warranted by conditions later in the season. The committee intends to meet on a regular basis early in the season to consider adjustments in the weekly percentage rates, as was done in the previous two seasons.

In its discussion, the committee recognized the need for and the benefits of the weekly percentage regulation. The committee recommended establishing the base percentage at 25 percent for each of the regulation weeks. This is as restrictive as § 905.153 will allow.

In making this recommendation, the committee considered that by establishing regulation at 25 percent, they could meet again in August and the months following and use the best information available to help the industry and the committee make the most informed decisions as to whether the established percentages are appropriate.

Based on this information and the experiences from past seasons, the committee agreed to establish the weekly percentage at the most restrictive level. They can then meet in late August, or in September and October, as needed, when additional information is available, and determine whether the set percentage levels are appropriate. They said this is essentially what was done in the prior two years, and it had been very successful. For example, the committee met in May 1998, and recommended a weekly percentage of 25 percent for each of the first 11 weeks of the 1998–99 season. In September, the committee met again, and recommended that the weekly percentage be relaxed. They met again in October, and did not recommend any further relaxation. Any changes to the weekly percentages proposed by this rule would require additional rulemaking and the approval of the Secretary.

The committee noted that more information helpful in determining the appropriate weekly percentages will be available after August. At the time of the April meeting, grapefruit had not yet begun to size, giving little indication as to the distribution of sizes. Only the most preliminary of crop estimates was available, with the official estimate not to be issued until October.

While information concerning the coming season is limited prior to September, there are indications that setting the weekly percentage at 25 percent is the appropriate level. During deliberations in past seasons as to weekly percentages, the committee

considered how past shipments had affected the market. Based on available statistical information, the committee members believed that once shipments of sizes 48 and 56 reached levels above 250,000 cartons a week, prices declined on those and most other sizes of red seedless grapefruit. The committee believed that if shipments of small sizes could be maintained at around 250,000 cartons a week, prices should stabilize and demand for larger, more profitable sizes should increase.

As is the case for this season, they wanted to recommend a weekly percentage that would provide a sufficient volume of small sizes without adversely impacting the markets for larger sizes. They also originally recommended that the percentage for each of the 11 weeks be established at the 25 percent level. This percentage, when combined with the average weekly shipments for the total industry, provided a total industry allotment of approximately 234,000 cartons of sizes 48 and/or 56 red seedless grapefruit per regulated week. The total shipments of small red seedless grapefruit would approach the 250,000 carton mark during regulated weeks without exceeding it.

While the committee did eventually vote last season to increase the weekly percentages, shipments of sizes 48 and 56 during the 11 weeks regulated during the 1998–99 season remained close to the 250,000 carton mark. This may have contributed to the success of the regulation.

Based on the shipments from last year, a weekly percentage of 25 percent would not have been that much more restrictive on shipments than the percentages established, reducing in most cases just the excess available allotment. In setting the weekly percentage for each week at 25 percent this season, the total available allotment would closely approximate the 250,000 carton level. The weekly percentage of 25 percent, when combined with the average weekly shipments for the total industry, would provide a total industry allotment of nearly 235,000 cartons of sizes 48 and/or 56 red seedless grapefruit per regulated week.

In addition, the production area is suffering through a period of insufficient rainfall. While the actual effects are not currently known, it is possible that this may affect the sizing of the crop as well as maturity. This could mean a larger volume of small sized red seedless grapefruit, further exacerbating the problem with small sizes early in the season.

The situation is also complicated by the ongoing economic problems affecting the European and Asian markets. In past seasons, the European market has shown a strong demand for the smaller sized red seedless grapefruit. The reduction in shipments to these areas experienced during the last two years is expected to continue during the upcoming season. This reduction in demand could result in a greater amount of small sizes for remaining markets to absorb. These factors increase the need for restrictions to prevent the volume of small sizes from overwhelming all markets.

Therefore, this rule would establish the weekly percentage at 25 percent for each of the 11 weeks. The committee plans to meet in late August and as needed during the remainder of the 11 week period to work to ensure that the set weekly percentages are at the appropriate levels.

Under § 905.153, the quantity of sizes 48 and/or 56 red seedless grapefruit that may be shipped by a handler during a regulated week would be calculated using the recommended percentage of 25 percent. By taking the weekly percentage times the average weekly volume of red grapefruit handled by such handler in the previous five seasons, handlers can calculate the volume of sizes 48 and/or 56 they may ship in a regulated week.

An average week has been calculated by the committee for each handler using the following formula. The total red seedless grapefruit shipments by a handler during the 33 week period beginning the third Monday in September and ending the first Sunday in May during the previous five seasons are added and divided by five to establish an average season. This average season is then divided by the 33 weeks to derive the average week. This average week would be the base for each handler for each of the 11 weeks of the regulatory period. The weekly percentage, in this case 25 percent, is multiplied by a handler's average week. The product is that handler's allotment of sizes 48 and/or 56 red seedless grapefruit for the given week.

Under this proposed rule, the calculated allotment is the amount of small sized red seedless grapefruit a handler could ship. If the minimum size established under § 905.52 remains at size 56, handlers could fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments are within the established limits. If the minimum size under the order is 48, handlers could fill their allotment with size 48 fruit such that the total of these shipments is within the established limits. The committee staff would perform the specified calculations and provide them to each handler.

To illustrate, suppose Handler A shipped a total of 50,000 cartons, 64,600 cartons, 45,000 cartons, 79,500 cartons, and 24,900 cartons of red seedless grapefruit in the last five seasons, respectively. Adding these season totals and dividing by five yields an average season of 52,800 cartons. The average season would then be divided by 33 weeks to yield an average week, in this case, 1,600 cartons. This would be Handler A's base. The weekly percentage of 25 percent would then be applied to this amount. This would provide this handler with a weekly allotment of 400 cartons (1,600 × .25) of size 48 and/or 56.

The average week for handlers with less than five previous seasons of shipments would be calculated by the committee by averaging the total shipments for the seasons they did ship red seedless grapefruit during the immediately preceding five years and dividing that average by 33. New handlers with no record of shipments would have no prior period on which to base their average week. Therefore, under this proposal, a new handler could ship small sizes equal to 25 percent of their total volume of shipments during their first shipping week. Once a new handler has established shipments, their average week will be calculated as an average of the weeks they have shipped during the current season.

This proposed rule would establish a weekly percentage of 25 percent for each of the 11 weeks to be regulated. The regulatory period begins the third Monday in September. Each regulation week would begin Monday at 12:00 a.m. and end at 11:59 p.m. the following Sunday, since most handlers keep records based on Monday being the beginning of the work week. If necessary, the committee could meet and recommend a percentage above 25 percent to the Secretary at any time during the regulatory period.

The rules and regulations contain a variety of provisions designed to provide handlers with some marketing flexibility. When regulation is established by the Secretary for a given week, the committee calculates the quantity of small red seedless grapefruit which may be handled by each handler. Section 905.153(d) provides allowances for overshipments, loans, and transfers of allotment. These allowances should allow handlers the opportunity to supply their markets while limiting the impact of small sizes on a weekly basis.

During any week for which the Secretary has fixed the percentage of sizes 48 and/or 56 red seedless grapefruit, any handler could handle an amount of sizes 48 and/or 56 red seedless grapefruit not to exceed 110 percent of their allotment for that week. The quantity of overshipments (the amount shipped in excess of a handler's weekly allotment) would be deducted from the handler's allotment for the following week. Overshipments would not be allowed during week 11 because there would be no allotments the following week from which to deduct the overshipments.

If handlers fail to use their entire allotments in a given week, the amounts undershipped would not be carried forward to the following week. However, a handler to whom an allotment has been issued could lend or transfer all or part of such allotment (excluding the overshipment allowance) to another handler. In the event of a loan, each party would, prior to the completion of the loan agreement, notify the committee of the proposed loan and date of repayment. If a transfer of allotment is desired, each party would promptly notify the committee so that proper adjustments of the records could be made. In each case, the committee would confirm in writing all such transactions prior to the following week. The committee could also act on behalf of handlers wanting to arrange allotment loans or participate in the transfer of allotment. Repayment of an allotment loan would be at the discretion of the handlers party to the loan.

The committee would compute each handler's allotment by multiplying the handler's average week by the percentage established by regulation for that week. The committee would notify each handler prior to that particular week of the quantity of sizes 48 and 56 red seedless grapefruit such handler could handle during a particular week, making the necessary adjustments for overshipments and loan repayments.

The committee chose to use the past five seasons to provide the most accurate picture of an average season. When recommending procedures for establishing weekly percentage of size regulation for red seedless grapefruit, the committee discussed several methods of measuring a handler's volume to determine this base. It was decided that shipments for the five previous years and for the 33 weeks beginning the third Monday in September to the first Sunday the following May should be used for calculation purposes.

This bases allotment on a 33 week period of shipments, not just a handler's early shipments. This was done specifically to accommodate small shippers or light volume shippers, who may not have shipped many grapefruit in the early season. The use of an average week based on 33 weeks also helps adjust for variations in growing conditions that may affect when fruit matures in different seasons and growing areas. After considering different ways to calculate the average week, the committee settled on this definition of prior period as the method that would provide each handler with an equitable base from which to establish shipments.

The procedures under which this rule is recommended provide flexibility through several different options. Handlers can transfer, borrow or loan allotment based on their needs in a given week. Handlers also have the option of over shipping their allotment by 10 percent in a week, as long as the overshipment is deducted from the following week's shipments. Statistics show that in none of the regulated weeks was the total available allotment used. Approximately 190 loans and transfers were utilized last season. To facilitate this process, the committee staff provides a list of handler names and telephone numbers to help handlers find possible sources of allotment if needed for loan or trade. Also, this regulation only restricts shipments of small sized red grapefruit. There are no volume restrictions on larger sizes.

After considering the available information, the committee recommended that shipments of small sized red seedless grapefruit should be regulated this season.

This rule does not affect the provision that handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day exempt from regulatory requirements. Fruit shipped in gift packages that are individually addressed and not for resale, and fruit shipped for animal feed are also exempt from handling requirements under specific conditions. Also, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements under the order.

Section 8e of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for certain commodities under a domestic marketing order, including grapefruit, imports of that commodity must meet the same or comparable requirements. This rule does not change the minimum grade and size requirements under the order, only the percentages of sizes 48 and/or 56 red grapefruit that may be handled. Therefore, no change is necessary in the grapefruit import regulations as a result of this action.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 80 grapefruit handlers subject to regulation under the order and approximately 11,000 growers of citrus in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (SBA) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000 (13 CFR 121.601).

Based on industry and committee data, the average annual f.o.b. price for fresh Florida red grapefruit during the 1998–99 season was around $7.20 per 4/5 bushel carton, and total fresh shipments for the 1998–99 season are estimated at 14.6 million cartons of red grapefruit. Approximately 20 percent of all handlers handled 60 percent of Florida grapefruit shipments. In addition, many of these handlers ship other citrus fruit and products which are not included in committee data but would contribute further to handler receipts. Using the average f.o.b. price, about 80 percent of grapefruit handlers could be considered small businesses under SBA's definition, and about 20 percent of the handlers could be considered large businesses. The majority of Florida grapefruit handlers and growers may be classified as small entities.

Under the authority of § 905.52 of the order, this proposed rule would limit the volume of small red seedless grapefruit entering the fresh market during the first 11 weeks of the 1999–2000 season, beginning the third Monday in September. This rule utilizes the provisions of § 905.153. The proposal would limit the volume of sizes 48 and/or 56 red seedless grapefruit by setting the weekly percentage for each of the 11 weeks at 25 percent. Under such a limitation, the quantity of sizes 48 and/or 56 red seedless grapefruit that may be shipped by a handler during a particular week is

calculated using the recommended percentage.

By taking the recommended percentage times the average weekly volume of red grapefruit handled by such handler in the previous five seasons, the committee would calculate a handler's weekly allotment of small sizes. The rule would set the weekly percentage at 25 percent for the 11 week period. This proposal would provide a supply of small sized red seedless grapefruit sufficient to meet market demand, without saturating all markets with these small sizes. This rule would help stabilize the market and improve grower returns during the early part of the season.

The weekly percentage of 25 percent, when combined with the average weekly shipments for the total industry, would provide a total industry allotment of nearly 235,000 cartons of sizes 48 and/or 56 red seedless grapefruit per regulated week. If a 25 percent restriction on small sizes had been applied during the 11 week period in the three seasons prior to the 1997–98 season, an average of 4.2 percent of overall shipments during that period would have been affected. A large percentage of this volume most likely could have been replaced by larger sizes. Under this proposal, a sufficient volume of small sized red grapefruit would still be allowed into all channels of trade, and allowances would be in place to help handlers address any market shortfall. Therefore, the overall impact on total seasonal shipments and on industry costs should be minimal.

The early season crop tends to have a greater percentage of small sizes. This creates a glut of smaller, lower priced fruit, driving down the price for all sizes. Early in the season, larger sized fruit commands a premium price. In some cases, the f.o.b. price is $4 to $6 a carton more than for the smaller sizes. In early October, the f.o.b. price for a size 27 averages around $10.00 per carton. This compares to an average f.o.b. price of $5.50 per carton for size 56. By the end of the 11 week period covered in this rule, the f.o.b. price for large sizes typically drops to within $2 of the f.o.b. price for small sizes.

The over shipment of smaller sized red seedless grapefruit early in the season has contributed to below production cost returns for growers and lower on tree values. An economic study done by the University of Florida—Institute of Food and Agricultural Sciences (UF–IFAS) in May 1997, found that on tree prices had fallen from a high near $7.00 per carton in 1991–92 to around $1.50 per carton for the 1996–97 season. The study projected that if the industry elected to make no changes, the on tree price would remain around $1.50 per carton. The study also indicated that increasing minimum size restrictions could help raise returns.

This regulation would have a positive impact on affected entities. The purpose of this rule is to help stabilize the market and improve grower returns by limiting the volume of small sizes marketed early in the season. There are no volume restrictions on larger sizes. Therefore, larger sizes could be substituted for smaller sizes with a minimal effect on overall shipments. While this rule may necessitate spot picking, which could entail slightly higher harvesting costs, many in the industry are already using the practice. In addition, because this regulation is only in effect for part of the season, the overall effect on costs is minimal. This rule is not expected to appreciably increase costs to producers.

This rule would help limit the effects of an over supply of small sizes early in the season. Similar rules were enacted successfully the last two seasons. During the 11 week period, the regulations were successful in helping maintain prices at a higher level than in prior seasons, and sizes 48 and 56 by count and as a percentage of total shipments were reduced. Therefore, this action should have a positive impact on grower returns.

For the weeks when pricing information was available, last season's prices were higher in five of the six weeks when compared with f.o.b. prices from the 1996–97 season. The average f.o.b. for these weeks was $6.28 for the 1996–97 season, $6.55 for the 1997–98 season and $7.63 for the 1998–99 season.

The rules were also successful in reducing the steep drop in prices for larger sizes that had occurred in previous seasons. During the six weeks from mid-October through November, prices for sizes 23, 27, 32, and 36 fell by 25, 25, 20, and 14 percent, respectively, during the 1997–98 season. Prices for the same sizes fell only 13, 11, 14, and 11 percent, respectively, during the same period last season with regulation. Prices for all sizes were firmer during this period last season when compared to the 1996–97 season, with the weighted average price dropping only 11 percent during this period last season as compared to 22 percent during the 1996–97 season.

An economic study done by Florida Citrus Mutual (Lakeland, Florida) in April 1998, found that the weekly percentage regulation had been effective. The study indicated that part of the strength in early season pricing appeared to be due to the use of the weekly percentage rule to limit the volume of sizes 48 and 56. Prices were generally higher across the size spectrum, with sizes 48 and 56 having the largest gains and larger sized grapefruit registering modest improvements.

The report also stated that sizes 48 and 56 grapefruit accounted for around 27 percent of domestic shipments during the 11 weeks during the 1996–97 season, compared to only 17 percent during the 1997–98 season, as small sizes were used to supply export customers with preferences for small sized grapefruit.

Over 50 percent of red seedless grapefruit are shipped to the fresh market. Because of reduced demand and an oversupply, the processing outlet is not currently profitable. Consequently, it is essential that the market for fresh red grapefruit be fostered and maintained. Any costs associated with this action would only be for the 11 week regulatory period. However, benefits from this action could stretch throughout the entire 33 week season.

This rule is intended to stabilize the market during the early season and increase grower returns. Information available from the last two seasons suggests the regulation could do both. A stabilized price that returns a fair market value would be beneficial to both small and large growers and handlers. The opportunities and benefits of this rule are expected to be available to all red seedless grapefruit handlers and growers regardless of their size of operation. Accordingly, this action would provide the most beneficial results for the industry given any other alternatives.

Handlers utilizing the flexibility of the loan and transfer aspects of this action would be required to submit a form to the committee. The rule would increase the reporting burden on approximately 80 handlers of red seedless grapefruit who would be taking about 0.03 hour to complete each report regarding allotment loans or transfers. The information collection requirements contained in this section have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and assigned OMB number 0581–0094. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.760 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

The committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the April 6, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 15-day comment period is provided to allow interested persons to respond to this proposal. Fifteen days is deemed appropriate because this rule would need to be in place as soon as possible since handlers will begin shipping grapefruit in September. In addition, because of the nature of this rule, handlers need time to consider their allotment and how best to service their customers. Also, the industry has been discussing this issue for some time, and the committee has kept the industry well informed. It has also been widely discussed at various industry and association meetings. Interested persons have had time to determine and express their positions. This action is similar to those taken in the previous two seasons, and it was unanimously recommended by the committee. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is proposed to be amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 905.350 is revised to read as follows:

§ 905.350 Red seedless grapefruit regulation.

This section establishes the weekly percentages to be used to calculate each handler's weekly allotment of small sizes. If the minimum size in effect under § 905.306 for red seedless grapefruit is size 56, handlers can fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments are within the established weekly limits. If the minimum size in effect under § 905.306 for red seedless grapefruit is 48, handlers can fill their allotment with size 48 red seedless grapefruit such that the total of these shipments is within the established weekly limits. The weekly percentages for sizes 48 and/or 56 red seedless grapefruit grown in Florida, which may be handled during the specified weeks are as follows:

Week	Weekly percentage
(a) 9/20/99 through 9/26/99	25
(b) 9/27/99 through 10/3/99	25
(c) 10/4/99 through 10/10/99	25
(d) 10/11/99 through 10/17/99	25
(e) 10/18/99 through 10/24/99	25
(f) 10/25/99 through 10/31/99	25
(g) 11/1/99 through 11/7/99	25
(h) 11/8/99 through 11/14/99	25
(i) 11/15/99 through 11/21/99	25
(j) 11/22/99 through 11/28/99	25
(k) 11/29/99 through 12/5/99	25

Dated: August 23, 1999.

Bernadine M. Baker,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–22253 Filed 8–25–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–30–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Limited Dart Series Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Rolls-Royce Limited Dart series turboprop engines. This proposal would require a one-time visual inspection of the interior of the switch to determine the type of low torque switch, and removal from service of unapproved Klixon low torque switches and replacement with serviceable parts. This proposal is prompted by the discovery of unapproved low torque switches in fleet operation. The actions specified by the proposed AD are intended to prevent possible low torque switch failure, which could result in failure of a propeller to auto-feather following an engine power loss, resulting in possible loss of control of the airplane due to high asymmetric drag.

DATES: Comments must be received by September 27, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–30–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be submitted to the Rules Docket by using the following Internet address: "9-ane-adcomment@faa.gov". Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Rolls-Royce Limited, Attn: Dart Engine Service Manager, East Kilbride, Glasgow G74 4PY, Scotland; telephone: +44 1355–220–200, fax: +44 1141–778–432. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7176, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NE–30–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–30–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Rolls-Royce Limited (R–R) Dart 506, 510, 511, 514, 525, 526, 529, 530, 531, 532, 535, 542, and 552 series turboprop engines. The CAA advises that in 1976, failure of a low torque switch resulted in a fatal military airplane accident. The investigation revealed problems with the low torque switch that were resolved in a subsequent airworthiness action.

Recently, however, the CAA has determined that a number of unapproved, Klixon low torque switches, part number (P/N) 6PS–25–1, are in service. These low torque switches have not been tested by R–R and are not approved for use by R–R or the CAA on R–R Dart series turboprop engines, and are of a different design than the approved, capsule and snap diaphragm assembly low torque switches. All low torque switches sense reduction gearbox torque pressure, which is related to engine power output, and is set to trigger at a predetermined pressure. While there have been no failures to date of the unapproved Klixon low torque switches, the CAA and R–R cannot determine whether the switch will function properly. The low torque switch remains dormant until an emergency situation, and there are no functional preflight checks of the low torque switch system to ensure safe operation. This condition, if not corrected, could result in failure of a propeller to auto-feather following an engine power loss, resulting in possible loss of control of the airplane due to high asymmetric drag.

Service Information

R–R has issued Service Bulletin (SB) No. Da61–13, dated December 1996, that specifies procedures for performing a visual inspection of the interior of the switch to determine the type of low torque switch, and removal from service of unapproved Klixon low torque switches and replacement with serviceable parts. Externally, the Klixon low torque switches are indistinguishable from the approved low torque switches. The CAA classified this SB as mandatory and issued AD 002–12–96 in order to assure the airworthiness of these engines in the UK.

This engine model is manufactured in the UK and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design registered in the United States, the proposed AD would require a one-time visual inspection of the interior of the switch to determine the type of low torque switch, and removal from service of unapproved Klixon low torque switches and replacement with approved low torque switches. This action would be required within 3 months after the effective date of this AD. The actions would be required to be accomplished in accordance with the SB described previously.

Economic Analysis

There are approximately 890 engines of the affected design in the worldwide fleet. The FAA estimates that 139 engines installed on aircraft of US registry would be affected by this proposed AD, that it would take approximately 2 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $12,500 per engine. Based on these figures, the total cost impact of the proposed AD on US operators is estimated to be $1,754,180.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Rolls-Royce Limited: Docket No. 99–NE–30–AD.

Applicability: Rolls-Royce Limited (R–R) Dart 506, 510, 511, 514, 525, 526, 529, 530, 531, 532, 535, 542, and 552 series turboprop engines, installed on but not limited to Gulfstream Aerospace Corp. G–159, British Aerospace HS 748, Fokker Aircraft F.27, Mitsubishi Heavy Industries YS–11, General Dynamics (Convair) 640 and 600 series, and Vickers Armstrongs (Aircraft Limited) Viscount.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of a propeller to auto-feather following an engine power loss, resulting in possible loss of control of the airplane due to high asymmetric drag, accomplish the following:

(a) Within 3 months after the effective date of this AD, accomplish the following in accordance with the Action section of R–R Service Bulletin (SB) No. Da61–13, dated December 1996:

(1) Remove the switch cover, visually inspect the interior of the switch and replace the switch cover, all in accordance with the accomplishment instructions of the SB.

(2) If a Klixon low torque switch, part number (P/N) 6PS–25–1, is installed, prior to further flight remove the Klixon low torque switch from service and replace with an approved low torque switch.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on August 19, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–22194 Filed 8–25–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

14 CFR Part 382

49 CFR Part 27

[Docket OST–99–6159; Notice No: 5]

RIN 2105–AC81

Nondiscrimination on the Basis of Disability in Air Travel: Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department is proposing to amend its rules implementing the Air Carrier Access Act of 1986 and section 504 of the Rehabilitation Act of 1973 concerning the provision of equipment to facilitate the boarding by individuals with disabilities on aircraft where level-entry boarding is not now available. The proposed rule would require air carriers and airports to work jointly to make lifts or other boarding devices available for aircraft, of whatever size, where level-entry loading bridges or existing lifts are not present.

DATES: Comments are requested on or before November 24, 1999. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to Docket Clerk, Docket No. OST–99–6159, Department of Transportation, 400 7th Street, SW., Room PL–401, Washington, DC, 20590. Comments will be available for inspection at this address from 10 a.m. to 5:30 p.m., Monday through Friday, and are also viewable through the Dockets Management System (DMS) portion of the Department's web (www.dot.gov). Commenters may also submit comments electronically. Commenters who wish to do so should follow the instructions on the DMS site. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date-stamp the postcard and mail it back to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., Room 10424, Washington, DC, 20590. (202) 366–9306 (voice); (202) 755–7687 (TDD).

SUPPLEMENTARY INFORMATION: On November 1, 1996, the Department published a final rule requiring airports and airlines to work together to ensure that lifts were available to provide level-entry boarding for passengers with disabilities who were flying on small commuter aircraft. This rule applied to aircraft with a seating capacity of 19–30 passengers. The final rule, and the proposal that led to it, did not address the issue of level entry boarding for aircraft with 31 or more seats.

The original 1990 Air Carrier Access Act (ACAA) rule provided that, with an exception relevant only to the small commuter aircraft category, carriers must use "ramps, mechanical lifts, or other devices (not normally used for freight)" to provide boarding assistance, where level-entry boarding by loading bridge or mobile lounge was not available (14 CFR 382.39(a)(2)). The term "other devices" has been interpreted to include boarding chairs carried up aircraft stairs by carrier personnel.

Carrying passengers up stairs in a boarding chair is generally viewed as an undesirable way of providing access, for reasons having to do with the dignity, safety, and comfort of passengers. (It also increases risks to carrier personnel involved.) Consequently, the Department is proposing in this notice to require carriers to make lifts available for boarding assistance to any aircraft with a seating capacity of 31 seats or more where level-entry boarding by loading bridge or mobile lounge is not available. This requirement would apply to medium-size commuter aircraft or regional jets that are typically boarded from the tarmac in most airports, as well as to larger jets (up to and including "jumbo jets") at those airports or gates where, for some reason, level-entry boarding is not otherwise available.

The proposed regulatory provisions parallel those for small commuter aircraft. Carriers and airports would have to work together, create an agreement, and phase in implementation of lift service over a reasonable period of time. The Department seeks comment on whether there are any situations covered by the proposal in which providing lift access would be impracticable (e.g., analogous to the "problem aircraft" exempted from the small commuter aircraft lift rule).

The lift rule for small commuter aircraft had a phased-in implementation schedule, varying by size of airport. Because the draft regulatory evaluation for this rulemaking concludes that existing lifts, or lifts being put in place in response to the small commuter aircraft lift rule, will be sufficient to meet the proposed requirements, the

NPRM proposes an 18-month deadline for using lifts for larger aircraft at all airports. We specifically seek comment on this point.

Regulatory Analyses and Notices

This NPRM does not propose a significant rule under Executive Order 12866 or the Department's Regulatory Policies and Procedures. A regulatory evaluation that examines the projected costs and impacts of the proposal has been placed in the docket. It concludes that incremental costs of the requirement would be negligible, because lifts already in place or required to be in place by existing rules could meet the proposal's requirements.

The Department certifies that this rule, if adopted, would not have a significant economic effect on a substantial number of small entities. The basis for this statement is that the overall national annual costs are not great, and few airline companies operating aircraft of the type covered by the NPRM and commercial service airports could properly be regarded as small entities. Nevertheless, the Department specifically seeks comment on whether there are small entity impacts the Department should consider, and what those impacts are. If comments provide information that there are significant small entity impacts, the Department will provide a regulatory flexibility analysis at the final rule stage. The Department does not believe that there would be sufficient Federalism impacts to warrant the preparation of a Federalism Assessment.

List of Subjects

14 CFR Part 382

Air carriers, Consumer protection, Individuals with disabilities, Reporting and recordkeeping requirements.

49 CFR Part 27

Airports, Civil rights, Individuals with disabilities, Reporting and recordkeeping requirements.

Issued this 18th day of August, 1999, at Washington, DC.

Rodney E. Slater,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department proposes to amend 14 CFR part 382 and 49 CFR part 27 as follows:

14 CFR PART 382—[AMENDED]

1. The authority citation for 14 CFR part 382 is revised to read as follows:

Authority: 49 U.S.C. 41702, 47105, and 41712.

2. Section 382.39 is proposed to be amended as follows:

a. Paragraph (a)(2) is proposed to be revised;

b. Paragraphs (b) and (c) are proposed to be redesignated as paragraphs (c) and (d), respectively, and a new paragraph (b) is proposed to be added. The proposed addition and revision to § 382.39 read as follows:

§ 382.39 Provision of services and equipment.

* * * * *

(a) * * *

(2) Boarding shall be by level-entry loading bridges or accessible passenger lounges, where these means are available. Where these means are unavailable, boarding assistance to commuter aircraft with fewer than 30 seats shall be provided as set forth in § 382.40, and boarding assistance for aircraft with 31 or more seats shall be provided as set forth in paragraph (c) of this section. In no case shall carrier personnel be required to hand-carry a passenger in order to provide boarding assistance (i.e., directly to pick up the passenger's body in the arms of one or more carrier personnel to effect a level change the passenger needs to enter or leave the aircraft).

* * * * *

(b) This paragraph applies to aircraft with a seating capacity of 31 or more passengers, in any situation in which passengers are not boarded by level-entry loading bridges or accessible passenger lounges. In these situations, carriers shall, in cooperation with the airports they serve, provide boarding assistance to individuals with disabilities using mechanical lifts, ramps, or other suitable devices that do not require employees to lift or carry passengers up stairs.

(1) Each carrier shall negotiate in good faith with the airport operator at each airport concerning the acquisition and use of boarding assistance devices. The carrier(s) and the airport operator shall, by no later than (insert date mine months from the effective date of this section), sign a written agreement allocating responsibility for meeting the boarding assistance requirements of this section between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.

(2) The agreement shall provide that all actions necessary to ensure accessible boarding for passengers with disabilities are completed as soon as practicable, but no later than (insert a date 18 months from the effective date of the rule). All air carriers and airport operators involved are jointly responsible for the timely and complete implementation of the agreement.

(3) Under the agreement, carriers may require that passengers wishing to receive boarding assistance requiring the use of a lift for a flight check in for the flight one hour before the scheduled departure time for the flight. If the passenger checks in after this time, the carrier shall nonetheless provide the boarding assistance by lift if it can do so by making a reasonable effort, without delaying the flight.

(4) When boarding assistance cannot be provided as required by for reasons beyond the control of the parties to the agreement (e.g., because of mechanical problems with a lift), boarding assistance shall be provided by any available means to which the passenger consents, except hand-carrying as defined in paragraph (a)(2) of this section.

(5) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.

(6) The training of carrier personnel required by § 382.61 shall include, for those personnel involved in providing boarding assistance, training to proficiency in the use of the boarding assistance equipment used by the carrier and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers.

* * * * *

49 CFR PART 27—[AMENDED]

3. The authority citation for Part 27 continues to read as follows:

Authority: Sec. 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); sec. 16(a) and (d) of the Federal Transit Act of 1964, as amended (49 U.S.C. 5310(a) and (f); sec. 165(b) of the Federal-Aid Highway Act of 1973, as amended (23 U.S.C. 142nt).

4. In 49 CFR part 27, § 27.72 is proposed to be revised to read as follows:

§ 27.72 Boarding assistance for small aircraft.

(a) Paragraphs (b)–(e) of this section apply to airports with 10,000 or more annual enplanements.

(b) Airports shall, in cooperation with carriers serving the airports, provide boarding assistance to individuals with disabilities using mechanical lifts, ramps, or other devices that do not require employees to lift or carry passengers up stairs. Paragraph (c) of this section applies to aircraft with a seating capacity of 19–30 passengers. Paragraph (d) of this section applies to aircraft with a seating capacity of 31 or more passengers.

(c) (1) Each airport operator shall negotiate in good faith with each carrier serving the airport concerning the acquisition and use of boarding assistance devices for aircraft with a seating capacity of 19–30 passengers. The airport operator and the carrier(s) shall, by no later than September 2, 1997, sign a written agreement allocating responsibility for meeting the boarding assistance requirements of this section between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.

(2) The agreement shall provide that all actions necessary to ensure accessible boarding for passengers with disabilities are completed as soon as practicable, but no later than December 2, 1998, at large and medium commercial service hub airports (those with 1,200,000 or more annual enplanements); December 2, 1999, for small commercial service hub airports (those with between 250,000 and 1,199,999 annual enplanements); or December 2, 2000, for non-hub commercial service primary airports (those with between 10,000 and 249,999 annual enplanements) . All air carriers and airport operators involved are jointly responsible for the timely and complete implementation of the agreement.

(3) Boarding assistance under the agreement is not required in the following situations:

(i) Access to aircraft with a capacity of fewer than 19 or more than 30 seats;

(ii) Access to float planes;

(iii) Access to the following 19-seat capacity aircraft models: the Fairchild Metro, the Jetstream 31, and the Beech 1900 (C and D models);

(iv) Access to any other 19-seat aircraft model determined by the Department of Transportation to be unsuitable for boarding assistance by lift on the basis of a significant risk of serious damage to the aircraft or the presence of internal barriers that preclude passengers who use a boarding or aisle chair to reach a non-exit row seat.

(4) When boarding assistance is not required to be provided under paragraph (c)(4) of this section, or cannot be provided as required by paragraphs (b) and (c) of this section for reasons beyond the control of the parties to the agreement (e.g., because of mechanical problems with a lift), boarding assistance shall be provided by any available means to which the passenger consents, except hand-carrying as defined in 14 CFR 382.39(a)(2).

(5) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.

(d)(1) Each airport operator shall negotiate in good faith with each carrier serving the airport concerning the acquisition and use of boarding assistance devices for aircraft with a seating capacity of 31 or more passengers. The airport operator and the carrier(s) shall, by no later than (a date nine months from the effective date of this section), sign a written agreement allocating responsibility for meeting the boarding assistance requirements of this section between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.

(2) The agreement shall provide that all actions necessary to ensure accessible boarding for passengers with disabilities are completed as soon as practicable, but no later than (a date 18 months from the effective date of this section). All air carriers and airport operators involved are jointly responsible for the timely and complete implementation of the agreement.

(3) When boarding assistance cannot be provided as required by this paragraph for reasons beyond the control of the parties to the agreement (e.g., because of mechanical problems with a lift), boarding assistance shall be provided by any available means to which the passenger consents, except hand-carrying as defined in 14 CFR 382.39(a)(2).

(4) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.

(e) In the event that airport personnel are involved in providing boarding assistance, the airport shall ensure that they are trained to proficiency in the use of the boarding assistance equipment used at the airport and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Foreign Options Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing to amend the Commission's regulations to clarify when foreign futures and options brokers who are members of a foreign board of trade must register or obtain an exemption from registration. The Commission proposes to modify Rule 30.4(a) by clarifying that foreign futures and options brokers, including those with U.S. bank branches, are not required to register as futures commission merchants (FCMs) pursuant to Rule 30.4, or seek Rule 30.10 relief, if they fall generally into the following categories: those that carry customer omnibus accounts for U.S. FCMs; those that carry U.S. affiliate accounts which are proprietary to the foreign futures and options broker; and those that carry U.S. accounts which are proprietary to a U.S. FCM. In addition, proposed Rule 30.10(a) will specify representations that must be made by a foreign futures and options broker that has U.S. bank branches in order to obtain a Rule 30.10 comparability exemption or to come within the registration exception of Rule 30.4.

DATES: Comments must be received by October 25, 1999.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to "Commission Rules 30.1, 30.4 and 30.10—Registration and Exemption.".

FOR FURTHER INFORMATION CONTACT: Laurie Plessala Duperier, Special Counsel, or Susan A. Elliott, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION:

I. Background

In 1987, the Commission adopted a new Part 30 to its regulations.[1] Part 30 governs, generally, the solicitation and sale of foreign futures[2] and foreign

[1] 52 FR 28980 (August 5, 1987). CFTC regulations may be found at 17 CFR Ch. I (1999).

[2] "Foreign futures" as defined in Part 30 means "any contract for the purchase or sale of any commodity for future delivery made, or to be made, on or subject to the rules of any foreign board of trade." Commission Rule 30.1(a).

option[3] contracts to customers[4] located in the United States. These rules were promulgated pursuant to sections 2(a)(1)(A), 4(b) and 4c of the Commodity Exchange Act ("Act"), which vested the Commission with exclusive jurisdiction over the offer and sale, in the United States, of options and futures contracts traded on or subject to the rules of a board of trade, exchange or market located outside of the United States.

When it adopted Part 30, the Commission recognized that many complexities would need to be addressed by the staff in the years after adoption of these rules.[5] Soon after the final rulemaking for Part 30 was published, the staff of the Division of Trading and Markets (the "Division") published several interpretative letters and no-action positions regarding the application of the registration requirements of Part 30 to foreign firms, and their ability to obtain an exemption from certain of the requirements of Part 30, pursuant to Rule 30.10. The Commission now proposes to codify some of those interpretations and positions. Each of the interpretative letters discussed below will cease to have any prospective applicability if the proposed rules are adopted. Those who properly relied on interpretative statements in the past must henceforth comply with the proposed rules if adopted. Since no-action letters may only be relied on by the entity seeking the no-action position, the entities who received the no-action letters discussed below may continue to rely on the relief provided. All other persons were, and are, required to comply with Commission rules.

[3] "Foreign option" as defined in Part 30 means "any transaction or agreement which is or is held out to be of the character of, or in commonly known to the trade as, an 'option', 'privilege', 'indemnity', 'bid', 'offer', 'put', 'call', 'advance guaranty', or 'decline guaranty,' made or to be made on or subject to the rules of any foreign board of trade." Commission rule 30.1(b).

[4] Pursuant to Commission Rule 30.1(c), "Foreign futures or foreign options customer" means "any person located in the United States, its territories or possessions who trades in foreign futures or foreign options: *Provided*, That an owner or holder of a proprietary account as defined in paragraph (y) of [Commission rule] 1.3 shall not be deemed to be a foreign futures or foreign options customer within the meaning of §§ 30.6 and 30.7 of this part."

[5] "The Commission is mindful that the implementation of a regulatory scheme such as this is an evolving process, particularly as the issues are numerous and complex. Accordingly, the Commission invites affected persons to seek interpretations of the rules, no-action positions and exemptions, as appropriate. In this regard, the Commission has determined to retain the general exemptive provision set forth in rule 30.10, as proposed." 52 FR at 28980–28981 (August 5, 1987).

A. Registration Required by Rule 30.4(a)

Rule 30.4(a) requires anyone who solicits or accepts orders and/or money for foreign futures and options contracts from foreign futures and options U.S. customers to register as an FCM. Rule 30.4(e) requires registered FCMs to maintain an office in the United States which is managed by an individual domiciled in the United States and registered with the Commission as an associated person ("AP"). Rule 30.10 allows any person to seek exemption form any provision of Part 30.

Shortly after Part 30 was adopted, it became clear that it might not be necessary for certain conduct to trigger the registration requirements of Rule 30.4(a). For example, foreign futures and options brokers that did nothing more than carry the customer omnibus account of a U.S. FCM fell within the registration provisions of Rule 30.4(a). As a result, the staff issued an interpretation in CFTC Letter 87–7 to make clear that a member of a foreign board of trade (or an affiliate of a U.S firm that is authorized to carry accounts under relevant foreign law), whose only contact with foreign futures and option customers was limited to carrying the customer omnibus account of a U.S. FCM, would not be required to register as an FCM under Rule 30.4(a). The Division reasoned that registration should not be required in that circumstance because of the presence of an "intervening registrant [i.e., a U.S. FCM] to whom the rules would be fully applicable."[6] In other words, U.S. foreign futures and option customers would continue to have a relationship with and be clients of the U.S. FCM for which the foreign firm was carrying the omnibus account, and would not have direct contact with the foreign futures and options broker. Specifically, the Division stated:

> [W]here an FCM transfers its customer omnibus account to an offshore firm which is either a member or a foreign exchange or is an offshore affiliate of a U.S. FCM licensed or authorized by the offshore jurisdiction where it is located, and such foreign exchange member's or affiliate's contact with foreign futures and options customers is limited to carrying the customer omnibus account of a U.S. FCM for execution on the foreign exchange, such activity should not bring it within the scope of the foreign futures and options rules.[7]

The Division sought to resolve other issues through the no-action process. For instance, CFTC Letter 87–7 was limited to the transfer of customer omnibus accounts to foreign firms and the existence of U.S. branches resulted in the bank being characterized as "present" in the United States.[8] Thus, despite the relief offered in CFTC Letter 87–7, foreign banks that, as brokers, carried US FCMs' customer omnibus accounts, could not take advantage of that relief if the banks had bank branches in the United States. In CFTC Letter 89–11, the Division stated that it would not recommend an enforcement action against a foreign bank with U.S. bank branches if the foreign bank availed itself of the relief of CFTC Letter 87–7.[9] The Division's no-action position was contingent upon three undertakings by the foreign bank: (1) the U.S. branches would not solicit or accept orders for foreign futures contracts or options or engage in any activities subject to regulation by the Commission, except in connection with proprietary trading conducted by its U.S. branches; (2) the foreign bank would provide upon request of the Commission or the National Futures Association, access to the books and records of the U.S. branches to ensure compliance with undertaking (1); and (3) the bank would designate an agent for the purpose of accepting delivery and service of any communication from the Commission relating to the foreign firm's activities in carrying the omnibus accounts.[10]

Still other ambiguities arose with regard to foreign firms. In the Part 30 rules, there is no specific provision relating to registration requirements for foreign futures and options brokers handling proprietary accounts. Commission Rule 3.10(c) provides a general exemption from FCM registration for persons trading solely for proprietary accounts, which is arguably applicable to foreign futures and options brokers.[11] Shortly after the Commission adopted Part 30, an interpretative letter was requested regarding foreign firms soley carrying U.S. customer foreign futures and options accounts that would be proprietary accounts to the foreign firm. In CFTC Letter 88–15,[12] Division staff determined that, subject to certain conditions, "in instances where a foreign firm *solely* carries accounts on behalf of customers in the United States which may be deemed to be proprietary accounts of the foreign firm, such foreign firm should not be subject to the registration requirement of Rule 30.4, or be required to apply for exemptive relief therefrom pursuant to Rule 30.10 based on comparability of regulation in the foreign jurisdiction."[13] The Division further stated that such a firm would, however, remain subject to all other applicable provisions of the Act and rules, regulations and orders thereunder.

While the staff previously has addressed the situation where a foreign firm carries its own "proprietary" account, it has not issued an interpretative letter relating to the applicability of the Rule 30.4 registration requirement to a foreign futures and options broker when the foreign futures and options broker carries the proprietary account of a U.S. FCM that is not proprietary to the foreign firm. Pursuant to Rule 30.4a, a U.S. FCM trading its proprietary account through a foreign futures and options broker is a "U.S. foreign futures and options customer," requiring the foreign futures and options broker to register in order to carry the firm's proprietary account.[14] The logic of CFTC Letter 87–7, however, suggests that certain foreign futures and options brokers carrying FCM proprietary accounts similarly should not be required to register or to obtain a Rule 30.10 exemption.

The registration relief in CFTC Letter 87–7 was limited by its terms to a foreign firm which either was a member of a foreign board of trade or was an offshore affiliate of a U.S. FCM licensed, authorized or otherwise subject to regulation in the offshore jurisdiction where it was located. The staff took this position because, among other things, there would be no contact by a foreign firm with the FCM's customers and the U.S. FCM will have engaged in all sales practices and remain responsible for compliance with the Part 30 rules. Similarly, sales practice considerations are not of particular concern where an FCM opens a firm account (i.e., noncustomer account) with a foreign board of trade member. U.S. FCMs are professionals in the commodities industry and therefore should be familiar with the risks of trading foreign commodity futures and options contracts. The FCM does not need the added protections afforded by requiring the foreign firm to register as an FCM, provided of course that the foreign firm is a member of a foreign board of trade or a registered affiliate of the U.S. FCM. Moreover, where the foreign firm carries the proprietary account of a U.S. FCM, the requirement of registration and the attendant capital and customer funds rules are not necessary because the foreign jurisdiction generally has already imposed rules to protect the foreign clearing house.

B. Availability of Rule 30.10 Exemptions to Foreign Firms With U.S. Bank Branches

Those persons located outside the United States that solicit or accept orders directly from United States customers for foreign futures or options transactions and that are subject to a comparable regulatory scheme in the country in which they are located[15] may apply under Appendix A to Rule 30.10 for relief from the registration requirements of Rule 30.4. Rule 30.10 and Appendix A thereto have been the basis for exemptions granted to a number of foreign firms that, along with their governmental agency or self-regulatory organization, have demonstrated that their particular foreign regulatory program is comparable to that of the Commission.

Although the Commission orders granting general Rule 30.10 exemptive relief from FCM registration have applied only with respect to persons located outside of the United States, the Division has permitted foreign futures and options brokers with U.S. bank branches to obtain a Rule 30.10 exemption under certain conditions. In CFTC Letter 89–5,[16] the Division stated that it would not recommend enforcement action if a division or branch of a foreign bank is *de facto* treated as a separate entity by the Office of the Comptroller of the Currency (OCC) and has no involvement with U.S. foreign futures and options customers. Under those circumstances, the branch could be treated by the bank as though it were a subsidiary or affiliate,[17] and the foreign firm would be eligible for an exemption under Rule 30.10. The Division staff has required foreign firms with U.S. bank branches that are seeking confirmation of Rule 30.10 relief to make representations which ensure that the U.S. branch does not solicit or otherwise have contact with U.S. customers for transactions governed by Commission rules. In so doing, the Division noted that the bank branch "is viewed as a separate legal entity in many respects under the federal bank regulatory scheme."[18]

In the ten years following the issuance of CFTC Letter 89–5, staff has issued several no-action letters to foreign firms with U.S. bank branches permitting them to obtain confirmation of Rule 30.10 relief. Since that time, the staff has not become aware of problems with foreign firms using their U.S. bank branches inappropriately. Therefore, the Commission proposes to codify the procedure by which foreign firms with U.S. bank branches may obtain 30.10 relief. Doing so will obviate the need for affected persons to seek interpretative relief or a non-action position, and will

[6] CFTC Letter 87–7, [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 23,972 (November 17, 1987). The scope of CFTC Letter 87–7 was limited to foreign exchange members and US FCMs' offshore affiliates which were licensed, authorized or otherwise subject to regulation in the offshore jurisdiction. With regard to affiliates, CFTC Letter 87–7 required the affiliate to identify to the CFTC and to the National Futures Association ("NFA") the foreign clearing member through which the affiliate conducts business in order to ensure an adequate audit trail so that transactions may be traceable to the foreign exchange.

[7] *Id.* at 34,407–8.

[8] See discussion of CFTC Letter 89–5, *infra*.

[9] CFTC Letter 89–11, [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,516 (August 15, 1989).

[10] The letter emphasized: "The Division further understands that each such U.S. Branch is subject to extensive regulation, including reporting and recordkeeping requirements and examinations, either under state banking laws or under federal law by the Office of the Comptroller of the Currency."

[11] Rule 3.10(c) provides: "A person trading solely for proprietary accounts, as defined in 1.3(y) of this chapter, is not required to register as a futures commission merchant: Provided that such person remains subject to all other provisions of the Act and of the rules, regulations and orders thereunder."

[12] CFTC Letter 88–15, [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,296 (August 10, 1988).

[13] The requestor of the letter had a U.S. affiliate whose account it carried; both firms were in turn wholly owned by a parent company. The term "proprietary account" as defined in rule 1.3(y), 17 CFR 1.3(y) (1998), includes an account carried on the books and records of a corporation or other type of association for a "business affiliate that directly or indirectly is controlled by or is under common control with, such . . . corporation or association."

[14] Rule 30.1(c) exempts an owner or holder of a proprietary account from the definition of foreign futures and options, cutomer only with regard to the disclosure requirements of Rule 30.6 and the secured amount requirement of Rule 30.7. Owners or holders of proprietary accounts currently are not excluded from the definition for purposes of Rule 30.4, thereby triggering the registration requirement for foreign futures and options brokers who do business with them.

[15] Appendix A, "Interpretative Statement with Respect to the Commission's Exemptive Authority Under § 30.10 of Its Rules," CCH ¶ 2707, 57 FR 49644 (November 2, 1992) (Emphasis added.)

[16] CFTC Letter 89–5, [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,271 (December 5, 1988).

[17] In CFTC Letter 88–3, the Division distinguished between a foreign firm having U.S. divisions (which are "legally part of the firm itself"), and a foreign firm with a U.S. subsidiary or affiliate (which "is a separate legal entity.") [1987–1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,085 (January 15, 1988). The letter stated that while a foreign firm with a U.S. branch or division would not be eligible for Rule 30.10 relief, a foreign firm with a U.S. subsidiary or affiliate would be eligible for a 30.10 exemption. *Id.* The Division modified that position in CFTC Letter 89–5 by recognizing that branches and divisions are often operated separately and in a manner analogous to a subsidiary. CFTC Letter 89–5 at 36,071. Foreign firms with separately incorporated U.S. subsidiaries or affiliates must follow the guidelines in CFTC Advisory 41–93 (July 26, 1993) when petitioning for Rule 30.10 relief. *See* CFTC Letter 93–65, [1992–1994 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 25,784 (July 26, 1993).

[18] CFTC Letter 89–5, *id.* at p. 36,071.

thus utilize Commission resources more efficiently.

II. The Proposed Amendments

The Commission believes it can provide clarity to its registration requirements under Part 30 by specifically addressing, in Rule 30.4, when registration by a foreign futures and options broker is not required. As discussed earlier, the Commission proposes to amend Rule 30.4(a) to clarify that it does not require registration by certain foreign futures and options brokers that carry U.S. foreign futures and foreign options customer omnibus accounts of U.S. FCMs and have no customer contact, including foreign brokers with U.S. bank branches. The Commission also proposes to amend Rule 30.4(a) to clarify that a foreign firm that carries a U.S. FCM's proprietary account, or a foreign firm which trades for its own proprietary account (including U.S. affiliates whose accounts are "proprietary" to the foreign firm), need not register as an FCM so long as certain conditions are met. Such foreign firms would, however, otherwise remain subject to provisions of Part 30 that are not dependent upon registration as an FCM, such as the antifraud provision of Rule 30.9. While the Commission is proposing to permit foreign brokers to carry "proprietary" accounts in the broader sense of the term (as defined in Rule 1.3(y)), not just firm trading accounts or "house" accounts [19], the Commission invites comment on the advisability of limiting the exemption to house accounts only.[20]

In addition, the Commission proposes to amend Rule 30.10 to clarify that foreign firms with U.S. bank branches may be eligible for Rule 30.10 relief if certain representations are made. A foreign firm with U.S. bank branches would be able to obtain a Rule 30.10 exemption without requesting a no-action position if it files the following representations with the NFA Vice-President, Registration & Membership:

(1) No U.S. bank branch, office of division of the foreign futures and options broker will engage in the trading of futures or options on futures within or from the United States, except for its own proprietary account;

(2) No U.S. bank branch, office of division of the foreign futures and options broker will refer any foreign futures or options customer to the foreign broker or otherwise be involved in the foreign broker's business in foreign futures and option transactions;

(3) No U.S. bank branch, office or division of the foreign futures and options broker will solicit any foreign futures or options business or purchase or sell foreign futures and option contracts on behalf of any foreign futures or option customers or otherwise engage in any activity subject to regulation under Part 30 or engage in any clerical duties related thereto. If any U.S. division, office or branch desires to engage in such activities, it will only do so through an appropriate CFTC registrant;

(4) The foreign futures and options broker will maintain outside the United States all contract documents, books and records regarding foreign futures and option transactions;

(5) The foreign futures and options broker and each of its U.S. bank branches, offices or divisions agree to provide upon request of the Commission, the NFA or the U.S. Department of Justice, access to their books and records for the purpose of ensuring compliance with the foreign undertakings and consents to make such records available for inspection at a location in the United States within 72 hours after service of the request; [21] and

(6) Although it will continue to engage in normal commercial activities, no U.S. bank branch, office or division of the foreign futures and options broker will establish relationships in the United States with the applicant's foreign futures and options customers for the purpose of facilitating or effecting transactions in foreign futures and option contracts in the United States.

Similarly, any foreign futures and options broker that would not be required to register under the proposed Rule 30.4(a) because it solely carries a U.S. customer omnibus account, its own proprietary account, or a U.S. FCM's proprietary account, will not be required to register solely because it has U.S. bank branches provided that it files with the NFA, Vice President, Registration & Membership, the above representations in accordance with Rule 30.10(b).

The Commission solicits comment regarding the number of foreign futures or options brokers' non-bank branches located in the United States, as well as information concerning their activities.[22] The Commission also requests comment on the advisability of expanding the relief provided by the proposed rule amendments to foreign futures and options brokers with any type of U.S. branch, not just bank branches.

Finally, the proposed rule defines "foreign futures and options customer omnibus account" in Rule 30.1(d), and "foreign futures and options broker" in Rule 30.1(e).

II. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–611, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[23] The proposed rules discussed herein would affect foreign members of foreign boards of trade who perform the functions of an FCM, some of which may be foreign affiliates of U.S. FCMS. The Commission previously has determined that, based upon the fiduciary nature of the FCM/customer relationships, as well as the requirement that FCMs meet minimum financial requirements, FCMs should be excluded from the definition of small entities. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Nonetheless, the Commission specifically requests comment on the impact these proposed rules may have on small entities.

B. Paperwork Reduction Act

When publishing proposed rules, the Paperwork Reduction Act of 1995 [24] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the Act, the Commission, through this rule proposal, solicits comments to: (1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The Commission has submitted this proposed rule and its associated information collection requirements to the Office of Management and Budget. The burden associated with this entire collection 3038–0023, including this proposed rule, is as follows:

Average burden hours per response: .1645.

Number of Respondents: 73,610.

Frequency of response: On occasion; annually, semi-annually; quarterly.

The burden associated with this specific proposed rule, is as follows:

Average burden hours per response: .05.

Number of Respondents: 110.

Frequency of response: On occasion.

Persons wishing to comment on the estimated paperwork burden associated with this proposed rule should contact the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, D.C. 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street NW, Washington, D.C. 20581, (202) 418–5160.

List of Subjects in 17 CFR Part 30

Definitions, Foreign futures, Foreign options, Registratiaon requirements, Reporting and recordkeeping requirements. Registration requirements,

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(1), 4(b), 4c and 8 thereof, 7 U.S.C. 2, 6(b) 6c and 12a (1982), and pursuant to the authority contained in 5 U.S.C. 552 and 552b (1982), the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 30—FOREIGN OPTIONS AND FOREIGN FUTURES TRANSACTIONS

1. The authority citation for Part 30 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6, 6c and 12a, unless otherwise noted.

2. Section 30.1 is proposed to be amended by adding paragraph (d) and (e) to read as follows:

§ 30.1 Definitions.

* * * * *

(d) *Foreign futures and options customer omnibus account* is defined as an account in which the transactions of one or more foreign futures and options customers are combined and carried in the name of the originating futures commission merchant rather than in the name of each individual foreign futures and options customer.

(e) *Foreign futures and options broker* (FFOB) is defined as a non-U.S. person that is a member of a foreign board of trade, as defined in § 1.3(ss), licensed, authorized or otherwise subject to regulation in the jurisdiction where the foreign board of trade is located; or a foreign affitiate of a U.S. futures commission merchant, licensed, authorized or otherwise subject to regulation in the jurisdiction where the affiliate is located.

3. Section 30.4 is proposed to be amended by revising paragraph (a) to read as follows:

§ 30.4 Registration required.

* * * * *

(a)(1) To solicit or accept orders for or involving any foreign futures contract or foreign options transaction and, in connection therewith, to accept any money securities or property (or extend credit in lieu thereof), to margin, guarantee or secure any trades or contracts that result or may result therefrom, unless such person shall have registered, under the Act, with the Commission as a futures commission merchant and such registration shall not have expired nor been suspended nor revoked; *provided that*, a foreign futures and options broker (as defined in § 30.1(e)) is not required to register as an FCM:

(i) In order to accept orders from or to carry a U.S. futures commission merchant foreign futures and options customer omnibus account, as that term is defined in § 30.1(d);

(ii) In order to accept orders from or to carry a U.S. FCM proprietary account, as that term is defined in paragraph (y) of § 1.3 of this chapter; or

(iii) In order to accept orders from or to carry a U.S. affiliate account which is proprietary to the foreign broker, as "proprietary account" is defined in paragraph (y) of § 1.3 of this chapter.

(2) Such foreign futures and options broker remains subject to all other applicable provisions of the Act and of the rules, regulations and orders thereunder. Foreign futures and options brokers that have U.S. bank branches, offices or divisions engaging in the above-listed activity are not required to register as an FCM if they file with the National Futures Association, Vice-President, Registration and Membership, 200 West Madison Avenue, Suite 1600, Chicago, Illinois 60606, the representations in § 30.10(b)(1)–(6).

* * * * *

4. Section 30.10 is revised to read as follows:

§ 30.10 Petitions for exemption.

(a) Any person adversely affected by any requirement of this part may file a petition with the Secretary of the Commission, which petition must set forth with particularity the reasons why that person believes that he should be exempt from such requirement. The Commission may, in its discretion, grant such an exemption if that person demonstrates to the Commission's satisfaction that the exemption is not otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought. The petition will be granted or denied on the basis of the papers filed. The petition may be granted subject to such terms and conditions as the Commission may find appropriate.

(b) Any foreign person that files a petition for an exemption under this section shall be eligible for such an exemption notwithstanding its presence in the United States through U.S. bank

[19] Firm trading or "house" accounts are defined as "proprietary" in Rule 1.17(b)(3) for regulatory capital purposes, while "proprietary accounts" comprise a broader category in the Rule 1.3(y) definition.

[20] When an FCM executes trades for its proprietary account with a foreign firm, funds other than those of the FCM are at risk (e.g., of affiliates and employees as per CFTC Rule 1.3(y)). One can assume that the class of persons defined by Rule 1.3(y) is in a relationship of trust and confidence to the FCM and thus the same considerations that would permit the FCM to open an account with foreign firm registering as an FCM also apply to the FCM's proprietary accounts.

[21] The Commission has recognized that Japanese and Hong Kong laws require that original books and records of any firm located within either country be maintained within the local jurisdiction. *See* CFTC Letter 95–83 [1994–1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶26,559 at 43,490 (September 20, 1995) (no-action position permitting the Japanese and Hong Kong affiliates of a U.S. FCM to accept directly foreign futures and options orders from certain sophisticated U.S. customers); 62 FR 47792 (September 11, 1997) (extending the relief under CFTC Letter 95–83 to the Japanese and Hong Kong affiliates of all U.S. FCMs). For the purpose of this rulemaking, the Commission proposes to allow foreign futures and options brokers in Japan and Hong Kong to satisfy the books and records requirement by: (1) providing within 72 hours authenticated copies of its books and records upon request of a Commission representative; (2) providing within 72 hours access to original books and records in the foreign jurisdiction; (3) waiving objection to the admissibility of the copies as evidence in a Commission action against the foreign futures and options broker; and (4) agreeing in the event of a proceeding to provide a witness to authenticate copies of books and records given to the Commission.

[22] The rationale for providing relief to foreign firms with bank branches in the U.S. is that those branches are otherwise regulated by the banking authorities. Although this rationale would be inapplicable to non-bank branches, there may be other reasons why exemption from registration under Part 30 would be appropriate.

[23] 47 FR 18618–18621 (April 30, 1982).

[24] Pub. L. 104–13 (May 13, 1995).

branches, offices or divisions if, in conjunction with a petition for confirmation of § 30.10 comparability relief under an existing § 30.10 Commission order, it files the following representations with the National Futures Association, Vice-President, Registration & Membership:

(1) No U.S. bank branch, office or division will engage in the trading of futures or options on futures within or from the United States, except for its own proprietary account;

(2) No U.S. bank branch, office or division will refer any foreign futures or options customer to the foreign broker or otherwise be involved in the foreign broker's business in foreign futures and option transactions;

(3) No U.S. bank branch, office or division will solicit any foreign futures or options business or purchase or sell foreign futures and option contracts on behalf of any foreign futures or option customers or otherwise engage in any activity subject to regulation under this part or engage in any clerical duties related thereto. If any U.S. division, office or branch desires to engage in such activities, it will only do so through an appropriate CFTC registrant;

(4) The foreign person will maintain outside the United States all contract documents, books and records regarding foreign futures and option transactions;

(5) The foreign person and each of its U.S. bank branches, offices or divisions agree to provide upon request of the Commission, the National Futures Association or the U.S. Department of Justice, access to their books and records for the purpose of ensuring compliance with the foreign undertakings and consents to make such records available for inspection at a location in the United States within 72 hours after service of the request; and

(6) Although it will continue to engage in normal commercial activities, no U.S. bank branch, office or division of the foreign person will establish relationships in the United States with the applicant's foreign futures and options customers for the purpose of facilitating or effecting transactions in foreign futures and option contracts in the United States.

Dated: August 19, 1999.

By the Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 99–22019 Filed 8–25–99; 8:45 am]

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Exemption from Registration for Certain Foreign FCMs and IBs

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing to amend the Commission's rules and regulations on Foreign Futures and Foreign Options Transactions to include new Rules 30.12.[1] The new rule will permit certain foreign firms acting in the capacity of FCMs and IBs to accept and execute foreign futures and options orders directly from certain U.S. customers via telephone, facsimile and electronic message without having to register with the Commission.

DATES: Comments must be received by October 25, 1999.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to *secretary@cftc.gov*. Reference should be made to "Commission Rules 30.12."

FOR FURTHER INFORMATION CONTACT: Laurie Plessala Duperier, Special Counsel, or Andrew Chapin, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418–5430.

SUPPLEMENTARY INFORMATION:

I. Background Information

A. Formal Rulemaking

In 1987, the Commission adopted a new Part 30 to its regulations to govern the offer and sale to U.S. persons of futures and option contracts entered into on or subject to the rules of a foreign board of trade.[2] These rules were promulgated pursuant to sections 2(a)(1)(A), 4(b) and 4c of the Commodity Exchange Act ("Act"), which vest the Commission with exclusive jurisdiction over the offer and sale, in the United States, of options and futures contracts traded on or subject to the rules of a board of trade, exchange or market located outside of the United States.

Part 30 sets forth regulations governing foreign futures[3] and foreign option[4] transactions executed on behalf of foreign futures or foreign options customers.[5] For example, Rule 30.4 requires any person engaged in the activities of a futures commission merchant ("FCM"), introducing broker ("IB"), commodity pool operator ("CPO") and commodity trading advisor ("CTA"), as those activities are defined within the rule, to register with the Commission unless such person claims relief from registration under Part 30. The transactions which are subject to regulation and require registration under Part 30 include the solicitation or acceptance of orders for trading any foreign futures or foreign option contract and acceptance of money, securities or property to margin, guarantee or secure any foreign futures or foreign option trades or contracts.[6]

Under Part 30, certain persons located outside the United States may obtain an exemption from registration and certain other requirements. For example, under Rule 30.10 and Appendix A thereto, the Commission may exempt a foreign firm that solicits or accepts orders (and accepts money, securities or property to margin the trades made thereto) from U.S. foreign futures and options customers from compliance with certain Commission rules, including those rules pertaining to registration, provided that a comparable regulatory system exists in the firm's home country and that certain safeguards are in place to protect U.S. investors, including an information-sharing arrangement between the Commission and the firm's home country regulator.[7] In addition, under Rule 30.5, the Commission may exempt foreign persons acting in the capacity of an IB, CPO or CTA from registration, provided that the person complies with certain requirements.[8]

B. Interpretation of the Registration Requirement of Rule 30.4

The Division of Trading and Markets ("Division") has issued advisories and interpretative letters that more specifically define the scope of permissible activity under Part 30 and what activities by foreign futures and options brokers ("FFOBs")[9] trigger the Commission registration requirement under Rule 30.4(a). In 1987, the Division issued an interpretative letter regarding registration by an FFOB that carries an FCM's customer omnibus account. The Division indicated that certain unregistered FFOBs would not be required to register pursuant to Rule 30.4 if their activities on a foreign exchange on behalf of U.S. foreign futures and options customers were limited solely to carrying foreign futures and options accounts on an omnibus basis on behalf of an FCM and to performing the services incidental thereto.[10] The Division reasoned that registration should not be required in that circumstance because of the presence of an "intervening U.S. registrant, i.e., a U.S. FCM, to whom the rules would be fully applicable."[11] The Division, however, limited this relief to the members of a foreign exchange and/or the affiliates of an FCM.[12]

In 1993, the Division issued an advisory permitting certain foreign affiliates of a U.S. FCM not registered with the Commission that carry the customer omnibus account of the FCM to receive orders for trades placed directly by certain foreign futures and options customers for execution for or on behalf of such customers through the FCM's customer omnibus account.[13] The Division reasoned that the regulatory purposes of the Act would not be adversely affected if direct contacts between certain institutional customers and certain affiliates of an FCM were permitted under circumstances where the FCM could adequately control the transactions for which its omnibus account would be obligated by such direct customer contacts.[14] Accordingly, the Division interpreted Rule 30.4 to exempt from registration those foreign affiliates[15] that have received confirmation of Rule 30.10 relief[16] who receive orders directly from "authorized customers"[17] for or on behalf of such customers through the FCM's customer omnibus account.[18] This relief, however, was contingent upon the FCM's compliance with certain conditions. As outlined in the Advisory, an FCM was required to institute certain procedures with regard to its ability to adequately supervise the impact of such requests on its financial condition, confirm and supervise foreign futures and options orders placed through its customer omnibus account, and maintain an audit trail to track an order from the time it is placed to the time it is cleared and reported back to the foreign futures and options

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[1] Commission rules referred to herein are found at 17 CFR Ch. I (1999).

[2] 52 FR 28980 (August 5, 1987).

[3] "Foreign futures" as defined in Part 30 means "any contract for the purchase or sale of any commodity for future delivery made, or to be made, on or subject to the rules of any foreign board of trade." Commission rule 30.1(a).

[4] "Foreign option" as defined in Part 30 means "any transaction or agreement which is or is held out to be of the character of, or is commonly known to the trade as, an 'option', 'privilege', 'indemnity', 'bid', 'offer', 'put', 'call', 'advance guaranty', or 'decline guaranty', made or to be made on or subject to the rules of any foreign board of trade," Commission Rule 30.1(b).

[5] Pursuant to Commission Rule 30.1(c), "Foreign futures or foreign options customer" means "any person located in the United States, its territories or possessions who trades in foreign futures or foreign options: *Provided*, That an owner or holder of a proprietary account as defined in paragraph (y) of § 1.3 of this chapter shall not be deemed to be a foreign futures or foreign options customer within the meaning of §§ 30.6 and 30.7 of this part."

[6] *See* Commission rule 30.4.

[7] *See* Appendix A to Part 30; 62 FR 47792 (September 11, 1997) ("Delegation Order"). Note that persons located inside the United States may petition for an exemption under Rule 30.10 separate from the comparability relief provided for in Appendix A.

[8] An exemption from registration pursuant to Rule 30.5 requires a foreign person acting in the capacity of an IB, CPO or CTA to file a petition for exemption with NFA and to designate an agent for service of process. As set forth in the most recent amendments to Rule 30.5, 64 FR 28910 (May 28, 1999), the Rule 30.5 applicant must (1) provide general background information and information regarding the firm's fitness to conduct business with U.S. customers, (2) irrevocably agree to the jurisdiction of the commission and state and federal courts in the United States with respect to activities and transactions subject to Part 30, and (3) designate an agent for service of process. The agent for service of process must be a registered FCM, a registered futures association, or any other person located in the United States in the business of providing agency services. In addition, Rule 30.5 requires that only a U.S. FCM or a foreign broker who has received confirmation of Rule 30.10 relief, infra note 15, may carry accounts for or on behalf of any foreign futures or foreign options customer.

[9] For this preamble and the proposed rule, "foreign futures and options broker" will mean any person located outside the United States or its territories that is a member of a foreign board of trade, as defined in § 1.3(ss) of the Act, and is licensed, authorized or otherwise subject to regulation of a foreign jurisdiction. This term has not been previously defined in any of the Advisories. In another proposed rulemaking issued on this date, the term "foreign futures and options broker" will be similarly defined in proposed amendments to Rule 30.1. The Commission believes that a formal definition of "foreign futures and options broker" is necessary to distinguish it from the definition of "foreign broker" for purposes of Parts 15 through 21 of the Act. Commission Rule 15.00(a)(1) ("foreign broker" means "any person located outside the United States or its territories who carries an account in commodity futures or commodity options on any contract market for any other person").

[10] CFTC Letter No. 87–7, Comm. Fut. L. Rep. (CCH) ¶23,792 (November 17, 1987).

[11] *Id.* at 34,408.

[12] *Id.* at 34,407–408. An affiliate of an FCM who is not also a member of the relevant foreign exchange must be licensed, authorized or otherwise subject to regulation in accordance with the relevant laws, rules or regulations of that foreign jurisdiction. In addition, the foreign affiliate must identify to the Commission and the National Futures Association the foreign clearing member through which the affiliate conducts business and agree to respond to requests for information and records concerning transactions on such foreign exchange. *Id.* at 34,408.

[13] CFTC Advisory No. 93–115, Comm. Fut. L. Rep. (CCH) ¶ 25,932 at 41,047 (December 23, 1993).

[14] *Id.* at 41,052.

[15] The unregistered FFOB must either have a parent/subsidiary relationship with an FCM or otherwise be affiliated through common ownership. *Id.* at 41,054.

[16] Rule 30.10 and Appendix A thereto allows the Commission to exempt a foreign firm that solicits or accepts orders (and accepts money, securities or property to margin the trades made thereto) from U.S. foreign futures and options customers engaging in those acts described by Rule 30.4(a) from compliance with certain Commission rules and regulations based upon the firm's compliance with comparable regulatory requirements imposed by the firm's home-country regulator. The Commission has established a process whereby a foreign regulator or self-regulatory organization ("SRO") can petition on behalf of its regulatees or members, respectively, for such an exemption based upon the comparability of the regulatory structure in the foreign jurisdiction to that under the Act. Once the Commission determines that the foreign jurisdiction's regulatory structure offers comparable regulatory oversight, the Commission issues an Order granting general relief subject to certain conditions. Firms seeking confirmation of relief must make certain representations set forth in the Rule 30.10 Order issued to the regulator or SRO from the firm's home country. For a more detailed discussion of the Commission's comparability analysis and the representations to be made by foreign regulators and individual foreign firms, see FR 47792, 47793 (September 11, 1997).

[17] For the purpose of CFTC Advisory No. 93–115, "authorized customers" meant:

(i) An FCM, IB, CPO or CTA registered as such with the Commission;

(ii) A broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934;

(iii) An investment company registered under the Investment Company Act of 1940 or a business development company defined in section 2(a)(48) of the Act;

(iv) An insurance company as defined in section 2(13) of the Securities Act;

(vi) A plan established by and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5,000,000;

(vii) An employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974, *provided* that the investment decision is made by a plan fiduciary, as defined in section 3(21) of the Act, which is a bank, savings and loan association, insurance company, or registered adviser, or that the employee benefit plan has total assets in excess of $5,000,000;

(viii) A private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940;

(ix) An organization described in section 501(c)(3) of the Internal Revenue Code, with total assets in excess of $5,000,000;

(x) A corporation, Massachusetts or similar business trust, or partnership, other than a pool which has total assets in excess of $5,000,000;

(xi) A natural person who individually or with that person's spouse owns a portfolio of securities and other property with an aggregate market value of at least $5,000,000;

(xii) A pool, trust, insurance company separate account or bank collective trust, with total assets in excess of $5,000,000;

(xiii) A foreign person substantially equivalent to those persons described in paragraph (i) through (xii) above; or

(xiv) A governmental entity (including the United States, a state, or foreign government) or political subdivision thereof, or a multinational or supranational entity or an instrumentality, agency or department of any of the foregoing.

Id. at 41,052–053.

[18] *Id.* at 41,052–054.

customer.[19] With these procedures in place, unregistered foreign affiliates of a U.S. FCM that had received confirmation of Rule 30.10 relief were permitted to accept directly orders from certain institutional investors for trades to be placed in the FCM's customer omnibus account,[20] and the Commission would have access to all the pertinent financial information should a problem arise.

In 1995, the Division issued another advisory expanding the bounds of permissible direct order transmittal to include contact between certain foreign futures and options customers and foreign affiliates of U.S. FCMs that were not registered and had not received confirmation of Rule 30.10 relief.[21] Subject to additional terms and conditions, the Division determined that the regulatory purposes of the Act would not be undermined by allowing these unregistered affiliates of FCMs to accept orders directly from "authorized customers" for execution for or on behalf of such customers through the FCM's customer omnibus account.[22] Similar to the terms and conditions described in Advisory No. 93–115, the relief in Advisory No. 95–08 was contingent upon the satisfaction of certain conditions by the FCM. In particular, an FCM was required to ensure that customers authorized to transmit orders directly to its foreign affiliate only deal with "designated persons," i.e., a class of individuals working in the office of the foreign affiliate identified by and under the direct supervision of the FCM,[23] (2) that any "designated person" who accepted or entered orders in other than a clerical capacity be registered with the Commission as an AP, and (3) that all "designated persons" at the foreign affiliate were subject to the supervision of an AP of the FCM.[24] The FCM was also required to represent to the Commission that it was liable for all acts by the foreign affiliate through its "designated person" whether or not the "designated person" is registered with the Commission, or any person who acts in such capacity whether or not designated, for or on behalf of customers of the FCM under the circumstances described within the Advisory.[25] In addition, both the FCM, and the unregistered FFOB had to undertake to provide access to original books and records upon the request of the Commission, and represent that neither was aware of any law of the relevant foreign jurisdiction that would prohibit either entity from complying with this undertaking.[26] Moreover, a qualified, unregistered FFOC was required to consent to service of process in the United States with respect to its activities which are the subject of the Advisory.[27]

In the aggregate, the interpretative letter and advisories issued by the Division regarding Rule 30.4 have restricted the foreign order transmittal process to "authorized customers" of U.S. FCMs contacting the FCM's foreign affiliates. Recently, the Futures Industry Association ("FIA") has approached the Commission about a new rule regarding foreign order transmittal that would expand the relief from registration pursuant to Rule 30.4 to certain qualified, nonaffiliated FFOBs.[28] The rule proposed by FIA would not only allow unregistered, non-Rule 30.10 FFOBs to accept orders directly from U.S. customers for execution for or on behalf of such customers through the FCM customer omnibus account carried by the FFOB, but also permit unregistered, non-Rule 30.10 FFOBs to accept directly and execute these orders for the purpose of giving the trades up to another unregistered FFOB carrying the FCM's customer omnibus account.[29] FIA's proposed rule significantly expands the relief permitted by the existing interpretative letter and advisories issued by the Division.

FIA claims that, without such relief, there is a risk that sophisticated and/or institutional U.S. investors will transfer their foreign futures and options business offshore.[30] According to FIA, sophisticated investors execute more than 90 percent of all foreign domestic futures and options transactions entered into by U.S. investors.[31] These sophisticated investors desire direct access to international cash and futures markets in order to implement their trading strategies throughout the 24-hour trading day and do not require the protections afforded by the Act to less sophisticated investors.[32] These customers want to have the operational and economic efficiencies that are the natural consequence of having all of their futures and options transactions carried by a well-capitalized U.S. FCM.[33] In particular, these customers seek the lower costs associated with centralized recordkeeping, trade reconciliation, risk management and the margining of funds. FIA has noted that such an arrangement also affords the FCM a more complete picture of aggregate risk that the customer, and hence the FCM, is incurring.[34]

The Commission has determined to propose Rule 30.12 to address the concerns raised by FIA, and invites public comment on all aspects of the proposed rule. The Commission believes that the proposed rule would provide for a significant liberalization of existing rules and interpretative statements.

[19] *Id.*

[20] The relief extended to certain unregistered FFOBs in Advisory No. 93–115 was limited to an FCM's institutional customer's ability to place orders directly with the FCM's Rule 30.10 qualified foreign affiliate which carried that FCM's customer omnibus account. If that foreign affiliate in turn had an omnibus account with yet another affiliated firm (or firms) with Rule 30.10 relief, the FCM's institutional customer was not permitted to use procedure described therein to place orders with other foreign affiliate of the FCM unless the trade processing and recordkeeping systems of the FCM and relevant affiliates were linked in a manner which would have permitted the FCM and relevant foreign affiliates to remain in compliance with the terms of the Advisory. *Id.* at 41,051.

[21] CFTC Advisory No. 95–08, Comm. Fut. L. Rep. (CCH) ¶ 26,300 at 42,489 (January 25, 1995). In Advisory No. 95–08, the Division did not modify the list of "authorized customers."

[22] *Id.* at 42,490.

[23] *Id.* at 42,490–491; *see* CFTC Letter No. 92–11, Comm. Fut. L. Rep. (CCH) ¶ 25,325 at 39,051 (June 25, 1992), as *modified by* CFTC Letter No. 93–83, Comm. L. Rep. (CCH) ¶ 25,949 at 41,089 (August 9, 1993) (discussing procedures necessary for an FCM to allow a foreign affiliate to handle Globex orders placed by a customer after normal business hours in the United States, a.k.a., "passing the book").

[24] *Id.* 42,490–491.

[25] *Id.* at 42,490.

[26] *Id.* at 42, 491.

Shortly after it issued CFTC Letter No. 95–08, the Division learned that local laws in both Japan and Hong Kong prevented firms located in those jurisdictions from removing original books and records from the country without prior notice to and consent from the appropriate regulatory agencies. *See* CFTC Letter No. 95–83, Comm. Fut. L. Rep. (CCH) ¶ 26,559 at 43, 490 (September 20, 1995). Accordingly, the Division issued a no-action position with regards to a U.S. FCM's Japanese and Hong Kong affiliates without Rule 30.10 relief, provided that the U.S. FCM making the request and affiliates agreed to provide authentic copies of the original books and records upon the request of the Commission. *Id.* at 43,491. Citing CFTC Letter No. 95–08, the Commission extended this avenue of relief to all U.S. FCMs with Japanese and Hong Kong affiliates. Delegation Order, 62 FR at 47795, n.31.

[27] CFTC Letter No. 95–05, ¶ 26,300 at 42,491.

[28] Letter from Ronald H. Filler, President, FIA's Law and Compliance Division, to the Division of Trading and Markets, dated February 18, 1999. The FIA proposal did not restrict FCM participation to those firms that met certain minimum capital requirements, nor did it limit the category of foreign brokers to those that were clearing members of foreign exchange. The Commission believes that these limitations are essential and as discussed below, has incorporated those provisions into the proposed rule.

[29] *Id.* at Appendix A, p. 4 ("Example 4. Transaction Executed by Executing Firm and Given-Up to Firm Carrying US FCM Customer Omnibus Account").

[30] *Id.* at 4.

[31] *Id.* at 2.

[32] *Id.* at 3.

[33] *Id.*

[34] *Id.*

II. Proposed Rule 30.12

As the Commission noted in its adoption of Part 30, "the implementation of a regulatory scheme such as this is an evolving process, particularly as the issues are numerous and complex."[35] The Commission believes that it is appropriate to amend provisions of Part 30 at this time to continue the Commission's efforts to update and to modernize its regulations. This effort is particularly appropriate now, when many futures and options exchanges are accessible 24 hours per day and customers, particularly sophisticated customers, want prompt access to exchanges globally.

Specifically, the Commission proposes to allow certain foreign firms with sufficient capital and regulatory oversight to directly receive foreign futures and options orders from certain sophisticated U.S. customers without having to register with the Commission, regardless of whether such firm has received confirmation of Rule 30.10 relief or is an affiliate of a U.S. FCM, or whether such firm carries the FCM's customer omnibus account.[36] Further, a qualified customer of an FCM may, with the consent of the FCM,[37] directly place a foreign futures and/or options order with an unregistered FFOB who either carries the FCM's customer omnibus account, or transfers the trade pursuant to a give-up arrangement to the unregistered FFOB that carries the FCM's customer omnibus account, without requiring either FFOB to register or obtain a Rule 30.10 exemption. Such a rule will permit qualified U.S. investors to select execution and clearing firms based upon their analysis of the respective services that each firm provides. Under the proposed rule, a qualified investor would be able to execute foreign futures and options trades through unregistered FFOBs without having to sacrifice the operational and economic efficiencies offered by a single U.S. global clearing firm, such as centralized recordkeeping, trade reconciliation, and the margining of funds.

In proposing Rule 30.12, the Commission has also sought to protect customers and to minimize systemic risk. Both of these concerns were implicated in the recent failure of Griffin Trading Company ("Griffin"), which is instructive here. Late last year, a London customer of Griffin placed orders on Eurex Deutschland, a German electronic futures and options exchange, through an executing broker in London with instructions to give up the trades to the clearing firm with which Griffin maintained a customer omnibus account. The customer's orders executed by the executing broker for give-up to Griffin's customer omnibus account far exceeded the customer's ability to pay and exceeded the amount of funds on margin in the customer's account. While Griffin itself presumably would not have executed the customer's voluminous orders, the unaffiliated executing broker did. Since neither the customer nor Griffin was able to meet the margin calls issued by the broker carrying Griffin's customer omnibus account, Griffin defaulted and ultimately became insolvent.

It would be impossible to fashion regulations that would adequately protect against every rogue customer placing trades in excess of his financial resources; nor can the Commission guarantee that no broker will ever fail. Rather, the Commission must strike a reasonable balance between permitting and encouraging market efficiency and growth, and protecting against known risks, particularly those that have systemic implications. Accordingly, the Commission proposes to permit direct order transmittal to unregistered FFOBs only if the primary participants in direct foreign order transmittal (e.g., the customer, the U.S. FCM and the FFOB) posses the sophistication and the financial resources to mitigate the risk that any default or failure by an individual customer or firm will threaten the integrity of the market itself or cause other customers to lose their money. Had Griffin, the executing broker and the London customer been required to follow the proposed rules, the customer could not have lawfully placed the trades that resulted in Griffin's collapse because all of the rule's eligibility requirements would not have been met.

Under the proposed rule, an FFOB that is not registered with the Commission and has not received confirmation of Rule 30.10 relief will be permitted to receive orders directly from certain U.S. customers for execution on a foreign exchange only under the circumstances described below. The exemption from registration for qualified, unregistered FFOBs does not apply to the solicitation of U.S. foreign futures and options customers. Under the proposed rule, the qualified customer, or the U.S. FCM acting on its behalf, must initiate contact with the FFOB in an effort to establish a transactional relationship with consent of the U.S. FCM that carries its account. Once the transactional relationship is established, the FFOB may then provide services incidental to that relationship, including the provision of up-to-date market information to the customer and the confirmation of any trades placed by the customer directly with the FFOB. At no time may the qualified FFOB solicit current or prospective foreign futures and options customers, direct the trading in any authorized foreign futures and options customer account, or engage in any other activity that would require registration under the Act without an appropriate exemption.

A. Eligible Participants

(1) Authorized Customers

The Commission proposes to limit direct foreign order transmittal to only the most sophisticated of U.S. investors. In the past, the Commission has identified particular groups of investors who do not require the full customer sales practice protections afforded by the Act.[38] The Commission believes that the risks inherent in the procedures permitted by the proposed rule require a distinct, more narrowly-defined class

[35] 52 FR at 28980.

[36] For the purpose of this proposed rulemaking, "customer omnibus account" means an account in which the transactions of one or more customers are combined and carried in the name of the originating FCM rather than separately.

[37] Since ultimate responsibility for trades executed through the customer omnibus account lies with the FCM, the customer must receive approval from the FCM before engaging in direct foreign order transmittal.

[38] For example, in part 4 of the Commission's rules, the Commission defined certain investors to be "qualified eligible participants" ("QEPs") and "qualified eligible clients" ("QECs") for the purpose of allowing CPOs and CTAs, respectively, to avoid certain registration, disclosure, recordkeeping and reporting obligations with respect to activities undertaken in connection with these sophisticated persons. Working with the definition of an "accredited investor," as defined by Regulation D of the Securities Act, 17 C.F.R. 230.501–230.508, the Commission defined QEP and QEC status by means of "objective criteria that such persons possess either the investment expertise and experience necessary to understand the risks involved, as evidenced by the registered status of certain investment professionals, or have an investment portfolio of a size sufficient to indicate that the participant has substantial investment experience and thus a high degree of sophistication with regard to investments as well as financial resources to withstand the risk of their investments." 57 FR 3148, 3151 (January 28, 1992) (proposed Rule 4.7); 57 FR 34853, 34854 (August 7, 1992) (final Rule 4.7).

Similarly, the Commission adopted Parts 35 and 36 to allow certain sophisticated investors to engage in swaps and contract market transactions, respectively, in the absence of any Commission oversight. For the purpose of defining "eligible swap participant" for Part 35, the Commission generally used the list of "appropriate persons" set forth in new section 4(c)(3)(A) through (J) of the Act and utilized the authority granted by section 4(c)(3)(K) to include other persons. 58 FR 5587, 5589 (January 22, 1993). For the purpose of defining "eligible participant" for Part 36, the Commission created a class of sophisticated persons derived from the list of "appropriate persons" and the definition of "eligible swap participant." 60 FR 51323, 51328 (October 2, 1995).

of sophisticated investors, called "authorized customers" for the purpose of this rule. Proposed Rule 30.12 will allow authorized customers to enter into transactions with parties that may or may not be (1) subject to the jurisdiction of the courts of the United States or the Commission's reparations or arbitration program, nor (2) supervised or controlled by a U.S. FCM. As a result, the transactions may implicate laws, rules, regulations, customs and/or usages that offer different or diminished protection from those that govern transactions on U.S. exchanges. Accordingly, the Commission seeks to identify those sophisticated investors who it reasonably believes will appreciate the additional risk associated with transmitting orders to foreign brokers not registered or supervised by the Commission and who are sufficiently well-capitalized to withstand the risk of such transactions. Note that, unlike the exemption granted to eligible swap participants pursuant to Part 35, proposed Rule 30.12 would focus on the financial sophistication of the person managing the assets and not the individual contributors to a commodity pool or the clients of a CTA.

The Commission believes that financial institutions have the sophistication to manage and appreciate the risk of such transactions. These institutions include banks, savings associations, credit unions, insurance companies, investment companies subject to the regulation under the Investment Company Act of 1940, broker-dealers subject to regulation under the Securities Exchange Act of 1934, and FCMs. Moreover, these institutions are subject to ongoing regulation regarding, among other things, their financial condition.

Similarly, futures industry professionals, such as CPOs and CTAs, generally obtain professional licenses by passing proficiency exams which cover, among other things, the risks associated with commodity markets. However, their proficiency may not necessarily include an understanding of the risks of dealing in foreign futures and options. As a proxy for such understanding, the Commission proposes to require foreign brokers seeking relief under proposed Rule 30.12 to only accept orders from CPOs and CTAs that "have an investment portfolio of a size sufficient to indicate that the participant has substantial investment experience and thus a high degree of sophistication with regard to investments as well as financial resources to withstand the risk of their investments." [39] In a like manner, business associations (including, but not limited to, corporations, proprietorships and partnerships) may not possess the financial acumen to appreciate adequately the risks of direct foreign order transmittal, and therefore, should also be required to maintain a significant asset level as a proxy for their financial sophistication. However, since business associations are putting their own funds at risk, and not the funds of a third party investor, the Commission proposes to require a lower level of net assets to serve as a proxy for financial sophistication. Accordingly, the Commission proposes to define authorized customer to include those CPOs and CTAs with $50,000,000 in funds under management, and those business associations with $10,000,000 in net assets, as well.

In addition, the Commission proposes not to include customer floor brokers [40] and floor traders in the definition of authorized customers.[41] U.S. floor brokers and floor traders may be well=versed in the risks of trading on U.S. futures exchanges, but are not required to be experts in trading foreign futures and options. For similar reasons, the Commission proposes not to include in the definition of "authorized customer" employee benefit plans and state and local government entities. It is important to note that, despite their exclusion from the list of authorized customers, small CPOs and CTAs, as well as state and local government entities and employee benefit plans, may continue to place orders for foreign futures and options through a U.S. FCM or a Rule 30.10 firm, in accordance with Part 30 of the regulations.

The Commission requests comments specifically addressed to whether these "authorized customers" eligibility requirements are appropriate and whether net asset, net worth or other financial criteria should be increased or decreased.

The Commission's proposed eligibility requirements for "authorized customers" apply equally regardless of whether the foreign executing broker directly receiving the order carries the FCM's customer omnibus account, or gives up the trade for clearing to either the foreign broker carrying the FCM's omnibus account or directly to the FCM. The Commission believes that, in order to simplify the operational aspects of complying with and enforcing the rule, one uniform standard should define "authorized customers." For example, if the minimum financial requirements for authorized customers differed depending on whether there was a give-up trade, then a customer might be permitted to utilize direct foreign order transmittal for orders placed only in those jurisdictions where the FCM maintains an omnibus account. Thus, the U.S. FCM would have to create and maintain separate lists of those investors qualified to place orders on each exchange, and implement internal procedures necessary to monitor and apply the bifurcated rule. Similarly, a rule requiring different standards for those firms executing orders placed directly in an FCM's customer omnibus account and those firms executing orders pursuant to a give up arrangement would unnecessarily prejudice U.S. FCMs that do not maintain numerous customer omnibus accounts abroad. Accordingly, the Commission proposes a single standard to identify which "authorized customers" can participate in direct foreign order transmittal.

(2) U.S. FCM Carrying Brokers

The Commission also proposes to limit direct foreign order transmittal to authorized customers of FCMs whose adjusted net capital exceeds minimum requirements. In a typical FCM-customer relationship, the FCM limits the size of any one customer's open positions based upon the customer's financial condition and creditworthiness. These trading limits are generally correlated to the amount of assets available to the customer to satisfy its contractual obligations, and serve to protect the FCM (and derivatively, other market participants) in the event that a customer's aggregate position declines significantly. Should the customer place an order directly with an FCM that exceeds the customer's trading limits, the FCM may reject the order. If the FCM does not reject the order, and the customer cannot deposit additional funds to cover any subsequent loss, then the FCM will have to use its own capital to satisfy the margin call from a clearinghouse or clearing broker or it will be in default.

Under the proposed rule, an FCM may not be able to prevent an authorized customer from placing orders in excess of its trading limits with an unaffiliated FFOB.[42] More specifically, an authorized customer may place trades with an FFOB in multiple international markets without the immediate knowledge of the FCM. Under these circumstances, an FCM may be responsible for the trades even though the positions exceed a customer's trading limits. Therefore, FCMs should possess sufficient capital to meet an unusually large margin call and thus mitigate against the increased systemic risk.[43] Accordingly, the Commission proposes to require FCMs whose authorized customers use direct foreign order transmittal to possess either $50,000,000 in adjusted net capital as defined by Rule 1.17(c)(5)[44], or three times the amount of adjusted net capital required by Rule 1.17(a)(1)(i)(B).[45] The FCM's compliance with this requirement will be determined by reference to the most current Form 1–FR filed (or required to have been filed) by the FCM with the Commission. With either amount of capital in reserve, the FCM would more likely be able to satisfy the obligations of its authorized customers without implicating the integrity of the market as a whole or impacting other customers. In addition, the alternative minimum capital requirement will allow smaller FCMs to participate in the direct foreign order transmittal process, provided that they maintain a proportionate amount of excess capital to mitigate the risk associated with the activities of their authorized customers.[46] Should an FCM fail to satisfy both of the minimum financial requirement alternatives outlined above, it may seek relief from this requirement by petitioning the Division for a no-action position accordance with Rule 140.99.

The Commission requests comments specifically addressed to whether these thresholds are appropriate in light of the increased systemic risk associated with direct foreign order transmittal and whether other financial criteria should be applied to determine the eligibility of a U.S. FCM to participate in the process.

The FCM is responsible, along with the unregistered FFOB, for determining which of the FCM's customers qualify as authorized customers and for ensuring that the FCM maintains excess capital as required by the rule. An FCM's breach of either of these core obligations shall be considered a violation of the proposed rule. In addition, the proposed rule requires each participating FCM to also establish, or continue to maintain, reasonable procedures to facilitate compliance with the other obligations imposed by the proposed rule regarding its ability to supervise adequately the impact of such orders on its financial condition, confirm and supervise foreign futures and options orders placed through its customers omnibus account, and maintain an audit trail to track an order from the time it is placed in the customer omnibus account to the time it is cleared and reported back to the foreign futures and options customer. An FCM's breach of any of these obligations shall be considered a violation of the proposed rule. Note that nothing in the proposed rule discharges an FCM of its duty to comply with the requirements set forth in the Act, including, but not limited to, its obligation to maintain the secured amount set forth in Rule 30.7.

(3) Foreign Futures and Options Brokers

The Commission also proposes to specify which FFOBs may receive foreign futures and options orders via direct foreign order transmittal from U.S. customers without being required to register or obtain Rule 30.10 relief. Absent registration with the Commission, the Commission believes that FFOBs should be, at a minimum, registered, licensed or otherwise subject to regulation in the jurisdiction in which they are located. While the Commission recognizes that such registration, licensing or other regulation may offer different or even diminished protection to U.S. investors (and carrying brokers), authorized customers and qualified FCMs will know that the unregistered FFOB is subject to the jurisdiction of a foreign regulatory authority. In addition, the Commission believes that an FFOB's decision to register abroad evidences its intent to act according to the governing statutes. Accordingly, the Commission proposes that FFOBs not registered with the Commission that accept orders pursuant to the guidelines of proposed Rule 30.12 be licensed, authorized or otherwise subject to regulation in accordance with the relevant laws, rules or regulations of the foreign jurisdiction in which they are located.

The Commission also proposes to require unregistered FFOBs seeking to accept orders via direct order transmittal to demonstrate an ability to mitigate against the effect of default on the exchange on which the order is placed in the event that the FCM carrying the authorized customer's account rejects a trade or is unable to meet a margin call generated by one of its customers' trades. As one alternative, the Commission proposes to require that an unregistered FFOB that accepts orders from authorized persons in accordance with Rule 30.12 be a clearing member (or a majority-owned affiliate thereof) on the exchange on which the trade is executed. Although minimum capital requirements for FFOBs vary from jurisdiction to jurisdiction, in general, clearing members must maintain greater capital. In the event that the FCM carrying the authorized customer's account rejects a trade or is unable to meet a margin call generated by one of its customers' trades, the clearing member, or derivatively, its majority-owned affiliate, would be able to prevent a series of potential defaults by other intermediaries and/or counterparties by absorbing the loss. As a second alternative, the Commission proposes to allow those unregistered FFOBs affiliated with FCMs to accept orders from authorized persons in accordance with proposed Rule 30.12. As described in the existing advisories, the Commission believes that an FCM and its affiliates have a relationship that fosters the ability to exchange information as necessary to prevent an authorized customer from exceeding its trading limits without authorization and thereby putting the affiliate and the FCM at risk. Accordingly, the Commission proposes that unregistered FFOBs operating pursuant to proposed Rule 30.12 be clearing members on the exchange on which the order is executed, a majority-owned affiliate of a clearing member located in the

[39] *See, e.g.*, 57 FR 3148, 3151.

[40] "Floor Broker" means "any person who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, shall purchase or sell for any other person any commodity for future delivery on or subject to the rules of any contract market." Section 1a(8) of the Act.

[41] "Floor Trader" means "any person who, in or surrounding any pit, ring, post, or other place provided by a contract market for the meeting of persons similarly engaged, purchases, or sells solely for such person's own account, any commodity for future delivery on or subject to the rules of any contract market." Section 1a(9) of the Act.

[42] Financial obligations arising from a customer trading in excess of its limits are resolved according to privately-negotiated contractual arrangements entered into by the customer, the FCM and/or the intermediating FFOBs, and/or the laws, rules and regulations of the exchange governing such a transaction.

[43] While some of these risks are present in domestic give-up arrangements, they are mitigated by the fact that on U.S. exchanges all participants to the transaction, including the floor brokers and traders, are either clearing members of that exchange or guaranteed by clearing members. Not all foreign exchanges have similar requirements.

[44] Commission Rule 1.17(c)(5).

[45] Commission Rule 1.17(a)(1)(i)(B). Rule 1.17(a)(1)(i) requires FCMs to maintain adjusted net capital equal to or in excess of the greatest of various statutorily defined amounts, including:

(B) Four percent of the following amount: the customer funds required to be segregated pursuant to the Act and the regulations in this part and the foreign futures or foreign options secured amount, less the market value of commodity options purchased by customers on or subject to the rules of a contract market or a foreign board of trade for which the full premiums have been paid: *Provided*, however, That the deduction for each customer shall be limited to the amount of customer funds in such customer's account(s) and foreign futures and foreign options secured accounts.

[46] The Commission notes that as of March 31, 1999, 41 out of the 200 firms currently registered as FCMs would not satisfy the threshold financial requirements. Of those 41, only 14 (or 7% of the total number of FCMs) carry accounts on behalf of foreign futures and options customers.

jurisdiction in which the trade is executed or be an affiliate of the U.S. FCM that carries the authorized customer's account.

The Commission request comments specifically addressed to whether these requirements for unregistered FFOBs are appropriate in light of the increased risk associated with direct foreign order transmittal.

B. Procedural Safeguards

In addition to limiting direct order transmittal to a select class of investors, carrying brokers, and FFOBs, the Commission proposes to require carrying brokers to perform certain tasks designed to apprise authorized customers of the risks of dealing directly with a foreign broker and to mitigate against the risks of customer default. Under both FIA's proposal and the Commission's proposed rule, the U.S. FCM carrying the account of an authorized customer will be required to furnish an additional risk disclosure document to authorized customers advising them of the risks of placing orders directly with an unregistered foreign broker before the authorized customer contacts any FFOB. While the Commission is sensitive to the costs imposed upon carrying brokers by an additional disclosure requirement, it believes the additional disclosure is necessary in light of the risks associated with direct foreign order transmittal. In addition, the U.S. FCM will be required to establish guidelines for direct contacts between any of its authorized customers and any FFOB exempt from registration under the proposed rule, and devise appropriate risk management procedures to monitor its own risk relative to its authorized customers' risk aggregated across all markets. The Commission believes that these requirements will serve to further mitigate the increased systemic risk associated with direct foreign order transmittal by promoting the flow of relevant information among the parties to the transaction.

This proposed rule will apply to transmittal of orders to an FFOB by telephone, facsimile and electronic mail messages. The rule shall not address the transmission of orders via a screen-based direct trading system or automated order routing system for execution on an electronic foreign exchange. The relief under the proposed rule also is not available to any FFOB that directly carries the customer account for any foreign futures or options customers,[47] unless the FFOB has applied for and received confirmation of Rule 30.10 relief in accordance with existing procedures[48] or is registered with the Commission as an FCM.

Note that this proposed rule would replace prior Commission advisories as the sole source of authorization for those unregistered FFOBs that directly accept orders from foreign futures and options customers.[49] In addition, note that the proposed rule does not alter any obligation to comply with other provisions of the Act, or any existing regulatory obligations to the Securities and Exchange Commission or state securities administrators. The Commission seeks comments on this proposed rule at that time and invites comment regarding any other amendments to Part 30 that may be appropriate in light of these proposed rules.

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–611, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[50] The Commission previously has determined that registered FCMs and CPOs are not small entities for the purpose of the RFA.[51] With respect to CTAs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs would be considered to be small entities and, if so, the economic impact on them of any rule.[52] Due to the minimum capital requirements for CTAs under proposed Rule 30.12, the Commission believes that it is unlikely that firms defined as small businesses could qualify as an authorized customer for the purpose of engaging in direct order transmittal. Further, the proposed rule would not add any legal, accounting, consulting or expert costs because the determination of whether a business qualifies as an authorized person requires minimal analysis of data that will be readily accessible. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Nonetheless, the Commission specifically requests comment on the impact these proposed rules may have on small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.* (Supp. I 1995)) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA.

While the proposed rule discussed herein has no burden, the group of rules (3038–0023, Rules, Regulations and Forms for Domestic and Foreign Futures and Options Related to Registration with the Commission) of which it is a part has the following burden:

Average Burden Hours Per Response: 18.11.

Number of Respondents: 76,750.

Frequency of Response: Annually and On Occasion.

The Office of Management and Budget (OMB) approved the collection of information associated with this group of rules on May 26, 1999. Copies of the OMB-approved information collection submission are available from the CFTC Clearance Officer, 1155 21st Street, NW, Washington, DC, 20581 (202) 418–5160.

[47] The relief described herein will extend to those FFOBs that accept orders directly from an authorized customer of a U.S. FCM that maintains a customer omnibus account with a single foreign affiliate who, in turn, maintains customer omnibus accounts with FFOBs on various foreign exchanges, provided that the U.S. FCM independently satisfies the minimum capital requirements prescribed by the proposed rule, and the U.S. FCM, its foreign affiliate and the FFOB otherwise comply with the conditions outlined therein.

[48] Unlike an unregistered FFOB, a Rule 30.10 firm must, among other things, consent to jurisdiction in the United States, agree to provide access to its original books and records, represent that no principal of the firm would be disqualified under Section 8a(2) of the Act from registering to do business in the U.S. and consent to NFA arbitration. Information regarding the registration status of any FFOB, including those firms with exemptions from registration pursuant to Rules 30.5 and 30.10, is publicly available through NFA. Interested parties may contact NFA or access NFA's registration database, BASIC, at http://www.nfa.futures.org.

[49] The following advisories will be rescinded if the proposed rules are adopted: CFTC Advisory No. 93–115 (permitting unregistered foreign affiliates of a U.S. FCM that carry the customer omnibus account of the FCM to receive orders for trades placed directly by certain foreign futures and options customers for execution for or on behalf of such customers through the FCM's customers omnibus account, provided that the affiliate had obtained confirmation of Rule 30.10 relief) and CFTC Advisory No. 95–08 (extending the relief in Advisory No. 93–115 to unregistered foreign affiliates who had not received confirmation of Rule 30.10 relief). The Commission seeks comments from any party adversely affected by the determination to rescind CFTC Advisories Nos. 93–115 and 95–08.

[50] 47 FR 18618–18621 (April 30, 1982).

[51] 47 FR 18619–18620.

[52] 47 FR 18618–18620.

List of Subjects in 17 CFR Part 30

Definitions, Foreign futures, Consumer protection, Foreign options, Registration requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 2(a)(1), 4(b), 4c and 8a thereof, 7 U.S.C. 2, 6(b), 6c and 12a (1982), and pursuant to the authority contained in 5 U.S.C. 552 and 552b (1982), the Commission hereby proposes to amend Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 30—FOREIGN FUTURES AND OPTIONS TRANSACTIONS

1. The authority citation for part 30 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6, 6c and 12a, unless otherwise noted.

2. Section 30.12 is proposed to be added to read to follows:

§ 30.12 Direct foreign order transmittal.

(a) *Authorized customers defined.* For the purposes of this section an "authorized customer" of a futures commission merchant shall mean any foreign futures or foreign options customer, as defined in paragraph (c) of § 30.1 of this chapter, that:

(1) The futures commission merchant has authorized to place orders for the account of the futures commission merchant's foreign futures and foreign options customer omnibus account and

(2) Is:

(i) A bank or trust company acting on its own behalf;

(ii) A savings association or credit union;

(iii) An insurance company;

(iv) An investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.); provided, that such investment company is not formed solely for the specific purpose of constituting an authorized customer;

(v) A commodity pool operator subject to regulation under the Act, provided, that such commodity pool operator has funds, securities or property exceeding $50,000,000 under management for the purpose of trading in any commodity for future delivery or commodity option on or subject to any contract market or foreign board of trade, irrespective of whether the owner of the funds, securities or property under management independently satisfies any of the requirements set forth in paragraph (a) of this section;

(vi) A corporation, partnership, proprietorship, organization, trust, or other entity not formed solely for the specific purpose of constituting an authorized customer:

(A) Which has total assets exceeding $10,000,000, or

(B) The obligation which under the customer agreement with the futures commission merchant are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by any such entity referenced in paragraph (a)(2)(vi)(A) of this section or by an entity referred to in paragraph (a)(2) (i), (ii), (iii), (iv), (v), (vi) or (vii) of this section;

(vii) Any United States governmental entity, or political subdivision thereof, of any multinational or supranational entity or any instrumentality, agency, or department of any of the foregoing;

(viii) a broker-dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), acting on its own behalf, provided, however, that if such broker-dealer is a natural person or sole proprietorship, the broker-dealer must also meet the requirements of paragraph (a)(2)(vi) of this section;

(ix) A futures commission merchant subject to regulation under the Act acting on its own behalf, provided, however, if such futures commission merchant is a natural person or sole proprietorship, the futures commission merchant must also meet the requirements of paragraph (a)(2)(vi) of this section;

(x) A commodity trading advisor subject to regulation under the Act, including any investment adviser registered as such with the Securities and Exchange Commission that is exempt from regulation as such under the Act or Commission regulations, with total assets under management exceeding $50,000,000, irrespective of whether the owner of the assets under management independently satisfies any of the requirements set forth in paragraph (a) of this section.

(b) *Procedures for futures commission merchants.* It shall be unlawful for any futures commission merchant to permit an authorized customer to place orders for execution in the futures commission merchant's foreign futures and foreign options customer omnibus account directly with a person exempt from registration under paragraphs (c) and (d) of this section, unless, such futures commission merchant:

(1) Meets one of the following capital requirements, as determined by the FCM's most recent required filing of a Form 1–FR with the Commission:

(i) Possesses $50,000,000 in adjusted net capital, as defined by Rule 1.17(c)(5); or

(ii) Possesses three times the amount of adjusted net capital required by Rule 1.17(a)(1)(i)(B); and

(2) Has established control procedures that will serve as guidelines for permitting direct contacts between any authorized customer of the futures commission merchant and any person exempt from registration under paragraph (c) or (d), and has in place appropriate risk management procedures to monitor its own risk relative to its authorized customers' risk aggregated across all markets, including, but not limited to, procedures to ensure that each authorized customer satisfies the participation criteria set forth in paragraph (a) of this section and to specify the manner in which trades may be executed through its customer omnibus account pursuant to this section;

(3)(i) Furnishes a written disclosure statement to each such authorized customer, in a form acceptable to the Commission, advising the customer of the additional risks the customer may be assuming in placing orders directly with the foreign broker.

(ii) The disclosure statement must read as follows:

Direct Order Transmittal Client Disclosure Statement

This statement applies to the ability of authorized customers [1] of [US FCM] to place orders for foreign futures and options transactions directly with non-US entities (each, an "Executing Firm") that execute transactions on behalf of [FCM's] customer omnibus accounts.

Please be aware of the following should you be permitted to place the type of orders specified above.

- The orders you place with an Executing Firm are for [FCM's] customer omnibus account maintained with a foreign clearing firm. Consequently, [FCM] may limit or otherwise condition the orders you place with the Executing Firm.
- You should be aware of the relationship of the Executing Firm and [FCM]. [FCM] may not be responsible for the acts, omissions, or errors of the Executing Firm, or its representatives, with which you place your orders. In addition, the Executing Firm may not be affiliated with [FCM]. If you choose to place orders directly with an Executing Firm, you may be doing so at your own risk.
- It is your responsibility to inquire about the applicable laws and regulations that govern the foreign exchanges on which transactions will be executed on your behalf. Any orders placed by you for execution on that exchange will be subject to such rules and regulations, its customs and usages, as well as any local laws that may govern transactions on that exchange. These laws, rules, regulations, customs and usages may offer different or diminished protection from those that govern transactions on US exchanges. In particular, funds received from customers to margin foreign futures

transactions may not be provided the same protections as funds received to margin futures transactions on domestic exchanges. Before you trade, you should familiarize yourself with the foreign rules which will apply to your particular transaction. United States regulatory authorities may be unable to compel the enforcement of the rules of regulatory authorities or markets in non-US jurisdictions where transactions may be effected.

• It is your responsibility to determine whether the Executing Firm has consented to the jurisdiction of the courts in the United States. In general, neither the Executing Firm nor any individuals associated with the Executing Firm will be registered in any capacity with the Commodity Futures Trading Commission. Similarly, your contacts with the Executing Firm may not be sufficient to subject the Executing Firm to the jurisdiction of courts in the United States in the absence of the Executing Firm's consent. Accordingly, neither the courts of the United States nor the Commission's reparations program will be available as a forum for resolution of any disagreements you may have with the Executing Firm, and your recourse may be limited to actions outside the United States.

• Unless you object within five (5) days by giving notice as provided in your customer agreement after receipt of this disclosure, [FCM] will assume your consent to the aforementioned conditions.

[1] You should contact your account executive regarding your eligibility to participate in the direct order transmittal process.

(c) *Exemption for foreign futures and options brokers.* Any person not located in the United States, its territories or possessions, who is otherwise required in accordance with this part to be registered with the Commission as a futures commission merchant or as an introducing broker will be exempt from such registration, *provided*, that such person accepts orders for foreign futures and foreign options transactions from authorized customer via telephone, facsimile or electronic message for the execution of the trades for or on behalf of the customer omnibus account of a registered futures commission merchant that meets the requirements of paragraph (b)(1) of this section carried by the person, but does not solicit, or accept any money, securities or property (or extend credit in lieu thereof) directly, from any U.S. foreign futures and options customer to margin, guarantee to secure any trades or contracts that result or may result therefrom; and *provided further*, that such person is licensed, authorized or otherwise subject to regulation of the foreign jurisdiction in which such person is located, *and* is either a clearing member of a foreign exchange on which the trade is executed, a majority-owned affiliate of a clearing member located in the jurisdiction in which the trade is executed or an affiliate of the futures commission merchant referred to in this section.

(d) Exemption for foreign futures and options brokers carrying a customer omnibus account. Any person not located in the United States, its territories or possessions, who is otherwise required in accordance with this part to be registered with the Commission as a futures commission merchant will exempt from such registration, *provided*, that such person carries the customer omnibus account of a futures commission merchant that meets the requirements of paragraph (b)(1) of this section, and accepts orders for foreign futures and foreign options transactions from authorized customers via telephone, facsimile or electronic message for the execution of the trades for or on behalf of the customer omnibus account of a registered futures commission merchant either directly or pursuant to a give-up arrangement, and *provided further*, that such person is licensed, authorized or otherwise subject to regulation of the foreign jurisdiction in which such person is located, *and* is either a clearing member of a foreign exchange on which the trade is executed, a majority-owned affiliate of a clearing member located in the jurisdiction in which the trade is executed or an affiliate of the futures commission merchant referred to in this section.

Dated: August 19, 1999.

By the Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 99–22020 Filed 8–25–99; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 101 and 115

[Docket Nos. 98N–1230, 96P–0418, and 97P–0197]

Food Labeling: Safe Handling Statements: Labeling of Shell Eggs; Shell Eggs: Refrigeration of Shell Eggs Held for Retail Distribution; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the **Federal Register** of July 6, 1999 (64 FR 36492). The document proposed to require safe handling statements on labels of shell eggs that have not been treated to destroy Salmonella microorganisms. The document also proposed to require that, when held by retail establishments, shell eggs be stored and displayed under refrigeration at a temperature of 7.2°C (45°) or less. The document was published with some inadvertent errors. This documents corrects those errors.

DATES: Submit written comments by September 20, 1999.

FOR FURTHER INFORMATION CONTACT: Geraldine A. June, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION: In FR Doc. 99–17122, beginning on page 36492 in the **Federal Register** of Tuesday, July 6, 1999, the following corrections are made:

1. On page 36497, in the second column, in the first full paragraph, the 19th line is corrected by inserting the word "eggs" before the word "into".

2. On page 36498, in the first column, in the first full paragraph, the second line is corrected by inserting the phrase "consumption of" before "SE-".

3. On page 36507, in the first column, the last paragraph is corrected after the last line by adding "One comment suggested allowing existing safe handling labels. Several comments advocated some form of HACCP for shell eggs. Comments regarding the regulatory impact of the proposed rule are addressed below."

§ 101.17 [Corrected]

4. On page 36513, in § 101.17(h)(8)(i)(E)(*1*), in the second column, in the second line, "(h)(8)(iv)" is corrected to read "(h)(8)(i)(A)".

§ 115.50 [Corrected]

5. On page 36514, in § 115.50(e), in the second column, in the 19th line, "paragraphs (f)(2)(iii) through (f)(2)(v)" is corrected to read "paragraph (f)(2)(iii)".

§ 115.50 [Corrected]

6. On page 36514, in § 115.50(f)(1)(ii)(D), in the third column, in the fourth line, "(g)(4)" is corrected to read "(f)(1)(v)".

§ 115.50 [Corrected]

7. On page 36514, in § 115.50(f)(1)(iv), in the third column, in the forth line, "(g)(1)" is corrected to read "(f)(1)(i)".

Dated: August 19, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–22103 Filed 8–25–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

31 CFR Part 1

Privacy Act of 1974; Implementation

AGENCY: Internal Revenue Service, Department of the Treasury.

ACTION: Withdrawal of proposed rule.

SUMMARY: The Department of the Treasury, Internal Revenue Service (IRS) is withdrawing the proposed rule to exempt the system of records Treasury/IRS 00.003—Customer Feedback System (TBOR 2) from certain provisions of the Privacy Act.

FOR FURTHER INFORMATION CONTACT: Michael Sincavage, Director, 6103/Privacy Operations, Governmental Liaison and Disclosure, Internal Revenue Service, at 202–622–6200.

SUPPLEMENTARY INFORMATION: The IRS published a proposed rule on August 7, 1997, at 62 FR 42443 to exempt IRS 00.003—Customer Feedback System from certain provisions of the Privacy Act pursuant to section 5 U.S.C. 552a(k)(4). The records were to be maintained and used solely for statistical purposes. The Department of the Treasury is withdrawing the proposed rule because the records will no longer be used solely for statistical purposes due to passage of the Internal Revenue Service Restructuring and Reform Act of 1998, (Pub. L. 105–206, July 22, 1998).

Dated: July 28, 1999.

Shelia Y. McCann,

Deputy Assistant Secretary (Administration).

[FR Doc. 99–22206 Filed 8–25–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 167

[USCG–1998–3385]

Port Access Routes; Prince William Sound via Cape Hinchinbrook Entrance and Passages Within the Sound Between Port Valdez and Cape Hinchinbrook

AGENCY: Coast Guard, DOT.

ACTION: Notice of study results.

SUMMARY: The Coast Guard announces the results of a Port Access Route Study which evaluated the need for modifications to current vessel routing and traffic management measures in the approaches to, departures from, and within Prince William Sound, Alaska. The study was completed in March of 1999. This notice summarizes the study recommendations.

ADDRESSES: The Docket Management Facility, U.S. Department of Transportation (DOT), 400 Seventh Street SW, Washington, DC 20590–0001 maintains the public document for this notice. Documents and enclosures as indicated in this preamble, will become part of the docket and will be available for viewing electronically on the internet at http://dms.dot.gov/. The docket is also available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the above address between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Lieutenant Chris Holmes, Vessel Traffic Service Prince William Sound, telephone 907–835–7209; or Mr. Ed LaRue, Coast Guard Headquarters, Office of Waterways Services, telephone 202–267–0416. For questions on viewing material in the Docket, contact Dorothy Walker, Chief Dockets, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Definitions

The following definitions should help you review this notice.

Precautionary area means a routing measure comprising an area within defined limits where ships must navigate with particular caution and within which the direction of traffic flow may be recommended.

Separation Zone means a zone separating the traffic lanes in which ships are proceeding in opposite or nearly opposite directions; or separating a traffic lane from the adjacent sea area; or separating traffic lanes designated for particular classes of ships proceeding in the same direction.

Shipping Safety Fairway means a lane or corridor in which no artificial island or fixed structure, whether temporary or permanent, will be permitted.

Traffic lane means an area within defined limits in which one-way traffic is established.

Traffic Separation Scheme or (*TSS*) means a designated routing measure, which is aimed at the separation of opposing streams of traffic by appropriate means and by the establishment of traffic lanes.

Background and Purpose

Why Did the Coast Guard Conduct This Port Access Route Study?

During recent years, many commercial vessel operators in the Prince William Sound area have expressed the need to modify the existing TSS in Prince William Sound to reduce risk and improve vessel traffic efficiency. In late 1996, the Prince William Sound Risk Assessment Steering Committee completed an analysis of oil shipping risk within Prince William Sound (referred to as the Prince William Sound Risk Assessment). While this risk assessment focused on oil transportation, it did address all facets of maritime commerce in Prince William Sound. The risk assessment included recommendations to improve vessel routing measures. Based on public input and the findings of the Prince William Sound Risk Assessment, the Coast Guard conducted this Port Access Route Study to review and evaluate the need for modifications to current vessel routing and traffic management measures in the Prince William Sound area.

When Did the Coast Guard Conduct the Port Access Route Study?

The Coast Guard announced the study in a notice published in the **Federal Register** on February 9, 1998 (63 FR 6502). The Coast Guard completed the study in March, 1999.

What Are the Existing Vessel Routing Measures in the Approaches to, Departures From, and Within Prince William Sound?

Existing vessel routing measures include the TSS in Prince William Sound and Prince William Sound Safety Fairway.

The TSS runs from the vicinity of Cape Hinchinbrook through Prince William Sound and into the Valdez Arm (the entrance to Port Valdez). The TSS includes a network of traffic lanes with a separation zone in between the lanes. The traffic lanes are 1,371.6 meters (1,500 yards) wide from Hinchinbrook Entrance to the vicinity of Bligh Reef at the southeast end of the Valdez Arm, then gradually decreases in width to 914.4 meters (1,000 yards) and terminate at Rocky Point. The separation zone is 1,828.8 meters (2,000 yards) wide from Hinchinbrook Entrance to the vicinity of Bligh Reef, then gradually decreases in width to 914.4 meters (1,000 yards) and terminates at Rocky Point. The southern extremity of the TSS leads through the middle of Cape Hinchinbrook Entrance.

The Prince William Sound Safety Fairway is described in 33 CFR 166.400. Most vessels operating in the area use the Prince William Sound Safety Fairway. The one exception is laden tankers chartered by British Petroleum departing from Cape Hinchinbrook. Instead of using the Hinchinbrook to Gulf Safety Fairway, these tankers use an alternate route to reduce the risk of an oil spill near the Copper River Flats and Delta.

What Data Did the Coast Guard Use to Help Conduct the Port Access Route Study?

We relied on data from a variety of sources. Two documents, the 1994 Disabled Tanker Towing Study and the 1996 Prince William Sound Risk Assessment, provided supporting data and analysis for the Port Access Routes Study. Copies of these studies are available from either of the persons listed under **FOR FURTHER INFORMATION CONTACT**. They are also available in the public docket at the address listed under the **ADDRESSES** section and electronically on the DMS website at http://dms.dot.gov. In addition, Coast Guard Vessel Traffic Service Prince William Sound collected up-to-date vessel transit data to ensure data in the Prince William Sound Risk Assessment remained valid.

We also considered the 12 written comments we received from the public. The comments generally support the recommendations in the study.

Study Recommendations

The study recommends four changes to existing vessel routing and traffic management measures.

1. Remove the southern dogleg to provide a straight traffic lane between the Pilot Station and Cape Hinchinbrook

The study found that implementing this recommendation should reduce risk for vessels operating in the area. Removing the dogleg decreases the length of transit in Prince William Sound, reducing overall exposure time for vessels. It should also result in a smoother flow of traffic and reduce traffic congestion. In addition, if the dogleg were removed, the minimum distance from the center of the southbound traffic lane to Naked Island would increase from 6 nautical miles to 9 nautical miles, reducing the risk of drift groundings.

To implement this recommendation, the following coordinates would connect the TSS in central Prince William Sound:

Latitude	*Longitude*
60°49′29.4″ N	146°58′11.6″ W
60°20′35.3″ N	146°48′10.5″ W
60°20′36.0″ N	146°54′18.7″ W
60°49′06.3″ N	147°04′11.5″ W

Within the TSS, the Separation Zone would be connected by the following coordinates:

Latitude	*Longitude*
60°48′17.6″ N	146°59′46.1″ W
60°20′56.1″ N	146°50′19.3″ W
60°20′45.9″ N	146°52′18.7″ W
60°48′07.2″ N	147°01′47.0″ W

2. Establish a Precautionary Area at Bligh Reef Pilot Station

Implementing this recommendation should reduce risk for vessels operating in the area. Several vessels converge in this area, including ferries, cruise ships, and tankers. Navigation can sometimes be difficult in the area because of outflows from the Columbia Glacier. In addition, since the area offers little protection from the weather, vessels occasionally alter course to provide safe embarking and disembarking for pilots.

To implement the recommended Precautionary Area, the southbound traffic lane of the TSS within Valdez Arm would be widened to meet up with the Precautionary Area. The TSS would be modified to the following coordinates:

Latitude	*Longitude*
60°58′55.6″ N	146°48′51.3″ W
60°58′02.6″ N	146°46′31.1″ W
60°50′36.8″ N	147°03′36.1″ W
60°49′29.4″ N	146°58′11.6″ W

The recommended Precautionary Area would consist of a 1.5 nautical mile radius around the following position:

Latitude	*Longitude*
60°49′38″N	147°01′20″W

3. Establish a Precautionary Area southeast of Cape Hinchinbrook

Implementing this recommendation should reduce the potential for traffic congestion in this area. As discussed in the *Background and Purpose* section of this document, laden tankers chartered by British Petroleum departing from Cape Hinchinbrook do not follow the existing Prince William Sound Safety Fairway. Instead, the vessels use an alternate route to provide an extra measure of protection for the environmentally sensitive Copper River Flats Delta area. The recommended Precautionary Area would provide two distinct routes for departing and returning vessels, improving vessel traffic management and safety.

The following coordinates would bind the recommended Precautionary Area:

Latitude	*Longitude*
60°20′35.3″N	146°48′10.5″W
60°12′40.1″N	146°40′25.9″W
60°11′00.7″N	146°28′39.0″W
60°05′28.2″N	146°00′00.6″W
60°00′48.6″N	146°03′31.7″W
60°05′26.1″N	146°27′34.9″W
59°51′47.8″N	146°37′30.4″W
59°53′31.1″N	146°46′50.2″W
60°07′45.6″N	146°36′14.6″W
60°11′30.7″N	146°46′38.1″W
60°20′36.0″N	146°54′18.7″W

4. Remove the Separation Zone within the Valdez Arm

Implementing this recommendation may improve safety in the area. Traffic in and out of the Valdez narrows is relatively light and is monitored by the Vessel Traffic Service (VTS). Due to ice conditions, the VTS often imposes "custom ice routing measures" which typically involve one way traffic requirements. During the study, vessel operators stated that they would like to have more access to the center of the waterway when there are no vessels on opposing courses. This option may reduce the risk of powered and drift groundings since vessels could stay as far off shoal water as possible and offer the vessel masters the flexibility to consider prevailing weather and ice conditions to identify the safest track for their vessels.

However, there are concerns that removing the Separation Zone may increase the risk of collisions in the area.

The Coast Guard will seek public comment on the recommended changes to the existing routing measures before making any submission to the International Maritime Organization.

Dated: August 6, 1999.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–21921 Filed 8–25–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF EDUCATION

34 CFR Ch. VI

Office of Postsecondary Education; Review of Regulations Under Title IV of the Higher Education Act of 1965, as Amended

AGENCY: Department of Education.

ACTION: Outreach to customers and partners for advice and recommendations on regulatory review for Title IV of the Higher Education Act of 1965, as amended.

SUMMARY: We solicit advice and recommendations from interested parties (our customers—such as students and borrowers, and our partners—such as guaranty agencies, lenders, and schools) regarding a review of the regulations for programs authorized under Title IV of the Higher Education Act of 1965, as amended.

DATES: You may submit comments in writing by September 30, 1999, to the addresses in this notice or at topic sessions and regional sessions we are holding in September. (See dates, times and locations of topic and regional sessions under the **SUPPLEMENTARY INFORMATION** section of this notice.)

ADDRESSES: Address all comments to Colleen McGinnis, U.S. Department of Education, 400 Maryland Avenue, SW, ROB–3, Room 5102, Washington, DC 20202–5132. If you prefer to send your comments through the Internet, use the following address: ODS__regs@ed.gov

FOR FURTHER INFORMATION CONTACT: Colleen McGinnis, Telephone: (202) 708–7263. You may also obtain information on the Department's website at: http://www.ed.gov/offices/ODS/regreview

If you use a telecommunications device for the deaf (TDD) you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Background

On October 7, President Clinton signed into law Public Law 105–244, the Higher Education Amendments of 1998, (Amendments) amending the Higher Education Act of 1965 (HEA). Section 498B of the HEA, as amended, requires that we review each regulation issued under title IV of the HEA that is in effect at the time of the review and that applies to the operations or activities of any participant in the programs assisted under title IV. The review will include a determination of whether the regulation is duplicative or no longer necessary. The review may also involve:

- An assurance of the uniformity of interpretation and application of the regulations under title IV.
- The establishment of a process for ensuring that eligibility and compliance issues, such as institutional audit, program review, and recertification, are considered simultaneously.
- A determination of the extent to which unnecessary costs are imposed on institutions of higher education as a consequence of regulations prescribed for purposes of regulating industrial and commercial enterprises.

In addition, we will review and evaluate, in accordance with section 498B, the extent to which regulatory and statutory provisions may be improved, streamlined, or eliminated for institutions of higher education (other than institutions described in section 102(a)(1)(C) of the HEA) that have received less than $200,000 in title IV funds in each of the last two award years.

We will then prepare a report to Congress based on the results of this review. To assist us in preparing the report for Congress, as required by section 498B, we are consulting with relevant participants in title IV programs. Through this notice, the topic sessions and regional sessions that we will conduct, and other contacts with these customers and partners, we will collect the information necessary to complete the report to Congress.

We have already conducted listening sessions relating to title IV of the HEA through the Office of Student Financial Assistance's (OSFA's) Customer Service Task Force (CSTF). In the 1998 Amendments, Congress made OSFA the first Performance-Based Organization in the Federal government. Congress further mandated that OSFA improve service to students and cut the overall cost of postsecondary financial assistance. To achieve this end, OSFA conducted over 200 listening sessions and received over 8,000 comments through the listening sessions and over the Internet. OSFA received comments from students, schools, financial institutions, and employees. Many of the comments concerned the title IV regulations and their impact on our customers and partners.

We also received numerous useful suggestions from members of the student financial aid community for improving current title IV regulations during negotiated rulemaking sessions held from January–June, 1999.

In addition to the work that the Department has already done, we will hold several more topic sessions and regional sessions. We will be holding four topic sessions in Washington D.C., and three additional regional sessions, one each in Atlanta, Chicago, and San Francisco, to solicit comments, advice, and recommendations on our title IV regulations, in accordance with section 498B.

We recognize that the timing of these sessions is difficult for some of our customers and partners because of the beginning of the new school year. Unfortunately, when combined with the time required to complete negotiated rulemaking, the statutory deadline for producing a report leaves us with no alternative. Please note, however, that you can submit comments even if you are unable to attend the topic or regional sessions, to Colleen McGinnis, at the address listed in the **ADDRESSES** section of this notice, or by e-mail to the internet address listed in the **ADDRESSES** section of this notice.

Moreover, the process of reviewing regulations will not end with our report to Congress in October. We view this report as part of a continuing review and analysis of title IV regulations that will extend well beyond this report. If you are unable to provide comments at this time, there will be additional opportunities later this year, or next. Both the regional and listening sessions are intended to surface regulatory issues and identify regulatory sections in need of improvement. In addition, we would like to talk about an ongoing process for regulatory reform. The report will chronicle the issues identified at the sessions and outline the process for continuing our work on regulatory reform.

Specifically, we are interested in answers to the following five questions:

1. Are there any regulations that are duplicative or no longer necessary?
2. Are there any regulations that are not being interpreted and applied uniformly?
3. Are unnecessary burdens being placed on schools through the eligibility and compliance process? For example, is there a need to consider eligibility and compliance issues simultaneously?
4. Are unnecessary costs imposed on institutions of higher education by regulations that were designed to apply primarily to industrial and commercial enterprises?
5. Are there any regulations affecting public and private colleges and universities and proprietary schools that receive less than $200,000 in title IV funds each year that could be improved, streamlined, or eliminated?

The Department is also engaged in a broader effort to reduce regulatory burdens while simultaneously assuring the effective administration of the title IV programs. This endeavor includes the recommendations of our customers and partners collected by the CSTF. In addition, to the extent time permits, this current review will also examine other ways in which our regulations could be improved.

In general, how can the Department's title IV regulations be revised to make them more effective? How can we reduce administrative burdens while still assuring the effective administration of the title IV programs? How can we improve the way we develop our regulations? Participants are welcome to address these issues either by attending the topic sessions, the regional sessions or by submitting written comments.

Topic Sessions

We are hosting four topic sessions in Washington, DC, in September. All four sessions are open to the public and will be held at the U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202. The sessions are:

September 13, 1999; 8:30–12:30

Lender and Guaranty Agency Issues

September 13, 1999; 1:30–5:30

Loan Issues (FFEL, Direct Loan, and Perkins Loan Programs)

September 14, 1999; 8:30–12:30

Refunds, Program, and Student Eligibility Issues

September 14, 1999; 1:30–5:30

Institutional Eligibility Issues

Regional Sessions

We are also holding regional sessions in Atlanta, Chicago, and San Francisco. Individuals who wish to present comments at one of these regional sessions are encouraged to do so. It is likely that each participant choosing to make a statement will be limited to 5 minutes. Individuals interested in making oral statements will be able to sign up to make a statement beginning at 8:30 a.m. on the day of the session at the Department's regional session on-site registration table on a first-come, first-served basis. If additional time slots remain, individuals may be given additional time to speak. If no time slots remain, the Department has reserved one additional hour at the end of the day for people who were not able to register to speak. The amount of time available will depend upon the number of individuals who request reservations. Speakers may also submit written comments.

The Department has reserved a limited number of rooms at each of the following hotels at or below a special government per diem room rate. To reserve these rates, be certain to inform the hotel that you are attending the regional sessions with the Department of Education.

Dates, Times, and Locations of Regional Sessions

1. September 17, 1999, 9:00 a.m., Four Points Hotel Atlanta Perimeter, 1850 Cotillion Drive, Atlanta, GA. Call 1–770–394–5000 and ask for reservations. Sleeping room rate for September 16: $89.00 plus taxes.

2. September 24, 1999, 9:00 a.m., The Sheraton Chicago Hotel and Towers, 301 E. North Water Street, Chicago, Illinois. Call 1–312–464–1000, and ask for reservations. Sleeping room rate for September 23: $89.00 plus taxes.

3. September 27, 1999, 9:00 a.m., Clarion Hotel San Francisco Airport, 401 Millbrae Avenue East, San Francisco, CA. Call 1–650–692–6363 and ask for reservations. Sleeping room rate for September 26 and 27: $109.00 plus taxes.

In addition, for anyone unable to attend any of the sessions, the Department will also accept, and strongly encourages, written comments. You should send your comments to Colleen McGinnis at the address listed in the **ADDRESSES** section of this notice, or by e-mail to the internet address listed in the **ADDRESSES** section of this notice.

Assistance to Individuals With Disabilities at the Listening Sessions

The listening session sites are accessible to individuals with disabilities. If you will need an auxiliary aid or service other than an interpreter to participate in the listening session (e.g., assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled listening session date. Although we will attempt to meet a request we receive after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Electronic Access to This Document

You may view this document in text or Adobe Portable Document Format (PDF) on the Internet at the following sites:

http://ocfo.ed.gov/fedreg.htm
http://ifap.ed.gov/csb_html/fedlreg.htm
http://www.ed.gov/legislation/HEA/rulemaking/

To use the PDF, you must have the Adobe Acrobat Reader Program with Search, which is available free at the first of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Program Authority: 20 U.S.C. 1099c–2.

Dated: August 23, 1999.

Richard W. Riley,

Secretary of Education.

[FR Doc. 99–22283 Filed 8–25–99; 8:45 am]

BILLING CODE 4000–01–U

POSTAL SERVICE

39 CFR Part 265

Release of Information

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This document rescinds a proposal published on June 9, 1999, (64 FR 30929) to amend the Postal Service's regulations to allow the disclosure of certain information contained in PS Form 1583, Application for Delivery of Mail Through Agent. Under that proposed rule change, the recorded business name, address, and telephone number of the addressee using a Commercial Mail Receiving Agency (CMRA) private mailbox (PMB) for the purpose of doing or soliciting business with the public would be furnished to any person upon request without charge. The rule change would have been consistent with current postal policy applicable to post office boxholders.

As a result of public comment, discussed below, this document proposes a rule to preserve current postal policy that prohibits disclosure of information contained in PS Form 1583 except to federal, local, and state government agency requesters, including those engaged in law enforcement activities, or pursuant to subpoena or court order. In addition, this proposal would amend the Postal Service's current policy for disclosing information about post office boxholders contained in PS Form 1093, Application for Post Office Box or Caller Service. Under current policy, the recorded business name, address, and telephone number of the holder of a post office box used for doing or soliciting business with the public, or of any person applying for a box on behalf of a holder, are provided to any person. Under this proposed rule change, core disclosure policy for post office boxholder information will parallel that for PMB customers in that disclosure to the general public will be prohibited, and permitted only to federal, state, and local government agency requesters; when needed for service of legal process; or pursuant to a subpoena or court order.

DATES: Comments must be received on or before September 27, 1999.

ADDRESSES: Written comments should be mailed to Manager, Administration and FOIA, United States Postal Service, 475 L'Enfant Plaza SW, Room 8141, Washington, DC 20260–5202. Copies of all written comments will be available for inspection and photocopying between 8 a.m. and 4 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff (202) 268–2608.

SUPPLEMENTARY INFORMATION:

A. Background

This proposal was preceded by a notice of proposed rulemaking (NPRM) published on June 9, 1999 (64 FR 30929). As explained in that NPRM, the Postal Service has adopted rules (March 25, 1999, at 64 FR 14385–14391) amending sections D042.2.5 through D042.2.7 of the Domestic Mail Manual (DMM) to update and clarify procedures for delivery of an addressee's mail to a CMRA. Section D042.2.6(b) as amended requires an applicant for delivery of mail through an agent to indicate on PS Form 1583 whether the private mail box (PMB) will be used for the purpose of doing or soliciting business with the public. The June 9 NPRM would have changed postal policy set out in 39 CFR 265.6(d)(8) to permit disclosure of certain information from PS Form 1583 upon request to the Postal Service, when the PMB is being used for the purpose of doing or soliciting business with the public. This policy was intended to be consistent with disclosure policy currently applicable to post office boxholders, as set out in 39 CFR 265.6(d)(3), Post office boxholder information.

B. Analysis of Comments Received

Comments on the proposed rule were due on or before July 9, 1999. The Postal Service received a total of 1,239 comments, including a petition with 72 names of customers of a CMRA generally disagreeing with the new CMRA rules. Of the total, 1,226 comments were from CMRA customers, 10 were from CMRA owners or franchisers, two were from public interest groups, and one was from a member of Congress. These comments were largely identical in content and format, and all opposed the proposed rule, except for one commenter whose comment was limited to a statement requesting that the Postal Service not change the way the proposal reads. The Postal Service also received a number of comments after the deadline that were similar in nature and content to those received on time that generally opposed the proposed rule. Comments received in response to the June 9 NPRM were considered in reaching the decision to rescind the June 9 NPRM and in the formulation of this proposed rule.

The comments received in response to the June 9 NPRM most often expressed concern that disclosure of CMRA customer information could leave the public vulnerable to identity theft; harassment or harm; and theft of property. They expressed particular concern about potential harm to domestic violence victims; children at risk of exploitation and abduction; stalking victims; witnesses; celebrities; and law enforcement personnel and others who hold high profile or dangerous jobs. They also expressed concern that business owners dealing in valuable commodities, such as antiques, rare coins, jewelry, or gems, would be subjected to theft.

Many commenters had been misinformed and thought that any information on any PS Form 1583 would be disclosed to any member of the public upon request. One commenter stated "I am horrified that anyone could walk into the (CMRA) or post office to examine my personal identification." Similar sentiments were expressed by several other commenters who misunderstood the circumstances of disclosure. The proposed rule in fact limited release of information to the name, address, and telephone number of the CMRA customer, and only if the PMB was being used to do or solicit business with the public. Such a disclosure policy would have been consistent with the Postal Service's longstanding policy on the disclosure of post office boxholder information, premised on the idea that a consumer should be able to know to whom and where money is sent for goods or services. Nevertheless, many commenters, particularly business owners operating out of the home, believed such a regulation would subject them to harassment and harm and asked that the proposed rule be rescinded. Despite the lack of any significant reported harassment or harm to business post office boxholders about whom such information historically has been disclosed, the Postal Service recognizes these concerns and the paramount importance of public safety and has determined to publish this proposed rulemaking for public comment. Consequently, this proposed rulemaking reverses the June 9 NPRM and prohibits disclosure of information about either a post office box or PMB holder to the general public, regardless of how the box is used.

Another concern frequently expressed is that the Postal Inspection Service already has ample opportunity to investigate and prosecute suspected mail fraud cases and other crimes. The commenters stated that consumers doing business with PMB users are already adequately protected since the home address always has been available to law enforcement personnel and for anyone with a legal cause of action (interpreted to mean pursuant to a subpoena or court order). It is true that the home address of CMRA customers historically has been available to government agencies, most of which may be engaged in law enforcement, upon written request meeting Privacy Act requirements. To the Postal Service's knowledge, such disclosure has occurred without threat to the safety of these parties. Although the June 9 proposed rulemaking was intended to take a proactive approach to reducing the opportunities to use a PMB for fraudulent purposes, the policy proposed by this rule will continue the previous practice of disclosure only to government agency requesters who certify that the information is required for the performance of official duties.

One special interest organization stated that it had received many messages from individuals who are concerned about the "privacy-intrusive database that will be compiled as a result of having to complete Form 1583." Others expressed concern about the establishment of a database that would simplify and increase datasharing. The Postal Service has never intended to create a national database with information from PS Form 1583. PS Forms 1583 are maintained locally and are subject to Privacy Act safeguards.

Some comments related to procedural issues, such as the timing of the June 9 NPRM. The discussion of these issues would add no significance since this notice rescinds and reverses the June 9 NPRM. However, in response to comments that the PS Form 1583 contained no OMB number as required by the Paperwork Reduction Act, the Postal Service is not subject to the Paperwork Reduction Act of 1980; its forms are approved and prescribed in accordance with its own forms management program.

Other comments received related to other aspects of the revisions to CMRA requirements not pertinent to the

proposed rule discussed here. Those concerns were responded to in the March 25, 1999, final rule amending the DMM.

List of Subjects in 39 CFR Part 265

Administrative practice and procedure, Courts, Freedom of information, Government employees, Release of information.

For the reasons set out above, the Postal Service proposes to amend 39 CFR part 265 as follows:

PART 265—RELEASE OF INFORMATION

1. The authority citation for part 265 continues to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. App. 3; 39 U.S.C. 401, 403, 410, 1001, 2601.

2. Section 265.6(d)(3) and (d)(8) are revised to read as follows:

§ 265.6 Availability of records.

* * * * *

(d) * * *

(3) *Post office boxholder information.* Information from PS Form 1093, Application for Post Office Box or Caller Service, will be provided only as follows:

(i) In those circumstances stated at paragraphs (d)(4)(i) through (d)(4)(iv) of this section.

(ii) Copies of PS Form 1093 will not be furnished except in those circumstances stated at paragraphs (d)(4)(i), (d)(4)(iii), or (d)(4)(iv) of this section.

* * * * *

(8) *Private mailbox information.* Information from PS Form 1583, Application for Delivery of Mail Through Agent, will be provided only as follows:

(i) In those circumstances stated at paragraphs (d)(4)(i), (d)(4)(iii), or (d)(4)(iv) of this section.

(ii) To the public only for the purpose of identifying a particular address as an address of an agent to whom mail is delivered on behalf of other persons. No other information, including, but not limited to, the identities of persons on whose behalf agents receive mail, may be disclosed to the public from PS Form 1583.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–22124 Filed 8–25–99; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL–6423–7]

Hazardous Waste Management Program: Final Authorization and Incorporation by Reference of State Hazardous Waste Management Program for Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to incorporate by reference the Oklahoma Department of Environmental Quality's (ODEQ) hazardous waste program under the for Resource Conservation and recovery Act (Cluster V) and to approve the revisions to that program submitted by the State of Oklahoma. In the "Rules and Regulations" section of this **Federal Register** (FR), the EPA is approving the State's request as immediate final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the immediate final rule. If no adverse written comments are received in response to the immediate final rule, no further activity is contemplated in relation to this proposed rule. If the EPA receives adverse written comments, a second FR document will be published before the time the immediate final rule takes effect. The second document may withdraw the immediate final rule or identify the issues raised, respond to the comments and affirm that the immediate final rule will take effect as scheduled. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments on this proposed rule must be received on or before September 27, 1999.

ADDRESSES: Written comments may be mailed to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, at the address shown below. Copies of the materials submitted by ODEQ may be examined during normal business hours at the following locations: EPA Region 6 Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202–2733, Phone number: (214) 665–6444.; or the Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma 73101–1677, phone number (405) 702–7180.

FOR FURTHER INFORMATION CONTACT: Alima Patterson at (214) 665–8533.

SUPPLEMENTARY INFORMATION: For additional information see the immediate final rule published in the rules section of this **Federal Register**.

Dated: June 24, 1999.

Jerry Clifford,

Deputy Regional Administrator, Region 6.

[FR Doc. 99–21937 Filed 8–25–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6427–6]

National Oil and Hazardous, Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Neal's Dump Superfund site from the National Priorities List; request for comments.

SUMMARY: The United States Environmental Protection Agency (U.S. EPA) Region V announces its intent to delete the Neal's Dump Site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which U.S. EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended. This action is being taken by U.S. EPA, because it has been determined that all responses under CERCLA have been implemented by the responsible party and U.S. EPA, in consultation with the State of Indiana, has determined that no further response is appropriate. Moreover, U.S. EPA and the State have determined that remedial activities conducted at the Site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the proposed deletion of the Site from the NPL may be submitted on or before September 27, 1999.

ADDRESSES: Comments may be mailed to Gladys Beard, Associate Remedial Project Manager, Superfund Division, U.S. EPA, Region V, 77 W. Jackson Blvd. (SR–6J), Chicago, IL 60604. Comprehensive information on the site is available at U.S. EPA's Region V office and at the local information repository located at: The Monroe County Public Library, 303 E. Kirkwood, Bloomington, IN 47408 or The Monroe County Public Library-Elletsville Branch, 600 West Temperance, Ellettsville, IN. Requests for comprehensive copies of documents should be directed formally to the Region V Docket Office. The address and phone number for the Regional Docket Officer is Jan Pfundheller (H–7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

FOR FURTHER INFORMATION CONTACT: Thomas Alcamo at (312) 886–7278 (SR–6J), Remedial Project Manager or Gladys Beard Associate Remedial Project Manager, Superfund Division (SR–6J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–7253 or Derrick Kimbrough (P–19J), Office of Public Affairs, U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 886–9749.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The U.S. Environmental Protection Agency (U.S. EPA) Region V announces its intent to delete the Neal's Dump Site from the National Priorities List (NPL), which constitutes appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on the proposed deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund Response Trust Fund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if the conditions at the site warrant such action.

The U.S. EPA will accept comments on this proposal for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that U.S. EPA is using for this action. Section IV discusses the history of this site and explains how the site meets the deletion criteria.

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter U.S. EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist in Agency management.

II. NPL Deletion Criteria

The NCP establishes the criteria the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, U.S. EPA will consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate non-time Critical Removal Actions or Fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

(iii) The Remedial Investigation has shown that the release poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

III. Deletion Procedures

Upon determination that at least one of the criteria described in § 300.425(e) has been met, U.S. EPA may formally begin deletion procedures once the State has concurred. This **Federal Register** notice, and a concurrent notice in the local newspaper in the vicinity of the Site, announce the initiation of a 30-day comment period. The public is asked to comment on U.S. EPA's intention to delete the Site from the NPL. All critical documents needed to evaluate U.S. EPA's decision are included in the information repository and the deletion docket.

Upon completion of the public comment period, if necessary, the U.S. EPA Regional Office will prepare a Responsiveness Summary to evaluate and address comments that were received. The public is welcome to contact the U.S. EPA Region V Office to obtain a copy of this responsiveness summary, if one is prepared. If U.S. EPA then determines the deletion from the NPL is appropriate, final notice of deletion will be published in the **Federal Register**.

IV. Basis for Intended Site Deletion

The Neal's Dump site is approximately one-half acre in size and is located in southeast Owen County, Indiana. The site was owned by Ray Neal between 1967 and 1971, and closed in 1971. Richard Neal, son of Ray Neal, was the transporter to Neal's Dump of capacitors filled with polychlorinated biphenyl (PCB) containing oil, PCB oil stained rags and PCB contaminated sawdust from the former Westinghouse facility on Curry Pike in Bloomington, Indiana. The site is currently owned by Betty White. In November 1980, the U.S. EPA inspected the site and discovered exposed capacitors, some which were leaking oil. Soil samples showed PCBs as high as 188,000 parts per million.

In May 1982, the U.S. EPA's Field Investigation Team collected 6 soil samples on the Neal's Dump site and discovered PCB levels ranging from 0.41 ppm to 19,000 ppm. In addition, in June 1982, a magnetometer survey to determine the site boundaries along with the installation of 4 monitoring wells were completed. By September 1982, a monitoring well program was implemented and a residential survey as to well water usage was also completed. Based upon the data collected at the site, Neal's Dump was estimated to contain 14,000 cubic yards of contaminated material. The site was listed on the National Priorities List (NPL) on June 10, 1986.

In December 1983, CBS Corporation implemented a removal action which included the following:

- Removal of 46 exposed capacitors, capacitor paper and some soils in close proximity of the exposed capacitors. Approximately 60 capacitors were reburied at two locations within the dump.
- Seeding of disturbed areas so that a full coverage of vegetative growth as established and maintained.
- Implementation of erosion control measures including erosion control fences.
- Placement of a chain-link security fence around the site to restrict access and posting of warning signs.

On January 4, 1983, the United States filed a civil action against Westinghouse, now known as CBS, pursuant to section 7003 of the Resource Conservation and Recovery Act (RCRA) and sections 104, 106, and 107 of CERCLA, alleging an imminent and substantial endangerment to human health or the environment due to improper disposal of Polychlorinated Biphenyl (PCBs) at two sites in the Bloomington area. During the fall of 1983, CBS expressed its interest in negotiating a settlement of that suit as well as a civil action filed by the City of Bloomington for improper PCB disposal at two of the sites owned by the City. After negotiations among CBS,

U.S. EPA, the City of Bloomington, Monroe County, and the Indiana State Board of Health, (hereinafter collectively referred to as the "Parties") a Consent Decree was signed in 1985 and subsequently entered by the court on August 22, 1985, for the cleanup of Neal's Dump. The Consent Decree called for the construction of a permitted, Toxic Substances Control Act municipal (TSCA) approved, solid waste fired incinerator to be used to destroy PCB contaminated material excavated from Neal's Dump.

In 1994, the parties agreed to jointly explore, alternatives to the incineration remedy required by the Consent Decree. In November 1997, Federal Judge Hugh Dillin issued a judicial order stating that the six Consent Decree sites must be remediated by December 1999 and assigned Magistrate Judge Kennard Foster to oversee the progress of the parties toward meeting the December 1999 deadline. On February 1, 1999, Judge Dillin issued an order directing that the Consent Decree parties have until December 31, 1999 to complete the source control remedies for the Consent Decree sites.

After discussions with governmental parties, and under court supervision, the U.S. EPA issued a Proposed Plan for the Neal's Dump site on August 23, 1998. After addressing public comments, on October 16, 1998 the U.S. EPA signed a Record of Decision (ROD) Amendment for the Neal's Dump site. The ROD Amendment modified the August 3, 1984, Enforcement Decision Document (EDD). The ROD Amendment called for the following:

- Excavation of the site soils to residential/high occupancy PCB cleanup standards with disposal of the soils in a off-site, permitted Toxic Substances Control Act/chemical waste landfill.
- Off-site incineration in a permitted, TSCA approved, incinerator of all capacitors containing PCB oil.
- Placement of a minimum of a 10-inch soil cover over the excavated areas and implementation of drainage controls, including providing a vegetative cover.
- Implementation of deed restrictions for the site.
- Monitoring groundwater surrounding the site for a minimum of five years.

Remedial Construction Activities

CBS began excavating PCB contaminated soil/material on September 29, 1998, after approval by the governmental parties of the RD/RA Work Plan. A total of 7,250 tons of PCB contaminated material was disposed of at Wayne Disposal in Belleville, Michigan. In addition, 2,430 capacitors, which weighed approximately 250,000 pounds and filled with PCB oil were incinerated at ChemWaste in Port Arthur, Texas. The U.S. EPA, the State of Indiana, and Monroe County performed oversight of the CBS activities at the Neal's Dump site.

As described in the ROD Amendment, CBS was required to meet a 10 ppm PCB average concentration in the soils. Excavated areas were then covered with a 10-inch soil cover. CBS completed a magnetometry study along with soil borings for PCB analysis around the dump to verify the site boundaries. Verification sampling by CBS after the excavation was completed showed that residual PCBs was well under the cleanup standard, at 0.8 ppm on average. The U.S. EPA split 20 verification samples for PCBs with CBS and the results were similar to CBS's sampling. In addition, the U.S. EPA analyzed for volatiles, semi-volatiles and metals in 7 samples and the results showed no additional risk. To assure that fill and final soil cover was free of contamination, CBS completed sampling of the two borrow areas for PCBs and pesticides.

CBS completed construction of the site on November 17, 1998, excluding final placement of topsoil, and the U.S. EPA completed the pre-final inspection on November 20, 1998. CBS Corporation completed the final site grading and seeding and the final inspection was completed on June 8, 1999. CBS has also filed deed restrictions with Owen County.

CBS has developed a groundwater monitoring plan to conduct groundwater monitoring until the Five-Year Review is completed. Groundwater monitoring in the proposed monitoring wells have shown low levels of PCBs, but under the maximum contaminant level (MCL) for PCBs. By completely removing the source material, the U.S. EPA expects no additional action for groundwater. At the Five-Year review, the U.S. EPA will make a determination if the groundwater monitoring will continue.

Community Relations Activities

The Consent Decree sites in and near Bloomington, Indiana, have been the object of considerable public interest. The Region's community relations staff conducted an active campaign to ensure that the residents were well-informed about the activities at the Neal's Dump site. Activities included meeting every 4 to 6 weeks with the Citizens Information Committee to discuss the Consent Decree sites, including Neal's Dump. These meetings are broadcast over the local cable television station.

Conclusion

No hazardous substances remain at the site above health based levels. Historical groundwater monitoring has shown PCBs to be present and CBS Corporation is required to monitor groundwater semi-annually until the Five-Year review. At the Five-Year review, the U.S. EPA will determine if groundwater monitoring will continue.

U.S. EPA, with concurrence from the State of Indiana has determined that all appropriate Fund-financed responses under CERCLA at the Neal's Dump Superfund Site have been completed, and no further CERCLA response is appropriate in order to provide protection of human health and the environment. Therefore, U.S. EPA proposes to delete the Site from the NPL.

Dated: August 17, 1999.

Francis X. Lyons,

Regional Administrator, Region V.

[FR Doc. 99–21939 Filed 8–25–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[I.D. 080999E]

RIN 0648–AM15

Fisheries of the South Atlantic; Pelagic *Sargassum* Habitat in the South Atlantic; Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of a fishery management plan for the pelagic *Sargassum* habitat of the South Atlantic Region; request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) has submitted a Fishery Management Plan for the Pelagic *Sargassum* Habitat Fishery of the South Atlantic Region (FMP) for review, approval, and implementation by NMFS. The FMP would establish the management unit for *Sargassum*; specify optimum yield (OY) for pelagic *Sargassum* as zero harvest; specify overfishing levels as occurring when the fishing mortality rate is greater than zero; identify essential fish habitat (EFH) for *Sargassum*; establish habitat areas of particular concern (HAPC) for Sargassum; and phase out the harvest or possession of pelagic *Sargassum* in or from the exclusive economic zone off the southern Atlantic states starting January 1, 2001, or when 50,000 lb (22,680 kg) wet weight is harvested, whichever occurs first.

DATES: Written comments must be received on or before October 25, 1999.

ADDRESSES: Comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Requests for copies of the FMP, which includes a Final Environmental Impact Statement, an Initial Regulatory Flexibility Analysis, a Regulatory Impact Review, and a Social Impact Assessment/Fishery Impact Statement, should be sent to the South Atlantic Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407–4699. Phone: 843–571–4366; fax: 843–769–4520; e-mail: safmc@noaa.gov. Additional information may be obtained from the Council's website at http://www.safmc.nmfs.gov.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 727-570-5305.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires Regional Fishery Management Councils to submit any proposed fishery management plan or plan amendment to NMFS for review, approval, and implementation. The Magnuson-Stevens Act also requires that NMFS, upon receiving such plan or plan amendment, immediately publish a document in the **Federal Register** stating that the plan or plan amendment is available for public review and comment.

The FMP addresses conservation and management of pelagic *Sargassum* off the U.S. Atlantic coast from the North Carolina/Virginia border through the east coast of Florida, including the Atlantic side of the Florida Keys.

Need for Management

Pelagic *Sargassum* is an abundant brown algae that occurs near the surface in warm waters of the western North Atlantic that supports a diverse assemblage of marine organisms, including over 100 species of fish, fungi, micro- and macro-epiphytes, at least 145 species of invertebrates, five species of sea turtles, and numerous marine birds. The Council has designated pelagic *Sargassum* as EFH and as an HAPC for snapper-grouper species and coastal migratory pelagic species.

The FMP indicates that the standing crop of pelagic *Sargassum* in the North Atlantic Ocean may be 4 to 11 million metric tons (roughly 9 to 24 billion lb). One company has harvested a total of 448,000 lb (203,213 kg) of pelagic *Sargassum* off the southern Atlantic states from 1976 to the present. Section 303(a)(7) of the Magnuson-Stevens Act requires that the Councils minimize, to the extent practicable, adverse effects on EFH caused by fishing. Even though there is no indication that the harvest, to date, has had an adverse impact on *Sargassum* EFH, the Council concluded that any removal of pelagic *Sargassum* constitutes a net loss of EFH off the southern Atlantic states, and thus is contradictory to the goals and objectives of the Council's Comprehensive Habitat Plan for the South Atlantic Region.

Data are insufficient to calculate a maximum sustainable yield (MSY) for pelagic *Sargassum*, and the Council chose not to specify an MSY in the FMP. Nevertheless, section 303(a)(3) of the Magnuson-Stevens Act requires that a fishery management plan "assess and specify the present and probable future condition of, and the maximum sustainable yield and optimum yield from, the fishery, and include a summary of the information utilized in making such specification." MSY is a necessary fundamental FMP component, upon which such other FMP measures as an MSY control rule, as specified in NMFS guidelines (see 50 CFR 600.310), would depend.

With the inability to estimate MSY for pelagic *Sargassum* with any certainty and to meet other provisions of the Magnuson-Stevens Act concerning the requirements of an FMP, the Council may wish to pursue alternative management actions that would achieve its goals to conserve and maintain sustainable pelagic *Sargassum* habitat. Therefore, NMFS invites comments specifically on this aspect of the FMP and the propriety of control rule measures such as an OY specification of zero in the absence of any specification of MSY.

Endangered and Threatened Species Issues

In compliance with requirements of the Endangered Species Act, NMFS evaluated the impact of harvesting *Sargassum* on endangered or threatened species. That consultation concluded that continued harvest of pelagic *Sargassum* until January 1, 2001, or until the 50,000 lb (22,660 kg) wet weight cap is reached, is not likely to jeopardize the continued existence of any listed species under NMFS purview, although the loggerhead, green, leatherback, Kemp's ridley, and hawksbill sea turtles are likely to be adversely affected by the action. As part of the consultation, NMFS developed an incidental take statement that included reasonable and prudent measures necessary to minimize the impacts of the takings.

NMFS will consider comments received by October 25, 1999 in its decision to approve, disapprove, or partially approve the FMP. NMFS will not consider comments received after that date in this decision; NMFS will address all comments received on the FMP in the preamble of the final rule.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 20, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–22215 Filed 8–25–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 64, No. 165

Thursday, August 26, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 99–066–1]

Secretary's Advisory Committee on Foreign Animal and Poultry Diseases; Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of meeting.

SUMMARY: We are giving notice of a meeting of the Secretary's Advisory Committee on Foreign Animal and Poultry Diseases.

PLACE, DATES, AND TIME OF MEETING: The meeting will be held at the USDA Center at Riverside in the Conference Center, 4700 River Road, Riverdale, MD. Sessions will be held from 8 a.m. to 5 p.m. on September 14–15, 1999, and from 8 a.m. to 12 noon on September 16, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Annelli, Chief Staff Veterinarian, Emergency Programs Staff, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231; (301) 734–8073.

SUPPLEMENTARY INFORMATION: The Secretary's Advisory Committee on Foreign Animal and Poultry Diseases (the Committee) advises the Secretary of Agriculture on actions necessary to prevent the introduction of foreign diseases of livestock and poultry into the United States. In addition, the Committee advises the Secretary on contingency planning and on maintaining a state of preparedness to deal with these diseases, if introduced.

The meeting will focus on the U.S. animal health emergency management system and the foreign animal disease situation worldwide and its relevance to the United States. The meeting will be open to the public. However, due to the time constraints, the public will not be allowed to participate in the Committee's discussions.

You may obtain an agenda for the meeting by contacting Dr. Joseph Annelli at the address listed under **FOR FURTHER INFORMATION CONTACT.** You may file written statements on meeting topics with the Committee before or after the meeting by sending them to Dr. Joseph Annelli at the address listed under **FOR FURTHER INFORMATION CONTACT.** You may also file written comments at the time of the meeting. Please refer to Docket No. 99–066–1 when submitting your comments.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act.

Done in Washington, DC, this 19th day of August 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–22222 Filed 8–25–99; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Forest Service

Klamath Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Klamath Provincial Advisory Committee will meet on September 9–10, 1999, in Yreka, California. On Thursday, September 9, the meeting will be at the Miner's Inn Convention Center, 122 E. Miner Street, starting at 9:00 a.m. and will adjourn at 5:00 p.m. On Friday, September 10, the meeting will start at 8:00 a.m. and adjourn at 1:00 p.m. Agenda items for the meeting include: (1) Socio-economic Panel Discussion; (2) Total Maximum Daily Load Letter Proposal; (3) 12–PAC/IAC Joint Meeting Update; (4) Subcommittee Reports; and (5) Public Comment Periods. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Connie Hendryx, USDA, Klamath National Forest, 1312 Fairlane Road, Yreka, California 96097; telephone 530–841–4468 (voice), TDD 530–841–4573.

Dated: August 13, 1999.

Nancy J. Gibson,

Acting Forest Supervisor.

[FR Doc. 99–22172 Filed 8–25–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by October 25, 1999.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Program Development and Regulatory Analysis, Rural Utilities Service, USDA, 1400 Independence Ave., SW., STOP 1522, Room 4034 South Building, Washington, DC 20250–1522. Telephone: (202) 720–0736. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR Part 1789, Use of Consultants Funded by Borrowers.

OMB Control Number: 0572–0115.

Type of Request: Extension of a previously approved collection.

Abstract: On November 1, 1993, Public Law 103–129 amended section 18 of the RE Act to provide a mechanism for expediting RUS reviews. As amended, section 18(c) authorized RUS to use consultants voluntarily funded by borrowers for financial, legal, engineering, and other technical services. Consultants may be used to facilitate timely action on loan applications by borrowers for financial assistance and for approvals required by RUS, pursuant to the terms of outstanding loans, or otherwise. RUS may not require borrowers to fund consultants. The provisions of section 18(c) may be utilized only at the borrower's request.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2 hours per response.

Respondents: Small cooperatives or similar organizations.

Estimated Number of Respondents: 6.

Estimated Number of Responses per Respondent: 1.

Estimate Total Annual Burden on Respondents: 12 hours.

Copies of this information collection can be obtained from Bob Turner, Program Development and Regulatory Analysis, at (202) 720–0696.

Comments are invited on (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms of information technology. Comments may be sent to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1522, Room 4034 South Building, Washington, DC 20250–1522.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: August 19, 1999.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 99–22244 Filed 8–25–99; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–810]

Certain Welded ASTM A–312 Stainless Steel Pipe From Korea: Extension of Time Limits for Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limits For Preliminary Results of Administrative Review.

EFFECTIVE DATE: August 26, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Strollo or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–3782 or (202) 482–3020, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Departments's regulations are to the current regulations, codified at 19 CFR part 351, (1999).

Background

On December 30, 1998, the Department of Commerce (the Department) received a request from Avesta Sheffield Pipe Co., Damascus Tube Division, Damascus-Bishop Tube Co., and the United Steelworkers of America (AFL–CIO/CLC), herein referred to as "the domestic industry," for administrative review of the antidumping duty order on certain welded ASTM A–312 stainless steel pipe from Korea. On January 25, 1999, the Department published its initiation of this administrative review covering the period of December 1, 1997 through November 30, 1998 (64 FR 3682).

Extension of Time Limits for Preliminary Results

Because of the complexities enumerated in the Memorandum from Joseph A. Spetrini to Robert S. LaRussa, *Extension of Time Limit for the Administrative Review of Certain Welded ASTM A–312 Stainless Steel Pipe from Korea*, dated August 17, 1999, it is not practical to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limits for the preliminary results to December 13, 1999. The final results continue to be due 120 days after the publication of the preliminary results.

Dated: August 17, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary for AD/CVD Enforcement III.

[FR Doc. 99–22196 Filed 8–25–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Preliminary Results of Full Sunset Review: Brass Sheet and Strip From the Netherlands

[A–421–701]

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Full Sunset Review: Brass Sheet and Strip from the Netherlands.

SUMMARY: On February 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on brass sheet and strip from the Netherlands (64 FR 4840) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate filed on behalf of domestic interested parties and adequate substantive responses filed on behalf of the domestic and respondent interested parties, the Department determined to conduct a full review. As a result of this review, the Department preliminarily finds that revocation of the antidumping duty order would not be likely to lead to continuation or recurrence of a dumping.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

EFFECTIVE DATE: August 26, 1999.

Statute and Regulations

This review is being conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

Imports covered by this order are brass sheet and strip, other than leaded and tin brass sheet and strip, from the Netherlands. The chemical composition of the products under order is currently defined in the Copper Development Association (CDA) 200 Series or the Unified Numbering System (UNS) C20000 series. This order does not cover products the chemical composition of which are defined by other CDA or UNS series. The physical dimensions of the products covered by this order are brass sheet and strip of solid rectangular cross section over 0.006 inch (0.15 millimeter) through 0.188 inch (4.8 millimeters) in gauge, regardless of width. Coiled, wound-on-reels (traverse-wound), and cut-to-length products are included. The merchandise subject to this order is currently classifiable under items numbers 7409.21.00 and 7409.29.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this order is dispositive.

History of the Order

The antidumping duty order on brass sheet and strip from the Netherlands was published in the **Federal Register** on August 12, 1988 (53 FR 30455).[1] In that order, the Department announced estimated weighted-average dumping margins of 16.99 percent for the Metallverken Nederland B.V. and all-others.[2]

The Department has conducted several administrative reviews since that time.[3] The order remains in effect for all producers and exporters of brass sheet and strip from the Netherlands.

Background

On February 1, 1999, the Department initiated a sunset review of the antidumping duty order on brass sheet and strip from the Netherlands (64 FR 4840) pursuant to section 751(c)(6)(A)(i) of the Act. On February 16, 1999, the Department received a Notice of Intent to Participate on behalf of Heyco Metals, Inc. ("Heyco"), Hussey Copper Ltd. ("Hussey"), Olin Corporation-Brass Group ("Olin"), Outokumpu American Brass ("American Brass"), PMX Industries, Inc. ("PMX"), Wieland Metals, Inc. ("Wieland"), Revere Copper Products, Inc. ("Revere"), the International Association of Machinists and Aerospace Workers, the United Auto Workers (Local 2367), and the United Steelworkers of America (AFL-CIO/CLC) (collectively referred to as "domestic interested parties"), within the applicable deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. The domestic interested parties claimed interested party status under sections 771(9)(C) and 771(9)(D) of the Act as U.S. brass mills, rerollers, and unions whose workers are engaged in the production of subject brass sheet and strip in the United States.

In their Notice of Intent to Participate, the domestic interested parties acknowledge that American Brass is related to Outokumpu Copper Strip, B.V. ("OBV"),[4] a Netherlands producer/exporter of the subject merchandise and respondent interested party in this proceeding; PMX is related to Poongsan Corp., a Korean producer of the domestic like products; and Wieland is related to Wieland Werke Metallwerke AG,[5] a German producer and exporter of the domestic like products. Moreover, American Brass, PMX, and Wieland stipulate that they have had experience of importing the subject merchandise and/or the domestic like products.

We received a complete substantive response to the notice of initiation from the domestic interested parties on March 3, 1999. In their substantive response, the domestic interested parties indicate that most of their members were parties to the original investigation with a few exceptions: Heyco did not participate in the original investigation but fully supports the instant review, and PMX was established after the original petitions were filed. The domestic party also notes that American Brass was formerly known as American Brass Company.[6]

The Department received a complete substantive response on behalf of OBV on March 4, 1999. In its substantive response, OBV, a Dutch producer of the subject merchandise, indicates that it was the respondent in the original investigation and a participant in several administrative reviews of the order. *See* March 4, 1999, Substantive Response of OBV at 1. Also, OBV states that American Brass belongs to the same parent company to which OBV belongs. *Id.* OBV further notes that it is the sole producer of the subject merchandise in the Netherlands; therefore, OBV's exports account for 100 percent of the subject merchandise imported to the United States.[7] *Id.* at 9. We received rebuttal responses on behalf of both the domestic interested parties and OBV on March 12, 1999.[8]

Using the Department's Trade Statistics, the United States Census Bureau's IM146s, and the information provided by OBV concerning its exports of the subject merchandise to the United States, the Department determined that OBV accounted for significantly more than 50 percent of the total exports of the subject merchandise over the five calendar years preceding the initiation of the sunset review; hence, respondent interested parties provided an adequate response.[9] Since OBV provided an adequate response to the notice of initiation, the Department determined to conduct a full (240 day) sunset review in accordance with section 351.218(e)(2)(i) of the *Sunset Regulations*.[10]

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order—an order which was in effect on January 1, 1995, *see* section 751(c)(6)(C) of the Act. The Department determined that the sunset review of the antidumping duty order on brass sheet and strip from the Netherlands is extraordinarily complicated. Therefore, on May 28, 1999, the Department extended the time limit for completion of the preliminary results of this review until not later than August 20, 1999, in accordance with section 751(c)(5)(B) of the Act.[11]

Determination

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the original investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's preliminary determinations concerning continuation or recurrence of dumping and magnitude of the margin are discussed below. In addition, interested parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Parties' Comments

The domestic interested parties, in their substantive response of March 3, 1999, at 32, argue that dumping of brass sheet and strip by OBV will continue if the order is revoked. To support their argument, the domestic interested parties point to decreased import volumes of the subject merchandise after the issuance of the order, *id.* at 43–44. Although they acknowledge that OBV's average dumping margins have had a downward trend and are currently at zero, the domestic interested parties, nonetheless, insist that OBV achieved lower weighted-average dumping margins primarily by drastically reducing import volumes of the subject merchandise after the issuance of the order, *id.* To illustrate their contention, first, the domestic interested parties put forth import data pertaining to the period before and the period after the issuance of the order. The domestic interested parties compare a three year (1984–1986) average of import volumes prior to the issuance of the order with a three year (1989–1991) average subsequent to the order: 15.1 million pounds versus 7.8 million pounds—a 48.3 percent decrease, *id.*

Next, the domestic interested parties indicate that, with respect to imports of brass sheet and strip from the Netherlands, between 1992 and 1998, imports of the subject merchandise never exceeded 552,000 pounds. This volume, the domestic interested parties note, is less than four percent of the average volume in the pre-petition period, *id.*

Therefore, the domestic interested parties conclude that the Department must determine that OBV is incapable of selling commercially significant quantities of the subject merchandise in the U.S. without resuming the practice of dumping. In other words, to the domestic interested parties, revocation of the current order would result in resumed dumping and major increases in import volumes of the subject merchandise, *id.*

OBV, in its Substantive Response of March 4, 1999, at 1 and 12–14, argues that if the order were revoked, OBV is not likely to resume dumping. OBV also states that mere existence of the order and past margins, in and of themselves, should not be justifications for the maintenance of the order; instead, the Department should consider all other relevant information and arguments that OBV put forth in its substantive response, *id.*

Although OBV points out that the Department has found zero average-dumping margins for OBV in the two most recent administrative reviews, *id.* at 17,[12] OBV's primary contention lies with its notion that the comparison of pre- and post-order volumes is a meaningless way to determine whether dumping of the subject merchandise would recur. While not denying its export volumes of the subject merchandise to the U.S. have declined since the issuance of the order, OBV goes one step further by asserting that the volume comparison is not a valid measure and carries no probative value in determining OBV's ability to continue to export without dumping, insofar as OBV poses unique circumstances, *id.* at 14–17.

As to why its situation is unique, OBV claims that it does not have to dump to preserve its position in the United States market because it has a sister company, American Brass, as a U.S. domestic producer, *see* OBV's substantive response at 15.[13] In other words, OBV argues that it no longer has to dump the subject merchandise in order to maintain or preserve market share in the United States, for its sister company American Brass, alone, is adequate in producing and in selling the subject merchandise in the United States. Put differently, OBV argues that, via its sister company, OBV can maintain its market share in the U.S. while exporting significantly smaller quantities than before the imposition of the order, *id.* at 17. Consequently, in a situation like this, OBV avers, the fact that imports of subject merchandise have significantly declined carries no probative value with respect to OBV's ability to continue to export the subject merchandise without dumping.

OBV goes on to point out that it is not even permitted to compete with American Brass in the U.S. market because OBV and American Brass are sister companies, thereby precluding OBV from competing with any other domestic producers and eliminating the possibility that OBV would even consider dumping its products in the U.S. market.[14] Consequently, OBV states, since the acquisition, it only played and will continue to play, a

[1] *See Antidumping Duty Order of Sales at Less Than Fair Value; Brass Sheet and Strip From the Netherlands*, 53 FR 30455 (August 12, 1988).

[2] In the original investigation, Outokumpu Copper Strip, B.V. ("OBV") was doing business under the name Metallverken Nederland B.V., *see*, March 4, 1999, Substantive Response of OBV at 5 (footnote 4); also, March 3, 1999, Substantive Response of the domestic interested parties at 24.

[3] *See Brass Sheet and Strip From the Netherlands; Final Results of Antidumping Duty Administrative Reviews* (Corrections), 57 FR 11352 (April 2, 1992); *Brass Sheet and Strip From the Netherlands; Final Results of Antidumping Administrative Reviews*, 57 FR 9534 (March 19, 1992) (this review consolidated first and second reviews); *Brass Sheet and Strip From the Netherlands; Final Results of Antidumping Duty Administrative Review*, 61 FR 1324 (January 19, 1996); *Brass Sheet and Strip From the Netherlands; Amendment to Final Results of Antidumping Duty Administrative Review*, 62 FR 33395 (June 19, 1997); *Brass Sheet and Strip From The Netherlands; Final Results of Antidumping Duty Administrative Review*, 61 FR 1324, (January 19, 1996); *Brass Sheet and Strip From the Netherlands; Final Results of Antidumping Duty Administrative Review*, 62 FR 51449 (October 1, 1997); and *Brass Sheet and Strip From the Netherlands; Final Results of Antidumping Duty Administrative Review*, 63 FR 49544 (September 16, 1998).

[4] American Brass, indicated that it does not support continuation of this antidumping duty order against OBV, *see* March 3, 1999 Substantive Response of the domestic interested parties, at page 3, footnote 1; also, *see* American Brass's February 26, 1999 letter in Exhibit 8 of OBV' March 4, 1999 substantive response. Also, American Brass subsequently disassociated itself from the Rebuttal of the domestic interested parties, *see* the domestic interested parties' rebuttal at 2, footnote 1. Consequently, the Department excluded American Brass from the domestic interested parties in the instant review.

[5] Wieland subsequently withdrew its name from the domestic interested parties claiming it no longer supports continuation of the antidumping order, *see* March 1, 1999 letter from Counsel to the domestic interested parties.

[6] In 1990, OBV's parent company, Outokumpu Oyj, purchased American Brass Company (hereinafter referred to as "the acquisition") and renamed the latter as Outokumpu American Brass ("American Brass"), *see* OBV's March 4, 1999 substantive response at 11 & Exhibit 7 thereof.

[7] OBV also provides the Department with affidavits from the Ministry of Economic Affairs of the Government of the Netherlands and the Dutch Federation of the Non-Ferrous Industries, certifying that OBV is the sole producer of the subject merchandise, *see* Exhibits 6A & 6B in March 4, 1999, Substantive Response of OBV.

[8] On March 4, 1999, the domestic interested parties requested a four (4) day extension of the deadline for filing rebuttal comments to the substantive responses. The Department extended the deadline until March 12, 1999 for all participants who are eligible to file rebuttal comments.

[9] As noted earlier, OBV is the only producer of brass sheet and strip from the Netherlands, *see* footnote 7.

[10] The domestic interested parties filed comments, pertaining to the Department's decision to conduct a full sunset review, in which the domestic party concurred with the Department's decision, *see* May 12, 1999 the domestic interested parties' comments on the Adequacy of Responses and the Appropriateness of Expedited Sunset Review at 2.

[11] *See Brass Sheet and Strip From Canada, Brass Sheet and Strip From the Netherlands, Porcelain-on-Steel Cooking Ware From Mexico, Porcelain-on-Steel Cooking Ware From Mexico: Extension of Time Limit for Preliminary Results of Five-Year Reviews*, 64 FR 28983 (May 28, 1999).

[12] *See* footnote 3, supra.

[13] *See* footnote 6, supra. Also, according to OBV, American Brass is the largest mill (almost four-times larger than OBV in terms of production capacity) in the world for rolled copper and copper alloy (*i.e.*, brass) products, *see* substantive response of OBV at 20.

[14] OBV currently exports only a specific type of brass strip (radiator strip) in which OBV claims a comparative advantage over American Brass, and which American Brass does not produce in significant quantity, *id.* at 27–28.

relatively minor role as a supplier of brass sheet and strip products in the United States, *id.* at 21–22.[15] According to OBV, it merely wants the order revoked so that it can avoid costs, burdens, legal fees, inherent uncertainties, and management disruptions that are intrinsic to administrative reviews of the order, *id.* at 17.

In support of its assertions, OBV compiles an extensive Economic Experts' Report, which lists various findings: assuming no foreseeable major changes in the U.S. market, due to a significant investment, OBV became world cost leader in radiator strip achieving its objective; regarding radiator strip, OBV faces no competition from U.S. mills; OBV is operating at full capacity while American Brass's production capacity is expanding; the Dutch guilder has been weak against the U.S. dollar, and an appreciation of the former is unlikely; OBV will not export any products besides radiator cap because it does not want to compete with American Brass; and the circumstances surrounding the production and importation of the subject merchandise have changed significantly and permanently since the original investigation, *id.* at 26–29. The upshot of these economic findings is that OBV would not resume dumping if the order is revoked, *id.*

OBV further elaborates that strong and increasing U.S. domestic demand coupled with projected new and technology-induced demand will not permit downward pricing pressure on the subject merchandise in the U.S. market.[16] That is, OBV would not have to sell the subject merchandise at less than normal value, *id.* 29–32. Also, making reference to the effects of currency fluctuations upon the imports of the subject merchandise, OBV explains that, even if the Dutch guilder becomes stronger, such a change would not create an environment in which OBV has to resort to dumping. Finally, OBV points out that it has reached full production capacity (*i.e.*, no excess capacity), that it has well-diversified and well-established world-wide markets,[17] and that it has made a commitment not to dump in the U.S. market, *id.* 34–39.[18]

In conclusion, OBV argues strenuously that the Department's normal policies and procedures for determining likelihood of continuation or recurrence of dumping based on pre- and post-order import volumes and dumping margins are not valid measurements with respect to OBV. OBV urges that a wide range of other information and arguments it has submitted should be taken into account by the Department in making its likelihood determination; that, on the basis of this additional information the Department should find that it is unlikely that OBV will continue to dump the subject merchandise in the United States; and, consequently, that the Department should revoke the antidumping order.

In their rebuttal, the domestic interested parties emphasize that the decline in OBV's weighted-average dumping margin from 16.99 percent to the current rate of 0.00 percent was achieved by one method only—the virtual elimination of its exports to the United States, *see* Rebuttal Response of the domestic interested parties at 18.[20] The domestic interested parties state that OBV's behavior can be best described as one with dual characters: OBV has high dumping margins when it exports large volumes of the subject merchandise to the United States, and has small dumping margins when it exports low volumes, *id.* at 19.

Regarding OBV's argument that the Department to consider various other factors outside of dumping margins and import volumes, the domestic interested parties urge that the Department should not be distracted by OBV's speculative contentions and claims, *id.* at 20. The domestic interested parties claim that the acquisition does not change the fact that, previously, OBV was unable to sell brass sheet and strip without dumping. Furthermore, the evidence (with its zero current dumping margin, OBV is only exporting very small, commercially insignificant volumes) indicates that, currently, OBV cannot sell in the United States without dumping.

While citing the case of Wieland-Werke AG, an exporter of brass sheet and strip from Germany, the domestic interested parties urge the Department to be consistent with the findings of that review.[21] Also, the domestic interested parties argue that OBV's "Economic Experts Report" is, in many respects, flawed and that it makes unsupported and incorrect claims, *id.* at 22. In short, the domestic interested parties argue that OBV's characterization of the multinational nature of the automotive industry is completely irrelevant in ascertaining the possibility of price discrimination; that OBV used the wrong period in discerning "price effects of Dutch imports"; and that OBV's usage of aggregate import data provide no meaningful information with respect to relative product mix of imports of like products from various countries, *id.* at 22–25.

In concluding their rebuttal, the domestic interested parties contend that OBV has not demonstrated why the Department should consider other factors, outside of import volumes and dumping margins, in determining whether continuation or recurrence of dumping of the subject merchandise is likely if the order is revoked. As in their substantive response, the domestic interested parties urge the Department to find that dumping would recur were the order revoked.

OBV, in its rebuttal to the substantive response of the domestic interested parties, restates its positions from its own substantive response: dumping will not recur if the order is revoked because its situation is unique, and import levels do not provide a reliable indicator of the likelihood of OBV's resumption of dumping, *see* OBV's March 12, 1999 Rebuttal to Petitioners' Substantive Response at 1–3.

OBV stresses, again, that its pre- and post-order import volumes of the subject merchandise are not valid measurements and bear absolutely no probative value in the Department's making of likelihood determination because American Brass maintains market share for OBV without OBV having to dump in the United States. In addition, OBV argues that, because of the size of American Brass and the large investment that Outokumpu OYJ has made in it, American Brass clearly has virtually exclusive responsibility for the sale of the broad range of brass sheet and strip products required by U.S. customers, *id.* at 2–3. Therefore, OBV implies, there is no need for OBV to resume dumping were the order revoked.

Department's Determination

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicates that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3.)

The order on brass sheet and strip from the Netherlands remains in place for the sole respondent interested party: OBV.[22]

Consistent with section 752(c) of the Act, the Department considered whether dumping continued at any level above *de minimis* after the issuance of the order. Although dumping of the subject merchandise continued until 1991 at varying and generally declining degrees, we preliminarily determine that OBV did not dump, at any level above *de minimis*, during the periods, 1995–1996 and 1996–1997 (last two administrative review periods).[23]

With respect to import volumes of the subject merchandise, the data supplied by both OBV and the domestic interested parties indicate that, since the imposition of the order, import volumes of the subject merchandise have declined substantially. Moreover, data in United States Census Bureau IM146s and import data from the United States International Trade Commission clearly indicate that imports of the subject merchandise have declined over the life of the order: in 1985, import volumes of brass sheet and strip exceeded 20 million pounds; whereas, in 1998 import volumes were well under 1 million pounds. In addition, as noted above, OBV does not negate the statistics which show that OBV's import volumes of the subject merchandise decreased significantly during the life of the order. Therefore, the Department preliminarily determines that import volumes of the subject merchandise decreased significantly after the issuance of the order.

Normally, as per (c) of section II.A.3. of the *Sunset Policy Bulletin* (a situation in which dumping is eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly), the Department would determine that dumping is likely to recur if the order is revoked. Nonetheless, in the instant case, the Department has decided to consider other relevant information and arguments, which OBV provides to the Department in its substantive response.

First and foremost, the Department agrees with OBV's contention that the acquisition of American Brass makes OBV's position in the U.S. market rather unique: OBV no longer has to dump in order to supply in the U.S. market because its much bigger sister company, American Brass, has more than adequate capacity to meet the demand in the U.S. market for the subject merchandise. The fact that immediately after the acquisition, imports of the subject merchandise fell to zero and stayed zero until 1995, also buttresses the above notion that American Brass basically took over OBV's exports of the subject merchandise.

Consequently, OBV's argument that it does not make sense for OBV to jeopardize the economic well being of American Brass by undercutting the prices of the subject merchandise in the U.S. by resuming dumping, is persuasive. This point is especially relevant considering Outokumpu OYJ spent hundreds of millions of dollars in purchasing and investing in American Brass.

In addition, given the facts of this case, we believe that the zero dumping margins calculated in the most recent reviews to be probative: when OBV resumed exporting the subject merchandise to the United States in 1996, it could export without dumping.[24] This is contrary to domestic interested parties' contention that OBV cannot export the subject merchandise without dumping.

Considering all the relevant information and arguments provided by OBV, the Department is convinced that American Brass bears the primary responsibility of satisfying the U.S. customers and that OBV will play a minor role by supplying only radiator strip at a normal price in the U.S. market. Therefore, in conclusion, although import volumes of the subject merchandise declined significantly after the issuance of the order, since the two most recent administrative reviews indicate that dumping of the subject merchandise has been eliminated, and since OBV presents effective "other relevant information and arguments" explaining why it is unlikely that OBV would resume dumping in the U.S., the Department preliminarily determines that recurrence of dumping of brass sheet and strip from the Netherlands is not likely if the order is revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all-others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

However, since the Department determined that dumping would not be likely to recur, the question of magnitude of margin is moot.

Preliminary Results of Review

As a result of this review, the Department preliminarily finds that revocation of the antidumping duty order would not be likely to lead to continuation or recurrence of dumping.

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR

[15] To this effect, OBV presents a company memo, a letter written by the President of Outokumpu Copper Products Oy in which the President indicated that American Brass should be the sole supplier of brass and strip products in the U.S., *id.* at 25.

[16] OBV strongly believes that a new and better product "CuproBraze radiator strip," which is created to compete with aluminum radiator strip, would further increase demand of brass products in general including the demand for the subject merchandise although CuproBraze itself is not covered by the scope of the order, *see* substantive response of OBV at 30–32.

[17] Over the ten year period (1988–1998) after the issuance of the order, OBV has exported brass strip products to seventy-five countries: exports to the U.S. account for twenty-seven percent of OBV's total exports. Furthermore, over ninety percent of OBV's total shipments to the U.S. during the period of 1996–1998 is non-subject merchandise, *id.* 36–38.

[18] For this last point, OBV stresses that for last two review periods covering 1995–96 and 1996–97, the Department's administrative reviews show OBV's dumping margins were zero. Also, OBV points out that Resolutions Adopted by the Board of Directors of OBV on 18 November 1998 resolve not to violate the U.S. antidumping laws, *see id.* at 38 and Exhibit 23.

[20] To support this, the domestic interested parties utilize proprietary information provided by OBV in its March 3, 1999 substantive response, which seem to indicate that the current rate of zero percent is associated with rather insignificant import volumes of the subject merchandise, compared to those of pre-order volume.

[21] *See Brass Sheet and Strip From Germany; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 61 FR 49727 (September 23, 1996).

[22] *See* footnote 2, supra.

[23] *See* footnote 3, supra, for the list of final determinations of administrative reviews in which the Department found zero weighted-average margins for OBV in respective period of investigation. Also, *see* OBV's substantive response at 7.

[24] *See* footnote 3, for the Department's findings that OBV did not dump during 1995–1996 and 1996–1997.

351.310(c). Any hearing, if requested, will be held on October 20, 1999. Interested parties may submit case briefs no later than October 11, 1999, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than October 18, 1999. The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such comments, no later than December 28, 1999.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 20, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–22198 Filed 8–25–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–601]

Preliminary Results of Full Sunset Review: Brass Sheet and Strip From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Full Sunset Review: Brass Sheet and Strip from Canada.

SUMMARY: On February 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on brass sheet and strip from Canada (64 FR 4840) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate filed on behalf of domestic interested parties and adequate substantive responses filed on behalf of domestic interested parties and respondent interested parties, the Department determined to conduct a full review. As a result of this review, the Department preliminarily finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the *Preliminary Results of Review* section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–5050 or (202) 482–1560, respectively.

EFFECTIVE DATE: August 26, 1999.

Statute and Regulations

This review is being conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

Imports covered by this order are shipments of brass sheet and strip, other than leaded or tinned, from Canada. The chemical composition of the subject merchandise is defined in the Copper Development Association (C.D.A.) 200 Series or the Unified Numbering System (U.N.S.) C2000 Series. This order does not cover products the chemical compositions of which are defined by other C.D.A. or U.N.S. series. In physical dimensions, the products covered by this order have a solid rectangular cross section over 0.006 inches (0.15 millimeters) through 0.188 inches (4.8 millimeters) in finished thickness or gauge, regardless of width. Coiled, wound-on-reels (traverse wound), and cut-to-length products are included. The merchandise is currently classifiable under item numbers 7409.21.00 and 7409.29.00 of the Harmonized Tariff Schedule of the United States ("HTS"). The HTS item numbers are provided for convenience and customs purposes only. The written description remains dispositive.

On February 28, 1990, the Department determined that Arrowhead Metals Limited ("Arrowhead") had officially gone out of business and, therefore, would no longer be subject to the order (55 FR 39682, September 28, 1990). On November 8, 1991, the Department revoked the order with regard to Ratcliffs/Severn Limited ("Ratcliffs") (56 FR 57317, November 8, 1991). Finally, on May 13, 1992, the Department determined that Wolverine Tube, Inc. ("Wolverine") had acquired the production facilities of Noranda Metals, Inc. ("Noranda") and, therefore, had become the successor-in-interest to Noranda (57 FR 20460, May 13, 1992). Only Arrowhead and Noranda were involved in the original investigation. Due to the revocations of the order for Arrowhead and Ratcliffs, Wolverine is currently the only company subject to the order.

History of the Order

The antidumping duty order on brass sheet and strip from Canada was published in the **Federal Register** on January 12, 1987 (52 FR 1217). During the original investigation, the Department calculated a dumping margin of 2.51 percent for Arrowhead and 11.54 percent for Noranda. The Department also established an all others rate of 8.10 percent.

Since that time the Department has conducted eight administrative reviews of this order.[5] On May 13, 1992, the Department determined that Wolverine was the successor-in-interest to Noranda (57 FR 20460). As discussed in the section above, the only known producer/exporter currently subject to the order is Wolverine. The Department notes that, to date, there have been no duty absorption findings in this proceeding.

Background

On February 1, 1999, the Department initiated a sunset review of the antidumping duty order on brass sheet and strip from Canada (64 FR 4840) pursuant to section 751(c) of the Act. On February 16, 1999, the Department received a Notice of Intent to Participate on behalf of the Heyco Metals, Inc., Hussey Copper Ltd., Olin Corporation-Brass Group, Outokumpu American Brass, PMX Industries, Inc., Revere Copper Products, Inc., the International Association of Machinists and Aerospace Workers, the United Auto Workers, and the United Steelworkers of America (AFL–CIO/CLC) (collectively, "the domestic interested parties"), within the applicable deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. The domestic interested parties claimed interested party status under sections 771(9)(C) and (D) of the Act as U.S. brass mills, rerollers, and unions whose workers are engaged in the production of subject brass sheet and strip in the United States. We received a complete substantive response to the notice of initiation from the domestic interested parties on March 3, 1999. We received a complete substantive response on behalf of Wolverine on March 4, 1999. In its substantive response, Wolverine, a Canadian producer of brass sheet and strip, claimed interested party status under section 771(9)(A) of the Act. We received rebuttal responses on behalf of both the domestic interested parties and Wolverine on March 12, 1999.

Using the Department's trade statistics, the United States Census Bureau's IM146 Reports, and the information provided by Wolverine concerning its exports to the United States, and the fact that Wolverine is the only company still subject to the order, the Department determined that Wolverine accounted for significantly more than 50 percent of the value of total exports of the subject merchandise over the five calendar years preceding the initiation of the sunset review. Therefore, the Department determined that respondent interested parties provided an adequate response to the notice of initiation, and the Department determined to conduct a full (240 day) sunset review in accordance with section 351.218(e)(2)(i) of the *Sunset Regulations*.

The Department determined that the sunset review of the antidumping duty order on brass sheet and strip from Canada is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). (*See* section 751(c)(6)(C) of the Act.) Therefore, on May 21, 1999, the Department extended the time limit for completion of the preliminary results of this review until not later than August 20, 1999, in accordance with section 751(c)(5)(B) of the Act.[1] The Department, therefore, intends to issue the final results of this review not later than December 28, 1999.

Determination

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the original investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's preliminary determinations concerning continuation or recurrence of dumping and magnitude of the margin likely to prevail are discussed below. In addition, parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin likely to prevail are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Parties' Comments

In its substantive response, the domestic interested parties state that it is highly likely that dumping would continue if the order were revoked. (*See* Substantive Response of the Domestic Interested Parties of March 3, 1999 at 31.) The domestic interested parties recognize that, currently, only Wolverine is subject to the order.

With respect to whether imports of the subject merchandise have either fallen dramatically or ceased following imposition of the antidumping duty order, the domestic interested parties argue that imports of the subject merchandise from Canada declined significantly. To illustrate this, the domestic interested parties state that from 1983 to 1985, the three years before imposition of the order, Canadian imports of brass sheet and strip averaged 10.2 million pounds. However, in 1987, the year immediately after the imposition of the order, Canadian imports fell to 6.8 million pounds and only averaged approximately 7 million pounds for the period from 1987 to 1989. (*See* Substantive Response of the Domestic Interested Parties at 35–36.)

Additionally, the domestic interested parties argue that the increase in the dumping margins for Arrowhead and Noranda in 1990 caused imports to fall from roughly 6 million pounds in 1989 to below 2 million pounds in 1990. The domestic interested parties also argue that the only reason for the later reduction in Wolverine's margins (to *de minimis* levels) was due to the fact that it was only selling modest volumes of subject brass sheet and strip in the United States. (*See* Substantive Response of the Domestic Interested Parties of March 3, 1999 at 36.) Finally, the domestic industry claims that imports of brass sheet and strip from Canada have risen by 11 million pounds in 1998 and that they believe Wolverine resumed significant volumes and dumping of exports of the subject merchandise to the United States in the belief that revocation would occur in mid-1998.

In conclusion, the domestic interested parties argue that the behavior of Canadian producers and exporters, specifically Wolverine, indicates that commercially significant volumes of brass sheet and strip cannot be sold in the United States without dumping.

Wolverine, in its substantive response of March 4, 1999, argues that it is in a very unique position, as compared to other companies in other sunset reviews of antidumping duty orders. The reason for this is that, according to the company, the Department has found a *de minimis* dumping margin for Wolverine in the preliminary and final results of each administrative review conducted by the Department since the 1993.[2] Furthermore, Wolverine argues that, were it not for the Department's error in the final results of the 1996 administrative review which resulted in a dumping margin in excess of *de minimis*, the Department likely would have revoked the order with respect to Wolverine in the final results. Between the preliminary results of the 1996 administrative review, in which the

[5] *See Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 55 FR 31414 (August 2, 1990); *Brass Sheet and Strip from Canada; Final Results and Revocation, in Part, of Antidumping Duty Administrative Review*, 56 FR 57317 (November 8, 1991); *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992) ("*1990 Review Final*"); *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 60 FR 49582 (September 26, 1995); *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 61 FR 46618 (September 4, 1996); *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 62 FR 16759 (April 8, 1997); *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 63 FR 33037 (January 17, 1998); and *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part*; issued on August 9, 1999, the expected date of publication in the **Federal Register** is August 24, 1999.

[1] *See Brass Sheet and Strip From Canada, Brass Sheet and Strip From the Netherlands, Porcelain-on-Steel Cooking Ware From Mexico, Porcelain-on-Steel Cooking Ware From Mexico: Extension of Time Limit for Preliminary Results of Five-Year Reviews*, 64 FR 28983 (May 28, 1999).

[2] *See Brass Sheet and Strip from Canada: Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 1560 (January 22, 1996); *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 61 FR 46618 (September 4, 1996); *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 62 FR 16759 (April 8, 1997); *Brass Sheet and Strip from Canada; Preliminary Results of Antidumping Duty Administrative Review*, 64 FR 6039 (February 8, 1999). In April 1999, the Department granted Wolverine's request to terminate the 1993 administrative review (63 FR 23269). In the final results of the 1996 administrative review, the Department calculated an above *de minimis* margin for Wolverine. However, the final results of the 1996 administrative review are currently being reviewed by a NAFTA Dispute Resolution Panel.

Department preliminarily determined to revoke the order with respect to Wolverine, and the final results of that review, the Department collected no additional information that would cause the preliminary results to change and, therefore, according to Wolverine, the order should have been revoked.

Furthermore, Wolverine provided, in the course of this sunset review, additional information in support of its proposition that dumping is unlikely to resume if Wolverine were revoked from the order. Wolverine asserts that it services small customers that require small quantities of a variety of products and that its "market niche" in North America appears to be largely saturated. Wolverine argues that its production capacity is limited and that it has no excess capacity to use to manufacture additional subject merchandise for export to the United States. In addition, Wolverine contends that its budgeting and marketing processes are focused on the development of non-subject merchandise and increasing Canadian sales. Lastly, Wolverine asserts that its sales process incorporates monitoring to ensure against future dumping.

In rebuttal, the domestic interested parties argue that Wolverine has shipped very small volumes of subject merchandise to the United States over the past several years and that these volumes are far below the total volume of imports of subject merchandise from Canada around the time of the imposition of the order. The domestic interested parties further argue that the Department's preliminary determination in the 1996 administrative review should not be relied upon in making sunset determinations. Furthermore, the domestic interested parties argue that the 0.67 percent dumping margin found in the 1996 administrative review should stand, despite the Department's admission of error in the calculation of Wolverine's dumping margin.

In summation, the domestic interested parties argue that the Department should conclude that revocation of the Canadian antidumping duty order would likely lead to continuation or recurrence of dumping. The domestic interested parties assert that both Noranda and Wolverine persisted in dumping at increased rates for several years after the order entered into force and Wolverine has managed to obtain *de minimis* or zero dumping margins only in periods when it has had U.S. sales volumes so low as to not be in commercial quantities. Because of this, the domestic interested parties argue that the Department should find a likelihood of continuation or recurrence of dumping.

In its rebuttal comments, Wolverine argue that it has sold and continues to sell commercially meaningful and increasing volumes of subject merchandise in the United States without dumping. Wolverines further argues that the Department has determined, in previous administrative reviews, that Wolverine's sales in the United States are of commercially meaningful volumes. Wolverine also asserts that 13-year old dumping margins from the investigation in this proceeding are logically, factually, and legally irrelevant. Wolverine asserts that prior to its acquisition of Noranda's Fergus facility in 1988, it (Wolverine) had no legal or managerial responsibility for the Fergus plant. Thus, Noranda's pricing policies and costs of production, presumably reflected in the Department's calculation of Noranda's dumping margin in the investigation, have no relevance to Wolverine's dumping margins or the Department's sunset determination, with respect to likelihood of continuation or recurrence of dumping.

Department's Determination

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2 of the *Sunset Policy Bulletin*). Additionally, the Department normally will determine that revocation of a antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3. of the *Sunset Policy Bulletin*).

As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, the existence of dumping margins after the order, or the cessation of imports after the order, is highly probative of the likelihood of continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were revoked. If imports cease after the order is issued, it is reasonable to assume that the exporters could not sell in the United States without dumping and that, to reenter the U.S. market, they would have to resume dumping.

On August 9, 1999, the Department issued its final results of the 1997 administrative review.[3] In that determination, the Department found an above *de minimis* dumping margin of 0.71 percent for Wolverine. As discussed in section II.A.3. of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed.

With respect to whether imports of the subject merchandise ceased following the imposition of the order, the Department has reviewed the U.S. Census Bureau IM146 Reports, the final results and publicly ranged import volumes from previous administrative reviews, and participants' submissions in this sunset review. Based on these sources, we find that imports of subject merchandise have existed throughout the life of the order, and continue to exist.[4] However, an examination of this information demonstrates a significant decrease in the import volumes of subject merchandise during the periods in which the Department calculated *de minimis* dumping margins for Wolverine compared with the periods in which Wolverine had significant dumping margins. The Department finds that such a situation may indicate that Wolverine was only able to eliminate dumping by significantly reducing its exports of subject merchandise to the United States (*see* Memo to File, Re: Import Volumes of Brass Sheet and Strip from Canada, dated August 19, 1999).

Based on this analysis, the Department finds that the existence of dumping margins after the issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping. A deposit rate above a *de minimis* level continues in effect for imports of the subject merchandise from the only known Canadian producer/exporter. Therefore, given that dumping has continued during the life of the order, the Department preliminarily determines that dumping is likely to continue if the order were revoked.

Because the Department is basing its likelihood determination on the continued existence of above *de minimis* dumping margins and continued imports of the subject merchandise, it is not necessary to address parties comments concerning the reduction in import volumes of the subject merchandise over the life of the order, the *de minimis* dumping margins found by the Department in previous administrative reviews, Wolverine's budgeting and marketing process, its market demographics, or its sales monitoring program.

Magnitude of the Margin

Parties' Comments

In its substantive and rebuttal responses, the domestic interested parties assert that a dumping margin of 25.49 percent, from the 1992 administrative review, is likely to prevail if the order were to be revoked because it was calculated based upon the Department's first analysis of Wolverine's data after Wolverine had taken over Noranda's Fergus facility and because it is the highest margin calculated by the Department for Wolverine. The domestic interested parties argue that in the three year period before the filing of the petition (1983–1985), imports of brass sheet and strip from Canada averaged 10.2 million pounds annually. However, in the first full year following the imposition of the order (1987), imports from Canada fell to 6.8 million pounds. Since 1990, import volumes of the subject merchandise have remained below 2 million pounds. The domestic interested parties further argue that the *de minimis* margins obtained by Wolverine for the calendar years 1995, 1996, and 1997, have only been achieved through a substantial reduction in its exports of the subject merchandise.

The domestic interested parties claim, however, that in 1998, imports of brass sheet and strip surged by 11 million pounds. It asserts that Wolverine resumed significant volumes and dumping of exports of the subject merchandise to the United States in the belief that revocation would occur in mid-1998. Based on these factors, the domestic interested parties assert that this apparent pattern of behavior by Wolverine is indicative of the fact that Wolverine cannot sell any commercially meaningful volumes of the subject merchandise in the United States without dumping and, therefore, the report of a *de minimis* margin to the Commission would be inappropriate.

Wolverine, in its substantive and rebuttal responses, argues that the dumping margin likely to prevail if the order were to be revoked is zero. Wolverine asserts that it has demonstrated this to the Department in four consecutive administrative reviews. Further, they argue that the dumping margin established for Wolverine in the 1994 administrative review was based on the best information available and is in no way relevant to the dumping margin likely to prevail if the order were to be revoked. In addition, the 21.32 percent dumping margin calculated for Noranda and subsequently assigned to Wolverine in the 1990 administrative review also is inappropriate. Wolverine argues that Noranda's pricing policies and costs of production, presumably reflected in the Department's calculation of Noranda's dumping margin in the original investigation and subsequent two administrative reviews, have no relevance to Wolverine's dumping margins because Wolverine had no affiliation with Noranda at the time the 21.32 percent dumping margin was calculated.

Department's Determination

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The Department, in its final determination of sales at less than fair value, published weighted-average dumping margins for two producers/exporters of brass sheet and strip from Canada (51 FR 44319, December 9, 1986). The Department also published an "all others" rate in this determination. We note that, to date, the Department has not issued any duty absorption findings in this case.

The Department disagrees with the domestic interested parties, in part, concerning the dumping margin likely to prevail if the order were to be revoked. The domestic interested parties' argument, that the Department should use the 25.49 percent dumping margin from the 1992 administrative review because it is the first dumping margin calculated after the Department made a successor-in-interest determination (and is the highest dumping margin ever calculated in the proceeding) is inconsistent with the Department's "successorship" finding.

In the 1990 administrative review, the Department examined Wolverine's purchase of Noranda in order to make its "successorship" determination. *See 1990 Review Final*, 57 FR at 20461. At issue in "successorship" cases is the appropriate rate to be assigned to entities affected by, for example, an acquisition of all or part of another company's assets, a transfer of another company's corporate control, or some other change which raises the questions of the company's status in the proceeding. In determining the appropriate rate, the Department examines the totality of circumstances. In the *1990 Review Final*, therefore, after considering all of the information on the record, the Department determined that Wolverine should receive the same cash deposit rate as Noranda because Wolverine was essentially the same business operation as Noranda. Specifically, the Department found that production facilities, essential personnel, customers, and management were transferred from Noranda to Wolverine without interruption. *Id.* Because the Department has previously determined that, at the time of the purchase of Noranda by Wolverine, there was no change in the business operations of the company, the domestic interested parties' argument that there is a distinction between Wolverine and Noranda for the purposes of dumping margin calculations provides insufficient reason for the Department to choose the "first" rate calculated for Wolverine as the dumping margin likely to prevail if the order were to be revoked.

With respect to the decreases in import volumes during the life of the order, the Department disagrees with the domestic industry's interpretation and evaluation. After an examination of the record in this proceeding as well as the submissions from the participants in this sunset review, the Department found that Wolverine is currently the only Canadian producer and/or exporter of the subject merchandise. Therefore, the Department finds that it would be

[3] This determination was issued on August 9, 1999, however, it has not yet been published. The expected date of publication in the **Federal Register** is August 24, 1999.

[4] The Department notes, as stated in *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 57 FR 20460 (May 13, 1992), that there were no imports of subject merchandise from Noranda/Wolverine during calendar year 1990.

unreasonable to compare the present import volumes of Wolverine with the pre-order import volumes of two (or more) producers/exporters who were subject to the order in 1987. If this comparison were made, the Department would almost certainly find that total imports had decreased over the life of the order because there are fewer producers/exporters who are currently subject to the order. Because of this, the Department believes that it is more appropriate to examine all available import volumes for Wolverine (Noranda) over the life of the order.

With respect to the domestic interested parties' claims concerning the surge in imports in 1998, the Department is not persuaded by its argument. The Department agrees with Wolverine and the proprietary argument that it has made concerning this purported surge. As a result of the information concerning this increase in import volumes provided by both the domestic industry and Wolverine, the Department preliminarily finds that there was no surge in imports of subject merchandise from Wolverine in calendar year 1998 (*see Memo to File, Re: 1998 Import Volume Surge*, dated August 19, 1999).

However, the Department also disagrees with Wolverine's argument concerning the dumping margin likely to prevail. The Department finds that the existence of dumping margins after the issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping. More importantly, a deposit rate above a *de minimis* level continues in effect for imports of the subject merchandise from Wolverine. Because a dumping margin above a *de minimis* level is currently in effect and because imports of the subject merchandise continue, we find the use of a zero dumping margin to be inappropriate to report to the Commission.

Furthermore, Wolverine's argument implies that the Department should report a more recently calculated dumping margin to the Commission. The Department disagrees with Wolverine's basis for this argument. According to the SAA at 890–91 and the House Report at 64, declining (or no) dumping margins accompanied by steady or increasing imports may indicate that companies do not have to dump in order to maintain market share. As a result, decreasing margins may be more representative of a company's behavior in the absence of the order. In the instant case, however, the zero or *de minimis* dumping margins have not been accompanied by steady or increasing imports. Instead, as noted above, they have been associated with periods where Wolverine's imports were significantly below its imports in prior periods.

Based on the above analysis, the Department finds the margin from the original investigation is the only calculated rate that reflects the behavior of producers and exporters without the discipline of the order. Therefore, consistent with the *Sunset Policy Bulletin*, we preliminarily determine that the margin calculated in the Department's original investigation is probative of the behavior of Canadian producers and exporters of brass sheet and strip if the order were revoked. We will report to the Commission the company-specific and all others rates from the original investigation contained in the Preliminary Results of Review section of this notice.

Preliminary Results of Review

As a result of this review, the Department preliminarily finds that revocation of the order is likely to lead to continuation or recurrence of dumping at the margins listed below:[5]

Manufacturer/Exporter	Margin (percent)
Wolverine (formerly Noranda) ..	11.54
All Others	8.10

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held on October 20, 1999. Interested parties may submit case briefs no later than October 11, 1999, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than October 18, 1999. The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such comments, no later than December 28, 1999.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 20, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

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[5] On September 28, 1990, the Department acknowledged that Arrowhead had gone out of business (*see Brass Sheet and Strip From Canada; Termination in Part of Antidumping Duty Administrative Review*, 55 FR 39682 (September 28, 1990).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–201–505]

Preliminary Results of Expedited Sunset Review: Porcelain-on-Steel Cooking Ware From Mexico

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Preliminary Results of Expedited Sunset Review: Porcelain-on-Steel Cooking Ware from Mexico.

SUMMARY: On February 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the countervailing duty order on porcelain-on-steel cooking ware from Mexico pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate filed on behalf of domestic interested parties and adequate substantive responses filed on behalf of domestic and respondent interested parties, the Department is conducting a full sunset review. As a result of this review, the Department preliminarily determines that revocation of the countervailing duty order would not be likely to lead to continuation or recurrence of a countervailing subsidy.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. & Constitution Ave., NW., Washington, D.C. 20230; telephone (202) 482–3207 or (202) 482–1560, respectively.

EFFECTIVE DATE: August 26, 1999.

Statute and Regulations

This review is being conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

Imports covered by this order are shipments of porcelain-on-steel ("POS") cooking ware from Mexico, except teakettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel, and are enameled or glazed with vitreous glasses. This merchandise is classifiable under item number 7323.94.0020 of the Harmonized Tariff Schedule (HTSUS). The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

History of the Order

On October 10, 1986, the Department issued a final affirmative countervailing duty determination on POS cooking ware from Mexico.[1] During the investigation, the Department reviewed two companies, Cinsa, S.A. ("Cinsa") and Troqueles y Esmaltes, S.A. ("TRES").[2] The Department calculated a country-wide estimated net subsidy of 1.97 percent *ad valorem* based on two programs found to confer subsidies—the Fund for the Promotion of Exportation of Mexican Manufactured Products (FOMEX), 1.69 percent *ad valorem*, and the Fund for Industrial Development (FONEI), 0.28 percent *ad valorem*. As a result of a program-wide change in the FOMEX program, which occurred prior to the preliminary determination, the Department adjusted the duty deposit rate to 1.90 percent ad valorem.[3] On December 12, 1986, the countervailing duty order on POS cooking ware from Mexico was published in the **Federal Register**.[4]

Since the issuance of the countervailing duty order on POS cooking ware from Mexico, the Department has conducted several administrative reviews.[5] In the administrative review covering January 1, 1990 through December 31, 1990, the Department found that the FOMEX program was eliminated by decree published in the *Diario Official* on December 30, 1989. Additionally, the Department found that effective January 1, 1990, the Mexican Treasury Department transferred the FOMEX trust to the Banco Nacional de Comercio Exterior, S.N.A. ("Bancomext") upon the elimination of the FOMEX loan program. The Department found that the Bancomext program operates much like its predecessor, FOMEX, and provided countervailable export subsidies. In the same review, the Department found that the PITEX program (the Program for Temporary Importation of Products used in the Production of Exports) provided a countervailable export subsidy. For the first time, the Department issued company-specific subsidy rates. (*See* 57 FR 562 (January 7, 1992) and 56 FR 48163 (September 24, 1991).) In the administrative review covering the period January 1, 1993 through December 31, 1993, the Department stated that FONEI, which provided long-term loans at below-market rates, was a GOM trust administered by the Banco de Mexico until its dissolution on December 31, 1989. (*See* 60 FR 39360 (August 2, 1995) and 60 FR 53165 (October 12, 1995).)

Background

On February 1, 1999, the Department initiated a sunset review of the countervailing duty order on porcelain-on-steel cooking ware from Mexico pursuant to section 751(c) of the Act. On February 16, 1999, the Department received a Notice of Intent to Participate from Columbian Home Products, LLC ("CHP"), within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. On March 3, 1999, the Department received a complete substantive response from CHP, within the deadline specified in section 351.218(d)(3)(i). CHP claimed interested party status under section 19 U.S.C 1677(9)(C) as the sole domestic manufacturer of porcelain-on-steel cooking ware. CHP asserts that it participated in the original countervailing investigation.

The Department received substantive responses from respondent interested parties, Cinsa, Esmaltaciones de Norte America, S.A. de C.V. (ENASA), and from the Government of Mexico ("GOM") (collectively "Respondents"), within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). Cinsa claimed interested party status as a foreign manufacturer and exporter of light-gauge POS cook ware from Mexico. ENASA claimed interested party status as a foreign manufacturer and exporter of heavy-gauge POS cooking ware from Mexico. The GOM claimed interested party status within the meaning of 19 U.S.C. 1677(9)(B). Cinsa maintains that it was a respondent in the original investigation and has participated in all of the subsequent administrative reviews. ENASA maintains that it was incorporated in 1993, and began its shipments of POS cooking ware to the United States in 1994. ENASA has been a participant in the two most recent administrative reviews.[6]

The Department received rebuttal comments from CHP and Respondents on March 12, 1999.[7] Because we received complete substantive responses from CHP, the GOM, and respondent foreign producers accounting for significantly more than 50 percent of the value of imports over the most recent five years, the Department is conducting a full sunset review of this order.

The Department determined that the sunset review of the countervailing duty order on POS cooking ware from Mexico is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). (*See* section 751(c)(6)(C) of the Act.) Therefore, on May 28, 1999 the Department extended the time limit for completion of the final results of this review until not later than August 20, 1999, in accordance with section 751(c)(5)(B) of the Act (*see* 64 FR 28983).

[1] *See Final Affirmative Countervailing Duty Determination; Porcelain-on-Steel Cooking Ware from Mexico, Mexico*, 51 FR 36447 (October 10, 1986).

[2] TRES subsequently became Acero Porcelanizada, S.A. ("APSA").

[3] The duty deposit rate attributable to FOMEX was reduced to 1.62 percent *ad valorem*.

[4] *See Porcelain-on-Steel Cooking Ware from Mexico Countervailing Duty Order*; 51 FR 44827 (December 12, 1986).

[5] *See Porcelain-on-Steel Cooking Ware from Mexico; Final Results of Countervailing Duty Administrative Review*, 54 FR 13093 (March 30, 1989), *Porcelain-on-Steel Cooking Ware from Mexico; Final Results of Countervailing Duty Administrative Review*, 55 FR 6666 (February 26, 1990), *Porcelain-on-Steel Cooking Ware from Mexico; Final Results of Countervailing Duty Administrative Review*, 56 FR 2064 (June 6, 1991), *Porcelain-on-Steel Cooking Ware from Mexico; Final Results of Countervailing Duty Administrative Review*, 57 FR 562 (January 7, 1992), *Porcelain-on-Steel Cooking Ware from Mexico; Final Results of Countervailing Duty Administrative Review*, 60 FR 53165 (October 12, 1995), *Porcelain-on-Steel Cooking Ware from Mexico; Final Results of Countervailing Duty Administrative Review*, 60 FR 62391 (December 6, 1995), and *Porcelain-on-Steel Cooking Ware from Mexico; Final Results of Countervailing Duty Administrative Review*, 61 FR 10726 (March 15, 1996). Twenty-two programs were made available to manufacturers/producers/exporters of POS cooking ware from Mexico since the countervailing duty order was placed in effect. See the POS cooking ware from Mexico case information on the Department's web site, *http://www.ita.doc.gov/import_admin/records/sunset/feb99*.

[6] Cinsa and ENASA note that they are sister companies, each 100 percent owned subsidiaries of ISLO, S.A. de C.V., which in turn is a wholly owned subsidiary of Grupo Industrial Saltillo, S.A. de C.V. ("GIS").

[7] On March 5, 1999, the Department received a request from CHP for an extension of deadline for filing rebuttal comments in this sunset review. As a result, the Department granted a five day extension for all participants eligible to file rebuttal comments. The deadline for filing rebuttals to the substantive comments became March 12, 1999, instead of the original deadline date of March 8, 1999.

Determination

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the program which gave rise to the net countervailable subsidy has occurred that is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission ("the Commission") the net countervailable subsidy likely to prevail if the order is revoked. In addition, consistent with section 752(a)(6), the Department shall provide the Commission information concerning the nature of the subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures ("Subsidies Agreement").

The Department's determination concerning continuation or recurrence of a countervailable subsidy, the net countervailable subsidy likely to prevail if the order is revoked, and nature of the subsidy are discussed below. In addition, parties' comments with respect to each of these issues are addressed within the respective sections.

Continuation or Recurrence of a Countervailable Subsidy

Parties' Comments

In its substantive response, CHP argues that the history of this proceeding indicates that Mexican producers and exporters of the subject merchandise would likely continue to receive countervailable subsidies from the Mexican Government if the order were revoked. CHP argues that the FOMEX program, which was found to confer a countervailable subsidy and was found to have been terminated, was essentially replaced by the Bancomext program. Further, the Bancomext program was found to confer a countervailable subsidy. Accordingly, CHP argues that the Department should determine that the continued existence of the FOMEX program, which was essentially replaced by the Bancomext program, is a strong indication that Mexican producers would likely continue to receive countervailable subsidies were the order revoked.

With respect to the FONEI program, which CHP admits was found terminated in December, 1989, CHP argues that the fact that the program provided countervailable subsidies from the original investigation through the seventh administrative review indicates that the program could be reinstated and lead to future subsidization. Additionally, CHP argues that the Department has never made a finding that the program was not likely to be reinstated.

Finally, CHP argues that the PITEX program was found in the fourth administrative review to confer a countervailable subsidy. Because the program has not been discontinued, CHP asserts that the Department should determine that were the order revoked, this program would likely lead to continuation or recurrence of a countervailable subsidy.

In their substantive responses, Respondents argue that revocation of the order will have no impact on the U.S. market or domestic interested parties because no net countervailable subsidy has been conferred on the subject merchandise since 1993 and because the countervailing duty deposit rate has been zero since October 1995. Respondents argue that the GOM terminated one of the two programs found in the original investigation to confer countervailable benefits (FOMEX export and pre-export loans) and that the GOM now provides loans to Mexican companies (Bancomext loans and FONEI loans) consistent with commercial considerations, thereby eliminating countervailable benefits. Therefore, Respondents argue there is no likelihood that Mexican producers of POS cooking ware could be able to obtain countervailable benefits were the order revoked.

The GOM argues that because it no longer provides export loans or long-term loans that are inconsistent with commercial considerations—in compliance with its obligations pursuant to the Mexico-United States Understanding Regarding Subsidies and Countervailing Duties (the "Understanding")—a subsidy rate from a period before the agreement took effect does not provide a basis for a determination of likelihood of continuation or recurrence of a countervailable subsidy. Finally, the GOM argues that, had this investigation been conducted under the current statute, a final country-wide subsidy rate of 1.97 percent would be found *de minimis* and, as a result, the Department would issue a negative final countervailing duty determination.

In its rebuttal comments CHP argues that although the FOMEX and FONEI programs have changed since the time of the original investigation, these changes do not provide a sufficient basis for finding that the programs will not be used in the future to provide subsidies to Mexican POS cooking ware manufacturers and exporters. Specifically, CHP argues that, as admitted by respondents, the FOMEX program has not been permanently terminated, but instead it continues to exist in a slightly altered form as the Bancomext program. CHP asserts, therefore, that it would be simple for the GOM to use this program to provide subsidies to Mexican exporters of POS cooking ware.

CHP further argues that respondents provided no evidence to suggest that changes in the FONEI program are either binding or permanent. CHP argues that Mexico's elimination of the preferential element of FONEI loans represents an exercise of administrative discretion which could be reversed at any time. In conclusion, CHP argues, therefore, that the Department should find that FONEI is likely to be reinstated as a subsidy program in the event the order is revoked.

Finally, CHP argues that contrary to respondent's assertions, the 1985 Understanding does not reduce the likelihood of future countervailable subsidization of subject merchandise. Referring to the terms of the Understanding, CHP asserts that the terms of the Understanding do not prohibit the use of domestic subsidies. Further, CHP notes that Mexico continued to provide export subsidies (in the form of PITEX) after the Understanding came into effect. Additionally, CHP argues that the Understanding does not prohibit Mexico from providing export subsidies, rather, it entitles the United States to refuse to afford merchandise from Mexico an injury test in any pending or future countervailing duty determination. In this connection, CHP notes that as a WTO member country, Mexico is entitled to an injury test regardless of the Understanding.

In conclusion, CHP argues that any recent decline in usage of the programs found countervailable over the life of the order is not indicative of what is likely to occur if the order is revoked. Rather, as is clear from the terms of the Understanding, the Mexican Government continues to be permitted to confer subsidies upon its manufacturers and exporters. CHP argues that, accordingly, the Department should determine that revocation of the order would likely lead to continuation or recurrence of a countervailable subsidy.

In its rebuttal comments the GOM asserts that the arguments presented by CHP do not provide sufficient evidence or reasoning to demonstrate that, given the producer-exporters commercial history and current situation, there is a "need" to continue imposition of the order. Referring to Article 21.1 of the Subsidies Agreement, the GOM asserts that Commerce is required to demonstrate that there is a "need" to continue the order and that such a determination must be demonstrable on the basis of evidence. Further, the GOM asserts that the arguments presented by CHP do not provide sufficient evidence or reasoning to demonstrate that, if the order is revoked, it is "likely" that exporters would continue to benefit from subsidization at significant margins.

The GOM argues that contrary to CHP's assumption that FOMEX and Bancomext are the same, FOMEX was terminated over ten years ago. Additionally, although the FOMEX funds were taken in by Bancomext, Bancomext is an entirely separate entity from FOMEX. Furthermore, the GOM asserts that the only company in this case that benefitted from any Bancomext loan, no longer exists. The GOM argues, therefore, that CHP's assertion that Mexican producers would likely continue to benefit from subsidies is a presumption unsupported by evidence or reasons.

Similarly, with respect to the FONEI domestic loan program which was terminated in 1989, the GOM argues that CHP's assertion that there is an indication that the program could be reinstated and provide future subsidization because the program continued to have a diminishing countervailable benefit (down to 0.01 percent in 1993) until the 7th review, does not provide any evidence or reason as to why the GOM would be interested in reinstating such a program. Further, the GOM argues that CHP does not provide any evidence as to how the program could be considered a prohibited or actionable subsidy as established in articles 3, 5, or 6.1 of the Subsidies Agreement.

With respect to the PITEX program, the GOM first notes that the program was not considered in the context of the investigation and therefore has never been determined to cause injury to the U.S. industry, as required by articles 15.5, 15.9, and 21.1 of the Subsidies Agreement. Additionally, the GOM asserts that PITEX was only used by a single company that no longer exists. As such, the GOM argues that there is no reason to presume that exporters will continue to benefit from a program that they have never used and, if such a presumption is made, it must be demonstrated by the Department.

The GOM also argues that the producers and exporters affected by this order have changed over the life of the order. Specifically, of the two companies investigated in the original investigation—Cinsa and TRES (later know as APSA)—APSA no longer exists. Therefore, the GOM argues that it would be inappropriate for the Department to consider the effect of the subsidy margins for APSA in the context of an order-wide review. Rather, the Department should, analogous to its practice of calculating separate subsidy margins in an original investigation or review, determine likelihood specific to each producer.

The GOM expresses its belief that CHP's assumptions relied on polices identified in the Sunset Policy Bulletin, policies which the GOM believes may be inconsistent with the WTO and the Subsidies Agreement. The GOM asserts that the policies, and general assumptions contained therein, appear to operate to effectively require the continued imposition of countervailing duties and place the burden on respondents to prove the assumptions wrong. The GOM argues that, contrary to the policies, the Department bears the burden of demonstrating, with evidence, the issues regarding "necessity" and "likelihood."

In their rebuttal comments, Cinsa and ENASA ("respondent companies") argue that CHP's assertions are not correct and the information before the Department establishes that if the order were revoked, subsidization would not recur. Respondent companies argue that CHP's assertions ignore several facts relevant to the Department's determination. First, CHP, although acknowledging that the country-wide rate has been *de minimis* since 1993, fails to give effect to the Department's finding of zero subsidization. Further, CHP fails to give effect to the Department's determination that Cinsa (the respondent which presently accounts for the vast majority of Mexican exports of POS cooking ware to the United States) has had company-specific countervailing duty rates of *de minimis* since 1989, a period of ten years.

Similar to the GOM, respondent companies argue that TRES, later known as APSA—the company that received most of the countervailable subsidies before becoming a zero rate company in 1993—no longer exists and, as such, cannot possibly obtain future countervailable subsidies. Further, respondent companies argue that it is inappropriate to assert that subsidization would recur if the order were revoked based largely upon the historical receipt of net countervailable subsidies by a respondent that no longer exists. Rather, the Department's determination of likelihood should be based upon the experience of the companies that presently exist and have the potential to produce and export subject merchandise to the United States.

Respondent companies also argue that the Understanding (which has been fully implemented) and other multilateral agreements to which both Mexico and the United States are parties, have been responsible for the termination of export subsidies and the elimination of the preferential elements from loan programs. Therefore, the magnitude of subsidization that may have existed prior to Mexico's undertaking of its current international obligations to eliminate improper subsidization does not provide a rational basis for determining the magnitude of subsidization that would likely prevail at this point in time if the order were revoked.

Respondent parties argue that CHP is incorrect in its attempt to have the Department assign the net subsidy rate from FOMEX to Bancomext. Rather, they argue that the Department should confirm its previous findings that the FOMEX program was terminated and then should separately determine whether any subsidization under the Bancomext program would recur if the order were revoked. With respect to Bancomext, Respondent parties argue that the only time the Department imposed countervailing duties attributable to Bancomext was in the 1990 administrative review and, even there, the duties were with regard to TRES/APSA, a company that no longer exists. Further, Respondent parties argue that given that in the most recently completed administrative reviews the Department determined that the Bancomext program provided zero or *de minimis* benefits, the likely net countervailable subsidy rate that would prevail if the order were revoked would continue to be zero.

With respect to the FONEI program, Respondent parties argue that CHP's position is untenable. First, Respondent parties note that, in the 1993 review, the Department determined that the net benefit attributable to this previously revoked, long-term loan program was a *de minimis* 0.01 percent. Further, even if the ten-year loan (the maximum term under the program) which provided the

benefit in the original investigation has been taken out in 1985, the benefit stream would have terminated in 1995. Even if a 10-year loan had been taken out in the final year of the program (1989), the benefit stream would terminate in 1999. Therefore, Respondent parties argue that no possible benefit stream from a FONEI loan that could exist beyond the date of revocation.

Lastly, with respect to the PITEX program, Respondent companies argue that the information before the Department establishes that if the order were revoked there would be no likely net countervailable subsidy to existing POS cooking ware manufacturers and exporters. Again, Respondent parties argue that only TRES/APSA ever received a net countervailable subsidy from PITEX and that the Department has found PITEX not used by any other company examined by the Department. Further, Respondent companies argue that PITEX is countervailable only to the extent that import duties are refunded or not collected for imported machinery or spare parts used in the production of export merchandise and that, in the 1989 review, the Department found that PITEX benefits were not countervailable to the extent that they are attributable to products that were physically incorporated into re-exported merchandise. Additionally, Respondent parties refer to the Department's Sunset Policy Bulletin and argue that the Department recognizes that it is not appropriate to attribute future usage of a program to companies that have never been found to have used that program. In conclusion, Respondent parties argue that because the Department has never found that Cinsa or ENASA have used countervailable elements of the PITEX program, it would be contrary to stated Departmental policy to attribute a net countervailable subsidy for PITEX to existing POS cooking ware companies.

Department's Preliminary Determination

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreement Act ("URAA"), specifically the Statement of Administrative Act ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt. 1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its Sunset Policy Bulletin providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that the determinations of likelihood will be made on an order-wide basis (see section III.A.2. of the Sunset Policy Bulletin). Additionally, the Department normally will determine that revocation of a countervailing duty order is likely to lead to continuation or recurrence of a countervailable subsidy where (a) a subsidy program continues, (b) a subsidy program has been only temporarily suspended, or (c) a subsidy program has been only partially terminated (*see* section III.A.3.a of the Sunset Policy Bulletin). Exceptions to this policy are provided where a company has a long record of not using a program (*see* section III.A.3.b of the Sunset Policy Bulletin).

The Sunset Policy Bulletin, at section III.A.3.a, states that, consistent with the SAA at 888, continuation of a program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies. Temporary suspension or partial termination of a subsidy program also will be probative of continuation or recurrence of countervailable subsidies absent significant evidence to the contrary. However, the Sunset Policy Bulletin also provides that, where a program has been officially terminated by the foreign government, this will be probative of the fact that the program will not continue or recur if the order is revoked. (*See* Sunset Policy Bulletin at section III.A.5.)

As noted above, in the final affirmative countervailing duty determination the Department determined that Mexican producers/exporters of the subject merchandise were benefitting from countervailable subsidies under the FOMEX and FONEI programs. In subsequent administrative reviews, the Department found that the FOMEX and FONEI programs were terminated in 1989. CHP argues that the FOMEX program continues to exist by virtue of the fact that remaining funds were transferred to the still existent Bancomext program. However, as the Department determined in the 1990 administrative review, the FOMEX program was officially eliminated by decree in December, 1989. Additionally, the Department confirmed this determination in the final results of the 1993 administrative review when it explained that the FOMEX program was terminated on December 31, 1989 and effective January 1, 1990, the FOMEX trust was transferred to Bancomext. The Department has, in numerous reviews, investigated Bancomext as a separate program. Therefore, given that the FOMEX program was terminated by official decree, we preliminarily determine that the FOMEX program has been eliminated.

With respect to the FONEI program, we preliminarily determine that the program has been eliminated without residual benefit. In the 1993 administrative review, the Department stated that FONEI was a GOM trust administered by the Banco de Mexico until its dissolution on December 31, 1989. CHP does not argue that the program still exists. Rather, they argue that the program could be easily reinstated. We are not persuaded by mere assertions, however. Rather, based on the Department's prior findings with respect to FONEI and absent evidence to the contrary, we preliminarily determine that the FONEI program has been eliminated and is not likely to be reinstated. Further, we agree with respondents that any potential remaining countervailable benefit from 10-year, long-term loans granted prior to the 1989 termination of the FONEI program would not continue beyond 1999.

With respect to the PITEX program, we note that none of the parties argued that the program has been terminated. Rather, CHP argues that we should find that countervailable subsidies are likely to continue or recur were the order revoked based on a finding in the 1990 administrative review that one company, APSA, used the program for temporary imports of machinery and spare parts that were not physically incorporated into exported products. The Respondents argue that APSA is the only company in this proceeding ever found to have received a countervailable subsidy under this program, APSA no longer exists, and other companies have a long track record of not using this program. Therefore, PITEX should not be found likely to provide a countervailable subsidy.

We preliminarily determine that there is a long track record of non-use of the PITEX program by companies that are currently, and are likely to be, producing and exporting POS cooking ware to the United States. In the administrative review of the antidumping duty order on POS cooking ware from Mexico covering the period December 1, 1996 through November 31, 1997, the Department found that APSA had been sold in 1997 and that Cinsa had incorporated some of APSA's production equipment into its facility (*see* Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review, 64 FR 26934 (May 18, 1999)). Therefore, we agree that APSA no longer exists. As to whether companies other than APSA are likely to receive a countervailable subsidy from the PITEX program, we agree with respondents that, where a company has a long track record of not using a program, the Department normally will determine that the mere availability of the program does not, by itself, indicate likelihood of continuation or recurrence of a countervailable subsidy. (*See* section III.A.3.b of the Sunset Policy Bulletin.) We preliminarily determine, therefore, that there is no likelihood of a countervailable subsidy from the PITEX program were the order revoked.

With respect to the Bancomext program, CHP argues that Bancomext should be considered a replacement for FOMEX and, therefore, CHP does not independently address Bancomext. As noted above, the Department determined that the Bancomext program was separate from the FOMEX program. Further, Bancomext has been found to provide countervailable subsidies to the extent that loans are provided at preferential rates. None of the parties have argued that the Bancomext program has been terminated. Rather, respondents argue that, as a result of the 1985 Understanding, the GOM altered its practice and no longer provides loans on terms inconsistent with commercial considerations. The Department has reviewed the Bancomext program during reviews covering 1990, 1993, and 1994. In each of these reviews, the Department found countervailable subsidies were provided by the Bancomext program, albeit at *de minimis* rates. Therefore, we do not agree with respondents that the Bancomext no longer provides countervailable subsidies. However, we do agree, based on a history of *de minimis* findings, that there is no evidence to suggest that the Bancomext program is likely to provide above *de minimis* countervailable subsidies, if any, were the order revoked. Therefore, we preliminarily determine that the Bancomext program is not likely to confer a countervailable subsidy were the order revoked.

On the basis of the above analysis regarding the termination, non-use, and *de minimis* subsidies, we preliminarily determine that revocation of the countervailing duty order on POS cooking ware from Mexico is not likely to result in continuation or recurrence of a countervailable subsidy.

Net Countervailable Subsidy

Parties' Comments

In its substantive and rebuttal comments, CHP argues that in accordance with the Department's policy, the Department should report to the Commission a net countervailable subsidy of 3.84 percent as the subsidy likely to prevail if the order were revoked. CHP argues that the Department should add to the 1.97 percent subsidy from the original investigation (attributable to FOMEX and FONEI) the 1.87 percent subsidy rate found in the 1990 administrative review attributable to PITEX.

In their substantive and rebuttal comments, the respondents argue that the zero or *de minimis* rates from the most recent administrative reviews are the rates likely to prevail if the order were revoked.

Department's Preliminary Determination

Because we preliminarily determine that a countervailable subsidy is not likely to continue or recur were the order revoked, there is no net countervailable subsidy to report to the Commission.

Nature of the Subsidy

Parties' Comments

Neither party specifically addressed this issue. As noted above, however, the GOM did argue that the Department must be able to demonstrate, with evidence, that any subsidy found likely to continue or recur if the order were revoked is a subsidy inconsistent with articles 3, 5, or 6 or the Subsidies Agreement.

Department's Position

Because we preliminarily determine that a countervailable subsidy is not likely to continue or recur were the order revoked, there is no nature of the subsidy to report to the Commission.

Preliminary Results of Review

As a result of this review, the Department preliminarily finds that revocation of the countervailing duty order would not be likely lead to continuation or recurrence of a countervailable subsidy. As a result of this determination, the Department, pursuant to section 751(d)(2) of the Act, preliminarily intends to revoke the order on POS cooking ware from Mexico. Pursuant to section 751(c)(6)(A)(iv) of the Act, this revocation would be effective January 1, 2000.

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held on October 20, 1999. Interested parties may submit case briefs no later than October 11, 1999, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than October 18, 1999. The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such comments, no later than December 28, 1999.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 20, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–22197 Filed 8–25–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–504]

Preliminary Results of Sunset Review: Porcelain-on-Steel Cooking Ware From Mexico

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of preliminary results of Sunset Review: porcelain-on-steel cooking ware from Mexico.

SUMMARY: On February 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping order on porcelain-on-steel cooking ware from Mexico pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate filed on behalf of domestic interested parties and adequate substantive comments filed on behalf of domestic and respondent interested parties, the Department is conducting a full sunset review. As a result of this review, the Department preliminarily finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Preliminary Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. & Constitution Ave., NW, Washington, D.C. 20230; telephone (202) 482–3207 or (202) 482–1560, respectively.

EFFECTIVE DATE: August 26, 1999.

Statute and Regulations

This review is being conducted pursuant to sections 751(c) and 752 of

the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Scope

The merchandise subject to this antidumping duty order is porcelain-on-steel ("POS") cooking ware from Mexico, which includes tea kettles, that do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. This merchandise is currently classifiable under Harmonized Tariff Schedule of the United States ("HTSUS") subheading 7323.94.00. Kitchenware currently entering under HTSUS subheading 7323.94.00.30 is not subject to the order. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope remains dispositive.

History of the Order

On October 10, 1986, the Department issued a final determination of sales at less than fair value on POS cooking ware from Mexico.[1] On December 2, 1986, the Department's antidumping duty order on the subject merchandise was published in the **Federal Register** (51 FR 43415).

Since the issuance of the order, Department has conducted several administrative reviews of the order on POS cooking ware from Mexico.[2] The order remains in effect for all producers and exporters of the subject merchandise. In the amended final results of the eleventh administrative review of this antidumping duty order, the Department found that antidumping duties were being absorbed by Cinsa and by ENASA.[3]

Background

On February 1, 1999, the Department initiated a sunset review of the antidumping order on POS cooking ware from Mexico, pursuant to section 751(c). On February 16, 1999 we received a Notice of Intent to Participate on behalf of Columbian Home Products, LLC ("CHP"), within the deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. CHP claimed interested party status under section 771(9)(C) of the Act, as a domestic producer of POS cooking ware. CHP asserts that it is the only domestic producer of POS cooking ware.

We received complete substantive responses to the notice of initiation on March 3, 1999, on behalf of CHP, and Cinsa, S.A. de C.V. ("Cinsa") and Emaltaciones de Norte America, S.A. de C.V. ("ENASA") (collectively "respondents"). Cinsa and ENASA claimed interested party status within the meaning of 19 U.S.C. 1677(9)(A) as foreign manufacturers and exporters of POS cooking ware from Mexico. Cinsa contends that it manufactures light-gauge POS cooking ware, while ENASA contends that it manufactures heavy-gauge POS cooking ware. Cinsa asserts that it was a respondent in the original investigation and participant in all completed administrative reviews conducted by the Department. ENASA asserts that it has been a participant in reviews of this order since it began exporting to the United States (8th and 10th administrative review). Cinsa and ENASA further note that they are respondents in the 11th review and 12th review being conducted by the Department at the time of their submission.

In their substantive response, respondents provided information on the value of their exports of the subject merchandise for the calendar years 1994 to 1997, as well as the total value of exports of the subject merchandise to the U.S. Respondents represent significantly more than 50 percent of the value of total exports of the subject merchandise over the past five calendar years preceding the investigation of the sunset reviews. Because domestic and respondent interested parties provided adequate responses to the notice of initiation, the Department is conducting a full sunset review in accordance with section 351.218(e)(2)(i) of the Sunset Regulations.

On May 28, 1999, the Department determined that the sunset review of the antidumping duty order on POS cooking ware from Mexico is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). (See section 751(c)(6)(C) of the Act). As a result of this determination, the Department extended the time limit for completion of the preliminary results of this review until not later than August 20, 1999, in accordance with section 751(c)(5)(B) of the Act.[4]

Adequacy

In its rebuttal comments, CHP argues that the Department should determine that the foreign producers' response to the notice of initiation was inadequate and, therefore, the Department should conduct an expedited review. CHP asserts that the regulations require respondent interested parties to submit export data for calendar years 1994 through 1998. CHP then argues that since respondents did not submit export data for calendar year 1998 and the data submitted for 1994 through 1997 was not submitted on a calendar year basis, respondents' submission must be viewed as incomplete. In conclusion, CHP asserts that because no other Mexican producers submitted a response to the Notice of Initiation, the Department has not received a complete substantive response from any respondent interested party. As a result, CHP argues that the Department should issue an expedited determination based on facts available and apply an adverse inference against respondents.

In the preamble to the Sunset Regulations the Department explained that it may consider a substantive response that does not contain all of the information required to be complete where a party is unable to report certain required information and provides a reasonable explanation as to why it is unable to provide such information. In their substantive response, respondents explained that they were providing annual (December–November) export statistics corresponding to the administrative reviews conducted by the Department. Further, because the data on sales of subject merchandise during the 12th administrative review had not yet been calculated, respondents explained that data for the most recent year was not yet available. Cinsa explained that its accounting records are maintained on the basis of all light gauge POS products, which includes subject and non-subject merchandise. Therefore, the computerized sales tapes prepared for the Department's administrative reviews enable it to distinguish between subject and non-subject merchandise.

We determine that the respondents provided a reasonable explanation as to why information was not yet available and was reported based on a different time period. We note that our adequacy determinations are intended to determine whether there is sufficient participation of interested parties to warrant a full review. Where, as in this review, respondents have provided information sufficient to enable us to make that determination along with a reasonable explanation for any discrepancies, we do not intend to require respondents to recalculate information which is otherwise available in a slightly altered form. Therefore, we continue to conclude that we received adequate response from respondent interested parties to warrant a full review.

Determination

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c)(1) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order. Pursuant to section 752(c)(3) of the Act, the Department shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and magnitude of the margin are discussed below. In addition, parties' comments with respect to the continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Parties' Comments

In its substantive response CHP refers to the Department's Sunset Policy Bulletin and argues that the Department should find that dumping is likely to continue at significant margins if the order is revoked. In support of its assertion that dumping has continued over the life of the order, CHP cites to the final results of administrative reviews that have been completed. CHP asserts that Cinsa's company-specific margin has increased since the order was imposed from 1.63 percent in the first administrative review to 16.91 percent in the tenth review, and most recently to 64.02 percent in the preliminary results of the eleventh review.

With respect to import levels, CHP refers to official import statistics from the Department of Commerce, Bureau of Census to support its assertion that imports from Mexico have declined. Specifically, CHP asserts a 50 percent decrease in imports from 1994 (3.3 million units) to 1998 (1.7 million units).

CHP argues that this evidence is highly probative that dumping would be likely to continue or recur if the order were revoked. In conclusion, CHP argues that the combination of declining import volumes and simultaneously increasing dumping margins demonstrates that Mexican producers are unable to sell significant volumes of POS cooking ware in the United States without dumping.

The respondents argue revocation of the order would have minimal or *de minimis* effects on the POS cookware market in the United States. Respondents assert that the 17.47 percent margin assigned to Cinsa (from the investigation) and the 2.74 percent margin assigned to ENASA (from the 9th review) are substantially lower than the 29.52 percent weighted-average margin assigned to all others in the original investigation. Further, respondents assert that their dumping margins have generally declined from such initiation levels while their exports to the United States and market share of Mexican exports of POS cooking ware have increased significantly. On these bases, respondents argue that they are able to market and sell their merchandise in the United States without high dumping margins.

Additionally, respondents argue that revocation of the order would not result in a sudden increase in their exports because the Mexican domestic market is their primary market. Citing to official United States import statistics, respondents assert that in 1998, the Mexican share of total U.S. imports of POS cooking ware was only 6.66 percent and that imports from Mexico declined by approximately 57 percent from 1994 to 1998. Finally, respondents assert that even though Mexican imports of subject merchandise have declined since 1994, the imports in 1998 are still approximately 85 percent higher than they were in 1985, the year prior to the issuance of the order.

In its rebuttal comments CHP argues that contrary to respondents' assertion, dumping margins have increased during the history of this proceeding. CHP asserts that Cinsa's margin has steadily increased since the third administrative review and, as of the tenth review, is 16.91 percent. Further, CHP argues that ENASA's margin in the tenth review is 61.66 percent. CHP also argues that, if as respondents argue, dumping is not likely to continue or recur, respondents should argue that any margin likely to prevail is zero, not the 12.85 to 23.72 percent range respondents have suggested is the margin likely to prevail if the order were revoked. On the basis of above *de minimis* margins in every

[1] *See Porcelain-On-Steel Cooking Ware from Mexico; Final Determination of Sales at less than Fair Value*, 51 FR 36435 (October 10, 1986).

[2] *See Porcelain-On-Steel Cooking Ware from Mexico; Final Results of Antidumping Duty Administrative Review*, 55 FR 21061(May 22, 1990); *Porcelain-On-Steel Cooking Ware from Mexico; Final Results of Antidumping Duty Administrative Review*, 55 FR 39186 (September 25, 1990); *Porcelain-On-Steel Cooking Ware from Mexico; Final Results of Antidumping Duty Administrative Review*, 58 FR 32095 (June 8, 1993); *Porcelain-On-Steel Cooking Ware from Mexico; Final Results of Antidumping Duty Administrative Review*, 58 FR 4332 (Aug. 16, 1993), as amended, *Porcelain-On-Steel Cooking Ware from Mexico; Final Results of Antidumping Duty Administrative Review*, 59 FR 23694 (May 6, 1994), and *Porcelain-On-Steel Cooking Ware from Mexico; Amended Final Results of Antidumping Duty Administrative Review in Accordance with Decision Upon Remand*, 63 FR 53643 (October 6, 1998); *Porcelain-On-Steel Cooking Ware from Mexico; Final Results of Antidumping Duty Administrative Review*, 60 FR 2378 (January 9, 1995), as amended, *Porcelain-On-Steel Cooking Ware from Mexico; Amendment to Final Results of Antidumping Duty Administrative Review*, 60 FR 7521 (February 8, 1995), as amended, *Porcelain-On-Steel Cooking Ware from Mexico; Amended Final Results of Antidumping Duty Administrative Review in Accordance with Decision Upon Remand*, 61 FR 53350 (October 11, 1996); *Porcelain-On-Steel Cooking Ware from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 54616 (October 21, 1996); *Porcelain-On-Steel Cooking Ware from Mexico; Final Results of Antidumping Duty Administrative Review*, 62 FR 25908 (May 12, 1997), as amended, *Porcelain-On-Steel Cooking Ware from Mexico; Notice of Amended Final Results of Antidumping Duty Administrative Review*, 62 FR 35153 (June 30, 1997); *Porcelain-On-Steel Cooking Ware from Mexico; Final Results of Antidumping Duty Administrative Review*, 62 FR 42496 (August 7, 1997), as amended, *Porcelain-on-Steel Cookware From Mexico: Notice of Panel Decision and Amended Final Results of Antidumping Duty Administrative Review in Accordance With Decision Upon Remand*, 64 FR 42916 (August 6, 1999); *Porcelain-On-Steel Cooking Ware from Mexico; Final Results of Antidumping Duty New Shipper Administrative Review*, 61 FR 15463 (April 8, 1996); *Porcelain-On-Steel Cooking Ware from Mexico; Final Results of Antidumping Duty Administrative Review*, 63 FR 38373 (July 16, 1998), as amended, *Porcelain-On-Steel Cooking Ware from Mexico; Amendment to Final Results of Antidumping Duty Administrative Review*, 63 FR 43594 (August 13, 1998); and *Porcelain-On-Steel Cooking Ware from Mexico; Final Results of Antidumping Duty Administrative Review*, 64 FR 26934 (May 18, 1999), as amended, *Porcelain-On-Steel Cooking Ware from Mexico; Amended Final Results of Antidumping Duty Administrative Review*, 64 FR 29262 (June 1, 1999).

[3] *See Porcelain-on-Steel Cookware From Mexico; Amended Final Results of Antidumping Duty Administrative Review*, 64 FR 29262 (June 1, 1999).

[4] *See POS Cooking Ware from Mexico: Extension of Time Limit for Preliminary Results of Five-Year Reviews et. al.*, 64 FR 28983 (May 28, 1999).

review, margins which have increased to historically high levels in the most recently completed administrative review, CHP argues that the Department should determine that revocation of this order would be likely to lead to a continuation of dumping.

The respondents did not address likelihood in their rebuttal comments.

Department's Preliminary Determination

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its Sunset Policy Bulletin providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2 of the Sunset Policy Bulletin). Additionally, the Department normally will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3 of the Sunset Policy Bulletin).

As discussed in section II.A.3 of the Sunset Policy Bulletin, the SAA at 890, and the House Report at 63–64, the existence of dumping margins after the order is highly probative of the likelihood of the continuation or recurrence of dumping. If companies continue to dump with the discipline of an order in place, it is reasonable to assume that dumping would continue if the discipline were revoked.

We agree with CHP that dumping margins above *de minimis* have continued over the life of the order. Further, deposit rates above *de minimis* remain in effect for all exports of POS cooking ware from Mexico. Using statistics provided by CHP and respondents, we find that imports have fluctuated over the order; steadily increasing in both volume and value from 1985 through 1994 and then steadily decreasing through 1998. Imports in 1998, however, remain slightly higher in value than in 1985 and are slightly lower in volume. Therefore, we do not agree with CHP's arguments that we should find likelihood on the basis of import volumes. However, since dumping margins have continued over the life of the order, the Department preliminarily determines that dumping is likely to continue or recur if the order were revoked.

Magnitude of the Margin

Parties' Comments

CHP asserts that, in this case, the Department should follow the guidance of the SAA and the Sunset Policy Bulletin, and provide to the Commission the margins from the original investigation. CHP suggests the Department apply 17.47 percent for Cinsa and 29.52, the "all others" rate from the original investigation should apply to all respondents that did not begin shipping until after the order was issued. Additionally, CHP notes that, in the eleventh review, the Department made a preliminary finding of duty absorption.

Respondents note that, according to the Sunset Policy Bulletin the Department normally determines that the weighted-average dumping margins from the original investigation are the margins likely to prevail if the antidumping duty order is revoked. Respondents assert, however, that in this case, consistent with the Sunset Policy Bulletin, the Department should apply a more recently calculated margin because declining dumping margins have been accompanied by steady or increasing imports which indicates that foreign companies do not have to dump to maintain market share in the United States and that dumping is less likely to continue or recur if the order were revoked.

Respondents argue that Cinsa's company-specific margins have always been lower than the weighted-average margin calculated in the original investigation. Further, ENASA's first margin was significantly lower than the weighted-average margin from the original investigation. In addition, respondents argue that overall imports from Mexico and from respondents have increased significantly since the imposition of the order, although having declined since their 1994 peak.

Respondents argue that the weighted-average margin from the original investigation (*i.e.*, the all others rate of 29.52 percent) was calculated on the basis of the margin calculated for Cinsa (17.47 percent) and the substantially higher margin calculated for Troqueles Y Esmaltes, S.A. de C.V. ("TRES"), later known as Aceros Porcelanizados, S.A. de C.V. ("APSA"). Because TRES/APSA no longer exists, respondents argue that use of a weighted-average margin incorporating the TRES/APSA margin does not provide a reasonable indication of the margin likely to prevail for existing manufacturers and exporters. Respondents suggest alternatives for determining the appropriate margins likely to prevail if the order were revoked, all of which include weight averaging margins using the 1997 exports. On this basis, respondents calculate margins ranging from 12.85 percent to 23.72 percent. Finally, respondents acknowledge a preliminary determination of duty absorption in the eleventh administrative review.

In its rebuttal comments CHP argues that respondents' version of the facts is incorrect. In fact, according to CHP, imports have decreased while dumping margins have increased. Under these circumstances, CHP argues that there is no basis in this review to use any margins other than those determined in the original investigation.

In their rebuttal comments, respondents argue that the facts in this case require application of more recently calculated margins. Specifically, respondents assert that official U.S. import statistics demonstrate that imports of POS cooking ware from Mexico increased from $2,853,000 in calendar year 1985, peaking at $10,712,000 in 1994, and then settling to $4,442,000 in 1998. Further, respondents refer to company-specific proprietary data and argue that their exports have increased even more significantly from 1985 to 1997. In conclusion respondents argue that alternatives to the margins from the original investigation would be the simple average of company-specific margins calculated by the Department over the life of the order or the margins from the last completed administrative review.

Department's Preliminary Determination

In the Sunset Policy Bulletin, the Department stated that, consistent with the SAA and House Report, the Department will provide to the Commission the company-specific margins from the investigation because that is the only calculated rate that reflects the behavior of exporters without the discipline of an order. Further, for companies not specifically investigated, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the all others rate from the investigation. (*See* section II.B.1 of the Sunset Policy Bulletin.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the Sunset Policy Bulletin.)

Our review of import statistics covering total imports of POS cooking ware from Mexico and company-specific imports demonstrates that import volumes and values have fluctuated over the life of the order. While we agree with respondents that the Department may select a more recently calculated margin when declining (or no) margins are accompanied by steady or increasing imports, we do not agree that the facts of this case support such a determination. Imports from both Cinsa and ENASA have fluctuated over the 1994 through 1997 period. This fluctuation occurred at a time when company-specific calculated margins have been increasing. Therefore, the record does not reflect declining margins accompanied by steady or increasing imports. Because of this, the Department preliminarily finds that the use of a more recently calculated margin in its report to the Commission would be inappropriate.

Additionally, we do not agree with respondents that the all others margin from the original investigation is inappropriate because it includes the margin calculated for a company that is no longer in existence. We would normally determine that the margins calculated in the original investigation best reflect the behavior of producers/exporters without the discipline of the order.

In the final results of the 1996–1997 administrative review of this order, the Department found that antidumping duties have been absorbed by Cinsa on 68.03 percent of its U.S. sales of subject merchandise and by ENASA on 98.52 percent of its U.S. sales of subject merchandise (*see* Porcelain-on-Steel Cookware from Mexico: Amended Final Results of Antidumping Duty Administrative Review, 64 FR 29262 (June 1, 1999). Consistent with the statute and the Sunset Policy Bulletin, the Department will notify the Commission of its findings regarding such duty absorption for the Commission to consider in conducting a sunset review.

Additionally, the Sunset Policy Bulletin refers to the SAA at 885, and the House report at 60, and provides that where the Department has found duty absorption, the Department normally will provide to the Commission the higher of the margin that the Department otherwise would have reported to the Commission or the most recent margin for that company adjusted to account for the Department's findings on duty absorption. The Department explained that it normally will adjust a company's most recent margin to take into account its findings on duty absorption by increasing the margin by the amount of duty absorption on those sales for which the Department found duty absorption. In the administrative review covering the period December 1, 1996 through November 30, 1997, the Department found dumping margins of 25.42 percent for Cinsa and 65.28 percent for ENASA. The all others rate remained at 29.54 percent. (*See* Porcelain-on-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review, 64 FR 26934 (May 18, 1999), as amended, Porcelain-on-Steel Cookware from Mexico: Amended Final Results of Antidumping Duty Administrative Review, 64 FR 29262 (June 1, 1999)). Further, as noted above, the Department found that antidumping duties had been absorbed by both Cinsa and ENASA. Therefore, consistent with the Sunset Policy Bulletin, we are adjusting the most recent margin to account for duty absorption. Because the adjusted margins for Cinsa and ENASA are higher than the rates from the original investigation, we will report to the Commission the adjusted rates as indicated below.

Preliminary Results of Review

As a result of this review, the Department preliminarily finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated below.

Manufacturer/exporter	Margin (percent)
Cinsa, S.A.	42.71
Esmaltaciones de Norte America, S.A. de C.V.	129.40
All Others	29.52

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held on October 20, 1999. Interested parties may submit case briefs no later than October 11, 1999, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than October 18, 1999. The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such comments, no later than December 28, 1999.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 20, 1999.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–22200 Filed 8–25–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology (NIST)

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Request for nominations of members to serve on the Visiting Committee on Advanced Technology.

SUMMARY: NIST invites and requests nomination of individuals for appointment to the Visiting Committee on Advanced Technology (VCAT). The terms of some of the members of the VCAT will soon expire. NIST will consider nominations received in response to this notice for appointment to the Committee, in addition to nominations already received.

DATES: Please submit nominations on or before September 16, 1999.

ADDRESSES: Please submit nominations to Dr. Brian C. Belanger, Executive Director, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 1004, Gaithersburg, MD 20899–1004. Nominations may also be submitted via FAX to 301–948–1224.

Additional information regarding the Committee, including its charter, current membership list, and executive summary may be found on its electronic home page at: http://www.nist.gov/director/vcat/vcat.htm.

FOR FURTHER INFORMATION CONTACT: Dr. Brian C. Belanger, Executive Director, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, 100 Bureau Drive, Mail Stop 1004, Gaithersburg, MD 20899–1004; telephone 301–975–4720, fax 301–948–1224; or via email at brian.belanger@nist.gov.

SUPPLEMENTARY INFORMATION:

I. VCAT Information

The VCAT was established in accordance with 15 U.S.C. 278 and the

Federal Advisory Committee Act (5 U.S.C. app.2).

Objectives and Duties

1. The Committee shall review and make recommendations regarding general policy for NIST, its organization, its budget, and its programs, within the framework of applicable national policies set forth by the President and the Congress.

2. The Committee functions solely as an advisory body, in accordance with the provisions of the Federal Advisory Committee Act.

3. The Committee shall report to the Director of NIST.

4. The Committee shall provide a written annual report, through the Director of NIST, to the Secretary of Commerce for submission to the Congress on or before January 31 each year. Such report shall deal essentially, though not necessarily exclusively, with policy issues or matters which affect the Institute, or with which the Committee in its official role as the private sector policy adviser of the Institute is concerned. Each such report shall identify areas of research and research techniques of the Institute of potential importance to the long-term competitiveness of United States industry, which could be used to assist United States enterprises and United States industrial joint research and development ventures. The Committee shall submit to the Secretary and the Congress such additional reports on specific policy matters as it deems appropriate.

Membership

1. The Committee is composed of fifteen members that provide representation of a cross-section of traditional and emerging United States industries. Members shall be selected solely on the basis of established records of distinguished service and shall be eminent in one or more fields such as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. No employee of the Federal Government shall serve as a member of the Committee.

2. The Director of the National Institute of Standards and Technology shall appoint the members of the Committee, and they will be selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance.

Miscellaneous

1. Members of the VCAT are not paid for their service, but will, upon request, be allowed travel expenses in accordance with 5 U.S.C. 5701 et seq., while attending meetings of the Committee or of its subcommittees, or while otherwise performing duties at the request of the chairperson, while away from their homes or a regular place of business.

2. Meetings of the VCAT take place in the Washington, DC metropolitan area, usually at the NIST headquarters in Gaithersburg, Maryland, and once each year at the NIST headquarters in Boulder, Colorado. Meetings are one or two days in duration and are held quarterly.

3. Committee meetings are open to the public except for approximately one hours, usually at the beginning of the meeting, a closed session is held in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. All other portions of the meetings are open to the public.

II. Nomination Information

1. Nominations are sought from all fields described above.

2. Nominees should have established records of distinguished service and shall be eminent in fields such as business, research, new product development, engineering, labor, education, management consulting, environment and international relations. The category (field of eminence) for which the candidate is qualified should be specified in the nomination letter. Nominations for a particular category should come from organizations or individuals within that category. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the person agrees to the nomination, acknowledge the responsibilities of serving on the VCAT, and will actively participate in good faith in the tasks of the VCAT. Besides participation at meetings, it is desired that members be able to devote the equivalent of two days between meetings to either developing or researching topics of potential interest, and so forth in furtherance of their Committee duties.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse VCAT membership.

Dated: August 17, 1999.

Karen H. Brown,

Deputy Director.

[FR Doc. 99–22217 Filed 8–25–99; 8:45 am]

BILLING CODE 3510–30–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology; Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Visiting Committee on Advanced Technology, National Institute of Standards and Technology (NIST), will meet Tuesday, September 14, 1999 from 8:30 a.m. to 5:00 p.m. The Visiting Committee on Advanced Technology is composed of fifteen members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an update on NIST programs; Update on the Manufacturing Extension Partnership; Chemical Science and Technology Laboratory's Thermophysical Properties Standard Reference Data Dissemination; a laboratory tour of the Materials Science and Engineering Laboratory's Welding R&D Program; Electronic and Electrical Engineering Laboratory's Future Directions in Metrology for the Magnetic Recording Industry and RF and Antenna Measurements; and Physics Laboratory's Short Pulse Lasers and the Laser "Ruler".

Discussions scheduled to begin at 8:15 a.m. and to end at 9:15 a.m. on September 14, 1999, on staffing of management positions at NIST and the NIST budget, including funding levels of the Advanced Technology Program and the Manufacturing Extension Partnership will be closed.

DATES: The meeting will convene September 14, 1999, at 8:15 a.m. and will adjourn at 5:30 p.m. on September 14, 1999.

ADDRESSES: The meeting will be held in the Radio Building, Room 1107 (seating capacity 60, includes 35 participants), National Institute of Standards and Technology, Boulder, Colorado.

FOR FURTHER INFORMATION CONTACT: Dr. Brian C. Belanger, Executive Director, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, MD 20899–1004, telephone number (301) 975–4720.

SUPPLEMENTARY INFORMATION: The Acting Chief Financial Officer and Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on July 15, 1999, that portions of the meeting of the Visiting Committee on Advanced Technology which involved discussion of proposed funding of the Advanced Technology Program and the Manufacturing Extension Partnership Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussion of the staffing issues of management and other positions at NIST may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: August 17, 1999.

Karen H. Brown,

Deputy Director.

[FR Doc. 99–22218 Filed 8–25–99; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.072899D]

Sea Turtle Conservation; Shrimp Trawling Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability.

SUMMARY: NMFS announces the availability of the report on the June 1998 Turtle Excluder Device (TED) testing session.

DATES: August 26, 1999.

ADDRESSES: Requests for copies of the 1998 TED testing report may be submitted to the Chief, Harvesting Systems and Engineering Branch, Mississippi Laboratories, Southeast Fisheries Science Center, NMFS, P.O. Drawer 1207, Pascagoula, MS 39568–1207.

FOR FURTHER INFORMATION CONTACT: Barbara Schroeder, 301–713–1401, or Charles A. Oravetz, 727–570–5312.

SUPPLEMENTARY INFORMATION: The Harvesting Systems and Engineering Branch of the National Marine Fisheries Service (NMFS), Mississippi Laboratories, Pascagoula Facility conducted SCUBA diver evaluations and testing of modified TED designs using the small turtle test protocol (Federal Register, Vol. 55, No. 195) in Panama City, Florida, May 29– June 14, 1998. The project objectives were to: (1) test and evaluate candidate Andrews soft TED designs for the exclusion of juvenile sea turtles, (2) develop detailed installation criteria for soft TED designs which pass the efficiency test, (3) examine the consistency of installation with the currently approved Parker soft TED design among different trawl types and sizes, and (4) provide vessel and diver support in conducting a multiple submergence experiment on 2 year old loggerhead sea turtles.

Soft TEDs were prohibited in December 1997 (61 FR 66933) due to difficulties with installing them correctly and observed sea turtle takes during controlled testing and commercial trawling operations. The Parker soft TED, however, was approved for use in the shrimp industry through October 13, 1999 (63 FR 17956, April 13, 1998). The approval was based on information from tests conducted in 1997 which showed the Parker design to be effective in excluding sea turtles in certain net configurations. Its use after October 13, 1999, will be determined based on an evaluation of the 1998 TED testing report made available through this **Federal Register** notice as well as an evaluation of observations made during commercial fishing activities, enforcement data and stranding data.

Authority: 16 U.S.C. 1531–1543 *et seq.*

Dated: August 20, 1999.

Wanda L. Cain,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–22216 Filed 8–25–99; 8:45 am]

BILLING CODE 3510–22–F

CONSUMER PRODUCT SAFETY COMMISSION

Petition Requesting Development of Safety Standard for Bleachers and Grandstands

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Commission has received a petition from Representatives Bill Luther and Jim Ramstad requesting that the Commission develop a safety standard to prevent falls between gaps in bleachers and grandstands. The Commission solicits written comments concerning the petition.

DATES: Comments on the petition should be received in the Office of the Secretary by October 25, 1999.

ADDRESSES: Comments, preferably in five copies, on the petition should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0800, or delivered to the Office of the Secretary, Room 501, 4330 East-West Highway, Bethesda, Maryland 20814. Comments may also be filed by telefacsimile to (301) 504–0127 or by email to cpsc-os@cpsc.gov. Comments should be captioned "Petition CP 99–2, Petition for Development of a Safety Standard for Bleachers and Grandstands." A copy of the petition is available for inspection at the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0800, ext. 1232.

SUPPLEMENTARY INFORMATION: The Commission has received a letter from Representatives Bill Luther and Jim Ramstad requesting that the Commission develop a safety standard for bleachers and grandstands. The Commission is docketing the correspondence as a petition under provisions of the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.* The petitioners note that there have been several recent incidents involving children falling through gaps in bleachers at basketball and hockey arenas. In one such incident a six-year-old boy died. The petitioners ask for a standard that would include minimum spacing requirements for gaps in new bleachers. They also request that the Commission issue guidelines for retrofitting older facilities.

Interested parties may obtain a copy of the petition by writing or calling the

Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800. A copy of the petition is also available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, Room 419, 4330 East West Highway, Bethesda, Maryland.

Dated: August 20, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 99–22094 Filed 8–25–99; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Air Force A–76 Initiatives Cost Comparisons and Direct Conversions (As of June 30, 1999)

The Air Force is in the process of conducting the following A–76 initiatives. Cost comparisons are public-private competitions. Direct conversions are functions that may result in a conversion to contract without public competition. These initiatives were announced and in-progress as of June 30, 1999, include the installation and state where the cost comparison or direct conversion is being performed, the total authorizations under study, public announcement date and actual or anticipated solicitation date. The following initiatives are in various stages of completion.

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation issued or scheduled date
COST COMPARISONS					
ANDERSEN	GUAM	SUPPLY AND TRANSPORTATION	384	25-Jun-98	28-May-99.
ANDREWS	MD	AIRCRAFT MAINTENANCE AND SUPPLY	815	25-Jul-97	26-May-99.
ANDREWS	MD	GROUNDS MAINTENANCE	9	17-Dec-98	01-Oct-99.
ANDREWS	MD	HEATING SYSTEMS	22	17-Dec-98	01-Oct-99.
ANDREWS	MD	MEDICAL FACILITY MAINTENANCE	11	09-Oct-97	15-Jul-99.
BARKSDALE	LA	PROTECTIVE COATING	13	14-Dec-98	13-Sep-99.
BOLLING	DC	SUPPLY AND TRANSPORTATION	164	01-Dec-98	03-Jan-00.
BUCKLEY	CO	AIRFIELD MANAGEMENT	34	22-Mar-95	18-May-99.
CARSWELL	TX	BASE OPERATING SUPPORT	69	13-Jun-96	10-Aug-99.
CHEYENNE MTN	CO	CIVIL ENGINEERING	139	08-May-98	01-Aug-00.
CHEYENNE MTN	CO	COMMUNICATION FUNCTIONS	401	08-May-98	01-Oct-99.
DOVER	DE	HEATING SYSTEMS	11	07-Jan-99	04-Oct-99.
EDWARDS	CA	BASE OPERATING SUPPORT	460	09-Dec-98	08-Nov-00.
EDWARDS	CA	TRANSIENT AIRCRAFT MAINTENANCE/AEROSPACE GROUND EQUIPMENT.	136	06-Nov-98	31-Aug-99.
EGLIN	FL	CIVIL ENGINEERING	200	03-Dec-96	21-Jul-98.
EIELSON	AK	HOUSING MANAGEMENT	16	17-Nov-97	18-May-99.
ELMENDORF	AK	ADMINISTRATIVE TELEPHONE SWITCHBOARD	16	28-Jul-97	24-Feb-99.
ELMENDORF	AK	BASE SUPPLY	210	26-Mar-99	07-Sep-99.
FAIRCHILD	WA	HEATING SYSTEMS	15	16-Mar-99	31-Oct-99.
GENERAL MITCHELL	WI	BASE OPERATING SUPPORT	77	13-Jun-96	20-Apr-98.
GREATER PITTSBURG	PA	BASE OPERATING SUPPORT	77	13-Jun-96	15-Sep-99.
GRISSOM	IN	BASE OPERATING SUPPORT	133	13-Jun-96	01-Oct-99.
HANSCOM AFB	MA	BASE SUPPLY	70	10-Nov-98	27-Aug-99.
HANSCOM AFB	MA	CIVIL ENGINEERING	201	09-Dec-98	25-Sep-99.
HANSCOM AFB	MA	EDUCATION/TRAINING AND PERSONNEL	14	25-Nov-98	11-Sep-99.
HILL AFB	UT	BASE OPERATING SUPPORT	730	30-Sep-98	20-Sep-00.
HOLLOMAN AFB	NM	MILITARY FAMILY HOUSING MAINTENANCE	66	12-May-97	16-Aug-99.
HOMESTEAD	FL	BASE OPERATING SUPPORT	106	13-Jun-96	15-Jan-00.
HURLBURT COM FL	FL	ADMINISTRATIVE SUPPORT	41	28-Apr-99	09-Mar-01.
HURLBURT COM FL	FL	BASE SUPPLY	43	15-Jul-98	01-Jan-00.
HURLBURT COM FL	FL	COMMUNICATION FUNCTIONS	50	31-Jul-98	24-Sep-99.
HURLBURT COM FL	FL	ENVIRONMENTAL	13	23-Sep-97	20-Nov-98.
KIRTLAND	NM	BASE COMMUNICATIONS	228	06-Nov-97	04-Jun-99.
KIRTLAND	NM	CIVIL ENGINEERING	360	09-Dec-98	15-Sep-99.
KIRTLAND	NM	ENVIRONMENTAL	32	24-Nov-98	13-Sep-99.
LACKLAND	TX	MULTIPLE SUPPORT FUNCTIONS	1587	26-Jan-99	09-Aug-99.
LANGLEY	VA	GENERAL LIBRARY	11	22-Dec-98	21-Jul-99.
LANGLEY	VA	MILITARY FAMILY HOUSING MAINTENANCE	16	24-Nov-97	11-Jun-99.
LOS ANGELES	CA	COMMUNICATIONS OPERATIONS AND MAINTENANCE FUNCTIONS.	85	01-Jul-97	25-Nov-98.
LOS ANGELES	CA	SERVICES ACTIVITIES	8	01-Jul-97	02-Sep-99.
MALMSTROM	MT	BASE COMMUNICATIONS	85	06-Oct-97	15-Jul-99.
MALMSTROM	MT	HEATING SYSTEMS	26	24-Nov-97	01-Jul-99.
MARCH	CA	BASE OPERATING SUPPORT	195	13-Jun-96	15-Nov-99.
MAXWELL	AL	MULTIPLE SUPPORT FUNCTIONS	814	28-Apr-98	22-Mar-99.
MCCHORD	WA	GROUNDS MAINTENANCE	9	14-Jun-99	22-Oct-99.
MCCHORD	WA	HEATING SYSTEMS	11	23-Sep-97	30-Mar-99.
MCCHORD	WA	MILITARY FAMILY HOUSING MAINTENANCE	15	23-Sep-97	03-Mar-99.
MINN/ST PAUL	MN	BASE OPERATING SUPPORT	83	13-Jun-96	11-Aug-98.
MULTIPLE INSTL		ADMINISTRATIVE SWITCHBOARD	50	19-Jun-97	15-Nov-99.

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation issued or scheduled date
RAMSTEIN	GERMY				
SEMBACH	GERMY				
SPANGDAHLEM	GERMY				
MULTIPLE INSTLNS		ADMINISTRATIVE SWITCHBOARD	44	19-Jun-97	15-Nov-99.
CROUGHTON	UK				
FAIRFORD	UK				
LAKENHEATH	UK				
MILDENHALL	UK				
MOLESWORTH	UK				
MULTIPLE INSTLNS		COMMUNICATION FUNCTIONS	141	11-Mar-99	11-Nov-99.
GRISSOM	IN				
GENERAL MITCHELL	WI				
MINN/ST PAUL	MN				
NEW ORLEANS NAS	LA				
CARSWELL	TX				
HOMESTEAD	FL				
MARCH	CA				
WESTOVER	MA				
YOUNGSTOWN MUNI	OH				
WILLOW GROVE	PA				
GREATER PITTSBURG	PA				
MULTIPLE INSTLNS		EDUCATION SERVICES	153	07-Jan-99	06-Oct-99.
HOWARD	PANMA				
MOODY	GA				
MINOT	ND				
MT HOME	ID				
NELLIS	NV				
SHAW	SC				
WHITEMAN	MO				
LAJES	AZORE				
ELLSWORTH	SD				
SEYMOUR JOHNSON	NC				
HOLLOMAN AFB	NM				
DYESS	TX				
DAVIS MONTHAN	AZ				
CANNON	NM				
BARKSDALE	LA				
KEFLAVIK	ICELD				
LANGLEY	VA				
BEALE	CA				
MULTIPLE INSTLNS		EDUCATION/TRAINING AND PERSONNEL	94	25-Mar-98	01-May-99.
BUCKLEY	CO				
F E WARREN	WY				
PATRICK	FL				
PETERSON	CO				
FALCON	CO				
VANDENBERG	CA				
MULTIPLE INSTLNS		PRECISION MEASUREMENT EQUIPMENT LABORATORY (PMEL).	1516	24-Sep-98	24-Aug-99.
NEW BOSTON	NH	BASE OPERATING SUPPORT	48	03-Dec-97	01-Nov-99.
NEW ORLEANS NAS	LA	BASE OPERATING SUPPORT	45	13-Jun-96	10-Aug-99.
OFFUTT	NE	BASE OPERATING SUPPORT	1608	30-Sep-98	31-Jan-00.
PATRICK	FL	SUPPLY AND TRANSPORTATION	43	14-May-98	01-Jun-00.
RAMSTEIN	GERMY	MILITARY FAMILY HOUSING MAINTENANCE	142	19-Jun-97	28-Dec-98.
ROBINS	GA	ADMINISTRATIVE TELEPHONE SWITCHBOARD	17	17-Mar-99	23-Dec-99.
ROBINS	GA	BASE SUPPLY	133	01-Apr-99	30-Jan-00.
ROBINS	GA	EDUCATION SERVICES	57	07-Jan-99	30-Sep-99.
SCOTT	IL	BASE SUPPLY	102	03-Jun-97	28-Aug-98.
SCOTT	IL	COMMUNICATIONS OPERATIONS AND MAINTENANCE FUNCTIONS.	178	19-Mar-98	16-Aug-99.
SCOTT	IL	MEDICAL FACILITY MAINTENANCE	8	09-Jan-98	05-Aug-98.
SEMBACH	GERMY	COMMUNICATION FUNCTIONS	48	18-Dec-98	30-Sep-99.
SHAW	SC	PROTECTIVE COATING	12	14-Dec-98	01-Jul-99.
TINKER	OK	BASE SUPPLY	150	30-Nov-98	10-Sep-99.
TINKER	OK	CIVIL ENGINEERING	567	15-Apr-97	26-Mar-98.
TINKER	OK	EDUCATION SERVICES	54	16-Nov-98	07-Sep-99.
TINKER	OK	ENVIRONMENTAL	53	24-Nov-98	10-Sep-99.
TRAVIS	CA	VEHICLE OPERATIONS AND MAINTENANCE	131	15-Jul-98	01-Sep-99.
USAF ACADEMY	CO	BASE OPERATING SUPPORT	108	08-May-98	15-Jul-99.
USAF ACADEMY	CO	CIVIL ENGINEERING	497	01-Dec-98	15-Feb-00.
USAF ACADEMY	CO	COMMUNICATION FUNCTIONS	120	20-May-99	19-May-00.

Installation	State	Function(s)	Total authorizations	Public announcement date	Solicitation issued or scheduled date
USAF ACADEMY	CO	FOOD SERVICES	297	08-May-98	21-Apr-99.
USAF ACADEMY	CO	SERVICES ACTIVITIES	75	08-May-98	24-Sep-99.
VANDENBERG AFB	CA	TRAINER FABRICATION	12	24-Nov-97	15-Jul-99.
WESTOVER	MA	BASE OPERATING SUPPORT	172	13-Jun-96	08-May-98.
WILLOW GROVE	PA	BASE OPERATING SUPPORT	52	13-Jun-96	28-Sep-98.
WRIGHT PATTERSON	OH	CIVIL ENGINEERING	698	15-Aug-97	25-Sep-98.
WRIGHT PATTERSON	OH	CIVIL ENGINEERING	104	21-Aug-98	02-Jul-99.
WRIGHT PATTERSON	OH	COMMUNICATION FUNCTIONS	319	21-Aug-98	17-Jun-99.
WRIGHT PATTERSON	OH	LABORATORY SUPPORT SERVICES	129	21-Aug-98	01-Jul-99.
YOUNGSTOWN MUNI	OH	BASE OPERATING SUPPORT	92	13-Jun-96	14-Sep-98
DIRECT CONVERSIONS					
ALTUS	OK	MEDICAL STENOGRAPHY	2	17-Nov-97	01-Jul-98.
ASHEVILLE	NC	COMPUTER SYSTEMS MAINTENANCE	10	17-Feb-99	01-Mar-00.
BARKSDALE	LA	ADMINISTRATIVE SWITCHBOARD	10	04-Aug-98	01-Aug-99.
BARKSDALE	LA	HOSPITAL SERVICES	3	01-Dec-97	15-Jul-99.
BOLLING	DC	DATA PROCESSING	3	07-May-99	28-Jun-99.
BUCKLEY	CO	CIVIL ENGINEERING	55	24-Nov-97	01-Oct-99.
CANNON	NM	PROTECTIVE COATING	2	07-Jan-99	09-Aug-99.
CANNON	NM	TRANSIENT AIRCRAFT MAINTENANCE/AEROSPACE GROUND EQUIPMENT.	13	27-Aug-98	01-Aug-99.
DAVIS MONTHAN	AZ	PROTECTIVE COATING	9	24-Jun-98	11-Oct-99.
DAVIS MONTHAN	AZ	RAILROAD TRANSPORTATION SERVICES	2	11-Aug-98	11-Oct-99.
DYESS	TX	ADMINISTRATIVE TELEPHONE SWITCHBOARD	9	12-Nov-98	30-Oct-99.
ELLSWORTH	SD	ADMINISTRATIVE TELEPHONE SWITCHBOARD	10	10-Jul-98	01-Jul-99.
ELLSWORTH	SD	ENVIRONMENTAL	7	05-Nov-98	23-Dec-98.
ELLSWORTH	SD	GENERAL LIBRARY	7	16-Jul-98	01-Jul-99.
F E WARREN	WY	BASE COMMUNICATIONS	93	30-Oct-97	15-Aug-99.
GRAND FORKS	ND	MISSILE STORAGE & MAINTENANCE	5	17-May-99	13-Oct-00.
KIRTLAND	NM	EDUCATION SERVICES	12	26-Oct-98	15-Jul-99.
KIRTLAND	NM	GENERAL LIBRARY	4	12-Jan-99	28-Sep-99.
KIRTLAND	NM	RECREATIONAL SUPPORT	9	12-Jan-99	25-Sep-99.
LANGLEY	VA	ADMINISTRATIVE TELEPHONE SWITCHBOARD	18	05-Feb-98	01-Apr-99.
LANGLEY	VA	COMMUNICATION FUNCTIONS	8	23-Mar-99	01-Aug-00.
LANGLEY	VA	GROUNDS MAINTENANCE	9	04-May-99	15-Jul-99.
LANGLEY	VA	TRANSIENT AIRCRAFT MAINTENANCE	21	27-Aug-98	15-Aug-99.
LOS ANGELES	CA	PACKING AND CRATING	4	01-Jul-97	12-Mar-99.
MAXWELL	AL	EDUCATION SERVICES	35	31-Jul-98	01-Jul-99.
MCGUIRE	NJ	FURNISHINGS MANAGEMENT	2	14-May-99	05-Feb-00.
MINOT	ND	ADMINISTRATIVE SWITCHBOARD	6	07-Jan-99	23-Aug-99.
MINOT	ND	GROUNDS MAINTENANCE	9	18-May-99	19-Dec-99.
MT HOME	ID	TRANSIENT AIRCRAFT MAINTENANCE	7	27-Aug-98	09-Oct-99.
MULTIPLE INSTLNS		LINEN	11	17-Jun-99	05-Nov-99.
RAMSTEIN	GERMY				
SPANGDAHLEM	GERMY				
LAKENHEATH	UK				
MILDENHALL	UK				
MULTIPLE INSTLNS		RADAR	106	12-Nov-98	16-Apr-99.
CANNON	NM				
SEYMOUR JOHNSON	NC				
SHAW	SC				
NELLIS	NV	COMMUNICATION FUNCTIONS	9	22-Dec-98	30-Aug-99.
NELLIS	NV	GENERAL LIBRARY	9	16-Jul-98	02-Apr-99.
NELLIS	NV	TRANSIENT AIRCRAFT MAINTENANCE/AEROSPACE GROUND EQUIPMENT.	18	27-Aug-98	30-Jul-99.
OFFUTT	NE	COMPUTER OPERATIONS	76	17-Feb-99	01-Mar-00.
OFFUTT	NE	DATA AUTOMATION	67	27-Aug-98	01-Aug-99.
OFFUTT	NE	SOFTWARE PROGRAMMING	3	12-Nov-98	26-Apr-99.
PATRICK	FL	BASE WEATHER OBSERVING	5	17-Mar-98	01-Sep-99.
PATRICK	FL	RANGE MAINTENANCE	32	19-May-98	15-Jul-99.
PATRICK	FL	RANGE MAINTENANCE	31	19-May-98	15-Jul-99.
POPE	NC	FURNISHINGS MANAGEMENT	1	07-Oct-98	26-Jul-99.
PORTLAND	OR	ADMINISTRATIVE SWITCHBOARD	2	22-Dec-98	20-Jul-99.
RANDOLPH	TX	FLYING TRAINING	26	01-Jun-98	21-May-99.
RANDOLPH	TX	FLYING TRAINING	45	20-Jan-98	03-Aug-98.
RANDOLPH	TX	INFORMATION MANAGEMENT	26	12-May-98	15-Jan-99.
SCOTT	IL	FURNISHINGS MANAGEMENT	3	08-Jul-98	27-Jul-99.
SCOTT	IL	MISCELANEOUS ACTIVITIES	2	18-Mar-99	13-Jan-00.
SELFRIDGE	MI	BASE OPERATIONS	6	04-Jun-98	30-Apr-99.
SELFRIDGE	MI	COMMUNICATION FUNCTIONS	3	17-Aug-98	30-Apr-99.

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SELFRIDGE	MI	FUELS MANAGEMENT	8	01-Jun-98	27-Apr-99.
SELFRIDGE	MI	TRANSIENT AIRCRAFT MAINTENANCE	8	04-Jun-98	28-Apr-99.
SEYMOUR JOHNSON	NC	TRANSIENT AIRCRAFT MAINTENANCE	8	12-Nov-97	02-Jul-99.
SHAW	SC	COMMUNICATION FUNCTIONS	3	18-May-99	09-May-00.
SHAW	SC	LIBRARY	7	27-Aug-98	15-Jul-99.
SHAW	SC	TRANSIENT AIRCRAFT MAINTENANCE	11	28-Aug-98	15-Jul-99.
TINKER	OK	GRAPHIC ARTS	13	14-Jan-99	09-Jul-99.
TRAVIS	CA	FACILITIES SERVICES MAINTENANCE	2	20-Apr-98	16-Dec-98.
TRAVIS	CA	HEATING SYSTEMS	5	20-Apr-98	01-Jul-99.
USAF ACADEMY	CO	AIRFIELD OPERATIONS AND WEATHER	9	17-Apr-98	12-Apr-99.
VANDENBERG AFB	CA	MISSILE STORAGE & MAINTENANCE	66	14-Apr-99	01-Nov-99.
WHITEMAN	MO	ADMINISTRATIVE SWITCHBOARD	9	22-Dec-98	01-Sep-99.
WHITEMAN	MO	GROUNDS MAINTENANCE	5	08-Dec-98	27-Sep-99.
WHITEMAN	MO	HOSPITAL SERVICES	2	17-Apr-98	17-Nov-98.
WHITEMAN	MO	PROTECTIVE COATING	8	06-Apr-99	22-Nov-99.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–22170 Filed 8–25–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Team Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 27, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Team Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 20, 1999.

William E. Burrow,

Team Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.

Title: Evaluation of the Eisenhower Regional Consortia Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 1,562. Burden Hours: 781.

Abstract: The Evaluation of the Eisenhower Regional Consortia Program is designed to determine the quality and effectiveness of technical assistance and professional development activities that each of the 10 Consortia provide to educators in their respective regions. The evaluation is mandated by Congress and is needed to provide information on the program in time for the reauthorization of the program. In addition, the evaluation is designed to provide information to measure the program's Government Performance and Results Act (GPRA) performance indicators. Respondents to the surveys being submitted for clearance include State Education Agency staff and other state-level educators, as well as local educators who have received Consortia services.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Jacqueline Montague at 202–708–5359. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–22109 Filed 8–25–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Record of Decision for the Department of Energy's Waste Management Program: Storage of High-Level Radioactive Waste

AGENCY: Department of Energy.

ACTION: Record of decision.

SUMMARY: The Department of Energy (DOE) has decided to store immobilized high-level radioactive waste (HLW), at three DOE-owned sites (the Hanford Site in the State of Washington, the Idaho National Engineering and Environmental Laboratory, and the Savannah River Site in South Carolina) and one DOE-managed site (the West Valley Demonstration Project in New

York, a project that is managed by DOE under the West Valley Demonstration Project Act, at a site owned by the State of New York). Immobilized HLW is a final waste form that will remain in storage until accepted for disposal at a geologic repository. This decision is based on the *Final Waste Management Programmatic Environmental Impact Statement* (WM PEIS).

FOR FURTHER INFORMATION CONTACT: Copies of the WM PEIS and this Record of Decision (ROD) are available in DOE public reading rooms and selected libraries located across the United States. A list of the public reading rooms at which the WM PEIS and this ROD are available can also be accessed on the DOE Office of Environmental Management's World Wide Web site at http://www.em.doe.gov/em30/. To request copies of the WM PEIS, this ROD, or a list of the reading rooms and public libraries, please write or call: Center for Environmental Management Information, P.O. Box 23769, Washington, DC 20026–3769, telephone: 1–800–736–3282 (in Washington, DC: 202–863–5084).

For further information on the WM PEIS or this ROD, please write or call: Ms. Karen Guevara, WM PEIS Program Manager, Office of Planning and Analysis (EM–35), U.S. Department of Energy, Office of Environmental Management, 19901 Germantown Road, Germantown, MD 20874, telephone: 301–903–4981.

For general information on the DOE National Environmental Policy Act (NEPA) process, please write or call: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, Office of Environment, Safety, and Health, 1000 Independence Avenue, SW, Washington, DC 20585–0119, telephone: 202–586–4600, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

Background

The *Waste Management Programmatic Environmental Impact Statement* (WM PEIS), DOE/EIS–0200F, issued in May 1997, studied the potential nation-wide impacts of managing four types of radioactive waste (low-level waste, mixed low-level waste, transuranic waste, high-level waste (HLW)) and hazardous waste generated by defense and research activities at 54 sites around the United States. Two Records of Decision (RODs) have been issued, based in part on the analyses in the WM PEIS. These are the transuranic waste treatment and storage ROD (63 FR 3629, January 23, 1998) and the non-wastewater hazardous waste treatment ROD (63 FR 41810, August 5, 1998). The ROD for low-level and mixed low-level waste treatment and disposal is expected to be issued shortly.

The WM PEIS analyzes the potential environmental impacts of broad alternatives for DOE's waste management program, and was designed to provide part of the basis for DOE to decide upon a programmatic configuration of sites for waste management activities. In addition, DOE will perform site-wide or project-specific NEPA reviews, as needed, to more specifically analyze site-specific waste management activities, consistent with the selected programmatic approach. Those reviews provide more focused analysis, including specific storage facility capacities and design parameters. DOE will not decide the specific location of any new facilities at sites selected to store HLW, or specific facility capacities and designs, until the completion of these follow-on NEPA reviews.

This ROD applies only to the storage of immobilized HLW as analyzed in the WM PEIS. DOE prepared this ROD in accordance with NEPA (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality's regulations for implementing NEPA (40 CFR Parts 1500–1508) and DOE's NEPA Implementing Procedures (10 CFR Part 1021).

High-Level Waste Storage

HLW is the highly radioactive waste resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from the liquid waste that contains fission products in sufficient concentrations, and other highly radioactive material that is determined, consistent with existing law, to require permanent isolation (DOE Order 435.1, *Radioactive Waste Management*, July 1999). In Chapter 9 of the WM PEIS, DOE analyzed alternatives for the storage of HLW, immobilized to a final form, that has been or will be generated at three DOE-owned sites: the Hanford Site in Washington, the Idaho National Environmental Engineering Laboratory (INEEL), and the Savannah River Site (SRS) in South Carolina, as well as at the West Valley Demonstration Project (WVDP) in New York. The State of New York retains title to the WVDP site and the stored HLW, but the waste has been treated by DOE pursuant to the West Valley Demonstration Project Act. Discussion and agreement with the State of New York would be necessary if DOE were to move the HLW canisters to another site.

For all four sites, DOE needs to decide where to store the immobilized HLW until its acceptance for disposal at a geologic repository managed by DOE's Office of Civilian Radioactive Waste Management. The Department is preparing an EIS on a proposal to construct, operate and monitor, and eventually close a geologic repository at Yucca Mountain in Nevada for the disposal of spent nuclear fuel and high-level radioactive waste. The Department plans to distribute the draft Yucca Mountain EIS in August of 1999 for public comment, and issue the Final EIS in the Fall of 2000. If Yucca Mountain were eventually approved as the site of the nation's first geologic repository, DOE intends to dispose high-level radioactive waste there. For the HLW at Hanford, WVDP, and SRS, DOE has already selected borosilicate glass poured into stainless steel canisters as the final waste form. No decision on a final immobilized waste form has yet been made for the HLW at INEEL but DOE is currently preparing the *Idaho High-Level Waste and Facilities Disposition at the INEEL EIS* (DOE/EIS–02870) which will evaluate the environmental impacts associated with alternative strategies for treatment, storage, and disposal (including the waste form) of high-level and associated radioactive wastes at the site, including offsite treatment options.

Alternatives Considered for Storage of Immobilized High-Level Waste

In the WM PEIS, the term "alternative" generally refers to a nationwide configuration of sites for treating, storing, or disposing of a waste type. In the case of HLW, however, the analysis did not include the impacts of storing non-immobilized HLW, treating HLW, or disposing of HLW. The following summarizes the alternatives DOE analyzed for immobilized HLW storage.

No Action Alternative. A no action or "status quo" alternative may not comply with applicable laws and regulations; however, analysis of such an alternative is required under NEPA regulations, and provides an environmental baseline against which the impacts of other alternatives can be compared. Selection of the No Action Alternative, in this case, would involve using only currently existing or approved HLW storage facilities at DOE sites. Immobilized HLW canisters would be stored at Hanford, SRS, and WVDP until transfer to a geologic repository managed by DOE's Office of Civilian Radioactive Waste Management. HLW at INEEL would be stored as a solidified calcine material (a dry noncorrosive granular solid) or as liquids, until its final disposition is determined. Because sufficient storage capacity for the projected number of HLW canisters is not already existing or approved at Hanford and SRS, immobilization activities would have to be interrupted or delayed, based on the rate at which a repository could accept the immobilized HLW.

Decentralized Alternative. Selection of this alternative would result in storing HLW, immobilized to a final form, where it was generated or will be generated in the future. The activities that differentiate the Decentralized Alternative from the No Action Alternative would be the siting, construction and operation of new storage facilities or the modification of existing storage facilities at some sites. Hanford, SRS, and WVDP would store immobilized HLW canisters, and INEEL would store HLW in a final immobilized form, yet to be determined, until transfer to a geologic repository. This was designated as the preferred alternative in the WM PEIS.

Regionalized Alternatives. Two alternatives were considered for regionalized storage of immobilized HLW. Under Regionalized Alternative 1, immobilized HLW canisters would be stored at Hanford and SRS, immobilized HLW canisters from WVDP would be transported to SRS, and HLW at INEEL would be stored there after immobilization until the HLW is accepted at a geologic repository. Under Regionalized Alternative 2, HLW canisters would be stored at Hanford and SRS, HLW canisters from WVDP would be transported to Hanford, and immobilized INEEL HLW would be stored there until transfer to a geologic repository.

Centralized Alternative. Immobilized HLW from INEEL, and HLW canisters from WVDP and SRS would be transported to Hanford where all of the HLW would be stored with Hanford HLW canisters until transfer to a geologic repository.

Environmentally Preferable Alternative

Table 9.16–1 in the Final WM PEIS summarizes the key impacts that may be associated with storage of immobilized HLW. This table quantifies potential worker health risks, transportation risks, and costs for the various HLW alternatives analyzed in the WM PEIS. Chapter 9 details additional HLW impact areas analyzed in the WM PEIS, including cultural resource and environmental justice concerns. All of these impacts were considered in identifying environmentally preferable alternatives and in making this waste storage decision.

The potential health and environmental impacts for all immobilized HLW storage alternatives are generally low. Differences among the alternatives are small, but the No Action, Decentralized (the preferred option), and Regionalized 1 Alternatives have 1–2 fewer estimated potential fatalities, over twenty years, than the Regionalized 2 and Centralized Alternatives (total fatalities are estimated to range from 8 to 10 among each of the five alternatives.) Under the No Action Alternative, however, immobilization of large quantities of HLW to a stable, durable form would be delayed or interrupted, posing an environmentally undesirable condition. Environmental impacts of the Decentralized and Regionalized 1 Alternatives are essentially comparable; however, the need for additional construction of a larger facility under the Regionalized 1 Alternative makes the Decentralized Alternative marginally more environmentally preferable. Additionally, under the Decentralized Alternative, immobilized HLW would need to be loaded and unloaded for transportation purposes less often, compared to the other action alternatives, thereby reducing worker radiological exposure. None of the alternatives would pose environmental justice concerns.

Decision: Storage of High-Level Waste

The Department has selected the Decentralized Alternative, to store immobilized HLW in a final form at the site of generation—Hanford, INEEL, SRS, or WVDP—until transfer to a geologic repository.

This decision is the same as the WM PEIS preferred alternative. The decision allows use of existing immobilized HLW storage capacity at SRS and WVDP, and use of the previously decided, almost complete Canister Storage Building at Hanford, which will provide partial storage for its immobilized HLW. This approach also reduces environmental impacts that would result from constructing larger storage facilities that would be needed under the Regionalized and Centralized Alternatives.

Although transportation-related fatalities are essentially the same for all the alternatives, the Decentralized Alternative results in reduced immobilized HLW loading and unloading operations for transportation purposes, as compared to the other action alternatives. Additionally, transportation-related administrative considerations involving the need for notification and emergency preparedness training, and public concerns in transportation corridor states, weighed in favor of the Decentralized Alternative when compared to the Regionalized and Centralized Alternatives.

DOE also considered uncertainties about the timing of accepting HLW at a geologic repository. Stakeholders and local governments have expressed concerns that sites may store immobilized HLW for much longer periods than the Department's plans currently indicate. The Department's selection of the Decentralized Alternative apportions the amount of such HLW to be stored according to the quantity of HLW generated at each site.

Mitigation

Although a mitigation action plan is not required because no non-routine mitigation commitments are being made, Chapter 12 of the WM PEIS describes measures that DOE takes in order to minimize the impacts of its waste management activities. Mitigation measures are an integral part of the Department's operations, so as to avoid, reduce, or eliminate potentially adverse environmental impacts. Some of the more important routine mitigation measures that DOE will continue to use in its management of radioactive waste are:

- Modifying engineering facility designs to reduce or eliminate risk or impacts;
- Implementing strict and mandatory safety programs for all facility workers;
- Using safety analyses to establish safety limits within which facilities can operate, while limiting risks and adequately protecting the environment; and
- Reviewing and modifying, as appropriate, existing emergency action plans at DOE sites to ensure appropriate response to accidents or other emergencies.

Site-specific, non-routine mitigation measures may also be identified and implemented in the course of further decision-making under site-specific NEPA reviews.

Issued in Washington, DC this 12th day of August, 1999.

Carolyn L. Huntoon,

Assistant Secretary for Environmental Management.

[FR Doc. 99–22149 Filed 8–25–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Chicago Operations Office, Office of Industrial Technologies; Notice of Solicitation for Financial Assistance Applications for Cooperative Research and Development for Low-Emission Gas Turbines

AGENCY: Chicago Operations Office, DOE.

ACTION: Notice of solicitation availability.

SUMMARY: The Department of Energy (DOE) announces its interest in receiving applications for federal assistance. The purpose of this research is to advance the state of development of one or more durable and cost-effective low-emission technologies for integration into Advanced Industrial Gas Turbine Systems used in power generation service. In order to reach this goal, development, subsystem testing, and demonstration of optimized and fully integrated components comprising low-emission technologies must be performed.

DATES: The solicitation document will be available on or about September 1, 1999. Applications are due on or about October 12, 1999. Awards are anticipated by December 31, 1999.

ADDRESSES: The solicitation will be available on the internet by accessing the DOE Chicago Operations Office Acquisition and Assistance Group home page at *http://www.ch.doe.gov/business/acg.htm* under the heading "Current Solicitations", Solicitation No. DE–SC02–99CH11000. Completed applications referencing Solicitation No. DE–SC02–99CH11000 must be submitted to the U.S. Department of Energy, Chicago Operations Office, Communications Center, Building 201, Room 168, 9800 South Cass Avenue, Argonne, IL 60439–4899, ATTN: Terry L. Vlasich, Acquisition and Assistance Group.

FOR FURTHER INFORMATION CONTACT: Terry L. Vlasich at 630/252–0954, U.S. Department of Energy, 9800 South Cass Avenue, Argonne, IL 60439–4899, by facsimile at 630/252–5045, or by electronic mail at *terry.vlasich@ch.doe.gov*.

SUPPLEMENTARY INFORMATION: The fully-developed, demonstrated low-emission system would accomplish the following objectives:

1. A technical potential of controlling NO_X in the exhaust to a level of less than 5 parts-per-million (ppm) by volume when firing with natural gas while simultaneously obtaining acceptable levels of carbon monoxide and unburned hydrocarbons.

2. Consideration for transitioning the technology to back-up fuels as well as alternative biomass-derived fuels, while achieving a substantial reduction in NO_X emissions for these fuels.

3. Durable for at least 8000 hours while otherwise maintaining reliability, availability, and maintainability of the Advanced Industrial Gas Turbine and its component subsystems.

4. A target cost add-on of no more than 10% of the cost of the base turbine.

The Scope of Work for this solicitation includes 5 Task areas described below as Tasks 1, 2, 3, 4 and 5. Tasks 1 and 2 may be performed with respect to any gas turbine, including microturbines. However, work under all tasks must have applicability to an Advanced Industrial Gas Turbine, and Tasks 3, 4 and 5 must be performed on an Advanced Industrial Gas Turbine. All work proposed under an application must be scheduled for completion within the three-year life expectancy of this program. Regardless of the task or tasks to be undertaken, the applicant will integrate an analytical system commensurate with the accuracy, precision, and sensitivity necessary for determining and controlling the ultra-low contents of pollutants expected from this work. Such analytical system may exceed the requirements of any prevailing emissions statute(s).

Task 1—The starting point of this task shall be, as a minimum, a low-emission concept with prior experimental evidence of its potential for meeting the solicitation objectives. The participant will identify the form, function, and fit of all components necessary to execute the proposed low-emission concept. The participant will also develop preliminary designs for the components. First article components will be constructed and tested at a scale suitable to confirm the design parameters that were used and to give qualitative and quantitative indications that the components will perform as planned.

Task 2—The participant will complete detailed designs of the selected low-emission system components. These designs will include the investigations of all process and economic parameters for integrating the selected components into an overall optimized low-emission system. The components will be manufactured and the low-emission system assembled. Development and testing will be done to verify the overall approach, to provide operating and control parameters, and to provide full-scale definition such as allowable turbine operating ranges, sensitivity to fuel variability, and other factors affecting the performance of the low-emission system.

Task 3—The design of an Advanced Industrial Gas Turbine will be adapted in parallel to the low-emission system development to assure compatibility, optimum fit, and functionality. The work will include the development of a control system that is integrated with the overall operation of the turbine system. The work under this task will integrate hardware, controls, and operating procedures for startup, steady operation over turbines usual power range (for example 50% to 100% of rated output), planned changes (such as anticipated shutdown or transitions of operating load) and unexpected changes in power output (such as lost load).

Task 4—The applicant shall design and fabricate a full-scale, low-emission combustion system that incorporates the scientific and engineering principles and the components necessary for the deployment of the applicant's concept. The low-emission system shall exhibit the form, function, and fit compatible with the modified turbine developed either under Task 3 or elsewhere. The applicant shall prove either by external testing or by demonstration on an actual turbine the ability of the combustion system to achieve less than 5 ppm for the combined total of the oxides of nitrogen. Such testing shall include those sensors and controllers needed to maintain this emission standard over the design operating range of the turbine. Test results shall include relationships among NO_X, combustor outlet temperature, and other relevant parameters, and the simultaneously measured values of carbon monoxide and unburned hydrocarbons. The proof testing shall be based on natural gas fuel. However, it is recognized than the market requires dual fuel capabilities. Such dual fuel capabilities may be considered in the design.

The completion of Task 4 would result in the installation of the low-emission system on an Advanced Industrial Gas Turbine and would qualify the combined low-emission system and gas turbine for shipment, installation, and demonstration in the field under Task 5.

Task 5—The completion of Task 5 would result in the demonstration of a low-emission Advanced Industrial Gas Turbine for 8000 hours. At a minimum, the demonstration shall comprise 4000 hours of operation with natural gas fuel at a host site that is compatible with an operating rate of at least 4000 hours per annum. The starting maturation level of this task shall be equivalent to the combined low-emission system and gas turbine qualified either by the completion of Task 4 or elsewhere.

The applicant shall complete a coordinated plan for the demonstration that incorporates the perspectives of all relevant parties, including the host site. The plan will also assign responsibilities on all matters necessary to execute the demonstration plan, such as business arrangements, balance of plant equipment, site construction, site integration, periodic inspections of hardware, visitations of third parties, data acquisition, and obtainment of environmental, construction, operating, and other permits.

The demonstration shall be representative of significant market segments of the distributed power generation industry. As a result, the successful demonstration at the host site will be expected to exemplify the resolution of the typical barriers (such as technical, environmental, industry acceptance, and control issues related to an interconnection to the existing local utility transmission and distribution grid) that impede the widespread adoption of distributed generation. In this regard, all hours of operation accumulated under the demonstration shall be gained while generating electric power.

Additionally, all such hours of operation shall be accumulated while the host site is interconnected to the existing local utility transmission and distribution grid that exists for the routine transmission and distribution of electric power. Accordingly, the balance of plant equipment shall be sufficient to generate and condition such electric power, and all hardware shall be provided for interconnection, transmission, and distribution on the local utility grid. (The sole use of isolation switches shall not be sufficient to meet this requirement.)

DOE expects to award three to six cooperative agreements under this solicitation. It is estimated that individual awards will range in value between approximately $800,000.00 and $1,600,000.00 of DOE funding and will require awardee Cost Sharing.

A minimum non-federal cost sharing commitment of 30% of the cost for Task 1 and 2, 45% of Task 3 and 4, and 60% of Task 5 is required. Any non-profit or for-profit organization or other institution of higher education, or non-federal agency or entity is eligible to apply, unless otherwise restricted by the Simpson-Craig Amendment. DOE National Laboratory participation as a subcontractor is limited to no more than 30% of the cost of any individual task to be performed.

As applicants may apply under one or more of the five tasks within the solicitation Scope of Work there is a wide range in the number of potential awards and award values.

Estimated DOE funding is $5 million over the three-year period. DOE reserves the right to fund in whole or in part, any, all, or none of the applications submitted in response to this solicitation. All awards are subject to the availability of funds.

Issued in Argonne, Illinois on August 20, 1999.

James R. Bieschke,

Director, Acquisition and Assistance Group, Contracting Officer.

[FR Doc. 99–22173 Filed 8–25–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1971–002]

California Independent System Operator Corporation; Notice of Filing

August 20, 1999.

Take notice that on August 6, 1999, the California Independent System Operator Corporation (ISO), tendered for filing an amendment to its compliance filing in the above-referenced docket which included a number of revisions to the ISO Tariff. The ISO states that this filing was submitted in response to certain protests of its initial compliance filing, submitted on July 2, 1999, and in response to the Commission's July 26, 1999 Order, 88 FERC ¶ 61,096 (1999), in the above-referenced docket.

The ISO states that this filing has been served on all parties listed on the offical service list in the above-referenced docket.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 9, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22139 Filed 8–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP87–203–007]

CNG Transmission Corporation; Notice of Site Visit

August 20, 1999.

On August 31, 1999, the Office of Pipeline Regulation staff will conduct a site visit of proposed and constructed facilities with representatives of CNG Transmission Corporation, of the Tiogo Expansion Project in Tioga County, Pennsylvania.

All interested parties may attend. Those planning to attend must provide their own transportation.

For further information, plaease contact Paul McKee at (202) 208–1088.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22142 Filed 8–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4016–000]

Mobil Energy Services Co., L.L.C.; Notice of Filing

August 20, 1999.

Take notice that on August 6, 1999, the above-mentioned power marketer/or public utility tendered for filing quarterly reports with the Commission in above referenced proceedings for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.fec.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before

August 30, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22140 Filed 8–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT99–16–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

August 20, 1999.

Take notice that on August 13, 1999, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, Third Revised Sheet No. 85. PG&E GT–NW requests that the above-referenced tariff sheets become effective September 13, 1999.

PG&E GT–NW asserts that the purpose of this filing is to update its Tariff to reflect that PG&E GT–NW will share certain facilities in San Antonio, Texas, with a marketing affiliate.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22145 Filed 8–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG99–15–001]

PG&E Gas Transmission-Northwest; Notice of Filing

August 20, 1999.

Take notice that PG&E Gas Transmission-Northwest (PG&E–NW) filed revised standards of conduct on August 13, 1999 in response to the Commission's July 16, 1999 order. 88 FERC ¶ 61,086 (1999). PG&E–NW states that it is revising its Standard E to state that Standard E's restrictions will apply to all employees, not just operating employees. 18 CFR 161.3(e).

Any person desiring to be heard or to protest the filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211 or 385.214. All such motions to intervene or protests should be filed on or before September 7, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22144 Filed 8–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–55–000]

Questar Pipeline Company; Notice of Tariff Filing

August 20, 1999.

Take notice that on August 17, 1999, Questar Pipeline Company, pursuant to 154.402(c) and Part 382 of the Commission's Regulations, tendered for filing and acceptance to be effective October 1, 1999, the following tariff sheets of its FERC Gas Tariff:

First Revised Volume No. 1

Eleventh Revised Sheet No. 5

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4067–000]

Puget Sound Energy, Inc., Notice of Filing

August 20, 1999.

Take notice that on August 12, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with McMinnville Water & Light (McMinnville).

A copy of the filing was served upon McMinnville.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 1, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22141 Filed 8–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–143–000]

TransColorado Gas Transmission Company; Notice of Tariff Filing

August 20, 1999.

Take notice that on August 17, 1999, TransColorado Gas Transmission Company, pursuant to 154.402(c) and Part 382 of the Commission's Regulations, tendered for filing and acceptance to be effective October 1, 1999, Fourth Revised Sheet No. 20 to Original Volume No. 1 of TransColorado's FERC Gas Tariff:

TransColorado states that this filing incorporates into its transportation rates

Tenth Revised Sheet No. 5A
Eighth Revised Sheet No. 6
Seventh Revised Sheet No. 6A

Original Volume No. 3

Twenty-Second Revised Sheet No. 8

Questar states that this filing incorporates into its storage and transportation rates the annual charge adjustment (ACA) unit rate of $0.00217 per Dth. In addition, the redundant restatement of the ACA unit rate has been eliminated from the footnotes in Questar's Statement of Rates.

Copies of this filing were served upon Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions and protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission to determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22137 Filed 8–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–602–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

August 20, 1999.

Take notice that on August 18, 1999, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston,Texas 77251, filed an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and the Commission's Regulations thereunder, for an order permitting and approving the partial abandonment and conversion of service to enable Transco to abandon and convert a portion of its Rate Schedule WSS firm storage service, currently rendered under Part 157 of the regulations and its individually certificated authorization in Docket No. CP74–33, to service under Transco's blanket certificate and Part 284 of the Commission's regulations, all as more full set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Any questions regarding the application should be directed to Gisela B. Cherches, Senior Attorney, Transcontinental Gas Pipe Line Corporation, Post Office Box 1396, Houston, Texas 77251, (713) 215–2000.

Transco states that PECO Energy Company (PECO) desires to abandon 43,382 dt/d of withdrawal capacity and 3, 687, 492 dt of total storage capacity effective October 1, 1999, which is currently provided to PECO under Rate Schedule WSS, and to convert such service to Rate Schedule WSS—Open Access storage service. Upon authorization of abandonment of this portion of Rate Schedule WSS service, it will be converted and Transco will provide Part 284 service under Rate Schedule WSS—Open Access to PECO for the entire amount of capacity.

Tranco also requests, to the extent necessary, a waiver of Section 49 of the General Terms and Conditions of its tariff, which requires Transco to announce any firm capacity which becomes available and to hold an open season for such capacity.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 10, 1999, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave is timely filed, or if the Commission on its own motion believes

that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for Transco to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22143 Filed 8–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–741–000]

Williams Field Services Group, Inc. v. El Paso Natural Gas Company; Notice of Compliant

August 20, 1999.

Take notice that on August 18, 1999, Williams Field Services Group, Inc. (Williams), tendered for filing a complaint against El Paso Natural Gas Company (El Paso), that alleging the El Paso has misfunctionalized certain gathering facilities among its transmission assets and rates. Specifically, Williams states that the Blanco compressor, located in northwestern New Mexico, supports nonjurisdictional gathering and processing operations and should be removed from El Paso's transmission assets and rates, including fuel rates. Williams also states that El Paso should be directed to remove from transmission rates all costs of the Chaco compressor, which is owned and operated by El Paso's affiliate, EL Paso Field Services Company. Finally, given the overlap of issues, Williams requests that the Commission consolidate its complaint with El Paso's rate case in Docket No. RP95–363–000.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests must be filed on or before September 7, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us./online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall be due on or before September 7, 1999.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22136 Filed 8–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–212–000, *et al.*]

Sithe Maryland Holdings, LLC, *et al.*; Electric Rate and Corporate Regulation Filings

August 19, 1999.

Take notice that the following filings have been made with the Commission:

1. Sithe Maryland Holdings, LLC

[Docket No. EG99–212–000]

Take notice that on August 11, 1999, Sithe Maryland Holdings, LLC, c/o Sithe Energies, Inc., 450 Lexington Avenue, 37th Floor, New York, NY 10017 filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Sithe Maryland Holdings, LLC, an indirect subsidiary of Sithe Energies, Inc., is acquiring a hydroelectric facility located adjacent to Deep Creek Lake in Garrett County, Maryland, with a capacity of approximately 18 MW.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Sierra Pacific Power Company

[Docket No. EL99–85–000]

Take notice that on August 13, 1999, Sierra Pacific Power Company (Sierra) tendered for filing pursuant to Section 210 of the Federal Power Act, an Application requesting that the Commission issue an order directing the interconnection of Sierra's facilities with those of Oxbow Geothermal Corporation (Oxbow). Sierra asserts that such an interconnection (referred to as the Frenchman's Tap) will provide system support that will result in a 30 MW increase in Sierra's import capacity and will at the same time also improve the reliability of Oxbow's transmission facilities. Sierra is willing to pay all of the actual costs incurred by Oxbow as a consequence of the Frenchman's Tap project.

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Cambridge Electric Light Company

[Docket Nos. ER98–1522–003, EC98–50–001 and EC98–50–002]

Take notice that on August 16, 1999, Cambridge Electric Light Company (Cambridge) tendered for filing its compliance refund report pursuant to the Commission's order issued July 1, 1999.

Copies of the tendered filing have been served by Cambridge upon the Town of Belmont, Massachusetts, and the Massachusetts Department of Telecommunications and Energy.

Comment date: September 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Cabrillo Power I LLC

[Docket No. ER99–4112–000]

Take notice that August 16, 1999, Cabrillo Power I LLC filed its quarterly report for the quarter ending June 30, 1999.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Arizona Public Service Company

[Docket Nos. OA96–153–005 and ER96–2401–003]

Take notice that on August 16, 1999, Arizona Public Service Company (APS) tendered for filing a Compliance Refund Report for refunds made in accordance with the Commission's letter of approval dated June 17, 1999 in Consolidated Docket Nos. OA96–153–000 and ER96–2401–000.

Copies of this filing have been served on the Service List and the Arizona Corporation Commission.

Comment date: September 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Westbrook Power LLC

[Docket No. EG99–208–000]

Take notice that on August 16, 1999, Westbrook Power LLC (Westbrook) filed a Notice of Withdrawal of its Application For Determination of Exempt Wholesale Generator Status that was filed in the above-referenced proceeding on July 30, 1999.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. Kevin Burke, Carol Monti Barris, James J. O'Brien, Jr., Hyman Schoenblum, Robert P. Stelben, Peter A. Irwin, Eugene R. McGrath, and Michael Del Giudice

[Docket Nos. ID–3398–000, ID–3399–000, ID–3400–000, ID–3401–000, ID–3402–000, ID–3403–000, ID–3404–000, and ID–2345–003]

Take notice that on August 9, 1999, Consolidated Edison Company of New York, Inc., tendered for filing informational reports of interlocking positions of above-referenced appointed officers of Orang and Rockland Utilities, Inc., Rockland Electric Company and Pike County Light & Power Company.

Comment date: September 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. East Texas Electric Cooperative, Inc.

[Docket No. ES99–59–000]

Take notice that on August 13, 1999, East Texas Electric Cooperative, Inc. (ETEC), tendered for filing an application under Section 204 of the Federal Power Act seeking authorization to enter into a loan agreement with the National Rural Utilities Cooperative Finance Corporation under which ETEC would assume up to $6 million in long-term debt.

ETEC also requested exemption from compliance with the Commission's competitive bidding or negotiated placement requirements at 18 CFR 34.2.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. San Diego Gas & Electric Company

[Docket No. ER99–3426–000]

Take notice that on July 12, 1999, San Diego Gas & Electric Company, tendered for filing corrections to its June 30, 1999, filling in the above-referenced docket.

Comment date: September 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4056–000]

Take notice that on August 12, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Aquila Power Corporation (APC).

Con Edison states that a copy of this filing has been served by mail upon APC.

Comment date: September 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4057–000]

Take notice that on August 12, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to New York Power Authority (NYPA).

Con Edison states that a copy of this filing has been served by mail upon NYPA.

Comment date: September 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. PacifiCorp

[Docket No. ER99–4058–000]

Take notice that PacifiCorp on August 12, 1999, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a Non-Firm Point-To-Point Transmission Service Agreement with Western Area Power Administration-Rocky Mountain Region (Western) under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: September 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4060–000]

Take notice that on August 12, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Constellation Power Source, Inc., (CPS).

Con Edison states that a copy of this filing has been served by mail upon CPS.

Comment date: September 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–4059–000]

Take notice that on August 12, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 32 to add two (2) new Customers to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of August 11, 1999, to Coral Power, L.L.C. and Aquila Energy Marketing Corporation.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: September 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Ameren Services Company

[Docket No. ER99–4061–000]

Take notice that on August 12, 1999, Ameren Services Company (ASC) as agent for Union Electric Company (UE), tendered for filing notice that effective as of July 12, 1999, Rate Schedule FERC No. 170, dated June 20, 1996, (Docket No. ER96–2299–000) filed with the Federal Energy Regulatory Commission by Union Electric Company is canceled.

Notice of the proposed cancellation has been served upon the following Duke Power Company.

Comment date: September 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Montaup Electric Company

[Docket No. ER99–4063–000]

Take notice that on August 12, 1999, Montaup Electric Company (Montaup), tendered for filing executed service agreements under Montaup's market-based sales tariff, FERC Electric Tariff, Original Volume No. 8, between Montaup and Great Bay Corporation, New Energy Ventures, Inc., and Reliant Energy Services, Inc.

Montaup requests a waiver of the sixty-day notice requirement so that the service agreements may become effective as of the date of the filing.

Comment date: September 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Puget Sound Energy, Inc.

[Docket No. ER99–4064–000]

Take notice that on August 12, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Mason County Public Utility District No. 3 (Mason County).

A copy of the filing was served upon Mason County.

Comment date: September 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Elwood Energy LLC

[Docket No. ER99–4062–000]

Take notice that on August 12, 1999, Elwood Energy LLC (Elwood), tendered for filing an agreement for the sale of electric energy and capacity by Elwood to Commonwealth Edison Company, dated March 24, 1999.

Comment date: September 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22133 Filed 8–25–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3021–048]

Allegheny Hydro No. 8 and 9 Limited Partnership and Connecticut National Bank; Notice of Availability of Final Environmental Assessment

August 20, 1999.

A final environmental assessment (EA) is available for public review. The final EA analyzes the environmental impacts of installing 15-inch flashboards on the top of Lock and Dam 9, part of the Allegheny River Lock and Dam 8 and 9 Hydroelectric Project No. 3021–048. The Commission is requiring flashboards, from about May 1 through October 31 each year, to rectify project-induced lower water levels in the Lock 9 pool. The final EA contains Commissions staff's analysis that 15-inch flashboards are needed and installation would not constitute a major federal action significantly affecting the quality of the human environment. The Allegheny River Lock and Dam 8 and 9 Project is on the Allegheny River near the City of Kittanning, in Armstrong County, Pennsylvania.

The final EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the final EA are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The final EA may be viewed on the web at www.ferc.fed.us/online/rims/htm. Call (202) 208–2222 for assistance.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22148 Filed 8–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

August 20, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New License.
b. *Project No.: 11563–002.*
c. *Dated filed:* May 3, 1994.
d. *Applicant:* Utica Power Authority.
e. *Names of Project:* Utica Project.
f. *Location:* On the North Fork Stanislaus River and Silver Creek in Alpine and Toulumne Counties, California. The project is on lands of the Stanislaus National Forest.
g. *Filed Pursuant to:* Federal Power Act 16 USC 791(a)–825(r).
h. *Applicant Contact:* Mr. Dennis Dickman, Utica Power Authority, PO Box 430, San Andreas, CA 95249, (209) 754–4230.
i. *FERC Contact:* Hector Perez, hector.perez@ferc.fed.us, (202)–219–2843.
j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The project consists of the following existing facilities: (1) Lake Alpine, with a surface area of 172 acres and a gross storage capacity of 4,115 acre-feet at a normal maximum water surface elevation of 7,302 feet created by; (2) the 49-foot-high and 400.5-foot-long masonry/rock filled gunite faced Alpine main dam, the 11-foot-high, 33-foot-long masonry/rock filled gunite faced Alpine dam No. 2, the 11-foot-high, 166-gfoot-long masonry/rock filled gunite faced Alpine dam No. 3, the 11-foot-high, 97.4-foot-long masonry/rock gunite faced Alpine dam No. 4, and a 12-foot-high, 140-foot-long earth filled section; (3) Union Reservoir, with a surface area of 218 acres and a gross storage capacity of 3,130 acre-feet at normal maximum water surface elevation of 6,850.2 feet created by; (4) the 33-foot-high, 1,142-foot-long rock filled Union main dam and seven auxiliary small rock filled dams; (5) Utica Reservoir, with a surface area of 233.5 acres and a gross storage capacity of 2,350 acre-feet at a normal maximum water surface elevation of 6,819.6 feet created by; (6) the 44-foot-high, 373-foot-long rock filled concrete faced Utica main dam and four auxiliary small rock filled dams; and (7) other appurtenances. There are no hydroelectric generation facilities at the project.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims/htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments,

recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission with 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service listed prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22134 Filed 8–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

August 20, 1999.

Take notice the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Minor License.
b. *Project No.:* P–11730–000.
c. *Date Filed:* April 21, 1999.
d. *Applicant:* Black River Limited Partnership.
e. *Name of Project:* Alverno Hydroelectric Project.
f. *Location:* On the Black River in the Townships of Aloha, Benton, and Grant, in Cheboygan County, Michigan.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Frank O. Christie, President, Franklin Hydro, Inc., 8 East Main Street, Malone, New York 12953, (518) 483–1961.
i. *FERC Contact:* Any questions on this notice should be addressed to John Costello, E-mail address *john.costello@ferc.fed.us* or telephone at (202) 219–2914.
j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official serve list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on the resource agency.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time.

l. *Description of Project:* The constructed project consists of a 360-foot-long earth filled dam with a power plant located on the right riverbank and a gated spillway near the left bank. The project impoundment extends approximately 2.5 miles upstream. The powerhouse contains 2 horizontal turbine-generator sets.

m. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files and Maintenance Branch, located at 888 First Street, NE., Room 2A–1, Washington, DC 20426, or by calling (202) 208–2326. A copy is also available for inspection and reproduction at the Cheboygan Public Library, 107 South Ball Street, Cheboygan, Michigan.

Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE"; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each

representative of the applicant specified in the particular application.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22135 Filed 8–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

August 20, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2019–017.

c. *Date filed:* May 3, 1994.

d. *Applicant:* Utica Power Authority.

e. *Name of Project:* Utica Project.

f. *Location:* On Mill and Angels Creeks in Calaveras, California. The project is partially on lands of the Stanislaus National Forest.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Dennis Dickman, Utica Power Authority, P.O. Box 430, San Andreas, CA 95249, (209) 754–4230.

i. *FERC Contact:* Hector Perez, hector.perez@ferc.fed.us, (202) 219–2843.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The existing project consists of: (1) The Mill Creek Tap which delivers water from the Collierville Tunnel (part of Project No. 2409, licensed to CCWD) to the Upper Utica Conduit; (2) the 0.7-mile-long Upper Utica Conduit (an open channel); (3) the 58.5-foot-high and 389-foot-long concrete arch and gravity Hunters dam; (4) Hunters Reservoir with a surface area of 19 acres and a gross storage capacity of 253 acre-feet; (5) the 13.41 mile-long Lower Utica Conduit (a metal-line wooden box flume and natural earth, and gunite canal sections); (6) the 2.8-acre surface area and 56.9-acre-foot gross storage capacity Murphys Forebay impounded by a 27-foot-high, 415-foot-long earthfill South dam and a 67-foot-high, 316-foot-long earthfill West dam; (7) the 24-inch to 48-inch and 4,048-foot-long shop welded steel Murphys Penstock; (8) the 33-foot-wide by 36-foot-long concrete Murphys Powerhouse, housing a semi-enclosed vertical impulse turbine-generator unit with an installed capacity of 4 MW; (9) Murphys Afterbay, with a surface area of 2.7 acres and a gross storage capacity of 31.3 acre-feet impounded by a 42-foot-high, 340-foot-long earthfill dam topped by a concrete parapet wall; (10) an access road network used to provide maintenance to the conduits; and (11) other appurtenances. The average annual generation of the project is 27 GWH.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims/htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title "COMMENTS," "REPLY COMMENTS"
"RECOMMENDATIONS," "TERMS AND CONDITIONS," or
"PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22146 Filed 8–25–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Recommendations, Terms and Conditions, and Prescriptions

August 20, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Subsequent License.

b. *Project No.:* 2699–001.

c. *Date filed:* December 21, 1993.

d. *Applicant:* Utica Power Authority.

e. *Name of Project:* Angels Project.

f. *Location:* On Angels Creek in Calaveras County California. The project does not utilize lands of the United States.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Dennis Dickman, Utica Power Authority, P.O. Box 430, San Andreas, CA 95249, (209) 754–4230.

i. *FERC Contact:* Hector Perez, hector.perez@ferc.fed.us, (202) 219–2843.

j. *Deadline for filing comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted for filing and is now ready for environmental analysis.

l. The existing project consists of: (1) the 5.6-foot-high, 64-foot-long, gunite faced, rock-wall and concrete buttress Angels Diversion dam; (2) the Upper Angels Canal, about 2.5 miles long, to Ross Reservoir; (3) the 100-acre gross storage capacity Ross Reservoir and a 44-foot-high and 710-foot-long earthfill, masonry, and rock structure dam; (4) the Lower Angels Canal, about 3.3 miles long; (5) the Angels Forebay with a gross storage capacity of 2 acre-feet; (6) the 8,624-foot-long Angels Penstock; (7) a powerhouse with an installed capacity of 1,400 kW; and (8) other appurtenances. The average annual generation of the project is 7 GWh.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The applicant may be viewed on http://www.ferc.fed.us/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS,"
"RECOMMENDATIONS," "TERMS AND CONDITIONS," or
"PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22147 Filed 8–25–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00274; FRL–6089–1]

Voluntary Children's Health Chemical Testing Program, Initiation of a Stakeholder Involvement Process; Notice of Public Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will hold three public meetings to involve stakeholders in the design and development of a voluntary program to test commercial chemicals to which children may have a high likelihood of exposure. The purpose of the voluntary testing program is to obtain toxicity data needed to assess the risk of childhood exposure to commercial chemicals. At the kickoff meeting, stakeholders will have an opportunity to give their reactions, either as individuals or as representatives of organizations, to EPA's preliminary thoughts on criteria and considerations that could be used to select chemicals for testing and the test battery. Stakeholders will also have an opportunity to provide their views on new or alternative approaches that might be used in this program. EPA is also interested in obtaining stakeholder input on the key design features of a voluntary testing program that could be used to gather the needed test data. Two subsequent meetings of the Stakeholder Involvement Process will be organized around sets of invited participants which will separately discuss with EPA the different issues related to the voluntary testing program. The two subsequent meetings will also be public meetings and there will be an opportunity for public comment at the conclusion of each discussion between the invited participants and EPA. The information which is developed in the course of this process in the interest of developing a voluntary testing program may also be considered in the development of a possible test rule under section 4 of the Toxic Substances Control Act (TSCA).

DATES: The kickoff meeting of the Stakeholder Involvement Process will be held from 9 a.m. to 5 p.m. on September 22, 1999, and from 9 a.m. to 12 noon on September 23, 1999. This public meeting will be followed by two subsequent meetings currently scheduled for November 30–December 1, 1999, and January 19–20, 2000. These will be the dates unless a **Federal Register** document is published changing the dates or canceling the

meetings. The dates will also be confirmed on the website at http://www.epa.gov/chemrtk/childhlt.htm.

Those who have pre-registered to attend the kickoff meeting, may also pre-register to present oral comments at the meeting by September 10, 1999.

Comments, identified by docket control number OPPTS–00274, must be received on or before September 21, 1999.

ADDRESSES: The kickoff meeting will be held at the Swissotel Washington, The Watergate, 2650 Virginia Ave., NW., Washington, DC.

To pre-register to attend the kickoff meeting or to present oral comments at the meeting, contact the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section.

Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION" section. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00274 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Christine Augustyniak, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (202) 260–3949; e-mail address: augustyniak.christine@epa.gov.

For technical information or to pre-register to attend or to present oral comments at the kickoff meeting contact: Ward Penberthy, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (202) 260–0508; e-mail address: chemrtk@epamail.epa.gov. Electronic messages should reference the Voluntary Children's Health Chemical Testing Program, Stakeholder Involvement Process as their subject. When pre-registering to present oral comments, please indicate the public comment session to which your comments are most relevant (see tentative agenda for the kickoff meeting provided on the website at http://www.epa.gov/chemrtk/childhlt.htm under "Meeting Information").

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under TSCA section 4, individuals or groups concerned with chemical testing and children's health, animal welfare groups, or other members of the general public . Since various individuals or groups may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding this action, please consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access the "Background Information Document" (Ref. A), additional information about the stakeholder meetings, as well as obtain an electronic copy of this document, you may go directly to the website at http://www.epa.gov/chemrtk/childhlt.htm.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–00274. The official record consists of the documents specifically referenced in this action, as well as the documents listed as references in the "Background Information Document" (Ref. A). The official record also consists of any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

C. How and to Whom do I Submit Written Comments on this Notice?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00274 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Officer (7407), Office of Pollution Prevention and Toxics (OPPTS), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* You may submit your comments electronically by e-mail to: "oppt.ncic@epa.gov," or mail your computer disk to the address identified in Unit I.C.1. of this document. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–00274. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Please note that, in the absence of steps by EPA leading to disclosure, none of the information marked "CBI" will be available for consideration in the Stakeholder Involvement Process; commenters may want to consider this point in developing their submissions. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section.

E. How Can I Request an Opportunity to Present Oral Comments to the Agency at the Kickoff Meeting of the Stakeholder Involvement Process?

Those who have pre-registered to attend the kickoff meeting, may also pre-register to present oral comments at the meeting by contacting the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section by September 10, 1999. Although this meeting is open to the public, there may be time limitations which will restrict the number of oral presentations which can be accommodated. Therefore, EPA strongly encourages those who wish to present oral comments to contact EPA and register in advance. Other presentations of oral comments will be accommodated as time allows. When you pre-register to present oral comments, you must identify the name of the individual who will make the presentation, the organization (if any) the individual represents, any requirements for audio visual equipment (e.g., overhead projector, 35mm projector, chalkboard, etc), and the public comment session to which the comments are most relevant. The topics to be covered in the four public comment sessions to be held during the kickoff meeting are listed in the tentative agenda provided on the website at http://www.epa.gov/chemrtk/childhlt.htm under "Meeting Information." There is no limit on the length of written comments, but oral comments will be limited to 5 minutes. We encourage presenters to coordinate their oral comments with others as appropriate. When pre-registering, please inform the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section of your plans to coordinate presentations. You are requested to provide at least 35 written copies of your oral statement by the date of the meeting. It is encouraged that you bring copies sufficient for the number of people who plan to attend the kickoff meeting; this number will be available on the website at http://www.epa.gov/chemrtk/childhlt.htm under "Meeting Information" several days before the meeting date. These written statements will become a part of the public version of the official record.

F. What Should I Consider as I Prepare My Comments for EPA?

EPA invites you to provide your views on the general approach presented in the "Background Information Document" cited in Unit I.B. and discussed in Unit II. of this notice. EPA also invites your views new approaches that have not been considered, the potential benefits or impacts of these various approaches (including possible unintended or unidentified benefits or impacts), and any other data or information that you would like the Agency to consider in the development of a voluntary testing program via the stakeholder process. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide specific technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate. If you estimate potential benefits or burden reductions (e.g., attributable to a voluntary program), explain how you arrived at the estimate.

5. Provide specific examples to illustrate the key points which underlie your views regarding benefits and impacts.

6. Offer alternative ways to improve the voluntary testing program.

7. Make sure to submit your comments by the deadline in this notice.

8. At the beginning of your comments (e.g., as part of the "Subject" heading), be sure to properly identify the document you are commenting on. You can do this by providing the docket control number assigned to the notice (OPPTS–00274), along with the name, date, and **Federal Register** citation.

G. Are There Issues on Which EPA is Particularly Interested in Receiving Comment?

EPA encourages interested parties to submit comments on chemical testing which are relevant to children's health and any aspect of this notice. Commenters are encouraged to identify other criteria for identifying children's exposure to commercial chemicals, such as bioavailability, and additional relevant data sources, especially as they relate to use in consumer products. Comments on the test battery previously submitted to EPA's Scientific Advisory Panel (SAP) need not be resubmitted.

II. Background Information Document

EPA has prepared a document entitled "Background Information on the Children's Health Chemical Testing Program" (Ref. A), which is referred to in this notice as the "Background Information Document." The "Background Information Document" describes the history of this program, EPA's preliminary thoughts on criteria and considerations that could be used to select chemicals for testing and the test battery, and how the test data would be used. The "Background Informaton Document" and a list of its references are provided on the website at http://www.epa.gov/chemrtk/childhlt.htm. A paper copy of the "Background Information Document" and each of its references are available in the public version of the official record, OPPTS–00274, which is located at the address provided in Unit I.B.2. of this notice.

III. Voluntary Testing Program

Although EPA has the authority to require manufacturers and processors to conduct toxicity testing of chemicals for which certain findings have been made under section 4 of TSCA, before proposing such a section 4 test rule, EPA wants to first provide the opportunity for stakeholders including manufacturers, processors, and a wide variety of interested parties to participate in the development of a testing program which involves conducting such testing voluntarily. EPA believes that the involvement of industry and other stakeholders in the early stages of the development of this testing program can promote cooperation, expedite the testing process, and benefit everyone concerned. On May 24, 1999, EPA took an initial step toward developing a voluntary testing program by meeting with representatives from a range of organizations with an interest in children's health issues and toxicity testing. This group discussed the use and possible operating features of a stakeholder involvement process to develop a voluntary chemical testing program and the issues that might be appropriate for consideration. In light of these discussions, EPA has determined that stakeholder meetings might be helpful on such topics as the criteria and data sources for chemical selection, the test battery, and the design of the voluntary testing program. The meeting also produced a list of organizations which may have an interest in a stakeholder involvement process.

Since the May 1999 meeting, EPA has secured a professional facilitator to help convene and manage a stakeholder

involvement process. The facilitator has prepared a document entitled "Preliminary Findings and Recommendations: Voluntary Children's Health Testing Program Stakeholder Involvement Process" (Ref. B) to better define the approach that will be taken to initiate discussion. The document is available on the website at http://www.epa.gov/chemrtk/childhlt.htm.

IV. Stakeholder Involvement Process

EPA has considered a number of sources of chemicals to which children may be exposed, but realizes that the wide range of parties interested in children's health is a resource which should be fully utilized to identify candidate chemicals for this testing program. Using a stakeholder involvement process, EPA intends to bring together and obtain input from knowledgeable individuals who represent parties that would be affected by any forthcoming testing program, i.e. stakeholders. These stakeholders would include child health advocates, pediatricians, chemical manufacturers and processors, trade associations, Federal agencies, State health departments, and animal welfare advocates. The stakeholders will have an equal opportunity to present their viewpoints at the kickoff meeting of the Stakeholder Involvement Process.

Due to possible time limitations, those wishing to present oral comments at the kickoff meeting are advised to pre-register with the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section and follow the instructions in Unit I.E. of this document. Oral comments will be limited to 5 minutes and copies of your statement must be provided as explained in Unit I.E. of this document. We encourage presenters to coordinate their oral comments with others as appropriate. When pre-registering, please inform the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section of your plans to coordinate presentations. To enable as many interested parties as possible to contribute their ideas and provide opinions, EPA plans to have the professional facilitator lead the meeting.

Persons wishing to file written comments should follow the instructions in Unit I.C., D., and F. of this document. There is no limit on the length of written comments and all interested parties are permitted to file written comments before the kickoff meeting. These written comments, along with copies of oral statements and a summary of the oral discussion at the meeting, will become a part of the public version of the official record and will be considered by EPA during the development of the voluntary testing program.

If you wish to observe the meeting but not present oral comments, you are advised to pre-register for the meeting due to possible space limitations. To pre-register you must identify yourself and your organization as described in the "FOR FURTHER INFORMATION CONTACT" section. Seating of others at the kickoff meeting will be on a first-come basis after those who have registered in advance of the meeting have been accommodated.

In the two subsequent meetings, EPA believes it will be necessary to limit the number of active participants to some extent in order to achieve a meaningful dialogue with stakeholders. Therefore, EPA proposes to structure each of the two subsequent meetings as three roundtable discussions with roughly two dozen invited participants at each discussion. EPA will identify and invite a balanced group of individuals and organizations who are believed to represent the interests of the various groups of stakeholders and whom it believes will have information useful to each discussion. Each of the roundtable discussions will address one of the three issue areas listed in Unit V.A. of this document. Depending on the issues to be discussed, the invited participants at each roundtable discussion may not be the same individuals. At the conclusion of each discussion between the invited participants and EPA, there will be an opportunity for public comment. EPA wants to emphasize that the two subsequent meetings, like the kickoff meeting, will be public meetings and all interested parties are encouraged to attend. Those not specifically invited to participate in the roundtable discussions will be given the opportunity to observe the proceedings to the extent space allows and to present information and opinions during solicitations of comments at the end of each discussion.

EPA is not asking participants in the Stakeholder Involvement Process to reach agreement or provide any collective recommendations on the subjects under discussion or on a detailed design of a voluntary testing program. EPA's intent is to obtain information and the individual perspective of the participants based on their unique experiences and background. Accordingly, EPA does not intend at this time to organize this Stakeholder Involvement Process as an advisory committee as defined in the Federal Advisory Committee Act, 5 U.S.C App.

V. Stakeholder Meetings

A. Kickoff Meeting

EPA will convene the kickoff meeting of the Stakeholder Involvement Process on September 22 and 23, 1999, at the location listed in the "ADDRESSES" section. At this meeting, EPA intends to orient the stakeholders to the background and future plans and goals for this project. In so doing, EPA will inform the stakeholders of the Agency's initial efforts to identify the chemicals to which children and prospective parents may be highly exposed and the testing needed to assess the risk of that exposure. Much of this information is contained in the "Background Information Document" (Ref. A) discussed in Unit II. of this notice. EPA will then take comment on EPA's initial efforts and also on the following main issues which EPA believes are of special interest to stakeholders:

1. What criteria, considerations, and data sources should be used to identify chemicals for which there is a concern for high potential exposure to children or prospective parents? (What additional criteria and data sources should be considered? What data sources should not be considered?)

2. Are there any beneficial modifications which could be made to the test battery (i.e., the battery presented to the FIFRA SAP in May 1999)?

3. What should be the key design features of this voluntary testing program?

Comments will be presented first by those who have registered in advance as described in the "FOR FURTHER INFORMATION CONTACT" section and Unit I.E. of this document and then by others as time allows.

The tentative agenda for the kickoff meeting of the Stakeholder Involvement Process can be found on the website at http://www.epa.gov/chemrtk/childhlt.htm under "Meeting Information."

B. Subsequent Meetings

At this time, EPA intends to hold two subsequent meetings as part of the Stakeholder Involvement Process. At these meetings, invited participants will have roundtable discussions with EPA on the main issues listed in Unit V.A. of this document. At the first of these meetings, EPA will also propose an outline of a chemical testing program which EPA will develop based on the comments presented at the kickoff meeting and written comments submitted according to the instructions in Unit I.C., D., and F. of this document. This outline of a chemical testing program will serve as a "strawman" proposal, which EPA will make available prior to the second meeting. EPA expects the "strawman" proposal and proposals submitted by other groups to be a major subject of comment at the roundtable discussions at both of the subsequent meetings. At the end of each roundtable discussion, comments will also be solicited from other stakeholders attending the meeting as described in Unit IV. of this document.

The tentative dates for the two subsequent meetings are November 30-December 1, 1999 and January 19–20, 2000. These will be the dates unless a **Federal Register** document is published changing the dates or canceling the meetings. The dates will also be confirmed on the website at http://www.epa.gov/chemrtk/childhlt.htm. All meetings will be held in the Washington, DC area and will be open to the public. Summaries of the meetings will be placed in the public record, OPPTS–00274.

VI. Public Record

At this time, the public record version of the official record contains the following:

A. United States Environmental Protection Agency (USEPA). "Background Information on the Children's Health Chemical Testing Program." Prepared by Chemical Information and Testing Branch, Chemical Control Division, Office of Pollution Prevention and Toxics (August 19, 1999).

B. Meridian Institute and The Keystone Center. "Preliminary Findings and Recommendations: Voluntary Children's Health Testing Program Stakeholder Involvement Process." Prepared by Tim Mealey and Paul De Morgan for the USEPA and other interested stakeholders (July 30, 1999).

List of Subjects

Environmental protection, Chemicals, Children, Hazardous substances, Heath and safety.

Dated: August 20, 1999.

Susan H. Wayland,

Deputy Assistant Administrator for Prevention, Pesticides and Toxics.

[FR Doc. 99–22203 Filed 8-23-99; 4:11 pm]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–880; FRL–6090–1]

Notice of Filing; Pesticide Petition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of chlorfenapyr in or on various food commodities.

DATES: Comments, identified by the docket control number PF–880, must be received on or before September 27, 1999.

ADDRESSES: By mail submit written comments to: Information and Records Integrity Branch, Public Information and Services Division (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under "SUPPLEMENTARY INFORMATION (CBI)." No confidential business information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Ann Sibold, Insecticide Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 212, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–6502; e-mail: sibold.ann@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of chlorfenapyr in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–880] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:
opp-docket@epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number (PF-880) and appropriate petition number. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 19, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the views of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the

availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

American Cyanamid

PP 6E4683

EPA has received a pesticide petition (6E4683) from American Cyanamid, P.O. Box 400, Princeton, NJ 08543-0400 proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR 180 by establishing a tolerance for residues of chlorfenapyr [4-bromo-2-(4-chlorophenyl)-1-(ethoxymethyl)-5-(trifluoromethyl)-1-pyrrole-3-carbonitrile] in or on the raw agricultural commodity (RAC) imported citrus at 0.5 ppm. As citrus processed commodities fed to food animals may be transferred to milk and edible tissues, tolerances are also proposed for the following ruminant food items, milk at 0.01 parts per million (ppm); milk fat at 0.15 ppm; meat at 0.01 ppm; and meat byproducts (including fat) at 0.10 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The nature of the residues of chlorfenapyr in plants is adequately understood and the residue of concern in citrus consists of the parent molecule. Expressed on a whole basis, the parent compound accounted for 56-75% of the total radioactive residue (TRR) 98% of which was associated with the external rinse and peel.

2. *Analytical method.* The gas chromatography (GC) analytical method M2284, which is proposed as the enforcement method for the residues of chlorfenapyr in citrus, has a limit of detection (LOD) of 0.01 ppm (0.025 ppm for juice), and a limit of quantitation (LOQ) of 0.05 ppm.

3. *Magnitude of residues.* Extensive citrus field trials have been conducted over multiple growing seasons in all major citrus growing regions of the United States, Argentina, and Brazil. The results of these studies indicate that at application rates of 1.05 lbs active ingredient acre (ai/A), the maximum expected chlorfenapyr residues are 0.4 ppm in oranges, 0.38 ppm in lemons, and 0.27 ppm in grapefruit samples harvested at a minimum of 7 days following the last application. These field trial data are adequate to support the proposed tolerance of 0.5 ppm in/on citrus. The results of processing studies indicate that chlorfenapyr residues do not concentrate in molasses and juice. The actual concentration factors in dried pulp (2.4x), and citrus oil (70x) are well below the maximum theoretical concentration factors for these commodities. Although citrus oil is not considered to be a ready-to-eat item and is not expected to contribute to the dietary exposure, a tolerance at 35 ppm (0.5 ppm x 70) is proposed for enforcement purposes.

B. Toxicological Profile

1. *Acute toxicity.* Based on EPA's toxicity category criteria, the acute toxicity category for chlorfenapyr technical is Category II or moderately toxic (signal word WARNING), and the acute toxicity category for the 2SC formulation is Category III or slightly toxic (signal word CAUTION). Males appear to be more sensitive to the effects of chlorfenapyr than females. The acute toxicity profile indicates that absorption by the oral route appears to be greater than by the dermal route. The following are the results from the acute toxicity tests conducted on the technical material.

i. *Rat oral LD_{50}* 441/1,152 milligrams/kilograms/body weight (mg/kg/bwt) male/female -- Toxicity Category II.

ii. *Rabbit dermal LD_{50}*: > 2,000 mg/kg/bwt male/female -- Toxicity Category III.

iii. *Acute inhalation.* LC_{50} 0.83/ > 2.7 milligrams per liter (mg/L) male/female -- Toxicity Category III.

iv. *Eye irritation.* Moderately irritating -- Toxicity Category III.

v. *Dermal irritation.* Non-irritating -- Toxicity Category IV.

vi. *Dermal sensitization.* Non-sensitizer -- Non Sensitizer.

vii. *Acute neurotoxicity.* No observed adverse effect level (NOAEL) 45 mg/kg bwt. Not an acute neurotoxicant.

2. *Genotoxicty.* Chlorfenapyr technical (94.5% a.i.) was examined in a battery of *in vitro*, and *in vivo* tests to assess its genotoxicity and its potential for carcinogenicity. These tests are summarized below.

i. *Microbial/microsome mutagenicity assay.* Non-mutagenic.

ii. *Mammalian Cell Chinese hampster ovary/hypoxanthine guanine phophoribosyl transferase (CHO/HGPRT) Mutagenicity Assay.* Non-mutagenic.

iii. *In vivo micronucleus assay.* Non-genotoxic.

iv. *In vitro--chromosome aberration assay in CHO.* Non-clastogenic.

v. *In vitro--chromosome aberration assay in CHLC.* Non-clastogenic.

vi. *Unscheduled DNA synthesis (UDS) assay.* Non-genotoxic.

3. *Reproductive and developmental toxicity.* Chlorfenapyr is neither a reproductive or developmental toxicant and is not a teratogenic agent in the Sprague-Dawley rat, or the New Zealand white rabbit. This is demonstrated by the results of the following studies:

i. *Rat oral teratology.* NOAEL for maternal toxicity 25 mg/kg bwt/day, and NOAEL for fetal/development toxicity 225 mg/kg/bwt/day.

ii. *Rabbit oral teratology.* NOAEL for maternal toxicity 5 mg/kg/ bwt/day and NOAEL for fetal/development toxicity 30 mg/kg/bwt/day.

iii. *Rat 2-generation reproduction.* NOAEL for parental toxicity/growth and offspring development 60 ppm (5 mg/kg/bwt/day). NOAEL for reproductive performance 600 ppm (44 mg/kg/bwt/day).

4. *Subchronic toxicity.* The following are the results of the subchronic toxicity tests that have been conducted with chlorfenapyr:

i. *28–Day rabbit dermal.* NOAEL 100 mg/kg/bwt/day.

ii. *28–Day rat feeding.* NOAEL > 600 ppm (< 71.6 mg/kg/bwt/day).

iii. *28–Day mouse feeding.* NOAEL > 160 ppm (< 32 mg/kg/bwt/day).

iv. *13–Week rat dietary.* NOAEL 150 ppm (11.7 mg/kg/bwt/day).

v. *13–Week mouse dietary.* NOAEL 40 ppm (8.2 mg/kg/bwt/day).

vi. *13–Week dog dietary.* NOAEL 120 ppm (4.2 mg/kg/bwt/day).

5. *Chronic toxicity.* Chlorfenapyr is not oncogenic in either Sprague Dawley rats or CD-1 mice and is not likely to be carcinogenic in humans. The following are the results of the chronic toxicity tests that have been conducted with chlorfenapyr:

i. *1–Year neurotoxicity in rats.* NOAEL 60 ppm (2.6/3.4 mg/kg/bwt/day male/female).

ii. *1–Year dog dietary.* NOAEL 120 ppm (4.0/4.5 mg/kg/bwt/day male/female).

iii. *24–Month rat dietary.* NOAEL for chronic effects 60 ppm (2.9/3.6 mg/kg/bwt/day male/female) and NOAEL for oncogenic effects 600 ppm (31/37 mg/kg/bwt/day male/female).

iv. *18–Month mouse dietary.* NOAEL for chronic effects 20 ppm (2.8/3.7 mg/kg/bwt/day male/female) and NOAEL for oncogenic effects 240 ppm (34.5/44.5 mg/kg/bwt/day male/female).

6. *Animal metabolism.* A metabolism study was conducted in Sprague Dawley rats at approximately 20 and 200 mg/kg/bwt using radiolabeled chlorfenapyr. Approximately 65% of the administered dose was eliminated during the first 24 hours (62% in feces and 3% in urine) and by 48 hours following dosing, approximately 85% of the dose had been excreted (80% in feces and 5% in urine). The absorbed chlorfenapyr-related residues were distributed throughout the body and detected in tissues and organs of all treatment groups. The principal route of elimination was via feces, mainly as unchanged parent plus minor N-dealkylated, debrominated and hydroxylated oxidation products. The metabolic pathway of chlorfenapyr in the laying hen and the lactating goat was also similar to that in laboratory rats.

7. *Metabolite toxicology.* The parent molecule is the only moiety of toxicological significance which needs regulation in plant and animal commodities.

8. *Endocrine disruption.* Collective organ weights and histopathological findings from the 2-generation rat reproduction study, as well as from the subchronic and chronic toxicity studies in two or more animal species, demonstrate no apparent estrogenic effects or effects on the endocrine system. There is no information available which suggests that chlorfenapyr would be associated with endocrine effects.

C. Aggregate Exposure

1. *Food.* For purposes of assessing the potential dietary exposure, a Theoretical Maximum Residue Contribution (TMRC) has been calculated from the tolerance of chlorfenapyr in/on citrus at 0.5 ppm. This exposure assessment is based on very conservative assumptions, namely 100% of all citrus is treated with chlorfenapyr and that the residues of chlorfenapyr in citrus are at the tolerance level. Although there are no other established United States permanent tolerances for chlorfenapyr, a petition for a permanent tolerance at 0.5 ppm in cottonseed is pending at the Agency. Therefore, the dietary exposures to residues of chlorfenapyr in or on food will be limited to residues in cottonseed, citrus and food and feed items derived from them. As dried citrus pulp is a dairy and beef cattle feed item, a cold feeding study with dairy cattle was conducted. Since this study demonstrated that measurable residues of chlorfenapyr may occur in milk, meat, and meat byproducts, appropriate residue tolerances for these items are proposed. The contribution of the citrus tolerances alone to the daily consumption uses only 0.23% of the reference dose (RfD) for the overall U.S. population. The combined contributions of the citrus and the pending cottonseed tolerances to the daily consumption uses less than 1% (actual 0.85%) of the RfD for the overall U.S. population and less than 3% (actual 2.23%) and less than 1% (actual 0.89%) of the RfD for children aged 1-6 and for non-nursing infants, respectively.

2. *Drinking water.* This proposed tolerance is for imported citrus. Since there are no currently registered uses of chlorfenapyr in the United States, potential exposure from drinking water is not relevant to this petition.

3. *Non-dietary exposure.* This petition is for a tolerance on imported citrus. As there are no registered uses of chlorfenapyr in the United States at present, the potential for non-dietary exposure is not pertinent to this petition.

D. Cumulative Effects

The pyrrole insecticides represent a new class of chemistry with a unique mechanism of action. The parent molecule, AC 303,630 is a pro-insecticide which is converted to the active form, CL 303,268, via rapid metabolism by mixed function oxidases (MFOs). The active form uncouples oxidative phosphorylation in the insect mitochondria by disrupting the proton gradient across the mitochondrial membrane. The production of adenosine triphosphate (ATP) is inhibited resulting in the cessation of all cellular functions. Because of this unique mechanism of action, it is highly unlikely that toxic effects produced by chlorfenapyr would be cumulative with those of any other pesticide chemical.

In mammals, there is a lower titer of MFOs, and chlorfenapyr is metabolized by different pathways (including dehalogenation, oxidation and ring hydroxylation) to other polar metabolites without any significant accumulation of the potent uncoupler, CL 303,268. In the rat, approximately 85% of the administered dose is excreted in the feces within 48 hours, thereby reducing the levels of AC 303,630 and CL 303,268 that are capable of reaching the mitochondria. This differential metabolism of AC 303,630 to CL 303,268 in insects versus to other polar metabolites in mammals is responsible for the selective insect toxicity of the pyrroles.

E. Safety Determination

1. *U.S. population.* The RfD of 0.03 mg/kg/bwt/day for the residues of chlorfenapyr in citrus is calculated by applying a 100-fold safety factor to the overall NOAEL of 3 mg/kg/bwt/day. This NOAEL is based on the results of the chronic feeding studies in the rat and mouse and the 2-generation reproduction study in the rat. The theoretical maximum residue contribution (TMRC) for the proposed tolerances in citrus alone, (0.0000692 mg/kg/bwt/day), will utilize only 0.23% of the RfD for the general U.S. population and the combined TMRC for the proposed chlorfenapyr tolerances in cottonseed, citrus, milk, and meat (0.0002558 mg/kg/bwt/day) will utilize approximately 0.85% of the RfD for the general U.S. population.

2. *Infants and children.* The TMRC in milk consumed by a non-nursing infant (> 1-year of age) is 0.0002435 mg/kg/bwt/day. The combined tolerances will use less than 1% (actual 0.89%) of the RfD for non-nursing infants. The TMRC in milk consumed by a child (1-6 years of age) is 0.0003886 mg/kg/bwt/day. The combined TMRC for the proposed chlorfenapyr tolerances in cottonseed, citrus meat and milk consumed by a child 1-6 years of age is 0.0006708 mg/kg/bwt/day, which is less than 3% (actual 2.23%) of the RfD. Therefore, the results of the toxicology and metabolism studies support both the safety of chlorfenapyr to humans based on the intended use as an insecticide-miticide on citrus and cottonseed and the granting of the requested tolerances in cottonseed, citrus, milk, milk fat solids, meat, and meat by-products.

Based on the conservative assumptions used in proposing the above tolerances and the absence of other non-dietary routes of exposure to chlorfenapyr, and since the calculated exposures are well below 100% of the reference dose, there is a reasonable certainty that no harm will result from aggregate exposure to residues of chlorfenapyr, including all anticipated dietary exposure and all other non-occupational exposures. The use of a 100-fold safety factor ensures an acceptable margin of safety for both the overall U.S. population as well as infants and children. As the toxicology database (reproduction/developmental and teratology studies) is complete, valid and reliable, no additional safety factor is needed.

The 100-fold margin of safety is adequate to assure a reasonable certainty of no harm to infants and children from the proposed use. As stated earlier, the NOAEL is based on the effects observed in the rat and mouse chronic oncogenicity studies, (reduced bwt gains, increased globulin and cholesterol values and increased liver weights in the rat and reduced bwt gains and vacuolation of white matter of the mouse brain), the 1–year neurotoxicity study in the rat, (reduced bwt gains and vacuolar myelinopathy of

the brain and spinal cord that is completely reversible following termination of treatment and is not associated with any damage to neuronal cell bodies or axons; vacuolation of the white matter is a consequence of edema (water) formation between the myelin layers which result from the unrestricted movement of ions across the cell membranes) and the 2-generation rat reproduction study, (reduced bwt gains for parental animals and reduced pup body weights for the F1 and F2 litters; however no behavioral changes were observed in either F1 or F2 offsprings in the 2-generation reproduction study). Moreover, as the NOAELs for fetal/developmental toxicity are significantly higher than those for maternal toxicity, the results indicate that chlorfenapyr is neither a developmental toxicant nor a teratogenic agent in either the Sprague-Dawley rat or New Zealand White rabbit. Thus, there is no reliable information to indicate that there would be a variability in the sensitivities of infants and children and adults to the effects of exposure to chlorfenapyr.

F. International Tolerances

Section 408(b)(4) of the amended FFDCA requires EPA to determine whether a maximum residue level has been established for the pesticide chemical by the Codex Alimentarius Commission. There is neither a Codex proposal, nor Canadian, or Mexican tolerances/limits for residues of chlorfenapyr in/on citrus. Therefore, a compatibility issue is not relevant to the proposed tolerance.

[FR Doc. 99–22190 Filed 8–25–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–819A; FRL–6099–8]

Amended Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: This notice announces the filing of an amended pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.
DATES: Comments, identified by docket control number PF–819A, must be received on or before September 10, 1999.
ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION" section. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–819A in the subject line on the first page of your response.
FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Fungicide Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–7740; and e-mail address: giles-parker.cynthia@.epa.gov.
SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**–Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–819A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–819A in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by E-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by docket control number PF–819A. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the "FOR FURTHER INFORMATION CONTACT" section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the rule or collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received an amended pesticide petition as follows proposing the establishment of regulations for residues of certain pesticides in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 20, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way.

Amended Petition

PP 8F4955

On August 17, 1998, EPA published a notice that it had received a pesticide petition (PP 8F4955) from Novartis crop Protection, Inc., PO Box 18300, Greensboro, NC 27419 proposing tolerances for the fungicide trifloxystrobin. EPA has received an amendment to PP 8F4955 from Novartis crop Protection, Inc., PO Box 18300, Greensboro, NC 27419 proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for the combined residues of trifloxystrobin and its metabolite, CGA–321113 and increasing the tolerance levels in or on the raw agricultural commodities pome fruit at 0.50 parts per million (ppm), cucurbit vegetables at 0.50 ppm, grapes at 2.0 ppm, raisins at 5.0 ppm, peanuts at 0.05 ppm, peanut hay at 4.0 ppm, wet apple pomace at 5.0 ppm, milk at 0.02 ppm, meat, fat and meat by-products of cattle, goats, hogs, horses and sheep at 0.05 ppm and imported bananas at 0.1 ppm. The tolerances proposed in this amendment will not increase the overall risk of the chemical. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

[FR Doc. 99–22204 Filed 8-23-99; 4:11 pm]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6429–1]

Proposed Administrative Agreement for Collection of CERCLA Past and Projected Clean Up Costs

AGENCY: Environmental Protection Agency (U.S. EPA).
ACTION: Notice; proposed CERCLA 122 administrative agreement.

SUMMARY: U.S. EPA is proposing to execute an Administrative Agreement (Agreement) under section 122 of CERCLA for collection of a percentage of past and projected future response costs at the Carey Electronics Superfund Site. Respondents have agreed to pay $235,000 out of total past and projected clean up costs of approximately $292,000, in return for a covenant not to sue and mutual contribution protection from U.S. EPA and one another. U.S. EPA today is proposing to execute this Agreement because it achieves collection of a high percentage (80.5%) of total Site costs.
DATES: Comments on this proposed settlement must be received on or before September 27, 1999.
ADDRESSES: Copies of the proposed settlement are available at the following address for review: (it is recommended that you telephone Ms. Cheryl Allen at (312) 353–6196 before visiting the Region V Office) Ms. Cheryl Allen, OPA (P19–J), Coordinator, Office of Public Affairs, U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard (P–19J), Chicago, Illinois 60604, (312) 353–6196.

Comments on this proposed settlement should be addressed to: (please submit an original and three copies, if possible) Ms. Cheryl Allen, Coordinator, Office of Public Affairs, U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard (P–

19J), Chicago, Illinois 60604, (312) 353–6196.

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Allen, Office of Public Affairs, at (312) 353–6196.

SUPPLEMENTARY INFORMATION: The Site is a multi-level building located at 1880 Clifton Avenue in Springfield, Clark County, Ohio. The Site is surrounded on all sides by residential areas, with an elementary school located approximately 1,200 feet to the north. (Additionally, there are 5 other schools located within a 1-mile radius of the Site.) The Carey Electronic Engineering Company still utilizes the basement area of the Site to produce aluminum and copper wool scrubbing and filter products, primarily for use in aviation. The laboratory area of the Site, that contains post-source removal radium (Ra–226) contamination and improperly stored chemicals of concern, is on the second floor of the Site building. Portions of the hallway leading to the laboratory and the stairway leading to the hallway have also been determined to have radioactive contamination.

A 30-day period, beginning on the date of publication, is open pursuant to section 122(I) of CERCLA for comments on the proposed Administrative Agreement.

Comments should be sent to Ms. Cheryl Allen of the Office of Public Affairs (P–19J), U.S. Environmental Protection Agency, Region V, 77 W. Jackson Boulevard, Chicago, Illinois 60604.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 99–22189 Filed 8–25–99; 8:45 am]

BILLING CODE 6560–60–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6428–7]

Notice of Proposed Settlement; Solitron Devises, Inc. Riviera Beach Property, Palm Beach County, Florida

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency (EPA) proposes to enter into a "Prospective Purchaser Agreement" (PPA) concerning property owned by Solitron Devises, Inc. (Solitron) in the City of Riviera Beach, Palm Beach County, Florida. EPA proposes to enter into the PPA with the National Land Company (NLC), a real estate development company. The PPA concerns the acquisition by NLC of certain real property presently owned by Solitron in Palm Beach County, Florida.

The real property in question (the "Property") is located at 1177 Blue Heron Blvd., Riviera Beach, Florida and consists of approximately 8 acres. The Property is the subject of a Purchase and Sale Agreement between Solitron and NLC.

The PPA obligates NLC to cooperate fully with EPA in responding to hazardous substances located on the Property. Pursuant to the PPA, NLC will be protected from CERCLA liability, which may arise from their participation in the acquisition of the Property, as described above. The protection is contingent on NLC fulfilling the obligations enumerated in the PPA.

EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should public comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper or inadequate.

Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, Waste Management Division, U.S. EPA, Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W., Atlanta, Georgia 30303–3104.

Written comments may be submitted to Ms. Batchelor on or before September 27, 1999.

Dated: August 12, 1999.

Anita Davis,

Acting Program Services Branch, Waste Management Division.

[FR Doc 99–22188 Filed 8–25–99; 8:45 am]

BILLING CODE 6560–60–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

August 18, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 27, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0515.

Title: Section 43.21(c), Miscellaneous Common Carrier Annual Letter Filing Requirement.

Form No.: N/A.

Type of Review: Reinstatement without change, of a previously approved collection for which approval has expired.

Respondents: Business or other for-profit.

Number of Respondents: 32.

Estimated Time Per Response: 1 hour.

Frequency of Response: Annual reporting requirement.

Total Annual Burden: 32 hours.

Total Annual Cost: N/A.

Needs and Uses: Pursuant to 47 CFR 43.21(c), each miscellaneous common carrier with operating revenues in excess of the indexed threshold as defined in 47 CFR 32.9000 must file a letter showing its operating revenues for that year and the value of its total communications plant at the end of that year. The letter must contain information pertaining to the carrier's revenues, expenses, net income, assets, liabilities and owners' equity. These letters must be filed by no later than April of the following year. Those miscellaneous common carriers with annual operating revenues that equal or surpass the indexed revenue threshold for the first time may file the letter up to one month after publication of the adjusted revenue threshold in the **Federal Register**, but in no event shall such carriers be required to file the letter prior to April 1.

The information is used by FCC staff members to regulate and monitor the telephone industry and by the public to analyze the industry. The information on revenue and total plant is compiled and published in the Commission's annual common carrier statistical publication and long distance market share report.

OMB Control No.: 3060–0655.

Title: Requests for Waiver of Regulatory Fees Predicated on Allegations of Financial Hardship (MD Docket No. 94–19).

Form No.: N/A.

Type of Review: Reinstatement without change, of a previously approved collection for which approval has expired.

Respondents: Individuals or households, businesses or other-for-profit.

Number of Respondents: 160.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement, recordkeeping requirement.

Total Annual Burden: 160 hours.

Total Annual Cost: N/A.

Needs and Uses: The FCC implemented provisions contained in Section 6003(a) of the Omnibus Budget Reconciliation Act of 1993, P.L. 103–66 and 103–121, which adds Section 9 to the Communications Act. Section 9 authorizes the FCC to assess and collect annual regulatory fees to recover costs incurred in carrying out its enforcement, policy and rulemaking activities and its user information services. Licensees and permittees may request a waiver of those fees. A number of requests for waiver are based on grounds of financial hardship but lack sufficient documentation to support a finding that a waiver should be granted. As a result, the FCC in ruling on Petitions for Reconsideration in the FY 1994 fee proceeding, the FCC set forth the types of documentation it will rely on to determine if waivers should be granted because of financial hardship, in order to give guidance to parties requesting waivers. Where parties have filed insufficient information with their FY 194 waiver requests, the FCC will afford them an opportunity to perfect their waiver requests by making the showing. The information will be used by FCC staff to determine if a party is entitled to a waiver of its obligation to pay the annual regulatory fee. It will be filed annually, but only by those parties who request waivers of their obligations to pay the fee because of financial hardship.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–22132 Filed 8–25–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Ever Concord Logistics, 403 N. Oak Street, Inglewood, CA 90302. Officer: Yin Wing Yau (Morgan Yau), President, (Qualifying Individual)

Jasper Freight Inc., 12145 Mora Drive, Suite 1, Santa Fe Springs, CA 90670. Officers: Ricco Tseng, Secretary, (Qualifying Individual), Rebecca Chu, President

Meitetsu Express U.S.A. Corporation, 419 Hindry Avenue, Suite A, Inglewood, CA 90301. Officer: Shigeki Shimizu, Vice President (Qualifying Individual)

MTS Transportation, Inc., 8054 E. Garvey Ave., #101, Rosemead, CA 91770. Officers: Ben Chou, Secretary (Qualifying Individual), Shiao-Chuan Cheng, President

North American (U.K.) Limited, 7–8 Borrowdale Road, Wokingham, Berkshire RG41 5UK, England. Officer: William F. Heximer, Secretary (Qualifying Individual)

Pan Asia Line Corporation, 820 S. Garfield Avenue, Suite 303, Alhambra, CA 91801. Officer: Carol P. Yue, President (Qualifying Individual)

Sovereign Express Line, LLC, 64–66 North Main Street, P.O. Box 1309, St. Albans, VT 05478. Officers: Wayne R. Burle, Vice President (Qualifying Individual), Kenneth J. Holzscheiter, President

Valley Freight Consolidators, Inc., 2025 N.W. 102nd Avenue, Unit 109, Miami, FL 33172. Officer: Jose Rodrico Rincon, President (Qualifying Individual)

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Trans-Group International Corporation, 155–06 South Conduit Avenue, #203, Jamaica, NY 11434. Officer: Yuxiong Zhang, President (Qualifying Individual)

Intrans Consolidators Inc., 7941 N.W. 21 Street, Miami, FL 33122–1616. Officers: Ramon R. Gonzalez, Vice President (Qualifying Individual), Conrad M. Wittkop, President

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants

All Freight Services International, Inc., 8240 N.W. 52nd Terrace, Suite 518, Miami, FL 33166. Officers: Belinda Dominguez, Ocean Manager (Qualifying Individual), Murray Norkin, President

Palumbo USA Inc., 1 Exchange Place, Suite 1000, Jersey City, NJ 07302–3911. Officers: Margarita G. Casseres, Corp. Secretary (Qualifying Individual), Anthony J. Pruzinsky, Director

Admiral Global Services, Inc., 1101 Ellis Avenue, Bensenville, IL 60106. Officers: Philip Edward Moss, Vice President (Qualifying Individual), Patricia Hezinger, President

P.E.X. Commercial Inc., 179 Morningside Drive, Miami Springs, FL 33166. Officer: Xenia Perez, President (Qualifying Individual)

Gamar Corporation, 9300 N.W. 25th Street, Suite 107, Miami, FL 33172. Abraham Sebastiani, Sole Proprietor

McCollisters Transportation System, Inc., 1800 Route 130, Burlington, NJ 08016. Officers: Bruce J. Joiner, Opera. Manager Int'l. Services

Dated: August 20, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–22093 Filed 8–25–99; 8:45 am]

BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–0296]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Draft Guidance for Industry on Formal Meetings with Sponsors and Applicants for PDUFA Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the proposed collection of information by September 27, 1999.

ADDRESSES: Submit written comments on the proposed collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Draft Guidance for Industry on Formal Meetings with Sponsors and Applicants for PDUFA Products; Availability

I. Description

FDA is issuing a draft guidance on the procedures for formal meetings between FDA and sponsors or applicants regarding the development and review of the Prescription Drug User Fee Act (PDUFA) products. The draft guidance describes procedures for requesting, scheduling, conducting, and documenting such formal meetings. The draft guidance provides information on how the agency will interpret and apply section 119(a) of the FDA Modernization Act of 1997 (the Modernization Act) (Public Law 105–115). Specific PDUFA goals for the management associated with the review of human drug applications for PDUFA products, and provisions of existing regulations describing certain meetings (§§ 312.47 and 312.82 (21 CFR 312.47 and 312.82)).

The draft guidance describes two collections of information: The submission of a meeting request containing certain information and the submission of an information package in advance of the formal meeting. Agency regulations at § 312.47(b)(1)(ii), (b)(1)(iv), and (b)(2) describe information that should be submitted in support of a request for an end-of-Phase 2 meeting and a pre-new drug application (NDA) meeting. The information collection provisions of § 312.47 have been approved by OMB (OMB Control No. 0910–0014). However, the draft guidance provides additional recommendations for submitting information to FDA in support of a meeting request. As a result, FDA is providing revised estimates in this notice.

II. Request for a Meeting

Under the draft guidance, a sponsor or applicant interested in meeting with the Center for Drug Evaluation and Research (CDER) and and the Center for Biologics Evaluation and Research (CBER) should submit a meeting request to the appropriate FDA component as an amendment to the underlying application.

FDA regulations (§§ 312.23, 314.50, and 601.2 (21 CFR 312.23, 314.50, and 601.2)) state that information provided to the agency as part of an investigational new drug application (IND), NDA, or biologics license application (BLA) must be submitted in triplicate and with an appropriate cover form. Form FDA 1571 must accompany submissions under IND's and Form FDA 356h must accompany submissions under NDA's and BLA's. Both forms have valid OMB control numbers as follows: FDA Form 1571, OMB Control No. 0910–0014, expires December 31, 1999; and FDA Form 356h, OMB Control No. 0910–0338, expires April 30, 2000.

In the draft guidance, CDER and CBER ask that a request for a formal meeting be submitted as an amendment to the application for the underlying product under the requirements of §§ 312.23, 314.50, and 601.2; therefore, requests should be submitted to the agency in triplicate with the appropriate form attached, either Form FDA 1571 or Form FDA 356h. The agency recommends that a request be submitted in this manner for two reasons: (1) To ensure that each request is kept in the administrative file with the entire underlying application, and (2) to ensure that pertinent information about the request is entered into the appropriate tracking data bases. Use of the information in the agency's tracking data bases enables the agency to monitor progress on the activities attendant to scheduling and holding a formal meeting and to ensure that appropriate steps will be taken in a timely manner.

Under the draft guidance, the agency requests that sponsors and applicants include in meeting requests certain information about the proposed meeting. Such information includes:

- Information identifying and describing the product,
- The type of meeting being requested,
- A brief statement of the purpose of the meeting,
- A list of objectives and expected outcomes from the meeting,
- A preliminary proposed agenda,
- A draft list of questions to be raised at the meeting,
- A list of individuals who will represent the sponsor or applicant at the meeting,
- A list of agency staff requested to be in attendance,
- The approximate date that the information package will be sent to the agency, and
- Suggested dates and times for the meeting.

This information will be used by the agency to determine the utility of the meeting, to identify agency staff necessary to discuss proposed agenda items, and to schedule the meeting.

III. Information Package

A sponsor or applicant submitting an information package to the agency in advance of a formal meeting should provide summary information relevant to the product and supplementary information pertaining to any issue raised by the sponsor, applicant, or agency. The agency recommends that information packages generally include:

- Identifying information about the underlying product;
- A brief statement of the purpose of the meeting;
- A list of objectives and expected outcomes of the meeting;
- A proposed agenda for the meeting;
- A list of specific questions to be addressed at the meeting;
- A summary of clinical data that will be discussed (as appropriate);
- A summary of preclinical data that will be discussed (as appropriate); and
- Chemistry, manufacturing, and controls information that may be discussed (as appropriate).

The purpose of the information package is to provide agency staff the opportunity to adequately prepare for the meeting, including the review of relevant data concerning the product. Although FDA reviews similar information in the meeting request, the information package should provide updated data that reflect the most current and accurate information available to the sponsor or applicant. The agency finds that reviewing such information is critical to achieving a productive meeting.

The proposed collection of information described in the draft guidance reflects the current and past practice of sponsors and applicants to submit meeting requests as amendments to IND's, NDA's, and BLA's and to submit background information prior to a scheduled meeting. Agency regulations currently permit such requests and recommend the submission of an information package before an end-of-Phase 2 meeting (§ 312.47(b)(1)(ii) and (b)(1)(iv)) and a pre-NDA meeting (§ 312.47(b)(2)).

Description of Respondent: A sponsor or applicant for a drug or biologic product who requests a formal meeting with the agency regarding the development and review of a PDUFA product.

Burden Estimate: Table 1 of this document provides an estimate of the annual reporting burden for the submission of meeting requests and information packages under the draft guidance.

Request for a Formal Meeting: Based on data collected from the review divisions and offices within CDER and CBER, FDA estimates that in fiscal year (FY) 1998, 548 sponsors and applicants (respondents) requested formal meetings with CDER and 495 respondents requested formal meetings with CBER regarding the development and review of a PDUFA product. FDA anticipates that the potential number of respondents submitting meeting requests will remain the same, and therefore estimates that the total number of respondents will be 1,043. The agency further estimates that the total annual responses, i.e., the total number of meetings requested per year, will be 1,043, based on data collected from the offices within CDER and CBER. The hours per response, which is the estimated number of hours that a respondent would spend preparing the information to be submitted with a meeting request in accordance with the draft guidance, is estimated to be approximately 10 hours. Based on FDA's experience, the agency expects it will take respondents this amount of time to gather and copy brief statements about the product and a description of the purpose and details of the meeting. Therefore, the agency estimates that sponsors will use 10,430 hours per year requesting formal meetings with CDER and CBER regarding the development and review of PDUFA products.

Information Package: Based on data collected from the review divisions and offices within CDER and CBER, FDA estimates that in FY 1998, CDER held 527 formal meetings and CBER held 415 formal meetings regarding the review of human drug applications as defined in section 735(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 379g). FDA anticipates that the potential number of meetings will remain the same; thus, the agency estimates that total annual responses will be 942. As stated previously, it is the current practice for sponsors and applicants to submit information packages to the agency in advance of any such meeting. In FY 1998, 527 respondents submitted information packages to CDER and 415 respondents submitted information packages to CBER prior to the scheduled meetings. FDA anticipates that the potential number of respondents submitting an information package will remain the same; thus, the agency estimates that the total number of respondents will be 942. The hours per response, which is the estimated number of hours that a respondent would spend preparing the information package in accordance with this draft guidance, is estimated to be approximately 18 hours. Based on FDA's experience, the agency expects it will take respondents this amount of time to gather and copy brief statements about the product, a description of the details for the anticipated meeting, and data and information that generally would already have been compiled for submission to the agency. Therefore, the agency estimates that respondents will spend 16,856 hours per year submitting information packages to the agency prior to a formal meeting regarding the development and review of a PDUFA product.

As stated earlier, the draft guidance provides information on how the agency will interpret and apply section 119(a) of the Modernization Act, specific PDUFA goals for the management of meetings associated with the review of human drug applications for PDUFA products, and provisions of existing regulations describing certain meetings (§§ 312.47 and 312.82). The information collection provisions in § 312.47 concerning end-of-Phase 2 meetings and pre-NDA meetings have been approved by OMB (OMB Control No. 0910–0014). These estimates provide for 100 respondents submitting 100 total annual responses at 24 hours per response, equalling 2,400 total burden hours. Therefore, FDA is subtracting these estimates from the estimates described previously for all formal meetings between FDA and sponsors or applicants regarding the development and review of PDUFA products. Specifically, the agency is subtracting in Table 1 of this document burden estimates for meeting requests and information packages for end-of-Phase 2 meetings and pre-NDA meetings. This reduces the total estimated burden hours from 27,386 to 24,986.

In the **Federal Register** of March 19, 1999 (64 FR 13591), FDA invited comments regarding the agency's estimate of the paperwork burden. One comment was received. The comment stated that FDA's estimate is a relatively accurate accounting of time used in administrative preparation of information for routine meetings. The comment stated that FDA underestimated the time required for creative writing and editing tasks associated with preparation of paperwork prior to a formal meeting where many issues or complicated topics will be discussed.

The agency's estimates are based in part on the expectation that respondents will have already compiled for submission to the agency most of the data and information that is described in the guidance document. The agency anticipates that respondents will have submitted the information as part of the underlying product application. Therefore, the bulk of the paperwork burden is related to administrative tasks, i.e., gathering and copying brief statements about the product and describing details of the anticipated meeting.

FDA invites comments on this analysis of information collection burdens.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Meeting Request and Information Package	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
Meeting Request					
CDER	548	1	548	10	5,480
CBER	495	1	495	10	4,950
Total					10,430
Information Packages					
CDER	527	1	527	18	9,486
CBER	415	1	415	18	7,470
Total					16,956
Subtotal					27,386
Less 2,400 hours					24,986
Total					24,986

[1] There are no capital costs or operating and maintenance costs associated with this collection of information

Dated: August 19, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–22100 Filed 8–25–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Workshop on Bacterial Contamination of Platelets; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop entitled "Bacterial Contamination of Platelets." The objectives of the public workshop are to obtain current information on bacterial contamination of platelets and to encourage future research and development efforts to minimize the risk of transfusion reactions. The public workshop will include an update on the epidemiology of platelet contamination, advances in detection methodology of contamination, and current strategies on bacterial inactivation and contamination avoidance. Results from a U.S. study (the BaCon Study) and similar European studies on microbial contamination will be presented.

Date and Time: The public workshop will be held on Friday, September 24, 1999, from 8:15 a.m. to 5 p.m.

Location: The public workshop will be held at the National Institutes of Health (NIH), NIH Clinical Center, Bldg. 10, Jack Masur Auditorium, 9000 Rockville Pike, Bethesda, MD.

Contact: Joseph Wilczek, Center for Biologics Evaluation and Research (CBER) (HFM–350), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6129, FAX 301–827–2843.

Registration and Requests for Oral Presentations: Mail or fax registration information (including name, title, firm name, address, telephone, and fax number) to Joseph Wilczek (address above) by Friday, September 10, 1999. Onsite registration will be done on a space-available basis on the day of the public workshop, beginning at 7:30 a.m. There is no registration fee for the public workshop. Space is limited, therefore, interested parties are encouraged to register early.

If you need special accommodations due to a disability, please contact Joseph Wilczek at least 7 days in advance.

A poster session will be set up for the public workshop. All participants are encouraged to present their study results in poster format. A limited number of abstracts may be selected for oral presentations. Send your abstracts and requests for oral presentations to Chiang Syin, Division of Transfusion Transmitted Diseases (HFM–320), CBER, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6465, FAX 301–594–6989, or e-mail "syin@cber.fda.gov" by Friday, September 10, 1999.

Transcripts: Transcripts of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. The meeting transcript will also be available on CBER's website at "http://www.fda.gov/cber/minutes/workshop-min.htm".

Dated: August 17, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–22098 Filed 8–25–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0362]

Advisory Committee for Pharmaceutical Science Site-Specific Stability Subcommittee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Advisory Committee for Pharmaceutical Science Site-Specific Stability Subcommittee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 22, 1999, 8:30 a.m. to 5 p.m.

Location: Center for Drug Evaluation and Research Advisory Committee Conference Room, 5630 Fishers Lane, Rockville, MD.

Contact Person: Kimberly Littleton Topper at Topperk@cder.fda.gov or Angie Whitacre at Whitacrea@cder.fda.gov, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane Rockville, MD 20857, (301) 827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12539. Please call the Information Line for up-to-date information on this meeting.

Agenda: The subcommittee will discuss the March site-specific stability proposal from the agency and the public comments submitted to Docket No. 98D–0362.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 8, 1999. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 8, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 18, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99–22151 Filed 8–25–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Psychopharmacologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Psychopharmacologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held October 7, 1999, from 8:30 a.m. to 5 p.m., and October 8, 1999 from 8 a.m. to 4:30 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Sandra L. Titus, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, or by e-mail at "tituss@cder.fda.gov", or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area) code 12544. Please call the Information Line for up-to-date information on this meeting.

Agenda: On October 7, 1999, the committee will consider the safety and efficacy of new drug application (NDA) supplement 20–592/S–009, Zyprexa® (olanzapine, Lilly), proposed to treat psychosis associated with dementia. On October 8, 1999, the committee will consider the safety and efficacy of NDA supplement 19–839/S–026, Zoloft® (sertraline hydrochloride, Pfizer Pharmaceuticals) proposed to treat posttraumatic stress disorder.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 1, 1999. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on both days. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 1, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 18, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99–22099 Filed 8–25–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Psychopharmacologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Psychopharmacologic Drugs Advisory Committee.

General Function of the Committees: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held November 3, 1999, 8 a.m. to 4:30 p.m.

Location: Hilton, Salons A, B, and C, 620 Perry Pkwy., Gaithersburg, MD.

Contact Person: Sandra L. Titus, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093) Rockville, MD 20857, 301–827–7001, or e-mail TITUSS@CDER.FDA.GOV, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area) code 12544. Please call the Information Line for up-to-date information on this meeting.

Agenda: On November 3, 1999, the committee will consider the safety and efficacy of new drug application (NDA) supplement 18–936/SE1–058, Prozac® (fluoxetine hydrochloride, Lilly), proposed to treat premenstrual dysphoric disorder.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by October 27, 1999. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before October 27, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 18, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99–22101 Filed 8-25-99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Vaccines and Related Biological Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Vaccines and Related Biological Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 14, 1999, 1 p.m. to 5 p.m., and on September 15, 1999, 8 a.m. to 4 p.m.

Location: Holiday Inn, Versailles Ballrooms I and II, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Nancy T. Cherry or Denise H. Royster, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12391. Please call the Information Line for up-to-date information on this meeting.

Agenda: On September 14, 1999, the committee will: (1) Hear reports on recent workshops on Thimerosal in Vaccines and Cell Substrates for Vaccine Development and be updated on recent developments concerning the rotavirus vaccine manufactured by Wyeth Laboratories, Inc., and (2) be briefed on selected individual research programs in the Laboratory of Parasitic Biology and the Laboratory of Biophysics. On September 15, 1999, the committee will discuss the use of immunologic surrogates for demonstration of protective efficacy of meningococcal conjugate vaccines.

Procedure: On September 14, 1999, from 1 p.m. to 3:10 p.m., and on September 15, 1999, from 8 a.m. to 4 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 7, 1999. Oral presentations from the public will be scheduled between approximately 2:10 p.m. and 2:50 p.m. on September 14, 1999, and between approximately 12:10 p.m. and 12:30 p.m. on September 15, 1999. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 7, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On September 14, 1999, from 3:10 p.m. to 4 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). This portion of the meeting will be closed to permit discussion of pending investigational new drug applications or pending product licensing applications. Also, on September 14, 1999, from 4 p.m. to 5 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The meeting will be closed to discuss personal information concerning individuals associated with the research programs.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 13, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99–22102 Filed 8-25-99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–99–6002]

Memorandum of Understanding Between the Food and Drug Administration and the State of Iowa

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA and the State of Iowa. The purpose of the MOU is to establish policies, procedures, and responsibilities for the billing and collection of Mammography Quality Standards Act (MQSA) mammography facility inspection fees for the second year.

DATES: The agreement became effective July 30, 1999.

FOR FURTHER INFORMATION CONTACT: Lireka P. Joseph, Center for Devices and Radiological Health (HFZ–200), Food and Drug Administration, 2094 Gaither Rd., Gaithersburg, MD 20850, 301–443–2845.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this memorandum of understanding.

Dated: August 19, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

BILLING CODE 4160–01–F

July 26, 1999

MEMORANDUM OF UNDERSTANDING

BETWEEN

STATE OF IOWA
DEPARTMENT OF PUBLIC HEALTH
BUREAU OF RADIOLOGICAL HEALTH

AND

U.S. FOOD AND DRUG ADMINISTRATION
CENTER FOR DEVICES AND RADIOLOGICAL HEALTH
OFFICE OF HEALTH AND INDUSTRY PROGRAMS

RE: AUTHORIZATION OF THE STATE OF IOWA TO PARTICIPATE IN THE U.S. FOOD AND DRUG ADMINISTRATION'S MQSA STATES AS CERTIFIERS DEMONSTRATION PROJECT

Control No. 225-99-6002

MEMORANDUM OF UNDERSTANDING

BETWEEN

STATE OF IOWA
DEPARTMENT OF PUBLIC HEALTH
BUREAU OF RADIOLOGICAL HEALTH

AND

U.S. FOOD AND DRUG ADMINISTRATION
CENTER FOR DEVICES AND RADIOLOGICAL HEALTH
OFFICE OF HEALTH AND INDUSTRY PROGRAMS

I. PURPOSE:

This Memorandum of Understanding (MOU) establishes policies, procedures, and responsibilities for the billing and collection of Mammography Quality Standards Act (MQSA) mammography facility inspection fees while the State of Iowa is participating in the Food and Drug Administration's (FDA) MQSA States as Certifiers Demonstration Project. The Demonstration Project is now renewable for a second year by mutual agreement.

II. BACKGROUND:

This MOU has been developed because of the need to bill and collect annual mammography facility inspection fees according to provisions contained in the MQSA while the State of Iowa is participating in the demonstration project. The State of Iowa voluntarily applied and agreed to participate in this demonstration project.

Each agency recognizes that this MOU documents a working relationship. It does not infer any contractual obligations nor assumption of liability by one agency for any action of the other agency.

It is understood that each agency continues to exercise its respective jurisdictional authority, and that the cooperation extended to the other agency does not transfer any jurisdictional authorities.

III. SUBSTANCE OF AGREEMENT:

1. The State of Iowa will provide the FDA, within five business days, the results of all annual MQSA inspections and MQSA follow-up inspections conducted by the State

during the demonstration project. Based on this information, the FDA will bill and charge each inspected mammography facility a fee of $509 to cover the FDA's costs for the annual inspection. This fee may be subject to change.

The types of services provided by FDA are as follows:

- Training and certification of inspectors.
- Development of instrument calibration procedures and calibration of instruments used in the inspections.
- Supplying, repairing, and replacing inspection equipment.
- Design, programming, and maintenance of inspection data systems.
- Administrative support attributable to facility inspections.

2. Under the MQSA, all certified mammography facilities except governmental entities are subject to the payment of inspection fees. During the period of time the State of Iowa is participating in the Project, facilities that qualify as government entities will not be required to pay the FDA inspection fee but will be required to recertify their government entity status using the form provided by the FDA.

During the period of time the State of Iowa is participating in the Project, the State Department of Public Health will directly bill and charge all facilities certified by the State to perform mammography under MQSA an annual certification fee of $850 for the first unit and $300 for each additional unit.

IV. DEFINITION:

1. Governmental Entity

A "governmental entity" is a mammography facility subject to the MQSA inspection that meets all of the following criteria:

The entire salary of all on-site personnel of the mammography facility is directly paid by a federal department, state, district, territory, possession, federally-recognized Indian tribe, city, county, town, village, municipal corporation or similar political organization or subpart thereof, the building, office, or other space occupied by the mammography facility is owned by, rented by, or leased to a federal department, state, district, territory, possession, federally-recognized Indian tribe, city, county, town, village, municipal corporation or similar political organization or subpart thereof, the facility's mammography equipment is owned by, rented by, or leased to a federal department, state, district, territory, possession, federally-recognized Indian tribe, city, county, town, village, municipal corporation or similar political organization or subpart thereof, and a federal department, state, district, territory, possession, federally-recognized Indian tribe, city, county, town, village, municipal corporation or

similar political organization or subpart thereof has the ultimate authority to make day-to-day decisions concerning the management and operation of the mammography facility.

or

A facility qualifies as a government entity if at least 50% of the mammography screening examinations provided during the preceding 12 months were funded under the Breast and Cervical Cancer Mortality Prevention Act of 1990, 42 U.S.C. 300k et seq.

V. AUTHORITY

The FDA is vested with authority under section 354(r) of the Public Health Services Act (the PHS Act) (42 U.S.C. 262 *et seq.*) to assess and collect fees from mammography facilities to cover the costs of annual inspections required by the MQSA. Under 354(q) of the PHS Act, FDA may approve a state to perform some of the agency's certification functions. The MQSA amended Title III of the PHS Act by adding a new section 354 (42 U.S.C. 263b) to require uniform national quality standards for mammography facilities.

The State of Iowa is authorized by State statute, Iowa Code Chapter 136.15

VI. NAME AND ADDRESSES OF PARTICIPATING AGENCIES:

A. FDA:

Office of Health and Industry Programs
1350 Piccard Drive
Rockville, MD 20850

B. State of Iowa:

Department of Public Health
Bureau of Radiological Health
Lucas State Office Building
321 E. 12th Street
Des Moines, IA 50319-0075

VII. LIAISON OFFICERS:

A. For FDA:

Lireka P. Joseph, Dr. P.H.

Director
Office of Health and Industry Programs
Center for Devices and Radiological Health
Food and Drug Administration

B. For State of Iowa:

Donald A. Flater
Chief
Bureau of Radiological Health
Iowa Department of Public Health

VIII. PERIOD OF AGREEMENT:

After acceptance by both parties, this MOU will be become effective on or after July 1, 1999 and continue until the completion of the demonstration project or upon termination in writing by either party with a 30-day prior notice (such notice shall be sent to the addresses listed in Section V). This MOU may be modified by mutual written consent at any time. The effective date will be specified in the letter formally approving the State of Iowa as a participant in the demonstration project.

IX. CONCURRENCE:

FDA:

7/26/99
(Signature and date)
Lireka P. Joseph, Dr.P.H.
Director
Office of Health and Industry Programs
Center for Devices and Radiological Health
Food and Drug Administration

State of Iowa:

7-30-99
(Signature and date)
Donald A. Flater
Chief
Bureau of Radiological Health
Iowa Department of Public Health

7-30-99
(Signature and date)
Dr. Stephen C. Gleason, D.O.
Director
Iowa Department of Public Health

[FR Doc. 99-22150 Filed 8-25-99; 8:45 am]
BILLING CODE 4160-01-C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0293]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR Part 1320. We cannot reasonably comply with the normal clearance procedures because of deadlines associated with this collection as referenced in the Government Performance and Results Act of 1993.

HCFA is requesting OMB review and approval of this collection within 10 working days of the publication of this notice, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below within 9 working days of publication of this notice. During this 180-day period, we will publish a separate Federal Register notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Request: New collection.

Title of Information Collection: Medicare Telephone Call Center Customer Satisfaction Study.

HCFA Form Number: HCFA–R–0293 (OMB approval #: 0938–NEW).

Use: The purpose of this information collection is to provide the 75+ Medicare call centers with suitably trained staff and survey materials to conduct a standardized random sample of beneficiary calls and administer a customer satisfaction questionnaire. The goal is to develop a national baseline measure of customer satisfaction with the Medicare telephone service provided by carriers and fiscal intermediaries.

Frequency: On occasion.

Affected Public: Medicare beneficiaries.

Number of Respondents: 120,000.

Total Annual Responses: 120,000.

Total Annual Burden Hours: 10,000.

We have submitted a copy of this notice to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, within 9 working days of publication of this notice in the **Federal Register**:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850. Fax Number: (410) 786–0262 Attn: Julie Brown HCFA–R–293 and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167 Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: August 19, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–22122 Filed 8–25–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the Annual Report for the following Health Resources and Services Administration's Federal Advisory Committee has been filed with the Library of Congress:

Health Professions and Nurse Education Special Emphasis Panel

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE, Washington, DC Copies may be obtained from: Ms. Sherry Whipple, Program Analyst, Peer Review Branch, Bureau of Health Professions, Room 8C–23, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–5926.

Dated: August 20, 1999.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–22153 Filed 8–25–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions, and Delegations of Authority

This notice amends part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Health Resources and Services Administration (60 FR 56605 as amended November 6, 1995, as last amended at 64 FR 36697 dated July 7, 1999). This notice reflects the organizational and functional changes in the Southeast Field Cluster.

Section RF–10—Organization

The Southeast Field Cluster is headed up by the Field Director who reports directly to the Associate Administrator, Office of Field Operations. The Southeast Field Cluster is organized as follows:

1. Immediate Office of the Field Director.
2. Office of Planning, Analysis and Evaluation.
3. Division of Health Resources and Services I.
4. Division of Health Resources and Services II.

Section RF–20—Function

(1.) Immediate Office of the Field Director (RF22)

Serves as HRSA's senior public health official in the Southeast region, providing liaison with State and local health officials as well as professional organizations; (2) provides input from local, regional and state perspectives to assist the Administrator and the Associate Administrators in the formulation, development, analysis and evaluation of HRSA programs and initiatives; (3) at the direction of the Administrator and/or in conjunction with the HRSA Associate Administrators and the Associate Administrator, Office of Field Operations, coordinates the field implementation of special initiatives which involve multiple HRSA programs and/or field offices (e.g., Border Health); (4) assists with the implementation of HRSA programs in the field by supporting the coordination of activities, alerting program officials of potential issues and assessing policies and service delivery systems; (5) represents the Administrator in working with other Federal agencies, state and local health departments, schools of public health, primary care associations and organizations, community health centers, and others in coordinating health programs and activities; and (6) exercises line management authority as delegated from the Administrator for general administrative and management functions within the field structure.

(2.) Office of Planning, Analysis, and Evaluation (RF23)

Provides technical assistance, consultation, training to Field Cluster staff, grantees related to data systems, planning, and evaluation; (2) serves as focal point for States and Agency grantees on data and data systems issues related to HRSA program requirements; (3) develops statistical profiles of HRSA grantees in the region, and analysis of Geographic Information Systems profiles and other profiles developed by federal, state and local agencies in the region; (4) develops State profiles; (5) conducts and disseminates, as appropriate, trend analysis of financial data, health indicators, and service data to identify emerging trends among HRSA grantees and health service catchment areas in the Southeast; (6) provides consultation and support to private nonprofit organizations involved in health care delivery around special studies, research, and evaluation related to health disparities; (7) analyzes program related reports; and (8) maintains Field Cluster program related database.

(3.) Division of Health Resources and Services I (RF24)

Directs and coordinates field development and implementation of HRSA programs and activities in four states within the Southeast Field Cluster designed to increase access, capacity, and capabilities of local and state health systems and programs serving the underserved populations in the states served by the cluster, including primary care programs, maternal and child health, HIV/AIDS, health facilities construction under the Hill-Burton Program, rural health, and other health related programs in the cluster; (2) provides continuous program monitoring of HRSA health service grants and contracts for compliance with applicable laws, regulations, policies, and performance standards; (3) assists in the implementation and monitors policies related to National Health Service Corps scholarship and loan repayment programs; (4) provides for development, implementation, and monitoring of the annual field work plan related to assigned program areas, including setting objectives responsive to national and field priorities based on guidance provided by appropriate HRSA bureau components and assigns division resources required to attain these objectives; (5) coordinates with other field office staff and headquarters staff to develop and consolidate objectives crossing program and division lines; (6) serves as source of expertise on health resources and services development, primary health care, maternal and child health, rural health, HIV/AIDS, and health professions programs; (7) establishes effective communication and working relationships with health-related organizations of States and other jurisdictions; (8) serves as a focal point for information on health resource programs and related efforts, including voluntary, professional, academic and other private sector activities

(4.) Division of Health Resources and Services II (RF25)

Directs and coordinates field development and implementation of programs and activities in four states within the Southeast Field Cluster designed to increase access, capacity, and capabilities of local and state health systems and programs serving the underserved populations in the states served by the cluster, including primary care programs, maternal and child health, HIV/AIDS, health facilities construction under the Hill-Burton Program, rural health, and other health related programs in the cluster; (2) provides continuous program monitoring of HRSA health service grants and contracts for compliance with applicable laws, regulations, policies, and performance standards; (3) assists in the implementation and monitors policies related to National Health Service Corps scholarship and loan repayment programs; (4) provides for development, implementation, and monitoring of the annual field work plan related to assigned program areas, including setting objectives responsive to national and field priorities based on guidance provided by appropriate HRSA bureau components and assigns division resources required to attain these objectives; (5) coordinates with other field office staff and headquarters staff to develop and consolidate objectives crossing program and division lines; (6) serves as source of expertise on health resources and services development, primary health care, maternal and child health, rural health, HIV/AIDS, and health professions programs; (7) establishes effective communication and working relationships with health-related organizations of States and other jurisdictions; (8) serves as a focal point for information on health resource programs and related efforts, including voluntary, professional, academic and other private sector activities.

Section RF–30 Delegations of Authority

All delegations and redelegations of authority which were in effect immediately prior to the effective date hereof have been continued in effect in them or their successors pending further redelegation.

This reorganization is effective August 4, 1999.

Dated: August 4, 1999.
Claude Earl Fox,
Administrator.
[FR Doc. 99–22152 Filed 8–25–99; 8:45 am]
BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Prostate, Lung, Colorectal and Ovarian Cancer Screening Trial

SUMMARY: Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 16, 1999, pages 18918–18919 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Prostate, Lung, Colorectal and Ovarian Cancer Screening Trial. Type of Information Collection Request: Revision, OMB control number 0925–0407, expiration date October 31, 1999. Need and Use of Information Collection: This trial is designed to determine if screening for prostate, lung, colorectal and ovarian cancer can reduce mortality from these cancers which currently cause an estimated 251,000 deaths annually in the U.S. The design is a two-armed randomized trial of men and women aged 55 to 74 at entry. The anticipated total sample size, after eight years of recruitment, is projected to be 148,000. The primary endpoint of the trial is cancer-specific mortality for each of the four cancer sites (prostate, lung, colorectal, and ovary). In addition, cancer incidence, stage shift, and case survival are to be monitored to help understand and explain results. Biologic prognostic characteristics of the cancers will be measured and correlated with mortality to determine the mortality predictive value of these intermediate endpoints. Basic demographic data, risk factor data for the four cancer sites and screening history data, as collected from all subjects at baseline, will be used to assure comparability between the screening and control groups and make appropriate adjustments in analysis. Further, demographic and risk factor information will be used to analyze the differential effectiveness of screening in high versus low risk individuals. Frequency of Response: On occasion. Affected Public: Individuals or households. Type of Respondents: Adult men and women. The annual reporting burden is as follows: Estimated Number of Respondents: 142,359; Estimated Number of Responses per Respondent: 1.65; Average Burden Hours Per Response: 0.40; and Estimated Total Annual Burden Hours Requested: 94,809. The annualized cost to respondents is estimated at: $948,090. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. John Gohagan, Chief, Early Detection Research Group, National Cancer Institute, NIH, EPN Building, Room 330, 6130 Executive Boulevard, MSC7346, Bethesda, MD 20892–7346, or call non-toll-free number (301) 496–3982 or E-mail your request, including your address to: JG72P@.NIH.GOV

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before September 27, 1999.

Dated: August 19, 1999.
Reesa L. Nichols,
NCI Project Clearance Liaison.
[FR Doc. 99–22242 Filed 8–25–99; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Call for Nominations for the National Cancer Institute Director's Consumer Liaison Group

The National Cancer Institute (NCI), the Federal Government's primary agency for cancer research, is now accepting nominations for five members of the National Cancer Institute Director's Consumer Liaison Group (DCLG) who will be appointed in July, 2000. The DCLG is a chartered Federal advisory committee of the NCI. It consists of 15 consumer advocates who are involved in cancer advocacy and who reflect the diversity among those whose lives are affected by cancer. DCLG members are appointed for three-year terms.

NCI brings together these advocates from many communities to advise and make recommendations to the Director, NCI, from the consumer advocate perspective on a wide variety of issues, programs and research priorities. The DCLG serves as a channel for consumer advocates to voice their views and concerns. Specifically the DCLG members:

- Help develop and establish processes, mechanisms, and criteria for identifying appropriate consumer advocates to serve on a variety of program and policy advisory committees responsible for advancing the mission of the NCI.
- Serve as a primary forum for discussing issues and concerns and exchanging viewpoints that are important to the broad development of the NCI programmatic and research priorities.
- Establish and maintain strong collaborations between the NCI and the cancer advocacy community to reach common goals.

Eligibility Requirements for Individual Members

To serve on the DCLG, a member must meet the following minimum eligibility requirements:

- Be involved in the cancer experience as a cancer survivor, a person affected by the suffering and consequences of cancer, or a professional or volunteer who works with survivors or those affected.
- Represent a constituency (formally or informally) with whom she or he communicates regularly on cancer issues and be able to serve as a conduit for information both to and from his/her constituency.

DCLG members must be committed to participating in all activities of the DCLG which includes at least two meetings a year in Bethesda.

Criteria for Evaluating Individual Candidates

Nominees who meet the minimum eligibility requirements will be further assessed based on the following criteria:

- Cancer advocacy experience.
- Ability to communicate effectively.
- Ability to represent broad issues, think "globally".
- Ability to contribute to an effective group process.
- Leadership ability.

Characteristics of the DCLG

In addition to the criteria for individual candidates, the following characteristics of the DCLG as a group are intended to ensure that it reflects the breadth and diversity of the consumer advocacy community:

- Multicultural diversity.
- A broad mix of cancer sites.
- Representation of the medically underserved.
- Men and women.
- A range of organizations (local/regional and national).
- Age diversity.
- Geographic diversity (rural/urban mix).

Selection Process

A call for nominations is disseminated annually to a broad range of groups, including local, regional and national organizations, to encourage nominations of candidates reflecting the diversity sought for the DCLG. All nominees are screened for eligibility, then evaluated according to the criteria. A list of highly qualified candidates who reflect balance and diversity of representation is forwarded to the Director, NCI, who selects the DCLG members. The original members of the DCLG endorsed this process, which will be used to select future members.

Nominations may come from members of organizations, or individuals, including self-nominations. The nominations must be postmarked no later than November 1, 1999. To request a nomination package send your name, advocacy organization affiliation (if any), and address to the Office of Liaison Activities, NCI, Building 31; Room 10A06, 31 Center Drive, MSC 2580, Bethesda, MD 20892–2580. You may also request a package via fax to 301 480–7558 or e-mail to liaison@od.nci.nih.gov

Dated: August 19, 1999.
LaVerne Stringfield,
Director, Office of Federal Advisory Committee Policy, National Institutes of Health.
[FR Doc. 99–22237 Filed 8–25–99; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Establishment

Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), the Director, National Institutes of Health, announces the establishment of the Secretary's Advisory Committee on Xenotransplantation (Committee).

This Committee will advise the Secretary of Health and Human Services, through the Assistant Secretary for Health, on all aspects of the scientific development and clinical applications of xenotransplantation. The Committee's charge includes: advise on the current state of knowledge regarding xenotransplantation, review current and proposed xenotransplantation clinical trails, identify and discuss the medical, scientific, ethical, legal, and/or socioeconomic issues raised by these clinical trials, advise on the potential for transmission of infectious diseases, recommend changes to the PHS Guidelines on Infectious Disease Issues in Xenotransplantation, and discuss other issues that are relevant to xenotransplantation.

Unless renewed by appropriate action prior to its expiration, the Charter for the Secretary's Advisory Committee on Xenotransplantation will expire two years from the date of establishment.

Dated: August 16, 1999.
Harold Varmus,
Director, National Institutes of Health.
[FR Doc. 99–22240 Filed 8–25–99; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Initial Review Group Comparative Medicine Review Committee.

Date: October 13–14, 1999.

Open: October 13, 1999, 8:00 AM to 9:30 AM.

Agenda: To discuss program planning and program accomplishments.

Place: One Washington Circle Hotel, Conference Center, One Washington Circle, Washington, DC 20037.

Closed: October 13, 1999, 9:30 AM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, Conference Center, One Washington Circle, Washington, DC 20037.

Contact Person: John D. Harding, PhD, Scientific Review Administrator, Office Of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, (301) 435–0810.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: August 19, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–22231 Filed 8–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Initial Review Group General Clinical Research Centers Review Committee.

Date: October 12–13, 1999.

Open: October 12, 1999, 8:00 AM to 9:30 AM.

Agenda: To discuss program planning and program accomplishments.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20814.

Closed: October 12, 1999, 9:30 AM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20814.

Contact Person: Charles G. Hollingsworth, DPH, Deputy Director, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, (301) 435–0818.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: August 19, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–22232 Filed 8–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel Comparative Medicine.

Date: September 15, 1999.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: DoubleTree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Charles G. Hollingsworth, DPH, Deputy Director, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0806.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: August 18, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–22235 Filed 8–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Mucosal Immunity and Infection.

Date: October 8, 1999.

Time: 1:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIAID, NIH (Room 2212), 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610 (Telephone Conference Call).

Contact Person: Nasrin Nabavi, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, HIN, Room 2217, 6700B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301 496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 20, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–22224 Filed 8–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel International Clinical Studies Support Center.

Date: September 22–23, 1999.

Time: 8:30 AM to 5:30 PM.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Chevy Chase, Terrace Room, 5520 Wisconsin Avenue, Bethesda, MD 20815.

Contact Person: Yen Li, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7610, 301–496–2250, yli@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 20, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–22225 Filed 8–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Allergy, Immunology, and Transplantation Research Committee.

Date: October 5–6, 1999.

Open: October 5, 1999, 9:00 AM to 10:00 AM.

Agenda: The meeting will be open for discussion of administrative details relating to committee business and program review, and for a report from the Director, Division of Extramural Activities, which will include a discussion of budgetary matters.

Place: Historic Inns of Annapolis, 58 State Circle, Annapolis, MD 21401.

Closed: October 5, 1999, 10:00 AM to adjournment.

Agenda: To review and evaluate grant applications.

Place: Historic Inns of Annapolis, 58 State Circle, Annapolis, MD 21401.

Contact Person: Denise A. Russo, Phd, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550, drusso@niaid.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: August 20, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–22226 Filed 8–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could dislose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel ADRC–SEP 1.

Date: September 13–15, 1999.

Time: 6:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, Palladian East and Center Rooms, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Louise L. Hsu, Phd, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 20, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–22229 Filed 8–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Aging Special Emphasis Panel Demography of Aging/K–12.

Date: August 27, 1999.

Time: 11:00 AM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ramesh Vemuri, PhD., Scientific Review Administrator, Office of Scientific Review, National Institute Aging, the Bethesda Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 20, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–22230 Filed 8–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Deafness and Other Communication Disorders Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individual associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Deafness and Other Communication Disorders Advisory Council Planning Subcommittee.

Date: October 7, 1999.

Open: 2:00 PM to 3:00 PM.

Agenda: Program documents.

Place: National Institutes of Health, Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, MD 20892.

Closed: 3:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Craig A. Jordan, PhD, Acting Director, NIH/NIDCD/DEA, Executive Plaza South, Room 400C, Bethesda, MD 20892–7180, 301–496–8693.

Name of Committee: National Deafness and Other Communication Disorders Advisory Council.

Date: October 8, 1999.

Open: 8:30 AM to 11:30 AM.

Agenda: Staff reports on divisional, programmatic and special activities.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Closed: 11:30 AM to adjournment.

Agenda: To review and evaluate grant applications.

Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.

Contact Person: Craig A. Jordan, PhD, Acting Director, NIH/NIDCD/DEA, Executive Plaza South, Room 400C, Bethesda, MD 20892–7180, 301–496–8693.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: August 19, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–22233 Filed 8–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: August 31, 1999.

Time: 11:00 AM to 12:30 PM.

Agenda: To review and evaluate grant applications.

Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892–7003, (Telephone Conference Call).

Contact Person: M. Virginia Wills, Lead Grants Technical Assistant, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Blvd., Bethesda, MD 20892–7003, 301–443–6106, vw21K@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training, 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: August 19, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–22234 Filed 8–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institutes of Dental Research Special Emphasis Panel 99–72, Review of R03s and K grants.

Date: September 7, 1999.

Time: 4:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact person: William J. Gartland, PhD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Dental & Craniofacial Res., Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institutes of Dental Research Special Emphasis Panel 99–55, Review of R13s.

Date: September 20, 1999.

Time: 12:10 PM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact person: H. George Hausch, PhD, Chief, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: August 18, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–22236 Filed 8–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the Board of Regents of the National Library of Medicine.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of privacy.

Name of Committee: Board of Regents of the National Library of Medicine.

Date: September 27–29, 1999.

Open: September 28, 1999, 9:00 AM to 3:45 PM.

Agenda: Administrative reports and program discussion.

Place: National Library of Medicine, Board Room Bldg. 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: September 28, 1999, 3:45 to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Board Room Bldg. 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.

Open: September 29, 1999, 9:00 AM to 12:00 PM.

Agenda: Administrative reports and program discussion.

Place: National Library of Medicine, Board Room Bldg. 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg. 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine Planning Subcommittee.

Date: September 27, 1999.

Open: 12:00 PM to 5:00 PM.

Agenda: Reports and program discussion.

Place: National Library of Medicine, Building 38, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg. 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine, Subcommittee on Outreach and Public Information.

Date: September 28, 1999.

Open: 7:00 AM to 8:45 AM.

Agenda: Outreach and Public Information items.

Place: National Library of Medicine, Building 38, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg. 38, Room 2E17B, Bethesda, MD 20894.

Name of Committee: Board of Regents of the National Library of Medicine Extramural Programs Subcommittee.

Date: September 28, 1999.

Closed: 12:00 PM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38A, HPCC Conference Room B1N30Q, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, National Institutes of Health, PHS, DHHS, Bldg. 38, Room 2E17B, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 20, 1999.

LaVerne Y. Stringfield,

Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–22228 Filed 8–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Library of Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Library of Medicine, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Library of Medicine.

Date: October 14–15, 1999.

Open: October 14, 1999, 9:00 AM to 1:00 PM.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communication.

Place: National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20894.

Closed: October 14, 1999, 1:00 PM to 2:00 PM.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20894.

Open: October 14, 1999, 2:00 PM to 5:00 PM.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communication.

Place: National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20894.

Open: October 15, 1999, 9:00 AM to 12:00 PM.

Agenda: Review of research and development programs and preparation of reports of the Lister Hill National Center for Biomedical Communication.

Place: National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20894.

Contact Person: Jackie Duley, Program Assistant, Lister Hill National Center for Biomedical Communications, National Library of Medicine, Bldg 38A, Rm 7N–705, Bethesda, MD, 301–496–4411.

(Catalog of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 18, 1999.

LaVerne Y. Stringfield,

Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–22238 Filed 8–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel NHAAP Phase 1.

Date: August 23, 1999.

Time: 9:30 AM to 5:30 PM.

Agenda: To review and evaluate contract proposals.

Place: National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892.

Contact Person: Susan Sparks, PhD, Senior Education Specialist, National Library of Medicine, Extramural Programs, Rockledge One, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 18, 1999.

LaVerne Y. Stringfield,

Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–22239 Filed 8–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel Phase II Next Generation Internet (NGI) Contract Proposals.

Date: September 1–2, 1999.

Time: September 1, 1999, 8:30 AM to 5:00 PM.

Agenda: To review and evaluate contract proposals.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Time: September 2, 1999, 8:30 AM to 3:00 PM.

Agenda: To review and evaluate contract proposals.

Place: National Library of Medicine, 8600 Rockville Pike, Board Room, Bethesda, MD 20894.

Contact Person: Paul A. Fontelo, BS, MD, MPH, Special Expert, High Performance Computing & Communications, Lister Hill Nat'l Ctr for Biomed Communications, National Library of Medicine, 8600 Rockville Pike, Bldg 38A, Rm B1N3OP, Bethesda, MD 20894.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: August 20, 1999.

LaVerne Y. Stringfield,

Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–22241 Filed 8–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: August 31, 1999.

Time: 1:00 PM to 3:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mary Sue Krause, MEDS, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7848, Bethesda, MD 20892, (301) 435–0681.)

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 20, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–22227 Filed 8–25–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration (SAMHSA) Notice of a Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of a meeting and a workshop of the Substance Abuse and Mental Health Services Administration (SAMHSA) National Advisory Council in September 1999.

The SAMHSA National Advisory Council meeting will be open and will include follow up to the June 11 SAMHSA National Advisory Council Meeting, a reauthorization and appropriation update, Center Directors' Reports, an update on the Agency's review activities, and an update on issues pertaining to service delivery in psychiatric hospitals. In addition, there will be status reports by the Council's workgroups on Access to Quality Care, Co-Occurring Disorders, Data Analysis and Program Evaluation, HIV/AIDS, Children, Communication, and Parity.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Substantive program information, a summary of the meeting, and a roster of Council members may be obtained from the contact whose name and telephone number is listed below.

Committee Name: SAMHSA National Advisory Council.

Date/Time: September 22, 1999, 8:30 a.m. to 5:15 p.m.

Place: Embassy Suites Chevy Chase Hotel, Tenleytown Rooms I & II, 4300 Military Road Washington, DC, Bethesda, Maryland 20814.

Open: September 22, 1999, 8:30 a.m. to 5:15 p.m.

Contact: Toian Vaughn, Executive Secretary, Parklawn Building, 5600 Fishers Lane, Room 17–89, Rockville, MD 20857, Telephone: (301) 443–4266; FAX: (301) 443–1587 and e-mail: TVaughn@samhsa.gov.

Dated: August 19, 1999.

Coral Sweeney,

Lead Grants Technical Assistant, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–22105 Filed 8–25–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Meeting of Advisory Committee to the Interagency Task Force To Improve Hydroelectric Licensing Processes

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the first meeting of the Advisory Committee to the Interagency Task Force to Improve Hydroelectric Licensing Processes will be held on September 16, 1999, at the Federal Energy Regulatory Commission. The purpose of the meeting is to:

(1) Review the goals, scope, and objective of the Interagency Task Force (ITF);

(2) Discuss the responsibilities of the Advisory Committee and the process by which the Committee will provide comments on ITF work products; and

(3) Review and discuss the ITF Working Groups' products on National Environmental Policy Act and noticing procedures.

DATES: September 16, 1999; 9:00 am–5:30 pm.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Security at the building entrance will issue you a visitor's pass and direct you to the Commission meeting room upon your arrival.

FOR FURTHER INFORMATION CONTACT: Carol Connors, Federal Energy Regulatory Commission, telephone 202–208–0870.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior and the Chairman, Federal Energy Regulatory Commission, with the Concurrence of ITF members, established the Advisory Committee to provide a forum for non-Federal entities to review and provide comments on the deliberations of the ITF. Interested parties are invited to attend and participate in the meetings.

Alex Matthiessen,

Special Assistant to the Designated Federal Officer.

[FR Doc. 99–22160 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered Species Permit Application

AGENCY: Fish and Wildlife Service.

ACTION: Notice of receipt of permit application.

SUMMARY: The following applicant has applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10 (a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Permit No. TE–015753–0

Applicant: Barry Koffler, High Falls, New York

The applicant requests a permit to purchase, in interstate commerce, one female and one male captive bred Hawaiian (=nene) goose (*Nesochen [=Branta] sandvicensis*) for the purpose of enhancing the species propagation and survival.

DATES: Written comments on this permit application must be received on or before September 27, 1999.

ADDRESSES: Written data or comments should be submitted to the Chief—Endangered Species, Ecological Services, Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243. Please refer to the permit number for the application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the permit number for the application when requesting copies of documents.

Dated: August 9, 1999.

Anne Badgley,

Regional Director, Region 1, Portland, Oregon.

[FR Doc. 99–21112 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare Environmental Assessments or Environmental Impact Statements for Permit Applications To Incidentally Take the Preble's Meadow Jumping Mouse in Boulder, Douglas, Elbert, El Paso, and Jefferson Counties, Colorado

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent and announcement of meetings.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are issuing this notice to advise the public that one or more Environmental Assessments (EA) and/or Environmental Impact Statements (EIS) will be prepared regarding applications for permits under section 10(a) of the Endangered Species Act to allow the incidental take of the Preble's meadow jumping mouse (*Zapus hudsonius preblei*) in those counties with an accompanying Habitat Conservation Plan (HCP). Public scoping meetings will be held as identified below.

DATES: See "Supplementary Information" section for times and places of Public scoping meetings to discuss the proposed action as it affects each county identified with each meeting date. Additional dates may be announced in the future for meetings sponsored by other local governments.

ADDRESSES: Kathleen Linder, U.S. Fish and Wildlife Service, 755 Parfet Street, Suite 361, Lakewood, Colorado 80215.

FOR FURTHER INFORMATION CONTACT: Lee Carlson, Colorado Field Supervisor, (see **ADDRESSES** above), or telephone (303) 275–2370.

SUPPLEMENTARY INFORMATION:

Public Participation

1. October 18, 1999, 6:00 p.m., Boulder County—County Courthouse, County Commissioners' Hearing Room, Third Floor, 1325 Pearl Street, Boulder, Colorado 80306.

2. September 29, 1999, 9:00 a.m., Douglas County—Phillip S. Miller County Building, Commissioners' Hearing Room, 100 Third Street, Castle Rock, Colorado 80104.

3. September 21, 1999, 7:00 p.m., Elbert County—County Courthouse, 215 Comanche Street, Kiowa, Colorado 80117.

4. October 13, 1999, 6:00 p.m., El Paso County—Pikes Peak Community College, Rampart Range Campus, 11195 Highway 83, Colorado Springs, Colorado 80921.

5. September 30, 1999, 6:00 p.m., Jefferson County—County Courthouse, 100 Jefferson County Parkway, Golden, Colorado 80419.

Each meeting will include a presentation about the Preble's meadow jumping mouse, the background and history of the HCP development process, the information available on the presence of this species in the county, activities that may be affected by their presence, and strategies to conserve the species while allowing land use activities to continue. Submission of written and oral comments and questions will be accepted at the meeting. Written comments regarding EA or EIS scoping also may be submitted by October 30, 1999, to the address above.

The Preble's meadow jumping mouse was listed as a threatened species on May 11, 1998. Because of that listing, the species is protected by the Act's prohibition against "taking." The Act defines "take" to mean—to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in such conduct. "Harm" is further defined by regulation as any act that kills or injures wildlife including significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavior patterns, including breeding, feeding, or sheltering (50 CFR 17.3). However, we may issue permits to carry out prohibited activities involving threatened species under certain circumstances. Regulations governing permits for endangered and threatened wildlife are at 50 CFR 17.22.

Each of the Colorado counties listed above is preparing to apply to the Service for an incidental take permit pursuant to section 10(a)(1)(b) of the Act, which authorizes the issuance of incidental take permits to non-Federal landowners. Each permit would authorize the incidental take of the Preble's meadow jumping mouse, and possibly other threatened or endangered species listed in the HCP(s), during the course of conducting otherwise lawful land use or development activities in the county. Although public and private entities or individuals have participated in development of the HCP(s) and may benefit by issuance of the incidental take permit, each county government listed above has accepted the responsibility of coordinating preparation of an HCP, submission of the permit application, and coordination of the preparation and processing of an EA or EIS for Service review and approval.

The action to be described in each HCP is a program that will ensure the continued conservation of the Preble's meadow jumping mouse in the county for which the HCP(s) is prepared, while resolving potential conflicts that may arise from the otherwise lawful activities that may involve this species and its habitat on non-Federal lands in that county. The environmental impacts that may result from implementation of a conservation program described in the HCP(s) or as a result of implementing other alternatives will be evaluated in the EA or EIS. The county governments listed above, the Colorado Department of Natural Resources (CDNR), and numerous other entities are engaged in gathering information and developing HCP(s), section 10(a)(1)(B) permit applications, and related EA's and/or EIS's in the counties listed above. In this case, the HCP(s), section 10(a)(1)(B) permit application, and EA or EIS materials are being developed concurrently.

Development of the HCP has involved, and will continue to involve, an open process coordinated by CDNR. A total of 15 open meetings have been held on February 4, February 13, February 18, February 19, February 20, March 10, March 11, March 17, April 15, September 1, September 3, September 8, and September 15, 1998, and June 21, 1999. Those involved in this effort to date include other State and Federal agencies, counties, cities, towns, industry representatives, agricultural representatives, environmental representatives, and biologists. It is anticipated that implementation of the conservation strategies identified in the HCP(s) may be through purchases of habitat, voluntary management agreements, county staff actions, implementing agreements with property owners, and other techniques.

Alternatives

1. *County HCP(s) and Incidental Take Permit(s) (Proposed Action)*—This action, which is the proposed action, seeks to address lands that constitute potential Preble's meadow jumping mouse habitat within each county, whether publicly or privately owned or large or small in size. Such lands may include publicly owned lands, (such as Federal facilities, State land board lands, State park lands, and other State-owned lands; utility, highway, and railroad rights-of-ways; facilities, parks, and open spaces owned by local governments; facilities and lands owned by municipal utilities; and other lands owned by local governments) as well as private and publicly owned land being used for other land uses, such as agriculture or development. Individual conservation strategies of landowners may include:

a. Avoiding disturbance of floodplains or nearby areas;

b. Engaging in agricultural practices designed to maintain habitat;

c. Revegetating riparian corridors between significant habitat areas;

d. Participating in Federal or State land conservation incentive programs;

e. Creating conservation easements with tax benefits;

f. Creating habitat banks and selling conservation credits to others;

g. Mitigating lost habitat through the creation or enhancement of habitat off site;

h. Participating in existing local government development review processes;

i. Avoiding the grazing of large numbers of animals on small acreage tracts;

j. Engaging in other practices or strategies designed to maintain habitat, or possibly to enhance habitat, as science confirms their effectiveness;

k. Creating an individual HCP if participation in the county HCP(s) and incidental take permit(s) is not attractive or feasible for the landowner.

This alternative seeks authority for long-term incidental take permit(s). The HCP(s) will assure continued conservation measures as well as monitoring and reporting procedures, as required by the Service for the issuance of an incidental take permit. Service issuance of the incidental take permit will authorize certain activities to proceed in each county without violating the Act. Individual landowners may participate in the HCP(s) through voluntary management programs, implementing agreements with the county government, certificates of inclusion in a county permit, sale or donation of lands to a public or private conservation organization, participation in State or Federal incentive programs for land conservation, partnerships with other participants in the HCP effort, agreement to the terms of the HCP(s) and the incidental take permit(s), exemption from regulation based on the terms of the HCP or permit, or other methods.

2. *Multiple Individual HCP(s) and Incidental Take Permits for Individual Landowners*—This alternative would involve individual landowners, or groups of landowners, preparing individual HCP(s) for individual land use or development projects as the need arises. Any conservation strategy listed in the proposed action could be applied to similar facts or circumstances in an individual HCP. Conservation strategies not discussed earlier also could be developed. This alternative would involve separate HCP development and application processes. In addition, it would require separate permit review processes by the Service with the necessity of conducting separate EA or EIS review procedures and documents. Implementation and oversight would probably not involve the county government or CDNR, but would require oversight and implementation as described in separate implementation agreements and the permits themselves.

3. *Single Statewide HCP and Incidental Take Permit*—This alternative would involve the development of a single HCP for the seven Colorado counties listed, and a single incidental take permit related to that HCP. Individual public and private landowners, including county, town, and city governments, might participate in the HCP through voluntary management programs, implementing agreements, certificates of inclusion in the single incidental take permit, sale or donation of lands to a public or private conservation organization, participation in State or Federal incentive programs for land conservation, partnerships with other participants in the HCP effort, agreement to the terms of the HCP and the incidental take permit, exemption from regulation based on the terms of the HCP or permit, or other methods. Implementation of the terms of the HCP might require an intergovernmental agreement with each local government whose boundaries include a participating landowner.

Alternatives 1, 2, and 3 also incorporate the concept of "adaptive management." As science and conservation strategies evolve or demonstrate a need to change, the landowner could modify the conservation strategies as needed. Therefore, as science and information progress, so may the conservation strategies and activities under the HCP(s) and permit(s).

4. *No Action Alternative*—Under the No Action Alternative, no section 10(a)(1)(B) permit would be issued and activities involving the take of the Preble's meadow jumping mouse would remain prohibited under section 9 of the Act. Activities that would avoid the take of the species could continue. Proposed activities on non-Federal land that may affect the Preble's meadow jumping mouse would require submitting an individual section 10(a)(1)(B) permit to the Service. If a Federal action (such as construction of a proposed road or interchange with Federal funds) would affect the species, incidental take could be allowed through the consultation process outlined in section 7 of the Act, and through the development of an incidental take statement if the proposed action were determined to not jeopardize the continued existence of the species.

Issue Resolution and Environmental Review

The primary issue to be addressed through the scoping and planning process for the HCP(s) and related EA or EIS documents is how to resolve potential conflicts between development and land management practices and listed species in each county. A tentative list of issues, concerns, and opportunities has been developed. There will be discussion of the potential effects of each alternative, which will include the following areas:

a. The Preble's meadow jumping mouse and its habitat in each county.

b. Other federally listed threatened or endangered species in each county.

c. State listed species in the State of Colorado.

d. Effects on other species of plants and animals.

e. Socioeconomic effects.

f. The use of Federal, State, county, or local public lands for conservation of the Preble's meadow jumping mouse.

g. The use of privately owned lands for conservation of the Preble's meadow jumping mouse.

h. Need for adequate funding.

i. Effects on species recovery.

Environmental review of the proposed action will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), National Environmental Policy Act regulations (40 CFR parts 1500–1508), other appropriate Federal regulations, and our procedures for compliance with those regulations. This notice is being furnished in accordance with section 1501.7 of the National Environmental Policy Act to obtain suggestions from other agencies, tribes, and the public on the scope of issues to be addressed in the EA or EIS.

Public Comments Solicited

We solicit written comments on the information described above. All comments received by the date specified in the **DATES** section above will be considered.

Authority: National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Dated: August 17, 1999.

Terry Terrell,

Regional Director, Denver, Colorado.

[FR Doc. 99–21891 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Draft Programmatic Environmental Impact Statement for the Proposed Navajo Ten-Year Forest Management Plan Alternatives, Navajo Nation, Arizona/New Mexico

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Draft Programmatic Environmental Impact Statement (DPEIS) for the proposed Navajo Nation Ten-Year Forest Management Plan Alternatives is now available for public review and comment. The DPEIS, prepared by the Bureau of Indian Affairs in cooperation with the Navajo Nation Forestry Department, describes alternative ways to promote the protection and sustained use of forest resources and guide the development of multi-year implementation programs for the Navajo Nation Forestry Department. A description of the proposed project location and of the environmental issues addressed in the DPEIS follow as supplementary information. This notice also announces a series of public hearings to receive public comments on the DPEIS.

DATES: Comments must be received on or before October 20, 1999. The dates and locations of the public hearings are listed below. All of these public hearings will begin at 7:00 p.m. to 9:00 p.m.

September 21, 1999, Fort Defiance Chapter House, Fort Defiance, AZ.

September 22, 1999, Chinle Chapter House, Chinle, AZ.

September 23, 1999, Shiprock Chapter House, Shiprock, NM.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail or hand-deliver comments to Harold D. Russell, Area Forester, Bureau of Indian Affairs, Navajo Area Office, Federal Building, 301 West Hill, P.O. Box 1060, Gallup, New Mexico 87305. You may also comment via the Internet to: Russell@105.doi.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact the Navajo Area Office directly at (520) 729–7228. Comments, including names and home addresses of respondents, will be available for public review at the above address during regular business hours (8:00 a.m. to 5:00 p.m.), Monday through Friday, excluding Federal holidays. Individual respondents may request confidentiality. If you wish to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. However, we will not consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

The public hearings will be held at the locations listed in the **DATES** section.

The DPEIS is available for review at two locations: (1) The Branch of Environmental Services, Navajo Area Office, Federal Building, 301 West Hill, Gallup, New Mexico; and (2) the Branch of Forestry, Bureau of Indian Affairs, 1 mile north on Route 12, Fort Defiance, Arizona. To obtain a copy of the DPEIS, please write to the Navajo Nation Forestry Department, P.O. Box 230, Fort Defiance, Arizona 86504, or call (520) 729–4007.

FOR FURTHER INFORMATION CONTACT: Harold D. Russell, (520) 729–7228.

SUPPLEMENTARY INFORMATION: The proposed action is to adopt a ten-year management plan for the Navajo Forest. The Navajo Forest lies in the Chuska Mountains and Defiance Plateau areas of the Navajo Nation, along the Arizona-New Mexico border. The area encompasses nearly 600,000 acres.

The DPEIS presents a preferred alternative, the no action alternative and three other action alternatives. Under the preferred alternative, approximately 79,500 acres out of 253,754 acres designated as commercial timberland would be harvested over the next ten years. Individual treatment areas would be limited to 100 acres or less, and harvesting would incorporate a combination of even-aged and uneven-aged management systems designed to promote more diversity in the vegetative structure. This alternative also designates 74,735 acres as Special Management Areas (SMA's), which would be excluded from commercial timberland in order to protect critical wildlife habitat and vital watershed areas, even where these SMA's are located within the most productive areas of the forest.

Timber protection activities under the preferred alternative include, where needed, fire prevention, prescribed burns, trespass control and insect and disease control. An estimated 680 acres per year would be subjected to prescribed burns, and 75 acres per year treated for insects and disease. Additional activities include monitoring and mitigation in accordance with published plans, guidelines or handbooks referenced in the DPEIS.

The no action alternative continues current levels of production—approximately 88,000 acres over the next ten years, with even-aged management and without SMA's. The three other action alternatives include: (1) No timber harvesting and no SMA's; (2) even-aged management, with a lower rate of harvest—approximately 79,000 acres over the next ten years—than the no action alternative, and with SMA's; and (3) uneven-aged management, with approximately 84,400 acres to be harvested over the next ten years and without SMA's. All of the alternatives include timber protection plus monitoring and/or mitigation measures.

The DPEIS addresses the environmental issues identified during public scoping. These include timber resources, other forest resources, water resources, biological resources, air quality, cultural resources and socio-economics.

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508), implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: August 20, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–22130 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Intent to Amend Existing Land Use Plans of the Bureau of Land Management (BLM), Northern and Central California Regions, for Purposes of Establishing Standards for Land Health

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice of Intent to amend existing land use plans of the Bureau of Land Management (BLM), northern and central California regions, for purposes of establishing Standards for Land Health.

SUMMARY: BLM California recently completed a process to incorporate Rangeland Health Standards and Guidelines for Livestock Grazing into the existing land use plans of the northern and central California regions (Alturas, Arcata, Bakersfield, Eagle Lake, Redding, Surprise, Ukiah Field Offices). However, the standards and guidelines were limited in scope to BLM's grazing management program.

This proposal will apply the Rangeland Health Standards to all other resource uses and activities through BLM's planning process in accordance with 43 CFR 1610. 5–5. All existing land use plans will be amended at the same time. BLM anticipates no significant adverse environmental effects of implementing this proposal. Since the standards will help ensure consistent management of the public lands, BLM expects the environmental effects to be positive. BLM will complete an environmental assessment (EA) as part of the plan amendment process. A separate planning process to establish Land Health Standards for the California desert region is expected to be completed in the year 2000.

The intent of the standards is to provide for a balance of sustainable development and multiple use along with progress toward attaining healthy, properly functioning ecosystems. The standards will be implemented, to the extent feasible, through terms and conditions of permits, leases, and other authorizations. BLM authorizations should determine whether the standards are met, and if not, whether reasonable mitigation measures are available which would allow the standards to be met or significant progress toward meeting the standards achieved.

DATES: Interested parties may submit comments on the scope of this amendment, including suggesting any reasonable alternatives for BLM's consideration, identifying possible adverse environmental effects of the amendment, or submitting any other suggestions or concerns BLM should take into account. Comments on this notice must be received by BLM at the following address on or before September 27, 1999.

FOR FURTHER INFORMATION CONTACT: Land Health Coordinator, U.S.D.I., Bureau of Land Management, California State Office, 2800 Cottage Way, Sacramento, CA 95825; tel: (916) 978–4400.

Dated: August 10, 1999.

Carl D. Rountree,

Deputy State Director, Natural Resources.

[FR Doc. 99–22171 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–500 1990–00]

Front Range Resource Advisory Council (Colorado) Open Houses and Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of open houses and public comment period.

SUMMARY: Notice is hereby given that the Front Range Resource Advisory Council (Front Range RAC) will hold an open house in Golden, Colorado for the purpose of gathering public comments and input on Outdoor Recreation Management Guidelines. These Guidelines will be recommended to the Bureau of Land Management in Colorado for consideration and use in day-to-day management of public lands in Colorado. The RAC will also accept written comments on the Outdoor Recreation Management Guidelines.

DATES: The open house will be held September 7, 1999 at the Holiday Inn Denver West Village, 14707 W. Colfax Ave., Golden, Colorado from 7 p.m. to 9 p.m. The two open houses previously published in the July 30, 1999 **Federal Register** have not changed and are scheduled from 7 p.m. to 9 p.m. at the Beidleman Environmental Center, 740 W. Caramillo Street, Colorado Springs, Colorado on August 17, 1999 and from 7 p.m. to 9 p.m. at the Chaffee County Fairgrounds, 10165 County Road 120, Salida, Colorado on August 31, 1999. Any changes to the time, date and/or location of the open houses will be publicized in the local media. The written public comment period which began July 30, 1999 ends September 15, 1999. Comments should be sent to Bureau of Land Management, Front Range Center, Attn: RAC, 3170 East Main Street, Canon City, Colorado 81212. Written comments and those given at the Open Houses will be equally considered. A copy of the Draft Outdoor Recreation Management Guidelines may be requested.

ADDRESSES: Bureau of Land Management (BLM), Front Range Center, 3170 East Main Street, Canon City Colorado 81212; Telephone (719) 269–8500.

FOR FURTHER INFORMATION CONTACT: Ken Smith at 719–269–8553

SUPPLEMENTARY INFORMATION: The Front Range RAC, along with the other RACs in Colorado, intend to develop a joint set of outdoor recreation management guidelines to recommend to the BLM in Colorado for adoption and use in everyday management of the lands the agency administers. The open houses are intended as a means for the RACs to gather informal input and ideas on the proposed set of guidelines that all the RACs in Colorado have agreed with so far. After September 15, 1999, representatives from all RACs will jointly develop a set of final recommended guidelines to submit to the BLM for consideration. The guidelines will include recommendations dealing with the management of off-highway vehicle use.

Kenneth Smith,

Acting Front Range Center Manager.

[FR Doc. 99–22120 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–500–1990–00]

Front Range Resource Advisory Council (Colorado) Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix, notice is hereby given that the next meeting of the Front Range Resource Advisory Council (Colorado) will be held on September 16, 1999 in Canon City, Colorado.

The meeting is scheduled to begin at 9:15 a.m. at the Holycross Abbey Community Center, 2951 E. Highway 50, Canon City, Colorado. Topics to be discussed at the meeting will include current issues within the Center including a discussion on the comments received from the Recreation Guidelines Public Open Houses and public comment period. All Resource Advisory Council meetings are open to the public.

Interested persons may make oral statements to the Council at 9:30 a.m. or written statements may be submitted for the Council's consideration. The Center Manager may limit the length of oral presentations depending on the number of people wishing to speak.

DATES: The meeting is scheduled for Thursday, September 16, 1999 from 9:15 a.m. to 4 p.m.

ADDRESSES: Bureau of Land Management (BLM), Front Range Center, 3170 East Main Street, Canon City Colorado 81212; Telephone (719) 269–8500.

FOR FURTHER INFORMATION CONTACT: Ken Smith at 719–269–8553.

SUPPLEMENTARY INFORMATION: Summary minutes for the Council meeting will be maintained in the Front Range Center Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Kenneth Smith,

Acting Front Range Center Manager.

[FR Doc. 99–22121 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–700–99–1010–00–1784]

Southwest Resource Advisory Council Open Houses

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Southwest Resource Advisory Council Open Houses on Draft Recreation Guidelines.

SUMMARY: Notice is hereby given that the Southwest Resource Advisory Council (Southwest RAC) will hold a series of open houses in southwestern Colorado for the purpose of gathering public comments and input on recreation management guidelines to be recommended to the Bureau of Land Management (BLM) in Colorado for use

in the day-to-day management of public lands in southwestern Colorado.

DATES: The open houses are scheduled for the following dates and times. All open houses will begin at 7 p.m. and end at 9 p.m. Any changes to the time, date and/or location of the Open Houses will be publicized in the local media.

September 14, 1999—Gunnison, Colorado; Gunnison County Fairgrounds Multipurpose Building, 275 South Spruce Street.

September 15, 1999—Lake City, Colorado; Town Armory, 230 North Bluff (corner of North Bluff and 3rd Streets).

September 16, 1999—Montrose, Colorado; BLM Southwest Center conference room, 2465 South Townsend Avenue.

September 20, 1999—Durango, Colorado; BLM-Forest Service/Public Lands Center conference room, Burnett Court.

September 22, 1999—Hotchkiss, Colorado; Senior Citizen's Center (corner of Cedar & Main)

September 29, 1999—Norwood, Colorado; Norwood Community Center, 1670 Naturita Street.

September 30, 1999—Cortez, Colorado; Senior Nutrition-Outreach Center, 103 North Chestnut Street.

The open houses will begin with an explanation of the highlights of the draft recreation guidelines before public input is solicited. Written comments can be sent to the SWRAC at the Bureau of Land Management, ATTN:RAC, Southwest Center, 2465 South Townsend, Montrose, CO 81401. In order to be considered, written comments must be received by October 13, 1999.

ADDRESSES: For additional information, contact Roger Alexander, BLM Southwest Center, 2465 South Townsend, Montrose, CO 81401, telephone 970.240.5335 or email Roger__Alexander@co.blm.gov.

SUPPLEMENTARY INFORMATION: The Southwest RAC, along with the Northwest and Front Range RACs, have developed a joint set of draft recreation guidelines to recommend to the BLM Colorado for adoption and use in everyday management of the public lands the agency administers. The open houses are intended as a means for the RACs to gather informal public input and ideas on the draft recreation. Upon completion of the open houses, representatives from the three RACs will jointly fashion a set of final recommended guidelines to submit to the BLM. The draft recreation guidelines include recommendations dealing with the management of off-highway vehicle use.

Dated: August 20, 1999.

Roger Alexander,

Public Affairs Specialist.

[FR Doc. 99–22126 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–700–99–1010–00–1784]

Southwest Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Resource Advisory Council Meetings.

SUMMARY: Notice is hereby given that the Southwest Resource Advisory Council (Southwest RAC) will meet in September and October, 1999 in Montrose, Colorado, and in November, 1999 in Durango, Colorado.

DATES: The meetings will be held on Thursday, September 16, 1999; Thursday, October 14, 1999; and Thursday, November 18, 1999.

ADDRESSES: For additional information, contact Roger Alexander, Bureau of Land Management (BLM), Southwest Center, 2465 South Townsend Avenue, Montrose, Colorado 81401; telephone 970–240–5335; TDD 970–240–5366; e-mail Roger__Alexander@co.blm.gov.

SUPPLEMENTARY INFORMATION: The September 16, 1999, meeting will be held at the BLM Southwest Center conference room at 2465 South Townsend, Montrose, Colorado. The meeting will begin at 1 p.m. and end no later than 5 p.m. The agenda will be limited to the introduction of new members and discussion on the draft recreation guidelines developed by BLM Colorado's three RAC's. Public comment is scheduled for 4:30 p.m., but the public is encouraged to provide comments on the draft recreation guidelines at an open house scheduled for 7 p.m. at the same address.

The October 14 meeting will also be held at the BLM Southwest Center conference room at 2465 South Townsend, Montrose, Colorado. The meeting will begin at 9 a.m. and end at 4:30 p.m. The agenda will focus on the draft recreation guidelines developed by BLM Colorado's three RAC's, but may include other issues/topics to be determined. Public comment is scheduled for 1 p.m.

The November 18 meeting will be held at the BLM–US Forest Service Public Lands Center Sonoran conference room at 15 Burnett Court, Durango, Colorado. The meeting will begin at 9 a.m. and end at 4:30 p.m. The agenda will focus on the draft recreation guidelines developed by BLM Colorado's three RAC's, but may include other issues/topics to be determined. Public comment is scheduled for 1 p.m.

Summary minutes for Council meetings are maintained in the Southwest Center Office and on the World Wide Web at http://www.co.blm.gov/mdo/mdo__sw__rac.htm and are available for public inspection and reproduction within thirty (30) days following each meeting.

Dated: August 20, 1999.

Roger Alexander,

Public Affairs Specialist.

[FR Doc. 99–22127 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–050–1220–00–GP9–0281]

Deschutes and Crook Counties: ATV Restrictions

AGENCY: Bureau of Land Management, Prineville District Office, DOI.

ACTION: Notice is hereby given that 30 days from the published date of this notice, all motorized use on public lands described legally in this notice is allowed only on routes designated and signed as open to motorized use. All other public lands including routes not signed and identified as open are closed to motorized use.

Legal Description

This closure order applies to all public lands within the entire area known as Cougar Butte. These public lands are located in Township 21 South, Range 20 East, Sections 21–23, 25–27, and 36; Township 21 South, Range 21 East, Sections 30–32; and Township 22 South, Range 21 East, Sections 5 and 6.

General Location

These public lands are located approximately 1–4 miles west and north of Hampton, Oregon in Deschutes and Crook Counties; approximately 1–2 miles north of Highway 20; three-four miles east of Lizard Creek; 2–6 miles west of Rhubarb Spring, west of the western boundary road of the Hampton Butte Wilderness Study Area. (OR–5–42). A map showing these public lands where motorized use is restricted is available for public review at the Prineville BLM office, 3050 NE Third, Prineville, OR 97754.

SUMMARY: The purpose of this vehicle restriction is to limit all motorized use to designated routes, and limit camping to within 300 feet of the designated route. All types of motor vehicles would be allowed on the first one-half mile of the designated route ending at a All Terrain Vehicle (ATV) Trailhead. Camping would be allowed during the first one-half mile, and within 300 feet of either side of the route. ATV use only would be allowed to continue on the designated route to the fence located on the east side of Cougar Butte. No motor vehicle use would be allowed beyond this fence. The route would be clearly marked by signs and a user map would be provided at key access points. The need for reduced motorized use to designed routes only is due to resource degradation by motorized vehicles on steep slopes having erosive soils, trespass and adjacent private lands and unauthorized motorized use in the Hampton Butte Wilderness Study Area east of these legally described public lands.

The creation of new vehicle routes continues to increase during hunting seasons. New motorized routes are created on public and adjacent private lands, due to limited public land acreage, rugged steep topography and irregular shaped public land ownership pattern.

This designated order maintains natural and scenic values by limiting motorized use to designated routes and avoid unauthorized cross-country motorized use. More specifically, this closure restricts motorized use to designated routes to reduce impacts to natural values, including soils and vegetation, and to prevent unauthorized trespass on adjacent private lands.

Exemptions to this closure order apply to administrative personnel or landowners accessing their property. Other exemptions to this closure order may be made on a case-by-case basis by the authorized officer. The authority for this vehicle restriction is 43 CFR 8364.1(a): Closure and restriction orders.

Penalities

Violation of this closure order is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months as provided in 43 CFR.

EFFECTIVE DATE: These supplementary rules will become effective 30 days from the published date of this notice, to allow for analysis of public comments and will remain in effect year-around until further notice.

SUPPLEMENTARY INFORMATION: The Brothers/LaPine Resource Management Plan/Record of Decision was finalized July 1989. Public lands surrounding Cougar Butte were designated as Open for motorized use, so cross-country vehicle use was allowed. North of Hampton, Oregon, Motorized vehicle use in the Hampton Butte and Cougar Well Wilderness Study Areas are restricted to existing routes. User maps at key access points into both these WSAs identify routes open to motorized use. All other routes and public lands in both WSAs are closed year-round to motorized use.

FOR FURTHER INFORMATION CONTACT: Berry Phelps, BLM Prineville District Office, P.O. Box 550, Prineville, Oregon 97754 or call 541–416–6700.

Dated: August 9, 1999.

James L. Hancock,

District Manager.

[FR Doc. 99–21622 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Docket No. WY–921–41–1310; WYW132170]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

August 17, 1999.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW132170 for lands in Converse County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW13270 effective May 1, 1999, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 99–22168 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–41–1310; WYW144497]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

August 17, 1999.

Pursuant to the provisions of 30 U.S.C. 1889 (d) and (e), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW144497 for lands in Converse County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW144497 effective June 1, 1998, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 99–22169 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Realty Action; Competitive Sale of Public Lands in Clark County, Nevada

The following lands have been designated for disposal under Pub. L. 105–263, the Southern Nevada Public Land Management Act of 1998 (112 Stat. 2343), and will be sold competitively in accordance with section 203 of the Federal Land Policy and Management

Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713), at not less than the appraised fair market value (FMV).

Serial No./Parcel No.	Legal Description	Gross acres (net acres)	Fair market value
N–63198 99–01BS	T. 20 S., R. 60 E., sec. 27, N½SE¼NW¼SW¼, NW¼SW¼NE¼SW¼, SE¼NW¼NW¼SW¼, NW¼NW¼NW¼SW¼	12.50 (7.54) ..	$2,275,000
N–61734 99–02	T. 22 S., R. 61 E., sec. 14, W½NW¼NE¼SE¼SE¼, SW¼NE¼SE¼SE¼, W½SE¼NE¼SE¼SE¼	.5.0 (4.55) ..	1,090,000
N–65663 99–03	T. 22 S., R. 61 E., sec. 14, NW¼SW¼NE¼NW¼, E½SW¼SW¼NE¼NW¼, W½SE¼SW¼NE¼NW¼, W½NW¼NE¼NW¼NW¼, SW¼NE¼NW¼NW¼, W½NE¼SE¼NW¼NW¼, E½NW¼SE¼NW¼NW¼, SW¼SE¼NW¼NW¼, W½SE¼SE¼NW¼NW¼, E½NE¼NE¼SW¼NW¼, E½NW¼NE¼SW¼NW¼, E½SW¼NE¼SW¼NW¼, W½SE¼NE¼SW¼NW¼, NE¼SE¼SW¼NW¼, E½NW¼SE¼SW¼NW¼, E½SW¼SE¼SW¼NW¼, E½SE¼SW¼NW¼, W½NW¼SE¼NW¼, E½NE¼SW¼SE¼NW¼, SE¼SW¼SE¼NW¼, W½SW¼SE¼NW¼, W½NW¼SE¼SE¼NW¼	42.50 (28.99)	2,900,000
N–65664 99–04	T. 22 S., R. 61 E., sec. 14, NW¼NW¼NE¼SW¼, E½NE¼NW¼SW¼	7.50 (3.23) ..	161,500
N–65665 99–05	T. 22 S., R. 61 E., sec. 14, W½NW¼SW¼NE¼SW¼, E½NE¼SE¼NW¼SW¼	2.50 (0.90) ..	45,000
N–65666 99–06	T. 22 S., R. 61 E., sec. 14, E½NE¼SW¼NE¼SW¼	1.25 (1.25) ..	62,500
N–65667 99–07	T. 22 S., R. 61 E., sec. 14, E½NE¼NW¼NE¼SW¼	1.25 (1.10) ..	55,000
N–65668 99–08	T. 22 S., R. 61 E., sec. 14, S½SW¼NE¼SW¼, E½SE¼SE¼NW¼SW¼	6.25 (4.00) ..	200,000
N–65669 99–09	T. 22 S., R. 61 E., sec. 14, W½NE¼NW¼SE¼SW¼, NW¼NW¼SE¼SW¼	3.75 (2.12) ..	106,000
N–65670 99–10	T. 22 S., R. 61 E., sec. 14, NW¼NE¼SE¼SW¼	2.50 (2.50) ..	125,000
N–65671 99–11	T. 22 S., R. 61 E., sec. 14, E½SW¼NW¼NE¼SW¼, W½SE¼NW¼NE¼SW¼	2.50 (2.50) ..	125,000
N–65672 99–12	T. 22 S., R. 61 E., sec. 14, W½SW¼NE¼SE¼SW¼, S½NW¼SE¼SW¼	6.25 (3.77) ..	188,500
N–65673 99–13	T. 22 S., R. 61 E., sec. 14, E½NE¼SW¼SE¼SW¼, W½NW¼SE¼SE¼SW¼, SE¼SW¼SE¼SW¼, W½SW¼SE¼SE¼SW¼	6.25 (3.37) ..	168,000
N–65674 99–14	T. 22 S., R. 61 E., sec. 14, E½SE¼NE¼SW¼SW¼, E½NW¼SE¼SW¼SW¼, NE¼SE¼SW¼SW¼, NW¼SW¼SE¼SE¼SW¼, W½SW¼SW¼SE¼SW¼, SE¼SE¼SW¼SW¼, E½SW¼SE¼SW¼SW¼	12.50 (7.59) ..	1,060,000
N–65675 99–15	T. 22 S., R. 61 E., sec. 14, W½SE¼SE¼NW¼SW¼, NE¼NE¼SW¼SW¼	3.75 (0.58) ..	29,000
N–65676 99–16	T. 22 S., R. 61 E., sec. 14, W½NW¼NE¼NW¼SW¼, SW¼NE¼NW¼SW¼, E½SW¼NW¼NW¼SW¼, SE¼NW¼NW¼SW¼, E½NE¼SW¼NW¼SW¼, NE¼SE¼NW¼SW¼, E½NW¼SE¼NW¼SW¼	15.00 (10.46)	835,000
N–65677 99–17	T. 22 S., R. 61 E., sec. 14, NE¼NW¼SW¼SW¼, E½NW¼NW¼SW¼SW¼, SW¼NW¼SW¼SW¼, W½SE¼NW¼SW¼SW¼, W½NE¼SW¼SW¼SW¼, NW¼SW¼NW¼SW¼, E½SW¼SW¼NW¼SW¼, NW¼SW¼SW¼SW¼, E½SW¼SW¼SW¼SW¼	12.50 (11.55)	1,615,000
N–65678 99–18	T. 22 S., R. 61 E., sec. 14, SE¼NE¼SE¼SW¼	2.50 (2.20) ..	110,000
N–65679 99–19	T. 22 S., R. 61 E., sec. 14, W½NW¼NW¼NW¼SW¼	1.25 (0.77) ..	295,000
N–65680 99–20	T. 22 S., R. 61 E., sec. 14, E½NW¼SW¼NW¼, SW¼NW¼SW¼NW¼, N½SW¼SW¼NW¼, E½SW¼SW¼SW¼NW¼, SE¼SW¼SW¼NW¼, W½NW¼SE¼SW¼NW¼, W½SW¼SE¼SW¼NW¼	18.75 (11.29)	1,130,000
N–65681 99–21	T. 22 S., R. 61 E., sec. 14, NW¼NW¼NW¼, N½SW¼NW¼NW¼, SW¼SW¼NW¼NW¼, W½SE¼SW¼NW¼NW¼	18.75 (7.61) ..	2,635,000
N–65682 99–22	T. 22 S., R. 61 E., sec. 14, E½NW¼NE¼NW¼	5.0 (4.62) ..	1,105,000
N–65683 99–23	T. 22 S., R. 61 E., sec. 14, E½SE¼SW¼SW¼SW¼	1.25 (1.06) ..	75,000
N–65684 99–24	T. 22 S., R. 61 E., sec. 14, NE¼SE¼SE¼SW¼	2.50 (2.20) ..	110,000

The lands described herein have been segregated from location and entry under the mining laws, and from operation under the mineral leasing and geothermal leasing laws in accordance with Public Law 105–263 until the lands are patented. Upon publication of this notice in the **Federal Register**, the above described lands will be segregated from all other forms of appropriations under the public land laws and mineral material sales. Until the completion of the sale, the BLM is no longer accepting, or will consider as filed, and will return applications for land use authorizations on such public lands. The segregation from forms of appropriations under the public land laws and mineral material sales will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first. The terms and conditions applicable to the sale are:

All Parcels Subject to the Following:

1. All minerals shall be reserved.

2. A right-of-way is reserved for ditches and canals constructed by the authority of the United States under the authority of the Act of August 30, 1890 (26 Stat. 291; 43 U.S.C. 945).

PARCEL 99–01BS

Subject to those rights for highway and flood control purposes which have been granted to the City of Las Vegas by Right-of-way No. N–37142 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761).

Subject to those rights for roadway and sewer drainage system purposes which have been granted to the City of Las Vegas by Right-of-way No. N–41255 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761).

Subject to those rights for natural gas line purposes which have been granted to Southwest Gas Corporation by Right-of-way No. N–48328 under the Act of February 25, 1920 (041 STAT 0437; 30 U.S.C. 185 Sec.28).

Subject to those rights for electrical distribution line purposes which have been granted to Nevada Power Company by Right-of-way No. N–61675 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761).

PARCEL 99–02

Subject to a reservation of the North 30 feet of the W½NW¼NE¼SE¼SE¼ and the South 30 feet of the SW¼NE¼SE¼SE¼, W½SE¼NE¼SE¼SE¼, Section 14, T. 22 S., R. 61 E. M.D.M., Nevada, for a road, public utilities and flood control purposes in favor of Clark County.

Subject to those rights for public roadway purposes which have been granted to Babel Eberhard by Right-of-way No. N–62348 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761).

PARCEL 99–03

Subject to a reservation of the North 50 feet of the W½NW¼NE¼NW¼NW¼ and the South 40 feet of the SE¼SW¼NW¼ and the South 40 feet of the SW¼SW¼SE¼NW¼ and the South 40 feet of the SE¼SW¼SE¼NW¼, Section 14, T. 22 S., R. 61 E. M.D.M., Nevada, for a road, public utilities and flood control purposes in favor of Clark County.

Subject to those rights for public roadway purposes which have been granted to Clark County by Right-of-way No. N–54758 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761).

Subject to those rights for electrical distribution and telephone line purposes which have been granted jointly to Nevada Power Company and Sprint Central Telephone Company of Nevada by Right-of-way No. N–43408 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761).

Subject to those rights for electrical distribution and telephone line purposes which have been granted jointly to Nevada Power Company and Sprint Central Telephone Company of Nevada by Right-of-way No. N–43255 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761).

Subject to those rights for public roadway purposes which have been granted to Clark County by Right-of-way No. N–61633 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761)

Subject to those rights for telephone line purposes which have been granted to Sprint Central Telephone Company of Nevada by Right-of-way No. N–6445 under the Act of February 15, 1901 (031 STAT 0790; 43 U.S.C. 959).

PARCEL 99–04

Subject to a reservation of the North 40 feet of the NW¼NW¼NE¼SW¼ and the North 40 feet of the NE¼NE¼NW¼SW¼, Section 14, T. 22 S., R. 61 E. M.D.M., Nevada, for a road, public utilities and flood control purposes in favor of Clark County.

PARCEL 99–05

No reservations.

PARCEL 99–06

No reservations.

PARCEL 99–07

Subject to a reservation of the North 40 feet of the E½NE¼NW¼NE¼SW¼, Section 14, T. 22 S., R. 61 E. M.D.M., Nevada, for a road, public utilities and flood control purposes in favor of Clark County.

Subject to those rights for public roadway purposes which have been granted to Clark County by Right-of-way No. N–54758 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761)

PARCEL 99–08

Subject to those rights for public roadway purposes which have been granted to Clark County by Right-of-way No. N–54758 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761)

PARCEL 99–09

Subject to those rights for public roadway purposes which have been granted to Clark County by Right-of-way No. N–54758 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761)

PARCEL 99–10

Subject to those rights for public roadway purposes which have been granted to Clark County by Right-of-way No. N–54758 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761)

PARCEL 99–12

Subject to those rights for public roadway purposes which have been granted to Clark County by Right-of-way No. N–54758 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761)

PARCEL 99–13

Subject to a reservation of the South 50 feet of the SE¼SW¼SE¼SW¼ and the South 50 feet of the W½SW¼SE¼SE¼SW¼, Section 14, T. 22 S., R. 61 E. M.D.M., Nevada, for a road, public utilities and flood control purposes in favor of Clark County.

Subject to those rights for electrical distribution and telephone line purposes which have been granted jointly to Nevada Power Company and Sprint Central Telephone Company of Nevada by Right-of-way No. N–41937 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761).

Subject to those rights for electrical distribution and telephone line purposes which have been granted jointly to Nevada Power Company and Sprint Central Telephone Company of Nevada by Right-of-way No. N–46507 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761).

Subject to those rights for public roadway purposes which have been granted to Clark County by Right-of-way No. N–54758 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761)

PARCEL 99–14

Subject to a reservation of the South 50 feet of the E½SE¼SW¼SW¼SW¼ and the South 50 feet of the E½SW¼SE¼SW¼SW¼ and the South 50 feet of the W½SW¼SW¼SE¼SW¼, Section 14, T. 22 S., R. 61 E. M.D.M., Nevada, for a road, public utilities and flood control purposes in favor of Clark County.

Subject to those rights for electrical distribution and telephone line purposes which have been granted jointly to Nevada Power Company and Sprint Central Telephone Company of Nevada by Right-of-way No. N–46507 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761).

Subject to those rights for electrical distribution and telephone line purposes which have been granted jointly to Nevada Power Company and Sprint Central Telephone Company of Nevada by Right-of-way No. N–41937 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761).

Subject to those rights for public roadway purposes which have been granted to Clark County by Right-of-way No. N–54758 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761)

PARCEL 99–15

Subject to those rights for public roadway purposes which have been granted to Clark County by Right-of-way No. N–54758 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C. 1761)

PARCEL 99–16

Subject to a reservation of the West 50 feet of the NW¼SW¼NW¼SW¼ and the North 40 feet of the W½NW¼NE¼NW¼SW¼, Section 14, T. 22 S., R. 61 E. M.D.M., Nevada, for a road, public utilities and flood control purposes in favor of Clark County.

Subject to those rights for public roadway purposes which have been granted to Clark County by Right-of-way No. N–54758 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C.1761)

PARCEL 99–17

Subject to a reservation of the West 50 feet of the SW¼NW¼SW¼SW¼ and the West 50 feet of the NW¼SW¼SW¼SW¼ and the South 55 feet of the E½SW¼SW¼SW¼SW¼, Section 14, T. 22 S., R. 61 E. M.D.M., Nevada, for a road, public utilities and flood control purposes in favor of Clark County.

Subject to those rights for electrical distribution line purposes which have been granted to Nevada Power Company by Right-of-way No. N–48159 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C.1761).

Subject to those rights for telephone line purposes which have been granted Sprint Central Telephone Company of Nevada by Right-of-way No. N–48056 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C.1761).

PARCEL 99–18

Subject to a reservation of the East 40 feet of the SE¼NE¼SE¼SW¼, Section 14, T. 22 S., R. 61 E. M.D.M., Nevada, for a road, public utilities and flood control purposes in favor of Clark County.

Subject to those rights for telephone line purposes which have been granted to Sprint Central Telephone Company of Nevada by Right-of-way No. N–6486 under the Act of February 15, 1901 (031 STAT 0790; 43 U.S.C.959).

Subject to those rights for telephone line purposes which have been granted to Nevada Power Company by Right-of-way No. N–7664 under the Act of February 15, 1901 (031 STAT 0790; 43 U.S.C.959).

Subject to those rights for sewer line purposes which have been granted Clark County Sanitation District by Right-of-way No. N–57156 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C.1761).

PARCEL 99–20

Subject to a reservation of the West 50 feet of the SW¼NW¼SW¼NW¼ and the West 50 feet of the NW¼SW¼SW¼NW¼ and the South 40 feet of the E½SW¼SW¼SW¼NW¼ and the South 40 feet of the SE¼SW¼SW¼NW¼, Section 14, T. 22 S., R. 61 E. M.D.M., Nevada, for a road, public utilities and flood control purposes in favor of Clark County.

Subject to those rights for public roadway purposes which have been granted to Clark County by Right-of-way No. N–54758 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C.1761)

PARCEL 99–21

Subject to a reservation of the North 50 feet and the West 60 feet of the NW¼NW¼NW¼ and the West 50 feet of the W½SW¼NW¼NW¼, Section 14, T. 22 S., R. 61 E. M.D.M., Nevada, for a road, public utilities and flood control purposes in favor of Clark County.

Subject to those rights for telephone line purposes which have been granted Sprint Central Telephone Company of Nevada by Right-of-way No. N–59915 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C.1761).

Subject to those rights for telephone line purposes which have been granted to Sprint Central Telephone Company of Nevada by Right-of-way No. N–5238 under the Act of February 15, 1901 (031 STAT 0790; 43 U.S.C.959).

Subject to those rights for public roadway purposes which have been granted to Clark County by Right-of-way No. N–42999 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C.1761)

Subject to those rights for public roadway purposes which have been granted to Clark County by Right-of-way No. N–54758 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C.1761)

PARCEL 99–22

Subject to a reservation of the North 50 feet of E½NW¼NE¼NW¼, Section 14, T. 22 S., R. 61 E. M.D.M., Nevada, for a road, public utilities and flood control purposes in favor of Clark County.

Subject to those rights for telephone line purposes which have been granted to Sprint Central Telephone Company of Nevada by Right-of-way No. N–5238 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C.1761).

Subject to those rights for public roadway purposes which have been granted to Clark County by Right-of-way No. N–42999 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C.1761)

PARCEL 99–23

Subject to a reservation of the South 50 feet of the E½SE¼SW¼SW¼SW¼, Section 14, T. 22 S., R. 61 E. M.D.M., Nevada, for a road, public utilities and flood control purposes in favor of Clark County.

Subject to those rights for electrical distribution and telephone line purposes which have been granted jointly to Nevada Power Company and Sprint Central Telephone Company of Nevada by Right-of-way No. N–46507 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C.1761).

Subject to those rights for electrical distribution line purposes which have been granted to Nevada Power Company by Right-of-way No. N–48159 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C.1761).

Subject to those rights for telephone line purposes which have been granted Sprint Central Telephone Company of Nevada by Right-of-way No. N–48056 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C.1761).

PARCEL 99–24

Subject to a reservation of the East 50 feet of the NE¼SE¼SE¼SW¼, Section 14, T. 22 S., R. 61 E. M.D.M., Nevada, for a road, public utilities and flood control purposes in favor of Clark County.

Subject to those rights for electrical distribution line purposes which have been granted to Nevada Power Company by Right-of-way No. N–54946 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C.1761).

Subject to those rights for electrical distribution line purposes which have been granted to Nevada Power Company by Right-of-way No. N–55281 under the Act of October 21, 1976 (090 STAT 2776; 43 U.S.C.1761).

The parcels will be offered for competitive sale beginning at 10:00 a.m. PST, November 4, 1999, in City Council Chambers, Las Vegas City Hall, 400 E. Stewart Avenue, Las Vegas, Nevada. Registration for oral bidding will begin at 8:00 a.m. the day of the sale and will end promptly at 10:00 a.m. All bidders are required to register.

Each parcel will be offered by sealed bid and oral auction. All sealed bids must be received in the BLM's Las Vegas Field Office (LVFO), 4765 Vegas Drive, Las Vegas, NV 89108, by no later than 4:15 pm PST, November 2, 1999. Sealed bid envelopes must be marked on the front left corner with the parcel number and sale date. Bids must be for not less than the FMV specified in this notice, with a separate bid submitted for each parcel. Each sealed bid shall be accompanied by a certified check, postal money order, bank draft, or cashier's check made payable to the Bureau of Land Management, for not less than 20 percent of the amount bid.

The highest qualified sealed bid on each parcel will determine the starting monetary point for oral bidding. If no sealed bids are received, oral bidding will begin at the appraised fair market value. Oral bids must be in increments of $500.00. The highest qualifying bid for any parcel, whether sealed or oral, shall be declared the highest bid. The apparent high bidder, if an oral bidder, must submit the required bid deposit in the form of cash, personal check, bank draft, money order, or any combination thereof, made payable to the Bureau of Land Management, for not less than 20 percent of the amount bid immediately following the close of the sale.

The remainder of the full price bid, whether sealed or oral, shall be paid within 180 days of the date of the sale. Failure to pay the full price within the 180 days shall disqualify the apparent high bidder and cause the bid deposit to be forfeited to the BLM. Unsold parcels will be withdrawn from sale, but may be offered again at a future date.

Federal law requires that bidders must be U.S. citizens 18 years of age or older; a corporation subject to the laws of any State or of the United States; a State, State instrumentality, or political subdivision authorized to hold property; and an entity, including but not limited to associations or partnerships, capable of holding property or interests therein under the law of the State of Nevada. Certification of qualification, including citizenship or corporation or partnership papers, shall accompany the bid deposit.

Detailed information concerning the sale, including the reservations, sale procedures and conditions, and planning and environmental documents, is available at the Bureau of Land Management, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, NV 89108, or by calling (702) 647–5114. This information is also available on the Internet at http://www.nv.blm.gov. Click on Southern Nevada Public Land Management Act, then you must click on Land Sale Information.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, the general public and interested parties may submit comments to the Field Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Dated: August 18, 1999.

Michael F. Dwyer,

Field Manager.

[FR Doc. 99–22128 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–010–07–1020–00–241A]

Notice of Intent To Amend the Kremmling Field Office Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to amend the Kremmling Field Office Resource Management Plan, 1984.

SUMMARY: Pursuant to section 102 of the National Environmental Policy Act of 1969 and section 202 of the Federal Land Policy and Management Act of 1976, the Bureau of Land Management, Kremmling Field Office, is proposing to amend the Kremmling Resource Management Plan, approved in December, 1984. The amendment will consider changing the boundaries of the Upper Colorado River Special Recreation Management Area, changing land use priorities for some public lands within the Area boundary, and establishing management prescriptions for the Area. The management prescriptions being considered will include: (1) no surface occupancy for oil and gas development, and (2) withdrawing the entire SRMA from settlement, sale, location, or entry under the general land laws, including the mining laws.

ADDRESSES: For further information, contact David Atkins, Bureau of Land Management (BLM), Northwest Center, 2815 H Road, Grand Junction, Colorado 81506; Telephone (970) 244–3074.

SUPPLEMENTARY INFORMATION: The affected area includes approximately 12,175 acres of public land in Grand and Eagle Counties, located along the Colorado River from approximately 7½ miles upstream of Kremmling, Colorado to State Bridge, Colorado.

Dated: August 23, 1999.

Linda Gross,

Field Manager, Kremmling Field Office.

[FR Doc. 99–22191 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–010–07–1020–00–241A]

Notice of Intent to Amend the Kremmling Field Office Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Amend the Kremmling Field Office Resource Management Plan, 1984.

SUMMARY: Pursuant to section 102 of the National Environmental Policy Act of 1969 and section 202 of the Federal Land Policy and Management Act of 1976, the Bureau of Land Management, Kremmling Field Office, is proposing to amend the Kremmling Resource Management Plan, approved in December, 1984. The amendment will identify land use priorities for parcels of property acquired through land exchanges completed since the Kremmling Resource Management Plan was approved in December, 1984, and provide for the establishment of land use prescriptions and priorities for future acquisitions at the time the lands are acquired.

ADDRESSES: For further information, contact David Atkins, Bureau of Land Management (BLM), Northwest Center, 2815 H Road, Grand Junction, Colorado 81506; Telephone (970) 244–3074.

SUPPLEMENTARY INFORMATION: The affected area includes approximately 11,146 acres of public land in the Kremmling Resource Area that has been acquired through land exchange since the original Kremmling Resource Management Plan was approved in December, 1984.

Dated: August 23, 1999.

Linda Gross,

Field Manager, Kremmling Field Office.

[FR Doc. 99–22192 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–950–7130–00–9789–P]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Wyoming State Office, Cheyenne, Wyoming, thirty (30) calendar days from the date of this publication.

Sixth Principal Meridian, Wyoming

Tps. 22 and 23 N., Rs. 119 and 120 W., accepted August 17, 1999

If protests against a survey, as shown on any of the above plats, are received prior to the official filing, the filing will be stayed pending consideration of the protest(s) and or appeal(s). A plat will not be officially filed until after disposition of protest(s) and or appeal(s).

These plats will be placed in the open files of the Wyoming State Office, Bureau of Land Management, 5353 Yellowstone Road, Cheyenne, Wyoming, and will be available to the public as a matter of information only. Copies of the plats will be made available upon request and prepayment of the reproduction fee of $1.10 per copy.

A person or party who wishes to protest a survey must file with the State Director, Bureau of Land Management, Cheyenne, Wyoming, a notice of protest within thirty (30) calendar days from the date of this publication. If the protest notice did not include a statement of reasons for the protest, the protestant shall file such a statement with the State Director within thirty (30) calendar days after the notice of protest was filed.

The above-listed plats represent dependent resurveys, subdivision of sections.

FOR FURTHER INFORMATION CONTACT: John P. Lee, (307) 775–6216, Bureau of Land Management, P.O. Box 1828, 5353 Yellowstone Road, Cheyenne, Wyoming 82003.

Dated: August 17, 1999.

John P. Lee,

Chief Cadastral Survey Group.

[FR Doc. 99–22123 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of information collection.

SUMMARY: Under the Paperwork Reduction Act of 1995, we are soliciting comments on an information collection titled Production Accounting and Auditing System Reports on Solid Minerals, OMB Control Number 1010–0063 which expires on December 31, 1999.

Form

Mine Information Form, MMS–4050; Facility and Measurement Information Form, MMS–4051S, Solid Minerals Operations Report, MMS–4059A&B; Solid Minerals Facility Report, MMS–4060A&B.

DATES: Written comments should be received on or before October 25, 1999.

ADDRESSES: The mailing address for written comments regarding this information collection is David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, Colorado 80225. Courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225. E-mail address is RMP.comments@mms.gov.

Public Comment Procedure

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, CO 80225–0165. Courier or overnight delivery address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225. You may also comment via the Internet to RMP.comments@mms.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: Production Accounting and Auditing System Reports on Solid Minerals, OMB Control Number 1010–0063" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact David S. Guzy directly at (303) 231–3432.

We will post public comments after the comment period closes on the Internet at *http://www.rmp.mms.gov*. You may arrange to view paper copies of the comments by contacting David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231–3432, FAX (303) 231–3385. Our practice is to make comments, including names and addresses of respondents, available for public review on the Internet and during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, telephone (303) 231–3046, FAX (303) 231–3385, e-mail Dennis.C.Jones@mms.gov.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The Department of the Interior is responsible for matters relevant to mineral resource development on Federal and Indian Lands and the Outer Continental Shelf (OCS). The Secretary of the Interior is responsible for managing the production of minerals from Federal and Indian Lands and the OCS; for collecting royalties from lessees who produce minerals; and for distributing the funds collected in accordance with applicable laws. MMS performs the royalty management functions for the Secretary.

We developed the Production Accounting and Auditing System (PAAS), an integrated computer database containing production processing data submitted by Federal and Indian lease operators, including operators of solid mineral leases. The PAAS database is designed to track minerals produced from Federal and Indian lands from the point of production to the point of disposition, or royalty determination, and/or point of sale. The PAAS data is compared with data in our Auditing and Financial System (AFS) database which tracks sales of mineral production from a lease and associated royalty payments as reported by payors. The comparison between production data (PAAS) and sales and royalty data (AFS) enables MMS to verify that the proper amount of royalties are being received for the minerals extracted from a lease.

Lessees file four forms to submit the required solid minerals data. Two forms are used to establish an MMS reference database of relatively static information on mines, facilities, and measurement points; this reference database eliminates the necessity for operators to continually report this static data. To monitor lease production, lessees file two operations reports to provide ongoing information on production, sales volumes, and inventories of mines and processing facilities.

The burden imposed on lessees submitting required information is directly proportional to mine activity and the point of sale, or the royalty determination. The more complicated the operations, the greater the reporting burden on the respondents. Mine/facility operators are required to submit the required production data to allow MMS to accurately and completely determine the correct amount of the royalty due on the minerals removed from Federal and Indian lands.

Currently the PAAS database includes 211 mine operators and 290 mines containing 653 leases. Coal lease operators make up 45 percent of the total respondents. Solid mineral leases also include limestone, molybdenum, potassium, sodium, and sand and gravel operations. The total number of facilities maintained on PAAS includes 27 coal processing plants, 20 refiners, 13 mill and 44 remote storage facilities. It is estimated that there will be a continuing growth of 3 percent per year for the number of new operators, mines, facilities, and leases added to PAAS.

The annual burden for responding to this information collection using the PAAS solid mineral forms, including 1 hour per operator per year to maintain records necessary for completion of PAAS forms, is estimated to be 2,920 hours.

Dated: August 20, 1999.

R. Dale Fazio,

Acting Associate Director for Royalty Management.

[FR Doc. 99–22096 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects From Pearl Harbor, HI in the Possession of the Bernice Pauahi Bishop Museum, Honolulu, HI

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Pearl Harbor, HI in the possession of the Bernice Pauahi Bishop Museum, Honolulu, HI.

A detailed assessment of the human remains was made by Bishop Museum professional staff in consultation with representatives of Hui Malama I Na Kupuna O Hawai'i Nei, and the O'ahu Island Burial Council. Koa Mana and the Office of Hawaiian Affairs were also contacted for consultation, but have not responded.

In 1978, human remains representing a minimum of 13 individuals were recovered by Toni Han, Owen Narikawa, and Bishop Museum staff following the disturbance of burials during construction of a new complex of naval magazines at West Loch Naval Magazine, Pearl Harbor, O'ahu, HI. No known individuals were identified. The 62 associated funerary objects include non-human bone, beads, a mirror, and a ceramic plate.

In 1998, the U.S. Navy determined, based on a 1978 Deed of Gift, that these human remains and associated funerary objects were in the control of the Bishop Museum. Based on the style and types of associated funerary objects, manner of interments, recovery locations, and consultation information, these individuals have been identified as Native Hawaiian. In keeping with prior consultations with Native Hawaiian organizations, the Bishop Museum did not attempt to determine the age of the human remains.

Based on the above mentioned information, officials of the Bishop Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 13 individuals of Native American ancestry. Officials of the Bishop Museum have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 62 objects listed above are reasonably

believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Bishop Museum have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and Hui Malama I Na Kupuna O Hawai'i Nei.

This notice has been sent to officials of the Hui Malama I Na Kupuna O Hawai'i Nei, the Office of Hawaiian Affairs, the O'ahu Island Burial Council, and Koa Mana. Representatives of any other Native Hawaiian organization that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Valerie Free, Unit Manager, Bernice Pauahi Bishop Museum, 1525 Bernice Street, Honolulu, HI 96817; telephone: (808) 847-8205, before September 27, 1999. Repatriation of the human remains and associated funerary objects to Hui Malama I Na Kupuna O Hawai'i Nei may begin after that date if no additional claimants come forward.

Dated: August 8, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–22162 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from Harper County, KS in the Possession of the Kansas State Historical Society, Topeka, KS

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains from Harper County, KS in the possession of the Kansas State Historical Society, Topeka, KS.

A detailed assessment of the human remains was made by Kansas State Historical Society (KSHS) professional staff in consultation with representatives of the Wichita and Affiliated Tribes.

In 1988, human remains representing four individuals were recovered from the Hallman site (14HP524), Harper County, KS during excavations directed by KSHS archeologists. No known individuals were identified. No associated funerary objects were present.

Based on archeological context, these individuals have been identified as Native American. Based on material culture, geographic location, and radiocarbon dates, the Hallman site has been identified as a Bluff Creek Complex occupation dating from c. 1020 A.D. Based on temporal position, geographic location, and general character of material culture, the Bluff Creek Complex has been identified as possibly being ancestral to the Wichita tribe.

Based on the above mentioned information, officials of the Kansas State Historical Society have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of four individuals of Native American ancestry. Officials of the Kansas State Historical Society have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Wichita and Affiliated Tribes.

This notice has been sent to officials of the Wichita and Affiliated Tribes. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Randall Thies, Archeologist, Kansas State Historical Society, 6425 SW Sixth Avenue, Topeka, KS 66606-1099; telephone: (913) 272-8681, ext. 267, before September 27, 1999. Repatriation of the human remains to the Wichita and Affiliated Tribes may begin after that date if no additional claimants come forward.

Dated: August 17, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–22165 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Modoc and Siskiyou Counties, CA in the Control of Klamath Basin National Wildlife Refuge Complex, U.S. Fish and Wildlife Service, Tulelake, CA

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Modoc and Siskiyou Counties, CA in the control of Klamath Basin National Wildlife Refuge Complex, U.S. Fish and Wildlife Service, Tulelake, CA.

A detailed assessment of the human remains was made by U.S. Fish and Wildlife, Oregon State Museum of Anthropology (OSMA), and California State University, Chico Department of Anthropology professional staff in consultation with representatives of the Klamath Indian Tribe of Oregon.

During the 1940s, human remains representing 16 individuals were recovered from Lower Klamath Lake National Wildlife Refuge during authorized excavations conducted by field crews of the University of Oregon. No known individuals were identified. The five associated funerary objects include one non-human tooth, one antler drill cap, one hammer, one olivella bead, and one unidentified animal bone.

In 1961, human remains representing one individual were recovered from Clear Lake National Wildlife Refuge authorized excavations by amateur archeologist Carrol B. Howe, who donated these human remains to OSMA. No known indivduals was identified. No associated funerary objects are present.

In 1992, human remains representing three individuals were turned over to Klamath Basin NWRC by the Siskiyou County Sheriff's Department. These human remains were given into the Sheriff's possession on the unconfirmed evidence that they had been removed from an archeological site at Tulelake NWR. No known individuals were identified. No associated funerary objects are present.

Based on apparent age, locations, archeological context, and consultation with the Klamath Indian Tribe of Oregon, these human remains have been identified as Native American. Based on oral history, ethnographic and historic accounts, and locations of the burials, these individuals have been affiliated with the Klamath and Modoc tribes. Representatives of the Modoc Tribe of Oklahoma have indicated the Klamath Indian Tribe of Oregon represents Modoc interests in the Klamath Basin NWR.

Based on the above mentioned information, officials of the U.S. Fish and Wildlife Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 20 individuals of Native American ancestry. Officials of the U.S. Fish and Wildlife Service have also determined that, pursuant to 43 CFR 10.2 (d)(2), the five objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the U.S. Fish and Wildlife Service have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Klamath Indian Tribe of Oregon.

This notice has been sent to officials of the Klamath Indian Tribe of Oregon and the Modoc Tribe of Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Francis G. Maiss, Acting Project Leader, Klamath Basin National Wildlife Refuge Complex, Route 1, Box 74, Tulelake, CA 96134; telephone: (530) 667-2231; fax: (530) 667-3299, before September 27, 1999. Repatriation of the human remains and associated funerary objects to the Klamath Indian Tribe of Oregon may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: August 16, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–22164; Filed 8-25-99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from New Mexico in the Possession of the Los Angeles County Museum of Natural History, Los Angeles, CA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of Los Angeles County Museum of Natural History, Los Angeles, CA.

A detailed assessment of the human remains was made by Los Angeles County Museum of Natural History professional staff in consultation with representatives of the Pueblo of Jemez.

Before 1966, human remains representing a minimum of six individuals were removed from the Unshagi site, an abandoned pueblo on the Jemez River, NM under unknown circumstances by person(s) unknown. In 1966, these human remains were transferred to the Los Angeles County Museum of Natural History from the Alan Hancock Foundation at the University of Southern California. No known individuals were identified. No associated funerary objects are present.

Based on accession records, these human remains have been identified as Native American. Ethnohistoric information indicates the Unshagi site has been identified as ancestral to the Pueblo of Jemez. Consultation with representatives of the Pueblo of Jemez confirms that the Unshagi site was inhabited exclusively by ancestors of the Pueblo of Jemez.

Based on the above mentioned information, officials of the Los Angeles County Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of six individuals of Native American ancestry. Officials of the Los Angeles County Museum of Natural History have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Pueblo of Jemez.

This notice has been sent to officials of the Pueblo of Jemez. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Margaret A. Hardin, Anthropology Section, Los Angeles County Museum of Natural History, 900 Exposition Blvd., Los Angeles, CA 90007; telephone: (213) 763-3382; e-mail: Mhardin@nhm.org, before September 27, 1999. Repatriation of the human remains to the Pueblo of Jemez may begin after that date if no additional claimants come forward.

Dated: August 10, 1999.

Richard Waldbauer,

Acting Departmental Consulting Archeologist, Archeology and Ethnography Program.

[FR Doc. 99–22166 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Alaska in the Possession of the Laboratory of Anthropology, University of Alaska-Anchorage, Anchorage, AK

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the Laboratory of Anthropology, University of Alaska-Anchorage, Anchorage, AK.

A detailed assessment of the human remains was made by Laboratory of Anthropology, University of Alaska-Anchorage professional staff in consultation with representatives of Chugach Alaska Corporation, the Chugach Heritage Foundation, the Cook Inlet Region, Inc. Foundation, and the Kenaitze Indian Tribe.

In 1974, human remains representing a minimum of 23 individuals were recovered at the Cottonwood Creek site (SEL 030) on the north shore of Kachemak Bay, south-central Alaska during archeological excavations conducted by Alaska Methodist University and the Anchorage Community College. No known individuals were identified. The 3,200 associated funerary objects include bone and shell beads, labrets, two bone knives, two diamond-shaped artificial eyes, a tiny bone inlay, and an edged slate scrap.

Based on the associated funerary objects; radiocarbon dating of the site; and manner of interment unique to the time period, these burials are estimated to date to between 2,000 and 1,500 years ago. Based on these dates, the Cottonwood Creek site has been identified as a late-stage Kachemak Tradition occupation.

In 1974, human remains representing a minimum of four individuals were recovered from the Chugachik Island site (SEL 033) on Chugachik Island during a test excavation conducted by Alaska Methodist University and the State of Alaska Department of Natural Resources Division of Parks, Office of History and Archeology. No known individuals were identified. No associated funerary objects were present.

In 1977, human remains representing a minimum of 13 individuals were

recovered from the Chugachik Island site (SEL 033) during archeological excavations conducted by the University of Alaska-Anchorage and Anchorage Community College. No known individuals were identified. No associated funerary objects are present.

In 1980, human remains representing a minimum of one individual were removed from an eroding midden face at the Chugachik Island site (SEL 033) by a unknown visitor and donated to the Laboratory of Anthropology, University of Alaska, Anchorage. No known individual was identified. No associated funerary objects are present.

In 1981, human remains representing up to 45 individuals were recovered from the Chugachik Island site (SEL 033) during archeological excavations conducted by the University of Alaska-Anchorage and Anchorage Community College. No known individuals were identified. No associated funerary objects are present.

In 1982, human remains representing a minimum of three individuals were recovered from the Chugachik Island site (SEL 033) and an associated beach front by Peter Zollars under the supervision of the University of Alaska-Anchorage. No known individuals were identified. No associated funerary objects are present.

In 1984, human remains representing one individual were recovered from the Chugachik Island site (SEL 033) by Peter Zollars under the supervision of the University of Alaska-Anchorage. No known individual was identified. No associated funerary objects were present.

In 1995, human remains representing a minimum of four individuals were recovered from the Chugachik Island site (SEL033) by a local resident. No known individuals were identified. The one associated funerary object is a birdbone tube cut at both ends.

At an unknown date, human remains representing one individual from a beach at the Chugachik Island site (SEL033) were recovered by an unknown person and donated to the University of Alaska-Anchorage. No known individual was identified. No associated funerary objects are present.

Based on radiocarbon dating, burial practices, intentionally modified human remains, and material culture, the Chugachik Island site has been identified as a Kachemak Tradition occupation dating to between 2400 to 1500 years ago.

In 1977, human remains representing one individual were recovered from the Yukon Island Fox Farm site (SEL041) on Yukon Island during excavations under the direction of William Workman (University of Alaska-Anchorage) and John Lobdell (Anchorage Community College). No known individual was identified. No associated funerary objects were present.

In 1978, human remains representing one individual were recovered from the Yukon Island Fox Farm site (SEL041) during a house pit trench excavation conducted by Frederica De Laguna and Karen Workman which included this disturbed burial in slough deposits. No known individual was identified. In 1993, three associated funerary objects were recovered from this burial and consist of a whalebone dagger and two barbed darts.

In 1985, human remains representing a minimum of one individual were recovered from the Yukon Island Fox Farm site (SEL041) during excavations conducted by Peter Zollars. No known individual was identified. No associated funerary objects are present.

In 1986, human remains representing a minimum of three individuals were recovered from the Yukon Island Fox Farm site (SEL041) during excavations conducted by Peter Zollars. No known individual was identified. The one associated funerary object is a hammerstone.

In 1987, human remains representing a minimum of two individuals were recovered from the Yukon Island Fox Farm site (SEL041) during excavations conducted by William Workman (University of Alaska-Anchorage) and Peter Zollars. No known individuals were identified. The ten associated funerary objects include a porpoise skull and other non-human bones.

In 1978, human remains representing a minimum of one individual were recovered from preserved buried beach deposits at the Great Midden site (SEL001) on Yukon Island during excavations conducted by John Lobdell of Anchorage Community College and Frederica De Laguna. No known individual was identified. No associated funerary objects are present.

Based on radiocarbon dating and material culture, the Yukon Island Fox Farm site and the Great Midden site have been identified as Kachemak Tradition occupation dating to 1500—3000 years ago.

In 1984, human remains representing a minimum of one individual were collected from a burial eroding down a steep slope at the front of the North Bluff site on Yukon Island by William Workman of the University of Alaska-Anchorage. No known individuals were identified. No associated funerary objects are present.

This site has not been investigated, however, a late Kachemak Tradition provenance seems likely based on the considerable depth of the exposed cultural deposits.

In 1978, human remains representing a minimum of three individuals were collected from an eroding midden site on Neptune Bay, Kachemak Bay by University of Alaska-Anchorage and Anchorage Community College archeologists. No known individuals were identified. No associated funerary objects are present.

This site on Neptune Bay has not been investigated, however, a late Kachemak Tradition provenance seems likely based on the considerable depth of the exposed cultural deposits.

Although the people of the Kachemak Tradition withdrew from Kachemak Bay no later than around 1,000 years ago, they were closely related in biology and culture to contemporary Kachemak Tradition people in the Kodiak Archipelago, with whom it is probable that they amalgamated. The Kodiak version of the Kachemak Tradition has been clearly documented by detailed archeological study of cultural material from a number of archeological sites and human biological study of several hundred human remains as the primary cultural and biological ancestor of the contemporary Alutiiq people of the Kodiak Archipelago and adjacent areas. The Kachemak Bay manifestation of the Kachemak Tradition should thus be viewed as a regional expression of ancestral Alutiiq or Pacific Eskimo culture, a complex long-enduring (at least 3,800 years) regional mosaic of cultural patterns with living descendents in the Kodiak archipelago, Prince William Sound, and elsewhere in south central Alaska.

Based on the above mentioned information, officials of the University of Alaska-Anchorage have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 108 individuals of Native American ancestry. Officials of the University of Alaska-Anchorage have also determined that, pursuant to 43 CFR 10.2 (d)(2), the approximately 3,215 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University of Alaska-Anchorage have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Chugach Alaska Corporation, the Native Village of Port Graham, the Native Village of Nanwalek (aka English Bay), and the Seldovia Village Tribe.

This notice has been sent to officials of the Chugach Alaska Corporation, the Chugach Heritage Foundation, the Cook Inlet Region, Inc. Foundation, the Kenaitze Indian Tribe, the Native Village of Port Graham, the Native Village of Nanwalek (aka English Bay), and the Seldovia Village Tribe. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Professor William Workman, Department of Anthropology, University of Alaska-Anchorage, 3211 Providence Drive, Anchorage, AK 99508; telephone: (907) 789-6842, before September 27, 1999. Repatriation of the human remains and associated funerary objects to the Chugach Alaska Corporation on behalf of the Native Village of Port Graham, the Native Village of Nanwalek (aka English Bay), and the Seldovia Village Tribe may begin after that date if no additional claimants come forward.

Dated: August 10, 1999.

Richard Waldbauer,

Acting Departmental Consulting Archeologist,

Archeology and Ethnography Program.

[FR Doc. 99–22167 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the University Museum, University of Arkansas, Fayetteville, AR

AGENCY: National Park Service, DOI.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the University Museum, University of Arkansas, Fayetteville, AR.

A detailed assessment of the human remains was made by University Museum professional staff in consultation with representatives of the Quapaw Tribe of Indians, Oklahoma; and the Tunica-Biloxi Indian Tribe of Louisiana.

In 1932, human remains representing a minimum of 19 individuals were recovered from the Kinkead-Mainard site (3PU2), Pulaski County, AR during excavations conducted by the University Museum. No known individuals were identified. The 117 associated funerary objects include ceramic vessels, ceramic sherds, a clay ball, lithic debris, copper beads, a copper band, a copper nugget, pigment, animal bones, a tortoise carapace, an antler pendant, antler projectile points, bone awls, shell beads, a mussel shell, and leather fragments.

Based on the associated funerary objects, and skeletal and dental morphology, these human remains have been identified as Native American. Based on ceramic styles and construction, this site has been identified as a manifestation of the Menard Complex during the protohistoric period (1500-1700 AD). French historical documents from 1700 indicate only the Quapaw tribe had villages in the area of the Kinkead-Mainard site. In 1818, the Quapaw ceded the central Arkansas River valley, including the Kinkead-Mainard site, to the United States. Based on historical information and continuity of occupation, these human remains have been affiliated with the Quapaw Tribe of Indians, Oklahoma.

In 1965, human remains representing eight individuals were recovered from the Parkin site (3CS29), Cross County, AR during the Arkansas Archeological Society summer excavation under the direction of the University Museum. No known individuals were identified. The eight associated funerary objects include ceramic vessels, potsherds, and a pottery object.

In 1966, human remains representing 17 individuals were recovered from the Parkin site (3CS29), Cross County, AR during the University of Arkansas Archeological Field School. No known individuals were identified. The 21 associated funerary objects include pottery vessels, potsherds, animal bones, and stones.

Based on the associated funerary objects, and skeletal and dental morphology, these human remains have been identified as Native American. Based on historical documents, Spanish artifacts at the site, and archeological research, the Parkin site is thought to be the village of Casqui from the DeSoto era (c. 1541-3 AD). Based on radiocarbon dates and Native ceramics, the Parkin site has been dated to the late Mississippian to the early protohistoric period (1350-1600 AD). French historical documents from 1700 indicate only the Quapaw tribe had villages in the area of eastern Arkansas above the mouth of the Arkansas River. Based on historical information, oral tradition, and continuity of occupation, these human remains have been affiliated with the Quapaw Tribe of Indians, Oklahoma.

Based on the above mentioned information, officials of the University Museum, University of Arkansas have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 44 individuals of Native American ancestry. Officials of the University Museum, University of Arkansas have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 146 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the University Museum, University of Arkansas have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Quapaw Tribe of Indians, Oklahoma.

This notice has been sent to officials of the Quapaw Tribe of Indians, Oklahoma; and the Tunica-Biloxi Indian Tribe of Louisiana. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Michael P. Hoffman, Curator of Anthropology, University Museum, University of Arkansas, Fayetteville, AR 72702; telephone: (501) 575-3855, before September 27, 1999. Repatriation of the human remains and associated funerary objects to the Quapaw Tribe of Indians, Oklahoma may begin after that date if no additional claimants come forward.

Dated: August 5, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–22163 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Repatriate Cultural Items From Shannon County, SD in the Possession of the Wyoming State Museum, Cheyenne, WY

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Wyoming State Museum, Cheyenne, WY which meet the definition of "sacred objects" under Section 2 of the Act.

The cultural items are two arrows with steel points and fletched with feathers; a wooden bow with pink ribbons attached at knocks, front stained blue and belly stained red; and a pipestem.

In 1919, John Hunton of Fort Laramie, WY donated these cultural items to the Wyoming State Museum. Donor information accompanying these cultural items indicates that on December 29, 1890, they were picked up on the Wounded Knee Massacre site by a U.S. Army scout Baptiste "Little Bat" Garnier, who later gave them to John Hunton.

The donor information accompanying these cultural items clearly indicates that they were removed without permission of the owners or relatives following the massacre. Consultation evidence provided by representatives of the Cheyenne River Sioux Tribe states that "mourning [associated with Wounded Knee].. cannot end until all of the property stolen away from the dead... is returned... and all necessary spiritual ceremonies relating to the traditional burial rites of the Lakota have been performed and executed by Lakota spiritual leaders."

Officials of the Wyoming State Museum have determined that, pursuant to 43 CFR 10.2 (d)(3), these four cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Wyoming State Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the Cheyenne River Sioux Tribe, Oglala Sioux Tribe of the Pine Ridge Reservation, and Rosebud Sioux Tribe of the Rosebud Indian Reservation.

This notice has been sent to officials of the Cheyenne River Sioux Tribe, Oglala Sioux Tribe of the Pine Ridge Reservation, Rosebud Sioux Tribe of the Rosebud Indian Reservation, and Standing Rock Sioux Tribe of North and South Dakota. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Jennifer Alexander, Supervisor of Collections, Wyoming State Museum, 6101 Yellowstone Road, Cheyenne, WY 82002; telephone: (307) 777-5472 before September 27, 1999. Repatriation of these objects to the Cheyenne River Sioux Tribe, Oglala Sioux Tribe of the Pine Ridge Reservation, and Rosebud Sioux Tribe of the Rosebud Indian Reservation may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within or the content of this notice.

Dated: January 21, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–22161 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Allocation of Water Supply and Expected Long-Term Contract Execution, Central Arizona Project, Arizona

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent and public scoping meetings.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, and the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA, the Bureau of Reclamation (Reclamation) proposes to prepare an environmental impact statement (EIS) concerning proposed modifications to previous Central Arizona Project (CAP) water allocation decisions. Reclamation is initiating public scoping for the proposed NEPA document and will be conducting scoping meetings pursuant to section 102(2)(C) of NEPA.

The Department anticipates it will reallocate and offer contracts for certain quantities of CAP water in connection with (1) settlement discussions arising out of operation of the CAP; (2) settlement discussions arising from legal claims involving the Gila River Indian Community (GRIC) and the San Carlos Apache Tribe (San Carlos); and (3) negotiations regarding implementation of the 1982 Southern Arizona Water Rights Settlement Act.

DATES: Three scoping meetings will be held to solicit comments on issues that should be addressed in the EIS:

September 14, 1999, from 1:00–3:30 p.m.
National YWCA Leadership Development Center, 9440 N. 25th Avenue, Phoenix, Arizona 85021–2789.

September 15, 1999 from 6:30–9:00 p.m.
Francisco Grande Resort Ballroom, 26000 Gila Bend Highway, Casa Grande, Arizona 85222.

September 16, 1999, from 1:00–3:30 p.m.
Tucson Community Center, Maricopa-Mojave Room, 260 S. Church, Tucson, Arizona 85701.

At each meeting, Reclamation will make a short presentation. Oral comments from the audience will then be accepted. A court reporter will prepare a written record of all comments made.

Hearing impaired, visually impaired, and/or mobility impaired persons planning to attend the meeting(s) may arrange for necessary accommodations by calling Ms. Janice Kjesbo (602–216–3864; fax 602–216–4006) no later than August 30, 1999.

ADDRESSES: Send written comments concerning the proposal to Mr. Bruce Ellis, Environmental Program Manager, Phoenix Area Office, Bureau of Reclamation, P.O. Box 81169, Phoenix Arizona, 85069–1169. To be most helpful, comments should be received by September 27, 1999. Written comments received by Reclamation become part of the public record associated with this action. Accordingly, such comments (including name, address, or telephone information shown on written correspondence) will be available to requestors of information through the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Questions concerning the process, the proposed action or alternatives, or this notice should be directed to Ms. Sandra Eto, Environmental Resource Management Division, Phoenix Area Office, Bureau of Reclamation, P.O. Box 81169, Phoenix, Arizona 850689–1169; telephone (602) 216-3857. To be placed on a mailing list for any subsequent information, please write or telephone Ms. Janice Kjesbo, Environmental Resource Management Division, Phoenix Area Office (see address above), telephone (602) 216–3854 or fax (602) 216–4006.

SUPPLEMENTARY INFORMATION: Reclamation proposes to modify existing allocations of CAP water under terms consistent with ongoing settlement discussions regarding operation of the CAP, the status of CAP water, and resolution of outstanding Indian water rights claims. In connection with preparation of the EIS, Reclamation will analyze the environmental consequences of a proposed action that allocates and offers contracts for CAP water. This action is consistent with contemplated reallocation of CAP water that has emerged from extensive discussions among settlement parties. Environmental analysis of the proposed reallocation does not preclude additional adjustments being made to the final reallocations, depending upon the course of negotiations.

In addition to the proposed action (i.e. reallocation of CAP water based upon current settlement negotiations), Reclamation intends to develop and evaluate alternative allocation scenarios as part of its NEPA analysis. These "action" alternatives will identify other reallocation and contracting scenarios the Secretary of the Interior (Secretary) could implement in the absence of settlement. Thus far, three alternative reallocation scenarios are being considered for inclusion in the EIS. These alternatives could be modified, and/or other alternatives developed based upon input received during the scoping period.

CAP water, estimated for these purposes to be 1,415,000 acre-feet [1] (AF) of primarily Colorado River water available for use within the Project service area, is divided into three basic categories. The majority of the water in each of these categories has been allocated and contracted; however, some in each category remains unallocated and/or uncontracted. The categories can be described as follows: Water previously allocated for use by municipal and industrial (M&I) entities (620,678 AF); water allocated for "Federal purposes" (453,224 AF, the great majority of which is under contract to Indian tribes); [2] and water previously allocated for use by non-Indian agricultural (NIA) districts, consisting of the CAP water supply that remains after water in the other two categories has been contracted (for the purposes of this notice, the amount of water in this NIA category is estimated to be 341,098 AF [3]). The following are assumed to occur or pertain to the proposed action and all three action alternatives currently under consideration:

a. 17,800 AF of Indian priority water would be allocated and contracted to GRIC. This represents CAP water that was previously allocated and contracted to the Harquahala Valley Irrigation District (HVID) but relinquished in 1992 to the Secretary for use in the settlement of water rights claims of Indian tribes having claims to the water in the Salt and Verde River system (which is already included in the "Federal purposes" category);

b. an estimated 18,600 AF of NIA priority water would be allocated and contracted to GRIC, in accordance with the "Settlement Agreement Among the Gila River Indian Community, Roosevelt Water Conservation District, and the United States of America (May 10, 1999)." This represents CAP water previously allocated and contracted to the Roosevelt Water Conservation District but relinquished in 1992 to the Secretary to hold for the use and benefit of GRIC (which is already included in the "Federal purposes" category);

c. 17,000 AF of M&I category water previously allocated to ASARCO, Inc., that is anticipated to be voluntarily assigned to GRIC as part of a settlement of GRIC water rights claims;

d. the NIA category includes an estimated 43,654 AF that has been or is anticipated to be assigned to several cities within Maricopa County through agreements with the Hohokam Irrigation and Drainage District (HIDD); and

e. with the exception of the water previously allocated to HVID, all CAP water would retain its current priority (which determines the order of priority in reducing deliveries during times of shortages on the Colorado River).

Proposed Action and Action Alternatives. Following are descriptions of actions—in addition to those identified above—that are contemplated to occur under the proposed action and the three alternatives currently being considered:

A. Proposed Action

1. Water allocated for M&I use would total 603,678 AF (which represents 620,678 AF less 17,000 Af of ASARCO water described in "c" above). An amount of 65,647 AF within this category, that is currently uncontracted, would be reallocated to M&I entities after consultation with the State of Arizona, Department of Water Resources (ADWR). CAP M&I water service subcontracts would be offered to these allottees.

2. Water allocated for NIA use would be reduced by an estimated 200,000 AF. This water would be reallocated for Federal purposes. Of the estimated 141,098 AF remaining in the NIA category, 97,444 AF would be reserved for use by non-Indian agricultural or M&I entities under a process to be developed. The remaining 43,654 AF represents the water associated with HIDD that has been or is anticipated to be assigned to several Maricopa County cities (see "d" above).

3. Water allocated for Federal purposes would be increased by an estimated 200,000 AF from reallocation of water from the NIA category described in A.2. above. This water would be contracted as follows: 102,000 AF to GRIC; 28,200 AF to the Tohono O'odham Nation; and 69,800 AF reserved by the Secretary for use in facilitating future Indian water rights settlements.

B. Alternative #1

1. Water in the M&I category would be handled the same as under the Proposed Action. The 65,647 AF that is currently uncontracted would be reallocated and contracted as described under the Proposed Action.

2. The amount of water in the NIA category would not change from present conditions (estimated for purposes of this action to be 341,098 AF); however, an estimated 112,578 AF of water in this category would be made available for use by non-Indian agricultural and/or M&I entities under a process to be developed. This amount is an estimate of that portion of water within the NIA category for which allocations were made in 1983, but for which no contracts were executed. No change in status would occur to the remaining estimated 228,520 AF in the NIA category.

3. An estimated amount of 1,518 AF of Indian priority water already held for Federal purposes (originally allocated to HVID) would be allocated and contracted to the Tonto Apache and Camp Verde Apache tribes.

C. Alternative #2

1. Water allocated for M&I use would be reduced by 65,647 AF, the amount within this category that is currently uncontracted. This water would be reallocated for Federal purposes (see

[1] The 1,415,000 acre-foot amount is an agreed to approximation of the number of acre-feet of Colorado River water available in a normal year for diversion and use by the CAP, after deducting estimated system losses.

[2] In a **Federal Register** notice (48 FR 12446, March 24, 1983), the Secretary allocated 638,823 AF of CAP water for M&I purposes, and 309,828 AF of CAP water to Indian tribes in central Arizona. Subsequent settlements of Indian water rights and reallocations of CAP water increased the total water for "Federal purposes" to 453,224 AF—18,145 AF of which came from the M&I category.

[3] The calculation of amounts of water with regard to the NIA category varies; analysts among the settlement parties disagree on the exact numbers associated with water in this category. These differences are due to the order of the calculations made and other assumptions used. Use of specific numbers in this notice is not meant to imply a degree of precision that does not exist, and it should be noted the various amounts of water attributed to the NIA category in this notice are estimates for purposes of describing alternative reallocation scenarios.

C.3. below). The water remaining in this category would be 538,031 AF (which includes a reduction of 17,000 acre-feet of ASARCO water; see "c" above).

2. Water allocated for NIA use would be reduced by an estimated 28,665 AF. This estimate represents NIA water previously allocated to Queen Creek Irrigation District (ID), Chandler Heights Citrus ID, San Tan ID and Tonopah ID. In addition, as in Alternative #1, an estimated 112,578 AF of water would be made available for use by non-Indian agricultural and/or M&I entities under a process to be developed. No change in status would occur to the remaining estimated 199,855 AF in this category.

3. The amount of CAP water available for Federal purposes would be increased by an estimated 94,312 AF as a result of the reallocations described in C.1 and C.2 above. The 65,647 AF from the M&I category would be contracted as follows: 20,000 AF to GRIC; 28,200 AF to Tohono O'odham Nation; 3,947 AF to San Carlos; and 13,500 AF to the Navajo and Hopi tribes. The estimated 28,665 AF from the NIA category would be contracted as follows: 9,000 AF to GRIC; and an additional 19,665 AF to San Carlos. In addition, as in Alternative #1, an estimated amount of 1,518 AF already held for Federal purposes would be allocated and contracted to the Tonto Apache and Camp Verde Apache tribes.

D. Alternative #3

1. Changes to amounts of water in the M&I category would be as described in Alternative #2.

2. Water allocated for NIA use would be reduced by an estimated 297,444 AF. An estimated 43,654 AF associated with HIDD would remain in this category (see "d" above).

3. The amount of water available for Federal uses would be increased by an estimated 272,091 AF as a result of the reallocations described in D.1 and D.2 above. The 65,647 AF from the M&I category would be contracted as under Alternative #2 (20,000 AF to GRIC; 28,200 AF to Tohono O'odham Nation; 3,947 AF to San Carlos; and 13,500 AF to the Navajo and Hopi tribes). An estimated 206,444 AF reallocated from the NIA category would be distributed as follows: 82,000 AF would be contracted to GRIC, and 124,444 AF would be reserved by the Secretary for future Federal purposes. As in Alternatives #1 and #2, an estimated 1,518 AF would be allocated and contracted to the Tonto Apache and Camp Verde Apache tribes.

4. The remaining 91,000 AF of water reallocated from the NIA category described in D.2 above would be reserved by the Secretary for as yet to be determined non-Federal users.

Following is a table that summarizes the estimated total number of AF that would comprise each pool of CAP water, by alternative:

Cap water category	Current condition	Proposed action	Alternative #1	Alternative #2	Alternative #3
M&I category	620,678	603,678	603,678	538,031	538,031
NIA category	341,098	141,098	341,098	312,433	43,654
Held for "Federal purposes"	453,224	670,224	470,224	564,536	742,315
Held for "non-Federal purposes"					91,000
Total (in AF):	1,415,000	1,415,000 AF	1,415,000	1,415,000	1,415,000

In addition to the proposed action and the three action alternatives, Reclamation will also evaluate environmental consequences that are anticipated to occur in the absence of the proposed action (the no Federal action). By definition, the no Federal action alternative means that no water would be reallocated and no new contracts would be signed. Currently, uncontracted water from the previous CAP allocations, including 65,647 AF of M&I category water, and that portion of the NIA pool which has either been declined (about 112,578 AF) or considered to be relinquished (subject to Secretarial consent) from four non-Indian irrigation districts (about 28,665 AF), is delivered by the Central Arizona Water Conservation District to entities through two-party excess water agreements. The United States is challenging these agreements in ongoing litigation regarding operation of the CAP. For purposes of this analysis it is assumed that under the no Federal action scenario, this practice would continue pending resolution of the ongoing litigation.

Reclamation is circulating this notice in anticipation of considerable public interest and the need to ensure that all relevant issues are evaluated in the EIS. Reclamation will consult other Federal, State, and local agencies with specific expertise regarding environmental impacts related to the project.

Dated: August 20, 1999.

Robert Johnson,

Regional Director.

[FR Doc. 99–22195 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review: Monthly Report Naturalization Papers.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty-days" until October 25, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Monthly Report Naturalization Papers.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–4. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federal Government. This form is used by the clerk of courts that administer the oath of allegiance for naturalization to notify the Immigration and Naturalization Service of all persons to whom the oath was administered.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,920 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 960 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: August 19, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–22111 Filed 8–25–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Nonimmigrant Checkout Letter.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty-days" October 25, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Nonimmigrant Checkout Letter.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form G–146. Detention and Deportation Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or households. This form is used in making inquiries of persons in the United States or abroad concerning the whereabaouts of aliens, and also requests departure information by the Immigration and Naturalization Service, when initial investigation to locate the alien or verify his or her departure is unsuccessful.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20,000 responses at 10 minutes (.166 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,320 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr.. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: August 19, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–22112 Filed 8–25–99 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review: Inter-Agency Alien Witness and Informant Record.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork

Reduction Act of 1995. The information collection was previously published in the **Federal Register** on April 15, 1999 at 64 FR 18637. The notice allowed for a 60-day public comment period. No public comment was received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 27, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement without change of a previously approved collection.

(2) *Title of the Form/Collection:* Inter-Agency Witness and Informant Record.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–854. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or households. This form is used by law enforcement agencies (LEA) to bring alien witnesses and informants to the United States in "S" nonimmigrant classification. This form also provides the Department of States and the Immigration and Naturalization Service with information necessary to identify the requesting LEA, the alien witness and/or informant.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 125 responses at 4 hours and 15 minutes (4.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 531 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the items(s) contained in this notice, especially regarding the estimated public burden and associated time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: August 19, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–22113 Filed 8–25–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10671, et al.]

Proposed Exemptions; Pacific Coast Roofers Pension Plan

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW, Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Pacific Coast Roofers Pension Plan (the Plan); Located in San Jose, California

[Application No. D–10671]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of section 406(a)(1)(D) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(D) of the Code, shall not apply to the making of loans by certain banks (the Banks), under a loan program (the Program) providing for loans to Bank customers for residential and commercial re-roofing jobs that are performed by contributing employers to the Plan, pursuant to an arrangement in which the Plan will purchase certificates of deposit (the CDs) issued by the Banks, provided the following conditions are met:

(a) Alan D. Biller and Associates, Inc. (Biller), an independent investment manager with respect to the Plan's equities and fixed-income investments, determines on an on-going basis the appropriateness of the Plan's investment of up to 5% of the Plan's total assets in CDs, including CDs issued under the Program, with respect to the Plan's overall investment objectives and policy guidelines;

(b) Turner Dale Associates, Inc. (TDA), an independent investment manager with respect to the Plan's assets involved in the Program, which is also independent of the Banks, acts on the Plan's behalf pursuant to a written Investment Management Agreement to determine on an on-going basis whether the Plan should make each particular investment in the CDs under the Program, and should continue or terminate participation in the Program;

(c) TDA determines at least annually that the Banks participating in the Program are solvent institutions, based on analysis of all relevant information involving the Banks' financial status;

(d) The requirements of section 408(b)(4) of the Act are satisfied if any Bank participating in the Program is a fiduciary or other party in interest with respect to the Plan (see 29 CFR 2550.408b–4);

(e) The Plan's CDs will have a maturity date of at least one year from the date of issuance and will pay the maximum rates of interest provided by the Banks for CDs of the same size and maturity being purchased at the time of the transaction by customers of the Bank not participating in the Program;

(f) The Banks offer CDs provided under the Program to other, unrelated customers in the ordinary course of business;

(g) Interest rates on CDs under the Program, and the total net rates of return to the Plan, taking into consideration all expenses associated with the transaction, are at least comparable to or better than those rates which the Plan could obtain on similar fixed-income investments of similar risk and term at the time of each CD purchase;

(h) No person who is a party in interest with respect to the Plan, including contributing employers, trustees and other plan fiduciaries, receives a loan under the Program;

(i) The total outstanding amount of CDs purchased by the Plan from the Banks will not exceed 5% of the Plan's total assets at the time of any transaction;

(j) No Plan trustee currently engages in any personal or business transactions with a Bank which will be involved in the Program, and if a trustee engages in such transactions in the future, the trustee shall recuse himself or herself with respect to any decision regarding the Program on behalf of the Plan;

(k) The Plan's investment in CDs is not part of an agreement, arrangement or understanding designed to benefit any investment manager, other Plan fiduciary, or contributing employer, other than to the extent that residential or commercial re-roofing jobs will be performed by contributing employers to the Plan; and

(l) If a customer defaults on a loan, the Bank has no claim against, or recourse to, the CDs or other assets of the Plan.

Summary of Facts and Representations

1. The Plan, which covers workers in the roofing industry, is a multiemployer defined benefit plan established in accordance with section 302(c)(5) of the Labor Management Relations Act of 1947, as amended. The Plan currently has approximately 5400 participants and approximately $300 million in net assets. The Plan is administered by a board of trustees (the Trustees) with an equal number of Trustees representing labor and management, who are the named fiduciaries of the Plan. The Trustees are authorized to appoint one or more investment managers to handle investment decisions for portions of the assets of the Plan. These Plan assets include fixed-income investments made pursuant to the Plan's investment guidelines established by the Trustees. The Trustees have appointed Biller to act as investment manager with respect to the decision to include the Program among the Plan investments.

Biller is an independent investment manager with respect to the Plan. Biller has no interest in, or affiliation with, the Bank. Biller will also not have any interest in, affiliation with, or any business dealings with any bank selected in the future to participate in the Program. Biller has determined that up to 5% of the Plan's assets may be invested in certificates of deposit (CDs) in accordance with the Plan's investment guidelines.

2. With respect to the Program, the Trustees have selected TDA as investment manager, within the meaning of Act section 3(38), with full authority and responsibility regarding the investment by the Plan in each particular CD under the Program. TDA, as investment manager, is an independent fiduciary with respect to the Plan, and is an investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940. TDA has experience handling investments for collectively bargained, jointly-trusteed employee benefit plans subject to the Act. TDA, which is located in Burlingame, California, currently has approximately $130 million in employee benefit plan assets under management.

3. The Plan proposes to invest up to 5% of its assets in CDs to be issued by various banks selected by TDA. The bank currently selected by TDA to issue CDs under the Program is United Labor Bank (hereinafter referred to as "the Bank"), although the Plan may invest in CDs issued by other Banks meeting the Program's standards and requirements. The Bank had assets in excess of $67 million as of September, 1997. The Bank was incorporated in 1990 and operates branches in Oakland and Los Angeles, California. The Bank is a member of the Federal Home Loan Bank System, and is federally regulated. The Bank is subject to certain regulatory requirements

administered by the board of Governors of the Federal Reserve System, the Office of Thrift Supervision and the Federal Financial Institution Examination Council.

TDA is independent of the Bank, and will be independent of any Banks selected in the future to provide CDs under the Program. There will be no transactions between TDA and the Bank (or future Banks) that will interfere with the independence of TDA to serve as the Plan's investment manager for CD investment purposes. TDA will review, at least annually, the financial condition and creditworthiness of the Bank to ensure that it continues to be a solvent financial institution. Moreover, TDA would base its selection of any other Banks to participate in the Program on the Banks' capitalization, creditworthiness, and ability to provide the Plan maximum rates of returns on CDs.

The Bank is not currently a fiduciary for the Plan's assets and will not be a fiduciary for any assets of the Plan involved in the proposed CD investment.[1] In addition, with the exception of one Trustee who previously served on the Bank's board of directors, no member of the Plan's Board of Trustees has any ownership interest in the Bank, or maintains an account with the Bank. That Trustee owns 100 out of approximately 200,000 shares of stock in the Bank. The applicants represent that the Trustee will not participate in any decisions with respect to the Program. If, in the future, any member of the Board of Trustees acquires an interest in the Bank, that member will be precluded from participating in any decisions with respect to the Program on behalf of either the Plan or the Bank.

Further, no Trustee currently engages in any personal or business transactions with the Bank. Should a Trustee wish to engage in personal or business relations with the Bank or other Banks that may become involved in the Program in the future, that Trustee must make his intention known to the Board and must remove himself from any considerations or decisions regarding the Plan's participation in the Program while such Banks are involved in the Program. As a result, the Trustees will not derive any financial benefit, such as banking services at a reduced cost, or business or personal loans under more favorable terms than those provided to other customers, as a result of the Plan's participation in the Program.[2]

4. The terms and conditions of the proposed agreement with the Bank are embodied in a written agreement (the Deposit Agreement). The Plan's initial $1 million deposit will be invested in a master certificate of deposit (Master CD) at the Bank's regular 30-day rate for large CDs, subject to adjustment higher or lower each month. The Master CD is essentially the total pool of available assets for investment in the CDs at any given time.

5. Under the Program, after the Plan's initial investment in the CDs, and as subsequent investments in CDs are made, the Bank will make loans (the Loans) from its own funds to customers who meet the Bank's normal lending standard for similar loans, to finance re-roofing jobs (whether residential or commercial), provided the work is done by employers who are required under collective bargaining agreements to contribute to the Plan on behalf of the employees who would be doing the re-roofing work. As the Program proceeds, and new Loans are made, the Plan will have the opportunity each month to make additional CD investments. The Loans will be for at least $1,500 and will have terms ranging from 2 to 5 years. The applicant represents that if the Bank makes Loans in a greater dollar amount than the dollar amount of CDs purchased by the Plan, the Plan will be under no obligation to make an additional CD purchase. Further, the applicant represents that there is no intention, express or implicit, to link the dollar amount of Loans made to Bank customers with the Plan's CD investments under the Program.

The Loans under the Program will not be made directly to Plan participants or parties in interest with respect to the Plan.[3] More specifically, no Loans would be made to contributing employers under the Program. Further, the Trustees and other Plan fiduciaries involved in any decision regarding the Plan's participation in the Program will be prohibited from receiving Loans under the Program.

6. Each month TDA will consider whether, and to what amount, to invest in a specific CD under the Program. TDA will use its discretion to determine whether it is prudent to invest the principal amount of the Loans then outstanding, or some larger amount, in CDs. The amount determined by TDA to be prudent would then be transferred from the Master CD to a CD. The CD in which the Plan invests will have terms identical to those of CDs of the same size and maturity offered and sold by the Bank to unrelated customers not participating in the Program. The applicants represent that the CDs will have a maturity term of at least one year from the date of issuance. Further, the interest rates on the CDs will pay the maximum rates of interest for CDs of the same size and maturity offered by the Bank or Banks at the time of the CD investment.

All decisions concerning the Plan's CD investments will be made by TDA. TDA will determine whether the Plan should make CD purchases based upon a variety of factors, including: (1) The financial condition and creditworthiness of the Bank, or Banks, issuing the CDs; (2) the presence and extent of Federal Deposit Insurance Corporation (FDIC) protection for the Plan's CD investments; (3) the yield and liquidity of the CD in comparison to other CDs of similar risk and term; and (4) the expenses that the Plan will incur in connection with the purchase. In this manner, TDA will ensure that the total net rate of return to the Plan from the CD investments will be at least comparable to, or better than, the rate of return available on other fixed-income investments of similar risk and term at the time of the CD purchase. TDA will also be responsible for decisions to suspend purchases of CDs by the Plan based on these criteria. The Trustees will monitor TDA's investments to ensure that the CD purchases are consistent with the Plan's asset allocation guidelines. TDA has reviewed the Bank's financial condition and has determined that it is prudent for the Plan to invest in CDs of the Bank.

7. To ensure that the interest rate on Loans under the Program is at a fair market rate, the Bank will set the interest rate for the borrower at 4% more than the interest rate for the CD as set by TDA. As noted, CDs will pay the maximum rate of interest for CDs issued by the Bank. The 4% difference represents the Bank's compensation for its origination, servicing, marketing and assumption of the risk of loss with respect to the Loans. By setting the Loan rates in this manner, the Bank will ensure that interest rates and fees are reasonable, so that potential borrowers are not discouraged from seeking Loans. The Loan interest rate will in no way impact the return to the Plan on the CDs.

8. Counsel for the Bank has prepared an opinion that all CDs issued by the Bank are eligible for FDIC pass-through deposit insurance up to the maximum limit under current regulations of the FDIC (see 12 CFR Part 330). Pursuant to FDIC regulation section 330.14(a), deposits of an employee benefit plan, such as the Plan, are insured on a pass-through basis in an amount of up to $100,000 per plan participant where certain recordkeeping requirements are met.[4] Should any funds on deposit with the Bank or other Banks participating in the Program cease to be eligible for such insurance, the Plan will be entitled to withdraw such funds from such Bank(s) immediately.

9. If TDA reasonably believes that interest rates on CDs will decline during an upcoming period, TDA may establish a minimum rate at which the Plan will invest in a CD for that upcoming period that is not to exceed 25 basis points below the effective annual yield at the end of the preceding period on U.S. Treasury Notes with the same term. TDA will not invest in a CD that does not meet this threshold. TDA represents that this measure of flexibility will allow it to exercise its expertise as an investment manager to obtain for the Plan the maximum CD rate set by the Bank or Banks for a given period based on the anticipated change.

10. Biller has the ongoing responsibility to determine whether up to 5% of the Plan's assets can prudently be invested in CDs in connection with the Program, and will make this determination based on, among other factors, the asset allocations for the Plan and the Plan's investment guidelines. TDA has the responsibility to monitor whether the Bank is financially secure, whether the CDs are at maximum rates, and whether it is in the best interest of the Plan to continue or suspend its participation in the Program with the Bank. Under the terms of the Deposit Agreement, the Plan has the right: (a) To inform the Bank prior to the beginning of a month of the minimum acceptable CD interest rate it will accept with respect to Loans made that month; (b) to suspend the transfer of assets from the Master CD to a CD in any month by giving notice to the Bank prior to the beginning of the month; and (c) to terminate its participation in the Program on 15 days' written notice to the Bank (upon termination, the Master CD would be paid to the Plan at the end of the month, and any outstanding CD would continue for a period of one year, at which time it would be paid to the Plan). Biller represents that based on its review of the Plan's projections of contributions, benefits and actuarial liabilities, it has determined that it is prudent for the Plan to invest up to 5% of its assets in federally-insured CDs issued at competitive market rates.

11. When, in the judgment of TDA, the expected rate of return on a CD issued by a Bank through the Program will not equal or exceed the rates available to the Plan from comparable, insured fixed-income investments, TDA will suspend or terminate the Plan's participation in the Program with respect to that Bank. TDA will make this determination by ensuring, based on relevant available information and its own expertise, that the interest rates on the CDs made available by the Bank remain comparable to other fixed-income investments of similar risk and duration and do not fall below the rates available for CDs offered by other banks.

12. The Plan's assets have been invested in a broadly diversified portfolio of fixed-income securities, common stocks and real estate investments. Biller has evaluated the Plan's portfolio of fixed-income investments and determined that the investment of up to 5% of net assets in insured CDs having rates of return which would be equal to, or greater than, those available in comparable, insured fixed-income investments would be an appropriate investment for the Plan. TDA has also determined that the purchase of Master CDs and CDs through participation in the Program, under conditions which it can monitor, would be a prudent investment strategy for the Plan. These determinations are supported by TDA's assessment of the economic merits of the investments apart from any benefits that may accrue to the Plan's participants as a result of increased employment opportunities and employer contributions to the Plan that may be generated by the Program.[5]

13. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) of the Act because: (a) Biller, an independent equities and fixed-income investment manager for the Plan, has reviewed the proposed investment Program and has determined that an investment of up to 5% of the Plan's assets in CDs, including CDs issued under the Program, is appropriate and consistent with the Plan's investment guidelines; (b) TDA, the independent investment manager with respect to the assets of the Plan

[1] Section 408(b)(4) of the Act states, in pertinent part, that the prohibitions of section 406(a) of the Act shall not apply to the investment of a plan's assets in deposits which bear a reasonable interest rate in a bank supervised by the United States or a State, if such bank is a fiduciary of such plan and if such investment is expressly authorized by a provision of the plan or by a fiduciary (other than such bank or an affiliate thereof) who is expressly empowered by the plan to so instruct the trustee with respect to such investment. Thus, the Plan's proposed purchase of the CDs from a Bank that is a fiduciary or other party in interest with respect to the Plan would be exempt from the restrictions of section 406 by section 408(b)(4) of the Act if the conditions of the exemption, and the regulations thereunder (see 29 CFR 2550.408b–4), were met. However, the exemptive relief proposed herein would permit the Banks to make certain loans to customers for re-roofing jobs performed by contributing employers of the Plan pursuant to an arrangement involving the Plan's purchase of CDs from the Banks. The Department notes that such an arrangement is a separate transaction which would not be exempted by section 408(b)(4) of the Act. The Department also notes that the proposed exemption is limited only to relief from the prohibitions of section 406(a)(1)(D) of the Act which may result from the making of such loans pursuant to the described arrangement.

[2] Section 406(b) of the Act states, in pertinent part, that a fiduciary with respect to a plan shall not deal with the assets of a plan in his own interest or for his own account and shall not receive any consideration for his personal account from any party dealing with such plan in connection with a transaction involving the assets of the plan.

[3] Thus, the Department is providing no relief in this proposed exemption for any prohibited transactions that may occur as a result of a Bank making a Loan to a party in interest with respect to the Plan under an arrangement designed to benefit that party in interest.

[4] The applicant represents that in order for FDIC insurance to be provided on a pass-through basis, FDIC regulation section 330.5 requires that a pension plan deposit be identified as such, and that records evidencing the ownership interests of each beneficiary under the plan be maintained by either the bank or the plan. The applicant represents that these requirements will be met with respect to the Program, and, accordingly, the CDs under the Program will be eligible for FDIC pass-through insurance.

[5] In this regard, the Department notes that the Act's standards of fiduciary conduct will apply to the decision to include the Program among the Plan's investments, and to invest in particular CDs under the Program. Section 404(a)(1) of the Act requires, among other things, that a fiduciary of a plan must act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries. Accordingly, the fiduciaries of the Plan must act "prudently" with respect to the decision to include the Program, as well as to the actual decision to commit Plan assets to the Program (including, where relevant, the determination of how much, if any, to invest in CDs under the Program, which banks to purchase the CDs from, and the maturity dates of the CDs). In order to act prudently in making investment decisions, a plan fiduciary must consider, among other factors, the availability, risks and potential return of alternative investments for the plan. Investing assets in CDs would not be prudent if such CDs would provide the plan with less return, in comparison to risk, than comparable investments available to the plan or if such CDs would involve a greater risk to the security of plan assets than other investments offering a similar return. The Department has construed the requirements that a fiduciary act solely in the interest of, and for the exclusive purpose of providing benefits to, participants and beneficiaries as prohibiting a fiduciary from subordinating the interests of participants and beneficiaries in their retirement income to unrelated objectives. Thus, in deciding whether and to what extent to invest in CDs, a plan fiduciary must consider only factors relating to the interests of the plan participants and beneficiaries in their retirement income. A decision to make an investment in CDs of a particular bank may not be influenced by non-economic factors, such as a desire to encourage the bank to make loans to finance re-roofing jobs where the work is being performed by contributing employers, unless the CD investment, when judged solely on the basis of its economic value, would be equal to or superior to alternative investments available to the Plan. Finally, we note that the granting of the exemption proposed herein should not be viewed as an endorsement by the Department of the Plan's participation in the Program or any CD purchases thereunder.

involved in the Program, has reviewed the Program and determined that it is in the Plan's interest based solely on the economic and financial merits of the Plan's involvement in the Program; (c) TDA will act on the Plan's behalf regarding the Plan's investment in Master CDs and CDs and will monitor all transactions relating to such investments; (d) the requirements of Act section 408(b)(4) will be satisfied if any bank participating in the Program is a fiduciary or party in interest with respect to the Plan; (e) the Plan's CDs will have a maturity of at least one year from the date of issuance and will pay the maximum rates of interest provided by the Bank for CDs of the same size and maturity; (f) the Bank will offer CDs provided under the Program to other, unrelated customers in the ordinary course of its business; (g) interest rates on CDs under the Program, and the total net rates of return to the Plan, taking into consideration all expenses associated with the transaction, will be at least comparable to or better than those rates which the Plan could obtain on similar fixed-income investments of similar risk and term at the time of each CD purchase; (h) TDA will determine at least annually that the Bank, or any other Bank participating in the Program in the future, is a solvent institution, based on an analysis of all relevant information involving the Bank's (or other Banks') financial status; (i) no person who is a party in interest with respect to the Plan, including contributing employers, Trustees and other plan fiduciaries, will receive a loan under the Program; (j) the total outstanding amount of CDs purchased by the Plan from the Banks will not exceed 5% of the fair market value of the Plan's total assets at the time of any transaction; (k) no Plan Trustee currently engages in any personal or business transactions with the Bank, and if a Trustee engages in such transactions in the future, the Trustee will recuse himself with respect to any decision regarding the Program on behalf of the Plan; (l) the Plan's investment in CDs is not part of an arrangement designed to benefit any investment manager, other Plan fiduciary, or contributing employer, other than to the extent that residential or commercial re-roofing jobs will be performed by contributing employers to the Plan; and (m) if a customer defaults on a Loan, the Bank has no claim against, or recourse to, the CDs or other assets of the Plan.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Electric Pension Trust (the Trust); Located in Fairfield, Connecticut

[Application Nos. D–10679 through D–10682]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, as of October 1, 1998, to the lease (the Lease) by the Trust of office space in a certain commercial office building (the Property) to Transport International Pool, Inc. (TIP), a party in interest with respect to employee benefit plans of General Electric Company (GE) and/or an affiliate whose assets are held in the Trust, provided that the following conditions are satisfied:

(1) The Trust was and is represented for all purposes under the Lease by a qualified, independent fiduciary;

(2) The terms and conditions of the Lease are at least as favorable to the Trust as those the Trust could have obtained in a comparable arm's length transaction with an unrelated party;

(3) The rent paid to the Trust under the Lease is no less than the fair market rental value of the office space occupied by TIP, as established by a qualified, independent appraiser;

(4) The independent fiduciary for the Trust reviewed the terms and conditions of the Lease on behalf of the Trust and determined that the Lease was in the best interests of the Trust;

(5) The independent fiduciary monitors and enforces compliance with all of the terms and conditions of the Lease, and of the exemption (if granted), throughout the duration of the Lease; and

(6) The independent fiduciary expressly approves any renewal of the Lease, and the rental rate under such renewal is based upon an updated independent appraisal of the office space being leased to TIP (but in no event shall the rental rate be less than that for the preceding period).

EFFECTIVE DATE: The proposed exemption, if granted, will be effective as of October 1, 1998.

Summary of Facts and Representations

1. The Trust holds assets of the GE Pension Plan, which constitutes approximately 99% of Trust assets, and also of the Knolls Atomic Laboratories Pension Plan, ERC Retirement Plan, and Components Pension Plan for Puerto Rico (collectively, the Plans). The Plans are all defined benefit plans that cover employees of GE and various GE subsidiaries. As of October 5, 1998, the Plans had, in the aggregate, over 400,000 participants and beneficiaries. As of December 31, 1997, the Trust had total assets of approximately $38.9 billion.

The trustees of the Trust are five individuals (the Trustees), who are officers of GE and/or its subsidiaries. The Trustees are appointed by the Benefit Plans Investment Committee of GE, an oversight committee that determines the investment policies of the Trust. The Trustees maintain overall responsibility for investment of the Trust assets. The specific responsibility for investment of the Trust assets that are relevant to the application rests with the General Electric Investment Corporation (GEIC), subject to the approval of one or more of the Trustees.

GEIC, a Delaware corporation and a wholly owned subsidiary of GE, is a registered investment adviser under the Investment Advisers Act of 1940. GEIC provides investment management and advisory services to a variety of GE-affiliated entities. As of January 1, 1998, GEIC had approximately $53.25 billion of assets under management.

2. TIP, a Pennsylvania corporation, is a wholly owned subsidiary of Transport Pool Corporation, which is a wholly owned subsidiary of General Electric Capital Corporation. General Electrical Capital Corporation is a wholly owned subsidiary of General Electric Financial Services, Inc., which, in turn, is a wholly owned subsidiary of GE. TIP is primarily engaged in the business of semi-trailer sales and leasing. TIP sponsors its own pension plan, and its employees do not participate in the GE Pension Plan. Accordingly, TIP is not an employer (within the meaning of section 3(5) of the Act) with respect to the Plans whose assets are held in the Trust, but is a party in interest with respect to the Plans under section 3(14)(G) of the Act by virtue of its relationship to GE and other GE affiliates.

3. The transaction for which an exemption is requested involves the leasing, by the Trust to TIP, of office space in an 18-story office tower located at 18101 Von Karman Avenue, Irvine, California (i.e., the Property). The value of the Property, as of October 5, 1998, was approximately $75 million.

The Property is within the Lakeshore Towers Project. Lakeshore Towers Limited Partnership Phase I (the Partnership) is a California limited partnership through which the Trust owns the Lakeshore Towers Project.[6] The Lakeshore Towers Project consists of the Property, a 1,700 space parking garage, a restaurant, and a sporting club on approximately 15 acres of land. The Lakeshore Towers Project is located on land that is ground leased from unrelated parties. The land consists of seven separately parceled leasehold estates. It is located in the John Wayne Airport Area of Orange County, California.

Dorn–Platz & Company (the Property Manager), a realty company which is independent of GE and its affiliates, serves as a manager of the Property and is located in Glendale, California. In this capacity, the Property Manager oversees any new construction or developments, supervises and negotiates the leasing of space, and manages any financing and re-financing arrangements involving the Property.

4. TIP formerly had its local office in the Los Angeles business district. In late 1997, it began looking to relocate its office to Orange County, largely for the increased convenience of its employees and the need for a larger space. In the course of its search for space, it independently located the Property, unaware of the Partnership's affiliation with the Trust. TIP decided that it was interested in leasing space in the Property and entered into negotiations with the Property Manager. Only during negotiations with the Property Manager did TIP discover the relationship of the parties and the need to obtain an exemption from the prohibited transaction rules of the Act. Once this discovery was made, negotiations ceased, and the Trustees sought independent legal counsel regarding the possibility of obtaining an administrative exemption.

5. In accordance with the advice of counsel, the Trustees at that point retained John S. Adams, M.A.I., of John S. Adams & Associates, Inc., as an independent fiduciary to represent the Trust with respect to the Lease. Mr. Adams is a real estate appraiser who is licensed in the State of California. Mr. Adams represents that he and his firm are independent of the Trust, GE, and GE's affiliates (including TIP) and derive less than 1% of annual gross income therefrom. Mr. Adams states that he is knowledgeable as to the subject transaction, for he has 26 years experience in the valuation and analysis of all types of real estate, including urban office buildings similar to the Property. Mr. Adams also acknowledges his duties, responsibilities, and liabilities in acting as a fiduciary under the Act to the Trust for purposes of the Lease.[7]

Mr. Adams prepared a report, dated September 9, 1998, which provides an appraisal of the Property, as well as an evaluation of the Lease. In the report, Mr. Adams states that he inspected and analyzed the Property, which has a net rentable area of 378,781 sq. ft. On the basis of a review of a number of comparable leases in the same general market area, Mr. Adams concluded that the space in the Property covered by the Lease had a fair market rental value, as of August 31, 1998, in the range of $2.21 to $2.48 per sq. ft. Mr. Adams' analysis of the Lease terms is described in Paragraph 7, below.

6. The Lease, which commenced on October 1, 1998, has a term of five years. The urgency to execute the Lease was due to TIP's immediate need for additional space to house its divisional sales and operations office. As of that date, the Trust had substantially completed the agreed upon tenant improvements: construction of a wall to separate the TIP office space from other rentable areas on the 10th floor of the Property, painting interior walls, etc. The cost to the Trust came to $1.95 per sq. ft.

Under the Lease, TIP has leased approximately 2,532 rentable sq. ft. of space on the 10th floor of the Property, which constitutes approximately 0.67 percent of the rentable square footage in the Property. The space may be used for general office use only. In addition, TIP leases eight parking spaces allocated to TIP on an in-common, non-exclusive and unreserved basis in the parking facility for the Property at the monthly charge of $60.00 per stall.

The Lease provides for a rental rate of $2.40 per sq. ft. of rentable area, or $6,076.80 per month. TIP is to pay its proportionate share of the Trust's real estate taxes and other expenses relating to the Property for years after 1998, to the extent that these taxes and expenses exceed those for the 1998 year (the "base" year). In addition, TIP is responsible for any additional taxes levied or assessed that are attributable to TIP's improvements to personal property within the leased space, its activities with the leased space, or any transactions involving the leased space.

Late payments are subject to (1) an interest charge on amounts unpaid from the time due until paid to compensate the Trust for the loss of the use of amounts owed and (2) an additional 10% late payment charge to compensate for administrative expenses incurred by the Trust in handling delinquent payments.

TIP does not have any options or rights to expand or extend the Lease, nor has it received any period of free rent. Any assignments or subleases by TIP are void unless the Trust has provided prior written consent, and, if consented to, may be subject to additional charges. In such instances, TIP is not released from any of its Lease obligations. Any alterations to be made by TIP to the leased space during the term of the Lease are also subject to the Trust's written consent.

7. Prior to the execution of the Lease, Mr. Adams, the independent fiduciary, reviewed and approved the terms and conditions of the Lease on behalf of the Trust. In his report, dated September 9, 1998, Mr. Adams stated that such terms and conditions were at least as favorable to the Trust as those the Trust could obtain in a comparable arm's length transaction with an unrelated party. Mr. Adams noted that the effective rental rate was $2.40 per sq. ft., which was at the upper end of the appraised range of $2.21 to $2.48 per sq. ft. for the Property. Mr. Adams took into account the fact that the Lease does not provide for periodic rental adjustments. He explained that if the Lease had been negotiated to include an escalation clause, the Trust would have been required to accept a lower rental rate than $2.40 per sq. ft. for the initial years of the Lease. Mr. Adams stated that he considered the flat rental rate favorable to the Trust, as landlord, because it allows the Trust to obtain a higher starting rent upfront. In all other respects, Mr. Adams noted that the Lease provides TIP, as tenant, with no unusual market advantages.

Mr. Adams also determined that the Lease was in the best interests of the Trust. In this regard, Mr. Adams stated that the execution of the Lease would reduce building vacancy and enhance cash flow for the Trust with respect to the Property.

Finally, Mr. Adams has agreed to monitor and enforce compliance with the terms and conditions of the Lease, and of the exemption (if granted), throughout the duration of the Lease, and will take whatever actions necessary to safeguard the interests of the Trust with respect to the Lease. Mr.

[6] For convenience, this notice will refer to the Trust as the "landlord" under the Lease rather than to the Partnership through which the Trust owns Lakeshore Towers Project, in which the Property is contained.

[7] In this regard, Mr. Adams will confer with legal counsel having expertise with respect to the requirements of the Act, as needed.

Adams will also expressly approve any renewal of the Lease.[8] The rental rate under such renewal will be based upon an updated independent appraisal of the office space being leased to TIP (but in no event shall the rental rate be less than that for the preceding period).

8. In summary, the applicant represents that the subject transaction satisfies the statutory criteria for an exemption under section 408(a) of the Act for the following reasons: (a) The Trust was and is represented for all purposes under the Lease by a qualified, independent fiduciary (i.e., Mr. Adams); (b) the terms and conditions of the Lease are at least as favorable to the Trust as those the Trust could have obtained in a comparable arm's length transaction with an unrelated party; (c) the rent paid to the Trust under the Lease is no less than the fair market rental value of the office space occupied by TIP, as established by a qualified, independent appraiser; (d) Mr. Adams, the independent fiduciary for the Trust, reviewed the terms and conditions of the Lease on behalf of the Trust and determined that the Lease was in the best interests of the Trust; (e) Mr. Adams will monitor and enforce compliance with all of the terms and conditions of the Lease, and of the exemption (if granted), throughout the duration of the Lease; and (f) Mr. Adams will expressly approve any renewal of the Lease, and the rental rate upon such renewal will be based upon an updated independent appraisal of the office space being leased to TIP (but in no event shall the rental rate be less than that for the preceding period).

Notice to Interested Persons

Notice of the proposed exemption will be given to all active employees of GE and its affiliates who are participants and beneficiaries in the plans whose assets are held in the Trust by posting a notice (along with a copy of the proposed exemption as published in the **Federal Register**) at GE locations, in areas that are customarily used for notices to employees with regard to employee benefits or labor relations matters. Notice of the proposed exemption will be given to former employees and retirees, and all others eligible to receive the Summary Annual Reports for the affected plans, by publication of a notice in the 1998 Summary Annual Reports, which are to be mailed no later than December 15, 1999. In both instances, the notice shall inform interested persons of their right to comment and/or request a hearing with respect to the proposed exemption. Comments and requests for a hearing from all interested persons are due within 30 days following distribution of the 1998 Summary Annual Reports.

FOR FURTHER INFORMATION CONTACT: Ms. Karin Weng of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Jonas Builders, Inc. Restated Profit Sharing Plan (the Plan); Located in Milwaukee, Wisconsin

[Application No. D–10764]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of a certain building, which contains a warehouse and a single-family residence (collectively; the Building), by the Plan to Mr. Gerald Jonas, a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) All terms and conditions of the sale are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(b) The fair market value of the Building has been determined by an independent qualified appraiser;

(c) The sale of the Building is a one-time transaction for cash;

(d) The Plan does not pay any commissions, costs or other expenses in connection with the sale of the Building; and

(e) The Plan receives an amount equal to the greater of either: (i) The original acquisition cost of the Building plus any improvement costs and real estate taxes that were incurred by the Plan from the date the Building was acquired by the Plan until the date of the proposed sale (i.e., the total cost of $1,929,422.73, as of December 31, 1998); or (ii) the current fair market value of the Building, as established by an independent qualified appraiser at the time of the sale.

Summary of Facts and Representations

1. The Plan is a profit sharing plan which was established on December 28, 1970. As of April 27, 1998, the Plan had two participants, Mr. Gerald Jonas (Gerald Jonas) and his son Mr. Mark Jonas. Gerald Jonas is also the Plan's trustee. As of December 31, 1998, the Plan had total assets of $8,649,839.

Jonas Builders, Inc. (the Employer) is the sponsor of the Plan. Gerald Jonas is the sole owner and shareholder of the Employer. The Employer is in the business of commercial and industrial real estate. The Employer was incorporated on November 25, 1981 in the State of Wisconsin and is located in Milwaukee, Wisconsin.

2. On April 22, 1991, the Plan purchased the Building from Scott Paper Company, an independent third party, for a purchase price of $1,530,108. The original acquisition of the Building was financed through Catholic Family Insurance,[9] which lent the Plan $1,000,000 of the purchase price. The Plan paid the remaining $530,108 in cash. As of May 28, 1999, the outstanding principal balance of the loan was $276,984.98.[10] The Plan paid the remaining $530,108 in cash. At the time it was originally acquired, the value of the Building represented approximately 36.65% of the Plan's total assets.[11] The applicant represents that the Plan has incurred $7,422 in improvement costs to install a loading dock. Furthermore, the Plan has paid $391,892.73 in real estate taxes from 1991 (i.e., year of original acquisition) until December 31, 1998. Therefore, the total cost to the Plan for the Building was $1,530.108 + $7,422+ $391,892.73 = $1,929,422.73, as of December 31, 1998.

It is represented that Gerald Jonas, as the Plan's trustee, made the original decision to purchase the Building as an investment for the Plan.

3. The Building consists of a warehouse of approximately 217,000 square feet (the Warehouse) and a single family home (the Home). The Warehouse part of the Building is located at 4425 N. Washington Road, and the Home is located at 4513 N. Port Washington Road, in Glendale, Wisconsin. The Building is located in an area of other warehouse, office and manufacturing buildings which is approximately 4 miles north of downtown Milwaukee, Wisconsin. The applicant represents that the Building is not adjacent to any property owned by the Employer, Gerald Jonas, or any other parties in interest with respect to the Plan.

For the last several years, only a fraction of the Building has been leased. The Plan has attempted to find additional tenants for the Building. Recent tenants have been willing to enter into only short term leases. The applicant states that leasing the entire Building on a long-term basis would be very beneficial to the Plan.[12] However, the Plan has been unable to find a tenant or tenants willing to lease the entire Building in its current condition (as noted in paragraph 4 below) or to enter into any longer term leases.

The applicant represents that the Plan has attempted to sell the Building to unrelated parties and that the Building has been listed on the market for several years. However, the Plan has not received any acceptable offers for the Building. Polacheck Realty was the listing company.

4. The Building was appraised (the Appraisal) on January 18, 1999, by Paul A. Vandeveld (Mr. Vandeveld), MAI, an independent and qualified appraiser with Vandeveld and Associates Real Estate Appraisals located in Brookfield, Wisconsin. Mr. Vandeveld states that in appraising the Building, he valued both the Warehouse and the Home.

The Appraisal states that the Building consists of a four building complex that is partially occupied by two separate commercial tenants (Wilson Services and Jefferson Smurfit), which are using the Warehouse. Mr. Vandeveld notes that only 91,380 square feet of the Building is leased (which is only approximately 41% of the total square feet in the Building).

Mr. Vandeveld states that the Home is a modest frame structure which the assessment records indicate was built in 1890. The Home has a full basement, two upper level bedrooms, living room, dining room, kitchen and full bath. However, the exterior appearance of the Home is poor. Mr. Vandeveld concludes that because of the age of the Home, its small size and its poor appearance and condition, the value of the Home is minimal compared to the Warehouse.

In preparing the Appraisal, Mr. Vandeveld used the Cost Approach, the Direct Sales Comparison Approach, and the Income Approach. However, because the Warehouse is mostly vacant, more reliance was placed on the direct sales comparison approach to value the Building. Mr. Vandeveld determined that the fair market value of the Warehouse and the Home was $2,250,000 and $40,000, respectively, for a total value of $2,290,000, as of January 18, 1999 .

5. The applicant represents that the proposed transaction is in the best interest and protective of the Plan because the sale of the Building will be for an amount equal to the greater of: (i) The original acquisition cost of the Building, plus any improvement costs and real estate taxes that were incurred by the Plan from the date of acquisition until date of the proposed sale (i.e., a total cost of $1,929,422.73, as of December 31, 1998); or (ii) the current fair market value of the Building, as established by an independent qualified appraiser at the time of the sale. The Plan will not pay any commissions, costs or other expenses in connection with the sale of the Building.

The transaction will be a one-time cash sale, and will enable the Plan to diversify its investment portfolio. In this regard, the Plan has tried unsuccessfully over the last few years to sell the Building to an unrelated party. The applicant maintains that the Plan will sustain economic hardship if the Plan is forced to keep the Building and undertake costly renovations to the Building in order to make it attractive to either prospective tenants or a third party buyer.

6. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) All terms and conditions of the sale are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(b) The fair market value for the Building has been determined by an independent qualified appraiser;

(c) The sale of the Building will be a one-time transaction for cash;

(d) The Plan will not pay any commissions, costs or other expenses in connection with the sale of the Building; and

(e) The Plan will receive an amount equal to the greater of:

(i) The original acquisition cost of the Building, plus any improvement costs and real estate taxes that were incurred by the Plan since the date of the acquisition of the Building until the date of the proposed sale; or (ii) the current fair market value of the Building, as established by an independent qualified appraiser at the time of the sale.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any

[8] It is represented that in the event it becomes necessary to appoint a successor independent fiduciary (the Successor) to replace Mr. Adams, the applicant will notify the Department 60 days in advance of such appointment. Any Successor shall be independent and possess comparable experience and responsibilities as Mr. Adams.

[9] The applicant represents that Gerald Jonas has a personal mortgage for another piece of property with Catholic Family Insurance, but that no other relationship exists between the parties.

[10] The applicant states that this loan will not be paid off as a result of the proposed transaction. Gerald Jonas will assume the Plan's obligation under the loan and the Plan will be released from further liability with respect to the loan.

[11] The Department is not providing any opinion in this proposed exemption as to whether the acquisition and holding of the Building by the Plan violated any of the provisions of Part 4 of Title I of the Act.

[12] In this regard, the applicant represents that during the years 1991 through (and including) July, 1999, the aggregate rental income earned by the Plan from the Building was $2,054,958.

such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 20th day of August, 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 99–22024 Filed 8–25–99; 8:45 am]

BILLING CODE 4510–29–P

NUCLEAR REGULATORY COMMISSION

[IA 99–037]

Stanislaw Piorek, Ph.D.; Confirmatory Order Prohibiting Involvement In NRC-Licensed Activities (Effective Immediately)

I

Stanislaw Piorek, Ph.D. is a former employee of New Technology Development for Metorex, Inc. (MI). While employed by MI, he functioned as Radiation Safety Officer and Vice President. MI holds Nuclear Regulatory Commission (NRC) License Nos. 29–30342–02G and 29–30342–01. License No. 29–30342–02G authorizes distribution of generally licensed devices. License No. 29–30342–01 authorizes sealed sources for use and possession incident to the distribution of specifically licensed devices; research and development as defined in 10 CFR 30.4; manufacturing and testing of analyzer devices; installation and removal from analyzer devices; repair and servicing of devices; calibration of instruments, receipt, storage, and transfer of devices from customers for disposal; demonstrations of devices; and instruction and training in the use of devices.

II

On August 20, 1998, NRC conducted a safety inspection of activities authorized by MI's licenses. The inspection reviewed the circumstances surrounding the unauthorized distribution of x-ray fluorescence analyzer devices (SIPS Probes) from October 1997 through July 1998. Based on the findings of the August 20, 1998 inspection, the NRC's Office of Investigations (OI) initiated an investigation on August 24, 1998. The OI investigation determined that Stanislaw Piorek, Ph.D. deliberately failed to stop shipments of x-ray fluorescence analyzer devices during the period January 1998 through July 1998, knowing that MI was not authorized by the NRC to distribute them. In addition, OI concluded that Dr. Piorek deliberately failed to submit quarterly reports to the NRC, regarding the transfer of radioactive material, for the fourth calendar quarter of 1997 and the first calendar quarter of 1998. As a result, the NRC has concluded that Dr. Piorek violated 10 CFR 30.10, "Deliberate Misconduct," in that Dr. Piorek caused the Licensee to be in violation of NRC requirements. Specifically: (1) in failing to stop distribution of x-ray fluorescence analyzer devices, Dr. Piorek caused the licensee to be in violation of 10 CFR 30.3; and (2) in failing to submit quarterly reports to the NRC, Dr. Piorek caused the licensee to be in violation of 10 CFR 32.52. Dr. Piorek has cooperated in the investigation of these matters and has admitted that these violations occurred.

III

In a telephone call on August 4, 1999, Dr. Piorek, through his attorney, agreed to issuance of a Confirmatory Order prohibiting him from engaging in NRC-licensed activities for a period of three (3) years from July 1, 1998, the date that Dr. Piorek ended his employment at MI and ceased involvement in NRC-licensed activities. On August 11, 1999, Dr. Piorek consented to the issuance of this Order with the commitments, as described in Section IV below. Dr. Piorek further agreed in the August 11, 1999 letter that this Order be effective upon issuance and that he waived his right to a hearing.

I find that Dr. Piorek's commitments as set forth in Section IV are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that the public health and safety require that Dr. Piorek's commitments be confirmed by this Order. Based on the above and Dr. Piorek's consent to this action, this Order is immediately effective upon issuance.

IV

Accordingly, pursuant to sections 53, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR Parts 30 and 32, and 10 CFR 30.10, *it is hereby ordered, effective immediately, that:*

A. For a period of three years from July 1, 1998, the date that Dr. Piorek ended his employment at MI and ceased involvement in NRC-licensed activities, Dr. Stanislaw Piorek is prohibited from engaging in, or exercising control over individuals engaged in, NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20. This prohibition covers the following activities: (1) using licensed materials or conducting licensed activities in any capacity within the jurisdiction of the NRC; and (2) supervising or directing any licensed activities conducted within the jurisdiction of the NRC.

Dr. Piorek may, however, provide advice to personnel on their use of devices containing licensed materials if such advice is described in a plan for such activities, which is reviewed and approved by the RSO or authorized designee. This advice is limited to the use of devices, not the contained licensed material. Dr. Piorek is not permitted to provide advice concerning use or installation of licensed material or compliance with NRC requirements. In addition, the actual conduct of such activities must be under the supervision of an authorized user. For purposes of this Order, an authorized user is a person who is listed on the license as a user of, or is an individual who supervises other persons using, NRC licensed material.

B. No less than five (5) days prior to the first time that Dr. Stanislaw Piorek engages in, or exercises control over, NRC-licensed activities during a period of five (5) years following the three-year prohibition stated in Section IV.A above, the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC. 20555, shall be notified in writing of the name, address, and telephone number of the NRC or Agreement State licensee and the location where the licensed activities will be performed. This notice shall be accompanied by a statement by Dr. Stanislaw Piorek, under oath or affirmation, that he understands the applicable NRC requirements and is committed to compliance with NRC requirements.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon a showing by Dr. Piorek of good cause.

V

Any person adversely affected by this Confirmatory Order, other than Dr. Piorek , may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, and include a statement of good cause for the extension. Any request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory, to the Deputy Assistant General Counsel for Enforcement, and to the Director, Office of Nuclear Materials Safety and Safeguards, at the same address. If such a person requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. *An answer or a request for hearing shall not stay the immediate effectiveness of this order.*

For the Nuclear Regulatory Commission.

Dated this 19th day of August, 1999.

R.W. Borchardt,

Director, Office of Enforcement.

[FR Doc. 99–22205 Filed 8–25–99; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Revision to Information Collection for OMB Review; Comment Request; Customer Satisfaction Survey for Plan Participants

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation is requesting that the Office of Management and Budget approve a revision to a collection of information consisting of annual customer satisfaction surveys mailed to plan participants and beneficiaries in pension plans trusteed by the PBGC (OMB Approval No. 1212–0058; expires 11/30/01). To supplement the annual survey, the PBGC proposes to send an abbreviated questionnaire in the form of a comment card to a randomly selected sample of participants and beneficaries shortly after a call to the PBGC.

DATES: Comments should be submitted by September 27, 1999.

ADDRESSES: All written comments should be addressed to: Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 725 17th Street, NW., Room 10235, Washington, DC 20503. Copies of the request for approval and of the proposed collection of information are available from the PBGC Communications and Public Affairs Department, suite 240, 1200 K Street, NW., Washington, DC 20005, between the hours of 9 a.m. and 4 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The PBGC is requesting OMB approval of a revision to a collection of information consisting of annual customer satisfaction surveys mailed to plan participants and beneficiaries in pension plans trusteed by the PBGC (OMB Approval No. 1212–0058; expires 11/30/01). To supplement the annual survey, the PBGC proposes to send an abbreviated questionnaire in the form of a comment card to a randomly selected sample of participants and beneficaries shortly after a call to the PBGC.

This voluntary collection of information will put a slight burden on a very small percentage of the public. The PBGC estimates that it will collect information through the comment card from 1,680 participants and beneficiaries annually and that the total annual burden will be 56 hours.

Issued at Washington, DC, this 19th day of August, 1999.

Gail A. Sevin,

Acting Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 99–22129 Filed 8–25–99; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Form BDW, SEC File No. 270–17 OMB Control No. 3235–0018
Form 15Ba2–5, SEC File No. 270–91, OMB Control No. 3235–0088
Form 15c1–5, SEC File No. 270–422, OMB Control No. 3235–0471
Form 15c1–6, SEC File No. 270–423, OMB Control No. 3235–0472
Form 15c3–1, SEC File No. 270–197, OMB Control No. 3235–0200
Form 17Ad–3(b), SEC File No. 270–424, OMB Control No. 3235–0473
Form 17Ad–17, SEC File No. 270–412, OMB Control No. 3235–0469
Form 17a–10, SEC File No. 270–154, OMB Control No. 3235–0122
Form 17f–2(c), SEC File No. 270–35, OMB Control No. 3235–0029

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below and as defined under the Securities Exchange Act of 1934 ("Exchange Act").

Form BDW is used by broker-dealers to withdraw from registration with the Commission, the self-regulatory organizations, and the states. It is estimated that approximately 900 broker-dealers annually will inure an average burden of 15 minutes, or 0.25 hours, to file for withdrawal on Form BDW via the internet with Web CRD, a computer system operated by the National Association of Securities Dealers, Inc. that maintains information regarding broker-dealers and their registered personnel. The annualized compliance burden per year is 225 hours (900 × 25 = 225 hours). The annualized cost to respondents, utilizing staff at an estimated cost of $35

per hour, would be $7,875 (225 × $35 = 7,875).

Rule 15Ba2–5, Registration of Fiduciaries permits a duly appointed fiduciary to assume immediate responsibility for the operation of a municipal securities dealer's business. Without Rule 15Ba2–5, the fiduciary would not be able to assume operation until it registered as a municipal securities dealer. Under Rule 15Ba2–5, the registration of a municipal securities dealer is deemed to be the registration of any executor, guardian, conservator, assignee for the benefit of creditors, receiver, trustee in insolvency or bankruptcy, or other fiduciary appointed or qualified by order, judgment, or decree of a court of competent jurisdiction to continue the business of such municipal securities dealer, provided that the fiduciary files with the Commission, with 30 days after entering upon the performance of its duties, a statement setting forth substantially the same information required by Form MSD or Form BD. That statement is necessary to ensure that the Commission and the public have adequate information about the fiduciary.

There is approximately one respondent per year that requires an aggregate total of 4 hours to comply with Rule 15Ba2–5. This respondent makes an estimated one annual response. Each response takes approximately 4 hours to complete. Thus, the total compliance burden per year is 4 burden hours. The approximate cost per hour is $20, resulting in a total cost of compliance for the respondent of $80 (i.e., 4 hours × $20).

Rule 15c1–5 states that any broker-dealer controlled by, controlling, or under common control with the issuer of a security that the broker-dealer is trying to sell to or buy from a customer must give the customer written notification disclosing the control relationship at or before completion of the transaction. The Commission estimates that 390 respondents collect information annually under Rule 15c1–5 and that approximately 3,900 hours would be required annually for these collections. The approximate cost per hour in $100, resulting in a total cost of compliance for the respondents of $390,000 (3,900 hours @ $100).

Rule 15c1–6 states that any broker-dealer trying to sell to or buy from a customer a security in a primary or secondary distribution in which the broker-dealer is participating or is otherwise financially interested must give the customer written notification of the broker-dealer's participation or interest at or before completion of the transaction. The Commission estimates that 780 respondents collect information annually under Rule 15c1–6 and that approximately 7,800 hours would be required annually for these collections. The approximate cost per hour is $100, resulting in a total cost of compliance for the respondents of $780,000 (7,800 hours @ $100).

Rule 15c3–1 requires brokers and dealers to have at all times sufficient liquid assets to meet their current liabilities, particularly the claims of customers. Rule 15c3–1 facilitates monitoring the financial condition of brokers and dealers by the Commission and the various self-regulatory organizations. It is estimated that approximately 8,500 active broker-dealer respondents registered with the Commission incur an aggregate burden of 950 hours per year to comply with Rule 15c3–1.

Rule 17Ad–3(d) requires registered transfer agents which for each of two consecutive months have failed to turnaround at least 75% of all routine items in accordance with the requirements of Rule 17Ad–2(a) or to process at least 75% of all routine items in accordance with the requirements of Rule 17Ad–2(a) to send to the chief executive officer of each issuer for which such registered transfer agent acts a copy of the written notice required under Rule 17Ad–2(c), (d), and (h). The issuer may use the information contained in the notices in several ways: (1) to provide an early warning to the issuer of the transfer agent's non-compliance with the Commission's minimum performance standards regarding registered transfer agents, and (2) to assure that issuers are aware of certain problems and poor performances with respect to the transfer agents that are servicing the issuer's securities. If the issuer does not receive notice of a registered transfer agents' failure to comply with the Commission's minimum performance standards than the issuer will be unable to take remedial action to correct the problem or to find another registered transfer agent. Pursuant to Rule 17Ad–3(b), a transfer agent that has already filed a Notice of Non-Compliance with the Commission pursuant to Rule 17Ad–2 will only be required to send a copy of that notice to issuers for which it acts when that transfer agent fails to turnaround 75% of all routine items or to process 75% of all items.

The Commission estimates that of the seven transfer agents that filed the Notice of Non-Compliance pursuant to Rule 17Ad–2, only two transfer agents will meet the requirements of Rule 17Ad–3(b). If a transfer agent fails to meet the minimum requirements under Rule 17Ad–3(b), such transfer agent is simply sending a copy of a form that has already been produced for the Commission. The Commission estimates a requirement will take each respondent approximately one hour to complete, for a total annual estimate burden of two hours at cost of approximately $60.00 for each hour.

Rule 17Ad–17 requires approximately 1,500 registered transfer agents to conduct searches using third party database vendors to attempt to locate lost securityholders. These recordkeeping requirements assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with Rule 17Ad–17.

The staff estimates that the average number of hours necessary for each transfer agent to comply with Rule 17Ad–17 is five hours annually. The total burden is 7,500 hours annually for all transfer agents. The cost of compliance with each individual transfer agent depends on the number of lost accounts at each transfer agent. Based on information received from transfer agents, we estimate that the annual cost industry wide is $5.2 million.

Rule 17a–10 requires broker-dealers that are exempted from the filing requirements of paragraph (a) of Rule 17a–5 to file with the Commission an annual statement of income (loss) and balance sheet. It is anticipated that approximately 350 broker-dealers will spend 12 hours per year complying with Rule 17a–10. The total burden is estimated to be approximately 4,200 hours. Each broker-dealer will spend approximately $1,200 per response for a total annual expense for all broker-dealers of $420,000.

Rule 17f–2(c) allows persons required to be fingerprinted pursuant to Section 17(f)(2) of the Exchange Act to submit their fingerprints through a national securities exchange or a national securities association in accordance with a plan submitted to and approved by the Commission. The plan or information is collected from the exchange or national securities association only once.

Because the Federal Bureau of Investigation will not accept fingerprint cards directly from submitting organizations, Commission approval of plans from certain exchanges and national securities associations is essential to the Congressional goal of fingerprint personnel in the security industry. The filing of these plans for review assures users and their personnel that fingerprint cards will be handled responsibly and with due care for confidentiality.

To date, plans have been approved for seven exchanges and one national securities association: the American Stock Exchange, the Boston Stock Exchange, the Chicago Stock Exchange, the New York Stock Exchange, the Pacific Exchange, the Philadelphia Stock Exchange, and the Chicago Board Options Exchange, and for the National Association of Securities Dealers (collectively the "SROs"). For the SROs that have already submitted their fingerprint plans to the Commission, there is no requirement for them with approved plans to submit subsequent filings to the Commission and, therefore, there is no continuing annual reporting or recordkeeping burden.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 16, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22115 Filed 8–25–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23956; 812–11112]

Core Trust (Delaware), et al.; Notice of Application

August 19, 1999.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order pursuant to section 17(d) of the Investment Company Act of 1940 ("Act") and rule 17d–1 under the Act.

SUMMARY OF THE APPLICATION: Applicants request an order to permit certain registered investment companies to pay fees based on a share of the revenue generated from securities lending transactions to an affiliated lending agent.

APPLICANTS: Core Trust (Delaware) ("Core Trust"), Norwest Advantage Funds ("Norwest Advantage"), and Norwest Select Funds ("Norwest Select") (collectively, "Norwest Trusts"); Norwest Bank Minnesota, N.A. ("Norwest Bank"); Norwest Investment Management, Inc. ("Norwest"); Stagecoach Funds, Inc. ("Stagecoach"); Life & Annuity Trust ("LAT"); Wells Fargo Bank, N.A. ("WF Bank"); and Wells Capital Management Incorporated ("WCM").

FILING DATES: The application was filed on April 20, 1998. Applicants have agreed to file an additional amendment, the substance of which is incorporated in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 13, 1999, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants: Norwest Advantage and Norwest Select, Attn: Don L. Evans, Two Portland Square, Portland, ME 04101; Core Trust, Attn: David I. Goldstein, Two Portland Square, Portland, ME 04101; Norwest Bank and Norwest, Attn: Jeffrey P. Lund, Norwest Center, Sixth and Marquette, Minneapolis, MN 55479–1026; Stagecoach and LAT, 111 Center Street, Little Rock, AR 72201; WF Bank and WCM, Attn: C. David Messman, 525 Market Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Rachel H. Graham, Senior Counsel, at (202) 942–0583, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Each Norwest Trust is an open-end management investment company registered under the Act and organized as a Delaware business trust. Norwest Advantage consists of thirty-nine series, Norwest Select consists of four series, and Core Trust consists of twenty-one series. Norwest serves as investment adviser to each series of the Norwest Trusts, with the exception of the International Portfolio of Core Trust (each such series a "Norwest Advised Fund"). Norwest is registered under the Investment Advisers Act of 1940 ("Advisers Act") and is a wholly-owned subsidiary of Norwest Bank, which in turn is a wholly-owned subsidiary of Wells Fargo & Company ("Wells Fargo"). Norwest Bank serves as custodian for each Norwest Advised Fund.

2. Stagecoach, a Maryland corporation, and LAT, a Delaware business trust, are open-end management investment companies registered under the Act. WF Bank serves as investment adviser and custodian for the thirty-four series of Stagecoach and the six series of LAT (each a "Wells Fargo Fund" and, together with the Norwest Advised Funds, the "Funds"). WF Bank is exempt from registration under the Advisers Act and is a wholly-owned subsidiary of Wells Fargo. WCM, an investment adviser registered under the Advisers Act and a wholly-owned subsidiary of WF Bank, is a subadviser for the Wells Fargo Funds.

3. Applicants request that any relief granted pursuant to the application also apply to (i) future series of the Norwest Trusts, Stagecoach, and LAT, and to all other registered open-end management investment companies for which Norwest or WF Bank (or a person controlling, controlled by, or under common control with Norwest or WF Bank) may now or in the future act as investment adviser (collectively, "Future Funds"); and (ii) any entity controlling, controlled by, or under common control with Norwest Bank that acts as custodian for any Fund or Future Fund (each a "Norwest Affiliate").[1]

4. Each of the Norwest Advised Funds is permitted under its investment objectives, policies, and restrictions to lend its portfolio securities. Pursuant to

[1] Each Fund that currently intends to rely on the requested order is named as an applicant. Any Future Fund or Norwest Affiliate that relies on the requested relief will do so only in compliance with the terms and conditions of the application.

no-action relief obtained by Norwest Advantage, the Norwest Advised Funds currently participate in a securities lending program ("Program") with Norwest Bank acting as lending agent for each such Fund.[2] Under the Program, Norwest Bank may lend portfolio securities on behalf of each Norwest Advised Fund to pre-approved borrowers on terms pre-approved by Norwest. As collateral for the securities loaned, Norwest Bank may accept cash or other types of collateral, such as government securities. Cash collateral is invested by or under the direction of Norwest in instruments pre-approved by Norwest.

5. Norwest provides certain services in connection with the Program. Norwest determines which securities are available for loan and has the discretion and power to prevent any loan from being made or to terminate any loan. Norwest also monitors Norwest Bank to ensure that securities loans are effected in accordance with its instructions and within the procedures adopted by the board of trustees of each Norwest Trust (each a "Norwest Board" and, collectively, the "Norwest Boards"), including a majority of the trustees of each Norwest Board who are not "interested persons" within the meaning of the Act. The Norwest Advised Funds currently pay Norwest Bank a fee for its lending services that is based on the number and complexity of the actions that Norwest Bank performs in connection with the Program. Applicants contend that this compensation arrangement is administratively cumbersome and time-consuming. Applicants request relief to permit the Norwest Advised Funds to pay to Norwest Bank fees based on a share of the revenue generated from securities lending transactions. With respect to securities loans collateralized by cash, Norwest Bank would receive a pre-negotiated percentage of the return earned on investment of the cash collateral, after payment of any agreed-upon amount to the borrower. In the case of collateral other than cash, Norwest Bank would negotiate a lending fee to be paid by the borrower to the Norwest Advised Fund, of which Norwest Bank would receive a pre-negotiated percentage.

6. Each of the Wells Fargo Funds is permitted under its investment objectives, policies, and restrictions to lend its portfolio securities. The Wells Fargo Funds intend to establish a securities lending program and to retain Norwest Bank as custodian and lending agent for each Wells Fargo Fund. The duties to be performed by Norwest Bank as lending agent would be consistent with, and not exceed, the parameters set forth in the Norwest Letter. Applicants request relief to permit the Wells Fargo Funds to compensate Norwest Bank for its services as lending agent by paying it a percentage of the lending fee received by a Wells Fargo Fund or of the return earned by such Fund on the investment of cash collateral.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act, in relevant part, prohibit an affiliated person of a registered investment company, or an affiliated person of such a person ("Second Tier Affiliate"), acting as principal, from participating in any joint enterprise or other joint arrangement or profit-sharing plan in which the investment company participates, unless the Commission has issued an order authorizing the arrangement. Section 2(a)(3) of the Act defines "affiliated person" to include: any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; any person directly or indirectly controlling, controlled by, or under common control with the other person; and, in the case of an investment company, its investment adviser.

2. Norwest Bank is an affiliated person of Norwest because it controls Norwest. As investment adviser to the Norwest Advised Funds, Norwest is an affiliated person of each Norwest Advised Fund. Norwest Bank, therefore, is a Second Tier Affiliate of each Norwest Advised Fund. Norwest Bank also may be deemed to be an affiliated person or Second Tier Affiliate of certain Norwest Advised Funds because it and its affiliates hold more than 5% of the outstanding voting shares of those Funds. With respect to the Wells Fargo Funds, WF Bank is the investment adviser to, and hence an affiliated person of, each Wells Fargo Fund. Norwest Bank and WF Bank are affiliated persons of one another because each is under the control of Wells Fargo. Norwest Bank, therefore, is a Second Tier Affiliate of each Wells Fargo Fund.

3. Applicants state that each Fund's proposed lending arrangements may be deemed a joint enterprise or profit-sharing plan within the meaning of section 17(d) and rule 17d–1 because Norwest Bank, as lending agent, would share in the revenue generated by each Fund's securities lending transactions. Applicants therefore request an order to permit the Funds to engage in the proposed fee sharing arrangement with Norwest Bank.

4. In determining whether to grant an order under rule 17d–1, the Commission will consider (i) whether the proposed arrangement is consistent with the provisions, policies, and purposes of the Act, and (ii) the extent to which the investment company's participation is on a basis different from or less advantageous than that of the other participants. Applicants believe that their request for relief meets these standards.

5. Applicants state that each Norwest Trust, Stagecoach, and LAT will adopt the following procedures to ensure that the proposed fee arrangement and other terms governing the relationship between each Fund and Norwest Bank, as lending agent, will meet the standards of rule 17d–1:

(a) In connection with the approval of Norwest Bank as lending agent to a Fund and implementation of the proposed fee arrangement, each Norwest Board, the board of directors of Stagecoach, and the board of trustees of LAT (each a "Board"), including a majority of the trustees or directors of each Board who are not "interested persons" within the meaning of the Act ("Independent Trustees/Directors"), will determine that: (i) The contract with Norwest Bank is in the best interests of the Fund and its shareholders; (ii) the services to be performed by Norwest Bank are required by the Fund; (iii) the nature and quality of the services provided by Norwest Bank are at least equal to those provided by others offering the same or similar services for similar compensation; and (iv) the fees for Norwest Bank's services are fair and reasonable in light of the usual and customary charges imposed by others for services of the same nature and quality.

(b) Each contract of each Norwest Trust, Stagecoach, and LAT, on behalf of each of their respective Funds, with Norwest Bank for lending agent services will be reviewed annually and will be approved for continuation only if a majority of each Board, including a majority of the Independent Trustees/Directors, makes the findings referred to in paragraph (a) above.

(c) In connection with the approval of Norwest Bank as lending agent to a Fund and implementation of the proposed fee arrangement under the terms described in the application, each Board will obtain competing quotes with respect to lending agent fees from at least three independent lending agents to assist the Board in making the findings referred to in paragraph (a) above.

(d) Each Board, including a majority of the Independent Trustees/Directors, will: (i) Determine at each quarterly meeting that the loan transactions during the prior quarter were effected in compliance with the conditions and procedures set forth in the application; and (ii) review no less frequently than annually such conditions and procedures for continuing appropriateness.

(e) On behalf of each Fund, each Norwest Trust, Stagecoach, and LAT will maintain and preserve: (i) Permanently, in an easily accessible place, a written copy of the procedures and conditions (and modifications thereto) described in the application or otherwise followed in connection with lending securities; and (ii) for a period of not less than six years from the end of the fiscal year in which any loan transaction occurred, the first two years in an easily accessible place, a written record of each loan transaction setting forth a description of the security loaned, the identity of the person on the other side of the loan transaction, the terms of the loan transaction, and the information or materials upon which the determination was made that the loan was made in accordance with the procedures set forth above and the conditions to the application.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Each Fund's securities lending program will comply with all present and future applicable Commission and staff positions regarding securities lending arrangements.

2. The approval of the Boards, including a majority of the Independent Trustees/Directors, will be required for the initial and subsequent approvals of Norwest Bank's service as lending agent for the Funds, for the institution of all procedures relating to the securities lending programs of the Funds, and for any periodic review of loan transactions for which Norwest Bank acts as lending agent.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22116 Filed 8–25–99; 8:45 am]

BILLING CODE 8010–01–M

[2] Norwest Bank Minnesota, N.A. (pub. avail. May 25, 1995) ("Norwest Letter").

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41766; File No. SR–GSCC–98–04]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to the Establishment of a Cross-Margining Program

August 19, 1999.

On November 16, 1998, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–GSCC–98–02) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("ACT").[1] Notice of the proposal was published in the **Federal Register** on February 10, 1999.[2] The Commission received five comment letters from four commenters.[3] For the reasons discussed below, the Commission is approving the proposed rule change.[4]

I. Description

Under the rule change, GSCC will establish a cross-margining program with futures clearing organizations ("FCOs").[5] GSCC will begin cross-margining with the New York Clearing Corporation ("NYCC")[6] and intends to set up cross-margining arrangements with other FCOs.[7]

A. General Description of the Cross-Margining Program

Under the rule change, cross-margining will be available to any GSCC member that is a member of or that has an affiliate[8] that is a member of an FCO that has entered into a cross-margining agreement with GSCC. Any such member (or pair of affiliated members) may elect to have its margin requirements at both clearing organizations calculated based upon the net risk of its cash and forward positions at GSCC and its offsetting positions in related futures contracts carried at the FCO. Cross-margining is intended to lower the cross-margining participant's (or pair of affiliated members') overall margin requirement.

GSCC and each FCO will determine which of their members are eligible to participate in the cross-margining program. In order to be a GSCC cross-margining participant, a member must either (a) also be a member of an FCO or (b) have an affiliate that is a member of an FCO.[9] In addition, the GSCC member (and its affiliate, if applicable) must sign an agreement under which it agrees to be bound by the cross-margining agreement and which allows GSCC or an FCO to apply the member's (or its affiliate's) margin collateral to satisfy any obligation of GSCC to an FCO (or vice versa) that results from the default of the member (or its affiliate).

Margining based on the net risk of correlated positions will be carried out through an arrangement under which GSCC and the FCO agree to share the proceeds from correlated positions and supporting collateral. Under this arrangement, each clearing organization will hold and manage its own collateral.

GSCC will offset each cross-margining participant's residual margin amount at GSCC against the offsetting residual margin amounts of the participant (or its

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 41019 (February 3, 1999), 64 FR 6727.

[3] Letters from Dennis A. Dutterer, President and Chief Executive Officer, Board of Trade Clearing Corporation (March 3, 1999 and May 18, 1999); Sal Ricca, President, GSCC (April 19, 1999); George F. Haase, Jr., President, New York Clearing Corporation (April 23, 1999); and Scott C. Rankin, Vice President and Assistant General Counsel, The Bond Market Association (July 23, 1999).

[4] The Commission also notes that the Commodity Futures Trading Commission ("CFTC") has approved New York Clearing Corporation's proposal to enter into a cross-margining arrangement with GSCC. Letter from David Van Wagner, Acting Associate Director, Division of Trading and Markets, CFTC to George F. Haase, Jr., President, New York Clearing Corporation.

[5] Under the rule change, the term *FCO* is defined in GSCC's Rules as a clearing organization for a board of trade designated as a contract market under Section 5 of the Commodity Exchange Act that has entered into a cross-margining agreement with GSCC. This will include NYCC and any other futures clearing organization with which GSCC establishes a cross-margining arrangement.

[6] Until January 15, 1999, NYCC was known as the Commodity Clearing Corporation.

[7] Each FCO that participates in cross-margining with GSCC will have a separate cross-margining agreement with GSCC. According to GSCC, each of these agreements will have essentially similar terms, and no preference will be given by GSCC to one FCO or its members over another. GSCC will file proposed rule changes for all proposed cross-margining arrangements with other FCOs, setting forth any difference in a proposed new cross-margining arrangement from the cross-margining arrangements with NYCC and any other approved cross-margining arrangements.

[8] The term *affiliate* will be defined in each cross-margining agreement between GSCC and an FCO. Under the form agreement between GSCC and NYCC that GSCC included with its filing, "affiliate" means a clearing member of one clearing organization that (1) directly or indirectly controls, (2) is directly or indirectly controlled by, or (3) is under common control with a clearing member of another clearing organization. Ownership of 10% or more of the common stock of an entity is deemed control of the entity under the definition.

[9] The GSCC cross-margining arrangement will be applicable on the futures side only to positions in a proprietary account of a cross-margining participant (or its affiliate) at an FCO. The arrangement will not apply to positions in a customer account at an FCO that would be subject to segregation requirements under the Commodity Exchange Act.

affiliate) at each FCO pro rata based upon the residual margin amount available at each.[10] GSCC and each FCO may then reduce the amount of collateral that they collect to reflect the offsets between the cross-margining participant's positions at GSCC and its (or its affiliate's) futures positions at an FCO. If more than one FCO is cross-margining with GSCC for a cross-margining participant, the participant's long or short position in government securities at GSCC will be apportioned pro rata among its offsetting short or long positions (if any) at each FCO.[11]

Each clearing organization will guarantee the cross-margining participant's (or its affiliate's) performance to the other clearing organization up to a specified maximum amount. Each clearing organization's guaranty will be backed by the positions and margin deposits of its cross-margining participant. The amount of the guaranty will ordinarily be equal to the amount of the offsetting residual margin used to reduce the cross-margining participant's margin requirement.

GSCC will issue a guaranty to each FCO with respect to a cross-margining participant (or its affiliate) in an amount based on the pro rata allocation among the FCOs of the participant's residual margin amounts. In the event of a default and liquidation of a cross-margining participant, the loss sharing arrangements as between GSCC and each FCO will be based on the same pro rata shares. Loss sharing between clearing organizations will be subject to a cap.

B. Summary of the Operation of the Cross-Margining Program

Data Exchange: GSCC and each FCO will exchange daily position and margin data for each cross-margining participant (or pair of affiliated members) with respect to each product eligible for cross-margining.

Collateral Management: Margin collateral will be collected, maintained, valued, and returned separately by GSCC and each FCO according to its own rules and procedures. GSCC will not maintain cross-margining accounts for a cross-margining participant separate from the cross-margining participant's regular account at GSCC, and there will be no separate collateral pool at GSCC for cross-margining activity.

Unified Margin Calculation: GSCC will agree with each of the FCOs on the particular products cleared by each that are sufficiently price correlated to be eligible for cross-margining treatment (*e.g.*, cash positions in two-year Treasury notes and futures on two-year Treasury notes). Such products will be referred to as "eligible products" and a cross-margining participant's long or short positions in eligible products will be called "eligible positions." GSCC and FCO will agree upon a common margin formula including the percentage of principal amount to be used as the base margin calculation on each long or short position in each eligible product, any disallowance factors to be applied when offsetting long and short margin amounts in different eligible products, and the minimum charges for offsetting positions.[12]

Coordinated Mark to Market Process: GSCC and each FCO will coordinate their daily mark to market and variation margin processes. If a cross-margining participant does not pay its debit mark or make a required clearing fund or margin deposit to one clearing organization on a particular business day, the other will be so informed and will not pay out to that participant (or its affiliate) any credit mark or clearing fund or margin withdrawal relating to cross-margined positions.

Daily Calculation of Cross-Margining Reduction and Cross-Guaranties: On each business day, GSCC will complete its own internal margining process for buy-sell, repo, and Treasury auction transactions for each cross-margining participant (including to the extent permitted in GSCC's rules the setting off or netting of GCF repo transactions with other activity).[13] Each FCO will perform an equivalent internal process for each of its cross-margining members by offsetting long margin amounts against short margin amounts for futures and options on futures contracts that are eligible products to the extent specified in the FCO's rules.[14]

After completing the internal margining process, each clearing organization may have "residual" long or short margin amounts for a member in various eligible products. The residual long or short margin amount is the amount of long or short margin (*i.e.*, margin with respect to a long position or a short position) that has not been "used up" in the internal offsetting process.[15]

Each FCO will inform GSCC how much residual long or short margin amount in each eligible product that the FCO intends to make available for cross-margining offsets on that day for each cross-margining participant. GSCC then will determine the amount of the long or short residual margin offered by each FCO that GSCC can offset against the participant's short or long residual margin amounts at GSCC for purposes of determining the cross-margining reduction.[16] GSCC will inform each FCO of the cross-margining reduction as between GSCC and that FCO for each cross-margining participant. The cross-margining reduction is the amount by which GSCC and the FCO may each appropriately reduce its cross-margining participant's margin requirement to reflect the cross-margining offset.[17]

[10] All possible offsets among positions carried by a cross-margining participant within a single clearing organization will be carried out before any offsets are carried out between GSCC and the FCO.

[11] For example, if a cross-margining participant has a $9 million residual short margin amount at GSCC and residual long margin amounts in the same product of $8 million at FCO 1 and $4 million at FCO 2, GSCC will use two-thirds of the $9 million margin amount ($6 million) for offset against the participant's FCO 1 activity and one-third of the $9 million margin amount ($3 million) for offset against FCO 2 activity.

[12] According to GSCC, an appropriate conversion method will be agreed upon to equate the size of futures and cash positions for offset purposes.

[13] For a description of GSCC's GCF Repo service, refer to Securities Exchange Act Release No. 40623 (October 30, 1998), 63 FR 59831 [File No. SR–GSCC–98–02] (order approving proposed rule change).

[14] For example, on each business day, GSCC and NYCC each will calculate for each cross-margining participant an initial margin requirement with respect to eligible positions. This calculation will be done independently based upon an agreed upon method without the other clearing corporation's review. However, GSCC and NYCC will review generally each other's margining process on a periodic basis, and each will have the obligation to inform the other of any material changes to its margining process.

[15] A margin amount may be "used up" whether or not there has been a full offset against it. For example, assume that a GSCC member has a $1 million gross margin requirement on a short position in the 10-year note (offset class F) that is offset against a $1 million gross margin requirement on a long position in the long bond (offset class G). Because there is a 20% disallowance on offsets between classes F and G, the member has a $200,000 margin requirement after the offset. However, both $1 million margin amounts have now been entirely used up, and nothing is available for further offset either within GSCC or for cross-margining with an FCO.

[16] The *cross-margining reduction* is determined by the residual margin amounts made available by an FCO and "used" by GSCC in determining the amount of the cross-guaranties. It does not depend upon the amount, if any, by which either GSCC or an FCO actually reduces a cross-margining participant's margin requirement. In other words, after an offer by an FCO of $1 million in residual margin and acceptance by GSCC of that amount for offset, the cross-margining reduction would be $1 million, and the base amount of the cross-guaranties would be fixed at that amount. However, either clearing organization might nevertheless decide to reduce the cross-margining participant's clearing fund or margin requirement by less than $1 million or not at all. In any event, the cross-margining reduction under the cross-margining agreement would still be $1 million. The clearing organization would simply have made a determination to hold more collateral without affecting the amount of the guaranty it receives from the other clearing organization.

[17] If a cross-margining participant has eligible positions at more than one participating FCO, the participant's total margin reduction at GSCC will be the sum of the cross-margining reductions between GSCC and each FCO.

[18] As noted above, GSCC and each FCO will retain the right to reduce a cross-margining participant's clearing fund or margin requirement by less than the amount of the cross-margining reduction or not to reduce it at all.

[19] The cross-margining participant's margin or clearing fund deposit will remain fixed at the clearing organization that is closed, and the closed clearing organization must therefore continue to rely on the guaranty based on the previous day's cross-margining reduction. However, the clearing organization that is open ordinarily will be able to assess and collect additional margin or clearing fund deposits if needed to reflect updated positions in the participant's account on its own books as well as the fixed guaranty obligation that is still outstanding to the other clearing organization.

[20] Under the form agreement between GSCC and NYCC that GSCC included with its filing, net surplus and net loss are calculated as follows:

In the event that (i) the sum of "available margin" and any proceeds of eligible positions realized by such clearing organization (including securities deliverable to and amounts receivable with respect to securities deliverable by such cross-margining participant in settlement of eligible positions) and any mark to market payments or other settlement amounts due from such clearing organization with respect to eligible positions exceeds (ii) the sum of the mark to market payments or other settlement amounts owed to such clearing organization with respect to or as a result of the closeout of eligible positions (including securities deliverable by or amounts payable with respect to securities deliverable to such cross-margining participant with respect to eligible positions) plus any interest expense, fees, commissions, or other costs reasonably incurred in such closeout or otherwise arising from such eligible positions, then the amount of such excess shall be deemed to be the net surplus. In the event that the sum referred to in clause (i) of the preceding sentences is less than the amount referred to in clause (ii), the difference shall be the net loss.

"Available margin" is defined as the amount of clearing fund deposits, margin, or other collateral remaining after satisfaction of all obligations of the cross-margining participant to the clearing organization other than obligations arising from eligible positions.

[21] Where a cross-margining participant had eligible positions at more than one FCO, GSCC's net loss or net surplus for purposes of the cross-margining agreement between GSCC and any one FCO will be a portion of GSCC's aggregate net loss or net surplus from all eligible positions and available margin at GSCC that is equal to the portion of the residual margin at GSCC that was offset against the residual margin at that FCO. For example, assume that FCO 1 and FCO 2 each offer GSCC $2 million in residual short margin based on a $200 million short position in futures on the 10-year note. If GSCC has only $2 million in residual long margin, it would "take" $1 million residual from each FCO for offset purposes. If GSCC incurs a $10 million loss in liquidating the $200 million futures position, GSCC's "net loss" for purposes of its agreement with FCO 1 would ordinarily be half of that or $5 million. However, the cross-margining agreements will also contain provisions permitting further contribution by FCO 1 if FCO 1's net surplus exceeds $5 million and FCO 2 contributes less than $5 million.

As a result, the maximum cross-margining reduction that a cross-margining participant will receive will be determined by the amount of residual margin taken by GSCC. For example, if an FCO offers $1 million in residual short margin for a particular member in 2-year note futures and if GSCC sets all of that amount off against a $2 million cash position in the 2-year note, then the cross-margining reduction amount will be $1,000,000 for GSCC and $1,000,000 for the FCO.

Under the anticipated terms of the cross-margining agreements between GSCC and each participating FCO, GSCC will be deemed to have extended its guaranty of a cross-margining participant's (or its affiliate's) obligation to each FCO in a base amount equal to the cross-margining reduction for that participant. Similarly, each participating FCO will be deemed to have extended its guaranty of the cross-margining participant's (or its affiliate's) obligation to GSCC in the same base amount. For example, if GSCC has a residual short margin amount for a cross-margining participant of $10 million in a product which is offset against an FCO's residual long margin amount of $4 million, then the base amount of the cross-guaranties is $4 million, and GSCC can reduce the participant's margin requirement for that product to $6 million because the FCO will have guaranteed $4 million.[18]

Each clearing organization will represent to the other that it will margin a cross-margining participant's positions such that the amount of margin is adequate to cover the cross-margining participant's obligations to that clearing organization including the obligation to reimburse any payment under the guaranty. In addition, on any day that is a business day for an FCO and not for GSCC or vice versa, the gross-guaranties as they existed on the immediately preceding business day will remain in effect. It shall be the responsibility of the clearing organization that is open for business on such day to adjust its margin requirements with respect to cross-margining participants to cover such cross-margining participants' obligations.[19]

Default of a Cross-Margining Participant: Liquidation and Loss-Sharing: If a cross-margining participant becomes insolvent and its eligible positions are liquidated by GSCC and the FCO(s), GSCC and each FCO will calculate its "net loss" or "net surplus" from the liquidation.[20] GSCC and each FCO will use their best efforts to coordinate the liquidation of eligible positions so that offsetting or hedged positions can be closed out simultaneously. GSCC and each FCO may unilaterally elect not to terminate or suspend and liquidate the eligible positions of its cross-margining participant. However, a clearing organization that does so will remain liable to the other on this guaranty. In addition, a clearing organization that elects not to liquidate the eligible positions of a defaulting participant will be deemed to have no net loss and no net surplus.

In the event a cross-margining participant is liquidated, if either GSCC or an FCO has a net loss and the other has a smaller net loss, no net loss, or a net surplus, then the one with the larger net loss ("worse-off party") is entitled to receive a payment from the other ("better-off party") that equalizes its losses. The amount of this equalizing payment will be capped at the least of: (1) The "maximum guaranty amount" of the better-off party; (2) if the better-off party has a net loss, an amount that together with its net loss equals its total cross-margining reduction; or (3) the worse-off party's net loss.

Generally, the guaranty arising from the cross-margining reduction will be a cap on the amount of loss that either GSCC or an FCO can incur as the result of a default by a participating member (or its affiliate) to the other. The "maximum guaranty amount" of GSCC or the FCO will exceed the amount of the cross-margining reduction only to the extent that the better-off party has funds of the participant remaining (*i.e.*, a "net surplus") after satisfying all other obligations of the participant to the better-off party.[21]

C. Information Specific to the Current Form Agreement Between GSCC and NYCC

Participation in the Cross-Margining Program: Any netting member of GSCC other than an interdealer broker will be eligible to participate. Any clearing member of NYCC will be eligible to participate.

Positions subject to Cross-margining: The products that will initially be eligible for cross-margining at GSCC are its offset classes for the 2-year note, 5-year note, 10-year note, and 30-year bond and at NYCC are its 2-year note, 5-year note, 10-year note, and 30-year bond futures products. Residual margin amounts will be applied only within the same "offset class" (*e.g.*, the 2-year note against the 2-year note future). All eligible positions maintained by a cross-margining participant in its account at GSCC and in its (or its affiliate's) proprietary account at NYCC will be eligible for cross-margining.

Unified Margin Factors: GSCC and NYCC will apply GSCC's margin factors to eligible positions.

Daily Procedures: On each business day by midnight, NYCC will inform

GSCC of the residual margin amounts it is making available. GSCC will inform NYCC by 2:00 a.m. how much of these residual margin amounts it will use.

D. GSCC Rule Changes

The rule change adds definitions relating to cross-margining to GSCC Rule 1. These definitions correspond generally to certain terms that will be defined in the cross-margining agreements.

The rule change amends Section 2 of GSCC Rule 4 to provide that the required fund deposit otherwise calculated for a cross-margining participant may be reduced at GSCC's sole discretion in an amount not to exceed the sum of the cross-margining reductions calculated under the various cross-margining agreements. The rule change amends Sections 5 and 6 of Rule 4 to clarify the application of those provisions in the context of the cross-margining arrangements. Specifically, the amendments provide tat GSCC may set off a cross-margining participant's obligation to reimburse GSCC for the payment of a guaranty against any asset of the participant that GSCC holds as collateral and against any amounts due to the participant. Section 6 of Rule 4 is also amended to provide that GSCC may apply a member's clearing fund deposits to satisfy a loss without treating the member as insolvent. The rule change also adds a provision to Section 2 of Rule 22 to specify that GSCC may but is not required to treat a cross-margining participant as insolvent if the member is declared to be insolvent by an FCO.

The rule change adds new Rule 43 to GSCC's rules to set forth How a GSCC netting member may become a cross-margining participant and its obligations as a cross-margining participant. Section 3 of Rule 43 provides that a cross-margining participant has the obligation to reimburse GSCC for any amount that it pays to an FCO on behalf of the participant (or its affiliated member) under a cross-margining guaranty. Rule 43 also cross-references the corresponding provisions of the cross-margining agreement which state that any obligations of a defaulting cross-margining participant to the FCO will be netted against any amounts held by or due to the participant as a result of its positions at GSCC. As a result, a defaulting participant will be entitled to receive from the close out of its positions and margin at GSCC only what remains after netting out the sum of its obligations to GSCC and the FCOs. Section 4 of Rule 43 provides that a cross-margining participant may be treated as insolvent at the discretion of GSCC if (1) the cross-margining participant is determined to be insolvent by an FCO or (2) the cross-margining participant's affiliate is deemed to be insolvent by an FCO and the cross-margining participant does not immediately upon GSCC's demand deposit with GSCC the amount of GSCC's cross-margining guaranty to the FCO.

II. Comment Letters

The Commission received five comment letters from four commenters in response to GSCC's filing.[22]

A. Letters From the Board of Trade Clearing Corporation

The Board of Trade Clearing Corporation ("BOTCC") submitted two comment letters in response to GSCC's proposal. In its first comment letter, BOTCC stated its specific concerns with GSCC's proposal. BOTCC's second letter responded to some of the statements in GSCC's comment letter (which is described below). In its comment letters, BOTCC expressed concern with the structure of GSCC's proposed cross-margining program and with the legal enforceability of some of the payment mechanisms in the program.

BOTCC noted that GSCC's proposed cross-margining program differs from existing cross-margining programs in that GSCC and participating FCOs will each maintain their own collateral and will not pool cross-margining positions and margin deposits on those positions in a jointly controlled account. BOTCC stated that the primary protection against loss in current cross-margining programs is the fact that participating clearing organizations have a joint first priority lien on and security interest in all positions in cross-margined accounts, all funds and securities deposited to satisfy margin requirements, and all proceeds resulting from the liquidation of the accounts.

BOTCC stated that it believes that the structure of GSCC's proposal does not ensure that GSCC and the FCOs will have sufficient resources to satisfy losses that might result from a default of a cross-margining participant. BOTCC stated that GSCC's proposal does not provide for any limitation on the amount of guaranties that GSCC and the FCOs can extend to each other. In addition, BOTCC stated that under GSCC's proposal, margin reductions would be backed by mutual unsecured promises rather than by a pool of collateral controlled jointly by GSCC and the FCOs.

[22] *Supra* note 3.

BOTCC also expressed concern that certain provisions of GSCC's proposed cross-margining program might not be enforceable under the U.S. Bankruptcy Code against a cross-margining participant that had filed a bankruptcy petition. Specifically, BOTCC stated that if GSCC became obligated to pay an FCO in order to equalize losses resulting from liquidating positions of a defaulting cross-margining participant, it would not be permitted under the Bankruptcy Code to setoff the participant's obligation to reimburse that amount to GSCC against any assets GSCC was holding for the participant.

Section 362(a) of the Bankruptcy Code[23] provides for a stay (known as the "automatic stay") of all actions against a debtor that has filed a bankruptcy petition for claims that arose before the petition was filed. However, Section 362(b)(6) of the Bankruptcy Code[24] provides an exception to the automatic stay which permits a clearing agency to setoff a mutual claim against the debtor for a margin payment or a settlement payment arising out of securities contracts against property that is held by or due from the clearing agency to margin or guarantee securities contracts. BOTCC stated that Section 362(b)(6) does not allow a clearing agency to setoff a pre-petition debt against a post-petition claim. BOTCC believes that a claim against the participant for reimbursement of an amount that GSCC paid to an FCO would be a post-petition debt and that GSCC would not be permitted under Section 362(b)(6) to setoff the reimbursement obligation against assets of that participant that GSCC was holding pre-petition (*e.g.*, surplus margin deposits). In addition, BOTCC believes that it is not clear that the reimbursement obligation is a "margin payment" or a "settlement payment" as defined in the Bankruptcy Code[25] because the obligation (a) is not a specific type of margin payment, (b) would not secure the cross-margining participant's already liquidated positions at GSCC, and (c) is not closely related to the settlement process.

B. Letter from GSCC

GSCC submitted a comment letter in response to BOTCC's first comment letter. With respect to BOTCC's statements on the structure of its proposed cross-margining program,

[23] 11 U.S.C. 362(a).

[24] 11 U.S.C. 362(b)(6).

[25] The term "margin payment" is defined in Sections 101, 741, and 761 of the Bankruptcy Code, 11 U.S.C. 101, 741, and 761. The term "settlement payment" is defined in Sections 101 and 741 of the Bankruptcy Code, 11 U.S.C. 101 and 741.

GSCC stated that all cross-margining arrangements rely to some extent on unsecured promises between clearing agencies. GSCC noted that it and the FCOs can decide to reduce or eliminate the cross-margining reduction for a particular member or for all members. In addition, GSCC stated that it can increase the amount of collateral that a cross-margining participant is required to deposit to support its obligation to GSCC including GSCC's guaranty obligations to the FCOs. GSCC further stated that it believes that the structure of its cross-margining program has an advantage over traditional cross-margining programs in that the total possible liability of GSCC to another clearing agency can be precisely calculated at any given point in time.

With respect to BOTCC's statements regarding the enforceability under the Bankruptcy Code of a cross-margining participant's obligation to reimburse GSCC's payment of a guaranty to an FCO, GSCC stated that the reimbursement obligation would be a pre-petition claim because it would be a contingent contractual obligation that would arise at the time the cross-margining participant becomes subject to the cross-margin agreement. In addition, GSCC stated that it believes that the reimbursement obligation is a margin payment or a settlement payment because (a) it would be made in settlement of a debt owed to GSCC and (b) because it would represent a reimbursement to GSCC of a payment made to an FCO to meet variation margin and settlement obligations. GSCC further stated that in the alternative the cross-margining agreement is a "netting contract" under the Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA")[26] and therefore is not subject to automatic stay provisions of Section 362 of the Bankruptcy Code.[27]

C. Letter From NYCC

NYCC stated that it supports GSCC's proposal and that the GSCC structure allows each clearing organization to use its own systems to monitor risk without having to set up a different system to monitor cross-margined positions. In addition, NYCC stated that all cross-margining arrangements rely on the risk systems, default protections, and the ability of a clearing organization to be able to fulfill its obligations.

D. Letter From the Bond Market Association

The Bond Market Association ("BMA") stated that it strongly supports cross-margining arrangements like the one proposed by GSCC. In addition, the BMA stated that it agrees with GSCC's conclusion that the cross-margining program will benefit cross-margining participants by lowering their margin requirements and thereby allowing them more efficient use of collateral and reduced operational costs. Moreover, the BMA stated that it "is comfortable expressing its agreement with GSCC's analysis of the FDICIA netting provisions and the Bankruptcy Code as they relate to its proposed cross-margining arrangement."

III. Discussion

Under Section 19(b) of the Act,[28] the Commission is directed to approve a proposed rule change of a clearing agency if it finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder. Section 17A(b)(3)(F) of the Act[29] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody and control of the clearing agency or for which it is responsible. Section 17A(a)(2)(A)(ii) of the Act[30] directs the Commission to use its authority under the Act to facilitate the establishment of linked or coordinated facilities for the clearance and settlement of transactions in securities, securities options, contracts of sale for future delivery and options thereon, and commodity options.

The comment letters that the Commission received from BOTCC raised questions about the structure of GSCC's proposed cross-margining program and about the legal enforceability of certain provisions of the program. GSCC stated in response that it believes that its cross-margining program will be safe and prudent from a risk management perspective and that its payment mechanisms will be enforceable against a defaulting cross-margining participant.

The Commission believes that GSCC's proposal should adequately limit GSCC's potential financial exposure to a defaulting cross-margining participant.[31] In particular, the Commission notes that GSCC may reduce or eliminate the cross-margining reduction to any cross-margining participant and that GSCC will be able to calculate precisely its potential liability to FCOs with respect to each cross-margining participant. Furthermore, the Commission has always viewed properly structured cross-margining programs as a significant risk reduction method because they reduce the extent to which clearing organizations have to independently manage the risk associated with some but not all of the components (*ie.*, the futures or government securities component) of a member's total portfolio. Therefore, the cross-margining program is structured so that GSCC will continue to be able to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

GSCC's proposal will also enable it to coordinate with the FCOs in the management of risks associated with their members' (or affiliated members') positions in government securities and in related futures contracts. The cross-margining program should also result in increased and better information sharing regarding the financial condition of participating joint and affiliated members. Therefore, GSCC's proposal should facilitate the establishment of linked or coordinated facilities for the clearance and settlement of transactions in government securities and in futures contracts.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–98–04) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[32]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22118 Filed 8–25–99 8:45 am]

BILLING CODE 8010–01–M

[26] 12 U.S.C. 4401–4407.

[27] In its second comment letter, BOTCC responded to GSCC's statements and reiterated its statements regarding the structure of the proposed cross-margining program and the effect of the Bankruptcy Code an a cross-margining participant's reimbursement obligation. In addition, BOTCC stated that it believes that FDICIA only permits the enforcement of a netting contract against a bankrupt party if there is an applicable exception from the automatic stay.

[28] 15 U.S.C. 78s(b).

[29] 15 U.S.C. 78q-1(b)(3)(F).

[30] 15 U.S.C. 78q-1(a)(2)(A)(ii).

[31] The Commission believes that the arguments in GSCC's comment letter are persuasive. However, the Commission recognizes that in a bankruptcy proceeding a court could reach a different result.

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41768; File No. SR–NSCC–99–11]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding Year 2000 Policies

August 19, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 19, 1999, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which items have been prepared primarily by NSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, NSCC will not activate any new or additional participant accounts or provide new services to participants after September 15, 1999, and until reasonably practicable in January 2000.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change provides that, NSCC will not activate any new or additional participant accounts or provide new services to participants after September 15, 1999, and until reasonably practicable in January, 2000. Among other things, NSCC announced in its July 19, 1999, Important Notice that after September 15, 1999, and for the remainder of the calendar year, NSCC will not: (1) Permit new participants to utilize NSCC's services; (2) allow current participants to utilize new NSCC services; and (3) assign additional participant numbers to current participants.

NSCC's Rule 2 provides in part that:

> The Corporation may deny an application to become a Member or to use one or more additional services of the Corporation upon a determination by the Corporation that the Corporation does not have adequate personnel, space, data processing capacity or other operational capability at such time to perform its services for the applicant or Member without impairing the ability of the Corporation to provide services for its existing Settling Members, to assure the prompt, accurate and orderly processing and settlement of securities transactions or to otherwise carry out its functions; provided, however, that any such applications which are denied pursuant to this paragraph shall be approved as promptly as the capabilities of the Corporation permit.

NSCC believes that continuing to activate numerous new or additional participant accounts or to provide new services to participants after September 15th could potentially be disruptive to the rest of its Year 2000 efforts. Specifically, NSCC will be devoting a great deal of resources to confirming the Year 2000 readiness of its systems and applications in October and November of 1999. Additionally, NSCC would like to ensure that it has enough time to deal with any unanticipated issues that arise before the end of the calendar year.

NSCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. In particular, the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[3] which requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC advised members of the Year 2000 policy modifications in an Important Notice, dated July 19, 1999. No written comments relating to the Important Notice or proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[4] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission finds that the proposed rule change is consistent with this obligation because the proposed modifications to NSCC's Year 2000 policies will permit NSCC sufficient time before year end to complete its Year 2000 preparations. As a result, NSCC should be able to continue to provide prompt and accurate clearance and settlement of securities transactions before, on, and after Year 2000 without interruption.

NSCC requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing because such approval will allow NSCC to better prepare for a smooth Year 2000 transition.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to the File No. SR–NSCC–99–11 and should be submitted by September 16, 1999.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (File No. SR–NSCC–99–11) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22117 Filed 8–25–99; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by NSCC.

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Notice 99–6]

Senior Executive Service Performance Review Boards Membership

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Performance Review Board (PRB) appointments.

SUMMARY: DOT publishes the names of the persons selected to serve on the various Departmental PRBs as required by 5 U.S.C. 4314(c)(4).

FOR FURTHER INFORMATION CONTACT: William Freed, Departmental Director, Office of Human Resource Management, (202) 366–4088.

SUPPLEMENTARY INFORMATION: The persons named below have been selected to serve on one or more Departmental PRBs.

Issued in Washington, DC, on August 23, 1999.

Melissa J. Allen,

Assistant Secretary for Administration.

Federal Railroad Administration

Jane H. Bachner, Deputy Associate Administrator for Industry and Intermodal Policy, Federal Railroad Administration
Ray Rogers, Associate Administrator for Administration and Finance, Federal Railroad Administration
Charles White, Associate Administrator for Policy and Program Development, Federal Railroad Administration
Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary
George S. Moore, Associate Administrator for Administration, Federal Highway Administration
Luz A. Hopewell, Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary

Federal Transit Administration

Janet L. Sahaj, Deputy Associate Administrator, Office of Program Management, Federal Transit Administration
Michael Winter, Associate Administrator for Budget and Policy, Federal Transit Administration
Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary
Richard M. Biter, Deputy Director, Office of Intermodalism, Office of the Secretary
Glenda Tate, Assistant Administrator for Human Resource Management, Federal Aviation Administration
Jerry A. Hawkins, Director, Office of Human Resources, Federal Highway Administration

Office of Inspector General

Joyce N. Fleischman, Deputy Inspector General, Department of Agriculture
John J. Connors, Deputy Inspector General, Department of Housing and Urban Development
Judith J. Gordon, Assistant Inspector General for Systems Evaluation, Department of Commerce
Nancy Hendricks, Assistant Inspector General for Audit, Federal Emergency Management Administration
Steven A. McNamara, Assistant Inspector General for Audit, Department of Education
Everett Mosley, Deputy Inspector General, Agency for International Development
Robert S. Terjesen, Assistant Inspector General for Investigations, Department of State
Joseph R. Willever, Deputy Inspector General, Office of Personnel Management

United States Coast Guard

RADM F. L. Ames, Assistant Commandant for Human Resources, United States Coast Guard
RADM Ernest R. Riutta, Assistant Commandant for Operations, United States Coast Guard
RADM Joyce M. Johnson, Director, Health and Safety Directorate, United States Coast Guard
RADM R. D. Sirois, Director of Reserve and Training, United States Coast Guard
RADM P. M. Stillman, Assistant Commandant for Congressional and Public Affairs, United States Coast Guard
RADM R. F. Silva, Assistant Commandant for Systems, United States Coast Guard
RADM J. A. Kinghorn, Director, Office of Intelligence and Security, Office of the Secretary
Jerry A. Hawkins, Director, Office of Human Resources, Federal Highway Administration
Patricia D. Parrish, Principal, TASC Customer Service, TASC
Lynn Sahaj, Deputy Associate Administrator for Program Management, Federal Transit Administration
Charles White, Associate Administrator for Policy and Program Development, Federal Railroad Administration

National Highway Traffic Safety Administration

Herman Simms, Associate Administrator for Administration, National Highway Traffic Safety Administration
Rose McMurray, Associate Administrator for Traffic Safety Programs, National Highway Traffic Safety Administration
William Walsh, Associate Administrator for Plans and Policy, National Highway Traffic Safety Administration
Frank Seales, Chief Counsel, National Highway Traffic Safety Administration,
Luz A. Hopewell, Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary

Federal Highway Administration

Arthur Hamilton, Program Manager, Federal Lands Highway Program, Federal Highway Administration
Fred Hempel, Director of Corporate Management, Federal Highway Administration
Leon Witman, Western Resource Center Director, Federal Highway Administration
Edward Morris, Jr., Director of Civil Rights, Federal Highway Administration
Walter Sutton, Director of Policy, Federal Highway Administration
Patricia Parrish, Principal, TASC Customer Service, TASC

Maritime Administration

Bruce J. Carlton, Associate Administrator for Policy and International Affairs, Maritime Administration
James J. Zok, Associate Administrator for Ship Financial Assistance and Cargo Preference, Maritime Administration
Margaret D. Blum, Associate Administrator for Port, Intermodal and Environmental Activities, Maritime Administration
John L. Mann, Jr., Associate Administrator for Administration, Maritime Administration

James E. Caponiti, Associate Administrator for National Security, Maritime Administration

Bonnie M. Green, Deputy Administrator for Inland Waterways and Great Lakes, Maritime Administration

Jerry A. Hawkins, Director, Office of Human Resources, Federal Highway Administration

Office of the Secretary, Transportation Administrative Service Center, Bureau of Transportation Statistics

Linda Lawson, Director, Office of Economics, Office of the Secretary

Donald Trilling, Director, Office of Environment, Energy and Safety, Office of the Secretary

Roberta D. Gabel, Assistant General Counsel for Environmental, Civil Rights, and General Law, Office of the Secretary

Luz A. Hopewell, Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary

Beverly Pheto, Director, Office of Budget and Program Performance, Office of the Secretary

Patricia D. Parrish, Principal, TASC Customer Service, TASC

Edward L. Thomas, Associate Administrator for Research, Demonstration and Innovation, Federal Transit Administration

Jerry A. Hawkins, Director, Office of Human Resources, Federal Highway Administration

Research and Special Programs Administration

Vivian Hobbs, Director, Office of Traffic and Operations Management, Research and Special Programs Administration

Robert McGuire, Acting Associate Administrator for Management and Administration, Research and Special Programs Administration

John Murray, Director of Policy and Program Support, Research and Special Programs Administration

Dorrie Aldridge, Associate Administrator for Administration, Federal Transit Administration

John Graykowski, Deputy Administrator, Maritime Administration

Joseph Kanianthra, Director, Office of Vehicle Safety Research, National Highway Traffic Safety Administration

[FR Doc. 99–22211 Filed 8–25–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA SPECIAL COMMITTEE 195; SPECIAL MEETING; LITHIUM BATTERIES

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–168 meeting to be held September 15–16, starting at 9 a.m. each day. The SC–168 finished their work in 1995 and several attempts to reference RTCA DO–227 in a TSO have been unsuccessful. The RTCA Program Management Committee approved this one time meeting to help resolve the issues identified. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW, Suite 1020, Washington, DC, 20036.

The agenda will include: September 15 and 16 (1) Welcome and Introductions; (2) Status of Lithium Battery Activities;

(3) Review of TSO–C142, Comments Received and Conclusions;

(4) Recommend and Approve the Process and wording to Resolve the Open Issues Identified; (5) Other Business; (6) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW, Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 12, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–22221 Filed 8–25–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Portsmouth & Tiverton, RI

AGENCY: Federal Highway Administration (FHWA), RIDOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for the proposed rehabilitation or replacement of the Sakonnet River Bridge, carrying RI Route 24 between Portsmouth and Tiverton.

FOR FURTHER INFORMATION CONTACT: Daniel J. Berman, Assistant Division Administrator, Federal Highway Administration, 380 Westminster Mall, Room 547, Providence, RI 02903, Telephone: (401) 528–4560; OR, Edmund T. Parker, Jr., P.E., Chief Design Engineer, Rhode Island Department of Transportation, Two Capitol Hill, Room 231–D, Providence, RI 02903, Telephone: (401) 222–4911.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with RIDOT, will prepare the Environmental Impact Statement (EIS) for the proposed rehabilitation or replacement of the Sakonnet River Bridge carrying RI Route 24 between Portsmouth and Tiverton.

This EIS will investigate scientific and engineering studies and other activities necessary to determine the environmental and socioeconomic impacts of various alternative rehabilitation and replacement scenarios to address the substandard condition of the Sakonnet River Bridge.

Rhode Island Bridge Number 250, known as the Sakonnet River Bridge, was originally constructed between the years 1954–1956. The main bridge structure is comprised of 27 spans with a total length of approximately 2,982 feet. According to the original design plans, the structure was designed in accordance with 1944 A.A.S.H.O Specifications. The Sakonnet River Bridge has been carrying highway traffic for over 43 years. With the exception of limited emergency repairs performed in 1997, and two partial painting contracts, the structure has not undergone any significant rehabilitation in over 20 years.

RIDOT conducted an in-depth field inspection of the bridge during September and October, 1997, and March and April, 1998. The inspection of the bridge found significant deficiencies in the concrete support piers and abutment walls, the steel substructure, and the bridge deck.

The majority of the bridge is supported by either main girders or trusses. These members have been identified as non-redundant and fracture critical; therefore, their deterioration and eventual failure could result in a compromise of the structural integrity of the bridge and possible collapse of the structure.

Due to the extensive nature of the rehabilitation required to address the structural deficiencies of the Sakonnet River Bridge, RIDOT is also considering potential options to replace the bridge with a new structure. The following paragraphs present a brief discussion of four potential alternatives which may be considered for further evaluation.

Option No. 1—No Build

This potential option consists of maintaining the current bridge, with major rehabilitation to address the deficiencies. Portions of the bridge structure would be replaced, and all elements would be brought to a serviceable condition under this option. This work would occur while the structure is in use, resulting in traffic delays during a continuous two year construction period. The existing bridge and approach rights-of-way would be maintained. The rehabilitated bridge would have a remaining useful life of 25 to 30 years.

Option No. 2—New Bridge on the Existing Alignment

This potential option consists of demolishing the existing bridge, and constructing a new bridge in the same alignment. During the three year construction period, RI Route 24 would be closed at this point, and all traffic between points north and Aquidneck Island would be detoured to alternate routes including the Mt. Hope bridge on RI Route 136. This option involves completion of interim repairs to the existing bridge to ensure that it is serviceable during environmental review of the project and design of the new bridge. The new bridge would have a 75- to 100-year lifespan. This alternative would accommodate a future bridge for commuter rail service along the existing railroad right-of-way.

Option No. 3—New Bridge to the North of the Existing Bridge

This potential option consists of constructing a new bridge on an alignment to the north of the existing bridge. The new alignment would be between the existing bridge and the railroad bridge, and will include provisions to accommodate a future lower bridge for commuter rail service. This option involves completion of interim repairs to the existing bridge to ensure that it is serviceable during environmental review, design and construction of the new bridge. The interim repairs and coincident construction of the new bridge would not involve significant traffic delays. Additional rights-of-way would be required for the new bridge and approach alignments. After the new bridge is in service, the existing bridge would be removed. The new bridge would have a 75- to 100-year lifespan.

Option No. 4—New Bridge to the South of the Existing Bridge

This potential option consists of constructing a new bridge on an alignment to the south of the existing bridge. The alignment would be approximately 30-feet from the existing bridge. This option involves completion of interim repairs to the existing bridge to ensure that it is serviceable during environmental review, design and construction of the new bridge. The interim repairs and coincident construction of the new bridge would not involve significant traffic delays. Additional rights-of-way would be required for the new bridge and approach alignments. After the new bridge is in service, the existing bridge would be removed. The new bridge would have a 75- to 100-year lifespan. This alternative would accommodate a future bridge for commuter rail service along the existing railroad right-of-way.

A scoping meeting to discuss the potential project alternatives and environmental and socioeconomic impacts will be held on October 6, 1999, from 9:00 am to 12:00 pm, at the Rhode Island Department of Administration, One Capitol Hill, Providence, RI 02903 in conference room A on the second floor. Written comments received within 30 days of the scoping meeting date will be incorporated into the record.

In addition to the scoping meeting, public participation will continue throughout the EIS process. Public workshops will be held in both Portsmouth and Tiverton, and potentially in other affected communities, to discuss the proposed project alternatives and issues, and receive public input prior to publishing a Draft EIS. Following publication of the Draft EIS, a formal public hearing will be held to receive comments regarding the proposed project. The Draft EIS will be available for public and agency review and comment prior to the public hearing, and comments will be received for 45-days following the public hearing.

To ensure that a full range of issues relating to this proposed action are addressed and all potential impacts are identified, comments and suggestions are invited from all interested parties. Comments or questions regarding this proposed action and the EIS should be directed to the Rhode Island Department of Transportation at the above address.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on August 18, 1999.

Melisa L. Ridenour,

Division Administrator, Federal Highway Administration.

[FR Doc. 99–22119 Filed 8–25–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. RSAC–96–1, Notice No. 18]

Railroad Safety Advisory Committee; Notice of Meeting

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Railroad Safety Advisory Committee ("RSAC") meeting.

SUMMARY: FRA announces the next meeting of the RSAC, a Federal Advisory Committee that develops railroad safety regulations through a consensus process. The meeting will address a wide range of topics, including possible adoption of specific recommendations for regulatory action.

DATES: The meeting of the RSAC is scheduled to commence at 9:30 a.m. and conclude at 4:00 p.m. on Wednesday, September 8, 1999.

ADDRESSES: The meeting of the RSAC will be held at The Wyndham Hotel, 1400 M Street NW, Washington, DC. The meeting is open to the public on a first-come, first-served basis and is accessible to individuals with disabilities. Sign language interpreters will be available for individuals with hearing impediments.

FOR FURTHER INFORMATION CONTACT: Vicky McCully, RSAC Coordinator, FRA, 1120 Vermont Avenue, NW, Stop 25, Washington, DC 20590, (202)493–6305 or Grady Cothen, Deputy Associate Administrator for Safety Standards and Program Development, FRA, 1120 Vermont Avenue, NW, Stop 25, Washington, DC 20590, (202) 493–6302.

SUPPLEMENTARY INFORMATION:.

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), FRA is giving notice of a meeting of the Railroad Safety Advisory Committee ("RSAC"). The meeting is scheduled to begin at 9:30 a.m. and conclude at 4 p.m. on Wednesday, September 8, 1999. The meeting will be held at The Wyndham Hotel, 1400 M Street, NW, Washington, DC. All times noted are Eastern Standard Time.

RSAC was established to provide advice and recommendations to the FRA on railroad safety matters. The Committee consists of 48 individual

representatives, drawn from among 27 organizations representing various rail industry perspectives, and 2 associate non-voting representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico. Staff of the National Transportation Safety Board and Federal Transit Administration also participate in an advisory capacity.

During this meeting, the RSAC will be briefed on the proposed standard for locomotive sanitary conditions, which has been forwarded to the Locomotive Cab Working Conditions Working Group for consensus approval to become the Working Group's recommendation to the full RSAC.

The RSAC will be requested to vote on the proposed adoption of the Positive Train Control Working Group's, Report on Implementation of Positive Train Control Systems, as the RSAC's report to the Federal Railroad Administrator.

A status report will be provided by the Accident/Incident Working Group, tasked with evaluating the concept of a reportable train accident, specifically the means by which the railroad property damage threshold is calculated. The Locomotive Crashworthiness Working Group will brief the RSAC on the status of proposed recommended standards for freight, passenger and switching locomotives.

A discussion on the issue of qualification and certification of safety-critical employees will be conducted, based on information to be provided to the FRA by the RSAC members.

FRA may request the RSAC to accept a task that would include revising the regulations governing the protection of employees engaged in the inspection, testing, repair and servicing of rolling equipment (49 CFR part 218, subpart B).

Informational briefings will be provided to the RSAC on safety-related issues of general interest.

Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740) for more information about the RSAC.

Issued in Washington, D.C. on August 23, 1999.

George A. Gavalla,

Acting Associate Administrator for Safety.

[FR Doc. 99–22219 Filed 8–25–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket: RSPA–98–4957; Notice 7]

Notice of Extension of Existing Information Collection

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Request for public comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Research and Special Programs Administration's (RSPA) is publishing this notice seeking public comments on a proposed renewal of an information collection for oil spill response plans prepared by onshore oil pipeline operators. This notice provides the public with 60 days for comment

DATES: Comments on this notice must be received on or before October 25, 1999 to be assured of consideration. U.S. Department of Transportation, Dockets Facility, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–001 or e-mail to dms.dot.gov. Please put docket number on all comments.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW. Washington, DC 20950, (202) 366–6205 or by electronic mail at Marvin.fell@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

Title: Response Plans for Onshore Oil Pipelines.

OMB Number: 2137–0589.

Type of Request: Renewal of an existing information collection.

Abstract: The Oil Pollution Act of 1990 (OPA 90) requires that certain pipelines that transport oil must develop a response to minimize the impact of an oil discharge in the case of an accident. These response plans enhance the spill response capability of pipeline operators.

Estimate of Burden: The average burden hours per response is approximately 47 hours.

Respondents: Oil pipeline operators.

Estimated Number of Respondents: 1,400.

Estimated Total Annual Burden on Respondents: 65,467 hours.

Frequency: Every three years.

Use: To enhance response capability in the event of an oil spill.

Copies of this notice and supporting documents on this information collection renewal can be reviewed at the Dockets Facility, Plaza 401, U.S. Department of Transportation, 400 Seventh St., SW, Washington, DC 20590, Monday through Friday from 9:00 A.M. to 5:00 P.M. Excluding Federal holidays. This information can also be reviewed electronically over the Internet at dms.dot.gov.

Comments are invited on: (a) the need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Issued in Washington, DC on August 20, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–22209 Filed 8–25–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8850

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8850, Pre-Screening Notice and Certification Request for the Work Opportunity and Welfare-to-Work Credits.

DATES: Written comments should be received on or before October 25, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Pre-Screening Notice and Certification Request for the Work Opportunity and Welfare-to-Work Credits.

OMB Number: 1545–1500.

Form Number: 8850.

Abstract: Employers use Form 8850 as part of a written request to a state employment security agency to certify an employee as a member of a targeted group for purposes of qualifying for the work opportunity credit or the welfare-to-work credit. The work opportunity credit and the welfare-to-work credit cover individuals who begin work for the employer before July 1, 1999.

Current Actions: There are no changes being made to Form 8850 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 400,000.

Estimated Time Per Respondent: 3 hr., 59 min.

Estimated Total Annual Burden Hours: 1,596,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 13, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–22246 Filed 8–25–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 99–43

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 99–43, Nonrecognition Exchanges under Section 897.

DATES: Written comments should be received on or before October 25, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the notice should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Nonrecognition Exchanges under Section 897.

OMB Number: 1545–1660.

Notice Number: Notice 99–43.

Abstract: Notice 99–43 announces a modification of the current rules under Temporary Regulation section 1.897–6T(a)(1) regarding transfers, exchanges, and other dispositions of U.S. real property interests in nonrecognition transactions occurring after June 18, 1980. The notice provides that, contrary to section 1.897–6T(a)(1), a foreign taxpayer will not recognize gain under Code section 897(e) for an exchange described in Code section 368(a)(1)(E) or (F), provided the taxpayer receives substantially identical shares of the same domestic corporation with the same dividend rights, voting power, liquidation preferences, and convertibility as the shares exchanged without any additional rights or features.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals or households.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 20, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–22247 Filed 8–25–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Third-Party Disclosure Requirements in IRS Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing regulations, Third-Party Disclosure Requirements in IRS Regulations.

DATES: Written comments should be received on or before October 25, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Third-Party Disclosure Requirements in IRS Regulations.

OMB Number: 1545–1466.

Abstract: These existing regulations contain third-party disclosure requirements that are subject to the Paperwork Reduction Act of 1995.

Current Actions: Changes to the third-party disclosure requirements include the following:

1. Proposed regulation section 1.131–1 was withdrawn. Therefore, the burden is reduced by 125,000 responses and 20,833 hours.

2. Regulation section 1.468B–5(b)(2) no longer has any effect because the required election statement had to be given to transferors on or before March 15, 1993. Therefore, the burden is reduced by 2,500 responses and 208 hours.

3. Regulation sections 1.1494–1(b)(1), 48.4041–11, and 48.4041–14 were eliminated because of changes in the underlying statutes. Therefore, the burden is reduced by a total of 1,020 responses and 111 hours.

4. Regulation sections 48.4041–15 and 48.4041–17 were affected by changes in the underlying statute regarding aviation gasoline. Therefore, the burden is reduced by a total of 2,000 responses and 200 hours.

5. Regulation section 1.6041–4(a)—As of January 2000, the rules of this regulation will be replaced with a new section that does not have any third-party disclosure requirements. Therefore, the burden is reduced by 1,000 responses and 2,000 hours.

Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 245,825,890.

Estimated Time Per Respondent: Varies.

Estimated Total Annual Burden Hours: 69,927,805.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 16, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–22248 Filed 8–25–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–62–93]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking and temporary regulation, IA–62–93 (TD 8509), Certain Elections Under the Omnibus Budget Reconciliation Act of 1993 (§§ 1.1044(a)–1T, 1.108(c)–1T, 1.163(d)–1T, and 1.6655(e)–1T).

DATES: Written comments should be received on or before October 25, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Certain Elections Under the Omnibus Budget Reconciliation Act of 1993.

OMB Number: 1545–1421.

Regulation Project Number: IA–62–93.

Abstract: These regulations established various elections enacted by the Omnibus Budget Reconciliation Act of 1993 (OBRA) and provided immediate interim guidance of the time and manner of making the elections. These regulations enable taxpayers to take advantage of various benefits provided by OBRA and the Internal Revenue Code.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and farms.

Estimated Number of Respondents: 410,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 202,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 18, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–22249 Filed 8–25–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–253578–96]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG–253578–96, Health Insurance Portability for Group Health Plans; and temporary regulation (TD 8716) Interim Rules for Health Insurance Portability for Group Health Plans (§§ 54.9801–3T, 54.9801–4T, 54.9801–5T, and 54.9801–6T).

DATES: Written comments should be received on or before October 25, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Notice of Proposed Rulemaking, Health Insurance Portability for Group Health Plans, and temporary regulation, Interim Rules for Health Insurance Portability for Group Health Plans.

OMB Number: 1545–1537.

Regulation Project Number: REG–253578–96.

Abstract: These regulations contain rules governing access, portability, and renewability requirements for group health plans and issuers of health insurance coverage offered in connection with a group health plan. The regulations also provide guidance for group health plans and the employers maintaining them regarding requirements imposed on plans relating to preexisting condition exclusions, discrimination based on health status, and access to coverage.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, and state, local, or tribal governments.

Estimated Number of Respondents: 1,300,000.

Estimated Time Per Respondent: Varies.

Estimated Total Annual Burden Hours: 591,561.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 18, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–22250 Filed 8–25–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 99–32

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 99–32, Conforming Adjustments Subsequent to Section 482 Allocations.

DATES: Written comments should be received on or before October 25, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Conforming Adjustments Subsequent to Section 482 Allocations.

OMB Number: 1545–1657.

Revenue Procedure Number: Revenue Procedure 99–32.

Abstract: Revenue Procedure 98–32 provides guidance for conforming a taxpayer's accounts to reflect a primary adjustment under Internal Revenue Code section 482. The revenue procedure prescribes the applicable procedures for the repatriation of cash by a United States taxpayer via an interest-bearing account receivable or payable in an amount corresponding to the amount allocated under Code section 482 from, or to, a related person with respect to a controlled transaction.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 180.

Estimated Time Per Respondent: 9 hours.

Estimated Total Annual Burden Hours: 1,620.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 20, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–22251 Filed 8–25–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 99–31

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 99–31, Employee Plans Compliance Programs—Acceptable Methods of Self-Correction and Closing Agreements.

DATES: Written comments should be received on or before October 25, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Employee Plans Compliance Programs—Acceptable Methods of Self-Correction and Closing Agreements.

OMB Number: 1545–1656.

Revenue Procedure Number: Revenue 99–31.

Abstract: The information requested in Revenue Procedure 99–31 is required to enable the Internal Revenue Service to make determinations on the issuance of various closing agreements and compliance statements as well as to verify that plan participants have been notified by their employers. The issuance of these agreements and proper notification allows individual plans to maintain their tax-qualified status. As a result, the favorable tax treatment of the benefits of the eligible employees is retained.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, and state, local or tribal governments.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 10.8 hours.

Estimated Total Annual Burden Hours: 10,800.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 19, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–22252 Filed 8–25–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TREASURY

Internal Revenue Service

Retirement of IBM Series/1 in IRS E-Filing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of retirement of IBM Series/1 in IRS E-filing.

SUMMARY: This announcement serves as notice that the Internal Revenue Service plans to retire the IBM Series/1 for IRS e-filing of Forms 1040 series, including the stand-alone Electronic Tax Document Forms, 4868 and Form 9465. The effective date for this is October 20, 1999 at the conclusion of the 1999 filing season.

Beginning with 1999 Participants Acceptance Testing System (PATS) in November 1999, software developers and transmitters will transmit test returns to the Austin Service Center (AUSC) and/or the Tennessee Computing Center (TCC) on the Electronic Management System (EMS) Front End Processing Subsystem (FEPS). Transmitters that would have e-filed returns at the Andover (ANSC) or Ogden Service Centers (OSC) will transmit them to AUSC. Transmitters that would have e-filed returns at the Cincinnati Service Center (CSC) and Memphis Service Center (MSC) will transmit them to TCC. The only difference to the filers is the telephone number they use to transmit returns. The returns will still be owned by the home service center for the taxpayer, either ANSC, AUSC, CSC, MSC, or OSC, so software developers, practitioners, and transmitters will still call the home center for assistance and questions for PATS and production. Each service center will have access to the node that contains their data, and will be able to assist e-filers with any question or problem, including transmission problems.

SUPPLEMENTARY INFORMATION: The EMS has been used at TCC since 1996 and AUSC since 1997. The Trading Partner Interface used in transmitting returns will remain the same. IRS is piloting alternative high-speed protocols, such as TCP/IP and use of ISDN, on the new EMS. The State Retrieval System for CSC will move to TCC and the State Retrieval Systems for ANSC and OSC will move to AUSC.

ADDRESSES: Questions or concerns should be directed to Carolyn E. Davis, Senior Program Analyst, IRS, Electronic Tax Administration, OP:ETA:O:S, 5000 Ellin Road, Room C4–187, Lanham, MD 20706.

FOR FURTHER INFORMATION CONTACT: Questions or concerns will also be taken over the telephone. Call 202–283–0589 (not a toll-free number) or via email to: *carolyn.e.davis@m1.irs.gov.*

Terence H. Lutes,

National Director, Electronic Program Operations, Electronic Tax Administration.

[FR Doc. 99–22245 Filed 8–25–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Notice of Meeting

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of open meeting of the So.Fla Citizen Advocacy Panel.

SUMMARY: An open meeting of the So.Fla Citizen Advocacy Panel will be held in Sunrise, Fla.

DATES: The meeting will be held Friday, September 10, 1999 and Saturday, September 11, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy Ferree at 1–888–912–1227, or 954–423–7973.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Citizen Advocacy Panel will be held Friday, September 10, 1999 from 6:00 pm to 9:00 pm and Saturday, September 11, 1999 from 9:00 am to 1:00 pm, in the Citizen Advocacy Panel Office, 7771 W. Oakland Park Blvd #225, Sunrise, Fla. 33351. The public is invited to make comments. Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 954–423–7973, or write Nancy Ferree, CAP Office, 7771 W. Oakland Park Blvd. #225, Sunrise, FL 33351. Due to limited conference space, notification of intent to attend the meeting must be made with Nancy Ferree. Ms. Ferree can be reached at 1–888–912–1227 or 954–423–7973. In accordance with the American's With Disabilities Act, persons with special needs should contact Nancy Ferree at 954–423–7973 by no later than 09/01/99.

The agenda will include the following: various IRS issue updates and reports by the CAP sub-groups.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: August 16, 1999.

Nancy Ferree,

CAP Office Manager.

[FR Doc. 99–22097 Filed 8–25–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974; Altered System of Records

AGENCY: Internal Revenue Service, Treasury.

ACTION: Proposed alteration of a Privacy Act system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Department of the Treasury gives notice of a major proposed alteration to the Customer Feedback System, (Treasury/IRS 00.003). This proposed alteration is part of the implementation of certain provisions of the Internal Revenue Service Restructuring and Reform Act of 1998, (Pub. L. 105–206, July 22, 1998), in order to achieve the objective of improving IRS customer service.

EFFECTIVE DATES: The proposed alteration will be effective October 5, 1999, unless the IRS receives comments that would result in a contrary determination.

ADDRESSES: Comments should be sent to the National Taxpayer Advocate's Office, (C:TA), 1111 Constitution Avenue, NW, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Kenneth Keller, National Taxpayer Advocate's Office, (202) 622–8808.

SUPPLEMENTARY INFORMATION: The Customer Feedback System is maintained by the Internal Revenue Service to meet the reporting requirement of § 1211 of Public Law 104–168, the Taxpayer Bill of Rights 2 (TBOR2), which provides that the Secretary of the Treasury shall submit an annual report to Congress on the misconduct of IRS employees. A database for the records includes allegations about IRS employee misconduct received from taxpayers and their representatives, as well as the disposition of such complaints by managers.

The IRS will conduct a test to alter the Customer Feedback System. Significant modifications of the current system include: (1) The subject matter will be broadened to include taxpayer complaints, problems, compliments and suggestions about IRS systems, processes. and procedures; (2) Information will be collected by IRS employees through their personal contacts with taxpayers, as well as through direct taxpayer input using a survey form; and (3) The system will be used as a basis for controlling and monitoring the Internal Revenue Service's handling of taxpayer issues to ensure that timely and appropriate responses are provided. In accordance with the requirements of the IRS Restructuring and Reform Act of 1998, the Internal Revenue Service will include in its Customer Feedback System records the identification of individual employees who are cited by taxpayers for inappropriate conduct when such allegations do not involve the mandatory discharge provisions of § 1203 of the Act. Most of these changes will be implemented initially on a test basis in four IRS offices (Pittsburgh, Richmond, Fresno and Atlanta) and expanded subsequently to the remaining IRS offices. During this test period, the original records will continue to exist concurrently with the test records for most offices. In the test offices, the new records will be referred to as "Customer Service Records," while in the remaining offices, the original records will continue to be referred to as the "Customer Feedback System records." For Privacy Act purposes, both kinds of records will continue to fall under the Customer Feedback System of records, IRS/Treasury 00.003.

The IRS published a proposed rule on August 7, 1997, at 62 FR 42443 to exempt the Customer Feedback System pursuant to section (k)(4) of the Act from certain provisions because the records were to be maintained and used solely for statistical purposes. We are withdrawing the proposed rule pursuant to Public Law 105–206, Internal Revenue Service Restructuring and Reform Act, as the records will no longer be used solely for statistical purposes. The document withdrawing the proposed rule is published separately in the **Federal Register**.

The altered system of records report, as required by 5 U.S.C. 552a(r) of the Privacy Act, has been submitted to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, Federal Agency Responsibilities for Maintaining Records About Individuals, dated February 8, 1996. The proposed alterations to Treasury/IRS 00.003—Customer Feedback System are set forth below.

Dated: July 28, 1999.

Shelia Y. McCann,

Deputy Assistant Secretary (Administration).

Treasury/IRS 00.003

SYSTEM NAME:

Customer Feedback System.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Description of Change: Add the following language at the end of the paragraph:

* * * The system will also capture customer feedback about any aspect of IRS operations and the identification of IRS employees about whom allegations of misconduct are made when such allegations do not involve the mandatory discharge provisions of § 1203 of the IRS Restructuring and Reform Act of 1998, Pub. L. 105–206 (July 22, 1998).

AUTHORITY FOR MAINTENANCE OF SYSTEM:

Description of Change: Add the following at the end of the paragraph:

* * * Section 3701 of the IRS Restructuring and Reform Act of 1998 (Pub. L. 105–206, July 22, 1998).

PURPOSE:

Description of change: Replace the current language with the following:

The purpose of this system is to collect a broad range of information about individual taxpayer issues and how they are resolved by the Internal Revenue Service. The collected records will enable the Service to better respond to individual taxpayer issues and to analyze and improve its operations, products and services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Description of change: Insert the following language at the beginning of the paragraph:

Disclosure of tax return and return information may only be made as provided by 26 U.S.C. 6103. * * *

* * * * *

RETRIEVABILITY:

Description of change: Replace the current language with the following:

Documents are stored and retrieved by control numbers; by taxpayer name, taxpayer identification number or person to contact; and by an employee identifier. The control number can be determined by reference to the entries for the taxpayer, taxpayer representative or the IRS employee to whom they relate.

* * * * *

NOTIFICATION PROCEDURE:

Description of change: Replace the current language with the following:

Individuals wishing to be notified if they are named in this system of records, or gain access to the records maintained in this system, must submit a written request in accordance with instructions appearing at 31 CFR part 1, subpart C, appendix B. Inquiries should be addressed to the office in which the records originate, to the attention of the National Taxpayer Advocate. See Appendix A for addresses of IRS offices.

RECORD ACCESS PROCEDURES:

Description of change: Replace the current language with the following:

See "Notification procedure" above.

CONTESTING RECORD PROCEDURES:

Description of change: Replace the current language with the following:

See "Notification procedure" above.

EXEMPTION CLAIMED FOR THE SYSTEM:

Description of change: Replace the current language with the following:

None.

[FR Doc. 99–22207 Filed 8–25–99; 8:45 am]

BILLING CODE 4830–01–P

federal register

Thursday
August 26, 1999

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 1217

Olive Oil Promotion, Research, and Information Order and Referendum Procedures; Proposed Rules

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1217

[FV–99–703–PR1]

Proposed Olive Oil Promotion, Research, and Information Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The U.S. Department of Agriculture (the Department or USDA) is seeking comments regarding the establishment of an industry-funded promotion, research, and information program for olive oil. A proposed program—the Olive Oil Promotion, Research, and Information Order (Order)—was submitted to USDA by the North American Olive Oil Association. Under the Order, olive oil first handlers and importers would pay an assessment of $0.01 per pound. First handlers would remit the assessment on domestic olive oil to the proposed Olive Oil Council (Council). The assessment on imported olive oil would be collected by the U.S. Customs Service and remitted to the Council. First handlers of less than 6,000 pounds of olive oil annually and importers of less than 6,000 pounds of olive oil annually would be exempt from assessment. The proposed program would be implemented under the Commodity Promotion, Research, and Information Act of 1996 (Act).

DATES: Comments must be received by October 25, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to the Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Stop 0244, Room 2535 South Building, 1400 Independence Avenue, SW, Washington, DC 20250–0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted electronically to: malinda.farmer@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this rule may be found at: www.ams.usda.gov/fv/rpdocketlist.htm. Pursuant to the Paperwork Reduction Act (PRA), send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information to the above address. Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Oliver L. Flake, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW, Room 2535 South Building, Washington, DC 20250–0244; telephone (202) 720–9915 or fax (202) 205–2800.

SUPPLEMENTARY INFORMATION: This proposed Order is issued pursuant to the Commodity Promotion, Research, and Information Act of 1996, 7 U.S.C. 7401–7425; Pub. L. 104–127, enacted April 4, 1996, hereinafter referred to as the Act.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the Act, a person subject to the Order may file a petition with the Secretary stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with the law, and requesting a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed within two years after the effective date of the Order, provision, or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Secretary of Agriculture (Secretary) will issue a ruling on a petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's final ruling.

Executive Order 12866

This proposed rule has been determined not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (RFA) [5 U.S.C. 601 *et seq.*], the Agency is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

The Act authorizes generic programs of promotion, research, and information for agricultural commodities. Congress found that it is in the national public interest and vital to the welfare of the agricultural economy of the United States to maintain and expand existing markets and develop new markets and uses for agricultural commodities through industry-funded, government-supervised, generic commodity promotion programs.

This program is intended to develop and finance an effective and coordinated program of promotion, research, and consumer information to maintain and expand the markets for olive oil. A proposal was submitted by the North American Olive Oil Association (proponent). The proponent has proposed that olive oil first handlers and importers approve the program in a referendum in advance of its implementation. Handlers, importers, and at-large members would serve on the 14-member Council that would administer the program under USDA's oversight. In addition, any person subject to the program may file with the Secretary a petition stating that the Order or any provision is not in accordance with law and requesting a modification of the Order or an exemption from the Order. Further, first handlers of less than 6,000 pounds of olive oil annually and importers of less than 6,000 pounds of olive oil annually would be exempt from assessment.

The proponent states that, of a total of 43 domestic first handlers, 13 would be covered by the program. Thirty first handlers would be exempt from paying assessments under the proposed Order because they handle less than 6,000 pounds of olive oil annually. Therefore, the only burden on first handlers of less than 6,000 pounds would be the filing of a request for an exemption and recordkeeping to document their exempt status. The required information would be the minimum necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Act. Such records shall be kept for at least two years. The exemption form can be completed with readily available information, and first handlers already keep records as a normal business practice. The added burden to the majority of first handlers for an olive oil promotion, research, and information program is therefore expected to be minimal.

In addition, there is a minimal burden on importers. The import assessments would be collected by the U.S. Customs Service (Customs) at time of entry into the United States. Importers would be required to keep records and to provide information to the Council or the Secretary when requested. However, it is not anticipated that importers would be required to submit forms to the Council. Importers who seek nomination to serve on the Council would be required to complete one form which would be submitted to the Secretary.

There would be an additional, minimal burden on the first handlers and importers who seek nomination to serve on the Council and who choose to vote in referenda.

The estimated annual cost of providing the information to the Council by an estimated 408 respondents (43 first handlers, 360 importers, and 5 at-large representatives) would be $3,920 or $600 for all first handlers or $13.95 per first handler, 3,270 for all importers or $9.08 per importer, and $50 for all at-large representatives or $5.00 per at-large representative.

The Department would oversee program operations and, if the program is implemented, would conduct a referendum (1) not later than seven years after assessments began to determine whether olive oil first handlers and importers support continuation of the program, (2) at the request of the Council established under the Order, or (3) at the request of 10 percent or more of the number of persons eligible to vote in referenda. Additionally, the Secretary may conduct a referendum at any time to determine whether the continuation, suspension, or termination of the Order or a provision of the Order is favored by those eligible to vote in referenda.

There are approximately 13 first handlers and 320 importers of olive oil who would be subject to the program. Most of the first handlers and importers would be classified as small businesses under the criteria established by the Small Business Administration (SBA) (13 CFR 121.601). The SBA defines small agricultural handlers and importers as those whose annual receipts are less than $5 million.

The United States produces very little olive oil compared to the amount it imports. Assuming a yield of 18 percent from the olives USDA reports as utilized for oil, production was 738 tons in 1998, compared to 648 tons in 1997. Imports, however, were 181,850 tons in 1998 and 180,186 tons in 1997. Italy accounted for 73 percent of imports in 1998, followed by Spain at 11 percent, Turkey at 8 percent, and Greece at 3 percent. A number of countries provided the remaining 5 percent. The total value of imports in 1998 was about $347 million, compared to $432 million in 1997. Exports of oil are significant, but are much smaller than imports. In 1998, the quantity reported was 8,934 tons, worth $6 million. This compares to 10,323 tons exported in 1997, worth $7 million. Exports exceed production because some imports are further processed or repackaged in the United States and then exported.

According to 1996 importer records, over 300 companies import olive oil into the United States; however, most of these companies import a very small quantity of oil with each importing less than 1 percent of the total amount.

Domestic first handlers of olive oil are located primarily in the states of Texas and California. We understand that approximately 70 percent of these first handlers are small companies, handling less than 6,000 pounds of olive oil per year and would fall within the exemption from assessment provided in the proposed Order.

Additionally, according to Nielsen Retail Sales data, the retail sector accounts for 45 percent of the sales of olive oil, the food service sector accounts for approximately 50 percent, and the commercial ingredient sector accounts for about 5 percent of olive oil consumption.

The proposed Order would authorize an initial assessment rate of $0.01 per pound paid by first handlers and importers of 6,000 pounds or more of olive oil annually. The proposed Order authorizes the assessment rate to be raised to a maximum of $0.02 per pound as long as the increase in any one year does not exceed $0.002 per pound.

Section 516(a)(1) of the Act provides authority to the Secretary to exempt from the Order any de minimis quantity of an agricultural commodity otherwise covered by the Order. As stated above, the proponent recommends that first handlers and importers of less than 6,000 pounds of olive oil annually be exempt from assessment.

At the initial proposed rate of assessment of $0.01 per pound of olive oil, the Council would collect between $3 million and $4 million annually.

USDA will keep all individuals informed throughout the referendum process to ensure that they are aware of and are able to participate in the referendum. USDA will publicize information regarding the referendum process so that trade associations and related industry media can be kept informed.

In addition, the olive oil industry would nominate first handlers, importers, and at-large representatives of the olive oil market to serve as members on the Council. The Council would nominate the public member of the Council. The Council would recommend the assessment rate, programs and projects, a budget, and any rules and regulations that might be necessary for the administration of the program. USDA would ensure that the nominees represent the olive oil industry in accordance with the Act and the proposed Order.

Proposed recordkeeping and reporting requirements for the olive oil promotion, research, and information program would be designed to minimize the burden on first handlers and importers. The olive oil promotion program would be designed to strengthen the position of olive oil in the marketplace, maintain and expand existing markets, and develop new uses and markets for olive oil.

The estimated annual cost of providing the information to the Council by an estimated 408 respondents (43 first handlers, 360 importers, and 5 at-large representatives) would be $3,920 or $600 for all first handlers or $13.95 per first handler, $3,270 for all importers or $9.08 per importer, and $50 for all at-large representatives or $5.00 per at-large representative.

With regard to alternatives to this proposed rule, the Act itself provides for authority to tailor a program according to the individual needs of an industry. Provision is made for permissive terms in an order in section 516 of the Act, and other sections provide for alternatives. For example, section 514 of the Act provides for orders applicable to (1) producers, (2) first handlers and other persons in the marketing chain as appropriate, and (3) importers (if imports are subject to assessment). Section 516 authorizes an order to provide for exemption of de minimis quantities of an agricultural commodity; different payment and reporting schedules; types of research, promotion, and information activities in both domestic and foreign markets; reserve funds; credits for generic and branded activities; and the assessment of imports.

In addition, section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under the order. An order also may provide for its approval in a referendum to be based upon (1) a majority of those persons voting; (2) persons voting for approval who represent a majority of the volume of the agricultural commodity; or (3) a majority of those persons voting for approval who also represent a majority of the volume of the agricultural commodity. Section 515 of the Act provides for establishment of a board from among producers, first handlers, others in the marketing chain as appropriate, and importers, if importers are subject to assessment.

This proposal includes provisions for market expansion and improvement; reserve funds; and an initial referendum to be conducted prior to the Order going into effect. Approval will be based upon a majority of the eligible persons voting in the referendum.

While we have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed Order on small entities, in order to obtain all the data necessary for a comprehensive analysis, we invite comments concerning the potential effects of the proposed Order. In particular, we are interested in obtaining more information on the number and kind of small and large entities that may incur benefits or costs from implementation of the proposed Order and information on the expected benefits or costs.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulation (5 CFR Part 1320) which implements the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements that may be imposed by this Order have been submitted to OMB for approval.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number for background form (number 1 below): 0505–0001.

Expiration Date of Approval: July 31, 2001.

OMB Number for other information collections: New Collection.

Expiration Date of Approval: 3 Years from date of approval.

Type of Request: Revision of currently approved information collections for advisory committees and boards and for research and promotion programs.

Abstract: The information collection requirements in the request are essential to carry out the intent of the Act.

In addition, there will be an additional burden on first handlers and importers who vote in referenda. The referendum ballot, which represents the information collection requirement relating to referenda, is addressed in a proposed rule on referendum procedures which is published separately in this issue of the **Federal Register**.

Under the proposed program, first handlers would be required to submit assessments and reports to the Council. Assessments on imports would be collected by Customs at the time of entry into the United States. Therefore, it is not anticipated that importers who are subject to assessments would be required to file any forms with the Council.

Handlers and importers of less than 6,000 pounds of olive oil annually would be required to file an application in order to receive an exemption from assessments.

In addition, the proposed Order would impose certain recordkeeping requirements on first handlers and importers. However, the information required under the proposed Order could be compiled from records currently maintained. Such records shall be retained for at least two years beyond the marketing year of their applicability.

The estimated annual cost of providing the information to the Council by an estimated 408 respondents (43 first handlers, 360 importers, and 5 at-large representatives) would be $3,920 or $600 for all first handlers or $13.95 per first handler, $3,270 for all importers or $9.08 per importer, and $50 for all at-large representatives or $5.00 per at-large representative.

The proposed Order's provisions have been carefully reviewed, and every effort has been made to minimize any unnecessary recordkeeping costs or requirements.

The proposed forms would require the minimum information necessary to effectively carry out the requirements of the program, and their use is necessary to fulfill the intent of the Order. Such information can be supplied without data processing equipment or outside technical expertise. In addition, there are no additional training requirements for individuals filling out reports and remitting assessments to the Council. The forms would be simple, easy to understand, and place as small a burden as possible on the person required to file the information.

The information required has been designed to coincide with normal industry business practices to minimize the burden on the industry. The required information is not available from other sources because such information relates specifically to individuals who are covered by the Order. Therefore, there is no practical method for collecting the required information without the use of these forms.

Information collection requirements that are included in this proposal include:

(1) *A background information form to be completed by candidates nominated for appointment to the Council. Estimate of Burden:* Public reporting for this collection of information is estimated to average 0.5 hours per response for each respondent.

Respondents: First handlers, importers, and at-large representatives.

Estimated Number of Respondents: 13 (average of 28 for the initial nominations to the Council and approximately 10 respondents annually thereafter for each 3-year period).

Estimated Number of Responses per Respondent: 1 every 3 years.

Estimated Total Annual Burden on Respondents: 14 hours for the initial nominations to the Council and 5 hours annually thereafter.

(2) *An annual report by each first handler of olive oil. Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.5 hours per each handler reporting on olive oil handled.

Respondents: Handlers.

Estimated Number of Respondents: 43.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 21.5 hours.

(3) *An exemption application for first handlers and importers of less than 6,000 pounds of olive oil annually.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .50 hours per response for each exempt first handler and importer.

Respondents: Exempt first handlers and importers.

Estimated Number of Respondents: 70.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 35 hours.

(4) *Importer application for reimbursement of assessment.*

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per importer requesting a reimbursement.

Respondents: Importers.

Estimated Number of Respondents: 40.

Estimated Number of Responses per Respondent: 12.

Estimated Total Annual Burden on Respondents: 120 hours.

(5) *A requirement to maintain records sufficient to verify reports submitted under the Order.*

Estimate of Burden: Public recordkeeping burden for keeping this information is estimated to average 0.5 hours per recordkeeper maintaining such records.

Recordkeepers: First handlers and importers.

Estimated number of Recordkeepers: 403.

Estimated Total Recordkeeping Hours: 201.5 hours.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of functions of the Order and the Department's oversight of the program, including whether the information will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Act provides for the submission of proposals for a promotion, research, and information order by industry organizations or any other interested person affected by an order.

Comments concerning the information collection requirements contained in this action should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments addressing the nomination background information form should reference OMB No. 0505–0001. In addition, the docket number, date, and page number of this issue of the **Federal Register** also should be referenced. Comments should be sent to the USDA Docket Clerk and the OMB Desk Officer for Agriculture at the addresses and within the time frames listed above. All responses to this notice will be summarized and included in the request for OMB approval.

OMB is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after publication. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Background

The Act authorizes the Secretary, under a generic authority, to establish agricultural commodity research and promotion orders. The Act provides for a number of optional provisions that allow the tailoring of orders for different commodities. Section 516 of the Act provides permissive terms for orders, and other sections provide for alternatives. For example, section 514 of the Act provides for orders applicable to (1) producers, (2) first handlers and others in the marketing chain as appropriate, and (3) importers (if importers are subject to assessment). Section 516 authorizes an order to provide for exemption of de minimis quantities of an agricultural commodity; different payment and reporting schedules; types of research, promotion, and information activities in both domestic and foreign markets; reserve funds; credits for generic and branded activities; and the assessment of imports. In addition, section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under the order. The order also may provide for its approval in a referendum based upon different voting patterns. Section 515 provides for establishment of a board from among producers, first handlers and others in the marketing chain as appropriate, and importers, if imports are subject to assessment.

This proposed Order includes provisions for market expansion and improvement, reserve funds, and an initial referendum to be conducted prior to the Order going into effect. Approval will be based upon a majority of the eligible first handlers and importers voting in the referendum.

The proponent has requested the establishment of a national promotion, research, and information order for olive oil pursuant to the Act. The Act authorizes the establishment and operation of generic promotion programs which may include a combination of promotion, research, industry information, and consumer information activities funded by mandatory assessments. These programs are designed to maintain and expand markets and uses for agricultural commodities. This proposal would provide for the development and financing of an effective and coordinated program of research, promotion, and information for olive oil. The purpose of the program would be to strengthen the position of olive oil in the marketplace and to develop, maintain, and expand markets for olive oil.

The program would not become effective until approved by first handlers and importers in a referendum to be conducted by USDA. Section 518 of the Act provides for the Department (1) to conduct an initial referendum, preceding a proposed order's effective date, among persons who would pay assessments under the program or (2) to implement a proposed order, pending the conduct of a referendum, among persons subject to assessments, within three years after assessments first begin.

In accordance with section 518(e) of the Act, the results of the referendum must be determined one of three ways: (1) Approval by a majority of those persons voting; (2) approval by persons voting who represent a majority of the volume of the commodity covered by the program; or (3) approval by a majority of the persons voting who also represent a majority of the volume of the commodity produced, handled, or imported by the persons voting.

The proponent proposes that the Department conduct an initial referendum preceding the proposed Order's effective date and that approval of the Order be determined by a simple majority of the eligible first handlers and importers voting in the referendum.

In accordance with the Act, the Department would oversee the program's operations. In addition, the Act requires the Secretary to conduct subsequent referenda: (1) Not later than seven years after assessments first begin under the Order; or (2) at the request of the Council established under the Order; or (3) at the request of 10 percent or more of the number of persons eligible to vote. The proponent group has requested that a referendum be conducted not later than seven years after assessments first begin under the proposed Order to determine if first handlers and importers want the program to continue.

In addition to these criteria, the Act provides that the Secretary may conduct a referendum at any time to determine whether the continuation, suspension, or termination of the Order or a provision of the Order is favored by persons eligible to vote.

According to the proponent, the largest obstacle to successful marketing of olive oil is the widespread lack of awareness of its characteristics and uses. Most consumers are aware that it costs three times as much as other food oils, but do not understand the differences between olive oils (a tree crop product) and vegetable or seed oils

that are an annual crop and are basically a secondary product to the high value oilseed meal that is used for animal feed.

Currently, only 22 percent of U.S. households purchase olive oil. Preliminary research by the proponent indicates that more than 50 percent of those who do not use olive oil say that they do not know how to use it. This indicates the magnitude of the task for the olive oil industry.

Similarly, there is also a need for educating the trade audience, such as chefs and others involved in the food service industry. Such sectors need more accurate information about the characteristics of olive oil and the types of foods and recipes that can be enhanced with olive oil.

Only in recent years has there emerged an awareness of the nutritional benefits of olive oil. A strong marketing program is needed to inform consumers about the nutritional benefits of olive oil and how it can be used within a nutritious diet.

Unlike other oils that are relatively uniform in characteristics, all extra virgin olive oils, virgin olive oils, and pure olive oils have different flavor characteristics. Different varieties and growing regions have a considerable influence on the flavor of oils. An effective promotion program is needed to educate the public and trade sectors on the types of olive oils and their uses in various food preparations.

Currently, no organization in the industry has sufficient resources to mount an effective information and publicity program for olive oil, to educate chefs on the uses of olive oil, and to develop the information that consumers and chefs require.

Most of the companies that market olive oil to the retail sector, food service sector, and commercial ingredient sector do not have the resources to promote the product. They look to the industry to develop the information that consumers and chefs require.

The olive oil industry has attempted to create marketing programs to no avail. These programs lacked adequate funding to reach the domestic audience and impact the marketplace for olive oil. For example, the proponent began a public relations program in 1991 with a budget of $100,000, but the maximum funds it has been able to raise for promotion by voluntary contributions has leveled off at $250,000. The total budget for the proponent is only $325,000. The budget of the California Olive Oil Council is less than $25,000. The Texas Olive Oil Council does not have a fixed budget.

Through the promulgation of a research and promotion order, the industry intends to effectively promote the consumption of olive oil through publicity on its nutritional and health benefits, its unique taste characteristics, and its versatility.

In addition, the Order would provide the necessary structure and budget to support scientific and other forms of research that would benefit the olive oil industry. For example, a wide variety of research projects are needed to further study the health and other potential benefits of olive oil as well as to address issues such as adulteration and botulism.

Members of the industry have already begun discussions regarding the types of programs and projects that should be launched nationally to achieve these objectives. A partial listing of these potential programs and projects include: Developing a publicity program to reach consumers, chefs, food writers, cook book authors, and others; providing representation of the olive oil industry at major food and nutrition shows; conducting food service and retail recipe contests; preparing collateral materials for industry; conducting in-store food demonstrations featuring olive oil; conducting news conferences and issuing news releases; researching the medical benefits of olive oil; and researching how olive oil works with different food applications in the commercial ingredient sector.

Industry support was assessed at a meeting of the Olive Oil Task Force held in December 1997. This task force is a coalition representing members of the North American Olive Oil Council, the California Olive Oil Council, and the Texas Olive Oil Council, as well as companies in the olive oil business. Members of the retail, food service, and commercial ingredient sectors were represented on the task force. These task force members as well as all known companies in the olive oil industry were invited to the meeting to discuss the benefits and usefulness of a research and promotion order for olive oil.

At this meeting and through subsequent discussions, participants agreed that current regional marketing programs will not be successful in boosting the domestic market for olive oil. In addition, participants reached a broad-based and almost unanimous agreement that the olive oil business would substantially benefit from a national research and promotion order.

All of these factors led the olive oil industry to seek a national promotion program to find ways to further increase the consumption of olive oil.

Section 516(f) of the Act allows an order to authorize the levying of assessments on imports of the commodity covered by the program or on products containing that commodity, at a rate comparable to the rate determined for the domestic agricultural commodity covered by the order. The proponent has proposed that imports be assessed.

The assessment levied on domestically produced and imported olive oil would be used to pay for promotion, research, and consumer and industry information as well as administration, maintenance, and functioning of the Council. Expenses incurred by the Secretary in implementing and administering the Order, including referenda costs, also would be paid from assessments.

Sections 516(e)(1) and (2) of the Act state that an Order may provide credits of assessments for generic and branded activities. The proponent has elected not to propose credits for generic or branded activities. Therefore, the terms "generic activities" and "branded activities" are not defined in the Order, and credits for assessments would not be made.

First handlers would be required to pay assessments and submit reports to the Council. Importers would be required to pay assessments, which would be collected by Customs at the time of entry into the United States. Both first handlers and importers would be required to keep records under the proposed program. First handlers and importers of less than 6,000 pounds of olive oil annually would be exempt from assessments. However, they would be required to file an exemption request in order to be exempt from assessments and reporting under the Order. First handlers and importers seeking nomination to serve on the Council would be required to complete a confidential questionnaire to determine their eligibility to serve.

All information obtained from persons subject to this Order as a result of recordkeeping and reporting requirements would be kept confidential by all officers, employees, and agents of the Department and of the Council. However, this information may be disclosed only if the Secretary considers the information relevant, and the information is revealed in a judicial proceeding or administrative hearing brought at the direction or on the request of the Secretary or to which the Secretary or any officer of the Department is a party. Other exceptions for disclosure of confidential information would include the issuance of general statements based on reports or on information relating to a number of persons subject to an order if the statements do not identify the information furnished by any person or the publication, by direction of the Secretary of the name of any person violating the Order and a statement of the particular provisions of the Order violated by the person.

The proposed Order provides for the Department to conduct an initial referendum preceding the proposed Order's effective date. Therefore, the proposed Order must be approved by a majority of the eligible first handlers and importers voting in the referendum. The proposed Order also provides for subsequent referenda to be conducted (1) no later than seven years after assessments first begin under the Order, (2) at the request of the Council established under the Order, or (3) when requested by 10 percent or more of first handlers and importers covered by the Order. In addition, the Secretary may conduct a referendum at any time.

The Act requires that such a proposed order provide for the establishment of a board to administer the program under USDA supervision. The proponent's proposal provides for a 14-member Olive Oil Council, as stated earlier.

To ensure fair and equitable representation of the olive oil industry on the Council, the Act requires membership on the Council to reflect the geographical distribution of the production of olive oil and the quantity or value of imports. To that end, this proposal provides that three members of the Council would be importers and marketers of consumer brands; one member would be an importer and marketer or packer of a private label; one member would be an importer of bulk olive oil; two members would be importers and marketers to the food service trade; two members would be first handlers of domestic olive oil; and five at-large members would represent one or more of the following segments of the olive oil market: The health community; professional chefs; food service operators; and food media/consultants.

Upon implementation of the Order and pursuant to the Act, the Council would at least once in each five-year period, but not more frequently than once in each three-year period, review the geographical distribution of olive oil production in the United States and the quantity of imports and make a recommendation to the Secretary after considering the results of its review and other information it deems relevant regarding the reapportionment of Council membership.

Members would serve for three-year terms, except that the members appointed to the initial Council would serve proportionately for two-, three-, and four-year terms. No member would serve more than two consecutive terms.

The proposed Order submitted by the proponent is summarized as follows:

Sections 1217.01 through 1217.22 of the proposed Order define certain terms, such as olive oil, first handler, importer, information, promotion, and research, which are used in the proposed Order.

Sections 1217.30 through 1217.37 include provisions relating to the Council: Establishment and membership, nominations, term of office, vacancies, procedure for conducting meetings, compensation and reimbursements for Council members, the Council's powers and duties, and prohibited activities.

Sections 1217.40 through 1217.41 establish the authority for the Council to develop research, promotion, and information projects and requirements for contracts, subject to oversight of the Secretary.

Sections 1217.50 through 1217.54 cover budget review and approval; financial statements; the collection of assessments; exemption from assessments; the use of assessments, including reimbursement of necessary expenses incurred by the Council for the performance of its duties, which includes expenses incurred for the Department's oversight responsibilities; a late-payment charge on past-due assessments; and an operating reserve.

The proponent recommends an initial assessment rate of $0.01 per pound on domestic and imported olive oil to be paid by handlers of domestic olive oil and importers.

The Council may raise the rate of assessment by no more than $0.002 per pound in any year, up to a maximum rate of $0.02, with approval of the Secretary.

The federal debt collection procedures referenced in § 1217.52(g) include those set forth in 7 CFR 3.1 through 3.36 for all research and promotion programs administered by USDA (60 FR 12533, March 7, 1995).

Sections 1217.55 through 1217.56 require that the Council perform an independent evaluation of its programs at least once every five years and address patents, copyrights, trademarks, information, publications, and product formulations developed through the use of assessment funds.

Sections 1217.60 through 1217.62 concern reporting and recordkeeping requirements for persons subject to the Order and protect the confidentiality of information from such books, records, or reports.

Sections 1217.70 through 1217.78 describe the rights of the Secretary; require an initial referendum before the program is implemented; authorize the Secretary to suspend or terminate the Order when deemed appropriate; prescribe proceedings after suspension or termination; specify effects of termination or amendment; and address personal liability, separability, and amendments.

The Department has modified the proponent's proposal to make it consistent with the Act and other similar national research and promotion programs for consistency throughout the text and for clarity.

In the definitions the following terms were added: "conflict of interest," "Department," "order," "suspend," and "terminate." Additionally, the term "first handler" was added to the definitions and replaced "handler" throughout the text.

The definition of "information" was rewritten to include activities designed to enhance olive oil's image, to add definitions of "consumer information" and "producer information," and to conform with the Act. The terms "marketing" and "research" were also changed to conform with the Act.

Section 1217.37 *Prohibited activities*, § 1217.41 *Contracts*, and § 1217.55 *Independent evaluation* were part of the original proposal but were subsections or cited in the proposal. The Department has expanded each of these for consistency with similar national research and promotion programs. In addition, the following sections and paragraphs were added to the proponent's proposal: § 1217.36 (r) and (s); § 1217.51 *Financial Statements;* § 1217.53(c) and (d); § 1217.70 *Right of the Secretary;* § 1217.71 *Referenda;* and § 1217.72(b) and (c).

Section 1217.16 was changed from *Plans and Projects* to *Programs, Plans, and Projects* and § 1217.35 was changed from *Expenses* to *Compensation and reimbursement* in order to more accurately reflect the subject covered in the section.

Section 1217.50(h) has been added in order to be consistent with the Act. Paragraph (e)(5) *Limitation on spending* of section 515 of the Act states that a board "may not expend for administration (except for reimbursements to the Secretary * * *)" an amount that exceeds 15 percent of the board's income during any fiscal year. This provision has been added as the proposal submitted did not indicate a limitation for such spending. In this same section, in order to be more

consistent with similar national research and promotion programs, a list of subjects to be covered in the budget was included. In addition, paragraphs (c), (d), and (f), which discuss amendments to the approved budget, authorization to incur expenses for a reasonable reserve, and the acceptance and use of voluntary contributions were added for clarity and for consistency with other similar national research and promotion programs.

Other minor changes which do not materially affect the text were made as appropriate.

The Department has determined that this proposed Order is consistent with and would effectuate the purposes of the Act.

The proposal set forth below has not received the approval of the Secretary.

List of Subjects in 7 CFR Part 1217

Administrative practice and procedure, Advertising, Consumer Information, Marketing agreements, Olive oil promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7 of Chapter XI of the Code of Federal Regulations be amended as follows:

1. Part 1217 is added to read as follows:

PART 1217—OLIVE OIL PROMOTION, RESEARCH, AND INFORMATION ORDER

Subpart A—Olive Oil Promotion, Research, and Information Order

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1217.4 Department.
1217.5 First handler.
1217.6 Fiscal period and marketing year.
1217.7 Handle.
1217.8 Importer.
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1217.11 Marketing.
1217.12 Olive oil.
1217.13 Order.
1217.14 Part and subpart.
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1217.17 Promotion.
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Olive Oil Council

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Research, Promotion, and Information

1217.40 Research, promotion, and information.
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1217.50 Budget and expenses.
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1217.60 Reports.
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1217.78 OMB control numbers.

Authority: 7 U.S.C. 7401–7425.

Subpart A—OLIVE OIL PROMOTION, RESEARCH, AND INFORMATION ORDER

Definitions

§ 1217.1 Act.

Act means the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7401–7425; Pub. L. 104–127; 110 Stat. 1029, as amended), or any amendments thereto.

§ 1216.2 Conflict of interest.

Conflict of interest means a situation in which a member or employee of the Council has a direct or indirect financial interest in a person who performs a service for, or enters into a contract with, the Council for anything of economic value.

§ 1217.3 Council.

Council means the administrative body established pursuant to § 1217.30.

§ 1217.4 Department.

Department means the United States Department of Agriculture.

§ 1217.5 First handler.

First handler means the first person (excluding a common or contract carrier) who buys or takes possession of olive oil from a producer for marketing. If a producer markets olive oil directly to consumers, the producer shall be considered to be a first handler with respect to the olive oil produced by the producer.

§ 1217.6 Fiscal period and marketing year.

Fiscal period and *marketing year* mean the 12-month period ending on December 31 or such other consecutive 12-month period as shall be recommended by the Council and approved by the Secretary.

§ 1217.7 Handle.

Handle means to process, package, sell, transport, purchase, or in any other way place olive oil, or cause it to be placed, in the current of commerce.

§ 1217.8 Importer.

Importer means any person who imports olive oil into the United States as principal or as an agent, broker, consignee, or representative of any person who produces or handles olive oil outside of the United States for sale in the United States, and who is listed in the import records as the importer of record for such olive oil.

§ 1217.9 Information.

Information means information and programs that are designed to increase efficiency in processing and to develop new markets, marketing strategies, increased market efficiency, and activities that are designed to enhance the image of olive oil on a national or international basis. These include:

(a) *Consumer information*, which means any action taken to provide information to, and broaden the understanding of, the general public regarding the consumption, use, nutritional attributes, and care of olive oil; and

(b) *Industry information*, which means information and programs that will lead to the development of new markets, new marketing strategies, or increased efficiency for the olive oil industry, and activities to enhance the image of olive oil.

§ 1217.10 Marketer.

Marketer means any person engaged in the sale or other disposition of olive oil in any channel of commerce.

§ 1217.11 Marketing.

Marketing means the sale or other disposition of olive oil in any channel of commerce.

§ 1217.12 Olive oil.

Olive oil is the oil obtained solely from the fruit of the olive tree *(Olea europaea sativa Hoffm. Et Link)* and, for purposes of this Order, includes olive pomace oil.

§ 1217.13 Order.

Order means an order issued by the Secretary under section 514 of the Act that provides for a program of generic promotion, research, and information regarding agricultural commodities authorized under the Act.

§ 1217.14 Part and subpart.

Part means the Olive Oil Research, Promotion, and Consumer Information Order and all rules, regulations, and supplemental orders issued thereunder, and the Order shall be a subpart of such part.

§ 1217.15 Person.

Person means any individual, group of individuals, partnership, corporation, cooperative, or any other legal entity.

§ 1217.16 Programs, plans, and projects.

Programs, plans, and projects means those research, promotion, and information plans, studies, or projects established pursuant to § 1217.30.

§ 1217.17 Promotion.

Promotion means any action, including paid advertising and the dissemination of culinary and nutritional information and public relations, to present a favorable image of olive oil to the public for the purpose of improving the competitive position of olive oil in the marketplace and to stimulate sales in the retail, food service, and industrial markets.

§ 1217.18 Research.

Research means any type of test, study, or analysis designed to advance the image, desirability, use, marketability, production, product development, or quality of olive oil.

§ 1217.19 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any other officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1217.20 Suspend.

Suspend means to issue a rule under section 553 of title 5, United States Code, or part thereof, to temporarily prevent the operation of an order during a particular period of time specified in the rule.

§ 1217.21 Terminate.

Terminate means to issue a rule under section 553 of title 5, United States Code, or part thereof, to cancel permanently the operation of an order beginning on a date certain specified in the rule.

§ 1217.22 United States.

United States means collectively the 50 states of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

Olive Oil Council

§ 1217.30 Establishment and membership.

(a) The Olive Oil Council is hereby established to administer the terms and provisions of the Order. The Council shall consist of 14 members as follows:

(1) Three members shall be importers and marketers of name brands;

(2) One member shall be an importer and marketer or packer of a private label;

(3) One member shall be an importer of bulk olive oil;

(4) Two members shall be importers and marketers to the food service trade;

(5) Two members shall represent the first handlers of domestic olive oil; and

(6) Five members shall be at-large representatives of one or more of the following segments of the olive oil market: the health community; professional chefs; food service operators; retailers; and food media/consultants.

(b) In accordance with regulations approved by the Secretary, at least every five years and not more than every three years, the Council shall review the geographical distribution of first handlers of domestic olive oil throughout the United States and the volume of imported olive oil and, if warranted, recommend to the Secretary the reapportionment of Council membership or the addition of members to reflect changes in the geographical distribution of the handling of olive oil and the volume of imported olive oil.

§ 1217.31 Nominations.

(a) The Secretary shall solicit nominations for the initial Council from importers, handlers, and other professionals associated with the olive oil industry.

(b) Procedure for subsequent nominations.

(1) The Council shall announce at least 180 days in advance of the expiration of members' terms that such terms are expiring and shall solicit nominations for such positions. The announcement shall include, at a minimum, the following information:

(i) A list of the vacancies for which nominees may be submitted and qualifications for nomination; and

(ii) The date by which the names of nominees shall be submitted to the Secretary for consideration in accordance with paragraph (b)(3) of this section.

(2) Importer members shall be nominated by importers, and handler members shall be nominated by handlers. The at-large members may be nominated by other professionals associated with the olive oil industry.

(3) Nominations should be submitted to the Secretary not less than 90 days prior to the expiration of members' terms.

(4) Two nominees must be submitted to the Secretary for each vacancy.

(c) The Secretary shall appoint the members of the Council from nominations made in accordance with paragraph (b) of this section.

(1) The Secretary may reject any nominee submitted. If there is an insufficient number of nominees from whom to appoint members to the Council as a result of the Secretary's rejecting such nominees, additional nominees shall be submitted to the Secretary in a manner prescribed by the Secretary.

(2) Whenever the industry fails to nominate individuals for appointment to the Council, the Secretary may appoint members in such a manner as the Secretary determines appropriate.

§ 1217.32 Term of office.

The members of the Council shall serve for terms of three years, except the members of the initial Council shall be designated for and shall serve terms as follows: Five members shall serve for two-year terms; five shall serve for three-year terms; and four shall serve for four-year terms. No member shall serve more than two consecutive terms.

§ 1217.33 Vacancies.

(a) In the event any member of the Council ceases to be a member of the category of members from which the member was appointed to the Council, such position shall automatically become vacant.

(b) If a member of the Council consistently refuses to perform the duties of a member of the Council, or if a member of the Council engages in acts of dishonesty or willful misconduct, the Council may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the Council shows adequate cause, the Secretary shall remove such member from office.

(c) Should any member position become vacant, the Secretary shall solicit nominations in the manner set forth in § 1217.32, except that said nomination and replacement shall not be required if said unexpired terms are less than six months.

§ 1217.34 Procedure.

(a) At a properly convened meeting of the Council, eight members shall constitute a quorum. Any action of the Council shall require the concurring votes of a majority of those present and voting. At assembled meetings, all votes shall be cast in person.

(b) In matters of an emergency nature when there is not enough time to call an assembled meeting of the Council, the Council may act upon the concurring votes of a majority of its members by mail, telephone, facsimile, or by other means of communication: *Provided*, that each proposition is explained accurately, fully, and substantially identically to each member. All telephone votes shall be promptly confirmed in writing and recorded in the Council minutes.

§ 1217.35 Compensation and Reimbursement.

Members of the Council, when acting as members, shall serve without compensation but shall be reimbursed for reasonable travel expenses, as approved by the Council, incurred by them in the performance of their duties as Council members.

§ 1217.36 Powers and duties.

The Council shall have the following powers and duties:

(a) To administer this subpart in accordance with its terms and provisions of the Act;

(b) With the approval of the Secretary, to invest funds, pending disbursement pursuant to a plan or project, only in: obligations of the United States or any agency thereof; in general obligations of any State or any political subdivision thereof; in any interest-bearing account or certificate of deposit of a bank which is a member of the Federal Reserve System; or in obligations fully guaranteed as to principal and interest by the United States;

(c) To appoint from its members an executive committee and to delegate to the committee authority to administer the terms and provisions of this subpart under the direction of the Council and within the policies determined by the Council;

(d) To receive, investigate, and report to the Secretary complaints of violations of this part; and

(e) To recommend to the Secretary amendments to this part.

(f) To meet and organize and to select from among its members a chairperson, other officers, and committees and subcommittees, as the Council determines to be appropriate;

(g) To develop and recommend to the Secretary for approval such bylaws as may be necessary for the functioning of the Council and such rules as may be necessary to administer the Order, including activities authorized to be carried out under the Order;

(h) To employ such persons as it may deem necessary and to determine the compensation and define the duties of each;

(i) To prepare and submit to the Secretary for the Secretary's approval, a budget on a fiscal period basis of its anticipated expenses in the administration of this part including the probable costs of all programs or projects and to recommend a rate of assessment with respect thereto;

(j) To receive and review or on its own develop programs and projects and to enter into contracts or agreements with the approval of the Secretary for the development and carrying out of programs or projects of promotion, and information;

(k) To maintain minutes, books, and records which shall be available to the Secretary for inspection and audit, and to prepare and submit such reports from time to time to the Secretary, as the Secretary may prescribe, and to make appropriate accounting with respect to the receipt and disbursement of funds entrusted to it;

(l) To periodically prepare and make public reports of its activities carried out, and, at least once each fiscal period, to make public an accounting of funds received and expended;

(m) To cause its books to be audited by a certified public accountant at the end of each fiscal period and to submit a copy of each audit to the Secretary;

(n) To give to the Secretary the same notice of meetings of the Council and subcommittees (including those conducted by telephone) as is given to members in order that representatives of the Secretary may attend such meetings;

(o) To submit to the Secretary such information pertaining to this subpart as the Secretary may request;

(p) To notify olive oil importers and first handlers of all Council meetings through news releases or other means;

(q) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the development and execution of plans, projects, or activities to effectuate the declared purpose of the Act.

(r) To act as intermediary between the Secretary and any producer, first handler, or importer.

(s) To work to achieve an effective, continuous, and coordinated program of promotion, research, information, evaluation, and industry information designed to strengthen the olive oil industry's position in the marketplace; maintain and expand existing markets and uses for olive oil; and to carry out programs, plans, and projects designed to provide maximum benefits to the olive oil industry.

§ 1217.37 Prohibited activities.

(a) The Council may not engage in and shall prohibit the employees and agents of the Council from engaging in:

(1) Any action that would be a conflict of interest; or

(2) Using funds collected by the Council under the Order to undertake any action for the purpose of influencing legislation or governmental action or policy, including local, state, national, and foreign governments, other than recommending to the Secretary amendments to the Order.

(b) No Council program, plan, or project shall make any false or misleading claims on behalf of olive oil or false, misleading, or disparaging statements with respect to the attributes or use of another agricultural commodity.

Research, Promotion, and Information

§ 1217.40 Research, promotion, and information.

(a) The Council shall develop and submit to the Secretary for approval any plans or projects authorized in this section. Such plans or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of appropriate plans or projects for research, promotion, and information designed to strengthen the position of olive oil in the marketplace, to maintain, develop, and expand markets for olive oil, and to encourage further development of the domestic industry; and

(2) The establishment and conduct of marketing research and development projects to the end that the acquisition of knowledge pertaining to olive oil or its consumption and use may be encouraged or expanded or to the end that the marketing and utilization of olive oil may be encouraged, expanded, improved, or made more efficient.

(b) No program, plan, or project shall be implemented prior to its approval by the Secretary. Once a program, plan, or project is so approved, the Council shall take appropriate steps to implement it.

(c) Each program, plan, or project implemented under this subpart shall be reviewed or evaluated periodically by the Council to ensure that it contributes to an effective program of promotion, research, or information. If it is found by the Council that any such program, plan, or project does not contribute to an effective program of promotion, research, or information, then the Council shall terminate such program, plan, or project.

§ 1217.41 Contracts.

(a) The Council may enter into contracts or make agreements for the development and carrying out of research, promotion, and information, and pay for the costs of such contracts or agreements, after approval from the Secretary.

(b) Each contract or agreement shall provide that:

(1) The contractor or agreeing party shall develop and submit to the Council a program, plan, or project together with a budget or budgets that shall show the estimated cost to be incurred for such program, plan, or project;

(2) The contractor or agreeing party shall keep accurate records of all its transactions and make periodic reports to the Council of activities conducted, submit accounting for funds received and expended, and make such other reports as the Secretary or the Council may require;

(3) The Secretary may audit the records of any contracting or agreeing party periodically; and

(4) Any subcontractor who enters into a contract with a Council contractor and who receives or otherwise uses funds allocated by the Council shall be subject to the same provisions as the contractor.

Expenses and Assessments

§ 1217.50 Budget and expenses.

(a) Prior to the beginning of each fiscal period, or as may be necessary thereafter, the Council shall prepare and submit to the Secretary a budget on a fiscal period basis of its anticipated expenses and disbursements in the administration of the Order and probable costs of research, promotion, and information. Each such budget shall include:

(1) A statement of objectives and strategy for each program, plan, or project;

(2) A summary of anticipated revenue, with comparative data for at least one preceding year (except for the initial budget);

(3) A summary of proposed expenditures for each program, plan, or project; and

(4) Staff and administrative expense breakdowns, with comparative data for at least one preceding year (except for the initial budget).

(b) Each budget shall provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in this subpart.

(c) Subject to this section, any amendment or addition to an approved budget must be approved by the Secretary, including shifting funds from one program, plan, or project to another. Shifts of funds which do not cause an increase in the Council's approved budget and which are consistent with governing bylaws, approved by the Secretary, need not have prior approval from the Secretary.

(d) The Council is authorized to incur such expenses, including provision for a reasonable reserve, as the Secretary finds are reasonable and likely to be incurred by the Council for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart. Such expenses shall be paid from funds received by the Council.

(e) With approval of the Secretary, the Council may borrow money for the payment of administrative expenses, subject to the same fiscal, budget, and audit controls as other funds of the Council. Any funds borrowed by the Council shall be expended only for startup costs and capital outlays and are limited to the first year of operation of the Council.

(f) The Council may accept voluntary contributions, but these shall only be used to pay expenses incurred in the conduct of programs, plans, and projects. Such contributions shall be free from any encumbrance by the donor, and the Council shall retain complete control of their use.

(g) The Council shall reimburse the Secretary for all expenses incurred by the Secretary in the implementation, administration, and supervision of the Order, including all referendum costs in connection with the Order.

(h) The Council may not expend for administration, maintenance, and functioning of the Council in any fiscal year an amount that exceeds 15 percent of the assessments and other income received by the Council for that fiscal year. Reimbursements to the Secretary required under paragraph (g) of this section are excluded from this limitation on spending.

§ 1217.51 Financial statements.

(a) As requested by the Secretary, the Council shall prepare and submit financial statements to the Secretary on a regular basis. Each such financial statement shall include, but not be limited to, a balance sheet, income statement, and expense budget. The expense budget shall show expenditures during the time period covered by the report, year-to-date expenditures, and the unexpended budget.

(b) Each financial statement shall be submitted to the Secretary within 30 days after the end of the time period to which it applies.

(c) The Council shall submit annually to the Secretary an annual financial statement within 90 days after the end of the fiscal year to which it applies.

§ 1217.52 Assessments.

(a) Each importer and first handler shall pay to the Council, upon demand, the assessment as may be approved by the Secretary. Such assessment shall be the amount established by the Secretary pursuant to paragraph (b) of this section.

(b) Except as otherwise provided, the rate of assessment shall be $0.01 per pound of olive oil imported or produced and handled in the United States. The rate of assessment may be raised to a maximum of $0.02 per pound as recommended by the Council and approved by the Secretary, but it shall not be raised more than $0.002 per year in any fiscal year.

(c) Importers of olive oil shall pay the assessment to the Council through the U.S. Customs Service at the time of entry. The U.S. Customs Service shall remit the assessment to the Council.

(d) The import assessment shall be uniformly applied to imported olive oil identified by the numbers 1509.10.20, 1509.10.40, 1509.90.20, 1509.90.40, 1510.00.40, and 1510.00.60 in the Harmonized Tariff Schedule of the United States.

(e) Assessments due from a first handler shall be paid to the Council at such time and in such manner as the Council, with the Secretary's approval, directs pursuant to regulations issued hereunder. Such regulations may provide for different importer or first handler payment schedules so as to recognize differences in marketing or purchasing practices and procedures.

(f) The Council shall impose a late payment charge on any person who fails to remit to the Council the total amount for which the person is liable on or before the payment due date established under this section. The late payment charge will be in the form of interest on the outstanding portion of any amount for which the person is liable. The rate of interest shall be prescribed in regulations issued by the Secretary.

(g) Persons failing to remit total assessments due in a timely manner may also be subject to actions by the Secretary under federal debt collection procedures.

§ 1217.53 Exemption from assessment.

(a) A domestic first handler who handles less than 6,000 pounds of olive oil per year or an importer who imports less than 6,000 pounds of olive oil per

year shall be eligible for an exemption from the assessment.

(b) To claim such exemption, a first handler or importer shall submit an application to the Council stating the basis on which the person claims the exemption for such year.

(c) If, after a person claims an exemption from assessments for any year under this section, and such person no longer meets the requirements of this paragraph for an exemption, such person shall provide additional information to the Council in the form and manner prescribed by the Council, subject to approval by the Secretary, and pay an assessment on all the olive oil handled or imported by such person during the year for which the person claimed the exemption.

(d) Exempted individuals are subject to such safeguards as prescribed in this part to prevent improper use of this exemption.

§ 1217.54 Operating reserve.

The Council may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in any reserve so established: *Provided*, That the funds in the reserve shall not exceed one fiscal period's budget. Subject to approval by the Secretary, such reserve funds may be used to defray any expenses authorized under this part.

§ 1217.55 Independent evaluation.

The Council shall, not less often than every five years, authorize and fund, from funds otherwise available to the Council, an independent evaluation of the effectiveness of the Order and programs conducted by the Council pursuant to the Act. The Council shall submit to the Secretary, and make available to the public, the results of each periodic independent evaluation conducted under this paragraph.

§ 1217.56 Patents, copyrights, inventions, product formulations, and publications.

(a) Any patents, copyrights, inventions, or publications developed through the use of funds collected by the Council under the provisions of this subpart shall be the property of the U.S. Government as represented by the Council, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications, inure to the benefit of the Council, and shall be considered income subject to the same fiscal, budget, and audit controls as other funds of the Board. Upon termination of this subpart, § 1217.73 shall apply to determine disposition of all such property.

(b) Should patents, copyrights, inventions or publications be developed through the use of funds received by the Council under this subpart and funds contributed by another organization or person, the ownership and related rights to such patents, copyrights, inventions, or publications shall be determined by an agreement between the Council and the party contributing funds towards the development of such patent, copyright, invention or publication in a manner consistent with paragraph (a) of this section, subject to approval by the Secretary.

Reports, Books, and Records

§ 1217.60 Reports.

Each first handler and importer shall be required to report to the administrative staff of the Council, at such times and in such manner as it may prescribe, such information as may be necessary for the Council to perform its duties. Such reports shall include, but shall not be limited to the following:

(a) For first handlers, the total quantity of olive oil handled during the reporting period; and a record of assessments paid, including a statement from the handler that the assessment has been paid on all olive oil handled during the reporting period.

(b) For importers, the total quantity of olive oil imported during the reporting period and a record of each importation of olive oil during such period, giving quantity, date, and port of entry.

(c) For persons who have an exemption from assessments under § 1217.53, such information as deemed necessary by the Council, and approved by the Secretary, concerning the exemption including disposition of exempted olive oil.

(d) Information reported to the administrative staff of the Council regarding total quantity, assessments, and other specific information must be kept confidential in accordance with § 1217.62.

§ 1217.61 Books and records.

First handlers and importers shall maintain, and during normal business hours make available for inspection by employees of the Council or the Secretary, such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any required reports. Such records shall be maintained for two years beyond the first period of their applicability.

§ 1217.62 Confidential treatment.

All information obtained from the books, records, or reports required to be maintained shall be kept confidential by all persons, including employees of the Council and all officers and employees and former officers and employees of contracting and subcontracting agencies or agreeing parties having access to such information, and shall not be made available to Council members, first handlers, or importers. Only such information as the Secretary deems relevant shall be disclosed to the public and then only in a suit or administrative hearing brought at the direction, or upon the request of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart, except that nothing in this subpart shall be deemed to prohibit:

(a) The issuance of general statements based upon the reports of a number of first handlers or importers subject to any order, if such statements do not either expressly or tacitly identify the information furnished by any person;

(b) The publication by direction of the Secretary, of the name of any person convicted of violating this subpart, together with a statement of the particular provisions of the Order violated by such person.

(c) Any disclosure of any confidential information by any employee of the Council shall be considered willful misconduct.

Miscellaneous

§ 1218.70 Right of the Secretary.

All fiscal matters, programs, plans, or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Council shall be submitted to the Secretary for approval.

§ 1217.71 Referenda.

(a) *Implementation.* For the purpose of ascertaining whether the persons to be covered by the Order favor the Order going into effect, the Secretary shall conduct an initial referendum among persons to be subject to the assessment under § 1217.52 who, during a representative period determined by the Secretary, engaged in the handling or importation of olive oil. The Order must be approved by a simple majority of those voting.

(b) *Subsequent referenda.* The Secretary shall hold subsequent referenda: Not later than seven years after assessments first begin under the Order; at the request of the Council; or when petitioned by 10 percent or more of the olive oil first handlers and importers eligible to vote to determine if they favor termination or suspension of this subpart. In addition, the Secretary may hold a referendum at any time.

§ 1217.72 Suspension or termination.

(a) The Secretary shall suspend or terminate this part or subpart or a provision thereof at the end of the marketing year whenever the Secretary determines that the subpart or a provision thereof obstructs or does not tend to effectuate the purposes of the Act, or if the Secretary determines that its suspension or termination is approved or favored in a referendum by a simple majority of the persons voting in a referendum who, during a representative period determined by the Secretary, have been engaged in the handling or importation of olive oil.

(b) If, as a result of a referendum, the Secretary determines that this subpart is not approved, the Secretary shall:

(1) No later than 180 days after making the determination, suspend or terminate, as the case may be, collection of assessments under this subpart; and

(2) As soon as practical, suspend or terminate, as the case may be, activities under this subpart in an orderly manner.

§ 1217.73 Proceedings after termination.

(a) Upon the termination of this subpart, the Council shall recommend to the Secretary not more than five of its members to serve as trustees for the purpose of liquidating the affairs of the Council. Such persons, upon designation by the Secretary, shall become trustees of all funds and property owned, in possession of, or under control of the Council, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Council under any contracts or agreements entered into by it pursuant to the Order;

(3) From time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Council and of the trustees, to such person as the Secretary may direct; and

(4) Upon the direction of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Council or the trustees pursuant to the Order.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligations as imposed upon the Council and the trustees.

(d) Any residual funds not required to defray the necessary expenses of liquidation shall be returned to the persons who contributed such funds, or paid assessments, or, if not practicable, shall be turned over to the Secretary to be utilized, to the extent practicable, in the interest of continuing one or more of the olive oil research or information programs authorized under the Order.

§ 1217.74 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or any regulation issued thereunder, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any such rule or regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or of any rule or regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, the Secretary, or of any person, with respect to any such violation.

§ 1217.75 Personal liability.

No member or employee of the Council shall be held personally responsible, either individually or jointly, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

§ 1217.76 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this subpart, or the applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1217.77 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Council or by any interested persons affected by the provisions of the Act, including the Secretary.

§ 1217.78 OMB control numbers.

The control number assigned to the information collection requirements by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, is yet to be determined. The Council nominee background statement form is assigned OMB control number 0505–0001.

Dated: August 18, 1999.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 99–22107 Filed 8–25–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1217

[FV–99–704–PR]

Olive Oil Promotion, Research, and Information Order; Referendum Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The purpose of this rule is to establish procedures which the Department of Agriculture (USDA or the Department) will use in conducting a referendum to determine whether the issuance of the proposed Olive Oil Promotion, Research, and Information Order (Order) is favored by the olive oil industry. Approval will be based on a majority of olive oil first handlers and importers voting in the referendum. These procedures would also be used for any subsequent referendum under the Order, if it is approved in the initial referendum. The proposed Order is being published in a separate document. This proposed program would be implemented under the Commodity Promotion, Research, and Information Act of 1996 (Act).

DATES: Comments must be received by October 25, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs (FV), Agricultural Marketing Service (AMS), USDA, Stop 0244, Room 2535 South Building, 1400 Independence Avenue, SW, Washington, DC 20250–0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted electronically to: malinda.farmer@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A

copy of this rule may be found at: www.ams.usda.gov/fv/rpdocketlist.htm. Pursuant to the Paperwork Reduction Act of 1995 (PRA), also send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to the above address. Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Oliver L. Flake or Karen T. Comfort, Research and Promotion Branch, FV, AMS, USDA, Stop 0244, Room 2535–S, 1400 Independence Avenue, SW, Washington, DC 20250–0244; telephone (202) 720–9915 or facsimile (202) 205–2800.

SUPPLEMENTARY INFORMATION: A referendum will be conducted to determine whether the issuance of the proposed Olive Oil Promotion, Research, and Information Order (Order) (7 CFR part 1217) is favored by a majority of eligible first handlers and importers voting in the referendum. The Order is authorized under the Commodity Promotion, Research, and Information Act of 1996 (Act) (Pub. L. 104–427, 7 U.S.C. 7401–7425). A proposed Order is being published separately in the **Federal Register**.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. Section 524 of the Act provides that the Act shall not affect or preempt any other Federal or State law authorizing promotion or research relating to an agricultural commodity.

Under section 519 of the Act, a person subject to the Order may file a petition with the Secretary of Agriculture (Secretary) stating that the order, any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with the law, and requesting a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order or any obligation imposed in connection with the Order, shall be filed within two years after the effective date of the Order, provision or obligation subject to challenge in the petition. The petitioner will have the opportunity for a hearing on the petition. The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall the jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's final ruling.

Executive Order 12866

This rule has been determined not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agency is required to examine the impact of the proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such action so that small businesses will not be disproportionately burdened.

The Act, which authorizes the Secretary to consider industry proposals for generic programs of promotion, research, and information for agricultural commodities, became effective on April 4, 1996. The Act provides for alternatives within the terms of a variety of provisions.

Paragraph (e) of section 518 of the Act provides three options for determining industry approval of a new research and promotion program: (1) By a majority of those voting; (2) by a majority of the volume of the agricultural commodity voted in the referendum; or (3) by a majority of those persons voting who also represent a majority of the volume of the agricultural commodity voted in the referendum. In addition, section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under the order. The North American Olive Oil Association (proponent), has recommended that the Secretary conduct a referendum in which the Order must be approved by a majority of those voting in the referendum, and the voters would be non-exempt first handlers and importers of olive oil. The proponent also has recommended that a referendum be conducted prior to the proposed Order going into effect.

This proposed rule would establish the procedures under which first handlers and importers may vote on whether they want an olive oil promotion, research, and information program to be implemented. First handlers and importers of 6,000 pounds or more of olive oil annually would be eligible to vote. The proposed Order provides for an exemption from assessment for first handlers and importers of less than 6,000 pounds of olive oil. This proposal would add a new subpart which establishes procedures to conduct an initial and future referenda. The proposed subpart covers definitions, voting instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

The United States produces very little olive oil compared to the amount it imports. Assuming a yield of 18 percent from the olives USDA reports as utilized for oil, production was 738 tons in 1998, compared to 648 tons in 1997. Imports, however, were 181,850 tons in 1998 and 180,186 tons in 1997. Italy accounted for 73 percent of imports in 1998, followed by Spain at 11 percent, Turkey at 8 percent, and Greece at 3 percent. A number of countries provided the remaining 5 percent. The total value of imports in 1998 was about $347 million, compared to $432 million in 1997. Exports of oil are significant but are much smaller than imports. In 1998, the quantity reported was 8,934 tons, worth $6 million. This compares to 10,323 tons exported in 1997, worth $7 million. Exports exceed production because some imports are further processed or repackaged in the United States and then exported.

According to 1996 importer records, over 300 companies import olive oil into the United States; however, most of these companies import a very small quantity of oil, with each importing less than 1 percent of the total amount.

Domestic first handlers of olive oil are located primarily in the states of Texas and California. We understand that an estimated 70 percent of these first handlers are small entities, handling less than 6,000 pounds of olive oil per year, and would fall within the exemption from assessment provided in the proposed Order.

Additionally, according to Nielsen Retail Sales data, the retail sector accounts for 45 percent of the sales of olive oil, the food service sector accounts for approximately 50 percent, and the commercial ingredient sector accounts for about 5 percent of olive oil consumption.

This proposed rule provides the procedures under which olive oil first handlers and importers may vote on whether they want the Order to be implemented. In accordance with the provisions of the Act, subsequent referenda may be conducted, and it is anticipated that the proposed procedures would apply.

Of the 43 first handlers, approximately 13 would be eligible to vote in the first referendum. Of the 360 importers, approximately 320 would be eligible to vote in the first referendum.

There are approximately 13 first handlers and 320 importers of olive oil who would be subject to the program. Most of the first handlers and importers would be classified as small businesses under the criteria established by the Small Business Administration (SBA) (13 CFR 121.601). The SBA defines small agricultural handlers and importers as those whose annual receipts are less than $5 million.

USDA will keep these individuals informed throughout the program implementation and referendum process to ensure that they are aware of and are able to participate in the program implementation process. USDA will also publicize information regarding the referendum process, so that trade associations and related industry media can be kept informed.

Voting in the referendum is optional. However, if first handlers and importers choose to vote, the burden of voting would be offset by the benefits of having the opportunity to vote on whether or not they want to be covered by the program.

The information collection requirements contained in this proposed rule are designed to minimize the burden on first handlers and importers. This rule provides for a ballot to be used by eligible first handlers and importers in voting in the referendum. The estimated annual cost of providing the information by an estimated 13 first handlers who would be eligible to vote would be $6.50 or $0.50 per first handler and, for the estimated 320 importers who would be eligible to vote, the annual cost would be $160.00 or $0.50 per importer.

The Secretary considered requiring eligible voters to vote in person at various USDA offices across the country. The Secretary also considered electronic voting, but the use of computers is not universal, current technology is not reliable enough to ensure that electronic ballots would be received in a readable format, and technology is insufficient at this time to provide sufficient safeguards of voters' confidentiality. Conducting the referendum from one central location by mail ballot would be more cost-effective and reliable. The Department would provide easy access to information for potential voters through a toll-free telephone line.

There are no federal rules that duplicate, overlap, or conflict with this rule.

We have performed this Initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities. However, in order to obtain all of the data necessary for a comprehensive analysis, we invite comments concerning the potential effects of this proposed rule. In particular, we are interested in obtaining more information on the number and kind of small and large entities that may incur benefits or costs from the implementation of this proposed rule and information on the expected benefits or costs.

Paperwork Reduction Act

In accordance with the Office of Management and Budget (OMB) regulations (5 CFR 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the referendum ballot, which represents the information collection and recordkeeping requirements that may be imposed by this rule, has been submitted to OMB for approval.

Title: National Research, Promotion, and Consumer Information Programs.

OMB Number: New collection.

Expiration Date of Approval: November 28, 2001.

Type of Request: Revision of a currently approved information collection for research and promotion programs.

Abstract: The information collection requirements in this request are essential to carry out the intent of the Act. The burden associated with the ballot is as follows:

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per response for each first handler and importer.

Respondents: First handlers and importers.

Estimated Number of Respondents: 333.

Estimated Number of Responses per Respondent: 1 every 5 years (0.2).

Estimated Total Annual Burden on Respondents: 16.65 hours.

The estimated annual cost of providing the information by an estimated 13 first handlers would be $6.50 or $0.50 per first handler and for an estimated 320 importers would be $160.00 or $0.50 per importer.

The ballot will be added to the other information collections approved for use under a OMB Number yet to be determined.

Comments are invited on: (a) Whether the proposed collection of information is necessary and whether it will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments concerning the information collection requirements contained in this action should reference the docket number, and the date and page number of this issue of the **Federal Register**. Comments should be sent to the USDA Docket Clerk and the OMB Desk Officer for Agriculture at the addresses and within the time frames specified above. All comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be summarized and included in the request for OMB approval.

OMB is required to make a decision concerning the collection of information contained in this rule between 30 and 60 days after publication. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Background

The Act authorizes the Secretary, under generic authority, to establish agricultural commodity research and promotion orders. The North American Olive Oil Association (proponent) has requested the establishment of an Olive Oil Promotion, Research, and Information Order (Order) pursuant to the Act. The proposed Order would provide for the development and financing of an effective and coordinated program of promotion, research, and information for olive oil. The program would be funded by an assessment levied on first handlers and importers (to be collected by the U.S. Customs Service at time of entry into the United States) at a rate of $0.01 per pound. In the proposed Order, olive oil is defined as the oil obtained solely from the fruit of the olive tree *(Olea europaea sativa Hoffm. Et Link)* and for the purposes of these referendum rules and the Order, includes olive pomace oil.

Assessments would be used to pay for promotion, research, and consumer information; administration, maintenance, and functioning of the Olive Oil Council; and expenses incurred by the Secretary in

implementing and administering the Order, including referendum costs.

Section 518 of the Act requires that a referendum be conducted among eligible olive oil first handlers and importers to determine whether they favor the Order. In addition, section 518 of the Act provides for referenda to ascertain approval of an order to be conducted either prior to its going into effect or within three years after assessments first begin under the order. According to a proposed rule that is published separately in this issue of the **Federal Register**, the Order would become effective if it is approved during the initial referendum, which will be held before the program is implemented. Approval will be based on a majority of the olive oil first handlers and importers voting in the referendum. First handlers and importers of 6,000 pounds or more of olive oil annually would be eligible to vote.

This proposed rule establishes the procedures under which first handlers and importers may vote on whether they want the olive oil promotion, research, and information program to be implemented. There are approximately 333 eligible voters.

This proposed rule would add a new subpart which would establish procedures to be used in this and future referenda. The subpart covers definitions, voting, instructions, use of subagents, ballots, the referendum report, and confidentiality of information.

All written comments received in response to this rule by the date specified will be considered prior to finalizing this action. We encourage the industry to pay particular attention to the definitions to be sure that they are appropriate for the olive oil industry.

List of Subjects in 7 CFR Part 1217

Administrative practice and procedure, Advertising, Olive Oil, Consumer Information, Marketing agreements, Olive Oil promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7, Chapter XI of the Code of Federal Regulations be amended as follows:

PART 1217—OLIVE OIL PROMOTION, RESEARCH, AND INFORMATION ORDER—[PROPOSED]

1. The authority citation for proposed part 1217 published elsewhere in this **Federal Register** continues to read as follows:

Authority: 7 U.S.C. 7401–7425.

2. Subpart B is added to proposed part 1217 to read as follows:

Subpart B—Procedure for the Conduct of Referenda in Connection With the Olive Oil Promotion, Research, and Information Order

Sec.

1217.100 General.
1217.101 Definitions.
1217.102 Voting.
1217.103 Instructions.
1217.104 Subagents.
1217.105 Ballots.
1217.106 Referendum report.
1217.107 Confidential information.

Subpart B—Procedure for the Conduct of Referenda in Connection With the Olive Oil Promotion, Research, and Information Order

§ 1217.100 General.

Referenda to determine whether eligible olive oil first handlers and importers favor the issuance, amendment, suspension, or termination of the Olive Oil Promotion, Research, and Information Order shall be conducted in accordance with this subpart.

§ 1217.101 Definitions.

(a) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the U.S. Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(b) *Olive oil* means the oil obtained solely from the fruit of the olive tree *(Olea europaea sativa Hoffm. Et Link)* and for the purposes of these regulations, includes pomace oil.

(c) *Eligible importer* means any person who imported 6,000 pounds or more of olive oil, that is identified by the numbers 1509.10.20, 1509.10.40, 1509.90.20, 1509.90.40, 1510.00.40, and 1510.00.60 in the Harmonized Tariff Schedule of the United States. Importation occurs when commodities originating outside the United States are entered or withdrawn from the U.S. Customs Service for consumption in the United States. Included are persons who hold title to foreign-produced olive oil immediately upon release by the U.S. Customs Service, as well as any persons who act on behalf of others, as agents or broker, to secure the release of olive oil from the U.S. Customs Service when such olive oil is entered or withdrawn for consumption in the United States.

(d) *Eligible first handler* means any person who buys or takes possession of 6,000 pounds or more of olive oil from a producer for marketing. If a producer markets the olive oil directly to consumers, the producer shall be considered to be the first handler with respect to olive oil produced by the producer.

(e) *Order* means the Olive Oil Promotion, Research, and Information Order.

(f) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

(h) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(i) *Representative period* means the period designated by the Secretary.

(j) *United States* means collectively the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the territories and possessions of the United States.

§ 1217.102 Voting.

(a) Each person who is an eligible first handler or an eligible importer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast only one ballot in the referendum.

(b) Proxy voting is not authorized, but an officer or employee of an eligible corporate first handler or importer, or an administrator, executor, or trustee or an eligible entity, may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that such individual is an officer or employee of the eligible entity, or an administrator, executive, or trustee of an eligible entity, and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(c) All ballots are to be cast by mail, as instructed by the Secretary.

§ 1217.103 Instructions.

The referendum agent shall conduct the referendum, in the manner herein provided, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining whether the person voting, or on whose behalf the vote is cast, is an eligible voter.

(c) Give reasonable public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the dates, places, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as the agent may deem advisable.

(d) Mail to eligible first handlers and importers whose names and addresses are known to the referendum agent, the instructions on voting, a ballot, and a summary of the terms and conditions of the proposed Order. No person who claims to be eligible to vote shall be refused a ballot.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized by the Administrator to monitor the referendum process.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

§ 1217.104 Subagents.

The referendum agent may appoint any individual or individuals necessary or desirable to assist the agent in performing such agent's functions hereunder. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

§ 1217.105 Ballots.

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be questioned for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was questioned, by whom, the reasons therefore, the results of any investigations made with respect thereto, if any, and the disposition thereof. Ballots invalid under this subpart shall not be counted.

§ 1217.106 Referendum report.

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

§ 1218.107 Confidential information.

The ballots and other information or reports that reveal, or tend to reveal, the vote of any person covered under the Act and the voting list shall be held confidential and shall not be disclosed.

Dated: August 18, 1999.

Eric M. Forman,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–22106 Filed 8–25–99; 8:45 am]

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federal register

Thursday
August 26, 1999

Part III

Environmental Protection Agency

40 CFR Part 710
TSCA Inventory Update Rule Amendments; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 710

[OPPTS–82053; FRL–6097–4]

RIN 2070–AC61

TSCA Inventory Update Rule Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The TSCA Inventory Update Rule (IUR) Amendments will help both EPA and the public better identify and mitigate potential exposures and risks associated with TSCA chemicals. Under section 8(a) of the Toxic Substances Control Act (TSCA), EPA currently requires manufacturers (including importers) of certain chemical substances and mixtures on the TSCA Chemical Substances Inventory to report current data regarding production volume, plant site information, and site-limited status. EPA is proposing to require the reporting of additional data that would assist EPA in evaluating potential exposures and risks resulting from industrial chemical operations and commercial and consumer uses of chemical substances. EPA is also proposing to modify reporting and recordkeeping requirements, to remove one reporting exemption and to create others, and to modify its Confidential Business Information (CBI) reporting procedures.

DATES: Comments on this proposed rule must be received no later than October 25, 1999. A public meeting to allow the opportunity for oral comment on this proposed rule will be held on Monday, October 4, 1999, from 9 a.m. to noon at the EPA Auditorium, 401 M St., SW., Washington, DC 20460.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the "SUPPLEMENTARY INFORMATION" section of this document.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Susan Krueger, Project Manager, Economics, Exposure and Technology Division (7406), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260-1713, fax: (202) 260-1661; e-mail: krueger.susan@epa.gov.

For general information contact: Christine M. Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202)554-1404, TDD: (202) 554-0551; e-mail: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Notice Apply to Me?

You may be potentially affected by this notice if you manufacture or import chemical substances and mixtures currently subject to reporting under the Inventory Update Rule (IUR) at 40 CFR part 710 or manufacture or import inorganic chemical substances. In the past, processors of chemical substances have not been required to comply with the requirements at 40 CFR part 710. These proposed amendments do not change the status of processors under the regulations at 40 CFR part 710. Potentially affected categories and entities may include, but are not limited to:

Category	NAICS	Examples of Potentially Regulated Persons
Chemical manufacturers and importers	325, 32411	Chemical manufacturers (including importers) currently subject to IUR reporting Chemical manufacturers (including importers) of inorganic chemical substances

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed above could also be regulated. To determine whether you or your business is affected by this action, carefully examine the applicability provisions in title 40 of the Code of Federal Regulations (CFR), part 710. If you have questions regarding the applicability of this action to a particular entity, consult the technical person listed in the preceding "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information or Copies of this Document or Other Documents?

1. *Electronically.* You may obtain electronic copies of this document and various support documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register--Environmental Documents." You can also go directly to the "Federal Register" listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–82053. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, Rm. NE-B607, Waterside Mall, 401 M St., SW., Washington, DC, from noon to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Nonconfidential Information Center telephone number is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropiate docket number (i.e., OPPTS–82053) in your correspondence.

1. *By mail.* Submit your comments to: Document Control Office (DCO) (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in the East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC 20460. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is 202–260–7099.

3. *Electronically.* You may submit your comments electronically by e-mail to: "oppt.ncic@epa.gov," or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by the docket control number OPPTS–82053. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want to Submit to the Agency?

You may claim information that you submit in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person identified in the "FOR FURTHER INFORMATION CONTACT" section.

E. What Should I Consider As I Prepare My Comments for EPA?

EPA invites you to provide your views on the various options proposed, new approaches EPA has not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide solid technical information and/or data to support your views.
- If you estimate potential burden or costs, explain how you arrived at the estimate.
- Tell us what you support, as well as what you disagree with.
- Provide specific examples to illustrate your concerns.
- Offer alternative ways to improve the rule or collection activity.
- Make sure to submit your comments by the deadline in this proposal.
- At the beginning of your comments (e.g., as part of the "Subject" heading), you must properly identify the document you are commenting on by providing the docket control number assigned to the proposal. You may also provide the name, date, and **Federal Register** citation, and the appropriate EPA or OMB ICR number.

II. Authority

EPA is required under TSCA section 8(b), 15 U.S.C. 2607(b), to compile and keep current an inventory of chemical substances in commerce. In 1977, EPA promulgated a rule (42 FR 64572, December 23, 1977) under TSCA section 8(a), 15 U.S.C. 2607(a), to compile an inventory of chemical substances. In 1986, EPA promulgated the IUR (51 FR 21447, June 12, 1986), also under TSCA section 8(a), to facilitate the periodic updating of the inventory and to support activities associated with the implementation of TSCA.

This document proposes amendments to 40 CFR part 710, which currently contains the Inventory Update Reporting Regulations. Failure to comply fully with any provision of a final rule would be a violation of TSCA section 15 and would subject the violator to the penalties of TSCA sections 16 and 17.

TSCA section 8(a)(1) authorizes the EPA Administrator to promulgate rules under which manufacturers (including importers) and processors of chemical substances and mixtures (referred to hereafter as "chemical substances") must maintain such records and submit such information as the Administrator may reasonably require. Under TSCA section 8(a), the Agency may collect information, insofar as it is known to, or reasonably ascertainable by the submitter, on the manufacture (including import) and processing of chemical substances. EPA possesses broad discretion in determining the information to be reported under TSCA section 8(a). Some of the types of information which can be required under TSCA section 8(a)(2) include: categories of use for each chemical substance, estimates of the amount manufactured or processed for each category of use, a description of the byproducts resulting from the manufacture, processing, use, or disposal of each chemical substance, an estimate of the number of individuals exposed, and the duration of such exposure. TSCA section 8(a) excludes, with certain exceptions, small manufacturers (including small importers), and processors of chemical substances from reporting requirements established in TSCA section 8(a). However, EPA is authorized by TSCA section 8(a)(3) to require TSCA section 8(a) reporting from small manufacturers (including importers) and processors with respect to any chemical substance that is the subject of a rule proposed or promulgated under TSCA section 4, 5(b)(4), or 6, or that is the subject of an order under TSCA section 5(e), or that is the subject of relief that has been granted pursuant to a civil action under TSCA sections 5 or 7. For purposes of the IUR, the standards for determining whether a business qualifies as a "small manufacturer or importer" are defined at 40 CFR 704.3. For additional information, see TSCA sections 2 and 8; H. Rep. 1341, 94th Cong., 2d Sess. 6-7 (July 14, 1976); Sen. Rep. 698, 94th Cong. 2d Sess. 3-5 (March 16, 1976).

III. Summary of the Amendments

In this document, EPA is proposing several changes to the current IUR reporting requirements. First, EPA is proposing to amend 40 CFR 710.32 in order to add exposure-related information to the reporting requirements for chemical substances covered by the IUR. Specifically, the Agency is proposing that manufacturers (including importers) subject to the proposed rule report, in ranges, the number of workers reasonably likely to be exposed to the chemical substance at the site of manufacture or import, and the physical form, average concentration, and maximum concentration of the chemical substance as it leaves the submitter's possession.

Second, EPA is proposing to amend 40 CFR 710.32 in order to require chemical manufacturers (including importers) ("submitters") of larger-volume chemical substances to report information concerning the processing and use of each reportable chemical substance that is conducted at sites controlled by the submitter and at "downstream" sites that receive the reportable chemical substance from the submitter directly or indirectly (including through a broker/distributor, from a customer of the submitter, etc.). Specifically, manufacturers (including importers) of these larger-volume chemical substances would be required to report:

1. The type of industrial processing or use operation at each site, including downstream sites.

2. The five-digit North American Industrial Classification System ("NAICS") codes that best describe the industrial activities conducted by the facilities that use or process the substance.

3. The "industrial functions" of the chemical substances.

4. The approximate number of processing and use sites.

5. The estimated number of workers reasonably likely to be exposed to each chemical substance at each site at which the chemical is used or processed.

6. The commercial and consumer uses of reportable chemical substances.

7. The estimated percentages of the submitter's production volume in each industrial function category and commercial and consumer product category.

8. The maximum concentration of the reportable chemical substance in each commercial and consumer product category.

Third, EPA is proposing to revoke the current full exemption from IUR reporting at 40 CFR 710.26(a) for inorganic chemical substances, and instead require partial reporting for these substances. EPA is also proposing to amend 40 CFR 710.26 to create a partial reporting exemption for petroleum process streams.

Fourth, EPA is proposing to amend 40 CFR 710.26 to provide an exemption from IUR reporting for certain forms of natural gas.

Fifth, EPA is proposing to amend 40 CFR 710.32 to require the reporting of additional information to assist in the identification of plant sites reporting under IUR.

Sixth, EPA is proposing to amend 40 CFR 710.28, 710.32, and 710.33 to change the period for which reporting is required from a corporate fiscal year to a calendar year basis.

Seventh, EPA is proposing to amend 40 CFR 710.32 to include two separate confidentiality boxes on the reporting form (Form U) for production volume in exact amounts and in ranges (see Unit VI. of this preamble for a copy of the proposed reporting form). These confidentiality boxes would enable submitters to assert a confidentiality claim for specific production volume information while releasing the more general production volume range as public information.

Eighth, EPA is proposing to amend 40 CFR 710.38 to require upfront substantiation of plant site confidentiality claims made in IUR submissions to EPA.

Ninth, EPA is proposing to add a new section, 40 CFR 710.39, to require submitters to reassert CBI claims made in past IUR reports during each reporting cycle.

Finally, EPA is proposing to amend 40 CFR 710.28 and 710.32 to raise the production volume reporting threshold from the current 10,000 pounds (lbs.) per year threshold to 25,000 lbs. per year, and to add a new larger-volume reporting threshold of 300,000 lbs. per year for the reporting of processing and use information.

Units VI. through VIII. of this preamble provide a discussion regarding changes to the current IUR that would occur upon promulgation of these proposed amendments. The discussion includes the current reporting requirements only to the extent that they would be modified in this proposal. EPA is not reopening the existing requirements for comment where they would not be modified in this proposal. CBI issues are discussed in Unit VIII. of this preamble, although certain of these issues are mentioned briefly in Unit VI. of this preamble.

IV. Background

A. Establishment of the Inventory Update Rule

In the **Federal Register** of June 12, 1986 (51 FR 21447), EPA published the Inventory Update Rule (IUR), which requires chemical manufacturers (including importers) to report to EPA every 4 years the identity of chemical substances manufactured (including imported) annually in quantities over 10,000 lbs. per year at each plant site they own or control. The current IUR excludes several categories of substances, including polymers, inorganic substances, microorganisms, and naturally occurring chemical substances. Plant sites subject to the rule are currently required to report information such as company name, plant site location, plant site Dun and Bradstreet number(s), identity of the reportable chemical substance, and production volume of the reportable chemical substance.

The data reported under IUR are used to update the information collected on the TSCA Inventory, which is a listing of chemical substances in commerce. EPA uses the TSCA Inventory and data reported under the IUR to support many TSCA-related activities and to provide overall support for a number of EPA and other Federal health, safety, and environmental protection activities (See Unit IV.B. of this preamble for further explanation of some of these activities).

B. EPA's TSCA-Related Chemical Screening and Assessment Activities

Congress enacted TSCA to establish a number of new requirements and authorities for identifying and controlling toxic chemical risks to human health and the environment (See TSCA section 2). To implement its responsibilities under TSCA, EPA must identify potential chemical risks, assess the magnitude of the identified risks and, where necessary, manage risks determined to be unreasonable. TSCA provides EPA with the authority to gather data, such as chemical toxicity data, chemical exposure data, and other related data, to determine whether a chemical substance may present an unreasonable risk of injury to human health or the environment, and to institute control actions when risks are determined to be unreasonable. As part of the implementation of this authority, EPA has established the IUR and other regulations to collect information on chemical substances.

Identification of chemical substances, plant sites, and exposures of greatest potential concern and setting priorities for more detailed risk assessment and potential risk management actions are important elements in a successful chemical risk management program. The TSCA Inventory includes more than 75,000 chemical substances. Approximately 8,300 of these chemical substances are non-polymer organic chemical substances manufactured or imported in quantities of 10,000 lbs. per year, as reported under the 1994 IUR data collection. See "Economic Analysis of Proposed Amendments to the TSCA Section 8 Inventory Update Rule," available in the public record for this proposal and listed at Unit X.A.2.f. of this preamble.

Once a chemical substance has been identified for risk screening under EPA's Existing Chemicals Program, EPA completes an initial review of the chemical. This initial review is designed to select the chemical substances that raise particular concern regarding the risks they present to human health and the environment. At the close of the initial review, three possible outcomes may occur: a testing recommendation, a recommendation for further evaluation, or closure. "Closure" may include referrals to other programs or agencies, dissemination of initial review results, or a decision to discontinue further review based on the chemical's low hazard, low risk potential, or because it will be considered for regulatory control as part of a broader cluster of chemical substances. This process is described in more detail in the document entitled, "Economic Analysis of Proposed Amendments to the TSCA Section 8 Inventory Update Rule," which is available in the public record for this rulemaking and listed at Unit X.A.2.f. of this preamble.

Between 1990 and 1994, 1,924 chemical substances were screened for inclusion in the risk management (RM) program. Of these candidate chemical substances, 561 were selected for more detailed review based on potential risks. Of the 561 chemicals evaluated, 125 (22%) were recommended for testing; 156 (28%) were recommended for further risk management; and 280 (50%) were recommended for closure. The Existing Chemicals Program represents a significant outlay in EPA resources, and is an important component in EPA's ability to manage unreasonable risks presented by chemical substances in commerce.

Effective risk screening and risk management are dependent upon both exposure information and hazard information. The exposure-related information reported under the IUR amendments, in combination with hazard information such as that developed under TSCA section 4 test rules, would allow the Agency to effectively screen and prioritize chemicals. In order to meet the directives put forth by Vice President Gore in his April 21, 1998 announcement (Ref. 1), EPA recently undertook the drafting of a significant proposed test rule for certain high production volume chemicals. The test rule would collect baseline hazard information which, in conjunction with the exposure-related information that would be reported under these IUR amendments, would be critical for chemical screening purposes.

EPA's Existing Chemicals Program is currently evaluating risks from indoor air pollutants, high release chemical substances listed on the Toxics Release Inventory (TRI) (established under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. sections 11001 to 11050), persistent bioaccumulators, and high production volume chemicals. While past approaches to priority setting have been primarily based on relative chemical hazards and production volume as a simple surrogate for exposure, EPA has increased its emphasis on the exposure component of risk screening and assessment. An example of this increased emphasis is reflected in the voluntary effort within EPA called the Use and Exposure Information Project (UEIP), undertaken by EPA and the Chemical Manufacturers Association (CMA), the Chemical Specialty Manufacturers Association (CSMA), the Synthetic Organic Chemical Manufacturers Association (SOCMA), and the American Petroleum Institute (API) (Ref. 2). The UEIP was undertaken cooperatively by government and industry in recognition of the difficulties encountered in obtaining current exposure information on TSCA chemicals. The UEIP, however, provided one-time reporting of information on a small number of selected high production volume chemicals. Given these efforts, the limitations of the data available from past and current information collections that are described in detail in Unit IV.B. of this preamble, and the amount of time it would take to acquire screening-level data for all of the chemical substances on the Inventory otherwise, EPA believes it is appropriate to develop a more systematic and comprehensive approach to the prioritization process. The new exposure-related information that would be reported under this proposed rule is necessary to allow more efficient and effective chemical risk screening.

V. Development of this Proposed Rule

A. Need for Change in the Inventory Update Rule

EPA is proposing to amend the Inventory Update Rule (IUR) for three primary reasons: (1) To tailor the chemical substance reporting requirements to more closely match the Agency's overall information needs; (2) to obtain new and updated information relating to potential exposures to a subset of chemical substances listed on the TSCA Chemical Substances Inventory ("the TSCA Inventory"); and (3) to improve the utility of the information reported. Changes to the information collected through the IUR, the chemicals covered by the rule, and CBI requirements accomplish these three goals.

These goals are supported by a primary policy underlying TSCA, which is that "adequate data should be developed with respect to the effect of chemical substances and mixtures on health and the environment and that the development of such data should be the responsibility of those who manufacture and those who process such chemical substances and mixtures" (TSCA section 2(b)(1)). EPA believes that, for basic risk screening purposes, the data currently available are inadequate (See Unit IV.B. of this preamble). TSCA section 8(a)(2) authorizes EPA to require manufacturers and processors of chemical substances to report a wide variety of data, including the exposure-related information which would be reported under these amendments to IUR. These amendments would remove certain reporting requirements and add others in an effort by EPA to focus the information reported under IUR on information that is most needed so that EPA and other Federal agencies are better able to screen for risk, and consequently assess and manage risk, and so that public awareness of basic information about a large number of chemical substances is improved.

As discussed in Unit IV.B. of this preamble, any determination of "risk" is based on some amount of hazard information in combination with some amount of exposure information. EPA relies on risk screening to indicate which chemical substances may present a risk, and thus warrant a resource-intensive risk assessment. The EPA Science Advisory Board's "Reducing Risk: Setting Priorities and Strategies for Environmental Protection" report (Ref. 3) and the National Academy of Public Administration's "Setting Priorities, Getting Results, A New Direction for EPA" report (Ref. 4) recognize that EPA's ability to set priorities through risk screening and EPA's ability to allocate its limited resources has been significantly impeded by a lack of exposure data. Screening the potential risks posed by the chemical substances included in the Inventory and setting priorities for more detailed risk assessment and possible risk management is an enormous challenge. The manufacturing, processing, and use of Inventory chemicals result in a wide array of exposure scenarios. By collecting the exposure-related data included in this proposed amendment to the IUR, the Agency would acquire information that would greatly improve EPA's ability to identify, through risk screening, the chemical substances that could pose a risk to human health and to the environment.

1. *Exposure-related data needed for chemical risk screening.* As discussed in Unit IV. of this preamble, EPA must screen thousands of chemical substances for potential risk to determine priorities for follow-up risk assessment and management among the chemical substances included on the TSCA Inventory. Because so many chemical substances and exposure scenarios are involved, it is not practical to devote the extensive resources that would be required to develop more precise exposure data, such as occupational and environmental monitoring data. Instead, EPA must identify and rely on exposure-related data that are more accessible and that are reasonably accurate and useful for identifying potential chemical risks.

EPA has had access to certain types of exposure-related information which it has found to be extremely useful. For example, EPA's New Chemicals Program requires the submission of exposure-related information in Premanufacture Notice (PMN) submissions. This information is used in developing risk estimates to determine the status of the chemical

under evaluation within the New Chemicals Program. Under section 5 of TSCA, companies must submit a PMN to EPA at least 90 days before initiating the manufacture for commercial purposes (including import) of chemical substances that are not included on the TSCA Inventory. Chemical substances included on the TSCA Inventory are often referred to as "existing chemicals" and those not included on the TSCA Inventory are often referred to as "new chemicals." EPA reviews the potential risks of new chemicals for which it has received a PMN and may act to restrict certain aspects of the chemicals' manufacture, processing or use. For example, for chemical substances that pose potential risks to workers based on estimates of inhalation exposures, the Agency often requires the use of respiratory protection by workers. EPA requires companies to include information in their PMN submissions that will provide an accurate review of potential exposures and risks. Exposure-related data included in the PMN include estimates of production volume, categories of use, percent production volume in categories of use, releases during manufacture, processing and use, maximum number of workers exposed, and physical form of the chemical. Since the creation of the New Chemicals Program, EPA has successfully reviewed the potential risks of approximately 32,000 chemicals.

The exposure-related information submitted in PMNs is typically developed prior to the manufacture of the chemical and prior to the addition of the chemical to the TSCA Inventory; information submitted through the New Chemicals Program is not sufficient for the future screening of new chemicals once they have been added to the TSCA Inventory (i.e., once they have become existing chemicals). The exposure-related information submitted in a PMN is not necessarily reflective of exposures once a chemical substance is added to the Inventory and is produced commercially by the company that originally submitted the PMN and/or any number of additional companies. Production volume information, for example, is provided only once during the PMN process, whereas production volume information is tracked over time under the IUR. EPA's analysis of the PMN data base is provided in a document entitled, "Inventory Update Rule (IUR) Amendment Technical Support Document: Exposure-Related Data Useful for Chemical Risk Screening," found in the record for this proposal and listed at Unit X.A.2.a. of this preamble.

Another example of EPA's use of available exposure-related information is in the evaluation of chemical risks and establishment of hazard testing priorities in the Agency's New Chemicals and Chemical Testing Programs. These programs rely upon data that are similar to data that would be collected under this proposal. EPA's New Chemicals Program, under the authority of TSCA section 5(e)(1)(A)(ii)(II), has established an exposure-based policy which utilizes various exposure criteria to guide its decisions regarding the issuance of consent orders. These criteria include estimates of production volume, releases, potential dose rates, numbers of potentially exposed workers and consumers, and the size of the potentially exposed general population and are used to determine whether an exposure concern exists (Ref. 5). These decisions are based on the expected use of the new chemical.

Similarly, the Chemical Testing Program relies upon exposure-related information to require testing under TSCA section 4. In order to require testing, EPA must initially make either risk-based findings under TSCA section 4(a)(1)(A) or exposure-based findings under TSCA section 4(a)(1)(B). Risk-based findings are partially based on exposure-related information. Because exposure is a component of risk (see Unit IV.B. of this preamble), risk-based findings require a demonstration that there is some possibility of exposure to a chemical substance. The possibility of exposure must be based on more than theoretical scenarios; some amount of factual information must be demonstrated by EPA. *Chemical Manufacturers Association* v. *EPA*, 859 F.2d 977, 991 (D.C. Cir. 1988). Exposure-based findings, on the other hand, are based entirely on exposure-related information. Generally, EPA relies upon production volume information in addition to chemical release information or human exposure information (i.e., for general population exposure, consumer exposure, or worker exposure) to make exposure-based findings. EPA's interpretation of its legal authority to make the findings necessary to require testing under TSCA section 4(a)(1)(B) is articulated in a Statement of Policy ("B Policy") (58 FR 28736, May 14, 1993). Many of the exposure data elements included in these proposed amendments to IUR are specifically relevant to the exposure-related findings contained in the B Policy. As a result, the exposure information submitted under the IUR amendments would be integral to the identification of candidate chemicals for inclusion in test rules. For example, the use information reported under the IUR amendments would assist in the selection of chemicals for inclusion in a planned test rule that would collect hazard information on chemicals to which children may be exposed, many of which are present in consumer products.

Other organizations recognize that exposure-related data is useful for screening chemical risks. The Chemical Manufacturers Association (CMA), in a letter to EPA (Ref. 6), noted that data on chemical use volumes, numbers of exposed workers, magnitudes of chemical usage per worker, number of use sites, and environmental releases can supplement production volume data in chemical risk screening. In addition, the exposure-related information that would be reported under these amendments to IUR would support chemical screening by the Consumer Product Safety Commission (CPSC). CPSC has stated that, "[a]t present, there is no comprehensive source of information on the ingredients of household chemicals and CPSC does not have the authority to obtain this information. The [IUR amendments] would be a first step in obtaining information on product ingredients and provide a more efficient means of screening household chemicals for emerging hazards under the Chemical Hazard Program" (Ref. 7).

Certain international organizations collect and utilize exposure-related information. The European Union (EU), in a regulation enacted in 1993 regarding the evaluation and control of existing substances (Ref. 8), requires chemical manufacturers and importers to report a variety of hazard and exposure information for the chemical substances they manufacture or import so that the EU can undertake preliminary risk evaluations and identify lists of priority substances which require special attention. Information on reasonably foreseeable uses of chemical substances is included in these reports. The types of use data collected under the EU regulation are similar to the types of use data that would be reported under this proposed rule.

The Organization for Economic Cooperation and Development (OECD) also recognizes the utility of exposure-related information. OECD sponsors an international cooperative effort designed to share the costs of chemical testing among its more than 20 member countries. This effort, called the Screening Information Data Set (SIDS) Program, has focused on securing

ecological and human hazard data for high production volume chemical substances. As this Program has evolved, the member countries have become more aware of the need to consider the contribution of exposure to estimates of potential chemical risks. At times, decisions to pursue followup risk management have been delayed until exposure information could be developed. Without exposure information for use in risk screening and risk assessment, sufficient information did not exist to determine potential risk. To ensure a consistent and accurate evaluation of potential exposures by the various member countries, OECD organized a meeting of designated national experts in occupational and environmental exposure assessment, including experts from the chemical industry and international agencies, to define the exposure-related data needed to support screening level prioritization decisions for chemical testing and risk assessment. The exposure data that are recognized as needed for SIDS screening-level determinations are very similar to the exposure data that would be reported under these amendments to the existing IUR (Ref. 9).

The successful use of exposure-related information in the development of risk estimates in EPA's New Chemicals Program (described in this unit) illustrates that the data reported under this proposed amendment to IUR would support EPA's risk screening of existing chemicals in commerce. EPA is proposing to collect readily obtainable exposure-related data that can be used to better establish priorities for its Existing Chemicals Program. The new IUR data elements included in this proposed rule are related to or are indicative of three components of exposure: The number of ecosystems or size of human populations potentially exposed (for example, data elements regarding number of sites, number of workers, and use in consumer products); the potential routes, magnitudes, and concentrations of exposures experienced by the environment or by humans (for example, data elements regarding function of chemical substances in industrial processes, physical form of chemical substances, industrial sectors where chemical substances are manufactured and used, average concentration, and maximum concentration); and the frequency and duration of potential exposures (for example, data elements regarding industrial function categories and commercial and consumer use categories). EPA intends to supplement the current data collected under IUR with additional data elements that would improve the Agency's ability to evaluate each of these components of exposure.

2. *Need to screen risks of inorganic chemical substances.* In this action, EPA is proposing to remove the IUR reporting exemption for inorganic chemical substances which currently exists at 40 CFR 710.26(a). The exemption exists because EPA believed in the past that the hazard potential of many inorganics was "relatively well-established" (50 FR 9944, 9947, March 12, 1985) and that information about these hazards was a sufficient basis for prioritization within inorganic chemical substance risk assessment. EPA now intends to increase the consideration given to exposure, another component of risk, in screening chemicals and in setting priorities for risk assessment and risk management activities due to its belief that chemical hazard information alone is an insufficient basis for prioritization for these purposes. EPA therefore believes that the basis for this exemption is no longer applicable. However, during interagency review it was suggested that EPA first collect the IUR information in Parts I., II., and IV. of the revised Form U on these substances before collecting processing and use information in Part III. of the revised Form U.

The need for additional basic information regarding production volume and other exposure-related data on the ongoing uses of inorganic chemical substances has been shown in a variety of ways. For example, the use of asbestos building materials led to the exposure of workers and other building occupants to asbestos. EPA has worked toward controlling and mitigating this exposure to asbestos. However, there is evidence that builders have unknowingly been incorporating new materials containing asbestos into buildings (Ref. 10). By including inorganic chemicals under the IUR, information needed to control exposure to asbestos in buildings would be made available to EPA. Such examples highlight the importance not only of production volume data, but of the use and other exposure-related data EPA may propose to collect through the IUR in the future.

At this time, EPA is proposing that inorganic chemicals would be subject to only partial IUR reporting. Partial reporting consists of the information in Parts I, II, and IV of revised reporting Form U, whereas full reporting consists of all information on the reporting form (see Unit VI. of this preamble). EPA is choosing to only require partial reporting on inorganic chemicals to allow the Agency to become familiar with information on inorganics; EPA does not generally require reporting of information on inorganics under the existing IUR. Partial reporting would identify inorganic chemicals that are produced in quantities large enough to report to IUR, and would allow EPA to generally become familiar with the production volumes of inorganic chemicals. In addition, limiting IUR reporting for inorganic chemicals to a partial report would allow manufacturers (including importers) of these chemicals, who may never have reported to IUR before, to familiarize themselves with the most basic IUR reporting requirements.

Because EPA and other IUR data users have a need for processing and use information on inorganic substances, EPA will review the need for full IUR reporting, i.e., all parts of revised reporting Form U, from manufacturers (including importers) of inorganic chemicals in the future. Based on EPA's review of the information submitted on inorganic chemicals in the first reporting period under these IUR amendments, EPA may propose to require full IUR reporting on inorganic chemicals by the second reporting period.

3. *Need for procedural reforms to IUR—a. Linking IUR data to other reporting.* EPA is undertaking a comprehensive facility identification initiative to improve coordination and comparability among different information reporting mechanisms. To facilitate this effort, EPA is establishing the Facility Registry System (FRS) as a central information resource of definitive facility information, which will link all facilities represented in EPA program data bases through common facility identification data elements. As part of the program, the FRS will include implementation of a new facility numbering system identifying each facility with a unique Facility Registration Identifier (FRI) which will be used for electronic and integrated reporting and central receiving. EPA and the States will develop the business rules for assigning the FRI to each facility and will determine how the number will be used in reporting. EPA anticipates releasing the first version of the FRS and the new numbering system in the fall of 1999.

In line with the FRS initiative, EPA is proposing to amend IUR so that future data collections include the reporting of the submitting plant site's FRI, as well as the county in which the plant site is located. Use of the new FRI number is

important to EPA and others in linking IUR information with information from other data bases, such as the Toxics Release Inventory (TRI).

In the alternative, should the FRS initiative not be underway at the time this proposed rule becomes final, EPA will require submitters to report the plant site's EPA identification number (ID), if it has one. The EPA ID is the 12-character number assigned to sites covered by the hazardous waste regulations under RCRA (40 CFR 262.12). For sites that have not been assigned an EPA ID, submitters would report this item as "not applicable." Section 262.12 states that plant sites that generate hazardous waste can obtain an EPA ID by applying to the EPA Administrator using Form 8700-12 "Notification of Regulated Activity." Upon receipt of such a request, the Administrator assigns an EPA ID number. Plant sites are required to report the EPA ID on RCRA manifests and biennial reports.

EPA also is proposing to amend the reporting basis from a corporate fiscal year basis to a calendar year basis. This amendment would make the information submitted under these amendments more consistent than the information submitted under the existing IUR because all submitters would refer to the same period of time when gathering reportable information. In addition, this amendment would make the IUR reporting schedule more comparable with other EPA reporting requirements, such as TRI, thereby increasing EPA's ability to link information from various data bases.

b. *Improving the process by which CBI claims are made.* IUR submitters currently have the ability to claim much of the information they report under the IUR as CBI. The ability to make CBI claims would continue under these amendments; however, EPA is proposing certain modifications to existing CBI policies in order to ensure that CBI claims are justified, and to facilitate the submission and subsequent release of non-confidential data.

TSCA section 14 provides that certain information may be claimed as confidential. The impact of a confidentiality claim on information is that the information may only be made available to properly trained Federal government employees and contractor employees. Accordingly, under most circumstances, non-Federal entities cannot be authorized for access to CBI data for independent assessment or other purposes. In addition to significantly increasing transaction costs, CBI claims can impact EPA's ability to use IUR data, because it is more difficult to justify risk screening, assessment and management decisions when data driving those decisions are CBI and cannot be publicly shared. While legitimate CBI claims protect valuable proprietary information, invalid claims thwart the Agency's goal of using TSCA data to support a wide variety of chemical management activities as intended by Congress.

Since the enactment of TSCA in 1976, the Agency has grappled with its related, but somewhat conflicting, obligations to protect CBI but also to make information available to the public. In 1990, the Agency initiated a program by which industry's TSCA CBI claims practices were examined and assessed (Refs. 11 and 12). The program revealed that the Agency's transaction costs are increased with CBI claims, the Agency's ability to use CBI data is limited, and CBI claims make it difficult to describe with specificity the facts necessary to justify chemical risk assessment and management decisions. The program also demonstrated that CBI claims prevent state governments engaging in chemical management activities from benefiting from access to TSCA CBI information (Ref. 13).

EPA's review of CBI claims practices also revealed that some CBI claims appeared to be unjustified. In some cases, certain information was claimed as confidential when the same information was available in a variety of publicly available sources such as newspapers, advertisements, and Internet websites. For example, site identity was at times claimed as CBI in IUR filings when that information was available in a variety of public documents. While it was widely accepted that the need for CBI protection for certain information expired over time, there was no mechanism which ensured that older CBI claims would be reviewed by the information submitter. The public increasingly questioned the validity of CBI claims over time as the overall credibility of industry's initial CBI claims was diminished.

One of the purposes of the CBI-specific IUR amendments is to ensure that CBI claims are valid at the time they are filed. Another purpose is to ensure that certain critical information, such as production volume information, is submitted in a way that generally enables the Agency to characterize industry-wide production volume, but that protects the specific CBI information involved. Finally, the new CBI amendments are intended to act as a mechanism that ensures that submitters periodically review older CBI claims and declassify information as their need for confidentiality ends.

Specifically, in an effort to increase the public availability of data and reduce transaction costs, EPA is proposing requirements in addition to those currently in place to require that submitters assert a separate CBI claim for production volume data reported in ranges; submitters substantiate CBI claims for plant site identity at the time the claims are made; and submitters reassert CBI claims for information claimed as CBI in past IUR filings. A detailed discussion of confidentiality issues is included in Unit VIII. of this preamble.

4. *Creating an exemption from IUR reporting for certain forms of natural gas.* EPA is proposing to add an exemption from IUR reporting to 40 CFR 710.26 for certain forms of natural gas. The six chemical substances that would be subject to this exemption are as follows: CAS No. 64741-48-6, Natural gas (petroleum), raw liquid mix; CAS No. 68919-39-1, Natural gas condensates; CAS No. 8006-61-9, Gasoline natural; CAS No. 68425-31-0, Gasoline (natural gas), natural; CAS No. 8006-14-2, Natural gas; and CAS No. 68410-63-9, Natural gas, dried.

EPA currently believes that additional IUR information on these chemical substances would be of limited value in the execution of various assessment and testing programs because EPA believes that adequate IUR information on these chemical substances is available to fulfill EPA's current needs, and the current needs of other IUR information users.

B. Consideration of Alternative Data Sources

TSCA section 8(a)(2) states that, to the extent feasible, the Administrator of EPA shall not impose reporting requirements under TSCA section 8(a)(1) which are unnecessary or duplicative. In order to ensure that the reporting requirements proposed in these amendments are not unnecessary or duplicative, EPA considered the extent to which the data that would be gathered as a result of this rulemaking are available to EPA through existing public data collections.

The data collections considered by EPA include EPA sources such as the current IUR, the TSCA Preliminary Assessment Information Reporting (PAIR) rule (40 CFR part 712), the TRI, and the Use and Exposure Information Project (UEIP), as well as other Federal sources such as the National Occupational Exposure Survey (NOES). EPA has used these sources to support its chemical review program. Although

the sources can provide useful information, EPA has been unable to perform the large-scale screening necessary to screen the chemicals on the TSCA Inventory based on risk because of limitations in the existing data. Some sources are dated, others are narrow in coverage of data elements or limited to certain chemical substances, while others entail procedural complications which limit their effectiveness in meeting EPA's needs. Based on this review, EPA has concluded that these information sources, considered individually or in the aggregate, do not adequately substitute for the information EPA is proposing to collect in this rulemaking. A detailed description of the basis for this conclusion is provided in the several documents provided in the public record for this proposal. These documents are: "Inventory Update Rule (IUR) Amendment Technical Support Document: Exposure-Related Data Useful for Chemical Risk Screening," "Economic Analysis of Proposed Amendments to the TSCA Section 8 Inventory Update Rule," and "A Review of Existing Exposure-Related Data Sources and Approaches to Screening Chemicals: A Response to CMA." These documents are listed at Unit X.A.2.a., Unit X.A.2.f., and Unit X.A.2.i. of this preamble respectively.

The following is a brief description of the extent to which each of these data collections includes exposure-related information (e.g., number of plant sites and workers, industrial and consumer uses, etc.), and whether they are sufficient for the risk-based screening of chemical substances listed on the TSCA Inventory. The documents mentioned in the preceding paragraph provide a more comprehensive and detailed discussion of existing exposure information data sources.

1. *The current IUR.* Although certain provisions in the current IUR would be amended by this action, many of its requirements would remain unchanged under these amendments. The existing IUR requires chemical manufacturers (including importers) to provide to EPA every four years the identity of chemical substances manufactured (including imported) in annual quantities of 10,000 lbs. or more at each plant site they own or control. The information required includes company name, plant site location, plant site Dun and Bradstreet number, the identity of the chemical substance, and the production volume of the chemical substance. The IUR has been a reliable source of production volume and site location data for organic chemical substances. Inorganic chemical substances are currently excluded from reporting.

Past approaches to the risk screening of chemical substances have been primarily based on relative chemical substance hazard, coupled with IUR production volume data. EPA has determined that production volume information alone is not typically adequate as a proxy for exposure information for purposes of risk assessment and risk screening (Ref. 14). In the past, the absence in IUR of exposure-related data beyond production volume data has severely limited the utility of IUR in a comprehensive screening program for chemicals in commerce.

2. *PAIR rule.* PAIR, which was promulgated under TSCA section 8(a), requires any person who manufactures (including imports) a particular chemical substance during the indicated reporting year to complete and submit a form that requests a variety of information pertaining to the manufacture and processing of TSCA chemicals. In some ways this information is similar to the information that would be reported under these amendments to IUR, while in other ways the information reported under PAIR is different.

Information reported under PAIR includes, but is not limited to, the following: chemical and company identity, plant site location, annual volume manufactured (including imported), plant site and customer activities (i.e., whether the substance is manufactured or used as a reactant or nonreactant, and whether operations are enclosed, controlled release or open), workers and worker hours, and types of industrial products (i.e., whether the substance is produced in pure form or incorporated into a mixture or article), and whether environmental releases occur (see 40 CFR 712.28). This information, on a per report basis, is both broader and narrower than the proposed IUR amendments information. For instance, release information is collected under PAIR, but would not be collected under the proposed IUR amendments. At the same time, PAIR reporting does not include information which can identify uses by specific consumer groups or NAICS codes, whereas the proposed IUR amendments would require the reporting of such information by certain entities. Duplicative reporting under both PAIR and IUR is avoided under the existing IUR regulations at 40 CFR 710.35, and would be avoided under the proposed IUR amendments as well.

The TSCA Interagency Testing Committee (ITC) determines which chemical substances are included on the TSCA section 4(e) Priority Testing List. PAIR rules are primarily used to collect information on those chemicals the ITC is considering designating for testing under TSCA section 4 (40 CFR 712.30). PAIR reporting is done on a one-time basis in response to the publication of a chemical-specific rule amendment, as opposed to the IUR which, in a single rule, requires recurring reporting for a large group of chemicals. About 458 chemicals have been subject to PAIR reporting as of September 1996, and 360 companies have submitted 1,668 reports (See "Preliminary Assessment Information Rule (PAIR) Database, Manufacturing Process Type/Release Analysis and Number of Workers/Production Quantity Analysis," available in the public record for this proposal, and listed at Unit X.A.2.b. of this preamble). Other features of PAIR include a reporting threshold of 500 kg/yr/site and reporting based on a corporate fiscal year.

Both PAIR and IUR could potentially be utilized to require the reporting of data regarding a greater number of chemical substances than the IUR currently covers. For example, the current IUR exemption for polymers and low volume chemicals could be eliminated, or a PAIR rule could be used to collect information for these exempted chemicals.

There are two major differences between reporting under IUR and PAIR other than differences in specific data elements. One of the differences is that IUR requires the reporting of information every 4 years, while PAIR requires the reporting of information on a one-time basis. However, the chemical industry is dynamic, and 30% of the chemicals for which IUR information was reported in 1990 were not reported in 1994. Because the industry is dynamic, the information it would report under the IUR amendments could change from reporting year to reporting year. Therefore, the information collected under these amendments would present a view of exposure to chemical substances that recognizes chemical industry dynamics which PAIR rules are not able to reveal. The other major difference between IUR and PAIR is that IUR requires the reporting of information on a large number of chemical substances during each reporting period, whereas each PAIR rule typically covers only one or a much more limited group of chemical substances. As discussed above, information on a large number of chemicals is necessary for the effective implementation of a chemical screening program.

3. *Toxics Release Inventory (TRI).* EPCRA section 313 and section 6607 of the Pollution Prevention Act (42 U.S.C. 13106(b)) require certain facilities that manufacture, import, process, or "otherwise use" EPCRA section 313 listed toxic chemicals at or above specified thresholds to annually report their releases and other waste management activities regarding such substances. The reporting thresholds are generally 25,000 lbs. per year for chemicals that are manufactured (including imported) and processed, and 10,000 lbs. per year for chemicals that are otherwise used. Included in the report is the following information: Chemical identity, facility identity, parent company identity, certain general activities and uses of the chemical at the reporting facility, the maximum amount on-site, releases on-site and quantities sent off-site for disposal, quantities combusted for energy recovery and recycled both on-site and off-site, and on-site waste treatment methods and efficiencies.

Only about 650 chemicals and chemical categories are currently reportable, including chemicals excluded from TSCA jurisdiction such as pesticides, and chemicals currently exempt from the IUR, such as inorganics. This list consists of fewer than 1% of the chemicals listed on the TSCA Inventory. In addition, facilities subject to the reporting requirements of EPCRA section 313 are limited to specific SIC codes and Federal facilities. Only facilities with 10 or more full-time employees are currently required to report. About 22,000 facilities report to TRI.

TRI data are useful for screening and assessing releases from industrial facilities for site-specific assessments of potential general population or environmental exposures to populations near facilities that manufacture, process or use EPCRA section 313 listed toxic chemicals. However, the TRI universe of chemicals is limited to a small portion of the chemicals on the TSCA Inventory. Also, TRI does not contain worker exposure and use data. These data, along with a larger universe of chemicals than is included in the TRI, are needed to accomplish the type of broad based chemical screening process that would be possible under the proposed IUR amendments.

4. *National Occupational Exposure Survey (NOES).* In 1983, NIOSH completed a systematic effort to collect data on potential occupational chemical, physical, and biological exposure agents in a representative sample of businesses. The sample was designed to be representative of virtually all of the non-agricultural, non-mining, and non-governmental businesses covered under the Occupational Safety and Health Act (OSH Act) of 1970. The survey consisted of observational data collected at 4,490 establishments by NIOSH surveyors through field visits, which included walk-through surveys and interviews of employees at the establishments. To develop nationwide samples from the data, the survey results were multiplied by a weighting factor. A description of the survey and the data base can be found in the public record for this proposal (Ref. 15).

The NOES data base includes information on plant site location, plant site SIC code, plant site occupational safety and health programs, occupational titles of workers potentially exposed, number of employees per occupational title, process steps, and product trade names. EPA has frequently used the NOES survey to estimate the total number of workers potentially exposed per chemical per SIC code; to estimate the number of chemical manufacturing, processing, and use sites; to rank potential exposures; and to develop exposure assessments.

Now over 15 years old, the NOES data have become progressively dated, and as a consequence, less representative of current exposure situations. In light of this shortcoming, EPA believes that the NOES data base cannot substitute for the up-to-date data base that EPA would develop with the proposed IUR amendments.

5. *Use and Exposure Information Project (UEIP).* The UEIP is a program developed jointly by EPA and chemical manufacturers. It provides a method for chemical manufacturers to voluntarily send readily obtainable use and exposure information to EPA for chemical substances entering the Existing Chemicals Program's screening assessment process. A sample UEIP data submittal package is included in the public record for this rulemaking (Ref. 2). The program started in the fall of 1992 and was developed after CMA and SOCMA asked EPA what the chemical industry could do to help strengthen EPA's Existing Chemicals Program. EPA explained that accurate use and exposure information was not available and that better information in this area was a key need. A joint industry/EPA workgroup was formed to address this need, to define relevant exposure data, and to develop a data transfer process for industry to effectively transmit data to EPA. More recently, the API and CSMA have endorsed and participated in further development of this project.

In the UEIP, manufacturers (including importers) voluntarily report production volume, site location, environmental releases, number of potentially exposed workers, monitoring data, industrial and consumer uses, and percent of production volume attributed to a given use. For any given chemical substance, the data transmitted to EPA via UEIP are more detailed than the data EPA would receive as a result of these IUR amendments. Upon receipt of UEIP data from manufacturers and importers, EPA prepares an exposure profile. The UEIP program is limited by agreement among the parties to obtaining data on no more than 40 chemical substances per year. The screening information that would be generated by this proposal would assist with the selection of chemical substances for inclusion in the UEIP program.

The UEIP program has yielded important advances for EPA's risk assessment and risk management efforts for several chemical substances. For example, exposure assessments based on the UEIP data have in some instances obviated the need for additional testing or followup risk management action for certain chemical substances under the SIDS program. However, the proposed amendments to IUR would include a wider range of chemicals than the UEIP and therefore would address the need for exposure-related data from across a wider segment of the chemical industry.

6. *Use Cluster Scoring System (UCSS).* EPA has developed the UCSS to identify potential risks of, and to establish regulatory review priorities for, chemical substances used in similar applications, or "use clusters" (Ref. 16). For example, instead of evaluating a single chemical used as a paint stripper, the UCSS evaluates the exposures and risks posed by the entire set of chemical substances that are used as paint strippers.

The UCSS evaluates exposure based on information from several sources. Although the UCSS has proven to be a valuable tool in conducting screening level exposure assessments, some of the sources of UCSS data are dated and some of the methods used to further develop the data are not yet validated for accuracy. Some of these data are discussed briefly below.

Use volume estimates are obtained from past EPA studies and commercial market reports. These sources are very limited in the number of uses covered and the detail of use information. Only large volume uses (100,000 kilograms/year or more) of chemical substances are usually captured in commercial market studies. These studies are further discussed in the document entitled, "A Review of Existing Exposure-Related Data Sources and Approaches to Screening Chemicals: A Response to CMA," available in the public record for this rulemaking and listed at Unit X.A.2.i. of this preamble.

Consumer use data are obtained from internal data bases (such as EPA's Indoor Air Chemical Database) and the Hazardous Substances Data Bank (HSDB), a database of Department of Transportation (DOT) information compiled by the National Library of Medicine. Each of these data bases, however, contains limited consumer use information for a small number of chemicals. These data bases are further discussed in the document entitled, "Economic Analysis of Proposed Amendments to the TSCA Section 8 Inventory Update Rule," and in "A Review of Existing Exposure-Related Data Sources and Approaches to Screening Chemicals: A Response to CMA," both of which can be found in the public record for this proposal and which are listed at Unit X.A.2.f. and Unit X.A.2.i. of this preamble.

Environmental release estimates are obtained from the TRI. The UCSS is not limited to TRI chemicals; however, no comprehensive sources of release data are available for non-TRI chemical substances. While the UCSS contains data from the Biennial Reporting System (BRS), these data are not used by UCSS to rank potential exposures. BRS, a data base maintained by EPA's Office of Solid Waste, is a collection of information on the quantity, management, and minimization of hazardous solid or liquid wastes from facilities that generate and/or manage these wastes. Information is identified by the RCRA waste codes. These waste codes identify the type of waste and frequently describe mixtures of chemicals; they do not provide information on the waste stream composition. This lack of composition information makes it difficult to determine the quantity of an individual chemical substance in the waste. Therefore, there is little information to use to determine potential exposures.

Estimates of the number of potentially exposed workers and the number of chemical processing and use sites are obtained from the NOES and the Bureau of Census' Census of Manufacturers. As in Unit V.B.4. of this preamble, the NOES data (developed by NIOSH) are over 15 years old and contain uncertainties due to the age of the data as well as sampling errors and systematic biases. The Census of Manufacturers data are not chemical-specific; chemical-specific or use-specific conclusions are therefore based upon data provided by four-and six-digit SIC codes when Census of Manufacturers data are used.

A recent review of the UCSS by EPA's Science Advisory Board (Ref. 17) found that "the cluster scoring system heavily weights exposure data. . . Unfortunately, there are no easily accessible data on exposure." The proposed amendments to the IUR would create a data source that would be used to augment the information in the UCSS, giving EPA a tool for use in prioritizing chemical clusters in a way that is consistent with the Science Advisory Board's suggestions (Ref. 16). Because the exposure information sources used to support many of EPA's existing chemical assessments are essentially the same as those relied upon by the UCSS, this comment is generally applicable to most of EPA's efforts to assess exposure to existing chemical substances.

7. *Other data sources.* Other data sources that have been considered are listed in the "Inventory of Exposure-Related Data Systems Sponsored by Federal Agencies" (Ref. 18). This document is a compilation of information on federally managed data systems that contain exposure information. These systems access collections of analytical results that assess environmental media such as air, soil, or water as well as analytical results from food, human samples, or bulk chemicals.

Each of the data bases described in the document is of limited utility due to a small or specialized sample size, the limited number of chemicals, or the age of the data. None of the data bases, either alone or combined, provide the Agency with the full array of screening level data on chemical substances that would be collected by the proposed amendments to IUR.

The information in available data systems does not provide a sufficiently clear picture of the potential for chemical exposure. Some of the systems are regional, rather than national in scope. Several systems cover only a very limited set of chemical substances, or a limited number of chemical uses, or only specific industry sectors. Several systems collect information on categories of pollutants or on waste streams rather than on specific chemical substances, making it difficult to use the data in chemical risk screening. Many of these systems collect monitoring data which are frequently media-specific (e.g., air or water), but do not collect information on the potential sources of chemical releases to the environment. This proposed rule would provide the exposure information needed for screening the chemical substances included on the TSCA Inventory for potential risk.

VI. Amendments Affecting All Manufacturers (Including Importers)

As discussed in detail in Unit VI.B. of this preamble, plant sites that manufacture (including import) a chemical substance in annual quantities of 25,000 lbs. or more would be required to report the information in Parts I., II., and IV. of Revised Reporting Form U. This information relates to basic site identification, manufacturing information, and CBI reassertion. Sites that manufacture (including import) a chemical substance in annual quantities of 300,000 lbs. or more would be required to report the information in Part III. of Reporting Form U in addition to the information in Parts I., II., and IV. This additional information relates to the processing and use of chemical substances.

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(IMPORTANT: Type only, read instructions before completing from)

PAGE 1 of ___

REPORT NUMBER

EPA

FORM U 2001

U.S. Environmental Protection Agency
Washington, DC 20460
Partial Updating of TSCA Inventory Data Base
Production and Site Report
(Section 8(a) Toxic Substances Control Act, 15 U.S.C. 2607)

Mark "X" here if this is a revision to a previous report

Previous Report Number

PART I. FACILITY IDENTIFICATION INFORMATION

SECTION I. CERTIFICATION

Certification Statement: I hereby certify to the best of my knowledge and belief that (1) all information entered on this from is complete and accurate; and (2) the confidentiality statements on the back of this form are true and correct as to that information for which I have asserted a confidentiality claim.

1.1 Signature | 1.2 Date | 1.3 Name | 1.4 Title

SECTION II. COMPANY INFORMATION

2.1 Company Name | 2.2 Company Dun & Bradstreet

2.3 Technical Contact Name | 2.4 Telephone (with Area Code)

Company Street Address	Company Mailing Address Check if Same
2.5 Address (Line 1)	2.10 Address (Line 1)
2.6 Address (Line 2)	2.11 Address (Line 2)
2.7 Company City	2.12 City
2.8 State / 2.9 Zip Code	2.13 State / 2.14 Zip Code

SECTION III. PLANT SITE IDENTIFICATION

3.1 Plant Site Name | 3.2 EPA Facility Identification Number | 3.3 Plant Site Dun & Bradstreet

Plant Site Street Address	Plant Site Mailing Address Check if Same
3.4 Address (Line 1)	3.10 Address (Line 1)
3.5 Address (Line 2)	3.11 Address (Line 2)
3.6 City / 3.7 County	3.12 Address City
3.8 State / 3.9 Zip Code	3.13 State / 3.14 Zip Code

EPA Form Number <XXXX-X> (Rev 8/26/99) - Previous editions are obsolete
Form Approved OMB Number: XX/X-XXXX

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REPORT NUMBER

PART II. MANUFACTURING INFORMATION

SECTION I. CHEMICAL IDENTIFICATION

CBI

1.1 Chemical Identifying Number | 1.2 Id Code

1.3 Chemical Name

SECTION II. BASIC MANUFACTURING INFORMATION

2.1 Company Information CBI

2.2 Plant Site CBI CBI | 2.3 Site limited (Y/N) CBI | 2.4 Activity (M or I) CBI

2.5 Production Volume (LB) | CBI 2.6 Production Volume range CBI

SECTION III. MANUFACTURING EXPOSURE RELATED DATA

3.1 Number of workers (code) CBI	3.2 Physical Form (code) CBI	3.3 Maximum Concentration (code) CBI	3.4 Average Concentration (code) CBI

PART III. PROCESSING AND USE INFORMATION

Complete Part III, section I and II only if the production volume noted in Part II, Section II 2.5 is greater than or equal to 100,000 lb/year

SECTION I. INDUSTRIAL PROCESSING AND USE EXPOSURE RELATED DATA

N/A

	a. Process or Use (code) CBI	b. 5-digit NAICS Code CBI	c. Industrial Function Category (code) CBI	d. % Production Volume CBI	e. Number of Sites (code) CBI	f. Number of Workers (code) CBI
1.1						
1.2						
1.3						
1.4						
1.5						
1.6						
1.7						
1.8						
1.9						
1.10						

PAGE ___ of ___

REPORT NUMBER

SECTION II. CONSUMER AND COMMERCIAL END-USE EXPOSURE RELATED DATA N/A

	a. Consumer and Commercial Product Category (code) CBI	b. % Production Volume CBI	c. Maximum Concentration (code) CBI		a. Consumer and Commercial Product Category (code) CBI	b. % Production Volume CBI	c. Maximum Concentration (code) CBI
2.1				2.2			
2.3				2.4			
2.5				2.6			
2.7				2.8			
2.9				2.10			

PART IV. REASSERTION OF PAST CBI CLAIMS

1.1 If an IUR report was submitted to EPA for the last reporting cycle for the chemical identified in Part II, Section I, item 1.1 from the plant site listed in Part I, Section III, enter that report number in the space provided: Last IUR Report Number

1.2 Do you wish to reassert CBI claims made on your last IUR report?

☐ NO — If you check "NO," all the information you have previously claimed CBI on IUR's for this chemical will be **DECLASSIFIED AND PUBLICLY RELEASED WITHOUT FURTHER NOTICE.** This includes any reassertions made on your last IUR report.

☐ YES, all — *SEE BELOW

☐ YES, some — If you check "YES, some," include with this report an amended IUR report indicating the specific changes you wish to make in your CBI claims. *SEE BELOW

*** If you checked either of the "YES" boxes above, any data which you continue to claim CBI must qualify for this protection per 40 CFR 710.38. If any of your answers to the substantiation questions listed in 40 CFR 710.38 and submitted with your original CBI claim (which you now wish to re-assert) have changed, please submit amended answers together with this Part IV.**

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EPA will make available detailed instructions for completing the reporting form before the effective date of the final rule. EPA also intends to encourage electronic submissions of the final form. The procedures for electronic submissions will be made available before the effective date of the final reporting rule.

A. Amendments to Substances Covered by IUR

1. *Inorganics.* EPA is proposing to require partial reporting for inorganic chemical substances (i.e., Parts I., II., and IV. of revised Reporting Form U, but not Part III.), most of which are presently excluded under the current IUR regulations at 40 CFR 710.26(a). As discussed in Unit V.A.2. of this preamble, EPA intends to screen potential risks associated with inorganic chemical substances to set priorities for testing, more detailed risk assessment and potential risk management. The removal of the IUR reporting exemption for inorganic chemical substances would allow EPA to gather information important for effective risk screening and priority setting.

2. *Petroleum process streams.* EPA is proposing to exempt as a class certain chemical substances termed "petroleum process streams" from a portion of the amended IUR's reporting requirements. For purposes of this proposed rule, the petroleum process streams included in the exemption would be the multi-component complex chemical substances listed by Chemical Abstracts Service (CAS) Registry Number in the proposed regulatory text at § 710.26(d). The reporting excluded by this exemption would be the exposure-related data contained in Part III. of Revised Reporting Form U. The chemical substances listed as petroleum process streams in the proposed regulatory text were derived from the 1983 publication of the API entitled "Petroleum Process Stream Terms Included in the Chemical Substances Inventory Under the Toxic Substances Control Act (TSCA)" (Ref. 19). Chemical substances listed in the API document consisting of a single component chemical, except for water, would not be considered petroleum process streams for IUR reporting purposes.

This exemption is not being proposed because these streams are of known low toxicity. In fact, EPA believes that several petroleum process streams are toxicologically active; however, EPA believes that it, as well as other IUR information users, will not have a need in the near future for full IUR reporting on petroleum process streams. EPA will take action to revoke this exemption if its needs change. About 5,850 of the about 24,000 IUR reports submitted to EPA during the 1994 reporting period were for chemical substances that fit the definition of petroleum process streams. Therefore, this proposed exemption is expected to significantly reduce submitters' reporting burdens from the burden that would exist without the exemption.

3. *Natural gas.* EPA is proposing to exempt certain forms of natural gas from IUR reporting. The chemical substances that would be covered by this exemption are the following: CAS No. 64741-48-6, Natural gas (petroleum), raw liquid mix; CAS No. 68919-39-1, Natural gas condensates; CAS No. 8006-61-9, Gasoline natural; CAS No. 68425-31-0, Gasoline (natural gas), natural; CAS No. 8006-14-2, Natural gas; and CAS No. 68410-63-9, Natural gas, dried.

EPA believes that adequate IUR information collected on these chemical substances to date is available to fulfill EPA's current needs, and the current needs of other IUR information users. EPA specifically requests comment on whether IUR reporting for these six natural gas substances should be required in upcoming reporting periods, and whether the six CAS numbers identified are the appropriate natural gas substances for inclusion in this exemption. EPA will take action to revoke this exemption if its needs change in the future. Approximately 1,225 of the 24,000 IUR reports submitted to EPA during the 1994 reporting period were for the six chemical substances included in this proposed exemption. Therefore, this proposed exemption would likely result in a beneficial burden reduction for IUR submitters.

B. Amendments to Reporting Thresholds

EPA is proposing to raise the IUR reporting threshold from a production volume of 10,000 lbs. per year to 25,000 lbs. per year. Every person manufacturing (including importing) a non-excluded substance at or above the threshold would be required to report the information in Parts I., II., and IV. of Revised Reporting Form U. The increased IUR reporting threshold would make the IUR and TRI reporting thresholds equivalent at 25,000 lbs. per year for manufacturers (including importers). These thresholds are also approximately equal to the recently amended PMN low volume exemption threshold of 10,000 kg (approximately 22,000 lbs.). EPA is proposing to raise this reporting threshold in order to reduce the number of reports filed, thus reducing industry burden. The new reporting threshold does not represent a finding of low exposure or low risk.

EPA is also proposing a second, higher-volume threshold of 300,000 lbs. per year. Persons who manufacture (including import) a non-excluded substance at or above this level would be required to report the information in Part III. of Revised Reporting Form U in addition to the information in Parts I., II., and IV. The information reported under Part III. relates to the processing and use of chemical substances. EPA recognizes that the requirement that processing and use information be reported would impose a burden on industry. EPA originally considered proposing a higher-volume threshold of 100,000 lbs. per year; however, in the interest of further reducing the paperwork burden imposed on industry, EPA is proposing a higher-volume threshold of 300,000 lbs. per year. EPA is proposing this separate threshold to limit exposure data reporting to a subset of a few thousand IUR reportable chemicals.

The new, higher thresholds proposed in this action are consistent with a report from the General Accounting Office (Ref. 20), which recommended that, "...the inventory could be more useful to EPA and other interested parties if it initially focused on a smaller number of the highest-priority chemicals known to present risks to health and the environment and was expanded as necessary." EPA considered a number of different thresholds between 10,000 lbs. and 50,000 lbs. for basic IUR information and between 10,000 lbs. and 10,000,000 lbs. for processing and use information (See "Economic Analysis of Proposed Amendments to the TSCA Section 8 Inventory Update Rule," available in the public record for this rulemaking and listed in this preamble at Unit X.A.2.f.). EPA examined each of these options in light of the benefits that would be obtained from the information collected, EPA's ability to utilize that information, and the burden imposed on the public to provide the information. EPA concluded that processing and use information would be highly valuable (see Ref. 14), but that EPA would likely focus initially on larger volume chemical substances.

In order to retain information on potential substitutes for the larger volume chemical substances, but at the same time reduce the public reporting burden, EPA initially considered proposing a 100,000 lb. higher-volume reporting threshold for processing and use information to reduce the paperwork burden on industry. Although EPA believes a 100,000 lbs.

higher-volume threshold would provide valuable information, EPA is proposing that this threshold be set at 300,000 lbs. in an attempt to further reduce paperwork burden on submitters. EPA believes that this effort to further reduce the paperwork burden, as well as the Agency's other efforts to minimize burden in this proposed rule, is consistent with the Paperwork Reduction Act. EPA seeks public comment on the proposed threshold and on the other alternative thresholds analyzed in the Economic Analysis (listed in Unit X.A.2.f. of this preamble).

EPA still believes that information concerning lower production volume chemical substances is valuable, especially for identifying trends and additional substitute chemicals, but EPA also recognizes the importance of limiting the reporting burden when the need for the data is generally less great. In the future, EPA may find it necessary to collect information on chemicals at reporting thresholds below the thresholds proposed in this action. Although both proposed thresholds are significantly higher than the current IUR 10,000 lbs. threshold, EPA believes that the enhanced information it would receive under this rule at the proposed thresholds would enable the Agency to more efficiently identify those chemical substances warranting further, more in-depth regulatory review (see Ref. 14).

The new, higher reporting thresholds would result in a reduction in the number of currently reportable chemicals. However, this reduction would be partially offset by the elimination of the exemption for inorganic chemical substances. Under the current IUR, EPA receives reports on about 8,900 chemical substances. The Agency estimates that raising the reporting threshold from 10,000 lbs. to 25,000 lbs. reduces the number of reportable chemicals to about 7,800, while deleting the exemption for inorganic chemical substances would increase the number of reportable chemicals by about 1,200. Of the approximately 8,900 reportable chemical substances expected under the IUR amendments, about 4,050 would likely be produced in volumes of 300,000 lbs. or more and would require the completion of the entire revised reporting form.

C. Amendments to Reporting Period and Frequency

Under the current IUR regulations at 40 CFR 710.33(b), submitters are required to report on a recurring basis between August 25 and December 23 every 4 years ("the reporting period"). EPA is not proposing to change this requirement. However, the current IUR regulations indicate that the information reported during each reporting period is from the submitter's latest complete corporate fiscal year prior to the reporting period. In order to standardize reporting time frames across IUR submitters and across various other reporting programs, such as the TRI program, the Agency is proposing to change this IUR reporting scheme from a fiscal year reporting basis to a calendar year reporting basis. This would mean, for example, that the information that would be reported during the reporting period from August 25 to December 23 in the year 2002 would be from calendar year 2001.

D. Amendments to Recordkeeping Requirements

Currently, the Inventory regulations at 40 CFR 710.37 require submitters to retain records on IUR reports for 4 years. In these amendments to IUR, EPA is proposing that persons subject to the rule be required to retain records that document information reported for 5 years after the end of the relevant reporting period. For example, if a person submits an IUR report in the reporting year 2002, that person would be required to retain the records on which the report is based until December 31, 2007. This change, which would assist EPA's enforcement of the IUR, would result in the requirement that submitters maintain records that span successive reporting periods, which would continue to occur every 4 years as under the existing IUR.

Persons who are not required to report under the existing IUR because they manufacture less than the 10,000 lb. reporting threshold are required to retain volume records as evidence to support a decision not to submit a report. In this rulemaking, EPA is proposing that this provision be eliminated because EPA believes that this information is of the type that companies would routinely retain in the normal course of business.

E. Amendments to Reportable Data Elements

The new and revised data elements that would be reported under the rule are discussed in this section. Data elements that are currently reported under IUR but that would not be revised by these amendments (such as company information, Part I., Section II. of Revised Reporting Form U; site-limited activity, Part II., Section II.; and manufacturer/importer activity, Part II., Section II.) are not generally discussed because EPA is not reopening these data elements for comment. Although certain CBI issues are mentioned in this section (see Unit VI.E.3. of this preamble, for example), changes to CBI procedures are discussed more completely in Unit VIII. of this preamble.

1. *Plant site identification (Part I., Section III. of Revised Reporting Form U).* EPA currently requires the following information to be reported for each plant site at which a reportable chemical substance is manufactured (including imported) in amounts greater than the reporting threshold: the plant site name, Dun and Bradstreet number, street address, city, state, and zip code. The site for a chemical substance importer is the site of the operating unit within the importer's organization that is directly responsible for importing the substance and that controls the import transaction, and may in some cases be the organization's headquarters office in the U.S.

EPA believes additional plant site identifiers would allow for full integration of IUR data with other "place-based" environmental data collected by EPA or states under other regulatory authorities into multi-source and function data bases. By facilitating this integration, the Agency would be better able to address its obligations under TSCA section 10, and would thereby achieve the intended TSCA goal that information collected under the Act be made easily accessible to a wide variety of governmental and nongovernmental entities. With data integrations, TSCA data could be fully utilized as a "feedstock" for a wide variety of chemical management activities.

Providing linkages and achieving integration for environmental data across various data bases are important EPA goals under TSCA. While it was always intended that TSCA data be made available to chemical managers, until relatively recently, the primary user of TSCA data has been OPPT and the TSCA data systems were designed with this user in mind. Over the last several years, however, TSCA data has been sought by a wide variety of Federal, State and private organizations. For example, several States routinely contact the Agency to gain access to TSCA data that might be useful for their implementation of both State laws and Federally delegated laws. As demand has increased, EPA has recognized that the existing TSCA data systems do not always efficiently address the needs of the non-OPPT user.

Another benefit associated with fully integrating TSCA data into multi-source and function data bases is that duplicative information collections would be more easily identified and eliminated. Finally, improved linkages among data bases would provide the public with access to additional information at little or no burden to the regulated community.

EPA is proposing to require the reporting of two identifiers for each plant site reporting under IUR:

a. The Facility Registration Identifier (FRI) (if the plant site has one).

b. The county or parish (or other jurisdictional indicator) in which the plant site is located.

EPA is establishing the Facility Registry System (FRS) as a central resource of facility information, which will link all facilities represented in EPA program data bases through common facility identification data elements. The FRS will include a new facility numbering system identifying each facility with a unique Facility Registration Identifier (FRI) which will be used for electronic and integrated reporting and central receiving. The business rules for assigning an FRI to each facility will be developed by EPA and the States. EPA anticipates releasing the first version of the FRS and the new numbering system in the fall of 1999. The first reporting year under the final IUR amendments should occur after this system is in effect. For sites that have not been assigned an FRI, submitters would report this item as "not applicable."

In the alternative, should the FRS initiative not be underway at the time this rule becomes final, EPA will require submitters to report the plant site's EPA identification number (ID), if it has one. The EPA ID is described by the 12-character number assigned to sites covered by the hazardous waste regulations under RCRA (40 CFR 262.12). This number is further described in Unit V.A.3.a. of this preamble. For sites that have not been assigned an EPA ID, submitters would report this item as "not applicable."

The TRI program has demonstrated that many public and private sector organizations find it useful to aggregate release data by county or parish of reporting plant sites when evaluating chemical risks. EPA believes that there is merit to including similar geographic identifiers in future IUR reporting so that similar aggregations of IUR data can be generated. The two proposed plant site identifiers will facilitate improved linkages of the IUR information to other data bases, enabling the Agency to perform more comprehensive risk screening, assessment, and management activities.

2. *Chemical identification (Part II., Section I. of Revised Reporting Form U).* The IUR currently requires manufacturers (including importers) to report both the specific chemical substance name and the Chemical Abstracts Service (CAS) Registry Number of each reportable chemical substance manufactured (including imported) in amounts over 10,000 lbs. per year. EPA is proposing to require that chemicals be identified only by EPA Accession Number, PMN case number or Inventory reporting form number when the CAS Registry Number is unknown to the submitter. Other previously used substitute identifying numbers (such as EPA-assigned numbers for Test Market Exemption applications) would not be allowed because they cannot be efficiently cross-referenced to CAS Registry Numbers.

3. *Confidentiality of production volume range.* In addition to the requirement that specific production volume be reported, EPA is proposing to amend the IUR to allow submitters to claim a pre-determined production volume range corresponding to the reported production volume number as CBI. This claim would be separate from a CBI claim for the specific production volume. Production volume range reporting is included in these amendments because EPA believes that the availability of range information is less likely to raise CBI concerns than the availability of specific production volume figures. Accordingly, EPA expects that the confidentiality claim rates will be roughly 50% lower for the reporting of volume ranges than for the reporting of specific volumes. EPA's expectation of reduced CBI claims for production volume ranges is based on the CBI claim statistics associated with the development of the original TSCA Inventory (See "Inventory Update Rule (IUR) Technical Support Document: Evaluation of Likelihood of Confidential Business Information Claims for Production Volume Information," available in the public record for this rulemaking and listed at Unit X.A.2.g. of this preamble) as well as comments received from industry (Ref. 21). If this expectation is correct, the public would have greater access to data on chemical production volumes, and the Agency would be better equipped to publicly release more data relevant to its risk screening decisions.

EPA is proposing to use the following production volume ranges for future CBI determinations:

- At least 25,000 but less than 100,000 lbs.
- At least 100,000 but less than 1,000,000 lbs.
- At least 1,000,000 but less than 10,000,000 lbs.
- At least 10,000,000 but less than 50,000,000 lbs.
- At least 50,000,000 but less than 100,000,000 lbs.
- At least 100,000,000 but less than 500,000,000 lbs.
- At least 500,000,000 but less than 1,000,000,000 lbs.
- At least 1,000,000,000 lbs.

These ranges were first used in the development of the original TSCA Inventory, except that the proposed ranges start at the proposed IUR reporting threshold of 25,000 lbs. rather than the existing 10,000 lb. threshold.

4. *Number of potentially exposed workers (Part II., Section III. of Revised Reporting Form U).* Workers involved in chemical manufacturing (including importing), processing and use are a subpopulation of concern to EPA, the Occupational Safety and Health Administration (OSHA) (Ref. 22), the National Institute of Occupational Safety and Health (NIOSH) (Ref. 23), and other organizations. Workers may often be exposed to chemical substances in higher doses and with greater frequency than the general population, and so are potentially at greater risk of adverse health effects. Accordingly, EPA and other organizations believe that it is important to be able to estimate the number of workers potentially exposed to specific chemical substances when developing priorities for testing, more detailed risk assessment, and risk management.

EPA is proposing to use ranges for the reporting of certain quantitative estimates, including number of workers and number of processing sites (see Unit VII.A. of this preamble), instead of requiring the reporting of specific values. In general, EPA believes that reporting these estimates in ranges has two advantages over requiring the reporting of specific values:

a. Range reporting would reduce the potential burden to submitters of developing a precise point estimate for the data element.

b. Range reporting should reduce CBI claims because ranges tend to reveal less sensitive information than specific estimates while still conveying information useful to more effectively screen chemical risks. Submitters would be permitted to claim the reported ranges as confidential if even revealing this general information would disclose CBI.

EPA is proposing to require reporting of the range code that corresponds to the submitter's estimate of the total number of workers reasonably likely to be exposed to each reportable chemical substance at each reporting plant site. EPA is proposing to define "reasonably

likely to be exposed" as an exposure to a chemical substance which, under foreseeable conditions of manufacture (including import), processing, distribution in commerce, or use of the chemical substance, is more likely to occur than to not occur. Such exposures would normally include, but not be limited to, exposure during activities such as charging reactor vessels; drumming; bulk loading; cleaning equipment; maintenance operations; materials handling and transfers; and analytical operations. Covered exposures include exposures through any route of entry (inhalation, ingestion, skin contact or absorption, contact with personal protective equipment, etc.), but excludes accidental or theoretical exposures. The use of protective equipment or engineering controls to minimize worker exposures cannot be used by submitters as a rationale for lowering their estimates of the total number of exposed workers.

EPA has considered using the OSHA hazard communication standard's (29 CFR 1910.1200) definition of exposed worker for amended IUR reporting. The Hazard Communication Standard defines "employee" as a worker who may be exposed to hazardous chemicals under normal operating conditions or in foreseeable emergencies. Workers such as office workers or bank tellers who encounter hazardous chemicals only in non-routine, isolated instances are not covered. The Standard also defines "exposure" or "exposed" as the subjection of an employee to a hazardous chemical in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.) and includes potential (e.g. accidental or possible) exposure. In EPA's view, this definition is overly broad for IUR purposes and for use in exposure assessments. The definition, for OSHA's purposes, was intended to be protective in order to ensure that all workers that could conceivably be exposed to a chemical substance would receive hazard communication. EPA solicits comment on the definition of "reasonably likely to be exposed" that the Agency has selected for this proposed rule.

The proposed ranges for reporting the estimated number of potentially exposed workers are as follows:

- Less than 10.
- At least 10 but less than 25.
- At least 25 but less than 50.
- At least 50 but less than 100.
- At least 100 but less than 250.
- At least 250 but less than 500.
- At least 500 but less than 1,000.
- At least 1,000 but less than 10,000
- At least 10,000.

5. *Physical Form (Part II., Section III. of Revised Reporting Form U).* EPA is proposing to require submitters to report the physical form of each reportable chemical substance as it leaves their sites. EPA believes that the physical form of a chemical is an important factor to consider when estimating magnitudes and concentrations of potential exposures. Two technical documents that support this proposed rule, entitled, "Inventory Update Rule (IUR) Amendment Technical Support Document: Exposure-Related Data Useful for Chemical Risk Screening," and "Preliminary Assessment Information Rule (PAIR) Database, Manufacturing Process Type/Release Analysis and Number of Workers/Production Quantity Analysis," both available in the public record for this proposal (listed at Unit X.A.2.a. and Unit X.A.2.b. of this preamble), state that an EPA data analysis demonstrated that information regarding the physical form of chemical substances provides an indication of potential chemical exposures to the environment or to humans. EPA is proposing that submitters would select the category that best describes the physical form of the chemical as it leaves their site. In the event the submitter ships a chemical in more than one physical form, the submitter must report the code corresponding to the physical form of the majority of the chemical manufactured (including imported). The proposed categories for reporting the physical form are as follows:

- Dry powder.
- Pellets or large crystals.
- Water- or solvent-wet solid.
- Other solid.
- Gas or vapor.
- Liquid.

The Agency recognizes that, for some chemical substances, the physical form of the substance at the time it leaves the submitter's site may not be the same physical form of the substance during processing and use; the Agency believes that such substances constitute a minority of all reportable chemical substances, and that it can, based on its knowledge of work practices in many industrial sectors, successfully identify many of the substances that undergo changes in physical form during processing and use. Therefore, to limit submitters' reporting burdens, EPA is proposing that physical form reporting be limited to the physical form of the substance at the time it leaves a submitter's site. Comments are invited on this proposed approach.

6. *Average and maximum concentration in commercial products (Part II., Section III. of Revised Reporting Form U).* EPA is proposing to require submitters to report the average and maximum concentration, measured by weight, of the reportable chemical substance as it leaves their sites in a commercial product. EPA believes that concentration is an important factor to consider when estimating magnitudes of potential exposures. Information related to average concentration is valuable when estimating the potential for concerns due to chronic exposures, while information related to maximum concentration is useful when estimating the potential for concerns due to acute exposures. EPA frequently uses models to estimate potential human inhalation and dermal exposures (Ref. 24). In the absence of concentration data, EPA often assumes that human inhalation and dermal exposures are the result of exposures to undiluted chemicals. Chemical substance concentration data would allow EPA to generate less conservative exposure estimates for chemicals that are diluted prior to processing or use.

Information about the average and maximum concentration of a chemical substance present at processing and use sites is used in chemical risk screening in EPA's New Chemicals Program. Estimates of maximum concentration assist EPA in establishing the maximum concentrations to which the environment and workers might be exposed by releases from industrial settings. For example, EPA has developed standard methods to estimate dermal exposures that workers may experience while performing common industrial operations such as sampling and loading chemicals into drums. If EPA is aware that a chemical substance is not processed or used at concentrations above a certain level, exposure estimates may be adjusted accordingly.

The following is the list of proposed concentration codes for use in IUR reporting under the proposed rule:

- Less than 1% by weight.
- 1 - 30% by weight.
- 31 - 60% by weight.
- 61 - 90% by weight.
- Greater than 90% by weight.

The Agency is proposing that reporting on concentrations be limited to concentrations at the time the chemical substance leaves the submitter's site, for the reasons discussed in Unit V.E.6. of this preamble.

VII. Amendments Affecting Larger Volume Manufacturers (Including Larger Volume Importers)

As discussed in Unit VI.B. of this preamble, EPA is proposing to replace the current IUR reporting threshold of 10,000 lbs. per year with two new reporting thresholds of 25,000 lbs. per year and 300,000 lbs. per year. Every person manufacturing (including importing) a reportable substance at or above the 25,000 lbs. threshold would be required to report the information in Parts I., II., and IV. of Revised Reporting Form U. Persons who manufacture (including import) a reportable substance at or above the 300,000 lbs. threshold would be required to report the information in Part III. of Revised Reporting Form U in addition to the information in Parts I., II., and IV. Part III. relates to the processing and use of chemical substances.

Process is defined in 40 CFR 710.2 as "the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce (1) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance or mixture, or (2) as part of a mixture or article containing the chemical substance or mixture."

Process for commercial purposes means "to process (1) for distribution in commerce, including for test marketing purposes, or (2) for use as an intermediate."

Based on these definitions, processing includes incorporating a reportable chemical substance into a formulation, an article, or a product. EPA is proposing to define "use" as "any utilization of a chemical substance or mixture that is not otherwise covered by the terms manufacture or process. Relabeling or redistributing a container holding a chemical substance or mixture where no repackaging of the chemical substance or mixture occurs does not constitute use or processing of the chemical substance or mixture."

TSCA section 8(a) authorizes EPA to require persons to report information that is "known to or reasonably ascertainable by" them (see proposed regulatory text § 710.2). Under the proposed amendment, the submitter would be required to report processing and use information only to the extent that such information is "readily obtainable" by the submitter's management and supervisory employees responsible for manufacturing, processing, distributing, technical services, and marketing (see proposed regulatory text § 710.2). Extensive file searches would not be required. The "readily obtainable" standard proposed for processing and use information requires less effort on the part of the submitter than the "known to or reasonably ascertainable by" standard that applies to all other IUR reporting. The Agency believes that the "readily obtainable" reporting standard would provide processing and use information of a sufficient precision for use in screening level reviews. Reducing the precision to "readily obtainable" from "known to or reasonably ascertainable by" for processing and use information also lowers the reporting burdens for many submitters. Moreover, the proposed reporting standard for processing and use information under these IUR amendments is the same standard currently in effect under PAIR (See 40 CFR 712.7).

Much of the additional information required under Part III. of Revised Reporting Form U would be provided in ranges, rather than discrete values, as described in more detail in this unit. EPA preliminarily determined that the planned use of information such as percent production volume, number of sites, number of potentially exposed workers, average concentration, and maximum concentration does not warrant the reporting of discrete values. In addition, the use of ranges for certain data elements would reduce reporting burdens, yet provide sufficient information for screening level analyses. EPA also believes that the use of ranges would greatly diminish CBI claims for information reported.

EPA considered the option of requiring processing and use reporting by larger volume manufacturers (i.e., those manufacturers that reach the 300,000 lbs. threshold) based upon submitter owned or controlled sites alone versus customer owned or controlled sites in addition to submitter owned or controlled sites. EPA preliminarily determined that manufacture, processing, and end use of the chemical substance were important to examining the potential exposure scenarios for a chemical substance, but that it did not matter if the processing or use site was submitter controlled or not. In addition, restricting the reporting of this information to submitter owned or controlled sites alone would not capture much of the information needed regarding the processing and use of reportable chemicals. Therefore, EPA decided to require the reporting of processing and use information readily obtainable by the submitter, including information based upon submitters' sites as well as their customers' sites.

The two general types of information that would be reported under Part III. of Revised Reporting Form U are industrial processing and use information and commercial and consumer use information.

A. Processing and Use Information (Part III. of Revised Reporting Form U)

EPA is proposing to require submitters to report the information described in Unit VII.A.1-5. of this preamble concerning the processing and use of each reportable chemical substance that are conducted both at sites the submitter controls and at sites that receive a reportable chemical substance from the submitter either directly or indirectly (including through a broker/distributor, from a customer of the submitter, etc.).

1. *Industrial process or use code (Part III., Section I.a. of Revised Reporting Form U).* The first item of reportable information under this proposed section is the industrial process or use code. The proposed categories for reporting the industrial processing and use are:

- Processing - as a reactant.
- Processing - incorporation into a formulation or mixture.
- Processing - incorporation into an article.
- Processing - repackaging.
- Use - non-incorporative activities.

Repackaging would be defined for purposes of IUR reporting under the proposed rule as the physical transfer of a chemical substance or mixture, as is, from one container to another container or containers in preparation for distribution of the chemical substance or mixture in commerce. This definition, therefore, would not include sites which only relabel or redistribute the reportable chemical substance without removing the chemical substance from the container in which it is received or purchased.

2. *The North American Industrial Classification System (NAICS) Code and Industrial Function Category (Part III., Section I.b. and c. of Revised Reporting Form U).* EPA is proposing to require submitters to report the five-digit NAICS code(s) that best describe(s) the industrial activities at the sites under the control of the submitter, as well as at the sites that receive a reportable chemical substance from the submitter either directly or indirectly (including through a broker/distributor, from a customer of the submitter, etc.), and that process and use the reportable chemical substance (Ref. 25). The NAICS codes, published by the Office of Management and Budget (OMB), have superseded OMB's prior system of Standard Industrial Classification (SIC) Codes. EPA is proposing that, to the extent the information is readily obtainable, submitters will report on industrial processing and use of chemical substances they manufacture after the chemical substances have passed

through distributors or other distribution or shipping systems. EPA does not intend for manufacturers (including importers) to survey their customers or distributors to precisely identify the appropriate NAICS codes at their "downstream" sites.

The NAICS code classification system is being used in this application solely to describe the industrial setting in which there may be chemical exposures associated with the industrial processing or use of a chemical substance. The submitter would be required to report all known and readily obtainable NAICS codes for the reportable chemical substances it manufactures (including imports). If the submitter is aware of more than 10 NAICS codes that describe the industrial activities at sites that process and use the reportable chemical substance, the submitter would be required under this proposed rule to report only the 10 NAICS codes that cumulatively represent the largest percentage of production volume, measured by weight. This limitation on reporting is intended to minimize submitters' reporting burdens.

EPA is also proposing to require submitters to report the industrial function categories associated with each NAICS code for each reportable chemical substance that is processed or used for industrial purposes. EPA believes that a NAICS code and industrial function category combination sufficiently define a potential exposure scenario for risk screening and priority-setting purposes. Two technical documents that support this proposed rule, entitled "Inventory Update Rule (IUR) Amendment Technical Support Document: Exposure-Related Data Useful for Chemical Risk Screening," and "Preliminary Assessment Information Rule (PAIR) Database, Manufacturing Process Type/Release Analysis and Number of Workers/Production Quantity Analysis," both found in the public record for this rulemaking (listed at Unit X.A.2.a and X.A.2.b. of this preamble), describe studies that demonstrate that information regarding the industrial sectors where a chemical substance is produced and used and information regarding the function that a chemical substance performs within industrial processes provide indications of the route, magnitude, and concentration of potential chemical exposures to the environment and to humans.

Industrial function categories are helpful in estimating the frequency and duration of chemical substance exposures. For example, EPA has found that the relationship between industrial function categories and the frequency and duration of exposure to chemical substances is particularly useful in developing exposure assessments for the New Chemicals Program. Similarly, data elements such as the number of sites and the number of workers enable the Agency to better estimate the scope of potential exposure. These data elements are important pieces in developing the most accurate exposure scenarios possible. In the absence of this data, EPA often assumes, for chemical risk screening purposes, that workers are exposed to chemical substances for full 8–hour work days for the duration of their careers. The data that would be obtained under these proposed amendments to IUR would enable EPA to make more realistic characterizations of exposure, instead of "worst case" assumptions.

Industrial function categories would be reported by selecting from the following list of proposed industrial function category codes for chemical processing and use:

- Adhesives and binding agents.
- Adsorbents and absorbents.
- Aerosol propellants.
- Agricultural chemicals (non-pesticidal).
- Anti-adhesive agents.
- Bleaching agents.
- Coloring agents, dyes.
- Coloring agents, pigments.
- Corrosion inhibitors and anti-scaling agents.
- Fillers.
- Fixing agents.
- Flame retardants.
- Flotation agents.
- Fuels.
- Functional fluids.
- Intermediates.
- Lubricants.
- Odor agents.
- Oxidizing agents.
- pH-regulating agents.
- Photosensitive chemicals.
- Plating agents and metal surface treating agents.
- Process regulators, used in vulcanization or polymerization processes.
- Process regulators, other than polymerization or vulcanization processes.
- Processing aid, not otherwise listed.
- Reducing agents.
- Solvents (for chemical manufacture and processing and are not part of the end product at greater than one percent by weight).
- Solvents (for cleaning or degreasing).
- Solvents (that become part of product formulation or mixture).
- Stabilizers.
- Surface active agents.
- Viscosity adjustors.
- Other.

As described in the document entitled, "Inventory Update Rule (IUR) Amendment Technical Support Document: Exposure-Related Data Useful for Chemical Risk Screening" (listed at Unit X.A.2.a. of this preamble), these industrial function categories have been developed and defined based on a review of different chemical function classification systems (including the systems used in the Premanufacture Notification, UCSS, UEIP, and EU programs), as well as development of data pertinent to the potential media of releases, potential quantities released, potential worker exposures, and potential incorporation into commercial and consumer products for each industrial function category. This list of specific categories is not meant to be exhaustive, therefore, an "other" category is provided for miscellaneous uses not captured in the listed categories. These categories address a wide range of industrial chemical processing and use functions, and are likely to be revised as analysis of reported IUR data is further refined over time.

3. *Percentage of production volume attributable to each combination of NAICS code and industrial function category (Part III., Section I.d. of Revised Reporting Form U).* EPA is proposing to require submitters to estimate the percentage of production volume that is attributable to each reported combination of NAICS code estimate and industrial function category, to the extent that such information is readily obtainable. Estimates must be rounded off to the nearest 10% of production volume. However, under the proposed rule, a particular NAICS code/industrial function category (NAICS/IFC) combination which accounts for 5% or less of the total production volume of a reportable chemical substance would not be permitted to be rounded off to zero if the production volume attributable to that NAICS/IFC combination is greater than or equal to 300,000 lbs. In such cases, submitters must report the percentage of production volume attributable to that NAICS/IFC combination to the nearest 1% of production volume. This exception to the general rounding off rule is being proposed to ensure that adequate use information is reported for the very large production volume chemical substances. The 300,000 lbs. level was selected for consistency with the proposed threshold for reporting exposure and use data.

4. *Number of sites (Part III., Section I.e. of Revised Reporting Form U).* For risk screening purposes, the number of sites at which chemical substances are manufactured (including imported), processed and used is a useful indicator of the number of ecosystems and the size of the general population potentially exposed to the chemical substances. EPA is proposing to require submitters to report an estimate of the total number of industrial sites, including those beyond the submitter's control, that process or use each reported chemical substance manufactured (including imported) by the submitter, as described by each combination of NAICS code estimate and industrial function category.

The ranges that would be used for reporting the number of sites are as follows:

- Less than 10.
- At least 10 but less than 25.
- At least 25 but less than 100.
- At least 100 but less than 250.
- At least 250 but less than 1,000.
- At least 1,000 but less than 10,000.
- At least 10,000.

EPA recognizes that there is a possibility of double-counting sites, for example, where two or more submitters manufacture (including import) the same reportable chemical substance and each sends the chemical substance to the same industrial processing or use site. However, because the Agency is proposing that the number of sites be reported in the specified ranges, it believes the impact of double-counting sites will not significantly affect the use of these estimates for screening purposes. In the event a submitter both manufactures (including imports) and processes or uses the same reportable chemical substance at the reporting plant site, the site should be counted as both a manufacturing site in Part II. of Revised Reporting Form U, and as a processing or use site reported in Part III. of Revised Reporting Form U.

5. *Number of workers (Part III., Section I.f. of Revised Reporting Form U).* As discussed in Unit V.A. of this preamble, information related to the exposure of workers to chemical substances is of particular interest to EPA and other organizations. EPA is proposing to require submitters to report an estimate of the total number of workers reasonably likely to be exposed while processing or using the reportable chemical substance as described by each combination of NAICS code estimate and industrial function category. These combinations relate to sites under the control of the submitter as well as sites that receive a reportable chemical substance from the submitter either directly or indirectly (see Unit VII.A.2. of this preamble). The approximate number of workers reasonably likely to be exposed during processing and use would be reported using the same definitions and codes described under Unit VI.E.4. of this preamble. The only difference in reporting worker exposure information under this section is that such information need be reported only to the extent that it is readily obtainable.

EPA recognizes that there is also a possibility of double-counting workers at industrial processing and use sites, for example, when two or more submitters manufacture the same reportable chemical substance and each ships the chemical substance to the same processing or use site. Because EPA is proposing that the number of workers be reported through the use of broad ranges, EPA believes the impact of double-counting workers will not significantly affect the use of the estimates for risk screening purposes. In addition, it will be possible to estimate the maximum potential magnitude of double counted workers at processing and use sites because the total number of manufacturers (including importers) will be known to EPA.

B. Commercial and Consumer Use Information (Part III., Section II. of Revised Reporting Form U)

EPA is proposing to require submitters to report the information described in Unit VII.B.1-3. of this preamble concerning the commercial and consumer uses of each reportable chemical substance that is manufactured (including imported) at sites the submitter controls and at sites controlled by persons to whom the submitter has either directly or indirectly (including through a broker/distributor or from a customer of the submitter, etc.) distributed the reportable chemical substance. As with the industrial processing and use information described in Unit VII.A. of this preamble, this requirement would apply only to each chemical substance manufactured (including imported) in annual quantities of 300,000 lbs. or more and submitters would only be required to report information to the extent that it is readily obtainable.

For purposes of IUR reporting, a commercial use means the use of a chemical substance or mixture in a commercial enterprise providing saleable goods or a service, such as painting contractors using paint products. A consumer use, on the other hand, means the use of a chemical substance that is directly, or as part of a mixture, sold to or made available to consumers for their use in or around a permanent or temporary household or residence, in or around a school, or in or around recreational areas. Exposures to commercial and consumer products are similar for risk screening purposes because existing assessment methods are not sophisticated enough to distinguish between these exposures.

Consumers comprise a subpopulation of particular concern to EPA, the Consumer Products Safety Commission (CPSC), and other organizations. Information from submitters on whether the chemical substances they manufacture (including import) are used in consumer products is useful in estimating the potential risks to consumers that result from chemical exposures. EPA often assumes, for risk screening purposes, that large, unprotected populations may potentially be exposed to the chemical substances in consumer products. EPA plans to propose a test rule to develop hazard data regarding chemicals in consumer products to which children are exposed. The consumer product information that would be reported under these IUR amendments would be used by EPA in the identification of chemicals that might be included in the test rule.

1. *Commercial and consumer product categories (Part III., Section II.a. of Revised Reporting Form U).* Commercial and consumer product categories are helpful in estimating the frequency and duration of chemical substance exposures. In the absence of other information, consumers are often assumed to experience less controlled, but less frequent exposures than workers. The data that would be obtained under these proposed amendments to IUR would enable EPA to make more realistic characterizations of exposure, instead of "worst case," overly conservative assumptions.

The proposed commercial and consumer product categories were developed based on a review of various data sources including national usage surveys of consumer products, product emissions testing, and exposure monitoring data (See "Technical Support Document: Technical Approach for the Selection of Consumer End-Use Categories for the Inventory Update Rule," available in the public record for this proposal and listed at Unit X.A.2.h. of this preamble). This review identified an extensive list of consumer products and provided subsequent categorization of these products by common characteristics, such as use scenarios, into major groupings of commercial and consumer products. The list is not meant to be comprehensive, therefore, an "other" category is provided for

miscellaneous commercial and consumer products not captured in the categorization system. Further details about the categories, including their development and definitions, are provided in the technical support document described in this paragraph.

The proposed categories for reporting commercial and consumer products are:

- Adhesives and sealants.
- Artists' supplies.
- Automotive care products.
- Electrical and electronic products.
- Fabrics, textiles and apparel.
- Glass and ceramic products.
- Lawn and garden products (non-pesticidal).
- Leather products.
- Lubricants, greases and fuel additives.
- Metal products.
- Paints and coatings.
- Paper products.
- Photographic chemicals.
- Polishes and sanitation goods.
- Rubber and plastic products.
- Soaps and detergents.
- Transportation products.
- Wood and wood furniture.
- Other.

2. *Percentage of production volume attributable to each commercial and consumer product category (Part III., Section II.b. of Revised Reporting Form U).* EPA is proposing to require submitters to estimate the percentage of their production volume for each reportable chemical substance that is attributable to each specific commercial and consumer end-use carried out at sites under the control of the submitter, as well as at sites that receive a reportable chemical substance from the submitter either directly or indirectly (including through a broker/distributor, from a customer of the submitter, etc.), to the extent that such information is readily obtainable. Estimates must be rounded off to the nearest 10% of production volume. However, under the proposed rule, a commercial and consumer product (CCP) category which accounts for 5% or less of the total production volume of a reportable chemical substance would not be permitted to be rounded off to zero if the production volume attributable to that CCP category is greater than or equal to 300,000 lbs. In such cases, submitters must report the percentage of production volume attributable to that CCP category to the nearest 1% of production volume. This exception to the general rounding off rule is being proposed to ensure that adequate use information is reported for the very large production volume chemical substances. The 300,000 lbs. level was selected for consistency with the proposed threshold for reporting processing and use data (see Unit VI.B. of this preamble).

3. *Maximum concentration, measured by weight in commercial and consumer products (Part III., Section II.c. of Revised Reporting Form U).* EPA is proposing to require each submitter to report estimates, in ranges, of the maximum concentration (measured by weight) of each reportable chemical substance likely to be present in commercial and consumer products manufactured (including imported) at sites under the submitter's control and at sites where the submitter's commercial and consumer products are distributed directly or indirectly (including through a broker/distributor, from a customer of the submitter, etc.). As with the other information in this section, such information would be required only to the extent that it is readily obtainable by the submitter. The proposed reporting range codes are the same as those listed in Unit VI.E.6. of this preamble.

VIII. Confidentiality

A. Asserting Claims

Submitters are able to claim certain information submitted to EPA under this proposed rule as confidential if they have reason to believe that release of the information would reveal trade secrets or confidential commercial or financial information, as provided by section 14 of TSCA and 40 CFR part 2. Claims of confidentiality must be asserted at the time information is submitted to EPA. EPA's procedures for processing and reviewing confidentiality claims are set forth at 40 CFR part 2, subpart B. EPA strongly encourages submitters to review confidentiality claims carefully to ensure that the information in question falls within the protection of TSCA section 14 and to limit confidentiality claims as much as possible.

To claim information as confidential, a submitter must check the appropriate box and sign the certification statement on the reporting form. If a submitter failed to do so, EPA could release the information to the public without further notice to the submitter. As in the last three TSCA Inventory Update collections and the initial TSCA Inventory collection and as reflected in the regulations, by signing the certification statement the submitter certifies that its claims of confidentiality are made in good faith. Procedures for claiming information submitted electronically (such as a submission on diskette) as confidential will be specified in the reporting rule instruction manual. CBI should not be submitted by e-mail. A discussion on proposed procedures and policies for making CBI claims in the context of this proposed rule is provided in this unit.

B. Chemical Identity

Under the existing IUR, confidentiality claims for chemical identity can only be made for those chemicals listed on the confidential portion of the Inventory. A submitter must currently assert a separate claim of confidentiality for specific chemical identity when submitting an IUR report. To assert a claim of confidentiality for the identity of a chemical substance which is confidential on the TSCA Inventory, submitters are currently, and would continue to be, required to indicate the claim on the IUR reporting form and provide a detailed substantiation of the claim as specified in 40 CFR 710.38. If a submitter fails to substantiate the chemical identity CBI claims in accordance with the applicable regulations, EPA may make the information available to the public without further notice to the submitter. EPA is not proposing to change these requirements.

C. Manufacturing Plant and Plant Site Information

Under IUR, a submitter may assert a claim of confidentiality for the specific manufacturing plant and plant site information if it is believed that release of that identity would reveal trade secrets or confidential commercial or financial information as provided by TSCA section 14. In past IUR information collections, in excess of 15% of IUR information submitters have claimed plant site name as CBI. While the Agency does not question the occasional need for this claim, it believes that these claims should be limited to only those circumstances in which it is absolutely necessary. The Agency has identified instances in which submitters have claimed plant site name as confidential yet this same information was found in such public filings as material safety data sheets and State and Federal permits. Overall, approximately 20% of the 1994 IUR reports contained CBI claims for plant site information. The IUR does not currently require upfront substantiation of CBI claims for plant site information. In these amendments to IUR, EPA is proposing a new upfront substantiation requirement for CBI claims for plant site information.

EPA has observed that, on occasion, plant site information has been claimed as confidential even though it was revealed in filings required under sections 311, 312 and 313 of EPCRA. EPA believes that many of these CBI claims are inappropriate and that the new substantiation requirement would reduce the occurrence of inappropriate claims. A decrease in the number of CBI claims under the new substantiation requirement would facilitate EPA's ability to make current plant site information available to other Federal agencies and the public because more information submitted under IUR could be released publicly.

Under this proposed rule, in order to assert a claim of confidentiality for plant site information, the submitter would be required to both check the appropriate box on the reporting form indicating a confidentiality claim for plant site information, and to substantiate the claim in writing by answering certain questions provided in § 710.38(d)(1) of the proposed rule. If a submitter fails to substantiate the plant site CBI claim in accordance with the applicable regulations, EPA may make the information available to the public without further notice to the submitter.

D. Chemical Production Volume Information

Under IUR, a submitter may assert a claim of confidentiality for production volume information if the release of that information would reveal trade secrets or confidential commercial or financial information as provided by section 14 of TSCA. EPA is not proposing to change this.

EPA observed that, in the last three IUR reporting periods when EPA sought actual production volume information, over 65% of the information was claimed as confidential. In contrast, overall CBI claims for production volume information in the original TSCA Inventory collection were 35%; this information, however, was collected in ranges. This high proportion of CBI claims in IUR reports has limited EPA's ability to convey to the public plant site production volume information. Because over 95% of the chemicals reported under IUR are manufactured at three plant sites or less, these CBI claims also greatly hinder EPA's ability to create national aggregate statistics on overall chemical production for specific chemical substances. For example, if EPA publishes a national aggregate production volume for a chemical substance that is manufactured at three plant sites and one site claims its production volume CBI and the other two do not, it might be possible to calculate the CBI production volume by difference. In such a case, EPA would not release aggregate data because of its responsibility to protect the CBI claim of the one submitter. However, EPA needs to be able to convey chemical substance production volume information to the public to explain its chemical risk assessment and risk management decisions. Effective communication of this information is vital to EPA's overall mission. To address this problem and yet acknowledge industry's legitimate concerns about this data element, EPA is proposing to require submitters to report both actual plant site chemical production volume information and a corresponding production volume range. Separate CBI claims could be made for each.

EPA is proposing to use the production volume ranges that are similar to those that were successfully used in the implementation of the original TSCA Inventory collection. Proposed production volume ranges for use in this action are listed in Unit VI.E.3. of this preamble. EPA anticipates that the CBI claim rates will be around 50% lower for the reporting of volume ranges than for the reporting of specific claims (See "Inventory Update Rule (IUR) Technical Support Document: Evaluation of Likelihood of Confidential Business Information Claims for Production Volume Information," available in the public record for this proposal and listed at Unit X.A.2.g. of this preamble).

EPA is seeking to develop and use ranged chemical production volume information at the suggestion of industry representatives following a dialogue with the public about TSCA CBI claims. In correspondence, an industry representative noted that manufacturers were less sensitive about ranged production volume information than specific numbers (Ref. 21). The representative suggested that collecting information on ranges similar to those used under the original TSCA Inventory might reduce the incidence of CBI claims for production volume information and facilitate EPA information dissemination goals. In this proposed rule, EPA would seek chemical production volume information and would use that information to make a production volume range assignment. EPA intends to use the production volume information in the creation of national statistics, whereas the ranged production volume data may be most useful in the creation of information products conveying site-specific chemical information.

E. Reasserting Claims

Submitters would use Part IV. of Revised Reporting Form U to reassert CBI claims made in their previous IUR reporting. CBI claims made in IUR submissions prior to 2002 (the first IUR reporting year under these amendments) would be not be subject to this reassertion requirement.

Since 1990, EPA has been engaged in a dialogue with the public on issues associated with TSCA CBI. During this dialogue, industry has confirmed EPA understanding that the need for certain confidentiality claims is reduced or eliminated over time. What was considered CBI to a submitter during one reporting cycle may not be considered CBI in subsequent years. Some information submitted to EPA with CBI claims is subsequently released by the submitter to the public because the submitter no longer believes that the claims are necessary. The result is that some information submitted to EPA is withheld by EPA from the public for long periods, at additional cost to the Agency and with no appreciable advantage to the submitter. This situation complicates EPA's efforts to make information available to potential users, including other Federal agencies, State and local chemical management authorities and local communities, secure the participation of the public in EPA's chemical management efforts, and in other ways allow for the effective EPA implementation of TSCA.

EPA is proposing new procedures to ensure that there is an ongoing need by the submitter for continued CBI protection. Under the proposed procedures, manufacturers (including importers) would be required, in subsequent reporting periods, to affirmatively represent the need for the continued CBI protection of the claims made in previous IUR reporting periods. To illustrate, for data submitted to EPA in the year 2010, a manufacturer (including importer) would be required to affirmatively represent on the reporting form that: (1) The specific CBI claims made for the first time in reporting year 2006 and (2) the specific CBI claims reasserted in reporting year 2006 continue to be necessary in order to protect trade secrets or confidential commercial or financial information as provided by TSCA section 14. The CBI certification statements would be contained in Part IV. of Revised Reporting Form U for the convenience of the submitter. If either certification is not provided by the submitter, EPA would assume that the submitter is waiving those claims of confidentiality to the underlying information contained in the earlier filings and the information would be subject to public disclosure without further notice.

This policy would be applied even if the submitter is not required to report in the present reporting period due to low production volume or other applicable exclusions. In other words, if a submitter who asserts a CBI claim in a prior reporting period is not required to report under the current IUR reporting period, that submitter must file a certification regarding its prior CBI claim during the current reporting period if it wishes to retain the claim. Again, CBI claims made in IUR submissions prior to 2002 (the first IUR reporting year under these amendments) would not be subject to this reassertion requirement.

EPA will undertake certain precautions in order to ensure that persons that make CBI claims in IUR submissions in the 2002 reporting period and subsequent reporting periods are aware of the requirement that these claims be reasserted, as appropriate, in subsequent reporting periods in order to retain CBI protections. Prior to each IUR reporting period, EPA will send an IUR reporting package to each person who submitted an IUR report or CBI reassertion in the previous reporting period. This package will contain a cover letter which will: (1) Remind the submitters of the reassertion requirements and (2) advise that failure to affirmatively reassert prior CBI claims will result in the removal of CBI protections for this information. The package will also contain a reporting form and reporting instructions which will reiterate these reminders. In addition, EPA will publish a **Federal Register** notice at least 2 weeks before the end of each reporting period which will remind members of the public who have not reasserted their prior CBI claims of the pending declassification of these claims if they do not reassert by the end of the reporting period.

In addition to the reminders related to CBI reassertion that are specifically proposed in this document, EPA also intends to publicize the need to reexamine and reassert past CBI claims via the EPA/OPPT Homepage on the Internet, and in communications with trade association publications.

It has been suggested that EPA additionally send a followup certified letter to persons who were sent IUR reporting packages, but who fail to indicate their intention to reassert/not reassert previous CBI claims by the end of the reporting period. The intent of the letter would be to further notify submitters that they need to reevaluate their past CBI claims and reassert them, as appropriate. EPA believes that this additional step would be costly and would result in an inefficient use of Agency resources. For example, if a submitter does not receive the reporting package mailed by EPA because the submitter's address was changed between the last IUR reporting period and the current reporting period (EPA sends packages to the addresses submitted during the previous reporting period), the submitter likewise would not receive a followup letter from EPA sent to the same incorrect address. As discussed above, before each reporting period ends, EPA is proposing to publish a **Federal Register** notice which EPA believes would reach a far broader audience than individual letters would. EPA seeks comment on the issue of whether means beyond those proposed in this action are needed to better inform submitters of the requirement that they reexamine their past CBI claims and reassert them, as appropriate, in order to retain CBI protections.

IX. Request for Comment and Notice of Public Meeting

The comment period for this proposed rule will extend until October 25, 1999. EPA will hold a public meeting on Monday, October 4, 1999, from 9 a.m. to noon at the EPA Auditorium, 401 M St., SW., Washington, DC 20460 to provide an opportunity for the public to present oral comments.

The following is a list of issues on which the Agency is specifically requesting public comment. EPA encourages all interested persons to submit comments on these issues, and to identify any other relevant issues as well. This input will assist the Agency in developing a rule that successfully addresses information needs while minimizing potential reporting burdens associated with the rule. EPA requests that commenters making specific recommendations include supporting documentation where appropriate.

1. What (if any) specific mechanisms or sources of data could EPA use to acquire the exposure-related information sought in this proposed rule with greater ease and less burden to industry?

2. EPA initially considered proposing a larger-volume threshold for the reporting of processing and use information of 100,000 lbs. per year per site, rather than the 300,000 lbs. per year per site threshold proposed in this document. EPA analyzed a number of alternative thresholds in the Economic Analysis (listed in Unit X.A.2.f. of this preamble). EPA is specifically seeking comment on the question of whether this threshold should be modified.

3. During the interagency review process, it was suggested that EPA consider proposing a partial reporting exemption for "low priority" chemicals. Manufacturers of these chemicals could be exempt from reporting the exposure-related data contained in Part III. of the reporting form. At one point during the development of this proposal, EPA considered developing such an exemption, but was unable to develop a satisfactory rationale for the exemption. Therefore, EPA seeks comment on the criteria the Agency might use to establish such an exemption. EPA also solicits comment on the specific chemicals that would qualify for such an exemption.

During the interagency review process, various lists of chemicals were suggested as candidates for such a "low priority" partial exemption. EPA would be interested in comments on the alternative lists described below, as well as any other suggested set of chemicals.

One set consists of those chemical substances that: (1) EPA has previously determined to be of low concern under the Existing Chemicals Program and (2) for which EPA has a minimum set of hazard and exposure data. This could include chemicals for which the following exist: (1) A complete set of basic test data as specified in the OECD's Screening Information Data Set (SIDS) Manual; (2) the UEIP data set (submitted by at least two-thirds of the manufacturers of the subject chemical substance based on the most recent IUR report); and (3) a determination by EPA's Existing Chemicals Program that the chemical substance is a "low priority."

An alternative set is the list of chemical substances that the European Union exempted from its reporting requirements for existing substances (Ref. 8, Annex II).

A third option for a "low priority substances" partial exemption is the list of high production volume chemical substances that are not considered candidates for testing under the HPV Challenge Program (Ref. 26). This list currently consists of the following 41 chemicals:

CAS Number	Chemical Name
50–70–4	Glucitol, D-
50–99–7	D-Glucose
56–81–5	Glycerol
57–50–1	Sucrose
69–65–8	Mannitol, D-
124–38–9	Carbon dioxide
1592–23–0	Stearic acid, calcium salt
7440–44–0	Carbon
8001–21–6	Sunflower oil
8001–22–7	Soybean oil
8001–26–1	Linseed oil
8001–29–4	Cottonseed oil
8001–30–7	Corn oil
8001–31–8	Coconut oil
8001–78–3	Castor oil, hydrogenated
8001–79–4	Castor oil
8002–03–7	Peanut oil
8002–75–3	Palm oil
8006–54–0	Lanolin
8016–28–2	Lard oil
8016–70–4	Soybean oil, hydrogenated
8021–99–6	Charcoal, bone
8029–43–4	Syrups, hydrolyzed starch
9050–36–6	Maltodextrin
16291–96–6	Charcoal
61788–61–2	Fatty acids, tallow, Me esters
61789–97–7	Tallow
61789–99–9	Lard
64147–40–6	Castor oil, dehydrated
64755–01–7	Fatty acids, tallow, calcium salts
68188–81–8	Grease, poultry
68334–00–9	Cottonseed oil, hydrogenated
68409–76–7	Bone meal, steamed
68425–17–2	Syrups, hydrolyzed starch, hydrogenated
68439–86–1	Bone, ash
68476–78–8	Molasses
68514–27–2	Grease, catch basin
68514–74–9	Palm oil, hydrogenated
68525–87–1	Corn oil, hydrogenated
68952–94–3	Soaps, stocks, vegetable-oil
73138–67–7	Lard, hydrogenated

Alternatively, it was suggested that EPA create a "low priority chemicals" list by identifying chemicals that are present on both the European Union list and the HPV Challenge Program list. Currently, the following chemicals are included on both of these lists:

CAS Number	Chemical Name
50–70–4	Glucitol, D-
50–99–7	D-Glucose
57–50–1	Sucrose
69–65–8	Mannitol, D-
124–38–9	Carbon dioxide
1592–23–0	Stearic acid, calcium salt
7440–44–0	Carbon
8001–21–6	Sunflower oil
8001–22–7	Soybean oil
8001–26–1	Linseed oil
8001–30–7	Corn oil
8001–79–4	Castor oil

CAS Number	Chemical Name
9050–36–6 61788–61–2	Maltodextrin Fatty acids, tallow, Me esters

4. During the interagency review process, it was suggested that the information the Agency would collect under the IUR amendments might be duplicative of existing reporting for manufacturers and importers of petroleum chemicals, who may also be required to report to the Department of Energy's (DOE) Energy Information Administration. Under the existing IUR 4 year reporting cycle, if a manufacturer or importer of a petroleum chemical meets the 10,000 lbs. reporting threshold, they must complete EPA Form U to report to EPA. Under the proposed IUR amendments, if a manufacturer or importer of a petroleum chemical meets the proposed 25,000 lbs. reporting threshold, they must complete Parts I., II., and IV. of Revised Reporting Form U. The proposed IUR amendments exempt these entities from reporting the proposed processing and use information in Part III. of revised reporting Form U (see Unit VI.A.2. of this preamble). In addition, EPA is proposing to fully exempt certain forms of natural gas from IUR reporting (see Unit VI.A.3. of this preamble).

It has been suggested that information provided to DOE in forms EIA 810, EIA 816, and EIA 64A might duplicate the information that would be provided to EPA under the proposed IUR amendments. Operators of domestic natural gas processing plants must complete form EIA 64A to provide an annual report of the origin of natural gas liquids production to DOE. Operators of all operating and idle petroleum refineries, blending plants or blending terminals must complete form EIA 810 to provide a monthly refinery report on their operations to DOE. Operators that extract liquid hydrocarbons from a natural gas stream and/or separate a liquid hydrocarbon stream into its component products must complete form EIA 816 to provide a monthly natural gas liquids report to DOE.

EPA is concerned about potential reporting duplication and is specifically requesting comments on whether such duplication exists, what specific information may be duplicated, and whether the information collected by DOE would satisfy the proposed IUR reporting requirements. EPA will also work with DOE to identify potential duplication, and investigate the potential utility of the information reporting to DOE in fulfilling EPA's statutory obligations under TSCA. Your comments will further inform EPA's evaluation of this issue.

5. EPA is proposing to require only partial IUR reporting for inorganic chemicals, i.e. only the information in Parts I., II., and IV. of Form U would be reported by manufacturers of inorganic chemicals. Full IUR reporting for inorganic chemicals, i.e. all parts of Form U, including the processing and use-related data elements in Part III., would be considered for a future amendments to the IUR regulations. Alternatively, EPA could adopt a phased-in approach to full reporting for inorganics, e.g., partial reporting for inorganic chemicals could be required in the first reporting year, followed by full reporting in subsequent reporting years. EPA solicits public comment on the proposed and alternate approaches.

6. During the interagency review process, it was suggested that the Agency limit the reporting of processing and use information on Part III. of Revised Reporting Form U to manufacturers and importers of high production volume (HPV) chemicals in the U.S. (i.e., are produced in amounts equal to or greater than 1 million pounds), chemicals that are currently subject to testing under TSCA section 4 (i.e., test rules and enforceable consent agreements (ECAs)), chemicals identified for voluntary testing, chemicals designated for testing by the ITC, and chemicals listed in the Agency's Master Testing List (the current edition is available at http://www.epa.gov/opptintr/chemtest/mtl.htm). This would mean that, for example, in order to determine whether or not a chemical is an HPV chemical, a manufacturer or importer would not only need to know their own production volume, but also whether the chemical is produced nationally in amounts equal to or greater than 1 million pounds. In order to determine whether a chemical is subject to testing under TSCA section 4, identified for voluntary testing, or designated for testing by the ITC during a particular reporting period, a manufacturer or importer would be required to review the regulations and the most recent Master Testing List. Therefore, EPA is specifically requesting comment on whether manufacturers and importers will be able to make these determinations for the universe of chemicals potentially subject to IUR reporting, including any suggestions for ways in which to make these determinations.

EPA believes that for an HPV determination procedure to be effective, it must be able to accommodate the frequency with which individual chemicals may rise above or fall below the HPV threshold criteria of a U.S. aggregate production volume of 1 million lbs. or more per year. For example, 17% of the chemicals which were HPVs according to data submitted under the 1990 IUR were not HPVs according to data submitted under the 1994 IUR. To address this issue, EPA is proposing in these IUR amendments to use a submitter-specific processing and use production volume threshold of 300,000 lbs. or more per site per year to ensure that reporting is captured for a great majority of HPVs (as defined on the basis of national aggregate production volume). EPA seeks comments on alternative approaches for identifying HPVs for IUR reporting purposes that similarly account for the dynamic nature of the set of HPV chemicals.

EPA is also specifically interested in receiving comments on the additional burden imposed on manufacturers and importers associated with the reporting of processing and use information under the IUR amendments to manufacturers and imports of HPV chemicals. Under EPA's current proposal, in order to determine whether a chemical is subject to IUR reporting during a particular reporting period, a manufacturer or importer would first determine the production volume of the chemicals they produced during the year for which reporting is required (i.e., was the chemical produced in an amount of 25,000 lbs. or more, or in an amount of 300,000 lbs. or more for processing and use information). They would then determine if the chemical is otherwise exempt from IUR reporting. The Agency is concerned that limiting reporting to the HPV chemicals would require a manufacturer or importer to make additional determinations, as described in the beginning of this request for comment, in order to ascertain whether they must report under IUR.

In addition, EPA is interested in receiving comment on whether this suggestion would limit the utility of the information that would be collected, because it would change the focus and purpose of the proposed IUR amendments related to the collection of processing and use information. As discussed previously, EPA believes that the basic processing and use information that EPA is proposing to collect on less than 3,500 of the 76,000 chemicals on the TSCA Inventory, is critical for EPA to more effectively and efficiently fulfill its obligations under TSCA, e.g., to assess the risks of chemicals in commerce, and to promote pollution prevention by encouraging the development of safer substitutes and alternatives. In developing its proposal, the Agency has taken steps to minimize burden and costs, and believes that the information that the Agency is proposing to collect is essential to the Agency's chemical screening process. The basic processing and use information that EPA is proposing to collect will allow the Agency and other users of IUR information to better prioritize their efforts based on a chemical's potential risks. The Agency therefore believes that the burden and costs associated with providing the information proposed in this document will assist the Agency and others to avoid the imposition of additional burden and costs related to further actions, such as more in-depth assessments and regulations.

7. Are the industrial function categories listed in this proposed rule the most appropriate ones?

8. Are the commercial and consumer product categories in this proposed rule the most appropriate ones?

9. Are there better alternatives to the definition of "potentially exposed worker" contained in this proposed rule (i.e., § 710.2), "reasonably likely to be exposed")? Is the OSHA hazard communication standard's definition (i.e., 29 CFR 1910.1200(c), "employee") more appropriate for this proposed rule?

10. Should EPA require the reporting of TRI facility identification numbers, where available?

11. Is the reporting of production volume ranges, as proposed, likely to result in fewer confidentiality claims than when specific production volumes are reported? What else could be done to the reporting process and data elements included in the final rule to reduce CBI claims of submitters to allow better public access to data?

12. Should the Agency collect information on the use of personal protective equipment during the manufacture or import of chemicals reported on the IUR? During the interagency review process, it was suggested that the Agency consider collecting information on the use of personal protective equipment (PPE). Generic PPE recommendations exist from Material Safety Data Sheets (MSDS), and may be available from other sources. As described in this preamble, EPA plans to use the information collected through these proposed amendments mainly for initial screening level assessments. EPA is interested in receiving comment on whether the Agency should collect information on PPE, what kind of specific PPE information should be collected, and whether such additional data reporting requirements would result in a significant burden increase to industry.

13. Are the data sought in this proposed rule related to industrial processing and use and commercial and consumer products "readily obtainable" by those who are required to report?

14. What alternatives are available to the procedures proposed in this document that will protect submitters' right to reassert their CBI claims? Can you identify means other than those discussed in this proposed rule which the Agency might use to better inform submitters of the requirement to reexamine past CBI claims and to reassert CBI claims, as appropriate, in order to retain CBI protections?

15. Should EPA require data to be reported using the metric system?

X. Materials in the Public Docket

The official record for this rulemaking has been established under docket control number OPPTS–82053. The following is a listing of the documents that have already been placed in the official record for this proposal.

A. Supporting Documentation

1. **Federal Register** notices/EPA documents/court opinions pertaining to this proposed rule consisting of:

a. "TSCA Section 4(a)(1)(B) Final Statement of Policy; Criteria for Evaluating Substantial Production, Substantial Release, and Substantial or Significant Human Exposure," (58 FR 28736, May 14, 1993).

b. 29 CFR 1910.1200 (OSHA hazard communication standards for toxic and hazardous substances).

c. *Chemical Manufacturers Association* v. *EPA*, 859 F.2d 977, 991 (D.C. Cir. 1988).

2. Technical support documents and studies consisting of:

a. EPA/OPPT, "Inventory Update Rule (IUR) Amendment Technical Support Document: Exposure-Related Data Useful for Chemical Risk Screening," Volumes 1 and 2, July 19, 1996.

b. Eastern Research Group, Inc., "Preliminary Assessment Information Rule (PAIR) Database, Manufacturing Process Type/Release Analysis and Number of Workers/Production Quantity Analysis," prepared for EPA/OPPT, September 26, 1996.

c. Environmental Business Strategies, "U.S. Chemical Production, Use, and Exposure Data: A Study of Existing Information Sources," on behalf of Chemical Manufacturers Association, October 1997.

d. GE Plastics, "IUR Reporting Frequency and EPA's Existing Chemicals Program," 1996.

e. NIOSH, National Occupational Exposure Survey (NOES), 1981.

f. EPA/OPPT/EETD/EPAB, "Economic Analysis of Proposed Amendments to the TSCA Section 8 Inventory Update Rule," March 1, 1999.

g. EPA/OPPT, "Inventory Update Rule (IUR) Technical Support Document: Evaluation of Likelihood of Confidential Business Information Claims for Production Volume Information," Final Draft, August 26, 1996.

h. EPA/OPPT, "Technical Support Document: Technical Approach for the Selection of Consumer End-Use Categories for the Inventory Update Rule," 1996.

i. EPA/OPPT, "A Review of Existing Exposure-Related Data Sources and Approaches to Screening Chemicals: A Response to CMA," March 1999.

3. Minutes or summaries of public meetings:

a. American Chemical Society Roundtable Forum, "A Pollution Prevention Strategy for Toxic Chemicals," July 28, 1993.

b. EPA, "Chemical Use Inventory (CUI) Meeting With Environmental and Right-to-Know Groups," September 29, 1993.

c. EPA, "The EPA Office of Pollution Prevention and Toxics (OPPT) Meeting on the Chemical Use Inventory,'" October 6, 1993.

d. EPA, "Chemical Use Inventory (CUI) Meeting With Industry," October 12, 1993.

e. EPA, "OPPT's Chemical Use Inventory Project: Presentation to FOSTTA Chemical Management and Chemical Information Project Members," October 19, 1993.

f. EPA, "Meeting with Labor Constituents," November 10, 1993.

g. EPA, "CUI Multi-stakeholder Meeting," January 5, 1994.

h. EPA, "Statement of Lynn R. Goldman, M.D. Before the

Subcommittee on Toxic Substances, Research and Development, Committee on Environment and Public Works, U.S. Senate," May 17, 1994.

i. U.S. Senate Committee on Environment and Public Works, Subcommittee on Toxic Substances, Research and Development, "Hearing to discuss reauthorization of the Toxic Substances and Control Act (TSCA)," July 13, 1994.

j. Clean Sites, "CUI/IUR Amendments Workshop, Meeting Summary," April 13, 1995.

k. EPA, "Discussion Paper [for April 13, 1995 meeting], Amendments to the TSCA Inventory Update Rule Needed to Create A Chemical Use Inventory," April 1995.

l. Mary Ellen Weber, EPA, "TSCA Chemical Use Inventory, Inventory Update Rule Amendments," presented to Chemical Manufacturers Association, TSCA Information Forum, May 15, 1996.

m. Mary Ellen Weber, EPA, "Chemical Use Inventory, TSCA Inventory Update Rule Amendments," presented to Organization Resources Counselors, Inc., Environmental Group, June 26, 1996.

4. Communications consisting of:

a. Memorandum from Mark V. Stanga and Patricia A. Franco, Electronic Industries Association to EPA, May 5, 1993.

b. Letter from Claudette M. Cofta, CMA to Mark A. Greenwood, EPA, September 8, 1993.

c. Letter from Albert K. Langley, Jr., Georgia Department of Natural Resources to Wardner G. Penberthy, EPA, October 25, 1993.

d. Letter from Michael A. Babich, Consumer Product Safety Commission to Wardner G. Penberthy, EPA, October 26, 1993.

e. Letter from Stephen S. Kellner, Chemical Specialties Manufacturers Association to Mark Greenwood, EPA, October 29, 1993.

f. Letter from Stephen D. Hanna, California EPA to Mary Ellen Weber, EPA, November 8, 1993.

g. Letter from Public Interest Groups to Mark Greenwood, EPA, November 17, 1993 (with attachments).

h. Letter from Hillel Gray, National Environmental Law Center, to Wardner G. Penberthy, EPA, November 22, 1993.

i. Letter from Roger A. Kanerva, State of Illinois EPA to Wardner G. Penberthy, EPA, November 22, 1993.

j. Letter from F. David Petke, Eastman Chemical Co. to Mary Ellen Weber, EPA, November 23, 1993.

k. Letter from Stephen S. Kellner, Chemical Specialties Manufacturers Association to Tim Hunt, OMB, November 30, 1993.

l. Letter from Andy Opperman, New Jersey Dept. of Environmental Protection and Energy to Wardner G. Penberthy, December 6, 1993.

m. Letter from Claudette M. Cofta, CMA to Mark A. Greenwood, EPA, December 7, 1993.

n. Letter from Cheryl O. Morton, SOCMA to Mark A. Greenwood, EPA, December 10, 1993.

o. Letter from Jeanne Herb, State of New Jersey Department of Environmental Protection and Energy, to Wardner G. Penberthy, EPA, December 8, 1993.

p. Letter from Robert D. Bullard, University of California, Los Angeles, to Wardner G. Penberthy, EPA, December 14, 1993.

q. Letter from Stephen R. Sides and H. Allen Irish, National Paint Coatings Association to Wardner G. Penberthy, EPA, January 11, 1994.

r. Letter from Mark V. Stanga, Litton Corporate, to Wardner G. Penberthy, EPA, January 17, 1994.

s. Letter from Stephen S. Kellner, Chemical Specialties Manufacturers Association to Lynn R. Goldman, EPA, January 19, 1994.

t. Letter from Claudette M. Cofta, CMA to Mark A. Greenwood, EPA, January 25, 1994.

u. Letter from Hillel Gray, National Environmental Law Center to Lynn R. Goldman, EPA, February 11, 1994.

v. Letter from Richard I. Sedlak, The Soap and Detergent Association to Wardner G. Penberthy, EPA, February 24, 1994.

w. Letter from Lawrence E. Slimak, American Automobile Manufacturers Association to Mark Greenwood, EPA, March 8, 1994.

x. Letter from Mark A. Greenwood, EPA to Lawrence E. Slimak, American Automobile Manufacturers Association, March 28, 1994.

y. Letter from Sarah Doelp, CMA to Mark Greenwood, EPA, June 20, 1994.

z. Report from Ken Geiser, Toxics Use Reduction Institute, University of Massachussetts, October 1994.

aa. Letter from Sarah Doelp, CMA to Wardner G. Penberthy, EPA, February 2, 1995.

bb. Letter from Stephen S. Kellner, Chemical Specialties Manufacturers Association to Tim Hunt, OMB, March 23, 1995.

cc. Letter from Walter L. McLeod, API to Allan Abramson, FPA, April 21, 1995.

dd. Letter from Lynn R. Goldman, EPA to Steve Tiber, Office of Administration and Resources Management, August 18, 1995.

ee. Letter from Donald D. Helin, Chemical Manufacturers Association to William H. Sanders III, EPA, March 26, 1997.

ff. Letter from Larry Rampy, Chemical Manufacturers Association to Arthur G. Fraas, Office of Management and Budget, May 26, 1999.

gg. Letter from Pamela Gilbert, Consumer Product Safety Commission, to Donald R. Arbuckle, Office of Management and Budget, June 14, 1999.

hh. Letter from John D. Walter, TSCA Interagency Testing Committee, to Mary Ellen Weber, EPA, June 15, 1999.

B. References

1. Vice President Albert Gore, "EPA Right-to-Know Announcement," April 21, 1998.

2. Chemical Manufacturers Association, Synthetic Organic Chemical Manufacturers Association, U.S. EPA, Chemical Specialties Manufacturing Association, American Petroleum Institute, "Round 3 of the UEIP (Use and Exposure Information Project)," June 3, 1996.

3. U.S. EPA, "Reducing Risk: Setting Priorities and Strategies for Environmental Protection," Science Advisory Board, (SAB-EC-90-021), 1990.

4. National Academy of Public Administration, "Setting Priorities, Getting Results - A New Direction for EPA," 1995.

5. U.S. EPA, "Decision Guidelines Manual," OPPT/CCD/NCB, December 1992.

6. Letter from M.L. Mullins, Chemical Manufacturers Association, to EPA, "Proposed Alternative to Anticipated Rule to Amend TSCA for the Creation of a Chemical Use Inventory," May 20, 1996.

7. Letter from Michael A. Babich, U.S. Consumer Product Safety Commission, to Wardner G. Penberthy, EPA, June 24, 1996.

8. Official Journal of the European Communities, "Council Regulation (EEC) No 793/93 of 23 March 1993 on the evaluation and control of the risks of existing substances," L84, Volume 36, April 5, 1993.

9. Organization of Economic Cooperation and Development, "SIDS Manual (Second Revision) Screening Information Data Set Manual of the OECD Programme on the Co-operative Investigation of High Production Volume Chemicals," May 1996.

10. Memorandum from Norman R. Niedergang, EPA to Dr. Lynn R. Goldman, EPA, "Continuing Sources of Asbestos Exposure," June 26, 1998.

11. U.S. EPA, "Influence of CBI Requirements on TSCA Implementation," OPPT, March 1992.

12. U.S. EPA, "Final Action Plan: TSCA Confidential Business Information Reform," OPPT, June 20, 1994.

13. U.S. EPA, "TSCA CBI Reform Program: State Access to TSCA Data, Including CBI, Project; Forum on State, Tribal Toxics Action Meeting" OPPT/IMD, June 24, 1996.

14. U.S. EPA, "EPA Needs Exposure-Related Data: A Discussion of the Justification for Collecting Exposure-Related Data Through the IUR Amendments," OPPT/EETD/EPAB, 1998.

15. Griefe, A. et al., "National Institute for Occupational Safety and Health General Industry Occupational Exposure Databases: Their Structure, Capabilities and Limitations," Applied Occupational and Environmental Hygiene 10(4), April 1995.

16. U.S. EPA, "Chemical Use Clusters Scoring Methodology," Draft Report, OPPT/EETD/CEB, July 23, 1994.

17. U.S. EPA, "An SAB Report: Improving the Use Cluster Scoring System, Recommendations for the Use Cluster Scoring System Prepared by the Environmental Engineering Committee," Science Advisory Board, SAB-EEC-95-017, September 1995.

18. U.S. EPA, "Inventory of Exposure-Related Data Systems Sponsored by Federal Agencies," EPA/600/R-92/078, http://www.epa.gov/ncepihom/nepishom/index.html, 1992.

19. American Petroleum Institute, "Petroleum Process Stream Terms Included in the Chemical Substances Inventory Under the Toxic Substances Control Act (TSCA)," Health and Safety Regulation Committee Task Force on Toxic Substances Control, February 1985.

20. General Accounting Office, "EPA Should Focus Its Chemical Use Inventory on Suspected Harmful Substances," GAO/RCED-95-165, July 7, 1995.

21. Letter from Mark N. Duvall, Union Carbide, to EPA, "Additional Comments of Union Carbide Corporation on EPA's Preliminary Actions to Reform TSCA Confidential Business Information, Docket No. OPPTS-00125," August 31, 1993.

22. Letter from Stephen A. Newell, Occupational Safety and Health Administration, to Wardner G. Penberthy, EPA, October 15, 1996.

23. Letter from Paul A. Schulte, National Institute for Occupational Safety and Health, to Wardner G. Penberthy, EPA, October 8, 1996.

24. U.S. EPA, "Preparation of Engineering Assessments," Vol. 1, Ch. 4, pp. 1-33, OPPT/EETD/CEB, February 28, 1991.

25. U.S. Census Bureau, North American Industrial Classification System (NAICS), http://www.census.gov/epcd/www/naics.html, 1999.

26. U.S. EPA, "Chemical Right-to-Know Initiative," http://www.epa.gov/chemrtk/index.htm, June 8, 1999.

XI. Regulatory Assessment Requirements

A. Executive Order 12866

Pursuant to Executive Order 12866 (58 FR 51735, October 4, 1993), entitled "Regulatory Planning and Review," the Office of Management and Budget (OMB) has determined that this is a "significant regulatory action" because this action may raise novel policy issues related to the collection of information. This action was submitted to OMB for review, and any comments or changes made during that review have been documented in the public record.

In addition, the Agency has prepared an economic assessment of the estimated costs and benefits attributable to this proposed rule. This document, entitled "Economic Analysis of Proposed Amendments to the TSCA Section 8 Inventory Update Rule," is available in the public version of the official record for this proposal, at the address listed in Unit I.B.2. of this preamble. EPA estimates the proposed amendments would cost between $36 to $51 million for the first year of reporting and $27 to $41 million for future years of reporting, resulting in an annualized cost of $10 to $14 million over the next 20 years.

Under the proposed amendments, approximately 8,900 chemicals would be subject to reporting, and the Agency expects that it would receive approximately 25,500 submissions during the first reporting cycle. Approximately 10,000 of those submissions (providing information on about 4,000 chemicals) would be full reports which include information found in Part III. of Revised Reporting Form U, with the remainder reporting only company, site and chemical identification and manufacturing information (Parts I., II., and IV. of Revised Reporting Form U). In order to keep the reporting burden as low as possible, EPA is proposing to require that certain information be reported in ranges, that only the top 10 NAICS codes be accounted for when reporting industrial processing and use information, and that only readily obtainable information in Part III be reported.

EPA analyzed the effects of a number of different alternatives for the proposed rule, including variations in exemptions, different thresholds for both partial- (i.e. Parts I., II., and IV. of Revised Reporting Form U) and full-form (i.e. all parts of Revised Reporting Form U), and various frequencies of collection. These options are explored further in the Economic Analysis.

In addition to the proposed option, EPA considered continuing the exemption from IUR reporting for inorganic chemicals and adding an exemption for site-limited petroleum streams. EPA examined the effects of keeping the partial-form threshold at 10,000 pounds and considered full-form thresholds of 10,000, 25,000, 100,000, 500,000, 1,000,000 and 10,000,000 pounds, as well as a phased-in 100,000/500,000 full-form threshold. EPA also considered changes in the reporting cycle, such as a one-time collection, a 2-year cycle, and an option that would have collected partial forms every 2 years and full forms every 4 years.

During the interagency review process, EPA also considered a 50,000 lb. threshold for the partial form (see Addendum to the economic analysis referenced in Unit X.A.2.f. of this preamble). While this threshold would indeed reduce industry burden by $2-3 million when compared to the proposed 25,000 lb. threshold, EPA feels that the benefit of the information obtained on chemicals produced between 25,000 and 50,000 lbs. yearly, far outweighs the costs. By increasing the threshold from 25,000 to 50,000 lbs., EPA would lose data on roughly 880 discrete chemicals from roughly 1,750 reports. Forgoing this information would exclude a large portion of the chemical industry from oversight under TSCA, which requires EPA to regulate the entire industry. In addition, EPA feels that the data collected at a 50,000 lb. threshold would be insufficient to meet the TSCA statutory requirement to update and keep current the TSCA Inventory of Chemical Substances.

During the interagency review process, EPA altered its proposal to include a natural gas exemption, an inorganics partial exemption, and an upper threshold of 300,000 lbs. These options are also analyzed in the addendum to the economic analysis referenced in Unit X.A.2.f. of this preamble. While the natural gas exemption affects only six chemicals, it reduces the number of reports by over 1,200. The inorganics partial exemption reduces the number of chemicals requiring full reports by about 1,200. The increase in the upper threshold from 100,000 to 300,000 pounds reduces the number of chemicals reporting processing and use information (Part III. of Form U) to about 3,400.

The costs of the proposed amendments would be borne by two groups: the chemical industry and EPA. Industry costs are associated with complying with the regulation, while EPA costs are associated with administering the regulation and maintaining the collected data. In this rulemaking effort, EPA has made every attempt to balance data needs with collection costs and burden. Wherever possible, EPA has used exemptions or partial exemptions to reduce the number of reports filed by industry. EPA has provided an upper threshold for reporting use information required in Part III of Revised Reporting Form U, reducing the per report burden for submitters. Recognizing that this information would be used for screening-level purposes, EPA has reduced the specificity of the information that would be required in three ways:

- By requiring the reporting of only readily obtainable information for the use and non-manufacturing exposure-related data.
- By requiring that submitters report much of the information in ranges, reducing the need to generate precise estimates.
- By requiring processing and use-related information on only the top 10 NAICS codes, as determined by percent of the chemical's volume.

These steps limit the amount of information required, reducing the time and effort spent by the chemical industry in complying with the amendments.

First-year costs of the proposed rule are estimated to be between $36 million and $51 million, with subsequent annual costs in future reporting years of $27 to $41 million. This results in an annualized cost of between $10 million and $14 million over the first 20 years. EPA assumes that the burden associated with reporting under the IUR amendments would decrease over time as the industry's familiarity with the reporting rule increases and to the extent that the information being reported remains somewhat constant from one reporting period to the next. Projected costs to EPA are relatively small and are estimated to be $525,000 in the first reporting year, and $275,000 in subsequent reporting years.

During the interagency review process, EPA added the collection of the data element for average concentration (not included in the Economic Analysis) to Part II. of the revised Reporting Form U. EPA expects the addition of this data element to result in only a negligible increase in burden because similar information is needed in order to report both the maximum concentration as well as the average concentration. EPA therefore did not find a reason to adjust the Economic Analysis to reflect this change.

B. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, the Agency hereby certifies that this proposed rule, if promulgated as proposed, will not have a significant impact on a substantial number of small entities. This certification is based on the Agency's analysis of potential impacts on small entities, which is included in the Economic Analysis summarized in section A. of this Unit.

Small entities include small businesses, small not-for-profit organizations, and small governmental jurisdictions (5 U.S.C. 601(6)). Because not-for-profit organizations and governmental jurisdictions will not be affected by this proposed rule, "small entity" for purposes of this proposed rule is synonymous with "small business."

Section 601(3) of the RFA establishes as the default definition of small business the definition used in section 3 of the Small Business Act (15 U.S.C. 632) under which the SBA establishes small business size standards (13 CFR 121.201). The RFA recognizes, however, that it may be appropriate at times for Federal agencies to use an alternate definition of small business. As a result, RFA section 601(3) provides that an agency may establish a different definition of small business after consultation with the SBA Office of Advocacy and after notice and an opportunity for public comment. EPA established a different definition of small business, found in the existing IUR at 40 CFR 704.3, in accordance with these requirements. Manufacturers and importers who meet the 40 CFR 704.3 definition of small business are generally exempted from IUR reporting in 40 CFR 710.29. This exemption is retained under these amendments and is not being reopened for comment.

Despite the fact that small manufacturers and importers that fully meet the 40 CFR 704.3 definition of small manufacturers and importers are generally exempt from reporting under IUR, and thus are not significantly impacted by these amendments to IUR, EPA conducted an analysis of the potential impact for submitters that meet only part of the 40 CFR 704.3 definition. Specifically, an analysis of the potential impact was conducted only for those submitters that meet the first criterion in the 40 CFR 704.3 definition of "small manufacturer or importer," i.e. total annual sales of less than $40 million, but that do not meet the second criterion, i.e. production or import volume of less than 100,000 pounds at all sites.

For small entities manufacturing (including importing) organic chemicals subject to reporting, the Agency estimates the impact to be 0.13% to 0.16% of sales. For small entities manufacturing (including importing) inorganic chemicals subject to reporting, the Agency estimates the impact to be 0.15% to 0.20% of sales. These estimates are based upon the Agency's belief that most small businesses reporting will complete the full Form U, unless the business is eligible for one of the partial exemptions. These small entity impacts are based on EPA's original proposal for the IUR amendments. The revised proposal, which has reduced industry cost and burden even further, is expected to have even less impact on small entities.

Information relating to this determination has been provided to the Chief Counsel for Advocacy of the Small Business Administration, and is included in the docket for this rulemaking. Any comments regarding the economic impacts that this proposed regulatory action may impose on small entities should be submitted to the Agency according to the procedures identified in the "ADDRESSES" section at the beginning of this preamble.

C. Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted to OMB under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, and in accordance with the procedures at 5 CFR 1320.11. An Information Collection Request (ICR) document has been prepared by EPA (EPA ICR No. 1884.01), and included in the public version of the official record that is described in Unit I.B.3. of this preamble. In addition to viewing the ICR document as described in Unit I.B.3. of this preamble, you may obtain a copy of the ICR by mail from Sandy Farmer, OP Regulatory Information Division; Environmental Protection Agency (2137), 401 M St., SW., Washington, DC 20460, by calling (202) 260-2740, or by e-mail to "farmer.sandy@epa.gov." An electronic copy has also been posted on EPA's World Wide Website (http://www.epa.gov/) with other information related to this action.

The information requirements contained in this proposal are not effective until OMB approves them. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information subject to OMB approval under the PRA unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial publication in the **Federal Register**, are displayed in a list at 40 CFR part 9.

The information that would be reported under these amendments to IUR would better enable EPA to screen thousands of chemical substances for potential risk. Risk screening is necessary in order to conserve limited Agency resources by focusing risk assessment work on chemical substances for which some level of potential risk has been indicated. The new information that would be reported under this rule is critical to the risk screening process and is unavailable through other sources. Responses to this collection of information would be mandatory, pursuant to TSCA section 8(a).

CBI claims may be made for all of the new information that would be reported under these amendments to IUR. This action proposes new substantiation procedures for CBI claims regarding plant site identity. (See § 710.38(d) of the regulatory text). In addition, a new provision for the reassertion of CBI claims would be added. This provision states that all CBI claims made in one reporting period would be valid only until the beginning of the reporting period immediately following the reporting period in which the information was claimed as confidential. To maintain the confidential status of information, the submitter would need to certify during every reporting period following the one in which the original claim of confidentiality was made, that the information should continue to be treated as confidential by EPA. Reassertions must be made to maintain confidentiality even if the submitter is not required to report during a given reporting period. If a submitter fails in a reporting period to reassert the confidentiality claims made in the previous reporting period, the claims are presumed to be waived and EPA will make the information available to the public without further notice to the submitter. (See § 710.39 of the regulatory text).

The following annual burden and cost figures represent the cost of a 4–year reporting cycle, spread over 4 years. Most or all of the burden would fall in the first year of the cycle. The public reporting burden for this collection of information is estimated to be 150,000 to 210,000 hours for each of the 4 years in the first reporting cycle for approximately 3,050 respondents. The average annual reporting burden per response is 6 to 8 hours, with the average company reporting 8.4 times per collection and each information collection occurring every 4 years. The annual public reporting cost burden for operation and maintenance expenses is estimated to be $11 to $15 million annually for the first four year reporting cycle, and decreasing after that. The total capital and start-up costs, as well as the purchase of services, are estimated to be zero.

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing burden, including through the use of automated collection techniques. Send comments on the ICR to the EPA according to the instructions provided in Unit I.C. of this preamble. Please remember to include the docket control number OPPTS–62053, or the ICR number in any correspondence. The final rule will respond to any comments on the information collection requirements contained in this proposal.

D. Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104-4), EPA has determined that this proposed regulatory action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or for the private sector in any 1 year. The analysis of the costs associated with this proposed action are described in Unit XI.A. of this preamble. In addition, EPA has determined that this proposed rule does not significantly or uniquely affect small governments. Accordingly, today's proposed rule is not subject to the requirements of sections 202, 203, 204, and 205 of UMRA.

E. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing Intergovernmental Partnerships* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12857 requires EPA to provide to the OMB a description of the extent of EPA's prior consultations with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's notice does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this proposed rule. Nevertheless, EPA has sought the active participation of State, local and tribal governments who might be interested in this proposal. The Agency has had several informal consultations regarding the proposed rule with some States through the EPA regional offices and at regularly scheduled State meetings. No significant issues or information were identified as a result of EPA's discussion with the States, who are primarily interested in CBI issues and whether they will have access to the information EPA collects under these proposed amendments.

F. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communitiies, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with

those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

G. Executive Order 12898

Pursuant to Executive Order 12898 (59 FR 7629, February 16, 1994), entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, the Agency has considered environmental justice-related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income and minority communities. The Agency believes that the information collected under this proposed rule would assist the Agency in determining the risks and exposures associated with these chemicals. Although not directly impacting environmental justice-related concerns, this information would enable the Agency to protect human health and the environment by being better able to prioritize chemical substances of concern.

H. Executive Order 13045

This rulemaking does not require special consideration pursuant to the terms of Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because it is not likely to have an annual effect on the economy of $100 million or more and it does not have a potential effect or impact on children. As discussed in this preamble, this proposed rule would provide the Agency with information needed to screen and prioritize chemical substances. This information will allow the Agency and others to determine which chemical substances have potential risks, allowing the Agency and others to take appropriate action to investigate and mitigate those risks.

I. National Technology Transfer and Advancement Act

This proposed regulatory action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Section 12(d) of NTTAA directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. EPA invites public comment on the Agency's determination that this regulatory action does not require the consideration of voluntary consensus standards.

List of Subjects in 40 CFR Part 710

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements.

Dated: August 2, 1999.

Susan H. Wayland,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 710 be amended as follows:

PART 710—[AMENDED]

1. The authority citation for part 710 would continue to read as follows:

Authority: 15 U.S.C. 2607(a).

2. By revising § 710.2 to read as follows:

§ 710.2 Definitions.

In addition to the definitions in § 704.3 in this chapter, the following definitions apply to this part:

(a) The following terms shall have the meaning contained in the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321 *et seq.*, and the regulations issued under such Act: *Cosmetic*, *device*, *drug*, *food*, and *food additive*. In addition, the term *food* includes poultry and poultry products, as defined in the Poultry Products Inspection Act, 21 U.S.C. 453 *et seq.*; *meats* and *meat food products*, as defined in the Federal Meat Inspection Act, 21 U.S.C. 60 *et seq.*; and *eggs* and *egg products*, as defined in the Egg Products Inspection Act, 21 U.S.C. 1033 *et seq.*

(b) The term *pesticide* shall have the meaning contained in the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 *et seq.*, and the regulations issued thereunder.

(c) The following terms shall have the meaning contained in the Atomic Energy Act of 1954, 42 U.S.C. 2014 *et seq.*, and the regulations issued thereunder: *byproduct material*, *source material*, and *special nuclear material*.

(d) The following definitions also apply to this part:

Act means the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.*

Administrator means the Administrator of the U.S. Environmental Protection Agency, any employee or authorized representative of the Agency to whom the Administrator may either herein or by order delegate his authority to carry out his functions, or any other person who shall by operation of law be authorized to carry out such functions.

An article is a manufactured item: (1) Which is formed to a specific shape or design during manufacture, (2) which has end use function(s) dependent in whole or in part upon its shape or design during end use, and (3) which has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the article and that may occur as described in § 710.4(d)(5); except that fluids and particles are not considered articles regardless of shape or design.

Byproduct means a chemical substance produced without separate commercial intent during the manufacture or processing of another chemical substance(s) or mixture(s).

Chemical substance means any organic or inorganic substance of a particular molecular identity, including any combination of such substances occurring in whole or in part as a result of a chemical reaction or occurring in nature, and any chemical element or uncombined radical; except that "chemical substance" does *not* include:

(1) Any mixture,

(2) Any pesticide when manufactured, processed, or distributed in commerce for use as a pesticide,

(3) Tobacco or any tobacco product, but not including any derivative products,

(4) Any source material, special nuclear material, or byproduct material,

(5) Any pistol, firearm, revolver, shells, and cartridges, and

(6) Any food, food additive, drug, cosmetic, or device, when manufactured, processed, or distributed in commerce for use as a food, food additive, drug, cosmetic, or device.

Commerce means trade, traffic, transportation, or other commerce:

(1) Between a place in a State and any place outside of such State, or

(2) Which affects trade, traffic, transportation, or commerce described in paragraph (1) of this definition.

Commercial use means the use of a chemical substance or mixture in a commercial enterprise providing saleable goods or services (e.g., dry cleaning establishment, painting contractor).

Consumer use means the use of a chemical substance that is directly, or as part of a mixture, sold to or made available to consumers for their use in or around a permanent or temporary household or residence, in or around a school, or in or around recreational areas.

Distribute in commerce and distribution in commerce when used to describe an action taken with respect to a chemical substance or mixture or article containing a substance or mixture, mean to sell or the sale of, the substance, mixture, or article in commerce; to introduce or deliver for introduction into commerce, or the introduction or delivery for introduction into commerce of, the substance, mixture, or article; or to hold, or the holding of, the substance, mixture, or article after its introduction into commerce.

EPA means the U.S. Environmental Protection Agency.

Importer means any person who imports any chemical substance or any chemical substance as part of a mixture or article into the customs territory of the U.S. and includes:

(1) The person primarily liable for the payment of any duties on the merchandise, or

(2) An authorized agent acting on his behalf (as defined in 19 CFR 1.11).

Impurity means a chemical substance which is unintentionally present with another chemical substance.

Industrial use means use at a site at which one or more chemical substances or mixtures are manufactured (including imported) or processed.

Intermediate means any chemical substance:

(1) Which is intentionally removed from the equipment in which it is manufactured, and

(2) Which either is consumed in whole or in part in chemical reaction(s) used for the intentional manufacture of other chemical substance(s) or mixture(s), or is intentionally present for the purpose of altering the rate of such chemical reaction(s).

Note: The *equipment in which it was manufactured* includes the reaction vessel in which the chemical substance was manufactured and other equipment which is strictly ancillary to the reaction vessel, and any other equipment through which the chemical substance may flow during a continuous flow process, but does not include tanks or other vessels in which the chemical substance is stored after its manufacture.

Known to or reasonably ascertainable by means all information in a person's possession or control, plus all information that a reasonable person similarly situated might be expected to possess, control, or know.

Manufacture means to manufacture or import for commercial purposes.

Manufacture or import "for commercial purposes" means: To import, produce, or manufacture with the purpose of obtaining an immediate or eventual commercial advantage, and includes, for example, the manufacture or import of any amount of a chemical substance or mixture:

(1) For commercial distribution, including for test marketing, or

(2) For use by the manufacturer, including use for product research and development, or as an intermediate.

Master Inventory File means EPA's comprehensive list of chemical substances which constitute the Chemical Substances Inventory compiled under section 8(b) of the Act. It includes substances reported under subpart A of this part and substances reported under part 720 of this chapter for which a Notice of Commencement of Manufacture or Import has been received under § 720.120 of this chapter.

Mixture means any combination of two or more chemical substances if the combination does not occur in nature and is not, in whole or in part, the result of a chemical reaction; except that "mixture" does include:

(1) Any combination which occurs, in whole or in part, as a result of a chemical reaction if the combination could have been manufactured for commercial purposes without a chemical reaction at the time the chemical substances comprising the combination were combined and if, after the effective date or premanufacture notification requirements, none of the chemical substances comprising the combination is a new chemical substance, and

(2) Hydrates of a chemical substance or hydrated ions formed by association of a chemical substance with water.

New chemical substance means any chemical substance which is not included in the inventory compiled and published under subsection 8(b) of the Act.

Nonisolated intermediate means any intermediate that is not intentionally removed from the equipment in which it is manufactured, including the reaction vessel in which it is manufactured, equipment which is ancillary to the reaction vessel, and any equipment through which the substance passes during a continuous flow process, but not including tanks or other vessels in which the substance is stored after its manufacture.

Person means any natural or juridicial person including any individual, corporation, partnership, or association, any State or political subdivision thereof, or any municipality, any interstate body and any department, agency, or instrumentality of the Federal Government.

Process means the preparation of a chemical substance or mixture, after its manufacture, for distribution in commerce (1) in the same form or physical state as, or in a different form or physical state from, that in which it was received by the person so preparing such substance or mixture, or (2) as part of a mixture or article containing the chemical substance or mixture.

Process for "commercial purposes" means to process (1) for distribution in commerce, including for test marketing purposes, or (2) for use as an intermediate.

Processor means any person who processes a chemical substance or mixture.

Readily obtainable information means information which is known by management and supervisory employees of the submitter company who are associated with research, development, distribution, technical services, or marketing of the reportable chemical substance. Extensive file searches are not required.

Reasonably likely to be exposed means an exposure to a chemical substance which, under foreseeable conditions of manufacture (including import), processing, distribution in commerce, or use of the chemical substance, is more likely to occur than not to occur. Such exposures would normally include, but not be limited to, activities such as charging reactor vessels, drumming, bulk loading, cleaning equipment, maintenance operations, materials handling, and transfers, and analytical operations. Covered exposures include exposures through any route of entry (inhalation, ingestion, skin contact, absorption, etc.), but excludes accidental or theoretical exposures.

Repackaging means the physical transfer of a chemical substance or mixture, as is, from one container to another container or containers in preparation for distribution of the chemical substance or mixture in commerce.

Reportable chemical substance means a chemical substance described in § 710.25.

Site means a contiguous property unit. Property divided only by a public right-of-way shall be considered one site. There may be more than one manufacturing plant on a single site. For the purposes of imported chemical substances, the site shall be the business address of the importer.

Site-limited means a chemical substance is manufactured and processed only within a site and is not distributed for commercial purposes as a substance or as part of a mixture or article outside the site. Imported substances are never site-limited.

Small manufacturer or importer means a manufacturer or importer whose total annual sales are less than $5,000,000, based upon the manufacturer's or importer's latest complete fiscal year as of January 1, 1978, except that no manufacturer or importer is a "small manufacturer or importer" with respect to any chemical substance which such person manufactured at one site or imported in quantities greater than 100,000 pounds during calendar year 1977. In the case of a company which is owned or controlled by another company, total annual sales shall be based on the total annual sales of the owned or controlled company, the parent company, and all companies owned or controlled by the parent company taken together.

Note: The purpose of the exception to the definition is to ensure that manufacturing and importers report production volumes for all chemical substances which they manufactured at one site or imported in quantities equal to or greater than 100,000 pounds during calendar year 1977.

Small quantities for purposes of scientific experimentation or analysis or chemical research on, or analysis of, such substance or another substance, including any such research or analysis for the development of a product (hereinafter sometimes shortened to *small quantities for research and development*) means quantities of a chemical substance manufactured, imported, or processed or proposed to be manufactured, imported, or processed that:

(1) Are no greater than reasonably necessary for such purposes, and

(2) After the publication of the revised inventory, are used by, or directly under the supervision of, a technically qualified individual(s).

Note: Any chemical substances manufactured, imported, or processed in quantities less than 1,000 pounds annually shall be presumed to be manufactured, imported, or processed for research and development purposes. No person may report for the inventory any chemical substance in such quantities unless that person can certify, that the substance was not manufactured, imported, or processed solely in small quantities for research and development, as defined in this section.

State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Canal Zone, American Samoa, the Northern Mariana Islands, or any other territory or possession of the United States.

Technically qualified individual means a person:

(1) Who because of his/her education, training, or experience, or a combination of these factors, is capable of appreciating the health and environmental risks associated with the chemical substance which is used under his supervision,

(2) Who is responsible for enforcing appropriated methods of conducting scientific experimentation, analysis, or chemical research in order to minimize such risks, and

(3) Who is responsible for the safety assessments and clearances related to the procurement, storage, use, and disposal of the chemical substance as may be appropriate or required within the scope of conducting the research and development activity. The responsibilities in this paragrah may be delegated to another individual, or other individuals, as long as each meets the criteria in paragraph (1) of this definition.

Test marketing means the distribution in commerce of no more than a predetermined amount of a chemical substance, mixture, or article containing that chemical substance or mixture, by a manufacturer or processor to no more than a defined number of potential customers to explore market capability in a competitive situation during a predetermined testing period prior to the broader distribution of that chemical substance, mixture or article in commerce.

United States, when used in the geographic sense, means all of the States, territories, and possessions of the United States.

Use means any utilization of a chemical substance or mixture that is not otherwise covered by the terms manufacture or process. Relabeling or redistributing a container holding a chemical substance or mixture where no repackaging of the chemical substance or mixture occurs does not constitute use or processing of the chemical substance or mixture.

3. In § 710.26, by revising the introductory text and paragraphs (a) and (c) and adding paragraph (e) to read as follows:

§ 710.26 Chemical substances for which information is not required.

The following categories of chemical substances are excluded from the reporting requirements of this part, with two exceptions: a chemical substance described in paragraph (a) only qualifies for a partial reporting exemption, as described in paragraph (a), and a chemical substance described in paragraph (a), (b), (c), or (e) of this section is not excluded from the reporting requirements of this part if that substance is the subject of a rule proposed or promulgated under section 4, 5(a)(2), 5(b)(4), or 6 of the Act, or is the subject of an order issued under section 5(e) or 5(f) of the Act, or is the subject of relief that has been granted under a civil action under section 5 or 7 of the Act.

(a) *Petroleum process streams.* All chemical substances listed by Chemical Abstract Service Registry Number (CAS Number) in this paragraph are excluded only from paragraphs (c)(4) and (5) of § 710.32. Such chemical substances are not excluded from the other reporting requirements under 40 CFR part 710. The chemical substances included in the list in this paragraph may be modified and, if modified, a new list will be published through direct final rulemaking in the **Federal Register** by EPA prior to the upcoming reporting period. If a new list is not published prior to a given reporting period, the list in effect for the previous reporting period is still in effect for the current reporting period.

CAS Numbers of Partially Exempt Chemical Substances Termed "Petroleum Process Streams"

63231-60-7
64741-41-9
64741-42-0
64741-43-1
64741-44-2
64741-45-3
64741-46-4
64741-47-5
64741-48-6
64741-49-7
64741-50-0
64741-51-1
64741-52-2
64741-53-3
64741-54-4
64741-55-5

64741-56-6
64741-57-7
64741-58-8
64741-59-9
64741-60-2
64741-61-3
64741-62-4
64741-63-5
64741-64-6
64741-65-7
64741-66-8
64741-67-9
64741-68-0
64741-69-1
64741-70-4
64741-71-5
64741-72-6
64741-73-7
64741-74-8
64741-75-9
64741-76-0
64741-77-1
64741-78-2
64741-79-3
64741-80-6
64741-81-7
64741-82-8
64741-83-9
64741-84-0
64741-85-1
64741-86-2
64741-87-3
64741-88-4
64741-89-5
64741-90-8
64741-91-9
64741-92-0
64741-93-1
64741-94-2
64741-95-3
64741-96-4
64741-97-5
64741-98-6
64741-99-7
64742-00-3
64742-01-4
64742-02-5
64742-03-6
64742-04-7
64742-05-8
64742-06-9
64742-07-0
64742-08-1
64742-09-2
64742-10-5
64742-11-6
64742-12-7
64742-13-8
64742-14-9
64742-15-0
64742-16-1
64742-17-2
64742-18-2
64742-19-4
64742-20-3
64742-22-9
64742-23-0
64742-24-1
64742-25-2
64742-27-4
64742-28-5
64742-29-6
64742-30-9
64742-31-0
64742-32-1
64742-33-2
64742-34-3
64742-35-4
64742-36-2
64742-36-5
64742-37-6
64742-38-7
64742-39-8
64742-40-1
64742-41-2
64742-42-3
64742-43-4
64742-44-5
64742-45-6
64742-46-7
64742-47-8
64742-48-9
64742-49-0
64742-50-3
64742-51-4
64742-52-5
64742-53-6
64742-54-7
64742-55-8
64742-56-9
64742-57-0
64742-58-1
64742-59-2
64742-60-5
64742-61-6
64742-62-7
64742-63-8
64742-64-9
64742-65-0
64742-66-1
64742-67-2
64742-68-3
64742-69-4
64742-70-7
64742-71-8
64742-72-9
64742-73-0
64742-74-1
64742-75-2
64742-76-3
64742-78-5
64742-79-6
64742-80-9
64742-81-0
64742-82-1
64742-83-2
64742-84-3
64742-85-4
64742-86-5
64742-87-6
64742-88-7
64742-89-8
64742-90-1
64742-91-2
64742-92-3
64742-93-4
64742-95-6
64742-96-7
64742-97-8
64742-98-9
64742-99-0
64743-00-6
64743-02-8
64743-01-7
64743-03-9
64743-04-0
64743-05-1
64743-06-2
64743-07-3
64754-89-8
64754-96-7
64771-71-7
64771-71-7
64771-72-8
64771-72-8
67674-12-8
67674-13-9
67674-15-1
67674-16-2
67674-17-3
67674-18-4
67891-77-4
67891-79-6
67891-78-5
67891-80-9
67891-82-1
67891-83-2
67891-85-4
68131-05-5
68131-49-7
68131-75-9
68131-77-1
68131-79-3
68131-80-6
68131-81-7
68131-83-9
68131-99-7
68132-00-3
68153-22-0
68187-57-5
68187-58-6
68187-58-6
68187-60-9
68307-98-2
68307-99-3
68308-00-9
68308-01-0
68308-02-1
68308-03-2
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68333-29-9

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68425-35-4
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68477-65-6
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68603-32-7
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68647-62-1
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69029-75-0
69430-33-7
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70913-86-9
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70955-09-8
70955-10-1
70955-17-8
71243-66-8
71302-82-4
71329-37-8
71808-30-5
72230-71-8
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72623-84-8
72623-85-9
72623-86-0
72623-87-1
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8002-74-2
8006-14-2

8006-20-2
8006-61-9
8007-45-2
8008-20-6
8008-20-6
8009-03-8
8012-95-1
8030-30-6
8032-32-4
8042-47-5
8052-42-4
10024-97-2
* * * * *

(c) *Microorganisms.* Any combination of chemical substances that is a living organism, and that meets the definition of "microorganism" at 40 CFR 725.3 of this chapter. Any chemical substance produced from a living microorganism is reportable under this part unless otherwise excluded.

* * * * *

(e) *Certain forms of natural gas.* Chemical substances with the following CAS Numbers: CAS No. 64741-48-6, Natural gas (petroleum), raw liquid mix; CAS No. 68919-39-1, Natural gas condensates; CAS No. 8006-61-9, Gasoline natural; CAS No. 68425-31-0, Gasoline (natural gas), natural; CAS No. 8006-14-2, Natural gas; and CAS No. 68410-63-9, Natural gas, dried.

4. By revising § 710.28 to read as follows:

§ 710.28 Persons who must report.

Except as provided in §§ 710.29 and 710.30, the following persons are subject to the requirements of this part. Persons must determine whether they must report under this section for each chemical substance that they manufacture (including import) at an individual site.

(a) *Persons subject to recurring reporting.* Any person who manufactured (including imported) for commercial purposes 25,000 lbs. (11,350 kg) or more of a chemical substance described in § 710.25 at any single site owned or controlled by that person at any time during calendar year 1999 or during the calendar year at 4–year intervals thereafter is subject to reporting. A person who does not manufacture (including import) at least 25,000 lbs. of a chemical substance described in § 710.25 at any single site owned or controlled by that person at any time during 1999 or during any year in 4–year intervals thereafter, but who chooses to reassert [a] confidentiality claim[s] made in [a] previous reporting period[s], as described in § 710.39, must make the reassertion in each reporting period even if the person is not required to report the information described in § 710.32(c).

(b) *Special provisions for importers.* For purposes of this section, the site for a person who imports a chemical substance described in § 710.25 is the site of the operating unit within the person's organization which is directly responsible for importing the substance and which controls the import transaction. The import site may in some cases be the organization's headquarters in the United States (see also § 710.35(b)).

5. By revising § 710.32 to read as follows:

§ 710.32 Reporting information to EPA.

Any person who must report under this part, as described in § 710.28, must submit the information described in this section for each chemical substance described in § 710.25 that the person manufactured (including imported) for commercial purposes in an amount of 25,000 lbs. (11,350 kg) or more at any one site during calendar year 2001 or during the calendar year at 4–year intervals thereafter. (The site for a person who imports a chemical substance is the site of the operating unit within the person's organization that is directly responsible for importing the substance and which controls the import transaction, and may in some cases be the organization's headquarters office in the United States) Except as otherwise noted, a submitter of information under this part must report information in writing or by magnetic media as prescribed in this section, to the extent that such information is known to or reasonably ascertainable by that person. A submitter under this part must report information that applies to the calendar year for which the person is required to report (i.e., calendar year 2001 and the calendar year at 4–year intervals thereafter).

(a) *Reporting in writing.* Any person who chooses to report information to EPA in writing must do so by completing the reporting form available from EPA at the address set forth in § 710.40(b). The form must include all information prescribed in paragraph (c) of this section. Persons reporting in writing must submit a separate form for each site for which the person is required to report.

(b) *Reporting by magnetic media.* Any person who chooses to report information to EPA by means of magnetic media must submit the information prescribed in paragraph (c) of this section. Magnetic media submitted in response to this subpart must meet EPA specifications, as described in the instruction booklet available from EPA at the address set forth in § 710.40(b).

(c) *Information to be reported.* Manufacturers (including importers) of a chemical substance described in § 710.25 in an amount equal to or greater than 25,000 lbs. (11,350 kg) during a calendar year for which reporting is required must report the information described in paragraphs (c)(1), (c)(2), and (c)(3) of this section. Manufacturers (including importers) of an organic chemical substance described in § 710.25 in an amount equal to or greater than 300,000 lbs. (136,200 kg) during a calendar year for which reporting is required must report the information described in paragraphs (c)(4) and (c)(5) of this section in addition to the information described in paragraphs (c)(1), (c)(2), and (c)(3) of this section.

(1) *A certification statement signed and dated by an authorized official of the submitter company.* Persons reporting by means of magnetic media must submit this information on the reporting form available from EPA at the address set forth in § 710.40.

(2) *Company and plant site information.* The following company and plant site information must be reported:

(i) The name, company, address, city, State, zip code, and telephone number of a person who will serve as technical contact for the submitter company, and who will be able to answer questions about the information submitted by the company to EPA. Persons reporting by means of magnetic media must submit this information on the reporting form available from EPA at the address set forth in § 710.40.

(ii) The name, street address, city, State, and zip code of each site at which at least 25,000 lbs. (11,350 kg) or more of a chemical substance for which reporting is required under this part is manufactured (including imported). (The site for a person who imports a chemical substance is the site of the operating unit within the person's organization which is directly responsible for importing the substance and which controls the import transaction, and may in some cases be the organization's headquarters office in the U.S.) A submitter under this part must include the appropriate Dun and Bradstreet Number and any EPA Facility Registration Identifier (FRI) (once an FRI has been assigned to the facility) for each plant site reported. In addition, the county or parish (or other jurisdictional indicator) in which the plant site is located must be provided.

(3) *Chemical specific information.* The following chemical-specific information must be reported:

(i) The specific chemical name and Chemical Abstracts Service (CAS) Registry Number of each chemical

substance for which reporting is required under this part ("reportable chemical substance"). As provided in the instruction booklet identified in § 710.40(b), a submitter under this part may use an EPA-Designated Accession Number, a premanufacture notice (PMN) case number (see § 720.65 of this chapter), or a TSCA Chemical Inventory reporting form number (see § 710.40) in lieu of a CAS Registry Number when a CAS Registry Number is not known to the submitter.

(ii) A statement indicating, for each reportable chemical substance, whether the substance is manufactured in the United States, imported into the United States, or both manufactured in the United States and imported into the United States.

(iii) A designation indicating, for each reportable chemical substance, whether the substance is site-limited.

(iv) The total volume (in pounds) of each reportable chemical substance manufactured (including imported) at each site. This amount must be reported to two significant figures of accuracy provided that the reported figures are within plus or minus 10% of the actual volume.

(v) Any person claiming the volume reported under paragraph (c)(3)(iv) of this section is confidential business information under § 710.38 must provide a statement indicating, for each reportable chemical substance, whether the total volume range (in pounds) which corresponds to the volume reported in response to paragraph (c)(3)(iv) of this section of each reportable chemical substance manufactured (including imported) at each site is claimed confidential. Volume ranges are listed in the following table:

Volume Ranges for Non-Confidential Reporting Purposes

From 25,000 to 100,000 lbs.
From 100,000 to 1,000,000 lbs.
From 1,000,000 to 10,000,000 lbs.
From 10,000,000 to 50,000,000 lbs.
From 50,000,000 to 100,000,000 lbs.
From 100,000,000 to 500,000,000 lbs.
From 500,000,000 to 1,000,000,000 lbs.
Greater than 1,000,000,000 lbs.

(vi) The total number of workers reasonably likely to be exposed to each reportable chemical substance at each site where the substance is manufactured (including imported). For each substance, the submitter shall report the code that corresponds to the appropriate number of workers according to the range codes in the following table:

Codes for Reporting Number of Workers Exposed

Codes	Range
W1	Less than 10
W2	At least 10 but less than 25
W3	At least 25 but less than 50
W4	At least 50 but less than 100
W5	At least 100 but less than 500
W6	At least 500 but less than 1,000
W7	At least 1,000 but less than 10,000
W8	At least 10,000

(vii) The physical form of the reportable chemical substance as it is sent off-site. If the reportable chemical substance is sent in more than one physical form, the submitter shall report whichever physical form constitutes the largest portion of its total volume, measured by weight. For each substance, the submitter shall report the code that corresponds with the appropriate physical form code according to the following table.

Codes for Reporting Physical Form of Chemical Substance

Codes	Physical Form
F1	Dry powder
F2	Pellets or large crystals
F3	Water- or solvent-wet solid
F4	Other solid
F5	Gas or vapor
F6	Liquid

(viii) The average concentration and maximum concentration, measured by percentage of weight, of the reportable chemical substance at the time it is sent off-site. For each chemical substance, report the code that corresponds to the appropriate average concentration and maximum concentration according to the following table:

Codes for Reporting Average Concentration and Maximum Concentration of Chemical Substance

Codes	Concentration Range (% weight)
M1	Less than 1% by weight
M2	Between 1 and 30% by weight
M3	Between 31 and 60% by weight
M4	Between 61 and 90% by weight
M5	Greater than 90% by weight

(4) *Industrial processing and use information*—(i) The following information must be be reported only for reportable chemical substances manufactured (including imported) for commercial purposes in an amount of 300,000 lbs. (136,200 kg) or more at any one site during calendar year 1999 or during the calendar year at 4-year intervals thereafter. Persons subject to this paragraph must report industrial processing and use information for each reportable chemical substance at sites under their control and at sites that receive a reportable chemical substance from the submitter directly or indirectly (including through a broker/distributor, from a customer of the submitter, etc.). Information regarding processing or use activities occurring at sites not under the control of the submitter must be reported only to the extent that it is readily obtainable by the submitter. If the required information is not readily obtainable by the submitter, the submitter shall provide estimates, using the submitter's best professional judgment, based upon the submitter's past experience for similar chemical substances in the same or similar markets, and/or any reasonable projections of likely processing and use scenarios for the chemical substance. The following items must be reported under this paragraph:

(A) A designation indicating the type of industrial processing or use operation at each site subject to the industrial processing and use information reporting under this paragraph. For each reportable chemical substance, report the letters which correspond to the appropriate processing or use operation[s]:

Designation	Operation
PC	Processing as a reactant
PF	Processing - incorporation into formulation, mixture or reaction product
PA	Processing - incorporation into article
PK	Processing - repackaging
U	Use - non-incorporative activities

(B) The five-digit North American Industrial Classification System (NAICS) codes which best describe the industrial activities associated with each industrial processing or use operation reported under paragraph (c)(4)(i)(A) in this section. If more than 10 NAICS codes apply to a reportable chemical substance, submitters need only report the NAICS codes for the reportable chemical substance that cumulatively represent the largest percentage of production volume, measured by weight.

(C) For each NAICS code reported under paragraph (c)(4)(i)(B) in this section, a code from the following list must be selected to designate the industrial function category that best represents the specific manner in which the reportable chemical substance is used:

Codes for Reporting Industrial Function Categories

Codes	Categories
U01	Adsorbents and absorbents
U02	Adhesives and binding agents
U03	Aerosol propellants
U04	Agricultural chemicals (non-pesticidal)
U05	Anti-adhesive agents
U06	Bleaching agents
U07	Coloring agents, dyes
U08	Coloring agents, pigments
U09	Corrosion inhibitors and anti-scaling agents
U10	Fillers
U11	Fixing agents
U12	Flame retardants
U13	Flotation agents
U14	Fuels
U15	Functional fluids
U16	Intermediates
U17	Lubricants
U18	Odor agents
U19	Oxidizing agents
U20	pH-regulating agents
U21	Photosensitive chemicals
U22	Plating agents and metal surface treating agents
U23	Processing aid, not otherwise listed
U24	Process regulators, used in vulcanization or polymerization processes
U25	Process regulators, other than polymerization or vulcanization processes
U26	Reducing agents
U27	Solvents (for cleaning or degreasing)
U28	Solvents (which become part of product formulation or mixture)
U29	Solvents (for chemical manufacture and processing and are not part of product at greater than one percent by weight)
U30	Stabilizers
U31	Surface active agents
U32	Viscosity adjustors
U33	Other

(D) The percentage, rounded off to the closest 10%, of total production volume of the reportable chemical substance associated with each combination of NAICS code and industrial function category. Where a particular combination of NAICS code and industrial function category accounts for 5% or less of the total production volume of a reportable chemical substance, the percentage shall not be rounded off to zero % if the production volume attributable to that NAICS code and industrial function category combination is equal to or greater than 300,000 lbs. during the calendar year for which data must be reported. Instead, in such a case, submitters shall report the percentage, rounded off to the closest 1%, of total production volume of the reportable chemical substance associated with the particular combination of NAICS code and industrial function category.

(E) The number of processing and use sites, by number range, of each subject chemical substance for each combination of NAICS code and industrial function category. For each substance, report the code (e.g., 0 through 9) that corresponds to the appropriate number range according to the following table:

Codes for Reporting Numbers of Sites

Codes	Range
S1	Less than 10
S2	From 10 to 25
S3	From 25 to 100
S4	From 100 to 250
S5	From 250 to 1,000
S6	From 1,000 to 10,000
S7	Greater than 10,000

(F) An estimate of the number range of workers reasonably likely to be exposed to each reportable chemical substance at the site(s) where the chemical substance is processed or used. For each substance, report the code (e.g., W1 through W8) which corresponds to the appropriate worker range according to the table in paragraph (c)(3)(vi) of this section.

(ii) [Reserved]

(5) *Commercial and consumer use information.*—(i) The following information must be reported only for reportable chemical substances manufactured (including imported) for commercial purposes in an amount of 300,000 lbs. (136,200 kg) or more at any one site during calendar year 1999 or during the calendar year at 4–year intervals thereafter. Persons subject to this paragraph must report information for each reportable chemical substance at sites under their control and at sites that receive a reportable chemical substance from the submitter directly or indirectly (including through a broker/distributor, from a customer of the submitter, etc.). Information regarding use activities occurring at sites beyond the control of the submitter must be reported only to the extent that it is readily obtainable by the submitter. If the required information is not readily obtainable by the submitter, the submitter shall provide estimates, using the submitter's best professional judgment, based upon the submitter's past experience for similar chemical substances in the same or similar market, and/or any reasonable projections on likely use scenarios for the chemical substance. The following information must be reported under this paragraph:

(A) Using the codes listed, submitters must designate each commercial and consumer product category for which the reportable chemical substance is used:

Codes for Reporting Commercial and Consumer Product Categories

Codes	Category
C01	Artists' supplies
C02	Adhesives and sealants
C03	Automotive care products
C04	Electrical and electronic products
C05	Glass and ceramic products
C06	Fabrics, textiles and apparel
C07	Lawn and garden products (non-pesticidal)
C08	Leather products
C09	Lubricants, greases and fuel additives
C10	Metal products
C11	Paper products
C12	Paints and coatings
C13	Photographic chemicals
C14	Polishes and sanitation goods
C15	Rubber and plastic products
C16	Soaps and detergents
C17	Transportation products
C18	Wood and wood furniture
C19	Other

(B) The percentage, rounded off to the closest 10%, of total production volume of the reportable chemical substance associated with each commercial and consumer product category. Where a particular commercial and consumer product category accounts for 5% or less of the total production volume of a reportable chemical substance, the percentage shall not be rounded off to zero % if the production volume attributable to that commercial and consumer product category is equal to or greater than 300,000 lbs. during the calendar year for which data must be reported. Instead, in such a case, submitters shall report the percentage, rounded off to the closest 1%, of total production volume of the reportable chemical substance associated with the particular commercial and consumer product category.

(C) Where the reportable chemical substance is used in commercial or consumer products, the typical maximum concentration, measured by weight, of the chemical substance in each commercial and consumer product category reported under paragraph (c)(5)(i)(A) of this section.

(ii) [Reserved]

6. By revising § 710.33 to read as follows:

§ 710.33 When to report.

All information reported to EPA in response to the requirements of this part must be submitted during an applicable reporting period. The first reporting period is from August 25, 2002, to December 23, 2002. Subsequent recurring reporting periods are from August 25 to December 23 at 4-year intervals after the first reporting period. Any person described in § 710.28(a) must report during each reporting period for each chemical substance described in § 710.25 that the person manufactured (including imported) during the preceding calendar year.

7. By revising § 710.37 to read as follows:

§ 710.37 Recordkeeping requirements.

Each person who is subject to the reporting requirements of this part must maintain records that document any information reported to EPA. Records relevant to reporting during a reporting period described in § 710.33 must be retained for a period of 5 years beginning with the effective date of that reporting period.

8. By revising § 710.38 to read as follows:

§ 710.38 Confidentiality.

(a) Any person submitting information under this part may assert a business confidentiality claim for the information at the time it is submitted. These claims will apply only to the information submitted with the claim. New confidentiality claims, if necessary, must be asserted with regard to information submitted during the next reporting period. Guidance for asserting confidentiality claims is provided in the instruction booklet identified in § 710.40. Information claimed as confidential in accordance with this section will be treated and disclosed in accordance with the procedures in part 2 of this chapter.

(b) A person may assert a claim of confidentiality for the chemical identity of a specific chemical substance only if the identity of that substance is treated as confidential in the Master Inventory File as of the time the report is submitted for that substance under this part.

(c) *Chemical identity.* The following steps must be taken to assert a claim of confidentiality for the identity of a reportable chemical substance:

(1) The person must submit with the report detailed written answers to the following questions signed and dated by an authorized official.

(i) What harmful effects to your competitive position, if any, do you think would result from the identity of the chemical substance being disclosed in connection with reporting under this part? How could a competitor use such information? Would the effects of disclosure be substantial? What is the causal relationship between the disclosure and the harmful effects?

(ii) How long should confidential treatment be given? Until a specific date, the occurrence of a specific event, or permanently? Why?

(iii) Has the chemical substance been patented? If so, have you granted licenses to others with respect to the patent as it applies to the chemical substance? If the chemical substance has been patented and therefore disclosed through the patent, why should it be treated as confidential?

(iv) Has the identity of the chemical substance been kept confidential to the extent that your competitors do not know it is being manufactured or imported for a commercial purpose by anyone?

(v) Is the fact that the chemical substance is being manufactured (including imported) for a commercial purpose available to the public, for example in technical journals, libraries, or State, local, or Federal agency public files?

(vi) What measures have been taken to prevent undesired disclosure of the fact that the chemical substance is being manufactured (including imported) for a commercial purpose?

(vii) To what extent has the fact that this chemical substance is manufactured (including imported) for commercial purposes been revealed to others? What precautions have been taken regarding these disclosures? Have there been public disclosures or disclosures to competitors?

(viii) Does this particular chemical substance leave the site of manufacture (including import) in any form, e.g. as product, effluent, emission, etc.? If so, what measures have been taken to guard against the discovery of its identity?

(ix) If the chemical substance leaves the site in a product that is available to the public or your competitors, can the substance be identified by analysis of the product?

(x) For what purpose do you manufacture (including import) the substance?

(xi) Has EPA, another Federal agency, or any Federal court made any pertinent confidentiality determinations regarding this chemical substance? If so, please attach copies of such determinations.

(2) If any of the information contained in the answers to the questions is asserted to contain confidential business information, the person must mark that information as "trade secret," "confidential," or other appropriate designation.

(d) *Site identity.* A person may assert a claim of confidentiality for a submitter site only if the linkage of the site with a chemical submitted in this rule is confidential and not publicly available. The following steps must be taken to assert a claim of confidentiality for a site identity:

(1) The person must submit with the report detailed written answers to the following questions signed and dated by an authorized official:

(i) Has site information been linked with a chemical identity in any other Federal, state or local reporting scheme? For example, is the chemical identity linked to a facility in a filing under the Emergency Planning and Community Right-To-Know Act (EPCRA) section 311, namely through a Material Safety Data Sheet (MSDS)? If so, identify all such schemes. Was the linkage claimed as confidential in any of these instances?

(ii) What harmful effect, if any to your competitive position do you think would result from the identity of the site and the chemical substance? How could a competitor use such information? Would the effects of disclosure be substantial? What is the causal relationship between the disclosure and the harmful effects?

(2) If any of the information contained in the answers to the questions is asserted to contain confidential business information, the person must mark that information as "trade secret," "confidential," or another appropriate designation.

(e) If no claim of confidentiality is indicated on the reporting form submitted to EPA under this part, or if confidentiality claim substantiation required under paragraphs (c) and (d) of this section is not submitted with the reporting form, EPA may make the information available to the public without further notice to the submitter.

9. By revising § 710.39 to read as follows:

§ 710.39 Reassertion of past confidentiality claims.

(a) Any claim of confidentiality under § 710.38 is valid only until the end of the reporting period immediately following the reporting period in which the information was claimed as confidential. To maintain the

confidential status of information, the submitter must certify during every reporting period following the one in which the original claim of confidentiality was made, that the information should continue to be treated as confidential by EPA. Reassertions must be made to maintain confidentiality even if the submitter is not required to report the information in § 710.32(c) during a given reporting period.

(b) If the submitter fails in a reporting period to reassert the confidentiality claims made in the previous reporting period, the claims are presumed to be waived and EPA will make the information available to the public without further notice to the submitter. EPA will publish a Federal Register notice at least 2 weeks before the end of each reporting period, which will remind persons who made or reasserted CBI claims in the previous reporting period of the need to examine these claims and reassert them, as appropriate, in the current reporting period. Claims not reasserted by the end of a reporting period will be declassified after the reporting period ends.

(c) CBI claims made in IUR submissions prior to 2002 will not be subject to this reassertion requirement. CBI claims made in IUR submissions beginning with the 2002 reporting year will need to be reasserted in subsequent reporting years in order to retain CBI protections.

10. By adding § 710.40 to read as follows:

§ 710.40 Availability of reporting form and instructions.

(a) Use the proper EPA form. You must use the EPA form identified as "Form U" to submit written information in response to the requirements of this subpart. Copies of Form U are available from EPA at the address set forth in paragraph (c) of this section, from the EPA Internet Home Page at http://www.epa.gov/opptintr, or via fax on demand by using a faxphone to call (202) 401-0527 and selecting item 5119. You may also follow the automated menus.

(b) Guidance for completing the reporting form and preparing a magnetic media report is available in the EPA publication entitled "Instructions for Reporting for Partial Updating of the TSCA Chemical Inventory Data Base."

(c) EPA will mail a reporting package (consisting of a copy of Form U and a copy of the "Instructions for Reporting for Partial Updating of the TSCA Chemical Inventory Data Base") to those companies that reported in the IUR reporting period that occurred immediately prior to the current reporting period. If you did not receive a reporting package, but are required to report, you may obtain a copy of the reporting package from EPA by submitting a request for this information as follows:

(1) By phone. Call the EPA TSCA Hotline at 202-554-1404, or TDD 202-554-0551.

(2) By e-mail. Send an e-mail request for this information to the EPA TSCA Hotline at TSCA-Hotline@epa.gov.

(3) By mail. Send a written request for this information to the following address: TSCA Hotline, Mail Code 7408, ATTN: Inventory Update Rule, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

(d) Submit the completed reports. You must submit your completed reporting form(s) and/or magnetic media to EPA at the following address: Document Control Officer, Mail Code 7407, ATTN: Inventory Update Rule, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 211/P.L. 106–48
To designate the Federal building and United States courthouse located at 920 West Riverside Avenue in Spokane, Washington, as the "Thomas S. Foley United States Courthouse", and the plaza at the south entrance of such building and courthouse as the "Walter F. Horan Plaza". (Aug. 17, 1999; 113 Stat. 230)

H.R. 1219/P.L. 106–49
Construction Industry Payment Protection Act of 1999 (Aug. 17, 1999; 113 Stat. 231)

H.R. 1568/P.L. 106–50
Veterans Entrepreneurship and Small Business Development Act of 1999 (Aug. 17, 1999; 113 Stat. 233)

H.R. 1664/P.L. 106–51
Emergency Steel Loan Guarantee and Emergency Oil and Gas Guaranteed Loan Act of 1999 (Aug. 17, 1999; 113 Stat. 252)

H.R. 2465/P.L. 106–52
Military Construction Appropriations Act, 2000 (Aug. 17, 1999; 113 Stat. 259)

S. 507/P.L. 106–53
Water Resources Development Act of 1999. (Aug. 17, 1999; 113 Stat. 269)

S. 606/P.L. 106–54
For the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical, LLC (successor to Kerr-McGee Chemical Corporation), and for other purposes. (Aug. 17, 1999; 113 Stat. 398)

S. 1546/P.L. 106–55
To amend the International Religious Freedom Act of 1998 to provide additional administrative authorities to the United States Commission on International Religious Freedom, and to make technical corrections to that Act, and for other purposes. (Aug. 17, 1999; 113 Stat. 401)

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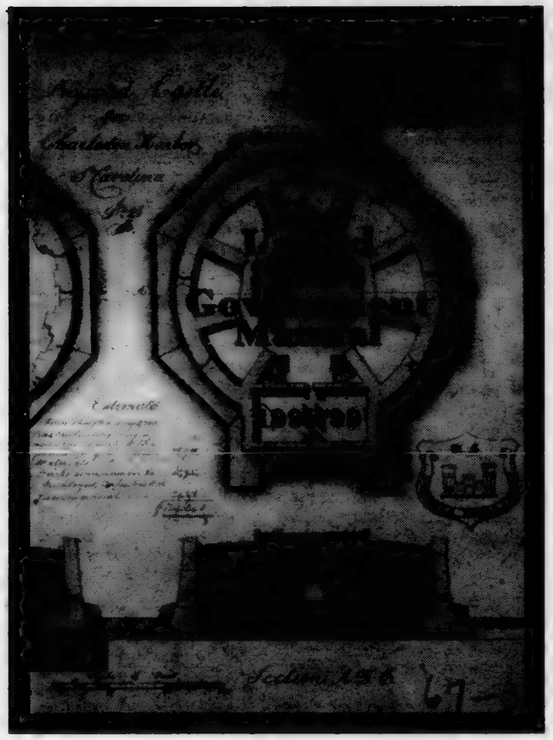

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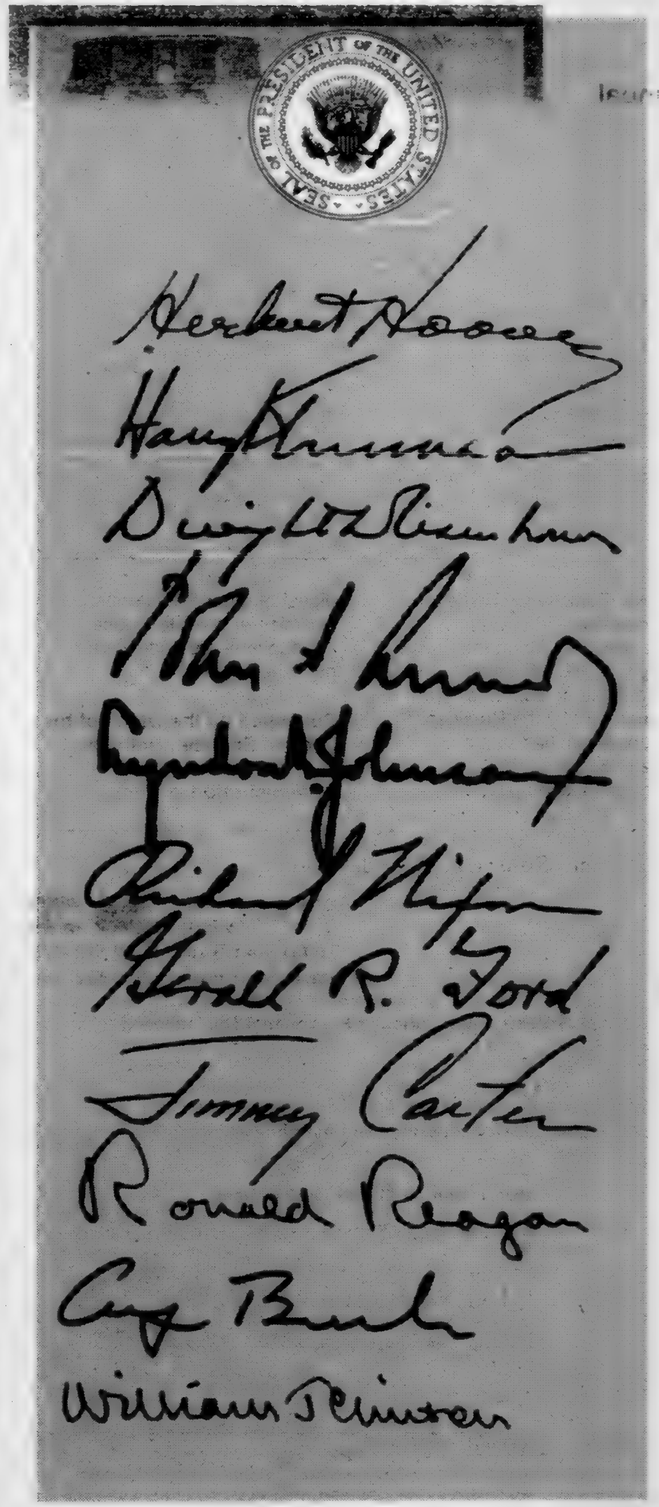

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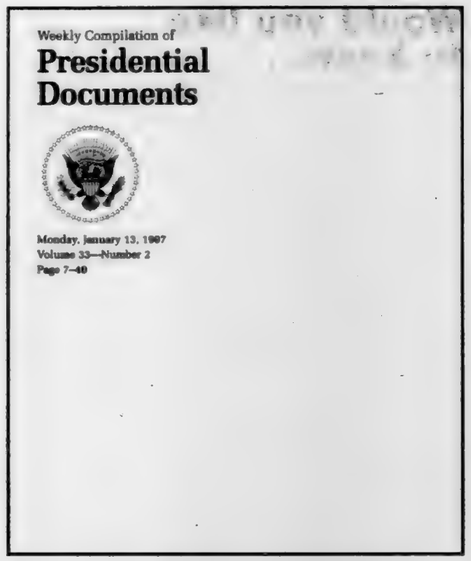

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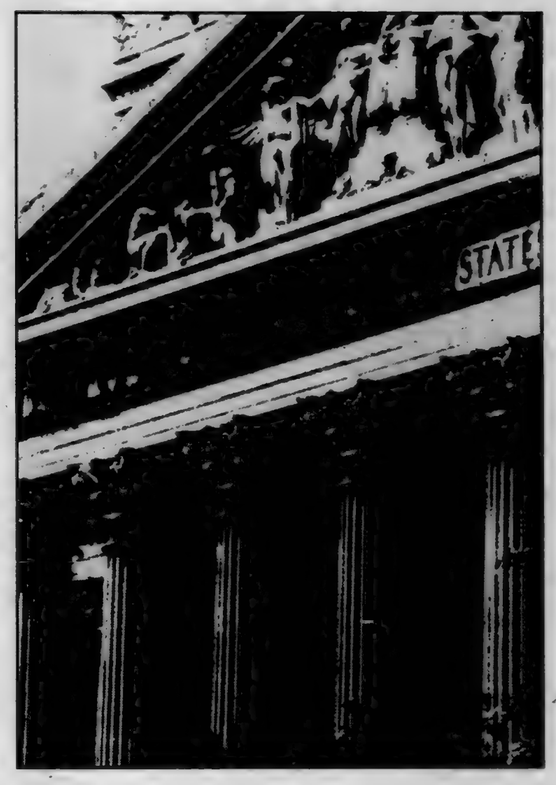

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Friday, August 27, 1999

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The President

Proclamation 7215 of August 24, 1999

Women's Equality Day, 1999

By the President of the United States of America

A Proclamation

The theme for America's celebration of the coming millennium is "honor the past—imagine the future," a theme that could also describe our annual observance of Women's Equality Day. On this special day, we honor the past by remembering the decades-long struggle of visionary and determined women and men who fought for women's suffrage. Seventy-nine years ago, their efforts were rewarded with the ratification of the 19th Amendment to the Constitution, which guaranteed women the right to vote and moved our Nation forward on the path toward equal civil and political rights for all Americans.

This year we also mark the 35th anniversary of another hard-fought victory for women's equality: the enactment of Title VII of the Civil Rights Act of 1964, which—among other things—prohibits employment discrimination on the basis of gender. Title VII guarantees women equal access to jobs, promotions, pay, and benefits, empowering them to provide for themselves and their families and to achieve their highest aspirations. This historic legislation benefits our entire Nation by strengthening America's workforce and economy through the contributions of millions of Americans whose talents in the past had too often been ignored or excluded.

We also celebrate Women's Equality Day by imagining the future—a future where women will receive equal pay for equal work, where our social structures will help women and men to balance better the responsibilities of job and family, where there will be no ceilings to prevent women from rising as far and as fast as their talents will take them. Such a future seems possible when we reflect on the extraordinary feats women have achieved this summer alone. The entire world was captivated by the energy, skill, teamwork, and determination of the women soccer players from around the globe who competed in the Women's World Cup; and all America rejoiced when the U.S. team won a breathtaking victory. Just 13 days later, Air Force Colonel Eileen Collins, commander of Space Shuttle Mission STS–93, became the first woman to command a mission in space.

With a rich past, an exciting present, and a future of limitless possibilities, women have much to celebrate on this Women's Equality Day, and all Americans have much to be grateful for as we reflect on the countless contributions women make to the quality of our lives and the well-being of our Nation.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim August 26, 1999, as Women's Equality Day. I call upon the citizens of our great Nation to observe this day with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of August, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 99–22483
Filed 8–26–99; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 64, No. 166
Friday, August 27, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–35]

Modification of Class D Airspace and Class E Airspace; Terre Haute, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice modifies Class D airspace and Class E airspace at Terre Haute, IN. An analysis of the controlled airspace required for the instrument approach procedures for Terre Haute International-Hulman Field Airport, in light of the recent runway extension for that airport, have resulted in the need to modify the Class D airspace and the Class E airspace extension to the Class D airspace. The purpose of this action is to provide adequate controlled airspace for the instrument approach procedures and flight operations at the airport. This action increases the radius of the Class D airspace and modifies the Class E airspace extension, incorporating the increased radius, for this airport.

EFFECTIVE DATE: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Annette Davis, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, June 11, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class D airspace and Class E airspace at Terre Haute, IN (64 FR 31525). The proposal was to modify the existing controlled airspace to incorporate a recent runway extension at the airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations are published in paragraph 5000, and Class E airspace areas designated as an extension to a Class D surface area are published in paragraph 6004, of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class D airspace and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class D airspace and Class E airspace at Terre Haute, IN, by increasing the radius of the Class D airspace and modifying the Class E airspace extension to the Class D airspace, incorporating the increased radius, for Terre Haute International-Hulman Field Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11035; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter than will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

AGL IN D Terre Haute, IN [Revised]

Terre Haute International-Hulman Field Airport, IN
(Lat. 39°27′05″N., long. 087°18′27″W.)
Terre Haute, Sky King Airport, IN
(Lat. 39°32′52″N., long. 087°22′38″W.)

That airspace extending upward from the surface to and including 3,100 feet MSL within a 5.7-mile radius of the Terre Haute International-Hulman Field Airport, excluding that airspace within a 1.0-mile radius of Sky King Airport.

* * * * *

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area.

* * * * *

AGL IN E4 Terre Haute, IN [Revised]

Terre Haute International-Hulman Field Airport, IN
(Lat. 39°27′05″N., long. 087°18′27″W.)
Terre Haute VORTAC
(Lat. 39°29′20″N., long. 087°14′56″W.)

That airspace extending upward from the surface within 1.8 mile each side of the Terre Haute VORTAC 047° radial, extending from the 5.7-mile radius of the Terre Haute International-Hulman Field Airport to 10.5 miles northeast of the VORTAC.

* * * * *

Issued in Des Plaines, Illinois on August 17, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–22296 Filed 8–26–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–32]

Modification of the Legal Description of the Class E Airspace; Cincinnati, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the legal description of the Class E airspace at Cincinnati Municipal Airport Lunken Field, OH. The legal description for this airspace includes a reference to excluding that airspace within the Cincinnati/Northern Kentucky International Airport, KY, Class C airspace area. This Class C airspace designation was revoked, and effective at 0901 UTC, July 15, 1999, a Class B airspace area for the Cincinnati/Northern Kentucky International Airport was established. The reference to Class C airspace in the legal description for the Class E airspace at Cincinnati Municipal Airport Lunken Field will be invalid, and this action changes that reference to Class B airspace.

EFFECTIVE DATE: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Annette Davis, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Thursday, June 3, 1999, the FAA proposed to amend 14 CFR part 71 to modify the legal description of the Class E airspace at Cincinnati Municipal Airport Lunken Field, OH (64 FR 29817). The proposal was to correct the legal description of the existing controlled airspace to reflect the correct reference to the Cincinnati/Northern Kentucky International Airport, KY, Class C airspace area. Effective July 15, 1999, this Class C airspace was revoked and a Class B airspace area for the Cincinnati/Northern Kentucky International Airport was established (Airspace Docket No. 93–AWA–5, final rule published in the **Federal Register** on November 30, 1998, 63 FR 65972, effective date delayed on December 14, 1998, 63 FR 68675, and confirmation of effective date on April 12, 1999, 64 FR 17934). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designated as a surface area are published in paragraph 6002 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies the legal description of the Class E airspace at Cincinnati Municipal Airport Lunken Field, OH, by changing the reference to the Cincinnati/Northern Kentucky International Airport, KY, Class C airspace area to Class B. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 CFR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6002 Class E airspace designated as a surface area.

* * * * *

AGL OH E2 Cincinnati, OH [Revised]

Cincinnati Municipal Airport Lunken Field, OH
(Lat. 39°06'12" N., long. 84°25'07" W.)

Within an 4.1-mile radius of the Cincinnati Municipal Airport Lunken Field, excluding that airspace within the Cincinnati/Northern Kentucky International Airport, KY, Class B airspace area. This Class E airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on August 9, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–22059 Filed 8–26–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–36]

Revocation of Class E airspace, Lafayette, Aretz Airport, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice revokes the Class E airspace for Lafayette, Aretz Airport, IN. All instrument approach procedures for the Aretz Airport have been cancelled in preparation for the closure of the airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is no longer needed to contain aircraft executing instrument procedures. This action revokes the Class E airspace for Lafayette, Aretz Airport, IN.

EFFECTIVE DATE: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Annette Davis, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, June 11, 1999, the FAA proposed to amend 14 CFR part 71 to revoke Class E airspace at Lafayette, Aretz Airport, IN (64 FR 31527). The proposal was to revoke the existing controlled airspace due to cancellation of all instrument approach procedures for the airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 revokes Class E airspace at Lafayette, Aretz Airport, IN. The area will be removed from appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16k, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IN E5 Lafayette, Aretz Airport, IN [Removed]

* * * * *

Issued in Des Plaines, Illinois on August 17, 1999.

Christopher R. Blum,

Manager, Air Traffic Divisions.

[FR Doc. 99–22293 Filed 8–26–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–34]

Modification of Class E airspace; Escanaba, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice modifies Class E airspace at Escanaba, MI. A Instrument Landing System (ILS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 9 has been developed for Delta Country Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action increases the radius of the existing controlled airspace for this airport.

EFFECTIVE DATE: 0901 UTC, November 04, 1999.

FOR FURTHER INFORMATION CONTACT: Annette Davis, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, June 11, 1999, the FAA proposed to amend 14 CRF part 71 to modify Class E airspace at Escanaba, MI (64 FR 31526). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comment objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Escanaba, MI, to accommodate aircraft executing the proposed ILS Rwy 9 SIAP at Delta County Airport by modifying the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the Criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 Feet or more above the surface of the earth.

* * * * *

AGL MI E2 Escanaba, MI [Revised]

Escanaba, Delta County Airport, MI
Lat. 45° 43′ 22″N., long. 87° 05′ 37″W.)
Escanaba VORTAC
Lat. 45° 43′ 22″N., long. 87° 05′ 23″W.)
Within a 4.3-mile radius of the Escanaba, Delta County Airport, and within 2.6 miles each side of the Escanaba VORTAC 007° radial, extending from the 4.3-mile radius to 7.4 miles north of the VORTAC, and within 2.6 miles each side of the Escanaba VORTAC 101° radial, extending from the 4.3-mile radius to 7.4 miles east of the VORTAC, and within 2.6 miles each side of the Escanaba VORTAC 266° radial, extending from the 4.3-mile radius to 7.0 miles west of the VORTAC, and within 3.2-miles each side of the Escanaba VORTAC 171° radial, extending from the 4.3-mile radius to 7.0 miles south of the VORTAC.

* * * * *

Issued in Des Plaines, Illinois on August 17, 999.

Christopher R. Blum

Manager, Air Traffic Division.

[FR Doc. 99–22295 Filed 8–26–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Parts 257, 258 and 399

[Docket Nos. OST–95–179, OST–95–623, and OST–95–177]

RIN 2105–AC10, 2105–AC17

Petitions Involving the Effective Dates of the Disclosure of Code-Sharing Arrangements and Long-Term Wet Leases Final Rule, and the Disclosure of Change-of-Gauge Services Final Rule.

AGENCY: Office of the Secretary (OST), Department of Transportation.

ACTION: Final rule and notice of effective and compliance dates.

SUMMARY: On March 15, 1999, we issued two new rules, the Disclosure of Code-Sharing Arrangements and Long-Term Wet Leases Rule, 14 CFR part 257 ("Code-Share Rule"), and the Disclosure of Change-of-Gauge Services Rule, 14 CFR part 258 ("Change-of-Gauge Rule"), to enable consumers to make informed choices about their air transportation and to travel without undue confusion. Both rules were to take effect on July 13. On July 9, in response to petitions to delay the rules' effective date, we issued a Final Rule and Notice of Proposed Disposition (see 64 FR 38111, July 15, 1999), delaying the effective date for both rules until August 25, 1999, and giving interested parties until July 30 to comment on our proposal to delay the compliance date of portions of both rules further, until March 15, 2000. We are adopting our proposal as a final rule, as clarified below, and amending both disclosure rules to reflect the new compliance dates.

DATES: The effective date of 14 CFR part 257, published at 64 FR 12851–12852 (March 15, 1999), and new § 257.6, published herein, is August 25, 1999. The date on which compliance with § 257.5(a), § 257.5(b) (insofar as compliance requires reprogramming by Computer Reservations Systems), and § 257.5(c) is mandatory is March 15, 2000; compliance with all other sections is mandatory as of August 25, 1999.

The effective date of 14 CFR part 258, published at 64 FR 12860 (March 15, 1999), and new § 258.6, published herein, is August 25, 1999. The date on which compliance with § 258.5(c) is mandatory is March 15, 2000; compliance with all other sections is mandatory as of August 25, 1999.

The removal of 14 CFR 399.88, published at 64 FR 12852 (March 15, 1999), is effective August 25, 1999.

FOR FURTHER INFORMATION CONTACT: Betsy L. Wolf, Senior Trial Attorney, Office of Aviation Enforcement and Proceedings (202–366–9359), Office of the General Counsel, U.S. Department of Transportation, 400 Seventh Street, S.W., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

On March 15, 1999, we adopted two new disclosure rules, the Code-Share Rule and the Change-of-Gauge Rule, under 49 U.S.C. § 41712, our authority to prohibit unfair and deceptive practices and unfair methods of competition. The rules will protect consumers of air transportation by ensuring that they are told the nature of service they are considering before they decide to buy it and then by giving them written information to help them avoid confusion and mishaps, such as missed flights or connections, during their transportation. Each rule codifies and augments existing disclosure requirements for air carriers [1] and also sets new disclosure requirements for ticket agents. Among other things, the Code-Share Rule (14 CFR Part 257) requires air carriers involved in code-sharing arrangements or long-term wet leases to identify those arrangements in the written or electronic schedule information they provide to the public, in the Official Airline Guide and comparable publications, and in Computer Reservations Systems ("CRSs") with an asterisk or comparable mark and to disclose the transporting carrier's corporate name and any other name under which the service is held out to the public (§ 257.5(a)). The rule also requires air carriers and ticket agents to disclose this information orally to prospective passengers before booking transportation (§ 257.5(b)) and then to provide this information in a written notice once a consumer has booked a flight involving a code-share arrangement or a long-term wet lease (§ 257.5(c)). The Change-of-Gauge rule (14 CFR part 258) has comparable requirements for service with one flight number that requires a change of aircraft en route (§ 258.5). For many if not most air carriers and for all ticket agents, the ability to comply fully with the above requirements hinges on the CRSs' capability both to display all of the relevant information and to print it as the required written notice.

The rules were scheduled to take effect on July 13. Beginning in late April, we received several petitions

[1] As used in this discussion, the term "air carriers" means both U.S. carriers and foreign carriers.

from air carriers and trade associations asking that we delay the rules' effective date. Most petitioners based their requests on the CRSs' inability to accomplish all necessary reprogramming by July 13 due to two factors: one, their having initially underestimated the magnitude of this task, and two, their needing now to devote the bulk of their information systems resources to anticipating and avoiding problems during the transition to the year 2000 ("Y2K"). Most petitioners asked that both rules be made effective March 15, 2000. The United States Tour Operators Association, Inc. ("USTOA"), which said that its members cannot begin to reprogram their own "front-end information systems" until after the CRSs are reprogrammed, requested an additional grace period for its members of six months.

While recognizing that the information systems used by the air transportation industry must be prepared to continue functioning normally through the turn of the year, we also recognized that the need for effective disclosure of code-share service, long-term wet-lease service, and change-of-gauge service has been pressing and is likely to increase as air carriers' relationships and operations grow ever more complex. Balancing these two concerns, in a Final Rule and Notice issued July 9, 1999 (see 64 FR 38111 (July 15, 1999), we delayed the effective date of both rules until August 25; we proposed that compliance with those portions of the new rules that codify existing requirements and those portions with which air carriers and ticket agents can comply without awaiting CRS reprogramming be mandatory as of August 25, and we proposed that compliance with those portions of the new rules with which air carriers and ticket agents cannot comply until CRS reprogramming is completed be mandatory as of March 15, 2000, as requested. We also proposed to refrain as a matter of discretion from enforcing both rules in their entirety against USTOA's members until September 15, 2000. We gave interested parties until July 30 to comment on our proposed disposition.

The sections of Part 257 for which we proposed to make compliance mandatory as of August 25 because carriers and ticket agents can comply with them without further CRS reprogramming are the following:

Sec.
257.1 Purpose.
257.2 Applicability.
257.3 Definitions.
257.4 Unfair and Deceptive Practice.
257.5 Notice requirement.
(b) Oral notice to prospective consumers (in part): oral notice before booking transportation involving a code-share arrangement (1) of the fact that the selling carrier is not the transporting carrier and (2) of the transporting carrier's identity (as shown by its two-letter designator code in CRS displays).
(d) Advertising.

We proposed that compliance with the following sections of Part 258 be mandatory as of August 25:

Sec.
258.1 Purpose.
258.2 Applicability.
258.3 Definitions.
258.4 Unfair and Deceptive Practice.
258.5 Notice requirement.
(a) Notice in schedules.
(b) Oral notice to prospective consumers.

The sections of Part 257 for which we proposed to make compliance mandatory as of March 15, 2000, because carriers and ticket agents cannot comply with them without further CRS reprogramming are the following:

Section 257.5 Notice requirement.
(a) Notice in schedules.
(b) Oral notice to prospective consumers (in part): the remaining elements of this section—*i.e.* (1) identification of the transporting carrier in code-share arrangements by its corporate name and any other name under which the service is held out to the public and (2) all required disclosures for long-term wet leases.
(c) Written notice.

We proposed that compliance with the following section of Part 258 be mandatory as of March 15, 2000:

Section 258.5 Notice requirement.
(c) Written notice.

Disposition of Comments

We received comments from the Air Transport Association of America, Inc. ("ATA"), Amadeus Global Travel Distribution, S.A., the Regional Airline Association ("RAA"), and the following air carriers: Aeropostal Alas de Venezuela, C. por A., Air New Zealand Limited, American Eagle Airlines, Inc. and Executive Airlines, Inc. d/b/a American Eagle, Continental Airlines, Delta Air Lines, Qantas Airways Limited, and US Airways, Inc. ATA, Amadeus, RAA, Continental, Delta, and US Airways support the Department's approach. Aeropostal asks that we delay the compliance date of the requirement that print advertisements disclose long-term wet leases (§ 257.5(d)) until March 15, 2000. Air New Zealand and Qantas ask that we similarly delay the compliance date of any requirement that cannot be met until carriers reprogram their own internal reservations systems. American Eagle and Executive state that they will not need the waiver they requested earlier and were granted in the notice (see 64 FR 38111 at 38112 (July 15, 1999)) if the March 15, 2000, compliance date is adopted as proposed. Finally, US Airways requests clarification of the disclosure requirement for print advertisements (§ 257.5(d)).

Aeropostal, the flag carrier of Venezuela, states that it is only permitted to provide transportation between Venezuela and the United States by means of a wet lease arrangement or a code-sharing arrangement with an authorized carrier from another country. All of its U.S.-Venezuela service is therefore subject to the Code-Share Rule. If the rule's advertising requirement takes effect before March 15, 2000, Aeropostal maintains, the discrepancy between the detailed disclosure in its print advertisements and the more limited information available to travel agents through their CRSs will cause confusion for consumers who call travel agents and will result in lost business. Aeropostal seeks a delay in the advertising requirement's compliance date in order that consumers and travel agents will be working with the same information.

We will deny Aeropostal's request. The information its advertisements will provide on the nature of its services and the identity of the transporting carrier is critical to consumers' ability both to choose intelligently among transportation options and to avoid confusion during their journeys. As § 257.4 of the Code-Share rule states, holding out or selling code-share or long-term wet-lease services without making the required disclosures is an unfair or deceptive practice or an unfair method of competition in violation of 49 U.S.C. 41712. The public interest thus requires that we not delay the effective date of any provision that does not entail CRS reprogramming. Furthermore, we do not share Aeropostal's concern that travel agents will not be able to field consumers' questions about Aeropostal's services. As experienced professionals, travel agents are familiar with industry practices and can be expected to know enough about wet leases and how to find details on particular wet-lease services to explain them to consumers without having the information on their CRS screens. Code-share services are already listed in CRSs with the transporting carrier identified by its designator code: all that the Code-Share Rule adds to existing requirements is to specify that carriers must disclose both the transporting carrier's corporate

name and any other name under which the service is held out to the public.

Air New Zealand and Qantas raise an issue that we did not consider when we issued our July 9 proposal. The Code-Share and Change-of-Gauge Rules apply to air carriers not only in their capacity as providers of air transportation and sellers of their own services but also in their capacity as sellers of the services of other air carriers. In the latter capacity, they are serving the function of a ticket agent. Any carrier that uses a CRS governed by 14 CFR part 255 as its internal CRS has the same information available to it as CRSs' travel agent subscribers have and is thus in a position to comply now with those parts of the new rules' oral disclosure requirements that do not require CRS reprogramming. In particular, such a carrier has the capability of informing a passenger before booking transportation that another carrier's service is a code-share service and naming the transporting carrier. It likewise has the capability of informing a passenger before booking transportation that another carrier's service entails a change of aircraft en route. Air New Zealand and Qantas, however, are not such carriers. Each of them has an internal reservations system that is not a CRS governed by 14 CFR part 255, and the only code-share or change-of-gauge services that these systems currently display as such are those of Air New Zealand and Qantas themselves, respectively. In order to comply with the new rules' oral and written notice requirements, both carriers will need to reprogram their internal reservations systems, which they will not be able to do by August 25. They therefore request that the compliance date of § 257.5(b) and § 258.5(b) be delayed for carriers situated as they are until March 15, 2000.

We will accommodate Air New Zealand, Qantas, and any similarly situated carrier in the same way that we are accommodating USTOA: rather than complicate matters by codifying different compliance dates for different classes of sellers of air transportation, we will simply refrain as a matter of discretion from enforcing § 257.5(b) and § 258.5(b) against carriers whose internal reservations systems do not display the code-share and change-of-gauge services of other carriers for their sales of such services prior to March 15, 2000. This approach is fair to the carriers and should not affect consumers to any significant degree. Air New Zealand estimates that only approximately 0.0135 percent of the bookings on its internal reservations system are made in the U.S. for code-share flights between third-party carriers. The carrier estimates that the level of its third-party carrier change-of-gauge bookings, more difficult to quantify, is even lower.

Qantas raises another issue: it seeks assurance that our decision to delay the compliance date of § 257.5(a), the requirement concerning notice in schedules of code-share and long-term wet-lease arrangements, to March 15, 2000, applies to all information whose inclusion depends on reprogramming carriers' internal reservations systems. The carrier also asks us to delay until March the compliance date of § 258.5(a), the parallel requirement for change-of-gauge service, which we tentatively decided should be August 25. Qantas's request reflects a misunderstanding of the rules. As used in § 257.5(a) and § 258.5(a), the term "computer reservations system" means a CRS governed by 14 CFR part 255; it does not mean carriers' internal reservations systems. Carriers offering change-of-gauge service are already required to indicate the change of aircraft in their CRS listings, so no delay in the compliance date of § 258.5(a) is warranted. We are delaying the compliance date of § 257.5(a)—in its entirety—because it requires carriers to list new information in CRSs and because the CRSs cannot display this information until they are reprogrammed.

US Airways requests clarification of the Code-Share Rule's advertising requirement (§ 257.5(d)). With code-sharing relationships that involve 9 "US Airways Express" carriers, some 2,500 daily US Airways Express departures, and 170 airports, US Airways seeks a means of implementing this requirement that presents the relevant information without confusing its customers. The carrier states that it frequently lists services for multiple city-pairs in one advertisement as a cost-effective, competitive means of informing the public of low fares. While such an advertisement serves primarily to promote US Airways' own jet service, in some cases, the advertised fare in a city-pair may be available in addition on another routing operated partly or entirely by a US Airways Express carrier, and some travelers may prefer this latter service. Under these circumstances, US Airways plans to use the following language in its advertisements in reasonably-sized print (*i.e.*, not in fine-print fare conditions):

> These fares are available on US Airways. Depending upon your travel needs, alternative routings may be available at the same fares, with all or part of the service on regional aircraft operated by US Airways Express Carriers Allegheny, Air Midwest, CCAIR, Chautauqua, CommutAir, Mesa, Piedmont, PSA or Trans States Airlines. Call your travel consultant for details.

US Airways maintains that in the context of the new rules' other requirements, the above language will give consumers "complete, concise, readable, and accurate information about their air transportation options."

In the circumstances outlined by US Airways, the language it proposes will satisfy the Code-Share Rule's requirements for print advertisements. The treatment of § 257.5(d) in the rule's preamble (see 64 FR 12838 at 12848 (March 15, 1999)) might literally be interpreted as precluding US Airways' approach and requiring instead that the carrier at least use symbols for each individual city-pair to identify all possible transporting carriers and combinations of carriers. We believe, however, that in these particular circumstances, such an advertisement would be needlessly complex and would cause consumers undue confusion. Therefore, for an advertisement in which the advertising carrier offers service in its own right in every city-pair listed as well as code-share service in one or more of these city-pairs, the carrier may comply with § 257.5(d) by including the language proposed by US Airways (with the appropriate carriers' names, of course), or equivalent language,[2] in reasonably-sized print. For an advertisement in which the advertising carrier does not offer service in its own right in every city-pair listed, however, the rule requires that the transporting carrier(s) be specified for each city-pair.

In closing, we once again encourage the CRSs and the carriers to complete their reprogramming as quickly as possible, and we encourage any affected parties that can comply with the Code-Share Rule and the Change-of-Gauge Rule in their entirety before they become effective in their entirety to do so.

Regulatory Analyses and Notices

The Department has determined that this action is not an economically significant regulatory action under Executive Order 12866 or the Department's Regulatory Policies and Procedures, and it has not been reviewed by the Office of Management and Budget. This rule is significant under the Department's Regulatory Policies and Procedures because of congressional and public interest. The rule does not impose unfunded mandates or requirements that will have any effect on the quality of the human environment. A summary of the regulatory analyses of the rules whose effective date is being extended here was published at 64 FR 12850–12851 and 12859, March 15, 1999. Also published there were discussions of the rules' effects on small businesses and their Federalism and Paperwork Reduction Act implications. Apart from the Y2K implications recently brought to light and addressed above and in the July 9 proposal, the determinations made previously are not significantly affected by the limited extensions of the effective date made here.

[2] Carriers may ask our Office of Aviation Enforcement and Proceedings to review proposed advertisements in order to make certain that any equivalent language complies with the advertising requirement in both letter and spirit.

List of Subjects in 14 CFR Parts 257 and 258

Air carriers, Foreign air carriers, Ticket agents, and Consumer protection.

For the reasons set forth in the preamble, the Department amends Title 14, Chapter II, Subchapter A, Parts 257 and 258 as follows:

PART 257—DISCLOSURE OF CODE-SHARING ARRANGEMENTS AND LONG-TERM WET LEASES

1. The authority citation for Part 257 continues to read as follows:

Authority: 49 U.S.C. 40113(a) and 41712.

2. Section 257.6 is added to read as follows:

§ 257.6 Effective and compliance dates.

(a) This Part is effective as of August 25, 1999.

(b) Compliance with the following sections is mandatory as of August 25, 1999:

(1) § 257.1, § 257.2, § 257.3, § 257.4, § 257.5(d), and § 257.6.

(2) § 257.5(b) to the extent that it requires sellers of air transportation to give consumers oral notice before booking transportation involving a code-share arrangement

(i) Of the fact that the selling carrier is not the transporting carrier and

(ii) Of the transporting carrier's identity (as shown by its two-letter designator code in CRS displays).

(c) Compliance with the following sections is mandatory as of March 15, 2000:

(1) § 257.5(a) and § 257.5(c) in their entirety.

(2) § 257.5(b) insofar as it requires sellers of air transportation to give consumers

(i) Oral notice before booking transportation involving a code-share arrangement of the transporting carrier's corporate name and any other name under which the service is held out to the public and

(ii) The same disclosures for long-term wet leases as for code-sharing arrangements.

PART 258—DISCLOSURE OF CHANGE-OF-GAUGE SERVICES

3. The authority citation for Part 258 continues to read:

Authority: 49 U.S.C. 40113(a) and 41712.

4. Section 258.6 is added to read as follows:

§ 258.6 Effective and compliance dates.

(a) This Part is effective as of August 25, 1999.

(b) Compliance with the following sections is mandatory as of August 25, 1999: § 258.1, § 258.2, § 258.3, § 258.4, § 258.5(a), § 258.5(b), and § 258.6.

(c) Compliance with § 258.5(c) is mandatory as of March 15, 2000.

Issued in Washington, DC on August 18, 1999, under authority delegated by 49 CFR 1.56a(h)2.

A. Bradley Mims,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 99–21998 Filed 8–25–99; 8:45 am]

BILLING CODE 4910–62–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 239, 270, 274 and 275

[Release Nos. 33–7728, IC–23958, IA–1815; File No. S7–25–95]

RIN 3235–AG27

Personal Investment Activities of Investment Company Personnel

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is adopting amendments to the rule under the Investment Company Act that addresses conflicts of interest that arise from personal trading activities of investment company personnel. The amendments will increase the oversight role of an investment company's board of directors with respect to codes of ethics, improve the manner in which investment company personnel report their personal securities holdings, and require prior approval of investments in initial public offerings and certain limited offerings by certain investment company personnel (including portfolio managers). Related amendments to disclosure forms will require investment companies to provide information about their policies concerning personal investment activities in their registration statements. The rule amendments are designed to enhance the board of directors' oversight of the policies governing personal transactions in securities by investment company personnel, help compliance personnel and the Commission's examinations staff in monitoring potential conflicts of interest and detecting potentially abusive activities, and make information about personal investment policies available to the public.

DATES: *Effective Date:* The rule amendments will become effective October 29, 1999. *Compliance Date:* Section IV of this release contains information on compliance dates.

FOR FURTHER INFORMATION CONTACT: Penelope W. Saltzman, Senior Counsel, or C. Hunter Jones, Assistant Director, Office of Regulatory Policy, Division of Investment Management, at (202) 942–0690, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549–0506.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to rule 17j–1 [17 CFR 270.17j–1] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the "Investment Company Act" or the "Act"), rule 204–2 [17 CFR 275.204–2] under the Investment Advisers Act of 1940 [15 U.S.C. 80b] (the "Advisers Act"), Forms N–1A [17 CFR 239.15A, 274.11A], N–2 [17 CFR 239.14, 274.11a–1], N–3 [17 CFR 239.17a, 274.11b] and N–5 [17 CFR 239.24, 274.5] under the Investment Company Act and the Securities Act of 1933 [15 U.S.C. 77a–77aa] (the "Securities Act"), and Form N–8B–2 [17 CFR 274.12] under the Investment Company Act.[1]

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[1] Unless otherwise noted, all references to "amended rule 17j–1," "rule 17j–1, as amended," or any paragraph of the rule will be to 17 CFR 270.17j–1, as amended by this release, and all references to "amended rule 204–2," "rule 204–2, as amended," or any paragraph of the rule will be to 17 CFR 275.204–2, as amended by this release.

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I. Executive Summary

The Commission is adopting amendments to rule 17j–1 under the Investment Company Act. Rule 17j–1 addresses conflicts of interest between registered investment company ("fund") personnel (such as portfolio managers) and their funds that may arise when these persons buy or sell securities for their own accounts ("personal investment activities").

Rule 17j–1 prohibits fraudulent, deceptive or manipulative acts by fund personnel in connection with their personal transactions in securities held or to be acquired by the fund. The rule also contains requirements that are designed to prevent fraud, including (i) requiring funds and their investment advisers and principal underwriters (collectively, "rule 17j–1 organizations") to adopt a code of ethics ("code") containing provisions reasonably necessary to prevent fraudulent, deceptive or manipulative acts and (ii) requiring certain persons to report their personal securities transactions to their rule 17j–1 organization.

The amendments to rule 17j–1 are designed to improve the regulation of personal investment activities in two respects. First, the amendments enhance fund directors' oversight of personal investment activities by requiring that a fund's board, including a majority of independent directors on the board, approve the fund's code and the code of any investment adviser or principal underwriter of the fund. Second, the amendments assist the management of rule 17j–1 organizations in monitoring compliance with the rule. The amendments require initial and annual holdings reports from access persons, as well as review of reports on personal trading by compliance personnel. The amendments also require the fund or its investment adviser to review and pre-approve any investment in an initial public offering ("IPO") or a limited offering (such as a private placement) by personnel who participate in managing the fund's portfolio ("investment personnel"). In addition, amendments to the disclosure forms under the Securities Act of 1933 and the Investment Company Act will make information about a rule 17j–1 organization's policies concerning personal investment activities available to the public in the fund's registration statement.

II. Background

Section 17(j) of the Investment Company Act prohibits any affiliated person of a rule 17j–1 organization from engaging in fraudulent trading activities that violate rules adopted by the Commission.[2] Section 17(j) authorizes the Commission to adopt rules to define or prevent fraudulent activities. Under this authority, the Commission adopted rule 17j–1 in 1980.[3] Rule 17j–1 prohibits fund personnel from engaging in fraud in connection with personal transactions in securities held or to be acquired by the fund.[4] In addition, the rule requires every rule 17j–1 organization to adopt a code of ethics designed to prevent "access persons"[5] from engaging in fraud,[6] and requires that the organization use reasonable diligence and institute procedures reasonably necessary to prevent violations of its code of ethics.[7] The rule also requires an access person to report personal securities transactions to his or her rule 17j–1 organization at least quarterly.[8]

The Commission issued a release in 1995 proposing amendments to rule 17j–1 ("Proposing Release").[9] The proposed amendments were designed to: (i) increase the oversight role of a fund's board of directors with respect to the codes of ethics adopted by the fund, its investment adviser, and principal underwriter; (ii) require that rule 17j–1 organizations receive information about the personal securities holdings of their employees; and (iii) improve disclosure to investors concerning policies on personal investment activities.

We received fourteen comment letters, which generally expressed strong support for the proposed amendments to rule 17j–1.[10] In addition, one commenter urged us to impose minimum guidelines that all codes of ethics must contain in order to address conflicts of interest. Two commenters stated that the current rule should not be revised. A number of commenters addressed particular issues raised by the proposals but did not express an overall view on the amendments. The comment letters have been very helpful to us in formulating the final rule amendments, which are described below.[11]

[2] 15 U.S.C. 80a–17(j). An "affiliated person" of a rule 17j–1 organization includes: (i) any officer, director, partner, copartner, or employee of the rule 17j–1 organization; (ii) any person directly or indirectly controlling, controlled by, or under common control with the rule 17j–1 organization; (iii) any person owning five percent of the rule 17j–1 organization's voting securities; and (iv) any person in which the rule 17j–1 organization owns five percent or more of the voting securities. *See* Investment Company Act section 2(a)(3) [15 U.S.C. 80a–2(a)(3)].

[3] Prevention of Certain Unlawful Activities With Respect To Registered Investment Companies, Investment Company Act Release No. 11421 (Oct. 31, 1980) [45 FR 73915 (Nov. 7, 1980)] ("1980 Adopting Release").

[4] Amended rule 17j–1(b).

[5] Rule 17j–1 defines "access person" to include: (i) any director, officer, or general partner of a fund or of a fund's investment adviser, or any employee of a fund or of a fund's investment adviser who, in connection with his or her regular functions or duties, participates in the selection of a fund's portfolio securities or who has access to information regarding a fund's future purchases or sales of portfolio securities; or (ii) any director, officer, or general partner of a principal underwriter who, in the ordinary course of business, makes, participates in or obtains information regarding, the purchase or sale of securities for the fund for which the principal underwriter acts, or whose functions or duties in the ordinary course of business relate to the making of any recommendation to the fund regarding the purchase or sale of securities. Amended rule 17j–1(a)(1). The term "principal underwriter" is defined in section 2(a)(29) of the Act [15 U.S.C. 80a–2(a)(29)].

[6] Amended rule 17j–1(c)(1)(i).

[7] Amended rule 17j–1(c)(2)(i).

[8] Amended rule 17j–1(d)(1)(ii). The rule 17j–1 organization also must keep records of violations of its code of ethics and certain other records. *See* amended rule 17j–1(f).

[9] Personal Investment Activities of Investment Company Personnel and Codes of Ethics of Investment Companies and their Investment Advisers and Principal Underwriters, Investment Company Act Release No. 21341 (Sept. 8, 1995) [60 FR 47844 (Sept. 14, 1995)]. The Proposing Release was preceded by a Commission staff study of rule 17j–1 and an industry advisory group report. Division of Investment Management, SEC, Personal Investment Activities of Investment Company Personnel (1994) ("PIA Report"); Investment Company Institute, Report of the Advisory Group on Personal Investing (1994) ("ICI Advisory Group Report"). The Investment Company Institute is an association of funds representing approximately 95 percent of total fund assets under management in the United States.

[10] The comment letters and a summary of the comments prepared by Commission staff are available to the public in File No. S7–25–95. The Commission received additional comments on the rule proposal after the summary of comments was completed on September 11, 1997. These comments also are available to the public in File No. S7–25–95.

[11] In addition to the amendments described below, the amendments reorganize and add headings to the text of rule 17j–1 and replace the term "security" with "covered security" to make the rule easier to understand and use. The Commission also has changed the title of the rule from "Certain unlawful acts, practices, or courses of business and requirements relating to codes of ethics with respect to registered investment companies" to "Personal investment activities of investment company personnel" to reflect more clearly the substance of the rule.

III. Discussion

A. Codes of Ethics

Codes of ethics are an important part of a rule 17j–1 organization's efforts to prevent fraud resulting from personal trading in securities by its employees. When the Commission adopted rule 17j–1 in 1980, it stated that the "introduction and tailoring of ethical restraints on the behavior of persons associated with an investment company can best be left in the first instance to the directors of the investment company."[12] Comments on the rule proposals confirmed that a "one-size-fits-all" approach to these codes would not be more effective in preventing fraudulent personal trading practices, and would be unnecessarily burdensome, particularly for smaller rule 17j–1 organizations.

Although rule 17j–1 does not specify the provisions that a code of ethics must contain, funds can take several steps to anticipate and avoid problems resulting from conflicts of interest. A 1994 report by an advisory group of the Investment Company Institute ("ICI Advisory Group Report") recommended, among other things, that every code of ethics: (i) prohibit investment personnel from participating in IPOs; (ii) prohibit securities transactions during certain "blackout periods";[13] and (iii) prohibit short-term trading profits.[14] A 1994 Commission staff report noted that the recommendations in the ICI Advisory Committee Report provide important guidance for a rule 17j–1 organization in preparing its own code of ethics.[15] The Commission believes that a rule 17j–1 organization should review the recommendations in the ICI Advisory Group Report and determine whether the specific restrictions and prohibitions recommended by the report are appropriate for inclusion in its code of ethics.

B. Role of Fund Boards

1. Approval of Code of Ethics

Rule 17j–1 requires each rule 17j–1 organization to adopt a code of ethics, but does not currently specify a role for a fund's board of directors with respect to the codes.[16] We proposed that a majority of a fund's board, including a majority of independent directors,[17] be required to approve the fund's code and review the codes of any investment adviser or principal underwriter to the fund.

Commenters generally supported increasing board oversight of codes of ethics, and we are adopting the provision, with certain modifications.[18] As suggested by one commenter, the amended rule requires that instead of *reviewing* the code of an investment adviser and principal underwriter, the board must *approve* the code and any material changes.[19] In addition, the Commission is clarifying that the board must approve the code when the fund initially engages the investment adviser or principal underwriter (rather than upon each contract renewal). If an investment adviser or principal underwriter makes a material change to its code of ethics, the board has six months in which to approve the material change.[20]

Under amended rule 17j–1, a fund's board must base its approval of a code of ethics, or a material change to a code of ethics, upon a determination that the code contains provisions reasonably necessary to prevent access persons from violating the anti-fraud provision of the rule.[21] The Commission is not, as suggested by one commenter, adopting specific detailed standards for board approval of a code of ethics. We believe that the relevant factors used to approve a code of ethics will vary from fund to fund. Nevertheless, we continue to believe that a basic issue for each board of directors is whether the code should permit personal trading by personnel of a rule 17j–1 organization.[22] This issue is relevant for each organization covered by the rule and is too important for a board to ignore.

2. Annual Issues and Certification Report

The board's involvement in the personal investment policies applicable to the fund should not end after the board's initial approval of a code. Continued oversight of the personal investment policies applicable to the fund is in the interest of shareholders because it subjects these policies to independent, objective analysis by the "watchdog" for fund shareholders.[23] Therefore, we are adopting, as proposed, amendments that require each rule 17j–1 organization to report periodically to the board on issues raised under its code of ethics. Under the amended rule, the management of a rule 17j–1 organization, at least once a year, must provide the fund's board a written report[24] that (i) describes issues that arose during the previous year under the code of ethics or procedures applicable to the rule 17j–1 organization, including, but not limited to,

[12] *See* 1980 Adopting Release, *supra* note 3, at text following n.2.

[13] Blackout period restrictions generally prohibit transactions by fund personnel in a security during a certain period of time before and after the fund trades in that security.

[14] ICI Advisory Group Report, *supra* note 9, at 31–42. The report also recommended that every code of ethics require prior approval of any acquisition of securities by investment personnel in a private placement and prohibit investment personnel from serving on the boards of publicly traded companies without prior authorization. *Id.* In order to implement these restrictions effectively, the report recommended that fund codes of ethics, among other things, require all access persons to: (i) "preclear" personal securities investments; (ii) direct their brokers to provide copies of confirmations of all personal securities transactions and periodic statements of all securities accounts; and (iii) certify annually that they have read and understand the code of ethics, and that they have complied with the requirements of the code. *Id.* at 42–49.

[15] *See* PIA Report, *supra* note 9, at 31–32.

[16] All references in this release to boards of directors include boards of trustees for funds organized as business trusts. *See* Investment Company Act section 2(a)(12) [15 U.S.C. 80a–2(a)(12)] (definition of "director" for purposes of the Investment Company Act).

[17] As used in this release, the term "independent directors" means directors who are not "interested persons" of the fund under the Investment Company Act. *See* Investment Company Act section 2(a)(19) [15 U.S.C. 80a–2(a)(19)] (definition of "interested person" for purposes of the Investment Company Act).

[18] Amended rule 17j–1(c)(1)(ii).

[19] *Id.* This change should not affect the substance of board action because, under the proposal, the same analysis would have been required by the board when it reviewed the code of an investment adviser or principal underwriter. *See* Proposing Release, *supra* note 9, at n.17 and accompanying text.

[20] Amended rule 17j–1(c)(1)(ii). Funds in a fund complex often have different fiscal year periods and, as a result, different schedules for meetings of their boards. The amendments to rule 17j–1 permit fund boards six months in which to approve material changes to codes in order to avoid requiring all funds in a fund complex to approve simultaneously a material change in their investment adviser's or principal underwriter's code of ethics. *Id.*

[21] The codes of ethics of some rule 17j–1 organizations only recite general principles, and the procedures (rather than the codes) of these organizations contain the specific restrictions, prohibitions, or requirements concerning an access person's personal investment activities. Under amended rule 17j–1, the board must approve a code based on its determination that the *code* contains provisions reasonably necessary to prevent access persons from violating the anti-fraud provisions of the rule. If a board can make this determination only if it takes into consideration the procedures, then the code must incorporate, or the board must explicitly approve, those procedures, as well as any subsequent material changes to those procedures.

[22] *See* Proposing Release, *supra* note 9, at text preceding n.18.

[23] *See* Division of Investment Management, SEC, Protecting Investors: A Half Century of Investment Company Regulation 253, 255–56 (1992); PIA Report, *supra* note 9, at 47.

[24] The proposed amendments did not specify the method by which the management of a rule 17j–1 organization should provide the report to the fund's board. Two commenters questioned whether the reports could be made orally. The Commission believes that the issues and certification report is important to board oversight of personal investment policies and will best serve the board in written form. We have therefore clarified in the amended rule that the management of each rule 17j–1 organization must furnish a *written* report to the fund board. *See* amended rule 17j–1(c)(2)(ii).

information about material code or procedure violations and sanctions imposed in response to those material violations[25] and (ii) certifies to the fund's board that the rule 17j–1 organization has adopted procedures reasonably necessary to prevent its access persons from violating its code of ethics.[26]

The issues and certification report is designed to give the board an opportunity to evaluate the effectiveness of codes of ethics and procedures and the manner in which they have been implemented. We expect a fund's board to examine the report carefully, and thus the amended rule requires that the board "consider" the report.[27] Upon receipt and consideration of a report, a fund board may determine that it is necessary to amend the fund's code or procedures, or to suggest to an investment adviser or principal underwriter that it consider amending its code or procedures.[28]

3. Unit Investment Trusts

Rule 17j–1 currently applies to unit investment trusts ("UITs") and requires a UIT and its principal underwriter to adopt codes of ethics.[29] Because UITs do not have boards of directors, the Commission proposed to require that the principal underwriter or depositor for a UIT approve the codes of ethics of the UIT and its principal underwriter or depositor, and be responsible for ensuring that the code of ethics applicable to the UIT contains procedures reasonably necessary to prevent an access person from violating rule 17j–1 and the code.[30]

Commenters generally accepted the proposed changes for UITs, which the Commission is adopting substantially as proposed.[31] If a UIT has more than one principal underwriter or depositor, the principal underwriters and depositors may designate a single principal underwriter or depositor to be responsible for approving the UIT's code of ethics and any material changes to the code. The designated principal underwriter or depositor, however, would have to consent in writing to this arrangement.[32]

C. Reports by Access Persons

1. Initial Holdings Report

Rule 17j–1 currently requires an access person to report personal securities transactions to his or her rule 17j–1 organization at least quarterly ("quarterly transaction reports") but does not require a complete report of all securities holdings that could create a conflict of interest with the fund. In the Proposing Release, the Commission expressed concern that a rule 17j–1 organization may not be able to monitor effectively potential conflicts of interest unless the rule 17j–1 organization knows the identity of *all* securities held by the access person that could present a conflict, including securities acquired before the person became an access person.[33] Without knowledge of all those securities, for example, it would be difficult for a fund to monitor whether the access person is making trading decisions for the fund based on the securities that the access person holds in his or her own portfolio.

To improve the information that a rule 17j–1 organization currently receives under the rule, the Commission proposed to require that each access person provide an initial holdings report to its rule 17j–1 organization listing all securities beneficially owned by the access person no later than 10 days after he or she becomes an access person. We are adopting this provision substantially as proposed.[34]

Commenters generally supported the addition of an initial holdings report requirement, although some urged that it be limited to persons who participate in fund portfolio management.[35] The Commission has decided not to narrow the initial holdings report requirement as suggested by these commenters. These reports are not burdensome to file, and other access persons may be called upon from time to time to participate in fund investment decision-making that may give rise to a conflict because of these persons' securities holdings. The initial holdings report (updated by transaction reports and annual holdings reports described below) will allow a rule 17j–1 organization to better monitor and address these conflicts.[36]

2. Annual Holdings Report

In addition to the initial holdings report and quarterly transaction reports, the Commission is amending rule 17j–1 to require each access person to file with his or her rule 17j–1 organization an annual holdings report.[37] In the Proposing Release, the Commission asked for comment on (but did not propose) an annual holdings report.[38] Commenters differed on the issue. We have decided to require the additional report because of our concern that, without the report, neither the Commission's examinations staff nor a rule 17j–1 organization would be able to understand the full nature of an access person's current securities holdings without sorting through, in some cases, many years of transaction reports.[39] Thus, requiring an annual holdings report should improve the ability of fund compliance personnel and Commission examiners to detect illegal trading activity by fund personnel.

3. Information Required in Reports

The Commission proposed that an access person be required to report in an initial holdings report *every* security (as defined in rule 17j–1) that the access person beneficially owns, regardless of whether the fund owns, or intends or proposes to acquire, the security.[40] The proposed amendments also would have required an initial holdings report to include the title of the security, the number of shares held, the principal amount of the security and its CUSIP number, and a quarterly transaction report to include the CUSIP number for each security for which a transaction occurred and the date that the access person submitted the report.

We are adopting these requirements with some modifications.[41] The amended rule does not require disclosure of the security's CUSIP number. Commenters asserted that CUSIP numbers often are not readily available to access persons, and that requiring them could present an obstacle to timely filing of reports. The reports do, however, require disclosure of any securities account the access person maintains with a broker, dealer or bank.[42] This information will assist the rule 17j–1 organization and the Commission's compliance staff in evaluating compliance with the rule's reporting requirements.[43]

4. Time for Providing Reports

The Commission proposed that the initial holdings report would be required to be filed within ten days after the individual becomes an access person. Some commenters recommended lengthening this period to twenty or thirty days, arguing that a ten-day period may not allow sufficient time for access persons to gather and provide the required information to their rule 17j–1 organization. One commenter suggested that the ten-day period could be *shortened* for an initial holdings report by a portfolio manager.

The Commission notes that quarterly transaction reports under existing rule 17j–1 are required to be submitted no later than ten days after the end of the calendar quarter. This time period does not appear to be unreasonable, and commenters did not argue that it has been burdensome. We are adopting this provision as proposed.[44]

5. Review of Reports

Rule 17j–1 currently includes no specific requirement that the quarterly transaction reports required by the rule be reviewed by anyone in the rule 17j–1 organization. In the Proposing Release, the Commission explained that the purposes of the rule will be served only if the reports are reviewed to detect conflicts of interest and abusive practices.[45] The Commission therefore proposed to require that the procedures instituted by each rule 17j–1 organization include procedures to review all securities transaction and holdings reports required by rule 17j–1.

The Commission is amending rule 17j–1 to require the review of all securities transaction and holdings reports. Under the amended rule, the procedures instituted by a rule 17j–1 organization to prevent a violation of a code must include procedures requiring that: (i) appropriate management or compliance personnel of the rule 17j–1 organization review transaction and holdings reports (both initial and annual reports) submitted by access persons; and (ii) the rule 17j–1 organization maintain the names of the persons responsible for reviewing these reports.[46]

D. Preapproval of Investments in IPOs and Private Placements

As discussed above, the Commission did not propose specific restrictions on personal investment activities of fund personnel, but we did ask for comment on the issue.[47] We noted that the ICI Advisory Group Report recommended that all funds prohibit investment personnel from investing in IPOs, require pre-clearance of investments in private placements, and restrict certain other trading practices.[48] Many fund complexes have followed this advice and revised their codes of ethics accordingly.[49] Not all have adopted these ethical restrictions, however, which caused us to consider procedures that would further assist funds and advisers in monitoring conflicts of interest that arise from these particular investment activities.

Most individuals rarely have a chance to invest in IPOs, particularly "hot issue" IPOs,[50] shares of which usually

[25] Amended rule 17j–1(c)(2)(ii)(A). As suggested by two commenters, we are limiting the scope of the annual issues and certification report to *material* violations or matters. Nevertheless, even immaterial individual violations (such as late filings of transaction reports) may collectively suggest material problems with an organization's compliance systems. We therefore would expect the report to include any violations that are material in the aggregate. In addition, the requirement to report on issues under the code of ethics or procedures means that a report also should include significant conflicts of interest that arose involving the personal investment policies of the organization, even if the conflicts have not resulted in a violation of the code. For example, a fund would be required to report to the board if a fund portfolio manager is a director of a company whose securities are held by the fund.

[26] Amended rule 17j–1(c)(2)(ii)(B). Although the amendments require an issues and certification report to be provided to the board only once a year, more frequent reports by the management of a rule 17j–1 organization may be appropriate in certain circumstances, such as when there have been significant violations of a code or procedures, or significant conflicts of interest arising under the code or procedures. The report also may be used as an opportunity to propose changes to the code or to the procedures that must be approved by the board.

[27] Amended rule 17j–1(c)(2)(ii). In considering the report, the board should determine whether any action is required in response to the report.

[28] The board also may determine that the fund, investment adviser or principal underwriter is not appropriately implementing its code and procedures, as required by rule 17j–1, to prevent violations of the organization's code of ethics. *See* amended rule 17j–1(c)(2)(i).

[29] *See* amended rule 17j–1(a)(5) (defining the term "Fund" to include any registered investment company). Unlike other types of funds, a UIT typically does not employ an investment adviser or have a board of directors and has a relatively fixed portfolio of investments. *See* Investment Company Act section 4(2) [15 U.S.C. 80a–4(2)] (definition of "unit investment trust").

[30] *See* Proposing Release, *supra* note 9, at nn.30–31 and accompanying text.

[31] Amended rule 17j–1(c)(1)(iii).

[32] *Id.*

[33] Proposing Release, *supra* note 9, at n.38 and accompanying text.

[34] Amended rule 17j–1(d)(1)(i). In some cases, persons may have been reporting their securities holdings and brokerage accounts to their rule 17j–1 organizations before they become access persons. In such cases, we believe that an access person would satisfy the initial holdings report requirement, *i.e.*, would not have to submit a report, if his or her rule 17j–1 organization maintains a record of the information required to be disclosed in the initial report and the access person confirms in writing (which writing may be electronic) the accuracy of the record within 10 days after becoming an access person.

[35] These commenters suggested limiting an initial holdings report to "investment personnel," as defined in the ICI Advisory Group Report. *See infra* note 48.

[36] Persons who currently are or who become access persons before the effective date of the amendments to rule 17j–1 are not required to file initial holdings reports. *See infra* note 98.

[37] Amended rule 17j–1(d)(1)(iii).

[38] Proposing Release, *supra* note 9, at n.42 and accompanying text. The Commission noted that the ICI Advisory Group Report recommended that access persons file reports listing all of their securities holdings upon commencement of employment *and annually thereafter*. *See* ICI Advisory Group Report, *supra* note 9, at 46.

[39] Using an annual holdings report, a rule 17j–1 organization should better be able to determine the securities holdings of all access persons each year and would not need, for example, to keep a "running count" of the holdings based on the initial holdings report and subsequent quarterly transaction reports. If holdings information were needed, for example, five years after a person becomes an access person, the Commission's examinations staff or a rule 17j–1 organization might have to piece together information from the initial holdings report and as many as 20 quarterly reports. Some rule 17j–1 organizations do, however, maintain a "running count" of their employees' current securities holdings and brokerage accounts. We believe that access persons at these organizations would satisfy their annual holdings report requirement by confirming annually, in writing (which may be electronic), the accuracy of the organization's record of information required to be disclosed in the annual holdings report, and recording the date of the confirmation.

[40] Proposing Release, *supra* note 9, at nn.43–46 and accompanying text. Under current rule 17j–1, the term "security" excludes certain securities, such as U.S. government securities and shares of open-end funds, that do not appear to present the same opportunities for fraudulent trading activities that rule 17j–1 was designed to prevent. *See* current rule 17j–1(e)(5). The amendments to rule 17j–1 change the term to "covered security" and expand the types of securities excluded from the definition. *See* amended rule 17j–1(a)(4) (discussed *infra* in section III.H of this release). The Commission has revised the term in order to avoid any confusion with the term "security" as defined under the Act. *See* Investment Company Act section 2(a)(36) [15 U.S.C. 80a–2(a)(36)].

[41] Amended rule 17j–1(d)(1).

[42] Amended rule 17j–1(d)(1)(i)(B), (ii)(B) and (iii)(B).

[43] This requirement is similar to a recommendation of the ICI Advisory Group Report that the National Association of Securities Dealers ("NASD") adopt a rule to require all broker-dealers to notify a fund when any of the fund's employees open a brokerage account. ICI Advisory Group Report, *supra* note 9, at 44–45.

[44] Amended rule 17j–1(d)(1)(i).

[45] Proposing Release, *supra* note 9, at text following n.47.

[46] Amended rule 17j–1(d)(3) and (f)(1)(D).

[47] Proposing Release, *supra* note 9, at nn.32–34 and accompanying text. Five commenters emphasized that all funds should be given flexibility to determine their own policies and procedures governing personal investment activities. One of these commenters, however, supported specific basic requirements in codes, including restrictions on trading in IPOs and private placement offerings.

[48] *Id.* The report did not define the term "private placement." *See supra* notes 13–14 and accompanying text for a discussion of the additional restrictions recommended in the report. The report defined "investment personnel" to include portfolio managers and employees who provide information and advice to a portfolio manager or who help execute a portfolio manager's decisions, such as securities analysts and traders. ICI Advisory Group Report, *supra* note 9, at 29–30.

[49] ICI, Report to the Division of Investment Management, U.S. Securities and Exchange Commission: Implementation of the Institute's Recommendations on Personal Investing 15–18 (1995) ("ICI Survey"). Approximately 66 percent of the fund complexes with funds that are ICI members (representing approximately 97 percent of ICI member assets under management) responded to the survey. Seventy-two percent of those fund complexes adopted the ban on investment personnel acquiring securities in an IPO. Sixty-nine percent adopted the ban on purchasing securities in private placements without prior approval. Fourteen percent of the fund complexes that responded to the survey adopted recommendations based on their particular circumstances, which in some cases provided for more stringent restrictions than those recommended by the ICI Advisory Group Report. *Id.*

[50] A "hot issue" IPO typically means an IPO in which the securities trade in the aftermarket at a premium over the offering price. *See* Rule IM–2110–1(a)(1) of the NASD Conduct Rules, NASD

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are reserved for institutional investors, or wealthy individual customers with large brokerage accounts.[51] As the ICI Advisory Group Report commented, the opportunity for investment personnel to purchase IPO shares presents a "clear potential for conflict between the interests of the individual and the fund." [52] The purchase of IPO shares by investment personnel may raise questions as to whether the investment is an undisclosed reward for directing fund business to the underwriter or issuer,[53] whether the individual is misappropriating an opportunity that should have been offered to the fund,[54] and whether the individual's future investment decisions for the fund will be based solely on the best interests of the fund's shareholders.[55]

Purchases by investment personnel of securities in private placements or other limited offerings ("private placements") may raise similar conflicts because the opportunity to invest in the private placement may be a reward for past business deals.[56] In some cases, the conflict may occur later when the issuer of the privately placed security is considering making a public offering.[57]

To ensure that the potential conflicts associated with these investments can be addressed before they arise, the amendments we are adopting require that investment personnel obtain approval from their fund or adviser before directly or indirectly acquiring any beneficial ownership in securities in an IPO or private placement.[58] The amendments *do* not prohibit these investments because we recognize that there may be situations in which investment in these offerings does not raise the types of conflicts that the rule is designed to address. In some circumstances, an investment opportunity clearly may be available to investment personnel for reasons *other than* the individual's position with the fund. The fund or adviser therefore could determine that, based on the particular nature of the offering,[59] or the particular facts of the purchase,[60] the investment would create no material conflict. In other circumstances, the investment may raise only potential conflicts from which the fund and its investors can be protected.[61] Because the portfolio manager's fund or investment adviser is in the best position to evaluate whether an investment in an IPO or limited offering creates or may create a conflict of interest, the amendments permit that organization to protect the fund by determining whether to approve the proposed investment.

The Commission expects that a fund or investment adviser, in fulfilling its pre-clearance responsibilities, will assign appropriate compliance personnel to carefully review each request for approval.[62] We also expect that the fund or adviser will use its judgment to distinguish between serious conflicts that must be avoided and those less serious conflicts that the organization can monitor and manage consistent with the protection of the fund and its investors.[63] In addition, in order to further encourage careful monitoring of potential conflicts, amended rule 17j–1 requires funds and advisers to retain a record of the approval of, and rationale supporting, any direct or indirect acquisition by investment personnel of a beneficial interest in securities in an IPO or private placement.[64] These records also should assist compliance personnel and Commission staff in detecting illegal trading activities by fund personnel.

The application of the pre-clearance provision is limited to certain "investment personnel." [65] The term is defined in rule 17j–1 to include portfolio managers and other employees of the fund or its investment adviser who participate in making investment recommendations to the fund, and persons in a control relationship to the fund who obtain information about investment recommendations made to the fund.[66] These persons are involved in investment decisions for the fund and thus have significant opportunities to influence fund decisions that may benefit them personally.

E. Disclosure of Policies Concerning Personal Investment Activities

Rule 17j–1 currently does not require funds to disclose publicly any information about their codes of ethics. The Commission proposed to require that a fund disclose in its registration statement (i) that the fund and its investment adviser and principal underwriter have adopted codes of ethics, (ii) whether these codes permit personnel to invest in securities for their own accounts, and (iii) that the codes are on public file with, and are available from, the Commission.[67] We also proposed to require a fund to file with the Commission all codes of ethics applicable to the fund as an exhibit to its registration statement. Commenters generally did not raise significant objections to these proposals, although some commenters questioned whether the proposed disclosure would be meaningful to investors.[68]

The Commission is adopting the disclosure requirements substantially as proposed, except that the disclosure may be in the Statement of Additional Information ("SAI") rather than in the prospectus.[69] This approach is more consistent with other disclosure rules that govern the type of information that appears in the SAI.[70] We also are requiring that the codes of ethics be filed through the Commission's Electronic Data Gathering, Analysis and Retrieval ("EDGAR") system as an exhibit to the fund's registration statement.[71] Electronic filing will facilitate public access to the codes and permit investors, market professionals and the financial media to obtain information about a fund's policies concerning personal investment activities.

F. Beneficial Ownership

Rule 17j–1 currently states that, for purposes of the rule 17j–1 reporting requirement, beneficial ownership should be interpreted in a manner that is consistent with section 16 of the Exchange Act.[72] In 1991, the Commission adopted revised rule 16a–1 under the Exchange Act, which clarified the meaning of beneficial ownership for purposes of section 16.[73] The Commission is amending rule 17j–1 to incorporate this interpretation.[74] The Commission is making a parallel amendment to rule 204–2 under the Advisers Act to incorporate this interpretation.[75]

G. "Security Held or To Be Acquired" by a Fund

Rule 17j–1 prohibits fraud by certain fund personnel [76] in connection with their purchase or sale of a "security held or to be acquired" by the fund.[77] The Commission proposed to amend the definition of a "security held or to be

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Manual (CCH) 4112 (1999) (introduction to rules on "free-riding" and "withholding").

[51] *See* Kathleen Weiss Hanley, William J. Wilhelm, Jr., *Evidence on the Strategic Allocation of Initial Public Offerings*, 37 Journal of Financial Economics 239 (1995) (suggesting that approximately 67 percent of shares in IPOs are allocated to institutional investors). *See also* Michael Siconolfi, *Underwriters Set Aside IPO Stock for Officials of Potential Customers*, Wall St. J., Nov. 12, 1997, at A1 ("It is no news that underwriters make most of the shares in hot IPOs available not to the little-guy investor but to institutions, such as mutual fund companies and pension funds that provide a lot of trading commissions and other business.").

[52] ICI Advisory Group Report, *supra* note 9, at 32.

[53] *See, e.g., U.S.* v. *Ostrander*, 999 F.2d 27 (2d Cir. 1993) (affirming conviction of portfolio manager, who purchased privately offered warrants of company whose securities she acquired for the fund, for accepting unlawful compensation for fund's purchase of property in violation of the Investment Company Act).

[54] *See, e.g.*, In the Matter of Ronald V. Speaker and Janus Capital Corporation, Investment Company Act Release No. 22461 (Jan. 13, 1997) (investment adviser made $16,000 profit on same day purchase and sale of debentures in which fund could have invested, and failed to disclose transactions to the fund or obtain prior consent of the fund (or a disinterested employee authorized to waive the opportunity on the fund's behalf)).

[55] *See* ICI Advisory Group Report, *supra* note 9, at 32.

[56] *See Ostrander*, *supra* note 53.

[57] A fund portfolio manager who has invested in the private placement may have an opportunity to increase the value of his or her investment by causing the fund to invest in the public offering and contribute to its success. *See* ICI Advisory Group Report, *supra* note 9, at 33–34 (citing John Accola, *Firms, Fund Exec Ties "Normal," Rocky Mountain News, Jan. 18, 1994, at 38A).*

[58] Amended rule 17j–1(e). The rule is not limited to purchases of "covered securities" sold in an IPO or limited offering, but rather applies to purchases of all securities sold in an IPO or limited offering. *See* 15 U.S.C. 80a–2(a)(36) (definition of "security"). The rule generally defines an IPO to include an offering of securities registered with the Commission, the issuer of which, immediately before the registration, was not required to file reports with the Commission. Rule 17j–1(a)(6). This is the same definition used in section 12(f)(1)(G)(i) of the Securities Exchange Act of 1934 (the "Securities Exchange Act") [15 U.S.C. 78*l*(f)(G)(i)]. The definition of "limited offering" under the rule includes private placement offerings that are exempt from registration under section 4(6) of the Securities Act [15 U.S.C. 77d(6)] or under Regulation D [17 CFR 230.501–508], as well as offerings that are not public under section 4(2) of the Securities Act [15 U.S.C. 77d(2)]. Amended rule 17j–1(a)(8).

[59] A portfolio manager, for example, may have an opportunity to invest in an IPO of the fund adviser as a result of his or her service as an employee of the adviser, in an IPO of a mutual insurance company as a result of his or her ownership of a life insurance policy, or in an IPO of a spinoff company as a result of his or her ownership of stock in the company that spins off the issuer. In each case (and other similar cases), a fund or adviser could determine that the portfolio manager's access to the IPO did not result from his or her position with the fund.

[60] For example, a portfolio manager's purchase of privately offered securities issued by a small family business that is unlikely to make a public offering in the future would likely not raise a material conflict if the portfolio manager's fund is prohibited from investing in private placements. Similarly, an investment in an IPO in which all shares are allocated to investors on a non-discriminatory basis may not raise a material conflict. *See* Elizabeth Cochran, *Taking a Seat at the IPO Table*, Wash. Post, Jan. 7, 1999, at E1 (some online firms allocate IPO shares on a "first-come, first-served" basis or on a pro-rata basis to all interested investors); Lisa Bransten and Nick Wingfield, *New Company Aims to Shift IPO Playing Field*, Wall St. J., Feb. 8, 1999, at C1 (one online firm selling IPO shares will use a "Dutch auction" process to set the offering price and to allocate IPO stock to the highest bidding investors).

[61] For example, if a portfolio manager sought approval to invest in a private placement of securities of a business that might make a public offering in the future, the fund or adviser could decide to approve the investment subject to conditions designed to protect investors from potential conflicts. These conditions might require that the portfolio manager disclose his or her investment if the fund subsequently considers investing in the business, and that other investment personnel who have no personal interest in the issuer review any decision the portfolio manager may make regarding the fund's investment in the business. *See* ICI Advisory Group Report, *supra* note 9, at 33.

[62] We expect that funds and advisers will review these proposed investments on a case-by-case basis, except for those circumstances in which advance general approval may be appropriate because it is clear that conflicts are very unlikely to arise due to the nature of the opportunity for investing in the IPO or private placement. *See supra* text accompanying notes 59–60. The fund's inability to invest in the securities would not be a basis for concluding generally that the conflicts are unlikely to arise. *See* text accompanying note 53 *supra*.

[63] Some conflicts of interest must be reported to the fund's board of directors under rule 17j–1. *See supra* note 25; amended rule 17j–1(c)(2)(ii) (annual issues and certification report requirement).

[64] Amended rule 17j–1(f)(2).

[65] In deciding whether to approve securities transactions by investment personnel, the adviser should consider all conflicts that may cause the adviser and its investment personnel to violate their fiduciary obligations to the fund, other funds advised by the adviser, and other clients of the adviser. In the case of a proposed transaction in a security of limited availability, the adviser should consider whether the fund or other clients can invest in the security before approving the transaction. *See* Speaker, *supra* note 54; In the Matter of Kemper Financial Services, Inc. et al., Investment Advisers Act Release No. 1494 (June 6, 1995); In the Matter of Joan Conan, Investment Advisers Act Release No. 1446 (Sept. 30, 1994).

[66] Amended rule 17j–1(a)(7) defines "investment personnel" as: (i) any employee of a fund or its investment adviser (or any company in a control relationship with either) who, in connection with his or her regular functions or duties, makes or participates in making any recommendations regarding the purchase or sale of securities by the fund and (ii) any natural person in a control relationship to the fund or its investment adviser who obtains information concerning recommendations made to the fund regarding the purchase or sale of securities by the fund.

[67] *See* Proposing Release, *supra* note 9, at nn.50–51 and accompanying text.

[68] Two commenters opposed the requirement that a fund disclose whether fund personnel may invest in "securities, including securities that may be purchased or held by the fund" and noted that this phrase could imply that investment by fund personnel in these securities is inherently suspect. We believe this information is important for investors, and, as discussed below, we are adopting this requirement as proposed. Funds are free to provide additional disclosure that personal trading by fund personnel is not inherently unlawful.

[69] The SAI is the second part of Form N–1A, the form used to register open-end funds, of Form N–2, the form used to register closed-end funds, and of Form N–3, the form used to register separate accounts offering variable annuity contracts. The recent amendments to Form N–1A require a fund to send an SAI to requesting investors within three business days of a request. *See* Registration Form Used by Open-End Management Investment Companies, Investment Company Act Release No. 23064 (Mar. 13, 1998) [63 FR 13916 (Mar. 23, 1998)], at text accompanying n.189 ("Amendments to Form N–1A"); Form N–1A [17 CFR 274.11A], Instruction 3 to Item 1(b)(1).

[70] *See* Amendments to Form N–1A, *supra* note 69, at text accompanying n.23 (stating that prospectus disclosure requirements are designed to include "essential information" about the fundamental characteristics and risks of investing in a fund, and to be limited to information "necessary for an average or typical investor to make an investment decision").

[71] Information in the EDGAR system is available through our Internet web site at <http://www.sec.gov>. Registration statements also can be reviewed and copied at the Commission's Public Reference Room in Washington, D.C.

A fund that is not required to have a code of ethics because, for example, it does not invest in covered securities as defined in amended rule 17j–1(a)(4), would not be required to file any code as an exhibit to its registration statement, but should indicate on its exhibit list the reason that it is not filing a code of ethics. *See* Form N–1A, Item 23(p). A fund that invests only in the securities of one other fund (such as a feeder fund in a "master/feeder" fund arrangement) would be required to file the codes of ethics applicable to the fund in which it invests because the feeder fund is a vehicle for investment in the underlying fund. *Id.* A management investment company that invests in the securities of other funds and exercises discretion regarding the funds in which it invests (such as a "fund of funds") would not, however, be required to file the codes of ethics of those other funds.

[72] Current rule 17j–1(c)(1); 15 U.S.C. 78p.

[73] 17 CFR 240.16a–1(a)(2). *See* Ownership Reports and Trading by Officers, Directors and Principal Security Holders, Securities Exchange Act Release No. 28869 (Feb. 8, 1991) [56 FR 7242 (Feb. 21, 1991)]. The rule provides that, for purposes of determining whether a person is the beneficial owner of more than 10 percent of a registered class of equity securities under section 16 of the Securities Exchange Act [15 U.S.C. 78p], ownership should be calculated according to standards of beneficial ownership outlined under section 13(d) of the Securities Exchange Act [15 U.S.C. 78m(d)] and the rules under section 13(d), subject to certain exclusions. 17 CFR 240.16a–1(a)(1). For all other purposes under section 16, beneficial ownership should be based on whether the person has a pecuniary interest in the equity security. 17 CFR 240.16a–1(a)(2).

[74] Amended rule 17j–1(d)(5). The amended rule also clarifies that the definition of beneficial ownership applies to any "covered security" the access person owns or acquires. *Id.* To the extent that the clarification differs from any previous guidance that the staff has given, that guidance is withdrawn. *See* MI Fund, Inc., SEC No-Action Letter (Aug. 18, 1981).

[75] Amended rule 204–2(a)(12)(iii)(B), (13)(iii)(B).

[76] These personnel are "affiliated persons" of a fund or of its investment adviser or principal underwriter. An "affiliated person" of an organization includes any officer, director, partner, copartner, or employee of the organization. *See supra* note 2.

[77] Amended rule 17j–1(b); *see also* section 17(j) [15 U.S.C. 80a–17(j)] (prohibiting violation of Commission rules in connection with purchase or sale of a "security held or to be acquired" by a fund). Under rule 17j–1, a "security held or to be acquired" by a fund includes a security that (i) is held or is being considered for purchase by the fund or its investment adviser for the fund at the time of the transaction, or (ii) was held or was considered for purchase by the fund or its investment adviser for the fund at any time during the 15 days before the transaction. Amended rule 17j–1(a)(10). The effect of this provision is to include a transaction in such a security within the scope of the rule's anti-fraud provision. Rule 17j–1 does not prohibit fund personnel from purchasing or selling these securities unless the transaction would defraud the fund (although codes of ethics may prohibit or limit such transactions). In addition, rule 17j–1 does not limit a fund's ability to purchase or sell a security as a result of transactions by fund personnel. While a transaction by fund personnel in a security that is outside the scope of the rule will not violate section 17(j) or rule 17j–1, such a transaction may nonetheless violate other anti-fraud provisions of the federal securities laws. *See, e.g.*, section 17(a) of the Securities Act [15 U.S.C. 77q(a)], section 10(b) of the Securities Exchange Act [15 U.S.C. 78j(b)], rule 10b–5 [17 CFR 240.10b–5] thereunder, and section 206 of the Advisers Act [15 U.S.C. 80b–6].

acquired" by a fund, to clarify that the securities that are subject to the rule's anti-fraud provision include any option to purchase or sell, and any security that is exchangeable for or convertible into, any security that is held or to be acquired by a fund. As explained in the Proposing Release, a fund insider who purchases or sells an option or convertible security could improperly benefit from that transaction to the same extent as a fund insider who purchases or sells the underlying security.[78] The only two commenters on this issue supported the proposed clarification, and we are adopting it as proposed.[79]

H. Excepted Securities and Funds

Because certain types of securities do not present the opportunity for the type of improper trading activities that rule 17j–1 is designed to prevent, the rule has excepted from its coverage transactions in certain money market fund instruments, certain U.S. Government securities,[80] and securities issued by mutual funds. The Commission proposed to expand the exceptions to cover a broader array of money market instruments, and to exclude from the rule's coverage all money market funds (which are generally limited to investing in money market instruments), as well as their investment advisers and principal underwriters. Commenters supported the amendments, which the Commission is adopting as proposed.[81]

As a result of these exceptions, all funds that are money market funds, or that limit their investments to certain money market instruments, certain U.S. Government securities and securities of other mutual funds, do not need to adopt codes of ethics under rule 17j–1.[82] Access persons of these organizations also would not be required to make holdings or transaction reports to their organization.[83] In addition, access persons of rule 17j–1 organizations that are required to adopt codes of ethics under the rule do not have to file transaction reports concerning transactions in these instruments or report them in their initial or annual holdings reports.[84]

I. Conforming Amendments to Advisers Act Rules

Rule 204–2(a) under the Advisers Act requires each investment adviser to keep records of the personal securities transactions of the adviser and its "advisory representatives."[85] Although the purpose of this requirement is substantially the same as the quarterly transaction reporting requirements of rule 17j–1, the two rules except transactions in different securities from their respective reporting and recordkeeping requirements.[86] The Commission is revising rule 204–2(a), as proposed, to conform its exceptions to those of rule 17j–1.[87] The Commission also is adding an exception to the recordkeeping requirements under rule 204–2(a) to permit an investment adviser not to make certain records under the rule if the information required under rule 204–2(a) would duplicate information contained in a broker trade confirmation or account statement received and kept by the investment adviser.[88]

IV. Effective Date; Compliance Dates

A. Effective Date

The rule amendments the Commission is adopting today will become effective October 29, 1999.

B. Compliance Dates

To permit the individuals and entities that are subject to rule 17j–1 sufficient time to comply with the new provisions adopted today and to avoid conflicts with plans to address Y2K issues, the Commission is providing transition time for certain new requirements.

1. March 1, 2000

No later than March 1, 2000, rule 17j–1 organizations (*i.e.*, funds and their investment advisers and principal underwriters) and their personnel must meet the following requirements:[89]

(i) Each rule 17j–1 organization must have identified access persons and notified them of their reporting obligations;[90]

(ii) Each rule 17j–1 organization must have adopted procedures for management or compliance personnel to review transaction and holdings reports; and[91]

(iii) Each rule 17j–1 organization must have established a record of access persons who are required to make transaction and holdings reports, and of persons who are responsible for reviewing those reports.[92]

2. September 1, 2000

No later than September 1, 2000:

(i) Each fund's board of directors must have approved codes of ethics of the fund, its investment advisers and principal underwriters (which codes may have been revised in response to the rule amendments adopted in this release);[93]

(ii) Each rule 17j–1 organization must have provided the fund's board of directors with the first of its annual issues and certification reports;[94] and

(iii) Each access person must have provided the first of his or her annual holdings reports to his or her rule 17j–1 organization.[95]

3. April 10, 2000

Each quarterly transaction report filed for the calendar quarter ending March 31, 2000 (due April 10, 2000), and for subsequent quarters must include all information required under amended rule 17j–1(d)(1)(ii).[96]

4. Other Compliance Dates

(i) After March 1, 2000, investment personnel may not directly or indirectly acquire any beneficial interest in securities in an IPO or in a private placement without prior approval from the fund or the fund's investment adviser, and the fund and adviser must retain records of the approval and reasons for granting the approval;[97]

(ii) Each person who becomes an access person on or after March 1, 2000 must file his or her initial holdings report with his or her rule 17j–1 organization within 10 days after becoming an access person;[98] and

(iii) In the next post-effective amendment filed by a fund after March 1, 2000, the fund must file copies of codes of ethics of the rule 17j–1 organizations as an exhibit to the registration statement, and disclose certain information about those codes.[99]

V. Cost-Benefit Analysis

A. Summary

The Commission is sensitive to the costs and benefits that result from its rules, and understands that complying with the requirements of rule 17j–1 may impose costs on rule 17j–1 organizations and their personnel. The Commission requested data on the costs and benefits of rule 17j–1 in the Proposing Release, but none of the comment letters on the Proposing Release provided specific estimates of any costs or benefits of amending the rule. Nevertheless, as discussed below, the Commission believes that the amendments to rule 17j–1 will improve the regulation of personal investment activities and that the benefits to investors justify the costs of compliance with the rule. Investors also should benefit from the additional disclosure of information about policies of rule 17j–1 organizations concerning personal investment activities.

The amendments to rule 17j–1 require: (i) a fund's board, including a majority of independent directors on the board, to approve the fund's code and the code of any investment adviser or principal underwriter of the fund as well as any material changes to those codes; (ii) the management of a 17j–1 organization to provide the fund's board an annual report describing issues that arose under the code during the previous year; (iii) each access person to file with his or her rule 17j–1 organization an initial and annual holdings report; and (iv) all investment personnel to obtain approval from the fund or investment adviser before investing in an IPO or private placement. The amendments also clarify certain provisions of rule 17j–1. Amendments to disclosure forms under the Securities Act and the Investment Company Act require funds to make available to the public information about the policies of rule 17j–1 organizations regarding personal investment activities.

B. Benefits

The Commission believes that the rule amendments adopted today will yield important benefits for investors. The amendments to rule 17j–1 are designed to improve the oversight and monitoring of personal trading activities. In addition, the amendments to disclosure forms under the Securities Act and Investment Company Act will allow the public, including the financial media and market professionals, to obtain information on rule 17j–1 organizations' policies regarding personal investment activities.

These regulations will allow rule 17j–1 organizations more quickly to detect conflicts of interest that may arise from personal trading activities and help prevent subsequent conduct that could defraud the fund. Specifically, the rule's requirement that each fund board approve the codes of ethics of the fund and its investment advisers and principal underwriters will allow fund directors to better oversee the personal investment activities of fund personnel. The requirement that management of a rule 17j–1 organization annually provide a written report to the board on issues raised under its code of ethics will give the board the opportunity to evaluate the effectiveness of the codes and procedures and the manner in which they have been implemented.

The requirement that each access person provide an initial and annual holdings report to his or her rule 17j–1 organization will allow the organization to better monitor the conflicts of interest that may arise when an access person participates in investment decisions for the fund that involve securities the access person holds in his or her portfolio. The annual holdings report requirement also will enable rule 17j–1 organizations to monitor whether access persons are filing accurate quarterly transaction reports. In addition, the annual report will allow the rule 17j–1 organization and the Commission's examination staff to view the full scope of an access person's current securities holdings without having to sort through multiple years of transaction reports. Finally, the requirement that investment personnel pre-clear their investments in IPOs and private placements will allow funds and advisers to review carefully the personal investment activities that create the greatest opportunities for fraud and to address any potential conflicts of interest that could result from these investments before they arise.

C. Costs

Several commenters who addressed the proposed amendments to rule 17j–1 suggested that the Commission modify the rule to simplify its application and reduce compliance burdens, in order to reduce costs for rule 17j–1 organizations. We have evaluated these comments and determined that it is appropriate to adopt the amendments to rule 17j–1 with a number of changes that simplify the rule for rule 17j–1 organizations. The adopted amendments, for example, simplify the compliance requirements of rule 17j–1 organizations by extending the exception from the requirement to have a code of ethics to cover any fund that does not invest in covered securities as defined in the rule.

We estimate that approximately 5,226 rule 17j–1 organizations would be required to comply with rule 17j–1. Those organizations include approximately: (i) 3,900 active

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[78] Proposing Release, *supra* note 9, at nn.59–61 and accompanying text.

[79] Amended rule 17j–1(a)(10). A security that is exchangeable for or convertible into a security that is held or to be acquired by a fund would include warrants to purchase or sell the security.

[80] Rule 17j–1 currently excepts "securities issued by the Government of the United States" from the definition. The Commission is not changing the securities subject to this exception, but is amending the exception to read "direct obligations of the Government of the United States" in order to conform the exception to the exception for these securities listed in rule 204–2(a)(12) and 204–2(a)(13) under the Advisers Act. Amended rule 17j–1(a)(4)(i).

[81] Amended rule 17j–1(a)(4)(ii). As amended, rule 17j–1 excludes from the definition of "covered security" "bankers' acceptances, bank certificates of deposit, commercial paper, and high quality short-term debt instruments, including repurchase agreements." *Id.* We interpret "high quality short-term debt instrument" to mean any instrument that has a maturity at issuance of less than 366 days and that is rated in one of the two highest rating categories by a Nationally Recognized Statistical Rating Organization.

[82] *See* amended rule 17j–1(c)(1)(i). Similarly, investment advisers and principal underwriters to these funds would not have to adopt codes of ethics *unless* the investment adviser or principal underwriter also provides services to a fund that must adopt a code of ethics under rule 17j–1. *See also supra* note 71.

[83] *See* amended rule 17j–1(d)(1). If, however, an access person is an access person of another organization that is covered by rule 17j–1, the access person would have to provide holdings and transaction reports to that organization.

[84] *See* amended rule 17j–1(d)(1)(i), (ii)(A) and (iii)(A) (reports limited to covered securities). The Proposing Release requested comment whether there are other types of securities that should be excepted from the scope of the rule. Commenters recommended several other types of securities that should be excepted, such as options and futures on broad-based market indices. The Commission does not believe that those recommended types of securities are insulated from the risks of market manipulation and the potential conflicts of interest that rule 17j–1 is intended to cover. The Commission therefore is not amending the rule's definition of "covered security" to exclude those securities.

[85] Amended rule 204–2(a)(12), (13).

[86] Rule 17j–1 currently excepts transactions in securities issued by the Government of the United States, bankers' acceptances, bank certificates of deposit, commercial paper and shares of registered open-end investment companies from its reporting requirements. Rule 204–2(a) currently excepts from its recordkeeping requirements only transactions in securities that are direct obligations of the United States.

[87] For a discussion of these exceptions, *see supra* section III.H of this release.

[88] Amended rule 204–2(a)(12), (13).

[89] Rule 17j–1 organizations that already are in compliance with these requirements do not have to satisfy the requirements of the rule again to meet these compliance dates. Thus, a rule 17j–1 organization that currently requires quarterly transaction, initial holdings and annual holdings reports containing the information required under amended rule 17j–1 and that already has identified and notified its access persons of those reporting obligations would not need to identify and notify the individuals again.

[90] *See* amended rule 17j–1(d)(4).

[91] *See* amended rule 17j–1(d)(3).

[92] *See* amended rule 17j–1(f)(4).

[93] *See* amended rule 17j–1(c)(1)(iii).

[94] *See* amended rule 17j–1(c)(2).

[95] *See* amended rule 17j–1(d)(1)(iii).

[96] The additional information required under this amendment is: (i) the date that the quarterly transaction report is filed; (ii) the name of any covered securities account established by the access person during that quarter; and (iii) the date the account was established. Amended rule 17j–1(d)(1)(ii)(A)(5), (B). Note that access persons need not file a quarterly transaction report if the information would duplicate information that their rule 17j–1 organization has received in a broker's confirmation or account statement. *See* amended rule 17j–1(d)(2)(v).

[97] *See* amended rule 17j–1(e), (f)(2).

[98] *See* amended rule 17j–1(d)(1)(i). Any person who has become an access person before March 1, 2000 need not file an initial holdings report, but must file the first of his or her annual holdings reports no later than the date specified above.

[99] *See* Amended Forms N–1A, N–2, N–3, N–5 and N–8B–2. A post-effective amendment made for the purpose of complying with these amendments may be made pursuant to rules 485(b) or 486(b) under the Securities Act [17 CFR 230.485(b), .486(b)], provided the post-effective amendment otherwise meets the conditions for immediate effectiveness under those rules.

registered investment companies; (ii) 901 investment advisers to funds; and (iii) 425 principal underwriters of funds.[100] The number of rule 17j–1 organizations is based on staff estimates of the number of entities that must comply with rule 17j–1 and data available for 1998.[101] Other estimates are based on the staff's experience and discussions with mutual fund organizations.

Rule 17j–1 Organizations. Funds may incur additional expenses in the first year after the amendments become effective because the board of directors will have to approve the codes of the fund, its investment adviser and principal underwriter.[102] The Commission believes these expenses will be minimal because all rule 17j–1 organizations already are required to have adopted codes of ethics.[103] In addition, we have allowed fund boards one year in which to comply with this requirement, which will allow boards to consider the codes during one of their regularly scheduled meetings.[104] After initial approval, fund boards will be required to approve only material changes to the codes.[105]

Under the amendments, a rule 17j–1 organization also could incur additional costs in producing and filing the annual issues and certification report for the fund's board. We estimate that the report would take each rule 17j–1 organization approximately 3 hours to prepare, for an annual cost to the organization of approximately $315 and a total annual cost to the industry of approximately $1,646,190.[106]

[100] The estimated number of respondents may overstate the number of entities actually required to comply with the rule's requirements because money market funds, funds that invest only in securities excluded from the definition of "covered security" in rule 17j–1, and some investment advisers, principal underwriters, and access persons to those funds, do not have to comply with the rule's requirements concerning codes of ethics and transactions and holdings reports. *See* amended rule 17j–1(c)(1); 17j–1(d)(2)(i).

[101] Although the Proposing Release requested it, none of the comment letters provided data pertaining to the cost of complying with rule 17j–1.

[102] Because the amendments to rule 17j–1 expand the types of funds that are exempt from rule 17j–1, in certain cases a rule 17j–1 organization's costs could decrease under the amended rule.

[103] *See* current rule 17j–1(b)(1).

[104] We understand that fund directors generally receive compensation on the basis of the number of meetings that they attend. Therefore, no additional payment would be required for work performed during a regularly scheduled meeting.

[105] *See* amended rule 17j–1(c)(1)(ii).

[106] The cost estimate is based on our estimate that the report would take 2 hours of professional time (at $150 per hour) and 1 hour of support staff time (at $15 per hour) to prepare.

The amendments also require the procedures instituted by rule 17j–1 organizations to require review of transaction and holdings reports. The Commission believes that most funds already have review procedures in place and the cost of implementing additional procedures to review transaction and holdings reports would not be significant.

The amendments also require the fund to disclose that the fund, its investment adviser and principal underwriter have adopted codes of ethics, and require each fund to file a copy of the applicable codes with the Commission. We estimate that the cost to funds of these requirements in the first year after the amendments are adopted would be $1,263,600.[107] Funds would be required to file codes in subsequent years only to the extent that the codes had been materially amended.

Finally, funds and advisers will have to maintain a written record of any approvals permitting investment personnel to purchase securities in an IPO or private placement. Many funds and advisers currently prohibit investment personnel from IPO investments and require pre-clearance of investments in private placement offerings.[108] For those funds and advisers that would have to begin maintaining approval records, we estimate the review and documentation process would cost approximately $750 per organization each year, for a total annual cost to the industry of $900,000.[109]

Access Persons. Rule 17j–1 currently requires access persons to file quarterly transaction reports. The amendments to the rule require access persons to file initial holdings reports when they become access persons and annual holdings reports thereafter.[110]

[107] The cost of including this disclosure in a post-effective amendment and filing the codes of ethics would be minimal for funds that submit their own filings through EDGAR. Funds that use outside contractors to submit EDGAR filings would incur some additional cost in filing the codes as exhibits. We estimate that approximately 40 percent of funds submit their own EDGAR filings. Thus, approximately 2,340 funds use outside contractors. We estimate that funds using outside contractors would file an average of 36 pages of exhibits at an average cost of $15 per page, for a total cost to funds of $1,263,600 (2,340 × 36 × $15 = $1,263,600) in the first year after the amendments to rule 17j–1 become effective.

[108] *See infra* note 118.

[109] This estimate assumes that each fund and adviser will receive, on average, 10 applications for review each year, each of which will take, on average, approximately 0.5 hours of professional time (at $150 per hour) to review (and, if necessary, document), for an annual cost of $750 per organization (5 × $150 = $750). These numbers may vary considerably depending on the fund or adviser and its personnel. The estimated annual cost of review and documentation is equal to the number of funds and advisers that must begin review multiplied by the number of hours per organization to review multiplied by the cost per hour to review, for a total of $900,000 (1,200 × 5 × $150 = $900,000).

[110] We have assumed that a new access person who files an initial holdings report would not have to file an annual holdings report in the same year. An access person may, however, have to file an initial and annual holdings report in the same year if the rule 17j–1 organization requires all access persons to file reports by the same date each year.

These amendments will impose additional costs on access persons only to the extent that their rule 17j–1 organization currently does not impose similar reporting requirements. A 1995 survey of members by the ICI found that a majority of fund complexes already require some form of reporting similar to that adopted in the amendments.[111] Based on the ICI Survey, we estimate that the rule amendments would require approximately 67,518 access persons at approximately 4,703 rule 17j–1 organizations to begin filing annual holdings reports.[112] We further estimate

[111] Sixty-six percent of member fund complexes responded to the ICI Survey. ICI Survey, *supra* note 49, at 1. The Survey indicated that 66 percent of the fund complexes responding adopted the ICI Advisory Group Report recommendation that investment personnel disclose all personal securities holdings when they begin employment and annually thereafter. *Id.* at 30–31. An additional 11 percent of the responding fund complexes stated that they had adapted the disclosure requirements to their circumstances. Some of these adaptations have imposed more frequent reporting requirements or extended reporting requirements to all access persons. *Id.*

[112] We estimate that 275 of the 5,226 rule 17j–1 organizations are new this year. Access persons at those organizations would file an initial holdings report in the first year rather than an annual holdings report. Of the remaining 4,951 existing rule 17j–1 organizations, we estimate that 66 percent already have implemented initial and annual holdings report requirements for *investment personnel, see supra* note 111, and that investment personnel represent half of the *access persons* at these organizations. Therefore, the amendments would impose *new* reporting requirements on only *half* of the access persons at 66 percent of existing organizations. Based on the ICI Survey, we estimate that 5 percent of existing organizations currently require all access persons to submit initial and annual holdings reports. Therefore, the amendments would not impose new reporting requirements on any of the access persons at those organizations. (We do not know the precise percentage of funds that impose reporting requirements on all access persons, *see supra* note 111, so we have estimated 5 percent as the approximate midpoint of the 11 percent range of funds that adapted the reporting recommendations of the ICI Advisory Group Report.) We estimate that the remaining 29 percent of organizations (100 − (66 + 5) = 29) currently do not require any access persons to make personal holdings disclosures comparable to those required by the amendments to rule 17j–1. Therefore, the amendments would impose new reporting requirements on all the access persons at those organizations.

We estimate that, on average, a rule 17j–1 organization will have approximately 24 access persons (22 of whom would file an annual holdings report, and 2 of whom are new and would file an initial holdings report). Therefore, we estimate that the number of access persons who would have to *begin* filing annual reports as a result of the amendments to rule 17j–1 equals the sum of: all continuing access persons at 29 percent of 4,951 existing rule 17j–1 organizations (22 × 1,435 = 31,570) plus half of continuing access persons at 66 percent of existing rule 17j–1 organizations (11 × 3,268 = 35,948); or a total of 67,518 access persons.

that it would take an access person, on average, 0.5 hours of professional time to complete an annual report, for an estimated total annual cost to the industry of $5,063,850.[113]

Initial reports are required to be provided only by persons who become access persons after the effective date of the amendments.[114] The Commission estimates that the amendments to rule 17j–1 will result in approximately 10,218 new access persons having to file initial holdings reports each year.[115] Assuming the initial holdings report will take approximately 1 hour of professional time to prepare, we estimate an annual total cost to the industry of $1,532,700.[116]

Investment Personnel. The requirement that investment personnel obtain approval before investing in an IPO or private placement should impose minimal costs on those individuals for at least three reasons. First, the requirement may result in restrictions on their purchases of two types of offerings, but the provision does not restrict them from participating in the vast majority of investment opportunities. Second, as discussed above, few individuals have access to IPOs and private placements unless they have substantial accounts with a broker or may be in a position to direct business to the broker or issuer.[117] Therefore, few investment personnel appear likely to be given an opportunity to purchase securities in an IPO or private placement that does not raise a serious conflict with the fund. Third, most fund complexes already prohibit these activities.[118] Although the Commission cannot quantify the costs to investment personnel associated with the pre-clearance provision because we cannot verify the number of investment personnel who invest in IPOs and private placements, we believe that any costs of the provision to investment personnel will be minimal and will be greatly outweighed by the benefits to investors of restricting these potentially fraudulent opportunities.

Issuers. We also believe that the pre-approval provision will result in minimal, if any, costs to issuers selling securities in IPOs or private placements. These offerings are often oversubscribed, and we expect that other purchasers will replace investment personnel who might otherwise invest in the offerings.[119]

Based on the estimates discussed above, we estimate that in the first year after the effective date, the costs of complying with the amendments to rule 17j–1 will be $10,406,340. In later years we anticipate these costs will decrease because funds will have to file codes again with the Commission only if the codes have been materially amended.

VI. Effects on Competition, Efficiency and Capital Formation

As discussed above, we anticipate that the amendments to rule 17j–1 will not result in a major increase in costs to funds or fund investors. We also have considered, in addition to the protection of investors, whether the provisions adopted today will promote efficiency, competition, or capital formation.

VII. Paperwork Reduction Act

Certain provisions of the amendments to rule 17j–1 and the conforming amendments to rule 204–2 under the Advisers Act contain "collection of information" requirements within the meaning of the Paperwork Reduction Act ("PRA").[120] Because the Proposing Release was published in 1995, prior to the effective date of the 1995 amendments to the PRA, the Proposing Release did not contain a separate section requesting comment on the collection of information burdens imposed by the proposed amendments, as required by the PRA.[121] The Proposing Release did, however, request comment regarding the specific reporting and recordkeeping requirements contained in the proposed amendments to rule 17j–1.

The collection of information requirements contained in the amendments were submitted to the Office of Management and Budget ("OMB") for review pursuant to section 3507(d) of the PRA. OMB approved the PRA submission with respect to these amendments and assigned OMB control numbers with respect to the rules and forms amended by this release.[122] We received an extension of the OMB approval of the collection of information for rule 17j–1 last year.[123] The collection of information requirements are in accordance with section 3507 of the PRA. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the agency displays a valid OMB control number.

As described in more detail above and in the Proposing Release, the collections of information under the rule and form amendments are necessary for funds to monitor potential conflicts of interest, to

[113] The estimated cost to the industry resulting from the rule's annual holdings report requirement equals the number of continuing access persons multiplied by the number of hours required to complete the report multiplied by the hourly cost of completing the report (67,518 × 0.5 × $150 = $5,063,850). The estimated cost of professional time ($150) is an average and could be significantly higher or lower for individual rule 17j–1 organizations and their access persons.

[114] *See supra* note 98.

[115] The estimated number of new access persons who would file initial holdings reports as a result of the amendments to rule 17j–1 equals the number of new access persons each year at existing rule 17j–1 organizations that do not have an initial holdings report requirement *plus* the number of new access persons at new organizations that do not have an initial holdings report requirement. Based on the ICI Survey, *see supra* note 112, we estimate the number of access persons each year who would have to submit an initial holdings report as a result of amendments to rule 17j–1 equals the sum of: all new access persons at 29 percent of 4,951 existing rule 17j–1 organizations (2 × 1,435); all access persons at 29 percent of 275 new rule 17j–1 organizations (24 × 79 = 1,896); half of new access persons at 66 percent of 4,951 existing rule 17j–1 organizations (1 × 3,268 = 3,268); and half of access persons at 66 percent of 275 new rule 17j–1 organizations (12 × 182); for a total of 10,218 access persons.

[116] The estimated cost to the industry of filing initial holdings reports equals the number of access persons required to file reports multiplied by the number of hours required to complete the report multiplied by the hourly cost to complete the report (10,218 × 1 × $150 = $1,532,700).

[117] *See supra* note 51 and accompanying text.

[118] According to the ICI Survey, 72 percent of fund complexes that responded to the Survey prohibit investment personnel from acquiring any securities in an IPO. In addition, approximately 14 percent of responding fund complexes have adapted the prohibition to their circumstances, in some cases adopting broader prohibitions, such as prohibiting purchases of securities in secondary market transactions or extending the prohibition to all access persons or all employees. ICI Survey, *supra* note 49, at 15–16. Approximately 69 percent of fund complexes responding to the Survey stated that they require prior approval before investment personnel may purchase securities in a private placement. An additional 14 percent of responding fund complexes stated that they have adapted this requirement to their situations, in some cases making the restrictions broader, such as by applying it to all access persons or employees in certain cases. *Id.* at 17–18. We estimate that after the amendments to rule 17j–1 become effective, investment personnel in approximately 25 percent of fund complexes will be subject to the restrictions on purchases of IPOs and private placements for the first time.

[119] *See supra* note 51 of this release. We are unable to quantify the number of investment persons who purchase securities in IPOs and private placements or the frequency of those purchases. The number may vary significantly among individual funds or advisers.

[120] 44 U.S.C. 3501–3520.

[121] Prior to the revisions to the PRA in 1995, requiring disclosure of information to third parties was not a "collection of information" under the PRA. *See* 44 U.S.C. 3502(3)(A) (definition of "collection of information").

[122] OMB control numbers are as follows: rule 17j–1 (3235–0224, expires Oct. 31, 2001); rule 204–2 (3235–0278, expires Apr. 30, 2000); Form N–1A (3235–0307, expires May 31, 2000); Form N–2 (3235–0026, expires Oct. 31, 2001); Form N–3 (3235–0316, expires Mar. 31, 2000); Form N–5 (3235–0169, expires Oct. 31, 2001); Form N–8B–2 (3235–0186, expires Oct. 31, 2001); and Form S–6 (3235–0184, expires Mar. 31, 2002).

[123] As required under any request for extension of approval, the Commission sought comment on the collection of information. See Existing Collection: Comment Request, OMB Control No. 3235–0224 [63 FR 37606 (July 13, 1998)]; and Submission for OMB Review; Comment Request, OMB Control No. 3235–0224 [63 FR 50608 (Sept. 22, 1998)].

facilitate the effective oversight of personal investment activities by a fund and our examinations staff, to provide the fund and the Commission with information regarding compliance with rule 17j–1, and to disclose information to investors about a fund's policies concerning personal investment activities. If the records required to be kept pursuant to the rule are requested by Commission examiners, they will be kept confidential to the extent permitted by relevant statutory and regulatory provisions. Information required by Form N–1A, Form N–2, Form N–3, Form N–5, Form N–8B–2, and Form S–6 and disclosed in a registration statement, is public, and we do not keep it confidential.

The amendments to rule 17j–1 as adopted contain two collection of information requirements in addition to those in the proposed amendments. The adopted amendments require each access person to provide an annual holdings report listing all covered securities the access person beneficially owned at the end of the previous calendar year and all accounts in which securities are held for the benefit of the access person.[124] The annual holdings report requirement imposes an additional paperwork burden on rule 17j–1 organizations and their access persons only to the extent that these organizations do not currently require their access persons to file this information.[125] If an access person already submits equivalent information to his or her rule 17j–1 organization, the access person will simply have to confirm in writing the accuracy of that information to satisfy the annual holdings report requirement under rule 17j–1.[126]

The amendments to rule 17j–1 also require funds and their advisers to retain a written record of any decision to permit investment personnel to purchase securities in an IPO or private placement and the reasons supporting the approval.[127] This requirement imposes additional burdens on funds and advisers only to the extent the fund or adviser does not currently prohibit investments in IPOs or require pre-clearance of investments in private placements.[128]

We estimate that each year 275 new rule 17j–1 organizations each will expend 8 hours to formulate and provide codes of ethics for an annual total of 275 responses and 2,200 burden hours ($275 \times 8 = 2,200$). We also estimate that the managements of 5,226 rule 17j–1 organizations[129] each will expend 3 hours annually to provide the fund board with an annual issues and certification report for a total of 5,226 responses and 15,678 burden hours ($5,226 \times 3 = 15,678$). We estimate that in the first year after the amendments to rule 17j–1 become effective, each fund will require 0.25 hours to prepare the required disclosure regarding the appropriate codes of ethics, for a total of 3,900 responses and 975 burden hours ($3,900 \times 0.25 = 975$).[130]

We estimate that 103,800 access persons[131] each will spend 0.5 hours filing one quarterly transaction report per year, for a total of 103,800 responses and 51,900 burden hours ($103,800 \times 0.5 = 51,900$).[132] We estimate that each year 16,502 new access persons each will expend 1 hour to file an initial holdings report for a total of 16,502 responses and 16,502 burden hours[133] and each of 108,922 existing access persons will expend 0.5 hours to file an annual holdings report, for a total of 108,922 responses and 54,461 burden hours ($108,922 \times 0.5 = 54,461$).[134]

The Commission estimates that 5,226 rule 17j–1 organizations each will expend 2 hours to maintain records of codes of ethics, records of violations of codes of ethics, reports by access persons, and issues and certification reports, for a total of 5,226 responses and 10,452 burden hours ($5,226 \times 2 = 10,452$). We also estimate that each of the approximately 1,200 funds and advisers that currently do not prohibit investment personnel from purchasing securities in an IPO would take, on average, approximately 0.25 hours to complete each of 3 responses each year to document approvals of IPO purchases, for a total of 3,600 responses and 900 burden hours ($1,200 \times 0.25 \times 3 = 900$).[135] Finally, we estimate that 4,801 funds and advisers would make, on average, 3 responses each year to document approvals of investment in private placement offerings, for a total of 14,403 responses and 3,601 burden hours ($4,801 \times 0.25 \times 3 = 3,601$).

The Commission therefore estimates the total number of annual responses required by the rule is 261,854, and the total annual burden of the collection of information requirements in the first year is 156,669 hours. This estimate represents an increase of 82,099 hours from the current estimate of 74,570 burden hours. The increase is attributable primarily to the annual holdings report requirement, the documentation of approvals for investments in IPOs and private placements, and adjustments due to an increase in rule 17j–1 organizations reflected in the updated number of organizations.[136]

In addition to the annual hour burden, we estimate that some funds will incur costs to file the codes of the fund and its investment adviser and principal underwriter. As discussed above, a fund that submits its own EDGAR filings will incur costs associated with the annual hourly burden. Funds that use an outside contractor to submit filings will incur costs for that service. We have estimated that the cost of filing codes for firms that use outside contractors would be approximately $1,263,600 in the first year after the amendments become effective.[137] Thereafter, the annual cost would decrease significantly because funds would only have to refile a code if the code had been materially amended.

VIII. Summary of Final Regulatory Flexibility Analysis

A summary of the Initial Regulatory Flexibility Analysis ("IRFA") regarding the proposed amendments, which was prepared in accordance with 5 U.S.C. 603, was published in the Proposing Release. No comments were received on the IRFA. We have prepared a Final Regulatory Flexibility Analysis ("FRFA") in accordance with 5 U.S.C. 604 relating to the adopted amendments.

The FRFA discusses the need for, and objectives of, the amendments to rule 17j–1. The FRFA states that rule 17j–1 currently prohibits fraud by fund affiliates and certain other persons in connection with their personal transactions in securities held or to be acquired by the fund, requires funds and their investment advisers and principal underwriters to adopt codes of ethics containing provisions reasonably necessary to prevent fund personnel from engaging in conduct prohibited by the rule, and requires fund personnel to report their personal securities transactions to their employers. The FRFA further states that the amendments are designed to enhance the board of directors' oversight of the policies governing personal transactions in securities by investment company personnel, help fund compliance personnel and the Commission's examinations staff in monitoring potential conflicts of interest and detecting potentially abusive activities, and make available to the public additional information about these policies.

The FRFA estimates that out of approximately 3,900 funds registered with the Commission, a total of approximately 732 would be considered small entities.[138] The FRFA also states that investment advisers and principal underwriters of registered funds would be required to comply with certain amendments to rule 17j–1. The FRFA estimates that (i) out of approximately 901 investment advisers registered with the Commission that advise funds, a total of approximately 265 would be considered small entities[139] and (ii) out of approximately 425 principal underwriters to funds, a total of approximately 272 would be considered small entities.[140] The FRFA indicates that the amendments to rule 17j–1 would affect small entities in the same manner as other entities subject to the rule.

Finally, the FRFA states that in adopting the amendments to rule 17j–1, the Commission considered (a) the establishment of differing rule requirements that take into account the resources available to small entities; (b) the clarification, consolidation, or simplification of the rule's requirements for small entities; (c) the use of performance rather than design standards; and (d) an exemption from the rule for small entities. The FRFA states that the Commission concluded that different requirements for small entities would be inconsistent with investor protection. In addition, the amendments to rule 17j–1 incorporate performance standards rather than design standards.

The FRFA is available for public inspection in File No. S7–25–95. A copy may be obtained by contacting Penelope Saltzman, Senior Counsel, Office of Regulatory Policy, Division of Investment Management, at (202) 942–0690, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549–0506.

IX. Statutory Authority

The Commission is amending rule 17j–1 pursuant to the authority set out in sections 17(j) and 38(a) of the Investment Company Act [15 U.S.C. 80a–17(j) and 80a–37(a)] and sections 206(4) and 211(a) of the Advisers Act [15 U.S.C. 80b–6(4) and 80b–11(a)]. The amendments to registration forms are adopted pursuant to the authority set out in sections 6, 7(a), 10 and 19(a) of the Securities Act [15 U.S.C. 77f, 77g(a), 77j, 77s(a)], and sections 8(b), 24(a) and 38(a) of the Investment Company Act [15 U.S.C. 80a–8(b), 80a–24(a) and 80a–37(a)]. The Commission is adopting amendments to rule 204–2 under the Advisers Act pursuant to the authority set out in sections 204, 206(4) and 211(a) of the Advisers Act [15 U.S.C. 80b–4, 80b–6(4) and 80b–11(a).]

Text of Rule and Form Amendments

List of Subjects in 17 CFR Parts 239, 270, 274 and 275

Investment companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

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[124] The Proposing Release requested comment on an annual holdings report and whether an annual holdings report would impose an undue burden on persons required to file the report. *See* Proposing Release, *supra* note 9, at n.42 and accompanying text.

[125] *See supra* notes 111–12 and accompanying text.

[126] The amendments also require access persons to disclose two new items of information in their quarterly transaction and initial holdings reports: the name of any broker, dealer or bank with whom they maintain a securities account, and the date the report is filed. Amended rule 17j–1(d)(1)(i)(B), (ii)(B). We believe this information will take little additional time to disclose.

[127] The Proposing Release sought comment regarding specific restrictions on personal investment activities, including prohibition on the purchase of securities in an IPO. *See supra* note 47.

[128] *See supra* note 118. Because this requirement and the requirement for access persons to provide an annual holdings report affect the paperwork burden estimate, the Commission has filed a "Paperwork Reduction Act Change Worksheet" with OMB to reflect the changes in the annual reporting burden.

[129] *See supra* note 100 and accompanying text for a discussion of the estimated number of funds, and investment advisers and principal underwriters to funds.

[130] As noted above, funds should have to prepare disclosures regarding codes of ethics after the initial disclosure only to the extent the codes are materially amended.

[131] *See supra* note 112 for an estimate of the average number of access persons at each 17j–1 organization. Under amended rule 17j–1, access persons of investment advisers to funds are exempt from filing quarterly transaction reports if the reports would duplicate information provided under rule 204–2 of the Advisers Act. Amended rule 17j–1(d)(2)(v). Thus, we estimate that the number of access persons filing quarterly transaction reports is equal to the average number of access persons for each rule 17j–1 organization *multiplied* by the total number of funds and principal underwriters of funds ($24 \times (3900 + 425) = 103,800$).

[132] The number of access persons who are required to file quarterly transaction reports will vary depending on the personal investment activities of each access person. In addition, amended rule 17j–1 contains several exceptions to filing quarterly transaction reports, including an exception if the report would duplicate information contained in broker trade confirmations or account statements received by the rule 17j–1 organization. Amended rule 17j–1(d)(2)(v). Although a number of access persons may, on average, have transactions to report during more than one quarter each year, many access persons may not have to provide a quarterly transaction report because their rule 17j–1 organizations have received the information in a broker trade confirmation or account statement. Accordingly, we estimate that each access person, on average, would file one quarterly transaction report each year. Estimates concerning quarterly transaction reports are not included in the cost-benefit analysis because access persons currently are required to file quarterly transaction reports under rule 17j–1. *See* current rule 17j–1(c)(1), (2).

[133] We estimate that the number of access persons who would have to file initial holdings reports each year equals the average number of access persons at each new rule 17j–1 organization ($275 \times 24 = 6,600$) *plus* the average number of new access persons at existing rule 17j–1 organizations ($4,951 \times 2 = 9,902$), for a total of 16,502 ($6,600 + 9,902 = 16,502$). *See supra* note 112 and accompanying text.

[134] The number of access persons filing an annual report would not include new access persons. *See supra* note 110. Thus, we estimate that the number of access persons filing an annual report each year equals the number of existing rule 17j–1 organizations ($5,226 - 275 = 4,951$) *multiplied* by the average number of continuing access persons per organization ($24 - 2 = 22$), for a total of 108,922 ($4,951 \times 22 = 108,922$).

[135] This estimate assumes that 75 percent of funds and advisers currently prohibit investment personnel from investing in IPOs. *See supra* note 118.

[136] We also did not adopt a proposed exception to the initial holdings report requirement. The proposed amendments would have excepted access persons from filing initial holdings reports if the information would duplicate information already maintained by the person's rule 17j–1 organization. Under the amended rule, all new access persons must file an initial holdings report. As discussed in note 34 *supra*, however, an access person may satisfy the requirement by simply confirming information required to be in the report that is maintained by the person's rule 17j–1 organization. This change from the proposed amendments accounts for the remainder of the increase in burden hours.

[137] *See supra* note 107.

[138] As defined in rules adopted under the Investment Company Act for purposes of the Regulatory Flexibility Act, a small entity is an investment company with net assets of $50 million or less as of the end of its most recent fiscal year. 17 CFR 270.0–10 (1997). The Commission amended its definition of small entity under the Investment Company Act for purposes of the Regulatory Flexibility Act in 1998. *See* Definitions of "Small Business" or "Small Organization" Under the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Exchange Act of 1934 and the Securities Act of 1933, Securities Act Release No. 7548 (June 24, 1998), [63 FR 35508 (June 30, 1998)]. Because the IRFA for this proposal relied on the earlier definition (which was broader), the FRFA also relies on the earlier definition.

[139] As defined in rules adopted under the Investment Advisers Act for purposes of the Regulatory Flexibility Act, a small entity is an investment adviser that manages assets with a total value of $50 million or less, in discretionary or nondiscretionary accounts, as of the end of its most recent fiscal year and does not render other advisory services. 17 CFR 275.0–7 (1997). The FRFA relies on the definition of "small entity" under the Investment Advisers Act before it was amended in June 1998. *See supra* note 138.

[140] As defined in rules under the Securities Exchange Act for purposes of the Regulatory Flexibility Act, a small entity is a broker or dealer that had total capital of less than $500,000 on the date of its prior fiscal year. 17 CFR 240.0–10 (1997). The FRFA relies on the definition of "small entity" under the Securities Exchange Act before it was amended in June 1998. *See supra* note 138.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 is amended by adding the following citation to read as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39, unless otherwise noted;

* * * * *

Section 270.17j–1 is also issued under secs. 206(4) and 211(a), Investment Advisers Act (15 U.S.C. 80b–6(4) and 80b–11(a));

* * * * *

2. Section 270.17j–1 is revised to read as follows:

§ 270.17j–1 Personal investment activities of investment company personnel.

(a) *Definitions.* For purposes of this section:

(1) *Access Person* means:

(i) Any director, officer, general partner or Advisory Person of a Fund or of a Fund's investment adviser.

(A) If an investment adviser is primarily engaged in a business or businesses other than advising Funds or other advisory clients, the term Access Person means any director, officer, general partner or Advisory Person of the investment adviser who, with respect to any Fund, makes any recommendation, participates in the determination of which recommendation will be made, or whose principal function or duties relate to the determination of which recommendation will be made, or who, in connection with his or her duties, obtains any information concerning recommendations on Covered Securities being made by the investment adviser to any Fund.

(B) An investment adviser is "primarily engaged in a business or businesses other than advising Funds or other advisory clients" if, for each of its most recent three fiscal years or for the period of time since its organization, whichever is less, the investment adviser derived, on an unconsolidated basis, more than 50 percent of its total sales and revenues and more than 50 percent of its income (or loss), before income taxes and extraordinary items, from the other business or businesses.

(ii) Any director, officer or general partner of a principal underwriter who, in the ordinary course of business, makes, participates in or obtains information regarding, the purchase or sale of Covered Securities by the Fund for which the principal underwriter acts, or whose functions or duties in the ordinary course of business relate to the making of any recommendation to the Fund regarding the purchase or sale of Covered Securities.

(2) *Advisory Person* of a Fund or of a Fund's investment adviser means:

(i) Any employee of the Fund or investment adviser (or of any company in a control relationship to the Fund or investment adviser) who, in connection with his or her regular functions or duties, makes, participates in, or obtains information regarding the purchase or sale of Covered Securities by a Fund, or whose functions relate to the making of any recommendations with respect to the purchases or sales; and

(ii) Any natural person in a control relationship to the Fund or investment adviser who obtains information concerning recommendations made to the Fund with regard to the purchase or sale of Covered Securities by the Fund.

(3) *Control* has the same meaning as in section 2(a)(9) of the Act [15 U.S.C. 80a–2(a)(9)].

(4) *Covered Security* means a security as defined in section 2(a)(36) of the Act [15 U.S.C. 80a–2(a)(36)], except that it does not include:

(i) Direct obligations of the Government of the United States;

(ii) Bankers' acceptances, bank certificates of deposit, commercial paper and high quality short-term debt instruments, including repurchase agreements; and

(iii) Shares issued by open-end Funds.

(5) *Fund* means an investment company registered under the Investment Company Act.

(6) An *Initial Public Offering* means an offering of securities registered under the Securities Act of 1933 [15 U.S.C. 77a], the issuer of which, immediately before the registration, was not subject to the reporting requirements of sections 13 or 15(d) of the Securities Exchange Act of 1934 [15 U.S.C. 78m or 78o(d)].

(7) *Investment Personnel* of a Fund or of a Fund's investment adviser means:

(i) Any employee of the Fund or investment adviser (or of any company in a control relationship to the Fund or investment adviser) who, in connection with his or her regular functions or duties, makes or participates in making recommendations regarding the purchase or sale of securities by the Fund.

(ii) Any natural person who controls the Fund or investment adviser and who obtains information concerning recommendations made to the Fund regarding the purchase or sale of securities by the Fund.

(8) A *Limited Offering* means an offering that is exempt from registration under the Securities Act of 1933 pursuant to section 4(2) or section 4(6) [15 U.S.C. 77d(2) or 77d(6)] or pursuant to rule 504, rule 505, or rule 506 [17 CFR 230.504, 230.505, or 230.506] under the Securities Act of 1933.

(9) *Purchase or sale of a Covered Security* includes, among other things, the writing of an option to purchase or sell a Covered Security.

(10) *Security Held or to be Acquired* by a Fund means:

(i) Any Covered Security which, within the most recent 15 days:

(A) Is or has been held by the Fund; or

(B) Is being or has been considered by the Fund or its investment adviser for purchase by the Fund; and

(ii) Any option to purchase or sell, and any security convertible into or exchangeable for, a Covered Security described in paragraph (a)(10)(i) of this section.

(b) *Unlawful Actions.* It is unlawful for any affiliated person of or principal underwriter for a Fund, or any affiliated person of an investment adviser of or principal underwriter for a Fund, in connection with the purchase or sale, directly or indirectly, by the person of a Security Held or to be Acquired by the Fund:

(1) To employ any device, scheme or artifice to defraud the Fund;

(2) To make any untrue statement of a material fact to the Fund or omit to state a material fact necessary in order to make the statements made to the Fund, in light of the circumstances under which they are made, not misleading;

(3) To engage in any act, practice or course of business that operates or would operate as a fraud or deceit on the Fund; or

(4) To engage in any manipulative practice with respect to the Fund.

(c) *Code of Ethics.*

(1) *Adoption and Approval of Code of Ethics.*

(i) Every Fund (other than a money market fund or a Fund that does not invest in Covered Securities) and each investment adviser of and principal underwriter for the Fund, must adopt a written code of ethics containing provisions reasonably necessary to prevent its Access Persons from engaging in any conduct prohibited by paragraph (b) of this section.

(ii) The board of directors of a Fund, including a majority of directors who are not interested persons, must approve the code of ethics of the Fund, the code of ethics of each investment adviser and principal underwriter of the Fund, and any material changes to these codes. The board must base its approval of a code and any material changes to the code on a determination that the code contains provisions reasonably necessary to prevent Access Persons from engaging in any conduct prohibited by paragraph (b) of this section. Before approving a code of a Fund, investment adviser or principal underwriter or any amendment to the code, the board of directors must receive a certification from the Fund, investment adviser or principal underwriter that it has adopted procedures reasonably necessary to prevent Access Persons from violating the investment adviser's or principal underwriter's code of ethics. The Fund's board must approve the code of an investment adviser or principal underwriter before initially retaining the services of the investment adviser or principal underwriter. The Fund's board must approve a material change to a code no later than six months after adoption of the material change.

(iii) If a Fund is a unit investment trust, the Fund's principal underwriter or depositor must approve the Fund's code of ethics, as required by paragraph (c)(1)(ii) of this section. If the Fund has more than one principal underwriter or depositor, the principal underwriters and depositors may designate, in writing, which principal underwriter or depositor must conduct the approval required by paragraph (c)(1)(ii) of this section, if they obtain written consent from the designated principal underwriter or depositor.

(2) *Administration of Code of Ethics.*

(i) The Fund, investment adviser and principal underwriter must use reasonable diligence and institute procedures reasonably necessary to prevent violations of its code of ethics.

(ii) No less frequently than annually, every Fund (other than a unit investment trust) and its investment advisers and principal underwriters must furnish to the Fund's board of directors, and the board of directors must consider, a written report that:

(A) Describes any issues arising under the code of ethics or procedures since the last report to the board of directors, including, but not limited to, information about material violations of the code or procedures and sanctions imposed in response to the material violations; and

(B) Certifies that the Fund, investment adviser or principal underwriter, as applicable, has adopted procedures reasonably necessary to prevent Access Persons from violating the code.

(3) *Exception for Principal Underwriters.* The requirements of paragraphs (c)(1) and (c)(2) of this section do not apply to any principal underwriter unless:

(i) The principal underwriter is an affiliated person of the Fund or of the Fund's investment adviser; or

(ii) An officer, director or general partner of the principal underwriter serves as an officer, director or general partner of the Fund or of the Fund's investment adviser.

(d) *Reporting Requirements of Access Persons.*

(1) *Reports Required.* Unless excepted by paragraph (d)(2) of this section, every Access Person of a Fund (other than a money market fund or a Fund that does not invest in Covered Securities) and every Access Person of an investment adviser of or principal underwriter for the Fund, must report to that Fund, investment adviser or principal underwriter:

(i) *Initial Holdings Reports.* No later than 10 days after the person becomes an Access Person, the following information:

(A) The title, number of shares and principal amount of each Covered Security in which the Access Person had any direct or indirect beneficial ownership when the person became an Access Person;

(B) The name of any broker, dealer or bank with whom the Access Person maintained an account in which any securities were held for the direct or indirect benefit of the Access Person as of the date the person became an Access Person; and

(C) The date that the report is submitted by the Access Person.

(ii) *Quarterly Transaction Reports.* No later than 10 days after the end of a calendar quarter, the following information:

(A) With respect to any transaction during the quarter in a Covered Security in which the Access Person had any direct or indirect beneficial ownership:

(*1*) The date of the transaction, the title, the interest rate and maturity date (if applicable), the number of shares and the principal amount of each Covered Security involved;

(*2*) The nature of the transaction (*i.e.*, purchase, sale or any other type of acquisition or disposition);

(*3*) The price of the Covered Security at which the transaction was effected;

(*4*) The name of the broker, dealer or bank with or through which the transaction was effected; and

(*5*) The date that the report is submitted by the Access Person.

(B) With respect to any account established by the Access Person in which any securities were held during the quarter for the direct or indirect benefit of the Access Person:

(*1*) The name of the broker, dealer or bank with whom the Access Person established the account;

(*2*) The date the account was established; and

(*3*) The date that the report is submitted by the Access Person.

(iii) *Annual Holdings Reports.* Annually, the following information (which information must be current as of a date no more than 30 days before the report is submitted):

(A) The title, number of shares and principal amount of each Covered Security in which the Access Person had any direct or indirect beneficial ownership;

(B) The name of any broker, dealer or bank with whom the Access Person maintains an account in which any securities are held for the direct or indirect benefit of the Access Person; and

(C) The date that the report is submitted by the Access Person.

(2) *Exceptions from Reporting Requirements.*

(i) A person need not make a report under paragraph (d)(1) of this section with respect to transactions effected for, and Covered Securities held in, any account over which the person has no direct or indirect influence or control.

(ii) A director of a Fund who is not an "interested person" of the Fund within the meaning of section 2(a)(19) of the Act [15 U.S.C. 80a–2(a)(19)], and who would be required to make a report solely by reason of being a Fund director, need not make:

(A) An initial holdings report under paragraph (d)(1)(i) of this section and an annual holdings report under paragraph (d)(1)(iii) of this section; and

(B) A quarterly transaction report under paragraph (d)(1)(ii) of this section, unless the director knew or, in the ordinary course of fulfilling his or her official duties as a Fund director, should have known that during the 15-day period immediately before or after the director's transaction in a Covered Security, the Fund purchased or sold the Covered Security, or the Fund or its investment adviser considered purchasing or selling the Covered Security.

(iii) An Access Person to a Fund's principal underwriter need not make a report to the principal underwriter under paragraph (d)(1) of this section if:

(A) The principal underwriter is not an affiliated person of the Fund (unless the Fund is a unit investment trust) or any investment adviser of the Fund; and

(B) The principal underwriter has no officer, director or general partner who serves as an officer, director or general partner of the Fund or of any investment adviser of the Fund.

(iv) An Access Person to an investment adviser need not make a

quarterly transaction report to the investment adviser under paragraph (d)(1)(ii) of this section if all the information in the report would duplicate information required to be recorded under §§ 275.204–2(a)(12) or 275.204–2(a)(13) of this chapter.

(v) An Access Person need not make a quarterly transaction report under paragraph (d)(1)(ii) of this section if the report would duplicate information contained in broker trade confirmations or account statements received by the Fund, investment adviser or principal underwriter with respect to the Access Person in the time period required by paragraph (d)(1)(ii), if all of the information required by that paragraph is contained in the broker trade confirmations or account statements, or in the records of the Fund, investment adviset or principal underwriter.

(3) *Review of Reports.* Each Fund, investment adviser and principal underwriter to which reports are required to be made by paragraph (d)(1) of this section must institute procedures by which appropriate management or compliance personnel review these reports.

(4) *Notification of Reporting Obligation.* Each Fund, investment adviser and principal underwriter to which reports are required to be made by paragraph (d)(1) of this section must identify all Access Persons who are required to make these reports and must inform those Access Persons of their reporting obligation.

(5) *Beneficial Ownership.* For purposes of this section, beneficial ownership is interpreted in the same manner as it would be under § 240.16a–1(a)(2) of this chapter in determining whether a person is the beneficial owner of a security for purposes of section 16 of the Securities Exchange Act of 1934 [15 U.S.C. 78p] and the rules and regulations thereunder. Any report required by paragraph (d) of this section may contain a statement that the report will not be construed as an admission that the person making the report has any direct or indirect beneficial ownership in the Covered Security to which the report relates.

(e) *Pre-approval of Investments in IPOs and Limited Offerings.* Investment Personnel of a Fund or its investment adviser must obtain approval from the Fund or the Fund's investment adviser before directly or indirectly acquiring beneficial ownership in any securities in an Initial Public Offering or in a Limited Offering.

(f) *Recordkeeping Requirements.*

(1) Each Fund, investment adviser and principal underwriter that is required to adopt a code of ethics or to which reports are required to be made by Access Persons must, at its principal place of business, maintain records in the manner and to the extent set out in this paragraph (f), and must make these records available to the Commission or any representative of the Commission at any time and from time to time for reasonable periodic, special or other examination:

(A) A copy of each code of ethics for the organization that is in effect, or at any time within the past five years was in effect, must be maintained in an easily accessible place;

(B) A record of any violation of the code of ethics, and of any action taken as a result of the violation, must be maintained in an easily accessible place for at least five years after the end of the fiscal year in which the violation occurs;

(C) A copy of each report made by an Access Person as required by this section, including any information provided in lieu of the reports under paragraph (d)(2)(v) of this section, must be maintained for at least five years after the end of the fiscal year in which the report is made or the information is provided, the first two years in an easily accessible place;

(D) A record of all persons, currently or within the past five years, who are or were required to make reports under paragraph (d) of this section, or who are or were responsible for reviewing these reports, must be maintained in an easily accessible place; and

(E) A copy of each report required by paragraph (c)(2)(ii) of this section must be maintained for at least five years after the end of the fiscal year in which it is made, the first two years in an easily accessible place.

(2) A Fund or investment adviser must maintain a record of any decision, and the reasons supporting the decision, to approve the acquisition by investment personnel of securities under paragraph (e), for at least five years after the end of the fiscal year in which the approval is granted.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

3. The authority citation for Part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

4. The authority citation for Part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

5. Item 1 of Form N–1A [referenced in §§ 239.15A and 274.11A] is amended by revising paragraph (b)(3) to read as follows:

Form N–1A

* * * * *

Item 1. Front and Back Cover Pages

* * * * *

(b) * * *

(3) A statement that information about the Fund (including the SAI) can be reviewed and copied at the Commission's Public Reference Room in Washington, D.C., and that information on the operation of the Public Reference Room may be obtained by calling the Commission at 1–202–942–8090. State that reports and other information about the Fund are available on the EDGAR Database on the Commission's Internet site at http://www.sec.gov, and that copies of this information may be obtained, after paying a duplicating fee, by electronic request at the following E-mail address: publicinfo@sec.gov, or by writing the Commission's Public Reference Section, Washington, D.C. 20549–0102.

* * * * *

6. Item 13 of Form N–1A [referenced in §§ 239.15A and 274.11A] is amended by adding paragraph (f) and an instruction to read as follows:

Note: The text of Form N–1A does not, and the amendments to the form will not, appear in the Code of Federal Regulations.

Form N–1A

* * * * *

Item 13. Management of the Fund

* * * * *

(f) *Codes of Ethics.* Provide a brief statement disclosing whether the Fund and its investment adviser and principal underwriter have adopted codes of ethics under rule 17j–1 of the Investment Company Act [17 CFR 270.17j–1] and whether these codes of ethics permit personnel subject to the codes to invest in securities, including securities that may be purchased or held by the Fund.

Instruction: A Fund that is not required to adopt a code of ethics under rule 17j–1 of the Investment Company Act is not required to respond to this item.

* * * * *

7. Item 23 of Form N–1A [referenced in §§ 239.15A and 274.11A] is amended by adding paragraph (p) and an instruction to read as follows:

Form N–1A

* * * * *

Item 23. Exhibits

* * * * *

(p) *Codes of Ethics.* Any codes of ethics adopted under rule 17j–1 of the Investment Company Act [17 CFR 270.17j–1] and currently applicable to the Fund (*i.e.*, the codes of the Fund and its investment advisers and principal underwriters). If there are no codes of ethics applicable to the Fund, state the reason (*e.g.*, that the Fund is a Money Market Fund).

Instruction: A Fund that is a feeder fund also must file a copy of all codes of ethics applicable to the master fund.

* * * * *

8. Item 18 of Form N–2 [referenced in §§ 239.14 and 274.11a–1] is amended by adding paragraph 5 and an instruction to read as follows:

Note: The text of Form N–2 does not, and the amendments to the form will not, appear in the Code of Federal Regulations.

Form N–2

* * * * *

Item 18. Management

* * * * *

5. *Codes of Ethics:* Provide a brief statement disclosing whether the Registrant and its investment adviser and principal underwriter have adopted codes of ethics under Rule 17j–1 of the 1940 Act [17 CFR 270.17j–1] and whether these codes of ethics permit personnel subject to the codes to invest in securities, including securities that may be purchased or held by the Registrant. Also explain in the statement that these codes of ethics can be reviewed and copied at the Commission's Public Reference Room in Washington, D.C., that information on the operation of the Public Reference Room may be obtained by calling the Commission at 1–202–942–8090, that these codes of ethics are available on the EDGAR Database on the Commission's Internet site at http://www.sec.gov, and that copies of these codes of ethics may be obtained, after paying a duplicating fee, by electronic request at the following E-mail address: publicinfo@sec.gov, or by writing the Commission's Public Reference Section, Washington, D.C. 20549–0102.

Instruction

A Registrant that is not required to adopt a code of ethics under Rule 17j–1 under the 1940 Act [17 CFR 270.17j–1] is not required to respond to this item.

* * * * *

9. Item 24 of Form N–2 [referenced in §§ 239.14 and 274.11a–1] is amended by adding new paragraph 2.r. to read as follows:

Form N–2

* * * * *

Item 24. Financial Statements and Exhibits

* * * * *

2. * * *

r. copies of any codes of ethics adopted under Rule 17j–1 under the 1940 Act [17 CFR 270.17j–1] and currently applicable to the Registrant (*i.e.*, the codes of the Registrant and its investment advisers and principal underwriters). If there are no codes of ethics applicable to the Registrant, state the reason (*e.g.*, the Registrant is a Money Market Fund).

* * * * *

10. Item 20 of Form N–3 [referenced in §§ 239.17a and 274.11b] is amended by adding paragraph (d) and an Instruction to read as follows:

Note: The text of Form N–3 does not, and the amendments to the form will not, appear in the Code of Federal Regulations.

Form N–3

* * * * *

Item 20. Management

* * * * *

(d) Provide a brief statement disclosing whether the Registrant and its investment adviser and principal underwriter have adopted codes of ethics under Rule 17j–1 of the 1940 Act [17 CFR 270.17j–1] and whether these codes of ethics permit personnel subject to the codes to invest in securities, including securities that may be purchased or held by the Registrant. Also explain in the statement that these codes of ethics can be reviewed and copied at the Commission's Public Reference Room in Washington, D.C., that information on the operation of the Public Reference Room may be obtained by calling the Commission at 1–202–942–8090, that these codes of ethics are available on the EDGAR Database on the Commission's Internet site at http://www.sec.gov, and that copies of these codes of ethics may be obtained, after paying a duplicating fee, by electronic request at the following E-mail address: publicinfo@sec.gov, or by writing the Commission's Public Reference Section, Washington, D.C. 20549–0102.

Instruction: A Registrant that is not required to adopt a code of ethics under Rule 17j–1 under the 1940 Act [17 CFR 270.17j–1] is not required to respond to this item.

* * * * *

11. Item 28 of Form N–3 [referenced in §§ 239.17a and 274.11b] is amended by removing the word "and" at the end of paragraph (b)(14), removing the period at the end of paragraph (b)(15) and in its place adding a semicolon, removing the period at the end of paragraph (b)(16) and in its place adding "; and", and adding new paragraph (b)(17) to read as follows:

Form N–3

* * * * *

Item 28. Financial Statements and Exhibits

* * * * *

(b) * * *

(17) copies of any codes of ethics adopted under Rule 17j–1 under the 1940 Act [17 CFR 270.17j–1] and currently applicable to the Registrant (*i.e.*, the codes of the Registrant and its investment advisers and principal underwriters). If there are no codes of ethics applicable to the Registrant, state the reason (*e.g.*, the Registrant is a Money Market Fund).

* * * * *

12. Item 3 of Form N–5 [referenced in §§ 239.24 and 274.5] is amended by removing the word "investment" both times that it appears in the introductory text and adding paragraph (i) and an Instruction after the Instruction to read as follows:

Note: The text of Form N–5 does not, and the amendments to the form will not, appear in the Code of Federal Regulations.

Form N–5

* * * * *

Item 3. Policies with Respect to Security Investments

* * * * *

(i) Whether the registrant and its investment adviser and principal underwriter have adopted codes of ethics under Rule 17j–1 of the Investment Company Act of 1940 [17 CFR 270.17j–1] and whether these codes of ethics permit personnel subject to the codes to invest in securities, including securities that may be purchased or held by the registrant. Also explain that these codes of ethics can be reviewed and copied at the Commission's Public Reference Room in Washington, D.C., that information on the operation of the Public Reference Room may be obtained by calling the Commission at 1–202–942–8090, that these codes of ethics are available on the EDGAR Database on the Commission's Internet site at http://www.sec.gov, and that copies of these

codes of ethics may be obtained, after paying a duplicating fee, by electronic request at the following E-mail address: publicinfo@sec.gov, or by writing the Commission's Public Reference Section, Washington, D.C. 20549–0102.

Instruction: A registrant that is not required to adopt a code of ethics under Rule 17j–1 under the 1940 Act [17 CFR 270.17j–1] is not required to respond to this item.

* * * * *

13. The Instructions As To Exhibits of Form N–5 [referenced in §§ 239.24 and 274.5] are amended by adding paragraph 13 to read as follows:

Form N–5

* * * * *

Instructions as to Exhibits

* * * * *

13. Copies of any codes of ethics adopted under Rule 17j–1 under the Investment Company Act of 1940 [17 CFR 270.17j–1] and currently applicable to the registrant (*i.e.*, the codes of the registrant and its investment advisers and principal underwriters). If there are no codes of ethics applicable to the registrant, state the reason (*e.g.*, the registrant is a Money Market Fund).

* * * * *

14. Item 52 of Form N–8B–2 [referenced in § 274.12] is amended by adding paragraph (e) and an Instruction to read as follows:

Note: The text of Form N–8B–2 does not, and the amendments to the form will not, appear in the Code of Federal Regulations.

Form N–8B–2

* * * * *

Policy of Registrant

52. * * *

(e) Provide a brief statement disclosing whether the trust and its principal underwriter have adopted codes of ethics under rule 17j–1 of the Act [17 CFR 270.17j–1] and whether these codes of ethics permit personnel subject to the codes to invest in securities, including securities that may be purchased or held by the trust. Also explain that these codes of ethics can be reviewed and copied at the Commission's Public Reference Room in Washington, D.C., that information on the operation of the Public Reference Room may be obtained by calling the Commission at 1–202–942–8090, that these codes of ethics are available on the EDGAR Database on the Commission's Internet site at http://www.sec.gov, and that copies of these codes of ethics may be obtained, after paying a duplicating fee, by electronic request at the following E-mail address: publicinfo@sec.gov, or by writing the Commission's Public Reference Section, Washington, D.C. 20549–0102.

Instruction: A trust that is not required to adopt a code of ethics under Rule 17j–1 under the Act [17 CFR 270.17j–1] is not required to respond to this item.

* * * * *

15. Part IX of Form N–8B–2 [referenced in § 274.12] is amended by adding paragraph A.(11) to read as follows:

Form N–8B–2

* * * * *

IX—Exhibits

A. * * *

(11) Copies of any codes of ethics adopted under rule 17j–1 under the Act [17 CFR 270.17j–1] and currently applicable to the trust (*i.e.*, the codes of the trust and its principal underwriters). If there are no codes of ethics applicable to the trust, state the reason (*e.g.*, the trust invests only in direct obligations of the United States Government).

* * * * *

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

16. The authority citation for Part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(17), 80b–3, 80b–4, 80b–6(4), 80b–6a, 80b–11, unless otherwise noted.

* * * * *

17. Section 275.204–2 is amended by revising paragraph (a)(12)(i), redesignating paragraphs (a)(12)(ii) and (a)(12)(iii) as paragraphs (a)(12)(iii) and (a)(12)(iv), adding new paragraph (a)(12)(ii), redesignating newly designated paragraph (a)(12)(iii)(B) as paragraph (a)(12)(iii)(C), adding new paragraph (a)(12)(iii)(B), revising paragraph (a)(13)(i), redesignating paragraphs (a)(13)(ii) and (a)(13)(iii) as paragraphs (a)(13)(iii) and (a)(13)(iv), adding new paragraph (a)(13)(ii), redesignating newly designated paragraphs (a)(13)(iii)(B) and (a)(13)(iii)(C) as paragraphs (a)(13)(iii)(C) and (a)(13)(iii)(D), and adding new paragraph (a)(13)(iii)(B) to read as follows:

§ 275.204–2 Books and records to be maintained by investment advisers.

(a) * * *

(12)(i) A record of every transaction in a security in which the investment adviser or any advisory representative (as defined in paragraph (a)(12)(iii)(A) of this section) of the investment adviser has, or by reason of the transaction acquires, any direct or indirect beneficial ownership, except:

(A) Transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and

(B) Transactions in securities that are: direct obligations of the Government of the United States; bankers' acceptances, bank certificates of deposit, commercial paper, and high quality short-term debt instruments, including repurchase agreements; or shares issued by registered open-end investment companies.

(ii) The record required by paragraph (a)(12)(i) of this section must state the title and amount of the security involved; the date and nature of the transaction (*i.e.*, purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker, dealer, or bank with or through whom the transaction was effected. Any record required by paragraph (a)(12)(i) of this section also may contain a statement declaring that the record of the transaction will not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction must be recorded no later than 10 days after the end of the calendar quarter in which the transaction was effected. An investment adviser will be considered to have made a record required by paragraph (a)(12)(i) of this section if:

(A) The investment adviser receives a broker trade confirmation or account statement in the time period required by this paragraph (a)(12)(ii);

(B) The broker trade confirmation, account statement or other records of the investment adviser contains all the information required by this paragraph (a)(12)(ii);

(C) The investment adviser keeps the broker trade confirmation, account statement, and other records containing the information required by this paragraph (a)(12)(ii); and

(D) All broker trade confirmations and account statements that are printed on paper and kept under paragraph (a)(12)(ii)(C) of this section are organized in a manner that allows easy access to and retrieval of any particular confirmation or statement.

(iii) * * *

(B) *Beneficial ownership* will be interpreted in the same manner as it would be under § 240.16a–1(a)(2) of this chapter in determining whether a person has beneficial ownership of a security for purposes of section 16 of the Securities Exchange Act of 1934 [15 U.S.C. 78p] and the rules and regulations thereunder.

* * * * *

(13)(i) Notwithstanding the provisions of paragraph (a)(12) of this section, an investment adviser that is primarily engaged in a business or businesses other than advising registered investment companies or other advisory clients, must maintain a record of every transaction in a security in which the investment adviser or any advisory representative (as defined in paragraph (a)(13)(iii)(A) of this section) of the investment adviser has, or by reason of the transaction acquires, any direct or indirect beneficial ownership, except:

(A) Transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and

(B) Transactions in securities that are: direct obligations of the Government of the United States; bankers' acceptances, bank certificates of deposit, commercial paper, and high quality short-term debt instruments, including repurchase agreements; or shares issued by registered open-end investment companies.

(ii) The record required by paragraph (a)(13)(i) of this section must state the title and amount of the security involved; the date and nature of the transaction (*i.e.*, purchase, sale or other acquisition or disposition); the price at which it was effected; and the name of the broker, dealer or bank with or through whom the transaction was effected. Any record required by paragraph (a)(13)(i) of this section also may contain a statement declaring that the record of the transaction will not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction must be recorded no later than 10 days after the end of the calendar quarter in which the transaction was effected. An investment adviser will be considered to have made a record required by paragraph (a)(13)(i) of this section if:

(A) The investment adviser receives a broker trade confirmation or account statement in the time period required by this paragraph (a)(13)(ii);

(B) The broker trade confirmation, account statement or other records of the investment adviser contains all the information required by this paragraph (a)(13)(ii);

(C) The investment adviser keeps the broker trade confirmation, account statement, and other records containing the information required by this paragraph (a)(13)(ii); and

(D) All broker trade confirmations and account statements that are printed on paper and kept under paragraph (a)(13)(ii)(C) of this section are organized in a manner that allows easy access to and retrieval of any particular confirmation or statement.

(iii) * * *

(B) *Beneficial ownership* will be interpreted in the same manner as it would be under § 240.16a–1(a)(2) of this chapter in determining whether a person has beneficial ownership of a security for purposes of section 16 of the Securities Exchange Act of 1934 [15 U.S.C. 78p] and the rules and regulations thereunder.

* * * * *

By the Commission.

Dated: August 20, 1999.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–22310 Filed 8–26–99; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Zeranol

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Schering-Plough Animal Health Corp. The supplemental NADA provides for use of a zeranol implant in steers fed in confinement for slaughter for improved feed efficiency.

EFFECTIVE DATE: August 27, 1999.

FOR FURTHER INFORMATION CONTACT: Jack Caldwell, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1600.

SUPPLEMENTARY INFORMATION: Schering-Plough Animal Health Corp., 1095 Morris Ave., P.O. Box 3182, Union, NJ 07083–1982, filed supplemental NADA 38–233 that provides for use of Ralgro® Magnum (zeranol) implant in steers being fed in confinement for slaughter at a dose of 72 milligrams per steer for improved feed efficiency. The supplemental NADA is approved as of June 25, 1999, and the regulations are amended in 21 CFR 522.2680(d)(3)(ii) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning June 25, 1999, because the supplemental application contains substantial evidence of the effectiveness of the drug involved, any studies of animal safety or, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval and conducted or sponsored by the applicant. Three years marketing exclusivity is limited to use of the drug for improved feed efficiency in steers fed in confinement for slaughter.

FDA has carefully considered the potential environmental impact of this action and has concluded that the action will not have a significant impact on the human environment and an environmental impact statement is not required. FDA's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 522.2680 [Amended]

2. Section 522.2680 *Zeranol* is amended in paragraph (d)(3)(ii) by removing "For increased rate of weight gain" and adding in its place "For increased rate of weight gain and improved feed efficiency".

Dated: August 2, 1999.

Claire M. Lathers,

Director, Office of New Animal Drug Evaulation, Center for Veterinary Medicine.

[FR Doc. 99–22312 Filed 8–26–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. 98F–0195]

Food Additives Permitted in the Feed and Drinking Water of Animals; Menadione Nicotinamide Bisulfite

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of menadione nicotinamide bisulfite (MNB) in diets of growing and finishing swine as a nutritional supplement for the prevention of vitamin K deficiency and as a source of supplemental niacin. This action is in response to a food additive petition (animal use) filed by Vanetta S.p.A.

DATES: The regulation is effective August 27, 1999; submit written objections and requests for a hearing by September 27, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Michaela G. Alewynse, Center for Veterinary Medicine (HFV–228), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6657.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of May 12, 1998 (63 FR 26194), FDA announced that a food additive petition (animal use) (FAP 2239) had been filed by Vanetta S.p.A., Via Alzia Trento 10, Milano, Corsico, Italy. The petition proposed to amend the food additives regulations in part 573 (21 CFR part 573) to provide for use of menadione nicotinamide bisulfite in swine diets as a source of vitamin K activity and niacin. The notice of filing provided that written comments be sent to the Dockets Management Branch. No comments were received.

The agency has evaluated the information submitted by the sponsor in support of the petition and other relevant material and concluded that it establishes the safety and utility of up to 10 grams MNB per ton of complete feed in the diets of growing and finishing swine as a nutritional supplement for the prevention of vitamin K deficiency and as a source of supplemental niacin. Therefore, § 573.625 is amended to provide for this use. Furthermore, the section is revised to conform to current format.

In accordance with § 571.1(h) (21 CFR 571.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Veterinary Medicine by appointment with the information contact person listed above. As provided in § 571.1(h), FDA will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has determined under 21 CFR 25.32(r) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Any person who will be adversely affected by this regulation may at any time on or before September 27, 1999, file with the Dockets Management Branch (see above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 573

Animal feeds, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 573 is amended as follows:

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

1. The authority citation for 21 CFR part 573 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

2. Section 573.625 is revised to read as follows:

§ 573.625 Menadione nicotinamide bisulfite.

The food additive may be safely used as follows:

(a) The additive is 1,2,3,4-tetrahydro-2-methyl-1,4-dioxo-2-naphthalene sulfonic acid with 3-pyridine carboxylic acid amine (CAS No. 73581–79–0).

(b) The additive is used or intended for use as a nutritional supplement for both the prevention of vitamin K deficiency and as a source of supplemental niacin as follows:

(1) In chicken and turkey feeds at a level not to exceed 2 grams per ton of complete feed.

(2) In growing and finishing swine feeds at a level not to exceed 10 grams per ton of complete feed.

(c) To assure safe use, the label and labeling of the additive shall bear adequate directions for use.

Dated: August 2, 1999.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 99–22313 Filed 8–26–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. 94F–0283]

Food Additives Permitted in the Feed and Drinking Water of Animals; Menadione Nicotinamide Bisulfite

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; republication and opportunity to file objections or additional information.

SUMMARY: The Food and Drug Administration (FDA) is republishing, with additional information, a final rule that published in the **Federal Register** of January 2, 1996 (61 FR 5). The rule amended the food additive regulations (animal use) to reflect approval of a food additive petition (FAP) filed by Vanetta (U.S.A.) Inc. Objections to the final rule were filed. FDA is not acting on the objections in this document, but is clarifying the basis of approval of the petition and providing additional information. The agency also is providing a new 30-day period for the submission of objections or of additional information in support of the objections that were previously filed. FDA has not stayed the effective date of the final rule, effective January 2, 1996.

DATES: Objections, additional information in support of the previously filed objections, or additional written objections and requests for a hearing, must be submitted by September 27, 1999.

ADDRESSES: Submit written objections and/or additional information in support of objections previously submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Sharon A. Benz, Center for Veterinary Medicine (HFV–228), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6656.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of January 2, 1996, FDA published a final rule that amended the food additive regulations (animal use) to reflect approval of an FAP (FAP 2228) filed by Vanetta (U.S.A.) Inc., 1770 East Market St., York, PA 17402. The final rule provides for the safe use of menadione nicotinamide bisulfite (MNB) as a nutritional supplement in chicken and turkey feeds for the prevention of vitamin K deficiency and as a source of supplemental niacin when used at a rate not to exceed 2 grams per ton (g/t) of complete feed. Heterochemical Corp., 111 East Hawthorne Ave., Valley Stream, NY 11580, filed objections to the final rule in its entirety alleging that the studies upon which the petition relies failed to conform to good laboratory practices (GLP's) or good clinical practices (GCP's), and that the regulation promotes deception of the consumer and misbranding of the product. Heterochemical's objections are:

1. The record of the studies fails to establish that any of the nonclinical laboratory studies (including target animal safety) on which the regulation is based were conducted in accordance with GLP's as described in part 58 (21 CFR part 58). The record also fails to provide, alternatively, a reason for noncompliance as required by § 571.1(k) (21 CFR 571.1(k)). Furthermore, the record does not provide a basis for identifying the differences between the practices used and those required by the GLP regulations, so as to permit an evaluation of the studies' integrity and reliability (i.e., if the target animal safety studies are flawed, there is no information in support of the safety of the food additive) (Ref. 1).

2. The record of the studies fails to establish that any of the clinical studies on which the regulation is based were conducted in accordance with GCP's as illustrated in FDA's Center for Veterinary Medicine's (CVM's) guidance document entitled "Guideline on the Conduct of Clinical Investigations: Responsibility of Clinical Investigators and Monitors for Investigational New Animal Drug Studies," October 1992 (the guidelines cited by the objection were supplanted by a revised document in May 1997) (Ref. 2).

3. Heterochemical objects to the regulation in that it establishes MNB as a source of supplemental niacin and authorizes labeling the product as a source of supplemental niacin. Based on a low level of niacin supplementation, the firm contends that the labeling promotes deception of the consumer and results in misbranding of food within the meaning of the Federal Food, Drug, and Cosmetic Act (the act).

The preamble of the January 2, 1996, final rule stated that FDA evaluated the data presented in the petition and concluded that use of the product is safe. The final rule stated that the food additive regulations would be amended as requested in the FAP. FDA is now republishing the final rule to clarify its basis for approval, and to provide additional information supporting approval of the petitioned use, specifically the GLP statement as described in § 571.1(k). FDA believes this course of action is appropriate to supplement the record. FDA will also clarify the reasons for approving the FAP, and provide Heterochemical and any other interested party with an opportunity to proffer facts that demonstrate FDA's basis for approving FAP 2228 was incorrect.

FDA is therefore republishing the final rule and providing an additional 30 days for submission of objections or of additional information in support of the objections that have already been filed. In accordance with its discretion under section 409(f) of the act (21 U.S.C. 348(f)), FDA is not staying the final rule. FDA will consider a stay, however, if one is requested, after having evaluated any objections or other information filed in response to this document.

II. Administrative Record

A. Question of Adherence to GLP's (Part 58 and § 571.1(k))

In filing an FAP, the petitioner is required to provide data and information to support the safe use of the product as required by section 409(c)(1) of the act. The supporting data and information include full reports of investigations made with respect to the safety of use of the additive, including information as to the methods and controls used in conducting the investigations. Part 58 prescribes GLP's for conducting those nonclinical laboratory studies that are used to support or are intended for use to support FAP's or marketing permits for products regulated by FDA. Compliance with GLP's is intended to ensure the quality and integrity of the safety data filed to support approval of an FAP. If nonclinical laboratory studies are involved, an FAP shall include, for each study, a statement that the study was conducted in compliance with GLP requirements set forth under part 58, or if the study was not conducted in compliance with the GLP's, a brief statement with the reason for noncompliance.

In FAP 2228, Vanetta submitted a journal article (Ref. 1) supporting approval of its petition. The studies reported in the article were not conducted in accordance with GLP's, and Vanetta did not submit a statement of the reason for noncompliance. Accordingly, FDA is reopening the administrative record to include a statement from Vanetta on the reasons for the studies' noncompliance with GLP's, as required under § 571.1(k).

B. Clarification of the Record

The objections Heterochemical filed in response to FDA's approval of MNB point out that the basis for the agency's decision was not clear. The administrative record for FAP 2228 included various agency comments on the studies reported in the journal article by Oduho et al. The objector interpreted the comments to mean that the studies were invalid and thus did not support approval of the FAP. Contrary to the objector's interpretation, the agency's comments on the Oduho studies did not question their validity, and do not invalidate the agency's final decision that MNB is safe and achieves its intended technical effect. However, the objections made it clear that the agency needed to make additional comments to clarify the record.

1. Target Animal Safety

FAP 2228 included the Oduho article to support safety of MNB. The Oduho article included what was described as a chronic study (Ref. 1). The results reported in the article indicated that MNB is a safe and effective source of vitamin K and niacin activities. Niacin can serve as a generic name for all pyridine-3-carboxylic acids that exhibit nicotinamide activity (Ref. 3). Only when doses exceed 1,000 times the chick's vitamin K requirement did the article's authors report morbidity or mortality. The data generated by the chronic study, where up to 6 g of menadione per kilogram (kg) complete feed were fed to chick's, support the safety of the substance.

Although this chronic study was of relatively short duration (14 days), the agency believes that it is sufficient to support its conclusion that MNB is safe. The agency evaluated the results of the study in conjunction with the following and other available information that further supported its final determination that MNB is safe and achieves its intended technical effect. MNB hydrolyzes into menadione and nicotinamide. Menadione is prior sanctioned as a source of vitamin K activity (Ref. 4), and nicotinamide (niacinamide) is generally recognized as safe as a nutrient and/or dietary supplement under 21 CFR 582.5535 and section 201(s) of the act (21 U.S.C. 321(s)). Both components have a long history of safe use in animal diets (Refs. 4 and 5).

2. Utility

Menadione and many of its derivatives have vitamin K activity. This vitamin has several biological functions, one of the most important being in blood clot formation (Ref. 6). The Oduho article included a study demonstrating that inclusion of MNB in chick diets improved blood clotting when compared to negative controls. The improvements observed in the study were similar to those seen when another accepted source of vitamin K activity was added to experimental diets.

The highest level of menadione utilized in this study, 0.4 milligram (mg)/kg diet, approaches that recommended by the National Research Council, 0.5 mg/kg, for the type of birds used in this experiment (Ref. 7). The adequacy of 0.4 mg to meet the birds' nutritional requirement is demonstrated by the fact that the prothrombin times of 17 and 19 seconds for MNB and menadione dimethylpyrimidinol bisulfite (MPB), an accepted source of vitamin K activity (21 CFR 573.620), fall very close to the normal range for chickens, which has been reported to vary from 20 to 25 seconds (Ref. 8). The Oduho article reported the normal prothrombin range for chicks to be 12 to 25 seconds. The bioavailability of the vitamin K activity, supplied by the menadione component of MNB, did not differ significantly from that of the positive control substance, MPB. Both MNB and MPB were bioequivalent as an active source of menadione.

The agency noted that the levels of nicotinamide utilized in Oduho experiment number 2 are below those accepted as nutritionally adequate. However, this study did demonstrate that the nicotinamide portion of the MNB molecule was available to the chicks, i.e., that it is bioavailable to a similar extent as pure nicotinamide, which served as a control in the study. In addition, the low level of nicotinamide supplementation is closer to the level of this vitamin supplied by MNB with the mandated 2 g per ton complete feed restriction. Both the amount of nicotinamide supplied by MNB and other dietary sources of this compound will be utilized to formulate a diet which meets the animal's niacin nutritional requirements.

Vanetta amended its petition and submitted a preliminary report on clinical studies conducted at the University of Georgia. This report supported the utility of MNB as a source of vitamin K activity. Because the bioavailabilities of both the menadione and nicotinamide components of MNB were established by the Oduho article, and the utility of MNB as a source of vitamin K activity was confirmed in the University of Georgia experiments, the utility portion of the amended petition was acceptable.

3. Conditions of Use and Directions for Use

The approved conditions of use, as specified in the MNB regulation (21 CFR 573.625(b)), state that MNB can be used as a "nutritional supplement in chicken and turkey feeds for both the prevention of vitamin K deficiency and as a source of supplemental niacin."

The conditions of use appropriately compare the levels of vitamin K activity from menadione and nicotinamide by stating that MNB can prevent a vitamin K deficiency, but is simply a source of niacin. As noted previously, niacin can serve as a generic name for all pyridine-3-carboxylic acids that exhibit nicotinamide activity (Ref. 3). By using the different terms, the conditions of use establish that MNB provides different levels of vitamin K and niacin activities.

The directions for use on the product label specify the minimum amount of menadione and niacin in MNB, and do so in units commonly used in the feed industry (Ref. 9). Animal nutritionists routinely mix feed ingredients to obtain a complete, balanced animal diet, and the composition of this diet normally changes with an animal's weight and age (Ref. 7). Therefore, users of the product will refer to the minimum amounts specified on the MNB label and mix feed accordingly with MNB and other sources of niacin to provide all nutritional needs based on the weight and age of the animals being fed.

Finally, the agency notes that the MNB label follows the Association of American Feed Control Officials (AAFCO) format, which the agency concluded was acceptable. AAFCO, primarily composed of State regulatory officials, has developed a set of model regulations concerning feed labeling. FDA generally concurs with the AAFCO model regulations although these model regulations are not binding. Feed manufacturers routinely follow the model regulations when labeling feed and are familiar with the AAFCO requirements.

III. Opportunity for Objection

A food additive shall, with respect to any particular use or intended use of such additive, be deemed to be unsafe, unless it and its use or intended use conform to the terms of an exemption that is in effect for investigational use, or there is in effect, and it and its use or intended use are in conformity with, a regulation issued under section 409(a) of the act. With respect to any intended use of a food additive, a person may file a petition with the appropriate center within FDA proposing the issuance of a regulation prescribing the conditions under which said additive may be safely used. The petition shall, in addition to any explanatory or supporting data, contain the name of the food additive, its chemical name and composition, a statement of the conditions of the proposed use of such additive, together with all directions, recommendations, and suggestions proposed for the use of such additive with specimens of proposed labeling. The petition shall also contain relevant data bearing on the physical or other technical effect the additive is intended to produce, the quantity of the additive required to produce the desired effect, a description of practicable methods for determining the quantity of the additive in or on food and any substance formed in or on food because of its use, and full reports of investigations made with respect to the safety of the use of the additive, including information as to the methods and controls used in conducting the investigations.

Any party who will be adversely affected by this regulation may at any time on or before September 27, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

IV. References

1. Oduho, G. W., T. K. Chung, and D. H. Baker, "Menadione nicotinamide bisulfite is a bioactive source of vitamin K and niacin activity for chicks," *Journal of Nutrition*, 123: 737–743, 1993.

2. "Guideline on the Conduct of Clinical Investigations: Responsibility of Clinical Investigators and Monitors for Investigational New Animal Drug Studies" ("Guideline No. 39," U.S. Department of Health and Human Services, FDA, CVM, October 1992) (superseded by "Guidance for Industry No. 58," May 1997).

3. National Research Council, *Vitamin Tolerance of Animals*, National Academy Press, 1987.

4. "Food Additive Status of Vitamin K Active Substances in Animal Food" (48 FR 16748, April 19, 1983).

5. Title 21 CFR 121.101, "Substances that are generally recognized as safe," 1974 (21 CFR part 582, 1998).

6. Suttie, J. W., "Vitamin K," *Handbook of Vitamins*, edited by L. J. Machlin, Marcel Dekker, Inc., 1991.

7. National Research Council, *The Nutritional Requirements of Poultry*, National Academy Press, 1994.

8. Swenson, M. J. "Physiological properties and cellular and chemical constituents of blood," *Duke's Physiology of Domestic Animals*, edited by M. J. Swenson, Cornell University Press, 1977.

9. *Official Publication*, Association of American Feed Control Officials, Inc., 1998.

List of Subjects in 21 CFR Part 573

Animal feeds, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, FDA is republishing in its entirety the text of the final regulation that appeared in the **Federal Register** of January 2, 1998. This republication of the final rule does not amend the regulation in any way.

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

1. The authority citation for 21 CFR part 573 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

2. Section 573.625 is republished as follows:

§ 573.625 Menadione nicotinamide bisulfite.

The food additive may be safely used as follows:

(a) *Product.* The additive is 1,2,3,4-tetrahydro-2-methyl-1, 4-dioxo-2-naphthalene sulfonic acid with 3-pyridine carboxylic acid amine (CAS No. 73581–79–0).

(b) *Conditions of use.* As a nutritional supplement in chicken and turkey feeds for both the prevention of vitamin K deficiency and as a source of supplemental niacin.

(c) *Limitations.* Not to exceed 2 grams per ton of complete feed. To assure safe use, the label and labeling shall bear adequate directions for use.

Dated: August 11, 1999.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 99–22314 Filed 8–26–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 103

[Docket No. FR–4433–F–02]

RIN 2529–AA86

Fair Housing Complaint Processing; Plain Language Revision and Reorganization

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final rule.

SUMMARY: This final rule adopts an interim rule, published in the **Federal Register** on April 14, 1999, that revised HUD's regulations concerning the processing of fair housing complaints.

DATES: Effective Date: September 27, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Rodriguez, Acting Director, Office of Enforcement, Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–2000; telephone (202) 708–0836 (this is not a toll-free number). Hearing or speech impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On April 14, 1999, HUD published in the **Federal Register** an interim rule (64 FR 18538) that revised HUD's fair housing complaint processing regulations. The interim rule revised these regulations in two ways. First, the sections of HUD's regulations that addressed the filing of complaints were rewritten using plain language. Plain language is an approach to writing that promotes responsive, accessible, and understandable written communication. Second, the sections of HUD's regulations that addressed the investigation of complaints were moved to another place in the regulations. We revised these regulations to make the procedures for filing housing discrimination complaints easier to understand.

The interim rule solicited comments from the public on these revisions and included a 60-day public comment period. The public comment period closed on June 14, 1999. We received no comments on the interim rule. This final rule adopts the interim rule without change.

II. Findings and Certifications

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This final rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or, tribal governments or on the private sector.

Environmental Impact

This final rule concerns fair housing enforcement procedures. Accordingly, under 24 CFR 50.19(c)(3), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Impact on Small Entities

The Secretary has reviewed this final rule before publication and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule would not have a significant economic impact on a substantial number of small entities. This final rule adopts an interim rule, published in the **Federal Register** on April 14, 1999, that revised HUD's regulations concerning the processing of fair housing complaints.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612 (entitled "Federalism"), has determined that the policies contained in this final rule do not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 24 CFR Part 103

Administrative practice and procedure, Aged, Fair housing, Individuals with disabilities, Intergovernmental relations, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements.

PART 103—FAIR HOUSING—COMPLAINT PROCESSING

Accordingly, the interim rule amending 24 CFR part 103, which was published at 64 FR 18538 on April 14, 1999, is adopted as a final rule without change.

Dated: August 13, 1999.

Eva M. Plaza,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 99–22362 Filed 8–26–99; 8:45 am]

BILLING CODE 4210–28–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 24 and 252

[T.D. ATF–413]

RIN 1512–AC00

Technical Amendments

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule makes technical amendments and conforming changes to the wine and exportation of liquors regulations to provide clarity and uniformity.

DATES: Effective August 27, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy Kern, Regulations Division, (202) 927–8210, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Alcohol, Tobacco and Firearms (ATF) administers regulations published in Title 27, Code of Federal Regulations. These regulations are updated April 1 of each year to incorporate new or revised regulations that were published by ATF in the **Federal Register** during the preceding year. ATF identified several amendments that are needed to provide clarity and uniformity to the regulations in 27 CFR.

These amendments do not make any substantive changes and are only intended to improve the clarity of title 27.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no recordkeeping or reporting requirements.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply to this rule because no notice of proposed rulemaking is required.

Executive Order 12866

This final rule is not subject to the requirements of Executive Order 12866 because the regulations make nonsubstantive technical corrections to previously published regulations.

Administrative Procedure Act

Because this final rule merely makes technical corrections to improve the clarity of the regulations, it is unnecessary to issue this final rule with notice and public procedure under 5 U.S.C. 553(b), or subject to the effective date limitation in section 553(d).

Drafting Information

The author of this document is Nancy M. Kern, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 24

Administrative practice and procedure, Authority delegation, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Taxpaid wine bottling house, Transportation, Vinegar, Warehouses, Wine.

27 CFR Part 252

Aircraft, Alcohol and alcoholic beverages, Armed forces, Authority delegations, Beer, Claims, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Perfume, Reporting requirements, Transportation, Wine.

Authority and Issuance

Title 27, Code of Federal Regulations is amended as follows:

PART 24—WINE

Paragraph 1. The authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. In § 24.177, revise the fourth sentence to read as follows:

§ 24.177 Chaptalization (Brix adjustment).

* * * If grape juice or grape wine is ameliorated after chaptalization, the quantity of pure dry sugar added to juice for chaptalization will be included as ameliorating material. * * *

* * * * *

Par. 3. In § 24.180, revise the second sentence to read as follows:

§ 24.180 Use of concentrated and unconcentrated fruit juice.

* * * Concentrated fruit juice reduced with water to any degree of Brix greater than 22 degrees Brix may be further reduced with water to any degree of Brix between its original density and 22 degrees Brix. * * *

* * * * *

PART 252—EXPORTATION OF LIQUORS

Par. 4. The authority citation for part 252 continues to read as follows:

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5041, 5051, 5054, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5555, 6302, 7805; 27 U.S.C. 203, 205; 44 U.S.C. 3504(h).

Par. 5. In § 252.62, revise the second sentence of paragraph (c) to read as follows:

§ 252.62 Bond, Form 2735 (5100.30).

* * * * *

(c) * * * The exporter may reapportion the bond coverage, if changing conditions make this necessary, by filing a consent of surety, ATF Form 1533 (5000.18), for approval by the Director of Industry Operations (DIO).

* * * * *

Signed: June 25, 1999.

John W. Magaw,

Director.

Approved: June 12, 1999.

John P. Simpson

Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 99–22290 Filed 8–26–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF JUSTICE

28 CFR Part 0

[AG Order No. 2250–99]

Personnel and Administrative Authorizations

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule transfers the current delegations of authority for personnel and certain administrative matters affecting General Schedule grades GS–1 through GS–15 and wage board positions in the Federal Bureau of Investigation (FBI) and Drug Enforcement Administration (DEA) contained in the Department of Justice regulations. The rule also revises the regulations to add delegations of authority for the Office of Justice Programs, the Executive Office for Immigration Review, and the Executive Office for United States Trustees. This revision consolidates the delegated authority for General Schedule grades GS–1 through GS–15 and wage board positions for all bureaus in one section. Finally, this rule publishes the definition of "career employee in the civil service" as it applies to the FBI–DEA Senior Executive Service (SES) and clarifies the authority delegated to the Deputy Attorney General will respect to personnel in the FBI–DEA SES.

EFFECTIVE DATE: August 17, 1999.

FOR FURTHER INFORMATION CONTACT: Valerie M. Willis, Assistant Director, Executive Resources Group, Personnel Staff, Department of Justice, National Place Building, Suite 1170, 1331 Pennsylvania Avenue, NW, Washington, DC 20530, telephone (202) 514–6794.

SUPPLEMENTARY INFORMATION: The Department is consolidating in 28 CFR 0.138 the delegated authority for General Schedule grades GS–1 through GS–15 and wage board positions for all Department components. These delegations were previously included in two separate sections: 28 CFR 0.137 (delegations to the FBI and DEA) and 28 CFR 0.138 (delegations to bureaus. Because section 0.138 currently does not include all the components within the Department, this rule adds the Office of Justice Programs, the Executive Office for Immigration Review, and the Executive Office for United States Trustees to the components listed in section 0.138, thereby consolidating in one section delegations for all Department components.

This rule also publishes the definition of the term "career employee in the civil service" as it applies to eligibility for selection to the FBI–DEA SES in section 0.157. As provided in 5 U.S.C. 3151 (b)(2)(B), the Attorney General and the Director of the Office of Personnel Management have consulted and agreed to the definition of "career employee in the civil service" added to section 0.157.

Section 0.157 has also been modified to clarify the authority delegated to the Deputy Attorney General. It has been revised further to remove current redelegations. Redelegations will be made in internal guidance. Making redelegations by such guidance will allow greater flexibility to the Department to redelegate when it is in the interest of the Department to do so, e.g., where reorganizations occur within the DEA or the FBI.

Administrative Procedure Act 5 U.S.C. 553

This rule is a rule of agency organization and is therefore exempt from the notice requirement of 5 U.S.C. 553(b). This rule is made effective upon signature.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Attorney General has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. The rule pertains only to personnel and administrative matters affecting the Department.

Executive Order 12866

This action has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, section 1(b), Principles of Regulation. This rule is limited to agency organization, management, and personnel as described by Executive Order 12866 section 3(d)(3) and therefore is not a "regulation" or "rule" as defined by that Executive Order. Accordingly, this action has not been reviewed by the Office of Management and Budget.

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were

deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write to Valerie M. Willis, (202) 514–6794.

Congressional Review Act

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of non-agency parties. Accordingly, it is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 804. Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

According, part 0 of title 28 of the Code of Federal Regulations is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301, 3151; 28 U.S.C. 509, 510, 515–519.

§ 0.137 [Removed and Reserved]

2. Section 0.137 of Subpart X is removed and reserved.

3. Section 0.138 is revised to read as follows:

§ 0.138 Federal Bureau of Investigation, Drug Enforcement Administration, Bureau of Prisons, Federal Prison Industries, Immigration and Naturalization Service, United States Marshals Service, Office of Justice Programs, Executive Office for Immigration Review, Executive Office for United States Attorneys, Executive Office for United States Trustees.

(a) The Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, the Director of the Bureau of Prisons, the Commissioner of Federal Prison Industries, the Commissioner of Immigration and Naturalization Service, the Director of the United States Marshals Service, the Assistant Attorney General for the Office of Justice Programs, the Director of the Executive Office for Immigration Review, the Director of the Executive Office for United States Attorneys, and the Director of the Executive Office for United States Trustees are, as to their respective jurisdictions, authorized to exercise the power and authority vested in the Attorney General by law to take final action in matters pertaining to the employment, direction, and general administration (including appointment, assignment, training, promotion, demotion, compensation, leave, awards, classification, and separation) of personnel in General Schedule grades GS–1 through GS–15 and in wage board positions, but excluding therefrom all attorney and U.S. Marshal positions. Such officials are, as to their respective jurisdictions, authorized to exercise the power and authority vested in the Attorney General by law to employ on a temporary basis experts or consultants or organizations thereof, including stenographic reporting services (5 U.S.C. 3109(b)).

(b) All personnel actions taken under this section shall be subject to post-audit and correction by the Assistant Attorney General for Administration.

4. Section 0.157 is amended by removing paragraph (e) and revising paragraphs (b) through (d) to read as follows:

§ 0.157 Federal Bureau of Investigation-Drug Enforcement Administration Senior Executive Service.

* * * * *

(b) Pursuant to 5 U.S.C. 3151(b)(2)(B), a career employee in the civil service is one who occupies, or who within the last 5 years occupied, a permanent position in the competitive service, a career-type permanent position in the excepted service, or a permanent position in the SES while serving under a career appointment. A career-type permanent position in the excepted service does not include:

(1) A Schedule C position authorized under 5 CFR 213.3301;

(2) A position that meets the same criteria as a Schedule C position; and

(3) A position where the incumbent is traditionally removed upon a change in Presidential Administration.

(c) Except as to the position of Deputy Director of the FBI (which remains subject to the exclusive authority of the Attorney General), the FBI–DEA SES is subject to the overall supervision and direction of the Deputy Attorney General, who shall ensure that the FBI–DEA SES is designed and administered in compliance with all statutory and regulatory requirements.

(d) The Attorney General retains the authority to recommend members of the FBI–DEA SES for Presidential Rank Awards.

Dated: August 17, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–22349 Filed 8–26–99; 8:45 am]

BILLING CODE 4410–AR–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1917 and 1918

RIN 1218–AB33

Powered Industrial Truck Operator Training; Stay of Compliance Dates

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Final rule; Stay of compliance dates.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is staying the compliance date for the new Powered Industrial Truck Operator Training Standard as it applies to employers in the Marine Terminal and Longshoring Industries from December 1, 1999, until March 1, 2000. The compliance date of the standard for employers in General Industry, Shipyards and Construction remains December 1, 1999.

DATES: The effective date of this document is August 27, 1999.

The effective date for the new Powered Industrial Truck Operator Training Standard, published December 1, 1998 (63 FR 66238), is March 1, 1999.

Compliance Dates: The dates by which powered industrial truck operators must be trained and evaluated pursuant to the new standard in the Marine Terminal and Longshoring Industries are shown on the following table.

If the employee was hired	The initial training and evaluation of that employee must be completed
Before March 1, 2000	By March 1, 2000.
After March 1, 2000 ..	Before the employee is assigned to operate a powered industrial truck.

Until operators are trained and evaluated pursuant to the new standard, employers in the Marine Terminal and Longshoring Industries must remain in compliance with OSHA's prior powered industrial truck operator training standards: 29 CFR 1917.27 (1998) for marine terminals; and 29 CFR 1918.98 (1998) for longshoring.

FOR FURTHER INFORMATION CONTACT: Direct press inquiries to: Bonnie Friedman, Director, Office of Information and Consumer Affairs, Rm. N3637, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–1999, Fax (202) 693–1634. Direct technical inquires to: Paul Rossi, Office of Maritime Safety Standards, Rm. N3621, telephone (202) 693–2066, Fax (202) 693–1663 or Patrick Kapust, Directorate of Compliance Programs, Rm. N–3603, telephone (202) 693–1850, Fax (202) 693–1628 at the above address.

SUPPLEMENTARY INFORMATION: On December 1, 1998, OSHA published a final standard improving training requirements for powered industrial truck operators at 63 FR 66238–66274. The new standard applies to employees in general industry, shipyards, marine terminals, longshoring and construction. The new standard will replace existing, more general training requirements in standards pertaining to each of these industrial sectors. The new standard had an effective date of March 1, 1999, and a completion of initial training and evaluation date of December 1, 1999 for operators employed before December 1, 1999. Completion of initial training and evaluation for operators hired on or after December 1, 1999 shall occur prior to their assignment to operate a truck.

The National Maritime Safety Association, Inc. (NMSA) petitioned for review of the standard in the Court of Appeals as it applied to the marine terminal and longshoring industries. (No other legal challenges were filed.) NMSA has asked OSHA to consider that certain unique circumstances in those industries involving the use of day labor and hiring halls suggest the need for flexibility in interpreting some provisions of the new standard.

OSHA, NMSA and some of its management and labor members are engaged in settlement negotiations, which have made some progress. In order to permit time for the negotiations to proceed, OSHA and NMSA have agreed to delay the court briefing schedule, and OSHA has agreed to stay the compliance dates of the new Powered Industrial Truck Operator Training Standard for the marine terminals and longshoring industries from December 1, 1999 to March 1, 2000. In the interim, employers in the marine terminal and longshoring industries are to remain in compliance with the pre-existing powered industrial truck training requirements at 29 CFR 1917.27 and 29 CFR 1918.98, respectively, which appear in the CFR volume, 29 CFR Parts 1911 to 1925 (Revised as of July 1, 1998).

The new Powered Industrial Truck Operator Training Standard is codified as 29 CFR 1910.178(l) and was published at 63 FR 66270–66273 (December 1, 1998). The new standard is made applicable to marine terminals by cross reference from 29 CFR 1917.1 (a)(2)(xiv) and to longshoring by 29 CFR 1918.1(b)(10). See 63 FR 66274. Accordingly, to give notice of the stay, OSHA is adding a note following 29 CFR 1917.1(a)(2)(xiv) and 29 CFR 1918.1(b)(10).

OSHA is not staying the compliance date of the standard for the general industry, shipyard and construction sectors. Accordingly, compliance with the new Powered Industrial Truck Operator Standard is required for those sectors by December 1, 1999. See also 64 FR 22552 (April 27, 1999) for further discussion of the compliance dates.

List of Subjects

29 CFR Part 1917

Hazardous substances, Longshore and harbor workers, Marine terminals, Occupational safety and health, Reporting and recordkeeping.

29 CFR Part 1918

Freight, Hazardous substances, Longshore and harbor workers, Occupational safety and health, Reporting and recordkeeping, Vessels.

Authority and Signature:

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 23rd day of August, 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

Accordingly, pursuant to sections 4, 6(b), 8(c) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657,) section 41 of the Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941), Secretary of Labor's Order 6–96 (62 FR 111), and 29 CFR part 1911, 29 CFR parts 1917and 1918 are amended as set forth below.

SUBPART 1917—MARINE TERMINALS

1. The authority citation for part 1917 continues to read as follows:

Authority: Section 41, Longshore and Harbor Workers' Compensation Act (33 U.S.C. 941); Sections 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 235736), or 6–96 (62 FR 111), as applicable; and 29 CFR Part 1911.

Section 1917.28 also issued under 5 U.S.C. 553.

Subpart A—Scope and Definitions

2. Section 1917.1 is amended by revising paragraph (a)(2)(xiv) to read as follows:

§ 1917.1 Scope and applicability.

(1) * * *

(2) * * *

(xiv) Powered industrial truck operator training, Subpart N, § 1910.178(l).

Note to Paragraph (a)(2)(xiv): The compliance dates of December 1, 1999 set forth in 29 CFR 1910.178(l)(7) are stayed until March 1, 2000 for Marine Terminals.

PART 1918—SAFETY AND HEALTH REGULATIONS FOR LONGSHORING

1. The authority citation for part 1918 continues to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970, 29 U.S.C. 653, 655, 657; Walsh Healey Act, 41 U.S.C.. 35 et seq.; Service Contract Act of 1965, 41 U.S.C. 351 et seq.; Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act), 40 U.S.C. 333; Sec. 41 of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 941; National Foundation of Arts and Humanities Act, 20 U.S.C. 951 et seq.; Secretary of Labor's Order No. 6–96 (62 FR 111); and 29 CFR part 1911.

Subpart A—Scope and Definitions

2. Section 1918.1 is amended by revising paragraph (b)(10) to read as follows:

§ 1918.1 Scope and application.

* * * * *

(b) * * *

(10) Powered industrial truck operator training, Subpart N, § 1910.178(l).

Note to Paragraph (b)(10): The Compliance dates of December 1, 1999 set forth in 29 CFR 1910.178(l)(7) are stayed until March 1, 2000 for Longshoring.

[FR Doc. 99–22304 Filed 8–26–99 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–094]

RIN 2115–AA97

Safety Zone: Staten Island Fireworks, Lower New York Bay and Raritan Bay

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing two temporary safety zones for Staten Island fireworks displays located on Lower New York Bay and Raritan Bay. This action is necessary to provide for the safety of life on navigable waters during the events. This action is intended to restrict vessel traffic in a portion of Lower New York Bay and Raritan Bay.

DATES: This temporary final rule is effective from 8:30 p.m. on August 28, 1999, until 10 p.m. September 5, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays. The telephone number is (718) 354–4193.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Regulatory History

On July 7, 1999, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Safety Zone: Staten Island Fireworks, Lower New York Bay and Raritan Bay in the **Federal Register** (64 FR 36633). The Coast Guard received no letters commenting on the proposed rulemaking. No public hearing was requested, and none was held.

Good cause exists for making this regulation effective less than 30 days after **Federal Register** publication. Due to the date the Application for Approval of Marine Event was received, there was insufficient time to promulgate a NPRM and a temporary final rule that would be effective at least 30 days after it was published. The Coast Guard published an NPRM with a 45-day comment period, but this did not leave sufficient time to publish the temporary final rule 30 days before its effective date. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to prevent traffic from transiting a portion of Lower New York and Raritan Bays, and provide for the safety of life on navigable waters.

Background and Purpose

The fireworks programs are being sponsored by the Borough of Staten Island. This temporary final rule establishes two temporary safety zones. First, in all waters of Lower New York Bay within a 360-yard radius of the fireworks barge located in approximate position 40°35′11″ N, 074°03′42″ W (NAD 1983), about 350 yards east of South Beach, Staten Island. The safety zone is in effect from 8:30 p.m. until 10 p.m. on August 28, 1999. The rain date for this event is August 29, 1999, at the same time and place. Second, in all waters of Raritan Bay in the vicinity of the Raritan River Cutoff and Ward Point Bend (West) within a 240-yard radius of the fireworks barge in approximate position 40°30′04″ N, 074°15′35″ W (NAD 1983), about 240 yards east of Raritan River Cutoff Channel Buoy 2 (LLNR 36595). The temporary safety zone is in effect from 8:30 p.m. until 10 p.m. on September 4, 1999. The rain date of this event is September 5, 1999, at the same time and place. The temporary safety zones prevent vessels from transiting a portion of Lower New York Bay and Raritan Bay in the vicinity of the Raritan River Cutoff, Ward Point Bend (West). The temporary safety zones are needed to protect boaters from the hazards associated with fireworks launched from two barges in the area. Marine traffic will still be able to transit through Lower New York Bay during the event off South Beach on August 28, 1999. Marine traffic will still be able to transit through the eastern 140 yards of the 230-yard wide Ward Point Bend (West) during the event on September 4, 1999. Traffic that cannot transit through the closed Raritan River Cutoff may transit through Ward Point Bend (West) by using South Amboy Reach, Great Beds Reach, Ward Point Secondary Channel, and Ward Point Bend (East). Additionally, vessels are not precluded from mooring at or getting underway from any marinas or piers at Perth Amboy, New Jersey during the display in the Raritan River Cutoff. Public notifications will be made before the event by the Local Notice to Mariners and marine information broadcasts. The Coast Guard limited the comment period for this NPRM to 45 days because the temporary safety zones are only for one and a half hour long local events.

Discussion of Comments and Changes

The Coast Guard received no letters commenting on the proposed rulemaking. No changes were made to the proposed rule.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this temporary final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone, and on the facts that vessels are not precluded from getting underway, or mooring at, the marinas and piers in Perth Amboy, New Jersey; that marine traffic will still be able to transit through Lower New York Bay during the display on August 28, 1999; that marine traffic will still be able to transit to the east of the zone on September 4, 1999; and that advance notifications will be made to the local maritime community by the Local Notice to Mariners and marine information broadcasts.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this temporary final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This temporary final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this temporary final rule under the principles and criteria contained in Executive Order 12612 and has determined that this temporary final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A "Federal mandate" is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This temporary final rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard considered the environmental impact of this temporary final rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this temporary final rule is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–094 to read as follows:

§ 165.T01–094 Safety Zone: Staten Island Fireworks, Lower New York Bay and Raritan Bay.

(a) *Safety Zone A:* (1) *Location.* All waters of Lower New York Bay within a 360-yard radius of the fireworks barge in approximate position 40°35′11″ N., 074°03′42″ W. (NAD 1983), about 350 yards east of South Beach, Staten Island.

(2) *Effective period.* This paragraph is effective from 8:30 p.m. until 10 p.m. on August 28, 1999. If the event is canceled for inclement weather, then this paragraph is effective from 8:30 p.m. until 10 p.m. on August 29, 1999.

(b) *Safety Zone B:* (1) *Location.* All waters of Raritan Bay in the vicinity of the Raritan River Cutoff and Ward Point Bend (West) within a 240-yard radius of the fireworks barge in approximate position 40°30′04″ N., 074°15′35″ W. (NAD 1983), about 240 yards east of Raritan River Cutoff Channel Buoy 2 (LLNR 36595).

(2) *Effective period.* This paragraph is effective from 8:30 p.m. until 10 p.m. on September 4, 1999. If the event is canceled for inclement weather, then this paragraph is effective from 8:30 p.m. until 10 p.m. on September 5, 1999.

(c) *Effective period.* This section is effective from 8:30 p.m. on August 28, 1999, until 10 p.m. September 5, 1999.

(d) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: August 23 1999.

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 99–22333 Filed 8–26–99; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–81–167; FRL–6427–4]

Approval and Promulgation of State Implementation Plans; California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision from the State of California demonstrating that the California Low Emission Vehicle (LEV) program qualifies as a substitute for the Clean Air Act (CAA) Clean Fuel Fleet (CFF) vehicle program. The CAA requires states, in order to opt-out of the CFF vehicle program, to submit a substitute program for all or a portion of the program which consists of measures not otherwise required by the Act and that achieves at least equal long-term emission reductions of ozone-producing and air toxic emissions. EPA is taking these actions under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national ambient air quality standards (NAAQS), and plan requirements for nonattainment areas.

EFFECTIVE DATE: This approval is effective on September 27, 1999.

ADDRESSES: The rulemaking docket for this notice is available for public inspection during normal business hours at EPA's Region IX office, Air Division, 75 Hawthorne Street, San Francisco, CA 94105–3901. A reasonable fee may be charged for copying parts of the docket.

Copies of related materials are also available for inspection at the following location: California Air Resources Board, 2020 L Street, Sacramento, California 95814–2815

FOR FURTHER INFORMATION CONTACT: Roxanne Johnson, EPA Region IX Air Planning Office, (415) 744–1225, or johnson.roxanne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. EPA's Final Action

We are approving a SIP revision submitted by the State of California, consisting of Executive Order G–125–145 containing a substitute for the CAA CFF vehicle program, dated November 7, 1994.[1] The California Air Resources Board (CARB) Executive Order G–125–145 is a formal document which sets forth the substance of California's opt-out request and describes the legal authority under which the SIP revision was submitted.

Sections 182(c)(4)(A) and 246 of the Act require certain states, including California, to submit for EPA approval a SIP revision that includes measures to implement the Clean Fuel Fleet vehicle program. Section 182(c)(4)(B) of the CAA allows states to "opt-out" of the

[1] CARB submitted the Executive Order on November 7, 1994 which appended the State's May 11, 1994 SIP submittal. On November 13, 1992, CARB submitted a request to EPA to revise the SIP and opt-out of the CAA CFF vehicle program. In this submittal CARB committed to supply more detailed emission reduction data demonstrating equivalence to the CAA CFF vehicle program, and requested the EPA to conditionally approve the commitment pursuant to CAA section 110(k)(4). The conditional approval dated November 29, 1993, (published at 58 FR 62532) stated that California would be required to submit a SIP revision fulfilling the commitment by May 15, 1994.

CFF vehicle program by submitting for EPA approval a SIP revision consisting of a program or programs not otherwise required by the Act that will result in at least equivalent long term reductions in ozone-producing and toxic air emissions.

II. Background

The six serious and above nonattainment areas for either one or both ozone and carbon monoxide (CO) subject to the CAA Clean Fuel Fleets program include: Los Angeles-South Coast Air Basin; Sacramento Metro; San Diego; San Joaquin Valley; Southeast Desert Modified AQMD; and Ventura County. California has designated a certain portion of the emission benefits achieved by their LEV program as a substitute for the CAA fleet program. California has estimated that the LEV program will achieve more than 50 times the ROG emission reduction and more than 30 times the NO_X emission reduction compared to the CAA fleet program.

On November 7, 1994, CARB submitted as a SIP revision Executive Order G–125–145, formally adopting its request to opt-out of the CAA CFF vehicle program, and attaching supporting materials demonstrating that the State's LEV program achieves longterm reductions in emissions of ozone-forming and air toxic pollutants at least as large as those that would be achieved by the CAA CFF vehicle program. On January 30, 1995, the revision was found to be complete pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V.[2] On April 14, 1997, EPA proposed approval of the State's November submittal and removed the condition on approval of California's opt-out of the CAA CFF vehicle program in a notice of proposed rulemaking (NPRM) published at 62 FR 18071[3].

III. Response to Public Comments

A. Summary of Comments and Responses

EPA received comments on the proposed approval only from the California Air Resources Board (CARB). CARB pointed out that the language in the proposal did not clearly state that CARB was opting to use a "portion" of the benefits achieved from their Low Emission Vehicle (LEV) program to meet the CAA opt-out requirements.

Response: EPA understands that CARB intended to rely on a portion of the emissions reductions achieved by the LEV program as its substitute for the CFF program. In the May 1994 SIP submittal, CARB estimated the reductions in ozone-forming and toxic air emissions that would be achieved through implementation of the CAA clean fuel fleet program compared to the LEV program. The estimated emission benefits for both programs were calculated for reactive organic gas (ROG), NO_X, and CO emission benefits for the years 2000 and 2010. Implementation of the CAA CFF program is expected to reduce 2.2 tons/day of ROG, 5.0 tons/day of NO_X, and 6.0 tons/day of CO in the year 2000 and 5.0 tons/day of ROG, 10.2 tons/day of NO_X, and 10.4 tons/day of CO in the year 2010. CARB also provided a rationale from their LEV program for long-term emission reductions of toxic air contaminants. The comparison of the emission benefits from the LEV program and the CAA CFF program demonstrated emission reductions in the two ozone precursors ROG and NO_X and therefore a concurrent reduction in the toxic air contaminants included in ROG. CARB cited an EPA study on motor vehicle related toxic air contaminants emphasized those toxics that "* * * pose the greatest risk to human health or about which significant uncertainties remain, including emissions of benzene, formaldehyde, and 1,3-butadiene (EPA, 1993)." CARB further stated that emissions of benzene typically account for over 80 percent of the sum total exhaust emissions of these three compounds and are expected to be reduced by the same relative amount as total ROG emissions. Formaldehyde and 1,3-butadiene emissions are also expected to be reduced with ROG emissions although the relative amounts appear to be more variable. CARB's LEV program is expected to provide long-term reductions in toxic air contaminants that will exceed levels anticipated from implementation of the CAA CFF program due to the reductions in ROG emissions of 252 tons/day in the year 2010.

B. Conclusion

We are finalizing the action as proposed. The emission benefits analysis performed by CARB demonstrates that the LEV program provides long-term reductions in ozone and toxic air contaminants exceeding those of the CAA clean fuel fleet program (see Table 1). It should also be noted that CARB is not committing the full benefits demonstrated by the LEV program, but is committing only that portion of the benefits equivalent to those provided by the CAA clean fuel fleet program. Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

TABLE 1.—EMISSION BENEFITS: CAA CFF PROGRAM V CA LEV PROGRAM

[Tons/day]

Vehicle Type	CAA CFF Program			LEV Program		
	ROG	NOx	CO	ROG	NOx	CO
Year 2000:						
Passenger Cars	0.84	0.93	3.97	34.61	214.11	38.22
Light-Duty Trucks < 6,001 lbs	0.28	0.41	0.00	8.27	8.17	11.51
Medium-Duty Vehicles	0.09	0.00	0.00	2.53	0.43	0.26
Heavy-Duty Vehicles [1]	0.97	3.65	2.00	0.77	0.44	0.11
Total	2.18	4.99	5.97	46.18	223.15	50.10
Year 2010:						
Passenger Cars	1.60	1.74	6.62	170.35	222.52	824.73

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[3] Final rulemaking published November 29, 1993 at 59 FR 62532.

Table 1.—Emission Benefits: CAA CFF Program v CA LEV Program—Continued

[Tons/day]

Vehicle Type	CAA CFF Program			LEV Program		
	ROG	NOx	CO	ROG	NOx	CO
Light-Duty Trucks < 6,001 lbs	1.16	1.61	0.00	52.35	86.40	88.77
Medium-Duty Vehicles	0.38	0.00	0.00	20.11	5.80	18.02
Heavy-Duty Vehicles	1.89	6.83	3.83	9.45	6.72	11.78
Total	5.03	10.18	10.45	252.26	321.44	943.30

[1] For this analysis, heavy-duty vehicles consist of two categories: (1) light heavy-duty (8501—321.4414,000 lbs) and (2) medium heavy-duty (14,001–33,000 lbs). The federal clean fuel fleet program applies to vehicles weighing less than 26,000 lbs and the LEV program to those weighing less than 14,000 lbs.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective

and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this action does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 14, 1999.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(201) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(201) A plan for the following agency was submitted on November 7, 1994 by the Governor's designee.

(i) Incorporation by reference.

(A) California Air Resources Board.

(*1*) California's Opt-out Program, Executive Order G–125–145, dated November 7, 1994.

* * * * *

[FR Doc. 99–22187 Filed 8–26–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AC82

Extensions of Application Period for Temporary Housing Assistance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule expands the circumstances under which the Regional Director may extend the standard 60-day application period for assistance provided under the Disaster Housing Program. This rule also retains FEMA's authority to accept an individual application made after the application period has closed when the applicant's reason for lateness is justified.

EFFECTIVE DATE: This rule is effective September 27, 1999.

FOR FURTHER INFORMATION CONTACT: Laurence W. Zensinger, Response and Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3642, (facsimile) 202–646–2730, or (e-mail) laurence.zensinger@fema.gov.

SUPPLEMENTARY INFORMATION: On May 6, 1998, we published a proposed rule in the **Federal Register** at 63 FR 25010 and invited comments for 60 days ending on July 6, 1998. We received one set of comments from a legal assistance attorney. While most of the submitted comments addressed issues beyond the scope of the proposed rule, those comments that did address the proposed rule were in favor of placing the flexibility for an extension to the application period in regulation. The attorney asked for additional information on two points: (1) What circumstances may warrant an extension; and (2) what would be sufficient justification for a late application to be accepted. We will issue a policy to provide guidance on these points once the final rule is in effect. We are publishing the final rule with no substantive changes from what we published as a proposed rule.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. We have not prepared an environmental impact assessment.

Executive Order 12866, Regulatory Planning and Review

This rule is not a significant regulatory action within the meaning of section 2(f) of Executive Order 12866 of September 30, 1993, 58 FR 51735. To the extent possible, this rule adheres to the regulatory principles set forth in Executive Order 12866. The Office of Management and Budget has not reviewed it under the provisions of Executive Order 12866.

Paperwork Reduction Act

This rule does not contain a collection of information requirement as described in section 3504(h) of the Paperwork Reduction Act.

Executive Order 12612, Federalism

This rule does not involve any policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

Congressional Review of Agency Rulemaking

We have submitted this final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Public Law 104–121. The rule is not a "major rule" within the meaning of that Act. It is an administrative action in support of normal day-to-day activities. It does not result in nor is it likely to result in an annual effect on the economy of $100,000,000 or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have "significant adverse effects" on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

This final rule is exempt (1) from the requirements of the Regulatory Flexibility Act, and (2) from the Paperwork Reduction Act. The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Public Law 104–4. It does not meet the $100,000,000 threshold of that Act, and any enforceable duties are imposed as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Disaster assistance, Housing.

Accordingly, we amend 44 CFR part 206 as follows:

PART 206—FEDERAL DISASTER ASSISTANCE FOR DISASTERS DECLARED ON OR AFTER NOVEMBER 23, 1988

1. The authority citation for part 206 continues to read as follows:

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

Subpart D—Temporary Housing Assistance

2. We revise § 206.101(e)(1) to read as follows:

§ 206.101 Temporary housing assistance.

* * * * *

(e) *Applications*—(1) *Application period.* The standard FEMA application period is the 60 days following the date the President declares an incident a major disaster or an emergency. The Regional Director may, however, extend the application period, when we anticipate that we need more time to collect applications from the affected population or to establish the same application deadline for contiguous Counties or States. After the application period has ended, FEMA will accept and process applications for an additional 60 days only from persons who can provide an acceptable explanation (and documentation to substantiate their explanation) for why they were not able to contact FEMA before the application period ended.

* * * * *

Dated: August 5, 1999.

James L. Witt,

Director.

[FR Doc. 99–21960 Filed 8–26–99; 8:45 am]

BILLING CODE 6718–02–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. RSPA–98–3783; Amendment 192–86; 195–67]

RIN 2137–AB38

Pipeline Safety: Qualification of Pipeline Personnel

AGENCY: Research and Special Programs Administration (RSPA); Office of Pipeline Safety (OPS).

ACTION: Final rule.

SUMMARY: This final rule requires pipeline operators to develop and maintain a written qualification program for individuals performing covered tasks on pipeline facilities. The intent of this qualification rule is to ensure a qualified work force and to reduce the probability and consequence of incidents caused by human error. This final rule creates new subparts in the gas and hazardous liquid pipeline safety regulations. It establishes qualification requirements for individuals performing covered tasks, and amends certain training requirements in the hazardous liquid regulations. This final rule was developed through a negotiation process.

DATES: This final rule will be effective on October 26, 1999.

FOR FURTHER INFORMATION CONTACT: Eben M. Wyman, (202) 366–0918, or by e-mail at eben.wyman@rspa.dot.gov, regarding the subject matter of this final rule; or the Dockets Unit, (202) 366–4453, for copies of this final rule or other material in the docket. All materials in this docket may be accessed electronically at http://dms.dot.gov. General information about the RSPA Office of Pipeline Safety can be obtained by accessing OPS's Internet home page at http://ops.dot.gov.

SUPPLEMENTARY INFORMATION:

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I. Introduction

Although no regulatory program is capable of completely eliminating human error, the objective of this final rule is to reduce the risk of accidents on pipeline facilities attributable to human error. This final rule for the qualification of individuals is intended to provide an additional level of safety. This final rule does not replace existing qualification requirements in 49 CFR Part 192. However, it does remove the operations and maintenance training requirements of 195.403. The final rule does not diminish the importance of the safety requirements already in the pipeline safety regulations. These include requirements for safety design features, such as relief valves and over-pressure protection devices, to provide protection against human error and other causes of incidents and accidents.

The final rule requires operators of pipelines to develop a qualification program to evaluate an individual's ability to perform covered tasks, and to recognize and react to abnormal operating conditions that may occur while performing covered tasks.

The final rule also sets recordkeeping requirements that operators must follow to successfully demonstrate compliance, and the information that must be maintained on each individual who has been evaluated and deemed qualified to work on a pipeline facility. Finally, the final rule specifies the deadlines by which operators must develop and implement their qualification programs.

This final rule allows operators with existing programs to modify those programs if necessary to ensure compliance with the minimum requirements of this final rule. The final rule also requires operators without a qualification program to establish a program to evaluate the qualifications of individuals performing certain operation and maintenance activities on those pipeline facilities that could affect pipeline operation or integrity.

This final rule establishes a new Subpart N in 49 CFR Part 192 and a new Subpart G in 49 CFR part 195. The final rule amends the training regulations in

49 CFR 195.403. The emergency response training requirements remain as they appear in 49 CFR 195.403.

II. Statutory Authority and Regulatory History

Sections 106 and 205 of the Pipeline Safety Act of 1992 (Pub. L. No. 102–508) required the Department of Transportation to establish regulations requiring that "all individuals responsible for the operation and maintenance of pipeline facilities be tested for qualifications and certified to operate and maintain those facilities."

On August 3, 1994, RSPA published a notice of proposed rulemaking to establish specific training requirements for the qualification of pipeline workers (59 FR 39506). This proposal would have introduced qualification standards for personnel that perform, or supervise persons performing, regulated operations, maintenance, and emergency response functions. The purpose of the proposal was to improve pipeline safety by requiring operators to ensure the competency of pipeline personnel through training, testing, and periodic refresher training.

In response to this notice, RSPA received 131 comments that expressed a wide variety of interests and concerns. Most commenters asserted that the proposal should have taken a more general approach to qualification with broad requirements for persons performing "safety related" functions. Commenters stated that the proposal was too prescriptive and that the many references to training requirements should be modified to focus the proposal on actual qualification, rather than on the method(s) of achieving qualification.

OPS' technical advisory committees, the Technical Pipeline Safety Standards Committee and the Technical Hazardous Liquid Pipeline Safety Standards Committee, disapproved of the proposal. These Committees passed several motions for amendments to the proposal. These motions were generally consistent with the written comments.

Subsequently, the Pipeline Safety Act was amended to require that "all individuals who operate and maintain pipeline facilities shall be qualified to operate and maintain the pipeline facilities" (49 U.S.C. 60102(a)). This Act also requires that the "qualifications applicable to an individual who operates and maintains a pipeline facility shall address the ability to recognize and react appropriately to abnormal operating conditions that may indicate a dangerous situation or a condition exceeding design limits" (49 U.S.C. 60102(a)).

Following review of the comments to the 1994 proposed rulemaking, as well as recommendations by the Technical Advisory Committees, and a petition for withdrawal and alternative proposal submitted collectively by the American Gas Association, the American Public Gas Association, and the Southern Gas Association, RSPA decided that a regulatory process other than traditional rulemaking would better address the issues surrounding operator qualifications. Consequently, RSPA issued a Notice of Withdrawal of the 1994 proposed rulemaking (61 FR 34413; July 22, 1996) and simultaneously issued a Notice of Intent to form a negotiated rulemaking committee to develop a final rule on the qualification of pipeline personnel (61 FR 34410; July 22, 1996).

III. Negotiated Rulemaking

RSPA understands that effective regulatory solutions to certain issues can be difficult for an agency to craft. In the typical rulemaking process, the participants often develop adversarial relationships that prevent effective communication and creative solutions. Exchange of ideas that may lead to solutions that are acceptable to all interested groups does not often occur in the traditional notice and comment rulemaking procedure.

Negotiated rulemaking is conducted under authority of the Negotiated Rulemaking Act of 1990 and the Federal Advisory Committee Act. The process involves assembling representatives of the affected interests to discuss a particular issue and all potential solutions. The goal was to reach consensus and prepare a proposed rule for consideration by the agency. On February 22–23, 1999, the group reconvened to review received comments and make recommendations for the final rule. This inclusive process was intended to make the rule more acceptable to all affected interests and minimize the likelihood of petitions for reconsideration and litigation.

RSPA believed that the negotiated rulemaking process would provide ample opportunity for all affected parties to present their views and to reach a consensus on a proposed qualification rule. Negotiated rulemakings have been used successfully by the Department of Transportation, including the Federal Aviation Administration, the United States Coast Guard, the Federal Highway Administration, the National Highway Traffic Safety Administration, and the Federal Railroad Administration. In addition, the Environmental Protection Agency, and the Occupational Safety and Health Administration have successfully used the process.

A. Members of the RSPA Negotiated Rulemaking Committee

The Federal Mediation and Conciliation Service (FMCS) served as the convenor and facilitator for the RSPA Negotiated Rulemaking Committee (Committee). FMCS chaired the negotiations, offered suggestions in attempting to reach the desired consensus, and helped determine the feasibility of negotiating particular issues. From the beginning of this process, RSPA met with FMCS on several occasions to discuss the issues that needed to be addressed and the interests that needed to be represented on a Committee. After a comprehensive search, RSPA selected the following organizations, representing broad interests, to serve on the Committee:

1. *American Gas Association (A.G.A.):* represents a large number of gas distribution and a few transmission companies in the pipeline industry. A.G.A. members consist of both large and small operators.

2. *American Petroleum Institute (API):* represents the interests of the hazardous liquid pipeline companies. API is the major trade association in the petroleum industry, and also represents the interests of operators of other hazardous liquid pipelines.

3. *Interstate Natural Gas Association of America (INGAA):* represents the interests of the larger interstate gas transmission pipeline companies in the natural gas transportation industry. INGAA consists mainly of the larger interstate gas transmission pipelines.

4. *American Public Gas Association (APGA):* represents publicly-owned and municipal gas companies. Although these public companies are generally small, they operate a large number of the distribution pipelines in American cities and suburbs.

5. *National Propane Gas Association (NPGA):* represents the interests of propane marketing and distribution at the local level. NPGA is made up of both large and small companies.

6. *Association of Texas Intrastate Natural Gas Pipelines:* represents the interests of intrastate natural gas transmission pipelines.

7. *Midwest Energy Association (MEA):* represents over 300 investor-owned utilities, municipal utilities, contractors and manufacturers. MEA brought considerable expertise in pipeline personnel training issues.

8. *NACE International, The Corrosion Society (NACE):* an organization of corrosion experts. NACE works primarily on issues of corrosion and corrosion control systems.

9. *National Association of Pipeline Safety Representatives (NAPSR):* represents state pipeline safety programs. Many of these organizations will incorporate the final rule on operator qualifications into their pipeline safety program.

10. *National Association of Regulatory Utility Commissioners (NARUC):* represents the interests of the state utility commissioners, who regulate gas rates and terms of service in most of the fifty states.

11. *National Association of State Fire Marshals (NASFM):* represents the interests of state fire officials in state safety programs and the issue of qualification for emergency response.

12. *International Union of Operating Engineers (IUOE):* represents the interests of a substantial number of pipeline construction and maintenance workers.

13. *International Brotherhood of Electrical Workers (IBEW):* represents over 21,000 gas industry workers.

14. *Office of Pipeline Safety (OPS):* served as the representative of RSPA, and the Designated Federal Official on the Committee.

B. Negotiated Rulemaking Committee Ground Rules

Most of the procedures and protocols followed in the negotiation were established by the Committee. A set of Committee "ground rules" was developed by participants at the initial meeting. Issues discussed and agreed upon by the Committee included: how discussions would be conducted, possibility of subgroups to work on particular issues, expectations of Committee members, the Committee's role throughout the rulemaking process, audience participation, and other topics. The following are some of the more significant ground rules established by the Committee:

1. Membership: All organizations were allowed one seat at the table, and permitted to name one alternate to serve in their absence.

2. Good faith: All participants were expected to act in good faith on behalf of their organization. OPS agreed to issue the Committee's proposed rule as long as it was not in conflict with any other legal requirements. In turn, the Committee agreed to support the proposal following publication in the **Federal Register**. It was agreed that the Committee would be actively involved through publication of the final rule.

3. Conduct of meetings: Committee members reserved the right to bring constituents to the table to address the Committee, and could quietly consult with constituents during the course of the negotiation. All meetings were open to the public. The Committee agreed that there would be time scheduled on every meeting agenda for comment by the audience.

4. Public Record: RSPA kept a record of all Committee meetings. This record was placed in the public docket (Docket No. PS–94) and is publicly available.

5. Consensus: The goal of the negotiating process is consensus. The Committee developed its own definition of consensus for the purposes of this rulemaking, which was as follows: "A decision which all members or designated alternates present at the meeting can agree upon. The decision may not be everyone's first choice, but they have heard it and everyone can live with it."

C. Committee Meetings

The Committee convened a total of eight times between May 1997, and February 1999. Each negotiating session lasted a minimum of two days, with two sessions convening for two and a half days. These meetings resulted in an NPRM which was published in the **Federal Register** on October 27, 1998, (63 FR 57269). The Committee reached final consensus on the final rule in its last meeting in February 1999.

IV. Discussion of Comments in Response to NPRM

General Comments

RSPA received 41 comments to the NPRM. Comments were received from nine pipeline-related trade associations, 25 pipeline operators, two state government agencies, two union organizations, two independent organizations, and the National Transportation Safety Board. Most commenters expressed support for the rule.

Four commenters questioned the need for an operator qualification rule. They said there is no evidence in the pipeline industry's safety record to demonstrate the need for what they alleged would be a new administrative burden. Another commenter expressed that it is inappropriate to add a new subpart to the pipeline safety regulations. However, RSPA was mandated by Congress to develop qualification requirements in several pipeline safety reauthorization actions, most recently in 1996. The mandate was supported by several entities, including many state government agencies, the National Transportation Safety Board, and others.

In addition, seven out of the 14 members of the Committee that developed this rule represented various parts of the gas and hazardous liquid pipeline industry. The Committee agreed to focus the rule on the requirements of the 1996 Act, which called for the establishment of "qualification" requirements rather than "training and certification" requirements that were mandated in the 1992 Pipeline Reauthorization Act. RSPA believes the proposed rule addresses the intent of the 1996 Act.

One commenter said that the goal of the rule could be better served by implementing general language into the pipeline safety regulations, such as "all tasks required by Part 192 will be carried out by qualified individuals." RSPA disagrees that this language would be sufficient to ensure a qualified work force. This ambiguous language would not satisfy the requirements called for in the 1996 Act.

A pipeline industry trade association recommended that RSPA conduct a formal cost-benefit analysis as described in the 1996 Act. A cost-benefit analysis was performed and is a part of the public docket. RSPA is statutorily required to prepare a cost-benefit analysis, even if a rule is developed by a negotiated rulemaking committee. RSPA worked closely with the Committee on the regulatory analysis section of the rule.

Another commenter said that RSPA did not adequately consider the burdens imposed on the operator resulting from responsibility for contractor qualification, and asked that RSPA exempt operators from qualifying contractors. Another commenter noted that pipeline contractors with in-house safety training will suffer because different pipeline companies will have different qualification plans. As is the case with all pipeline safety regulations, responsibility for compliance lies with the pipeline operator. RSPA does not have regulatory jurisdiction over pipeline contractors. However, to ensure the qualification of the many contractor personnel that work regularly on pipelines, the proposed rule covers all operator employees contractors, sub-contractors, or any other entities working on behalf of the operator.

One commenter suggested that RSPA facilitate the development of a "model qualification program," to assist small operators, and to provide outreach and explanation of the rule to pipeline contractors and sub-contractors. Another commenter said that RSPA should not require compliance with "model" or "industry standard" qualification programs. RSPA believes the spirit of this rule is to allow flexibility for operators to develop

specific qualification programs for their unique systems, and that a compliance "model" would be inconsistent with the spirit of the rule. However, RSPA will be working with state government agencies, and pipeline industry groups to facilitate implementation of the qualification rule. RSPA believes cooperative efforts with affected parties will provide the necessary guidance for compliance with the rule.

One commenter said there should be provisions for "transitional allowances," in situations where merging operators have inconsistent qualification programs. RSPA believes the time frames provided allow adequate time to resolve inconsistencies between qualification programs. Program modifications are inevitable in the case of company mergers. RSPA understands the problems that arise in the event of company mergers, and will work with operators on a case by case basis to ensure compliance with this rule.

Eleven commenters believed that the references to the existing authority of inspectors to evaluate the adequacy of qualification programs should be eliminated from the preamble of the final rule, because this authority "already exists." They insisted that existing procedures provide administrative processes for resolution of disagreements. The Committee discussed this issue at length, and agreed that the references should be retained to remind all affected parties that the increased flexibility provided in this rule does not limit the authority of oversight agencies.

There were several comments regarding the implementation of this rule, and on measuring performance. A commenter suggested that RSPA provide the following provisions to mitigate the financial impact on local government systems that must comply with the rule: (1) A federally sponsored and funded training program to be administered on a state/local level; and (2) federal funds necessary for local government compliance. RSPA provides federal funds in the pipeline safety grant program, which provides up to 50% of a state agency's program, if they are considered a "state partner" to RSPA. Additional training programs dealing with compliance with the rule are currently under development and will be open to all interested parties, including local government entities affected by the regulation. Further, federal guidance documents such as the revised version of the "Guidance Manual for Operators of Small Gas Systems" will help small operators achieve compliance. Also, two commenters suggested that RSPA develop a mechanism(s) to evaluate the rule's effectiveness. RSPA plans to establish a periodic review with stakeholders regarding the effectiveness of the qualification rule.

Finally, eleven commenters said that language should be implemented in the preamble describing what process or procedure RSPA would use if it became necessary to revise the qualification rule. They suggested the following options: (1) Reconvene the Committee; (2) establish an industry/government task team; (3) hold public meetings and/or workshops; or (4) nominating stakeholders to form a peer review team. RSPA cannot predict what changes might be necessary for this rule in the future, but will periodically work with stakeholders to evaluate the effectiveness of this rule.

One commenter was concerned with the effect of the proposed rule on small operators, and suggested that RSPA provide guidance on compliance with the rule to assist small operators, and state pipeline safety inspection personnel. Another commenter believed master meter operators should be exempt from qualification requirements, because many master meter operators are small "mom and pop" operations. This commenter asked how these small operators would be able to evaluate qualification of the many contract personnel that work on their master meter systems.

The Committee discussed the issue of the effects of the rule on small operators and master meter systems, and agreed that special provisions would not be appropriate because the qualification of workers at both large and small pipeline operators can impact safety. Federal guidance documents such as the "Guidance Manual for Operators of Small Gas Systems" will be revised to help small operators achieve compliance. In addition, many training programs are currently under development by government organizations and members of the pipeline industry.

A commenter said RSPA should clarify how individuals involved in emergency response, who do not perform covered tasks, would be subject to the qualification requirements. The Committee agreed not to re-write the qualification requirements of emergency response personnel. The rule applies only to personnel performing operations and maintenance activities.

Comments to §§ 192.801/195.501—Scope

One pipeline operator suggested the reference to gas control operations on page 57273 of the proposed rule be removed from the rule. This operator claimed that monitoring is related to market response and customer delivery, not overpressure protection, and would not necessarily be a covered task. RSPA believes that controlling gas would clearly have to be considered a covered task. Any handling of the noted "physical and mechanical devices" would require qualification. The example remains in the final rule.

Thirty commenters were concerned with a paragraph on page 57273 of the proposed rule dealing with tasks "performed pursuant to requirement in part 192 or 195," and the example of "calibrations and low-pressure shutdowns." These commenters believe this language directly conflicts with the rule language, which describes a covered task as one that is "performed as a requirement of this Part." The commenters noted RSPA added this paragraph to clarify the meaning of a covered task, but that it appears to expand the criteria for determining a covered task. These commenters also said that any references to "pursuant to" a requirement in the pipeline safety regulations should be revised to "as required by" to be consistent throughout the preamble and rule language. This paragraph was intended to provide further clarification of activities that would be considered covered tasks, but apparently caused confusion. RSPA has deleted the paragraph in the final rule.

Two commenters called for better guidance in identifying covered tasks. For clarification, they believed the term "pipeline facility" should be defined in the rule, using the existing definition in the pipeline safety regulations. The definition of the term "pipeline facility" can be found in 192.3 and 195.2. These definitions apply generally to those subparts of the pipeline safety regulations. RSPA does not see any merit in adding the definition to the rule.

One commenter said the preamble should include a note of clarification to distinguish the term "task" from "covered task," as there could be some misinterpretation of the meaning of the term. RSPA agrees with this comment and has revised any appropriate references to "task" with "covered tasks" or replaced the term "task" with "activity."

Thirteen commenters expressed that under "Tasks affecting the operation or integrity of the pipeline," the term "could" should be deleted where used in the generic sense in column 1 of page 57273 of the proposed rule to match the language in the rule. RSPA agrees and has made this change in the final rule.

Fourteen commenters wanted clarification of the "examples" in the proposed rule used to describe the four-part test. These commenters said that the spirit of the rule is to provide operators with opportunity to identify covered tasks unique to their systems, but the discussion of "examples" imply that these examples would always be covered tasks under the rule. These commenters said the preamble should be revised to express that the "hypothetical examples," are not to imply that they would necessarily be covered for all operators. RSPA believes the term "hypothetical" speaks for itself. We believe no change is necessary.

One pipeline operator had many problems with various provisions and examples throughout the preamble. This operator incorrectly believed that the example dealing with leak surveys on page 57273 of the NPRM was inappropriate, because leak surveys do not affect the operation or integrity of the pipeline. The commenter also incorrectly said use of the term "covered task" is unnecessary because a covered task is simply an operations and maintenance task. Activities such as painting a pipeline for appearance reasons would not require qualification. This operator also stated that the concept of a task not being covered when performed on an unattached pipeline component was confusing, and asked for clarification. The Committee decided that when pipeline facilities are not physically attached to the pipeline, work on these facilities should not be "covered," such as a manufacturers repair work off site.

This operator also alleged that the preamble does not explain that the term "integrity" includes the potential long-term effects of an activity. Also, this operator did not believe the example dealing with the coating and jacketing of pipelines was appropriate to illustrate the significance of tasks affecting the operation or integrity of a pipeline. RSPA disagrees with this commenter in all of these areas. The Committee discussed pipeline integrity considerably, and agreed that the examples used were appropriate. Therefore RSPA does not believe any changes are necessary.

Comments to 192.803/195.503—Definitions

Abnormal Operating Condition

Fourteen commenters suggested that the preamble should state that the Committee determined that the current definition for "Abnormal Operation" in part 192 would not satisfy the provisions in the 1996 Act. These commenters also claimed that this definition could be read to require individuals to recognize and react to an abnormal operating condition that is unrelated to their expertise. RSPA believes that all persons performing covered tasks should be able to reasonably recognize and react to abnormal operating conditions while performing their work. The current definition of "Abnormal Operation" in part 192 does not meet the requirements of the 1996 Act. Further, the Committee agreed that a separate definition would be appropriate for the purposes of this subpart.

One commenter said that the structure of Abnormal Operating Condition definition is unclear and inconsistent with the structure of other definitions. RSPA agrees and has revised the format of the definition to provide clarity.

Evaluation

Eleven commenters said that Note 1 of the table on page 57274 of the NPRM, should be clarified from "during the period between the effective date of the rule and the three-year compliance date" to "October 28, 2002." RSPA agrees and has made the appropriate change in the final rule.

Twelve commenters said that RSPA should add the table to the rule language because the description in the preamble is not sufficient guidance for pipeline operators. RSPA does not believe the change is warranted because the rule language provides clear guidance. The table was included in the preamble for illustrative purposes only.

One commenter asked that RSPA clarify how operators should identify and document covered tasks during "transitional" qualification. The commenter said the reference to transitional qualification is confusing because no covered tasks are required to be documented for 20 months. It is clear that no worker may be qualified under this rule before an operator has established a qualification program, including a covered task list. Although a qualification program may be established at any time, it must be completed and documented no later than 20 months after the rule is published in the **Federal Register**. The use of the term "transitional" in the preamble to the rule merely highlights that current workers can be qualified solely through use of a work performance history review only during the period ending 38 months after the rule is published.

Qualified

One commenter believed there was no need to define this term because it will lead to confusion and inconsistency with other regulations. However, the Committee agreed early in the negotiating process that this term should be defined for the purposes of this rule, so no changes have been made.

One commenter stated that RSPA may need to define "Operations and Maintenance" or designate which sections of parts 192 and 195 are covered by the proposed rule. The final rule describes covered tasks as those identified by the operator using the "four-part test." This topic is discussed further in the discussion concerning identification of covered tasks, in particular operations and maintenance tasks. Therefore, RSPA does not believe that further description is warranted in the final rule.

Comments to §§ 192.805/195.505—Qualification Program

Two commenters did not agree with the language "contributed to an incident as defined in Part 191 of this chapter," because it includes LNG facilities in the definition of "incident." These commenters do not believe the scope of the rule should include individuals that work at or near LNG facilities. The scope section of this rule states that the regulation would cover only Parts 192 or 195 of the pipeline safety regulations.

Two commenters believed that there may be situations where a covered task is simple or repetitive enough that a required re-evaluation at any interval is not warranted. The commenters asked that this be noted in the preamble. The Committee discussed this issue at length, and agreed that simple repetition of a covered task does not ensure that the task is performed safely and properly. Appropriate intervals (as determined by the operator) will ensure that the person performing a covered task is continually qualified. Thus, RSPA does not believe a change is needed.

One commenter noted that the description of 192.805 allows operators to add to the seven required elements of their qualification program and makes clear that operators will not be held accountable for the qualification of personnel performing non-covered tasks. However, the commenter was concerned that attempts could be made to treat non-covered tasks included in a qualification program as if they were covered tasks. The commenter suggested that RSPA revise the preamble to emphasize that voluntary tasks included

in a qualification program would not be treated as required covered tasks. RSPA believes the rule is clear as written. If a task does not meet the "four-part test" in § 192.805 and § 195.505, it is not covered task, even if voluntarily included in the qualification program.

Comments to §§ 192.807/195.507—Recordkeeping

No comments were received regarding these sections.

Comments to §§ 192.809/195.509—General

Thirteen commenters suggested that "18 months" should be changed to "20 months after publication of the final rule." They also asked that RSPA change the final rule to clarify "three years" to "38 months from the publication date of the final rule." RSPA agrees and has made the appropriate change in the final rule.

Thirteen commenters said that the language stating that a "qualification program would be effective for a minimum of 10 years" is confusing. Commenters suggested that RSPA remove the sentence because it could be subject to multiple interpretations. RSPA agrees and has made the change in the final rule.

Comments to 195.403—Emergency Response Training

A petroleum trade association supported the proposed revisions in 195.403, which would remove prescriptive O&M training requirements and provide consistency with gas regulations. However, the commenter suggested that the preamble clarify that hazardous liquid operators may modify or discontinue operations and maintenance training requirements only when the qualification rule is fully implemented. RSPA agrees and has added language in 195.403 to reflect this change.

RSPA has implemented several other suggested grammatical corrections in the final rule.

Comments to rulemaking analysis and notices

RSPA worked closely with the Committee, as well as with several representatives in the pipeline industry when developing the rulemaking analysis. One commenter suggested RSPA should use simple annualized costs, rather than amortized costs. However, amortized costs more accurately reflect the costs incurred by the pipeline industry.

RSPA received several comments on the following paragraphs regarding Executive Order 12866:

"However, the impact of inadequate qualification of pipeline personnel is not always apparent. For example, incidents/accidents that operators attribute to equipment failure or corrosion may actually have been set in motion by poorly performed operation or maintenance procedures." (63 FR 57276)

"In 1997, there were a total of 363 reportable pipeline incidents/accidents. Of these, 105 were directly attributable to human error." (63 FR 57276)

"In fact, human error frequently is not cited as a contributing factor in incident/accident investigations, even though it is recognized that human error underlies nearly all pipeline failures to some degree." (63 FR 57276)

"Perhaps the most important factor to consider when assessing the benefits of this proposal is that very few pipeline failures occur without some degree of human failure." (63 FR 57277)

Twenty-two commenters contend that the above references are not reasonable. They request that RSPA describe its methodology used to reach these conclusions, and substantiate these statements with sufficient and credible data, or delete them.

These commenters did not agree that human error is a contributing factor to nearly all incidents. Further, human error is not always related to lack of qualification. The commenters suggested that RSPA remove or substantiate the "non-quantifiable benefits," because they questioned the assumption that the rule will improve "work productivity and down-time."

"[I]n 1997, there were 88 reportable incidents attributed to outside force damage in the natural gas pipeline industry. Although the data reflects outside force damage as the cause of the incidents, human error is inherently present in most outside force damage. For instance, the outside force damage may have resulted from a pipeline worker not following local one-call system procedures or from improper marking of the pipeline prior to excavation" (63 FR 57277).

Seventeen commenters expressed that this discussion is misleading and not supported by facts. They noted that the discussion referring to "the difficulty in quantifying the benefits of this proposed rule * * *" were only made to narrow the gap between costs and benefits. They believe that these assumptions were not substantiated and should be deleted from the preamble. RSPA acknowledges that language was added to the NPRM after the final review by the Committee. However, the cost/benefit section was not part of the negotiated discussion by the entire Committee during the development of this rulemaking. RSPA has nonetheless considerably revised this discussion to take into consideration the comments on this topic.

Two commenters argued that litigation costs may increase, not decrease, as a result of this rule. RSPA has removed the reference to litigation costs since it would be difficult to predict the effect of this rule on litigation costs.

Eighteen commenters expressed that DOT's reference to the 1994 gas pipeline incident in Edison, NJ is inappropriate. This incident was the result of illegal third party activity. They requested that DOT delete the paragraph. RSPA agrees with these commenters and has removed the reference in this final rule.

Specific Comments on the Proposed Rule Language

Several comments were received regarding the regulatory language. One commenter suggested that 192.801 does not need the phrase "as identified by the operator." Several industry representatives on the Committee wanted this clarification to highlight that the operator is responsible for identifying covered tasks. Therefore, RSPA has not made the suggested change to the final rule.

Ten commenters said that 192.803 should be changed by adding the phrase "that may reasonably be anticipated to be encountered while performing the covered task" to the end of item #2 in the definition of "Qualified" (63 FR 57278). The commenters believed this would be consistent with the language in the preamble and thus does not obligate pipeline personnel to know all types of potential abnormal conditions. The Committee discussed this issue and concluded that no change to the regulatory language is warranted.

Nine commenters suggested that 191.805(f) should have the word "substantive" between the words "communicate" and "changes". Commenters believed this change would make the rule consistent with the preamble (page 57275, 3rd column, 2nd full paragraph) where the term "substantive" is used and makes it clear that not every change must be communicated. This issue was discussed by the Committee, and RSPA does not believe change to the regulatory language is warranted.

Ten commenters noted that 192.809(a) should read "20 months" instead of "2018 months". This typographical error was corrected in this final rule.

Eleven commenters said 192.803 should be revised to clarify that the reference to "other forms of assessment" is distinct from "observation during" in the Evaluation definition. RSPA discussed this with the Committee and revised the rule to distinguish the term "observation" from "other forms of assessment."

The term "integrity" in the Scope sections is unclear. This issue was discussed by the Committee, and RSPA does not believe changes to the regulatory language are warranted.

One commenter suggested that section 192.809 be revised to allow extra time for operators to ensure qualification of contractor personnel. This issue was discussed by the Committee, and RSPA does not believe changes to the regulatory language are warranted.

One commenter suggested that an additional section be inserted in the rule to measure the performance of the qualification rule. RSPA plans to establish a periodic review with stakeholders regarding the effectiveness of the qualification rule. RSPA does not believe changes to the regulatory language are warranted.

V. Scope

The Accountable Pipeline Safety and Partnership Act of 1996 required RSPA to adopt regulations requiring that "all individuals who operate and maintain pipeline facilities shall be qualified to operate and maintain the pipeline facilities" and "shall address the ability to recognize and react appropriately to abnormal operating conditions that may indicate a dangerous situation or a condition exceeding design limits" (49 U.S.C. 60102(a)). The Committee determined that a national qualification program conducted by RSPA, another federal agency, or a state agency, would not be an appropriate or practical response to the 1996 Act. Such a system offers the advantages of national consistency, including the ability of contractor employees to work for different operators under a single qualification regime. However, it was determined that the complexity and cost of administering such a system, coupled with the difficulty of devising a system appropriate for the wide variations in the operations and maintenance procedures and facilities of individual operators, precluded this from being an effective option.

The Committee determined the mandate would best be met by a non-prescriptive, performance based regulation requiring each operator to develop, or have developed, a written program for the qualification of individuals. This would allow each program to be tailored to the unique operations and practices of each operator.

A. Persons Covered by the Final Rule

This final rule applies to operators subject to the requirements of 49 CFR parts 192 or 195. The rule applies to all individuals who perform covered tasks, regardless of whether they are employed by the operator, a contractor, a sub-contractor, or any other entity performing covered tasks on behalf of the operator.

B. Operators are Responsible for Identifying Covered Tasks

Under this final rule, the operator is responsible for identifying which activities performed on the pipeline facility are covered tasks. The process for identifying covered tasks is set forth in 49 CFR 192.801 and 195.501 ("Scope") of this final rule.

The Committee discussed whether the regulator or the operator should be responsible for identifying covered tasks. Because of large differences between operations of pipelines across the country, a uniform list of covered tasks would not be useful, and could result in overall increased costs. For example, some operators do not have transmission lines in their systems, others operate only distribution lines, and others do not have compressors, pump stations, or storage facilities. Some operators perform a large number of covered tasks, while other, smaller, operators may have only a limited number of tasks that must be classified as covered tasks.

Identification of covered tasks is a key component of the qualification requirements under this final rule. The Committee proposed that it would be more effective and practical to let each operator determine the covered tasks requiring qualification.

However, some Committee members were concerned that if operators are allowed to determine the covered tasks, the final rule should also ensure that the regulators retain the authority to review each operator's determinations. Some Committee members objected to allowing each operator to identify covered tasks requiring individuals to be qualified. These members objected to the use of the words "determined by," which could be interpreted to preclude regulators from questioning the operator's identification of covered tasks. The Committee decided to use the words "identified by" to mean the selection of covered tasks by the operator. The Committee concluded that the authority to allow pipeline safety regulators to require modifications to programs that fail to meet regulatory requirements was already within the scope of federal and state jurisdiction, as was the authority to question particular activities included as covered tasks by the operator. The Committee concluded that covered tasks would be activities identified by the operator.

Therefore, under this final rule, the operator of a pipeline facility is responsible for identifying which activities performed on that facility are covered tasks. The criteria for identifying covered tasks on gas and hazardous liquid pipelines is set forth in 49 CFR 192.801 and 195.501, respectively.

Although operators are responsible for identifying covered tasks for which individuals must be qualified, regulators remain responsible for reviewing operator qualification programs and ensuring that federal regulatory standards are applied and met nationwide. Regulators may question an operator's inclusion and exclusion of particular activities as covered tasks. Regulators may require modifications to programs that fail to meet the requirements of the rule.

B. Identification of Covered Tasks

The final rule includes a four-part test that each operator must use to determine whether an activity constitutes a covered task. A covered task is: (1) Performed on a pipeline facility; (2) an operations or maintenance task; (3) performed pursuant to a requirement in 49 CFR part 192 or 195; and (4) affects the operation or integrity of the pipeline.

1. *Tasks Performed on a Pipeline Facility.* The phrase "performed on a pipeline facility" means an activity that is performed by an individual whose performance directly impacts the pipeline facility. An individual who works on a pipeline component that is physically connected to the pipeline system is performing work "on a pipeline facility" and may be subject to the final rules, regardless of whether or not product is flowing through the pipeline. However, a person who repairs a pipeline system or appurtenance, that has been removed from the system, would not be performing work on the pipeline, and therefore would not be performing a covered task.

2. *Operations or Maintenance Tasks.* The Federal pipeline safety law requires that all individuals who operate and maintain pipeline facilities be qualified to operate and maintain those facilities (49 U.S.C. 60102(a)(1)(C)).

Most of the operations and maintenance activities on pipeline facilities are found in 49 CFR part 192, subparts L and M, or in 49 CFR part 195, subpart F. In addition, the regulations contain other subparts that include requirements for conducting operations and maintenance activities. For example, part 192, Subpart I, establishes

requirements for protecting metallic pipelines from external, internal, and atmospheric corrosion. The requirements to monitor corrosion control systems are operations activities. The requirements to take corrective action when deficiencies are found in a corrosion control program are maintenance activities. Therefore, repairing pipelines affected by corrosion is also a maintenance activity.

Certain tasks performed on pipeline facilities may be covered tasks when performed in the course of operation and maintenance activities, but may not be covered tasks in the course of other activities. For example, "welding" could be a covered task when performed as an operations and maintenance activity on a pipeline, such as when installing a weld-over sleeve to repair an anomaly. However, "welding" is not a covered task under this subpart when performed during the fabrication of new installations, because this would not be an operations and maintenance task.

However, welders are currently subject to qualification requirements in 49 CFR part 192, Subpart E, and Part 195, Subpart D. To comply with the final rule, welders would have to be additionally qualified to recognize and react to abnormal operating conditions when welding as a covered task. This also applies to other activities such as "plastic pipe joining," for which the regulations contain specific requirements.

3. *Tasks Performed Pursuant to a Requirement in 49 CFR Part 192 or 195.* Covered tasks include only those operations and maintenance activities required by 49 CFR Part 192 or 195.

Examples of covered tasks might include:

- purging a pipeline because it is specifically required by 49 CFR 192.629;
- leakage surveys of distribution lines, required by 49 CFR 192.723;
- starting, operating, and shutting down gas compressor units, because 49 CFR 192.605(b)(7) specifically requires written procedures on these activities, to provide safety during maintenance and operations;
- inspection of navigable water crossings under 49 CFR 195.412; and
- inspection of breakout tanks required by 49 CFR 195.432.

Operators of pipeline facilities may voluntarily conduct operations and maintenance activities that are not required by a specific provision in 49 CFR parts 192 or 195. However, an activity does not necessarily become a covered task simply because an operator develops procedures for conducting the activity, and includes those procedures in its Operations and Maintenance Plan. For example, an operator may voluntarily choose to maintain a customer's buried piping, and include procedures for this activity in its Operations and Maintenance Plan. Because such maintenance is not specifically required by 49 CFR parts 192 or 195, the associated maintenance activities are not covered tasks.

4. *Tasks Affecting the Operation or Integrity of the Pipeline.* Under the final rule, covered tasks include only those activities that affect the operation or integrity of the pipeline.

The main purpose of the final rule is to ensure safety of pipelines through qualification of individuals. Initial discussions centered around safety-related activities and the need to categorize covered tasks as only those activities having safety implications. Some Committee members argued that most of the provisions in parts 49 CFR 192 and 195 regulate safety-related activities. It would therefore be redundant to include the word "safe" on pipeline operations addressed under this criteria. Therefore, it was decided to use the phrase, "operation or integrity," because some activities do not adversely affect the operation or integrity of the pipeline, even though they meet the other three criteria. The Committee decided to include a fourth criteria that must be satisfied for an activity to be a covered task, namely that the activity affects the operation or integrity of the pipeline.

The Committee discussed the term "operation" as used here in the safety context of normal versus abnormal operation, where the latter could result in an unsafe condition. For example, the control of flow and pressure in pipelines could result in abnormal operation, if the pressure is allowed to rise above an acceptable limit. Therefore, in this example, activities that include controlling flow and pressure on a pipeline system would be considered covered tasks if the other three criteria for covered tasks were met.

An additional example of an activity affecting the integrity of the pipeline would be coating or jacketing of aboveground pipeline components. In the event atmospheric corrosion is present, coating or jacketing the component could affect the integrity of the pipeline. However, painting a pipeline for aesthetic reasons would not affect the integrity of the pipeline.

The "integrity" of the pipeline refers to the pipeline's ability to operate safely and to withstand stresses imposed during operations. An example of a short-term effect on integrity would be exceeding the Maximum Allowable Operating Pressure (MAOP) for gas pipelines and Maximum Operating Pressure (MOP) for liquid pipelines. An example of a long-term effect would be failure from corrosion due to improper coating after repair of a welded joint.

Because the term "pipeline facility" was used in the first criterion, the Committee also considered whether it would be appropriate to use the term "pipeline facility" in the fourth criterion instead of the term "pipeline." Although some argued that consistency should be maintained, others stated that the primary goal of the final rule is to ensure the safe operation and integrity of the pipeline itself. Furthermore, the term "pipeline" as defined in 49 CFR parts 192 and 195 already encompasses the "facilities" targeted by the final rule. The Committee therefore agreed that this criterion should remain unchanged.

If an activity fails to meet any one of the four criteria, the activity would not be considered a covered task under this final rule. The following are hypothetical examples of how the four-part test can be used to identify a covered task:

Example 1: Leakage surveys on gas transmission pipelines.

(1) Performed on a pipeline facility? Yes, because leakage surveys are performed immediately above the pipeline and on the pipeline right-of-way.

(2) Is an operations and maintenance task? Yes, leakage surveys are conducted in the course of pipeline operations and maintenance activities.

(3) Is performed as a requirement of this part? Yes, leakage surveys are required by 49 CFR 192.706 and 192.723.

(4) Affects the operation or integrity of the pipeline? Yes, if a leakage survey is not properly conducted, a leak might not be detected, resulting in a potentially hazardous situation.

Since all four criteria are met, the leakage survey is a covered task.

Example 2: Measuring pipe-to-soil potentials.

(1) Performed on a pipeline facility? Yes, pipe-to-soil potentials are measured at cathodic test stations attached directly to the pipeline.

(2) Is an operations and maintenance task? Yes, pipe-to-soil potentials are read in the course of pipeline operations and maintenance activities.

(3) Is performed as a requirement of this part? Yes, pipe-to-soil potential measurements are required by 49 CFR 192.465 and 195.416.

(4) Affects the operation or integrity of the pipeline? Yes, pipe-to-soil potential measurements, if taken improperly, will not accurately reflect the level of cathodic protection being provided. While not affecting the immediate operation of the pipeline, the future integrity of the pipeline might be jeopardized (for example, corrosion might develop), if inadequate cathodic protection is applied to the pipeline over a period of time.

Since all four criteria are met, the measurement of pipe-to-soil potentials is a covered task.

Example 3: Meter reading.

(1) Performed on a pipeline facility? Yes, a meter is a part of a pipeline facility.

(2) Is an operations and maintenance task? Yes, meters are read in the course of pipeline operations and maintenance activities.

(3) Is performed as a requirement of this part? No, meter reading is not a requirement of 49 CFR part 192 or part 195.

(4) Affects the operation or integrity of the pipeline? No, meter reading has no impact on pipeline operation or integrity.

Because meter reading fails at least one of the four criteria, meter reading is not considered a covered task.

In identifying covered tasks, operators must consider specific activities and not necessarily the job classification of individuals performing the activities, because each job classification may incorporate several activities. For example, an individual with the job classification, "meter reader," may be assigned activities other than reading a meter, such as distribution line patrolling under 49 CFR Part 192.721, that could be covered tasks.

D. Amendments to Section 195.403 (Training).

Section 195.403 currently prescribes the training requirements for operations, maintenance, and emergencies for operators of hazardous liquid pipelines. Because the final rule includes a qualification process for operations and maintenance activities, but does not address emergency response qualification, 49 CFR § 195.403 is amended to retain emergency response training requirements. This rule removes the specific operations and maintenance training requirements addressed in 49 CFR § 195.403. Persons performing operations and maintenance tasks need to be qualified in accordance with the final rule. This amendment is not effective until October 28, 2002.

VI. Definitions

The definitions section of this final rule was developed to facilitate common understanding of key terms. The Committee began using a number of terms that were not commonly defined by all members. To facilitate communication, these terms were defined and are provided in the final rule.

Abnormal operating condition.

An abnormal operating condition, as defined in this final rule, is "a condition identified by the operator that may indicate a malfunction of a component or deviation from normal operations that may:

(1) Indicate a condition exceeding design limits; or

(2) Result in a hazard(s) to persons, property, or the environment."

This definition is derived from Federal pipeline safety law (49 U.S.C. 60102) and from the pipeline safety regulations (49 CFR 192.605 (c)(1)(v) and 49 CFR 195.402(d)(1)(v)).

"Abnormal operating conditions" is also referenced in the definition of the term "qualified". To be qualified, an individual needs to be able to properly perform assigned covered tasks and be able to recognize and react to an abnormal operating condition that may be encountered while performing the covered task. For example, this may include notifying the responsible parties or taking corrective action to mitigate the condition.

As an example, an individual who has been qualified to perform leak surveys should be able to recognize and react to an abnormal operating condition such as blowing gas. Likewise, an individual who is qualified to perform control of gas pressure and flow should be able to recognize and react to an abnormal operating pressure in a pipeline segment.

Not all atypical operating conditions are abnormal. An example of an atypical operating condition that is not abnormal is a pipeline which can (not to exceed MAOP or MOP) operate up to 200 pounds per square inch (psig), but which typically operates at 50 psig. Operating this pipeline at 150 psig could be atypical, but not abnormal. If however the atypical operating condition would cause the pressure in the pipeline to exceed its allowable limits or cause a hazard to persons, property or the environment, an abnormal operating condition would result. A qualified individual performing control of gas pressure and flow who observes an unanticipated pressure increase in such a pipeline segment should know to investigate the cause of the change before it reaches the MAOP/MOP of the line.

Evaluation

An evaluation of an individual's ability to perform a covered task is the process that assesses and documents the individual's qualifications to perform the covered task. Although the definition lists several acceptable methods for evaluation, the list is not all-inclusive.

The evaluation of an individual's qualifications should be an objective, consistent process that documents an individual's ability to perform the covered task. This includes the individual's ability to recognize and react to abnormal operating conditions that the operator could reasonably anticipate the qualified individual will encounter while performing the covered task. The operator should establish the acceptance criteria for the evaluation method used (for example, for on-the-job training spell out the performance criteria; for a written exam establish the cutoff score). The following table was developed in Committee discussion to illustrate acceptable evaluation methods for "transitional", "initial" and "subsequent" qualification, although these terms do not appear in the rule:

Evaluation method	"Transitional" qualification[1]	"Initial" qualification[2]	"Subsequent" qualification[3]
Written exam	YES	YES	YES.
Oral exam	YES	YES	YES.
Work performance history review.	YES	May not be used as the sole evaluation method.	May not be used as the sole evaluation method after the three-year compliance date.
Performance on-the-job	YES	YES	YES.
On-the-Job Training	YES	YES	YES.
Simulation	YES	YES	YES.
Other	YES	YES	YES.

Notes:
[1] "Transitional" qualification means qualification completed by October 28, 2002, of individuals who have been performing a covered task on a regular basis prior to the effective date of the rule.
[2] "Initial" qualification means qualification, at any time, of individuals who were not performing a covered task on a regular basis prior to the effective date of the rule.
[3] "Subsequent" qualification means evaluation of an individual's qualification, after "transitional" or "initial" qualification, at the interval established by the operator.

Under 49 CFR §§ 192.809(c) and 195.509(c), a work performance history review may not be used as a sole evaluation method after October 28, 2002. "Transitional" qualification may rely on a work performance history review as the sole evaluation method. "Initial" qualification may not rely on only a work performance history review. "Subsequent" qualifications may rely on work performance history review if used in conjunction with at least one other evaluation method.

Prior to the three year compliance date operators may use work performance history review as the sole method for evaluation when qualifying individuals. After the three year compliance date, if work performance history review is used, it must be combined with at least one other form of assessment. Any of the other forms of assessment specified in the definition of evaluation may be used as the sole method of evaluation both before and after the three year compliance date. When an operator has qualified an individual prior to the three year compliance date and used work performance history review as the sole method of evaluation, the operator is not required to re-evaluate each individual using additional criteria until the next scheduled evaluation, which may vary by covered task.

The operator must establish the parameters for the work performance history review. For example, a work performance history review may include:

(1) A search of existing records for documentation of an individual's past satisfactory performance of a covered task(s);

(2) verification that the individual's work performance history contains no indications of substandard work or involvement in an incident (part 192) or accident (part 195), caused by an error in performing a covered task; and,

(3) verification that the individual has successfully performed the covered task on a regular basis prior to the effective date of the rule.

Qualified

Qualified, means that an individual has been evaluated and is able to properly perform a covered task(s), and recognize and react to abnormal operating conditions that may be encountered during the performance of the covered task(s). An individual may be qualified using any of the evaluation methods specified in the operator's written qualification program.

VII. Qualification program

The Committee identified the following seven elements as requirements in the operator's qualification program:

Paragraph (a) of 49 CFR 192.805 and 195.505 requires operators to identify the covered tasks to be included in the qualification program. Whether an activity is a covered task would be determined using the four criteria in 49 CFR 192.801(b) or 195.501(b). Because operators are responsible for identifying covered tasks, variations among qualification programs are expected.

A concern of the Committee was whether periodic review of covered tasks should be required. Although a periodic review requirement was not included in the final rule, an operator may consider a periodic review to ensure the accuracy of its covered task list.

Paragraph (b) requires that the qualification program include provisions to ensure through evaluation that individuals performing covered tasks are qualified. This would set forth the evaluation methods to determine if an individual is qualified.

The Committee discussed contractor personnel and who is responsible for their qualification and compliance under this rule. Some members believed contractors should not be subject to this final rule and that OPS should be responsible for ensuring the qualification of contractor personnel. OPS does not have the authority to directly enforce compliance by contractors with this rule. The pipeline operator is responsible for all individuals working on their pipeline systems. This includes operator and contractor personnel.

The Committee discussed the role of those performing evaluations. Members agreed not to include a provision in the rule to require that evaluators be "qualified" to evaluate. However, persons performing evaluations should possess the required knowledge (1) to ascertain an individual's ability to perform covered tasks and (2) to substantiate an individual's ability to recognize and react to abnormal operating conditions that might surface while performing those activities. This does not necessarily mean that the persons performing evaluations should be physically able to perform the covered tasks themselves.

The Committee discussed the concerns and options available to the operator regarding who should evaluate the individuals performing covered tasks. Because the operator is responsible for the development and implementation of the evaluation methods, the Committee thought that the operator should also be responsible for selecting appropriately knowledgeable individuals to perform evaluations. The final rule requires a qualification program that focuses on ensuring an individual can properly perform a covered task(s) rather than the credentials of persons conducting evaluations.

Paragraph (c) allows for performance of covered tasks by individuals who are not qualified as long as a qualified individual directly observes the non-qualified individual(s), and is able to take immediate corrective actions when necessary. For example, an operator may use a three-person crew to repair gas leaks. Two of the crew members could be non-qualified. The crew excavates and repairs leaking gas mains and services under the direct and close observation of the qualified member of the crew. The intent of this provision is to ensure that non-qualified individuals performing covered tasks are subject to close observation by a qualified individual. Ultimately, the qualified member of the crew is responsible for the repair. The ratio of non-qualified individuals to "qualified" individuals should be kept to a minimum.

Paragraph (d) requires the operator to evaluate an individual if the operator has reason to believe that the individual's performance of a covered task could have contributed to an incident as defined in 49 CFR part 191 or accident as defined in 49 CFR part 195. If so, the individual's qualification should be evaluated to determine if the individual continues to be qualified to perform the covered task.

Paragraph (e) requires the operator to evaluate an individual if there is reason to believe that the individual is no longer qualified to perform a covered task. This could occur if the individual displays unsatisfactory performance of the task or if there is reason to believe the individual can no longer perform the covered task. The operator's qualification program must include provisions for evaluating an individual's qualification if the circumstances warrant.

Paragraph (f) recognizes that changes may occur that impact how a covered task is performed. Changes that may need to be communicated to individuals performing covered tasks may include:

- Modifications to company policies or procedures.
- Changes in state or Federal regulations.
- Utilization of new equipment and/or technology.
- New information from equipment or product manufacturers.

The final rule requires that the qualification program include provisions for communicating information on substantive changes to the individuals performing the affected covered tasks. When significant changes occur, the operator should consider whether additional qualification requirements are necessary and whether individuals performing the covered task should be evaluated again.

Paragraph (g) addresses the identification of covered tasks, and the frequency of evaluation intervals for each covered task. The appropriate interval may vary depending on the covered task. It was therefore left to the operator to determine which covered tasks and the interval at which subsequent qualification of an individual performing a covered task will occur. The Committee felt that the evaluation intervals could be specified in units of time, frequency of performance or other appropriate units. The Committee recognized that subsequent evaluation methods may differ from initial qualification methods.

This rule does not require that the written qualification program be incorporated into an operator's Operations and Maintenance Plan. The operator may expand any of the seven required elements and add additional elements to their program but will only be held accountable to meet the requirements of this Subpart.

VIII. Recordkeeping

Under the final rule, each operator is required to maintain records that demonstrate compliance. The Committee had considerable discussion regarding records content, records to be retained, and length of retention.

The records that support an individual's qualifications must include the identity of each qualified individual (for example, name, social security number, or employee number), identification of each covered task for which qualified, date(s) of current qualification and qualification methods(s). Records of an individual's current qualifications must be maintained while the individual is performing the covered tasks for which qualified. When an individual is evaluated for subsequent qualification, the prior qualification records must be maintained for a period of five years. Also, when an individual stops performing a covered task (for example, the individual retires or is promoted) the individual's qualification records must be retained for a period of five years. The Committee selected five years to be consistent with other regulatory time periods. The records may be kept in paper, electronic, or any other appropriate format. The records may be kept at a central location or at multiple locations.

The final rule does not address whether a certification or other record of qualification need be issued to each qualified individual. This matter is solely within the discretion of the operator.

IX. General

Development and implementation of a qualification program will take some operators longer than others. Many operators currently have adequate processes or programs to ensure the qualification of individuals working on their pipeline systems. However, to ensure that this final rule is enforceable, definitive time frames must be specified. The Committee decided that 18 months would be sufficient time to develop a written qualification program.

An operator will have 38 months from the effective date of the final rule to complete the qualification of all individuals performing covered tasks on its system. This will allow operators with more limited resources and differing budget cycles adequate time to complete the qualification process. Those operators who are able to comply before the mandatory compliance date are encouraged to do so. The rule does not intend to penalize early compliance. Therefore, the starting time for subsequent evaluation intervals determined by the operator is not required to begin until the compliance date.

Finally, work performance history review will only be allowed as the sole method of evaluation during the three-year period prior to mandatory compliance with the rule. After this time, work performance history review will be an acceptable method of evaluating individuals only in combination with another evaluation method.

Rulemaking Analyses and Notices

Executive Order 12866

This final rule is considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, is subject to review by the Office of Management and Budget. The final rule is considered significant under the Department of Transportation Policies and Procedures (44 FR 1103; February 26, 1979) because of the substantial interest expressed by the pipeline industry, state and Federal agencies, and Congress. This section summarizes the conclusions of the regulatory evaluation. Copies of the regulatory evaluation are available in the docket. Several groups, including the Congress, the National Transportation Safety Board, and the National Association of State Pipeline Safety Representatives, have called repeatedly for a pipeline personnel qualification rule.

This final rule is the product of a negotiated rulemaking in which representatives of all interested parties participated, including pipeline trade associations, pipeline operators both large and small, organized labor, state pipeline safety representatives, and the Federal government. The members of the negotiated rulemaking committee agreed that this process ensured adoption of a cost-effective standard for pipeline personnel qualification. The American Gas Association (AGA) and other participants in the negotiated rulemaking contributed to estimates of the cost of this proposal. RSPA adjusted the cost estimates to provide an annualized cost estimate for the entire pipeline industry. Based on an estimated 175,000 covered pipeline employees, including both operator employees and contractors, the industry and the Committee identified three major cost categories for implementation and compliance with the rule by gas and hazardous liquid pipeline operators:

1. Cost for qualification program set-up, $210 million
2. Cost of transitional evaluation and qualification, $140 million
3. Cost of subsequent evaluation and qualification, $87.5 million

RSPA determined that the program set-up costs should be amortized over 9 years. Therefore, RSPA amortized the set-up costs over 9 years using a 7% interest rate for an annualized cost of $29.3 million for program development and initial qualification.

The transitional qualification costs were amortized over a six year period (three years before the effective date of the regulation that requires initial qualification, and an estimated three years before subsequent qualification) using a 7% interest rate for an annualized transitional qualification cost of $28.6 million.

The Committee estimated that qualification for various covered tasks would be reviewed approximately every three years, although the length of time between evaluations for a particular covered task and pipeline operator might vary widely. Therefore, the next qualification (and each subsequent qualification) is amortized over three years at 7% or an annual subsequent qualification cost of $32.4 million.

The result of these calculations is a cost of $57.9 million per year for the years 1–6 ($29.3 million + $28.6 million) and a cost of $61.7 million per year for years 7–9 ($29.3 million + $32.4 million). The average annual cost for compliance with the rule is approximately $59 million.

The preamble to this final rule notes that the intent of the qualification rule is to ensure a qualified workforce and to reduce the probability and consequences of accidents caused by human error. Investigations of pipeline incidents/accidents clearly attributable to human error often indicate either a deficiency of knowledge or skill (for example, lack of qualification) or an error in judgement on the part of pipeline personnel. However, the impact of inadequate qualification of pipeline personnel is not always apparent. For example, incidents/accidents that operators attribute to equipment failure or corrosion may actually have been set in motion by poorly performed operation or maintenance procedures. Although many state pipeline safety representatives have stated that this rule will reduce incidents/accidents by ensuring a qualified workforce, they concede that the task of quantifying that reduction is very difficult.

Perhaps the most important factor to consider when assessing the benefits of this rule is that human error is frequently not cited as an element contributing to an incident/accident. Available data does not always capture the contribution of human error to incidents/accidents. In 1997, there were 354 reportable pipeline incidents/accidents. Of these, 87 gas pipeline incidents and 40 hazardous liquid pipeline accidents were attributed to outside force damage. Although most outside force damage is caused by persons not covered by this rule—as when a third party disregards one-call procedures—damage sometimes results when a pipeline worker fails to follow one-call system procedures or from improper marking of the pipeline prior to excavation. Consequently, while third parties causing damage will not be better prepared to prevent pipeline damage, they will potentially reap the benefits of this rule by working around pipelines that are more clearly marked.

These scenarios show the difficulty in quantifying the benefits of this rule. Nonetheless, it is clear that some incidents/accidents could be avoided as a result of implementation of this rule, and that the cost of these incidents/accidents is substantial. Total outside force incidents/accidents resulted in 7 fatalities ($19 million), 38 injuries ($18.5 million), and $27 million in property damage. This results in a total monetized loss of $ 64.5 million in 1997. Monetization of fatalities and injuries employed DOT's "willingness to pay" estimates. Because the record keeping and reporting system of OPS lacks detailed data, it is not possible to accurately quantify the percentage of accidents that will be avoided as a result of this rule.

Although quantifying all the benefits of an operator qualification rule is impossible, most of the Committee members agreed that this rule, as written, is as cost beneficial as practicable, and RSPA believes that the overall benefits justify the costs of the rule. Furthermore, although relatively few fatalities and injuries occur each year from pipeline failures, the potential exists for significant, and very costly, disasters.

In addition, even a small reduction in overall pipeline expenses resulting from a fully-qualified workforce could result in significant savings that could offset the costs of this rule. If standardizing qualification procedures increases productivity and reduces operating expenses by one-half of one percent per year, the annual expenses of the major pipeline operators could drop by more than $68 million (FERC Form 2, page 116, reports $13.77 billion in total 1996 operating expenses for 53 large pipeline operators).

Other nonquantifiable benefits of this rule may include:

1. Reducing the likelihood of incorrectly following procedures;
2. Eliminating and correcting inadequate operating and maintenance procedures;
3. Reducing or eliminating the occurrence of sending inadequately prepared individuals into the field to perform covered tasks;
4. Increasing the formal communications between operator and workers;
5. Increasing the attention and oversight on safety-related procedures; and
6. Improving the documentation that ensures a qualified workforce.

These nonquantifiable benefits could translate into reduced operating expenses. Finally, documentation of a qualified workforce could improve operator public relations. RSPA provides further analysis for its conclusion that this rule will have a positive benefit/cost in its "Regulatory Evaluation," which is included in the docket.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), RSPA must consider whether a rulemaking would have a significant economic impact on a substantial number of small entities. Based on the regulatory evaluation, RSPA has determined that the rule will not have a significant impact on a substantial number of small entities. The Committee unanimously agreed that all operators, regardless of size, should be subject to the final rule because the qualification of workers at both large and small pipeline operators can impact safety. One of the participants in the negotiated rulemaking was a representative of the American Public Gas Association (APGA). The APGA represents municipal gas distribution companies, the main group of small entities in the pipeline industry. Hazardous liquid and gas transmission companies tend to be quite large. As a result, there are not a substantial number of small hazardous liquid pipeline entities. In conversations between RSPA and APGA, APGA indicated that as a trade association it would make itself available to assist its members in complying with this final rule.

As indicated in the regulatory evaluation, many resources exist to assist both small and large operators in compliance with this rule, including classes from DOT's Transportation Safety Institute, nonprofit industry associations, as well as for-profit companies. Additionally, while some costs, such as the development of the qualification program, are on a per company basis, the actual qualification will be on a per-employee basis. As a result, costs incurred by smaller companies should not be significant.

Further, the Committee considered the flexibility that this final rule allows in terms of permitting each company to tailor its worker qualification program to its own unique needs, and would allow small operators to interact with inspectors to evaluate and modify their qualification programs if necessary. Because of this flexibility, the availability of assistance in developing qualification plans, the fact that much of the cost will be proportionate to the number of employees, and the fact that very few small entities can be found among hazardous liquid and gas transmission companies, I certify that this final rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This Final Rule contains information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the information collection requirements in the rule have been submitted to the Office of Management and Budget for their review and have been approved under OMB #2139–0600.

Executive Order 12612

This final rule has been analyzed with the principles and criteria in Executive Order 12612 ("Federalism") (52 FR 41685), and does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the final rule.

National Environmental Policy Act

We have analyzed the final rule for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). Requiring all gas and hazardous liquid pipeline operators to adopt the operator personnel qualification regulation should result in a reduction of pipeline incidents that are caused by human error. This should result in reduced fatalities, injuries, property damage, and environmental damage. Furthermore, this regulation will not have a detrimental impact on the environment. Thus, we have determined that the final rule will not significantly affect the quality of the human environment. An environmental assessment document is available for review in the docket.

Impact on Business Processes and Computer Systems

Many computers that use two digits to keep track of dates will, on January 1, 2000, recognize "double zero" not as 2000 but as 1900. This glitch, the Year 2000 problem, could cause computers to stop running or to start generating erroneous data. The Year 2000 problem poses a threat to the global economy in which Americans live and work. With the help of the President's Council on Year 2000 Conversion, Federal agencies are reaching out to increase awareness of the problem and to offer support. We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to the Year 2000 Problem.

This final rule does not require business process changes or require modifications to computer systems. Because this final rule should not affect the ability of organizations to respond to the Year 2000 problem, we do not intend to delay the effectiveness of the rule changes.

List of Subjects

49 CFR Part 192

Natural gas, Pipeline safety.

49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Hazardous liquids, Petroleum, Pipeline safety.

In consideration of the foregoing, RSPA amends 49 CFR Parts 192 and 195 as follows:

PART 192 AMENDED

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; and 49 CFR 1.53.

2. Subpart N is added to read as follows:

Sec.
192.801 Scope.
192.803 Definitions.
192.805 Qualification Program.
192.807 Recordkeeping.
192.809 General.

192.801 Scope.

(a) This subpart prescribes the minimum requirements for operator qualification of individuals performing covered tasks on a pipeline facility.

(b) For the purpose of this subpart, a covered task is an activity, identified by the operator, that:

(1) Is performed on a pipeline facility;

(2) Is an operations or maintenance task;

(3) Is performed as a requirement of this part; and

(4) Affects the operation or integrity of the pipeline.

§ 192.803 Definitions.

Abnormal operating condition means a condition identified by the operator that may indicate a malfunction of a component or deviation from normal operations that may:

(a) Indicate a condition exceeding design limits; or

(b) Result in a hazard(s) to persons, property, or the environment.

Evaluation means a process, established and documented by the operator, to determine an individual's ability to perform a covered task by any of the following:

(a) Written examination;
(b) Oral examination;
(c) Work performance history review;
(d) Observation during:
(e) Performance on the job,
(f) On the job training, or
(g) Simulations; or
(h) Other forms of assessment.

Qualified means that an individual has been evaluated and can:

(a) Perform assigned covered tasks; and

(b) Recognize and react to abnormal operating conditions.

§ 192.805 Qualification program.

Each operator shall have and follow a written qualification program. The program shall include provisions to:

(a) Identify covered tasks;

(b) Ensure through evaluation that individuals performing covered tasks are qualified;

(c) Allow individuals that are not qualified pursuant to this subpart to perform a covered task if directed and observed by an individual that is qualified;

(d) Evaluate an individual if the operator has reason to believe that the individual's performance of a covered task contributed to an incident as defined in Part 191;

(e) Evaluate an individual if the operator has reason to believe that the individual is no longer qualified to perform a covered task;

(f) Communicate changes that affect covered tasks to individuals performing those covered tasks; and

(g) Identify those covered tasks and the intervals at which evaluation of the individual's qualifications is needed.

§ 192.807 Recordkeeping.

Each operator shall maintain records that demonstrate compliance with this subpart.

(a) Qualification records shall include:

(1) Identification of qualified individual(s);
(2) Identification of the covered tasks the individual is qualified to perform;
(3) Date(s) of current qualification; and
(4) Qualification method(s).
(b) Records supporting an individual's current qualification shall be maintained while the individual is performing the covered task. Records of prior qualification and records of individuals no longer performing covered tasks shall be retained for a period of five years.

§ 192.809 General.

(a) Operators must have a written qualification program by April 27, 2001.
(b) Operators must complete the qualification of individuals performing covered tasks by October 28, 2002.
(c) Work performance history review may be used as a sole evaluation method for individuals who were performing a covered task prior to August 27, 1999.
(d) After October 28, 2002, work performance history may not be used as a sole evaluation method.

PART 195—AMENDED

3. The authority citation for Part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53.

4. Section 195.403 is revised to read as follows:
This section becomes effective October 28, 2002.

§ 195.403 Emergency response training.

(a) Each operator shall establish and conduct a continuing training program to instruct emergency response personnel to:
(1) Carry out the emergency procedures established under 195.402 that relate to their assignments;
(2) Know the characteristics and hazards of the hazardous liquids or carbon dioxide transported, including, in case of flammable HVL, flammability of mixtures with air, odorless vapors, and water reactions;
(3) Recognize conditions that are likely to cause emergencies, predict the consequences of facility malfunctions or failures and hazardous liquids or carbon dioxide spills, and take appropriate corrective action;
(4) Take steps necessary to control any accidental release of hazardous liquid or carbon dioxide and to minimize the potential for fire, explosion, toxicity, or environmental damage; and
(5) Learn the proper use of firefighting procedures and equipment, fire suits, and breathing apparatus by utilizing, where feasible, a simulated pipeline emergency condition.
(b) At the intervals not exceeding 15 months, but at least once each calendar year, each operator shall:
(1) Review with personnel their performance in meeting the objectives of the emergency response training program set forth in paragraph (a) of this section; and
(2) Make appropriate changes to the emergency response training program as necessary to ensure that it is effective.
(c) Each operator shall require and verify that its supervisors maintain a thorough knowledge of that portion of the emergency response procedures established under 195.402 for which they are responsible to ensure compliance.

Subpart G—[Added]

5. Subpart G is added to read as follows:

Sec.
195.501 Scope.
195.503 Definitions.
195.505 Qualification Program.
195.507 Recordkeeping.
195.509 General.

§ 195.501 Scope.

(a) This subpart prescribes the minimum requirements for operator qualification of individuals performing covered tasks on a pipeline facility.
(b) For the purpose of this subpart, a covered task is an activity, identified by the operator, that:
(1) Is performed on a pipeline facility;
(2) Is an operations or maintenance task;
(3) Is performed as a requirement of this part; and
(4) Affects the operation or integrity of the pipeline.

§ 195.503 Definitions.

Abnormal operating condition means a condition identified by the operator that may indicate a malfunction of a component or deviation from normal operations that may:
(a) indicate a condition exceeding design limits; or
(b) result in a hazard(s) to persons, property, or the environment.
Evaluation means a process, established and documented by the operator, to determine an individual's ability to perform a covered task by any of the following:
(a) written examination;
(b) oral examination;
(c) work performance history review;
(d) observation during:
(e) performance on the job,
(f) on the job training, or
(g) simulations; or
(h) other forms of assessment.
Qualified means that an individual has been evaluated and can:
(a) perform assigned covered tasks and
(b) recognize and react to abnormal operating conditions.

§ 195.505 Qualification program.

Each operator shall have and follow a written qualification program. The program shall include provisions to:
(a) Identify covered tasks;
(b) Ensure through evaluation that individuals performing covered tasks are qualified;
(c) Allow individuals that are not qualified pursuant to this subpart to perform a covered task if directed and observed by an individual that is qualified;
(d) Evaluate an individual if the operator has reason to believe that the individual's performance of a covered task contributed to an accident as defined in Part 195;
(e) Evaluate an individual if the operator has reason to believe that the individual is no longer qualified to perform a covered task;
(f) Communicate changes that affect covered tasks to individuals performing those covered tasks; and
(g) Identify those covered tasks and the intervals at which evaluation of the individual's qualifications is needed.

§ 195.507 Recordkeeping.

Each operator shall maintain records that demonstrate compliance with this subpart.
(a) Qualification records shall include:
(1) Identification of qualified individual(s);
(2) Identification of the covered tasks the individual is qualified to perform;
(3) Date(s) of current qualification; and
(4) Qualification method(s).
(b) Records supporting an individual's current qualification shall be maintained while the individual is performing the covered task. Records of prior qualification and records of individuals no longer performing covered tasks shall be retained for a period of five years.

§ 195.509 General.

(a) Operators must have a written qualification program by April 27, 2001.
(b) Operators must complete the qualification of individuals performing covered tasks by October 28, 2002.
(c) Work performance history review may be used as a sole evaluation method for individuals who were performing a covered task prior to August 27, 1999.

(d) After October 28, 2002, work performance history may not be used as a sole evaluation method.

Issued in Washington, DC, on August 20, 1999.

Kelley S. Coyner,

Administrator.

[FR Doc. 99–22208 Filed 8–26–99; 8:45 am]
BILLING CODE 4910–60–P

Proposed Rules

Federal Register
Vol. 64, No. 166
Friday, August 27, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–46]

Proposed Modification of Class E Airspace; Fort Wayne, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class E airspace at Fort Wayne, IN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 13 has been developed for Smith Field Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to enlarge the existing controlled airspace to the north to accommodate this airport.

DATES: Comments must be received on or before October 11, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–46, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Annette Davis, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–46." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Fort Wayne, IN, to accommodate aircraft executing the proposed GPS Rwy 13 SIAP at Smith Field Airport by modifying the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IN E5 Fort Wayne, IN [Revised]

Fort Wayne VORTAC
(Lat. 40°58′45″N., long. 85°11′17″W.)
Fort Wayne, Smith Field Airport, IN
(Lat. 45°14′10″N., long. 93°59′08″W.)

That airspace extending upward from 700 feet above the surface within a 14.8-mile radius of the Fort Wayne VORTAC, and within a 16.1-mile radius of the Fort Wayne VORTAC, extending from the Fort Wayne VORTAC 194° radial clockwise to the Fort Wayne VORTAC 335° radial, and within a 6.3-mile radius of the Smith Field Airport, and within 2.0 miles each side of the 308° bearing from the airport, extending from the 6.3-mile radius to 7.6 miles northwest of the airport.

* * * * *

Issued in Des Plaines, Illinois on August 9, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–22062 Filed 8–26–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–45]

Proposed Modification of Class E Airspace; Maple Lake, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify Class E airspace at Maple Lake, MN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 28 has been developed for Maple Lake Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to increase the radius of the existing controlled airspace for this airport.

DATES: Comments must be received on or before October 11, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–45, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois

FOR FURTHER INFORMATION CONTACT: Annette Davis, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–45." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW. Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Maple Lake, MN, to accommodate aircraft executing the proposed GPS Rwy 28 SIAP, at Maple Lake Municipal Airport by modifying the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air

traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Maple Lake, MN [Revised]

Maple Lake Municipal Airport, MN
(Lat. 40°14′10″ N., long. 93°59′08″ W.)

That airspace extending upward form 700 feet above the surface within a 6.3-mile radius of the Maple Lake Municipal Airport.

* * * * *

Issued in Des Plaines, Illinois on August 9, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–22061 Filed 8–26–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–44]

Proposed Establishment of Class E Airspace; Batesville, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Batesville, IN. A Transponder Landing System (TLS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 36 has been developed for Hillenbrand Industries Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to create controlled airspace for this airport.

DATES: Comments must be received on or before October 11, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–44, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Annette Davis, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–44". The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Batesville, IN, to accommodate aircraft executing the proposed TLS Rwy 36 SIAP at Hillenbrand Industries Airport by creating controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IN E5 Batesville, IN [New]

Batesville, Hillenbrand Industries Airport, IN
(Lat. 39°20′40″N., long. 85°15′30″W.)

That airspace extending upward from 700 feet above the surface within and 6.5-mile radius of the Hillenbrand Industries Airport, excluding that airspace within the Greensburg, IN, Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on August 9, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–22060 Filed 8–26–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–47]

Proposed establishment of Class E Airspace; Pine River, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Pine River, MN. A Nondirectional Beacon (NDB) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 34 has been developed for Pine River Regional Airport. Controlled airspace extending upward from 700 to 1,200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action would create controlled airspace for Pine River Regional Airport.

DATES: Comments must be received on or before October 18, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–47, 2300, East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Annette Davis, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–47." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Pine River, MN, to accommodate aircraft executing the proposed NDB Rwy 34 SIAP at Pine River Regional Airport by creating controlled airspace for the airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1999, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document

would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Pine River, MN [New]

Pine River Regional Airport, MN
(lat. 46° 43′ 29″N, long. 94° 22′ 54″W)
Pine River NDB
(lat. 46° 43′ 37″N, long. 94° 23′ 04″W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Pine River Regional Airport and within 1.3 miles each side of the 154° bearing from the Pine River NDB, extending from the 6.3-mile radius to 7.0 miles southeast of the airport.

* * * * *

Issued in Des Plaines, Illinois on August 17, 1999.

Christopher R. blum,

Manager, Air Traffic Division.

[FR Doc. 99–22294 Filed 8–20–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

Office of Insular Affairs

15 CFR Part 303

[Docket No. 990813222–9222–01]

RIN 0625–AA55

Extend Production Incentive Benefits to Jewelry Manufacturers in the U.S. Insular Possessions

AGENCIES: Import Administration, International Trade Administration, Department of Commerce; Office of Insular Affairs, Department of the Interior.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Departments propose to amend their regulations governing duty-exemption allocations and duty-refund benefits for watch producers in the United States insular possessions (the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands) due to the enactment of Pub. L. 106–36. This law amends additional U.S. notes to chapter 71 of the Harmonized Tariff Schedule of the United States ("HTSUS") to provide a duty-refund benefit for any article of jewelry within heading 7113 which is the product of the Virgin Islands, Guam, American Samoa or the Northern Mariana Islands in accordance with the new provisions of the note in chapter 71 and additional U.S. note 5 to chapter 91. The proposed rule would amend the regulations by changing Title 15 CFR part 303 to include jewelry, creating a Subpart A for the current insular watch and watch movement regulations and a Subpart B for the new regulations pertaining to jewelry duty-refund benefits authorized by Pub. L. 106–36.

DATES: Written comments must be received on or before September 27, 1999.

ADDRESSES: Address written comments to Faye Robinson, Program Manager, Statutory Import Programs Staff, Room 4211, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 482–3526, same address as above.

SUPPLEMENTARY INFORMATION: The insular possessions watch industry provision in Sec. 110 of Pub. L. 97–446 (96 Stat. 2331) (1983), as amended by Sec. 602 of Pub. L. 103–465 (108 Stat. 4991) (1994); additional U.S. Note 5 to chapter 91 of the HTSUS, as amended by Pub. L. 94–241 (90 Stat. 263) (1976) requires the Secretary of Commerce and the Secretary of the Interior, acting jointly, to establish a limit on the quantity of watches and watch movements which may be entered free of duty during each calendar year. The law also requires the Secretaries to establish the shares of this limited quantity which may be entered from the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands ("CNMI"). After the Departments have verified the data submitted on the annual application (Form ITA–334P), the producers' duty-exemption allocations are calculated from the territorial share in accordance with Section 303.14 of the regulations (15 CFR 303.14) and each producer is issued a duty-exemption license. The law further requires the Secretaries to issue duty-refund certificates to each territorial watch and watch movement producer based on the company's duty-free shipments and creditable wages paid during the previous calendar year.

Pub. L. 106–36 authorizes the issuance of a duty-refund certificate to each territorial jewelry producer for any article of jewelry provided for in heading 7113 of the HTSUS which is the product of any such territory based on creditable wages paid and duty-free units shipped into the United States during the previous calendar year. Although the law specifically mentions the U.S. Virgin Islands, Guam and American Samoa, the issuance of the duty-refund certificate would also apply to the CNMI due to the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (Pub. L. 94–241), which states that goods from the CNMI are entitled to the same tariff treatment as imports from Guam. (*See also* 19 CFR 7.2(a)). The law provides that during the first two years, beginning August 9, 1999 (45 days after the date of enactment), jewelry that is assembled in the territories shall be treated as a product of such territories. Thereafter, in order to be considered a product of such territories, the jewelry must meet the U.S. Custom Service substantial transformation requirements (the jewelry must become a new and different article of commerce as a result of production or manufacture performed in the territory). To receive duty-free treatment, the jewelry must also satisfy the requirements of General Note 3(a)(iv) of the HTSUS and applicable Customs Regulations (19 CFR 7.3).

The law specifies, in addition, that watch producer benefits shall not be diminished as a consequence of extending duty-refund benefits to jewelry manufacturers. In the event that the aggregate amount of the calculated duty refunds for both watches and jewelry exceeds the total amount available under Pub. L. 97–446, as amended by Pub. L. 103–465, the watch producers shall receive their calculated amounts; the jewelry producers would then receive amounts proportionately reduced from the remainder.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chief Counsel for Regulation at the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule, if promulgated as final, will not have a significant economic impact on a substantial number of small entities. This rulemaking will not affect the five watch companies currently participating in the insular possessions watch program because Pub. L. 106–36 does not allow watch producers' benefits to be reduced as a consequence of extending benefits to jewelry manufacturers. We expect up to five jewelry companies to set up production facilities in the insular possessions in response to the extension to them of existing incentives by Pub. L. 106–36. However, as with watch producers, the duty refund benefit per company does not apply to shipments exceeding 750,000 units of jewelry into the United States per year. The last Census of Manufacturers statistics (1992) indicate that there are 2,180 precious jewelry manufacturers located in the U.S. employing 32,300 employees. Because the insular jewelry industry would represent such a small percentage of the existing U.S. industry and because there is a limit on the benefit extended to insular jewelry producers, the proposed regulations will not have a significant adverse impact on any small business entities. We expect a positive impact in the form of new jobs in the small U.S. insular economies.

Paperwork Reduction Act

This proposed rulemaking involves new collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 which have been submitted to OMB for approval. The extension of the insular watch program to include the jewelry benefit will require the use of three of the current forms, modified to accommodate jewelry. The public reporting burden for these collection-of-information requirements include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Form ITA–334P, the annual application, would be completed once a year by each jewelry producer and requires one burden hour. Form ITA–360P, the certificate of refund, would also be used once a year and is completed by the Department of Commerce and imposes no burden hours. Form ITA–361P, the request for refund of duties, would normally used once or twice a year per jewelry producer and takes about 10 minutes to complete. Public comment is sought regarding: Whether the proposed collection-of-information requirements are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology. Send comments regarding any of these burden estimates or any other aspect of the collection-of-information to U.S. Department of Commerce (see Address above) and Office of Information and Regulations Officer, Office of Management and Budget, Washington, DC 20503 (Att: OMB Desk Officer).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information unless it displays a currently valid OMB Control Number.

E.O. 12866

It has been determined that the proposed rulemaking is not significant for purposes of Executive Order 12866.

List of Subjects in 15 CFR Part 303

Administrative practice and procedure, American Samoa, Customs duties and inspection, Guam, Imports, Marketing quotas, Northern Mariana Islands, Reporting and recordkeeping requirements, Virgin Islands, Watches and jewelry.

For reasons set forth above, The Departments propose to amend 15 CFR Part 303 as follows:

PART 303—WATCHES, WATCH MOVEMENTS AND JEWELRY PROGRAM

1. The authority citation for 15 CFR part 303 is revised to read as follows:

Authority: Pub. L. 97–446, 96 Stat. 2331 (19 U.S.C. 1202, note); Pub. L. 103–465, 108 Stat. 4991; Pub. L. 94–241, 90 Stat. 263 (48 U.S.C. 1681, note); Pub. L. 106–36, 113 Stat. 127,167.

2. Amend the heading for part 303 to read as set forth above.

Subpart A—Watches and Watch Movements

3. Designate §§ 303.1 through 303.14 as subpart A and add a subpart heading as set forth above.

4. Add subpart B to read as follows:

Subpart B—Jewelry

Sec.
303.15 Purpose.
303.16 Definitions and forms.
303.17 Annual jewelry application.
303.18 Sale and transfer of business.
303.19 Issuance and use of production incentive certificate.
303.20 Duty refund.
303.21 Appeals.

Subpart B—Jewelry

§303.15 Purpose.

(a) This subpart implements the responsibilities of the Secretaries of Commerce and the Interior ("the Secretaries") under Pub. L. 106–36, enacted 25 June 1999 which substantially amended Pub. L. 97–446, enacted 12 January 1983, amended by Pub. L. 89–805, enacted 10 November 1966, amended by Pub. L. 94–88, enacted 8 August 1975, amended by Pub. L. 94–241, enacted 24 March 1976, and amended by Pub. L. 103–465, enacted 8 December 1994.

(b) The amended law provides for the issuance of certificates to insular jewelry producers who have met the requirements of the laws and regulations, entitling the holder (or any transferee) to obtain refunds of duties on watches and watch movements and parts (except discrete watch cases) imported into the customs territory of

the United States. The amounts of these certificates may not exceed specified percentages of the producers' verified creditable wages in the insular possessions (90% of wages paid for the production of the first 300,000 duty-free units and declining percentages, established by the Secretaries, of wages paid for incremental production up to 750,000 units by each producer) nor an aggregate annual amount for all certificates exceeding $5,000,000 adjusted for growth by the ratio of the previous year's gross national product to the gross national product in 1982. However, the law specifies that watch producer benefits are not to be diminished as a consequence of extending the duty refund to jewelry manufacturers. In the event that the amount of the calculated duty refunds for watches and jewelry exceeds the total aggregate annual amount that is available, the watch producers shall receive their calculated amounts and the jewelry producers would receive amounts proportionately reduced from the remainder. Refund requests are governed by regulations issued by the Department of the Treasury (*See* 19 CFR 7.4).

(c) Section 2401(a) of Pub. L. 106–36 and additional U.S. note 5 to chapter 91 of the HTSUS authorize the Secretaries to issue regulations necessary to carry out their duties. The Secretaries may cancel or restrict the certificate of any insular manufacturer found violating the regulations.

§ 303.16 Definitions and forms.

(a) *Definitions.* For purposes of this subpart, unless the context indicates otherwise:

(1) *Act* means Pub. L. 97–446, enacted 12 January 1983 (19 U.S.C. 1202), 96 Stat. 2329, as amended by Pub. L. 103–465, enacted on 8 December 1994, 108 Stat. 4991 and, as amended by Pub. L. 106–36, enacted on 25 June 1999.

(2) *Secretaries* means the Secretary of Commerce and the Secretary of Interior or their delegates, acting jointly.

(3) *Director* means the Director of the Statutory Import Programs Staff, International Trade Administration, U.S. Department of Commerce.

(4) *Sale or transfer of a business* means the sale or transfer of control, whether temporary or permanent, over a firm which is eligible for a jewelry program duty-refund to any other firm, corporation, partnership, person or other legal entity by any means whatsoever, including, but not limited to, merger and transfer of stock, assets or voting trusts.

(5) *New firm* means a jewelry producer who has requested in writing to the Secretaries permission to participate in the program, has agreed to abide by the laws and regulations of the program and has been accepted by the Secretaries as a viable company that will make an economic contribution to the territory. Also, the new firm must be an entity which is completely separate from and not associated with, by way of ownership or control, any other potential jewelry duty-refund recipient (and only one watch duty-refund recipient) in any territory.

(6) *Jewelry producer* means a company, located in one of the insular territories (*see* paragraph (a)(8) of this section), that produces jewelry provided for in heading 7113, HTSUS, which meets all the U.S. Customs Service requirements for duty-free entry set forth in General Note 3(a)(iv), HTSUS, and 19 CFR 7.3, and has maintained its eligibility for duty refund benefits by complying with these regulations.

(7) *Unit of jewelry* means a single article, pair (example: earrings, cufflinks), subassembly or component which is contained in HTSUS heading 7113.

(8) *Territories, territorial and insular possessions* refers to the insular possessions of the United States (i.e., the U.S. Virgin Islands, Guam, American Samoa and the Northern Mariana Islands).

(9) *Creditable wages* means all wages—up to the amount per person of $38,650—paid to permanent residents of the territories employed in the firm's manufacture of HTSUS heading 7113 articles of jewelry which are a product of the insular possessions and have met the U.S. Customs Service's criteria for duty-free entry into the United States, plus any wages paid for the repair of non-insular HTSUS heading 7113 jewelry up to an amount equal to 50 percent of the firm's total creditable wages. Excluded, however, are wages paid for special services rendered to the firm by accountants, lawyers, or other professional personnel plus any wages paid for the assembly of dutiable jewelry or the repair of dutiable jewelry to the extent that such wages exceed the percentage set forth above. Wages paid to persons engaged in production of jewelry that has entered the U.S. both duty-free and duty-paid may be credited proportionately *provided* the firm maintains production and payroll records adequate for the Departments' verification of the creditable wages portion.

(10) *Dutiable jewelry* includes jewelry which does not meet the requirements for duty-free entry under General Note 3(a)(iv), HTSUS, and 19 CFR 7.3 , contains any material which is the product of any country with respect to which Column 2 rates of duty apply or is ineligible for duty-free treatment pursuant to other laws or regulations.

(b) *Forms*—(1) *ITA—334P.* "Annual Application for License to Enter Watches and Watch Movements into the Customs Territory of the United States." The Director shall issue instructions for jewelry manufacturers on the completion of the relevant portions of the form. The form must be completed annually by all jewelry producers desiring to receive a duty refund.

(2) *ITA—360P.* "Certificate of Entitlement to Secure the Refund of Duties on Watches and Watch Movements." This document authorizes a territorial jewelry producer to request the refund of duties on imports of watches, watch movements and parts therefor, with certain exceptions, up to a specified value. Certificates may be used to obtain duty refunds only when presented with a properly executed Form ITA–361P.

(3) *ITA—361P.* "Request for Refund of Duties on Watches and Watch Movements." This form must be completed to obtain the refund of duties authorized by the Director through Form ITA–360P. After authentication by the Department of Commerce, it may be used for the refund of duties on items which were entered into the customs territory of the United States during a specified time period. Copies of the appropriate Customs entries must be provided with this form to establish a basis for issuing the claimed amounts. The forms may also be used to transfer all or part of the producer's entitlement to another party (*see* § 303.19(c)).

(The information collection requirements in paragraph (b)(1) were approved by the Office of Management and Budget under control number 0625–0040. The information collection requirements in paragraphs (b) (2) and (3) were approved under control number 0625–0134.)

§ 303. 17 Annual jewelry application

(a) Form ITA–334P shall be furnished to producers by January 1 and must be completed and returned to the Director no later than January 31 of each calendar year.

(b) All data supplied are subject to verification by the Secretaries and no duty refund shall be made to producers until the Secretaries are satisfied that the data are accurate. To verify the data, representatives of the Secretaries shall have access to relevant company records including, but not limited to:

(1) Work sheets used to answer all questions on the application form, as specified by the instructions;

(2) Original records from which such data are derived;

(3) Records pertaining to ownership and control of the company;

(4) Records pertaining to all duty-free and dutiable shipments of HTSUS 7113 jewelry, including Customs entry documents;

(5) Records pertaining to corporate income taxes, gross receipts taxes and excise taxes paid by each producer in the territories;

(6) Customs, bank, payroll, and production records;

(7) Records on purchases of components and sales of jewelry, including proof of payment; and

(8) Any other records in the possession of the parent or affiliated companies outside the territory pertaining to any aspect of the producer's jewelry operations.

(c) Data verification shall be performed in the territories, unless other arrangements satisfactory to the Departments are made in advance, by the Secretaries' representatives by the end of February of each calendar year. In the event a company cannot substantiate the data in its application, the Secretaries shall determine which data will be used.

(d) Records subject to the requirements of paragraph (b), of this section, shall be retained for a period of two years following their creation.

§ 303.18 Sale or transfer of business.

(a) The sale or transfer of a business together with its duty refund entitlement shall be permitted with prior written notification to the Departments. Such notification shall be accompanied by certifications and representations, as appropriate, that:

(1) The transferee is neither directly nor indirectly affiliated with any other territorial duty refund jewelry recipient in any territory;

(2) The transferee will not modify the jewelry operations in a manner that will significantly diminish its economic contributions to the territory.

(b) At the request of the Departments, the transferee shall permit representatives of the Departments to inspect whatever records are necessary to establish to their satisfaction that the certifications and representations contained in paragraph (a) of this section have been or are being met.

(c) Any transferee who is either unwilling or unable to make the certifications and representations specified in paragraph (a) of this section shall secure the Departments' approval in advance of the sale or transfer of the business. The request for approval shall specify which of the certifications specified in paragraph (a) of this section the firm is unable or unwilling to make, and give reasons why such fact should not constitute a basis for the Departments' disapproval of the sale or transfer.

§ 303.19 Issuance and use of production incentive certificates.

(a) *Issuance of certificates.* (1) Certificates of Entitlement, Form ITA–360, shall be issued before March 1 of each year.

(2) Certificates shall not be issued to more than one jewelry company in the territories owned or controlled by the same corporate entity.

(b) *Security and handling of certificates.* (1) Certificate holders are responsible for the security of the certificates. The certificates shall be kept at the territorial address of the producer or at another location having the advance approval of the Departments.

(2) All refund requests made pursuant to the certificates shall be entered on the reverse side of the certificate.

(3) Certificates shall be returned by registered, certified or express carrier mail to the Department of Commerce when:

(i) A refund is requested which exhausts the entitlement on the face of the certificate,

(ii) The certificate expires, or

(iii) The Departments request their return with good cause.

(4) Certificate entitlements may be transferred according to the procedures described in paragraph (c) of this section.

(c) *The use and transfer of certificate entitlements.* (1) Insular producers issued a certificate may request a refund by executing a Form ITA–361P (*see* § 303.16(b)(3)) and the instructions on the form). After authentication by the Department of Commerce, Form ITA–361P may be used to obtain duty refunds on watch movements, watches, and parts therefor. Duties on watch cases not containing a movement and on articles containing any material which is the product of a country with respect to which Column 2 rates of duty apply may not be refunded. Articles for which duty refunds are claimed must have entered the customs territory of the United States during the two-year period prior to the issue date of the certificate or during the one-year period the certificate remains valid. Copies of the appropriate Customs entries must be provided with the refund request in order to establish a basis for issuing the claimed amounts. Certification regarding drawback claims and liquidated refunds relating to the presented entries is required from the claimant on the form.

(2) Regulations issued by the U.S. Customs Service, U.S. Department of the Treasury, govern the refund of duties under 19 CFR 7.4. If the Departments receive information from the Customs Service that a producer has made unauthorized use of any official form, they may cancel the affected certificate.

(3) The territorial producer may transfer a portion of all of its certificate entitlement to another party by entering in block C of Form ITA–361P the name and address of the party.

(4) After a Form ITA–361P transferring a certificate entitlement to a party other than the certificate holder has been authenticated by the Department of Commerce, the form may be exchanged for any consideration satisfactory to the two parties. In all cases, authenticated forms shall be transmitted to the certificate holder or its authorized custodian for disposition (*see* paragraph (b) of this section).

(5) All disputes concerning the use of an authenticated Form ITA–361P shall be referred to the Departments for resolution. Any party named on an authenticated Form ITA–361P shall be considered an "interested party" within the meaning of § 303.21 of this part.

§ 303.20 Duty refund.

(a) Territorial jewelry producers are entitled to duty refund certificates only for jewelry that they produce which is provided for in heading 7113, HTSUS, is a product of a territory and otherwise meets the requirements for duty-free entry under General Note 3 (a)(iv), HTSUS, and 19 CFR 7.3.

(1) An article of jewelry is considered to be a product of a territory if:

(i) The article is wholly the growth or product of the territory; or

(ii) The article became a new and different article of commerce as a result of production or manufacture performed in the territories.

(2) *Two-year exception.* Any article of jewelry provided for in heading 7113, HTSUS, entered or withdrawn from warehouse for consumption during the two-year period beginning August 9, 1999, that is assembled in a territory shall be considered a product of the insular possessions. At the expiration of the two-year period, only jewelry which satisfies either of the criteria set forth in paragraph (a)(1) of this section shall be considered a product of an insular possession.

(b) *Calculation of the value of production incentive certificates.* (1) The value of each producer's certificate shall equal the producer's average creditable wages per unit shipped free

of duty into the United States multiplied by the sum of:

(i) The number of units shipped up to 300,000 units times a factor of 90%; plus

(ii) Incremental units shipped up to 450,000 units times a factor of 85%; plus

(iii) Incremental units shipped up to 600,000 times a factor of 80%; plus

(iv) Incremental shipments up to 750,000 units times a factor of 75%.

(2) The Departments may make adjustments for these data in the manner set forth in § 303.17(c).

§ 303.21 Appeals.

(a) Any official decision or action relating to the issuance or use of production incentive certificates may be appealed to the Secretaries by any interested party. Such appeals must be received within 30 days of the date on which the decision was made or the action taken in accordance with the procedures set forth in paragraph (b) of this section. Interested parties may petition for the issuance of a rule, or amendment or repeal of a rule issued by the Secretaries. Interested parties may also petition for relief from the application of any rule on the basis of hardship or extraordinary circumstances resulting in the inability of the petitioner to comply with the rule.

(b) Petitions shall bear the name and post office address of the petitioner and the name and address of the principal attorney or authorized representative (if any) for the party concerned. They shall be addressed to the Secretaries and filed in one original and two copies with the U.S. Department of Commerce, Import Administration, International Trade Administration, Washington, DC 20230, Attention: Statutory Import Programs Staff. Petitions shall contain the following:

(1) A reference to the decision, action or rule which is the subject of the petition;

(2) A short statement of the interest of the petitioner;

(3) A statement of the facts as seen by the petitioner;

(4) The petitioner's argument as to the points of law, policy or fact. In cases where policy error is contended, the alleged error together with the policy the submitting party advocates as the correct one should be described in full;

(5) A conclusion specifying the action that the petitioner believes the Secretaries should take.

(c) The Secretaries may at their discretion schedule a hearing and invite the participation of other interested parties.

(d) The Secretaries shall communicate their decision, which shall be final, to the petitioner by registered, certified or express mail.

Robert LaRussa,

Assistant Secretary for Import Administration, Department of Commerce.

Ferdinand Aranza,

Acting Director, Office of Insular Affairs, Department of the Interior.

[FR Doc. 99–22201 Filed 8–26–99; 8:45 am]

BILLING CODE 3510–DS–P and 4310–93–P

DEPARTMENT OF TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–105565–99]

RIN 1545–AX22

Arbitrage Restrictions Applicable to Tax-exempt Bonds Issued by State and Local Governments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations on the arbitrage restrictions applicable to tax-exempt bonds issued by State and local governments. The proposed amendments affect issuers of tax-exempt bonds and provide a safe harbor for qualified administrative costs for brokers' commissions and similar fees incurred in connection with the acquisition of a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow.

DATES: Written comments must be received by November 26, 1999.

Outlines of topics to be discussed at the public hearing scheduled for December 14, 1999, at 10 a.m. must be received by Tuesday, November 23, 1999.

ADDRESSES: Send submissions to CC:DOM:CORP:R (REG–105565–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:DOM:CORP:R (REG–105565–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS site at http://www.irs.ustreas.gov/tax_regs/regslist.html. The public hearing is in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Rose M. Weber, (202) 622–3980; concerning submissions of comments, the hearing, and/or requests to be placed on the building access list to attend the hearing, Michael Slaughter, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 148 of the Internal Revenue Code provides rules addressing the use of proceeds of tax-exempt State and local bonds to acquire higher-yielding investments. On May 9, 1997, final regulations (TD 8718) relating to the arbitrage restrictions and related rules under sections 103, 148, 149, and 150 were published in the **Federal Register** (62 FR 25502). The final regulations (TD 8718) were amended on December 30, 1998 (63 FR 71748). This document proposes to modify § 1.148–5(e)(2) to provide a safe harbor for determining whether brokers' commissions and similar fees incurred in connection with the acquisition of guaranteed investment contracts or investments purchased for a yield restricted defeasance escrow are treated as qualified administrative costs.

Explanation of Provisions

Section 1.148–5(e)(2)(iii) and (iv) of the regulations provides rules for determining whether a broker's commission or similar fee is treated as a qualified administrative cost. Section 1.148–5(e)(2)(iii) provides that, for a guaranteed investment contract, a broker's commission or similar fee paid on behalf of either an issuer or the provider is treated as an administrative cost and, generally, is a qualified administrative cost to the extent that the present value of the commission, as of the date the contract is allocated to the issue, does not exceed the lesser of a reasonable amount or the present value of annual payments equal to .05 percent of the weighted average amount reasonably expected to be invested each year of the term of the contract. Present value is computed using the taxable discount rate used by the parties to compute the commission, or if not readily ascertainable, the yield to the issuer on the investment contract or other reasonable taxable discount rate.

Section 1.148–5(e)(2)(iv) provides that, for investments purchased for a yield restricted defeasance escrow, a fee paid to a bidding agent is a qualified administrative cost only if the fee is comparable to a fee that would be charged for a reasonably comparable investment if acquired with a source of funds other than gross proceeds of tax-exempt bonds, and it is reasonable. The fee is deemed to meet both the comparability and reasonableness requirements if it does not exceed the lesser of $10,000 and .1 percent of the initial principal amount of investments deposited in the yield restricted defeasance escrow.

Unlike § 1.148–5(e)(2)(iv), § 1.148–5(e)(2)(iii) does not provide parameters under which the reasonableness test will be deemed to have been met. Practitioners have noted that they are uncertain about how to determine reasonableness and whether the .05% test may be used as a safe harbor without regard to whether the resulting amount is a reasonable fee.

Practitioners have also noted that the computation required by § 1.148–5(e)(2)(iii) is too complex and results in different fees being paid for the same services provided.

Finally, having different rules for guaranteed investment contracts and investments purchased for a yield restricted defeasance escrow provides an unnecessary tax incentive to structure investments in a certain manner.

To eliminate these complexities and to provide a rule that is easily administered by issuers, the proposed regulations create a single rule for qualified administrative costs that applies to a broker's commission or similar fee incurred in connection with a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow. The proposed regulations also set forth a safe harbor, which allows a broker's commission or similar fee incurred in connection with the acquisition of a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow to be treated as a qualified administrative cost. To fairly compensate most brokers, the proposed safe harbor provides a higher safe harbor limit than is currently provided for in § 1.148–5(e)(2)(iv).

The proposed safe harbor sets forth two requirements. Under the first requirement, the amount of the broker's commission or similar fee incurred in connection with the acquisition of a guaranteed investment contract or other investments purchased for a yield restricted defeasance escrow and treated by the issuer as a qualified administrative cost cannot exceed the lesser of $25,000 and .2 percent of the computational base. For guaranteed investment contracts, the computational base is the aggregate amount reasonably expected to be deposited over the term of the contract. For investments, other than guaranteed investment contracts, deposited in a yield restricted defeasance escrow, the computational base is the initial amount invested in those investments. For example, for a guaranteed investment contract purchased for a debt service fund, the aggregate amount reasonably expected to be deposited includes all periodic deposits reasonably expected to be made pursuant to the terms of the contract. Under the second requirement, for any issue of bonds, the issuer cannot treat as qualified administrative costs more than $75,000 in brokers' commissions and similar fees with respect to all guaranteed investment contracts and investments for yield restricted defeasance escrows purchased with gross proceeds of the issue.

The proposed regulations eliminate the special rule in § 1.148–5(e)(2)(iii) for issues that meet section 148(f)(4)(D)(i). These bond issues will be permitted to use the safe harbor.

These regulations are proposed to apply to bonds sold on or after the date 90 days after the issuance of the final regulations.

Special Analysis

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required.

It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies, if written) that are submitted timely to the IRS. In particular, the IRS and Department of Treasury specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Tuesday, December 14, 1999, beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments by November 26, 1999, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by November 23, 1999. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these proposed regulations are Rose M. Weber and Rebecca L. Harrigal, Office of the Assistant Chief Counsel (Financial Institutions & Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.148–5, paragraph (e) is amended as follows:

1. Paragraph (e)(2)(iii) is revised.

2. Paragraph (e)(2)(iv) is removed.

The revision reads as follows:

§ 1.148–5 Yield and valuation of investments.

* * * * *

(e) * * *

(2) * * *

(iii) *Special rule for guaranteed investment contracts and investments purchased for a yield restricted defeasance escrow*—(A) *In general.* An amount paid for a broker's commission or similar fee with respect to a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow is a qualified administrative cost if the fee is reasonable within the meaning of paragraph (e)(2)(i) of this section.

(B) *Safe harbor.* (1) A broker's commission or similar fee with respect to the acquisition of a guaranteed investment contract or investments purchased for a yield restricted defeasance escrow is reasonable within the meaning of paragraph (e)(2)(i) of this section if—

(*i*) The amount of the fee that the issuer treats as a qualified administrative cost does not exceed the lesser of $25,000 and .2% of the computational base; and

(*ii*) For any issue, the issuer does not treat as qualified administrative costs more than $75,000 in brokers' commissions or similar fees with respect to all guaranteed investment contracts and investments for yield restricted defeasance escrows purchased with gross proceeds of the issue.

(*2*) For purposes of paragraph (e)(2)(iii)(B)(*1*) of this section, computational base shall mean—

(*i*) For a guaranteed investment contract, the amount the issuer reasonably expects as of the issue date to be deposited in the guaranteed investment contract over the term of the contract; and

(*ii*) For investments (other than guaranteed investment contracts) to be deposited in a yield restricted defeasance escrow, the amount of gross proceeds initially invested in those investments.

(C) *Example.* The following example illustrates an application of the safe harbor in paragraph (e)(2)(iii)(B) of this section:

Example. The issuer of a multipurpose issue uses brokers to purchase the following investments with gross proceeds of the issue: a guaranteed investment contract for amounts to be deposited in a debt service fund (debt service GIC), a guaranteed investment contract for amounts to be deposited in a construction fund (construction GIC), Treasury securities to be deposited in a yield restricted defeasance escrow (Treasury investments) and a guaranteed investment contract that will be used to earn a return on what would otherwise be idle cash balances from maturing investments in the yield restricted defeasance escrow (the float GIC). The issuer uses $8,040,000 of the proceeds to purchase the Treasury investments and deposits $14,000,000 into the construction GIC. Over the term of the construction GIC, the issuer reasonably expects that no further deposits will be made. Over the term of the float GIC, the issuer reasonably expects that aggregate deposits of $600,000 will be made to the float GIC. Over the term of the debt service GIC, the issuer reasonably expects that it will make aggregate deposits of $22,000,000, plus interest on the bond issue. The brokers' fees do not exceed $16,080 for the Treasury investments, $25,000 for the construction GIC, $1,200 for the float GIC, and $25,000 for the debt service GIC. Assuming the issuer claims no further brokerage or similar fees, the issuer can claim all $67,280 in brokerage fees for these investments as qualified administrative costs because the fees do not exceed the limitations described in paragraph (e)(2)(iii)(B) of this section.

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–21877 Filed 8–26–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–105327–99]

RIN 1545–AX03

Qualified Zone Academy Bonds; Obligations of State and Political Subdivisions; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: This document contains a correction to REG–105327–99, which was published in the **Federal Register** on Thursday, July 1, 1999 (64 FR 35579). These regulations provide guidance to holders and issuers of qualified zone academy bonds.

FOR FURTHER INFORMATION CONTACT: Timothy L. Jones, (202) 622–3980 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking that is the subject of this correction is under sections 1397E and 1397F of the Internal Revenue Code.

Need for Correction

As published, REG–105327–99 contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–105327–99), which is the subject of FR Doc. 99–16622, is corrected as follows:

On page 35579, column 3, in the preamble, under the paragraph heading "Comments and Public Hearing", second paragraph, second line of the paragraph, the language "for November 19, 1999, beginning at 10" is corrected to read "for November 9, 1999, beginning at 10".

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99–22223 Filed 8–26–99; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MT–001–0011; FRL–6429–8]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Billings/Laurel Sulfur Dioxide State Implementation Plan; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of the comment period.

SUMMARY: EPA is extending the comment period for a notice published on July 28, 1999 (64 FR 40791). In the July 28 document, EPA proposed to partially approve, conditionally approve and partially disapprove the Billings/Laurel sulfur dioxide (SO_2) State Implementation Plan (SIP) revisions submitted by the State of Montana in response to a SIP Call. EPA also proposed a regulatory scheme for sanctions. At the request of several of the stationary sources controlled by the SIP, EPA is extending the comment period through September 27, 1999.

DATES: Comments must be received on or before September 27, 1999.

ADDRESSES: Mail written comments (in duplicate if possible) to Richard R. Long, Director, Air Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, EPA, Region VIII, (303) 312–6437.

Dated: August 19, 1999.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 99–22326 Filed 8–26–99; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 64, No. 166

Friday, August 27, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 27, 1999.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Folder, File, Farmer's Home Administration 7530-FMHA Item #39
NPA: Blind Work Association, Binghamton, New York, Box, Shipping 8115–01–015–1315
NPA: Tarrant County Association for the Blind, Fort Worth, Texas

Services

Grounds Maintenance
Fox Island Acoustic Laboratory, 630 3rd Avenue, Fox Island, Washington
NPA: Peninsula Services, Bremerton, Washington

Janitorial/Custodial

U.S. Geological Survey, 1209 Orca Street, Anchorage, Alaska
NPA: Assets, Inc., Anchorage, Alaska

Janitorial/Custodial

Buildings 1714, 1830 and 1831, Fort Polk, Louisiana
NPA: Vernon Sheltered Workshop, Leesville, Louisiana

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–22352 Filed 8–26–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: September 27, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION:

On June 25, July 9 and 16, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (64 FR 34187, 34188, 37098 and 38408) of proposed additions to the Procurement List.

Additions

The following comments pertain to Facilities Management, Federal Center, Defense Logistics Information Services (DLIS), 74 North Washington Street, Battle Creek, Michigan

Comments were received from the current contractor in response to a request for sales data. The contractor indicated that losing this project would be "a significant loss" to the company. The percentage of the contractor's total sales which its contract for this service represents, however, is below the level which the Committee normally considers to be severe adverse impact on a contractor.

The following comments pertain to Janitorial/Custodial, Basewide, Brooks Air Force Base, Texas and Janitorial/Custodial, Basewide (excluding Gymnasium), Fort Sam Houston, Texas

Identical comments were received from the current contractor and four other small disadvantaged businesses. The commenters opposed the addition of these services to the Procurement List on the basis of impact on the 8(a) Program generally. The commenters claimed that both the 8(a) and JWOD Programs exist to serve disadvantaged individuals, so it would be a conflict to move a project from one program to the other. They also noted that removal of any projects from the 8(a) Program would exacerbate the effects of recent changes in the 8(a) contracting process and contract bundling by Federal agencies. Accordingly, they asked that the Committee not add these services or any others performed by 8(a) contractors to the Procurement List.

The Committee adds services performed by 8(a) contractors to the Procurement List upon graduation of the contractors from the 8(a) Program, in order to avoid having an impact on the contractors while they remain eligible to perform services which would continue in the 8(a) Program after the contractors' graduation if they were not added to the Procurement List. For Fiscal Year 1998, the JWOD Program's Federal revenues were less than seven percent of the 8(a) Program's Federal revenues, so the Committee does not believe that its Procurement List additions are having a severe adverse impact on the 8(a) Program. The changes in 8(a) contracting processes and opportunities which the commenters mentioned are the result of actions by the Small Business Administration and Federal contracting activities, which are beyond the control of the Committee.

The following material pertains to all of the items being added to the Procurement List

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Sachet Bag Assorted Scents & Oil Crystal Assorted, M.R. 1733 (Sachet Bag), M.R. 1779 (Oil)

Services

Facilities Management, Federal Center, Defense Logistics Information Services (DLIS), 74 North Washington Street, Battle Creek, Michigan
Family Housing Maintenance, Travis Air Force Base, California
Grounds Maintenance, U.S. Environmental Protection Agency, Western Ecology Division, Environmental Effects Laboratory, 200 SW 35th Street, Willamette Research Station, 1350 SE Goodnight Ave, Corvallis, Oregon

Janitorial/Custodial

U.S. Department of Agriculture, Animal Plant Health Inspection Services (APHIS), Plant Protection and Quarantine (PPQ), 214 North Andes Avenue, Orlando, Florida

Janitorial/Custodial

U.S. Army Reserve Center, Building 213, Fort Hamilton, New York

Janitorial/Custodial

Basewide, Brooks Air Force Base, Texas

Janitorial/Custodial

Basewide (excluding Gymnasium), Fort Sam Houston, Texas

Janitorial/Custodial

National Institute for Occupational Safety and Health (NIOSH), Morgantown, West Virginia
Laundry and Dry Cleaning Service, Fort Belvoir, Virginia,

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–22353 Filed 8–26–99; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–857, A–560–809]

Initiation of Antidumping Investigations: Paintbrushes and Paintbrush Heads, Other Than Natural Bristle Paintbrushes and Paintbrush Heads, From the People's Republic of China and Paintbrushes and Paintbrush Heads From Indonesia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 27, 1999.

FOR FURTHER INFORMATION CONTACT: Sunkyu Kim, AD/CVD Enforcement Group I, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–2613.

INITIATION OF INVESTIGATIONS:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the current regulations at 19 CFR part 351 (April 1998).

The Petitions

On August 2, 1999, the Department received petitions filed in proper form by The Paintbrush Trade Action Coalition (PATAC) which is comprised of the following companies: EZ Paintr Corporation; The Wooster Brush Company; Purdy Corporation; Bestt Liebco; and Tru*Serv Manufacturing, collectively referred to hereinafter as the petitioner. On August 11 and August 16, 1999, the Department received supplemental information to these petitions that it had requested from the petitioner.

In accordance with section 732(b) of the Act, the petitioner alleges that imports of paintbrushes, other than natural bristle paintbrushes, from the People's Republic of China (PRC), and paintbrushes from Indonesia are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring an industry in the United States.

The Department finds that the petitioner filed the petitions on behalf of the domestic industry because it is an interested party as defined in sections 771(9) (C) and (D) of the Act and it has demonstrated sufficient industry support. *See* "Determination of Industry Support for the Petitions" section, below.

Scope of Investigations

There is an existing antidumping duty order on natural bristle paintbrushes from the PRC. *See Antidumping Duty Order; Natural Bristle Paintbrushes and Brush Heads from the People's Republic of China*, 51 FR 5580 (February 14, 1986). The scope of the petition on

paintbrushes from the PRC covers all paintbrushes and paintbrush heads imported from the PRC, except those that are already covered by the existing order. For Indonesia, the scope of the petition includes all paintbrushes and paintbrush heads (*i.e.*, natural bristle, synthetic filament, and natural-synthetic filament blended paintbrushes).

People's Republic of China

The scope of the PRC investigation includes all paintbrushes and paintbrush heads that are used to apply paint, stain, varnish, shellac, or any other type of protective coating, other than natural bristle paintbrushes and paintbrush heads that are classifiable under 9603.40.4040 of the Harmonized Tariff Schedule of the United States (HTSUS). The scope of the investigation includes paintbrushes and paintbrush heads with a blend of natural bristle and synthetic filaments, provided that the synthetic filaments comprise over 50 percent of the total filler material in the finished paintbrush or paintbrush head.

The merchandise subject to this investigation is classifiable under 9603.40.4060 of the HTSUS. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are artists' brushes classifiable under 9603.30.2000, 9603.30.4000, or 9603.30.6000 of the HTSUS or other non-paintbrush products classifiable under 9603.40.4060 of the HTSUS, such as foam applicators, sponge applicators, or any other type of non-brush paint applicator.

Indonesia

The scope of the Indonesian investigation includes all paintbrushes and paintbrush heads that are used to apply paint, stain, varnish, shellac, or any other type of protective coating, including natural bristle paintbrushes and paintbrush heads, synthetic filament paintbrushes and paintbrush heads, and paintbrushes and paintbrush heads made with a blend of natural bristle and synthetic filament.

The merchandise subject to this investigation is classifiable under 9603.40.4040 and 9603.40.4060 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Excluded from the scope of this investigation are artists' brushes classifiable under 9603.30.2000, 9603.30.4000, or 9603.30.6000 of the HTSUS or other non-paintbrush products classifiable under 9603.40.4060 of the HTSUS, such as foam applicators, sponge applicators, or any other type of non-brush paint applicator.

During our review of the petitions, we discussed the definitions of the scope of the investigations with the petitioner to ensure that the definitions accurately reflect the products for which it is seeking relief. As we discussed in the preamble to the Department's regulations, we are setting aside a period for parties to raise issues regarding product coverage. *See* Antidumping Duties; Countervailing Duties: Final Rule, 62 FR 27296, 27323 (May 19, 1997). The Department encourages all parties to submit such comments by September 13, 1999. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW., Washington, DC, 20230. This scope consultation period is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product; and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who account for production of the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether the domestic industry has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory provision regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the domestic like product, such differences do not render the decision of either agency contrary to the law.[1] Section 771(10) of the Act defines domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

In this case, the petitioner claims that all paintbrushes including natural bristle, synthetic filament, and natural-synthetic filament blended paintbrushes, constitute one class or kind of merchandise. In addition, the petitioner notes that the ITC, in its determination in the original investigation on natural bristle paintbrushes from the PRC, defined the domestic like product as all paintbrushes, both natural bristle and synthetic filament paintbrushes. *See Natural Bristle Paint Brushes from the People's Republic of China*, Inv. No. 731–TA–244 (Final), USITC Pub.1805 at 7 (January 1986).

Based on our analysis of the information and arguments presented to the Department, we have determined that for purposes of initiation of these investigations there is a single domestic like product which is defined in the "Scope of Investigations" section, above, with respect to Indonesia.

Moreover, the Department has determined that the petitions and supplemental information contained adequate evidence of sufficient industry support. *See* August 23, 1999, Initiation Checklist (public version on file in the Central Records Unit of the Department of Commerce, Room B–099). To the best of the Department's knowledge, the producers who support the petitions account for more than 50 percent of the production of the domestic like product. Additionally, no person who would qualify as an interested party pursuant to section 771(9) (C), (D), (E) or (F) of the Act expressed opposition to the petitions on the record. Accordingly, the Department determines that these petitions are filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

[1] See *Algoma Steel Corp., Ltd.* v. *United States*, 688 F. Supp. 639, 644 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass Therefor from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 Fed. Reg. 32376, 32380–81 (July 16, 1991).

Export Price and Normal Value

The following describes the allegations of sales at less than fair value upon which our decision to initiate these investigations is based. Should the need arise to use any of this information in our preliminary or final determinations for purposes of facts available under section 776 of the Act, we may re-examine the information and revise the margin calculations, if appropriate.

People's Republic of China

The petitioner identified 42 potential PRC exporters and/or producers of paintbrushes. The petitioner based export price (EP) on offers for sale of the subject merchandise by three PRC exporters. The petitioner made no adjustments to the starting prices.

Because the PRC is considered a nonmarket economy (NME) country under section 771(18) of the Act, the petitioner based normal value (NV) on the factors of production valued in a surrogate country, in accordance with section 773(c)(3) of the Act. For purposes of the petition, the petitioner selected Indonesia as the most appropriate surrogate market economy. For the factors of production, the petitioner analyzed sample paintbrushes provided by the PRC exporters that correspond to the price quotations. The petitioner disassembled and weighed each of the inputs in order to derive the consumption amount of each raw material used. For labor and electricity, the petitioner estimated the consumption amounts based on its own experience.

Materials were valued based on Indonesian prices obtained from the petitioner's market research. For wood handles, the petitioner stated that it was unable to obtain any publicly available information specific to wood handles for paintbrushes. Therefore, wood handles were valued using prices obtained from an Indonesian supplier. The remaining materials, including packing materials, were valued based on publicly available information which consisted principally of prices published in official Indonesian government import statistics (*i.e.*, *Foreign Trade Statistical Bulletin: Imports*) for the period January 1997 through October 1997. Labor, including direct and packing labor, was valued using the regression-based wage rate for the PRC provided by the Department, in accordance with 19 CFR 351.408(c)(3). To value electricity, the petitioner used the value used by the Department in the 1996–1997 administrative review of the antidumping duty order on natural bristle paintbrushes and brush heads from the PRC. This value is based on rates published in *A Brief Guide for Investors 1995*, issued by the Indonesian government's Investment Coordinating Board. The petitioner adjusted the rate for inflation using the wholesale price indices (WPI) published by the International Monetary Fund (IMF). For factory overhead, selling, general, and administrative expenses (SG&A) and profit, the petitioner used information from financial statements pertaining to the Indonesian industrial grouping which includes manufacturers of paintbrushes, as reported in the Indonesian government's *Large and Medium Manufacturing Statistics: Volume I* (1997).

Based on comparisons of EP to NV, the petitioner estimates dumping margins from 10.82 percent to 148.91 percent.

Indonesia

The petitioner identified the following four exporters and producers of paintbrushes from Indonesia: PT Ace Oldfields; PT Eterna Jayatama Industries; PT Kata Perkasa J/V; and PT Sentosa Hastareksa. For EP, the petitioner used price quotes offered by one of the producers, PT Ace Oldfields, as obtained from its foreign market research.

The petitioner adjusted these prices by subtracting amounts for foreign inland freight and brokerage and handling expenses. The movement expenses were based on information obtained from the petitioner's market research report.

With respect to NV, the petitioner used price quotations obtained from the foreign market researcher for paintbrushes manufactured by Ace Oldfields and sold to customers in Indonesia. The petitioner adjusted these prices by subtracting foreign inland freight amounts which were calculated by using information obtained by the market researcher. In addition, the petitioner made a circumstance of sale adjustment for imputed credit expenses by subtracting home market credit expenses from the starting prices. The petitioner calculated home market imputed credit expenses based on an estimated credit period and the average short-term lending rate in Indonesia during the first quarter of 1999, as published in the *International Financial Statistics*.

Based on comparisons of EP to home market prices, the petitioner estimates margins of 0.00 to 53.12 percent.

Allegation of Sales Below Cost

Pursuant to section 773(b) of the Act, the petitioner alleged that home market sales of the foreign like product in Indonesia were made at prices below the cost of production (COP) and requested that the Department initiate a country-wide sales-below-cost investigation.

Pursuant to section 773(b)(3) of the Act, COP consists of cost of manufacturing (COM), SG&A and packing costs. The petitioner calculated the COP for a sample paintbrush manufactured in Indonesia by PT Ace Oldfields in the following manner: (1) the petitioner calculated the cost of materials by weighing the various material inputs, including packing materials, and valuing the cost of each material using publicly available data; (2) for labor and electricity, the petitioner estimated the consumption amounts based on its analysis of the product and the production experience of its members; and (3) for factory overhead and SG&A, the petitioner used information from publicly available 1997 financial statements pertaining to the Indonesian industrial grouping which includes manufacturers of paintbrushes.

With the exception of the values for labor and natural bristle, the petitioner relied on the information used to value the factors of production of paintbrushes from the PRC, as described above, to calculate the COP of the analyzed paintbrush. To value labor, the petitioner used the April 1999 regional minimum wage rate applicable in West Java, Indonesia, as obtained from the February 1999 issue of the *Indonesian Commercial Newsletter*. The petitioner calculated the cost of natural bristles based on values obtained from the October 1997 issue of the *Foreign Trade Statistical Bulletin: Imports* for the period January 1997 through October 1997.

Based upon the comparison of the adjusted prices from the petition of the foreign like product in Indonesia to the COP calculated in the petition, we do not find "reasonable grounds to believe or suspect" that sales of these foreign like products were made below their respective COP within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, based on information currently on the record, the Department is not initiating a country-wide cost investigation for Indonesia, as requested by the petitioner.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of paintbrushes and paintbrush heads, other than natural bristle paintbrushes and paintbrush heads, from the PRC and paintbrushes and paintbrush heads from Indonesia are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitioner alleges that the U.S. industry producing the domestic like product is being materially injured, and is threatened with material injury, by reason of imports of the subject merchandise sold at less than NV. The allegations of injury and causation are supported by relevant evidence including business proprietary data from the members of PATAC and U.S. Customs import data. The Department assessed the allegations and supporting evidence regarding material injury and causation and determined that these allegations are sufficiently supported by accurate and adequate evidence and meet the statutory requirements for initiation. *See* Initiation Checklist (public version on file in the Central Records Unit of the Department of Commerce, Room B–099).

Initiation of Antidumping Investigations

We have examined the petitions on paintbrushes and paintbrush heads, other than natural bristle paintbrushes and paintbrush heads, from the PRC and paintbrushes and paintbrush heads from Indonesia and have found that they meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of paintbrushes and paintbrush heads, other than natural bristle paintbrushes and paintbrush heads, from the PRC and paintbrushes and paintbrush heads from Indonesia are being, or are likely to be, sold in the United States at less than fair value. Unless extended, we will make our preliminary determinations for the antidumping duty investigations by January 10, 2000.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each petition has been provided to the representatives of the governments of the PRC and Indonesia. We will attempt to provide a copy of the public version of each petition to each exporter named in the petition (as appropriate).

International Trade Commission Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine by September 16, 1999, whether there is a reasonable indication that imports of paintbrushes and paintbrush heads, other than natural bristle paintbrushes and paintbrush heads, from the PRC and paintbrushes and paintbrush heads from Indonesia are causing material injury, or threatening to cause material injury, to a U.S. industry. Negative ITC determinations will result in the particular investigations being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published in accordance with section 777(i)(1) of the Act.

Dated: August 23, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–22354 Filed 8–26–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

District Export Council Nomination Opportunity

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Opportunity to Serve as a Member of One of the Fifty-five District Export Councils.

SUMMARY: The U.S. Department of Commerce is currently seeking expressions of interest from individuals in serving as a member of one of the fifty-five District Export Councils (DECs) nationwide. The DECs are closely affiliated with the Export Assistance Centers (EACs) of the Commercial Service. DECs combine the energies of more than 1,500 exporters and private and public export service providers who volunteer their time to supply specialized expertise to small and medium-sized businesses in their local communities who are interested in exporting. DEC members volunteer at their own expense.

DATES: Applications for nomination to a DEC must be received by the designated local DEC representative by September 10, 1999.

FOR FURTHER INFORMATION CONTACT: Jennifer Stone, International Trade Specialist, the Commercial Service, tel. 202–482–6298. Additional information about the DECs is also found on the National DEC Homepage at http://www.ita.doc.gov/dec.

SUPPLEMENTARY INFORMATION: Providing their expertise and mentoring services, DEC members help local firms move from their first international business plan to their first export sale. The DECs create seminars that simplify trade finance, host international buyer delegations, design breakthrough exporting guides, put exporters on the Internet, and help build local partnerships that strengthen export assistance programs. Because DEC members represent both the users and providers of local export assistance services, they can identify gaps in the export services that EACs provide to U.S. businesses and thus shape EAC international trade programs to better meet local business needs.

Selection Process

About half of the approximately 30 positions on each of the 55 DECs will be open for nominations for the term that begins January 1, 2000, and ends December 31, 2003. Nominees are recommended by the local DEC Executive Secretary in consultation with the DEC and with other local export promotion partners. After undergoing a review process, DEC nominees are then selected and appointed to DEC membership by the Secretary of Commerce.

Membership Criteria

Each DEC is interested in nominating highly-motivated people active in the local exporting community. Membership composition on the DECs include: exporters (such as representatives from manufacturing, the services industry, and export trading companies); bankers; U.S. Small Business Administration representatives; state and local officials; and other "partners" including international lawyers and accountants as well as representatives from world trade centers, chambers of commerce, export management companies, labor and freight forwarders.

Authority: 15 U.S.C. 1501 *et seq.*, 15 U.S.C. 4721.

Dated: August 19, 1999.

Daniel J. McLaughlin,

Deputy Assistant Secretary for Domestic Operations, U.S. and Foreign Commercial Service.

[FR Doc. 99–22356 Filed 8–26–99; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–502]

Welded Carbon Steel Pipes and Tubes from Turkey: Extension of Time Limit for Preliminary Results of Five-Year Review:

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit for Preliminary Results of Five-Year ("Sunset") Review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the preliminary results of the sunset review on the countervailing duty on welded carbon steel pipes and tubes from Turkey. Based on adequate responses from domestic interested parties and respondent interested parties, the Department is conducting a full sunset review to determine whether revocation of the order would be likely to lead to continuation or recurrence of a countervailable subsidy. As a result of this extension, the Department intends to issue its preliminary results not later than November 19, 1999 and its final results not later March 28, 2000.

EFFECTIVE DATE: August 27, 1999.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Melissa G. Skinner, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

Extension of Preliminary Results

The Department has determined that the sunset review of the countervailing duty order on welded carbon steel pipes and tubes from Turkey is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Tariff Act of 1930, as amended ("the Act"), the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). *See* section 751(c)(6)(C) of the Act. The Department is extending the time limit for completion of the preliminary results of this review until not later than November 19, 1999 and the final results until not later than March 28, 2000, in accordance with section 751(c)(5)(B) of the Act.

Dated: August 23, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–22355 Filed 8–26–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Termination of Panel Reviews

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Motion to Terminate the Panel Review of the final antidumping duty determination made by the International Trade Administration, respecting Stainless Steel Round Wire From Canada (Secretariat File No. USA–CDA–99–1904–04).

SUMMARY: Pursuant to the Notice of Motion to Terminate the Panel Review by the requestors, the panel review is terminated as of August 10, 1999. No panel has been appointed to this panel review. Pursuant to Rule 71(2) of the *Rules of Procedure for Article 1904 Binational Panel Review*, this panel review is terminated.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested and terminated pursuant to these Rules.

Dated: August 23, 1999.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 99–22265 Filed 8–26–99; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 072799B]

Marine Mammals; Scientific Research Permit (PHF# 731–1509–00)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Robin W. Baird, Ph.D., C201–2747 S. Kihei Road, Kihei, HI 96753, has been issued a permit to take several species of cetaceans for purposes of scientific research.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: On July 22, 1998, notice was published in the Federal Register (63 FR 39272) that a request for a scientific research permit to take several species of cetaceans during the course of biopsy sampling and photo-identification studies had been submitted by the above-named individual. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR Parts 222 - 226).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West

Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070 (206/526–6426);

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4027);

Protected Species Program Manager,Pacific Islands Area Office, NMFS, NOAA, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, Hawaii 96814–4700 (808/973–2935); and

Regional Administrator, Alaska Region, NMFS, 709 W. 9th Street, Federal Building, Room 461, P.O. Box 21668, Juneau, AK 99802 (907/586–7235).

Dated: July 23, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–22339 Filed 8–26–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Information Collection Support of the DoD Acquisition Process (Solicitation Phase); OMB Number 0704–0187.

Type of Request: Extension.

Number of Respondents: 192,555.

Responses Per Respondent: Approximately 12.

Annual Responses: 2,338,668.

Average Burden Per Response: 10.25 hours.

Annual Burden Hours: 23,986,320.

Needs and Uses: This information collection requirement pertains to information that an offeror must submit to DoD in response to a request for proposals or an invitation for bids. DoD uses this information to (1) evaluate offers, (2) determine which offeror to select for contract award, and (3) determine whether the offered price is fair and reasonable. DoD also uses this information in determining whether to furnish precious metals as Government-furnished material; and whether to trade in existing personal property towards the purchase of new items.

Affected Pubic: Business or Other For-Profit; Not-For-Profit Institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 23, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–22254 Filed 8–26–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend record systems.

SUMMARY: The Department of the Air Force proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on September 27, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/ITC, 1250 Air Force Pentagon, Washington, DC 203301250.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 5886187.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record system being amended are set forth below followed by the notice as amended, published in its entirety.

Dated: August 23, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F035 SAFPA E

SYSTEM NAME:

Public Affairs References *(June 11, 1997, 62 FR 31793).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'F035 SAFAA A'.

* * * * *

SYSTEM LOCATION

Delete entry and replace with 'Office of the Secretary of the Air Force, Secretary s Staff Group, 1670 Air Force Pentagon, Washington, DC 20330-1670.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Disposition pending. No records will be destroyed until authorization is granted from the National Archives and Records Administration. All records will be retained until approval is granted.'

* * * * *

F035 SAFAA A

SYSTEM NAME:

Public Affairs References.

SYSTEM LOCATION:

Office of the Secretary of the Air Force, Secretary s Staff Group, 1670 Air Force Pentagon, Washington, DC 20330-1670.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian officials of the Federal Government (including Presidential Appointees), prominent Americans in and out of government who are involved in defense matters, and reporters and syndicated columnists or commentators who write on defense matters.

CATEGORIES OF RECORDS IN THE SYSTEM:

For military and civilian officials of the Department of Defense and for Presidential Appointees: Copies of official biographies released by the Department of Defense or by the White House. A speech subsystem may contain copies or excerpts of speeches by military and civilian Federal Government officials speaking about defense matters. A clippings subsystem may contain news media clippings about activities or statements of prominent Americans.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force.

PURPOSE(S):

To respond to requests from Air Force and Department of Defense officials for any of the following information: Biographical material about key government officials; public statements by government officials about defense matters; defense related statements or activities of prominentAmericans, as reported in news media; or publishing history of writers on defense matters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permittedunder 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C.552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and note books/binders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Disposition pending. No records will be destroyed until authorization is granted from the National Archives and Records Administration. All records will be retained until approval is granted.

SYSTEM MANAGER(S) AND ADDRESS:

Administrative Assistant to the Secretary of the Air Force, 1720 Air Force Pentagon, Washington, DC 20330-1720.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Administrative Assistant to the Secretary of the Air Force, 1720 Air Force Pentagon, Washington, DC 20330-1720.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Administrative Assistant to the Secretary of the Air Force, 1720 Air Force Pentagon, Washington, DC 20330-1720.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from the public media and from source documents such as reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–22256 Filed 8–26–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 27, 1999, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, Army Records Management and Declassification Agency, ATTN: TAPC-PDD-RP, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 23, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0040–3c DASG

SYSTEM NAME:

Medical Regulating Files *(August 7, 1997, 62 FR 42527).*

CHANGES:

* * * * *

STORAGE:

Delete entry and replace with 'Paper records in file folders and electronic storage media.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Destroyed 1 year following the end of the calendar year in which the patient was reported to the Global Patient Movement Requirements Center.'

* * * * *

A0040–3c DASG

SYSTEM NAME:

Medical Regulating Files.

SYSTEM LOCATION:

Primary location: The Surgeon General, U.S. Army Medical Command, ATTN: MCIM, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234–6013.

Segments exist at Army medical treatment facilities, evacuation units and medical regulating offices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any patient requiring transfer to another medical treatment facility who is reported to the Global Patient Movement Requirements Center by U.S. Government medical treatment facilities for designation of the receiving medical facility.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains information reported by the transferring medical treatment

facility and includes, but is not limited to, patient identity, service affiliation and grade or status, sex, medical diagnosis, medical condition, special procedures or requirements needed, medical specialties required, administrative considerations, personal considerations, the patient's home town and/or duty station and other information having an impact on the transfer.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and 10 U.S.C. 3013, Secretary of the Army.

PURPOSE(S):

To properly determine the appropriate medical treatment facility to which the reported patient will be transferred; to notify the reporting U.S. Government medical treatment facility of the transfer destination; to notify the receiving medical treatment facility of the transfer; to notify evacuation units, medical regulating offices and other government offices for official reasons; to evaluate the effectiveness of reported information; to establish further the specific needs of the reported patient; for statistical purposes; and when required by law and official purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

Note: Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd–2. This statute takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The Army's 'Blanket Routine Uses' do not apply to these types records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By individual's name.

SAFEGUARDS:

Records are maintained in secured areas accessible only to authorized personnel who are properly screened and trained.

RETENTION AND DISPOSAL:

Destroyed 1 year following the end of the calendar year in which the patient was reported to the Global Patient Movement Requirements Center

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Patient Administration Division, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCHO-CL-P, Room G104, 2050 Worth Road, Fort Sam Houston, TX 78234-6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Chief, Patient Administration Division, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCHO-CL-P, Room G104, 2050 Worth Road, Fort Sam Houston, TX 78234-6013 or to the Patient Administrator at the medical treatment facility where service was provided.

Individual should provide full name, rank or status and parent service, approximate date of transfer, medical treatment facility from which transferred, and current address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to Chief, Patient Administration Division, Office of the Surgeon General, U.S. Army Medical Command, ATTN: MCHO-CL-P, Room G104, 2050 Worth Road, Fort Sam Houston, TX 78234-6013 or to the Patient Administrator at the medical treatment facility where service was provided.

Individual should provide full name, rank or status and parent service, approximate date of transfer, medical treatment facility from which transferred, and current address and telephone number.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From transferring and receiving treatment facilities, medical regulating offices, evacuation offices, and other U.S. Government offices, agencies and commands relevant to the patient transfer.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–22257 Filed 8–26–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend record systems.

SUMMARY: The Defense Logistics Agency proposes to amend systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The action will be effective on September 27, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 220606221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 7676183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Defense Logistics Agency proposes to amend systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems report. The records systems being amended are set forth below, as amended, published in their entirety.

Dated: August 23, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION

S339.50 DSAC-L

SYSTEM NAME:

Staff Information File *(February 22, 1993, 58 FR 10854).*

Reason: As a result of an internal reorganization and a realignment of funcions, this system of records is no longer needed. Therefore, records have been destroyed.

AMENDMENTS

S200.60 DD

SYSTEM NAME:

Chaplain Care and Counseling Records *(August 23, 1996, 61 FR 43532).*

CHANGES:

* * * * *

STORAGE:

Delete 'computerized' and replace with 'electronic'.

* * * * *

NOTIFICATION PROCEDURES:

Delete 'CAAV' and replace with 'ATTN: CAAR'.

RECORD ACCESS PROCEDURES:

Delete 'CAAV' and replace with 'ATTN: CAAR'.

* * * * *

S200.60 DD

SYSTEM NAME:

Chaplain Care and Counseling Records.

SYSTEM LOCATION:

Office of the Command Chaplain, Defense Logistics Agency, ATTN: DDAC, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 220606221.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have received spiritual counseling, guidance, or ministration from the DLA Command Chaplain; individuals who have participated in Chaplain sponsored activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records contain the individual's name, home address and telephone number, Social Security Number, religion, and details for which the individual sought counseling or assistance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 302(b)(1) (Delegation of authority); 10 U.S.C. 136, Assistant Secretaries of Defense; 10 U.S.C. 3547, Duties: Chaplains, assistance required of commanding officers; 10 U.S.C. 5142 Chaplain Corps and Chief of Chaplains; 10 U.S.C. 8067(h), Designation: officers to perform certain professional functions (chaplains); and E.O. 9397 (SSN).

PURPOSE(S):

To document spiritual counseling or assistance provided to individuals. The records will be used in the course of scheduling counseling sessions, conducting and evaluating training, and recording participation in spiritual activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 553a(b) of the Privacy Act, these records and information contained therein may specifically be disclosed outside DoD as a routine use pursuant to 5 U.S.C. 55a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning DLA's compilation of systems of records notices *do not* apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper and electronic form.

RETRIEVABILITY:

Records are retrieved by name or Social Security Number.

SAFEGUARDS:

Records are stored in locked cabinets or rooms and are controlled by personnel screening and computer software.

RETENTION AND DISPOSAL:

Information is retained in the system until superseded or no longer needed.

SYSTEM MANAGER AND ADDRESS:

Office of the Command Chaplain, Defense Logistics Agency, ATTN: DDAC, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 220606221.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, HQ DLA, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 220606221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, HQ DLA, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 220606221.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 220606221.

RECORD SOURCE CATEGORIES:

Information is provided by the record subject or subject's family members.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

S322.35 DMDC

SYSTEM NAME:

Survey and Census Data Base *(May 7, 1999, 64 FR 24626).*

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add '10 U.S.C. 1782, Surveys of Military Families'.

* * * * *

S322.35 DMDC

SYSTEM NAME:

Survey and Census Data Base.

SYSTEM LOCATION:

Primary location: Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943-5000.

Back-up location: Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955-6771.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who completed census or survey forms, including military members, civilians, persons eligible for DoD benefits, men and women of military age, and applicants to the military services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Survey responses and census information:

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10

U.S.C. 1782, Surveys of Military Families; 10 U.S.C. 2358, Research and Development Projects; DoD Directive 5124.2, Under Secretary of Defense for Personnel and Readiness (USD(P&R)); and E.O. 9397 (SSN).

PURPOSE(S):

The purposes of the system are to count DoD personnel and beneficiaries for evacuation planning, apportionment when directed by oversight authority and for other policy planning purposes, and to obtain characteristic information on DoD personnel and households to support manpower and benefits research; to sample attitudes and/or discern perceptions of social problems observed by DoD personnel and to support other manpower research activities; to sample attitudes toward enlistment in and determine reasons for enlistment decisions. This information is used to support manpower research sponsored by the Department of Defense and the military services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The information may be used to support manpower research sponsored by other Federal agencies.

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic computer tape.

RETRIEVABILITY:

Records can be retrieved by Social Security Number; by institutional affiliation such as service membership; and by individual characteristics such as educational level.

SAFEGUARDS:

Access to data at all locations is restricted to those who require the records in the performance of their official duties. Access is further restricted by the use of passwords which are changed periodically. Physical entry is restricted by the use of locks, guards, and administrative procedures.

RETENTION AND DISPOSAL:

Disposition pending.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Defense Manpower Data Center, 1600 Wilson Boulevard, 4th Floor, Arlington, VA 222092593.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system contains information about themselves should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

Written requests should contain the full name, Social Security Number, and current address and telephone numbers of the individual. In addition, the approximate date and location where the survey was completed should be provided.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license or military or other identification card.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

Written requests should contain the full name, SocialSecurity Number, and current address and telephone numbers of the individual. In addition, the approximate date and location where the survey was completed should be provided.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license or military or other identification card.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 220606221.

RECORD SOURCE CATEGORIES:

The survey and census information is provided by the individual; additional data obtained from Federal records are linked to individual cases in some data sets.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

S330.10 DLA-KS

SYSTEM NAME:

Official Records for Host Enrollee Programs *(February 22, 1993, 58 FR 10854).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'S340.20 CAHS'.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'File contains name, Social Security Number, data pertaining to the selection, tenure, and separation of individuals, time and attendance data, training information, periodic evaluations, data on enrollee designee for emergency contact, and similar employment related information.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with 'Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.); Emergency Jobs and Unemployment Assistance Act of 1974 (Pub. L. 93-567); Job Training Partnership (29 U.S.C. 1501, et seq.); and E.O. 9397 (SSN).'

* * * * *

STORAGE:

Delete entry and replace with 'Records are maintained in electronic and paper form.'

* * * * *

SAFEGUARDS:

Add to end of entry 'Records are secured in locked or guarded buildings, locked offices, or locked cabinets during nonduty hours.'

* * * * *

S340.20 CAHS

SYSTEM NAME:

Official Records for Host Enrollee Programs.

SYSTEM LOCATION:

Defense Logistics Agency Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Primary Level Field Activities (PLFAs) act as hosts for individuals sponsored by local, state and federal agencies who seek work experience and training with DLA activities with or without DLA participation relative to compensation and reimbursement.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All applicants and selectees of Host Enrollee Programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains name, Social Security Number, data pertainingto the selection, tenure, and separation of individuals, time and attendance data, training information, periodic evaluations, data on enrollee designee for emergency contact, and similar employment related information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Rehabilitation Act of 1973 (29 U.S.C. 701, et seq.); Emergency Jobs and Unemployment Assistance Act of 1974 (Pub. L. 93-567); Job Training Partnership (29 U.S.C. 1501, et seq.); and E.O. 9397 (SSN).

PURPOSE(S):

This information is used to assist personnel and management officials inadministering a uniform employment and training program and to make a proper evaluation of the enrollee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in electronic and paper form.

RETRIEVABILITY:

Retrieved by employee name under particular type of Host Enrollee Program.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must access the records to perform their duties. The computerized files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during nonduty hours.

RETENTION AND DISPOSAL:

Records are maintained for the duration of the enrollee's program assignment. They are held for two years after separation from the program and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Primary Level Field Activities Human Resources Officers. Official mailing addresses are published as an appendix to DLA's compilation of system of records notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221, or the Privacy Act Officer of the particular DLA PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221, or the particular DLA PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, FortBelvoir, VA 220606221.

RECORD SOURCE CATEGORIES:

Information is obtained from the employee, program sponsor, educationalinstitutions, supervisors and others who contribute to the work and training experience of the enrollee while registered in the respective PLFA Host Enrollee Program.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

S330.40 DLA-KS

SYSTEM NAME:

Employee Assistance Program Case Record Systems *(February 22, 1993, 58 FR 10854).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'S330.40 CAHS.'

SYSTEM NAME:

Delete entry and replace with 'Employee Assistance Program Records.'

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'All DLA civilian employees in appropriated and nonappropriated fund activities and employees in agencies receiving personnel support by DLA who are referred by management or who voluntarily request counseling assistance; military service members assigned to DLA activities who voluntarily request counseling; and family members of military members or civilian employees who voluntarily request counseling.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'The file includes name, Social Security Number, address, phone numbers, and data generated in the course of counseling.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to entry '5 U.S.C. 7904 (Employee Assistance); 5 U.S.C. 7361, et seq. (Drug Abuse and Alcohol); and 10 U.S.C. 1090 (Drug and Alcohol Dependence).'

* * * * *

RETRIEVABILITY:

Add to entry 'Social Security Number'.

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Record subject, counselors, supervisors, medical practitioners, co-workers, and private individuals to include family members of enrollee.'

* * * * *

S330.40 CAHS

SYSTEM NAME:

Employee Assistance Program Records.

SYSTEM LOCATION:

Headquarters Defense Logistics Agency, DLA Primary Level Field Activities, and offices of contractors who provide counseling services. Official mailing addresses are published asan appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All DLA civilian employees in appropriated and nonappropriated fund activities and employees in agencies receiving personnel support by DLA who are referred by management or who

voluntarily request counseling assistance; military service members assigned to DLA activities who voluntarily requestcounseling; and family members of military members or civilian employees who voluntarily request counseling.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file includes name, Social Security Number, address, phone numbers, and data generated in the course of counseling.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7904 (Employee Assistance); 5 U.S.C. 7361, et seq. (Drug Abuse and Alcohol); and 10 U.S.C. 1090 (Drug and Alcohol Dependence); 42 U.S.C. 290dd2 (Confidentiality of records); E.O. 9397 (SSN) and E.O. 12564 (Drug-Free Federal Workplace).

PURPOSE(S):

Used in the execution of the counseling function as it applies to the individual; selected information may be provided to and used by other counselors.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

In order to comply with provisions of 42 U.S.C. 290dd2, the DLA 'Blanket Routine Uses' do not apply to this system of records.

Records in this system may not be disclosed without the prior written consent of such patient, unless the disclosure would be:

To medical personnel to the extent necessary to meet a bona fide medical emergency;

To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner; and

If authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause therefor.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper and electronic form.

RETRIEVABILITY:

By employee name, Social Security Number, locally assigned identifying number or by case number.

SAFEGUARDS:

Records are maintained in areas accessible only to individuals who must access the records to perform their official duties. Computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked office, or locked cabinets during nonduty hours.

RETENTION AND DISPOSAL:

Records are destroyed 3 years after termination of counseling.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, Human Resources Office, Headquarters Defense Logistics Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060-6221 and the HumanResources Officer or comparable official of the Human Resources Office servicing the activity or installation. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221, or the Privacy Act Officer of the particular DLA PLFA involved. Official mailing addresses are published as an appendix toDLA's compilation of systems of records notices.

The letter should contain the full name and signature of the requester and the approximate period of time, by date, during which the case record was developed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Fort Belvoir, VA 22060-6221, or the Privacy Act Officer of the particular DLA PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 220606221.

RECORD SOURCE CATEGORIES:

Record subject, counselors, supervisors, medical practitioners, co-workers, and private individuals to include family members of enrollee.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

S380.50 DLA-K

SYSTEM NAME:

DLA Drug-Free Workplace Program Records *(February 22, 1993, 58 FR 10854).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'S380.50 CAHS'.

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Primary location: Defense Logistics Agency, Human Resources Operations Center, 3990 East Broad Street, Building 11, Columbus, OH 43213-5000.

Secondary locations: Executive Director, Human Resources Office, Headquarters Defense Logistics Agency, ATTN: CAHS, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221, and the Human Resources Offices of the DLA Primary Level Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Offices of contractors who provide collection, laboratory analysis, and medical review services. Contact system manager for mailing addresses of contractors.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'DLA employees, individuals who have applied to DLA for employment, and individuals who are provided personnel support by DLA.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Records are maintained in areas accessible only to DLA personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during nonduty hours.'

* * * * *

RETENTION AND DISPOSAL:

Add to entry 'Records relevant to litigation or disciplinary actions should be disposed of no earlier than the related litigation or adverse action case file(s).'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Record subject; agency employees involved in the selection and notification of individuals to be tested; laboratories that test urine specimens for the presence of illegal drugs; physicians who review test results; and supervisors, managers, and other officials.'

* * * * *

S380.50 CAHS

SYSTEM NAME:

DLA Drug-Free Workplace Program Records.

SYSTEM LOCATION:

Primary location: Defense Logistics Agency, Human Resources Operations Center, 3990 East Broad Street, Building 11, Columbus, OH 43213-5000.

Secondary locations: Executive Director, Human Resources Office,Headquarters Defense Logistics Agency, ATTN: CAHS, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221, and the Human Resources Offices of the DLA Primary Level Field Activities (PLFAs). Official mailing addresses arepublished as an appendix to DLA's compilation of systems of records notices.

Offices of contractors who provide collection, laboratory analysis, and medical review services. Contact system manager for mailing addresses of contractors.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DLA employees, individuals who have applied to DLA for employment, and individuals who are provided personnel support by DLA.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records relating to program implementation and administration, including selection, notification, and testing of individuals; collection and chain of custody documents; urine specimens and drug test results; consent forms; rebuttal correspondence; and similar records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 12564, Drug-Free Federal Workplace and E.O. 9397 (SSN); Pub. L. 10071; 42 U.S.C. 290dd2 and 5 U.S.C. 7301.

PURPOSE(S):

The system is established to maintain records relating to the selection and testing of DLA employees and applicants for DLA employment for use of illegal drugs. The records will provide the basis for taking appropriate action in reference to employees who test positive for use of illegal drugs.

Records may be used by authorized contractors for the collection process; assigned Medical Review Officials; the Administrator of any Employee Assistance Program in which the employee is receiving counseling or treatment or is otherwise participating; and agency supervisory or management officials having authority to take adverse personnel action against such an employee when test results are positive.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF THE USES:

In order to comply with provisions of 5 U.S.C. 7301, the DLA 'Blanket Routine Uses' that appear at the beginning of DLA's compilation of systems of records notices do not apply to thissystem.

Records may be disclosed to a court of competent jurisdiction when required by the United States Government to defend against a challenge to related adverse personnel action.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper and electronic form.

RETRIEVABILITY:

Records are retrieved by name of activity, name of employee or applicant, position title, position description number, Social Security Number, I.D. number, or any combination of these.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who mustuse the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during nonduty hours.

RETENTION AND DISPOSAL:

Records relating to test selection, scheduling, collection, handling, and results will be destroyed when 3 years old; records relating to individual notification and acknowledgment will be destroyed when the individual separates from the testing designated position. Records relevant to litigation ordisciplinary actions should be disposed of no earlier than the related litigation or adverse action case file(s).

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, Human Resources Office, Defense Logistics Agency, ATTN: CAHS, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

Individuals must provide name; date of birth; Social Security Number; I.D. Number (if known); approximate date of record; and activity and position title.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Fort Belvoir, VA 22060-6221.

Individuals must provide name; date of birth; Social Security Number; I.D. Number (if known); approximate date of record; and activity and position title.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 220606221.

RECORD SOURCE CATEGORIES:

Record subject; agency employees involved in the selection and notification of individuals to be tested; laboratories that test urine specimens for the presence of illegal drugs; physicians who review test results; and supervisors, managers, and other officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–22255 Filed 8–26–99; 8:45 am]

BILLING CODE 5001–10–F

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 99–1]

Safe Storage of Fissionable Material Called "Pits"

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice, recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a(a)(5) concerning safe storage of fissionable material called "pits."

DATES: Comments, data, views, or arguments concerning this recommendation are due on or before September 27, 1999.

ADDRESSES: Send comments, data, views, or arguments concerning this recommendation to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pusateri or Andrew L. Thibadeau at the address above or telephone (202) 694–7000.

Dated: August 23, 1999.

John T. Conway,

Chairman.

[Recommendation 99–1]

Safe Storage of Fissionable Material Called "Pits"

Dated: August 11, 1999.

Fissionable components are at the heart of all nuclear weapons, and have therefore been of central importance to that part of the nation's defense posture that relies on nuclear deterrence. Most of the defense nuclear programs of DOE and its predecessor agencies have been devoted to production of the fissionable material for these components and the working of this material into weapons parts. Most fissionable material in nuclear weapons is in components called "pits," which are the primary parts of the weapons, and which have geometrical forms, dimensions, and other features which are highly classified. Pits are predominantly made of plutonium metal which by itself would corrode in an air atmosphere, causing a possibility of dispersion of this hazardous material. Therefore, pits normally have a corrosion-resistant cladding, and where possible they are kept in an inert atmosphere. The design purpose of pits and their constituent material leads them to have singular importance, both from the standpoint of national security and that of safety. In particular, when pits are stored by themselves, not incorporated in a nuclear weapon ("stand-alone" pits), special attention is required to avoid any undue risk.

Most plutonium pits in this country were formerly made at the Rocky Flats Plant of the Department of Energy, situated between Boulder and Golden, Colorado. When manufacture of new pits was ended in 1989, a number of previously made but still unused pits existed outside of completed weapons, along with some others that had been manufactured but that required rework. Also, when weapons are dismantled, their pits are stored as stand-alone pits. In the following, the term "pits" will be reserved to those components not incorporated in nuclear weapons.

The number of stand-alone pits continues to grow as more nuclear weapons are dismantled in accordance with international agreements and national policy, and it is now in excess of 10,000. Most of the nation's pits are stored at this time at the Pantex Plant of the Department of Energy, near Amarillo, Texas, under conditions considered to be secure and also safe for the time being.

Current plans envisage three principal destinies for pits stored at Pantex. Some pits are to be retained in a strategic reserve, in case a decision should be made to use them in nuclear weapons at a future time. Other pits regarded as surplus to any conceivable future defense mission are to be converted from metallic form to a plutonium oxide, which is to be added to depleted uranium oxide. The combination is to serve as the fissionable material in mixed oxide fuel in certain commercial nuclear reactor plants. Plutonium from some surplus pits that will be difficult to use in this way will be disposed of.

Numerous decisions must still be made to convert such tentative plans to reality. The most basic ones would establish where certain actions and processes are to take place. They are:

1. Where is the strategic stockpile of pits to be stored?
2. Where is the conversion of metallic plutonium to plutonium oxide to take place?
3. Where is the manufacture of mixed oxide fuel to occur?
4. Where will surplus pits awaiting disposition be stored?

Current actions of DOE are consistent with storage of pits for the strategic stockpile at the Pantex Plant. Pits destined for conversion to plutonium oxide and subsequent incorporation in mixed oxide fuel must be processed into feedstock prior to fuel manufacture. DOE has announced in its Record of Decision following an Environmental Impact Statement that Savannah River is the preferred site for this conversion to feedstock. For this to take place, pits in the latter category must be shipped to the Savannah River Site from their present location at the Pantex Plant at Amarillo, Texas.

Almost as basic are decisions still awaited regarding the structures in which both medium-term and long-term storage will take place, and the nature of the storage itself including the containers that will be used for shipping and storage. For most of the pits now in storage at Pantex, the outer metallic cladding is the only reliable containment. Although the cladding of pits has rarely failed or been breached, most pits have been protected throughout their existence by the sealed atmosphere within a nuclear weapon, limiting their exposure to incompatible or corrosion-producing materials. However, most pits at Pantex are now in AL–R8 containers with a normal atmosphere, along with celotex packing material that is a potential source of moisture and chlorides. The containers are not tightly sealed, and they are kept in magazines with an atmosphere that communicates with the outside air through a normal ventilation system. The AL–R8 container is used for storage, but not for shipping pits. It is regarded as noncertifiable for shipping.

Furthermore, inspection, cleaning, and other operations associated with dismantlement of nuclear weapons makes use of chemicals that could conceivably initiate corrosion or otherwise damage a pit in the long term. The condition of pits following dismantlement is not well documented, and some long-term modes of possible degradation are not well understood. Some types of pits must be kept cool.

In 1992, as the forthcoming size of the inventory of pits came to be realized, DOE began to plan for measures to better protect them. A surveillance program was instituted. A plan was developed to place pits in sealed stainless steel containers called AT–400A, each having a sealed stainless steel insert holding a pit in an inert atmosphere. The AT–400A would have fully protected its enclosed pit, and would have been certifiable as a shipping container. As plans developed, repackaging of pits was to start in 1995 and was to have been completed in five years. However, this repackaging never became a reality. The Pantex contractor found the final weld seal on the AT–400A's insert to be very difficult, and the cost of the AT–400A was concluded to be too high. Use of the AL–R8 continued.

The design laboratories have stated in letters to DOE and to Pantex in 1995 and 1997 that pits, when in AL–R8 containers for an extended period, face a possibility of corrosion. They recommended that no pits should be stored an appreciable period of time in these containers. Further, they stated that if pits are to be stored in AL–R8s for more than five years, aggressive surveillance should be applied and humidity control should be used.

DOE has since pursued a course intermediate between continued use of the AL–R8 alone and introduction of a totally new container such as the AT–400A, and has developed a design of a stainless steel pit container with a bolted, flanged closure, to be an insert for the AL–R8. Some materials compatibility problems have been attached to the design, but these seem surmountable.

The Board has been actively following the development of plans for pit storage, and has discussed the issues with DOE and the Pantex contractor on numerous occasions during the years since 1992. On December 31, 1997, the Board sent to the Assistant Secretary for Defense Programs a comprehensive review of the matter, defining a number of steps believed to be necessary for conduct of an adequate program, and stating that it may be prudent to assign overall responsibility for the endeavor to a senior line manager within DOE to ensure success. No formal reply to the letter was made, although the issue was pursued during briefings of the Board, including some at Pantex. The next written communication on the matter occurred in a letter from the Deputy Assistant Secretary for Military Application and Stockpile Management, DOE, on October 14, 1998. The letter informed the Board that proposed use of the AT–400A container had been abandoned in favor of the AL-R8 with a sealed insert.

On November 6, 1998, a letter from the same source transmitted a copy of an Integrated Pit Storage Program Plan (IPSPP) which included up-to-date plans for interim storage of all Pantex pits (an earlier version of the IPSPP had been furnished the Board in January 1998, but that had been withdrawn). The Board responded on March 12, 1999, finding that the IPSPP did not adequately address the concerns stated in its letter of December 31, 1997. The IPSPP continued to be focused on short-term goals and did not take into account the need for informed decisions to be made regarding critical elements of the pit management system, such as the selection of pit packaging and storage facilities and preparation for eventual shipment to disposition facilities.

On April 15, 1999, the Assistant Secretary for Defense Programs responded in a letter agreeing that the IPSPP does not fully address all pit life-cycle issues. He stated that the Plan was intended to ensure safe storage in the near-term. He also promised to form a multi-disciplinary team in the summer of 1999 to identify appropriate issues and develop the desired end-states, to assign, subject to higher approval, the responsibilities for their achievement, and to identify the resources. The IPSPP would be modified accordingly.

The rate of repackaging of Pantex pits is not well predictable, but one estimate places corresponding completion of the task at no sooner than the year 2008. The Pantex contractor is seeking a means to operate two shifts within present budgets, which could mean a completion date approximately in the year 2006. Startup of a second repackaging line might speed the process by about two years. Since the original plan was to repackage all pits in AT–400A containers by the year 2000, even the most intensive of these possibilities would amount to a long delay during which pits would reside in present AL–R8 containers in conditions regarded by the design laboratories as undesirable.

There are some safety questions regarding the present design of the AL–R8 system with the sealed insert. The celotex in the outer container may constitute a chemical threat to the sealed insert because of questions of moisture and chlorides. The principal question relates to the carbon steel bolts used for the flanged closure of the sealed insert because these bolts may be more subject to corrosion, and their failure would expose the pit within to the conditions which had caused bolts to fail. The Board considers these design questions to be readily solvable.

Finally, the end product of the repackaging into the AL–R8 would be placement of all pits in containers unsuitable for shipping, and pits slated for conversion to mixed oxide for reactor fuel might not be available for repackaging in containers that could be certified for shipping until well into the 21st century. To conduct the necessary repackaging into shipping containers not yet even designed would subject personnel to additional radiation exposure. There are no present plans to avoid this situation.

Apart from possible effects of readily avoidable design problems of sealed inserts for AL–R8 containers, the Board regards the use of these sealed inserts for repackaging of pits stored at Pantex to be the basis for acceptable solution during the near term. Repackaging pits into the improved AL–R8 should adequately solve the problems that the design laboratories identified as attached to the existing system of storage. Inspection over time will tell how long such storage can be relied on.

On the other hand, the length of time foreseen for arriving at repackaging of pits into this acceptable state is not compatible with avoidance of safety problems identified by the design laboratories. The Board is also concerned regarding these potential problems. They are a legacy of past manufacture of nuclear weapons and are among the questions raised by the Board's Recommendation 94–1, which addressed the need for safe interim storage of these legacy materials.

Pits in the strategic reserve at Pantex have great value to national defense. These pits, manufactured at great cost and great effort by the Department of Energy and its forebears, are probably only second in importance to nuclear weapons in the military stockpile. In the nuclear weapons defense system, they are effectively irreplaceable. Their assured safe protection should be a vital component of national defense.

Furthermore, DOE's program plan for materials disposition is in peril regarding recycling excess pits into mixed oxide fuel, because there is no container suitable for shipping the pits from the Pantex Plant to the Savannah River Site, and no plans exist for development of such a container.

To further the safety of pits at the Pantex Plant, the Board recommends that:

1. The remaining questions of materials compatibility affecting the possibility of chemical attack on closure of sealed inserts for AL–R8 containers be settled expeditiously;

2. Action be taken to accelerate the repackaging of pits into containers suited to safe storage for the near term;

3. A system of statistical sampling for continued integrity of containers and their sealed inserts for repackaged pits be put into effect suited to forecasting the horizon for need for further repackaging; and

4. The importance of the above measures be emphasized by defining them as the specific responsibility of a designated individual of the stature, position, and technical knowledge necessary for their accomplishment, and

continued.

who is given the authority and resources required.

John T. Conway,

Chairman.

APPENDIX—Transmittal Letter to the Secretary of Energy

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

625 Indiana Avenue, NW, Suite 700, Washington, D.C. 20004–2901, (202) 694–7000

August 11, 1999.

The Honorable Bill Richardson,
Secretary of Energy 1000 Independence Avenue, SW, Washington, DC 20585–1000.

Dear Secretary Richardson: On August 11, 1999, the Defense Nuclear Facilities Safety Board (Board), in accordance with 42 U.S.C. 2286a(5), unanimously approved Recommendation 99–1, which is enclosed for your consideration. Recommendation 99–1 deals with the safe storage of fissionable material called "pits."

41 U.S.C. 2286d(a) requires that after your receipt of this recommendation, the Board promptly make it available to the public in DOE's regional public reading rooms. The Board believes the recommendation contains no information that is classified or otherwise restricted. To the extent this recommendation does not include information restricted by DOE under the Atomic Energy Act of 1954, 42 U.S.C. 2161–68, as amended, please arrange to have it promptly placed on file in your regional public reading rooms.

The Board will also publish this recommendation in the **Federal Register**.

Sincerely,

John T. Conway,

Chairman.

Enclosure

c: Mr. Mark B. Whitaker, Jr.

[FR Doc. 99–22278 Filed 8–26–99; 8:45 am]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Team Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 27, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Team Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 23, 1999.

William E. Burrow,

Team Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Application for Grants under the Training Program for Federal TRIO Programs.
Frequency: Biennially.
Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Burden:
Responses: 60.
Burden Hours: 2,040.
Abstract: The training program is mandated to provide training for staff and leadership personnel employed or preparing for employment in projects designed to identify individuals from disadvantaged backgrounds. It will prepare them for a program of postsecondary education, and provide special services for such students pursuing programs of postsecondary education.

Comments regarding this package may be submitted to the following electronic mailbox: TRIO@ed.gov

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, this will be the only 30-day public comment notice for this collection.

[FR Doc. 99–22271 Filed 8–26–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.017A]

Office of Postsecondary Education, International Research and Studies Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

Purpose of Program: The International Research and Studies Program provides grants to conduct research and studies to improve and strengthen instruction in modern foreign languages, area studies, and other international fields to provide full understanding of places in which the foreign languages are commonly used.

Eligible Applicants: Public and private agencies, organizations, and institutions, and individuals.

Deadline for Transmittal of Applications: October 29, 1999.

Applications Available: September 7, 1999.

Available Funds: The estimated amount of funds available for new awards is $1,893,600, based on the Administration's request for FY 2000. The actual level of funding, if any, is contingent on final congressional action.

Estimated Range of Awards: $50,000–$150,000 per year.

Estimated Average Size of Awards: $118,350 per year.

Estimated Number of Awards: 16.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 82, 85, and 86; and (b) the regulations in 34 CFR parts 655 and 660.

For Applications or Information Contact: Jose Martinez, U.S. Department of Education, International Education and Graduate Programs Service, 400 Maryland Avenue, SW, Suite 600 Portals Building, Washington, DC 20202–5331. Mr. Martinez may be reached at e-mail address *jose martinez@ed.gov* or telephone: (202) 401–9784. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person specified in the preceding paragraph. Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document: You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news/html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have any questions about using the PDF, call the U.S. Government Printing Office (GPO) toll free, at 1–888–293–6498; or in the Washington, DC area, at (202) 512–1530.

Note: The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

http://www.access.gpo.gov/nara/index.html

Program Authority: 20 U.S.C. 1125.

Dated: August 23, 1999.

Claudio R. Prieto,

Acting Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 99–22284 Filed 8–26–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.235H]

Special Demonstration Programs Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

Purpose of Program

To provide financial assistance to projects that expand and improve the provision of rehabilitation and other services for individuals with disabilities.

Eligible Applicants

State vocational rehabilitation agencies; community rehabilitation programs; Indian tribes or tribal organizations; and public or nonprofit agencies or organizations, including institutions of higher education.

Deadline for Transmittal of Applications: February 4, 2000.

Deadline for Intergovernmental Review: April 4, 2000.

Applications Available: October 5, 1999.

Available Funds: $3,800,000.

Estimated Range of Awards: $200,000–$275,000.

Estimated Average Size of Awards: $250,000.

Estimated Number of Awards: 14–16.

Note: The Department is not bound by any estimates in this notice.

Maximum Award: In no case does the Secretary make an award greater than $275,000 for a single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this maximum amount.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 369.

Priorities

Under 34 CFR 75.105(c)(1) the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1—Special Demonstrations to Increase Employment Outcomes, Especially Self-Employment, Telecommuting, or Business Ownership, for American Indians With Disabilities Who Reside on or Near Reservations or in Urban Settings

Projects that would increase the employment opportunities by providing vocational rehabilitation services to American Indians with disabilities. Projects that would provide services to American Indians, and may provide training and instruction to other nonprofit agencies to provide these services, to achieve vocational outcomes related to self-employment, telecommuting, or business ownership. Services may include, but are not limited to, technical assistance and other consultation services to conduct market analyses, develop business plans, and obtain loans, occupational licenses, tools, equipment, initial stocks and supplies for eligible individuals.

Invitational Priority 2—Programs That Demonstrate Methods of Providing Affordable Transportation Services to Indiviuals With Disabilities

Projects that would demonstrate methods of providing affordable transportation services to individuals with disabilities who are employed, seeking employment, or receiving vocational rehabilitation services from public or private organizations and who reside in geographic areas in which public transportation or paratransit service is not available.

Invitational Priority 3—Projects Focusing on Career Advancement

Projects that would demonstrate service delivery models that would further high quality employment outcomes for individuals with disabilities. Projects that would provide services, which may include, but is not limited to, training, education, counseling, placement, and follow-up activities that would allow the individuals with disabilities to possess the knowledge and skills necessary to compete for jobs with the potential for career advancement and higher wages and benefits. Projects may also provide services to improve career advancement opportunities for individuals with disabilities who are employed.

Selection Criteria

In evaluating an application for a new grant under this competition, the Secretary uses selection criteria chosen from the general selection criteria in 34 CFR 75.210 of EDGAR. The selection criteria to be used for this competition will be provided in the application package for this competition.

FOR FURTHER INFORMATION CONTACT: Pamela Martin or Alfreda Reeves, U.S. Department of Education, 400 Maryland Avenue, SW., room 3314, Switzer Building, Washington, DC. 20202–2650. Telephone: (202) 205–8494 or (202) 205–9361. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–

576–7734. You may also contact ED Pubs via its Web site (http://www.ed.gov/pubs/edpubs.html) or its E-mail address (ed pubs@inet.ed.gov). If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.235H.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8351. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Program Authority: 29 U.S.C. 773(b).

Dated: August 19, 1999.

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–22036 Filed 3–26–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 99–24; Novel X-Ray Light Sources

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting research grant applications.

SUMMARY: The Office of Basic Energy Sciences (BES) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving grant applications for the development and application of novel, laser-based light sources operating in the X-ray spectral region.

DATES: Potential applicants are strongly encouraged to submit a brief preapplication. All preapplications, referencing Program Notice 99–24, should be received by DOE by 4:30 P.M., E.D.T., October 1, 1999. A response to the preapplications encouraging or discouraging a formal application generally will be communicated to the applicant within 30 days of receipt.

The deadline for receipt of formal applications is 4:30 P.M., E.S.T., January 19, 2000, in order to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2000.

ADDRESSES: All preapplications, referencing Program Notice 99–24, should be sent to Dr. Eric A. Rohlfing, Division of Chemical Sciences, SC–14, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290 or transmitted by facsimile to (301) 903–4110.

Formal applications referencing Program Notice 99–24 should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 99–24. This address must also be used when submitting applications by U.S. Postal Service Express, any commercial mail delivery service, or when hand carried by the applicant. An original and seven copies of the application must be submitted.

FOR FURTHER INFORMATION CONTACT: Dr. Eric A. Rohlfing, Division of Chemical Sciences, SC–14, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone (301) 903–8165, e-mail: eric.rohlfing@science.doe.gov.

SUPPLEMENTARY INFORMATION:

In January 1999, the Basic Energy Sciences Advisory Committee (BESAC) Panel on Novel, Coherent Light Sources made a series of six recommendations to BES on the R&D plan for the development of light sources that might ultimately lead to the next-generation light-source facility. The full report from this panel is available at the following web address: *http://www.er.doe.gov/production/bes/BESAC/pubs.html*

The BESAC panel identified the specific need for research into the development and application of table-top, laser light sources in their Recommendation (3):

"There is a symbiotic relationship between future accelerator-based sources and high-powered ultrafast lasers. Future light sources will involve a complete marriage of accelerator principles and lasers. Lasers are also likely to be the avenue where the shortest pulses are attained and many new scientific experiments are developed first. The Panel recommends that DOE should support laser light source development independently and vigorously. This is best done by support of peer-reviewed proposals based on science that requires a significant component of laser source development. It is also desirable to support one or more DOE laboratory centers for laser development that can be coordinated with overall light source facility development plans."

They also identified the need for improved X-ray detectors and optics in order to more fully utilize these novel lasers or existing synchrotron facilities in their Recommendation (6):

"Support should be provided for the development of X-ray detectors and optics, concomitant with better utilization of existing synchrotron facilities and lasers to carry out tests of potential new experiments that may be enhanced by a coherent hard X-ray source."

This invitation for grant applications is a direct response to these two recommendations of the BESAC Panel on Novel, Coherent Light Sources. In particular, we seek applications for research in the following areas:

- Development of new light sources in the X-ray region that are based on table-top, ultrafast laser systems or combinations of such lasers systems with particle beam accelerators or existing synchrotron X-ray sources. Desirable attributes for such sources include ultrashort (femtosecond) pulses, high peak spectral brightness, and a high degree of spatial and temporal coherence. Applications are not limited to those seeking to construct new sources. Fundamental experiment or theory on the physics underlying novel generation schemes (such as high-harmonic generation) are also sought.
- Fundamental experiment and theory on the interactions of ultrafast, intense X-ray pulses with matter, including multiphoton or multiwave processes, high-field effects, and material damage studies relevant to the development of X-ray optics for next-generation light sources.
- Improved techniques for the detection and characterization of ultrafast, intense X-ray pulses.
- Applications using such X-ray sources to fundamental science that fits within the interests of the Chemical Sciences and Materials Sciences Divisions of BES. Detailed program descriptions for these two BES divisions may be found at the BES homepage: *http://www.er.doe.gov/production/bes/bes.html*

As noted in Recommendation (3) of the BESAC Panel given above, future light source facilities are likely to encompass both accelerator-based and laser-based light sources in a fully symbiotic relationship. Thus, we encourage applications in which there is a direct linkage to or collaboration with ongoing efforts in the area of X-ray free electron lasers (FELs), such as the use of laser-based systems as seeds for FEL amplifiers.

Program Funding

It is anticipated that an estimated $1.0 million will be available for grant awards during FY 2000, contingent upon the availability of appropriated funds. Multiple year funding of grant awards is expected, also contingent upon the availability of appropriated funds, progress of the research and continuing program need. Applications received by the Office of Science, Office of Basic Energy Sciences, under its current competitive application mechanisms may be deemed appropriate for consideration under this notice and may be funded under this program.

Preapplications

Preapplications are strongly encouraged but not required prior to submission of a full application. Please note that notification of a successful preapplication is not an indication that an award will be made in response to the full application.

The preapplication should identify, on the cover sheet, the institution, principal investigator name, address, telephone, fax and e-mail address, title of the project, and the field of scientific research. The preapplication should consist of no more than a three-page narrative describing the research project objectives and methods of accomplishment. These will be reviewed relative to the scope and research needs of the Novel X-Ray Light Source initiative. Formal notification of either discouragement or encouragement for submission of a full application will occur within 30 days of the deadline for receipt of the preapplications.

Full applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d).

1. Scientific and/or Technical Merit of the Project,
2. Appropriateness of the Proposed Method or Approach,
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Applicants are encouraged to collaborate with researchers in other institutions, such as universities, industry, non-profit organizations, federal laboratories and Federally Funded Research and Development Centers (FFRDCs), including the DOE National Laboratories. A parallel announcement with a similar potential total amount of funds will be issued to DOE FFRDCs. All projects will be evaluated using the same criteria, regardless of the submitting institution.

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR Part 605 and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is available via the World Wide Web at: http://www.er.doe.gov/production/grants/grants.html. On the grant face page, form DOE F 4650.2, block 15, provide the principal investigator's phone number, fax number and e-mail address. The research description must be 20 pages or less, exclusive of figure illustrations, and must contain an abstract or summary of the proposed research. Attachments should include curriculum vitae, a listing of all current and pending federal support, and letters of intent when collaborations are part of the proposed research.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, D.C. on August 18, 1999.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 99–22301 Filed 8–26–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Semi-Annual Chairs Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Semi-Annual Chairs Meeting. Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES:

Monday, September 20, 1999, 3:30 p.m.–5:30 p.m.
Tuesday, September 21, 1999, 8:00 a.m.–9:00 p.m.
Wednesday, September 22, 1999, 8:00 a.m.–6:00 p.m.
Thursday, September 23, 1999, 8:00 a.m.–1:00 p.m.

ADDRESSES: Double Tree Hanford House Hotel, 802 George Washington Way, Richland, WA, (509) 946–7611.

FOR FURTHER INFORMATION CONTACT: Fred Butterfield, Deputy Designated Federal Officer, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington DC, 20585, (202) 586–5542.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities.

Tentative Agenda

Monday, September 20, 1999

3:30–5:30 p.m.: EM SSAB Chairs meet with Dr. Carolyn Huntoon, Assistant Secretary for Environmental Management (tentative)

Tuesday, September 21, 1999: Hanford Site Tour

8:00 a.m.: Bus departs hotel for Hanford Site tour (Lunch provided @ $6.00)
4:00 p.m.: Depart from Hanford Site tour to Dinner at the Yakama Indian Culture Center, Toppenish, WA

Note: Individuals must pre-register if they plan to attend; Cost: $10.00.

9:00 p.m. (approx.) Return to hotel

Wednesday, September 22, 1999: EM SSAB Chairs Meeting (Day 1)

8:00–8:30 a.m.: Registration
8:30–8:45 a.m.: Welcome by Mr. Keith Klein, Manager, DOE Richland Operations Office; and Mr. Dick French, Manager, Office of River Protection
8:45–8.50 a.m.: Introductory remarks (Martha Crosland, Acting Director, EM Office of Intergovernmental and Public Accountability)
8:50–9:00 a.m.: EM SSAB Chairs Meeting "Rules of Engagement" (Facilitator)
9:00–10:30 a.m.: "Round-robin" general issues and information exchange among local EM SSABs (SSAB Chairs)
10:30–10:45 a.m.: Break
10:45–11:30 a.m.: Open discussion on general outcomes from EM SSAB issue-specific seminars (SSAB Chairs and DOE–HQ)
11:30–1:00 p.m.: Working lunch at Hanford House: Discussion of outcomes from EM SSAB Transportation Seminar (SSAB Chairs and DOE–HQ)

Note: A luncheon buffet is available @ $14.95.

1:00–3:00 p.m.: Planning session for EM SSAB Stewardship Seminar scheduled for October 26–28, 1999, Oak Ridge, TN (Bill Pardue & Lorene Sigal, Oak Ridge SSAB)
3:00–3:15 p.m.: Break
3:15–4:15 p.m.: Introduction and discussion of Technology Management System and Site Technology Coordination Group (TBD)
4:15–4:45 p.m.: Overview of Draft Revised EM SSAB Guidance (Fred Butterfield, DOE–HQ)
4:45–5:00 p.m.: Public comment period
5:00–6:00 p.m.: Opportunities for informal gatherings of EM SSAB Chairs, SSAB Administrators/Facilitators, and DOE SSAB Federal Coordinators

Thursday, September 23, 1999: EM SSAB Chairs Meeting (Day 2)

8:00–9:00 a.m.: DOE/EM informational and status updates
- Waste Management PEIS and Disposal Records of Decision (RODs)
- PEIS Lawsuit Settlement
- Waste Isolation Pilot Plant (WIPP)
- Plutonium disposition and follow-on process for In-Tank Precipitation (ITP) at Savannah River Site
- NEPA (EIS/EA) Status Updates
- EM Integration Process
- Transportation Protocols Standardization Initiative
- DOE Field & HQ Personnel Changes

9:00–11:00 a.m.: Discussion session on the Draft Revised EM SSAB Guidance and related Board issues (Fred Butterfield & Martha Crosland, DOE/HQ)
11:00–11:30 a.m.: Public comment period/break
11:30 a.m.–12:00 p.m.: EM SSAB Chairs Meeting next steps and wrap-up (Facilitator)
12:00 p.m.: Closing Remarks/Adjourn (Martha)
1:00–5:00 p.m.: Optional: Boat Trip

Note: Individuals must pre-register if they plan to attend. Cost: $35.00; make checks payable to "Columbia River Journeys."

(Agenda topics may change up to the day of the meeting; please call the **FOR FURTHER INFORMATION CONTACT** in this notice for the current agenda.)

Public Participation: This meeting is open to the public. Written statements may be filed with the Board facilitator before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact the Board Chair at their specific site, or Fred Butterfield at the address listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer, Martha Crosland, and the Deputy Designated Federal Officer, Fred Butterfield, U.S. Department of Energy, are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: A written summary of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday–Friday, except Federal holidays. The meeting summary will also be available by writing the EM–SSAB Chair or Designated Deputy Federal Officer of every EM–SSAB that participated in the meeting.

Issued at Washington, DC on August 24, 1999.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–22299 Filed 8–26–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Idaho

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Idaho National Engineering and Environmental Laboratory (INEEL). Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, September 14, 1999, 8:00 a.m.–6:00 p.m., Wednesday, September 15, 1999, 8:00 a.m.–5:00 p.m.

ADDRESSES: The Miles & Virginia Willard Fine Arts Center 498 A Street, Idaho Falls, Idaho 83402.

FOR FURTHER INFORMATION CONTACT: Ms. Wendy Lowe, INEEL CAB Facilitator Jason Associates Corporation, 477 Shoup Avenue, Suite 205, Idaho Falls, ID 83402, (208–522–1662) or visit the Board's internet homepage at *http://www.ida.net/users/cab;* or contact Mr. Charles Rice, INEEL CAB Chair, c/o Jason Associates Corporation.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of future use, cleanup levels, waste disposition and cleanup priorities at the INEEL.

Tentative Agenda

Presentations and discussions on the following:
- Hazardous Waste Materials Act/Toxic Substances Control Act (HWMA/TSCA) permit for the Advanced Mixed Waste Treatment Plant (AMWTP);
- Sodium-Bonded Spent Nuclear Fuel Draft Environmental Impact Statement;
- Alternatives at INEEL High Level Waste and Facilities Disposition Draft Environmental Impact Statement;
- Alternative locations being considered for the placement of the INEEL Consolidated Disposal Facility;
- Proposed plan for the remediation of the Central Facilities Area (WAG 4);
- The Yucca Mountain Draft Environmental Impact Statement;
- Notifications for transportation of various types of waste;
- Activities to support preparation for the SSAB Stewardship Seminar.

Status reports on the following:
- The independent safety review panel investigation into the potential for explosion at Pit 9 (pending availability of panel's report);
- The Paducah Gaseous Diffusion Plant plutonium contamination issue.

Finalization of the following recommendations:
- HWMA/TSCA permit for the AMWTP;
- Sodium-Bonded spent Nuclear Fuel Draft Environmental Impact Statement;
- Proposed plan for the remediation of the Central Facilities Area (WAG 4).

(Agenda topics may change up to the day of the meeting; please call the **FOR FURTHER INFORMATION CONTACT** in this notice for the current agenda or visit the Internet site.)

Public Participation: This meeting is open to the public. Written statements may be filed with the Board facilitator before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact the Board Chair at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Jerry Bowman, Assistant Manager for Laboratory Development, Idaho Operations Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Every individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Charles M. Rice, INEEL CAB Chair, 477 Shoup Ave., Suite 205, Idaho Falls, Idaho 83402 or by calling the Board's facilitator at (208) 522–1662.

Issued at Washington, DC on August 24, 1999.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–22300 Filed 8–26–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–107–000, et al.]

The Connecticut Light and Power Company, et al.; Electric Rate and Corporate Regulation Filings

August 20, 1999.

Take notice that the following filings have been made with the Commission:

1. The Connecticut Light and Power Company, Western Massachusetts Electric Company, and Northeast Generation Company

[Docket Nos. EC99–107–000 and ER99–4114–000]

Take notice that on August 17, 1999, The Connecticut Light and Power Company (CL&P), Western Massachusetts Electric Company (WMECO) and Northeast Generation Company (collectively Applicants) tendered for filing an application under Section 203 of the Federal Power Act for approval of the transfer of certain jurisdictional facilities associated with the sale of certain generating facilities by CL&P and WMECO. The Applicants also tendered for filing under Section 205 of the Federal Power Act certain agreements pertaining to services related to the transfer of facilities.

The Applicants state that copies of this filing have been sent to the Connecticut Department of Public Utility Control, the Massachusetts Department of Telecommunications and Energy and the New Hampshire Public Utilities Commission.

Comment date: September 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Central Illinois Public Service Company, Union Electric Company, and Ameren Generating Company

[Docket Nos. EC99–108–000 and ER99–4115–000]

Take notice that on August 17, 1999, Central Illinois Public Service Company (AmerenCIPS), Union Electric Company (AmerenUE), and Ameren Generating Company (Genco) (Collectively, the Ameren Companies) filed an application for approval of certain agreements and transactions related to and necessitated by the transfer by AmerenCIPS of all its generating assets to Genco as part of a restructuring of the Ameren system's operations.

Comment date: September 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Wellhead Generating Company, LLC

[Docket No. EG99–176–000]

Take notice that on July 16, 1999, Wellhead Generating Company LLC, filed with the Federal Energy Regulatory Commission (Commission) a letter amendment to its Application for Determination of Exempt Wholesale Generator Status which was filed with the Commission on June 25, 1999.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the amended application.

4. Bay State GPE, Inc.

[Docket No. EG99–214–000]

Take notice that on August 18, 1999, Bay State GPE, Inc. (Bay State GPE) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Bay State GPE is a Massachusetts corporation which was organized for the purpose of owning and operating an electric generating facility in Agawam, Massachusetts. Bay State GPE's facility is 2,200 kw net capacity cogenerating and turbo expander facility. Bay State GPE states that a rate or charge in connection with this facility was in effect under the laws of any state as of October 24, 1992 or any time thereafter.

Bay State GPE further states that copies of the application were served upon the Securities and Exchange Commission, the Massachusetts Department of Telecommunications and Energy, the Maine Public Utilities Commission, the New Hampshire Public Utilities Commission, the Connecticut Department of Public Utility Control, the Rhode Island Public Utilities Commission, the Vermont Public Service Board, and the Indiana Utility Regulatory Commission.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice. The commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. CH Resources, Inc.

[Docket No. ER99–4109–000]

Take notice that on August 17, 1999, CH Resources, Inc. filed its quarterly report for the quarter ending June 30, 1999.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Arizona Public Service Company

[Docket Nos. OA96–153–005 and ER96–2401–003]

Take notice that on August 16, 1999, Arizona Public Service Company (APS) tendered for filing a Compliance Refund Report for refunds made in accordance with the Commission's letter of approval dated June 17, 1999 in Consolidated Docket Nos. OA96–153–000 and ER96–2401–000.

Copies of this filing have been served on the Service List and the Arizona Corporation Commission.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Energy Online, Inc., Community Electric Power Corporation

[Docket Nos. ER96–138–008, ER97–2792–005, ER97–2792–006, and ER97–2792–007]

Take notice that on August 9, 1999, the above-mentioned power marketers/ or public utilities tendered for filing quarterly reports with the Commission in above-referenced proceedings for information only. These filing are available for public inspection and copying in the Public Referenced Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

8. Commonwealth Energy Corporation

[Docket No. ER97–4253–006]

Take notice that on August 3, 1999, Commonwealth Energy Corporation (CEC), tendered for filing a transaction report for quarter ended June 30, 1999.

9. California Independent System Operator Corporation

[Docket Nos. ER98–1057–003, ER98–1058–002, ER98–2199–000, ER98–4106–000, ER98–4107–000, ER98–189–000, and ER99–294–000]

Take notice that on August 16, 1999, the California Independent System Operator Corporation (California ISO), tendered for filing a compliance report as required by the Commission's July 16, 1999, letter order.

Copies of the filing have been served upon each person designated on the Commission's official service list.

Comment date: September 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Pacific Energy & Development Corporation, IEP Power Marketing, LLC, Cleco Energy LLC

[Docket Nos. ER98–1824–006, ER95–802–017, and ER98–1170–004]

Take notice that on August 6, 1999, the above-mentioned power marketers/ or public utilities tendered for filing quarterly reports with the Commission in above-referenced proceedings for information only. These filing are available for public inspection and copying in the Public Referenced Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

11. New England Power Pool

[Docket Nos. ER99–1142–007 and ER99–2892–002]

Take notice that on August 16, 1999, the New England Power Pool (NEPOOL) Participants Committee tendered for filing a report of compliance. This report indicates that NEPOOL is in compliance with the Commission's July 16, 1999 order regarding NEPOOL governance, *New England Power Pool*, 88 FERC ¶ 61,079 (1999), by posting the NEPOOL committee bylaws on the ISO's internet home page (www.iso-ne.com), which is linked to the ISO's OASIS.

The NEPOOL Participants Committee states further that copies of these materials were sent to all persons identified in the Commission's official service lists for the captioned dockets and the Participants in the New England Power Pool.

Comment date: September 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Central Maine Power Company

[Docket Nos. ER99–3092–000 and ER99–3094–000 (not consolidated)]

Take notice that on August 16, 1999, Central Maine Power Company tendered for filing a response to the deficiency letter issued by the Director, Division of Rate Applications, Office of Electric Power Regulation, in the above-captioned dockets on July 15, 1999.

Comment date: September 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Puget Sound Energy, Inc.

[Docket No. ER99–4069–000]

Take notice that on August 12, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with LG&E Energy Marketing Inc. (LG&E).

A copy of the filing was served upon LG&E.

Comment date: September 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Puget Sound Energy, Inc.

[Docket No. ER99–4070–000]

Take notice that on August 12, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Los Angeles Department of Water & Power (L.A.).

A copy of the filing was served upon L.A.

Comment date: September 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Puget Sound Energy, Inc.

[Docket No. ER99–4068–000]

Take notice that on August 12, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Nevada Power Company (NPC).

A copy of the filing was served upon NPC.

Comment date: September 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Puget Sound Energy, Inc.

[Docket No. ER99–4071–000]

Take notice that on August 12, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Nebraska Public Power District (Nebraska).

A copy of the filing was served upon Nebraska.

Comment date: September 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Puget Sound Energy, Inc.

[Docket No. ER99–4072–000]

Take notice that on August 12, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Morgan Stanley Capital Group, Inc., (Morgan Stanley).

A copy of the filing was served upon Morgan Stanley.

Comment date: September 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Puget Sound Energy, Inc.

[Docket No. ER99–4073–000]

Take notice that on August 12, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Modesto Irrigation District (Modesto).

A copy of the filing was served upon Modesto.

Comment date: September 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Puget Sound Energy, Inc.

[Docket No. ER99–4074–000]

Take notice that on August 12, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Koch Energy Trading, Inc. (KETI).

A copy of the filing was served upon KETI.

Comment date: September 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Cinergy Services, Inc

[Docket No. ER99–4077–000]

Take notice that on August 13, 1999, Cinergy Services, Inc., on behalf of its Operating Company affiliates, The Cincinnati Gas & Electric Company and PSI Energy, Inc., collectively Cinergy Operating Companies (COC), tendered for filing an executed service agreement between COC and FirstEnergy Trading Services, Inc. (FETS), replacing the unexecuted service agreement filed on April 9, 1999 under Docket No. ER99–2440–000 per COC FERC Electric Cost-Based Power Sales Tariff, Original Volume No. 6–CB.

Cinergy is requesting an effective date of May 1, 1999 and the same Rate Designation as per the original filing.

Comment date: September 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Cinergy Services, Inc.

[Docket No. ER99–4078–000]

Take notice that on August 13, 1999, Cinergy Services, Inc. on behalf of its Operating Company affiliates, The Cincinnati Gas & Electric Company and PSI Energy, Inc., collectively Cinergy Operating Companies (COC), tendered for filing an executed service agreement between COC and FirstEnergy Trading Services, Inc. (FETS) replacing the unexecuted service agreement filed on April 16, 1999 under Docket No. ER99–2511–000 per COC FERC Electric Market-Based Power Sales Tariff, Original Volume No. 7–MB.

Cinergy is requesting an effective date of May 1, 1999 and the same Rate Designation as per the original filing.

Comment date: September 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Portland General Electric Company

[Docket No. ER99–4079–000]

Take notice that on August 13, 1999, Portland General Electric Company (PGE), tendered for filing under PGE's Market-Based Rate Tariff, FERC Electric Tariff, First Revised Volume No. 11 (Docket No. ER99–1263–000), an executed Service Agreement for Service at Market-Based Rates with ConAgra Energy Services, Inc. Pursuant to 18 CFR Section 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993.

PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR Section 35.3 to allow the Service Agreement to become effective August 1, 1999.

A copy of this filing was caused to be served upon ConAgra Energy Services, Inc., as noted in the filing letter.

Comment date: September 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Niagara Mohawk Power Corporation

[Docket No. ER99–4080–000]

Take notice that on August 13, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an Interconnection Agreement between Niagara Mohawk Power Corporation and Oswego Harbor Power LLC dated as of July 30, 1999.

Niagara Mohawk Power Corporation requests an effective date of September 13, 1999 or, if later, the Closing Date of the sale of the Oswego generating facility.

Niagara Mohawk requests waiver of the Commission requirement that a rate schedule be filed not less than 60 days or more than 120 days from its effective date.

Comment date: September 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Bay State GPE, Inc.

[Docket No. ER99–4081–000]

Take notice that on August 13, 1999, Bay State GPE, Inc.(Bay State GPE), tendered for filing an application for waivers and blanket approvals under various regulations of the Commission, and for an order accepting its FERC Electric Rate Schedule No. 1 authorizing Bay State GPE to engage in wholesale sales of capacity and energy at market rates.

Comment date: September 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Cinergy Services, Inc.

[Docket No. ER99–4082–000]

Take notice that on August 13, 1999, Cinergy Services, Inc., collectively as agent for and on behalf of its utility operating company affiliates, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (Cinergy), tendered for filing a service agreement under Cinergy's Market-Based Power Sales Standard Tariff-MB (the Tariff) entered into between Cinergy and NRG Power Marketing, Inc. (NRG).

Cinergy and TEMUS are requesting an effective date of July 19, 1999.

Comment date: September 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Cleco Utility Group Inc.

[Docket No. ER99–4083–000]

Take notice that on August 13, 1999, Cleco Utility Group Inc. (formerly, Cleco Corporation) (Cleco Utility), petitioned the Commission for acceptance of Amendment No. 2 to FERC Power Sales Tariff MR–1, Original Sheet Nos. 1–10, Revision No. 1—10/18/96 in the captioned docket. In Cleco Utility's proposed amendment, Cleco Utility proposes to supersede Original Sheet Nos. 1–10, Revision No. 1—10/18/96 with Revised Sheet Nos. 1–2.

Comment date: September 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Duke Energy Corporation

[Docket No. ER99–4084–000]

Take notice that on August 13, 1999, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with The Legacy Energy Group, LLC, for Non-Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on July 31, 1999.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: September 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Duke Energy Corporation

[Docket No. ER99–4085–000]

Take notice that on August 13, 1999, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with The Legacy Energy Group, LLC for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on July 31, 1999.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: September 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Illinois Power Company

[Docket No. ER99–4086–000]

Take notice that on August 13, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which El Paso Power Services Company will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of August 1, 1999.

Comment date: September 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Allegheny Energy Supply Company and Allegheny Power, on Behalf of Monongahela Power Company, the Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–4087–000]

Take notice that on August 13, 1999, Allegheny Energy Supply Company (AE Supply) and Allegheny Power filed a Form of Purchase and Sale Agreement for Ancillary Services pursuant to which AE Supply proposes to sell certain ancillary services to Allegheny Power at cost-based rates and at rates subject to an index-based cap, as applicable, and as more fully described in the application.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: September 2, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. PacifiCorp

[Docket No. ER99–4088–000]

Take notice that on August 16, 1999, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Non-Firm and Short-Term Firm Point-To-Point Transmission Service Agreements with El Paso Power Services Company (El Paso), Entergy Power Marketing Corp. (Entergy), Los Angeles Department of Water and Power (LADWP), MIECO Inc. (MIECO), New Energy Partners, LLC (New Energy) PECO Energy Company (PECO), and Reliant Energy Service, Inc. (Reliant), under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: September 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. Genesee Power Station Limited Partnership

[Docket No. ER99–4097–000]

Take notice that on August 16, 1999, Genesee Power Station Limited Partnership (Genesee), tendered for filing pursuant to Section 205 of the Federal Power Act and CFR Part 35, an Energy Purchase Agreement under Rate Schedule No. 2 which provides for sale at market-based rate of excess energy to its affiliated utility, Consumers Energy.

Genesee requests an effective date of September 1, 1999.

Copies of this filing were served upon the Michigan Public Service Commission.

Comment date: September 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

33. Mobile Energy Services Company, L.L.C.

[Docket No. ER99–4098–000]

Take notice that on August 16, 1999, Mobile Energy Services Company, L.L.C. (Mobile Energy), tendered for filing a Master Electric Power Purchase and Sale Agreement between Mobile Energy Services, Company, L.L.C., and Southern Company Energy Marketing, L.P., in the referenced docket.

Comment date: September 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

34. Duke Power Company—Nantahala Power and Light Company

[Docket No. OA97–450–006]

Take notice that on August 16, 1999, Duke Energy Corporation amended its filing in the above-reference docket to reflect a recent reorganization.

Comment date: September 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

35. Tenaska Gateway Partners, Ltd.

[Docket No. ER99–4090–000]

Take notice that on August 16, 1999, Tenaska Gateway Partners, Ltd., tendered for filing with the Federal Energy Regulatory Commission, pursuant to 18 CFR 35.1 and 131.52, a Certificate of Concurrence with respect to Southwestern Electric Power Company's Rate Schedule FERC No. 121.

Comment date: September 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

36. Wisvest-Connecticut, L.L.C.

[Docket No. ER99–4091–000]

Take notice that on August 16, 1999, Wisvest-Connecticut, L.L.C. (Wisvest-Connecticut), tendered for filing a proposed notice of cancellation of Service Agreement No. 7 on file with the Commission. Service Agreement No. 7 is a power sales agreement between Wisvest-Connecticut and PECO Energy—Power Team which expired by its terms on April 30, 1999.

Comment date: September 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

37. Illinois Power Company

[Docket No. ER99–4092–000]

Take notice that on August 16, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which TransAlta Energy Marketing (U.S.) Inc., will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of August 1, 1999.

Comment date: September 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

38. Illinois Power Company

[Docket No. ER99–4093–000]

Take notice that on August 16, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Southwestern Public Service Company will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of August 1, 1999.

Comment date: September 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

39. Illinois Power Company

[Docket No. ER99–4094–000]

Take notice that on August 16, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which West Penn Power Company d/b/a Allegheny Energy will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of August 1, 1999.

Comment date: September 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

40. Illinois Power Company

[Docket No. ER99–4095–000]

Take notice that on August 16, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which Louisville Gas & Electric will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of August 1, 1999.

Comment date: September 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

41. Grayling Generating Station—Limited Partnership

[Docket No. ER99–4096–000]

Take notice that on August 16, 1999, Grayling Generating Station Limited Partnership (Grayling), tendered for filing pursuant to Section 205 of the Federal Power Act and CFR Part 35, an Energy Purchase Agreement under Rate Schedule No. 2 which provides for sale at market-based rate of excess energy to its affiliated utility, Consumers Energy.

Grayling requests an effective date of September 1, 1999.

Copies of this filing were served upon the Michigan Public Service Commission.

Comment date: September 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22261 Filed 8–26–99; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6429–9]

Agency Information Collection Activities: Proposed Collection; Comment Request; Assess Compliance with EPCRA Section 312 Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Assess Compliance with EPCRA section 312 Reporting Requirements, EPA ICR number 1909.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 26, 1999.

ADDRESSES: Environmental Protection Agency, 401 "M" Street, Office of Compliance, Chemical, Commercial Services and Municipal Division, mail code 2224A, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: John Mason, at: tel. (202) 564–7037, FAX: (202) 564–0009, or E-mail: mason.john@epa.gov

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those states which have received Tier II reporting forms required to be submitted annually to the State Emergency Response Commissions (SERC) and the Local Emergency Response Committees (LEPC) by persons who use chemicals subject to Occupational Safety and Health Act (OSHA) for the past 4-year reporting period.

Title: Assess Compliance with EPCRA Section 312 Reporting Requirements.

Abstract: The information sought with this ICR is who among selected sectors that produce, use, or store hazardous chemicals (as defined by the Occupational Safety and Health Act of 1970) submitted Tier II forms to the SERC and/or the LEPC, and when did they submit them. This information is being sought to assess compliance with the requirements of EPCRA section 312.

The Emergency Planning and Community Right-to-Know Act (EPCRA) section 312 requires facilities which are required to prepare or have available Material Safety Data Sheets (MSDS) as required by OSHA to submit an annual emergency and hazardous chemical inventory form containing the amount and location of hazardous chemicals stored at the facility. Although EPCRA section 312 is a federal requirement, State Emergency Response Commissions, and Local Emergency Planning Committees are the main recipients and benefactors of this information. The inventory reports allow "first responders" (e.g. local fire departments) to be informed about the presence of hazardous chemicals in the community and help facilitate development of the local emergency response plan. They also enhance community awareness of chemical hazards in the local area.

EPA has initiated compliance projects among a number of industrial, service and/or government sectors including: the iron and steel industry, the primary nonferrous metals industry, metal services (electroplating and coating), the chemical preparation industry, pulp and paper mills, the telecommunications industry, coal-fired power plants, the automobile servicing industry, mining, the petroleum refineries, organic chemical manufacturers, and municipalities. These projects include, in some cases, efforts to enhance compliance with EPCRA section 312.

EPA will be working with states and facilities to assure and confirm compliance with EPCRA requirements. In particular, EPA will ask the states whether the facilities submitted their Tier II forms and when during the

reporting year the forms were submitted.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility. The Agency has committed through its Strategic Plan, Goal 9 to provide a credible deterrent to pollution and greater compliance with the law. By ensuring compliance through an array of traditional and innovative approaches, EPA is working to mitigate and avoid risks to human health and the environment, and help the regulated community understand and fully comply with environmental and statutory requirements. The information on facilities that did not submit their Tier II forms will be forwarded to EPA Regional offices for appropriate follow-up.

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used. The reporting form has been discussed with Regional and headquarters EPCRA section 312 coordinators. Although there is variability among the states' ability to respond to this request, EPA Regions were asked to determine how long it would take each state in their Region to retrieve, review, and provide the information requested based on a list of specific facilities located in that state. Some of the Regional offices conducted some preliminary review of the requested information which was used to estimate burden hours. EPA has determined that three states and some California LEPCs have this information in automated files which would require minimum resources to access. This information was also considered in determining burden hours.

(iii) Enhance the quality, utility, and clarity of the information to be collected. These projects have an anticipated length through September 30, 2001. However, we anticipate that if the information reveals any non-compliance, some follow-up with the states may be necessary. The information sought was kept to an absolute minimum to avoid any problems with data identification or retrieval.

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. To the extent possible, the Agency will collect the information through automated data systems.

Burden Statement: This information collection involves responses from 50 states, two territories (Puerto Rico and the Virgin Islands), and the District of Columbia, for a total of 53 respondents.

The requested information will be collected as part of this specific one-time only Agency initiative for each relevant sector. EPA does not anticipate any capital or start-up costs. Since the states collect and retain the requested information as part of their state EPCRA section 312 program, EPA does not anticipate any operations or maintenance costs associated with this request. EPA Regional or Headquarters activities are considered as part of program oversight and will not be included as burden hours.

The estimated maximum burden for the respondents is estimated to be approximately 4440 hours at a cost of approximately $78,125 (The cost of purchasing contract services, if needed, is estimated to be $7500). This estimate is based on records review and recording time plus some oversight for three of the largest sectors (i.e. greatest number of facilities). The review may be conducted for more than three sectors but at fewer than all 53 respondents. The response cost is calculated using labor rates of $17.48 per hour for clerical review and response time and $30.34 for supervisory time. The source of labor rates is the United States Department of Commerce, Bureau of Labor Statistics, March 1998, Table 4: Employment Costs of State and Local Government. This estimate includes the time needed to review the instructions, retrieve the records and record the results of the questionnaire.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: August 19, 1999.

Bruce R. Weddle,

Acting Director, Office of Compliance, Office of Enforcement and Compliance Assurance.

[FR Doc. 99–22325 Filed 8–26–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–6430–2]

Agency Information Collection Activities: Proposed Collection; Comment Request; National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*), this document announces that the EPA is planning to submit for renewal the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): "Reporting and Recordkeeping Requirements for National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings," EPA No. 1765.01, OMB No. 2060–0353, expires January 31, 2000. Before submitting the ICR to OMB for review and approval, the EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 26, 1999.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate) to: Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–95–18, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Docket. Information on the ICR and the Automobile Refinish Coatings Rule can be obtained from the docket (above) and is also available for downloading from the EPA's internet website for this rule at "http://www.epa.gov/ttn/uatw/183e/arc/arcpg.html." The docket is available for public inspection and copying between 8:30 am and 5:30 pm, Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, 1st Floor, 401 M Street, SW, Washington, DC 20460, telephone (202) 260–7548, FAX (202) 260–4400. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Morris at (919) 541–5416, Organic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, e-mail (morris.mark@epa.gov).

SUPPLEMENTARY INFORMATION: Affected entities: Entities potentially affected by this action are those which manufacture or import automobile refinish coatings or coating components for sale or distribution in the United States, including the District of Columbia and all United States territories.

Title: National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings; OMB Control No 2060–0353; EPA ICR No. 1765.01; expires January 31, 2000.

Abstract: The information collection includes initial and periodic reporting necessary for the EPA to ensure compliance with Federal standards for volatile organic compounds in automobile refinish coatings. Respondents are manufacturers and importers of automobile refinish coatings and coating components. Responses to the collection are mandatory under 40 CFR part 59, subpart B—National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings. All information submitted to the EPA for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in 40 CFR part 2, subpart B—Confidentiality of Business Information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submission of responses).

Burden Statement: Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. Total industry burden is estimated to be 22 hours per year, at a total labor cost of $1,100 per year. Labor costs were estimated based on Table 2 of the Bureau of Labor Statistics (BLS) Employment Cost Trends. After adding overhead costs of 100 percent to the BLS figures, the resulting hourly rates for management, technical, and clerical labor are $69, $48, and $32 respectively. There are no capital costs associated with this collection. Burden was calculated based on the following assumptions:

(i) Initial Notification Reports will have been submitted by all regulated entities (approximately 30) prior to expiration of the existing ICR. Therefore, the burden calculation is based on one new initial notification per year by a new regulated entity.

(ii) Reading the rule to obtain the recordkeeping and reporting instructions would require 2 hours.

(iii) Completion of the Initial Notification Report would require 2 hours.

(iv) Notification of a change in date coding systems would require 2 hours.

Dated: August 15, 1999.

John S. Seitz,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 99–22327 Filed 8–26–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6429–7]

Agency Information Collection Activities; OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at (202) 260–2740, or E-mail at "farmer.sandy@epa.gov", and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1789.02; NESHAP for Source Category: Natural Gas Transmission and Storage; in 40 CFR part 63, subpart HHH; was approved 07/22/99; OMB No. 2060–0418; expires 07/31/2002.

EPA ICR No. 1821.02; National Emission Standards for Hazardous Air Pollutants for Steel Pickling, HCl Process Facilities and Hydrochloric Acid Regeneration; in 40 CFR part 63, subpart CCC; was approved 07/22/99; OMB No. 2060–0414; expires 07/31/2002.

EPA ICR No. 1811.02; National Emission Standards for Hazardous Air Pollutants for Polyester Polyols Production; in 40 CFR part 63, subpart PPP; was approved 07/22/99; OMB No. 2060–0415; expires 07/31/2002.

EPA ICR No. 1788.02; NESHAP for Source Category: Oil and Gas Production; in 40 CFR part 63, subpart HH; was approved 07/22/99; OMB No. 2060–0417; expires 07/31/2002.

EPA ICR No. 1856.02; National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelters; in 40 CFR part 63, subpart TTT; was approved 07/22/99; OMB No. 2060–0419; expires 07/31/2002.

EPA ICR No. 1888.01; National Roster for Environmental Dispute Resolution

and Consensus-Building Professional; was approved 07/29/99; OMB No. 2010–0030; expires 07/31/2002.

EPA ICR No. 1801.02; National Emission Standards for Hazardous Air Pollutants for Portland Cement Manufacturing; in 40 CFR part 63, subpart LLL; was approved 08/06/99; OMB No. 2060–0416; expires 08/31/2002.

EPA ICR No. 0161.08; Foreign Purchaser Acknowledgment Statement of Unregistered Pesticides; in 40 CFR part 168, subpart D; was approved 08/16/99; OMB No. 2070–0027; expires 08/31/2002.

EPA ICR No. 1081.06; NESHAP for Inorganic Arsenic Emissions from Glass Manufacturing Plants; in 40 CFR part 61, subpart N; was approved 08/16/99; OMB No. 2060–0043; expires 08/31/2002.

EPA ICR No. 1054.07; NSPS for Petroleum Refineries; in 40 CFR part 60, subpart J; was approved 08/17/99; OMB No. 2060–0022; expires 08/31/2002.

EPA ICR No. 0746.04; NSPS for Calciners and Dryers in Mineral Industries; in 40 CFR part 60, subpart UUU; was approved 08/18/99; OMB No. 2060–0251; expires 08/31/2002.

EPA ICR No. 1057.08; NSPS for Sulfuric Acid Plants; in 40 CFR part 60, subpart H, was approved 08/18/99; OMB No. 2060–0041, expires 08/31/2002.

Extensions of Expiration Dates

EPA ICR No. 0095.10; Precertification and Testing Exemption Reporting and Recordkeeping Requirements; in 40 CFR part 85, subparts R and P, part 89, subpart G, and part 90, subpart J; OMB No. 2060–0007; on 07/26/99 OMB extended the expiration date through 01/31/2000.

EPA ICR No. 1619.02; EPA Indoor Environmental Quality Questionnaire; OMB No. 2060–0244; on 07/27/99 OMB extended the expiration date through 11/30/99.

EPA ICR No. 1131.05; NSPS for Glass Manufacturing Plants; in 40 CFR part 60, subpart CC; OMB No. 2060–0054; on 07/30/99 OMB extended the expiration date through 09/30/99.

EPA ICR No. 0983.05; NSPS for Petroleum Refineries; in 40 CFR part 60, subpart GGG; OMB No. 2060–0067; on 08/10/99 OMB extended the expiration date through 11/30/99.

EPA ICR No. 1696.02; Registration of Fuels and Fuel Additives: Health-Effects Research Requirements for Manufacturers; in 40 CFR part 79, subpart F; OMB No. 2060–0297; on 07/29/99 OMB extended the expiration date through 10/31/99.

OMB's Comments Filed

EPA ICR No. 1915.01; Pesticides: Tolerance Processing Fees (Proposed Rule); OMB filed comments 08/16/99.

Actions Withdrawn

EPA ICR No. 1892.01; Children's Total Exposure to Persistent Pesticides and Other Persistent Organic Pollutants; EPA withdrew this collection from OMB on 07/30/99.

EPA ICR No. 1861.01; Collection of Information for Atmospheric Pollution Prevention Division Programs; Request for Generic Clearance; EPA withdrew this collection from OMB on 08/05/99.

Dated: August 23, 1999.

Richard T. Westlund,

Acting Division Director. Regulatory Information Division.

[FR Doc. 99–22323 Filed 8–26–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6429–6]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Industry Detailed Questionnaire: Phase II Cooling Water Intake Structures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Industry Detailed Questionnaire: Phase II Cooling Water Intake Structures, EPA ICR No. 1838.01. The ICR describes the nature of the information collection and its expected burden and cost; and in this case, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 27, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1838.01.

SUPPLEMENTARY INFORMATION:

Title: Industry Detailed Questionnaire: Phase II Cooling Water Intake Structures (EPA ICR No. 1838.01). This is a new collection.

Abstract: In accordance with the Paperwork Reduction Act ("PRA") (44 U.S.C. 3501, *et seq.*), this notice announces the submission of an Information Collection Request (ICR) entitled, "Industry Detailed Questionnaire: Phase II Cooling Water Intake Structures", from the U.S. Environmental Protection Agency (EPA or the "Agency") to the Office of Management and Budget (OMB) for review and approval. EPA requests approval to conduct a survey of facilities potentially subject to section 316(b) of the Clean Water Act (CWA), 33 U.S.C. 1326(b). Section 316(b) provides that any standard established pursuant to sections 301 or 306 of the CWA and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available (BTA) for minimizing adverse environmental impact. Such impacts occur as a result of impingement (where fish and other aquatic life are trapped on technologies at the entrance to cooling water intake structures) and entrainment (where aquatic organisms, eggs, and larvae are taken into the cooling system, passed through the heat exchanger, and then pumped back out with the discharge from the facility). The detailed industry questionnaire is the second step of a two-step regulatory information collection effort. The screener questionnaire represented the first step. On December 24, 1998, OMB approved the Industry Screener Questionnaire: Phase I Cooling Water Intake Structures (OMB number 2040–0203). EPA will use the information collected from the detailed questionnaire to better characterize the design, location, construction, capacity, and operation of cooling water intake structures at facilities throughout the United States and to assess economic impacts from any regulatory effort affecting those facilities. The baseline technical data will help EPA frame regulatory options and define further research needs regarding the relationship of cooling water intake structures, intake technologies, and environmental impacts. The survey will also collect economic data on facility ownership, major activities, markets and finances. The Agency will use this information to assess facility-level and firm-level impacts of complying with the proposed cooling water intake structure regulations. In order to fully evaluate costs associated with a proposed section 316(b) regulation, EPA will consider the costs associated with performing section 316(b) demonstration studies, additions and modifications to cooling water intake structures and equipment, and operating and monitoring costs associated with the regulation. The economic data will also enable EPA to carry out required economic analyses, including a Regulatory Impact Analysis (RIA), cost/benefits analyses, and adverse impact analyses on small business entities. EPA is developing proposed regulations implementing section 316(b) of the Clean Water Act, 33 U.S.C. 1326(b) pursuant to a Consent Decree entered on October 10, 1995. EPA has the authority to collect this information under section 308 of the CWA (33 U.S.C. 1318). Accordingly, responses to the detailed questionnaire are mandatory. In accordance with 40 CFR part 2, subpart B, section 2.203, the survey will inform respondents of their right to claim information as confidential. The survey provides instructions on the procedures for making Confidential Business Information (CBI) claims, and the respondents will also be informed of the terms and rules governing protection of CBI obtained under the CWA. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 1/26/98 (63 FR 3738); 363 comments were received. Based on these comments and the pretest results, EPA significantly modified the questionnaire.

Burden Statement: The annual public reporting and recordkeeping burden for the detailed questionnaire is estimated to average 156 hours per response. The public reporting and recordkeeping burden for the Short Technical Industry Questionnaire, the Watershed Case Study Short Questionnaire, and the Voluntary and Supplemental Information Questionnaire is estimated to average 10 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Traditional Steam Electric Utilities, Nonutility Power Producers, and Manufacturing Facilities.

Estimated Number of Respondents: 1,836.

Frequency of Response: One-time submission.

Estimated Total Annual Hour Burden: 128,736 hours.

Estimated Total Annualized Cost Burden (non-labor costs): $13,635.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1838.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: August 23, 1999.

Richard T. Westlund.

Acting Director, Regulatory Information Division.

[FR Doc. 99–22320 Filed 8–26–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6429–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Notification of Regulated Waste Activity and RCRA Hazardous Waste Permit Application and Modification, Part A

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Requests (ICRs) have been forwarded to the Office of Management and Budget (OMB) for review and approval: Notification of Regulated Waste Activity, OMB Control Number 2050–0028, expiring on October 31, 1999; and RCRA Hazardous Waste Permit Application and Modification, Part A, OMB Control Number 2050–0034, expiring on October 31, 1999. These ICRs describe the nature of the information collection and their expected burden and cost; where appropriate, they include the actual data collection instrument.

DATES: Comments must be submitted on or before September 27, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download a copy of the ICRs off the Internet at http://www.epa.gov/icr and refer to EPA ICR Nos. 261.13 and 262.09.

SUPPLEMENTARY INFORMATION:

Title: Notification of Regulated Waste Activity, EPA ICR #261.13, OMB Control Number 2050–0028, expiring on October 31, 1999; and RCRA Hazardous Waste Permit Application and Modification, Part A, EPA ICR #262.09, OMB Control Number 2050–0034, expiring on October 31, 1999. This is a request for extension of currently approved collections.

Abstract: Section 3010 of subtitle C of RCRA, as amended, requires any person who generates or transports regulated waste or who owns or operates a facility for the treatment, storage, or disposal (TSD) of regulated waste to notify EPA of their activities, including the location and general description of activities and the regulated wastes handled. Section 3005 of subtitle C of RCRA requires TSDs to obtain a permit. To obtain the permit, the TSD must submit an application describing the facility's operation. There are two parts to the RCRA permit application—part A and part B. Part A defines the processes to be used for treatment, storage, and disposal of hazardous wastes; the design capacity of such processes; and the specific hazardous wastes to be handled at the facility. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on these collections of information was published on May 14, 1999 (64 FR 26407); one comment was received.

Burden Statement: The estimated average burden for renewing the existing notification ICR is 4.25 hours per respondent for initial notifications and 2.10 hours per respondent for subsequent notifications. These estimates for the notification ICR include all aspects of the information collection including time for reviewing instructions, searching existing data sources, gathering data, and completing and reviewing the form.

The estimated average burden for renewing the existing part A ICR is approximately 27 hours per respondent for submitting a new part A permit application and approximately14 hours for submitting a revised part A permit application. The burden estimates for the part A ICR includes time for reading the regulations, preparing and submitting initial and revised part A permit applications, preparing and submitting justifications for changes and preparing and submitting subpart H compliance demonstrations.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of hazardous waste facilities.

Estimated Number of Respondents: For notifications, 31,125; for part A applications, 59.

Frequency of Response: Occasional.

Estimated Total Annual Hour Burden: 100,137 hours for notifications; 945 hours for part A applications.

Estimated Total Annualized Cost: $130,725 for notifications; $424 for part A applications.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR Nos. 261.13 (notifications) and 262.09 (part A) and OMB Control Nos. 2050–0028 and 2050–0034, respectively, in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: August 23, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–22321 Filed 8–26–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6429–4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, NSPS Equipment Leaks of VOC in Petroleum Refineries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS subpart GGG Equipment Leaks of VOC in Petroleum Refineries; OMB Control Number 2060–0067; expires November 30, 1999. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 27, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 0983.06.

SUPPLEMENTARY INFORMATION:

Title: NSPS subpart GGG Equipment Leaks of VOC in Petroleum Refineries (OMB Control No. 2060–0067; EPA ICR No. 0983.06) expiring November 30, 1999. This is a request for extension of a currently approved collection.

Abstract: The New Source Performance Standards (NSPS) for Equipment Leaks of VOC (Volatile Organic Compound) in Petroleum Refineries were proposed on January 4, 1983 and promulgated on May 30, 1984. These standards apply to the following facilities in petroleum refineries: compressors and the group of all equipment (e.g., valves pumps, flanges, etc.) within a process unit in VOC service, commencing construction, modification or reconstruction after the date of proposal. This information is being collected to assure compliance with 40 CFR part 60, subpart GGG.

Owners or operators of the affected facilities described must make one-time-only notifications. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Monitoring requirements specific to Equipment Leaks of VOC in Petroleum Refineries provide information on which components are leaking VOCs. NSPS GGG references the compliance requirements of NSPS VV. Owners or operators are required to periodically (time period varies depending on equipment type and leak history) record information identifying leaking equipment, repair methods used to stop the leaks and dates of repair. Semiannual reports are required to measure compliance with the standards of NSPS subpart VV as referenced by NSPS subpart GGG . These notifications, reports, and records are essential in determining compliance; and are required, in general, of all sources subject to NSPS. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements, maintenance reports, and records.

All reports are sent to the delegated State or Local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. Responses to this information collection are mandatory. Section 111 of the Clean Air Act as Amended provide EPA with the authority for NSPS standards; 40 CFR part 60, NSPS subpart GGG, requires the collection of the emissions data. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 6/4/99 (64 FR 30020); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 57 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners and operators of Petroleum Refineries.

Estimated Number of Respondents: 48.

Frequency of Response: Initial, weekly, monthly, quarterly, semiannual.

Estimated Total Annual Hour Burden: 6,137 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0983.06 and OMB Control No. 2060–0067 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: August 23, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–22322 Filed 8–26–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6245–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or (202) 564–7153.

Weekly receipt of Environmental Impact Statements

filed August 16, 1999 through August 20, 1999

pursuant to 40 CFR 1506.9.

EIS No. 990294, Draft EIS, FHW, AK, C Street Project, Improvements between O'Malley Road to International Airport Road, Funding, NPDES Permit and COE Section 404 Permit, Municipality of Anchorage, AK, Due: October 12, 1999, Contact: Jim Bryson (907) 586–7428.

EIS No. 990295, Final EIS, FHW, GA, Harry S. Truman Parkway, Construction from the Abercorn Street Extension (GA–204) to Derenne Avenue, COE Section 404 Permit and U.S. Coast Guard Permit, Chatham County, GA, Due: September 27, 1999, Contact: Jennifer Kittle (404) 562–3633.

EIS No. 990296, Final EIS, NPS, OR, MO, IL, NB, WY, CA, IA, KS, CO, ID, WA, NV, UT, Oregon, California, Mormon Pioneer and Pony Express National Historic Trails, Implementation, Comprehensive Management and Use Plan, OR, CA, MO, IA, IL, KS, NB, CO, WY, ID, WA, UT and NV, Due: September 27, 1999, Contact: Jere L. Krakow (801) 539–4095.

EIS No. 990297, Second Final Supplement, AFS, ID, Payette National Forest, Land and Resource Management Plan, Implementation, Adams, Idaho, Valley and Washington Counties, ID, Due: September 27, 1999, Contact: Dautis Pearson (208) 253–0134.

EIS No. 990299, Draft EIS, BIA, WA, White River Amphitheatre Project, Construction and Operation an 20,000 Seat Open-Air Amphitheatre on the Muckleshoot Indian Reservation, COE Section 404 Permit and NPDES Permit, Seattle-Tacoma, WA, Due: October 12, 1999, Contact: June Boynton (503) 231–6749.

EIS No. 990300, Draft EIS, DOE, FL, JEA Circulating Fluidized Bed (CFB) Combustor Project, 300 Megawatt-Electric, Coal and Petroleum Coke-Fired, CFB Combustor and Boiler to Repower an existing Steam Turbine at JEA's North-side Generating Station Construction and Operation, Funding, Jacksonvile, Duval County, FL, Due: October 15, 1999, Contact: Lisa K. Hollingsworth (304) 285–4992.

EIS No. 990301, Draft EIS, MMS, FL, MI, AL, LA, Destin Dome 56 Unit Development and Production Plan, Right-of-Way Pipeline Application, NPDES Permit and COE Permit, Gulf of Mexico Outer Continental Shelf, FL, AL, MI and LA, Due: October 19, 1999, Contact: Maureen Bornholdt (703) 787–1739.

Amended Notices

EIS No. 990229, Draft EIS, AFS, MT, NB, WY, ND, SD, Dakota Prairie Grasslands, Nebraska National Forest Units and Thunder Basin National Grassland, Land and Resource Management Plans 1999 Revisions, Implementation, MT, NB, WY, ND and SD, Due: November 29, 1999, Contact: Pam Gardner (308) 432–0300. Published FR 07–16–99—Review Period extended from 10–13–99 to 11–29–99.

EIS No. 990254, Final EIS, FHW, VA, ADOPTION—Grundy Flood Damage Reduction/Highway Upgrade Project, Implementation, Town of Grundy, Buchanan County, VA, Due: August 30, 1999, Contact: Edward S. Sundra (804) 775–3338. Published FR–07–30–99—Correction to Title, Contact Person Name and Telephone.

Dated: August 24, 1999.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–22366 Filed 8–26–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6430–1]

Final NPDES Permit for Aquaculture Facilities and Associated, On-Site Fish Processing Facilities Operating in Idaho (ID–G13–0000)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final NPDES general permit.

SUMMARY: The Director, Office of Water, EPA Region 10, is publishing notice of the availability of the National Pollutant Discharge Elimination System (NPDES) general permit (number ID–G13–0000) for coverage of aquaculture facilities and associated, on-site fish processing facilities operating in Idaho, pursuant to the provisions of the Clean Water Act, 33 U.S.C. 1251 *et seq.* The general NPDES permit authorizes wastewater

discharges from these facilities to surface waters of the United States throughout Idaho, once a notification of coverage by the permit is received by the facilities from the Agency. The aquaculture facilities authorized to discharge under this general permit raise fish (rainbow trout, steelhead trout, chinook salmon, catfish, tilapia and other fish) for market as food products or for the enhancement of salmonid populations, and they discharge rearing wastewater containing fish excreta, excess fish feed, dissolved and suspended solid biological pollutants, nutrients, and residual disease control chemicals. The fish processing facilities authorized to discharge under this general permit butcher fish (rainbow trout, steelhead trout, chinook salmon, catfish, tilapia and other fish) for market as food products, and they discharge processing wastewater containing dissolved and suspended solid biological pollutants, oxygen demanding materials, nutrients, and residual disinfectants.

The aquaculture facilities authorized by the general NPDES permit are required to develop best management practices plans, supported by mass balance assessments of their operations, and to restrict their discharges below specific technology-based limitations for total suspended solids (TSS) and settleable solids (SS) and total phosphorus. The TSS and SS limits are based on the same effluent guidelines as previous aquaculture NPDES permits with an exception for the monitoring frequency. In addition, specific water quality-based limitations from the State's total maximum daily load (TMDL) for total phosphorus apply to dischargers to the Middle Snake River and its tributaries. These TMDL total phosphorus limits must be met by the fifth year of the permit.

The fish processing facilities authorized by the general NPDES permit are also required to develop best management practices plans, supported by mass balance assessments of their operations, and to restrict their discharges below specific technology-based limitations. Technology-based effluent limitations are required for TSS, five-day biochemical oxygen demand (BOD_5), oil and grease, and pH. Specific water quality-based limitations are also required for total residual chlorine and pH. Discharges of hazardous materials, sludge, grit and accumulated solid residues, and untreated cleaning wastewaters are prohibited under this permit.

The general NPDES permit contains effluent monitoring requirements which (1) support the detailed characterization of pollutants discharged during the first year of the permit term and (2) evaluate compliance with permit limitations throughout the five-year term of the permit. In addition to the limited pollutants, effluent monitoring is also required for nitrate-nitrite, total ammonia, total Kjeldahl nitrogen, dissolved oxygen, temperature, and total residual chlorine. The largest facilities (producing more than one million pounds of fish per year and, collectively, discharging more than one half of the pollution produced by this industry) are required to monitor the efficiency of their best management practices and waste treatment, and conduct whole effluent toxicity. The whole effluent toxicity data will be used to assess the environmental impacts of aquaculture discharges and ensure the protection of Idaho Water Quality Standards.

SUPPLEMENTARY INFORMATION: The EPA is publishing the general NPDES permit pursuant to its authority under sections 301(b), 304, 306, 307, 308, 401, 403 and 501 of the Clean Water Act. The fact sheet for the draft permit, the response to comments document, the biological assessment, and the 401 certification issued by the State of Idaho set forth the principal facts and the significant factual, legal and policy questions considered in the development of the terms and conditions of the final permit.

The permit was prepared with considerable consultation with the Idaho Division of Environmental Quality, Twin Falls Regional Office. The majority of aquaculture facilities are located in the Twin Falls Regional Office proper and are point sources identified in The Middle Snake Watershed Management Plan, Phase 1 TMDL.

Public Comment

Pursuant to section 402 of the Clean Water Act, 33 U.S.C. 1342, EPA proposed and solicited comment on the draft general permit in the **Federal Register** (59 FR 38473, April 10, 1998), the Times-News (Twin Falls), and the Idaho Statesman. A public meeting and hearing was held by EPA on May 12, 1998.

Changes have been made to the final permit in response to comments received from facility representatives, concerned citizens, environmental groups, the U.S. Fish and Wildlife Service, and the State of Idaho. The changes address grammatical/structural clarification, monitoring frequency, and limitations supported by industry data. Changes made to the general permit in response to public comments are addressed in a document entitled "Response to Public Comments on the Proposed Issuance of the general National Pollutant Discharge Elimination System (NPDES) permit for Aquaculture Facilities in Idaho and Associated, On-site Fish Processors." This document was provided to all commenters, current permittees and applicants and is available at the address below or from the EPA Region 10 website.

FOR FURTHER INFORMATION: Copies of the general NPDES permit, supporting fact sheet for the draft general NPDES permit, response to public comments, and today's publication are available from the EPA Region 10 Public Environmental Resource Center at 1–800–424–4EPA (4372). All documents can also be downloaded from EPA Region 10's Office of Water website under "Public Notices" at www.epa.gov/r10earth/offices/water/ow.htm. Copies are also available from the EPA Idaho Operations Office at 1435 N Orchard, Boise, Idaho 83706; Idaho Division of Environmental Quality (IDEQ)-Twin Falls Regional Office at 601 Pole Line Road, Suite 2, Twin Falls, Idaho 83301; IDEQ-Boise Regional Office at 1445 N. Orchard, Boise, Idaho 83706–2239; IDEQ-Pocatello Regional Office at 224 S. Arthur, Pocatello, Idaho 83204; IDEQ-Lewiston Regional Office at 1118 F St., Lewiston, Idaho 83501; IDEQ-Coeur d'Alene Regional Office at 2110 Ironwood Pkwy, Coeur d'Alene, Idaho 83814; and IDEQ-Idaho Falls Regional Office at 900 N. Skyline, Idaho Falls, Idaho 83402.

ADMINISTRATIVE RECORD OR FURTHER INFORMATION: The complete administrative record for the general NPDES permit is available for public review by contacting Carla Fromm. Unless otherwise noted in the permit, all other correspondence or questions regarding this permit should be sent to Carla Fromm, EPA Region 10, Idaho Office, 1435 North Orchard Street, Boise, Idaho 83706; (208) 378–5755; fromm.carla@epa.gov. For those with impaired hearing or speech, please contact EPA's telecommunication device for the deaf (TDD) at (206) 553–1698.

Legal Requirements

Endangered Species Act

Consultation under the Endangered Species Act was conducted with the U.S. Fish and Wildlife Service. The U.S. Fish and Wildlife Service has issued a Biological Opinion on the effects of the general permit as well as eight other individual NPDES permits that authorize discharge into the Middle Snake River. The Opinion concludes that the action is not likely to jeopardize the continued existence of listed snail species in the action area. The opinion also includes an "Incidental Take Statement." Under the terms of section 7(b)(4) and section 7(o)(2) of the Endangered Species Act, take of species that is incidental to an agency's action is not prohibited provided that such taking is in compliance with the terms and conditions of the Incidental Take Statement. The Service identified eight "reasonable and prudent measures" that have been addressed by EPA in order to minimize incidental take. Two revisions to the NPDES permit were necessary to address the conditions of the Biological Opinion. One of the measures requires the permittee to orally report conditions that endanger listed snail species to both EPA and the U.S. Fish and Wildlife Service within 24 hours from the time a permittee becomes aware of the circumstances. The other measure requires that written reports on noncompliance occurrences that endanger listed Snake River snails be sent to the Service.

State Water Quality Standards and State Certification

The State of Idaho, Division of Environmental Quality, has certified under section 401 of the Clean Water Act, that the subject discharges comply with the Idaho State Water Quality Standards and sections 208(e), 301, 302, 303, 306 and 307 of the Clean Water Act.

Executive Order 12866

EPA has determined that this general permit is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

Paperwork Reduction Act

The information collection requirements of this permit were previously approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that EPA prepare a regulatory flexibility analysis for rules subject to the requirements of 5 U.S.C. 553(b) that have a significant impact on a substantial number of small entities. The permit issued today, however, is not a "rule" subject to the requirements of 5 U.S.C. 553(b) and is therefore not subject to the Regulatory Flexibility Act.

Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their "regulatory actions" (defined to be the same as "rules" subject to the RFA) on tribal, state, and local governments and the private sector. The permit issued today, however, is not a "rule" subject to the RFA and is therefore not subject to the requirements of UMRA.

Appeal of Permit

Within 120 days following the date of permit issuance of EPA's final permit decision under 40 CFR 124.15, any interested person may appeal the general permit in the Federal Court of Appeal in accordance with section 509(b)(1) of the Clean Water Act. The date of permit effectiveness is defined at 40 CFR 23.2 to be at 1:00 pm eastern time, two weeks after the date of publication in the **Federal Register**. Persons affected by a general NPDES permit may not challenge the conditions of the permit as a right of further EPA proceedings. Instead, they may either challenge the permit in court or apply for an individual NPDES permit and then request a formal hearing on the issuance or denial of an individual NPDES permit.

Effective Date

The general NPDES permit shall become effective on September 13, 1999. The general permit and the authorization to discharge shall expire at midnight on September 13, 2004.

Dated: August 19, 1999.

Randall F. Smith,

Director, Office of Water, Region 10.

[FR Doc. 99–22324 Filed 8–26–99; 8:45 am]

BILLING CODE 0560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–1558]

ELIMINATION OF EXISTING SERVICE REQUIREMENT

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the elimination of the requirement that carriers making accounting rate filings serve every carrier that provides service on the international route. The Commission found that the International Bureau's new electronic filing system is an adequate substitute for this requirement. With this action, carriers will no longer have to serve other carriers with a copy of their filing with the Commission.

FOR FURTHER INFORMATION CONTACT: Lisa Choi or Jackie Ruff, Attorney-Advisors, Telecommunications Division, International Bureau, (202) 418–1470.

SUPPLEMENTARY INFORMATION:

The International Bureau announces on August 6, 1999 its implementation of the Commission's decision to eliminate the requirement that carriers making accounting rate filings with the Commission serve every carrier that provides service on the international route with a copy of the filing. We strongly encourage carriers in lieu of this requirement to file a copy of their accounting rate filing electronically over the International Bureau Electronic Filing System (IBFS) in order to assist with the Commission's processing of these filings. Interested parties and carriers making filings may access copies of accounting rate filings from the IBFS which can be found on the internet.

The Commission eliminated the requirement in § 64.1001(k) that carriers serve a copy of accounting rate filings to every carrier serving the international route in question in the *1998 Biennial Regulatory Review: Reform of the International Settlements Policy*, IB Docket No. 98–148, CC Docket 90–337 (Phase II), IB Docket 95–22, Report and Order and Order on Reconsideration, FCC 99–73 (rel. May 6, 1999), 64 FR 34734 (June 29, 1999). In that order, the Commission found that the International Bureau's new electronic filing system would be an adequate substitute for the existing service requirement and directed the International Bureau to implement the Commission's elimination of the requirement within three months of the release of the order.

On February 10, 1999, the International Bureau unveiled the IBFS to the public. The IBFS is an internet-based system that allows its users to electronically file 15 different types of applications and run a host of reports and customized queries. Among the many filing options users have is an electronic form for filing accounting rate change requests. We strongly encourage parties to file accounting rate change requests using IBFS, but we note such electronic filing is not mandatory at this time. Entities interested in filing electronically should contact the IBFS Information Line at (202) 418–2222 or visit the IBFS Homepage at *http://ibfsweb.fcc.gov/webreports*.

To facilitate the electronic submission of such accounting rate filings and

retrieval of information, the International Bureau will hold IBFS training courses for interested parties and carriers making accounting rate change requests. Course dates and times will be announced in a later notice.

For additional information about this implementation, please contact Lisa Choi or Jackie Ruff, Telecommunications Division, International Bureau, (202) 418–1460. For additional information about the IBFS, please contact Jacqueline Ponti, International Bureau, (202) 418–1460.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–22305 Filed 8–26–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, August 31, 1999, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Final amendment to Part 348—Management Official Interlocks.

Memorandum and resolution re: Proposed amendment to the Corporation's Rules and Regulations concerning restrictions on the purchase of assets from the Federal Deposit Insurance Corporation.

Discussion Agenda:

Memorandum and resolution re: Proposed amendment to Part 360—Resolution and Receivership Rules and withdrawal of related proposed statement of policy.

Memorandum and resolution re: Proposed amendments to Part 327—Assessments.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: August 24, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–22398 Filed 8–25–99; 10:09 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY:

Background. Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Chief, Financial Reports Section--Mary M. West--Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829); OMB Desk Officer--Alexander T. Hunt--Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7860).

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Report

1. Report title: Report of Condition for Foreign Subsidiaries of U.S. Banking Organizations and Financial Information for Foreign Subsidiaries of U.S. Banking Organizations.

Agency form number: FR 2314 a, b, and c.

OMB control number: 7100-0073.

Frequency: Quarterly and annually.

Reporters: Foreign subsidiaries of U.S. banks, bank holding companies, and Edge and agreement corporations.

Annual reporting hours: 6,825 burden hours.

Estimated average hours per response: 1.5 to 10.5 hours.

Number of respondents: 1,362.

Small businesses are not affected.

General description of report: This information collection is mandatory (12 U.S.C. 324, 602, 625, and 1844(c)) data are exempt from disclosure pursuant to Sections (b)(4) and (b)(8) of the Freedom of Information Act (5 U.S.C. 552(b)(4) and (8)).

Abstract: The FR 2314 is the only source of comprehensive and systematic data on the assets, liabilities, and earnings of the foreign bank and nonbank subsidiaries of U.S. banking organizations and is used to monitor the growth, profitability, and activities of these foreign companies. The FR 2314a collects information on assets and liabilities and includes several memoranda items on contingent liabilities and twelve supporting schedules. The supporting schedules provide detail on cash and balances due from depository institutions, securities, loans and lease financing receivables, other assets, claims on related organizations, deposits, other liabilities, liabilities to related organizations, changes in capital and reserve accounts, income and expenses, assets held in trading accounts, and past due and nonaccrual loans and leases. The FR 2314b collects somewhat less information on assets and liabilities, off-balance-sheet items, income and expenses, and securities. The FR 2314c is a brief one-page report that collects information on total assets, equity capital, net income, and off-balance-sheet items.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revisions, of the Following Reports

1. Report title: Domestic Finance Company Report of Assets and Liabilities.

Agency form number: FR 2248.

OMB control number: 7100-0005.

Frequency: Monthly.

Reporters: Domestic finance companies.

Annual reporting hours: 800 burden hours.

Estimated average hours per response: 40 minutes.

Number of respondents: 100

Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. 225(a)). Individual respondents data are confidential under section (b)(4) of the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Abstract: The FR 2248 collects balance sheet data on major categories of consumer and business credit receivables and on major short-term liabilities. For quarter-end months (March, June, September, and December), the report collects information on other assets and liabilities outstanding as well as information on capital accounts in order to provide a full balance sheet. The Federal Reserve reduced the authorized size of the FR 2248 reporting panel from 120 finance companies to 100 finance companies.

2. Report title: Financial Statements for a Bank Holding Company Subsidiary Engaged in Bank-Ineligible Securities Underwriting and Dealing.

Agency form number: FR Y-20.

OMB control number: 7100-0248.

Effective date: September 30, 1999.

Frequency: Quarterly.

Reporters: Bank holding companies.

Annual reporting hours: 2,568 burden hours.

Estimated average hours per response: 12.35 hours.

Number of respondents: 52.

Small businesses are not affected.

General description of report: This information collection is mandatory (12 U.S.C. 1844(b) and (c)). Individual respondents data are confidential under section (b)(4) of the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Abstract: The FR Y-20 report is filed by bank holding companies that have received the Board's approval by Order to engage in limited underwriting and dealing in securities, including all types of debt and equity securities that a bank may not underwrite or deal in directly. The FR Y-20 report contains a balance sheet (Schedule SUD), a supporting schedule of securities owned, including money market obligations (Schedule SUD-A), a statement of income (Schedule SUD-I), and a statement of changes in stockholders' equity (Schedule SUD-SE). Several of these schedules also include various memoranda items, such as intercompany liabilities, off-balance sheet items, and year-to-date income and expenses.

Current Actions: The Federal Reserve is making several limited changes to the FR Y-20. The first is amending the cover page of the report to include a structure indicator box to denote if the report is prepared on a consolidated or unconsolidated basis of accounting. The Federal Reserve is also making the following changes to the report's balance sheet: (1) the inclusion of a line item for Loans and leases held for trading (line item 11), and (2) the inclusion of a contra-asset line item, Allowance for losses from loans and leases held for trading (line item 11.a). In addition, the Federal Reserve is changing the statement of income by: (1) adding a structure indicator box on the first page to denote whether a consolidated, unconsolidated or parent-only statement of income is being submitted and (2) amending expense line item 16 to include exchange fees. The FR Y-20 instructional changes include providing organizational reporting structure guidance and revising the instructions due to changes in Board Orders and Board Legal Division opinions, changes in accounting standards, and guidance promulgated by the Financial Accounting Standards Board and the American Institute of Certified Public Accounts. The instructions also include other clarifications and minor editorial changes.

Discontinuance of the Following Report Under OMB Delegated Authority

1. Report title: Report of Broker Carrying Margin Accounts.

Agency form number: FR 2240.

OMB control number: 7100-0001.

Effective Date: Wednesday, June 30, 1999.

Frequency: Annual.

Reporters: Member firms of the New York or American Stock Exchange that carry customer margin accounts as of the end of June.

Annual reporting hours: 246 burden hours.

Estimated average hours per response: 2.7 hours.

Number of respondents: 91.

Small businesses are affected.

General description of report: The Board's Legal Division previously has determined that this report is authorized by law (15 U.S.C. 78q(g)). Individual respondent data are regarded as confidential under the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Abstract: The FR 2240 collects certain balance sheet information from securities brokers and dealers carrying margin accounts in order to regulate margin credit.

Current Actions: The Division of Research and Statistics is discontinuing the FR 2240. The report has become unnecessary because the vast majority of reporters already submits margin credit data to the New York Stock Exchange, which makes the data available on an aggregate basis to the Board of Governors and the general public.

Board of Governors of the Federal Reserve System, August 23, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–22262 Filed 8–26–99; 8:45am]

Billing Code 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 20, 1999.

A. Federal Reserve Bank of Atlanta (Cynthia Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Community Bancshares of Mississippi, Inc., Brandon, Mississippi; to acquire 100 percent of the voting shares of Community Bank, Meridian, Mississippi (in organization).

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice

President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. UMB Financial Corporation, Kansas City, Missouri, and First Sooner Bancshares, Inc, Oklahoma City, Oklahoma; to acquire 100 percent of the voting shares of Charter Bancshares, Inc., Oklahoma City, Oklahoma, and thereby indirectly acquire Charter National Bank, Oklahoma City, Oklahoma.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Doss, Ltd., Weatherford, Texas (in formation); to become a bank holding company by acquiring 49.15 percent of the voting shares of M & F Bancshares, Inc., Weatherford, Texas, and thereby indirectly acquire M & F Financial Corp., Wilmington, Delaware; Texas Bank, Weatherford, Texas; and Texas Bank, Brownwook, Texas.

Board of Governors of the Federal Reserve System, August 23, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–22281 Filed 8–26–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 10, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. J.P. Morgan & Co. Incorporated, New York, New York; to acquire up to approximately 25 percent of the voting shares of TP Group Limited, Grand Cayman, Cayman Islands, and thereby indirectly acquire additional voting shares in its subsidiary, Tradepoint Financial Networks plc, London, United Kingdom, and thereby engage in securities brokerage services and other agency transactional services for customer investments, pursuant to § 225.28(b)(7) of Regulation Y.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. GreatBanc Inc., Aurora, Illinois; to acquire ANB Financial Services, Inc., Aurora, Illinois, and thereby engage in making, acquiring, brokering and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, August 23, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–22282 Filed 8–26–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, September 1, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: August 25, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–22399 Filed 8–25–99; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: State Plan for Foster Care and Adoption Assistance—Title IV–E

OMB No.: 0980–0141

Description: A State plan for foster care and adoption assistance is required by section 471 of the Social Security Act from any State wishing to claim federal financial participation for foster care and adoption assistance. States may use a preprinted format or may develop their own format which meets the requirements of the law. The Plan is submitted only once and amended as necessary. Our experience is that a State will amend a Plan once every 4 years; approximately 12 per year.

Respondents: State, Local or Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Plan for Foster Care and Adoption Assistance Title IV–E.	12	1	15	180

Estimated Total Annual Burden Hours. 180

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: ACF Desk Officer.

Dated: August 23, 1999.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 99–22303 Filed 8–26–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–2100]

Agency Information Collection Activities; Announcement of OMB Approval; Survey of Manufacturers of Computer-Controlled, Potentially High-Risk Medical Devices Regarding Year 2000 Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Study of Manufacturers of Computer-Controlled, Potentially High-Risk Medical Devices Regarding Year 2000 Status" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Stewart Crumpler, Center for Devices and Radiological Health (HFZ–340), 2094 Gaither Rd., Rockville, MD 20850, 301–594–4659, ext. 119.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 2, 1999 (64 FR 36019), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0411. The approval expires on January 31, 2000. A copy of the supporting statement for this information collection is available on the Internet at "http://www.fda.gov/ohrms/dockets".

Dated: August 19, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–22315 Filed 8–26–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2635]

Draft Guidance for Industry on ANDA's: Blend Uniformity Analysis; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "ANDA's: Blend Uniformity Analysis." This draft guidance is intended to provide recommendations to holders of abbreviated new drug applications (ANDA's) on establishing in-process acceptance criteria related to blend uniformity analysis (BUA) for the manufacture of some drug products.

DATES: Written comments may be submitted on the draft guidance by October 26, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance are available on the Internet at "http://www.fda.gov/cder/guidance/index.htm". Written requests for single copies of the draft guidance for industry should be submitted to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist the office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 20, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–22317 Filed 8–26–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2777]

Guidance for Industry on Possible Dioxin/PCB Contamination in Drugs and Biological Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Possible Dioxin/PCB

Contamination in Drugs and Biological Products." During January through June 1999, some poultry, swine, and ruminants in several European Union (EU) countries were fed with animal feed of Belgian origin contaminated with dioxins and polychlorinated biphenyls (PCB's). Manufacturers who are using materials derived from such animal sources in the manufacture of their products should verify that the materials they are using are not derived from animals affected during the contamination incident, or conduct suitable testing of the materials.

DATES: Written comments on this guidance may be submitted at any time. General comments on agency guidances are welcome at any time.

ADDRESSES: Submit written comments to:
1. Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Submit written requests for copies of this guidance to:
2. Office of Training and Communications, Division of Communications Management, Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, http://www.fda.gov/cder/guidance/index.htm; or
3. Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448; http://www.fda.gov/cber/guidelines.htm; FAX: 1–888–CBERFAX or 301–827–3844, or call the Voice Information System at 800–835–4709 or 301–827–1800; or
4. Communications Staff (HFV–12), Center for Veterinary Medicine (CVM), 7500 Standish Pl., Rockville, MD 20855; 301–594–1755, http://www.fda.gov/cvm.

FOR FURTHER INFORMATION CONTACT:
Eric P. Duffy, Center for Drug Evaluation and Research (HFD–325), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–0098;
Christopher C. Joneckis, Center for Biologics Evaluation and Research (HFM–20), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–5318; or
John C. Matheson, Center for Veterinary Medicine (HFV–200), Food and Drug Administration, Center for Veterinary Medicine, 7500 Standish Pl., Rockville, MD 20855, 301–827–6649.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a guidance for industry entitled "Possible Dioxin/PCB Contamination in Drugs and Biological Products." During January through June 1999, some poultry, swine, and ruminants in several EU countries were fed with animal feed of Belgian origin contaminated with dioxins and PCB's. As a result, animals that received the contaminated feed have become contaminated with dioxins and PCB's. Manufacturers who are using materials derived from these animal sources in the manufacture of animal or human drug products or biological products should verify that the materials they are using are not derived from animals affected during the contamination incident, or conduct suitable testing of the materials.

This guidance document is being issued as a Level 1 guidance consistent with FDA's good guidance practices (62 FR 8961), February 27, 1997). It is being implemented immediately without prior public comment because of the potential hazard to the public health.

This guidance document may contain collections of information that require OMB clearance under the Paperwork Reduction Act of 1995. FDA will seek such approval and provide an opportunity for comment, as appropriate.

The guidance represents the agency's current thinking on the implications of dioxin/PCB contamination in animal and human drug products and biological products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may submit written comments on the draft guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 19, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–22316 Filed 8–26–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0495]

Prescription Drug User Fee Act (PDUFA) II Five-Year Plan Revision; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of an internal planning document entitled "PDUFA II Five–Year Plan: FY 1999 Revision." This revised plan updates FDA's anticipated prescription drug user fee revenues and planned expenditures of the fee revenues over the 5-year period from 1998 to 2002. The revised plan to achieve the new goals for the drug review process under the Prescription Drug User Fee Act of 1992 (PDUFA), which was amended and extended through the year 2002 by the Food and Drug Administration Modernization Act of 1997, takes into account changes in revenue projections and work load based on actual revenue and application receipts in fiscal year (FY) 1998. The amended and extended PDUFA is referred to as PDUFA II.

DATES: Written comments on the revised plan may be submitted at any time and will be considered as the agency makes annual adjustments to the revised plan in the second quarter of each FY.

ADDRESSES: Copies of this revised plan are available on the Internet at "www.fda.gov/oc/pdufa2/5yrplan.html". For those without Internet access, single copies of this revised plan may be obtained from the Office of Management and Systems (HFA–20), Attention: Frank P. Claunts, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Please send a self-addressed adhesive label to assist that office in processing your request. Submit written comments on the revised plan to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Frank P. Claunts, Office of Management Systems (HFA–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4427.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of an internal planning document entitled "PDUFA II Five–Year Plan: FY 1999 Revision." PDUFA was amended and extended through the year 2002 by the Food and Drug Administration Modernization Act of 1997. The amended and extended PDUFA is referred to as PDUFA II. PDUFA II authorizes appropriations and fees that will provide FDA with resources to sustain the drug review staff developed through FY 1997 and to achieve the even more stringent new goals.

The revised plan begins with a statement of purpose, provides background information on PDUFA and a summary of the new goals, and discusses the 10 major assumptions on which the revised plan is based and how those assumptions have changed since the original plan was issued last year. Included is the assumption that this revised plan is dynamic, and it will be reassessed each FY through 2002. This is the first revision of the plan since it was initially published last year. The individual plans of agency components with major PDUFA responsibilities are summarized, followed by a summary of associated expenditures and an agency summary. Attachments include: Estimates of PDUFA fees and revenues, the **Federal Register** notice of December 22, 1998, establishing prescription drug user fee rates for FY 1999, and the revised "PDUFA II Information Management Five–Year Plan."

In FDA's continuing efforts to maximize the availability and clarity of information about the agency's review processes and plans, FDA is sharing this revised plan with all who have an interest, and the agency is making it available on the Internet. The agency welcomes comments, and it will consider them in the future as annual adjustments are made to the plan.

Interested persons may submit written comments on the revised plan to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The revised plan and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 20, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–22311 Filed 8–26–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–295]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the Information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 CFR, Part 1320. The Agency cannot reasonably comply with the normal clearance procedures because public harm is likely to result due to the possibility of Medicare beneficiaries receiving incomplete information. This information is needed to help beneficiaries have and make informed choices about health plans. Research conducted with Medicare beneficiaries in the course of this disenrollment survey development, confirms that beneficiaries want to know the reasons behind the disenrollment rates when selecting a plan and could not make much sense of the rates alone. The reasons for the disenrollments can only be supplied by this survey. In addition, the Balanced Budget Act (BBA) of 1997, requires the calculation and presentation of "(I) disenrollment rates for Medicare enrollees electing to receive benefits through the plan for the previous 2 years (excluding disenrollment due to death or moving outside the plan's service area)"; and "(ii) information on Medicare enrollee satisfaction." Under the BBA, HCFA is required to provide a wealth of general and plan comparative information to beneficiaries that will help them make more informed health plan choices. This survey will do that.

HCFA is requesting OMB review and approval of this collection by September 27, 1999, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by September 23, 1999. During this 180-day period, we will publish a separate Federal Register notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Collection Request: New Collection;
Title of Information Collection: Medicare CAHPS Disenrollment Survey;
Form No.: HCFA–R–295 (OMB# 0938–NEW);
Use: This survey will be used to collect information from Medicare beneficiaries who have disenrolled from their health plans during the past year. The purpose of this information is to obtain their ratings of their former plans and the reasons why they left. The survey results will be reported to all beneficiaries in print and on the Internet for the purpose of informed choices.;
Frequency: Annually;
Affected Public: Individuals or Households;
Number of Respondents: 90,000;
Total Annual Responses: 72,000;
Total Annual Hours: 23,760.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of Information requirements. However, as noted above, comments on these Information collection and recordkeeping requirements must be

mailed and/or faxed to the designees referenced below, by September 23, 1999:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850

And

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: August 19, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–22266 Filed 8–26–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1077–N]

Medicare Program; September 23, 1999, Meeting of the Competitive Pricing Demonstration Area Advisory Committee, Maricopa County

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Competitive Pricing Demonstration Area Advisory Committee (AAC), Maricopa County, Arizona on September 23, 1999.

The Balanced Budget Act of 1997 (BBA) requires the Secretary of the Department of Health and Human Services (the Secretary) to establish a demonstration project under which payments to Medicare+Choice organizations in designated areas are determined in accordance with a competitive pricing methodology. The BBA requires the Secretary to appoint an AAC in each designated demonstration area to advise on implementation of the project, including the marketing and pricing of the plan and other factors. The AAC meetings are open to the public.

DATES: The meeting is scheduled for September 23, 1999, from 9:00 a.m. until 5:30 p.m., m.s.t.

ADDRESSES: The meeting will be held at the YWCA of the USA, Leadership Development Conference Center, 9440 North 25th Avenue, Phoenix, AZ 85021, (602) 944–0569.

FOR FURTHER INFORMATION CONTACT: Joseph Tilghman, Acting Regional Administrator, Health Care Financing Administration, 75 Hawthorne Street, 4th Floor, San Francisco, CA 94105, (415) 744–3501.

SUPPLEMENTARY INFORMATION:

Section 4011 of the Balanced Budget Act of 1997 (BBA) requires the Secretary of the Department of Health and Human Services (the Secretary) to establish a demonstration project under which payments to Medicare+Choice organizations in designated areas are determined in accordance with a competitive pricing methodology.

Section 4012(a) of the BBA requires the Secretary to appoint a Competitive Pricing Advisory Committee (the CPAC) to make recommendations to the Secretary concerning the designation of areas for inclusion in the project and appropriate research designs for implementing the project. Once an area is designated as a demonstration site, section 4012(b) of the BBA requires the Secretary to appoint an Area Advisory Committee (AAC) to advise on the marketing and pricing of the plan in the area and other factors. Thus far, the Kansas City, MO Metropolitan Area and Maricopa County, AZ have been designated as demonstration sites.

The Maricopa County AAC has previously met on March 31, 1999, April 20, 1999, May 18 and 19, 1999, June 7 and 8, 1999, June 30, 1999, and July 1, 1999. The Maricopa County AAC is composed of representatives of health plans, providers, employers, and Medicare beneficiaries in the area. The members are: Joseph Anderson, Schaller Anderson Inc.; Rick Badger, Pacificare of Arizona; Reginald Ballantyne III, PMH Health Resources, Inc.; Donna Buelow, Arizona State Retirement System; Charles Cohen, Arizona Department of Insurance; John Hensing, M.D., Samaritan Health Systems; Mary Lynn Kasunic, Area Agency on Aging; Anne Lindeman, Governor's Advisory Council on Aging; Ben Lopez, Honeywell Corp.; Thomas Marreel, William M. Mercer Associates; Anthony Mitten, Maricopa County Medical Society; Edward Munno, Jr., Intergroup of Arizona; Erik Olsen, D.D.S., American Association of Retired Persons; Leland Peterson, Sun Health Corp.; Donna Redford, Arizona Bridge to Independent Living; Herb Rigberg, M.D., Health Services Advisory Group; Martha Taylor, Arizona SHIP; Clyde Wright, M.D., Cigna of Arizona; Arthur Pelberg, M.D., Schaller Anderson Inc.; Joseph Hanss, M.D., physician; and Phyllis Biedess, Director, AHCCCS.

This notice announces the September 23, 1999, meeting of the Maricopa County AAC. This meeting will be held from 9:00 a.m. until 5:30 p.m., m.s.t. at the YWCA of the USA, Leadership Development Conference Center in Phoenix, AZ.

The agenda for the September 23, 1999, meeting will include the following:

- A discussion of the timeline for implementation of the competitive pricing demonstration.
- A finalization of the benefit package for plan bidding, which will include a report on the results of the local public testing of the proposed basic benefit package.
- Reports from the AAC subcommittees.
- Results of the town hall meeting.
- Any outstanding issues.

Individuals or organizations that wish to make 5-minute oral presentations on the agenda issues should contact the San Francisco Acting Regional Administrator, by 12 noon, September 16, 1999. Anyone who is not scheduled to speak may submit written comments to the San Francisco Acting Regional Administrator, by COB, September 20, 1999.

These meetings are open to the public, but attendance is limited to space available.

Authority: Section 4012 of the Balanced Budget Act of 1997, Public Law 105–33 (42 U.S.C. 1395w–23 note) and section 10(a) of Public Law 92–463 (5 U.S.C. App.2, Section 10(a)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program.)

Dated: August 20, 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration.

[FR Doc. 99–22302 Filed 8–26–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–34]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing-and speech-impaired (202) 708–2565 (these telephone number are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized building and real property controlled by such agencies or by GSA regarding its inventory of excess and surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/ to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or make available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: ARMY: Mr. Jeff Holste, U.S. Army Center for Public Works, Installation Support Center, Facilities Management, 7701 Telegraph Road, Alexandria, VA 22315–3862; (703) 428–6318, ENERGY: Ms. Marsha Penhaker, Department of Energy, Facilities Planning and Acquisition Branch, FM–20, Room 6H–058, Washington, DC 20585; (202) 586–0426; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0052; INTERIOR: Mr. Al Barth, Property Management, Department of the Interior, 1849 C Street, NW, mail Stop 5512–MIB, Washington, DC 20240; (202) 208–7283; NAVY: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: August 18, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

TITLE V. FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 8/27/99

Suitable/Available Properties

Buildings (by State)

Alaska

Bldg. 263
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 2119993011
Status: Excess
Comment: 13056 sq. ft., most recent use—housing, off-site use only

Bldg. 636
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 2119993012
Status: Excess
Comment: 33,726 sq. ft., concrete block, most recent use—library, off-site use only

Bldg. 736
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 2119993013
Status: Excess
Comment: 7090 sq. ft., most recent use—admin., off-site use only

Bldg. 786
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 2119993014
Status: Excess
Comment: 2242 sq. ft., most recent use—driver's testing facility, off-site use only

Bldg. 978
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 2119993016
Status: Excess
Comment: 2411 sq. ft., concrete block, most recent use—training, off-site use only

Bldg. 980
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army

Property Number: 2119993017
Status: Excess
Comment: 11,651 sq. ft., concrete block, most recent use—vehicle maintenance, off-site use only

Bldg. 58780
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21199930118
Status; Excess
Comment: 3230 sq. ft., most recent use—admin., off-site use only

California

Calexico Border Patrol Station
813 Andrade Avenue
Calexico Co: CA 00000–
Landholding Agency: GSA
Property Number: 54199930007
Status: Excess
Comment: 7420 sq. ft.,
GSA Number: 9–J–CA–1539

Georgia

Bldg 39720
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21199930119
Status: unutilized
Comment: 1520 sq. ft., concrete block, possible asbestos/lead paint, most recent use—office, off-site use only

Bldg. 492
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930120
Status: Unutilized
Comment: 720 sq. ft., most recent use—admin/maint, off-site use only

Bldg. 880
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930121
Status: Unutilized
Comment: 57,110 sq. ft., most recent use—instruction, off-site use only

Bldg. 1370
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930122
Status: Unutilized
Comment: 5204 sq. ft., most recent use—hdqts. bldg., off-site use only

Bldg. 2288
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930123
Status: Unutilized
Comment: 2481 sq. ft., most recent use—admin., off-site use only

Bldg. 2290
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930124
Status: Unutilized
Comment: 455 sq. ft., most recent use—storage, off-site use only

Bldg. 2293
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930125
Status: Unutilized
Comment: 2600 sq. ft., most recent use—hdqts. bldg., off-site use only

Bldg. 2297
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930126
Status: Unutilized
Comment: 5156 sq. ft., most recent use—admin., off-site use only

Bldg. 2505
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930127
Status: Unutilized
Comment: 10,257 sq. ft., most recent use—repair shop, off-site use only

Bldg. 2508
Fort Benning
Fort Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930128
Status: Unutilized
Comment: 2434 sq. ft., most recent use—storage, off-site use only

Bldg. 2815
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930129
Status: Unutilized
Comment: 2578 sq. ft., most recent use—hdqts. bldg., off-site use only

Bldg. 3815
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930130
Status: Unutilized
Comment: 7575 sq. ft., most recent use—storage, off-site use only

Bldg. 3816
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930131
Status: Unutilized
Comment: 7514 sq. ft., most recent use—storage, off-site use only

Bldg. 4555
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930132
Status: Unutilized
Comment: 18,240 sq. ft., most recent use—maint. shop, off-site use only

Bldg. 5886
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930134
Status: Unutilized
Comment: 67 sq. ft., most recent use—maint/storage, off-site use only

Bldg. 5974–5978
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930135
Status: Unutilized
Comment: 400 sq. ft., most recent use—storage, off-site use only

Bldg. 5993
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930136
Status: Unutilized
Comment: 960 sq. ft., most recent use—storage, off-site use only

Bldg. 5994
Fort Benning
Ft. Benning Co: Muscogee GA 31905–
Landholding Agency: Army
Property Number: 21199930137
Status: Unutilized
Comment: 2016 sq. ft., most recent use—storage, off-site use only

Hawaii

Bldg. P–144
Tripler Army Medical Center
Hawaii Co: HI 96857–
Landholding Agency: Army
Property Number: 21199930138
Status: Unutilized
Comment: 857 sq. ft., most recent use—service station, off-site use only

Kansas

Bldg. P–71
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199930139
Status: Unutilized
Comment: 180 sq. ft., most recent use—storage, off-site use only

Bldg. P–75
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199930140
Status: Unutilized
Comment: 12,129 sq. ft., most recent use—storage, off-site use only

Bldg. P–76
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199930141
Status: Unutilized
Comment: 180 sq. ft., most recent use—storage, off-site use only

Bldgs. P–26, P–27
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199930142
Status: Unutilized
Comment: 84 sq. ft., most recent use—utility, off-site use only

Bldgs. P–110, P–114, P–115
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199930143
Status: Unutilized
Comment: 85–92 sq. ft., most recent use—utility, off-site use only

Bldg. P–118
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199930144
Status: Unutilized
Comment: 117 sq. ft., most recent use—storage, off-site use only

Bldgs. P–160, P–161, P–165
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199930145
Status: Unutilized
Comment: 86–88 sq. ft., most recent use—utility, off-site use only

Bldg. P–223
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199930146
Status: Unutilized
Comment: 7,174 sq. ft., most recent use—storage, off-site use only

Bldg. T–236
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199930147
Status: Unutilized
Comment: 4563 sq. ft., most recent use—storage, off-site use only

Bldg. P–241
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199930148
Status: Unutilized
Comment: 5920 sq. ft., most recent use—storage, off-site use only

Bldg. T–257
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199930149
Status: Unutilized
Comment: 5920 sq. ft., most recent use—storage, off-site use only

Bldg. P–309
Fort Leavenworth
Leavenworth Co: KS 66027–
Landholding Agency: Army
Property Number: 21199930150
Status: Unutilized
Comment: 71 sq. ft., most recent use—storage, off-site use only

Maryland

Bldg. 00307
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21199930152
Status: Unutilized
Comment: 4071 sq. ft., most recent use—Admin., off-site use only

Bldg. 00646
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21199930153
Status: Unutilized
Comment: 880 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 01110
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21199930154
Status: Unutilized
Comment: 396 sq. ft., most recent use—magazine, off-site use only

Bldg. 01195
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21199930155
Status: Unutilized
Comment: 120 sq. ft., most recent use—storage, off-site use only

Bldg. E3264
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21199930156
Status: Unutilized
Comment: 64 sq. ft., most recent use—access control facility, off-site use only

Bldg. E3333
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–
Landholding Agency: Army
Property Number: 21199930157
Status: Unutilized
Comment: 64 sq. ft., most recent use—access control facility, off-site use only

Mississippi

Quarters 163
Natchez Trace Parkway
Ridgeland Co: Madison MS 39157–
Landholding Agency: Interior
Property Number: 61199910003
Status: Excess
Comment: 1121 sq. ft., most recent use—residential, presence of asbestos, off-site use only

Quarters 183
Natchez Trace Parkway
Kosciusko Co: Attala MS 39090–
Landholding Agency: Interior
Property Number: 61199910004
Status: Excess
Comment: 1121 sq. ft., presence of asbestos, most recent use—residential, off-site use only

Quarters 190
Natchez Trace Parkway
Port Gibson Co: Claiborne MS 39150–
Landholding Agency: Interior
Property Number: 61199910005
Status: Excess
Comment: 1121 sq. ft., presence of asbestos, most recent use—residential, off-site use only

Quarters 194
Natchez Trace Parkway
Ackerman Co: Choctaw MS 39725–
Landholding Agency: Interior
Property Number: 61199910006
Status: Excess
Comment: 1121 sq. ft., presence of asbestos, most recent use—residential, off-site use only

Quarters 258
Natchez Trace Parkway
Carlisle Co: Claiborne MS 39049–
Landholding Agency: Interior
Property Number: 61199910007
Status: Excess
Comment: 1121 sq. ft., presence of asbestos, most recent use—residential, off-site use only

Missouri

Bldg. 493
Fort Leonard Wood
Ft. Leonard Wood Co: Pulaski MO 65473–
Landholding Agency: Army
Property Number: 21199930158
Status: Unutilized
Comment: 26,936 sq. ft., concrete, presence of asbestos/lead paint, most recent use—store, off-site use only

New Mexico

Roberts, Thomas A
#70, County Rd. 2900
Aztec Co: San Juan NM 87410–
Landholding Agency: Interior
Property Number: 61199910017
Status: Excess
Comment: 2895 sq. ft., most recent use—residential, off-site use only

Oklahoma

Bldg. S–7960
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 21199930159
Status: Unutilized
Comment: 120 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. S–7961
Fort Sill
Lawton Co: Comanche OK 73503–
Landholding Agency: Army
Property Number: 21199930160
Status: Unutilized
Comment: 36 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Tennessee

01–200
Stones River Natl Battlefield
Murfreesboro Co: Rutherford TN 37129–
Landholding Agency: Interior
Property Number: 61199910018
Status: Excess
Comment: 1596 sq. ft., most recent use—residential, off-site use only

01–201
Stones River Natl Battlefield
2042 Mansion Pike
Murfreesboro Co: Rutherford TN 37129–
Landholding Agency: Interior
Property Number: 61199910019
Status: Excess
Comment: 3196 sq. ft., most recent use—residential, off-site use only

Texas

Tract 105–79
9047 Espada Rd,
San Antonio Co: Bexar TX 78214–
Landholding Agency: Interior
Property Number: 61199910013
Status: Unutilized
Comment: 712 sq. ft., most recent use—residence, off-site use only

Utah

Bldg. 35
S.A. Douglas AFRC
Salt Lake City Co: UT 84113–

Landholding Agency: Army
Property Number: 21199930161
Status: Excess
Comment: 57,244 sq. ft., possible asbestos, most recent use—storage, off-site use only

Bldg. 110
S.A. Douglas AFRC
Salt Lake City Co: UT 84113–
Landholding Agency: Army
Property Number: 21199930162
Status: Excess
Comment: 3600 sq. ft., most recent use—storage, off-site use only

Bldg. 111
S.A. Douglas AFRC
Salt Lake City Co: UT 84113–
Landholding Agency: Army
Property Number: 21199930163
Status: Excess
Comment: 2535 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 128
S.A. Douglas AFRC
Salt Lake City Co: UT 84113–
Landholding Agency: Army
Property Number: 21199930164
Status: Excess
Comment: 2535 sq. ft., possible asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 129
S.A. Douglas AFRC
Salt Lake City Co: UT 84113–
Landholding Agency: Army
Property Number: 21199930165
Status: Excess
Comment: 96 sq. ft., presence of lead paint, most recent use—storage, off-site use only

Land (by State)

Arizona

Harry B. Christman Property
N. of Missile Base Road
Case No. 91–012
Marana Co: Pinal AZ 85245–
Landholding Agency: Interior
Property Number: 61199910012
Status: Unutilized
Comment: 2.97 acres of vacant desert

Maryland

13 acres
Fort George G. Meade
west side of Rt 175
Ft. Meade Co: Anne Arundel MD 20755–5111
Landholding Agency: Army
Property Number: 21199930151
Status: Underutilized
Comment: small paved area, remainder wooded

Suitable/Unavailable Properties

Buildings (by State)

Alaska

Bldg. 806
Fort Richardson
Ft. Richardson Co: AK 99505–
Landholding Agency: Army
Property Number: 21199930115
Status: Excess
Comment: 93,178 sq. ft., concrete block, most recent use—storage, off-site use only

California

Visitor Motel—Upper Kaweah
Sequoia National Park
Three Rivers CA 93271–
Landholding Agency: Interior
Property Number: 61199720007
Status: Unutilized
Comment: 39,403 sq. ft., wood, 2-story, needs repair, presence of asbestos/lead paint, off-site use only

Idaho

Bldg. CFA–613
Central Facilities Area
Idaho National Engineering Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199630001
Status: Unutilized
Comment: 1,219 sq. ft., most recent use—sleeping quarters, presence of asbestos, off-site use only

Maryland

Former Physioc Property
NPS Tract 402–29
Jugtown Co: Washington MD 21713–
Landholding Agency: Interior
Property Number: 61199820005
Status: Excess
Comment: 227 sq. ft. stone cabin, off-site use only

Massachusetts

Ziegler House
National Park, Virginia Road
Lincoln Co: Middlesex MA 10773–
Landholding Agency: Interior
Property Number: 61199830001
Status: Unutilized
Comment: 1,661 sq. ft., residential

Unsuitable Properties

Buildings (by State)

California

Bldg. 913
Sandia National laboratories
Livermore Co: Alameda CA 94550–
Landholding Agency: Energy
Property Number: 41199830007
Status: Excess
Reason: Secured Area

Castle Area Shops
Sequoia National Park
Three Rivers CA 93271–
Landholding Agency: Interior
Property Number: 61199720004
Status: Unutilized
Reason: Extensive deterioration

Giant Forest Village
Sequoia National Park
Three Rivers CA 93271–
Landholding Agency: Interior
Property Number: 61199720006
Status: Unutilized
Reason: Extensive deterioration

Cabins 90–92, 100V–146
Sequoia National Park
Three Rivers CA 932371–
Landholding Agency: Interior
Property Number: 61199720008
Status: Unutilized
Reason: Extensive deterioration

Lower Kaweah 514–549, 594
Sequoia National Park
Three Rivers CA 93271–
Landholding Agency: Interior
Property Number: 61199720009
Status: Unutilized
Reason: Extensive deterioration

Lower Kaweah Cabins—various
Sequoia National Park
Three Rivers CA 93271–
Landholding Agency: Interior
Property Number: 61199720010
Status: Unutilized
Reason: Extensive deterioration

Bldg. 4190 & Outbuilding
Yosemite National Park
Wawona Co: Madera CA 95389–
Landholding Agency: Interior
Property Number: 61199910002
Status: Unutilized
Reasons: Extensive deterioration

Colorado

Bldg. 34
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 41199540001
Status: Underutilized
Reasons: Contamination; Secured Area

Bldg. 35
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 41199540002
Status: Underutilized
Reasons: Contamination; Secured Area

Bldg. 36
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 41199540003
Status: Underutilized
Reasons: Contamination; Secured Area

Bldg. 2
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 41199610039
Status: Unutilized
Reasons: Contamination; Secured Area

Bldg. 7
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 41199610040
Status: Unutilized
Reasons: Contamination; Secured Area

Bldg. 31–A
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 41199610041
Status: Unutilized
Reasons: Contamination; Secured Area

Bldg. 33
Grand Junction Projects Office
Grand Junction Co: Mesa CO 81503–
Landholding Agency: Energy
Property Number: 41199610042
Status: Unutilized
Reasons: Contamination; Secured Area

Bldg. 727
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910001
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 729
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910002
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 779
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910003
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 780
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910004
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 780A
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910005
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 780B
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 782
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 783
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910008
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 784 (A–D)
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910009
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 785
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910010
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 786
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910011
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 787 (A–D)
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910012
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 875
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910013
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 800
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910014
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 886
Rocky Flats Environmental Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910015
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 308A
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910016
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 788
Rocky Flats Env. Tech Site
Golden Co: Jefferson CO 80020–
Landholding Agency: Energy
Property Number: 41199910017
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Connecticut

Bldgs. 25 and 26
Prospect Hill Road
Windsor Co: Hartford CT 06095–
Landholding Agency: Energy
Property Number: 41199440003
Status: Excess
Reasons: Secured Area

9 Bldgs.
Knolls Atomic Power Lab, Windsor Site
Windsor Co: Hartford CT 06095–
Landholding Agency: Energy
Property Number: 41199540004
Status: Excess
Reasons: Secured Area

Bldg. 8, Windsor Site
Knolls Atomic Power Lab
Windsor Co: Hartford CT 06095–
Landholding Agency: Energy
Property Number: 41199830006
Status: Unutilized
Reason: Extensive deterioration.

Idaho

Bldg. PBF–621
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610001
Status: Unutilized
Reason: Secured Area

Bldg. CPP–1609
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610002
Status: Unutilized
Reason: Secured Area

Bldg. CPP–691
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610003
Status: Unutilized
Reason: Secured Area

Bldg. CPP–625
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610004
Status: Unutilized
Reason: Secured Area

Bldg. CPP–650
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610005
Status: Unutilized
Reason: Secured Area

Bldg. CPP–608
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610006
Status: Unutilized
Reason: Secured Area

Bldg. Bldg. TAN–660
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610007
Status: Unutilized
Reason: Secured Area

Bldg. TAN–636
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610008
Status: Unutilized
Reason: Secured Area

Bldg. TAN–609
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610009
Status: Unutilized
Reason: Secured Area

Bldg. TAN–670
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610010
Status: Unutilized
Reason: Secured Area

Bldg. TAN–661

Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610011
Status: Unutilized
Reason: Secured Area

Bldg. TAN–657
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610012
Status: Unutilized
Reason: Secured Area

Bldg. TRA–669
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610013
Status: Unutilized
Reason: Secured Area

Bldg. TAN–637
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610014
Status: Unutilized
Reason: Secured Area

Bldg. TAN–635
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610015
Status: Unutilized
Reason: Secured Area

Bldg. TAN–638
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610016
Status: Unutilized
Reason: Secured Area

Bldg. TAN–651
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610017
Status: Unutilized
Reason: Secured Area

Bldg. TRA–673
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610018
Status: Unutilized
Reason: Secured Area

Bldg. PBF–620
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610019
Status: Unutilized
Reason: Secured Area

Bldg. PBF–616
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610020
Status: Unutilized
Reason: Secured Area

Bldg. PBF–617
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610021
Status: Unutilized
Reason: Secured Area

Bldg. PBF–619
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610022
Status: Unutilized
Reason: Secured Area

Bldg. PBF–624
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610023
Status: Unutilized
Reason: Secured Area

Bldg. PBF–625
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610024
Status: Unutilized
Reason: Secured Area

Bldg. PBF–629
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610025
Status: Unutilized
Reason: Secured Area

Bldg. PBF–604
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610026
Status: Unutilized
Reason: Secured Area

Bldg. CF–673
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610027
Status: Unutilized
Reason: Secured Area

Bldg. CF–664
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610029
Status: Unutilized
Reason: Secured Area

Bldg. CF–643
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610030
Status: Unutilized
Reason: Secured Area

Bldg. CF–652
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610032
Status: Unutilized
Reason: Secured Area

Bldg. TRA–641
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610034
Status: Unutilized
Reason: Secured Area

Bldg. CF–691
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610036
Status: Unutilized
Reason: Secured Area

Bldg. CF–606
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199610037
Status: Unutilized
Reason: Secured Area

ARA 626
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199710003
Status: Unutilized
Reason: Secured Area

CF657/CF716
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199710005
Status: Unutilized
Reason: Secured Area

CPP709
Idaho National Engineering Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199710007
Status: Excess
Reason: Secured Area

TAN620/TAN656
Idaho National Engineering Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199710009
Status: Excess
Reasons: Secured Area, Extensive deterioration

STF Area, Natl Eng & Env Lab #601, 607, 612, 501, 502 ARA–628
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199740003
Status: Excess
Reason: Extensive deterioration

TAN 602, 631, 663, 702, 724
Idaho Natl Engineering & Environmental Lab
Test Area North
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41199830002
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

8 Bldgs.
Idaho Natl Engineering & Environmental Lab
Scoville Co: Butte ID 83415–
Location: TRA 643, 644, 655, 660, 704–706, 755
Landholding Agency: Energy
Property Number: 41199830003
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

5 Bldgs.
Idaho Natl Engineering & Environmental Lab
CPP601, CPP603/648, CPP627, CPP633, CPP640
Scoville Co: Butte ID 83415–
Landholding Agency: Energy

Property Number: 41199840002
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. Minidoka Project
Rupert Co: ID 83350–
Landholding Agency: Interior
Property Number: 61199910001
Status: Unutilized
Reason: Extensive deterioration

Illinois

Bldg. 996
Fermi National Accelerator Laboratory
Batavia Co: Dupage IL 60510–
Landholding Agency: Energy
Property Number: 41199920001
Status: Excess
Reason: Extensive deterioration

Kentucky

Ranger Station
Big South Fork Natl River & Rec Area
Stearnes Co: McCreary KY 42647–
Landholding Agency: Interior
Property Number: 61199910008
Status: Excess
Reason: Extensive deterioration

Qtrs. 36
Mammoth Cave National Park
Mammoth Cave Co: Barren KY 42259–
Landholding Agency: Interior
Property Number: 61199920001
Status: Unutilized
Reason: Extensive deterioration

9 Bldgs.
Wondering Woods
Mammoth Cave National Park
Mammoth Cave Co: Barren KY 42259–
Landholding Agency: Interior
Property Number: 61199920002
Status: Excess
Reason: Extensive deterioration

Louisiana

Weeks Island Facility
New Iberia Co: Iberia Parish LA 70560–
Landholding Agency: Energy
Property Number: 41199610038
Status: Underutilized
Reason: Secured Area

Montana

Barn/Garage
316 N. 26th Street
Billings Co: Yellowstone MT
Landholding Agency: Interior
Property Number: 61199520022
Status: Excess
Reason: Extensive deterioration

New Mexico

Bldgs. 9252, 9268
Kirtland Air Force Base
Albuquerque Co: Bernalillo NM 87185–
Landholding Agency: Energy
Property Number: 41199430002
Status: Unutilized
Reason: Extensive deterioration

McGee Warehouse
Los Alamos National Lab
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199610043
Status: Unutilized
Reason: Extensive deterioration

Bldg. 73, TA–16
Los Alamos National Lab
Los Alamos Co: Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199610044
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 75, TA–16
Los Alamos National Lab
Los Alamos Co: Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199610045
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 76, TA–16
Los Alamos National Lab
Los Alamos Co: Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199610046
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 77, TA–16
Los Alamos National Lab
Los Alamos Co: Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199610047
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 78, TA–16
Los Alamos National Lab
Los Alamos Co: Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199610048
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 79, TA–16
Los Alamos National Lab
Los Alamos Co: Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199610049
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 80, TA–16
Los Alamos National Lab
Los Alamos Co: Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199610050
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 99, TA–16
Los Alamos National Lab
Los Alamos Co: Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199610051
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 89, TA–16
Los Alamos National Laboratory
Los Alamos Co: Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199620005
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 90, TA–16
Los Alamos National Laboratory
Los Alamos Co: Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199620006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 91, TA–16
Los Alamos National Laboratory
Los Alamos Co: Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199620007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 92, TA–16
Los Alamos National Laboratory
Los Alamos Co: Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199620008
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 93, TA–16
Los Alamos National Laboratory
Los Alamos Co: Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199620009
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 101, TA–16
Los Alamos National Laboratory
Los Alamos Co: Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199620010
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Tech Area II
Kirtland Air Force Base
Albuquerque Co: Bernalillo NM 87105–
Landholding Agency: Energy
Property Number: 41199630004
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 1, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 2, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810002
Status: Unutilized

Reasons: Secured Area, Extensive deterioration

Bldg. 24, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 26, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810004
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 86, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810005
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 88, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810006
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 89, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810007
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 2, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810008
Status: Unutilized
Reason: Secured Area

Bldg. 3, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810009
Status: Unutilized
Reason: Secured Area

Bldg. 4, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810010
Status: Unutilized
Reason: Secured Area

Bldg. 5, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810011
Status: Unutilized
Reason: Secured Area

Bldg. 21, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810012
Status: Unutilized
Reason: Secured Area

Bldg. 116, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810013
Status: Unutilized
Reason: Secured Area

Bldg. 212, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810014
Status: Unutilized
Reason: Secured Area

Bldg. 228, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810015
Status: Unutilized
Reason: Secured Area

Bldg. 286, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810016
Status: Unutilized
Reason: Secured Area

Bldg. 10, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810017
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 27, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810018
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 63, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810019
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Extensive deterioration

Bldg. 515, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810020
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 516, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810021
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 517, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810022
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 518, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810023
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 519, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545–
Landholding Agency: Energy
Property Number: 41199810024
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 520, TA–16
Los Alamos National Laboratory
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199810025
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 18, TA–16
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199840001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 4, TA–2
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199930004
Status: Unutilized
Reasons: Secured Area

Bldg. 50, TA–2
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199930005
Status: Unutilized
Reasons: Secured Area

Bldg. 88, TA–2
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199930006
Status: Unutilized
Reasons: Secured Area

Bldg. 89, TA–2
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41199930007
Status: Unutilized
Reasons: Secured Area

North Carolina

Bldg. 8027
Marine Corps Air Station, Cherry Point
Bogue Co: NC 28584–
Landholding Agency: Navy
Property Number: 77199930043
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 8028
Marine Corps Air Station, Cherry Point
Bogue Co: NC 28584–
Landholding Agency: Navy
Property Number: 77199930044
Status: Excess
Reasons: Secured Area, Extensive deterioration

Ohio

Bldg. 77
Fernald Environmental Management Project
Fernald Co: Hamilton OH 45013–
Landholding Agency: Energy
Property Number: 41199840003
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 82A
Fernald Environmental Mgmt Project
Fernald Co: Hamilton OH 45013–
Landholding Agency: Energy
Property Number: 41199910018
Status: Excess
Reasons: Within 2,000 ft. of flammable or explosive material, Secured Area

Oklahoma

Bldgs. 4a, 4b, 6, 8, 9, 11, 12
NIPER
Bartlesville Co: Washington OK 74003–
Landholding Agency: Energy
Property Number: 41199720003
Status: Unutilized
Reason: Extensive deterioration

Pennsylvania

Z-Bldg.
Bettis Atomic Power Lab
West Mifflin Co: Allegheny PA 15122–0109
Landholding Agency: Energy
Property Number: 41199720002
Status: Excess
Reason: Extensive deterioration

Weiland Prop.—Sound Studio
Gettysburg Co: Adams PA 17325–
Landholding Agency: Interior
Property Number: 61199810013
Status: Excess
Reason: Extensive deterioration

Tennessee

Bldg. 3004
Oakridge National Lab
Oak Ridge Co: Roane TN 37831–
Landholding Agency: Energy
Property Number: 41199710002
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 3004
Oak Ridge National Lab
Oak Ridge Co: Roane TN 37831–
Landholding Agency: Energy
Property Number: 41199720001
Status: Excess
Reason: Extensive deterioration

Bldgs. 9714–3, 9714–4, 9983–AY
Y–12 Pistol Range
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41199720004
Status: Unutilized
Reason: Secured Area

5 Bldgs.
K–724, K–725, K–1031, K–1131, K–1410
East Tennessee Technology Park
Oak Ridge Co: Roane TN 37831–
Landholding Agency: Energy
Property Number: 41199730001
Status: Unutilized
Reason: Extensive deterioration

Bldg. 9418–1
Y–12 Plant
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41199810026
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 9825
Y–12 Plant
Oak Ridge Co: Anderson TN 37831–
Landholding Agency: Energy
Property Number: 41199810027
Status: Unutilized
Reasons: Secured Area

Bldg. 3026
Oak Ridge Natl Lab
Oak Ridge Co: Roane TN 37831–
Landholding Agency: Energy
Property Number: 41199830001
Status: Excess
Reasons: Secured Area, Extensive deterioration

Texas

Station Port Mansfield
Port Mansfield Co: Willary TX 78598–
Landholding Agency: GSA
Property Number: 54199930008
Status: Surplus
Reasons: Floodway
GSA Number: 7–U–TX–1057

Washington

Bldgs. 1158, 1159
Ross Lake Natl Recreation Area
Co: Whatcom WA
Landholding Agency: Interior
Property Number: 61199820001
Status: Unutilized
Reasons: Extensive deterioration

N3202, Residence
Pasco Co: Franklin WA 99301–
Landholding Agency: Interior
Property Number: 61199910014
Status: Excess
Reasons: Extensive deterioration

N3204, Residence
Pasco Co: Franklin WA 99301–
Landholding Agency: Interior
Property Number: 61199910015
Status: Excess
Reasons: Extensive deterioration

N3202, Residence
Pasco Co: Franklin WA 99301–
Landholding Agency: Interior
Property Number: 61199910016
Status: Excess
Reasons: Extensive deterioration

West Virginia

Thomas House, Tract 173–20
New River Gorge National River
Glen Jean Co: Fayette WV 25846–
Landholding Agency: Interior
Property Number: 61199910009
Status: Excess
Reasons: Extensive deterioration

Cole House, Tract 153–07
New River Gorge National River
Glen Jean Co: Fayette WV 25846–
Landholding Agency: Interior
Property Number: 61199910010
Status: Excess
Reasons: Extensive deterioration

Vento House, Tract 173–17
New River Gorge National River
Glen Jean Co: Fayette WV 25846–
Landholding Agency: Interior
Property Number: 61199910011
Status: Excess
Reason: Extensive deterioration

Land (by State)

Puerto Rico

119.3 acres
Culebra Island PR 00775–
Landholding Agency: Interior
Property Number: 61199210001
Status: Excess
Reason: Floodway

Washington

Spokane Satellite Tracking #1
Fairchild AFB
Portion of Site
Spokane WA 99224–
Landholding Agency: GSA
Property Number: 18199810028
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 9–D–WA–1172

[FR Doc. 99–21958 Filed 8–26–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Delaware & Lehigh National Heritage Corridor Commission Meeting

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware & Lehigh National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

Meeting Date and Time: Friday, September 10, 1999; 1:30–4:00 p.m.

Address: Heritage Conservancy, Aldie Mansion, 85 Old Dublin Pike, Doylestown PA 18901.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its

political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware & Lehigh National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988 and extended through Public Law 105–355, November 13, 1998.

FOR FURTHER INFORMATION CONTACT: Denise G. Holub, Chief Financial Officer/Grants Administrator, Delaware & Lehigh National Heritage Corridor Commission, 10 E. Church Street, Room A–208, Bethlehem, PA 18018, (610) 861–9345.

Dated: August 23, 1999.

Denise G. Holub,

Chief Financial Officer/Grants Administrator, Delaware & Lehigh National Heritage Corridor Commission.

[FR Doc. 99–22280 Filed 8–26–99; 8:45 am]

BILLING CODE 6820–PE–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; as Amended; Revisions to an Existing System of Records

AGENCY: Office of the Secretary, Interior.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a), the Office of the Secretary is issuing public notice of its intent to modify an existing Privacy Act system of records notice, OS–90, "Federal Financial System." The revisions will update the number and name of the system, categories of records, routine uses, the storage and safeguards statements, and the addresses of the system locations and system managers.

EFFECTIVE DATE: These actions will be effective August 27, 1999.

FOR FURTHER INFORMATION CONTACT: Director, Office of Financial Management, U.S. Department of the Interior, 1849 C Street NW, MS–5412 MIB, Washington, DC 20240.

SUPPLEMENTARY INFORMATION:

The Department of the Interior is proposing to amend the system notice for OS–90, "Federal Financial System," to update the number of the system to more accurately reflect its Department-wide scope, and to update the storage and safeguards statements and the address of the system locations and system managers to reflect changes that have occurred since the notice was last published.

Roy M. Francis,

Departmental Privacy Act Officer, Office of Information Resources Management.

Accordingly, the Department of the Interior proposes to amend the "Federal Financial System," OS–90, system notice in its entirety to read as follows:

INTERIOR/DOI–90

SYSTEM NAME:

Federal Financial System, Interior, DOI–90.

SYSTEM LOCATION:

(1) Office of Federal Systems and Services, National Business Center, U.S. Department of the Interior, 12201 Sunrise Valley Drive, Room 6A231, MS–206, Reston, VA 20192.

(2) Financial Systems Division, Products and Services, National Business Center, MS D–2700, 7301 West Mansfield Avenue, Denver, CO 80235–2230.

(3) Departmental offices which prepare, maintain, and provide input documents and information for data processing and administrative actions for financial functions implemented on the system.

(4) Other Federal agencies, councils and commissions using the system under a cross-servicing arrangement (an arrangement for the provision of computer and technical service support), with either of the National Business Center locations listed above.

(5) Commercial credit card contractor(s) maintaining information on employee usage of travel, purchasing and fleet management program credit cards.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Employees and former employees of the Department of the Interior.

(2) Employees of other Federal agencies, councils and commissions using the system under a cross-servicing arrangement.

(3) Persons serving without compensation to the extent authorized under 5 U.S.C. 5703, consultants, foreign participants, volunteers, contractors, and private citizen debtors and creditors who are serviced by either of the National Business Center locations listed above.

Note: This system also contains records relating to corporations and other business entities. These records are not subject to the Privacy Act. Only records relating to individuals containing personal information are subject to the Privacy Act.

CATEGORIES OF RECORDS IN THE SYSTEM:

Names of individuals; Social Security numbers and tax identification numbers; addresses and organizational codes; amounts owed and reasons for debts and payments; expenses, vouchers and routine travel information and travel, purchasing, and fleet management credit card program usage information; and routine billing, payment, and property accountability information used in accounting and financial processing.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

(1) 31 U.S.C. 3512. (2) 31 U.S.C. 3711. (3) 5 U.S.C. 5701 *et seq.* (4) 5 U.S.C. 4111(b). (5) 41 CFR parts 301–304. (6) Treasury Financial Manual. (7) Pub. L. 97–365. (8) 26 U.S.C. 6103(m)(2). (9) 5 U.S.C. 5514. (10) 31 U.S.C. 3716.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The primary use of the records is to maintain accounting and financial information associated with the normal operations of government organizations. Specifically, records are used:

(1) For billing and follow-up.

(2) For paying creditors.

(3) For accounting for goods and services provided and received.

(4) For accounting for funds paid and received.

(5) For processing travel authorizations and claims.

Records in this system are subject to use in approved computer matching programs authorized under the Privacy Act of 1974, as amended, for debt collection purposes.

Disclosures of data provided by other Federal agencies, councils and commissions using the system under a cross-servicing arrangement may be made by these same organizations to individuals within these same organizations who maintain accounting and financial information associated with the normal operations of government organizations.

Other disclosures outside the Department of the Interior be made:

(1) To the Department of Justice, or to a court, adjudicative or other administrative body, or to a party in litigation before a court or adjudicative or administrative body, when:

(a) One of the following is a party to the proceeding or has an interest in the proceeding:

(*1*) The Department or any component of the Department or any Federal agency, council or commission using the system under a cross-servicing arrangement;

(*2*) Any Departmental employee or employee of any Federal agency, council or commission using the system under a cross-servicing arrangement acting in his or her official capacity;

(*3*) Any Departmental employee or employee of any Federal agency, council or commission using the system under a cross-servicing arrangement acting in his or her individual capacity where the Department or the Federal agency, council or commission using the system under a cross-servicing arrangement or the Department of Justice has agreed to represent the employee; or

(*4*) The United States, when the Department or the Federal agency, council or commission using the system under a cross-servicing arrangement determines that the Department or the Federal agency, council or commission using the system under a cross-servicing arrangement is likely to be affected by the proceeding; and

(b) We deem the disclosure to be:

(*1*) Relevant and necessary to the proceeding; and

(2) Compatible with the purpose for which we compiled the information.

(2) The appropriate Federal, State, tribal, local or foreign governmental agency that is responsible for investigating, prosecuting, enforcing or implementing a statute, rule, regulation order or license, when we become aware of an indication of a violation or potential violation of the statute, rule, regulation, order or license.

(3) A congressional office in response to an inquiry to that office by the individual to whom the record pertains.

(4) To consumer reporting agencies to facilitate collection of debts owed the Government.

(5) To disclose debtor information to the Internal Revenue Service, or to another Federal agency or its contractor solely to aggregate information for the Internal Revenue Service to collect debts owed to the Federal government through the offset of tax refunds.

(6) To other Federal agencies for the purpose of collecting debts owed to the Federal government by administrative or salary offset.

(7) To any other Federal, state or local agency for the purpose of conducting an authorized computer matching program to identify and locate delinquent debtors for the recoupment of debts owed to the Department of the Interior.

(8) To the State Department in connection with the application for official government employee passports.

(9) To a Federal agency which has requested information relevant or necessary to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant or other benefit.

(10) To a Federal, State, tribal, territorial, or government agency where necessary for the Department to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant, or other benefit.

(11) To a commercial credit card contractor(s) for the accounting and payment of employee obligation for travel, purchasing and fleet management credit card usage.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in manual, microfilm, microfiche, electronic, imaged and computer printout form. Electronic records are stored on magnetic media at the central computer processing centers. Original input documents are stored in standard office filing equipment and/or as imaged documents on magnetic media at all locations which prepare and provide input documents and information for data processing.

RETRIEVABILITY:

Records are retrieved by name, Social Security number, organizational code, vendor code or number, and appropriation or fund to be credited.

SAFEGUARDS:

Access to all records in the system is limited to authorized personnel whose official duties require such access. Agency officials generally have access only to records pertaining to employees of their agencies. Paper or micro format records are maintained in locked metal file cabinets in secured rooms. Electronic records are maintained with safeguards meeting the security requirements of 43 CFR 2.51.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with the Treasury Financial Manual, the National Archives and Records Administration General Records Schedules, and the National Archives and Records Administration-approved Agency Records Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

(1) The following system manager has overall responsibility for the Federal Financial System: Director, Office of Financial Management, U.S. Department of the Interior, 1849 C Street NW, MS–5412 MIB, Washington, DC 20240.

(2) The following system managers have responsibility for the management and operation of the computing centers on which the Federal Financial System has been implemented:

(a) Director, Office of Federal Systems and Services, National Business Center, U.S. Department of the Interior, 12201 Sunrise Valley Drive, Room 6A231, MS–206, Reston, VA 20192.

(b) Chief, Financial Systems Division, Products and Services, National Business Center, MS D–2700, 7301 West Mansfield Avenue, Denver, CO 80235–2230.

(3) The following Department of the Interior bureau/office system managers have responsibility for the data input into and maintained on the Federal Financial System by or for their respective bureaus/offices:

(a) Chief, Division of Accounting Management, Bureau of Indian Affairs, PO Box 127, Albuquerque, NM 87112.

(b) Director, Office of Trust Responsibilities, Bureau of Indian Affairs, Office of Trust Responsibilities, 1849 C Street NW, MS–4513 MIB, Washington, DC 20240.

(c) Chief, Division of Finance, Bureau of Land Management, Building 50, Denver Federal Center, PO Box 25047, Denver, CO 80225.

(d) Chief, Financial Branch, Bureau of Reclamation, PO Box 25007, DFC Attn: D–360, Denver, CO 80225.

(e) Finance Officer, Division of Fiscal Services, National Business Center, Office of the Secretary, 1849 C Street NW, MS–1313 MIB, Washington, DC 20240.

(f) Director, Finance Center, U.S. Fish and Wildlife Service, PO Box 272060, Denver, CO 80227.

(g) Chief, Financial Branch, Royalty Management Program, Minerals Management Service, PO Box 25162, MS 3131, Denver, CO 80225.

(h) Chief, Accounting Operations Division, National Park Service, PO Box 4800, Reston, VA 22090.

(i) Chief, Division of Financial Management, Office of Surface Mining Reclamation and Enforcement, PO Box 25065 DFC, Denver, CO 80225.

(j) U.S. Geological Survey, Office of Financial Management, 12201 Sunrise Valley Drive, Reston, VA 20192.

(4) The following system managers have responsibility for the data input into and maintained on the Federal

Financial System by or for their respective organizations:

The Financial Officers of all Federal agencies, councils and commissions using the system under a cross-servicing arrangement. (To obtain a current list of these organizations and the addresses of their respective Financial Officers, contact the system managers responsible for the management and operation of the computing centers, as listed in (2), above.)

NOTIFICATION PROCEDURES:

Inquiries regarding the existence of records should be addressed to the appropriate System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.60.

RECORDS ACCESS PROCEDURES:

A request for access may be addressed to the appropriate System Manager. The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.63.

CONTESTING RECORDS PROCEDURES:

A petition for amendment should be addressed to the appropriate System Manager.

The request must be in writing, signed by the requester, and meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individuals on whom the records are maintained; supervisors of such individuals; contracting officers; employing offices; and standard travel, finance and accounting documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–22286 Filed 8–26–99; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Draft Environmental Impact Statement for the White River Amphitheatre, Muckleshoot Indian Reservation, King County, Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Draft Environmental Impact Statement (DEIS) for the proposed construction and operation of a 20,000 seat outdoor amphitheatre within the exterior boundaries of the Muckleshoot Indian Reservation, King County, Washington, is now available for public review and comment. The purpose of the proposed action is to provide an economically competitive performing art center for the greater Seattle-Tacoma concert market and a place for cultural educational and community events and gatherings for the Muckleshoot Indian Tribe (Tribe). Further details on the project and on the environmental issues addressed in the DEIS follow as supplementary information. This notice also announces a public Environmental Impact Statement (EIS)/design hearing.

DATES: Written comments must be received on or before October 27, 1999. The public EIS/design hearing will be held on September 29, 1999, from 6:00 p.m. to 9:00 p.m.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail or hand-deliver written comments to Stanley Speaks, Portland Area Director, Bureau of Indian Affairs, 911 N.E. 11th Avenue, Portland, Oregon 97232–4169. You may also comment via the Internet to Jboynton@PORT.BIA.GOV. Please submit Internet comments as an ASCII file, avoiding the use of special characters and any form of encryption. Include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (503) 231–6749.

Comments, including names and home addresses of respondents, will be available for public review at the above address during regular business hours, 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

The DEIS is also available for review at the above address. To obtain a copy of the DEIS, you may contact June Boynton, Environmental Coordinator at (503) 231–6749, or via e-mail to Jboynton@PORT.BIA.GOV; or you may contact Dean Torkko, EIS Coordinator, Washington State Department of Transportation, at (206) 440–4527, or via e-mail to torkkod@wsdot.wa.gov. Copies of the DEIS have already been sent to all agencies and individuals who participated in the scoping process or who previously requested copies.

The public EIS/design hearing will be held at the Auburn Performing Arts Center, Auburn, Washington. This site is accessible to people with disabilities. Anyone requiring written materials in alternative formats, sign language interpreters, physical accessibility accommodations or some other reasonable accommodation may request these by contacting (206) 440–4528, no later than September 8, 1999.

FOR FURTHER INFORMATION CONTACT: June Boynton, (503) 231–6749.

SUPPLEMENTARY INFORMATION: Three federal actions underlie the proposed construction of a 20,000 seat outdoor amphitheatre in the southeastern portion of the Muckleshoot Indian Reservation, between the cities of Auburn and Enumclaw, King County, Washington. Two of these are Bureau of Indian Affairs (BIA) actions, the taking into trust of approximately 346 acres of Indian-owned fee lands within the exterior boundaries of the reservation and the approval of a management agreement, under 25 U.S.C. 81, between the Tribe and Bill Graham Presents (BGP), under which the Tribe would own and BGP would manage the facility. The third federal action is the issuance of a wetland fill permit, under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*), by the U.S. Army Corps of Engineers. The BIA, as lead agency, prepared the DEIS in cooperation with the Corps of Engineers, the U.S. Environmental Protection Agency and the Washington Department of Transportation (WSDOT). Cooperation with WSDOT enables them to use this DEIS to meet the requirements of the State of Washington's Environmental Policy Act.

The DEIS presents a preferred alternative, the no action alternative and three other action alternatives. The preferred alternative calls for developing approximately 73 acres for the 20,000 seat amphitheatre, support facilities and surface parking, plus 17 acres for landscaping and buffers, including a shielding berm along the southern boundary. The amphitheatre will consist of a main stage, 10,000 seat bowl with fixed seating, a grass berm for informal lawn seating and an open air roof over the stage and fixed seating. Support facilities will include a ticket and administrative office, a loading dock, a hospitality area for performers, a restaurant, cafes, concession stands and public rest rooms.

The no action alternative assumes that the proposed amphitheatre will not be built and the proposed site not taken into trust. The partially constructed facilities on the site (see discussion of site restoration alternative below) will not be completed as an amphitheatre, although they may eventually be converted to other uses. At the gravel quarrying site proposed as an alternate location for the amphitheatre, mining operations will continue.

The three action alternatives include (1) an alternate location, where a 20,000 seat amphitheatre like that in the preferred alternative would displace existing gravel quarrying operations; (2) a smaller, 10,000 seat amphitheatre with an open air roof and support facilities similar to those for the preferred alternative, but with about one-half the parking capacity; and (3) site restoration, where partially completed facilities on the site of the preferred alternative will be removed, the site restored to its condition before construction was started, and the amphitheatre not constructed here or anywhere else. This construction, which had occurred out of synchronization with National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) [NEPA] requirements, was halted in response to an April 17, 1998, order by U.S. District Judge, John C. Coughenour, that the BIA prepare an EIS on the proposed action.

The environmental issues addressed in the DEIS include traffic, noise, crime, water quality, wetlands, fish, wildlife and endangered species, geo-technics, sewage disposal, air quality, cultural resources, land use, socio-economics, public safety, range of alternatives, and cumulative impacts. All of these issues were identified during public scoping.

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR Parts 1500 through 1508), implementing the procedural requirements of NEPA, and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: August 25, 1999.

Kevin Gover,

Assistant Secretary-Indian Affairs.

[FR Doc. 99–22437 Filed 8–26–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–110–0777–30–24–1A;–HAG 99–0298]

Notice of Intent To Prepare a Cascade Siskiyou Ecological Emphasis Area Plan/Environmental Impact Statement

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of intent to prepare a Cascade Siskiyou Ecological Emphasis Area plan/environmental impact statement and initiation of public scoping.

SUMMARY: Pursuant to the Federal Land Policy and Management Act and the National Environmental Policy Act, the Bureau of Land Management, Medford District, Ashland Resource Area will be preparing a Management Plan and Environmental Impact Statement (EIS) for the Cascade Siskiyou Ecological Emphasis Area (CSEEA) located in Jackson County, Oregon and Siskiyou County, California. If the land use allocations and resource uses proposed in the CSEEA are significantly different from those in the Medford and Redding Resource Management Plans (RMP), the analysis and decision-making process will also meet requirements of the Bureau's regulation for RMP amendments found in 43 Code of Federal Regulations 1610.5–5.

DATES: Written comments will be accepted until October 29, 1999, Public scoping meetings have been scheduled which include three field tours and one afternoon meeting. Field tours are planned for 9:00 a.m. to 3:00 p.m. on Tuesday, September 28,; Saturday, October 2; and Wednesday, October 6, 1999. Departure for the field tours will be from the parking area of the U.S. Forest Service, Ashland Ranger District at 645 Washington Street, Ashland, Oregon. The afternoon meeting is scheduled for October 9, 1999 at 1:30 p.m. at the science building auditorium of Southern Oregon University, 1250 Siskiyou Blvd., Ashalnd Oregon. Additional scoping meetings will be considered as appropriate.

The tentative project schedule is as follows:

1. Development of planning criteria, including information to be used, issues to be addressed, and initial alternatives to be considered -fall 1999.
2. File Draft Environmental Impact Statement—March 2000 (90 day public review period).
3. File Final Environmental Impact Statement—July 2000 (30 day public review period).
4. Record of Decision—October 2000.

SUPPLEMENTARY INFORMATION: The CSEEA analysis area is located on federal land in southwest Oregon and northern California. The CSEEA encompasses an environmental transition area between the Great Basin, the Siskiyou and Klamath Mountains, and the Cascade Mountains. Higher elevations act as a land bridge between the Cascade and Klamath Mountains. A unique area of rich ecological diversity has developed as a result of the confluence of these different environments.

The CSEEA encompasses the following on Bureau managed lands in Oregon and California:

—Soda Mountain Wilderness Study Area recommended for wilderness designation (5,867 ac.);
—Pacific Crest Trail (National Scenic Trail);
—Five Areas of Critical Environmental Concern, including two Research Natural Areas;
—Portions of one Late-Successional Reserve.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7 and 43 CFR 1610.2), which includes:

1. Defining the scope of the analysis and nature of the decision to be made.
2. Identifying the issues and determining the significant issues for consideration and analysis within the environmental impact statement.
3. Defining the proper skills required for the interdisciplinary team.
4. Exploring possible alternatives.
5. Identifying potential environmental effects.
6. Determining potential cooperating agencies.
7. Identifying groups or individuals interested or affected by the decision.

Public participation will be solicited by person-to-person contact, and/or by mail to known interested and affected publics and key contacts. In addition, news releases will be used to give the public general notice. Comments from interested persons and organizations will be used in preparation of the draft environmental impact statement.

Local and regional groups differ over future management within the CSEEA. Opinions range from full protection as a wilderness area to managing the area for recreation including off-highway vehicle, grazing, timber harvest, and other commodity uses. The completed management plan will provide direction for management of the public lands. Several management alternatives covering a wide range of management actions and resource uses will be

analyzed in the plan. These alternatives will be developed based on internal staff discussions, public comments, and meeting with government agencies. Tentative issues for discussion include off-highway vehicle use, livestock grazing, noxious weeds, and timber harvest. One alternative will be a "no action" alternative (continuation of the present management program), based on the 1995 approved Medford RMP. Another alternative will provide for greater restrictions on current uses and potential interagency coordination to meet landscape-level management objectives. Other alternatives will provide for road and trail designations and maintenance management programs comprising various combinations of resource uses and land allocations.

The BLM is seeking information, comments, and assistance from federal, state, and local agencies and other individuals or organizations interested in or affected by the proposed action.

The analysis will be completed by an interdisciplinary team. Disciplines to be represented on the team include, but are not limited to: archaeology, anthropology, botany, fire management, fisheries, forestry, geology and minerals, hydrology, realty, recreation, wilderness, and soils.

ADDRESSES: Comments should be sent to Richard J. Drehobl, Ashland Field Manager, Medford District Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504.

FOR FURTHER INFORMATION CONTACT: Tom Sensenig (541) 770–2319 or Bill Yocum (541) 770–2384. Fax or E-mail can be made sent attention to Tom Sensenig or Bill Yocum at (541) 770–2400, or <110mb@or.blm.gov>. Information concerning the analysis and potential RMP amendment will be available at the BLM office in Medford at the address shown above. Some information is available from Chuck Schultz at the BLM Redding Field Office, 355 Hemsted Drive, Redding, California 96002; (530) 224–2100.

Pursuant to 7 CFR Part 1, Subpart B, Section 1.27, all written submissions in response to this notice, the published scoping newsletter, draft and final environmental impact statements will be made available for public inspection including the submitter's name and address, unless the submitter specifically requests confidentiality. Anonymous comments will not be accepted. All written submissions from business entities and organizations, submitted on official letterheads, will be made available for public inspection in their entirety.

Dated: August 19, 1999.

Richard J. Drehobl,

Field Manager, Ashland Resource Area.

[FR Doc. 99–22268 Filed 8–26–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–070–7770–42]

Notice of Intent to Amend the Kingman Resource Management Plan, March 1995, to offer lands for lease and disposal under the Recreation and Public Purposes Act that were not previously identified for disposal

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: The Bureau of Land Management (BLM) Lake Havasu Field Office proposes to prepare an Environmental Assessment and amend the Kingman Resource Management Plan, (RMP), March 1995. The amendment would allow lease and disposal of the following described public land in Mohave County, under the provisions of the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869 *et seq.*):

Gila and Salt River Meridian, Arizona

T. 19 N., R. 21 W.
Sec. 28, E½, S½NW¼, SW¼,
Sec. 33, all.
Containing 1200 acres, more or less.

SUPPLEMENTARY INFORMATION: The described land has been requested to be made available to meet recreational and educational, needs of the community. The current RMP does not identify the land for disposal. The amendment would open the land to application by the Arizona Game and Fish Department (AG&FD), and/or any other qualified applicants for Recreation and Public Purposes Lease/Conveyance. The (AG&FD) proposes to use the sections of land for development of a sport utility complex for the greater Bullhead City Area.

DATES: Written comments related to the identification of issues will be accepted until September 30, 1999.

Comments, including names and street addresses of respondents, will be available for public review at the address below during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

ADDRESSES: Comments on this Notice should be sent to Donald Ellsworth, Field Manager, Bureau of Land Management, Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona 86406.

FOR FURTHER INFORMATION CONTACT: Field Manager, Donald Ellsworth, Lake Havasu Field Office, 2610 Sweetwater Avenue, Lake Havasu City, Arizona 86406 or telephone (520) 505–1264.

Dated: August 23, 1999.

Robert M. Henderson,

Acting Field Manager.

[FR Doc. 99–22351 Filed 8–26–99; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–010–1430–00; N–62824]

Notice of Realty Action: Non-Competitive Sale

AGENCY: Bureau of Land Management, DOI.

ACTION: Non-competitive sale of reversionary interest patent number 27–65–0234.

SUMMARY: The following described land in Clark County, Nevada, was patented to Basic Management Incorporated pursuant to the Act of Congress of August 27, 1954 (68 Stat. A223). The patent contained a reversionary interest to the United States. Victory Valley Land Company, L.P., a successor-in-interest, requests the purchase of the reversionary interest at not less than the estimated fair market value of $1,515,000.00. The Federal interest has been examined and found suitable for sale under the provisions of the Federal Land Policy and Management Act (43 CFR 2711.3–3).

Mount Diablo Meridian, Nevada

T. 21 S., R. 63 E.,
Sec. 33, SE¼SE¼NE¼SW¼, E½NE¼SE¼SW¼, NE¼SE¼SE¼SW¼, S½NW¼SE¼, N½SW¼SE¼, N½S½SW¼SE¼.

Containing 60 acres, more or less, identified as Clark County Assessor Parcel Number 160–33–801–001.

Non-competitive sale procedures are considered appropriate, in this case, as the land described above was granted to Basic Management, Incorporated, with a clause of reversionary interest to the United States.

The Federal interest has been jointly selected for sale by the unit of local government as provided by the Southern Nevada Public Land Management Act of 1997 (P.L. 105–263), and is being offered for non-competitive sale to Victory Valley Land Company, L.P. The property will continue to be subject to certain reservations to the United States.

Detailed information concerning these reservations as well as specific conditions of the sale are available for review at the Las Vegas Field Office, Bureau of Land Management, 4765 Vegas Drive, Las Vegas, Nevada 89108.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Field Manager, Las Vegas Field Office, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: August 17, 1999.

Cheryl Ruffridge,

Acting Assistant Field Manager, Las Vegas, NV.

[FR Doc. 99–22267 Filed 8–26–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–036–1210–00]

Notice of Recreation Use Restrictions and Regulations for Egin Lakes Access and Red Road Recreation Sites Adjacent and Within the Sand Mountain Wilderness Study Area (WSA), Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of recreation use restrictions for Egin Lakes Access and Red Road recreation sites adjacent and within the Sand Mountain WSA, Idaho.

SUMMARY: Notice is hereby given in accordance with Title 43 Group 8000-Recreation Programs, and in accordance with the principles established by the Federal Land Policy and Management Act of 1976 and the National Environmental Policy Act of 1969, that certain lands located in and adjacent to the Sand Mountain WSA which includes the area known as the St. Anthony Sand Dunes Special Recreation Management Area (SRMA) in Fremont and Jefferson Counties, Idaho have recreation use restrictions placed upon them. Actions are implemented under the authority of 43 CFR 8364.

DATES: Effective date: September 1, 1999.

ADDRESSES: Bureau of Land Management, Upper Snake River District, Idaho Falls Field Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83401, telephone (208) 524–7500.

SUPPLEMENTARY INFORMATION: The WSA is 21,000 acres of public land that has current vehicle and recreation use restrictions within it that were established through the **Federal Register** on August 13, 1992. Both the WSA and SRMA are within the Egin-Hamer Winter Seasonal Closure Area established through the **Federal Register** on December 16, 1997.

Recreation use in the SRMA has increased nearly 1000% from an estimated 14,000 visits in FY84 to over 136,000 visits in FY 98. The Egin Lakes Access Site alone recorded over 72,000 visits in which over 20,000 visitors were campers using the undeveloped camping area or the developed parking lot to camp. Use along the Red Road where there are numerous undeveloped recreation sites recorded over 24,000 visits in which over 2000 visitors were overnight campers.

Open campfire sites inside the Sand Mountain WSA but outside the Red Road Open Sand Campfire Area have increased tremendously in the last few years, especially around major access routes onto the open sand and around Dry Lake Bed (Hidden Lake) causing degradation of the natural values of the area. The last few years have also had non-traditional dispersed recreation uses occur on Hidden Lake which is a dry lake bed in the winter but has water throughout the spring, summer, and fall seasons. Snowmobile and Personal Water Craft users have been using the lake in the summer for water craft skimming. This activity has created safety problems for other recreation users along the lake shore and in the water. The development of the Egin Lakes access has created large gatherings of young individuals to the area. These gatherings have contributed to large beer and alcohol parties at the recreation site. Both drug and alcohol use by underage users has been documented at this site and other concentrated recreation use area within the St. Anthony Sand Dunes Special Recreation Management Area.

To reduce the litter and debris left in the recreation sites and areas along the Red Road and Egin Lakes access, and to reduce the safety hazard presented by alcohol use the following restriction will be in effect: (1) No Person under the age of twenty-one (21) shall possess or consume any alcoholic beverage, as defined by Idaho Code Title 23–105, on Public lands in the St. Anthony Sand Dunes Special Recreation Management Area.

Maps of the areas where the restriction will apply will be available at the Idaho Falls Field Office. Signs with the rules and regulations for the SRMA will be posted at entrances into the WSA as well as at the recreation sites and areas. The new restriction will be incorporated into the existing St. Anthony Sand Dunes and Sand Mountain WSA information flyer.

FOR FURTHER INFORMATION CONTACT: Bill Boggs, Bureau of Land Management, Upper Snake River District, Idaho Falls Field Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83401, (208) 524–7527.

Dated: August 17, 1999.

Joe Kraayenbrink,

Field Manager.

[FR Doc. 99–22270 Filed 8–26–99; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–950–1420–00–P]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

The plats of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10:00 a.m., August 20, 1999.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of Sections 17 and 20, T. 43 N., R. 109 W., Sixth Principal Meridian, Wyoming, Group No. 644, was accepted March 23, 1999.

The plat representing the dependent resurvey of the Seventh Standard Parellel North, through Range 87 West, a portion of the subdivisional lines and the subdivision of Section 34, T. 29 N., R. 87 W., Sixth Principal Meridian, Wyoming, Group No. 631, was accepted August 17, 1999.

The plat representing the dependent resurvey of portions of the east boundary and the subdivisional lines, and the subdivision of Section 25, T. 56 N., R. 70 W., Sixth Principal Meridian,

Wyoming, Group No. 646, was accepted August 17, 1999.

The plat representing the dependent resurvey of a portion of the Fort McKinney Military Reservation, T. 50 N., R. 82 W., Sixth Principal Meridian, Wyoming, Group No. 650, was accepted August 17, 1999.

The plat representing the dependent resurvey of portions of the south boundary and the subdivisional lines, and the subdivision of Section 35, T. 40 N., R. 93 W., Sixth Principal Meridian, Wyoming, Group No. 648, was accepted August 17, 1999.

The plat representing the dependent resurvey of portions of the north boundary and subdivisional lines, and the subdivision of Sections 3 and 4, T. 57 N., R. 75 W., Sixth Principal Meridian, Wyoming, Group No. 656, was accepted August 17, 1999.

The supplemental plat showing the corrected area of previous Lot 8, now shown as Lot 19, Section 31, Tp. 48 N., R. 76 W., Sixth Principal Meridian, Wyoming, is based on the plat accepted August 22, 1990, was accepted August 17, 1999.

All inquiries concerning the survey of the above described lands should be sent to John P. Lee, (307) 775–6216, Wyoming State Office, Bureau of Land Management, P.O. Box 1828, 5353 Yellowstone Road, Cheyenne, Wyoming 82003.

Dated: August 20, 1999.

John P. Lee,

Chief Cadastral Survey Group.

[FR Doc. 99–22269 Filed 8–26–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of Mesa Verde National Park, Mesa Verde, CO

AGENCY: National Park Service, Interior.

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of the National Park Service, Mesa Verde National Park, Mesa Verde, CO.

A detailed assessment of the human remains and associated funerary objects was made by National Park Service professional staff in consultation with representatives of the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Navajo Nation of Arizona, New Mexico, and Utah; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico, and Utah; and Zuni Tribe of the Zuni Reservation, New Mexico. The Pueblo of San Felipe, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; and Ysleta Del Sur Pueblo of Texas were unable to attend the Native American consultation meetings, but they requested and received the minutes of these proceedings.

In 1950, human remains representing one individual were recovered during a legally authorized National Park Service excavation conducted at Site 16 (5MV16), a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (post and adobe village with kiva, single coursed masonry pueblo with kiva, double coursed masonry pueblo with three towers and one kiva), dendrochronology, archeological context, a physical anthropology examination, and artifact (ceramic, bone, and lithic) analysis, this site (5MV16) and these human remains are dated to Basketmaker III-Pueblo II (A.D. 500-1100).

Between 1947 and 1948, human remains representing 23 individuals were recovered during a legally authorized excavation conducted by Gila Pueblo Survey archeologist Deric O'Bryan at Soda Canyon Pueblo (5MV34), a site within park boundaries. No known individuals were identified. The 32 associated funerary objects include 10 bowls and bowl fragments, seven mugs, five jars, two cylinders, one canteen, one scraper, one pitcher, one point, one geologic specimen, one abrader, one awl, and one ladle. Two mugs are missing from the original catalogued entry for this site. These two associated funerary objects have not been included in the total count.

Based on architectural features (45 rooms, 5 kivas, and a tower), dendrochronology, archeological context, a physical anthropology examination, and artifact (bone, lithic, ceramic, and organics) analysis, this site (5MV34), these human remains, and the associated funerary objects are dated to Pueblo II-Pueblo III (A.D. 900-1300).

In 1942, human remains representing one individual were recovered during a legally authorized National Park Service salvage excavation project conducted at One Clan House (5MV51), a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (burned stone), archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV51) and these human remains are dated to Pueblo I-Pueblo II (A.D. 700-1100).

In 1965, human remains representing six individuals were recovered during a legally authorized excavation conducted by University of Colorado archeologist Cal Jennings at Big Pit Structure (5MV60), a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (a circular pit structure), dendrochronology, archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV60) and these human remains are dated to Basketmaker III (A.D. 500-700).

In 1952, human remains representing one individual were recovered during a legally authorized National Park Service excavation conducted at 5MV80, a site within park boundaries. No known individuals were identified. The 112 associated funerary objects are all sherds.

Based on architectural features (midden, burned stone, and a rubble mound), archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV80), these human remains, and the associated funerary objects are dated to Pueblo II-Pueblo III (A.D. 900-1300).

In 1950, human remains representing one individual were recovered during a legally authorized National Park Service excavation conducted at Twin Trees Village (5MV106), a site within park boundaries. No known individuals were identified. The 80 associated funerary objects include one faunal bone, one jar, three ladle bowls, and 75 sherds.

Based on architectural features (a pithouse), dendrochronology, archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV106), these human remains, and the associated funerary objects are dated to Basketmaker III (A.D. 500-700).

In 1947, human remains representing one individual were recovered during a legally authorized excavation conducted by Gila Pueblo Survey archeologist Deric O'Bryan at Deric's Pithouse (5MV145), a site within park boundaries. No known individuals were identified. The three associated funerary objects include one shell bead, one pestle, and one stone artifact.

Based on architectural features (2 pithouses), dendrochronology, archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV145), these human remains, and the associated funerary objects are dated to Basketmaker III (A.D. 500-700).

In 1952, human remains representing one individual were recovered during a legally authorized National Park Service excavation conducted at Gila Pueblo t43 (5MV200), a site within park boundaries. No known individuals were identified. The 392 associated funerary objects include four bone awls and awl fragments, one basket, five blades and blade fragments, one core, one drill, one effigy vessel, 26 flakes, 37 geologic specimens (azurite, hematite, limonite, and malachite), one gizzard stone, one jar, one mano, four unfinished pendants, one pitcher, two points, 300 sherds, one battered stone artifact, four ground stone artifacts, and one polished stone artifact. One wood artifact, one mineral specimen, and one squash seed are missing from the original catalogued entry for this site. These three associated funerary objects have not been included in the total count.

Based on architectural features (a kiva depression, midden, and rubble mound), archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV200), these human remains, and the associated funerary objects are dated to Pueblo III (A.D. 1100-1300).

In 1952, human remains representing three individuals were recovered during a legally authorized National Park Service excavation conducted at 5MV201, a site within park boundaries. No known individuals were identified. The 260 associated funerary objects include one bowl fragment, one geologic specimen (sandstone), one ladle bowl, one miniature pitcher, and 256 sherds. One point is missing from the original catalogued entry for this site. This associated funerary object has not been included in the total count.

Based on architectural features (a kiva depression, rubble mound, and midden), archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV201), these human remains, and the associated funerary objects are dated to Pueblo II-Pueblo III (A.D. 900-1300).

In 1953, human remains representing two individuals were recovered during a legally authorized National Park Service excavation conducted at 5MV299, a site within park boundaries. No known individuals were identified. The two associated funerary objects include one jar fragment and one ladle bowl.

Based on architectural features (20-30 rooms, a tower, 2 kiva depressions, and a midden), archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV299), these human remains, and the associated funerary objects are dated to Pueblo II-Pueblo III (A.D. 900-1300).

In 1953, human remains representing one individual were recovered during a legally authorized National Park Service salvage excavation project conducted at Tent Area Salvage (5MV364), a site within park boundaries. No known individuals were identified. The two associated funerary objects are bowls.

Based on architectural features (a rubble mound and midden), archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV364), these human remains, and the associated funerary objects are dated to Basketmaker III (A.D. 500-700).

In 1953, human remains representing one individual were recovered during a legally authorized National Park Service field collection project conducted at 5MV475, a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (a rubble mound), archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV475) and these human remains are dated to Pueblo II (A.D. 900-1100).

In 1953, human remains representing 44 individuals were recovered during a legally authorized excavation conducted by University of Colorado archeologist Robert Lister at Lister Site No.2 (5MV499), a site within park boundaries. No known individuals were identified. The 17 associated funerary objects include one bone awl, eight bowls and bowl fragments, three faunal bones, two jars, one mano, one mug, and one pitcher.

Based on architectural features (Pueblo II component: 5 rooms and a kiva; Pueblo III component: 15–18 rooms, 2 kivas, a tower, and a milling room), dendrochronology, archeological context, a physical anthropology examination, and artifact (ceramic, lithic, and bone) analysis, this site (5MV499), these human remains, and the associated funerary objects are dated to Pueblo II-Pueblo III (A.D. 900-1300).

In 1954, human remains representing two individuals were recovered during a legally authorized National Park Service salvage excavation project conducted at Burial Cave (5MV503), a site within park boundaries. No known individuals were identified. The 40 associated funerary objects include 38 corn-cobs, one rush matting fragment, and one wood artifact. Human remains representing one individual are missing from the original catalogued entry for this site. These human remains have not been included in the total count.

Based on artifact (sandal and ceramic) analysis, archeological context, and a physical anthropology examination, this site (5MV503), these human remains, and the associated funerary objects are dated to Basketmaker III (A.D. 500-700).

In 1958, human remains representing one individual were recovered during a legally authorized National Park Service excavation conducted at 5MV509, a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (7 rooms, a kiva, 3 storage rooms, 2 retaining walls, an axe polishing groove, and a petroglyph), archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV509) and these human remains are dated to Pueblo III (A.D. 1100-1300).

In 1942 and 1977, human remains representing seven individuals were recovered during multiple legally authorized National Park Service excavations conducted at Oak Tree House (5MV523), a site within park boundaries. No known individuals were identified. The six individuals recovered in 1977 had no associated funerary objects. The one individual recovered in 1942 had eight associated funerary objects consisting of seven pieces of sinew and one calcium carbonate sample (35 grams).

Based on architectural features (55 rooms, 6 kivas, and 8 storage rooms), dendrochronology, archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV523), these human remains, and the associated funerary objects are dated to Pueblo III (A.D. 1100-1300).

Prior to 1921, human remains representing two individuals were recovered during legally authorized collection and excavation projects conducted by Smithsonian Institution archeologist Jesse Walter Fewkes at

Mummy House (5MV524), a site within park boundaries. No known individuals were identified. The three associated funerary objects include one ladle, one splint matting fragment, and one feather and fur textile fragment.

Based on architectural features (12 rooms, 2 kivas, a storage room, 2 grinding bins, 12 hearths, and a retaining wall), dendrochronology, archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV524), these human remains, and the associated funerary objects are dated to Pueblo III (A.D. 1100-1300).

In 1977, human remains representing one individual were recovered during an unauthorized field collection conducted by a park visitor at Tree House (5MV528), a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (4 rooms, a storage room, retaining wall, and 4 fire pits), archeological context, and a physical anthropology examination, this site (5MV528) and these human remains are dated to Pueblo III (A.D. 1100-1300).

In 1932, human remains representing two individuals were recovered during an unauthorized field collection conducted by park visitors at Alcove House (5MV529), a site within park boundaries. No known individuals were identified. The seven associated funerary objects include one bowl, four faunal bones, one mug, and one sherd.

Based on architectural features (a rubble mound, midden, 2 kivas, 12–14 rooms, walls, toe holds, and pictographs), archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV529), these human remains, and the associated funerary objects are dated to Pueblo III (A.D. 1100-1300).

In 1959, human remains representing one individual were recovered during a legally authorized National Park Service excavation conducted at 5MV536, a site within park boundaries. No known individuals were identified. The three associated funerary objects include one drill and two sherds.

Based on architectural features (4 rooms), archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV536), these human remains, and the associated funerary objects are dated to Pueblo III (A.D. 1100-1300).

Between 1909 and 1990 (before November 16, 1990), human remains representing five individuals were recovered during legally authorized National Park Service excavations, field collections, and site stabilization projects conducted at Cliff Palace (5MV625), a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (217 rooms, 23 kivas, 14 storage rooms, 2 towers, and 4 terrace levels), dendrochronology, archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV625) and the human remains are dated to Pueblo III (A.D. 1100-1300).

Between 1915 and 1986, human remains representing eleven individuals were recovered during legally authorized excavation and field collection projects conducted at Spruce Tree House (5MV640), a site within park boundaries. From 1915 to 1922, human remains representing one individual were recovered during field collection activities undertaken by Smithsonian Institution archeologist Jesse Walter Fewkes. In 1924, 1962, and 1986, National Park Service excavation and field collection projects recovered human remains representing a total of 10 individuals. No known individuals were identified. The individual recovered between 1915 and 1922 had no associated funerary objects. The human remains recovered between 1924 and 1986 had nine associated funerary objects consisting of four faunal bones and five pieces of reed matting.

Based on architectural features (114 rooms and 8 kivas), dendrochronology, archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV640), these human remains, and the associated funerary objects are dated to Pueblo III (A.D. 1100-1300).

In 1942, human remains representing one individual were recovered during a legally authorized National Park Service stabilization project conducted at Square Tower House (5MV650), a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (80 rooms and 7 kivas), dendrochronology, archeological context, and a physical anthropology examination, this site (5MV650) and these human remains are dated to Pueblo III (A.D. 1100-1300).

In 1934, human remains representing two individuals were recovered during a legally authorized National Park Service field collection project conducted at 5MV656, a site within park boundaries. No known individuals were identified. The three associated funerary objects include pieces of willow matting.

Based on architectural features (a room), archeological context, a physical anthropology examination, and analysis of the willow matting, this site (5MV656), these human remains, and the associated funerary objects are dated to Pueblo III (A.D. 1100-1300).

In 1986, human remains representing one individual were recovered during a legally authorized National Park Service site stabilization project conducted at 5MV693, a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (12 rooms and a square kiva), archeological context, and a physical anthropology examination, this site (5MV693) and these human remains are dated to Pueblo III (A.D. 1100–1300).

In 1956, human remains representing one individual were recovered during a legally authorized National Park Service excavation conducted at 5MV744, a site within park boundaries. No known individuals were identified. The 33 associated funerary objects include 32 sherds and one pecked and ground stone artifact.

Based on architectural features (a rubble mound), archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV744), these human remains, and the associated funerary objects are dated to Pueblo II (A.D. 900-1100).

In 1934 and 1976, human remains representing three individuals were recovered during legally authorized excavation and site stabilization projects conducted at Far View House (5MV808), a site within park boundaries. In 1934, human remains representing two individuals were recovered during National Park Service site stabilization and excavation projects. In 1976, human remains representing one individual were recovered during an excavation undertaken by University of Colorado archeologist David Breternitz. No known individuals were identified. The individual recovered in 1976 had no associated funerary objects. The two individuals recovered in 1934 had one associated funerary object consisting of a bone artifact.

Based on architectural features (40 rooms, 5 kivas, and a courtyard), dendrochronology, archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV808), these human remains, and the associated funerary object are dated to Pueblo II-Pueblo III (A.D. 900-1300).

In 1926, human remains representing three individuals were recovered during a legally authorized National Park Service excavation conducted at Far View Tower (5MV810), a site within park boundaries. No known individuals were identified. The two associated funerary objects include one point and one worked sherd.

Based on architectural features (16 rooms, 3 kivas, and a tower), archeological context, and a physical anthropology examination, this site (5MV810), these human remains, and the associated funerary objects are dated to Pueblo II (A.D. 900-1100).

Between 1968 and 1977, human remains representing 147 individuals were recovered during legally authorized excavation and field collection projects conducted at Coyote Village (5MV820), a site within park boundaries. In 1968 and 1969, human remains representing 143 individuals were recovered during excavations undertaken by University of Colorado archeologist David Breternitz. During field collection activities, the National Park Service recovered human remains representing three individuals in 1974 and one individual in 1977. No known individuals were identified. The individual recovered in 1977 had no associated funerary objects. The three individuals recovered in 1974 had 82 associated funerary objects, which included two bone awls, one axe, three bowls and bowl fragments, 27 clay objects, one concretion, two cores, 12 faunal bones, 11 flakes, two geologic specimens (hematite), one mug fragment, three sherds, 11 slabs, one chipped and ground stone artifact, four ground stone artifacts, and one worked sherd. The 143 individuals recovered in 1968 and 1969 had 469 associated funerary objects, which included six bone awls, one axe, 36 beads, one blade fragment, one bone artifact, 17 bowls and bowl fragments, three cores, 63 faunal bones, 18 flakes, two geologic specimens (porphyry), two hammerstones, three jars, five ladles, one mano, one miniature bowl, five mugs, two necklaces, four pitchers, two points, one scraper, 290 sherds, three slabs and slab fragments, and two ground stone artifacts. One mano is missing from the original catalogued entry for this site. This associated funerary object has not been included in the total count.

Based on architectural features (30-40 rooms, 5 kivas, and a tower), dendrochronology, archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV820), these human remains, and the associated funerary objects are dated to Pueblo II (A.D. 900-1100).

In 1950, human remains representing two individuals were recovered during a legally authorized National Park Service salvage excavation project conducted at Gila Pueblo 150 (5MV828), a site within park boundaries. No known individuals were identified. The 265 associated funerary objects include 260 sherds, one bowl, three geologic specimens, and one pitcher.

Based on architectural features (10-15 rooms, 2 kivas, and a midden), archeological context, a physical anthropology examination, and artifact analysis, this site (5MV828), these human remains, and the associated funerary objects are dated to Pueblo II (A.D. 900-1100)

Prior to 1921, human remains representing two individuals were recovered during a legally authorized field collection project conducted by Smithsonian Institution archeologist Jesse Walter Fewkes at Mummy Lake (5MV833), a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (a lined circular depression and ditches), archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV833) and these human remains are dated to Pueblo II-Pueblo III (A.D. 900-1300).

In 1954, human remains representing 22 individuals were recovered during a legally authorized excavation conducted by University of Colorado archeologists Breternitz and Lister at 5MV866, a site within park boundaries. No known individuals were recovered. The 12 associated funerary objects include two bowls, one effigy vessel, six faunal bones, one ladle, one ladle fragment, and one olla fragment.

Based on architectural features (a rubble mound, kiva depression, midden, and 4 rooms), archeological context, a physical anthropology examination, dendrochronology, and artifact (ceramic, lithic, and bone) analysis, this site (5MV866), these human remains, and the associated funerary objects are dated to Pueblo II (A.D. 900-1100).

In 1955 and 1956, human remains representing 17 individuals were recovered during legally authorized excavations conducted by University of Colorado archeologist Robert Lister at Lister Site No.1 (5MV875), a site within park boundaries. No known individuals were identified. The 31 associated funerary objects include 10 bowls and bowl fragments, five faunal bones, five jars and jar fragments, one ladle bowl fragment, three ladles, six pitchers, and one worked sherd.

Based on architectural features (17 rooms, 3 kivas, and a midden), dendrochronology, archeological context, a physical anthropology examination, and ceramic and lithic analysis, this site (5MV875), these human remains, and the associated funerary objects are dated to Pueblo II-Pueblo III (A.D. 900-1300).

In 1933, an Emergency Conservation Work (ECW) road crew recovered human remains representing three individuals during a legally authorized salvage excavation project conducted at 5MV947, a site within park boundaries. No known individuals were identified. The eight associated funerary objects include one axe and seven faunal bones.

Based on architectural features (13 terraces), archeological context, and a physical anthropology examination, this site (5MV947), these human remains, and the associated funerary objects are identified as Ancestral Puebloan (pre A.D. 1300).

In 1958, human remains representing six individuals were recovered during a legally authorized National Park Service excavation conducted at 5MV1025, a site within park boundaries. No known individuals were identified. The 24 associated funerary objects include one bone awl, one faunal bone, one jar, one ladle bowl, one pitcher, one pitcher fragment, and 18 sherds.

Based on architectural features (walls, a rubble mound, and midden), archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV1025), these human remains, and the associated funerary objects are dated to Pueblo II (A.D. 900-1100).

In 1965 and 1966, human remains representing 44 individuals were recovered during legally authorized excavations conducted by University of Colorado archeologists Breternitz and Lister at Morefield Great Kiva (5MV1067), a site within park boundaries. No known individuals were identified. The 187 associated funerary objects include three bone awls, one bone artifact, five bowl fragments, two cores, two ladle fragments, one doughnut jar, 45 faunal bones, 17 flakes, 12 jars and jar fragments, one miniature jar, 20 olla fragments, one pendant, one pitcher, 72 sherds, and four worked sherds.

Based on architectural features (a kiva), dendrochronology, archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV1067), these human remains, and the associated funerary objects are dated to Pueblo II (A.D. 900-1100).

In 1942 and 1965, human remains representing 18 individuals were recovered during legally authorized excavations conducted at Gila Pueblo 181 (5MV1088), a site within park

boundaries. In 1942, the National Park Service recovered one individual during a salvage excavation project. In 1965, the University of Colorado recovered 17 individuals during an excavation. No known individuals were identified. The one individual recovered in 1942 had six associated funerary objects consisting of one bowl, one faunal bone, two jars, one needle, and one scraper. The 17 individuals recovered in 1965 had six associated funerary objects consisting of three bowls and bowl fragments, one ladle, one miniature jar, and one miniature bowl. Human remains representing one individual are missing from the original catalogued entry for this site. These human remains have not been included in the total count.

Based on architectural features (10 or more rooms and a midden), archeological context, a physical anthropology examination, and artifact (ceramic, lithic, and bone) analysis, this site (5MV1088), these human remains, and the associated funerary objects are dated to Pueblo II (A.D. 900-1100).

In 1965 and 1966, human remains representing 33 individuals were recovered during a legally authorized excavation conducted by University of Colorado archeologists Lister and Breternitz at 5MV1104, a site within park boundaries. No known individuals were identified. The 121 associated funerary objects include 107 sherds, 10 faunal bones, one core, one flake, one jar, and one chipped and battered stone artifact.

Based on architectural features (12 rooms, a kiva, midden, and a possible tower), archeological context, a physical anthropology examination, and ceramic and lithic analysis, this site (5MV1104), these human remains, and the associated funerary objects are dated to Pueblo III (A.D. 1100-1300).

In 1958, human remains representing one individual were recovered during a legally authorized National Park Service field collection project conducted at 5MV1149, a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (10-20 rooms and walls), archeological context, and a physical anthropology examination, this site (5MV1149) and these human remains are dated to Pueblo II-Pueblo III (A.D. 900-1300).

In 1958, human remains representing two individuals were recovered during a legally authorized National Park Service field collection project conducted at 5MV1191, a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (outlines of 2-3 rooms), archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV1191) and these human remains are dated to Pueblo II (A.D. 900-1100).

Between 1937 and 1989, human remains representing 211 individuals were recovered during multiple episodes from Long House (5MV1200), a site within park boundaries. In 1937, a park visitor recovered human remains representing two individuals during an unauthorized excavation. From 1958 to 1962, human remains representing 208 individuals were recovered during a legally authorized National Park Service excavation. In 1989, human remains representing one individual were located in the collection by park curatorial staff. No known individuals were identified. The two individuals recovered in 1937 and the one individual found in 1989 had no associated funerary objects. The 208 individuals recovered from 1958 to 1962 had 539 associated funerary objects consisting of four bone awls, two axes, one bead, one bone artifact, 277 botanical specimens (juniper and yucca), 10 bowls and bowl fragments, one concretion, one cone, one feather/yucca cordage fragment, two cores, five corn cobs, three corn kernels, three cylinders, one disk fragment, 93 faunal specimens (bone, hide, claw, and eggshell), 13 flakes, three geologic specimens (barite, quartz, and shale), five gizzard stones, seven hammerstones, six jars and jar fragments, one ladle cup, one ladle, two manos, one miniature ladle, 12 mugs and mug fragments, four pendants, three points, 72 sherds, one drilled stone artifact, one pecked and grooved stone artifact, one wood artifact, and one worked sherd. Human remains representing two individuals and three cores are missing from the original catalogued entry for this site. These human remains and associated funerary objects have not been included in the total counts.

Based on architectural features (Basketmaker III component: a pithouse; Pueblo III component: 150 rooms, 21 kivas, and a plaza), dendrochronology, archeological context, a physical anthropology examination, and artifact (ceramic, lithic, bone, antler, and organics) analysis, this site (5MV1200), these human remains, and the associated funerary objects are dated to Basketmaker III (A.D. 500-700) and Pueblo III (A.D. 1100-1300).

In 1958, human remains representing 36 individuals were recovered during a legally authorized National Park Service field collection project conducted at 5MV1205, a site within park boundaries. No known individuals were identified. The 12 associated funerary objects include two bowls, three faunal bones, one flake, and six sherds.

Based on architectural features (cave with smoke blackened walls and roof, retaining wall, a room, 2 storage pits, 4 firepits, and six feet of fill), archeological context, a physical anthropology examination and artifact (ceramic, lithic, and bone) analysis, this site (5MV1205), these human remains, and the associated funerary objects are dated to Basketmaker III-Pueblo III (A.D. 500-1300).

In 1958, human remains representing one individual were recovered during a legally authorized National Park Service field collection project conducted at Burnt House (5MV1207), a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (15-20 rooms), dendrochronology, archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV1207) and these human remains are dated to Pueblo III (A.D. 1100-1300).

In 1959, human remains representing one individual were recovered during a legally authorized National Park Service field collection project conducted at 5MV1221, a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (35 rooms, a midden, kiva, and storage room), archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV1221) and these human remains are dated to Pueblo III (A.D. 1100-1300).

Between 1935 and 1963, human remains representing 16 individuals were recovered during legally authorized National Park Service field collection, excavation, and site stabilization projects conducted at Adobe Cave (5MV1228), a site within park boundaries. No known individuals were identified. The one individual recovered in 1958 had no associated funerary objects. The five individuals recovered in 1935 had 12 associated funerary objects consisting of seven matting splints, two mugs, two textile fragments, and one wood artifact. The 10 individuals recovered in 1963 had 16 associated funerary objects consisting of four botanical specimens (pinon nut), one concretion, three faunal specimens (bone, shell), one geologic specimen, one gizzard stone, one jar, one mug, and four wood artifacts.

Based on architectural features (3 rooms and 2 kivas), archeological context, and a physical anthropology examination, this site (5MV1228), these human remains, and the associated funerary objects are dated to Pueblo III (A.D. 1100-1300).

Between 1960-1961, human remains representing 138 individuals were recovered during a legally authorized National Park Service excavation conducted at Mug House (5MV1229), a site within park boundaries. No known individuals were identified. The 153 associated funerary objects include seven bone awls, two axes, two bone beads, one bone artifact, eight bowls and bowl fragments, two cylinders, 11 faunal bones, one flake, eleven geologic specimens, one hammerstone, four jars, one mano, 36 matting splints, two miniature bowls, three mugs, one bone needle fragment, five points, three polishing stones, two scrapers, 48 sherds, and two ground stone artifacts. One faunal bone is missing from the original catalogued entry for this site. This associated funerary object has not been included in the total count.

Based on architectural features (91 rooms, 3 towers, and 8 kivas), dendrochronology, archeological context, a physical anthropology examination, and artifact (organics, ceramic, lithic, and bone) analysis, this site (5MV1229), these human remains, and the associated funerary objects are dated to Pueblo II-Pueblo III (A.D. 900-1300).

In 1963, human remains representing two individuals were recovered during a legally authorized National Park Service excavation conducted at 5MV1230, a site within park boundaries. No known individuals were identified. The 38 associated funerary objects include two bone awls, one bowl, 10 faunal bones, one jar, and 24 sherds.

Based on architectural features (a kiva depression, rubble mound, walls, and terraces), archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV1230), these human remains, and the associated funerary objects are dated to Pueblo III (A.D. 1100-1300).

In 1959, human remains representing two individuals were recovered during a legally authorized National Park Service field collection project conducted at Nordenskiold's Ruin No.16 (5MV1241), a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (50 rooms, 5 kivas, a tower, and walls), dendrochronology, archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV1241) and these human remains are dated to Pueblo III (A.D. 1100-1300)

In 1962, human remains representing one individual were recovered during a legally authorized National Park Service excavation conducted at 5MV1249, a site within park boundaries. No known individuals were identified. The five associated funerary objects include one bone awl, two bowl fragments, and two sherds.

Based on architectural features (9 rooms, 2 kivas, a petroglyph, and a pictograph), archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV1249), these human remains, and the associated funerary objects are dated to Pueblo III (A.D. 1100-1300).

In 1963, human remains representing two individuals were recovered during a legally authorized National Park Service excavation conducted at 5MV1253, a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (a tower, room, and kiva), dendrochronology, archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV1253) and these human remains are dated to Pueblo III (A.D. 1100-1300).

In 1959, human remains representing one individual were recovered during a legally authorized National Park Service field collection project conducted at 5MV1274, a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (walls), archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV1274) and these human remains are dated to Pueblo III (A.D. 1100-1300).

Between 1935 and 1962, human remains representing 37 individuals were recovered during multiple legally authorized National Park Service excavations conducted at Step House (5MV1285), a site within park boundaries. In 1935, human remains representing one individual were recovered. In 1962, human remains representing 36 individuals were recovered. No known individuals were identified. The one individual recovered in 1935 had no associated funerary objects. The 36 individuals recovered in 1962 had 64 associated funerary objects consisting of one botanical specimen (wood), 15 sherds, one stone slab, 46 squash rind fragments, and one yucca textile fragment.

Based on architectural features (4 pithouses, 14 rooms, petroglyphs, kivas, and steps), dendrochronology, archeological context, a physical anthropology examination, and artifact (ceramic, lithic, bone, and organics) analysis, this site (5MV1285), these human remains, and the associated funerary objects are dated to Basketmaker III-Pueblo III (A.D. 500-1300).

In 1963, human remains representing 10 individuals were recovered during a legally authorized National Park Service excavation conducted at 5MV1291, a site within park boundaries. No known individuals were identified. The six associated funerary objects include one bowl, one faunal bone, two pitchers, and two sherds.

Based on architectural features (7 cysts, 3 firepits, a pithouse, tower, 3 rooms, and a midden), archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV1291), these human remains, and the associated funerary objects are dated to Basketmaker III-Pueblo III (A.D. 500-1300).

In 1959, human remains representing one individual were recovered during a legally authorized National Park Service field collection project conducted at 5MV1301, a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (2 rooms), archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV1301) and these human remains are dated to Pueblo III (A.D. 1100-1300).

In 1928, human remains representing one individual were recovered during a legally authorized National Park Service field collection project conducted at Nordenskiold's Ruin No.12 (5MV1321), a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (26 rooms and 5 kivas), dendrochronology, archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV1321) and these human remains are dated to Pueblo III (A.D. 1100-1300).

In 1959, human remains representing one individual were recovered during a legally authorized National Park Service field collection project conducted at Nordenskiold's Ruin No.11-1/2

(5MV1322), a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (2 kivas, 8 rooms, and a midden), archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV1322) and these human remains are dated to Pueblo III (A.D. 1100-1300).

In 1959, human remains representing five individuals were recovered during a legally authorized National Park Service field collection project conducted at 5MV1370, a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (3-5 rooms, a kiva, and midden), archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV1370) and these human remains are dated to Pueblo III (A.D. 1100-1300).

In 1959, human remains representing one individual were recovered during a legally authorized National Park Service field collection project conducted at Double House (5MV1385), a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (70-75 rooms, 5 kivas, a midden, steps, and axe grooves), archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV1385) and these human remains are dated to Pueblo III (A.D. 1100-1300).

In 1959, human remains representing one individual were recovered during a legally authorized National Park Service field collection project conducted at 5MV1447, a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (a room), archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV1447) and these human remains are dated to Pueblo II (A.D. 900-1100).

In 1935, human remains representing one individual were recovered during a legally authorized National Park Service site stabilization project conducted at Nordenskiold's Ruin No.20-1/2 (5MV1449), a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (48 rooms, 3 kivas, and a tower), dendrochronology, archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV1449) and these human remains are dated to Pueblo III (A.D. 1100-1300).

Between 1961 and 1986, human remains representing 159 individuals were recovered during legally authorized National Park Service excavation and rock shelter construction projects conducted at Badger House (5MV1452), a site within park boundaries. In 1961 and 1962, human remains representing 157 individuals were recovered. In 1986, human remains representing two individuals were recovered. No known individuals were identified. The two individuals recovered in 1986 had no associated funerary objects. The 157 individuals recovered between 1961 and 1962 had 576 associated funerary objects consisting of five bone awls, five beads, 17 bowl and bowl fragments, 16 cores, 10 corn cobs, one cylinder, one effigy pitcher, 16 faunal bones, 57 flakes, two geologic specimens (azurite, quartz), eight gizzard stones, three hammerstones, 18 jars and jar fragments, one ladle cup, two ladles, four manos and mano fragments, one miniature pitcher, one bone needle, seven pendants and pendant fragments, seven pitchers, two points, one scraper, 383 sherds, five stone artifacts, and three worked sherds. Human remains representing one individual and one shell fragment are missing from the original catalogued entry for this site. These human remains and the associated funerary object have not been included in the total counts.

Based on architectural features (a pithouse, kiva, tower, midden, and 15-20 rooms), archeological context, a physical anthropology examination, and artifact (ceramic, lithic, and bone) analysis, this site (5MV1452), these human remains, and the associated funerary objects are dated to Pueblo I-Pueblo II (A.D. 700-1100).

In 1959, human remains representing one individual were recovered during a legally authorized National Park Service field collection project conducted at Lancaster House (5MV1500), a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (30 rooms, 2 kivas, a tower, and midden), archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV1500) and these human remains are dated to Pueblo II-Pueblo III (A.D. 900-1300).

In 1960, human remains representing two individuals were recovered during a legally authorized National Park Service field collection project conducted at 5MV1554, a site within park boundaries. No known individuals were identified. The one associated funerary object is a concretion.

Based on architectural features (one storage room and one rubble mound), dendrochronology, archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV1554), these human remains, and the associated funerary object are dated to Basketmaker III-Pueblo I (A.D. 500-900).

In 1963, human remains representing one individual were recovered during a legally authorized National Park Service field collection project conducted at 5MV1575, a site within park boundaries. No known individuals were identified. The 30 associated funerary objects are all sherds.

Based on architectural features (11 terraces), archeological context, and a physical anthropology examination, this site (5MV1575), these human remains, and the associated funerary objects are identified as Ancestral Puebloan (pre A.D. 1300).

In 1958, human remains representing two individuals were recovered during a legally authorized National Park Service field collection project conducted at 5MV1594, a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (3 rooms), archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV1594) and these human remains are dated to Pueblo II (A.D. 900-1100).

In 1962, human remains representing 113 individuals were recovered during a legally authorized National Park Service excavation conducted at Big Juniper House (5MV1595), a site within park boundaries. No known individuals were identified. The 167 associated funerary objects include two beads, six bowls and bowl fragments, one concretion, two cores, 20 faunal specimens, 34 flakes, one gizzard stone, three jars and jar fragments, one ladle bowl fragment, two ladles and ladle fragments, one mano, one yucca matting, one olla, two pendants, three pitchers, 80 sherds, and seven worked sherds. Two sherds and one faunal bone are missing from the original catalogued entry for this site. These three associated funerary objects have not been included in the total count.

Based on architectural features (a rubble mound, 25-30 rooms, 3 kivas, a depression, and midden), dendrochronology, archeological context, a physical anthropology examination, and artifact (ceramic, lithic, bone, and textile) analysis, this site (5MV1595), these human remains, and the associated funerary objects are dated to Pueblo II-Pueblo III (A.D. 900-1300).

In 1962, human remains representing 58 individuals were recovered during a legally authorized National Park Service excavation conducted at Two Raven House (5MV1645), a site within park boundaries. No known individuals were identified. The 254 associated funerary objects include one bone awl, four beads and bead fragments, four bowls and bowl fragments, three cores, five faunal bones, 24 flakes, one hammerstone, six jar fragments, two ladles, one miniature ladle handle fragment, two miniature jar fragments, one pitcher, 197 sherds, and three worked sherds.

Based on architectural features (12 rooms, 2 pithouses, 45 postholes, a kiva, and a midden), dendrochronology, archeological context, a physical anthropology examination, and artifact (ceramic, lithic, and bone) analysis, this site (5MV1645), these human remains, and the associated funerary objects are dated to Pueblo II (A.D. 900-1100).

In 1963, human remains representing 30 individuals were recovered during a legally authorized National Park Service excavation conducted at Dog House (5MV1676), a site within park boundaries. No known individuals were identified. The 29 associated funerary objects include eight bone awls, one bead, two bowls, one hammerstone, four jars, one ladle cup, one ladle fragment, two metates, one bone needle, four pitchers and pitcher fragments, two points, one sherd, and one pecked stone artifact.

Based on architectural features (7 pithouses, 50 rooms, a great kiva, midden, a proto kiva, and scattered refuse), dendrochronology, archeological context, a physical anthropology examination, and ceramic and lithic analysis, this site (5MV1676), these human remains, and the associated funerary objects are dated to Basketmaker III-Pueblo II (A.D. 500-1100).

In 1962, human remains representing four individuals were recovered during a legally authorized National Park Service excavation conducted at 5MV1801, a site within park boundaries. No known individuals were identified. The eight associated funerary objects include two concretions and six sherds.

Based on architectural features (8–10 rooms, a kiva, and midden), archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV1801), these human remains, and the associated funerary objects are dated to Pueblo II-Pueblo III (A.D. 900-1300).

In 1958, human remains representing one individual were recovered during a legally authorized National Park Service field collection project conducted at 5MV1883, a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (3 rooms), archeological context, and a physical anthropology examination, this site (5MV1883) and these human remains are dated to Pueblo III (A.D. 1100-1300).

In 1964, human remains representing eight individuals were recovered during a legally authorized National Park Service excavation conducted at 5MV1914, a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (a rubble mound, kiva, retaining walls, and 16 rooms), archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV1914) and these human remains are dated to Pueblo II (A.D. 900-1100).

In 1966, human remains representing three individuals were recovered during a legally authorized excavation conducted by University of Colorado archeologist David Breternitz at 5MV1927, a site within park boundaries. No known individuals were identified. The five associated funerary objects include one corn-cob and four sherds.

Based on architectural features (a rubble mound, 4 kiva depressions, a midden, and approximately 40 rooms), archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV1927), these human remains, and the associated funerary objects are dated to Pueblo II (A.D. 900-1100).

In 1966, human remains representing one individual were recovered during a legally authorized excavation conducted by University of Colorado archeologist David Breternitz at 5MV1928, a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (a rubble mound, 5 kiva depressions, 75-100 rooms, and a midden), archeological context, a physical anthropology examination, and artifact (lithic, bone, and ceramic) analysis, this site (5MV1928) and these human remains are dated to Pueblo II (A.D. 900-1100).

In 1966, human remains representing 32 individuals were recovered during a legally authorized excavation conducted by University of Colorado archeologist David Breternitz at 5MV1929, a site within park boundaries. No known individuals were identified. The 67 associated funerary objects include one bone awl, three bone artifacts, 62 faunal bones, and one sherd.

Based on architectural features (20 rooms, a rubble mound, 1-2 kiva depressions, and a midden), archeological context, and a physical anthropology examination, this site (5MV1929), these human remains, and the associated funerary objects are dated to Pueblo II (A.D. 900-1100).

In 1966, human remains representing 20 individuals were recovered during a legally authorized excavation conducted by University of Colorado archeologist David Breternitz at 5MV1930, a site within park boundaries. No known individuals were identified. The 241 associated funerary objects include one axe fragment, eight baskets (burned), one botanical specimen (reed), one core, 20 faunal bones, six hammerstones, one jar, eight manos, two palette and palette fragments, 187 sherds, five ground stone artifacts, and one battered and ground stone artifact.

Based on architectural features (a great kiva and room block), dendrochronology, archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV1930), these human remains, and the associated funerary objects are dated to Pueblo I (A.D. 700-900).

In 1967, human remains representing two individuals were recovered during a legally authorized excavation conducted by University of Colorado archeologists Hallisy and Frost at 5MV1934, a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (a rubble mound, 8-10 rooms, a kiva depression, and a midden), archeological context, and a physical anthropology examination, this site (5MV1934) and these human remains are dated to Pueblo II (A.D. 900-1100).

In 1970, human remains representing one individual were recovered during a legally authorized excavation conducted by University of Colorado archeologist David Breternitz at 5MV1940, a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (a pithouse), dendrochronology, archeological context, and a physical anthropology examination, this site (5MV1940) and these human remains

are dated to Basketmaker III (A.D. 500-700).

In 1972, human remains representing eight individuals were recovered during a legally authorized excavation conducted by University of Colorado archeologist Roy Hunt at 5MV2282, a site within park boundaries. No known individuals were identified. The 48 associated funerary objects include one faunal bone, one fossil, and 46 sherds.

Based on the location of a nearby kiva tower, a physical anthropology examination, and ceramic analysis, this site (5MV2282), these human remains, and the associated funerary objects are dated to Pueblo III (A.D. 1100-1300).

In 1972, human remains representing one individual were recovered during a legally authorized excavation conducted by University of Colorado archeologist Barb Wyant at 5MV2470, a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (9 rooms, a kiva, and scattered refuse), archeological context, and a physical anthropology examination, this site (5MV2470) and these human remains are dated to Pueblo II-Pueblo III (A.D. 900-1300).

In 1973, human remains representing one individual were recovered during a legally authorized excavation conducted by University of Colorado archeologist C.J. Gager at 5MV2551, a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (a rubble mound), archeological context, a physical anthropology examination, and ceramic analysis, this site (5MV2551) and these human remains are dated to Pueblo II (A.D. 900-1100).

In 1977, human remains representing two individuals were recovered during a legally authorized excavation conducted by University of Colorado archeologist Steve Spears at 5MV3808, a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (a kiva, midden, rubble mound, and retaining wall), archeological context, and a physical anthropology examination, this site (5MV3808) and these human remains are dated to Pueblo II-Pueblo III (A.D. 900-1300)

In 1979, human remains representing one individual were recovered during a legally authorized National Park Service salvage excavation project conducted at 5MV3894, a site within park boundaries. No known individuals were identified. No funerary objects were present.

Based on the location of a nearby cliff dwelling, a physical anthropology examination, and corrugated pottery sherds found down-slope, this site (5MV3894) and these human remains are identified as Pueblo II–Pueblo III (A.D. 900-1300).

Between 1939 and 1962, human remains representing seven individuals were removed without authorization from Falls Creek Cave (5LP1434), a site located outside park boundaries. In 1939, human remains representing four individuals were seized by the Department of Agriculture and donated to Mesa Verde National Park. In 1962, human remains representing three individuals, originally recovered from the site during an unauthorized excavation, were donated to the Mesa Verde National Park. No known individuals were identified. The individuals donated in 1939 had seven associated funerary objects consisting of four hide artifacts, one hair artifact, one animal hair textile fragment, and one feather textile fragment. The individuals donated in 1962 had two leather artifacts associated with the burials.

Based on archeological context, a physical anthropology examination, and artifact analysis, this site (5LP1434), these human remains, and the associated funerary objects are identified as Basketmaker II (A.D. 100-500).

Between 1951 and 1954, human remains representing one individual were recovered during a legally authorized National Park Service field collection project conducted at a small unnamed pueblo, a site located outside park boundaries and inventoried as Yellow Jacket. These human remains were donated to Mesa Verde National Park. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (pueblo structure and midden), archeological context, and a physical anthropology examination, this site (Yellow Jacket) and these human remains are identified as Pueblo II-Pueblo III (A.D. 900-1300).

In 1961, human remains representing three individuals were recovered during a legally authorized National Park Service salvage excavation project conducted on St. Christopher's Mission property in Bluff, UT, a site outside park boundaries. No known individuals were identified. The five associated funerary objects include one faunal bone, one polishing stone, and three sherds. The human remains and associated funerary objects were donated to Mesa Verde National Park. One faunal bone is missing from the original catalogued entry for this site. This associated funerary object has not been included in the total count.

Based on ceramic and lithic analysis, as well as a physical anthropology examination, this site (Bluff, UT), these human remains, and the associated funerary objects are dated to Pueblo III (A.D. 1100-1300).

In 1936, human remains representing one individual were recovered during a legally authorized landscaping operation conducted by a Civilian Conservation Corps (CCC) crew at Chapin Mesa HQ, a site within park boundaries. No known individuals were identified. All seven associated funerary objects are gray sherds.

Based on geographic location, ceramic analysis, and a physical anthropology examination, this site (Chapin Mesa HQ), these human remains, and the associated funerary objects are dated to Basketmaker III-Pueblo I (A.D. 500-900).

In 1934 and 1947, human remains representing two individuals were recovered during legally authorized National Park Service construction (1934) and surface collection (1947) projects conducted at Chapin Mesa Hotel, a site within park boundaries. No known individuals were identified. The two associated funerary objects include faunal bones.

Based on the location of a nearby site and a physical anthropology examination, this site (Chapin Mesa Hotel), these human remains, and the associated funerary objects are identified as Ancestral Puebloan (pre A.D. 1300).

In 1975, human remains representing one individual were recovered during an unauthorized surface collection by a park visitor at Chapin Mesa Picnic Area, a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on geographic location and a physical anthropology examination, this site (Chapin Mesa Picnic Area) and these human remains are identified as Ancestral Puebloan (pre A.D. 1300).

In 1933, human remains representing three individuals were recovered during a legally authorized National Park Service quarry operation conducted at the Chapin Mesa Quarry, a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on geographic location and a physical anthropology examination, this site (Chapin Mesa Quarry) and these human remains are identified as Ancestral Puebloan (pre A.D. 1300).

In 1933, human remains representing one individual were recovered during a legally authorized National Park Service road construction project conducted at Chapin Mesa, The Glades, a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on geographic location and a physical anthropology examination, this site (The Glades) and these human remains are identified as Ancestral Puebloan (pre A.D. 1300).

In 1976, human remains representing one individual were recovered from a trailer court in Cortez, CO, a site outside park boundaries. The human remains and associated funerary objects were donated to Mesa Verde National Park. No known individuals were identified. The 34 associated funerary objects are sherds.

Based on ceramic analysis and a physical anthropology examination, this site (Cortez, CO), these human remains, and the associated funerary objects are dated to Pueblo II (A.D. 900-1100).

In 1955, human remains representing one individual were recovered from private property in Dolores, CO, a site located outside park boundaries. These human remains were donated to Mesa Verde National Park. No known individuals were identified. No associated funerary objects were donated.

Based on geographic location, objects found in the vicinity (Ancestral Puebloan artifacts were collected with the human remains and also donated to the park), and a physical anthropology examination, this site (Dolores, CO) and these human remains are identified as Ancestral Puebloan (pre A.D. 1300).

In 1960, human remains representing three individuals were recovered from a large "Chaco" style ruin on private property above the Dolores River, CO, a site located outside park boundaries. The human remains and associated funerary objects were donated to Mesa Verde National Park. No known individuals were identified. The four associated funerary objects include one bone artifact and three faunal bones.

Based on architectural features ("Chaco" style ruin), archeological context, and a physical anthropology examination, this site (Dolores River, CO), these human remains, and the associated funerary objects are dated to Pueblo III (A.D. 1100-1300).

In 1995, the University of Colorado returned human remains representing four individuals, originally recovered during legally authorized excavations, to Mesa Verde National Park. These human remains were identified with an accession number the University used for a number of sites it excavated. Therefore, the exact site from which the human remains originated is unknown. These remains have been identified on the NAGPRA inventory as No Provenience (1058). No known individuals were identified. No associated funerary objects were present.

Based on documentation and a physical anthropology examination, this site (No Provenience 1058) and these human remains are identified as Ancestral Puebloan (pre A.D. 1300).

In 1945, human remains representing one individual were recovered during an unauthorized excavation at the Mancos Reservoir, a site outside park boundaries. The human remains and associated funerary objects were donated to Mesa Verde National Park. No known individuals were identified. The two associated funerary objects include one bone awl and one bowl.

Based on an analysis of the associated artifacts and a physical anthropology examination, this site (Mancos Reservoir), these human remains, and the associated funerary objects are dated to Pueblo II-Pueblo III (A.D. 900-1300).

In the late 1800s, human remains representing one individual were removed from within present day park boundaries. In 1962, these human remains were donated to Mesa Verde National Park (627). No known individuals were identified. No associated funerary objects were donated.

Based on geographic location and a physical anthropology examination, these human remains are identified as Ancestral Puebloan (pre A.D. 1300).

In 1977, human remains representing seven individuals were recovered during a legally authorized excavation conducted by University of Colorado archeologists at 5MV3791, a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (2 walls and a rubble mound), archeological context, and a physical anthropology examination, this site (5MV3791) and these human remains are dated to Pueblo II (A.D. 900-1100).

In 1995, human remains representing two individuals were found in the Mesa Verde Research Center collection. The only identification was the site number 5MV34, or Soda Canyon Pueblo, on one of the individuals. Soda Canyon Pueblo, a site within park boundaries, was legally excavated in 1947 and 1948 by Gila Pueblo Survey archeologist Deric O'Bryan. In 1951, National Park Service archeologists conducted legally authorized excavations at the site. It is probable that these remains are also from 5MV34. The remains are identified on the NAGPRA inventory as No Provenience (1420). No known individuals were identified. No associated funerary objects were present.

Based on architectural features for 5MV34 (45 rooms, 5 kivas, and a tower), dendrochronology, a physical anthropology examination, and ceramic analysis, this site (No Provenience 1420) and these human remains are dated to Pueblo II-Pueblo III (A.D. 900-1300).

In the early 1890s, the American Water Supply Company of Portland, Maine recovered human remains representing five individuals during legally authorized field-work conducted at Montezuma Valley, CO, a site located outside park boundaries. In 1935, a former employee of the American Water Supply Company donated the remains to Mesa Verde National Park. No known individuals were identified. No associated funerary objects were donated.

Based on geographic location and a physical anthropology examination, this site (Montezuma Valley, CO) and these human remains are identified as Ancestral Puebloan (pre A.D. 1300).

Prior to 1921, human remains representing one individual were recovered by Smithsonian Institution archeologist Jesse Walter Fewkes from an unknown site in Navajo Canyon, a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on geographic location (Navajo Canyon) and a physical anthropology examination, these human remains are identified as Ancestral Puebloan (pre A.D. 1300).

Between 1949 and 1954, human remains representing two individuals were recovered from Pictograph Point (5MV1001), a site within park boundaries. In 1949, human remains representing one individual were recovered from a crevice just south of Pictograph Point during a legally authorized National Park Service surface collection project. In 1954, a park visitor recovered human remains representing one individual approximately 200 yards north of Pictograph Point during an unauthorized field collection. No known individuals were identified. No associated funerary objects were present.

Based on the location of a nearby cliff dwelling and petroglyph panel, as well as a physical anthropology examination, this site (5MV1001) and these human

remains are identified as Ancestral Puebloan (pre A.D. 1300).

In 1995, human remains representing one individual were found in the Mesa Verde Research Center collection. The only identification was the accession number MEVE-702. This accession was used for material recovered during the Wetherill Mesa Archeological Site Survey by archeologist Alden Hayes. It is assumed that these remains were recovered from a now unknown site during this survey. These remains are identified on the NAGPRA inventory as No Provenience (702). The surveyed sites were all within park boundaries. No known individuals were identified. No associated funerary objects were present.

It is not known from which site these human remains were recovered, but all Wetherill Mesa Archeological Site Survey material is from the Ancestral Puebloan occupation of Mesa Verde (pre A.D. 1300).

In 1946, human remains representing one individual were recovered during an unauthorized field collection by an employee of the park concessionaire from a cave in Soda Canyon, a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on recovery of the human remains in the vicinity of Far View Ruin (5MV808) and a physical anthropology examination, this site (Soda Canyon) and these human remains are identified as Ancestral Puebloan (pre A.D. 1300).

Between 1983-1987, human remains representing eight individuals were recovered during legally authorized excavations conducted by the Brigham Young University, Utah, at Nancy Patterson (42SA2110), a site located outside park boundaries in southeast Utah. The human remains and funerary objects were donated to Mesa Verde National Park. No known individuals were identified. The 60 associated funerary objects are all sherds.

Based on architectural features (Pueblo II component: 120 rooms, kivas, a circular plaza, and midden; Pueblo III component: 260-325 rooms, 21-29 pit structures, courtyards, a square kiva, and midden), archeological context, a physical anthropology examination, and ceramic analysis, this site (42SA2110), these human remains, and the associated funerary objects are dated to Pueblo II-Pueblo III (A.D. 900-1300).

In 1941, human remains representing one individual were recovered during a legally authorized National Park Service fencing operation conducted at the West Side of Park, a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on geographic location and a physical anthropology examination, this site (West Side of Park) and these human remains are identified as Ancestral Puebloan (pre A.D. 1300).

In 1942, human remains representing one individual were recovered from a Basketmaker site on private property in Durango, CO (304), a site located outside of park boundaries. The human remains were donated to Mesa Verde National Park. No known individuals were identified. No associated funerary objects were donated.

Based on archeological context and a physical anthropology examination, this site (304) and these human remains are dated to Basketmaker III (A.D. 500-700).

In 1947, human remains representing two individuals were recovered from a pithouse on private property near Durango, CO (335), a site located outside park boundaries. The human remains were donated to Mesa Verde National Park. No known individuals were identified. No associated funerary objects were donated.

Based on archeological context and a physical anthropology examination, this site (335) and these human remains are dated to Basketmaker III (A.D. 500-700).

In 1954, human remains representing two individuals were recovered from a site on private property east of Durango, CO (483), a site located outside of park boundaries. The human remains were donated to Mesa Verde National Park. No known individuals were identified. No associated funerary objects were donated.

Based on park records (the original catalog card states that the human remains were either Basketmaker III or Pueblo I) and a physical anthropology examination, this site (483) and these human remains are dated to Basketmaker III-Pueblo I (A.D. 500-900).

In 1960, human remains representing four individuals were recovered during a legally authorized National Park Service salvage excavation project conducted on Lutheran Church property in Durango, CO (582), a site located outside park boundaries. The remains and associated funerary objects were donated to Mesa Verde National Park. No known individuals were identified. The 246 associated funerary objects include three geologic specimens, one jar, one mineral specimen (hematite), and 241 sherds. One pestle is missing from the original catalogued entry for this site. This associated funerary object has not been included in the total count.

Based on ceramic analysis and a physical anthropology examination, this site (582), these human remains, and the associated funerary objects are dated to Basketmaker III (A.D. 500-700).

In 1962, human remains representing three individuals were recovered from a pithouse located on private property (present-day location of Fort Lewis College) in Durango, CO (593), a site located outside park boundaries. The human remains were donated to Mesa Verde National Park. No known individuals were identified. No associated funerary objects were donated.

Based on archeological context and a physical anthropology examination, this site (593) and these human remains are dated to Basketmaker (A.D. 100-700).

Prior to 1934, human remains representing 91 individuals were found in museum storage. It is assumed that most, if not all, of the remains and items in this accession were recovered from within Mesa Verde National Park. These remains are identified on the NAGPRA inventory as No Provenience (85). No known individuals were identified. The three associated funerary objects are faunal bones. Human remains representing three individuals are missing from the original catalogued entry for this site. These human remains have not been included in the total count.

It is not known from which sites these human remains were recovered. Based on geographic location and a physical anthropology examination, it is believed that the human remains and associated funerary objects are from the Ancestral Puebloan occupation of Mesa Verde (pre A.D. 1300).

In 1962, human remains representing one individual were recovered during an unauthorized collection from a pithouse and were later donated to Mesa Verde National Park. The location for this site is unknown. These remains are identified on the NAGPRA inventory as No Provenience (593). No known individuals were identified. No associated funerary objects were donated.

Based on museum records, archeological context, and a physical anthropology examination, this site (593) and these human remains are identified as Ancestral Puebloan (pre A.D. 1300).

Prior to 1921, human remains representing one individual were recovered from an unknown site by Smithsonian Institution archeologist Jesse Walter Fewkes. Park records indicate that the human remains were most likely recovered from within park boundaries. These remains are identified on the NAGPRA inventory as No Provenience (99). No known individuals were identified. No associated funerary objects were present.

Based on Fewkes' listing of these human remains and a physical anthropology examination, it is believed these human remains date to the Ancestral Puebloan occupation of Mesa Verde (pre A.D. 1300).

In 1935, human remains representing one individual were donated to Mesa Verde National Park. It is not known whether these remains were found inside or outside park boundaries. These remains are identified on the NAGPRA inventory as No Provenience (168). No known individuals were identified. No associated funerary objects were donated.

Based on museum records and a physical anthropology examination, these human remains are dated to Basketmaker III (A.D. 500-700).

In 1972, human remains representing one individual were recovered during a legally authorized archeological survey conducted by the University of Colorado at 5MV2381, a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (a kiva depression, tower, 2 large retaining walls, and 2 rubble mounds), archeological context, and ceramic analysis, this site (5MV2381) and these human remains are dated to Pueblo II-Pueblo III (A.D. 900-1300).

In 1972, human remains representing one individual were recovered during a legally authorized archeological survey conducted by the University of Colorado at 5MV2472, a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (3 circular kiva depressions, wall rubble, and 3 retaining walls), archeological context, and ceramic analysis, this site (5MV2472) and these human remains are dated to Pueblo II-Pueblo III (A.D. 900-1300).

In 1972, human remains representing one individual were recovered during a legally authorized archeological survey conducted by the University of Colorado at 5MV2481, a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (4 kivas, a series of room walls, and a possible retaining wall), archeological context, and ceramic analysis, this site (5MV2481) and these human remains are dated to Pueblo II-Pueblo III (A.D. 900-1300).

In 1975, human remains representing one individual were recovered during a legally authorized archeological survey conducted by the University of Colorado at 5MV3285, a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (large mound with a heavy concentration of sherd and lithic material and burned sandstone fragments), archeological context, and ceramic analysis, this site (5MV3285) and these human remains are dated to Pueblo II-Pueblo III (A.D. 900-1300).

Between 1933 and 1953, human remains representing five individuals were recovered during legally authorized National Park Service road cut activities conducted at Gila Pueblo 180 (5MV1091), a site within park boundaries. No known individuals were identified. No associated funerary objects were present.

Based on architectural features (15 rooms, kiva depression, and trash mound) and archeological context, this site (5MV1091) and these human remains are dated to Pueblo II (A.D. 900-1100)

In 1901, human remains representing four individuals were removed without authorization by a visitor from a Mesa Verde cliff dwelling. The location of the site is unknown. In 1989, the human remains were donated to Mesa Verde National Park. These remains are identified on the NAGPRA inventory as No Provenience (1235). No known individuals were identified. No associated funerary objects were donated.

Based on museum records, archeological context, and a physical anthropology examination, these human remains are dated to Pueblo II-Pueblo III (A.D. 1100-1300).

In 1914, human remains representing one individual were removed without authorization from a cliff dwelling in Montezuma County by a visitor. In 1997, the human remains were donated to Mesa Verde National Park. These remains are identified on the NAGPRA inventory as No Provenience (1448). No known individuals were identified. No associated funerary objects were donated.

Based on museum records and archeological context, these human remains are identified as Ancestral Puebloan (pre A.D. 1300).

The cultural affiliation of the above described human remains and associated funerary objects with present-day Indian tribes was determined through the use of the following types of evidence: geographical, kinship, biological, archeological, anthropological, linguistic, folklore, oral tradition, historical, and expert opinion. These modes of evidence were acquired from consultation efforts with the before mentioned Indian tribes, cultural affiliation studies, and research of the applicable anthropological and historical literature.

In order to provide an inventory and basic demographic profile of the human remains currently housed at the Mesa Verde Research Center, a team of physical anthropologists utilized non-destructive techniques to examine most of this osteological collection. Utilizing observable and measurable characteristics, such as shovel shaped incisors and changes in the cranium related to cradleboard use, as well as relying on archeological provenience and the material culture associated with the burials, the human remains listed above were identified as Ancestral Puebloan.

The archeological evidence for establishing cultural affiliation relied upon the degree to which the architecture, found in relationship with the recovered human remains and associated funerary objects, conformed with the Pecos Classification system, an accepted chronological sequence used by Southwestern archeologists. The archeological examination scrutinized multiple lines of evidence (similarity of artifacts, continuity of styles from present to past, and the evolution of architecture) to conclude that the present-day Puebloan peoples are directly related to the Ancestral Puebloans, who occupied the Mesa Verde area from at least A.D. 100 to A.D. 1300.

The extensive anthropological literature on Southwestern Native American communities was also utilized to determine the cultural affiliation of the human remains and associated funerary objects under discussion. Ethnographic research focusing on the emergence, migration, and sacred site location accounts of the Keresan-speaking Pueblos (Acoma, Cochiti, Laguna, San Felipe, Santa Ana, Santo Domingo, and Zia), Tanoan-speaking Pueblos (Tiwa-speaking: Isleta, Picuris, Sandia, and Taos; Tewa-speaking: Nambe, Pojoaque, San Ildefonso, San Juan, Santa Clara, and Tesuque; Towa-speaking: Jemez), Hopi (Uto-Aztecan), Zuni, and Navajo (Athabaskan) indicate that each of these groups possess a cultural relationship with the Mesa Verde area. Additionally, expert opinion provided by these present-day Indian tribes during consultation undertakings confirmed the existence of their individual

relationship with the past inhabitants of Mesa Verde.

Presently, archeologists do not agree when the Athabaskan or Apachean (Navajo and Apache) peoples entered the Southwest region. Dates as early as A.D. 1000 and as late as A.D. 1525 have been proposed. Spanish historical accounts of their initial 16th century entrance into the Southwest region noted that Apacheans surrounded Puebloan communities and that both peoples utilized common agricultural practices, material goods, and ceremonial activities. Irrespective of the earlier or later date for entry into the Southwest region, a long period of contact has existed between Puebloan and Athabaskan peoples. In particular, the Puebloans and Navajos, while retaining strong aspects of uniqueness and individuality, have intermarried, shared cultural traits, and maintained similar ceremonial practices with one another.

A specific instance of Pueblo-Navajo interaction and exchange occurred after the Pueblo Revolt of 1680, when many Puebloans fled the Spanish re-conquest and sought refuge among the Navajo. Ultimately, refugees from the Pueblos of Cochiti, Jemez, San Felipe, San Ildefonso, Santa Clara, and Zuni mingled with the Navajo and were incorporated into their clan system. Furthermore, the Hopi of Awatovi joined the Navajo during this period in the Chinle area. The circumstances surrounding the 1680 Pueblo Revolt generated dramatic cultural and population exchanges between the Puebloan and Navajo peoples. While interchanges between Puebloans and Navajos have ebbed and waned since this period, the existence of a complex biological and cultural relationship between these present-day communities is apparent.

Additional evidence for affiliating the Navajo with the past inhabitants of Mesa Verde includes expert opinion and oral tradition. For example, Navajo tribal experts identified references specific to Mesa Verde sites in Navajo ceremonies and oral histories. These experts also characterized Anasazi (Ancestral Puebloan) sites at Mesa Verde as places inhabited by Anasazis in the form of Talking God and Calling God, significant deities in the Navajo ceremonial system. Further, the Navajo consider the region known as Dinetah to be their area of emergence or the original Navajo homeland. Mesa Verde National Park falls within the cultural-geographical region of Dinetah.

In sum, the above described human remains and associated funerary objects were found to be Ancestral Puebloan. Based upon geographical, kinship, biological, archeological, anthropological, linguistic, folklore, oral tradition, historical and expert opinion, it has been determined that the present-day Pueblos, Hopi, and Zuni are culturally affiliated with these Ancestral Puebloan human remains and associated funerary objects. Based upon geographical, kinship, biological, anthropological, folklore, oral tradition, historical and expert opinion, it has also been determined that the present-day Navajo are culturally affiliated with these Ancestral Puebloan human remains and associated funerary objects. While archeological and oral tradition evidence exists for culturally affiliating the Pueblos, Hopi, and Zuni directly with the ancient inhabitants of Mesa Verde, the Navajos' cultural affiliation is affirmed through direct oral tradition ties to these Ancestral Puebloans, as well as their historically strong relationship with Puebloan peoples and culture.

Upon the examination of historical and geographical information, officials of the National Park Service have determined the Southern Ute Indian Tribe and the Ute Mountain Ute Indian Tribe share a historic and continuing cultural affiliation with Mesa Verde National Park lands. The Southern Ute Indian Tribe's status of cultural affiliation with the previously enumerated Ancestral Puebloan human remains and associated funerary objects continues to be evaluated by Mesa Verde National Park.

Based on the above information, officials of the National Park Service have determined that pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of at least 1,524 individuals of Native American ancestry. National Park Service officials have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 4,863 associated funerary objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the National Park Service have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Navajo Nation of Arizona, New Mexico, and Utah; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

This notice has been sent to officials of the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Navajo Nation of Arizona, New Mexico, and Utah; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico, and Utah; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects, should contact Superintendent Larry Wiese, Mesa Verde National Park, PO Box 8, Mesa Verde, CO 81733; telephone: (970) 529-4605, before September 27, 1999. Repatriation of the human remains and associated funerary objects to the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of San Juan, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Navajo Nation of Arizona, New Mexico, and Utah; Ysleta Del Sur Pueblo of Texas; and Zuni Tribe of the Zuni Reservation, New Mexico may

begin after that date if no additional claimants come forward.

Dated: August 17, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–22260 Filed 8–26–99; 8:45 am]

BILLING CODE 4310–70–F

INTERNATIONAL TRADE COMMISSION

Proposed Agency Information Collection; Comment Request

AGENCY: United States International Trade Commission.

ACTION: Notice of proposed information collection and request for comment.

EFFECTIVE DATE: August 23, 1999.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1995, the U.S. International Trade Commission intends to seek approval from the Office of Management and Budget for extension of the currently approved DataWeb user registration forms (OMB No.: 3117–0190) in connection with the ITC DataWeb Public Access Project. The user registration forms are required to accurately analyze usage, data reports generated, and costs by user sectors and to save user product and country lists for user reference during future logins.

Comments concerning the proposed information collection are requested in accordance with 5 CFR 1320.8(d).

DATES: To be assured of consideration, written comments must be received on or before October 26, 1999.

ADDRESSES: Signed comments should be submitted to Donna R. Koehnke, Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed forms and draft Supporting Statement to be submitted to the Office of Management and Budget will be posted on the Commission's World Wide Web site at http://www.usitc.gov or may be obtained from Peg MacKnight, Office of Operations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436 (telephone no. 202–205–3431). Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal, (telephone no. 202–205–1810).

Request for Comments

Comments are solicited as to (1) whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used; (3) the quality, utility, and clarity of the information to be collected; and (4) minimization of the burden of the proposed information collection on those who are to respond (including through the use of appropriate automated, electronic, mechanical, or other forms of information technology, e.g., permitting electronic submission of responses).

Summary of the Proposed Information Collection

The forms are for use by the Commission in connection with the ITC DataWeb Public Access Project. The ITC DataWeb provides on-line, rapid and customized retrieval of U.S. trade and tariff data and has been an Internet tool primarily for government users. The interagency International Trade Data System (ITDS) board chairman has requested that the ITC DataWeb be made formally available to the public. The purpose of the public access project is to assess the additional costs of making this service formally available to the general public and to evaluate benefits. The user registration forms are required to accurately track usage, data reports generated, and costs by user sectors and to save user product and country lists for user reference during future logins. The forms would appear on the ITC DataWeb internet site (http://dataweb.usitc.gov) and would need to be filled out only once.

Summary of Proposal

(1) *Number of forms submitted:* Two.

(2) *Title of forms:* ITC Tariff and Trade DataWeb Public Access Project: "Create New User Account Form" and "User Information Form."

(3) *Type of request:* Extension.

(4) *Frequency of use:* Single data gathering.

(5) *Description of respondents:* Government and private sector users of the on-line ITC DataWeb.

(6) *Estimated number of respondents:* 2,000 annually.

(7) *Estimated total number of minutes to complete the forms:* 2.0 minutes.

(8) Information obtained from the forms that qualify as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

Additional Information or Comment

Copies of the forms and supporting documents may be obtained from Peg MacKnight (E-mail pmacknight@usitc.gov or telephone 202–205–3431). Comments about the proposals should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503, ATTENTION: Docket Librarian. All comments should be specific, indicating which part of the forms are objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

By order of the Commission.

Issued: August 23, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–22342 Filed 8–26–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. AA1921–143, 731–TA–341, 731–TA–343–345, 731–TA–391–397, and 731–TA–399 (Review)]

Certain Bearings from China, France, Germany, Hungary, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom [1]

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the antidumping duty orders on certain bearings from China, France, Germany, Hungary, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom.

[1] The countries and investigation numbers for tapered roller bearings are as follows: China is 731–TA–344 (Review); Hungary is 731–TA–341 (Review); Japan is AA1921–143 (Review) for 4 inches and under and 731–TA–343 (Review) for over 4 inches; and Romania is 731–TA–345 (Review). The countries and investigation numbers for ball, cylindrical roller, and spherical plain bearings are as follows: France is 731–TA–392–A–C (Review); Germany is 731–TA–391–A–C (Review); and Japan is 731–TA–394–A–C (Review). The countries and investigation numbers for ball and cylindrical roller bearings are as follows: Italy is 731–TA–393–A–B (Review); Sweden is 731–TA–397–A–B (Review); and the United Kingdom is 731–TA–399–A–L (Review). The countries and investigation numbers for ball bearings are as follows: Romania is 731–TA–395 (Review) and Singapore is 731–TA–396 (Review).

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders on certain bearings from China, France, Germany, Hungary, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom would be likely to lead to continuation or recurrence of material injury. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the rules of practice and procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: August 23, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter (202–205–3172), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On July 2, 1999, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (64 FR 38471, July 16, 1999). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Participation in the Reviews and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the reviews will be placed in the nonpublic record on January 11, 2000, and a public version will be issued thereafter, pursuant to § 207.64 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on February 1, 2000, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 24, 2000. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 27, 2000, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.65 of the Commission's rules; the deadline for filing is January 21, 2000. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.67 of the Commission's rules. The deadline for filing posthearing briefs is February 10, 2000; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before February 10, 2000. On March 14, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before March 16, 2000, but such final comments must not contain new factual information and must otherwise comply with § 207.68 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: August 24, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–22344 Filed 8–26–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–420]

Certain Beer Products; Notice of Commission Decision Not To Review an Initial Determination Granting Summary Determination on the Domestic Industry Requirement of Section 337 of the Tariff Act of 1930

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has decided not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") granting a motion for summary determination on the domestic industry requirement of section 337 of the Tariff Act of 1930.

FOR FURTHER INFORMATION CONTACT: Andrea C. Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone (202) 205–3105. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 27, 1999, based on a complaint filed by Anheuser-Busch of St. Louis, Missouri ("Anheuser"), alleging a violation of section 337 in the importation and sale of certain beer products by reason of infringement of U.S. Trademark Registration Nos. 922,481, 952,277, or 666,637. The complaint named two firms as respondents, Argen-Wine Imports, Ltd. ("Argen"), and Budejovicky Budvar, N.P. ("Budvar"). On July 26, 1999, the ALJ terminated Argen from the investigation on the basis of a consent order.

On July 26, 1999, Anheuser moved for a summary determination that the domestic industry requirement set forth in section 337(a)(2) and (3) is met in this investigation. On August 5, 1999, the Commission investigative attorney filed a response in support of the motion. Budvar filed no response to the motion. On August 6, 1999, the ALJ issued an ID (Order No. 8) granting the motion pursuant to 19 CFR 210.18(b), based on the finding that Anheuser had demonstrated by undisputed facts that it met the domestic industry requirements.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in § 210.42 of the Commission's rules of practice and procedure (19 CFR 210.42). Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202–205–2000.

By order of the Commission.

Issued: August 23, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–22343 Filed 8–26–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–384 (Final) and Investigations Nos. 731–TA–806 and 808 (Final)]

Certain Hot-Rolled Steel Products From Brazil and Russia

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, [2] pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Brazil of certain hot-rolled steel products, provided for in headings 7208, 7210, 7211, 7212, 7225, and 7226 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be subsidized by the Government of Brazil. The Commission also determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of such imports from Brazil[2] and Russia [3] that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV). The Commission further determines that critical circumstances do not exist with regard to such imports from Russia. [4]

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] Commissioner Askey dissenting.

[3] Commissioner Askey determines that an industry in the United States is threatened with material injury.

[4] Chairman Bragg dissenting.

Background

The Commission instituted these investigations effective September 30, 1998, following receipt of petitions filed with the Commission and the Department of Commerce by Bethlehem Steel Corp., Bethlehem, PA; U.S. Steel Group, a unit of USX Corp., Pittsburgh, PA; Ispat Inland Steel, East Chicago, IN; LTV Steel Co., Inc., Cleveland, OH; National Steel Corp., Mishawaka, IN; California Steel Industries, Fontana, CA; Gallatin Steel Co., Ghent, KY; Geneva Steel, Vineyard, UT; Gulf States Steel, Inc., Gadsden, AL; IPSCO Steel, Inc., Muscatine, IA; Steel Dynamics, Butler, IN; Weirton Steel Corp., Weirton, WV; Independent Steelworkers Union, Weirton, WV; and the United Steelworkers of America, Pittsburgh, PA. The final phase of these investigations was scheduled by the Commission following notification of preliminary determinations by the Department of Commerce that imports of certain hot-rolled steel products from Brazil were being subsidized by the Government of Brazil within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)) and that imports from Brazil and Russia were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)).

Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notices in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notices in the **Federal Register** of March 5, 1999 (64 FR 10722 and 10723). The hearing was held in Washington, DC, on May 4, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on August 23, 1999. The views of the Commission are contained in USITC Publication 3223 (August 1999), entitled Certain Hot-rolled Steel Products from Brazil and Russia: Investigations Nos. 701-TA–384 and 731-TA–806 and 808 (Final).

Issued: August 24, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–22345 Filed 8–26–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–377 (Review)]

Internal Combustion Industrial Forklift Trucks From Japan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of a full five-year review concerning the antidumping duty order on internal combustion industrial forklift trucks from Japan.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on internal combustion industrial forklift trucks from Japan would be likely to lead to continuation or recurrence of material injury. For further information concerning the conduct of this review and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the rules of practice and procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: August 23, 1999.

FOR FURTHER INFORMATION CONTACT: Christopher J. Cassise (202–708–5408), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On July 2, 1999, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (64 FR 38475, July 16, 1999). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Participation in the Review and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the review will be placed in the nonpublic record on January 4, 2000, and a public version will be issued thereafter, pursuant to § 207.64 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on January 25, 2000, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before January 18, 2000. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on January 21, 2000, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony in camera no later than 7 days prior to the date of the hearing.

Written Submissions

Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.65 of the Commission's rules; the deadline for filing is January 13, 2000. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.67 of the Commission's rules. The deadline for filing posthearing briefs is February 3, 2000; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before February 3, 2000. On February 25, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before February 29, 2000, but such final comments must not contain new factual information and must otherwise comply with § 207.68 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

Issued: August 24, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–22346 Filed 8–26–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–846 through 850 (Preliminary)]

Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Czech Republic, Japan, Mexico, Romania, and South Africa

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the Czech Republic, Japan, Romania, and South Africa of small diameter (less than or equal to 4.5 inches in outside diameter) seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipe (including redraw hollows), provided for in subheadings 7304.10.10, 7304.10.50, 7304.31.30, 7304.31.60, 7304.39.00, 7304.51.50, 7304.59.60, and 7304.59.80 of the Harmonized Tariff Schedule of the United States (HTS), that are alleged to be sold in the United States at less than fair value (LTFV). The Commission also determines that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Japan and Mexico of large diameter (greater than 4.5 inches up to and including 16 inches in outside diameter) seamless carbon and alloy (other than stainless) steel standard, line, and pressure pipe, provided for in subheadings 7304.10.10, 7304.10.50, 7304.39.00, and 7304.59.80 of the HTS, that are alleged to be sold in the United States at LTFV.

Commencement of Final Phase Investigations

Pursuant to § 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling that will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules upon notice from the Department of Commerce (Commerce) of affirmative preliminary determinations in the investigations under section 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of these investigations need not enter a separate appearance for the final phase of the investigations. Industrial users and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On June 30, 1999, petitions were filed with the Commission and the Department of Commerce by Koppel Steel Corp., Beaver Falls, PA; Sharon Tube Co., Sharon, PA; U.S. Steel Group, Fairfield, AL; USS/Kobe Steel Co., Lorain, OH; and Vision Metals' Gulf States Tube Div., Rosenberg, TX; alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of small diameter seamless carbon and alloy steel standard, line, and pressure pipe from the Czech Republic, Japan, Romania, and South Africa; and by reason of LTFV imports of large diameter seamless carbon and alloy steel standard, line, and pressure pipe from Japan and Mexico. [2] Accordingly, effective June 30, 1999, the Commission instituted antidumping investigations Nos. 731–TA–846 through 850 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 8, 1999 (64 FR 36920). The conference was held in Washington, DC, on July 21, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 23, 1999. The views of the Commission are contained in USITC Publication 3221 (August 1999), entitled Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe from the Czech Republic, Japan, Mexico, Romania, and South Africa: Investigations Nos. 731–TA–846 through 850 (Preliminary).

By order of the Commission.

Issued: August 23, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–22341 Filed 8–26–99; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR 207.2(f)).

[2] Koppel, Sharon, and Vision are not petitioners in the investigations regarding large diameter subject products.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances Notice of Application

Pursuant to section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on April 20, 1999, B.I. Chemical, Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Amphetamine (1100)	II
Methadone (9250)	II
Levo-alphacetylmethadol (LAAM) (9648).	II

The firm plans to bulk manufacture the listed controlled substances for formulation into finished pharmaceuticals.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than October 26, 1999.

Dated: August 17, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–22309 Filed 8–26–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances Notice of Registration

By Notice dated March 1, 1999, and published in the **Federal Register** on April 9, 1999, (64 FR 17416), Lipomed, Inc., One Broadway, Cambridge, Massachusetts 02142, made application to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methaqualone (2565)	I
Lysergic acid diethylamide (7315).	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
3, 4, 5–Trimethoxyamphetamine (7390).	I
4–Bromo–2, 5–dimethoxyamphetamine (7391).	I
4–Methyl–2, 5–dimethoxyamphetamine (7395).	I
2, 5–Dimethoxyamphetamine (7396).	I
2, 5–Dimethoxy–4–ethylamphetamine (7399).	I
3, 4–Methylenedioxyamphetamine (7400).	I
3, 4–Methylenedioxy–N–ethylamphetamine (7404).	I
3, 4–Methylenedioxymethamphetamine (7405).	I
Psilocybin (7437)	I
Psilocyn (7438)	I
Acetyldihydrocodeine (9051)	I
Dihydromorphine (9145)	I
Heroin (9200)	I
Tilidine (9750)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Amobarbital (2125)	II
Secobarbital (2315)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgonine (9180)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Fentanyl (9801)	II

The firm plans to import small reference standard quantities of finished commercial product from its sister company in Switzerland for sale to its customers for drug testing and pharmaceutical research and development.

No comments or objections have been received. DEA has considered the factors of Title 21, United States Code, Section 823(a) and determined that the registration of Lipomed, Inc. to import the listed controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Lipomed, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1311.42, the above firm is granted registration as an importer of the basic classes of controlled substances listed above.

Dated: August 17, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc 99–22307 Filed 8–26–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated April 16, 1999, and published in the **Federal Register** on April 29, 1999, (64 FR 23114), Mallinckrodt Chemical, Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Tetrahydrocannabinols (7370)	I.
Amphetamine (1100)	II.
Methylphenidate (1724)	II.
Cocaine (9041)	II.
Codeine (9050)	II.
Diprenorphine (9058)	II.
Etorphine Hydrochloride (9059)	II.
Dihydrocodeine (9120)	II.
Oxycodone (9143)	II.
Hydromorphone (9150)	II.
Diphenoxylate (9170)	II.
Hydrocodone (9193)	II.
Levorphanol (9220)	II.
Meperidine (9230)	II.
Methadone (9250)	II.
Methadone-intermediate (9254)	II.
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II.
Morphine (9300)	II.
Thebaine (9333)	II.
Opium extracts (9610)	II.
Opium fluid extract (9620)	II.
Opium tincture (9630)	II.
Opium powdered (9639)	II.
Opium granulated (9640)	II.
Levo-alphacetylmethadol (9648)	II.
Oxymorphone (9652)	II.
Noroxymorphone (9668)	II.
Alfentanil (9637)	II.
Sufentanil (9740)	II.
Fentanyl (1980)	II.

The firm plans to manufacture the controlled substances for distribution as bulk products to its customers.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Mallinckrodt Chemicals, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Mallinckrodt Chemicals, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: July 28, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–22308 Filed 8–26–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA #179IR]

Controlled Substances: 1999 Aggregate Production Quotas

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Interim notice establishing revised 1999 aggregate production quotas and request for comments.

SUMMARY: This interim notice establishes revised 1999 aggregate production quotas for amphetamine, codeine (for conversion), hydrocodone (for sale), hydrocodone (for conversion), morphine (for conversion), oxycodone (for sale) and thebaine, all of which are Schedule II controlled substances in the Controlled Substances Act (CSA).

DATES: This is effective on August 27, 1999. Comments or objections must be received on or before September 27, 1999.

ADDRESSES: Send comments or objections to the Deputy Administrator, Drug Enforcement Administration, Washington, D.C. 20537, Attn.: DEA Federal Register Representative (CCR).

FOR FURTHER INFORMATION CONTACT: Frank L. Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the CSA (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for each basic class of controlled substance listed in Schedules I and II each year. This responsibility has been delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations. The Administrator, in turn, has redelegated this function to the Deputy Administrator of the DEA pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations.

On December 23, 1998, the DEA published a notice of established initial 1999 aggregate production quotas for certain controlled substances in Schedules I and II (63 FR 71160). This notice stipulated that the Deputy Administrator of the DEA would adjust the quotas in early 1999 as provided for in Section 1303 of Title 21 of the Code of Federal Regulations.

In a recently published **Federal Register** Notice, the DEA has proposed revised aggregate production quotas for controlled substances in Schedules I and II, including amphetamine, codeine (for conversion), hydrocodone (for sale), hydrocodone (for conversion), morphine (for conversion), oxycodone (for sale) and thebaine. However, due to the unforeseen and dramatic increase in sales of amphetamine, oxycodone and hydrocodone, the quotas for these three substances and four of the controlled substances used in their manufacture must be increased immediately. Without this immediate increase, bulk manufacturers will not be able to produce the material needed by the dosage form manufacturers. This could, in turn, impact the supply of products to distributors and retail pharmacies. In order to avoid this situation, an interim notice is being published. This interim notice will establish revised 1999 aggregate production quotas for amphetamine, codeine (for conversion), hydrocodone (for conversion), morphine (for conversion), oxycodone (for sale) and thebaine effective immediately.

Therefore, under the authority vested in the Attorney General by Section 306 of the authority vested in the Attorney General by Section 306 of the CSA (21 U.S.C. 826), delegated to the Administrator of the DEA by Section 0.100 of Title 28 of the Code of Federal Regulations, and redelegated to the Deputy Administrator, pursuant to Section 0.104 of Title 28 of the Code of Federal Regulations, the Deputy Administrator hereby establishes the following revised 1999 aggregate production quotas for the listed controlled substances, expressed in grams of anhydrous base:

Basic class	Revised 1999 quota
Amphetamine	9,007,000
Codeine (for conversion)	45,780,000
Hydrocodone (for sale)	20,208,000
Hydrocodone (for conversion)	12,100,000
Morphine (for conversion)	94,900,000
Oxycodone (for sale)	18,517,000
Thebaine	31,117,000

All interested persons are invited to submit their comments in writing regarding this interim notice.

The Office of Management and Budget has determined that notices of aggregate production quotas are not subject to centralized review under Executive Order 12866. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Deputy Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The establishment of aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international treaty obligations. Aggregate production quotas apply to approximately 200 DEA registered bulk and dosage form manufacturers of Schedules I and II controlled substances. The quotas are necessary to provide for the estimated medical, scientific, research and industrial needs of the United States, for export requirements and the establishment and maintenance of reserve stocks. While aggregate production quotas are of primary importance to large manufacturers, their impact upon small entities is neither negative nor beneficial. Accordingly, the Deputy Administrator has determined that this action does not require a regulatory flexibility analysis.

Dated: August 19, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–22306 Filed 8–26–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Bureau of Prisons

Notice of Availability of the Draft Environmental Assessment for the Construction and Operation of a Contractor-Owned/Contractor-Operated Correctional Facility for 1,000 Inmates

AGENCY: Federal Bureau of Prisons, Department of Justice.

ACTION: Notice of availability of the draft environmental assessment.

SUMMARY:

Proposed Action

The U.S. Department of Justice, Federal Bureau of Prisons has determined that, in order to meet the National Capital Revitalization and Self Government Improvement Act of 1997, which requires that the Federal Bureau of Prisons house, in private contract facilities, at least 2,000 District of Columbia sentenced felony inmates by December 31, 1999, that additional contractor-owned bed-space is needed.

The Draft Environmental Assessment (EA) studies potential environmental impacts associated with the construction and operation of a contractor-owned/contractor-operated correctional facility to house approximately 1,000 inmates. The proposed action is based on a need to house felons, mostly from the Washington, DC, area, due to the impending closure of correctional facilities in Lorton, Virginia.

The Draft EA considers potential impacts to the natural and manmade environments including topography, geology and soils, cultural, aesthetic, hydrological and biological resources, land use, socio-economics, air quality, noise, transportation, and utility services. among other topics at each proposed site. The Draft EA will be the subject of a 30-day review period which begins August 17, 1999 and ends September 17, 1999. Comments concerning the Draft EA and the proposed action must be received during this time to be assured of consideration.

All written comments received during this review period will be taken into consideration by the Bureau. Copies of the Draft EA are available for public viewing at:

Holt Memorial Library, Moshannon Valley Partnership Corp. Building, 200 Shady Lane, Philipsburg, PA
Shaw Public Library, 1 South Front Street, Clearfield, PA
Terra Alta Public Library, 120 East Washington Ave., Terra Alta, WV
Anacostia Public Library, Good Hope Road and 18th Street, SE., Washington, DC

Alternatives: In developing the Draft EA, the options of "no action" and "take action" for the proposed facility have been fully and thoroughly examined.

Public Hearing Process: Representatives of the Bureau will also conduct a Public Hearing to which all interested persons are invited to attend. The Public Hearing is being held to provide for timely public comments on the Draft EA consistent with the goals of NEPA. The Public Hearing will be held at 7 P.M., September 9, 1999 at the Philipsburg Jr. High School, Philipsburg, PA. The meeting is being held to allow interested persons to formally offer comments and express their views concerning the proposed action and the Draft EA. The Bureau reserves the right to impose a time limit for those speakers in order to accommodate all persons interested in commenting on the Draft EA. Written comments concerning the Draft EA will also be accepted at the meeting.

ADDRESS: Questions concerning the proposed action and the Draft Environmental Assessment can be answered by: David J. Dorworth, Chief, Site Selection and Environmental Review Branch, Administration Division, Federal Bureau of Prisons, 320 First Street, N.W, Washington, DC 20534, Telephone: (202) 514–6470, Telefacsimile: (202) 616–6024, E-mail: siteselection@bop.gov

Dated: August 13, 1999.

David J. Dorworth,

Chief, Site Selection and Environmental Review Branch.

[FR Doc. 99–21868 Filed 8–26–99; 8:45 am]

BILLING CODE 4410–55–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB review; comment request

August 23, 1999.

The Department of Labor (DOL) has submitted the following information collection requests (ICRs) (see below) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills (202) 219–5096, ext. 143 or E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316, by September 27, 1999.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Title: Process Safety Management of Highly Hazardous Chemical (29 CFR 1910.119).

OMB Number: 1218–0200.

Frequency: Varies (on occasion, annually).

Affected Public: Business or other for-profit; Not for-profit institutions; Federal Government, State, local or tribal.

Number of Respondents: 192,865.

Estimated Time Per Respondent: Varies from 5 minutes (0.08 hr.) To 146.5 hours.

Total Burden Hours: 73,111,180.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). In this regard, the information collection requirements in the Process Safety Management of Highly Hazardous Chemicals Standards (29 CFR 1910.119) prevent or minimize the consequences of accidents involving highly hazardous chemicals.

Agency: Occupational Safety and Health Administration.

Title: Hazardous Waste Operations and Emergency Response (HAZWOPER) (29 CFR 1910.120).

OMB Number: 1218–0202.

Frequency: Varies (on occasion, annually).

Affected Public: Business or other for-profit; Not for-profit institutions; Federal Government, State, local or tribal.

Number of Respondents: 38,363.

Estimated Time Per Respondent: Varies from 5 minutes (0.08 hr.) To 64 hours.

Total Burden Hours: 1,592,338.

Total Annualized capital/startup costs: $5,045,430.00.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The standard on Hazardous Waste and Emergency Response (HAZWOPER) (29 CFR 1910.120) regulates the safety and health of employees engaged in hazardous waste site operations and emergency response to the release of hazardous substances from their containers. It was mandated by Congress under section 126 of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Worker populations covered by the rule include workers at Superfund clean-sites and similar operations, workers at EPA permitted disposal sites, and emergency response workers at those sites, firefighters, emergency medical service personnel, police, and others involved in hazardous substance emergency response. Employers can use the information collected under the rule to develop the various programs the standard requires and to ensure that their employees are trained properly about the safety and health hazards associated with hazardous waste operations and emergency response to hazardous waste releases. OSHA will use the records developed in response to this standard to ensure adequate compliance with the safety and health provisions. The employer's failure to collect and distribute the information required in this standard will affect significantly OSHA's effort to control and reduce injuries and fatalities. Such failure would also be contrary to the direction Congress provided in SARA.

Maureen Hill,

Acting Departmental Clearance Officer.

[FR Doc. 99–22338 Filed 8–26–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S–3014, Washington, DC 20210.

Withdrawn General Wage Determination Decisions

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, the following General Wage Determinations:

MO990008 (See MO990045)
MO990047 (See MO990045)

Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

Virginia
VA990003 (Mar. 12, 1999)
VA990022 (Mar. 12, 1999)

Volume III

Georgia
GA990050 (Mar. 12, 1999)
GA990053 (Mar. 12, 1999)
GA990073 (Mar. 12, 1999)
Kentucky
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General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 20th day of August 1999.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–22023 Filed 8–26–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed collection; comment request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before October 26, 1999. The Bureau of Labor Statistics is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to Karin G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, N.E., Washington, DC 20212. Ms. Kurz can be reached on 202–606–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Karin G. Kurz, BLS Clearance Officer. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Proposed Collection

The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed new collection of the "Job Openings and Labor Turnover Survey (JOLTS)." A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed in the **ADDRESSES** section of this notice.

II. Background

The JOLTS will provide data on job vacancies, labor hires, and labor separations. The data can be used as demand-side indicators of labor shortages. These indicators of labor shortages at the national level would greatly enhance policy makers' understanding of imbalances between the demand and supply of labor. Presently there is no economic indicator of the demand for labor with which to assess the presence of labor shortages in the U.S. labor market. The availability of unfilled jobs (the number of job vacancies or the vacancy rate) is an important measure of tightness of job markets, parallel to existing measures of unemployment.

JOLTS statistics will reveal structural labor market conditions, such as the effectiveness of job matching and training processes, implications of unemployment insurance and welfare, and deficient demand for labor.

JOLTS statistics can be used for the following purposes:

- As an indicator of business cycles and their causes and consequences;
- As a basic economic indicator of growth, productivity and welfare;
- As a tool for considering the implications of unemployment policy, labor market policy; and
- As an indicator of inflation and wage growth.

The ratio of the unemployment rate to the vacancy rate can be a very powerful indicator and reveal important information about how to effectively manage unemployment. As recently as 1998, Robert M. Solow in *Proceedings of the British Academy* noted that, ". . . national unemployment counts exist almost everywhere, whereas vacancy statistics are quite rare."

III. Current Actions

The information will be collected once a month using Computer Assisted Telephone Interviewing (CATI) and Touch-tone Data Entry (TDE). An establishment will be included in the sample for 18 consecutive months.

During the first six months of data collection, the interviewer will call the respondent and conduct the interviews over the telephone using CATI. During these interviews, the interviewer will prepare the respondent for transition to TDE. The data for the establishment's final twelve months in the sample will be collected via TDE.

The following data elements will be collected:

Total Employment;
Total Number of Job Openings;
Total Hires;
Quits;
Layoffs and Discharges; and
Other Separations.

The reference period for the data are the pay period including the 12th of the month for Total Employment, the last business day of the month for Job Openings, and the entire month for Hires and Separations.

The information will be published monthly by combined North American Industry Classification System sector, at the National level and total non-agriculture level, by Census region. The data will be made public via press release and on the BLS Web site.

Type of Review: New collection.

Agency: The Bureau of Labor Statistics.

Title: Job Openings and Labor Turnover Survey.

OMB Number: BLS–1411.

Affected Public: Federal Government; State or local governments; Businesses or other for-profit; Not-for-profit institutions; Small businesses or organizations.

Total Respondents:: 16,000.

Frequency: Monthly.

Total Responses: 111,440 (annual average).

Average Time Per Response: 6 minutes.

Estimated Total Burden Hours: 11,144 (annual average).

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): 0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the ICR; they also will become a matter of public record.

Signed at Washington, DC, this 23rd day of August 1999.

Karen A. Krein,

Acting Chief, Division of Management Systems, Bureau of Labor Statistic.

[FR Doc. 99–22336 Filed 8–26–99; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before October 26, 1999. The Bureau of Labor Statistics is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Send comments to Karin G. Kurz, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, NE., Washington, DC 20212. Ms. Kurz can be reached on 202–606–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Karin G. Kurz, BLS Clearance Officer. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Proposed Collection

The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed new collection of the 2000 School Survey component of the National Longitudinal Survey of Youth 1997 (NLSY97). A copy of the proposed information collection request (ICR) can be obtained by contracting the individual listed in the Addresses section of this notice.

II. Background

Part of the mission of the Department of Labor (DOL) is to promote the development of the U.S. labor force and the efficiency of the U.S. labor market. The BLS contributes to this mission by gathering information about the labor force and labor market, and disseminating it to policy makers and the public so that participants in those markets can make more informed and, thus, more efficient choices.

The 2000 School Survey represents the second wave of data collection from the schools attended by and located within the primary sampling units (PSUs) of the youths surveyed in the NYSY97. (The first wave of the NLSY97 was cleared under OMB number 1220–0157.) The DOL has been interviewing these youths on a yearly basis to study how young people make the transition from full-time schooling to the establishment of their families and careers. the longitudinal focus of the NLSY97 requires collection of information about the same individuals over many years in order to trace their education, training, work experience, family formation, income, and program participation in programs such as apprenticeships, co-ops, internships, and so forth. Recognizing the crucial role of schools and training the next generation of our labor force, the BLS will administer a school survey to measure the characteristics of the schools the youths attend so that these characteristics can be related to the cognitive development of the respondents in the NLSY97.

III. Current Actions

The 2000 School Survey will provide important contextual data for better understanding the antecedents of youth's critical employment decisions and the employment paths, entrances, and exits that they take over their life

course. In addition to providing data relating to the student, the study also will provide school-level data that can be used, for example, to estimate changes in the incidence and profiles of school-to-work programs in the panel of schools.

The major purposes of this data collection are to determine the strengths and weaknesses of the process for guiding the nation's youths from school-to-work. The study will relate the characteristics of these youths' educational experiences to their success in finding a job and establishing a career. Accordingly, these data will help researchers and policy makers identify the antecedents and causes for youths experiencing difficulties in making the school-to-work transition. By comparing these data to comparable data from previous and future cohorts, researchers and policy makers will be able to identify and understand more about the dynamics of the labor market and whether and how the school experiences of this cohort differ from those of other cohorts.

The National School-to-Work Office, a joint office of the Department of Labor and the Department of Education, will use these data to assess the extent to which schools provide activities to prepare young people for work. Combined with information collected from the teenagers attending these institutions, BLS staff, researchers, and federal and state policy makers will use the data from this survey to address the roles of schools, families, individuals, peers, neighborhoods, and work in influencing today's youth as they move from school-to-work and, more generally, from adolescence to adulthood. The School-to-Work Office used data from the first wave to document the proportion of schools with school-to-work programs and the characteristics of those schools.

This request covers the 2000 NLSY97 School Survey data collection. The BLS believes that collecting high school-level information once every four years provides a sufficiently clear picture of the changes that occur in schools—such as advancement in technology, transformations in the size and characteristics of student populations, elimination of programs, and the evolution of funding mechanisms, without overburdening the school administrators who respond to the survey. Although a significant change can occur in any year for a school, most changes occur or evolve slowly. The questionnaire will capture these off-year changes by including retrospective questions about when programs began.

The four-year frequency further ensures that the changing high school experiences of students who move from one high school to another (approximately 8 percent) because of family relocation, changes in school boundaries, openings and closings of schools, family choices about educational opportunities, or other reasons, are captured.

If these data are not collected, the ability of researchers and policy makers to assess the school-to-work transition for the nation's youth will be severely compromised. Likewise, researchers and policy makers will be unable to assess the impact of schooling and other environmental factors on the quality of the newest entrants to the labor force and how those qualitative aspects relate to education, training, work experience, family formation, income, and program participation.

Type of Review: New.

Agency: The Bureau of Labor Statistics.

Title: 2000 School Survey component of the National Longitudinal Survey of Youth 1997 (NLSY97).

OMB Number: 1220—New.

Affected Public: Not-for-profit institutions (secondary schools).

Total Respondents: 7,981.

Frequency: Every 4 years.

Total Responses: 7,981.

Average Time Per Response: 30 minutes.

Estimated Total Burden Hours: 3,991 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maitenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, D.C., this 24th day of August 1999.

Karen A. Krein,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 99–22337 Filed 8–26–99; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–99–20]

Telecommunications, Training Certification; Extension of the Office of Management and Budget's (OMB) Approval of an Information Collection (Paperwork) Requirement

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the proposed increase in, and extension of, the information collection requirements (training certification records) contained in the Telecommunications Standard, 29 CFR 1910.268(c).

Request for Comment

The Agency seeks comments on the following issues:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated, electronic, mechanical, and other technological information and transmission collection techniques.

DATES: Submit written comments on or before October 26, 1999.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–99–20, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 2000 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2222. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirements in 29 CFR 1910.268(c) (training certification records) is available for inspection and copying in the Docket Office, or mailed on request by telephoning Theda Kenney at (202) 693–2222 or Barbara Bielaski at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at http://www.osha.gov/comp-links.html, and click on "Information Collection Requests".

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is correct.

The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents. (29 U.S.C. 657.) Section 1910.268 requires that employees be trained in hazards associated with their work. Paragraph (c) of 1910.268 requires that employers generate a record to certify the training was done. The record includes the name of the employee trained, the date the employee was trained and the signature of the employer or person who conducted the training.

II. Proposed Actions

OSHA proposes to increase its earlier estimate of 17,118 burden hours for the information collection requirements in 29 CFR 1910.268(c) (training certification records) to 61,983 burden hours.

OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirement contained in the above provision.

Type of Review: Extension of currently approved information collection requirement.

Agency: Occupational Safety and Health Administration.

Title: Telecommunications, Training Certification (29 CFR 1910.268(c)).

OMB Number: 1218–0225.

Affected Public: Business or other for-profit; Federal Government; State, local or tribal government.

Number of Respondents: 1,175,149.

Frequency: On occasion.

Average Time Per Response: Varies from 3 minutes (0.05 hour) to 5 minutes (0.08 hour).

Estimated Total Burden Hours: 61,963.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR part 1911.

Signed at Washington, DC, this 23 day of August 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–22335 Filed 8–26–99; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–105]

NASA Advisory Council (NAC), Aero-Space Technology Advisory Committee (ASTAC); Information Technology Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aero-Space Technology Advisory Committee, Information Technology Subcommittee meeting.

DATES: Tuesday, September 21, 1999, 8:30 a.m. to 5:00 p.m. and Wednesday, September 22, 1999, 8:30 a.m. to 12:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, Ames Research Center, Building 258, Room 221, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT: Dr. Eugene L. Tu, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 650/604–4486.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Information Technology Overview
—Advanced Computing, Networking and Storage Overview
—Integrated Application and Information Systems
—Universal Distributed Services
—Distributed High Performance Resources
—Deployment and Operations
—Discussions

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: August 22, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–22357 Filed 8–26–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice [99–106]

NASA Advisory Council (NAC), Aero-Space Technology Advisory Committee (ASTAC); Aviation Operations Systems Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aero-Space Technology Advisory Committee, Aviation Operations Systems Subcommittee meeting.

DATES: Wednesday, September 29, 1999, 8:00 a.m. to 4:30 p.m. and Thursday, September 30, 1999, 8:00 a.m. to 3:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, Glenn Research Center, Building 3, Room 215, Cleveland, OH 44135–3191.

FOR FURTHER INFORMATION CONTACT: Dr. J. Victor Lebacqz, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 650–604–5792.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Aviation Operations Systems Program Review
—Aviation Icing Element
—Aviation Weather Information Element
—Human/Automation Integration Research Element
—Maintenance Operations and Training Element
—Psychological/Physiological Stressors and Factors Element
—Methods for Analysis of System Stability and Safety Element

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: August 22, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–22358 Filed 8–26–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; President's Committee on the Arts and the Humanities: Meeting XLVI

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the President's Committee on the Arts and the Humanities will be held on September 24, 1999 from 9:00 a.m. to approximately 12:30 p.m. The meeting will be held in the Faculty Club, D'Agostino Hall, New York University Law School, 108 West 3rd Street (at Macdougal), New York, NY.

The Committee meeting will begin at 9:00 a.m. with opening remarks by Dr. John Brademas. This will be followed by the Executive Director's remarks from Harriet Mayor Fulbright. This will be followed by a National Cultural Policy Discussion with Marion Godfrey of the Pew Charitable Trust and James Smith of the Center for Arts and Culture. The Committee will hear presentations from Scott Shanklin-Peterson, Senior Deputy Chairman of the National Endowments for the Arts and George Farr, Acting Deputy Chairman of the National Endowment for the Humanities, Task Force Reports, and a National Cultural Policy and Support Update by Robert Lynch, President and CEO of Americans for the Arts.

The President's Committee on the Arts and the Humanities was created by Exexcutive Order in 1982 to advise the President, the two Endowments, and the Institute of Museum and Library Services on measures to encourage private sector support for the nation's cultural institutions and to promote public understanding of the arts and the humanities.

If, in the course of discussion, it becomes necessary for the Committee to discuss non-public commercial or financial information of intrinsic value, the Committee will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b.

Any interested person may attend as observers, on a space available basis, but seating is limited. Therefore, for this meeting, individuals wishing to attend must contact Shawn Wray of the President's Committee in advance at (202) 682–5409 or write to the Committee at 1100 Pennsylvania Avenue, NW, Suite 526, Washington, DC 20506. Further information with reference to this meeting can also be obtained from Mr Wray.

If you need special accommodations due to a disability, please contact Mr. Wray through the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Dated: August 23, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 99–22288 Filed 8–26–99; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Special Projects Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Special Projects Advisory Panel (Research Section), to the National Council on the Arts will be held on September 10, 1999. The committee will meet from 10:00 a.m. to 4:00 p.m. in Room 714 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, to assist in developing parameters for a national study of jazz artists in four cities.

This meeting will be open to the public on a space available basis. Any person may observe meetings, or portions thereof, of advisory panel which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Mr. Tom Bradshaw, Office of Policy Research and Analysis, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5527.

Dated: August 19, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 99–22287 Filed 8–26–99; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Meeting on Draft Reg Guide 1053

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Meeting.

SUMMARY: The Nuclear Regulatory Commission staff with its contractors will meet to discuss Draft Regulatory Guide DRG–1053, "Calculational and Dosimetry Methods for Determining Pressure Vessel Neutron Fluence" including an update of activities since the last public meeting in September 1996, benchmark calculations done to accompanying the DRG, and issues arising from public interest.

DATES: Tuesday, September 28, 1999 from 9:30 a.m. to 3:30 p.m.

ADDRESSES: Nuclear Regulatory Commission Headquarters, 11545 Rockville Pike (Two White Flint North), T 2 B 3 (ACRS Conference Room), Rockville Pike, Rockville, MD 20852–2738.

FOR FURTHER INFORMATION CONTACT: William R. Jones, Materials Engineering Branch, Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington, D.C. 20555–0001. Telephone 301–415–7558. E–Mail: wrj@nrc.gov.

Dated at Rockville, Maryland, this 23rd day of August, 1999.

For the Nuclear Regulatory Commission.

Michael E. Mayfield,

Chief, Materials Engineering Branch.

[FR Doc. 99–22334 Filed 8–26–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23959, 812–11724]

Clarion CMBS Capital Value Fund and Clarion Capital, LLC; Notice of Application

August 20, 1999.

ACTION: Notice of an application under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

Summary of Application: Applicants seek an order to permit in-kind redemptions of shares of Clarion CMBS Value Fund, Inc. (the "Fund") held by certain affiliated shareholders.

Applicants: The Fund and Clarion Capital, LLC (the "Adviser").

Filing Dates: The application was filed on August 6, 1999.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 14, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Shearman & Sterling 599, Lexington Avenue, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: George J. Zornada, Branch Chief, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Fund is registered under the Act as an open-end management investment company and organized as a Maryland corporation. The Adviser is registered as an investment adviser under the Investment Advisers Act of 1940, and serves as investment adviser to the Fund.

2. Applicants request relief to permit the Fund, to satisfy redemption requests made by any shareholder who, at the time of such redemption request, is an affiliated person of the Fund solely by reason of owning, controlling, or holding with the power to vote, five percent or more of the Fund's shares ("Covered Shareholder") by distributing portfolio securities in-kind. The relief sought would not extend to shareholders who are "affiliated persons" of the Fund within the meaning of sections 2(a)(3)(B) through (F) of the Act.

3. The Fund's prospectus provides that, generally, the Fund may satisfy all or part of a redemption request by a distribution in-kind of portfolio securities.[1] The board of directors of the Fund (the "Board"), including a majority of the directors who are not "interested persons" as defined in section 2(a)(19) of the Act ("Non-Interested Directors"), have determined that it would be in the best interests of the Fund and its shareholders to pay to a Covered Shareholder the redemption price for shares of the Fund in-kind.

Applicants' Legal Analysis

1. Section 17(a)(2) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from knowingly purchasing any security or other property (except securities of which the seller is the issuer) from the registered investment company. Section 2(a)(3)(A) of the Act defines "affiliated person" of another person to include any person owning 5% or more of the outstanding voting securities of the other person. Applicants state that to the extent that an in-kind redemption could be deemed to involve the purchase of portfolio securities (of which the Fund is not the issuer) by a Covered Shareholder, the proposed redemption in-kind would be prohibited by section 17(a)(2).

2. Section 17(b) of the Act provides that, notwithstanding section 17(a) of the Act, the Commission shall exempt a proposed transaction from section 17(a) of the Act if evidence establishes that: (a) the terms of the proposed transaction are reasonable and fair and do not involve overreaching: (b) the proposed transaction is consistent with the policy of each registered investment company involved; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class or classes of persons, securities or transactions, from the provisions of the Act, to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants request an order under sections 6(c) and 17(b) of the Act exempting them from section 17(a) of the Act to permit Covered Shareholders to redeem their shares of the Fund in-kind. The requested order would not apply to redemptions by shareholders who are affiliated persons of the Fund within the meaning of sections 2(a)(3)(B) through (F) of the Act.

5. Applicants submit that the terms of the proposed in-kind redemptions by Covered Shareholders meet the standards set forth in sections 6(c) and 17(b) of the Act. Applicants assert that neither the Fund nor the Covered Shareholders will have any choice as to the type of consideration to be received in connection with a redemption request, and neither the Adviser nor the Covered Shareholder will have an opportunity to select the specific portfolio securities to be distributed. Applicants further state that the portfolio securities to be distributed will be valued according to an objective, verifiable standard and that the in-kind redemptions are consistent with the investment policies of the Fund. Applicants also state that the proposed in-kind redemptions are consistent with the general purposes of the Act because the Covered Shareholders would not receive any advantage not available to other redeeming shareholders.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief will be subject to the following conditions:

1. The securities distributed to both Covered Shareholders and non-affiliated shareholders pursuant to a redemption in-kind (the "In-Kind Securities") will be limited to securities that are traded on a public securities market or for which quoted bid prices are available.

2. The In-Kind Securities will be distributed by the Fund on a pro rata basis after excluding: (a) securities which could not be publicly offered or sold in the United States without being registered under the Securities Act of 1933; (b) certain portfolio positions (such as futures and options contracts and repurchase agreements) that, although they may be liquid and

[1] The Fund has elected to be governed by rule 18f–1 under the Act.

marketable, involve the assumption of contractual obligations, require special trading facilities or can only be traded with an institutional counterparty to the transaction; (c) cash equivalents (such as certificates of deposit, commercial paper, and repurchase agreements); (d) other assists which are not readily distributable (including receivables and prepaid expenses); and (e) portfolio securities representing fractional shares or units, odd lot securities and accruals on such securities. Cash will be paid for the portion of the in-kind distribution represented by assets set forth in (a)–(e) less liabilities (including accounts payable).

3.The In-Kind Securities distributed to the Covered Shareholders and non-affiliated shareholders will be valued in the same manner as they would be valued for purposes of computing each Fund's net asset value.

4. The Fund's Board, including a majority of the Non-Interested Directors, will determine no less frequently than annually: (a) whether the In-Kind Securities, if any, have been distributed in accordance with conditions 1 and 2; (b) whether the In-Kind Securities, if any, have been valued in accordance with condition 3; and (c) whether the distribution of any such In-Kind Securities is consistent with the policies of the Fund as reflected in its prospectus. In addition, the Board will make and approve such changes in the procedures as it deems necessary for monitoring the Fund's compliance with the terms and conditions of this Application.

5. The Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which a proposed in-kind redemption by a Covered Shareholder occurs, the first two years in an easily accessible place, a written record of each such redemption setting forth the identity of the Covered Shareholder, a description of each security distributed in-kind, the terms of the in-kind distribution, and the information or materials upon which the valuation was made.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22263 Filed 8–26–99; 8:45 am]

BILLING CODE 8010–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Temporary Extension of Certain Provisions of the Special Textile and Apparel Regime Implemented Under the North American Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Proclamation 7125 provides duty-free treatment for suit-type jackets imported from Mexico containing interlining fabric that was cut but not formed in the United States, and it authorizes the United States Trade Representative ("USTR") to extend this treatment for one additional year after fulfilling certain requirements. Effective upon publication of this notice, and pursuant to authority delegated by the President, the United States Trade Representative hereby extends the duty-free treatment provided for in Proclamation 7125 for one additional year.

FOR FURTHER INFORMATION CONTACT: Caroyl Miller, Deputy Chief Textile Negotiator, Office of USTR, 600 17th Street, NW, Washington, DC 20508, (202) 395–3026.

SUPPLEMENTARY INFORMATION: Pursuant to authority granted under section 201(b)(1)(A) of the NAFTA Implementation Act (19 U.S.C. 3331(b)(1)(A)), on September 18, 1998, the President issued Proclamation 7125, which provides duty-free treatment for suit-type jackets imported from Mexico containing interlining fabric that was cut but not formed in the United States (63 FR 50737). In addition, the President delegated to USTR authority to extend such duty-free treatment for one additional year after obtaining advice from the appropriate advisory committees established under section 135 of the Trade Act of 1974, as amended (19 U.S.C. 2155).

In view of the fact that U.S.-formed interlinings currently are not available for all of the suit-type jackets subject to Proclamation 7125, USTR and the Committee for the Implementation of Textile Agreements requested advice from the Industry Sector Advisory Committees for Textiles and Apparel and for Wholesaling and Retailing (ISACs 15 and 17) on a proposal to extend the duty-free treatment provided for in Proclamation 7125 for one additional year. By letter dated August 11 and August 16, 1999, respectively, ISACs 17 and 15 responded with approval to this proposal.

Accordingly, pursuant to authority delegated by the President, USTR hereby extends for one additional year the duty-free tariff treatment proclaimed in Proclamation 7125. This action is effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after 12:00 a.m. EDT September 1, 1999, and will expire at 11:59 p.m. EDT on August 31, 2000.

C. Donald Johnson,

Ambassador, Chief Textile Negotiator.

[FR Doc. 99–22279 Filed 8–26–99; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–29]

Petitions for Exemption: Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before September 5, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. ____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9__NPRM__cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Terry Stubblefield (202) 267–7624 Office of Rulemaking (ARM–1, Federal Aviation) Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC on August 24, 1999.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29706.
Petitioner: American Airlines, Inc.
Section of the FAR Affected: 14 CFR 121 Appendix I section V paragraph (a)(1).
Description of Relief Sought: To allow employees performing safety sensitive functions for Reno Airlines, Inc., to perform similar functions for American Airlines without being subject to a pre-employment drug test.

[FR Doc. 99–22298 Filed 8–26–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Nashville International Airport, Nashville, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Nashville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments Must Be Received on or Before September 27, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 3385 Airways Blvd., Suite 302, Memphis, TN 38116–3841,

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to General William G. Moore, President of the Metropolitan Nashville Airport Authority at the following address: One Terminal Drive, Suite 501, Nashville, TN 37214–4114.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Metropolitan Nashville Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Cynthia K. Wills, Program Manager, Memphis Airports District Office, 3385 Airways Blvd., Suite 302, Memphis, TN 38116–3841, (901) 544–3495 Ext. 16. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Nashville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 18, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by Metropolitan Nashville Airport Association was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 30, 1999.

The following is a brief overview of the application.

PFC Application No.: 99–06–C–00–BNA
Level of the proposed PFC: $3.00.
Proposed charge effective date: August 1, 2001.
Proposed charge expiration date: October 30, 2001.
Total estimated PFC revenue: $2,660,000.
Brief description of proposed project(s):
Surface Movement Guidance and Control Systems (SMGCS)
Airport Operations Center Relocation
Airfield Lighting Control Panel
Runway Deicer Truck
Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Metropolitan Nashville Airport Authority.

Issued in Memphis, Tennessee, on August 18, 1999.

LaVerne F. Reid,

Manager, Memphis Airports District Office, Southern Region.

[FR Doc. 99–22291 Filed 8–26–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Tri-Cities Regional Airport, Blountville, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Tri-Cities Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 27, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airport District Office, 3385 Airways Blvd. Suite 302, Memphis, Tennessee 38116–3841.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to John E. Hanlin, Executive Director of the Tri-Cities Airport Commission at the following address: P.O. Box 1055, Blountville, Tennessee 37617.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Tri-Cities Airport Commission under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Cager Swauncy, Jr., Program Manager, Memphis, Tennessee 38116–3841, Telephone (901) 544–3495. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose

and use the revenue from a PFC at Tri-Cities Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 19, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by Tri-Cities Airport Commission was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 3, 1999.

The following is a brief overview of the application.

PFC Application No: 99–02–C–00–TRI.

Level of the proposed PFC: $3.00.

Proposed charge effective date: November 1, 2005.

Proposed charge expiration date: August 1, 2013.

Total estimated PFC revenue: $5,829,873.

Brief description of proposed project(s): Extend Runway 5 Safety Area and Terminal Concourse Expansion.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Tri-Cities Airport Commission.

Issued in Memphis, Tennessee on August 19, 1999.

LaVerne F. Reid,

Manager, Memphis Airports District Office, Southern Region.

[FR Doc. 99–22292 Filed 8–26–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Assistance Program for Historically Black Colleges and Universities (HBCUs) and Other Minority Institutions of Higher Education (MIHE)

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of restricted eligibility for a competitive assistance program.

SUMMARY: The FHWA is considering the establishment of a competitive assistance program which will be limited to HBCUs and MIHE. Under the assistance program envisioned, these schools and universities would be competing amongst themselves for grants and cooperative agreements that are relevant to one or more of the FHWA's five strategic goals. This notice seeks Expressions of Interest from HBCUs and other MIHE that would like to participate in such a program.

DATES: Expressions of Interest must be received on or before November 10, 1999.

ADDRESSES: Your Expressions of Interest may be mailed or hand-carried to the Federal Highway Administration, Office of Acquisition Management, 400 7th Street, SW., Room 4410, Washington, DC 20590–0001, Mail Stop HAAM–20, or submitted electronically to: Debbie.Ridgely@fhwa.dot.gov in WordPerfect 6.1 or higher.

FOR FURTHER INFORMATION CONTACT: Debbie Ridgely, Office of Acquisition Management, HAAM–10, (202)–366–4233, or Mr. Wilbert Baccus, Office of the Chief Counsel, HCC–32, (202) 366–1396, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 am to 4:15 pm, e.t., Monday through Friday except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the **Federal Register**'s home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

Internet users may access the FHWA Strategic Plan by going to: *http://www.fhwa.dot.gov* (select Major Program Areas, then FHWA Strategic Plan). Users may also review major program areas of the FHWA from this home page.

Internet users may also access the pertinent Executive Orders for HBCUs and MIHE at *www.whitehouse.gov* (select Virtual Library, then Executive Orders).

Background

The National Task Force on Historically Black Colleges and Universities (HBCUs) and other Minority Institutions of Higher Education (MIHE) was formed to make recommendations to the Administrator which would facilitate, enhance and increase the participation of these schools in all phases of the FHWA Federal and Federal-aid programs with a special emphasis on research and technology programs. The Task Force made numerous recommendations to the Acting Federal Highway Administrator in December 1997. As a result of those recommendations, the Office of Acquisition Management has proposed the establishment of the assistance program as a viable method of matching the capabilities of the HBCUs and MIHE, with the needs of the FHWA. The purpose of this program is to foster the HBCUs/MIHE* research and development activities which contribute substantially to the FHWA's mission and to prepare the faculty and students at HBCUs/MIHE to successfully participate in the competitive research arena.

*A HBCUs is defined in 34 CFR 608.2 as an accredited college or university, established prior to 1964, whose principle mission was and is, the education of African-Americans.

An Indian Serving Institution, which includes Tribal Colleges, as well as, Bureau of Indian Affairs affiliated institutions must have a student body of at least 51% American Indian to acquire and maintain Tribal College status.

A Hispanic Serving Institution, as defined by the Hispanic Association of Colleges and Universities (HACU), must have at least a 25% Hispanic student body. This entitles the school to a full membership in HACU. The HACU accepts associate memberships from institutions with a smaller percentage, of not less than 10% Hispanic students.

Under the program envisioned by the FHWA, all assistance program awards would be required to be relevant to one or more of the FHWA's five strategic goals of mobility, safety, productivity, human and natural environment, and national security. The *mobility* goal concerns the continual improvement of the public's access to activities, goods, and services through the preservation, improvement, and expansion of the highway transportation system and enhancement of its operations, efficiency, and intermodal connections. The *safety* goal concerns continual improvement of highway safety by reducing the number of fatalities and injuries. The *productivity* goal concerns the continual improvement of the economic efficiency of the Nation's transportation system to enhance America's position in the global economy. The *human and natural environment* goal concerns the protection and enhancement of the natural environment and communities affected by highway transportation. The *national security* goal seeks the improvement of the capacity and operation of the highway system to support defense mobilization.

The assistance program envisioned would be an annual program under which awards would be made on a competitive basis, predicated on merit review, typically for a period of three years. Funding beyond the first year would be based on an annual evaluation of documented progress, availability of funds, and the amount of funds reported as unexpended by the awardee at the end of each year's period of performance. A preliminary estimate of total award amounts would be approximately $100,000 on an annual basis.

The HBCUs and the MIHE that are interested in participating in such an assistance program are invited to submit an "Expression of Interest." Your submission should include:

1. Full name and address of school/university, point of contact, phone number, fax number and E-Mail address,
2. Specific FHWA goal(s) that your institution would be interested in participating under and your actual recent (past three years) experience in the area,
3. A list of your institution's current curriculum/majors as they relate to the FHWA strategic goals,
4. Any laboratories/research facilities that you currently have access to, and
5. Any specific future plans you have for expanding your curriculum and or research facilities.

Provided that a sufficient number of relevant "Expressions of Interest" are received in response to this notice, the FHWA would issue a program-based solicitation calling for submission of applications. The application process would be open to all HBCUs and MIHE and is not dependent upon submitting an initial "Expression of Interest." Applications would be assessed according to specific criteria that relate to the goals of the FHWA's National Strategic Plan and would be awarded to a limited number of applicants according to the merit of the application and the availability of funds in each fiscal year. The target date for initial awards would be FY 2000.

Authority: 23 U.S.C. 307 and 403; E.O. No. 12876, 58 FR 58735, 3 CFR, 1994 Comp., p. 671; E.O. No. 13021, 61 FR 54929, 3 CFR, 1997 Comp., p. 221; 49 CFR 1.48.

Issued on August 18, 1999.

Gloria J. Jeff,

Federal Highway Deputy Administrator.

[FR Doc. 99–22289 Filed 8–26–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Directional Drilling and Other Trenchless Technology Operations Conducted in Proximity to Underground Pipeline Facilities

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice; issuance of advisory bulletin.

SUMMARY: RSPA is issuing this advisory bulletin to owners and operators operators of natural gas and hazardous liquid pipeline systems to advise them to review, and amend if necessary, their written damage prevention program to minimize the risks associated with directional drilling and other trenchless technology operations near buried pipelines. This action follows several pipeline incidents involving trenchless technology operations which resulted in loss of life, injuries, and significant property damage. It also corresponds to National Transportation Safety Board (NTSB) Safety Recommendation P–99–1, which suggests that RSPA

> * * * ensure that the operators' damage prevention programs include actions to protect their facilities when directional drilling operations are conducted in proximity to those facilities.

This advisory bulletin emphasizes the importance of having procedures to mitigate the risks of directional drilling and other trenchless technology.

ADDRESSES: This document can be viewed at the Office of Pipeline Safety (OPS) home page at: http://ops.dot.gov.

FOR FURTHER INFORMATION CONTACT: Eben M. Wyman, (202) 366-0918, or by email at eben.wyman@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background

RSPA revised its inspection form for hazardous liquid pipelines to examine how operators monitor directional drilling and other trenchless technology operations in the vicinity of underground pipelines. The pipeline safety regulations require pipeline operators to carry out a written damage prevention program for buried pipelines. The revised inspection form considers whether a pipeline operator's damage prevention program includes actions to protect their facilities when directional drilling operations are conducted in proximity to the pipeline. RSPA will make similar changes to the natural gas pipeline inspection form in its next revision. In light of recent accidents involving trenchless technology operations, RSPA is encouraging operators to carefully review their damage prevention program and make modifications as appropriate. RSPA also notes the importance of accurately locating underground piping and ensuring the qualifications of personnel performing this work.

Additionally, NTSB Safety Recommendation P–99–1 (April 28, 1999) directs that RSPA

> [w]hen reviewing pipeline operator safety programs, ensure that the operators' damage prevention programs include actions to protect their facilities when directional drilling operations are conducted in proximity to those facilities.

This recommendation reflects NTSB's investigation into the rupture of a natural gas pipeline near Indianapolis, Indiana. The ignition of the escaping gas caused a fatality and an injury. NTSB determined that the probable cause was the failure of the pipeline operator to ensure that safe directional drilling operations were conducted in proximity to underground facilities.

RSPA believes that this Advisory Bulletin will encourage operators to recognize the dangers associated with directional drilling and other trenchless technology operations and to take appropriate action to ensure that underground facilities are adequately located and protected when these activities take place near pipelinethese facilities.

II. Advisory Bulletin (ADB–99–04)

To: Owners and Operators of Hazardous Liquid and Natural Gas Pipelines

Subject: Directional Drilling and Other Trenchless Technology Operations Conducted in Proximity to Underground Pipeline Facilities.

Purpose: To ensure that pipeline operators take actions to recognize the dangers associated with directional drilling and other trenchless technology operations, and to ensure that underground pipeline facilities are adequately located and protected from inadvertent damage.

Advisory: RSPA urges all owners and operators of gas and hazardous liquid pipelines to review their operations, maintenance, and damage prevention programs to include effective actions to protect their underground facilities from the dangers posed by directional drilling and other trenchless technology operations. Operators should take actions to ensure that both company and contractor personnel are following safe practices.

Trenchless technologies, including directional drilling, are effective

excavating practices that can reduce the threat of third-party damage to gas and hazardous liquid pipelines. They can also mitigate environmental and other concerns associated with traditional trenching methods of pipe and cable installation.

However, the potential exists for trenchless technology operations to damage underground facilities, sometimes with catastrophic results. Directional drilling and other trenchless technology operations employ a variety of cutting, jetting, boring, reaming, and jacking techniques. These techniques can result in rupture or damage to existing underground facilities, including oil and gas pipelines, electric cables and ducts, water and sewer pipes, telecommunications ducts, fiber optic cables, and cable television facilities.

Usually, the exact depth of existing underground facilities is not known, even if the facilities are accurately located before directional drilling commences. In addition, many facilities are buried deeper than the minimums required by law and regulation. This can be caused by changes in the surface contours due to agricultural activities, landscaping, and road building.

Damage to underground facilities can occur without any immediate indication to the operator. Sometimes a damaged underground facility will not fail for years after the completion of trenchless technology operations. Drilling equipment does not need to fully rupture a facility to create a hazardous situation. Damage to coatings and other corrosion prevention systems can increase the risk of a delayed corrosion failure. Escaping and migrating gas can create a safety issue for people living and working near these facilities long after the completion of directional drilling and other trenchless technology operations. Leakage from a damaged or ruptured hazardous liquid pipeline can create environmental and safety issues.

The primary safety concern is ensuring that trenchless technology operations do not accidentally contact existing underground facilities. This can be averted by knowing the precise locations of all underground facilities in proximity to trenchless technology operations. In addition to full compliance with the one-call notification process, the operator should also consider thorough site surveys of the area of a proposed directional drilling or trenchless technology project to locate potential conflicts with underground facilities.

Information on the safe conduct of trenchless technology operations is available from various trade associations and technical publications. In addition, the Gas Piping Technology Committee, a standards committee composed of experts on gas piping issues, publishes guidelines for planning and designing trenchless technology pipe installations in its Guide for Gas Transmission and Distribution Piping Systems, which is available from the American Gas Association.

/ Issued in Washington, D.C. on August 23, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–22331 Filed 8–26–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket Nos. 33788 and 33789]

Norfolk Southern Railway Company—Trackage Rights Exemption—Over North Carolina Railroad Company; Atlantic and East Carolina Railway Company—Trackage Rights Exemption—Line of North Carolina Railroad Company Operated Under Trackage Rights by Norfolk Southern Railway Company

In STB Finance Docket No. 33788, North Carolina Railroad Company (NCRR) has agreed to grant to Norfolk Southern Railway Company (NSR) exclusive local and overhead freight trackage rights over its entire line of railroad between Charlotte and Morehead City, NC.[1] The line extends between mileposts EC–0.0± and EC–94.7±; mileposts H–0.0± and H–129.5±; and mileposts 284.0± and 376.5±, a distance of approximately 317.2 miles in Alamance, Cabarrus, Carteret, Craven, Davidson, Durham, Guilford, Johnston, Jones, Lenoir, Mecklenburg, Orange, Randolph, Rowan, Wake, and Wayne Counties, NC.

Under the agreement, NSR is permitted to grant trackage rights to its subsidiaries. Accordingly, in STB Finance Docket No. 33789, NSR has agreed to grant to its wholly owned subsidiary, Atlantic and East Carolina Railway Company (AECR), local and overhead trackage rights over a portion of NCRR's line between Goldsboro, NC, and Morehead City. That portion extends between mileposts EC–0.0± and EC–94.7±, a distance of approximately 94.7 miles in Carteret, Craven, Jones, Lenoir, and Wayne Counties.

The exemption was effective on August 19, 1999, and the trackage rights operations are scheduled to begin on September 1, 1999.

The purpose of the trackage rights is to allow NSR and AECR to continue as the providers of local and overhead freight service on the NCRR lines, as they have previously done under now-expired leases.[2]

As a condition to these exemptions, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

These notices are filed under 49 CFR 1180.2(d)(7). If either contains false or misleading information, both exemptions are void *ab initio*. Petitions to revoke the exemptions under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.[3]

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33788, STB Finance Docket No. 33789, or both (as applicable) must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on G. Paul Moates, Esq., Sidley & Austin, 1722 Eye Street, N.W., Washington, DC 20006.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: August 23, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–22340 Filed 8–26–99; 8:45 am]

BILLING CODE 4915–00–P

[1] NSR is permitted to continue in effect existing and certain future agreements pertaining to passenger operations by the National Railroad Passenger Corporation (Amtrak) over the line. The Board's jurisdiction is not implicated as to this provision of the agreement.

[2] *See North Carolina Railroad Company—Petition to Set Trackage Compensation and Other Terms and Conditions—Norfolk Southern Railway Company, Norfolk & Western Railway Company, and Atlantic and East Carolina Railway Company*, STB Finance Docket No. 33134 (STB served May 29, 1997) (*NCRR Compensation*).

[3] In a pending motion in *NCRR Compensation*, intervener Walker F. Rucker seeks an order that he and the State of North Carolina be allowed and directed to participate in the negotiations for the trackage rights agreements that are the subject of this notice of exemption. The parties hereto replied, and Mr. Rucker responded to their replies. That collateral dispute provides no basis for rejection of the notice of exemption in this proceeding.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 20, 1999.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before September 27, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0126.

Form Number: IRS Form 1120–F.

Type of Review: Revision.

Title: U.S. Income Tax Return of a Foreign Corporation.

Description: Form 1120–F is used by foreign corporations that have investments, or a business, or a branch in the U.S. The IRS uses Form 1120-F to determine if the foreign corporation has correctly reported its income, deductions, and tax, and to determine if it has paid the correct amount of tax.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 21,618.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—107 hr., 8 min.
Learning about the law or the form—40 hr., 19 min.
Preparing the form—69 hr., 53 min.
Copying, assembling, sending the form to the IRS—7 hr., 31 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 4,860,807 hours.

Form	Recordkeeping	Learning about the law of the form	Preparing the form	Copying, assembling, and sending the form to the IRS
990	96 hr., 23 min	16 hr., 48 min	21 hr., 55 min	48 min
990–EZ	28 hr., 28 min	10 hr., 34 min	12 hr., 16 min	16 min
Schedule A (990)	50 hr., 13 min	9 hr., 26 min	10 hr., 40 min.	

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–22264 Filed 8–26–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on the Change of Control Collection Package.

DATES: Submit written comments on or before October 26, 1999.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0032. Hand deliver comments to the Public Reference Room, 1700 G Street, NW., lower level, from 9:00 a.m. to 4:00 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755; or (202) 906–6956 (if comments are over 25 pages). Send e-mails to "public.info@ots.treas.gov", and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room, 1700 G St. N.W., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Nadine Washington, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–6706.

SUPPLEMENTARY INFORMATION:

Title: Change of Control.

OMB Number: 1550–0032.

Form Numbers: 1173, 1393, 1606.

Abstract: 12 CFR Part 574 contains filing requirements for change of control applications. Section 1817(j) of the Federal Deposit Insurance Act requires a notice to be filed with the OTS when an insured institution undergoes a change of control.

Current Actions: OTS proposes to renew this information collection without revision.

Type of Review: Renewal.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 32.

Estimated Time Per Respondent: 33.5 hours.

Estimated Total Annual Burden Hours: 1,070 hours.

Request for Comments

The OTS will summarize comments submitted in response to this notice or will include these comments in its request for OMB approval. All comments will become a matter of

public record. The OTS invites comment on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or starting costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 19, 1999.

John E. Werner,

Director, Information & Management Services.

[FR Doc. 99–22272 Filed 8–26–99; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on the Service Corporation Activity Collection Package.

DATES: Submit written comments on or before October 26, 1999.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0013. Hand deliver comments to the Public Reference Room, 1700 G Street, NW., lower level, from 9:00 a.m. to 4:00 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755; or (202) 906–6956 (if comments are over 25 pages). Send e-mails to "public.info@ots.treas.gov", and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room, 1700 G St. N.W., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Nadine Washington, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–6706.

SUPPLEMENTARY INFORMATION:

Title: Service Corporation Activity.

OMB Number: 1550–0013.

Form Number: None.

Abstract: 12 CFR Section 545.74 requires savings associations to obtain approval or notify the OTS prior to engaging in activities through a service corporation that are not preapproved by regulation. It also contains a recordkeeping requirement for securities brokerage services. 12 CFR Section 559.12 governs the issuance of securities. These requirements allow the OTS to review service corporation activities and to ensure that they will not adversely affect an institution's safety and soundness.

Current Actions: OTS proposes to renew this information collection without revision.

Type of Review: Renewal.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 141.

Estimated Time Per Respondent: 2.25 hours.

Estimated Total Annual Burden Hours: 315 hours.

Request for Comments

The OTS will summarize comments submitted in response to this notice or will include these comments in its request for OMB approval. All comments will become a matter of public record. The OTS invites comment on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or starting costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 19, 1999.

John E. Werner,

Director, Information & Management Services.

[FR Doc. 99–22273 Filed 8–26–99; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on the Conversion from State to Federal Charter Collection Package.

DATES: Submit written comments on or before October 26, 1999.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0007. Hand deliver comments to the Public Reference Room, 1700 G Street, NW., lower level, from 9:00 a.m. to 4:00 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755; or (202) 906–6956 (if comments are over 25 pages). Send e-mails to "public.info@ots.treas.gov", and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room, 1700 G St. N.W., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Nadine Washington, Supervision Division, Office of Thrift Supervision Division, 1700 G Street, NW., Washington, DC 20552, (202) 906–6706.

SUPPLEMENTARY INFORMATION:

Title: Conversion from State to Federal Charter.

OMB Number: 1550–0007.

Form Number: 1582.

Abstract: Section 5(I) of the Home Owners' Loan Act and 12 CFR Sections 543.8 and 552.2 require the OTS to act on requests by state-chartered institutions proposing to convert to Federal charters.

Current Actions: OTS proposes to renew this information collection without revision.

Type of Review: Renewal.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 7.

Estimated Time Per Respondent: 4 hours.

Estimated Total Annual Burden Hours: 28 hours.

Request for Comments

The OTS will summarize comments submitted in response to this notice or will include these comments in its request for OMB approval. All comments will become a matter of public record. The OTS invites comment on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or starting costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 19, 1999.

John E. Werner,

Director, Information & Management Services.

[FR Doc. 99–22274 Filed 8–26–99; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on the Branch Offices Collection Package.

DATES: Submit written comments on or before October 26, 1999.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0006. Hand deliver comments to the Public Reference Room, 1700 G Street, NW., lower level, from 9:00 a.m. to 4:00 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755; or (202) 906–6956 (if comments are over 25 pages). Send e-mails to "public.info@ots.treas.gov", and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room, 1700 G St. NW., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Nadine Washington, Supervision Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–6706.

SUPPLEMENTARY INFORMATION:

Title: Branch Offices.

OMB Number: 1550–0006.

Form Number: 1450 and 1558.

Abstract: 12 CFR Section 545.92 requires federally-chartered institutions proposing to establish a branch office or to change the location of a branch office to file an application or notice with the OTS. Section 228 of the Federal Deposit Insurance Corporation Improvement Act requires insured thrifts to adopt a policy with respect to branch closings.

Current Actions: OTS proposes to renew this information collection without revision.

Type of Review: Renewal.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 1,145.

Estimated Time Per Respondent: 1.5 hours.

Estimated Total Annual Burden Hours: 1,984 hours.

Request for Comments

The OTS will summarize comments submitted in response to this notice or will include these comments in its request for OMB approval. All comments will become a matter of public record. The OTS invites comment on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or starting costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 19, 1999.

John E. Werner,

Director, Information and Management Services.

[FR Doc. 99–22275 Filed 8–26–99; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on the "Application for Permission to Organize".

DATES: Submit written comments on or before October 26, 1999.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0005. Hand deliver comments to the Public Reference Room, 1700 G Street, NW., lower level, from 9:00 a.m. to 4:00 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755; or (202) 906–6956 (if comments are over 25 pages). Send e-mails to "public.info@ots.treas.gov", and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room, 1700 G St. NW., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Nadine Washington, Supervision Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–6706.

SUPPLEMENTARY INFORMATION:

Title: Application for Permission to Organize.

OMB Number: 1550–0005.

Form Number: 138, 138E, 138F, 1393, 1606.

Abstract: The information provided is evaluated by the OTS staff to determine whether requests by organizing groups for Permission to establish a new Federal savings association comply with

applicable Federal laws and OTS regulations and policies.

Current Actions: OTS proposes to renew this information collection without revision.

Type of Review: Renewal.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 65.

Estimated Time Per Respondent: 99 hours.

Estimated Total Annual Burden Hours: 6,435 hours.

Request for Comments

The OTS will summarize comments submitted in response to this notice or will include these comments in its request for OMB approval. All comments will become a matter of public record. The OTS invites comment on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or starting costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 19, 1999.

John E. Werner,

Director, Information and Management Services.

[FR Doc. 99–22276 Filed 8–26–99; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on the Notice of Hiring of Senior Executive Officer or Director Collection Package.

DATES: Submit written comments on or before October 26, 1999.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0047. Hand deliver comments to the Public Reference Room, 1700 G Street, NW., lower level, from 9:00 a.m. to 4:00 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755; or (202) 906–6956 (if comments are over 25 pages). Send e-mails to "public.info@ots.treas.gov", and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room, 1700 G St. N.W., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Nadine Washington, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–6706.

SUPPLEMENTARY INFORMATION:

Title: Notice of Hiring of Senior Executive Officer or Director.

OMB Number: 1550–0047.

Form Numbers: 1624, 1623, 1606.

Abstract: Congress requires agency notification and approval for new senior executive officers and directors of financial institutions. Forms 1624 and 1623 are used to evaluate the competence, experience and integrity of individuals considered for directorships and senior executive positions. Form 1606 is an Applicant Certification as to lack of criminal background.

Current Actions: OTS proposes to renew this information collection without revision.

Type of Review: Renewal.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 44.

Estimated Time Per Respondent: 39.5 hours.

Estimated Total Annual Burden Hours: 1,738 hours.

Request for Comments

The OTS will summarize comments submitted in response to this notice or will include these comments in its request for OMB approval. All comments will become a matter of public record. The OTS invites comment on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or starting costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 19, 1999.

John E. Werner,

Director, Information & Management Services.

[FR Doc. 99–22277 Filed 8–26–99; 8:45 am]

BILLING CODE 6720–01–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determination: "Kremlin Gold—1000 Years of Russian Gems & Jewels"

AGENCY: United States Information Agency.

ACTION: Notice; withdrawal.

SUMMARY: Notice document 99–21536, appearing on page 45300, in the issue of Thursday, August 19, 1999, is withdrawn because the required determination has not been made.

FOR FURTHER INFORMATION CONTACT: Ms. Neila Sheahan, Assistant General Counsel, Office of the General Counsel, 202/619–5030. The address is Room 700, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: August 19, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–22360 Filed 8–26–99; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Congress-Bundestag Youth Exchange Program; Request for Proposal; Extension of Deadline

ACTION: Notice of extension to the deadline for the Congress-Bundestag Youth Exchange program.

SUMMARY: Due to the Agency's interest in providing opportunities for a broad range of organizations to apply for grants, the deadline for the Congress-Bundestag Youth Exchange program has been extended from September 17, 1999 to October 4, 1999.

ADDITIONAL INFORMATION: Interested organizations should contact Shalita Jones at 202–358–0331 or e-mail: sjones@usia.gov.

The Congress-Bundestag Youth Exchange program was announced in the **Federal Register** on August 5, 1999.

Dated: August 23, 1999.

William Kiehl,

Acting Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 99–22361 Filed 8–26–99; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register
Vol. 64, No. 166
Friday, August 27, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AJ40

Veterans Education: Increased Allowances for the Educational Assistance Test Program

Correction

In rule document 99–21248 beginning on page 44660 in the issue of Tuesday, August 17, 1999, make the following correction:

§ 21.5822 [Corrected]

On page 44661, in the third column, in § 21.5822, in the fourth line, ""payable to"" should read ""payable to:"".

[FR Doc. C9–21248 Filed 8–26–99; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–601–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Request Under Blanket Authorization

Correction

In notice document 99–21759 beginning on page 45961 in the issue of Monday, August 23, 1999, the docket number should appear as set forth above.

[FR Doc. C9–21759 Filed 8–26–99; 8:45 am]
BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27015]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

April 30, 1999.

Correction

In notice document 99–11457 appearing on page 24687, in the issue of Friday, May 7, 1999, the release number is corrected to read as set forth above.

[FR Doc. C9–11457 Filed 8–26–99; 8:45 am]
BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-23929]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

Correction

In notice document 99–20252, appearing on page 43003, in the issue of Friday, August 6, 1999, make the following correction:

On page 43003, in the first column, the docket number is corrected to read as set forth above.

[FR Doc. C9–20252 Filed 8–26–99; 8:45 am]
BILLING CODE 1505–01–D

federal register

Friday
August 27, 1999

Part II

Environmental Protection Agency

40 CFR Part 197

Environmental Radiation Protection Standards for Yucca Mountain, Nevada; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 197

[FRL–6427–5]

RIN 2060–AG14

Environmental Radiation Protection Standards for Yucca Mountain, Nevada

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: We, the Environmental Protection Agency (EPA), are proposing public health and safety standards for radioactive material stored or disposed of in the potential repository at Yucca Mountain, Nevada. Section 801 of the Energy Policy Act of 1992 (EnPA) directed the Administrator of EPA to develop these standards. The EnPA also required EPA to contract with the National Academy of Sciences (NAS) to conduct a study to provide findings and recommendations on reasonable standards for protection of the public health and safety. On August 1, 1995, NAS released its report (the NAS Report) entitled, "Technical Bases for Yucca Mountain Standards." We have taken the NAS Report into consideration as directed by the EnPA.

After we finalize these standards, the Nuclear Regulatory Commission (NRC or "the Commission") will incorporate them into its licensing regulations. The Department of Energy (DOE or "the Department") will be responsible for demonstrating compliance with these standards. The Commission will use its licensing regulations to determine whether the Department has demonstrated compliance with our standards prior to receiving the necessary licenses to store or dispose of radioactive material in Yucca Mountain.

DATES: *Comments.* We must receive your comments at the address given below on or before November 26, 1999 to assure their consideration.

Hearings. We will hold public hearings upon today's action in Amargosa Valley, Nevada, Las Vegas, Nevada, and Washington, DC. The dates will be announced in the **Federal Register** as soon as they are determined.

ADDRESSES: *Comments.* Send two copies of your comments to the Central Docket Section (6102), ATTN: Docket A–95–12, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460–0001.

Documents relevant to the rulemaking. Materials relevant to this rulemaking are contained in: (1) Docket No. A–95–12, located in Room M–1500 (first floor in Waterside Mall near the Washington Information Center), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460–0001; (2) an information file in the Government Publications Section, Dickinson Library, University of Nevada-Las Vegas, 4504 Maryland Parkway, Las Vegas, Nevada 89154; and (3) an information file in the Public Library in Amargosa Valley, Nevada 89020.

Background documents for this action. We have prepared additional documents that provide more detailed technical background in support of these proposed standards. You may obtain copies of the draft background information document (BID), the draft economic impact evaluation, and the Executive Summary of the NAS Report by requesting them in writing from the Office of Radiation and Indoor Air (6602J), U.S. Environmental Protection Agency, Washington, DC 20460–0001. We have also placed these documents into the docket and information files. You may also find them on our Internet site for Yucca Mountain (see the *Additional Docket and Electronic Information* section later in this notice).

FOR FURTHER INFORMATION CONTACT: Ray Clark, Office of Radiation and Indoor Air, U.S. Environmental Protection Agency, Washington, D.C. 20460–0001; telephone 202–564–9300.

SUPPLEMENTARY INFORMATION:

Who Will Be Regulated by These Standards?

The Department is the only entity directly regulated by these standards. To utilize the Yucca Mountain repository, DOE must obtain licensing approval from NRC. Thus, DOE will be subject to our standards which NRC will implement through its licensing proceedings. The NRC is only affected because, under the Energy Policy Act of 1992 (EnPA, Pub. L. 102–486), it must modify its licensing requirements, as necessary, to be consistent with our final standards.

Additional Docket and Electronic Information

When may I examine docket information? You may inspect the Washington, D.C. docket (phone 202–260–7548) on weekdays (8 a.m.–5:30 p.m.). As provided in 40 CFR part 2, the docket personnel may charge a reasonable fee for photocopying docket materials.

The information file located in the University of Nevada-Las Vegas, Government Publications Section (702–895–3409) may be inspected when classes are in session, Monday through Thursday (9 a.m.–8 p.m.), Friday (9 a.m.–6 p.m.), Saturday (9 a.m.–9 p.m.), and Sunday (11 a.m.–8 p.m.). However, since the hours vary based upon the academic calendar, you should call ahead to be certain of the time.

The information file in the Public Library in Amargosa Valley, Nevada (phone 775–372–5340) may be inspected Monday through Thursday (11 a.m.–7 p.m.) and Friday (9 a.m.–5 p.m.). The library is closed from 12:30 p.m.–1 p.m. each day. It is also closed Saturday and Sunday.

Can information be accessed by telephone or the Internet? Yes, we have established a toll-free information line that is accessible 24 hours per day. By dialing 800–331–9477, you can listen to a brief update describing our rulemaking activities for Yucca Mountain, leave a message requesting that your name and address be added to the Yucca Mountain mailing list, or request that an EPA staff person return your call. You can also find information on the World Wide Web at http://www.epa.gov/radiation/yucca.

Acronyms

There are many acronyms used in this notice. They are listed below for your reference and convenience.

ALARA—as low as reasonably achievable
BID—background information document
CAA—Clean Air Act
CEDE—committed effective dose equivalent
CG—critical group
DOE—U.S. Department of Energy
EIS—environmental impact statement
EnPA—Energy Policy Act of 1992
EPA—U.S. Environmental Protection Agency
GCD—greater confinement disposal
HLW—high-level radioactive waste
IAEA—International Atomic Energy Agency
ICRP—International Commission on Radiological Protection
LLW—low-level radioactive waste
MCL—maximum contaminant level
MCLG—maximum contaminant level goal
NAS—National Academy of Sciences
NCRP—National Council on Radiation Protection and Measurements
NEPA—National Environmental Policy Act
NESHAPs—National Emission Standards for Hazardous Air Pollutants
NID—negligible incremental dose
NIR—negligible incremental risk
NRC—U.S. Nuclear Regulatory Commission

NRDC—Natural Resources Defense Council
NTS—Nevada Test Site
NTTAA—National Technology Transfer and Advancement Act
NWPA—Nuclear Waste Policy Act of 1982
NWPAA—Nuclear Waste Policy Amendments Act of 1987
OMB—Office of Management and Budget
RCRA—Resource Conservation and Recovery Act
RME—reasonable maximum exposure
RMEI—reasonably maximally exposed individual
SDWA—Safe Drinking Water Act
SNF—spent nuclear fuel
TDS—total dissolved solids
UIC—underground injection control
UMRA—Unfunded Mandates Reform Act of 1995
USDW—underground source of drinking water
WIPP LWA—Waste Isolation Pilot Plant Land Withdrawal Act of 1992

Outline of Proposed Action

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I. What Led up to Today's Action?

Spent nuclear fuel (SNF) and high-level radioactive waste (HLW) have been produced since the 1940s, mainly as a result of commercial power production and defense activities. Since then, the proper disposal of these wastes has been the responsibility of the Federal government. The Nuclear Waste Policy Act of 1982 (NWPA, Pub. L. 97–425) formalized the current Federal program for the disposal of SNF and HLW by:

(1) Making DOE responsible for siting, building, and operating an underground geologic repository for the disposal of SNF and HLW;

(2) Directing us to set generally applicable environmental radiation protection standards based upon authority established under other laws; and

(3) Requiring NRC to implement our standards by incorporating them into its licensing requirements for SNF and HLW repositories.

Those responsibilities are generally maintained under the EnPA. Thus, NRC will implement the standards that we are proposing today, and DOE will submit a license application to NRC. The Commission will then determine whether DOE has met the standards and whether to issue an operating license for Yucca Mountain. We anticipate that NRC will require compliance with all of the applicable provisions of 40 CFR part 197 prior to allowing receipt of radioactive material onto the Yucca Mountain site.

In 1985, we established generic standards for the management, storage, and disposal of SNF, HLW, and transuranic radioactive waste. These standards are found in 40 CFR part 191 (50 FR 38066, September 19, 1985). The term "generic" meant that the standards applied to any applicable facilities in the United States, including Yucca Mountain, Nevada. In 1987, the U.S. Court of Appeals for the First Circuit invalidated the disposal standards and remanded them to us (*NRDC* v. *EPA*, 824 F.2d 1258 (1st Cir. 1987)). Also in 1987, the Nuclear Waste Policy Amendments Act (NWPAA, Pub. L. 100–203) amended the NWPA by, among other actions, selecting Yucca Mountain, Nevada as the only potential site to be characterized.

In October 1992, the Waste Isolation Pilot Plant Land Withdrawal Act (WIPP LWA, Pub. L. 102–579) and the EnPA became law. The statutes changed our obligations concerning certain radiation standards. The WIPP LWA:

(1) Reinstated the 40 CFR part 191 disposal standards except those that were the specific subject of the remand by the First Circuit;

(2) Required us to issue standards to replace those that were the subject of judicial remand; and

(3) Exempted the Yucca Mountain site from the 40 CFR part 191 disposal standards. We issued the final disposal standards in 40 CFR part 191 on December 20, 1993 (58 FR 66398) to address the judicial remand.

The EnPA gave us the responsibility to set public health and safety radiation standards for Yucca Mountain. Specifically, section 801(a)(1) of the EnPA directed us to "promulgate, by rule, public health and safety standards for the protection of the public from releases from radioactive materials stored or disposed of in the repository at the Yucca Mountain site." The EnPA also directed us to contract with NAS to give us findings and recommendations on reasonable standards for protection of public health and safety. Moreover, the statute provided that our standards shall be the only such standards applicable to the Yucca Mountain site and are to be based upon and consistent with NAS' findings and recommendations. On August 1, 1995, NAS released its report, "Technical Bases for Yucca Mountain Standards" (the NAS Report).

II. Background Information

II.A. What Are the Sources of Radioactive Waste?

Radioactive wastes are the result of using nuclear fuel and other radioactive material. Today's action proposes standards pertaining to SNF, HLW, and other radioactive waste (these are collectively referred to after this as "radioactive material" or "waste") which may be stored or disposed of in the Yucca Mountain repository. (When storage or disposal are discussed in this notice in reference to Yucca Mountain, it is to be understood that no decision has been made regarding the acceptability of Yucca Mountain for storage or disposal. To save space and excessive repetition, the description of Yucca Mountain as a "potential" repository will not be used but is intended.) These standards do not apply to facilities other than those related to Yucca Mountain.

Once enough uranium or other fissionable material in nuclear reactor fuel has been consumed through nuclear reactions, it is no longer useful. The product is known as "spent" nuclear fuel (SNF). Sources of SNF include:

(1) Commercial nuclear power plants;

(2) Government-sponsored research and development programs in universities and industry;

(3) Experimental reactors, such as, liquid metal fast breeder reactors and high-temperature gas-cooled reactors;

(4) Federal Government-controlled, nuclear-weapons production reactors;

(5) Naval and other Department of Defense reactors; and

(6) U.S.-owned, foreign SNF.

Spent nuclear fuel can be dissolved in a chemical process called "reprocessing," which is used to recover desired radionuclides. Radionuclides which are not recovered become part of the acidic liquid wastes that DOE plans to convert into various types of solid materials. The highly radioactive liquid or solid wastes from reprocessing SNF are called HLW. If SNF is not reprocessed prior to disposal, it becomes the waste form without further modification. The only commercial reprocessing facility to operate in the United States, the Nuclear Fuel Services Plant in West Valley, New York, closed in 1972. Since that time, no commercial SNF has been reprocessed in the United States. In 1992, DOE decided to phase out reprocessing of its SNF which supported the defense nuclear weapons and propulsion programs.

Where are the wastes stored now? Today, most SNF is stored in water pools or above-ground in dry concrete or steel canisters at more than 70 commercial nuclear-power reactor sites across the Nation. High-level waste is stored underground in steel tanks at four Federal facilities in Idaho, Washington, South Carolina, and New York.

What types of wastes will be placed into Yucca Mountain? We anticipate that most of the waste in Yucca Mountain will be SNF and solidified HLW (in the rest of this notice, HLW will refer to solidified HLW unless otherwise noted). Under current NRC regulations (10 CFR 60.135), liquid HLW will have to be solidified, through processes such as vitrification (mixing the waste into glass), since non-solid waste forms would not be allowed to be stored or disposed of in Yucca Mountain. The Department estimates that by the year 2010, about 64,000 metric tons of SNF and 284,000 cubic meters (containing 450 million curies of radioactivity) of HLW in predisposal form and 2,600 cubic meters (containing 189 million curies) of the disposable form of HLW will be in storage (DOE/RW–0006, Rev. 12, December 1996).

We are aware that other radioactive materials might be stored or disposed of in the Yucca Mountain repository. These materials include highly radioactive low-level waste (LLW), known as greater-than-Class-C waste, and excess plutonium or other fissile materials resulting from the dismantlement of nuclear weapons. In the future, other types of radioactive materials could be identified for storage or disposal. Since the plans for the disposal of these materials have not been finalized, their impact upon the design and performance of the disposal system has not been analyzed by NRC or DOE. However, whatever types of radioactive materials are finally disposed of in Yucca Mountain, the disposal system must comply with these standards.

II.B. What Types of Health Effects Can Radiation Cause?

Ionizing radiation can cause a variety of health effects. These effects are classified as either "non-stochastic" or "stochastic." Non-stochastic effects are those for which the damage increases with increasing exposure, such as destruction of cells or reddening of the skin. They are seen in cases of exposures to large amounts of radiation. Stochastic effects are associated with long-term exposure to low levels of radiation. Their type or severity does not depend upon the amount of exposure. Instead, the chance that an effect, for example, cancer, will occur is assumed to increase with increasing exposure.

The three categories of stochastic effects are cancer, mutations, and teratogenic effects. Cancers caused by radiation are indistinguishable from those occurring from other causes. Cancers caused by radiation have been observed in humans. However, the risk of cancer at the exposure levels normally encountered by members of the public must be estimated using indirect evidence, that is, extrapolation from higher doses.[1]

Mutations, the second category of stochastic effects, are created in the reproductive cells of exposed individuals and are transmitted to their descendants. The severity of hereditary effects can range from inconsequential to fatal. Although hereditary effects have been observed in animal studies at relatively high doses, hereditary effects in humans exposed to relatively small amounts of radiation have not been confirmed statistically in epidemiological studies. Finally, we assume that at low levels of exposure, the probability of incurring either cancer or hereditary effects increases as the dose increases and that there is no lower threshold, that is, a linear, non-threshold, dose-response relationship (this is discussed below in more detail).

Teratogenic effects, the third category of stochastic effects, can occur following exposure of fetuses. We believe that the fetus is more sensitive than adults to the induction of cancer by radiation. The fetus also is subject to various radiation-induced, physical malformations such as small brain size (microencephaly), small head size (microcephaly), eye malformations and slow growth prior to birth. Recent studies have focused upon the apparently increased risk of severe mental retardation as measured by the intelligence quotient. These studies indicate that the sensitivity of the fetus is greatest during 8 to 15 weeks following conception, and continues, at a lower level, between 16 and 25 weeks.[2] Although we do not know exactly how mental retardation is related to dose, it is prudent to assume that there is a linear, non-threshold, dose-response relationship between these effects and the dose delivered to the fetus during the 8- to 15-week period.

The NAS published its reviews of human health risks from exposure to low levels of ionizing radiation in a series of reports between 1972 and 1990. However, scientists still do not agree upon how best to estimate the probability of cancer occurring as a result of the doses encountered by members of the public[3] because these effects must be estimated based upon the effects observed at higher doses (such as effects seen in the survivors of the Hiroshima and Nagasaki atomic bombs). The linear model for estimating effects has been endorsed by many organizations, including NAS, the International Commission on Radiological Protection (ICRP), the United Nations Scientific Committee on the Effects of Atomic Radiation, and the National Radiological Protection Board of the United Kingdom.

Over the past decade, the scientific community has performed an extensive reevaluation of the doses and effects in the Hiroshima and Nagasaki survivors. These studies have resulted in increased estimates (roughly threefold between 1972 and 1990) of the extrapolated risk of cancer arising from exposure to environmental levels of radiation, that is, background levels of radiation. Nonetheless, the estimated number of health effects induced by small incremental doses of radiation above natural background levels remains small compared with the total number of fatal cancers that occur from other causes. In addition, because cancers are the same as those resulting from other causes, identifying them in human epidemiological studies may never be possible. This difficulty in identifying stochastic radiation effects does not mean that such effects do not occur. However, there is the possibility that effects do not occur as a result of these small doses, that is, there might be an exposure level below which there is no additional risk above the risk that is posed by natural background radiation. Sufficient data to prove either possibility scientifically is lacking. As a result, we believe that the best approach is to assume that the risk of cancer increases linearly starting at zero dose. That is, any increase in exposure to ionizing radiation results in a constant and proportionate increase in the potential for developing cancer.

The NAS Report stated that radiation causes about five cancers for every severe hereditary disorder. Also, NAS concluded that nonfatal cancers are more common than fatal cancers. Despite this, the NAS cited an ICRP study which judged that non-fatal cancers contribute less to overall health impact than fatal cancers "because of their lesser severity in the affected individuals." (NAS Report pp. 37–39). Our risk estimates for exposure of the population to low-dose-rate radiation is based upon fatal cancers rather than all cancers.

For radiation-protection purposes, we estimate (using a linear, non-threshold, dose-response model) an average risk for a member of the U.S. population of 5.75 in 100 (5.75×10^{-2}) fatal cancers per sievert (Sv)[4] (5.75×10^{-4} fatal cancers per rem) delivered at low dose rates.[5] (For example, if 100,000 people randomly chosen from the U.S. population were each given a uniform dose of 1 millisievert (mSv) (0.1 rem) to the entire body at a low rate, approximately five to six people are assumed to die of cancer during their remaining lifetimes because of that exposure. This is in addition to the roughly 20,000 fatal cancers that would occur in the same population from other causes.) The risk of fatal childhood cancer, resulting from exposure while in the fetal stage, is about 3 in 100 (3×10^{-2}) per Sv (that is, 3×10^{-4} effects per rem). The risk of severe hereditary effects in offspring is estimated to be about 1×10^{-2} per Sv (1×10^{-4} effects per rem).[6] The risk of severe mental retardation from doses to a fetus is estimated to be greater per unit dose than the risk of cancer in the general population.[7] However, the period of increased sensitivity is much shorter. Hence, at a constant exposure rate, fatal cancer risk in the general population remains the dominant factor.

We note that there is, of course, uncertainty in our risk estimates. A recent uncertainty analysis published by the National Council on Radiation Protection and Measurements (NCRP Report 126) estimated that the actual risk of cancer from whole-body exposure to low doses of radiation could be between 1.5 times higher and 4.8 times lower (at the 90-percent confidence level) than our basic estimate of 5.75×10^{-2} per Sv (5.75×10^{-4} per rem). Further, existing epidemiological data does not rule out the existence of a threshold. If there is a threshold, exposures below that level would pose no additional risk above the risk that is posed by natural background radiation. The risks of genetic abnormalities and mental retardation are loss well known than those for cancer and, thus, may include a greater degree of uncertainty. However, in spite of uncertainties in the data and its analysis, estimates of the risks from exposure to low levels of ionizing radiation are more clearly known than those for virtually any other environmental carcinogen.

II.C. What Are the Major Features of the Geology of Yucca Mountain and the Disposal System?

The geology. The Yucca Mountain site is located in southwestern Nevada approximately 90 miles northwest of Las Vegas. The eastern part of the site is on the Nevada Test Site, the northwestern part of the site is on the Nellis Air Force Range, and the southwestern part of the site is on Bureau of Land Management land. The area has a desert climate with topography typical of the Basin and Range province. See the BID for more information.

Yucca Mountain is made of layers of ashfalls from volcanic eruptions which happened more than 10 million years ago. The ash consolidated into a rock type called "tuff" which has varying degrees of compaction and fracturing depending upon the degree of "welding" caused by temperature and pressure when the ash was deposited. Regional geologic forces have tilted the tuff layers and formed Yucca Mountain's crest (Yucca Mountain's shape is actually a ridge rather than a peak). Below the tuff is carbonate rock. The carbonate rock was formed from sediments laid down at the bottom of ancient seas which existed in the area.

There are two general hydrologic zones within and below Yucca Mountain. The upper zone is called the "unsaturated zone" because the pore

[1] The general term "dose" is used to mean the dose equivalent, effective dose equivalent, or committed effective dose equivalent, depending upon the surrounding text. When precision is necessary, the exact term is used.

[2] *Health Effects of Exposure to Low Levels of Ionizing Radiation*, National Academy Press, Washington, D.C., 1990.

[3] The risk of interest is not at or near zero dose, but that due to small increments of dose above the pre-existing background level. Background in the U.S. is typically about 3 millisievert (mSv), that is, 300 millirem (mrem), effective dose equivalent per year, or 0.2 Sv (20 rem) in a lifetime. Approximately two-thirds of this dose is due to radon, and the balance comes from cosmic, terrestrial, and internal sources of exposure.

[4] The traditional unit for dose equivalent has been the rem. The unit "sievert" (Sv), a unit in the International System of Units which was adopted in 1979 by the General Conference on Weights and Measures, is now in general use throughout the world. One sievert is equal to 100 rem. The prefix "milli" (m) means one-thousandth. The individual-protection limit being proposed today may be expressed in either unit.

[5] "Low dose rates" here refer to dose rates on the order of or less than those from background radiation.

[6] The risk of severe hereditary effects in the first two generations, for exposure of the reproductive part of the population (with both parents exposed), is estimated to be 5×10^{-3} per Sv (5×10^{-5} per rem). For all generations, the risk is estimated to be 1.2×10^{-2} per Sv (1.2×10^{-4} per rem). For exposure of the entire population, which includes individuals past the age of normal child-bearing, each estimate is reduced to 40% of the cited value.

[7] Assuming a linear, non-threshold dose response, estimated risk for mental retardation due to exposure during the 8th through 15th week of gestation is 4×10^{-1} per Sv (4×10^{-3} per rem); under the same assumption, the estimated risk from the 16th to 25th week is 1×10^{-1} per Sv (1×10^{-3} per rem).

spaces and fractures within the rock are not filled entirely with water. Below the unsaturated zone, beginning at the water table, is the "saturated zone" in which the pores and fractures are filled completely with water. Fractures in both zones could act as pathways which allow for faster contaminant transport than would the pores. The Department plans to build the repository in the unsaturated zone about 300 meters below the surface and about 300 to 500 meters above the current water table.

There are two major aquifers in the saturated zone under Yucca Mountain. The upper one is in tuff, while the lower one is in carbonate rock. Regional ground water in the vicinity of Yucca Mountain is believed to flow generally in a south-southwesterly direction. The aquifers are more fully discussed in the BID.

The disposal system. The NAS Report described the current conception of the potential disposal system as a system of engineered barriers for the disposal of radioactive waste located in the geologic setting of Yucca Mountain (NAS Report pp. 23–27). Entry into the repository for waste emplacement would be on gradually downward sloping ramps which enter the side of Yucca Mountain. The NWPAA limits the capacity of the repository to 70,000 metric tons of SNF and HLW. Current DOE plans project that about 90 percent (by mass) would be commercial SNF and 10 percent defense HLW. Within 100 years after starting to put waste in place, the repository would be sealed by backfilling the tunnels, closing the opening to each of the tunnels, and sealing the entrance ramps and shafts.

We expect the engineered barrier system to consist of at least the waste form (that is, SNF assemblies or borosilicate glass containing the HLW), internal stabilizers for the SNF assemblies, the waste packages holding the waste, and backfill in the space between the waste packages and adjacent host rock. Spent nuclear fuel assemblies are comprised of uranium oxide, fission products, fuel cladding, and support hardware, all of which will be radioactive. (see the *What are the Sources of Radioactive Waste?* section above.)

II.D. Background on and Summary of the NAS Report

Section 801(a)(2) of the EnPA directed us to contract with NAS to conduct a study to provide findings and recommendations on reasonable standards for protection of public health and safety. Section 801(a)(2) of the EnPA specifically called for NAS to address the following three issues:

(A) whether a health-based standard based upon doses to individual members of the public from releases to the accessible environment (as that term is defined in the regulations contained in subpart B of part 191 of title 40, Code of Federal Regulations, as in effect on November 18, 1985) will provide a reasonable standard for protection of the health and safety of the general public;

(B) whether it is reasonable to assume that a system for post-closure oversight of the repository can be developed, based upon active institutional controls, that will prevent an unreasonable risk of breaching the repository's engineered or geologic barriers or increasing the exposure of individual members of the public to radiation beyond allowable limits; and

(C) whether it is possible to make scientifically supportable predictions of the probability that the repository's engineered or geologic barriers will be breached as a result of human intrusion over a period of 10,000 years.

On August 1, 1995, NAS submitted to us its report entitled "Technical Bases for Yucca Mountain Standards." The NAS Report is available for review in the dockets and information file described earlier. You can order the Report from the National Academy Press by calling 800–624–6242 or on the World Wide Web at http://www.nap.edu/bookstore/isbn/0309052890.html#title.

II.D.1. What Were the NAS Findings and Recommendations?

The NAS Report provided a number of conclusions and recommendations. (The EnPA used the term "findings," however, the NAS Report used the term "conclusions.")

Conclusions. The conclusions in the Executive Summary of the NAS Report (pp. 1–14) were:

(a) "that an individual-risk standard would protect public health, given the particular characteristics of the site, provided that policy makers and the public are prepared to accept that very low radiation doses pose a negligibly small risk" [later termed "negligible incremental risk"]. This is the response to the issue identified in section 801(a)(2)(A) of the EnPA;

(b) that the Yucca Mountain-related "physical and geologic processes are sufficiently quantifiable and the related uncertainties sufficiently boundable that the performance can be assessed over time frames during which the geologic system is relatively stable or varies in a boundable manner;"

(c) "that it is not possible to predict on the basis of scientific analyses the societal factors required for an exposure scenario. Specifying exposure scenarios therefore requires a policy decision that is appropriately made in a rulemaking process conducted by EPA;"

(d) "that it is not reasonable to assume that a system for post-closure oversight of the repository can be developed, based on active institutional controls, that will prevent an unreasonable risk of breaching the repository's engineered barriers or increasing the exposure of individual members of the public to radiation beyond allowable limits." This is the response to the issue identified in section 801(a)(2)(B) of the EnPA;

(e) "that it is not possible to make scientifically supportable predictions of the probability that a repository's engineered or geologic barriers will be breached as a result of human intrusion over a period of 10,000 years." This is the response to the issue identified in section 801(a)(2)(C) of the EnPA; and

(f) "that there is no scientific basis for incorporating the ALARA [as low as reasonably achievable] principle into the EPA standard or USNRC [U.S. Nuclear Regulatory Commission] regulations for the repository."

Recommendations. The recommendations in the Executive Summary of the NAS Report were:

(a) "the use of a standard that sets a limit on the risk to individuals of adverse health effects from releases from the repository;"

(b) "that the critical-group approach be used" (see the *Who Will Be Representative of the Exposed Population?* section later in this notice);

(c) "that compliance assessment be conducted for the time when the greatest risk occurs, within the limits imposed by long-term stability of the geologic environment;" and,

(d) "that the estimated risk calculated from the assumed intrusion scenario be no greater than the risk limit adopted for the undisturbed-repository case because a repository that is suitable for safe long-term disposal should be able to continue to provide acceptable waste isolation after some type of intrusion."

Other Conclusions and Recommendations. There were other conclusions and recommendations in addition to those summarized in the Executive Summary. Most were related to or supported those presented in the Executive Summary.

II.D.2. How Has the Public Participated in Our Review of the NAS Report?

We are committed to providing ample opportunity for public participation in our Yucca Mountain rulemaking activities. We announced the first opportunity for public participation on September 11, 1995 in the **Federal Register** (60 FR 47172) where we requested comments upon the NAS Report and announced the times and locations of three public meetings. Along with the general request for public comments, we asked five questions:

(1) did the Report sufficiently answer the questions posed in the EnPA;

(2) was there sufficient rationale to support the NAS' findings and conclusions;

(3) do provisions other than those found in NAS' findings and conclusions need to be included in the EPA standards;

(4) are any of NAS' findings or conclusions inappropriate or inaccurate regarding Yucca Mountain; and

(5) would the cost of imposing the findings and recommendations be justifiable when compared with the benefits provided?

We held the public meetings to inform the public of our role, to outline the issues associated with setting standards for Yucca Mountain, and to seek comments upon the NAS Report. The meetings were held on September 20, 1995, in Amargosa Valley, Nevada; on September 21, 1995, in Las Vegas, Nevada; and on September 27, 1995, in Washington, DC. We also have established several other information sources and given directions, in the **ADDRESSES** and *Additional Docket and Electronic Information* sections earlier in this notice, on how to access them.

II.D.3. What Were the Public Comments on the NAS Report?

We received comments regarding the NAS Report both orally and in writing at the public meetings and in response to the September 11, 1995, **Federal Register** notice, respectively. All written comments are in the docket and information files. The oral comments were summarized in a separate document, copies of which are also in the docket and information files.

Some commenters believed that the NAS inadequately supported its conclusion that there is no scientific basis for including the "as low as reasonably achievable" (ALARA) principle and subsystem requirements in the standards and, therefore, that we should include them in the proposed standards. The ALARA principle is a radiation-protection concept which states that exposures to radiation should be kept as low as can be done taking into account the costs and benefits of exposure reduction methods. "Subsystem requirements" refers to regulation of individual components of the overall disposal system. Other comments indicated that there was inadequate rationale to support NAS' concept of negligible incremental risk (NIR). The NIR concept is based upon an NCRP concept known as "negligible incremental dose" (NID, discussed in more detail later in this notice) which was described by NAS "as a level of effective dose that can, for radiation protection purposes, be dismissed from consideration" (NAS Report pp. 59–60). Commenters also stated that they did not support the NAS" rejection of a collective-dose standard. Comments were divided upon requiring quantitative or qualitative assessment of human intrusion.

With regard to the three questions posed in the EnPA: (1) There were mixed responses upon whether a standard to protect individuals could adequately protect the general public; (2) there was nearly unanimous agreement that active institutional controls cannot prevent a breach of the repository; and (3) there was nearly unanimous agreement that it is impossible to predict the probability of future human intrusion into the repository.

Commenters also expressed views related to a number of other issues. The majority favored:

(1) A standard expressed in terms of dose;

(2) The highest level of protection possible;

(3) Measuring compliance at the time of peak risk of the maximally exposed individual;

(4) A reference biosphere to be specified by EPA;

(5) Including other local sources of man-made radiation in determining an acceptable level of protection;

(6) Protection equal to that specified for WIPP, that is, that in 40 CFR part 191 (WIPP is a geologic disposal system in New Mexico for defense-related transuranic waste but, unlike Yucca Mountain, WIPP is subject to our generic radioactive-waste standards codified at 40 CFR part 191; see also 61 FR 5224, February 9, 1996);

(7) Using a collective-dose limit to restrict exposure to the general population while ignoring the NIR concept;

(8) Including assurance requirements; and

(9) Including ground water protection requirements.

We have taken into consideration all comments received during preparation of these proposed standards. If you submitted comments in response to the September 11, 1995, **Federal Register** notice or at the September 1995 public hearings, you should submit additional comments in response to today's notice to convey any concerns or views about this proposal.

III. What Are We Proposing Today?

We are proposing, and requesting comment upon, public health and safety standards governing the storage and disposal of SNF, HLW, and other radioactive material in the repository at Yucca Mountain, Nevada. We are also announcing a public comment period and public hearings to gather comments upon the proposal.

As noted earlier, section 801(a)(1) of the EnPA gave us rulemaking authority to set "public health and safety standards for the protection of the public from releases from radioactive materials stored or disposed of in the repository at the Yucca Mountain site." The statute also directed us to develop standards "based upon and consistent with the findings and recommendations of the National Academy of Sciences." Section 801(a)(2) of the EnPA directed us to contract with NAS to conduct a study to provide findings and recommendations on reasonable standards for protection of the public health and safety. Because the EnPA called for us to act "based upon and consistent with" the NAS findings, a major issue in this rulemaking is whether we are bound to follow the NAS determinations without exception or whether we have discretionary decision-making authority.

As a practical matter, the difficulty of this issue is reduced because some of the findings and recommendations in the NAS Report are expressed in a non-binding manner. In other words, NAS stated its findings and recommendations as starting points for the rulemaking process or recognized those that involve public policy issues that are more properly addressed in this public rulemaking proceeding. However, the Report also contains some findings and recommendations stated in relatively definite terms. It is these issues that most squarely present the question of whether we are to treat the views of NAS as binding.

Whether the EnPA binds us to following exactly the NAS findings and recommendations is a question that warrants close attention at this stage of the rulemaking because it affects the scope of our rulemaking. If we are required to follow every view expressed in the NAS Report, any such issue would be treated as addressed conclusively by NAS. We would not need to entertain public comment upon the affected issues since the outcome would be predetermined.

We believe that the EnPA does not bind us absolutely to follow the NAS Report. Instead, we have used the NAS Report as the starting point for this rulemaking. Today's proposal is based upon and consistent with the findings and recommendations of NAS. We have developed this proposal guided by the findings and recommendations of NAS because of the special role given NAS by Congress and the scientific expertise of NAS. However, the entirety of our proposed standards for the Yucca Mountain disposal system is the subject of this rulemaking. We do not intend to treat the views expressed by NAS as necessarily dictating the outcome of this rulemaking, thereby foreclosing public scrutiny of important issues. For the reasons described below, we believe this proposed interpretation of the EnPA is consistent with the statute and prudent in that it avoids potential Constitutional issues. Further, this proposed interpretation supports an important EPA policy objective—ensuring an opportunity for public input upon all aspects of the issues presented in this rulemaking.

Section 801(a)(2) of the EnPA required a study by NAS that provides "findings and recommendations on reasonable standards for protection of the public health and safety." While this section of the EnPA calls for NAS to address three specific issues, Congress did not place any restrictions upon other issues NAS could address. The report of the Congressional conferees underscored that "the National Academy of Sciences would not be precluded from addressing additional questions or issues related to the appropriate standards for radiation protection at Yucca Mountain beyond those that are specified." (H.R. Rep. No. 1018, 102nd Cong., 2d Sess. 391 (1992)). Thus, given the potentially unlimited scope of the NAS inquiry under the statute, NAS could have provided findings and recommendations that would dictate literally all aspects of the public health and safety standards for Yucca Mountain, rendering our function a ministerial one.

Section 801(a)(1) of the EnPA plainly gave EPA the authority to issue, by rulemaking, public health and safety standards for Yucca Mountain. If at the same time that Congress gave NAS the authority to provide findings and recommendations on any issues related to the Yucca Mountain public health and safety standards, Congress also intended that NAS' findings and recommendations be binding upon us, then Congress would have effectively delegated to NAS a standard-setting authority that overrides our delegated rulemaking authority. Carried to its logical conclusion, under this view of the statute, NAS would have authority to establish the public health and safety standards, and to do so without a public rulemaking process. Then the direction for EPA to set standards "by rule" would be unnecessary or relatively meaningless. This tension in the statute can be reasonably resolved by interpreting the NAS' findings and recommendations as non-binding, but highly influential, expert guidance to inform our rulemaking.

Thus, we do not believe the statute forces our rulemaking to adopt mechanically the NAS' recommendations as standards. If it did, the statutory provisions would allow us to consider only those issues that NAS did not address. Further, the provisions calling for us to use standard rulemaking procedures in issuing the standards would be unnecessary to reach results that NAS already established.

The report of the conferees also indicates that Congress did not intend to limit our rulemaking discretion. The Conference Report provides that Congress intended NAS to provide "expert scientific guidance" on the issues involved in our rulemaking and that Congress did not intend for NAS to establish the specific standards:

> The Conferees do not intend for the National Academy of Sciences, in making its recommendations, to establish specific standards for protection of the public but rather to provide expert scientific guidance on the issues involved in establishing those standards. Under the provisions of section 801, the authority and responsibility to establish the standards, pursuant to rulemaking, would remain with the Administrator, as is the case under existing law. The provisions of section 801 are not intended to limit the Administrator's discretion in the exercise of his authority related to public health and safety issues. (H.R. Rep. No. 1018 at p. 391)

Our proposed interpretation of the EnPA as not limiting the issues for consideration in this rulemaking is consistent with the views we expressed to Congress during deliberations over the legislation. The Chairman of the Senate Subcommittee on Nuclear Regulation requested our views of the bill reported out of conference. The Deputy Administrator of EPA indicated that the NAS Report would provide helpful input. Moreover, EPA's Deputy Administrator pointed to the language, cited above, stating the intent of the conferees not to limit our rulemaking discretion and assured Congress that any standards for radioactive materials that we ultimately issue would be the subject of public comment and involvement and would fully protect human health and the environment. (138 Cong. Rec. S33,955 (daily ed. October 8, 1992)).

Our proposed interpretation also is consistent with the role that both NAS and Congress understood NAS would fulfill. During the Congressional deliberations over the legislation, NAS informed Congress that while it would conduct the study, it would not assume a standard-setting role because that is properly the responsibility of government officials. (138 Cong. Rec. S33,953 (October 8, 1992)).

Our proposed interpretation of the NAS Report also avoids implicating potentially significant Constitutional issues. Construing the EnPA as delegating to NAS the responsibility to determine the health and safety standards at Yucca Mountain may violate the Appointments Clause of the Constitution (Art. II, sec. 2, cl. 2), which imposes restrictions against giving Federal governmental authority to persons not appointed in compliance with that Clause. In addition, the Constitution places restrictions arising under the separation of powers doctrine upon the delegation of governmental authority to persons not part of the Federal government. We are not concluding, at this time, that an alternative interpretation would necessarily run afoul of Constitutional limits. However, we believe it is reasonable both to assume that Congress intended to avoid these issues when it adopted section 801 of the EnPA and to interpret the EnPA accordingly.

In summary, we do not believe we must, in this rulemaking, adopt all of the positions advanced by NAS. At the same time, the statute does give NAS a special role. As noted, the NAS' findings and recommendations have been the starting point for this rulemaking and our proposal is consonant with those findings and recommendations. In fact, the NAS Report influenced us heavily during the development of this proposed rule. We have included many of the findings and recommendations in whole in today's proposal, and we intend to continue to weigh the NAS Report heavily throughout the course of this rulemaking. We will tend to give greatest weight to the judgments of NAS about issues having a strong scientific component, the area where NAS has its greatest expertise. In addition, we will reach final determinations that are congruent with the NAS analysis whenever we can do so without departing from the Congressional delegation of authority to us to promulgate, by rule, public health and safety standards for protection of the public, which we believe requires the consideration of public comment and our own expertise and discretion.

We request public comment upon how we should view and weigh the NAS' findings and recommendations in this rulemaking. Public commenters should also address this issue in the context of the specific issues presented in this rulemaking. Commenters should indicate whether we have given proper consideration to the NAS' findings and recommendations, whether we should give them more or less weight, and what the resulting outcome should be.

The following sections describe our proposed public health and safety standards for Yucca Mountain and the considerations which underlie the set of standards we are proposing today. The next section addresses the storage portion of the proposed standards. All of the other sections pertain to the disposal portion of the standards.

III.A. What Is the Proposed Standard for Storage of the Waste? (Proposed Subpart A)

Section 801(a)(1) of the EnPA calls for EPA's public health and safety standards to apply to radioactive materials "stored or disposed of in the repository at the Yucca Mountain site." (The repository is the mined portion of the facility constructed underground within the Yucca Mountain site. Hereafter, the term "repository" refers to the Yucca Mountain repository.) The EnPA differentiates between waste that is "stored" and waste that is "disposed," although it indicates that we must issue standards that apply to both types of activity. Congress was not clear regarding its intended use of the word "stored" in this context. Also, NAS did not address the issue of storage (see proposed §§ 197.2 and 197.12 for our proposed definitions of "storage" and "disposal"). The Yucca Mountain repository currently is conceived to be a disposal facility, not a storage facility, but that could change. Therefore, we propose to interpret this language as directing us to develop standards that apply to waste that DOE either stores or disposes of in the Yucca Mountain repository. The public health and safety standards we issue under section 801 of the EnPA would, therefore, apply to waste inside of the repository, whether it is there for storage or disposal.

The Department will also handle and might store radioactive material aboveground (that is, outside the repository). Those activities are covered by our previously promulgated standards for management and storage, codified at subpart A of 40 CFR part 191. The 40 CFR part 191 standards require that DOE manage and store SNF, HLW, and transuranic radioactive wastes at a site, such as Yucca Mountain, in a manner that provides a reasonable expectation that the annual dose equivalent to any member of the public in the general environment will not exceed 25 millirem (mrem) to the whole body. This is the standard which DOE must meet for WIPP and the greater confinement disposal (GCD) facility. (The GCD facility is a group of 120-feet deep boreholes located within the Nevada Test Site (NTS) which contains disposed transuranic wastes.)

The storage standards in 40 CFR 191.03(a) are stated in terms of an older dose-calculation method and are set at an annual whole-body-dose limit of 25 mrem/yr. The proposed storage standards for Yucca Mountain use a modern dose-calculation method known as "committed effective dose equivalent" (CEDE).[8] Even though today's proposal uses the modern method of dose calculation, we believe that the proposed dose level essentially maintains a similar risk level as in 40 CFR 191.03(a) at the time of its promulgation (see the discussion of the different dose-calculation methods in the *What Should the Level of Protection Be?* section later in this notice). The difference between these dose calculation procedures presents a problem in combining the doses for regulatory purposes. However, we have begun a rulemaking to amend both 40 CFR Parts 190 and 191. That rulemaking would update these limits to the CEDE methodology. We anticipate that we will finalize the amendments to parts 190 and 191 prior to the finalization of this rulemaking. If that does not occur, we would need to address the calculation of doses under the two methods in another fashion. For example, we could require that the doses occurring as a result of activities outside the repository be converted into annual CEDE for purposes of determining compliance with the storage standard. We request comments upon such an approach.

Section 801 of the EnPA specifically provides that the standards that we issue shall be the only "such standards" that apply at Yucca Mountain. Thus, the statute provides that the EnPA is the exclusive authority for "such standards" and, in turn, replaces our generally applicable standards for radiation protection to the extent that section 801 requires site-specific standards. Otherwise, our generic standards are not affected. As noted, we propose to interpret the scope of section 801 as applying to both storage and disposal of waste in the repository. Thus, waste inside the repository would be subject to the standards proposed in today's notice. Our generic standards in subpart A of 40 CFR part 191 will apply to waste outside of the repository.

Using this interpretation, we have considered the differences between the conditions covered by the storage standards in 40 CFR 191.03(a) and the conditions which could affect storage in the Yucca Mountain repository. The most significant difference is that the storage in Yucca Mountain would be underground whereas most storage covered under 40 CFR part 191 is aboveground. Otherwise, the technical situations we anticipate under both the existing generic standards and the proposed Yucca Mountain standards are essentially the same. Also, one of our goals in issuing 40 CFR parts 190 and 191 was to bring the entire uranium fuel cycle under consistent EPA standards. Therefore, we are proposing that the part 197 standards continue the coverage of the uranium fuel cycle because SNF, a large part of the waste planned for emplacement in Yucca Mountain, is part of that fuel cycle. Therefore, we are proposing to extend a similar level of protection as in the 1985 version of subpart A of 40 CFR part 191. In other words, under the part 197 storage standards, exposures of members of the public from waste storage inside the repository would be combined with exposures occurring as a result of storage outside the repository but within the Yucca Mountain site. The total dose could be no greater than 150 microsieverts (μSv) (15 mrem) CEDE per year (CEDE/yr).

Our application of subpart A of 40 CFR part 191 to storage activities outside of the repository at the Yucca Mountain site is supported by the WIPP LWA. Section 8 of the WIPP LWA excludes Yucca Mountain from our generic disposal standards but not from the generic management and storage standards found in subpart A of 40 CFR part 191. If we finalize the proposed interpretation of section 801 of the EnPA as applying to radioactive material stored or disposed of in the repository, we would apply subpart A of 40 CFR part 191 to the storage activities outside of the repository at the site without further public notice.

[8] The term "committed effective dose" in this rulemaking has the same meaning as the term "committed effective dose equivalent" which was used prior to the publication of ICRP Publication No. 60. It is used here since the term is less complicated and more compact. Also, the use of "committed effective dose" is consistent with subpart B of 40 CFR part 191 (58 FR 66398, 66402, December 20, 1993).

We request comment upon our proposed interpretation that section 801 of the EnPA directs us to develop new standards that apply only to radioactive materials stored in the repository. We also request public comment upon whether we should instead construe section 801 of the EnPA as providing for the establishment of new storage standards, rather than applying the existing storage standards in 40 CFR part 191 to storage, or handling, of radioactive materials at the Yucca Mountain site prior to their movement into the repository. If we decide, based upon the alternative interpretation of section 801, to promulgate new storage standards for the site, we anticipate that we would adopt standards essentially the same as those in 40 CFR 191.03(a). Thus, we request public comment upon whether we should develop and adopt in this rulemaking, under section 801 of the EnPA, new standards for management and storage activities at the site, and request comments upon the adoption of such standards based upon those in 40 CFR 191.03(a).

III.B. What Is the Standard for Protection of Individuals? (Proposed §§ 197.20 and 197.25)

III.B.1. Should the Limit Be on Dose or Risk?

Although a standard for limiting exposure of people to radiation can take many forms, NAS narrowed its final considerations to risk and dose, that is, a risk-based or dose—based standard. The numeric level of the proposed standard for protecting individual members of the public from radioactive materials disposed of in the Yucca Mountain disposal system is addressed in the *What Should the Level of Protection Be?* section later in this notice. The discussion here explains why we selected a dose-based standard rather than a risk-based standard, as recommended by NAS.

Two forms of radiation exposure can occur depending upon the location of the source relative to the body " internal and external. Internal exposures occur when a person inhales or ingests contaminated air, food, water, or soil. External exposures occur because a person is near a radionuclide which is emitting X-rays, gamma rays, beta particles, or neutrons. "Dose" is a measure of the amount of radiation received by individuals resulting from exposure to radionuclides. "Risk" is the probability of an individual incurring an adverse health effect from exposure to radiation. The NAS defined "risk" as the product of two parameters: (1) the probability of an individual receiving a dose, and (2) the probability of incurring a health effect because of that dose (NAS Report p. 42). This rulemaking takes both of these factors into account. (The probability of an individual receiving a dose is part of the performance assessment and is discussed in the *What Are the Requirements for Performance Assessments and Determinations of Compliance?* section later in this notice.) As mentioned in the previous section, these standards state radiation risk estimates as the probability of an individual developing a fatal cancer, since fatal cancers are the greatest harm to individuals from low-dose-rate radiation (NAS pp. 37–39).

Section 801(a)(1) of the EnPA directed that our standards for Yucca Mountain "shall prescribe the maximum annual effective dose equivalent to individual members of the public from releases to the accessible environment from radioactive materials stored or disposed of in the repository...." At the same time, the EnPA calls for us to issue our standards "based upon and consistent with" the findings and recommendations of NAS. The NAS recommended that we adopt a standard expressed as risk rather than the dose standard that Congress prescribed. The NAS offered two reasons for its recommendation. First, a risk-based standard is advantageous relative to a dose-based standard because it "would not have to be revised in subsequent rulemakings if advances in scientific knowledge reveal that the dose-response relationship is different from that envisaged today" (NAS Report p. 64). Second, a standard in the form of risk more readily enables the public to comprehend and compare the standard with human-health risks from other sources.

We have reviewed and evaluated the merits of a risk-based standard as recommended by NAS. However, we are proposing a dose-based standard for the following reasons. First, both national and international radiation protection guidelines developed by bodies of non-governmental radiation experts, such as ICRP and NCRP, generally have recommended that radiation standards be established in terms of dose. Also, national and international radiation standards, including the individual-protection requirements in 40 CFR part 191, are established almost solely in terms of dose or concentration, not risk. Therefore, a risk-based standard will not allow a convenient comparison with the numerous existing radiation guidelines and standards that are stated in terms of dose.

Second, we have an established methodology for calculating dose that is described in Federal Guidance Reports Nos. 11 and 12 (Federal Guidance). The development of this methodology was a combined effort of many Federal agencies involved in radiation protection and has become Federal policy. The guidance provides a consistent methodology for calculating doses for regulatory purposes. By contrast, there is currently no Federal Guidance Report, in final form, for calculating risk from radiation exposure.

Third, we have based the proposed dose-based standard upon the risk of developing a fatal cancer as a result of that level of exposure based upon a linear, non-threshold, dose-response relationship. We would establish a risk-based standard in the same manner. Thus, a risk-based standard, like a dose-based standard, depends upon current knowledge and assumptions about the chance of developing fatal cancer from a particular exposure level. Dose and risk are closely related; one can be converted to the other simply by using the appropriate factor. Therefore, both dose- and risk-based standards are based upon scientific assumptions that could change and no matter how it is expressed, the standard is based upon risk.

Finally, section 801(a)(1) of the EnPA specifically calls for a dose-based standard. Most commenters supported this by asking for a dose-based standard rather than a risk-based standard.

Accordingly, we are proposing a standard expressed as a limit on dose. We are requesting comments upon the proposed form of the standard, including whether the standard should be expressed as risk.

III.B.2. What Should the Level of Protection Be?

As noted previously, section 801(a)(1) of the EnPA calls for our Yucca Mountain standards to "prescribe the maximum annual effective dose equivalent to individual members of the public from releases of radioactive materials." Development of the individual-protection standard requires us to evaluate and specify several factors. These factors include the level of protection, who the standards should protect, and how long the standards should provide protection. Determining the appropriate dose level is ultimately a question of both science and public policy. The NAS stated in its Report: "The level of protection established by a standard is a statement of the level of the risk that is acceptable to society. Whether posed as "How safe is safe enough?" or as "What is an acceptable

level?", the question is not solvable by science" (NAS Report p. 49). We seek to find answers to these questions for the Yucca Mountain disposal system through this rulemaking.

We considered the NAS findings and recommendations in our determination of the CEDE level that would be adequately protective of human health. We also reviewed established EPA standards and guidance, other Federal agencies' actions for both radiation and non-radiation-related actions, and other countries' regulations. In addition, we evaluated guidance on dose limits provided by National and international, non-governmental, advisory groups of radiation experts.

The NAS recommended a range of risk levels that we could use as a reasonable starting point in this rulemaking (NAS Report p. 5). The range of annual risk of fatal cancer suggested by NAS was 1 chance in 100,000 (1×10^{-5}) to 1 chance in 1,000,000 (1×10^{-6}) (this corresponds to a range of 20 to 2 mrem CEDE/yr). The NAS based its recommendation upon its review and evaluation of our actions, other Federal actions, guidelines developed by National and international groups, and regulations of other countries. For these standards, we are proposing a limit of 150 μSv (15 mrem) CEDE/yr. This limit corresponds approximately to an annual risk of 7 chances in 1,000,000 (7×10^{-6})—within the range that NAS recommended as a starting point for consideration.

Table 1 below lists the dose limits of other current EPA and NRC regulations (adapted from NAS Report p. 50). Today's proposed standard of 150 μSv (15 mrem) CEDE/yr is within the range of these established standards. Further, it is consistent with the individual-protection standard at 40 CFR 191.15 in our generic disposal standards which limits the annual CEDE to 150 μSv (15 mrem)/yr.

TABLE 1.—CURRENT EPA AND NRC DOSE LIMITS ON VARIOUS ENVIRONMENTAL CONCERNS

Environmental concern	Limit*
Low-Level Waste (10 CFR part 61)	250 μSv (25 mrem)/yr
License Termination (10 CFR part 20)	25 mrem TEDE**/yr
Uranium Fuel Cycle (40 CFR part 190)	25 mrem/yr
Generic Standard for Management and Storage of SNF and HLW (40 CFR 191.03).	25 mrem/yr
Generic Individual-Dose Standard for Disposal of SNF and HLW (40 CFR 191.15).	150 μSv (15 mrem) CEDE/yr
National Emission Standards for Hazardous Air Pollutants (40 CFR part 61, subparts H and I).	10 mrem CEDE/yr
SNF and HLW Disposal Limit for Underground Sources of Drinking Water (40 CFR 191.24).	4 mrem/yr for man-made beta- and photon-emitting radionuclides

*Unless otherwise noted, only whole-body dose limits are listed; there may also be other requirements for any particular environmental concern. The 25-mrem/yr, whole-body-dose limit established in 1985 is essentially equivalent to the risk associated with today's dose rate of 150 μSv (15 mrem) CEDE/yr (58 FR 66402, December 20, 1993).

**TEDE (total effective dose equivalent) is NRC's term for CEDE. This regulation was not included in the NAS Report.

We note that, except for 40 CFR 191.15, 40 CFR part 61, and 10 CFR part 20, the dose limits in Table 1 are stated in terms of an old dose system. For example, the annual limits in 40 CFR 191.03(a) are 25 mrem for the whole body, 75 mrem for the thyroid, or 25 mrem for any other organ (only the whole-body limit is listed in Table 1). We established these dose levels in 1985 (50 FR 38085, September 19, 1985) under a different system for calculating doses than the more recent rulemakings that use the CEDE concept. We estimate that the 25-mrem/yr, whole-body-dose limit established in 1985 is essentially equivalent to the risk associated with today's proposed limit of 150 μSv (15 mrem) CEDE/yr (58 FR 66398, 66402, December 20, 1993).

In addition, the proposed 150-μSv (15 mrem)-CEDE/yr limit in today's proposal is consistent with other current standards. For example, our limits on radiation exposure through the air is part of the set of limits for pollutant releases known as the National Emission Standards for Hazardous Air Pollutants (NESHAPs, 40 CFR part 61). Since our NESHAPs limit of 10 mrem/yr covers radionuclide releases into only the air, the 150 μSv (15 mrem) CEDE/yr standard being proposed for 40 CFR part 197 is consistent with the NESHAPs limit because it applies to all potential pathways, that is, the dose limit is higher but includes other pathways in the analysis.

In summary, based upon our review of the guidance, regulations, and standards cited above, and the NAS Report, we are proposing a standard of 150 μSv (15 mrem) CEDE/yr for the Yucca Mountain disposal system. We request comment upon the reasonableness of this level of protection.

III.B.3. What Factors Can Lead to Radiation Exposure?

Protection of the public from exposure to radioactive pollutants requires knowledge and understanding of three factors: the source of the radiation, the pathways leading to exposure, and the recipients of the radiation. This section provides a discussion of the source of radiation and pathways of exposure. The following two sections discuss the recipients of the dose. The development of standards to protect public health and safety from radionuclides released from waste disposed of in the Yucca Mountain disposal system must include consideration of the sources of radiation and pathways which could lead to exposure of humans. The mechanisms of exposure are the basis of an analysis called the performance assessment. The performance assessment is the quantitative analysis of the projected behavior of the disposal system.

Source. The waste disposed of in Yucca Mountain will contain many different radionuclides including unconsumed uranium, fission products (for example, cesium-137 and strontium-90), and transuranic elements (for example, plutonium and americium).

The inventory of radionuclides over time will depend upon the type and amount of radionuclides originally disposed of in the disposal system, the half-lives of the radionuclides, and the amount of any radionuclides formed from the decay of parent radionuclides (see the BID). In the time frame of tens- to hundreds-of-thousands of years, most

radionuclides initially present in SNF and HLW will decay to essentially no radioactivity. Therefore, the waste will eventually have radiologic characteristics similar to a large uranium ore body (see the BID).

To delay the movement of radionuclides into the biosphere, DOE plans to use multiple barriers. These barriers would be man-made (engineered) and natural based upon the design of, and conditions in and around, the disposal system.

Engineered barriers must be designed to delay release of radionuclides from the repository. For example, an engineered barrier could be the waste form. The Department plans to convert liquid HLW derived from reprocessing of SNF into a solid by entraining the radionuclides into a matrix of borosilicate glass; NRC will likely consider this an engineered barrier. The molten glass then would be poured into and hardened in a second man-made barrier, a metal container (see the BID). In addition, it is possible to have other man-made barriers in the repository to serve as part of the disposal system (see the BID).

Natural barriers at Yucca Mountain also could slow the movement of radionuclides into the accessible environment. For instance, the Department plans to construct the repository in a layer of tuff located above the water table. The relative dryness of the tuff around the repository would limit the amount of water which comes into contact with the waste. It also would retard the future movement of radionuclides from the waste into the underlying aquifer. Any radioactive material that dissolved into infiltrating water, originating as surface precipitation, still would have to be moved to the saturated zone. Minerals, such as zeolites, contained within the tuff beneath the repository could act as molecular filters and ion-exchange agents for some of the released radionuclides, thereby slowing their movement. Such minerals also could limit the amount of water that contacts the waste and could help retard the movement of radionuclides from the waste to the water table. This mechanism would be most effective if flow was predominantly through the pores in the rock, also known as the matrix (see the BID).

Pathways. Once radionuclides have left the waste packages, they could be carried by water or air and reach the public. Upon release from the waste packages, most radionuclides will be carried by ground water away from the repository. However, those in a gaseous form, such as carbon-14 (^{14}C) in the form of carbon dioxide, will be carried by air moving through the mountain.

Movement via water. Radionuclides will not be moved into the water table instantaneously. The length of time it takes depends partly upon how much the water moves via fractures or through the matrix of the rock. Once radionuclides reach the saturated zone, they would move away from the disposal system in the direction of ground water flow.

There are currently no perennial rivers or lakes adjacent to Yucca Mountain to further transport contaminants. Therefore, based upon current knowledge and conditions, ground water and its usage will likely be the main pathway leading to exposure of humans. Current knowledge suggests that the two major ways that people would use the contaminated ground water are: (1) drinking and domestic uses; and (2) agricultural uses (see the BID). In other words, radionuclides that reach the public could deliver a dose if an individual: (1) Drinks contaminated ground water or uses it directly for other household uses; (2) drinks other liquids containing contaminated water; (3) eats food products processed using contaminated water; (4) eats vegetables or meat raised using contaminated water, or (5) is otherwise exposed as a result of immersion in contaminated water or air or inhalation of wind-driven particulates left following the evaporation of the water.

Movement via air. Some radionuclides could be carried by moving air. The largest known source of potential movement by air in Yucca Mountain is carbon dioxide containing ^{14}C. Airborne radionuclides might move through the tuff overlying the repository and exit into the atmosphere following release from the waste package. Once the radioactive gas enters the atmosphere, it would disperse. This dispersion would probably be global and, therefore, become greatly diluted. The major pathway for exposure of people by ^{14}C is the uptake of radioactive carbon dioxide by plants that humans subsequently eat (see the BID).

III.B.4. Who Will Be Representative of the Exposed Population?

To determine whether the Yucca Mountain disposal system complies with the standard, it will be necessary for DOE to calculate the dose to some individual or group of individuals exposed to releases from the repository and compare the calculated dose with the limit established in the standard. The standard must specify, therefore, the individual or group of individuals for whom the dose calculation is to be made.

The NAS definition of critical group. The NAS Report recommended that we base the standards for protection of individuals upon risk incurred by a critical group (CG). The CG would be the group of people which, based upon cautious, but reasonable, assumptions, has the highest risk of incurring health effects due to releases from the disposal system. The ICRP introduced the concept of a CG in order to account for the variation of dose which may occur in a population due to differences in age, size, metabolism, habits, and environment. In other words, the ICRP recommends the use of a group of people because individuals might have personal traits which make them much more or less vulnerable to releases of radiation than the average within a small group of the most highly exposed individuals. The ICRP defines the CG as a relatively homogeneous group of people whose location and habits are such that they represent those individuals expected to receive the highest doses as a result of the discharge of radionuclides. The NAS adapted the CG concept to a risk framework for the development of an individual-risk standard and recommended the following description of the CG (NAS Report p. 53):

> The critical group for risk should be representative of those individuals in the population who, based on cautious, but reasonable, assumptions, have the highest risk resulting from repository releases. The group should be small enough to be relatively homogeneous with respect to diet and other aspects of behavior that affect risks. The critical group includes the individuals at maximum risk and is homogeneous with respect to risk. A group can be considered homogeneous if the distribution of individual risk within the group lies within a total range of a factor of ten and the ratio of the mean of individual risks in the group to the standard is less than or equal to one-tenth. If the ratio of the mean group risk to the standard is greater than or equal to one, the range of risk within the group must be within a factor of 3 for the group to be considered homogeneous. For groups with ratios of mean group risk to the standard between one-tenth and one, homogeneity requires a range of risk interpolated between these limits.

The NAS also recommended that the CG risk calculated for purposes of comparison with the risk limit established in the standard is the average of the risks of all the members in the group. Using the average risk avoids the problem of the outcome being unduly influenced by unusual habits of individuals within the group.

The NAS indicated that in order to select a CG, the person or persons likely to be at highest risk from among the larger, exposed population must be specified. To accomplish this, one must make assumptions about the nature of human activities, lifestyles, and pathways that affect the level of exposure. The set of circumstances that affects the dose received, such as where people live, what they eat and drink, and other lifestyle characteristics, is a very important part of the exposure scenario. Many human behavior factors important to assessing repository performance vary over periods that are short in comparison with the compliance period proposed for these standards. The past several centuries have seen radical changes in human technology and behavior, many of which were not reasonably predictable. Given this potential for rapid change, we believe that it is not possible to know what patterns of human activity and changes in human biology might occur thousands of years from now. For the purpose of compliance with the standard, therefore, we are proposing that it is appropriate to use many of the current characteristics of members of the public in the vicinity of Yucca Mountain in the compliance assessments required by these standards (see the *What Should Be Assumed About the Future Biosphere? section later in this notice).*

The NAS Report presented two illustrative approaches for formulating an exposure scenario for determining compliance. The NAS also clearly stated that there might be other methods to reach the same objective (NAS Report p. 100). One approach, described in Appendix C of the NAS Report, *A Probabilistic Critical Group,* used statistical methods and probabilities to characterize a CG. The second, *The Subsistence-Farmer Critical Group,* described in Appendix D, identified a subsistence farmer as a principal representative of the CG.

The NAS probabilistic critical group. Appendix C of the NAS Report described a "probabilistic critical group." This section describes the contents of Appendix C of the NAS Report.

The NAS probabilistic CG approach would require use of a theoretical population distribution which we would, or require DOE to, develop by using a mathematical method known as "Monte Carlo." The Monte Carlo method is a mechanism to randomly select values of parameters which have a range of possible values. The parameters would be present-day environmental parameters, including soil quality, land slope, growing season, depth to the aquifer, and population distribution and lifestyles. The individuals who comprise the CG may represent a variety of economic lifestyles and activities. The analysis would then use the variability of those parameters in the region around Yucca Mountain to arrive at the theoretical population for the calculation of radiation exposure. This theoretical population would then, according to NAS, be combined with Monte Carlo simulations of the distribution of contaminated ground water in time and space (NAS Report p. 148). According to NAS, each simulation would generate a plume path which could be overlain on a map of potential farm density or water use to determine a potential exposure area. Each of these potential plume paths is known as a "realization." Values for parameters, including well depths, rates of water use, food sources, and consumption rates, are determined by sampling from the parameter-value distributions. For each plume realization of the contamination in the aquifer, the results of the exposure simulations are combined to give a spatial distribution of maximum exposures for the locations likely to be inhabited. This approach would use a large number of simulations of plume realizations to identify critical subgroups with the highest risk. It would then be used to calculate the arithmetic average of the risk of all critical subgroups over all plume realizations to estimate the risk for the CG. In determining compliance, the Commission would compare this estimate with the risk limit in the standard.

We considered proposing the probabilistic CG approach but are not doing so for the following reasons. First, there is no relevant experience in applying the probabilistic CG approach. Second, the approach is very complex and difficult to implement in a manner that assures it would meet the requirements of defining a CG. Third, we are concerned that this approach does not appear to identify clearly who is being protected. Finally, a significant majority of the comments that we have received upon the NAS Report opposes the probabilistic CG approach.

The NAS subsistence-farmer critical group. The approach in Appendix D of the NAS Report specified one or more subsistence farmers as the CG. It made assumptions designed to define the farmer at maximum risk to be included in the CG. This section describes the contents of Appendix D of the NAS Report.

The subsistence-farmer CG is a definable, highly exposed segment of the larger, exposed population. The subsistence farmer would be assumed to: (1) be a person with eating habits and response to doses of radiation that would be average for present-day people and (2) obtain all potable water and grow all of his or her own food using water withdrawn from the aquifer contaminated with radionuclides from the disposal system. The water used by this CG would be withdrawn at a location downgradient from and outside the footprint of the repository at the point of maximum potential concentration of ground water contamination, provided that no natural geologic features preclude drilling for water at that location. (The footprint of the repository is the circumscription of the outermost, original emplacement locations of the waste.)

Concentrations of radionuclides in the extracted ground water may be smaller than in undisturbed ground water due to pumping; this possibility could be used when evaluating exposures (NAS Report p. 155). As a result of uncertainty, there will be probabilistic distributions of radionuclide concentrations, as they vary in time and space in the aquifer outside the repository footprint, which are the input variables needed to estimate the risk. The radionuclide distributions in the aquifers, in turn, depend upon the performance of the components of the natural and engineered barrier systems. Projections of their performance also contain uncertainty and likely will be subject to probabilistic assessment. Any assessment of the potential doses from the repository, therefore, must consider the probability of processes and events that influence eventual concentrations of radionuclides in aquifers supplying water to the CG.

Overall, the "expected" risk for the average member of this CG would be about one-half that of the most-exposed subsistence farmer (NAS Report p. 158). This average risk to the members of the CG would be compared with the standard selected for compliance.

We considered proposing that the protected individual(s) be the subsistence-farmer CG. The CG concept has been utilized within the U.S. in various ways. The NRC uses the CG concept in assessing compliance with NRC standards for radionuclide releases from nuclear facilities. For example, the Commission uses the CG concept in: (1) licensing actions involving dose calculations under 10 CFR part 40, appendix A; (2) its radiological criteria for license termination of all NRC-licensed facilities at 10 CFR part 20, subpart E; and (3) its draft guidance for LLW disposal under 10 CFR part 61. The State of Washington recently

implemented the CG concept in actions relating to U.S. Ecology's LLW site at Hanford, and the State of Texas endorses CG in its decommissioning standards. Also, a great deal of international guidance exists that discusses the use of CG. The ICRP endorses CG, and has recommended the CG concept in numerous documents, both recent and dating back as far as 1977. Canada, Sweden, Switzerland, and the United Kingdom are among those individual nations that have adopted the CG methodology for radioactive waste storage and disposal.

We prefer an approach to exposure assessment that is consistent with other Agency programs (*Guidance on Risk Characterization for Risk Managers and Risk Assessors*, Deputy Administrator F. Henry Habicht II, February 26, 1992) and which we believe provides a level of protection substantially equivalent to that which would be achieved by the CG concept.

Our proposal for the protection of individuals. Most of our programs use an approach for the development of exposure scenarios that involves determining the high-end range of doses or exposures. Conceptually, this range is that above the 90th percentile of the entire (either measured or estimated) distribution of potential doses within the exposed population. Conversely, the NESHAPs program for radionuclides and the individual-protection requirements in the generic SNF and HLW disposal standards at 40 CFR 191.15 require calculation of the individual dose for a person assumed to reside at a location where that person would receive the highest dose. However, other Agency programs use a different approach to protect individuals by using "reasonable, maximum exposure" (RME) conditions. The National Contingency Plan describes an approach to be used for the RME scenario to protect individuals as "a product of factors, such as concentration and exposure frequency and duration, that are an appropriate mix of values that reflect averages and 95th percentile distributions" (55 FR 8666, 8710, March 8, 1990). In the past, we have defined "reasonable maximum" to mean potential exposures that are likely to occur. The method for calculating the RME is to estimate the high-end range of possible exposures by identifying the factors which have the greatest effect upon the size of the dose, and using maximum or nearly maximum values for one or a few of these factors, leaving the others at their average values (57 FR 22888, 22922, May 29, 1992). In this approach, we select a hypothetical individual who would be representative of the most highly exposed individuals. We call this individual the reasonably maximally exposed individual (RMEI). To be effective, the RMEI approach must avoid incompatible combinations of parameter values, such as, low body weight used in combination with high intakes.

Thus, we intend for this procedure to project doses that are within a reasonably expected range rather than projecting the most extreme case. However, the procedure is also meant to identify an individual dose which is well above the average dose in the exposed population. The ultimate goal and purpose is to estimate a level of exposure that is protective of the vast majority of individuals at a site, but is still within a reasonable range of potential exposures.

For the preceding reasons, we are proposing the RMEI concept as our preferred approach instead of the CG approach. The United States and other countries have used the concept of a hypothetical individual to represent future populations in radioactive-waste management programs. This is consistent with widespread practice, current and historical, of estimating dose and risk to highly exposed individuals even when the exposure habits of future people cannot be specified or accurately calculated, as in this case where doses must be projected for very long periods. The approach is straightforward and relatively simple to understand. We believe that this approach provides protection similar to that afforded by the NAS recommendation to use a CG. The RMEI model uses a series of assumptions about the lifestyle of a hypothetical individual. The desired degree of conservatism can be built into the model through choices of assumed values of RME parameters. However, these values would be within certain limits since we are proposing to require the use of Yucca Mountain-specific characteristics in choosing those parameters and their values. In subpart B of 40 CFR part 197, we propose a framework of assumptions for NRC to incorporate into its implementing regulations.

Our proposed RMEI would be representative of a future population group termed "rural-residential." The CEDE received by this RMEI would be calculated by DOE using cautious, but reasonable, exposure parameters and parameter-value ranges. The projected CEDE would be used by NRC in the determination of compliance with the proposed standards. We believe that the results obtained by using this approach would be similar to those which would be obtained by using the subsistence-farmer CG approach put forth in Appendix D of the NAS Report. In both cases, the objective is to determine the magnitude of the potential exposure using reasonable, not extreme, assumptions. Under the proposed standards, the RMEI will have food and water intake rates, diet, and physiology like that of individuals currently living in the downgradient direction of flow of the ground water passing under Yucca Mountain. The Department will perform the dose calculation to estimate exposure resulting from releases from the waste into the accessible environment based upon the assumption of present-day conditions in the vicinity of Yucca Mountain. Presently, we expect the ground water pathway to be the most significant pathway for exposure from radionuclides that are transported from the repository. Our initial evaluation of potential exposure pathways from the disposal system to the RMEI suggests that the dominant fraction of the dose incurred by the RMEI likely will be from ingestion of food irrigated with contaminated water (see the BID). It is possible, however, that another exposure pathway will be determined by DOE and NRC to be more significant for radiation exposure. Consequently, DOE and NRC must consider and evaluate all potentially significant exposure pathways in the performance assessment. As a result of the performance assessment, there will be a distribution of the highest potential doses incurred by the RMEI. We are proposing that the mean or median value (whichever is higher) of that distribution be used by NRC to determine compliance with the individual-protection standard. We request comments upon this method of determining compliance with the individual-protection standard.

We are also requesting comments upon the alternative of adopting the CG approach rather than the RMEI. Comments supporting the CG approach should address the level of detail EPA's rule should include on the parameters of the CG.

Exposure scenario for the RMEI. A major part of the exposure scenario is the location of the RMEI. In preparing to propose a location for the RMEI, we collected and evaluated information on the natural geologic and hydrologic features, such as topography, geologic structure, aquifer depth, aquifer quality, and the quantity of ground water, that may preclude drilling for water at a specific location. Based upon these factors and the current understanding of ground water flow in the area of Yucca Mountain, it appears that an individual could reside anywhere along the projected radionuclide flow path extending from Forty-Mile Wash, approximately five kilometers (km) from the proposed repository location, to the southwestern part of the Town of Amargosa Valley, Nevada, where the ground water is close to the land surface and where most of the farming in the area is done. However, an individual's ability to reside at any particular point along that path depends upon that individual's purpose and available resources. To explore these variations, we developed the four scenarios described below. We present our evaluation of factors associated with these scenarios more fully in the BID. We welcome comment upon the appropriateness of each of these scenarios and upon our preferred scenario. In developing scenarios, we assumed that the level of technology and economic considerations affecting population distributions and life styles in the future are the same as today (for more detail, see the *What Should Be Assumed about the Future Biosphere?* section below).

The RMEI in the first scenario is a subsistence (low technology) farmer. Such an individual would have continuous exposure to radionuclides in water, air, and soil which are arriving through all exposure pathways. The RMEI's location and habits would be generally consistent with historical locations of Native Americans and early settlements in Amargosa Valley and influenced heavily by easy access to water, that is, where the water table is near the surface (approximately 30–40 km away from the disposal system). In addition, all of the RMEI's water and food would come from contaminated sources. We did not choose this option because we believe that such a scenario is overly conservative given the site-specific characteristics of the area and reasonable consideration of the lifestyles of individuals in that area.

In the second scenario, we considered using a commercial farmer as the RMEI. We evaluated economic factors and current and potential future technologies which could be economically viable. There are areas in the vicinity of Yucca Mountain which are currently being farmed commercially or could be economically farmed based upon reasonable assumptions, current technology, and experience in other arid parts of the western United States. The exposure pathways in this scenario would be the same as those used for the subsistence-farmer scenario. We did not choose this as our preferred scenario since we believe that commercial farming would not be representative of the general population and would not be likely in areas other than where there is currently such farming, approximately 30 kilometers from the disposal system.

The third scenario, selected as our preferred approach, involves a rural-residential RMEI. We assume that the rural-residential RMEI is exposed through the same general pathways as the subsistence farmer. However, this RMEI would not be a full-time farmer but would do personal gardening and earn income from other sources of work in the area. We assume further that all of the drinking water (two liters per day) and some of the food consumed by the RMEI is from the local area. The consumption of two liters per day of drinking water is a high value since people consume water from outside sources, such as commercial products. Similarly, we assume that local food production will use radioactively contaminated water coming from the disposal system. We believe this lifestyle is similar to that of most people living in Amargosa Valley today.

The fourth scenario which we considered is domestic use of an underground source of drinking water (USDW) by a community living near the repository site. A USDW is essentially an aquifer which is large enough to supply or could supply a public water system (the full definition is in 40 CFR 144.3). Based upon current water usage in the arid western United States, a public water supply inside of the current NTS could exist since a community would have greater resources to access and recover water than would most individuals. Such a community water supply would have characteristics similar to DOE's water wells J–12 and J–13. These wells have supplied water needs (including human consumption) since the early 1960s for the Federal government. While we consider such a scenario possible, it could be less protective than the rural-residential scenario because it would not protect individuals from the ingestion of contaminated home-grown food. Also, we consider this scenario less representative of current conditions for most people in the vicinity of Yucca Mountain.

Location of the RMEI. The location of the RMEI is a basic part of the exposure scenario. We considered locations within a region occupying an area bordering Forty-Mile Wash, within a few kilometers of the repository site, to the southwestern border of the Town of Amargosa Valley. This region, which we believe is hydrologically downgradient from Yucca Mountain, can be considered as three general subareas.

The first subarea occupies the land south from near Yucca Mountain to the vicinity of U.S. Route 95. This subarea has deep ground water (up to about 300 meters) which is accessed by Federally owned wells used for DOE activities associated with Yucca Mountain and the NTS. This land is currently under government control and ownership. In addition, the likelihood of small or economically viable agricultural activities in this area is questionable when the depth to the water table is taken into consideration.

The next subarea borders the first and extends several kilometers south of U.S. Route 95. The northern portion of the Town of Amargosa Valley, including the businesses at the intersection of U.S. Route 95 and Nevada State Route 373 (Lathrop Wells), is included in this subarea. This subarea currently includes about 15 residents and no agricultural activities, although abandoned irrigation wells exist (see the BID). The depth to water in this area ranges from slightly more than 100 to about 60 meters. The U.S. Natural Resource Conservation Service has designated the types of soils in this area as suitable for rangeland and wildlife habitat.

The third subarea borders the second and covers the remainder of the Town of Amargosa Valley. This subarea is the closest downgradient location to Yucca Mountain with perennial agricultural activity. The depth to ground water is relatively shallow—approximately 50 to 15 meters. The agriculture consists of both personal gardens and commercial activities. The commercial agriculture is a mainstay of the local economy. Commercial farms produce crops, livestock, and dairy products for either local consumption or for transport out of the region. Most of the residents of the Town of Amargosa Valley are within this subarea, as are the community center, school, clinic, library, post office, and sheriff's office. The population consists of all age groups.

Based upon these considerations of the subareas, we propose that the intersection of U.S. Route 95 and Nevada State Route 373, known as Lathrop Wells, is a likely location for the RMEI. In this example, we do not consider it probable that the rural-residential RMEI would occupy locations significantly north of U.S. Route 95. We make this assumption mainly because the rough terrain and increasing depth to ground water nearer to Yucca Mountain would likely discourage settlement by individuals because access to water is more difficult than it would be a few kilometers

farther south. Also, there are currently several residents and businesses near this location whose source of water is the underlying aquifer (which we understand flows from under Yucca Mountain). Therefore, we believe that it is reasonable to assume that individuals could reside near this intersection in the future.

Farming occurs today farther south, in the southwestern portion of the Town of Amargosa Valley in an area near the California border and west of Nevada State Route 373. However, soil conditions in the vicinity of Lathrop Wells are similar to those in southwestern Amargosa Valley. Therefore, it should be feasible for the RMEI to grow some of his or her own food, including a grazing cow, using a fraction of the water recovered but not used for household purposes. Larger-scale food production at Lathrop Wells is unlikely because of the cost of recovering sufficient water. To supplement the gardening and grazing, we propose that it is also reasonable to assume that the RMEI would obtain much of his or her food from the local area.

Finally, we believe that a rural-residential RMEI near Lathrop Wells would be among the most highly exposed individuals in the downgradient direction from Yucca Mountain. We believe that this is true even though individuals residing closer to the repository (where the ground water is at a greater depth) could be consuming higher concentrations of radionuclides in their drinking water. Because of the significant cost of finding and withdrawing the ground water, we further believe that individuals living nearer the repository are unlikely to withdraw water from the significantly greater depth and in the much larger quantities needed for farming activities. Based upon our analyses of potential pathways of exposure, discussed above, we believe that irrigation would be the most likely pathway for most of the dose from the most soluble, least retarded radionuclides (such as technetium-99 and iodine-129). The percentage of the dose that results from irrigation would depend upon the assumptions about the fraction of all food assumed to be consumed by the RMEI from gardening or other crops grown using contaminated water. We also are proposing that protection of a rural-residential RMEI would be protective of the general population (see the *How Will the General Population Be Protected?* section below).

Our identification of Lathrop Wells as a potential location of the RMEI is based upon a review of available, site-specific information. Of course, DOE and NRC must consider other, more appropriate locations based upon additional data which DOE or others may develop later, but the selection of that other location must be based upon the same considerations used for this example. For example, if DOE subsequently determines that the direction of ground water flow is different than we have assumed, DOE and NRC must choose the location, at the same distance from the center of the repository footprint as the original point of compliance, where the highest radionuclide concentrations occur.

As stated earlier, the method of calculating the RME is to select average values for most parameters except one or a few which are set at their maximum, that is, high-end, values. We believe that the Lathrop Wells location and a consumption rate of two liters per day of drinking water from the plume of contamination represent high-end values for two of these factors. The Commission may identify additional parameters for which to assign high-end values in projecting the dose to the RMEI. To the extent possible, NRC should use site-specific information for any remaining factors. For example, NRC should use the most accurate projections of the amount of contaminated food that would be ingested in the future. Projections might be based upon surveys which indicate the percentage of the total diet of Amargosa Valley residents which is from food grown in the Amargosa Valley area.

We particularly request comment upon whether:

(1) Based upon the above criteria, there is now sufficient information for us to adequately support a choice for the RMEI location in the final rule or should we leave that determination to NRC in their licensing process based upon our criteria;

(2) Another location in one of the three subareas identified previously should be the location of the RMEI; and

(3) Lathrop Wells and an ingestion rate of two liters per day of drinking water are appropriate high-end values for parameters to be used to project the RME. We also request comment upon the potential approaches and assumptions for the exposure scenario to be used for calculating the dose incurred by the RMEI.

III.B.5. How Will the General Population be Protected?

In section 801(a)(2)(A) of the EnPA, Congress asked whether an individual-protection standard could also protect the general population. In response, the NAS concluded that an individual-protection standard could provide such protection for the case of the proposed Yucca Mountain repository. The NAS premised this conclusion upon the condition that the public and policymakers would accept the idea that extremely small individual radiation doses spread out over large populations pose a risk that is negligible (NAS Report p. 57). The NAS refers to this concept as "negligible incremental risk" (NAS Report p. 59). Earlier, we described our proposed individual-protection standard for the RMEI which would establish the highest allowable radiation dose. This section of the notice raises another question—should we also adopt a standard to limit the possible widespread exposure of whole populations to extremely small individual doses?

In discussing the feasibility of protecting the general population from releases of radionuclides from Yucca Mountain, NAS considered the potential for the release of gaseous radionuclides. The NAS Report explained how the release of carbon dioxide gas containing ^{14}C from the Yucca Mountain disposal system might expose a large population:

> Global populations might be affected because radionuclide releases from a repository can in theory be diffused throughout a very large and dispersed population. In the case of Yucca Mountain, the likely pathway leading to widely dispersed radionuclides is via the atmosphere beginning with release of carbon dioxide gas containing the carbon-14 (^{14}C) radioactive isotope which might escape from the waste canisters. (NAS Report p. 7)

On page 61 of its Report, NAS estimated that the average dose to members of the global population, based upon this scenario, to be 0.003 μSv/year (0.0003 mrem/yr) and equated that to an annual risk of fatal cancer of 1.5 in 10 billion ($1.5 \times 10^{-}10$).

The NAS relied upon the recommendations of the NCRP in its report titled "Limitation of Exposure to Ionizing Radiation" (NCRP Report No. 116) to support their claim that such doses are negligibly small. In this report, the NCRP stated that a radiation dose of less than 10 μSv (1 mrem)/yr for any source or practice would represent a "negligible incremental dose." The NCRP endorsed the assumption that there is some radiation risk for every radiation exposure. Further, they explained that there are great uncertainties in trying to understand the meaning of radiation effects upon populations, especially when these effects are calculated by summing extremely small individual doses among huge populations. Agreeing with this concept, the NAS preferred to use risk instead of dose. The NAS then estimated the risk level associated with the NCRP's NID level of 10 μSv/yr and adopted the term "negligible incremental risk." The NAS then proposed this NIR level as the starting point for a process to establish a risk level for individuals that would be "negligible."

For different reasons, we provisionally agree with the NAS that an individual-risk standard can adequately protect the general population near Yucca Mountain. Our agreement is based upon the particular characteristics of the Yucca Mountain site. We emphasize that our view relates to the specific circumstances associated only with Yucca Mountain. We are not proposing to adopt either an NID or NIR level. We are concerned that such an approach is not appropriate in all circumstances. Again, our proposed determination that an individual-risk standard is adequate to protect both the local and general population is based upon considerations unique to the Yucca Mountain site—it is not a general policy judgment by us upon other uses of the concept of NID or NIR.

We considered the NAS suggestion to adopt a general NIR level but have not done so because of reservations regarding the reasoning and analysis employed by NAS. As noted above, NAS referred to the NID level of 10 μSv (1 mrem)/yr per source or practice recommended by the NCRP. The International Atomic Energy Agency (IAEA) has made similar recommendations regarding exemptions in its Safety Series No. 89, "Principles for the Exemption of Radiation Sources and Practices from Regulatory Control." The IAEA has recommended that individual doses not exceed 10 μSv (1 mrem)/yr from each exempt practice. The IAEA's recommendations relate to criteria for exempting whole sources or practices, such as waste disposal or recycling generally, not whether radiation doses from a portion of a given practice, such as the release of gases from a specific geologic repository, may be considered negligible. Finally, the IAEA's recommendations intend their exemption to be for sources and practices "which are inherently safe." It is not clear that the low individual doses or risks projected from gaseous releases from the Yucca Mountain repository should be considered on their own as a "source" or "practice" or that such a source or practice should be considered inherently safe. Also, we believe it to be inappropriate to not calculate a radiation dose merely because the dose rate from a particular source is small.

Further, we are not sure it is appropriate to apply the NIR concept to consideration of population dose. A recent NCRP report questions the application of the negligible incremental dose (NID) concept to consideration of population doses. According to NCRP Report No. 121: "A concept such as the NID (Negligible Incremental Dose) provides a legitimate lower limit below which action to further reduce individual dose is unwarranted, but it is not necessarily a legitimate cut-off dose level for the calculation of collective dose. Collective dose addresses societal risk while the NID and related concepts address individual risk." Based upon this, we think it would be inappropriate to use the negligible incremental dose or risk concept to evaluate whether an individual-protection standard adequately protects the general population.

Although we do not advocate use of the NID concept, we acknowledge that the extremely low levels of individual risk and dose cited by NAS as being associated with the release of ^{14}C from Yucca Mountain are many orders of magnitude below the levels at which we have regulated in other circumstances. For example, we used the following policies under the pre-1990 Clean Air Act (CAA) hazardous air pollution control program: (1) provide public health protection for the greatest number of persons possible based upon a lifetime (70 years) risk level no higher than approximately 1×10^{-6} for an individual, and (2) limit the maximum, individual-lifetime, estimated risk to no higher than 1 in 10,000 (1×10^{-4}) (54 FR 51654, 51655, December 15, 1989). Even though we adopted this approach in a different policy context, it provides insight into how we have dealt with similar risk-management issues in a regulatory context. In 1990, Congress amended the CAA to require us to develop technology-based standards to reduce emissions. At the same time, Congress authorized us to delete categories of sources from regulation if no source in that category could cause a lifetime risk of cancer exceeding 1×10^{-6} for the most-exposed individual in the population. The risk over an individual's lifetime from exposure to gaseous ^{14}C released from the Yucca Mountain repository, as estimated by NAS, would be about 100 times lower than 10^{-6}. This particular risk level is extremely low and well below the risk level that we generally regulate.

The disposal standards in 40 CFR part 191 include release limits (or containment requirements) to protect populations and an individual-protection standard. We rejected adopting only an individual-protection standard in those standards because of a concern that an individual-dose limitation alone might encourage selection of disposal sites that relied upon dilution of radionuclides at the expense of increased overall population exposures. Specifically, we were concerned that, in the absence of release limits, "disposal sites near bodies of surface water or large sources of ground water might be preferred—which the Agency believes is an inappropriate policy that would usually increase overall population exposures" (50 FR 38066, 38078, September 19, 1985). For example, it is possible to have a site that could meet the 150 μSv (15 mrem)–CEDE/yr individual-protection standard while still having large numbers of people being exposed to radiation levels just below the standard. This scenario could result in significant numbers of calculated health effects for each generation exposed and very large numbers of calculated health effects over the regulatory period. We believe that the policy embodied in the generic 40 CFR part 191 disposal standards is sound. The provisions in 40 CFR part 191, which could apply to a variety of potential disposal sites, should discourage reliance upon dilution of radionuclides in the general environment as a disposal method.

However, the potential for large-scale dilution of radionuclides, through ground water and into surface water, as modeled in the supporting analyses for 40 CFR part 191, does not exist at Yucca Mountain, thereby minimizing the need for the kind of population-protection requirements found in 40 CFR part 191. Rather, DOE plans to locate the Yucca Mountain repository in an unsaturated rock formation with limited amounts of infiltrating water passing through it and into the underlying tuff aquifer. ("Unsaturated" means that the rock could absorb more water than it is holding.) That aquifer is, in turn, within a ground water system which discharges into arid areas having high evaporation rates and very little surface water. In other words, we believe that the characteristics of the saturated zone under Yucca Mountain are such that dilution from other sources will be limited and the aquifer does not discharge into any large bodies of surface water. Therefore, our basis for inclusion of a population-protection requirement in 40 CFR part 191 does not appear to apply to the development of site-specific standards for Yucca Mountain.

In addition, we based the release limits in 40 CFR part 191 partly upon technology and partly upon risk levels which we believed to be acceptably small. The technology basis for the release limits was based upon assessments of repository performance of several generic disposal systems, including one located in tuff. In finalizing 40 CFR part 191, we stated:

> [T]he rule cannot be interpreted as setting precedents for "acceptable risk" levels to future generations that should not be exceeded regardless of the circumstances. Instead, because of a number of unique circumstances, the Agency has been able to develop standards for the management and disposal of these wastes that are both reasonably achievable . . . and that limit risks to levels that the Agency believes are clearly acceptably small. (50 FR 38066, 38070, September 19, 1985)

We developed these standards during the siting process mandated by the NWPA in the 1980s. The inclusion of release limits pointed to the importance of considering population doses during site selection. We established the standards at a level that appeared to be reasonably achievable for several types of rocks or geologic media and which would keep risks to future populations acceptably small. The assessments we performed in support of these generally applicable standards, however, did not include a gaseous-release pathway similar to that described by NAS for ^{14}C because no one foresaw the potential importance of that pathway at that time. In fact, according to the generic analyses we performed in support of 40 CFR part 191, the unsaturated site in tuff was generally more protective, in terms of limiting total releases, than the other geologic media we evaluated.

For these reasons, we do not believe that these generic analyses and conclusions supporting the development of release limits in 40 CFR part 191 are appropriate for judging the need for population-risk limits or the acceptability of population risks from releases from wastes in the Yucca Mountain disposal system. We are proposing to find that the individual-protection standard is sufficient to protect public health based upon the unique characteristics of the area around the Yucca Mountain site.

In summary, we are proposing to adopt an individual-protection standard for Yucca Mountain that will limit the annual radiation dose incurred by the RMEI to 150 μSv (15 mrem) CEDE. At the same time, we are not proposing to adopt a separate limit on radiation releases for the purpose of protecting the general population, but we are recommending that collective dose be estimated and considered (see the following paragraph). We based this decision upon several factors. The first factor is the NAS projection of extremely small doses to individuals resulting from air releases from Yucca Mountain. That dose level is well below the risk corresponding to our proposed individual-protection standard for Yucca Mountain. It is also well below the level that we have regulated in the past through other regulations. Further, while we decline to establish a general NIR level, we do agree with NAS that estimating the number of health effects resulting from a 0.0003 mrem/yr dose rate, in addition to the dose rate from background radiation, in the general population is uncertain and controversial. The second major factor is that, based upon current and site-specific conditions near Yucca Mountain, there is not likely to be great dilution resulting in exposure of a large population. In addition, we are proposing additional ground water protection standards that would establish specific limits to protect users of ground water and ground water as a resource. Finally, we are still proposing to require that all of the pathways, including air and ground water, would be analyzed by DOE and considered by NRC under the individual-protection standard. We request comment upon this approach. Commenters who disagree with this approach should specifically address why it is inappropriate for the Yucca Mountain disposal system and make suggestions about how we might reasonably address this issue.

While we are not proposing to adopt additional regulatory requirements for collective exposures of the general population from releases from the Yucca Mountain disposal system, we urge DOE to examine design alternatives for the disposal system, for the purpose of reducing potential risk to the general population, in the National Environmental Policy Act (NEPA) process for Yucca Mountain. We received public comments, in response to our request for comments regarding the NAS Report, noting that DOE had already proposed, in its Notice of Intent to prepare a NEPA-prescribed environmental impact statement (EIS) for Yucca Mountain, to evaluate technical alternatives (60 FR 40167, August 7, 1995). In other words, DOE has previously proposed to evaluate technical alternatives as part of its waste containment and isolation strategy for Yucca Mountain (DOE, "Strategy for Waste Containment and Isolation for the Yucca Mountain Site," Preliminary Review Draft, October 9, 1995). Thus, we recommend that DOE incorporate these or similar considerations into its NEPA process to assess the effectiveness of design alternatives to mitigate population exposures.

The following language provides context to the approach we consider appropriate for calculating population exposure in the NEPA process. We recommend that DOE calculate the collective dose without truncation and with full consideration of the appropriate factors. This recommendation is supported by a recent NCRP report upon the principles and application of a collective dose in radiation protection (NCRP Report No. 121). The NCRP advocated the use of collective dose for optimization of protection and provided guidance on future exposures from long-lived radionuclides, the situation that will likely exist at Yucca Mountain:

> The most reasonable risk assessment that can be made for such situations is to calculate potential individual doses for a range of scenarios in order to: (1) evaluate protective measures and (2) to try to place some boundaries on estimates of future individual risks. For the few very long-lived radionuclides that are metabolically regulated in the body and more or less uniformly distributed within the biosphere (e.g., ^{14}C and ^{129}I), future average individual doses may be estimated from total quantities in the environment. . . . (NCRP Report No. 121, pp. 57–58)

III.B.6. What Should Be Assumed About the Future Biosphere?

We propose to require DOE and NRC to use the biosphere assumptions described in this section in all analyses of repository performance, including the performance assessment for determining compliance with the individual-protection standard, the assessment for determining compliance with the ground water standards, and the human-intrusion analysis. Projecting biosphere conditions necessitates making assumptions, many of which are very uncertain and may not be boundable. The NAS stated:

> In view of the almost unlimited possible future states of society and of the significance of these states to future risk and dose, . . . we have recommended that a particular set of assumptions be used about the biosphere (including, for example, how and where people get their food and water) for compliance calculations . . . we recommend the use of assumptions that reflect current technologies and living patterns. (NAS Report p. 122)

The NAS also stated:

> . . . unlike our conclusion about the earth science and geologic . . . factors described [earlier], we believe that it is not possible to predict on the basis of scientific analyses the societal factors that must be specified in a far-future exposure scenario. . . . Any particular scenario about the future of human society near Yucca Mountain . . . should not be interpreted as reflecting conditions that eventually will occur. Although we recognize the burden on regulators to avoid regulations that are arbitrary, we know of no scientific method for identifying these [exposure] scenarios. (NAS Report p. 96)

We agree with the NAS on this point and propose that speculation concerning some characteristics of the future should not be the focus of the compliance determination process. Instead, we believe that it would be more appropriate to assume that those characteristics will be the same as they are today. No one should interpret this assumption so literally that only current residences and lifestyles of individuals living in the area on the day of promulgation of this part can be considered. Rather, we intend that, based upon current knowledge, DOE and NRC may use those characteristics in combinations in a cautious, but reasonable, manner as input into the Yucca Mountain performance projections. Future characteristics which NRC and DOE may assume to be the same as they are today include the level of human knowledge and technical capability (including medical), human physiology and nutritional needs, general lifestyles of the population, and potential pathways through the biosphere leading to radiation exposure of humans. Also, we propose that it is inappropriate to speculate upon extreme changes in the number of residents, but that consideration should be given to changes in population near the location of the RMEI.

In concert with the NAS Report, we also propose not to allow the assumption that conditions in the future will be the same as present conditions for geologic, hydrologic, and climatic conditions. We are proposing this because we believe the parameter values in the performance assessment which relate to these conditions can be reasonably bounded. We propose to require that these conditions be varied within reasonable bounds over the compliance period and request comment upon this proposed approach.

III.B.7. How Far Into the Future Is It Reasonable To Project Disposal System Performance?

The NAS recommended that the time over which compliance should be assessed, that is, the compliance period, should be "the time when the greatest risk occurs, within the limits imposed by long-term stability of the geologic environment" (NAS Report p. 7). The NAS stated that it based this recommendation upon technical, not policy, considerations. However, we believe the selection of the compliance period necessarily involves both technical and policy considerations. For example, NAS stated that we might choose to establish similar policies for managing risks "from disposal of both long-lived hazardous nonradioactive materials and radioactive materials" (NAS Report p. 56). As NAS recognized, we must consider, in this rulemaking, both the technical and policy issues associated with establishing the appropriate compliance period for the performance assessment of the Yucca Mountain disposal system.

We request public comment upon two alternatives for the compliance period for the individual-protection standard. One alternative is to adopt a compliance period that is the time to peak dose within the period of geologic stability. The second alternative is to adopt a time period during which the repository must meet the disposal standards. For the reasons described below, we believe that the second alternative is preferable. Therefore, we are proposing that the peak dose within 10,000 years after disposal must comply with the individual-protection standard. Also, the EPA-preferred approach would require calculation of the peak dose within the period of geologic stability. It does not, however, apply a quantitative limit after 10,000 years. The intent of examining disposal system performance after 10,000 years is to estimate the long-term performance of the disposal system to see if dramatic changes in the performance of the disposal system could be anticipated. We would require DOE to include the results and bases of the additional analysis in the EIS for Yucca Mountain as an indicator of the future performance of the disposal system. This analysis also would serve as another source of information for decisionmakers in making both design and licensing decisions. However, NRC is not to use the additional analysis in determining compliance with proposed § 197.20.

The principal tool used to assess compliance with the individual-protection standard is a quantitative performance assessment. This method relies upon modeling of the potential processes and events leading to releases of radionuclides from the disposal system, subsequent radionuclide transport, and consequences upon health. To consider compliance for any length of time, several facets of knowledge and technical capability are necessary. First, the scientific understanding of the relevant, potential processes and events leading to releases must be sufficient to allow a quantitative estimate of projected repository performance. Second, adequate analytical methods and numerical tools must exist to incorporate this understanding into a quantitative assessment of compliance. Third, scientific understanding, data, and analytical methods must be adequately developed to allow evaluation of performance with sufficient robustness to judge compliance with reasonable expectation over the regulatory period. Finally, the analyses must be able to produce estimated results in a form capable of comparison with the standards.

The NAS evaluated these requirements for Yucca Mountain and concluded that those aspects of disposal system and waste behavior that depend upon physical and geologic properties can be estimated within reasonable limits of uncertainty. Also, NAS believed that these properties and processes are sufficiently understood and boundable over the long periods at issue to make such calculations possible and meaningful. The NAS acknowledged that these factors cannot be calculated precisely, but concluded that there is a substantial scientific basis for making such calculations. The NAS concluded that by taking uncertainties and natural variabilities into account, it would be possible to estimate, for example, the concentration of radionuclides in ground water at different locations and the times of gaseous releases. Second, NAS concluded that the mathematical and numerical tools necessary to evaluate repository performance are available or could be developed as part of the standard-setting or compliance-determination processes. Third, NAS concluded that: "So long as the geologic regime remains relatively stable, it should be possible to assess the maximum risks with reasonable assurance" (NAS Report p. 69). The NAS used the term "geologic stability" to describe the situation where geologic processes, such as earthquakes and erosion, that could affect the performance assessment of the Yucca Mountain site are active (not static) and are expected to occur. Based upon the use of the terms "stable" and "boundable" throughout the NAS Report, one can infer that NAS applied the term "geologic stability" or "stable" to the situation where the rate of processes and numeric range of individual physical properties could be bounded with reasonable certainty. The

subsequent use of the term "stable" will not imply static conditions or processes. Rather, it will describe the properties and processes that can be bounded. Finally, NAS found that the established procedures of risk analysis should enable the results of each performance simulation of the disposal system to be combined into a single estimate for comparison with the standard.

Time to peak dose within the period of geologic stability. The NAS recommended that the compliance period for the Yucca Mountain disposal system be the time to peak risk within the long-term stability of the geologic environment. Since the time to peak risk is generally the time to peak dose, subsequent discussion of the NAS findings will refer to the time to peak dose. The "peak dose" is the mean value of the range of the highest potential annual doses, as determined by the performance assessment, incurred by the RMEI within the compliance period. The NAS based its recommendation to use the time to peak dose upon its review of:

(1) The technical analyses supporting 40 CFR part 191;

(2) Information derived from current performance assessments of the Yucca Mountain disposal system; and (3) The geologic and physical processes that could affect the release and transport of radionuclides to the biosphere.

The 40 CFR part 191 standards contain a compliance period of 10,000 years. There were three reasons that we set this time frame:

(1) After that time, there is concern that the uncertainties in compliance assessment become unacceptably large (50 FR 38066, 38076, September 19, 1985);

(2) There are likely to be no exceptionally large geologic changes during that time (47 FR 58196, 58199, December 29, 1982); and

(3) Using time frames of less than 10,000 years does not allow for valid comparisons among potential sites. For example, for 1,000 years, all of the generic sites analyzed appeared to contain the waste approximately equally because of long ground water travel times at well-selected sites (47 FR 58196, 58199, December 29, 1982).

One purpose of geologic disposal is to provide long-term barriers to the movement of radionuclides into the biosphere (NAS Report p. 19). As described earlier, the Department plans to locate the Yucca Mountain repository in tuff about 300 meters above the local water table. When nongaseous radionuclides are released from the waste packages, they most likely will be transported by rain water that moves from the surface both horizontally within individual tuff layers and vertically downward, through fractures in the tuff layers, toward the underlying aquifer. Once the radionuclides reach the aquifer, they will be carried away from the repository in the direction of ground water flow. The most probable route for exposing humans to radiation resulting from releases from the Yucca Mountain disposal system is via withdrawal of contaminated water for local use. In the case of Yucca Mountain, DOE estimates that most radionuclides would not reach currently populated areas within 10,000 years (see the BID).

While this finding alone seems to indicate that the compliance period for Yucca Mountain should be longer than 10,000 years to be protective, NAS concluded that the need to consider the exposures when they are calculated to occur must be weighed against the problem of cumulative uncertainty. As noted above, exposures could occur over tens-to hundreds-of-thousands of years. However, as the compliance period is extended to such lengths, uncertainty increases and the resulting projected doses are increasingly meaningless from a policy perspective. The NAS stated that there are significant uncertainties in a performance assessment and that the overall uncertainty increases with time. Even so, NAS found that, ". . . there is no scientific basis for limiting the time period of the individual-risk standard to 10,000 years or any other value" (NAS Report p. 55). Estimates by NRC and DOE related to the Yucca Mountain disposal system have indicated wide differences in estimates of the time that radionuclides may take to reach the biosphere and cause the peak dose to occur (see the BID). However, while the results have indicated that the time to peak dose may vary anywhere from a few tens-of-thousands to hundreds-of-thousands of years, the estimated values of the peak doses, while separated in time, are similar in magnitude (see the BID). These estimates differ because the analysts used different assumptions and conceptual models for flow and transport of radionuclides through the Yucca Mountain unsaturated zone. We believe that this situation will exist independently of the compliance-period issue. The NAS also stated that data and analyses of some of the factors that are uncertain at one time might be more certain at a later time. For example, there is uncertainty as to how many waste packages might fail in the near term. However, at some later time in the distant future, the uncertainty is very small because when enough time has passed, all of the packages will fail (NAS Report p. 72). Also, NAS stated that many of the uncertainties in parameter values describing the geologic system are not due to the length of time but rather to the difficulty in estimating values of site characteristics which vary across the site. We believe that these difficulties are always present and that analysts must consider them in the compliance assessment for any period chosen (NAS Report p.72).

As NAS noted, evaluating compliance with the 40 CFR part 197 standards depends upon being able to:

(1) Understand and model radionuclide-transport processes and the processes and events that might lead to transport;

(2) Use appropriate analytical methods to determine the levels of human exposure;

(3) Quantify or bound the probabilities of the processes and events, including the related uncertainties; and

(4) State the results in a form capable of being compared with the standards.

The NAS reviewed how radionuclides might enter the biosphere in order to determine the feasibility of evaluating them in a compliance assessment. In addition, to determine whether the modifying processes should also be evaluated in a compliance assessment, NAS analyzed the geologic and physical processes that could modify the properties of the contaminant-containing media and processes by which radionuclides are moved.

The radionuclide-transport processes evaluated by NAS included:

(1) Release from the waste form;

(2) Transport from canisters into the near-field (near the waste canisters) unsaturated zone;

(3) Gas-phase transport from the unsaturated zone into the atmosphere around Yucca Mountain;

(4) Atmospheric circulation leading to dispersal of gaseous radionuclides in the global atmosphere;

(5) Aqueous-phase transport from the unsaturated zone to the water table; and

(6) Transport of radionuclides through the saturated zone beneath the repository to other locations from which water may be extracted by humans or ultimately reach the surface at a discharge area (NAS Report pp. 85–90).

The NAS concluded that these processes are "sufficiently quantifiable and the uncertainties are sufficiently boundable that they can be included in performance assessments that extend over time frames corresponding to those over which the geologic system is relatively stable or varies in a boundable manner" (NAS Report p. 85). The NAS concluded that the "geologic record suggests that this time frame is on the order of about one million years" (NAS Report pp. 9 and 85). Likewise, NAS concluded that the probabilities and consequences of these processes and events that could modify the way in which radionuclides are moved in the vicinity of Yucca Mountain, including climate change, seismic activity, and volcanic eruptions, "are sufficiently boundable so that these factors can be included in performance assessments that extend over periods on the order of about one million years" (NAS Report p. 91).

Thus, NAS recommended, on a technical basis, that the compliance period for the protection of the individual should extend to the time of the peak dose during the period in which geologic processes are stable or boundable. This would require determining compliance and licensing the disposal system on the basis of projections of performance over tens- to hundreds-of-thousands of years into the future. We believe that such an approach is not practical for Yucca Mountain.

As noted earlier, NAS concluded that "there is no scientific basis for limiting the time period of the individual-risk standard to 10,000 years or any other value." Nevertheless, there is still considerable uncertainty as to whether current modeling capability allows development and validation of computer models that will provide sufficiently meaningful projections over a time frame up to tens-of-thousands to hundreds-of-thousands of years. Simply because such models can provide projections for those time periods does not mean those projections are either meaningful for decisionmakers or accurate. Furthermore, we are not aware of a policy basis that we could use to determine the level of proof or confidence necessary to determine compliance based upon projections of hundreds-of-thousands of years into the future. While NAS indicated that analyses of the performance of the Yucca Mountain disposal system dealing with the far future can be bounded, a large and cumulative amount of uncertainty is associated with those numerical projections. Setting a strict numerical standard at a level of risk acceptable today for the period of geologic stability would tend to ignore this cumulative uncertainty. For example, if the performance assessment indicates that the peak dose occurs 600,000 years in the future at an annual CEDE that has an uncertainty range of 0.1 mrem to 10,000 mrem, does that indicate that the disposal system is safe or unsafe and should NRC license it or not? In light of the cumulative uncertainty for calculations over an extremely long time, it may be more appropriate to consider, in a regulatory decisionmaking, assessments of disposal system performance over such time in a qualitative manner. We request comments upon the reasonableness of adopting the NAS-recommended compliance period or some other approach in lieu of the 10,000-year compliance period which we favor and describe below. We also seek comment upon whether the NAS-recommended compliance period can be implemented in a reasonable manner and how that could be done.

A 10,000-year compliance period (proposed § 197.20). As noted earlier, the selection of the compliance period for the individual-protection standard involves both technical and policy considerations. It is our responsibility to weigh both during this rulemaking. In addition to the technical guidance provided in the NAS Report, we have considered several policy and technical factors that NAS did not fully address.

First, as suggested by NAS, we evaluated the policies for managing risks from the disposal of both long-lived, hazardous, nonradioactive materials and radioactive materials. Second, we evaluated consistency with both 40 CFR part 191 and the issue of consistent time periods for the protection of ground water resources and public health. Third, we considered the issue of uncertainty in predicting dose over the very long periods contemplated in the alternative of peak dose within the period of geologic stability. Finally, we reviewed the feasibility of implementing the alternative of peak risk within the period of geologic stability, as recommended by NAS. As a result of these considerations, we are proposing a 10,000-year compliance period with a quantitative limit and a requirement to calculate the peak dose, using performance assessments, if the peak dose occurs after 10,000 years. Under our proposal, the performance assessment results for the post-10,000-year period must be made part of the public record by DOE including it in the EIS for Yucca Mountain.

In its discussion of the policy issues associated with the selection of the time period for compliance, NAS suggested that we might choose to establish consistent risk-management policies for long-lived, hazardous, nonradioactive materials and radioactive materials. We previously addressed the 10,000-year compliance period in the regulation of hazardous waste subject to land-disposal restrictions. Land disposal, as defined in 40 CFR 268.2(c), includes, but is not limited to, any placement of hazardous waste in land-based units such as landfills, surface impoundments, and injection wells. Facilities may seek an exemption by demonstrating that there will be no migration of hazardous constituents from the disposal unit for as long as the waste remains hazardous (40 CFR 268.6). We have interpreted the phrase "for as long as the waste remains hazardous" to mean that the no-migration demonstration shows that hazardous constituents will not exceed acceptable concentration levels for as long as the constituents retain the potential to harm human health and the environment. This period may include not only the operating phase of the facility, but also what may be an extensive period after facility closure. With respect to injection wells, we have specifically required a demonstration that the injected fluid will not migrate within 10,000 years (40 CFR 148.20(a)). We chose the 10,000-year performance period referenced in our guidance upon no-migration petitions, in part, to be equal to time periods cited in draft or final DOE, NRC, and EPA regulations (10 CFR 960, 10 CFR 60, or 40 CFR 191, respectively) governing siting, licensing, and releases from HLW disposal systems. With respect to other land-based units regulated under the Resource Conservation and Recovery Act (RCRA) hazardous-waste regulations, we concluded that the compliance period is specific to the waste and site under consideration. For example, for the WIPP no-migration petition, we found that "it is not particularly useful to extend this model beyond 10,000 years into the future.* * * [However, t]he agency does believe * * * that modeling over a 10,000-year period provides a useful tool in assessing the long-term stability of the repository and the potential for migration of hazardous constituents" (55 FR 13068, 13073, April 6, 1990).

Second, the individual-protection requirements in 40 CFR part 191 (58 FR 66398, 66414, December 20, 1993) have a compliance period of 10,000 years. The part 191 standards apply to the same types of waste and type of disposal system as proposed for Yucca Mountain. However, as we explained in the *What Led up to Today's Action?* section earlier in this notice, by statute the part 191 requirements do not apply to Yucca Mountain. If we finally adopt the 10,000-year compliance period, it would require the same compliance period for

the Yucca Mountain disposal system as for other disposal systems subject to 40 CFR part 191. Such a requirement would be consistent with 40 CFR part 191, which we deem appropriate since both sets of standards apply to the same types of waste.

Third, we are concerned that there might be large uncertainty in projecting human exposure due to releases from the repository over extremely long periods. We agree with the NAS conclusion that it is possible to evaluate the performance of the Yucca Mountain disposal system and the lithosphere within certain bounds for relatively long periods. However, we believe that NAS might not have fully addressed two aspects of uncertainty.

One of the aspects of uncertainty relates to the impact of long-term natural changes in climate and its effect upon choosing an appropriate RMEI. For extremely long periods, major changes in the global climate, for example, a transition to a glacial climate, could occur (see the BID). However, over the next 10,000 years, the biosphere in the Yucca Mountain area will probably remain, in general, similar to present-day conditions due to the rain-shadow effect of the Sierra Nevada Mountains, which lie to the west of Yucca Mountain (see the BID). For the longer periods contemplated for the alternative of time to peak dose, the global climate regime is virtually certain to pass through several glacial-interglacial cycles, with the majority of time spent in the glacial state (NAS Report p. 91). These longer periods would require the specification of exposure scenarios that would not be based upon current knowledge or cautious, but reasonable, assumptions, but rather upon potentially arbitrary assumptions. The NAS indicated that it knew of no scientific basis for identifying such scenarios (NAS Report p. 96). It is for these reasons that such extremely long-term calculations are useful only as indicators, rather than accurate predictors, of the long-term performance of the Yucca Mountain disposal system (IAEA TECDOC–767, 1994).

The other aspect of uncertainty concerns the range of possible biosphere conditions and human behavior. It is necessary to make certain assumptions regarding the biosphere, even for the 10,000-year alternative, because the period of 10,000 years represents a very long compliance period for current-day assessments to project performance. For example, it is twice as long as recorded human history (see the *What Should Be Assumed About the Future Biosphere?* section earlier in this notice). For periods approaching the 1,000,000 years that NAS contemplated under the peak-dose alternative, even human evolutionary changes become possible. Thus, reliable modeling of human exposure may be untenable and regulation to the time of peak dose within the period of geologic stability could become arbitrary.

Fourth, many international geologic disposal programs use a 10,000-year regulatory compliance period as a requirement.

Finally, an additional complication associated with the time to peak dose within the period of geologic stability is that it could lead to a period of regulation that has never been implemented in a national or international radiation regulatory program. Focusing upon a 10,000-year compliance period forces more emphasis upon those features over which man can exert some control, such as repository design and engineered barriers. It is unlikely that over much longer time frames that any engineered barrier will be effective. Those features, the geologic barriers, and their interactions define the waste isolation capability of the disposal system. By focusing upon an analysis of the features that man can influence or dictate at the site, it may be possible to influence the timing and magnitude of the peak dose, even over times longer than 10,000 years.

Thus, we request comment upon our proposal of a 10,000-year compliance period to judge compliance with proposed § 197.20 and our proposal to require consideration of the peak dose, using performance assessments, if it occurs after 10,000 years. Again, after 10,000 years, we would not require the calculated level to comply with a specific numerical standard but we would require its consideration as an indicator of longer-term performance and be included in the EIS for Yucca Mountain.

We also request comment upon the appropriateness of a 10,000-year compliance period for the individual-protection standard. Commenters should address the issues that we should consider in determining the appropriate compliance period. We also specifically request comments upon whether the NAS' recommendation of the time to peak dose within the period of geologic stability can be implemented reasonably and, if so, how that could be done.

III.C. What Are the Requirements for Performance Assessments and Determinations of Compliance? (Proposed §§ 197.20, 197.25, and 197.35)

III.C.1. What Limits Are there on Factors Included in the Performance Assessments?

The Commission is responsible for deciding whether or not to license the Yucca Mountain disposal system. It must make that decision based largely upon whether DOE has demonstrated compliance with our standards in 40 CFR part 197. Under the proposed 40 CFR part 197, the quantitative analysis underlying that decision will be a performance assessment (the proposed definition of "performance assessment" is in § 197.12). We are proposing that performance assessments be a requirement of licensing. The EnPA requires that the Commission modify its technical requirements for licensing the disposal system to be consistent with our final 40 CFR part 197 standards. Therefore, our standards would require DOE to complete a performance assessment prior to applying for a license and would require NRC to determine, taking into consideration that performance assessment, whether the disposal system's projected performance complies with § 197.20.

We also are proposing, consistent with the performance assessment requirements in 40 CFR part 191:

(1) To exclude from performance assessments those natural processes and events whose likelihood of occurrence is so small that they are very unlikely;

(2) That such performance assessments need not include categories of processes or events that DOE and NRC estimate to have less than a 1 in 10,000 (1×10^{-4}) chance of occurring during the 10,000 years after disposal. Probabilities below this level are associated with events such as the appearance of new volcanoes outside of known areas of volcanic activity or a cataclysmic meteor impact in the area of the repository. We believe there is little or no benefit to public health or the environment from trying to regulate the effects of such very unlikely events; and

(3) That the performance assessment need not evaluate, in detail, the releases from processes, events, and sequences of processes and events estimated to have a likelihood of occurrence greater than 1×10^{-4} of occurring during the 10,000 years following disposal, if there is a reasonable expectation that the time to, or the magnitude of, the peak dose would not be changed significantly by such omissions. As necessary, the Commission may provide specific guidance upon scenario selection and characterization to assure that processes or events are not excluded inappropriately.

A related issue upon which we request comment is if there is a period of the geologic record which we should require DOE and NRC to use to calculate the probability of processes and events occurring. The probability of a geologic event, such as an earthquake, occurring in the future typically comes from evidence of previous events which is preserved in, and can be dated by using, the geologic record. We believe that the geologic record is best preserved in the relatively recent past.

We are also proposing to require that DOE and NRC use quantitative assessments to determine compliance with the human-intrusion and ground water protection standards (see the *What Is the Standard for Human Intrusion?* and *How Will Ground Water Be Protected?* Sections later in this notice). The human-intrusion analysis would require a separate assessment of the effects of human intrusion upon the resilience of the Yucca Mountain disposal system. Following the recommendation of NAS, we intend the analysis to be an assessment of the disposal system's isolation capability following a single, stylized, human intrusion. The analysis required to determine compliance with the ground water protection standards applies only to undisturbed performance.

We are proposing to allow the exclusion of unlikely natural events from both the ground water and human-intrusion assessments. The approach for the ground water protection requirements is consistent with subpart C of 40 CFR part 191, "Environmental Standards for Ground-Water Protection" while the approach for the human-intrusion assessment is consistent with the NAS recommendation (see the *What Is the Standard for Human Intrusion?* section later in this notice). We request public comment upon whether this approach is appropriate for Yucca Mountain.

III.C.2. Is Expert Opinion Allowed?

The quantitative requirements in proposed subpart B of part 197 require:

(1) Evaluation of processes, events, and sequences of processes and events leading to radionuclide releases from the disposal system;

(2) Estimation of the resulting doses or radionuclide concentrations; and

(3) Estimation of the likelihood of the resulting doses or radionuclide concentrations.

The likelihood of the processes, events, and sequences of processes and events occurring should be estimated by DOE and NRC based upon current scientific knowledge of previous occurrences. However, it is likely that there will be processes, events, and sequences of processes and events which have not occurred or occurred too infrequently to be statistically significant. This situation will require the use of expert opinion, for example, scientific and engineering expertise, to arrive at cautious, but reasonable, estimates of the probability of future occurrence. Also, there likely will be many other areas where DOE could use expert opinion, for example, when there are multiple models applicable to the performance assessment or human-intrusion analysis, or significant uncertainties in the variation of parameter values.

There are two commonly used methods for the gathering of expert opinion, namely, expert judgment and expert elicitation. Expert judgment is typically obtained informally from one or more individuals and is noted by the person(s) seeking the judgment in documentation used to support the activity. In contrast, expert elicitation is a formal, structured, and thoroughly documented process. Whether it is appropriate to conduct an expert elicitation depends upon the issue under consideration.

We have considered setting guidelines for the use of expert elicitation. The type of guidelines we considered could include one or all of the following requirements when expert elicitation is used: (1) the Commission needs to consider the source and use of the information so gathered; (2) we would expect the Commission to assure that, to the extent possible, experts with both expertise appropriate for the subject matter and independence from DOE will be on the expert elicitation panel consulted to judge the validity and adequacy of the model(s) or value(s) for use in a compliance assessment; and (3) when DOE presents information to the expert elicitation panel, it should do so in a public meeting, and qualified experts, such as representatives of the State, should be given an opportunity to present information.

If we were to set any requirement, we would have to consider whether NRC may allow DOE to use expert elicitations, which did not follow these rules but were completed prior to the effective date of part 197, for the purpose of determining compliance with the provisions of part 197. We believe that it would probably be an unnecessary use of time and resources to require such work to be repeated or not be used if the Commission judges them to be acceptable.

We request comment upon whether it is appropriate for us to set guidelines for the use of expert opinion in this standard and, if so, what those guidelines should be.

III.C.3. What Level of Expectation Is Required for NRC To Determine Compliance?

While the provisions in this rule establish minimum requirements for implementation of the disposal standards, NRC may establish requirements that are more stringent. As mentioned in the previous section, we are proposing the concept of "reasonable expectation" to reflect our intent regarding the level of "proof" necessary for NRC to determine whether the projected performance of the Yucca Mountain disposal system complies with the standards (see proposed §§ 197.20, 197.25, and 197.35). We intend for this term to convey our position and intent that unequivocal numerical proof of compliance is neither necessary nor likely to be obtainable. The NRC has used a similar qualitative test, "reasonable assurance," for many years in its regulations. However, the NRC regulations are focused upon engineered systems with relatively short lifetimes, for example, nuclear power reactors. We believe that for very long-term projections, involving the interaction of natural systems with the engineered system and the uncertainties associated with the long time periods involved, a different approach may be more appropriate.

Therefore, we are proposing to require that the test of disposal system compliance be a "reasonable expectation" that the standards will be met. In carrying out performance assessments under a "reasonable expectation" approach, all parameters that significantly affect performance would be identified and included in the assessments. The distribution of values for these parameters would be made to the limits of confidence possible for the expected conditions in the natural and engineered barriers and the inherent uncertainties involved in estimating those values. Selecting parameter values for quantitative performance assessments would focus upon the full range of defensible and reasonable parameter distributions rather than focusing only upon the tails of the distributions as is more commonly done under the "reasonable assurance" approach. The "reasonable expectation" approach also would not exclude important parameters from the assessments because they are difficult to

quantify to a high degree of confidence. Some parameters, such as corrosion rates for metal container components, may be quantified with a high degree of accuracy and precision. Others, such as the amount of water entering a waste emplacement drift and dripping onto a waste package, cannot be quantified with a high degree of accuracy and precision, but are very important to a realistic assessment of performance. Overestimating or underestimating the values of parameters, or ignoring the positive effects upon performance for other processes and parameters because they cannot be precisely estimated, would essentially result in the performance assessments actually being analyses of extreme performance scenarios. These extreme assessments have a high probability of being unrealistic or of such low probability that they would not represent the range of likely performance for the disposal system.

We note that if the compliance period for the individual-protection standard extended to the time of peak dose within the period of geologic stability (which NAS estimated to be one million years for the Yucca Mountain site), this test would allow for decreasing confidence in the numerical results of the performance assessments as the compliance period increases beyond 10,000 years. For example, this means that the weight of evidence necessary, based upon reasonable expectation, for a compliance period of 10,000 years would be greater than that required for a compliance period of hundreds of thousands of years.

III.D. Are There Qualitative Requirements To Help assure Protection?

In addition to the quantitative limits in the standards, we considered several qualitative principles called "assurance requirements." We considered including such requirements because of the uncertainties that exist in projecting the effects of releases from radioactive waste over long periods. The intent for such assurance requirements would be to add confidence that the Yucca Mountain disposal system will achieve the level of protection proposed in the quantitative standards. This is the same approach that we require in 40 CFR part 191 and would provide similar protection regarding Yucca Mountain. The NAS also recognized the need for protection beyond that provided by the disposal system when it addressed institutional controls in its Report (NAS Report p. 11).

The assurance requirements we considered included the use of passive and active institutional controls, monitoring, the use of multiple barriers to isolate waste, and the ability to locate and remove the waste after disposal. In 40 CFR part 191, there is a sixth assurance requirement, 40 CFR 191.14(e), which we consider to be inappropriate for the Yucca site. The purpose of that requirement is to avoid sites where there are resources that might increase the likelihood of human intrusion. Congress specifically designated the Yucca Mountain site for characterization, so avoiding sites close to resources is not relevant in this instance. Further, the EnPA specifically dictates that we establish standards for the Yucca Mountain site so the intent of influencing site selection does not apply here.

We recognize that no one can accurately project the increase of protection brought by these assurance requirements. Under 40 CFR part 191, which we promulgated under the authority of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2022), NRC is exempted from the assurance requirements because it included equivalent provisions in 10 CFR part 60, the NRC regulations which implement 40 CFR part 191. The EnPA requires NRC to modify its technical requirements and criteria to be consistent with our standards for Yucca Mountain. We request comment upon whether it is appropriate for us to establish assurance requirements in 40 CFR part 197, and if so, what those requirements should be.

III.E. What Is the Standard for Human Intrusion? (Proposed § 197.25)

Previous standards and regulations for radioactive waste disposal, for example, 40 CFR part 191 for SNF and HLW and 10 CFR part 61 for LLW, included consideration of inadvertent human intrusion which could affect the release rate from, and the resultant quantity of radionuclides leaving, a disposal system.

In section 801(a)(2)(B) of the EnPA, Congress inquired about whether active institutional controls could effectively stop human intrusion into the Yucca Mountain disposal system (see Background on and Summary of the NAS Report section earlier in this notice). In its Report, NAS concluded that the answer to this question was "no" (NAS Report p. 11). The NAS reasoned that an answer of "yes" would require assumptions that active institutional controls will endure and that future generations are willing to dedicate resources for this purpose for a period longer than recorded human history. In support of its opinion, NAS stated, "that there is no scientific basis for making projections over the long term of either the social [or] institutional...status of future societies' (NAS Report p. 106).

It was NAS' opinion that human intrusion is plausible at Yucca Mountain and that the standards should, therefore, include consideration of the effects of human intrusion. In order to assess the effects of human intrusion, one must determine the probability of its occurrence sometime in the future and the consequences of that intrusion. Whether it is possible to predict the probability or frequency of human intrusion in a scientifically supportable manner was the third and final question posed by Congress in the EnPA (section 801(a)(2)(C)). The NAS concluded "that there is no technical basis for predicting either the nature or the frequency of occurrence of intrusions' and that although accurate prediction of the frequency of human intrusion is not possible, calculations can project potential consequences of assumed human-intrusion events (NAS Report p. 106). The NAS thus recommended that we assume that an intrusion will occur and that we specify an intrusion scenario for DOE and NRC to use to evaluate the "resilience" of the repository. The NAS stated: "The key performance issue is whether repository performance would be substantially degraded as a consequence of an inadvertent intrusion...." (NAS Report p. 121).

In following that recommendation, we are proposing a single-borehole intrusion scenario based upon Yucca Mountain-specific conditions. The intended purpose of analyzing this scenario "...is to examine the site-and design-related aspects of repository performance under an assumed intrusion scenario to inform a qualitative judgment" (NAS Report p. 111). The assessment would result in a calculated RMEI dose arriving through the pathway created by the assumed borehole (with no other releases included). Consistent with the NAS Report, we also are proposing "that the conditional risk as a result of the assumed intrusion scenario should be no greater than the risk levels that would be acceptable for the undisturbed-repository case" (NAS Report p. 113). We are proposing to interpret the NAS" term "undisturbed" to mean that the Yucca Mountain disposal system is not disturbed by human intrusion but could be disturbed by other processes or events which are likely to occur.

We also are proposing that the human-intrusion analysis of repository performance use the same methods and RME characteristics for the performance assessment as those required for the individual-protection standard, with two exceptions. Those exceptions are that the human-intrusion analysis would exclude unlikely natural events and that the analysis would only address the releases occurring through the borehole (see the *What Are the Requirements for Performance Assessments and Determinations of Compliance?* section earlier in this notice).

Concerning intentional intrusion, NAS concluded that: "We also considered intentional intrusion...but concluded that it makes no sense...to try to protect against the risks arising from the conscious activities of future human societies" (NAS Report p. 114). We agree with this conclusion and propose to find it acceptable to exclude long-term or deliberate, as opposed to acute and inadvertent, human disturbance of the disposal system from the human-intrusion analysis on the theory that society could retain at least some general knowledge of the disposal system and, therefore, would know that such actions could be dangerous. The proposed human-intrusion scenario, therefore, includes only an acute, inadvertent intrusion.

Description of the proposed human-intrusion scenario. To develop an appropriate scenario, we reviewed information about known resources and geologic characteristics of the Yucca Mountain site associated with past and current drilling for resources in the area surrounding Yucca Mountain that could have an effect upon the type of proposed human-intrusion scenario (see the BID). Based upon this examination, we are proposing to adopt the NAS-suggested starting point for a human-intrusion scenario. That scenario is a single, stylized intrusion through the repository to the underlying aquifer based upon current drilling practices. The proposed scenario presumes that the intrusion occurs because of exploratory drilling for water. There are a number of reasons why people in the future could be drilling within the repository area, e.g., archeological pursuits, mineral exploration, or geological investigations. However, we believe that drilling for water is, for regulatory purposes, the best example of an intrusion scenario. The choice of exploratory drilling for water is not a prediction that this type of intrusion will occur or that it will occur on the surface slopes overlying the repository but it is necessary to fulfill the NAS' consideration that a borehole "of specified diameter [is] drilled from the surface through a canister of waste to the underlying aquifer" (NAS Report p. 111). Exploratory drilling for water, using current technology, essentially fixes the diameter of the borehole and drilling from the surface necessarily places the drill rig somewhere above the repository, but not necessarily on the crest of Yucca Mountain. For purposes of determining compliance with the human-intrusion standard, DOE must calculate the CEDE incurred by the RMEI using only releases through the pathway created by the assumed borehole (with no other releases included).

Under our proposal, NRC would specify when the intrusion would occur based upon the earliest time that current technology and practices could lead to waste package penetration. However, it must not occur sooner than the cessation of active institutional controls (see the *Are There Qualitative Requirements To Help Assure Protection?* section earlier in this notice). In general, we believe that the time frame for the drilling intrusion should be within the period that a small percentage of the waste packages have failed but before significant migration of radionuclides from the engineered barrier system has occurred since, based upon our understanding of drilling practices, this would be about the earliest time that impact with a waste package would not be recognized by a driller. Our review of information about drilling and experiences of drillers indicates that special efforts, for example, changing to a specialized drill bit, would likely be necessary to penetrate intact, nondegraded waste packages of the type DOE plans to use. As stated earlier, NRC would determine the timing as part of the licensing process. The Department's waste-package performance estimates indicate that a waste package would be recognizable to a driller for at least thousands of years (see the BID).

This is consistent with NAS' example scenario (NAS Report pp. 111–112). It requires evaluation of a single, nearly vertical borehole from the surface that breaches the repository, passes through a degraded waste package, and reaches the water table. We also are proposing that careful sealing of the borehole does not occur, but that natural processes gradually modify the transport characteristics within the borehole. In determining compliance, we are proposing that it is appropriate to assume that the result is no more severe than the creation of a ground water flow path from the crest of Yucca Mountain through the repository and into the ground water table. By proposing this single-borehole, single-waste-package scenario, we are not suggesting that other forms or types of human intrusion, or that intrusion as a result of a resource other than water, will not occur. For example, we know of different drilling techniques such as slanted, horizontal, and robotic which, in theory, could result in more penetrated waste packages. However, we do not believe that more complex scenarios would provide more information about the resilience of the repository than would the proposed scenario.

We also considered use of a human-intrusion scenario consistent with that required in EPA's criteria for certifying WIPP (40 CFR part 194). These criteria required DOE to identify the rate of resource drilling in the area surrounding the WIPP for the past 100 years (approximately the period of recorded history for drilling events in the area). DOE was required to then use this drilling rate in its performance assessment to determine the number of intrusions into the repository over the 10,000-year regulatory period. We considered this approach appropriate for the WIPP facility given the considerable amount of drilling in the vicinity of the site. We chose not to propose this approach for the Yucca Mountain facility given the recommendation in the NAS Report. We request comment upon the reasonableness of the proposed human-intrusion scenario, and whether an approach similar to that used for WIPP is more appropriate.

As noted earlier, we are proposing to use the same RME descriptors for this analysis and scenario as in the assessment for compliance with the individual-protection standard. While one could postulate that an individual occupies a location above the repository footprint in the future and is impacted by radioactive material brought to the surface during an intrusion event, the level of exposure of such an individual would be independent of whether the repository performs acceptably when breached by human intrusion in the manner prescribed in the proposed scenario. Movement of waste to the surface as a result of human intrusion is an acute action with the resulting exposure being a direct consequence of that action. Thus, we propose to interpret the NAS-recommended test of "resilience" to be a longer-term test as measured by exposures caused by releases which occur gradually through the borehole, not suddenly as with direct removal. In addition, the effects of direct removal depend upon the specific parameters involved with the drilling and not upon the containment

characteristics of the disposal system. We also are proposing that the test of the resilience of the repository system be the dose incurred by the same RMEI as determined for the individual-protection standard. This is consistent with the NAS' recommendation.

We request comment upon how much the human-intrusion analysis will add to protection of public health. Also, given current drilling practice in the vicinity of Yucca Mountain, we seek comment upon whether our proposed, stylized, human-intrusion scenario is reasonable.

Time frame for the analysis. We are considering two approaches to determine how far into the future that the human-intrusion analyses will be required to project doses. In the first approach, which is proposed in §§ 197.25 and 197.26, we would require the peak dose during the first 10,000 years, as a result of human intrusion, to be less than 150 μSv/yr (15 mrem/yr). In the second approach, DOE would calculate the earliest time that the engineered barrier system would degrade sufficiently that current drilling techniques could lead to complete waste package penetration without recognition by the drillers. If that intrusion can happen within 10,000 years, then DOE must do an analysis which projects the peak dose that would occur as a result of the intrusion within 10,000 years. That dose would have to be less than 150 μSv/yr (15 mrem/yr) for the site to be licensed, considering reasonable expectation. If the undetected intrusion could not occur until after 10,000 years, then DOE would still do the analysis, however the results would not be part of the licensing process but would be included in the Yucca Mountain EIS. This approach mirrors the way that the 10,000-year and post-10,000-year analyses are proposed in the individual-protection standard. This approach has the advantage of encouraging DOE to use a robust engineered design. We request comment upon the appropriateness of using either of these alternatives.

III.F. How Will Ground Water Be Protected? (Proposed § 197.35)

Ground water is a valuable resource with many potential uses. Our proposed ground water protection standards would protect ground water that is being used or might be used as drinking water by restricting potential future contamination. Water from the aquifer which flows beneath Yucca Mountain is currently being used as a source of drinking water 20 to 30 km south of Yucca Mountain in the communities directly protected by the individual-protection standard. It is also a potential source of drinking water for more distant communities and, theoretically, could supply drinking water for several hundred thousand people. For these reasons, we believe it is a resource that needs to be protected. Therefore, we are proposing to protect the ground water to the same level as the maximum contaminant levels (MCLs) for radionuclides which we have established under the authority of the Safe Drinking Water Act (SDWA). This is also consistent with our policy for ground water protection as stated in "Protecting the Nation's Ground Water: EPA's Strategy for the 1990s" ("the Strategy," EPA 21Z–1020, July 1991). In addition to drinking water, ground water may be a source of radiation exposure when used for irrigation, stock watering, food preparation, showering, or when incorporated into various industrial processes. Ground water contamination is also of concern to us because of potential adverse impacts upon ecosystems, particularly sensitive or endangered ecosystems.

Today's proposal utilizes the current MCLs, but the MCLs might change in the final rule. The Agency recognizes that the current MCLs are based upon the best scientific knowledge regarding the relationship between radiation exposure and risk that existed in 1975 when the MCLs were developed. Scientific understanding has evolved since 1975 and we are working to update the existing MCLs based upon a number of factors, including: the current understanding of the risk of developing a fatal cancer from exposure to radiation; pertinent risk management factors, e.g., information about treatment technologies and analytical methods; and applicable statutory requirements. Particularly relevant statutory requirements, in this context, are the requirements that MCLs be set as closely as feasible to the Maximum Contaminant Level Goal (MCLG) (SDWA section 1412(b)(4)(B)) and that revised drinking water regulations provide for equivalent or greater human health protection than the regulations they replace (SDWA section 1412(b)(9)). The Agency's preliminary efforts indicate that, for the radionuclides of concern at Yucca Mountain, the concentration values for those MCLs are probably not likely to change significantly. However, if those revisions to the MCLs are finalized prior to finalization of the part 197 standards, we plan to adopt those MCLs into the final part 197 standards. If part 197 is finalized first, the MCLs being proposed today would be maintained. We believe that this approach is necessary to provide stability for NRC and DOE in the licensing process. The uncertainty involved in not knowing when a change would occur and what form that change would take could delay the licensing proceeding. We request public comment upon this approach. If you do not consider the proposed approach appropriate, please provide an alternative and rationale.

In July 1991, we issued the Strategy cited above in order to guide future EPA and State activities in ground water protection and cleanup. The Strategy presents an effective approach for protecting the Nation's ground water resources. Our policies, programs, and resource allocations reflect this approach. It guides EPA, State and local governments, and other parties in carrying out ground water protection programs. In addition, our "Final Comprehensive State Ground-Water Protection Program Guidance" provides guidance to States for establishing a coordinated approach to their ground water protection.

The key element of our ground water protection strategy is the overall goal of preventing adverse effects upon human health and the environment by protecting the environmental integrity of the Nation's ground water resources. We believe that it is important to protect ground water to ensure that the Nation's currently used and potential USDWs are preserved for present and future generations. Also, we believe that it is important to protect ground water to ensure that where it interacts with surface water it does not interfere with the attainment of surface-water-quality standards. These standards are necessary to protect human health and the integrity of ecosystems.

Our Strategy also recognizes, however, that our efforts to protect ground water must take into consideration the use, value, and vulnerability of the resource, as well as social and economic values. In carrying out our programs, we use MCLs, established under the SDWA, as reference points for water-resource protection efforts when the ground water in question is a potential source of drinking water. Pursuant to section 1412 of the SDWA, we issued the National Primary Drinking Water Regulations for contaminants in drinking water which may cause an adverse effect upon the health of persons and which are known or anticipated to occur in public water systems (see 40 CFR parts 141 and 142). These regulations specify either MCLs or treatment techniques and contain "criteria and procedures to assure a

supply of drinking water which dependably complies" with such MCLs (see SDWA § 1401). The relevant MCLs, for water containing less than 10,000 milligrams per liter (mg/L) of total dissolved solids (TDS) and assuming an ingestion rate of 2 L of water per day, are:

(1) 5 picocuries per liter (pCi/L) for combined radium-226 and radium-228;

(2) 15 pCi/L for gross alpha; and

(3) 4 mrem/yr for combined beta particle and photon radiation from man-made radionuclides.

We employ MCLs to protect ground water in numerous regulatory programs. This approach is reflected in our regulations pertaining to hazardous-waste disposal (40 CFR part 264), municipal-waste disposal (40 CFR parts 257 and 258), underground injection control (UIC) (40 CFR parts 144, 146, and 148), generic SNF, HLW, and transuranic radioactive waste disposal (40 CFR part 191), and uranium mill tailings disposal (40 CFR part 192). These Agency programs have demonstrated that such protection is scientifically and technically achievable, within the constraints applied in each of these regulations ("Progress In Ground Water Protection and Restoration," EPA 440/6–90–001).

Most ground water in the United States moves slowly, in the range of five to 50 feet per year. This means that a large amount of a contaminant can enter an aquifer and remain undetected until it affects a water well or surface-water body. Contaminants in ground water, unlike those in other environmental media like air or surface water, can move with relatively little mixing or dispersion, so concentrations can remain relatively high. Moreover, because ground water is below the Earth's surface and "out of sight," its contamination is far more difficult to monitor or remove than is contamination in air, surface water, or soil. These plumes of contaminants move slowly through aquifers and may be present for many years, sometimes for decades or longer, potentially making the resource unusable for extended periods of time. Because an individual plume may underlie only a small part of the land surface, it can be difficult to detect by aquiferwide or regional monitoring. In addition, for periods spanning thousands of years, monitoring is unlikely to continue, avoidance of the contamination may be difficult, and the area affected may become large. These factors are part of the reason that our policy emphasizes prevention of ground water pollution.

Regarding this rulemaking, NAS clearly identified the ground water pathway as one of the significant pathways of exposure in the vicinity of the Yucca Mountain site (NAS Report pp. 52 and 81). The NAS also recognized that ground water modeling for the Yucca Mountain site is complex, involving both fracture and matrix flow and, as a result, that there is uncertainty regarding which model or models to use in the analysis:

> Because of the fractured nature of the tuff aquifer below Yucca Mountain, some uncertainty exists regarding the appropriate mathematical and numerical models required to simulate advective transport....[E]ven with residual uncertainties, it should be possible to generate quantitative (possibly bounding) estimates of radionuclide travel times and spatial distributions and concentrations of plumes accessible to a potential critical group. (NAS Report p. 90)

The basis of NRC's determination of compliance with the ground-water protection standards will be DOE projections in the license application of potential future contaminant concentrations that will inevitably contain uncertainty. An important cause of uncertainty, as recognized above by NAS, is the choice of conceptual site models. To illustrate, the conceptual models used for Yucca Mountain can differ fundamentally, that is, water can be presumed to flow through either pores in the rock or conduits through the rock, such as discrete fractures or a network of fractures that may act as preferential pathways for faster ground water flow, or a combination of the two. To further complicate the situation, any of these flow scenarios, with the possible exception of flow through conduits, can occur at Yucca Mountain whether the rock is completely saturated with water or not.

We believe that adequate data and the choice of models will be critical to any compliance calculation or determination. The NAS has examined the use of ground-water flow and contaminant-transport models in regulatory applications ("Ground Water Models: Scientific and Regulatory Applications," 1990). In that report, NAS concluded that data inadequacy is an impediment to the use of unsaturated fracture flow models for Yucca Mountain. However, NAS noted that data inadequacy was also an impediment to using models that assume the pores in the rock are either saturated or unsaturated or that assume flow through fractures that are completely filled with water. However, despite the recognition of the importance of the choice of the site conceptual model, the Agency believes that the need for sufficient quantity, types, and quality of data to adequately analyze the site, because of its hydrogeologic complexity, is even more important. In other words, the complexity of the ground water flow system requires adequate site characterization to justify the choice of the conceptual flow model.

The choice of modeling approaches to address the ground water system in the area of Yucca Mountain, based upon the conceptual model of the site developed from site characterization activities, is important to characterize contaminant migration, particularly the mixing of water, contaminated with radionuclides from breached waste packages, with uncontaminated water. The extent of the dilution afforded by mixing contaminated water with other ground water moving through the rocks below the repository but above the water table and the dispersion of the plume of contamination within the saturated zone as the ground water system carries radionuclides downgradient are critical elements of the dose assessments.

At one end of a spectrum of approaches to modeling the site ground water system is the assumption that the system can be modeled based upon flow through pores over the area of total system assessments (tens of square kilometers). At the other extreme is the assumption that radionuclides are carried through fast-flow, fracture pathways in the unsaturated zone separately from uncontaminated ground water also passing through the repository footprint. Those radionuclides then are assumed to be carried through the saturated zone in fractures that allow little or no dispersion within, or mixing with, uncontaminated water in the saturated zone. This is essentially "pipe flow" from the repository to the receptor. Although the flow of ground water at the site is influenced strongly by fractures, which should be reflected in the models, we believe that it is unreasonable to assume that no mixing with uncontaminated ground water would occur along the radionuclide travel paths. We request comment upon this approach, including consideration of the practical limitations on characterizing the flow system over several or tens of square kilometers.

Our intention is to develop ground water protection standards that are implementable by NRC. In this regard, NAS indicated that quantitative estimates of ground water contamination should be possible (NAS Report p. 90). We are proposing to require DOE to project the level of radioactive contamination it expects to be in the representative volume of ground water. The representative

volume could be calculated to be in any aquifer which contains less than 10,000 mg/L of TDS and is downgradient from Yucca Mountain. By proposing this method, we intend to avoid requiring DOE and NRC to project the contamination in a small, possibly unrepresentative amount of water since we believe that this is not practical (see the discussion of "representative volume of ground water" immediately below). For example, we do not intend that NRC must consider whether a few gallons of water in a single fracture would exceed the standards. Thus, we are proposing to allow use of a larger volume of water which must, on average, meet the standards. This larger volume, the "representative volume," is discussed below.

Since the intended purpose of the engineered and natural barriers of the geologic repository is to contain radionuclides and minimize their movement into the general environment, we anticipate that radionuclide releases from the repository will not occur for long periods of time. With this in mind, we believe that ground water protection for the Yucca Mountain site should focus upon the protection of the ground water as a resource for future human use. It is the general premise of this proposal that the individual-protection standard would adequately protect those few current residents closest to the repository. The proposed ground water standards are directed to protecting the aquifer as a resource for current users, and a potential resource for larger numbers of future users either near the repository or for communities farther away comprised of as many as several hundred thousand people. To implement this conceptual approach and develop an approach for compliance determinations, we believe that the ground water standards currently used, the MCLs, should apply to public water supplies downgradient from the repository in aquifers at risk of contamination from repository releases. Applying the MCLs assures that the level of protection currently required for public water supplies elsewhere in the Nation is also maintained for future communities using the water supply downgradient from the Yucca Mountain repository.

To implement the standards in § 197.35, we are proposing that DOE use the concept of a "representative volume" of ground water in which DOE and NRC would project the concentration of radionuclides released from the Yucca Mountain disposal system for comparison against the MCLs. The representative volume will be the volume of water that would supply the annual water demands of a defined hypothetical community that could exist in the future at the point of compliance for the ground water protection standards. We believe that community size and water demand estimates should reflect the current, general lifestyles and demographics of the area, but not be rigidly constrained by current activities since any potential contamination would occur far into the future. In the area south of Yucca Mountain, the ground water is currently used for domestic purposes, commercial agriculture (for example, dairy cattle, feed crops, other crops, and fish farming), residential gardening, commercial, and municipal uses. The water resources, as reflected by estimates of current usage and aquifer yields, indicate that there is theoretically enough water to support communities of hundreds to thousands of people at the four alternative proposed locations for the point of compliance. This sets an upper bound on the size of the hypothetical community and its water demand. On the other hand, the SDWA defines the minimum size for a public water system as a system with 15 service connections or, regularly supplying at least 25 people.

For the four alternative proposed downgradient distances for the point of compliance (approximately 5, 18, 20, and 30 km from the repository), current populations vary from hundreds of persons around 30 km, to about 10 people residing at 18–20 km, to no residents at 5 km. Current projections of population growth in the area indicate increases at both the 20– and 30–km locations. Based upon current water usage, lifestyles, projections of population increases, and the potential number of people that could be supported by available ground water, there is a range of annual ground water volumes that could correspond to possible future public water system uses. While we believe that, ideally, the representative volume should be fully consistent with the protection objectives of the ground water protection strategy, we also recognize the unique features of this proposal. The extraordinary 10,000-year compliance period introduces unresolvable uncertainties that make this situation fundamentally different from the situations of clean-up or foreseeable, near-term potential contamination to which the strategy ordinarily applies. We therefore request comment upon a proposed representative ground water volume and upon possible alternatives for the size of the representative volume of ground water. These alternatives are based upon variations in possible lifestyles for residents downgradient from the repository and upon current and near-term projections of population growth and land use in the area.

The proposed representative volume is based upon a small farming community of 25 people and 255 acres of alfalfa cultivation, the current economic base in the Amargosa Valley. This approach assumes a community whose water needs include an agricultural component comparable to present water usage in the vicinity of the repository. The size of the average area of alfalfa cultivation, 255 acres, is based upon site-specific information for the nine alfalfa-growing operations which range in size from about 65 acres to about 800 acres. Using a water demand for alfalfa farming in Amargosa Valley of 5 acre-feet per acre per year, we estimate the water demand for the average operation to be 1275 acre-feet per year. As discussed below, it is appropriate to add 10 acre-feet per year for domestic uses resulting in 1285 acre-feet per year.

We request comment upon whether this approach is the most appropriate representative volume of ground water, or whether other values within the ranges discussed below are more appropriate. We believe that there may be significant technical, policy, or practical obstacles with the use of either very small or very large water volumes.

We considered using volumes of 10 and 120 acre-feet per year. Although the character of ground water movement in the saturated zone makes it progressively more difficult to model smaller volume flow, we are interested in comment upon the use of and whether, or how, it would be practical and feasible, using scientifically defensible methods, for the Commission to determine compliance with an alternative which specifies smaller representative volumes, such as 10 acre-feet and 120 acre-feet per year. A volume of 10 acre-feet would be representative of the annual water use of a non-farming family of four with average domestic water usage, including a garden. This is also the lower bound for the amount of water that would be used through 15 connections serving at least 25 persons in a public water supply, as defined in the SDWA. As mentioned in earlier discussions regarding the nature of ground water flow in fractured rocks, modeling the flow of ground water and the movement of contaminants involves significant uncertainties in the exact quantitative relationship between ground water movement in fractures versus its movement in the rock pore spaces. Modeling these processes, of necessity, requires simplifying assumptions and approximations that lower the level of confidence that can be attached to estimating contaminant concentrations in progressively smaller volumes of ground water. From our understanding of the complexity of the flow system at Yucca Mountain and the surrounding area, and the uncertainties involved in modeling it, a small representative volume such as 10 acre-feet would be difficult to model with a sufficient degree of certainty for regulatory confidence. The Agency, of course, wants the size of the representative volume used in compliance calculations to be scientifically defensible in order to provide the public a reasonable certainty of their accuracy.

An annual water demand of 120 acre-feet assumes a community of 150 persons and is based upon current water use data for the area. This population estimate is based upon recent population increases in the area and 20-year projections of land use at the 20-km location, as described in county planning documents. In such a scenario, it would be important for commenters to look at whether it is appropriate to assume this community would have an agriculture component, or whether a primarily residential community is more appropriate.

We also considered using a volume of 4,000 acre-feet which would be representative of the estimated perennial yield of the Jackass Flats hydrographic sub-basin in which the proposed Yucca Mountain repository is located. This volume represents the annual sustainable quantity of water which could be removed from this sub-basin without significantly decreasing the subsequent water yield and quality in the future. This volume is not directly linked to any specific use, but rather is included as representative of the volume of the water resource for potential future, large-scale, sustainable ground water use.

As already stated, we believe that there may be significant technical, policy, or practical obstacles that preclude the use of such a large volume. Releases from the repository will migrate downward and into the saturated zone where the contaminated ground water will move generally southward. The Jackass Flats sub-basin covers a large area, most of which is east of the repository site and not in the path of ground water flow from the repository. The Agency did not include this alternative in the rule since the use of 4,000 acre-feet would result in a contaminant estimate based upon dilution by a large volume of unaffected water. We are requesting comment upon the use of 4,000 acre-feet as the basis for the Commission to determine compliance with an alternative which specifies this volume as representative of the ground water resource.

To implement these options, the Department would project the radionuclide concentration in the representative volume or the resultant doses, for the option selected, and compare them against the appropriate MCLs. For these calculations, the movement of radionuclides released from the repository must be calculated as they move downgradient toward the compliance point. For the purpose of demonstrating compliance with the ground water protection standards, we intend for DOE and NRC to use the performance assessments to determine compliance with the individual-protection standard to calculate the concentration of radionuclides in the ground water.

There are two basic approaches between which DOE must choose for calculating the concentrations of radionuclides at the point of compliance. The Department may perform this analysis by determining how much contamination is in: (1) a "well-capture zone"; or (2) a "slice of the plume." (These approaches are explained immediately below.) For either approach, the volume of water used in the calculations is equal to the representative volume, i.e., the annual water demand for the proposed future group using the ground water.

The "well-capture zone" is the volume from which a water supply well, pumping at a defined rate, is withdrawing water from an aquifer. The dimensions of the well-capture zone are determined by the pumping rate in combination with aquifer characteristics assumed for calculations, such as hydraulic conductivity, gradient, and the screened interval. If this approach is used, DOE must assume that the:

(1) Well has characteristics consistent with public water supply wells in Amargosa Valley, for example, well bore size and length of the screened interval;

(2) Screened interval is centered at the highest concentration in the plume of contamination at the point of compliance; and

(3) Pumping rate is set to produce an annual withdrawal equal to the representative volume.

To include an appropriate measure of conservatism in the compliance calculations for the well withdrawal approach, we are proposing that, for the purpose of the analysis, DOE should assume that the community water demand would be supplied from one pumping well located in the center of any projected plume of contamination originating in the repository. Conservatism is achieved by requiring that the entire water demand is withdrawn from one well intercepting the center of the plume of contamination so that the highest radionuclide concentrations in the plume are included in the volume used for the compliance calculations.

The "slice of the plume" is a cross-section of the plume of contamination centered at the point of compliance with sufficient thickness parallel to the prevalent flow of the plume such that it contains the representative volume. If DOE uses this approach, it must:

(1) Propose to NRC, for its approval, where the edge of the plume of contamination occurs, for example; where the concentration of radionuclides reaches 0.1% of the level of the highest concentration at the point of compliance;

(2) Assume that the slice of the plume is perpendicular to the prevalent direction of flow of the aquifer; and

(3) Set the volume of ground water contained within the slice of the plume equal to the representative volume.

In both alternatives, we are proposing that DOE must determine the physical dimensions and orientation of the representative volume during the licensing process, subject to approval by the Commission. Factors that would go into determining the orientation of the representative volume would include hydrologic characteristics of the aquifer and the well.

Under our proposal, the Department must demonstrate compliance with the proposed ground water protection standards (§ 197.35) assuming undisturbed performance of the disposal system. The term "undisturbed performance" means that human intrusion or the occurrence of unlikely, disruptive, natural processes and events do not disturb the disposal system. This approach recognizes that human behavior is difficult to predict and, if human intrusion occurs, that individuals may be exposed to radiation doses that would be more attributable to human actions than to the quality of repository siting and design (NAS Report p. 11). The requirement that DOE project performance for comparison with the ground water protection standards based upon undisturbed-performance scenarios is consistent with our generally applicable standards for SNF, HLW, and transuranic waste in 40 CFR part 191 (58 FR 66402,

December 20, 1993; 50 FR 38073 and 38078, September 19, 1985).

We also are proposing to require that DOE combine certain estimated releases from the Yucca Mountain disposal system with the pre-existing naturally occurring or man-made radionuclides to determine the concentration in the representative volume (see Table 1 in the *What Should the Level of Protection Be?* section earlier in this notice for particular cases). This means that the releases of radionuclides from radioactive material in the Yucca Mountain disposal system must not be allowed to cause the projected level of radioactivity at the point of compliance to exceed the limits in § 197.35 with reasonable expectation.

We request public comment upon these approaches. Comments also are requested upon whether it is desirable and appropriate for us to provide more quantitative requirements for the proposed representative volume in the final standards. If so, please provide specifics.

III.F.1. Is the Storage or Disposal of Radioactive Material in the Yucca Mountain Repository Underground Injection?

We first addressed the issue of whether the disposal of radioactive waste in geologic repositories might be considered a form of underground injection in a rulemaking to amend 40 CFR part 191. In the preamble to the final amendments (58 FR 66398), we stated that it was unnecessary to address whether the disposal of radioactive waste in a geologic repository covered under 40 CFR part 191 constitutes underground injection under the SDWA since the ground water protection requirements in 40 CFR part 191 conformed with the MCLs. We also noted that in *NRDC* v. *EPA*, 824 F.2d at 1270–71, the First Circuit Court of Appeals itself did not resolve the underground injection issue. The Court stated only that disposal in geologic repositories would "likely" constitute underground injection. Also, in the preamble to the 40 CFR part 191 amendments, we reviewed the SDWA, its legislative history, and the regulations governing the UIC program. We concluded that the underground disposal of containerized radioactive waste in geologic repositories subject to 40 CFR part 191 does not constitute underground injection within the meaning of the SDWA or our regulations governing the UIC program (58 FR 66398, 66408–66411, December 20, 1993). Similarly, in the present rulemaking, we propose to find that the storage or disposal of containerized radioactive waste in Yucca Mountain does not constitute underground injection.

Section 1421 of the SDWA defines "underground injection" as "the subsurface emplacement of fluids by well injection." 42 U.S.C. 300h(d)(1). The statute defines neither "fluids" nor "well injection." Moreover, neither the statute nor the legislative history directly addresses whether the underground storage or disposal of containerized radioactive waste constitutes the "subsurface emplacement of fluids by well injection." Even though the legislative history states, "[t]he definition of 'underground injection' is intended to be broad enough to cover any contaminant which may be put below ground level and which flows or moves, whether the contaminant is in semi-solid, liquid, sludge, or any other form or state," (H.R. Rep. No. 1185, 93d Cong., 2d Sess. 31 (1974)), it does not specifically address whether the underground storage or disposal of containerized radioactive waste in a geologic repository, such as Yucca Mountain, constitutes the "subsurface emplacement of fluids by well injection."

In this rulemaking, we are proposing to conclude that the underground storage or disposal of containerized radioactive waste in the Yucca Mountain repository does not constitute underground injection both because the materials to be emplaced are not "fluids" and because the mode of emplacement of these materials is not "well injection." We do not consider the type of containerized radioactive wastes covered under today's proposal to be "fluids." Instead, DOE plans for the wastes to consist entirely of solid materials and to be enclosed in thick metal waste packages. We do not believe that the SDWA's reference to "subsurface emplacement of fluids" was intended to address the subsurface storage or disposal of solid, containerized materials. As noted above, neither the statute nor the legislative history specifically address the subsurface emplacement of containerized materials or solids. On the other hand, the legislative history does address the injection of liquid materials that flow or move at the time they are emplaced into the ground. For example, in floor debate, Sen. Domenici stated that "the [UIC] regulations would cover all types of injection wells from industrial and nuclear disposal wells, oil and gas injection wells, solution mining wells or any hole in the ground designed for the purpose of injecting water or other fluids below the surface" (see 126 Cong. Rec. 30189, November 19, 1980, remarks of Sen. Domenici). Indeed, in amending the SDWA in 1985, Congress stated "underground injection is the process of forcing liquids underground through a well." H.R. Rep. No. 168, 99th Cong., 1st Sess. 30 (1985). Moreover, it is clear from the legislative history of the SDWA that Congress intended to ratify EPA's policy regarding deep-well injection contained in Administrator's Decision Statement #5, entitled "Subsurface Emplacement of Fluids," (39 FR 12922, April 2, 1974, H.R. Rep. No. 1185, 93rd Cong., 2d Sess. 31–32 (1974)). Administrator's Decision Statement #5 contains parameters for well injection including, among other things, data requirements for volume, rate, and injection pressure of the fluid; degree of fluid saturation; and formation and fluid pressure (39 FR 12923, April 9, 1974). Like the legislative history itself, the policy does not mention the subsurface emplacement of containerized radioactive wastes, but it does address the injection of noncontainerized liquids as an object of regulatory concern.

The legislative history of the SDWA indicates that Congress was concerned about contamination of ground water from a variety of sources of noncontainerized liquids and sludges. Quoting from a U.S. Department of Health, Education and Welfare report entitled "Human Health and the Environment—Some Research Needs," Representative Rogers noted in floor debate that ground water pollution was rapidly increasing from sources including ". . . waste water sludges and effluents . . . mine drainage, subsurface disposal of oil-field brines, seepage from septic tanks and storage transmission facilities, and individual on-site waste-water disposal systems." (123 Cong. Rec. 22460 (July 12, 1977)). Later in 1985, Congress made clear its intent that there would be early detection of fluid migration into or in the direction of a USDW (H.R. Rep. No. 168, 99th Cong., 1st Sess. 30 (1985)). Again, there is no mention that Congress intended that the SDWA cover the subsurface emplacement of containerized radioactive wastes.

Reflecting this statutory approach, our UIC regulations similarly do not treat containerized radioactive wastes as fluids or liquids for the purpose of control under the UIC program. Our regulations at 40 CFR 146.3 define "fluid" as "material or substance which flows or moves whether in a semisolid, liquid, sludge, gas, or any other form or state." In adopting this regulatory definition of fluid, we did not consider the emplacement of containerized radioactive wastes into geologic repositories to be fluids subject to the UIC regulations. There is no mention of this activity in the preambles to the proposed or final UIC regulations. On the contrary, the fluids regulated by our UIC program include: (1) Brines from oil and gas production; (2) hazardous and industrial waste waters; (3) liquid hydrocarbons (gasoline, crude petroleum, and others); (4) solution mining fluids from uranium, sulfur, and salt solution mining; and (5) sewage and treated effluent (40 CFR 144.6). All of these materials can flow or move at the time they are emplaced into the ground. There is no indication of any intention to cover containerized materials as fluids under the UIC regulations.

Finally, we have never interpreted our UIC regulations to include the subsurface emplacement of containerized wastes or solid materials that do not flow or move. As explained in greater detail below, we have stated instead that placement of containerized hazardous waste in geologic repositories such as underground salt formations, mines, or caves, is regulated under Subtitle C of the RCRA hazardous waste program. Subtitle D of RCRA regulates the disposal of containerized, nonhazardous wastes pursuant to the regulatory provisions at 40 CFR 257.1. Today's proposed standards for Yucca Mountain regulate the emplacement and disposal of containerized radioactive wastes including SNF and HLW.

In *NRDC* v. *EPA*, 824 F.2d 1258, the First Circuit was concerned that radiation itself might be considered a fluid within the meaning of the SDWA and EPA's UIC regulations (40 CFR 146.3). We believe that radiation itself does not meet the UIC regulatory or statutory definition of "fluid." Radioactivity is a specific characteristic of the radionuclides in the waste but does not define the form of the waste. Also, radioactivity results in the emission of ionizing radiation in the form of electromagnetic energy or subatomic particles. Electromagnetic radiation is a form of energy, not a "material or substance." Hence, it is not a "fluid." Subatomic particles, such as alpha and beta particles, will be absorbed in either the waste or the container and, therefore, not travel beyond the container, or will travel very short distances, perhaps a few inches. In any event, as set forth above, we believe that since the activity at the Yucca Mountain repository will consist of the emplacement of containers of radioactive wastes underground, this activity is emplacement of solid materials, not "fluids." Even though these materials might eventually disintegrate or dissolve and release some radiation, liquids, or gases, the activity in question still consists of emplacement of containers and solid materials that will not flow or move at the time of emplacement underground.

Moreover, we do not consider the emplacement into the Yucca Mountain repository of containerized and solid wastes that do not flow or move to be subsurface emplacement "by well injection." At the Yucca Mountain repository as currently conceived, a rail car will be used to carry the containerized waste into the repository. The waste containers then will be emplaced in drifts mined into the geologic formation. Once enough containers are accumulated, each drift will be closed. Closure of the disposal system will occur when all of the openings into the repository have been backfilled and all entrance ramps sealed.

Our UIC regulations define "well injection" as "subsurface emplacement of fluids through a bored, drilled or driven well; or through a dug well, where the depth of the dug well is greater than the largest surface dimension" (40 CFR 146.3). The regulations define a "well" as "a bored, drilled or driven shaft, or a dug hole, whose depth is greater than the largest surface dimension" (Id.). Although movement of the materials underground in the Yucca Mountain repository will involve waste handling, it will be drifts, that is, tunnels, through which containerized solid materials are transported and emplaced, not "wells" into which fluids are being "injected" within the meaning and intent of the SDWA or our UIC regulations. In addition, the overall configuration of the repository is far different from that of a "drilled," "driven," or "dug" injection well.

We noted in the preamble to the proposed UIC rules setting forth the definitions of "well" and "well injection" that the definitions cover not only "conventional" deep wells, but also drilled, bored, and driven wells. Dug wells and non-residential septic tanks also fall under the term. We further stated, however, that "although the definition is broad, it is not without limitation." (44 FR 23738, 23740, April 20, 1979) For example, we stated that the term does not cover simple depressions in the land or single-family domestic cesspools or septic systems, nor does it cover surface impoundments (Id.). Although we had been concerned initially about whether the UIC regulations should impose conditions upon surface impoundments, generally referred to as "pits, ponds, and lagoons," since they pose a threat to ground water, we noted that standards to control such contamination are under the RCRA hazardous-waste management program (44 FR 23740, April 20, 1979). Thus, we recognized that there are some disposal practices that might contaminate ground water that would not be covered under the UIC program.

Similarly, we do not believe that the UIC program should cover emplacement of containerized waste by way of a drift. Such emplacement is in no way similar to the pressurized or gravity-driven flow of fluids, liquids, or sludges injected into a well that has been the traditional focus of the UIC program (for example, 41 FR 36726, 36732, August 31, 1976). Even Class-V wells, a general category of injection wells, are not used for the disposal of containerized waste. Class V covers the subsurface emplacement of fluids, usually by gravity-driven flow, into the injection well. Although Class-V wells include some types of wells that traditionally might not be thought of as injection wells, for example, septic systems, all of the well types involve the emplacement of noncontainerized fluids into drilled, bored, dug, or driven wells, typically through gravity-driven flow rather than pressurized flow.

We specifically addressed the status of containerized waste under RCRA and SDWA in the preamble to the final rule promulgating standards for miscellaneous units used for the disposal of hazardous wastes under subpart X of the RCRA regulations (40 CFR part 264). In the preamble to the final rule, we stated: "Placement of containerized hazardous waste or bulk non-liquid hazardous waste in geologic repositories such as underground salt formations, mines, or caves, either for the purpose of disposal or long-term retrievable storage, is included under subpart X" (52 FR 46946, 46952, December 10, 1987).

We promulgated the subpart X regulations to address hazardous-waste management technologies not covered under 40 CFR part 264 (RCRA regulations for the disposal of hazardous waste) or 40 CFR part 146 (UIC program technical criteria and standards). As we indicated in the preamble to the subpart X regulations, the 40 CFR part 146 technical standards do not address practices other than the injection of noncontainerized liquids, slurries, and sludges, and do not fully address some potential disposal or storage practices that may fall under our regulatory definition of well injection (52 FR 46946, 46953, December 10, 1987). In the subpart X rule, we provided that, to the extent that miscellaneous disposal practices subject to subpart X might be

underground injection, a subpart X permit would constitute a UIC permit for well injection of hazardous waste for which current 40 CFR part 146 technical standards are not generally appropriate. We stated, however, that we were not "specifying that these miscellaneous management practices constitute underground injection" (Id.).

Thus, we have never expressed an intent that the disposal of containerized waste, including containerized radioactive waste, in geologic repositories is an activity covered by the UIC program. Instead, injection wells have been described as "facilities [within] which wastes, in a fluid (usually liquid) state, are injected into the land under a pressure head greater than the pressure head of the ground water into or above which they are injected for the purpose of disposal. Discharge to the ground water is either direct or by direct seepage of leachate from the well outlet (46 FR 11126, 11137–38, February 5, 1981).

Moreover, we have never intended for the regulatory criteria and standards applicable to underground injection, contained in 40 CFR parts 144 and 146, to apply to a geologic repository such as Yucca Mountain. The concepts of area of review, pressure buildup and pressure monitoring, restrictions upon injection pressure, other operating requirements, and mechanical-integrity testing of injection wells, that are included in the 40 CFR part 146 regulations, are meaningless as applied to Yucca Mountain. Further, as noted above, the Yucca Mountain disposal system will have mined containment areas in which humans operate mechanical equipment to emplace waste packaged in containers surrounded by both engineered and natural barriers designed to isolate such waste from the environment. The UIC regulations are directed at injection of fluids by pressure or gravity flow where they are then in direct contact with the natural, underground media; this activity is far different, from an engineering perspective, than the subsurface emplacement of containerized wastes planned for Yucca Mountain.

Finally, as explained below, we are proposing specific ground water protection standards, in addition to other public health and safety standards, to protect ground water resources in the vicinity of Yucca Mountain. We believe these standards are adequate to protect public health and the environment from the radiation exposure resulting from releases following the emplacement of these containerized radioactive wastes into the Yucca Mountain disposal system. Thus, it is not necessary to expand the scope of the UIC program to cover this activity.

III.F.2. Does the Class-IV Well Ban Apply?

Today's action provides protection, with one possible exception, substantively similar to the SDWA through the proposed adoption of the MCLs to protect ground water resources in the vicinity of Yucca Mountain (proposed § 197.35). The possible exception relates to the provision of 40 CFR 144.13 banning "Class IV" injection wells. As defined in 40 CFR 144.6(d), such wells include those which dispose of radioactive waste into or above a formation which contains a USDW within one-quarter (¼) mile of the well. In the preamble to the amendments to 40 CFR part 191 (58 FR 66398, 66410, December 20, 1993), we said we would further consider the Class-IV well-ban issue in the context of the Yucca Mountain rulemaking. We have done so and are proposing in this rulemaking not to apply the Class-IV injection-well ban to the Yucca Mountain repository. Our position is that this is appropriate in light of the statutory and regulatory provisions, discussed above, relating to "underground injection" and the differences in the purposes of the UIC program and the authority delegated to us under the EnPA to establish public health and safety standards for Yucca Mountain.

The UIC regulations mandate minimum requirements for State programs to prevent underground injection which endangers USDWs, while the 40 CFR part 197 standards proposed for Yucca Mountain are directed toward protecting ground water in the accessible environment in the vicinity of the Yucca Mountain site and establish requirements for performance of the Yucca Mountain disposal system. As discussed below, we believe that the proposed standards for the Yucca Mountain disposal system achieve public health and environmental protections comparable to those of the UIC program. Moreover, as discussed above, we do not believe that the emplacement of radioactive waste in the Yucca Mountain disposal system is a form of underground injection. Therefore, we are proposing to find that the Class-IV well ban does not apply to, and is not needed, in the case of the Yucca Mountain disposal system.

It is important to emphasize that our proposed decision not to apply the Class-IV well ban to Yucca Mountain does not affect other disposal systems that dispose of hazardous or radioactive waste into or above a formation which, within one-quarter (¼) mile of the disposal system, contains a USDW. We are basing today's proposal upon site- and facility-specific characteristics of the Yucca Mountain repository, and today's proposal is limited to the Yucca Mountain repository.

The Class-IV well ban is part of the UIC program and is recognized in section 3020 of RCRA. As explained previously, the UIC program addresses "well injection" in the common-sense meaning of that term. In contrast, the proposed 40 CFR part 197 regulations address emplacement of radioactive wastes into a uniquely designed and utilized facility. The Yucca Mountain disposal system is planned to be subjected to extremely sophisticated site characterization, design, engineering, containerization, and operational requirements. Given such intense scrutiny, applying a blunt instrument akin to the Class-IV well ban as a siting prohibition appears to be both unnecessarily restrictive and a poor substitute for more sophisticated site characterization studies that may preclude siting of a disposal facility for reasons other than those embodied in the Class-IV restriction. Further, if Congress intended that the Yucca Mountain disposal system be subject to and summarily precluded by the Class-IV well ban, we seriously question whether Congress would have specifically directed us, under the EnPA, to establish public health and safety standards for Yucca Mountain.

Previously, we explained our proposed conclusion that emplacement of radioactive material into the Yucca Mountain disposal system is not underground injection. The materials to be disposed are solid, containerized radioactive wastes emplaced in a mined containment system in which humans operate heavy mechanical equipment. Such emplacement and such materials do not fall under the intent or meaning of the UIC concepts or programs, or more specifically, the Class-IV well ban at 40 CFR 144.13, but are judged more appropriately by the standards mandated by Congress under the EnPA specifically for Yucca Mountain. Further, the ground water protection alternatives presented in today's proposal provide protections very comparable to those under the UIC program.

Taken together, we believe these distinctions are sufficient to justify nonapplicability of the Class-IV well ban under the SDWA. We request comment upon our position that application of the UIC Class-IV well ban is neither legally required nor appropriate for the Yucca Mountain disposal system. Further, we will not address in this rulemaking the relevance of the Class-IV well ban to underground repositories generally.

III.F.3. Which Ground Water Should Be Protected?

Although we propose to find that the Yucca Mountain disposal system is not a form of underground injection in the context of the SDWA, we nevertheless consider the ground water protection principles embodied in the SDWA to be important. Therefore, while not applying all aspects of the SDWA, we are proposing ground water protection standards consistent with the levels of the radionuclide MCLs.

We request public comment upon the proposal and the other approaches, described below, that are designed to protect ground water resources in the vicinity of the repository. We are concerned that ground water resources in the vicinity of Yucca Mountain receive adequate protection from radioactive contamination. The primary purpose of our proposed standards is to prevent contamination of drinking-water resources. (Since the proposed compliance period is 10,000 years after disposal, references to levels of contamination mean those levels projected to exist at specific future times, unless otherwise noted. However, these projections will be made at the time of licensing.) This prevents placing the burden upon future generations to decontaminate that water by implementing expensive clean-up or treatment procedures. We believe it is prudent to protect drinking water from contamination through prevention rather than to rely upon clean-up afterwards. The cost to remediate the effects of radionuclides released from a geologic disposal system, such as Yucca Mountain, could far exceed the costs typically associated with near-surface Superfund sites. Moreover, absent this protection through prevention, the disposal system itself could become subject to clean-up by future generations. Thus, our proposed ground water protection standards stress pollution prevention and provide protection from contamination of sources of drinking water containing up to 10,000 mg/L of TDS. We emphasize that all ground water pathways, including drinking water, are also covered under the proposed individual-protection standard (§ 197.20).

The definition of USDW received extensive discussion in the legislative history of the SDWA as reflected in the report of the House Committee on Interstate and Foreign Commerce. To guide the Agency, the Committee Report suggested inclusion of aquifers with fewer than 10,000 mg/L of TDS (H.R. Rep. No. 1185, 93d Cong., 2d Sess. 32, 1974). We have reviewed the current information on the use of aquifers for drinking water which contain high levels of TDS. This review found that ground water containing up to 3,000 mg/L of TDS that is treated is in widespread use in the U.S. In the Yucca Mountain vicinity, with few exceptions (one being the Franklin Playa area), ground water contains less than 1,000 mg/L of TDS. Our review also found that ground water elsewhere in the Nation, containing as much as 9,000 mg/L of TDS, currently supplies public water systems. Based upon this review and the legislative history of the SDWA, we are proposing that it is reasonable to protect the aquifers potentially affected by releases from the Yucca Mountain disposal system. Therefore, the provisions found in proposed § 197.35 would apply to all aquifers, or their portions, containing less than 10,000 mg/L of TDS. The proposed definitions associated with § 197.35 are taken directly from our UIC regulations found in 40 CFR parts 144–146.

III.F.4. How Far Into the Future Should Compliance Be Projected?

We are proposing a 10,000-year compliance period for ground water protection. This is consistent with the 10,000-year compliance period we are proposing for the individual-protection standard and, therefore, provides internal consistency within the proposed standards. This time period would also make the ground water protection compliance period consistent with 40 CFR part 191. Consistency also is achieved with regulations covering long-lived chemically hazardous wastes which present potential health risks similar to those from radioactive waste.

In addition to trying to achieve consistency with our other hazardous and radioactive-waste programs, we are concerned about the uncertainty associated with projecting radiation doses over periods longer than 10,000 years. The NAS indicated that beyond 10,000 years uncertainty will likely continue to increase (NAS Report p. 72). As a result, it will become increasingly difficult to discern a difference between the radiation dose from drinking water containing radionuclides (limited by the MCLs) and the total dose arriving through all pathways (which is limited by the individual-protection standard).

In fact, we considered incorporating a compliance period of time-to-peak concentration within the geologic stability of the site. However, this approach may be unworkable and duplicative of the requirements already promulgated in the MCLs. The current MCLs for radionuclides are expressed both in terms of radiation dose and concentration. For man-made beta and photon emitters, the MCL is a dose limit of 4 mrem/yr, with specific instructions for determining radionuclide-specific concentrations corresponding to that dose (40 CFR part 141.16(b)). For radium-226 (^{226}Ra) and ^{228}Ra combined, the MCL is a concentration level of 5 pCi/L of water, while for gross-alpha activity (including ^{226}Ra but excluding radon and uranium), the MCL is a concentration level of 15 pCi/L (40 CFR 141.15(a) and 141.15(b), respectively).

The Yucca Mountain disposal system will contain all of these types of radionuclides. To express a regulatory limit for ground water protection in terms of a single limit on peak concentration may be impractical because of the separate, multiple, and distinct MCLs established by regulation. Although the gross-alpha limit is set at 15 pCi/L to limit lifetime cancer risk to about 1×10^{-4}, the concentrations of specific alpha-emitting radionuclides corresponding to this risk level may vary widely. For various thorium isotopes, concentrations of 50 to 125 pCi/L are equivalent to this risk, while for either neptunium-237 or plutonium-238, a concentration of 7 pCi/L corresponds to a lifetime cancer risk of 1×10^{-4} (56 FR 33050, 33121, July 18, 1991). To develop a limit on the peak concentration for each radionuclide would be unwieldy, because of the large number of radionuclides involved. To establish a single, overall, limiting peak concentration applicable to all radionuclides would be, at best, an approximation of the public-health protection already embodied in the MCLs. For these reasons, we are concerned that expressing ground water protection requirements in terms of a single, peak concentration or numerous radionuclide-specific limits is not appropriate.

We request comment upon our proposal to impose the ground water protection standards during the first 10,000 years following disposal and whether we should, instead, adopt a compliance period of time-to-peak concentration (see the *How Far Into the Future Should Compliance Be Projected?* section earlier in this notice for a discussion of time-to-peak-dose compliance period which is the basis of this concept). Commenters recommending the time-to-peak-concentration approach should address our concerns, particularly those related to implementability, as expressed above.

III.F.5. How Will the Point of Compliance Be Identified?

To provide a basis for determining projected compliance with § 197.35, it is necessary to establish a geographic location where DOE must project the concentrations of radionuclides in the ground water over the compliance period. We refer to this location as the "point of compliance."

In this section, we will discuss two alternative approaches for determining the location of the point of compliance. In the final rule, we will specify the location to be used by NRC and DOE as the point of compliance. One approach (used in Alternatives 1 and 4) would establish the maximum size for an area around the repository (that is, a "controlled area") which would be exempt from the ground water protection standards. In demonstrating compliance, the Department would choose the point on the area's boundary located above the primary ground water flow pathway and where the highest concentrations of radionuclides are expected to be found. Under the second approach (used in Alternatives 2 and 3), we would specify a specific geographic location where we believe the primary ground water flow pathway and the highest concentrations of radionuclides will be. If the Department's improved knowledge of ground water flow direction changes the expected location of the highest concentrations of radionuclides, DOE must propose that location to NRC as an alternative point of compliance. This new point of compliance, however, must be at the same distance from the repository as the originally promulgated point of compliance. As discussed below, DOE must obtain the approval of the Commission prior to using the alternative point for demonstrating compliance.

Under the "controlled area" approach of Alternatives 1 and 4, the standards would designate an area within which DOE would not have to demonstrate compliance with the ground water protection standards. These standards would apply outside of that area. Under this approach, we are proposing that the Department would have to determine the point on the boundary of the controlled area where the highest projected concentrations of radionuclides will occur. That location would become the point of compliance. In effect, a certain volume of the geologic medium would be dedicated to delaying or keeping releases from the waste within the controlled area and away from the accessible environment. We adopted a generic definition of controlled area in 40 CFR part 191. The definition of controlled area for this rulemaking could take into account unique features in the vicinity of the Yucca Mountain site or we could adopt the definition from part 191. An alternative for each definition is presented and discussed below.

Not applying the ground water protection standards inside a controlled area is consistent with the approach in 40 CFR Part 191 in which the natural geologic barriers surrounding radioactive-waste repositories are a part of the disposal system and may be dedicated for this purpose (50 FR 38066, 38077, September 19, 1985). We implemented this concept in 40 CFR part 191 by requiring compliance with ground water standards outside of the controlled area. This concept was upheld by the First Circuit in *NRDC* v. *EPA*, 824 F.2d at 1272–73 & 1277–79. The court reasoned that allowing for contamination of some area surrounding a geologic repository was consistent with the site-selection provisions of the NWPA and that Congress expected DOE to rely upon geologic barriers and, therefore, "knew of the inevitability of some contamination of ground water in the immediate area of the stored waste." *NRDC* v. *EPA*, 824 F.2d at 1278.

For Yucca Mountain, the EnPA also generally follows the approach of dedicating some portion of the surrounding geology for containment and requiring compliance in the accessible environment outside of such an area. For example, section 801(a)(1) of the EnPA specifically uses the term "accessible environment" (that is, outside of the controlled area) when calling for us to prescribe standards for "releases to the accessible environment from radioactive materials stored or disposed of in the repository." The EnPA also specifically incorporates the definition from 40 CFR part 191 in its direction to NAS to address whether a health-based standard based upon doses to individual members of the public "from releases to the accessible environment (as that term is defined in the regulations in subpart B of part 191 of title 40, Code of Federal Regulations, as in effect on November 18, 1985)" will provide a reasonable standard for protection of the general public.

The second approach (Alternatives 2 and 3) for establishing a point of compliance is the identification of a specific location where DOE must project the concentration of radionuclides. Rather than designating a "controlled area," under this approach we would specify a specific point as the point of compliance. This approach relies upon current knowledge of the ground water flow system in the region around Yucca Mountain with a realization that more information may be available to DOE and NRC at the time of licensing. Therefore, if this approach is the one we adopt in the final standard, it is important to explain our current understanding of ground water flow in the area and to establish a mechanism which allows flexibility for selecting an alternative point of compliance during licensing if the current conceptual model proves no longer valid at the time of licensing. Despite the fact that a particular point would be designated, please note that this approach would allow radioactive contamination in the path of the plume of contamination between the repository footprint and the point of compliance. In fact, the intervening area could contain ground water which is contaminated above the ground water protection standards. However, with this approach, those standards could not be exceeded at or beyond the point of compliance during the proposed 10,000-year compliance period.

Our understanding, based upon current knowledge, of the flow of ground water passing under Yucca Mountain is as follows. The general direction of ground water movement in the aquifers under Yucca Mountain is south and southwest. The major aquifers along the flow path are in tuff, alluvium, and, underlying both of these, much deeper carbonate rocks. At the edge of the repository, even the tuff aquifer is relatively (several hundred meters) deep. It gets closer to the surface as it moves toward its natural discharge points. Potential releases of radionuclides from the engineered barrier system into the surrounding rocks would be highly directional and would reflect the orientation of fractures, rock unit contacts, and ground water flow in the area downgradient from Yucca Mountain. Directly under the repository, we anticipate that any waterborne releases of radionuclides will move through the unsaturated zone and downward into the tuff aquifer, in an easterly direction, between layers of rocks which slant to the east, and then horizontally. The layer of tuff gradually thins proceeding south (downgradient) from Yucca Mountain. As the tuff thins, the overlying alluvium becomes thicker until the tuff disappears and the water in the aquifer moves into the alluvium to become the "alluvial aquifer." Along the flow path, there might be movement of water between the carbonate aquifer and either the tuff or alluvial aquifers. If there is significant upward flow from the carbonate aquifer, contamination in overlying aquifers could be diluted. It is generally believed, however, that any such flow would not significantly affect the concentration of radionuclides in the overlying aquifers. Conversely, downward movement of ground water from the tuff aquifer could contaminate the carbonate aquifer. Today, most of the water for human use is withdrawn between 20 and 30 km away from the repository footprint (that is, at Lathrop Wells and farther south through the Town of Amargosa Valley) where it is more easily and economically accessed for agricultural use and human consumption. It is likely that water within the alluvial aquifer is the source of this water.

Another basis of our understanding is the historical record of water use in the region. That record indicates that significant, long-term human habitation has not occurred in the southwestern area of the NTS, or for that matter anywhere in the vicinity of Yucca Mountain, except where ground water is very easily accessible, for example, in Ash Meadows. This observation coincides with current practice whereby the number of wells generally decreases relative to the greater depth to ground water. The difficulty in accessing ground water in the tuff aquifer in the near vicinity of Yucca Mountain is made more difficult by the rough terrain, the relative hardness of the tuff formations containing the aquifer, and the great depth to ground water there. As described earlier, the ground water flow from under Yucca Mountain is thought to be generally south and southwest. In those directions, the ground water gets progressively closer to the Earth's surface the farther away it gets from Yucca Mountain until it is thought to discharge to surface areas 30–40 km away (the southern boundary of NTS is about 18 km from Yucca Mountain). This means that access into the upper aquifer is easier at increasing distance from Yucca Mountain. It should also be pointed out, the Yucca Mountain site is on several Federally controlled areas of land, i.e., the Nellis Test Range, NTS, and Bureau of Land Management land. In these areas, the U.S. government is the senior appropriator and holds water rights, i.e., water is appropriated for beneficial use by and for the U.S. government.

Because of DOE's ongoing site characterization studies, it is possible that, at the time of licensing, data not now available will reveal important inaccuracies in the preceding conception of ground water flow. In proposing Alternatives 2 and 3 (see discussion below), we intend that the location of the point of compliance will be where the highest concentrations of radionuclides within the plume are projected by DOE and NRC to be. We believe, based upon current information, that the locations specified for the proposed alternative points of compliance in Alternatives 2 and 3 are likely to include such concentrations.

However, if DOE and NRC determine that the direction of ground water flow or location of the highest concentration is different than now believed because new knowledge is available at the time of licensing, we propose to require the Department to propose to the Commission the location where the highest concentration is projected to be. Any such new point of compliance would replace the one we specify in the final rule only if it is at the same distance from the repository as the original point of compliance and is approved by the Commission. It may be moved only to account for new information regarding flow-direction or the location of the highest concentration. We believe such flexibility will enhance the quality of NRC's licensing decision and will provide greater protection of public health and the environment by taking into account the latest available information. We request comment upon this approach.

III.F.6. Where Will the Point of Compliance Be Located?

Introduction to the alternatives. We are presenting four alternatives for comment prior to determining the location of the point of compliance. They are presented in the proposed regulatory text (see proposed § 197.37) and are discussed here in no particular order of preference. For convenience, we refer to them as Alternatives 1, 2, 3, and 4, respectively.

We note that Alternatives 2 and 3 rely upon our current knowledge of ground water flow and use in the region. As discussed above, we are also proposing a method for proceeding under Alternatives 2 and 3, if further knowledge changes the understanding of the flow of the region's ground water or the location of the highest concentrations of radionuclides.

Alternatives in proposed § 197.37. Alternative 1 would establish a "controlled area." In this case, we would define the extent of the controlled area (in proposed § 197.12) as it is in 40 CFR part 191 (with the substitution of the term "repository footprint" for the original wording, "outer boundary of the original location of the radioactive wastes in a disposal system"):

(1) A surface area, identified by passive institutional controls, that encompasses no more than 100 square kilometers and extends horizontally no more than five kilometers in any direction from the repository footprint; and (2) the subsurface underlying the surface area.

The Department would determine where on the controlled area's boundary to place the point of compliance based upon the projected direction of ground water flow and the expected locations of the highest concentrations of radionuclides.

As mentioned earlier, this approach would be consistent with 40 CFR part 191 and would, therefore, maintain consistency with the generic standards which apply to WIPP, GCD, and any future disposal system for SNF, HLW, and transuranic radioactive waste which is subject to 40 CFR part 191. (As described earlier, the GCD facility is a complex of 120-foot deep boreholes, located within NTS, which contains disposed transuranic radioactive waste and WIPP is a geologic disposal system, in New Mexico, for defense-related transuranic radioactive waste.) While this alternative would not provide explicitly for consideration of site-specific factors in determining the size of the controlled area, it would ensure that the boundary of the controlled area would not extend substantially beyond Yucca Mountain itself. This alternative would have the effect of providing natural topographic constraints on access to ground water within the controlled area. Therefore, it would provide a safeguard against use of ground water within the controlled area during the compliance period.

In Alternative 2, we would specify the location of the point of compliance. In this case, the point of compliance would be located near the intersection of U.S. Route 95 and Nevada State Route 373, commonly referred to as Lathrop Wells (Lathrop Wells is actually an area within the Town of Amargosa Valley and is the location closest to Yucca Mountain where the general population currently consumes water). We have found that the depth to the water currently withdrawn for domestic use within the Town of Amargosa Valley ranges from a few meters in the southern parts of the town to 110 meters near Lathrop Wells (see the BID). This alternative would put the point of compliance near the currently assumed location of the RMEI.

In Alternative 3, we would establish an area located about 30 km south of Yucca Mountain within which DOE and NRC would identify a specific point as the point of compliance. The area would be bounded by Frontier Street on the

north, Nevada State Route 373 on the east, the Nevada-California border on the south/southwest, and Casada Way on the west. About 75% of the current population and about 60% of the current water-supply wells in what we understand to be the downgradient direction from Yucca Mountain are within this area. This is an area where it is relatively easy to access ground water (see the BID). This option would, therefore, provide direct protection for most of the population currently using drinking water from the alluvial aquifer.

In Alternative 4, the Department, with the consent of NRC, would establish a controlled area outside of which the ground water standards would apply. Its size would be determined by DOE (without exceeding the limits set by us). This controlled area would be a combination of Alternative 1 and site-specific considerations for Yucca Mountain. The site-specific consideration is the proximity of the repository footprint and NTS. The boundary of the controlled area could be no more than five kilometers from the footprint (the same limit applied in Alternative 1), except in those cases where the five kilometers is located within the NTS. In that case, DOE may extend the controlled area to include all or part of the NTS.

We base this alternative, in part, upon the fact that NTS has existed under the control of DOE for about 50 years. Another basis is that we believe that future generations will be aware of the extensive, well-publicized nuclear activities that occurred there. This will likely increase the effectiveness of the passive institutional controls, as discussed below. The NTS is well-known around the world for many reasons but most notably for the approximately 900 tests of nuclear weapons conducted there. This makes NTS unique in the Western Hemisphere because of the resultant presence of hundreds of millions of curies of radionuclides (see the BID). This will presumably lead the Federal government to document the extent of radionuclide contamination and the activities which occurred there, including the Yucca Mountain disposal system, more thoroughly and retain records for longer periods than might occur elsewhere.

To repeat for clarification, the conceptual difference between Alternatives 1 and 4 and Alternatives 2 and 3 is that in Alternatives 1 and 4, we will define an area surrounding the repository outside of which the ground water standards would apply, whereas for Alternatives 2 and 3, we will specify limited areas downgradient from the repository within which DOE and NRC must place the point of compliance.

We request comment upon all of the alternatives discussed above. Commenters should address the effectiveness of these or other alternatives for protecting ground water, including consideration of site-specific characteristics and reasonable methods of implementing the alternatives.

IV. Specific Questions for Comment

In addition to requesting comment upon all aspects of this rulemaking, many of which we have highlighted in the preceding sections of this notice, we also request comment based upon the following specific questions. To be most useful to us, please provide your reasoning in your answers.

1. The NAS recommended that we base the individual-protection standard upon risk. Consistent with this recommendation and the statutory language of the EnPA, we are proposing a standard in terms of annual CEDE incurred by individuals. Is our rationale for this aspect of our proposal reasonable?

2. We are proposing an annual limit of 150 μSv (15 mrem) CEDE to protect the RMEI and the general public from releases from waste disposed of in the Yucca Mountain disposal system. Is our proposed standard reasonable to protect both individuals and the general public?

3. To define who should be protected by the proposed individual-protection standard, we are proposing to use an RMEI as the representative of the rural-residential CG. Is our approach reasonable? Would it be more useful to have DOE calculate the average dose occurring within the rural-residential CG rather than the RMEI dose?

4. Is it reasonable to use RME parameter values based upon characteristics of the population currently located in proximity to Yucca Mountain? Should we promulgate specific parameter values in addition to specifying the exposure scenarios?

5. Is it reasonable to consider, select, and hold constant today's known and assumed attributes of the biosphere for use in projecting radiation-related effects upon the public of releases from the Yucca Mountain disposal system?

6. In determining the location of the RMEI, we considered three geographic subareas and their associated characteristics. Are there other reasonable methods or factors which we could use to change the conclusion we reached regarding the location of the RMEI? For example, should we require an assumption that for thousands of years into the future people will live only in the same locations that people do today? Please include your rationale for your suggestions.

7. The NAS suggested using an NIR level to dismiss from consideration extremely low, incremental levels of dose to individuals when considering protection of the general public. For somewhat different reasons, we are proposing to rely upon the individual-protection standard to address protection of the general population. Is this approach reasonable in the case of Yucca Mountain? If not, what is an alternative, implementable method to address collective dose and the protection of the general population?

8. Is our rationale for the period of compliance reasonable in light of the NAS recommendations?

9. Does our requirement that DOE and NRC determine compliance with § 197.20 based upon the mean of the distribution of the highest doses resulting from the performance assessment adequately address uncertainties associated with performance assessments?

10. Is the single-borehole scenario a reasonable approach to judge the resilience of the Yucca Mountain disposal system following human intrusion? Are there other reasonable scenarios which we should consider, for example, using the probability of drilling through a waste package based upon the area of the package versus the area of the repository footprint or drilling through an emplacement drift but not through a waste package? Why would your suggested scenario(s) be a better measure of the resilience of the Yucca Mountain disposal system than the proposed scenario?

11. Is it reasonable to expect that the risks to future generations be no greater than the risks judged acceptable today?

12. What approach is appropriate for modeling the ground water flow system downgradient from Yucca Mountain at the scale (many kilometers to tens of kilometers) necessary for dose assessments given the inherent limitations of characterizing the area? Is it reasonable to assume that there will be some degree of mixing with uncontaminated ground water along the radionuclide travel paths from the repository?

13. Which approach for protecting ground water in the vicinity of Yucca Mountain is the most reasonable? Is there another approach which would be preferable and reasonably implementable? If so, please explain the approach, why it is preferable, and how it could be implemented.

14. Is the 10,000-year compliance period for protecting the RMEI and ground water reasonable or should we extend the period to the time of peak dose? If we extend it, how could NRC reasonably implement the standards while recognizing the nature of the uncertainties involved in projecting the performance of the disposal system over potentially extremely long periods?

15. As noted by NAS, some countries have individual-protection limits higher than we have proposed. In addition, other Federal authorities have suggested higher individual-dose limits with no separate protection of ground water. Therefore, we request comment upon the use of an annual CEDE of 250 μSv (25 mrem) with no separate ground water protection, including the consistency of such a limit with our ground water protection policy.

16. We are proposing to require, in the individual-protection standard, that DOE must project the disposal system's performance after 10,000 years. Are the specified uses of the projections appropriate and adequate?

V. Regulatory Analyses

V.A. Executive Order 12866

Section 3(f) of Executive Order 12866 (E.O. 12866) defines "significant regulatory action" for purposes of centralized regulatory review by the Office of Management and Budget (OMB) to mean any regulatory action that is likely to result in a rule that may:

(1) Have an annual effect upon the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We are classifying this proposed action as significant under the fourth clause. These standards have been mandated by the EnPA which gave us, for the first time, the authority to set site-specific environmental radiation protection standards. Also, the subject of this rulemaking, Yucca Mountain, Nevada, is a unique facility since it is the first and only one of its kind in the United States being studied for the potential disposal of SNF and HLW.

The OMB has reviewed the text of the draft of this rulemaking and associated materials. In accordance with § 6(a)(3)(E) of E.O. 12866, we have placed interagency review materials into the docket and other locations listed at the beginning of this notice. The interagency materials include: (1) the draft document(s) provided to OMB; and (2) document(s) identifying the substantive changes made between the draft submitted to OMB and the proposed rulemaking, and identifying those changes that we made at the suggestion or recommendation of OMB.

V.B. Executive Orders on Federalism

Under Executive Order 12875 (E.O. 12875), "Enhancing Intergovernmental Partnerships," we may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or unless we consult with those governments. If we comply by consulting, E.O. 12875 requires us to provide to OMB a description of the extent of our prior consultation with representatives of affected State, local, and tribal governments; the nature of their concerns; any written communications from the governments; and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires us to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate upon State, local, or tribal governments. The rule does not impose any enforceable duties upon those entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule. Despite this fact, we nonetheless held public meetings in Nevada and Washington, D.C. in September 1995 (see the *How Has the Public Participated in Our Review of the NAS Report?* section earlier in this notice) during which we received comments from and had discussions with representatives of the State of Nevada and county officials. There were also informal meetings with State and local officials in which those personnel were apprised of the status of the rulemaking.

Finally, while there is a new executive order on federalism, it will not go into effect for 90 days. In the interim, under the current Executive Order 12612 on Federalism, this rule does not have a substantial direct effect upon States, upon the relationship between the national government and the States, or upon the distribution of power and responsibilities among the various levels of government, because the rule only prescribes standards appropriate for one facility in one State.

V. C. Executive Order 12898

Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations And Low-income Populations (Environmental Justice)," directs us to incorporate environmental justice as part of our overall mission by identifying and addressing disproportionately high and adverse human health and environmental effects of programs, policies, and activities upon minority populations and low-income populations.

We find no disproportionate impact in the outcome of this rulemaking. No plan has thus been devised to address a disproportionate impact.

V. D. Executive Order 13045

Executive Order 13045 (E.O. 13045), "Protection of Children from Environmental Health Risks and Safety Risks," (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect upon children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule upon children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives that we considered.

This proposed rule is not subject to E.O. 13045 because we do not have reason to believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. The public is invited to submit or identify peer-reviewed studies and data, of which we may not be aware, that assessed results of early life exposure to radiation.

V. E. Executive Order 13084

Under Executive Order 13084 (E.O. 13084), "Consultation and Coordination with Indian Tribal Governments," we may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs upon those communities, unless the Federal government provides the funds necessary to pay the direct

compliance costs incurred by the tribal governments, or we consult with those governments. If we comply by consulting, Executive Order 13084 requires us to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of our prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires us to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule implements requirements specifically set forth by the Congress in the EnPA without the exercise of any discretion by us. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

V. F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. No. 104–113, section 12(d) (15 U.S.C. 272 note) directs us to use voluntary consensus standards in our regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, we are not considering the use of any voluntary consensus standards.

We request public comment upon this aspect of the proposed rulemaking and, specifically, ask you to identify potentially applicable voluntary consensus standards and to explain why such standards could be used in this regulation.

V. G. Paperwork Reduction Act

We have determined that this proposed rule contains no information requirements within the scope of the Paperwork Reduction Act, 42 U.S.C. 3501–20.

V. H. Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act of 1996

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, agencies must prepare and make available for public comment an initial regulatory flexibility analysis assessing the impact of a proposed rule upon "small entities" (5 U.S.C. 603). "Small entities" include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000 (5 U.S.C. 601). However, the requirement to prepare a regulatory flexibility analysis does not apply if the Administrator certifies that the rule will not, if promulgated, have a significant economic impact upon a substantial number of small entities (5 U.S.C. 605(b)). The rule proposed today would establish requirements that apply only to DOE. Therefore, it does not apply to small entities. Accordingly, I hereby certify that the rule, when promulgated, will not have a significant economic impact upon a substantial number of small entities.

V.I. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104–4) establishes requirements for Federal agencies to assess the effects of their regulatory actions upon State, local, and tribal governments and the private sector. Under section 202 of UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before we promulgate a rule for which a written statement is needed, section 205 of UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective, or least burdensome if the Administrator publishes with the final rule an explanation as to why that alternative was not adopted. Before we establish any regulatory requirements that significantly or uniquely affect small governments, we must develop, under section 203 of UMRA, a small-government-agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input into the development of regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule is not subject to the requirements of sections 202 and 205 of UMRA because it implements requirements specifically set forth by the Congress in section 801 of the EnPA. We are proposing rules which, when final, would establish requirements that DOE and NRC must follow in connection with licensing the Yucca Mountain disposal system. The EnPA directs the Administrator of EPA to promulgate standards for the protection of the public from releases from radioactive materials stored or disposed of in the repository at Yucca Mountain, Nevada.

Also, today's proposed rule does not impose new, enforceable duties upon State, local, or tribal governments, or the private sector. Thus, we have determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments as contemplated in section 203 of UMRA.

List of Subjects in 40 CFR Part 197

Environmental protection, Nuclear energy, Radiation protection, Radionuclides, Uranium, Waste treatment and disposal, Spent nuclear fuel, High-level radioactive waste.

Dated: August 18, 1999.

Carol M. Browner,

Administrator.

The Environmental Protection Agency is proposing to add a new part 197 to Subchapter F of Chapter I, title 40 of the Code of Federal Regulations, as follows:

SUBCHAPTER F—RADIATION PROTECTION PROGRAMS

PART 197—ENVIRONMENTAL RADIATION PROTECTION STANDARDS FOR YUCCA MOUNTAIN, NEVADA

Subpart A—Environmental Standards for Storage

Sec.

197.1 What does subpart A cover?
197.2 What definitions apply in subpart A?
197.3 How is subpart A implemented?
197.4 What is DOE required to do relative to stored radioactive material?
197.5 When will this part take effect?

Subpart B—Environmental Standards for Disposal

Introduction

197.11 What does subpart B cover?
197.12 What definitions apply in subpart B?
197.13 How is subpart B implemented?
197.14 What is reasonable expectation?
197.15 How must DOE take into account the changes that will occur during the next 10,000 years?

Individual-Protection Standard

197.20 What standard must DOE meet?
197.21 Who is the reasonably maximally exposed individual (RMEI)?

Human-Intrusion Standard

197.25 What standard must DOE meet?
197.26 What are the circumstances of the human intrusion?

Other Considerations

197.30 What other projections must be made by DOE?

Ground Water Protection Standards

197.35 What standards must DOE meet?
197.36 What is a representative volume?
197.37 Where is the point of compliance?

Additional Provisions

197.40 Are there limits on what must be considered in the performance assessments?
197.41 Can the EPA amend this rule?

Authority: Sec. 801, Pub. L. 102–486, 106 Stat. 2921, 42 U.S.C. 10141 n.

Subpart A—Environmental Standards for Storage

§ 197.1 What does subpart A cover?

This subpart covers the storage of radioactive materials by DOE in the Yucca Mountain repository and on the Yucca Mountain site.

§ 197.2 What definitions apply in subpart A?

Annual committed effective dose equivalent means the committed effective dose equivalent plus the effective dose equivalent received by an individual in one year from radiation sources external to the individual.

Committed effective dose equivalent means the total effective dose equivalent received by an individual from radionuclides internal to the individual following a one-year intake of those radionuclides.

DOE means the Department of Energy.

Effective dose equivalent means the sum over specified tissues of the products of the dose equivalent received following an exposure of, or an intake of radionuclides into, specified tissues of the body, multiplied by appropriate weighting factors.

EPA means the Environmental Protection Agency.

General environment means everywhere outside the Yucca Mountain site, the Nellis Air Force Range, and the Nevada Test Site.

High-level radioactive waste means high-level radioactive waste as defined in the Nuclear Waste Policy Act of 1982 (Public Law 97–425).

Member of the public means anyone who is not a radiation worker for purposes of worker protection.

NRC means the Nuclear Regulatory Commission.

Radioactive material means matter composed of or containing radionuclides subject to the Atomic Energy Act of 1954, as amended. Radioactive material includes, but is not limited to, high-level radioactive waste and spent nuclear fuel.

Spent nuclear fuel means spent nuclear fuel as defined in the Nuclear Waste Policy Act of 1982 (Public Law 97–425).

Storage means retention (and any associated activity, operation, or process necessary to carry out successful retention) of radioactive material with the intent or capability to readily access or retrieve such material.

Yucca Mountain repository means the mined portion of the facility constructed underground within the Yucca Mountain site.

Yucca Mountain site means the site recommended by the Secretary of DOE to the President under section 112(b)(1)(B) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10132(b)(1)(B)) on May 27, 1986.

§ 197.3 How is subpart A implemented?

The NRC implements this subpart A. The DOE must demonstrate to NRC that operations on the Yucca Mountain site will occur in compliance with this subpart before NRC may grant to DOE a license to receive and possess radioactive material on the Yucca Mountain site.

§ 197.4 What is DOE required to do relative to stored radioactive material?

(a) The DOE must ensure that no member of the public in the general environment receives more than an annual committed effective dose equivalent of 150 microsieverts (15 millirems) from the combination of:

(1) Management and storage (as defined in 40 CFR 191.02) of radioactive material which:

(i) Is subject to 40 CFR 191.03(a); and

(ii) Occurs outside of the Yucca Mountain repository but within the Yucca Mountain site; and

(2) Storage (as defined in § 197.02) of radioactive material inside the Yucca Mountain repository.

§ 197.5 When will this part take effect?

The standards in this part take effect on [sixty days after publication of the final standards in the **Federal Register**].

Subpart B—Environmental Standards for Disposal

Introduction

§ 197.11 What does subpart B cover?

This subpart covers the disposal of waste in Yucca Mountain by DOE.

§ 197.12 What definitions apply in subpart B?

All definitions in subpart A of this part and the following:

Active institutional control means controlling access and/or performing work on the Yucca Mountain site by any means other than passive institutional controls.

Aquifer means an underground geological formation, group of formations, or part of a formation that can yield a significant amount of water to a well or spring.

Barrier means any material, structure, or feature that, for a period to be determined by NRC, prevents or substantially reduces the rate of movement of water or radionuclides from the Yucca Mountain repository, or prevents the release or substantially reduces the release rate of radionuclides from the waste. For example, a barrier may be a geologic feature, an engineered structure, a canister, a waste form with physical and chemical characteristics that significantly decrease the mobility of radionuclides, or a material placed over and around the waste, provided that the material substantially delays movement of water or radionuclides.

Alternative 1 for § 197.12, Definition of Controlled Area:

Controlled area means:

(1) A surface area, identified by passive institutional controls, that encompasses no more than 100 square kilometers and extends horizontally no more than five kilometers in any direction from the repository footprint; and

(2) The subsurface underlying the surface area. [This definition would be included only if Alternative 1 for § 197.37 were chosen.]

Alternative 2 for § 197.12, Definition of Controlled Area:

Controlled area means:

(1) A surface area, identified by passive institutional controls, that extends horizontally no more than five kilometers in any direction from the repository footprint except that DOE may include in the controlled area any

contiguous area within the boundary of the Nevada Test Site (as established as of the date of promulgation of this part); and

(2) The subsurface underlying the surface area. [This definition would be included only if Alternative 4 for § 197.37 were chosen.]

Disposal means emplacement of radioactive material into the Yucca Mountain disposal system with the intent of isolating it for as long as reasonably possible and with no intent of recovery, whether or not the design of the disposal system permits the ready recovery of the material. Disposal of radioactive material in the Yucca Mountain disposal system begins when all of the ramps and other openings into the Yucca Mountain repository are backfilled and sealed.

Ground water means water below the land surface and in a saturated zone.

Human intrusion means breaching of any portion of the Yucca Mountain disposal system by human activity.

Passive institutional controls means:

(1) Markers, as permanent as practicable, placed on the Earth's surface;

(2) Public records and archives;

(3) Government ownership and regulations regarding land or resource use; and

(4) Other reasonable methods of preserving knowledge about the location, design, and contents of the Yucca Mountain disposal system.

Peak dose means the highest annual committed effective dose equivalent projected to be received by the reasonably maximally exposed individual.

Performance assessment means an analysis that:

(1) Identifies the processes, events, and sequences of processes and events (except human intrusion), and their probabilities of occurring over 10,000 years after disposal, that might affect the Yucca Mountain disposal system;

(2) Examines the effects of those processes, events, and sequences of processes and events upon the performance of the disposal system; and

(3) Estimates the annual committed effective dose equivalent received by the reasonably maximally exposed individual, including the associated uncertainties, as a result of releases caused by all significant processes, events, and sequences of processes and events.

Period of geologic stability means the time during which the variability of geologic characteristics and their future behavior in and around the Yucca Mountain site can be bounded, that is, they can be projected within a reasonable range of possibilities.

Plume of contamination means that volume of ground water that contains radioactive contamination from releases from the Yucca Mountain disposal system. It does not include releases from any other potential sources on or near the Nevada Test Site.

Point of compliance is the place where DOE must project the amount of radionuclides in the ground water for purposes of § 197.35. The point of compliance is located above the highest concentration in the plume of contamination as specified in § 197.37.

Repository footprint means the outline of the outermost locations of where the waste is emplaced in the Yucca Mountain repository.

Slice of the plume means a cross-section of the plume of contamination with sufficient thickness parallel to the prevalent flow of the plume that it contains the representative volume.

Total dissolved solids means the total dissolved (filterable) solids in water as determined by use of the method specified in 40 CFR part 136.

Undisturbed performance means that human intrusion or the occurrence of unlikely, disruptive, natural processes and events do not disturb the disposal system.

Waste means any radioactive material emplaced for disposal into the Yucca Mountain disposal system.

Well-capture zone means the volume from which a well pumping at a defined rate is withdrawing water from an aquifer. The dimensions of the well-capture zone are determined by the pumping rate in combination with aquifer characteristics assumed for calculations, such as hydraulic conductivity, gradient, and the screened interval.

Yucca Mountain disposal system means the combination of underground engineered and natural barriers at the Yucca Mountain site which prevents or substantially reduces releases from the disposed radioactive material.

§ 197.13 How is subpart B implemented?

The NRC implements subpart B. In the case of the specific numerical requirements in this subpart, NRC will determine compliance based upon the mean or median (whichever is higher) of the highest results of DOE's performance assessments projecting the performance of the Yucca Mountain repository for 10,000 years after disposal. The DOE must demonstrate to NRC that there is a reasonable expectation of compliance with this subpart before NRC can issue a license.

§ 197.14 What is reasonable expectation?

Reasonable expectation means that the Commission is satisfied that compliance will be achieved based upon the full record before it. Reasonable expectation:

(a) Requires less than absolute proof because absolute proof is impossible to attain for disposal due to the uncertainty of projecting long-term performance;

(b) Is less stringent than the reasonable assurance concept that NRC uses to license nuclear power plants;

(c) Takes into account the inherently greater uncertainties in making long-term projections of the performance of the Yucca Mountain disposal system;

(d) Does not exclude important parameters from assessments and analyses simply because they are difficult to precisely quantify to a high degree of confidence; and

(e) Focuses performance assessments and analyses upon the full range of defensible and reasonable parameter distributions rather than only upon extreme physical situations and parameter values.

§ 197.15 How must DOE take into account the changes that will occur during the next 10,000 years?

The DOE should not attempt to project changes to society, human biology, or increases or decreases to human knowledge. In all analyses done to demonstrate compliance with this part, DOE must assume that all of those factors remain constant as they are at the time of license submission to NRC. However, DOE must vary factors related to the geology, hydrology and climate based on environmentally protective but reasonable scientific predictions of the changes that could affect the Yucca Mountain disposal system over the next 10,000 years.

Individual-Protection Standard

§ 197.20 What standard must DOE meet?

The DOE must demonstrate, using performance assessment, that there is a reasonable expectation that for 10,000 years following disposal the reasonably maximally exposed individual receives no more than an annual committed effective dose equivalent of 150 microsieverts (15 mrem) from releases from the undisturbed Yucca Mountain disposal system. The DOE's analysis must include all potential pathways of radionuclide transport and exposure.

§ 197.21 Who is the reasonably maximally exposed individual (RMEI)?

The RMEI is a hypothetical person who could meet the following criteria:

(a) Based upon current understanding, lives within one-half kilometer of the junction of U.S. Route 95 and Nevada State Route 373, unless NRC determines that the RMEI would receive a higher dose living in another location at the same distance from the Yucca Mountain repository;

(b) Has a diet and living style representative of the people who are now residing in the Town of Amargosa Valley, Nevada. The DOE must use the most accurate projections which might be based upon surveys of the people residing in the Town of Amargosa Valley, Nevada, to determine their current diets and living styles and use the mean values in the assessments conducted for §§ 197.20 and 197.25; and

(c) Drinks 2 liters of water per day from wells drilled into the ground water at the location where the RMEI lives.

Human-Intrusion Standard

§ 197.25 What standard must DOE meet?

Alternative 1 for § 197.25:

The DOE must demonstrate that there is a reasonable expectation that for 10,000 years following disposal the reasonably maximally exposed individual receives no more than an annual committed effective dose equivalent of 150 microsieverts (15 mrem) as a result of a human intrusion. The DOE's analysis of human intrusion must include all potential environmental pathways of radionuclide transport and exposure.

Alternative 2 for § 197.25:

The DOE must determine the earliest time after disposal that the waste package would degrade sufficiently that a human intrusion (see § 197.26) could occur without recognition by the drillers. The DOE must:

(a) Demonstrate that there is a reasonable expectation that the reasonably maximally exposed individual receives no more than an annual committed effective dose equivalent of 150 microsieverts (15 mrem) as a result of a human intrusion, if complete waste package penetration can occur at or before 10,000 years after disposal. The analysis must include all potential environmental pathways of radionuclide transport and exposure; and

(b) Include the results of the analysis and its bases in the environmental impact statement for Yucca Mountain as an indicator of long-term disposal system performance, if the intrusion cannot occur before 10,000 years after disposal.

§ 197.26 What are the circumstances of the human intrusion?

For the purposes of the analysis of human intrusion, DOE must make the following assumptions:

(a) There is a single human intrusion as a result of exploratory drilling for ground water;

(b) The intruders drill a borehole directly through a degraded waste container into the uppermost aquifer underlying the Yucca Mountain repository;

(c) The drillers use the common techniques and practices that are currently employed in the region surrounding Yucca Mountain;

(d) Careful sealing of the borehole does not occur, instead natural degradation processes gradually modify the borehole;

(e) Only releases of radionuclides that occur as a result of the intrusion and that are transported through the resulting borehole to the saturated zone are projected;

(f) No releases are included which are caused by unlikely natural processes and events; and

(g) The intrusion occurs at a time or within a range of time determined by NRC. The NRC must make that determination based upon the following factors

[Paragraph (g) would be included only if Alternative 1 for § 197.25 is chosen]:

(1) The earliest time that current drilling techniques could lead to waste package penetration without recognition by the drillers;

(2) The time it would take for a small percentage of waste packages to fail but before significant migration of radionuclides has occurred; and

(3) Intrusion would not occur during the period of active institutional control.

Other Considerations

§ 197.30 What other projections must be made by DOE?

To complement the results of § 197.20, DOE must calculate the peak dose of the reasonably maximally exposed individual that would occur after 10,000 years following disposal but within the period of geologic stability. While no regulatory standard applies to the results of this analysis, DOE must include the results and their bases in the environmental impact statement for Yucca Mountain as an indicator of long-term disposal system performance.

Ground Water Protection Standards

§ 197.35 What standards must DOE meet?

In its license application to NRC, DOE must provide a reasonable expectation that, for 10,000 years of undisturbed performance after disposal, releases of radionuclides from radioactive material in the Yucca Mountain disposal system will not cause the level of radioactivity in the representative volume of ground water at the point of compliance to exceed the limits in Table 1 as follows:

TABLE 1.—LIMITS ON RADIONUCLIDES IN THE REPRESENTATIVE VOLUME.

Radionuclide or type of radiation emitted	Limit	Is natural background included?
Combined radium-226 and radium-228	5 picocuries per liter	Yes
Gross alpha activity (including radium-226 but excluding radon and uranium).	15 picocuries per liter	Yes
Combined beta and photon emitting radionuclides	40 microsieverts (4 millirem) per year to the whole body or any organ.	No

§ 197.36 What is a representative volume?

(a) It is the volume of ground water that would be withdrawn annually from an aquifer containing less than 10,000 milligrams of total dissolved solids per liter of water to supply a given water demand. The DOE must project the concentration of radionuclides from the Yucca Mountain repository that will be in the representative volume. The DOE must then use the projected concentrations to demonstrate to NRC compliance with § 197.35. The DOE must make the following assumptions concerning the representative volume:

(1) It is centered on the highest concentration level in the plume of contamination at the point of compliance;

(2) Its position and dimensions in the aquifer are determined using average hydrologic characteristics for the aquifers along the radionuclide migration path from the Yucca Mountain repository to the compliance point as determined by site characterization; and

(3) It contains 1285 acre-feet of water (about 1,591,023,000 liters or 418,690,000 gallons).

(b) The DOE must use one of two alternative methods for determining the dimensions of the representative volume. The DOE must propose the method, and any underlying assumptions, to NRC for approval.

(1) The dimensions may be calculated as a well-capture zone. If this approach is used, DOE must assume that the:

(i) Water supply well has characteristics consistent with public water supply wells in Amargosa Valley, Nevada, for example, well bore size and length of the screened intervals;

(ii) Screened interval is centered in the highest concentration in the plume of contamination at the point of compliance; and

(iii) Pumping rate is set to produce an annual withdrawal equal to the representative volume.

(2) The dimensions may be calculated as a slice of the plume. If this approach is used, DOE must:

(i) Propose to NRC, for its approval, where the location of the edge of the plume of contamination occurs. For example, the place where the concentration of radionuclides reaches 0.1% of the level of the highest concentration at the point of compliance;

(ii) Assume that the slice of the plume is perpendicular to the prevalent direction of flow of the aquifer; and

(iii) Assume that the volume of ground water contained within the slice of the plume is equal to the representative volume.

§ 197.37 Where is the point of compliance?

Alternative 1 for § 197.37:

The point of compliance is any point on the boundary of the controlled area.

Alternative 2 for § 197.37:

The point of compliance is any point within a one-half kilometer radius of the intersection of U.S. Route 95 and Nevada State Route 373. However, if NRC determines that there is another location, at the same distance (approximately 20 kilometers) from the center of the repository footprint, where the representative volume would have a higher concentration of radionuclides which were released from the Yucca Mountain disposal system, NRC must specify that location the point of compliance.

Alternative 3 for § 197.37:

The point of compliance is any point within the Town of Amargosa Valley, Nevada, and within the area bounded by Frontier Street on the north, Nevada State Route 373 on the east, the Nevada-California border on the south/southwest, and Casada Way on the west (as they are located at the time of promulgation of this part). However, if NRC determines that there is another location, at approximately 30 kilometers, from the center of the repository footprint where the representative volume would have a higher concentration of radionuclides which were released from the Yucca Mountain disposal system, NRC must specify that location as the point of compliance.

Alternative 4 for § 197.37:

The point of compliance is any point on the boundary of the controlled area.

Additional Provisions

§ 197.40 Are there limits on what must be considered in the performance assessments?

Yes. The DOE's performance assessments should not include consideration of processes or events that are estimated to have less than one chance in 10,000 of occurring within 10,000 years of disposal. The NRC may change this limit to exclude slightly higher probability events. In addition, with the NRC's approval, DOE's performance assessments need not evaluate, in detail, the impacts resulting from any processes and events or sequences of processes and events with a higher chance of occurrence if the results of the performance assessments would not be changed significantly.

§ 197.41 Can EPA amend this rule?

Yes. We can amend this rule by another notice-and-comment rulemaking. However, if we amend this rule, there must be a public comment period of at least 90 days and we must, at a minimum, hold hearings in Washington, D.C. and the Nevada Counties of Nye and Clark.

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federal register

Friday
August 27, 1999

Part III

Department of the Interior

Bureau of Land Management

43 CFR Part 3730 et al.

Location, Recording, and Maintenance of Mining Claims or Sites; Interim Final Rule

43 CFR Part 3730 et al.

Locating, Recording, and Maintaining Mining Claims or Sites; and Extension of Currently Approved Information Collection, OMB Approval Number 1004–0114; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3730, 3820, 3830, and 3850

[WO–620–1430–00–24 1A]

RIN 1004–AD31

Location, Recording, and Maintenance of Mining Claims or Sites

AGENCY: Bureau of Land Management, Interior.

ACTION: Interim final rule.

SUMMARY: The Bureau of Land Management (BLM) is promulgating this rule to amend regulations on locating, recording, and maintaining mining claims or sites. In this rule, BLM amends the regulations to respond to a recent law that continues to require claimants to pay location and maintenance fees on unpatented mining claims or sites and to provide annual maintenance fee waivers to small miners until September 30, 2001. BLM collected these fees and provided for waivers under the existing regulations based on a previous law that expired on September 30, 1998. The new law—

Moves the annual payment and waiver filing deadline from August 31 to September 1 to coincide with the beginning of the assessment year;

Allows time to cure a small miner waiver application defect; and

Allows maintenance fee payment after the payment deadline instead of forfeiting a claim or site in an incurable waiver.

The interim final rule is necessary to implement and publicize the changes made by Congress. Elsewhere in this issue of the **Federal Register** appears a proposed rule that makes these changes and also reorganizes and simplifies the regulations on locating and maintaining mining claims and sites.

DATES: The interim final rule is effective August 27, 1999. If you wish to comment on the interim final rule, you should submit your comments by October 26, 1999. In developing a final rule, BLM may not consider comments postmarked or received in person or by electronic mail after this date.

ADDRESSES: You may mail comments to Bureau of Land Management, Administrative Record, Room 401 LS, 1849 C Street, NW, Washington, DC 20240. You may also hand-deliver comments to BLM at Room 401, 1620 L Street, NW, Washington, DC. For information about filing comments electronically, see the **SUPPLEMENTARY INFORMATION** section under PUBLIC COMMENT PROCEDURES and "Electronic access and filing address."

FOR FURTHER INFORMATION CONTACT: Roger Haskins in the Solid Minerals Group at (202) 452–0355 or Ted Hudson in Regulatory Affairs at (202) 452–5042. For assistance in reaching the above contacts, individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1-(800) 877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Interim Final Rule
IV. Procedural Matters

I. Public Comment Procedures

General Comment Procedures

Comments on the interim final rule should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where possible, your comments should refer to the specific section or paragraph of the interim final rule that you are addressing. BLM may not necessarily consider or include in the Administrative Record for the final rule comments that BLM receives after the close of the comment period (see **DATES.**) or comments delivered to an address other than those listed above (see **ADDRESSES.**).

BLM will make your comments, including your name and address, available for public review at the "L Street" address listed in **ADDRESSES** above during regular business hours (7:45 a.m. to 4:15 p.m., Monday through Friday, except Federal holidays). BLM will also post all comments on its home page (http://www.blm.gov) at the end of the comment period.

Under certain conditions, BLM can keep your personal information confidential. You must prominently state your request for confidentiality at the beginning of your comment. BLM will consider withholding your name, street address, and other identifying information on a case-by-case basis to the extent allowed by law. BLM will make available to the public all submissions from organizations and businesses and from individuals identifying themselves as representatives or officials of organizations or businesses.

Electronic Access and Filing Address

You may view an electronic version of this interim final rule at BLM's Internet home page: www.blm.gov. You may also comment via the Internet to: WOComment@blm.gov. Please also include "Attention: AD31" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (202) 452–5030.

Comments on Rule Format

We also welcome your comments on how we could make this interim final rule easier to understand, including answers to the following questions:

- Are the requirements clearly stated?
- Does it contain unclear technical language or jargon?
- Does the format aid or reduce its clarity?
- Would it be easier to understand if it were divided into more sections?
- Is the description in the "supplementary information" section helpful?

Please send format comments to the Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C St., NW, Washington, DC 20240, or e-mail them to Execsec@ios.doi.gov.

II. Background

We explain the role of BLM in administering the mining law, the regulatory context for this rule, and the types of claims and sites that you may locate (legally establish) on public lands, in a related proposed rule appearing elsewhere in this issue of the **Federal Register**.

Since 1992, Congress has passed three short-term laws requiring claimants to pay various fees when locating, recording, and maintaining mining claims or sites on public lands. As the collector of the fees, BLM has implemented each of these laws by amending its regulations. This rule implements the third of these short-term laws—the Interior and Related Agencies Appropriation Act for Fiscal Year 1999 (the FY99 Act) (section (e) of Pub. L. 105–277, 112 Stat. 2681–232, 2681–235, 30 U.S.C. 28f–28k), enacted on October 21, 1998. Before that, on August 10, 1993, Congress enacted Pub. L. 103–66, 107 Stat. 405, 30 U.S.C. 28f–k, which required claimants to pay a $25 one-time location fee and a $100 annual maintenance fee per claim or site, and added qualifiers for small miner waivers. To implement the 1993 Act, BLM published a rule amending 43 CFR parts 3730, 3821, 3833, and 3850 on August 30, 1994, at 59 FR 44857. The 1993 Act expired on September 30, 1998. The FY99 Act renewed and modified somewhat the provisions of the 1993 Act.

Earlier, on October 5, 1992, Congress enacted Pub. L. 102–381, 106 Stat. 1374, 1378–1379, which required claimants to pay mining claim rental fees of $100 per claim or site and provided exemptions for claimants with approved notices or plans of operations for actual exploration work or mineral production. To implement this Act, BLM published a rule amending 43 CFR parts 3730, 3821, 3833, and 3850 on July 15, 1993, at 58 FR 38197. The Act expired on September 30, 1994, and was superseded by the 1993 Act.

The successive statutes also changed some of the pertinent terminology: Rental fees in the 1992 Act became maintenance fees in the 1993 Act, and exemptions became waivers.

III. Discussion of Interim Final Rule

Why the Rule Is Being Published on an Interim Final Basis

BLM is adopting this interim final rule solely to implement the requirements of the Interior and Related Agencies Appropriation Act for Fiscal Year 1999 (the FY99 Act), section (e) of Pub. L. 105–277, 112 Stat. 2681–232, 2681–235, 30 U.S.C. 28f–28k, enacted by Congress on October 21, 1998. We are not making any other changes in this rule.

The Department of the Interior for good cause finds under 5 U.S.C. 553(b)(3)(B) that notice and public procedure for this rule are unnecessary and that this rule may properly take effect upon publication. The reasons are as follows:

- This rule merely codifies procedural changes required by Congress;
- There is insufficient time for a public comment period and preparation of a final rule before the time when the procedural requirements must be in place. This rule affects payments that are due to BLM by September 1, 1999.
- Publishing the regulations in final form gives the public extra time to get accustomed to the new procedures and deadlines before their implementation on September 1, 1999.
- On this same date, we are publishing a proposed rule with a 60-day comment period reorganizing the mining law regulations relating to location and maintenance of mining claims. That proposed rule also includes the same regulatory changes included here. If comments on the proposed rule reveal the need for changes in the regulation text, we will make the changes when finalizing the proposed rule.

Nevertheless, this interim final rule also includes opportunity for public comment. Comments raising urgent concerns about this rule may cause us to make changes in a separate final rule before the more comprehensive rulemaking effort also initiated today is completed.

We also determine under 5 U.S.C. 553(d) that there is good cause to place the rule into effect on the date of publication. First, the matters addressed in the rule are required by statute. Second, the payments this rule affects are due to BLM by September 1, 1999. Therefore, the public needs certainty in advance of that date to make its payments properly.

Changes Made by the FY99 Act in BLM's Current Requirements

The FY99 Act does not change the requirements for all claimants to pay a one-time $25 location fee and a $100 annual maintenance fee, or the provision for small miner and other waivers. BLM had collected these fees and waivers under the Interior and Related Agencies Appropriations Act for Fiscal Year 1994 (Pub. L. 103–66; 107 Stat. 405), which expired on September 30, 1998. The FY99 Act extends BLM's authority from October 1, 1998, to September 30, 2001. This rule reflects this extension.

The Act makes two important changes. First, it moves the annual payment deadline from August 31 to September 1, which is the first day of the assessment year.

Second, the FY99 Act gives claimants more time to cure defective small miner waiver applications. Under existing BLM practice, if you, as a claimant, filed a waiver application on time but received notification that the waiver was defective, you had 30 days after the notification date to cure the defect, if it was curable. You also had the option of paying the maintenance fee instead of curing the defect as long as the payment deadline had not passed. If the payment deadline had passed and you failed to cure the defect within 30 days, you forfeited the claims or sites. Since waiver applications and maintenance fees are both due on the same date, claimants rarely had the option of paying the maintenance fee instead of curing the defect. Therefore, if the defect was incurable, you generally forfeited the claims or sites.

Under the FY99 Act, you have 60 days instead of 30 days after receiving written notification from BLM to cure a defective small miner waiver application. The FY99 Act also gives you the option to pay the maintenance fee instead of curing the defect during this 60-day period, regardless of whether the payment deadline has passed.

Organization of the Interim Final Rule

This interim final rule amends the existing regulations. It contains only the specific amendments required by the FY99 Act. Except for new § 3833.4–1, which includes the new provision on curing defects in waiver requests, all of the amendments appear as line-by-line edits. While this presentation may be somewhat harder to follow, especially if you do not have a current Code of Federal Regulations containing the existing regulations being amended, we have chosen this method to make it clear that we are not making changes beyond those called for by Congress in the FY99 Act.

The only changes we have made in these line-by-line edits are—

- Changes in citations and authorities to reflect the new statute;
- Changes in filing deadlines from August 31 to September 1; and
- Changes in the expiration date of the regulations from 1998 to 2001.

In new § 3833.4–1 you will find the only new provisions required by the FY99 Act. The FY99 Act gives you 60 days instead of 30 days to cure defective small miner waiver applications if BLM receives them by the payment deadline. The FY99 Act also gives you the same 60 days to pay the maintenance fee if the defective small miner waiver application is incurable. Section 3833.4–1 is added to implement these changes.

V. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, BLM has determined that this rule is not a significant regulatory action. The Office of Management and Budget (OMB) makes the final determination under Executive Order 12866.

- The rule will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These changes do not significantly change the substance of current mining claim administration within BLM. The annual revenue received from the collection of the congressionally mandated oil shale, maintenance, and location fees has averaged $32 million since August of 1993. This rule will not change the fee amounts and thus will not have a significant impact on fees collected.
- This rule will not create inconsistencies with other agencies'

actions. It does not change the relationships of BLM to other agencies and their actions.

• This rule will not materially affect entitlements, grants, loan programs, or the rights and obligations of their recipients. The rule does not address any of these programs.

• This rule will not raise novel legal or policy issues because it makes no major substantive changes in the regulations. The Constitutionality of the rental and maintenance fees has been challenged in the Federal Courts. The Courts have consistently upheld the 1992 and 1993 Acts and their implementing regulations.

Regulatory Flexibility Act

We certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The rule will not have an impact because the fees paid by small entities will not change. Deadlines for paying them and complying with other regulatory requirements are relaxed somewhat. A final Regulatory Flexibility Analysis is not required, and a Small Entity Compliance Guide is not required.

For the purposes of this section a "small entity" is an individual, limited partnership, or small company, at "arm's length" from the control of any parent companies, with fewer than 500 employees or less than $5 million in revenue. This definition accords with Small Business Administration regulations at 13 CFR 121.201.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

• Does not have an annual effect on the economy of $100 million or more. As explained in section 1 above, the revised regulations will not materially alter current BLM policy or the fees paid by mining claimants.

• Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The changes implemented by this rule are likely to leave all other economic aspects of BLM unaffected.

• Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

• This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is unnecessary.

• This rule will not produce a Federal mandate of $100 million or greater in any year. It is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The changes implemented in this rule do not require anything of any non-Federal governmental entity.

Executive Order 12630, Takings

In accordance with Executive Order 12630, the rule does not have takings implications. A takings implication assessment is not required. This rule does not substantially change BLM policy. Nothing in this rule constitutes a taking. The Federal Courts have heard a number of suits challenging the imposition of the rental and maintenance fees as a taking of a right, or, alternatively, as an unconstitutional tax. The Courts have upheld the 1992 and 1993 Acts and the BLM rules as a proper exercise of Congressional and Executive authorities.

Executive Order 12612, Federalism

In accordance with Executive Order 12612, BLM finds that the rule does not have significant Federalism effects. A Federalism assessment is not required. This rule does not change the role or responsibilities between Federal, State, and local governmental entities, nor does it relate to the structure and role of States or have direct, substantive, or significant effects on States.

Executive Order 12988, Civil Justice Reform

In accordance with Executive Order 12988, BLM finds that the rule does not unduly burden the judicial system and therefore meets the requirements of sections 3(a) and 3(b)(2) of the Order. BLM consulted with the Department of the Interior's Office of the Solicitor throughout the drafting process.

Paperwork Reduction Act

The Office of Management and Budget has approved the information collection requirements in the interim final rule under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, and has assigned clearance number 1004–0114. This rule does not require a new information collection approval under the Paperwork Reduction Act. However, the existing OMB approval of the information collection under ICB 1004–0114 expires in September 1999. Therefore, BLM is applying for renewal of the approval at this time, using a proposed rule published elsewhere in this issue of the **Federal Register** as an opportunity to notify the public.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 318 DM 2.2(g) and 6.3(D). Since no substantial changes are proposed, this rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Because this rule does not substantially change BLM's overall management objectives or environmental compliance requirements, it would have no impact on, or only marginally affect, the following critical elements of the human environment as defined in Appendix 5 of the BLM National Environmental Policy Act Handbook (H–1790–1): Air quality, areas of critical environmental concern, cultural resources, Native American religious concerns, threatened or endangered species, hazardous or solid waste, water quality, prime and unique farmlands, wetlands, riparian zones, wild and scenic rivers, environmental justice, and wilderness.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have considered the impact of this rule on the interests of Tribal governments. Because this rule does not specifically involve Indian reservation lands, government-to-government relationships will remain unaffected.

The principal author of this interim final rule is Ted Hudson in the Regulatory Affairs Group, assisted by Roger Haskins in the Solid Minerals Group, Washington Office, BLM.

List of Subjects

43 CFR Part 3730

Administrative practice and procedure; Mines; Public lands-mineral resources; Reporting and record keeping requirements; Surety bonds.

43 CFR Part 3820

Mines; Monuments and memorials; National forests; National parks; Public lands-mineral resources; Reporting and record keeping requirements; Surety bonds; Wilderness areas.

43 CFR Part 3830

Maintenance fees; Mines; Public lands—mineral resources; Reporting and record keeping requirements.

43 CFR Part 3850

Mines; Public lands-mineral resources.

For the reasons stated in the preamble, and under the authority of section (e) of the Act of October 21, 1998 (P.L. 105–277; 112 Stat. 2681–232, 2681–235); sections 441 and 2478 of the Revised Statutes, as amended (43 U.S.C. 1201 and 1457); section 2319 of the Revised Statutes, as amended (30 U.S.C. 22); sections 310 and 314 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1740 and 1744); and the Act of April 16, 1993 (43 U.S.C. 299(b)); parts 3730, 3810, 3820, 3830, 3840, and 3850, Groups 3700 and 3800, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations are amended on an interim basis as follows:

PART 3730—PUBLIC LAW 359; MINING IN POWERSITE WITHDRAWALS: GENERAL

1. Revise the authority citation for part 3730 to read as follows:

Authority: 69 Stat. 681, 30 U.S.C. 621–625; 43 U.S.C. 1701 *et seq.*; 30 U.S.C. 28f–28k, as amended.

2. Amend section 3730.0–9 by revising the last sentence of paragraph (a) to read as follows:

§ 3730.0–9 Information collection.

(a) * * * A response is required to obtain a benefit in accordance with the Act of August 11, 1955 (30 U.S.C. 621–625), section 314 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1744), and 30 U.S.C. 28f–28k, as amended by the Act of October 21, 1998 (112 Stat. 2681–232, 2682–235).

* * * * *

PART 3820—AREAS SUBJECT TO SPECIAL MINING LAWS

3. The authority citation for part 3820 continues to read as follows:

Authority: 30 U.S.C. 22 *et seq.*; 43 U.S.C. 1201 and 1740.

Subpart 3821—O and C Lands

4. Revise section 3821.0–3 to read as follows:

§ 3821.0–3 Authority.

The authorities for the regulations in this subpart are the Act of April 8, 1948 (62 Stat. 162); Section 314 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1744); and 30 U.S.C. 28f–28k, as amended by the Act of October 21, 1998 (112 Stat. 2681–232, 2681–235).

PART 3830—LOCATION OF MINING CLAIMS

5. The authority citation for part 3830 is revised to read as follows:

Authority: 30 U.S.C. 22, 28, and 28f–k; 43 U.S.C. 299 and 1201; 31 U.S.C. 9701; 16 U.S.C. 1901, 1907; 43 U.S.C. 1740 and 1744; 30 U.S.C. 242; 50 U.S.C. Appendix 565; 112 Stat. 2861–235.

§ 3833.0–3 [Amended]

6. Amend § 3833.0–3 as follows:

a. Remove from the first sentence of paragraph (a) the phrase "the Act of August 10, 1993 (30 U.S.C. 28f–k, 107 Stat. 405)," and add in its place the phrase "30 U.S.C. 28f–k, as amended by the Act of October 21, 1988 (112 Stat. 2681–235),"

b. Remove from the first sentence of paragraph (e) the phrase "Sections 10101–10106 of the Act of August 10, 1993 (Pub. L. 103–66, 107 Stat. 405) require", and add in its place the phrase "The Act of October 21, 1998 (112 Stat. 2681–232, 2681–235, 30 U.S.C. 28f–28k) requires'; and

c. Remove from the third sentence of paragraph (e) the phrase "the Act of August 10, 1993," and add in its place the phrase "30 U.S.C. 28f."

§ 3833.0–5 [Amended]

7. Amend § 3833.0–5 as follows:

a. Remove from the second sentence of paragraph (o) the phrases "December 30, 1999," and "the Act of August 10, 1993," and add in their places, respectively, the phrases "December 30, 2002," and "the Act of October 21, 1998,"

b. Remove from the first sentence of paragraph (v) the phrase "the Act of August 10, 1993 (Pub. L. 103–66, 107 Stat. 312)" and add in its place the phrase "30 U.S.C. 28f, as amended by the Act of October 21, 1998 (112 Stat. 2681–235)";

c. Remove from the second sentence of paragraph (v) the phrase "September 29, 1998" and add in its place the phrase "September 29, 2001";

d. Remove from the first sentence of paragraph (w) the phrases "the Act of August 10, 1993," and "September 30, 1998", and add in their places, respectively, the phrases "30 U.S.C. 28g, as amended by the Act of October 21, 1998," and "September 30, 2001"; and

e. Remove from the first sentence of paragraph (y) the phrase "the Act of August 10, 1993," and add in its place the phrase "30 U.S.C. 28g, as amended by the Act of October 21, 1998."

§ 3833.0–9 [Amended]

8. Amend § 3833.0–9 by removing from the last sentence of paragraph (a) the phrase "the Act of April 16, 1993 (Public Law 103–23, 107 Stat. 60), and the Act of August 10, 1993 (Public Law 103–66, 30 U.S.C. 28f–k, 107 Stat. 405)" and adding in its place the phrase "43 U.S.C. 299, and 30 U.S.C. 28f–k, as amended by the Act of October 21, 1998 (112 Stat. 2681–235)."

§ 3833.1–3 [Amended]

9. Amend § 3833.1–3 by removing from each place it appears in paragraph (c)(2) the phrase "August 31" and adding in its place the phrase "September 1."

§ 3833.1–4 [Amended]

10. Amend § 3833.1–4 by removing from paragraph (b) the phrase "September 30, 1998" and adding in its place the phrase "September 30, 2001."

11. Amend § 3833.1–5 as follows:

a. Remove from the last sentence of the introductory text the phrases "the Act of August 10, 1993," and "September 1, 1999" and add in their places, respectively, the phrases "30 U.S.C. 28f" and "September 1, 2002,"

b. Remove from each place it appears in paragraph (a)(1) the phrases "an August 31" and "August 31," and add in place thereof the phrase "September 1,"

c. Remove from the first sentence of paragraph (b) the phrases "the Act of August 10, 1993" and "August 31" and add in their places, respectively, the phrases "30 U.S.C. 28f" and "September 1";

d. Revise the second sentence of paragraph (b) to read as set forth below; and

e. Remove from paragraph (e) the phrase "December 31" and add in its place the phrase "December 30."

§ 3833.1–5 Maintenance Fees.

* * * * *

(b) * * * The payments are due on each September 1 through September 1, 2001. * * *

12. Amend § 3833.1–6 as follows:

§ 3833.1–6 [Amended]

a. Remove from the section heading the phrase "Act of August 10, 1993" and add in its place the phrase "30 U.S.C. 28f", and remove from the section heading the phrase "'applicable from 12 o'clock noon on September 1, 1993, until 12 o'clock noon September 1, 1999";

b. Remove from the first sentence of paragraph (a)(1) the phrase "August 31" and add in its place the phrase "September 1";

c. Remove from the second sentence of paragraph (b) the phrase "August 31" and add in its place the phrase "September 1";

d. Remove from paragraph (d)(2) the phrase "August 31 immediately preceding" and add in its place the phrase "September 1 at the beginning of"; and

e. Remove from the third sentence of paragraph (e) the phrase "August 31" and add in its place the phrase "September 1."

§ 3833.1–7 [Amended]

13. Amend § 3833.1–7 as follows:

a. In paragraph (d) remove the first sentence, and remove from the second sentence the phrases "August 31" and "August 31, 1998", and add in their places, respectively, the phrases "September 1" and "September 1, 2002", and remove the word "thereafter"; and

b. In paragraph (d)(3) remove the phrase "August 31" and add in its place the phrase "September 1."

§ 3833.2–3 [Amended]

14. Amend § 3833.2–3 as follows:

a. Remove from the section heading the phrase "the Act of August 10, 1993" and add in its place "the Act of October 21, 1998";

b. Remove from paragraph (d) the phrases "Act of August 10, 1993," "September 1, 1999," and "December 30, 2000," and add in their places, respectively, the phrases "30 U.S.C. 28f," "September 1, 2002," and "December 30, 2003"; and

c. Remove from paragraph (e) the phrases "September 1, 1998," "September 29, 1998," and "September 1, 1999", and add in their places, respectively, the phrases "September 1, 2001," "September 29, 2001," and "September 1, 2002."

§ 3833.4 [Amended]

15. Amend § 3833.4 by removing from paragraph (a)(1) the phrase "August 31" and add in its place the phrase "September 1."

16. Add § 3833.4–1 to read as follows:

§ 3833.4–1 Curing defective waivers.

(a) If BLM finds a defect in a waiver request, BLM will send a notice to the claimant by certified mail—return receipt requested, to the address given on the waiver request.

(b) The claimant must cure the defective waiver or pay the annual maintenance fees within 60 days of receiving BLM notification of the defects. Otherwise the claims covered by the defective waiver are forfeited.

PART 3850—ASSESSMENT WORK

17. The authority citation for part 3850 continues to read as follows:

Authority: 30 U.S.C. 22 et seq.; 30 U.S.C. 28–28k; 50 U.S.C. Appendix 565; 107 Stat. 405.

Subpart 3851—Assessment Work: General

17. Amend § 3851.3 by removing from the first sentence of paragraph (c) the phrase "Act of August 10, 1993" and add in its place the phrase "30 U.S.C. 28f."

Dated: July 26, 1999.

Sylvia V. Baca,

Acting Assistant Secretary of the Interior.

[FR Doc. 99–21910 Filed 8–25–99; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3730, 3810, 3820, 3830–3840, and 3850

[WO–620–1430–00–24 1A]

RIN 1004–AD31

Locating, Recording, and Maintaining Mining Claims or Sites; and Extension of Currently Approved Information Collection, OMB Approval Number 1004–0114

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule and notice and request for comment on information collection.

SUMMARY: The Bureau of Land Management (BLM) is proposing this rule to amend regulations on locating, recording, and maintaining mining claims or sites. In this proposed rule, BLM is seeking to amend regulations to respond to a recent law that continues to require claimants to pay location and maintenance fees on unpatented mining claims or sites and to provide annual maintenance fee waivers to small miners until September 30, 2001. BLM collected these fees and provided for waivers under the existing regulations based on a previous law that expired on September 30, 1998. The new law—

Moves the annual payment and waiver filing deadline from August 31 to September 1 to coincide with the beginning of the assessment year;

Allows time to cure a small miner waiver application defect; and

Allows maintenance fee payment after the payment deadline instead of forfeiting a claim or site in an incurable waiver.

In addition to making these changes in the regulations, the proposed rule would streamline the regulations by consolidating provisions on location, recording, and maintenance of mining claims or sites in one CFR part, clarifying conflicting language, eliminating duplication, and removing obsolete provisions. These revisions are part of BLM's overall effort to rewrite regulations in plain language to make them easier for the public to use and understand.

The BLM is also taking this opportunity to announce its intention to request an extension of its current approval to collect certain information from holders of unpatented mining claims, mill, and tunnel sites.

DATES: Proposed rule: You should submit your comments by October 26, 1999. In developing a final rule, BLM may not consider comments postmarked or received in person or by electronic mail after this date.

Proposed information collection renewal: You should submit your comments by October 26, 1999. BLM may not consider comments postmarked or received by electronic mail after the above date in the decision-making process on the proposed information collection.

ADDRESSES: Please comment separately on the proposed rule or the information collection renewal. You may hand-deliver comments on the proposed rule or the proposed information collection renewal to Bureau of Land Management, Administrative Record, Room 401, 1620 L St., NW, Washington, DC, or mail comments to Bureau of Land Management, Administrative Record, Room 401LS, 1849 C St., NW, Washington, DC 20240. For information about filing comments electronically, see the **SUPPLEMENTARY INFORMATION** section under "Public Comment Procedures" and "Electronic access and filing address."

FOR FURTHER INFORMATION CONTACT: Roger Haskins in the Solid Minerals Group at (202)452–0355 or Ted Hudson in Regulatory Affairs at (202)452–5042. For assistance in reaching the above contacts, individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1-(800)877–8339 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Section-by-Section Analysis
V. Procedural Matters

I. Public Comment Procedures

General Comment Procedures

Comments on the proposed rule or the information collection should be specific, should be confined to issues pertinent to the proposed rule, and should explain the reason for any recommended change. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing. BLM may not necessarily consider or include in the Administrative Record for the final rule comments that BLM receives after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

Please submit your comments on issues related to the proposed rule or information collection renewal, in writing, according to the **ADDRESSES** section above. Please comment separately on the proposed rule or on the information collection renewal. Your comments should explain the need for any changes you recommend and, where possible, refer to specific sections or paragraphs in the proposed rule.

BLM will make your comments, including your name and address, available for public review at the "L Street" address listed in **ADDRESSES** above during regular business hours (7:45 a.m. to 4:15 p.m., Monday through Friday, except Federal holidays). BLM will also post all comments on its home page (http://www.blm.gov) at the end of the comment period.

Under certain conditions, BLM can keep your personal information confidential. You must prominently state your request for confidentiality at the beginning of your comment. BLM will consider withholding your name, street address, and other identifying information on a case-by-case basis to the extent allowed by law. BLM will make available to the public all submissions from organizations and businesses and from individuals identifying themselves as representatives or officials of organizations or businesses.

Electronic Access and Filing Address

You may view an electronic version of this proposed rule at BLM's Internet home page: www.blm.gov. You may also comment via the Internet to: WOComment@blm.gov. Please also include "Attention: AD31" for the proposed rule or "Attention: 1004–0114" for the proposed information collection renewal, and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (202) 452–5030.

Comments on Rule Format

We also welcome your comments on how we could make this proposed rule easier to understand, including answers to the following questions:

- Are the requirements clearly stated?
- Does it contain unclear technical language or jargon?
- Does the format aid or reduce its clarity?
- Would it be easier to understand if it were divided into more sections?
- Is the description in the "supplementary information" section helpful?

Please send format comments to the Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C St., NW, Washington, DC 20240, or e-mail them to Execsec@ios.doi.gov.

II. Background

BLM has primary responsibility for the administration of mining claims or sites on Federal lands. At the end of fiscal year (FY) 1998, there were 289,054 mining claims and sites maintained on the Federal lands. During FY 1998, claimants recorded 34,756 new mining claims and sites. In addition, BLM processed 4,121 waiver documents containing 27,498 mining claims and sites and processed 256,593 annual maintenance fee transactions. BLM also collected a total of $29,968,000 in location and maintenance fees. BLM deposits these collected fees into a special fund, and Congress appropriates money to BLM from the fund to pay for the personnel and operations of the Mining Law Administration program which includes, among other things, mining claim recording and fee collection, processing patent applications and plans of operations, inspecting operations and enforcing the regulations.

A. Mining Claims or Sites

A mining claim, which can be either lode or placer, comprises a parcel of Federal land that contains a valuable mineral deposit. In contrast, a mill site is located on non-mineral land and used to support a lode or placer mining claim operation or support itself independent of a particular claim. A tunnel site contains a tunnel to a lode mine or is used to discover unknown lode mineral deposits. See 30 U.S.C. 22–42.

A mineral entry occurs when a patent applicant has met all patenting requirements for the mining claims or mill sites that are included in a mineral patent application. This means that except for the confirmation of a discovery of a valuable mineral deposit or validation of proper use and occupancy, a claimant of a mining claim or mill site is otherwise qualified to receive a mineral patent to the lands applied for. However, in the context of land withdrawals, the term "closed to mineral entry" means only that the lands are withdrawn from mining claim or site location under the General Mining Law.

B. Current Regulations

Organization of the Current Regulations

Regulations on location, recording, and maintenance of mining claims or sites are scattered throughout Groups 3700 and 3800. BLM and the General Land Office (GLO), BLM's predecessor, created them piece by piece since 1939, when the first Code of Federal Regulations (CFR) was issued. Past practice of the BLM and GLO was to create a new subpart if Congress amended the General Mining Law or passed new laws affecting mining claims or sites. For this reason, current regulations are disjointed and contain conflicting or duplicative information. This rule is BLM's first attempt to consolidate, clarify, and eliminate duplications in these regulations.

Other Regulations Related to This Rule.

This rule concerns the location, recording, and maintenance of mining claims and associated mineral rights on the Federal lands of the United States that are subject to the General Mining Law. In order to obtain permission to occupy or disturb the surface or subsurface of your mining claims or sites, you must follow the Surface Management regulations of the surface management agency.

- For BLM administered lands, you must follow 43 CFR part 3715, 3802, 3809, or 3814 as applicable.
- On National Forest lands, you must follow 36 CFR part 228.
- On National Park System lands, you must follow 36 CFR part 9.
- In addition, most States have mining and reclamation permits that you must obtain before beginning surface disturbing operations on Federal lands.

To apply for a mineral patent for your mining claim or mill site, you must follow the regulations at 43 CFR part 3860. However, due to a Congressional budget moratorium in effect since September 30, 1994, BLM cannot accept any new mineral patent applications until Congress removes the moratorium.

Previously Proposed Rules Related to This Rule

Since 1992, Congress has passed three short-term laws requiring claimants to pay various fees when locating, recording, and maintaining mining claims or sites. As the collector of the fees, BLM has implemented each of these laws by amending its regulations. This proposed rule would implement the third of these short-term laws—the Interior and Related Agencies Appropriation Act for Fiscal Year 1999 (the FY99 Act) (section (e) of Pub. L. 105–277, 112 Stat. 2681–232, 2681–235, 30 U.S.C. 28g–28k), enacted on October 21, 1998. Before that, on August 10, 1993, Congress enacted Pub. L. 103–66, 107 Stat. 405, 30 U.S.C. 28f–k, which required claimants to pay a $25 one-time location fee and a $100 annual maintenance fee per claim or site, and added qualifiers for small miner waivers. To implement the 1993 Act, BLM published a rule amending 43 CFR parts 3730, 3821, 3833, and 3850 on August 30, 1994, at 59 FR 44857. The 1993 Act expired on September 30, 1998.

Earlier, on October 5, 1992, Congress enacted Pub. L. 102–381, 106 Stat. 1374, 1378–1379, which required claimants to pay mining claim rental fees of $100 per claim or site and provided exemptions for claimants with approved notices or plans of operations for actual exploration work or mineral production. To implement this Act, BLM published a rule amending 43 CFR parts 3730, 3821, 3833, and 3850 on July 15, 1993, at 58 FR 38197. The Act expired on September 30, 1994, and was superseded by the 1993 Act.

The successive statutes also changed some of the pertinent terminology: Rental fees in the 1992 Act became maintenance fees in the 1993 Act, and exemptions became waivers.

C. Statutory History

Originally, all commercially valuable minerals were locatable under the General Mining Law, 30 U.S.C. 21 *et seq.* Congress has, over time, added minerals to, or removed minerals from, the General Mining Law through amendments and the passage of the Mineral Leasing Act, 30 U.S.C. 181 *et seq.*, the Geothermal Steam Act, 30 U.S.C. 1001 *et seq.*, and the Surface Resources Act, 30 U.S.C. 601, 603. As a result, locatable minerals are defined by the intersection of these statutes with the General Mining Law. The Federal Land Policy and Management Act (FLPMA), 43 U.S.C. 1701 *et seq.*, affects location, recording, and maintenance of mining claims or sites through its broad directive to the Secretary of the Interior to manage all public lands. In addition, Congress requires special procedures for locating or maintaining claims or sites that fall under the Stockraising Homestead Act or the Energy Policy Act.

1. The Federal Land Policy and Management Act

The Federal Land Policy and Management Act of 1976 (FLPMA) gives the Secretary broad-ranging authority to manage all public lands. This Act resulted from Congress completely overhauling the entire public land management system of the United States. Relevant sections in FLPMA:

- Require recording all mining claims or sites with BLM, and maintenance of those claims or sites, or they are forfeited (section 314, 43 U.S.C. 1744);
- Make knowing disregard or circumvention of any regulation issued under the authority of FLPMA a Federal offense (section 303, 43 U.S.C. 1733).

2. The General Mining Law

How to locate minerals under the General Mining Laws

The General Mining Laws, as amended, which generally comprises chapters 2, 11, 12, 12A, 15, 16, and 20, and section 161 of title 30 of the United States Code, are the primary statutes governing disposition of minerals on Federal lands by location. Locating claims or sites has five elements:

- Discovering a valuable mineral deposit
- Locating mining claims or sites
- Recording mining claims or sites
- Maintaining mining claims or sites
- Patenting mining claims or sites

Claimants who comply with the first four elements gain a right of possession to the deposit, or a right to explore for, extract and develop the minerals. This right includes the use of the surface for exploration, mineral development, mineral extraction, and uses reasonably incident to exploration, extraction, and development. This right is a property interest and may be bought, sold, transferred, leased, rented, devised or inherited. The Federal Government retains ownership and title to the land, even while a claimant is developing the mineral deposit. On lands where the United States is not the owner of the surface estate, which is the situation on Stockraising Homestead Act lands, the surface owner retains title to the surface of the land and BLM administers the mineral estate reserved to the United States. Under certain circumstances, a claimant may qualify for a mineral patent and receive title to the land.

3. Mineral Leasing Act

The Mineral Leasing Act allows leasing of the Federal lands for development of certain types of minerals. The Act made several minerals that were once locatable or not available under the General Mining Law leasable after February 25, 1920, including:

- Oil and gas
- Coal
- Potassium, sodium, and phosphate
- Oil shale, tar sands, native asphalt, solid and semisolid bitumen
- Oil recovered from oil sands after the deposit is mined or quarried
- Sulphur in Louisiana and New Mexico that belongs to the U.S.

4. Mineral Materials Act and Surface Resources Act

The Mineral Materials Act and the Surface Resources Act govern sale of mineral materials on Federal land. These mineral materials include petrified wood and common variety mineral materials. Common variety mineral materials were locatable until July 23, 1955, when the Surface Resources Act made all deposits of common varieties of sand, stone, gravel, pumice, pumicite, and cinders salable and therefore no longer locatable. Uncommon varieties of mineral materials, which have distinct and special value, are still locatable under the General Mining Law.

5. Stockraising Homestead Act and the Homestead Act

Claimants must follow additional procedures when seeking to locate mining claims or sites on lands which were patented under the Stockraising Homestead Act (SRHA) of 1916 (43 U.S.C. 291–299) or, in some instances, the Homestead Act (43 U.S.C. 161–284). The United States owns only the mineral estate in these lands.

Under the Homestead Act, the United States granted land patents (or title) to homesteaders who wanted to enter and cultivate the land. However, in some situations, particularly in the arid West, some land was not suitable for traditional crop farming. The SRHA allowed homesteaders to use the land for grazing, instead of traditional farming. For those who already had an application (entry) under the Homestead Act but could not meet the cultivation and irrigation requirements, the SRHA permitted conversion of the Homestead entry into an SRHA entry. These converted patents were issued under the Homestead Act. However, unlike other Homestead Act patents which granted title to both the surface and mineral estates, the converted patents conveyed title to the surface estate only and reserved the mineral estate to the United States under the SRHA.

Thus, certain lands that appear to have been patented under the authority of the Homestead Act after December 29, 1916, were patented under the SRHA with a Federal mineral estate reservation. Mining claims or tunnel sites may be located on these reserved mineral estates. However, since the United States is not the surface owner of the land, claimants must notify both the surface owner and BLM before locating mining claims or tunnel sites.

Congress enacted amendments to the Stockraising Homestead Act in 1993 that impose notification requirements on anyone other than the surface owner who wants to enter Stockraising Homestead Act lands to explore for minerals and locate mining claims. Act of April 16, 1993; Pub. L. 103–23; 43 U.S.C. 299(b).

6. Energy Policy Act

The Energy Policy Act (30 U.S.C. 242) no longer requires assessment work for oil shale placer claims. Instead, it requires payment of an annual $550 fee for most oil shale claims, and requires an annual filing of a notice of intent to hold. In cases where $550 is due, the claimant is not required to pay an additional maintenance fee.

7. Federal Oil and Gas Royalty Management Act

The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 188(f)) provides that a claimant may seek to convert an oil placer mining claim that was validly located before February 24, 1920, to a noncompetitive oil and gas lease. This lease would be effective as of the date the mining claim is deemed abandoned because the claimant failed to comply with section 314 of FLPMA. The claimant's failure must be inadvertent, justifiable, or not due to his or her lack of reasonable diligence.

8. State Laws

Most States have passed their own laws about mining claim location, recording, and annual maintenance as authorized by the General Mining Law. In addition to BLM's regulations, these State law requirements will apply to you.

III. Discussion of Proposed Rule

Organization of the Proposed Rule

This proposed rule would consolidate information about locating, recording, and maintaining mining claims or sites. Two parts would be reserved so that other related information may eventually be relocated into this part. These reserved parts will address mineral lands available for location and recording, and notification requirements under special Acts.

Proposed part 3830 contains several sections. Each of the sections, located directly under part 3830 (in sections numbered 3830.xx), contains general information that is applicable throughout part 3830 and the succeeding parts 3831 through 3839. In old regulations, BLM used section numbers in the format xxxx.0-x for the sections providing this general information. To conform more closely with the standard numbering system for the Code of Federal Regulations, we eliminated the zero and dash.

To make regulations on mining claims or sites easier to use, this rule organizes sections within each part so that:

- Sections xxxx.1-xxxx.9 are introductory sections containing general information applicable to the part;
- Sections xxxx.x0, such as xxxx.10, xxxx.20, and xxxx.30, mark the beginning of new topic areas within the part;
- Sections under these "new topic" sections, such as xxxx.12, xxxx.26, or xxxx.38, are related to the topic areas; and
- Sections xxxx.90–xxxx.99 tell you how to cure defects in your compliance with the requirements in that part.

Why BLM is Proposing This Rule

BLM is proposing this rule for two reasons:

- To implement the Interior and Related Agencies Appropriation Act for Fiscal Year 1999 (the FY99 Act), section (e) of Pub. L. 105–277, 112 Stat. 2681–232, 2681–235, 30 U.S.C. 28f–28k, enacted by Congress on October 21, 1998; and
- To make it easier for you, as claimants and other interested persons, to find and understand relevant requirements.

How the FY99 Act Changes BLM's Current Requirements

The FY99 Act does not change the requirements that all claimants pay a one-time $25 location fee and a $100 annual maintenance fee, or the provision for small miner and other waivers. BLM had collected these fees and waivers under the Interior and Related Agencies Appropriations Act for Fiscal Year 1994 (Pub. L. 103–66; 107 Stat. 405), which expired on September 30, 1998. The FY99 Act extends BLM's authority from October 1, 1998, to September 30, 2001. This rule reflects this extension.

The Act makes two important changes. First, it moves the annual payment deadline to September 1, which is the first day of the assessment year.

Second, the FY99 Act gives claimants more time to cure defective small miner waiver applications. Under current regulations, if you, as a claimant, filed a waiver application on time and received notification that the waiver was defective you had 30 days from the notification date to cure the defect. You also had the option of paying the maintenance fee instead of curing the defect as long as the payment deadline had not passed. If the payment deadline had passed and you failed to cure the defect within 30 days, you forfeited the claims or sites. Since waiver applications and maintenance fees are both due on the same date, you rarely had the option of paying the maintenance fee instead of curing the defect. Therefore, if the defect was incurable, you generally forfeited the claims or sites.

Under the FY99 Act, you have 60 days instead of 30 days after receiving written notification from BLM to cure a defective small miner waiver application. The FY99 Act also gives you the option to pay the maintenance fee instead of curing the defect during this 60-day period, regardless of whether the payment deadline has passed. These changes required under the FY99 Act affect payments due to BLM on September 1, 1999. Because the entire rulemaking process will not be finished by that date, BLM is adopting an interim final rule to make these changes. Elsewhere in this issue of the **Federal Register**, you will find that interim final rule that makes these changes, and only these changes, in the context of the existing regulations. You may also comment on that interim final rule as stated in its preamble, but the changes contained in it are effective on publication so that new deadlines will be in place for the opening of the next assessment year. Once this proposed rule is published in final form, it will supersede the interim final rule. If comments on the interim final rule require urgent changes, we will make them in an expedited, separate, final rule.

How This Proposed Rule Streamlines and Clarifies the Regulations

BLM seeks to improve regulations on mining claims or sites by making them easier to use and understand. First, this rule would make it easier for the public to find and follow regulations on mining claims or sites by consolidating most of the regulations about mining claim or site location, recording, and maintenance in one part, 43 CFR part 3830. These regulations are currently scattered throughout Groups 3700 (Multiple Use Mining) and 3800 (Mining Claims under the General Mining Laws). Two parts in the series of parts beginning with 3830 would be reserved so that BLM can redesignate other regulations, including those on special mining act requirements and mineral lands availability, in future rulemakings.

Eventually, BLM plans to consolidate all mining claim requirements, except for mineral patenting and surface management requirements, into part 3830. Mineral survey and patenting regulations will stay in part 3860. BLM wants to assist you in finding the information you need by combining all mining claim and site information into one part.

Second, this rule would make regulations easier to understand by removing conflicts in requirements, eliminating duplication, and removing outdated or inapplicable provisions. Some of the language in existing regulations dates back to the late 1890s and we must remove them if they are unnecessary or rewrite them in plain language.

Effect of the Streamlining and Clarifying Changes

The organizational changes in this proposed rule are not intended to make a significant change in the meaning of the regulations in any way. BLM wants to make the regulations easier for the public to use and understand.

IV. Section-by-Section Analysis

This section-by-section analysis will briefly outline how the new regulations would be organized and highlight the few minor substantive changes. Although the following paragraphs use descriptive rather than conditional language in most cases to describe the proposed regulations, none of the following descriptions will be effective unless and until promulgated in a final rule. (Of course, to the extent that this analysis reflects reorganization rather than substantive amendment, many of the provisions described here are already in effect.)

The chart below provides a map of the proposed numbering changes to help guide you through the new consolidated part. The column on the left shows the section numbers in this proposed rule, and the column on the right shows the sections from which the proposed provisions are derived or states that they are new. Sections ending in "0" are generally introductory sections leading into a series of related substantive sections.

Proposed regulations	Existing regulations
PART 3830	
3830.1	New; 3833.01.
3830.2	3832; 3833.0–1; 3833.5(e).
3830.3	New; 3833.0–3.
3830.5	New; 3833.0–5.
3830.6	3833.5(g).
3830.9	3833.0–9.
3830.10	
3830.11	3811.1; 3812.1.
3830.12	New; 3711; 3812.1.
3830.20.	
3830.21	New; 3833.1–1; 3833.1–4; 3833.1–5; 3852.2.
3830.22	3833.1–1.
3830.23	3833.1–3; 3833.1–4.
3830.24	3833.1–3; 3833.0–5(m).
3830.25	3833.1–3.
3830.90	
3830.91	New.
3830.92	3833.4(f).
3830.93	New; 3833.5(f).
3830.94	New; 3833.4(b); 3833.4(c); 3833.5(d); 3833.5(f).
3830.95	New; 3833.1–3(b); 3833.4(a).
3830.96	3833.1–3(d); 3833.4(b).
3830.97	3833.5(h).
PART 3832	
3832.1	New.
3832.10	
3832.11	3831.1; 3833.1–2(b); 3841.4–4; 3841.4–5; 3841.4–6.
3832.20	
3832.21	3812.1; 3842.2; 3842.4.
3832.22	3841.4–1; 3841.4–2; 3842.1–2.
3832.30	
3832.31	New; 3844.
3832.32	New; 3844.
3832.33	New; 3844.
3832.34	New; 3844.
3832.40	
3832.41	New; 3843.
3832.42	3843.
3832.43	3843.
3832.44	3843.1.
3832.45	New; 3843.
3832.90	
3832.91	New; 3841.4–2
PART 3833	
3833.1	New; 3833.0–1; 3833.0–2; 3833.4(d).
3833.10	
3833.11	3833.1–2(a); 3833.1–2(b)(1)–(4); 3833.5(c).
3833.20	
3833.21	New; 3833.0–5(p).
3833.22	New; 3833.0–5(p).
3833.30	
3833.31	3833.3.
3833.32	New; 3833.3(c).
3833.33	3833.3(a).
3833.34	New; 3842.1–1.
3833.90	
3833.91	New; 3833.4(a); 3833.5(a).
3833.92	New; 3833.4(c).
3833.93	3833.5(f).
PART 3834	
3834.10	
3834.11	3833.1–5(b) & (e).
3834.12	3833.1–5(a), (b), & (e).
3834.13	3833.1–5(c).
3834.14	New; 3833.1–5(a) & (d).
3834.20	
3834.21	3833.1–5(h).
3834.22	3833.1–5(h)(1).
3834.23	New; 3833.1–5(h)(2).
PART 3835	
3835.1	New; 3833.1–5 & 3833.1–6.
3835.10	
3835.11	New; 3833.1–7(d).
3835.12	3833.1–6(a)–(d) & (f); 3833.1–7(c).
3835.13	3833.1–6(a)–(d); 3833.1–7(d) & (e).
3835.14	New; 3833.1–6; 3833.1–7(d); 3851.1(b).
3835.15	New; 3833.1–7(d); 3833.2–2(c).
3835.16	New; 3833.1–6(b); 3833.2–2(c); 3851.1; 3851.3.
3835.20	New; 3833.1–5(g).
3835.30	
3835.31	New; 3833.0–5(n); 3833.2–3(c); 3851.1.
3835.32	3833.1–5(e) &(f); 3833.1–6(b)–(d) & (f).
3835.33	3833.2–4.
3835.34	3833.2–4(c); 3833.2–5.
3835.90	
3835.91	3833.2–3(a) and (b); 3833.4(a).
3835.92	3833.4(a).
3835.93	New.
PART 3836	
3836.10	
3836.11	3851.1(b)–(c).
3836.12	New; 3851.2.
3836.13	3851.2.
3836.14	3851.2.
3836.15	3833.4(a); 3851.3.
3836.20	New; 3852.0–3.
3836.21	3852.1.
3836.22	3852.2.
3836.23	3852.3.
3836.24	3852.4.
3836.25	3833.1–7(e); 3852.5.
PART 3837	
3837.10	
3837.11	3851.4(a) and (d).
3837.20	
3837.21	New; 3851.4(b).
3837.22	3851.4(a).
3837.23	New; 3851.4(b).
3837.24	New; 3851.4.
3837.30	New.
PART 3838	
3838.1	New.
3838.2	New.
3838.10	
3838.11	New; 3833.0–3(g); 3833.1–2(c) & (d).
3838.12	New; 3833.1–2(d).
3838.13	New; 3833.1–2(d).
3838.14	3833.0–3(g); 3833.1–2(c).
3838.15	3833.0–3(g); 3833.1–2(c).
3838.16	3833.1–2(c).
3838.90	
3838.91	New; 3833.4(a).

Part 3730—Public Law 359; Mining in Powersite Withdrawals: General

Cross references in § 3734.1 are amended to reflect the reorganization of part 3830.

Part 3810—Lands and Minerals Subject to Location

The description of minerals that are subject to location, subpart 3812, would be removed. This information can now be found in § 3830.11, "Which minerals are locatable under the mining law?"

Part 3820—Areas Subject to Special Mining Laws

Cross references in §§ 3821.2 and 3821.3 are amended to reflect the reorganization of part 3830.

Part 3830—Locating, Recording, and Maintaining Mining Claims or Sites; General Provisions

Proposed §§ 3830.1 through 3830.94 contain provisions that generally apply to all the regulations in parts 3830 through 3839. You should refer back to these sections on general policies and procedures when you follow regulations in this part.

Sections 3830.1, 3830.2, and 3830.3 outline the purpose, scope, and authority for this part. Section 3830.5 contains definitions that are important to understand in this series of parts. Section 3830.8 discusses information collection requirements. Section 3830.9 describes the penalties for filing a document with BLM that you know contains false, erroneous, or fictitious information or statements.

Section 3830.11 and 3830.12 describe which minerals are locatable under the mining law and subject to the regulations under this part.

Sections 3830.20 through 3830.24 explain payment procedures for various fees and service charges required in part 3830. Section 3830.21 contains a table describing the fees and service charges and when they are due. Section 3830.22 describes when BLM will refund fees you have paid. Section 3830.23 explains the forms of payment BLM will accept. Section 3830.24 tells you how you can get your payments to BLM. Section 3830.25 explains when you should pay for a new location.

Sections 3830.91 through 3830.96 describe what happens if you fail to comply with this part, the types of defects that may affect claims and sites, and the procedures you must follow if you want to cure defects. Section 3830.97 describes appeal procedures and cross-references other regulations, including appeals regulations found in parts 4 and 1840 of this title, that outline procedures for appealing to the Interior Board of Land Appeals.

In addition to this general section on defects, most parts also contain sections xxxx.90 through xxxx.9x, which identify the types of defects that you

may encounter specifically to that part, and tell you whether they can be cured and how to cure them.

Part 3831—Mineral Lands Available for the Location of Mining Claims or Sites [Reserved]

This part is reserved so that BLM may consolidate all information on the lands that are available for the mining claim and site location. This information is currently found in 43 CFR parts 3730, 3740, 3810, and 3820 and will likely be moved to this part in future rulemakings.

Part 3832—Locating Mining Claims or Sites [Added]

This part consolidates location requirements, currently found in 43 CFR subpart 3831 and part 3840, for lode and placer mining claims and mill and tunnel sites.

Section 3832.1 defines what location is. Sections 3832.10 through 3832.12 describe general procedures for locating mining claims or sites. Sections 3832.20 through 3832.22 provide specific requirements for lode and placer mining claims. Section 3821.21 discusses, among other things, claims located as building stone placer, oil placer, or saline placer claims on lands chiefly valuable for those minerals. The issue of what "chiefly valuable" means is currently before the Secretary in a case entitled *U.S.* v. *United Mining Corp.* If the Secretary decides that case before this rule is issued in final form, the final rule may reflect the outcome of that decision. This rule proposes to prevent claimants from circumventing the limitation on the number of millsite acres a claimant may locate under § 3832.32 by limiting the millsite acreage you may locate to 5 acres per associated 20 acre parcel of lode or placer claim lands. Sections 3832.30 through 3832.34 contain specific requirements for dependent and independent or custom mill sites. In accordance with the Mining Law, this rule proposes to make it clear that you may not locate more than an aggregate of 5 acres of mill site land for each associated placer or lode mining claim. The provision allowing a maximum of 5 acres of mill site land for each lode or placer mining claim held is contained in 30 U.S.C. 42, and derives from the Lode Law of 1866 (14 Stat. 251). This requirement was recently reviewed and Solicitor's Opinion M–36988 reaffirmed it on November 7, 1997. Sections 3832.40 through 3832.45 contain specific requirements for tunnel sites. Sections 3832.90 and 3832.91 specify when and how you can correct defects in your location of claims or sites.

Part 3833—Recording Mining Claims or Sites [Added]

This part walks you through the Federal process for recording a mining claim or site.

Section 3833.1 describes what it means to record mining claims and sites and why you must record your mining claims and sites. The recording process provides BLM with a record of claims and sites.

Sections 3833.10 and 3833.11 outline the procedures for recording mining claims and sites. Specifically, § 3833.11 describes how you record mining claims and sites. Some of this information may be the same information that you used to locate your claim in part 3832.

Sections 3833.20 through 3833.23 describe when and how you may amend the record of a previously located mining claim or site. Sections 3833.30 through 3833.35 cover transfers of mining claims or sites.

Finally, §§ 3833.90 through 3833.93 describe how to cure certain defects in your recording of mining claims or sites.

Part 3834—Required Fees for Mining Claims or Sites

This part guides you through annual maintenance of your claims or sites. It describes what you must do each year to maintain your mining claims or sites properly to avoid forfeiting them. Section 3834.11 describes the annual $100 maintenance fee, the fee waiver, and the consequences for failing to pay. Sections 3834.12 through 3834.14 go through the procedures for and effects of paying the maintenance fee. These sections contain two of the five changes in our regulations resulting from the passage of the Interior and Related Agencies Appropriation Act for Fiscal Year 1999 (the FY99 Act), which Congress passed on October 21, 1998. First, BLM is revising these regulations to reflect the new statutory basis for BLM to collect location and maintenance fees from October 1, 1998, through September 30, 2001. BLM's previous statutory authority expired on September 30, 1998. Second, Congress moved the annual payment deadline from August 31 to September 1. Since assessment years begin every September 1, it makes sense to require payment on the first day of the assessment year instead of one day earlier.

Section 3834.11 also describes the $550 fee that you must pay for most oil shale placer claims, instead of the $100 maintenance fee. Most oil shale placer claims have different requirements because of the Energy Policy Act of 1992 (30 U.S.C. 242). Claimants who hold oil shale claims, except those who filed a patent application and received a first half final certificate for an oil shale claim by the date of enactment of the Energy Policy Act, must pay an annual fee of $550 for each oil shale claim and file a notice of intent to hold, which is due every year by December 30.

Sections 3834.20 through 3834.23 outline when and how the Secretary may adjust the amount of the maintenance and location fees.

Part 3835—Waivers From Annual Fees

Section 3835.1 provides general information about fee waivers and their applicability. Sections 3835.10 through 3835.12 address general filing requirements for waivers, while § 3835.13 lists specific types of waivers, their duration, and how you should renew them. Five types of waivers are available to claimants who are—

- Small miners,
- Military personnel under the Soldiers and Sailors' Relief Act,
- Performing reclamation,
- Denied access, or
- Applicants for a mineral patent (but only under certain circumstances).

The third of the five changes to our regulations resulting from the FY99 Act is found in these sections. The change is that the deadline for filing a waiver request is now September 1 instead of August 31.

Sections 3835.14 through 3835.16 establish the conditions for obtaining a small miner waiver in the assessment year following the assessment year of location, for filing a waiver in one year and paying the maintenance fee the next, and for paying the maintenance fee in one year and switching to a waiver the next assessment year.

Section 3825.20 addresses whether waivers continue when a claim is transferred. It explains that a waiver is still good if the transferee also qualifies for the waiver.

Sections 3835.30 through 3835.34 describe annual FLPMA filings and when they are required. An annual FLPMA filing is either the submission of an affidavit of assessment work when it is required as a condition of a waiver, or the submission of a notice of intent to hold when an affidavit of assessment work cannot be filed.

As in the earlier parts, §§ 3835.90 through 3835.93 describe the procedures to cure certain defects if you have any in your waiver application. Here in § 3835.93 you will find the fourth and fifth of the five changes to our regulations resulting from the FY99 Act. The FY99 Act gives you 60 days instead of 30 days to cure defective small miner waiver applications if BLM receives them by the payment deadline. The FY99 Act also gives you the opportunity to pay the maintenance fee if the defective small miner waiver applications cannot be cured within 60 days after the payment deadline.

Part 3836—Annual Assessment Work Requirements for Mining Claims

This part consolidates the provisions of current part 3851 on performing and recording assessment work, which is sometimes a condition for a maintenance fee waiver. Sections 3836.10 through 3836.15 identify the types of work that qualify as assessment work, and tell you how to record the work. Section 3836.16 discusses what happens if you fail to perform assessment work. If you are a qualified small miner, and you have been denied access to your claims, you may petition BLM to defer assessment work as outlined in §§ 3836.20 through 3836.25.

Part 3837—Acquiring a Delinquent Co-Claimant's Interests in a Mining Claim or Site

This part consolidates the procedures in current subpart 3851 and 30 U.S.C. 28 for acquiring the interests of a delinquent co-claimant in a mining claim or site when the co-claimant has failed to contribute a proportionate share of the assessment work, expenditures, or maintenance fees. Section 3837.10 states the conditions for acquisition and §§ 3837.20 through 3837.24 lay out the steps for acquisition. Section 3837.30 provides guidance in the event of a dispute between co-claimants.

Part 3838—Special Procedures for Locating and Recording Mining Claims and Tunnel Sites on Stockraising Homestead Act Lands

This part contains special procedures for exploring for minerals and locating, recording, and maintaining mining claims or tunnel sites located on or under Stockraising Homestead Act (SRHA) lands. If you want to locate mining claims on SRHA lands, you must take these special steps before locating, recording, and maintaining mining claims or tunnel sites under this part. These procedures are required by the Act of April 16, 1993; Public Law 103–23; 43 U.S.C. 299(b). The Act took effect on October 13, 1993.

Sections 3838.1 and 3838.2 describe what SRHA lands are, and why claims or sites on them require special procedures. Sections 3838.10 through 3838.14 and § 3838.16 discuss the procedures for exploring for minerals and locating mining claims on SRHA lands. Specifically, you must record a notice of intent to locate mining claims (NOITL) with BLM, and serve a copy of the NOITL on the surface owners. You must wait 30 days before entering the lands to explore for minerals or locate any mining claims. Section 3838.15 describes the benefits you receive when you file a NOITL, while §§ 3838.90 and 3838.91 state the consequences of failing to file a NOITL.

Part 3839—Special Laws, in Addition to FLPMA, that Require Recording or Notice

This part is reserved for future consolidation of regulations about recording and notice requirements and contest procedures under certain special laws. The current regulations are found in 43 CFR parts 3710, 3730, 3740, 3810, and 3820. These parts cover surface rights determinations under the Surface Resources Act of 1955; permission to use or occupy placer mining claims located in power site withdrawals under the Mining Claim Rights Restoration Act of 1955; conflict resolution between mining claims and mineral leases under the Multiple Mineral Development Act of 1954; and timber use on O&C lands in Oregon by mining claimants.

Part 3840—Nature and Classes of Mining Claims

BLM proposes to move the provisions of part 3840, which describe the types of claims or sites and how to locate and record them, to parts 3832 and 3833. See the conversion chart earlier in this preamble.

Part 3850—Assessment Work

BLM proposes to move the provisions of part 3850, which describes assessment work requirements, to part 3836.

V. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

In accordance with the criteria in Executive Order 12866, BLM has determined that this rule is not a significant regulatory action. The Office of Management and Budget (OMB) makes the final determination under Executive Order 12866.

- The rule will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These changes do not significantly change the substance of current mining claim administration within BLM. The annual revenue received from the collection of the congressionally mandated oil shale, maintenance, and location fees has averaged $32 million since August of 1993. This rule would not change the fee amounts and thus will not have a significant impact on fees collected.
- This rule will not create inconsistencies with other agencies' actions. It does not change the relationships of BLM to other agencies and their actions.
- This rule will not materially affect entitlements, grants, loan programs, or the rights and obligations of their recipients. The rule does not address any of these programs.
- This rule will not raise novel legal or policy issues because it makes no major substantive changes in the regulations. The Constitutionality of the rental and maintenance fees has been challenged in the Federal Courts. The Courts have consistently upheld the 1992 and 1993 Acts and their implementing regulations.

Regulatory Flexibility Act

We certify that this rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) The rule will not have an impact because the fees paid by small entities will not change. A final Regulatory Flexibility Analysis is not required, and a Small Entity Compliance Guide is not required.

For the purposes of this section a "small entity" is an individual, limited partnership, or small company, at "arm's length" from the control of any parent companies, with fewer than 500 employees or less than $5 million in revenue. This definition accords with Small Business Administration regulations at 13 CFR 121.201.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

- Does not have an annual effect on the economy of $100 million or more. As explained above, the revised regulations will not materially alter current BLM policy or the fees paid by mining claimants.
- Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The changes implemented by this rule are likely to leave all other economic aspects of BLM unaffected.
- Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or

the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*):

• This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is unnecessary.

• This rule will not produce a Federal mandate of $100 million or greater in any year. It is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The changes implemented in this rule do not require anything of any non-Federal governmental entity.

Executive Order 12630, Takings

In accordance with Executive Order 12630, the rule does not have takings implications. A takings implication assessment is not required. This rule does not substantially change BLM policy. Nothing in this rule constitutes a taking. The Federal Courts have heard a number of suits challenging the imposition of the rental and maintenance fees as a taking of a right, or, alternatively, as an unconstitutional tax. The Courts have upheld the 1992 and 1993 Acts and the BLM rules as a proper exercise of Congressional and Executive authorities.

Executive Order 12612, Federalism

In accordance with Executive Order 12612, BLM finds that the rule does not have significant Federalism effects. A Federalism assessment is not required. This rule does not change the role or responsibilities between Federal, State, and local governmental entities, nor does it relate to the structure and role of States or have direct, substantive, or significant effects on States.

Executive Order 12988, Civil Justice Reform

In accordance with Executive Order 12988, BLM finds that the rule does not unduly burden the judicial system and therefore meets the requirements of sections 3(a) and 3(b)(2) of the Order. BLM consulted with the Department of the Interior's Office of the Solicitor throughout the drafting process.

Paperwork Reduction Act

The Office of Management and Budget has approved the information collection requirements in the proposed rule under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, and has assigned clearance number 1004–0114.

This rule does not require a new information collection under the Paperwork Reduction Act. However, the existing OMB approval of the information collection under ICB 1004–0114 expires in September 1999. Therefore, BLM is applying for renewal of the approval at this time, using this proposed rule as an opportunity to notify the public. This is necessary because this rule proposes to change the numbering of the regulations in certain respects, and simply renewing the existing approval without change would lead to confusion and misapprehension. BLM has prepared an OMB form 83–I, which has been approved by the Office of Policy Analysis, Department of the Interior. This rule makes no changes to the approved information collection required to implement the Act other than conforming section numbers where necessary.

The existing approval pertains to the current edition of these regulations at 43 CFR parts 3730, 3820, 3830, and 3850. This proposed rule consolidates these parts into 43 CFR part 3830. The information to be collected remains the same. There are no changes in the form or types of information to be collected, or in the amounts of fees required to be paid by the mining claimants. The BLM will continue to use form 3830–2 "Maintenance Fee Payment Waiver Certification" and form 3814–4 "Notice of Intent to Locate a Lode or Placer Mining Claim and/or a Tunnel Site(s) on Lands Patented Under the Stockraising Homestead Act of 1916, as amended by the Act of April 16, 1993." Form number 3814–4 will be renumbered as form 3830–3 with no other changes. The revision and consolidation effort affects the numbering system of the regulations and therefore the form as well.

National Environmental Policy Act

We have analyzed this rule in accordance with the criteria of the National Environmental Policy Act and 318 DM 2.2(g) and 6.3(D). Since no substantial changes are proposed, this rule does not constitute a major Federal action significantly affecting the quality of the human environment.

Because this rule does not substantially change BLM's overall management objectives or environmental compliance requirements, it would have no impact or only marginally affect, the following critical elements of the human environment as defined in Appendix 5 of the BLM National Environmental Policy Act Handbook (H–1790–1): Air quality, areas of critical environmental concern, cultural resources, Native American religious concerns, threatened or endangered species, hazardous or solid waste, water quality, prime and unique farmlands, wetlands, riparian zones, wild and scenic rivers, environmental justice, and wilderness.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have considered the impact of this rule on the interests of Tribal governments. Because this rule does not specifically involve Indian reservation lands, we believe that the government-to-government relationships will remain unaffected.

The principal author of this proposed rule is Roger Haskins in the Solid Minerals Group, assisted by Ted Hudson in the Regulatory Affairs Group, Washington Office, BLM.

List of Subjects

43 CFR Part 3730

Administrative practice and procedure; Mines; Public lands—mineral resources; Reporting and recordkeeping requirements; Surety bonds.

43 CFR Part 3810

Mines, Public lands—mineral resources; Reporting and recordkeeping requirements

43 CFR Part 3820

Mines; Monuments and memorials; National forests; National parks; Public lands—mineral resources; Reporting and recordkeeping requirements; Surety bonds; Wilderness areas.

43 CFR Part 3830

Maintenance fees; Mines; Public lands—mineral resources; Reporting and recordkeeping requirements.

43 CFR Part 3831

Mines; Public lands—mineral resources; Reporting and recordkeeping requirements.

43 CFR Part 3832

Mines; Public lands—mineral resources; Reporting and recordkeeping requirements.

43 CFR Part 3833

Mines; Public lands—mineral resources; Reporting and recordkeeping requirements.

43 CFR Part 3834

Maintenance fees; Mines; Public lands--mineral resources; Reporting and recordkeeping requirements.

43 CFR Part 3835

Mines; Public lands—mineral resources; Reporting and recordkeeping requirements.

43 CFR Part 3836

Assessment work; Mines; Public lands—mineral resources; Reporting and recordkeeping requirements.

43 CFR Part 3837

Assessment work; Mines; Public lands—mineral resources; Reporting and recordkeeping requirements.

43 CFR Part 3838

Homesteads; Mines; Public lands—mineral resources; Reporting and recordkeeping requirements.

43 CFR Part 3839

Mines; Public lands—mineral resources; Reporting and recordkeeping requirements.

43 CFR Part 3840

Mines; Public lands—mineral resources.

43 CFR Part 3850

Mines; Public lands—mineral resources.

For the reasons stated in the preamble, and under the authority of section (e) of the Act of October 21, 1998 (Pub. L. 105–277; 112 Stat. 2681–232, 2681–235); sections 441 and 2478 of the Revised Statutes, as amended (43 U.S.C. 1201 and 1457); section 2319 of the Revised Statutes, as amended (30 U.S.C. 22); sections 310 and 314 of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1740 and 1744); and the Act of April 16, 1993 (43 U.S.C. 299(b)); parts 3730, 3810, 3820, 3830, 3840, and 3850, Groups 3700 and 3800, Subchapter C, Chapter II of Title 43 of the Code of Federal Regulations are proposed to be amended as follows:

PART 3710—PUBLIC LAW 167; ACT OF JULY 23, 1955

1. Add an authority citation for part 3710 to read as follows:

Authority: 30 U.S.C. 22 *et seq.*; 30 U.S.C. 611–615; 43 U.S.C. 1201; 43 U.S.C. 1740.

PART 3730—PUBLIC LAW 359; MINING IN POWERSITE WITHDRAWALS: GENERAL

2. Revise the authority citation for part 3730 to read as follows:

Authority: 30 U.S.C. 22 *et seq.*; 30 U.S.C. 28f–k; 30 U.S.C. 621–625; 43 U.S.C. 1201; 43 U.S.C. 1740; 43 U.S.C. 1744.

Subpart 3734—Location and Assessment Work

§ 3734.1 [Amended]

3. Amend § 3734.1 as follows:

a. By removing in line nine of paragraph (a) the citation "§§ 3833.1, 3833.3, 3833.4, and 3833.5" and substituting the citation "part 3833";

b. By removing in line 12 of paragraph (a) the citation "subpart 3833" and substituting the citation "part 3830";

c. By removing in line 18 of paragraph (a) the citation "§ 3833.5(c)" and adding "part 3833";

d. By removing in line 4 of paragraph (c) the word "shall" and adding the words "may choose to either";

e. By removing in line 6 of paragraph (c) the citation "§ 3833.0–5(u)" and adding the citation "part 3835";

f. By adding in line 7 of paragraph (c) a semi-colon ";" after the word "title"; and

g. By removing the number "3833" in the last line of paragraph (c) and adding the number "3834".

PART 3810—LANDS AND MINERALS SUBJECT TO LOCATION

4. The authority citation for part 3810 continues to read as follows:

Authority: 30 U.S.C. 22 *et seq.*; 43 U.S.C. 1201; 43 U.S.C. 1740.

Subpart 3812—Minerals Under the Mining Laws [Removed]

5. Remove subpart 3812 in its entirety.

PART 3820—AREAS SUBJECT TO SPECIAL MINING LAWS

6. Revise the authority citation for part 3820 to read as follows:

Authority: 30 U.S.C. 22 *et seq.*; 43 U.S.C. 1201; 43 U.S.C. 1740; 62 Stat. 162.

Subpart 3821—O and C Lands

§ 3821.2 [Amended]

7. Amend § 3821.2 as follows:

a. By removing in lines eight and nine the citations "§§ 3833.1, 3833.3, 3833.4, and 3833.5" and adding the citation "part 3833";

b. By removing in line 12 the citation "subpart 3833" and adding the citation "part 3830 through part 3839"; and

c. By removing the phrase "3833.5 of this title" in line 18 and adding the phrase "part 3833 of this chapter."

§ 3821.3 [Amended]

8. Amend § 3821.3 as follows:

a. By removing in line 3 the word "shall" and inserting the word "may either" in its place;

b. By removing in line 5 the comma "," after the word "work" and adding the phrase "if qualified as a small miner under part 3835 of this title,'; and

c. By removing in the last line the phrase "subpart 3833 of this title" and adding the phrase "part 3834 of this chapter."

9.–10. Revise part 3830 to read as follows:

PART 3830—LOCATING, RECORDING, AND MAINTAINING MINING CLAIMS OR SITES; GENERAL PROVISIONS

Sec.

Subpart A—Introduction

3830.1 What is the purpose of this part?
3830.2 What is the scope of these regulations?
3830.3 Who may locate mining claims?
3830.5 Definitions.

Subpart B—Providing Information to BLM

3830.8 How will BLM use the information it collects and what does it estimate the burden on the public to be?
3830.9 What will happen if I file a document with BLM that I know contains false, erroneous, or fictitious information or statements?

Subpart C—Mining Law Minerals

3830.10 Locatable minerals.
3830.11 Which minerals are locatable under the mining law?
3830.12 What are characteristics of a locatable mineral?

Subpart D—BLM Service Charge and Fee Requirements

3830.20 Payments of service charges, location fees, initial maintenance fees, annual maintenance fees, and oil shale fees.
3830.21 What are the different types of charges and fees?
3830.22 Will BLM refund service charges and fees?
3830.23 What type of payment will BLM accept?
3830.24 How do I make payments?
3830.25 When do I pay for recording a new notice or certificate of location for a mining claim or site?

Subpart E—Failure To Comply With This Part

3830.90 Failure to comply with the regulations in this part.
3830.91 What happens if I fail to comply with the requirements in this part?
3830.92 What special provisions apply to oil placer mining claims?
3830.93 When are defects curable?
3830.94 How do I cure a defect in my compliance with the requirements in this part?
3830.95 What if I pay only part of the service charges, location fees, oil shale fees, or maintenance fees?
3830.96 What if I pay only part of the service charges and fees for previously-recorded mining claims or sites?

Subpart F—Appeals

3830.100 How do I appeal a final decision by BLM?

Authority: 43 U.S.C. 2, 1201, 1740, 1744; 30 U.S.C. 22 *et seq.*; 30 U.S.C. 611; 31 U.S.C. 9701; 43 U.S.C. 1457; 18 U.S.C. 1001, 3571; sec. (e) of Pub. L. 105–277, 112 Stat. 2681–232, 2681–235; 44 U.S.C. 3501 *et seq.*; 30 U.S.C. 242.

Subpart A—Introduction

§ 3830.1 What is the purpose of this part?

(a) This part introduces you to the regulations that describe the steps you as a mining claimant must take to locate, hold, maintain, and transfer a lode or placer mining claim, mill site, or tunnel site located on the Federal lands under Federal law. These regulations are in this part and parts 3831 through 3839 of this chapter (hereinafter "these regulations").

(b) These regulations do not provide guidance on State law. In addition to these regulations, there are State law requirements that will apply to you.

§ 3830.2 What is the scope of these regulations?

These regulations govern all mining claims, mill sites, and tunnel sites on Federal land and units of the National Park System.

(a) You must follow the recording and maintenance requirements in these regulations even if BLM has actual knowledge of the existence of your mining claims or sites through other means.

(b) Part 3838 of this chapter describes supplemental procedures for locating mining claims or sites on land subject to the Stockraising Homestead Act, 43 U.S.C. 291–299.

§ 3830.3 Who may locate mining claims?

Persons qualified to locate mining claims or sites under these regulations include:

(a) United States citizens who have reached the age of discretion, under the law of the State of residence;

(b) Legal immigrants who have declared their intention to become a citizen;

(c) Corporations organized under the laws of any State; or

(d) Duly constituted and appointed agents acting on behalf of qualified locators.

§ 3830.5 Definitions.

Aliquot part means a legal subdivision of a section of a township and range, except fractional lots, by division into halves or quarters. The smallest non-lotted aliquot part that BLM will recognize is a two-and-a-half-acre parcel.

Amended location means a location that amends an earlier valid location as described further in § 3833.21 of this chapter.

Annual FLPMA filing means either a notice of intent to hold, or an affidavit of assessment work, as prescribed in section 314(a) of FLPMA (43 U.S.C. 1744(a)). The term *proof of labor* means the same as "affidavit of assessment work" as used in this part.

Assessment year means a period of 12 consecutive months beginning at 12:00 noon on September 1 each year.

Bench placer claim means a placer mining claim located on gravel and sediment benches on the valley wall above the current riverbed created when the river previously was at a higher topographic level than now.

BLM State Office means the Bureau of Land Management State Office listed in § 1821.2–1(d) of this chapter having jurisdiction over the land in which the mining claims or sites are situated. The Northern District Office in Fairbanks may also receive and record documents, filings, and fees for mining claims or sites in Alaska.

Claimant means the person, under State or Federal law, who holds all or any part of an unpatented mining claim or site.

Closed to mineral entry means the land is not available for the location of mining claims or sites under the General Mining Law.

Control means actual control, legal control, or the power to exercise control, through or by common directors, officers, stockholders, a voting trust, or a holding company or investment company, or any other means. BLM may consider a stockholder who is not an officer or director, or who is not a majority shareholder, of a publicly traded company or corporation to exercise control as defined in this regulation upon an adequate factual demonstration.

Copy of the official record means a legible duplicate, except microfilm, of the document filed under State law in the local jurisdiction where the mining claims or sites are located.

Federal lands means any lands or interest in lands owned by the United States, subject to location under the General Mining Law including, but not limited to, those lands within forest reservations in the National Forest System and wildlife refuges in the National Wildlife Refuge System, but excluding those lands within the units of the National Park System.

File or filed means that a document is received and date stamped by the BLM State Office during official business hours.

Filing period means the time period established in law or regulation during which you must provide documents and fees to the BLM State Office. If the last day of the filing period falls on a day when the office is officially closed, a document received the next day the office is open to the public is filed within the filing period. A document is filed on time if it is postmarked or clearly identified as being transmitted on or before the due date by a bona fide mail delivery service and received by the BLM State Office within 15 calendar days after the due date.

FLPMA means the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1701 *et seq.*).

Forfeit or forfeiture means the voidance or invalidation of an unpatented mining claim or site. The terms "abandoned and void", "null and void" and "forfeited" mean the same thing.

General Mining Law means the Act of May 10, 1872, as amended, (codified as 30 U.S.C. 22–54).

Gulch placer claim means a placer claim located on the bed of a river contained within steep, non-mineral canyon walls. The form of the river valley and non-mineral character of the valley walls preclude the location of the claim by aliquot parts and a metes and bounds description is necessary.

Local recording office means the county or State government office established under State law where all legal documents, deeds, wills, etc., are required to be recorded before they are given legal effect.

Location fee means the one-time fee required by 30 U.S.C. 28g for all new mining claims and sites at the time BLM records them.

Metes and bounds means a method of describing a parcel of land by using compass bearings and distances from a known point to a specified point on the parcel and then by using a continuous and sequential set of compass bearings and distances beginning at the point of beginning, continuing along and between the corners or boundary markers of the parcel's outer perimeter, until returning to the point of beginning.

Maintenance fee means the initial or annual fee required by 30 U.S.C. 28f to hold and maintain mining claims or sites.

Mineral-in-character means the land is known, or can be reasonably inferred from the available geologic evidence, to contain valuable minerals subject to location under the General Mining Law.

Mineral land means the same as mineral-in-character.

Mineral Leasing Acts means the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181 *et seq.*); the Geothermal Steam Act of 1970, as amended (30 U.S.C. 1001 *et seq.*); the Acquired Land Leasing Act of 1947 (30 U.S.C. 351 *et seq.*); and as further defined in 30 U.S.C. 505. The definition pertains to all minerals that BLM administers under Groups 3100, 3200, 3400, and 3500 of this chapter.

Mineral materials means those materials that may be sold under the Mineral Materials Act of July 31, 1947 (30 U.S.C. 601–604), as amended by the Surface Resources Act of 1955 (30 U.S.C. 601, 603, and 611–615) and administered under parts 3600, 3610, and 3620 of this chapter.

Multiple Mineral Development Act means the Act of August 13, 1954 (30 U.S.C. 521–531).

Open to mineral entry means that the land is open to the location of mining claims or sites under the General Mining Law.

Patent means a document conveying title to Federal land.

Related party means:

(1) The spouse and dependent children of the claimant as defined in section 152 of the Internal Revenue Code of 1986; or

(2) A person who controls, is controlled by, or is under common control with the claimant.

Segregate or segregation means the Department of the Interior has removed the affected lands from mining claim location and entry, land transactions, or other uses as specified in the statute or regulation authorizing the segregation of the land in question. The land remains segregated until the statutory period has expired or the Department of the Interior removes the notation of segregation from its records, whichever occurs first.

Service charge means an administrative fee that BLM assesses to cover the cost of processing documents that this part requires to be filed and processed.

Site means either an unpatented mill site authorized under 30 U.S.C. 42 or a tunnel site authorized under 30 U.S.C. 27.

Small miner means a claimant who, along with all related parties, holds no more than 10 mining claims or sites on Federal lands on the date annual maintenance fees are due, and meets the additional requirements of part 3835 of this chapter.

Split estate lands means that the United States has conveyed the surface estate to another person and retained the mineral estate.

Surface Resources Act means the Act of July 23, 1955 (30 U.S.C. 601, 603, and 611–615).

Unpatented mining claim means a lode mining claim or a placer mining claim located and held under the General Mining Law for which a mineral patent has not been issued under 30 U.S.C. 29.

Subpart B—Providing Information to BLM

§ 3830.8 How will BLM use the information it collects and what does it estimate is the burden on the public?

(a) The Office of Management and Budget has approved the collections of information contained in this part 3830 under 44 U.S.C. 3501 *et seq.* and has assigned clearance number 1004–0114.

(b) BLM will use the information collected to:

(1) Keep records of mining claims or sites;

(2) Maintain ownership records to those mining claims or sites;

(3) Determine the geographic location of the mining claims or sites recorded for proper land management purposes; and

(4) Determine which mining claims or sites the claim holders wish to continue to hold under applicable Federal statutes.

(c) BLM estimates that the public reporting burden for this information averages 8 minutes per response. This burden includes time for reviewing instructions, searching existing records, gathering and maintaining the data collected, and completing and reviewing the information collected.

(d) Send any comments on information collection, including your views on the burden estimate and how to reduce the burden, to: the Information Collection Clearance Officer (DW 101), Bureau of Land Management, Denver Federal Center, Building 40, P.O. Box 25047, Lakewood, CO, 80225–0047; and the Office of Management and Budget, Paperwork Reduction Project, 1004–0114, Washington, DC 20503.

§ 3830.9 What will happen if I file a document with BLM that I know contains false, erroneous, or fictitious information or statements?

You may be subject to criminal penalties under 18 U.S.C. 1001 and 43 U.S.C. 1212. The maximum penalty is 5 years in prison and/or a fine of $250,000.

Subpart C—Mining Law Minerals

§ 3830.10 Locatable minerals.

§ 3830.11 Which minerals are locatable under the mining law?

Minerals are locatable if they are:

(a) Subject to the General Mining Law;

(b) Not leasable under the Mineral Leasing Acts; and

(c) Not salable under the Mineral Materials Act of 1947 and Surface Resources Act of 1955, 30 U.S.C. 601–615 (see part 3600 *et seq.* of this chapter).

§ 3830.12 What are characteristics of a locatable mineral?

(a) Minerals are locatable if they are:

(1) Recognized as a mineral by the scientific community;

(2) Found on Federal lands open to mineral entry; and

(3) Found in a quantity and quality to constitute a valuable mineral deposit. A claimant has discovered a valuable deposit of locatable minerals if there is a reasonable prospect of success in—

(i) Developing a valuable mine; and

(ii) Making a profit on the sale of the minerals contained in the deposit being mined.

(b) Under the Surface Resources Act, certain varieties of mineral materials are locatable if they are uncommon because they have a distinct and special value.

(1) A distinct and special value is determined by:

(i) Comparing the mineral deposit in question with other deposits of that mineral, and

(ii) Finding a unique physical property in the mineral deposit.

(2) If the use for the mineral is ordinary, the deposit must have some distinct and special value for that use.

(3) The distinct and special value must be reflected by the mineral's higher price in the marketplace, or the reduced cost of its mining so that the claimant's profit is substantially greater.

(c) Block pumice having one dimension of 2 or more inches is an uncommon variety of mineral material under the Surface Resources Act.

Subpart D—BLM Service Charge and Fee Requirements

§ 3830.20 Payment of service charges, location fees, initial maintenance fees, annual maintenance fees and oil shale fees.

§ 3830.21 What are the different types of charges and fees?

The following table lists BLM's service charges, maintenance fees, location fees, and oil shale fees (all cross-references refer to this chapter):

Transaction	Amount due per mining claim or site	Waiver available
(a) Recording a mining claim or site location (part 3833)	(1) A total of $135, including: (i) A $10 service charge (i) A one-time $25 location fee (iii) An initial $100 maintenance fee	No.
(b) Amending a mining claim or site location (§ 3833.20)	A $5 service charge	No.
(c) Transferring a mining claim or site (§ 3833.30)	A $5 service charge	No.
(d) Maintaining a mining claim or site for one assessment year (part 3834).	$100 annual maintenance fees	Yes, see Part 3835.
(e) Recording an annual filing (§ 3835.30)	A $5 service charge	No.
(f) Submitting petition for deferment of assessment work (§ 3836.30).	A $25 service charge	No.
(g) Maintaining an oil shale placer mining claim (§ 3834.12)	Annual $550 fees	No.
(h) Recording a notice of intent to locate mining claims on Stockraising Homestead Act Lands (part 3838).	A $25 service charge	No.

§ 3830.22 Will BLM refund service charges and fees?

(a) BLM will not refund service charges.

(b) BLM will refund maintenance and location fees if:

(1) At the time you or your predecessor in interest located the mining claim or site, the location was on land not open to mineral entry or otherwise not available for mining claim or site location, or

(2) At the time you paid the fees, the mining claim or site was void.

§ 3830.23 What type of payment will BLM accept?

(a) BLM will accept the following types of payments:

(1) U.S. currency;

(2) Postal money order payable to the Department of the Interior—Bureau of Land Management;

(3) Check or other negotiable instrument payable in U.S. dollars to the Department of the Interior—Bureau of Land Management;

(4) Valid credit card that is acceptable to the BLM; or

(5) An authorized debit from a declining deposit account with BLM.

(i) You may maintain a declining deposit account with the BLM State Office where your mining claims or sites are recorded.

(ii) BLM will deduct service charges and fees or add overpayments to the account only with your authorization.

(b) If you use a credit card—

(i) You must send or fax a written authorization, bearing your signature, to use your credit card; or

(ii) You may authorize BLM to use your credit card by telephone if you can satisfactorily establish your identity.

(c) If the issuing institution of your check, negotiable instrument, or credit card refuses to pay and it is not because it made a mistake, BLM will treat the service charges and fees as unpaid.

§ 3830.24 How do I make payments?

(a) You may bring payments to the BLM State Office by close of business on or before the due date; or

(b) You may send payments using a bona fide mail delivery service.

(1) The payment must be postmarked or clearly identified by the mail delivery service as being sent on or before the due date; and

(2) The BLM State Office must receive the payment no later than 15 calendar days after the due date.

§ 3830.25 When do I pay for recording a new notice or certificate of location for a mining claim or site?

You must pay the service charge, location fee, and initial maintenance fee, in full, as provided in § 3830.21 at the time you record new notices or certificates of location.

Subpart E—Failure To Comply With This Part

§ 3830.90 Failure to comply with the regulations in this part.

§ 3830.91 What happens if I fail to comply with the requirements in this part?

(a) You will forfeit your mining claims or sites if you fail to comply with any of the requirements in this part, unless the defect is curable and you comply with the procedures in §§ 3830.93 through 3830.960.

(b) Even if you forfeit your mining claims or sites, you remain responsible for—

(1) All reclamation and performance requirements imposed by parts 3802, 3809, or 3814 of this chapter; and

(2) All other legal responsibilities imposed by other agencies or parties who have management authority over surface or subsurface operations.

§ 3830.92 What special provisions apply to oil placer mining claims?

(a) Under 30 U.S.C. 188(f), you, as an oil placer mining claimant, may seek to convert an oil placer mining claim to a noncompetitive oil and gas lease under section 17(e) of the Mineral Leasing Act (30 U.S.C. 226(e)), if:

(1) BLM declared your oil placer mining claim abandoned and void under section 314 of FLPMA;

(2) Your failure to comply with section 314 of FLPMA was inadvertent, justifiable, or not due to lack of reasonable diligence;

(3) You or your predecessors in interest validly located the unpatented oil placer mining claim before February 24, 1920;

(4) The claim has been or is currently producing or is capable of producing oil or gas; and

(5) You have filed a petition for issuance of a noncompetitive oil and gas lease, together with the required rental and royalty, including back rental and royalty accruing from the statutory date of abandonment of the oil placer mining claim.

(b) If BLM chooses to issue a noncompetitive oil and gas lease, the lease will be effective on the date that BLM declared your unpatented oil placer mining claim abandoned and void.

§ 3830.93 When are defects curable?

(a) If there is a defect in your compliance with a requirement imposed by statute, the defect is incurable if the statute does not give the Secretary authority to permit exceptions. If your payment or filing has incurable defects, the affected mining claims or sites are statutorily forfeited.

(b) If there is a defect in your compliance with requirements imposed by regulation, but not by statute, the defect is curable. You may correct curable defects when BLM gives you notice. If you fail to cure the defect within the time BLM allows, you will forfeit your mining claims or sites.

(c) Your mining claims or sites are null and void from the beginning under the General Mining Law if you locate on lands withdrawn from mineral entry at the time of location. You cannot cure this defect.

§ 3830.94 How do I cure a defect in my compliance with the requirements in this part?

(a) (1) BLM will send a notice to you by certified mail'-return receipt requested at the address given—

(i) On your notice or certificate of location,

(ii) On an address correction you have filed with BLM, or (iii) on a valid transfer document filed with BLM.

(2) The notice provided for in paragraph (a)(1) of this section constitutes legal service even if you do not actually receive the notice or decision.

(b) If you have filed a defective document or an incomplete payment, other than a defective fee waiver request, you must cure the defects within 30 days of receiving BLM notification of the defects.

(c) If you have filed a defective fee waiver request, you must cure the defects or pay the annual maintenance fees within 60 days of receiving BLM notification of the defects.

(d) If BLM does not receive the requested information in the time allowed, or if the matter is statutorily not curable, you will receive a final decision from BLM that you forfeited the affected mining claims or sites.

§ 3830.95 What if I pay only part of the service charges, location fees, oil shale fees, or maintenance fees?

(a) If you pay only part of the service charges, maintenance fees, or location fees when recording new claims or sites, BLM will—

(1) Assign serial numbers to each mining claim or site or petition for deferment of assessment work in the order it is received; and

(2) Apply the partial payment to the mining claims or sites or petitions in serial number order until the money runs out. For example, BLM will apply the money to cover as many complete costs as possible per mining claim or site, including the service charge, the location fee and the initial maintenance fee per claim or site.

(b) If you have submitted insufficient funds for recording new claims or sites and want to resubmit the new location notices or certificates with the proper payment of the required fees, you must do so within 90 days of the original date of location of the claim or site as defined under State law or the affected mining claims or sites will be forfeited.

(c) BLM will not record your mining claims or sites until you pay the full amount of all charges and fees for those claims or sites.

(d) For notices of intent to locate mining claims (NOITL) under the Stockraising Homestead Act (see part 3838 of this chapter for information regarding the Stockraising Homestead Act and NOITLs), BLM will not accept a NOITL that is filed without the required service charges. BLM will return the NOITL to you without taking any further action. See § 3830.21 of this part for the amount of the service charge for a NOITL.

§ 3830.96 What if I pay only part of the service charges and fees for previously-recorded mining claims or sites?

(a) If you pay only part of the service charges due for document filings or only part of the annual maintenance or oil shale fees for previously recorded mining claims or sites, BLM will apply the partial payment in serial number order until the money runs out.

(b) For any claims or sites for which there are no funds in your partial payment to pay the service charges, maintenance fees, oil shale fees, or location fees, you will forfeit the mining claims or sites not covered by your partial payment unless you submit the additional funds necessary to complete the full payment by the due date.

Subpart F—Appeals

§ 3830.100 How do I appeal a final decision by BLM?

If you are adversely affected by a BLM decision, you may appeal the decision in accordance with parts 4 and 1840 of this title.

PART 3831—MINERAL LANDS AVAILABLE FOR THE LOCATION OF MINING CLAIMS OR SITES [RESERVED]

11. Add and reserve part 3831.

12. Add part 3832 to read as follows:

PART 3832—LOCATING MINING CLAIMS OR SITES

Sec.
3832.1 What does it mean to locate mining claims or sites?

Subpart A—Locating Mining Claims or Sites

3832.10 Procedures for locating mining claims or sites.
3832.11 How do I locate mining claims or sites?
3832.12 When I record a mining claim or site, how do I describe the lands I have claimed?

Subpart B—Types of Mining Claims

3832.20 Lode and placer mining claims.
3832.21 How do I locate a lode or placer claim?
3832.22 How much land may I include in my mining claim?

Subpart C—Mill Sites

3832.30 Mill sites.
3832.31 What is a mill site?
3832.32 How much land may I include in my mill site?
3832.33 How do I locate a mill site?
3832.34 What must I use my mill site for?

Subpart D—Tunnel Sites

3832.40 Tunnel sites.
3832.41 What is a tunnel site?
3832.42 How do I locate a tunnel site?
3832.43 How may I use a tunnel site?
3832.44 Do I have rights to any minerals within a tunnel site I have located?
3832.45 How do I obtain any minerals discovered within a tunnel site I have located?

Subpart E—Defective Locations

3832.90 Defects in the location of mining claims and sites.
3832.91 May I amend a mining claim or site location if it exceeds the size limitations in this part?

Authority: 30 U.S.C. 22 *et seq.*; 43 U.S.C. 2, 1201, 1457, 1744.

§ 3832.1 What does it mean to locate mining claims or sites?

(a) Locating a mining claim or site means:

(1) Discovering a valuable mineral deposit;

(2) Establishing the exterior lines of a mining claim or site on lands open to mineral entry to identify the exact land claimed; and

(3) Recording a notice or certificate of location as required by State and Federal law and by this part.

(b) You will find—

(1) Location requirements in this part;

(2) Recording requirements in part 3833 of this chapter;

(3) Requirements for transferring an interest in a mining claim or site in § 3833.30 of this chapter; and

(4) Annual fee requirements for mining claims and sites in parts 3834, 3835, and 3836 of this chapter.

Subpart A—Locating Mining Claims and Sites

§ 3832.10 Procedures for locating mining claims or sites.

§ 3832.11 How do I locate mining claims or sites?

(a) You must follow both State and Federal law.

(b) You must—

(1) Discover a valuable mineral deposit before locating a lode or placer claim;

(2) Stake and monument the corners of a mining claim or site which meets the size limitations described in § 3832.22 of this part;

(3) Post public notice of location on the claim or site which must include:

(i) The name or names of the locators;

(ii) The date of the location; and

(iii) A description of the claim or site located;

(4) Record the public notice or certificate of location in the local recording office and the BLM State Office with jurisdiction according to the procedures in part 3833;

(5) Follow all other relevant State law requirements; and

(6) Comply with the specific requirements for lode claims, placer claims, mill sites, or tunnel sites in this part.

§ 3832.12 When I record a mining claim or site, how do I describe the lands I have claimed?

(a) *General requirements.* (1) You must describe the land by State, meridian, township, range, and section by aliquot part within the quarter section. Use an official survey plat or other U.S. Government map which is based on a surveyed or protracted U.S. Public Land Survey System in order to obtain this land description. If you cannot describe the land by aliquot part, you must provide a metes and bounds description that fixes the position of the claim corners with respect to a specified claim corner, discovery monument, or official survey monument. In all cases, your description of the land must be as compact and regular in form as reasonably possible and should conform to the U.S. Public Land Survey System and its rectangular subdivisions as much as possible.

(2) You must file a topographical map published by the U.S. Geological Survey with a depiction of the claim or site. As an alternative, you may file a narrative or sketch describing the claim or site and referencing a tie to a natural object, permanent monument or topographic, hydrographic, or man-made feature. You must show or describe the boundaries and position of the individual claim or site by aliquot part within the quarter section accurately enough for BLM to identify the mining claims or sites on the ground.

(i) You may show more than one claim or site on a single map or describe more than one claim or site in a single sketch—

(A) If they are located in the same general area; and

(B) If the individual mining claims or sites are clearly identified.

(ii) You are not required to employ a professional surveyor or engineer.

(b) *Lode claims.* You must describe lode claims by metes and bounds beginning at the discovery point on the claim and including a reference to natural objects or permanent monuments including:

(1) Township and section survey monuments;

(2) Official U.S. mineral survey monuments;

(3) Monuments of the National Geodetic Reference System;

(4) The confluence of streams or point of intersection of well-known gulches, ravines, or roads, prominent buttes, and hills; or

(5) Adjoining claims or sites.

(c) *Placer claims.* (1) You must describe placer claims by aliquot part and complete lots using the U.S. Public Land Survey System and its rectangular subdivisions except when placer claims—

(i) Are on unsurveyed Federal lands;

(ii) Are gulch or bench placer claims; or

(iii) Are bounded by other mining claims or non-mineral lands.

(2) For placer mining claims that are on unsurveyed Federal lands or are gulch or bench placer claims:

(i) You must describe the lands by protracted survey if the BLM has a protracted survey of record; or

(ii) You may describe the lands by metes and bounds, if a protracted survey is not available or if the land is not amenable to protraction.

(3) If you are describing an association placer claim by metes and bounds, you must meet the following requirements, as described in Snow Flake Fraction Placer, 37 L.D. 250 (1908):

(i) A location by one or two persons must fit within the exterior boundaries of a square 40-acre tract;

(ii) A location by three or four persons must fit within the exterior boundaries of two square 40-acre contiguous tracts;

(iii) A location by five or six persons must fit within the exterior boundaries of three square contiguous 40-acre tracts; and

(iv) A location by seven or eight persons must fit within the exterior boundaries of four square contiguous 40-acre tracts.

Subpart B—Types of Mining Claims

§ 3832.20 Lode and placer mining claims.

§ 3832.21 How do I locate a lode or placer claim?

(a) *Lode claims.* (1) You may locate a lode claim if you have discovered a valuable mineral deposit that:

(i) Occurs as veins, lodes, or other rock in place;

(ii) Contains gold, silver, cinnabar, lead, tin, copper, zinc, fluorite, barite, or other similar valuable mineral; and

(iii) Does not occur in bedded form or as placer, alluvial (deposited by water), eluvial (deposited by wind), colluvial (deposited by gravity), or aqueous deposits.

(2) If the minerals are contained within a vein, lode, or ledge and extend through the sidelines of your lode claim, you have extra-lateral rights to pursue the down-dip extension of the vein, lode, or ledge as projected parallel to the end lines and outside the sideline boundaries of your lode claim if—

(i) The long axis of the lode claim is substantially parallel to the course of the vein, lode, or ledge; and

(ii) The top or apex of the vein, lode, or ledge lies within vertical planes defined by the sidelines of the lode claim.

(3) You should determine, if possible, the general course of the vein in either direction from the point of discovery in order to mark the correct boundaries of the claim. You must expose the vein, lode, or ledge by—

(i) Tracing the vein or lode on the surface; or

(ii) Drilling a hole, sinking a shaft, or running a tunnel or drift to a sufficient depth.

(b) *Placer claims.* (1) You may locate a placer claim if:

(i) you have discovered a valuable mineral deposit that is not a lode deposit,

(ii) each ten-acre aliquot part is mineral in character, and

(iii) the deposit is—

(A) River sands or gravels bearing gold or valuable detrital minerals;

(B) Hosted in soils, alluvium (deposited by water), eluvium (deposited by wind), colluvium (deposited by gravity), talus, or other rock not in its original place;

(C) Bedded gypsum, limestone, cinders, pumice, and similar mineral deposits; or

(D) A mineral-bearing brine not subject to the leasing acts where a mineral otherwise subject to the General Mining Law is extracted.

(2) Some minerals must by law be located as placer mining claims, including building stone deposits (30 U.S.C. 161) and petroleum claims (oil placer claims) located before February 25, 1920.

(3) If you have located a building stone placer claim, oil placer claim or saline placer claim, the lands on which you located the claim must be chiefly valuable for the development of the discovered mineral deposit.

§ 3832.22 How much land may I include in my mining claim?

(a) *Lode claims.* Lode claims must not exceed 1,500 by 600 feet. Each lode claim is limited to a maximum of 1500 feet along the course of the vein, lode, or ledge and a maximum of 300 feet in width on each side of the middle of the vein, lode, or ledge.

(b) *Placer claims.* (1) An individual placer claim must not exceed 20 acres in size.

(2) An association placer claim must not exceed 20 acres per locator with up to eight co-locators allowed in an association. For example, three co-locators may jointly locate a 60-acre association placer claim. You may not use the names of other persons as dummies to locate an association placer claim for your own benefit.

Subpart C—Mill Sites

§ 3832.30 Mill sites.

§ 3832.31 What is a mill site?

A mill site is nonmineral land not contiguous to a vein or lode that you can locate and use for activities reasonably incident to mineral development on, or production from, the unpatented or patented lode or placer claim with which it is associated.

(a) A dependent mill site is used for activities that support a particular patented or unpatented lode or placer mining claim or group of mining claims.

(b) An independent or custom mill site—

(1) Is not dependent on a particular mining claim but provides milling or reduction processing for nearby lode mines or a lode mining district;

(2) Is used to mill, process, and reduce either—

(i) Ores for other miners on a contractual basis, or

(ii) Ores that are purchased by the independent or custom mill site holder.

§ 3832.32 How much land may I include in my mill site?

A mill site must not exceed 5 acres in size. You may locate more than one mill site, so long as you do not locate more than an aggregate of 5 acres of mill site land for each 20-acre parcel of patented or unpatented placer or lode mining claims associated with that mill site land, regardless of the number of lode or placer claims located in the 20-acre parcel.

§ 3832.33 How do I locate a mill site?

(a) You may locate a mill site in the same manner as a lode or placer mining claim, except that—

(1) It must be on land that is not mineral in character, and

(2) You must use or occupy each two and a half acre portion of a mill site in order for that portion of the mill site to be valid.

(b) If the United States does not own the surface estate of a particular tract of land, you may not locate a mill site on that land.

§ 3832.34 What may I use my mill site for?

Dependent and independent mill sites may be used or occupied for:

(a) Placement of grinding, crushing, or milling and reduction facilities (for example, smelting, electro-winning, roasters, autoclaves, leachate recovery, and similar facilities);

(b) Mine administrative and support buildings, warehouses and maintenance buildings, electrical plants and substations;

(c) Tailings ponds and leach pads;

(d) Rock and soil dumps;

(e) Water and process treatment plants; and

(f) Any other use that is reasonably incident to mine development and operation, except for uses supporting reclamation or closure of a mine.

Subpart D—Tunnel Sites

§ 3832.40 Tunnel sites.

§ 3832.41 What is a tunnel site?

A tunnel site is a subsurface right-of-way under Federal land open to mineral entry. It is used for access to lode mining claims or to explore for blind or undiscovered veins, lodes, or ledges not currently claimed or known to exist on the surface.

§ 3832.42 How do I locate a tunnel site?

You may locate a tunnel site by:

(a) Erecting a substantial post, board, or monument at the face of the tunnel, which is the point where the tunnel enters cover;

(b) Placing stakes or monuments on the surface along the boundary lines of the tunnel at proper intervals from the face of the tunnel for 3,000 feet or to the end of the tunnel, whichever is shorter; and

(c) Placing a location notice or certificate on the post, board, or monument that includes:

(1) The names of the claimants;

(2) The actual or proposed course or direction of the tunnel;

(3) The height and width of the tunnel; and

(4) The course and distance from the face or starting point to some permanent well-known natural objects or permanent monuments, in the same manner as required to describe a lode claim (see § 3832.28(c) of this part).

§ 3832.43 How may I use a tunnel site?

You may use the tunnel site for subsurface access to a lode claim or to explore for and acquire previously unknown lodes, veins, or ledges within the confines of the tunnel site.

§ 3832.44 Do I have rights to any minerals within a tunnel site I have located?

(a) If you located your tunnel site in good faith, you have the possessory right to any blind veins, ledges, or lodes cut, discovered, or intersected by your tunnel if—

(1) They are located within a radius of 1,500 feet from the tunnel axis; and

(2) They were not previously known to exist on the surface and within the limits of your tunnel.

(b) Your site is protected from other parties making locations of lodes within the sidelines of the tunnel and within the 3,000-foot length of the tunnel, unless such lodes appear upon the surface or were previously known to exist.

(c) You must diligently work on the tunnel site. If you fail to work on it for more than six (6) consecutive months, you will lose your right to all unclaimed, undiscovered veins, lodes, or ledges on your tunnel site.

§ 3832.45 How do I obtain any minerals discovered within a tunnel site I have located?

(a) Even if you have located the tunnel site, you must separately locate a lode claim to acquire the possessory right to a blind vein, lode, or ledge you have discovered within the boundaries of the tunnel site sidelines.

(b) The date of location of your lode claim is retroactive to the date of location of your tunnel site.

Subpart E—Defective Locations

§ 3832.90 Defects in the location of mining claims and sites.

§ 3832.91 How may I amend a mining claim or site location if it exceeds the size limitations in this part?

(a) You may correct defects in your location of a mining claim or mill site by filing an amended notice of location (see § 3833.20 of this chapter on conditions allowing amendments and how to record them.) You may amend a mining claim or mill site only if it is oversized by 10 percent or less. However, a claim or site that exceeds statutory maximum dimensions by more than 10 percent is void as of the date you located it.

(b) For placer claims or mill sites located using an irregular survey or lotting of irregular sections, you may use the "Rule of Approximation" to determine allowable acreage. The Rule of Approximation is the rule developed for determining maximum allowable acreage for placer claims where the excess acreage is less than the deficiency would be if the smallest legal subdivision is excluded from the location or entry. The rule applies only to surveyed public lands. In no case may the use of the rule result in obtaining acreage in excess of what is allowable under the applicable law. (See Henry C. Tingley, 8 Land Dec. 205 (1889)).

13. Add part 3833 to read as follows:

PART 3833—RECORDING MINING CLAIMS AND SITES

Sec.

3833.1 Why must I record mining claims and sites?

Subpart A—Recording Process

3833.10 Procedures for recording mining claims and sites.
3833.11 How do I record mining claims and sites?

Subpart B—Amending Recorded Mining Claims and Sites

3833.20 Amending previously recorded mining claims and sites.
3833.21 When may I amend a recorded notice or certificate of location?
3833.22 How do I record an amendment?

Subpart C—Recording Transfers

3833.30 Recording transfers of mining claims and sites.
3833.31 What is a transfer?
3833.32 How do I transfer a mining claim or site?
3833.33 What does BLM require me to do if I am the transferee of a mining claim or site?
3833.34 How may I transfer, sell, or otherwise convey an association placer mining claim?

Subpart D—Defective Records

3833.90 Defects in recordation and transfer of mining claims and sites.
3833.91 What defects cannot be cured under this part?
3833.92 What happens if I do not record a transfer of interest on time?
3833.93 What if BLM does not promptly notify me of a defect in my recording or other status of my mining claim or site?

Authority: 43 U.S.C. 2, 1201, 1457, 1740, 1744; 30 U.S.C. 22 *et seq.*; 30 U.S.C. 621–625; 62 Stat. 162, 112 Stat. 2681–235.

PART 3833—RECORDING MINING CLAIMS AND SITES

§ 3833.1 Why must I record mining claims and sites?

FLPMA requires you to record all mining claims and sites with BLM and the local recording office in order to maintain a mining claim or site under the General Mining Law.

(a) If you fail to record a mining claim or site by the 90th day after the date of location, it is abandoned and void by operation of law.

(b) Recording a mining claim or site, filing any other documents with BLM, or paying fees or service charges, as required by this chapter, does not make a claim or site valid if it is not otherwise valid under applicable law. They also do not establish any property rights for the claimant unless the claimant has complied with all applicable law.

Subpart A—Recording Process

§ 3833.10 Procedures for recording mining claims and sites.

§ 3833.11 How do I record mining claims and sites?

(a) You must file in the BLM State Office and the local recording office a copy of the official record, notice, or certificate of location, whichever is required by State law, by the 90th day after the date of location. If there is no such requirement under State law (as in Arkansas), you must record a document with BLM and the local recording office that contains the information required by this part.

(b) Your notice or certificate of location must include:

(1) The name or number, or both, of the claim or site;

(2) The names and current mailing addresses of the locators of the claim;

(3) The type of claim or site;

(4) The date of location;

(5) A complete description of the lands you have claimed as required in part 3832 of this chapter.

(c) When you record a notice or certificate of location, you must pay a non-refundable service charge, location fee, and initial maintenance fee as provided in § 3830.21 of this chapter.

(d) When you record a mining claim or site as required by this part, you still must comply with any other separate recording requirements which may exist under other Federal law. However, notices or certificates of location that you mark as being recorded under the Act of April 8, 1948, or the Act of August 11, 1955, satisfy the additional recording requirements of those Acts under subpart 3821 of this chapter for O and C Lands and part 3730 of this chapter for Powersite Withdrawals.

Subpart B—Amending Recorded Mining Claims and Sites

§ 3833.20 Amending previously recorded mining claims and sites.

§ 3833.21 When may I amend a recorded notice or certificate of location?

(a) You may amend a recorded notice or certificate of location if—

(1) The original location is valid; and

(2) There are defects or omissions in the original notice or certificate of location that you need to correct or clarify; or

(3) You need to correct the legal land description of the claim or site, the mining claim name, or accurately describe the position of discovery or boundary monuments or similar items; or

(4) You need to reposition the sidelines of your lode claim so that they are parallel to the discovered lode, ledge, or vein, if there are no intervening rights to the land.

(b) You may not amend a location to—

(1) Transfer any interest or add owners;

(2) Relocate or re-establish mining claims or sites you previously forfeited or BLM declared void for any reason;

(3) Change the type of claim or site; or

(4) Enlarge the size of the mining claim or site.

(c) You may not amend legal descriptions or boundaries after the land is closed to mineral entry, unless you are reducing the size of the mining claim or site.

§ 3833.23 How do I record an amendment?

(a) You must record an amended location certificate with BLM within 90 days after amending the location. Failure to record an amended location within this time conclusively constitutes abandonment of the claim or site.

(b) You must pay a non-refundable service charge for each claim or site amended. See the table of fees and service charges in § 3830.21 of this chapter.

(c) An amended location notice is effective back to the original location date. The amendment takes effect when you record it with the local recording office under State law. However, we will not recognize an amended location until it also is recorded with BLM.

Subpart C—Recording Transfers

§ 3833.30 Recording transfers of mining claims or sites.

§ 3833.31 What is a transfer?

Transfers include selling, assigning, passing through inheritance, or otherwise conveying ownership or legal interest in a mining claim or site. Unpatented mining claims or sites are not subject to State community property laws.

§ 3833.32 How do I transfer a mining claim or site?

You must follow State law and procedures for transferring a mining claim or site. The transfer is effective on the date it is properly executed under State law and recorded in the local recording office. Recording with BLM does not determine the date of transfer.

§ 3833.33 What does BLM require me to do if I am the transferee of a mining claim or site?

(a) You must file in the BLM State Office a notice of the transfer that includes:

(1) The serial number BLM assigned to the claim or site when the notice or certificate of location was originally recorded (the person who transferred you ownership or legal interest should have this number);

(2) Your name and current mailing address; and

(3) A copy of the legal instrument or document that was used to transfer the interest in the claim or site under State law.

(b) BLM will notify only the claim holder of record with BLM of any action it takes regarding a mining claim or site. If BLM is required by law to give a claimant notice of any new legal requirements, BLM has properly given notice by sending the notice to the claim holder of record with BLM.

(c) You must pay a non-refundable service charge per mining claim or site transferred. See the table of fees and service charges in § 3830.21 of this chapter.

§ 3833.34 How may I transfer, sell, or otherwise convey an association placer mining claim?

You may transfer, sell, or otherwise convey an association placer mining claim at any time to an equal or greater number of mining claim holders. If you want to transfer an association placer claim to an individual or an association that is smaller in number than the association that located the claim, you must have either—

(a) Discovered a valuable mineral deposit before the transfer; or

(b) Reduced the acreage of the claim, if necessary, so that the 20-acre per locator limit is met.

Subpart D—Defective Records

§ 3833.90 Defects in recordation and transfer of mining claims and sites.

§ 3833.91 What defects cannot be cured under this part?

Defects that cannot be cured and therefore result in forfeiture of mining claims or sites are:

(a) Failing to record a mining claim or site within 90 days after location;

(b) Failing to pay the location fee or initial maintenance fee within 90 days of location;

(c) Locating a mining claim or site on lands closed to mineral entry at the time of location;

(d) Filing an amendment to a void or forfeited mining claim or site; and

(e) Recording a mining claim or site that exceeds the statutory maximum dimensions or acreage by more than ten (10) percent.

§ 3833.92 What happens if I do not record a transfer of interest?

Even if your transfer has been recorded with the local recording office, BLM will not recognize the interest you acquire, or send you notice of any BLM action, decision, or contest, regarding the mining claim or site until you record the transfer with BLM (see § 1810.2 of this chapter). The Department will treat the last owner of record as the responsible party for maintaining the mining claim or site until you file a transfer notice.

§ 3833.94 What if BLM does not promptly notify me of a defect in my recording or other status of my mining claim or site?

Even if BLM does not immediately notify you when you have filed a defective recording with BLM that is incurable, the mining claim or site is still forfeited by law.

14. Add part 3834 to read as follows:

PART 3834—REQUIRED FEES FOR MINING CLAIMS OR SITES

Subpart A—Fee Payment

Sec.

3834.10 Paying annual maintenance and oil shale fees.
3834.11 Which fees must I pay to maintain a mining claim or site and when do I pay them?
3834.12 How will BLM know which mining claims or sites I am paying the fees for?
3834.13 Will BLM prorate annual maintenance or oil shale fees?
3834.14 May I obtain a waiver from these fees?

Subpart B—Fee Adjustment

3834.20 Adjusting location and maintenance fees.
3834.21 How will BLM adjust the location and maintenance fees?
3834.22 How will I know that BLM has adjusted the location and maintenance fees?
3834.23 When do I start paying the adjusted fees?

Authority: 43 U.S.C. 1201, 1740; 30 U.S.C. 28f; 112 Stat. 2681–235 *et seq.*; 30 U.S.C. 242.

Subpart A—Fee Payment

§ 3834.10 Paying annual maintenance and oil shale fees.

§ 3834.11 Which fees must I pay to maintain a mining claim or site and when do I pay them?

(a) *All mining claims or sites (except oil shale placer claims).*—(1) *Initial maintenance fee.* When you first record a mining claim or site with BLM, you must pay an initial maintenance fee for the assessment year in which you located the mining claim or site.

(2) *Annual maintenance fee.* You must pay an annual maintenance fee on or before September 1st of each year in order to maintain a mining claim or site for that assessment year. The assessment year begins at 12:00 noon on September 1 of each year.

(b) *Oil shale placer claims.* (1) Under the Energy Policy Act of 1992, 30 U.S.C. 242, if you hold an oil shale claim, you must pay an annual $550 fee, and file a notice of intent to hold, each year on or before December 30 (See part 3835 of this chapter for notice of intent to hold requirements and the table of fees and service charges in § 3830.21 of this chapter):

(i) If you elected to maintain an oil shale placer claim;

(ii) If you elected to apply for limited patent; or

(iii) If you filed a patent application for an oil shale placer claim but did not receive a first half final certificate on or before October 24, 1992.

(2) You need not pay the annual $550 fee, or file a notice of intent to hold, if

you filed a patent application and received a first half of the mineral entry final certificate on or before October 24, 1992.

§ 3834.12 How will BLM know which mining claims or sites I am paying the fees for?

When you pay any fees to BLM, you must include a list of the mining claims or sites that you are paying for by claim name and BLM serial number. You must also state which assessment year you are paying for.

§ 3834.13 Will BLM prorate annual maintenance or oil shale fees?

BLM will not prorate annual maintenance or rental fees if you hold a mining claim or site for only part of a year. You must pay an annual fee even if you hold the claim or site for just one day in an assessment year.

§ 3834.14 May I obtain a waiver from these fees?

(a) No waivers are available for the initial maintenance fee or the $550 oil shale fee.

(b) You may request a waiver from annual maintenance fees under certain circumstances. See part 3835 of this chapter.

Subpart B—Fee Adjustment

§ 3834.20 Adjusting location and maintenance fees.

§ 3834.21 How will BLM adjust the location and maintenance fees?

BLM will adjust the location and maintenance fees at least every 5 years, based upon the Consumer Price Index (CPI).

§ 3834.22 How will I know that BLM has adjusted location and maintenance fees?

BLM will publish a notice in the **Federal Register** about the adjustment on or before July 1st of a given year in order to impose the adjusted fees beginning on September 1st of the same year.

§ 3834.23 When do I start paying the adjusted fees?

(a) You must pay the adjusted initial maintenance and location fees when you record a new mining claim or site located on or after the September 1st immediately following the date BLM published its notice about the adjustment.

(b) For previously recorded mining claims and sites, you must pay the adjusted maintenance fee on or before the September 1st immediately following the date BLM published its notice about the adjustment.

15. Add part 3835 to read as follows:

PART 3835—WAIVERS FROM ANNUAL FEES

Sec.

3835.1 What is a waiver?

Subpart A—Filing Requirements

3835.10 Filing requirements for a waiver.
3835.11 How do I file for a waiver?
3835.12 Types of waivers and additional filing requirements.
3835.13 How long do the waivers last and how do I renew them?
3835.14 May I file for a small miner waiver for the assessment year immediately following the assessment year in which I located the mining claim or site?
3835.15 If qualify as a small miner, how do I apply for a waiver if I paid the maintenance fee in the last assessment year?
3835.16 If I am a qualified small miner, and I obtained a waiver in one assessment year, what must I do if I want to pay the maintenance fee for the following assessment year?
3835.15 What must a qualified small miner do if he pays the maintenance fee in one assessment year and applies for a waiver for the following assessment year?
3835.16 What must a qualified small miner do if he obtains a waiver in one assessment year and pays the maintenance fee for the following assessment year?

Subpart B—Conveying Mining Claims of Sites Under Waiver

3835.20 Transferring, selling, passing through inheritance, or otherwise conveying mining claims or sites for which a waiver has been granted.

Subpart C—Annual FLPMA Filings

3835.30 Annual FLPMA filings.
3835.31 When do I submit an annual FLPMA filing?
3835.32 What type of annual FLPMA filing is required?
3835.33 What should I include when I submit an affidavit of assessment work?
3835.34 What should I include when I submit a notice of intent to hold?

Subpart D—Defective Waivers and FLPMA Filings

3835.90 Failure to comply with this part.
3835.91 What if I fail to submit annual FLPMA filings?
3835.92 What if I fail to submit a qualified waiver request?
3835.93 What happens if BLM finds a defect in my waiver request?

Authority: 112 Stat. 2861–235; 30 U.S.C. 22, 28, 28f–28k; 43 U.S.C. 2, 1201, 1457, 1740, 1744; 50 U.S.C. App. 501, 565.

§ 3835.1 What is a waiver?

(a) Under certain conditions, you may obtain a waiver from the annual maintenance fee requirements. You cannot get a waiver from service charges, the location fee, the initial maintenance fee, or the $550 oil shale fee.

(b) If you get a small miner waiver, you must perform annual assessment work and file annual FLPMA filings. You will find more information about annual FLPMA filings in § 3835.30 of this part, and about assessment work in part 3836 of this chapter.

Subpart A—Filing Requirements

§ 3835.10 Filing requirements for a waiver.

§ 3835.11 How do I file for a waiver?

(a) You must file a waiver certification form on or before September 1 of each year for which you are seeking a waiver. You may have an agent file a waiver certification form on your behalf if you file or have filed a power of attorney or other legal documentation which shows that the agent is acting on your behalf.

(b) You must include in all waiver certification forms:

(1) The names and addresses of all claimants who maintain an interest in the mining claims or sites listed on the waiver certification form;

(2) The original signatures of all claimants of the mining claims or sites for which you request a waiver;

(3) The names of the mining claims or sites for which you request a waiver;

(4) The serial numbers BLM assigned to the mining claims or sites; and

(5) The fee deadline for which you want a waiver.

(c) You must also file additional information for certain waivers as specified in § 3835.12 of this part.

§ 3835.12 Types of waivers and their additional filing requirements.

The following table lists the types of waivers available, how you qualify for them, and the procedures for requesting them:

Type	Qualification	Waiver certificatiaon requirements
(a) Small Miner	(1)(i) All related parties must hold no more than a total of 10 mining claims or sites nationwide, not including oil shale claims. (ii) All co-claimants must also qualify for the small miner waiver.	(2) Include a declaration that: (i) You and all related parties hold no more than a total of 10 mining claims and sites nationwide; and (ii) You have completed or will complete assessment work by September 1 of the assessment year just ending.
(b) Soldiers' and Sailors' Civil Relief Act.	(1) You and all co-claimants must be military personnel on active duty status.	(2) File a notice of active military service or entry into active military service.
(c) Reclamation	(1) Your mining claims or sites are undergoing final reclamation under subparts 3802, 3809, or 3814; and you do not intend to continue mining, milling, or processing operations on those sites.	(2) File a certified statement that: (i) States you are reclaiming the mining claims or sites; (ii) States your intent to end mining operations on the claims or sites permanently; and (iii) References a reclamation plan that you submitted to BLM or that BLM approved; or references a reclamation plan approved by a surface managing agency other than BLM.
(d) Denial of Access	(1) You have received a declaration of taking or a notice of intent to take from the National Park Service (NPS) or other Federal agency; or the United States has otherwise denied you access to your mining claim or site..	(2)(i) File a certified statement that you have received a declaration of taking or a notice of intent to take from NPS or other Federal agency or have been denied access to your mining claim or site; and (ii) Submit copies of all official documents you have received that demonstrate the declaration or taking, notice of intent to take or denial of access.
(e) Mineral Patent Application.	(1) You have filed an application for a mineral patent under part 3860 and the Secretary has granted you mineral entry.	(2) No additional information required.

§ 3835.13 How long do the waivers last and how do I renew them?

The following table states how long waivers last and explains how to renew them:

Type of waiver	Duration	Renewal requirements
(a) Small Miner	One assessment year	Apply for a small miner waiver by each September 1.
(b) Soldiers' and Sailors' Civil Relief Act.	Until six months after you are released from active duty status or from a military hospital, whichever is later.	Your waiver is automatically renewed if you continue to meet the qualifications.
(c) Reclamation	One assessment year	Apply for waiver certification by each September 1.
(d) Denial of Access	One assessment year.	Apply for a reclamation waiver by each September 1.
(e) Mineral Patent Application with Mineral Entry.	Until patent issues or mineral entry is canceled. BLM will not refund previously deposited annual maintenance fees to a mineral patent applicant.	None. If mineral entry is canceled, you must pay the required fees beginning on the September 1 immediately following the cancellation or file for a different waiver if you qualify.

§ 3835.14 How do I file for a small miner waiver for the assessment year immediately following the assessment year in which I located the mining claim or site?

(a) In order to obtain a small miner waiver for the assessment year immediately following the assessment year of location, you must—

(1) (i) File the waiver request on or before September 1, or

(ii) If the mining claim or site was located before September 1 and recorded after September 1 in a timely manner, you must submit the waiver request at the time of recording the mining claim or site with BLM, and

(2) Make an annual FLPMA filing in order to comply with FLPMA. For a waiver filing, you must file on or before December 30, a notice of intent to hold the mining claim or site because the Mining Law does not require you to perform assessment work in the assessment year in which you locate a mining claim. The notice of intent to hold must—

(i) Conform to §§ 3835.32 and 3835.34 of this part;

(ii) State that you are filing the waiver for the assessment year after the assessment year in which you located the mining claim or site; and

(iii) State that you did not have to perform assessment work for the assessment year in which you located the claim or site.

§ 3835.15 If I qualify as a small miner, how do I apply for a waiver if I paid the maintenance fee in the last assessment year?

(a) You must file a notice of intent to hold under §§ 3835.32 and 3835.34 of this part on or before the December 30 immediately following the September 1st that you applied for a waiver;

(b) You must also perform the required assessment work in the assessment year for which the maintenance fee was waived; and

(c) You must file an affidavit of assessment work on or before the December 30 immediately following the close of the assessment year in which you performed the assessment work.

§ 3835.16 If I am a qualified small miner, and I obtained a waiver in one assessment year, what must I do if I want to pay the maintenance fee for the following assessment year?

(a) You must perform the required assessment work in the assessment year for which the fee was waived and record an affidavit of assessment work on or before December 30 immediately following the close of the assessment year for which the fee was waived; and

(b) You must pay the maintenance fee by the proper deadline for the following assessment year.

Subpart B—Conveying Mining Claims or Sites Under Waiver

§ 3835.20 Transfer, sale, inheritance, or other conveyance of mining claims or sites already subject to a waiver.

If you purchase, inherit, or otherwise obtain mining claims or sites that are subject to a waiver, then if—

(a) You also qualify for the waiver, BLM will transfer the waiver to you; or

(b) You do not also qualify for the waiver, you must pay an annual maintenance fee at the time you file a notice of transfer with BLM for the assessment year the transfer was effective under State law. You must pay the annual maintenance fee by the September 1 following the effective date of the transfer or forfeit the mining claims or sites.

Subpart C—Annual FLPMA Filings

§ 3835.30 Annual FLPMA filings.

§ 3835.31 When do I submit an annual FLPMA filing?

(a) You must submit your annual FLPMA filings on or before the December 30 of the calendar year in which the assessment year ends.

(b) If part 3836 of this chapter requires you to perform assessment work, you must file an affidavit of assessment work as an annual FLPMA filing. You do not need to complete assessment work in the assessment year when you located your claim.

(c) If part 3836 of this chapter does not require you to perform assessment work, either because you located the claim during the current assessment year or because BLM has deferred assessment work, you must submit a notice of intent to hold under §§ 3835.32 and 3835.34 of this part as an annual FLPMA filing. You must state in the notice of intent to hold either that BLM has deferred the assessment work requirement or that you located the claim during the current assessment year.

§ 3835.32 What type of annual FLPMA filing is required?

The following table describes FLPMA filing requirements according to the situation:

Your situation	Affidavit of assessment work required	Notice of intent to hold required
(a) You have paid annual maintenance fees	No	No.
(b) You have an oil shale placer claims	No	Yes, by December 30 of each year if you must pay the $550 oil shale fee.
(c) You have a small miner waiver which covers mining claims.	Yes, each year beginning the calendar year in which the first assessment year ends which follows the assessment year in which the claim was located.	Yes, only one time, by the December 30 after the assessment year in which the claim was located.
(d) You have a small miner waiver which covers mining claims and mill or tunnel sites.	Only for the mining claims, not the mill or tunnel sites.	Only for the mill or tunnel sites, not the mining claims.
(e) You have a Soldiers and Sailor's Civil Relief Act Waiver.	No	No.
(f) You have a reclamation waiver	No	Yes.
(g) You have a waiver because you have been denied access.	No	Yes.
(h) You have applied for a mineral patent	Yes, for mining claims, until date of mineral entry.	Yes, for mill sites, until date of mineral entry.

§ 3835.33 What should I include when I submit an affidavit of assessment work?

You must include the following:

(a) The BLM serial number of the mining claim for which you did assessment work;

(b) Any known changes in the mailing addresses of the claimants;

(c) A non-refundable service charge for each mining claim or site affected (see the table of charges in § 3830.21 of this chapter); and

(d) An exact legible reproduction or duplicate, other than microfilm, of either:

(1) The evidence of assessment work performed under State law for record; or

(2) The geological, geochemical, and geophysical surveys provided for in part 3836 of this chapter.

§ 3835.34 What should I include when I submit a notice of intent to hold?

You must include the following:

(a) A letter or other notice with original signatures of all of the claimants, as specified in § 3835.31 of this part, which states your intention to hold the mining claims or sites for the calendar year in which the assessment year ends;

(b) If applicable:

(1) A copy of the BLM decision granting a deferment of the annual assessment work;

(2) A copy of a pending petition for deferment of the annual assessment work including the date you filed the petition; or

(3) Any documents supporting why you are filing a notice of intent to hold instead of an assessment work filing.

(c) The BLM serial number of the mining claim or site;

(d) Any known changes in the mailing addresses of the claimants; and

(e) A non-refundable service charge for each mining claim or site affected. (See the table of service charges in § 3830.21 of this chapter.)

Subpart D—Defective Waivers and FLPMA Filings

§ 3835.90 Failure to comply with this part.

§ 3835.91 What if I fail to submit annual FLPMA filings?

If you fail to make a required annual FLPMA filing on time, you forfeit the affected mining claims or sites.

§ 3835.92 What if I fail to submit a qualified waiver request?

(a) If you fail to submit a qualified waiver request and fail to pay an annual maintenance fee on time, you forfeit the affected mining claims or sites.

(b) If you fail to list the 10 or fewer mining claims or sites on your small miner waiver request and fail to pay an annual maintenance fee on time, you forfeit those mining claims or sites.

(c) If you fail to cure any defects in your waiver request or pay the maintenance fee within the allowed time, you forfeit the affected mining claims or sites.

(d) If a mining claim or site is held by more than one person and one of the co-claimants does not qualify for a small miner waiver, all of the co-claimants forfeit the affected mining claim or site.

§ 3835.93 What happens if BLM finds a defect in my waiver request?

(a) BLM will send a notice to you by certified mail-return receipt requested at the address given—

(1) on your notice or certificate of location,

(2) on an address correction you have filed with BLM,

(3) on a valid transfer document filed with BLM, or

(4) on the waiver form.

(b) If the certified mail is delivered to your most recent address of record, this constitutes legal service even if you do not actually receive the notice or decision.

(c) You must cure the defective waiver or pay the annual maintenance fees within 60 days of receiving BLM notification of the defects.

16. Add part 3836 to read as follows:

PART 3836—ANNUAL ASSESSMENT WORK REQUIREMENTS FOR MINING CLAIMS

Sec.

Subpart A—Performing Assessment Work

3836.10 Performing assessment work.
3836.11 What are the general requirements for performing assessment work?
3836.12 What work qualifies as assessment work?
3836.13 What are geological, geochemical, or geophysical surveys?
3836.14 What other requirements must geological, geochemical, or geophysical surveys meet to qualify as assessment work?
3836.15 What happens if I fail to perform required assessment work?

Subpart B—Deferring Assessment Work

3836.20 Deferring assessment work.
3836.21 How do I qualify for a deferment of assessment work on my mining claims?
3836.22 How do I petition for deferment?
3836.23 After BLM sends me a decision regarding my petition, what else must I do to obtain a deferment?
3836.24 How long is a deferment granted?
3836.25 When must I complete my deferred assessment work?

Authority: 30 U.S.C. 22, 28, 28b-28e; 50 U.S.C. App. 501, 565; 43 U.S.C. 2, 1201, 1457, 1740.

Subpart A—Performing Assessment Work

§ 3836.10 Performing assessment work.

§ 3836.11 What are the general requirements for performing assessment work?

(a) You must spend $100 in labor or improvements for each claim every assessment year if you obtain a small miner waiver from the annual maintenance fee requirement.

(b) You may perform assessment work on one or several claims of a group of contiguous lode or placer claims that you hold in common and which cover the same mineral deposit. Your total expenditure must equal at least $100 per claim.

§ 3836.12 What work qualifies as assessment work?

Assessment work includes, but is not limited to—

(a) Drilling, excavations, driving shafts and tunnels, sampling (geochemical or bulk), road construction on or for the benefit of the mining claim; and

(b) Geological, geochemical, and geophysical surveys.

§ 3836.13 What are geological, geochemical, or geophysical surveys?

(a) Geological surveys are surveys of the geology of mineral deposits which are done by, among other things, taking mineral samples, mapping rock units, mapping structures, and mapping mineralized zones.

(b) Geochemical surveys are surveys of the chemistry of mineral deposits which are done by, among other things, sampling soils, waters, and bedrock to identify areas of anomalous mineral values and quantities.

(c) Geophysical surveys are surveys of the physical characteristics of mineral deposits which measure physical differences between rock types or physical discontinuities in geological formations. These surveys include, among other things, magnetic and electromagnetic surveys, gravity surveys, seismic surveys, and spectral surveys.

§ 3836.14 What other requirements must geological, geochemical, or geophysical surveys meet to qualify as assessment work?

(a) The surveys must be conducted by qualified experts and verified in a detailed report filed in the county or recording district office where the claim is recorded. A qualified expert is an individual qualified by education or experience to conduct geological, geochemical, or geophysical surveys.

(b) You must record the report on the surveys with BLM and the local recording office, as provided in part 3835 of this chapter. This report must set forth fully the following:

(1) The location of the work performed in relation to the point of discovery and boundaries of the claim;

(2) The nature, extent, and cost of the work performed;

(3) The basic findings of the surveys; and

(4) The name, address, and professional background of persons conducting the work and analyzing the data.

(c) You may not count these surveys as assessment work for more than 2 consecutive years or for more than a total of 5 years on any one mining claim.

(d) No survey may repeat any previous survey of the same claim.

§ 3836.15 What happens if I fail to perform required assessment work?

If you fail to comply substantially with the requirements of this part, BLM may void your claim.

Subpart B—Deferring Assessment Work

§ 3836.20 Deferring assessment work.

(a) Under some circumstances, you may obtain a temporary deferment that relieves you from performing annual assessment work on your mining claims.

(b) If BLM grants you a deferment, you have merely deferred doing the assessment work. You still must complete the assessment work for that assessment year after the deferment period ends.

§ 3836.21 How do I qualify for a deferment of assessment work on my mining claims?

You must have a mining claim that—

(a) You cannot enter or gain access to because it is surrounded by lands over which BLM has denied a right-of-way;

(b) Is in the process of being acquired under State law; or

(c) You cannot enter or gain access to because of some other legal impediment.

§ 3836.22 How do I petition for deferment?

In order to apply for deferment—

(a) You must file a petition in duplicate with the BLM State Office that includes:

(1) The names of the claims;

(2) The BLM serial numbers assigned to the claims;

(3) The starting date of the one-year period of the requested deferment; and

(4) A copy of the small miner waiver certification form you filed for the previous maintenance fee deadline.

(b) If you are filing the petition because BLM or another party has denied you a right-of-way, you must also describe—

(1) The nature and ownership of the land over which you were seeking a right-of-way to reach your claims;

(2) The land over which you are seeking a right-of-way by legal subdivisions if the land is surveyed;

(3) Why present use of the right-of-way is denied or prevented;

(4) The steps you have taken to acquire the right to cross the lands; and

(5) Whether any other right-of-way is available and if so, why it is not feasible to use that right-of-way.

(c) If you are filing the petition because of other legal impediments to your access to the claim, you must describe the legal impediments and file copies of any documents you have which evidence the legal impediments.

(d) You must record in the local recording office a notice that you are petitioning BLM for a deferment of assessment work.

(e) You must attach a copy of the notice required by paragraph (d) of this section to the petition you file with BLM.

(f) The petition you file with BLM and the original notice you file with the local recording office must be signed by at least one of the claimants of each of the mining claims for which you request a deferment.

(g) You must pay a non-refundable service charge with each petition. (See the table of fees and charges in § 3830.21 of this chapter.)

§ 3836.23 After BLM sends me a decision regarding my petition, what else must I do to obtain a deferment?

You must record a copy of BLM's decision regarding your petition in the local recording office.

§ 3836.24 How long may a deferment last?

(a) BLM may grant a deferment for up to one assessment year. However, the deferment ends automatically if the reason for the deferment ends.

(b) The deferment period will begin on the date you requested in the petition unless BLM's approval sets a different date.

(c) You may petition to renew the deferment for one additional assessment year if a valid reason for a deferment continues.

§ 3836.25 When must I complete my deferred assessment work?

(a) You may begin the deferred assessment work any time after the deferment ends. However, you must complete it before the end of the following assessment year. For example, if your deferment ends on July 15, 2008, you must complete the deferred assessment work by September 1, 2009, in addition to completing the regular assessment work due on that date.

(b) You may also choose to pay the annual maintenance fees for the years deferred instead of performing the deferred assessment work.

17. Add part 3837 to read as follows:

PART 3837—ACQUIRING A DELINQUENT CO-CLAIMANT'S INTERESTS IN A MINING CLAIM OR SITE

Sec.

Subpart A—Conditions for Acquiring a Delinquent Co-Claimant's Interests in a Mining Claim or Site

3837.10 Conditions for acquiring a delinquent co-claimant's interests.
3837.11 How may I acquire a delinquent co-claimant's interest in a mining claim or site?

Subpart B—Aquisition procedures

3837.20 Acquisition.
3837.21 How do I notify the delinquent co-claimant that I want to acquire his or her interests?
3837.22 How long does a delinquent co-claimant have after notification to contribute a proportionate share of the assessment work, expenditures, or maintenance fees?
3837.23 How do I notify BLM that I have acquired a delinquent co-claimant's interests in a mining claim or site?
3837.24 What kind of evidence must I submit to BLM to show I have properly notified the delinquent co-claimant?

Subpart C—Resolving Disputes About Acquiring a Delinquent Co-Claimant's Interests

3837.30 Disputes about acquiring a delinquent co-claimant's interests.

Authority: 43 U.S.C. 2, 1201, 1457; 50 U.S.C. App. 501, 565; 30 U.S.C. 28.

Subpart A—Conditions for Acquiring a Delinquent Co-Claimant's Interests in a Mining Claim or Site

§ 3837.10 Conditions for acquiring a delinquent co-claimant's interests.

§ 3837.11 How may I acquire a delinquent co-claimant's interests in a mining claim or site?

(a) You may acquire a co-claimant's interest in a mining claim or site under the following circumstances:

(1) You are a co-claimant who has performed the assessment work, made improvements, or paid the maintenance fees required under parts 3834 and 3836 of this chapter;

(2) Your co-claimant fails to contribute a proportionate share of the assessment work, expenditures, or maintenance fees by the end of the assessment year concerned;

(3) You notify the delinquent co-claimant of the failed obligation as provided in § 3837.21 of this part; and

(4) After 90 days following the date of the notice or the end of the publication, if the delinquent co-claimant fails or refuses to contribute a proportionate share of the assessment work, expenditures, or maintenance fees, the remaining co-claimants acquire the delinquent co-claimant's share in the mining claim or site.

(b) You may not acquire a co-claimant's interest in a mining claim or site if the co-claimant is on active military duty.

Subpart B—Acquisition Procedures

§ 3837.20 Acquisition.

§ 3837.21 How do I notify the delinquent co-claimant that I want to acquire his or her interests?

(a) You must give the delinquent co-claimant written notice by mail using certified mail, return receipt requested, or by personal service, or

(b) If, after diligent search, you cannot locate the delinquent co-claimant, you must publish notification in a newspaper nearest the location of the claims or sites at least once a week for 90 days.

§ 3837.22 How long does a delinquent co-claimant have after notification to contribute a proportionate share of the assessment work, expenditures, or maintenance fees?

The delinquent co-claimant has—

(a) 90 days from the date on which the co-claimant receives written notice by mail or personal service to contribute a proportionate share of the assessment work, expenditures, or maintenance fees; or

(b) 90 days after the date on which the 90-day newspaper publication period ends to contribute a proportionate share of the assessment work, expenditures, or maintenance fees.

§ 3837.23 How do I notify BLM that I have acquired a delinquent co-claimant's interests in a mining claim or site?

You must submit—

(a) Evidence that you properly notified the delinquent co-claimant;

(b) An originally signed and dated statement by all the compliant co-claimants that the delinquent co-claimant failed to contribute the proper proportion of assessment work, expenditures, or maintenance fees within the period fixed by the statute; and

(c) A non-refundable service charge for a transfer of interest, as found in the table of fees in § 3830.21 of this chapter.

§ 3837.24 What kind of evidence must I submit to BLM to show I have properly notified the delinquent co-claimant?

(a) If you gave written notice to the delinquent co-claimant by personal service, you must sign and submit a notarized affidavit explaining how and when you delivered the written notice to the delinquent co-claimant.

(b) If you gave written notice to the delinquent co-claimant by mail, you must submit—

(1) A copy of the notice you mailed to the delinquent co-claimant; and

(2) A copy of the signed U.S. Postal Service return receipt from the registered or certified envelope in which you sent the notice to the delinquent co-claimant.

(c) If you published the notice in a newspaper, you must submit:

(1) A statement from the newspaper publisher describing the publication, including the beginning and ending dates of publication;

(2) A printed copy of the published notice; and

(3) A notarized affidavit attesting that you conducted a diligent search for the delinquent co-claimant, you could not locate the delinquent co-claimant, and therefore notification by publication was necessary.

Subpart C—Resolving Disputes About Acquiring a Delinquent Co-Claimant's Interests

§ 3837.30 Disputes about acquiring a delinquent co-claimant's interests.

If co-claimants are engaged in a dispute regarding the acquisition of a delinquent co-claimant's interests—

(a) The co-claimants must resolve the dispute, without BLM involvement, in a court of competent jurisdiction or other proceeding as permitted within the State where the disputed claims are located.

(b) The co-claimants must file with BLM a certified copy of the judgment, decree, or settlement agreement resolving the dispute before BLM will update its records.

18. Add part 3838 to read as follows:

PART 3838—SPECIAL PROCEDURES FOR LOCATING AND RECORDING MINING CLAIMS AND TUNNEL SITES ON STOCKRAISING HOMESTEAD ACT (SRHA) LANDS

Sec.

Subpart A—General Provisions

3838.1 What are SRHA lands?
3838.2 How are SRHA lands different from other Federal lands?

Subpart B—Locating and Recording Mining Claims and Tunnel Sites

3838.10 Procedures for locating and recording a mining claim or tunnel site on SRHA lands.
3838.11 How do I locate and record mining claims or tunnel sites on SRHA lands?
3838.12 What do I include in a NOITL on SRHA lands?
3838.13 What restrictions are there on recording a NOITL on SRHA lands?
3838.14 What does BLM do when I record a NOITL on SRHA lands?
3838.15 How do I benefit from properly filing a NOITL on SRHA lands?
3838.16 What happens if the surface owner of the SRHA lands changes?

Subpart C—Compliance Problems

3838.90 Failure to comply with this part?
3838.91 What if I fail to comply with this part?

Authority: 43 U.S.C. 299(b), 1201, 1457, 1740, 1744; 30 U.S.C. 22 *et seq.*

Subpart A—General Provisions

§ 3838.1 What are SRHA lands?

SRHA lands are lands that were—

(a) Patented under the Stockraising Homestead Act of 1916, as amended (30 U.S.C. 54 and 43 U.S.C. 299); or

(b) Originally entered under the Homestead Act, as amended, and patented under the SRHA after December 29, 1916.

§ 3838.2 How are SRHA lands different from other Federal lands?

(a) The United States owns the mineral estate of SRHA lands, but not the surface estate. Patents issued under the SRHA, and Homestead Act entries patented under the SRHA, reserved the mineral estate to the United States.

(b) The procedures in this part describe how to notify the surface owner before exploring for minerals or locating a mining claim on the mineral estate of SRHA lands. If you own the surface estate of SRHA lands and want to explore for minerals or locate a mining claim on the Federally-reserved mineral estate, you do not need to follow the requirements in this part, but you must follow the requirements in parts 3832, 3833, 3834 and 3835 of this chapter.

Subpart B—Locating and Recording Mining Claims and Tunnel Sites

§ 3838.10 Procedures for locating and recording a mining claim or tunnel site on SRHA lands.

§ 3838.11 How do I locate and record mining claims or tunnel sites on SRHA lands?

(a) You must—

(1) Record a notice of intent to locate mining claims (NOITL) with the proper BLM State Office that is responsible for the affected mineral estate and submit a non-refundable service charge for processing (see the table of fees in § 3830.21 of this chapter);

(2) Serve a copy of the NOITL on the surface owner(s) of record, by registered or certified mail, return receipt requested; and

(3) Record proof that you served a copy of the NOITL on the surface owner with BLM to complete the recordation of a NOITL.

(b) You can record the NOITL and serve a copy of the NOITL on the surface owner at the same time.

(c) If you want to explore parcels of land that are owned by different people, you must file a separate NOITL for each parcel of land.

(d) You must—

(1) Wait 30 days after you serve the surface owner with the NOITL before entering the lands to explore for minerals or locate a mining claim or tunnel site; and

(2) Follow procedures for locating mining claims and tunnel sites in part 3832 of this chapter, recording mining claim and tunnel sites in part 3833 of this chapter, and annual maintenance of mining claims in parts 3834 and 3835 of this chapter.

§ 3838.12 What must I include in a NOITL on SRHA lands?

A NOITL must include:

(a) The names, mailing address, and telephone numbers of everyone who is filing the NOITL.

(b) Information about the surface owners, including:

(1) The names, mailing addresses, and telephone numbers of all surface owners of the tract of land you want to enter;

(2) Evidence from the current edition of the county or borough tax rolls that the names of the surface owners you file are the current owners of the surface estate;

(3) A description of the lands covered by the NOITL, including:

(i) The total number of acres to the nearest whole acre; and

(ii) A map and legal land description to the nearest 5-acre subdivision or lot based on a U.S. Public Land Survey of the lands you want to explore, including access routes; and

(4) A brief description of the proposed mineral activities, including:

(i) The name, mailing address, and telephone number of the person who will be managing the activities and

(ii) A list of the dates on which the activities will take place.

§ 3838.13 What restrictions are there on recording a NOITL on SRHA lands?

(a) You or your affiliates may not file NOITLs for more than 1,280 acres of land owned by a single surface owner.

(b) You or your affiliates may not file NOITLs for more than 6,400 acres of land in any one State.

(c) Your NOITL will expire 90 days after you record it with BLM, unless you file a plan of operations with BLM before the end of the 90-day period.

(d) After your NOITL expires, you are not allowed to record another NOITL for the same lands until 30 days after the expiration of the previously-filed NOITL.

(e) Only those persons whose names are listed on the properly recorded NOITL will be allowed to explore for minerals or locate mining claims or tunnel sites on the lands covered by the NOITL.

§ 3838.14 What will BLM do when I record a NOITL on SRHA lands?

When BLM accepts a properly completed and executed NOITL, we will note the official land status records. The date that BLM accepts the NOITL will be the effective date of the notation.

§ 3838.15 How do I benefit from properly filing a NOITL on SRHA lands?

(a) For 90 days after BLM accepts your NOITL:

(1) You may enter the lands covered by the NOITL to explore for minerals and locate mining claims;

(2) You may cause only minimal disturbance of the surface resources on the lands covered by the NOITL;

(3) You must not use mechanized earthmoving equipment, explosives, or toxic or hazardous materials; and

(4) You must not construct roads or drill pads.

(b) For 90 days after BLM accepts your NOITL, no other person, including the surface owner, may:

(1) file a NOITL for any lands included in your NOITL;

(2) explore for minerals or locate a mining claim on the lands included in your NOITL; or

(3) file an application to acquire any interest under section 209 of FLPMA in the lands included in your NOITL.

(c) If you file a plan of operations with BLM, as provided in section 1 of the Act of April 16, 1993, 43 U.S.C. 299(b), before the end of the 90-day period, BLM will extend the effects of the 90-day period until BLM approves or denies a plan of operations.

§ 3838.16 What happens if the surface owner of the SRHA lands changes?

If the surface owner transfers all or part of the surface to a new owner after you have recorded a NOITL and served it on the surface owner, you do not have to serve a copy of the NOITL on the new surface owners.

Subpart C—Compliance Problems

§ 3838.90 Failure to comply with this part.

§ 3838.91 What if I fail to comply with this part?

If you fail to comply with the requirements in this part, the NOITL is void. Mining claims or tunnel sites located under a void NOITL are null and void from the beginning and we will cancel them.

PART 3839—SPECIAL LAWS, IN ADDITION TO FLPMA, THAT REQUIRE RECORDING OR NOTICE [RESERVED]

19. Add and reserve part 3839.

PART 3840—NATURE AND CLASSES OF MINING CLAIMS [REMOVED]

20. Remove part 3840 in its entirety.

PART 3850—ASSESSMENT WORK [REMOVED]

21. Remove part 3850 in its entirety.

Dated: July 26, 1999.

Sylvia V. Baca,

Acting Assistant Secretary of the Interior.

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August 27, 1999

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Frameworks for Late-Season Migratory Bird Hunting Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AF24

Migratory Bird Hunting; Proposed Frameworks for Late-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; Supplemental.

SUMMARY: The Fish and Wildlife Service (hereinafter Service or we) is proposing to establish the 1999–2000 late-season hunting regulations for certain migratory game birds. We annually prescribe frameworks, or outer limits, for dates and times when hunting may occur and the number of birds that may be taken and possessed in late seasons. These frameworks are necessary to allow State selections of seasons and limits and to allow recreational harvest at levels compatible with population and habitat conditions.

DATES: To comment on the proposed late-season frameworks, you must do so by September 7, 1999.

ADDRESSES: Send your comments on these proposals to the Chief, Office of Migratory Bird Management (MBMO), U.S. Fish and Wildlife Service, room 634-Arlington Square, Washington, DC 20240. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Jonathan Andrew, Chief, or Ron W. Kokel, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1999

On May 3, 1999, we published in the **Federal Register** (64 FR 23742) a proposal to amend 50 CFR part 20. The proposal dealt with the establishment of seasons, limits, and other regulations for migratory game birds under § 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 17, we published in the **Federal Register** (64 FR 32758) a second document providing supplemental proposals for early-and late-season migratory bird hunting regulations frameworks and the proposed regulatory alternatives for the 1999–2000 duck hunting season. The June 17 supplement also provided detailed information on the 1999–2000 regulatory schedule and announced the Service Migratory Bird Regulations Committee and Flyway Council meetings.

On June 22–23, we held meetings that reviewed information on the current status of migratory shore and upland game birds and developed 1999–2000 migratory game bird regulations recommendations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 1999–2000 regular waterfowl seasons. On July 22, we published in the **Federal Register** (64 FR 39460) a third document specifically dealing with the proposed frameworks for early-season regulations for the 1999–2000 duck hunting season. The July 22 supplement also established the final regulatory alternatives for the 1999–2000 duck hunting season. We will publish a rulemaking establishing final frameworks for early-season migratory bird hunting regulations for the 1999–2000 season in late August.

On August 3–4, 1999, we held meetings, as announced in the May 3 and June 17 **Federal Register**s, to review the status of waterfowl. This document deals specifically with proposed frameworks for the late-season migratory bird hunting regulations. It will lead to final frameworks from which States may select season dates, shooting hours, areas, and limits. We have considered all pertinent comments received through August 6, 1999, in developing this document. In addition, new proposals for certain late-season regulations are provided for public comment. Comment periods are specified above under **DATES**. We will publish final regulatory frameworks for late-season migratory game bird hunting in the **Federal Register** on or about September 25, 1999.

Population Status and Harvest

The 1999 estimate for total ducks in the traditional survey area was 43.4 million birds, the largest population size estimated since operational surveys began in 1955. This is an increase ($P<0.01$) of 11% over that of 1998, and 32% higher ($P<0.01$) than the 1955–98 average. Mallard (*Anas platyrhynchos*) abundance was 10.8 million, the second largest population size estimated. This is an increase of 12% ($P=0.01$) over last year and 47% ($P<0.01$) greater than the long-term average. Blue-winged teal (*Anas discors*) abundance was 7.1 million, an all time high, and 65% greater than the long-term average ($P<0.01$). Northern pintail (*Anas acuta*), scaup (*Aythya marila* and *Aythya affinis*), green-winged teal (*Anas crecca*), and northern shoveler (*Anas clypeata*) numbers increased from 1998 estimates, while gadwall (*Anas strepera*) decreased ($P<0.04$). Gadwall, green-winged teal, northern shoveler, redheads (*Aythya americana*), and canvasbacks (*Aythya valisineria*) were above their respective long-term averages ($P<0.05$), while pintails and scaup remained below their long-term averages ($P<0.01$). American wigeon (*Anas americana*) numbers were unchanged from last year or from long-term average. May habitat conditions in the traditional survey area were generally good to excellent, except for a few dry areas primarily in southern and central Alberta, Montana, and central Saskatchewan. The number of May ponds in the traditional survey area was 6.7 million, an increase of 46% over 1998 and 37% above the long-term average ($P<0.01$).

In the eastern areas of Canada and the U.S. (strata 51–56 and 62), the total number of ducks (1.2 million) remained unchanged from last year and the 1995–98 average ($P<0.10$). Numbers of individual species in the east were similar to those of last year ($P<0.10$), except for goldeneye (*Bucephala clangula* and *B. islandica*), which were 196% greater than 1998 levels, and scaup, which were 93% below 1998 levels. Goldeneye were above their 1995–98 average, while blue-winged teal and scaup were below ($P<0.03$). Habitats in the east were somewhat drier than last year, and conditions were overall not as favorable for waterfowl production.

The preliminary estimate of the total-duck fall-flight index is 105 million birds, compared to 84 million last year. The fall flight is predicted to include 13.6 million mallards, 16% greater ($P<0.01$) than the estimate of 11.8 million in 1998.

Most goose and swan populations in North America remain numerically sound and the size of most fall flights will be similar to or increased from last year. Twelve of the 29 populations of geese and swans we report on appear to have increased since last year, 4 appear to have decreased, 9 appear to have changed little, and no comparisons were possible for the remaining 4. Some of the annual variation reflects differences in the timing of surveys; spring estimates of several Canada goose populations that nest near Hudson Bay were probably biased low last year. Of the 25 populations for which data spanning the last 10 years were available, 14 have exhibited a significant increasing trend (5 of 7 of *Anser* populations, 1 of 2 swan populations, and 8 of 15 *Branta* populations), 1 showed evidence of significant decline (1 of 7 *Anser* populations), while 10 appeared stable (7 of 15 *Branta* populations, 1 of 7 *Anser* populations, 1 swan population). As in previous years, forecasts for production of young in 1999 varied regionally based largely on spring weather and habitat conditions. Generally, spring phenology was earlier than normal in northern Quebec, the Hudson Bay Lowlands, and the mid-central Arctic, and this should lead to greater-than-average production for geese nesting there. In the north-central and western Arctic, the high Arctic, and along the west coast of Alaska, seasons were moderately to severely delayed, and average to below-average production is expected for geese and swans nesting in those areas. For temperate-zone breeding geese, spring weather in British Columbia and the Pacific Northwest was cold and wet, with delayed snow melt, which will negatively impact production from those areas. Conditions in the eastern tier of the Pacific flyway are reported as average to below average, with generally average to good conditions for most of the Central Flyway. Habitat conditions for nesting geese were good to very good in south-central and eastern Canada and much of the contiguous U.S east of the Mississippi River.

During the 1998–99 hunting season, duck stamp sales were 2% below sales in 1997 and hunter numbers remain well below the highs observed during the early 1970s. United States waterfowl hunters hunted about 4% fewer days and bagged about 4% more ducks, 9% more geese and 14% fewer coots than in 1997.

The number of ducks harvested during the 1998–99 hunting season was similar to the numbers that were harvested during the early 1970s. The increased harvest during the last few years is a reflection the more liberal hunting seasons offered and the increased duck abundance resulting from the improved water availability and habitat conditions that occurred in the prairie-pothole area. Of the five species of ducks that are most important in the bag, in order of importance; the number of mallards harvested increased 2%; the number of green-winged teal increased 23%; the number of gadwall increased 16%; the number of wood ducks increased 11%; and the number of blue-winged teal was similar to the 1997–98 harvest.

The overall harvest of geese last year increased 9% from that of 1997–98. Steady increases in goose harvests over the last decade largely reflect the increased numbers of resident or giant Canada geese, although increases in other populations of Canada geese and other goose species, including snow geese, have occurred. In the U.S., harvest of Canada geese increased 5%, snow geese increased 33%, blue geese increased 20%, Ross' geese increased 62%, white-fronted geese decreased 13% and brant decreased 17% from 1996–97.

Review of Public Comments and Flyway Council Recommendations

The preliminary proposed rulemaking, which appeared in the May 3 **Federal Register**, opened the public-comment period for late-season migratory game bird hunting regulations. Late-season comments are summarized below and numbered in the order used in the May 3 **Federal Register**. Only the numbered items pertaining to late season issues for which written comments were received are included.

We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below.

We seek additional information and comments on the recommendations in this supplemental proposed rule. New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the May 3, 1999, **Federal Register**.

1. Ducks

The categories used to discuss issues related to duck harvest management are as follows: (A) General Harvest Strategy, (B) Framework Dates, (C) Season Length, (D) Closed Seasons, (E) Bag Limits, (F) Zones and Split Seasons, and (G) Special Seasons/Species Management. Only those categories containing substantial recommendations are included below.

A. General Harvest Strategy

Council Recommendations: The Atlantic Flyway Council, the Upper-Region Regulations Committee of the Mississippi Flyway Council, the Central Flyway Council, and the Pacific Flyway Council recommended adopting the "liberal" alternative for the 1999–2000 duck hunting season.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended adoption of the "liberal" alternative, except that they recommend framework dates of the Saturday nearest October 1 to the Sunday nearest January 20 for all States. The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended adoption of the "liberal" alternative, except that they recommend a 60-day season for all States regardless of the framework closing date. Specific details are discussed in B. Framework Dates.

Service Response: Since 1995, Adaptive Harvest Management (AHM) strategies have been based on the status of midcontinent mallards, which are defined as those breeding in the traditional survey area, and in Minnesota, Wisconsin, and Michigan. An optimal regulatory choice is based on breeding population size and prairie water conditions, and on the weights assigned to four alternative models of population dynamics. The same regulatory alternative is applied in all four Flyways, although season lengths and bag limits are Flyway-specific. The 1999 harvest strategy for midcontinent mallards is based on: (1) An objective to maximize long-term harvest and achieve a population goal of 8.7 million; (2) regulatory alternatives that are unchanged from last year; and (3) model weights that are similar to last year. Based on a breeding population size of 11.8 million mallards in the mid-continent region (traditional survey areas and Lake States) and 3.9 million ponds in Prairie Canada, the optimal regulatory choice for midcontinent mallards in 1999 is the "liberal" alternative.

Modifying the AHM protocol to account for mallards breeding eastward and westward of the midcontinent region is perhaps the most challenging technical issue facing duck harvest managers. Never before have we tried to consider the status of multiple mallard stocks in such a formal way, nor have we attempted to give all Flyways the ability to choose regulations that are tied to their particular derivation of mallards. Although progress has been significant, there are a number of outstanding technical issues. The

Service and AHM working group have assigned a high priority to addressing these issues, and hope to fully integrate eastern mallards and western mallards into the AHM process in 2000 and 2001, respectively.

In the interim, we are exploring optimal harvest strategies targeted for eastern mallards. A harvest strategy has been derived based on: (1) An objective to maximize long-term harvest; (2) regulatory alternatives that are unchanged from last year; and (3) a "working model" of population dynamics. Based on a breeding population size of 1.1 million mallards and spring precipitation of 8.3 inches, the optimal regulatory choice for eastern mallards in 1999 is the "liberal" alternative. By next year, we hope to be able to prescribe Flyway-specific regulations for those cases where the optimal regulatory choice is different for midcontinent and eastern mallards.

Therefore, we agree with the Flyway Councils and are proposing the "liberal" alternative for the 1999 duck hunting season.

B. Framework Dates

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended adoption of the "liberal" alternative, except that they recommend framework dates of the Saturday nearest October 1 to the Sunday nearest January 20 for all States. The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended a 60-day season for all States regardless of their selected framework closing date.

Service Response: Frameworks for the 1999–2000 duck hunting season were established in the July 22 **Federal Register**, with the finalization of the 1999–2000 regulatory alternatives. As we indicated in our July 22 response, we continued the use of the 1998–99 regulatory alternatives published in the August 5, 1998, **Federal Register**, for the 1999–2000 hunting season with one exception. For the States of Alabama, Mississippi, and Tennessee, we offered the use of a 51-day season in the "liberal" alternative and a 38-day season in the "moderate" alternative with a January 31 framework closing date in both alternatives. Framework opening and closing dates for all other States are unchanged from those published in the August 5, 1998, **Federal Register**. For a complete discussion of this issue, you should refer to the July 22 **Federal Register**.

F. Zones and Split Seasons

Council Recommendations: The Atlantic Flyway Council recommended the Service allow "3 zones with 2-way splits in each zones" as an additional option beginning in 2001. Further, the Council recommended that zone-split guidelines be finalized by July 2000 so that States have adequate opportunity to select their desired approach.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service add "3 zones with 2-way splits permitted in one or more zones" as an additional option beginning in 2001. Further, because of the public input process many States undertake, the Committee recommended that States have up to one year to choose this option prior to the 2001 regular duck season regulations process. The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service consider offering all States the option of choosing 3 zones with a split season in each zone in the year 2001.

The Pacific Flyway Council recommended the Service engage the Flyway Councils in an evaluation of the guidelines for zoning and split seasons, prior to the 2001 "open season" on regulation changes.

Service Response: We acknowledge the recommendations from the Councils pertaining to the guidelines for selecting zone and split options for duck hunting. Accordingly, we will work with all the Flyway Councils in the next year to review the existing guidelines, and plan to finalize these guidelines during next year's (2000–01) late-season regulations process. The final guidance will then be available for use by all States in the ensuing year as they solicit public input for zone and split configurations for use during 2001–05.

G. Special Seasons/Species Management

i. Black Ducks

Council Recommendations: The Atlantic Flyway Council recommended that the individual Atlantic Flyway States continue to achieve a 42 percent reduction in their black duck harvest during the 1999-2000 season compared with the 1977–81 base-line harvest.

Service Response: We agree with the Atlantic Flyway Council's recommendation and acknowledge the Council's concern for the population status of black ducks. Black duck populations remain below the North American Wildlife Management Plan goal and while the decline seems to have halted, little increase is evident. Harvest estimates increased 16% in the U.S. (8% in the Atlantic and 36% in the Mississippi Flyways) during the 1998–99 hunting season and we reiterate our concern about the effects of longer duck seasons on black duck harvests and recommend that States maintain harvest restrictions achieved since the 1983 Environmental Assessment. Higher harvests and lower midwinter population estimates in the Mississippi Flyway in recent years are of particular concern. Although efforts are underway to develop an international harvest strategy, and possibly an AHM approach, interim harvest restriction alternatives should be considered where appropriate. Thus, we believe the harvest restrictions identified in the 1983 Environmental Assessment should be maintained until a revised harvest strategy is developed.

ii. Canvasbacks

Council recommendations: The Lower-Region Regulations Committee of the Mississippi Flyway Council requested to know the population level at which an increase in the canvasback bag limit would be warranted.

Service Response: The Service continues to support the canvasback harvest strategy adopted in 1994. This strategy allows a daily bag limit of 1 bird during any open season. Seasons with a daily bag limit greater than 1 would require revision of the strategy, and we believe that more experience with the present strategy is needed before revisions are considered. Current population and habitat status suggest that a daily bag limit of 1 canvasback during the 1999–2000 season will result in a harvest within levels allowed by the strategy. However, monitoring data collected during the last 5 years suggest that harvest models have consistently predicted levels of harvest lower than those observed. For the 1999–2000 season, the strategy still prescribes an open season, even when accounting for this additional harvest. However, we believe that, beginning in the 2000–01 season, the harvest models (some of which were based on data from ~30 years ago) should be replaced with these more contemporary data. We will present the proposed harvest levels at next winter's Flyway Technical Section meetings for review.

iii. Pintails

Council Recommendations: All four Flyway Councils recommended a daily bag limit of 1 pintail in the 1999–2000 hunting season as prescribed by the Interim Pintail Harvest Strategy.

Service Response: We concur with the recommendations. Considering the current status of the population (3.1 million breeding birds) and the expected recruitment rate (1.00), the strategy prescribes a bag limit of 1 pintail for all Flyways under the "liberal" alternative.

iv. Scaup

In the past year, we have continued to indicate our growing concern for the status and trends of North American scaup. We distributed a status report on scaup and provided some initial guidelines concerning a scaup harvest strategy to the Flyway Councils and others for consideration in the development of recommendations for the 1999–2000 hunting season. In response to this information, all four Flyways discussed the issue at their winter meetings. Following Council comments on the initial harvest guidelines (presented in the July 22 **Federal Register**), we revised the harvest guidelines and developed a draft harvest strategy that was distributed to the Councils for consideration at their summer meetings.

Council recommendations: The Atlantic Flyway Council recommended a daily bag limit of 3 scaup until a harvest strategy for lesser and greater scaup is adopted.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended a daily bag limit of 3 scaup. The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended no scaup restriction in the overall daily bag limit.

The Central Flyway Council recommended adoption of the draft harvest strategy with the exception of the prescription. The Council recommended a prescription for scaup bag limits based on the status of lesser scaup as follows: < 2.5 million, bag limit of 1; 2.5–3.5 million, bag limit of 2; 3.5–4.0 million, bag limit of 3; and > 4.0, the bag limit for scaup should equal the regular daily duck limit as determined by the AHM process.

The Pacific Flyway Council recommended no internal bag restrictions on scaup in the Pacific Flyway for the 1999–2000 hunting season.

Service Response: We remain concerned about the status of lesser scaup. Lesser scaup populations have declined 1% per year since 1995 and 3% per year during the last 10 years. Lesser scaup harvest has varied over the years in the U.S. with lows around 100,000 in 1990 but since has increased in recent years to over 500,000. These recent increases have occurred concurrent with liberalizations in season length and bag limits with the implementation of AHM.

For the 1999–2000 season, we propose a bag limit of 3 scaup in the Atlantic, Mississippi, and Central Flyways, and 4 scaup in the Pacific Flyway. This action is only for one year. These bag limit reductions maintain the current differentials in the full duck bag limit that presently exist among Flyways. While we note a general feeling among the Flyway Councils that some reduction is appropriate, we acknowledge that this is not unanimous among Flyways. However, we believe that if a reduction in harvest is needed, all should participate. We will continue to work with the Flyway Councils to develop a harvest strategy to be formally adopted prior to next year's hunting season.

4. Canada Geese

Council Recommendations: The Atlantic Flyway Council recommended that a limited hunting season for AP (Atlantic Population) Canada geese be permitted in 1999–2000 throughout AP harvest areas (those areas closed in 1998) in the Atlantic Flyway. For the Mid-Atlantic and New England AP Areas, the Council recommended a 15-day season with framework dates of November 1–January 20. The daily bag limit would be 1 Canada goose. For the Chesapeake Region AP Areas, the Council recommended a 6-day season with framework dates of November 15 to January 20. The daily bag limit would be 1 Canada goose. Additionally, in Delaware and Maryland the harvest would be limited to 2,100 and 12,200 birds, respectively, and all Canada geese must be tagged and the season limit will be the number of tags issued to each permittee. In Southern Region AP Areas, the Council recommended the season remain closed. In all open areas, the season could be split into two segments, but must run concurrent with duck seasons.

The Atlantic Flyway Council also recommended modification of the frameworks for the regular season in Erie, Butler, and Mercer Counties, and designated portions of Crawford County, in Pennsylvania. The Council recommended changing the existing 70-day season with October 1 to January 31 frameworks to a 40-day season between November 15 and January 15, with a daily bag limit of 2 geese per day. The Council also recommended modification of the framework opening date in southwestern New York to November 1 and allowing Maryland to divide their regular resident Canada goose season into 3 segments on an experimental basis for the 1999–2000 season.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended a number of changes in season lengths, bag limits, zones, and quotas for Canada geese in Wisconsin, Michigan, Indiana, and Illinois, primarily to allow increased harvest of MVP Canada geese, and in Minnesota, Iowa, and Missouri, primarily to allow increased harvest of EPP Canada geese. The Lower-Region Regulations Committee of the Mississippi Flyway Council also recommended several changes in season lengths, quotas, etc., primarily to allow increased harvest of MVP Canada geese. All of these changes are based on improved population status and current management plans.

The Central Flyway Council made several recommendations on goose frameworks. In the East Tier, the Council recommended an increase in the Canada goose (or any other goose species except light geese and white-fronted geese) season from 93 days to 95 days with a daily bag limit of 3. Outside framework dates would be the Saturday nearest October 1 (Oct. 2, 1999) and the Sunday nearest February 15 (Feb. 13, 2000). In the Eastern Goose Zone of Texas, the Council recommended an additional season alternative of a 107-day season with a 1 Canada goose daily bag limit. The framework closing date for the Eastern Goose Zone of Texas would be February 21. In the West Tier, the Council recommended dark goose outside framework dates of the Saturday nearest October 1 (October 2, 1999) and the Sunday nearest February 15 (February 13, 1999), with daily bag and possession limits of 5 and 10, respectively. In the Western Goose Zone of Texas, the Council recommended a daily bag limit of 5 dark geese, to include no more than 2 white-fronted geese, with a framework closing date of February 21.

The Pacific Flyway Council made several recommendations for dark geese (see also item 5. White-fronted Geese). The Council recommended the bag limit for dark geese be increased from 2 to 3 in the Rocky Mountain Population zones in Arizona, California, Colorado, Nevada (except Lincoln and Clark Counties), New Mexico, and Utah. The Pacific Flyway Council also recommended that Washington and Oregon be allowed to split the dark goose season in the Dusky quota zones into 3 segments. Additionally, they recommended that the Harney, Lake, Klamath, and Malheur goose zone in Oregon be re-defined to include only Lake County. The Council also

recommended that white-fronted and cackling Canada geese be allowed during the first 44 days in the Northeastern Zone of California. Finally, the Council recommended several boundary adjustments to the closure zones for dark geese in the Balance-of-the State Zone in California.

Service Response: We support the Atlantic Flyway's request to reinstate the regular season on the Atlantic Population of Canada geese in the areas described. Numbers of breeding pairs in northern Quebec increased substantially this spring from last year's estimate, which suggests this population is showing signs of recovery. An increase in nesting densities was also encouraging, although predation will likely limit nest success to "good" in the Ungava Bay area and only fair along the Hudson Bay Coast. A slight increase in the fall flight is predicted. While we remain cautious about resuming a sport harvest, we recognize that the Action Plan criteria have been triggered. For the near future, we remain optimistic about the recovery of this population, particularly with average or better production since 1997, which should continue the expansion in the number of breeding pairs.

Regarding the Central Flyway Council's recommendations, we support their request to increase the Canada goose (or any other goose species except light geese and white-fronted geese) season from 93 to 95 days with a daily bag limit of 3 for the entire East Tier. We also support the Council's recommendation for an additional season alternative of a 107-day season with a 1 Canada goose daily bag limit in the Eastern Goose Zone of Texas. Further, we support the Council's recommendation for outside framework dates and believe that all dark goose seasons in the East Tier should have consistent outside dates of the Saturday nearest October 1 (Oct. 2, 1999) and the Sunday nearest February 15 (Feb. 13, 2000). In the West Tier, we support the Council's recommendation for an increase in the aggregate dark goose bag and possession limits from 4 and 8 to 5 and 10, respectively. However, in the Western Goose Zone of Texas, we do not support an increase in the white-fronted goose daily bag restriction from 1 to 2. While we are aware that the whitefront harvest (5,000) in this zone is small, we are concerned about the status of white-fronted geese breeding in the Interior of Alaska, which migrate through this area. These birds clearly have lower survival rates than Mid-Continent white-fronted geese from other breeding areas, but indices of abundance and long-term trends are less certain. We also realize that harvest of these birds also occurs in Alberta, Saskatchewan, and the Mexico Highlands; however, we believe that the Management Plan serves as the appropriate mechanism to address cooperative harvest management strategies for these birds. In the Western Tier, we also do not support the recommended framework closing date of February 21, and believe that dark goose outside dates should be consistent with the East Tier. Thus, we propose framework dates of the Saturday nearest October 1 (Oct. 2, 1999) to the Sunday nearest February 15 (Feb. 13, 2000) for the entire Western Tier.

Regarding the other recommendations from the Flyway Councils: we concur with the framework modifications in Pennsylvania, New York, Maryland; changes in season lengths, bag limits, zones, and quotas for Wisconsin, Michigan, Indiana, Illinois, Minnesota, Iowa, and Missouri; bag limit, zone and boundary changes, and framework modifications in Arizona, California, Colorado, Nevada, New Mexico, Utah, Washington and Oregon.

C. Special Late Seasons

Council Recommendations: The Atlantic Flyway Council recommended an experimental late season between January 15 and February 15 for Erie, Butler, and Mercer Counties, and designated portions of Crawford County, in Pennsylvania.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended the establishment of experimental late Canada goose seasons for Minnesota and Ohio. The Lower-Region Regulations Committee of the Mississippi Flyway Council recommended that the Service work closely with the Council's Technical Section in evaluating the cumulative effects that special seasons may have on non-target populations.

Service Response: We concur with the recommended changes in the Atlantic and Mississippi Flyways and will continue to work with the Mississippi Flyway Council's Technical Section to assess the cumulative effects of special seasons.

5. White-fronted Geese

Council Recommendations: The Upper-and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended that seasons for white-fronted geese increase from 70 days and 2 geese to 86 days and 2 geese or 107 days and 1 goose, with a framework closing date of February 15, consistent with the Mid-continent white-fronted goose plan.

The Central Flyway Council recommendations regarding dark geese in the West Tier involve white-fronted geese (see item 4. Canada Geese). For the East Tier, the Council recommended a 95-day season with framework dates of the Saturday nearest October 1 (October 2, 1999) to January 31, with a daily bag limit of 2 whitefronts. In the Eastern Goose Zone of Texas, the Council recommended a 86-day season with a daily bag limit of 2 whitefronts or an alternative 107-day season with a daily bag limit of 2 whitefronts for 44 consecutive days and 1 for the remaining 63 days. The framework closing date would be February 21.

The Pacific Flyway Council recommendations regarding dark geese also involve white-fronted geese (see item 4. Canada Geese). The Council recommended the bag limit for dark geese be increased from 2 to 3 in the Rocky Mountain Population zones in Arizona, California, Colorado, Nevada (except Lincoln and Clark Counties), New Mexico, and Utah. The Pacific Flyway Council also recommended that Washington and Oregon be allowed to split the dark goose season in the Dusky quota zones into 3 segments. Additionally, they recommended that the Harney, Lake, Klamath, and Malheur goose zone in Oregon be re-defined to include only Lake County. The Council also recommended that white-fronted and cackling Canada geese be allowed during the first 44 days in the Northeastern Zone of California. Finally, the Council recommended several boundary adjustments to the closure zones for dark geese in the Balance-of-the State Zone in California. Further, the Council supported the liberal whitefront frameworks proposed by the Mississippi and Central Flyway Councils.

Service Response: As we noted above, the Central Flyway Council's recommendations for dark geese include whitefronts in the West Tier and are further addressed in item 4. Canada geese. For the East Tier, we do not support an increase in the season length and bag limit from 72 days and 2 birds, or 86 days and 1 bird, to 95 days and 2 birds with a framework closing date of January 31. For the Eastern Goose Zone of Texas, we also do not support a 107-day season alternative with a daily bag limit of 2 whitefronts for 44 consecutive days and 1 bird for the remaining 63 days with a framework closing date of February 21. We believe that the whitefront season length and daily bag limit should be 86 days and 2 birds or 107 days and 1 bird for both the Mississippi Flyway and the East Tier of the Central Flyway. We believe that equitable hunting opportunity between the Mississippi Flyway and the East Tier of the Central Flyway is appropriate because Mid-Continent white-fronted geese are managed as one population. This equitable approach is consistent with the "base regulations" identified in the cooperative management plan. Finally, in the absence of any guidance for liberalizations, we believe that this level of liberalization should be viewed as the "liberal alternative" beyond the "base regulations" identified in the management plan for these harvest areas.

Regarding framework closing dates, we do not support recommendations for a whitefront framework closing date of January 31 in the East Tier and a framework closing date of February 21 for the Eastern Goose Zone of Texas. We propose a dark goose framework closing date of the Sunday nearest February 15th for the entire East Tier. This date is consistent with the framework closing date for dark geese in the West Tier. We believe that the change in harvest related to this alignment of framework closing dates would be negligible, and consistent framework closing dates would facilitate the simplification of dark goose hunting regulations in the Central Flyway.

We also acknowledge the completion of the Cooperative Management Plan for Mid-Continent White-fronted geese (1998). The Plan supports the combining of Eastern and Western Segments of Mid-Continent whitefronts into one population. However, we believe that a major shortcoming of the Plan surfaced this year relating to the guidance provided for the setting of hunting regulations. Although "base regulations" are clearly defined in the Plan, no guidance is provided for liberalizations or restrictions from base regulations. This year, the Mississippi Flyway Council recommended liberalizations different than those recommended by the Central Flyway Council, although the plan calls for the same "base regulations." Further, the population objective (600,000) and associated thresholds identified in the Plan appear to have little relationship with recent population estimates derived from the fall population survey conducted since 1992. Additionally, we believe that cooperative management plans are an appropriate mechanism to address International issues related to special harvest considerations and information data needs, e.g. interior Alaska whitefronts. We are aware of the 5-year revision schedule for this plan and encourage the Central and Mississippi Flyways to work with the Pacific Flyway, Canada and Mexico to address these issues in the next plan update.

We concur with the other Flyway Council recommendations.

6. Brant

Council Recommendations: The Atlantic Flyway Council recommended an increase in the daily bag limit for brant from 2 to 4 birds.

The Upper- and Lower-Region Regulations Committees of the Mississippi Flyway Council recommended seasons for brant be modified to include an option of 107 days and 1 brant in addition to the current option of 70 days and 2 brant. The Committees do not expect this additional option to increase brant harvest in the Flyway, but would allow states to set dark goose season dates to coincide.

Written Comments: The Atlantic Flyway Council subsequently recommended the brant daily bag limit remain at 2 birds. Their revised recommendation was based on new information from the Arctic breeding grounds indicating a strong possibility of very limited brant production this year.

Service Response: We concur with the change back to a 2-bird daily bag limit based on reports from the Baffin Island and surrounding areas that there was no appreciable production this year. Although an increase to a 4-bird daily bag would be consistent with the Atlantic Brant Hunt Plan based on the population status (171,628 in the mid-winter survey), we believe it prudent to conserve the breeding stock and not liberalize the bag limit during a year of poor production.

7. Snow and Ross' Geese

Council Recommendations: The Atlantic Flyway Council recommended allowing the use of an unlimited number of splits in the season.

The Central Flyway Council supported the late-winter light goose hunting season in the Rainwater Basin area of Nebraska per the plan agreed to by the Service and the Nebraska Game and Parks Commission.

Written Comments: The Delaware Division of Fish and Wildlife and the Maryland Department of Natural Resources requested that the Service allow States in the Chesapeake Bay Region (including Delaware) the ability to split their snow goose season up to 47 times. They believed this would be the most effective method for discouraging snow geese from depredating wetlands and agricultural fields. Under this scenario, the season would not have to be closed for more than one day at a time. Alternately, they requested the use of zones and the ability to split their snow goose season up to 15 times. Under this scenario, the season would be closed for 3-day periods each week. Both alternatives would be considered experimental and would be evaluated by use of farm surveys, monthly aerial surveys, biweekly snow goose surveys, and harvest surveys.

Service Response: We are sympathetic towards the depredation issues brought forward by the Atlantic Flyway Council in Delaware and Maryland where too many greater snow geese are causing extensive agricultural damage and wetland degradation during closed segments of their hunting seasons. It remains to be seen whether an increase in the number of split seasons will resolve this problem, but to provide temporary relief, we agree to explore this option further pending an evaluation. We propose that Delaware and Maryland be guided by the existing restrictions on splits for geese (3-way split season) until the end of the regular duck season. After such time, they will be permitted to hunt on Mondays, Wednesdays, Fridays, and Saturdays, involving two splits per week until the framework closing date of March 10, 2000. This season would be experimental, limited to this year only, and requires an evaluation. We will reevaluate the effectiveness on this approach prior to next year. Both States should actively seek landowner support to reduce their crop damage problems by allowing hunter access on their fields to hunt snow geese.

At this time, we do not support the recommendation for use of unlimited splits during snow goose seasons. In 1997, we allowed an increase from 2 to 3 season segments for geese in all four Flyways. This increase resulted in a more consistent use of split-season options among all Flyways. In addition, within any established season, a State may also designate certain days as non-hunt days, if that hunt strategy is desired. The use of zoning for light geese remains a management tool that is currently not contained by specific guidelines for use by a State. We believe that the current ability to divide a 107-day season into 3 segments with the unlimited use of zones provides adequate flexibility for States to set seasons for light geese.

Regarding the hunt strategy for the Rainwater Basin, we appreciate the Central Flyway Council's support of the late-winter light goose hunting strategy for the Rainwater Basin Area of Nebraska and propose to implement the strategy this year.

Public Comment Invited

We intend that adopted final rules be as responsive as possible to all concerned interests, and therefore desire to obtain the comments and suggestions of the public, other governmental agencies, non-governmental organizations, and other private interests on these proposals. However, special circumstances are involved in the establishment of these regulations which limit the amount of time that we can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: (1) The need to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms; and (2) the unavailability, before mid-June, of specific, reliable data on this year's status of some waterfowl and migratory shore and upland game bird populations. Therefore, we believe that to allow comment periods past the dates specified is contrary to the public interest.

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. We invite interested persons to participate in this rulemaking by submitting written comments to the address indicated under the caption **ADDRESSES**.

You may inspect comments received on the proposed annual hunting regulations during normal business hours at the Service's office in room 634, 4401 North Fairfax Drive, Arlington, Virginia. For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments received during the comment period and respond to them after the closing date in the final rule.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published a Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). Copies are available from the address indicated under the caption **ADDRESSES**.

Endangered Species Act Consideration

Prior to issuance of the 1999–2000 migratory game bird hunting regulations, we will consider provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and that the proposed action is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental proposed rulemakings.

Executive Order (E.O.) 12866

While this individual supplemental rule was not reviewed by the Office of Management and Budget (OMB), the migratory bird hunting regulations are economically significant and are annually reviewed by OMB under E.O. 12866.

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail and issued a Small Entity Flexibility Analysis (Analysis) in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns from which it was estimated that migratory bird hunters would spend between $429 and $1,084 million at small businesses in 1998. Copies of the Analysis are available upon request.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. We utilize the various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 9/30/2001). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform-Executive Order 12988

The Department, in promulgating this proposed rule, has determined that these regulations meet the applicable standards found in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges; and, therefore, reduce restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 12612, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1999–2000 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742a–j.

Dated: August 23, 1999.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

Proposed Regulations Frameworks for 1999–2000 Late Hunting Seasons on Certain Migratory Game Birds

Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department has approved frameworks for season lengths, shooting hours, bag and possession limits, and outside dates within which States may select seasons for hunting waterfowl and coots between the dates of September 1, 1999, and March 10, 2000.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Flyways and Management Units

Waterfowl Flyways

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

High Plains Mallard Management Unit—roughly defined as that portion of the Central Flyway which lies west of the 100th meridian.

Definitions: For the purpose of hunting regulations listed below, the collective terms "dark" and "light" geese include the following species:

Dark geese—Canada geese, white-fronted geese, brant, and all other goose species except light geese.

Light geese—snow (including blue) geese and Ross' geese.

Area, Zone, and Unit Descriptions: Geographic descriptions related to late-season regulations are contained in a later portion of this document.

Area-Specific Provisions: Frameworks for open seasons, season lengths, bag and possession limits, and other special provisions are listed below by Flyway.

Compensatory Days in the Atlantic Flyway: In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, Virginia, and West Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Atlantic Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between October 1 and January 20.

Hunting Seasons and Duck Limits: 60 days and daily bag limit of 6 ducks, including no more than 4 mallards (2 hens), 3 scaup, 1 black duck, 1 pintail, 1 mottled duck, 1 fulvous whistling duck, 2 wood ducks, 2 redheads, 1 canvasback, and 4 scoters.

Closures: The season on harlequin ducks is closed.

Sea Ducks: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Merganser Limits: The daily bag limit of mergansers is 5, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Lake Champlain Zone, New York: The waterfowl seasons, limits, and shooting hours shall be the same as those selected for the Lake Champlain Zone of Vermont.

Zoning and Split Seasons: Delaware, Florida, Georgia, Maryland, North Carolina, Rhode Island, South Carolina, and Virginia may split their seasons into three segments; Connecticut, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Vermont, and West Virginia may select hunting seasons by zones and may split their seasons into two segments in each zone.

Canada Geese

Season Lengths, Outside Dates, and Limits: Specific regulations for Canada geese are shown below by State. Unless specified otherwise, seasons may be split into two segments. In areas within States where the framework closing date

for Atlantic Population (AP) goose seasons overlaps with special late season frameworks for resident geese, the framework closing date for AP goose season is January 14.

Connecticut

North Atlantic Population (NAP) Zone: A 40-day season may be held between October 1 and December 15 with a 2-bird daily bag limit.

Atlantic Population (AP) Zone: A 15-day season may be held concurrent with the duck season between November 1 and January 20 with a 1-bird daily bag limit.

South Zone: A special experimental season may be held in the between January 15 and February 15, with a 5-bird daily bag limit.

Delaware: A 6-day season may be held concurrent with the duck season between November 15 and January 20 with a 1-bird daily bag limit (tagging required to harvest). The harvest of Canada geese is limited to 2,100.

Florida: A 70-day season may be held between November 15 to February 15, with a 5-bird daily bag limit.

Georgia: In specific areas, a 70-day season may be held between November 15 and February 15, with a 5-bird daily bag limit.

Maine: A 40-day season may be held Statewide between October 1 and December 15 with a 2-bird daily bag limit.

Maryland

Southern James Bay Population (SJBP) Zone: A 40-day season may be held between November 15 to January 14, with a 2-bird daily bag limit. The season may be split 3-ways. Additionally, an experimental season may be held from January 15 to February 15, with a 5-bird daily bag limit.

AP Zone: A 6-day season may be held concurrent with the duck season between November 15 and January 20 with a 1-bird daily bag limit (tagging required to harvest). The harvest of Canada geese is limited to 12,200.

Massachusetts

NAP Zone: A 40-day season may be held between October 1 to December 15 with a 2-bird daily bag limit. Additionally, a special season may be held from January 15 to February 15, with a 5-bird daily bag limit.

AP Zone: A 15-day season may be held concurrent with the duck season between November 1 and January 20 with a 1-bird daily bag limit.

New Hampshire: A 40-day season may be held statewide between October 1 and December 15 with a 2-bird daily bag limit.

New Jersey

Statewide: A 15-day season may be held concurrent with the duck season between November 1 and January 20 with a 1-bird daily bag limit.

Special Late Goose Season Area: An experimental season may be held in designated areas of North and South New Jersey from January 15 to February 15, with a 5-bird daily bag limit.

New York

SJBP Zone: A 70-day season may be held between November 1 and January 30, with a 2-bird daily bag limit.

NAP Zone: A 40-day season may be held between October 1 and December 31 with a 2-bird daily bag limit.

Special Late Goose Season Area: An experimental season may be held between January 15 and February 15, with a 5-bird daily bag limit in designated areas of Chemung, Tioga, Broome, Sullivan, Westchester, Nassau, Suffolk, Orange, Dutchess, Putnam, and Rockland Counties.

AP Zone: A 15-day season may be held concurrent with the duck season between November 1 and January 20 with a 1-bird daily bag limit.

North Carolina: A 46-day season may be held between October 1 and November 15, with a 2-bird daily bag limit Statewide, except for the Northeast Hunt Unit and Northampton County.

Pennsylvania

SJBP Zone: A 40-day season may be held between November 15 to January 14, with a 2-bird daily bag limit.

AP Zone: A 15-day season may be held concurrent with the duck season between November 1 and January 20 with a 1-bird daily bag limit.

Special Late Goose Season Area: An experimental season may be held from January 15 to February 15 with a 5-bird daily bag limit.

Pymatuning Zone: A 35-day season may be held between October 1 and January 20, with a 1-bird daily bag limit.

Rhode Island: A 40-day season may be held between October 1 and December 15 with a 2-bird daily bag limit. An experimental season may be held in a designated area from January 15 to February 15, with a 5-bird daily bag limit.

South Carolina: In designated areas, a 70-day season may be held during November 15 to February 15, with a 5-bird daily bag limit.

Vermont: A 15-day season may be held concurrent with the duck season between November 1 and January 20 with a 1-bird daily bag limit.

Virginia

SJBP Zone: A 40-day season may be held between November 15 to January 14, with a 2-bird daily bag limit. Additionally, an experimental season may be held between January 15 to February 15, with a 5-bird daily bag limit.

AP Zone: A 6-day season may be held concurrent with the duck season between November 15 and January 20 with a 1-bird daily bag limit.

Back Bay Area: Season is closed.

West Virginia: A 70-day season may be held between October 1 and January 31, with a 3-bird daily bag limit.

Light Geese

Season Lengths, Outside Dates, and Limits: States may select a 107-day season between October 1 and March 10, with a 15-bird daily bag limit and no possession limit. States may split their seasons into three segments, except in Delaware and Maryland, where following the completion of their duck season, and until March 10, they may split the remaining portion of the season to hunt on Mondays, Wednesdays, Fridays, and Saturdays only.

Brant

Season Lengths, Outside Dates, and Limits: States may select a 50-day season between October 1 and January 20, with a 2-bird daily bag limit. States may split their seasons into two segments.

Mississippi Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between the Saturday nearest October 1 (October 2) and the Sunday nearest January 20 (January 23). Seasons in Alabama, Mississippi, and Tennessee may extend to January 31.

Hunting Seasons and Duck Limits: 60 days with a daily bag limit of 6 ducks, including no more than 4 mallards (no more than 2 of which may be females), 3 mottled ducks, 3 scaup, 1 black duck, 1 pintail, 2 wood ducks, 1 canvasback, and 2 redheads. In the States of Alabama, Mississippi, and Tennessee, if a season extending beyond the Sunday nearest January 20 (January 23) is selected in any portion of the State, the season length will be 51 days throughout the State.

Merganser Limits: The daily bag limit is 5, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Alabama, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin may select hunting seasons by zones.

In Alabama, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Ohio, Tennessee, and Wisconsin, the season may be split into two segments in each zone.

In Minnesota and Arkansas, the season may be split into three segments.

Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Mississippi Flyway Council and U.S. Fish and Wildlife Service approval, and a 3-year evaluation, by each participating State.

Season Lengths, Outside Dates, and Limits: States may select seasons for light geese not to exceed 107 days with 20 geese daily between the Saturday nearest October 1 (October 2) and March 10; for white-fronted geese not to exceed 86 days with 2 geese daily or 107 days with 1 goose daily between the Saturday nearest October 1 (October 2) and the Sunday nearest February 15 (February 13); and for brant not to exceed 70 days with 2 brant daily or 107 days with 1 brant daily between the Saturday nearest October 1 (October 2) and January 31. There is no possession limit for light geese. Specific regulations for Canada geese and exceptions to the above general provisions are shown below by State. Except as noted below, the outside dates for Canada geese are the Saturday nearest October 1 (October 2) and January 31.

Alabama: In the Southern James Bay Population (SJBP) Goose Zone, the season for Canada geese may not exceed 35 days. Elsewhere, the season for Canada geese may extend for 70 days in the respective duck-hunting zones. The daily bag limit is 2 Canada geese.

Arkansas: The season for Canada geese may extend for 23 days in the East Zone and 16 days in the West Zone. In both zones, the season may extend to February 15. The daily bag limit is 2 Canada geese. In the remainder of the State, the season for Canada geese is closed.

Illinois: The total harvest of Canada geese in the State will be limited to 119,600 birds. The possession limit is 10 Canada geese.

(a) North Zone—The season for Canada geese will close after 92 days or when 16,700 birds have been harvested in the Northern Illinois Quota Zone, whichever occurs first. The daily bag limit is 2 Canada geese during the first 74 days and 3 Canada geese thereafter.

(b) Central Zone—The season for Canada geese will close after 92 days or when 22,100 birds have been harvested in the Central Illinois Quota Zone, whichever occurs first. The daily bag limit is 2 Canada geese during the first 78 days and 3 Canada geese thereafter.

(c) South Zone—The harvest of Canada geese in the Southern Illinois and Rend Lake Quota Zones will be limited to 36,100 and 6,600 birds, respectively. The season for Canada geese in each zone will close after 67 days or when the harvest limit has been reached, whichever occurs first. The daily bag limit is 2 Canada geese. In the Southern Illinois Quota Zone, if any of the following conditions exist after December 20, the State, after consultation with the Service, will close the season by emergency order with 48 hours notice:

(1) Average body weights of adult female geese less than 3,200 grams as measured from a weekly sample of a minimum of 50 geese.

(2) Starvation or a major disease outbreak resulting in observed mortality exceeding 5,000 birds in 10 days, or a total mortality exceeding 10,000 birds.

In the remainder of the South Zone, the season may extend for 67 days or until both the Southern Illinois and Rend Lake Quota Zones have been closed, whichever occurs first. The daily bag limit is 2 Canada geese.

Indiana: The total harvest of Canada geese in the State will be limited to 25,675 birds. The daily bag limit is 2 Canada geese.

(a) Posey County—The season for Canada geese will close after 66 days or when the Canada goose harvest at the Hovey Lake Fish and Wildlife Area exceeds 950 birds, whichever occurs first.

(b) Remainder of the State—The season for Canada geese may extend for 56 days, except in the SJBP Zone, where the season may not exceed 35 days.

Iowa: The season may extend for 70 days. The daily bag limit is 2 Canada geese.

Kentucky

(a) Western Zone—The season for Canada geese may extend for 59 days (74 days in Fulton County), and the harvest will be limited to 22,900 birds. Of the 22,900-bird quota, 14,885 birds will be allocated to the Ballard Reporting Area and 4,350 birds will be allocated to the Henderson/Union Reporting Area. If the quota in either reporting area is reached prior to completion of the 59-day season, the season in that reporting area will be closed. If the quotas in both the Ballard and Henderson/Union reporting areas are reached prior to completion of the 59-day season, the season in the counties and portions of counties that comprise the Western Goose Zone (listed in State regulations) may continue for an additional 7 days, not to exceed a total of 59 days (74 days in Fulton County). The season in Fulton County may extend to February 15. The daily bag limit is 2 Canada geese.

(b) Pennyroyal/Coalfield Zone—The season may extend for 35 days. The daily bag limit is 2 Canada geese.

(c) Remainder of the State—The season may extend for 50 days. The daily bag limit is 2 Canada geese.

Louisiana: The season for Canada geese may extend for 9 days. During the season, the daily bag limit is 1 Canada goose and 2 white-fronted geese with an 86-day white-fronted goose season or 1 white-fronted goose with a 107-day season. Hunters participating in the Canada goose season must possess a special permit issued by the State.

Michigan: The total harvest of Canada geese in the State will be limited to 56,800 birds. The framework opening date for all geese is September 19.

(a) North and Middle zones—The season for Canada geese may extend for 15 days. The daily bag limit is 2 Canada geese.

(b) South Zone:

(1) Allegan County GMU—The season for Canada geese will close after 21 days or when 880 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(2) Muskegon Wastewater GMU—The season for Canada geese will close after 22 days or when 280 birds have been harvested, whichever occurs first. The daily bag limit is 2 Canada geese.

(3) Saginaw County GMU—The season for Canada geese will close after 50 days or when 2,000 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(4) Tuscola/Huron GMU—The season for Canada geese will close after 50 days or when 750 birds have been harvested, whichever occurs first. The daily bag limit is 1 Canada goose.

(5) Remainder of South Zone—The season for Canada geese will open September 19 and may extend for 15 days. The daily bag limit is 2 Canada geese.

(d) Southern Michigan GMU—A special Canada goose season may be held between January 8 and February 6. The daily bag limit is 5 Canada geese.

(e) Central Michigan GMU—An experimental special Canada goose season may be held between January 8 and February 6. The daily bag limit is 5 Canada geese.

Minnesota

(a) West Zone:

(1) West Central Zone—The season for Canada geese may extend for 30 days. In

the Lac Qui Parle Zone, the season will close after 30 days or when 16,000 birds have been harvested, whichever occurs first. Throughout the West Central Zone, the daily bag limit is 1 Canada goose.

(2) Remainder of West Zone—The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(b) Northwest Zone—The season for Canada geese may extend for 40 days. The daily bag limit is 1 Canada goose.

(c) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

(d) Special Late Canada Goose Season—An experimental Special Canada goose season of up to 10 days may be held in December, except in the West Central and Lac qui Parle Goose zones. During the special season, the daily bag limit is 5 Canada geese, except in the Southeast Goose Zone, where the daily bag limit is 2.

Mississippi: The season for Canada geese may extend for 70 days. The daily bag limit is 3 Canada geese.

Missouri

(a) Swan Lake Zone—The season for Canada geese may extend for 70 days, with no more than 30 days occurring after November 30. The season may be split into 3 segments. The daily bag limit is 2 Canada geese.

(b) Southeast Zone—The season for Canada geese may extend for 70 days. The season may be split into 3 segments, provided that at least 1 segment occurs prior to December 1. The daily bag limit is 3 Canada geese through October 31, and 2 Canada geese thereafter.

(c) Remainder of the state—

(1) North Zone—The season for Canada geese may extend for 70 days, with no more than 30 days occurring after November 30. The season may be split into 3 segments, provided that 1 segment of at least 9 days occurs prior to October 15. The daily bag limit is 3 Canada geese through October 31, and 2 Canada geese thereafter.

(2) Middle Zone—The season for Canada geese may extend for 70 days, with no more than 30 days occurring after November 30. The season may be split into 3 segments, provided that 1 segment of at least 9 days occurs prior to October 15. The daily bag limit is 3 Canada geese through October 31, and 2 Canada geese thereafter.

(3) South Zone—The season for Canada geese may extend for 70 days. The season may be split into 3 segments, provided that at least 1 segment occurs prior to December 1. The daily bag limit is 3 Canada geese through October 31, and 2 Canada geese thereafter.

Ohio: The season for Canada geese may extend for 70 days in the respective duck-hunting zones, with a daily bag limit of 2 Canada geese, except in the Lake Erie SJBP Zone, where the season may not exceed 30 days and the daily bag limit is 1 Canada goose. A special experimental Canada goose season of up to 22 days, beginning the first Saturday after January 10, may be held in selected areas of the State. During the special season, the daily bag limit is 2 Canada geese.

Tennessee

(a) Northwest Zone—The season for Canada geese will close after 74 days or when 8,500 birds have been harvested, whichever occurs first. The season may extend to February 15. A 6,000-bird harvest quota will be monitored in the Reelfoot Quota Zone. The remaining 2,500 quota will be assigned to the area outside the Reelfoot Zone. If the quota in the Reelfoot Quota Zone is reached prior to completion of the 74-day season, the season in the entire Northwest Zone will close. The daily bag limit is 2 Canada geese.

(b) Southwest Zone—The season for Canada geese may extend for 59 days, and the harvest will be limited to 1,000 birds. The daily bag limit is 2 Canada geese.

(c) Kentucky/Barkley Lakes Zone—The season for Canada geese will close after 50 days or when 1,800 birds have been harvested, whichever occurs first. All geese harvested must be tagged. The daily bag limit is 2 Canada geese. In lieu of the quota and tagging requirement above, the State may select either a 50-day season with a 1-bird daily bag limit or a 35-day season with a 2-bird daily bag limit for this Zone.

(d) Remainder of the State—The season for Canada geese may extend for 70 days. The daily bag limit is 2 Canada geese.

Wisconsin: The total harvest of Canada geese in the State will be limited to 79,800 birds.

(a) Horicon Zone—The framework opening date for all geese is September 18. The harvest of Canada geese is limited to 39,500 birds. The season may not exceed 95 days. All Canada geese harvested must be tagged. The daily bag limit is 2 Canada geese and the season limit will be the number of tags issued to each permittee.

(b) Collins Zone—The framework opening date for all geese is September 18. The harvest of Canada geese is limited to 1,300 birds. The season may not exceed 68 days. All Canada geese harvested must be tagged. The daily bag limit is 2 Canada geese and the season limit will be the number of tags issued to each permittee.

(c) Exterior Zone—The framework opening date for all geese is September 25. The harvest of Canada geese is limited to 34,500 birds, with 500 birds allocated to the Mississippi River Subzone. The season may not exceed 94 days, except in the Mississippi River Subzone, where the season may not exceed 80 days. The daily bag limit is 1 Canada goose. In that portion of the Exterior Zone outside the Mississippi River Subzone, the progress of the harvest must be monitored, and the season closed, if necessary, to ensure that the harvest does not exceed 34,000 birds.

Additional Limits: In addition to the harvest limits stated for the respective zones above, an additional 4,500 Canada geese may be taken in the Horicon Zone under special agricultural permits.

Quota Zone Closures: When it has been determined that the quota of Canada geese allotted to the Northern Illinois, Central Illinois, Southern Illinois, and Rend Lake Quota Zones in Illinois, Posey County in Indiana, the Ballard and Henderson-Union Subzones in Kentucky, the Allegan County, Muskegon Wastewater, Saginaw County, and Tuscola/Huron Goose Management Units in Michigan, the Lac Qui Parle Zone in Minnesota, the Northwest and Kentucky/Barkley Lakes (if applicable) Zones in Tennessee, and the Exterior Zone in Wisconsin will have been filled, the season for taking Canada geese in the respective zone (and associated area, if applicable) will be closed by either the Director upon giving public notice through local information media at least 48 hours in advance of the time and date of closing, or by the State through State regulations with such notice and time (not less than 48 hours) as they deem necessary.

Central Flyway

Ducks, Mergansers, and Coots

Outside Dates: Between October 2 and January 23.

Hunting Seasons and Duck Limits

(1) High Plains Mallard Management Unit (roughly defined as that portion of the Central Flyway which lies west of the 100th meridian): 97 days and a daily bag limit of 6 ducks, including no more than 5 mallards (no more than 2 of which may be hens) 1 mottled duck, 1 canvasback, 1 pintail, 2 redheads, 3 scaup, and 2 wood ducks. The last 23 days may start no earlier than the Saturday nearest December 10 (December 11).

(2) Remainder of the Central Flyway: 74 days and a daily bag limit of 6 ducks, including no more than 5 mallards (no more than 2 of which may be hens), 1 mottled duck, 1 canvasback, 1 pintail, 2 redheads, 3 scaup, and 2 wood ducks.

Merganser Limits: The daily bag limit is 5 mergansers, only 1 of which may be a hooded merganser.

Coot Limits: The daily bag limit is 15 coots.

Zoning and Split Seasons: Kansas (Low Plains portion), Montana, Nebraska (Low Plains portion), New Mexico, Oklahoma (Low Plains portion), South Dakota (Low Plains portion), Texas (Low Plains portion), and Wyoming may select hunting seasons by zones.

In Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming, the regular season may be split into two segments.

In Colorado, the season may be split into three segments.

Geese

Split Seasons: Seasons for geese may be split into three segments. Three-way split seasons for Canada geese require Central Flyway Council and U.S. Fish and Wildlife Service approval, and a 3-year evaluation by each participating State.

Outside Dates: For dark geese, seasons may be selected between the outside dates of the Saturday nearest October 1 (October 2) and the Sunday nearest February 15 (February 13). For light geese, outside dates for seasons may be selected between the Saturday nearest October 1 (October 2) and March 10. In the Rainwater Basin Light Goose Area (East and West) of Nebraska, temporal and spatial restrictions consistent with the experimental late-winter snow goose hunting strategy endorsed by the Central Flyway Council in July 1999, are required.

Season Lengths and Limits

Light Geese: States may select a light goose season not to exceed 107 days. The daily bag limit for light geese is 20 with no possession limit.

Dark Geese: In Kansas, Nebraska, North Dakota, Oklahoma, South Dakota, and the Eastern Goose Zone of Texas, States may select a season for Canada geese (or any other dark goose species except white-fronted geese) not to exceed 95 days with a daily bag limit of 3. Additionally, in the Eastern Goose Zone of Texas, an alternative season of 107 days with a daily bag limit of 1 Canada goose may be selected. For white-fronted geese, these States may select either a season of 86 days with a bag limit of 2 or a 107-day season with a bag limit of 1.

In South Dakota, for Canada geese in the Power Plant Area of Dark Goose Unit 1, the daily bag limit is 3 until November 30 and 2 thereafter.

In Colorado, Montana, New Mexico and Wyoming, States may select seasons not to exceed 107 days. The daily bag limit for dark geese is 5 in the aggregate.

In the Western Goose Zone of Texas, the season may not exceed 107 days. The daily bag limit for Canada geese (or any other dark goose species except white-fronted geese) is 5. The daily bag limit for white-fronted geese is 1.

Pacific Flyway

Ducks, Mergansers, Coots, and Common Moorhens

Hunting Seasons and Duck Limits: Concurrent 107 days and daily bag limit of 7 ducks and mergansers, including no more than 2 female mallards, 1 pintail, 4 scaup, 2 redheads and 1 canvasback.

The season on coots and common moorhens may be between the outside dates for the season on ducks, but not to exceed 107 days.

Coot and Common Moorhen Limits: The daily bag and possession limits of coots and common moorhens are 25, singly or in the aggregate.

Outside Dates: Between the Saturday nearest October 1 (October 2) and the Sunday nearest January 20 (January 23).

Zoning and Split Seasons: Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may select hunting seasons by zones.

Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington may split their seasons into two segments.

Colorado, Montana, New Mexico, and Wyoming may split their seasons into three segments.

Colorado River Zone, California: Seasons and limits shall be the same as seasons and limits selected in the adjacent portion of Arizona (South Zone).

Geese

Season Lengths, Outside Dates, and Limits: Except as subsequently noted, 100-day seasons may be selected, with outside dates between the Saturday nearest October 1 (October 2), and the Sunday nearest January 20 (January 23), and the basic daily bag limits are 3 light geese and 4 dark geese, except in California, Oregon, and Washington, where the dark goose bag limit does not include brant.

Split Seasons: Unless otherwise specified, seasons for geese may be split into up to 3 segments. Three-way split seasons for Canada geese and white-fronted geese require Pacific Flyway Council and U.S. Fish and Wildlife Service approval and a 3-year evaluation by each participating State.

Brant Season—A 16-consecutive-day season may be selected in Oregon and Washington, and a 30-consecutive-day season may be selected in California. In these States, the daily bag limit is 2 brant and is in addition to dark goose limits.

Closures: There will be no open season on Aleutian Canada geese in the Pacific Flyway. The States of California, Oregon, and Washington must include a statement on the closure for that subspecies in their respective regulations leaflet. Emergency closures may be invoked for all Canada geese should Aleutian Canada goose distribution patterns or other circumstances justify such actions.

Arizona: The daily bag limit for dark geese is 3.

California

Northeastern Zone—White-fronted geese and cackling Canada geese may be taken only during the first 44 days of the goose season. The daily bag limit is 3 geese and may include no more than 2 dark geese; including not more than 1 cackling Canada goose.

Colorado River Zone—The seasons and limits must be the same as those selected in the adjacent portion of Arizona (South Zone).

Southern Zone—The daily bag limit for dark geese is 3 geese, including not more than 1 cackling Canada goose.

Balance-of-the-State Zone—A 79-day season may be selected. Limits may not include more than 3 geese per day and 6 in possession, of which not more than 2 daily and 4 in possession may be white-fronted geese and not more than 1 daily or 2 in possession may be cackling Canada geese. Three areas in the Balance-of-the-State Zone are restricted in the hunting of certain geese:

(1) In the Counties of Del Norte and Humboldt, there will be no open season for Canada geese, except for the Special September Canada goose hunt in Humboldt County.

(2) In the Sacramento Valley Special Management Area (West), the season on white-fronted geese must end on or before December 14, and, except in the Sacramento Valley Special Management Area (East), there will be no open season for Canada geese.

(3) In the San Joaquin Valley Special Management Area, there will be no open season for Canada geese.

Colorado: The daily bag limit for dark geese is 3 geese.

Idaho

Northern Unit—The daily bag limit is 4 geese, including 4 dark geese, but not more than 3 light geese.

Southwest Unit and Southeastern Unit—The daily bag limit on dark geese is 4.

Montana: West of Divide Zone and East of Divide Zone—The daily bag limit of dark geese is 4.

Nevada: Lincoln and Clark County Zone—The daily bag limit of dark geese is 2.

New Mexico: The daily bag limit of dark geese is 3.

Oregon: Except as subsequently noted, the dark goose daily bag limit is 4, including not more than 1 cackling Canada goose.

Lake County Zone—The season length may be 100 days. The dark goose limit is 4, including not more than 2 white-fronted geese and 1 cackling Canada goose.

Western Zone—In the Special Canada Goose Management Area, except for designated areas, there shall be no open season on Canada geese. In the designated areas, individual quotas shall be established which collectively shall not exceed 165 dusky Canada geese. See section on quota zones. In those designated areas, the daily bag limit of dark geese is 4 and may include 4 cackling Canada geese.

Utah: The daily bag limit for dark geese is 3 geese.

Washington: The daily bag limit is 4 geese, including 4 dark geese but not more than 3 light geese.

West Zone—In the Lower Columbia River Special Goose Management Area, except for designated areas, there shall be no open season on Canada geese. In the designated areas, individual quotas shall be established which collectively shall not exceed 85 dusky Canada geese. See section on quota zones. In this area, the daily bag limit of dark geese is 4 and may include 4 cackling Canada geese.

Wyoming: The daily bag limit is 4 dark geese.

Quota Zones: Seasons on dark geese must end upon attainment of individual quotas of dusky Canada geese allotted to the designated areas of Oregon and Washington. The September Canada goose season, the regular goose season, any special late dark goose season, and any extended falconry season, combined, must not exceed 107 days and the established quota of dusky Canada geese must not be exceeded. Hunting of dark geese in those designated areas shall only be by hunters possessing a State-issued permit authorizing them to do so. In a Service-approved investigation, the State must obtain quantitative information on hunter compliance of those regulations aimed at reducing the take of dusky Canada geese and eliminating the take of Aleutian Canada geese. In the designated areas of the Washington Quota Zone, a special late dark goose season may be held between January 22 and March 10. The daily bag limit may not include Aleutian Canada geese. In the Special Canada Goose Management Area of Oregon, the framework closing date is extended to the Sunday closest to March 1 (Feb. 28). In the Special Canada Goose Management Area of Oregon, the framework closing date is extended to the Sunday closest to March 1 (Feb. 28). Regular dark goose seasons may be split into 3 segments within the Oregon and Washington quota zones. The 3-way split seasons are considered experimental for the next 3 years. An evaluation of the 3-way split seasons is required and must be submitted by July, 2002.

Swans

In designated areas of Utah, Nevada, and the Pacific Flyway portion of Montana, an open season for taking a limited number of swans may be selected. Permits will be issued by States and will authorize each permittee to take no more than 1 swan per season. The season may open no earlier than the Saturday nearest October 1 (October 2). The States must implement a harvest-monitoring program to measure the species composition of the swan harvest. In Utah and Nevada, the harvest-monitoring program must require that all harvested swans or their species-determinant parts be examined by either State or Federal biologists for the purpose of species classification. All States should use appropriate measures to maximize hunter compliance in providing bagged swans for examination or, in the case of Montana, reporting bill-measurement and color information. All States must provide to the Service by June 30, 1998, a report covering harvest, hunter participation, reporting compliance, and monitoring of swan populations in the designated hunt areas. These seasons will be subject to the following conditions:

In Utah, no more than 2,750 permits may be issued. The season must end no later than the first Sunday in December (December 6) or upon attainment of 15 trumpeter swans in the harvest, whichever occurs earliest.

In Nevada, no more than 650 permits may be issued. The season must end no later than the Sunday following January 1 (January 3) or upon attainment of 5 trumpeter swans in the harvest, whichever occurs earliest.

In Montana, no more than 500 permits may be issued. The season must end no later than December 1.

Tundra Swans

In Central Flyway portion of Montana, and in North Carolina, North Dakota, South Dakota (east of the Missouri River), and Virginia, an open season for taking a limited number of tundra swans may be selected. Permits will be issued by the States and will authorize each permittee to take no more than 1 tundra swan per season. The States must obtain harvest and hunter participation data. These seasons will be subject to the following conditions:

In the Atlantic Flyway

—The season will be experimental
—The season may be 90 days, from October 1 to January 31
—In North Carolina, no more than 5,000 permits may be issued
—In Virginia, no more than 600 permits may be issued

In the Central Flyway

—The season may be 107 days and must occur during the light goose season
—In the Central Flyway portion of Montana, no more than 500 permits may be issued
—In North Dakota, no more than 2,000 permits may be issued
—In South Dakota, no more than 1,500 permits may be issued

Area, Unit and Zone Descriptions

Ducks (Including Mergansers) and Coots

Atlantic Flyway

Connecticut

North Zone: That portion of the State north of I–95.

South Zone: Remainder of the State.

Maine

North Zone: That portion north of the line extending east along Maine State Highway 110 from the New Hampshire and Maine border to the intersection of Maine State Highway 11 in Newfield; then north and east along Route 11 to the intersection of U.S. Route 202 in Auburn; then north and east on Route 202 to the intersection of Interstate Highway 95 in Augusta; then north and east along I–95 to Route 15 in Bangor; then east along Route 15 to Route 9; then east along Route 9 to Stony Brook in Baileyville; then east along Stony Brook to the United States border.

South Zone: Remainder of the State.

Massachusetts

Western Zone: That portion of the State west of a line extending south from the Vermont border on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone: That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone: That portion of Massachusetts east and south of the Central Zone.

New Hampshire

Coastal Zone: That portion of the State east of a line extending west from Maine border in Rollinsford on NH 4 to the city of Dover, south to NH 108, south along NH 108 through Madbury, Durham, and Newmarket to NH 85 in Newfields, south to NH 101 in Exeter, east to NH 51 (Exeter-Hampton Expressway), east to I–95 (New Hampshire Turnpike) in Hampton, and south along I–95 to the Massachusetts border.

Inland Zone: That portion of the State north and west of the above boundary.

New Jersey

Coastal Zone: That portion of the State seaward of a line beginning at the New York border in Raritan Bay and extending west along the New York border to NJ 440 at Perth Amboy; west on NJ 440 to the Garden State Parkway; south on the Garden State Parkway to the shoreline at Cape May and continuing to the Delaware border in Delaware Bay.

North Zone: That portion of the State west of the Coastal Zone and north of a line extending west from the Garden State Parkway on NJ 70 to the New Jersey Turnpike, north on the turnpike to U.S. 206, north on U.S. 206 to U.S. 1 at Trenton, west on U.S. 1 to the Pennsylvania border in the Delaware River.

South Zone: That portion of the State not within the North Zone or the Coastal Zone.

New York

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Pennsylvania

Lake Erie Zone: The Lake Erie waters of Pennsylvania and a shoreline margin along Lake Erie from New York on the east to Ohio on the west extending 150 yards inland, but including all of Presque Isle Peninsula.

Northwest Zone: The area bounded on the north by the Lake Erie Zone and including all of Erie and Crawford Counties and those portions of Mercer and Venango Counties north of I–80.

North Zone: That portion of the State east of the Northwest Zone and north of a line extending east on I–80 to U.S. 220, Route 220 to I–180, I–180 to I–80, and I–80 to the Delaware River.

South Zone: The remaining portion of Pennsylvania.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: The remaining portion of Vermont.

West Virginia

Zone 1: That portion outside the boundaries in Zone 2.

Zone 2 (Allegheny Mountain Upland): That area bounded by a line extending south along U.S. 220 through Keyser to U.S. 50; U.S. 50 to WV 93; WV 93 south to WV 42; WV 42 south to Petersburg; WV 28 south to Minnehaha Springs; WV 39 west to U.S. 219; U.S. 219 south to I–64; I–64 west to U.S. 60; U.S. 60 west to U.S. 19; U.S. 19 north to I–79, I–79 north to U.S. 48; U.S. 48 east to the Maryland border; and along the border to the point of beginning.

Mississippi Flyway

Alabama

South Zone: Mobile and Baldwin Counties.

North Zone: The remainder of Alabama.

Illinois

North Zone: That portion of the State north of a line extending east from the Iowa border along Illinois Highway 92 to Interstate Highway 280, east along I–280 to I–80, then east along I–80 to the Indiana border.

Central Zone: That portion of the State south of the North Zone to a line extending east from the Missouri border along the Modoc Ferry route to Modoc Ferry Road, east along Modoc Ferry Road to Modoc Road, northeasterly along Modoc Road and St. Leo's Road to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, east along I–70 to the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to I–70, then east along I–70 to the Indiana border.

South Zone: The remainder of Illinois.

Indiana

North Zone: That portion of the State north of a line extending east from the Illinois border along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio border.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, east along State Road 62 to State 56, east along State 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59

to Interstate Highway 80, then east along I–80 to the Illinois border.

South Zone: The remainder of Iowa.

Kentucky

West Zone: All counties west of and including Butler, Daviess, Ohio, Simpson, and Warren Counties.

East Zone: The remainder of Kentucky.

Louisiana

West Zone: That portion of the State west of a line extending south from the Arkansas border along Louisiana Highway 3 to Bossier City, east along Interstate Highway 20 to Minden, south along Louisiana 7 to Ringgold, east along Louisiana 4 to Jonesboro, south along U.S. Highway 167 to Lafayette, southeast along U.S. 90 to Houma, then south along the Houma Navigation Channel to the Gulf of Mexico through Cat Island Pass.

East Zone: The remainder of Louisiana.

Catahoula Lake Area: All of Catahoula Lake, including those portions known locally as Round Prairie, Catfish Prairie, and Frazier's Arm. See State regulations for additional information.

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of, Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, east along U.S. 10 BR to U.S. 10, east along U.S. 10 to Interstate Highway 75/U.S. Highway 23, north along I–75/U.S. 23 to the U.S. 23 exit at Standish, east along U.S. 23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canada border.

South Zone: The remainder of Michigan.

Mississippi

Zone 1: Hancock, Harrison, and Jackson Counties.

Zone 2: The remainder of Mississippi.

Missouri

North Zone: That portion of Missouri north of a line running west from the Illinois border along Interstate Highway 70 to U.S. Highway 54, south along U.S. 54 to U.S. 50, then west along U.S. 50 to the Kansas border.

South Zone: That portion of Missouri south of a line running west from the Illinois border along Missouri Highway 34 to Interstate Highway 55; south along I–55 to U.S. Highway 62, west along U.S. 62 to Missouri 53, north along Missouri 53 to Missouri 51, north along Missouri 51 to U.S. 60, west along U.S. 60 to Missouri 21, north along Missouri 21 to Missouri 72, west along Missouri 72 to Missouri 32, west along Missouri 32 to U.S. 65, north along U.S. 65 to U.S. 54, west along U.S. 54 to Missouri 32, south along Missouri 32 to Missouri 97, south along Missouri 97 to Dade County NN, west along Dade County NN to Missouri 37, west along Missouri 37 to Jasper County N, west along Jasper County N to Jasper County M, west along Jasper County M to the Kansas border.

Middle Zone: The remainder of Missouri.

Ohio

North Zone: The Counties of Darke, Miami, Clark, Champaign, Union, Delaware, Licking (excluding the Buckeye Lake Area), Muskingum, Guernsey, Harrison and Jefferson and all counties north thereof.

Ohio River Zone: The Counties of Hamilton, Clermont, Brown, Adams, Scioto, Lawrence, Gallia and Meigs.

South Zone: That portion of the State between the North and Ohio River Zone boundaries, including the Buckeye Lake Area in Licking County bounded on the west by State Highway 37, on the north by U.S. Highway 40, and on the east by State 13.

Tennessee

Reelfoot Zone: All or portions of Lake and Obion Counties.

State Zone: The remainder of Tennessee.

Wisconsin

North Zone: That portion of the State north of a line extending east from the Minnesota border along State Highway 77 to State 27, south along State 27 and 77 to U.S. Highway 63, and continuing south along State 27 to Sawyer County Road B, south and east along County B to State 70, southwest along State 70 to State 27, south along State 27 to State 64, west along State 64/27 and south along State 27 to U.S. 12, south and east on State 27/U.S. 12 to U.S. 10, east on U.S. 10 to State 310, east along State 310 to State 42, north along State 42 to State 147, north along State 147 to State 163, north along State 163 to Kewaunee County Trunk A, north along County Trunk A to State 57, north along State 57 to the Kewaunee/Door County Line, west along the Kewaunee/Door County Line to the Door/Brown County Line, west along the Door/Brown County Line to the Door/Oconto/Brown County Line, northeast along the Door/Oconto County Line to the Marinette/Door County Line, northeast along the Marinette/Door County Line to the Michigan border.

South Zone: The remainder of Wisconsin.

Central Flyway

Kansas

High Plains Zone: That portion of the State west of U.S. 283.

Low Plains Early Zone: That portion of the State east of the High Plains Zone and west of a line extending south from the Nebraska border along KS 28 to U.S. 36, east along U.S. 36 to KS 199, south along KS 199 to Republic County Road 563, south along Republic County Road 563 to KS 148, east along KS 148 to Republic County Road 138, south along Republic County Road 138 to Cloud County Road 765, south along Cloud County Road 765 to KS 9, west along KS 9 to U.S. 24, west along U.S 24 to U.S. 281, north along U.S. 281 to U.S. 36, west along U.S. 36 to U.S. 183, south along U.S. 183 to U.S. 24, west along U.S. 24 to KS 18, southeast along KS 18 to U.S. 183, south along U.S. 183 to KS 4, east along KS 4 to I–135, south along I–135 to KS 61, southwest along KS 61 to KS 96, northwest on KS 96 to U.S. 56, west along U.S. 56 to U.S. 281, south along U.S. 281 to U.S. 54, then west along U.S. 54 to U.S. 283.

Low Plains Late Zone: The remainder of Kansas.

Montana (Central Flyway Portion)

Zone 1: The Counties of Blaine, Carbon, Carter, Daniels, Dawson, Fallon, Fergus, Garfield, Golden Valley, Judith Basin, McCone, Musselshell, Petroleum, Phillips, Powder River, Richland, Roosevelt, Sheridan, Stillwater, Sweet Grass, Valley, Wheatland, Wibaux, and Yellowstone.

Zone 2: The remainder of Montana.

Nebraska

High Plains Zone: That portion of the State west of highways U.S. 183 and U.S. 20 from the South Dakota border to Ainsworth, NE 7 and NE 91 to Dunning, NE 2 to Merna, NE 92 to Arnold, NE 40 and NE 47 through Gothenburg to NE 23, NE 23 to Elwood, and U.S. 283 to the Kansas border.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north and east of a line extending from the South Dakota border along NE 26E Spur to U.S. 20, west on U.S. 20 to NE 12, west on NE 12 to the Knox/Keya Paha County line, south along the county line to the Niobrara River and along the Niobrara River to U.S. 183 (the High Plains Zone line). Where the Niobrara River forms the boundary, both banks will be in Zone 1.

Low Plains Zone 2: That portion of the State east of the High Plains Zone and bounded by designated highways and political boundaries starting on U.S. 73 at the Kansas border, north to NE 67, north to U.S. 75, north to NE 2, west to NE 43, north to U.S. 34, east to NE 63, north and west to U.S. 77, north to NE 92, west to U.S. 81, south to NE 66, west to NE 14, south to U.S. 34, west to NE 2, south to I–80, west to Hamilton/Hall County line (Gunbarrel Road), south to Giltner Road; west to U.S. 34, west to U.S. 136, east on U.S. 136 to NE 10, south to the State line, west to U.S. 283, north to NE 23, west to NE 47, north to U.S. 30, east to NE 14, north to NE 52, northwesterly to NE 91, west to U.S. 281, north to NE 91 in Wheeler County, west to U.S. 183, north to northerly boundary of Loup County, east along the north boundaries of Loup, Garfield, and Wheeler County, south along the east Wheeler County line to NE 70, east on NE 70 from Wheeler County to NE 14, south to NE 39, southeast to NE 22, east to U.S. 81, southeast to U.S. 30, east along U.S. 30 to U.S. 75, north along U.S. 75 to the Washington/Burt County line; then east along the county line to the Iowa border.

Low Plains Zone 3: The area east of the High Plains Zone, excluding Low Plains Zone 1, north of Low Plains Zone 2.

Low Plains Zone 4: The area east of the High Plains Zone and south of Zone 2.

New Mexico (Central Flyway Portion)

North Zone: That portion of the State north of I–40 and U.S. 54.

South Zone: The remainder of New Mexico.

North Dakota

High Plains Unit: That portion of the State south and west of a line from the South Dakota border along U.S. 83 and I–94 to ND 41, north to U.S. 2, west to the Williams/Divide County line, then north along the County line to the Canadian border.

Low Plains: The remainder of North Dakota.

Oklahoma

High Plains Zone: The Counties of Beaver, Cimarron, and Texas.

Low Plains Zone 1: That portion of the State east of the High Plains Zone and north of a line extending east from the Texas border along OK 33 to OK 47, east along OK 47 to U.S. 183, south along U.S. 183 to I–40, east along I–40 to U.S. 177, north along U.S. 177 to OK 33, west along OK 33 to I–35, north along I–35 to U.S. 60, west along U.S. 60 to U.S. 64, west along U.S. 64 to OK 132, then north along OK 132 to the Kansas border.

Low Plains Zone 2: The remainder of Oklahoma.

South Dakota

High Plains Unit: That portion of the State west of a line beginning at the North Dakota border and extending south along U.S. 83 to U.S. 14, east along U.S. 14 to Blunt-Canning Road in Blunt, south along Blunt-Canning Road to SD 34, east to SD 47, south to I–90, east to SD 47, south to SD 49, south to Colome and then continuing south on U.S. 183 to the Nebraska border.

North Zone: That portion of northeastern South Dakota east of the High Plains Unit and north of a line extending east along US 212 to SD 15, then north along SD 15 to Big Stone Lake at the Minnesota border.

South Zone: That portion of Gregory County east of SD 47, Charles Mix County south of SD 44 to the Douglas County line, south on SD 50 to Geddes, east on the Geddes Hwy. to U.S. 281, south on U.S. 281 and U.S. 18 to SD 50, south and east on SD 50 to Bon Homme County line, the Counties of Bon Homme, Yankton, and Clay south of SD 50, and Union County south and west of SD 50 and I–29.

Middle Zone: The remainder of South Dakota.

Texas

High Plains Zone: That portion of the State west of a line extending south from the Oklahoma border along U.S. 183 to Vernon, south along U.S. 283 to Albany, south along TX 6 to TX 351 to Abilene, south along U.S. 277 to Del Rio, then south along the Del Rio International Toll Bridge access road to the Mexico border.

Low Plains North Zone: That portion of northeastern Texas east of the High Plains Zone and north of a line beginning at the International Toll Bridge south of Del Rio, then extending east on U.S. 90 to San Antonio, then continuing east on I–10 to the Louisiana border at Orange, Texas.

Low Plains South Zone: The remainder of Texas.

Wyoming (Central Flyway Portion)

Zone 1: The Counties of Converse, Goshen, Hot Springs, Natrona, Platte, Washakie, and that portion of Park County south of T58N and not within the boundary of the Shoshone National Forest.

Zone 2: The remainder of Wyoming.

Pacific Flyway

Arizona—Game Management Units (GMU) as Follows

South Zone: Those portions of GMUs 6 and 8 in Yavapai County, and GMUs 10 and 12B–45.

North Zone: GMUs 1–5, those portions of GMUs 6 and 8 within Coconino County, and GMUs 7, 9, 12A.

California

Northeastern Zone: That portion of the State east and north of a line beginning at the Oregon border; south and west along the Klamath River to the mouth of Shovel Creek; south along Shovel Creek to Forest Service Road 46N10; south and east along FS 46N10 to FS 45N22; west and south along FS 45N22 to U.S. 97 at Grass Lake Summit; south and west along U.S. 97 to I–5 at the town of Weed; south along I–5 to CA 89; east and south along CA 89 to the junction with CA 49; east and north on CA 49 to CA 70; east on CA 70 to U.S. 395; south and east on U.S. 395 to the Nevada border.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Idaho

Zone 1: Includes all lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

Zone 2: Includes the following Counties or portions of Counties: Adams; Bear Lake; Benewah; Bingham within the Blackfoot Reservoir drainage; those portions of Blaine west of ID 75, south and east of U.S. 93, and between ID 75 and U.S. 93 north of U.S. 20 outside the Silver Creek drainage; Bonner; Bonneville; Boundary; Butte; Camas; Caribou except the Fort Hall Indian Reservation; Cassia within the Minidoka National Wildlife Refuge; Clark; Clearwater; Custer; Elmore within the Camas Creek drainage; Franklin; Fremont; Idaho; Jefferson; Kootenai; Latah; Lemhi; Lewis; Madison; Nez Perce; Oneida; Power within the Minidoka National Wildlife Refuge; Shoshone; Teton; and Valley Counties.

Zone 3: Includes the following Counties or portions of Counties: Ada; Blaine between ID 75 and U.S. 93 south of U.S. 20 and that additional area between ID 75 and U.S. 93 north of U.S. 20 within the Silver Creek drainage; Boise; Canyon; Cassia except within the Minidoka National Wildlife Refuge; Elmore except the Camas Creek drainage; Gem; Gooding; Jerome; Lincoln; Minidoka; Owyhee; Payette; Power west of ID 37 and ID 39 except that portion within the Minidoka National Wildlife Refuge; Twin Falls; and Washington Counties.

Nevada

Lincoln and Clark County Zone: All of Clark and Lincoln Counties.

Remainder-of-the-State Zone: The remainder of Nevada.

Oregon

Zone 1: Clatsop, Tillamook, Lincoln, Lane, Douglas, Coos, Curry, Josephine, Jackson, Linn, Benton, Polk, Marion, Yamhill, Washington, Columbia, Multnomah, Clackamas, Hood River, Wasco, Sherman, Gilliam, Morrow and Umatilla Counties.

Columbia Basin Mallard Management Unit: Gilliam, Morrow, and Umatilla Counties.

Zone 2: The remainder of the State.

Utah

Zone 1: All of Box Elder, Cache, Daggett, Davis, Duchesne, Morgan, Rich, Salt Lake, Summit, Unitah, Utah, Wasatch, and Weber Counties and that part of Toole County north of I–80.

Zone 2: The remainder of Utah.

Washington

East Zone: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Columbia Basin Mallard Management Unit: Same as East Zone.

West Zone: All areas to the west of the East Zone.

Geese

Atlantic Flyway

Connecticut

NAP Zone: Statewide, except for Hartford and Litchfield Counties west of the Connecticut River.

AP Zone: Remainder of the State.

South Zone: Same as for ducks.

North Zone: Same as for ducks.

Maryland

SJBP Zone: Allegheny, Carroll, Frederick, Garrett, Washington counties and the portion of Montgomery County south of Interstate 270 and west of Interstate 495 to the Potomac River.

AP Zone: Remainder of the State.

Massachusetts

NAP Zone: Central Zone (same as for ducks) and that portion of the Coastal Zone that lies north of route 139 from Green Harbor.

AP Zone: Remainder of the State.

New Hampshire

Same zones as for ducks.

New Jersey

North—that portion of the State within a continuous line that runs east along the New York State boundary line to the Hudson River; then south along the New York State boundary to its intersection with Route 440 at Perth Amboy; then west on Route 440 to its intersection with Route 287; then west along Route 287 to its intersection with Route 206 in Bedminster (Exit 18); then north along Route 206 to its intersection with Route 94; then west along Route 94 to the tollbridge in Columbia; then north along the Pennsylvania State boundary in the Delaware River to the beginning point.

South—that portion of the State within a continuous line that runs west from the Atlantic Ocean at Ship Bottom along Route 72 to the Garden State Parkway; then south along the Garden State Parkway to Route 9; then south along Route 9 to Route 542; then west along Route 542 to the Mullica River (at Pleasant Mills); then north (upstream) along the Mullica River to Route 206; then south along Route 206 to Route 536; then west along Route 536 to Route 322; then west along Route 322 to Route 55; then south along Route 55 to Route 553 (Buck Road); then south along Route 553 to Route 40; then east along Route 40 to Route 55; then south along Route 55 to Route 552 (Sherman Avenue); then west along Route 552 to Carmel Road; then south along Carmel Road to Route 49; then south along Route 49 to Route 50; then east along Route 50 to Route 9; then south along Route 9 to Route 625 (Sea Isle City Boulevard); then east along Route 625 to the Atlantic Ocean; then north to the beginning point.

New York

Special Late Season Area for Canada Geese: that area of Chemung County lying east of a continuous line extending south along State Route 13 from the Schuyler County line to State Route 17 and then south along Route 17 to the New York-Pennsylvania boundary; all of Tioga and Broome Counties; that area of Delaware, Sullivan, and Orange Counties lying southwest of a continuous line extending east along State Route 17 from the Broome County line to U.S. Route 209 at Wurtsboro and then south along Route 209 to the New York-Pennsylvania boundary at Port Jervis, excluding areas on or within 50 yards of the Delaware River between the confluence of the West Branch and East Branch below Hancock and the mouth of the Shingle Kill (3 miles upstream from Port Jervis); that area of Orange, Rockland, Dutchess, Putnam and Westchester Counties lying southeast of a continuous line extending north along Route 17 from the New York-New Jersey boundary at Suffern to Interstate Route 87, then north along Route 87 to Interstate Route 84, then east along Route 84 to the northern boundary of Putnam County, then east along that boundary to the New York-Connecticut boundary; that area of Nassau and Suffolk Counties lying north of State Route 25A and west of a continuous line extending northward from State Route 25A along Randall Road (near Shoreham) to North Country Road, then east to Sound Road and then north to Long Island Sound and then due north to the New York-Connecticut boundary.

Long Island (NAP) Zone: Same as Long Island Duck Zone.

Southwest (SJBP) Zone: all of Allegany, Cattaraugus, and Chautaugua Counties; that area of Erie, Wyoming and Niagara Counties lying south and west of a continuous line extending from the Rainbow Bridge below Niagara Falls, north along the Robert Moses Parkway to US Route 62A, then east along Route 62A to US Route 62, then southeast along US Route 62 to Interstate Route 290, then south along Route 290 to Exit 50 of the NYS Thruway, then east along I–90 to State Route 98, then south along State Route 98 to the Cattaraugus County line; and that area of Steuben and Chemung Counties lying south of State Route 17.

AP Zone: Remainder of the State.

North Carolina

Regular Season for Canada Geese: Statewide, except for Northampton County and the Northeast Hunt Unit—Counties of Bertie, Camden, Chowan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington.

Pennsylvania

SJBP Zone: Area from the New York State line west of U.S. Route 220 to intersection of I–180, west of I–180 to intersection of SR 147, west of SR 147 to intersection of U.S. Route 322, west of U.S. Route 322 to intersection of I–81, west of I–81 to intersection of I–83, west of I–83 to I–283, west of I–283 to SR 441, west of SR 441 to U.S. Route 30, west of U.S. Route 30 to I–83, west of I–83 to Maryland State line, except for the Pymatuning Zone.

Pymatuning Zone: Area south of SR 198 from the Ohio State line to the intersection of SR 18, to the intersection of US Route 322/SR 18, to the intersection of SR 3013, then south to the Crawford/Mercer County line.

Special Late Season Area for Canada Geese: Same as SJBP Zone and the area from New York State line east of U.S. Route 220 to intersection of I–180, east of I–180 to intersection of SR 147, east of SR 147 to intersection of U.S. Route 322, east of Route 322 to intersection of I–81, north of I–81 to intersection of I–80, north of I–80 to New Jersey State line.

AP Zone: Remainder of the State.

Rhode Island

Special Area for Canada Geese: Kent and Providence Counties and portions of the towns of Exeter and North Kingston within Washington County (see State regulations for detailed descriptions).

South Carolina

Canada Goose Area: Statewide except for Clarendon County and that portion of Lake Marion in Orangeburg County and Berkeley County.

Vermont

Same zones as for ducks.

Virginia

SJBP Zone and Special Late Season Area for Canada Geese: All areas west of I–95.

Back Bay Area: The waters of Back Bay and its tributaries and the marshes adjacent thereto, and on the land and marshes between Back Bay and the Atlantic Ocean from Sandbridge to the North Carolina line, and on and along the shore of North Landing River and the marshes adjacent thereto, and on and along the shores of Binson Inlet Lake (formerly known as Lake Tecumseh) and Red Wing Lake and the marshes adjacent thereto.

AP Zone: Remainder of the State.

West Virginia

Same zones as for ducks.

Mississippi Flyway

Alabama

Same zones as for ducks, but in addition:

SJBP Zone: That portion of Morgan County east of U.S. Highway 31, north of State Highway 36, and west of U.S. 231; that portion of Limestone County south of U.S. 72; and that portion of Madison County south of Swancott Road and west of Triana Road.

Arkansas

East Zone: Arkansas, Ashley, Chicot, Clay, Craighead, Crittenden, Cross, Desha, Drew, Greene, Independence, Jackson, Jefferson, Lawrence, Lee, Lincoln, Lonoke, Mississippi, Monroe, Phillips, Poinsett, Prairie, Pulaski, Randolph, St. Francis, White, and Woodruff Counties.

West Zone: Baxter, Benton, Boone, Carroll, Cleburne, Conway, Crawford, Faulkner, Franklin, Fulton, Izard, Johnson, Madison, Marion, Newton, Pope, Searcy, Sharp, Stone, Van Buren, and Washington Counties, and those portions of Logan, Perry, Sebastian, and Yell Counties lying north of a line extending east from the Oklahoma border along State Highway 10 to Perry, south on State 9 to State 60, then east on State 60 to the Faulkner County line.

Illinois

Same zones as for ducks, but in addition:

North Zone: Northern Illinois Quota Zone: The Counties of McHenry, Lake, Kane, DuPage, and those portions of LaSalle and Will Counties north of Interstate Highway 80.

Central Zone: Central Illinois Quota Zone: The Counties of Grundy, Woodford, Peoria, Knox, Fulton, Tazewell, Mason, Cass, Morgan, Pike, Calhoun, and Jersey, and those portions of LaSalle and Will Counties south of Interstate Highway 80.

South Zone: Southern Illinois Quota Zone: Alexander, Jackson, Union, and Williamson Counties.

Rend Lake Quota Zone: Franklin and Jefferson Counties.

Indiana

Same zones as for ducks, but in addition: SJBP Zone: Jasper, LaGrange, LaPorte, Starke, and Steuben Counties, and that portion of the Jasper-Pulaski Fish and Wildlife Area in Pulaski County.

Iowa

Same zones as for ducks.

Kentucky

Western Zone: That portion of the State west of a line beginning at the Tennessee border at Fulton and extending north along the Purchase Parkway to Interstate Highway 24, east along I–24 to U.S. Highway 641, north along U.S. 641 to U.S. 60, northeast along U.S. 60 to the Henderson County line, then south, east, and northerly along the Henderson County line to the Indiana border.

Ballard Reporting Area: That area encompassed by a line beginning at the northwest city limits of Wickliffe in Ballard County and extending westward to the middle of the Mississippi River, north along the Mississippi River and along the low-water mark of the Ohio River on the Illinois shore to the Ballard-McCracken County line, south along the county line to Kentucky Highway 358, south along Kentucky 358 to U.S. Highway 60 at LaCenter; then southwest along U.S. 60 to the northeast city limits of Wickliffe.

Henderson-Union Reporting Area: Henderson County and that portion of Union County within the Western Zone.

Pennyroyal/Coalfield Zone: Butler, Daviess, Ohio, Simpson, and Warren Counties and all counties lying west to the boundary of the Western Goose Zone.

Michigan

Same zones as for ducks, but in addition:

South Zone

Tuscola/Huron Goose Management Unit (GMU): Those portions of Tuscola and Huron Counties bounded on the south by Michigan Highway 138 and Bay City Road, on the east by Colwood and Bay Port Roads, on the north by

Kilmanagh Road and a line extending directly west off the end of Kilmanagh Road into Saginaw Bay to the west boundary, and on the west by the Tuscola-Bay County line and a line extending directly north off the end of the Tuscola-Bay County line into Saginaw Bay to the north boundary.

Allegan County GMU: That area encompassed by a line beginning at the junction of 136th Avenue and Interstate Highway 196 in Lake Town Township and extending easterly along 136th Avenue to Michigan Highway 40, southerly along Michigan 40 through the city of Allegan to 108th Avenue in Trowbridge Township, westerly along 108th Avenue to 46th Street, northerly ½ mile along 46th Street to 109th Avenue, westerly along 109th Avenue to I–196 in Casco Township, then northerly along I–196 to the point of beginning.

Saginaw County GMU: That portion of Saginaw County bounded by Michigan Highway 46 on the north; Michigan 52 on the west; Michigan 57 on the south; and Michigan 13 on the east.

Muskegon Wastewater GMU: That portion of Muskegon County within the boundaries of the Muskegon County wastewater system, east of the Muskegon State Game Area, in sections 5, 6, 7, 8, 17, 18, 19, 20, 29, 30, and 32, T10N R14W, and sections 1, 2, 10, 11, 12, 13, 14, 24, and 25, T10N R15W, as posted.

Special Canada Goose Seasons:

Southern Michigan GMU: That portion of the State, including the Great Lakes and interconnecting waterways and excluding the Allegan County GMU, south of a line beginning at the Ontario border at the Bluewater Bridge in the city of Port Huron and extending westerly and southerly along Interstate Highway 94 to I–69, westerly along I–69 to Michigan Highway 21, westerly along Michigan 21 to I–96, northerly along I–96 to I–196, westerly along I–196 to Lake Michigan Drive (M–45) in Grand Rapids, westerly along Lake Michigan Drive to the Lake Michigan shore, then directly west from the end of Lake Michigan Drive to the Wisconsin border.

Central Michigan GMU: That portion of the South Zone north of the Southern Michigan GMU, excluding the Tuscola/Huron GMU, Saginaw County GMU, and Muskegon Wastewater GMU.

Minnesota

West Zone: That portion of the state encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa border, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to Interstate Highway 94, then north and west along I–94 to the North Dakota border.

West Central Zone: That area encompassed by a line beginning at the intersection of State Trunk Highway (STH) 29 and U.S. Highway 212 and extending west along U.S. 212 to U.S. 59, south along U.S. 59 to STH 67, west along STH 67 to U.S. 75, north along U.S. 75 to County State Aid Highway (CSAH) 30 in Lac qui Parle County, west along CSAH 30 to County Road 70 in Lac qui Parle County, west along County 70 to the western boundary of the State, north along the western boundary of the State to a point due south of the intersection of STH 7 and CSAH 7 in Big Stone County, and continuing due north to said intersection, then north along CSAH 7 to CSAH 6 in Big Stone County, east along CSAH 6 to CSAH 21 in Big Stone County, south along CSAH 21 to CSAH 10 in Big Stone County, east along CSAH 10 to CSAH 22 in Swift County, east along CSAH 22 to CSAH 5 in Swift County, south along CSAH 5 to U.S. 12, east along U.S. 12 to CSAH 17 in Swift County, south along CSAH 17 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 40, east along STH 40 to STH 29, then south along STH 29 to the point of beginning.

Lac qui Parle Zone: That area encompassed by a line beginning at the intersection of U.S. Highway 212 and County State Aid Highway (CSAH) 27 in Lac qui Parle County and extending north along CSAH 27 to CSAH 20 in Lac qui Parle County, west along CSAH 20 to State Trunk Highway (STH) 40, north along STH 40 to STH 119, north along STH 119 to CSAH 34 in Lac qui Parle County, west along CSAH 34 to CSAH 19 in Lac qui Parle County, north and west along CSAH 19 to CSAH 38 in Lac qui Parle County, west along CSAH 38 to U.S. 75, north along U.S. 75 to STH 7, east along STH 7 to CSAH 6 in Swift County, east along CSAH 6 to County Road 65 in Swift County, south along County 65 to County 34 in Chippewa County, south along County 34 to CSAH 12 in Chippewa County, east along CSAH 12 to CSAH 9 in Chippewa County, south along CSAH 9 to STH 7, southeast along STH 7 to Montevideo and along the municipal boundary of Montevideo to U.S. 212; then west along U.S. 212 to the point of beginning.

Northwest Zone: That portion of the state encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Northeast Zone—That portion of the state encompassed by the following boundary: Beginning on State Trunk Highway (STH) 72 at the northern boundary of the state, thence along STH 72 to the Tamarac River in Beltrami County, thence along the southerly shore of the Tamarac River to Upper Red Lake, thence along the easterly and southerly shores of Upper Red Lake to the easterly boundary of the Red Lake Indian Reservation, thence along the easterly boundary of said Reservation to STH 1, thence along STH 1 to STH 72, thence along STH 72 to U.S. Highway 71, thence along U.S. 71 to County State Aid Highway (CSAH) 39 in Beltrami County, thence along CSAH 39 to CSAH 20, thence along CSAH 20 to CSAH 53, thence along CSAH 53 to CSAH 12, thence along CSAH 12 to CSAH 51, thence along CSAH 51 to CSAH 8, thence along CSAH 8 to CSAH 25, thence along CSAH 25 to CSAH 4, thence along CSAH 4 to CSAH 46, thence along CSAH 46 to U.S. Highway 2, thence along U.S. 2 to CSAH 45, thence along CSAH 45 to CSAH 9, thence along CSAH 9 to CSAH 69, thence along CSAH 69 to CSAH 5, thence along CSAH 5 to CSAH 39, thence along CSAH 39 to County Road (CR) 94, thence along CR 94 to CSAH 31, thence along CSAH 31 to STH 200, thence along STH 200 to STH 371, thence along STH 371 to STH 84, thence along STH 84 to CSAH 2, thence along CSAH 2 to CSAH 1, thence along CSAH 1 to STH 6, thence along STH 6 to STH 18, thence along STH 18 to U.S. Highway 169, thence due east to the west shore of Mille Lacs Lake, thence along the westerly and southerly shores of said lake to a point due north of the junction of U.S. 169 and STH 27, thence due south to said junction, thence along U.S. 169 to STH 23, thence along STH 23 to STH 65, thence along STH 65 to STH 70, thence along STH 70 to the east boundary of the state, thence along the easterly and northerly boundaries of the state to the point of beginning.

Special Canada Goose Seasons:

Fergus Falls/Alexandria Zone: That portion of the state encompassed by a line beginning at the intersection of State Trunk Highway (STH) 55 and STH 28 and extending east along STH 28 to County State Aid Highway (CSAH) 33 in Pope County, north along CSAH 33 to CSAH 3 in Douglas County, north along CSAH 3 to CSAH 69 in Otter Tail County, north along CSAH 69 to CSAH 46 in Otter Tail County, east along CSAH 46 to the eastern boundary of Otter Tail County, north along the east boundary of Otter Tail County to CSAH 40 in Otter Tail County, west along CSAH 40 to CSAH 75 in Otter Tail County, north along CSAH 75 to STH 210, west along STH 210 to STH 108, north along STH 108 to CSAH 1 in Otter Tail County, west along CSAH 1 to CSAH 14 in Otter Tail County, north along CSAH 14 to CSAH 44 in Otter Tail County, west along CSAH 44 to CSAH 35 in Otter Tail County, north along CSAH 35 to STH 108, west along STH 108 to CSAH 19 in Wilkin County, south along CSAH 19 to STH 55, then southeast along STH 55 to the point of beginning.

Southeast Zone: That portion of the state encompassed by a line extending north from the Iowa border along U.S. Highway 63 to State Trunk Highway [STH] 30, west on STH 30 to County State Aid Highway [CSAH] 13 in Dodge County, north on CSAH 13 to STH 57, north on STH 57 to U.S. Highway 52, north on U.S. Highway 52 to Cannon Falls, north on U.S. Highway 52 to the south boundary of the Twin Cities Metro Goose Zone, east on the south boundary of the Twin Cities Metro Goose Zone to the Wisconsin border.

Missouri

Same zones as for ducks but in addition:

North Zone

Swan Lake Zone: That area bounded by U.S. Highway 36 on the north, Missouri Highway 5 on the east, Missouri 240 and U.S. 65 on the south, and U.S. 65 on the west.

Middle Zone

Southeast Zone: That portion of the State encompassed by a line beginning at the intersection of Missouri Highway (MO) 34 and Interstate 55 and extending south along I–55 to U.S. Highway 62, west along U.S. 62 to MO 53, north along MO 53 to MO 51, north along MO 51 to U.S. 60, west along U.S. 60 to MO 21, north along MO 21 to MO 72, east along MO 72 to MO 34, then east along MO 34 to I–55.

Ohio

Same zones as for ducks but in addition:

North Zone

Lake Erie SJBP Zone: That portion of the state encompassed by a line beginning in Lucas county at the Michigan state line on I–75, and extending south along I–75 to I–280, south along I–280 to I–80, east along I–80 to the Pennsylvania state line in Trumbull county, north along the Pennsylvania state line to SR 6 in Ashtabula county, west along SR 6 to the Lake/Cuyahoga county line, north along the Lake/Cuyahoga county line to the shore of Lake Erie.

Tennessee

Southwest Zone: That portion of the State south of State Highways 20 and 104, and west of U.S. Highways 45 and 45W.

Northwest Zone: Lake, Obion and Weakley Counties and those portions of Gibson and Dyer Counties not included in the Southwest Tennessee Zone.

Kentucky/Barkley Lakes Zone: That portion of the State bounded on the west by the eastern boundaries of the Northwest and Southwest Zones and on the east by State Highway 13 from the Alabama border to Clarksville and U.S. Highway 79 from Clarksville to the Kentucky border.

Wisconsin

Horicon Zone: That area encompassed by a line beginning at the intersection of State Highway 21 and the Fox River in Winnebago County and extending westerly along State 21 to the west boundary of Winnebago County, southerly along the west boundary of Winnebago County to the north boundary of Green Lake County, westerly along the north boundaries of Green Lake and Marquette Counties to State 22, southerly along State 22 to State 33, westerly along State 33 to U.S. Highway 16, westerly along U.S. 16 to Weyh Road, southerly along Weyh Road to County Highway O, southerly along County O to the west boundary of Section 31, southerly along the west boundary of Section 31 to the Sauk/Columbia County boundary, southerly along the Sauk/Columbia County boundary to State 33, easterly along State 33 to Interstate Highway 90/94, southerly along I–90/94 to State 60, easterly along State 60 to State 83, northerly along State 83 to State 175, northerly along State 175 to State 33, easterly along State 33 to U.S. Highway 45, northerly along U.S. 45 to the east shore of the Fond Du Lac River, northerly along the east shore of the Fond Du Lac River to Lake Winnebago, northerly along the western shoreline of Lake Winnebago to the Fox River, then westerly along the Fox River to State 21.

Collins Zone: That area encompassed by a line beginning at the intersection of Hilltop Road and Collins Marsh Road in Manitowoc County and extending westerly along Hilltop Road to Humpty Dumpty Road, southerly along Humpty Dumpty Road to Poplar Grove Road, easterly and southerly along Poplar Grove Road to County Highway JJ, southeasterly along County JJ to Collins Road, southerly along Collins Road to the Manitowoc River, southeasterly along the Manitowoc River to Quarry Road, northerly along Quarry Road to Einberger Road, northerly along Einberger Road to Moschel Road, westerly along Moschel Road to Collins Marsh Road, northerly along Collins Marsh Road to Hilltop Road.

Exterior Zone: That portion of the State not included in the Horicon or Collins Zones.

Mississippi River Subzone: That area encompassed by a line beginning at the intersection of the Burlington Northern Railway and the Illinois border in Grant County and extending northerly along the Burlington Northern Railway to the city limit of Prescott in Pierce County, then west along the Prescott city limit to the Minnesota border.

Rock Prairie Subzone: That area encompassed by a line beginning at the intersection of the Illinois border and Interstate Highway 90 and extending north along I–90 to County Highway A, east along County A to U.S. Highway 12, southeast along U.S. 12 to State Highway 50, west along State 50 to State 120, then south along 120 to the Illinois border.

Brown County Subzone: That area encompassed by a line beginning at the intersection of the Fox River with Green Bay in Brown County and extending southerly along the Fox River to State Highway 29, northwesterly along State 29 to the Brown County line, south, east, and north along the Brown County line to Green Bay, due west to the midpoint of the Green Bay Ship Channel, then southwesterly along the Green Bay Ship Channel to the Fox River.

Central Flyway

Colorado (Central Flyway Portion)

Northern Front Range Area: All lands in Adams, Boulder, Clear Creek, Denver, Gilpin, Jefferson, Larimer, and Weld Counties west of I–25 from the Wyoming border south to I–70; west on I–70 to the Continental Divide; north along the Continental Divide to the Jackson-Larimer County Line to the Wyoming border.

South Park/San Luis Valley Area: Alamosa, Chaffee, Conejos, Costilla, Custer, Fremont, Lake, Park, Teller, and Rio Grande Counties and those portions of Hinsdale, Mineral, and Saguache Counties east of the Continental Divide.

North Park Area: Jackson County.

Arkansas Valley Area: Baca, Bent, Crowley, Kiowa, Otero, and Prowers Counties.

Pueblo County Area: Pueblo County.

Remainder: Remainder of the Central Flyway portion of Colorado.

Eastern Colorado Late Light Goose Area: that portion of the State east of Interstate Highway 25.

Kansas

Light Geese

Unit 1: That portion of Kansas east of a line beginning at the intersection of the Nebraska border and KS 99, extending south along KS 99 to I–70 to U.S. 75, south on U.S. 75 to U.S. 54, west on U.S. 54 to KS 99, and then south on KS 99 to the Oklahoma border.

Unit 2: The remainder of Kansas, laying west of Unit 1.

Dark Geese

Marais des Cygnes Valley Unit: The area is bounded by the Missouri border to KS 68, KS 68 to U.S. 169, U.S. 169 to KS 7, KS 7 to KS 31, KS 31 to U.S. 69, U.S. 69 to KS 239, KS 239 to the Missouri border.

South Flint Hills Unit: The area is bounded by highways U.S. 50 to KS 57, KS 57 to U.S. 75, U.S. 75 to KS 39, KS 39 to KS 96, KS 96 to U.S. 77, U.S. 77 to U.S. 50.

Flint Hills Unit: That part of Kansas bounded by a line from the junction of I–35 and K–57, then south and east on K–57 to its junction US–75, then south on US–75 to its junction with K–39, then south and west on K–39 to its junction with K–96, then west on K–96 to its junction with US–77, then north on US–77 to its junction with I–70, then east on I–70 to its junction with US–75, then south on US–75 to its junction with I–35, then west on I–35 to its junction with K–57, except federal and state sanctuaries.

Montana (Central Flyway Portion)

Sheridan County: Includes all of Sheridan County.

Remainder: Includes the remainder of the Central Flyway portion of Montana.

Nebraska

Dark Geese

North Unit: Keya Paha County east of U.S. 183 and all of Boyd County, including the boundary waters of the Niobrara River, all of Knox County and that portion of Cedar County west of U.S. 81.

Southcentral Unit: That area south and west of U.S. 281 at the Kansas/Nebraska border, north to Giltner Road (near Doniphan), east to NE 14, north to NE 91, west to U.S. 183, south to NE 92, west to NE 61, north to U.S. 2, west to the intersection of Garden, Grant, and Sheridan counties, then west along the northern border of Garden, Morrill, and Scotts Bluff counties to the Wyoming border.

Northcentral Unit: That area north of the Southcentral Unit and west of U.S. 183.

East Unit: The remainder of Nebraska.

Light Geese

Rainwater Basin Light Goose Area (West): The area bounded by the junction of U.S. 283 and U.S. 30 at Lexington, east on U.S. 30 to U.S. 281, south on U.S. 281 to NE 4, west on NE 4 to U.S. 34, continue west on U.S. 34 to U.S. 283, then north on U.S. 283 to the beginning.

Rainwater Basin Light Goose Area (East): The area bounded by the junction of U.S. 281 and US 30 at Grand Island, north and east on U.S. 30 to NE 92, east on NE 92 to NE 15, south on NE 15 to NE 4, west on NE 4 to U.S. 281, north on U.S. 281 to the beginning.

Remainder of State: The remainder portion of Nebraska.

New Mexico (Central Flyway Portion)

Dark Geese

Middle Rio Grande Valley Unit: Sierra, Socorro, and Valencia counties.

Remainder: The remainder of the Central Flyway portion of New Mexico.

North Dakota

Dark Geese

Missouri River Zone: That area encompassed by a line extending from the South Dakota border north on U.S. 83 and I–94 to ND 41, north to ND 53, west to U.S. 83, north to ND 23, west to ND 37, south to ND 1804, south approximately 9 miles to Elbowoods Bay on Lake Sakakawea, south and west across the lake to ND 8, south to ND 200, east to ND 31, south to ND 25, south to I–94, east to ND 6, south to the South Dakota border, and east to the point of origin.

Statewide: All of North Dakota.

South Dakota

Dark Geese

Unit 1: Statewide except for Units 2 and 3.

Power Plant Area: That portion of Grant County east of SD 15 and north of SD 20.

Unit 2: Brule, Buffalo, Campbell, Dewey, Hughes, Hyde, Lyman, Potter, Stanley, Sully, and Walworth Counties and that portion of Corson County east of State Highway 65.

Unit 3: Charles Mix and Gregory Counties.

Texas

West Unit: That portion of the State laying west of a line from the international toll bridge at Laredo; north along I–35 and I–35W to Fort Worth; northwest along U.S. 81 and U.S. 287 to Bowie; and north along U.S. 81 to the Oklahoma border.

East Unit: Remainder of State.

Wyoming (Central Flyway Portion)

Area 1: Converse, Hot Springs, Natrona, and Washakie Counties, and that portion of Park County south of T58N.

Area 2: Platte County.

Area 3: Albany, Big Horn, Campbell, Crook, Fremont, Johnson, Laramie, Niobrara, Sheridan, and Weston Counties and those portions of Carbon County east of the Continental Divide and Park County north of T58N.

Area 4: Goshen County.

Pacific Flyway

Arizona

GMU 22 and 23: Game Management Units 22 and 23.

Remainder of State: The remainder of Arizona.

California

Northeastern Zone: That portion of the State east and north of a line beginning at the Oregon border; south and west along the Klamath River to the mouth of Shovel Creek; south along Shovel Creek to Forest Service Road 46N10; south and east along FS 46N10 to FS 45N22; west and south along FS 45N22 to U.S. 97 at Grass Lake Summit; south and west along U.S. 97 to I–5 at the town of Weed; south along I–5 to CA 89; east and south along CA 89 to the junction with CA 49; east and north on CA 49 to CA 70; east on CA 70 to U.S. 395; south and east on U.S. 395 to the Nevada border.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and the Colorado River Zones.

Del Norte and Humboldt Area: The Counties of Del Norte and Humboldt.

Sacramento Valley Special Management Area (East): That area bounded by a line beginning at the junction of the Gridley-Colusa Highway and the Cherokee Canal; west on the Gridley-Colusa Highway to Gould Road; west on Gould Road and due west 0.75 miles directly to Highway 45; south on Highway 45 to Highway 20; east on Highway 20 to West Butte Road; north on West Butte Road to Pass Road; west on Pass Road to West Butte Road; north on West Butte Road to North Butte Road; west on North Butte Road and due west 0.5 miles directly to the Cherokee Canal; north on the Cherokee Canal to the point of beginning.

Sacramento Valley Special Management Area (West): That area bounded by a line beginning at Willows south on I–5 to Hahn Road; easterly on Hahn Road and the Grimes-Arbuckle Road to Grimes; northerly on CA 45 to the junction with CA 162; northerly on CA 45/162 to Glenn; and westerly on CA 162 to the point of beginning in Willows.

San Joaquin Valley Special Management Area: That area bounded by a line beginning at the intersection of Highway 5 and Highway 120; south on Highway 5 to Highway 33; southeast on Highway 33 to Crows Landing Road; north on Crows Landing Road to Highway 99; north on Highway 99 to Highway 120; west on Highway 120 to the point of beginning.

Western Canada Goose Hunt Area: That portion of the above described Sacramento Valley Area lying east of a line formed by Butte Creek from the Gridley-Colusa Highway south to the Cherokee Canal; easterly along the Cherokee Canal and North Butte Road to West Butte Road; southerly on West Butte Road to Pass Road; easterly on Pass Road to West Butte Road; southerly on West Butte Road to CA 20; and westerly along CA 20 to the Sacramento River.

Colorado (Pacific Flyway Portion)

West Central Area: Archuleta, Delta, Dolores, Gunnison, LaPlata, Montezuma, Montrose, Ouray, San Juan, and San Miguel Counties and those portions of Hinsdale, Mineral and Saguache Counties west of the Continental Divide.

State Area: The remainder of the Pacific-Flyway Portion of Colorado.

Idaho

Zone 1: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Zone 2: The Counties of Ada; Adams; Boise; Canyon; those portions of Elmore north and east of I-84, and south and west of I–84, west of ID 51, except the Camas Creek drainage; Gem; Owyhee west of ID 51; Payette; Valley; and Washington.

Zone 3: The Counties of Blaine; Camas; Cassia; those portions of Elmore south of I–84 east of ID 51, and within the Camas Creek drainage; Gooding; Jerome; Lincoln; Minidoka; Owyhee east of ID 51; Power within the Minidoka National Wildlife Refuge; and Twin Falls.

Zone 4: The Counties of Bear Lake; Bingham within the Blackfoot Reservoir drainage; Bonneville, Butte; Caribou except the Fort Hall Indian Reservation; Clark; Custer; Franklin; Fremont; Jefferson; Lemhi; Madison; Oneida; Power west of ID 37 and ID 39 except the Minidoka National Wildlife Refuge; and Teton.

Zone 5: All lands and waters within the Fort Hall Indian Reservation, including private inholdings; Bannock County; Bingham County, except that portion within the Blackfoot Reservoir drainage; and Power County east of ID 37 and ID 39.

In addition, goose frameworks are set by the following geographical areas:

Northern Unit: Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties.

Southwestern Unit: That area west of the line formed by U.S. 93 north from the Nevada border to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana border (except the Northern Unit and except Custer and Lemhi Counties).

Southeastern Unit: That area east of the line formed by U.S. 93 north from the Nevada border to Shoshone, northerly on ID 75 (formerly U.S. 93) to Challis, northerly on U.S. 93 to the Montana border, including all of Custer and Lemhi Counties.

Montana (Pacific Flyway Portion)

East of the Divide Zone: The Pacific Flyway portion of the State located east of the Continental Divide.

West of the Divide Zone: The remainder of the Pacific Flyway portion of Montana.

Nevada

Lincoln Clark County Zone: All of Lincoln and Clark Counties

Remainder-of-the-State Zone: The remainder of Nevada.

New Mexico (Pacific Flyway Portion)

North Zone: The Pacific Flyway portion of New Mexico located north of I–40.

South Zone: The Pacific Flyway portion of New Mexico located south of I–40.

Oregon

Southwest Zone: Douglas, Coos, Curry, Josephine and Jackson Counties.

Northwest Special Permit Zone: That portion of western Oregon west and north of a line running south from the Columbia River in Portland along I–5 to OR 22 at Salem; then east on OR 22 to the Stayton Cutoff; then south on the Stayton Cutoff to Stayton and due south to the Santiam River; then west along the north shore of the Santiam River to I–5; then south on I–5 to OR 126 at Eugene; then west on OR 126 to Greenhill Road; then south on Greenhill Road to Crow Road; then west on Crow Road to Territorial Hwy; then west on Territorial Hwy to OR 126; then west on OR 126 to OR 36; then north on OR 36 to Forest Road 5070 at Brickerville; then west and south on Forest Road 5070 to OR 126; then west on OR 126 to the Pacific Coast.

Northwest Zone: Those portions of Clackamas, Lane, Linn, Marion, Multnomah, and Washington Counties outside of the Northwest Special Permit Zone.

Closed Zone: Those portions of Coos, Curry, Douglas and Lane Counties west of US 101.

Eastern Zone: Hood River, Wasco, Sherman, Gilliam, Morrow, Umatilla, Deschutes, Jefferson, Crook, Wheeler, Grant, Baker, Union, and Wallowa Counties.

Lake County Zone: All of Lake County.

Utah

Washington County Zone: All of Washington County.

Remainder-of-the-State Zone: The remainder of Utah.

Washington

Eastern Washington: All areas east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Area 1: Lincoln, Spokane, and Walla Walla Counties; that part of Grant County east of a line beginning at the Douglas-Lincoln County line on WA 174, southwest on WA 174 to WA 155, south on WA 155 to US 2, southwest on US 2 to Pinto Ridge Road, south on Pinto Ridge Road to WA 28, east on WA 28 to the Stratford Road, south on the Stratford Road to WA 17, south on WA 17 to the Grant-Adams County line; those parts of Adams County east of State Highway 17; those parts of Franklin County east and south of a line beginning at the Adams-Franklin County line on WA 17, south on WA 17 to US 395, south on US 395 to I–182, west of I–182 to the Franklin-Benton County line; those parts of Benton County south of I–182 and I–82; and those parts of Klickitat County east of U.S. Highway 97.

Area 2: All of Okanongan, Douglas, and Kittitas Counties and those parts of Grant, Adams, Franklin, and Benton Counties not included in Eastern Washington Goose Management Area 1.

Area 3: All other parts of eastern Washington not included in Eastern Washington Goose Management Areas 1 and 2.

Western Washington: All areas west of the East Zone.

Area 1: Skagit, Island, and Snohomish Counties.

Area 2: Clark County, except portions south of the Washougal River, Cowlitz, Pacific, and Wahkiakum Counties, and that portion of Grays Harbor County south of U.S. highway 12 and east of U.S. highway 101.

Area 3: All parts of western Washington not included in Western Washington Goose Management Areas 1 and 2.

Lower Columbia River Early-Season Canada Goose Zone: Beginning at the Washington-Oregon border on the I–5 Bridge near Vancouver, Washington; north on I–5 to Kelso; west on Highway 4 from Kelso to Highway 401; south and west on Highway 401 to Highway 101 at the Astoria-Megler Bridge; west on Highway 101 to Gray Drive in the City of Ilwaco; west on Gray Drive to Canby Road; southwest on Canby Road to the North Jetty; southwest on the North Jetty to its end; southeast to the Washington-Oregon border; upstream along the Washington-Oregon border to the point of origin.

Wyoming (Pacific Flyway Portion): See State Regulations.

Bear River Area: That portion of Lincoln County described in State regulations.

Salt River Area: That portion of Lincoln County described in State regulations.

Eden-Farson Area: Those portions of Sweetwater and Sublette Counties described in State regulations.

Swans

Central Flyway

South Dakota: Aurora, Beadle, Brookings, Brown, Brule, Buffalo, Campbell, Clark, Codington, Davison, Deuel, Day, Edmunds, Faulk, Grant, Hamlin, Hand, Hanson, Hughes, Hyde, Jerauld, Kingsbury, Lake, Marshall, McCook, McPherson, Miner, Minnehaha, Moody, Potter, Roberts, Sanborn, Spink, Sully, and Walworth Counties.

Pacific Flyway

Montana (Pacific Flyway Portion)

Open Area: Cascade, Chouteau, Hill, Liberty, and Toole Counties and those portions of Pondera and Teton Counties lying east of U.S. 287–89.

Nevada

Open Area: Churchill, Lyon, and Pershing Counties.

Utah

Open Area: Those portions of Box, Elder, Weber, Davis, Salt Lake, and Toole Counties lying south of State Hwy 30, I–80/84, west of I–15, and north of I–80.

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federal register

Friday
August 27, 1999

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Final Frameworks for Early-Season Migratory Bird Hunting Regulations; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN: 1018–AF24

Migratory Bird Hunting; Final Frameworks for Early-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes final early-season frameworks which States, Puerto Rico, and the Virgin Islands may select season dates, limits, and other options for the 1999–2000 migratory bird hunting seasons. Early seasons are those which generally open prior to October 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the Virgin Islands. The effect of this final rule is to facilitate the selection of hunting seasons by the States and Territories to further the annual establishment of the early-season migratory bird hunting regulations. These selections will be published in the **Federal Register** as amendments to 20.101 through 20.107, and 20.109 of title 50 CFR part 20.

DATES: This rule takes effect on August 27, 1999.

ADDRESSES: States and Territories should send their season selections to: Chief, Office of Migratory Bird Management, US Fish and Wildlife Service, Department of the Interior, ms 634–ARLSQ, 1849 C Street, NW, Washington, DC 20240. You may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Jonathan Andrew, Chief, or Ron W. Kokel, Office of Migratory Bird Management, US Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1999

On May 3, 1999, the US Fish and Wildlife Service (hereinafter Service or we) published in the **Federal Register** (64 FR 23742) a proposal to amend 50 CFR part 20. The proposal dealt with the establishment of seasons, limits, and other regulations for migratory game birds under 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 17, we published in the **Federal Register** (64 FR 32758) a second document providing supplemental proposals for early-and late-season migratory bird hunting regulations frameworks and the proposed regulatory alternatives for the 1999-2000 duck hunting season. The June 17 supplement also provided detailed information on the 1999-2000 regulatory schedule and announced the Service Migratory Bird Regulations Committee and Flyway Council meetings.

On June 22–23, we held meetings that reviewed information on the current status of migratory shore and upland game birds and developed 1999–2000 migratory game bird regulations recommendations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 1999–2000 regular waterfowl seasons. On July 22, we published in the **Federal Register** (64 FR 39460) a third document specifically dealing with the proposed frameworks for early-season regulations for the 1999–2000 duck hunting season.

This document is the fourth in a series of proposed, supplemental, and final rulemaking documents. It establishes final frameworks from which States may select season dates, shooting hours, and daily bag and possession limits for the 1999–2000 season.

Review of Public Comments

The preliminary proposed rulemaking, which appeared in the May 3 **Federal Register**, opened the public comment period for migratory game bird hunting regulations. The public comment period for early season issues ended on August 2, 1999. We have considered all pertinent comments received in developing this document. Early-season comments are summarized below and numbered in the order used in the May 3 **Federal Register**. Only the numbered items pertaining to early seasons issues for which written comments were received are included. We received recommendations from all four Flyway Councils. Some recommendations supported continuation of last year's frameworks. Due to the comprehensive nature of the annual review of the frameworks performed by the Councils, support for continuation of last year's frameworks is assumed for items for which no recommendations were received. Council recommendations for changes in the frameworks are summarized below.

General

Written Comments: The Humane Society of the United States (HSUS) believed that all migratory bird seasons should be closed or severely restricted for those species either lacking reliable population data or which data indicates significant and sustained declines. HSUS recommended all seasons open at noon, mid-week, to reduce the large kills associated with the traditional Saturday openings and that hunting during the one-half hour before sunrise be eliminated.

Service Response: The long-term objectives of the Service continue to include providing opportunities to harvest portions of certain migratory game bird populations and to limit harvests to levels compatible with each population's ability to maintain healthy, viable numbers. Annually, we evaluate the status of populations and considers the potential impacts of hunting. We believe that the hunting seasons provided herein are consistent with the current status of populations and long-term population goals and there is no evidence to suggest the frameworks provided are not appropriate.

Regarding mid-week season openings, we have previously stated in the **Federal Register** (58 FR 50190) that a State may choose to delay its opening date to correspond with a particular day of the week or to close earlier to maximize the number of weekends that hunting is allowed.

In regard to shooting hours, we have compiled information which demonstrates that shooting hours beginning one-half hour before sunrise do not contribute significantly to the harvest of nontarget species. Consistent with the Service's long-term strategy for shooting hours, published in the September 21, 1990, **Federal Register** (55 FR 38898), the frameworks herein provide for shooting hours of one-half hour before sunrise to sunset, unless otherwise specified.

1. Ducks

Categories used to discuss issues related to duck harvest management are: (A) Harvest Strategy Considerations, (B) Framework Dates, (C) Season Length, (D) Closed Seasons, (E) Bag Limits, (F) Zones and Split Seasons, and (G) Special Seasons/Species Management. The categories correspond to previous published issues/discussion and only those containing substantial recommendations are discussed below.

G. Special Seasons/Species Management

iv. September Teal/Wood Duck Seasons

Council Recommendations: The Lower-Region Regulations Committee of the Mississippi Flyway Council requested that the Service clarify the linkage between the Flyway-wide wood duck harvest strategy, September teal seasons, and regional (reference area) September wood duck seasons. They further recommended the continuation of the experimental September teal/wood duck seasons in Kentucky and Tennessee in 1999 with no changes from the 1998 season.

Written Comments: The Wildlife Management Institute supported the decision to discontinue special teal and wood duck seasons in Florida, Kentucky, and Tennessee after September 2000 and to replace those seasons with Flyway-wide prescriptions.

An individual in Alabama, citing Tennessee's experimental September teal/wood duck season requested we allow wood ducks in the daily bag limit during Alabama's September teal season.

Service Response: In the July 17, 1998, **Federal Register** (63 FR 38707) we indicated that September wood duck seasons would be allowed to continue for a maximum of 3 years. Results from the Wood Duck Population Monitoring Initiative indicate that sufficient monitoring capabilities currently do not exist at the sub-Flyway level to support continuation of September wood duck seasons. Therefore, the seasons in Florida, Kentucky, and Tennessee will be discontinued after September 2000. Flyway harvest strategies that address regular-season wood duck regulations will then be implemented for the 2001–2002 season. We see no linkage between the Flyway-wide wood duck strategy, September teal seasons, and regional September wood duck seasons.

v. Youth Hunt

Council Recommendations: The Lower-Region Regulations Committee of the Mississippi Flyway Council and the Central Flyway Council recommended expansion of the special youth waterfowl hunt to 2 days.

Written Comments: The Alabama Division of Game and Fish recommended expansion of the special youth hunt to 2 consecutive days.

Service Response: We appreciate the Flyway Councils' support of the youth waterfowl hunting day, but do not support the recommendation of the Mississippi Flyway Council's Lower-Region Regulations Committee and the Central Flyway Council to expand the youth hunt to two consecutive days. Our intent in establishing this special day of opportunity was to introduce youth to the concepts of ethical utilization and stewardship of waterfowl and other natural resources, encourage youngsters and adults to experience the outdoors together, and to contribute to the long-term conservation of the migratory bird resource. We view the special youth hunting day as a unique educational opportunity, above and beyond the regular season, which helps ensure high-quality learning experiences for those youth indicating interest in hunting. We believe that the youth hunting day will help develop a conservation ethic in our youth and is consistent with the Service's responsibility to foster an appreciation for our nation's valuable wildlife resources. We do not believe an extensive evaluation of the effects of youth hunting day is cost effective but believe waterfowl populations can support this limited additional opportunity. Increases in the duration of this unique opportunity would increase the pressure to conduct additional evaluations. With the above objectives and potential costs in mind, there is not a compelling reason to extend the opportunity beyond the 1-day period.

4. Canada Geese

A. Special Seasons

Council Recommendations: The Atlantic Flyway Council made several recommendations concerning September goose seasons. They recommended the approval of operational status for a September 1 to 25 framework in Crawford County, Pennsylvania, and a September 1 to 30 framework in New Jersey. They further recommended the expansion of the September goose season framework closing date around Montezuma National Wildlife Refuge, New York from September 15 to 20.

The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that Minnesota be allowed to have an experimental extension of their September special season from September 16 to 22, except in the Northwest Goose Zone, for the 1999–2001 hunting seasons. The Lower-Region Regulations Committee of the Mississippi Flyway Council urged the Service to use caution in changing or expanding special goose seasons.

The Pacific Flyway Council recommended the addition of the Bridger Valley hunt unit to the existing September RMP Canada goose seasons in western Wyoming, with frameworks of September 1 to 7.

Written Comments: The Alabama Division expressed appreciation for the caution demonstrated by the Service in changing or expanding special Canada goose seasons.

The Pennsylvania Farm Bureau recommended lengthening hunting seasons for resident geese to provide relief from excessive crop damage. An individual in Pennsylvania also supported increasing hunting seasons to help farmers control excessive goose damage.

The Friends of Lake Shelbyville Wildlife opposed any hunting of Canada geese in the Lake Shelbyville, Illinois area due to declining populations in this area. They further request that the Service and the Illinois Department of Natural Resources examine the circumstances for the population decline.

The Wildlife Management Institute supported the proposed changes in Canada goose special seasons in New Jersey, Pennsylvania, New York, Minnesota, and Wyoming.

Service Response: We concur with the recommendations regarding the change in status for the New Jersey and Pennsylvania special seasons. Additionally, we concur with the recommendations for experimental extensions of the special September Canada goose seasons in New York and Minnesota, with the provisions and evaluation outlined in their proposals. We also concur with the proposal to add the Bridger Valley Hunt Unit in Wyoming.

Regarding the specific area of concern in Illinois, we note that the Mississippi Flyway Giant Population (MFGP) of Canada geese (i.e., resident Canada geese) now numbers almost 1.4 million according to the 1999 spring survey. Additionally, conditions were favorable to extremely favorable for nesting geese throughout their breeding range this year and we expect another large fall flight. While localized populations may have experienced recent declines, we believe the current population status of MFGP supports the continued use of special seasons. Further, we note that, as always, Illinois may be more restrictive than Federal frameworks. As such, we have forwarded the comments in question to the Illinois Department of Natural Resources.

B. Regular Seasons

Council Recommendations: The Upper-Region Regulations Committee of the Mississippi Flyway Council recommended that the 1999 regular goose season opening date be as early as

September 18 in Michigan and Wisconsin.

Service Response: We concur with the recommendations for a September 18 opening date in Wisconsin and the North Zone (Upper Peninsula) of Michigan. For the Lower Peninsula (Middle and South Zones) of Michigan, we concur with the recommendation for a September 18 opening under the conditions for Canada geese identified in the following frameworks. Continuation of an opening date earlier than the Saturday nearest October 1 in the Lower Peninsula beyond the 1999–2000 hunting season will be contingent upon the State's developing a proposal for evaluating the population composition of the Canada goose harvest during the earlier regular seasons in comparison to seasons with a traditional opening date. In addition to identifying the kinds of data to be collected and analyzed during the next few years, the proposal should include a summary of data collected during the earlier regular seasons in 1998–99 and 1999–2000. Michigan should submit the proposal to us and the Mississippi Flyway Council prior to the Council's March 2000 meeting.

Regarding the Lower-Region Regulation Committee's concern for cumulative impacts of special-season harvests on migrant Canada goose populations of concern, we are aware of the Committee's concern and are monitoring the harvests occurring during these seasons.

9. Sandhill Cranes

Council Recommendations: The Central Flyway Council recommended removal of the "float" portion (10% of the total allowable harvest) of the Rocky Mountain Population (RMP) greater sandhill crane annual harvest allocation for the 1999–2000 and 2000–2001 seasons. The Council recommended removal of this harvest portion to allow a research study.

The Pacific Flyway Council recommended several changes in sandhill crane seasons. For greater sandhill cranes, the Council recommended the establishment of a new experimental crane hunt in Box Elder County, Utah, between September 1 and September 30. For RMP cranes, the Council recommended that the frameworks be modified to include Bear Lake and Fremont Counties in Idaho, and that the current requirement for hunter check stations in these counties be waived. The Council further recommended that the annual check station requirement for the Arizona RMP Greater Sandhill Crane hunt be modified to a required check station every 3 years.

Written Comments: The HSUS recommends that all crane seasons be closed. The HSUS believes that these seasons are held largely to sustain hunter interest.

Service Response: We concur with the various proposals from the Central and Pacific Flyway Councils regarding RMP Cranes. We note that several of the proposals received from the Pacific Flyway Council were requests for exemptions from specific provisions of the management plan for this population. We believe the biological information was clearly in support of the recommended exemptions, however, we would also note that it is our strong preference to see the Councils address these types of issues through management plan revisions rather than through exemptions to procedures placed in Federal regulations. Therefore, we have approved these recommendations but require that the management plan for this population be revised to reflect these changes in procedures by July, 2001. Further, we request that the Pacific Flyway Council give consideration to changing management plans rather than requesting federal regulatory changes if similar situations should develop with this or other populations of migratory game birds in the future.

Regarding HSUS's recommendations for closed seasons, available information indicates that harvest pressure on cranes is commensurate with the population status and the various crane management plans. Crane harvest is closely monitored by the Service, the Flyway Councils, and the States and there is no evidence to suggest the frameworks provided are not appropriate.

18. Alaska

Council Recommendations: The Pacific Flyway Council made several recommendations concerning Alaska. For sea ducks, the Council recommended reducing the separate sea duck bag and possession limits from 15/30 to 10/20 king and common eiders, scoters, and mergansers in the aggregate. Long-tailed ducks (oldsquaws) and harlequins would be included in general duck limits and seasons would remain closed for spectacled and Steller's eiders. For Canada geese, the Council recommended removal of Canada goose bag limit restrictions within dark goose bag limits (4/8) in Alaska Game Management Subunit 9E (Alaska Peninsula) and Unit 18 (Y–K Delta). Further, for tundra swans, the Council recommended that tundra swan permits issued for swan hunts in Alaska allow the take of up to 3 swans per permit, with no change in reporting requirements or other framework conditions.

Written comments: The HSUS recommended that the opening date for all seasons in Alaska be delayed by 2 weeks so that young birds are able to leave natal marshes before being subjected to hunting pressure.

A constituent from Alaska wrote regarding the need for greater reductions in sea duck harvest regulations than had been proposed by the Pacific Flyway Council. The constituent noted the declining trends seen in sea ducks, the differing reproductive strategy of sea ducks, pertinent biological considerations, cumulative mortality factors, historical bag limits, and additive mortality considerations.

Service Response: We concur with the recommendations regarding Alaska's migratory game birds regulations for the 1999–2000 hunting season. We have carefully reviewed the recommendation regarding changes in Alaska's sea duck regulations from both the Council and from a concerned constituent. The population status of sea ducks remains a concern. We believe that the Council's proposed changes constitute a good first step in developing a more comprehensive strategy for the long-term harvest management of sea ducks in Alaska. We are convinced that the long-term solution will involve both sport and subsistence harvest as well as meeting many of the pressing information needs for this important waterfowl group. We look forward to working with our partners in the newly formed Sea Duck Joint Venture to meet these challenges.

Additionally, we note that the tundra swan permit request for Alaska is another instance where the Council is requesting an exemption from procedures outlined in approved management plans. While we recognize the special circumstances that have led to this recommendation and have approved the change in procedures as recommended by the Council, we strongly prefer that future deviations from procedures in the management plan be addressed through management plan revisions rather than Federal regulation. Further, it is our belief that changes in total harvest allocation were not intended to result from the proposed changes in the permit procedure. Therefore, we have not changed the total swan harvest allocated to Alaska. We strongly recommend that the western tundra swan management and hunt plans be revised in a timely fashion and prior to any further requests for exceptions to the procedures outlined in the management and hunt plans. We suggest that July of 2001 would seem a reasonable target date for completion of such a revision and will work with the Council to achieve this goal.

Regarding Alaska's opening date, we reiterate previous responses that hunting pressure on migratory birds is comparatively light. Many species migrate from Alaska before seasons opening in September and there is no evidence indicating regulated hunting has adversely impacted local populations.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published a Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). Copies are available from the address indicated under the caption **ADDRESSES**.

Endangered Species Act Consideration

As in the past, we design hunting regulations to remove or alleviate chances of conflict between migratory game bird hunting seasons and the protection and conservation of endangered and threatened species. We conducted consultations to ensure that actions resulting from these regulatory proposals will not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion and may have caused modification of some regulatory measures previously proposed. Final frameworks reflect any modifications. The biological opinions resulting from section 7 consultation are public documents available for inspection in the Service's Division of Endangered Species and MBMO, at the address indicated under the caption **ADDRESSES**.

Executive Order (E.O.) 12866

This rule is economically significant and was reviewed by the Office of Management and Budget (OMB) under E.O. 12866.

E.O. 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail and issued a Small Entity Flexibility Analysis (Analysis) in 1998. The Analysis documented the significant beneficial economic effect. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns from which it was estimated that migratory bird hunters would spend between $429 and $1,084 million at small businesses in 1998. Copies of the Analysis are available upon request.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1).

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. We utilize the various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, subpart K, in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 9/30/2001). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires 9/30/2000). The information from this survey is used to estimate the magnitude, the geographical and temporal distribution of harvest, and the portion it constitutes of the total population. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this rule, has determined that these regulations meet the applicable standards found in sections 3(a) and 3(b)(2) of E.O. 12988.

Takings Implication Assessment

In accordance with E.O. 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges; and, therefore, reduce restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections. This process preserves the ability of the States to determine which seasons meet their individual needs. Any State may be more restrictive than the Federal frameworks. The frameworks are developed in a cooperative process with

the States and the Flyway Councils. This allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with E.O. 12612, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to select season dates and limits; to communicate those selections to us; and to establish and publicize the necessary regulations and procedures to implement their decisions. We therefore find that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these frameworks will, therefore, take effect immediately upon publication.

Therefore, under authority of the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703–711), we prescribe final frameworks setting forth the species to be hunted, the daily bag and possession limits, the shooting hours, the season lengths, the earliest opening and latest closing season dates, and hunting areas, from which State conservation agency officials will select hunting season dates and other options. Upon receipt of season and option selections from these officials, we will publish in the **Federal Register** a final rulemaking amending 50 CFR part 20 to reflect seasons, limits, and shooting hours for the conterminous United States for the 1999–2000 season.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1999–2000 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a–j.

Dated: August 16, 1999.

Stephen C. Saunders,

Acting Assistant Secretary for Fish and Wildlife and Parks.

Final Regulations Frameworks for 1999–2000 Early Hunting Seasons on Certain Migratory Game Birds Pursuant to the Migratory Bird Treaty Act and delegated authorities, the Department of the Interior approved the following frameworks which prescribe season lengths, bag limits, shooting hours, and outside dates within which States may select for certain migratory game birds between September 1, 1999, and March 10, 2000.

General

Dates: All outside dates noted below are inclusive.

Shooting and Hawking (taking by falconry) Hours: Unless otherwise specified, from one-half hour before sunrise to sunset daily.

Possession Limits: Unless otherwise specified, possession limits are twice the daily bag limit.

Flyways and Management Units

Waterfowl Flyways

Atlantic Flyway—includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Mississippi Flyway—includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

Central Flyway—includes Colorado (east of the Continental Divide), Kansas, Montana (Counties of Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except the Jicarilla Apache Indian Reservation), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

Pacific Flyway—includes Alaska, Arizona, California, Idaho, Nevada, Oregon, Utah, Washington, and those portions of Colorado, Montana, New Mexico, and Wyoming not included in the Central Flyway.

Management Units

Mourning Dove Management Units

Eastern Management Unit—All States east of the Mississippi River, and Louisiana.

Central Management Unit—Arkansas, Colorado, Iowa, Kansas, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming.

Western Management Unit—Arizona, California, Idaho, Nevada, Oregon, Utah, and Washington.

Woodcock Management Regions:

Eastern Management Region—Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

Central Management Region—Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Texas, and Wisconsin.

Other geographic descriptions are contained in a later portion of this document.

Compensatory Days in the Atlantic Flyway: In the Atlantic Flyway States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, North Carolina, Pennsylvania, Virginia, and West Virginia, where Sunday hunting is prohibited statewide by State law, all Sundays are closed to all take of migratory waterfowl (including mergansers and coots).

Special September Teal Season

Outside Dates: Between September 1 and September 30, an open season on all species of teal may be selected by the following States in areas delineated by State regulations:

Atlantic Flyway—Delaware, Georgia, Maryland, North Carolina, Pennsylvania, South Carolina, Virginia, and West Virginia. All seasons are experimental.

Mississippi Flyway—Alabama, Arkansas, Illinois, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Ohio, and Tennessee.

Central Flyway—Colorado (part), Kansas, New Mexico (part), Oklahoma, and Texas.

Hunting Seasons and Daily Bag Limits: Not to exceed 9 consecutive days in the Atlantic Flyway and 16 consecutive days in the Mississippi and Central Flyways. The daily bag limit is 4 teal.

Shooting Hours:

Atlantic Flyway—One-half hour before sunrise to sunset, if evaluated; otherwise sunrise to sunset.

Mississippi and Central Flyways—One-half hour before sunrise to sunset, except in the States of Arkansas, Illinois, Indiana, Missouri, and Ohio, where the hours are from sunrise to sunset.

Special September Duck Seasons

Florida: A 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate.

Kentucky and Tennessee: In lieu of a special September teal season, a 5-consecutive-day season may be selected in September. The daily bag limit may not exceed 4 teal and wood ducks in the aggregate, of which no more than 2 may be wood ducks.

Iowa: Iowa may hold up to 5 days of its regular duck hunting season in September. All ducks which are legal during the regular duck season may be taken during the September segment of the season. The September season segment may commence no earlier than the Saturday nearest September 20 (September 18). The daily bag and possession limits will be the same as those in effect last year, but are subject to change during the late-season regulations process. The remainder of the regular duck season may not begin before October 10.

Special Youth Waterfowl Hunting Day

Outside Dates: States may select 1 day per duck-hunting zone, designated as "Youth Waterfowl Hunting Day," in addition to their regular duck seasons. The day must be held outside any regular duck season on a weekend, holiday, or other non-school day when youth hunters would have the maximum opportunity to participate. The day may be held up to 14 days before or after any regular duck-season frameworks or within any split of a regular duck season, or within any other open season on migratory birds.

Daily Bag Limits: The daily bag limit may include ducks, geese, mergansers, coots, moorhens, and gallinules and would be the same as that allowed in the regular season. Flyway species and area restrictions would remain in effect.

Shooting Hours: One-half hour before sunrise to sunset.

Participation Restrictions: Youth hunters must be 15 years of age or younger. In addition, an adult at least 18 years of age must accompany the youth hunter into the field. This adult could not duck hunt but may participate in other seasons that are open on the special youth day.

Scoter, Eider, and Oldsquaw Ducks (Atlantic Flyway)

Outside Dates: Between September 15 and January 20.

Hunting Seasons and Daily Bag Limits: Not to exceed 107 days, with a daily bag limit of 7, singly or in the aggregate of the listed sea-duck species, of which no more than 4 may be scoters.

Daily Bag Limits During the Regular Duck Season: Within the special sea duck areas, during the regular duck season in the Atlantic Flyway, States may choose to allow the above sea duck limits in addition to the limits applying to other ducks during the regular duck season. In all other areas, sea ducks may be taken only during the regular open season for ducks and are part of the regular duck season daily bag (not to exceed 4 scoters) and possession limits.

Areas: In all coastal waters and all waters of rivers and streams seaward from the first upstream bridge in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, and New York; in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 1 mile of open water from any shore, island, and emergent vegetation in New Jersey, South Carolina, and Georgia; and in any waters of the Atlantic Ocean and in any tidal waters of any bay which are separated by at least 800 yards of open water from any shore, island, and emergent vegetation in Delaware, Maryland, North Carolina and Virginia; and provided that any such areas have been described, delineated, and designated as special sea-duck hunting areas under the hunting regulations adopted by the respective States.

Special Early Canada Goose Seasons

Atlantic Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected for the Montezuma Region of New York, the Lake Champlain Region of New York and Vermont, the Eastern Unit of Maryland, and Delaware. Seasons not to exceed 20 days during September 1–20 may be selected for the Northeast Hunt Unit of North Carolina. Seasons not to exceed 30 days during September 1–30 may be selected by New Jersey. Seasons may not exceed 25 days during September 1–25 in the remainder of the Flyway, except Georgia and Florida, where the season is closed. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 5 Canada geese.

Experimental Seasons

Experimental Canada goose seasons of up to 20 days during September 1–20 may be selected by New York (Montezuma Region). Experimental seasons of up to 30 days during September 1–30 may be selected by New York (Long Island Zone), North Carolina (except in the Northeast Hunt Unit), and South Carolina. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Daily Bag Limits: Not to exceed 5 Canada geese.

Mississippi Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected, except in the Upper Peninsula in Michigan, where the season may not extend beyond September 10, and in the Michigan Counties of Huron, Saginaw and Tuscola, where no special season may be held. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Experimental Seasons

An experimental Canada goose season of up to 7 consecutive days during September 16–22 may be selected by Minnesota, except in the Northwest Goose Zone. The daily bag limit may not exceed 5 Canada geese.

Central Flyway

General Seasons

Canada goose seasons of up to 15 days during September 1–15 may be selected. The daily bag limit may not exceed 5 Canada geese. Areas open to the hunting of Canada geese must be described, delineated, and designated as such in each State's hunting regulations.

Pacific Flyway

General Seasons

Wyoming may select an 8-day season on Canada geese between September 1–15. This season is subject to the following conditions:

1. Where applicable, the season must be concurrent with the September portion of the sandhill crane season.

2. All participants must have a valid State permit for the special season.

3. A daily bag limit of 2, with season and possession limits of 4 will apply to the special season.

Oregon may select a special Canada goose season of up to 15 days during the period September 1–15. In addition, in the NW goose management zone, a 15-day season may be selected during the period September 1–20. Any portion of the season selected between September 16 and 20 will be considered experimental. Daily bag limits may not exceed 5 Canada geese. In the NW goose zone, at a minimum, Oregon must provide an annual evaluation of the number of dusky Canada geese present in the hunt zone during the period September 16–20 and agree to adjust seasons as necessary to avoid any potential harvest of dusky Canada geese.

Washington may select a special Canada goose season of up to 15 days during the period September 1–15. Daily bag limits may not exceed 3 Canada geese.

Idaho may select a 15-day season in the special East Canada Goose Zone, as described in State regulations, during the period September 1–15. All participants must have a valid State permit and the total number of permits issued is not to exceed 110 for this zone. The daily bag limit is 2.

Idaho may select a 7-day Canada Goose Season during the period September 1–15 in Nez Perce County, with a bag limit of 4.

California may select a 9-day season in Humboldt County during the period September 1–15. The daily bag limit is 2.

Areas open to hunting of Canada geese in each State must be described, delineated, and designated as such in each State's hunting regulations.

Regular Goose Seasons

Regular goose seasons may open as early as September 18 in Wisconsin and Michigan. In Wisconsin, and in Michigan for all geese except Canada geese, season lengths and bag and possession limits will be the same as those in effect last year, but are subject to change during the late-season regulations process. In the Middle and South Zones of Michigan, for Canada goose seasons opening September 18, the season may not exceed 23 days. The daily bag limit will be 2 Canada geese, except that in the South Zone, during that portion of the season that overlaps the duck season, the daily bag limit will be one Canada goose. Provision for seasons opening October 2 or later will be contained in the late-season frameworks.

Sandhill Cranes

Regular Seasons in the Central Flyway

Outside Dates: Between September 1 and February 28.

Hunting Seasons: Seasons not to exceed 58 consecutive days may be selected in designated portions of the following States: Colorado, Kansas, Montana, North Dakota, South Dakota, and Wyoming. Seasons not to exceed 93 consecutive days may be selected in designated portions of the following States: New Mexico, Oklahoma, and Texas.

Daily Bag Limits: 3 sandhill cranes.

Permits: Each person participating in the regular sandhill crane seasons must have a valid Federal sandhill crane hunting permit and/or, in those States where a Federal sandhill crane permit is not issued, a State-issued Harvest Information Survey Program (HIP) certification for game bird hunting, in their possession while hunting.

Special Seasons in the Central and Pacific Flyways:

Arizona, Colorado, Idaho, Montana, New Mexico, Utah, and Wyoming may select seasons for hunting sandhill cranes within the range of the Rocky Mountain Population subject to the following conditions:

Outside Dates: Between September 1 and January 31.

Hunting Seasons: The season in any State or zone may not exceed 30 days.

Bag limits: Not to exceed 3 daily and 9 per season.

Permits: Participants must have a valid permit, issued by the appropriate State, in their possession while hunting.

Other provisions: Numbers of permits, open areas, season dates, protection plans for other species, and other provisions of seasons must be consistent with the management plan and approved by the Central and Pacific Flyway Councils with the following exceptions:

(1) In Utah, the requirement for monitoring the racial composition of the harvest in the experimental season is waived and 100% of the harvest will be assigned to the RMP quota;

(2) In Arizona, the annual requirement for monitoring the racial composition of the harvest is changed to once every 3 years; and

(3) In Idaho, seasons are experimental and the requirement for monitoring the racial composition of the harvest is waived, 100% of the harvest will be assigned to the RMP quota.

Common Moorhens and Purple Gallinules

Outside Dates: Between September 1 and January 20 in the Atlantic Flyway, and between September 1 and the Sunday nearest January 20 (January 23) in the Mississippi and Central Flyways. States in the Pacific Flyway have been allowed to select their hunting seasons between the outside dates for the season on ducks; therefore, they are late-season frameworks and no frameworks are provided in this document.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 70 days in the Atlantic, Mississippi, and Central Flyways. Seasons may be split into 2 segments. The daily bag limit is 15 common moorhens and purple gallinules, singly or in the aggregate of the two species.

Rails

Outside Dates: States included herein may select seasons between September 1 and January 20 on clapper, king, sora, and Virginia rails.

Hunting Seasons: The season may not exceed 70 days, and may be split into 2 segments.

Daily Bag Limits:

Clapper and King Rails—In Rhode Island, Connecticut, New Jersey, Delaware, and Maryland, 10, singly or in the aggregate of the two species. In Texas, Louisiana, Mississippi, Alabama, Georgia, Florida, South Carolina, North Carolina, and Virginia, 15, singly or in the aggregate of the two species.

Sora and Virginia Rails—In the Atlantic, Mississippi, and Central Flyways and the Pacific-Flyway portions of Colorado, Montana, New Mexico, and Wyoming, 25 daily and 25 in possession, singly or in the aggregate of the two species. The season is closed in the remainder of the Pacific Flyway.

Common Snipe

Outside Dates: Between September 1 and February 28, except in Maine, Vermont, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, and Virginia, where the season must end no later than January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 107 days and may be split into two segments. The daily bag limit is 8 snipe.

American Woodcock

Outside Dates: States in the Eastern Management Region may select hunting seasons between October 6 and January 31. States in the Central Management Region may select hunting seasons between the Saturday nearest September 22 (September 25) and January 31.

Hunting Seasons and Daily Bag Limits: Seasons may not exceed 30 days in the Atlantic Flyway and 45 days in the Central and Mississippi Flyways. The daily bag limit is 3. Seasons may be split into two segments.

Zoning: New Jersey may select seasons in each of two zones. The season in each zone may not exceed 24 days.

Band-Tailed Pigeons

Pacific Coast States (California, Oregon, Washington, and Nevada)

Outside Dates: Between September 15 and January 1.

Hunting Seasons and Daily Bag Limits: Not more than 9 consecutive days, with bag and possession limits of 2 and 2 band-tailed pigeons, respectively.

Zoning: California may select hunting seasons not to exceed 9 consecutive days in each of two zones. The season in the North Zone must close by October 4.

Four-Corners States (Arizona, Colorado, New Mexico, and Utah)

Outside Dates: Between September 1 and November 30.

Hunting Seasons and Daily Bag Limits: Not more than 30 consecutive days, with a daily bag limit of 5 band-tailed pigeons.

Zoning: New Mexico may select hunting seasons not to exceed 20 consecutive days in each of two zones. The season in the South Zone may not open until October 1.

Mourning Doves

Outside Dates: Between September 1 and January 15, except as otherwise provided, States may select hunting seasons and daily bag limits as follows:

Eastern Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. The hunting seasons in the South Zones of Alabama, Florida, Georgia, Louisiana, and Mississippi may commence no earlier than September 20. Regulations for bag and possession limits, season length, and shooting hours must be uniform within specific hunting zones.

Central Management Unit

Hunting Seasons and Daily Bag Limits: Not more than 70 days with a daily bag limit of 12, or not more than 60 days with a daily bag limit of 15.

Zoning and Split Seasons: States may select hunting seasons in each of two zones. The season within each zone may be split into not more than three periods. Texas may select hunting seasons for each of three zones subject to the following conditions:

A. The hunting season may be split into not more than two periods, except in that portion of Texas in which the special white-winged dove season is allowed, where a limited mourning dove season may be held concurrently with that special season (see white-winged dove frameworks).

B. A season may be selected for the North and Central Zones between September 1 and January 25; and for the South Zone between September 20 and January 25.

C. Each zone may have a daily bag limit of 12 doves (15 under the alternative) in the aggregate, no more than 2 of which may be white-tipped doves, except that during the special white-winged dove season, the daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

D. Except as noted above, regulations for bag and possession limits, season length, and shooting hours must be uniform within each hunting zone.

Western Management Unit

Hunting Seasons and Daily Bag Limits: Idaho, Nevada, Oregon, Utah, and Washington—Not more than 30 consecutive days with a daily bag limit of 10 mourning doves (in Nevada, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate).

Arizona and California—Not more than 60 days which may be split between two periods, September 1–15 and November 1–January 15. In Arizona, during the first segment of the season, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. During the remainder of the season, the daily bag limit is restricted to 10 mourning doves. In California, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

White-Winged and White-Tipped Doves

Hunting Seasons and Daily Bag Limits

Except as shown below, seasons in Arizona, California, Florida, Nevada, New Mexico, and Texas must be concurrent with mourning dove seasons.

Arizona may select a hunting season of not more than 30 consecutive days, running concurrently with the first segment of the mourning dove season. The daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate, of which no more than 5 may be white-winged doves.

In Florida, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate, of which no more than 4 may be white-winged doves.

In the Nevada Counties of Clark and Nye, and in the California Counties of Imperial, Riverside, and San Bernardino, the daily bag limit may not exceed 10 mourning and white-winged doves in the aggregate.

In New Mexico, the daily bag limit may not exceed 12 mourning and white-winged doves (15 under the alternative) in the aggregate.

In Texas, the daily bag limit may not exceed 12 doves (15 under the alternative) in the aggregate, of which not more than 2 may be white-tipped doves.

In addition, Texas may also select a hunting season of not more than 4 days for the special white-winged dove area of the South Zone between September 1 and September 19. The daily bag limit may not exceed 10 white-winged, mourning, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves.

Alaska

Outside Dates: Between September 1 and January 26.

Hunting Seasons: Alaska may select 107 consecutive days for waterfowl, sandhill cranes, and common snipe in each of five zones. The season may be split without penalty in the Kodiak Zone. The seasons in each zone must be concurrent.

Closures: The season is closed on Canada geese from Unimak Pass westward in the Aleutian Island chain. The hunting season is closed on Aleutian Canada geese, emperor geese, spectacled eiders, and Steller's eiders.

Daily Bag and Possession limits:

Ducks—Except as noted, a basic daily bag limit of 7 and a possession limit of 21 ducks. Daily bag and possession limits in the North Zone are 10 and 30, and in the Gulf Coast Zone they are 8 and 24, respectively. The basic limits may include no more than 1 canvasback daily and 3 in possession.

In addition to the basic duck limits, there is a sea duck daily bag limit of 10, with a possession limit of 20, scoter, common and king eiders, and common and red-breasted mergansers, singly or in the aggregate. Alaska may choose to allow these sea duck limits in addition to regular duck bag limits. However, the

total daily bag limit for any duck species may not exceed 10.

Light Geese—A basic daily bag limit of 3 and a possession limit of 6.

Dark Geese—A basic daily bag limit of 4 and a possession limit of 8.

Dark-goose seasons are subject to the following exceptions:

1. In Units 5 and 6, the taking of Canada geese is permitted from September 28 through December 16. A special, permit only Canada goose season may be offered on Middleton Island. No more than 10 permits can be issued. A mandatory goose identification class is required . Hunters must check-in and check-out. Bag limit of 1 daily and 1 in possession. Season to close if incidental harvest includes 5 dusky Canada geese. A dusky Canada goose is any dark-breasted Canada goose (Munsell 10 YR color value five or less) with a bill length between 40 and 50 millimeters.

2. In Unit 10 (except Unimak Island), the taking of Canada geese is prohibited.

3. In Unit 9(D) and the Unimak Island portion of Unit 10, the limits for dark geese are 6 daily and 12 in possession.

Brant—A daily bag limit of 2.

Common snipe—A daily bag limit of 8.

Sandhill cranes—A daily bag limit of 3.

Tundra Swans—Open seasons for tundra swans may be selected subject to the following conditions:

1. All seasons are by registration permit only.

2. All season framework dates are September 1–October 31.

3. In GMU 18, no more than 500 swans may be harvested during the operational season. Up to 3 tundra swans may be authorized per permit. No more than 1 permit may be issued per hunter per season.

4. In GMU 22, no more than 300 swans may be harvested during the operational season. Each permittee may be authorized to take up to 3 tundra swan per permit. No more than 1 permit may be issued per hunter per season.

5. In GMU 23, no more than 300 swans may be harvested during the experimental season. No more than 3 tundra swans may be authorized per permit with no more than 1 permit issued per hunter per season. The experimental season evaluation must adhere to the guidelines for experimental seasons as described in the Pacific Flyway Management Plan for the Western Population of (Tundra) Swans.

Hawaii

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 65 days (75 under the alternative) for mourning doves.

Bag Limits: Not to exceed 15 (12 under the alternative) mourning doves.

Note: Mourning doves may be taken in Hawaii in accordance with shooting hours and other regulations set by the State of Hawaii, and subject to the applicable provisions of 50 CFR part 20.

Puerto Rico

Doves and Pigeons

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida, mourning, and white-winged doves in the aggregate. Not to exceed 5 scaly-naped pigeons.

Closed Areas: There is no open season on doves or pigeons in the following areas: Municipality of Culebra, Desecheo Island, Mona Island, El Verde Closure Area, and Cidra Municipality and adjacent areas.

Ducks, Coots, Moorhens, Gallinules, and Snipe

Outside Dates: Between October 1 and January 31.

Hunting Seasons: Not more than 55 days may be selected for hunting ducks, common moorhens, and common snipe. The season may be split into two segments.

Daily Bag Limits:

Ducks—Not to exceed 6.

Common moorhens—Not to exceed 6.

Common snipe—Not to exceed 8.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck, which are protected by the Commonwealth of Puerto Rico. The season also is closed on the purple gallinule, American coot, and Caribbean coot.

Closed Areas: There is no open season on ducks, common moorhens, and common snipe in the Municipality of Culebra and on Desecheo Island.

Virgin Islands

Doves and Pigeons

Outside Dates: Between September 1 and January 15.

Hunting Seasons: Not more than 60 days for Zenaida doves.

Daily Bag and Possession Limits: Not to exceed 10 Zenaida doves.

Closed Seasons: No open season is prescribed for ground or quail doves, or pigeons in the Virgin Islands.

Closed Areas: There is no open season for migratory game birds on Ruth Cay (just south of St. Croix).

Local Names for Certain Birds: Zenaida dove, also known as mountain dove; bridled quail-dove, also known as Barbary dove or partridge; Common ground-dove, also known as stone dove, tobacco dove, rola, or tortolita; scaly-naped pigeon, also known as red-necked or scaled pigeon.

Ducks

Outside Dates: Between December 1 and January 31.

Hunting Seasons: Not more than 55 consecutive days.

Daily Bag Limits: Not to exceed 6.

Closed Seasons: The season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, and masked duck.

Special Falconry Regulations

Falconry is a permitted means of taking migratory game birds in any State meeting Federal falconry standards in 50 CFR 21.29(k). These States may select an extended season for taking migratory game birds in accordance with the following:

Extended Seasons: For all hunting methods combined, the combined length of the extended season, regular season, and any special or experimental seasons shall not exceed 107 days for any species or group of species in a geographical area. Each extended season may be divided into a maximum of 3 segments.

Framework Dates: Seasons must fall between September 1 and March 10.

Daily Bag and Possession Limits: Falconry daily bag and possession limits for all permitted migratory game birds shall not exceed 3 and 6 birds, respectively, singly or in the aggregate, during extended falconry seasons, any special or experimental seasons, and regular hunting seasons in all States, including those that do not select an extended falconry season.

Regular Seasons: General hunting regulations, including seasons and hunting hours, apply to falconry in each State listed in 50 CFR 21.29(k). Regular-season bag and possession limits do not apply to falconry. The falconry bag limit is not in addition to gun limits.

Area, Unit, and Zone Descriptions

Mourning and White-Winged Doves

Alabama

South Zone—Baldwin, Barbour, Coffee, Conecuh, Covington, Dale, Escambia, Geneva, Henry, Houston, and Mobile Counties.

North Zone—Remainder of the State.

California

White-winged Dove Open Areas—Imperial, Riverside, and San Bernardino Counties.

Florida

Northwest Zone—The Counties of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, Washington, Leon (except that portion north of U.S. 27 and east of State Road 155), Jefferson (south of U.S. 27, west of State Road 59 and north of U.S. 98), and Wakulla (except that portion south of U.S. 98 and east of the St. Marks River).

South Zone—Remainder of State.

Georgia

Northern Zone—That portion of the State lying north of a line running west to east along U.S. Highway 280 from Columbus to Wilcox County, thence southward along the western border of Wilcox County; thence east along the southern border of Wilcox County to the Ocmulgee River, thence north along the Ocmulgee River to Highway 280, thence east along Highway 280 to the Little Ocmulgee River; thence southward along the Little Ocmulgee River to the Ocmulgee River; thence southwesterly along the Ocmulgee River to the western border of the Jeff Davis County; thence south along the western border of Jeff Davis County; thence east along the southern border of Jeff Davis and Appling Counties; thence north along the eastern border of Appling County, to the Altamaha River; thence east to the eastern border of Tattnall County; thence north along the eastern border of Tattnall County; thence north along the western border of Evans to Candler County; thence east along the northern border of Evans County to U.S. Highway 301; thence northeast along U.S. Highway 301 to the South Carolina line.

South Zone—Remainder of the State.

Louisiana

North Zone—That portion of the State north of Interstate Highway 10 from the Texas State line to Baton Rouge, Interstate Highway 12 from Baton Rouge to Slidell and Interstate Highway 10 from Slidell to the Mississippi State line.

South Zone—The remainder of the State.

Mississippi

South Zone—The Counties of Forrest, George, Greene, Hancock, Harrison, Jackson, Lamar, Marion, Pearl River, Perry, Pike, Stone, and Walthall.

North Zone—The remainder of the State.

Nevada

White-winged Dove Open Areas—Clark and Nye Counties.

Texas

North Zone—That portion of the State north of a line beginning at the International Bridge south of Fort Hancock; north along FM 1088 to TX 20; west along TX 20 to TX 148; north along TX 148 to I–10 at Fort Hancock; east along I–10 to I–20; northeast along I–20 to I–30 at Fort Worth; northeast along I–30 to the Texas-Arkansas State line.

South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to San Antonio; then east on I–10 to Orange, Texas.

Special White-winged Dove Area in the South Zone—That portion of the State south and west of a line beginning at the International Bridge south of Del Rio, proceeding east on U.S. 90 to Uvalde; south on U.S. 83 to TX 44; east along TX 44 to TX 16 at Freer; south along TX 16 to TX 285 at Hebbronville; east along TX 285 to FM 1017; southwest along FM 1017 to TX 186 at Linn; east along TX 186 to the Mansfield Channel at Port Mansfield; east along the Mansfield Channel to the Gulf of Mexico.

Area with additional restrictions—Cameron, Hidalgo, Starr, and Willacy Counties.

Central Zone—That portion of the State lying between the North and South Zones.

Band-Tailed Pigeons

California

North Zone—Alpine, Butte, Del Norte, Glenn, Humboldt, Lassen, Mendocino, Modoc, Plumas, Shasta, Sierra, Siskiyou, Tehama, and Trinity Counties.

South Zone—The remainder of the State.

New Mexico

North Zone—North of a line following U.S. 60 from the Arizona State line east to I–25 at Socorro and then south along I–25 from Socorro to the Texas State line.

South Zone—Remainder of the State.

Washington

Western Washington—The State of Washington excluding those portions lying east of the Pacific Crest Trail and east of the Big White Salmon River in Klickitat County.

Woodcock

New Jersey

North Zone—That portion of the State north of NJ 70.

South Zone—The remainder of the State.

Special September Canada Goose Seasons

Atlantic Flyway

Connecticut

North Zone—That portion of the State north of I–95.

Maryland

Eastern Unit—Anne Arundel, Calvert, Caroline, Cecil, Charles, Dorchester, Harford, Kent, Queen Annes, St. Marys, Somerset, Talbot, Wicomico, and Worcester Counties, and those portions of Baltimore, Howard, and Prince George's Counties east of I–95.

Western Unit—Allegany, Carroll, Frederick, Garrett, Montgomery, and Washington Counties, and those portions of Baltimore, Howard, and Prince George's Counties east of I–95.

Massachusetts

Western Zone—That portion of the State west of a line extending south from the Vermont border on I–91 to MA 9, west on MA 9 to MA 10, south on MA 10 to U.S. 202, south on U.S. 202 to the Connecticut border.

Central Zone—That portion of the State east of the Berkshire Zone and west of a line extending south from the New Hampshire border on I–95 to U.S. 1, south on U.S. 1 to I–93, south on I–93 to MA 3, south on MA 3 to U.S. 6, west on U.S. 6 to MA 28, west on MA 28 to I–195, west to the Rhode Island border; except the waters, and the lands 150 yards inland from the high-water mark, of the Assonet River upstream to the MA 24 bridge, and the Taunton River upstream to the Center St.-Elm St. bridge shall be in the Coastal Zone.

Coastal Zone—That portion of Massachusetts east and south of the Central Zone.

New York

Lake Champlain Zone—The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone—That area consisting of Nassau County, Suffolk

County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone—That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border, except for the Montezuma Zone.

Montezuma Zone—Those portions of Cayuga, Seneca, Ontario, Wayne, and Oswego Counties north of U.S. Route 20, east of NYS Route 14, south of NYS Route 104, and west of NYS Route 34.

Northeastern Zone—That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone—The remaining portion of New York.

North Carolina

Northeast Hunt Unit—Counties of Bertie, Camden, Chovan, Currituck, Dare, Hyde, Pasquotank, Perquimans, Tyrrell, and Washington.

South Carolina

Early-season Hunt Unit—Clarendon County and those portions of Orangeburg County north of SC Highway 6 and Berkeley County north of SC Highway 45 from the Orangeburg County line to the junction of SC Highway 45 and State Road S–8–31 and west of the Santee Dam.

Vermont

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area north and west of the line extending from the New York border along U.S. 4 to VT 22A at Fair Haven; VT 22A to U.S. 7 at Vergennes; U.S. 7 to the Canadian border.

Interior Zone: The remaining portion of Vermont.

Mississippi Flyway

Illinois

Northeast Canada Goose Zone—Cook, DuPage, Grundy, Kane, Kankakee, Kendall, Lake, McHenry, and Will Counties.

North Zone: That portion of the State outside the Northeast Canada Goose Zone and north of a line extending east from the Iowa border along Illinois Highway 92 to Interstate Highway 280, east along I–280 to I–80, then east along I–80 to the Indiana border.

Central Zone: That portion of the State outside the Northeast Canada Goose Zone and south of the North Zone to a line extending east from the Missouri border along the Modoc Ferry route to Modoc Ferry Road, east along Modoc Ferry Road to Modoc Road, northeasterly along Modoc Road and St. Leo's Road to Illinois Highway 3, north along Illinois 3 to Illinois 159, north along Illinois 159 to Illinois 161, east along Illinois 161 to Illinois 4, north along Illinois 4 to Interstate Highway 70, east along I–70 to the Bond County line, north and east along the Bond County line to Fayette County, north and east along the Fayette County line to Effingham County, east and south along the Effingham County line to I–70, then east along I–70 to the Indiana border.

South Zone: The remainder of Illinois.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois border.

South Zone: The remainder of Iowa.

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of, Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, east along U.S. 10 BR to U.S. 10, east along U.S. 10 to Interstate Highway 75/U.S. Highway 23, north along I–75/U.S. 23 to the U.S. 23 exit at Standish, east along U.S. 23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canada border.

South Zone: The remainder of Michigan.

Minnesota

Twin Cities Metropolitan Canada Goose Zone—

A. All of Hennepin and Ramsey Counties.

B. In Anoka County, all of Columbus Township lying south of County State Aid Highway (CSAH) 18, Anoka County; all of the cities of Ramsey, Andover, Anoka, Coon Rapids, Spring Lake Park, Fridley, Hilltop, Columbia Heights, Blaine, Lexington, Circle Pines, Lino Lakes, and Centerville; and all of the city of Ham Lake except that portion lying north of CSAH 18 and east of U.S. Highway 65.

C. That part of Carver County lying north and east of the following described line: Beginning at the northeast corner of San Francisco Township; thence west along the north boundary of San Francisco Township to the east boundary of Dahlgren Township; thence north along the east boundary of Dahlgren Township to U.S. Highway 212; thence west along U.S. Highway 212 to State Trunk Highway (STH) 284; thence north on STH 284 to County State Aid Highway (CSAH) 10; thence north and west on CSAH 10 to CSAH 30; thence north and west on CSAH 30 to STH 25; thence east and north on STH 25 to CSAH 10; thence north on CSAH 10 to the Carver County line.

D. In Scott County, all of the cities or Shakopee, Savage, Prior Lake, and Jordan, and all of the Townships of Jackson, Louisville, St. Lawrence, Sand Creek, Spring Lake, and Credit River.

E. In Dakota County, all of the cities of Burnsville, Eagan, Mendota Heights, Mendota, Sunfish Lake, Inver Grove Heights, Apple Valley, Lakeville, Rosemount, Farmington, Hastings, Lilydale, West St. Paul, and South St. Paul, and all of the Township of Nininger.

F. That portion of Washington County lying south of the following described line: Beginning at County State Aid Highway (CSAH) 2 on the west boundary of the county; thence east on CSAH 2 to U.S. Highway 61; thence south on U.S. Highway 61 to State Trunk Highway (STH) 97; thence east on STH 97 to the intersection of STH 97 and STH 95; thence due east to the east boundary of the State.

Northwest Goose Zone—That portion of the State encompassed by a line extending east from the North Dakota border along U.S. Highway 2 to State Trunk Highway (STH) 32, north along STH 32 to STH 92, east along STH 92 to County State Aid Highway (CSAH) 2 in Polk County, north along CSAH 2 to CSAH 27 in Pennington County, north along CSAH 27 to STH 1, east along STH 1 to CSAH 28 in Pennington County, north along CSAH 28 to CSAH 54 in Marshall County, north along CSAH 54 to CSAH 9 in Roseau County, north along CSAH 9 to STH 11, west along STH 11 to STH 310, and north along STH 310 to the Manitoba border.

Two Goose Zone—That portion of the state lying east of Interstate Highway 35 and south of the Twin Cities Metropolitan Canada Goose Zone.

Five Goose Zone—That portion of the state not included in the Twin Cities Metropolitan Canada Goose Zone, the Northwest Goose Zone, or the Two Goose Zone.

West Zone—That portion of the state encompassed by a line beginning at the junction of State Trunk Highway (STH) 60 and the Iowa border, then north and east along STH 60 to U.S. Highway 71, north along U.S. 71 to Interstate Highway 94, then north and west along I–94 to the North Dakota border.

Tennessee

Middle Tennessee Zone—Those portions of Houston, Humphreys, Montgomery, Perry, and Wayne Counties east of State Highway 13; and Bedford, Cannon, Cheatham, Coffee, Davidson, Dickson, Franklin, Giles, Hickman, Lawrence, Lewis, Lincoln, Macon, Marshall, Maury, Moore, Robertson, Rutherford, Smith, Sumner, Trousdale, Williamson, and Wilson Counties.

East Tennessee Zone—Anderson, Bledsoe, Bradley, Blount, Campbell, Carter, Claiborne, Clay, Cocke, Cumberland, Dekalb, Fentress, Grainger, Greene, Grundy, Hamblen, Hamilton, Hancock, Hawkins, Jackson, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Overton, Pickett, Polk, Putnam, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, Van Buren, Warren, Washington, and White Counties.

Wisconsin

Early-Season Subzone A—That portion of the State encompassed by a line beginning at the Lake Michigan shore in Sheboygan, then west along State Highway 23 to State 67, southerly along State 67 to County Highway E in Sheboygan County, southerly along County E to State 28, south and west along State 28 to U.S. Highway 41, southerly along U.S. 41 to State 33, westerly along State 33 to County Highway U in Washington County, southerly along County U to County N, southeasterly along County N to State 60, westerly along State 60 to County Highway P in Dodge County, southerly along County P to County O, westerly along County O to State 109, south and west along State 109 to State 26, southerly along State 26 to U.S. 12, southerly along U.S. 12 to State 89, southerly along State 89 to U.S. 14, southerly along U.S. 14 to the Illinois border, east along the Illinois border to the Michigan border in Lake Michigan, north along the Michigan border in Lake Michigan to a point directly east of State 23 in Sheboygan, then west along that line to the point of beginning on the Lake Michigan shore in Sheboygan.

Early-Season Subzone B—That portion of the State between Early-Season Subzone A and a line beginning at the intersection of U.S. Highway 141 and the Michigan border near Niagara, then south along U.S. 141 to State Highway 22, west and southwest along State 22 to U.S. 45, south along U.S. 45 to State 22, west and south along State 22 to State 110, south along State 110 to U.S. 10, south along U.S. 10 to State 49, south along State 49 to State 23, west along State 23 to State 73, south along State 73 to State 60, west along State 60 to State 23, south along State 23 to State 11, east along State 11 to State 78, then south along State 78 to the Illinois border.

Central Flyway

Kansas

September Canada Goose Unit—That part of Kansas bounded by a line from the Kansas-Missouri state line west on KS–68 to its junction with KS–33, then north on KS–33 to its junction with US–56, then west on US–56 to its junction with KS–31, then west-northwest on KS–31 to its junction with KS–99, then north on KS–99 to its junction with US–24, then east on US–24 its junction with KS–63, then north on KS–63 to its junction with KS–16, then east on KS–16 to its junction with KS–116, then east on KS–116 to its junction with US–59, then northeast on US–59 to its junction with the Kansas-Missouri line, then south on the Kansas-Missouri line to its junction with KS–68.

North Dakota

Special Early Canada goose Unit—Richland and Sargent Counties.

South Dakota

September Canada Goose Unit—Brookings, Clark, Codington, Day, Deuel, Grant, Hamlin, Kingsbury, Lake, Marshall, McCook, Moody Counties, and Miner County east of SD 25, and that portion of Minnehaha County north and west of a line beginning at the junction of County 130 (Renner Road) and the Minnesota border, then west on County 130 to I–29 and along I–29 to the Lincoln County line.

Pacific Flyway

Idaho

East Zone—Bonneville, Caribou, Fremont and Teton Counties.

Oregon

Northwest Zone—Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Polk, Multnomah, Tillamook, Washington, and Yamhill Counties.

Southwest Zone—Coos, Curry, Douglas, Jackson, Josephine, and Klamath Counties.

East Zone—Baker, Gilliam, Malheur, Morrow, Sherman, Umatilla, Union and Wasco Counties.

Washington

Southwest Zone—Clark, Cowlitz, Pacific, and Wahkiakum Counties.

East Zone—Asotin, Benton, Columbia, Garfield, Klickitat, and Whitman Counties.

Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Farson-Edon Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

Teton Area—Those portions of Teton County described in State regulations.

Bridger Valley Area—The area described as the Bridger Valley Hunt Unit in State regulations.

Ducks

Atlantic Flyway

New York

Lake Champlain Zone: The U.S. portion of Lake Champlain and that area east and north of a line extending along NY 9B from the Canadian border to U.S. 9, south along U.S. 9 to NY 22 south of Keesville; south along NY 22 to the west shore of South Bay, along and around the shoreline of South Bay to NY 22 on the east shore of South Bay; southeast along NY 22 to U.S. 4, northeast along U.S. 4 to the Vermont border.

Long Island Zone: That area consisting of Nassau County, Suffolk County, that area of Westchester County southeast of I–95, and their tidal waters.

Western Zone: That area west of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, and south along I–81 to the Pennsylvania border.

Northeastern Zone: That area north of a line extending from Lake Ontario east along the north shore of the Salmon River to I–81, south along I–81 to NY 49, east along NY 49 to NY 365, east along NY 365 to NY 28, east along NY 28 to NY 29, east along NY 29 to I–87, north along I–87 to U.S. 9 (at Exit 20), north along U.S. 9 to NY 149, east along NY 149 to U.S. 4, north along U.S. 4 to the

Vermont border, exclusive of the Lake Champlain Zone.

Southeastern Zone: The remaining portion of New York.

Mississippi Flyway

Indiana

North Zone: That portion of the State north of a line extending east from the Illinois border along State Road 18 to U.S. Highway 31, north along U.S. 31 to U.S. 24, east along U.S. 24 to Huntington, then southeast along U.S. 224 to the Ohio border.

Ohio River Zone: That portion of the State south of a line extending east from the Illinois border along Interstate Highway 64 to New Albany, east along State Road 62 to State 56, east along State 56 to Vevay, east and north on State 156 along the Ohio River to North Landing, north along State 56 to U.S. Highway 50, then northeast along U.S. 50 to the Ohio border.

South Zone: That portion of the State between the North and Ohio River Zone boundaries.

Iowa

North Zone: That portion of the State north of a line extending east from the Nebraska border along State Highway 175 to State 37, southeast along State 37 to U.S. Highway 59, south along U.S. 59 to Interstate Highway 80, then east along I–80 to the Illinois border.

South Zone: The remainder of Iowa.

Central Flyway

Kansas

High Plains Zone: That portion of the State west of U.S. 283.

Low Plains Early Zone: That portion of the State east of the High Plains Zone and west of a line extending south from the Nebraska border along KS 28 to U.S. 36, east along U.S. 36 to KS 199, south along KS 199 to Republic County Road 563, south along Republic County Road 563 to KS 148, east along KS 148 to Republic County Road 138, south along Republic County Road 138 to Cloud County Road 765, south along Cloud County Road 765 to KS 9, west along KS 9 to U.S. 24, west along U.S 24 to U.S. 281, north along U.S. 281 to U.S. 36, west along U.S. 36 to U.S. 183, south along U.S. 183 to U.S. 24, west along U.S. 24 to KS 18, southeast along KS 18 to U.S. 183, south along U.S. 183 to KS 4, east along KS 4 to I–135, south along I–135 to KS 61, southwest along KS 61 to KS 96, northwest on KS 96 to U.S. 56, west along U.S. 56 to U.S. 281, south along U.S. 281 to U.S. 54, then west along U.S. 54 to U.S. 283.

Low Plains Late Zone: The remainder of Kansas.

New Mexico (Central Flyway Portion)

North Zone: That portion of the State north of I–40 and U.S. 54.

South Zone: The remainder of New Mexico.

Pacific Flyway

California

Northeastern Zone: That portion of the State east and north of a line beginning at the Oregon border; south and west along the Klamath River to the mouth of Shovel Creek; south along Shovel Creek to Forest Service Road 46N10; south and east along FS 46N10 to FS 45N22; west and south along FS 45N22 to U.S. 97 at Grass Lake Summit; south and west along U.S. 97 to I–5 at the town of Weed; south along I–5 to CA 89; east and south along CA 89 to the junction with CA 49; east and north on CA 49 to CA 70; east on CA 70 to U.S. 395; south and east on U.S. 395 to the Nevada border.

Colorado River Zone: Those portions of San Bernardino, Riverside, and Imperial Counties east of a line extending from the Nevada border south along U.S. 95 to Vidal Junction; south on a road known as "Aqueduct Road" in San Bernardino County through the town of Rice to the San Bernardino-Riverside County line; south on a road known in Riverside County as the "Desert Center to Rice Road" to the town of Desert Center; east 31 miles on I–10 to the Wiley Well Road; south on this road to Wiley Well; southeast along the Army-Milpitas Road to the Blythe, Brawley, Davis Lake intersections; south on the Blythe-Brawley paved road to the Ogilby and Tumco Mine Road; south on this road to U.S. 80; east seven miles on U.S. 80 to the Andrade-Algodones Road; south on this paved road to the Mexican border at Algodones, Mexico.

Southern Zone: That portion of southern California (but excluding the Colorado River Zone) south and east of a line extending from the Pacific Ocean east along the Santa Maria River to CA 166 near the City of Santa Maria; east on CA 166 to CA 99; south on CA 99 to the crest of the Tehachapi Mountains at Tejon Pass; east and north along the crest of the Tehachapi Mountains to CA 178 at Walker Pass; east on CA 178 to U.S. 395 at the town of Inyokern; south on U.S. 395 to CA 58; east on CA 58 to I–15; east on I–15 to CA 127; north on CA 127 to the Nevada border.

Southern San Joaquin Valley Temporary Zone: All of Kings and Tulare Counties and that portion of Kern County north of the Southern Zone.

Balance-of-the-State Zone: The remainder of California not included in the Northeastern, Southern, and Colorado River Zones, and the Southern San Joaquin Valley Temporary Zone.

Canada Geese

Michigan

North Zone: The Upper Peninsula.

Middle Zone: That portion of the Lower Peninsula north of a line beginning at the Wisconsin border in Lake Michigan due west of the mouth of Stony Creek in Oceana County; then due east to, and easterly and southerly along the south shore of, Stony Creek to Scenic Drive, easterly and southerly along Scenic Drive to Stony Lake Road, easterly along Stony Lake and Garfield Roads to Michigan Highway 20, east along Michigan 20 to U.S. Highway 10 Business Route (BR) in the city of Midland, east along U.S. 10 BR to U.S. 10, east along U.S. 10 to Interstate Highway 75/U.S. Highway 23, north along I–75/U.S. 23 to the U.S. 23 exit at Standish, east along U.S. 23 to Shore Road in Arenac County, east along Shore Road to the tip of Point Lookout, then on a line directly east 10 miles into Saginaw Bay, and from that point on a line directly northeast to the Canada border.

South Zone: The remainder of Michigan.

Sandhill Cranes

Central Flyway

Colorado

Regular-Season Open Area—The Central Flyway portion of the State except the San Luis Valley (Alamosa, Conejos, Costilla, Hinsdale, Mineral, Rio Grande and Saguache Counties east of the Continental Divide) and North Park (Jackson County).

Kansas

Regular Season Open Area—That portion of the State west of a line beginning at the Oklahoma border, north on I–35 to Wichita, north on I–135 to Salina, and north on U.S. 81 to the Nebraska border.

New Mexico

Regular-Season Open Area—Chaves, Curry, De Baca, Eddy, Lea, Quay, and Roosevelt Counties.

Middle Rio Grande Valley Area—The Central Flyway portion of New Mexico in Socorro and Valencia Counties.

Southwest Zone—Sierra, Luna, and Dona Ana Counties.

Oklahoma

Regular-Season Open Area—That portion of the State west of I–35.

Texas

Regular-Season Open Area—That portion of the State west of a line from the International Toll Bridge at Brownsville along U.S. 77 to Victoria; U.S. 87 to Placedo; Farm Road 616 to Blessing; State 35 to Alvin; State 6 to U.S. 290; U.S. 290 to Austin; I–35 to the Texas-Oklahoma border.

North Dakota

Regular-Season Open Area—That portion of the State west of U.S. 281.

South Dakota

Regular-Season Open Area—That portion of the State west of U.S. 281.

Montana

Regular-Season Open Area—The Central Flyway portion of the State except that area south of I–90 and west of the Bighorn River.

Wyoming

Regular-Season Open Area—Campbell, Converse, Crook, Goshen, Laramie, Niobrara, Platte, and Weston Counties.

Riverton-Boysen Unit—Portions of Fremont County.

Park and Bighorn County Unit—Portions of Park and Bighorn Counties.

Pacific Flyway

Arizona

Special-Season Area—Game Management Units 30A, 30B, 31, and 32.

Montana

Special-Season Area—See State regulations.

Utah

Special-Season Area—Rich, Cache, and Box Elder Counties.

Wyoming

Bear River Area—That portion of Lincoln County described in State regulations.

Salt River Area—That portion of Lincoln County described in State regulations.

Eden-Farson Area—Those portions of Sweetwater and Sublette Counties described in State regulations.

All Migratory Game Birds in Alaska

North Zone—State Game Management Units 11–13 and 17–26.

Gulf Coast Zone—State Game Management Units 5–7, 9, 14–16, and 10—Unimak Island only.

Southeast Zone—State Game Management Units 1–4.

Pribilof and Aleutian Islands Zone—State Game Management Unit 10—except Unimak Island.

Kodiak Zone—State Game Management Unit 8.

All Migratory Birds in the Virgin Islands

Ruth Cay Closure Area—The island of Ruth Cay, just south of St. Croix.

All Migratory Birds in Puerto Rico

Municipality of Culebra Closure Area—All of the municipality of Culebra.

Desecheo Island Closure Area—All of Desecheo Island.

Mona Island Closure Area—All of Mona Island.

El Verde Closure Area—Those areas of the municipalities of Rio Grande and Loiza delineated as follows: (1) All lands between Routes 956 on the west and 186 on the east, from Route 3 on the north to the juncture of Routes 956 and 186 (Km 13.2) in the south; (2) all lands between Routes 186 and 966 from the juncture of 186 and 966 on the north, to the Caribbean National Forest Boundary on the south; (3) all lands lying west of Route 186 for one kilometer from the juncture of Routes 186 and 956 south to Km 6 on Route 186; (4) all lands within Km 14 and Km 6 on the west and the Caribbean National Forest Boundary on the east; and (5) all lands within the Caribbean National Forest Boundary whether private or public.

Cidra Municipality and adjacent areas—All of Cidra Municipality and portions of Aguas, Buenas, Caguas, Cayer, and Comerio Municipalities as encompassed within the following boundary: beginning on Highway 172 as it leaves the municipality of Cidra on the west edge, north to Highway 156, east on Highway 156 to Highway 1, south on Highway 1 to Highway 765, south on Highway 765 to Highway 763, south on Highway 763 to the Rio Guavate, west along Rio Guavate to Highway 1, southwest on Highway 1 to Highway 14, west on Highway 14 to Highway 729, north on Highway 729 to Cidra Municipality boundary to the point of beginning.

[FR Doc. 99–22363 Filed 8–26–99; 8:45 am]

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federal register

Friday
August 27, 1999

Part VI

Department of Labor

Office of the Secretary

29 CFR Part 18

Use of Settlement Judges in Longshore and Related Proceedings Before the Office of Administrative Law Judges; Final Rule

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 18

RIN 1290–AA20

Use of Settlement Judges in Longshore and Related Proceedings Before the Office of Administrative Law Judges

AGENCY: Office of the Secretary, Labor.

ACTION: Final rule.

SUMMARY: Settlement judges have been made available, with certain exceptions, for proceedings before the Office of Administrative Law Judges since mid-August 1993. Cases arising pursuant to the Longshore and Harbor Workers' Compensation Act and related statutes, however, were excluded from the formal settlement judge procedure because of the high rate of settlement already existing in that program. Existing methods of promoting settlements, both before the Office of Workers' Compensation Programs and the Office of Administrative Law Judges, continue to accommodate high rates of resolution of cases without the need for a formal hearing. Experience with the settlement judge procedure, however, indicates that making settlement judges available in cases arising pursuant to the Longshore and Harbor Workers' Compensation Act and related statutes would be appropriate and beneficial where the parties consent to the appointment, and the Chief Administrative Law Judge concludes that such an appointment is a prudent use of resources. The Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges, therefore, is hereby amended to permit the appointment of settlement judges in cases arising out of Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901 *et seq.*, the Defense Base Act, the Outer Continental Shelf Lands Act, the Nonappropriated Fund Instrumentalities Act, and the former District of Columbia Workmen's Compensation Act.

EFFECTIVE DATE: August 27, 1999.

FOR FURTHER INFORMATION CONTACT: John M. Vittone, Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K St, NW., Suite 400–N, Washington, DC 20001, Telephone: (202) 565–5341.

SUPPLEMENTARY INFORMATION: Settlement judges have been made available, with certain exceptions, for proceedings before the Office of Administrative Law Judges since mid-August 1993. See 58 FR 38498 (July 16, 1993). One variety of proceeding in which settlement judge proceedings have not been available is cases arising pursuant to the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 901 *et seq.*, and related statutes. The related statutes include the Longshore Act's direct extensions—the Defense Base Act, the Outer Continental Shelf Lands Act, Nonappropriated Fund Instrumentalities Act—and the former District of Columbia Workmen's Compensation Act, 45 Stat. 600.

The Longshore and directly related workers' compensation cases were excluded from the formal settlement judge procedure because existing techniques for promoting settlements in such cases were already achieving significant rates of settlement in cases pending before the administrative law judges. Success in the use of settlement judges in other case areas, and interest in the procedure arising from the workers' compensation bar, however, indicates that it would be beneficial and appropriate to make the settlement judge procedure available in proceedings arising pursuant to the Longshore Act and the aforementioned related statutes. Accordingly, the following rule would end the exclusion of such cases from the settlement judge provision of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges.

This amendment of the settlement judge rule is not intended to supplant informal methods of dispute resolution long used successfully in Longshore and related cases, such as the informal conference before the Office of Workers' Compensation Programs, or settlement conferences before the presiding administrative law judge. Rather, it is intended to provide an additional method of dispute resolution in cases where the parties are unable to resolve the issues at the OWCP district office level, one or more party has requested a formal hearing, all consent to the appointment of a settlement judge, and the Chief Administrative Law Judge concludes that such an appointment represents a prudent use of resources. Settlements reached before a settlement judge remain subject to review by the presiding administrative law judge in accordance with section 8(i) of the Longshore and Harbor Workers' Compensation Act, 33 U.S.C. 908(i). Moreover, the availability of the settlement judge process does not change existing law regarding the effect of settlements on petitions for Special Fund relief pursuant to section 8(f) of the Longshore Act, 33 U.S.C. 908(f).

Executive Order 12866

This rule has been drafted and reviewed in accordance with section 1(b) of Executive Order 12866, Principles of Regulation. The Department has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning And Review. Accordingly, it does not require an assessment of potential costs and benefits under section 6(a)(3) of that order.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under section 553(b) of the Administrative Procedure Act (APA), the requirements of the Regulatory Flexibility Act (5 U.S.C. 601) pertaining to regulatory flexibility do not apply to this rule. See 5 U.S.C. 601(2).

Paperwork Reduction Act

This final rule is not subject to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501) since it does not contain any new collection of information requirements.

Publication in Final

The Department has determined that these amendments need not be published as a proposed rule, as is generally required by the APA (5 U.S.C. 553), since this rulemaking merely reflects agency organization, procedure, or practice. It is thus exempt from notice and comment by virtue of section 553(b)(A).

Effective Date

This document will become effective upon publication pursuant to 5 U.S.C. 553(d). The undersigned has determined that good cause exists for waiving the customary requirement for delay in the effective date of a final rule for 30 days following its publication. This determination is based upon the fact that the rule is technical and nonsubstantive, and merely reflects agency organization, practice and procedure.

Small Business Regulatory Fairness Act of 1996

This rule is not classified as a "rule" under Chapter 8 of the Small Business Regulatory Fairness Act of 1996, because it is a rule pertaining to agency organization, procedure, or practice that does not substantially affect the rights or obligations of non-agency parties. See 5 U.S.C. 804(3)(C).

List of Subjects in 29 CFR Part 18

Administrative practice and procedure.

Accordingly, part 18 of title 29 of the Code of Federal Regulations is amended as follows:

PART 18—RULES OF PRACTICE AND PROCEDURE FOR ADMINISTRATIVE HEARINGS BEFORE THE OFFICE OF ADMINISTRATIVE LAW JUDGES

1. The authority citation for part 18 continues to read as follows:

Authority: 5 U.S.C. 301; 5 U.S.C. 551–553; 5 U.S.C. 571 note; E.O. 12778; 57 FR 7292.

2. Section 18.9 is amended by revising paragraph (e)(2) to read as follows:

§ 18.9 Consent order or settlement; settlement judge procedure.

* * * * *

(e) * * *

(2) *How initiated.* A settlement judge may be appointed by the Chief Administrative Law judge upon a request by a party or the presiding administrative law judge. The Chief Administrative Law Judge has sole discretion to decide whether to appoint a settlement judge, except that a settlement judge shall not be appointed when—

(i) A party objects to referral of the matter to a settlement judge;

(ii) Such appointment is inconsistent with a statute, executive order, or regulation;

(iii) The proceeding arises pursuant to Title IV of the Federal Mine Safety and Health Act, 30 U.S.C. 901 *et seq.*, also known as the Black Lung Benefits Act.

* * * * *

Signed at Washington, DC, this 20th day of August, 1999.

Alexis M. Herman,

Secretary of Labor.

[FR Doc. 99–22259 Filed 8–26–99; 8:45 am]

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.R. 211/P.L. 106–48
To designate the Federal building and United States courthouse located at 920 West Riverside Avenue in Spokane, Washington, as the "Thomas S. Foley United States Courthouse", and the plaza at the south entrance of such building and courthouse as the "Walter F. Horan Plaza". (Aug. 17, 1999; 113 Stat. 230)

H.R. 1219/P.L. 106–49
Construction Industry Payment Protection Act of 1999 (Aug. 17, 1999; 113 Stat. 231)

H.R. 1568/P.L. 106–50
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H.R. 2465/P.L. 106–52
Military Construction Appropriations Act, 2000 (Aug. 17, 1999; 113 Stat. 259)

S. 507/P.L. 106–53
Water Resources Development Act of 1999. (Aug. 17, 1999; 113 Stat. 269)

S. 606/P.L. 106–54
For the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical, LLC (successor to Kerr-McGee Chemical Corporation), and for other purposes. (Aug. 17, 1999; 113 Stat. 398)

S. 1546/P.L. 106–55
To amend the International Religious Freedom Act of 1998 to provide additional administrative authorities to the United States Commission on International Religious Freedom, and to make technical corrections to that Act, and for other purposes. (Aug. 17, 1999; 113 Stat. 401)

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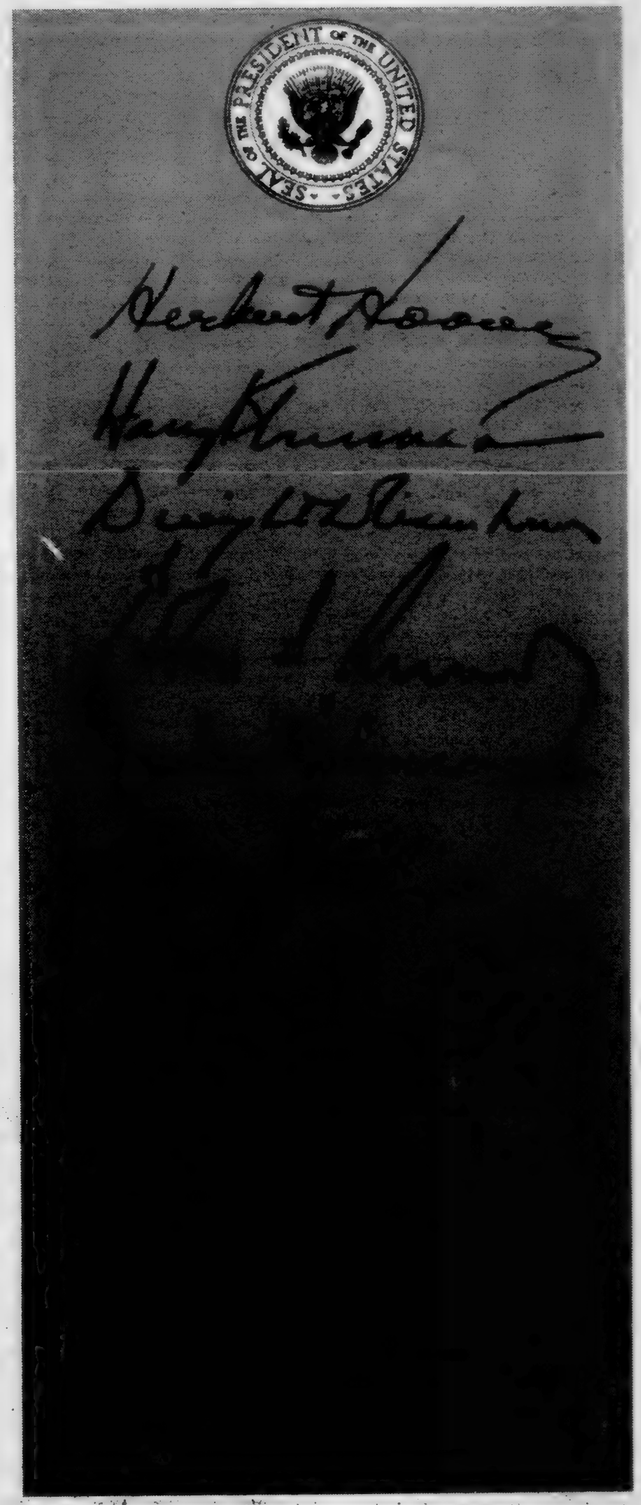

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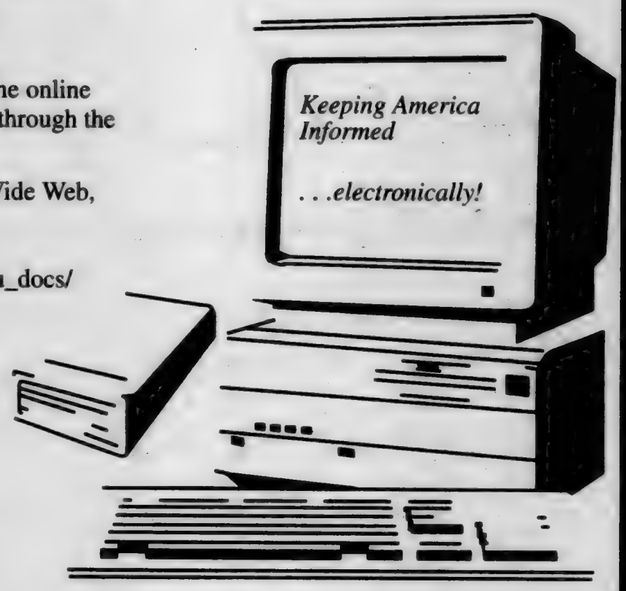

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Title 3—

The President

Proclamation 7216 of August 25, 1999

Minority Enterprise Development Week, 1999

By the President of the United States of America

A Proclamation

Throughout our history, America's minority entrepreneurs have contributed to the strength of our economy and the quality of our national life. In the 18th and 19th centuries, as farmers and fur traders, shipwrights and sea captains, barbers and bankers, they forged better lives for themselves, their families, and their neighbors. Often facing prejudice and discrimination, they nonetheless succeeded in creating businesses that energized their communities and helped to build a dynamic new society.

Today, minority business owners are branching out from predominantly retail and service industries into the fields of manufacturing, transportation, construction, energy, and technology, helping to power the longest peacetime economic expansion in our Nation's history. Producing goods and services that generate new jobs and spur investment, minority business owners have played a vital role in building an economy with nearly 19 million new jobs, wages rising at twice the rate of inflation, and the lowest peacetime unemployment rate since 1957.

All Americans can be proud that we have eliminated many of the obstacles that in the past hindered minority entrepreneurs from contributing the full value of their talents to our society. However, while many minority business owners are enjoying success, many still face barriers that keep them from competing on a level playing field. We must continue to build on the combined efforts of the private sector and government to ensure that minority-owned businesses have access to the capital, customers, and services that will enable them to succeed in high technology and other rapidly growing sectors.

Through my Administration's New Markets Initiative, we are building partnerships between business and government to encourage investments in areas that have not attracted investments in the past: inner cities, rural regions, and Indian reservations. We are striving to ensure that our Nation's economic expansion—which has benefited millions of Americans—will reach people who have been left behind for decades.

We are also working to help minority-owned firms harness the enormous power of the Internet. The Minority Business Development Agency (MBDA) at the Department of Commerce, together with the Small Business Administration (SBA), provide minority-owned businesses with the tools they need to succeed in the Information Age. These efforts range from interactive educational courses on the fundamentals of E-commerce to the creation of Phoenix-Opportunity, an automatic electronic bid-matching system that notifies firms of opportunities through the Internet. Similarly, SBA's Pro-Net system provides contracting officers and small and minority-owned businesses with an electronic gateway to procurement opportunities and information.

During Minority Enterprise Development Week, as we honor the many minority businessmen and women whose energy, spirit, and creativity have strengthened our economy and enriched our country, let us rededicate ourselves to nurturing the dreams and talents of all Americans and to realizing the limitless possibilities of our free enterprise system.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 19 through September 25, 1999, as Minority Enterprise Development Week, and I call on all Americans to join together with minority business entrepreneurs across the country in appropriate observances.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of August, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 99–22645
Filed 8–27–99; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7217 of August 25, 1999

Small Manufacturing Week, 1999

By the President of the United States of America

A Proclamation

America's free enterprise system is continually energized by the skill, vision, and exceptional performance of our Nation's small manufacturers—those who employ fewer than 500 employees. Though small in size, these companies make enormous contributions to our economy and provide our society and the world with high-quality manufactured goods. More important, small manufacturers are a vital source of new jobs— almost 1 million between 1992 and 1996—and provide a livelihood for nearly 12 million Americans.

We live in an age dominated by information and technology, where the global marketplace grows ever more complex and interdependent. As large manufacturers expand their reliance on smaller firms for parts and services, the performance of small manufacturers becomes increasingly important to the competitiveness of America's manufacturing sector.

My Administration, working with the Congress and State governments, has strived to ensure that these small firms have access to the resources, technology, expertise, and training they need to realize their highest potential. By passing two consecutive balanced budgets and signing into law the Taxpayer Relief Act of 1997, we have helped to reduce interest rates, ease the tax burden on small firms, and encourage investment and growth. The Small Business Administration, through its vigorous lending and loan guaranty efforts, has improved access to capital so that small manufacturing firms and other small businesses can modernize, expand, and invest in worker training.

The Manufacturing Extension Partnership (MEP) of the Department of Commerce, which is celebrating its tenth anniversary this year, gives small manufacturers a solid foundation on which to build innovative ideas and products. With a network of more than 70 nonprofit centers, the MEP serves small manufacturers in all 50 States, the District of Columbia, and Puerto Rico, providing access to the newest technology, manufacturing processes, and business practices. The MEP's local centers offer personalized guidance to manufacturers on issues ranging from business to technology solutions. And because these centers are linked together through the Department of Commerce's National Institute of Standards and Technology, even the smallest manufacturing firms can enjoy instant access to the most advanced national resources.

Most important, we are continuing to invest in education and training to give America's working men and women the skills and knowledge they need to succeed in the jobs of the 21st century. The Workforce Investment Act of 1998, which I was pleased to sign into law last year, provides skill grants directly to workers so they can choose the kind of training they want and where they want to obtain it.

As we observe Small Manufacturing Week, let us pay tribute to America's more than 385,000 small manufacturing firms whose commitment to hard work and excellence has helped set our country on a steady course for continued growth and prosperity.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 19 through September 25, 1999, as Small Manufacturing Week, 1999. I invite all Americans to observe this week with appropriate ceremonies, activities, and programs that recognize the achievements of our Nation's small manufacturers.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of August, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF GOVERNMENT ETHICS

5 CFR Parts 2634 and 2636

RINs 3209–AA00 and 3209–AA13

Civil Monetary Penalties Inflation Adjustments for Ethics in Government Act Violations

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule; technical amendments.

SUMMARY: In accordance with the 1990 Federal Civil Penalties Inflation Adjustment Act as amended by the 1996 Debt Collection Improvement Act, these final rule amendments incorporate 10% inflation adjustments for each of the five civil monetary penalties provided in the Ethics in Government Act, as reflected in the executive branchwide financial disclosure and outside employment/activities regulations promulgated by OGE.

EFFECTIVE DATE: September 29, 1999.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Senior Associate General Counsel, Office of Government Ethics; telephone: 202–208–8000; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION:

Background

The Office of Government Ethics is issuing these final rule technical amendments as mandated by the Debt Collection Improvement Act of 1996, section 31001 of Pub. L. 104–134, 110 Stat. 1321, to adjust for inflation the civil monetary penalties (CMP) provided in the Ethics in Government Act of 1978 as amended (the "Ethics Act"), 5 U.S.C. appendix. As explained below, all of the Ethics Act penalties are being raised by 10%, effective September 29, 1999. These adjustments will bring the Ethics Act CMPs into line with inflation since they were last adjusted in the 1989 Ethics Reform Act, thereby promoting compliance with the law.

The Debt Collection Improvement Act revised sections 4 and 5 of, and added a new section 7 to, the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note, to require Federal agencies to regularly adjust certain statutory CMPs for inflation. As amended, that statute requires each Federal agency to make an initial inflation adjustment by regulation published in the **Federal Register** for all applicable CMPs provided by law within its jurisdiction, and to make further adjustments by regulation at least once every four years thereafter for these penalty amounts. The inflation adjustments are to be rounded, in pertinent part, to the nearest multiple of $1,000 for CMPs of greater than $1,000 but less than or equal to $10,000, such as those provided in the Ethics Act, subject to a limitation on any initial increase of no more than 10% of the penalty.

Under the Debt Collection Improvement Act, the increased penalties only apply to violations that occur after the increase takes effect, but no earlier than 180 days after the date of enactment (April 26, 1996) of that law, or October 23, 1996. In the case of the Ethics Act CMPs, the inflation adjustments will not become effective until this rulemaking takes effect on September 29, 1999.

In addition, OGE notes that a separate Department of Justice rulemaking also being published in today's issue of the **Federal Register**, includes, as part of a broader set of CMP inflation adjustments, for that Department's Civil Division (which brings Ethics Act CMP enforcement actions) new regulatory provisions being added in a new part 85 of 28 CFR which provide for the same penalties, as adjusted by the same amount and effective on the same date as are also provided for herein. The Office of Government Ethics and the Justice Department have, therefore, coordinated in issuance of these two rulemakings.

The Office of Government Ethics emphasizes that only Ethics Act violations occurring on or after the effective date of this rulemaking, September 29, 1999, will be subject to the increased civil monetary penalty amounts. For any violations occurring prior to that date, the CMP amounts originally specified in the Ethics Act as amended by the 1989 Ethics Reform Act would apply. The modified OGE regulatory provisions will reflect both the original and adjusted CMP amounts. The Office of Government Ethics will notify departments and agencies by memorandum of this rulemaking action and its effect.

Ethics Act CMPs

There are five civil monetary penalties provided for in the Ethics in Government Act, as amended inter alia by the 1989 Ethics Reform Act. The law provides for a $10,000 maximum civil penalty that can be assessed by an appropriate United States district court, based upon a civil action brought by the Department of Justice, for the following four types of violations: knowing and willful failure to file, report required information on, or falsification of a public financial disclosure report; knowing and willful breach of a qualified trust by trustees and interested parties; misuse of a public report; and violation of outside employment/activities provisions. In the case of outside employment/activities violations, an alternative assessable maximum penalty, if greater, is the amount of compensation received (if any) by an individual for prohibited conduct. That alternative penalty is indirectly affected by the increase in the applicable set dollar CMP in this rulemaking. In addition, a $5,000 maximum civil monetary penalty is specified in the Ethics Act for negligent breach of a qualified trust by trustees and interested parties. See sections 102(f)(6)(C)(i) and (ii), 104(a), 105(c)(2) and 504(a) of the Ethics Act, 5 U.S.C. appendix, sections 102(f)(6)(C)(i) and (ii), 104(a), 105(c)(2) and 504(a). These penalties are reflected in 5 CFR 2634.701(b), 2634.702 (a) and (b), and 2634.703 of OGE's executive branchwide financial disclosure regulation and 5 CFR 2636.104(a) of OGE's executive branchwide covered noncareer employee outside employment/activities regulation.

Late Filing Fee Not a CMP

The Office of Government Ethics notes that it has determined, after consultation with the Department of Justice, that the $200 late filing fee for

public financial disclosure reports that are more than 30 days overdue (see section 105(d) of the Ethics Act, 5 U.S.C. appendix, section 105(d), and 5 CFR 2634.704 of OGE's regulations thereunder) is not a civil monetary penalty as defined under the Federal Civil Penalties Inflation Adjustment Act, as amended. Therefore, that fee is not being adjusted and will remain at its current amount of $200.

Calculation of Inflation Adjustments

The Federal Civil Penalties Inflation Adjustment Act, as amended by the Debt Collection Improvement Act, requires Federal agencies to adjust CMPs within their respective jurisdictions by the cost-of-living adjustment set forth in section 5 of that law. The cost-of-living adjustment is defined as the percentage by which the U.S. Department of Labor's Consumer Price Index (CPI) for the month of June of the calendar year preceding the adjustment exceeds the CPI for the month of June of the calendar year in which the amount of the penalty was last set or adjusted pursuant to law, subject to the rounding formula and initial 10% maximum adjustment noted above. The Ethics Act CMPs were last set by statute in the Ethics Reform Act of 1989 (with the CMP provisions becoming effective on January 1, 1991) and have not previously been administratively adjusted for inflation. The CPI for June 1989 was 371.7, while that for June 1998 was 488.2. Thus, the increase was just over 31% (additionally, OGE notes that the CPI for June 1991 was 407.3, which yields an increase to June 1998 of just under 20%). Therefore, this first statutorily required adjustment of the five Ethics Act CMPs is limited to the maximum 10% increase specified by the Debt Collection Improvement Act.

Applying the 10% increase to the Ethics Act civil monetary penalties, OGE is amending its above-noted regulatory provisions, effective September 29, 1999, to increase each of the four $10,000 maximum penalties to a maximum of $11,000 and the one $5,000 maximum penalty to a maximum of $5,500.

Conclusion

The Office of Government Ethics, in coordination with the Justice Department will also make future inflation adjustments in accordance with the statutory formula under the Federal Civil Penalties Inflation Adjustment Act, as amended. That law provides that civil monetary penalties are to be adjusted for inflation at least once every four years after the initial adjustment.

Finally, OGE is making a couple of minor clarifying revisions in the amended sections of its regulations subject to the CMP adjustments, as set forth below.

Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b), as Director of the Office of Government Ethics, I find that good cause exists for waiving the general notice of proposed rulemaking and public comment procedures as to these technical amendments. The notice and comment procedures are being waived because these amendments, which concern matters of agency organization, procedure and practice, are being adopted in accordance with statutorily mandated inflation adjustment procedures of the 1990 Federal Civil Penalties Inflation Adjustment Act, as amended by the 1996 Debt Collection Improvement Act. It is also in the public interest that the adjusted rates for civil monetary penalties under the Ethics in Government Act become effective as soon as possible in order to maintain their deterrent effect. However, OGE notes that, in order to provide an appropriate period for notification to executive branch departments and agencies and their employees, these technical amendments will only take effect 30 days after the date of publication of this rulemaking in the **Federal Register**, on September 29, 1999.

Executive Order 12866

In promulgating these technical amendments to its regulations, OGE has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These amendments have not been reviewed by the Office of Management and Budget under that Executive order because they are not deemed "significant" thereunder since they are limited to the adoption of statutorily mandated inflation adjustments without interpretation.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this final amendatory regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch employees and their agencies.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this amendatory rulemaking does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects

5 CFR Part 2634

Certificates of divestiture, Conflict of interests, Government employees, Penalties, Reporting and recordkeeping requirements, Trusts and trustees.

5 CFR Part 2636

Conflict of interests, Government employees, Penalties.

Approved: August 6, 1999.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending 5 CFR parts 2634 and 2636 as follows:

PART 2634—[AMENDED]

1. The authority citation for part 2634 is revised to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub. L. 104–134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. Section 2634.101 is revised to read as follows:

§ 2634.101 Authority.

The regulation in this part is issued pursuant to the authority of the Ethics in Government Act of 1978, as amended; 26 U.S.C. 1043; the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996; and Executive Order 12674 of April 12, 1989, as modified by Executive Order 12731 of October 17, 1990.

3. Section 2634.701 is amended by revising the last sentence of paragraph (b) to read as follows:

§ 2634.701 Failure to file or falsifying reports.

* * * * *

(b) * * * The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed $10,000, as provided by section 104(a) of the Act, for any such violation occurring before September 29, 1999, as adjusted effective September 29, 1999 to $11,000 for any such violation occurring on or after that date, in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

* * * * *

4. Section 2634.702 is amended by revising the respective last sentences of paragraphs (a) and (b) to read as follows:

§ 2634.702 Breaches by trust fiduciaries and interested parties.

(a) * * * The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed $10,000, as provided by section 102(f)(6)(C)(i) of the Act, for such violation occurring before September 29, 1999, as adjusted effective September 29, 1999 to $11,000 for any such violation occurring on or after that date, in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

(b) * * * The court in which the action is brought may assess against the individual a civil monetary penalty in any amount, not to exceed $5,000, as provided by section 102(f)(6)(C)(ii) of the Act, for any such violation occurring before September 29, 1999, as adjusted effective September 29, 1999 to $5,500 for any such violation occurring on or after that date, in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

5. Section 2634.703 is amended by revising the second sentence to read as follows:

§ 2634.703 Misuse of public reports.

* * * The court in which the action is brought may assess against the person a civil monetary penalty in any amount, not to exceed $10,000, as provided by section 105(c)(2) of the Act, for any such violation occurring before September 29, 1999, as adjusted effective September 29, 1999 to $11,000 for any such violation occurring on or after that date, in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended.

* * *

PART 2636—[AMENDED]

6. The authority citation for part 2636 is revised to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub. L. 104–134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

7. Section 2636.104 is amended by revising paragraph (a) to read as follows:

§ 2636.104 Civil, disciplinary and other action.

(a) *Civil action.* Except when the employee engages in conduct in good faith reliance upon an advisory opinion issued under § 2636.103 of this subpart, an employee who engages in any conduct in violation of the prohibitions, limitations and restrictions contained in this part may be subject to civil action under 5 U.S.C. app. 504(a) and a civil monetary penalty of not more than $10,000 for any such violation occurring before September 29, 1999, as adjusted effective September 29, 1999 to $11,000 for any such violation occurring on or after that date, in accordance with the inflation adjustment procedures prescribed in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, or the amount of the compensation the individual received for the prohibited conduct, whichever is greater.

* * * * *

[FR Doc. 99–22348 Filed 8–27–99; 8:45 am]

BILLING CODE 6345–01–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 761

RIN 0560–AF70

Small Hog Operation Payment Program

AGENCY: Farm Service Agency, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the regulations for the Small Hog Operations Payment (SHOP) Program. Enactment of the 1999 Emergency Supplemental Appropriations Act has made more funds available for the SHOP program. This will allow the Department to spend up to $175 million (including the $50 million allocated in the original, February 10, 1999, (64 FR 6495) interim rule). Payments will be made to producers in the order in which they were filed, to the extent that funds are available. As amended in this rule, the SHOP program regulations would allow hog operations to receive up to $5,000 in total payments at a total rate of $10 per each eligible slaughter hog and $3.60 for eligible feeder pigs sold during the relevant marketing period. Also, this rule expands the program's eligibility provisions to allow operations to qualify so long as the operation did not sell 2,500 or more hogs during the relevant marketing period. In the original rule, the limit was set at less than 1,000 hogs. SHOP program payments already received by an eligible operation will be deducted from the expanded eligible amount an operation may have under the new rules.

DATES: Effective August 26, 1999. Comments on this rule must be received by September 29, 1999, in order to be assured of consideration. Comments on the information collections in this rule must be received by October 29, 1999, in order to be assured of consideration.

ADDRESSES: Comments should be mailed to Grady Bilberry, Director, Price Support Division (PSD), Farm Service Agency (FSA), United States Department of Agriculture (USDA), STOP 0512, 1400 Independence Avenue, SW, Washington, DC 20250–0512 or Candace Thompson, Branch Chief, PSD, FSA, USDA, at the same address; telephone: (202) 720–7901; e-mail: candy__thompson@wdc.fsa.usda.gov. Comments may be inspected in the Office of the Director, PSD, FSA, USDA, Room 4095 South Building, Washington, DC, between 7:30 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this interim rule is available on the PSD home page at http://www.fsa.usda.gov/dafp/psd/.

FOR FURTHER INFORMATION CONTACT: Candace Thompson, (202) 720–6689.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule is in conformance with Executive Order 12866 and has been determined to be economically significant and therefore has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not

applicable to this rule because the Farm Service Agency is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, an Environmental Impact Statement is not needed.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any legal action may be brought regarding determinations of this rule, the administrative appeal provisions set forth at 7 CFR part 780 must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3014, subpart V, published June 24, 1983 (48 FR 29115).

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act of 1995

In accordance with the Paperwork Reduction Act of 1995, FSA has submitted an emergency information collection request (ICR) to OMB for the approval of the Small Hog Operation Payment Program report as necessary for the proper functioning of the program.

Title: Small Hog Operation Payment Program.

OMB Control Number: 0560-0193.

Type of Request: Reinstatement with change.

Abstract: Hog operations are eligible to receive direct payments provided they make certifications that attest to their eligibility to receive such payments. These operations must certify: (1) The number of hogs marketed; (2) that the hogs were marketed during the last 6 months of 1998; (3) that the hogs were not marketed under a fixed-price or cost-plus contract; and (4) that the operation was still in the business of farming at the time of the SHOP Program request. The information collection will be used by FSA to approve Form FSA–1042 or to determine the program eligibility of the hog operation in accordance with this subpart. FSA considers the information collected essential to prudent eligibility determinations and payment calculations. The eligibility requirements have been established to target the direct payments towards smaller operations.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: Hog Operations.

Estimated Number of Respondents: 55,000.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 13,750 hours.

Proposed topics for comment include: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information collected; or (d) ways to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Grady Bilberry, Director, Price Support Division, Farm Service Agency, United States Department of Agriculture, STOP 0512, 1400 Independence Avenue, SW, Washington, DC 20250–0512, telephone (202) 720–7901.

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Background

On February 10, 1999, regulations were published, by an interim rule (64 FR 6495), to establish the SHOP program.

The SHOP program utilizes funds available under clause (3) of section 32 of the Act of August 24, 1935, as amended (7 U.S.C. 612c). That clause permits Section 32 funds to be used to "[r]eestablish farmers" purchasing power by making payments in connection with the normal production of any agricultural commodity for domestic consumption." However, by statute, normally no more than 25 percent of the available Section 32 funds can be used in a fiscal year for any one agricultural commodity or the products therefrom.

Taking into consideration that limit, $50 million in assistance were made available under the original SHOP program rule. Subsequently, however, the 1999 Emergency Supplemental Appropriations Act (Pub. L. 106–31, enacted May 21, 1999) appropriated $145 million to be added to the Section 32 fund and allowed the Secretary, for fiscal year 1999, to waive the 25 percent limitation. Because of the availability of these additional funds, it has been determined that the SHOP program's eligibility provisions should be expanded and its payment rates increased. Before, a hog operation could, up to February 12, 1999, sign-up to qualify for up to $2,500 in SHOP program payments at $5 per eligible slaughter hog and $1.80 per eligible feeder pig hog, for hogs and feeder pigs marketed in the period from July 1, 1998 through December 31, 1998. However, no payment would be made if the operation marketed 1,000 or more head during that period. Under the new provisions of this interim rule, sign-up has been extended through September 24, 1999, the $2,500 has been increased to $5,000, the $5 payment rate increased to $10, the $1.80 payment rate increased to $3.60, and the maximum allowable marketings raised from less than 1,000 to less than 2,500. Payments already received will be deducted from the new benefit calculations and payments will continue to be subject to the proviso that, if a hog operation is owned by one or more individuals who have a gross revenue of $2.5 million or more in farming and ranching operations in calendar year 1998, the payment to the operation will be reduced by a pro rata amount based upon the ownership interest of such entity or individual. All other eligibility requirements as specified in the original rule also remain unchanged. The new eligibility

requirements are consistent with the purposes of the original program, some of the comments in response to the original rule, and with the available funding. The regulations specify that no more than $175 million in total may be expended under the SHOP program with the claims of old claimants given a first priority. For new claimants, the claims will be handled first-come, first-served, to the extent the $175 million total has not been expended. However, it is expected that the total claims will be considerably below that amount.

Hog operations may apply in person at county FSA offices during regular business hours by the close of business September 24, 1999, and at that time complete the application Form FSA–1042. Hog operations who applied for and received payment under the February 1999 SHOP program interim rule do not need to re-apply. Additional payments will be issued based upon the original application. Hog operations needing an application may request the SHOP program application by mail, telephone, or facsimile from their designated county FSA office, or obtain the application via the Internet. The Internet website is located at www.fsa.usda.gov/dafp/psd/. The completed application, Form FSA–1042, must be received by the hog operations' local county FSA office by the September 24 deadline and can be returned in person, by mail, or by facsimile.

Because of the poor market conditions that have recently faced hog operations as specified in the February rule, particularly that have faced small hog operations, a delay in making this assistance available would be contrary to the public interest and the purpose of the statute authorizing additional assistance. Likewise and for those reasons it has been determined that to the extent that Section 801 of the Small Business Regulatory Enforcement Fairness Act of 1996 would otherwise apply, delaying this rule for Congressional review would be contrary to the public interest. Accordingly, it has been determined that this rule will be made effective immediately upon filing for public inspection at the Office of the Federal Register.

List of Subjects in 7 CFR Part 761

Direct payments to small hog operations, Reporting and recordkeeping requirements.

Accordingly, 7 CFR Part 761 is amended to read as follows:

PART 761—SMALL HOG OPERATION PAYMENT PROGRAM

1. The authority citation for part 761 continues to read as follows:

Authority: 7 U.S.C. 612c.

2. Amend § 761.4 by removing "February 12, 1999" and adding in its place "September 24, 1999".

3. Amend § 761.5 by removing "1,000" and adding in its place "2,500".

* * * * *

4. Revise § 761.6 to read as follows:

§ 761.6 Rate of payment and limitations on funding.

(a) Benefits under this part may be made to hog operations for the quantity of eligible slaughter hogs and feeder pigs actually marketed during the marketing period in accordance with the limitations set forth in this section. Payments will be calculated by operation and shall be made in an amount determined by:

(1) Multiplying $3.60 by the number of eligible feeder pigs marketed during the marketing period; plus

(2) Multiplying $10 by the number of eligible slaughter hogs marketed during the marketing period;

(3) Limiting the payment per hog operation otherwise calculated under paragraphs (a)(1) and (2) of this section to $5,000; and

(4) Reducing the amount due as calculated under paragraphs (a)(1) through (3) of this section by amounts previously paid under this part based on marketings in the same period and, for claims filed after February 12, 1999, by reducing the payment further to zero as necessary to insure subject to paragraph (c), that the total payments under this part do not exceed $175 million.

(b) Producers who filed an application under this part prior to February 12, 1999, do not need to file another application in order to receive benefits at the increased rates announced in the **Federal Register** published on August 30, 1999. A producer who wishes to amend an application filed prior to February 12, 1999, may file an amended application by the deadline for new applications specified in § 761.4 of this part.

(c) To the extent that $175 million is not sufficient to cover all claims under this part, claims filed on or before February 12, 1999, shall be paid in full for the eligible hogs and feeder pigs which were the subject of that claim. For claims filed after that date, the claims will be paid in the manner deemed appropriate by FSA to assure, to the extent practicable, that the claims are paid in the order in which they are filed, until the available funds are expended at which point no additional claims will be paid.

Signed at Washington, DC, on August 29, 1999.

Parks Shackelford,

Acting Administrator, Farm Service Agency.

[FR Doc. 99–22484 Filed 8–26–99; 10:09 am]

BILLING CODE 3410–05–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 270, 274a, and 280

28 CFR Parts 20, 22, 36, 71, 76, and 85

[AG Order No. 2249–99]

RIN 1105–AA48

Civil Monetary Penalties Inflation Adjustment

AGENCY: Office of the Attorney General, Justice.

ACTION: Final rule.

SUMMARY: In accordance with the requirements of section 4 of the Federal Civil Monetary Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, the United States Department of Justice is publishing this regulation adjusting for inflation the civil monetary penalties assessed or enforced by the Department.

DATES: This rule is effective September 29, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Hinchman, Senior Counsel, Office of Policy Development, Department of Justice, Room 4258, Main Building, 950 Pennsylvania Avenue, NW., Washington, DC. 20530,(202) 514–8059.

SUPPLEMENTARY INFORMATION:

Background

Why Is the Justice Department Revising Its Civil Monetary Penalties?

The Federal Civil Monetary Penalties Inflation Adjustment Act of 1990, Pub. L. 101–410 (Adjustment Act), provides for the regular evaluation of civil monetary penalties to ensure that they continue to maintain their deterrent effect and that penalty amounts due the Federal Government are properly accounted for and collected.

On April 26, 1996, President Clinton signed into law the Omnibus Consolidated Rescissions and Appropriations Act of 1996, Pub. L. 104–134. Section 31001 of that Act, also known as the Debt Collection

Improvement Act of 1996 (Improvement Act), amended the Adjustment Act to provide for more effective tools for government wide collection of delinquent debt.

In particular, section 31001(s)(1) of the Improvement Act amended section 4 of the Adjustment Act to require the head of each agency to "by regulation adjust each civil monetary penalty provided by law within the jurisdiction of the Federal agency" and to "publish each such regulation in the **Federal Register**" not later than one hundred eighty days after enactment of the Debt Collection Improvement Act of 1996. Subsection (s)(1) also added a new section 7 to the Adjustment Act providing that any increase in a civil monetary penalty made pursuant to this Act shall apply only to violations that occur after the date the increase takes effect.

Is There a Limit on the First Adjustment of These Penalties?

Subsection (s)(2) of the Improvement Act provides that the first adjustment of a civil monetary penalty made pursuant to the amendment in subsection (s)(1) may not exceed 10 percent of such penalty.

How Often Will These Penalties be Adjusted for Inflation?

The adjustment for inflation required by the Adjustment Act must be done every four years. Pursuant to the Improvement Act, the first adjustment was required by October 23, 1996.

What Penalties Imposed Pursuant to the Immigration Reform and Control Act of 1986 Does This Rule Adjust and What Penalties Were Adjusted by a Recently Published EOIR Rule?

This rule adjusts, among other things, penalties listed in 8 CFR part 274a that the Immigration and Naturalization Service (INS) imposes pursuant to 8 U.S.C. 1324a for various specified unlawful acts pertaining to the employment of unauthorized aliens. On January 12, 1999, the Executive Office for Immigration Review (EOIR) issued a rule adjusting civil monetary penalties within its area. 64 FR 7066. The adjustment of EOIR penalties included penalties at 28 CFR 68.52(d) that are imposed pursuant to 8 U.S.C. 1324b for unfair employment practices, including discrimination. The Office of Special Counsel for Immigration Related Unfair Employment Practices, Civil Rights Division, is authorized to seek these penalties at hearings presided over by EOIR Administrative Law Judges. The adjustment of these two sets of penalties by this rule and by the recent EOIR rule maintains parity among fines imposed for violating the employer sanctions and the anti-discrimination provisions of the Immigration Reform and Control Act of 1986.

This rule fulfills the Attorney General's obligations under the Improvement Act with respect to all civil monetary penalties, except those pertaining to EOIR.

Are There Any Related Regulations of Other Federal Agencies That Readers of This Rule Should Consult?

The Office of Government Ethics (OGE) is publishing elsewhere in this issue of the **Federal Register** a rule adjusting for inflation certain Ethics Act and Ethics Reform Act civil monetary penalties that are codified at 5 CFR part 2634 and 5 CFR part 2636. Because the Department's Civil Division brings Ethics Act enforcement actions, the Department and OGE have coordinated the issuance of these regulations. For the convenience of the reader, the Department is including in this rule adjustments to the same Ethics Act and Ethics Reform Act penalties that OGE is making today, in the same amount and effective on the same day as the adjustments contained in the OGE rule. Further, as OGE notes in the preamble to its rule, the Department and OGE have determined that the $200 late filing fee for public financial disclosure reports that are more than 30 days overdue (see section 105(d) of the Ethics Act, 5 U.S.C. app. 105(d) and 5 CFR 2634.704) is not a civil monetary penalty as defined by the Federal Civil Penalties Inflation Adjustment Act, as amended. Therefore, that fee is not being adjusted.

The Department's litigating components bring suit to collect various civil monetary penalties of other agencies as well. The reader should consult the regulations of those other agencies for any inflation adjustments of their penalties.

Are There Any Penalties That Are Not Being Adjusted?

The Department notes that various civil penalties contained in Title 8, Title 21, and Title 28 are *not* being adjusted by this rule because they have been in effect for a short number of years or because the penalty scheme is new. Penalties not being adjusted by this rule will be adjusted, if appropriate, during the next adjustment required by the Debt Collection Improvement Act.

Administrative Procedure Act, 5 U.S.C. 553

The Department finds that good cause exists under 5 U.S.C. 553(b)(B) and (d)(3) for immediate implementation of this final rule without prior notice and comment. This rule is a nondiscretionary ministerial action to conform the amount of civil penalties assessed or enforced by the Department of Justice to the statutorily mandated ranges. The calculation of these adjustments follows the mathematical formula set forth in section 5 of the Adjustment Act.

Regulatory Flexibility Act

The Attorney General in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. Only those entities which are determined to have violated Federal law and regulations would be affected by the increase in penalties made by this rule pursuant to the statutory requirement.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is not a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12612

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12988—Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Robert Hinchman, Senior Counsel, Office of Policy Development, Department of Justice, Room 4258, Main Building, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530, (202) 514–8059.

List of Subjects

8 CFR Part 270

Administrative practice and procedure, Aliens, Employment, Fraud, Penalties.

8 CFR Part 274a

Administrative practice and procedure, Aircraft, Immigration, Law enforcement, Motor carriers, Motor vehicles, Seizures and forfeitures, Vessels.

8 CFR Part 280

Administrative practice and procedure, Immigration, Penalties.

28 CFR Part 20

Crime, Penalties, Research, and Statistics.

28 CFR Part 22

Crime, Juvenile delinquency, Penalties, Privacy, Research, and Statistics.

28 CFR Part 36

Administrative practice and procedure, Alcoholism, Americans with disabilities, Buildings, Business and industry, Civil rights, Consumer protection, Drug abuse, Handicapped, Historic preservation, Penalties, Reporting and recordkeeping requirements.

28 CFR Part 71

Claims, Fraud, Organization and function (Government agencies), Penalties.

28 CFR Part 76

Drug traffic control, Drug abuse, Authority delegations (Government agencies), Penalties.

28 CFR Part 85

Penalties.

Accordingly, for the reasons set forth in the preamble, chapter I of Title 8 and chapter I of Title 28 of the Code of Federal Regulations are amended as follows:

TITLE 8—ALIENS AND NATIONALITY

PART 270—PENALTIES FOR DOCUMENT FRAUD

1. The authority citation for part 270 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, and 1324c; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

2. Section 270.3 is amended by revising paragraph (b)(1)(ii) to read as follows:

§ 270.3 Penalties.

* * * * *

(b) * * *

(1) * * *

(ii) To pay a civil penalty as follows:

(A) *First offense.* Not less than $250 and not exceeding $2,000 for each fraudulent document or each proscribed activity described in section 274C(a)(1) through (a)(4) of the Act before September 29, 1999, and not less than $275 and not exceeding $2,200, for each fraudulent document or each proscribed activity on or after September 29, 1999.

(B) *Subsequent offenses.* Not less than $2,000 and not more than $5,000 for each fraudulent document or each proscribed activity described in section 274C(a)(1) through (a)(4) of the Act before September 29, 1999, and not less than $2,200 and not exceeding $5,500, for each fraudulent document or each proscribed activity occurring on or after September 29, 1999.

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

3. The authority citation for part 274a is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

4. Section 274a.8 is amended by revising paragraph (b) to read as follows:

§ 274a.8 Prohibition of indemnity bonds.

* * * * *

(b) *Penalty.* Any person or other entity who requires any individual to post a bond or security as stated in this section shall, after notice and opportunity for an administrative hearing in accordance with section 274A(e)(3)(B) of the Act, be subject to a civil monetary penalty of $1,000 for each violation before September 29, 1999, and $1,100 for each violation occurring on or after September 29, 1999, and to an administrative order requiring the return to the individual of any amounts received in violation of this section or, if the individual cannot be located, to the general fund of the Treasury.

5. Section 274a.10 is amended by revising paragraph (b)(1)(ii) and paragraph (b)(2) introductory text to read as follows:

§ 274a.10 Penalties.

* * * * *

(b) * * *

(1) * * *

(ii) To pay a civil fine according to the following schedule:

(A) First offense—not less than $250 and not more than $2,000 for each unauthorized alien with respect to whom the offense occurred before September 29, 1999, and not less than $275 and not exceeding $2,200, for each unauthorized alien with respect to whom the offense occurred occurring on or after September 29, 1999.

(B) Second offense—not less than $2,000 and not more than $5,000 for each unauthorized alien with respect to whom the second offense occurred before September 29, 1999, and not less than $2,200 and not exceeding $5,500, for each unauthorized alien with respect to whom the second offense occurred on or after September 29, 1999; or

(C) More than two offenses—not less than $3,000 and not more than $10,000 for each unauthorized alien with respect to whom the third or subsequent offense occurred before September 29, 1999, and not less than $3,300 and not exceeding $11,000, for each unauthorized alien with respect to whom the third or subsequent offense occurred on or after September 29, 1999; and

* * * * *

(2) A respondent determined by the Service (if a respondent fails to request a hearing) or by an administrative law judge, to have failed to comply with the employment verification requirements as set forth in § 274a.2(b), shall be subject to a civil penalty in an amount of not less than $100 and not more than $1,000 for each individual with respect to whom such violation occurred before September 29, 1999, and not less than $110 and not more than $1,100 for each individual with respect to whom such violation occurred on or after September

29, 1999. In determining the amount of the penalty, consideration shall be given to:

* * * * *

PART 280—IMPOSITION AND COLLECTION OF FINES

6. The authority citation for part 280 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1221, 1223, 1227, 1229, 1253, 1281, 1283, 1284, 1285, 1286, 1322, 1323, and 1330; 66 Stat. 173, 195, 197, 201, 203, 212, 219, 221–223, 226, 227, 230; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

7. Section 280.53 is added to read as follows:

§ 280.53 Civil monetary penalties inflation adjustment.

(a) *In general.* In accordance with the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101–410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104–34, 110 Stat. 1321, the civil monetary penalties provided by law within the jurisdiction of the Service and listed in paragraph (c) of this section are adjusted as set forth in this section, effective for violations occurring on or after September 29, 1999.

(b) *Calculation of adjustment.* (1) The inflation adjustments described in paragraph (c) of this section were determined by increasing the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, for each civil monetary penalty assessed or enforced by the Service by the cost-of-living adjustment as that term is defined by the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101–410. Any increase so determined was rounded to the nearest—

(i) Multiples of $10 in the case of penalties less than or equal to $100;

(ii) Multiples of $100 in the case of penalties greater than $100 but less than or equal to $1,000;

(iii) Multiples of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000;

(iv) Multiples of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000;

(v) Multiples of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and

(vi) Multiples of $25,000 in the case of penalties greater than $200,000.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section, the initial adjustment for each penalty is capped at 10%.

(c) *Adjustment to penalties.* The civil monetary penalties provided by law within the jurisdiction of the Service, as set forth in this paragraph (c)(1) through (9), are adjusted in accordance with the inflation adjustment procedures prescribed in section 5 of the Federal Civil Monetary Penalties Inflation Adjustment Act of 1990, Pub. L. 101–410, effective on or after the September 29, 1999 as follows:

(1) Section 231(d) of the Act, Lists of Aliens and Citizen Passengers Arriving or Departing; Record of Resident Aliens and Citizens Leaving Permanently for Foreign Country: from $300 to $330.

(2) Section 234 of the Act, Designation of Ports of Entry for Aliens Arriving by Civil Aircraft: from $2,000 to $2,200.

(3) Section 251(d) of the Act, List of Alien Crewmen; Reports of Illegal Landings: from $200 to $220 for each alien not reported in accordance with § 251; and from $5,000 to $5,500 for use of alien crewman for longshore work in violation of section 251(d).

(4) Section 254(a) of the Act, Control of Alien Crewman: from $500 minimum/$3,000 maximum to $550 minimum/$3,300 maximum.

(5) Section 255 of the Act, Employment on Passenger Vessels of Aliens Afflicted with Certain Disabilities: from $1,000 to $1,100.

(6) Section 256 of the Act, Discharge of Alien Crewman: from $1,500 minimum/$3,000 maximum to $1,500 minimum/$3,300 maximum.

(7) Section 257 of the Act, Bringing Alien Crewmen Into United States with Intent to Evade Immigration Laws: from a $10,000 maximum to a $11,000 maximum.

(8) Section 271(a) of the Act, Prevention of Unauthorized Landing of Aliens: from $3,000 to $3,300.

(9) Section 272(a) of the Act, Bringing in Aliens Subject to Exclusion on a Health-Related Ground: from $3,000 to $3,300.

(10) Section 273(b) of the Act, Unlawful Bringing of Aliens Into United States: from $3,000 to $3,300.

(d) *Identification of sections requiring no adjustment to penalties.* The civil monetary penalties provided by law within the jurisdiction of the Service, as set forth below in paragraphs (d)(1) through (7) of this section require no adjustment:

(1) Section 240B(d) of the Act, Voluntary Departure.

(2) Section 243(c)(1)(A) and (B) of the Act, Penalties Related to Removal.

(3) Section 274C(a)(5) and (a)(6) of the Act, Penalties for Document Fraud.

(4) Section 274D of the Act, Penalties for Failure to Depart.

(5) Section 275(b) of the Act, Entry of Alien at Improper Time or Place.

TITLE 28—JUDICIAL ADMINISTRATION

PART 20—CRIMINAL JUSTICE INFORMATION SYSTEMS

8. The authority citation for part 20 is revised to read as follows:

Authority: 28 U.S.C. 534; Pub. L. 92–544, 86 Stat. 1115; 42 U.S.C. 3711, *et seq.*; Pub. L. 99–169, 99 Stat. 1002, 1008–1011, as amended by Pub. L. 99–569, 100 Stat. 3190, 3196; Pub. L. 101-410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

9. Section 20.25 is amended by revising the first sentence to read as follows:

§ 20.25 Penalties.

Any agency or individual violating subpart B of these regulations shall be subject to a civil penalty not to exceed $10,000 for a violation occurring before September 29, 1999, and not to exceed $11,000 for a violation occurring on after September 29, 1999. * * *

PART 22—CONFIDENTIALITY OF IDENTIFIABLE RESEARCH AND STATISTICAL INFORMATION:

10. The authority citation for part 22 is revised to read as follows:

Authority: Secs. 801(a), 812(a), Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, *et seq.*, as amended (Pub. L. 90–351, as amended by Pub. L. 93–83, Pub. L. 93–415, Pub. L. 94–430, Pub. L. 94–503, Pub. L. 95–115, Pub. L. 96–157, and Pub. L. 98–473); secs. 262(b), 262(d), Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, *et seq.*, as amended (Pub. L. 93–415, as amended by Pub. L. 94–503, Pub. L. 95–115, Pub. L. 99–509, and Pub. L. 98–473); and secs. 1407(a) and 1407(d) of the Victims of Crime Act of 1984, 42 U.S.C. 10601, *et seq.*, Pub. L. 98–473; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

11. Section 22.29 is revised to read as follows:

§ 22.29 Sanctions.

Where BJA, OJJDP, BJS, NIJ, or OJP believes that a violation of section 812(a) of the Act or section 1407(d) of the Victims of Crime Act, these regulations, or any grant or contract conditions entered into thereunder has occurred, it may initiate administrative actions leading to termination of a grant or contract, commence appropriate personnel and/or other procedures in cases involving Federal employees, and/or initiate appropriate legal actions leading to imposition of a civil penalty not to exceed $10,000 for a violation occurring before September 29, 1999, and not to exceed $11,000 for a violation occurring on or after September 29, 1999 against any person responsible for such violations.

PART 36—NONDISCRIMINATION ON THE BASIS OF DISABILITY BY PUBLIC ACCOMMODATIONS AND IN COMMERCIAL FACILITIES

12. The authority citation for part 36 is revised to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 12188(b); Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

13. Section 36.504 is amended by revising paragraph (a)(3) (i) and (ii) to read as follows:

§ 36.504 Relief.

(a) * * *

(3) * * *

(i) Not exceeding $50,000 for a first violation occurring before September 29, 1999, and not exceeding $55,000 for a first violation occurring on or after September 29, 1999; and

(ii) Not exceeding $100,000 for any subsequent violation occurring before September 29, 1999, and not exceeding $110,000 for any subsequent violation occurring on or after September 29, 1999.

* * * * *

PART 71—IMPLEMENTATION OF THE PROVISIONS OF THE PROGRAM FRAUD CIVIL REMEDIES ACT OF 1986

14. The authority citation for part 71 is revised to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 31 U.S.C. 3801–3812; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

15. In § 71.3, the concluding text of paragraphs (a) and (f) are removed, and the introductory text of paragraphs (a) and (f) are revised to read as follows:

§ 71.3 Basis for civil penalties and assessments.

(a) Any person shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each claim listed in paragraphs (a)(1) through (a)(4) of this section made before September 29, 1999, and not more than $5,500 for each such claim made on or after September 29, 1999, if that person makes a claim that the person knows or has reason to know:

* * * * *

(f) Any person shall be subject, in addition to any other remedy that may be prescribed by law, to a civil penalty of not more than $5,000 for each statement listed in paragraphs (f)(1) and (f)(2) of this section made before September 29, 1999, and not more than $5,500 for each such statement made on or after September 29, 1999, if that person makes a written statement that:

* * * * *

PART 76—RULES OF PROCEDURE FOR ASSESSMENT OF CIVIL PENALTIES FOR POSSESSION OF CERTAIN CONTROLLED SUBSTANCES

16–17. The authority citation for part 76 is revised to read as follows:

Authority: 5 U.S.C. 301; 21 U.S.C. 844a, 875, 876; 28 U.S.C. 509, 510,; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

18. Section 76.3 is amended by revising paragraph (a) to read as follows:

§ 76.3 Basis for civil penalty.

(a) Any individual who knowingly possesses a controlled substance that is listed in § 76.2(h) in violation of 21 U.S.C. 844a shall be liable to the United States for a civil penalty in an amount of not to exceed $10,000 for each such violation occurring before September 29, 1999, and not to exceed $11,000 for each such violation occurring on or after September 29, 1999.

* * * * *

19. Part 85 is added to read as follows:

PART 85—CIVIL MONETARY PENALTIES INFLATION ADJUSTMENT

Sec.

85.1 In general.

85.2 Calculation of adjustment.

85.3 Adjustments to penalties.

Authority: 5 U.S.C. 301, 28 U.S.C. 503; Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321.

§ 85.1 In general.

(a) In accordance with the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 104–410, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104–134, 110 Stat. 1321, the civil monetary penalties provided by law within the jurisdiction of the Department of Justice and listed in section 85.3 are adjusted as set forth in this part, effective for violations occurring on or after September 29, 1999.

(b) Reference should be made to regulations of the Immigration and Naturalization Service in title 8 of the Code of Federal Regulations for the adjustment of civil monetary penalties pertaining to immigration matters. In addition, adjustments to civil penalties relating to unauthorized employment of aliens, immigration related unfair employment practices, and civil document fraud are addressed in 28 CFR 68.52.

§ 85.2 Calculation of adjustment.

(a) The inflation adjustments described in § 85.3 were determined by increasing the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, for each civil monetary penalty assessed or enforced by the Department of Justice by the cost-of-living adjustment as that term is defined by the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101–410. Any increase so determined was rounded to the nearest—

(1) Multiples of $10 in the case of penalties less than or equal to $100;

(2) Multiples of $100 in the case of penalties greater than $100 but less than or equal to $1,000;

(3) Multiples of $1000 in the case of penalties greater than $1000 but less than or equal to $10,000;

(4) Multiples of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000;

(5) Multiples of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and

(6) Multiples of $25,000 in the case of penalties greater than $200,000.

(b) Notwithstanding the provisions of paragraph (a) of this section, the initial adjustment for each penalty is capped at 10%.

§ 85.3 Adjustments to penalties.

The civil monetary penalties provided by law within the jurisdiction of the respective components of the Department, as set forth in paragraphs (a) through (d) of this section, are adjusted in accordance with the inflation adjustment procedures prescribed in section 5 of the Federal Civil Monetary Penalties Inflation Adjustment Act of 1990, Pub. L. 101–410, effective on or after September 29, 1999, as follows:

(a) *Civil Division.* (1) 5 U.S.C. App. 4 102(f)(6)(C)(i), Ethics in Government Act of 1978, knowing and willful disclosure, solicitation, or receipt of information with respect to blind trusts: from $10,000 to $11,000.

(2) 5 U.S.C. App. 4 102(f)(6)(C)(ii), Ethics in Government Act of 1978, negligent disclosure, solicitation, or receipt of information with respect to blind trusts: from $5,000 to $5,500.

(3) 5 U.S.C. App. 4 104(a), Ethics in Government Act of 1978, falsification or failure to file required reports: from $10,000 to $11,000.

(4) 5 U.S.C. App. 4 105(c)(2), Ethics in Government Act of 1978, unlawful acquisition or use of public reports: from $10,000 to $11,000.

(5) 5 U.S.C. App. 4 504(a), Ethics Reform Act of 1989, violations of

limitations on outside earned income and employment: from $10,000 to $11,000.

(6) 12 U.S.C. 1833a(b)(1), Financial Institutions Reform, Recovery, and Enforcement Act of 1989, violation: from $1,000,000 to $1,100,000.

(7) 12 U.S.C. 1833a(b)(2), Financial Institutions Reform, Recovery, and Enforcement Act of 1989, continuing violations (per day): minimum from $1,000,000 to $1,100,000; maximum from $5,000,000 to $5,500,000.

(8) 22 U.S.C. 2399b(a)(3)(A), Foreign Assistance Act of 1961, fraudulent claim for assistance: from $2,000 to $2,200.

(9) 31 U.S.C. 3729(a), False Claims Act, violations: minimum from $5,000 to $5,500; maximum from $10,000 to $11,000.

(10) 31 U.S.C. 3802(a)(1), Program Fraud Civil Remedies Act, violation involving false claim: from $5,000 to $5,500.

(11) 31 U.S.C. 3802(a)(2), Program Fraud Civil Remedies Act, violation involving false statement: from $5,000 to $5,500.

(12) 40 U.S.C. 489(b)(1), Federal Property and Administrative Services Act of 1949, violation involving surplus government property: from $2,000 to $2,200.

(13) 41 U.S.C. 55(a)(1)(B), Anti-Kickback Act of 1986, violation involving kickbacks: from $10,000 to $11,000.

(b) *Civil Rights Division.* (1) 18 U.S.C. 248(c)(2)(B), Freedom of Access to Clinic Entrances Act of 1994: nonviolent physical obstruction (first order) from $10,000 to $11,000; (subsequent order) unchanged at $15,000.

(2) 18 U.S.C. 248(c)(2)(B), Freedom of Access to Clinic Entrances Act of 1994: other violations (first order) unchanged at $15,000; (subsequent order) from $25,000 to $27,500.

(3) 42 U.S.C. 3614(d)(1)(C), Fair Housing Act of 1968, as amended in 1988: pattern or practice violation (first order) from $50,000 to $55,000; (subsequent order) from $100,000 to $110,000.

(c) *Criminal Division.* 18 U.S.C. 216(b), Ethics Reform Act of 1989, violation: from $50,000 to $55,000.

(d) *Drug Enforcement Administration.* 21 U.S.C. 961(1), Controlled Substances Import Export Act, transshipment and in-transit shipment of controlled substances: from $25,000 to $27,500.

Dated: August 12, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–22347 Filed 8–27–99; 8:45 am]

BILLING CODE 4410–19–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 734, 736, 742, 743, 748, 750 and 774

[Docket No. 990811216–9216–01]

RIN 0694–AB81

Editorial Clarifications and Revisions to the Export Administration Regulations

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations (EAR) by making certain editorial revisions and clarifications to simplify portions of the EAR and correct typographical errors.

DATES: This rule is effective August 30, 1999.

FOR FURTHER INFORMATION CONTACT: Frank J. Ruggiero, Office of Exporter Services, Bureau of Export Administration, Telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION: This rule makes the following corrections and clarifications:

1. In paragraph 734.5(a) (Activities of U.S. and foreign persons subject to the EAR), the term "nuclear explosive devices" is added.

2. In paragraph 736.2 (b)(3)(ii)(A)(*1*) (General Prohibition Three), a citation is given to clarify when written assurance from an ultimate consignee is needed to export the direct product of technology or software.

3. Paragraph (c)(6)(ii)(D) of Supplement No. 2 to Part 742 (Anti-Terrorism Controls; Iran, Syria and Sudan Contract Sanctity Dates and Related Topics), is corrected by replacing the phrase "9A994" with "9A991.d" to conform with the Commerce Control List numbering changes made to implement the Wassenaar Arrangement.

4. The heading of paragraph (c)(37) of Supplement No. 2 to Part 742 (Anti-Terrorism Controls; Iran, Syria and Sudan Contract Sanctity Dates and Related Topics), is corrected by replacing the phrase "ECCN 2B992" with "ECCN 2B996" to conform with the Commerce Control List numbering changes made to implement the Wassenaar Arrangement.

5. In paragraph 743.1(c)(1)(v)(Wassenaar Arrangement), a grammatical correction is made.

6. In the first sentence of paragraph (g)(1) of Supplement No. 2 to Part 748 (Unique License Application Requirements), the citation "§ 744.4" is deleted.

7. Supplement No. 4 to Part 748 (Authorities Administering Import Certificate/Delivery Verification (IC/DV) and End-Use Certificate Systems in Foreign Countries), the office title, address, phone and fax number of Australia and Belgium are revised.

8. Paragraph 750.7(i) (Records) is redesignated as 750.7(j), and new language is added to paragraph 750.7(i) which clarifies that existing license conditions are terminated when License Exceptions become available or if a product can be exported or reexported without a license.

9. In Category 0 to part 774 (Nuclear Materials, Facilities, and Equipment (And Miscellaneous Items)), the first Reason for Control for ECCN 0A984 is corrected to include shotguns with a barrel length equal to 18 inches.

10. In Supplement No. 2 to part 774 (General Technology and Software Notes), the phrase "License Exception OTS" in the third paragraph of Note No. 1 is corrected to read "License Exception TSU."

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and to the extent permitted by law, the provisions of the EAA, as amended, in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527) August 13, 1997 (62 FR 43629), August 13, 1998 (63 FR 44121), and August 10, 1999 (64 FR 44101).

Rulemaking Requirements

1. This final rule has been determined to be not significant for the purposes of Executive Order 12866.

2. Not withstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collection has been approved by the Office of Management and Budget under control numbers 0694–0088, 0694–0023, and 0694–0106. There are neither additions nor subtractions to these collections due to this rule.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act requiring notice of proposed Rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed Rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed Rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Frank J. Ruggiero, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 734

Administrative practice and procedure, Exports, Foreign trade, Inventions and patents, Research, Science and technology.

15 CFR Part 736

Exports, Foreign trade.

15 CFR Part 742

Exports, Foreign trade, Terrorism.

15 CFR Parts 743, 748, and 750

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, parts 734, 736, 742, 743, 748, 750 and 774 of the Export Administration Regulations (15 CFR Parts 730–774) are amended as follows:

PART 734—[AMENDED]

1. The authority citation for 15 CFR Part 734 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of November 12, 1998, 63 FR 63589, 3 CFR, 1998 Comp., p. 305; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

2. Section 734.5 is amended by revising the phrase "proliferation of chemical or biological weapons or of missile technology as described in § 744.6 of the EAR and" in paragraph (a) to read "proliferation of nuclear explosive devices, chemical or biological weapons, missile technology as described in § 744.6 of the EAR, and".

PART 736—[AMENDED]

3. The authority citation for 15 CFR Parts 736 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

4. Section 736.2 is amended by revising paragraph (b)(3)(ii)(A)(*1*), to read as follows:

§ 736.2 General prohibitions and determination of applicability.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(A) * * *

(*1*) They are the direct product of technology or software that requires a written assurance as a supporting document for a license, as defined in paragraph (o)(3)(i) of Supplement No. 2 to part 748 of the EAR, or as a precondition for the use of License Exception TSR at § 740.6 of the EAR, and

* * * * *

PART 742—[AMENDED]

5. The authority citation for 15 CFR Part 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of November 12, 1998, 63 FR 63589, 3 CFR, 1998 Comp., p. 305; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

6. Supplement No. 2 to part 742 is amended by revising paragraph (c)(6)(ii)(D), to read as follows:

Supplement No. 2 to Part 742—Anti-Terrorism Controls; Iran, Syria, and Sudan Contract Sanctity Dates and Related Policies

* * * * *

(c) * * *

(6) * * *

(ii) * * *

(D) Contract sanctity dates for helicopter or aircraft parts and components controlled by 9A991.d: August 28, 1991.

* * * * *

7. Supplement No. 2 to part 742 (Anti-Terrorism Controls; Iran, Syria, and Sudan Contract Sanctity Dates and Related Policies), is amended by revising the phrase "*Manual dimensional inspection machines described in ECCN 2B992*" in the heading of paragraph (c)(37) to read "*Manual dimensional inspection machines described in ECCN 2B996*".

PART 743—[AMENDED]

8. The authority citation for 15 CFR part 743 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq*; 50 U.S.C. 1701 *et seq*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

9. Section 743.1 is amended by revising paragraph (c)(1)(v), to read as follows:

§ 743.1 Wassenaar Arrangement.

* * * * *

(c) * * *

(1) * * *

(v) *Category 5:* 5A001.b.8, 5B001 (items specially designed for 5A001.b.8), 5D001.a and .b, and 5E001.a;

* * * * *

PART 748—[AMENDED]

10. The authority citation for 15 CFR Part 748 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

11. Supplement No. 2 to part 748 (Unique License Application Requirements), is amended by revising the phrase "§ 742.3 or § 744.4 of the EAR," in paragraph (g)(1) introductory text to read "§ 742.3 of the EAR,".

12. Supplement No. 4 to part 748 is amended by revising the entry for "Australia" and "Belgium" to read as follows:

Supplement No. 4 to Part 748—Authorities Administering Import Certificate/Delivery Verification (IC/DV) and End Use Certificate Systems in Foreign Countries

Country	IC/DV authorities	System administered
Australia	Director, Strategic Trade Policy and Operations, Industry & Procurement Infrastructure Division, Department of Defence, Campbell Park 4–1–53, Canberra ACT 2600 Phone: +61 (0)2 6266 3717, Fax: +61 (0)2 6266 2997.	IC/DV.
Belgium	Ministere Des Affaires Economiques, Administration Des Relations Economiques Rue General Leman, 60 1040 Bruxelles Phone: 02/206.58.16, Fax: 02/230.83.22.	IC/DV.

PART 750—[AMENDED]

13. The authority citation for 15 CFR Part 750 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12981, 60 FR 62980, 3 CFR, 1997 Comp., p. 60; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

14. Section 750.7 is amended by:

a. redesignating paragraph (i) as paragraph (j), and

b. adding a new paragraph (i) to read as follows:

§ 750.7 Issuance of licenses.

* * * * *

(i) *Terminating license conditions.* Exporters or reexporters who have shipped under licenses with conditions that would not apply to an export under a License Exception or if no license was required, and foreign consignees who have agreed to such conditions, are no longer bound by these conditions when the licensed items become eligible for a License Exception or can be exported or reexported without a license. Items that become eligible for a License Exception are subject to the terms and conditions of the applicable License Exception and to the restrictions in § 740.2 of the EAR. Items that become eligible for export without a license remain subject to the EAR and any export, reexport, or disposition of such items may only be made in accordance with the requirements of the EAR. Termination of license conditions does not relieve an exporter or reexporter of its responsibility for violations that occurred prior to the availability of a License Exception or prior to the removal of license requirements.

* * * * *

PART 774—[AMENDED]

15. The authority citation for 15 CFR Part 774 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420, 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 3201 *et seq.*, 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a, 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

16. In Supplement No. 1 to part 774, Category 0—Nuclear Materials, Facilities, and Equipment [And Miscellaneous Items] is amended by revising ECCN 0A984 to read as follows:

Supplement No. 1 to—

PART 774—THE COMMERCE CONTROL LIST

* * * * *

0A984 Shotguns, barrel length 18 inches (45.72 cm) inches or over; buckshot shotgun shells; except equipment used exclusively to treat or tranquilize animals, and except arms designed solely for signal, flare, or saluting use; and parts, n.e.s.

License Requirements

Reason for Control: CC, UN.

Control(s)	Country Chart
CC applies to shotguns with a barrel length greater than or equal to 18 in. (45.72 cm), but less than 24 in. (60.96 cm) or buckshot shotgun shells controlled by this entry, regardless of end-user.	CC Column 1.
CC applies to shotguns with a barrel length greater than or equal to 24 in. (60.96 cm), regardless of end-user	CC Column 2.
CC applies to shotguns with a barrel length greater than or equal to 24 in. (60.96 cm) if for sale or resale to police or law enforcement.	CC Column 3.
UN applies to entire entry	Rwanda; Federal Republic of Yugoslavia (Serbia and Montenegro).

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: $ value.

Related Controls: This entry does not control shotguns with a barrel length of less than 18 inches (45.72 cm). (See 22 CFR part 121.) These items are subject to the export licensing authority of the Department of State, Office of Defense Trade Controls.

Related Definitions: N/A.

Items: The list of items controlled is contained in the ECCN heading.

* * * * *

17. Supplement No. 2 to part 774 is amended by revising the phrase "License Exception OTS" in paragraph 1. General Technology Note to read "License Exception TSU".

Dated: August 19, 1999.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 99–22154 Filed 8–27–99; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 381

[Docket No. RM99–11–000]

Annual Updates of Filing Fees

August 24, 1999.

AGENCY: Federal Energy Regulatory Commission DOE.

ACTION: Final rule; correction.

SUMMARY: The Federal Energy Regulatory Commission published in the **Federal Register** of August 17, 1999, a document updating the Commission's filing fees. The filing fee for applications for exempt wholesale generator status in § 381.801 of the Commission's regulations was incorrectly listed. This document corrects the filing fee.

EFFECTIVE DATE: Effective on August 30, 1999.

FOR FURTHER INFORMATION CONTACT: Troy Cole, Office of Finance, Accounting and Operations, Federal Energy Regulatory Commission, 888 First Street, NE., Room 42–80, Washington, DC 20426, 202–219–2970.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE, Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission. CIPS can be accessed via Internet through FERC's Home Page (http://www.ferc.fed.us) using the CIPS link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII, WordPerfect 8.0 format. User assistance is available at 202–208–2222 or by E-mail to CipsMaster@ferc.fed.us.

This document is also available through the Commission's Records and information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed, RIMS is available in the public Reference Room or remotely via Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to RimsMaster@ferc.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc., is located in the Public Reference Room at 888 First Street, NE, Washington, DC 20426.

Correction

The filing fee for applications for exempt wholesale generator status in § 381.801 of the Commission's regulations was incorrectly listed in the final rule updating filing fees issued on August 11, 1999. (64 FR 44,652 (Aug. 17, 1999)). The correct filing fee is $1,530.

§ 381.801 [Corrected]

On page 44,653, in the third column, correct amendment 8 to § 381.801 by correcting "$ 1,460" to read "$ 1,530."

Thomas R. Herlihy,

Executive Director and Chief Financial Officer.

[FR Doc. 99–22377 Filed 8–27–99; 8:45 am]

BILLING CODE 4910–60–P §

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 89F–0338]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of fumaric acid grafted onto certain olefin polymers, and maleic anhydride grafted onto ethylene-vinyl acetate copolymers for use in contact with food. This action is in response to a petition filed by E. I du Pont de Nemours and Co.

DATES: This regulation is effective August 30, 1999; submit written objections and requests for a hearing September 29, 1999. The Director of the Office of the **Federal Register** approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of certain publications in § 177.1350 (b)(2), effective August 30, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 31, 1989 (54 FR 36053), FDA announced that a food additive petition (FAP 9B4163) had been filed by E. I. du Pont de Nemours and Co., 1007 Market St., Wilmington, DE 19898 (presently, c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001). The petition proposed to amend the food additive regulations in § 177.1350 *Ethylene-vinyl acetate copolymers* (21 CFR 177.1350) and § 177.1520 *Olefin polymers* (21 CFR 177.1520) to provide for the safe use of fumaric acid and maleic anhydride grafted onto certain olefin polymers and maleic anhydride grafted onto ethylene-vinyl acetate copolymers for use in contact with food. In a subsequent submission, the petitioner withdrew its request for the proposed use of maleic anhydride grafted onto olefin polymers. In this final rule the agency is, therefore, providing for the use of only fumaric acid grafted onto olefin polymers.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additives is safe, that the additives will achieve their intended technical effects, and therefore, that the regulations in §§ 177.1350 and 177.1520 should be amended as set forth in this document.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed previously. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has determined under 21 CFR 25.31(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Any person who will be adversely affected by this regulation may at any time on or before September 29, 1999 file with the Dockets Management Branch (address above) written objection thereto. Each objection shall

be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objection received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 177.1350 is amended by redesignating paragraph (a) introductory text and paragraphs (a)(1) through (a)(6) as paragraphs (a)(1) introductory text and (a)(1)(i) through (a)(1)(vi), respectively, and by redesignating paragraph (b) as paragraph (b)(1), and by adding paragraphs (a)(2) and (b)(2) to read as follows:

§ 177.1350 Ethylene-vinyl acetate copolymers.

* * * * *

(a)(1) * * *

(2) Maleic anhydride-grafted ethylene-vinyl acetate copolymers (CAS Reg. No. 28064–24–6) consist of basic resins produced by the catalytic copolymerization of ethylene and vinyl acetate, followed by reaction with maleic anhydride. Such polymers shall contain not more than 11 percent of polymer units derived from vinyl acetate by weight of total polymer prior to reaction with maleic anhydride, and not more than 2 percent of grafted maleic anhydride by weight of the finished polymer. Optional adjuvant substances that may be added to the copolymers include substances generally recognized as safe in food and food packaging, substances the use of which is permitted under applicable regulations in parts 170 through 189 of this chapter, and substances identified in § 175.300(b)(3)(xxv), (xxvii), (xxxiii), and (xxx) of this chapter and colorants for polymers used in accordance with the provisions of § 178.3297 of this chapter.

(b)(1) * * *

(2) Maleic anhydride grafted ethylene-vinyl acetate copolymers shall have a melt flow index not to exceed 2.1 grams per 10 minutes as determined by ASTM method D 1238–82, "Standard Test Method for Flow Rates of Thermoplastics by Extrusion Plastometer," which is incorporated by reference in accordance with 5 U.S.C. 552(a). Copies may be obtained from the American Society for Testing Materials, 1916 Race St., Philadelphia, PA 19103, or at the Division of Petition Control (HFS–215), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC. Compliance of the melt flow index specification shall be determined using conditions and procedures corresponding to those described in the method as Condition E, Procedure A). The copolymers shall be used in blends with other polymers at levels not to exceed 17 percent by weight of total polymer, subject to the limitation that when contacting food of types III, IV–A, V, VI–C, VII–A, and IX, identified in § 176.170(c) of this chapter, Table 1, the polymers shall be used only under conditions of use C, D, E, F, and G, described in § 176.170(c) of this chapter, Table 2.

* * * * *

3. Section 177.1520 is amended by redesignating paragraph (a)(2) as paragraph (a)(2)(i), by adding paragraphs (a)(2)(ii) and (a)(3)(vi), by amending paragraph (c) in the table by adding items 2.4 and 3.8 in numerical order, and by amending paragraph (d)(7) in the table by alphabetically adding two entries to read as follows:

§ 177.1520 Olefin polymers.

* * * * *

(a) * * *

(2)(i) * * *

(ii) Fumaric acid-grafted polyethylene (CAS Reg. No. 26877–81–6) consists of basic polymers manufactured by the catalytic polymerization of ethylene followed by reaction with fumaric acid in the absence of free radical initiators. Such polymers shall contain grafted fumaric acid at levels not to exceed 2 percent by weight of the finished polymer.

(3) * * *

(vi) Olefin basic copolymers (CAS Reg. No. 61615–63–2) manufactured by the catalytic copolymerization of ethylene and propylene with 1,4-hexadiene, followed by reaction with fumaric acid in the absence of free radical initiators. Such polymers shall contain not more than 4.5 percent of polymer units deriving from 1,4-hexadiene by weight of total polymer prior to reaction with fumaric acid and not more than 2.2 percent of grafted fumaric acid by weight of the finished polymer.

* * * * *

(c) * * *

Olefin polymers	Density	Melting point (MP) or softening point (SP) (*Degrees Centigrade*)	Maximum extractable fraction (expressed as percent by weight of the polymer) in *N*-hexane at specified temperatures	Maximum soluble fraction (expressed as percent by weight of polymer) in xylene at specified temperatures
* * *				
2.4 Olefin polymers described in paragraph (a)(2)(ii) of this section, having a melt flow index not to exceed 17 grams/per 10 minutes as determined by the method described in paragraph (d)(7) of this section, for use in blends with other polymers at levels not to exceed 20 percent by weight of total polymer, subject to the limitation that when contacting food of types III, IV–A, V, VI–C, VII–A, and IX identified in § 176.170(c) of this chapter, Table 1, the polymers shall be used only under conditions of use C, D, E, F, and G, described in § 176.170(c) of this chapter, Table 2.				
* * *				
3.8 Olefin polymers described in paragraph (a)(3)(vi) of this section, having a melt flow index not to exceed 9.2 grams per 10 minutes as determined by the method described in paragraph (d)(7) of this section, for use in blends with other polymers at levels not to exceed 8 percent by weight of total polymer, subject to the limitation that when contacting food of types III, IV–A, V, VI–C, VII–A, and IX, identified in § 176.170(c) of this chapter, Table 1, the polymers shall be used only under conditions of use C, D, E, F, and G, described in § 176.170(c) of this chapter, Table 2.				
* * *				

(d) * * *

(7) * * *

List of polymers	Conditions/procedures
* * *	
Olefin polymers described in paragraph (a)(2)(ii) of this section.	Condition E, procedure A.
Olefin polymers described in paragraph (a)(3)(vi) of this section.	Condition E, procedure A.

* * * * *

Dated: August 5, 1999.

Janice F. Oliver,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–22474 Filed 8–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 99F–0459]

Indirect Food Additives: Adjuvants, Production Aids, Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of isopropyl laurate in surface lubricants used in the manufacture of metallic articles intended for contact with food. This action is in response to a petition filed by Exxon Co. International.

DATES: This regulation is effective August 30, 1999; submit written objections and requests for a hearing September 29, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 18, 1999 (64 FR 13431), FDA announced that a food additive petition (FAP 9B4647) had been filed by Exxon Co. International, 200 Park Ave., Florham Park, NJ 07932–1002. The petition proposed to amend the food additive regulations in § 178.3910 *Surface lubricants used in the manufacture of metallic articles* (21 CFR 178.3910) to provide for the safe use of isopropyl laurate in surface lubricants used in the manufacture of metallic articles intended for contact with food.

The March 18, 1999, filing notice for the petition stated that the action resulting from the petition qualified for a categorical exclusion under 21 CFR 25.32(i). This conclusion was not correct. Upon further review, the agency determined that such a categorical exclusion is not appropriate for this proposed action, because the lubricant does not remain with the finished food packaging material through use by the consumer. Consequently, as discussed below, the agency considered the environmental effects of this action.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will

achieve its intended technical effect, and therefore, (3) the regulations in § 178.3910 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before September 29, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.3910 is amended in the table in paragraph (a)(2) by alphabetically adding an entry under the headings "List of substances" and "Limitations" to read as follows:

§ 178.3910 Surface lubricants used in the manufacture of metallic articles.

* * * * *

(a) * * *

(2) * * *

List of substances	Limitations
* * * * * * *	
Isopropyl laurate (CAS Reg. No. 10233–13–3).	For use at a level not to exceed 10 percent by weight of the finished lubricant formulation.
* * * * * * *	

* * * * *

Dated: August 20, 1999.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–22476 Filed 8–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1225

[Docket No. NHTSA–99–5873]

RIN 2127–AH39

Operation of Motor Vehicles by Intoxicated Persons; Correction of Effective Date Under Congressional Review Act (CRA)

AGENCY: National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Final rule; correction of effective date under the CRA.

SUMMARY: On Thursday, July 1, 1999, NHTSA published a final rule which adopted as final, with procedural changes, the interim rule concerning a new program established by the Transportation Equity Act for the 21st Century (TEA–21), published on September 3, 1998. This document corrects the effective date of the final rule published on July 1, 1999, to be consistent with the Congressional Review Act (CRA), enacted as part of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801, 808.

DATES: *Effective Date:* August 30, 1999.

FOR FURTHER INFORMATION CONTACT: In NHTSA: Ms. Marlene Markison, Office of State and Community Services, NSC–01, telephone (202) 366–2121; or Ms. Heidi L. Coleman, Office of Chief Counsel, NCC–30, telephone (202) 366–1834.

In FHWA: Byron Dover, Office of Highway Safety Infrastructure, HMHS–1, telephone (202) 366–2161; or Mr. Raymond W. Cuprill, HCC–20, telephone (202) 366–0834.

SUPPLEMENTARY INFORMATION:

Background

The CRA, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States.

The effective date of the final rule on Operation of Motor Vehicles by Intoxicated Persons, published at 64 FR 35568, is corrected from July 1, 1999 to August 30, 1999 in order to comply with the CRA.

Administrative Procedure Act

The Administrative Procedure Act provides that an agency may dispense with prior notice and opportunity for comment when the agency for good cause finds that such procedures are impracticable, unnecessary or contrary to the public interest, 5 U.S.C. 553(b)(3)(B). NHTSA has determined that prior notice and comment are unnecessary, because NHTSA is merely correcting the effective date of the promulgated rule to be consistent with the congressional review requirements of the CRA as a matter of law and has no discretion in this matter. Thus, notice and public procedure are unnecessary. The agency finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

Issued on: August 25, 1999.

Adele Derby,

Associate Administrator, State and Community Services, National Highway Traffic Safety Administration.

Karen E. Skelton,

Chief Counsel, Federal Highway Administration.

[FR Doc. 99–22472 Filed 8–27–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 2 and 14

RIN 2900—AJ31

Delegations of Authority; Tort Claims

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) regulations regarding delegations of authority for determining and reconsidering claims under the Federal Tort Claims Act. We believe these amendments will facilitate the processing of claims. This document also makes miscellaneous nonsubstantive changes to various regulatory provisions by revising or adding authority citations, updating titles of positions and VA subunits, correcting typographical errors, and making other nonsubstantive changes for the purpose of clarification.

DATES: Effective Date: August 30, 1999.

FOR FURTHER INFORMATION CONTACT: E. Douglas Bradshaw, Jr., Assistant General Counsel (021), Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC 20420, (202) 273–6481.

SUPPLEMENTARY INFORMATION:

Administrative Procedure Act

This final rule consists of delegations of authority and nonsubstantive changes. Accordingly, it is exempt from the notice-and-comment and delayed effective date provisions of 5 U.S.C. 553.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The final rule consists of delegations of authority and nonsubstantive changes that will not have an economic effect on entities. Accordingly, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

There are no Catalog of Federal Domestic Assistance numbers associated with this rule.

List of Subjects

38 CFR Part 2

Authority delegations (Government agencies).

38 CFR Part 14

Administrative practice and procedure, Claims, Government employees, Lawyers, Legal services, Organization and functions (Government agencies).

Approved: August 11, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons stated above, 38 CFR parts 2 and 14 are amended as set forth below:

PART 2—DELEGATIONS OF AUTHORITY

1. The authority citation for part 2 is revised to read as follows:

Authority: 5 U.S.C. 302, 552a; 38 U.S.C. 501, 512, 515, 1729, 1729A, 5711; 44 U.S.C. 3702, unless otherwise noted.

2. Sections 2.1 and 2.2 are redesignated as §§ 2.2 and 2.3, respectively; and a new § 2.1 is added to read as follows:

§ 2.1 General provisions.

In addition to the delegations of authority in this part, numerous delegations of authority are set forth throughout this title.

(Authority: 38 U.S.C. 512)

3. Section 2.6 is amended as follows:

a. The introductory text of paragraph (a) is amended by removing "Chief Medical Director" and adding, in its place, "Under Secretary for Health";

b. The heading for paragraph (a), and paragraphs (a)(1), (a)(3), and (a)(7), are amended by removing "Veterans Health Services and Research Administration" and adding, in its place, "Veterans Health Administration";

c. Paragraphs (a)(3) and (a)(7) are amended by removing "Deputy Chief Medical Director" and adding, in its place, "Deputy Under Secretary for Health";

d. Paragraph (e)(1) is removed and reserved; and

e. The authority citation following paragraph (g) is revised to read as follows:

§ 2.6 Secretary's delegations of authority to certain officials (38 U.S.C. 512).

* * * * *

(Authority: 5 U.S.C. 552a)

PART 14—LEGAL SERVICES, GENERAL COUNSEL, AND MISCELLANEOUS CLAIMS

4. The heading for part 14 is revised to read as set forth above.

5. The authority citation for part 14 is revised to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 2671–2680; 38 U.S.C. 501(a), 512, 515, 5502, 5902–5905; 28 CFR part 14, appendix to part 14, unless otherwise noted.

6. Section 14.600 is revised to read as follows:

§ 14.600 Federal Tort Claims Act—general.

(a) *Federal Tort Claims Act—overview.* The Federal Tort Claims Act (28 U.S.C. 1291, 1346, 1402, 2401, 2402, 2411, 2412, and 2671 through 2680) prescribes a uniform procedure for handling of claims against the United States, for money only, on account of damage to or loss of property, or on account of personal injury or death, caused by the negligent or wrongful act or omission of a Government employee while acting within the scope of his or her office or employment, under circumstances where the United States, if a private person, would be liable in accordance with the law of the place where the act or omission occurred.

(b) *Applicable regulations.* The regulations issued by the Department of Justice at 28 CFR part 14 are applicable to claims asserted under the Federal Tort Claims Act, including such claims that are filed with VA. The regulations in §§ 14.600 through 14.605 of this part supplement the regulations at 28 CFR part 14.

(c) *Delegations of authority concerning claims.* Subject to the limitations in 28 CFR 14.6(c), (d), and (e), authority to consider, ascertain, adjust, determine, compromise, and settle claims asserted under the Federal Tort Claims Act (including the authority to execute an appropriate voucher and other necessary instruments in connection therewith) is delegated as follows:

(1) To the Under Secretary for Health, the Deputy Under Secretary for Health, Veterans Integrated Service Network (VISN) Directors, and VA Medical Facility Directors; with respect to any claim for $2,500 or less that arises out of the operations of the Veterans Health Administration.

(2) To the General Counsel, Deputy General Counsel, and Assistant General Counsel (Professional Staff Group I) with respect to any claim; provided that any award, compromise, or settlement in excess of $200,000 shall be effected only with the prior written approval of the Attorney General or his or her designee.

(3) To the Regional Counsels and Deputy Assistant General Counsel (Professional Staff Group I) with respect to any claim; provided that:

(i) Any award, compromise, or settlement in excess of $100,000 but not more than $200,000 shall be effected only with the prior written approval of the General Counsel, Deputy General Counsel, or Assistant General Counsel (Professional Staff Group I); and

(ii) Any award, compromise, or settlement in excess of $200,000 shall be effected only with the prior written approval of the General Counsel, Deputy General Counsel, or Assistant General Counsel (Professional Staff Group I) and with the prior written approval of the Attorney General or his or her designee.

(d) *Delegations of authority to reconsider final denial of a claim.* Subject to the limitations in 28 CFR 14.6(c), (d), and (e), authority under 28 CFR 14.9 to reconsider final denials of claims under the Federal Tort Claims Act is delegated as follows:

(1) To the Regional Counsel with jurisdiction over the geographic area where the occurrence complained of arose, with respect to any claim for $2,500 or less that arises out of the operations of the Veterans Health Administration.

(2) To the General Counsel, Deputy General Counsel, and Assistant General Counsel (Professional Staff Group I) with respect to any claim; provided that any award, compromise, or settlement in excess of $200,000 shall be effected only with the prior written approval of the Attorney General or his or her designee.

Note (1) to paragraph (c)(2): For any award, compromise, or settlement in excess of $100,000 but not more than $200,000 a memorandum fully explaining the basis for the action taken shall be sent to the Department of Justice.

Note (2) to paragraph (c)(3)(i): For any award, compromise, or settlement under paragraph (c)(3)(i) of this section a memorandum fully explaining the basis for the action taken shall be sent to the Department of Justice.

Note (3) to paragraph (d)(2): For any award, compromise, or settlement in excess of $100,000 but not more than $200,000 a memorandum fully explaining the basis for the action taken shall be sent to the Department of Justice.

(Authority: 28 U.S.C. 1291, 1346, 1402, 2401, 2402, 2411, 2412, 2671–2680; 38 U.S.C. 512, 515; 28 CFR part 14, appendix to part 14)

7. The undesignated center heading immediately preceding § 14.601 is removed.

8. Section 14.601 is amended as follows:

a. The heading for paragraph (a) is revised,

b. A heading for paragraph (b) is added, and

c. An authority citation at the end of the section is added, to read as follows:

§ 14.601 Investigation and development.

(a) *Development of untoward incidents.* * * *

(b) *Development of medical malpractice claims.* * * *

(Authority: 28 U.S.C. 2671–2680; 38 U.S.C. 512, 515; 28 CFR part 14, appendix to part 14)

§ 14.602 [Amended]

9. In § 14.602, paragraph (a) is amended by removing "shall be" and adding, in its place, "shall".

10. Section 14.604 is amended as follows:

a. Paragraph (a) is amended by removing ", who will transmit forthwith to the appropriate agency" and adding, in its place, "for appropriate action in accord with 28 CFR 14.2";

b. Paragraph (c) is amended by removing "(see § 14.600(b)(1))"; and

c. An authority citation is added at the end of the section to read as follows:

§ 14.604 Filing a claim.

* * * * *

(Authority: 28 U.S.C. 1346(b)(1), 2401(b), 2671–2680; 38 U.S.C. 512, 515; 28 CFR part 14, appendix to part 14)

11. The undesignated center heading immediately preceding § 14.605 is removed.

12. Section 14.605 is amended as follows:

a. Paragraph (b) is amended by removing "Veterans Health Services and Research Administration" and adding, in its place, "Veterans Health Administration" and by removing "unsolved" and adding, in its place, "involved";

b. Paragraph (d) is amended by removing "employement" and adding, in its place, "employment"; and

c. An authority citation is added at the end of the section to read as follows:

§ 14.605 Suits against Department of Veterans Affairs employees arising out of a wrongful act or omission or based upon medical care and treatment furnished in or for the Veterans Health Administration.

* * * * *

(Authority: 28 U.S.C 2671–2680; 38 U.S.C. 512, 515, 7316; 28 CFR part 14, appendix to part 14)

13. In § 14.615, paragraph (a) is amended by removing "Veterans' " and adding, in its place, "Veterans", and an authority citation is added at the end of the section to read as follows:

§ 14.615 General.

* * * * *

(Authority: 28 U.S.C 2671–2680; 38 U.S.C. 512, 515, 7316; 28 CFR part 14, appendix to part 14)

[FR Doc. 99–22258 Filed 8–27–99; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[OH 121–1c; FRL–6425–1]

Approval and Promulgation of Implementations; Ohio Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving emission limits for two sources in Lake County, Ohio and redesignating Lake and Jefferson Counties to attainment for SO_2. EPA proposed this action on March 17, 1999 along with a direct final rule. On April 15, 1999, EPA received adverse comments from Weirton Steel Corporation (WSC), West Virginia, requesting that EPA not redesignate Jefferson County, Ohio to attainment for SO_2. WSC commented that EPA's reliance on the modeling dating back to 1975 is misplaced and that more current modeling is needed in order to demonstrate compliance with the SO_2 NAAQS. WSC also commented that some sources located in Jefferson County, Ohio, are contributing significantly to the nonattainment problem in Hancock County, West Virginia, and are interfering with West Virginia's ability to maintain compliance with the SO_2 NAAQS.

EPA has reviewed WSC's comments, disagrees with the comments, and concludes that Jefferson County should be redesignated to attainment.

Also, because EPA's response to adverse comments for Jefferson County was to withdraw direct final action for Lake as well as Jefferson County, today's action reinstates approval of the Lake County emission limits and redesignation as well as the Jefferson County redesignation. If refined modeling evidence becomes available that indicates a need for tighter limits for Jefferson County, as WSC anticipates, then EPA will require Ohio to adopt the tighter limits as appropriate at that time.

DATES: This final rule is effective on September 29, 1999.

ADDRESSES: Copies of the revision request and the comments letter are available for inspection at the following address: Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Phuong Nguyen at (312) 886–6701 before visiting the Region 5 office.)

FOR FURTHER INFORMATION CONTACT: Phuong Nguyen at (312) 886–6701.

SUPPLEMENTARY INFORMATION: This supplementary information section is organized as follows:

I. GENERAL INFORMATION
A. What action is EPA taking today?
II. COMMENTS AND RESPONSES
A. Who sent comments?
B. What were the comments and how does EPA respond?
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2. 110(a)(2)(D)
III. OTHER PROPOSED ACTION
A. Why is EPA finalizing other proposed action?
IV. CONCLUSION
V. ADMINISTRATIVE REQUIREMENTS
A. Executive Order 12866
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C. Executive Order 13045
D. Executive Order 13084
E. Regulatory Flexibility Act
F. Unfunded Mandates
G. Submission to Congress and the Comptroller General
H. National Technology Transfer and Advancement Act
I. Petitions for Judicial Review

I. General Information:

What action is EPA taking today?

EPA is approving a State Implementation Plan (SIP) revision which replaces the federally promulgated limits by State promulgated limits for the two sources in Lake County. In addition, EPA is approving maintenance plans in Jefferson and Lake Counties, Ohio. Finally, EPA is redesignating Jefferson and Lake Counties, Ohio to attainment of NAAQS for sulfur dioxide (SO_2).

EPA proposed this action and promulgated this action as a direct final rule on March 17, 1999. On April 15, 1999, we received objections to the Jefferson County action from Weirton Steel Corporation (WSC). We therefore withdrew our direct final approval, addressing Lake as well as Jefferson County. WSC's objections are discussed at length in the following section. We have concluded that WSC's comments do not warrant deferring or rejecting redesignation of Jefferson County. Therefore, EPA is taking final the action as proposed.

II. Comments and Responses

Who sent comments?

On April 15, 1999, we received adverse comments from WSC of Hancock County, West Virginia, objecting to the SO_2 redesignation for Jefferson County, Ohio. Hancock County, West Virginia, is adjacent to Jefferson County, and was designated nonattainment for SO_2 on December 21, 1993 (58 FR 67334). WSC is planning to do new modeling using a refined model to determine its impact on SO_2 levels and the impact of nearby sources, some of which are located in Jefferson County, Ohio. WSC's comments thus reflect its interest in the impact that Jefferson County sources have on SO_2 concentrations in the WSC environs.

What were the comments and how does EPA respond?

WSC's letter included two comments on EPA's proposed rulemaking, recommending that EPA not redesignate Jefferson County based on uncertainty of attainment and failure to satisfy Clean Air Act section 110(a)(2)(D). The following sections describe these comments further and provide EPA's response.

1. Attainment of National Ambient Air Quality Standards (NAAQS)

EPA proposed to find Jefferson County attaining the SO_2 NAAQS on the basis of compliance of key sources with emission limits. These limits were set at levels shown to assure attainment by modeling conducted in 1975. Consequently, we concluded that use of current emission rates in the approved (1975) modeling analysis would show the area to be attaining the standards.

WSC's first comment disagrees with using 1975 modeling for determining the attainment status of Jefferson County. WSC believes that new modeling is needed for this purpose. WSC is preparing a protocol to submit to the West Virginia Department of Environmental Protection (WVDEP) to model SO_2 sources around the Weirton area. This modeling will include most of the largest sources in Jefferson County. WSC recommended that EPA defer rulemaking on the Jefferson County redesignation request until the new modeling is available.

EPA recognizes that new modeling techniques have become available since 1975 and are recommended by the current modeling guidelines for new modeling analyses. On other hand, the 1975 modeling, which EPA approved on January 27, 1981, is the best currently available evidence as to Jefferson County's attainment situation. WSC provided no results from more current modeling to suggest that Jefferson County is violating the NAAQS, and WSC provided no basis or rationale to expect that new modeling would show violations. EPA customarily evaluates SO_2 redesignation requests based on available evidence rather than requiring updated modeling. In the absence of updated modeling showing violations, EPA continues to believe based on available evidence that Jefferson County is attaining the SO_2 NAAQS.

Implicit in WSC's comments is a view that modeling is necessary to assess whether the SO_2 NAAQS is being attained. Although the relative merits of modeling and monitoring data vary, EPA generally shares WSC's view. Consequently, if WSC prepares modeling meeting current modeling guidelines, EPA expects Ohio and West Virginia to work together to revise limits as necessary to assure attainment throughout the area. As appropriate, EPA will at that time reevaluate the attainment status of Jefferson County.

2. Section 110(a)(2)(D)

WSC's second comment is based on section 110(a)(2)(D) of the Clean Air Act. WSC claimed that some sources located in Jefferson County, Ohio, are contributing significantly to the nonattainment problem in Weirton and interfering with Hancock County, West Virginia's ability to maintain compliance with the SO_2 NAAQS. WSC believes that the results of its proposed modeling will demonstrate this significant contribution of Jefferson County sources to Hancock County nonattainment. WSC also commented that the previously conducted SO_2 modeling has shown that these large sources of SO_2 in Jefferson County are significant contributors to SO_2 nonattaiment in and around the Weirton area.

When EPA approved Ohio's SIP, EPA made no determination that the SIP did not comply with the interstate transport provisions under the predecessor to section 110(a)(2)(D). As indicated in a memorandum from John Calcagni, Director of Air Quality Management Division, to Regional Air Division Directors, September 4, 1992, EPA takes the position that when acting on a redesignation request that may implicate section 110(a)(2)(D), EPA may rely on prior approvals of the SIP, and EPA is not obligated to review whether, at the time EPA is approving the redesignation request, the State is in compliance with section 110(a)(2)(D). EPA most recently took this position in approving a request to redesignate the Cleveland-Akron-Lorain Ohio as attainment for ozone. The US Court of Appeals for the 6th Circuit upheld EPA's action against a challenge based on grounds similar to those presented by the commenter concerning today's action. *Southwestern Pennsylvania Growth Alliance* v. *Browner*, 144 F.2d 984 (6th Cir. 1999).

In addition, it should be emphasized that WSC has not yet presented to EPA modeling that would substantiate WSC's position that Jefferson County sources are contributing significantly to Hancock County nonattainment. Given the unanswered questions as to the respective impacts of Jefferson and Hancock County sources and their relative ease of control, EPA cannot conclude at this time that Jefferson County sources are contributing significantly to nonattainment in the Weirton area.

We understand that the efforts by WSC and West Virginia to satisfy nonattainment planning requirements for Hancock County, West Virginia, may supply much of the information that EPA would need before it could find a violation of section 110(a)(2)(D). WSC should provide to EPA the details of its modeling results, the percent impact of sources in Jefferson County vs. WSC and other sources, the sources' control strategy options, and the schedule by which WSC is expecting to come into compliance with applicable emission limits.

As planning for Hancock County proceeds, EPA expects Ohio and West Virginia to work together to assure that all relevant sources have limits sufficient to assure attainment throughout the Weirton area. EPA expects the modeling analysis to include a number of Ohio sources. Depending on the results of that modeling, EPA expects that the States will consider a variety of control strategy options, including options involving reduced emission limits at Ohio facilities. We expect that Ohio and West Virginia would then agree on a strategy and make any necessary rule revisions accordingly. Nevertheless, if WSC and West Virginia develop information that Ohio sources contribute significantly to nonattainment in Hancock County (including information that controls of these Ohio sources would be an equitable part of a Weirton area control strategy), and Ohio fails to adopt appropriate emission limits, then this information should be provided to EPA. If warranted EPA would consider requiring Ohio to submit a SIP revision to implement necessary controls, or West Virginia may submit a petition under section 126(b) seeking controls on the Jefferson County sources.

III. Other Proposed Action

Why is EPA finalizing other proposed action?

On March 17, 1999, EPA approved the SIP revision request submitted by the State of Ohio, which replaced the federally promulgated limits by state promulgated limits for two sources (First Energy, Eastlake Plant and Ohio Rubber Company) in Lake County, Ohio. In addition we also approved the SO_2 maintenance plan and the redesignation request for Lake and Jefferson Counties.

On May 10, 1999, we withdrew our direct final approval for both Lake and Jefferson Counties due to the adverse comments we had received from WSC on the Jefferson County redesignation. We received no adverse comments on the actions other than redesignation of Jefferson County. We continue to believe that the submitted State emission limits for the two Lake County sources are equivalent and suitable replacements for the current federally promulgated limits, that the maintenance plans for the two counties are adequate to assure continued attainment, and that Lake County has satisfied all the requirements in section 107(d)(3)(E) for redesignation. Therefore, EPA is finalizing these actions as proposed on March 17, 1999.

IV. Conclusion

EPA has reviewed all of the comments submitted in response to the Jefferson County SO_2 redesignation. First, although WSC believes that new modeling meeting current modeling guidelines must be used to assess whether violations of the SO_2 air quality standards are occurring near some Ohio sources, EPA believes that it is appropriate to continue to rely on the existing modeling underlying the current approved Ohio limits, which suggests that the area is attaining the standard. Second, sources located in Jefferson County have not been shown to contribute significantly to a violation of the SO_2 NAAQS near Weirton Steel Corporation. Therefore, EPA has not concluded and cannot conclude that section 110(a)(2)(D) is violated, and instead must conclude that Ohio has satisfied the fifth prerequisite for redesignation by satisfying all requirements of section 110 including section 110 (a)(2)(D). Consequently, EPA is redesignating Jefferson County to attainment.

EPA is also approving two SIP revisions in Lake County, approving maintenance plan for the two counties, and redesignating Lake County to attainment. Finally, the codification for this rulemaking corrects a longstanding omission in Title 40, § 52.1881(a)(8) by reinserting the sources in Ross and Sandusky Counties for which no action has been taken.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation.

In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available

and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 29, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 81

Environmental protection, Air pollution control.

Dated: August 5, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

For the reasons stated in the preamble, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. Section 52.1870 is amended by adding paragraph (c)(118) to read as follows:

§ 52.1870 Identification of plan.

* * * * *

(c) * * *

(118) On August 20, 1998, Ohio submitted material including State adopted limits for Lake County, and requested approval of limits for the Ohio First Energy Eastlake Plant and the Ohio Rubber Company Plant.

(i) Incorporation by reference.

(A) Rule 3745–18–49 (G) and (H) of the Ohio Administrative Code, effective May 11, 1987.

3. Section 52.1881 is amended by revising paragraph (a)(4) and (a)(8) and adding paragraph (a)(13) to read as follows:

§ 52.1881 Control strategy; Sulfur oxide (sulfur dioxide).

(a) * * *

(4) Approval—EPA approves the sulfur dioxide emission limits for the following counties: Adams County (except Dayton Power & Light—Stuart), Allen County (except Cairo Chemical), Ashland County, Ashtabula County, Athens County, Auglaize County, Belmont County, Brown County, Carroll County, Champaign County, Clark County, Clermont County (except Cincinnati Gas & Electric—Beckjord), Clinton County, Columbiana County, Coshocton County (except Columbus & Southern Ohio Electric—Conesville), Crawford County, Darke County, Defiance County, Delaware County, Erie County, Fairfield County, Fayette County, Fulton County, Gallia County (except Ohio Valley Electric Company—Kyger Creek and Ohio Power—Gavin), Geauga County, Greene County, Guernsey County, Hamilton County, Hancock County, Hardin County, Harrison County, Henry County, Highland County, Hocking County, Holmes County, Huron County, Jackson County, Jefferson County, Knox County, Lake County (except Painesville Municipal Plant boiler number 5) , Lawrence County (except Allied Chemical—South Point), Licking County, Logan County, Lorain County (except Ohio Edison—Edgewater, Cleveland Electric Illuminating—Avon Lake, U.S. Steel—Lorain, and B.F. Goodrich), Lucas County (except Gulf Oil Company, Coulton Chemical Company, and Phillips Chemical Company), Madison County, Marion County, Medina County, Meigs County, Mercer County, Miami County, Monroe County, Morgan County, Montgomery County (except Bergstrom Paper and Miami Paper), Morrow County, Muskingum County, Noble County, Ottawa County, Paulding County, Perry County, Pickaway County, Pike County (except Portsmouth Gaseous Diffusion Plant), Portage County, Preble County, Putnam County, Richland County, Ross County (except Mead Corporation), Sandusky County (except Martin Marietta Chemicals), Scioto County, Seneca County, Shelby County, Trumbull County, Tuscarawas County, Union County, Van Wert County, Vinton County, Warren County, Washington County (except Shell Chemical), Wayne County, Williams County, Wood County (except Libbey-Owens-Ford Plants Nos. 4 and 8 and No. 6), and Wyandot County.

* * * * *

(8) No Action—EPA is neither approving nor disapproving the emission limitations for the following counties on sources pending further review: Adams County (Dayton Power & Light—Stuart), Allen County (Cairo Chemical), Butler County, Clermont County (Cincinnati Gas & Electric—Beckjord), Coshocton County (Columbus & Southern Ohio Electric—Conesville), Cuyahoga County, Franklin County, Gallia County (Ohio Valley Electric Company—Kyger Creek, and Ohio Power—Gavin), Lake County (Painesville Municipal Plant boiler number 5), Lawrence County (Allied Chemical—South Point), Lorain County (Ohio Edison—Edgewater Plant, Cleveland Electric Illuminating—Avon Lake, U.S. Steel—Lorain, and B.F. Goodrich), Lucas County (Gulf Oil Company, Coulton Chemical Company, and Phillips Chemical Company), Mahoning County, Montgomery County (Bergstrom Paper and Miami Paper), Pike County (Portsmouth Gaseous Diffusion Plant), Ross County (Mead Corporation), Sandusky County (Martin Marietta Chemicals), Stark County, Washington County (Shell Chemical Company), and Wood County (Libbey-Owens-Ford Plants Nos. 4 and 8 and No. 6).

* * * * *

(13) In a letter dated October 26, 1995, Ohio submitted a maintenance plan for sulfur dioxide in Lake and Jefferson Counties.

* * * * *

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. In § 81.336 the table entitled "Ohio SO_2" is revised to read as follows:

§ 81.336 Ohio.

* * * * *

OHIO—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
Athens County				X
Clermont County				X
Columbiana County				X
Coshocton County: X[1]				
The remainder of Coshocton County				X[1]
Cuyahoga County:				
The Cities of Bay Village, Westlake, North Olmsted, Olmsted Falls, Rock River, Fairview Park, Berea, Middleburg Hts., Strongsville, North Royalton, Broadview Hts., Brecksville and the Townships of Olmsted and Riveredge				X
The remainder of Cuyahoga County	X			
Gallia County:				
Addison Township		X[1]		
The remainder of Gallia County				X[1]
Greene County				X
Hamilton County:				
The City of Cincinnati bounded on the west by 175 and U.S. Route 127, and on the south by the Ohio and Little Miami Rivers; the Cities of Norwood, Fairfax, Silverton, Golf Manor, Amberly, Deer Park, Arlington Heights, Elwood Place, and St. Bernard				X[1]
The remainder of Hamilton County				X[1]
Jefferson County:				
Cities of Steubenville & Mingo Junction, Townships of Steubenville, Island Creek, Cross Creek, Knox and Wells				X
The remainder of Jefferson County				X[1]
Lake County:				
The Cities of Eastlake, Timberlake, Lakeline, Willoughby (north of U.S. 20), and Mentor (north of U.S. 20 west of S.R. 306)				X
The remainder of Lake County				X
Lorain County:				
Area bounded on the north by the Norfolk and Western Railroad Tracks, on the east by State Route 301 (Abbe Road), on the south by State Route 254, and on the west by Oberlin Road	X			
The remainder of Lorain County				X
Lucas County:				
The area east of Rte. 23 & west of eastern boundary of Oregon Township	X[1]			
The remainder of Lucas County				X[1]
Mahoning County				X
Montgomery County				X
Morgan County:				
Center Township				X[1]
The remainder of Morgan County				X[1]
Summit County:				
Area bounded by the following lines—North—Interstate 76, East—Route 93, South—Vanderhoof Road, West—Summit County Line				X
Area bounded by the following lines—North—Bath Road (48 east to Route 8, Route 8 north to Barlow Road, Barlow Road east to county line, East—Summit/Portage County line, South Interstate 76 to Route 93, Route 93 south to Route 619, Route 619 east to County line, West-Summit/Medina County line	(2)	(2)	(2)	(2)
Entire area northwest of the following line Route 80 east to Route 91, Route 91 north to the County line				X[3]
The remainder of Summit County				X[4]
Trumbull County				X
Washington County				X
Waterford Township				X
The remainder of Washington County				X
All other counties in the State of Ohio				X[1]

[1] EPA designation replaces State designation.
[2] This area remains undesignated at this time as a result of a court remand in PPG Industries, Inc. vs. Costle, 630 F.2d 462 (6th Cir. 1980).
[3] This area was affected by the Sixth Circuit Court remand but has since been designated.
[4] The area was not affected by the court remand in PPG Industries, Inc. vs. Costle, 630 F.2d 462 (6th Cir. 1980).

[FR Doc. 99–22319 Filed 8–27–99; 8:45 am]
BILLING CODE 6560–60–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 94–158; FCC 99–171]

Operator Services Providers and Call Aggregators.

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the Commission's rules to specify a deadline to update inaccurate information posted on a public phone about the presubscribed provider of long-distance operator services at that location. The FCC acted in further implementation of the dual goals of the Telephone Operator Consumer Services Improvement Act of 1990 ("TOCSIA"). Those are to protect consumers from unfair and deceptive practices relating to their use of operator services to place interstate telephone calls; and to ensure that consumers have the opportunity to make informed choices in making such calls. The FCC concluded that, consistent with its obligations to protect consumers pursuant to that Congressional mandate, it should specify deadlines by which aggregators must provide accurate information to consumers.

DATES: New § 64.703(c) contains information collection requirements that are not effective until approved by the Office of Management and Budget. The FCC will publish a document in the **Federal Register** announcing the effective date for that section.

Written comments by the public on the information collections are due September 29, 1999.

OMB notification of action is due October 29, 1999.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, S.W., Washington, DC 20554.

Send a copy of any comments that concern information collection requirements for the new rule adopted in CC Docket No. 94–158 to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Adrien Auger, 202–418–0960. For additional information concerning the information collections contained in this Report and Order contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: 1. The Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA), codified as Section 226 of the Communications Act of 1934, 47 U.S.C. 226, requires that call aggregators post, on or near a payphone or other aggregator location, the name, address, and toll-free telephone number of the presubscribed provider of long-distance operator services. The FCC implements the Section 226 requirements with its rules at 47 CFR 64.703 *et seq.* Both Section 226(c)(1)(A) of the Communications Act and § 64.703(b) of the Commission's rules require call aggregators to post, on or near a payphone, the name, address, and toll-free telephone number of the presubscribed long-distance provider of operator services. Neither Congress nor the FCC previously has specified a deadline by which to update any change in such information to consumers.

2. In 1995, the Commission sought comment whether it should specify a time by which aggregators must update information posted on or near payphones. 60 FR 8217, Feb. 13, 1995. In 1996, the Commission requested comment on a proposed 30-day deadline that the majority of those who had commented favored. 61 FR 15 020 Apr. 4, 1996.

3. The Commission has revised 47 CFR part 64, in a *Second Report and Order* released July 19, 1999, in CC Docket No. 94–158. The revised rule provides greater certainty to aggregators and presubscribed providers of operator services at aggregator locations with regard to their obligations under Section 226 of the Communications Act. The Commission's purpose in adopting the new rule is to protect consumers, ensure their opportunity to make informed choices when placing calls from public phones, enable them to choose a long-distance carrier of their choice, and thus further greater price and service competition in the marketplace.

4. This Report and Order contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other federal agencies are invited to comment on the new or modified information collections contained in this proceeding. This is a synopsis of the new information collection requirement. Section 64.703(c) requires that information that call aggregators must post on or near payphones, pursuant to Section 226 of the Communication Act of 1934, as amended, 47 U.S.C. 226, be updated as soon as practicable, but no later than 30 days from the time of a change of the presubscribed provider of operator services.

Paperwork Reduction Act: This Report and Order contains either a new or modified information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this Order, as required by the Paperwork Reduction Act of 1995, Public Law No. 104–12. Written comments by the public on the information collections are due September 29, 1999. OMB notification of action is due October 29, 1999. Comments should address: (a) Whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents including the use of automated collection techniques or other forms of information technology.

OMB Approval Number: 3060–0653.

Title: Consumer Information Posting by Aggregators—§ 64.703(b) and (c).

Form No.: N/A.

Type of Review: Revised collection.

Respondents: Businesses or other for profit.

Section/Title	No. of responses	Est. time per response	Total annual burden
Sections 64.703(b) and (c) 3.67	206,566	56,200	

Total Annual Burden: 206,566 burden hours

Estimated Costs Per Respondents: $0.

Needs and Uses: Section 64.703(c) establishes a 30-day outer limit for updating the posted consumer information when an aggregator has changed the presubscribed operator service provider. This modified information collection requirement was a response to widespread failure of aggregators to disclose information necessary for informed consumer choice in the marketplace.

List of Subjects in 47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read:

Authority: 47 U.S.C. 10, 201, 218, 226, 332, unless otherwise noted.

2. Section 64.703 is amended by revising paragraph (c) to read as follows:

§ 64.703 Consumer information.

* * * * *

(c) *Updating of postings.* The posting required by this section shall be updated as soon as practicable following any change of the carrier presubscribed to provide interstate service at an aggregator location, but no later than 30 days following such change. This requirement may be satisfied by applying to a payphone a temporary sticker displaying the required posting information, provided that any such temporary sticker shall be replaced with permanent signage during the next regularly scheduled maintenance visit.

* * * * *

[FR Doc. 99–22402 Filed 8–27–99; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 575

[Docket No. NHTSA–98–3381, Notice 3]

RIN 2127–AH68

Consumer Information Regulations; Utility Vehicle Label

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final Rule; Response to Petition for Reconsideration.

SUMMARY: On March 9, 1999, we published a final rule modifying the rollover warning currently required for small- and mid-sized utility vehicles. In response to a petition for reconsideration of that final rule, this document amends the utility vehicle and air bag warning label requirements to allow manufacturers to combine the rollover and air bag alert labels in one label, permits manufacturers to comply with either of two options for installing both labels on the same side of the sun visor until September 1, 2000, and allows manufacturers to voluntarily install on the same side of the sunvisor as the air bag label, rollover warning labels in vehicles for which they are not required, such as pickup trucks and large utility vehicles. Today's final rule will provide manufacturers with additional flexibility to determine the location of air bag and rollover warning labels in sport utility vehicles.

DATES: This final rule is effective September 1, 1999, however, voluntary compliance with the final rule is allowed as of August 30, 1999. Petitions for reconsideration must be received by October 14, 1999.

ADDRESSES: Petitions for reconsideration should refer to the docket and notice number of this final rule and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590:

For labeling issues: Mary Versailles, Office of Planning and Consumer Programs, NPS–31, telephone (202) 366–2057, facsimile (202) 366–4329.

For legal issues: Nicole Fradette, Office of Chief Counsel, NCC–20, telephone (202) 366–2992, facsimile (202) 366–3820.

SUPPLEMENTARY INFORMATION:

I. Background

On March 9, 1999, we published a final rule amending the rollover warning label and owner's manual requirements for small- and mid-sized utility vehicles.[1] (64 FR 11724) The agency explained that the new label and owner's manual requirements will more effectively alert drivers to the risk the vehicles will roll over, the steps they can take to avoid that risk, and the steps they can take to reduce the chance of injury in the event of a rollover. The new label replaced the former text-only format with a format using bright colors, graphics, and short bulleted text messages. The rule requires the label's header to have an alert symbol (a triangle containing an exclamation point) followed by the statement "WARNING: Higher Rollover Risk" in black text on a yellow background. The following three statements must appear below the header in the center of the label: "Avoid Abrupt Maneuvers and Excessive Speed," "Always Buckle Up," and "See Owner's Manual For Further Information." The rule specifies that the label must contain two pictograms: one showing a tilting utility vehicle on the left of the label, and the other showing a seated vehicle occupant with a secured three-point belt system on the right. The pictograms and the statement must be in black on a white background. The rule requires the label to be placed on either the driver's sun visor or the driver's side window. If the label is placed on the back of the driver's sun visor, the rule requires an alert label to be placed on the front of the visor urging the person to flip the visor over and read the information on the other side. The new label is required on utility vehicles with a wheelbase of 110 inches or less. The rule also requires additional information on rollover be included in the owner's manuals of these vehicles. The new requirements are effective September 1, 1999.

On April 26, 1999, we published a notice clarifying that manufacturers of utility vehicles with a wheelbase of 110 inches or less may comply with the upgraded requirements in advance of the September 1, 1999, mandatory compliance date. (64 FR 20209) We explained that any manufacturer choosing to comply with the new rule before September 1, 1999, must comply with the new rule in its entirety (i.e., they must comply with the new owners'

[1] "Utility vehicles" are defined in 49 CFR Part 575 as multipurpose passenger vehicles (other than those which are passenger car derivatives) with a wheelbase of 110 inches or less and with special features for off-road operation. 49 CFR Part 575.105. These vehicles are commonly referred to as sport utility vehicles in the media.

manual information requirements as well as with the new, improved labeling requirements).

II. Alliance of Automobile Manufacturers' Petition for Reconsideration

On April 23, 1999, the Alliance of Automobile Manufacturers (AAM) submitted a petition for reconsideration of the March 9 final rule. The petition raised issues regarding (1) the requirement that the air bag warning label be to the left of the rollover warning label; (2) the requirement that the air bag warning label and rollover warning label not be contiguous; (3) the air bag and rollover alert label requirements; and (4) the air bag label requirement's prohibition of "other information" as it pertains to a rollover warning label installed in a vehicle that is not required to have the label. The AAM also wrote to the agency on April 8, 1999, requesting clarification as to whether foreign language translations of the rollover warning label were allowed and whether voluntary compliance with the new requirements was permitted. As noted above, on April 28, 1999, we published a notice clarifying that early compliance with the new rule was permitted. A discussion of the remaining issues raised by AAM and our response to them follows.

III. Agency's Response to Petition for Reconsideration

A. Restriction on Label's Location

To keep the pictograms of the air bag and rollover warning labels from running together visually, the final rule specified that the air bag warning label must be to the left of the utility vehicle rollover warning label when both labels are placed on the same side of the sun visor. We reasoned that since the pictogram on the air bag warning label in Figure 6a (after which the majority of air bag warning labels are modeled) of the air bag warning requirements is on the label's left side, placing that label to the left of the rollover warning label would put the air bag pictogram far from the pictograms on the rollover warning label. We believed that such a placement would prevent the pictograms of the two labels from blending together visually.

In its petition, AAM asked that we delete the requirement that the air bag warning label be to the left of the rollover warning label. AAM stated that, unlike the rollover warning label which specifies the content, form, and sequence of the label, the air bag warning label requirements specify only the content of the label—not the location of the pictogram. The form and sequence of the air bag label and the placement of the pictogram is left to the discretion of the manufacturer. Consequently, the air bag pictogram could be to the right on some air bag warning labels and the pictograms of the two labels could, in some situations, be adjacent. Since the purpose of this requirement is to keep the pictograms from running together visually, such a placement, while permitted, would thwart the requirement's purpose.

We are, therefore, replacing the requirement that the air bag warning label be placed to the left of the rollover warning label with a requirement that there be text between the air bag pictogram and the rollover pictogram whenever both labels are affixed to the same side of the sun visor. We believe that this change will prevent the pictograms from visually blending. This provision will also provide manufacturers with additional label placement options.

B. Contiguous Label Prohibition

To maintain the separateness of the two labels and their messages, the agency specified that the air bag and rollover warning labels could not be contiguous. In its petition for reconsideration, AAM asked the agency to delete this requirement and replace it with a requirement that the labels be visually separate. AAM argued that specifying that the labels may not be connected "without specifying a minimum separation distance means that labels 1 mm apart" would comply with the requirement. AAM stated that it believed the agency's intent was to visually separate the two messages, but suggested that other methods could be effectively used to maintain the separateness of the two labels. For example, AAM suggested using one label with clear, transparent material between the two messages to give the appearance of separate labels when placed on the sun visor. AAM also suggested placing a border around each message to separate the two messages from one another. AAM argued that the requirement should be revised to specify that the messages of the two labels be "visually separated" when placed on the same side of the sun visor.

We do not believe that the requirement suggested by AAM is readily enforceable. Manufacturers are required to certify that their products conform to NHTSA's regulations before they can be offered for sale. Manufacturers must know how NHTSA plans to determine compliance with a particular regulation if they are to ensure that their vehicles comply. The requirement that the labels be "visually separated" is too subjective. Consequently, manufacturers would have difficulty determining whether their labels were "visually separate" within the meaning of the standard.

By specifying that the two labels not be contiguous, we intended to require a clear demarcation between the two messages to ensure that the two warnings did not run together visually and confuse the reader.[2] We did not specify the amount of space between the two labels because we did not want to be unnecessarily design restrictive. However, based on AAM's petition and several other manufacturer inquiries, it is apparent that manufacturers believe that this provision requires them to separately affix each label to the vehicle and prohibits them from using one material to affix the labels to the sunvisor.

We still believe it important to maintain the separateness of the two labels and their messages. AAM suggested that placing a border around each label would be one way of ensuring that the labels remained visibly distinct. We note, however, that unless we specify the distance between the borders, labels placed 1 millimeter apart could comply with the requirement. Therefore, simply placing a border around each label without specifying a distance between the borders would not address AAM's earlier concern that manufacturers could place the labels one millimeter apart and still comply with the noncontiguous requirement.

In response to the concerns raised by AAM in its petition, we have decided to replace the requirement that the labels not be contiguous with a requirement that the labels must be situated so that the shortest distance from any of the lettering or graphics on the rollover warning label to any of the lettering or graphics on the air bag warning label is not less than three centimeters or, in the case of rollover warning and air bag warning labels that are each completely surrounded by a continuous solid-lined border, the shortest distance from the border of the rollover warning label to the border of the air bag warning label must be not less than one centimeter when both labels are affixed to the same side of the sun visor. We believe that this provision, unlike the provision suggested by AAM, is objective, readily enforceable, and will ensure that the warning labels remain visually distinct.

We are also amending the March 9 final rule to explicitly allow manufacturers to meet the rollover labeling requirements by permanently marking or molding the required information to the vehicle. This provision will ensure that manufacturers may, if they so choose, use one material or process to affix the two labels to the vehicle. This means that a manufacturer could, at its option, silkscreen, emboss, or in some other way permanently mark the rollover warning to the vehicle. We believe that these changes will alleviate any confusion as to what is required and will give manufacturers the flexibility to determine the best way to affix the required warnings to their vehicles.

[2] As discussed in the March 9, 1999 final rule, when multiple hazard warnings are placed in the same location, ANSI Z535.4 (1991) recommends that individual messages have sufficient space around them to prevent them from visually blending together.

C. Compliance options for placing labels on the same side of the sun visor

In the March 9 final rule we established a September 1, 1999, effective date for the new labeling and owner's manual requirements. With respect to the labeling requirement, we noted that all of the commenters agreed that a leadtime of 180 days was sufficient to design, produce and install a new label. On April 26, 1999, we published a notice clarifying that manufacturers could voluntarily comply with the new requirements in advance of the September 1, 1999 mandatory compliance date. We understand that some manufacturers intend to do so.

We are concerned that requiring manufacturers to comply with the new requirements by September 1, 1999, would not give manufacturers who wish to install both labels on the same side of the sun visor sufficient lead time to design, produce, and install new labels that comply with the new requirements. We also believe, however, that those who can comply with the requirements of today's rule should be allowed to do so. Therefore, manufacturers who install both labels on the same side of the sunvisor may, until September 1, 2000, choose between two compliance options. The first option would require the air bag label to be to the left of the rollover warning label and the labels to be noncontiguous. The second option would require there to be text separating the pictograms of the two labels and that either the labels must be located such that the shortest distance from any of the lettering or graphics on the rollover warning label to any of the lettering or graphics on the air bag warning label is at least three centimeters, or where the rollover warning and air bag warning labels are each completely surrounded by a continuous solid-lined border, the shortest distance from the border of the rollover warning label to the border of the air bag warning label must be at least one centimeter. As of September 1, 2000, manufacturers would have to comply with the requirements of the second option. We believe that this provision will give manufacturers sufficient lead time to comply with the new requirements for placing labels on the same side of the sun visor.

A manufacturer must select one of the compliance options at the time it certifies the vehicle and may not thereafter select the other option for the vehicle. Failure to comply with the selected option would constitute a noncompliance with the standard regardless of whether the vehicle complies with the other option.

D. Air Bag and Rollover Alert Label Requirements

The final rule requires that an alert label be placed on the front of the sun visor if the rollover label is not visible when the sun visor is in the stowed position. The air bag warning label has a similar requirement. Currently, these two alert labels may not be combined. AAM requested that we amend the rollover and air bag alert label requirements to allow the two labels to be combined when both the air bag and rollover warning labels are not visible when the visor is in the stowed position. AAM argued that it was redundant and unnecessary to require two separate alert labels with two "flip visor over" text messages on the driver's sun visor.

We agree that only one alert label is needed to alert the driver to turn the visor over for an important safety message. Therefore, we are amending the alert label requirements to allow the warnings to be combined in one label. The combined alert label must contain the following statements in yellow text on a black background: "Air Bag and Rollover Warnings", "Flip Visor Over". In addition, the label must include a black pictogram on a white background of an air bag deploying into a rearfacing infant seat. The pictogram must be encircled by a red circle with a slash through it. We believe the combined alert label will effectively alert drivers to the importance of turning the visor over to read the label and will give manufacturers the option of affixing one alert label instead of two.

E. Voluntary placement of rollover warning labels

In the March 9, 1999 final rule, we amended the text of the air bag warning label requirement (49 CFR 571.208, S4.5.1(b)(3)) to allow both the air bag label and the rollover label to be placed on the same side of the sun visor. In its petition, AAM noted that the change made to the provision's regulatory text prohibits the voluntary installation of the rollover warning label on the same side of the sun visor as the air bag warning label in vehicles such as large SUVs or pickup trucks.

The text of S4.5.1(b)(3) prohibits manufacturers from affixing to the same side of the sun visor as the air bag label anything other than the air bag maintenance label and the rollover label required on utility vehicles with a wheelbase of 110 inches or less. Specifically, S4.5.1(b)(3) states:

> Except for the information on an air bag maintenance label placed on the visor pursuant to S4.5.1(a) of this standard, or on a utility vehicle label placed on the visor pursuant to 49 CFR 575.105(d)(1), no other information shall appear on the same side of the sun visor to which the sun visor air bag warning label is affixed. Except for the information in an air bag alert label placed on the visor pursuant to S4.5.1(c) of this standard, no other information about air bags or the need to wear seat belts shall appear anywhere on the sun visor.

Under S4.5.1(b)(3), as currently drafted, a rollover warning label installed on the same side of the sun visor as the air bag warning label on a large-sized utility vehicle or a pickup truck would be prohibited as "other information" since it would not be installed pursuant to 49 CFR 575.105(d)(1), which applies only to utility vehicles with a wheelbase of 110 inches or less.

Although we decided not to extend the rollover warning labeling requirement to other vehicles in the March 9 final rule, we have no objection to manufacturers voluntarily installing rollover warning labels in pickups, vans, or other vehicles. Rollovers occur in vehicles other than small and mid-sized utility vehicles, albeit at a lower rate.

NHTSA analyzed the statistics for percent rollovers per single vehicle crashes for vehicles with a wheelbase of ≤110 inches compared to vehicles with a wheelbase of >110 inches to determine the rollover rate for different vehicle types. The results are included in Table 1.

TABLE 1.—PERCENT ROLLOVER PER SINGLE VEHICLE CRASHES
[% RO/SVC]

	All	≤110" wheelbase	>110" wheelbase
Car	17.4	20.1	11.0
Utility Vehicle	48.9	57.5	9.5
Van	22.2	8.3	30.4
Pickup	37.5	41.4	25.6

We believe that manufacturers should be allowed to alert their drivers to the risk that the vehicles will roll over, the steps they can take to avoid that risk, and the steps they can take to reduce the chance of injury in the event of a rollover. While manufacturers may voluntarily install a rollover warning in vehicles other than utility vehicles with a wheelbase of 110 inches or less, S4.5.1(b)(3) prohibits them from installing them on the same side of the sunvisor as the air bag warning label. We believe that manufacturers should be able to voluntarily affix the rollover warning label in the exact same places the required label can be affixed. We are, therefore, amending the March 9 final rule to allow the voluntary installation of the rollover warning label on the same side of the sun visor as the air bag warning label in vehicles that are not required by 49 CFR 575.105 to have them.

F. Foreign Language Translations

In an April 8, 1999 letter, AAM asked that we allow foreign language translations of the new rollover warning label. AAM stated that this would be consistent with prior agency interpretations concerning the use of foreign languages on required labels.

We have long held that manufacturers may present information in addition to the required information as long as the information is presented in a way that does not obscure or confuse the meaning of the required information. The labeling requirement of the March 9 final rule requires manufacturers to supply the rollover warning information in English. However, once manufacturers meet this requirement, they may supply the same information in other languages, so long as it does not confuse consumers. Manufacturers may apply an additional rollover warning label in a foreign language and may include a foreign language translation of the required owner's manual information, in addition to the required English text.

We note that S4.5.1 of Standard No. 208 prohibits "other information" from being placed on the sunvisor with the air bag label. We want to make it clear that as long as the non-English language label is an exact translation of the required information, we do not interpret it to be "other information". Information that is not a translation of the required information is considered "other information" and is not permitted.

G. Voluntary early compliance

The effective date of today's rule is September 1, 1999. Manufacturers may, however, comply early with the requirements included in today's rule. If a manufacturer chooses to do so, it must comply with all of the requirements.

IV. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866. Further, this action has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures.

NHTSA believes that this rule will result in a minimal cost to manufacturers and consumers of utility vehicles with a wheel base of less than 110 inches since this rule only involves minor changes.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

NHTSA has considered the impacts of this rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As explained above, NHTSA believes this rule will have minimal economic impact.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. The OMB Clearance number for the utility vehicle warning (49 CFR 575.105) is 2127–0049. NHTSA has considered the impact of the changes required by today's rule and determined that they will not have any effect on the total burden hours imposed on the public by 49 CFR 575.105.

National Environmental Policy Act

NHTSA has also analyzed this rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule will not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This rule will not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and does not have a disproportionate effect on children.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

We reviewed all relevant American National Standards Institute (ANSI) standards as part of developing the labeling and information requirements that are the subject of this document. We used the following voluntary consensus standard in developing the labeling and information requirements:

• American National Standard Institute (ANSI) standard for product safety signs and labels (ANSI Z535.4).

List of Subjects

49 CFR Part 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

49 CFR Part 575

Consumer protection, Labeling, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA amends chapter V of Title 49 of the Code of Federal Regulations as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. In § 571.208, in S4.5.1, revise paragraph (b)(3) to read as follows:

§ 571.208 Standard No. 208; Occupant crash protection.

* * * * *

S4.5.1 * * *

* * * * * *

(b) *Sun visor air bag warning label.*

(3) Except for the information on an air bag maintenance label placed on the visor pursuant to S4.5.1(a) of this standard, or on a utility vehicle warning label placed on the visor that conforms in content, form, and sequence to the label shown in Figure 1 of 49 CFR 575.105, no other information shall appear on the same side of the sun visor to which the sun visor air bag warning label is affixed. Except for the information in an air bag alert label placed on the visor pursuant to S4.5.1(c) of this standard, or on a utility vehicle warning label placed on the visor that conforms in content, form, and sequence to the label shown in Figure 1 of 49 CFR 575.105, no other information about air bags or the need to wear seat belts shall appear anywhere on the sun visor.

* * * * *

PART 575—CONSUMER INFORMATION REGULATIONS

3. The authority citation for Part 575 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

4. In Section 575.105 revise paragraph (d)(1)(ii) and add paragraphs (d)(1)(iii) and (iv), (d)(5) and (6) and Figure 2 to § 575.105 to read as follows:

§ 575.105 Vehicle rollover.

* * * * *

(d) *Required information.*

(1) *Rollover Warning Label.*

* * * * *

(ii) Vehicles manufactured on or after September 1, 1999 and before September 1, 2000. When the rollover warning label required by paragraph (d)(1)(i) of this section and the air bag warning label required by paragraph S4.5.1(b) of 49 CFR 571.208 are affixed to the same side of the driver side sun visor, either:

(A) the rollover warning label must be affixed to the right (as viewed from the driver's seat) of the air bag warning label and the labels may not be contiguous; or

(B) the pictogram of the air bag warning label must be separated from the pictograms of the rollover warning label by text, and

(*1*) the labels must be located such that the shortest distance from any of the lettering or graphics on the rollover warning label to any of the lettering or graphics on the air bag warning label is not less than 3 cm, or

(*2*) if the rollover warning and air bag warning labels are each completely surrounded by a continuous solid-lined border, the shortest distance from the border of the rollover warning label to the border of the air bag warning label is not less than 1 cm.

(iii) The manufacturer must select the option to which a vehicle is certified by the time the manufacturer certifies the vehicle and may not thereafter select a different option for that vehicle. If a manufacturer chooses to certify

compliance with more than one compliance option, the vehicle must satisfy the requirements applicable to each of the options selected.

(iv) Vehicles manufactured on or after September 1, 2000. When the rollover warning label required by paragraph (d)(1)(i) of this section and the air bag warning label required by paragraph S4.5.1(b) of 49 CFR 571.208 are affixed to the same side of the driver side sun visor the pictogram of the air bag warning label must be separated from the pictograms of the rollover warning label by text and:

(A) the labels must be located such that the shortest distance from any of the lettering or graphics on the rollover warning label to any of the lettering or graphics on the air bag warning label is not less than 3 cm, or

(B) If the rollover warning and air bag warning labels are each completely surrounded by a continuous solid-lined border, the shortest distance from the border of the rollover warning label to the border of the air bag warning label must be not less than 1 cm.

* * * * *

(5) *Combined Rollover and Air Bag Alert Warning.* If the warnings required by paragraph (d)(1) of this section and paragraph S4.5.1(b) of 49 CFR 571.208 to be affixed to the driver side sun visor are not visible when the sun visor is in the stowed position, a combined rollover and air bag alert label may be permanently affixed to that visor in lieu of the alert labels required by paragraph (d)(3) of this section and paragraph S4.5.1(c)(2) of 49 CFR 571.208. The combined rollover and air bag alert label must be visible when the visor is in the stowed position. The combined rollover and air bag alert warning must conform in content to the label shown in Figure 2 of this section, and must comply with the following requirements:

(i) The label must read:

AIR BAG AND ROLLOVER WARNINGS
Flip Visor Over

(ii) The message area must be black with yellow text. The message area must be no less than 20 square cm.

(iii) The pictogram shall be black with a red circle and slash on a white background. The pictogram must be not less than 20 mm in diameter.

(6) At the option of the manufacturer, the requirements in paragraph (d)(1)(i) for labels that are permanently affixed to specified parts of the vehicle may instead be met by permanent marking and molding of the required information.

BILLING CODE 4910–59–P

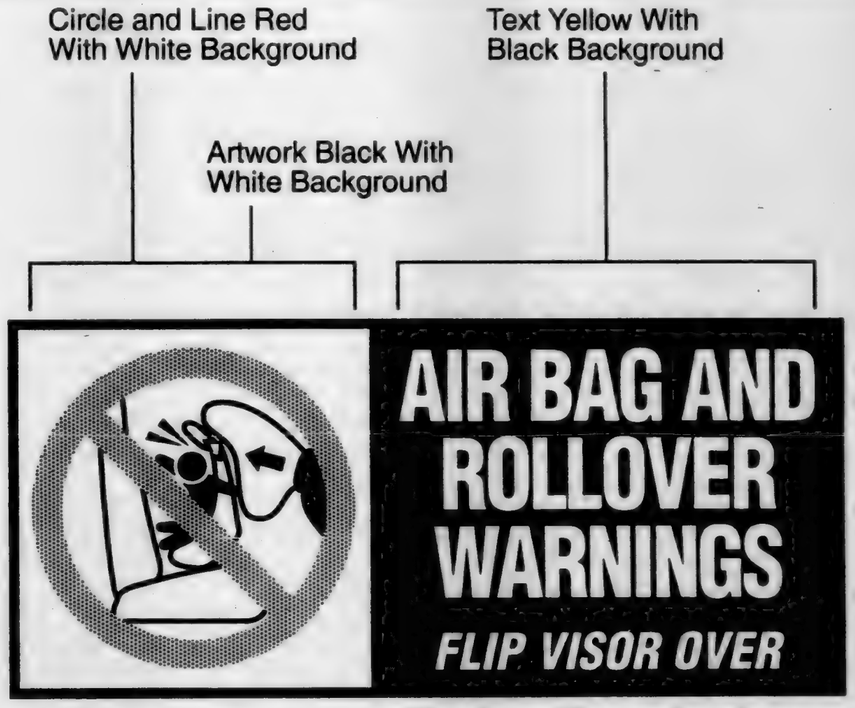

Figure 2. Sun Visor Label Visible When Visor is in Up Position.

Issued on: August 24, 1999.

Frank Seales, Jr.

Acting Deputy Administrator.

[FR Doc. 99–22365 Filed 8–25–99; 4:19 pm]

BILLING CODE 4910–59–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC09

Endangered and Threatened Wildlife and Plants; Threatened Status for Lake Erie Water Snakes (Nerodia sipedon insularum) on the Offshore Islands of Western Lake Erie

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: Under the authority of the Endangered Species Act of 1973, as amended (Act), we (the U.S. Fish and Wildlife Service) determine threatened status for the Lake Erie water snake (*Nerodia sipedon insularum*) found among the western Lake Erie offshore islands and adjacent waters in the U.S. and Canada. This listing does not extend the Act's protection to water snakes (*Nerodia sipedon*) found on the U.S. mainland, Canadian mainland, or the adjacent near-shore U.S. islands (e.g., Mouse Island and Johnson Island in Ohio). Small population size, persecution by humans, and habitat destruction are the primary threats. This action implements the Act's protections for the Lake Erie water snake. In addition, it identifies specific handling conditions that do not violate the Act's prohibitions.

EFFECTIVE DATE: The effective date of this rule is August 30, 1999 (see "Effective Date" section under **SUPPLEMENTARY INFORMATION** below).

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours, at offices of the U. S. Fish and Wildlife Service in Fort Snelling, Minnesota, and in Reynoldsburg, Ohio. The Minnesota office is located at the Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. The Ohio office is located at 6950–H Americana Parkway, Reynoldsburg, Ohio 43068.

FOR FURTHER INFORMATION CONTACT: Buddy B. Fazio, endangered species biologist, Ohio (614–469–6923 ext. 13) or Jennifer Szymanski, biologist, Division of Endangered Species, Minnesota (612–713–5342) at the above addresses.

SUPPLEMENTARY INFORMATION:

Background

This listing provides threatened status and Endangered Species Act protection to the Lake Erie water snake (*Nerodia sipedon insularum*) located on the western Lake Erie offshore islands and adjacent waters. This listing does not include water snakes (*N. sipedon*) found on the Canadian mainland, U.S. mainland, or adjacent near-shore islands due to those areas having high occurrence of northern water snakes (*N. s. sipedon*), intergrades between the two subspecies, and the low occurrence of Lake Erie water snakes (*N. s. insularum*). This means water snakes located on Ohio's Catawba/Marblehead Peninsula, Mouse Island and Johnson Island (also referred to as Johnson's Island), and Canada's Point Pelee are not protected under the Act by this listing. We define near-shore islands as those islands or rock outcrops located immediately adjacent to, or within 1.6 kilometers (km) (1 mile (mi)) of either mainland.

We define offshore islands as those 22 or more named and unnamed western Lake Erie islands and rock outcrops located greater than 1.6 (km)(1 mi) from the Ohio mainland and Ontario mainland. We define the offshore island's adjacent waters as the western Lake Erie waters surrounding the offshore islands and located greater than 1.6 (km)(1 mi) from the Ohio mainland and Ontario mainland. These islands and rock outcrops and their adjacent waters are located within boundaries roughly defined as 82°22′30″ North Longitude, 83°07′30″ North Longitude, 41°33′00″ West Latitude, and 42°00′00″ West Latitude. The U.S. Lake Erie offshore islands and rock outcrops include, but are not limited to, the islands called Kelleys, South Bass, Middle Bass, North Bass, Sugar, Rattlesnake, Green, Gibraltar, Starve, Gull, Ballast, Lost Ballast, and West Sister. Canadian Lake Erie offshore islands and rock outcrops of Lake Erie include, but are not limited to, the islands called Pelee, Middle, East Sister, Middle Sister, North Harbour, Hen, Chick, Big Chicken, and Little Chicken.

Lake Erie water snakes (*N. s. insularum*) were briefly described by Morse (1904) as *Natrix fasciata erythrogaster*. Conant and Clay (1937, 1963) described the Lake Erie water snake subspecies more fully. Lake Erie water snakes are uniformly gray or brown and have either no color pattern or have blotches or banding that are faded or reduced (Conant and Clay 1937, 1963; Camin and Ehrlich 1958; Conant 1982; Kraus and Schuett 1982; King 1987b, 1991). Color pattern variations among Lake Erie water snakes are thought to result from the combined effects of both natural selection and gene flow (King 1993b, 1993c; King and Lawson 1995). On the rocky shorelines of the western Lake Erie islands, water snakes with unbanded or reduced patterns appear to have a survival advantage compared to fully patterned water snakes (Camin *et al.* 1954; Camin and Ehrlich 1958; Ehrlich and Camin 1960; King 1992a). Female Lake Erie water snakes grow up to 1.1 meters (m) (3.5 feet (ft)) long and are larger than males. Newborn Lake Erie water snakes are the size of a pencil when born during late summer, or early fall.

Lake Erie water snakes use habitat composed of shorelines that are rocky or contain limestone/dolomite shelves and ledges for sunning and shelter (Conant and Clay 1937; Conant 1951; Thomas 1949; Camin and Ehrlich 1958; King 1986, 1987b). Shelter (refugia) occurs in the form of loose rocks, piled rocks, or shelves and ledges with cracks, crevices, and nearby sparse shrubbery (Thomas 1949; King 1986, 1992a). Lake Erie water snakes are found less often on shorelines composed of small stones, gravel or sand (Conant and Clay 1937; Conant 1938; King 1986). Certain types of rip-rap, armor stone, or docks made with rock cribs can serve as shelter for Lake Erie water snakes (Conant and Clay 1937; Conant 1938, 1982; King 1990; Service 1994), provided adequate space exists in these structures that is above Lake Erie's water and ice levels.

The Lake Erie water snake (*N. s. insularum*) and the northern water snake (*N. s. sipedon*) are separate subspecies. Northern water snakes (*N. s. sipedon*) are common and widely distributed in eastern North America, including the Ohio and Ontario mainland, whereas Lake Erie water snakes (*N. s. insularum*) have declined and occur primarily on the offshore islands of western Lake Erie (Schmidt and Davis 1941; Conant 1982; Kraus and Schuett 1982; King 1986, 1987b, 1989a, 1989b, 1991, 1993b, 1996; King and Lawson 1995; King 1997; King *et al.* 1997). Lake Erie water snakes have reduced or no color patterns, while northern water snakes have sharply defined band patterns (Conant and Clay 1937, 1963; Camin and Ehrlich 1958; Conant 1982; Kraus and Schuett 1982; King 1987b, 1991). Lake Erie water snakes occur on rocky limestone and dolomite shorelines; northern water snakes use more heavily vegetated locations with soil, mud or clay (Conant 1951; King 1986, 1987b; King and Lawson 1995). Lake Erie water snakes also have a different diet, a larger adult body size, lower growth rates, and shorter tails compared to northern water snakes (Conant 1951; Hamilton 1951; Langlois 1964; Drummond 1983; King 1986, 1989a, 1993a).

The geographic interface where both subspecies of water snake (*Nerodia sipedon*) occur is the Ohio mainland (the Catawba/Marblehead Peninsula) and its near-shore islands (Mouse Island and Johnson Island). Water snake populations in these areas have northern water snakes (*N. s. sipedon*), Lake Erie water snakes (*N. s. insularum*), and intergrades between the two subspecies (Conant and Clay 1937, 1963; Conant 1938; Camin and Ehrlich 1958; Kraus and Schuett 1982; King 1986, 1987a, 1987b; Pfingston 1991; Reichenbach 1992a, 1992b, 1997, 1998). Intergrades naturally occur on the Peninsula and near-shore islands because there is no barrier to prevent the two subspecies from interbreeding. Lake Erie water snakes (*N. s. insularum*) occur in this interface zone in low frequencies (Conant and Clay 1937; Camin and Ehrlich 1958; Kraus and Schuett 1982; King 1987b; Reichenbach 1997, 1998).

Approximately 95 percent of the Lake Erie water snake (*N. s. insularum*) population's gene pool occurs on the offshore islands of western Lake Erie (King 1998a, 1998b). The offshore islands are isolated from the Ohio and Ontario mainland by approximately 5 to 14 km (3 to 9 mi) of water. Although not a complete barrier, the distance from offshore islands to the mainland (and the near-shore islands) creates a natural barrier. This barrier maintains the integrity of the Lake Erie water snake gene pool by limiting interbreeding between offshore island Lake Erie water snakes and mainland and near-shore northern water snakes. Thus, species experts believe that the genetic pool on the western Lake Erie offshore islands is primarily Lake Erie water snake (Conant and Clay 1963 using data from Cliburn 1961; King 1986, 1987b, 1992a, 1992b, 1998a) and the genetic pool on the mainlands and near-shore islands is predominately northern water snake (*N. s. sipedon*).

Lake Erie water snake movements and related gene flow are lower among mainland and island sites compared to movements among islands (King 1987b; King and Lawson 1995). King (1987b) reports that all 202 water snakes, recaptured up to 1,146 days after initial capture, were found within 50 m to 300 m (164 ft to 984 ft) of the original capture site. No water snakes were observed to move among island study sites separated by as little as 1.3 km (.8 mi), confirming the observations of Fraker (1970) that water snakes practice high site fidelity. King (1987b) estimates that less than 3 percent of adult water snakes move among islands or among sites on a given island, each year, and thus, by inference, movement between near-shore islands/mainland and off-shore islands is likely very limited. King and Lawson (1995) estimated that, for each generation, an average 9.2 water snakes migrate between Pelee Island and the Ontario mainland, and 3.6 water snakes migrate between the islands and the Ohio mainland. Enserink (1997) notes that populations with 10 or more migrants per generation tend to not experience natural forces, such as natural selection, that promote speciation (i.e., a subspecies eventually evolving into a full species over geologic time). Thus, the Lake Erie water snake remains a unique insular population that is affected by the opposing forces of natural selection and gene flow (King and Lawson 1995).

The historic abundance of water snakes on the Lake Erie islands was first noted in descriptions by early travelers (McDermott 1947; Parker 1976). During the 1700s, the islands of western Lake Erie were called "Les Iles aux Serpentes," the islands of snakes (McDermott 1947; Langlois 1964). Other accounts by early travelers describe islands with "myriads (or 'wreaths') of water snakes basking in the sun" or with water snakes "sunning themselves in heaps, knots and snarls" (Ballou 1878; Hatcher 1945; McDermott 1947; Parker 1976; Wright and Wright 1957:534). Morse (1904) noted that many of the water snakes on the islands of western Lake Erie were uniquely grey, unbanded individuals (at that time, *Natrix fasciata erythrogaster*).

The Lake Erie water snake population has declined over 150 years due to persecution and habitat alteration (Hatcher 1945, Langlois 1964, Conant 1982, Kraus and Schuett 1982; King 1986, 1987a, 1987b, 1990, 1998a, 1998b; King and Lawson 1995; King *et al.* 1997). One example is Middle Island, Ontario, where Thomas (1949) observed up to seven snakes per "clump" of shrubbery at "close intervals" over a distance of several hundred yards of limestone shoreline. King (1986) estimated a population size for Middle Island that is three to five times lower than the number of water snakes collected in a single day by Camin *et al.* (1954) or in two days by Ehrlich and Camin (1960). In another example, it took King (1986) a month or more on several islands to achieve sample sizes similar to that achieved by Conant and Clay (1937) or Camin and Ehrlich (1958) in a single day. Finally, in terms of numbers of water snakes per investigator hour, King (Service 1994) noted that Lake Erie water snake capture rates declined from 10 snakes per hour (during the 1930s through 1950s) to less than one snake per hour (during the early 1980s), a ten-fold decline over 30 to 50 years.

Recent data also show declines in population density (i.e., number of Lake Erie water snakes per km of shoreline) on three of the four U.S. islands most important to the water snake's long-term survival (King 1998a, 1998b). When compared to the 1986 population estimate (King 1986), the 1998 estimate indicates the overall Lake Erie water snake population continues to remain at a small size. Small population size makes the Lake Erie water snake population vulnerable to extinction or extirpation. (See discussions under the "Issue 2" and "Factor E" sections later in this document.)

The current distribution of Lake Erie water snakes is small compared to their historic distribution. The historic range of the Lake Erie water snake (*N. s. insularum*) included 22 or more offshore islands and rock outcrops of western Lake Erie, a portion of the Ontario mainland that includes Point Pelee, and shorelines of the Catawba/Marblehead Peninsula, Mouse Island, and Johnson Island in Ohio (Conant and Clay 1937, 1963; Conant 1938; Kraus and Schuett 1982; King 1986, 1987a, 1987b, 1998a). Water snakes were found on Green Island in 1930 (Conant 1982) and early museum records (Ohio State University F.T. Stone Laboratory collection) initially confirmed water snakes on West Sister Island. Today, Lake Erie water snakes no longer occur on the Ontario mainland and four islands: West Sister Island, Green Island, Middle Sister Island, and North Harbour Island (King 1986, 1998a, 1998b).

In summary, the Lake Erie water snake has declined in population abundance and in distribution. The current estimate for the U.S. population ranges from 1,530 to 2,030 adults and is restricted to only 8 islands (King 1998a, 1998b). Stated another way, 95 percent of the Lake Erie water snake population is currently restricted to an area with a diameter of less than 40 km (25 mi) comprising 12 western Lake Erie offshore islands in the U.S. and Canada combined (King 1986, 1987a, 1998a, 1998b).

Previous Federal Record

We identified the Lake Erie water snake as a category 2 candidate species in notices of review published in the **Federal Register** on September 18, 1985 (50 FR 37958) and on January 6, 1989 (54 FR 554). Our November 21, 1991, Notice of Review (56 FR 225), changed the snake's status to category 1 candidate. Prior to 1996, a category 2 species was one that we were

considering for possible addition to the Federal List of Endangered and Threatened Wildlife, but for which conclusive data on biological vulnerability and threat were not available to support a proposed rule. We stopped designating category 2 species in the February 28, 1996, Notice of Review (61 FR 7596). We now define a candidate species as a species for which we have on file sufficient information to propose it for protection under the Act (former category 1 classification).

On August 18, 1993, we published a rule proposing to list the Lake Erie water snake (*N. s. insularum*) as threatened (58 FR 43857). The original comment period ended on November 16, 1993, and the deadline for receipt of public hearing requests was October 4, 1993. An October 12, 1993, notice (58 FR 52740) extended the public comment and the hearing request deadline for 30 days. On May 13, 1994, we published in the **Federal Register** a notice of public hearing and reopening of the comment period (59 FR 25024). We held public hearings on South Bass Island, Ohio, on May 31, 1994, and in Port Clinton, Ohio, on June 1, 1994. The comment period closed on June 16, 1994.

On April 10, 1995, Congress enacted a moratorium on the processing of all final listing actions (Public Law 104–6) and rescinded $1.5 million from our listing budget, which further delayed action on the proposed rule. The Congressional moratorium continued until April 26, 1996, when President Clinton exercised authority given to him in the Omnibus Budget Reconciliation Act of 1996, waiving the moratorium.

During 1995, due to uncertainty as to the extent of the Congressional moratorium, we determined that the available data for the listing decision could have become outdated. To ensure responsible evaluation of current data, we and the Ohio Division of Wildlife funded a two-year study of the Lake Erie water snake population in 1996 and 1997, with some additional data collection and a final report due in 1998. We received the report from Dr. Richard King during June of 1998, and received an addendum to the final report in September of 1998.

On May 8, 1998, we published Listing Priority Guidance for Fiscal Years 1998 and 1999 (63 FR 25502). The guidance clarifies the order in which we will process rule-makings, giving highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists); second priority (Tier 2) to processing final determinations on proposals to add species to the Lists, processing new proposals to add species to the Lists, processing administrative findings on petitions (to add species to the Lists, delist species, or reclassify listed species), and processing a limited number of proposed or final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed or final rules designating critical habitat. The processing of this final rule falls under Tier 2.

Summary of Comments and Recommendations

In the August 18, 1993, proposed rule and two subsequent notifications, we requested all interested parties (hereafter called participants) to submit factual reports or information that might contribute to development of a final rule. We contacted appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties in the United States and asked them to comment. We also notified Canadian officials at the Ontario Ministry of Natural Resources offices (located in Toronto, London, and Chatham) and at the Canadian Wildlife Service in Ottawa, Ontario. We published newspaper notices inviting public comment and notifying the public of pertinent hearings in the following newspapers—"The Port Clinton News Herald" (Port Clinton, Ohio), "The Sandusky Register" (Sandusky, Ohio), "The Cleveland Plain Dealer" (Cleveland, Ohio), "The Toledo Blade" (Toledo, Ohio), and "The Call and Post" (Cleveland, Columbus, and Cincinnati, Ohio). We notified island residents of public hearings and the reopened June comment period by placing notices in their local U.S. Post Office boxes.

Public hearings were requested by Donald J. McTigue (of McTigue & Brooks, Attorneys at Law, Columbus, Ohio), representing Baycliff's Corporation, and by H. R. Clagg (President, Johnson's Island Property Owners Association, Marblehead, Ohio). In response, we held public hearings on May 31, 1994, at Put-in Bay, South Bass Island, Ohio, and on June 1, 1994, in Port Clinton, Ohio. Approximately 20 people attended the hearing at Put-in Bay, and approximately 50 people attended the hearing at Port Clinton.

We received comments and information from participants in the form of letters, reports, and oral testimony. Out of 96 total comments received, 89 supported listing the Lake Erie water snake as threatened, while seven did not support listing. We received comments from 2 State agencies, 4 universities, 2 zoos, 5 herpetologists, 2 environmental groups, 1 corporation, 2 private groups, 12 private citizens and 57 school children.

We address comments and oral statements received during the public hearings and comment periods in the following summary of issues. Comments of a similar nature are grouped into a single issue.

Issue 1—Some participants asked if other factors besides habitat loss and persecution, such as predation, pollution, or collecting, contributed to Lake Erie water snake declines.

Response—The effects of predation, pollution, and collecting on Lake Erie water snake population are not clear. We believe it is unlikely that natural predators contribute significantly to Lake Erie water snake declines. Although Lake Erie water snakes are undoubtedly taken as prey by gulls, herons, other birds, and other snakes (Camin and Ehrlich 1958; Goldman 1971; Hoffman and Curnow 1979; King 1986, 1987b, 1993c), the mortality is believed negligible and not likely to adversely affect Lake Erie water snake populations.

Although some water snakes were documented to contain or be adversely affected by certain pollutants (Herald 1949, DeWitt *et al.* 1960, Peterle 1966, Meeks 1968, Novakowski *et al.* 1974), the role of pollution in the decline of Lake Erie water snakes is not clear. To date, comprehensive pollution toxicity studies have not been conducted.

The impact of scientific collecting on the Lake Erie water snake population is also unknown. The number of museum collections and the numerous reports of collections within scientific literature suggest the Lake Erie water snake population can withstand some level of scientific collection. We cannot discount, however, the possible negative impacts of over-collection on the population, particularly if the population declines further. Federal listing will curtail superfluous scientific collecting, as well as any other collecting activity.

Issue 2—Some participants believe the Lake Erie water snake population has seriously declined, while others believe the population has not declined.

Response—The decline of Lake Erie water snakes from historical levels is well documented (Hatcher 1945; McDermott 1947; Ehrlich and Camin 1960; Conant and Clay 1963; Langlois 1964; Conant 1982; Kraus and Schuett 1982; Reichenback 1992; Service 1994; King 1986, 1998a; King *et al.* 1997). In addition to obvious decline in abundance from earlier this century, the Lake Erie water snake's geographic distribution has been restricted. The Lake Erie water snake historically occurred on the Ohio mainland, the Ontario mainland, 2 or more near-shore Ohio islands, and 22 or more offshore islands and rock outcrops. Today, the Lake Erie water snake does not occur on the Ontario mainland, has disappeared from four islands, and has declined significantly on the remaining islands (King 1986, 1987a, 1998a, 1998b; King *et al.* 1997).

We recognize the population estimates provided by King (1986, 1987a, 1998a, 1998b) and Reichenbach (1997, 1998) as the best available scientific information with respect to current estimates of Lake Erie water snake population size in the United States. The Lake Erie water snake population size is currently estimated to be 1,530 to 2,030 adults (King 1998a, 1998b). When compared to the 1986 population estimate (King 1986), the 1998 estimate verifies that the Lake Erie water snake population has remained at a small size for over a 12-year period (King 1998).

The Lake Erie water snake population suffers from three problems. First, the Lake Erie water snake continues to decline in terms of population density (i.e., water snakes per km of shoreline) on three out of four U.S. islands most important to the water snake's long-term survival (King 1998a, 1998b). Second, current reproduction and survival rates appear insufficient to allow the population to increase to levels higher than existing vulnerable thresholds. Third, low population densities and insular distribution of the Lake Erie water snake render it vulnerable to extinction or extirpation.

Issue 3—Participants asked for an explanation of characteristics that distinguish the Lake Erie water snake subspecies (*Nerodia sipedon insularum*) from the northern water snake subspecies (*Nerodia sipedon sipedon*).

Response—The two water snake subspecies are distinguished from each other by habitat, behavioral, and morphological differences. Lake Erie water snakes occur on rocky limestone and dolomite shorelines with some plants, whereas northern water snakes use more heavily vegetated locations with soil, mud or clay (Conant 1951; King 1986, 1987b; King and Lawson 1995). Lake Erie water snakes also have a different diet, a larger adult body size, lower growth rates, and shorter tails compared to northern water snakes (Conant 1951; Hamilton 1951; Langlois 1964; King 1986, 1989a, 1993a). Furthermore, Lake Erie water snakes are uniformly gray or brown and either have no color pattern or have blotches or banding that are faded or reduced, whereas northern water snakes have sharply defined, complete banding patterns (Conant and Clay 1937, 1963; Camin and Ehrlich 1958; Conant 1982; Kraus and Schuett 1982; King 1987b, 1991). It is important to note, however, that at locations where the two subspecies co-occur, subspecies intergrades exist which are difficult to identify as either a Lake Erie water snake or northern water snake.

Issue 4—Some participants inquired about the status of the Lake Erie water snake on Johnson Island and the Catawba/Marblehead Peninsula. The participants also asked if these locations are within the documented range of the Lake Erie water snake.

Response—The Peninsula and two near-shore islands (i.e., Johnson Island and Mouse Island) are within the current and historic range of the Lake Erie water snake (Kraus and Schuett 1982; King 1986; King *et al.* 1997; Reichenbach 1998). However, the core gene pool comprising 95 percent of the Lake Erie water snake population occurs on the off-shore islands (i.e., islands located more than one mile from the Ohio or Ontario mainland) of western Lake Erie (King 1986, 1998). The near-shore islands and mainland locations contain a gene pool dominated by northern water snakes (*N. s. sipedon*) with a much lower frequency of Lake Erie water snakes (*N. s. insularum*) and intergrades between the two subspecies (Conant and Clay 1937, 1963; Conant 1938; Conant 1982; Camin and Ehrlich 1958; Kraus and Schuett 1982; King 1986; Pfingston 1991; Reichenbach 1997, 1998).

Issue 5—Some participants believe that water snakes on Ohio's Catawba/Marblehead Peninsula, Mouse Island and Johnson Island should be included in the Lake Erie water snake listing as threatened.

Response—In responding to Issues 3 and 4, above, we explain that the Peninsula, Johnson Island, and Mouse Island comprise a zone dominated by the northern water snake (*N. s. sipedon*). This is because these areas lack the natural barrier, distance from the mainland, that buffers the Lake Erie water snake populations on the offshore islands. Johnson Island located in Sandusky Bay is 480 m (1600 ft) from the Catwaba/Marblehead peninsula that separates it from the other offshore islands. A rip-rap lined causeway connects Johnson Island to the Catwaba/Marblehead peninsula, facilitating the movement of northern water snakes to Johnson Island. Mouse Island is located less than 300 m (1000 ft) from the Ohio shore. We believe that the protection of the offshore populations ensures the long-term survival of the Lake Erie water snake (*N. s. insularum*).

Issue 6—Some participants asked that "Critical habitat" be declared for Lake Erie water snakes.

Response—As explained later in this rule under the "Critical Habitat" section, we believe designation of critical habitat is not prudent.

Issue 7—Some participants believe water snakes are a nuisance, poisonous, and dangerous to small children, adults, and pets.

Response—The Lake Erie water snake may appear dangerous because of its large body size and defensive temperament. However, when approached by humans it will choose escape over confrontation, if possible. If escape is not possible, like any wild animal, it will try to protect itself. The Lake Erie water snake is not poisonous and does not have fangs; instead, the snake has small teeth that give a pinching bite. In 1994, we and the Ohio Division of Wildlife began a public awareness campaign on the Lake Erie islands. This campaign encourages adults and children to respect and not handle the Lake Erie water snake just as they would respect other wild animals.

Issue 8—Some participants asked if artificial structures or artificial habitat can benefit Lake Erie water snakes. Participants also asked if the presence of artificial structures would cause the Lake Erie water snake subspecies to expand its range into locations where it did not previously occur.

Response—Certain types of artificial habitat (rip-rap, certain armor stone, rock piles, or docks made with rock-filled cribs) may provide shelter for Lake Erie water snakes (Conant and Clay 1937; Conant 1938, 1982; King 1990; Service 1994). However, the extent to which such artificial refugia benefit Lake Erie water snakes is currently unknown. The conservation of Lake Erie water snakes can also be aided by incorporating rock-oriented designs into shoreline developments and associated erosion control structures. Such measures have already been adopted by one developer on Johnson Island (Pfingston 1991; Reichenbach 1992a, 1992b, 1997, 1998). These structures, however, are unlikely to precipitate the expansion of the Lake Erie water snake (*N. s. insularum*) population because of outside pressures such as habitat degradation, natural selection, and natural gene flow from the northern water snake (*N. s. sipedon*).

Issue 9—Some participants asked if listing Lake Erie water snakes as threatened will cause additional permits to be required for shoreline development. Others asked if listing

will prevent landowners from developing their land.

Response—The purpose of the Act is to conserve species such as the Lake Erie water snake (*N. s. insularum*) and the ecosystems upon which they depend. To achieve this goal, it is necessary to minimize the loss of Lake Erie water snakes and their habitat. Thus, the Act affords protection against take (i.e., killing, injuring, capturing, etc.) of Lake Erie water snakes. Projects that will harm individual Lake Erie water snakes or destroy their habitat will require an incidental take permit from us. Under the "Available Conservation Measures" section of this notice, we identify activities likely to result in take of Lake Erie water snakes. However, many of these actions, such as construction of shoreline docks, placement of stone or armor plates to prevent erosion, and other shoreline developments, already require a permit from the U.S. Army Corps of Engineers (Corps) under section 404 of the Clean Water Act or section 10 of the Rivers and Harbors Act. Pursuant to the Endangered Species Act, it is the Corps' responsibility to ensure that issuance of a Corps permit will not jeopardize Lake Erie water snakes on the offshore islands. If permit issuance by the Corps may affect the water snake or other federally listed species, the Corps must enter into section 7 consultation with us. Under section 7 consultation, we work with the Corps and project proponent to find solutions that allow the project to proceed while avoiding jeopardy to listed species. This often means adopting project modifications. If a shoreline project does not require a Corps permit and does not involve Federal funding or other Federal authorization or other action, but will take water snakes, the landowner may be required to obtain an incidental take permit under section 10 of the Act. However, we believe most minor shoreline projects as they are currently undertaken will require few modifications.

Issue 10—A few participants asked if listing Lake Erie water snakes as threatened will cause shoreline property owners to lose their homes or their land.

Response—Listing Lake Erie water snakes as threatened will not cause any landowner or homeowner to lose his/her home or land.

Issue 11—Some participants are concerned that listing Lake Erie water snakes might cause restrictions to be placed against land access or fishing activities.

Response—We do not foresee such restrictions to be enacted. We do not consider unintentional capture or entanglement as a result of recreational fishing to be a violation of the Act's prohibition on take provided the snake is immediately freed and released (see the "Available Conservation Measures" section). It is our policy (June 3, 1996; 61 FR 27978) to pursue cooperative partnerships to minimize and resolve conflicts between the implementation of the Act and recreational fishing activities.

Issue 12—Some participants asked which types of shoreline habitat will be affected by listing Lake Erie water snakes as threatened.

Response—Lake Erie water snakes can be found along any shoreline of the islands of western Lake Erie. However, they occur more often on or near rocky shorelines or shorelines composed of limestone/dolomite shelves and ledges (Conant and Clay 1937; Thomas 1949; Conant 1951; Camin and Ehrlich 1958; King 1986, 1987b). The Lake Erie water snake is protected by the Act on the shorelines of all islands and rock outcrops of western Lake Erie, except Mouse Island, Johnson Island, or any other islands and rock outcrops within 1.6 km (1 mi) of the Ohio or Ontario mainland.

Issue 13—Some participants expressed concern about being prosecuted for removing a Lake Erie water snake from their basement or yard, or from a fishing hook.

Response—Provided that private individuals follow the specific handling conditions identified in this rule, the Service will not prosecute them for removing Lake Erie water snakes from their property or from accidental capture while fishing (see the "Available Conservation Measures" section).

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, we have determined that the Lake Erie water snake (*Nerodia sipedon insularum*) on western Lake Erie offshore islands and adjacent waters (i.e., offshore islands and their surrounding waters that are more than 1.6 km (1 mi) from the Ohio and Ontario mainland) should be classified as a threatened species. We followed procedures found in section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Lake Erie water snake (*Nerodia sipedon insularum*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Habitat destruction is a major cause of the decline of Lake Erie water snakes (Ashton 1976; Kraus and Schuett 1982; King 1986; King *et al.* 1997). During the past 60 years, shoreline habitat important to the water snakes has been significantly altered, degraded, and developed through the construction of shoreline cottages, marinas, docks, and sea walls, the filling of lagoons, and the mining of quarries (Hatcher 1945; Core 1948; Kraus and Schuett 1982; King 1985, 1986; R. Conant, University of New Mexico, *in litt.* 1993; King *et al.* 1997). Current development on many western Lake Erie islands (e.g., Kelleys, North Bass, Middle Bass, South Bass, Pelee) is resulting in increased loss of Lake Erie water snake habitat. Some examples of currently proposed developments affecting Lake Erie water snake habitat include a large resort proposed for Middle Bass Island, a 1,220 m (4,000 ft) long sea wall proposed for North Bass Island, and airport expansions proposed for Kelleys Island and Middle Bass Island (Service, *in litt.* 1999).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

We know of no recreational or commercial overutilization of the Lake Erie water snake. The impact of scientific collecting on the Lake Erie water snake population is not known, but negative impacts from possible over-collecting cannot be discounted. The historical collection of Lake Erie water snakes is well documented, with reports of from 40 water snakes (Hamilton 1951; Langlois 1964; Conant 1982; Ohio Division of Natural Areas and Preserves, unpublished data, 1993) to hundreds of water snakes (Conant and Clay 1937, 1963; Conant 1938, 1951, 1982; Camin and Ehrlich 1958) collected per island during repeated visits. If the Lake Erie water snake population continues to decline, all sources of mortality, including collecting, will be problematic for the species (see "Factor E").

C. Disease or Predation

We are not aware of any evidence showing that natural predation has contributed significantly to the decline of Lake Erie water snakes. Although predation by herring gulls (*Larus argentatus*), great blue herons (*Ardea herodias*), robins (*Turdus migratorius*), and blue racers (*Coluber constrictor*) have occurred (Camin and Ehrlich 1958; Goldman 1971; Hoffman and Curnow 1979; King 1986, 1987b, 1993c), this very low level of mortality is not likely to have a significant affect on the Lake Erie water snake population. However, as stated above, populations like the Lake Erie water snake that occur at low densities can be adversely impacted by any mortality factor, whether natural or human-caused.

Little is known about the impacts of disease on water snakes (*Nerodia sipedon*). We believe disease is currently only a minor problem for Lake Erie water snakes. However, we recognize that the synergistic effects of pollutants, other environmental stress (such as habitat loss), and the locally dense nature of some localized sub-populations could expose water snakes to significant disease problems.

D. The Inadequacy of Existing Regulatory Mechanisms

Until now, Lake Erie water snakes have had no legal protection from take, harm, or habitat loss within the United States. The Ohio Division of Wildlife (ODOW) granted State threatened status (chapter 119 of the Ohio Revised Code) to the Lake Erie water snake (*N. s. insularum*) in 1990 but this is an administrative designation that does not confer legal protection. The Lake Erie water snake is listed as endangered by the Society for the Study of Amphibians and Reptiles but this also confers no legal protection. A small fraction of the land area on the western Lake Erie islands comprises public land. The Ohio State University and the Ohio Department of Parks and Recreation (R.B. King, Northern Illinois University, *in litt.* 1993) own property that is inhabited by Lake Erie water snakes, and thus is minimally protected from habitat destruction.

The Lake Erie water snake (*N. s. insularum*) subspecies is currently protected in Ontario, Canada, under the provincial Endangered Species Act, R.S.O. 1980, c. 138, in 1977 (Regulation 328; Regulation 195/88 which amends Regulation 287 of Revised Regulations of Ontario). The Lake Erie water snake (*N. s. insularum*) subspecies is also listed as federally endangered by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC). In addition, the species *Nerodia sipedon* is protected under the Ontario Game and Fish Act (Regulation 520; Regulation 113/88 which amends Regulation 397/84 of Revised Regulations of Ontario). Although these regulations provide some protection for Lake Erie water snakes at a few sites in Canada, the majority of the subspecies' island habitat remains unprotected, including 13 islands within the United States. Of the 5 core islands most important to the lake Erie water snake, 4 occur in the United States with little or no protection for the species and its habitat.

Three preserves exist in Ontario, Canada, which are inhabited by Lake Erie water snakes and protected from habitat loss. On Pelee Island, Ontario, the Lake Erie water snake is protected by Provincial preserves at Fish Point and Lighthouse Point (I. Bowman and P. Prevett, Ontario Ministry of Natural Resources, pers. comm. 1994). The Essex Region Conservation Authority also set aside preserve land on Pelee Island which benefits water snakes and local plant species (D. Krouse, ERCA, pers. comm. 1994). East Sister Island is a Lake Erie water snake Provincial preserve, but the population of water snakes on the island is small and declining (King 1986; I. Bowman and P. Prevett, Ontario Ministry of Natural Resources, pers. comm. 1994; R. King, Northern Illinois University, pers. comm. 1998). We believe the regulatory mechanisms are inadequate because of the small number of water snakes in preserves and the vulnerability from lack of regulatory protection outside of preserves.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

Persecution by humans is the most significant and well documented factor in the decline of Lake Erie water snakes (Conant 1982, Kraus and Schuett 1982, King 1986, King *et al.* 1997; Service *in litt.* 1998). During the 1800s, pigs were released on some islands to exterminate snakes (Hatcher 1945, McDermott 1947). All snake species were eradicated from Rattlesnake Island by 1930 (Conant 1982), but a few water snakes recently moved to the island (King 1987b; King *et al.* 1997). Ehrlich and Camin (1960) told of a campaign of extermination waged against water snakes on Middle Island. Conant and Clay (1963) noted that persecution of island water snakes was severe. Persecution by humans is still a serious problem on several islands (Service *in litt.* 1998). The effects of past and current persecution are evident today and are a threat to the continued existence of the water snake.

The influences of factors A through E, above, on the Lake Erie water snake are exacerbated by the small size of the population. The current low population densities and insular distribution of Lake Erie water snakes make them vulnerable to extinction or extirpation from catastrophic events, demographic variation, negative genetic effects, and environmental stresses such as habitat destruction and extermination (Shaffer 1981; King 1987b, 1998b; Dodd 1993; Nunney and Campbell 1993; King *et al.* 1997). Though populations naturally fluctuate, small populations are more likely to fluctuate below the minimum viable population threshold needed for long-term survival. Likewise, chance variation in age and sex ratios can cause death rates to exceed birth rates, causing a higher risk of extinction in small populations. Finally, decreasing genetic variability in small populations increases the vulnerability of a species to extinction due to inbreeding depression (decreased growth, survival, or productivity caused by inbreeding) and genetic drift (loss of genetic variability that takes place as a result of chance). A recent study of snakes (adders) in Sweden found that inbreeding depression in isolated populations resulted in smaller litter size, higher proportion of deformed and stillborn offspring, and lower degree of genetic heterozygosity (Madsen *et al.* 1996), which in turn cause reduced fertility and survivorship. Thus, in small populations, environmental, demographic, and genetic changes can result in an accelerating slide toward extinction.

Mace and Lande (1991) describe a system used to categorize the status of a species as Vulnerable, Endangered, or Critical according to risk of extinction criteria. Applying these criteria to the Lake Erie water snake population, King (1998b) suggests the population in the United States qualifies as Endangered or Vulnerable. Mace and Lande (1991) define Vulnerable as having a 10 percent probability of extinction within 100 years, and define Endangered as having a 20 percent probability of extinction within 20 years or 10 generations (whichever is longer). King (1998b) indicates that the Lake Erie water snake population meets these criteria because of (1) the decline of island sub-populations of the snakes, (2) accelerated habitat alteration (e.g., development) during the 1990s, and (3) potential ecological interactions with introduced species. Zebra mussels (*Dreissena polymorpha*) and round gobies (*Neogobius melanostmus*) can reduce water snake prey (i.e., fish) availability (Dermott and Munawar 1993; Fitzsimons *et al.* 1995; Jude *et al.* 1995).

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Lake Erie water snake in making this final listing determination. Based on this evaluation, we believe the Lake Erie water snake

(*Nerodia sipedon insularum*) meets the criteria for protection under the Act on the basis of persecution, destruction and modification of habitat, curtailment of its range, significant population decline from historical levels, flat and vulnerable population status in the 1990s, and the inadequacy of regulatory mechanisms. The present distribution and abundance of the Lake Erie water snake is at risk given the potential for these impacts to continue. Therefore, based on this evaluation, the preferred action is to list the Lake Erie water snake as a threatened species. The Act defines a threatened species as one that is likely to become an endangered species in the foreseeable future throughout all or a significant portion of its range. Federal threatened status for the Lake Erie water snake is effective immediately upon publication of this final rule (see "Effective Date" section below).

Effective Date

In accordance with 5 U.S.C. 553(d)(3), we have found good cause to make the effective date of this rule immediate. Because of low Lake Erie water snake population densities, continuing eradication by people, and accelerating habitat destruction, protection provided by the Act is granted to Lake Erie water snakes (*Nerodia sipedon insularum*) located on the western Lake Erie offshore islands and adjacent waters immediately upon publication of this final rule. We believe eradication efforts and habitat destruction, in particular, would temporarily intensify if the effective date of the Act's protection is delayed by the normal 30 days after rule publication. We also believe that this sudden increase in water snake persecution and habitat destruction would seriously jeopardize the already small, vulnerable Lake Erie water snake population to the extent that the long-term recovery process would be irreversibly impaired.

Critical Habitat

Section 3 of the Act defines critical habitat as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographic area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. We find that designation of critical habitat is not prudent for the Lake Erie water snake for both reasons stated above.

Potential benefits of critical habitat designation derive from section 7(a)(2) of the Act, which requires Federal agencies, in consultation with us, to ensure that their actions are not likely to jeopardize the continued existence of listed species or to result in the destruction or adverse modification of critical habitat of such species. Critical habitat designation, by definition, directly affects only Federal agency actions. Since the Lake Erie water snake is semi-aquatic, Federal actions that might affect this species and its habitat include those with impacts on island shoreline habitat and water quality. Most activities that occur would be subject to review under section 7(a)(2) of the Act, regardless of whether critical habitat was designated. The Lake Erie water snake has become so restricted in distribution that any significant adverse modification or destruction of occupied habitats would likely jeopardize the continued existence of this species. This would also hold true as the species recovers and its numbers increase. As part of the development of this rule, Federal and State agencies were notified of this species' general distribution, and we requested that they provide data on proposed Federal actions that might adversely affect the species. Should any future projects be proposed in areas inhabited by this snake, the involved Federal agency will already have the distributional data needed to determine if its action may impact the species, and if needed, we will provide more specific distribution information. Therefore, habitat protection for the Lake Erie water snake can be accomplished through the section 7 jeopardy standard, and there is no benefit in designating currently occupied habitat of this species as critical habitat.

Though critical habitat designation directly affects only Federal agency actions, controversy resulting from critical habitat designation has been known to reduce private landowner cooperation in the management of species listed under the Act. Critical habitat designation could affect landowner cooperation within habitat currently occupied by the snake and in areas unoccupied that might be needed for recovery. The publication of critical habitat maps in the **Federal Register** and local newspapers, and other publicity or controversy accompanying critical habitat designation may increase the potential for persecution as well as other collection threats. This applies to currently occupied habitat and any unoccupied habitat that were to be designated and subsequently recolonized by the species. Factor "E" of the "Summary of Factors Affecting the Species" section details the significant human persecution threats that have affected and continue to affect Lake Erie water snakes.

Based on the above analysis, we have concluded that critical habitat designation would provide little additional benefit for this species beyond those that would accrue from listing under the Act. We also conclude that any potential benefit from such a designation would be offset by an increased level of vulnerability to collecting, persecution, and by a possible reduction in landowner cooperation to manage and recover this species. Therefore, the designation of critical habitat for Lake Erie water snake is not prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States. The Act also requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against take of species and harm to species are discussed, in part, below.

Following listing, a number of recovery actions may be initiated by us, in cooperation with the State of Ohio and numerous other parties. Some possible recovery actions are as follows—(1) continuation of a public outreach program directed toward island residents and visitors; (2) habitat protection measures, as needed; (3) voluntary conservation agreements with landowners; (4) design and testing of artificial refugia; (5) increased law enforcement efforts; (6) voluntary land acquisition or conservation easements from willing sellers; (7) monitoring studies; (8) winter hibernation studies; (9) reintroduction of Lake Erie water snakes to appropriate locations; and (10) captive rearing.

A public outreach program by us and the Ohio Division of Wildlife has been active on the Lake Erie islands since 1994. The program encourages a "live and let live" attitude for snakes living among island residents and visitors. A poster contest, outdoor sign campaign, and personal contacts are helping island residents and visitors realize that Lake Erie water snakes are not poisonous and pose little threat to people. We look forward to the continuing success of this public outreach program as part of the overall effort to achieve recovery of the Lake Erie water snake.

Listing Lake Erie water snakes as threatened provides much needed coordination and legal protection. Federal threatened status for Lake Erie water snakes will automatically result in State of Ohio endangered status, triggering effective State legal protection against take. Threatened status in the United States will facilitate Federal coordination for Lake Erie water snakes in the form of partnerships with landowners, planning and management with Canadian wildlife officials, consultations on Federal projects (section 7 of the Act), enforcement (section 9 of the Act), conservation planning (section 10 of the Act), and permits (section 10 of the Act).

Section 7(a) of the Act, requires Federal agencies to evaluate their actions with respect to any species, and its critical habitat (if declared), that is proposed or listed as endangered or threatened. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR Part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us. Possible Federal actions may include projects, activities, and permit issuance by the Corps, the Natural Resources Conservation Service, the U.S. Environmental Protection Agency, the U.S. military services, the National Park Service, our Ottawa National Wildlife Refuge, and Federal agency participation in the Great Lakes Initiative, or other cooperative U.S. efforts involving Canadian governments.

The section 7 consultation process will play an important role in recovery of the Lake Erie water snake. The resulting habitat protection, habitat restoration, education of agency personnel, practical seasonal recommendations for construction activity, and beneficial project designs are vital for the Lake Erie water snake recovery. Beneficial shoreline projects contain designs that utilize rock and vegetation to provide shelter or forage areas for Lake Erie water snakes. Examples of potentially beneficial project designs are docks with rock-filled cribs, shoreline erosion barriers that utilize medium to large size stone, and reefs beneficial to small fish and amphibians that allow Lake Erie water snakes to safely feed.

The Act and implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and State conservation agencies.

Under the Act, permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are described in 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, for the enhancement or propagation or survival of the species, or for incidental take in connection with otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

It is our policy (July 1, 1994; 59 FR 34272) to identify to the maximum extent practicable, at the time a species is listed, those activities that do or do not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities on the offshore islands and adjacent waters of western Lake Erie. We believe that, based on the best available information, the following actions will not result in a violation of section 9 with respect to Lake Erie water snakes—(1) brief handling necessary to transfer individual water snakes from roads, sidewalks, structures, yards, and watercraft to adjacent habitat upon immediate release; (2) brief handling necessary to free and immediately release to adjacent habitat a water snake unintentionally hooked or entangled in fishing equipment; (3) non-harmful actions that encourage water snakes to leave, stay off, or keep out of a residence (including swimming pools and yards), a business building, the top decks of docks, foot paths, and water equipment (including boats, rafts, swimming decks, water intakes, and recreational gear); for example, a homeowner using a pool net pole to gently nudge a water snake away from his property; (4) actions that may affect offshore island water snakes and are authorized, funded or carried out by a Federal agency, when conducted in accordance with any reasonable and prudent measures given by the Service in accordance with section 7 of the Act; (5) actions authorized by a section 10 permit under the Act.

We believe violations of section 9 of the Act include, but are not limited to, the following actions on the Lake Erie offshore islands conducted without a section 10 permit under the Act—(1) intentional killing or injuring of water snakes by any means; (2) harassing water snakes in any offshore island or adjacent water habitat; (3) unauthorized collecting or handling of the water snake; (4) altering or destroying shoreline water snake habitat, including adjacent vegetation; (5) illegal discharge or dumping of toxic chemicals or other pollutants into areas occupied by the water snake.

Requests for copies of the regulations regarding listed wildlife and inquiries about prohibitions and permits may be addressed to the Division of Endangered Species, Bishop Henry Whipple Federal Building, 1 Federal Drive, Ft. Snelling, Minnesota 55111–4056 (612–713–5350; fax 612–713–5292).

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We

published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid control number. For additional information concerning permit and associated requirements for threatened species, see 50 CFR 17.32.

References Cited

A complete list of all references cited herein, as well as others, is available upon request (see **ADDRESSES** section).

Authors

The primary authors of this proposed rule are Buddy B. Fazio (614–469–6923) of our Reynoldsburg, Ohio office, and Jennifer Szymanski (612–713–5342) of our Minnesota Regional Office (see **ADDRESSES** section.)

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following to the List of Endangered and Threatened Wildlife, in alphabetical order under REPTILES:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
REPTILES							
*	*	*	*	*	*	*	*
Snake, Lake Erie water.	*Nerodia sipedon insularum.*	U.S.A. (OH), Canada (Ont.).	Lake Erie offshore Islands and their adjacent waters (located more than 1 mile from mainland)—U.S.A. (OH), Canada (Ont.).	T	665	N/A	N/A
*	*	*	*	*	*	*	*

Dated: August 16, 1999

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 99–22459 Filed 8–27–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AF24

Migratory Bird Hunting; Migratory Bird Hunting Regulations on Certain Federal Indian Reservations and Ceded Lands for the 1999–2000 Early Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special early season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands and ceded lands. This responds to tribal requests for U.S. Fish and Wildlife Service (hereinafter Service or we) recognition of their authority to regulate hunting under established guidelines. This rule allows the establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

DATES: This rule takes effect on September 1, 1999.

ADDRESSES: You may inspect comments received, if any, on the proposed special hunting regulations and tribal proposals during normal business hours in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. You should send communications regarding the documents to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, ms 634–ARLSQ, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703/358–1714).

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Department of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported or transported.

In the August 13, 1999, **Federal Register** (64 FR 44384), we proposed special migratory bird hunting regulations for the 1999–2000 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines respond to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal members and nonmembers, with hunting by non-tribal members on some reservations to take place within Federal frameworks but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, the regulations established under the guidelines must be consistent with the March 10–September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada.

In the May 3, 1999, **Federal Register** (64 FR 23742), we requested that tribes desiring special hunting regulations in the 1999–2000 hunting season submit a proposal including details on:

(a) Harvest anticipated under the requested regulations;

(b) Methods that would be employed to measure or monitor harvest (such as bag checks, mail questionnaires, etc.);

(c) Steps that would be taken to limit level of harvest, where it could be shown that failure to limit such harvest would adversely impact the migratory bird resource; and

(d) Tribal capabilities to establish and enforce migratory bird hunting regulations.

No action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which an Indian reservation is located. We have successfully used the guidelines since the 1985–86 hunting season. We finalized the guidelines beginning with the 1988–89 hunting season (August 18, 1988, **Federal Register** [53 FR 31612]).

Although the proposed rule included generalized regulations for both early- and late-season hunting, this rulemaking addresses only the early-season proposals. Late-season hunting will be addressed in late-September. As a general rule, early seasons begin during September each year and have a primary emphasis on such species as mourning and white-winged dove. Late seasons begin about October 1 or later each year and have a primary emphasis on waterfowl.

Status of Populations

In the August 13 **Federal Register**, we reviewed the status for various populations for which early seasons were proposed. This information included brief summaries of the May Breeding Waterfowl and Habitat Survey and population status reports for blue-wing teal, Canada goose populations hunted in September seasons, sea ducks, sandhill cranes, woodcock, mourning doves, white-winged doves, white-tipped doves, and band-tailed pigeons. As a result of these status, we have responded by proposing Flyway frameworks that are essentially the same as those of last season for the 1999–2000 waterfowl hunting season (August 27, 1999, **Federal Register**). The tribal seasons established below are commensurate with the population status.

Comments and Issues Concerning Tribal Proposals

For the 1999–2000 migratory bird hunting season, we proposed regulations for 22 tribes and/or Indian groups that followed the 1985 guidelines and were considered appropriate for final rulemaking. Some of the proposals submitted by the tribes had both early and late-season elements. However, as noted earlier, only those with early-season proposals are included in this final rulemaking; 15 tribes have proposals with early seasons. Comments and revised proposals received to date are addressed in the following section. The comment period for the proposed rule, published on August 13, 1999, closed on August 23, 1999. Because of the necessary brief comment period, we will respond to any comments received on the proposed rule and/or these early-season regulations not responded to herein in the September late-season final rule.

We received two comments regarding the notice of intent published on May 3, 1999, which announced rulemaking on regulations for migratory bird hunting by American Indian tribal members. Both of these comments were addressed in the August 13 proposed rule.

NEPA Consideration

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), the "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES–75–74)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the **Federal Register** on June 13, 1975, (40 FR 25241). A supplement to the final environmental statement, the "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (SEIS 88–14)" was filed on June 9, 1988, and notice of availability was published in the **Federal Register** on June 16, 1988 (53 FR 22582), and June 17, 1988 (53 FR 22727). Copies of these documents are available from us at the address indicated under the caption **ADDRESSES**. In addition, an August 1985 Environmental Assessment titled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the same address.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, "The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act" (and) shall "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *" Consequently, we conducted consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion and may have caused modification of some regulatory measures previously proposed. The final frameworks reflect any modifications. Our biological opinions resulting from its Section 7 consultation are public documents available for public inspection in the Service's Division of Endangered Species and MBMO, at the address indicated under the caption **ADDRESSES.**

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail and issued a Small Entity Flexibility Analysis (Analysis) in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis was based on the 1996

National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns from which it was estimated that migratory bird hunters would spend between $429 and $1,084 million at small businesses in 1998. Copies of the Analysis are available upon request.

Executive Order (E.O.) 12866

Collectively, the rules covering the overall frameworks for migratory bird hunting are economically significant and have been reviewed by the Office of Management and Budget (OMB) under E.O. 12866. This rule is a small portion of the overall migratory bird hunting frameworks and was not individually submitted and reviewed by OMB under E.O. 12866.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1) and this rule will be effective immediately.

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. We utilize the various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 9/30/2001). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires 9/30/2000). The information from this survey is used to estimate the magnitude, the geographical and temporal distribution of harvest, and the portion it constitutes of the total population. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, these rules, authorized by the Migratory Bird Treaty Act, do not have significant takings implications and do not affect any constitutionally protected property rights. These rules will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise privileges that would be otherwise unavailable; and, therefore, reduce restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 12612, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship with Tribes

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the Migratory Bird Treaty Act. Thus, in accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, by virtue of the tribal proposals received in response to the May 3 request for proposals and the August 13 proposed rule, we have consulted with all the tribes affected by this rule.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the tribes would have insufficient time to communicate these seasons to their member and non-tribal hunters and to establish and publicize the necessary regulations and procedures to implement their decisions.

We therefore find that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these regulations will, therefore, take effect immediately upon publication.

Therefore, under the authority of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 703 *et seq.*), we prescribe final hunting regulations for certain tribes on Federal Indian reservations (including off-reservation trust lands), and ceded lands. The regulations specify the species to be hunted and establish season dates, bag and possession limits, season length, and shooting hours for migratory game birds.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, part 20, subchapter B, chapter I of Title 50 of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

1. **Authority:** 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

(**Note:** The following hunting regulations provided for by 50 CFR 20.110 will not appear in the Code of Federal Regulations because of their seasonal nature).

2. Section 20.110 is revised to read as follows:

§ 20.110 Seasons, limits and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

(a) Colorado River Indian Tribes, Parker, Arizona (Tribal Members and Non-tribal Hunters)

Doves

Season Dates: Open September 1, close September 15, 1999; then open November 19, 1999, close January 3, 2000.

Daily Bag and Possession Limits: For the early season, daily bag limit is 10 mourning or 10 white-winged doves, singly, or in the aggregate. For the late season, the daily bag limit is 10 mourning doves. Possession limits are twice the daily bag limits.

General Conditions: A valid Colorado River Indian Reservation hunting permit is required for all persons 14 years and older and must be in possession before taking any wildlife on tribal lands. Any person transporting game birds off the Colorado River Indian Reservation must have a valid transport declaration form. Other tribal regulations apply, and may be obtained at the Fish and Game Office in Parker, Arizona.

(b) Crow Creek Sioux Tribe, Crow Creek Indian Reservation, Fort Thompson, South Dakota (Tribal Members and Non-tribal Hunters)

Sandhill Cranes

Season Dates: Open September 18, close October 24, 1999.

Daily Bag Limit: 3 sandhill cranes.

Permits: Each person participating in the sandhill crane season must have a valid Federal sandhill crane hunting permit in their possession while hunting.

General Conditions: The waterfowl hunting regulations established by this final rule apply only to tribal and trust lands within the external boundaries of the reservation. Tribal and non-tribal hunters must comply with basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Crow Creek Sioux Tribe also apply on the reservation.

(c) Fond du Lac Band of Lake Superior Chippewa Indians, Cloquet, Minnesota (Tribal Members Only) All seasons in Minnesota, 1854 Treaty Zone

Ducks and Mergansers

Season Dates: Open September 11, close November 23, 1999.

Daily Bag Limit for Ducks: 20 ducks, including no more than 10 mallards (only 5 of which may be hens), 4 black ducks; 4 redheads, 4 pintails and 2 canvasbacks.

Daily Bag Limit for Mergansers: 5 mergansers, including no more than 1 hooded merganser.

Geese

Season Dates: Open September 1, close November 28, 1999.

Daily Bag Limit: 10 geese.

Coots and Common Moorhens (Gallinule)

Season Dates: Open September 11, close November 23, 1999.

Daily Bag Limit: 20 coots and common moorhens, singly or in the aggregate.

Sora and Virginia Rails

Season Dates: Open September 1, close November 28, 1999.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate. The possession limit is 25.

Common Snipe and Woodcock

Season Dates: Open September 1, close November 28, 1999.

Daily Bag Limit: 8 snipe and 3 woodcock.

General Conditions:

1. While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements in 50 CFR part 20 as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting.

3. Band members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

4. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above. Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of band members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

(d) Grand Traverse Band of Ottawa and Chippewa Indians, Suttons Bay, Michigan (Tribal Members Only)

All seasons in Michigan, 1836 Treaty Zone:

Ducks

Season Dates: Open September 20, 1999, close January 20, 2000.

Daily Bag Limit: 10 ducks, which may include no more than 1 pintail, 1 canvasback, 2 black ducks, 1 hooded merganser, 2 wood ducks, 2 redheads, and 5 mallards (only 2 of which may be hens).

Canada Geese

Season Dates: Open September 1, close November 30, 1999, and open January 1, 2000, close February 8, 2000.

Daily Bag Limit: 5 geese.

Sora Rails, Common Snipe, and Woodcock

Season Dates: Open September 1, close November 14, 1999.

Daily Bag Limit: 5 rails, 5 snipe, and 5 woodcock.

General Conditions: A valid Grand Traverse Band Tribal license is required for all persons 12 years and older and must be in possession before taking any wildlife. All other basic regulations contained in 50 CFR part 20 are valid. Other tribal regulations apply, and may be obtained at the tribal office in Suttons Bay, Michigan.

(e) Great Lakes Indian Fish and Wildlife Commission, Odanah, Wisconsin (Tribal Members Only)

Ducks

Wisconsin and Minnesota 1837 and 1842 Zones:

Season Dates: Begin September 15 and end December 1, 1999.

Daily Bag Limit: 20 ducks, including no more than 10 mallards (only 5 of which may be hens), 4 black ducks, 4 redheads, 4 pintails, and 2 canvasbacks.

Michigan 1836 and 1842 Treaty Zones:

Season Dates: Begin September 15 and end December 1, 1999.

Daily Bag Limit: 10 ducks, including no more than 5 mallards (only 2 of which may be hens), 2 black ducks, 2 redheads, 2 pintails, and 1 canvasback.

Mergansers

Wisconsin and Minnesota 1837 and 1842 Zones:

Season Dates: Begin September 15 and end December 1, 1999.

Daily Bag Limit: 5 mergansers.

Michigan 1836 and 1842 Treaty Zones:

Season Dates: Begin September 15 and end December 1, 1999.

Daily Bag Limit: 5 mergansers, including no more than 1 hooded merganser.

Geese

All Ceded Areas:

Season Dates: Begin September 1 and end December 1, 1999.

Daily Bag Limit: 10 geese.

Other Migratory Birds: All Ceded Areas.

Coots and Common Moorhens (Common Gallinules)

Season Dates: Begin September 15 and end December 1, 1999.

Daily Bag Limit: 20 coots and common moorhens (common gallinules), singly or in the aggregate.

Sora and Virginia Rails

Season Dates: Begin September 15 and end December 1, 1999.

Daily Bag Limit: 25 sora and Virginia rails singly, or in the aggregate.

Common Snipe

Season Dates: Begin September 15 and end December 1, 1999.

Daily Bag Limit: 8 common snipe.

Woodcock

Season Dates: Begin September 7 and end December 1, 1999.

Daily Bag Limit: 5 woodcock.

General Conditions

1. While hunting waterfowl, a tribal member must carry on his/her person a valid tribal waterfowl hunting permit.

2. Except as otherwise noted, tribal members will be required to comply with tribal codes that will be no less restrictive than the provisions of Chapter 10 of the Model Off-Reservation Code. Except as modified by the Service rules adopted in response to this proposal, these amended regulations parallel Federal requirements in 50 CFR Part 20 as to hunting methods, transportation, sale, exportation and other conditions generally applicable to migratory bird hunting.

3. Tribal members in each zone will comply with State regulations providing for closed and restricted waterfowl hunting areas.

4. Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above. Possession limits are applicable only to transportation and do not include birds which are cleaned, dressed, and at a member's primary residence. For purposes of enforcing bag and possession limits, all migratory birds in the possession or custody of tribal members on ceded lands will be considered to have been taken on those lands unless tagged by a tribal or State conservation warden as having been taken on-reservation. In Wisconsin, such tagging will comply with applicable State laws. All migratory birds which fall on reservation lands will not count as part of any off-reservation bag or possession limit.

5. Minnesota and Michigan—Duck Blinds and Decoys. Tribal members hunting in Michigan and Minnesota will comply with tribal codes that contain provisions that parallel applicable State laws concerning duck blinds and/or decoys.

(f) Kalispel Tribe, Kalispel Reservation, Usk, Washington (Tribal Members Only)

Ducks

Season Dates: Open September 15, 1999, close January 31, 2000.

Daily Bag and Possession Limits: 7 ducks, including no more than 1 pintail, 2 hen mallards, 4 scaup, and 1 canvasback.

Geese

Season Dates: Open September 1, 1999, close January 31, 2000.

Daily Bag and Possession Limits: 4 geese, including 4 dark geese but not more than 3 light geese. The possession limit is twice the daily bag limit.

General: Tribal members must possess a validated Migratory Bird Hunting and Conservation Stamp and a tribal ceded lands permit.

(g) Leech Lake Band of Ojibwe, Cass Lake, Minnesota (Tribal Members Only)

Ducks

Season Dates: Open September 25, close November 28, 1999.

Daily Bag Limits: 10 ducks.

Geese

Season Dates: Open September 25, close November 28, 1999.

Daily Bag Limits: 10 geese.

General: Possession limits are twice the daily bag limits. Shooting hours are one-half hour before sunrise to one-half hour after sunset.

(h) Navajo Indian Reservation, Window Rock, Arizona (Tribal Members and Nonmembers)

Band-tailed Pigeons

Season Dates: Open September 1, close September 30, 1999.

Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

Mourning Doves

Season Dates: Open September 1, close September 30, 1999.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General Conditions: Tribal and non-tribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20, regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

(i) Oneida Tribe of Indians of Wisconsin, Oneida, Wisconsin (Tribal Members)

Ducks

Season Dates: Open September 18, close November 19, 1999.

Daily Bag and Possession Limits: 6 ducks, including no more than 5 mallards (only 1 of which may be a hen), 5 wood ducks, 1 canvasback, 1 redhead, 2 pintails, and 1 hooded merganser. Possession limit is twice the daily bag limit.

Geese and Brant

Season Dates: Open September 1, close November 19, open November 29, close December 31, 1999.

Daily Bag and Limits: 5 brant, 3 Canada geese, and 5 snow geese. Geese must be tagged after harvest with tribal tags. The tribe will reissue tags upon registration of the daily bag limit. A season quota of 150 birds is adopted. If the quota is reached before the season concludes, the season will be closed at that time.

Woodcock

Season Dates: Open September 11, close November 19, 1999.

Daily Bag and Possession Limits: 5 and 10 woodcock, respectively.

General Conditions: Tribal members and non-tribal members hunting on the Oneida Indian Reservation or on lands under the jurisdiction of the Oneida Nation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20. Tribal hunters are exempt from the requirement to purchase a Migratory Waterfowl Hunting and Conservation Stamp (Duck Stamp) and the plugging of shotgun to limit capacity to 3 shells.

(j) Point No Point Treaty Tribes, Kingston, Washington (Tribal Hunters)

Ducks

Season Dates: Open September 15, 1999, close January 15, 2000.

Daily Bag and Possession Limits: 7 ducks, including no more than 2 hen mallards, 2 pintails, 1 canvasback and 2 redheads. The season on harlequin ducks is closed. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 15, 1999, close January 15, 2000.

Daily Bag and Possession Limits: 4 geese, and may include no more than 3 light geese. The season on Aleutian Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open September 15, 1999, close January 15, 2000.

Daily Bag and Possession Limits: 2 brant. Possession limit is twice the daily bag limit.

Coots

Season Dates: Open September 15, 1999, close January 15, 2000.

Daily Bag Limits: 25 coots.

Mourning Doves

Season Dates: Open September 1, close September 30, 1999.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 15, close January 15, 2000.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

General Conditions: All hunters authorized to hunt migratory birds on the reservation must obtain a tribal hunting permit from the respective tribe. Hunters are also required to adhere to a number of special regulations available at the tribal office.

(k) Seminole Tribe of Florida, Big Cypress Seminole Reservation, Clewiston, Florida (Tribal Members and Non-tribal Hunters)

Mourning Dove

Season Dates: September 18, 1999, through January 20, 2000.

Daily Bag Limit: 15 doves.

General Conditions: Hunting is on Saturdays only. All other Federal regulations contained in 50 CFR part 20 apply.

(l) Squaxin Island Tribe, Squaxin Island Reservation, Shelton, Washington (Tribal Members)

Ducks

Season Dates: Open September 15, 1999, close January 15, 2000.

Daily Bag and Possession Limits: 5 ducks, including no more than 1 canvasback. The season on harlequin ducks is closed. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 15, 1999, close January 15, 2000.

Daily Bag and Possession Limits: 4 geese, and may include no more than 2 snow geese and 1 dusky Canada goose. The season on Aleutian and Cackling Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open September 15, close December 31, 1999.

Daily Bag and Possession Limits: 2 and 4 brant, respectively.

Coots

Season Dates: Open September 15, 1999, close January 15, 2000.

Daily Bag Limits: 25 coots.

Snipe

Season Dates: Open September 15, 1999, and close January 15, 2000.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-tailed Pigeons

Season Dates: Open September 15, close December 1, 1999.

Daily Bag and Possession Limits: 2 and 4 pigeons, respectively.

General Conditions: All tribal hunters must obtain a Tribal Hunting Tag and Permit from the tribe's Natural Resources Department and must have the permit, along with the member's treaty enrollment card, on his or her person while hunting. Shooting hours are one-half hour before sunrise to one-half hour after sunset and steel shot is required for all migratory bird hunting. Other special regulations are available at the tribal office in Shelton, Washington.

(m) Tulalip Tribes of Washington, Tulalip Indian Reservation, Marysville, Washington (Tribal Members)

Ducks/Coot

Season Dates: Open September 15, 1999, and close February 1, 2000.

Daily Bag and Possession Limits: 6 and 12 ducks, respectively; except that bag and possession limits are restricted for blue-winged teal, canvasback, harlequin, pintail, and wood duck to those established for the Pacific Flyway by final Federal frameworks, to be announced.

Geese

Season Dates: Open September 15, 1999, and close February 1, 2000.

Daily Bag and Possession Limits: 6 and 12 geese, respectively; except that the bag limits for brant and cackling and dusky Canada geese are those established for the Pacific Flyway in accordance with final Federal frameworks, to be announced. The tribes also set a maximum annual bag limit on ducks and geese for those tribal members who engage in subsistence hunting.

General Conditions: All waterfowl hunters, members and non-members, must obtain and possess while hunting a valid hunting permit from the Tulalip tribes. Also, non-tribal members sixteen years of age and older, hunting pursuant to Tulalip Tribes' Ordinance No. 67, must possess a validated Federal Migratory Bird Hunting and Conservation Stamp and a validated State of Washington Migratory Waterfowl Stamp. All Tulalip tribal members must have in their possession while hunting, or accompanying another, their valid tribal identification card. All hunters are required to adhere to a number of other special regulations enforced by the tribes and available at the tribal office.

(n) White Earth Band of Chippewa, White Earth, Minnesota (Tribal Members Only)

Ducks and Mergansers

Season Dates: Open September 18, close November 30, 1999.

Daily Bag Limit for Ducks: 7 ducks, including no more than 2 mallards and

1 canvasback through September 24 and no more than 2 hen mallards and 2 canvasbacks thereafter.

Daily Bag Limit for Mergansers: 5 mergansers, including no more than 2 hooded mergansers.

Geese

Season Dates: Open September 1, close November 30, 1999.

Daily Bag Limit: 5 geese.

Coots

Season Dates: Open September 18, close November 30, 1999.

Daily Bag Limit: 20 coots.

Sora and Virginia Rails

Season Dates: Open September 11, close December 1, 1999.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate. The possession limit is 25.

Common Snipe and Woodcock

Season Dates: Open September 11, close December 1, 1999.

Daily Bag Limit: 10 snipe and 10 woodcock.

Mourning Dove

Season Dates: Open September 11, close December 1, 1999.

Daily Bag Limit: 25 doves.

General Conditions: Shooting hours are one-half hour before sunrise to one-half hour after sunset. Non-toxic shot is required.

(o) White Mountain Apache Tribe, Fort Apache Indian Reservation, Whiteriver, Arizona (Tribal Members and Non-tribal Hunters)

Band-tailed Pigeons

Season Dates: Open September 1, close September 12, 1999.

Daily Bag and Possession Limits: 3 and 6 pigeons, respectively.

Mourning Doves

Season Dates: Open September 1, close September 12, 1999.

Daily Bag and Possession Limits: 8 and 16 doves, respectively.

General Conditions: All non-tribal hunters hunting band-tailed pigeons and mourning doves on Reservation lands shall have in their possession a valid White Mountain Apache Daily or Yearly Small Game Permit. In addition to a small game permit, all non-tribal hunters hunting band-tailed pigeons must have in their possession a White Mountain Special Band-tailed Pigeon Permit. Other special regulations established by the White Mountain Apache Tribe apply on the reservation. Tribal and non-tribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR Part 20 regarding shooting hours and manner of taking.

Dated: August 24, 1999.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–22383 Filed 8–27–99; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register

Vol. 64, No. 167

Monday, August 30, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 98–120–1]

Baggage Inspection for Domestic Flights From Puerto Rico and the U.S. Virgin Islands

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: The Animal and Plant Health Inspection Service is soliciting public comment on changes we are considering making to regulations requiring inspections of airline passenger baggage on domestic flights leaving Puerto Rico and the U.S. Virgin Islands. Currently, air passengers must offer their carry-on and check-in baggage for inspection prior to boarding any domestic flight from Puerto Rico or the U.S. Virgin Islands to other parts of the United States, except Guam. Baggage is inspected to ensure that it is free of unauthorized fruits, vegetables, or other material that could harbor plant pests. We are considering changing this practice by concentrating inspections on flights that stop or end in parts of the United States where the plant pests could become established and reducing inspection of baggage on other flights.

We will hold two public hearings to discuss the regulatory changes we are considering in this advance notice of proposed rulemaking.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by October 29, 1999. We also will consider comments made at two public hearings scheduled to be held in San Juan, PR, on October 5, 1999, and in Sacramento, CA, on October 7, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 98–120–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3CO3, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–120–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

The public hearing in San Juan, PR, will be held at the Biblioteca Carnegie/Carnegie Library, Departamento de Educación/Department of Education, Avenue Ponce de Leon #7, San Juan, PR. The public hearing in Sacramento, CA, will be held at the Red Lion Inn-Sacramento, Comstock II Room, 1401 Arden Way, Sacramento, CA.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Smith, Senior Operations Officer, Safeguarding and Pest Management, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236; (301) 734–8295; fax: (301) 734–8584; or e-mail: Jim.F.Smith@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart—Fruits and Vegetables from Puerto Rico or the Virgin Islands" (7 CFR 318.58 through 318.58–16, referred to below as the regulations) are designed to prevent the dissemination of plant pests, including diseases, from Puerto Rico or the U.S. Virgin Islands into other parts of the United States.

Currently, the regulations in § 318.58–10 require all air passengers to offer their carry-on and check-in baggage and other personal effects for inspection prior to boarding flights from Puerto Rico or the U.S. Virgin Islands to other parts of the United States, except Guam.

The purpose of the inspections is to ensure that the baggage does not contain any agricultural articles that could carry plant pests, including diseases, to other parts of the United States. After inspecting and passing the baggage or personal effects, inspectors apply a United States Department of Agriculture (USDA) stamp, inspection sticker, or other identification to indicate that the baggage has been inspected and passed as required. The regulations prohibit airlines from accepting check-in baggage that has not been tagged.

New global trade patterns have resulted in increased agricultural imports into Puerto Rico and the U.S. Virgin Islands. More imports have increased the need for inspection of agricultural cargo, smuggling interdiction, and new pest monitoring activities. However, our current practice of requiring all air passengers on all flights from Puerto Rico and the U.S. Virgin Islands to other parts of the United States to offer their baggage for inspection prevents us from reallocating resources to other inspection and plant pest prevention activities. Current baggage inspection requirements also have created long lines and frustrated air passengers. As a result, we have reviewed our procedures to see if any changes might be appropriate.

As part of this review, we analyzed pest interception records from predeparture baggage inspections in San Juan, PR, during fiscal years 1994 through 1996. This analysis was conducted to determine whether the intercepted pests posed a risk to mainland United States agriculture generally or whether the risk was significant only if the pests were introduced into the southern United States. The analysis evaluated 36 pests and determined that intercepted plant pests in baggage from Puerto Rico pose a limited threat to agriculture in the northern United States. Cooler temperatures north of 38° latitude, especially from October 1 through April 30, effectively prevent the permanent establishment of tropical or subtropical plant pests and diseases in the northern United States. The analysis, titled "Hazard Identification Analysis; Evaluation of San Juan Predeparture Interceptions in Baggage FY 1994–96," is available for public review on the Internet at http://www.usda.gov/ppq/ss/cobra/hazardsanjuan.html. You may also request a copy from the person listed under **FOR FURTHER INFORMATION CONTACT**.

The hazard identification analysis suggests that even if passenger baggage from Puerto Rico contained unauthorized fruits, vegetables, or other plant material and was carried into the northern United States, any plant pest in the baggage would present an insignificant risk. These conclusions are also applicable to passenger baggage from the U.S. Virgin Islands due to current practices that allow for the unrestricted movement of fruits, vegetables, or other plant material between Puerto Rico and the U.S. Virgin Islands. As a result, we are considering reducing baggage inspections on flights from Puerto Rico or the U.S. Virgin Islands that stop or end in the northern United States without a stop in the southern continental United States or Hawaii. However, because the climate on the west coast of the United States also could support populations of some pests of concern, we are considering ending mandatory inspection of baggage only for flights that will stop or end in parts of the continental United States east of 117° longitude and north of 38° latitude without a stop in either Hawaii or parts of the continental United States west of 117° longitude and south of 38° latitude. Roughly, the 38° latitude runs south of Washington and Baltimore on the east coast, south of Kansas City and Denver in the central United States, and south of Salt Lake City in the western United States. The 117° longitude corresponds to the State boundaries of Washington and Idaho in the northern United States and intersects the 38° latitude in south-central Nevada. This means that all carry-on and check-in baggage on flights from Puerto Rico and the U.S. Virgin Islands to California, Hawaii, Oregon, Washington, and the southern continental United States would continue to be inspected and tagged prior to departure. The inspection and tagging procedures for baggage on these flights are necessary to ensure that the baggage does not contain agricultural commodities that could carry plant pests from Puerto Rico or the U.S. Virgin Islands to other parts of the United States where the pests could become established.

For flights that do not stop in Hawaii or parts of the continental United States south of 38° latitude or west of 117° longitude, passengers would be required to offer baggage for inspection as directed by the local port director. The local port director could indicate whether passengers on a particular flight needed to offer baggage for inspection by posting signs in the airport departure terminal. The port director would use a random sampling method or risk-based criteria to select specific flights for inspection. The risk-based criteria would include: Seasonal conditions in the area where the flight would stop (e.g. if a flight would stop in an area where summer weather and available host material could support a local, temporary infestation); detection of pests not considered in the hazard identification analysis (e.g. outbreaks of new pests or diseases of plants or animals in Puerto Rico, the U.S. Virgin Islands, or neighboring islands); and monitoring data that indicates that air passengers may board connecting flights for continental United States destinations south of 38° latitude, west of 117° longitude, or Hawaii. This change in procedures would provide local port directors with the discretion to redirect resources and focus inspection efforts on higher risk activities. However, passengers leaving Puerto Rico or the U.S. Virgin Islands for any domestic destination would continue to be informed about fruits and vegetables and other materials prohibited in baggage, and the periodic inspections of baggage on flights to locations east of 117° longitude and north of 38° latitude would deter passengers from carrying this material in their baggage.

If we adopted the changes just described, we would also need to change our current requirements for tagging check-in baggage. As noted earlier, the regulations prohibit airlines from accepting check-in baggage that has not been tagged as inspected. We would maintain this requirement only for check-in baggage on flights that would stop or end in Hawaii or a place in the continental United States south of 38° latitude or west of 117° longitude. Check-in baggage on other domestic flights would not always be inspected.

Comments are invited on these potential changes to our procedures for inspecting passenger baggage. In particular, we are soliciting comments on the following questions:

1. Does the hazard identification analysis of predeparture baggage from San Juan, PR, adequately address plant pest risk associated with passenger baggage from Puerto Rico?
2. Does the hazard identification analysis of predeparture baggage from San Juan, PR, adequately address plant pest risk associated with passenger baggage from the U.S. Virgin Islands?
3. Does passenger baggage from Puerto Rico or the U.S. Virgin Islands present a risk of carrying agricultural commodities that confer risks to agriculture other than plant pests risks (e.g. noxious weeds, animal pests or diseases)?

Public Hearings

In addition to accepting written comments, we will hold two public hearings to discuss the regulatory changes under consideration in this advance notice of proposed rulemaking. One public hearing will be held on October 5, 1999, at the Biblioteca Carnegie/Carnegie Library, Departamento de Educación/ Department of Education, Avenue Ponce de Leon #7, San Juan, PR. The second hearing will be held on October 7, 1999, at the Red Lion Inn-Sacramento, Comstock II Room, 1401 Arden Way, Sacramento, CA.

A representative of APHIS will preside at the public hearings. Any interested person may appear and be heard in person, by attorney, or by other representative. Persons who wish to speak at the public hearings will be asked to sign in, listing their names and organizations.

The public hearings will begin at 9 a.m. local time and are scheduled to end at 5 p.m. local time. However, the hearings may be terminated at any time after they begin if all persons desiring to speak have been heard. We ask that anyone who reads a statement provide two copies to the presiding officer at the hearing. If the number of speakers at the hearing warrants, the presiding officer may limit the time for each presentation so that everyone wishing to speak has the opportunity.

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, 164a, and 167; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 23rd day of August, 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–22447 Filed 8–27–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–157–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon (Beech) Model 400A Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Raytheon (Beech) Model 400A airplanes. This proposal would require replacement of certain bus bars connecting the battery and external power receptacle to the airframe ground with a new, improved bus bar. This proposal is prompted by reports of electrical arcing at the battery and external power receptacle of the airframe ground in the aft fuselage due to a deficiency in the bus bar and washer design. The actions specified by the proposed AD are intended to prevent overheating or arcing of the ground connection in the aft fuselage area, which could result in a fire hazard due to ignition of fuel fumes during an engine start sequence.

DATES: Comments must be received by October 14, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–157–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Hawker Customer Support Department, P. O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Philip E. Petty, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4139; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–157–AD". The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–157–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received several reports indicating that electrical arcing occurred at the battery and external power receptacle of the airframe ground in the aft fuselage on Raytheon (Beech) Model 400A airplanes. Further investigation revealed that the battery ground was installed with a bus bar and washer that, later analysis showed, were too small of a capacity with regard to the battery ground current. Additionally, the torque specification that is called out for the bolt holding the bus bar and washer is not adequate for electrical applications. Such conditions, if not corrected, could result in electrical arcing or overheating of the ground connection in the aft fuselage area, which could result in a fire hazard due to ignition of fuel fumes during an engine start sequence.

Explanation of Relevant Service Information

The FAA has reviewed and approved Raytheon Aircraft Service Bulletin SB 24–3253, dated January, 1999, which describes procedures for replacing certain bus bars connecting the battery and external power receptacle to the airframe ground with a new, improved bus bar. Accomplishment of the action specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the action specified in the service bulletin described previously.

Cost Impact

There are approximately 122 airplanes of the affected design in the worldwide fleet. The FAA estimates that 110 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 11 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. The manufacturer has committed previously to its customers that it will bear the cost of replacement parts. As a result, the cost of those parts is not attributable to this proposed AD. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $72, 600, or $660 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that manufacturer warranty remedies are available for labor costs associated with accomplishing the actions required by this proposed AD. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figure indicated above.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Raytheon Aircraft Company (Formerly Beech): Docket No. 99–NM–157–AD.

Applicability: Model 400A airplanes, serial numbers RK–78, RK–87 through RK–207 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical arcing or overheating of the ground connection in the aft fuselage area, which could result in a fire hazard due to ignition of fuel fumes during an engine start sequence, accomplish the following:

Replacement

(a) Within 50 flight hours after the effective date of this AD, replace the two bus bars, part number (P/N) 128–364239–17 and P/N 101–361146–1, with a new, improved bus bar, P/N 101–364046–231, in accordance with Raytheon Aircraft Service Bulletin SB 24–3253, dated January 1999.

Spares

(b) As of the effective date of this AD, no person shall install on any airplane, a bus bar, P/N 128–364239–17 or P/N 101–361146–1.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office, FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 23, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22394 Filed 8–27–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–186–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes, and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes, and C–9 (military) airplanes. This proposal would require a one-time general visual inspection to detect certain discrepancies in the wiring of the fuel quantity indicating system (FQIS) in the forward cargo compartment; and corrective actions, if necessary. This proposal is prompted by a report indicating that several discrepancies were found in the wiring of the FQIS due to maintenance or alteration practices. The actions specified by the proposed AD are intended to prevent excessive electrical energy from entering the fuel tanks through the FQIS wiring, which could result in a potential ignition source in the fuel tanks.

DATES: Comments must be received by October 14, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–186–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Propulsion Branch, ANM–140L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5245; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–186–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–186–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that, during an inspection of 12 randomly selected McDonnell Douglas DC–9 series airplanes, certain discrepancies were found in the wiring of the fuel quantity indicating system (FQIS) in the forward cargo compartment area due to maintenance or alteration practices. These discrepancies include missing, loosely installed, or incorrectly sized wiring run attachment clamps; FQIS wiring that is string-tied in direct contact with other airplane wiring; and non-FQIS wires routed with the FQIS segmented conduit. Such conditions, if not corrected, could permit the wires to chafe against each other, which could permit excessive electrical energy to enter the fuel tanks through the FQIS wiring. This condition could result in a potential ignition source in the fuel tanks.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin DC9–28–077, dated June 8, 1999, which describes procedures for a one-time visual inspection to detect discrepancies (i.e., missing, loosely installed, or incorrectly sized wiring run attachment clamps; FQIS wiring that is string-tied in direct contact with other airplane wiring; and non-FQIS wires routed with the FQIS segmented conduit) in the wiring of the FQIS, and repairing or rerouting the wires, if necessary. Accomplishment of the action specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below. The proposed AD also would require that operators report results of inspection findings to the FAA.

Differences Between Proposed Rule and Service Information

Operators should note that, although the service bulletin recommends accomplishing the visual inspection at the earliest practical heavy maintenance period (after the release of the service bulletin), the FAA has determined that such an interval would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection (less than one hour). In light of all of these factors, the FAA finds an 18-month compliance time for initiating the required actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Additionally, operators should note that, although the service bulletin specifies that the inspection findings should be sent to the manufacturer, this proposal would require the inspection findings to be sent to the FAA.

Cost Impact

There are approximately 815 airplanes of the affected design in the worldwide fleet. The FAA estimates that 577 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $34,620, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) it promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 99–NM–186–AD.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes, and C–9 (military) airplanes; as listed in McDonnell Douglas Service Bulletin DC9–28–077, dated June 8, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the

owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent excessive electrical energy from entering the fuel tanks through the fuel quantity indicating system (FQIS) wiring, which could result in a potential ignition source in the fuel tanks, accomplish the following:

Inspection and Corrective Actions

(a) Within 18 months after the effective date of this AD, perform a one-time general visual inspection to detect discrepancies in the wiring of the FQIS in the area of the forward cargo compartment in accordance with McDonnell Douglas Service Bulletin DC9–28–077, dated June 8, 1999. If any discrepancy is detected, prior to further flight, perform the corrective actions specified in the service bulletin, except as provided in paragraph (b) of this AD.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Reporting Requirement

(b) Where the service bulletin specifies to submit a report of inspection findings to Boeing: Within 10 days after accomplishing the inspection required by paragraph (a) of this AD, submit a report of the inspection results (both positive and negative findings) to the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 3960 Paramount Boulevard, Lakewood, California 90712–4137; ATTN: Robert Baitoo; fax (562) 627–5210. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Note 3: Accomplishment of the inspection, corrective action, and reporting in accordance with McDonnell Douglas All Operator Letter (AOL) 9–2584, dated February 19, 1999; and Interim DC–9 Forward Cargo Compartment FQIS Inspection and Information Procedure, Revision 1, dated February 11, 1999; is acceptable for compliance with the actions required by paragraphs (a) and (b) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 23, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22393 Filed 8–27–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–199–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and 340B series airplanes. This proposal would require removal of certain main landing gear downlock and brake hydraulic swivel brackets and replacement with new, redesigned brackets. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the downlock or brake swivels. Brake swivel failure could cause the loss of inboard or outboard brakes. Downlock swivel failure could cause the loss of hydraulic fluid in the main hydraulic system, as well as the loss of nose wheel steering operation, extension and retraction capability of landing gear and flaps, and operation of the propeller brake (if installed).

DATES: Comments must be received by September 29, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–199–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–199–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–199–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, notified the FAA that an unsafe condition may exist on certain Saab Model SAAB SF340A and 340B series airplanes. The LFV advises that a misalignment of the downlock or brake hydraulic swivels in the main landing gear (MLG) dragbrace and MLG shock strut trunnions has, due to excessive loads during extension/retraction of landing gear, resulted in an abnormally high failure rate of the hydraulic swivels. Brake swivel failure could cause the loss of inboard or outboard brakes. Downlock swivel failure could cause the loss of hydraulic fluid in the main system, as well as the loss of nose wheel steering operation, extension and retraction of landing gear and flaps, and operation of the propeller brake (if installed).

Explanation of Relevant Service Information

Saab Aircraft AB has issued Service Bulletin 340–29–009, Revision 02, dated July 2, 1999, which describes procedures for removal of certain main landing gear downlock and brake swivel brackets and replacement with new, redesigned brackets. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive SAD No. 1–145, dated July 2, 1999, in order to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

These airplane models are manufactured in Sweden and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 200 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1,375 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $299,000, or $1,495 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

SAAB Aircraft AB: Docket 99–NM–199–AD.

Applicability: Model SAAB SF340A series airplanes, serial numbers SF340A–004 through –159 inclusive, and Model SAAB 340B series airplanes, serial numbers SF340B–160 through –339 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main landing gear (MLG) downlock or brake hydraulic swivels and consequent loss of certain hyraulic-powered operations, accomplish the following:

Bracket Replacement

(a) Within 12 months after the effective date of this AD, remove the MLG downlock and brake hydraulic swivel brackets and replace with new, improved parts, in accordance with Saab Service Bulletin 340–29–009, Revision 02, dated July 2, 1999.

Note 2: Accomplishment, prior to the effective date of this AD, of the bracket replacement in accordance with Saab Service Bulletin 340–29–009, dated August 20, 1992, or Revision 1, dated April 15, 1993, is considered acceptable for compliance with the requirements of paragraph (a) of this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators

shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Swedish airworthiness directive SAD No. 1–145, dated July 2, 1999.

Issued in Renton, Washington, on August 23, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22391 Filed 8–27–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–15–AD]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 31, 31A, 35, 35A, and 60 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Learjet Model 31, 31A, 35, 35A, and 60 airplanes. This proposal would require a visual inspection of the spoiler actuators to determine the serial number of the spoiler actuators; and replacement of the spoiler actuators with new actuators, if necessary. This proposal is prompted by failure of a spoiler actuator piston rod during the first production flight of a Model 60 airplane due to an incomplete heat treatment process. The actions specified by the proposed AD are intended to prevent failure of the spoiler actuator, which could result in the spoiler panel floating and inducing an uncommanded roll of the airplane.

DATES: Comments must be received by October 14, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–15–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Learjet, Inc., One Learjet Way, Wichita, Kansas 67209–2942. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Shane Bertish, Aerospace Engineer, Systems and Equipment Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209, telephone (316) 946–4156; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–15–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–15–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report of failure of the spoiler actuator piston rod on the first production flight of a Learjet Model 60 airplane. Investigation revealed that a group of actuator piston rods had undergone an incomplete heat treating process that failed to achieve the desired material properties. This condition, if not corrected, could result in the spoiler panel floating and inducing an uncommanded roll of the airplane.

The subject spoiler actuator piston rods on Learjet Model 31, 31A, 35, and 35A airplanes are identical to those on the affected Learjet Model 60 airplanes. Therefore, all of these airplanes may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Learjet Service Bulletins SB 31–27–19, dated December 14, 1998 (for Model 31 and 31A airplanes); SB 35–27–36, dated December 14, 1998 (for Model 35 and 35A airplanes); and SB 60–27–21, dated December 14, 1998 (for Model 60 airplanes). These service bulletins describe procedures for a visual inspection of the spoiler actuators to determine the serial number of the spoiler actuators; and replacement of the spoiler actuators with new actuators, if necessary. Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the applicable service bulletin described previously.

Cost Impact

There are approximately 45 airplanes of the affected design in the worldwide fleet. The FAA estimates that 37 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,220, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Learjet, Inc.: Docket 99–NM–15–AD.

Applicability: Model 31 and 31A airplanes, serial numbers 31–033, 31–105, 31–114, 31–126, and 31–150 through 31–161 inclusive; Model 35 and 35A airplanes, serial numbers 35–065, 35–242, 35–300, 35–323, 35–447, 35–622, and 35–670; and Model 60 airplanes, serial numbers 60–029, 60–050, 60–120 through 60–139 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the spoiler actuator, which could result in the spoiler panel floating and inducing an uncommanded roll of the airplane, accomplish the following:

Inspection and Replacement

(a) Within 150 flight hours after the effective date of this AD, perform a visual inspection to determine the serial number of the spoiler actuators, in accordance with Learjet Service Bulletins SB 31–27–19, dated December 14, 1998 (for Model 31 and 31A airplanes); SB 35–27–36, dated December 14, 1998 (for Model 35 and 35A airplanes); or SB 60–27–21, dated December 14, 1998 (for Model 60 airplanes); as applicable.

(1) If the serial number is not listed in the applicable service bulletin, no further action is required by this AD.

(2) If the serial number is listed in the applicable service bulletin, prior to further flight, replace the spoiler actuators with new actuators in accordance with the Accomplishment Instructions of the applicable service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 23, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22396 Filed 8–27–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–90–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9 and C–9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9 and C–9 (military) series airplanes. This proposal would require modification of the electrical power center and modification and overhaul of certain alternating current power relays. This proposal is prompted by reports indicating that the alternating current (AC) cross-tie relay shorted out internally, which caused severe smoke and burn damage to the relay, aircraft wiring, and adjacent panels. The actions specified by the proposed AD are intended to prevent a short in the cross-tie relay, which may result in in-flight electrical fires.

DATES: Comments must be received by October 14, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–90–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind

Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Elvin Wheeler, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5344; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–90–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–90–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that the alternating current cross-tie relay shorted out internally on McDonnell Douglas Model DC–9 series airplanes, which caused severe smoke and burn damage to the relay, aircraft wiring, and adjacent panels. Investigation revealed that the electrical fire originated within the cross-tie relay of the power distribution system. The cause of this incident has been attributed to a phase-to-phase short within the relay. This condition, if not corrected, could result in in-flight electrical fires.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas DC–9 Service Bulletin 24–57, Revision 1, dated March 12, 1980, as amended by Change Notification 24–57 R1 CN2, dated June 24, 1988, which describes procedures for modification of the electrical power center. The modification of the electrical power center involves installation of two terminal boards, two nameplates, fourteen clamps, six current limiters, a mount assembly, two zees near the alternating current cross tie relay, and three spare alternating current cross tie relay current limiters and nameplate.

The FAA also has reviewed Westinghouse Aerospace Service Bulletin 75–703, dated June 1977, which describes procedures for modification and overhaul of certain alternating current power relays. The modification of certain alternating current power relays involves removal of part number 914F567–3 and installation of a –4 configuration.

The FAA also has reviewed McDonnell Douglas DC–9 Service Bulletin DC9–24–156, dated March 31, 1995, which describes procedures for replacement of the relays, P/N 914F567–3 or –4, with improved relays, P/N 9008D09.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

There are approximately 924 McDonnell Douglas DC–9 and C–9 (military) series airplanes of the affected design in the worldwide fleet. The FAA estimates that 392 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 7 work hours per airplane (for Group I, 316 airplanes), and 3 work hours per airplane (for Group II, 76 airplanes), to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $490 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $287,560, or $910 per airplane (for Group I airplanes), and $50,920, or $670 per airplane (for Group II airplanes), per modification.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 99–NM–90–AD.

Applicability: Model DC–9 and C–9 (military) series airplanes, as listed in McDonnell Douglas DC–9 Service Bulletin 24–57, Revision 1, dated March 12, 1980; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a short in the cross-tie relay, which may result in in-flight electrical fires, accomplish the following:

Modification

(a) Within 12 months after the effective date of this AD, modify the electrical power center in accordance with McDonnell Douglas DC–9 Service Bulletin 24–57, Revision 1, dated March 12, 1980, as amended by Change Notification 24–57 R1 CN2, dated June 24, 1988, and accomplish the requirements specified in paragraph (a)(1) or (a)(2) of this AD.

(1) Modify the Westinghouse alternating current power relays, part number (P/N) 914F567–3 (i.e., cross-tie relays, generator relays, auxiliary power relays, and external power relays), to a –4 configuration, in accordance with Westinghouse Aerospace Service Bulletin 75–703, dated June 1977.

(2) Replace the Westinghouse alternating current power relays, P/N 914F567–3 or –4 with improved relays, P/N 9008D09, in accordance with McDonnell Douglas DC–9 Service Bulletin DC9–24–156, dated March 31, 1995.

Overhaul

(b) Overhaul the Westinghouse alternating current power relays, in accordance with Westinghouse service bulletin 75–703, dated June 1977, at times specified in paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) For airplanes equipped with Westinghouse relay, P/N 914F567–4, within 7,000 flight hours after accomplishing the modification required by paragraph (a) of this AD, overhaul the relay and repeat the overhaul at intervals not to exceed 7,000 flight hours.

(2) For airplanes equipped with Westinghouse relay, P/N 9008D09, within 12,000 flight hours after accomplishing the modification required by paragraph (a) of this AD, overhaul the relay and repeat the overhaul at intervals not to exceed 12,000 flight hours.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 23, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22395 Filed 8–27–99; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Use of Electronic Signatures by Customers, Participants and Clients of Registrants

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: As part of its ongoing efforts to facilitate the use of electronic technology and media in the futures industry, the Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing to adopt new rules allowing the use of electronic signatures in lieu of handwritten signatures for certain purposes under the Commission's regulations.[1] The Commission seeks comment on these rules and on issues relating generally to the use of electronic media for communications necessary to establish an account for trading commodity interests.

DATES: Comments must be received on or before October 29, 1999.

[1] Commission regulations referred to herein are found at 17 CFR Ch. 1 *et seq.* (1999).

ADDRESSES: Comments should be mailed to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581; transmitted by facsimile to (202) 418–5521; or transmitted electronically to (secretary@cftc.gov). Reference should be made to "Internet Account-Opening Process."

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Christopher W. Cummings, Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Telephone (202) 418–5430.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

Notwithstanding the rapid pace at which business transactions of all kinds are being converted from paper-based to electronic formats, the opening of accounts to trade investment products in the commodity futures and option markets continues to involve exchange of paperwork between the broker and the customer. Strictly speaking, there is nothing in the Commodity Exchange Act (the "Act")[2] and the Commission's regulations issued thereunder that prevents a futures commission merchant ("FCM") or introducing broker ("IB") from opening electronically a customer account. There are ancillary rules, however, that effectively require the parties to exchange paper, such as the requirement that the FCM or IB obtain a signed acknowledgment that the customer has received the required risk disclosure statement,[3] or the requirement that an agreement to arbitrate disputes be entered into by a separate signature from that which executes the account agreement.[4] In the current session of Congress, several bills have been introduced to authorize the use of electronic signatures.[5] In addition, the National Conference of Commissioners on Uniform State Laws has prepared a "Uniform Electronic Transactions Act" ("UETA") with the goal that it will be adopted by the States, giving legal certainty to

[2] 7 U.S.C. 1 *et seq.* (1994).

[3] *See* Rule 1.55(a)(1).

[4] *See* Rule 180.3(b)(6).

[5] *See* Senate Bills 761 ("Millennium Digital Commerce Act") and 921 ("Electronic Securities Transactions Act") and House Resolutions 1572 ("Digital Signature Act of 1999"), 1685 ("Internet Growth and Development Act of 1999") and 1714 ("Electronic Signatures in Global and National Commerce Act").

electronic commerce, particularly from the perspective of contract law.

Over the past several years, the Commission has modified or made exception to rule provisions that were adopted originally with paper-based transactions in mind in order to permit registrants to comply with those provisions in the context of electronic commerce. For example, as a result of such actions, the Commission now permits commodity pool operators ("CPOs") and commodity trading advisors ("CTAs") who deliver their prescribed Disclosure Documents by electronic means to obtain the required acknowledgment of receipt by electronic means that use a unique identifier to confirm the identity of the recipient, including such means as a personal identification number, or "PIN." [6] The Commission has accepted the use of PINs in other contexts as well, such as in the attestation of financial reports that FCMs are required to file with self-regulatory organizations.[7]

Recently, the Division was asked to interpret Commission rules to permit an FCM to accept, in lieu of a prospective customer's manually signed, paper acknowledgment that he received and understood the risk disclosure statement specified in Rule 1.55, an electronic mail message to that effect on which the customer has typed his name. The Commission believes that customers of FCMs and IBs, as well as commodity pool participants and clients of CTAs, should be permitted to use electronic signatures in those instances where Commission regulations require the customer's (or participant's or client's) manual signature. In furtherance of this belief, the Commission is proposing Rule 1.4, "Use of electronic signatures." [8]

B. Current Regulatory Requirements Affecting the Account-Opening Process

The process by which an FCM or IB actually establishes a customer account to trade commodity interests primarily is governed by state contract law. Neither the Act, the Commission's regulations nor the rules adopted by commodity industry self-regulatory organizations directly specify the steps to be taken to establish an account or the manner in which those steps are to be taken, although certain provisions of the Commission's regulations affect matters that are pendant to the account opening process. The following discussion highlights the CFTC rule provisions that may be implicated regarding customer authorizations and endorsements necessary for opening and maintaining a commodity interest trading account.

Rules 1.36 and 1.37

Rule 1.37(a) requires FCMs and IBs to keep permanent records, for each commodity futures or option account, of the customer's true name, address and principal occupation or business, as well as the name of any person guaranteeing the account or exercising any trading control with respect to the account. Rule 1.36 requires an FCM who receives property other than cash to margin or secure futures or commodity option transactions to keep a record of all such property and the name and address of the customer (as well as information regarding the segregation and ultimate disposition of the property).

Rules 1.55(a), (b), (c) and (f), and Rule 30.6

Rule 1.55(a) provides that prior to opening a commodity futures account an FCM or IB must: (1) furnish the customer with a written disclosure statement containing language specified in rule 1.55 (b) or (c); and (2) obtain the customer's signed and dated acknowledgement that he has received and understands the disclosure statement. Rule 30.6 extends a similar requirement to FCMs or IBs seeking to open foreign futures trading accounts for customers. Rule 1.55(f) provides that the FCM or IB may open a commodity interest account without furnishing the customer with the disclosure statements required by Rules 1.55(a), 30.6(a), 33.7(a) and 190.10(c) if the customer is among a specified category of sophisticated customers.[9]

Rule 33.7

Where an FCM or IB seeks to open a commodity option account for a customer, Rule 33.7 imposes requirements similar to those imposed by Rule 1.55 for commodity futures accounts. As with Rule 1.55, the FCM or IB must obtain a signed and dated acknowledgement that the required disclosure statement was received and understood by the customer. As is true for Rule 1.55(a), Rule 30.6 and Rule 190.10(c), this requirement does not apply where the customer is one of the types of sophisticated customers identified in rule 1.55(f).

Rule 190.10(c)

Rule 190.10(c) requires a commodity broker (other than a clearing organization), before accepting property other than cash to margin or secure a commodity contract, to furnish to the customer the bankruptcy risk disclosure statement specified in Rule 190.10(c)(2). As is true of Rule 1.55(a), Rule 30.6 and Rule 33.7, this requirement does not apply where the customer is one of the types of sophisticated customers identified in Rule 1.55(f).

Rule 190.06

Rule 190.06(d) requires that a commodity broker must provide an opportunity for each customer to specify when undertaking the customer's first hedging contract whether, in the event of the broker's bankruptcy, the customer prefers that open commodity contracts held in a hedging account be liquidated by the trustee in bankruptcy without seeking instructions from the customer.

Rule 1.55(d)

Rule 1.55(d) provides that an FCM or IB may obtain the acknowledgments required by rules 1.55, 33.7 and 190.06 by having the customer sign once, provided that the customer has acknowledged on the document he signs, by check or other indication, next to a description of each required disclosure statement (or election) that the customer has received and understood the disclosure statement (or made the election).

Rule 180.3

Rule 180.3 regulates conditions under which FCMs and IBs [10] may enter agreements with customers requiring that disputes be submitted to a settlement procedure, such as binding arbitration. Signing the agreement to use the specified settlement procedure must not be made a condition for the customer to utilize the services offered by the registrant. The rule also provides that if the agreement is contained as a clause or group of clauses in a broader agreement (*e.g.*, an FCM's customer agreement), the customer must separately endorse the clause or clauses containing the prescribed language regarding available dispute resolution fora and other cautionary material specified in rule 180.3.

Rule 166.2

Rule 166.2 requires that before an FCM, an IB or one of their APs effects a transaction in a customer's commodity interest account the customer (or the person designated by the customer to control the account) must specifically authorize the transaction *or* the customer must have authorized the FCM, IB or AP in writing to effect transactions in the account *without* specific authorization. Under the rule, any such authorization to effect transactions without specific further authorization must be expressly documented.

Several other rule provisions may, but do not necessarily, affect the account opening process:

Rule 1.65

Rule 1.65 applies to bulk transfers of customer accounts to another FCM or IB under circumstances other than at the request of the customer (an event that generally occurs subsequent to the opening of an account). The transferor FCM or IB must first obtain the customer's specific consent to the transfer. If the customer agreement contains a valid consent by the customer to prospective transfers of the account, the customer must nevertheless be provided with written notice of the transfer and must be given a reasonable opportunity to object to the transfer. The transferee FCM or IB must provide the risk disclosure statements required by rules 1.55, 33.7 and 190.10(c) unless: (1) The FCM or IB has clear written evidence that the customer has received and acknowledged the required disclosure statements; (2) the FCM or IB has clear written evidence that at the time the account was opened the customer was one of the sophisticated customers identified in rule 1.55(f); or (3) the transferor IB and the transferee IB are both guaranteed by the same FCM, and that FCM maintains the relevant acknowledgments required by Rules 1.55(a)(1)(ii) and 33.7(a)(1)(ii) and can establish compliance with Rule 190.10(c).

Rule 155.3

Rule 155.3(b)(2) prohibits an FCM or any of its affiliated persons from knowingly taking the other side of any order of another person revealed to the FCM or affiliated person by reason of their relationship to such person except with the other person's prior consent and in accordance with Commission-approved contract market rules.

Rule 1.20(a)

An FCM may not remove funds from a customer's segregated account and transfer those funds to another non-segregated account (such as a securities account) without a separate writing clearly evidencing the customer's authorization for the removal of those funds. The Commission has consistently declined to permit FCMs to include in the customer account agreement the requisite authorization to transfer funds from a customer's segregated account to another account of that customer carried by the FCM.[11]

II. Proposed New Rules

A. Rule 1.3(tt)

Rule 1.3 contains definitions of various terms used in the Act and the Commission's regulations. The Commission is proposing to add a new paragraph (tt) to the rule, which would define the term "electronic signature" as "an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent of signing the record." The proposed definition is taken from the Uniform Electronic Transactions Act ("UETA") approved and recommended for enactment in all the States by the National Conference of Commissioners of Uniform State Laws during that Conference's July 23–30, 1999 annual meeting.[12]

The wording of the proposed definition is intended to be broad enough to encompass electronic signatures created under a variety of current and future technologies, while requiring that the person employing an electronic signature does so with the intent to accomplish the signing of a particular electronic document or record. The definition also expressly provides that the "sound, signal or process" that will constitute the electronic signature be attached to or logically associated with an electronic record. As the drafters of the UETA noted:

> A key aspect of this definition lies in the necessity that the electronic signature be linked or logically associated with the electronic record. For example, in the paper world, it is assumed that the symbol adopted by a party is attached to or located somewhere in the same paper that is intended to be authenticated. These tangible manifestations do not exist in the electronic environment, and accordingly, this definition expressly provides that the symbol must in some way be linked to or connected with, the electronic record being signed.[13]

Thus, where a futures customer is required to sign or adopt a particular phrase or statement (*e.g.*, a specific disclosure statement or portion thereof), the electronic signature must be linked or associated in a logical way with that phrase or statement.

B. Rule 1.4

Proposed rule 1.4(a) would permit the customer of an FCM or IB, a pool participant, or a client of a CTA to use an electronic signature *in lieu* of a written signature in any situation in which a provision of the Act or Commission regulations requires that person's signature. The broad permission to use electronic signatures would be subject to compliance with applicable Federal law and any standards regarding electronic signatures that the Commission may later adopt and guidance that Commission staff may provide.[14] It would also be subject to the futures commission merchant, introducing broker, commodity pool operator or commodity trading advisor utilizing reasonable safeguards regarding the use of electronic signatures (including, at a minimum, measures to verify that the electronic signature belongs to the person using it, procedures to prevent alteration of an electronically-signed record, and procedures to detect changes or errors in an electronic signature). The Commission continues to believe that it generally is unwise to attempt to impose specific technological mandates or specific system design criteria on registrants, and that requiring instead the use of reasonable safeguards,

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[6] *See* Rules 4.21(b) and 4.31(b), and 62 FR 39104, 39110 (July 22, 1997).

[7] Rule 1.10(d)(4). *See* 62 FR 10441 (March 7, 1997).

[8] As is discussed more fully below, the Commission also is proposing to define in new Rule 1.3(tt) the term "electronic signature."

[9] A customer is considered sophisticated for purposes of Rule 1.55(f) if it is: a bank or trust company; a savings association or credit union; an insurance company; an SEC-registered investment company or a foreign investment company with total assets in excess of $5 million; a pool operated by a registered (or foreign registered) or exempt CPO; a corporation or other entity with total assets in excess of $10 million or a net worth of $1 million; an employee benefit plan subject to ERISA (or foreign person performing similar functions and subject to foreign regulation) with assets in excess of $5 million; a registered broker-dealer; a registered FCM, floor broker or floor trader; or a natural person with total assets exceeding $10 million.

[10] Rule 180.3 also applies to registered floor brokers, CPOs and CTAs and their respective associated persons ("APs").

[11] *See Protection of Commodity Customers; Risk Disclosure by Futures Commission Merchants and Introducing Brokers to Customers; Bankruptcy Disclosure.* 63 FR 17495 (April 5, 1993) at 17499 n.18 and Staff Letters referenced there.

[12] The UETA definition is a broad one and is likely to be generally consistent with state and Federal laws adopted in the future.

[13] National Conference of Commissioners on Uniform State Laws *Uniform Electronic Transactions Act*, Draft prepared for the July 23–30, 1999 meeting (the "Annual Meeting Draft") at page 15. The Annual Meeting Draft is available online at the following URL: *http://www.law.upenn.edu/library/ulc/uecicta/etaam99.htm* The text of the UETA as approved is available online at the following URL: *http://www.law.upenn.edu/bll/ulc/fnact99/1990s/ueta.htm.*

[14] Although the Commission presently is not proposing to adopt specific standards regarding electronic signatures, it is possible that legislation pending in Congress may require Federal agencies to adopt such standards. For example, House Resolution 1572 would direct the National Institute of Standards and Technology to establish minimum technical criteria for the use by Federal agencies of electronic certification and management systems and to participate in a national policy panel intended to develop a national digital signature infrastructure based on uniform standards.

to be identified and implemented by the registrant itself, is the better approach.[15]

As is clear from the rule, it is not the Commission's intention that registrants (particularly small businesses) be required to implement electronic signature technology. Rather, if a registrant elects generally to accept electronically signed documents, proposed Rule 1.4 eliminates any uncertainty under the Act or Commission rules or regulations regarding the validity of the signatures.

Until such time as the Congress and State legislatures enact definitive legislation, there will be some question as to the sufficiency of electronic signatures in various contexts, and persons desiring to use them should know that this question exists and consequently that they should use electronic signatures with care. In particular, although the proposed rules will make clear that electronic signatures provided pursuant to the rules will comply with Commission regulations, the validity of such signatures under state contract law will vary depending on the relevant jurisdiction (*i.e.*, these proposed rules do not purport to preempt state law). In light of the foregoing, an FCM, IB, CPO or CTA who elects to receive, handle and store documents or records that have been signed by means of an electronic signature would be required by proposed Rule 1.4(b) to disclose to the customer, participant or client that although an electronic signature is sufficient for purposes of the Act and Commission regulations, it may be insufficient for purposes of other Federal or State laws or regulations (such as common law of contracts). For their own protection and the protection of their customers, registrants obviously should take reasonable care to determine whether an electronic signature intended to consummate a binding contract will be valid in a particular jurisdiction.

It should be noted that proposed Rule 1.4 would not relieve a registrant from any other applicable requirement under the Act or the Commission's rules—*e.g.*, applicable requirements to maintain records of certain signed documents (whether signed with pen and ink or with an electronic signature) in a manner consistent with Commission Rule 1.31.[16] Similarly, proposed Rule 1.4 would not relieve a registrant from requirements regarding the scope or type of customer information required to be kept—*e.g.*, Rule 1.37's requirement that FCMs and IBs keep permanent records, for each commodity futures or option account, of the customer's true name, address and principal occupation or business, as well as the name of any person guaranteeing the account or exercising any trading control with respect to the account. Lastly, registrants should be cognizant of their obligations, among other things, to report material inadequacies in their accounting and internal controls in accordance with Rule 1.16(e) and their duties diligently to supervise the handling of all commodity interest accounts they carry, operate, advise or introduce in accordance with Rule 166.3 when they determine the manner in which they will accept electronic signatures and the procedures and safeguards that they establish and use in connection with electronic signatures.

III. Issues on Which the Commission Requests Comment

General

As noted previously, for the past several years the Commission has been engaged in a process of reviewing its regulatory scheme and modernizing and streamlining its regulations to adapt to developments in the marketplace (including developments in technology and screen-based trading). As part of this process, the Commission believes that allowing for the use of electronic signatures will reduce paperwork and promote efficient access to futures markets. These proposed rules have been structured to be consistent with any future action by Congress or various states in this area. Should the Commission issue rules in this area now? Should the Commission defer rulemaking on electronic signatures pending possible legislation by Congress?

Security

As indicated above, Commission rules require that an FCM or IB obtain information (such as name, address and occupation) and signed acknowledgments (such as an acknowledgment of receipt of the Risk Disclosure Statement) from a new customer. Wholly-electronic communications such as interactive transactions over the Internet lend themselves to anonymous dealings and permit persons to adopt assumed identities. Is opening a commodity interest trading account entirely by electronic means inherently less conducive to establishing that a customer is who he or she claims to be than current practice involving exchange of paper documents and/or face-to-face dealings? What safeguards, if any, are appropriate to counteract any loss of security that may result from elimination of such vestiges of non-electronic commerce as manual signatures on acknowledgments, exchange of paper documents and face-to-face transactions? How and to what extent might encryption, personal identification numbers, callbacks or other security measures be employed to safeguard the integrity of information provided to or received from customers of FCMs and IBs, pool participants or clients of CTAs?

Much has been written on the development of so-called digital signatures and other electronic identification procedures. But each such method depends upon unambiguous establishment at the outset of the identity of the person who will use the identification procedure. If a digital signature or a personal identification number is assigned to a person who is using a false identity in the first place, the purpose of the process has been defeated. Would digital signatures or other electronic identification procedures be any less safe than is the case in the current "paper world?" Is the language of the proposed rules contained in this release adequate for purposes of permitting FCMs, IBs, CPOs and CTAs to accept electronic signatures from their customers or clients? Are any additional safeguards warranted?

Customer Protection

Under current practice, a customer who wants to trade commodity interests electronically must generally download and print out an account agreement and perhaps other documents, to be signed and returned before trading can commence. Does this built-in delay operate as a beneficial safeguard against high-pressure sales tactics or ill-considered entry into potentially risky markets? If a customer is able to log on to his computer, sign up electronically for a commodity interest trading account and immediately begin trading, does that make the customer more susceptible to unscrupulous and deceptive sales tactics? Would there be a benefit to customers if the Commission imposed a specific waiting period (*e.g.*, twenty-four hours) before trading can commence in an electronically-opened account? Would a customer's ability to begin trading almost immediately upon electronically opening an account subject the FCM to new risks (*e.g.*, would it be more difficult or impossible for the FCM to run credit checks that may currently be part of the account opening process)?

Contract law issues

The Commission is aware that in spite of the fact that under Federal securities laws and regulations securities broker-dealers may be able to open and trade accounts electronically, broker-dealers have generally continued to require some exchange of signed paper documents in connection with opening trading accounts, largely because of the existing variations in state contract laws. Agreements to submit disputes to arbitration, for example, must be executed in such a way as to survive a court challenge, and to date, most broker-dealers have been reluctant to accept an electronic signature for this purpose. The Commission has elected in these proposed rules to allow electronic signatures, but to require disclosure to customers to the effect that an electronically executed arbitration agreement may be unenforceable in certain states. Are there any other legal issues besides questions of contract enforceability or issues concerning provisions of the Act or the Commission's regulations that may be raised if registrants open customer accounts electronically?

Coordination with self-regulatory organizations

To the extent that self-regulatory organizations ("SROs") overseen by the Commission (including the National Futures Association and the designated contract markets) propose or adopt rules regarding electronic signatures, conflicts may arise between the proposed rule and such SRO rules. Should the Commission expressly provide that SRO rules must be consistent with the proposed rule? Is this matter better handled in the context of the process pursuant to which the Commission reviews and approves SRO rule changes?

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–611, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA.[17] The Commission has previously determined that FCMs and CPOs are not small entities for the purpose of the RFA.[18] With respect to CTAs and IBs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs and IBs would be considered to be small entities and, if so, the economic impact on them of any rule.[19] In this regard the Commission notes that the regulations being proposed herein do not change the obligations of CTAs and IBs under the Act and Commission regulations, but permit CTAs and IBs to comply with certain existing obligations by using electronic means as an acceptable alternative to paper-based compliance. The Chair, on behalf of the Commission hereby certifies, pursuant to 5 U.S.C. 605(b), that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Nonetheless, the Commission specifically requests comment on the impact these proposed rules may have on small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.* (Supp. I 1995)) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA.

The Office of Management and Budget (OMB) approved the collection of information associated with this proposed rule (3038–0022, Rules Pertaining to Contract Markets and Their Members) on October 24, 1998. While the proposed rule discussed herein has no burden, the group of rules (3038–0022) of which it is a part has the following burden:

Average Burden Hours Per Response: 3,609.89.

Number of Respondents: 15,893.

Frequency of Response: Annually and On Occasion.

Copies of the OMB-approved information collection submission are available from the CFTC Clearance Officer, 1155 21st Street, NW, Washington, DC 20581 (202) 418–5116.

List of Subjects in 17 CFR Part 1

Signatures, Commodity futures, Commodity brokers.

Accordingly, 17 CFR part 1 is proposed to be amended as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, 24.

2. Section 1.3 is proposed to be amended by adding new paragraph (tt) to read as follows:

§ 1.3 Definitions.

* * * * *

(tt) *Electronic signature* means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent of signing the record.

3. Section 1.4 is proposed to be added to read as follows:

§ 1.4 Use of electronic signatures.

(a) For purposes of complying with any provision in the Commodity Exchange Act or the rules or regulations in this Chapter I that requires a document to be signed by a customer of a futures commission merchant or introducing broker, a pool participant or a client of a commodity trading advisor, an electronic signature executed by the customer, participant or client will be sufficient, if the futures commission merchant, introducing broker, commodity pool operator or commodity trading advisor elects generally to accept electronic signatures; *Provided, however,* That:

(i) The electronic signature must comply with applicable Federal laws and such standards as the Commission may adopt and such guidance as the Commission's staff may provide; and

(ii) The futures commission merchant, introducing broker, commodity pool operator or commodity trading advisor must adopt and utilize reasonable safeguards regarding the use of electronic signatures, including at a minimum:

(A) Safeguards employed for the purpose of verifying that an electronic signature is that of the person purporting to use it;

(B) Safeguards employed to prevent alteration of the electronic record with which the electronic signature is associated, after such record has been electronically signed; and

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[15] Among the potential security procedures for electronic signatures identified in the UETA are "the use of algorithms or other codes, identifying words or numbers, encryption, or callback or other acknowledgement procedures." *See* UETA Section 2(14).

[16] Regardless of the form that an electronic signature takes, where a registrant is required by Commission regulations to retain a signed record in accordance with Rule 1.31, the registrant must be able to make the record available (as a signed record) to Commission representatives at any time during the retention period specified in Rule 1.31. Under Rule 1.31, as recently amended (64 FR 28735 (May 27, 1999)) persons who store required records electronically must provide facilities for immediate production or projection of those records for examination by representatives of the Commission or the Department of Justice upon request.

[17] 47 FR 18618–18621 (April 30, 1982).

[18] 47 FR 18619–18620.

[19] 47 FR 18618–18620.

(C) Safeguards employed for detecting changes or errors in a person's electronic signature.

(b) Any futures commission merchant, introducing broker, commodity pool operator or commodity trading advisor who elects to accept documents that are executed by means of an electronic signature must clearly disclose to the customer, participant or client using an electronic signature that although an electronic signature is sufficient for purposes of the Commodity Exchange Act and the rules or regulations of this chapter, it may not be sufficient for purposes of other Federal or State laws or regulations.

Issued in Washington D.C. on August 24, 1999.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 99–22461 Filed 8–27–99; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD07–99–058]

RIN 2115–AA98

Special Anchorage Area; St. Lucie River, Stuart, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a special anchorage area on the St. Lucie River in Stuart, FL. This area is currently used as a temporary and long-term area for vessels to anchor. The establishment of this anchorage will improve the safety of vessels anchoring within and transiting the highly trafficked area, while also lessening the detrimental impact on the ecosystem by providing a designated safer area for vessels to anchor.

DATES: Comments must be received on or before October 29, 1999.

ADDRESSES: Comments may be mailed to Commander, Aids to Navigation Branch, Seventh Coast Guard District, 909 S.E. First Avenue, Miami, FL 33131–3050, or may be delivered to above address between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: LT Kerstin Rhinehart, Seventh Coast Guard District, Aids to Navigation Branch, at (305) 536–4566.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD07–99–058] and the specific section of this proposal to which each comment applies and give the reason for each comment.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, it will hold a public hearing at a time and place announced by a notice in the **Federal Register**.

Background and Purpose

This proposed rule is in response to a request made by the City of Stuart to establish a city managed mooring field on the St. Lucie River. The intended effect of the regulations is to reduce the risk of vessel collisions by providing notice to mariners of the establishment of a special anchorage area, in which vessels not more than 65 feet in length shall not be required to carry or exhibit anchor lights as required by the Navigation Rules. The establishment of the special anchorage has been in coordination with and endorsed by the Florida Department of Environmental Protection (DEP). The DEP determined that properly managed mooring and anchorage fields located in appropriate areas, will encourage vessels to utilize them for safety purposes, and as a side benefit the ecosystem will incur lessened or negligible detrimental impacts.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposed rule, if adopted, will have a significant economic effect upon a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities as use of the anchorage area is voluntary. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard, in association with the Florida Department of Environmental Protection, is considering the environmental impact of this proposed rule, and has determined that this rule may be categorically excluded from further environmental documentation under Figure 2–1, paragraph 34(f) of Commandant Instruction M16475.1C. An Environmental Analysis Checklist and Categorical Exclusion Determination will be completed during the comment period.

List of Subjects in 33 CFR Part 110

Special anchorage areas.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 110 of Title 33, Code of Federal Regulations, as follows:

PART 110—[AMENDED]

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.73c is added to read as follows:

§ 110.73c Okeechobee Waterway, St. Lucie River, Stuart, FL.

The following is a special anchorage area: Beginning on the Okeechobee Intracoastal Waterway between mile marker 7 and 8 on the St. Lucie River, bounded by a line beginning at 27°12′06.583″N, 80°15′33.447″W; thence to 27°12′07.811″N, 80°15′38.861″W; thence to 27°12′04.584″N, 80°15′41.437″W; thence to 27°11′49.005″N, 80°15′44.796″W; thence to 27°11′47.881″N, 80°15′38.271″W; thence to the point of beginning. All coordinates reference Datum NAD:83.

Note: This area is principally used by recreational vessels. The mooring of vessels in this area is administered by the local Harbormaster, City of Stuart, Florida.

Dated: August 11, 1999.

G.W. Sutton,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.

[FR Doc. 99–22436 Filed 8–27–99; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1604; MM Docket No. 99–86; RM–9505]

Radio Broadcasting Services; Fruitland, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; dismissal of.

SUMMARY: The Commission denies the request of Mountain West Broadcasting to allot Channel 300A to Fruitland, NM, as it is not a community for allotment purposes. *See* 64 FR 14421, March 25, 1999. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–86, adopted August 11, 1999, and released August 13, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–22401 Filed 8–27–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[RSPA–97–2094]

RIN 2137—AC54

Pipeline Safety: Underwater Abandoned Pipeline Facilities

AGENCY: Research and Special Programs Administration, (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposal would require the last operator of an abandoned pipeline, offshore and, or, crossing under, over or through navigable waterways to submit a report of the abandonment to the Secretary of Transportation. This notice responds to a Congressional mandate. The results of this proposal would be a central depository of information about underwater abandoned pipelines.

DATES: Comments on the subject of this NPRM must be received on or before October 29, 1999.

ADDRESSES: Comments should identify the docket number of this NPRM, RSPA–97–2094, and be mailed to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street SW, Washington, DC 20590–0001. You should submit the original and one copy. If you wish to receive confirmation of receipt of your comments, you must include a stamped, self-addressed postcard. The Dockets facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays. In addition, the public may also submit or review comments by accessing the Docket Management System's home page at http://dms.dot.gov. An electronic copy of any document may be downloaded from the Government Printing Office Electronic Bulletin Board Service at (202) 512–1661.

FOR FURTHER INFORMATION CONTACT: L.E. Herrick by telephone at 202–366–5523, by fax at 202–366–4566, by mail at U.S. Department of Transportation, RSPA, DPS–10, 400 Seventh Street, SW, Washington, DC, 20590, or via e-mail to le.herrick@rspa.dot.gov regarding this notice of proposed rulemaking. You may contact the Dockets Unit, 202–366–5046, for copies of this notice or material that is referenced herein.

SUPPLEMENTARY INFORMATION:

A. Background

Underwater pipelines are being abandoned at an increasing rate as older facilities reach the end of their use. This trend is expected to continue. Presently, there is no one location where these records of abandonment are maintained. In 1992, Congress directed the Secretary of Transportation to require the last operator of an offshore pipeline facility or a pipeline facility crossing under, over, or through navigable waters to report the abandonment of that facility to the Secretary (49 U.S.C. 60108(c)(6)(B)). This report must contain reasonably available information about the facility and specify whether the facility has been abandoned properly according to applicable Federal and State requirements. Once these reports are filed by the operators they will be accessible to appropriate Federal and State agencies.

We propose to fulfil this Congressional mandate by requiring operators who have abandoned underwater pipeline facilities to report information to the Secretary through the Research and Special Programs Administration's (RSPA) Associate Administrator for Pipeline Safety. The report would include all reasonably available information related to the facility, including information in the possession of a third party. The report would provide a consolidated information source for Federal agencies and State governments to assist in determining if current abandonment requirements are meeting public safety goals. The report would be due upon abandonment of the facility or, for those facilities abandoned prior to the

effective date of this rule, the report would be due one year from the effective date of this rule. The lead time prior to the implementation of this reporting requirement would provide the last operator with sufficient time to incorporate the reporting requirement into their operations.

B. Report Requirements

All reasonably available information should be included. For example:

Location: The geographic location of the endpoints and description of the line as used in the right of way permit and by Geographical Information System (GIS) coordinates.

Size: The outside diameter and approximate length of the pipeline.

Date of abandonment: The date the operator satisfied all the applicable State and Federal requirements for the abandonment.

Method of abandonment: A statement describing the method of abandonment.

Certification: A written statement by the last operator certifying that the facility has been abandoned according to all applicable State and Federal requirements.

Service use: The year or years the facility was placed in service, and the primary product carried by the pipeline prior to abandonment.

We expect that most operators will have the required information readily available. However we are particularly interested in receiving comments from the operators concerning the availability of the information. We are also interested in comments making recommendations on the criteria we should use to determine the scope of the provision for the operator to supply all information that is "reasonably available".

We believe that most operators affected by this rule currently employ practices for abandoning pipelines which include some measure of reporting the abandonment. The requirements we are proposing for this report are expected to be sufficiently performance based to allow the operators to be able to forward information to us with a minimal of additional costs.

In implementing these provisions, we would require that the report be sent by letter mail, e-mail, or fax to: Information Officer, Department of Transportation, Research and Special Programs Administration, Office of Pipeline Safety, 400 Seventh Street, SW, Washington, DC 20590, E-mail: roger.little@rspa.dot.gov, FAX: (202) 366–4566.

Regulatory Analysis and Notices

A. E.O. 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, is not subject to review by the Office of Management and Budget. The proposal is not considered significant under the policies and procedures of the Department of Transportation (44 FR 11034, February 26, 1979).

Those operators who abandoned pipelines after 1980 should have the required information to compile the abandonment report readily available because the operators have been retaining these records for other purposes. For these operators, it should take 15 to 30 minutes to compile and submit the abandonment report. For operators who have abandoned pipelines before 1980, where the data may not be readily available, some research may be required to compile the abandonment report. However, we believe that pre 1980 abandonments represent a small number of the total abandonments. Because a majority of the abandonments have occurred after 1980, we conclude that this regulation will have a minimal impact on the pipeline industry. For more details see the "Paperwork Reduction Act" section of this preamble.

B. Federalism Assessment

The proposed rulemaking action would not have substantial direct effects on States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612 (52 FR 41685, October 30, 1987), we have determined that this notice does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

C. Executive Order 13084—Indian Tribal Governments

We believe that revised regulations from this NPRM would have no significant or unique effect on the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13084 ("Consultation and Coordination with Indian Tribal Governments"). Therefore, the funding and consultation requirements of this Executive Order would not apply. Nevertheless, this NPRM specifically requests comments from affected persons, including Indian tribal governments, as to its potential impact.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires each agency to review regulations and assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. Based on its preliminary regulatory evaluation prepared in support of this proposal, RSPA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. Although operators who have abandoned pipelines before 1980 may be required to perform approximately 8 hours of work to compile the data necessary to produce an abandoned pipeline report, we estimate that there are under 300 operators effected by such abandonments. Because the majority of reports required by this proposed regulation would require only 15–30 minutes of operator time per abandonment, the impact of this regulation will be minimal. The building of pipelines that cross navigable waterways is a very capital intensive operation that requires access to significant sums of working capital. It is unlikely that many small operators have such pipelines. Therefore, I certify, pursuant to section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that this proposal will not, if implemented, have a significant economic impact on a substantial number of small entities. However, we are interested in receiving comments from any small business operators who believe otherwise. This certification is subject to modification as a result of a review of the comments received in response to this proposal.

E. Unfunded Mandates

This proposed rule would not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of over $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the Congressional mandate.

F. Paperwork Reduction Act

This notice of proposed rulemaking contains information collection requirements in 49 CFR 192.727 and 49 CFR 195.59 for the last operator of an abandoned underwater pipeline facility. The notice proposes the submission of a report to the Department of Transportation regarding the abandonment of underwater pipeline facilities. This requirement will be submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act. Comments are specifically requested on the additional burden this requirement would likely impose upon the operators. Comments on the proposed information collection requirement should be submitted to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attn: Desk Officer for Department of Transportation, Research and Special Programs Administration.

We request that comments sent to OMB also be sent to our rulemaking docket.

A copy of the Paperwork Analysis has been put in the docket, and is available for review and copying along with the preamble of this proposal. To summarize the conclusions of the paperwork analysis:

	Number of reports	Time to compile and send report per segment (hours)	Total hours
Pipelines abandoned before 1980	300	8	2,400
Pipelines abandoned 1980–1992	300	1	300
Pipelines abandoned after 1992	2000 (or 400 per year)	0.25	500
Total			3,200

The total cost of this proposal for all pipelines abandoned prior to 1992, assuming that the person compiling the report is paid $40 per hour, is $128,000. The reason for the reduction in the time to compile the report for more recently abandoned pipelines is that the information necessary to compile the report should be readily available because operators are generally compiling and maintaining this information as part of their normal operations. Data on pipelines abandoned after 1992 should be in a form that can be easily copied and sent to the Federal Government. Abandoned pipeline data for the period 1980–1992 might require some more preparation before sending to the Federal Government and therefore is estimated to take one hour of operator time . We believe that the information for the reports for the period prior to 1980, is "reasonably available," in most cases, if found within eight (8) hours of diligent searching.

After 1992 operators were routinely maintaining reports of abandonment. We estimate that each year after 1992 will cost the industry $4,000 (400 reports × $40 × 1/4hour = $4,000.)

G. Impact on Business Processes and Computer Systems

Many computers that use two digits to keep track of dates will, on January 1, 2000, recognize "double zero" not as 2000 but as 1900. This glitch, the Year 2000 problem, could cause computers to stop running or to start generating erroneous data. The Year 2000 problem poses a threat to the global economy in which Americans live and work. With the help of the President's Council on Year 2000 Conversion, Federal agencies are reaching out to increase awareness of the problem and to offer support. We do not want to impose new requirements that would mandate business process changes when the resources necessary to implement those requirements would otherwise be applied to the Year 2000 problem.

This NPRM does not propose business process changes or require modifications to computer systems. Because this NPRM apparently does not affect organizations' ability to respond to the Year 2000 problem, we do not intend to delay the effectiveness of the proposed requirements in this NPRM.

H. National Environmental Policy Act

We have analyzed this action for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and have determined that this action would not significantly affect the quality of the human environment. An Environmental Assessment and a Finding of No Significant Impact are in the docket.

I. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 192

Hazardous liquid, Natural gas, Pipeline safety, Pipelines, Reporting and recordkeeping requirements.

49 CFR Part 195

Ammonia, Carbon dioxide, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA proposes to amend parts 192 and 195 of title 49 of the Code of Federal Regulations as follows:

PART 192—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

Subpart A—General

1. The authority citation for part 192 would continue to read as follows:

Authority: 49 U.S.C. 5103, 6102, 6104, 6108, 6109, 6110, 6113, and 6118; 49 CFR 1.53.

2. Section 192.3 would be amended by adding a new definition in alphabetical order to read as follows:

§ 192.3 Definitions.

Abandoned means permanently removed from service.

* * * * *

3. Section 192.727 would be amended to add paragraph (g) to read as follows:

§ 192.727 Abandonment or inactivation of facilities.

* * * * *

(g) For each abandoned offshore pipeline facility or each abandoned onshore pipeline facility that crosses over, under or through a navigable waterway, the last operator of that facility must file a report by mail, fax or e-mail to the Information Officer, Research and Special Programs Administration, Department of Transportation, Room 7128, 400 Seventh Street, SW, Washington DC 20590; fax (202) 366–4566; e-mail, roger.little@rspa.dot.gov. The information in the report must contain all reasonably available information related to the facility, including information in the possession of a third party. The report must contain the location, size, date, method of abandonment, and a certification that

the facility has been abandoned according to all applicable laws.

PART 195—[AMENDED]

1. The authority citation for Part 195 would continue to read as follows:

Authority: 49 U.S.C. 5103, 6102, 6104, 6108, 6109, 6118; 49 CFR 1.53.

2. Section 195.3 would be amended by adding a new definition in alphabetical order to read as follows:

§ 195.2 Definitions.

Abandoned means permanently removed from service.

* * * * *

3. Section 195.59 would be added to read as follows:

§ 195.59 Abandoned underwater facilities.

For each abandoned offshore pipeline facility or each abandoned onshore pipeline facility that is crossing over, under, or through a navigable waterway, the last operator of that facility must file a report by mail, fax or e-mail to the Information Officer, Research and Special Programs Administration, Department of Transportation, Room 7128, 400 Seventh Street, SW, Washington DC 20590; fax (202) 366–4566; e-mail, roger.little@rspa.dot.gov. The information in the report must contain all reasonably available information related to the facility, including information in the possession of a third party. The report must include the location, size, date, method of abandonment, and a certification that the facility has been abandoned according to all applicable laws.

4. Section 195.402(c) (10) would be revised to read as follows:

§ 195.402 Procedural manual for operations, maintenance, and emergencies.

* * * * *

(c) * * *

(1) * * *

(10) Abandoning pipeline facilities, including safe disconnection from an operating pipeline system, purging of combustibles, and sealing abandoned facilities left in place to minimize safety and environmental hazards. For each abandoned offshore pipeline facility or each abandoned onshore pipeline facility that is crossing over, under, or through a navigable waterway, the last operator of that facility must file a report as specified in § 195.59 of this part.

* * * * *

Issued in Washington, DC on August 23, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–22330 Filed 8–27–99; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register

Vol. 64, No. 167

Monday, August 30, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 99–049–1]

Horse Protection Act; List of Designated Qualified Persons

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice advises the general public and the horse industry of the organizations that have a Designated Qualified Person program currently certified by the United States Department of Agriculture. This notice also lists the currently licensed Designated Qualified Persons in each organization.

FOR FURTHER INFORMATION CONTACT: Dr. Dick Watkins, Assistant Deputy Administrator, Animal Care, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1234; (301) 734–7712; or e-mail: Richard.H.Watkins@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The practice known as "soring" is a painful procedure used to accentuate a horse's gait in order to enhance its performance in the show ring. In 1970, Congress passed the Horse Protection Act (15 U.S.C. 1821–1831), referred to below as the Act, to eliminate the practice of soring by prohibiting the showing or selling of sored horses. Exercising its rulemaking authority under the Act, the Animal and Plant Health Inspection Service (APHIS) enforces regulations in 9 CFR part 11, referred to below as the regulations, that prohibit devices and methods that might sore horses. In 1979, in response to an amendment to the Act, we established regulations under which show management must, to avoid liability for any sore horses that are shown, appoint individuals trained to conduct preshow inspections to detect or diagnose sored horses. These individuals, referred to as Designated Qualified Persons (DQP's), are trained and licensed under industry-sponsored DQP programs that we certify and monitor. The requirements for DQP programs and licensing of DQP's are set forth in § 11.7 of the regulations.

Section 11.7 also requires that we publish a current list of horse industry organizations that have certified DQP programs, and a list of licensed DQP's, in the **Federal Register** at least once each year. The list reads as follows:

Spotted Saddle Horse Breeders & Exhibitors Association, P.O. Box 1046, Shelbyville, TN 37162
Licensed DQP's: Joe "Buck" Beard, Earl M. "Marty" Coleman, Danny Ray Davis, Tommy Derryberry, James "Tony" Edwards, Steven L. Johnson, Mac McGee, Boyd Melton, E.W. Murray, Larry Keith Smith, Don Woodson

Kentucky Walking Horse Association, Route 6, Box 11, Manchester, KY 40962
Licensed DQP's: Les W. Acree, Lee Arnold, Jackie Brown, Ray Burton, Eddie Ray Davis, James Floyd, Buddy L. Glasscock, John L. Goldey, James M. Goode, Grover C. Hatton, Bobby W. Helton, J. Scott Helton, Leon Hester, Dave Jividen, Paul Lasure, Ricky McCammon, Alonzo Napier, Rick O'Neal, Curtis Pittman, Ted B. Poland, John Robinson, Donald Todd, Arnold "Sarg" Walker, Johnnie Zeller

Western International Walking Horse Association, 18525 SE 346, Auburn, WA 98092
Licensed DQP's: Larry Corbett, Don Douglas, Ross Fox, Dennis Izzi, Terry Jerke, Joe Nelson, Dave Swingley, Kim Swingley, Kelly Smith, Pat Thacker

Horse Protection Commision, Inc., P.O. Box 1330, Frazier Park, CA 93225
Licensed DQP's: M. Avila, D. Benefield, D. Collins, L. Connelly, J. Hampton, K. Hester, T. Hester, J. Kendig, S. Kolbusz, R. Lauer, A. Miller, L. Mitchell, P. Mitchell, D. Moore, M. Mullrul, C. Pitts, D. Rash, C. Shepherd, J. Singleton, P. Snodgrass, V. Stamper, K. Thompson

Heart of America Walking Horse Association, 1775 DeGraffenreid Place, Nixa, MO 65714
Licensed DPQ's: Bob Blackwell, Jackie Brown, Chad Campbell, Jennifer Campbell, Larry Carriger, Ronnie D. Cousler, William H. Cox, L. Forgey, Lawanda Foust, R. Dewey Foust, Robert Foust, Betty Grooms, Floyd Hampsmire, Jim Hill, Jim Hoffman, Philip Manker, Stephen Mullins, Wendell Pigg, Linda Scrivner, Sonny Scrivner, A. Scott Skopec, Steve Skopec, Charlie Smart, Robert H. Smith, William Stotler, Jerry Williams, John Williams

National Horse Show Commission, P.O. Box 167, Shelbyville, TN 37160
Licensed DQP's: Lonnie D. Adkins, Melanie Allen, Don Bell, Nolan Benton, Ray Cairnes, Ronnie Campbell, Harry Chaffin, John Cordell, Joe L. Cunningham, Sr., Jessie Davis, Jerry Eaton, William Edwards, Anthony Eubanks, Craig Evans, James Fields, Bob Flynn, Kathy Givens, Iry Gladney, Jimmy House, Ralph Lakes, Larry R. Landreth, Malcolm G. Luttrell, Earl Melton, Andy Messick, Lonnie Messick, Richard Messick, Cary C. Myers, Harlan Pennington, Dickey Reece, Ricky D. Rutledge, Vernon Shearer, Ronnie Slack, Virginia Stanley, Ricky L. Statham, J.H. Syrcle, Charles Thomas, Mark Thomas, Steven Thomas, Greg Thomason, Doug Watkins, Tommy Willet, John F. Wilson

Missouri Fox Trotting Horse Breed Association, Inc., P. O. Box 1027, Ava, MO 65608
Licensed DQP's: Julie Alford, Jack Arnold, Beverly Berry, Frank Bowman, Richard B. Carr, Everett Clamp, Kennith Cochran, Donnie Daugherty, Rob Eagleburger, Gail Freed, Pat Harris, Deb Heggerston, Mark Landers, Edward L. Lee, Geno Middleton, Jeanie Nichols, David Ogle, Mike Osborn, Gary Pierce, Traci Scott, Danny Sublett, Shawn Sublett, Ken Williams, Lee Yates

National Walking Horse Association, P. O. Box 28, Petersburg, TN 37144
Licensed DQP's: Pat Klabusich, Murral R. Johnson, Chris McKinney, Jeff Smith, Mike Stanley, Pamela Wisecup

Done in Washington, DC, this 23rd day of August, 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–22446 Filed 8–27–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service

Applications for FY 2000 National Research Initiative Competitive Grants Program

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Notice of Availability of Program Description and Solicitation for Applications for Fiscal Year 2000 National Research Initiative Competitive Grants Program.

SUMMARY: Applications are invited for competitive grant awards in

agricultural, forest, and related environmental sciences under the National Research Initiative (NRI) Competitive Grants Program administered by the Competitive Research Grants and Awards Management Division, Cooperative State Research, Education, and Extension Service (CSREES), for fiscal year (FY) 2000.

FOR FURTHER INFORMATION CONTACT: USDA/CSREES/NRI, Stop 2241, 1400 Independence Ave., SW., Washington, DC 20250–2241. Phone: (202) 401–5022. E-mail: nricgp@reeusda.gov.

SUPPLEMENTARY INFORMATION:

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Stakeholder Input

CSREES is soliciting comments regarding this solicitation of applications from any interested party. These comments will be considered in the development of the next solicitation of applications for the program. Such comments will be forwarded to the Secretary or his designee for use in meeting the requirements of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998 (Pub. L. 105–185). Written comments should be submitted by first-class mail to: Office of Extramural Programs; Competitive Research Grants and Awards Management; USDA–CSREES; STOP 2299; 1400 Independence Avenue, SW.; Washington, DC 20250–2299, or via e-mail to: RFP-OEP@reeusda.gov.

In your comments, please include the name of the program and the fiscal year solicitation of applications to which you are responding. Comments are requested within six months from the issuance of the solicitation of applications. Comments received after that date will be considered to the extent practicable.

Authority and Applicable Regulations

The authority for this program is contained in 7 U.S.C. 450i(b). Under this program, subject to the availability of funds, the Secretary may award competitive research grants, for periods not to exceed five years, for the support of research projects to further the programs of the United States Department of Agriculture (USDA).

Regulations applicable to this program include the following: (a) The regulations governing the NRI, 7 CFR part 3411, which set forth procedures to be followed when submitting grant proposals, rules governing the evaluation of proposals and the awarding of grants, and regulations relating to the post-award administration of grant projects; (b) the USDA Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher-Education, Hospitals, and Other Non-Profit Organizations, 7 CFR part 3019; (c) the USDA Uniform Federal Assistance Regulations, 7 CFR part 3015; (d) the USDA Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 7 CFR part 3016; and (e) 7 U.S.C. 3103, which defines "sustainable agriculture."

Conflicts of Interest

For the purpose of determining conflicts of interest in accordance with 7 CFR part 3411.12, the academic and administrative autonomy of an institution shall be determined by reference to the February 1999 issue of the Codebook for Compatible Statistical Reporting of Federal Support to Universities, Colleges, and Nonprofit Institutions, prepared by Quantum Research Corporation for the National Science Foundation. Copies may be obtained through the Internet at http://www.nsf.gov/sbe/srs/sfsucni/method98/codebook/codebook.htm.

Project Types and Eligibility Requirements

The project types for which proposals are solicited include:

I. Conventional Projects

(a) Standard Research Grants: Research will be supported that is fundamental or mission-linked, and that is conducted by individual investigators, co-investigators within the same discipline, or multidisciplinary teams. Any State agricultural experiment station, college, university, other research institution or organization, Federal agency, national laboratory, private organization, corporation, or individual may apply. Proposals submitted by non-United States organizations will not be considered for support.

(b) Conferences: Scientific meetings that bring together scientists to identify research needs, update information, or advance an area of research are recognized as integral parts of research efforts. Any State agricultural experiment station, college, university, other research institution or organization, Federal agency, national laboratory, private organization, corporation, or individual is an eligible applicant in this area. Proposals submitted by non-United States organizations will not be considered for support.

II. Agricultural Research Enhancement Awards

To contribute to the enhancement of research capabilities in the research program areas described herein, applications are solicited for Agricultural Research Enhancement Awards. Such applications may be submitted by any State agricultural experiment station, college, university, other research institution or organization, Federal agency, national laboratory, private organization, corporation, or individual; however, further eligibility requirements are defined in 7 CFR part 3411.3(d) and restated in the FY 2000 NRI Program Description. Applications submitted by non-United States organizations will not be considered for support. However, United States citizens applying as individuals for Postdoctoral Fellowships may perform all or part of the proposed work at a non-United States organization. Agricultural Research Enhancement Awards are available in the following categories:

(a) Postdoctoral Fellowships
(b) New Investigator Awards
(c) Strengthening Awards: Institutions in USDA EPSCoR entities are eligible for strengthening awards. For FY 2000, USDA EPSCoR states consist of the following:

Alaska
Arkansas
Connecticut
Delaware
Hawaii
Idaho
Kentucky
Maine
Mississippi
Montana
Nevada
New Hampshire
New Mexico
North Dakota
Rhode Island
South Carolina
South Dakota
Vermont
West Virginia
Wyoming

For FY 2000, other USDA–EPSCoR entities consist of the following:

American Samoa
District of Columbia
Guam
Micronesia
Northern Marianas
Puerto Rico
Virgin Islands

Investigators at small and mid-sized institutions (total enrollment of 15,000 or less) may also be eligible for Strengthening Awards. An institution in this instance is an organization that possesses a significant degree of autonomy. Significant degree of autonomy is defined by being independently accredited as determined by reference to the 1999 Higher Education Directory, published by Higher Education Publications, Inc., 6400 Arlington Boulevard, Suite 648, Falls Church, Virginia 22042. Phone: (703) 532–2305.

Institutions which are among the most successful universities and colleges for receiving Federal funds for science and engineering research, except those in USDA EPSCoR entities, are ineligible for strengthening awards. The top 100 institutions excluding those in USDA EPSCoR entities are as follows:

Baylor College of Medicine
Boston University
California Institute of Technology
Carnegie-Mellon University
Case Western Reserve University
Colorado State University
Columbia University
Cornell University
CUNY Mount Sinai School of Medicine
Duke University
Emory University
Florida State University
Georgia Institute of Technology
Harvard University
Indiana University
Iowa State University of Science and Technology
Johns Hopkins University
Massachusetts Institute of Technology
Medical College of Wisconsin
Michigan State University
New York University
North Carolina State University
Northwestern University
Ohio State University
Oregon Health Sciences University
Oregon State University
Pennsylvania State University
Princeton University
Purdue University
Rockefeller University
Rutgers, The State University of New Jersey
Scripps Research Institute
Stanford University
State University of New York at Stony Brook
State University of New York at Buffalo
Texas A&M University College Park
Thomas Jefferson University
Tufts University
Tulane University
University of Alabama Birmingham
University of Arizona
University of California Berkeley
University of California Davis
University of California Irvine
University of California Los Angeles
University of California San Diego
University of California San Francisco
University of California Santa Barbara
University of Chicago
University of Cincinnati
University of Colorado
University of Florida
University of Georgia
University of Illinois Urbana-Champaign
University of Illinois Chicago
University of Iowa
University of Kansas
University of Maryland Baltimore Prof Sch
University of Maryland College Park
University of Massachusetts Amherst
University of Massachusetts Medical School Worcester
University of Medicine and Dentistry of New Jersey
University of Miami
University of Michigan Ann Arbor
University of Minnesota Twin Cities
University of Missouri Columbia
University of North Carolina Chapel Hill
University of Pennsylvania
University of Pittsburgh
University of Rochester
University of Southern California
University of Texas at Austin
University of Texas Health Science Center Houston
University of Texas Health Sci. Center San Antonio
University of Texas MD Anderson Cancer Center
University of Texas Medical Branch Galveston
University of Texas SW Medical Center Dallas
University of Utah
University of Virginia
University of Washington
University of Wisconsin Madison
Vanderbilt University
Virginia Polytechnic Institute and State University
Virginia Commonwealth University
Wake Forest University
Washington University
Wayne State University
Woods Hole Oceanographic Institute
Yeshiva University, New York

See the FY 2000 NRI Program Description for complete details on programs and eligibility.

Funding Categories for FY 2000

CSREES is soliciting proposals, subject to the availability of funds, for support of high priority research of importance to agriculture, forestry, and related environmental sciences, in the following research categories (ANTICIPATED FY 2000 (FY00) funding and ACTUAL FY 1999 (FY99) funding, rounded to the $0.1M, follows in parentheses):

- Natural Resources and the Environment (FY00: $19.1M, FY99: $19.1M).
- Nutrition, Food Quality, and Health (FY00: $14.9M, FY99: $14.9M).
- Plant Systems (FY00: $38.2M, FY99: $38.2M).
- Animal Systems (FY00: $27.0M, FY99: $27.0M).
- Markets, Trade, and Policy (FY00: $4.3M, FY99: $4.3M).
- New Products and Processes (FY00: $7.6M, FY99: $7.6M).

Support for research opportunities listed below may be derived from one or more of the above funding categories based on the nature of the scientific topic to be supported.

Pursuant to 7 U.S.C. 450i(b)(10), no less than 10 percent (FY00: $11.1M, FY99: $11.1M) of the available funds listed above will be made available for Agricultural Research Enhancement Awards (excluding New Investigator Awards), and no more than 2 percent (FY00: $2.2M, FY99: $2.2M) of the available funds listed above will be made available for equipment grants. Further, no less than 30 percent (FY00: $33.4M, FY99: $33.4M) of the funds listed above shall be made available for grants for research to be conducted by multidisciplinary teams, and no less than 40 percent (FY00: $44.5M, FY99: $44.5M) of the funds listed above shall be made available for grants for mission-linked systems research.

CSREES is prohibited from paying indirect costs exceeding 19 per centum of the total Federal funds provided under each award on competitively awarded research grants (7 U.S.C. 3310).

Research Opportunities

The funds appropriated as listed above will be used to support research grants in the following areas:

NATURAL RESOURCES AND THE ENVIRONMENT
- Plant Responses to the Environment
- Ecosystem Science
- Soils and Soil Biology
- Watershed Processes and Water Resources

NUTRITION, FOOD SAFETY, AND HEALTH
- Improving Human Nutrition for Optimal Health
- Food Safety
- Epidemiological Approaches for Food Safety

ANIMALS
- Animal Reproductive Efficiency
- Animal Growth, Development, and Nutrient Utilization
- Animal Genome and Genetic Mechanisms
- Animal Health and Well-Being

BIOLOGY AND MANAGEMENT OF PESTS AND BENEFICIAL ORGANISMS.
- Entomology and Nematology
- Biologically Based Pest Management.
- Biology of Plant-Microbe Associations
- Biology of Weedy and Invasive Plants

PLANTS

Plant Genome
Plant Genetic Mechanisms
Plant Growth and Development
Agricultural Plant Biochemistry
MARKETS, TRADE, AND RURAL DEVELOPMENT
Markets and Trade
Rural Development
ENHANCING VALUE AND USE OF AGRICULTURAL AND FOREST PRODUCTS
Value-Added Products Research
Food Characterization/Process/Product Research
Non-Food Characterization/Process/Product Research
Improved Utilization of Wood and Wood Fiber
AGRICULTURAL SYSTEMS RESEARCH (integrated, multidisciplinary research on agricultural systems)

Application Materials

The FY 2000 NRI Program Description, which contains research topic descriptions, and the NRI Application Kit, which contains detailed instructions on how to apply and the requisite forms, are available through the NRI home page, www.reeusda.gov/nri. Paper copies of these application materials may be obtained by sending an e-mail with your name, complete mailing address (not e-mail address), phone number, and materials that you are requesting to psb@reeusda.gov. Materials will be mailed to you (not e-mailed) as quickly as possible. Alternatively, paper copies may be obtained by writing or calling the office indicated below. Proposal Services Unit, Office of Extramural Programs, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2245, 1400 Independence Ave., SW, Washington, DC 20250–2245, Telephone: (202) 401–5048.

Materials Available on Internet

The following are among the materials available on the NRI home page (www.reeusda.gov/nri).

NRI Program Description

This document is available for the current fiscal year, and describes all of the NRI funding programs. To apply for a grant, it is also necessary to obtain the NRI Application Kit.

NRI Application Kit

This document contains guidelines for proposal preparation and the requisite forms.

NRI Abstracts of Funded Research

The abstracts available on this searchable database are nontechnical abstracts written by the principal investigator of each individual grant, starting with FY 1993. Each entry also includes the title, principal investigator(s), awardee institution, dollar amount, and proposal number for each grant. The first two digits of the proposal number indicate the fiscal year in which the proposal was submitted.

NRI Annual Report

The NRI Annual Reports starting with FY 1995 are available. These reports include descriptions of the program concept, the authorization, policy, inputs to establish research needs, program execution, and outcomes, including relevant statistics. Also included are examples of recent research funded by the NRI.

Electronic Subscription to NRI Documents

The NRI has set up a mailserver which will notify subscribers when publications such as its Program Description or Abstracts of Funded Research are available electronically on the World Wide Web. Subscribers will not receive the document itself, but instead will receive an e-mail containing an announcement regarding the document's availability on the NRI home page.

To subscribe:

Send an e-mail message to: majordomo@reeusda.gov

In the body of the message, include only the words: *subscribe nri-epubs*

To unsubscribe:

Send an e-mail message to: majordomo@reeusda.gov

In the body of the message, include only the words: *unsubscribe nri-epubs*

Please note that this is not a forum. Messages, other than those related to subscription, can not be posted to this address.

NRI Deadline Dates

The following fixed dates have been established for proposal submission deadlines within the NRI. To be considered for funding in any fiscal year, proposals must be transmitted by the date listed below (as indicated by postmark or date on courier bill of lading). When the deadline date falls on a weekend or Federal holiday, transmission must be made by the following business day.

Programs offered in any fiscal year depend on availability of funds and deadlines may be delayed due to unforeseen circumstances. Consult the pertinent NRI solicitation in the **Federal Register**, the NRI Program Description, or the NRI home page (www.reeusda.gov/nri) for up-to-date information.

Postmarked dates	Program codes	Program areas
November 15	22.1	Plant Responses to the Environment.
	23.0	Ecosystem Science.
	25.0	Soils and Soil Biology.
	26.0	Watershed Processes and Water Resources.
	31.0	Improving Human Nutrition for Optimal Health.
	51.9	Biology of Weedy and Invasive Plants.
	80.1	Research Career Enhancement Awards.
	80.2	Equipment Grants.
	80.3	Seed Grants.
December 15	52.1	Plant Genome.
	52.2	Plant Genetic Mechanisms.
	53.0	Plant Growth and Development.
	61.0	Markets and Trade.
	62.0	Rural Development.
	71.1	Food Characterization/Process/Product Research.
	71.2	Non-Food Characterization/Process/Product Research.
January 15	32.0	Food Safety.
	32.1	Epidemiological Approaches for Food Safety.

Postmarked dates	Program codes	Program areas
	41.0	Animal Reproductive Efficiency.
	44.0	Animal Health and Well-Being.
	51.2	Entomology and Nematology.
	51.7	Biologically Based Pest Management.
	51.8	Biology of Plant-Microbe Associations.
	73.0	Improved Utilization of Wood and Wood Fiber.
February 15	42.0	Animal Growth, Development, and Nutrient Utilization.
	43.0	Animal Genome and Genetic Mechanisms.
	54.3	Agricultural Plant Biochemistry.
	100.0	Agricultural Systems Research.

Please note: Starting in fiscal year 2001, the submission deadline for the Agricultural Systems Research (100.0) will be November 15.

Done at Washington, DC, this 19th day of August 1999.

Charles W. Laughlin,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 99–22381 Filed 8–27–99; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Food Safety Inspection Service

[Docket No. 99–042N]

National Advisory Committee on Microbiological Criteria for Foods

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The National Advisory Committee on Microbiological Criteria for Foods (NACMCF) will hold a public meeting on September 21–24, 1999, to review and discuss ongoing work on *Listeria monocytogenes (Lm)* and *Vibrio parahaemolyticus (V. parahaemolyticus)* risk assessments and to address the issue of bare-hand contact with ready-to-eat foods at retail.

DATES: The full committee will hold a public meeting on bare-hand contact of ready-to-eat foods at retail, on Tuesday and Wednesday, September 21–22, 1999, beginning at 8:00 a.m. On Wednesday afternoon, September 22, beginning at 1:30 p.m. there will be an update on performance criteria for fresh juice. The full committee will reconvene on Thursday and Friday, September 23–24, 1999, beginning at 8:00 a.m. to discuss *Lm* and *V. parahaemolyticus* risk assessments. Also, on Friday, September 24, 1999, beginning at 3:15 p.m., the full committee will review for adoption the Small Plant Hazard Analysis Guidelines.

ADDRESSES: The meeting will be held at the Washington Plaza Hotel, #10 Thomas Circle NW, at Massachusetts Avenue & 14th Street, Washington, DC 20005, telephone number (202) 842–1300.

FOR FURTHER INFORMATION CONTACT: Persons wishing to register for the meeting, should contact Ms. Mary Harris, (202) 501–7315, Fax (202) 501–7615, e-mail address: mary.harris@usda.gov or mailing address: Food Safety and Inspection Service, Department of Agriculture, Room 6904E—Franklin Court, 1400 Independence Avenue, SW, Washington, DC 20250–3700. Persons requiring a sign language interpreter or other special accommodations should notify Ms. Harris, by September 10, 1999.

If you wish to make an oral presentation on any of the meeting topics you must contact Ms. Catherine M. DeRoever at (202) 205–4251, fax: (202) 205–4970, or e-mail address: *cderoeve@bangate.fda.gov* and submit (1) a brief written statement regarding the general nature of comments and (2) the name, address, and telephone number, of the person who will be giving the presentation. Because of the anticipated number of individuals who may wish to make a public statement, it is likely that the committee will limit the time allotted for the presentations. Reservations to make a public statement will be taken on a first come, first served basis. All requests to make a presentation must be received no later than 4:30 p.m., September 8, 1999. Any documents submitted become part of the Committee records.

SUPPLEMENTARY INFORMATION:

Background

The NACMCF provides advice and recommendations to the Secretary of Agriculture and the Secretary of Health and Human Services, regarding the microbiological safety of foods. The Committee also provides advice to the Centers for Disease Control and Prevention and the Departments of Commerce and Defense. Dr. I. Kaye Wachsmuth, Deputy Administrator, Office of Public Health and Science, FSIS, is the Committee Chair.

During the full committee meeting on bare-hand contact with ready-to-eat foods at retail, the committee will discuss the many scientific issues having to do with food worker hand contact of ready-to-eat foods. They will evaluate the risk of transmitting bacterial, viral, and parasitic pathogens from food workers, via ready-to-eat foods, to consumers, and the effectiveness of interventions.

During the full committee meeting on *Lm*, the preliminary risk assessment that addresses the presence of *Lm* in specific food groups, the consumption of these foods by various subpopulations including their total intake and health response, will be reviewed. Comments will be requested on the methodology used, the interpretation of data, and any additional assessments that should be made. At the *V. parahaemolyticus* risk assessment session, an update on the information, data, and parameters, will be given along with a summation of the risk assessment findings to date. Again, comments will be requested on the methodology used, the interpretation of data, and any additional assessments that should be made.

The Meat and Poultry Subcommittee will submit the Small Plant Hazard Analysis Guidelines for adoption by the full committee.

Additional Public Notification

Pursuant to Departmental Regulation 4300–4, "Civil Rights Impact Analysis," dated September 22, 1993, FSIS has considered the potential civil rights impact of this notice on minorities, women, and persons with disabilities. Therefore, to better ensure that these groups and others are made aware of this meeting, FSIS will announce it and provide copies of the **Federal Register** publication in the FSIS Constituent Update.

The Agency provides a weekly FSIS Constituent Update, which is communicated via fax to over 300

organizations and individuals. In addition, the update is available on line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding Agency policies, procedures, regulations, **Federal Register** Notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, the Agency is able to provide information with a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Office of Congressional and Public Affairs, at (202) 720–5704.

Done at Washington, DC on: August 25, 1999.

Thomas J. Billy,

Administrator.

[FR Doc. 99–22430 Filed 8–27–99; 8:45 am]

BILLING CODE 3410–DM–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has scheduled its regular business meetings to take place in Washington, D.C. on Monday, Tuesday, and Wednesday, September 13–15, 1999, at the times and location noted below.

DATES: The schedule of events is as follows:

Monday, September 13,1999

1:30 p.m.–5:00 p.m. Technical Programs Committee

Tuesday, September 14, 1999

9:00 a.m.–Noon and 1:30 p.m.–5:00 p.m. Committee of the Whole and Ad Hoc Committee on Section 508 Standards (Closed Meeting)

Wednesday, September 15, 1999

9:00 a.m.–9:30 a.m. Committee of the Whole Meeting—Play Areas Final Rule (Closed Meeting)

9:30 a.m.–10:30 a.m. Planning and Budget Committee

10:30 a.m.–Noon Executive Committee

1:30 p.m.–3:00 p.m. Board Meeting

ADDRESSES: The meetings will be held at the Ronald Reagan Building, Conference Center, 1300 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: For further information regarding the meetings, please contact Lawrence W. Roffee, Executive Director, (202) 272–5434, ext. 14 (voice) and (202) 272–5449 (TTY).

SUPPLEMENTARY INFORMATION: At the Board meeting, the Access Board will consider the following agenda items.

- Executive Director's Report.
- Approval of the Minutes of the July 14, 1999, Board Meeting.
- Executive Committee Report—Ad Hoc Committee on Nominations Report and Committee Work Plan.
- Planning and Budget Committee Report—Fiscal Year 1999 Spending Plan and Fiscal Year 2001 Budget.
- Technical Programs Committee Report—Status Report on Fiscal Years 1998, 1999, and 2000 Projects.
- Committee of the Whole and Ad Hoc Committee Report—Section 508 NPRM.
- Committee of the Whole Report—Play Areas Final Rule.
- Regulatory Negotiation Committee Report—Outdoor Developed Areas.

All meetings are accessible to persons with disabilities. Sign language interpreters and an assistive listening system are available at all meetings.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 99–22464 Filed 8–27–99; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee (RPTAC) will meet September 14, 1999, 9 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, NW, Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Open Session

1. Opening remarks by the Chairperson.
2. Presentation of papers or comments by the public.
3. Update on pending regulatory revisions.
4. Update on policies under review.
5. Discussion of draft regulation concerning Exporter of Record.
6. Discussion on compliance and enforcement issues.
7. Discussion of encryption regulations.
8. Discussion of regulations regarding High Performance Computers.
9. Update on implementation of Wassenaar Arrangement.

Closed Session

10. Discussion of matters properly classified under Executive Order 12958, dealing with the US export control program and strategic criteria related thereto.

A limited number of seats will be available for the open session. Reservations are not required. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to the following address: Ms. Lee Ann Carpenter, BXA MS:3876, 15th St. and Pennsylvania Ave., NW, US Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 12, 1999, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meeting or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 52b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and 10(a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, US Department of Commerce, Washington, DC. For more information, call Lee Ann Carpenter at (202) 482–2583.

Dated: August 24, 1999.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 99–22458 Filed 8–27–99; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews and requests for revocation in part.

SUMMARY: The Department of Commerce (the Department) has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with July anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department also received requests to revoke four antidumping duty orders in part.

EFFECTIVE DATE: August 30, 1999.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background.

The Department has received timely requests, in accordance with 19 CFR 351.213(b) (1997), for administrative reviews of various antidumping and countervailing duty orders and findings with July anniversary dates. The Department also received timely requests to revoke in part the antidumping duty orders on silicon metal from Brazil, certain pasta from Italy, canned pineapple from Thailand, and certain pasta from Turkey.

Initiation of Reviews

In accordance with 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than July 31, 2000.

	Periods to be reviewed
Antidumping Duty Proceedings	
Brazil: Silicon Metal, A–351–806	7/1/98–6/30/99
Companhia Brasileira Carbuerto De Calcio	
Companhia Ferroligas Minas Gerais-Minasligas	
Eletrosilex S.A.	
Ligas de Aluminia S.A.	
Rima Industrial S.A.	
Canada: Oil Country Tubular Goods,* A–122–506	12/1/98–5/30/99
Atlas Tube Inc.	
*Inadvertently omitted from previous initiation notice. Also because we are conducting a new shipper review covering the period 6/1/98 through 11/30/98, this administrative review will only cover the period 12/1/98 through 5/30/99.	
Chile: Fresh Atlantic Salmon, A–337–803	7/28/98–6/30/99
Acuicultura de Aquas Australes	
Agromar Ltda.	
Aquachile S.A.	
Aguas Claras S.A.	
Aquasur Fisheries Ltda.	
Asesoria Acuicola S.A.	
Best Salmon	
C.M. Chiloe Ltda.	
Cenculmavique	
Centro de Cultivo de Moluscos	
Cerro Farellon Ltda.	
Chile S.A.	
Chisal S.A.	
Complejo Piscicola Coyhaique	
Cultivadora de Salmones Linao Ltda.	
Cultivos San Juan	
Cultivos Yardan S.A.	
Cultivos Marinos Chiloe Ltda.	
Fiordo Blanco S.A.	
Fisher Farms	
Fitz Roy	
G.M. Tornagaleones S.A.	
Hiutosal	
Huitosal Mares Australes Salmo Pac.	
I.P. Mar de Chiloe S.A.	
Intervec Seafood S.A.	
Manao Bay Fisheries	
Mardim Ltda.	
Mares Australes	
Ocean Horizons	
P. Antares S.A.	
P. Chiloe S.A.	
P. Friosur S.A.	
P. Los Fiordas	
P. Pacific Star	

	Periods to be reviewed
Pacific Mariculture	
Patagonia Fish Farming S.A.	
Patagonia Salmon Farming, S.A.	
Pes Quellon Ltda.	
Pesca Chile S.A.	
Pesquera Eicosal Ltda.	
Pesquera Mares Australes Ltda.	
Piscicultura Iculpe	
Piscicultura La Cascada	
Piscicultura Santa Margarita	
Prosmolt S.A.	
Salmonamerica	
Salmon Andes S.A.	
The Salmoamerica Group	
Salmones Americanos S.A.	
Cultivadora de Salmones Linao Ltda.	
Salmones Antarctica S.A.	
Salmones Caicaen S.A.	
Salmones Llanquihue	
Salmones Mainstream S.A.	
Salmones Multiexport Ltda.	
Salmones Pacifico Sur, S.A.	
Salmones Quellon	
Salmones Ranco Sur Ltda.	
Salmones Tecmar S.A.	
Salmones Unimarc S.A.	
Salmosan	
Seafine	
Trusal S.A.	
Ventisqueros S.A.	
Italy: Certain Pasta, A–475–818	7/1/98–6/30/99
Commercio-Rappresentanze-Export S.r.l.	
F.lli De Cecco di Filippo Fara S. Martino S.p.A.	
Industrie Alimentari Molisane S.r.l.	
La Molisana Industrie Alimentari S.p.A.	
Pastificio Antonio Pallante S.r.l.	
Pastifico F.LLI Pagani S.p.A.	
Pastificio Maltagliati S.p.A.	
P.A.M., S,r.l.—Prodotti Alimentari Meridionali.	
Rummo S.p.A. Pastificio e Molino	
Thailand: Canned Pineapple, A–549–813	7/1/98–6/30/99
Kuiburi Fruit Canning Company Limited	
Malee Sampran Factory Public Company, Ltd.	
The Prachuab Fruit Canning Company	
Siam Fruit Canning (1988) Co., Ltd.	
Siam Food Products Public Company Ltd.	
Thai Pineapple Canning Industry Corp., Ltd.	
The Thai Pineapple Public Co., Ltd.	
Tropical Food Industries Co., Ltd.	
Vita Food Factory (1989) Co. Ltd.	
The People's Republic of China: Persulfates,* A–570–847	7/1/98–6/30/99
Guangdong Petroleum Chemical Import & Export Trade Corp.	
Sinochem Jiangsu Wuxi Import & Export Corp.	
Shanghai Ai Jian Import & Export Corp.	
*If one of the above named companies does not qualify for a separate rate, all other exporters of persulfates from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.	
The People's Republic of China: Sebacic Acid,* A–570–825	7/1/98–6/30/99
Guangdong Chemicals Import & Export Corporation	
Sinochem International Chemicals Company	
Sinochem Jiangsu Import & Export Corporation	
Tianjin Chemicals Import & Export Corporation	
*If one of the above named companies does not qualify for a separate rate, all other exporters of sebacic acid from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.	
Turkey: Certain Pasta, A–489–805	7/1/98–6/30/99
Filiz Gida Sanayi ve Ticaret A.S.	
Pastavilla Makarnacilik Sanayi ve Ticaret A.S.	
The United Kingdom: Industrial Nitrocellulose, A–412–803	7/1/98–6/30/99
Imperial Chemical Industries PLC	
Countervailing Duty Proceedings	
Italy: Certain Pasta, C–475–819	1/1/98–12/31/99

	Periods to be reviewed
Delverde, SpA	
Tamma Industrie Alimentari, SrL	
Suspension Agreements	
The People's Republic of China: Honey, A–570–838.	

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping order under section 351.211 or a determination under section 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of this section to any administrative review initiated in 1998 (19 CFR 351.213(j)(1–2)).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 351.221(c)(1)(i).

Dated: August 24, 1999.

Bernard T. Carreau,

Deputy Assistant Secretary for Group II, AD/CVD Enforcement.

[FR Doc. 99–22463 Filed 8–27–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–811]

Certain Stainless Steel Wire Rods From France: Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 30, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Rick Johnson, AD/CVD Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3434 or (202) 482–3818, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Review

The products covered by this administrative review are certain stainless steel wire rods (SSWR), products which are hot-rolled or hot-rolled annealed, and/or pickled rounds, squares, octagons, hexagons, or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling, are normally sold in coiled form, and are of solid cross section. The majority of SSWR sold in the United States is round in cross-sectional shape, annealed, and pickled. The most common size is 5.5 millimeters in diameter.

The SSWR subject to this review is currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, and 7221.00.0080 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and Customs purposes, our written description of the scope of the order is dispositive.

Amendment of Final Results

On August 28, 1998, the Department of Commerce (the Department) published the amended final results of the administrative review of the antidumping duty order on certain stainless steel wire rods from France (63 FR 45998). This review covered Imphy S.A., and Ugine-Savoie, two manufacturers/exporters of the subject merchandise to the United States. The period of review (POR) is January 1, 1996, through December 31, 1996.

On September 14, 1998, counsel for the petitioning companies, Al Tech Specialty Steel Corp., Armco Stainless & Alloy Products, Carpenter Technology Corp., Republic Engineered Steels, Talley Metals Technology, Inc., United Steelworkers of America, and AFL–CIO/CLC (collectively "petitioners") filed an allegation of a clerical error in a timely fashion.

Petitioners allege that the Department failed to correct a ministerial error with respect to the calculation of home market credit expenses when the payment date was missing. Petitioners state that the Department's amended final program continues to result in an abnormally high imputed credit expenses that result in negative home market prices for certain sales. Petitioners state that they informed the Department of this clerical error in their July 8, 1998 clerical error letter. However, according to petitioners, in issuing its amended final results the Department did not provide a reason for not amending the program for this clerical error, but stated only that "petitioners have failed to point to any specific programming language which is in error, and the mere allegation that certain calculated expenses are too high is insufficient for finding a ministerial error." *See Amended Final Results of Antidumping Duty Administrative Review, Certain Stainless Steel Wire Rods from France*; 63 FR 45999, (August 28, 1998). Petitioners acknowledge that they did not provide exact programming language nor locate the exact cause of the alleged clerical error at the time of their original clerical errors comments were filed, although petitioners did propose on June 8 that the Department rely on respondents' submitted information for credit expenses. Petitioners argue that ignoring a clerical error simple because they did not identify the programming error within the provided time frame is unfair and unlawful. Nevertheless, petitioners have now identify the error, and request that the Department correct this clerical error. Respondents did not comment on this issue.

After a review of petitioners' allegation, we agree with petitioners that a clerical error was made in the calculation of home market credit expense in the amended final results. We have corrected our calculation of home market credit expense when the

pay date is missing in our model match program. For the computer code we used to correct this ministerial error, please see the *Memorandum from Robert A. Bolling to Edward Yang* dated April 19, 1999 ("*Amended Final Calculation Memorandum*"), a public version of which is available in the Central Records Unit, Room B–099 of the Department of Commerce building, 14th Street and Constitution Ave, NW, Washington, DC.

Amended Final Results of Review

As a result of our review and the correction of the ministerial errors described above, we have determined that the following margin exists:

Manufacturer/Exporter	Time period	Margin (percent)
Imphy/Ugine-Savoie	1/1/96–12/31/96	7.19

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and normal value may vary from the percentages stated above. This Department will issue appraisement instructions directly to the Customs Service. The amended final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review. For duty assessment purposes, we calculated an importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales to each importer and dividing this amount by the total value of subject merchandise entered during the POR for each importer.

Furthermore, the following deposit requirements will be effective, upon publication of this notice of amended final results of review for all shipments of certain stainless steel wire rods from France entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates for those firms as stated above; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 24.51 percent for stainless steel wire rods, the all others rate established in the LTFV investigations. *See Amended Final Determination and Antidumping Duty Order: Certain Stainless Steel Wire Rods from France*, (59 FR 4022, January 28, 1994).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 353.34(d) of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 19, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–22462 Filed 8–27–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Newly Established Industry Functional Advisory Committee; Request for Nominations

AGENCY: International Trade Administration, Trade Development.

ACTION: Notice of Establishment of Industry Functional Advisory Committee on Electronic Commerce for Trade Policy Matters; Request for Nominations.

SUMMARY: The Secretary of Commerce and the United States Trade Representative have jointly established an Industry Functional Advisory Committee on Electronic Commerce for Trade Policy Matters pursuant to section 135 of the Trade Act of 1974, and seek nominations for appointment to the Committee. Nominees must be U.S. citizens, representing U.S. manufacturing and service firms that trade internationally or provide services in direct support of the international trading activities of other entities. Priority will be given to a balanced representation in terms of point of view represented by various sectors, product lines, firm sizes and geographic areas.

More detailed information is provided below and is also available on the International Trade Administration website at www.ita.doc.gov/icp. Inquiries may be directed to Tamara Underwood, Director, Industry Consultations Program, U.S. Department of Commerce, 14th and Constitution Avenue NW, Room 2015–B, Washington, DC 20230, phone 202/482–3268.

SUPPLEMENTARY INFORMATION: Pursuant to section 135 of the Trade Act of 1974 (19 U.S.C. 2155) and the Federal Advisory Committee Act (5 U.S.C. App), the Secretary of Commerce (the Secretary) and the United States Trade Representative (USTR) established the Industry Functional Advisory Committee on Electronic Commerce for Trade Policy Matters (the Committee) on August 17, 1999.

Electronic Commerce is a driving force in U.S. economic growth and international trade. A primary thrust of U.S. policy on electronic commerce will be to avoid government actions that might impede its growth and development. The Department and the USTR must have regular advice from the U.S. private sector to effectively address these issues and identify new and emerging concerns. The Committee will advise the Secretary and the USTR on electronic commerce issues that could threaten or restrict trade, which encompass issues such as privacy, taxation, standards, consumer protection, authentication, and content, among others. The Committee's advice will be used to develop USG positions and priorities on electronic commerce for international discussions in bilateral, regional and multilateral discussions, including the WTO, OECD, FTAA, TEP and others.

Background

In section 135 of the Trade Act of 1974, as amended (19 U.S.C. 2155), Congress established a private-sector advisory system to ensure that U.S. trade policy and trade negotiation objectives adequately reflect U.S. commercial and economic interests.

Section 135 directs the President to—

"seek information and advice from representative elements of the private sector and the non-Federal governmental sector with respect to—

(A) Negotiating objectives and bargaining positions before entering into a trade agreement under [title I of the 1974 Trade Act and section 1102 of the Omnibus Trade and Competitiveness Act of 1988];

(B) The operation of any trade agreement once entered into; including preparation for dispute settlement panel proceedings to which the United States is a party; and

(C) Other matters arising in connection with the development, implementation, and administration of the trade policy of the United States.

* * *"

The Secretary and the USTR have established seventeen Industry Sector Advisory Committees for Trade Policy Matters (ISACs) and four Industry Functional Advisory Committees for Trade Policy Matters (IFACs) pursuant to section 135. A complete list of these committees appears below:

Industry Sector Advisory Committees for Trade Policy Matters (ISAC) on:
- Aerospace Equipment (ISAC 1);
- Capital Goods (ISAC 2);
- Chemicals and Allied Products (ISAC 3);
- Consumer Goods (ISAC 4);
- Electronics and Instrumentation (ISAC 5);
- Energy (ISAC 6);
- Ferrous Ores and Metals (ISAC 7);
- Footwear, Leather, and Leather Products (ISAC 8);
- Building Products and Other Materials (ISAC 9);
- Lumber and Wood Products (ISAC 10);
- Nonferrous Ores and Metals (ISAC 11);
- Paper and Paper Products (ISAC 12);
- Services (ISAC 13);
- Small and Minority Business (ISAC 14);
- Textiles and Apparel (ISAC 15);
- Transportation, Construction, Mining, and Agricultural Equipment (ISAC 16);
- Wholesaling and Retailing (ISAC 17); and

Industry Functional Advisory Committees on Trade Policy Matters (IFAC) on:
- Customs (IFAC 1);
- Standards (IFAC 2);
- Intellectual Property Rights (IFAC 3).
- Electronic Commerce (IFAC 4).

Functions

The duties of the ISACs and IFACs are to provide the Secretary and the USTR with advice on objectives and bargaining positions for multilateral trade negotiations, bilateral trade negotiations, and other trade-related matters. The committees provide nonpartisan industry input in the development of trade policy objectives. The committees' efforts result in strengthening the U.S. negotiating position by enabling the United States to display a united front when it negotiates trade agreements with other nations.

The ISACs provide advice and information on issues that affect specific sectors of U.S. industry. The IFACs focus on cross-cutting issues that affect all industry sectors, such as customs matters, product standards, intellectual property rights and electronic commerce. Each ISAC may also select a member to serve on each IFAC so that a broad range of industry perspectives is represented.

Committees meet an average of four times a year in Washington, DC. Members are responsible for all travel expenses incurred to attend the meetings.

Membership

ISAC and IFAC members are appointed jointly by the Secretary of Commerce and the USTR. Appointments are made at the initial chartering of the Committee, at the rechartering of each committee and periodically throughout the two-year charter period. Members serve at the discretion of the Secretary and USTR. Appointments to an ISAC/IFAC expire at the end of the committee's charter. However, members may be reappointed for one or more additional terms should the committee's charter be renewed and if the member proves to work effectively with the committee and his/her expertise is still needed.

The IFAC on Electronic Commerce is chartered for 40 members total, 23 directly appointed members and 17 elected members to represent each of the ISACs. The committee's charter expires March 19, 2000.

Qualifications

The Secretary and USTR invite nominations to the Committee of U.S. citizens who will represent U.S. manufacturing or service companies that trade internationally, or trade associations whose members are U.S. companies that trade internationally. Companies must be at least 51 percent beneficially-owned by U.S. persons. U.S.-based subsidiaries of foreign companies in general do not qualify for representation on the committees.

Nominees will be considered based upon their ability to carry out the goals of section 135 of the Trade Act of 1974, as amended. Secondary criteria are ensuring that the committee is balanced in terms of points of view, demographics, geography and company size. By law, appointments are made without regard to political affiliation.

Application Procedures

Requests for applications should be sent to the Director of the Industry Consultations Program, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Room 2015–B, Washington, DC 20230.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. App) and 21 CFR part 14 relating to advisory committees.

Dated: July 30, 1999.

Michael J. Copps,

Acting Assistant Secretary for Trade Development.

[FR Doc. 99–22424 Filed 8–27–99; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.080999G]

Notice of Availability of Bycatch Estimates Under the Harbor Porpoise Take Reduction Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability.

SUMMARY: NMFS has provided harbor porpoise bycatch estimates for January through December 1998 and January through April of 1999.

ADDRESSES: Send information requests to: Donna Wieting, Marine Mammal Division, Office of Protected Resources (F/PR2), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226, Attn: Harbor

Porpoise Bycatch Estimates. Copies of the information may also be requested from Richard Merrick, Northeast Fisheries Science Center, 166 Water St., Woods Hole, MA 02543; or Doug Beach, Northeast Regional Office (F/NER3), One Blackburn Dr., Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Donna Wieting, Office of Protected Resources, NMFS, at (301) 713–2322, ext. 157; Richard Merrick, Northeast Fisheries Science Center, (508) 495–2291; or Doug Beach, Northeast Region, (978) 281–9254.

SUPPLEMENTARY INFORMATION: NMFS implemented a plan in December of 1998 to reduce harbor porpoise bycatch in the Northeast sink gillnet fishery to below the Potential Biological Removal (PBR) level for that stock. The Harbor Porpoise Take Reduction Plan includes a combination of management measures including fishery closures and gear modifications. The Harbor Porpoise Take Reduction Plan aims to reduce New England harbor porpoise takes through two types of gillnet fishery closures: (1) Closures to all vessels except those using acoustic deterrent devices (or "pingers") and (2) In a limited number of cases, complete closures to all sink gillnet gear.

NMFS is hereby making available harbor porpoise incidental take levels for 1998 and the months of January through April of 1999, as estimated by NMFS' Northeast Fisheries Science Center.

For 1998, the total estimated bycatch of harbor porpoise was 778 animals. For January through April of 1999, total estimated bycatch of harbor porpoise was 157 animals (104 in the Gulf of Maine and 53 in the Mid-Atlantic). NMFS considers the numbers to be the best estimates of harbor porpoise mortality in gillnet fisheries in the Gulf of Maine and the Mid-Atlantic during the time frames specified.

NMFS will make information publicly available on harbor porpoise incidental take on a calendar-year quarterly basis through the end of the year 2001. Notification of the information availability will be published in the **Federal Register** on an annual basis.

This information along with other material provided by NMFS staff will be reviewed by the Gulf of Maine Harbor Porpoise Team to evaluate what further action may be necessary for the coming year.

Dated: August 23, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–22467 Filed 8–27–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082399C]

Marine Mammals; File No. 848–1335

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that the NMFS Southwest Fisheries Science Center, Honolulu Laboratory, 2570 Dole Street, Honolulu, HI 96822–2396, has requested an amendment to scientific research and enhancement Permit No. 848–1335.

DATES: Written or telefaxed comments must be received on or before September 29, 1999.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001); and

Protected Resources Program Manager, Pacific Islands Area Office, NMFS, 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700 (808/973–2937).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak or Trevor Spradlin, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 848–1335, issued on July 10, 1997 (62 FR 32586) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 848–1335 authorizes the permit holder to: to conduct population assessment, disease assessment, recovery actions, and pelagic ecology studies of Hawaiian monk seals (*Monachus* schauinslandi) at all locations within the Hawaiian Archipelago and at Johnston Atoll, through May 31, 2002. Research methods include: observation and monitoring; capture; physical and chemical restraint; flipper tagging and retagging; instrumentation; bleach marking; measuring and weighing; blood and tissue sampling; swabbing; biopsy sampling (blubber); lavage; capture for the purpose of rehabilitation and release to the wild; experimental medical treatment; and relocation or removal of up to 10 adult male Hawaiian monk seals from the Northwestern Hawaiian Islands, in the event that such seals are known to cause mortality to nursing or weaned pups.

The Permittee is now requesting to amend Activity IV, Task 7 of the permit to increase the number of animals authorized to be taken from 30 to 100 seals annually for the duration of the permit. In addition, authorization is requested to: (1) allow retrieval of time-depth recorders (TDRs) from Hawaiian monk seals; (2) provide additional take by instrumentation (including sonic tags) to support continued research into the foraging ecology of Hawaiian monk seals; and (3) allow an additional procedure, isotopic water dilution, to estimate the body composition as an indication of foraging success and condition of study subjects. Activity IV, Task 7 currently authorizes seals to be captured, sedated, blood sampled, and tagged with various instrument packages up to two times each (once to apply the instrument package and once to remove it).

For this amendment, some of these seals may be taken up to three times: Once to apply a VHF transmitter; a second time to apply a TDR or satellite-linked time-depth recorder (SLTDR), and a third time to retrieve the TDR/SLTDR. The increased takes are necessary to: (1) remove time-depth recorders (TDRs) from weaned Hawaiian monk seal pups, and (2) continue research on Hawaiian monk seal foraging ecology in future years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 24, 1999.

Ann Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–22466 Filed 8–27–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

August 12, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 19, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482094212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927095850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482093715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 67050, published on December 4, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 12, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 30, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man09made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on August 19, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit1A[1]
Levels in Group I	
352/652	2,212,828 dozen.
36909S1A[2]	9,917 kilograms.
611	5,201,529 square meters.
633	56,384 dozen.
636	1,910,481 dozen.
643	606,355 numbers.
645/646	736,831 dozen.
649	5,714,665 dozen.
65909H1A[3]	1,659,613 kilograms.
847	330,211 dozen.
Group II 20009227, 30009326, 332, 35909O1A[4], 360, 362, 363, 36909O1A[5], 40009414, 43409438, 440, 442, 444, 448, 459pt.1A[6], 464, 469pt.1A[7], 60009607, 61309629, 644, 65909O1A[8], 666, 66909O1A[9], 67009O1A[10], 831, 83309838, 84009846, 85009858 and 859pt.1A[11], as a group.	239,200,611 square meters equivalent.

[1] 1AThe limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] 1ACategory 36909S: only HTS number 6307.10.2005.

[3] 1ACategory 65909H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[4] 1ACategory 35909O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 35909C); and 6406.99.1550 (Category 359pt.).

[5] 1ACategory 36909O: all HTS numbers except 6307.10.2005 (Category 36909S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700 (Category 369pt.).

[6] 1ACategory 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[7] 1ACategory 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[8] 1ACategory 65909O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 65909C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 65909H); 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[9] 1ACategory 66909O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 66909P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040 (Category 669pt.).

[10] 1ACategory 67009O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 67009L).

Category	Adjusted twelve-month limit1A[1]

[1]1ACategory 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.99-21478 Filed 8-18-99; 8:45 am]

BILLING CODE 3510DR00F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

DATE AND TIME: Thursday, September 9, 1999, 1:00–4:00 p.m.

PLACE: Central America and Eurasia Rooms at the Overseas Private Investment Corporation (OPIC), 1100 New York Avenue, NW, 12th floor, Washington, DC 20005.

STATUS: Open.

MATTERS TO BE CONSIDERED:

I. Welcome
II. Approval of Minutes and Proceedings of March, 1999, Board Meeting
III. Report from the Chief Executive Officer
IV. Committee Reports
  A. Executive Committee
  B. Management Committee
  1. Action Plan Update
  C. Planning and Evaluation Committee
  D. Communications Committee
V. Reports by Boys and Girls Clubs of America and Volunteers of America
VI. Program Updates
  A. Service-Learning Award and Recognition Programs
  B. AmeriCorps*National Civilian Community Corp's Fifth Year
  C. Fifth Year Anniversary of AmeriCorps
  D. White House Conference on Philanthropy
VII. Public Comment
VIII. Future Board Meetings
IX. Adjournment

ACCOMMODATIONS: Anyone who needs an interpreter or other accommodation should notify the Corporation's contact person.

CONTACT PERSON FOR FURTHER INFORMATION: Rhonda Taylor, Associate Director of Special Projects and Initiatives, Corporation for National Service, 8th Floor, Room 8619, 1201 New York Avenue NW, Washington, D.C. 20525. Phone (202) 606–5000 ext. 282. Fax (202) 565–2794. TDD: (202) 565-2799.

Dated: August 26, 1999.

Thomasenia P. Duncan,

General Counsel, Corporation for National and Community Service.

[FR Doc. 99–22661 Filed 8–26–99; 3:31 pm]

BILLING CODE 6050–28–U

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Boards Membership

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of the Performance Review Boards for the Department of the Army.

EFFECTIVE DATE: August 20, 1999.

FOR FURTHER INFORMATION CONTACT: Marilyn D. Ervin, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army (Manpower and Reserve Affairs), 111 Army Pentagon, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the Office, Secretary of the Army are:

1. Mr. Brian E. Burke, Principal Deputy Assistant Secretary of the Army (Civil Works), Office of the Assistant Secretary of the Army (Civil Works).
2. Mr. Walter W. Hollis, Deputy Under Secretary of the Army (Operations Research), Office of the Under Secretary.
3. Mr. Paul Johnson, Deputy Assistant Secretary of the Army (Installations & Housing), Office of the Assistant Secretary of the Army (Installations & Environment).
4. Mr. Keith Charles, Deputy Assistant Secretary for Plans & Programs, Office of the Assistant Secretary of the Army (Acquisition, Logistics, and Technology).
5. Mr. John McLaurin, Deputy Assistant Secretary of the Army (Military Personnel Management and Equal Opportunity Policy), Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs).
6. Mr. Thomas Taylor, Senior Deputy General Counsel; Office of the General Counsel.
7. Mr. David Borland, Vice Director to the Director of Information Systems for Command, Control, Communications, and Computers (DISC4).
8. Dr. Robert Raynsford, Special Advisor for Economic Policy and Productivity Programs, Office of the Assistant Secretary of the Army (Financial Management and Comptroller).
9. Mr. George Bruno, Special Assistant to the Deputy Under Secretary of the Army (International Affairs).
10. Mr. Francis E. Reardon, The Auditor General.
11. Ms. Kathryn Condon, Special Assistant for Resources and Military Support, Office of the Assistant Secretary of the Army (Installations and Environment).
12. Ms. Sandra Riley, Deputy Administrative Assistant to the Secretary of the Army, Office of the Secretary.
13. Dr. Daniel Willard, Special Assistant for Air and Missile Defense, Office of the Deputy Under Secretary of the Army (Operations Research).
14. Mr. Michael L. Davis, Deputy Assistant Secretary of the Army (Policy and Legislation), Office of the Assistant Secretary of the Army (Civil Works).
15. Mr. Raymond Fatz, Deputy Assistant Secretary of the Army (Environmental Safety and Occupational Health), Office of the Assistant Secretary of the Army (Installations and Environment).
16. Dr. Theodore W. Prociv, Deputy Assistant Secretary of the Army (Chemical Demilitarization), Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology).
17. Mr. David Snyder, Deputy Assistant Secretary of the Army (Civilian Personnel Policy), Office of the Secretary of the Army (Manpower and Reserve Affairs).
18. Mr. Earl Stockdale, Deputy General Counsel (Civil Works and Environment), Office of the General Counsel.
19. BG James C. Hylton, Director of Programs and Architecture, DISC4.
20. BG Hugh B. Tant III, Director, Operations and Support, Office of the Assistant Secretary of the Army (Financial Management).

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–22438 Filed 8–27–99; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Final Notice of Modification of Nationwide Permit 29 for Single Family Housing

AGENCY: Army Corps of Engineers, DoD.

ACTION: Final notice.

SUMMARY: On April 30, 1998, a court order was issued by the United States District Court, District of Alaska, remanding the Secretary of the Army to consider lower acreage limits for Nationwide Permit (NWP) 29 and consider excluding high value waters from NWP 29. NWP 29 authorizes discharges of dredged or fill material into non-tidal waters of the United States for the construction of single family residences, including attendant features. The court order also prohibited the Corps of Engineers (Corps) from accepting preconstruction notifications for any NWP 29 activity after June 30, 1998. In the July 1, 1998, **Federal Register** (63 FR 36040–36078) the Corps proposed to modify NWP 29 to reduce the acreage limit from ½ acre to ¼ acre. In that **Federal Register** notice, the Corps also announced the suspension of NWP 29 for activities that result in the loss of greater than ¼ acre of non-tidal waters of the United States. As a result of the Corps review of the comments received in response to the July 1, 1998, **Federal Register** notice, NWP 29 has been modified to reduce the acreage limit to ¼ acre. In response to the court order and the modification of NWP 29, the Corps has also issued a new environmental assessment (EA) for NWP 29. The new EA responds to the court order by addressing the use of NWP 29 in high value waters of the United States, including the process whereby division and district engineers restrict or prohibit the use of NWP 29 to authorize discharges of dredged material into high value waters. The revised EA also discusses the Corps consideration of lower acreage limits for NWP 29 and the Corps decision to reduce the acreage threshold to ¼ acre. Since the revised EA fulfills the requirements of the court order, the Corps is no longer prohibited from receiving and processing preconstruction notifications for proposed NWP 29 activities. PCNs for NWP 29 will be accepted starting September 30, 1999.

DATES: The modification of NWP 29 is effective on September 30, 1999.

ADDRESSES: Further information can be obtained by writing to: HQUSACE, ATTN: CECW–OR, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson or Mr. Sam Collinson at (202) 761–0199 or access the Corps of Engineers Regulatory Home Page at: http://www.usace.army.mil/inet/functions/cw/cecwo/reg/.

SUPPLEMENTARY INFORMATION: Nationwide Permit (NWP) 29, which authorizes discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of single family housing and attendant features, was first issued on July 27, 1995, as part of the President's Wetlands Plan to ensure that regulatory programs are fair, flexible, and effective. NWP 29 was issued to reduce the regulatory burden on small landowners who desire to build or expand a single family home on their property. NWP 29 was reissued on December 13, 1996, with minor modifications, for a period of five years.

On July 15, 1996, a lawsuit was filed in Alaska District Court by several organizations against the Corps, challenging the issuance of NWP 29 under Section 404 of the Clean Water Act (CWA), the National Environmental Policy Act (NEPA), and the Endangered Species Act (ESA). The plaintiffs challenged the issuance of NWP 29 because they believe that: (1) the Corps violated the CWA by issuing an NWP for activities that result in more than minimal adverse environmental effects; (2) the Corps violated the CWA by issuing an NWP for activities that are not similar in nature; (3) the Corps violated the procedural requirements of the Section 404(b)(1) Guidelines of the CWA; (4) the Corps violated the Endangered Species Act (ESA) by failing to consult with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS); (5) the Corps violated the Fish and Wildlife Coordination Act by failing to consult with the FWS and NMFS; (6) the Corps violated the National Environmental Policy Act (NEPA) by failing to prepare an Environmental Impact Statement (EIS); and (7) the issuance of NWP 29 was arbitrary, capricious, and an abuse of discretion. After the Corps reissued NWP 29 on December 13, 1996, a supplemental complaint was filed by the plaintiffs challenging the reissuance of NWP 29.

On April 30, 1998, a court order was issued by the United States District Court, District of Alaska, remanding the Secretary of the Army to consider excluding high value waters from NWP 29, consider lower acreage limits for NWP 29, and to set forth those considerations in an amended environmental assessment (EA). The court determined that the EA for NWP 29 that was issued on December 10, 1996, inadequately addressed the Corps consideration of the exclusion of high value waters and consideration of lower acreage limits. Pending the Secretary of the Army's consideration of these issues, the court enjoined the Corps from accepting any preconstruction notifications (PCNs) for NWP 29 after June 30, 1998, unless otherwise ordered by the court.

In the July 1, 1998, **Federal Register** notice, the Corps proposed to reduce the acreage limit of NWP 29 from ½ acre to ¼ acre, to provide further assurance that NWP 29 would authorize only those single family housing activities with minimal adverse effects on the aquatic environment, individually or cumulatively. The Corps did not request comments on the other terms and conditions of NWP 29.

In response to the July 1, 1998, **Federal Register** notice, the Corps received more than 80 comments addressing the proposed modification of NWP 29. A number of commenters supported the Corps proposal to reduce the acreage limit of NWP 29 to ¼ acre. Many commenters opposed the proposed acreage limit reduction. Several of these commenters indicated that the Corps has not provided sufficient supporting evidence demonstrating that the lower acreage limit is necessary to ensure that only activities with minimal adverse effects on the aquatic environment are authorized by NWP 29. One commenter stated that decreasing the acreage limit of NWP 29 will result in more landowners seeking individual permits to fill more wetlands. This commenter indicated that the ½ acre limit encourages minimization of impacts to wetlands because landowners have incentive to design their projects to comply with the ½ acre limit of NWP, but that a ¼ acre limit would discourage minimization. This commenter also stated that the proposal is contrary to Administration's wetlands program because lowering the acreage limit will increase burdens on the regulated public by causing more single family housing activities to require individual permits. Several commenters objected to NWP 29, suggesting that it should be revoked.

We believe that a ¼ acre limit for NWP 29 is necessary to ensure that this NWP limits authorization of single family housing activities so that there will be no more than minimal adverse effects on the aquatic environment. NWP 29 is still an effective means of

reducing the regulatory burden on the public for single family housing activities in non-tidal waters of the United States, while minimizing effects on the aquatic environment. It is unnecessary to revoke this NWP because the PCN process allows district engineers to review all proposed activities and determine if those activities comply with the terms and conditions of the NWP and result in minimal adverse effects on the aquatic environment. Regional conditioning of NWP 29 provides for Corps districts to restrict or prohibit the use of NWP 29 to authorize single family housing activities in high value non-tidal waters and ensure that the NWP authorizes only activities with minimal adverse effects on the aquatic environment. We are proposing an NWP condition for all of the NWPs that will address the use of NWPs in critical resource waters (see 64 FR 39252 and the discussion at the end of this preamble).

We disagree that reducing the acreage limit of NWP 29 will substantially increase the number of individual permits for single family housing activities. Most landowners can design their single family residences to comply with the lower acreage limit. The data collected by the Corps concerning the use of NWP 29 during 1996, 1997, and 1998 demonstrates that the average acreage loss resulting from activities authorized by NWP 29 is less than ¼ acre. (The actual data indicates an average of 0.19 acre.) This lower average acreage loss is partly due to the PCN process, because district engineers review each proposed NWP 29 activity and, where appropriate, require additional minimization to ensure that the adverse effects on the aquatic environment are minimal. Reducing the acreage limit for NWP 29 to ¼ acre merely reinforces the on-site avoidance and minimization process required for NWP activities.

Several comments suggested other acreage limits for NWP 29. One commenter recommended a 3 acre limit for NWP 29. Another commenter said that NWP 29 should have the same acreage limit as the proposed modification of NWP 40 for agricultural activities and proposed NWP 39 for residential, commercial, and institutional activities. This commenter believes that the regulated public would be less confused if the PCN thresholds for the proposed NWPs 40 and 39 are the same. Two commenters suggested an acreage limit of ⅒ acre. One commenter suggested an acreage limit of ⅕ acre, based on the average loss of non-tidal wetlands for NWP 29 authorizations cited in the July 1, 1998, **Federal Register** notice.

A 3 acre limit for single family housing activities is unlikely to comply with the minimal adverse effects requirement for general permits, including NWPs, nor is it likely to comply with the condition that requires the permittee to minimize and avoid impacts on-site (see Section 404 Only Condition 4). In addition, a 3 acre limit is unnecessary since approximately 90% of residential landowners in the United States own parcels that are ½ acre or less in size (see the July 27, 1995, **Federal Register** notice (60 FR 38650—38663) announcing the issuance of NWP 29). Single family housing activities resulting in the loss of greater than ¼ acre of waters of the United States can be authorized by individual permits or, if available, regional general permits issued by Corps districts. Reducing the acreage limit of NWP 29 to ⅒ acre would substantially reduce the utility of this NWP and greatly increase the number of individual permits required for many single family housing activities that result in minimal adverse effects on the aquatic environment. All PCNs for NWP 29 activities will be reviewed by district engineers to determine if the proposed work complies with the terms and conditions of NWP 29 and results in minimal adverse effects on the aquatic environment. In addition, division engineers regionally condition NWP 29 to reduce the acreage limit in areas where there is greater potential for more than minimal individual or cumulative adverse effects on the aquatic environment. Regional conditions are adopted to prohibit or restrict the use of NWP 29 in certain high value waters.

A couple of commenters stated that NWP 29 violates Section 404(e) of the Clean Water Act. Several commenters opposed the proposed modification of NWP 29, stating that the NWP would result in more than minimal adverse effects on the aquatic environment. Some commenters stated that the proposed ¼ acre limit would still result in substantial cumulative losses of wetlands from activities authorized by NWP 29. A couple of commenters stated that NWP 29 should be applicable only in isolated wetlands. These commenters also recommended conditioning the NWP to require septic tanks and other sewage disposal and collection systems to be located on uplands to the maximum extent practicable. One commenter stated that the NWP should be conditioned to require the prospective permittee to submit a statement with the PCN demonstrating how impacts to wetlands were avoided and minimized to the maximum extent practicable. One commenter stated that the provision allowing the use of NWP 29 with other NWPs should be removed.

NWP 29 complies with Section 404(e) of the Clean Water Act because it authorizes activities that are similar in nature (i.e., the construction or expansion of single family residences and attendant features). All activities authorized by NWP 29 require submission of a preconstruction notification, which will allow district engineers to review all proposed NWP 29 activities on a case-by-case basis to ensure that those activities result only in minimal adverse effects on the aquatic environment. The PCN process allows district engineers to monitor the use of NWP 29 to determine if the authorized activities will result in more than minimal cumulative adverse effects on the aquatic environment on a watershed basis. We do not agree that it is necessary to restrict the use of NWP 29 only to isolated waters or condition the NWP to limit sewage disposal systems to uplands. State and local regulations usually address the siting of sewage disposal systems. In those areas where state and local regulations do not address the siting of sewage disposal systems, district engineers can consider that issue during review of the PCN. Through regional conditions, division engineers can prohibit or restrict the use of NWP 29 in high value waters identified by district engineers. Division or district engineers can also exercise discretionary authority and require an individual permit for single family housing activities that involve discharges into high value waters, if those discharges will result in more than minimal adverse effects on the aquatic environment.

We do not agree that using NWPs other than NWPs 14, 18, or 26 with NWP 29 should be prohibited. For example, bank stabilization activities authorized by NWP 13 may be necessary to protect the home site from erosion. District engineers will review all NWP 29 activities, including those which involve the use of other NWPs to authorize single and complete projects, to ensure that the proposed work will result in minimal adverse effects on the aquatic environment.

Paragraph (c) of NWP 29 requires the permittee to take all practicable actions to minimize on-site and off-site impacts resulting from discharges of dredged material into waters of the United States. This condition reinforces the requirements of Section 404 Only Condition 4, which states that discharges of dredged or fill material into waters of the United States must be minimized or avoided to the maximum extent practicable on the project site. We do not believe it is necessary to require a statement from the prospective permittee to demonstrate that impacts to waters of the United States have been avoided on-site to the maximum extent practicable for these small projects. District engineers will review PCNs for all NWP 29 activities and may require additional minimization on a case-by-case basis.

One commenter recommended that the requirement for vegetated buffers should be deleted, because the Corps lacks the regulatory authority to impose such a requirement.

The Corps currently has regulatory authority through the Clean Water Act to require vegetated buffers for NWP 29 activities where such vegetated buffers, including upland buffers, help prevent degradation of water quality and aquatic habitat. The establishment and maintenance of wetland or upland vegetated buffers adjacent to open waters, streams, or other waters of the United States can be considered compensatory mitigation for losses of waters of the United States authorized by Corps permits. One of the goals of the Clean Water Act is the maintenance and restoration of the chemical, physical, and biological integrity of the Nation's waters. Regulatory agencies can place conditions on a permit or authorization as long as those conditions are related to the activities regulated by that agency. The Section 404 activities regulated by the Corps usually cause adverse effects on the aquatic environment. To offset these adverse effects, we can require measures, such as vegetated upland buffers adjacent to streams, that prevent or reduce adverse effects on the aquatic environment. Vegetated buffers, including uplands, adjacent to open waters of the United States provide many of the same functions and values of wetlands, such as flood mitigation, erosion reduction, the removal of pollutants and nutrients from water, and support aquatic habitat values. Permit applicants must recognize that NWPs are optional permits and if the applicant believes that the NWPs are too restrictive, then he or she can apply for authorization under the individual permit process.

In response to the court order issued by the United States District Court for the District of Alaska and the modification of NWP 29, we have issued a modified environmental assessment (EA) for NWP 29. The revised EA considers lower acreage limits and the exclusion of high value waters. For NWP 29, the Corps has several mechanisms to protect high value waters, including wetlands. In high value waters, division and district engineers can: (1) prohibit the use of the NWP in those waters and require an individual permit or regional general permit; (2) decrease the acreage limit for the NWP; (3) add regional conditions to the NWP to ensure that the adverse environmental effects are minimal; or (4) add special conditions to specific NWP authorizations, such as compensatory mitigation requirements, to ensure that the adverse effects on the aquatic environment are minimal. NWPs can authorize activities in some high value waters as long as the individual and cumulative adverse effects on the aquatic environment are minimal.

Corps districts also monitor cumulative impacts to ensure compliance with the CWA. Corps districts generally monitor regulated activities on a watershed basis to ensure that the activities authorized by NWP 29 and other Corps general permits do not result in more than minimal cumulative adverse effects on the aquatic environment in a particular watershed. Division engineers will revoke NWP 29 in high value aquatic environments or in specific geographic areas (e.g., watersheds), if they determine that the use of NWP 29 in these areas will result in more than minimal individual and/or cumulative adverse environmental effects to the aquatic environment.

All activities authorized under NWP 29 require preconstruction notification to the Corps. The preconstruction notification allows district engineers to review each proposed single family housing activity to determine if that activity will result in minimal adverse environmental effects, and if necessary, add special conditions to the NWP authorization to further minimize adverse effects on the aquatic environment. If the proposed work will result in more than minimal adverse environmental effects on the aquatic environment, then the District Engineer will exercise discretionary authority to require an individual permit, with the requisite alternatives analysis and public interest review.

The general conditions for the NWPs apply to NWP 29, and can be found in the December 13, 1996, issue of the **Federal Register** (61 FR 65874–65922). NWP 29 will expire on February 11, 2002, unless otherwise modified, suspended, or revoked. The modification of NWP 29 does not require new Section 401 water quality certifications or Coastal Zone Management Act consistency determinations since the modification decreased the acreage limit, which will result in fewer single family housing activities that can be authorized by NWP 29.

As a result of our consideration of comments received in response to the October 14, 1998, **Federal Register** notice, we have proposed in the July 21, 1999, **Federal Register** (64 FR 39252–39371), three new NWP general conditions to further protect the aquatic environment. If adopted, these new general conditions will become effective when the new and modified NWPs that will replace NWP 26 become effective. General Condition 25 prohibits the use of several NWPs, including NWP 29, to authorize discharges of dredged or fill material into designated critical resource waters, including wetlands adjacent to those waters. For the purposes of General Condition 25, designated critical resource waters include NOAA-designated marine sanctuaries, National Estuarine Research Reserves, National Wild and Scenic Rivers, critical habitat for Federally-listed threatened and endangered species, coral reefs, State natural heritage sites, and outstanding natural resource waters officially designated by the state in which those waters are located. Discharges into National Wild and Scenic Rivers or adjacent wetlands may be authorized by NWP if the activity complies with General Condition 7. Discharges into designated critical habitat for Federally-listed threatened or endangered species may be authorized by NWP if the activity complies with General Condition 11 and the FWS or NMFS has concurred in a determination of compliance with General Condition 11. General Condition 26 addresses the use of NWPs to authorize discharges in impaired waters of the United States and wetlands adjacent to those impaired waters. For the purposes of General Condition 26, impaired waters are those waters of the United States that have been identified by States or Tribes through the Clean Water Act Section 303(d) process as impaired due to nutrients, organic enrichment resulting in low dissolved oxygen concentration in the water column, sedimentation and siltation, habitat alteration, suspended solids, flow alteration, turbidity, or the loss of wetlands. General Condition 26 requires the prospective permittee to clearly demonstrate that the activity will not further impair the waterbody. General Condition 27 prohibits the use of several NWPs, including NWP 29, to authorize permanent, above-grade fills in waters of the United States in 100-year floodplains.

Dated: August 23, 1999.

Eric R. Potts,

Colonel, U.S. Army, Executive Director of Civil Works.

Accordingly, Nationwide Permit 29 is modified as follows:

29. *Single Family Housing:* Discharges of dredged or fill material into non-tidal waters of the United States, including non-tidal wetlands, for the construction or expansion of a single-family home and attendant features (such as a garage, driveway, storage shed, and/or septic field) for an individual permittee provided that the activity meets all of the following criteria:

a. The discharge does not cause the loss of more than ¼ acre of non-tidal waters of the United States, including non-tidal wetlands;

b. The permittee notifies the District Engineer in accordance with the "Notification" general condition;

c. The permittee has taken all practicable actions to minimize the on-site and off-site impacts of the discharge. For example, the location of the home may need to be adjusted on-site to avoid flooding of adjacent property owners;

d. The discharge is part of a single and complete project; furthermore, that for any subdivision created on or after November 22, 1991, the discharges authorized under this NWP may not exceed an aggregate total loss of waters of the United States of ¼ acre for the entire subdivision;

e. An individual may use this NWP only for a single-family home for a personal residence;

f. This NWP may be used only once per parcel;

g. This NWP may not be used in conjunction with NWP 14, NWP 18, or NWP 26, for any parcel; and,

h. Sufficient vegetated buffers must be maintained adjacent to all open water bodies, streams, etc., to preclude water quality degradation due to erosion and sedimentation.

For the purposes of this NWP, the acreage of loss of waters of the United States includes the filled area previously permitted, the proposed filled area, and any other waters of the United States that are adversely affected by flooding, excavation, or drainage as a result of the project. Whenever any other NWP is used in conjunction with this NWP, the total acreage of impacts to waters of the United States of all NWPs combined, can not exceed ¼ acre. This NWP authorizes activities only by individuals; for this purpose, the term "individual" refers to a natural person and/or a married couple, but does not include a corporation, partnership, or similar entity. For the purposes of this NWP, a parcel of land is defined as "the entire contiguous quantity of land in possession of, recorded as property of, or owned (in any form of ownership, including land owned as a partner, corporation, joint tenant, etc.) by the same individual (and/or that individual's spouse), and comprises not only the area of wetlands sought to be filled, but also all land contiguous to those wetlands, owned by the individual (and/or that individual's spouse) in any form of ownership." (Sections 10 and 404)

[FR Doc. 99–22285 Filed 8–27–99; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before September 29, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 24, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement.

Type of Review: Reinstatement.

Title: National Assessment of Educational Progress (NAEP) Secondary Analysis Grant Program.

Frequency: Annually.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 15.

Burden Hours: 360.

Abstract: Congress has mandated that reports be produced using the data from the National Assessment of Educational Progress. This grant program will encourage researchers to study the NAEP data and expand our understanding of the relationship between school and student characteristics and academic achievement. Grant applicants will be universities, educational research organizations and consulting firms.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *vivian_reese@ed.gov* or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Kathy Axt at 703–426–9692. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–22380 Filed 8–27–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.128G]

Vocational Rehabilitation Service Projects Program for Migrant and Seasonal Farmworkers; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000.

Purpose of Program: To provide grants for vocational rehabilitation services to individuals with disabilities who are migrant or seasonal farmworkers, as determined in accordance with rules prescribed by the Secretary of Labor, and to the family members who are residing with those individuals (whether or not those family members are individuals with disabilities).

Eligible Applicants: A State designated agency; nonprofit agencies working in collaboration with a State agency; and a local agency working in collaboration with a State agency.

Deadline for Transmittal of Applications: December 1, 1999.

Deadline for Intergovernmental Review: January 30, 2000.

Applications Available: September 1, 1999.

Available Funds: $660,000.

Estimated Range of Awards: $150,000—$170,000.

Estimated Average Size of Awards: $165,000.

Estimated Number of Awards: 4.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85 and 86; and (b) The regulations in 34 CFR part 369.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes. The regulations in 34 CFR part 86 apply to institutions of higher education only.

Selection Criteria: In evaluating an application for a new grant under this competition, the Secretary uses selection criteria chosen from the general selection criteria in 34 CFR 75.210 of EDGAR. The selection criteria to be used for this competition will be provided in the application package for this competition.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734. You may also contact ED Pubs via its Web site (http://www.ed.gov/pubs/edpubs.html) or its E-mail address (edpubs@inet.ed.gov). If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.128G.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the Grants and Contracts Services Team (GCST), U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8351. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

For Further Information Contact: Mary E. Chambers, U.S. Department of Education, 400 Maryland Avenue, SW., room 3322, Switzer Building, Washington, DC 20202–2647. Telephone (202) 205–8435. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain a copy of this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Program Authority: 29 U.S.C. 774.

Dated: August 25, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–22440 Filed 8–27–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council Meeting (FICC)

AGENCY: Federal Interagency Coordinating Council, Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council, and invites people to participate. Notice of this meeting is required under section 685(c) of the Individuals with Disabilities Education Act and is intended to notify the general public of their opportunity to attend the meeting. The meeting will be accessible to individuals with disabilities.

DATE AND TIME: Thursday, September 16, 1999 from 1 p.m. to 4:30 p.m.

ADDRESSES: Holiday Inn Capitol, Clark Room, 550 C Street, SW, Washington, DC 20202, near the Federal Center Southwest and L'Enfant metro stops.

FOR FURTHER INFORMATION CONTACT: Libby Doggett or Kim Lawrence, U.S. Department of Education, 330 C Street, SW, Room 3080, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–5507. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–9754.

SUPPLEMENTARY INFORMATION: The Federal Interagency Coordinating Council (FICC) is established under section 685(c) of the Individuals with Disabilities Education Act (20 U.S.C. 1484a). The Council is established to: (1) Minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify

areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by the Assistant Secretary for Special Education and Rehabilitative Services.

The meeting of the FICC is open to the public and will be physically accessible. Anyone requiring accommodations such as an interpreter, materials in Braille, large print, or cassette please call Kim Lawrence at (202) 205–5507 ten days in advance of the meeting.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 330 C Street, SW, Room 3080, Switzer Building, Washington, DC 20202–2644, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal holidays.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–22371 Filed 8–27–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

National Educational Research Policy and Priorities Board; Meeting

AGENCY: National Educational Research Policy and Priorities Board; Education.

ACTION: Notice of partially closed meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Educational Research Policy and Priorities Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the open portions of the meeting.

DATE: September 16, 1999.

TIME: 9: a.m. to 2 p.m., open; 2 p.m. (approximately) to 5 p.m., closed.

LOCATION: Room 100, 80 F St., NW, Washington, D.C. 20208–7564.

FOR FURTHER INFORMATION CONTACT: Thelma Leenhouts, Designated Federal Official, National Educational Research Policy and Priorities Board, Washington, DC 20208–7564. Tel.: (202) 219–2065; fax: (202) 219–1528; e-mail: Thelma_Leenhouts@ed.gov, or nerppb@ed.gov. The main telephone number for the Board is (202) 208–0692.

SUPPLEMENTARY INFORMATION: The National Educational Research Policy and Priorities Board, is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement (OERI) to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office. From 9 a.m. to 2 p.m., the Board will conduct outstanding business in open session and hear reports on its recommendations regarding peer review and on the midterm evaluations of the research and development centers. The meeting will be closed to the public from approximately 2 p.m. to 5 p.m. under the authority of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. Appendix I) and under exemptions 4 and 9(B) of Section 552b of title 5 U.S.C. The Board will discuss proposals of a privileged or confidential nature and other information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. A final agenda will be available from the Board office on September 9, 1999, and will be posted on the Board's web site, *http://www.ed.gov/offices/OERI/NERPPB/*.

A summary of the activities at the closed session and related matters which are informative to the public consistent with the policy of title 5 U.S.C. 552b will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the office of National Educational Research Policy and Priorities Board, Suite 100, 80 F St., NW, Washington, DC 20208–7564.

Dated: August 24, 1999.

Eve M. Bither,

Executive Director.

[FR Doc. 99–22406 Filed 8–27–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Notice of Floodplain and Wetlands Involvement for the Development of Soil Borrow Areas Near the Weldon Spring Site

AGENCY: Office of Environmental Management, DOE.

ACTION: Notice of floodplain and wetlands involvement.

SUMMARY: The U.S. Department of Energy (DOE) is proposing to develop two soil borrow areas at the Weldon Spring Site, located in St. Charles County, Missouri. The borrow areas would provide materials necessary to fill the Weldon Spring quarry. The proposed action will ensure continued protectiveness of human health and the environment. The proposed borrow areas contain a number of small wetlands and, in addition, one of the borrow areas is located within the Missouri River 100 year-floodplain. In accordance with 10 CFR Part 1022, DOE is preparing a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands.

DATES: Comments are due to the address below no later than September 14, 1999.

ADDRESSES: Comments should be addressed to Mr. Steve McCracken, U.S. Department of Energy, Weldon Spring Site Remedial Action Project, 7295 Highway 94 South, St. Charles, MO 63304. Comments may be faxed to (636)447–0739.

FOR FURTHER INFORMATION ON THIS PROPOSED ACTION, CONTACT: Mr. Steve McCracken, U. S. Department of Energy, Weldon Spring Site Remedial Action Project, 7295 Highway 94 South, St. Charles, MO 63304, (636)441–8978.

FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Carol M. Borgstrom, Director Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202)586–4600 or (800)472–2756.

SUPPLEMENTARY INFORMATION: The DOE is conducting response actions at its Weldon Spring Site under the direction of the DOE Office of Environmental Management. The Weldon Spring Site is located in St. Charles County, Missouri, approximately 48 km (30 miles) west of St. Louis. As part of the overall cleanup of the Weldon Spring Site, the DOE is proposing to backfill an abandoned quarry, located approximately 3.9 km (2.5 miles) southwest of the site, within the State of Missouri Weldon Spring Conservation Area. The quarry was used for the disposal of chemically and radioactively contaminated materials between the 1940s and 1960s. Removal of bulk waste from the quarry was completed in October, 1995. This action is intended to mitigate physical hazards associated with an open quarry and eliminate ponded water in the sump.

Two soil borrow areas are proposed as the source for the fill material. The primary area proposed for the excavation of borrow material is located approximately 0.37 km (0.23 mile) southwest of the quarry, within the Weldon Spring Conservation Area. This proposed borrow area is approximately 8 ha (20 acres) in size, bounded by Femme Osage Creek, Femme Osage Slough, and Little Femme Osage Creek, and is approximately 1.2 km (0.77 mile) from the Missouri River. One small palustrine forested wetland occurs within the area to be excavated, and several small palustrine wetlands occur in immediately adjacent areas. This proposed borrow area lies entirely within the 100 year floodplain of the Missouri River. A second area proposed for excavation of material, if necessary, is located approximately 1.7 km (1.1 miles) northeast of the quarry, and is also within the Weldon Spring Conservation Area. This proposed borrow area is approximately 1.2 ha (3.1 acres) in size and lies approximately 75 m (246 feet) from a perennial tributary of the Little Femme Osage Creek. Several small palustrine wetlands occur within, and adjacent to, the area proposed for excavation.

Contaminated bulk materials and soil have been excavated from within the quarry and all exposed surfaces have been decontaminated. The proposed action would prevent any further migration of contaminants from the quarry. The anticipated volume of fill material required for the proposed action would be approximately 86,400 m^3 (113,000 yd^3). Excavation depth within the principal borrow area would be approximately 2.4 m (8 feet); the additional borrow area also would be excavated to a depth of approximately 2.4 m (8 feet). Erosion controls would be installed down gradient from all excavations to prevent the transport of silt downstream by stormwater flows. Restoration of excavated areas would include grading to avoid steep or vertical slopes.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR Part 1022), DOE is preparing a floodplain and wetlands assessment for this proposed DOE action. After DOE issues the assessment, a floodplain statement of findings will be published in the **Federal Register**.

Issued in Oak Ridge, Tennessee on August 19, 1999.

James L. Elmore,

Alternate Oak Ridge Operations, National Environmental Policy Act, Compliance Officer.

[FR Doc. 99–22423 Filed 8–27–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Notice of Open Teleconference Meeting

AGENCY: Department of Energy.

ACTION: Notice of open teleconference meeting.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee teleconference:

Name: Secretary of Energy Advisory Board

The purpose of the teleconference is to discuss the findings and recommendation of the Task Force on Fusion Energy, a subcommittee of the Board.

DATES AND TIME: Thursday, September 2, 1999, 1:30 PM–3:00 PM Eastern Time.

ADDRESSES: Participants may call the Office of the Secretary of Energy Advisory Board at (202) 586–7092 to reserve a teleconference line and receive a call-in number. Public participation is welcomed. However, the number of teleconference lines are limited and are available on a first come basis.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–1709 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION:

Purpose of the Board

The Secretary of Energy Advisory Board (Board) reports directly to the Secretary of Energy and is chartered under the Federal Advisory Committee Act, section 624(b) of the Department of Energy Organization Act (Public Law 95–91). The Board provides the Secretary of Energy with essential independent advice and recommendations on issues of national importance. On September 2, the Board will conduct a teleconference to discuss Realizing the Promise of Fusion Energy: Final Report of the Task Force on Fusion Energy (August 9, 1999), a report by a subcommittee of the Board.

Purpose of the Task Force on Fusion Energy

The Secretary of Energy directed the Board to form the Task Force on Fusion Energy, a subcommittee of the Board, to conduct a thorough review of all the Department's fusion energy technologies, both inertial and magnetic. The review was to analyze and provide recommendations on the role of each of these fusion technologies as part of a national fusion energy research program. The analysis was to address whether the current and planned resources within the Office of Fusion Energy Sciences budget are appropriately balanced among the concepts to provide the scientific basis for an informed selection of the best option for development as a fusion energy source.

The SEAB Task Force on Fusion Energy was to take into account the program's relationship to international fusion energy programs, the connection of inertial fusion energy research to the stockpile stewardship activities in Defense Programs, and the broader science and educational goals that may be enabled by fusion technologies.

Tentative Agenda

Thursday, September 2, 1999

1:30 PM–1:40 PM—Welcome & Opening Remarks—SEAB Chairman Andrew Athy
1:40 PM–2:00 PM—Overview of Fusion Energy Task Force's Findings and Recommendations—Task Force Chairman, Richard Meserve
2:00 PM–2:30 PM—Public Comment Period
2:30 PM–3:00 PM—SEAB Review & Comment and Action—SEAB Chairman Andrew Athy
3:00 PM—Adjourn

This tentative agenda is subject to change.

Public Participation: The Chairman of the Secretary of Energy Advisory Board is empowered to conduct the teleconference in a way that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its teleconference, the Board welcomes public comment. Members of the public will be heard during the public comment period. The Board will make every effort to hear the views of all interested parties. Written comments may be submitted to Elizabeth Mullins, Executive Director,

Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: Minutes and a transcript of the teleconference will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 AM and 4:00 PM, Monday through Friday except Federal holidays. Information on the Secretary of Energy Advisory Board and copies of the subject report may also be found at the Board's web site, located at http://www.hr.doe.gov/seab

Issued at Washington, D.C., on August 25, 1999.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 99–22602 Filed 8–27–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–470–000]

Black Marlin Pipeline Company; Notice of Request For Waiver

August 23, 1999.

Take notice that on August 17, 1999, Black Marlin Pipeline Company (Black Marlin), tendered for filing a request for waiver of the provisions of Order No. 587–I which require an interactive web site.

Black Marlin states that it does not have an interactive EBB today. Black Marling states that there are only six active shippers who nominate at five receipt points and only four operators who confirm on Black Marlin. Black Marlin states that it has only four delivery points and is not part of the interstate pipeline grid. Black Marlin further states that the shippers on Black Marlin submit monthly nominations with few changes during the month. Black Marlin states that the nominations and confirmation process is currently accomplished by the use of fax communications and that no shipper has requested an interactive electronic nomination/confirmation process.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22415 Filed 8–21–99; 8:45 am]

BILLING CODE 6717–0–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–38–000]

Destin Pipeline Company, L.L.C.; Notice of Filing Non-Conforming Rate Schedule FT–2 Service Agreements

August 24, 1999.

Take notice that on June 15, 1999, Destin Pipeline Company, L.L.C. (Destin) tendered for filing in the above-captioned docket a copy of transportation service agreements under Rate Schedule FT–2, which agreements deviate from the form of Rate Schedule FT–2 Service Agreement in Destin's FERC Gas Tariff, Original Volume No. 1.

Specifically, Destin will provide transportation service pursuant to the terms and conditions of the Service Agreements between Destin and Mobil Oil Exploration and Producing Southeast Inc. (Mobil) and between Destin and Phillips Production Company (Phillips) dated May 5, 1999, and June 11, 1999, respectively, under Destin's Rate Schedule FT–2. Destin is filing these Service Agreements as non-conforming due to the special discounting contingency contained in Exhibit C thereto. Destin states that for Rate Schedule FT–2 shippers, the Transportation Demand is set forth in quarterly periods and mirrors expected production profiles for committed reserves, which is commercially sensitive production information. Destin further states that due to the proprietary and commercially sensitive nature of such Transportation Demand profile contained in Exhibits A and B to the Service Agreements, such confidential information has been redacted from the Service Agreements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before August 30, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22379 Filed 8–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–469–000]

Destin Pipeline Company, L.L.C; Notice of Proposed Changes to FERC Gas Tariff

August 23, 1999.

Take notice that on August 13, 1999, Destin Pipeline Company, L.L.C. (Destin) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, (Tariff) the following tariff sheets to become effective October 1, 1999:

First Revised Sheet No. 2
Second Revised Sheet No. 12
First Revised Sheet No. 22a
First Revised Sheet No. 30
First Revised Sheet No. 136a

Destin states that the purpose of this filing is to revise the Tariff with respect to the generic types of rate discounts that may be granted by Destin. Destin has requested that these sheets be made effective as of October 1, 1999. Destin states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22414 Filed 8–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–605–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

August 23, 1999.

Take notice that on August 19, 1999, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP99–605–000 a request pursuant to sections 157.205, and 157.216, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon in place certain delivery facilities located in Jasper County, Texas under Koch Gateway's blanket certificate issued in Docket No. CP82–430–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–0400 for assistance).

Koch Gateway utilizes these facilities to provide natural gas service on behalf of Reliant Energy Entex, a Division of Reliant Energy Resources Corporation (Entex), a local distribution company. Entex has agreed to connect the tap to its local distribution system and no longer requires natural gas service from these facilities.

Any questions regarding this application should be directed to Kyle Stephens at (713) 544–7309, Koch Gateway Pipeline Company, P.O. Box 1478, Houston, Texas, 77251–1478.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22410 Filed 8–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–429–002]

Midwestern Gas Transmission Company; Notice of Compliance Filing

August 23, 1999.

Take notice that on August 18, 1999, Midwestern Gas Transmission Company (Midwestern), P.O. Box 2511, Houston, Texas 77252, tendered for filing Second Substitute Sixth Revised Sheet No. 110(A) for inclusion in Midwestern's FERC Gas Tariff, Second Revised Volume No. 1. Midwestern requests that the revised tariff sheet be made effective August 1, 1999.

Midwestern states the revised tariff sheet is an errata correction for a sheet submitted on August 4, 1999, in compliance with the Commission's July 20, 1999 Letter Order issued in Docket No. RP99–429 (July 20 Order). Midwestern states that in the July 20 Order as corrected, the Commission required Midwestern to file a revised tariff sheet which separately identifies as GISB Version 1.2 certain existing data sets. Midwestern further states that in the August 4, 1999 compliance filing, two of the twenty-three data sets were not correctly shown as GISB Version 1.2. and that the revised tariff sheet reflects the proper changes.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22413 Filed 8–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–600–000]

National Fuel Gas Distribution Corporation; Notice of Petition for Declaratory Order

August 23, 1999.

Take notice that on August 13, 1999, as supplemented on August 16, and August 19, 1999, National Fuel Gas Distribution Corporation (Distribution) 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP99–600–000, a petition pursuant to Section 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.207) for a declaratory order regarding the jurisdictional status and regulatory compliance of Norse Pipeline, LLC (Norse) and its affiliate, Nornew Energy Supply, Inc. (Nornew), all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on a web at www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Distribution explains that the Commission previously found Norse to be a non-jurisdictional gathering company, but noted that certain changes in Norse's operations could alter that status. *Columbia Gas Transmission Corporation, Norse Pipeline, LLC*, 85 FERC 61,191 (1998), *reh'g denied*, 86 FERC 61,137 (1999). Distribution asserts that recent business transactions may have alerted Norse's status. Distribution believes that the public commitment of

Nornew, Norse's affiliate, to provide service to the Jamestown Board of Public Utilities (JBPU) using newly constructed facilities and the Norse system appears to be interstate natural gas transportation service.

Distribution contends that Norse was put on notice by the Commission that future flows of interstate gas onto its system would obviate Norse's non-jurisdictional status and require Norse to apply for Section 7 authorization. Nornew, its affiliate, has entered business commitments different from that described in the order, above. Because of Norse's gathering system status. Distribution says Norse appears to have entered into affiliated entity transactions that would strictly be prohibited for a jurisdictional pipeline. Distribution states that Norse's affiliate, Nornew is committing to construct a pipeline through which interstate gas will flow, which may require either certification under the NGA or state regulations as a "Hinshaw" pipeline.

Therefore, Distribution submits that Norse is offering to operate as an unregulated but jurisdictional interstate pipeline by providing transportation for a supplier (its affiliate, Nornew) to a newly-connected power station and that such operation have placed Distribution at a significant disadvantage in the New York marketplace. Both Distribution and Nornew bid for the transportation contract for JBPU. Distribution says Nornew won by using Norse's transportation service.

Distribution wants the Commission to answer the following questions:

1. Would Norse's transportation to JBPU of interstate natural gas supplies delivered from an interstate pipeline (such as Tennessee at Mayville) trigger the requirement that Norse obtain a certificate under Section 7 of the NGA?

2. Would Norse be required to obtain its Section 7 certificate before providing interstate service as contemplated under the JBPU service proposal?

3. Would Nornew become an interstate natural gas pipeline by building and operating a pipeline that is engaged in the transportation of interstate natural gas supplies, as contemplated by the JBPU proposal? and,

4. If Norse or Nornew were to become an interstate pipeline as a consequence of the JBPU transaction, would the Commission's regulations and standards applicable to interstate pipelines (including affiliated marketer restrictions) apply to contracts executed before the commencement of interstate service but which would require interstate transportation?

Distribution wants the Commission to act quickly on these questions as it will guide all the parties in the development of service to the power plant. Distribution believes Norse and Nornew show no signs of complying with any NGA jurisdictional regulations and that there is a significant possibility that affiliate preferences are being granted in ways completely contrary to the policies of the Commission.

Any questions regarding this petition may be directed to Christopher J. Barr, Esq., Morgan, Lewis & Bockius, LLP, 1800 M Street, NW, Washington, DC 20036 (202) 467–7142 or Alice A. Curtiss, Senior Regulatory Attorney, National Fuel Gas Distribution Corporation, 10 Lafayette Square, Buffalo, New York 14203 (716) 857–7951.

Any person desiring to be heard or to make any protest with reference to said petition should on or before September 13, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22408 Filed 8–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES99–50–000]

New York Independent System Operator, Inc.; Notice of Application

August 23, 1999.

Take notice that on August 18, 1999, the New York Independent System Operator, Inc. (NYISO) withdrew its July 28, 1999 application under Section 204 of the Federal Power Act for authorization to assume short-term indebtedness in the above-referenced docket.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions and protests should be filed on or before September 2, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22411 Filed 8–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–604–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

August 23, 1999.

Take notice that on August 19, 1999, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed a request with the Commission in Docket No. CP99–604–000, pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a new direct delivery point for service to Interconn Resources, Inc. (Interconn), authorized in blanket certificate issued in Docket No. CP82–406–000, all as more fully set forth in the request on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Southern Natural Gas Company proposes to construct and operate certain measurement and other appurtenant facilities in order to provide transportation service to Interconn at a new delivery point for service at the Beaulieu of America Plant. Such delivery point would be located at approximately Mile Post 97.7 on Southern's 12" Cleveland Branch Line in Whitfield County, Georgia. The estimated cost of the construction and installation of the facilities would be approximately $231,200. Interconn states that they would reimburse Southern for the cost of constructing and installing the proposed facilities.

Southern further states that it would transport gas on behalf of Interconn under its Rate Schedule IT. Southern reports that the installation of the proposed facilities would have no adverse effect on its ability to provide its firm deliveries.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If not protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22409 Filed 8–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–412–002]

Tennessee Gas Pipeline Company; Notice of Compliance Filing

August 23, 1999.

Take notice that on August 18, 1999, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, tendered for filing Second Substitute Ninth Revised Sheet No. 412 for inclusion in Tennessee's FERC Gas Tariff, Fifth Revised Volume No. 1. Tennessee requests that the revised tariff sheet be made effective August 1, 1999.

Tennessee states the revised tariff sheet is an errata correction for a tariff sheet submitted on August 6, 1999, in compliance with the Commission's July 23, 1999 Letter Order issued in Docket No. RP99–412 (July 23 Order). Tennessee states that in the July 23 Order, the Commission required Tennessee to file revised tariff sheets which separately identify as GISB Version 1.2 certain existing data sets. Tennessee further states that in the August 6, 1999, compliance filing two of the twenty-three data sets were not correctly shown as GISB Version 1.2 and that the revised tariff sheet reflects the proper changes.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22412 Filed 8–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–472–000]

Transcontinental Gas Pipe Line Corporation; Notice of filing

August 23, 1999.

Take notice that on August 18, 1999, Transcontinental Gas Pipe Line Corporation tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheets are enumerated in Appendix A attached thereto. The proposed effective date of the revised tariff sheets is October 1, 1999.

Transco states that the purpose of the instant filing is to revise Transco's tariff to update the negotiated rate authority contained therein to reflect developments in Commission policy relating to negotiated rates. Transco initially filed tariff sheets in Docket No. RP96–359 to establish the flexibility under its tariff to negotiate rates in accordance with the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines in Docket No. RM95–6–000, which tariff sheets were approved by the Commission. Since that filing, the Commission has further refined its negotiated rate policy in numerous individual pipeline proceedings. Transco proposes herein to revise its tariff to reflect, among other things, those refinements in order to provide to Transco and its shippers the full range of flexibility to negotiate rates for service consistent with Commission policy.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22416 Filed 8–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–9–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 23, 1999.

Take notice that on August 18, 1999, Transcontinental Gas Pipe Line Corporation (Transco), tendered for filing with the Federal Energy Regulatory Commission (Commission) Sixteenth Revised Sheet No. 28 to its FERC Gas Tariff, Third Revised Volume No. 1. The attached tariff sheet is proposed to be effective August 1, 1999.

Transco states that the purpose of the instant filing is track rate changes attributable to storage service purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X–28 the costs of which are included in the rates and charges payable under Transco's Rate Schedule S–2. The filing is being made pursuant to tracking provisions under Section 26 of the General Terms and Conditions of

Transco's Third Revised Volume No. 1 Tariff.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22417 Filed 8–27–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–830–004, et al.]

Merrill Lynch Capital Services, Inc., et al.; Electric Rate and Corporate Regulation Filings

August 23, 1999.

Take notice that the following filings have been made with the Commission:

1. Merrill Lynch Capital Services, Inc. and Lakeside Energy Services, LLC

[Docket Nos. ER99–830–004 and ER99–505–002]

Take notice that on August 3, 1999, the above-mentioned power marketers/or public utilities tendered for filing quarterly reports with the Commission in above-referenced proceedings for information only.

Comment date: September 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. PS Energy Group, Inc., Salko Energy Services, Inc., River City Energy, Inc., Central Maine Power Company, and Carolina Power & Light Company

[Docket Nos. ER99–1876–001, ER99–1052–002, ER99–823–002, ER99–4027–000 and ER99–4032–000]

Take notice that on August 9, 1999, the above-mentioned power marketers/or public utilities tendered for filing quarterly reports with the Commission in above-referenced proceedings for information only.

Comment date: September 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Long Beach Generation LLC, El Segundo Power, LLC, Cargill-Alliant, LLC

[Docket Nos. ER99–4054–000, ER99–4053–000 and ER99–4015–000]

Take notice that on August 11, 1999, the above-mentioned power marketers/or public utilities tendered for filing quarterly reports with the Commission in above-referenced proceedings for information only.

Comment date: September 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Dartmouth Power Associates Limited Partnership

[Docket No. ER99–4023–000]

Take notice that on August 5, 1999, the above-mentioned power marketer/or public utility tendered for filing a quarterly report with the Commission in above-referenced proceeding for information only.

Comment date: September 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Entergy Services, Inc.

[Docket No. ER98–2028–001]

Take notice that on August 17, 1999, Entergy Services, Inc., tendered for filing a refund report in the above-referenced docket.

Comment date: September 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Northeast Energy Services, Inc.

[Docket No. ER97–4347–007]

Take notice that on August 16, 1999, Northeast Energy Services, Inc. (Noresco), tendered for filing its quarterly transaction report for the Second Quarter of 1999 in the above-referenced docket.

7. Electric Clearinghouse, Inc.

[Docket No. ER94–968–028]

Take notice that on August 16, 1999, Electric Clearinghouse, Inc., tendered for filing its summary of activity for the quarter ended June 30, 1999.

8. California Independent System Operator Corporation

[Docket No. ER98–3594–002]

Take notice that on August 17, 1999, California Independent System Operator Corporation (ISO), tendered for filing revised tariff sheets originally filed with the Commission on August 12, 1999, in the above-referenced docket.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. U.S. Power & Light, Inc.

[Docket No. ER96–105–015]

Take notice that on August 5, 1999, the above-mentioned power marketer/or public utility tendered for filing quarterly report with the Commission in above-referenced proceeding for information only.

10. GPU Advanced Resources, Inc., 3E Technologies, Inc., PacifiCorp Power Marketing, Inc.

[Docket Nos. ER97–3666–010, ER98–3809–002 and ER95–1096–019]

Take notice that on August 11, 1999, the above-mentioned power marketers/or public utilities tendered for filing quarterly reports with the Commission in above-referenced proceedings for information only.

11. Pelican Energy Management, Inc., Abacus Group Ltd.

Docket Nos. ER98–3084–004 and ER98–4240–001]

Take notice that on August 9, 1999, the above-mentioned power marketers/or public utilities tendered for filing quarterly reports with the Commission in above-referenced proceedings for information only.

12. Northern/AES Energy, LLC, DTE-CoEnergy L.L.C.

[Docket Nos. ER98–445–006 and ER97–3835–008]

Take notice that on August 3, 1999, the above-mentioned power marketers/or public utilities tendered for filing quarterly reports with the Commission in above-referenced proceedings for information only.

13. California Power Exchange Corporation

[Docket No. ER99–2021–001]

Take notice that on August 18, 1999, California Power Exchange Corporation filed revised tariff sheets to comply with the Commission's July 28, 1999, order in this proceeding.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Southern California Edison Company

[Docket No. ER99–3182–000]

Take notice that on August 18, 1999, Southern California Edison Company (SCE) tendered for filing supplemental information regarding its filing in the above-captioned docket.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. WPS Resources Operating Companies

[Docket No. ER99–3417–000]

Take notice that on August 18, 1999, WPS Resources Operating Companies filed an amendment in response to the Commission's August 4, 1999, deficiency letter for its filing with the firm point-to-point transmission service agreement for Madison Gas & Electric Company.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Florida Power Corporation

[Docket No. ER99–4099–000]

Take notice that on August 17, 1999, Florida Power Corporation (FPC), tendered for filing a service agreement between Florida Municipal Power Agency (FMPA) and FPC for service under FPC's Cost-Based Wholesale Power Sales Tariff (CR–1), FERC Electric Tariff, Original Volume No. 9.

FPC requests an August 11, 1999 effective date for the service agreement.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Elwood Energy LLC

[Docket No. ER99–4100–000]

Take notice that on August 17, 1999, Elwood Energy LLC (Elwood), tendered for filing an agreement for the sale of electric energy and capacity by Elwood to Engage Energy US, L.P., dated April 5, 1999.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Duke Energy Corporation

[Docket No. ER99–4101–000]

Take notice that on August 17, 1999, Duke Energy Corporation tendered for filing an Interconnection Agreement Between Yadkin, Inc., and Duke Energy Corporation.

Duke requests an effective date of October 17, 1999, for the Interconnection Agreement.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Milford Power Company, LLC

[Docket No. ER99–4102–000]

Take notice that on August 17, 1999, Milford Power Company, LLC (Milford Power), tendered for filing an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1.

Milford Power proposed that its Rate Schedule No. 1 become effective upon commencement of service of the Milford Power Plant (the Plant), a generation project currently being developed by Milford Power in the State of Massachusetts. The Plant will commence the sale of test power in August, 2000, but will not be commercially operable until the first quarter of 2001.

Milford Power intends to sell energy and capacity from the Plant at market-based rates, and on such terms and conditions to be mutually agreed to with the purchasing party.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Orange and Rockland Utilities, Inc.

[Docket No. ER99–4103–000]

Take notice that on August 17, 1999, Orange and Rockland Utilities, Inc. (Orange and Rockland), tendered for filing a Service Agreement between Orange and Rockland and PP&L, Inc., (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of Orange and Rockland Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of August 8, 1999, for the Service Agreement.

Orange and Rockland has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Orange and Rockland Utilities, Inc.

[Docket No. ER99–4104–000]

Take notice that on August 17, 1999, Orange and Rockland Utilities, Inc. (Orange and Rockland), tendered for filing a Service Agreement between Orange and Rockland and PP&L, Inc., (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of Orange and Rockland Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of August 15, 1999, for the Service Agreement.

Orange and Rockland has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Orange and Rockland Utilities, Inc.

[Docket No. ER99–4105–000]

Take notice that on August 17, 1999, Orange and Rockland Utilities, Inc. (Orange and Rockland), tendered for filing a Service Agreement between Orange and Rockland and PP&L, Inc., (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of Orange and Rockland Open Access Transmission Tariff filed on July 9, 1996 in Docket No. OA96–210–000.

Orange and Rockland requests waiver of the Commission's sixty-day notice requirements and an effective date of August 22, 1999, for the Service Agreement.

Orange and Rockland has served copies of the filing on The New York State Public Service Commission and on the Customer.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. PP&L, Inc.

[Docket No. ER99–4106–000]

Take notice that on August 17, 1999, PP&L, Inc. (PP&L), tendered for filing a Service Agreement dated July 22, 1999 with Morgan Stanley Capital Group Inc. (Morgan) under PP&L's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds Morgan as an eligible customer under the Tariff.

PP&L requests an effective date of August 17, 1999 for the Service Agreement.

PP&L states that copies of this filing have been supplied to Morgan and to the Pennsylvania Public Utility Commission.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Southwest Power Pool

[Docket No. ER99–4107–000]

Take notice that on August 17, 1999, Southwest Power Pool (SPP), tendered for filing executed service agreements for loss compensation firm service, and short-term and non-firm point-to-point transmission service under the SPP Tariff with Columbia Water & Gas Company (Columbia).

SPP requests an effective date of July 23, 1999 for the agreement for loss compensation service, and July 24, 1999 for the agreements for short-term firm and non-firm transmission service.

Copies of this filing were served upon Columbia.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Southwest Power Pool, Inc.

[Docket No. ER99–4108–000]

Take notice that on August 17, 1999, Southwest Power Pool, Inc. (SPP), tendered for filing changes to its Open Access Transmission Tariff intended to allow network customers to elect to be treated on the same basis as their host transmission provider for purposes of determining the megawatt-mile impact of related point-to-point transactions.

SPP requests an effective date of August 18, 1999 for these changes.

Copies of this filing were served upon members and customers of SPP, and on all affected state commissions.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Pacific Gas and Electric Company

[Docket No. ER99–4110–000]

Take notice that on August 17, 1999, Pacific Gas and Electric Company (PG&E), tendered for filing: (1) two Quitclaim Conveyance Agreements with the City and County of San Francisco (City), pursuant to which PG&E is transferring title to and ownership of two transformers and associated equipment to the City, which ownership transfer agreements were completed before the operation date of the facilities, which were constructed for the City's sole benefit; and (2) a request for termination of the two related agreements between PG&E and City, both dated December 30, 1994, and respectively entitled "Special Facilities Agreement for Pacific Gas and Electric's Airport Substation Facilities for Service to the City and County of San Francisco's Station BA" and "Special Facilities Agreement for PG&E's Millbrae Substation Facilities for Service to CCSF's Station M."

Copies of this filing have been served upon City and the California Public Utilities Commission.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. The Montana Power Company

[Docket No. ER99–4111–000]

Take notice that on August 17, 1999, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 an executed Firm and executed Non-Firm Point-To-Point Transmission Service Agreements with Transalta Energy Marketing (US) Inc., under Montana's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Transalta Energy Marketing (US) Inc.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. California Power Exchange Corporation

[Docket No. ER99–4113–000]

Take notice that on August 18, 1999, the California Power Exchange Corporation (CalPX), tendered for filing a new Electric Service Tariff No. 2, which is intended to supersede CalPX's existing tariff and protocols.

CalPX proposes to make Tariff No. 2 effective 60 days after filing on October 18, 1999.

CalPX states that it has served copies of its filing on the PX Participants and on the California Public Utilities Commission. The filing also has been posted on CalPX's website at http://www.calpx.com.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Sonat Power L.P.

[Docket No. ER96–2343–013]

Take notice that on August 17, 1999, Sonat Power Marketing L.P. (SPMLP), tendered for filing a three year update to its market power study in compliance with the Commission's Order in Docket No. ER96–2343–000, granting SPMLP market rate authority.

Comment date: September 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22407 Filed 8–27–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 77–110—California Potter Valley Project]

Pacific Gas and Electric Company; Notice of Proposed Restricted Service List for a Memorandum of Agreements for Managing Properties Potentially Eligible for Inclusion in the National Register of Historic Places

August 24, 1999.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the California State Historic Preservation Officer (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, Council) pursuant to the Council's regulations, 36 CFR Part 800, implementing Section 106 of the National Historic Preservation Act, as amended, (16 U.S.C. Section 470 f), to prepare a memorandum of agreement for managing properties potentially eligible for inclusion in the National Register of Historic Places at Project No. 77.

[1] 18 CFR 385.2010.

The memorandum of agreement, when executed by the Commission, the SHPO, and possibly by the Council, would satisfy the Commission's Section 106 responsibilities for the proposed amendment filed by the Pacific Gas & Electric Company to protect and maintain the anadromous fishery in the Upper Eel River. The Commission's responsibilities pursuant to Section 106 for the above project would be fulfilled through the memorandum of agreement, which the Commission proposes to draft in consultation with certain parties listed below. The executed memorandum of agreement would be incorporated into any Orders amending the license.

Pacific Gas & Electric, as licensee for Project No. 77, is invited to participate in consultations to develop the memorandum of agreement and to sign as a concurring party to the memorandum of agreement.

For purposes of commenting on the memorandum of agreement, we propose to restrict the service list for the aforementioned amendment as follows:

John Fowler, Advisory Council on Historic Preservation, The Old Post Office Building, 1100 Pennsylvania Avenue, NW, #809, Washington, DC 20004

Mr. Daniel Abeyet, Acting State Historic Preservation Officer, CA State Office of Historic Preservation, P.O. Box 942896, Sacramento, CA 94296–0001

Ms. Rhonda Shiffman, Pacific Gas & Electric Company, Mail Code N11C, P.O. Box 770000, San Francisco, CA 94177

Any person on the official service list for the above-captioned proceeding may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date.

An original and 8 copies of any such motion must be filed with the Secretary of the Commission (888 First Street, NE, Washington, DC 20426) and must be served on each person whose name appears on the official service list. If no such motions are filed, the restricted service list will be effective at the end of the 15-day period. Otherwise, a further notice will be issued ruling on the motion.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22378 Filed 8–27–99; 8:45 am]

BILLING CODE 6710–01–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

August 20, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 29, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW, Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0734.

Title: Implementation of the Telecommunications Act of 1996: Accounting Safeguards Under the Telecommunications Act of 1996.

Form Number: SEC 10–K.

Type of Review: Revision.

Respondents: Business or other for-profit entities.

Number of Respondents: 168 respondents.

Estimated Time Per Response: 1074.6 hours per response (avg.).

Total Annual Burden: 180,547 hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $633,000.

Frequency of Response: Annually, Biennially, On occasion, Recordkeeping.

Needs and Uses: In Accounting Safeguards Under the Telecommunications Act of 1996, Report and Order in CC Docket No. 96–150 (Report and Order), the Commission addressed the accounting safeguards necessary to satisfy the requirements of section 260 and 271 through 276 of the Telecommunications Act of 1996. The Report and Order prescribed the way incumbent local exchange carriers (ILECs), including the Bell Operating Companies (BOCs), must account for transactions with affiliates involving, and allocate costs incurred in the provision of, both regulated telecommunications services and nonregulated services, including telemessaging, interLATA telecommunications and information services, telecommunications equipment and customer premises equipment manufacturing, electronic publishing, alarm monitoring services and payphone service. The Commission concluded that its current cost allocation rules generally satisfy the 1996 Act's accounting safeguards requirements when ILECs, including the BOCs, provide services permitted under sections 260 and 271 through 276 on an in-house basis. The Commission also concluded that its current affiliate transactions rules generally satisfy the 1996 Act's accounting safeguards requirements when ILECs, including the BOCs, are required to, or choose to, use an affiliate to provide services permitted under sections 260 and 271 through 276. In the Report and Order, the Commission also modified its affiliate transaction rules to provide greater protection against subsidization of competitive activities by subscribers to regulated telecommunications services. Section 274(F) establishes a reporting requirement for separate electronic publishing affiliates created pursuant to section 274. In the Report and Order, the Commission concluded that its rules should require those section 274 affiliates that already file an SEC Form 10–K to file a copy with this Commission. For those section 274 affiliates that were not required to file a Form 10–K with the SEC, the Commission required them to file an identical form with us. In CC Docket No. 98–81, released June 30, 1999, the Commission modified the holding in the

Report and Order and concluded that the information contained in the limited version of the SEC Form 10–K, with certain modifications, is sufficient to enable the Commission to monitor electronic publishing affiliates' compliance with the section 274 requirements. The Commission concludes that the information contained in the limited version of SEC Form 10–K, with certain modifications, will enable the Commission to monitor the electronic publishing affiliate's compliance with the section 274 requirements. The Commission modify the limited Form 10–K filing requirements to exclude Item 5 and include Item 10. The information collections will enable the Commission to ensure that the subscribers to regulated telecommunications services do not bear the costs of these new nonregulated services and that transactions between affiliates and carriers will be at prices that do not ultimately result in unfair rates being charged to ratepayers.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–22403 Filed 8–27–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2354]

Petitions for Reconsideration of Action in Rulemaking Proceeding

August 20, 1999.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, SW, Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by September 14, 1999. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations, (Stanfield), OR) (MM Docket No. 99–44).

Number of Petitions Filed: 1.

Federal Communications Commission.

Magalie Roman Sales,

Secretary.

[FR Doc. 99–22404 Filed 8–27–99; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2355]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

August 20, 1999.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in room CY–A257, 445 12th Street, S.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by September 14, 1999. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: In the Matter of Truth-in-Billing and Billing Format (CC Docket No. 98–170).

Number of Petitions Filed: 6.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–22405 Filed 8–27–99; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Meeting Notice

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:30 a.m. on Tuesday, August 31, 1999, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider matters relating to the Corporation's corporate, insurance, and resolution activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 7th Street, NW, Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. James D. LaPierre, Deputy Executive Secretary of the Corporation, at (202) 898–6757.

Dated: August 26, 1999.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 99–22663 Filed 8–26–99; 3:51 pm]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 24, 1999.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Julie Freeman, Bartlesville, Oklahoma; to retain voting shares of Peoples Bankshares, Inc., Mora, Minnesota, and thereby indirectly retain voting shares of Peoples National Bank of Mora, Mora, Minnesota.

Board of Governors of the Federal Reserve System, August 25, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–22469 Filed 8–27–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 23, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Village Bancorp, Inc., Prospect Heights, Illinois; to acquire 100 percent of the voting shares of Village Bank and Trust of Munster, Munster, Indiana, a de novo bank.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Alta Vista Bancshares, Inc., Alta Vista, Kansas; to become a bank holding company by acquiring 91 percent of the voting shares of Alta Vista State Bank, Alta Vista, Kansas.

2. SJN Banc Co., St. John, Kansas; to become a bank holding company by acquiring 66.35 percent of the voting shares of St. John National Bank, St. John, Kansas.

Board of Governors of the Federal Reserve System, August 24, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–22370 Filed 8–27–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 99-21590) published on page 45548 of the issue for Friday, August 20, 1999.

Under the Federal Reserve Bank of New York heading, the entry for Popular Inc., and Popular International Bank, Inc., both of Hato Rey, Puerto Rico, and Popular North America, Inc., Mt. Laurel, New Jersey, is revised to read as follows:

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Popular Inc., and Popular International Bank, Inc., both of Hato Rey, Puerto Rico, and Popular North America, Inc., Mt. Laurel, New Jersey have applied to acquire 100 percent of the voting shares of Banco Popular, National Association, Orlando, Florida.

In connection with this application, Banco Popular, National Association, Orlando, Florida; has applied to establish Popular Insurance, Inc., Culebra, Puerto Rico, as an agreement Corporation, pursuant to § 25A of the Federal Reserve Act, and a wholly owned subsidiary of Banco Popular, National Association, Orlando, Florida.

Comments on this application must be received by September 10, 1999.

Board of Governors of the Federal Reserve System, August 25, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–22470 Filed 8–27–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 24, 1999.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. The Royal Bank of Scotland Group plc, The Royal Bank of Scotland plc, and RBSG International Holdings Limited, all of Edinburgh, Scotland; to become bank holding companies by acquiring 100 percent of the voting shares of Citizens Financial Group, Providence, Rhode Island, and thereby indirectly acquire Citizens Bank Rhode Island, Providence, Rhode Island, Citizens Bank of Massachusetts, Boston, Massachusetts, Citizens Bank New Hampshire, Manchester, New Hampshire, and Citizens Bank of Connecticut, New London, Connecticut.

In connection with this application, RBSG International Holdings Limited, Edinburgh, Scotland, has also applied to acquire Citizens Capital, Inc., Boston, Massachusetts, and thereby engage in mezzanine financing, pursuant to § 225.28(b)(1) of Regulation Y, and NYCE Corporation, Woodcliff Lake, New Jersey, and thereby engage in data processing and check verification services, pursuant to §§ 225.28(b)(14) and (b)(2) of Regulation Y, respectively.

B. Federal Reserve Bank of Atlanta (Cynthia Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Synovus Financial Corp., Columbus, Georgia; to merge with Horizon Bancshares, Inc., Pensacola, Florida, and thereby indirectly acquire Horizon Bank of Florida, Pensacola, Florida.

C. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Citizens Banking Corporation, Flint, Michigan; to acquire 100 percent of the voting shares of F & M Bancorporation, Inc., Kaukauna, Wisconsin, and thereby indirectly

acquire F&M Northeast, Pulaski, Wisconsin; F&M Kaukauna, Kaukauna, Wisconsin; F&M Lakeland, Woodruff, Wisconsin; F&M Waushara County, Wautoma, Wisconsin; F&M Winnebago County, Omro, Wisconsin; F&M East Troy, East Troy, Wisconsin; F&M Portage County, Stevens Point, Wisconsin; F&M Appleton, Appleton, Wisconsin; F&M Fennimore, Fennimore, Wisconsin; F&M Kiel, Kiel, Wisconsin; F&M Brodhead, Brodhead, Wisconsin; F&M Jefferson, Jefferson, Wisconsin; F&M New London, New London, Wisconsin; F&M Hilbert, Hilbert, Wisconsin; F&M Algoma, Algoma, Wisconsin; F&M Superior, Superior, Wisconsin; F&M Prairie du Chien, Prairie du Chien, Wisconsin; F&M Darlington, Darlington, Wisconsin; F&M Landmark, Hudson, Wisconsin; F&M Dundas, Dundas, Minnesota; F&M Iowa Central, Marshaltown, Iowa; F&M Story City, Story City, Iowa; F&M South Central, Grinnell, Iowa; and F&M Bank Elkhorn, Elkhorn, Wisconsin.

In connection with this application, Applicant has also applied to acquire F & M Trust Company, Kaukauna, Wisconsin, and thereby engage in trust company functions, pursuant to § 225.28(b)(5) of Regulation Y.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Lea M. McMullan Trust, Lea M. McMullan, Trustee (as managing general partner for the target partnership), Shelbyville, Kentucky; to become a bank holding company by acquiring 35.81 percent of the voting shares of L.B.S. McMullan Limited Partnership, Shelbyville, Kentucky, and thereby indirectly acquire Citizens Union Bancorp of Shelbyville, Inc., Shelbyville, Kentucky, Citizens Union Bank of Shelbyville, Shelbyville, Kentucky, and First Farmers Bank & Trust Company, Warsaw, Kentucky.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Parkway National Bancshares, Inc., Plano, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Parkway Bank, N.A., Plano, Texas.

Board of Governors of the Federal Reserve System, August 25, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–22471 Filed 8–27–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR part 225), to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 13, 1999.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Boston Private Financial Holdings, Inc., Boston, Massachusetts; to acquire RINET Company, Inc., Boston, Massachusetts, and thereby indirectly acquire Cornerstone Fund Advisors, Inc., Boston, Massachusetts, and thereby engage in tax-planning and preparation services and investment advisory activities, pursuant to § 225.28(b)(6) of Regulation Y.

Board of Governors of the Federal Reserve System, August 24, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–22369 Filed 8–27–99; 8:45 am]

BILLING CODE 6210–01–F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of meeting on September 16, 1999.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the Federal Accounting Standards Advisory Board will hold a meeting on Thursday, September 16, 1999, from 9:00 to 4:30 p.m. in room 7C13, the Comptroller General's Briefing Room, of the General Accounting Office building, 441 G St., NW, Washington, DC.

The purpose of the meeting is to discuss:

- National Defense PP&E
  —project plan for Phase 2
  —SARS reporting; issues and options
- Direct Loan and Loan Guarantee Amendments
  —comments letters with summaries
- Other Matters such as Reporting on Indian Trust Funds in Department of the Interior Financial Reports

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., NW, Room 3B18, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: August 24, 1999.

Wendy M. Comes,

Executive Director.

[FR Doc. 99–22457 Filed 8–27–99; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Fiscal Year 1999 Competitive Supplemental Funds for Comprehensive STD Prevention Systems: Monitoring Prevalence of STDs and TB Infection in Persons Entering Corrections Facilities: Correction

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, the Centers for Disease Control and Prevention (CDC) published a notice in the **Federal Register** of August 23, 1999, Volume 64, Number 162, Page 45971, concerning a Special Emphasis Panel to be convened on September 2, 1999, to review and evaluate applications received in response to Program Announcement #99000–D.

Correction: The meeting will not convene as a Special Emphasis Panel, as announced. Instead, applications received in response to Program Announcement #99000–D will be reviewed and evaluated by means of an internal objective review.

Contact Person for More Information: Beth Wolfe, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, 11 Corporate Square Boulevard, M/S E07, Atlanta, Georgia 30329, telephone 404/639–8025, e-mail eowl@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 24, 1999.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc 99–22485 Filed 8–25–99; 5:06 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Fiscal Year 1999 Competitive Supplemental Funds for Comprehensive STD Prevention Systems: Monitoring Trends in STD Prevalence, Tuberculosis, and HIV Risk Behaviors Among Men Who Have Sex With Men: Correction

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announced the following meeting in the **Federal Register** of August 23, 1999, Volume 64, Number 162, Page 45971–45972.

Name: Disease, Disability and Injury Prevention and Control Special Emphasis Panel: Fiscal Year 1999 Competitive Supplemental Funds for Comprehensive STD Prevention Systems: Monitoring Trends in STD Prevalence, Tuberculosis, and HIV Risk Behaviors among Men Who Have Sex with Men, Program Announcement #99000–E.

Correction: Please note the correct meeting date, as follows:

Time and Date: 8:30 a.m.–9 a.m., September 2, 1999 (Open), 9 a.m.–4:30 p.m., September 2, 1999 (Closed).

CONTACT PERSON FOR MORE INFORMATION: Beth Wolfe, Prevention Support Office, National Center for HIV, STD, and TB Prevention, CDC, Corporate Square Office Park, 11 Corporate Square Boulevard, M/S E07, Atlanta, Georgia 30329, telephone 404/639–8025, e-mail eow1@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 24, 1999.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–22486 Filed 8–25–99; 4:49 pm]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98C–1017]

International Association of Color Manufacturers; Withdrawal of Color Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a color additive petition (CAP 9C0264) proposing that the color additive regulations be amended to provide for the safe use of D&C Red No. 28 and its aluminum lake to color food and dietary supplements.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3071.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of November 25, 1998 (63 FR 65212), FDA announced that a color additive petition (CAP 9C0264) had been filed by the International Association of Color Manufacturers, c/o Daniel R. Thompson, P.C., 1620 I St., suite 925, Washington, DC 20006. The petition proposed to amend the color additive regulations to provide for the safe use of D&C Red No. 28 and its aluminum lake to color food and dietary supplements. The International Association of Color Manufacturers has now withdrawn the petition without prejudice to a future filing (21 CFR 71.6(c)(2)).

Dated: August 12, 1999.

Laura M. Tarantino,

Deputy Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–22478 Filed 8–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–2907]

Alcide Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Alcide Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of acidified sodium chlorite solutions as an antimicrobial agent on red meat parts and organs.

DATES: Written comments on the petitioner's environmental assessment by September 29, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–418–3074.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9A4692) has been filed by Alcide Corp., 8561 154th Ave. NE., Redmond, WA 98052. The petition proposes to amend the food additive regulations in 21 CFR 173.325 to provide for the safe use of acidified sodium chlorite solutions as an antimicrobial agent on red meat parts and organs.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations issued under the National Environmental Policy Act

(40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before September 29, 1999, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 17, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–22475 Filed 8–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Blood Products Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Blood Products Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 16, 1999, 8 a.m. to 4:30 p.m. and September 17, 1999, from 8 a.m. to 12:30 p.m.

Location: Ramada Inn, Embassy Ballroom, 8400 Wisconsin Ave., Bethesda, MD.

Contact Person: Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM–350), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3514, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 19516. Please call the Information Line for up-to-date information on this meeting.

Agenda: On September 16, 1999, the following committee updates are tentatively scheduled: (1) Summary of the August 26 to 27, 1999, Public Health Service (PHS) Advisory Committee on Blood Safety and Availability meeting; (2) summary of the July 21, 1999, Workshop on Donor Suitability: Donor History of Hepatitis; and (3) guidance document on revised precautionary measures to reduce the possible risk of transmission of Creutzfeldt–Jakob Disease (CJD) and new variant Creutzfeldt–Jakob Disease (nvCJD) by blood and blood products. Other committee updates will be scheduled if the need arises. In the morning, the committee will hear and discuss an informational presentation on strategies for increasing the blood supply and discuss and provide recommendations on nucleic acid testing of blood donors for human parvovirus B–19. In the afternoon, the committee will hear an informational presentation on antigen/antibody testing for malaria.

On September 17, 1999, the committee will sit as a medical device panel for the reclassification of human immunodeficiency virus (HIV) drug sensitivity assays.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 7, 1999. Oral presentations from the public will be scheduled between approximately 10 a.m. to 10:30 a.m.; 11:30 a.m. to 12 noon; and 3 p.m. to 3:30 p.m. on September 16,1999, and from 9 a.m. to 11 a.m. on September 17, 1999. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 7, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated:August 22, 1999.

Linda A. Suydam

Senior Associate Commissioner

[FR Doc. 99–22480 Filed 8–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee for Pharmaceutical Science; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Advisory Committee for Pharmaceutical Science.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 23 and 24, 1999, 8:30 a.m. to 5 p.m.

Location: Center for Drug Evaluation and Research Advisory Committee conference room, 5630 Fishers Lane, Rockville, MD.

Contact Person: Kimberly Littleton Topper at topperk@cder.fda.gov or Angie Whitacre at whitacre@cder.fda.gov, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12539. Please call the Information Line for up-to-date information on this meeting.

Agenda: On September 23, 1999, the committee will discuss individual bioequivalence–criteria for equivalence comparisons. On September 24, 1999, the committee will discuss clinical pharmacology–pharmacokinetic/pharmacodynamic issues in drug development and research issues in nonclinical studies.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 8, 1999. Oral presentations from the public will be scheduled between approximately 1 p.m. to 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 8, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated:August 23, 1999.

Linda A. Suydam

Senior Associate Commissioner

[FR Doc. 99–22479 Filed 8–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Technical Electronic Product Radiation Safety Standards Committee Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Technical Electronic Product Radiation Safety Standards Committee Advisory Committee

General Function of the Committee: To provide advice on technical feasibility, reasonableness, and practicality of performance standards for electronic products to control the emission of radiation under 42 U.S.C. 263f(f)(1)(A).

Date and Time: The meeting will be held on September 15, 1999, 8:30 a.m. to 5:30 p.m., and September 16, 1999, 8:30 a.m. to 2:30 p.m.

Location: Holiday Inn, Lincoln Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Contact Person: Orhan H. Suleiman, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12399. Please call the Information Line for up-to-date information on this meeting.

Agenda: On September 15, 1999, the committee will: (1) Discuss proposed amendments to the performance standards for lasers and sunlamp products (21 CFR part 1040), and (2) hear presentations on medical telemetry systems and electronic article surveillance systems. On September 16, 1999, the committee will hear: (1) Presentations concerning nonmedical security devices which result in persons being exposed to ionizing radiation; and (2) presentations concerning conventional fluoroscopy (21 CFR part 1020), and computed tomography fluoroscopy.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 7, 1999. Oral presentations from the public will be scheduled on September 15, 1999, between approximately 11:15 a.m. and 12 noon and between approximately 4:15 p.m. and 5 p.m. Oral presentations from the public will be scheduled on September 16, 1999, between approximately 1 p.m. and 1:45 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 7, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 23, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99–22477 Filed 8–27–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Center for Substance Abuse Prevention; Notice of Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Center for Substance Abuse Prevention (CSAP) National Advisory Council in September 1999.

The agenda will include the review, discussion and evaluation of individual grant applications. Therefore a portion of this meeting will be closed to the public as determined by the Administrator, SAMHSA, in accordance with Title 5 U.S.C. 552b(c)(6) and 5 U.S.C. App. 2, Section 10(d).

The open session of the meeting will include presentations of CSAP programs, a CSAP budget update, SAMHSA's Administrator's Report, and discussions of administrative matters and announcements. If anyone needs special accommodations for persons with disabilities, please notify the contact listed below.

A summary of this meeting and roster of committee members may be obtained from Yuth Nimit, Ph.D., Executive Secretary, Rockwall II building, Suite 910, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–8455.

Substantive program information may be obtained from the person listed above.

Committee Name: Center for Substance Abuse Prevention National Advisory Council.

Meeting Dates: September 8, 1999/8:30 a.m.–3:00 p.m.(Closed), September 9, 1999/8:30 a.m.–4:00 p.m. (Open).

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland 20841.

Contact: Yuth Nimit, Ph.D., 5515 Security Lane, Rockwall II building, Suite 901, Rockville, Maryland 20852, Telephone: (301) 443–8455.

Dated: August 24, 1999.

Sandra Stephens,

Acting Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–22439 Filed 8–27–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period for the Notice of Intent To Clarify the Role of Habitat in Endangered Species Conservation

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice: reopening of comment period.

SUMMARY: We (the U.S. Fish and Wildlife Service) reopen the comment period on our notice of intent to develop policy or guidance and/or to revise regulations, if necessary, to clarify the role of habitat in endangered species conservation. We received several requests to extend or reopen the comment period. We solicit public

comments, and we will analyze and incorporate additional comments received during this comment period, as well as those we received during the previous comment period, into new proposed guidance as appropriate.

DATES: We will accept comments on this guidance until October 29, 1999.

ADDRESSES: Submit your comments regarding this guidance to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, NW, Mailstop ARLSQ–420, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Nancy Gloman, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 703–358–2171 (see **ADDRESSES** section).

SUPPLEMENTARY INFORMATION:

Background

On June 14, 1999 (64 FR 31871), we published a notice of our intent to develop policy or guidance and/or to revise regulations, if necessary, to clarify the role of habitat in endangered species conservation. In that notice, we sought comments relative to the benefits of the designation of critical habitat (beyond that of listing) and what considerations should be included in our prudency determinations. We also requested comments and suggestions relative to how we can effectively streamline the process of determining and designating critical habitat and specifically whether and how our existing regulations might or should be changed to accomplish this. Additionally, we requested comments and suggestions on possible legislative actions that might improve the effectiveness and efficiency of the critical habitat process.

Public Comments Solicited

We reopen the comment period on this notice in order to provide additional time for interested parties to comment on this important issue. We will take into consideration any comments and additional information received and will announce proposed guidance after the close of the public comment period and as promptly as possible after all comments have been reviewed and analyzed. We will make available for your review and comment any guidance, policy, or regulatory changes that are developed.

Authority

The authority for this notice is the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

Dated: August 19, 1999.

Marshall P. Jones,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 99–22460 Filed 8–27–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of Great Egg Harbor National Scenic and Recreational River Draft Comprehensive Management Plan and Environmental Impact Statement

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of availablity of Great Egg Harbor National Scenic and Recreational River draft Comprehensive Management Plan and Environmental Impact Statement.

SUMMARY: The National Park Service has prepared and released a draft Comprehensive Management Plan and Environmental Impact Statement for the management, protection, and use of the Great Egg Harbor National Scenic and Recreational River in New Jersey. The public is invited to review and comment on the draft plan. For more information about this document, contact Mary Vavra, National Park Service Program Manager by letter or telephone.

FOR FURTHER INFORMATION CONTACT: Mary Vavra, Program Manager, National Park Service, Philadelphia Support Office, 200 Chestnut Street, 3rd Floor, Philadelphia, PA 19106, (215) 597–9175.

Dated: August 9, 1999.

Marie Rust,

Regional Director, Northeast Region, National Park Service.

[FR Doc. 99–22443 Filed 8–27–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Draft Environmental Impact Statement for Mountain Goat Management Within Olympic National Park, Washington

ACTION: Suspension of Environmental Impact Statement (EIS) Process.

SUMMARY: This Notice announces the suspension of the environmental impact statement process for mountain goat management within Olympic National Park. In early 1999, the Department of the Interior awarded a contract for a review of existing scientific information about mountain goats in Olympic National Park. The science review is being conducted by the Conservation Biology Institute of Corvallis, Oregon. A report from this review will be provided to the Secretary and made available to the public in late 1999 or early 2000. Following receipt of this report, the National Park Service will consider any changes or updates needed to the draft EIS, at which point a supplemental draft EIS may be prepared.

DATES: Dates for resumption of the EIS process will be announced in the **Federal Register**.

ADDRESSES: Questions or comments concerning suspension of the Environmental Impact Statement process should be submitted to: Superintendent, Olympic National Park, 600 East Park Avenue, Port Angeles, WA 98362.

SUPPLEMENTARY INFORMATION: The Draft EIS on mountain goat management was made available to the public in March 1995 (FR, Vol. 60, No. 62, p. 16647). This science review responds to a Congressional request prompted by concerns from some constituents regarding research associated with this issue. A review of the science is a key element in responding to public questions and concerns, and will further inform the EIS decision process for mountain goat management at Olympic National Park.

Dated: August 16, 1999.

William C. Walters,

Deputy Regional Director, Pacific West Region, National Park Service.

[FR Doc. 99–22441 Filed 8–27–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Gettysburg National Military Park Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the thirtieth meeting of the Gettysburg National Military Park Advisory Commission.

Date: The Public meeting will be held on October 21, 1999, from 7:00 p.m.–9:00 p.m.

Location: The meeting will be held at Cyclorama Auditorium, 125 Taneytown Road, Gettysburg, Pennsylvania 17325.

Agenda: Sub-Committee Reports, Update on General Management Plan, Federal Consistency Projects Within the Gettysburg Battlefield Historic District, Operational Update on Park Activities, and Citizens Open Forum.

FOR FURTHER INFORMATION CONTACT: John A. Latschar, Superintendent, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Advisory Commission, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325. Minutes of the meeting will be available for inspection four weeks after the meeting at the permanent headquarters of the Gettysburg National Military Park located at 97 Taneytown Road, Gettysburg, Pennsylvania 17325.

Dated: August 18, 1999.

John A. Latschar,

Superintendent, Gettysburg NMP/Eisenhower NHS.

[FR Doc. 99–22372 Filed 8–27–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of Plan of Operations; Mining Operation Dorothy Lode Claim #1; North Cascades National Park, Skagit County, Washington

Notice is hereby given in accordance with Section 9.17(a) of Title 36 of the Code of Federal Regulations, Part 9, Subpart A, that the National Park Service has received from Mr. William Webster a Proposed Plan of Operations to remove a limited quantity of stockpiled ore from existing workings on the Dorothy Lode Claim #1 in North Cascades National Park. The ore would be transported by helicopter from Thunder Basin east to Washington State Route 20 (the North Cascades Highway).

The Proposed Plan of Operations is available for public review and comment for a period of 30 days from the publication of this notice. The document can be viewed during normal business hours at the Office of the Superintendent, North Cascades National Park, 2105 State Route 20, Sedro Woolley, Washington, 98284–9394.

Dated: August 19, 1999.

William F. Paleck,

Superintendent, North Cascades National Park Service Complex.

[FR Doc. 99–22442 Filed 8–27–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council's Ecosystem Roundtable Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council's (BDAC) Ecosystem Roundtable will meet on September 14, 1999, to discuss additional 1999 watershed projects, priorities and potential projects for FY 2000, and other issues. This meeting is open to the public. Interested persons may make oral statements to the Ecosystem Roundtable or may file written statements for consideration.

DATES: The BDAC Ecosystem Roundtable meeting will be held from 9:30 a.m. to 12:00 p.m. on Tuesday, September 14, 1999.

ADDRESSES: The Ecosystem Roundtable will meet at the Resources Building, Room 1131, 1416 Ninth Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Wendy Halverson Martin, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA). The BDAC provides advice to CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: August 24, 1999.

Neil Stessman,

Acting Deputy Regional Director, Mid-Pacific Region.

[FR Doc. 99–22400 Filed 8–27–99; 8:45 am]

BILLING CODE 4310–94–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23963; 812–11718]

HSBC Securities (USA) Inc., et al.; Notice of Application

August 23, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from section 12(d)(1) of the Act, under section 6(c) of the Act for an exemption from sections 12(d)(3) and 14(a) of the Act, and under section 17(b) of the Act for an exemption from section 17(a) of the Act.

Summary of Application: HSBC Securities (USA) Inc. ("HSBC Securities") and HSBC Holdings plc

("HSBC Holdings," together with HSBC Securities, "HSBC") request an order with respect to the future HSBC Capital Funding Trusts ("HSBC Trusts") and future trusts that are substantially similar to the HSBC Trusts and for which HSBC Securities will serve as a principal underwriter (collectively, the "Trusts") and all English limited partnerships, the general partner of which is a wholly owned subsidiary of HSBC Holdings and in which the Trusts invest (the "(Limited Partnerships") that would (i) permit other registered investment companies to own a greater percentage of the total outstanding voting stock of any Trust (the "Securities") than that permitted by section 12(d)(1), (ii) exempt the Trusts from the initial net worth requirements of section 14(a), and (iii) permit the Trusts to purchase certain securities from HSBC or its affiliates at the time of a Trust's initial issuance of Securities.

Applicants: HSBC Securities and HSBC Holdings.

Filing Dates: The application was filed on July 29, 1999. Applicants have agreed to file an amendment to the application, the substance of which is reflected in this notice, during the notice period.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 13, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants: HSBC Securities, 140 Broadway, New York, New York 10005; HSBC Holdings, 10 Lower Thames Street, London EC3 6AE, England.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Staff Attorney, at (202) 942–0634, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. no. 202–942–8090).

Applicants' Representations

1. Each Trust will be a limited-life, grantor trust registered under the Act as a non-diversified, closed-end management investment company. HSBC Securities will serve as a principal underwriter (as defined in section 2(a)(29) of the Act) of the Securities issued to the public by each Trust.

2. Each Trust's assets will consist of (i) American Depositary Shares representing preference shares issued by HSBC Holdings ("Shares") and (ii) a limited partnership interest in a Limited Partnership (the "Limited Partnership Interest"). As discussed below, the Limited Partnership will hold subordinated debt issued by HSBC Holdings or a member of the HSBC Holdings group. Each Trust's assets will be purchased at the time of and with the proceeds of the issuance and sale of the Securities.

3. Each Trust's investment objective will be to provide to the holders of the Securities ("Holders") (i) fixed dollar quarterly cash distributions on the Securities over the term of the Trust from the proceeds of the Limited Partnership Interest, to the extent HSBC Holdings would be able to pay dividends on issued and outstanding preference shares, (ii) Shares in exchange for Securities upon a fixed termination date for the Trust, or, if earlier, upon a specified trigger event, and (iii) a fixed dollar amount equal to the subscription price per Security if the Securities are redeemed prior to exchange for Shares.

4. The quarterly distributions on the Securities will be funded by distributions on the Trust's Limited Partnership Interest.[1] The sole business of the Limited Partnerships will be the subscription for, and the holding of, subordinated Eurobonds paying quarterly interest and issued by HSBC Holdings ("Eurobonds") or other debt with similar terms and conditions to the Eurobonds and issued by a member of the HSBC Holdings group and guaranteed by HSBC Holdings. All distributions on the Limited Partnership Interest will be funded by income payments on the Eurobonds. HSBC Holdings also will provide subordinated guarantees to the Trusts in respect of the Trusts' entitlement to payments relating to the Limited Partnership Interest (the "Partnership Guarantees"). The Limited Partnerships will not be obligated to make, and the Partnership Guarantees will not guarantee, any payments to the Trusts in any circumstance under which HSBC Holdings would not have been able to pay dividends on issued and outstanding preference shares.

5. On a fixed termination date for each Trust, or, if earlier, upon a specified trigger event,[2] the Limited Partnership Interest will be redeemed and the Trust will distribute to the Holders the number of Shares that is equal to the Holder's pro rata interest in the Shares. If the Shares are redeemed prior to any such exchange, the Holders will instead receive per Security a fixed dollar amount equal to the subscription price for each Security. The Limited Partnership Interests, Shares, and Partnership Guarantees will be structured so as to require redemption of all the securities constituting assets of a Trust if any are redeemed and to ensure that the Trust has sufficient funds to meet its cash obligations. In no event will Holders receive Limited Partnership Interests or Eurobonds.

6. Securities issued by the Trusts will be listed on a national securities exchange or traded on the Nasdaq National Market System. Thus, the Securities will be "national market system" securities subject to public price quotation and trade reporting requirements. After the Securities are issued, the trading price of the Securities is expected to vary from time to time based primarily upon the creditworthiness of HSBC Holdings, interest rates, and other factors affecting conditions and prices in the debt markets. HSBC Securities may intend, but will not be obligated, to make a market in the Securities of each Trust.

7. Each Trust will be internally managed by three trustees and will not have any separate investment adviser. A majority of the trustees of each Trust will be individuals who are not interested persons, as defined in section 2(a)(19) of the Act, of the Trust. The trustees will have no power to vary the investments held by each Trust. The Trusts will be structured so that the trustees are not authorized to sell any of the underlying assets and will hold them until, in the case of Shares, their redemption or distribution and, in the case of the Limited Partnership Interests, its redemption. A bank qualified to serve as a trustee under the Trust Indenture Act of 1939, as amended, will act as custodian for each Trust's assets and may act as administrator, paying agent, registrar, and transfer agent with respect to each Trust's Securities. The day-to-day administration of each Trust will be carried out by such bank.

8. The trustees of each Trust will be selected initially by HSBC, together with any other initial Holders, or by the grantors of the Trust. The Holders of each Trust will have the right, upon the declaration in writing or vote of more than two-thirds of the outstanding Securities of the Trust, to remove a trustee. The Holders will be entitled to a vote for each Security held on all matters to be voted on by the Holders and will not be able to cumulate their votes in the election of trustees. The investment objectives and policies of each Trust may be changed only with the approval of all of the Trust's outstanding Securities. Unless the Holders so request, it is not expected that the Trusts will hold any meetings of Holders, or that Holders will ever vote.

9. Each Trust's organizational and ongoing expenses will not be borne by the Holders but will be paid directly or indirectly by a third party (which may include HSBC Securities or HSBC Holdings), as will be described in the prospectus for the relevant Trust. There will be paid annually or quarterly to each of the administrator, the custodian, and the paying agent, and to each trustee, the ongoing amounts in respect of such agent's fee and in the case of the administrator, expenses. These expenses will generally be paid as incurred by a party other than the Trust itself (which party may be HSBC Securities or HSBC Holdings). The Trust agreements will be structured so that no payments in respect of fees and expenses relating to the Trust will be made or payable by the Trust.

10. Applicants assert that the investment product offered by the Trusts serves a valid business purpose. The Trust, unlike most registered investment companies, are not marketed to provide investors with either professional investment asset management or the benefits of investment in a diversified pool of assets. Rather, applicants assert that the Securities are intended to provide Holders with a security having the equivalent payment and risk characteristics of an investment in preference shares of HSBC Holdings, while enabling HSBC Holdings to benefit from favorable regulatory capital and taxation treatments that would not apply were the Holders to invest directly in preference shares.

Applicants' Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A)(i) of the Act prohibits any registered investment company from owning more than 3% of the total outstanding voting stock of any other investment company. Section 12(d)(1)(C) of the Act similarly prohibits any investment company, other investment companies having the same investment adviser, and companies controlled by such investment companies from owning more than 10% of the total outstanding voting stock of any closed-end investment company.

2. Section 12(d)(1)(J) of the Act provides that the SEC may exempt persons or transactions from any provision of section 12(d)(1), if, and to the extent that, such exemption is consistent with the public interest and protection of investors. Applicants request an order under Section 12(d)(1)(J) to permit other registered investment companies to own a greater percentage of the Securities of any Trust than that permitted by section 12(d)(1).

3. Applicants state that, in order for the Trust to be marketed most successfully, and to be traded at a price that most accurately reflects their value, it is necessary for the Securities to be offered to large investment companies and investment company complexes. Applicants state that large investment companies and investment company complexes seek to spread the fixed costs of analyzing specific investment opportunities by making sizable investments in those opportunities that prove attractive. Conversely, it may not be economially rational for such investors, or their advisers, to take the time to review an investment opportunity if the amount that they would ultimately be permitted to purchase is immaterial in light of the total assets of the investment company or investment company complex. Therefore, applicants argue that in order for the Trusts to be economically attractive to large investment companies and investment company complexes, such investors must be able to acquire Securities in excess of the limitations imposed by sections 12(d)(1)(A)(i) and 12(d)(1)(C).

4. Applicants state that section 12(d)(1) was designed to prevent one investment company from buying of other investment companies and creating complicated pyramidal structures. Applicants also state that section 12(d)(1) was intended to address the layering of costs to investors.

5. Applicants assert that the concerns about pyramiding and undue influence generally do not arise in the case of the Trusts because neither the trustees nor the Holders will have the power to vary the investments held by each Trust or to acquire or dispose of the assets of the Trusts. To the extent that Holders can change the composition of the board of trustees or the fundamental policies of each Trust by vote, applicants argue that any concerns regarding undue influence will be eliminated by a provision in the charter documents of the Trusts that will require any investment companies owning Securities of any Trust in excess of the limits imposed by sections 12(d)(1)(A)(i) and 12(d)(1)(C) to vote their Securities in proportion to the votes of all other Holders. Applicants also state that the concern about undue influence through a threat to redeem does not arise in the case of the Trusts because the Securities will not be redeemable.

6. Section 12(d)(1) also was designed to address the excessive costs and fees that may result from multiple layers of investment companies. Applicants state that these concerns do not arise in the case of the Trusts because of the limited ongoing fees and expenses incurred by the Trusts and the fact that these fees and expenses will be borne either directly or indirectly by HSBC Holdings or HSBC Securities or another third party, and not by the Holders. In addition, the Holders will not, as a practical matter, bear the organizational expenses (including underwriting expenses) of the Trusts. Applicants assert that the organizational expenses will be borne directly by HSBC Holdings, HSBC Securities, or other third parties. Thus, a Holder will not pay duplicative charges to purchase Securities. Finally, there will be no duplication of advisory fees because the Trusts will not have any separate investment advisers.

B. Section 12(d)(3)

1. Section 12(d)(3) of the Act generally prohibits a registered investment company from acquiring any security issued by any person who is a broker, dealer, investment adviser, or engaged in the business of underwriting (collectively, "securities-related activities"). Applicants state that because HSBC Holdings is engaged in securities-related activities, the Trusts may be prohibited by section 12(d)(3) from purchasing the Shares and Limited Partnership Interests.

2. Rule 12d3–1 under the Act exempts from the prohibition of section 12(d)(3)

[1] To the extent necessary to make the quarterly distributions, the Trust may invest distributions paid on the Limited Partnership Interest in short-term U.S. government obligations maturing no later than the business day preceding the next following distribution date of the Limited Partnership Interest.

[2] The specified trigger events will relate to the failure of HSBC Holdings to meet certain solvency conditions established by the United Kingdom Financial Services Authority, its principal regulator.

purchases of securities of an issuer engaged in securities-related activities if certain conditions are met. One of these conditions, set forth in rule 12d3–1(c), prohibits the acquisition of a security issued, among other persons, by the investment company's principal underwriter or any affiliated person of the principal underwriter.

3. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (i) any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person, (ii) any person 5% or more of whose voting securities are directly or indirectly owned, controlled, or held with the power to vote by the other person, and (iii) any person directly or indirectly controlling, controlled by, or under common control with, the other person.

4. Applicants state that HSBC Holdings is an affiliated person of HSBC Securities, the Trusts' principal underwriter. Applicants thus state that they are unable to rely on rule 12d3–1.

5. Applicants request an exemption under section 6(c) of the Act from section 12(d)(3) to permit the Trusts to purchase the Shares and Limited Partnership Interests, provided that the requirements of rule 12d3–1, except paragraph (c), are met. Section 6(c) provides that the SEC may exempt any person or transaction from any provision of the Act or any rule under the Act to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. For the reasons stated below, applicants believe that the requested relief satisfies this standard.

6. Applicants assert that their proposal does not raise the concerns about conflicts of interest that the provisions of rule 12d3–1(c) were designed to address. Applicants state that the Shares and the Limited Partnership Interests will be acquired by the Trusts only at the time of the issuance of the Securities and a Trust's assets will remain fixed for the life of the Trust.

C. Section 14(a)

1. Section 14(a) of the Act requires, in pertinent part, that an investment company have a net worth of a least $100,000 before making any public offering of its shares. The purpose of section 14(a) is to ensure that investment companies are adequately capitalized prior to or simultaneously with the sale of their securities to the public. Rule 14a–3 under the Act exempts from section 14(a) unit investment trusts ("UITs") that meet certain conditions in recognition of the fact that;, once the units are sold, a UIT requires much less commitment on the part of the sponsor than does a management investment company. Rule 14a–3 provides that a UIT investing in eligible trust securities shall be exempt from the net worth requirement, provided that the UIT holds at least $100,000 of eligible trust securities at the commencement of a public offering.

2. Applicants request an order under section 6(c) exempting the Trusts from the requirements of section 14(a). Applicants believe that the exemption is appropriate in the public interest and consistent with the protection of investors and the policies and provisions of the Act. Applicants assert that, while the Trusts are classified as management companies, they have the characteristics of UITs. Investors in the Trust, like investors in a UIT, will not be purchasing interests in a managed pool of securities, but rather in a fixed portfolio that is held until the termination of the Trust. Applicants believe therefore, that there is no need for an ongoing commitment on the part of the underwriter.

3. Applicants state that, in order to ensure that each Trust will become a going concern, the Securities of each Trust will be publicly offered in a firm commitment underwriting, registered under the Securities Act of 1933, or in a transaction exempt from such registration, and resulting in net proceeds to each Trust of at least $100,000,000. Prior to the issuance and delivery of the Securities of each Trust to the underwriters, the underwriters will enter into an underwriting agreement pursuant to which they will agree to purchase the Securities subject to customary conditions to closing. The underwriters will not be entitled to purchase less than all of the Securities of each Trust. Accordingly, applicants state that the offering will not be completed at all or each Trust will have a net worth substantially in excess of $100,000 on the date of the issuance of the Securities. Applicants also do not anticipate that the net worth of the Trusts will fall below $100,000 before they are terminated.

D. Section 17(a)

1. Sections 17(a)(1) and 17(a)(2) of the Act generally prohibit the principal underwriter, or any affiliated person of the principal underwriter, of a registered investment company from selling or purchasing any securities to or from that investment company. The effect of these provisions is to preclude the Trusts from purchasing the Shares and the Limited Partnership Interests (including the Partnership Guarantees) from HSBC Holdings and the Limited Partnerships, respectively.

2. Section 17(b) of the Act provides that the SEC shall exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the proposed transaction are reasonable and fair and do not involve overreaching, and the proposed transaction is consistent with the policies of the registered investment company involved and the purposes of the Act. Applicants request an exemption under section 17(b) from sections 17(a)(1) and 17(a)(2) to permit the Trusts to purchase Shares and the Limited Partnership Interests (including the Partnership Guarantees) from HSBC Holdings and the Limited Partnerships.

3. Applicants state that they are seeking relief from section 17(a) only with respect to the initial purchase of the Shares and Limited Partnership Interests and not with respect to an ongoing course of business. Applicants state that the terms of the Shares and the Limited Partnership Interests (including the terms of the associated Partnership Guarantees and Eurobonds) and of their purchase will be fully disclosed to investors in the Securities prior to the making of an investment decision. Applicants also state that the Securities are expected to be investment-grade rated securities and that their pricing and economic characteristics will be established by reference to similar investment-grade rated instruments. Applicants assert that, since an investment in the Securities is in effect a proxy for investment in the Shares, and since the Trusts will use all of the proceeds of the offering of the Securities to buy the requisite number of Shares and Limited Partnership Interests, there should be no potential for overreaching by HSBC Holdings or the Limited Partnerships.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. Any investment company owning Securities of any Trust in excess of the limits imposed by section 12(d)(1) of the Act will be required by the Trust's charter documents to vote its Trust Securities in proportion to the vote of all other Holders.

2. The investment objectives and policies of each Trust as recited in such Trust's registration statement will fully and accurately describe the investment objectives and policies of the Trust as set forth in the trust agreement establishing the Trust and may be changed only with the approval of all the Holders of such Trust's outstanding Securities.

3. The underlying securities to be purchased by each Trust will be sufficient to provide payments to Holders of Securities that are consistent with the investment objectives and policies of the Trust as recited in the Trust's registration statement and will be consistent with the interests of the Trust and the Holders of its Securities.

4. The terms of the transactions will be fair to the Holders of the Securities issued by each Trust and will not involve overreaching of the Trust or the Holders of Securities thereof on the part of any person concerned. Prior to the sale of the Shares and the Limited Partnership Interest to each Trust, the trustees of such Trust, including a majority of trustees who are not interested persons of the Trust, shall have determined that the terms of the transaction, including the price at which the Shares and the Limited Partnership Interest are to be purchased by such Trust, are reasonable and fair and do not involve overreaching on the part of any person concerned.

5. No fee, spread, or other remuneration shall be received by HSBC Securities in connection with the sale of the Shares or the Limited Partnership Interests to the Trust.

6. Each Trust will comply with rule 12d–3 under the Act, except paragraph (c) of the rule to the extent permitted by the order.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22374 Filed 8–27–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27066]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

August 23, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 21, 1999, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declaration(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After September 21, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Eastern Utilities Associates (70–9527)

Eastern Utilities Associates ("EUA"), One Liberty Square, P.O. Box 2333, Boston, Massachusetts 02107, a registered holding company, Eastern Edison Company ("Eastern Edison"), 750 West Center Street, West Bridgewater, Massachusetts 02379, an electric utility subsidiary of EUA, and Montaup Electric Company ("Montaup"), 750 West Center Street, West Bridgewater, Massachusetts 02379, a nonutility subsidiary of Eastern Edison, have filed an application-declaration under sections 6(a)(2), 7, 9(a), 10, and 12(c) of the Act and rules 43 and 46 under the Act.

EUA proposes to acquire from Eastern Edison, and Eastern Edison proposes to transfer to EUA, the securities of Montaup, including: (1) preferred stock; (2) common stock; and (3) debentures ("Montaup Securities"). The transfer of the Montaup Securities to EUA by Eastern Edison will take the form of, and it is also proposed that Eastern Edison make, a special dividend payment comprising all remaining capitalization of Montaup. Eastern Edison further proposes to make the dividend payment out of retained earnings to the maximum extent possible and, thereafter, out of paid-in capital and unearned surplus. Eastern Edison proposes that the dividend payment take the form of a redemption of its common stock, which will be funded with Montaup Securities.

Prior to executing the transactions proposed above (and subject to Commission authorization and the consent of Eastern Edison, as sole shareholder of Montaup), Montaup proposes to amend its corporate charter to eliminate its status as a Section 9A company under Chapter 164 of the Massachusetts General Laws so that its ability to transmit and sell electricity will not be tied to its sole shareholder.

Cinergy Corp., et al. New Century Energies, Inc., et al. (70–9531)

Cinergy Corp. ("Cinergy"), a registered holding company located at 139 East Fourth Street, Cincinnati, Ohio 45202, New Century Energies, Inc. ("NCE"), a registered holding company located a 1225 17th Street Denver, Colorado 80202, and Cadence Network LLC ("Cadence" and together with Cinergy and NCE, "Applicants"), a nonutility company and subsidiary of each of Cinergy and NCE, located at 105 East Fourth Street, Suite 200 Cincinnati, Ohio 45202, have filed a joint application under sections 6(a), 7, 9(a) and 10 of the Act and rule 54 under the Act.

Cinergy and NCE acquired their ownership interests in Cadence in September 1997 under rule 58. Each of Cinergy and NCE indirectly holds a one-third ownership interest in Cadence. Cinergy holds its one-third interest in Cadence through its wholly owned, special-purpose nonutility subsidiary, Cinergy-Cadence, Inc. ("Cinergy-Cadence"); NCE holds its one-third interest in Cadence through its wholly owned, special-purpose nonutility subsidiary, New Century-Cadence, Inc. ("New Century-Cadence"). Both of these subsidiaries were formed under rule 58 in order to acquire and hold Cinergy's and NCE's respective interests in Cadence.

Applicants state that Cadence uses information to reduce energy-related costs for commercial businesses that own and operate families of chain stores or other multi-location retail establishments. Cadence collects, centralizes and redistributes to customers relevant cost information using sophisticated technology. Through The Cadence Network ("Network"), an Internet-based interactive reporting tool developed by Cadence, Cadence's are able to track and manage electricity, natural gas and related costs incurred at their facilities (e.g., with respect to heating ventilation and air conditioning, water/sewage, telephone, cable, and trash collection). The Network anchors other services offered by Cadence that are specifically targeted at reducing the customers's energy-related costs. Currently these services consist of bill verification and

correction,[1] "best rate" assurance,[2] and consulting with respect to gas and electric commodity purchasing[3] and energy efficiency projects.[4] Customers compensate Cadence on a fixed fee or shared savings basis. At June 30, 1999, Cadence was serving customers with operations in all 50 states.

As an "energy-related company," as defined under rule 58, substantially all of Cadence's revenues must derive, and, according to Applicants, have derived, from permissible energy-related activities carried out within the United States. However, Applicants assert that this geographical restriction imposes significant business and competitive disadvantages on Cadence, noting, among other things, that certain of Cadence's customers have locations outside of the United States for which they would like Cadence to provide services consistent with the services Cadence provides them in the United States.

Applicants propose that Cadence be permitted to market its utility-related cost reporting and reduction services anywhere outside the United States, without restriction on the amount or proportion of revenues derived from these activities outside the United States. In connection with this proposal, Cinergy and NCE request authority to retain their ownership interests in Cadence, Cinergy-Cadence and New Century-Cadence previously acquired under rule 58. In addition, Applicants propose that this authority cover not merely the utility-related cost reporting and reduction services now in place, but include additional similar and complementary energy-related services that Cadence may develop and seek to offer to customers in future, both in the United States and abroad, provided that in no event would these future services be broader in scope than the energy management services and consulting services approved for Cinergy's nonutility subsidiary, Cinergy Solutions, Inc.[5] Applicants further request that Cadence be granted the flexibility to provide its services directly or indirectly through one or more special-purpose subsidiaries, formed as corporations, partnerships, limited liability companies or other legal entities, as applicable business, legal, tax, accounting or strategic considerations dictate.[6] Cinergy and NCE commit that they will not seek recovery through higher rates to customers of their utility subsidiaries for any losses or inadequate returns arising from the proposed transactions.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR DOC. 99–22425 Filed 8–27–99; 8:45 am]

BILLING CODE 8010–01–M

[1] Under this service option, Cadence audits and otherwise reviews and monitors individual invoices and invoicing patterns for electricity, natural gas and water/sewage service furnished to customer sites. Cadence also identifies clusters of likely savings and provides comparative reports. Once errors are detected, Cadence's utility billing experts isolate the cause and negotiate on the client's behalf directly with the utility supplier for refunds and credits.

[2] Under this service option, Cadence assures that the client's high priority facilities are being assessed optimal utility rates for electricity and natural gas service. Cadence scrutinizes and verifies facility load data and utility rate schedules and negotiates or renegotiates directly with the utility supplier to ensure application of the optimal rates to these high-priority customer facilities. In connection with this program, clients can also authorize Cadence to conduct a national rate assessment, identifying and prioritizing tariff-based rate savings opportunities for electric and natural gas service with respect to all of the customer's sites throughout the United States.

[3] Under this service option, Cadence assists its customers in shopping for electric and natural gas supplies. Cadence can help secure the most attractive commodity rates possible through custom proposals and proposal reviews. After Cadence determines which facilities are most likely to profit from electric and gas deregulation and other competitive purchasing opportunities, Cadence uses the Network to aggregate load information and create the custom request for proposals necessary to shop for the commodity supply. Cadence then reviews proposals from the various marketers, analyzes rate pricing option, and helps to negotiate the contractual terms. Throughout this process, Cadence acts as a consultant for the customer. Cadence does not take title to the commodity nor act as a broker for the buyer or seller.

[4] Under this service option, Cadence helps implement energy efficiency projects to realize further cost savings for its customers. Using the detailed data captured from the Network, Cadence can begin to identify high-cost facilities that cannot be corrected by better rates or more accurate billing. To identify the most likely targets for cost reduction, Cadence conducts internal benchmarking, drawing on internal data-mining techniques. Once it has identified the problem and likely solution, Cadence prepares proposals for national energy-efficiency projects and develop comprehensive strategies. Cadence develops the implementation plan, recommends the proposed application, and negotiates for project procurement. In this regard, Cadence acts as a project facilitator or overseer, rather than a contractors.

[5] *See Cinergy Corp.*, Holding Co. Act Release No. 26662 (February 7, 1997).

[6] Cinergy and NCE anticipate that they will meet their allocable shares of Cadence's financing needs through capital contributions or loans exempt under rules 45 and 52. In addition, Cadence may issue its securities to outside parties to finance its business in transactions exempt under rule 52. To the extent necessary, any Cinergy guarantees in respect to Cadence securities would be issued under the authority granted to Cinergy in Holding Co. Act Release No. 26984 (March 1, 1999). Likewise, any NCE guarantees in respect of Cadence securities would be issued under the authority granted to NCE in Holding Co. Act Release No. 27000 (April 7, 1999).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23962; 812–11716]

The Victory Portfolios, et al.; Notice of Application

August 23, 1999.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 12(d)(1)(A) and 17(a) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

Summary of Application

Applicants seeks to amend a prior order that permits non-money market series of a registered open-end management investment company to purchase shares of one or more of the money market series of such registered investment company by adding one registered open-end management investment company and one investment adviser as applicants.

Applicants

The Victory Funds (formerly known as The Society Funds), The Highmark Group, The Parkstone Group of Funds, The Conestoga Family of Funds, The AmSouth Funds (formerly known as The ASO Outlook Group), The Sessions Group, American Performance Funds, The Coventry Group, BB&T Mutual Funds Group (collectively, the "Original Funds"); Society Asset Management, Inc., Union Bank of Californian, N.A. (formerly known as The Bank of California), First of America Investment Corporation, Meridian Investment Company, AmSouth Bank (formerly known as AmSouth Bank, N.A.), National Bank of Commerce, BancOklahoma Trust Company, AMR Investment Services, Inc., Boatmen's Trust Company, AMCORE Capital Management, Inc., and Branch Banking and Trust Company (collectively, the "Original Advisers"); BISYS Fund Services Limited Partnership (formerly known as The Winsbury Company) ("BISYS"), BISYS Fund Services Ohio, Inc. (formerly known as The Winsbury

Service Corporation) (all of the above entities collectively, the "Original Applicants"); BISYS Fund Services, Inc. ("BISYS Services"); Martindale Andres & Company, Inc. and 1st Source Bank (collectively, the "First Additional Advisers"); Eureka Funds, Performance Funds Trust, Centura Funds, Inc., (collectively, the First Additional Funds"); Sanwa Bank California, Trustmark National Bank and Centura Bank (collectively, the "Second Additional Adviser"); The Infinity Mutual Funds, Inc. (the "New Fund") and First American National Bank (the "New Adviser").

The Sessions Group, BISYS, BISYS Fund Services Ohio, Inc. and the First Additional Advisers are also referred to as the "First Subsequent Applicants." BISYS, BISYS Services, the First Additional Funds, and the Second Additional Advisers are also referred to as the "Second Subsequent Applicants." The Original Applicants, the First Subsequent Applicants, and the Second Subsequent Applicants are also referred to collectively as the "Prior Applicants." BISYS, BISYS Fund Services Ohio, Inc., the New Fund, as the New Adviser are referred to collectively as the "New Applicants."

Filing Dates

The Application was filed on July 23, 1999.

Hearing or Notification of Hearing

An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 20, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit or, of lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Charles H. Hire, Esq., Baker & Hostetler LLP, 65 East State Street—Suite 2100, Columbus, Ohio 43215.

FOR FURTHER INFORMATION CONTACT: Lawrence W. Pisto, Senior Counsel, at (202) 942–0527, or George L. Zornada, Branch Chief, at (202) 942–0564, Office of Investment Company Regulation, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicant's Representations

1. On October 5, 1993, the Commission issued an order (the "Original Order") under sections 6(c) and 17(b) of the Act that exempted the Original Applicants from the provisions of sections 12(d)(1)(A) and 17(a) of the Act and that permitted, pursuant to rule 17d–1, certain joint transactions in accordance with section 17(d) and rule 17d–1.[1] The Original Order permitted: (i) The non-money market series of an Original Fund to utilize cash reserves that have not been invested in portfolio securities ("Uninvested Cash") to purchase shares of one or more of the money market series of such Original Fund; and (ii) the sale of shares by the money market series of an Original Fund to the non-money market series of such Original Fund, and the purchase (or redemption) of their shares by the money market series of the Original Fund from the non-money market series of such Original Fund.

2. On May 20, 1997, the Commission issued an order that amended the Original Order (together with the Original Order, the "First Amended Order"), by extending the relief granted in the Original Order to the First Subsequent Applicants.[2]

3. On September 15, 1998, the Commission issued an order that amended the Original Order for the second time (together with the First Amended Order, the "Second Amended Order"), by extending the relief granted in the Original order to the Second Subsequent Applicants.[3] The Original Order, the First Amended Order and the Second Amended Order and referred to herein collectively as the "Amended Order."

4. The New Fund is an open-end management investment company registered under the Act and organized as a Maryland corporation. The New Fund currently offers (or proposes to offer) twenty-two series, four of which are money market funds, that are advised by the New Adviser. The New Adviser is not registered under the Investment Advisers Act of 1940 (the "Advisers Act") in reliance upon the exclusion from the definition of investment adviser set forth in section 202(a)(11)(A) of the Advisers Act. BISYS, one of the Prior Applicants, is the principal underwriter, administrator and distributor for each of the series. BISYS Ohio, also one of the Prior Applicants, is the administrator and transfer and dividend disbursing agent for each of the series.

5. The New Applicants seek to have the exemptive relief granted under the Amended Order extend to include them so as to permit the permit the non-money market series of the New Fund which are advised by the New Adviser to utilize Uninvested Cash to purchase shares of one or more of the money market series of the New Fund which are advised by the New Adviser.[4] The New Applicants consent to the conditions set forth in the original application and agree to be bound by the terms and provisions of the Amended Order to the same extent as the Prior Applicants. The New Applicants believe that granting the requested order is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22373 Filed 8–27–99; 8:45 am]

BILLING CODE 8010–01–M

[1] Investment Company Act Release Nos. 19695 (Sept. 9, 1993) (notice) and 19759 (Oct. 5, 1993) (order).

[2] Investment Company Act release Nos. 22636 (April 25, 1997)(notice) and 22677 (May 20, 1997) (order).

[3] Investment Company Act Release Nos. 23393 (August 18, 1998)(notice) and 23436 (September 15, 1998)(order).

[4] The requested relief also would extend to any other registered open-end management investment companies advised by the New Adviser or any person directly or indirectly controlling, controlled by, or under common control with the New Adviser, and for which BISYS or any person directly or indirectly controlling, controlled by, or under common control with BISYS, now or in the future serves as principal underwriter.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41767; File No. SR–CTA/CQ–99–02]

Consolidated Tape Association; Notice of Filing of Fifth Charges Amendment to the Second Restatement of the Consolidated Tape Association Plan and the Fourth Charges Amendment to the Restated Consolidated Quotation Plan

August 19, 1999.

Pursuant to Rule 11Aa3–2 [1] of the Securities Exchange Act of 1934 ("Act"),[2] notice is hereby given that on August 2, 1999, the Consolidated Tape Association ("CTA") and the Consolidated Quotation ("CQ") Plan Participants ("Participants") [3] filed with the Securities and Exchange Commission ("Commission" or "SEC") amendments to the Restated CTA Plan and CQ Plan.[4] The amendments propose (1) to modify the fees payable by vendors of the Network B market information in respect of nonprofessional subscriber services, (2) to introduce pay-for-use rates into the Network B rate schedules following a pilot test that commenced in February 1997, and (3) to grant each vendor of a pay-for-use service the ability to limit its monthly pay-for-use obligation for each of its customers that qualifies as a nonprofessional subscriber.

Pursuant to Rule 11Aa3–2(c)(1), the CTA and CQ Participants submitted this notice of proposed amendments to two effective national market system plans.[5] The Commission is publishing this notice to solicit comments from interested persons on the amendments.

[1] 17 CFR 240.11Aa3–2.

[2] 15 U.S.C. 78s(b)(1).

[3] The amendments were executed by each Participant in each of the Plans. The Participants include American Stock Exchange LLC, Boston Stock Exchange, Inc., Chicago Board Options Exchange, Inc., Chicago Stock Exchange, Inc., Cincinnati Stock Exchange, Inc., National Association of Securities Dealers, Inc. New York Stock Exchange, Inc., Pacific Exchange, Inc., and Philadelphia Stock Exchange, Inc.

[4] The Communications Facilities charge was incorrectly stated on the Schedule of Fees submitted with the proposal. The charge remains $250 for each unit as approved on October 14, 1997 in Securities Exchange Act Rel. No. 39235, 62 FR 54886 (October 22, 1997). Telephone conversation between Kerry G. Baker, Director, Market Data Services, Nasdaq/AMEX, and Mignon McLemore, Attorney, Division of Market Regulation, Commission, August 19, 1999.

[5] The CTA and CQ Plans have been designated as effective transaction reporting plans pursuant to Exchange Act Rule 11Aa3–1(b).

I. Description and Purpose of the Amendments

A. Rule 11Aa3–2

1. Nonprofessional Subscriber Service Rates

The Participants under the Plans that make Network B last sale information and Network B quotation information available (the "Network B Participants") impose on vendors a monthly fee of $3.25 for each nonprofessional subscriber to whom the vendor provides a Network B market data display service. These amendments propose to reduce that monthly fee from $3.25 to $1.00 for each nonprofessional subscriber to whom a vendor provides a Network B display service during the month.

The objective of the proposed plan amendments is to encourage the proliferation of those services and the widespread dissemination of Network B market data. The Network B Participants also believe that reductions in the nonprofessional subscriber rates respond to the growing number of broker-dealers and vendors that wish to provide on-line services to their customers, which services may, for example, enable their customers to price portfolios with real-time information and to receive "dynamically updated" services, such as real-time ticker displays.

For the nonprofessional subscriber rates (rather than the much higher professional subscriber rates) to apply to any of its subscribers, a vendor must make certain that the subscriber qualifies as a nonprofessional subscriber,[6] subject to the same criteria that have applied since 1985, when the Network B Participants first established a reduced rate for nonprofessional subscribers.

Only those nonprofessional subscribers that actually gain access to at least one real-time Network B quote or price during the month will be charged the proposed fees by the Network B Participants.

2. Pay-for-Use Rates

Since February 1997, the Network B Participants have conducted a pilot program pursuant to which vendors, providing Network B market data display services to nonprofessional subscribers, have been afforded the following tiered usage schedule as an alternative to the flat $3.25 monthly rate the Network B Participants have historically imposed on nonprofessional subscribers.

1–50 quotes = $0.50 per month, per quote
51–250 quotes = $3.25 per month, per user
251 + quotes = $35.00 per month, per user

Based on its experience with the tiered usage schedule and their extensive consultation with vendors and member organizations, the Network B Participants are proposing to alter the tiered usage schedule and to make the altered fee structure part of the Network B rate schedule.

Under the altered rates, each vendor would pay:

i. three-quarters of one cent ($0.0075) per quote packet [7] for each of the first 20 million quote packets that it distributes during a month;

ii. one-half of one cent ($0.005) per quote packet for each of the next 20 million quote packets that it distributes during that month (*i.e.*, quote packets 20,000,001 through 40,000,000 million); and

iii. one-quarter of one cent ($0.0025) for every quote packet in excess of 40 million that it distributes during that month.

The Network B Participants believe that the proposed pay-for-use fees may motivate additional market data vendors and broker-dealers to provide pay-for-use services, thereby making real-time market data even more readily available to investors through those channels.

3. Interplay of Nonprofessional-Subscriber and Pay-for-Use Rates

The Network B Participants further propose to reduce the cost exposure of vendors and broker-dealers by permitting them to limit the amount due from each nonprofessional subscriber each month. The vendor and broker-dealers would be eligible to pay the lower of either (i) the aggregate pay-per-use fees that would apply to the subscriber's usage during the month or (ii) the flat monthly $1.00 nonprofessional subscriber fee. The Network B Participants propose to offer this flexibility to each subscriber that qualifies as a nonprofessional subscriber and that has agreed to the terms and conditions that apply to the receipt of market information as a nonprofessional subscriber.

For ease of administration, the Network B Participants propose to allow each vendor and broker-dealer to apply the $1.00 fee for any month in which each nonprofessional subscriber retrieves 134 or more quote packets during the month, without regard to the marginal per-quote rate that the vendor or broker-dealer pays that month (*i.e.*, three-quarters, one-half or one-quarter cent per quote packet). In addition, each vendor may reassess each month to determine which fee is more economical, the per-quote fee or the nonprofessional subscriber fee.

* * * * *

This amendment furthers the objectives of the national market system regarding the dissemination of last sale information delineated in Sections 11A(a)(1)(C), 11A(a)(1)(D) and 11A(a)(3)(B) of the Act.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendment

The Participants have manifested their approval of the proposed amendments to the CTA and CQ Network B rate schedules by means of their execution of the amendments. The rate changes would become effective on the first day of the month that follows the month in which the Commission approves the proposed plan amendments.

D. Development and Implementation Phases

See Item I(C).

E. Analysis of Impact on Competition

The proposed amendments do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Network B Participants do not believe that the proposed plan amendments introduce terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Act.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

G. Approval by Sponsors in Accordance with Plans

In accordance with Section XII(b)(iii) of the CTA Plan and Section IX(b)(iii) of the CQ Plan, each of the Participants has approved the fee reductions.

[6] A "nonprofessional subscriber" shall receive the information solely for his personal, non-business use. The subscriber shall not furnish the information to any other person. *See* NYSE and ASE Application and Agreement for the Privilege of Receiving Last Sale Information & Bond Last Sale Information as a Nonprofessional Subscriber, for the qualifications necessary to be classified as a nonprofessional subscriber.

[7] A *quote packet* refers to any data element, or all data elements, relating to a single issue. Last sale price, opening price, high price, low price, volume, net change, bid, offer, size, best bid and best offer all exemplify data elements. "IBM" exemplifies a single issue. An index value constitutes a single issue data element.

H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

I. Terms and Conditions of Access

See Item I(A) above.

J. Method of Determination and Imposition, and Amount of Fees and Charges

See Item I(A) and the text of the amendments.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Rule 11Aa3–1 (solely in its application to the amendments to the CTA Plan)

A. Reporting Requirements

Not applicable.

B. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

C. Manner of Consolidation

Not applicable.

D. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

E. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

F. Terms of Access to Transaction Reports

See Item I(A).

G. Identification of Marketplace of Execution

III. Solicitation of Comments

Section 11A of the Act requires that the Commission assure fair competition among brokers and dealers and assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities.[8] Another provision in this section authorizes the Commission to prescribe rules to assure that all persons may obtain this market data on terms that are "not unreasonably discriminatory."

Based on these standards, the Commission requests comment on whether the tiered fee structure applicable to users is unreasonably discriminatory.

1. The usage-based fee is structured as a fee per user with decreases for larger numbers of users. Will this tiered fee structure have an effect on competition among broker-dealers?

2. Will these volume discounts inure to the benefit of retail investors equally regardless of the broker-dealer they choose?

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CTA. All submissions should refer to the file number in the caption above and should be submitted by September 20, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22375 Filed 8–27–99; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78k–1(a)(1)(C)(i) and (ii).

[9] 17 CFR 200.30–3(a)(27).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Meeting Notice

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of August 30, 1999.

A closed meeting will be held on Thursday, September 2, 1999, at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain

staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, September 2, 1999, will be:

Institution and settlement of administrative proceedings of an enforcement nature.
Institution of injunctive actions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: August 25, 1999.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–22664 Filed 8–26–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41775; File No. SR–Amex–99–28]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC to Revise the Settlement Value Calculation Methodology for Nasdaq/NMS Component Stocks in the Morgan Stanley High Technology 35 Index

August 20, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 29, 1999, the American Stock Exchange LLC (the "Exchange" or "Amex") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise the settlement value calculation methodology for Nasdaq National Market System ("Nasdaq/NMS") component stocks in the Morgan Stanley High Technology 35 Index ("Index"). The proposal does not revise the Index in any other way.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to revise the settlement value calculation methodology for Nasdaq/NMS component stocks in the Index. Currently, the Index's settlement value is determined by using the regular way opening sale price for each of the Index's component stocks in its primary market on the last trading day prior to expiration.[3] The Exchange proposes to revise the settlement value calculation methodology by using the volume weighted average price for each Nasdaq/NMS listed Index component, as calculated during the first five minutes of trading immediately following the first reported trade for such component.[4]

[3] *See* Securities Exchange Act Release No 36283 (Sept. 26, 1995), 60 FR 51825 (Oct. 3, 1995) (order approving the Exchange's proposed rule change to list and trade options on the Index).

[4] If no other trades are executed in a Nasdaq/NMS listed Index component during the five minutes following the first reported trade, the Exchange will use the price of the first reported trade in calculating the settlement value for the Index. Telephone conversation between Michael L. Loftus, Attorney, Division of Market Regulation, Commission, and Scott G. Van Hatten, Legal Counsel, Derivative Securities, Exchange (August 17, 1999).

While investors in exchange-listed securities are able to receive executions at the specialist-determined opening price by entering a market-on-open order, investors in Nasdaq securities cannot be assured of transacting at a price equal to the first reported print. In some instances, the first reported price may be significantly different than the price at which investors receive execution. As a result, investors, market-makers, and the Index specialist cannot be sure that their hedges or offsets will converge to the settlement value for the Index. Moreover, in some cases the value of the hedge may differ significantly from the Index settlement value. This uncertainty adds to the cost of trading the Index options and makes them less desirable to trade.

While it may remain difficult to accomplish complete or perfect convergence using the proposed methodology, the volume weighted average price should provide a better opportunity for market participants to transact at a price near the settlement price used for the Index. This makes it less likely that there will be a significant difference between a market participant's hedge and the settlement value of the Index. For this reason, the Exchange is revising the settlement value calculation methodology for Nasdaq/NMS listed Index components.[5]

The Exchange proposes to calculate the Index's settlement value by using the volume weighted average price for all Nasdaq/NMS listed Index components, as calculated during the first five minutes of trading in such component. Once the first trade in a Nasdaq/NMS component is reported, that component's volume weighted average price is determined by: (i) Multiplying the number of shares traded (volume) by the price at which those shares traded (execution price) for each trade; (ii) aggregating these products; and (iii) dividing this sum by the total number of shares traded (total volume) during the five minute period immediately following the first reported trade.[6] For all other Index components not primarily listed on the Nasdaq/NMS (*i.e.*, those Index components having the Exchange or the New York Stock Exchange as their primary market), the Index's settlement value will continue to reflect the regular way opening sale prices reported on the primary market on the last trading day prior to expiration.

[5] The Exchange intends to submit to the Commission a separate, but similar, rule filing that revises the settlement value calculation methodology for other Exchange indexes by using volume weighted average prices for Nasdaq/NMS component securities in place of regular way opening sale prices. Telephone conversation between Michael L. Loftus, Attorney, Division of Market Regulation, Commission, and Scott G. Van Hatten, Legal Counsel, Derivative Securities, Exchange (August 17, 1999).

[6] The facilitate the prompt and accurate calculation of the Index's final settlement value, the volume weighted average price for all Nasdaq/NMS stocks included in the Index will be calculated by Nasdaq's "Index Calculation Group" and forwarded electronically to Amex's "Index Calculation Group."

The settlement value calculation methodology currently used for Nasdaq/NMS components ("Old Methodology") will continue to be used for the settlement of any option series still outstanding when Index option contracts based on the proposed settlement value calculation methodology ("New Methodology") are introduced. Thereafter, any newly introduced Index option series will settle based on the New Methodology. Index option contracts based on the Old Methodology will be aggregated with those based on the New Methodology for purposes of determining compliance with position and exercise limits.[7] LEAPS® (Long Term Equity Anticipation Securities) still outstanding when the New Methodology is implemented will continue to settle based on the Old Methodology. Thereafter, any newly introduced LEAPS® will settle based on the New Methodology.

The Exchange believes that the use of the volume weighted average price to calculate the Index's settlement value is appropriate and should result in a settlement value that better reflects the markets in Nasdaq/NMS securities. The Exchange proposes no other changes to the Index, and will continue to maintain the Index in accordance with the applicable criteria set forth in the original order approving the Index for options trading.[8] The Exchange will disseminate an information circular to its members to inform them of the change to the Index's settlement value calculation methodology. The circular will detail the method by which contracts settling under the Old Methodology will be phased out and those settling based on the New Methodology will be introduced.

[7] As set forth in Exchange Rules 904C and 905C, the current position and exercise limits for options on the Index are 15,000 contracts on the same side of the market. The Exchange notes, however, that these position and exercise limits may be revised upwards in connection with an Exchange proposal to increase the position and exercise limits for narrow-based index options. *See* Securities Exchange Act Release No. 40756 (Dec. 7, 1998), 63 FR 68809 (Dec. 14, 1998).

[8] *See* Note 3 *supra*.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Section 6(b)(5),[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices; promote just and equitable principles of trade; foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; and remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) by its terms, does not become operative for 30 days after July 29, 1999, the date of filing; [11] and the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with the text of the proposal, at least five business days prior to the filing date; the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) [13] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if its appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] Although the proposed rule change is considered effective upon filing, it may not become operative until at least August 28, 1999, which is 30 days after the date of filing (July 29, 1999).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–99–28 and should be submitted by September 20, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22428 Filed 8–27–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41770; File No. SR–EMCC–99–09]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding Year 2000 Policies

August 20, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 19, 1999, the Emerging Markets Clearing Corporation ("EMCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items II and II below, which items have been prepared primarily by EMCC. The Commission is publishing this notice

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Under the proposed rule change, EMCC will not activate any new or additional participant accounts or provide new services to participants after November 1, 1999, and until reasonably practicable in January 2000.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, EMCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. EMCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change provides that, EMCC will not activate any new or additional participant accounts or provide new services to participants after November 1, 1999, and until reasonably practicable in January, 2000. Among other things, EMCC announced in its August 6, 1999, Important Notice that after November 1, 1999, and for the remainder of the calendar year, EMCC will not: (1) permit new participants to utilize EMCC's services; (2) allow current participants to utilize new FMCC services; and (3) assign additional participant numbers to current participants.

EMCC's Rule 2 provides in part that:

> the Corporation may deny an application to become a Member or to use one or more additional services of the Corporation upon a determination by the Corporation that the Corporation does not have adequate personnel, space, data processing capacity or other operational capability at such time to perform its services for the applicant or Member without impairing the ability of the Corporation to provide services for its existing Settling Members, to assure the prompt, accurate and orderly processing and settlement of securities transactions or to otherwise carry out its functions; provided, however, that any such applications which are denied pursuant to this paragraph shall be approved as promptly as the capabilities of the Corporation permit.

EMCC believes that continuing to activate numerous new or additional participant accounts or to provide new services to participants after November 1st could potentially be disruptive to the rest of its Year 2000 efforts. Specifically, EMCC will be devoting a great deal of resources to confirming the Year 2000 readiness of its systems and applications in November of 1999. Additionally, EMCC would like to ensure that it has enough time to deal with any unanticipated issues that arise before the end of the calendar year.

EMCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. In particular, the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[3] which requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

EMCC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

EMCC advised members of the Year 2000 policy modifications in an Important Notice, dated August 6, 1999. No written comments relating to the Important Notice or proposed rule change have been solicited or received. EMCC will notify the Commission of any written comments received by EMCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[4] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission finds that the proposed rule change is consistent with this obligation because the proposed modifications to EMCC's Year 2000 policies will permit EMCC sufficient time before year end to complete its Year 2000 preparations. As a result, EMCC should be able to continue to provide prompt and accurate clearance and settlement of securities transactions before, on, and after Year 2000 without interruption.

EMCC requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing because such approval will allow EMCC to better prepare for a smooth Year 2000 transition.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of EMCC. All submissions should refer to the File No. SR–EMCC–99–09 and should be submitted by September 20, 1999.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[5] that the proposed rule change (File No. SR–EMCC–99–09) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22376 Filed 8–27–99; 8:45 am]

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[2] The Commission has modified the text of the summaries prepared by EMCC.

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41773; File No. SR–MSRB–99–7]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing of Proposed Rule Change Relating to an Amendment to Rule G–16 on Periodic Compliance Examinations

August 20, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 13, 1999, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing herewith a proposed rule change to Rule G–16, on periodic compliance examination (hereinafter referred to as the "proposed rule change"). The proposed rule change will revise the 24-month examination in Rule G–16 to a two calendar year requirement. Below is the text of the proposed rule change: [3]

Rule G–16. Periodic Compliance Examination

At least once each [twenty-four months] *two calendar years*, each broker, dealer and municipal securities dealer shall be examined in accordance with Section 15B(c)(7) of the Act to determine, at a minimum, whether such broker, dealer or municipal securities dealer and its associated persons are in compliance with all applicable rules of the Board and all applicable provisions of the Act and rules and regulations of the Commission thereunder.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Section 15B(c)(7)(A)[4] of the Act provides that periodic examinations of dealers for compliance with Board rules are to be conducted by the National Association of Securities Dealers, Inc. ("NASD") with respect to securities firms and by the appropriate federal bank regulatory agencies with respect to bank dealers. Rule G–16 permits such examinations to be combined with other periodic examinations of securities firms and bank dealers in order to avoid unnecessary regulatory duplication and undue regulatory burdens for such firms and bank dealers.

By letter dated April 28, 1999, NASD Regulation, Inc., ("NASDR") requested that the Board revise Rule G–16. The letter states that because of NASDR's efforts to coordinate examination schedules, NASDR believes there is a need for a change in Rule G–16. NASDR requested that the Board change the 24-month requirement in Rule G–16 to a two calendar year requirement.

NASDR states that the requirement in Rule G–16 that municipal securities examinations commence within 24-months of the previous examination takes precedence over all examinations when coordinating examination schedules. NASDR uses the "field work start date" of a firm's prior municipal securities examination to calculate the 24-month period for the purposes of Rule G–16. Apply this methodology, NASDR identifies all municipal securities examinations required in a given calendar year. A determination is then made as to whether the identified firms are also scheduled for a routine cycle examination during the same year.

If a routine cycle examination is required of a firm that is subject to a municipal inspection, the routine and municipal examinations are combined. If a routine cycle examination is not required, a separate "off-cycle" municipal examination may have to be conducted on-site. Whenever a municipal securities examination is accelerated, the due date for commencement of a subsequent examination is moved to an earlier period; increasingly the first quarter. NASDR states that this hampers both current and future examination planning and coordination. NASDR states that without the rule change it may be necessary to remove municipal securities examinations from the coordinated examination programs.

The Board discussed the proposed rule change with representatives from the Federal Deposit Insurance Corporation, the Federal Reserve Board, and the Office of the Comptroller of the Currency ("the bank regulators") The bank regulators also examine dealers for compliance with Board rules pursuant to Rule G–16. All of the bank regulators responded favorably to the NASDR's request, stating that the requested change would help bank regulators better coordinate examinations.

Coordination of on-site examinations eliminates unnecessary regulatory duplication and is less intrusive for dealers without negatively impacting investor protection. A formal Memorandum of Understanding among the North American Securities Administrators Association, Inc., SEC, NASDR and other securities industry self-regulatory organizations reflects the joint commitment to coordinated examinations. The Board believes that the proposed rule change will permit more effective coordination of examinations with other regulatory and self-regulatory organizations. It will also provide operating flexibility in planning and scheduling NASDR's and the bank regulators' overall examination program.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] New language is italicized and deletions are in brackets.

[4] 15 U.S.C. 78o–4(c)(7)(A).

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–99–7 and should be submitted by September 20, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22429 Filed 8–27–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41774; File No. SR–PCX–99–24]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Automated Opening Rotations

August 20, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 13, 1999, the Pacific Exchange Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On August 4, 1999, the Exchange filed with the Commission Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to adopt a new procedure for handling customer orders and executing option transactions during the opening rotation. This rule change is intended to automate the current procedures for opening rotations, except for those situations in which the opening rotation will continue to be conducted manually. The test of the proposed rule change follows. New text is italicized.

¶5073—Trading Rotations

Rule 6.64*(a)*—No additional change.

(b) Automated Opening Rotation. The Exchange may employ automated opening rotations in designated series of options. All option series that are eligible for participation in the Automatic Opening Rotation will be opened automatically. Conversely, if an option series is not opened automatically pursuant to this Rule, then that series must be opened manually pursuant to applicable Exchange Rules. Automated Opening Rotations, when held, will be based upon the following procedures.

(1) Establishing a Market for the Opening Rotation: Prior to the opening rotation in a particular option series, the Order Book Official will determine whether there are any manual orders being represented in the trading crowd to be executed during the opening rotation. In doing so, the Order Book Official will call for bids and offers from the trading crowd once the underlying security has opened. The trading crowd may determine that the bids and offers then being displayed on the overhead screens are accurate, or alternatively, may modify those bids and offers by public outcry.

(2) Designating Series that are Not Eligible for the Automated Opening Rotation. The Order Book Official must identify, prior to the opening, all option series that are not eligible for the automated opening rotation. These series include:

(A) Series for which there are no market or marketable limit orders in the POETS system.

(B) Series for which there are one or more manual orders being represented in the trading crowd that are likely to be executed during the opening rotation, as determined by an Order Book Official.

(C) Series for which one or more members of the trading crowd has reasonably requested that a manual opening rotation be conducted. Two Floor Officials may deny member requests for manual opening rotations in the absence of reasonable justification for doing so. Prior to the opening, the OBO, in conjunction with the members of the trading crowd, will set for each option issue a number of contracts that constitutes an imbalance threshold, i.e., a specific number of option contracts to buy in excess of the number of contracts to sell or a specific number of contracts to sell in excess of the number of contracts to buy. The POETS system will not automatically open any series with an imbalance exceeding the threshold for that issue.

(3) Automated Opening Rotations. Series Eligible for the Automated Opening Rotation will be opened automatically based on the following principles and procedures:

(A) The POETS system will determine a single price at which a particular option series will be opened, as provided in Commentary .03, below.

(B) Orders in the system will maintain priority over Market Maker bids and offers. Orders in the system will be matched up with one another, if possible, before they are executed against the accounts of Market Makers participating on the Automatic Execution System.

(C) If there is an imbalance in the number of contacts to buy or sell at the opening, then the imbalance will be cleaned up by the Market Makers who are participating on the Automatic Execution System. Accordingly, each Market Maker will be assigned a number of option contracts for execution until the imbalance has been exhausted. The maximum number of option contracts that may be assigned to a Market Maker is established pursuant to Rule 6.87. When the Auto-Ex System assigns the imbalance of contracts to Market Makers, the assignments will be made in the same manner in which option contracts are allocated to Market Makers who are participating on the Auto-Ex System pursuant to Rule 6.87. The maximum number of contracts assigned will be the same as the number assigned under the Auto-Ex procedures established pursuant to Rule 6.87.

Commentary:

.01–.02—No Change.

.03—Determining the Opening Price of a Single Price Opening. The appropriate price to be used in a single price opening on the Exchange is determined in the following manner: Once the trading crowd has established the bid and offering prices in a particular series, the Order Book Official will identify the number of contracts available to sell at the previously-established bid price and the number of contracts available to buy at the previously-established offering price.

(a) If the number of contracts available to sell at the bid price is greater than the number available to buy at the offering price, then the opening price will be the bid price.

(b) If the number of contracts available to buy at the offering price is greater than the number available to sell at the bid price, then the opening price will be the offering price.

(c) If eligible market and marketable limit orders can be completely satisfied by trading against other orders in the Limit Order Book, then the market may open between the established bid and ask prices, with no Market Maker participation. For example, if the market is 2–2¼, with an order in the Limit Order Book to sell 20 contracts at 2⅛, and there is a market order to buy 5 contracts, the single price open, will occur with 5 contracts trading at 2–⅛. The opening price will always be on or between the established bid and offer.

(d) If there is no trading increment available at the half-way point between the bid and offering prices e.g., as in the case of a market of bid, 2 1/16 asked), then the opening price will be established at the price closest to the last sale price of option contracts in that series.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the place specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Introduction. The Exchange is proposing to adopt a new procedure to facilitate trading of option contracts during the opening rotation.[4] Opening rotations are held promptly following the opening of the underlying security on the principal market where it is traded.[5] Opening rotations are conducted by an Order Book Official ("OBO"), who is an Exchange employee.[6] The PCX rules on opening rotations apply to both index and equity option contracts.[7]

Current Procedures for Opening Rotations. Prior to the opening, firms and floor brokers may enter customer orders into the Limit Order Book ("Book") for handling by the OBO to facilitate a single price opening. It is the responsibility of the floor broker to make the OBO aware of orders that may be expected to trade on the opening.[8]

In conducting the opening rotation, the OBO first asks the trading crowd whether the quotes generated by Auto-Quote[9] are consistent with the trading crowd's markets. At that time, the market makers have an opportunity to adjust the Auto-Quote parameters, including the volatility settings. If one or more members of the trading crowd determines to improve a market, they may do so. Alternatively, the trading crowd or LMM may establish a market without the use of the Auto-Quote function, and in that case, the OBO will request bids and offers from members of the trading crowd and enter the quotes manually.

Once the best bid and ask prices have been established, each option series,[10] is opened as follows: First, if there are no orders in the Book and no orders being manually represented in the trading crowd of which the OBO is aware, the series is flagged "open," free trading is commenced in that series and the Auto-Ex System[11] is flagged on in that series. Second, if there are one or more market or marketable limit orders in the Book, or one or more orders being manually represented in the trading crowd and designed for trading at the opening rotation, the OBO will call for a market and attempt to determine from floor brokers the sizes and prices of those orders.[12] The OBO will then ask the floor brokers in the crowd what customers orders they are holding to be executed at the opening and, when possible, match all customers orders at the appropriate price.[13] If imbalances occur, the OBO asks the market makers if they can clean up the imbalance at the established price and, if not, establish

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange further clarifies the operation of automated openings, provides rule text related to the new procedures, and justifies its request for accelerated approval. *See* letter from Michael D. Pierson, Director, Regulatory Policy, PCX, to Michael A. Walinskas, Associate Director, Commission, dated August 3, 1999 ("Amendment No. 1").

[4] The Exchange intends to continue to employ the current (manual) procedures for closing rotations.

[5] *See* PCX Rule 6.64, Comment. .01(a).

[6] *See* PCX Rules 6.51 and 6.64.

[7] *See* PCX Rule 7.10.

[8] *See* OFPA A–1.

[9] The Auto-Quote feature of POETS allows market quotes to be generated systematically, using programmed theoretical models and variable criteria that are entered through the Auto-Quote function by Book staff. *See* Securities Exchange Act Release No. 27633 (January 18, 1990), 55 FF 2466 (January 24, 1990).

[10] The term "series" means all option contracts of the same class (puts or calls) having the same expiration date and exercise price, and the same unit of trading. In general, when a new issue is first listed and traded on the Exchange, there will be 24 series available for trading. These include series that are in-, at- and out-of-the money, for both puts and calls, and for each of four expiration months. As the price of the underlying stock moves and new series are added, the number of series outstanding at any given time can be greater than 100. For example, on July 1, 1999, the number of series outstanding in options on America Online, Inc. was 104.

[11] The Auto-Ex system permits eligible market or marketable limit orders sent from member firms to be executed automatically at the displayed bid or offering price. Participating market makers are designated as the contra side to each Auto-Ex order. Participating market makers are assigned by Auto-Ex on a rotating basis, with the first market maker selected at random from the list of signed-on market makers. Auto-Ex preserves Book Priority in all options. Automatic executions through Auto-Ex are currently available for public customer orders of 20 contracts or less in most option issues traded on the Exchange (however, the maximum size of orders eligible for Auto-Ex is ten contracts in a small number of issues).

[12] *See* OFPA C–1. If the OBO believes that the response to the request for markets is insufficient either as to price or size, the OBO may request markets from each market maker who did not respond and/or may call for supplemental market makers. *See* OFPA C–1.

[13] *See* OFPA C–1. The appropriate price that is used in a single price opening is determined in the following manner: Once the bid and offering prices in a particular series have been determined, the OBO will identify the number of contracts available to sell at the bid price and the number of contracts available to buy at the offering price. If the number available to sell at the bid price is greater than the number available to buy at the offering price, then the opening price will be the bid price, and vice versa. If the number of contracts to sell is equal to the number to buy, then the opening price will be established halfway between the bid and offering price. However, if there is no trading increment available at the half-way point between the bid and offering prices (*e.g.*, as in the case of a market 2 bid, 2 1/16 asked), then the opening price will be established at the price closest to the last sale price of option contracts of that series.

If market and marketable limit orders can be completely satisfied by trading against other orders in the Book, then the market may open between the established bid and ask prices, with no market maker participation. For example, if the market is 2–2¼, with an order in the Book to sell 20 contracts at 2⅛, and a market order to buy 5 contracts, the single price opening will occur with 5 contracts trading at 2⅛ (public customer to public customer). The market quote at the opening will then be 2–2⅛.

[5] 17 CFR 200.30–3(a)(12).

where the orders can be filled.[14] Market makers who respond with bids or offers are entitled to participate based on existing rules on priority of bids and offers.[15]

While conducting the opening rotation, the OBO will attempt to match all public customer orders at a single price.[16] If there is an imbalance of public customer orders in the Book, the OBO will seek market maker and firm participation to establish the opening price.[17] The OBO may give market orders that are entitled to participate at the opening[18] priority over limit orders at the same opening price on the Book.

Generally, each option issue traded at a given trading post is to be opened in the same order in which opening transactions are reported in the underlying securities.[19] In opening a particular option issue, the OBO will ordinarily first open one or more series of a given class having the nearest expiration, and then proceed to series of options having the next most distant expiration, and so forth, until all series in that issue have been opened.[20] Unless the Options Floor Trading Committee ("OFTC") provides otherwise, the OBO will determine whether to open puts first or calls first, but may alternate the opening of put series and call series, or may open all series of one type (puts or calls) before opening series of the other type, depending upon market conditions.[21]

New Automated Opening Rotation ("AOR") Process. The Exchange is proposing to adopt a new procedure that will allow the OBO to establish electronically a single price opening for executing eligible market and marketable limit orders in the POETS system. In the event of an imbalance, any remaining orders in the system that are eligible to be executed will be assigned to market makers participating on the Auto-Ex System. The new process involves three basic steps: first, the markets are established; second, the opening rotation is automatically processed for the majority of series; and finally, any series was manual orders or complication is opened manually *i.e.*, pursuant to the current procedures for opening rotations as described above.[22]

More specifically, under the new AOR process, opening rotations on the PCX will occur in the following manner: Prior to the opening, the OBO will determine whether there are any orders in the trading crowd to be executed at the opening.[23] Once the underlying security has opened, the OBO will request from the trading crowd bids and offers in the specific option issue. The trading crowd may determine that the posted bids and offers are accurate, or alternatively, may request by public outcry that certain quotes be modified.[24]

Once the bid and asking price in each series has been ascertained, the OBO and AOR system will identify all series that are eligible for the AOR and that can be opened immediately, and will also identify all series that are not eligible for the AOR. Those that are not eligible for the AOR must be opened manually. Procedures for automatic and manual opening are discussed below.

1. *Automatic Opening*

The Exchange intends to use the AOR in all issues traded on the PCX. The Exchange also expects that particular series will only be designated for manual openings (*i.e.*, "de-selected" from the automated procedure) in unusual circumstances. The Exchange does not anticipate any situations where all series of a given issue will be opened manually when the AOR is operational. The Exchange also does not anticipate that any particular series will be de-selected and opened manually on a routine or regular basis.[25]

To prepare for an automated opening, the AOR will first exclude series for which there are no market or marketable limit orders in the system,[26] as well as all series deemed ineligible for AOR. The series eligible for AOR will be promptly opened in accordance with the following principles and procedures. First, the system will determine a single price at which the series will be opened.[27] Second, orders in the system will maintain priority over market maker bids and offers, so orders in the system will be matched up with one another, if possible, before executing against the accounts of market makers. Third, if there is an imbalance in the number of contracts to buy or sell at the opening,[28] then the imbalance will be "cleaned up" by the market makers who are participating on the Auto-Ex system, *i.e.*, the system will assign a set number of contracts (generally 20) to each participating market marker until the imbalance has been exhausted.

Currently, under the manual process, the imbalance will be cleaned up based on auction market principles: Any member can bid or offer for some (or all) of the imbalance at the established price. If there are no bids or offers for the imbalance, the OBO will allocate the imbalance to the members of the trading crowd. Under the proposal, however, the imbalance will be allocated to the members of the trading crowd using the Exchange's existing Auto-Ex system. When the Auto-Ex System assigns the imbalance of contracts to market makers, the assignments will be made in the same manner in which option contracts are allocated to market makers who are participating on the Auto-Ex System pursuant to PCX Rule 6.87. The maximum number of contracts assigned will be the same as the number assigned under the Auto-Ex procedures established pursuant to PCX Rule 6.87.[29]

The number of contracts allocated to each market will depend on the Auto-Ex size guarantee established for that particular issue. If that number is 20 (which currently applies to most issues currently traded on the PCX), then based on the example, two market markers will each receive automatic executions of 20 contracts against their trading accounts at the opening price. Under the proposal, whatever the opening price, the system will guarantee that all contracts constituting an imbalance will be cleaned by the Auto-Ex System.[30]

Under the proposal, orders may participate in the automated opening rotation regardless of size. An order will not be prohibited from participating in the automated opening rotation on the ground that the order is ineligible from being executed over the Auto-Ex System due to its size.[31]

2. Manual Opening

As noted above, all series that are not eligible for AOR will have been identified before any series are opened automatically. The OBO can designate a series as ineligible for AOR by deliberately not entering a quote into the system for that series. Series not eligible for the AOR include series for which: (a) there are orders requiring special handling; [32] (b) there is an imbalance of contracts exceeding an established threshold; or (c) the trading crowd and OBO determine that the series should be opened manually.

a. Manual Orders Requiring Special Handling

A series will be deemed ineligible for AOR if a broker in the crowd is holding an order that is likely to be executed during the opening. In general, manual orders to buy at relatively low prices or to sell at relatively high prices generally will not likely participate in the opening.[33]

b. Imbalance of Contracts Exceeding Established Thresholds

The Exchange will establish, for each option issue, a number of contracts that constitutes an imbalance threshold. This number will attempt to reflect the relative liquidity in the trading crowd and size of the trading crowd.[34] The AOR will calculate imbalance on a series-by series basis and flag those series for which the imbalance threshold has been exceeded. The threshold level will vary by issue and by trading crowd. For example, assume the established market is 5–5¼ and there are orders for 100 contracts to buy at 5¼ and orders for 500 contracts to sell at 5. Since the imbalance is 400 contracts, the threshold will be exceeded unless the established level is greater than 400. If the established level is greater than 400, the opening will occur under AOR. If the threshold is exceeded there will be a manual opening.

c. Crowd's Request for Manual Opening

A member or members of a trading crowd may request a particular series to be opened manually, and the OBO will honor reasonable requests. These requests may typically be made in a series with a large amount of open interest or for other reasons.[35] Although the Exchange does not anticipate problems resulting from such requests, in the event of a dispute the matter would be resolved by floor officials.[36]

Obligations and Eligibility of Market Makers. Market makers may participate in the AOR if they are otherwise eligible to participate on the Auto-Ex system during the trading day pursuant to PCX Rule 6.87. Generally, to participate on Auto-Ex, a market maker must be present in the trading crowd and that trading crowd must be included within that market maker's primary appointment zone. If there is inadequate participation in a particular option issue, two floor officials may require market makers who are members of the trading crowd, as defined in subsection (6) of PCX Rule 6.87, to log on to Auto-Ex, while present in the trading crowd, absent reasonable justification or excuse for non-participation. The Exchange proposes that these rules will apply to market maker participation in the AOR with respect to contracts allocated to market makers during the opening rotation process.

Surveillance of Market Maker Procedures. The market makers participating on AOR will be required to price the contracts fairly, in a manner consistent with their obligations under PCX Rule 6.37. In conjunction with the implementation of the AOR system, the Exchange will publish a regulatory bulletin to remind market makers of their obligation to set Auto-Quote fairly. The Exchange believes that a number of factors, including scrutiny by customers and firms representing customer orders, will ensure that market makers adjust the Auto-Quote values consistent with their obligation. Moreover, market makers are required to vocalize their changes to Auto-Quote, which allows OBO's to oversee the markets and alerts market makers who may want to improve the markets. In addition, if an OBO notices any unusual activity in the setting of Auto-Quote values, the OBO must fill out an OBO Unusual Activity Report which will be investigated by the Exchange. Finally, the Exchange's Auto-Quote has an audit trail log that details every quote change resulting from the use of Auto-Quote. This audit trail report can be studied in the event of any concerns with the way the Auto-Quote values were established for AOR.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section

[14] *See* OFPA C–1. During the opening rotation, OBOs are permitted to match market orders at the opening price, but floor brokers who present these orders to the OBO must remain on the trading floor during the rotation (or must designate another floor broker to represent those market orders in his or her place). *See* OFPA A–1.

[15] *See* PCX Rules 6.73 and 6.75.

[16] *See* PCX Rule 6.75(c)(2).

[17] *See* PCX Rule 6.75(c)(2).

[18] The OFTC is required to establish a cut-off-time for orders entitled to participate in the opening. *See* PCX Rule 6.75(c)(1).

[19] *See* PCX Rule 6.64, Comment. .01(a).

[20] *See* PCX Rule 6.64, Comment. .01(a).

[21] *See* PCX Rule 6.64, Comment. .01(a).

[22] *See Current Procedures for Opening Rotations, supra.*

[23] These may include, for example, orders that cannot be represented in POETS, such as contingency orders, broker/dealer orders, orders designated "not held," orders for spreads or straddlers, combination orders, all-or-none orders, as well as any order the floor broker determines to represent manually. As noted above, it is the floor brokers' obligation to notify the OBO of such orders prior to the opening. *See* note 8, *supra.*

[24] Prior to an automated opening, the members of the trading crowd must establish a bid and offer for each series in a given issue. This occurs basically as follows: The OBO will first display a bid price and an offering price for a particular series. (These prices will have been established either by the Auto-Quote feature of POETS or by manual process, *i.e.*, a member or members of the trading crowd will vocalize bids and offers that a Market Quote Terminal Operator will enter into the system and display on the overhead screen.) The OBO will then ask the crowd if the displayed prices are "all right" (or other words to that effect). There will then be a short window period when the displayed prices may be adjusted. While the trading crowd is establishing the market, any member may vocalize a bid or offer that improves the market, and the OBO will be required to update the market accordingly. *See* Amendment No. 1.

[25] *See* Amendment No. 1.

[26] There can be single price opening unless there are orders eligible for trading being represented.

[27] The formula that the Exchange intends to use for establishing a single price opening in automated openings is set forth above. *See* note 13, *supra.*

[28] For example, if there are market or marketable limit orders collectively representing interest to buy 500 contracts and to sell 100 contracts at a single price, the imbalance will be 400 contracts. As discussed below, an imbalance in an amount greater than a previously-established threshold level will render the series ineligible for the AOR.

[29] *See* Amendment No. 1.

[30] *Id.*

[31] *Id.*

[32] The following types of orders are ineligible to participate in the automated opening rotation: (1) broker/dealer orders; (2) contingency orders; (3) spreads; (4) straddles; (5) not held orders; and (6) combination orders. These types of orders are defined in PCX Rule 6.62. If any of these types of orders are being represented in the trading crowd and are likely to participate in the opening based on price, a manual opening rotation will be held in that series. *See* Amendment No. 1.

Market orders and plain limit orders (*i.e.*, limit orders with no contingencies) are eligible to participate in the automated opening rotation. *See* PCX Rule 6.75(c)(1); OFPA A–1 (eligibility of market orders); and Amendment No. 1.

[33] If there is an order in the crowd that is ineligible to participate in the automated opening rotation due to its type, and, based on its price, that order is likely to participate in the opening (*e.g.*, there is a broker/dealer order to buy puts at 5¼ and the established market is 4⅞–5), the opening rotation will be conducted manually for that series. On the other hand, if the market were 5½–5⅞, the 5¼ bid would not likely participate in the opening, so it will not be required that a manual process be held. (A manual opening is required under proposed PCX Rule 6.64(b)(2)(B) for a series if there are one or more manual orders in the trading crowd "that are likely to be executed during the opening rotation, as determined by the Order Book Official.") However, in the second example above, the broker/dealer order to buy puts at 5¼ will be eligible to be executed in free trading immediately following the opening of that series. *See* Amendment No. 1.

[34] The Exchange anticipates that the number of contracts constituting an imbalance threshold will be established by the OBO in consultation with the trading crowd. The Options Floor Trading Committee will monitor and supervise the general process of designating imbalance thresholds on the trading floor. The Exchange believes that it is necessary to provide a reasonable amount of flexibility in the process of establishing particular thresholds, and further that there is little risk of abuse in providing flexibility because if low thresholds are established by a trading crowd, the result will merely be that certain series will have to be opened manually. Although the Exchange does not anticipate that there will be any problems in this area, the Exchange will study the process during the first six months of use of the new system, and if rule changes appear necessary, the Exchange will file a rule filing with the Commission to effect the changes necessary. *See* Amendment No. 1.

[35] The Exchange represents that it does not anticipate that this provision will be used with any regularity, but instead, should be used under extraordinary circumstances. For example, there may be a series that has a very large amount of open interest, and the underlying stock is involved in a takeover or merger. The crowd may prefer to have a particular series opened manually because the proposed takeover price is equal to the strike price of that series. In this exceptional case, the use of the open outcry system would be preferable to the use of the auto-ex system because the allocation of contracts would more likely be consistent with the trading strategies of the members of the trading crow. *See* Amendment No. 1.

[36] *See* PCX Constitution, art. IV, sec. 8. On the PCX, floor officials are members of the OFTC who are responsible for the general supervision of the dealings of members on the Options Floor.

6(b)[37] of the Act, in general, and furthers the objectives of Section 6(b)(5),[38] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to protect investors and the public interest, to remove impediments to and to perfect the mechanism of a free and open market and a national market system. Specifically, the proposal is designed to facilitate the execution of orders at the opening by providing a means of establishing a single price opening. This will expedite the opening of option issues on the Exchange, which will serve all market participants. It will eliminate problems associated with later openings, including the elimination of backlogs of unexecuted orders that can result when opening rotations are conducted entirely manually.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–99–24 and should be submitted by [insert date 21 days from date of publication].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[39]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22427 Filed 8–27–99; 8:45 am]

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[37] 15 U.S.C. 78f(b).

[38] 15 U.S.C. 78f(b)(5).

[39] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41776; File No. SR–Phlx–99–07]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1 and 2 and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 3 to the Proposed Rule Change Requiring Off-Floor Traders for which the Phlx is the Designated Examining Authority to Successfully Complete the General Securities Representative Examination Series 7

August 20, 1999.

On March 15, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")[1] and Rule 19b–4 thereunder.[2] The proposed rule change would amend Phlx Rule 604, Registration and Termination of Registered Representatives, to require successful completion of the General Securities Representative Examination Series 7 ("Series 7 Exam") by persons who are associated with members or participant organizations[3] for which the Exchange is the Designated Examining Authority ("DEA")[4] and who trade off the floor of the Exchange ("off-floor traders").[5]

On April 6, 1999, the Exchange filed Amendment No. 1 with the Commission, removing a description of professional traders from the filing.[6] On April 12, 1999, the Exchange filed Amendment No. 2 with the Commission, making technical changes to the proposed rule.[7] On August 18, 1999, the Exchange filed Amendment No. 3 with the Commission, which revised the rule language.[8] Notice of the proposed rule change, as amended, together with the substance of the proposal, was published in the **Federal Register**.[9] The Commission received 22 comment letters from 21 commenters on the filing.[10] This order approves the proposed rule change, as amended.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term "participant organizations" refers to foreign currency options participant organizations, which includes foreign currency options participants firms and foreign currency options participant corporations. Phlx Rules 13–16.

[4] Pursuant to Section 17(d) of the Exchange Act, 15 U.S.C. 78q(d), the Commission may "allocate among self-regulatory organizations the authority to adopt rules with respect to matters as to which, in the absence of such allocations, such self-regulatory organizations share authority under this title." The DEA is the self-regulatory organization ("SRO") that has the responsibility for examining a broker or dealer member for compliance with the federal securities laws and the rules of the SRO.

[5] Under the proposed rule change, Phlx Rule 604 would be retitled as Registration and Termination of Registered Persons.

[6] *See* Letter from Richard S. Rudolph, Legal Counsel, Phlx, to Karl Varner, Special Counsel, Division of Market Regulation ("Division"), SEC (April 6, 1999).

[7] *See* Letter from Richard S. Rudolph, Legal Counsel, Phlx, to Karl Varner, Special Counsel, Division, SEC (April 12, 1999).

[8] *See* Letter from Richard S. Rudolph, Legal Counsel, Phlx, to Karl Varner, Special Counsel, Division, SEC (Aug. 18, 1999). Amendment No. 3 revised the proposed rule language for paragraph (e) of Phlx Rule 604. (Amendment No. 3 was inadvertently designated as Amendment No. 2 by the Phlx).

[9] Securities Exchange Act Release No. 41306 (April 16, 1999), 64 FR 22665 (April 27, 1999).

[10] *See* Letter from Donald M. Nisonoff, Senior Counsel, Proskauer Rose LLP to Secretary, SEC (May 14, 1999) ("Nisonoff Letter"); E-mail from Chris Pheil to Rule-Comments at OSI (May 3, 1999); E-mail from Victor Shakerchi to Rule-Comments at OSI (May 3, 1999); Letter from H.R. Roger Menear III to Secretary, SEC (May 7, 1999); Letter from Brian Dalinsky to Secretary, SEC (May 7, 1999); Letter from Vladimir M. Slavinsky to Secretary, SEC (May 7, 1999); Letter from Joseph H. Phoenix to Secretary, SEC (May 7, 1999); Letter from Aleksandr E. Shapiro to Secretary, SEC (May 7, 1999); Letter from Dan Dimitrigevic to Secretary, SEC (May 7, 1999); Letter from Nelson R. Davis, Jr. to Secretary, SEC (May 10, 1999), E-mail from Sean von Tagen to Rule-Comments at OSI (May 12, 1999); E-mail from Dan Laycock to Rule-Comments at OSI (May 4, 1999; E-mail from Barry Pozmantier to Rule-Comments at OSI (May 6, 1999) ("Pozmantier E-mail"); E-mail from David Kolpak to Rule-Comments at OSI (May 18, 1999); E-mail from David Wacker to Rule-Comments at OSI (May 16, 1999); E-mail from Jerry Wickey to Rule-Comments at OSI (May 16, 1999); E-mail from John Hodges to Rule-Comments at OSI (May 16, 1999); E-mail from Alan Goldstein to Rule-Comments at OSI (May 16, 1999; E-mail from Peter Kulbokas to Rule-Comments at OSI (May 20, 1999); Letter from P.L. Blackburn, Office Manager, Bright Trading, to Secretary, SEC (May 10, 1999) ("Blackburn Letter"); Letter from Ron Owens to SEC (May 15, 1999); Memorandum to File No. SR–PHLX–99–07 (June 1, 1999) (telephone conference with Donald Nisonoff and Saul Cohen, Proskauer Rose, LLP).

I. Background and Summary

Phlx Rule 604 specifies the qualification requirements for persons conducting a public business or duties customarily performed by registered representatives. Specifically, these associated persons are required to register on Form U–4, Uniform Application for Securities Industry Registration or Transfer, and to pass the Series 7 Exam and maintain an effective Series 7 Full Registration/General Securities Representative registration.[11] In addition, Phlx Rule 604 specifies the qualification requirements for associated persons of a member or participant organization for which the Exchange is the DEA when these persons are not registered representatives, but are compensated directly or indirectly for trading securities for the firm's account.[12] Currently, this class of associated persons, which includes the Phlx off-floor traders who are the subject of the proposed rule change, are only required to file a Form U–4.

The Exchange proposes to amend Phlx Rule 604 to require successful completion of the Series 7 Exam by persons who are associated with members or participant organizations for which the Exchange is the DEA and who trade off the floor of the Exchange. The Exchange believes those persons to whom the new examination requirement would apply primarily are associated with limited liability companies ("LLC") for the purpose of trading securities off the floor of the Exchange for the firm's account. According to the Exchange, these off-floor traders generally become members of an LLC to avail themselves of good faith margin[13] provided through the LLC's Joint Back Office[14] agreement with its clearing agent.

The proposal would require all currently registered associated persons who trade off the floor of the Exchange to register to take the Series 7 Exam within 30 days of the Exchange's notice to its membership of this requirement, and to successfully complete the Series 7 Exam within six months of the date of notice by the Exchange.[15] Those associated persons covered by the rule change will be required to notify the Exchange promptly that they have registered to take the Series 7 Exam. Persons who become associated with member organizations or participant organizations after the date of notice of this requirement must successfully complete the Series 7 Exam prior to conducting securities trading activities for which the examination is mandated.

II. Summary of Comments and the Exchange's Response

All 21 commenters expressed concerns about the proposal. Twenty commenters stated that, if the Exchange were to require an examination for off-floor traders, the Limited Representative-Equity Trader Examination ("Series 55 Exam"), which qualifies individuals to trade equity and convertible debt securities on a principal or agency basis, or another unspecified examination, would be more appropriate for those traders.[16] Some of these commenters argued that the Series 55 Exam is more relevant for off-floor traders. Two commenters added that the proposal will discourage trading off the floor of the Exchange without any regulatory benefit, because the Series 7 Exam covers a wide range of products and activities that typically are not engaged in by off-floor traders.[17] One of these commenters also objected to the proposal because in his view: (1) Off-floor traders associated with LLCs have limited interaction with traders at other firms and no contact with customers; (2) adequate controls exist now to limit any possible impact of trading off the floor of the Exchange;[18] and (3) the proposal is an indirect attempt to regulate credit used by the off-floor traders.[19] Another commenter stated that the proposal discriminates in favor of certain parties and against others because the Series 7 Exam is not required of floor traders and others conducting similar businesses.[20]

The Phlx in its response letter stated that the Series 7 Exam, rather than the Series 55 Exam, is appropriate for a logistical reason: To qualify to take the Series 55 Exam, an individual must first pass either the Series 7 Exam or the Corporate Securities Limited Representative Qualification Examination ("Series 62 Exam").[21] The Phlx believes that it is more practical to require the Series 7 Exam only, rather than both the Series 7 Exam and the Series 55 Exam. The Phlx also responded that the Series 55 Exam is not suitable because it is used to qualify individuals to trade equity and convertible debt securities on a principal or agency basis, with an emphasis on Nasdaq market maker activities and obligations. Moreover, the Exchange noted that the Series 55 Exam was designed with the assumption that the participant will already have been thoroughly tested on the critical areas in the Series 7 Exam (such as compliance with federal and state laws and industry regulations, characteristics of different investment products, investment risks, and principal factors affecting securities markets and prices for individual securities).

[11] *See* Phlx Rule 604(a).

[12] Phlx Rule 604(d) specifies that every person who is compensated directly or indirectly by a member or participant organization for which the Exchange is the DEA for the solicitation or handling of business in securities, including trading securities for the account of the member or participant organization, whether such securities are those dealt in on the Exchange or those dealt in over-the-counter, who is not otherwise required to register with the Exchange, must file Form U–4, Uniform Application for Securities Industry Registration or Transfer, with the Exchange. *See also* Securities Exchange Act Release No. 36515 (November 27, 1995), 60 FR 62119 (December 4, 1995) (File No. SR–Phlx–95–58) (order approving addition of paragraph (d) to Phlx Rule 604 to require associated persons to file Form U–4.).

[13] Good faith margin is the amount of margin which a creditor would require in exercising sound credit judgment. *See* 12 CFR 220.2 ("Regulation T").

[14] *See* 12 CFR 220.7(c) (noting that in a broker-dealer credit account, a creditor may finance transactions of any of its owners if the creditor is a clearing and servicing broker or dealer owned jointly or individually by other creditors).

[15] According to the Exchange, as of June 30, 1999, the proposal would affect approximately 1,777 persons associated with about 15 firms out of a total of 8,240 firms that have the ability to direct orders to the Phlx by using floor broker members to expedite trades. Telephone conversation between Richard S. Rudolph, Legal Counsel, Phlx, and Joseph Morra, Attorney, Division, SEC (July 28, 1999).

[16] *See, e.g.*, Nisonoff Letter, Pozmantier E-mail.

[17] *See* Nisonoff Letter at 2 and Blackburn Letter.

[18] *See* Nisonoff Letter at 2.

[19] *See supra* n.10, Nisonoff Telephone Conference.

[20] *See* Pozmantier E-mail.

[21] *See* Letter from Richard S. Rudolph, Legal Counsel, Phlx, to Karl Varner, Esquire, Division, SEC (June 9, 1999). The Series 55 Exam was developed by the National Association of Securities Dealers, Inc. ("NASD") in response to problems identified in connection with the administrative proceeding against the NASD, *National Association of Securities Dealers, Inc.*, Securities Exchange Act Release No. 37538 (Aug. 8, 1996), 62 S.E.C. Docket 1346 (Order Instituting Public Proceedings Pursuant To Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions). NASD rules generally require a person to have successfully completed the Series 7 Exam before taking the Series 55. *See* Securities Exchange Act Release No. 39516 (January 2, 1998), 63 FR 1520 (January 9, 1998) (order approving Series 55 Exam).

The Phlx also stated that other SROs such as the New York Stock Exchange, Inc. ("NYSE"), the American Stock Exchange, Inc. ("Amex"), and the Chicago Stock Exchange, Inc. ("CHX") require that securities traders pass the Series 7 Exam.[22] The Phlx noted that an associated person of a Phlx member would be required to take the Series 7 Exam if the firm or that associated person decided to become a member of another SRO.

III. Discussion

Under Section 19(b) of the Act,[23] the Commission is required to approve a proposed rule change if it finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the SRO. Under the Act, SROs are assigned rulemaking and enforcement responsibilities for regulating the securities industry for the protection of investors and for related purposes. A key requirement for SROs is to assure that associated persons[24] of their members satisfy prescribed standards of training, experience, and competence as a condition to membership.[25] The Commission finds that the Exchange's proposal requiring those off-floor traders of Phlx members or participant organizations for which the Phlx is the DEA to successfully complete the Series 7 Exam is consistent with the requirements of the Section 6 of Act, and particularly Sections 6(b)(5)[26] and 6(c)(3) (A) and (B)[27] thereunder, for the reasons discussed below.

A review of the Act and its legislative history, as well as subsequent amendments, reveals that one of the Act's most important objectives is to maintain the integrity and competency of securities industry personnel. To this end, Congress has authorized the Commission to comprehensively regulate the securities activities of member firms and their associated persons by, among other things, ensuring that all natural persons associated with a broker-dealer meet such standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors.[28] Moreover, Section 15(b)(7)(C) of the Act[29] provides that the Commission may rely on the registered securities associations and national securities exchanges to "require registered brokers an dealers and persons associated with such brokers and dealers to pass tests administered by or on behalf of any such association or exchange." To effectuate the goals of Section 15(b)(7) of the Act,[30] the Commission in 1993 adopted Rule 15b7–1, which prohibits registered broker-dealers from effecting any transaction in, or inducing the purpose or sale of, any security unless any natural person associated with such broker or dealer who effects or is involved in effecting such transaction is registered or approved in accordance with the standards of training, experience, competence, and other qualification standards (including but not limited to submitting and maintaining all required forms, paying all required fees and passing any required examinations) established by the rules of any national securities exchange of which such broker or dealer is a member.[31]

In addition, Section 6(c)(3)(A) of the Act[32] provides that a national securities exchange may deny membership to, or condition the membership of, a registered broker-dealer if any natural persons associated with such broker or dealer do not meet such standards of training, experience and competence as are prescribed by the rules of the exchange.[33] Also, under Section 6(c)(3)(B) of the Act,[34] a National securities exchange may bar a natural person from becoming associated with a member if the person does not meet the exchange's standards of training, experience, or competence, or if the person has engaged and there is a reasonable likelihood the person will engage again in acts or practices inconsistent with just and equitable principles of trade. Under these statutory provisions, the various national securities exchanges, including the Phlx, are empowered to implement rules establishing the prerequisites to qualify and approve persons associated with members to engage in securities activities.

The Act's legislative history also demonstrates the strong concerns of Congress regarding the expertise and competency of persons associated with the brokerage industry. One of the primary objectives of Congress in amending the Act in 1964 was "to strengthen the standards of entrance into the securities business, enlarge the scope of self-regulation, and strengthen Commission disciplinary controls over brokers, dealers, and their employees."[35] The Senate Report further noted that "[o]ne of the basic purposes of the Securities Exchange Act of 1934 is to regulate the conduct of broker-dealers and persons associated with them, both through direct Commission controls and through self-regulation by industry groups, with appropriate Commission oversight."[36] The Senate Report emphasized the importance of screening the integrity and competence of those persons involved in the securities industry.[37]

The Commission finds that the Exchange's proposal to require associated persons of members to pass the Series 7 Exam is a well-established and accepted practice in the securities industry and is directly related to one of the most important objectives of the Exchange Act—maintaining the integrity and competency of securities industry personnel.

Off-floor traders of the Phlx are participants in the securities industry. The persons who will be subject to the new rule are associated persons of the member firm.[38] They effect their trading activities in the firm's proprietary account. As associated persons of members of the Phlx, they are required to comply with the Commission's and the Exchange's rules pertaining to broker-dealers and their associated personnel, including qualification requirements established to assure that they maintain the degree of integrity and competency expected of securities industry personnel. The off-floor traders are already subject to registration requirements, including the requirement to file a Form U–4. Requiring these off-floor traders to pass the Series 7 Exam will further the objectives of Sections 6(c)(3) (A) and (B)[39] of the Act, which are intended to assure that associated persons are sufficiently familiar with Commission and SRO requirements and procedures when they are closely connected to the securities industry.

The proper education of securities industry personnel is but one component of a carefully considered statutory and regulatory framework designed to promote the integrity of securities markets and protect investors. According to the Exchange, these off-floor traders generally become members of an LLC to avail themselves of benefits available to associated persons, *e.g.*, Joint Back Office agreements, and not to others. The off-floor traders' benefits of associated person status and the ability to trade in the firm's account also entail obligations under the securities laws. By successfully completing the Series 7 Exam, these off-floor traders should develop a greater understanding of securities products, risks, and regulations appropriate for associated persons.

Moreover, the proposed rule change is consistent with the provisions of Section 6(b)(5)[40] of the Act requiring, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. The Series 7 Exam tests for proficiency in a broad range of securities matters, including anti-fraud and anti-manipulation regulation. Without proper training, these associated persons may inadvertently engage in transactions in the firm's account that are improper under the federal securities laws and regulations or rules of the SROs. In the Commission's opinion, the proposed rule revision satisfies the objectives of Section 6(b)(5)[41] of the Act because, by satisfactorily completing the Series 7 Exam, these off-floor traders who trade on a proprietary basis will gain a greater understanding of the regulations, procedures and principles governing the securities industry.

Most commenters suggested that the Phlx instead should require off-floor traders to pass the Series 55 Exam or another examination specifically tailored to the activities of these off-floor traders, rather than the Series 7 Exam. The Commission believes that, although the Series 7 Exam does not focus on trading off the floor of the Exchange, the exam covers a reasonably broad range of applicable laws, rules, regulations, and industry practices that are pertinent to most associated persons. In essence, the Series 7 Exam is the industry standard for persons who want to be affiliated with a broker-dealer and trade securities. In addition, typically a person must pass the Series 7 Exam to qualify to take the Series 55 Exam, which is a specialized registration category.[42] The Series 55 Exam focuses on activities, automated execution and trading systems, and trade reporting obligations geared toward the Nasdaq market maker.[43] In contrast, the Series 7 Exam is broader in scope, used principally to qualify persons seeking registration as general securities representatives. It tests for appropriate levels of knowledge and expertise regarding securities laws and regulations, characteristics of different investment products, investment risk, and principal factors affecting securities markets and prices for individual securities. The Commission agrees with the Phlx that the Series 7 Exam is the more appropriate test for off-floor traders.

One commenter remarked that the proposal discriminates against off-floor traders because traders on the floor of the Phlx do not have to take the Series 7 Exam. The Commission, however, finds that the proposal does not unfairly discriminate against off-floor traders because traders on the floor of the Exchange must pass the Series 7 Exam, the Series 7A examination,[44] or an options proficiency examination for Registered Options Traders ("ROT") administered by the Phlx Department of Regulatory Services.[45] Another commenter suggested that the Exchange's proposal would not apply to firms engaged in proprietary trading, even though such firms' employees are routinely permitted to trade large firm proprietary positions far exceeding the position that an LLC member would take using his or her own capital. The Commission finds that the proposal, however, is intended to apply to all off-floor traders of members or participant organizations who trade for the member firm's proprietary account when the Phlx is the DEA, and not just those associated with LLCs.[46] In addition, as noted above, all traders on the floor of the Exchange who trade for the member firm's proprietary account must successfully complete the Series 7 Exam, the Series 7A examination, or a Phlx options proficiency examination, depending on which is applicable.

With respect to one commenter's statement that adequate controls exist to limit any possible impact of trading off the floor of the Exchange, the Commission finds that the proposal will properly supplement existing controls to ensure that off-floor traders and other associated persons of members are appropriately qualified to become associated with a member. By successfully completing the Series 7 Exam, off-floor traders of the Phlx should hve a sufficient level of knowledge of securities laws and regulations, as well as investment products and risks, that is suitable to their role as associated persons of a member organization and who trade on a proprietary basis in the firm's account.

In one commenter's view, the proposal is an indirect attempt to regulate credit used by off-floor traders. The Commission does not consider the proposal to be an indirect attempt to impose greater credit restrictions on off-floor traders, but an effort to assure a level of understanding and competency regarding securities matters by

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[22] *See* NYSE Rule 345; Amex Rule 341; NASD Conduct Rule 1030; CHX Article VI, Rule 3.

[23] 15 U.S.C. 78s(b)(2).

[24] As defined in Section 3(a)(21) of the Act, an associated person of a member is "any partner, officer, director, or branch manager of such member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with such member, or any employee of such member." 15 U.S.C. 78c(a)(21). The off-floor traders covered by the Exchange's proposed rule change are associated persons of the member firm.

[25] *See* 15 U.S.C. 78f(c)(3)(B).

[26] 15 U.S.C. 78f(b)(5).

[27] 15 U.S.C. 78f(c)(3) (A) and (B).

[28] *See* Section 15(b)(7) of the Act, 15 U.S.C. 78o(b)(7).

[29] 15 U.S.C. 78o(b)(7)(C).

[30] 15 U.S.C. 78o(b)(7).

[31] 17 CFR 240.15b7–1.

[32] 15 U.S.C. 78f(c)(3)(B).

[33] Under Section 15(b)(8) of the Act, all registered brokers or dealers must be members of an SRO—either a securities association or a national securities exchange. 15 U.S.C. 78o(b)(8).

[34] 15 U.S.C. 78f(c)(3)(B).

[35] S. Rep. No. 379, 88th Cong., 1st Sess. 1 (1963) ("Senate Report").

[36] *Id.* at 38.

[37] The Senate Report noted the following:

The findings of the Special Study show that—because of the complex nature of the securities markets, the reliance which the investing public necessarily places upon the competence and character of professionals in those markets, and the responsibilities which are assumed—the existing ease of entry for inexperienced and unqualified persons subjects the investing public to undue hazards and unnecessarily complicates the task of regulation.

Id. at 43–44. In this regard, the national securities exchanges and associations were specifically charged to enhance their regulation of associated persons: "Development and administration of such standards is a matter which is peculiarly appropriate for self-regulation under Commission supervision; and the establishment of such requirements, in conjunction with the requirement of membership in a regulatory body, should significantly simplify regulation and improve investor protection." *Id.* at 44.

[38] *See supra* n. 24.

[39] 15 U.S.C. 78f(c)(3) (A) and (B).

[40] 15 U.S.C. 78f(b)(5).

[41] *Id.*

[42] Securities Exchange Act Release No. 39516 (January 2, 1998), 63 FR 1520 (January 9, 1998) (order approving Series 55 Examination).

[43] *See* Letter from Richard S. Rudolph, Counsel, Phlx, to Karl Varner, Esquire, Division, SEC, at pp. 1–2 (June 9, 1999).

[44] *See* Phlx Rule 604. The Series 7A examination is a module of the Series 7 Exam developed to test the knowledge of the relevant securities laws and Exchange Rules required of a member who conducts a public business that is limited to accepting orders from professional customers for execution on the trading floor.

[45] *See* Telephone conversation between Richard S. Rudolph, Legal Counsel, Phlx, and Karl Varner, Attorney, Division, SEC (Aug. 17, 1999). An ROT is a regular member or a foreign currency options participant of the Exchange located on the trading floor who has received permission from the Exchange to trade options for his own account. *See* Phlx Rule 1014(b). *See also* Phlx Rule 901(c)(1), which specifies that the Exchange may bar a person from becoming associated with a member or condition the association of a person with a member organization if the person does not successfully complete such written proficiency examinations as required by the Exchange to enable it to examine and verify the applicant's qualifications to function in one or more of the capacities applied for.

[46] *See* Telephone conversation between Richard S. Rudolph, Legal Counsel, Phlx, and Karl Varner, Attorney, Division, SEC (Aug. 9, 1999).

associated persons of broker-dealers. In fact, the Phlx rule change may benefit a member firm because its off-floor traders will be comprehensively trained and tested on fundamental securities matters.

Finally, the Commission finds that the proposal will bring the Exchange's qualification requirements in line with those of other securities exchanges by adding testing requirements for off-floor traders and other associated persons of members who are not covered by the current qualification requirements for floor traders. The Series 7 Exam was adopted as an industry-wide qualification examination in 1974. In addition to mandating the exam for general securities representatives, other securities exchanges currently require off-floor traders to pass the Series 7 Exam.[47] The Commission notes that other SROs such as the NYSE, Amex, and CHX already require securities traders who do not conduct a public business to pass the Series 7 Exam.[48] For example, NYSE Rule 345 requires "securities traders" engaged in the purchase or sale of securities for the account of their employer and who do not transact business with the public to pass the Series 7 Exam. Amex Rule 341 parallels this rule. In addition, Interpretation and Policy .02 to CHX Rule 3 establishes a Series 7 examination requirement for associated persons who execute, make trading decisions, or otherwise engage in proprietary or agency trading off the floor of the exchange. The examination requirement for off-floor traders at the Phlx will enhance the consistency of exam requirements across the exchanges and prevent off-floor traders from associating with members of the Phlx solely to avoid the examination requirements of other SROs.

The Commission also finds good cause for approving proposed Amendment No. 3 prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**. Amendment No. 3 conforms the proposal to similar rules of other self regulatory organizations.[49] For these reasons, the Commission finds good cause for accelerating approval of the proposed rule change, as amended.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Phlx. All submissions should refer to File No. SR–Phlx–99–07 and should be submitted by September 20, 1999.

V. Conclusion

The Commission finds that the proposed rule change is consistent with the Act, and in particular, with Sections 6(b)(5) and 6(c)(3) (A) and (B).[50]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[51] that the proposal, SR–Phlx–99–07, as amended, be and hereby is approved.[52]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[53]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22426 Filed 8–27–99; 8:45 am]

BILLING CODE 8010–01–M

[47] *See* NYSE Rule 345; Amex Rule 341; NASD Conduct Rule 1030; CHX Article VI, Rule 3. On June 1, 1999, the Pacific Exchange, Inc. ("PCX") filed a similar proposed rule change with the Commission to require that qualified off-floor traders for which the PCX is the designated examining authority successfully complete the Series 7 Exam. *See* Securities Exchange Act Release No. 41555 (June 24, 1999), 64 FR 36063 (July 2, 1999) (SR–PCX–99–16).

[48] *Id.*

[49] *Id.*

[50] 15 U.S.C. 78f(b)(5), 15 U.S.C. 78f(c)(3) (A) and (B).

[51] 15 U.S.C. 78s(b)(2).

[52] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[53] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Modifications to the Disability Determination Procedures; Disability Claims Process Redesign Prototype

AGENCY: Social Security Administration.

ACTION: Notice of a prototype involving modifications to the disability determination procedures.

SUMMARY: The Social Security Administration (SSA) is announcing a prototype involving a combination of modifications to the disability determination process. Before proceeding to national implementation, we expect that this prototype will provide a body of information about what impact these modifications may have on agency operations, notice and other procedures, as well as the resulting quality and timeliness of decisions for the public.

DATES: Selection of cases to be included in the prototype will begin on or about October 1, 1999 and is expected to be concluded on or about December 31, 2001. If the Agency decides to continue the prototype beyond this date, another notice will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Harry Pippin, Social Security Administration, Office of Disability, Disability Process Redesign Staff, 6401 Security Boulevard, Baltimore, Maryland, 21235–6401, 410–965–9203.

SUPPLEMENTARY INFORMATION: Current rules codified at 20 CFR 404.906 and 416.1406 authorize us to test modifications to the disability determination procedures individually or in any combination. Under this authority, several tests have been conducted. We are now announcing a prototype that incorporates multiple modifications to the disability determination procedures employed by State Disability Determination Services (DDS) which have been shown to be effective in earlier tests. Specifically, the prototype incorporates a series of changes that improve the initial disability determination process by: providing greater decisional authority to the disability examiner and more effective use of the expertise of the medical consultant; ensuring appropriate development and explanation of key issues; increasing opportunities for claimant interaction with the decision maker before a determination is made; and simplifying the appeals process by eliminating the reconsideration step. Focusing initially on 10 states enables us to further refine the process and learn more about potential operational impacts before moving to national implementation. This strategy allows us to put the complete process together and ensure that the changes meet our goal of improved service to disability applicants.

Use of an Adjudication Officer authorized under 20 CFR 404.906 and 416.1406, will not be included in the prototype. However, along with the prototype, we will incorporate several initiatives to improve the hearings process, including administrative efficiencies designed to streamline case processing; structural changes in the management organization of hearings offices; improvements in automation and data collection; and implementation of a "national workflow model" that combines pre-hearing activities, a standardized pre-hearing conference, and processing-time benchmarks for various tasks.

The prototype will be conducted in 10 states. For DDS branches listed here under Group I, all Social Security and Supplemental Security Income disability applicants will participate in the Prototype—with the exception of Social Security disability claims filed for purposes of Medicare entitlement only. In States listed under Group II, only those applicants whose disability claims are processed by the listed branch of the State DDS will participate. On a national basis, approximately 20 percent of applicants for disability benefits will participate in the prototype.

Group I

State of Alabama
- Department of Education, Disability Determination Services, 2545 Rocky Ridge Lane, Birmingham, AL 35216
- Department of Education, Disability Determination Services, 2000 Old Bayfront Drive, Mobile, AL 36652

State of Alaska
- Division of Vocational Rehabilitation, Disability Determination Unit, 619 East Ship Creek Avenue, Suite 305, Anchorage, AK 99501

State of Colorado
- Department of Human Services, Division of Disability Determination, 2530 South Parker Road, Suite 500, Aurora, CO 80014–1641

State of Louisiana
- Department of Social Services, Office of Family Support, Disability Determination Services, 445 North 12th Street, Baton Rouge, LA 70802
- Department of Social Services, Office of Family Support, Disability Determination Services, 5905 Florida Blvd, Suite 3, Baton Rouge, LA 70806
- Department of Social Services, Office of Family Support, Disability Determination Services, 2920 Knight Street, Suite 232, Shreveport, LA 71105
- Department of Social Services, Disability Determination Services, Suite 301, 3510 North Causeway Blvd., Metairie, LA 70002

State of Michigan
- Department of Social Services, Disability Determination Services, 608 W Allegan Street, Third Floor, Lansing, MI 48933
- Department of Social Services, Disability Determination Services, MI Plaza Building, Tenth Floor, 1200 Sixth Street, Detroit, MI 48226
- Department of Social Services, Disability Determination Services, 315 E Front Street, Traverse City, MI 49684
- Department of Social Services, Disability Determination Services, 151 South Rose Street, Kalamazoo, MI 49007–4715

State of Missouri
- Division of Vocational Rehabilitation, Dept of Elementary & Secondary Education, Section of Disability Determinations, 3024 West Truman Blvd., Jefferson City, MO 65109–0525
- Division of Vocational Rehabilitation, Dept of Elementary & Secondary Education, Section of Disability Determinations, 1500 B. Southridge Drive, Jefferson City, MO 65109
- Division of Vocational Rehabilitation, Dept of Elementary & Secondary Education, Section of Disability Determinations, 1845 Borman Court, Suite 200, St. Louis, MO 63146
- Division of Vocational Rehabilitation, Dept of Elementary & Secondary Education, Section of Disability Determinations, 4040 Seven Hills Drive, Florissant, MO 63033
- Division of Vocational Rehabilitation, Dept of Elementary & Secondary Education, Section of Disability Determinations, 8500 East Bannister Road, Kansas City, MO 64134
- Division of Vocational Rehabilitation, Dept of Elementary & Secondary Education, Section of Disability Determinations, 3014 Blattner Drive, Cape Girardeau, MO 63701
- Division of Vocational Rehabilitation, Dept of Elementary & Secondary Education, Section of Disability Determinations, 2530 I. South Campbell, Springfield, MO 65807

State of New Hampshire
- Division of Adult Learning and Rehabilitation, Disability Determination Services, State Dept of Education Building JB, 78 Regional Drive, Concord, NH 033301

State of Pennsylvania
- Bureau of Disability Determination, Room 200-Central Operations, 1171 South Camerson Street, Harrisburg, PA 17104–2594
- Bureau of Disability Determination, 264 Highland Park Blvd., Wilkes-Barre, PA 18702
- Bureau of Disability Determination, 351 Harvey Avenue, Greensburg, PA 15605

Group II

State of California
- Department of Social Services, Disability and Adult Programs Division, 3435 Wilshire Boulevard, Los Angeles, CA 90010

State of New York
- Division of Disability Determinations, 99 Washington Avenue, Room 1239, Albany, NY 12260
- Division of Disability Determinations, 22 Cortlandt Street, 5th Floor, New York, NY 10007–3107

Dated: August 24, 1999.

Sue C. Davis,

Director, Disability Process Redesign Team.

[FR Doc. 99–22421 Filed 8–27–99; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice #3100]

Advisory Committee on Labor Diplomacy; Notice of Meeting

The Advisory Committee on Labor Diplomacy (ACLD) will hold its inaugural meeting from 9:30 a.m. to 4:00 p.m. on September 17, 1999, in Room 1107, U.S. Department of State, 2201 C Street, NW, Washington, DC 20520. Committee Chairman Thomas Donahue, former President of the AFL–CIO, will chair the meeting.

The ACLD is comprised of prominent persons with expertise in the area of international labor policy and labor diplomacy. The ACLD will advise the Secretary of State and the President on the resources and policies necessary to implement labor diplomacy programs efficiently, effectively and in a manner that ensures U.S. leadership before the international community in promoting the objectives and ideals of U.S. labor policies now and in the 21st century. The ACLD will make recommendations on how to strengthen the Department of State's ability to respond to the many challenges facing the United States and the federal government in international labor matters. These challenges include the protection of worker rights, the elimination of exploitative child labor, and the prevention of abusive working conditions.

The agenda for the September 17 meeting includes: (1) Committee organizational and administrative issues; (2) review of the State Department's labor diplomacy efforts and their relevance to other federal agency efforts, especially those of the U.S. Department of Labor; and (3) discussion of current international labor issues and their impact on labor diplomacy needs.

Members of the public are welcome to attend the meeting as seating capacity allows. As access to the Department of State is controlled, persons wishing to attend the meeting must be pre-cleared by calling or faxing the following information, by close of business September 14, to ACLD Executive Secretary Mark Simonoff at (202) 647-4327 or fax (202) 647–0431 or Jake Aller at (202) 647–3664 or email AllerJC @ state.gov: name; company or organization affiliation (if any); date of birth; and social security number. Pre-cleared persons should use the 23rd Street entrance to the State Department and have a driver's license with photo, a passport, a U.S. Government ID or other valid photo identification.

Members of the public may, if they wish, submit a brief statement to the Committee in writing. Those wishing further information should contact Mr. Simonoff or Mr. Aller at the phone and fax numbers provided above.

Dated: August 24, 1999.

Leslie Gerson,

Acting Assistant Secretary, Bureau of Democracy, Human Rights and Labor, U.S. Department of State.

[FR Doc. 99–22445 Filed 8–27–99; 8:45 am]

BILLING CODE 4710–18–P

DEPARTMENT OF STATE

[Public Notice No. 3085]

Proposed UNIDROIT Convention on International Equipment Finance and a Protocol on Aircraft Transactions; Meeting Notices

AGENCY: Department of State.

ACTION: Notice: Meetings on Cross-Border Insolvency.

SUMMARY: The Study Group on Cross-Border Insolvency of the Secretary of State's Advisory Committee on Private International Law will hold two meetings, the first on September 16, 1999 in New York City and the second on November 20, 1999 in Houston, Texas. The topic will be developments in cross-border insolvency laws and procedures affecting commercial entities and proposed international initiatives.

AGENDA: The agenda, subject to available time, will include a review of current developments in this field, including the status of legislation pending in Congress on procedural aspects of cross-border insolvency cases. The principle focus will be examination of possible legal approaches concerning reform of substantive as well as procedural bankruptcy laws, which could be the basis of future international efforts to prepare model legislative provisions, guidelines or even at some point a treaty system. The focus will be on reform and uses of bankruptcy law regimes as a positive factor in assisting all states, including developing countries and countries in transition, to strengthen economic systems through more effective recycling or preservation of economic assets of distressed commercial enterprises. The impacts on systemic business and financial systems will be considered.

These discussions will, inter alia, assist in preparation of possible U.S. positions as various international fora, including the United Nations Commission on International trade Law (UNCITRAL) which will hold a meeting of its Working Group on Cross-Border Insolvency starting December 6, 1999. In addition, advice will be sought on insolvency issues within the context of negotiation at UNCITRAL of a draft treaty regime for accounts receivable financing, and at UNIDROIT on a draft treaty regime for international secured interests in mobile equipment. Finally, the effect of the proposed Hague Conference convention on jurisdiction, recognition and enforcement of foreign court judgments on insolvency proceedings, orders and judgments will be considered.

Attendance

The meetings are open to the public up to the capacity of the meeting rooms. The first meeting will be at 10:00 am–4:00 pm on September 16, 1999 at the New York City office of Goodwin, Procter & Hoar, 599 Lexington Ave., 40th floor; the second meeting will be at 10:00 am–4:00 pm on November 20, 1999 at the Houston office of Fulbright & Jaworski, 1301 McKinney St., 49th floor. Members of the public wishing to attend should contact either Cynthia Vitello at (617) 570–1445, fax 523–1231, email dvitello@gph.com., or Rosie Gonzales at (202) 776–8420, fax 776–8482 or email at pildb@his.com.

For copies of relevant documents on the above topics, please contact Ms. Gonzales at the Department of State, Office of Legal Adviser at the above numbers. For additional information on the international organizations or processes involved, contact Harold Burman at (202) 776–8421, fax 776–8482.

Harold S. Burman,

Executive Director, Secretary of State's Advisory Committee on Private International Law, United States Department of State.

[FR Doc. 99–22444 Filed 8–27–99; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 1, 1999), FR 64, page 29404–29405].

DATES: Comments must be submitted on or before September 29, 1999. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Rotocraft External-Load Operator Certificate Application.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0044.

Form(s): FAA Form 8710–4.

Affected Public: An estimated 400 individual airmen, state and local governments and businesses.

Abstract: 14 CFR Part 133, Rotocraft External-Load Operations, was adopted to establish certification and operating rules governing nonpassenger-carrying rotocraft external-load operations conducted for compensation or hire.

Estimated Annual Burden Hours: 3,268 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, FAA Desk Officer.

Comments Are Invited On

Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 23, 1999.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 99–22432 Filed 8–27–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration, (FAA), DOT).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (QMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 1, 1999, [FR 64, page 29404–29405].

DATES: Comments must be submitted on or before September 29, 1999. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Explosives Detection System Certification Testing.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0577.

Form(s): N/A.

Affected Public: Manufacturers of explosive detection systems.

Abstract: Pub. L. 101–604 requires the Administrator of the Federal Aviation Administration to certify explosives detection systems, pursuant to protocols developed outside the agency, prior to mandating their use. The information required is necessary for the FAA to perform the certification testing on systems submitted by manufacturers.

Estimated Annual Burden Hours: 775 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention: FAA Desk Officer.

Comments Are Invited On

Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 23, 1999.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 99–22433 Filed 8–27–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–30]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 5, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Terry Stubblefield (202) 267–7624 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independent Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 25, 1999.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions For Exemption

Docket No.: 29536.

Petitioner: Astral Aviation, Inc. dba Skyway Airlines.

Section of the FAR Affected: 14 CFR 121.407(d) and 121.409(d).

Description of Relief Sought: To permit Skyway Airlines to conduct low altitude windshear flight training for 24 pilots in an Embraer EMB–145 simulator until such time that the Fairchild Dornier DO328–300 simulator is available.

[FR Doc. 99–22431 Filed 8–27–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application to Use Only, Impose Only and Impose and Use the Revenue from a Passenger Facility Charge (PFC) at Meadows Field Airport, Bakersfield, California

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invites public comment on the application to use only, impose only and impose and use revenue from a PFC at Meadows Field Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before September 29, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Airports Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA, 90009. In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Raymond C. Bishop, Director of Airports, Meadows Field Airport, 1401 Skyway Drive, Suite 200 Bakersfield, CA 93308. Air carriers and foreign air carriers may submit copies of written comments previously provided to the county of Kern under section 158.23 Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Milligan, Supervisor Standards Section, Airports Division, P.O. Box 92007, WPC, Los Angeles, CA 90009, Telephone: (310) 725–3621. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use only, impose only and impose and use the revenue from a PFC at Meadows Field Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). On July 23, 1999, the FAA determined that the application to use only, impose only and impose and use the revenue from a PFC submitted by the county of Kern was not substantially complete within the requirements of section 158.25 of Part 158. The following items are required to complete the application:

The impose authority for the Construct an Aircraft Rescue and Fire Fighting (ARFF) Station project was expired on June 1, 1998. Reconsult with the carriers on this project as a new impose and use project, or delete this ARFF project from the application. The country of Kern has not submitted supplemental information to complete this application. The FAA will approve or disapprove the application, in whole or in part, not later than October 22, 1999.

The following is a brief overview of the application:

Level of the proposed PCF: $3.00.

Proposed charge effective date: January 1, 2000.

Proposed charge expiration date: May 1, 2002.

Total Estimated PFC Revenue: $829,933.

Brief description of the proposed projects:

Use only:

Construct an Aircraft Rescue and Fire Fighting (ARFF) Station.

Impose only:

Land Acquisition for Airport Expansion.

Impose and Use:

Planning and Design of New Terminal and Apron/Master Plan Design and Install Touchdown and Centerline Lights for Runway 30R–12L Install Midfield and Rollout Runway Visual Range (RVR) sensors Class or classes of air carriers which the public agency has requested not be required to collect PCFs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Meadows Field Airport Administration Office.

Issued in Hawthorne, California, on August 10, 1999.

Peter T. Melia,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. 99–22434 Filed 8–27–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–98–4622]

Transportation Equity Act for the 21st Century: Implementation Guidance for the National Corridor Planning and Development Program and the Coordinated Border Infrastructure Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments; solicitation of applications for fiscal year (FY) 2000 grants.

SUMMARY: This document provides implementation guidance on section 1118 and 1119 of the Transportation Equity Act for the 21st Century (TEA–21). These sections established the National Corridor Planning and Development Program (NCPD program) and the Coordinated Border Infrastructure Program (CBI program). The NCPD and the CBI programs are funded by a single funding source. These programs provide funding for planning, project development, construction and operation of projects that serve border regions near Mexico and Canada and high priority corridors throughout the United States. States and metropolitan planning organizations (MPOs) are, under the NCPD program, eligible for discretionary grants for: Corridor feasibility; corridor planning; multistate coordination; environmental review; and construction. Border States and (MPOs) are, under the CBI program, eligible for discretionary grants for: Transportation and safety infrastructure improvements, operation and regulatory improvements, and coordination and safety inspection improvements in a border region.

DATES: Grant applications should be received by FHWA Division Offices on November 29, 1999. Specific information required in grant applications is provided in Section III of this notice. Comments on program implementation should be received on or before January 27, 2000. The additional time is provided so that any applicants can use the first 60 days to fully concentrate on preparing grant applications and, subsequently, to use information developed during that time to formulate comments in the following 90 days. The FHWA will consider comments received in developing the FY 2001 solicitation of grant applications. More information on the type of comments sought by the FHWA is provided in Section II of this notice.

ADDRESSES: You signed, written comments on program implementation for FY 2001 and beyond should refer to the docket number appearing at the top of this document and you must submit the comments to the Docket Clerk, US DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments should include a self-addressed, stamped envelope or postcard.

Applications for FY 2000 grants under the NCPD and CBI programs should be submitted to the FHWA Division Office in the State where the applicant is located.

FOR FURTHER INFORMATION CONTACT: For program issues: Mr. Martin Weiss, Office of Intermodal and Statewide Programs, HEPS, (202) 366–5010; or for legal issues: Mrs. Diane Mobley (for the NCPD program), Office of the Chief Counsel, HCC–31, (202) 366–1366; or Ms. Grace Reidy (for the CBI program), Office of the Chief Counsel, HCC–31, (202) 366–6226; Federal Highway Administration, 400 Seventh Street SW., Washington D.C. 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Service at (202) #512–1661. Internet users may reach the Office of the **Federal Register's** home page at: http://www.access.nara.gov/fedreg and the Government Printing Office's web page at htt://www.access.gpo.gov/nara.

In addition, a number of documents and links concerning the NCPD and CBI programs are available though the home page of the Corridor/Border Programs: http://www.fhwa.dot.gov/hep10/corbor/corbor.html.

Background

Sections 1118 and 1119 of the TEA–21, Public Law 105–178, 112 Stat. 107, at 161, establish the NCPD and CBI programs, respectively. These programs respond to substantial interest dating from, as early as, 1991. In that year, the Intermodal Surface Transportation Efficiency Act (ISTEA), Pub. L. 102–240, 105 Stat. 1914, designated a number of high priority corridors. Subsequent legislation modified the corridor descriptions and designated additional corridors. Citizen and civic groups promoted many of these corridors as, for example, a means to accommodate international trade. Similarly, since 1991, a number of studies identified infrastructure and operation deficiencies near the U.S. borders with Mexico and Canada. Also various groups, some international and/or intergovernmental, studies opportunities to improve infrastructure and operations.

In 1997, the DOT's Strategic Plan for 1997–2002 was established. The strategic goals in this plan are: Safety, mobility, economic growth and trade, human and natural environment, and national security. In 1998, the FHWA's National Strategic Plan was established. The strategic goals in this plan are: Mobility, safety, productivity, human and natural environment and national security. Both sets of goals are consistent with the language of TEA–21, including sections 1118 and 1119.

The NCPD and CBI programs are funded by a single funding source. The combined authorized funding for these two programs is $140 million in each year from FY 1999 and FY 2003 (a total of $700 million). However, obligations are limited each year by the requirements of section 1102 (Obligation Ceiling) of the TEA–21.

Under the NCPD program, funds are available to States and MPOs for coordinated planning, design, and construction of corridors of national significance, economic growth, and international or interregional trade. Under the CBI program, funds are available to border States and MPOs for projects to improve the safe movement of people and goods at, or across, the border between the United States and Canada, and the border between the United States and Mexico. In addition, the Secretary may transfer up to a total of $10 million of combined program funds, over the life of the TEA–21, to the Administrator of General Services for the construction of transportation infrastructure necessary for law enforcement in border States. Such transfer(s) will be made, based on funding requested and supporting information furnished by the Administrator of General Services. Finally, the Secretary of Transportation (the Secretary) will implement any provisions in legislation that directs that FY 2000 NCPD/CBI funds be used for specific projects. Based on the factors noted above (i.e., obligation limitations, transfer of funds to GSA and legislation), the FHWA anticipates that between $95 million and $130 million will be available for allocation for projects submitted in response to this notice.

The Federal share for these funds is set by 23 U.S.C. 120 (generally 80 percent plus the sliding scale adjustment in States with substantial public lands). The period of availability for obligation is the fiscal year for which the funds are authorized and the three years following. States which receive an allocation of funds under these programs will, at the same time, receive an increase in obligation equal to the allocation. Under section 1102 of TEA–21, obligation authority for discretionary programs that is provided during a fiscal year is extinguished at the end of the fiscal year. Funds allocated to projects which, under the NCPD/CBI programs, receive an obligation authority increase for FY 2000, must therefore be obligated during FY 2000 or be withdrawn for redistribution.

This notice includes four sections:

Section I—Program Background and Implementation of the NCPD/CBI Discretionary Program in FY 1999
Section II—Eligibility and Selection Criteria for FY 2000 Grants
Section III—Request for Comments on Program Implementation in FY 2001 and Beyond
Section IV—Solicitation of Applications for FY 2000 Grants

Section I—Program Background and Implementation of the NCPD/CBI Discretionary Program in FY 1999

The FHWA implemented the NCPD/CBI programs with specific goals. In addition, the FHWA considered the following: Comments received at outreach sessions; information received during program discussions within the DOT; and information received during discussions between officials of the DOT and a variety of public sector and private sector officials. The FY 1999 implementation goals were:

1. Respect both the letter and the intent of existing statutes.
2. Minimize administrative additions to statutory requirements.
3. Minimize grant application paperwork.
4. Maximize administrative control of grants by FHWA field personnel rather than FHWA Headquarters personnel.
5. Encourage substantive coordination of grant applications and grant administration by State and local officials.
6. Encourage appropriate private/public, State/local, intermodal,

interregional, multistate and multinational coordination.

7. Encourage grant applications that have realistic objectives and time horizons.

Summary of Selection Process—FY 1999

The FHWA received 151 applications for NCPD/CBI funding, all of which were at least partially eligible (e.g., some applications included work components that were not eligible and also included work components that were eligible) for consideration. The requests for funding totaled over $2.2 billion compared with $123,620,000 available for allocation. The FHWA established an evaluation panel comprised of officials from various agencies within the DOT (e.g., the Federal Railroad Administration, the Federal Transit Administration, the Office of the Secretary of Transportation, as well as the FHWA) which reviewed the applications and tabulated summaries of applications. The evaluation panel identified applications that were "well qualified" and those which were "qualified" based on summary information prepared by the FHWA program office. This information was presented to the FHWA Administrator and other DOT management officials who together selected 55 applications for funding totaling $123,603,000; some for full funding of the amount requested, some for funding of a portion of the amount requested. An announcement of the selections was made on May 27, 1999. The list of all applications, and well as the list of selected applications, are available at the URL noted above. A report, for the fiscal quarter covering the May 27, 1999, selections, containing the reasons for selection of projects, is required by section 1311 of the TEA–21, as amended. At the time of this notice, the report for that quarter is not available. When completed, it will be available at URL: *http://www.fhwa.dot.gov/discretionary/*

Summary of Comments to the Docket

The November 12, 1998 **Federal Register** notice (63 FR 63351) requested comments on how the NCPD/CBI programs implementation could be improved in FY 2000, as well as other aspects of the program. Commenters were asked specifically for improvements that could be made at the discretion of the FHWA that would more effectively meet the seven goals established for the program.

The following organizations submitted letters to the docket (FHWA–1998–4622):

Pennsylvania Turnpike Commission
Texas Department of Transportation
Canadian National Railway
Whatcom County Council of Governments
State of Michigan, Department of Transportation
Wisconsin Department of Transportation
Washington State Department of Transportation
Illinois Department of Transportation
ITS America
Science Applications International Corporation

Although no specific comment was raised by more than one or two of the letters, there were a number of comments that addressed similar issues or discussed similar problems.

The most common comment, made to some extent by all but one letter, was the suggestion that more evaluation weight be given to certain characteristics of applications. In a number of such cases, commenters asserted that Congress "meant" to give more weight to these characteristics. The FHWA was unable to find any statutory language to support any of these assertions. In all cases where a suggestion was made to give more weight to certain characteristics of applications, these characteristics were those contained in applications submitted or favored by the organization writing the letter. The FHWA has, however, reconsidered the overall subject of selection in response to these comments. Based on this reconsideration, the FHWA will emphasize, in the selections, applications that support the DOT and the FHWA strategic goals noted previously in the context of the statute.

A common problem, cited to some extent by four commenters, was that of addressing criteria specifically cited in the statute, e.g., international truck-borne cargo, reduction in commercial and other travel time through a port of entry, the value of the cargo and congestion impose economic costs on the Nation's economy, and encourage or facilitates multistate or regional mobility. While developing the FY 1999 solicitation of applications, the FHWA did not find any cost effective, easy-to-use methodologies for quantifying the specific terms noted above. thus, in that solicitation, the FHWA allowed the use of surrogates to address such requirements and will continue to allow the use of surrogates in addressing statutory criteria in the FY 2000 solicitation. However, the FHWA and other agencies are currently investing time and money in developing better means to measure and predict these terms.

Another common problem, cited to some extent by four commenters, was that of not being sure where to place particular project information in the application. One commenter suggested that the FHWA prescribe a consistent uniform format for applications. While the FHWA does not believe a prescriptive approach is needed, additional consistency in applications is desirable. Therefore, the FHWA has modified and clarified the section containing the application format accordingly.

Four commenters mentioned performance measures. One noted that there was no detailed direction about this for applicants and three suggested examples of performance measures for use by applicants. The FHWA did not provide detailed direction on this during the FY 1999 solicitation process, because there was no clear statutory basis to develop such direction. However, the FHWA Strategic Plan, discussed above, includes a number of measures particularly relevant to these programs (e.g., reduction of delay on Federal-aid highways, reduction of delay at international border crossings, reduction of freight costs per ton mile, education of fatalities). The FHWA Strategic Plan is available at URL: *http://intra.fhwa.dot.gov/strategic/index.htm*. Thus, the evaluation considerations have been modified to note that meeting the goals in the FHWA strategic plan goals will be specifically considered in evaluating the selection criteria. Furthermore, the item in the application format on performance measures has been similarly modified.

Two commenters complimented certain aspects of the solicitation process. One especially appreciated the extensive guidance posted on the Internet; the other appreciated the flexibility to use existing planning and project development products as constituting the corridor development and management plan. The FHWA intends to continue the Internet posting of guidance and is continuing the flexibility regarding the corridor development and management plan.

The Texas Department of Transportation stated that the FHWA's interpretation of the statutory language was too flexible in that the FHWA allowed applicants to provide information on "interstate or interregional traffic" as a surrogate for the term "international truck-borne commodities." The latter term is the one which appears in section 1118 of the TEA–21. The same letter suggested clarification on how States and MPOs should address criteria that are difficult to quantify and specifically noted that "international truck-borne commodities" was one of those criteria. As noted above, the FHWA has not found any cost effective easy-to-use methodologies for quantifying the specific term used in the statute and will continue to allow the use of surrogates in addressing statutory criteria for FY 2000 while the FHWA and other agencies are investigating better measurement.

In addition, the Texas Department of Transportation stated that there is little transportation related trade data that is complete, reliable, comparable from State to State, easy to use, and inexpensive to obtain. The comment was made that the DOT should ensure this data is verified before using it to distribute program funds. The FHWA agrees with the comment about the lack of the kind of data desired. Because of this situation, the FHWA did not distribute FY 1999 program funds based on formulas or fixed numerical rating methods. Since there is no reasonable probability that this data situation will change, the FHWA does not expect to use formulas or fixed numerical rating methods for distributing FY 2000 program funds.

Finally, the Texas Department of Transportation commented that FHWA should provide applicants with information on how projects were selected and how applications could be improved. Information on selection was provided earlier in this notice. With respect to improving future applications, the FHWA division offices provide information to applicants on a case-by-case basis.

The Canadian National Railway stated that corridor plans (required by section 1118 of the TEA–21) will not indicate substantive intermodal, particularly freight rail, improvement opportunities. Section 1118(d) of the TEA–21, which provides the statutory reference for the corridor plan, nowhere requires, or even mentions rail freight or intermodal opportunities as a plan element. However, the FHWA considers intermodal opportunities as valid in the more general context of statewide and metropolitan planning, and intends, in updating regulations on statewide and metropolitan planning, to assure an appropriate level of intermodal attention.

The Whatcom County Council of Governments stated that a fixed schedule for announcing solicitations and allocations over the life of the program would be desirable. The FHWA is attempting to meet this desire by making the NCPD/CBI solicitations and allocations closer to the timetable used in other discretionary programs (e.g., ferry boats, public lands).

The State of Michigan, Department of Transportation objected to the FHWA division office accepting the application of a metropolitan planning organization (MPO) which had not cleared the application with the State DOT. The statute allows grants to an MPO and, therefore, acceptance of this application was clearly proper. It is expected that through its involvement in the MPO, the State DOT will be consulted in the MPO application(s).

The Wisconsin Department of Transportation commented that no new corridors be designated until substantial progress has been made on the corridors already listed in the TEA–21. Since the FHWA does not have the authority to designate corridors (nor does the Secretary), no response is made to this comment.

The Washington State Department of Transportation stated that spreading allocations to every corridor and every border crossing (referred to by the commenter as "peanut buttering") should be avoided. The comment went on to note that this point was made at other venues. This comment has merit and the FHWA took this into consideration in the FY 1999 allocations and intends to do so in the FY 2000 allocations.

Finally, two commenters encouraged the DOT/FHWA to ensure that a significant number of selected projects incorporated Intelligent Transportation Systems (ITS) and related technologies. As noted below, the FHWA strategic goals will be considered in the FY 2000 selections, specifically those involving ITS.

Section II—Eligibility and Selection Criteria for FY 2000 Grants

In general, the eligibility and selection criteria for FY 2000 grants are the same as those used for FY 1999 grants with one change; namely, that the FHWA is, in effect, considering not only the goals stated in the FY 1999 solicitations (see above) but also the US Department of Transportation and the FHWA strategic goals in making grant selections.

Eligibility—NCPD Program

Projects eligible for funding include the following:

1. Feasibility studies.
2. Comprehensive corridor planning and design activities.
3. Location and routing studies.
4. Multistate and intrastate coordination for corridors.
5. Environmental review or construction after review by the Secretary of a development and management plan for the corridor or useable section of the corridor (hence called "corridor plan").

The FHWA considers work in the pre-feasibility stage of a project, e.g., development of metropolitan and State plans and programs, as not eligible for support with Federal aid under section 1118 funds (although funds authorized by other portions of the TEA–21 are eligible for such support), but project development planning is eligible for support and multistate freight planning is specifically encouraged herein.

The FHWA construes the phrase "environmental review," as used above, as being the portion of the environmental documentation e.g., environmental assessment/finding of non significant impact (EA/FONSI), environmental impact statement (EIS) process requiring formal interagency review and comment. Thus, even without review of the corridor plan, work needed to produce the pre-draft EIS and to revise the draft would be eligible for support with Federal aid under section 1118. However, work subsequent to FHWA signature of the draft EIS (or equivalent) would not be eligible for such support until review of the corridor plan. Subsequent to such a review, work on a final EIS and any other necessary environmental work would be eligible for funding under this section.

Eligibility for funds from the NCPD program is limited to high priority corridors identified in section 1105(c) of the ISTEA, as amended, and any other significant regional or multistate highway corridors selected by the Secretary after consideration of the criteria listed for selecting projects for NCPD funding. Fund allocation to a corridor does not constitute designation of the corridor as a high priority corridor. The FHWA has no statutory authority to make such a designation.

Eligibility—CBI Program

Projects eligible for funding include the following:

1. Improvements to existing transportation and supporting infrastructure that facilitate cross border vehicle and cargo movements.
2. Construction of highways and related safety and safety enforcement facilities that will facilitate vehicle and cargo movements related to international trade.
3. Operational improvements, including improvements relating to electronic data interchange and use of telecommunications, to expedite cross border vehicle and cargo movement.

4. Modifications to regulatory procedures to expedite cross border vehicle and cargo movements.

5. International coordination of planning, programming, and border operation with Canada and Mexico relating to expediting cross border vehicle and cargo movements.

6. Activities of Federal inspection agencies.

The statute requires projects to be in a border region. The FHWA considers projects within 100km (62 miles) of the U.S./Canada or U.S./Mexico border to be in a border region.

Selection Criteria for the NCPD Program Funding

The statute provides criteria to be used in identifying corridors, in addition to those statutorily designated for eligibility. These following criteria will be used for selecting projects for funding:

1. The extent to which the annual volume of commercial vehicle traffic at the border stations or ports of entry of each State has increased since the date of enactment of the North American Free Trade Agreement (NAFTA), and is projected to increase in the future.

2. The extent to which commercial vehicle traffic in each State has increased since the date of enactment of the NAFTA, and is projected to increase in the future.

3. The extent to which international truck-borne commodities move through each State.

4. The reduction in commercial and other travel time through a major international gateway or affected port of entry expected as a result of the proposed project including the level of traffic delays at major highway/rail grade crossings in trade corridors.

5. The extent of leveraging of Federal funds, including use of innovative financing; combination with funding provided under other sections of the TEA–21 and title 23 U.S.C.; and combination with other sources of Federal, State, local, or private funding including State, local and private matching funds.

6. The value of the cargo carried by commercial vehicle traffic, to the extent that the value of the cargo and congestion impose economic costs on the Nation's economy.

7. Encourage or facilitate major multistate or regional mobility and economic growth and development in areas undeserved by existing highway infrastructure.

Specific aspects of the NCPD program require the FHWA to interpret these criteria. Based on the goals noted above in Section I, the FHWA intends to use a flexible interpretation. For example, while the date of the enactment of NAFTA was December 8, 1993, traffic data which provides an average for the calendar year 1993 could be used for the pre-NAFTA information. For another example, since businesses use both imported and domestically produced materials in a constantly changing component mix to produce higher valued products, and, because interregional trade is noted as part of the purpose of the section, either interstate traffic or interregional traffic could be used as a surrogate for "international truck-borne commodities." Similarly, where determining the value of cargo carried by commercial vehicle traffic would be impossible without using proprietary information, a reasonable surrogate could be based on the vehicle traffic multiplied by an imputed value for various classes of cargo.

Selection Criteria for the CBI Program Funding

The selection criteria in the statute are as follows:

1. Expected reduction in commercial and other motor vehicle travel time through an international border crossing as a result of the project.

2. Improvements in vehicle and highway safety and cargo security related to motor vehicles crossing a border with Canada or Mexico.

3. Strategies to increase the use of existing, underutilized border crossing facilities and approaches.

4. Leveraging of Federal funds, including use of innovative financing, combination of such funds with funding provided under other sections of the TEA–21 and combination with other sources of Federal, State, local or private funding.

5. Degree of multinational involvement in the project and demonstrated coordination with other Federal agencies responsible for the inspection of vehicles, cargo, and persons crossing international borders and their counterpart agencies in Canada and Mexico.

6. Improvements in vehicle and highway safety and cargo security in and through the gateway or affected port of entry concerned.

7. The extent to which the innovative and problem solving techniques of the proposed project would be applicable to other border stations or ports of entry.

8. Demonstrated local commitment to implement and sustain continuing comprehensive border or affected port of entry planning processes and improvement programs.

As in the NCPD program criteria, the FHWA intends to use a flexible interpretation of the CBI program selection criteria. For example, because local (e.g., business association, civic, county, municipal, utility) agencies and organizations sometimes have very small capital improvement budgets, that local commitment for continuing planning and improvement will be considered in the context of local program cooperation with State projects in the border regions, as well as in the context of local financial support for such projects.

Selection Criteria Common to Both Programs

Although all Federal-aid programs relate to the achievement of the FHWA's strategic goals—safety, mobility, productivity, environment, and national security—these discretionary programs apply most directly to fulfillment of the safety, mobility, and productivity goals. In addition, Departmental policy, related Federal directives and the Government Performance and Results Act of 1993, Public Law 103–62, 107 Stat. 285, emphasize the use of coordinated agency strategies and advanced technology applications to achieve goals in a cost-effective and environmentally sound manner. As noted in the Administrator's message accompanying the 1998 FHWA National Strategic Plan, the strategic goals and policies, "guide FHWA decisions on a day-to-day basis, and will help our partners to frame their own agendas within a context that contributes to achieving these broad national goals." In accordance with this guidance, in making selections, the Administrator will emphasize proposals related to motor carrier safety enforcement facilities, integrated trade transportation processing systems to improve border crossings, multistate freight planning efforts, and applications of operational strategies, including ITS applications.

In addition, the concept of equity was important in the development of the TEA–21. National geographic distribution among all discretionary programs and congressional direction or guidance will be considered by the Administrator in the selection of projects for discretionary funds.

Evaluation Considerations for Both the NCPD and the CBI Program

To adequately evaluate the extent to which selection criteria noted above are met by individual projects, the FHWA will consider the following in each grant application:

1. The extent to which the project will help meet the FHWA and the DOT strategic goals as noted above.

2. Likelihood of expeditious completion of a usable project or product.

3. Size, in dollars, of the program grant request in comparison to likely accomplishments (e.g., grant requests that exceed about 10 percent of the available NCPD and CBI program funding in a given year would be expected to be subject to extra scrutiny to determine whether the likely consequences would be commensurate with that level of funding).

4. Clarity and conciseness of the grant application in submission of the required information.

5. State priorities and endorsement of, or opposition to, projects by other States, MPOs and other public and private agencies or organizations, as well as the status of the project on the State transportation improvement program (STIP) and the metropolitan transportation improvement program (TIP).

6. The extent to which the project may be eligible under both the NCPD and the CBI program.

Section III—Request for Comments on Program Implementation in FY 2001 and Beyond

The FHWA has, as noted above, changed the selection criteria somewhat from what they were in the FY 1999 solicitation. In addition, the FHWA may consider requiring the use of electronic submittals for FY 2001 for the narrative portion of the application (not maps). Consequently, the FHWA is specifically requesting comments on these two aspects of program implementation. In addition, although, as noted above, comments have been made previously, agencies that wish to reconsider their previous comment(s) or make additional or new comments on other aspects of program implementation are invited to do so. The docket number noted in the beginning of this notice should be referenced.

Section IV—Solicitation of Applications for FY 2000 Grants

As noted above, applications for FY 2000 grants are to be sent to the division office in the State where the applicant is located or to the division office in the lead State, where a project is in more than one State.

When sending in applications, the States and MPOs must understand that any qualified projects may or may not be selected. It may be necessary to supplement NCPD and CBI program funds with other Federal-aid and/or other funds to complete a useable project or product. Allocations of FY 2000 funds will be made considering the degree to which proposed projects are viable and implementation schedules are realistic.

There is no prescribed format for project submission. The FHWA has developed, however, a sample application format and summary format which, if used, provides all the information needed to fairly evaluate candidate projects. The FHWA expects that, except for especially complex or geographically extensive projects, applications (excluding the corridor plan which is to be a separate document) should be no more than 12 pages in length and the summary should be one page in length. Applications that do not include all the described information may be considered incomplete. The sample application format and summary format are:

Format for Application for NCPD or CBI Discretionary Funds

1. State (if a multi state or multi MPO project list the lead State/MPO and participating States/MPO);

2. Congressional high priority corridor number(s), if applicable;

3. County(ies) or Parish(es);

4. U.S. Congressional District(s) and name of U.S. Representative(s) in the District(s);

5. Project Location, including a map or maps (no more than two, except for extraordinarily complex projects) with U.S. State, local numbered routes and other important facilities clearly identified;

6. Project objectives and benefits;

7. Proposed work, identifying which specific element(s) of work corresponds to each of the list of eligible NCPD and/or CBI work types and disaggregating the work into phases, if applicable;

8. Planning, programming, coordinating and scheduling status: Identifying whether the project is included, or expected to be included, in State and MPO plans and programs (e.g., STIPs and TIPs); noting consistency with plans and programs as developed by empowerment zone and enterprise community organizations; noting consistency with air quality plans; noting coordination with inspection agencies and with Canada and Mexico; and, stating the expected project initiation, milestone and/or project component completion and overall project completion dates;

9. Current and projected traffic (auto, heavy truck, and, if applicable, light truck, pedestrian, bicycle, transit vehicle, railcar, etc.) and motor carrier and highway safety information for significant facilities integral to the project;

10. Financial information and projections, including: total estimated cost of improvement to the overall corridor or border facility; a listing by year and source of previous funding (if part of a larger project, this should include previous funding for the overall project) from all sources; and, a listing, by year, amount and source, of other funds committed to the project or useable portions of the project;

11. Infrastructure condition information, applicable to infrastructure improvement projects where, at the time of the application, the facilities to be improved are reasonably known;

12. Information regarding ownership, applicable to infrastructure improvement projects where, at the time of the application, the facilities to be improved are reasonably know;

13. Maintenance responsibility, applicable to infrastructure improvement projects where, at the time of the application, the facilities to be improved are reasonably known;

14a. Other information needed to specifically address the seven selection criteria for NCPD program funding (e.g., increase in commercial traffic); and/or

14b. Other information needed to specifically address the eight selection criteria for CBI program funding (e.g., reduction in travel time);

15. Amount of NCPD program and/or CBI program funds requested, as well as written confirmation of the source and amount of non-Federal funds that make up the non-Federal share of the project;

16. Willingness to accept partial funding (if not indicated, the FHWA will construe that partial funding is acceptable);

17a. The priority within the State (or lead State) assigned to the application, relative to other applications submitted by that State, that is a clearly defined e.g., priority one or priority two, (not a qualified priority such as priority one for CBI or priority one for planning); or

17b. The reason(s) why a priority was not assigned;

18. Public endorsements of, expectations for or opposition to the project by public and private organizations who expect to use the work to be funded by the grant as well as those who expect to benefit or be adversely affected, directly or indirectly, from such work (a summary of such endorsements, delineating the oral from the written, and if appropriate, the extent of the support, is needed; however, copies of endorsements are not needed and should not be included in the application);

19a. A summary of the corridor plan, for those applications for the NCPD program where the work to be funded

includes environmental review or construction and where the project is not on a corridor identified by section 1105(c) of the ISTEA, as amended (for other NCPD applications this item is optional);

19b. Corridor plan, separate from the rest of the application, for those applications for the NCPD program where the work to be funded includes environmental review or construction.

20. Performance measures in support of the FHWA Strategic Plan; and

21. Summary sheet covering basic project information (see below).

Format for Summary Sheet—Application for NCPD or CBI Discretionary Funds

Grantee: List full name of agency.

U.S. Representative/Senator(s): List full names.

Governor/Mayor(s): List full names.

Project: Short name and brief description of project (e.g., This project provides for widening by one lane in each direction of * * * extending from * * * in the vicinity of * * * to * * * in the vicinity of * * * a distance of. * * * This improvement will serve * * * and * * * will result in major safety/time savings * * * to * * *).

FHWA Funds Requested: Exclude non-Federal share.

Other Funds Committed: Specify source and amounts.

Other Support: List agencies providing substantive assistance.

Other Important Information: (e.g., improved access to Indian Reservation, expected improvement to local economy, specify phase of project or corridor development, specify on going projects that will be coordinated with this one, identify environmental features, construction scheduling—all if appropriate).

Authority: 23 U.S.C. 315; secs. 1118 and 1119, Pub. L. 105–178, 112 Stat. 107, at 161 (1998); and 49 CFR 1.48.

Issued on: August 24, 1999.

Anthony R. Kane,

Executive Director.

[FR Doc. 99–22473 Filed 8–27–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–1999–6171]

Liquefied Natural Gas (LNG) Vessels; Notice of Application for Approval Under Section 9 Of the Shipping Act, 1916, as Amended, to Transfer Registry of the U.S.-Flag LNG Vessels LNG: Aquarius, Aries, Capricorn, Gemini, Leo, Libra, Virgo, and Taurus to the Marshall Islands

Wilmington Trust Company and United States Trust Company of New York, as Owner Trustees, Hull Fifty Corporation, Patriot I Shipping Corp., Patriot II Shipping Corp., and Patriot IV Shipping Corp. by applications submitted January 20 and August 20, 1999, request the approval required by Section 9 of the Shipping Act, 1916, as amended (Act), of the transfer to foreign registry of the LNG *Aquarius*, LNG *Aries*, LNG *Capricorn*, LNG *Taurus*, LNG *Libra*, LNG *Gemini*, LNG *Leo*, and LNG *Virgo* (Vessels). The Vessels, delivered between 1977 and 1979 in Quincy, Massachusetts, are 71,466 DWT liquefied natural gas carriers. The Vessels have been engaged in the carriage of LNG for Pertamina, the Indonesian State oil company, from Indonesia to Japan since their delivery, and it is expected that hey will continue to operate exclusively between foreign ports in the future. The proposed transfer of registry to the Marshall Islands does not include any change in ownership of the Vessels.

Any person, firm, or corporation having any interest in these applications for approval of the reflagging of the Vessels, and who desires to submit comments concerning the applications, should refer to the docket number that appears on this notice and submit their comments in triplicate to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Nassif Building, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at *http://dmses.dot.gov/submit/*. Comments must be received no later than 5 P.M. Eastern Time September 14, 1999.

This notice is published as a matter of discretion. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

The application and all comments received will be available for examination at the above address between 10 A.M. and 5 P.M., Monday through Friday, except Federal holidays. An electronic version of this document is available at the World Wide Web at http://dms.dot.gov.

By Order of the Maritime Administrator.

Dated: August 26, 1999.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 99–22574 Filed 8–27–99; 8:45 am]

BILLING CODE 4910–81–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–99–6157]

Pipeline Safety: Programmatic Environmental Assessment for Oil Pollution Act Facility Response Plans

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Availability of the environmental assessment for the Office of Pipeline Safety's Response Plan Review and Exercise Program.

SUMMARY: Pursuant to Council on Environmental Quality regulations and Department of Transportation policy, the Research and Special Programs Administration announces the availability of an Environmental Assessment for the Office of Pipeline Safety's (OPS) Response Plan Review and Exercise Program. The Environmental Assessment examines the effects of the program on the environment and on pipeline operators' ability to respond to oil spills affecting waters of the United States. The Research and Special Programs Administration is soliciting comments on this Environmental Assessment. These comments will be considered in evaluating it and in making decisions pursuant to the National Environmental Policy Act (NEPA).

ADDRESSES: Comments on the Environmental Assessment should be submitted to: Jim Taylor, Response Plans Officer, US Department of Transportation, Research and Special Programs Administration, Office of Pipeline Safety, Room 7128, 400 7th Street, SW, Washington, DC 20590 or email jim.taylor@rspa.dot.gov. A limited number of copies of the Environmental Assessment are available on request. Public reading copies of the Environmental Assessment will be available at the Department of Transportation Docket Center, Room PL–401, 400 7th Street, SW, Washington DC, 20590. The Dockets Facility is open from 10 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

DATES: The Environmental Assessment will remain available for public comment through September 29, 1999. Written comments should be received no later than September 29, 1999. Late comments will be considered so far as practicable.

FOR FURTHER INFORMATION CONTACT: Persons with questions about the Environmental Assessment may contact Jim Taylor at (202) 366–8860 or email *jim.taylor@rspa.dot.gov*. Persons with questions about viewing the Environmental Assessment in the DOT Docket Center may contact Dorothy Walker at (202) 366–9329 or email *dorothy.walker@tasc.dot.gov*.

SUPPLEMENTARY INFORMATION: In 1990, the United States Congress passed Public Law 101–380, the Oil Pollution Act of 1990 (OPA), to improve the nation's ability to respond to, and limit the economic and environmental impact from, marine spills of oil and other pollutants. Section 4202 of the OPA modifies the planning and response system created under the authority of Section 311(j) of the Federal Water Pollution Control Act (also known as the Clean Water Act). OPA required response plans for vessels and facilities that produce, store, transport, refine, and market oil.

Just as oil tankers are required to submit oil spill response plans to the Coast Guard and refineries are required to submit such plans to the Environmental Protection Agency (EPA), oil pipelines are required to submit their facility response plans (FRP) to OPS for review and approval. To date, more than 1300 facility response plans have been submitted to OPS. They represent some 200 oil pipeline operators, and lines that vary from 3-inch gathering systems to 36-inch product lines to the 48-inch Trans-Alaska Pipeline System. OPS conducts a thorough review of the plans, with particular emphasis on the adequacy of the pipeline operator's response resources, incident command system, and ability to protect environmentally sensitive areas from harm. OPS also makes sure that pipeline operators' plans are consistent with both the National Contingency Plan and the local Area Contingency Plan, which are developed by the Coast Guard and EPA.

In addition to reviewing operators' plans, OPS conducts exercises to test pipeline operators' ability to implement their facility response plans. To date, OPS has conducted sixty-nine Tabletop Exercises, scenario-driven discussions in which operators explain how they would implement their plans to respond to a worst-case spill. OPS has also conducted nine full-scale Area Exercises with pipeline operators in which they deploy people and equipment to the field in response to a simulated spill. In both Tabletop and Area Exercises, OPS makes every effort to have other Federal, State, and local environmental and emergency response agencies participate. Their participation makes exercises more realistic, and builds relationships between industry and public sector responders that make the response to real spills go more smoothly.

The Environmental Assessment concisely describes OPS's recent review of the effectiveness of its Response Plan Review and Exercise Program, its proposed action to continue implementation of the current program, the alternative programmatic approaches considered, the environment affected by this action, the consequences to the environment of the alternatives considered, and a list of the agencies and organizations consulted.

Issued in Washington, DC, on August 24, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–22332 Filed 8–27–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33785]

Utah Railway Company—Acquisition and Operation Exemption—Lines of Utah Transit Authority in Salt Lake City, UT

The Utah Railway Company (URC), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41, *et seq.* to acquire rights to operate over approximately 25 miles of rail line from milepost 775.19 at the Salt Lake County/Utah County boundary line to milepost 798.74 at Ninth South Street in Salt Lake City, including the 1.4-mile Lovendahl Spur. URC filed a supplement to the notice on August 9, 1999.

The notice recites that URC is acquiring "certain rights of Salt Lake City Southern Railroad Company, Inc. (SLCS) to operate over certain rail lines owned by Utah Transit Authority (UTA)." While UTA owns the underlying real property, it does not possess an ownership interest in a railroad right-of-way as such ownership is understood by this agency. If it did, UTA would have had to obtain authority from this agency for such an acquisition. UTA holds no such authority. Rather, SLCS owns the right-of-way, having acquired a permanent easement from the Union Pacific Railroad Company.

The notice recites that URC may consummate the transaction on September 30, 1999, 60 days after notice of the proposed transaction was posted at the workplace of the employees on the affected line. The regulations at 49 CFR 1150.42(e) provide, however, that the transaction not be consummated until 60 days after certification to the Board that the notice has been posted. Because this agency did not receive the certification until August 9, 1999, the transaction may not be consummated until October 8, 1999 at the earliest. In STB Docket No. AB–520, Salt Lake City Southern Railroad Company, Inc.—Adverse Abandonment—Line Of Utah Transit Authority in Salt Lake County, Utah, UTA has filed an adverse abandonment application against SLCS. UTC states that it will consummate the transaction in this proceeding after the Board authorizes SLCS's abandonment.

If this notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33785, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington DC 20423–0001. In addition, a copy of each pleading must be served on Theodore A. McConnell, Kirkpatrick & Lockhart LLP, 1500 Oliver Building, Pittsburgh, PA 15222.

Board decisions and notice are available on our website at "WWW.STB.DOT.GOV."

Decided: August 24, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–22465 Filed 8–27–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Performance Review Board

AGENCY: Department of the Treasury.

ACTION: Notice.

SUMMARY: This notice lists the membership to the Department Offices' Performance Review Board (PRB) and

supersedes the list published in **Federal Register** 54187, Vol. 63, No. 195, dated October 8, 1998, in accordance with 5 U.S.C. 4314(c)(4). The purpose of the PRB is to review the performance of members of the Senior Executive Service and make recommendations regarding performance ratings, performance awards, and other personnel actions.

The names and titles of the PRB members are as follows:

Joan Affleck-Smith: Director, Office of Financial Institutions Policy
Steven O. App: Deputy Chief Financial Officer
John J. Auten: Director, Office of Financial Analysis
Elisabeth A. Bresee: Assistant Secretary (Enforcement)
Theodore N. Carter: Deputy Assistant Secretary (Management Operations)
Mary E. Chaves: Director, Office of International Debt Policy
Marcia H. Coates: Director, Office of Equal Opportunity Program
Lynda Y. de la Vina: Deputy Assistant Secretary (Policy Coordination)
Anna F. Dixon: Director, Office of Enforcement Budget Resource Policy
Kay Frances Dolan: Deputy Assistant Secretary (Human Resources)
Joseph B. Eichenberger: Director, Office of Multilateral Development Banks
James H. Fall, III: Deputy Assistant Secretary (Technical Assistance Policy)
James J. Flyzik: Deputy Assistant Secretary (Information Systems) and Chief Information Officer
Geraldine A. Gerardi: Deputy for Business Taxation
Ronald A. Glaser: Director, Office of Personnel Policy
John C. Hambor: Director, Office of Policy Analysis
Donald V. Hammond: Fiscal Assistant Secretary
Nancy Killefer: Assistant Secretary (Management) and Chief Financial Officer
Ellen W. Lazar: Director, CDFI Fund
David A. Lebryk: Deputy Assistant Secretary (Fiscal Operations and Policy)
Nancy Lee: Director, Office of Central and Eastern European Nations
Margrethe Lundsager: Deputy Assistant Secretary (Trade and Investment Policy)
Shelia Y. McCann: Deputy Assistant Secretary (Administration)
David Medina: Deputy Assistant Secretary (Enforcement Policy)
Mark C. Medish: Deputy Assistant Secretary (Eurasia and Middle East)
Carl L. Moravitz: Director, Office of Budget
William C. Murden: Director, Office of International Banking and Securities Markets
James R. Nunns: Director for Individual Taxation
Lisa G. Ross: Deputy Assistant Secretary (Strategy and Finance)
Lewis A. Sachs: Principal Deputy Assistant Secretary (Government Financial Policy)
G. Dale Seward: Director, Automated Systems Division
Mary Beth Shaw: Director, Office of Financial Management
Gay H. Sills: Director, Office of International Investment
John P. Simpson: Deputy Assistant Secretary (Regulatory, Tariff, and Trade Enforcement)
Jane L. Sullivan: Director, Information Technology Policy and Management
Jonathan Talisman: Deputy Assistant Secretary (Tax Policy)
Karen A. Wehner: Deputy Assistant Secretary (Law Enforcement)
Thomas C. Wiesner: Director, Corporate Systems Management
David W. Wilcox: Assistant Secretary (Economic Policy)

FOR FURTHER INFORMATION CONTACT: Barbara A. Hagle, Executive Secretary, PRB, Room 1462, Main Treasury Building, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. Telephone: (202) 622–1410. This notice does not meet the Department's criteria for significant regulations.

Lisa Ross,
Acting Assistant Secretary for Management and Chief Financial Officer.

[FR Doc. 99–21981 Filed 8–27–99; 8:45 am]
BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Senior Executive Service Departmental Performance Review Board

AGENCY: Treasury Department.

ACTION: Notice of members of the Departmental Performance Review Board (PRB).

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of members of the Departmental PRB. The purpose of this PRB is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses and other appropriate personnel actions for incumbents of SES positions for which the Secretary or Deputy Secretary is the appointing authority. These positions include SES bureau heads, deputy bureau heads and certain other positions. The Board will perform PRB functions for other key bureau positions if requested.

COMPOSITION OF DEPARTMENTAL PRB: The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half the members shall consist of career appointees. The names and titles of the PRB members are as follows:

Nancy Killefer, Assistant Secretary for Management and Chief Financial Officer—Chairperson
Kay Frances Dolan, Deputy Assistant Secretary (Human Resources)
John P. Simpson, Deputy Assistant Secretary (Regulatory, Tariff & Trade Enforcement)
William H. Gillers, Deputy Associate Director, Bureau of Engraving and Printing
James E. Johnson, Under Secretary (Enforcement)
David A. Lebryk, Deputy Assistant Secretary for Fiscal Operations and Policy
Margrethe Lundsager, Deputy Assistant Secretary (Trade & Investment Policy)
Mary E. Chaves, Director, Office of International Debt Policy
Jane L. Sullivan, Director, Office of Information Resources Management
Joan Affleck-Smith, Director, Office of Financial Institutions Policy
John W. Magaw, Director, Bureau of Alcohol, Tobacco and Firearms
Samuel H. Banks, Deputy Commissioner, U.S. Customs Service
Douglas M. Browning, Assistant Commissioner (International Affairs), U.S. Customs Service
Brian L. Stafford, Director, U.S. Secret Service
W. Ralph Basham, Director, Federal Law Enforcement Training Center
John P. Mitchell, Deputy Director, U.S. Mint
Richard B. Calahan, Deputy Inspector General
Richard L. Gregg, Commissioner, Financial Management Service
Thomas A. Ferguson, Director, Bureau of Engraving and Printing
David A. Mader, Chief Officer, Management and Finance, Internal Revenue Service
Evelyn A. Petschek, Assistant Commissioner, Employee Plans and Exempt Organizations, Internal Revenue Service
Darlene R. Berthod, Deputy Chief Operations Officer, Internal Revenue Service
Frederic V. Zeck, Commissioner, Bureau of the Public Debt
Kenneth R. Schmalzbach, Assistant General Counsel (General Law & Ethics)
Roberta K. McInerney, Assistant General Counsel (Banking & Finance)

DATES: Membership is effective August 30, 1999.

FOR FURTHER INFORMATION CONTACT: Ronald A. Glaser, Department of the Treasury, Director, Office of Personnel Policy, Annex Building, Room 4161, Pennsylvania Avenue at Madison Place, NW., Washington, DC 20220, Telephone: (202) 622–1890.

This notice does not meet the Department's criteria for significant regulations.

Ronald A. Glaser,
Director, Office of Personnel Policy.

[FR Doc. 99–22419 Filed 8–27–99; 8:45 am]
BILLING CODE 4810–25–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: "Beyond the Golden Fleece: The Jews of Georgia"

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 133359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the objects to be included in the exhibit "Beyond the Golden Fleece: The Jews of Georgia", imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Meridian International Center, Washington, D.C. from on or about October 26, 1999 to on or about November, 1999. The exhibition will subsequently travel to San Diego, CA and Houston, TX and possibly at other U.S. venues yet to be identified, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For a copy of the list of exhibit items, or for other information, contact Carol Epstein, Assistant General Counsel, Office of the General Counsel at 202/619–6981. The address is Room 700, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: August 24, 1999.

Les Jin,
General Counsel.

[FR Doc. 99–22482 Filed 8–27–99; 8:45 am]
BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: "From Schongauer to Holbein: Master Drawings from Basel and Berlin"

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 133359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "From Schongauer to Holbein: Master Drawings from Basel and Berlin" imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at National Gallery of Art, Washington, DC, from on or about October 24, 1999 to on or about January 9, 2000, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For futher information, contact Jacqueline Caldwell, Assistant General Counsel, Office of the General Counsel, 202/619–6982, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: August 24, 1999.

Les Jin,
General Counsel.

[FR Doc. 99–22481 Filed 8–27–99; 8:45 am]
BILLING CODE 8230–01–M

federal register

Monday
August 30, 1999

Part II

Environmental Protection Agency

40 CFR Part 60
Emission Guidelines for Existing Stationary Sources: Small Municipal Waste Combustion Units; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–6424–6]

RIN 2060–AI51

Emission Guidelines for Existing Stationary Sources: Small Municipal Waste Combustion Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to reestablish emission guidelines for existing small municipal waste combustion (MWC) units. When implemented, these emission guidelines will result in stringent emission limits for organics (dioxins/furans), metals (cadmium, lead, mercury, and particulate matter), and acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides). Emission guidelines for small MWC units were originally promulgated in December 1995 but were vacated by the U.S. Court of Appeals for the District of Columbia Circuit in March 1997.

DATES: *Comments:* Comments on these proposed emission guidelines and comments on the Information Collection Request (ICR) document associated with these emission guidelines must be received on or before October 29, 1999.

Public Hearing: A public hearing will be held if requests to speak are received by September 14, 1999. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission guidelines. If requests to speak are received, the public hearing will take place in Research Triangle Park, North Carolina, approximately 30 days after August 30, 1999 and will begin at 10:00 a.m. A message regarding the status of the public hearing may be accessed by calling (919) 541–5264.

ADDRESSES: *Comments:* Submit comments on these proposed emission guidelines (in duplicate, if possible) to: Air and Radiation Docket and Information Center (MC–6102), Attention Docket No. A–98–18, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Comments may also be submitted electronically. Send electronic submittals to: "'A-and-R-Docket@epamail.epa.gov'". Submit electronic comments in American Standard Code for Information Interchange (ASCII) format. Avoid the use of special characters and any form of encryption. Electronic comments on these proposed emission guidelines may be filed online at any Federal Depository Library. For additional information on comments and public hearing see the **SUPPLEMENTARY INFORMATION** section.

Docket: Docket No. A–98–18 for this proposal and associated Docket Nos. A–90–45 and A–89–08 contain supporting information for these emission guidelines. These dockets are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center (MC–6102), 401 M Street SW., Washington, DC 20460, or by calling (202) 260–7548. The dockets are located at the above address in Room M–1500, Waterside Mall (ground floor, central mall). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Stevenson at (919) 541–5264, Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, e-mail: stevenson.walt@epa.gov.

SUPPLEMENTARY INFORMATION:

Comment Information

Comments and data will also be accepted on disks in WordPerfect® Version 5.1 or 6.1 file format (or ASCII file format). Address all comments and data for this proposal, whether on paper or in electronic form, such as through e-mail or disk, to Docket No. A–98–18.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it Confidential Business Information. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Ms. Melva Toomer, U.S. EPA, OAQPS Document Control Officer, 411 W. Chapel Hill Street, Room 944, Durham, NC 27701. Do not submit Confidential Business Information (CBI) electronically.

The EPA will disclose information identified as Confidential Business Information only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing

If a public hearing is held, it will take place at EPA's Office of Administration Auditorium, Research Triangle Park, NC, or at an alternate site nearby. Persons interested in presenting oral testimony at the public hearing should notify Ms. Libby Bradley, Combustion Group, Emission Standard Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5578, at least 2 days in advance of the public hearing. Persons interested in attending the public hearing must also call Ms. Bradley to verify the time, date, and location of the hearing. The final hearing status and location may be obtained by calling (919) 541–5264.

World Wide Web Site

Electronic versions of this notice, the proposed regulatory text, and other background information are available at the World Wide Web site that EPA has established for these proposed emission guidelines for small MWC units. The address is: "http://www.epa.gov/ttn/uatw/129/mwc/rimwc2.html." For assistance in downloading files, call the EPA's Technology Transfer Network (TTN) HELP line at (919) 541–5384.

Regulated Entities

No entities would be directly regulated by this action because this proposal is an emission guideline, which requires additional State or Federal action for implementation. However, the promulgation of State or Federal plans implementing these emission guidelines would affect the following categories of sources:

Category	NAICS codes	SIC codes	Examples of regulated entities
Industry, Federal government, and State/local/tribal governments.	562213 92411	4953 9511	Solid waste combustors or incinerators at waste-to-energy facilities that generate electricity or steam from the combustion of garbage (typically municipal waste); and solid waste combustors or incinerators at facilities that combust garbage (typically municipal waste) and do not recover energy from the waste.

This list is not intended to be exhaustive, but rather provides a guide regarding the entities EPA expects to be regulated by applicable State or Federal plans implementing these emission guidelines for small MWC units. These emission guidelines would primarily impact facilities in North American Industrial Classification System (NAICS) codes 562213 and 92411, formerly Standard Industrial Classification (SIC) codes 4953 and 9511, respectively. Not all facilities classified under these codes would be affected. To determine whether your facility would be regulated by State or Federal plans implementing these emission guidelines, carefully examine the applicability criteria in section II.A of this preamble and in §§ 60.1550 through 60.1565 of these proposed emission guidelines. If you have any questions regarding the applicability of this action to your small MWC unit or any other question or comment, please submit comments to Docket No. A–98–18 or refer to the **FOR FURTHER INFORMATION CONTACT** section.

Organization of This Document. The following outline is provided to aid in locating information in this preamble. Each section heading of the preamble is presented as a question and the text in the section answers the question.

I. Background Information
II. Summary of These Proposed Emission Guidelines
A. What sources would be directly or indirectly regulated by these proposed emission guidelines?
B. Has the small MWC unit population been subcategorized within this proposal?
C. What pollutants would be regulated by these proposed emission guidelines?
D. What is the format of the proposed emission limits in these emission guidelines?
E. Where can I find a more detailed summary of these proposed emission guidelines?
III. Changes in These Proposed Emission Guidelines Relative to the 1995 Emission Guidelines
A. How has the conversion to plain language affected these emission guidelines?
B. How has the size definition of the small MWC category been revised?
C. How has the population of small MWC units been subcategorized?
D. What are the proposed emission limits?
E. Have carbon monoxide emission limits been revised for fluidized bed combustion units that cofire wood and refuse derived fuel?
F. Have any changes been made to the operator certification requirements?
G. Have any changes been made to the operating practice requirements?
H. Have any changes been made to the monitoring and stack testing requirements?
I. Have any changes been made to the recordkeeping and reporting requirements?
IV. What Would be the Impacts of These Proposed Emission Guidelines?
A. Air Impacts
B. Cost and Economic Impacts
V. Companion Proposal for New Small MWC Units
VI. Amendments to 40 CFR Part 60, Subpart B
VII. Administrative Requirements
A. Public Hearing
B. Docket
C. National Technology Transfer and Advancement Act
D. Paperwork Reduction Act
E. Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act
F. Unfunded Mandates Reform Act
G. Executive Order 12866—Regulatory Planning and Review
H. Executive Order 12875—Enhancing the Intergovernmental Partnership
I. Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations
J. Executive Order 13045—Protection of Children from Environmental Health Risks and Safety Risks
K. Executive Order 13084—Consultation and Coordination with Indian Tribal Governments
L. Executive Memorandum on Plain Language in Government Writing

Abbreviations and Acronyms Used in This Document

ASCII—American Standard Code for Information Interchange
ASME—American Society of Mechanical Engineers
CBI—Confidential Business Information
CFR—Code of Federal Regulations
DSI/ESP/CI—dry sorbent injection/electrostatic precipitator/carbon injection
EPA—Environmental Protection Agency
ESP—electrostatic precipitator
FR—Federal Register
ICR—Information Collection Request
kg/year—kilograms per year
MACT—maximum achievable control technology
mg/dscm—milligrams per dry standard cubic meter
Mg/year—megagrams per year
MSW—municipal solid waste
MWC—municipal waste combustion
NAICS—North American Industrial Classification System
ng/dscm—nanograms per dry standard cubic meter
NSPS—new source performance standards
NTTAA—National Technology Transfer and Advancement Act
OAQPS—Office of Air Quality Planning and Standards
OMB—Office of Management and Budget
OP—Office of Policy
Pub. L.—Public Law
ppmv—parts per million by volume
RDF—refuse-derived fuel
RFA—Regulatory Flexibility Act
SBREFA—Small Business Regulatory Enforcement Fairness Act
SD/ESP/CI—spray dryer/electrostatic precipitator/carbon injection
SD/FF/CI/SNCR—spray dryer/fabric filter/carbon injection/selective noncatalytic reduction
SIC—Standard Industrial Classification
TTN—Technology Transfer Network
UMRA—Unfunded Mandates Reform Act
U.S.C.—United States Code

I. Background Information

On September 20, 1994, EPA proposed emission guidelines for large and small MWC units under 40 CFR part 60, subpart Cb. Those emission guidelines covered all MWC units located at plants with an aggregate plant combustion capacity larger than 35 megagrams per day of municipal solid waste (MSW), which is approximately 39 tons per day of MSW. The subpart Cb emission guidelines for large and small MWC units were promulgated on December 19, 1995.

The 1995 emission guidelines divided the MWC unit population into MWC units located at large MWC plants and MWC units located at small MWC plants based on the total aggregate capacity of all MWC units at the MWC plant. The large plant category included all MWC units located at MWC plants with aggregate plant combustion capacities greater than 225 megagrams per day (approximately 248 tons per

day). The small plant category comprised all MWC units located at MWC plants with aggregate plant combustion capacities of 35 to 225 megagrams per day (approximately 39 to 248 tons per day).

Following promulgation of the 1995 emission guidelines, a petition for review was filed with the U.S. Court of Appeals for the District of Columbia Circuit regarding the use of aggregate plant capacity as the basis for initial categorization of the MWC unit population. An initial opinion was issued by the court on December 6, 1996 (*Davis County Solid Waste Management and Recovery District* v. *EPA*, 101 F. 3d 1395, D.C. Cir. 1996). The initial opinion would have vacated (canceled) the 1995 emission guidelines for both large and small MWC units.

The EPA filed a petition for rehearing on February 4, 1997 requesting the court to reconsider the remedy portion of its opinion and to vacate these emission guidelines only as they apply to small MWC units (units having an individual capacity of 35 to 250 tons per day). The court granted EPA's petition, reconsidered its opinion, and issued a revised opinion on March 21, 1997 (*Davis County Solid Waste Management and Recovery District* v. *EPA*, 108 F. 3d 1454, D.C. Cir. 1997). The revised opinion remanded to EPA the 1995 emission guidelines for the large MWC unit category for amendment to be consistent with the court's final opinion and vacated these emission guidelines only as they applied to small MWC units.

Amendments to the 1995 emission guidelines incorporating the court's final opinion were published on August 25, 1997 (62 FR 45116). The amendments made the subpart Cb emission guidelines consistent with the court's decision and included other minor technical corrections to improve clarity. The principal change was to remove small MWC units from the applicability of subpart Cb. This was accomplished by increasing the lower size cutoff for large MWC units from 35 megagrams per day on a plant capacity basis to 250 tons per day on a unit capacity basis. No adverse comments were received on the proposal and they became effective on October 24, 1997.

With the increase in the lower size cutoff for large MWC units from 248 tons per day on a plant capacity basis to 250 tons per day on a unit capacity basis, 45 MWC units that were previously in the large MWC plant category were moved into the newly classified small MWC unit category. These units are commonly referred to as "Davis class" MWC units (referencing the name of the court's opinion that clarifies that EPA must move these units from the large MWC unit category to the small MWC unit category).

Today's proposal would reestablish emission guidelines for existing small municipal waste combustion capacities of 35 to 250 tons per day of MSW.

II. Summary of These Proposed Emission Guidelines

This section summarizes these proposed emission guidelines for small MWC units, including identification of the subcategories used in this proposal for small MWC units. Overall, these proposed emission guidelines for small MWC units are functionally equivalent to the 1995 emission guidelines for small MWC units.

A. What Sources Would be Directly or Indirectly Regulated by These Proposed Emission Guidelines?

Today's proposed emission guidelines would not directly regulate small MWC units, but they would require States to develop plans to limit air emissions from existing small MWC units. In this proposal and in associated State plans, a small MWC unit would be defined as any MWC unit with a combustion design capacity of 35 to 250 tons per day.

B. Has the Small MWC Unit Population Been Subcategorized Within this Proposal?

Yes, within these proposed emission guidelines, the small MWC unit population is subcategorized based on: (1) Aggregate capacity of the plant where the individual MWC unit is located, and (2) combustor type. The resulting subcategories are as follows: (1) Class A units are defined as nonrefractory-type small MWC units located at plants with an aggregate plant capacity greater than 250 tons per day of MSW, (2) Class B units are refractory-type small MWC units located at plants with an aggregate plant capacity greater than 250 tons per day of MSW, and (3) Class C units are all small MWC units located at plants with an aggregate plant capacity less than or equal to 250 tons per day of MSW.

C. What Pollutants Would be Regulated by These Proposed Emission Guidelines?

Section 129 of the Clean Air Act requires EPA to establish numerical emission limits for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, sulfur dioxide, hydrogen chloride, nitrogen oxides, and carbon monoxide. Section 129 specifies that EPA may also:

> * * * promulgate numerical emission limitations or provide for the monitoring of post-combustion concentrations of surrogate substances, parameters, or periods of residence times in excess of stated temperatures with respect to pollutants other than those listed [above] * * *.

Therefore, in addition to emission limits, EPA is proposing guidelines for unit operating load, flue gas temperature at the particulate matter control device inlet, and carbon feed rate as part of the good combustion practice requirements. The EPA is also proposing requirements for the control of fugitive ash emissions. All of these requirements were contained in the 1995 emission guidelines.

D. What is the Format of the Proposed Emission Limits in These Emission Guidelines?

The format of the proposed emission limits is identical to the format of the emission limits in the 1995 emission guidelines. The format is in the form of emission limits based on pollutant concentration. Alternative percentage reduction requirements are provided for mercury, sulfur dioxide, and hydrogen chloride. Opacity and fugitive ash requirements are identical to the 1995 emission guidelines. In addition to controlling stack emissions, these proposed emission guidelines incorporate the same good combustion practice requirements (i.e., operator training, operator certification, and operating requirements) that were included in the 1995 emission guidelines. Additionally, this proposal includes a clarification to the operator certification requirements to address periods when the certified chief facility operator and certified shift supervisor must be offsite. Section III.F provides more detail on the differences in operator certification requirements between these proposed subpart BBBB guidelines and the 1995 subpart Cb guidelines. Today's proposal also includes a revision to the activated carbon feed rate requirement. (Section III.G provides additional information on proposed changes to the carbon feed rate requirements.)

E. Where Can I Find a More Detailed Summary of These Proposed Emission Guidelines?

A concise summary of these proposed emission guidelines can be found either in: (1) Tables 2 through 5 of the proposed subpart BBBB emission guidelines following this preamble; or (2) the Technical Fact Sheet for this proposal that can be downloaded from the EPA World Wide Web site for small MWC units (http://www.epa.gov/ttn/uatw/129/mwc/rimwc2.html).

III. Changes in These Proposed Emission Guidelines Relative to the 1995 Emission Guidelines

This section summarizes changes in the proposed emission guidelines compared to the 1995 emission guidelines. Overall, these emission guidelines are functionally equivalent to the 1995 emission guidelines, with minimal changes. The most significant change is the use of the plain language style for organizing and writing these emission guidelines. These proposed emission guidelines retain subcategorization by aggregate plant capacity and only a few emission limits have been revised.

Compared to the 1995 emission guidelines for large and small MWC units, these proposed emission guidelines have identical requirements for all small MWC units except for Class B units. The requirements for the Class A and Class C units remain the same as the 1995 requirements, except that the nitrogen oxides emission limit for Class A units has been changed to reflect revised MACT floors.

A. How Has the Conversion to Plain Language Affected These Emission Guidelines?

These proposed emission guidelines are organized and written in the plain language style. This style has not affected the content of these proposed emission guidelines when compared to the 1995 emission guidelines. However, it has changed their appearance. The EPA considers the question and answer format of the plain language style to be more user friendly and understandable to all audiences when compared with previous rules that were not written in this style.

The question and answer format that is used in the regulatory text for this proposal significantly minimizes cross-referencing within these emission guidelines. Additionally, these proposed emission guidelines have been drafted as a stand-alone subpart without the cross-referencing to the NSPS required by the 1995 emission guidelines. To improve the presentation of these emission guidelines requirements, additional tables have been added.

B. How Has the Size Definition of the Small MWC Category Been Revised?

As a result of the 1997 court decision, both the upper and lower size definitions (cutoffs) have been changed so that the small MWC unit category is based on the capacity of an individual MWC unit rather than on the total capacity of the plant where an MWC unit is located. Additionally, English units of measure (tons per day capacity) are used instead of metric units of measure (megagrams per day capacity).

1. Upper Size Cutoff

The upper size cutoff for small MWC units is proposed as 250 tons per day on a unit capacity basis. In the 1995 emission guidelines, the upper size cutoff was 225 megagrams per day (approximately 248 tons per day) based on total plant capacity. This revised upper size cutoff is consistent with the 1997 court ruling.

2. Lower Size Cutoff

The lower size cutoff for small MWC units is proposed as 35 tons per day on a unit capacity basis. In the 1995 emission guidelines, the lower size cutoff for small MWC units was 35 megagrams per day (approximately 39 tons per day) based on total plant capacity. In this proposal, the lower size cutoff has been changed to a unit capacity basis to make both the upper size cutoff and lower size cutoff based on a unit capacity basis (Docket No. A–98–18).

C. How has the Population of Small MWC Units Been Subcategorized?

These proposed emission guidelines retain the use of aggregate plant capacity to subcategorize small MWC units.

After first dividing the MWC unit population into units above 250 tons per day (large units) and units less than 250 tons per day (small units), the court's decision allowed EPA to:

> * * * exercise its discretion to distinguish among units within a category and create subcategories of small units, for which it can then calculate MACT floors and standards separately.

Thus, the court allowed EPA to subcategorize by unit location (aggregate plant capacity) at its discretion. The EPA has elected to retain the subcategorization used in the 1995 emission guidelines. Therefore, today's proposal establishes separate subcategories for small MWC units at: (1) Facilities with aggregate plant capacities greater than 250 tons per day (Davis class units), and (2) facilities with aggregate plant capacities less than or equal to 250 tons per day (non-Davis class units).

The EPA has noted that design and operational characteristics of refractory-type units are noticeably different than those of nonrefractory-type units. Further analysis of MWC unit operation showed that refractory-type MWC units generate approximately 50 percent more flue gas (exhaust) per ton of waste burned than nonrefractory-type MWC units. Higher levels of excess combustion air are used with refractory units by design to avoid overheating the refractory walls (Docket No. A–98–18). Because of this technical difference, EPA has elected to subdivide the Davis class units into a Davis refractory-type class and a Davis nonrefractory-type class.

In summary, today's proposal divides the small MWC unit population into three classes. Class A comprises small nonrefractory-type MWC units located at plants with an aggregate plant capacity greater than 250 tons per day of MSW. Class B comprises small refractory-type MWC units located at plants with an aggregate plant capacity greater than 250 tons per day of MSW. Class C comprises all small MWC units located at plants with an aggregate plant capacity less than or equal to 250 tons per day of MSW.

D. What are the Proposed Emission Limits?

1. Summary of the Proposed Emission Limits for Small MWC Units

To propose emission limits for small MWC units, EPA had to recalculate the MACT floors to account for changes in the small MWC unit definition (from a plant basis to a unit basis and from metric units of measure to English units) and the establishment of the three MWC unit subcategories. After establishing the MACT floor for each pollutant in each small MWC unit subcategory, EPA considered the cost, nonair quality health and environmental impacts, and energy requirements associated with any alternatives more stringent than the MACT floor in selecting MACT for each pollutant.

For each of the three MWC unit subcategories (Classes A, B, and C), EPA is proposing emission limits for organics (dioxins/furans), metals (cadmium, lead, mercury, particulate matter, and opacity), and acid gases (sulfur dioxide and hydrogen chloride). In addition, a nitrogen oxides emission limit is proposed for Class A units.

The emission limits proposed for Class A and Class C units are identical to those promulgated in the 1995 emission guidelines for large and small MWC plants, respectively, except that the nitrogen oxides emission limit for Class A units has changed to reflect the revised MACT floor. The emission limits proposed today for the Class B units are less stringent than those contained in the 1995 emission guidelines for large MWC plants.

2. Summary of the MACT Floor for Small MWC Units

To calculate the MACT floors, the small MWC unit population had to first be subdivided. This was done by modifying the MWC unit population in the 1995 MWC inventory database to: (1) Incorporate the 45 Davis class MWC units into the small MWC unit category, and (2) assign those 45 units to the Class A or Class B subcategories. The remaining small MWC units originally in the 1995 MWC inventory database are Class C units.

After establishing the small MWC unit population in each of the three classes, the MACT floors were calculated using a similar method and the same emissions data that were used to calculate the MACT floors for the 1995 emission guidelines. In summary, the MACT floor for each pollutant in each of the three classes was determined by: (1) Identifying the most stringent emission limitations achieved by the small MWC units, and (2) calculating the average emission limitation of the best performing 12 percent of units in each class. In identifying the most stringent emission limitations achieved by small MWC units, EPA relied on permit limits. Where EPA did not have permit information for a sufficient number of units to account for 12 percent of the units in a particular class, EPA used an uncontrolled default emission value based on AP–42 emission factors and test data to account for the additional number of units necessary to represent 12 percent of the units in the class. The default values were also used for a small MWC unit if: (1) The unit was not in compliance with its permit; or (2) the unit had a permit limit value higher than typical uncontrolled emissions from small MWC units. The EPA believes the uncontrolled default emission values used are a reasonable surrogate for actual data for the following reasons. First, EPA made an exhaustive effort to obtain permit information for each small MWC unit. Some small MWC units did not have permits, while others had permits which did not contain emission limitations for one or more of the pollutants specified in section 129. The EPA believes that it is reasonable to assume that uncontrolled emission values reasonably reflect actual emissions for such units. Second, EPA believes that the uncontrolled emission default values used reasonably reflect uncontrolled emissions for small MWC units. The MACT floor development for this proposal is discussed in more detail in "Determination of the Maximum Achievable Control Technology (MACT) Floor for Small Municipal Waste Combustion Units" (Docket No. A–98–18), the September 1995 EPA report "Municipal Waste Combustion: Background Information Document for Promulgated Standards and Guidelines—Public Comments and Responses" (EPA–453/R–95–013b), and the 1994 proposal preamble (59 FR 48228).

3. Emission Limits for Class A Units

Class A units in this proposal are nonrefractory Davis class units that were in the large MWC plant population in the 1995 emission guidelines. Table 1 presents the MACT floor emission levels for Class A units.

TABLE 1.—MACT FLOOR EMISSION LEVELS FOR CLASS A MWC UNITS

Pollutant [a]	MACT floor
Dioxins/furans (ng/dscm) [b]	1000
Cadmium (mg/dscm)	0.45
Lead (mg/dscm)	1.0
Mercury (mg/dscm)	0.37
Particulate matter (mg/dscm)	34
Sulfur dioxide (ppmv)	50
Hydrogen chloride (ppmv)	50
Nitrogen oxides (ppmv)	171

[a] All concentrations are corrected to 7 percent oxygen.
[b] Total mass of tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans.

The EPA has concluded that a SD/FF/CI/SNCR air pollution control system is needed to achieve the MACT floor emission levels for sulfur dioxide, hydrogen chloride, mercury, nitrogen oxides, and particulate matter presented in table 1. This is the same air pollution control technology that served as the basis of these emission guidelines promulgated in 1995 for large MWC plants. This air pollution control technology would also provide substantial reductions of dioxins/furans, cadmium, and lead. Therefore, EPA is proposing the same emission limits for Class A units for all pollutants, except nitrogen oxides, as those promulgated for large MWC plants in the 1995 emission guidelines.

The EPA is proposing a single emission limit for nitrogen oxides of 171 ppmv. Unlike the emission limits promulgated in 1995 that had separate nitrogen oxides limits for each different combustion unit design type (e.g., mass burn waterwall, fluidized bed combustor, mass burn rotary waterwall), EPA is proposing one nitrogen oxides emission limit for all combustion unit design types within Class A. This proposed nitrogen oxides emission limit is the MACT floor emission level. The EPA has concluded that this limit could be achieved with the same control technology (SNCR) that served as the basis of the nitrogen oxides emission limits for large MWC plants in 1995 (Docket No. A–90–45). This single nitrogen oxides emission limit also simplifies these emission guidelines. Table 2 presents the proposed emission limits for Class A units.

TABLE 2.—EMISSION LIMITS FOR CLASS A MWC UNITS

Pollutant [a]	Emission limit
Dioxins/furans (ng/dscm) [b]	30/60 [c]
Cadmium (mg/dscm)	0.04
Lead (mg/dscm)	0.49
Mercury (mg/dscm)	0.08 (or 85-percent reduction)
Particulate matter (mg/dscm).	27
Sulfur dioxide (ppmv)	31 (or 75-percent reduction)
Hydrogen chloride (ppmv)	31 (or 95-percent reduction)
Nitrogen oxides (ppmv)	171

[a] All concentrations are corrected to 7 percent oxygen.
[b] Total mass of tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans.
[c] The emission limit is 60 ng/dscm for MWC units using an electrostatic precipitator-based air pollution control system and is 30 ng/dscm for MWC units using a non-electrostatic precipitator-based air pollution control system.

The 1994 proposal preamble (59 FR 48228) provides thorough documentation of: (1) the capability of an SD/FF/CI/SNCR air pollution control system to meet the emission limits being proposed, and (2) the rationale for selection of these limits for Class A units.

4. Emission Limits for Class B Units

Class B units in this proposal are the refractory-type MWC units in the Davis class that were in the large MWC plant population for the 1995 emission guidelines. Table 3 presents the MACT floor emission levels for Class B units.

TABLE 3.—MACT FLOOR EMISSION LEVELS FOR CLASS B MWC UNITS

Pollutant [a]	MACT floor
Dioxins/furans (ng/dscm) [b]	123
Cadmium (mg/dscm)	1.2
Lead (mg/dscm)	1.8
Mercury (mg/dscm)	0.29
Particulate matter (mg/dscm)	34
Sulfur dioxide (ppmv)	55
Hydrogen chloride (ppmv)	200

[a] All concentrations are corrected to 7 percent oxygen.

[b] Total mass of tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans.

The EPA has concluded that a DSI/ESP/CI air pollution control system is needed to achieve the MACT floor emission levels for sulfur dioxide, hydrogen chloride, dioxins/furans, mercury, and particulate matter presented in table 3. Unlike the MACT floors for large MWC plants for the 1995 emission guidelines, which requires an air pollution control technology equivalent to a SD/ESP/CI or SD/FF/CI, it is not necessary to use this technology to meet these MACT floors for Class B units.

The EPA considered the feasibility of going beyond the MACT floor level of technology and proposing the same emission limits for Class B units as those for Class A units (i.e., emission limits based on SD/ESP/CI or SD/FF/CI technology). However, the refractory-type combustor design of Class B units is distinctly different from the nonrefractory-type design of Class A units. The design and operational characteristics of refractory and nonrefractory-type units were evaluated (Docket No. A–98–18). This evaluation demonstrated that refractory-type MWC units (Class B) generate approximately 50 percent more flue gas (exhaust volume) per ton of waste burned than nonrefractory-type MWC units (Class A). Higher levels of excess air are used in refractory-type units by design to avoid overheating the refractory walls. Large flue gas exhaust volume from refractory-type units result in more flue gas to be cleaned. Therefore, EPA does not believe it is reasonable to propose emission limits for Class B units based on SD/FF/CI or SD/ESP/CI technology.

For this reason, EPA proposes to set the emission limits for Class B units based on the MACT floor level control technology (DSI/ESP/CI). For dioxins/furans, particulate matter, sulfur dioxide, and hydrogen chloride, the proposed emission limits are the MACT floor emission levels. For cadmium, lead, and mercury, EPA is proposing emission limits that are more stringent than the MACT floor level but have been demonstrated to be achievable by DSI/ESP/CI technology. The emission limits for these three pollutants are the same as the limits in the 1995 emission guidelines for small MWC plants where DSI/ESP/CI technology was the basis of the MACT limits. The proposed emission limits for Class B units are summarized in table 4.

TABLE 4.—EMISSION LIMITS FOR CLASS B MWC UNITS

Pollutant [a]	Emission limit
Dioxins/furans (ng/dscm) [b]	123
Cadmium (mg/dscm)	0.1
Lead (mg/dscm)	1.6
Mercury (mg/dscm)	0.08 (or 85-percent reduction)
Particulate matter (mg/dscm).	34
Sulfur dioxide (ppmv)	55 (or 50-percent reduction)
Hydrogen chloride (ppmv)	200 (or 50-percent reduction)

[a] All concentrations are corrected to 7 percent oxygen.
[b] Total mass of tetra through octachlorinated dibenzo-p-dioxins and dibenzofurans.

Thorough documentation of the capability of a DSI/ESP/CI system to meet these proposed emission limits is available in the 1994 proposal (59 FR 48228) and the document "Municipal Waste Combustors—Background Information for Proposed Standards: Post-Combustion Technology Performance" (Docket No. A–89–08). As in the 1995 emission guidelines for large refractory-type MWC units, no nitrogen oxides emission limit is proposed for Class B units (see the 1994 proposal preamble, 59 FR 48228).

5. Emission Limits for Class C Units

Class C units in this proposal are those units that were in the small MWC plant population in the 1995 emission guidelines. Table 5 presents the MACT floor emission levels for Class C units.

TABLE 5.—MACT FLOOR EMISSION LEVELS FOR CLASS C MWC UNITS

Pollutant [a]	MACT floor
Dioxins/furans (ng/dscm) [b]	837
Cadmium (mg/dscm)	1.2
Lead (mg/dscm)	23
Mercury (mg/dscm)	0.65
Particulate matter (mg/dscm)	91
Sulfur dioxide (ppmv)	85
Hydrogen chloride (ppmv)	291

[a] All concentrations are corrected to 7 percent oxygen.
[b] Total mass of tetra through octachlorinated dibenzo-p-dioxins and dibenzofurans.

The EPA has concluded that a DSI/ESP air pollution control system is needed to achieve the MACT floor emission levels for sulfur dioxide, hydrogen chloride, and particulate matter presented in table 5. This is the same air pollution control technology (DSI/ESP) used as the basis of the emission limits promulgated in 1995 for small MWC plants. This air pollution control technology would also provide substantial reductions in cadmium and lead. The MACT floor for mercury is at a level typical for units that are uncontrolled. As discussed in the 1994 proposal preamble (59 FR 48249), for units that would need a DSI/ESP system to meet MACT floor requirements, activated carbon injection could be added to a DSI/ESP system at a minimal incremental cost. The addition of a CI air pollution control system would provide substantial reductions in dioxins/furans and mercury. The EPA considers that the cost to install CI is reasonable given the potential health effects associated with the bioaccumulation of mercury in the environment and the toxic nature of dioxins/furans. Therefore, EPA is proposing the same emission limits for Class C units as those promulgated for small MWC plants in the 1995 emission guidelines as MACT. These emission limits reflect MACT performance and are based on the performance of a DSI/ESP/CI air pollution control technology. Table 6 presents the proposed emission limits for Class C units.

TABLE 6.—EMISSION LIMITS FOR CLASS C MWC UNITS

Pollutant [a]	Emission limit
Dioxins/furans (ng/dscm) [b]	125
Cadmium (mg/dscm)	0.1
Lead (mg/dscm)	1.6
Mercury (mg/dscm)	0.08 (or 85-percent reduction)
Particulate matter (mg/dscm).	70
Sulfur dioxide (ppmv)	80 (or 50-percent reduction)
Hydrogen chloride (ppmv)	250 (or 50-percent reduction)

[a] All concentrations are corrected to 7 percent oxygen.
[b] Total mass of tetra through octachlorinated dibenzo-p-dioxins and dibenzofurans.

These proposed emission limits are identical to those promulgated in the 1995 emission guidelines for small MWC units. Because of this, the 1994 proposal preamble (59 FR 48228) provides thorough documentation of: (1) The capability of a DSI/ESP/CI system to meet the emission limits being proposed, and (2) the rationale for selection of these limits for Class C units. As in the 1995 emission guidelines for small MWC units, no nitrogen oxides emission limit is proposed for Class C units.

E. Have Carbon Monoxide Emission Limits Been Revised for Fluidized Bed Combustion Units That Cofire Wood and Refuse-derived Fuel?

The EPA has concluded that another MWC unit category should be established for carbon monoxide emission limits. Fluidized bed combustion units that burn a mixture of wood and RDF have exhibited higher variations in carbon monoxide than expected.

The EPA conducted an analysis of carbon monoxide data from a fluidized bed combustion unit that burns a mixture of wood and RDF and has incorporated good combustion practice modifications (Docket No. A–98–18). The EPA has determined that an additional carbon monoxide emission limit would be appropriate for cofired fluidized bed combustion units. Based on this analysis, EPA observed that a long-term average carbon monoxide emission level of less than 100 ppmv can be achieved and a carbon monoxide emission limit for this combustion unit type of 200 ppmv (24-hour average) would be appropriate. The carbon monoxide data used to establish this new carbon monoxide emission limit were compared with dioxin/furan emission tests conducted on this same MWC unit following the good combustion practice modifications. This comparison showed that fluidized bed combustion units burning wood and RDF and applying good combustion practices emit carbon monoxide up to 200 ppmv, and substantial dioxin/furan emission reductions are achieved by good combustion practices at these carbon monoxide levels.

F. Have Any Changes Been Made to the Operator Certification Requirements?

One change is proposed for the operator certification section of the good combustion practice requirements since the 1995 guidelines. In response to questions since the 1995 emission guidelines were promulgated, EPA has clarified what actions an MWC unit owner must take to continue operating an MWC unit during times when the certified chief facility operator and certified shift supervisor must be temporarily offsite for an extended period of time and there are no other certified chief facility operators or certified shift supervisors onsite. The EPA has addressed this issue by adding specific requirements for MWC units when the certified chief facility operator and certified shift supervisor must be offsite. Different requirements apply depending on the length of time the certified chief facility operator and certified shift supervisor must be offsite. These changes have been added to § 60.1685 of these proposed emission guidelines.

G. Have Any Changes Been Made to the Operating Practice Requirements?

One change is proposed for the operating practice requirements since the 1995 guidelines. The EPA has clarified how the required level of carbon feed rate is established and how the required monitoring parameter and quarterly carbon usage are used to determine compliance with the operating practice requirements. As discussed below, this results in two enforceable requirements for carbon feed rate.

As in the 1995 emission guidelines, the MWC plant owner must select an operating parameter (e.g., screw feeder speed) that can be used to calculate carbon feed rate. During each dioxin/furan and mercury stack test, the total amount of carbon used during each stack test must be measured. The total amount of carbon used during the test is divided by the duration (hours) of the stack test to give an average carbon feed rate in kilograms (or pounds) per hour. The MWC plant owner must also monitor the selected operating parameter during each dioxin/furan and mercury stack test and record the average operating parameter level. After the dioxin/furan and mercury stack tests are complete, the MWC owner must establish a relationship between the selected operating parameter and the measured carbon feed rate so that the selected parameter can be used to calculate the carbon feed rate. The selected operating parameter must then be continuously monitored during MWC unit operation and used to calculate the carbon feed rate. The calculated carbon feed rate cannot fall below the carbon feed rate measured during the dioxin/furan or mercury stack test (depending on which test establishes the higher carbon feed rate).

The 1995 emission guidelines did not clearly specify an averaging time for calculating the carbon feed rate. Because the baseline carbon feed rate is established as the average feed rate during the annual dioxin/furan or mercury stack test, EPA is clarifying that the averaging time used for monitoring this feed rate (using parametric data) should be of similar duration. Therefore, EPA is proposing an 8-hour block averaging period for monitoring carbon feed rates. This would allow facilities to compensate for interruptions in carbon feed rates (due to calibration, malfunction, or repair) by offsetting the interruption with an increase in carbon feed rates within the 8-hour averaging period.

The quarterly carbon usage requirements in the 1995 emission guidelines have also been revised and clarified. The EPA is proposing that MWC plant owners calculate required plantwide carbon usage on a quarterly basis and compare this required level of carbon usage to the actual amount of carbon purchased and delivered to the MWC plant. After an average carbon feed rate is established for an MWC unit based on the most recent dioxin/furan or mercury stack test, the required quarterly carbon usage level for the MWC unit is calculated by multiplying the kilogram (or pound) per hour rate by the number of operating hours for each quarter. Next, the required quarterly carbon usage for the plant is calculated by summing the carbon usage value for each small MWC unit located at the plant.

The MWC plant owner must then compare the required quarterly carbon usage level, based on the carbon usage during the stack test and the hours of operation, with the amount of carbon purchased and delivered to the MWC plant. The MWC plant owner must demonstrate that they are using the required amount of carbon during each quarter. This comparison is done on a plant basis rather than a unit basis because MWC units typically use a common carbon storage system; therefore, purchase, delivery, and usage are best tracked on a plant basis. If a plant does not meet the quarterly carbon usage requirement, all units at the plant would be considered out of compliance.

An MWC plant owner can choose to track quarterly carbon usage on an MWC unit basis if that is practical at the plant. The required quarterly carbon usage for each individual unit would then be compared to the carbon purchased and delivered to that unit. In this case, if an MWC unit does not meet the quarterly carbon usage requirement, only the one MWC unit, instead of the entire MWC plant, would be considered out of compliance.

H. Have any Changes Been Made to the Monitoring and Stack Testing Requirements?

No changes are proposed to the monitoring and stack testing requirements contained in the 1995 guidelines. However, to clarify differences between stack testing and continuous emission monitoring system requirements, these two topics have been divided into separate sections within these proposed guidelines.

The nitrogen oxides trading and averaging provisions that were included in the 1995 emission guidelines are not included in this proposal. No large MWC units have used the trading and averaging provisions provided in the subpart Cb emission guidelines for large MWC units. Therefore, EPA does not anticipate that any small MWC units will use the nitrogen oxides trading and averaging provisions. Furthermore, the majority of small MWC units affected by this proposed subpart would not have nitrogen oxides emission limits and therefore, would not need trading and averaging provisions.

I. Have any Changes Been Made to the Recordkeeping and Reporting Requirements?

No changes are proposed to the recordkeeping and reporting requirements since the 1995 emission guidelines. However, consistent with the proposed changes in subpart B contained in this proposal, a reduction in the number of increments of progress reporting requirements for Class C small MWC units would occur.

This change affects the number of increments of progress required for State plans under subpart B of this part. Subpart B generally requires specific milestone dates and notification for five increments of progress when compliance will take longer than 12 months. For Class C units, EPA is proposing a requirement of only two increments of progress: submittal of a control plan and final compliance. For Class C units, the other three increments of progress are not appropriate or necessary to ensure progress toward compliance. Reducing the number of increments required for Class C units reduces the reporting and recordkeeping burden on smaller facilities. Section VI of this preamble, "Amendments to Subpart B," addresses the subpart B revision.

Furthermore, EPA is proposing one minor change to clarify recordkeeping and reporting of: (1) 8-hour average calculated carbon feed rate, and (2) quarterly amounts of carbon purchased and delivered. These changes make the recordkeeping and reporting sections consistent with the operating practice requirements described above in section III.G.

IV. What Would Be the Impacts of These Proposed Emission Guidelines?

This section describes the impacts (i.e., air, water, solid waste, energy, cost, and economic impacts) of these proposed emission guidelines for small MWC units. The impact analysis conducted to evaluate the 1995 emission guidelines is available at 59 FR 48228. The discussion in this section focuses only on the air, cost, and economic impacts of these proposed emission guidelines.

In the preamble for the 1995 emission guidelines, EPA determined that the water, solid waste, and energy impacts associated with these proposed emission guidelines were not significant. Today's proposal affects only a subset of the MWC units that were addressed in the earlier impact analysis. Again, EPA has concluded that the water, solid waste, and energy impacts associated with today's proposal would not be significant.

For further information on the impacts of these proposed emission guidelines, refer to the document entitled "Economic Impact Analysis: Small Municipal Waste Combustor—Section 111/129 Emission Guidelines and New Source Performance Standards" (Docket No. A–98–18).

A. Air Impacts

The national air emission reductions that would result from full implementation of these emission guidelines compared to current estimated national emission levels have been calculated. Table 7 summarizes these air emission reductions and the percentage change in emissions relative to current baseline levels associated with the full implementation of these proposed emission guidelines for small MWC units.

TABLE 7. NATIONAL AIR EMISSION IMPACTS OF THESE EMISSION GUIDELINES FOR SMALL MWC UNITS

Pollutant	Air emission reduction	Percent change from 1998 baseline emission level[a]
Dioxins/furans[b].	2.7 kg/year	97
Cadmium	309 kg/year ...	84
Lead	12.7 Mg/year	91
Mercury	4.1 Mg/year ...	95
Particulate matter.	351 Mg/year ..	73
Sulfur dioxide	1,196 Mg/year	49
Hydrogen chloride.	2,390 Mg/year	85
Nitrogen oxides.	384 Mg/year ..	9

[a] Percent national emission reduction relative to national baseline emissions that would occur in the absence of these emission guidelines.

[b] Total mass of tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans.

B. Cost and Economic Impacts

The EPA estimates that 90 small MWC units located at 41 plants would be affected by these proposed emission guidelines. The total MSW combustion capacity of these 90 units is 8,551 tons per day. Of these 90 units, 69 percent are owned by city or county governments, 29 percent are owned by private businesses, and 2 percent are owned by nonprofit organizations.

To estimate the cost impacts of the proposed guidelines, EPA has taken into account all of the existing control equipment currently in operation at small MWC units. The cost estimates presented here, which are in 1997 dollars, are incremental costs over the control equipment already in use. The method used to estimate the cost and economic impacts of today's proposal is similar to the method used in the 1995 emission guidelines. For more details on the cost and economic analysis, refer to the impact analysis in the document entitled "Economic Impact Analysis: Small Municipal Waste Combustor—Section 111/129 Emission Guidelines and New Source Performance Standards" (Docket No. A–98–18).

The total annual cost (including annualized capital and operating costs) of these proposed emission guidelines would be approximately $50 million, which is equivalent to $18.75 per ton of MSW combusted. The total nationwide cost is approximately one-tenth of the nationwide cost that was estimated for both large and small MWC units for the 1995 emission guidelines. This is because most of the impacts of the 1995 emission guidelines were associated with large MWC units and because there has been a decrease in the small MWC population.

V. Companion Proposal for New Small MWC Units

A companion proposal to these proposed emission guidelines is being published in today's **Federal Register** to establish NSPS for new small MWC units. Following promulgation, the NSPS for new small MWC units will be contained in 40 CFR part 60, subpart AAAA.

VI. Amendments to Subpart B

Also included in today's **Federal Register** is a proposal to amend subpart B of this part, "Adoption and Submittal of State Plans for Designated Facilities." Subpart B establishes procedures that are used in developing State plans and Federal plans to implement section 111(d) emission guidelines for existing facilities. Subpart B would be used to develop State plans implementing the subpart BBBB emission guidelines proposed today for small MWC units. The EPA is proposing two amendments to subpart B.

The first amendment addresses compliance schedules for designated facilities. The amendment affects the increments of progress requirements specified in § 60.24(e)(1) of subpart B of 40 CFR part 60. The EPA is adding the following language to the increments of progress requirements: "unless otherwise specified in the applicable subpart." The purpose of this amendment is to allow EPA subpart-specific discretion in the number of increments of progress that a designated facility must meet. The intent of the increments of progress is to ensure designated facilities make continued progress toward meeting the compliance schedules established in these emission guidelines for the source category. Emission guidelines that have been implemented through subpart B include those for sulfuric acid plants, large MWC units, medical waste incinerators, and municipal solid waste landfills.

Currently, subpart B requires designated facilities to meet five increments of progress during their air pollution control device retrofit. The following five increments, with dates, must be addressed for the following activities: (1) submitting control plans, (2) awarding contracts, (3) initiating onsite construction, (4) completing onsite construction, and (5) final compliance.

For some categories of designated facilities, such as large MWC units, the five increments are appropriate. Large MWC units must develop site-specific control plans. Retrofit of controls is normally associated with large onsite field-erected construction projects. Although the current subpart B increments are appropriate for large MWC units, they are inappropriate for smaller MWC units. Most small Class C MWC units will achieve compliance by installing preconstructed modular control systems. When a control system for a small MWC unit is ordered from a vendor and then delivered, installation is relatively quick without extensive onsite construction. This is different from a complex retrofit where detailed site-specific planning, multiple contracts, and months of onsite construction are required to complete the retrofit. Therefore, EPA believes that establishing and reporting five increments of progress is overly burdensome for small Class C MWC units and is not necessary to ensure compliance. Other source categories covered by future emission guidelines may experience similar situations where some of the five increments of progress are also not appropriate. Therefore, EPA is proposing to allow subpart-specific flexibility in establishing increments of progress for a particular subpart.

The proposed second amendment to subpart B addresses the public hearing requirements specified in § 60.27(f) of subpart B of 40 CFR part 60. The EPA is proposing additional text to clarify that EPA will hold a public hearing for Federal plan development just as a State holds a public hearing for State plan development.

The purpose of this revision is to clarify how the public hearing requirements apply if EPA is developing a Federal plan for designated facilities in States that did not develop approvable State plans. If State regulatory authorities are developing a plan that affects designated facilities in their States, § 60.23(c)(1) of subpart B of 40 CFR part 60 requires at least one public hearing per State (a State has the discretion to hold more than one hearing). The proposed revisions would clarify that EPA must conduct at least one public hearing for the Federal plan (EPA will also have the discretion to hold more than one public hearing).

VII. Administrative Requirements

A. Public Hearing

In accordance with section 307(d)(5) of the Clean Air Act, EPA will hold a public hearing if individuals request to speak. If a public hearing is held, EPA may ask clarifying questions during the oral presentation but will not respond to the presentations or comments. To provide an opportunity for all who may wish to speak, oral presentations will be limited to 15 minutes each. Any member of the public may submit written comments (see the **DATES** and **ADDRESSES** sections). The EPA will consider written comments and supporting information with equivalent weight as any oral statement and supporting information presented at a public hearing.

B. Docket

The docket is an organized and complete file of the administrative record compiled by EPA in the development of this proposal. Material is added to the docket throughout the rule development process. The principal purposes of the docket are: (1) to allow members of the public to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review except for interagency review material. The docket numbers for these emission guidelines are Docket No. A–98–18 and associated Docket Nos. A–90–45 and A–89–08, which have been incorporated by reference into Docket No. A–98–18.

C. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113), all Federal agencies are required to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to the OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

Consistent with the NTTAA, the EPA conducted searches to identify voluntary consensus standards for use in process and emissions monitoring. The search for emissions monitoring procedures identified 20 voluntary consensus standards that appeared to have possible use in lieu of EPA standard reference methods. However, after reviewing available standards, EPA determined that 12 of the candidate consensus standards identified for measuring emissions of pollutants or surrogates subject to emission standards in the rule would not be practical due to lack of equivalency, documentation, validation data, and other important technical and policy considerations. Eight of the remaining candidate consensus standards are new standards under development that EPA plans to follow, review and consider adopting at a later date.

One consensus standard, ASTM D6216–98, appears to be practical for EPA use in lieu of EPA Performance Specification 1 (40 CFR part 60, appendix B). On September 23, 1998, EPA proposed incorporating by reference ASTM D6216–98 under a separate rulemaking (63 FR 50824) that would allow broader use and application of this consensus standard. The EPA plans to complete this action in the near future. For these reasons, EPA does not propose in these emission guidelines to adopt D6216–98 in lieu of PS–1 requirements as it would be impractical for EPA to act independently from separate rulemaking activities already undergoing notice and comment.

The EPA solicits comment on proposed emission monitoring requirements proposed in these emission guidelines and specifically invites the public to identify potentially-applicable voluntary consensus standards. Commenters should also explain why this regulation should incorporate these voluntary consensus standards, in lieu of EPA's standards. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if method other than Method 301, 40 CFR part 63, appendix A was used).

The EPA also conducted searches to identify voluntary consensus standards for process monitoring and process operation. Candidate voluntary consensus standards for process monitoring and process operation were identified for: (1) MWC unit load level (steam output), (2) designing, constructing, installing, calibrating, and using nozzles and orifices, and (3) MWC plant operator certification requirements.

One consensus standard by the ASME was identified for use in these proposed emission guidelines for measurement of MWC unit load level (steam output). The EPA believes this standard is practical to use in these proposed emission guidelines as the method to measure MWC unit load. The EPA takes comment on the incorporation by reference of "ASME Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1—1964 (R1991)" in the proposed guidelines.

A second consensus standard by ASME was identified for use in these proposed emission guidelines for designing, constructing, installing, calibrating, and using nozzles and orifices. The EPA believes this standard is practical to use in these proposed emission guidelines for the design, construction, installation, calibration, and use of nozzles and orifices. The EPA takes comment on the incorporation by reference of "American Society of Mechanical Engineers Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters", 6th edition (1971).

A third consensus standard by ASME (QRO–1–1994) was identified for use in these proposed emission guidelines for MWC plant operator certification requirements instead of developing new operator certification procedures. The EPA believes this standard is practical to use in these proposed emission guidelines that require a chief facility operator and shift supervisor to successfully complete the operator certification procedures developed by ASME.

Tables 6, 7, and 8 of these proposed emission guidelines list the EPA testing methods and performance standards included in the proposed regulations. Most of these standards have been used by States and industry for more than 10 years. Nevertheless, under § 60.8 of 40 CFR part 60, subpart A, the proposal also allows any State or source to apply to EPA for permission to use an alternative methods in place of any of the EPA testing methods or performance standards listed in Tables 6, 7, and 8.

D. Paperwork Reduction Act

The EPA submitted the information collection requirements (ICR) in these proposed emission guidelines to OMB for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The EPA prepared an ICR document (ICR No. 1900.01.01) and a copy may be obtained from Sandy Farmer by mail at the OP, Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street SW, Washington, DC 20460, by e-mail at "farmer.sandy@epamail.epa.gov" or by calling (202) 260–2740. A copy may also be downloaded off the Internet at "http://www.epa.gov/icr".

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OP Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street, SW, Washington, DC 20460, and to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW, Washington, DC 20503, marked "Attention: Desk Officer for EPA (ICR Tracking No. 1900.01)." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after August 30, 1999, a comment to OMB is best assured of having its full effect if OMB receives it by September 29, 1999. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

The information would be used by the Agency to ensure that the small MWC unit requirements are implemented properly and are complied with on a continuous basis. Records and reports are necessary to enable EPA to identify small MWC units that may not be in compliance with these emission guidelines. Based on reported information, EPA would decide which small MWC units should be inspected and what records or processes should be inspected. The records that owners and operators of small MWC units maintain would indicate to EPA whether personnel are operating and maintaining control equipment properly.

These proposed emission guidelines are projected to affect approximately 90 small MWC units located at 41 plants. The estimated average annual burden for industry for the first 3 years after promulgation of these emission guidelines would be 1,297 person-hours annually. There will be no capital costs for monitoring or recordkeeping during the first 3 years. The estimated average annual burden, over the first 3 years, for the implementing agency would be 773 hours with a cost of $30,869 (including travel expenses) per year.

Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

E. Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act

Section 605 of the RFA (5 U.S.C. 601 *et seq.*) requires Federal agencies to give special consideration to the impacts of regulations on small entities, which are small businesses, small organizations, and small governments. In 1996, the SBREFA amended the RFA to strengthen the RFA's analytical and procedural requirements and to establish a new mechanism for expedited congressional review. The major purpose of these Acts is to keep paperwork and regulatory requirements from getting out of proportion to the scale of the entities being regulated without compromising the objectives of

the Clean Air Act. If a regulation is likely to have a significant economic impact on a substantial number of small entities, the EPA may give special consideration to those small entities when analyzing regulatory alternatives and drafting the regulation. Under these Acts, EPA must generally prepare a regulatory flexibility analysis for a rule subject to notice and comment rulemaking procedures unless the EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions.

Pursuant to the provisions of 5 U.S.C. 605(b), the EPA certifies that today's proposed emission guidelines will not have a significant economic impact on a substantial number of small entities. The EPA conducted a regulatory flexibility analysis that shows eight existing small MWC units (operated by one small business and seven small governments) that would be subject to these emission guidelines are considered "small entities" according to the Small Business Administration's definitions for the affected industries. Also in the initial analysis, EPA calculated compliance costs as a percentage of sales for business and a percentage of income (total household income) for the relevant population of owning governments for the MWC units that are considered small entities. The estimated annual compliance cost as a percentage of income is 0.03 percent for the seven small potentially affected government entities and 39 percent for the one small business. For the seven potentially affected government entities, the maximum compliance cost was 0.25 percent. None of the governmental impacts are considered significant. The impact on the one small business is considered significant but one small business is not a substantial number of entities.

Based on the results of the initial analysis, EPA concluded that these emission guidelines do not have a significant economic impact on a substantial number of small entities. Therefore, it is not necessary to prepare a final regulatory flexibility analysis.

F. Unfunded Mandates Reform Act

Title II of the 1995 UMRA, Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 allow EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that these proposed emission guidelines do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The economic impact analysis (Docket No. A–98–18) shows that the total annual costs of these proposed emission guidelines is about $50 million per year (in 1997 dollars), starting on the fifth year after the rule is promulgated. Thus, today's proposed emission guidelines are not subject to the requirements of sections 202 and 205 of the UMRA. Although these emission guidelines are not subject to UMRA, EPA did prepare a cost-benefit analysis under section 202 of the UMRA for the 1995 emission guidelines. For a discussion of how EPA complied with the UMRA for the 1995 emission guidelines, including its extensive consultations with State and local governments, see the preamble to the 1995 emission guidelines (60 FR 65405–65412, December 19, 1995). Because today's proposed emission guidelines are functionally equivalent to the 1995 emission guidelines, no additional consultations were necessary.

G. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant," and therefore, subject to OMB review and the requirements of this Executive Order. The Executive Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The EPA considers these emission guidelines proposed today to be "not significant" because these guidelines will not have an annual effect on the economy of $100 million or more and do not impose any additional control requirements above the 1995 emission guidelines. The EPA considered the 1995 emission guidelines to be "significant" because the 1995 guidelines were expected to have an annual effect on the economy in excess of $100 million. The EPA submitted the 1995 emission guidelines to OMB for review (60 FR 65405, December 19, 1995). However, these emission guidelines proposed today are projected to have an impact of approximately $50 million annually (Docket No. A–98–18). Therefore, these proposed emission guidelines are considered to be "not significant" under Executive Order 12866 and will not be submitted to OMB for review.

H. Executive Order 12875—Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

The EPA has concluded that these emission guidelines may create a mandate on a number of city and county governments, and the Federal government would not provide the funds necessary to pay the direct costs incurred by these city and county governments in complying with the mandate. However, today's proposed emission guidelines do not impose any additional costs or result in any additional control requirements above those considered during promulgation of the 1995 emission guidelines. In developing the 1995 emission guidelines, EPA consulted extensively with State and local governments to enable them to provide meaningful and timely input in the development of those emission guidelines. Because these proposed emission guidelines are the same as those developed in 1995, these previous consultations still apply. For a discussion of EPA's consultations with State and local governments, the nature of the governments' concerns, and EPA's position supporting the need to issue these emission guidelines, see the preamble to the 1995 emission guidelines (60 FR 65405–65413, December 19, 1995).

I. Executive Order 12898—Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 directs Federal agencies to "determine whether their programs, policies, and activities have disproportionately high adverse human health or environmental effects on minority populations and low-income populations" (sections 3–301 and 3–302). In developing these emission guidelines for small MWC units, EPA analyzed environmental justice issues that could be relevant to this proposal.

An impact analysis was conducted to determine the distribution of minority and low-income groups in the surrounding area where MWC units are located in the United States. The EPA reviewed the demographic characteristics presented in this impact analysis (Docket No. A–90–45) and other analyses. The EPA concluded that there is no significant difference in ethnic makeup or income level in counties where MWC units are located when compared to the average ethnic and income levels of the respective States in which the units are located.

In addition, this proposal would reduce air emissions from small MWC units, thereby improving air quality, health, and the environment in areas where MWC units are located.

Therefore, EPA has concluded that this proposal would not have a disproportionately high adverse human health or environmental effect on minority populations or low-income populations.

J. Executive Order 13045—Protection of Children from Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation.

These emission guidelines are not subject to Executive Order 13045 because they are not economically significant as defined in Executive Order 12866 and because they are based on technology performance and not on health and safety risks. No children's risk analysis was performed because no alternative technologies exist that would provide greater stringency at a reasonable cost. Therefore, the results of any such analysis would have no impact on the stringency decision.

K. Executive Order 13084—Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's emission guidelines do not significantly or uniquely affect the communities of Indian tribal governments. The EPA is not aware of any small MWC units located in Indian territory. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to these emission guidelines.

L. Executive Memorandum on Plain Language in Government Writing

On June 1, 1998, President Clinton issued an Executive Memorandum entitled "Plain Language in Government Writing," which instructs Federal agencies to use plain language in all proposed and final rulemakings by January 1, 1999. Therefore, these proposed emission guidelines are organized and written in a plain language format and style. The plain language format and style do not alter the content or intent of this proposal compared to the 1995 emission guidelines. The EPA considers this plain language format and style to be more user friendly and understandable to all audiences when compared with previous proposals that were not written in plain language.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Municipal waste combustion.

Dated: August 6, 1999.

Carol M. Browner,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 60 of

the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7413, 7414, 7416, 7429, 7601, and 7602.

2. Section 60.24 of subpart B of part 60 is amended by revising paragraph (e)(1) to read as follows:

Subpart B—Adoption and Submittal of State Plans for Designated Facilities

§ 60.24 Emission standards and compliance schedules.

* * * * *

(e)(1) Any compliance schedule extending more than 12 months from the date required for submittal of the plan must include legally enforceable increments of progress to achieve compliance for each designated facility or category of facilities. Unless otherwise specified in the applicable subpart, increments of progress must include, where practicable, each increment of progress specified in § 60.21(h) and must include such additional increments of progress as may be necessary to permit close and effective supervision of progress toward final compliance.

* * * * *

3. Section 60.27 of subpart B of part 60 is amended by revising paragraph (f) to read as follows:

§ 60.27 Actions by the Administrator.

* * * * *

(f) Prior to promulgation of a plan under paragraph (d) of this section, the Administrator will provide the opportunity for at least one public hearing in either:

(1) Each State that failed to hold a public hearing as required by § 60.23(c); or

(2) Washington, DC or an alternate location specified in the **Federal Register**.

* * * * *

4. Part 60 is amended by adding a new subpart BBBB to read as follows:

Subpart BBBB—Emission Guidelines: Small Municipal Waste Combustion Units

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Introduction

§ 60.1500 What is the purpose of this subpart?

This subpart establishes emission guidelines and compliance schedules for the control of emissions from existing small municipal waste combustion units. The pollutants addressed by these emission guidelines are listed in tables 2, 3, 4, and 5 of this subpart. These emission guidelines are developed in accordance with sections 111(d) and 129 of the Clean Air Act and subpart B of this part.

§ 60.1505 Am I affected by this subpart?

(a) If you are the Administrator of an air quality program in a State or United States protectorate with one or more existing small municipal waste combustion units that commenced construction before August 30, 1999, you must submit a State plan to EPA that implements these emission guidelines contained in this subpart.

(b) You must submit the State plan to EPA within 1 year after the promulgation of this subpart.

§ 60.1510 Is a State plan required for all States?

No. You are not required to submit a State plan if there are no existing small municipal waste combustion units in your State and you submit a negative declaration letter in place of the State plan.

§ 60.1515 What must I include in my State plan?

(a) Include nine items:

(1) Inventory of affected municipal waste combustion units, including those that have ceased operation but have not been dismantled.

(2) Inventory of emissions from affected municipal waste combustion units in your State.

(3) Compliance schedules for each affected municipal waste combustion unit.

(4) Good combustion practices and emission limits for affected municipal waste combustion units that are at least as protective as these emission guidelines contained in this subpart.

(5) Stack testing, continuous emission monitoring, recordkeeping and reporting requirements.

(6) Transcript of the public hearing on the State plan.

(7) Provision for State progress reports to EPA.

(8) Identification of enforceable State mechanisms that you selected for implementing these emission guidelines of this subpart.

(9) Demonstration of your State's legal authority to carry out the section 111(d) and section 129 State plan.

(b) Your State plan can deviate from the format and content of these emission guidelines contained in this subpart. However, if your State plan does deviate, you must demonstrate that your State plan is as protective as these emission guidelines contained in this subpart. Your State plan must address regulatory applicability, increments of progress for retrofit, operator training and certification, operating practice, emission limits, continuous emission monitoring, stack testing, recordkeeping, reporting, and air curtain incinerator requirements.

(c) Follow the requirements of subpart B of this part in your State plan.

§ 60.1520 Is there an approval process for my State plan?

The EPA will review your State plan according to § 60.27 of subpart B of this part.

§ 60.1525 What if my State plan is not approvable?

If you do not submit an approvable State plan (or a negative declaration letter), EPA will develop a Federal plan, according to § 60.27 of subpart B of this part, to implement these emission guidelines contained in this subpart. Owners and operators of municipal waste combustion units not covered by an approved and currently effective State plan must comply with the Federal plan. The Federal plan is an interim action and, by its own terms, will cease to apply when your State plan is approved and becomes effective.

§ 60.1530 Is there an approval process for a negative declaration letter?

No. The EPA has no formal review process for negative declaration letters. Once your negative declaration letter has been received, EPA will place a copy in the public docket and publish a notice in the **Federal Register**. If, at a later date, an existing small municipal waste combustion unit is identified in your State, the Federal plan implementing these emission guidelines contained in this subpart will automatically apply to that municipal waste combustion unit until your State plan is approved.

§ 60.1535 What compliance schedule must I include in my State plan?

(a) Your State plan must include compliance schedules that require small municipal waste combustion units to achieve final compliance as expeditiously as practicable but not later than the earlier of two dates:

(1) Five years after [*the date of publication of the final rule*].

(2) Three years after the effective date of State plan approval.

(b) For compliance schedules longer than 1 year after the effective date of State plan approval, State plans must include two items:

(1) Dates for enforceable increments of progress as specified in § 60.1590.

(2) For Class A and Class B units (see definition in § 60.1940), dioxin/furan stack test results for at least one test conducted during or after 1990. The stack tests must have been conducted according to the procedures specified under § 60.1790.

(c) Class A and Class B units that commenced construction after June 26, 1987 must comply with the dioxin/furan and mercury limits specified in tables 2 and 3 of this subpart by the later of two dates:

(1) One year after the effective date of State plan approval.

(2) One year following the issuance of a revised construction or operation permit, if a permit modification is required.

§ 60.1540 Are there any State plan requirements for this subpart that apply instead of the requirements specified in subpart B?

Subpart B establishes general requirements for developing and processing section 111(d) plans. This subpart applies, instead of the requirements in subpart B of this part, for two items:

(a) *Option for case-by-case less stringent emission standards and longer compliance schedules.* State plans developed to implement this subpart must be as protective as these emission guidelines contained in this subpart. State plans must require all municipal waste combustion units to comply within 5 years after [publication date of final rule]. This requirement applies, instead of the option for case-by-case less stringent emission standards and longer compliance schedules in § 60.24(f) of subpart B of this part.

(b) *Increments of progress requirements.* For Class C units (see definition in § 60.1940), a State plan must include at least two increments of progress for the affected municipal waste combustion units. These two minimum increments are the final control plan submittal date and final compliance date in § 60.21(h)(1) and (5) of subpart B of this part. This requirement applies, instead of the requirement of § 60.24(e)(1) of subpart B of this part that would require a State plan to include all five increments of progress for all municipal waste combustion units. For Class A and Class B units under this subpart, the final control plan must contain the five increments of progress in § 60.24(e)(1) of subpart B of this part.

§ 60.1545 Does this subpart directly affect municipal waste combustion unit owners and operators in my State?

(a) No. This subpart does not directly affect municipal waste combustion unit owners and operators in your State. However, municipal waste combustion unit owners and operators must comply with the State plan you developed to implement these emission guidelines contained in this subpart. Some States may incorporate these emission guidelines contained in this subpart into their State plans by direct incorporation by reference. Others may include the model rule text directly in their State plan.

(b) All municipal waste combustion units must be in compliance with the requirements established in this subpart by 5 years after [*the date of publication of the final rule*], whether the municipal waste combustion unit is regulated under a State or Federal plan.

Applicability of State Plans

§ 60.1550 What municipal waste combustion units must I address in my State plan?

(a) Your State plan must address all existing small municipal waste combustion units in your State that meet two criteria:

(1) The municipal waste combustion unit has the capacity to combust at least 35 tons per day of municipal solid waste but no more than 250 tons per day of municipal solid waste or refuse-derived fuel.

(2) The municipal waste combustion unit commenced construction before August 30, 1999.

(b) If an owner or operator of a municipal waste combustion unit makes changes that meet the definition of modification or reconstruction after the date 6 months after [*the date of publication of the final rule*] for subpart AAAA of this part, the municipal waste combustion unit becomes subject to subpart AAAA of this part and the State plan no longer applies to that unit.

(c) If an owner or operator of a municipal waste combustion unit makes physical or operational changes to an existing municipal waste combustion unit primarily to comply with your State plan, subpart AAAA of this part (New Source Performance Standards for Small Municipal Waste Combustion Units) does not apply to that unit. Such changes do not constitute modifications or reconstructions under subpart AAAA of this part.

§ 60.1555 Are any small municipal waste combustion units exempt from my State plan?

(a) *Small municipal waste combustion units that combust less than 11 tons per day.* These units are exempt from your State plan if four requirements are met:

(1) The municipal waste combustion unit is subject to a federally enforceable permit limiting municipal solid waste combustion to less than 11 tons per day.

(2) You are notified by the owner or operator that the unit qualifies for this exemption.

(3) You receive from the owner or operator of the unit a copy of the federally enforceable permit.

(4) The owner or operator of the unit keeps daily records of the amount of municipal solid waste combusted.

(b) *Small power production units.* These units are exempt from your State plan if four requirements are met:

(1) The unit qualifies as a small power production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)).

(2) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity.

(3) You are notified by the owner or operator that the unit qualifies for this exemption.

(4) You receive documentation from the owner or operator that the unit qualifies for this exemption.

(c) *Cogeneration units.* These units are exempt from your State plan if four requirements are met:

(1) The unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)).

(2) The unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(3) You are notified by the owner or operator that the unit qualifies for this exemption.

(4) You receive documentation from the owner or operator that the unit qualifies for this exemption.

(d) *Municipal waste combustion units that combust only tires.* These units are exempt from your State plan if three requirements are met:

(1) The municipal waste combustion unit combusts a single-item waste stream of tires and no other municipal waste (the unit can cofire coal, fuel oil, natural gas, or other nonmunicipal solid waste).

(2) You are notified by the owner or operator that the unit qualifies for this exemption.

(3) You receive documentation from the owner or operator that the unit qualifies for this exemption.

(e) *Hazardous waste combustion units.* These units are exempt from your State plan if the unit has received a permit under section 3005 of the Solid Waste Disposal Act.

(f) *Materials recovery units.* These units are exempt from your State plan if the unit combusts waste mainly to recover metals. Primary and secondary smelters may qualify for this exemption.

(g) *Cofired units.* These units are exempt from your State plan if four requirements are met:

(1) The unit has a federally enforceable permit limiting municipal solid waste combustion to 30 percent of the total fuel input by weight.

(2) You are notified by the owner or operator that the unit qualifies for this exemption.

(3) You receive from the owner or operator of the unit a copy of the federally enforceable permit.

(4) The owner or operator records the weights, each quarter, of municipal solid waste and of all other fuels combusted.

(h) *Plastics/rubber recycling units.* These units are exempt from your State plan if four requirements are met:

(1) The pyrolysis/combustion unit is an integrated part of a plastics/rubber recycling unit as defined under "Definitions" (§ 60.1940).

(2) The owner or operator of the unit records the weight, each quarter, of plastics, rubber, and rubber tires processed.

(3) The owner or operator of the unit records the weight, each quarter, of feed stocks produced and marketed from chemical plants and petroleum refineries.

(4) The owner or operator of the unit keeps the name and address of the purchaser of the feed stocks.

(i) *Units that combust fuels made from products of plastics/rubber recycling plants.* These units are exempt from your State plan if two requirements are met:

(1) The unit combusts gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquified petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feed stocks produced by plastics/rubber recycling units.

(2) The unit does not combust any other municipal solid waste.

(j) *Cement kilns.* Cement kilns that combust municipal solid waste are exempt from your State plan.

(k) *Air curtain incinerators.* If an air curtain incinerator (see § 60.1940 for definition) combusts 100 percent yard waste, then these units must meet only the requirements under "Model Rule—Air Curtain Incinerators That Burn 100 Percent Yard Waste" (§§ 60.1910 through 60.1930).

§ 60.1560 Can an affected municipal waste combustion unit reduce its capacity to less than 35 tons per day rather than comply with my State plan?

(a) Yes, an owner or operator of an affected municipal waste combustion unit may choose to reduce, by your final compliance date, the maximum combustion capacity of the unit to less than 35 tons per day of municipal solid waste rather than comply with your State plan. They must submit a final control plan and the notifications of achievement of increments of progress as specified in § 60.1610.

(b) The final control plan must, at a minimum, include two items:

(1) A description of the physical changes that will be made to accomplish the reduction.

(2) Calculations of the current maximum combustion capacity and the planned maximum combustion capacity after the reduction. Use the equations specified under § 60.1935(d) and (e) to calculate the combustion capacity of a municipal waste combustion unit.

(c) A permit restriction or a change in the method of operation does not qualify as a reduction in capacity. Use the equations specified under § 60.1935(d) and (e) to calculate the combustion capacity of a municipal waste combustion unit.

§ 60.1565 What subcategories of small municipal waste combustion units must I include in my State plan?

This subpart specifies different requirements for different subcategories of municipal waste combustion units. You must use these same three subcategories in your State plan. These three subcategories are based on aggregate capacity of the municipal waste combustion plant and the type of municipal waste combustor unit as follows:

(a) *Class A units.* These are nonrefractory-type small municipal waste combustion units that are located at municipal waste combustion plants with aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. (See the definition of municipal waste combustion plant capacity in § 60.1940 for specification of which units at a plant are included in the aggregate capacity calculation.)

(b) *Class B units.* These are refractory-type small municipal waste combustion units that are located at municipal waste combustion plants with aggregate plant combustion capacity greater than 250 tons per day of municipal solid waste. (See the definition of municipal waste combustion plant capacity in § 60.1940 for specification of which units at a plant are included in the aggregate capacity calculation.)

(c) *Class C units.* These are all small municipal combustion units that are located at municipal waste combustion plants with aggregate plant combustion capacity no more than 250 tons per day of municipal solid waste. (See the definition of municipal waste combustion plant capacity in § 60.1940 for specification of which units at a plant are included in the aggregate capacity calculation.)

Use of Model Rule

§ 60.1570 What is the purpose of the "Model Rule" in this subpart?

(a) The model rule provides these emission guidelines requirements in a standard regulation format. You must develop a State plan that is as protective as the model rule. You may use the

model rule language as part of your State plan. Alternative language may be used in your State plan if you demonstrate that the alternative language is as protective as the model rule contained in this subpart.

(b) In the model rule of §§ 60.1585 through 60.1905, "you" means the owner or operator of a small municipal waste combustion unit.

§ 60.1575 How does the model rule relate to the required elements of my State plan?

The model rule may be used to satisfy the State plan requirements specified in § 60.1515(a)(4) and (5). Alternatives may be used, but only if you can demonstrate that they are as protective as the model rule.

§ 60.1580 What are the principal components of the model rule?

The model rule contains five major components:

(a) Increments of progress toward compliance.
(b) Good combustion practices.
(1) Operator training.
(2) Operator certification.
(3) Operating requirements.
(c) Emission limits.
(d) Monitoring and stack testing.
(e) Recordkeeping and reporting.

Model Rule—Increments of Progress

§ 60.1585 What are my requirements for meeting increments of progress and achieving final compliance?

(a) *Class A and Class B units.* If you plan to achieve compliance more than 1 year following the effective date of State plan approval and a permit modification is not required, or more than 1 year following the date of issuance of a revised construction or operation permit if a permit modification is required, you must meet five increments of progress:

(1) Submit a final control plan.
(2) Submit a notification of retrofit contract award.
(3) Initiate onsite construction.
(4) Complete onsite construction.
(5) Achieve final compliance.

(b) *Class C units.* If you plan to achieve compliance more than 1 year following the effective date of State plan approval and a permit modification is not required, or more than 1 year following the date of issuance of a revised construction or operation permit if a permit modification is required, you must meet two increments of progress:

(1) Submit a final control plan.
(2) Achieve final compliance.

§ 60.1590 When must I complete each increment of progress?

Table 1 of this subpart specifies compliance dates for each of the increments of progress for Class A, B, and C units. (See § 60.1940 for definitions of classes.)

§ 60.1595 What must I include in the notifications of achievement of my increments of progress?

Your notification of achievement of increments of progress must include three items:

(a) Notification that the increment of progress has been achieved.
(b) Any items required to be submitted with the increment of progress (§§ 60.1610 through 60.1630).
(c) The notification must be signed by the owner or operator of the municipal waste combustion unit.

§ 60.1600 When must I submit the notifications of achievement of increments of progress?

Notifications of the achievement of increments of progress must be postmarked no later than 10 days after the compliance date for the increment.

§ 60.1605 What if I do not meet an increment of progress?

If you fail to meet an increment of progress, you must submit a notification to the Administrator postmarked within 10 business days after the specified date in table 1 of this subpart for achieving that increment of progress. This notification must inform the Administrator that you did not meet the increment. You must include in the notification an explanation of why the increment of progress was not met and your plan for meeting the increment as expeditiously as possible. You must continue to submit reports each subsequent month until the increment of progress is met.

§ 60.1610 How do I comply with the increment of progress for submittal of a control plan?

For your control plan increment of progress, you must complete two items:

(a) Submit the final control plan, including a description of the devices for air pollution control and process changes that you will use to comply with the emission limits and other requirements of this subpart.
(b) You must maintain an onsite copy of the final control plan.

§ 60.1615 How do I comply with the increment of progress for awarding contracts?

You must submit a signed copy of the contracts awarded to initiate onsite construction, initiate onsite installation of emission control equipment, and incorporate process changes. Submit the copy of the contracts with the notification that this increment of progress has been achieved.

§ 60.1620 How do I comply with the increment of progress for initiating onsite construction?

You must initiate onsite construction and installation of emission control equipment and initiate the process changes outlined in the final control plan.

§ 60.1625 How do I comply with the increment of progress for completing onsite construction?

You must complete onsite construction and installation of emission control equipment and complete process changes outlined in the final control plan.

§ 60.1630 How do I comply with the increment of progress for achieving final compliance?

For the final compliance increment of progress, you must complete two items:

(a) Complete all process changes and complete retrofit construction as specified in the final control plan.
(b) Connect the air pollution control equipment with the municipal waste combustion unit identified in the final control plan and complete process changes to the municipal waste combustion unit so that if the affected municipal waste combustion unit is brought online, all necessary process changes and air pollution control equipment are operating as designed.

§ 60.1635 What must I do if I close my municipal waste combustion unit and then restart my municipal waste combustion unit?

(a) If you close your municipal waste combustion unit but will reopen it prior to the final compliance date in your State plan, you must meet the increments of progress specified in § 60.1585.

(b) If you close your municipal waste combustion unit but will restart it after your final compliance date, you must complete emission control retrofit and meet the emission limits and good combustion practices on the date your municipal waste combustion unit restarts operation.

§ 60.1640 What must I do if I plan to permanently close my municipal waste combustion unit and not restart it?

(a) If you plan to close your municipal waste combustion unit rather than comply with the State plan, you must submit a closure notification, including the date of closure, to the Administrator by the date your final control plan is due.

(b) If the closure date is later than 1 year after the effective date of State plan approval, you must enter into a legally binding closure agreement with the Administrator by the date your final control plan is due. The agreement must specify the date by which operation will cease.

Model Rule—Good Combustion Practices: Operator Training

§ 60.1645 What types of training must I do?

There are two types of required training:

(a) Training of operators of municipal waste combustion units using the EPA or a State-approved training course.
(b) Training of plant personnel using a plant-specific training course.

§ 60.1650 Who must complete the operator training course? By when?

(a) Three types of employees must complete the EPA or State-approved operator training course:

(1) Chief facility operators.
(2) Shift supervisors.
(3) Control room operators.

(b) These employees must complete the operator training course by the later of three dates:

(1) One year after the effective date of State plan approval.
(2) Six months after your municipal waste combustion unit starts up.
(3) The date before an employee assumes responsibilities that affect operation of the municipal waste combustion unit.

(c) The requirement in paragraph (a) of this section does not apply to chief facility operators, shift supervisors, and control room operators who have obtained full certification from the American Society of Mechanical Engineers on or before the effective date of State plan approval.

(d) You may request that the EPA Administrator waive the requirement in paragraph (a) of this section for chief facility operators, shift supervisors, and control room operators who have obtained provisional certification from the American Society of Mechanical Engineers on or before the effective date of State plan approval.

§ 60.1655 Who must complete the plant-specific training course?

All employees with responsibilities that affect how a municipal waste combustion unit operates must complete the plant-specific training course. Include at least six types of employees:

(a) Chief facility operators.
(b) Shift supervisors.
(c) Control room operators.
(d) Ash handlers.
(e) Maintenance personnel.
(f) Crane or load handlers.

§ 60.1660 What plant-specific training must I provide?

For plant-specific training, you must do four things:

(a) For training at a particular plant, develop a specific operating manual for that plant by the later of two dates:

(1) Six months after your municipal waste combustion unit starts up.
(2) One year after the effective date of State plan approval.

(b) Establish a program to review the plant-specific operating manual with people whose responsibilities affect the operation of your municipal waste combustion unit. Complete the initial review by the later of three dates:

(1) One year after the effective date of State plan approval.
(2) Six months after your municipal waste combustion unit starts up.
(3) The date before an employee assumes responsibilities that affect operation of the municipal waste combustion unit.

(c) Update your manual annually.
(d) Review your manual with staff annually.

§ 60.1665 What information must I include in the plant-specific operating manual?

You must include 11 items in the operating manual for your plant:

(a) A summary of all applicable standards in this subpart.
(b) A description of the basic combustion principles that apply to municipal waste combustion units.
(c) Procedures for receiving, handling, and feeding municipal solid waste.
(d) Procedures to be followed during periods of startup, shutdown, and malfunction of the municipal waste combustion unit.
(e) Procedures for maintaining a proper level of combustion air supply.
(f) Procedures for operating the municipal waste combustion unit within the standards contained in this subpart.
(g) Procedures for responding to periodic upset or off-specification conditions.
(h) Procedures for minimizing carryover of particulate matter.
(i) Procedures for handling ash.
(j) Procedures for monitoring emissions from the municipal waste combustion unit.
(k) Procedures for recordkeeping and reporting.

§ 60.1670 Where must I keep the plant-specific operating manual?

You must keep your operating manual in an easily accessible location at your plant. It must be available for review or inspection by all employees who must review it and by the Administrator.

Model Rule—Good Combustion Practices: Operator Certification

§ 60.1675 What types of operator certification must the chief facility operator and shift supervisor obtain and by when must they obtain it?

(a) Each chief facility operator and shift supervisor must obtain and keep a current provisional operator certification from the American Society of Mechanical Engineers (QRO–1–1994 (incorporated by reference in § 60.17 of subpart A of this part)) or a current provisional operator certification from your State certification program.

(b) Each chief facility operator and shift supervisor must obtain a provisional certification by the later of three dates:

(1) For Class A and Class B units, 12 months after the effective date of State plan approval. For Class C units, 18 months after the effective date of State plan approval.
(2) Six months after the municipal waste combustion unit starts up.
(3) Six months after they transfer to the municipal waste combustion unit or 6 months after they are hired to work at the municipal waste combustion unit.

(c) Each chief facility operator and shift supervisor must take one of three actions:

(1) Obtain a full certification from the American Society of Mechanical Engineers or a State certification program in your State.
(2) Schedule a full certification exam with the American Society of Mechanical Engineers (QRO–1–1994 (incorporated by reference in § 60.17 of subpart A of this part)).
(3) Schedule a full certification exam with your State certification program.

(d) The chief facility operator and shift supervisor must obtain the full certification or be scheduled to take the certification exam by the later of the following dates:

(1) For Class A and Class B units, 12 months after the effective date of State plan approval. For Class C units, 18 months after the effective date of State plan approval.
(2) Six months after the municipal waste combustion unit starts up.
(3) Six months after they transfer to the municipal waste combustion unit or 6 months after they are hired to work at the municipal waste combustion unit.

§ 60.1680 After the required date for operator certification, who may operate the municipal waste combustion unit?

After the required date for full or provisional certification, you must not operate your municipal waste combustion unit unless one of four employees is on duty:

(a) A fully certified chief facility operator.
(b) A provisionally certified chief facility operator who is scheduled to take the full certification exam.
(c) A fully certified shift supervisor.
(d) A provisionally certified shift supervisor who is scheduled to take the full certification exam.

§ 60.1685 What if all the certified operators must be temporarily offsite?

If the certified chief facility operator and certified shift supervisor both must leave your municipal waste combustion unit, a provisionally certified control room operator at the municipal waste combustion unit may fulfill the certified operator requirement. Depending on the length of time that a certified chief facility operator and certified shift supervisor is away, you must meet one of three criteria:

(a) When the certified chief facility operator and certified shift supervisor are both offsite for less than 8 hours and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the Administrator.

(b) When the certified chief facility operator and certified shift supervisor are offsite for more than 8 hours, but less than 2 weeks, and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the Administrator. However, you must record the periods when the certified chief facility operator and certified shift supervisor are offsite and include this information in the annual report as specified under § 60.1885(l).

(c) When the certified chief facility operator and certified shift supervisor are offsite for more than 2 weeks and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the Administrator. However, you must take two actions:

(1) Notify the Administrator in writing. In the notice, state what caused the absence and what you are doing to ensure that a certified chief facility operator or certified shift supervisor is onsite.

(2) Submit a status report and corrective action summary to the Administrator every 4 weeks following the initial notification. If the Administrator notifies you that your status report or corrective action summary is disapproved, the municipal waste combustion unit may continue operation for 90 days, but then must cease operation. If corrective actions are taken in the 90-day period such that the Administrator withdraws the disapproval, municipal waste combustion unit operation may continue.

Model Rule—Good Combustion Practices: Operating Requirements

§ 60.1690 What are the operating practice requirements for my municipal waste combustion unit?

(a) You must not operate your municipal waste combustion unit at loads greater than 110 percent of the maximum demonstrated load of the municipal waste combustion unit (4-hour block average), as specified under "Definitions" (§ 60.1940).

(b) You must not operate your municipal waste combustion unit so that the temperature at the inlet of the particulate matter control device exceeds 17 °C above the maximum demonstrated temperature of the particulate matter control device (4-hour block average), as specified under "Definitions" (§ 60.1940).

(c) If your municipal waste combustion unit uses activated carbon to control dioxin/furan or mercury emissions, you must maintain an 8-hour block average carbon feed rate at or above the highest average level established during the most recent dioxin/furan or mercury test.

(d) If your municipal waste combustion unit uses activated carbon to control dioxin/furan or mercury emissions, you must evaluate total carbon usage for each calendar quarter. The total amount of carbon purchased and delivered to your municipal waste combustion plant must be at or above the required quarterly usage of carbon. At your option, you may choose to evaluate required quarterly carbon usage on a municipal waste combustion unit basis for each individual municipal waste combustion unit at your plant. Calculate the required quarterly usage of carbon using the appropriate equation in § 60.1935.

(e) Your municipal waste combustion unit is exempt from limits on load level, temperature at the inlet of the particulate matter control device, and carbon feed rate during any of five situations:

(1) During your annual tests for dioxins/furans.

(2) During your annual mercury tests (for carbon feed rate requirements only).

(3) During the 2 weeks preceding your annual tests for dioxins/furans.

(4) During the 2 weeks preceding your annual mercury tests (for carbon feed rate requirements only).

(5) Whenever the Administrator or delegated State authority permits you to do any of five activities:

(i) Evaluate system performance.

(ii) Test new technology or control technologies.

(iii) Perform diagnostic testing.

(iv) Perform other activities to improve the performance of your municipal waste combustion unit.

(v) Perform other activities to advance the state of the art for emission controls for your municipal waste combustion unit.

§ 60.1695 What happens to the operating requirements during periods of startup, shutdown, and malfunction?

(a) The operating requirements of this subpart apply at all times except during periods of municipal waste combustion unit startup, shutdown, or malfunction.

(b) Each startup, shutdown, or malfunction must not last for longer than 3 hours.

Model Rule—Emission Limits

§ 60.1700 What pollutants are regulated by this subpart?

Eleven pollutants, in four groupings, are regulated:

(a) *Organics.* Dioxins/furans.
(b) *Metals.*
(1) Cadmium.
(2) Lead.
(3) Mercury.
(4) Opacity.
(5) Particulate matter.
(c) *Acid gases.*
(1) Hydrogen chloride.
(2) Nitrogen oxides.
(3) Sulfur dioxide.
(d) *Other.*
(1) Carbon monoxide.
(2) Fugitive ash.

§ 60.1705 What emission limits must I meet? By when?

(a) After the date the initial stack test and continuous emission monitoring system evaluation are required or completed (whichever is earlier), you must meet the applicable emission limits specified in the following four tables of this subpart:

(1) For Class A units, see table 2.
(2) For Class B units, see table 3.
(3) For Class C units, see table 4.
(4) For carbon monoxide emission limits for all classes of units, see table 5.

(b) If your Class A or Class B municipal waste combustion unit began construction, reconstruction, or modification after June 26, 1987, then you must comply with the dioxin/furan and mercury emission limits specified in table 2 or 3 as applicable by the later of the following two dates:

(1) One year after the effective date of State plan approval.

(2) One year after the issuance of a revised construction or operating permit, if a permit modification is required.

§ 60.1710 What happens to the emission limits during periods of startup, shutdown, and malfunction?

(a) The emission limits of this subpart apply at all times except during periods of municipal waste combustion unit startup, shutdown, or malfunction.

(b) Each startup, shutdown, or malfunction must not last for longer than 3 hours.

Model Rule—Continuous Emission Monitoring

§ 60.1715 What types of continuous emission monitoring must I perform?

To continuously monitor emissions, you must perform four tasks:

(a) Install continuous emission monitoring systems for certain gaseous pollutants.

(b) Make sure your continuous emission monitoring systems are operating correctly.

(c) Make sure you obtain the minimum amount of monitoring data.

(d) Install a continuous opacity monitoring system.

§ 60.1720 What continuous emission monitoring systems must I install for gaseous pollutants?

(a) You must install, calibrate, maintain, and operate continuous emission monitoring systems for oxygen (or carbon dioxide), sulfur dioxide, and carbon monoxide. If you operate a Class A municipal waste combustion unit, also install, calibrate, maintain, and operate a continuous emission monitoring system for nitrogen oxides. Install the continuous emission monitoring system for sulfur dioxide and nitrogen oxides at the outlet of the air pollution control device.

(b) You must install, evaluate, and operate each continuous emission monitoring system according to the "Monitoring Requirements" in § 60.13 of subpart A of this part.

(c) You must monitor the oxygen (or carbon dioxide) concentration at each location where you monitor sulfur dioxide and carbon monoxide. Additionally, if you operate a Class A municipal waste combustion unit, you must also monitor the oxygen (or carbon dioxide) concentration at the location where you monitor nitrogen oxides.

(d) You may choose to monitor carbon dioxide instead of oxygen as a diluent gas. If you choose to monitor carbon dioxide, then an oxygen monitor is not required and you must follow the requirements in § 60.1745.

(e) If you choose to demonstrate compliance by monitoring the percent reduction of sulfur dioxide, you must also install a continuous emission monitoring system for sulfur dioxide and oxygen (or carbon dioxide) at the inlet of the air pollution control device.

§ 60.1725 How are the data from the continuous emission monitoring systems used?

You must use data from the continuous emission monitoring systems for sulfur dioxide, nitrogen oxides, and carbon monoxide to demonstrate continuous compliance with the applicable emission limits specified in tables 2, 3, 4, and 5 of this subpart. To demonstrate compliance for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash, see § 60.1780.

§ 60.1730 How do I make sure my continuous emission monitoring systems are operating correctly?

(a) Conduct initial, daily, quarterly, and annual evaluations of your continuous emission monitoring systems that measure oxygen (or carbon dioxide), sulfur dioxide, nitrogen oxides (Class A municipal waste combustion units only), and carbon monoxide.

(b) Complete your initial evaluation of the continuous emission monitoring systems within 180 days after your final compliance date.

(c) For initial and annual evaluations, collect data concurrently (or within 30 to 60 minutes) using your oxygen (or carbon dioxide) continuous emission monitoring system, your sulfur dioxide, nitrogen oxides, or carbon monoxide continuous emission monitoring systems, as appropriate, and the appropriate test methods specified in table 6 of this subpart. Collect these data during each initial and annual evaluation of your continuous emission monitoring systems following the applicable performance specifications in appendix B of this part. Table 7 of this subpart shows the performance specifications that apply to each continuous emission monitoring system.

(d) Follow the quality assurance procedures in Procedure 1 of appendix F of this part for each continuous emission monitoring system. These procedures include daily calibration drift and quarterly accuracy determinations.

§ 60.1735 Am I exempt from any appendix B or appendix F requirements to evaluate continuous emission monitoring systems?

Yes, the accuracy tests for your sulfur dioxide continuous emission monitoring system require you to also evaluate your oxygen (or carbon dioxide) continuous emission monitoring system. Therefore, your oxygen (or carbon dioxide) continuous emission monitoring system is exempt from two requirements:

(a) Section 2.3 of Performance Specification 3 in appendix B of this part (relative accuracy requirement).

(b) Section 5.1.1 of appendix F of this part (relative accuracy test audit).

§ 60.1740 What is my schedule for evaluating continuous emission monitoring systems?

(a) Conduct annual evaluations of your continuous emission monitoring systems no more than 12 months after the previous evaluation was conducted.

(b) Evaluate your continuous emission monitoring systems daily and quarterly as specified in appendix F of this part.

§ 60.1745 What must I do if I choose to monitor carbon dioxide instead of oxygen as a diluent gas?

You must establish the relationship between oxygen and carbon dioxide during the initial evaluation of your continuous emission monitoring system. You may reestablish the relationship during annual evaluations. To establish the relationship use three procedures:

(a) Use EPA Reference Method 3 or 3A to determine oxygen concentration at the location of your carbon dioxide monitor.

(b) Conduct at least three test runs for oxygen. Make sure each test run represents a 1-hour average and that sampling continues for at least 30 minutes in each hour.

(c) Use the fuel-factor equation in EPA Reference Method 3B to determine the relationship between oxygen and carbon dioxide.

§ 60.1750 What is the minimum amount of monitoring data I must collect with my continuous emission monitoring systems and is this requirement enforceable?

(a) Where continuous emission monitoring systems are required, obtain 1-hour arithmetic averages. Make sure the averages for sulfur dioxide, nitrogen oxides (Class A municipal waste combustion units only), and carbon monoxide are in parts per million by dry volume at 7 percent oxygen (or the equivalent carbon dioxide level). Use the 1-hour averages of oxygen (or carbon dioxide) data from your continuous emission monitoring system to determine the actual oxygen (or carbon

dioxide) level and to calculate emissions at 7 percent oxygen (or the equivalent carbon dioxide level).

(b) Obtain at least two data points per hour in order to calculate a valid 1-hour arithmetic average. Section 60.13(e)(2) of subpart A of this part requires your continuous emission monitoring systems to complete at least one cycle of operation (sampling, analyzing, and data recording) for each 15-minute period.

(c) Obtain valid 1-hour averages for 75 percent of the operating hours per day and for 90 percent of the operating days per calendar quarter. An operating day is any day the unit combusts any municipal solid waste or refuse-derived fuel.

(d) If you do not obtain the minimum data required in paragraphs (a) through (c) of this section, you are in violation of this data collection requirement regardless of the emission level monitored, and you must notify the Administrator according to § 60.1885(e).

(e) If you do not obtain the minimum data required in paragraphs (a) through (c) of this section, you must still use all valid data from the continuous emission monitoring systems in calculating emission concentrations and percent reductions in accordance with § 60.1755.

§ 60.1755 How do I convert my 1-hour arithmetic averages into appropriate averaging times and units?

(a) Use the equation in § 60.1935(a) to calculate emissions at 7 percent oxygen.

(b) Use EPA Reference Method 19, section 4.3, to calculate the daily geometric average concentrations of sulfur dioxide emissions. If you are monitoring the percent reduction of sulfur dioxide, use EPA Reference Method 19, section 5.4, to determine the daily geometric average percent reduction of potential sulfur dioxide emissions.

(c) If you operate a Class A municipal waste combustion unit, use EPA Reference Method 19, section 4.1, to calculate the daily arithmetic average for concentrations of nitrogen oxides.

(d) Use EPA Reference Method 19, section 4.1, to calculate the 4-hour or 24-hour daily block averages (as applicable) for concentrations of carbon monoxide.

§ 60.1760 What is required for my continuous opacity monitoring system and how are the data used?

(a) Install, calibrate, maintain, and operate a continuous opacity monitoring system.

(b) Install, evaluate, and operate each continuous opacity monitoring system according to § 60.13 of subpart A of this part.

(c) Complete an initial evaluation of your continuous opacity monitoring system according to Performance Specification 1 in appendix B of this part. Complete this evaluation by 180 days after your final compliance date.

(d) Complete each annual evaluation of your continuous opacity monitoring system no more than 12 months after the previous evaluation.

(e) Use tests conducted according to EPA Reference Method 9, as specified in § 60.1790, to determine compliance with the applicable emission limit for opacity in tables 2, 3, or 4 of this subpart. The data obtained from your continuous opacity monitoring system are not used to determine compliance with the limit on opacity emissions.

§ 60.1765 What additional requirements must I meet for the operation of my continuous emission monitoring systems and continuous opacity monitoring system?

Use the required span values and applicable performance specifications in table 8 of this subpart.

§ 60.1770 What must I do if my continuous emission monitoring system is temporarily unavailable to meet the data collection requirements?

Refer to table 8 of this subpart. It shows alternate methods for collecting data when these systems malfunction or when repairs, calibration checks, or zero and span checks keep you from collecting the minimum amount of data.

Model Rule—Stack Testing

§ 60.1775 What types of stack tests must I conduct?

Conduct initial and annual stack tests to measure the emission levels of dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash.

§ 60.1780 How are the stack test data used?

You must use results of stack tests for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash to demonstrate compliance with the applicable emission limits in tables 2, 3, and 4 of this subpart. To demonstrate compliance for carbon monoxide, nitrogen oxides, and sulfur dioxide, see § 60.1725.

§ 60.1785 What schedule must I follow for the stack testing?

(a) Conduct initial stack tests for the pollutants listed in § 60.1775 by 180 days after your final compliance date.

(b) Conduct annual stack tests for these pollutants after the initial stack test. Conduct each annual stack test within 12 months after the previous stack test.

§ 60.1790 What test methods must I use to stack test?

(a) Follow table 8 of this subpart to establish the sampling location and to determine pollutant concentrations, number of traverse points, individual test methods, and other specific testing requirements for the different pollutants.

(b) Make sure that stack tests for all these pollutants consist of at least three test runs, as specified in § 60.8 (Performance Tests) of subpart A of this part. Use the average of the pollutant emission concentrations from the three test runs to determine compliance with the applicable emission limits in tables 2, 3, or 4 of this subpart.

(c) Obtain an oxygen (or carbon dioxide) measurement at the same time as your pollutant measurements to determine diluent gas levels, as specified in § 60.1720.

(d) Use the equations in § 60.1935(a) to calculate emission levels at 7 percent oxygen (or an equivalent carbon dioxide basis), the percent reduction in potential hydrogen chloride emissions, and the reduction efficiency for mercury emissions. See the individual test methods in table 6 of this subpart for other required equations.

§ 60.1795 May I conduct stack testing less often?

(a) You may test less often if you own or operate a Class C municipal waste combustion unit and if all stack tests for a given pollutant over 3 consecutive years show you comply with the emission limit. In this case, you are not required to conduct a stack test for that pollutant for the next 2 years. However, you must conduct another stack test within 36 months of the anniversary date of the third consecutive stack test that shows you comply with the emission limit. Thereafter, you must perform stack tests every third year but no later than 36 months following the previous stack tests. If a stack test shows noncompliance with an emission limit, you must conduct annual stack tests for that pollutant until all stack tests over a 3-year period show compliance.

(b) You can test less often if you own or operate a municipal waste combustion plant that meets two conditions. First, you have multiple municipal waste combustion units onsite that are subject to this subpart. Second, all these municipal waste combustion units have demonstrated levels of dioxin/furan emissions no more than 15 nanograms per dry standard cubic meter (total mass) for Class A units, or 30 nanograms per day standard cubic meter (total mass) for Class B and Class C units, for 2 consecutive years. In this case, you may choose to conduct annual stack tests on only one municipal waste combustion unit per year at your plant.

(1) Conduct the stack test no more than 12 months following a stack test on any municipal waste combustion unit subject to this subpart at your plant. Each year, test a different municipal waste combustion unit subject to this subpart and test all municipal waste combustion units subject to this subpart in a sequence that you determine. Once you determine a testing sequence, it must not be changed without approval by the Administrator.

(2) If each annual stack test shows levels of dioxin/furan emissions less than 15 nanograms per dry standard cubic meter (total mass) for Class A units, or 30 nanograms per day standard cubic meter (total mass) for Class B and Class C units, you may continue stack tests on only one municipal waste combustion unit subject to this subpart per year.

(3) If any annual stack test indicates levels of dioxin/furan emissions greater than 15 nanograms per dry standard cubic meter (total mass) for Class A units, or 30 nanograms per day standard cubic meter (total mass) for Class B and Class C units, conduct subsequent annual stack tests on all municipal waste combustion units subject to this subpart at your plant. You may return to testing one municipal waste combustion unit subject to this subpart per year if you can demonstrate dioxin/furan emission levels less than 15 nanograms per dry standard cubic meter (total mass) for Class A units, or 30 nanograms per day standard cubic meter (total mass) for Class B and Class C units, for all municipal waste combustion units at your plant subject to this subpart for 2 consecutive years.

§ 60.1800 May I deviate from the 12-month testing schedule if unforeseen circumstances arise?

You may not deviate from the 12-month testing schedules specified in §§ 60.1785(b) and 60.1795(b)(1) unless you apply to the Administrator for an alternative schedule, and the Administrator approves your request for alternate scheduling prior to the date on which you would otherwise have been required to conduct the next stack test.

Model Rule—Other Monitoring Requirements

§ 60.1805 Must I meet other requirements for continuous monitoring?

You must also monitor three operating parameters:

(a) Load level of each municipal waste combustion unit.

(b) Temperature of flue gases at the inlet of your particulate matter air pollution control device.

(c) Carbon feed rate if activated carbon is used to control dioxin/furan or mercury emissions.

§ 60.1810 How do I monitor the load of my municipal waste combustion unit?

(a) If your municipal waste combustion unit generates steam, you must install, calibrate, maintain, and operate a steam flowmeter or a feed water flowmeter and meet five requirements:

(1) Continuously measure and record the measurements of steam (or feed water) in kilograms per hour (or pounds per hour).

(2) Calculate your steam (or feed water) flow in 4-hour block averages.

(3) Calculate the steam (or feed water) flow rate using the method in "American Society of Mechanical Engineers Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1—1964 (R1991)," section 4 (incorporated by reference in § 60.17 of subpart A of this part).

(4) Design, construct, install, calibrate, and use nozzles or orifices for flow rate measurements, using the recommendations in "American Society of Mechanical Engineers Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters", 6th Edition (1971), chapter 4 (incorporated by reference in § 60.17 of subpart A of this part).

(5) Before each dioxin/furan stack test, or at least once a year, calibrate all signal conversion elements associated with steam (or feed water) flow measurements according to the manufacturer instructions.

(b) If your municipal waste combustion unit does not generate steam, you must determine, to the satisfaction of the Administrator, one or more operating parameters that can be used to continuously estimate load level (for example, the feed rate of municipal solid waste or refuse-derived fuel). You must continuously monitor the selected parameters.

§ 60.1815 How do I monitor the temperature of flue gases at the inlet of my particulate matter control device?

You must install, calibrate, maintain, and operate a device to continuously measure the temperature of the flue gas stream at the inlet of each particulate matter control device.

§ 60.1820 How do I monitor the injection rate of activated carbon?

If your municipal waste combustion unit uses activated carbon to control dioxin/furan or mercury emissions, you must meet three requirements:

(a) Select a carbon injection system operating parameter that can be used to calculate carbon feed rate (for example, screw feeder speed).

(b) During each dioxin/furan and mercury stack test, determine the average carbon feed rate in kilograms (or pounds) per hour. Also, determine the average operating parameter level that correlates to the carbon feed rate. Establish a relationship between the operating parameter and the carbon feed rate in order to calculate the carbon feed rate based on the operating parameter level.

(c) Continuously monitor the selected operating parameter during all periods when the municipal waste combustion unit is operating and combusting waste and calculate the 8-hour block average carbon feed rate in kilograms (or pounds) per hour, based on the selected operating parameter. When calculating the 8-hour block average, do two things:

(1) Exclude hours when the municipal waste combustion unit is not operating.

(2) Include hours when the municipal waste combustion unit is operating but the carbon feed system is not working correctly.

§ 60.1825 What is the minimum amount of monitoring data I must collect with my continuous parameter monitoring systems and is this requirement enforceable?

(a) Where continuous parameter monitoring systems are used, obtain 1-hour arithmetic averages for three parameters:

(1) Load level of the municipal waste combustion unit.

(2) Temperature of the flue gases at the inlet of your particulate matter control device.

(3) Carbon feed rate if activated carbon is used to control dioxin/furan or mercury emissions.

(b) Obtain at least two data points per hour in order to calculate a valid 1-hour arithmetic average.

(c) Obtain valid 1-hour averages for at least 75 percent of the operating hours per day and for 90 percent of the operating days per calendar quarter. An operating day is any day the unit combusts any municipal solid waste or refuse-derived fuel.

(d) If you do not obtain the minimum data required in paragraphs (a) through

(c) of this section, you are in violation of this data collection requirement and you must notify the Administrator according to § 60.1885(e).

Model Rule—Recordkeeping

§ 60.1830 What records must I keep?

You must keep four types of records:

(a) Operator training and certification.

(b) Stack tests.

(c) Continuously monitored pollutants and parameters.

(d) Carbon feed rate.

§ 60.1835 Where must I keep my records and for how long?

(a) Keep all records onsite in paper copy or electronic format unless the Administrator approves another format.

(b) Keep all records on each municipal waste combustion unit for at least 5 years.

(c) Make all records available for submittal to the Administrator, or for onsite review by an inspector.

§ 60.1840 What records must I keep for operator training and certification?

You must keep records of six items:

(a) *Records of provisional certifications.* Include three items:

(1) For your municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room operators who are provisionally certified by the American Society of Mechanical Engineers or an equivalent State-approved certification program.

(2) Dates of the initial provisional certifications.

(3) Documentation showing current provisional certifications.

(b) *Records of full certifications.* Include three items:

(1) For your municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room operators who are fully certified by the American Society of Mechanical Engineers or an equivalent State-approved certification program.

(2) Dates of initial and renewal full certifications.

(3) Documentation showing current full certifications.

(c) *Records showing completion of the operator training course.* Include three items:

(1) For your municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room operators who have completed the EPA or State municipal waste combustion operator training course. Dates on which each person completed the operator training course.

(2) Dates of completion of the operator training course.

(3) Documentation showing completion of operator training course.

(d) *Records of reviews for plant-specific operating manuals.* Include three items:

(1) Names of persons who have reviewed the operating manual.

(2) Date of the initial review.

(3) Dates of subsequent annual reviews.

(e) *Records of when a certified operator is temporarily offsite.* Include two main items:

(1) If the chief facility operator and shift supervisor are offsite for more than 8 hours but less than 2 weeks and no other certified operator is onsite, record the dates that the chief facility operator and shift supervisor were offsite.

(2) When all certified chief facility operators and shift supervisors are offsite for more than 2 weeks and no other certified operator is onsite, keep records of four items:

(i) Your notice that all certified persons are offsite.

(ii) The conditions that cause these people to be offsite.

(iii) The corrective actions you are taking to ensure a certified chief facility operator or shift supervisor is onsite.

(iv) Copies of the written reports submitted every 4 weeks that summarize the actions taken to ensure that a certified chief facility operator or shift supervisor will be onsite.

(f) *Records of calendar dates.* Include the calendar date on each record.

§ 60.1845 What records must I keep for stack tests?

For stack tests required under § 60.1775, you must keep records of four items:

(a) The results of the stack tests for eight pollutants or parameters recorded in the appropriate units of measure specified in tables 2, 3, or 4 of this subpart:

(1) Dioxins/furans.

(2) Cadmium.

(3) Lead.

(4) Mercury.

(5) Opacity.

(6) Particulate matter.

(7) Hydrogen chloride.

(8) Fugitive ash.

(b) Test reports including supporting calculations that document the results of all stack tests.

(c) The maximum demonstrated load of your municipal waste combustion units and maximum temperature at the inlet of your particulate matter control device during all stack tests for dioxin/furan emissions.

(d) The calendar date of each record.

§ 60.1850 What records must I keep for continuously monitored pollutants or parameters?

You must keep records of eight items.

(a) *Records of monitoring data.* Document six parameters measured using continuous monitoring systems:

(1) All 6-minute average levels of opacity.

(2) All 1-hour average concentrations of sulfur dioxide emissions.

(3) For Class A municipal waste combustion units only, all 1-hour average concentrations of nitrogen oxides emissions.

(4) All 1-hour average concentrations of carbon monoxide emissions.

(5) All 1-hour average load levels of your municipal waste combustion unit.

(6) All 1-hour average flue gas temperatures at the inlet of the particulate matter control device.

(b) *Records of average concentrations and percent reductions.* Document five parameters:

(1) All 24-hour daily block geometric average concentrations of sulfur dioxide emissions or average percent reductions of sulfur dioxide emissions.

(2) For Class A municipal waste combustion units only, all 24-hour daily arithmetic average concentrations of nitrogen oxides emissions.

(3) All 4-hour block or 24-hour daily block arithmetic average concentrations of carbon monoxide emissions.

(4) All 4-hour block arithmetic average load levels of your municipal waste combustion unit.

(5) All 4-hour block arithmetic average flue gas temperatures at the inlet of the particulate matter control device.

(c) *Records of exceedances.* Document three items:

(1) Calendar dates whenever any of the five pollutants or parameter levels recorded in paragraph (b) or the opacity level recorded in paragraph (a)(1) of this section did not meet the emission limits or operating levels specified in this subpart.

(2) Reasons you exceeded the applicable emission limits or operating levels.

(3) Corrective actions you took, or are taking, to meet the emission limits or operating levels.

(d) *Records of minimum data.* Document three items:

(1) Calendar dates for which you did not collect the minimum amount of data required under §§ 60.1750 and 60.1825. Record these dates for five types of pollutants and parameters:

(i) Sulfur dioxide emissions.

(ii) For Class A municipal waste combustion units only, nitrogen oxides emissions.

(iii) Carbon monoxide emissions.

(iv) Load levels of your municipal waste combustion unit.

(v) Temperatures of the flue gases at the inlet of the particulate matter control device.

(2) Reasons you did not collect the minimum data.

(3) Corrective actions you took or are taking to obtain the required amount of data.

(e) *Records of exclusions.* Document each time you have excluded data from your calculation of averages for any of the following five pollutants or parameters and the reasons the data were excluded:

(1) Sulfur dioxide emissions.

(2) For Class A municipal waste combustion units only, nitrogen oxides emissions.

(3) Carbon monoxide emissions.

(4) Load levels of your municipal waste combustion unit.

(5) Temperatures of the flue gases at the inlet of the particulate matter control device.

(f) *Records of drift and accuracy.* Document the results of your daily drift tests and quarterly accuracy determinations according to Procedure 1 of appendix F of this part. Keep these records for the sulfur dioxide, nitrogen oxides (Class A municipal waste combustion units only), and carbon monoxide continuous emissions monitoring systems.

(g) *Records of the relationship between oxygen and carbon dioxide.* If you chose to monitor carbon dioxide instead of oxygen as a diluent gas, document the relationship between oxygen and carbon dioxide, as specified in § 60.1745.

(h) *Records of calendar dates.* Include the calendar date on each record.

§ 60.1855 What records must I keep for municipal waste combustion units that use activated carbon?

For municipal waste combustion units that use activated carbon to control dioxin/furan or mercury emissions, you must keep records of five items:

(a) *Records of average carbon feed rate.* Document five items:

(1) Average carbon feed rate (in kilograms or pounds per hour) during all stack tests for dioxin/furan and mercury emissions. Include supporting calculations in the records.

(2) For the operating parameter chosen to monitor carbon feed rate, average operating level during all stack tests for dioxin/furans and mercury emissions. Include supporting data that document the relationship between the operating parameter and the carbon feed rate.

(3) All 8-hour block average carbon feed rates in kilograms (pounds) per hour calculated from the monitored operating parameter.

(4) Total carbon purchased and delivered to the municipal waste combustion plant for each calendar quarter. If you choose to evaluate total carbon purchased and delivered on a municipal waste combustion unit basis, record the total carbon purchased and delivered for each individual municipal waste combustion unit at your plant. Include supporting documentation.

(5) Required quarterly usage of carbon for the municipal waste combustion plant, calculated using the appropriate equation in § 60.1935(f). If you choose to evaluate required quarterly usage for carbon on a municipal waste combustion unit basis, record the required quarterly usage for each municipal waste combustion unit at your plant. Include supporting calculations.

(b) *Records of low carbon feed rates.* Document three items:

(1) The calendar dates when the average carbon feed rate over an 8-hour block was less than the average carbon feed rates determined during the most recent stack test for dioxin/furan or mercury emissions (whichever has a higher feed rate).

(2) Reasons for the low carbon feed rates.

(3) Corrective actions you took or are taking to meet the 8-hour average carbon feed rate requirement.

(c) *Records of minimum carbon feed rate data.* Document three items:

(1) Calendar dates for which you did not collect the minimum amount of carbon feed rate data required under § 60.1825.

(2) Reasons you did not collect the minimum data.

(3) Corrective actions you took or are taking to get the required amount of data.

(d) *Records of exclusions.* Document each time you have excluded data from your calculation of carbon feed rates and the reasons the data were excluded.

(e) *Records of calendar dates.* Include the calendar date on each record.

Model Rule—Reporting

§ 60.1860 What reports must I submit and in what form?

(a) Submit an initial report and annual reports, plus semiannual reports for any emission or parameter level that does not meet the limits specified in this subpart.

(b) Submit all reports on paper, postmarked on or before the submittal dates in §§ 60.1870, 60.1880, and 60.1895. If the Administrator agrees, you may submit electronic reports.

(c) Keep a copy of all reports required by §§ 60.1875, 60.1885, and 60.1900 onsite for 5 years.

§ 60.1865 What are the appropriate units of measurement for reporting my data?

See tables 2, 3, 4 and 5 of this subpart for appropriate units of measurement.

§ 60.1870 When must I submit the initial report?

As specified in subpart A of this part, submit your initial report by 180 days after your final compliance date.

§ 60.1875 What must I include in my initial report?

You must include seven items:

(a) The emission levels measured on the date of the initial evaluation of your continuous emission monitoring systems for all of the following five pollutants or parameters as recorded in accordance with § 60.1850(b).

(1) The 24-hour daily geometric average concentration of sulfur dioxide emissions or the 24-hour daily geometric percent reduction of sulfur dioxide emissions.

(2) For Class A municipal waste combustion units only, the 24-hour daily arithmetic average concentration of nitrogen oxides emissions.

(3) The 4-hour block or 24-hour daily arithmetic average concentration of carbon monoxide emissions.

(4) The 4-hour block arithmetic average load level of your municipal waste combustion unit.

(5) The 4-hour block arithmetic average flue gas temperature at the inlet of the particulate matter control device.

(b) The results of the initial stack tests for eight pollutants or parameters (use appropriate units as specified in tables 2, 3, or 4 of this subpart):

(1) Dioxins/furans.

(2) Cadmium.

(3) Lead.

(4) Mercury.

(5) Opacity.

(6) Particulate matter.

(7) Hydrogen chloride.

(8) Fugitive ash.

(c) The test report that documents the initial stack tests including supporting calculations.

(d) The initial performance evaluation of your continuous emissions monitoring systems. Use the applicable performance specifications in appendix B of this part in conducting the evaluation.

(e) The maximum demonstrated load of your municipal waste combustion unit and the maximum demonstrated temperature of the flue gases at the inlet of the particulate matter control device.

Use values established during your initial stack test for dioxin/furan emissions and include supporting calculations.

(f) If your municipal waste combustion unit uses activated carbon to control dioxin/furan or mercury emissions, the average carbon feed rates that you recorded during the initial stack tests for dioxin/furan and mercury emissions. Include supporting calculations as specified in § 60.1855(a)(1) and (2).

(g) If you choose to monitor carbon dioxide instead of oxygen as a diluent gas, documentation of the relationship between oxygen and carbon dioxide, as specified in § 60.1745.

§ 60.1880 When must I submit the annual report?

Submit the annual report no later than February 1 of each year that follows the calendar year in which you collected the data. If you have an operating permit for any unit under title V of the Clean Air Act, the permit may require you to submit semiannual reports. Parts 70 and 71 of this chapter contain program requirements for permits.

§ 60.1885 What must I include in my annual report?

Summarize data collected for all pollutants and parameters regulated under this subpart. Your summary must include twelve items:

(a) The results of the annual stack test, using appropriate units, for eight pollutants, as recorded under § 60.1845(a):

(1) Dioxins/furans.
(2) Cadmium.
(3) Lead.
(4) Mercury.
(5) Opacity.
(6) Particulate matter.
(7) Hydrogen chloride.
(8) Fugitive ash.

(b) A list of the highest average emission levels recorded, in the appropriate units. List these values for five pollutants or parameters:

(1) Sulfur dioxide emissions.
(2) For Class A municipal waste combustion units only, nitrogen oxides emissions.
(3) Carbon monoxide emissions.
(4) Load level of the municipal waste combustion unit.
(5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device (4-hour block average).

(c) The highest 6-minute opacity level measured. Base this value on all 6-minute average opacity levels recorded by your continuous opacity monitoring system (§ 60.1850(a)(1)).

(d) For municipal waste combustion units that use activated carbon for controlling dioxin/furan or mercury emissions, include four records:

(1) The average carbon feed rates recorded during the most recent dioxin/furan and mercury stack tests.
(2) The lowest 8-hour block average carbon feed rate recorded during the year.
(3) The total carbon purchased and delivered to the municipal waste combustion plant for each calendar quarter. If you choose to evaluate total carbon purchased and delivered on a municipal waste combustion unit basis, record the total carbon purchased and delivered for each individual municipal waste combustion unit at your plant.
(4) The required quarterly carbon usage of your municipal waste combustion plant calculated using the appropriate equation in § 60.1935(f). If you choose to evaluate required quarterly usage for carbon on a municipal waste combustion unit basis, record the required quarterly usage for each municipal waste combustion unit at your plant.

(e) The total number of days that you did not obtain the minimum number of hours of data for six pollutants or parameters. Include the reasons you did not obtain the data and corrective actions that you have taken to obtain the data in the future. Include data on:

(1) Sulfur dioxide emissions.
(2) For Class A municipal waste combustion units only, nitrogen oxides emissions.
(3) Carbon monoxide emissions.
(4) Load level of the municipal waste combustion unit.
(5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device.
(6) Carbon feed rate.

(f) The number of hours you have excluded data from the calculation of average levels (include the reasons for excluding it). Include data for six pollutants or parameters:

(1) Sulfur dioxide emissions.
(2) For Class A municipal waste combustion units only, nitrogen oxides emissions.
(3) Carbon monoxide emissions.
(4) Load level of the municipal waste combustion unit. (5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device.
(6) Carbon feed rate.

(g) A notice of your intent to begin a reduced stack testing schedule for dioxin/furan emissions during the following calendar year if you are eligible for alternative scheduling (§ 60.1795(a) or (b)).

(h) A notice of your intent to begin a reduced stack testing schedule for other pollutants during the following calendar year if you are eligible for alternative scheduling (§ 60.1795(a)).

(i) A summary of any emission or parameter level that did not meet the limits specified in this subpart.

(j) A summary of the data in paragraphs (a) through (d) of this section from the year preceding the reporting year. This summary gives the Administrator a summary of the performance of the municipal waste combustion unit over a 2-year period.

(k) If you choose to monitor carbon dioxide instead of oxygen as a diluent gas, documentation of the relationship between oxygen and carbon dioxide, as specified in § 60.1745.

(l) Documentation of periods when all certified chief facility operators and certified shift supervisors are offsite for more than 8 hours.

§ 60.1890 What must I do if I am out of compliance with these standards?

You must submit a semiannual report on any recorded emission or parameter level that does not meet the requirements specified in this subpart.

§ 60.1895 If a semiannual report is required, when must I submit it?

(a) For data collected during the first half of a calendar year, submit your semiannual report by August 1 of that year.

(b) For data you collected during the second half of the calendar year, submit your semiannual report by February 1 of the following year.

§ 60.1900 What must I include in the semiannual out-of-compliance reports?

You must include three items in the semiannual report:

(a) For any of the following six pollutants or parameters that exceeded the limits specified in this subpart, include the calendar date they exceeded the limits, the averaged and recorded data for that date, the reasons for exceeding the limits, and your corrective actions:

(1) Concentration or percent reduction of sulfur dioxide emissions.
(2) For Class A municipal waste combustion units only, concentration of nitrogen oxides emissions.
(3) Concentration of carbon monoxide emissions.
(4) Load level of your municipal waste combustion unit.
(5) Temperature of the flue gases at the inlet of your particulate matter air pollution control device.
(6) Average 6-minute opacity level.

(b) If the results of your annual stack tests (as recorded in § 60.1845(a)) show emissions above the limits specified in table 2, 3 or 4 of this subpart as applicable for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash, include a copy of the test report that documents the emission levels and your corrective actions.

(c) For municipal waste combustion units that apply activated carbon to control dioxin/furan or mercury emissions, include two items:

(1) Documentation of all dates when the 8-hour block average carbon feed rate (calculated from the carbon injection system operating parameter) is less than the highest carbon feed rate established during the most recent mercury and dioxin/furan stack test (as specified in § 60.1855(a)(1)). Include four items:

(i) Eight-hour average carbon feed rate.
(ii) Reasons for these occurrences of low carbon feed rates.
(iii) The corrective actions you have taken to meet the carbon feed rate requirement.
(iv) The calendar date.

(2) Documentation of each quarter when total carbon purchased and delivered to the municipal waste combustion plant is less than the total required quarterly usage of carbon. If you choose to evaluate total carbon purchased and delivered on a municipal waste combustion unit basis, record the total carbon purchased and delivered for each individual municipal waste combustion unit at your plant. Include five items:

(i) Amount of carbon purchased and delivered to the plant.
(ii) Required quarterly usage of carbon.
(iii) Reasons for not meeting the required quarterly usage of carbon.
(iv) The corrective actions you have taken to meet the required quarterly usage of carbon.
(v) The calendar date.

§ 60.1905 Can reporting dates be changed?

(a) If the Administrator agrees, you may change the semiannual or annual reporting dates.

(b) See § 60.19(c) in subpart A of this part for procedures to seek approval to change your reporting date.

Model Rule—Air Curtain Incinerators That Burn 100 Percent Yard Waste

§ 60.1910 What is an air curtain incinerator?

An air curtain incinerator operates by forcefully projecting a curtain of air across an open chamber or open pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor.

§ 60.1915 What is yard waste?

Yard waste is grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs. They come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include two items:

(a) Construction, renovation, and demolition wastes that are exempt from the definition of "municipal solid waste" in § 60.1940 of this subpart.

(b) Clean wood that is exempt from the definition of "municipal solid waste" in § 60.1940 of this subpart.

§ 60.1920 What are the emission limits for air curtain incinerators that burn 100 percent yard waste?

(a) By 180 days after your final compliance date, you must meet two limits:

(1) The opacity limit is 10 percent (6-minute average) for air curtain incinerators that can combust at least 35 tons per day of municipal solid waste and no more than 250 tons per day of municipal solid waste.

(2) The opacity limit is 35 percent (6-minute average) during the startup period that is within the first 30 minutes of operation.

(b) Except during malfunctions, the requirements of this subpart apply at all times. Each malfunction must not exceed 3 hours.

§ 60.1925 How must I monitor opacity for air curtain incinerators that burn 100 percent yard waste?

(a) Use EPA Reference Method 9 to determine compliance with the opacity limit.

(b) Conduct an initial test for opacity as specified in § 60.8 of subpart A of this part.

(c) After the initial test for opacity, conduct annual tests no more than 12 calendar months following the date of your previous test.

§ 60.1930 What are the recordkeeping and reporting requirements for air curtain incinerators that burn 100 percent yard waste?

(a) Provide a notice of construction that includes four items:

(1) Your intent to construct the air curtain incinerator.
(2) Your planned initial startup date.
(3) Types of fuels you plan to combust in your air curtain incinerator.
(4) The capacity of your incinerator, including supporting capacity calculations, as specified in § 60.1935(d) and (e).

(b) Keep records of results of all opacity tests onsite in either paper copy or electronic format unless the Administrator approves another format.

(c) Keep all records for each incinerator for at least 5 years.

(d) Make all records available for submittal to the Administrator or for onsite review by an inspector.

(e) Submit the results (each 6-minute average) of the opacity tests by February 1 of the year following the year of the opacity emission test.

(f) Submit reports as a paper copy on or before the applicable submittal date. If the Administrator agrees, you may submit reports on electronic media.

(g) If the Administrator agrees, you may change the annual reporting dates (see § 60.19(c) in subpart A of this part).

(h) Keep a copy of all reports onsite for a period of 5 years.

Equations

§ 60.1935 What equations must I use?

(a) *Concentration correction to 7 percent oxygen.* Correct any pollutant concentration to 7 percent oxygen using the following equation:

$$C_7\% = C_{unc} * (13.9) * (1/(20.9 - C_{O2}))$$

Where:

$C_7\%$ = concentration corrected to 7 percent oxygen.
C_{unc} = uncorrected pollutant concentration.
C_{O2} = concentration of oxygen (%).

(b) *Percent reduction in potential mercury emissions.* Calculate the percent reduction in potential mercury emissions ($\%P_{Hg}$) using the following equation:

$$\%P_{Hg} = (E_i - Eo) * (100/E_i)$$

Where:

$\%P_{Hg}$ = percent reduction of potential mercury emissions
E_i = mercury emission concentration as measured at the air pollution control device inlet, corrected to 7 percent oxygen, dry basis
E_o = mercury emission concentration as measured at the air pollution control device outlet, corrected to 7 percent oxygen, dry basis

(c) *Percent reduction in potential hydrogen chloride emissions.* Calculate the percent reduction in potential hydrogen chloride emissions ($\%P_{HCl}$) using the following equation:

$$\%P_{HCl} = (E^i - E_o) * (100/E_i)$$

Where:

$\%P_{HCl}$ = percent reduction of the potential hydrogen chloride emissions
E_i = hydrogen chloride emission concentration as measured at the air pollution control device inlet, corrected to 7 percent oxygen, dry basis
E_o = hydrogen chloride emission concentration as measured at the air pollution control device outlet, corrected to 7 percent oxygen, dry basis

(d) *Capacity of a municipal waste combustion unit.* For a municipal waste combustion unit that can operate

continuously for 24-hour periods, calculate the capacity of the municipal waste combustion unit based on 24 hours of operation at the maximum charge rate. To determine the maximum charge rate, use one of two methods:

(1) For municipal waste combustion units with a design based on heat input capacity, calculate the maximum charging rate based on this maximum heat input capacity and one of two heating values:

(i) If your municipal waste combustion unit combusts refuse-derived fuel, use a heating value of 12,800 kilojoules per kilogram (5,500 British thermal units per pound).

(ii) If your municipal waste combustion unit combusts municipal solid waste, use a heating value of 10,500 kilojoules per kilogram (4,500 British thermal units per pound).

(2) For municipal waste combustion units with a design not based on heat input capacity, use the maximum designed charging rate.

(e) *Capacity of a batch municipal waste combustion unit.* Calculate the capacity of a batch municipal waste combustion unit as the maximum design amount of municipal solid waste they can charge per batch multiplied by the maximum number of batches they can process in 24 hours. Calculate this maximum number of batches by dividing 24 by the number of hours needed to process one batch. Retain fractional batches in the calculation. For example, if one batch requires 16 hours, the municipal waste combustion unit can combust 24/16, or 1.5 batches, in 24 hours.

(f) *Quarterly carbon usage.* If you use activated carbon to comply with the dioxin/furan or mercury limits, calculate the required quarterly usage of carbon using the appropriate equation for plant basis or unit basis:

(1) Plant basis.

$$C = \sum_{i=i}^{n} f_i * h_i$$

Where:

C = required quarterly carbon usage for the plant in kilograms (or pounds).

f_i = required carbon feed rate for the municipal waste combustion unit in kilograms (or pounds) per hour. This is the average carbon feed rate during the most recent mercury or dioxin/furan stack tests (whichever has a higher feed rate).

h_i = number of hours the municipal waste combustion unit was in operation during the calendar quarter (hours).

n = number of municipal waste combustion units, i, located at your plant.

(2) Unit basis.

$$C = f * h$$

Where:

C = required quarterly carbon usage for the unit in kilograms (or pounds).

f = required carbon feed rate for the municipal waste combustion unit in kilograms (or pounds) per hour. This is the average carbon feed rate during the most recent mercury or dioxin/furan stack tests (whichever has a higher feed rate).

h = number of hours the municipal waste combustion unit was in operation during the calendar quarter (hours).

Definitions

§ 60.1940 What definitions must I know?

Terms used but not defined in this section are defined in the Clean Air Act and in subparts A and B of this part.

Administrator means the Administrator of the U.S. Environmental Protection Agency or his/her authorized representative or the Administrator of a State Air Pollution Control Agency.

Air curtain incinerator means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor.

Batch municipal waste combustion unit means a municipal waste combustion unit designed so it cannot combust municipal solid waste continuously 24 hours per day because the design does not allow waste to be fed to the unit or ash to be removed during combustion.

Calendar quarter means three consecutive months (nonoverlapping) beginning on: January 1, April 1, July 1, or October 1.

Calendar year means 365 (366 in leap years) consecutive days starting on January 1 and ending on December 31.

Chief facility operator means the person in direct charge and control of the operation of a municipal waste combustion unit. This person is responsible for daily onsite supervision, technical direction, management, and overall performance of the municipal waste combustion unit.

Class A units mean nonrefractory-type small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant capacity greater than 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" for specification of which units at a plant site are included in the aggregate capacity calculation.

Class B units mean refractory-type small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant capacity greater than 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" for specification of which units at a plant site are included in the aggregate capacity calculation.

Class C units mean all small municipal combustion units that are located at municipal waste combustion plants with aggregate plant capacity less than or equal to 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" for specification of which units at a plant site are included in the aggregate capacity calculation.

Clean wood means untreated wood or untreated wood products including clean untreated lumber, tree stumps (whole or chipped), and tree limbs (whole or chipped). Clean wood does not include two items:

(1) "Yard waste", which is defined in this section.

(2) Construction, renovation, or demolition wastes (for example, railroad ties and telephone poles) that are exempt from the definition of "municipal solid waste" in this section.

Cofired combustion unit means a unit that combusts municipal solid waste with nonmunicipal solid waste fuel (for example, coal, industrial process waste). To be considered a cofired combustion unit, the unit must be subject to a federally enforceable permit that limits it to combusting a fuel feed stream which is 30 percent or less (by weight) municipal solid waste as measured each calendar quarter.

Continuous burning means the continuous, semicontinuous, or batch feeding of municipal solid waste to dispose of the waste, produce energy, or provide heat to the combustion system in preparation for waste disposal or energy production. Continuous burning does not mean the use of municipal solid waste solely to thermally protect the grate or hearth during the startup period when municipal solid waste is not fed to the grate or hearth.

Continuous emission monitoring system means a monitoring system that continuously measures the emissions of a pollutant from a municipal waste combustion unit.

Dioxins/furans mean tetra through octachlorinated dibenzo-p-dioxins and dibenzofurans.

Effective date of State plan approval means the effective date that the EPA approves the State plan. The **Federal Register** specifies this date in the notice that announces EPA's approval of the State plan.

Eight-hour block average means the average of all hourly emission concentrations or parameter levels when the municipal waste combustion unit operates and combusts municipal solid waste measured over any of three 8-hour periods of time:

(1) 12:00 midnight to 8:00 a.m.

(2) 8:00 a.m. to 4:00 p.m.

(3) 4:00 p.m. to 12:00 midnight.

Federally enforceable means all limits and conditions the Administrator can enforce (including the requirements of 40 CFR parts 60, 61, and 63), requirements in a State's implementation plan, and any permit requirements established under 40 CFR 52.21 or under 40 CFR 51.18 and 40 CFR 51.24.

First calendar half means the period that starts on January 1 and ends on June 30 in any year.

Fluidized bed combustion unit means a unit where municipal waste is combusted in a fluidized bed of material. The fluidized bed material may remain in the primary combustion zone or may be carried out of the primary combustion zone and returned through a recirculation loop.

Four-hour block average or *4-hour block average* means the average of all hourly emission concentrations or parameter levels when the municipal waste combustion unit operates and combusts municipal solid waste measured over any of six 4-hour periods:

(1) 12:00 midnight to 4 a.m.

(2) 4 a.m. to 8 a.m.

(3) 8 a.m. to 12:00 noon.

(4) 12:00 noon to 4 p.m.

(5) 4 p.m. to 8 p.m.

(6) 8 p.m. to 12:00 midnight.

Mass burn refractory municipal waste combustion unit means a field-erected municipal waste combustion unit that combusts municipal solid waste in a refractory wall furnace. Unless otherwise specified, this includes municipal waste combustion units with a cylindrical rotary refractory wall furnace.

Mass burn rotary waterwall municipal waste combustion unit means a field-erected municipal waste combustion unit that combusts municipal solid waste in a cylindrical rotary waterwall furnace.

Mass burn waterwall municipal waste combustion unit means a field-erected municipal waste combustion unit that combusts municipal solid waste in a waterwall furnace.

Maximum demonstrated load of a municipal waste combustion unit means the highest 4-hour block arithmetic average municipal waste combustion unit load achieved during 4 consecutive hours in the course of the most recent dioxin/furan stack test that demonstrates compliance with the applicable emission limit for dioxins/furans specified in this subpart.

Maximum demonstrated temperature of the particulate matter control device means the highest 4-hour block arithmetic average flue gas temperature measured at the inlet of the particulate matter control device during 4 consecutive hours in the course of the most recent stack test for dioxin/furan emissions that demonstrates compliance with the limits specified in this subpart.

Mixed fuel-fired (pulverized coal/refuse-derived fuel) combustion unit means a combustion unit that combusts coal and refuse-derived fuel simultaneously, in which pulverized coal is introduced into an air stream that carries the coal to the combustion chamber of the unit where it is combusted in suspension. This includes both conventional pulverized coal and micropulverized coal.

Modification or *modified municipal waste combustion unit* means a municipal waste combustion unit you have changed later than 6 months after [*the date of publication of the final rule*] and that meets one of two criteria:

(1) The cumulative cost of the changes over the life of the unit exceeds 50 percent of the original cost of building and installing the unit (not including the cost of land) updated to current costs.

(2) Any physical change in the municipal waste combustion unit or change in the method of operating it that increases the emission level of any air pollutant for which standards have been established under section 129 or section 111 of the Clean Air Act. Increases in the emission level of any air pollutant are determined when the municipal waste combustion unit operates at 100 percent of its physical load capability and are measured downstream of all air pollution control devices. Load restrictions based on permits or other nonphysical operational restrictions cannot be considered in this determination.

Modular excess-air municipal waste combustion unit means a municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers, all of which are designed to operate at conditions with combustion air amounts in excess of theoretical air requirements.

Modular starved-air municipal waste combustion unit means a municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers in which the primary combustion chamber is designed to operate at substoichiometric conditions.

Municipal solid waste or *municipal-type solid waste* means household, commercial/retail, or institutional waste. Household waste includes material discarded by residential dwellings, hotels, motels, and other similar permanent or temporary housing. Commercial/retail waste includes material discarded by stores, offices, restaurants, warehouses, nonmanufacturing activities at industrial facilities, and other similar establishments or facilities. Institutional waste includes materials discarded by schools, by hospitals (nonmedical), by nonmanufacturing activities at prisons and government facilities, and other similar establishments or facilities. Household, commercial/retail, and institutional waste does include yard waste and refuse-derived fuel. Household, commercial/retail, and institutional waste does not include used oil; sewage sludge; wood pallets; construction, renovation, and demolition wastes (which include railroad ties and telephone poles); clean wood; industrial process or manufacturing wastes; medical waste; or motor vehicles (including motor vehicle parts or vehicle fluff).

Municipal waste combustion plant means one or more municipal waste combustion units at the same location as specified under "Applicability of State Plans" (§ 60.1550(a)).

Municipal waste combustion plant capacity means the aggregate municipal waste combustion unit capacity at a plant for all municipal waste combustion units at the plant that are not subject to subparts Ea, Eb, or AAAA of this part.

Municipal waste combustion unit means any setting or equipment that combusts solid, liquid, or gasified municipal solid waste including, but not limited to, field-erected combustion units (with or without heat recovery), modular combustion units (starved-air or excess-air), boilers (for example, steam generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Two criteria further define these municipal waste combustion units:

(1) Municipal waste combustion units do not include pyrolysis or combustion units located at a plastics or rubber recycling unit as specified under "Applicability of State Plans"

(§ 60.1555(h) and (i)). Municipal waste combustion units do not include cement kilns that combust municipal solid waste as specified under "Applicability of State Plans" (§ 60.1555(j)). Municipal waste combustion units also do not include internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

(2) The boundaries of a municipal waste combustion unit are defined as follows. The municipal waste combustion unit includes, but is not limited to, the municipal solid waste fuel feed system, grate system, flue gas system, bottom ash system, and the combustion unit water system. The municipal waste combustion unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine-generator set. The municipal waste combustion unit boundary starts at the municipal solid waste pit or hopper and extends through three areas:

(i) The combustion unit flue gas system, which ends immediately after the heat recovery equipment or, if there is no heat recovery equipment, immediately after the combustion chamber.

(ii) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(iii) The combustion unit water system, which starts at the feed water pump and ends at the piping that exits the steam drum or superheater.

Particulate matter means total particulate matter emitted from municipal waste combustion units as measured by EPA Reference Method 5 (§ 60.1790).

Plastics or rubber recycling unit means an integrated processing unit for which plastics, rubber, or rubber tires are the only feed materials (incidental contaminants may be in the feed materials). These materials are processed and marketed to become input feed stock for chemical plants or petroleum refineries. The following three criteria further define a plastics or rubber recycling unit:

(1) Each calendar quarter, the combined weight of the feed stock that a plastics or rubber recycling unit produces must be more than 70 percent of the combined weight of the plastics, rubber, and rubber tires that recycling unit processes.

(2) The plastics, rubber, or rubber tires fed to the recycling unit may originate from separating or diverting plastics, rubber, or rubber tires from municipal or industrial solid waste. These feed materials may include manufacturing scraps, trimmings, and off-specification plastics, rubber, and rubber tire discards.

(3) The plastics, rubber, and rubber tires fed to the recycling unit may contain incidental contaminants (for example, paper labels on plastic bottles or metal rings on plastic bottle caps).

Potential hydrogen chloride emissions means the level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without emission controls for acid gases.

Potential mercury emissions means the level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without controls for mercury emissions.

Potential sulfur dioxide emissions means the level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without emission controls for acid gases.

Pyrolysis/combustion unit means a unit that produces gases, liquids, or solids by heating municipal solid waste. The gases, liquids, or solids produced are combusted and the emissions vented to the atmosphere.

Reconstruction means rebuilding a municipal waste combustion unit and meeting two criteria:

(1) The reconstruction begins on or after [the date 6 months after publication date of the final rule].

(2) The cumulative cost of the construction over the life of the unit exceeds 50 percent of the original cost of building and installing the municipal waste combustion unit (not including land) updated to current costs (current dollars). To determine what systems are within the boundary of the municipal waste combustion unit used to calculate these costs, see the definition of "municipal waste combustion unit" in this section.

Refractory unit or *refractory wall furnace* means a municipal waste combustion unit that has no energy recovery (such as through a waterwall) in the furnace of the municipal waste combustion unit.

Refuse-derived fuel means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. This includes all classes of refuse-derived fuel including two fuels:

(1) Low-density fluff refuse-derived fuel through densified refuse-derived fuel.

(2) Pelletized refuse-derived fuel.

Same location means the same or contiguous properties under common ownership or control, including those separated only by a street, road, highway, or other public right-of-way. Common ownership or control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, subdivision, or any combination thereof. Entities may include a municipality, other governmental unit, or any quasi-governmental authority (for example, a public utility district or regional authority for waste disposal).

Second calendar half means the period that starts on July 1 and ends on December 31 in any year.

Shift supervisor means the person who is in direct charge and control of operating a municipal waste combustion unit and who is responsible for onsite supervision, technical direction, management, and overall performance of the municipal waste combustion unit during an assigned shift.

Spreader stoker, mixed fuel-fired (coal/refuse-derived fuel) combustion unit means a municipal waste combustion unit that combusts coal and refuse-derived fuel simultaneously, in which coal is introduced to the combustion zone by a mechanism that throws the fuel onto a grate from above. Combustion takes place both in suspension and on the grate.

Standard conditions when referring to units of measure mean a temperature of 20°C and a pressure of 101.3 kilopascals.

Startup period means the period when a municipal waste combustion unit begins the continuous combustion of municipal solid waste. It does not include any warmup period during which the municipal waste combustion unit combusts fossil fuel or other solid waste fuel but receives no municipal solid waste.

State means any of the 50 United States and the protectorates of the United States.

State plan means a plan submitted pursuant to section 111(d) and section 129(b)(2) of the Clean Air Act and 40 CFR part 60, subpart B, that implements and enforces 40 CFR part 60, subpart BBBB.

Stoker (refuse-derived fuel) combustion unit means a steam generating unit that combusts refuse-derived fuel in a semisuspension combusting mode, using air-fed distributors.

Total mass dioxins/furans or *total mass* means the total mass of tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans as determined using EPA Reference Method 23 and the procedures specified in § 60.1790.

Twenty-four hour daily average or *24-hour daily average* means either the arithmetic mean or geometric mean (as specified) of all hourly emission concentrations when the municipal waste combustion unit operates and combusts municipal solid waste measured during the 24 hours between 12:00 midnight and the following midnight.

Untreated lumber means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Untreated lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

Waterwall furnace means a municipal waste combustion unit that has energy (heat) recovery in the furnace (for example, radiant heat transfer section) of the combustion unit.

Yard waste means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs. They come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include two items:

(1) Construction, renovation, and demolition wastes that are exempt from the definition of "municipal solid waste" in this section.

(2) Clean wood that is exempt from the definition of "municipal solid waste" in this section.

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Table 1 of Subpart BBBB — Model Rule — Compliance Schedules and Increments of Progress

Affected units	Increment 1 (Submit final control plan)	Increment 2 (Award contracts)	Increment 3 (Begin onsite construction)	Increment 4 (Complete onsite construction)	Increment 5 (Final compliance)
All affected Class A and Class B units[a]	(Dates to be specified in State plan)	(Dates to be specified in State plan)	(Dates to be specified in State plan)	(Dates to be specified in State plan)	(Dates to be specified in State plan)[b,c]
All Class C units [a]	(Dates to be specified in State plan)	Not applicable	Not applicable	Not applicable	(Dates to be specified in State plan)[b]

[a] Plant specific schedules can be used at the discretion of the State.
[b] The date can be no later than 3 years after the effective date of State plan approval or 5 years after [the date of publication of the final rule].
[c] For Class A and Class B units that began construction, reconstruction, or modification after June 26, 1987, comply with the dioxin/furan and mercury limits by the later of two dates:
1. One year after the effective date of State plan approval.
2. One year after the issuance of a revised construction or operation permit, if a permit modification is required.

Table 2 of Subpart BBBB — Model Rule — Class A Emission Limits for Existing Municipal Waste Combustion Units

For these pollutants	You must meet these emission limits [a]	Using these averaging times	And determine compliance by these methods
Organics			
Dioxins/furans (total mass basis)	30 nanograms per dry standard cubic meter for municipal waste combustion units that do not employ an electrostatic precipitator-based emission control system -or- 60 nanograms per dry standard cubic meter for municipal waste combustion units that employ an electrostatic precipitator-based emission control system	3-run average (minimum run duration is 4 hours)	Stack test
Metals			
Cadmium	0.040 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
Lead	0.490 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
Mercury	0.080 milligrams per dry standard cubic meter -or- 85 percent reduction of potential mercury emissions	3-run average (run duration specified in test method)	Stack test
Opacity	10 percent	Thirty 6-minute averages	Stack test
Particulate matter	27 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test

[a] All emission limits are measured at 7 percent oxygen.

Table 2 of Subpart BBBB — Model Rule —Class A Emission Limits For Existing Municipal Waste Combustion Units (Continued)

For these pollutants	You must meet these emission limits [a]	Using these averaging times	And determine compliance by these methods
Lead	0.490 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
Mercury	0.080 milligrams per dry standard cubic meter -or- 85 percent reduction of potential mercury emissions	3-run average (run duration specified in test method)	Stack test
Opacity	10 percent	Thirty 6-minute averages	Stack test
Particulate matter	27 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test

[a] All emission limits are measured at 7 percent oxygen.

Table 3 of Subpart BBBB — Model Rule — Class B Emission Limits for Existing Municipal Waste Combustion Units

For these pollutants		You must meet these emission limits[a]	Using these averaging times	And determine compliance by these methods
Organics				
	Dioxins/furans (total mass basis)	123 nanograms per dry standard cubic meter	3-run average (minimum run duration is 4 hours)	Stack test
Metals				
	Cadmium	0.10 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
	Lead	1.6 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
	Mercury	0.080 milligrams per dry standard cubic meter -or- 85 percent reduction of potential mercury emissions	3-run average (run duration specified in test method)	Stack test
	Opacity	10 percent	Thirty 6-minute averages	Stack test
	Particulate matter	34 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
Acid Gases				
	Hydrogen chloride	200 parts per million by dry volume -or- 50 percent reduction of potential hydrogen chloride emissions	3-run average (minimum run duration is 1 hour)	Stack test
	Nitrogen Oxides	Not applicable	Not applicable	Not applicable

[a] All emission limits measured at 7 percent oxygen.

Table 3 of Subpart BBBB — Model Rule — Class B
Emission Limits for Existing Municipal Waste Combustion Units (Continued)

For these pollutants	You must meet these emission limits[a]	Using these averaging times	And determine compliance by these methods
Acid gases			
Sulfur dioxide	55 parts per million by dry volume -or- 50 percent reduction of potential sulfur dioxide emissions	24-hour daily block geometric average concentration -or- percent reduction	Continuous emission monitoring system
Other			
Fugitive ash	Visible emissions for no more than 5 percent of hourly observation period	Three 1-hour observation periods	Visible emission test

[a]All emission limits are measured at 7 percent oxygen.

Table 4 of Subpart BBBB — Model Rule — Class C
Emission Limits for Existing Municipal Waste Combustion Units

For these pollutants		You must meet these emission limits[a]	Using these averaging times	And determine compliance by these methods
Organics				
	Dioxins/furans (total mass basis)	125 nanograms per dry standard cubic meter	3-run average (minimum run duration is 4 hours)	Stack test
Metals				
	Cadmium	0.10 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
	Lead	1.6 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
	Mercury	0.080 milligrams per dry standard cubic meter -or- 85 percent reduction of potential mercury emissions	3-run average (run duration specified in test method)	Stack test
	Opacity	10 percent	Thirty 6-minute averages	Stack test
	Particulate Matter	70 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
Acid gases				
	Hydrogen chloride	250 parts per million by volume -or- 50 percent reduction of potential hydrogen chloride emissions	3-run average (minimum run duration is 1 hour)	Stack test

[a]All emission limits measured at 7 percent oxygen.

Table 4 of Subpart BBBB — Model Rule — Class C Emission Limits for Existing Municipal Waste Combustion Units (Continued)

For these pollutants		You must meet these emission limits[a]	Using these averaging times	And determine compliance by these methods
Acid gases				
	Nitrogen Oxides	Not applicable	Not applicable	Not applicable
	Sulfur Dioxide	80 parts per million by dry volume -or- 50 percent reduction of potential sulfur dioxides emissions	24-hour daily block geometric average concentration -or- percent reduction	Continuous emission monitoring system
Other				
	Fugitive Ash	Visible emissions for no more than 5 percent of hourly observation period	Three 1-hour observation periods	Visible emission test

[a]All emission limits are measured at 7 percent oxygen.

Table 5 of Subpart BBBB — Model Rule — Carbon Monoxide Emission Limits for Existing Municipal Waste Combustion Units

For these municipal waste combustion units	You must meet the carbon monoxide limits[a]	Using these averaging times[b]
Fluidized bed	100 parts per million by dry volume	4-hour
Fluidized bed, mixed fuel, (wood/refuse-derived fuel)	200 parts per million by dry volume	24-hour
Mass burn rotary refractory	100 parts per million by dry volume	4-hour
Mass burn rotary waterwall	250 parts per million by dry volume	24-hour
Mass burn waterwall and refractory	100 parts per million by dry volume	4-hour
Mixed fuel-fired, (pulverized coal/refuse-derived fuel)	150 parts per million by dry volume	4-hour
Modular starved-air and excess air	50 parts per million by dry volume	4-hour
Spreader stoker, mixed fuel-fired (coal/refuse-derived fuel)	200 parts per million by dry volume	24-hour daily
Stoker, refuse-derived fuel	200 parts per million by dry volume	24-hour daily

[a] All limits are measured at 7 percent oxygen. Compliance is determined by continuous emission monitoring systems.

[b] All averages are block averages. See §60.1940 for definitions.

Table 6 of Subpart BBBB — Model Rule — Requirements for Validating Continuous Emission Monitoring Systems (CEMS)

For these continuous monitoring systems	Use these methods to validate pollutant concentration levels	Use these methods to measure oxygen (or carbon dioxide)
Nitrogen oxides (Class A units only)	Method 7, 7A, 7B, 7C, 7D, or 7E	Method 3 or 3A
Sulfur dioxide	Method 6 or 6C	Method 3 or 3A
Carbon monoxide	Method 10, 10A, or 10B	Method 3 or 3A

Table 7 of Subpart BBBB — Model Rule — Requirements for Continuous Emission Monitoring Systems (CEMS)

For these pollutants	Use these span values for your CEMS	Use these performance specifications for your CEMS (from appendix B)	If needed to meet minimum data requirements, use these alternate methods to collect data
Opacity	100 percent opacity	P.S. 1	Method 9
Nitrogen oxides (Class A units only)	**Control device outlet:** 125 percent of the maximum expected hourly potential nitrogen oxides emissions of the municipal waste combustion unit	P.S. 2	Method 19
Sulfur dioxide	**Inlet to control device:** 125 percent of the maximum expected hourly potential sulfur dioxide emissions of the municipal waste combustion unit **Control device outlet:** 50 percent of the maximum expected hourly potential sulfur dioxide emissions of the municipal waste combustion unit	P.S. 2	Method 19
Carbon monoxide	125 percent of the maximum expected hourly potential carbon monoxide emissions of the municipal waste combustion unit	P.S. 4A	Method 10 with alternative interference trap
Oxygen or carbon dioxide	25 percent oxygen or 25 percent carbon dioxide	P.S. 3	Method 3A or 3B

Table 8 of Subpart BBBB — Model Rule — Requirements for Stack Tests

To measure these pollutants	Use these methods to determine the sampling location	Use these methods to measure pollutant concentration	Also note the following additional information
Organics			
Dioxins/furans	Method 1	Method 23[a]	The minimum sampling time must be 4 hours per test run while the municipal waste combustion unit is operating at full load.
Metals			
Cadmium	Method 1	Method 29[a]	Compliance testing must be performed while the municipal waste combustion unit is operating at full load.
Lead	Method 1	Method 29[a]	Compliance testing must be performed while the municipal waste combustion unit is operating at full load.
Mercury	Method 1	Method 29[a]	Compliance testing must be performed while the municipal waste combustion unit is operating at full load.
Opacity	Not applicable	Method 9	Use Method 9 to determine compliance with opacity limits. 3-hour observation period (thirty 6-minute averages).
Particulate matter	Method 1	Method 5[a]	The minimum sample volume must be 1.7 cubic meters. The probe and filter holder heating systems in the sample train must be set to provide a gas temperature no greater than 160 ±14 °C.

[a] Must simultaneously measure oxygen (or carbon dioxide) using Method 3 or 3A.
[b] Use CEMS to test sulfur dioxide, nitrogen oxide, and carbon monoxide. Stack tests are not required except for Appendix F quality assurance requirements.

Table 8 of Subpart BBBB — Model Rule — Requirements for Stack Tests (Continued)

To measure these pollutants	Use these methods to determine the sampling location	Use these methods to measure pollutant concentration	Also note the following additional information
Acid gases[b]			
Hydrogen chloride	Not applicable	Method 26[a]	Test runs must be at least 1 hour long.
Other[b]			
Fugitive ash	Not applicable	Method 22 (visible emissions)	The three 1-hour observation period must include periods when the facility transfers fugitive ash from the municipal waste combustion unit to the area where the fugitive ash is stored or loaded into containers or trucks.

[a] Must simultaneously measure oxygen (or carbon dioxide) using Method 3 or 3A.
[b] Use CEMS to test sulfur dioxide, nitrogen oxide, and carbon monoxide. Stack tests are not required except for Appendix F quality assurance requirements.

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federal register

Monday
August 30, 1999

Part III

Environmental Protection Agency

40 CFR Part 60
New Source Performance Standards for New Small Municipal Waste Combustion Units; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD–FRL–6424–7]

RIN 2060–AI51

New Source Performance Standards for New Small Municipal Waste Combustion Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to reestablish new source performance standards (NSPS) for new small municipal waste combustion (MWC) units. When implemented, these NSPS will result in stringent emission limits for organics (dioxins/furans), metals (cadmium, lead, mercury, and particulate matter), and acid gases (hydrogen chloride, sulfur dioxide, and nitrogen oxides). The NSPS for small MWC units were originally promulgated in December 1995 but were vacated by the U.S. Court of Appeals for the District of Columbia Circuit in March 1997. These proposed NSPS are functionally equivalent to the 1995 NSPS.

DATES: *Comments:* Comments on these proposed NSPS and comments on the Information Collection Request (ICR) document associated with these NSPS must be received on or before October 29, 1999.

Public Hearing: A public hearing will be held if requests to speak are received by September 14, 1999. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed NSPS. If requests to speak are received, the public hearing will take place in Research Triangle Park, North Carolina, approximately 30 days after August 30, 1999 and will begin at 10:00 a.m. A message regarding the status of the public hearing may be accessed by calling (919) 541–5264.

ADDRESSES: *Comments:* Submit comments on these proposed NSPS (in duplicate, if possible) to: Air and Radiation Docket and Information Center (MC–6102), Attention Docket No. A–98–18, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Comments may also be submitted electronically. Send electronic submittals to: "A-and-R-Docket@epamail.epa.gov". Submit electronic comments in American Standard Code for Information Interchange (ASCII) format. Avoid the use of special characters and any form of encryption. Electronic comments on these proposed NSPS may be filed online at any Federal Depository Library. For additional information on comments and public hearing see the **SUPPLEMENTARY INFORMATION** section.

Docket: Docket No. A–98–18 for this proposal and associated Docket Nos. A–90–45 and A–89–08 contain supporting information for these NSPS. These dockets are available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at EPA's Air and Radiation Docket and Information Center (MC–6102), 401 M Street SW, Washington, DC 20460 or by calling (202) 260–7548. The docket is located at the above address in Room M–1500, Waterside Mall (ground floor, central mall). A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Stevenson at (919) 541–5264, Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, e-mail: stevenson.walt@epa.gov.

SUPPLEMENTARY INFORMATION:

Comment Information

Comments and data will also be accepted on disks in WordPerfect® Version 5.1 or 6.1 file format (or ASCII file format). Address all comments and data for this proposal, whether in paper form or in electronic form such as through e-mail or disk, to Docket No. A–98–18.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it "Confidential Business Information." Send submissions containing proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Ms. Melva Toomer, U.S. EPA, OAQPS Document Control Officer, 411 W. Chapel Hill Street, Room 944, Durham, NC 27701. Do not submit Confidential Business Information (CBI) electronically.

The EPA will disclose information covered by such a claim of confidentiality only to the extent allowed and by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing

If a public hearing is held, it will take place at EPA's Office of Administration Auditorium, Research Triangle Park, NC, or at an alternate site nearby. Persons interested in presenting oral testimony at the public hearing should notify Ms. Libby Bradley, Combustion Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5578, at least 2 days in advance of the public hearing. Persons interested in attending the public hearing must call Ms. Bradley to verify the time, date, and location of the hearing. The final hearing status and location may be obtained by calling (919) 541–5264.

World Wide Web Site

Electronic versions of this notice, the proposed regulatory text, and other background information are available at the World Wide Web site that EPA has established for these proposed NSPS for small MWC units. The address is: "http://www.epa.gov/ttn/uatw/129/mwc/rimwc2.html". For assistance in downloading files, call the EPA's Technology Transfer Network (TTN) HELP line at (919) 541–5384.

Regulated Entities

These NSPS would affect the following categories of sources:

Category	NAICS codes	SIC codes	Examples of regulated entities
Industry, Federal government, and State/local/ tribal governments.	562213 92411	4953 9511	Solid waste combustors or incinerators at waste-to-energy facilities that generate electricity or steam from the combustion of garbage (typically municipal waste); and solid waste combustors or incinerators at facilities that combust garbage (typically municipal waste) and do not recover energy from the waste.

This list is not intended to be exhaustive, but rather provides a guide regarding the entities EPA expects to regulate with these NSPS for small MWC units. These NSPS would primarily impact facilities in North American Industrial Classification System (NAICS) codes 562213 and 92411, formerly Standard Industrial Classification (SIC) codes 4953 and 9511, respectively. Not all facilities classified under these codes would be affected. Other types of entities not listed in this table could also be affected. To determine whether your facility would be regulated by these NSPS, carefully examine the applicability criteria in section II.A of this preamble. If you have any questions regarding the applicability of this action to your small MWC unit or any other question or comment, please submit comments to Docket No. A–98–18 or refer to the **FOR FURTHER INFORMATION CONTACT** section.

Organization of This Document. The following outline is provided to aid in locating information in this preamble.

Each section heading of the preamble is presented as a question and the text in the section answers the question.

I. Background Information
II. Summary of These Proposed NSPS
A. What Sources Would Be regulated by These Proposed NSPS?
B. What Pollutants Would Be Regulated by These Proposed NSPS?
C. What Is the Format of the Proposed Emission Limits in These NSPS?
D. Where Can I Find a More Detailed Summary of These Proposed NSPS?
III. Changes in These Proposed NSPS Relative to the 1995 NSPS
A. How Has the Conversion to Plain Language Affected These NSPS?
B. How Has the Size Definition of the Small MWC Unit Category Been Revised?
C. How Has the Population of Small MWC Units Been Subcategorized in These Proposed NSPS?
D. Have Any Changes Been Made to the Emission Limits for These Proposed NSPS?
E. Have Any Changes Been Made to the Operator Certification Requirements?
F. Have Any Changes Been Made to the Operating Practice Requirements?
G. Have Any Changes Been Made to the Monitoring and Stack Testing Requirements?
H. Have Any Changes Been Made to the Recordkeeping and Reporting Requirements?
IV. What Would Be the Impacts Associated With These Proposed NSPS?
A. Air Impacts
B. Cost and Economic Impacts
V. Companion Proposal for Existing Small MWC Units
VI. Administrative Requirements
A. Public Hearing
B. Docket
C. National Technology Transfer and Advancement Act
D. Paperwork Reduction Act
E. Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act
F. Unfunded Mandates Reform Act
G. Executive Order 12866—Regulatory Planning and Review
H. Executive Order 12875—Enhancing the Intergovernmental Partnership
I. Executive Order 12898—Federal Actions to Address Environmental Justice on Minority Populations and Low-income Populations
J. Executive Order 13045—Protection of Children from Environmental Health Risks and Safety Risks
K. Executive Order 13084—Consultation and Coordination with Indian Tribal Governments
L. Executive Memorandum on Plain Language in Government Writing

Abbreviations and Acronyms Used in This Document

ASCII—American Standard Code for Information Interchange
ASME—American Society of Mechanical Engineers
ASTM— American Society for Testing and Materials
CBI—Confidential Business Information
CFR—Code of Federal Regulations
CI—Carbon Injection
EPA—Environmental Protection Agency
FR—Federal Register
ICR—Information Collection Request
MACT—Maximum achievable control technology
MSW—Municipal solid waste
MWC—Municipal waste combustion
NAICS—North American Industrial Classification System
NSPS—New source performance standards
NTTAA—National Technology Transfer and Advancement Act
OAQPS—Office of Air Quality Planning and Standards
OMB—Office of Management and Budget
OP—Office of Policy
Pub. L.—Public Law
RFA—Regulatory Flexibility Act
SBREFA—Small Business Regulatory Enforcement Fairness Act
SD/FF/CI—Spray dryer/fabric filter/ carbon injection
SIC—Standard Industrial Classification
SNCR—Selective non-catalytic reduction
TTN—Technology Transfer Network
UMRA—Unfunded Mandates Reform Act
U.S.C.—United States Code

I. Background Information

On September 20, 1994, EPA proposed NSPS for large and small MWC units under 40 CFR part 60, subpart Eb. Those NSPS covered all MWC units located at plants with an aggregate plant combustion capacity larger than 35 megagrams per day of MSW which is approximately 39 tons per day of MSW. The subpart Eb NSPS for large and small MWC units were promulgated on December 19, 1995.

The 1995 NSPS divided the MWC unit population into MWC units located at large or small MWC plants based on the total aggregate capacity of all MWC units at the MWC plant. The large plant category comprised all MWC units located at MWC plants with aggregate plant combustion capacities greater than 225 megagrams per day (approximately 248 tons per day). The small plant category comprised all MWC units located at MWC plants with aggregate plant combustion capacities of 35 to 225 megagrams per day (approximately 39 to 248 tons per day).

Following promulgation of the 1995 NSPS, a petition for review was filed with the U.S. Court of Appeals for the District of Columbia Circuit regarding the use of aggregate plant capacity as the basis for initial categorization of the MWC unit population. An initial opinion was issued by the court on December 6, 1996 (*Davis County Solid Waste Management and Recovery District* v. *EPA*, 101 F. 3d 1395, D.C. Circuit, 1996). The initial opinion would have vacated (canceled) the 1995 NSPS for both large and small MWC units.

The EPA filed a petition for rehearing on February 4, 1997 requesting the court to reconsider the remedy portion of its opinion and to vacate only the NSPS as they apply to small MWC units (units with an individual unit capacity of 35 to 250 tons per day). The court granted EPA's petition, reconsidered its opinion, and issued a revised opinion on March 21, 1997 (*Davis County Solid Waste Management and Recovery District* v. *EPA*, 108 F. 3d 1454, D.C. Circuit, 1997). The revised opinion remanded to EPA the 1995 NSPS for the large MWC unit category for amendment to be consistent with the court's final opinion and vacated these NSPS only as they applied to small MWC units.

Amendments to the 1995 NSPS incorporating the court's final opinion were published on August 25, 1997 (62 FR 45116). The amendments made the subpart Eb NSPS consistent with the court's decision and included other minor technical corrections to improve clarity. The principal change was to remove small MWC units from the applicability of subpart Eb. This was accomplished by increasing the lower size definition (cutoff) for large MWC

plants from 35 megagrams per day on a plant capacity basis to 250 tons per day on a unit capacity basis. No adverse comments were received on the proposal and the amendments became effective on October 24, 1997.

Today's proposal would reestablish NSPS for new small MWC units with combustion capacities of 35 to 250 tons per day of MSW.

II. Summary of These Proposed NSPS

This section summarizes these proposed NSPS for small MWC units, including identification of the subcategories used in this proposal. Overall, these proposed NSPS for small MWC units are functionally equivalent to the 1995 NSPS for small MWC units. These proposed NSPS retain subcategorization by aggregate plant capacity. The following two subcategories are used in these NSPS for small MWC units: (1) Small MWC units located at plants with aggregate plant capacities greater than 250 tons of MSW per day; and (2) small MWC units located at plants with aggregate plant capacities less than or equal to 250 tons of MSW per day. The court allowed this subcategorization as a second step after first categorizing the MWC unit population into large MWC unit (subpart Eb) and small MWC unit (subpart AAAA) categories.

A. What Sources Would Be Regulated by These Proposed NSPS?

Today's proposed NSPS, if promulgated in the current form, would apply to each new MWC unit that has a combustion design capacity of 35 to 250 tons of MSW, and commenced construction after August 30, 1999 or commenced modification or reconstruction 6 months after the date that these NSPS rule are promulgated. Small MWC units that commenced construction on or before August 30, 1999 are not covered under this subpart. These units would be subject to the emission guidelines for existing small MWC units that are proposed as subpart BBBB in a separate part of today's **Federal Register**.

B. What Pollutants Would Be Regulated by These Proposed NSPS?

Section 129 of the Clean Air Act requires EPA to establish numerical emission limits for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, sulfur dioxide, hydrogen chloride, nitrogen oxides, and carbon monoxide. Section 129 specifies that EPA may also:

> * * * promulgate numerical emission limitations or provide for the monitoring of post-combustion concentrations of surrogate substances, parameters, or periods of residence times in excess of stated temperatures with respect to pollutants other than those listed [above] * * *

Therefore, in addition to the proposed emission limits, EPA is proposing limits for unit operating load, flue gas temperature at the particulate matter control device inlet, and carbon feed rate as part of the good combustion practice requirements. The EPA is also proposing limits for control of fugitive ash emissions. All of these requirements were contained in the 1995 NSPS.

C. What Is the Format of the Proposed Emission Limits in These NSPS?

The format of the emission limits in these proposed NSPS is identical to the format of the 1995 NSPS. The format is in the form of emission limits based on pollutant concentration. Alternative percentage reduction requirements are provided for mercury, sulfur dioxide, and hydrogen chloride. Opacity and fugitive ash requirements in these NSPS are identical to the 1995 NSPS. In addition to controlling stack emissions, these proposed NSPS incorporate the same good combustion practice requirements (i.e., operator training, operator certification, and operating requirements) that were included in the 1995 NSPS. Additionally, this proposal includes a clarification to the operator certification requirements to address periods when the certified chief facility operators and certified shift supervisors must be offsite. Section III.E provides more detail on these proposed changes. Today's proposal also includes a revision to the carbon injection requirements. See section III.F of this preamble for more detail on the proposed changes.

D. Where Can I Find a More Detailed Summary of These Proposed NSPS?

A concise summary of these proposed NSPS can be found either in: (1) tables 1 and 2 of the proposed subpart AAAA NSPS following this preamble, or (2) the Technical Fact Sheet for this proposal that can be downloaded from the EPA World Wide Web site for small MWC units (http://www.epa.gov/ttn/uatw/129/mwc/rimwc2.html).

III. Changes in These Proposed NSPS Relative to the 1995 NSPS

This section summarizes the changes in these proposed NSPS compared to the 1995 NSPS. Overall, these NSPS are functionally equivalent to the 1995 NSPS, with minimal changes. The most significant change since the 1995 NSPS has been the use of the plain language style for organizing and writing these NSPS. These proposed NSPS retain subcategorization by aggregate plant capacity as allowed by the court.

A. How Has the Conversion to Plain Language Affected These NSPS?

The proposed NSPS are organized and written in the plain language style. This plain language style has not affected the content of these proposed NSPS compared to the 1995 NSPS. However, it has changed their appearance. The EPA considers the question and answer style used with plain language to be more user friendly and understandable to all audiences when compared with previous rules that were not written in this style. To improve the presentation of these NSPS requirements, additional tables have been added.

B. How Has the Size Definition of the Small MWC Unit Category Been Revised?

As a result of the 1997 court decision, both the upper and lower size cutoffs have been changed for the small MWC unit category so that the size cutoffs are based on the capacity of an individual MWC unit rather than on the total capacity of the plant where an MWC unit is located. Additionally, English units of measure are used instead of metric units of measure.

1. Upper Size Cutoff

The upper size cutoff for small MWC units is proposed as 250 tons per day on a unit capacity basis. In the 1995 NSPS, the upper size cutoff was 225 megagrams per day (approximately 248 tons per day) based on total plant capacity. The revised upper size cutoff is consistent with the 1997 court ruling.

2. Lower Size Cutoff

The lower size cutoff is proposed as 35 tons per day on a unit capacity basis to make both the upper size cutoff and lower size cutoff consistent on a unit capacity basis. In the 1995 NSPS, the lower size cutoff for small MWC units was 35 megagrams per day (approximately 39 tons per day) based on total plant capacity.

C. How Has the Population of Small MWC Units Been Subcategorized in These Proposed NSPS?

As stated in the **SUMMARY** section, these proposed NSPS are functionally equivalent to the 1995 NSPS and retain the use of aggregate plant capacity to subcategorize small MWC units within these proposed NSPS. The 1997 court decision allowed EPA to:

> * * * exercise its discretion to distinguish among units within a category and create subcategories of small units, for which it can then calculate MACT (maximum achievable control technology) floors and standards separately.

After first categorizing the MWC unit population into large and small MWC units based on unit capacity, the court allowed EPA, as a second step, to subcategorize by unit location (aggregate plant capacity) at EPA discretion. The EPA has elected to retain the subcategorization used in the 1995 NSPS. Therefore, today's proposal divides the small MWC unit population into two classes: Class I and Class II. Class I comprises small MWC units located at MWC plants with an aggregate plant capacity greater than 250 tons of MSW per day. Class II comprises small MWC units located at MWC plants with an aggregate plant capacity less than or equal to 250 tons of MSW per day. The establishment of these two classes preserves the subcategorization used in the 1995 NSPS.

D. Have Any Changes Been Made to the Emission Limits in These Proposed NSPS?

The proposed emission limits are identical to those established in the 1995 NSPS. Based on a reevaluation of the best controlled units within the small MWC unit population, EPA has concluded that the performance of a SD/FF air pollution control system continues to represent the MACT floor for new small MWC units. The supplemental use of CI continues to represent MACT performance for mercury and dioxins/furans. This technology (SD/FF/CI) is the same technology basis of these NSPS promulgated in 1995. With respect to nitrogen oxides, EPA has concluded that a SNCR air pollution control system would represent the basis of the MACT floor for nitrogen oxides for Class I units. Since these technologies are the same as those used as the basis for the 1995 NSPS, EPA is proposing the same emission limits that were promulgated in the 1995 NSPS. The methods used to determine the new source MACT floors, to select the technology basis of the new source MACT, and to determine the emission limits are identical to the methods described in the **Federal Register** notices and background documents for the 1995 NSPS. The emission limits proposed for Class I units are the same as the emission limits for large MWC units in the 1995 NSPS. The emission limits proposed for Class II units are the same as the emission limits for small MWC units in the 1995 NSPS.

E. Have Any Changes Been Made to the Operator Certification Requirements?

One change is proposed for the operator certification section of the good combustion practice requirements since the 1995 NSPS. In response to questions since the 1995 NSPS were promulgated, EPA has clarified what actions an MWC owner must take to continue operating an MWC unit during times when the certified chief facility operator and certified shift supervisor must be temporarily offsite for an extended period of time when there are no other certified chief facility operators or certified shift supervisors onsite. The EPA has addressed this issue by adding specific requirements for MWC units during times when the certified chief facility operator and certified shift supervisor must be offsite. Different requirements apply depending on the length of time the certified chief facility operator and certified shift supervisor must be offsite. These changes have been added to § 60.1195 of these proposed NSPS.

F. Have Any Changes Been Made to the Operating Practice Requirements?

One change is proposed to the operating practice requirements since the 1995 NSPS. The EPA has clarified how the required level of carbon feed rate is established and how the required monitoring parameter and quarterly carbon usage are used to determine compliance with the operating practice requirements. As discussed below, this results in two enforceable requirements for carbon feed rate.

As in the 1995 NSPS, the MWC plant owner must select an operating parameter (e.g., screw feeder speed) that can be used to calculate the carbon feed rate. During each dioxin/furan and mercury stack test, the total amount of carbon used during each stack test must be measured. The total amount of carbon used during the test is divided by the duration (hours) of the stack test to give an average carbon feed rate in kilograms (or pounds) per hour. The MWC plant owner must also monitor the selected operating parameter during each dioxin/furan and mercury stack test and record the average operating parameter level. After the dioxin/furan and mercury stack tests are complete, the MWC plant owner must establish a relationship between the selected operating parameter and the measured carbon feed rate so that the selected parameter can be used to calculate the carbon feed rate. The selected operating parameter must then be continuously monitored during MWC unit operation and used to calculate the carbon feed rate. The calculated carbon feed rate cannot fall below the carbon feed rate measured during the dioxin/furan or mercury stack test (depending on which test establishes the higher carbon feed rate).

The 1995 NSPS did not clearly specify an averaging time for calculating the carbon feed rate. Because the baseline carbon feed rate is established as the average feed rate during the annual dioxin/furan or mercury stack test, EPA is clarifying that the averaging time used for monitoring the carbon feed rate (using parametric data) should be of similar duration. Therefore, EPA is proposing an 8-hour block averaging period for monitoring carbon feed rates. This would allow facilities to compensate for interruptions in carbon feed rates (due to calibration, malfunction, or repair) by offsetting the interruption with an increase in carbon feed rates within the 8-hour averaging period.

The 1995 NSPS requirements have also been revised and clarified relative to quarterly carbon usage. The EPA is proposing that MWC plant owners calculate required plantwide carbon usage on a quarterly basis and compare this required level of carbon usage to the actual amount of carbon purchased and delivered to the MWC plant. After an average carbon feed rate is established for an MWC unit based on the most recent dioxin/furan or mercury stack test, the required quarterly carbon usage level for the MWC unit is calculated by multiplying the kilogram (or pound) per hour rate by the number of operating hours for each quarter. Next, the required carbon usage for the plant is calculated by summing this value for each small MWC unit located at the plant.

The MWC plant owner must then compare the required quarterly carbon usage level, based on the carbon usage during the stack test and hours of operation, with the amount of carbon purchased and delivered to the MWC plant. The MWC plant owner must demonstrate that they are using the required amount of carbon during each quarter. This comparison is done on a plant basis rather than on a unit basis because MWC units typically use a common carbon storage system; therefore, purchase, delivery, and use of carbon are best tracked on a plant basis. If a plant does not meet the quarterly carbon usage requirement, all units at the plant would be considered out of compliance.

A plant owner can choose to track quarterly carbon usage on an MWC unit basis if that is practical at the plant. The required quarterly carbon usage for each

individual MWC unit would then be compared to the carbon purchased and delivered to that unit. In this case, if an MWC unit does not meet the quarterly carbon usage requirement, only the one MWC unit, instead of the entire MWC plant, would be considered out of compliance.

G. Have Any Changes Been Made to the Monitoring and Stack Testing Requirements?

No changes are proposed to the monitoring and testing requirements contained in the 1995 NSPS. However, to clarify differences between stack testing and continuous emission monitoring requirements, these topics have been addressed in different sections of these NSPS.

H. Have Any Changes Been Made to the Recordkeeping and Reporting Requirements?

No significant changes are proposed to the recordkeeping and reporting requirements since the 1995 NSPS. The EPA is proposing one minor change to clarify recordkeeping and reporting of: (1) 8-hour average calculated carbon feed rate, and (2) quarterly amounts of carbon purchased and delivered. These changes make the reporting and recordkeeping sections consistent with the carbon injection operating practice requirements described above in section III.F.

IV. What Would Be the Impacts Associated With These Proposed NSPS?

This section describes the impacts (i.e., air, water, solid waste, energy, cost, and economic impacts) of these proposed NSPS for small MWC units. These proposed NSPS are functionally equivalent to these NSPS promulgated in 1995. The impact analysis conducted to evaluate the 1995 NSPS still applies and is available at 59 FR 48198. The discussion in this preamble focuses on the air, cost, and economic impacts of these proposed NSPS.

In the preamble for the 1995 NSPS, EPA determined that the water, solid waste, and energy impacts associated with these proposed NSPS were not significant. Because these proposed NSPS are the same as the 1995 NSPS, the water, solid waste, and energy impacts are not significant.

For more detail on the air, cost, and economic impacts of these proposed NSPS, refer to the document entitled "Economic Impact Analysis: Small Municipal Waste Combustion Units—Section 111/129 Emission Guidelines and New Source Performance Standards" (Docket No. A–98–18).

A. Air Impacts

Table 1 presents national impacts of air emission reductions for new small MWC units that would result from implementation of these NSPS. These are fifth year impacts based on the assumption that one new plant with two small MWC units would initiate operation each year.

TABLE 1.—NATIONAL AIR EMISSION IMPACTS OF THESE NSPS FOR SMALL NWC UNITS

Pollutant	Air emission reduction	Percent change[a]
Dioxins/furans[b]	0.04 kg/year	99
Cadmium	34 kg/year	99
Lead	3 Mg/year	99
Mercury	77 kg/year	97
Particulate matter	48 Mg/year	98
Sulfur dioxide	38 Mg/year	83
Hydrogen chloride	28 Mg/year	90
Nitrogen oxides	See footnote c	(c)

[a] Percent national emission reduction relative to national baseline emissions that would occur in the absence of these NSPS.
[b] Total mass of tetra-through octachlorinated dibenzo-p-dioxins through dibenzofurans.
[c] For Class I units, nitrogen oxides emission reductions are expected to be approximately 40 percent. Class II units do not have a nitrogen oxides emission limit and are not expected to have any reductions in nitrogen oxides emissions. Since the distribution of new Class I and II units to be constructed are unknown, no mass reductions of nitrogen oxides are presented.

B. Cost and Economic Impacts

Approximately 90 small MWC units located at 41 plants are currently operating in the United States. Based on trends in small MWC unit construction over the past several years, EPA projects that about one new small MWC plant will be constructed each year. It is estimated that most new plants with small MWC units will have, on average, two small MWC units onsite.

To estimate the costs of these proposed NSPS for new small MWC units, EPA has taken into account the various air pollution control equipment that would need to be installed at new small MWC plants to achieve these proposed NSPS. The cost estimates presented here, which are in 1997 dollars, are the projected costs that a new MWC plant with two small MWC units would incur to comply with these NSPS. These costs are based on new small MWC units installing SD/FF/CI as the air pollution control device system.

The method used to estimate the cost and economic impacts of today's proposal is consistent with the method used to estimate the same impacts of the 1995 NSPS. For more details on the cost and economic analysis, refer to the document entitled "Economic Impact Analysis: Small Municipal Waste Combustion Units—Section 111/129 Emission Guidelines and New Source Performance Standards" (Docket No. A–98–18).

The EPA projects that the total annual cost (including annualized capital and operating costs) for an MWC plant with two small MWC units to comply with today's proposed NSPS would be approximately $1.6 million. Based on the current trend of MWC plant openings, in 5 years there will be five MWC plants, with ten small MWC units subject to these NSPS. In this case, the total annual cost of these NSPS would be $8.1 million in the 5th year after promulgation of subpart AAAA.

V. Companion Proposal for Existing Small MWC Units

A companion proposal to these NSPS is being published in today's **Federal Register** to establish emission guidelines for existing small MWC units. Following promulgation, the emission guidelines for existing small MWC units will be contained in 40 CFR part 60, subpart BBBB.

VI. Administrative Requirements

A. Public Hearing

In accordance with section 307(d)(5) of the Clean Air Act, EPA will hold a public hearing if individuals request to speak. If a public hearing is held, EPA may ask clarifying questions during the oral presentation but will not respond to the presentations or comments. To provide an opportunity for all who may wish to speak, oral presentations will be limited to 15 minutes each. Any member of the public may submit written comments (see the **DATES** and **ADDRESSES** sections). The EPA will consider written comments and supporting information with equivalent weight to any oral statement and supporting information presented at a public hearing.

B. Docket

The docket is an organized and complete file of the administrative record compiled by EPA in the development of this proposal. Material is added to the docket throughout the rule development process. The principal purposes of the docket are: (1) To allow members of the public to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review, except for interagency review material. The docket numbers for these NSPS are Docket No. A–98–18 and associated Docket Nos. A–90–45 and A–89–08, which have been incorporated by reference into Docket No. A–98–18.

C. National Technology Transfer and Advancement Act

Under section 12(d) of the 1995 NTTAA (Pub. L. No. 104–113), all Federal agencies are required to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to the OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

Consistent with the NTTAA, the EPA conducted searches to identify voluntary consensus standards for use in process and emissions monitoring. The search for emissions monitoring procedures identified 20 voluntary consensus standards that appeared to have possible use in lieu of EPA standard reference methods. However, after reviewing available standards, EPA determined that 12 of the candidate consensus standards identified for measuring emissions of pollutants or surrogates subject to emission standards in the rule would not be practical due to lack of equivalency, documentation, validation data, and other important technical and policy considerations. Eight of the remaining candidate consensus standards are new standards under development that EPA plans to follow, review and consider adopting at a later date.

One consensus standard, ASTM D6216–98, appears to be practical for EPA use in lieu of EPA performance specification 1 (40 CFR part 60, appendix B). On September 23, 1998, EPA proposed incorporating by reference ASTM D6216–98 under a separate rulemaking (63 FR 50824) that would allow broader use and application of this consensus standard. The EPA plans to complete this action in the near future. For these reasons, EPA does not propose in these NSPS to adopt D6216–98 in lieu of PS–1 requirements as it would be impractical for EPA to act independently from separate rulemaking activities already undergoing notice and comment.

The EPA solicits comment on proposed emission monitoring requirements proposed in these NSPS and specifically invites the public to identify potentially-applicable voluntary consensus standards. Commenters should also explain why this regulation should incorporate these voluntary consensus standards, in lieu of EPA's standards. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if method other than Method 301, 40 CFR part 63, appendix A was used).

The EPA also conducted searches to identify voluntary consensus standards for process monitoring and process operation. Candidate voluntary consensus standards for process monitoring and process operation were identified for: (1) MWC unit load level (steam output), (2) designing, constructing, installing, calibrating, and using nozzles and orifices, and (3) MWC plant operator certification requirements.

One consensus standard by the ASME was identified for use in these proposed NSPS for measurement of MWC unit load level (steam output). The EPA believes this standard is practical to use in these proposed NSPS as the method to measure MWC unit load. The EPA takes comment on the incorporation by reference of "ASME Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1—1964 (R1991)" in these proposed NSPS.

A second consensus standard by ASME was identified for use in these proposed NSPS for designing, constructing, installing, calibrating, and using nozzles and orifices. The EPA believes this standard is practical to use in these proposed NSPS for the design, construction, installation, calibration, and use of nozzles and orifices. The EPA takes comment on the incorporation by reference of "American Society of Mechanical Engineers Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters", 6th edition (1971).

A third consensus standard by ASME (QRO–1–1994) was identified for use in these proposed NSPS for MWC plant operator certification requirements instead of developing new operator certification procedures. The EPA believes this standard is practical to use in these proposed NSPS that require a chief facility operator and shift supervisor to successfully complete the operator certification procedures developed by ASME.

Tables 3, 4, and 5 of these proposed NSPS list the EPA testing methods and performance standards included in the proposed regulations. Most of these standards have been used by States and industry for more than 10 years. Nevertheless, under § 60.8 of 40 CFR part 60, subpart A, the proposal also allows any State or source to apply to EPA for permission to use alternative methods in place of any of the EPA testing methods or performance standards listed in Tables 3, 4, and 5.

D. Paperwork Reduction Act

The EPA submitted the information collection requirements in these proposed NSPS to OMB for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The EPA prepared an ICR document (ICR No. 1900.01) and a copy may be obtained from Sandy Farmer by mail at the OP, Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street SW, Washington, DC 20460, by e-mail at "farmer.sandy@epamail.epa.gov", or by calling (202) 260–2740. A copy may also be downloaded from the Internet at: "http://www.epa.gov/icr".

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OP Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street, SW, Washington,

DC 20460, and to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, NW, Washington, DC 20503, marked "Attention: Desk Officer for EPA (ICR Tracking No. 1900.01)". Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after August 30, 1999, a comment to OMB is best assured of having its full effect if OMB receives it by September 29, 1999. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

The information would be used by the Agency to identify new, modified, or reconstructed MWC units subject to these NSPS and to ensure that these MWC units undergo a preconstruction impact analysis. The information would also be used to ensure that the small MWC unit requirements are implemented properly and are complied with on a continuous basis. Records and reports are necessary to enable EPA to identify small MWC units that may not be in compliance with these NSPS. Based on reported information, EPA would decide which small MWC units should be inspected and what records or processes should be inspected. The records that owners and operators of small MWC units maintain would indicate to EPA whether personnel are operating and maintaining control equipment properly.

These NSPS are projected to affect six MWC units at three MWC plants during the first 3 years immediately following promulgation. The estimated average annual burden for industry for the first 3 years after promulgation of these NSPS would be 8,559 person-hours annually at a cost of $219,000 per year to meet the monitoring, recordkeeping, and reporting requirements. The estimated average annualized burden for the implementing agency would be 497 hours during the first 3 years at a cost of $21,000 (including travel expenses).

Burden means total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose, or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

E. Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act

Section 605 of the RFA (5 U.S.C. 601 *et seq.*) requires Federal agencies to give special consideration to the impact of regulations on small entities, which are small businesses, small organizations, and small governments. In 1996, the SBREFA amended the RFA to strengthen the RFA's analytical and procedural requirements. The SBREFA also made other changes to agency regulatory practice as it affects small businesses and established a new mechanism to expedite congressional review. The major purpose of these acts is to keep paperwork and regulatory requirements from getting out of proportion to the scale of the entities being regulated without compromising the objectives of the Clean Air Act. If a regulation is likely to have a significant economic impact on a substantial number of small entities, the EPA may give special consideration to those small entities when analyzing regulatory alternatives and drafting the regulation. Under these Acts, EPA must generally prepare a regulatory flexibility analysis for a rule subject to notice and comment rulemaking procedures unless the EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

Pursuant to the provisions of 5 U.S.C. 605(b), the EPA certifies that these NSPS proposed today will not have a significant economic impact on a substantial number of small entities. The EPA projects that five small MWC plants will begin operation over the next 5 years, averaging one MWC plant per year (Docket No. A–98–18).

Impacts of this proposal are not significant for a substantial number of small entities because few small entities use MWC units for municipal solid waste disposal. The vast majority of small entities use municipal solid waste landfills for disposal. A small entity considering a new small MWC unit would have the opportunity to switch to an alternative municipal solid waste disposal method, such as municipal solid waste landfills, if the costs to comply with these NSPS were considered prohibitive. Thus, the number of small entities that would be significantly impacted by this proposal would not be substantial.

For a summary of the actions that EPA took to involve small entities in the development of these proposed NSPS, refer to the discussion of the Unfunded Mandates Reform Act in section VI.F. of these Administrative Requirements.

F. Unfunded Mandates Reform Act

Title II of the 1995 UMRA, Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least-costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule.

The provisions of section 205 allow EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that these proposed NSPS do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The economic impact analysis for these NSPS (Docket No. A–98–18) shows that the total annual costs of these regulatory requirements would be about $8.1 million annually (in 1997 dollars) in the fifth year after promulgation. Thus, these proposed NSPS are not subject to the requirements of sections 202 and 205 of the UMRA. Although these NSPS are not subject to UMRA, EPA did prepare a cost-benefit analysis under section 202 of the UMRA for the 1995 NSPS. For a discussion of how EPA complied with the UMRA for the 1995 NSPS, including extensive consultations with State and local governments, see the preamble to the 1995 NSPS (60 FR 65405–65412, December 19, 1995). Because today's proposed NSPS are functionally equivalent to the 1995 NSPS, no additional consultations were necessary.

G. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and, therefore, subject to OMB review and the requirements of this Executive Order. The Executive Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, EPA considers these proposed NSPS to be "not significant" because these NSPS would not have an annual effect on the economy of $100 million or more and do not impose any additional control requirements above the 1995 NSPS. The 1995 NSPS were considered to be "significant," and a full analysis and review was conducted. However, these NSPS proposed today are projected to have an impact of approximately $8.1 million annually in the fifth year after promulgation of these NSPS (Docket No. A–98–18). Therefore, these proposed NSPS are considered to be "not significant" under Executive Order 12866 and will not be submitted to OMB for review.

H. Executive Order 12875—Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or EPA consults with those governments. If EPA complies by consulting with those governments, Executive Order 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

The EPA has concluded that these NSPS may create a mandate on a small number of city and county governments, and that the Federal government would not provide the funds necessary to pay the direct costs incurred by these city and county governments in complying with the mandate. However, today's proposed NSPS do not impose any additional costs or result in any additional control requirements above those considered during promulgation of the 1995 NSPS. In developing the 1995 NSPS, EPA consulted extensively with State and local governments to enable them to provide meaningful and timely input in the development of these NSPS. Because these proposed NSPS are the same as the 1995 NSPS, these previous consultations still apply. For a discussion of EPA's consultations with State and local governments, the nature of the governments' concerns, and EPA's position supporting the need to issue these NSPS, see the preamble to the 1995 NSPS (60 FR 65405–65413, December 19, 1995).

I. Executive Order 12898—Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 directs Federal agencies to "determine whether their programs, policies, and activities have disproportionately high adverse human health or environmental effects on minority populations and low-income populations" (sections 3–301 and 3–302). In developing these NSPS for small MWC units, EPA analyzed environmental justice issues that may be relevant to this proposal.

The EPA conducted an impact analysis to determine the distribution of minority and low-income groups in the surrounding area where MWC units are located in the United States. The EPA reviewed the demographic characteristics presented in this impact analysis (Docket No. A–90–45) and other analyses. The EPA concluded that there is no significant difference in ethnic makeup or income level in counties where MWC units are located when compared to the average ethnic and income levels of the respective States in which the units are located. It is expected that these trends would also apply to future siting of small MWC units.

These proposed NSPS would require all new small MWC plants to use the most stringent air pollution control technology currently available for small MWC units. This upgrade in air pollution control technology for new small MWC units would result in lowered air emissions (compared to an absence of NSPS) from small MWC units, thereby improving human health and the environment in areas where small MWC units are located. Additionally, siting requirements for new small MWC units include two public meetings, which would allow the public to comment on the siting of any new small MWC unit before construction begins.

J. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks so that the analysis required under section 5–501 of the

Executive Order has the potential to influence the regulation.

These NSPS are not subject to Executive Order 13045 because they are not economically significant as defined in Executive Order 12866 and because they are based on technology performance and not on health and safety risks. A children's risk analysis was not performed for these NSPS because no alternative technologies exist that would provide greater stringency at a reasonable cost. Therefore, the results of any such analysis would have no impact on the stringency decision.

K. Executive Order 13084—Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or EPA consults with those governments. If EPA complies by consulting with those governments, Executive Order 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

These NSPS do not significantly or uniquely affect the communities of Indian tribal governments. The EPA is not aware of any existing or planned small MWC units located in Indian territory. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to these NSPS.

L. Executive Memorandum on Plain Language in Government Writing

On June 1, 1998, President Clinton issued an Executive Memorandum entitled "Plain Language in Government Writing," which instructs Federal agencies to use plain language in all proposed and final rulemakings by January 1, 1999. Therefore, these proposed NSPS are organized and written in a plain language format and style. This plain language format and style do not alter the content or intent of this proposal compared to the 1995 NSPS. The EPA considers this plain language format and style to be more user friendly and understandable to all audiences when compared with previous proposals that were not written in plain language.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, Municipal waste combustion.

Dated: August 6, 1999.

Carol M. Browner,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 60, of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7413, 7414, 7416, 7429, 7601, and 7602.

2. Part 60 is amended by adding a new subpart AAAA to read as follows:

Subpart AAAA—Standards of Performance for New Stationary Sources: Small Municipal Waste Combustion Units

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Introduction

§ 60.1000 What does this subpart do?

This subpart establishes new source performance standards for new small municipal waste combustion units.

§ 60.1005 When does this subpart become effective?

This subpart takes effect [the date 6 months after publication of the final rule in the **Federal Register**]. Some of the requirements in this subpart apply to municipal waste combustion unit planning and must be completed before construction is commenced on the municipal waste combustion unit. In particular, the preconstruction requirements in §§ 60.1050 through 60.1150 must be completed prior to commencing construction. Other requirements (such as the emission limits) apply when the municipal waste combustion unit begins operation.

Applicability

§ 60.1010 Does this subpart apply to my municipal waste combustion unit?

Yes, if your municipal waste combustion unit meets two criteria:

(a) Your municipal waste combustion unit is a new municipal waste combustion unit.

(b) Your municipal waste combustion unit has the capacity to combust at least 35 tons per day but no more than 250 tons per day of municipal solid waste or refuse-derived fuel.

§ 60.1015 What is a new municipal waste combustion unit?

(a) A new municipal waste combustion unit is a municipal waste combustion unit that meets either of two criteria:

(1) Commenced construction after [date the final rule is published in the **Federal Register**].

(2) Commenced reconstruction or modification at least 6 months after [date the final rule is published].

(b) This subpart does not apply to your municipal waste combustion unit if you make physical or operational changes to an existing municipal waste

combustion unit primarily to comply with the emission guidelines in subpart BBBB of this part. Such changes do not qualify as reconstruction or modification under this subpart.

§ 60.1020 Does this subpart allow any exemptions?

(a) *Small municipal waste combustion units that combust less than 11 tons per day.* You are exempt from this subpart if you meet four requirements:

(1) Your municipal waste combustion unit is subject to a federally enforceable operating permit limiting the amount of municipal solid waste combusted to less than 11 tons per day.

(2) You notify the Administrator that the unit qualifies for this exemption.

(3) You provide the Administrator with a copy of the federally enforceable permit.

(4) You keep daily records of the amount of municipal solid waste combusted.

(b) *Small power production facilities.* You are exempt from this subpart if you meet four requirements:

(1) Your unit qualifies as a small power-production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)).

(2) Your unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity.

(3) You notify the Administrator that the unit qualifies for this exemption.

(4) You provide the Administrator with documentation that the unit qualifies for this exemption.

(c) *Cogeneration facilities.* You are exempt from this subpart if you meet four requirements:

(1) Your unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)).

(2) Your unit combusts homogeneous waste (excluding refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(3) You notify the Administrator that the unit qualifies for this exemption.

(4) You provide the Administrator with documentation that the unit qualifies for this exemption.

(d) *Municipal waste combustion units that combust only tires.* You are exempt from this subpart if you meet three requirements:

(1) Your municipal waste combustion unit combusts a single-item waste stream of tires and no other municipal waste (the unit can cofire coal, fuel oil, natural gas, or other nonmunicipal solid waste).

(2) You notify the Administrator that the unit qualifies for this exemption.

(3) You provide the Administrator with documentation that the unit qualifies for this exemption.

(e) *Hazardous waste combustion units.* You are exempt from this subpart if you get a permit for your unit under section 3005 of the Solid Waste Disposal Act.

(f) *Materials recovery units.* You are exempt from this subpart if your unit combusts waste mainly to recover metals. Primary and secondary smelters qualify for this exemption.

(g) *Cofired combustors.* You are exempt from this subpart if you meet four requirements:

(1) Your unit has a federally enforceable permit limiting the combustion of municipal solid waste to 30 percent of the total fuel input by weight.

(2) You notify the Administrator that the unit qualifies for this exemption.

(3) You provide the Administrator with a copy of the federally enforceable permit.

(4) You record the weights, each quarter, of municipal solid waste and of all other fuels combusted.

(h) *Plastics/rubber recycling units.* You are exempt from this subpart if you meet four requirements:

(1) Your pyrolysis/combustion unit is an integrated part of a plastics/rubber recycling unit as defined under "Definitions" (§ 60.1465).

(2) You record the weights, each quarter, of plastics, rubber, and rubber tires processed.

(3) You record the weights, each quarter, of feed stocks produced and marketed from chemical plants and petroleum refineries.

(4) You keep the name and address of the purchaser of these feed stocks.

(i) *Units that combust fuels made from products of plastics/rubber recycling plants.* You are exempt from this subpart if you meet two requirements:

(1) Your unit combusts gasoline, diesel fuel, jet fuel, fuel oils, residual oil, refinery gas, petroleum coke, liquified petroleum gas, propane, or butane produced by chemical plants or petroleum refineries that use feedstocks produced by plastics/rubber recycling units.

(2) Your unit does not combust any other municipal solid waste.

(j) *Cement kilns.* You are exempt from this subpart if your cement kiln combusts municipal solid waste.

(k) *Air curtain incinerators.* If your air curtain incinerator (see § 60.1465 for definition) combusts 100 percent yard waste, you must only meet the requirements under "Air Curtain Incinerators That Burn 100 Percent Yard Waste" (§§ 60.1435 through 60.1455).

§ 60.1025 Do subpart E new source performance standards also apply to my municipal waste combustion unit?

If this subpart (subpart AAAA) applies to your municipal waste combustion unit, then subpart E does not apply to your municipal waste combustion unit.

§ 60.1030 Can the Administrator delegate authority to enforce these Federal standards to a State agency?

Yes. The Administrator can delegate all authorities in all sections of this subpart to the State for direct State enforcement.

§ 60.1035 How are the standards structured?

The standards contain five major components:

(a) Preconstruction requirements.
(1) Materials separation plan.
(2) Siting analysis.
(b) Good combustion practices.
(1) Operator training.
(2) Operator certification.
(3) Operating requirements.
(c) Emission limits.
(d) Monitoring and stack testing.
(e) Recordkeeping and reporting.

§ 60.1040 Do all five components of the standards apply at the same time?

No. You must meet the preconstruction requirements before you commence construction of the municipal waste combustion unit. After the municipal waste combustion unit begins operation, you must meet all of the good combustion practices, emission limits, monitoring, stack testing, and most recordkeeping and reporting requirements.

§ 60.1045 Are there different subcategories of small municipal waste combustion units within this subpart?

(a) Yes. This subpart subcategorizes small municipal waste combustion units into two groups based on the aggregate capacity of the municipal waste combustion plant and the type of municipal waste combustion unit as follows:

(1) *Class I Units.* These are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity of more than 250 tons per day of municipal solid waste. (See the definition of "municipal waste combustion plant capacity" in § 60.1465 for specification of which units at a plant are included in the aggregate capacity calculation.)

(2) *Class II Units.* These are small municipal waste combustion units that are located at municipal waste combustion plants with an aggregate plant combustion capacity no more than 250 tons per day of municipal solid waste. (See the definition of "municipal waste combustion plant capacity" in § 60.1465 for specification of which units at a plant are included in the aggregate capacity calculation.)

(b) The requirements for Class I and Class II units are identical except for two items:

(1) Class I units have a nitrogen oxide emission limit. Class II units do not have a nitrogen oxide emission limit (see table 1 of this subpart). Additionally, Class I units have continuous emission monitoring, recordkeeping, and reporting requirements for nitrogen oxides.

(2) Class II units are eligible for the reduced testing option provided in § 60.1305.

Preconstruction Requirements: Materials Separation Plan

§ 60.1050 Who must submit a materials separation plan?

(a) You must prepare a materials separation plan for your municipal waste combustion unit if you plan to commence construction of a new small municipal waste combustion unit after [the date of publication of the final rule].

(b) If you commence construction of your municipal waste combustion unit after August 30, 1999 but before [the publication date of the final rule], you are not required to prepare the materials separation plan specified in this subpart.

(c) You must prepare a materials separation plan if you are required to submit an initial application for a construction permit, under 40 CFR part 51, subpart I, or part 52, as applicable, for the reconstruction or modification of your municipal waste combustion unit.

§ 60.1055 What is a materials separation plan?

The plan identifies a goal and an approach for separating certain components of municipal solid waste for a given service area prior to waste combustion and making them available for recycling.

§ 60.1060 What steps must I complete for my materials separation plan?

(a) For your materials separation plan, you must complete nine steps:

(1) Prepare a draft materials separation plan.

(2) Make your draft plan available to the public.

(3) Hold a public meeting on your draft plan.

(4) Prepare responses to public comments received during the public comment period on your draft plan.

(5) Prepare a revised materials separation plan.

(6) Discuss the revised plan at the public meeting for review of the siting analysis.

(7) Prepare responses to public comments received on your revised plan.

(8) Prepare a final materials separation plan.

(9) Submit the final materials separation plan.

(b) You may use analyses conducted under the requirements of 40 CFR part 51, subpart I, or part 52, to comply with some of the materials separation requirements of this subpart.

§ 60.1065 What must I include in my draft materials separation plan?

(a) You must prepare and submit a draft materials separation plan for your municipal waste combustion unit and its service area.

(b) Your draft materials separation plan must identify a goal and an approach for separating certain components of municipal solid waste for a given service area prior to waste combustion and making them available for recycling. A materials separation plan may include such elements as dropoff facilities, buy-back or deposit-return incentives, programs for curbside pickup, and centralized systems for mechanical separation.

(c) Your materials separation plan may include different goals or approaches for different subareas in the service area.

(d) Your materials separation plan may exclude materials separation activities for certain subareas or, if warranted, the entire service area.

§ 60.1070 How do I make my draft materials separation plan available to the public?

(a) Distribute your draft materials separation plan to the main public libraries in the area where you will construct the municipal waste combustion unit.

(b) Publish a notice of a public meeting in the main newspapers that serve these two areas:

(1) The area where you will construct the municipal waste combustion unit.

(2) The areas where the waste that your municipal waste combustion unit combusts will be collected.

(c) Include six items in your notice of the public meeting:

(1) The date of the public meeting.

(2) The time of the public meeting.

(3) The location of the public meeting.

(4) The location of the public libraries where the public can find your materials separation plan. Include the normal business hours of each library.

(5) An agenda of the topics that will be discussed at the public meeting.

(6) The beginning and ending dates of the public comment period on your draft materials separation plan.

§ 60.1075 When must I accept comments on the materials separation plan?

(a) You must accept verbal comments at the public meeting.

(b) You must accept written comments anytime during the period that begins on the date the document is distributed to the main public libraries and ends 30 days after the date of the public meeting.

§ 60.1080 Where and when must I hold a public meeting on my draft materials separation plan?

(a) You must hold a public meeting and accept comments on your draft materials separation plan.

(b) You must hold the public meeting in the county where you will construct the municipal waste combustion unit.

(c) You must schedule the public meeting to occur at least 30 days after you make your draft materials separation plan available to the public.

(d) You may combine this public meeting with any other public meeting required as part of any other Federal, State, or local permit review. However, you may not combine it with the public meeting required for the siting analysis under "Preconstruction Requirements: Siting Analysis" (§ 60.1140).

(e) You are encouraged to address eight topics at the public meeting for your draft materials separation plan:

(1) Expected size of the service area for your municipal waste combustion unit.

(2) Amount of waste you will collect in the service area.

(3) Types and estimated amounts of materials proposed for separation.

(4) Methods proposed for materials separation.

(5) Amount of residual waste for disposal.

(6) Alternate disposal methods for handling the residual waste.

(7) Where your responses to public comments on the draft materials separation plan will be available for inspection.

(8) Where your revised materials separation plan will be available for inspection.

(f) You must prepare a transcript of the public meeting on your draft materials separation plan.

§ 60.1085 What must I do with any public comments I receive during the public comment period on my draft materials separation plan?

You must do three steps:

(a) Prepare written responses to any public comments you received during the public comment period. Summarize these responses to public comments in a document that is separate from your revised materials separation plan.

(b) Make the comment response document available to the public in the service area where you will construct your municipal waste combustion unit. You must distribute the document at least to the main public libraries used to announce the public meeting.

(c) Prepare a revised materials separation plan for the municipal waste combustion unit that includes, as appropriate, changes made in response to any public comments you received during the public comment period.

§ 60.1090 What must I do with my revised materials separation plan?

You must do two tasks:

(a) As specified under "Reporting" (§ 60.1375), submit five items to the Administrator by the date you submit the application for a construction permit under 40 CFR part 51, subpart I, or part 52. (If you are not required to submit an application for a construction permit under 40 CFR part 51, subpart I, or part 52, submit five items to the Administrator by the date of your notice of construction under § 60.1380):

(1) Your draft materials separation plan.

(2) Your revised materials separation plan.

(3) Your notice of the public meeting for your draft materials separation plan.

(4) A transcript of the public meeting on your draft materials separation plan.

(5) The document that summarizes your responses to the public comments you received during the public comment period on your draft materials separation plan.

(b) Make your revised materials separation plan available to the public as part of the siting analysis procedures under "Preconstruction Requirements: Siting Analysis" (§ 60.1130).

§ 60.1095 What must I include in the public meeting on my revised materials separation plan?

As part of the public meeting for review of the siting analysis, as specified under "Preconstruction Requirements: Siting Analysis" (§ 60.1140), you must discuss two areas:

(a) Differences between your revised materials separation plan and your draft materials separation plan discussed at the first public meeting (§ 60.1080).

(b) Questions about your revised materials separation plan.

§ 60.1100 What must I do with any public comments I receive on my revised materials separation plan?

(a) Prepare written responses to any public comments and include them in the document that summarizes your responses to public comments on the siting analysis.

(b) Prepare a final materials separation plan that includes, as appropriate, changes made in response to any public comments you received on your revised materials separation plan.

§ 60.1105 How do I submit my final materials separation plan?

As specified under "Reporting" (§ 60.1380), submit your final materials separation plan to the Administrator as part of the notice of construction for the municipal waste combustion unit.

Preconstruction Requirements: Siting Analysis

§ 60.1110 Who must submit a siting analysis?

(a) You must prepare a siting analysis if you plan to commence construction of a small municipal waste combustion unit after [the date of publication of the final rule].

(b) If you commence construction on your municipal waste combustion unit after August 30, 1999, but before [the date of publication of the final rule], you are not required to prepare the siting analysis specified in this subpart.

(c) You must prepare a siting analysis if you are required to submit an initial application for a construction permit, under 40 CFR part 51, subpart I, or part 52, as applicable, for the reconstruction or modification of your municipal waste combustion unit.

§ 60.1115 What is a siting analysis?

The siting analysis addresses how your municipal waste combustion unit affects ambient air quality, visibility, soils, vegetation, and other relevant factors. This analysis can be used to determine whether the benefits of your proposed facility significantly outweigh the environmental and social costs resulting from its location and construction. This analysis must also consider other major industrial facilities near the proposed site.

§ 60.1120 What steps must I complete for my siting analysis?

(a) For your siting analysis, you must complete five steps:

(1) Prepare an analysis.

(2) Make your analysis available to the public.

(3) Hold a public meeting on your analysis.

(4) Prepare responses to public comments received on your analysis.

(5) Submit your analysis.

(b) You may use analyses conducted under the requirements of 40 CFR part 51, subpart I, or part 52, to comply with some of the siting analysis requirements of this subpart.

§ 60.1125 What must I include in my siting analysis?

(a) Include an analysis of how your municipal waste combustion unit affects these four areas:

(1) Ambient air quality.

(2) Visibility.

(3) Soils.

(4) Vegetation.

(b) Include an analysis of alternatives for controlling air pollution that minimize potential risks to the public health and the environment.

§ 60.1130 How do I make my siting analysis available to the public?

(a) Distribute your siting analysis and revised materials separation plan to the main public libraries in the area where you will construct your municipal waste combustion unit.

(b) Publish a notice of a public meeting in the main newspapers that serve these two areas:

(1) The area where you will construct your municipal waste combustion unit.

(2) The areas where the waste that your municipal waste combustion unit combusts will be collected.

(c) Include six items in your notice of the public meeting:

(1) The date of the public meeting.

(2) The time of the public meeting.

(3) The location of the public meeting.

(4) The location of the public libraries where the public can find your siting analysis and revised materials separation plan. Include the normal business hours of each library.

(5) An agenda of the topics that will be discussed at the public meeting.

(6) The beginning and ending dates of the public comment period on your siting analysis and revised materials separation plan.

§ 60.1135 When must I accept comments on the siting analysis and revised materials separation plan?

(a) You must accept verbal comments at the public meeting.

(b) You must accept written comments anytime during the period that begins on the date the document is distributed to the main public libraries and ends 30 days after the date of the public meeting.

§ 60.1140 Where and when must I hold a public meeting on the siting analysis?

(a) You must hold a public meeting to discuss and accept comments on your siting analysis and your revised materials separation plan.

(b) You must hold the public meeting in the county where you will construct your municipal waste combustion unit.

(c) You must schedule the public meeting to occur at least 30 days after you make your siting analysis and revised materials separation available to the public.

(d) You must prepare a transcript of the public meeting on your siting analysis.

§ 60.1145 What must I do with any public comments I receive during the public comment period on my siting analysis?

You must do three things:

(a) Prepare written responses to any public comments on your siting analysis and the revised materials separation plan you received during the public comment period. Summarize these responses to public comments in a document that is separate from your materials separation plan and siting analysis.

(b) Make the comment response document available to the public in the service area where you will construct your municipal waste combustion unit. You must distribute the document at least to the main public libraries used to announce the public meeting for the siting analysis.

(c) Prepare a revised siting analysis for the municipal waste combustion unit that includes, as appropriate, changes made in response to any public comments you received during the public comment period.

§ 60.1150 How do I submit my siting analysis?

As specified under "Reporting" (§ 60.1380), submit four items as part of the notice of construction:

(a) Your siting analysis.

(b) Your notice of the public meeting on your siting analysis.

(c) A transcript of the public meeting on your siting analysis.

(d) The document that summarizes your responses to the public comments you received during the public comment period.

Good Combustion Practices: Operator Training

§ 60.1155 What types of training must I do?

There are two types of required training:

(a) Training of operators of municipal waste combustion units using the EPA or a State-approved training course.

(b) Training of plant personnel using a plant-specific training course.

§ 60.1160 Who must complete the operator training course? By when?

(a) Three types of employees must complete the EPA or State-approved operator training course:

(1) Chief facility operators.

(2) Shift supervisors.

(3) Control room operators.

(b) These employees must complete the operator training course by the later of three dates:

(1) Six months after your municipal waste combustion unit starts up.

(2) One year after [date of publication of the final rule].

(3) The date before an employee assumes responsibilities that affect operation of the municipal waste combustion unit.

§ 60.1165 Who must complete the plant-specific training course?

All employees with responsibilities that affect how a municipal waste combustion unit operates must complete the plant-specific training course. Include at least six types of employees:

(a) Chief facility operators.

(b) Shift supervisors.

(c) Control room operators.

(d) Ash handlers.

(e) Maintenance personnel.

(f) Crane or load handlers.

§ 60.1170 What plant-specific training must I provide?

For plant-specific training, you must do four things:

(a) For training at a particular plant, develop a specific operating manual for that plant by the later of two dates:

(1) Six months after your municipal waste combustion unit starts up.

(2) One year after [date of publication of the final rule].

(b) Establish a program to review the plant-specific operating manual with people whose responsibilities affect the operation of your municipal waste combustion unit. Complete the initial review by the later of three dates:

(1) Six months after your municipal waste combustion unit starts up.

(2) One year after [date of publication of the final rule].

(3) The date before an employee assumes responsibilities that affect operation of the municipal waste combustion unit.

(c) Update your manual annually.

(d) Review your manual with staff annually.

§ 60.1175 What information must I include in the plant-specific operating manual?

You must include 11 items in the operating manual for your plant:

(a) A summary of all applicable standards in this subpart.

(b) A description of the basic combustion principles that apply to municipal waste combustion units.

(c) Procedures for receiving, handling, and feeding municipal solid waste.

(d) Procedures to be followed during periods of startup, shutdown, and malfunction of the municipal waste combustion unit.

(e) Procedures for maintaining a proper level of combustion air supply.

(f) Procedures for operating the municipal waste combustion unit within the standards contained in this subpart.

(g) Procedures for responding to periodic upset or off-specification conditions.

(h) Procedures for minimizing carryover of particulate matter.

(i) Procedures for handling ash.

(j) Procedures for monitoring emissions from the municipal waste combustion unit.

(k) Procedures for recordkeeping and reporting.

§ 60.1180 Where must I keep the plant-specific operating manual?

You must keep your operating manual in an easily accessible location at your plant. It must be available for review or inspection by all employees who must review it and by the Administrator.

Good Combustion Practices: Operator Certification

§ 60.1185 What types of operator certification must the chief facility operator and shift supervisor obtain and by when must they obtain it?

(a) Each chief facility operator and shift supervisor must obtain and keep a current provisional operator certification from the American Society of Mechanical Engineers (QRO–1–1994 (incorporated by reference in § 60.17 of subpart A of this part)) or a current provisional operator certification from your State certification program.

(b) Each chief facility operator and shift supervisor must obtain a provisional certification by the later of three dates:

(1) Six months after the municipal waste combustion unit starts up.

(2) One year after [date of publication of the final rule].

(3) Six months after they transfer to the municipal waste combustion unit or 6 months after they are hired to work at the municipal waste combustion unit.

(c) Each chief facility operator and shift supervisor must take one of three actions:

(1) Obtain a full certification from the American Society of Mechanical Engineers or a State certification program in your State.

(2) Schedule a full certification exam with the American Society of Mechanical Engineers (QRO–1–1994 (incorporated by reference in § 60.17 of subpart A of this part)).

(3) Schedule a full certification exam with your State certification program.

(d) The chief facility operator and shift supervisor must obtain the full certification or be scheduled to take the certification exam by the later of three dates:

(1) Six months after the municipal waste combustion unit starts up.

(2) One year after [date of publication of the final rule].

(3) Six months after they transfer to the municipal waste combustion unit or 6 months after they are hired to work at the municipal waste combustion unit.

§ 60.1190 After the required date for operator certification, who may operate the municipal waste combustion unit?

After the required date for full or provisional certifications, you must not operate your municipal waste combustion unit unless one of four employees is on duty:

(a) A fully certified chief facility operator.

(b) A provisionally certified chief facility operator who is scheduled to take the full certification exam.

(c) A fully certified shift supervisor.

(d) A provisionally certified shift supervisor who is scheduled to take the full certification exam.

§ 60.1195 What if all the certified operators must be temporarily offsite?

If the certified chief facility operator and certified shift supervisor both must leave your municipal waste combustion unit, a provisionally certified control room operator at the municipal waste combustion unit may fulfill the certified operator requirement. Depending on the length of time that a certified chief facility operator and certified shift supervisor are away, you must meet one of three criteria:

(a) When the certified chief facility operator and certified shift supervisor are both offsite for less than 8 hours, and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the Administrator.

(b) When the certified chief facility operator and certified shift supervisor are offsite for more than 8 hours, but less than 2 weeks, and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the Administrator. However, you must record the period when the certified chief facility operator and certified shift supervisor are offsite and include this information in the annual report as specified under § 60.1410(l).

(c) When the certified chief facility operator and certified shift supervisor are offsite for more than 2 weeks, and no other certified operator is onsite, the provisionally certified control room operator may perform those duties without notice to, or approval by, the Administrator. However, you must take two actions:

(1) Notify the Administrator in writing. In the notice, state what caused the absence and what you are doing to ensure that a certified chief facility operator or certified shift supervisor is onsite.

(2) Submit a status report and corrective action summary to the Administrator every 4 weeks following the initial notification. If the Administrator notifies you that your status report or corrective action summary is disapproved, the municipal waste combustion unit may continue operation for 90 days, but then must cease operation. If corrective actions are taken in the 90-day period such that the Administrator withdraws the disapproval, municipal waste combustion unit operation may continue.

Good Combustion Practices: Operating Requirements

§ 60.1200 What are the operating practice requirements for my municipal waste combustion unit?

(a) You must not operate your municipal waste combustion unit at loads greater than 110 percent of the maximum demonstrated unit load of the municipal waste combustion unit (4-hour block average), as specified under "Definitions" (§ 60.1465).

(b) You must not operate your municipal waste combustion unit so that the temperature at the inlet of the particulate matter control device exceeds 17°C above the maximum demonstrated temperature of the particulate matter control device (4-hour block average), as specified under "Definitions" (§ 60.1465).

(c) If your municipal waste combustion unit uses activated carbon to control dioxin/furan or mercury emissions, you must maintain an 8-hour block average carbon feed rate at or above the highest average level established during the most recent dioxin/furan or mercury test.

(d) If your municipal waste combustion unit uses activated carbon to control dioxin/furan or mercury emissions, you must evaluate total carbon usage for each calendar quarter. The total amount of carbon purchased and delivered to your municipal waste combustion plant must be at or above the required quarterly usage of carbon. At your option, you may choose to evaluate required quarterly carbon usage on a municipal waste combustion unit basis for each individual municipal waste combustion unit at your plant. Calculate the required quarterly usage of carbon using the appropriate equation in § 60.1460(f).

(e) Your municipal waste combustion unit is exempt from limits on load level, temperature at the inlet of the particulate matter control device, and carbon feed rate during any of five situations:

(1) During your annual tests for dioxins/furans.

(2) During your annual mercury tests (for carbon feed rate requirements only).

(3) During the 2 weeks preceding your annual tests for dioxins/furans.

(4) During the 2 weeks preceding your annual mercury tests (for carbon feed rate requirements only).

(5) Whenever the Administrator or delegated State authority permits you to do any of five activities:

(i) Evaluate system performance.

(ii) Test new technology or control technologies.

(iii) Perform diagnostic testing.

(iv) Perform other activities to improve the performance of your municipal waste combustion unit.

(v) Perform other activities to advance the state of the art for emission controls for your municipal waste combustion unit.

§ 60.1205 What happens to the operating requirements during periods of startup, shutdown, and malfunction?

(a) The operating requirements of this subpart apply at all times except during periods of municipal waste combustion unit startup, shutdown, or malfunction.

(b) Each startup, shutdown, or malfunction must not last for longer than 3 hours.

Emission Limits

§ 60.1210 What pollutants are regulated by this subpart?

Eleven pollutants, in four groupings, are regulated:

(a) *Organics.* Dioxins/furans.

(b) *Metals.*

(1) Cadmium.

(2) Lead.

(3) Mercury.

(4) Opacity.

(5) Particulate matter.

(c) *Acid gases.*

(1) Hydrogen chloride.

(2) Nitrogen oxides.

(3) Sulfur dioxide.

(d) *Other.*

(1) Carbon monoxide.

(2) Fugitive ash.

§ 60.1215 What emission limits must I meet? By when?

You must meet the emission limits specified in tables 1 and 2 of this subpart. You must meet these limits 60 days after your municipal waste combustion unit reaches the maximum load level but no later than 180 days after its initial startup.

§ 60.1220 What happens to the emission limits during periods of startup, shutdown, and malfunction?

(a) The emission limits of this subpart apply at all times except during periods of municipal waste combustion unit startup, shutdown, or malfunction.

(b) Each startup, shutdown, or malfunction must not last for longer than 3 hours.

Continuous Emission Monitoring

§ 60.1225 What types of continuous emission monitoring must I perform?

To continuously monitor emissions, you must perform four tasks:

(a) Install continuous emission monitoring systems for certain gaseous pollutants.

(b) Make sure your continuous emission monitoring systems are operating correctly.

(c) Make sure you obtain the minimum amount of monitoring data.

(d) Install a continuous opacity monitoring system.

§ 60.1230 What continuous emission monitoring systems must I install for gaseous pollutants?

(a) You must install, calibrate, maintain, and operate continuous emission monitoring systems for oxygen (or carbon dioxide), sulfur dioxide, and carbon monoxide. If you operate a Class I municipal waste combustion unit, also install, calibrate, maintain, and operate a continuous emission monitoring system for nitrogen oxides. Install the continuous emission monitoring system for sulfur dioxide and nitrogen oxides at the outlet of the air pollution control device.

(b) You must install, evaluate, and operate each continuous emission monitoring system according to the "Monitoring Requirements" in § 60.13 of subpart A of this part.

(c) You must monitor the oxygen (or carbon dioxide) concentration at each location where you monitor sulfur dioxide and carbon monoxide. Additionally, if you operate a Class I municipal waste combustion unit, you must also monitor the oxygen (or carbon dioxide) concentration at the location where you monitor nitrogen oxides.

(d) You may choose to monitor carbon dioxide instead of oxygen as a diluent gas. If you choose to monitor carbon dioxide, then an oxygen monitor is not required, and you must follow the requirements in § 60.1255.

(e) If you choose to demonstrate compliance by monitoring the percent reduction of sulfur dioxide, you must also install a continuous emission monitoring system for sulfur dioxide and oxygen (or carbon dioxide) at the inlet of the air pollution control device.

§ 60.1235 How are the data from the continuous emission monitoring systems used?

You must use data from the continuous emission monitoring systems for sulfur dioxide, nitrogen oxides, and carbon monoxide to demonstrate continuous compliance with the emission limits specified in tables 1 and 2 of this subpart. To demonstrate compliance for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash, see § 60.1290.

§ 60.1240 How do I make sure my continuous emission monitoring systems are operating correctly?

(a) Conduct initial, daily, quarterly, and annual evaluations of your continuous emission monitoring systems that measure oxygen (or carbon dioxide), sulfur dioxide, nitrogen oxides (Class I municipal waste combustion units only), and carbon monoxide.

(b) Complete your initial evaluation of the continuous emission monitoring systems within 60 days after your municipal waste combustion unit reaches the maximum load level at which it will operate, but no later than 180 days after its initial startup.

(c) For initial and annual evaluations, collect data concurrently (or within 30 to 60 minutes) using your oxygen (or carbon dioxide) continuous emission monitoring system, your sulfur dioxide, nitrogen oxides, or carbon monoxide continuous emission monitoring systems, as appropriate, and the appropriate test methods specified in table 3 of this subpart. Collect these data during each initial and annual evaluation of your continuous emission monitoring systems following the applicable performance specifications in appendix B of this part. Table 4 of this subpart shows the performance specifications that apply to each continuous emission monitoring system.

(d) Follow the quality assurance procedures in Procedure 1 of appendix F of this part for each continuous emission monitoring system. These procedures include daily calibration drift and quarterly accuracy determinations.

§ 60.1245 Am I exempt from any appendix B or appendix F requirements to evaluate continuous emission monitoring systems?

Yes, the accuracy tests for your sulfur dioxide continuous emission monitoring system require you to also evaluate your oxygen (or carbon dioxide) continuous emission monitoring system. Therefore, your oxygen (or carbon dioxide) continuous emission monitoring system is exempt from two requirements:

(a) Section 2.3 of performance specification 3 in appendix B of this part (relative accuracy requirement).

(b) Section 5.1.1 of appendix F of this part (relative accuracy test audit).

§ 60.1250 What is my schedule for evaluating continuous emission monitoring systems?

(a) Conduct annual evaluations of your continuous emission monitoring systems no more than 12 months after the previous evaluation was conducted.

(b) Evaluate your continuous emission monitoring systems daily and quarterly as specified in appendix F of this part.

§ 60.1255 What must I do if I choose to monitor carbon dioxide instead of oxygen as a diluent gas?

You must establish the relationship between oxygen and carbon dioxide during the initial evaluation of your continuous emission monitoring system. You may reestablish the relationship during annual evaluations. To establish the relationship use three procedures:

(a) Use EPA Reference Method 3 or 3A to determine oxygen concentration at the location of your carbon dioxide monitor.

(b) Conduct at least three test runs for oxygen. Make sure each test run represents a 1-hour average and that sampling continues for at least 30 minutes in each hour.

(c) Use the fuel-factor equation in EPA Reference Method 3B to determine the relationship between oxygen and carbon dioxide.

§ 60.1260 What is the minimum amount of monitoring data I must collect with my continuous emission monitoring systems and is this requirement enforceable?

(a) Where continuous emission monitoring systems are required, obtain 1-hour arithmetic averages. Make sure the averages for sulfur dioxide, nitrogen oxides, and carbon monoxide are in parts per million by dry volume at 7 percent oxygen (or the equivalent carbon dioxide level). Use the 1-hour

averages of oxygen (or carbon dioxide) data from your continuous emission monitoring system to determine the actual oxygen (or carbon dioxide) level and to calculate emissions at 7 percent oxygen (or the equivalent carbon dioxide level).

(b) Obtain at least two data points per hour in order to calculate a valid 1-hour arithmetic average. Section 60.13(e)(2) of subpart A of this part requires your continuous emission monitoring systems to complete at least one cycle of operation (sampling, analyzing, and data recording) for each 15-minute period.

(c) Obtain valid 1-hour averages for 75 percent of the operating hours per day and for 90 percent of the operating days per calendar quarter. An operating day is any day the unit combusts any municipal solid waste or refuse-derived fuel.

(d) If you do not obtain the minimum data required in paragraphs (a) through (c) of this section, you are in violation of this data collection requirement regardless of the emission level monitored, and you must notify the Administrator according to § 60.1410(e).

(e) If you do not obtain the minimum data required in paragraphs (a) and (c) of this section, you must still use all valid data from the continuous emission monitoring systems in calculating emission concentrations and percent reductions in accordance with § 60.1265.

§ 60.1265 How do I convert my 1-hour arithmetic averages into the appropriate averaging times and units for this standard?

(a) Use the equation in § 60.1460(a) to calculate emissions at 7 percent oxygen.

(b) Use EPA Reference Method 19, section 4.3, to calculate the daily geometric average concentrations of sulfur dioxide emissions. If you are monitoring the percent reduction of sulfur dioxide, use EPA Reference Method 19, section 5.4, to determine the daily geometric average percent reduction of potential sulfur dioxide emissions.

(c) If you operate a Class I municipal waste combustion unit, use EPA Reference Method 19, section 4.1, to calculate the daily arithmetic average for concentrations of nitrogen oxides.

(d) Use EPA Reference Method 19, section 4.1, to calculate the 4-hour or 24-hour daily block averages (as applicable) for concentrations of carbon monoxide.

§ 60.1270 What is required for my continuous opacity monitoring system and how are the data used?

(a) Install, calibrate, maintain, and operate a continuous opacity monitoring system.

(b) Install, evaluate, and operate each continuous opacity monitoring system according to § 60.13 of subpart A of this part.

(c) Complete an initial evaluation of your continuous opacity monitoring system according to performance specification 1 in appendix B of this part. Complete this evaluation within 60 days after your municipal waste combustion unit reaches the maximum load level at which it will operate, but no more than 180 days after its initial startup.

(d) Complete each annual evaluation of your continuous opacity monitoring system no more than 12 months after the previous evaluation.

(e) Use tests conducted according to EPA Reference Method 9, as specified in § 60.1300, to determine compliance with the emission limit for opacity in table 1 of this subpart. The data obtained from your continuous opacity monitoring system are not used to determine compliance with the limit on opacity emissions.

§ 60.1275 What additional requirements must I meet for the operation of my continuous emission monitoring systems and continuous opacity monitoring system?

Use the required span values and applicable performance specifications in table 4 of this subpart.

§ 60.1280 What must I do if my continuous emission monitoring system is temporarily unavailable to meet the data collection requirements?

Refer to table 5 of this subpart. It shows alternate methods for collecting data when these systems malfunction or when repairs, calibration checks, or zero and span checks keep you from collecting the minimum amount of data.

Stack Testing

§ 60.1285 What types of stack tests must I conduct?

Conduct initial and annual stack tests to measure the emission levels of dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash.

§ 60.1290 How are the stack test data used?

You must use results of stack tests for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash to demonstrate compliance with the emission limits in table 1 of this subpart. To demonstrate compliance for carbon monoxide, nitrogen oxides, and sulfur dioxide, see § 60.1235.

§ 60.1295 What schedule must I follow for the stack testing?

(a) Conduct initial stack tests for the pollutants listed in § 60.1285 within 60 days after your municipal waste combustion unit reaches the maximum load level at which it will operate, but no later than 180 days after its initial startup.

(b) Conduct annual stack tests for these pollutants after the initial stack test. Conduct each annual stack test within 12 months after the previous stack test.

§ 60.1300 What test methods must I use to stack test?

(a) Follow table 5 of this subpart to establish the sampling location and to determine pollutant concentrations, number of traverse points, individual test methods, and other specific testing requirements for the different pollutants.

(b) Make sure that stack tests for all these pollutants consist of at least three test runs, as specified in § 60.8 (Performance Tests) of subpart A of this part. Use the average of the pollutant emission concentrations from the three test runs to determine compliance with the emission limits in table 1 of this subpart.

(c) Obtain an oxygen (or carbon dioxide) measurement at the same time as your pollutant measurements to determine diluent gas levels, as specified in § 60.1230.

(d) Use the equations in § 60.1460(a) to calculate emission levels at 7 percent oxygen (or an equivalent carbon dioxide basis), the percent reduction in potential hydrogen chloride emissions, and the reduction efficiency for mercury emissions. See the individual test methods in table 5 of this subpart for other required equations.

§ 60.1305 May I conduct stack testing less often?

(a) You may test less often if you own or operate a Class II municipal waste combustion unit and if all stack tests for a given pollutant over 3 consecutive years show you comply with the emission limit. In this case, you are not required to conduct a stack test for that pollutant for the next 2 years. However, you must conduct another stack test within 36 months of the anniversary date of the third consecutive stack test that shows you comply with the emission limit. Thereafter, you must perform stack tests every third year but no later than 36 months following the previous stack tests. If a stack test shows noncompliance with an emission limit, you must conduct annual stack tests for that pollutant until all stack tests over a 3-year period show compliance.

(b) You can test less often if you own or operate a municipal waste combustion plant that meets two conditions. First, you have multiple municipal waste combustion units onsite that are subject to this subpart. Second, all these municipal waste combustion units have demonstrated levels of dioxin/furan emissions no more than 7 nanograms per dry standard cubic meter (total mass) for 2 consecutive years. In this case, you may choose to conduct annual stack tests on only one municipal waste combustion unit per year at your plant.

(1) Conduct the stack test no more than 12 months following a stack test on any municipal waste combustion unit subject to this subpart at your plant. Each year, test a different municipal waste combustion unit subject to this subpart and test all municipal waste combustion units subject to this subpart in a sequence that you determine. Once you determine a testing sequence, it must not be changed without approval by the Administrator.

(2) If each annual stack test shows levels of dioxin/furan emissions less than 7 nanograms per dry standard cubic meter (total mass), you may continue stack tests on only one municipal waste combustion unit subject to this subpart per year.

(3) If any annual stack test indicates levels of dioxin/furan emissions greater than 7 nanograms per dry standard cubic meter (total mass), conduct subsequent annual stack tests on all municipal waste combustion units subject to this subpart at your plant. You may return to testing one municipal waste combustion unit subject to this subpart per year if you can demonstrate dioxin/furan emission levels less than 7 nanograms per dry standard cubic meter (total mass) for all municipal waste combustion units at your plant subject to this subpart for 2 consecutive years.

§ 60.1310 May I deviate from the 12-month testing schedule if unforeseen circumstances arise?

You may not deviate from the 12-month testing schedules specified in §§ 60.1295(b) and 60.1305(b)(1) unless you apply to the Administrator for an alternative schedule, and the Administrator approves your request for alternative scheduling prior to the date on which you would otherwise have been required to conduct the next stack test.

Other Monitoring Requirements

§ 60.1315 Must I meet other requirements for continuous monitoring?

You must also monitor three operating parameters:

(a) Load level of each municipal waste combustion unit.

(b) Temperature of flue gases at the inlet of your particulate matter air pollution control device.

(c) Carbon feed rate if activated carbon is used to control dioxin/furan or mercury emissions.

§ 60.1320 How do I monitor the load of my municipal waste combustion unit?

(a) If your municipal waste combustion unit generates steam, you must install, calibrate, maintain, and operate a steam flowmeter or a feed water flowmeter and meet five requirements:

(1) Continuously measure and record the measurements of steam (or feed water) in kilograms per hour (or pounds per hour).

(2) Calculate your steam (or feed water) flow in 4-hour block averages.

(3) Calculate the steam (or feed water) flow rate using the method in "American Society of Mechanical Engineers Power Test Codes: Test Code for Steam Generating Units, Power Test Code 4.1—1964 (R1991)," section 4 (incorporated by reference in § 60.17 of subpart A of this part).

(4) Design, construct, install, calibrate, and use nozzles or orifices for flow rate measurements, using the recommendations in "American Society of Mechanical Engineers Interim Supplement 19.5 on Instruments and Apparatus: Application, Part II of Fluid Meters," 6th Edition (1971), chapter 4 (incorporated by reference in § 60.17 of subpart A of this part).

(5) Before each dioxin/furan stack test, or at least once a year, calibrate all signal conversion elements associated with steam (or feed water) flow measurements according to the manufacturer instructions.

(b) If your municipal waste combustion unit does not generate steam, you must determine, to the satisfaction of the Administrator, one or more operating parameters that can be used to continuously estimate load level (for example, the feed rate of municipal solid waste or refuse-derived fuel). You must continuously monitor the selected parameters.

§ 60.1325 How do I monitor the temperature of flue gases at the inlet of my particulate matter control device?

You must install, calibrate, maintain, and operate a device to continuously measure the temperature of the flue gas stream at the inlet of each particulate matter control device.

§ 60.1330 How do I monitor the injection rate of activated carbon?

If your municipal waste combustion unit uses activated carbon to control dioxin/furan or mercury emissions, you must meet three requirements:

(a) Select a carbon injection system operating parameter that can be used to calculate carbon feed rate (for example, screw feeder speed).

(b) During each dioxin/furan and mercury stack test, determine the average carbon feed rate in kilograms (or pounds) per hour. Also, determine the average operating parameter level that correlates to the carbon feed rate. Establish a relationship between the operating parameter and the carbon feed rate in order to calculate the carbon feed rate based on the operating parameter level.

(c) Continuously monitor the selected operating parameter during all periods when the municipal waste combustion unit is operating and combusting waste and calculate the 8-hour block average carbon feed rate in kilograms (or pounds) per hour, based on the selected operating parameter. When calculating the 8-hour block average, do two things:

(1) Exclude hours when the municipal waste combustion unit is not operating.

(2) Include hours when the municipal waste combustion unit is operating but the carbon feed system is not working correctly.

§ 60.1335 What is the minimum amount of monitoring data I must collect with my continuous parameter monitoring systems and is this requirement enforceable?

(a) Where continuous parameter monitoring systems are used, obtain 1-hour arithmetic averages for three parameters:

(1) Load level of the municipal waste combustion unit.

(2) Temperature of the flue gases at the inlet of your particulate matter control device.

(3) Carbon feed rate if activated carbon is used to control dioxin/furan or mercury emissions.

(b) Obtain at least two data points per hour in order to calculate a valid 1-hour arithmetic average.

(c) Obtain valid 1-hour averages for, at a minimum, 75 percent of the operating hours per day and for 90 percent of the operating days per calendar quarter. An operating day is any day the unit combusts any municipal solid waste or refuse-derived fuel.

(d) If you do not obtain the minimum data required in paragraphs (a) through (c) of this section, you are in violation

of this data collection requirement and you must notify the Administrator according to § 60.1410(e).

Recordkeeping

§ 60.1340 What records must I keep?

You must keep five types of records:
(a) Materials separation plan and siting analysis.
(b) Operator training and certification.
(c) Stack tests.
(d) Continuously monitored pollutants and parameters.
(e) Carbon feed rate.

§ 60.1345 Where must I keep my records and for how long?

(a) Keep all records onsite in paper copy or electronic format unless the Administrator approves another format.
(b) Keep all records on each municipal waste combustion unit for at least 5 years.
(c) Make all records available for submittal to the Administrator, or for onsite review by an inspector.

§ 60.1350 What records must I keep for the materials separation plan and siting analysis?

You must keep records of five items:
(a) The date of each record.
(b) The final materials separation plan.
(c) The siting analysis.
(d) A record of the location and date of the public meetings.
(e) Your responses to the public comments received during the public comment periods.

§ 60.1355 What records must I keep for operator training and certification?

You must keep records of six items:
(a) *Records of provisional certifications.* Include three items:
(1) For your municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room operators who are provisionally certified by the American Society of Mechanical Engineers or an equivalent State-approved certification program.
(2) Dates of the initial provisional certifications.
(3) Documentation showing current provisional certifications.
(b) *Records of full certifications.* Include three items:
(1) For your municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room operators who are fully certified by the American Society of Mechanical Engineers or an equivalent State-approved certification program.
(2) Dates of initial and renewal full certifications.
(3) Documentation showing current full certifications.
(c) *Records showing completion of the operator training course.* Include three items:
(1) For your municipal waste combustion plant, names of the chief facility operator, shift supervisors, and control room operators who have completed the EPA or State municipal waste combustion operator training course.
(2) Dates of completion of the operator training course.
(3) Documentation showing completion of the operator training course.
(d) *Records of reviews for plant-specific operating manuals.* Include three items:
(1) Names of persons who have reviewed the operating manual.
(2) Date of the initial review.
(3) Dates of subsequent annual reviews.
(e) *Records of when a certified operator is temporarily offsite.* Include two main items:
(1) If the certified chief facility operator and certified shift supervisor are offsite for more than 8 hours, but less than 2 weeks, and no other certified operator is onsite, record the dates that the certified chief facility operator and certified shift supervisor were offsite.
(2) When the certified chief facility operator and certified shift supervisor are offsite for more than 2 weeks and no other certified operator is onsite, keep records of four items:
(i) Your notice that all certified persons are offsite.
(ii) The conditions that cause these people to be offsite.
(iii) The corrective actions you are taking to ensure a certified chief facility operator or certified shift supervisor is onsite.
(iv) Copies of the written reports submitted every 4 weeks that summarize the actions taken to ensure that a certified chief facility operator or certified shift supervisor will be onsite.
(f) *Records of calendar dates.* Include the calendar date on each record.

§ 60.1360 What records must I keep for stack tests?

For stack tests required under § 60.1285, you must keep records of four items:
(a) The results of the stack tests for eight pollutants or parameters recorded in the appropriate units of measure specified in table 1 of this subpart:
(1) Dioxins/furans.
(2) Cadmium.
(3) Lead.
(4) Mercury.
(5) Opacity.
(6) Particulate matter.
(7) Hydrogen chloride.
(8) Fugitive ash.
(b) Test reports including supporting calculations that document the results of all stack tests.
(c) The maximum demonstrated load of your municipal waste combustion units and maximum temperature at the inlet of your particulate matter control device during all stack tests for dioxin/furan emissions.
(d) The calendar date of each record.

§ 60.1365 What records must I keep for continuously monitored pollutants or parameters?

You must keep records of eight items:
(a) *Records of monitoring data.* Document six parameters measured using continuous monitoring systems:
(1) All 6-minute average levels of opacity.
(2) All 1-hour average concentrations of sulfur dioxide emissions.
(3) For Class I municipal waste combustion units only, all 1-hour average concentrations of nitrogen oxides emissions.
(4) All 1-hour average concentrations of carbon monoxide emissions.
(5) All 1-hour average load levels of your municipal waste combustion unit.
(6) All 1-hour average flue gas temperatures at the inlet of the particulate matter control device.
(b) *Records of average concentrations and percent reductions.* Document five parameters:
(1) All 24-hour daily block geometric average concentrations of sulfur dioxide emissions or average percent reductions of sulfur dioxide emissions.
(2) For Class I municipal waste combustion units only, all 24-hour daily arithmetic average concentrations of nitrogen oxides emissions.
(3) All 4-hour block or 24-hour daily block arithmetic average concentrations of carbon monoxide emissions.
(4) All 4-hour block arithmetic average load levels of your municipal waste combustion unit.
(5) All 4-hour block arithmetic average flue gas temperatures at the inlet of the particulate matter control device.
(c) *Records of exceedances.* Document three items:
(1) Calendar dates whenever any of the five pollutant or parameter levels recorded in paragraph (b) or the opacity level recorded in paragraph (a)(1) of this section did not meet the emission limits or operating levels specified in this subpart.
(2) Reasons you exceeded the applicable emission limits or operating levels.
(3) Corrective actions you took, or are taking, to meet the emission limits or operating levels.
(d) *Records of minimum data.* Document three items:
(1) Calendar dates for which you did not collect the minimum amount of data required under §§ 60.1260 and 60.1335. Record these dates for five types of pollutants and parameters:
(i) Sulfur dioxide emissions.
(ii) For Class I municipal waste combustion units only, nitrogen oxides emissions.
(iii) Carbon monoxide emissions.
(iv) Load levels of your municipal waste combustion unit.
(v) Temperatures of the flue gases at the inlet of the particulate matter control device.
(2) Reasons you did not collect the minimum data.
(3) Corrective actions you took, or are taking, to obtain the required amount of data.
(e) *Records of exclusions.* Document each time you have excluded data from your calculation of averages for any of the following five pollutants or parameters and the reasons the data were excluded:
(1) Sulfur dioxide emissions.
(2) For Class I municipal waste combustion units only, nitrogen oxides emissions.
(3) Carbon monoxide emissions.
(4) Load levels of your municipal waste combustion unit.
(5) Temperatures of the flue gases at the inlet of the particulate matter control device.
(f) *Records of drift and accuracy.* Document the results of your daily drift tests and quarterly accuracy determinations according to procedure 1 of appendix F of this part. Keep these records for the sulfur dioxide, nitrogen oxides (Class I municipal waste combustion units only), and carbon monoxide continuous emissions monitoring systems.
(g) *Records of the relationship between oxygen and carbon dioxide.* If you chose to monitor carbon dioxide instead of oxygen as a diluent gas, document the relationship between oxygen and carbon dioxide, as specified in § 60.1255.
(h) *Records of calendar dates.* Include the calendar date on each record.

§ 60.1370 What records must I keep for municipal waste combustion units that use activated carbon?

For municipal waste combustion units that use activated carbon to control dioxin/furan or mercury emissions, you must keep records of five items:

(a) *Records of average carbon feed rate.* Document five items:
(1) Average carbon feed rate (in kilograms or pounds per hour) during all stack tests for dioxin/furan and mercury emissions. Include supporting calculations in the records.
(2) For the operating parameter chosen to monitor carbon feed rate, average operating level during all stack tests for dioxin/furans and mercury emissions. Include supporting data that document the relationship between the operating parameter and the carbon feed rate.
(3) All 8-hour block average carbon feed rates in kilograms (pounds) per hour calculated from the monitored operating parameter.
(4) Total carbon purchased and delivered to the municipal waste combustion plant for each calendar quarter. If you choose to evaluate total carbon purchased and delivered on a municipal waste combustion unit basis, record the total carbon purchased and delivered for each individual municipal waste combustion unit at your plant. Include supporting documentation.
(5) Required quarterly usage of carbon for the municipal waste combustion plant, calculated using the appropriate equation in § 60.1460(f). If you choose to evaluate required quarterly usage for carbon on a municipal waste combustion unit basis, record the required quarterly usage for each municipal waste combustion unit at your plant. Include supporting calculations.
(b) *Records of low carbon feed rates.* Document three items:
(1) The calendar dates when the average carbon feed rate over an 8-hour block was less than the average carbon feed rates determined during the most recent stack test for dioxin/furan or mercury emissions (whichever has a higher feed rate).
(2) Reasons for the low carbon feed rates.
(3) Corrective actions you took or are taking to meet the 8-hour average carbon feed rate requirement.
(c) *Records of minimum carbon feed rate data.* Document three items:
(1) Calendar dates for which you did not collect the minimum amount of carbon feed rate data required under § 60.1335.
(2) Reasons you did not collect the minimum data.
(3) Corrective actions you took or are taking to get the required amount of data.
(d) *Records of exclusions.* Document each time you have excluded data from your calculation of average carbon feed rates and the reasons the data were excluded.
(e) *Records of calendar dates.* Include the calendar date on each record.

Reporting

§ 60.1375 What reports must I submit before I submit my notice of construction?

(a) If you are required to submit an application for a construction permit under 40 CFR, part 51, subpart I, or part 52, you must submit five items by the date you submit your application.
(1) Your draft materials separation plan, as specified in § 60.1065.
(2) Your revised materials separation plan, as specified in § 60.1085(c).
(3) Your notice of the initial public meeting for your draft materials separation plan, as specified in § 60.1070(b).
(4) A transcript of the initial public meeting, as specified in § 60.1080(f).
(5) The document that summarizes your responses to the public comments you received during the initial public comment period, as specified in § 60.1085(a).
(b) If you are not required to submit an application for a construction permit under 40 CFR part 51, subpart I, or part 52, you must submit the items in paragraph (a) of this section with your notice of construction.

§ 60.1380 What must I include in my notice of construction?

(a) Include ten items:
(1) A statement of your intent to construct the municipal waste combustion unit.
(2) The planned initial startup date of your municipal waste combustion unit.
(3) The types of fuels you plan to combust in your municipal waste combustion unit.
(4) The capacity of your municipal waste combustion unit including supporting capacity calculations, as specified in § 60.1460(d) and (e).
(5) Your siting analysis, as specified in § 60.1125.
(6) Your final materials separation plan, as specified in § 60.1100(b).
(7) Your notice of the second public meeting (siting analysis meeting), as specified in § 60.1130(b).
(8) A transcript of the second public meeting, as specified in § 60.1140(d).
(9) A copy of the document that summarizes your responses to the public comments you received during the second public comment period, as specified in § 60.1145(a).
(10) Your final siting analysis, as specified in § 60.1145(c).
(b) Submit your notice of construction no later than 30 days after you commence construction, reconstruction,

or modification of your municipal waste combustion unit.

§ 60.1385 What reports must I submit after I submit my notice of construction and in what form?

(a) Submit an initial report and annual reports, plus semiannual reports for any emission or parameter level that does not meet the limits specified in this subpart.

(b) Submit all reports on paper, postmarked on or before the submittal dates in §§ 60.1395, 60.1405, and 60.1420. If the Administrator agrees, you may submit electronic reports.

(c) Keep a copy of all reports required by §§ 60.1400, 60.1410, and 60.1425 onsite for 5 years.

§ 60.1390 What are the appropriate units of measurement for reporting my data?

See tables 1 and 2 of this subpart for appropriate units of measurement.

§ 60.1395 When must I submit the initial report?

As specified in subpart A of this part, submit your initial report within 60 days after your municipal waste combustion unit reaches the maximum load level at which it will operate, but no later than 180 days after its initial startup.

§ 60.1400 What must I include in my initial report?

You must include seven items:

(a) The emission levels measured on the date of the initial evaluation of your continuous emission monitoring systems for all of the following five pollutants or parameters as recorded in accordance with § 60.1365(b).

(1) The 24-hour daily geometric average concentration of sulfur dioxide emissions or the 24-hour daily geometric percent reduction of sulfur dioxide emissions.

(2) For Class I municipal waste combustion units only, the 24-hour daily arithmetic average concentration of nitrogen oxides emissions.

(3) The 4-hour block or 24-hour daily arithmetic average concentration of carbon monoxide emissions.

(4) The 4-hour block arithmetic average load level of your municipal waste combustion unit.

(5) The 4-hour block arithmetic average flue gas temperature at the inlet of the particulate matter control device.

(b) The results of the initial stack tests for eight pollutants or parameters (use appropriate units as specified in table 2 of this subpart):

(1) Dioxins/furans.
(2) Cadmium.
(3) Lead.
(4) Mercury.
(5) Opacity.
(6) Particulate matter.
(7) Hydrogen chloride.
(8) Fugitive ash emissions.

(c) The test report that documents the initial stack tests including supporting calculations.

(d) The initial performance evaluation of your continuous emissions monitoring systems. Use the applicable performance specifications in appendix B of this part in conducting the evaluation.

(e) The maximum demonstrated load of your municipal waste combustion unit and the maximum demonstrated temperature of the flue gases at the inlet of the particulate matter control device. Use values established during your initial stack test for dioxin/furan emissions and include supporting calculations.

(f) If your municipal waste combustion unit uses activated carbon to control dioxin/furan or mercury emissions, the average carbon feed rates that you recorded during the initial stack tests for dioxin/furan and mercury emissions. Include supporting calculations as specified in § 60.1370(a)(1) and (2).

(g) If you choose to monitor carbon dioxide instead of oxygen as a diluent gas, documentation of the relationship between oxygen and carbon dioxide, as specified in § 60.1255.

§ 60.1405 When must I submit the annual report?

Submit the annual report no later than February 1 of each year that follows the calendar year in which you collected the data. If you have an operating permit for any unit under title V of the Clean Air Act, the permit may require you to submit semiannual reports. Parts 70 and 71 of this chapter contain program requirements for permits.

§ 60.1410 What must I include in my annual report?

Summarize data collected for all pollutants and parameters regulated under this subpart. Your summary must include twelve items:

(a) The results of the annual stack test, using appropriate units, for eight pollutants, as recorded under § 60.1360(a):

(1) Dioxins/furans.
(2) Cadmium.
(3) Lead.
(4) Mercury.
(5) Particulate matter.
(6) Opacity.
(7) Hydrogen chloride.
(8) Fugitive ash.

(b) A list of the highest average levels recorded, in the appropriate units. List these values for five pollutants or parameters:

(1) Sulfur dioxide emissions.
(2) For Class 1 municipal waste combustion units only, nitrogen oxides emissions.
(3) Carbon monoxide emissions.
(4) Load level of the municipal waste combustion unit.
(5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device (4-hour block average).

(c) The highest 6-minute opacity level measured. Base this value on all 6-minute average opacity levels recorded by your continuous opacity monitoring system (§ 60.1365(a)(1)).

(d) For municipal waste combustion units that use activated carbon for controlling dioxin/furan or mercury emissions, include four records:

(1) The average carbon feed rates recorded during the most recent dioxin/furan and mercury stack tests.

(2) The lowest 8-hour block average carbon feed rate recorded during the year.

(3) The total carbon purchased and delivered to the municipal waste combustion plant for each calendar quarter. If you choose to evaluate total carbon purchased and delivered on a municipal waste combustion unit basis, record the total carbon purchased and delivered for each individual municipal waste combustion unit at your plant.

(4) The required quarterly carbon usage of your municipal waste combustion plant, calculated using the appropriate equation in § 60.1460(f). If you choose to evaluate required quarterly usage for carbon on a municipal waste combustion unit basis, record the required quarterly usage for each municipal waste combustion unit at your plant.

(e) The total number of days that you did not obtain the minimum number of hours of data for six pollutants or parameters. Include the reasons you did not obtain the data and corrective actions that you have taken to obtain the data in the future. Include data on:

(1) Sulfur dioxide emissions.
(2) For Class I municipal waste combustion units only, nitrogen oxides emissions.
(3) Carbon monoxide emissions.
(4) Load level of the municipal waste combustion unit.
(5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device.
(6) Carbon feed rate.

(f) The number of hours you have excluded data from the calculation of average levels (include the reasons for excluding it). Include data for six pollutants or parameters:

(1) Sulfur dioxide emissions.
(2) For Class I municipal waste combustion units only, nitrogen oxides emissions.
(3) Carbon monoxide emissions.
(4) Load level of the municipal waste combustion unit.
(5) Temperature of the flue gases at the inlet of the particulate matter air pollution control device.
(6) Carbon feed rate.

(g) A notice of your intent to begin a reduced stack testing schedule for dioxin/furan emissions during the following calendar year, if you are eligible for alternative scheduling (§ 60.1305 (a) or (b)).

(h) A notice of your intent to begin a reduced stack testing schedule for other pollutants during the following calendar year, if you are eligible for alternative scheduling (§ 60.1305(a)).

(i) A summary of any emission or parameter level that did not meet the limits specified in this subpart.

(j) A summary of the data in paragraphs (a) through (d) of this section from the year preceding the reporting year. This summary gives the Administrator a summary of the performance of the municipal waste combustion unit over a 2-year period.

(k) If you choose to monitor carbon dioxide instead of oxygen as a diluent gas, documentation of the relationship between oxygen and carbon dioxide, as specified in § 60.1255.

(l) Documentation of periods when all certified chief facility operators and certified shift supervisors are offsite for more than 8 hours.

§ 60.1415 What must I do if I am out of compliance with these standards?

You must submit a semiannual report on any recorded emission or parameter level that does not meet the requirements specified in this subpart.

§ 60.1420 If a semiannual report is required, when must I submit it?

(a) For data collected during the first half of a calendar year, submit your semiannual report by August 1 of that year.

(b) For data you collected during the second half of the calendar year, submit your semiannual report by February 1 of the following year.

§ 60.1425 What must I include in the semiannual out-of-compliance reports?

You must include three items in the semiannual report:

(a) For any of the following six pollutants or parameters that exceeded the limits specified in this subpart, include the calendar date they exceeded the limits, the averaged and recorded data for that date, the reasons for exceeding the limits, and your corrective actions:

(1) Concentration or percent reduction of sulfur dioxide emissions.

(2) For Class I municipal waste combustion units only, concentration of nitrogen oxides emissions.

(3) Concentration of carbon monoxide emissions.

(4) Load level of your municipal waste combustion unit.

(5) Temperature of the flue gases at the inlet of your particulate matter air pollution control device.

(6) Average 6-minute opacity level.

(b) If the results of your annual stack tests (as recorded in § 60.1360(a)) show emissions above the limits specified in table 1 of this subpart for dioxins/furans, cadmium, lead, mercury, particulate matter, opacity, hydrogen chloride, and fugitive ash, include a copy of the test report that documents the emission levels and your corrective actions.

(c) For municipal waste combustion units that apply activated carbon to control dioxin/furan or mercury emissions, include two items:

(1) Documentation of all dates when the 8-hour block average carbon feed rate (calculated from the carbon injection system operating parameter) is less than the highest carbon feed rate established during the most recent mercury and dioxin/furan stack test (as specified in § 60.1370(a)(1)). Include four items:

(i) Eight-hour average carbon feed rate.

(ii) Reasons for these occurrences of low carbon feed rates.

(iii) The corrective actions you have taken to meet the carbon feed rate requirement.

(iv) The calendar date.

(2) Documentation of each quarter when total carbon purchased and delivered to the municipal waste combustion plant is less than the total required quarterly usage of carbon. If you choose to evaluate total carbon purchased and delivered on a municipal waste combustion unit basis, record the total carbon purchased and delivered for each individual municipal waste combustion unit at your plant. Include five items:

(i) Amount of carbon purchased and delivered to the plant.

(ii) Required quarterly usage of carbon.

(iii) Reasons for not meeting the required quarterly usage of carbon.

(iv) The corrective actions you have taken to meet the required quarterly usage of carbon.

(v) The calendar date.

§ 60.1430 Can reporting dates be changed?

(a) If the Administrator agrees, you may change the semiannual or annual reporting dates.

(b) See § 60.19(c) in subpart A of this part for procedures to seek approval to change your reporting date.

Air Curtain Incinerators That Burn 100 Percent Yard Waste

§ 60.1435 What is an air curtain incinerator?

An air curtain incinerator operates by forcefully projecting a curtain of air across an open chamber or open pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor.

§ 60.1440 What is yard waste?

Yard waste is grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs. They come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include two items:

(a) Construction, renovation, and demolition wastes that are exempt from the definition of "municipal solid waste" in § 60.1465 of this subpart.

(b) Clean wood that is exempt from the definition of "municipal solid waste" in § 60.1465 of this subpart.

§ 60.1445 What are the emission limits for air curtain incinerators that burn 100 percent yard waste?

(a) Within 60 days after your air curtain incinerator reaches the maximum load level at which it will operate, but no later than 180 days after its initial startup, you must meet two limits:

(1) The opacity limit is 10 percent (6-minute average) for air curtain incinerators that can combust at least 35 tons per day of municipal solid waste and no more than 250 tons per day of municipal solid waste.

(2) The opacity limit is 35 percent (6-minute average) during the startup period that is within the first 30 minutes of operation.

(b) Except during malfunctions, the requirements of this subpart apply at all times. Each malfunction must not exceed 3 hours.

§ 60.1450 How must I monitor opacity for air curtain incinerators that burn 100 percent yard waste?

(a) Use EPA Reference Method 9 to determine compliance with the opacity limit.

(b) Conduct an initial test for opacity as specified in § 60.8 of subpart A of this part.

(c) After the initial test for opacity, conduct annual tests no more than 12 calendar months following the date of your previous test.

§ 60.1455 What are the recordkeeping and reporting requirements for air curtain incinerators that burn 100 percent yard waste?

(a) Provide a notice of construction that includes four items:

(1) Your intent to construct the air curtain incinerator.

(2) Your planned initial startup date.

(3) Types of fuels you plan to combust in your air curtain incinerator.

(4) The capacity of your incinerator, including supporting capacity calculations, as specified in § 60.1460 (d) and (e).

(b) Keep records of results of all opacity tests onsite in either paper copy or electronic format unless the Administrator approves another format.

(c) Keep all records for each incinerator for at least 5 years.

(d) Make all records available for submittal to the Administrator or for onsite review by an inspector.

(e) Submit the results (each 6-minute average) of the opacity tests by February 1 of the year following the year of the opacity emission test.

(f) Submit reports as a paper copy on or before the applicable submittal date. If the Administrator agrees, you may submit reports on electronic media.

(g) If the Administrator agrees, you may change the annual reporting dates (see § 60.19(c) in subpart A of this part).

(h) Keep a copy of all reports onsite for a period of 5 years.

Equations

§ 60.1460 What equations must I use?

(a) *Concentration correction to 7 percent oxygen.* Correct any pollutant concentration to 7 percent oxygen using the following equation:

$$C_{7\%} = C_{unc} * (13.9) * (1/(20.9 - CO_2))$$

Where:

$C_{7\%}$ = concentration corrected to 7 percent oxygen.

C_{unc} = uncorrected pollutant concentration.

CO_2 = concentration of oxygen (%).

(b) *Percent reduction in potential mercury emissions.* Calculate the percent reduction in potential mercury emissions ($\%P_{Hg}$) using the following equation:

$$\%P_{Hg} = (E_i - E_o) * (100/E_i)$$

Where:

$\%P_{Hg}$ = percent reduction of potential mercury emissions

E_i = mercury emission concentration as measured at the air pollution control device inlet, corrected to 7 percent oxygen, dry basis

E_o = mercury emission concentration as measured at the air pollution control device outlet, corrected to 7 percent oxygen, dry basis

(c) *Percent reduction in potential hydrogen chloride emissions.* Calculate the percent reduction in potential hydrogen chloride emissions ($\%P_{HCl}$) using the following equation:

$$\%P_{HCl} = (E_i - E_o) * (100/E_i)$$

Where:

$\%P_{HCl}$ = percent reduction of the potential hydrogen chloride emissions

E_i = hydrogen chloride emission concentration as measured at the air pollution control device inlet, corrected to 7 percent oxygen, dry basis

E_o = hydrogen chloride emission concentration as measured at the air pollution control device outlet, corrected to 7 percent oxygen, dry basis

(d) *Capacity of a municipal waste combustion unit.* For municipal waste combustion units that can operate continuously for 24-hour periods, calculate the municipal waste combustion units capacity based on 24 hours of operation at the maximum charge rate. To determine the maximum charge rate, use one of two methods:

(1) For municipal waste combustion units with a design based on heat input capacity, calculate the maximum charging rate based on this maximum heat input capacity and one of two heating values:

(i) If your municipal waste combustion unit combusts refuse-derived fuel, use a heating value of 12,800 kilojoules per kilogram (5,500 British thermal units per pound).

(ii) If your municipal waste combustion unit combusts municipal solid waste, use a heating value of 10,500 kilojoules per kilogram (4,500 British thermal units per pound).

(2) For municipal waste combustion units with a design not based on heat input capacity, use the maximum designed charging rate.

(e) *Capacity of a batch municipal waste combustion unit.* Calculate the capacity of a batch municipal waste combustion unit as the maximum design amount of municipal solid waste they can charge per batch multiplied by the maximum number of batches they can process in 24 hours. Calculate this maximum number of batches by dividing 24 by the number of hours needed to process one batch. Retain fractional batches in the calculation. For example, if one batch requires 16 hours, the municipal waste combustion unit can combust 24/16, or 1.5 batches, in 24 hours.

(f) *Quarterly carbon usage.* If you use activated carbon to comply with the dioxin/furan or mercury limits, calculate the required quarterly usage of carbon using the appropriate equation for plant basis or unit basis:

(1) Plant basis.

$$C = \sum_{i=i}^{n} f_i * h_i$$

Where:

C = required quarterly carbon usage for the plant in kilograms (or pounds).

f_i = required carbon feed rate for the municipal waste combustion unit in kilograms (or pounds) per hour. This is the average carbon feed rate during the most recent mercury or dioxin/furan stack tests (whichever has a higher feed rate).

h_i = number of hours the municipal waste combustion unit was in operation during the calendar quarter (hours).

n = number of municipal waste combustion units, i, located at your plant.

(2) Unit basis.

$$C = f * h$$

Where:

C = required quarterly carbon usage for the unit in kilograms (or pounds).

f = required carbon feed rate for the municipal waste combustion unit in kilograms (or pounds) per hour. This is the average carbon feed rate during the most recent mercury or dioxin/furan stack tests (whichever has a higher feed rate).

h = number of hours the municipal waste combustion unit was in operation during the calendar quarter (hours).

Definitions

§ 60.1465 What definitions must I know?

Terms used but not defined in this section are defined in the Clean Air Act and in subparts A and B of this part.

Administrator means the Administrator of the U.S. Environmental Protection Agency or his/her authorized representative or the Administrator of a State Air Pollution Control Agency.

Air curtain incinerator means an incinerator that operates by forcefully projecting a curtain of air across an open chamber or pit in which combustion occurs. Incinerators of this type can be constructed above or below ground and with or without refractory walls and floor.

Batch municipal waste combustion unit means a municipal waste combustion unit designed so it cannot combust municipal solid waste continuously 24 hours per day because the design does not allow waste to be fed to the unit or ash to be removed during combustion.

Calendar quarter means three consecutive months (nonoverlapping) beginning on: January 1, April 1, July 1, or October 1.

Calendar year means 365 (366 in leap years) consecutive days starting on January 1 and ending on December 31.

Chief facility operator means the person in direct charge and control of the operation of a municipal waste combustion unit. This person is responsible for daily onsite supervision, technical direction, management, and overall performance of the municipal waste combustion unit.

Class I units mean small municipal waste combustion units subject to this subpart that are located at municipal waste combustion plants with an aggregate plant capacity more than 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" for specification of which units at a plant site are included in the aggregate capacity calculation.

Class II units mean small municipal waste combustion units subject to this subpart at municipal waste combustion plants with an aggregate plant capacity no more than 250 tons per day of municipal solid waste. See the definition of "municipal waste combustion plant capacity" for specification of which units at a plant site are included in the aggregate capacity calculation.

Clean wood means untreated wood or untreated wood products including clean untreated lumber, tree stumps (whole or chipped), and tree limbs (whole or chipped). Clean wood does not include two items:

(1) Yard waste, which is defined elsewhere in this section.

(2) Construction, renovation, or demolition wastes (for example, railroad ties and telephone poles) that are exempt from the definition of municipal solid waste in this section.

Cofired combustion unit means a unit that combusts municipal solid waste with nonmunicipal solid waste fuel (for example, coal, industrial process waste). To be considered a cofired combustion unit, the unit must be subject to a federally enforceable permit that limits it to combusting a fuel feed stream which is 30 percent or less (by weight) municipal solid waste as measured each calendar quarter.

Continuous burning means the continuous, semicontinuous, or batch feeding of municipal solid waste to dispose of the waste, produce energy, or provide heat to the combustion system in preparation for waste disposal or energy production. Continuous burning does not mean the use of municipal solid waste solely to thermally protect the grate or hearth during the startup period when municipal solid waste is not fed to the grate or hearth.

Continuous emission monitoring system means a monitoring system that continuously measures the emissions of a pollutant from a municipal waste combustion unit.

Dioxins/furans mean tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans.

Eight-hour block average means the average of all hourly emission concentrations or parameter levels when the municipal waste combustion unit operates and combusts municipal solid waste measured over any of three 8-hour periods of time:

(1) 12:00 midnight to 8:00 a.m.

(2) 8:00 a.m. to 4:00 p.m.

(3) 4:00 p.m. to 12:00 midnight.

Federally enforceable means all limits and conditions the Administrator can enforce (including the requirements of 40 CFR parts 60, 61, and 63), requirements in a State's implementation plan, and any permit requirements established under 40 CFR 52.21 or under 40 CFR 51.18 and 40 CFR 51.24.

First calendar half means the period that starts on January 1 and ends on June 30 in any year.

Fluidized bed combustion unit means a unit where municipal waste is combusted in a fluidized bed of material. The fluidized bed material may remain in the primary combustion zone or may be carried out of the primary combustion zone and returned through a recirculation loop.

Four-hour block average or *4-hour block average* means the average of all hourly emission concentrations or parameter levels when the municipal waste combustion unit operates and combusts municipal solid waste measured over any of six 4-hour periods:

(1) 12:00 midnight to 4 a.m.

(2) 4 a.m. to 8 a.m.

(3) 8 a.m. to 12:00 noon.

(4) 12:00 noon to 4 p.m.

(5) 4 p.m. to 8 p.m.

(6) 8 p.m. to 12:00 midnight.

Mass burn refractory municipal waste combustion unit means a field-erected municipal waste combustion unit that combusts municipal solid waste in a refractory wall furnace. Unless otherwise specified, this includes municipal waste combustion units with a cylindrical rotary refractory wall furnace.

Mass burn rotary waterwall municipal waste combustion unit means a field-erected municipal waste combustion unit that combusts municipal solid waste in a cylindrical rotary waterwall furnace.

Mass burn waterwall municipal waste combustion unit means a field-erected municipal waste combustion unit that combusts municipal solid waste in a waterwall furnace.

Materials separation plan means a plan that identifies a goal and an approach for separating certain components of municipal solid waste for a given service area in order to make the separated materials available for recycling. A materials separation plan may include three items:

(1) Elements such as dropoff facilities, buy-back or deposit-return incentives, curbside pickup programs, or centralized mechanical separation systems.

(2) Different goals or approaches for different subareas in the service area.

(3) No materials separation activities for certain subareas or, if warranted, the entire service area.

Maximum demonstrated load of a municipal waste combustion unit means the highest 4-hour block arithmetic average municipal waste combustion unit load achieved during 4 consecutive hours in the course of the most recent dioxin/furan stack test that demonstrates compliance with the applicable emission limit for dioxins/furans specified in this subpart.

Maximum demonstrated temperature of the particulate matter control device means the highest 4-hour block arithmetic average flue gas temperature measured at the inlet of the particulate matter control device during 4 consecutive hours in the course of the most recent stack test for dioxin/furan emissions that demonstrates compliance with the limits specified in this subpart.

Mixed fuel-fired (pulverized coal/refuse-derived fuel) combustion unit means a combustion unit that combusts coal and refuse-derived fuel simultaneously, in which pulverized coal is introduced into an air stream that carries the coal to the combustion chamber of the unit where it is combusted in suspension. This includes both conventional pulverized coal and micropulverized coal.

Modification or *modified municipal waste combustion unit* means a municipal waste combustion unit you have changed later than 6 months after

promulgation of this subpart and that meets one of two criteria:

(1) The cumulative cost of the changes over the life of the unit exceeds 50 percent of the original cost of building and installing the unit (not including the cost of land) updated to current costs.

(2) Any physical change in the municipal waste combustion unit or change in the method of operating it that increases the emission level of any air pollutant for which standards have been established under section 129 or section 111 of the Clean Air Act. Increases in the emission level of any air pollutant are determined when the municipal waste combustion unit operates at 100 percent of its physical load capability and are measured downstream of all air pollution control devices. Load restrictions based on permits or other nonphysical operational restrictions cannot be considered in this determination.

Modular excess-air municipal waste combustion unit means a municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers, all of which are designed to operate at conditions with combustion air amounts in excess of theoretical air requirements.

Modular starved-air municipal waste combustion unit means a municipal waste combustion unit that combusts municipal solid waste, is not field-erected, and has multiple combustion chambers in which the primary combustion chamber is designed to operate at substoichiometric conditions.

Municipal solid waste or *municipal-type solid waste* means household, commercial/retail, or institutional waste. Household waste includes material discarded by residential dwellings, hotels, motels, and other similar permanent or temporary housing. Commercial/retail waste includes material discarded by stores, offices, restaurants, warehouses, nonmanufacturing activities at industrial facilities, and other similar establishments or facilities. Institutional waste includes materials discarded by schools, by hospitals (nonmedical), by nonmanufacturing activities at prisons and government facilities, and other similar establishments or facilities. Household, commercial/retail, and institutional waste does include yard waste and refuse-derived fuel. Household, commercial/retail, and institutional waste does not include used oil; sewage sludge; wood pallets; construction, renovation, and demolition wastes (which include railroad ties and telephone poles); clean wood; industrial process or manufacturing wastes; medical waste; or motor vehicles (including motor vehicle parts or vehicle fluff).

Municipal waste combustion plant means one or more municipal waste combustion units at the same location as specified under "Applicability" (§ 60.1015(a) and (b)).

Municipal waste combustion plant capacity means the aggregate municipal waste combustion unit capacity at a plant for all municipal waste combustion units at the plant that are subject to subparts Ea or Eb of this part, or this subpart.

Municipal waste combustion unit means any setting or equipment that combusts solid, liquid, or gasified municipal solid waste including, but not limited to, field-erected combustion units (with or without heat recovery), modular combustion units (starved-air or excess-air), boilers (for example, steam generating units), furnaces (whether suspension-fired, grate-fired, mass-fired, air curtain incinerators, or fluidized bed-fired), and pyrolysis/combustion units. Two criteria further define these municipal waste combustion units:

(1) Municipal waste combustion units do not include pyrolysis or combustion units located at a plastics or rubber recycling unit as specified under "Applicability" (§ 60.1020(h) and (i)). Municipal waste combustion units also do not include cement kilns that combust municipal solid waste as specified under "Applicability" (§ 60.1020(j)). They also do not include internal combustion engines, gas turbines, or other combustion devices that combust landfill gases collected by landfill gas collection systems.

(2) The boundaries of a municipal waste combustion unit are defined as follows. The municipal waste combustion unit includes, but is not limited to, the municipal solid waste fuel feed system, grate system, flue gas system, bottom ash system, and the combustion unit water system. The municipal waste combustion unit does not include air pollution control equipment, the stack, water treatment equipment, or the turbine-generator set. The municipal waste combustion unit boundary starts at the municipal solid waste pit or hopper and extends through three areas:

(i) The combustion unit flue gas system, which ends immediately after the heat recovery equipment or, if there is no heat recovery equipment, immediately after the combustion chamber.

(ii) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. It includes all ash handling systems connected to the bottom ash handling system.

(iii) The combustion unit water system, which starts at the feed water pump and ends at the piping that exits the steam drum or superheater.

Particulate matter means total particulate matter emitted from municipal waste combustion units as measured by EPA Reference Method 5 (§ 60.1300).

Plastics or rubber recycling unit means an integrated processing unit for which plastics, rubber, or rubber tires are the only feed materials (incidental contaminants may be in the feed materials). These materials are processed and marketed to become input feed stock for chemical plants or petroleum refineries. The following three criteria further define a plastics or rubber recycling unit:

(1) Each calendar quarter, the combined weight of the feed stock that a plastics or rubber recycling unit produces must be more than 70 percent of the combined weight of the plastics, rubber, and rubber tires that recycling unit processes.

(2) The plastics, rubber, or rubber tires fed to the recycling unit may originate from separating or diverting plastics, rubber, or rubber tires from municipal or industrial solid waste. These feed materials may include manufacturing scraps, trimmings, and off-specification plastics, rubber, and rubber tire discards.

(3) The plastics, rubber, and rubber tires fed to the recycling unit may contain incidental contaminants (for example, paper labels on plastic bottles or metal rings on plastic bottle caps).

Potential hydrogen chloride emissions means the level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without emission controls for acid gases.

Potential mercury emissions means the level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without controls for mercury emissions.

Potential sulfur dioxide emissions means the level of emissions from a municipal waste combustion unit that would occur from combusting municipal solid waste without emission controls for acid gases.

Pyrolysis/combustion unit means a unit that produces gases, liquids, or solids by heating municipal solid waste. The gases, liquids, or solids produced are combusted and the emissions vented to the atmosphere.

Reconstruction means rebuilding a municipal waste combustion unit and meeting two criteria:

(1) The reconstruction begins 6 months or more after [publication date of final rule].

(2) The cumulative cost of the construction over the life of the unit exceeds 50 percent of the original cost of building and installing the municipal waste combustion unit (not including land) updated to current costs (current dollars). To determine what systems are within the boundary of the municipal waste combustion unit used to calculate these costs, see the definition of municipal waste combustion unit.

Refractory unit or *refractory wall furnace* means a municipal waste combustion unit that has no energy recovery (such as through a waterwall) in the furnace of the municipal waste combustion unit.

Refuse-derived fuel means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. This includes all classes of refuse-derived fuel including two fuels:

(1) Low-density fluff refuse-derived fuel through densified refuse-derived fuel.

(2) Pelletized refuse-derived fuel.

Same location means the same or contiguous properties under common ownership or control, including those separated only by a street, road, highway, or other public right-of-way. Common ownership or control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, subdivision, or any combination thereof. Entities may include a municipality, other governmental unit, or any quasi-governmental authority (for example, a public utility district or regional authority for waste disposal).

Second calendar half means the period that starts on July 1 and ends on December 31 in any year.

Shift supervisor means the person who is in direct charge and control of operating a municipal waste combustion unit and who is responsible for onsite supervision, technical direction, management, and overall performance of the municipal waste combustion unit during an assigned shift.

Spreader stoker, mixed fuel-fired (coal/refuse-derived fuel) combustion unit means a municipal waste combustion unit that combusts coal and refuse-derived fuel simultaneously, in which coal is introduced to the combustion zone by a mechanism that throws the fuel onto a grate from above. Combustion takes place both in suspension and on the grate.

Standard conditions when referring to units of measure mean a temperature of 20°C and a pressure of 101.3 kilopascals.

Startup period means the period when a municipal waste combustion unit begins the continuous combustion of municipal solid waste. It does not include any warmup period during which the municipal waste combustion unit combusts fossil fuel or other solid waste fuel but receives no municipal solid waste.

Stoker (refuse-derived fuel) combustion unit means a steam generating unit that combusts refuse-derived fuel in a semisuspension combusting mode, using air-fed distributors.

Total mass dioxins/furans or *total mass* means the total mass of tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans as determined using EPA Reference Method 23 and the procedures specified in § 60.1300.

Twenty-four hour daily average or *24-hour daily average* means either the arithmetic mean or geometric mean (as specified) of all hourly emission concentrations when the municipal waste combustion unit operates and combusts municipal solid waste measured during the 24 hours between 12:00 midnight and the following midnight.

Untreated lumber means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Untreated lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote.

Waterwall furnace means a municipal waste combustion unit that has energy (heat) recovery in the furnace (for example, radiant heat transfer section) of the combustion unit.

Yard waste means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs. They come from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include two items:

(1) Construction, renovation, and demolition wastes that are exempt from the definition of "municipal solid waste" in this section.

(2) Clean wood that is exempt from the definition of "municipal solid waste" in this section.

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Table 1 of Subpart AAAA — Emission Limits For New Municipal Waste Combustion Units

For these pollutants	You must meet these emission limits[a]	Using these averaging times	And determine compliance by these methods
Organics			
Dioxins/furans (total mass basis)	13 nanograms per dry standard cubic meter	3-run average (minimum run duration is 4 hours)	Stack test
Metals			
Cadmium	0.020 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
Lead	0.20 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
Mercury	0.080 milligrams per dry standard cubic meter -or- 85 percent reduction of potential mercury emissions	3-run average (run duration specified in test method)	Stack test
Opacity	10 percent	Thirty 6-minute averages.	Stack test
Particulate matter	24 milligrams per dry standard cubic meter	3-run average (run duration specified in test method)	Stack test
Acid Gases			
Hydrogen chloride	25 parts per million by dry volume -or- 95 percent reduction of potential hydrogen chloride emissions	3-run average (minimum run duration is 1 hour)	Stack test

[a]All emission limits measured at 7 percent oxygen.

Table 1 of Subpart AAAA — Emission Limits For New Municipal Waste Combustion Units (Continued)

For these pollutants	You must meet these emission limits[a]	Using these averaging times	And determine compliance by these methods
Acid Gases (Continued)			
Nitrogen oxides (Class I units)	150 (180 for first year of operation) parts per million by dry volume	24-hour daily block arithmetic average concentration	Continuous emission monitoring system
Nitrogen oxides (Class II units)	Not applicable	Not applicable	Not applicable
Sulfur dioxide	30 parts per million by dry volume -or- 80 percent reduction of potential sulfur dioxide emissions	24-hour daily block geometric average concentration - or - percent reduction	Continuous emission monitoring system
Other			
Fugitive ash	Visible emissions for no more than 5 percent of hourly observation period	Three 1-hour observation periods	Visible emission test

[a]All emission limits are measured at 7 percent oxygen.

Table 2 of Subpart AAAA — Carbon Monoxide Emission Limits For New Municipal Waste Combustion Units

For these municipal waste combustion units	You must meet these carbon monoxide limits[a]	Using these averaging times[b]
Fluidized-bed	100 parts per million by dry volume	4-hour
Mass burn rotary refractory	100 parts per million by dry volume	4-hour
Mass burn rotary waterwall	100 parts per million by dry volume	24-hour
Mass burn waterwall and refractory	100 parts per million by dry volume	4-hour
Mixed fuel-fired (pulverized coal/refuse-derived fuel)	150 parts per million by dry volume	4-hour
Modular starved-air and excess air	50 parts per million by dry volume	4-hour
Spreader stoker, mixed fuel-fired (coal/refuse-derived fuel)	150 parts per million by dry volume	24-hour daily
Stoker, refuse-derived fuel	150 parts per million by dry volume	24-hour daily

[a] All limits are measured at 7 percent oxygen. Compliance is determined by continuous emission monitoring systems.
[b] All averages are block averages. See §60.1465 for definitions.

Table 3 of Subpart AAAA — Requirements For Validating Continuous Emission Monitoring Systems (CEMS)

For these continuous monitoring systems	Use these methods to validate pollutant concentration levels	Use these methods to measure oxygen (or carbon dioxide)
Nitrogen oxides (Class 1 units only)	Method 7, 7A, 7B, 7C, 7D, or 7E	Method 3 or 3A
Sulfur dioxide	Method 6 or 6C	Method 3 or 3A
Carbon monoxide	Method 10, 10A, or 10B	Method 3 or 3A

Table 4 of Subpart AAAA — Requirements For Continuous Emission Monitoring Systems (CEMS)

For these pollutants	Use these span values for your CEMS	Use these performance specifications for your CEMS (from appendix B)	If needed to meet minimum data requirements, use these alternate methods to collect data
Opacity	100 percent opacity	P.S. 1	Method 9
Nitrogen oxides (Class I units only)	**Control device outlet:** 125 percent of the maximum expected hourly potential nitrogen oxides emissions of the municipal waste combustion unit	P.S. 2	Method 19
Sulfur dioxide	**Inlet to control device:** 125 percent of the maximum expected sulfur dioxide emissions of the municipal waste combustion unit **Control device outlet:** 50 percent of the maximum expected hourly potential sulfur dioxide emissions of the municipal waste combustion unit	P.S. 2	Method 19
Carbon monoxide	125 percent of the maximum expected hourly potential carbon monoxide emissions of the municipal waste combustion unit	P.S. 4A	Method 10 with alternative interference trap
Oxygen or carbon dioxide	25 percent oxygen or 25 percent carbon dioxide	P.S. 3	Method 3A or 3B

Table 5 of Subpart AAAA — Requirements For Stack Tests

To measure these pollutants	Use these methods to determine the sampling location	Use these methods to measure pollutant concentration	Also note the following additional information
Organics			
Dioxins/furans	Method 1	Method 23[a]	The minimum sampling time must be 4 hours per test run while the municipal waste combustion unit is operating at full load.
Metals			
Cadmium	Method 1	Method 29[a]	Compliance testing must be performed while the municipal waste combustion unit is operating at full load.
Lead	Method 1	Method 29[a]	Compliance testing must be performed while the municipal waste combustion unit is operating at full load.
Mercury	Method 1	Method 29[a]	Compliance testing must be performed while the municipal waste combustion unit is operating at full load.
Opacity	Not applicable	Method 9	Use Method 9 to determine compliance with opacity limit. 3-hour observation period (thirty 6-minute averages).
Particulate matter	Method 1	Method 5[a]	The minimum sample volume must be 1.7 cubic meters. The probe and filter holder heating systems in the sample train must be set to provide a gas temperature no greater than 160 ±14°C.
Acid Gases [b]			
Hydrogen chloride	Not applicable	Method 26 [a]	Test runs must be at least 1 hour long.

[a]Must simultaneously measure oxygen (or carbon dioxide) using Method 3 or 3A.
[b]Use CEMS to test sulfur dioxide, nitrogen oxide, and carbon monoxide. Stack tests are not required except for Appendix F quality assurance requirements.

Table 5 of Subpart AAAA — Requirements For Stack Tests (Continued)

To measure these pollutants	Use these methods to determine the sampling location	Use these methods to measure pollutant concentration	Also note the following additional information
Other [b]			
Fugitive ash	Not applicable	Method 22 (visible emissions)	The three 1-hour observation period must include periods when the facility transfers fugitive ash from the municipal waste combustion unit to the area where the fugitive ash is stored or loaded into containers or trucks.

[a]Must simultaneously measure oxygen (or carbon dioxide) using method 3 or 3A.
[b]Use CEMS to test sulfur dioxide, nitrogen oxide, and carbon monoxide. Stack tests are not required except for Appendix F quality assurance requirements.

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federal register

Monday
August 30, 1999

Part IV

Department of Education

Office of Special Education and Rehabilitative Services; Grant Applications Under Part D, Subpart 2 of the Individuals With Disabilities Education Act Amendments of 1997; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Grant Applications under Part D, Subpart 2 of the Individuals with Disabilities Education Act Amendments of 1997

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2000.

SUMMARY: This notice provides closing dates and other information regarding the transmittal of applications for FY 2000 competitions under five programs authorized by the Individuals with Disabilities Education Act (IDEA), as amended. The five programs are: (1) Special Education—Research and Innovation to Improve Services and Results for Children with Disabilities (seven priorities); (2) Special Education—Personnel Preparation to Improve Services and Results for Children with Disabilities (four priorities); (3) Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities (two priorities); (4) Special Education—Technology and Media Services for Individuals with Disabilities (five priorities); and (5) Special Education—Training and Information for Parents of Children with Disabilities (one priority).

This notice supports the National Education Goals by helping to improve results for children with disabilities.

Waiver of Rulemaking

It is generally the practice of the Secretary to offer interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the Administrative Procedure Act (5 U.S.C. 553) inapplicable to the priorities in this notice.

General Requirements

(a) Projects funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities in project activities (see section 606 of IDEA);

(b) Applicants and grant recipients funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see section 661(f)(1)(A) of IDEA);

(c) Projects funded under these priorities must budget for a two-day Project Directors' meeting in Washington, D.C. during each year of the project;

(d) In a single application, an applicant must address only one absolute priority in this notice; and (e)

Part III of each application submitted under a priority in this notice, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. An applicant must limit Part III to the equivalent of no more than the number of pages listed in the "Page Limits" section under the applicable priority in this notice. An applicant must use the following standards: (1) A "page" is 8½" × 11" (on one side only) with one-inch margins (top, bottom, and sides). (2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than 3 lines per vertical inch). If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters to the inch.

The page limit does not apply to Part I—the cover sheet; Part II—the budget section (including the narrative budget justification); Part IV—the assurances and certifications; or the one-page abstract, resumes, bibliography, and letters of support. However, all of the application narrative must be included in Part III. If an application narrative uses a smaller print size, spacing, or margin that would make the narrative exceed the equivalent of the page limit, the application will not be considered for funding.

Note: The Department of Education is not bound by any estimates in this notice.

Information collection resulting from this notice has been submitted to OMB for review under the Paperwork Reduction Act and has been approved under control number 1820–0028, expiration date July 31, 2000.

Research and Innovation To Improve Services and Results for Children With Disabilities

Purpose of Program

To produce, and advance the use of, knowledge to: (1) Improve services provided under IDEA, including the practices of professionals and others involved in providing those services to children with disabilities; and (2) improve educational and early intervention results for infants, toddlers, and children with disabilities.

Eligible Applicants

State and local educational agencies; institutions of higher education; other public agencies; private nonprofit organizations; outlying areas; freely associated States; and Indian tribes or tribal organizations.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, and; (b) The selection criteria for the priorities under this program are drawn from the EDGAR general selection criteria menu. The specific selection criteria for each priority are included in the funding application packet for the applicable competition.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priority

Under 34 CFR 75.105(c)(3), we consider only applications that meet one of the following priorities:

Absolute Priority 1—Student—Initiated Research Projects (84.324B)

This priority provides support for short-term (up to 12 months) postsecondary student-initiated research projects focusing on special education and related services for children with disabilities and early intervention services for infants and toddlers, consistent with the purposes of the program, as described in Section 672 of the Act.

Projects must—

(a) Develop research skills in postsecondary students; and (b) Include a principal investigator who serves as a mentor to the student researcher while the project is carried out by the student.

Competitive Preferences:

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: Up to 12 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $20,000 for the entire project period. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: The maximum page limit for this priority is 25 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the "General Requirements" section of this notice.

Absolute Priority 2—Field-Initiated Research Projects (84.324C)

This priority provides support for a wide range of field-initiated research projects that support innovation, development, exchange, and use of advancements in knowledge and practice as described in section 672 of the Act including the improvement of early intervention, instruction, and learning for infants, toddlers, and children with disabilities.

Projects must—

(a) Prepare their procedures, findings, and conclusions in a manner that informs other interested researchers and is useful for advancing professional practice or improving programs and services to infants, toddlers, and children with disabilities and their families; and

(b) Disseminate project procedures, findings, and conclusions to appropriate research institutes and technical assistance providers.

Invitational Priorities:

Within absolute priority 2 for FY 2000, we are particularly interested in applications that meet one or more of the following invitational priorities.

Under 34 CFR 75.105(c)(1) we do not give to an application that meets one or more of these invitational priorities a competitive or absolute preference over other applications.

(a) Projects to address the specific problems of over-identification and under-identification of children with disabilities. (See section 672(a)(3) of the Act).

(b) Projects to develop and implement effective strategies for addressing inappropriate behavior of students with disabilities in schools, including strategies to prevent children with emotional and behavioral problems from developing emotional disturbances that require the provision of special education and related services. (See section 672(a)(4) of the Act).

(c) Projects studying and promoting improved alignment and compatibility of general and special education reforms concerned with curriculum and instruction, evaluation and accountability, and administrative procedures. (See section 672(b)(2)(D) of the Act).

(d) Projects that advance knowledge about the coordination of education with health and social services. (See section 672(b)(2)(G) of the Act).

Competitive Preferences:

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: The majority of projects will be funded for up to 36 months. Only in exceptional circumstances—such as research questions that require repeated measurement within a longitudinal design—will projects be funded for more than 36 months, up to a maximum of 60 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $180,000 for any single budget period of 12 months. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: The maximum page limit for this priority is 50 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the "General Requirements" section of this notice.

Absolute Priority 3—Initial Career Awards (84.324N)

Background:

There is a need to enable individuals in the initial phases of their careers to initiate and develop promising lines of research that would improve early intervention services for infants and toddlers, and special education and related services for children with disabilities. Support for research activities among individuals in the initial phases of their careers is intended to develop the capacity of the special education research community. This priority would address the additional need to provide support for a broad range of field-initiated research projects—focusing on the special education and related services for children with disabilities and early intervention for infants and toddlers—consistent with the purpose of the program as described in section 672 of the Act.

Priority: The Secretary establishes an absolute priority for the purpose of awarding grants to eligible applicants for the support of individuals in the initial phases of their careers to initiate and develop promising lines of research consistent with the purposes of the program. For purposes of this priority, the initial phase of an individual's career is considered to be the first three years after completing a doctoral program and graduating (e.g., for fiscal year 2000 awards, projects may support individuals who completed a doctoral program and graduated no earlier than the 1996–1997 academic year).

Projects must—

(a) Pursue a line of inquiry that reflects a programmatic strand of research emanating either from theory or a conceptual framework. The line of research must be evidenced by a series of related questions that establish directions for designing future studies extending beyond the support of this award. The project is not intended to represent all inquiry related to the particular theory or conceptual framework; rather, it is expected to initiate a new line or advance an existing one;

(b) In addition to involving individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the project, as required by the Act, include, in design and conduct, sustained involvement with one or more nationally recognized experts having substantive or methodological knowledge and expertise relevant to the proposed research. The experts do not have to be at the same institution or

agency at which the project is located, but the interaction with the project must be sufficient to develop the capacity of the initial career researcher to effectively pursue the research into mid-career activities. At least 50 percent of the researcher's time must be devoted to the project;

(c) Prepare their procedures, findings, and conclusions in a manner that informs other interested researchers and is useful for advancing professional practice or improving programs and services to infants, toddlers, and children with disabilities and their families; and

(d) Disseminate project procedures, findings, and conclusions to appropriate research institutes and technical assistance providers.

Invitational Priority:

Within absolute priority 3 for FY 2000, we are particularly interested in applications that meets the following invitational priority.

Projects that include in the design and conduct of the research project, a practicing teacher or clinician, in addition to the required involvement of nationally recognized experts.

Under 34 CFR 75.105(c)(1) we do not give to an application that meets the priority a competitive or absolute preference over other applications.

Competitive Preferences:

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: Up to 36 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $75,000 for any single budget period of 12 months. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: The maximum page limit for this priority is 30 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the "General Requirements" section of this notice.

Absolute Priority 4—Model Demonstration Projects for Children with Disabilities (84.324M)

This priority supports model demonstration projects that develop, implement, evaluate, and disseminate new or improved approaches for providing early intervention, special education, and related services to infants, toddlers, and children with disabilities, and students with disabilities who are pursuing post-school employment, postsecondary education or independent living goals. Projects supported under this priority are expected to be major contributors of models or components of models for service providers and for outreach projects funded under the Individuals with Disabilities Education Act.

Requirements for All Demonstration Projects:

A model demonstration project must—

(a) Develop and implement the model with specific components or strategies that are based on theory, research, or evaluation data;

(b) Evaluate the model by using multiple measures of results to determine the effectiveness of the model and its components or strategies; and

(c) Produce detailed procedures and materials that would enable others to replicate the model.

Federal financial participation for a project funded under this priority will not exceed 90 percent of the total annual costs of development, operation, and evaluation of the project (see section 661(f)(2)(A) of IDEA).

In addition to the annual two-day Project Directors' meeting in Washington, DC mentioned in the "General Requirements" section of this notice, projects must budget for another meeting in Washington, DC to collaborate with the Federal project officer and the other projects funded under this priority, to share information and discuss model development, evaluation, and project implementation issues.

Competitive Preferences:

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: Up to 48 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $150,000 (exclusive of any matching funds) for any single budget period of 12 months. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limit: The maximum page limit for this priority is 40 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the "General Requirements" section of this notice.

Absolute Priority 5—Outreach Projects for Children with Disabilities (84.324R)

This priority supports projects that will assist educational and other agencies in replicating proven models, components of models, and other exemplary practices that improve services for infants, toddlers, children with disabilities, and students with disabilities who are pursuing post-school employment, postsecondary education or independent living goals.

For the purposes of this priority, a "proven model" is a comprehensive description of a theory or system that, when applied, has been shown to be effective. "Exemplary practices" are effective strategies and methods used to deliver education, related or early intervention services. The models, components of models, or exemplary practices selected for outreach may include these developed for pre-service and in-service personnel preparation, and do not need to have been developed through projects funded under IDEA, or by the applicant.

Important elements of an outreach project include but are not limited to:

(a) Providing supporting data or other documentation in the application regarding the effectiveness of the model, components of a model, or exemplary practices selected for outreach;

(b) Selecting implementation sites in multiple regions within one State or multiple States and describing the criteria for their selection;

(c) Describing the expected costs, needed personnel, staff training, equipment, and sequence of implementation activities associated with the replication efforts, including a description of any modifications to the model or practice made by the sites;

(d) Including public awareness, product development and dissemination, training, and technical assistance activities as part of the implementation of the project; and

(e) Coordinating dissemination and replication activities conducted as part of outreach with dissemination projects, technical assistance providers, consumer and advocacy organizations, State and local educational agencies, and the lead agencies for Part C of IDEA, as appropriate.

Projects must prepare products from the project in formats that are useful for specific audiences, including parents, administrators, teachers, early intervention personnel, related services personnel, and individuals with disabilities. (See section 661(f)(2)(B) of IDEA).

Federal financial participation for a project funded under this priority will not exceed 90 percent of the total annual costs of development, operation, and evaluation of the project (see section 661(f)(2)(A) of IDEA).

In addition to the annual two-day Project Directors' meeting in Washington, DC mentioned in the General Requirements section of this notice, projects must budget annually for another meeting in Washington, DC to collaborate with the Federal project officer and the other projects funded under this priority, to share information and discuss project implementation issues.

Competitive Preferences:

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: Up to 36 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $150,000 (exclusive of any matching funds) for any single budget period of 12 months. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: The maximum page limit for this priority is 40 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the "General Requirements" section of this notice.

Absolute Priority 6—Research Institute To Enhance the Role of Special Education and Children With Disabilities in Education Policy Reform (84.324P)

Education reforms are often leveraged through enhanced accountability for students outcomes, school improvement, and personnel performance. Findings from the Center for Policy Research on the Impact of General and Special Education Reform indicate that inclusion of students with disabilities in these general accountability efforts is one of the major forces shaping reform of special education. IDEA reflects an increased emphasis on including students with disabilities in accountability systems by requiring their participation in general State and district-wide assessments. IDEA also requires States to establish indicators to use in assessing progress toward achieving goals that address the performance of children with disabilities on assessments, drop-out rates, and graduation rates.

Priority:

The Secretary establishes an absolute priority for a research institute to study the role of special education and children with disabilities in educational policy reform, specifically initiatives designed to improve student performance through increased accountability. A project funded under this priority must—

(a) Identify and review critical gaps in the current knowledge in the following areas:

(1) How broad education policy reforms that incorporate high-stakes accountability mechanisms include consideration of children with disabilities;

(2) The criteria for which special education has historically been held accountable and how these criteria have been assessed;

(3) How traditional education accountability mechanisms at both the systems level (e.g., State improvement planning and compliance monitoring, due process, and judicial resolution) and the individual child or student level (e.g., large-scale assessments provided with accommodations, alternate assessments, individualized education programs, individualized family services plans) have impacted outcomes for children with disabilities;

(4) How students with disabilities are affected by the recent large-scale, high stakes State and national accountability-based education policy reforms (e.g., State and district assessments, enhanced graduation and exiting requirements, governance and professional preparation and development reforms and other standards-based reform initiatives), including consideration of developed models of inclusive special education accountability (e.g., models developed by the National Association of State Directors of Special Education and the National Center for Educational Outcomes); and

(5) How changes and reforms in special education might better align with and support such large-scale, high stakes State and national accountability-based education policy reforms.

(b) In consultation with the Office of Special Education Programs (OSEP), design and conduct a strategic program of research that addresses knowledge gaps identified in paragraph (a) by:

(1) Conducting a rigorous research program that builds upon recent and current research on broad education policy reforms that incorporate high-stakes accountability mechanisms, including research by the recent Center for Policy Research on the Impact of General and Special Education Reform;

(2) Using a variety of methodologies designed to comprehensively examine the breadth of accountability mechanisms including how such mechanisms impact academic, functional, vocational, social, emotional and other outcomes for children and youth with disabilities;

(3) Conducting the program of research in settings that ensure that the impact of accountability-based education policy reforms on disabled minority, rural, low income, urban, limited English proficiency, immigrant, and migrant populations, will be examined; and

(4) Collaborating with other research institutions and studies and evaluations supported under IDEA, including the national assessment of special education activities (section 674(b) of IDEA).

(c) Design, implement, and evaluate a dissemination approach that links research to practice and promotes the use of current knowledge and ongoing research findings. This approach must:

(1) Develop linkages with Education Department technical assistance providers including the IDEA Linking Partnership technical assistance projects supported by OSEP to communicate research findings and distribute products; and

(2) Prepare the research findings and products from the project in formats that are useful for specific audiences, including general education researchers; and local, State, and national policymakers; as well as education practitioners.

(d) Fund at least five graduate students per year as research assistants who have concentrations in either education policy or disability issues.

(e) Meet with the OSEP project officer in the first four months of the project to review the program of research and dissemination approaches.

(f) In addition to the annual two-day Project Directors' meeting in Washington, DC listed in the "General Requirements" section of this notice, budget for another annual two-day trip to Washington, DC to collaborate with the OSEP project officer by sharing information and discussing implementation and dissemination issues.

In deciding whether to continue this project for the fourth and fifth years, the Secretary, will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of three experts selected by the Secretary. The services of the review team, including a two-day site visit to the grantee, are to be performed during the last half of the project's second year and may be included in that year's evaluation required under 34 CFR 75.590. Costs associated with the services to be performed by the review team must also be included in the project's budget for year two. These costs are estimated to be approximately $6,000;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The degree to which the project's design and methodology demonstrates the potential for advancing significant new knowledge.

Under this priority, the Secretary will make one award for a cooperative agreement with a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards.

Competitive Preferences:

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: Up to 60 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $700,000 for any single budget period of 12 months. The Secretary may change the maximum amounts through a notice published in the **Federal Register**.

Page Limits: The maximum page limit for this priority is 70 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the "General Requirements" section of this notice.

Absolute Priority 7—Improving Post-School Outcomes: Identifying and Promoting What Works (84.324W)

Background:

With the passage of the Education of the Handicapped Act Amendments of 1983, a Federal initiative was begun to assist high school youth with disabilities in achieving their goals for adult life, including postsecondary education, continuing education, competitive employment, and independent living. This initiative has continued to be defined and developed in legislation, research and practice; and to a large extent, has been the impetus for the shift in special education from an emphasis on process to one of achieving better results for children with disabilities. The Office of Special Education Programs (OSEP) has funded approximately 500 secondary transition, postsecondary education, and dropout prevention and intervention projects since 1984 to develop, refine, and validate effective programs and practices.

The purpose of this priority is to fund one project that will —

(a) Synthesize the professional literature on improving academic results, secondary transition practice, postsecondary educational supports, and dropout prevention and intervention;

(b) Analyze important features, findings and outcomes of projects in these areas, including but not limited to, projects funded by OSEP, the Rehabilitation Services Administration (RSA), the Office of Postsecondary Education (OPE), the Office of Vocational and Adult Education (OVAE) and the National Institute on Disability and Rehabilitation Research (NIDRR); and

(c) Summarize, proactively disseminate, and publicize the results of the synthesis and analysis in an effort to inform policy and practice.

Priority:

The Secretary establishes an absolute priority to support a project that will identify and promote effective policy and practice that will improve results for secondary-aged youth and young adults with disabilities. At a minimum, this project must—

(a) Synthesize the extant professional knowledge base in each of four areas:

—Improving academic results
—Secondary transition practice
—Postsecondary educational supports, and
—Dropout prevention and intervention, including factors associated with early school exit for students with disabilities. Each synthesis must:

(1) Develop a conceptual framework around which research questions will be posed and the synthesis conducted. Develop these research questions with input from potential consumers of the synthesis to enhance the usability and validity of the findings. Consumers include technical assistance providers, policymakers, educators, other relevant practitioners, individuals with disabilities, and parents;

(2) Identify and implement rigorous social science methods for synthesizing the professional knowledge base (including but not limited to, integrative reviews (Cooper, 1982), best-evidence synthesis (Slavin, 1989), meta-analysis (Glass, 1977), multi-vocal approach (Ogawa & Malen, 1991), and National Institute of Mental Health consensus development program (Huberman, 1977));

(3) Implement procedures for locating and organizing the extant literature and ensure that these procedures address and guard against potential threats to the integrity of each synthesis, including the generalization of findings;

(4) Establish criteria and procedures for judging the appropriateness of each synthesis;

(5) Meet with OSEP to review the project's methodological approach for conducting the synthesis prior to initiating the synthesis;

(6) Analyze and interpret the professional knowledge base, including identification of general trends in the literature, points of consensus and conflict among the findings, and areas of evidence where the literature base is lacking. The interpretation of the literature base must address the contributions of the findings for improving policy, transition practice and drop out prevention and intervention, and research priorities in the four focus areas; and

(7) Submit a draft report of the synthesis in each of the focus areas, and based on reviews by OSEP staff and potential consumers, revise and submit a final report.

(b) Conduct an analysis to identify effective approaches and practices of the important features, findings and outcomes of projects (including, but not limited to, projects funded by OSEP, RSA, NIDRR, OVAE and OPE) in each of four areas:

—Improving academic results
—Secondary transition practice
—Postsecondary educational supports, and
—Dropout prevention and intervention, incorporating the following activities in each analysis:

(1) Identify the relevant projects for each analysis. Describe and implement procedures for locating and organizing relevant information on the individual projects, including sampling techniques, if appropriate;

(2) Articulate a research-based conceptual framework to guide the selection of variables to be examined within and across projects, including demographics, target population, purpose, activities, outcomes, and barriers. Pose research questions around which the analysis will be conducted. Develop these research questions with input from potential consumers of the information to enhance the usability and validity of the research findings. Consumers include technical assistance providers, policymakers, educators, other relevant practitioners, individuals with disabilities, and parents;

(3) Identify and implement rigorous methods for conducting each analysis;

(4) Meet with OSEP to review the project's research questions and methodological approach for conducting the analysis prior to initiation;

(5) Analyze and interpret the findings of the analysis, including similarities and differences among project goals, activities, staffing and costs; points of consensus and conflict among the findings or outcomes of the demonstrations, and the characteristics of model programs that hold significant promise for the field based upon outcome data. In addition, the analysis must link to the synthesis on this topic and provide direction for future policy formulation, practice implementation, and research priorities; and

(6) Submit a draft report of the analysis in each of the focus areas, and based on reviews by OSEP staff and potential consumers, revise and submit a final report.

(c) Summarize, proactively disseminate, and publicize the results of this analysis to inform policy and practice, incorporating the following activities into the project design:

(1) Develop and implement a communication plan that includes the types of products to be created, proposed audiences, procedures for adapting the form and content of the products based upon the audience or audiences, vehicles for dissemination, and timelines. In particular, address how the project will provide updated information at regular intervals to each of the following audiences: OSERS-funded technical assistance and dissemination projects, the Parent Training and Information Centers; and the State Improvement program grantees. The project may propose collaborative dissemination activities with one or more of these projects; and

(2) Meet with OSEP to review the project's communication plan prior to implementation.

In addition to the annual two-day Project Directors' meeting in Washington, DC listed in the "General Requirements" section of this notice, projects must budget for another meeting each year in Washington, DC with OSEP to share information and discuss project implementation issues.

In deciding whether to continue this project for the fourth and fifth years, the Secretary, will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of three experts selected by the Secretary. The services of the review team, including a two-day site visit to the grantee, are to be performed during the last half of the project's second year and may be included in that year's evaluation required under 34 CFR 75.590. Costs associated with the services to be performed by the review team must also be included in the project's budget for year two. These costs are estimated to be approximately $6,000;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The degree to which the project's design and methodology demonstrates the potential for advancing significant new knowledge.

Under this priority, the Secretary will make one award for a cooperative agreement with a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards.

Competitive Preferences: Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: Up to 60 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $500,000 for any single budget period of 12 months. The Secretary may change the maximum

amount through a notice published in the **Federal Register**.

Page Limits: The maximum page limit for this priority is 60 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the "General Requirements" section of this notice.

Special Education—Personnel Preparation To Improve Services and Results for Children With Disabilities (CFDA 84.325)

Purpose of Program

The purposes of this program are to (1) help address State-identified needs for qualified personnel in special education, related services, early intervention, and regular education, to work with children with disabilities; and (2) to ensure that those personnel have the skills and knowledge, derived from practices that have been determined through research and experience to be successful, that are needed to serve those children.

Eligible Applicants

Institutions of higher education.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, and 97; (b) The selection criteria for the priorities under this program are drawn from the EDGAR general selection menu. The specific selection criteria for each priority are included in the funding application packet for the applicable competition.

Additional Requirement for All Personnel Preparation Program Priorities

Student financial assistance is authorized only for the preservice preparation of special education and related services personnel who serve children ages 3 through 21, early intervention personnel who serve infants and toddlers, and leadership personnel who work in these areas.

Priority

Under section 673 of the Act and 34 CFR 75.105 (c)(3) we consider only applications that meet one of the following priorities:

Absolute Priority 1—Preparation of Special Education, Related Services, and Early Intervention Personnel To Serve Infants, Toddlers, and Children With Low-Incidence Disabilities (84.325A)

Background:

The national demand for educational, related services, and early intervention personnel to serve infants, toddlers, and children with low-incidence disabilities exceeds available supply. However, because of the small number of these personnel needed in each State, institutions of higher education and individual States have not given priority to programs that train personnel to work with those with low-incidence disabilities. Moreover, of the programs that do exist, many are not producing graduates with the prerequisite skills needed to meet the needs of the low-incidence disability population. Thus, Federal support is required to ensure an adequate supply of personnel to serve children with low-incidence disabilities and to improve the quality of appropriate training programs so that graduates possess necessary prerequisite skills.

Priority: The Secretary establishes an absolute priority to support projects that increase the number and quality of personnel to serve children with low-incidence disabilities. This priority supports projects that provide preservice preparation of special educators, early intervention personnel, and related services personnel at the associate, baccalaureate, master's, or specialist level.

A preservice program is a program that leads toward a degree, certification, or professional licence or standard and may include the preparation of currently employed personnel who are seeking additional degrees, certifications, endorsements, or licences.

The term "low-incidence disability" means a visual or hearing impairment, or simultaneous visual and hearing impairments, a significant cognitive impairment, or any impairment for which a small number of personnel with highly specialized skills and knowledge are needed in order for children with that impairment to receive early intervention services or a free appropriate public education.

Applicants may propose to prepare one or more of the following types of personnel:

(a) Special educators, including early childhood, speech and language, adapted physical education, and assistive technology personnel that work with children with low-incidence disabilities;

(b) Related services personnel who provide developmental, corrective, and other support services that assist children with low-incidence disabilities to benefit from special education. Both comprehensive programs, and specialty components within a broader discipline, that prepare personnel for work with the low-incidence population may be supported; or

(c) Early intervention personnel who serve children birth through age 2 (until the third birthday) with low-incidence disabilities and their families. For the purpose of this priority, all children who require early intervention services are considered low-incidence. Early intervention personnel include persons who train, or serve as consultants to, service providers and case managers.

The Secretary particularly encourages projects that address the needs of more than one State, provide multi-disciplinary training, and provide for collaboration among several training institutions and between training institutions and public schools. In addition, projects that foster successful coordination between special education and regular education professional development programs to meet the needs of children with low-incidence disabilities in inclusive settings are encouraged.

Each project funded under this absolute priority must—

(a) Prepare personnel to address the specialized needs of children with low-incidence disabilities from different cultural and language backgrounds by;

(1) Determining the additional competencies needed for personnel to understand and work with culturally diverse populations; and

(2) Infusing those competencies into early intervention, special education and related services training programs.

(b) Incorporate research-based practices in the design of the program and the curricula;

(c) Incorporate curricula that focus on improving results for children with low-incidence disabilities;

(d) Promote high expectations for students with low-incidence disabilities and foster access to the general curriculum in the regular classroom, wherever appropriate; and

(e) If the project prepares personnel to provide services to visually impaired or blind children that can be appropriately provided in Braille, prepare those individuals to provide those services in Braille.

To be considered for an award, an applicant must satisfy the following requirements contained in section 673(f)–(h) of the Act—

(a) Demonstrate, with letters from one or more States that the project proposes to serve, that States need personnel in the area or areas in which the applicant proposes to provide preparation, as identified in the States' comprehensive systems of personnel development (CSPD) under Parts B and C of the Act;

(b) Demonstrate that it has engaged in a cooperative effort with one or more State educational agencies or, if appropriate, lead agencies for providing early intervention services, to plan, carry out, and monitor the project;

(c) Provide letters from one or more States stating that they intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards for serving children with disabilities or serving infants and toddlers with disabilities;

(d) Meet State and professionally-recognized standards for the preparation of special education, related services, or early intervention personnel; and

(e) Ensure that individuals who receive financial assistance under the proposed project will subsequently provide, special education and related services to children with disabilities, or early intervention services to infants and toddlers with disabilities, for a period of two years for every year for which assistance was received or repay all or part of the cost of that assistance. Applicants must describe how they will notify scholarship recipients of this work or repay requirement, which is specified under section 673(h)(1) of the Act (20 U.S.C. 1473(h)(1)). The requirement must be implemented consistent with section 673(h)(1) of the Act and with applicable regulations in effect prior to the awarding of grants under this priority. Applicants must designate at least 55 percent of the budget for student support or provide sufficient justification for any designation less than 55 percent for student support.

Under this absolute priority, the Secretary plans to award approximately:

- 60 percent of the available funds for projects that support careers in special education, including early childhood educators;
- 10 percent of the available funds for projects that support careers in educational interpreter services for hearing impaired individuals;
- 15 percent of the available funds for projects that support careers in related services, other than educational interpreter services; and
- 15 percent of the available funds for projects that support careers in early intervention.

Competitive Priority:

Within this absolute priority, we will give the following competitive preference under 34 CFR 75.105(c)(2)(i) to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for recruiting students from underrepresented populations. Up to five (5) of these 10 points would be based on the extent to which the application includes effective strategies for recruiting students with disabilities.

In addition, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of these competitive preferences, applicants can be awarded up to a total of 20 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 120 points.

Project Period: Up to 60 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $300,000 for any single budget period of 12 months. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: The maximum page limit for this priority is 40 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the "General Requirements" section of this notice.

Absolute Priority 2—Preparation of Leadership Personnel (84.325D)

This priority supports projects that conduct the following preparation activities for leadership personnel:

(a) Preparing personnel at the doctoral, and postdoctoral levels of training to administer, enhance, or to provide special education, related or early intervention services for children with disabilities; or

(b) Masters and specialist level programs in special education administration.

Projects funded under this absolute priority must—

Prepare personnel to work with culturally and linguistically diverse populations by;

(a) Determining the additional competencies for personnel needed to understand and work with culturally diverse populations; and

(b) Infusing those competencies into early intervention, special education and related services training programs.

To be considered for an award, an applicant must satisfy the following requirements contained in section 673(f)–(h) of the Act—

(a) Demonstrate, with letters from one or more States that the project proposes to serve, that States need personnel in the area or areas in which the applicant proposes to provide preparation, as identified in the States' comprehensive systems of personnel development under Parts B and C of the Act;

(b) Demonstrate that it has engaged in a cooperative effort with one or more State educational agencies or, if appropriate, lead agencies for providing early intervention services, to plan, carry out, and monitor the project;

(c) Meet State and professionally-recognized standards for the preparation of leadership personnel in special education, related services or early intervention fields; and

(d) Ensure that individuals who receive financial assistance under the proposed project will subsequently perform work related to their preparation for a period of two years for every year for which assistance was received or repay all or part of the cost of that assistance. Applicants must describe how they will notify scholarship recipients of this work or repay requirement, which is specified under section 673(h)(2) of the Act (20 U.S.C. 1473(h)(2)). The requirement must be implemented consistently with section 673(h)(2) of the Act and with applicable regulations in effect prior to the awarding of grants under this priority. Applicants must designate at least 65 percent of the budget for student support or provide sufficient justification for any designation less than 65 percent for student support.

Competitive Preferences:

Within this absolute priority, we will give the following competitive preference under 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for recruiting students from underrepresented populations. Up to five (5) of these 10 points would be based on the extent to which the application includes effective strategies for recruiting students with disabilities.

In addition, we will give the following competitive preference under section

606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of these competitive preferences, applicants can be awarded up to a total of 20 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 120 points.

Project Period: Up to 48 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $200,000 for any single budget period of 12 months. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: The maximum page limit for this priority is 40 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the "General Requirements" section of this notice.

Absolute Priority 3—Preparation of Personnel in Minority Institutions (84.325E)

This priority supports awards to institutions of higher education with minority student enrollments of at least 25 percent, including Historically Black Colleges and Universities, for the purpose of preparing personnel to work with children with disabilities. Awards must be made consistent with the objectives in section 673(a) of the Act.

Projects funded under this absolute priority must —

Prepare personnel to work with culturally and linguistically diverse populations by;

(a) Determining the additional competencies needed for personnel to understand and work with culturally diverse populations; and

(b) Infusing those competencies into early intervention, special education, and related services training programs.

The Secretary particularly encourages projects that:

(a) Have effective strategies for recruiting and retraining students from culturally and linguistically diverse populations;

(b) Focus on providing student financial support; and

(c) Include student support systems such as tutors, mentors, and other innovative practices.

This program supports projects at all levels, from the associate degree through the post-doctoral level.

To be considered for an award, an applicant must satisfy the following requirements contained in section 673(f)-(h) of the Act—

(a) Demonstrate, with letters from one or more States that the project proposes to serve, that States need personnel in the area or areas in which the applicant proposes to provide preparation, as identified in the States' comprehensive system of personnel development under Parts B and C of the Act;

(b) Demonstrate that it has engaged in a cooperative effort with one or more State educational agencies or, if appropriate, lead agencies for providing early intervention services, to plan, carry out, and monitor the project;

(c) Provide letters from one or more States stating that they intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards for serving children with disabilities or serving infants and toddlers with disabilities;

(d) Meet State and professionally-recognized standards for the preparation of special education, related services, or early intervention personnel, if the purpose of the project is to assist personnel in obtaining degrees; and

(e) Ensure that individuals who receive financial assistance under the proposed project will subsequently provide special education and related services to children with disabilities, or early intervention services for infants and toddlers, for a period of two years for every year for which assistance was received or repay all or part of the cost of that assistance. Applicants must describe how they will notify scholarship recipients of this work or repay requirement, which is specified under section 673(h)(1) of the Act (20 U.S.C. 1473(h)(1)). The requirement must be implemented consistently with section 673(h)(1) of the Act and with applicable regulations in effect prior to the awarding of grants under this priority. Applicants must designate at least 55 percent of the budget for student support or provide sufficient justification for any designation less than 55 percent for student support.

Competitive Preference: Within this absolute priority, we will give the following competitive preference under 34 CFR 75.105(c)(2)(i) to applicant institutions that are otherwise eligible for funding under this priority:

(a) Up to ten (10) points based on the extent to which an application includes effective strategies for recruiting students from underrepresented populations. Up to five (5) of these 10 points would be based on the extent to which the application includes effective strategies for recruiting students with disabilities.

(b) Up to ten (10) points to applicant institutions that have not received an FY 1999 or FY 2000 award under the IDEA personnel preparation program.

In addition, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of these competitive preferences applicants can be awarded up to a total of 30 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting all of these competitive preferences could earn a maximum total of 130 points.

Project Period: Up to 48 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $200,000 for any single budget period of 12 months. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: The maximum page limit for this priority is 40 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the "General Requirements" section of this notice.

Absolute Priority 4—Improving the Preparation of Personnel To Serve Children With High-Incidence Disabilities (84.325H)

Background: State agencies, university training programs, local schools, and other community-based agencies and organizations confirm both the importance and the challenge of improving training programs for personnel to serve children with high-incidence disabilities and of meeting the staffing needs of localities experiencing chronic shortages of these personnel.

This priority is intended to improve personnel preparation programs throughout the Nation and help meet shortages in particular areas. The project requirements, in conjunction with the identified competitive priorities, also reflect a number of important factors that are common to effective personnel preparation programs. These factors are:

(a) Collaboration among governmental, educational and community-based organizations on the Federal, State, and local levels in meeting personnel needs;

(b) Field-based training opportunities for students to use acquired knowledge and skills in schools reflecting wide contextual student diversity, and high poverty schools;

(c) Multi-disciplinary training of teachers, including regular and special education teachers, and related services personnel;

(d) Coordinating personnel preparation programs aimed at addressing chronic personnel shortages with State practices for addressing such needs;

(e) Addressing shortages of teachers in particular geographic and content areas;

(f) Integration of research based curriculum and pedagogical knowledge and practices; and

(g) Meeting the needs of trainees, and of children with disabilities, from diverse backgrounds.

Priority: Consistent with section 673(e) of the Act, the purpose of this priority is to develop or improve, and implement, programs that provide preservice preparation for special and regular education teachers and related services personnel in order to meet the diverse needs of children with high incidence disabilities (such as mild or moderate mental retardation, speech or language impairments, emotional disturbance, or specific learning disability) and to enhance the supply of well-trained personnel to serve these children in areas of chronic shortage. Training of para-professionals to serve children with high-incidence disabilities is authorized under this priority. (Training of early intervention personnel is addressed under the preparation of personnel to serve children with low-incidence disabilities, and therefore, is not included as part of this priority).

A preservice program is defined as one that leads toward a degree, certification, or professional licence or standard, and may be supported at the associate, baccalaureate, master's or specialist level. A preservice program may include the preparation of currently employed personnel who are seeking additional degrees, certifications, endorsements, or licences.

Projects funded under this priority must—

(a) Develop or improve, and implement, partnerships that are mutually beneficial to grantees and LEAs in order to promote continuous improvement of preparation programs;

(b) Use research-based curriculum and pedagogy to prepare personnel who are able to assist students with disabilities in achieving in the general education curricula and able to improve student outcomes;

(c) Utilize effective instructional strategies and provide practice opportunities for students on how special education, related services, and regular education personnel can collaborate to improve results for children with disabilities;

(d) Include field-based training opportunities for students in schools reflecting wide contextual and student diversity, including high poverty schools; and

(e) Prepare personnel to work with culturally and linguistically diverse populations by;

(1) Determining the additional competencies needed for personnel to understand and work with culturally diverse populations; and

(2) Infusing those competencies into special education and related services training programs.

An applicant must satisfy the following requirements contained in section 673(f)-(h) of the Act:

(a) Demonstrate, with letters from one or more States that the project proposes to serve, that States need personnel in the area or areas in which the applicant proposes to provide preparation, as identified in the States' comprehensive systems of personnel development (CSPD) under Part B of the Act;

(b) Demonstrate that it has engaged in a cooperative effort with one or more State educational agencies to plan, carry out, and monitor the project;

(c) Provide letters from one or more States stating that they intend to accept successful completion of the proposed personnel preparation program as meeting State personnel standards for serving children with disabilities;

(d) Meet State and professionally-recognized standards for the preparation of special education and related services personnel; and

(e) Ensure that individuals who receive financial assistance under the proposed project will subsequently provide special education and related services to children with disabilities, for a period of two years for every year for which assistance was received or repay all or part of the cost of that assistance. Applicants must describe how they will notify scholarship recipients of this work or repay requirement, which is specified under section 673(h)(1) of the Act (20 U.S.C. 1473(h)(1)). The requirement must be implemented consistently with section 673(h)(1) of the Act and with applicable regulations in effect prior to the awarding of grants under this priority. Applicants must designate at least 65 percent of the budget for student support or provide sufficient justification for any designation less than 65 percent for student support.

Competitive Preferences:

Within this absolute priority we will give the following competitive preferences under 34 CFR 75.105(c)(2)(i) to applications that are otherwise eligible for funding under this priority.

(a) Up to ten (10) points based on the extent to which an application includes effective strategies for recruiting students from underrepresented populations. Up to five (5) of these ten points would be based on the extent to which the application includes effective strategies for recruiting students with disabilities.

(b) Up to ten (10) points based on the extent to which an application demonstrates that the majority of the graduates of its program consistently enter jobs in which they serve children with disabilities in high poverty—rural or inner city—areas.

In addition, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of these competitive preferences applicants can be awarded up to a total of 30 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting all of these competitive preferences could earn a maximum total of 130 points.

Project Period: The maximum funding period for awards is 36 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $200,000 in Federal funding for any single budget period of twelve months.

Page Limits: The maximum page limit for this priority is 40 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the "General Requirements" section of this notice.

Special Education—Technical Assistance and Dissemination To Improve Services and Results for Children With Disabilities

Purpose of Program

The purpose of this program is to provide technical assistance and information through such mechanisms as institutes, regional resource centers, clearinghouses and programs that support States and local entities in building capacity, to improve early intervention, educational, and transitional services and results for children with disabilities and their families, and address systemic-change goals and priorities.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, and 97; (b) The selection criteria for the priorities under this program are drawn from the EDGAR general selection criteria menu. The specific selection criteria for each priority are included in the funding application packet for the applicable competition.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Eligible Applicants

State and local educational agencies, institutions of higher education, other public agencies, private nonprofit organizations, outlying areas, freely associated States, Indian tribes or tribal organizations, and for-profit organizations.

Priority:

Under section 685 of IDEA and 34 CFR 75.105(c)(3) we consider only applications that meet the following priorities:

Absolute Priority 1—Projects for Children Who Are Deaf-Blind (84.326C)

Background: IDEA includes provisions designed to ensure that each child with a disability is provided a high-quality individual program of services to meet his or her developmental and educational needs. For children who are deaf and blind to receive those services, intensive technical assistance must be afforded State and local educational agencies regarding appropriate educational placements, accommodations, environmental adaptations, support services and other matters.

In addition, given the severity of deaf-blindness and the low-incidence nature of this population, many early intervention programs or local school districts lack personnel with the training or experience to serve children who are deaf-blind. For these reasons, the following priority supports projects that provide specialized technical assistance regarding the provision of early intervention, special education, related, and transitional services to children who are deaf-blind.

In FY 1999, 48 awards were made under this priority. Of the 48 awards issued, 43 were authorized for a 48-month project period; the remaining 5 awards, which serve Nebraska, Oregon, New York, Rhode Island and South Dakota, were authorized for a 12-month period. The purpose of this notice is to invite applications for FY 2000 awards to support projects which will serve one or more of these 5 States and be authorized for up to 36 months.

Priority:

(a) This priority supports projects that build the capacity of State and local agencies to facilitate the achievement of improved outcomes by children who are deaf-blind, and their families. This priority specifically supports State and Multi-State Projects.

(b) State and Multi-State Projects provide technical assistance, information, and training that address the early intervention, special education, related services, and transitional service needs of children with deaf-blindness and enhance State capacity to improve services and outcomes for those children and their families. Projects must:

(1) Identify specific project goals and objectives in providing an appropriate array of technical assistance services;

(2) Facilitate systemic-change goals and school reform;

(3) Enhance State capacity to improve services and outcomes for deaf-blind children and their families;

(4) Provide technical assistance, information, and training that:

(i) Focus on implementation of research-based, effective practices that result in appropriate assessment, placement, and support services to all children who are deaf-blind in the State;

(ii) Help administrators develop and operate effective State and local programs for serving children who are deaf-blind;

(iii) Ensure that service providers have the necessary skills and knowledge to effectively serve children who are deaf-blind; and

(iv) Address the needs of families of children who are deaf-blind;

(5) Maintain basic demographic information on children with deaf-blindness in the State for program planning and evaluation purposes. The data should include hearing, vision, etiology, educational placement, living arrangement, and other information necessary to ensure a high quality program that meets the needs of the State or States served by the project;

(6) Maintain an assessment of current needs of the State and utilize data to determine State-wide priorities for technical assistance services across all age ranges;

(7) Develop and implement procedures to evaluate the impact of program activities on services and outcomes for children with deaf-blindness and their families, and on increasing State and local capacity to provide services and facilitate improved outcomes. The procedures must provide for—

(i) Evaluating project goals and objectives, and the effectiveness of project strategies relative to those goals and objectives; and

(ii) Including measures of change in outcomes for children with deaf-blindness and other indicators that document actual benefits of conducting the project;

(8) Facilitate ongoing coordination and collaboration with State and local educational agencies, as well as other relevant agencies and organizations responsible for providing services to children who are deaf-blind by —

(i) Promoting service integration that enables children with deaf-blindness to receive services in natural environments and inclusive settings, as appropriate; and

(ii) Encouraging systemic change efforts for addressing the needs of children with deaf-blindness by improving education opportunities and inter-agency cooperation, and reducing duplication of effort;

(9) Establish and maintain an advisory committee to assist in promoting project activities. Each committee must include at least one individual with deaf-blindness, a parent of a child with deaf-blindness, a representative of each State educational agency and each State lead agency under Part C of IDEA in the State (or States) served by the project, and a limited number of professionals with training and experience in serving children with deaf-blindness; and

(10) In addition to the annual two-day Project Directors' meeting in Washington, DC listed in the "General Requirements" section of this notice, budget for another annual two-day trip to Washington, DC to collaborate with the OSEP project officer by sharing information and discussing implementation issues.

The Secretary may make awards under this priority to support single or multi-State projects. A State may be served by only one supported project.

The Secretary considers the following factors in determining the funding level for each award for a single or multi-State project award:

(i) The total number of children birth through age 21 in the State;

(ii) The number of children with deaf-blindness in the State;

(iii) The State per pupil cost; and

(iv) The quality of the application submitted.

Funds awarded under this priority may not be used for direct early intervention, special education, or related services provided under Parts B and C of IDEA.

Competitive Preferences:

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: Up to 36 months.

Estimated Range: The estimated range of awards for State and Multi-State projects is $40,000–$550,000.

Maximum Project Award: The Secretary rejects and does not consider an application for a State and Multi-State project that proposes a budget exceeding $550,000 for any single budget period of 12 months. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: The maximum page limit for this priority is 50 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the "General Requirements" section of this notice.

Absolute Priority 2—Outreach Services to Minority Entities To Expand Research Capacity (84.326M)

Background:

The Congress has found that the Federal Government must be responsive to the growing needs of an increasingly more diverse society and that a more equitable distribution of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals.

The opportunity for full participation in awards for grants, cooperative agreements, and contracts by Historically Black Colleges and Universities (HBCUs) and other institutions of higher education with minority enrollments of at least 25 percent (OMIs) is essential if we are to take full advantage of the human resources we have to improve results for children with disabilities.

This priority focuses on assisting HBCUs and OMIs to prepare scholars for careers in research on early intervention, special education, and related services for infants, toddlers, and children with disabilities, consistent with the purposes of the program, described in section 672 of the Act. This preparation must consist of engaging both faculty and students at HBCUs and OMIs in special education research activities. The activities focus on an area of critical need that has material application in today's changing environment and will likely be the subject of future research efforts—*the special education of children in urban and high poverty schools.* By building a cadre of experienced researchers on this important topic, the chances for increased participation in awards for grants, cooperative agreements and contracts by HBCUs and OMIs will be more likely.

The association between socioeconomic status and enrollment in special education has been well-documented. Available data from the National Longitudinal Transition Study (NLTS) show that 68 percent of students in special education live in a household where the income is less than $25,000 per year versus 39 percent of the general youth population.

This association is heightened in urban school districts and, to a lesser extent, rural districts. NLTS data reveal that only 34 percent of students in special education live in suburban school districts compared to 48 percent of all students. Data from the Office for Civil Rights indicate that 30 percent of all inner-city students live in poverty compared to 18 percent of students in non-inner-city areas.

Urban school districts face a variety of unique challenges in meeting the educational needs of their students. Their schools often have high per student costs and limited financial resources. Their students are disproportionately poor and the population of individuals with limited English proficiency is among the fastest growing populations with special needs in some of these districts. This disproportionate representation of poor children in special education is also likely to be uniquely influenced by culturally diverse and urban settings, posing both opportunities and problems in the provision of special education services.

Priority:

This priority supports a project whose purpose is to increase the participation of HBCUs and OMIs in discretionary research and development grant activities authorized under IDEA, and to increase the capacity of individuals at these institutions to conduct research and development activities in early intervention, special education, and related services. The project must implement Congress' direction in section 661(d)(2)(A)(i) to provide outreach and technical assistance to these institutions to increase their participation in competitions for research, demonstration and outreach grants, cooperative agreements, and contracts funded under the IDEA. Activities must include:

(a) Conducting research activities at HBCUs and OMIs as explained later in this notice that link scholars at HBCUs and OMIs with researchers at institutions with an established research capacity in a mentoring relationship to develop both individual and institutional research capacity at those HBCUs and OMIs with a demonstrated need for capacity development.

(b) Providing linkages between HBCUs and OMIs with a demonstrated need for capacity development and institutions with an established research capacity to provide opportunities for researchers at those HBCUs and OMIs to develop first-hand experience in the

grants and contracts application process.

(c) Providing outreach and technical assistance to doctoral students at HBCUs and OMIs to increase their participation in competitions for grant awards to support student-initiated research in early intervention, special education, and related services.

(d) Establishing a cooperative partnership with the Disability and Rehabilitation Research Project (CFDA 84.133A–15) funded under section 21(b)(2)(A) of the Rehabilitation Act. This project awarded by the National Institute on Disability and Rehabilitation Research, was established to improve the quality and utility of research related to minority individuals with disabilities by (1) building capacity of researchers, especially those from minority backgrounds, to conduct disability research, especially related to rehabilitation of minorities, and (2) enhancing knowledge and awareness of issues related to minority individuals with disabilities among disability and rehabilitation researchers generally.

All research activities must be conducted for the purpose of capacity building. The research project must include one or more components focused on issues related to improving the delivery of special education services to, and educational results for, children with disabilities in urban and high poverty schools. Other possible research topics may include:

(a) Effective intervention strategies that make a difference in the provision of a free appropriate public education to children with disabilities;

(b) Practices to promote the successful inclusion of children with disabilities in the least restrictive environment;

(c) Strategies for establishing high expectations for children with disabilities and increasing their participation in the general curriculum provided to all children;

(d) Strategies for promoting effective parental participation in the educational process, especially among parents who have difficulty in participating due to linguistic, cultural, or economic differences;

(e) Effective disciplinary approaches, including behavioral management strategies, for ensuring a safe and disciplined learning environment;

(f) Strategies to improve educational results for students with disabilities in secondary education settings and promote their successful transition to postsecondary settings; or

(g) Effective practices for promoting the coordination of special education services with health and social services for children with disabilities and their families.

The project must ensure that findings are communicated in appropriate formats for researchers. The project must also ensure that findings of importance to other audiences, such as teachers, administrators, and parents, are made available to the Department of Education's technical assistance, training, and dissemination projects for distribution to those audiences.

The project must demonstrate experience and familiarity in research on children with disabilities in urban and high poverty schools with predominantly minority enrollments. The project must also demonstrate experience in capacity development in special education research, as well as a thorough understanding of the strengths and needs of HBCUs and OMIs.

In addition to the annual two-day Project Directors' meeting in Washington, DC listed in the "General Requirements" section of this notice, the project must budget for another annual two-day trip to Washington, DC to collaborate with the Federal project officer and other projects funded under this priority by sharing information and discussing implementation, and dissemination issues, including the carrying out of cross-project dissemination activities.

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a), and in addition—

(a) The recommendation of a review team consisting of three experts selected by the Secretary. The services of the review team, including a two-day site visit to the grantee, are to be performed during the last half of the project's second year and may be included in that year's evaluation required under 34 CFR 75.590. Costs associated with the services to be performed by the review team must also be included in the project's budget for year two. These costs are estimated to be approximately $6,000;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The degree to which the project's design and methodology demonstrates the potential for advancing significant new knowledge.

Under this priority, the Secretary will make one award for a cooperative agreement with a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards.

Competitive Preferences:

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: Up to 60 months.

Maximum Awared: The Secretary rejects and does not consider an application that proposes a budget exceeding $1,000,000 for any single budget period of 12 months to support one cooperative agreement. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: The maximum page limit for this priority is 75 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the "General Requirements" section of this notice.

Technology and Media Services for Individuals With Disabilities (CFDA 84.327)

Purpose of Program

The purpose of this program is to promote the development, demonstration, utilization of technology and to support educational media activities designed to be of educational value to children with disabilities. This program also provides support for some captioning, video description, and cultural activities.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, and 97; (b) The selection criteria for the priorities under this program are drawn from the EDGAR general selection criteria menu. The specific selection criteria for each priority are included in the funding application packet for the applicable competition.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Eligible Applicants

State and local educational agencies; institutions of higher education; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

Priority

Under section 687 of IDEA and 34 CFR 75.105(c)(3), we consider only applications that meet the following priority:

Absolute Priority 1—Steppingstones of Technology Innovation for Students with Disabilities (84.327A)

The purpose of this priority is for the support of projects that—

(a) Select and describe a technology-based approach for achieving one or more of the following purposes for early intervention, preschool, elementary, middle school or high school students with disabilities: (1) Improving the results of education or early intervention; (2) improving access to and participation in the general curriculum, or appropriate activities for preschool children; and (3) improving accountability and participation in educational reform. The technology-based approach must be an innovative combination of a new technology and additional materials and methodologies that enable the technology to achieve educational purposes for students with disabilities;

(b) Justify the approach on the basis of research or theory that supports the effectiveness of the technology-based approach for achieving one or more of the purposes presented in paragraph (a);

(c) Clearly identify and conduct work in *ONE* of the following phases:

(1) *Phase 1—Development:* Projects funded under Phase 1 must develop and refine a technology-based approach, and test its feasibility for use with students with disabilities. Activities may include development, adaptation, and refinement of technology, curriculum materials, or instructional methodologies. Activities must include formative evaluation. The primary product of Phase 1 should be a promising technology-based approach that is suitable for field-based evaluation of effectiveness.

(2) *Phase 2—Research on Effectiveness:* Projects funded under Phase 2 must select a promising technology-based approach that has been developed in a manner consistent with Phase 1, and subject the approach to rigorous field-based research and evaluation to determine effectiveness and feasibility in educational or early intervention settings. Approaches studied in Phase 2 may have been developed with previous funding under this priority or with funding from other sources. Products of Phase 2 include a further refinement and description of the technology-based approach, and sound evidence that, in a defined range of real world contexts, the approach can be effective in achieving one or more of the purposes presented in paragraph (a).

(3) *Phase 3—Research on Implementation:* Projects funded under Phase 3 must select a technology-based approach that has been evaluated for effectiveness and feasibility in a manner consistent with Phase 2, and must study the implementation of the approach in multiple, complex settings to acquire an improved understanding of the range of contexts in which the approach can be used effectively, and the factors that determine the effectiveness and sustainability of the approach in this range of contexts. Approaches studied in Phase 3 may have been developed and tested with previous funding under this priority or with funding from other sources. Factors to be studied in Phase 3 include factors related to the technology, materials and methodologies that constitute the technology-based approach. Also to be studied in Phase 3 are contextual factors associated with students, teacher attitudes and skills, physical setting, curriculum and instruction or early intervention approaches, resources, and professional development and policy supports, etc. Phases 2 and 3 can be contrasted as follows: Phase 2 studies the effectiveness the approach can have, while Phase 3 studies the effectiveness the approach is likely to have in sustained use in a range of typical educational settings. The primary product of Phase 3 should be a set of research findings that can be used to guide dissemination and utilization of the technology-based approach;

(d) In addition to the annual two-day Project Directors' meeting in Washington, DC mentioned above in the "General Requirements" section of this notice, budget for another annual trip to Washington, DC to collaborate with the Federal project officer and the other projects funded under this priority, and to share information and discuss findings and methods of dissemination; and

(e) Prepare products from the project in formats that are useful for specific audiences as appropriate, including parents, administrators, teachers, early intervention personnel, related services personnel, researchers, and individuals with disabilities.

Projects on Children From Birth to 3: The Secretary intends to fund at least two projects focusing on technology-based approaches for children with disabilities, ages birth to 3.

Competitive Preferences:

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: The Secretary intends to fund at least three projects in each phase. Projects funded under Phase 1 will be funded for up to 24 months. Projects funded under Phase 2 will be funded for up to 24 months. Projects funded under Phase 3 will be funded for up to 36 months. During the final year of projects funded under Phase 3, the Secretary will determine whether or not to fund an optional six-month period for additional dissemination activities.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $200,000 for any single budget period of 12 months for projects in Phases 1 and 2, and $300,000 for projects in Phase 3. The Secretary may change the maximum amount through a notice published in the **Federal Register**.

Page Limits: The maximum page limit for this priority is 40 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the "General Requirements" section of this notice.

Absolute Priority 2—Dramatic and Theatrical Experiences for Individuals Who Are Deaf or Hard of Hearing (84.327D)

Background:

The National Theatre of the Deaf's Professional Training Program for Deaf Theatre Personnel was established through a grant from the former Department of Health, Education and Welfare in 1967. The U.S. Department of Education, when established, continued to fund this training program, along with other programs conducted by the National Theatre of the Deaf. These programs have been key sources for the recruitment and training of deaf and, in some instances, hearing individuals in a variety of theatrical and production areas. These training and production projects are intended to promote cross-cultural understanding and to help enable deaf and hearing populations explore ways to overcome communication barriers. This, in turn, will provide opportunities for deaf individuals to participate in and contribute to society as a whole. This priority proposes to continue such activities.

Priority:

This priority supports, on a national level, a series of programs that will provide for the development and will broaden the theatrical and general cultural experience of the deaf and hard of hearing populations in the United States. This priority will enable individuals who are deaf or hard of hearing to participate in specialized professional actor's training and theatrical production that would otherwise be unavailable to them. Specifically, this priority will support—

(a) The provision of training in drama and theatrical production to actors and artists who are deaf or hard of hearing;

(b) The promotion of awareness of the artistic and intellectual achievement of people who are deaf or hard of hearing;

(c) The provision of outreach activities including professional and technical assistance to regional and local cultural programs; and

(d) The production of video-taped performances for distribution and, whenever possible, national and regional television broadcast.

To be considered for funding under this priority, a project must:

(a) Describe the training program(s), including curriculum and length and duration of the training periods;

(b) Identify the type of theatrical productions that will take place;

(c) Identify outreach activities that will be conducted; and

(d) Ensure that at least one major production will be videotaped for later use on television or through duplicated cassettes.

Competitive Preferences:

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: Up to 60 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $800,000 for any single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding these maximum amounts. The Secretary may change the maximum amounts through a notice published in the **Federal Register**.

Page Limits: The maximum page limit for this priority is 50 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the "General Requirements" section of this notice.

Absolute Priority 3—Research on Educational Captioning (84.327H)

This priority supports research on captioning of educational media and materials. Research can be based on the instructional use of captioning or the use of captioning as a language development tool for enhancing the reading and literacy skills of individuals who are deaf or hard of hearing. Media and technologies explored or used by projects funded under this priority may include, but are not limited to (1) Television—including high-definition television; (2) videos; and (3) other media and multi-media technologies such as interactive videodiscs and CD–ROMs.

Under this competition, projects must—

(a) Identify specific technological approaches that would be investigated;

(b) Carry out the research within a conceptual framework, based on previous research or theory, that provides a basis for the strategies to be studied, the research design, and target population;

(c) Collect, analyze and report (1) characteristics and outcome data (actual rather than expected results), including the settings, the service providers, and the individuals targeted by the project; and (2) multiple, functional outcome data on the individuals who are the focus of the technological approaches;

(d) Conduct the research in realistic settings such as residential or integrated schools or colleges, or in community settings, as appropriate; and

(e) Conduct the research using methodological procedures that will: (1) Produce unambiguous findings regarding the effects of approaches and effects of the interaction among particular approaches and particular groups of individuals or particular settings; and (2) permit use of the findings in policy analyses.

Competitive Preferences:

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: Up to 36 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $125,000 for any single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding these maximum amounts. The Secretary may change the maximum amounts through a notice published in the **Federal Register**.

Page Limits: The maximum page limit for this priority is 50 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the "General Requirements" section of this notice .

Absolute Priority 4—Video Description (84.327J)

Background:

This priority supports cooperative agreements to provide video description in two areas: (1) Broadcast and cable television programs; and (2) home video. The purpose of this activity will be to describe television programs and videos to make television programming and home videos more accessible to children and adults with visual disabilities. The intent of this priority is to enable children, and adults who are blind or have low vision to have access to television programming and home videos in order to enhance shared educational, social, and cultural experiences for children and adults with visual disabilities.

Note: In accordance with section 687(c)(2) of IDEA, funds from an award made under this priority may only be used for video descriptions of educational, news, and informational television programs beginning October 1, 2001. This may require a grantee to change some or all of the programming that it describes under this award as of this date.

Priority:

To be considered for funding under this priority, a project must —

(a) Include criteria that take into account the preference of consumers for particular topics of interest, the diversity of programs or videos available, and the contribution of these programs or videos to the general educational, social, and cultural experiences of individuals with visual disabilities;

(b) Identify the total number of hours and cost for each program to be described;

(c) Identify for each program to be described, the source, and amount of any private or other public support, if any;

(d) Demonstrate the willingness of program or video producers to permit video description and distribution of their program or video; and

(e) Evaluate the effectiveness of the methods and technologies used in providing this service and the impact on intended populations.

Competitive Preferences:

Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

Project Period: Up to 36 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $200,000 for any single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding these maximum amounts. The Secretary may change the maximum amounts through a notice published in the **Federal Register**.

Page Limits: The maximum page limit for this priority is 50 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the "General Requirements" section of this notice.

Absolute Priority 5—Closed Captioned Sports Programs (84.327P)

Background:

This priority supports cooperative agreements to continue and expand closed-captioning of major national sports programs shown on national commercial broadcast or basic cable television networks. Captioning provides a visual representation of the audio portion of the programming and enables children, young adults, and adults who are deaf or hard of hearing to participate in the shared experience of national sporting events. Funds provided under this priority may be used to support no more than fifty percent of the captioning costs.

Note: In accordance with section 687(c)(2) of IDEA, funds from an award made under this priority may only be used for captioning educational, news, and informational television programs beginning October 1, 2001. This may require a grantee to change some or all of the programming that it captions under this award as of this date.

Priority:

To be considered for funding under this competition, a project must—

(a) Include procedures and criteria for selecting programs for captioning that take into account the preference of consumers for particular sports programs;

(b) Provide a back-up system that will ensure quality captioning service;

(c) Identify and support a consumer advisory group that would meet at least annually;

(d) Identify the total number of hours and the cost per program hour for each of the programs captioned;

(e) Identify for each program to be captioned, the source, and amount of any private or other public support, if any;

(f) Demonstrate the willingness of major national commercial broadcast or basic cable networks to permit captioning of their programs; and

(g) Implement procedures for monitoring the extent to which full and accurate captioning is provided and use this information to make refinements in captioning operations.

Captions produced under these awards may be reformatted or otherwise adapted by owners or rights holders of programming, including networks or syndicators, for future airings or other distributions.

Competitive Preference: Within this absolute priority, we will award the following competitive preference, under 34 CFR 75.105(c)(2)(i): An additional 10 points to an applicant that proposes to include in the range of programs to be captioned at least 52 hours a year of sports programming originally broadcast in Spanish.

In addition, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of these competitive preferences, applicants can be awarded up to a total of 20 points in addition to those awarded under the published

selection criteria for this priority. That is, an applicant meeting these competitive preferences could earn a maximum total of 120 points.

Project Period: Up to 36 months.

Maximum Award: The Secretary rejects and does not consider an application that proposes a budget exceeding $100,000 for any single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding these maximum amounts. The Secretary may change the maximum amounts through a notice published in the **Federal Register**.

Page Limits: The maximum page limit for this priority is 50 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the "General Requirements" section of this notice.

Special Education—Training and Information for Parents of Children With Disabilities [CFDA No. 84.328]

Purpose of Program

The purpose of this program is to ensure that parents of children with disabilities receive training and information to help improve results for their children.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 97; and (b) The selection criteria for this priority are drawn from the EDGAR general selection criteria menu. The specific selection criteria for this priority are included in the funding application packet for this competition.

Priority

Under sections 661(e)(2) and 683 of the Act, and 34 CFR 75.105(c)(3), we will give an absolute preference to applications that meet this absolute priority:

Absolute Priority—Community Parent Resource Centers (84.328C)

The purpose of this statutory priority is to support local parent training and information centers that will help ensure that underserved parents of children with disabilities, including low-income parents, parents of children with limited English proficiency, and parents with disabilities, have the training and information they need to enable them to participate effectively in helping their children with disabilities to—

(a) Meet developmental goals and, to the maximum extent possible, those challenging standards that have been established for all children; and

(b) Be prepared to lead productive independent adult lives, to the maximum extent possible.

Each community parent training and information center supported under this priority must—

(a) Provide training and information that meets the training and information needs of parents of children with disabilities proposed to be served by the project;

(b) Assist parents to understand the availability of, and how to effectively use, procedural safeguards under section 615 of the Act, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in the Act;

(c) Serve the parents of infants, toddlers, and children with the full range of disabilities by assisting parents to—

(1) Better understand the nature of their children's disabilities and their educational and developmental needs;

(2) Communicate effectively with personnel responsible for providing special education, early intervention, and related services;

(3) Participate in decision making processes and the development of individualized education programs and individualized family service plans;

(4) Obtain appropriate information about the range of options, programs, services, and resources available to assist children with disabilities and their families;

(5) Understand the provisions of the Act for the education of, and the provision of early intervention services to, children with disabilities; and

(6) Participate in school reform activities;

(d) Contract with the State education agencies, if the State elects to contract with the community parent resource centers, for the purpose of meeting with parents who choose not to use the mediation process, to encourage the use and explain the benefits of mediation, consistent with sections 615(e)(2)(B) and (D) of the Act;

(e) In order to serve parents and families of children with the full range of disabilities, network with appropriate clearinghouses, including organizations conducting national dissemination activities under section 685(d) of the Act, and with other national, State, and local organizations and agencies, such as protection and advocacy agencies;

(f) Establish cooperative partnerships with the parent training and information centers funded under section 682 of the Act;

(g) Be designed to meet the specific needs of families who experience significant isolation from available sources of information and support; and

(h) Annually report to the Secretary on—

(1) The number of parents to whom it provided information and training in the most recently concluded fiscal year; and

(2) The effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities.

The Secretary intends to fund a maximum of ten awards.

Competitive Priorities: Within this absolute priority, we will give preference to applications under 34 CFR 75.105(c)(2)(i) that meet one or both of the following competitive priorities:

The Secretary awards 20 points to an application submitted by a local parent organization that has a board of directors, the majority of whom are parents of children with disabilities, from the community to be served.

The Secretary awards 5 points to an application that proposes to provide services to one or more Empowerment Zones or Enterprise Communities that are designated within the areas served by projects. To meet this priority an applicant must indicate that it will:

(a) Design a program that includes special activities focused on the unique needs of one or more Empowerment Zones or Enterprise Communities; or

(b) Devote a substantial portion of program resources to providing services within, or meeting the needs of residents of these zones and communities.

As appropriate, the proposed project under IDEA must contribute to the strategic plan of the Empowerment Zones or Enterprise Communities and be made an integral component of the Empowerment Zone or Enterprise Community activities. A list of areas that have been selected as Empowerment Zones or Enterprise Communities is included in the application package.

In addition, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of such strategies, the Secretary will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of these competitive preferences, applicants can be awarded up to a total of 30 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting all of these competitive preferences could earn a maximum total of 130 points.

Eligible Applicants: Local parent organizations are defined in section 682(g) and 683(c) of IDEA. According to section 682(g), a parent organization is a private nonprofit organization (other than an institution of higher education) that (a) has a board of directors, (1) the parent and professional members of which are broadly representative of the population to be served, (2) the majority of whom are parents of children with disabilities, and (3) that includes individuals with disabilities and individuals working in the fields of special education, related services, and early intervention; or (b) has a membership that represents the interests of individuals with disabilities and has established a special governing committee that meets requirements of paragraph (a) and a memorandum of understanding between this special governing committee and the board of directors of the organization that clearly outlines the relationship between the board and the committee and the decision making responsibilities and authority of each. According to section 683(c), local parent organizations are parent organizations that must meet one of the following criteria—

(a) Have a board of directors the majority of whom are from the community to be served; or

(b) Have as part of its mission, serving the interests of individuals with disabilities from such community; and have a special governing committee to administer the project, a majority of the members of which are individuals from such community.

Examples of administrative responsibilities include controlling the use of the project funds, and hiring and managing project personnel.

Project Period: Up to 36 months.

Project Award: Projects will not be funded in excess of $100,000 for any single budget period of 12 months.

Page Limits: The maximum page limit for this priority is 30 double-spaced pages.

Note: Applications must meet the required page limit standards that are described in the "General Requirements" section of this notice.

For Applications Contact

Education Publications Center (ED Pubs), PO Box 1398, Jessup, Maryland 20794–1398. Telephone (toll free): 1–877–4ED–Pubs (1–877–433–7827). FAX: 301–470–1244. Individuals who use a telecommunications device for the deaf (TDD) may call (toll free) 1–877–576–7734.

You may also contact Ed Pubs via its Web site (http://www.ed.gov/pubs/edpubs.html) or its E-mail address (edpubs@inet.ed.gov).

For Further Information Contact: Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW, room 3317, Switzer Building, Washington, D.C. 20202–2550. Telephone: (202) 205–9817.

If you use a TDD you may call the TDD number: (202) 205–8953.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the Department as listed above. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Intergovernmental Review

All programs in this notice (except for Research and Innovative) are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for those programs.

Available Funds

The Administration has requested funds for these programs for Fiscal Year 2000. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process before the end of the fiscal year, if Congress appropriates funds for these programs.

BILLING CODE 4000–01–P

INDIVIDUALS WITH DISABILITIES EDUCATION ACT
APPLICATION NOTICE FOR FISCAL YEAR 2000

CFDA No. and Name	Applications Available	Application Deadline Date	Deadline for Intergovernmental Review	Maximum Award (per year)*	Project Period	Page Limit**	Estimated Number of Awards
84.324B Student Initiated Research Projects	09/13/99	02/04/00	11/13/00	$20,000	Up to 12 mos.	25	12
84.324C Field Initiated Research Projects	09/13/99	12/10/99	02/08/00	$180,000	***Up to 60 mos.	50	14
84.324N Initial Career Awards	09/13/99	12/10/99	02/08/00	$75,000	Up to 36 mos.	30	4
84.324M Model Demonstration Projects for Children with Disabilities	09/13/99	11/29/99	01/28/00	$150,000	Up to 48 mos.	40	14
84.324R Outreach Projects for Children with Disabilities	09/13/99	12/03/99	02/01/00	$150,000	Up to 36 mos.	40	21
84.324P Research Institute to Enhance the Role of Special Education and Children with Disabilities in Education Policy Reform	09/13/99	05/19/00	07/18/00	$700,000	Up to 60 mos.	70	1
84.324W Improving Post-School Outcomes: Identifying and Promoting What Works	09/13/99	11/13/99	01/12/00	$500,000	Up to 60 mos.	60	1
84.325A Preparation of Special Education, Related Services, and Early Intervention Personnel to Serve Infants, Toddlers, and Children with Low-Incidence Disabilities	09/03/99	10/15/99	12/14/99	$300,000	Up to 60 mos.	40	33
84.325D Preparation of Leadership Personnel	09/03/99	10/15/99	12/14/99	$200,000	Up to 48 mos.	40	13
84.325E Preparation of Personnel in Minority Institutions	09/03/99	10/15/99	12/15/99	$200,000	Up to 48 mos.	40	16
84.325H Improving the Preparation of Personnel to Serve Children with High-Incidence Disabilities	09/03/99	11/12/99	01/11/00	$200,000	Up to 36 mos.	40	31
84.326C Projects for Children Who are Deaf-Blind	09/13/99	01/07/00	03/07/00	$550,000	Up to 36 mos.	50	1
84.326M Outreach Services to Minority Entities to Expand Research Capacity	09/13/99	01/07/00	03/07/00	$1,000,000	Up to 60 mos.	75	1

BILLING CODE 4000-01-C

CFDA No. and Name	Applications Available	Application Deadline Date	Deadline for Intergovernmental Review	Maximum Award (per year)*	Project Period	Page Limit**	Estimated Number of Awards
84.327A Steppingstones of Technology Innovation for Students with Disabilities	09/13/99	12/10/99	02/08/00				11
Phase 1 and 2				$200,000	Up to 24 mos.	40	
Phase 3				$300,000	Up to 36 mos.	40	
84.327D Dramatic and Theatrical Experiences for Individuals Who Are Deaf or Hard of Hearing	09 13//99	11/13/99	01/12/00	$800,000	Up to 60 mos.	50	1
84.327H Research on Educational Captioning	09/13/99	12/03/99	02/08/00	$125,000	Up to 36 mos.	50	2
84.327J Video Description	09/13/99	02/18/00	04/18/00	$200,000	Up to 36 mos.	50	4
84.327P Closed Captioned Sports Programs	09/13/99	02/11/00	04/11/00	$100,000	Up to 36 mos.	50	5
84328C Community Parent Resource Centers	09/13/99	03/03/00	05/02/00	$100,000	Up to 36 mos.	30	10

*The Secretary rejects and does not consider an application that proposes a budget exceeding the amount listed for each priority for any single budget period of 12 months. ** Applicants must limit the Application Narrative, Part III of the Application, to the page limits noted above. Please refer to the "Page Limit" requirements included under each priority in this notice. The Secretary rejects and does not consider an application that does not adhere to this requirement. ***The majority of projects will be funded for up to 36 months. Only in exceptional circumstances will projects be funded for more than 36 months, up to a maximum of 60 months.

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http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo/nara/index.html

Dated: August 23, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–22359 Filed 8–27–99; 8:45 am]

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federal register

Monday
August 30, 1999

Part V

Department of the Interior

Fish and Wildlife Service

Migratory Bird Hunting; Environmental Impact Statement on White Goose Management; Notice

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Migratory Bird Hunting; Environmental Impact Statement on White Goose Management; Notice

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The U.S. Fish and Wildlife Service (Service or "we") is issuing this notice to invite public participation in the scoping process for preparing an Environmental Impact Statement (EIS) that considers a range of management alternatives aimed at addressing population expansion of lesser snow geese, Ross' geese, and greater snow geese (white geese). This notice invites further public participation in the scoping process, identifies the location, date, and time of public scoping meetings, and identifies the Service official to whom questions and comments may be directed.

DATES: Written comments regarding EIS scoping should be submitted by November 22, 1999, to the address below. Dates for nine public scoping meetings are identified in the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Written comments should be sent to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, 4401 N. Fairfax Dr., Suite 634—Arlington, VA 22203. Alternatively, comments may be submitted electronically to the following address: white—goose—eis@fws.gov. The public may inspect comments during normal business hours in Room 634 " Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia. Locations for nine public scoping meetings are identified in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Mr. Jon Andrew, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, (703) 358–1714, or James Kelley, Office of Migratory Bird Management (703) 358–1964.

SUPPLEMENTARY INFORMATION: On May 13, 1999, we published a Notice of Intent to prepare an EIS on white goose management (64 FR 26268). This action is in response to population expansion of white geese, which has resulted in habitat degradation in certain breeding, migration, and/or wintering areas of the three species of geese involved.

Lesser Snow Geese and Ross' Geese

We believe that the combined population of lesser snow geese and Ross' geese in the mid-continent region has exceeded the long-term carrying capacity of its breeding habitat and must be reduced. These geese have become seriously injurious to their arctic and subarctic habitat and habitat important to other migratory birds. We believe that population reduction measures are necessary to prevent further habitat destruction and to protect the remaining habitat upon which numerous wildlife species depend. The Arctic Goose Habitat Working Group estimated that the combined population of lesser snow geese and Ross' geese in the mid-continent region should be reduced by 50% by 2005 (Batt 1997). That would suggest a reduction from the 1999 winter index of approximately 2.8 million birds to approximately 1.4 million birds.

Greater Snow Geese

The greater snow goose population has expanded from less than 50,000 birds in the late 1960s to approximately 700,000 today. With a growth rate of about 9% per year, the population is expected to reach 1,000,000 by 2002 and 2,000,000 by 2010 (Batt 1998). While researchers have not documented the damage to the breeding habitat of greater snow geese to the same degree as the mid-continent white geese, high populations of greater snow geese are negatively impacting natural marshes in the St. Lawrence estuary and some coastal marshes of the Mid-Atlantic U.S (Batt 1998). The Arctic Goose Habitat Working Group recommended that the population be stabilized by the year 2002 at between 800,000 to 1,000,000 birds (Batt 1998). This strategy is intended to prevent the destruction of arctic habitat that is likely to occur if the population exceeds the carrying-capacity of breeding areas.

Alternatives

We are considering the following alternatives as a result of public comments we received previously. After the scoping process, we will develop the alternatives to be included in the EIS and base them on the mission of the Service and comments received during scoping. We are soliciting your comments on issues, alternatives, and impacts to be addressed in the EIS.

A. No Action Alternative

Under the No Action Alternative, no additional regulatory methods or direct population control strategies would be authorized. Existing white goose hunting regulations would remain in place.

B. New Regulatory Alternatives (Proposed Action)

This alternative seeks to provide new regulatory options to wildlife management agencies that will increase the harvest of white geese above that which results from existing hunting frameworks. This approach may include legalization of additional hunting methods such as electronic calls, unplugged shotguns, and expanded shooting hours. This alternative also includes establishment of a conservation order in the U.S. to reduce and/or stabilize white goose populations. A conservation order would authorize taking of white geese after the normal framework closing date of March 10, through August 31.

The intent of this alternative is to significantly reduce or stabilize white goose populations without threatening their long-term health. We are confident that reduction or stabilization efforts will not result in populations falling below either the lower management thresholds established by Flyway Councils, or the North American Waterfowl Management Plan population objectives. Monitoring and evaluation programs are in place to estimate population sizes and will be used to prevent over-harvest of these populations.

C. Direct Population Control on Wintering and Migration Areas in the U.S.

This alternative would involve direct population control strategies such as trapping and culling programs, market hunting, or other general strategies that would result in the killing of white geese on migration and/or wintering areas in the U.S. Some of these types of control measures could involve disposal of large numbers of carcasses.

D. Seek Direct Population Control on Breeding Grounds by Canada

This alternative, if successful, would involve direct population control strategies, such as trapping and culling programs, market hunting, or other general strategies, that would result in killing of white geese on breeding colonies in Canada. Some of these types of control measures could involve disposal of large numbers of carcasses. We do not have the authority to implement direct population control measures on migration or breeding areas in Canada. Therefore, this alternative would require extensive consultation with Canada in order to urge implementation of control measures on breeding areas. Such measures may or may not involve active U.S. participation.

Issue Resolution and Environmental Review

The primary issue to be addressed during the scoping and planning process for the EIS is to determine which management alternatives for the control of white goose populations will be analyzed. We will prepare a discussion of the potential effect, by alternative, which will include the following areas:

(1) White goose populations and their habitats.

(2) Other bird populations and their habitats.

(3) Effects on other species of flora and fauna.

(4) Socioeconomic effects.

Environmental review of the management action will be conducted in accordance with the requirements of the National Environmental Policy Act (NEPA), as appropriate. This Notice is being furnished in accordance with 40 CFR 1501.7, to obtain suggestions and information from other agencies, tribes, and the public on the scope of issues to be addressed in the EIS. A draft EIS should be available to the public in the winter of 2000.

Public Scoping Meetings

Nine public scoping meetings will be held on the following dates at the indicated locations and times:

1. September 29, 1999; Pomona, NJ at the Richard Stockton College of New Jersey, A Wing Lecture Hall, Jimmie Leeds Road, 7 p.m. to 9:30 p.m.

2. September 30, 1999; Dover, DE at the Richardson and Robbins Auditorium, Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, 7 p.m. to 9:30 p.m.

3. October 3, 1999; Sacramento, CA at the Auditorium, Resource Building, 1416 Ninth St., 3 p.m. to 5:30 p.m.

4. October 5, 1999; Rosenberg, TX at the Texas Agricultural Extension Service Building, 1436 Band Road, 7 p.m. to 9:30 p.m.

5. October 6, 1999; Baton Rouge, LA at the Louisiana Room, First Floor, Louisiana Department of Wildlife and Fisheries Building, 2000 Quail Drive, 7 p.m. to 9:30 p.m.

6. October 12, 1999; Bismarck, ND at the North Dakota Game and Fish Department Auditorium, 100 N. Bismarck Expressway, 7 p.m. to 9:30 p.m.

7. October 13, 1999; Bloomington, MN at the Best Western Thunderbird Hotel and Convention Center, 2201 East 78th Street, 7 p.m. to 9:30 p.m.

8. October 14, 1999; Kansas City, MO at the Holiday Inn Sports Complex, 4011 Blue Ridge Cutoff, 7 p.m. to 9:30 p.m.

9. October 21, 1999; Washington, DC in the Auditorium of the Department of the Interior Building, 1849 C Street NW, 9 a.m. to 11:30 a.m.

Meeting participants may choose to submit oral and/or written comments on the EIS scoping process. To facilitate planning, we request that individuals or organizations that desire to submit oral comments at meetings to send us their name and the meeting location at which comments will be submitted. Name and meeting location information should be sent to the location indicated under the **ADDRESSES** caption. However, submission of names prior to a particular meeting is not required in order to present oral comments at any meeting.

Written comments may also be submitted by November 22, 1999, to the location indicated under the **ADDRESSES** caption. Alternatively, comments may be submitted electronically by November 22, 1999, to the following email address:
white__goose__eis@fws.gov.

References Cited

Batt, B.D.J., editor. 1997. Arctic ecosystems in peril: report of the Arctic Goose Habitat Working Group. Arctic Goose Joint Venture Special Publication. U. S. Fish and Wildlife Service, Washington, DC and Canadian Wildlife Service, Ottawa, Ontario. 120pp.

Batt, B.D.J., editor. 1998. The greater snow goose: report of the Arctic Goose Habitat Working Group. Arctic Goose Joint Venture Special Publication. U. S. Fish and Wildlife Service, Washington, DC and Canadian Wildlife Service, Ottawa, Ontario. 88pp.

Authorship

The primary author of this Notice is James R. Kelley, Jr., Office of Migratory Bird Management.

Dated: August 24, 1999.

Paul R. Schmidt,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 99–22382 Filed 8–27–99; 8:45 am]

BILLING CODE 4310–55–P

federal register

Monday
August 30, 1999

Part VI

Department of the Interior

National Park Service

36 CFR Part 51
Concession Contracts; Proposed Rule

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 51

Concession Contracts

AGENCY: National Park Service, Interior.

ACTION: Proposed rule; extension of comment period.

SUMMARY: Notice was given in Part III of the **Federal Register** dated June 30, 1999, 64 FR 35516 to 35536, that the National Park Service proposes to amend existing regulations on concession contracts to comply with the requirements of Title IV of the National Parks Omnibus Management Act of 1998, and is soliciting written comments from all interested parties on or before August 30, 1999. However, it has been determined that it would be in the best interest of all interested parties and the United States to provide an additional period of time within which to submit written comments.

DATES: Written comments on the proposed rule must be received on or before October 15, 1999.

ADDRESSES: Written comments should be sent to the Concession Program Manager, National Park Service, 1849 "C" Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Wendelin Mann, Concession Program, National Park Service, 1849 "C" Street, NW, Washington, DC 20240 (202/565–1219).

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–22603 Filed 8–27–99; 8:45 am]

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 211/P.L. 106–48
To designate the Federal building and United States courthouse located at 920 West Riverside Avenue in Spokane, Washington, as the "Thomas S. Foley United States Courthouse", and the plaza at the south entrance of such building and courthouse as the "Walter F. Horan Plaza". (Aug. 17, 1999; 113 Stat. 230)

H.R. 1219/P.L. 106–49
Construction Industry Payment Protection Act of 1999 (Aug. 17, 1999; 113 Stat. 231)

H.R. 1568/P.L. 106–50
Veterans Entrepreneurship and Small Business Development Act of 1999 (Aug. 17, 1999; 113 Stat. 233)

H.R. 1664/P.L. 106–51
Emergency Steel Loan Guarantee and Emergency Oil and Gas Guaranteed Loan Act of 1999 (Aug. 17, 1999; 113 Stat. 252)

H.R. 2465/P.L. 106–52
Military Construction Appropriations Act, 2000 (Aug. 17, 1999; 113 Stat. 259)

S. 507/P.L. 106–53
Water Resources Development Act of 1999. (Aug. 17, 1999; 113 Stat. 269)

S. 606/P.L. 106–54
For the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical, LLC (successor to Kerr-McGee Chemical Corporation), and for other purposes. (Aug. 17, 1999; 113 Stat. 398)

S. 1546/P.L. 106–55
To amend the International Religious Freedom Act of 1998 to provide additional administrative authorities to the United States Commission on International Religious Freedom, and to make technical corrections to that Act, and for other purposes. (Aug. 17, 1999; 113 Stat. 401)

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1, 2 (2 Reserved)	(869–034–00001–1)	5.00	[5] Jan. 1, 1999
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1997 to June 30, 1998. The volume issued July 1, 1997, should be retained.

[5] No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

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Title 3—

The President

Proclamation 7218 of August 27, 1999

America Goes Back to School, 1999

By the President of the United States of America

A Proclamation

Education has always been at the heart of opportunity in America. It opens doors for our young people, gives them the tools they need to succeed, and instills in them a sense of responsibility as they strive to make the most of their lives. However, while the importance of education is unchanging, the challenges facing America's schools and students are not. There are now more children, from more diverse backgrounds, in our public schools than at any time in our country's history. We must ensure that their education gives them the knowledge and skills they need to help our Nation thrive in the new century.

America's current prosperity offers us an unprecedented opportunity to invest in our children's education. I am proud that we have begun that task by opening the doors of college to all our young people with tax credits and more affordable student loans, more Pell grants and work-study jobs, education IRAs, and the new HOPE Scholarship tax cut that more than 5 million Americans will have received by the end of this year. I have also announced $43 million in grants to help States and communities to recruit talented people into teaching jobs and improve the quality of teaching nationwide.

These are important accomplishments, but we must build on them. The goal of the America Goes Back to School initiative is to support family and community involvement in childhood learning and to build strong community support for our schools, teachers, and students.

This year's theme—"Challenge Our Students and They Will Soar"—reflects our faith in America's youth and our commitment to providing them with the tools they need to succeed in our rapidly changing world. We must turn around failing schools, hold States and school districts accountable for helping all children reach high academic standards, support charter schools and other forms of public school choice, expand after-school and summer programs, develop pathways to college and careers, and provide safe, drug-free schools for all our children. We must ensure that all our students have access to computers and that every classroom and library is connected to the Internet. If we want our children to compete at a world-class level, they must have modern, world-class schools. I am therefore challenging the Congress to enact my proposals to build and modernize 6,000 public schools; and I am also asking the Congress to continue funding to hire 100,000 well-prepared teachers to reduce class size in the early grades, the years that we know—intuitively and through research—are critical to the development of children's learning and thinking skills.

My Administration is working hard to improve our Nation's education system, but no government effort can replace the vision, encouragement, and dedication of our families and communities. As America's students go back to school this year, let us pledge to provide every child with a safe and supportive environment in which to learn and grow, and let us ensure that every segment of our society is involved in the effort. Let us also resolve that our young people will return to schools that are genuine places

of learning, where they receive the care, attention, and education they need to reach their full potential.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim August 29 through September 11, 1999, as a time when America Goes Back to School. I encourage parents, schools, community and State leaders, businesses, civic and religious organizations, and the people of the United States to observe this period with appropriate ceremonies and activities expressing support for high academic standards and promoting family and community involvement in providing a quality education for every child.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-seventh day of August, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 99–22777
Filed 8–30–99; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13135 of August 27, 1999

Amendment to Executive Order 12216, President's Committee on the International Labor Organization

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Federal Advisory Committee Act, as amended (5 U.S.C. App.), it is hereby ordered that Executive Order 12216 is amended as follows: The second sentence of section 1–101 is amended by substituting "the Assistant to the President for Economic Policy, and the Presidents of..." for "and the Presidents of...".

William J. Clinton

THE WHITE HOUSE,
August 27, 1999.

[FR Doc. 99–22778
Filed 8–30–99; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Presidential Determination No. 99–33 of August 12, 1999

Emergency Presidential Determination on Additional FY 99 Refugee Admissions Numbers Pursuant to Section 207(b) of the Immigration and Nationality Act

Memorandum for the Secretary of State

In accordance with section 207(b) of the Immigration and Nationality Act (the "Act") (8 U.S.C. 1157(b)), and after appropriate consultations with the Congress, I hereby determine that an unforeseen refugee emergency exists in Europe, and that the admission to the United States of Kosovar refugees in response to this emergency is justified by grave humanitarian concerns and is in the national interest. The admission of these refugees cannot be accomplished under the worldwide refugee admissions ceiling of 78,000 for Fiscal Year 1999, as authorized in Presidential Determination 98–39 of September 30, 1998, and an increase to 91,000 is warranted. The revised regional allocations are as follows:

Africa	12,000
East Asia	9,000
Europe	61,000
Latin America/Caribbean	3,000
Near East/South Asia	4,000
Unallocated	2,000

The provisions of Presidential Determination 98–39 are retained, except to the extent superseded by this determination.

You are hereby directed to report this determination to the Congress immediately and to publish it in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, August 12, 1999.

[FR Doc. 99–22779
Filed 8–30–99; 8:45 am]
Billing code 4710–10–M

Presidential Determination No. 99–34 of August 13, 1999

Determination to Authorize the Furnishing of Nonlethal Emergency Military Assistance to the States Participating in the Economic Community of West African States' Monitoring Group (ECOMOG) Under Section 506(a)(l) of the Foreign Assistance Act of 1961, as Amended

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 506(a)(l) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318(a)(1) (the "Act"), I hereby determine that:

(1) an unforeseen emergency exists that requires immediate military assistance to states currently participating in, and to states that may in the future participate in, ECOMOG; and

(2) the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other law except section 506(a)(1) of the Act.

Therefore, I direct the drawdown from the inventory and resources of the Department of Defense of an aggregate value not to exceed $3 million in defense articles from the stocks of the Department of Defense, defense services of the Department of Defense, and military education and training, to provide drawdown assistance to the states currently participating (Nigeria, Ghana, Sierra Leone, Mali, and Guinea), and to those states that in the future may participate, in ECOMOG to enhance ECOMOG's capabilities to participate in efforts to restore peace and security in Sierra Leone.

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, August 13, 1999.

[FR Doc. 99–22780
Filed 8–30–99; 8:45 am]
Billing code 4710–10–M

Memorandum of August 17, 1999

Delegation of Responsibilities Under the International Religious Freedom Act of 1998

Memorandum for the Secretary of State

By the authority vested in me by the Constitution and the laws of the United States of America, including section 301 of title 3 of the United States Code, I hereby delegate to the Secretary of State the functions and authorities vested in the President by title IV, subtitle I (sections 401–409) of the International Religious Freedom Act of 1998 (Public Law 105–292) (the "Act").

Any reference in this memorandum to any act shall be deemed to be a reference to such act as amended from time to time.

The functions delegated by this memorandum may be delegated within the Department of State.

You are authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, August 17, 1999.

[FR Doc. 99–22781
Filed 8–30–99; 8:45 am]
Billing code 4710–10–M

Presidential Determination No. 99–35 of August 17, 1999

Determination to Authorize the Furnishing of Commodities and Services for the United Nations War Crimes Tribunal Established With Regard to the Former Yugoslavia

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me as President of the United States, including section 554 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1999, as enacted in Public Law 105–277, I hereby:

(a) determine that a drawdown of up to $5 million of commodities and services from the inventory and resources of the Department of Defense will contribute to a just resolution of charges regarding genocide and other violations of international humanitarian law; and

(b) direct the drawdown, pursuant to section 552(c) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2348a (the "Act"), of up to $5 million in commodities and services from the inventory and resources of the Department of Defense for the United Nations War Crimes Tribunal established with regard to the former Yugoslavia by the United Nations Security Council, without regard to the ceiling limitation contained in section 552(c)(2) of the Act.

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, August 17, 1999.

[FR Doc. 99–22782
Filed 8–30–99; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

Federal Register
Vol. 64, No. 168
Tuesday, August 31, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 57 and 75

Inspection of Eggs and Regulations for Inspection and Certification of Quality of Agricultural and Vegetable Seeds

CFR Correction

In Title 7 of the Code of Federal Regulations, parts 53 to 209, revised as of Jan. 1, 1999, page 80, § 57.760 is corrected by reinstating text missing from the end of the section, the source note, and the effective date; and page 193, which is duplicate text, is removed. The reinstated text follows:

§ 57.760 Inspection of egg handlers.

* * * any place of business, plant, or transport vehicle subject to inspection under the provisions of the Act.

[63 FR 45675, Aug. 27, 1998. Redesignated at 63 FR 69970, Dec. 17, 1998]

Effective Date Note: At 63 FR 69970, Dec. 17, 1998, § 57.760 was redesignated from § 59.760. At 63 FR 45675, Aug. 27, 1998, § 59.760 was revised, effective Aug. 27, 1999. For the convenience of the user, the superseded text is set forth as follows:

[FR Doc. 99–55527 Filed 8–30–99; 8:45am]
BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV99–906–3 IFR]

Oranges and Grapefruit Grown in Lower Rio Grande Valley in Texas; Changes to Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule changes the pack requirements currently prescribed under the marketing order covering oranges and grapefruit grown in the Lower Rio Grande Valley in Texas. The marketing order regulates the handling of such fruit and is administered locally by the Texas Valley Citrus Committee (Committee). This rule changes the orange and grapefruit pack sizes so that each pack size will reflect the actual number of fruit in a 7/10 bushel carton. It also more closely aligns the pack sizes for Texas oranges with the pack sizes used by shippers of California oranges. These changes will enable Texas handlers to compete more effectively in the marketplace. The rule also makes conforming changes to the pack size references in the minimum size regulations to keep the minimum size requirements for orange and grapefruit the same as currently specified.

DATES: Effective September 1, 1999; comments received by November 1, 1999 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, Regional Manager, McAllen Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone: (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 906, as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule changes the current orange and grapefruit pack sizes from a 1⅔ bushel box basis to pack sizes based upon the actual number of fruit packed in a 7/10 bushel carton. The orange pack

sizes also will be more closely aligned to the pack sizes and size tolerances used by California orange shippers. The rule also makes conforming changes to the pack size references in the minimum size regulations for oranges and grapefruit to keep the minimum size requirements the same as currently specified. This rule will enable handlers to compete more effectively in the marketplace.

The Committee's Grade and Size Subcommittee met on April 20 and 29 and May 4, 1999, to discuss possible changes to the order's pack requirements. At a meeting on May 13, 1999, the Subcommittee recommended and the Committee unanimously approved changes to the regulations. On July 1, 1999, the Committee met again and unanimously recommended the following changes to the orange and grapefruit pack and conforming changes to the size regulations.

(1) Eliminate two pack size tables for different orange varieties, change the pack sizes to a 7/10 bushel carton basis for all orange varieties to be consistent with California pack sizes, and add a pack size 64 to the California sizes. The changes will result in one pack size chart ranging from pack size 24 to 138 with minimum and maximum diameter size ranges for all oranges, and, when packed in 7/10 bushel containers, the pack sizes will reflect the actual number of fruit in the container;

(2) Replace the 1 2/5 bushel box references in the regulations with 7/10 bushel carton references;

(3) Change current grapefruit pack sizes based on a 1 2/5 bushel box to pack sizes based upon the actual number of fruit packed in a 7/10 bushel carton; and

(4) Make conforming changes to the size requirements in § 906.365 based on the above changes to keep the minimum size requirements for oranges and grapefruit the same as currently specified.

Under the terms of the order, fresh market shipments of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas are required to be inspected and meet grade, size, container, and pack requirements. Section 906.40 authorizes the issuance of pack regulations. Section 906.340(a)(2) of the order's rules and regulations outlines pack requirements for fresh shipments of Texas oranges and grapefruit.

Changes to the Pack Requirements for Oranges

Section 906.340(a)(2)(i) specifies pack requirements for oranges. It includes two tables specifying pack sizes in terms of minimum and maximum diameters for each specified pack size, for different varieties of oranges. Packing tolerances for off-size are specified, as are standard pack requirements.

Currently, oranges are divided into two categories for the purpose of pack regulations: (1) Navel, Valencia, and similar late-type oranges, and (2) all other varieties of oranges. For all types of oranges, 13 pack sizes ranging from pack size 46 (the largest fruit) to pack size 324 (the smallest fruit) are specified. The minimum diameters for Navel, Valencia, and similar late-type oranges for each of the pack sizes are 2/16 inch smaller than those specified for all other oranges, while the maximum diameters for all varieties of oranges in the 13 pack sizes are the same. All oranges, however, must at least be pack size 288, except that the minimum diameter limit is 2 6/16 inches.

The current orange pack sizes and minimum and maximum diameters are shown in the following tables:

Table I (Section 906.304(a)(2)(i)(a))

TABLE 1.—ORANGES, EXCEPT NAVELS, VALENCIAS, & SIMILAR LATE-TYPE ORANGES

[1 2/5 Bushel Box]

Pack size	Diameter in inches	
	Minimum	Maximum
46's	4 5/16	5
54's or 56's	4 2/16	4 12/16
64's	3 15/16	4 6/16
70's or 72's	3 13/16	4 5/16
80's	3 10/16	4 2/16
100's	3 7/16	3 13/16
112's	3 5/16	3 11/16
125's	3 3/16	3 9/16
163's	2 15/16	3 5/16
200's	2 11/16	3 1/16
252's	2 7/16	2 12/16
288's	2 4/16	2 9/16
324's	2 3/16	2 6/16

Table II (Section 906.340(a)(2)(i)(c))

TABLE II.—NAVELS, VALENCIA & SIMILAR LATE-TYPE ORANGES

[1 2/5 Bushel Box]

Pack size	Diameter in inches	
	Minimum	Maximum
46	4 3/16	5
54	4	4 12/16
64	3 13/16	4 6/16
70 or 72	3 11/16	4 5/16
80	3 6/16	4 2/16

TABLE II.—NAVELS, VALENCIA & SIMILAR LATE-TYPE ORANGES—Continued

[1 2/5 Bushel Box]

Pack size	Diameter in inches	
	Minimum	Maximum
100	3 5/16	3 13/16
112	3 3/16	3 11/16
125	3 1/16	3 9/16
163	2 13/16	3 5/16
200	2 9/16	3 1/16
252	2 5/16	2 12/16
288	2 2/16	2 9/16

All oranges must be at least Pack Size 288, except that the minimum diameter limit for Pack Size 288 oranges in any lot shall be 2 6/16 inches.

The Committee recommended changing the orange pack sizes to the pack sizes used by the California citrus industry. A study by the Committee indicates that approximately 39 percent of Texas oranges are sold in Texas, and about 36 percent in California. Almost 90 percent of Texas oranges are marketed west of the Mississippi River. California dominates the western domestic orange market with fruit available on a year-round basis. Texas, on the other hand, is a relatively small producer of oranges with a marketing season from late September through May. Presently, the pack sizes for California oranges are different from those for Texas oranges. Furthermore, Texas presently has the two previously mentioned orange size tables—one for Navels, Valencias, and similar late-type oranges, and another for all other varieties.

Since California dominates the orange market, produce buyers are much more familiar with California orange pack sizes than pack sizes used by the Texas citrus industry. Buyers' computers tend to have California pack sizes listed, but not Texas. This puts handlers of Texas oranges at a competitive disadvantage. Further, Texas does not currently pack a size 138 orange, because this size is not a specified pack size. The closest Texas sizes are 126 and 144. As a result, the Texas orange industry cannot take advantage of size 138 business.

Moreover, retailers, wholesalers, food service distributors, and brokers are much more familiar with California orange pack sizes than Texas orange pack sizes because California ships a much larger volume and is present in the marketplace year-round. Having pack sizes different from California's is a marketing problem that affects all producers and handlers and could cause the Texas industry to lose fresh orange sales. The Committee believes that the Texas pack sizes need to be more closely aligned with the California pack sizes. In addition to the pack sizes used by the California industry, the Committee recommended a pack size 64, presently a very popular size for the Texas industry, ranging from a minimum diameter of 2 11/16 inches to a maximum of 3 10/16 inches.

The Committee unanimously recommended orange pack sizes ranging from pack size 24 to 138 with minimum and maximum diameters based on the 7/10 bushel carton and the actual number of fruit in that size carton, as shown in the following table:

ORANGES

[7/10 bushel carton]

Pack size/Number of oranges	Diameter in inches	
	Minimum	Maximum
24	3 12/16	5 1/16
32	3 9/16	4 9/16
36	3 4/16	4 6/16
40	3 2/16	4 4/16
48	2 15/16	4
56	2 13/16	3 13/16
64	2 11/16	3 10/16
72	2 9/16	3 8/16
88	2 8/16	3 4/16
113	2 7/16	3
138	2 6/16	2 12/16

Currently, Texas has minimum and maximum orange size diameters in inches and fractions of an inch for each pack size based on the 1 2/5 bushel box. The Committee recommended changing the minimum and maximum diameter size ranges for the proposed pack sizes to a 7/10 bushel carton basis as shown in the foregoing table because 1 2/5 bushel boxes are no longer used by the industry.

Adopting the California orange pack sizes for all varieties of oranges will eliminate the two separate pack size tables currently in the orange pack regulations. Separate tables for different varieties of oranges were established to allow for varietal size differences. Some varieties tend to be round and others slightly oblong, and older mechanical fruit sizing equipment could not accurately size the differently shaped fruit. Present day mechanical fruit sizers, however, accurately size all varieties of oranges regardless of shape, and two separate pack size tables for different orange varieties are no longer necessary.

Language also is being added to clarify that if 7/10 bushel containers of oranges are marked, the count of fruit in each container shall not be less than the count marked on the container, but may exceed the count marked on the container by not more than 8 percent. The 8 percent tolerance is used in California. When packed in marked containers other than 7/10 bushel, the pack sizes applicable to 7/10 bushel containers shall also apply to such containers.

Replace References to the 1 2/5 Bushel Box With a 7/10 Bushel Carton

As discussed earlier, the current Texas orange and grapefruit regulations refer to a 1 2/5 bushel box. The 1 2/5 bushel box is a carryover from past years when fruit was packed in a wooden "Bruce" box, which is twice the size of the common 7/10 bushel carton presently used in commercial business. The Committee recommended changing all references to the 1 2/5 bushel box to a 7/10 bushel carton. References to the 1 2/5 bushel box and associated fruit pack sizes based on that container are confusing to the industry. All weekly Committee utilization reports, annual reports, and other documents currently reference the 7/10 bushel carton equivalent. With the elimination of the 1 2/5 bushel box, the orange pack sizes would be in accordance with the count in a 7/10 bushel carton.

The 7/10 bushel carton equivalent and fruit count per carton is now the accepted unit of measure for oranges and grapefruit within the Texas industry. Handlers actually currently pack as to count of fruit in the box. Eliminating all references to the 1 2/5 bushel box and related pack sizes will minimize confusion among all producers and handlers.

Changes to the Pack Requirements for Grapefruit

Section 906.340(a)(2)(ii) specifies pack requirements for grapefruit based upon the United States Standards for Grades of Grapefruit (Texas and States other than Florida, California, and Arizona), hereinafter referred to as the "grapefruit standards", with some exceptions. Grapefruit are currently required to be packed within the diameter limits specified for the various pack sizes defined in 7 CFR 51.630(c) of the grapefruit standards, based on a 1 2/5 bushel box. Exceptions are that the minimum diameter limit for pack size 96 grapefruit is 3 9/16 inches, and for pack size 112 grapefruit, the minimum diameter is 3 5/16 inches. The current standard pack and standard sizing requirements, and packing tolerances will remain unchanged.

The grapefruit standards define eight pack sizes. The smallest is size 125/126, which ranges from a minimum of 3 inches to a maximum of 3 8/16 inches in diameter. The largest is size 46 which ranges from 4 5/16 to 5 inches in diameter. The Texas grapefruit pack regulations include a size 36 grapefruit, which ranges from 4 15/16 to 5 9/16 inches in diameter. This pack size is not in the grapefruit standards. The minimum diameters for pack sizes 96 and 112 are different from those specified in the grapefruit standards. The grapefruit standards specify 3 6/16 inches and 3 2/16 inches, and the order requirements specify 3 9/16 inches and 3 5/16 inches, respectively. The maximum diameters are the same.

The Committee recommended revising the grapefruit pack sizes based on a 7/10 bushel carton as shown in the following table rather than the 1 2/5 bushel box, which is obsolete and confusing. As mentioned earlier, the Texas citrus industry for many years has used the 7/10 bushel carton as its standard shipping container. Presently, any reference to a 1 2/5 bushel of fruit has to be converted to 7/10 bushel equivalents. With the elimination of the 1 2/5 bushel box, grapefruit pack sizes will reference the number of grapefruit that will pack in a 7/10 bushel carton.

GRAPEFRUIT

[7/10 bushel carton]

Pack size/ Number of grapefruit	Diameter in inches	
	Minimum	Maximum
18(36)	4 15/16	5 9/16
23(46)	4 5/16	5
27(54/56)	4 2/16	4 12/16
32(64)	3 15/16	4 8/16
36(70/72)	3 13/16	4 5/16
40(80)	3 10/16	4 2/16
48(96)	3 9/16	3 14/16
56(112/113)	3 5/16	3 10/16

(Numbers in parentheses represent current pack sizes.) Minimum and maximum diameter ranges for the new pack sizes (not in parentheses) are the same as currently specified.

Language also is being added to clarify that if 7/10 bushel containers of grapefruit are marked, the count of fruit in the container shall not be less than the count marked on the container, but may exceed the count marked on the container by not more than 8 percent. The 8 percent tolerance is used in California. When packed in marked containers other than 7/10 bushel, the pack sizes applicable to 7/10 bushel containers shall also apply to such containers.

Conforming Changes to the Size Regulations

Changing the orange pack sizes and minimum and maximum diameter size ranges requires conforming changes to the size regulations for oranges in § 906.365(a)(2). The minimum size which may be packed will change from pack size 288 to the new pack size 138, but the minimum size permitted will continue to be a 2 6/16 inch minimum diameter.

Changing the grapefruit pack sizes from a 1 2/5 bushel box basis to pack sizes based on the 7/10 bushel carton also requires conforming changes to the grapefruit size regulations in § 906.365(a)(4). The minimum pack size will change from pack size 96 to pack size 48, but the minimum diameter permitted to be shipped will remain 3 9/16 inches. A reference to current pack size 112 in § 906.365(a) will change to pack size 56. That paragraph provides that pack size 56 grapefruit (with a minimum diameter of 3 5/16 inches) may be shipped if the fruit grades at least U.S. No. 1.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 315 producers of oranges and grapefruit in the production area and 16 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts less than $500,000 and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of Texas orange and grapefruit producers and handlers may be classified as small entities.

Last year, 5 of the 16 handlers (31 percent) each shipped over 625,000 7/10 bushel cartons of oranges and grapefruit. Using an average f.o.b. price of $8.00 per carton, these handlers could be considered large businesses by the SBA, and the remaining 11 handlers (69 percent) could be considered small businesses. Of the approximately 315 producers within the production area, few have sufficient acreage to generate sales in excess of $500,000; therefore, a majority of producers of Texas oranges and grapefruit may be classified as small entities.

Many producers are still recovering from the 1983 and 1989 devastating freezes that virtually destroyed the Texas citrus industry. Most trees in the production area were planted within the past ten years and have not yet reached full maturity. As a result, yields are still somewhat low and the profit to the producers is marginal. The 1998–99 season grapefruit and orange production levels were 59 percent and 36 percent of the pre-1983 freeze levels.

This rule changes the orange and grapefruit pack sizes currently prescribed under the order to pack sizes based upon the actual number of fruit packed in a 7/10 bushel carton. It also more closely aligns the pack sizes for Texas oranges to those used by shippers of oranges grown in California. Conforming changes are also made to the pack size references in the size regulations for oranges and grapefruit to the minimum sizes permitted to be shipped the same as currently specified. This rule will enable handlers to compete more effectively in the marketplace.

The Grade and Size Subcommittee met on April 20 and 29 and May 4, 1999, to discuss possible changes to the order's pack requirements. At a meeting on May 13, 1999, the Subcommittee recommended and the Committee unanimously approved changes to the regulations. On July 1, 1999, the Committee met again and unanimously recommended the following changes to the orange and grapefruit pack and conforming changes to the size regulations:

(1) Eliminate two separate pack size tables for different orange varieties and establish one table for all orange varieties, change the pack sizes to a 7/10 bushel carton basis for all orange varieties consistent with California pack sizes (the Texas pack sizes currently are based on 1 2/5 bushel boxes), and add a pack size 64 not specified in the California sizes. The new pack size table includes pack sizes for all orange varieties ranging from pack size 24 to 138, and each pack size has minimum and maximum diameter ranges;

(2) Change current grapefruit pack sizes based on a 1 2/5 bushel box to pack sizes based upon the actual number of fruit packed in the 7/10 bushel carton; and (3) Make conforming changes to the size regulations based on the above recommendations.

Under the terms of the order, fresh market shipments of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas are required to be inspected and meet grade, size, container, and pack requirements. Section 906.40 authorizes the issuance of pack regulations. Section 906.340(a)(2) of the order's rules and regulations outlines pack requirements for fresh shipments of Texas oranges and grapefruit. Size requirements are specified under § 906.365.

Changes to the Pack Requirements for Oranges

Section 906.340(a)(2) specifies pack requirements for oranges and includes two tables with pack sizes and minimum and maximum diameter size ranges for different varieties of oranges. These requirements provide, among other things, that oranges be packed in accordance with certain minimum and maximum diameters.

Currently, oranges are divided into two categories for the purpose of pack regulations: (1) Navel, Valencia and similar late-type oranges, and (2) all other varieties of oranges. All types of oranges must be packed in accordance with 13 pack sizes. The minimum diameters for Navel, Valencia, and similar late-type oranges for each of the pack sizes are 2/16 inch smaller than those specified for all other oranges, while the maximum diameters for all varieties of oranges in the 13 pack sizes are the same. The minimum diameter, however, for all oranges is pack size 288 with a minimum diameter limit of 2 6/16 inches.

The current orange pack sizes and minimum and maximum diameters are shown in the following tables:

Table I (Section 906.304(a)(2)(i)(a))

TABLE 1.—ALL ORANGES, EXCEPT NAVELS, VALENCIAS, AND SIMILAR LATE-TYPE ORANGES

[1 2/5 Bushel Box]

Pack size	Diameter in inches	
	Minimum	Maximum
46's	4 5/16	5
54's or 56's	4 2/16	4 12/16
64's	3 15/16	4 8/16
70's or 72's	3 13/16	4 5/16
80's	3 10/16	4 2/16
100's	3 7/16	3 13/16

TABLE 1.—ALL ORANGES, EXCEPT NAVELS, VALENCIAS, AND SIMILAR LATE-TYPE ORANGES—Continued
[1⅗ Bushel Box]

Pack size	Diameter in inches	
	Minimum	Maximum
112's	3 5/16	3 11/16
125's	3 3/16	3 9/16
163's	2 15/16	3 5/16
200's	2 11/16	3 1/16
252's	2 7/16	2 13/16
288's	2 4/16	2 9/16
324's	2 3/16	2 8/16

Table II (Section 906.340(a)(2)(i)(c))

TABLE II.—NAVELS, VALENCIA & SIMILAR LATE-TYPE ORANGES
[⅗ Bushel Box]

Pack size	Diameter in inches	
	Minimum	Maximum
46	4 3/16	5
54	4	4 12/16
64	3 11/16	4 8/16
70 or 72	3 11/16	4 5/16
80	3 8/16	4 2/16
100	3 5/16	3 13/16
112	3 3/16	3 11/16
125	3 1/16	3 9/16
163	2 13/16	3 5/16
200	2 9/16	3 1/16
252	2 5/16	2 12/16
288	2 2/16	2 9/16

All oranges must be at least Pack Size 288, except that the minimum diameter limit for Pack Size 288 oranges in any lot shall be 2 8/16 inches.

The Committee recommended changing the orange pack sizes to the pack sizes used by the California citrus industry. A study by the Committee indicates that approximately 39 percent of Texas oranges are sold in Texas, and about 36 percent in California. Almost 90 percent is marketed west of the Mississippi River. California dominates the western domestic orange market with fruit available on a year-round basis. Texas, on the other hand, is a relatively small producer of oranges with a marketing season from late September through May. Presently, oranges from California are sized differently from oranges available from Texas. Furthermore, as mentioned before, Texas has two orange size tables—one for Navels, Valencias, and similar late-type oranges, and another for all other varieties.

Since California dominates the orange market, produce buyers are much more familiar with California orange pack sizes than pack sizes used by the Texas citrus industry. Buyers' computers tend to have California pack sizes listed, but not Texas'. This puts Texas oranges at a competitive disadvantage. Further, Texas does not currently pack a size 138 orange. The closest Texas sizes are 126 and 144. As a result, the Texas orange industry cannot supply buyers interested in purchasing size 138.

Retailers, wholesalers, food service distributors, and brokers are much more familiar with California orange pack sizes than Texas orange pack sizes because California ships a much larger volume and is present in the marketplace year-round. Having pack sizes different from California's is a marketing problem that affects all producers and handlers and could cause the Texas industry to lose fresh orange sales. The Committee believes that the pack sizes for Texas should be similar to those used by California shippers. In addition to the pack sizes used by the California industry, the Committee recommended a pack size 64, presently a very popular size for the Texas industry, ranging from a minimum diameter of 2 11/16 inches to a maximum of 3 10/16 inches.

The Committee unanimously recommended orange pack sizes ranging from pack size 24 to 138 with minimum and maximum diameters based on the 7/10 bushel carton, which will refer to the actual number of fruit in the carton, as shown in the following table:

ORANGES
[7/10 bushel carton]

Pack size/Number of grapefruit	(Diameter in Inches)	
	Minimum	Maximum
24	3 12/16	5 1/16
32	3 6/16	4 9/16

ORANGES—Continued
[7/10 bushel carton]

Pack size/Number of grapefruit	(Diameter in Inches)	
	Minimum	Maximum
36	3 4/16	4 6/16
40	3 2/16	4 4/16
48	2 15/16	4
56	2 13/16	3 13/16
64	2 11/16	3 10/16
72	2 9/16	3 6/16
88	2 8/16	3 4/16
113	2 7/16	3
138	2 6/16	2 12/16

Currently, Texas has minimum and maximum orange diameter size ranges in inches and fractions of an inch for each pack size. The Committee recommended changing the minimum and maximum diameters for the pack sizes to a 7/10 bushel carton basis as shown in the foregoing table.

Adopting the California orange pack sizes for all varieties of oranges would eliminate the two separate pack size tables currently in the orange pack regulations. The separate tables for different varieties of oranges were established to allow for varietal size differences. Some varieties tend to be round and others slightly oblong, which caused problems with older mechanical sizing equipment. Present day mechanical fruit sizing equipment, however, accurately sizes all varieties of oranges and two separate pack size tables for different orange varieties are no longer necessary.

For purposes of clarity, language is being added under Table I indicating that if 7/10 bushel containers of oranges are marked, the count of fruit in each container shall not be less than the count marked on the container, but may exceed the count marked on the container by not more than 8 percent. The 8 percent tolerance is used in California. When packed in marked containers other than 7/10 bushel, the pack sizes applicable to 7/10 bushel containers shall also apply to such containers.

Replace References to the 1⅗ Bushel Box with a 7/10 Bushel Carton

The current Texas orange and grapefruit pack size regulations refer to a 1⅗ bushel box. The 1⅗ bushel box is a carryover from past years when fruit was packed in a wooden "Bruce" box, which is twice the size of the common 7/10 bushel carton presently used in commercial business. The Committee recommended changing all references to the 1⅗ bushel box to a 7/10 bushel carton. References to the 1⅗ bushel box and associated fruit pack sizes based on that container are confusing to the industry. All weekly Committee utilization reports, annual reports, and other documents currently reference the 7/10 bushel carton or equivalent. With the elimination of the 1⅗ bushel box, the orange pack sizes would be in accordance with the count in a 7/10 bushel carton.

The 7/10 bushel carton and fruit count per carton is now the accepted standard for oranges and grapefruit within the Texas industry. Handlers currently pack as to the count of fruit in the box. Eliminating all references to the 1⅗ bushel box and related pack sizes will minimize confusion among all producers and handlers.

Changes to the Pack Requirements for Grapefruit

Section 906.340(a)(2) also provides pack requirements for grapefruit based upon the United States Standards for Grades of Grapefruit (Texas and States other than Florida, California, and Arizona) with some exceptions. Grapefruit are currently required to be packed within the diameter limits specified for the various pack sizes defined in 7 CFR 51.630(c) of the United States Standards for Grades of Grapefruit (Texas and States other than Florida, California, and Arizona), hereinafter referred to as the grapefruit standards, based on a 1⅗ bushel box. Exceptions are that the minimum diameter for pack size 96 grapefruit is 3 9/16 inches, and for pack size 112 grapefruit, the minimum diameter is 3 5/16 inches. The current standard pack and standard sizing requirements, and packing tolerances will remain unchanged.

The grapefruit standards define eight pack sizes. The smallest is size 125/126, which ranges from a minimum of 3 inches to a maximum of 3 9/16 inches in diameter. The largest is size 46 which ranges from 4 5/16 to 5 inches in diameter. The Texas grapefruit pack regulations also include a size 36 grapefruit, which ranges from 4 15/16 to 5 9/16 inches in diameter. The minimum diameters for pack sizes 96 and 112 have been modified from 3 6/16 inches and 3 2/16 inches as specified in the grapefruit standards to 3 9/16 and 3 5/16 inches, respectively.

The Committee recommended revising the grapefruit pack sizes based on a 7/10 bushel carton, as shown in the following table, rather than the 1⅗ bushel box, because the latter basis is obsolete and confusing. The Texas citrus industry for many years has used the 7/10 bushel carton as the standard. Presently, any reference to a 1⅗ bushel of fruit has to be converted to 7/10 bushel equivalents. With the elimination of the 1⅗ bushel box, grapefruit pack sizes will reference the number of grapefruit that will pack in a 7/10 bushel carton.

GRAPEFRUIT
[7/10 bushel carton]

Pack size/Number of grapefruit	Diameter in inches	
	Minimum	Maximum
18(36)	4 15/16	5 9/16

GRAPEFRUIT—Continued

[7/10 bushel carton]

Pack size/Number of grapefruit	Diameter in inches	
	Minimum	Maximum
23(46)	4 5/16	5
27(54/56)	4 2/16	4 12/16
32(64)	3 15/16	4 8/16
36(70/72)	3 13/16	4 5/16
40(80)	3 10/16	4 2/16
48(96)	3 9/16	3 14/16
56(112/113)	3 5/16	3 10/16

(Numbers in parentheses represent current pack sizes.)

Minimum and maximum diameter size ranges for the new pack sizes will remain the same as currently specified.

For purposes of clarity, language is being added after Table II specifying that if 7/10 bushel containers of grapefruit are marked, the count of fruit in the container shall not be less than the count marked on the container, but may exceed the count marked on the container by not more than 8 percent. The 8 percent tolerance is used in California. When packed in marked containers other than 7/10 bushel, the pack sizes applicable to 7/10 bushel containers shall also apply to such containers.

Conforming Changes to the Size Regulations

Changing the orange pack sizes and minimum and maximum diameter size ranges requires conforming changes to the size regulations for oranges in 906.365(a)(2). The minimum size which may be packed will change from pack size 288 to a new pack size 138, but the minimum diameter permitted to be shipped will continue to be 2 9/16 inches.

Changing the grapefruit pack sizes from a 1 3/5 bushel box basis to pack sizes based on the 7/10 bushel carton also requires conforming changes to the grapefruit size regulations in 906.365(a)(4). The minimum pack size will change from pack size 96 to pack size 48, but the minimum diameter permitted to be shipped will remain 3 9/16 inches. A reference to current pack size 112 in 906.365(a)(4) will change to pack size 56. That paragraph provides that pack size 56 grapefruit (with a minimum diameter of 3 5/16 inches) may be packed and shipped if the fruit grades at least U.S. No. 1.

The Committee concluded that leaving the pack sizes as they currently are could cause the Texas citrus industry to lose fresh orange sales. The pack size changes are expected to result in increased sales, but the amount of increase cannot be determined precisely.

Eliminating the references to the 1 3/5 bushel box in the regulations will not have any effect upon producer returns or sales. It simply eliminates an antiquated unit of measure from the regulations, will prevent confusion, and eliminate the need for converting 1 3/5 bushel box references to the standard 7/10 bushel carton.

Changing the grapefruit pack sizes consistent with the changes being recommended in the orange pack sizes would prevent confusion in the industry. The industry, both sellers and buyers, currently refer to the size of grapefruit (and oranges) by the number of fruit packed in a 7/10 bushel carton. The changes made by this action reflect this industry practice.

The opportunities and benefits of these changes are expected to be equally available to all Texas citrus producers and handlers regardless of their size of operation. The recommended changes offer benefits to the entire Texas citrus industry. These changes will enable handlers to compete more effectively in the marketplace. They will also contribute to the industry's long-term objective to market as much citrus as possible. These regulation changes are expected to lead to market expansion, which would benefit producers, handlers, buyers, and consumers of Texas citrus. Accordingly, in assessing alternatives to the changes provided in this interim final rule, this action provides the most beneficial results.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large Texas orange and grapefruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meetings were widely publicized throughout the Texas orange and grapefruit industry and all interested persons were invited to attend the meetings and participate in Committee deliberations. Like all Committee meetings, the May 13, 1999, and July 1, 1999, meetings were public meetings and all entities, both large and small, were able to express their views on this issue.

Also, the Committee has a number of appointed subcommittees to review certain issues and make recommendations to the Committee. The Committee's Grade and Size Subcommittee met on April 20, April 29, and May 4, 1999, and discussed this issue in detail. Those meetings were also public meetings and both large and small entities were able to participate and express their views. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on changes to the pack requirements and conforming changes to the size regulations currently prescribed under the Texas citrus marketing order. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule changes pack requirements applied to handlers of Texas citrus grown in the production area to enable them to compete more effectively in the marketplace; (2) the regulatory period begins September 1 and this action should be in effect promptly so handlers can plan accordingly; (3) the Committee unanimously recommended these changes at public meetings and interested parties had an opportunity to provide input; (4) Texas citrus handlers are aware of this action and are preparing to operate under the new pack sizes; and (5) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. The subpart heading immediately preceding § 906.340 is revised to read "**Subpart—Container and Pack Requirements**"

3. In § 906.340, paragraphs (a)(2)(i)(b) and (a)(2)(i)(c) are removed, and paragraphs (a)(2)(i), Tables I and II, and (a)(2)(ii) are revised to read as follows:

§ 906.340 Container, pack, and container marking regulations.

(a) * * *

(2) *Pack regulation.* (i) *Oranges.* (A) Oranges, when packed in any carton, bag, or other container, shall be sized in accordance with the sizes in the following Table I, and, when place packed in cartons or other containers, meet the requirements of standard pack; and, when in containers not packed according to a definite pattern, shall be sized in accordance with the sizes in Table I and otherwise meet the requirements of standard sizing: *Provided,* That the packing tolerances in the U.S. Standards for Grades of Oranges (Texas and States other than Florida, California, and Arizona), shall apply to fruit so packed:

TABLE I.—ORANGES

[7/10 bushel carton]

Pack size/Number of oranges	Diameter in inches	
	Minimum	Maximum
24	3 12/16	5 1/16
32	3 9/16	4 9/16
36	3 4/16	4 6/16
40	3 2/16	4 4/16
48	2 15/16	4
56	2 13/16	3 13/16
64	2 11/16	3 10/16
72	2 9/16	3 6/16
88	2 6/16	3 4/16
113	2 7/16	3
138	2 6/16	2 12/16

(B) If 7/10 bushel containers of oranges are marked, the count of fruit in each container shall not be less than the count marked on the container, but may exceed the count marked on the container by not more than 8 percent. When packed in marked containers other than 7/10 bushel, the pack sizes applicable to 7/10 bushel containers shall also apply to such containers.

(ii) *Grapefruit.* (A) Grapefruit, when packed in any carton, bag, or other container, shall be sized in accordance with the sizes in the following Table II, except as otherwise provided in the regulations issued pursuant to this part, and when place packed in cartons or other containers meet the requirements of standard pack; and, when in containers not packed according to a definite pattern, shall be sized in accordance with the sizes in Table II and otherwise meet the requirements of standard sizing: *Provided,* That the packing tolerances in the U.S. Standards for Grades of Grapefruit (Texas and States other than Florida, California, and Arizona), shall apply to fruit so packed:

TABLE II.—GRAPEFRUIT

[7/10 bushel carton]

Pack size/Number of grapefruit	Diameter in inches	
	Minimum	Maximum
18	4 15/16	5 9/16
23	4 5/16	5
27	4 2/16	4 12/16
32	3 15/16	4 8/16
36	3 13/16	4 5/16
40	3 10/16	4 2/16
48	3 9/16	3 14/16
56	3 5/16	3 10/16

(B) If 7/10 bushel containers of grapefruit are marked, the count of fruit in the container shall not be less than the count marked on the container, but may exceed the count marked on the container by not more than 8 percent. When packed in marked containers other than 7/10 bushel, the pack sizes applicable to 7/10 bushel containers shall also apply to such containers.

* * * * *

3. Section 906.365 is amended by revising paragraphs (a)(2) and (a)(4) to read as follows:

§ 906.365 Texas Orange and Grapefruit Regulation 34.

(a) * * *

(2) Such oranges are at least pack size 138 with a minimum diameter limit of 2 9/16 inches;

* * * * *

(4) Such grapefruit are at least pack size 48 with a minimum diameter limit of 3 9/16: *Provided,* That any handler may handle grapefruit smaller than pack size 48, if such grapefruit grade at least U.S. No. 1 and they are at least pack size 56 with a minimum diameter limit of 3 5/16 inches.

* * * * *

Dated: August 26, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–22666 Filed 8–30–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1439

RIN 0560–AF57

Flood Compensation Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule provides relief for a special Flood Compensation Program for farmers in certain counties affected by long-term flooding. Twelve million dollars have been made available from proceeds from a disaster reserve under section 813 of the Agricultural Act of 1970. Another thirty million dollars have been made available using funds under section 1102(c) of the Agriculture, Rural Development, Food and Drug Administration, and Related Appropriations Act, 1999 (1999 Act). Farmers can, subject to certain payment limits, receive payment for the loss of the use of cropland or pastureland in eligible counties during the period from October 1, 1997 through September 30, 1998. The county must have been declared a disaster area under a Presidential Declaration or Secretarial Designation during a period specified in the rules and land on at least one farm in the county must be cropland or pasture land that was flooded sometime after October 1, 1992. Other limitations also apply. Applicants for assistance must own or have a binding cash lease on the property and have owned it or leased it continuously since October 1, 1997. These rules are designed to address circumstances where changes in bodies of water may have produced widespread losses that might not otherwise generate assistance under other programs. At least $12 million of the total $42 million will be reserved for livestock producers because of the special needs of such producers.

DATES: Effective August 26, 1999. Comments on this rule must be received by September 27, 1999 in order to be assured of consideration. Comments on the information collection must be received by October 25, 1999 in order to be assured of consideration.

ADDRESSES: Comments should be mailed to Diane Sharp, Director, Production, Emergencies, and Compliance Division, Farm Service Agency, United States Department of Agriculture, STOP 0517, 1400 Independence Avenue, SW, Washington, DC 20250–0517, telephone (202) 720–7641, e-mail Diane_Sharp@wdc.fsa.usda.gov. Comments may be inspected in the Office of the Director, PECD, Farm Service Agency (FSA), USDA, Room 4752 South Building, Washington, DC, between 7:30 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Helen Smith, at the above address, (202) 720–6601.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule is issued in conformance with Executive Order 12866 and has been determined to be significant and therefore has been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the Farm Service Agency (FSA) and the Commodity Credit Corporation (CCC) are not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the environment nor an adverse effect on human health on any population. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any judicial action may be brought concerning provisions of this rule, administrative remedies must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Paperwork Reduction Act

Information will be collected for the program provided for in this notice. The information collected will be used to operate the Flood Compensation Program. In accordance with the Paperwork Reduction Act, the Commodity Credit Corporation will submit an emergency information collections request to OMB for approval of the Flood Compensation Program reports as necessary for the proper functioning of the program.

Title: Flood Compensation Program.

OMB Control Number: 0560—New.

Type of Request: Request for approval of a New Information Collection.

Abstract: Producers must have land in counties declared a disaster area by a Presidential Declaration or Secretarial Designation during the period January 1, 1997, through August 1, 1998, as a result of damage due to severe flooding or excess moisture in order to be eligible for benefits. Approval for benefits is contingent upon a determination that due to flooding or excess moisture the land was unfit for crop production, haying, grazing, or other agricultural production at all times during FY 1998. Producers will be required to certify the fields and acres that were unfit for crop production, haying, grazing, or other agricultural production at times during FY 1998 due to the flooding or excess moisture. The information collection will be used to determine the eligibility and amount of assistance. The information collection is essential to eligibility and assistance determinations.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Producers.

Estimated Number of Respondents: 6,500.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 6,500 hours.

Proposed topics for comment include: (a) Whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Diane Sharp, Director, Production, Emergencies, and Compliance Division, Farm Service Agency, United States Department of Agriculture, STOP 0517, 1400 Independence Avenue SW, Washington, DC 20250–0517, telephone (202) 720–7641.

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Section 1133 of the 1999 Act exempts implementation of section 1102 from public rule-making. Although this rule is based on another authority as well (section 813 of the Agricultural Act of 1970 (7 U.S.C. 1427a)), in order to be consistent with the 1999 Act, to allow immediate acceptance of applications, and to assure that relief is made available promptly, this rule is made effective immediately with a 30-day comment period. Further delay would, for the reasons given, be contrary to the public interest. Likewise, to the extent that any statute requires Congressional review prior to implementation, it is determined that delay for such review would be contrary to the public interest.

Background

This interim rule sets forth the terms and conditions of the Flood Compensation Program (FCP) established by the Secretary of Agriculture to be carried out through the Commodity Credit Corporation (CCC) by the Farm Service Agency (FSA) of the Department of Agriculture (USDA). On June 12, 1996, Congress passed a Concurrent Resolution (S. Con. Res. 63), which addresses the Secretary's authority to dispose of commodities held in the disaster reserve established under section 813 of the Agricultural Act of 1970 (7 U.S.C. 1427a). The Concurrent Resolution suggests that the proceeds of the reserve be used for the benefit of livestock producers whose ability to maintain livestock is adversely affected by disaster conditions, such as prolonged drought or flooding. Accordingly, the Secretary designated $12 million received from the sale of commodities previously held in the disaster reserve to compensate livestock producers whose flooded land was previously used in the production of feed or grazing for livestock.

In addition, section 1102(c) of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 (Pub. L. 105–277) (1999 Act) appropriated funds to the Secretary "to make assistance available to producers on a farm who have incurred multiyear losses (as defined by the Secretary) in the 1998 and preceding crops of a commodity due to disasters." Of that appropriation, the Secretary has designated $30 million for the FCP established by this subpart. Accordingly, a total of $42 million is made available to carry out the FCP.

The rule is designed to focus on counties with generalized flooding problems since 1992, due to, for example, the expansion of the boundaries of natural bodies of water such as Devil's Lake in North Dakota and Day County and surrounding counties in South Dakota. Such flooding can change the basic character of the land and render the land ineligible for other benefits or for enrollment in programs like the Conservation Reserve Program (CRP). Generalized conditions of that sort can produce tertiary effects in the local community and accordingly, problems such as those in Devil's Lake have been the source of considerable attention and concern with respect to the exercise of discretionary authorities that may be available to the Secretary of Agriculture. The rule is addressed to those situations and is designed to focus on recent losses caused by flooding that may have occurred in the recent past, much as in the generalized disaster program provided for in section 1102 of the 1999 Act. Hence, the regulations set out in this notice would provide compensation to eligible producers whose land was not usable in the period from October 1, 1997 through September 30, 1998. To assure severe enough general conditions to accord with the intent of this program, the rules provide further that a county will be eligible for the program only if the county was declared a disaster area during the period January 1, 1997 through August 1, 1998 due to losses caused by flooding or excess moisture. Also, the county must have been experiencing such losses since 1992 in order to identify places where the problem is a long-term problem, but one that involves increasing losses due to increased flooding.

General Rules for programs of this type are provided in part 1439, which was revised in total by a rule published on March 19, 1999 (64 FR 13497). In the new program, no person, as defined in the applicable regulations, may receive over $40,000, and no person may receive any payment if that person's gross revenue for 1998, as determined in conformity with the rules, exceeded $2.5 million. The applicant must be the owner or lessee under a binding lease of cropland or pastureland that was engulfed after 1992, must have owned or leased the land continuously since October 1, 1997 and must still be the owner or lessee of the land. Other restrictions apply as well.

Also, this rule modifies the March 19, 1999 rule that, in addition to providing the general provisions for part 1439, set out specific rules for a general Livestock Assistance Program (LAP). The LAP rule indicated that LAP payments would be in addition to other payments received under other programs. That rule has

been changed in this rule to avoid the possibility of over-compensation for the same losses. Specifically, 1439.101(c) is amended so that, unless otherwise specified in some other authority, there will not be such double payment unless specifically approved for reasons of equity by the agency.

Because livestock producers don't generally have access to the same programs as other producers and because of the concern expressed in the 1996 resolution, at least $12 million of the total $42 million provided in the new program set out in this rule will be reserved for persons who, during the time set in the regulations, were livestock producers, even if it becomes necessary to prorate benefits due to claims in excess of available funds. Unadjusted payment rates will be based on the average local rental rates for crop land and pasture land, using, where possible, National Agricultural Statistical Service data.

List of Subjects in 7 CFR Part 1439

Animal feed, Disaster assistance, Flooded land, Livestock programs, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 1439 is amended as follows:

PART 1439—EMERGENCY LIVESTOCK ASSISTANCE

1. The authority citation for 7 CFR part 1439 is revised to read as follows:

Authority: 7 U.S.C. 1427a; 15 U.S.C. 714b and 714c; Sec. 1102, Pub. L. 105–277, 122 Stat. 2681.

§ 1439.101 [Amended].

2. Section 7 CFR 1439.101(c) is revised by removing the word "eligible" and adding the phrase "not eligible" in its place.

3. Part 1439 is amended by adding a new subpart entitled "Subpart—1998 Flood Compensation Program (FCP)", to read as follows:

Subpart—1998 Flood Compensation Program

Sec.

1439.201 Applicability.
1439.202 Administration.
1439.203 Definitions.
1439.204 Application process.
1439.205 County committee determinations of general applicability.
1439.206 Eligible producers, eligible land and loss criteria.
1439.207 Producer eligibility.
1439.208 Calculation of assistance.
1439.209 Availability of funds.

Subpart—1998 FLood Compensation Progam

§ 1439.201 Applicability.

This subpart sets forth the terms and conditions applicable to the 1998 Flood Compensation Program (FCP). Benefits will be provided to eligible livestock and non-livestock producers in the United States but only in counties where long term flooding occurred, and that were subsequently approved by the Deputy Administrator for Farm Programs as eligible counties.

§ 1439.202 Administration.

This subpart shall be administered as set forth in § 1439.2 of this part.

§ 1439.203 Definitions.

Terms in this part shall have the same meanings as are assigned by those defined in § 1439.3 and § 718.2 of this title. In addition, for purposes of this part and notwithstanding any contrary definitions in this part or part 718:

Application means Form CCC–454, Flood Compensation Program Application. Form CCC–454 is available at county FSA offices.

FCP means the Flood Compensation Program provided for in this part.

FY 1998 means the period from October 1, 1997 through September 30, 1998.

Livestock means beef and dairy cattle, buffalo and beefalo (when maintained in the same manner as beef cattle), sheep, goats, swine, poultry, and equine animals used commercially for human food or kept for the production of food or fiber on the owner's farm.

NASS means The National Agricultural Statistics Service.

§ 1439.204 Application process.

(a) Producers must submit a completed application prior to the close of business on July 2, 1999, or other such date as established by the Deputy Administrator. The application and any supporting documentation shall be submitted to the county office with administrative authority over a producer's eligible flooded land or to the county office that maintains the farm records for the producer.

(b) Producers shall certify as to the accuracy of all the information contained in the application, and provide any other information to CCC that the County Office or Committee deems necessary to determine the producer's eligibility.

§ 1439.205 County committee determinations of general applicability.

(a)(1) County Committees in counties declared or designated a disaster area by a Presidential Declaration or Secretarial Designation during the period January 1, 1997, through August 1, 1998, because of severe flooding or excessive moisture shall determine whether that county has at least one farm with land used for the production of crops, feed, seed, or other agricultural use prior to October 1, 1992, on which both of the following apply:

(i) Land on the farm that otherwise would have been used for crops or for pasture was inaccessible or incapable of production at all times during FY 1998 due to flooding; and

(ii) Land on the farm has been subject to continuous flooding that began any time during FY 1993 and continued through FY 1998.

(2) In making this determination, the County committee shall use what it considers to be the best information available, including but not limited to: Extension Service, Natural Resources Conservation Service, aerial photography, rainfall data, and general knowledge of losses due to flooding

(b) Having made an affirmative determination under paragraph (a), the county committee shall, if it is also determined that cropland or pastureland in the county was incapable of crop production during FY 1998 because of new or increased continuous flooding that occurred since FY 1992, submit to the Deputy Administrator for Farm Programs, with State Committee concurrence, a memorandum of request for affirmance of the county as an eligible county for purposes of this part. That request shall be accompanied by a copy of applicable notification of disaster declaration or designation, and copies of certification maps and acreage reports from one farm in the county that indicate continuous flooding occurred on the farm that began no later than October 1, 1993. Upon affirmance by the Deputy Administrator or designee after review, the county shall be considered to be an "eligible county" for purposes of this part.

(c) With respect to each eligible county, the county committee for that county shall establish separate payment rates for cropland and pasture land. These rates shall be reviewed by the State Committee and shall be equal to the estimated five-year average for all land of each type in the county. The State Committee may take into account rates established for the Conservation Reserve Program operated under 7 CFR part 1410 and ensure, subject to paragraph (d), that the rates are comparable. The Deputy Administrator shall review and may adjust the rates for reasonableness and consistency.

(d) Except as provided by the Deputy Administrator, payment rates shall be established based on NASS data in the States for which NASS has established rental rates on a county-by-county basis for 1998.

§ 1439.206 Eligible producers, eligible land, and loss criteria.

(a) The flooded land for which a producer requests benefits must be within the physical boundary of an eligible county. Producers in unapproved counties contiguous to an eligible county may not receive benefits under this subpart.

(b) To be eligible for benefits under this subpart, a producer in an eligible county must have a tract of land that meets all the following criteria:

(1) The land is cropland or pasture land used for the production of feed for livestock (haying, grazing, or feed grain production) or other agricultural use in one or more years during the period beginning October 1, 1991, through September 30, 1997;

(2) The land was inaccessible or unfit for crop production, grazing, or haying because of flooding or excess moisture during all of the period beginning October 1, 1997, through September 30, 1998;

(3) The land has been owned or leased under a binding cash lease by the producer continuously since October 1, 1997;

(4) The land is a contiguous parcel of land with an area equal to one acre or more;

(5) The land was not, except as determined by the Deputy Administrator, the subject of, nor will be the subject of, any other Federal payment for activities or lack of activity during the period October 1, 1997, through September 30, 1998, whether or not disaster-related, with the exception of the production flexibility contract (PFC) program payments received under part 1412 of this chapter. This prohibition includes but is not limited to other payments under this part; the Conservation Reserve Program, part 1410 of this chapter; the Wetlands Reserve Program, part 1467 of this chapter; or any Emergency Watershed Protection Program or Federal Easement Program that prohibits crop production or grazing.

(c) On Form CCC–454 producers shall be required to certify on each farm the number of flooded cropland and non-cropland acres for the farm in 1998 and the number of flooded cropland and non-cropland acres in 1992. To establish the acreage eligible for payment, flooded land certified for 1992 shall be subtracted from the flooded land certified for 1998 for each applicable type. The difference will be the acreages of cropland and non-cropland subject to flooding and eligible for FCP payment, except that the difference may be adjusted as needed to ensure, to the extent practicable, an accurate estimate of the net increased flooding on the farm after October 1, 1993.

(d) All determinations as to the amount of land eligible for enrollment and compensation under this subpart are subject to approval by the county committee.

(e) The county committee may use any available documentation to make the determinations under paragraphs (b) and (c) of this section, including but not limited to: maps, slides, precipitation data, water table levels and disaster reports.

§ 1439.207 Producer eligibility.

(a) At least $12 million in payments under this part shall be reserved for livestock producers. For this purpose, a livestock producer is a person who, on the applicable farm, meets the definition of livestock producer set out in § 1439.3 during the period beginning January 1, 1993 and ending with the ending date of the Presidential disaster designation that qualified the county for this program.

(b) Payments under this subpart shall be subject to the provisions of § 1439.1 through § 1439.12, and their successor regulations, except as otherwise provided in this subpart.

(c) No person (as defined and determined under part 1400 of this chapter) may receive more than $40,000 under this subpart.

(d) No person (as defined and determined under part 1400 of this chapter) will be eligible for payment under this subpart if that person's annual gross receipts for the most recent tax year preceding the crop year for which benefits are requested were in excess of $2.5 million. That determination shall be made in the manner provided for in § 1439.11.

(e) The following entities are not eligible for benefits under this subpart:

(1) State or local governments or subdivisions thereof; or

(2) Any individual or entity who is a foreign person as determined in accordance with the provisions of § 1400.501 and § 1400.502 of this chapter.

§ 1439.208 Calculation of Assistance.

(a) The unadjusted value of FCP assistance determined with respect to the flooded land in an eligible county for each producer may not exceed the amount obtained by adding paragraphs (b) and (c) of this section.

(b) For each eligible producer with respect to the applicable qualifying cropland, the established local payment rate for cropland will be multiplied by the number of qualifying acres, as determined by the County Committee in accordance with instructions from the Deputy Administrator.

(c) For each eligible producer with respect to the applicable qualifying non-cropland, the established local payment rate for non-cropland will be multiplied by the number of qualifying acres, as determined by the County Committee in accordance with instructions from the Deputy Administrator.

§ 1439.209 Availability of Funds.

In the event that the total amount of claims submitted under this subpart exceeds the $42 million appropriated for FCP, each payment shall be reduced by a uniform national percentage except as needed to assure sufficient payment to livestock producers as provided for in this part. Such payment reductions shall be after the imposition of applicable payment limitation provisions.

Signed in Washington, DC, on August 26, 1999.

Parks Shackelford,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 99–22626 Filed 8–26–99; 4:24 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 14 and 17

[Docket No. FAA–1998–4379; Amendment No. 14–03, Part 17 (New)]

RIN 2120–AG19

Procedures for Protests and Contract Disputes; Amendment of Equal Access to Justice Act Regulations; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes certain corrections to the final rule published in the **Federal Register** on June 18, 1999, (64 FR 32926), which provides regulations for the conduct of protests and contract disputes under the Federal Aviation Administration Acquisition Management System.

DATES: Effective on August 31, 1999.

FOR FURTHER INFORMATION CONTACT: Marie A. Collins, telephone: (202) 366–6400.

SUPPLEMENTARY INFORMATION: This action adds language inadvertently omitted from the final rule, corrects erroneous references to subsections, and

modifies the "Discussion of Comments" section accordingly. The added language was contained originally in the Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on August 25, 1998 (63 FR 45372) and was discussed in the "Discussion of Comments" section of the final rule. That section indicated that the language pertaining to the deadline for requesting intervenor status in protests of contract awards and Attorneys' fees was unchanged from that contained in the NPRM, but that the provision pertaining to payment of interest was eliminated.

Correction

In rule FR Doc. 99–15217, published on June 18, 1999 (64 FR 32926), make the following corrections:

1. On page 32926, in the heading, on the 6th line, correct "No. 14–0317–01" to read "No. 14–03, Part 17 (New)".

2. On page 32933, in the third column, second full paragraph, line 7, correct "§ 17.39(m) as well" to read "§ 17.39(l), which was moved to § 17.39(m)".

3. On page 32933, in the third column, second full paragraph, beginning on line 11, add the following sentence, "Former § 17.39(l) and language was added to clarify the process of releasing findings and recommendations that contain protected information subject to a protective order.".

4. On page 32933, in the third column, second full paragraph, line 21, before the word "Finally," add the following sentence, "The language in former § 17.39(m) pertaining to Attorneys' fees was moved to § 17.39(n).".

5. On page 32939, in the second column, in § 17.15, add a sentence at the end of paragraph (f) to read as follows:

§ 17.15 Filing a protest.

* * * * *

(f) * * * The awardee and/or interested parties shall notify the ODRA in writing, of their interest in participating in the protest as intervenors within two (2) business days of receipt of the CO's notification, and shall, in such notice, designate a person as the point of contact for the ODRA. Such notice may be submitted to the ODRA by facsimile.

* * * * *

6. On page 32944, second column, in § 17.39, add paragraph (n), to read as follows:

§ 17.39 Default adjudicative process for contract disputes.

* * * * *

(n) Attorneys fees of a qualified prevailing contractor are allowable to the extent permitted by the EAJA, 5 U.S.C. 504 (a) (1).

Issued in Washington, DC on August 24, 1999.

Donald P. Byrne,

Assistant Chief Counsel.

[FR Doc. 99–22297 Filed 8–30–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–72–AD; Amendment 39–11268; AD 99–18–02]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 205A–1 and 205B Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Bell Helicopter Textron, Inc. (BHTI) Model 205A–1 and 205B helicopters, that requires inspecting the vertical fin spar cap (spar cap) for cracking, corrosion, or disbonding; modifying the vertical fin; and replacing the left-hand spar cap. This amendment is prompted by five accidents involving helicopters of similar type design. The actions specified by this AD are intended to detect fatigue cracking or corrosion on the spar cap, which could lead to failure of the vertical fin spar, loss of the tail rotor, and subsequent loss of control of the helicopter.

DATES: Effective October 5, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of October 5, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280–3391, fax (817) 280–6466. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Kohner, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5447, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to BHTI Model 205A–1 and 205B helicopters was published in the **Federal Register** on June 3, 1999 (64 FR 29814). That action proposed to require:

—Visually inspecting the spar cap for any crack or disbonding;
—Inspecting the spar cap for any disbonding using a tap hammer;
—Modifying the vertical fin;
—After modifying the vertical fin, inspecting the spar cap for any cracks using a dye-penetrant inspection method; and
—Replacing the left-hand spar cap.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial changes. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 150 helicopters of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per helicopter to accomplish the initial inspections, 0.5 work hour for the repetitive inspections, and 180 hours to replace the vertical fin spar assembly, and that the average labor rate is $60 per work hour. Required parts will cost approximately $300 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,705,500 to conduct the initial inspection and one repetitive inspection, and replace the vertical vin spar assembly on all the fleet.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended].

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 99–18–02–AD Bell Helicopter, Textron, Inc.: Amendment 39–11268. Docket No. 98–SW–72–AD.

Applicability: Model 205A–1 helicopters with vertical fin spar cap, part number (P/N) 212–030–447–001 or –101, installed, and Model 205B helicopters with vertical fin spar cap, P/N 212–030–447–101, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the vertical fin (fin) spar, loss of the tail rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) For Model 205A–1 helicopters with a fin spar cap (spar cap), P/N 212–030–447–001, installed, accomplish the following:

(1) Within 8 hours time-in-service (TIS), modify the vertical fin and visually inspect the fin spar for cracks in accordance with Part I (A1), paragraphs 1 through 4 of Bell Helicopter Textron, Inc. Alert Service Bulletin No. 205–98–70, Revision A, dated September 21, 1998 (ASB).

(i) If a crack is discovered on the fin spar, replace the fin spar assembly with an airworthy fin spar assembly before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(ii) After inspecting, apply MIL–PRF–81352 clear lacquer or an equivalent coating to the area where the paint and primer were removed. Spray, brush, or wipe on a protective coat of MIL–C–16173, Grade 2, or equivalent compound, over the clear lacquer or equivalent coating.

(iii) Install the inspection door, intermediate gearbox cover, and tail rotor driveshaft cover.

(2) After initially modifying and inspecting the fin, inspect the fin spar for cracks at intervals not to exceed 8 hours TIS as follows:

(i) Accomplish Part I (A2), paragraphs 1 through 3, of the ASB.

(ii) If a crack is discovered on the fin spar, replace the fin spar cap or spar assembly with airworthy parts before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(iii) After inspecting, accomplish Part I (A2), paragraphs 5 and 6, of the ASB.

(3) Within 25 hours TIS, inspect and modify the fin assembly as follows:

(i) Accomplish Part II (C1), paragraph 1, of the ASB.

(ii) Remove the clip, part number (P/N) 212–030–099–091, and radius block, P/N 212–030–099–095, if existing. Remove the retainer, P/N 212–030–121–037, and sufficient rivets from the bottom row of the forward left-hand fin skin to allow trimming of the forward left-hand skin along the skin "cutline", approximately fin station 66.31 (see Figure 2 of the ASB).

(iii) Before drilling or reaming, inspect all holes in the spar cap where rivets were removed for short edge distance. If an existing edge distance will be less than 1.5 times the diameter of the drill or reamed hole, repairs must be performed and must be FAA approved before proceeding.

(iv) Accomplish Part II (C1), paragraphs 3, 4, and 6, in the ASB.

(v) If a crack is discovered on the fin spar, replace the fin spar cap or spar assembly with airworthy parts before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(vi) Accomplish Part II (C1), paragraphs 10 through 14, of the ASB.

(4) After initially modifying and dye-penetrant inspecting the fin spar, inspect the fin spar at intervals not to exceed 300 hours TIS as follows:

(i) Accomplish Part II (C2), paragraphs 1, 2, 3, 4, 5, and 7, of the ASB.

(ii) If a crack is discovered on the fin spar, replace the fin spar cap or spar assembly with airworthy parts before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(iii) Accomplish Part II (C2), paragraphs 11 through 14, of the ASB.

(5) Within 12 calendar months, remove the left-hand fin spar cap, P/N 212–030–447–001. Replace it with an airworthy fin spar cap or spar assembly configuration that has been demonstrated to the FAA to satisfy the structural fatigue requirements of repeated high-torque events and is approved by the Manager, Rotorcraft Standards Staff.

(6) Installation of a fin spar cap or assembly that has been approved by the Manager, Rotorcraft Standards Staff, constitutes terminating action for the requirements of this AD.

(b) For Model 205A–1 helicopters with a fin spar cap, P/N 212–030–447–101, installed, accomplish the following:

(1) Within 8 hours TIS, modify the vertical fin and visually inspect the fin spar for cracks in accordance with Part II (A1), paragraphs 1 through 5, of the ASB.

(i) If a crack is discovered on the fin spar, replace the fin spar cap or assembly with an airworthy parts before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(ii) After inspecting, apply MIL–PRF–81352 clear lacquer or an equivalent coating to the two lower rivet holes and on the surface where paint and primer were removed. Spray, brush, or wipe on a protective coat of MIL–C–16173, Grade 2 or equivalent compound, over the clear lacquer or equivalent coating. To facilitate subsequent inspections, do not replace the two lower rivets (see Figure 2 of the ASB).

(iii) Before drilling or reaming, inspect all holes in the spar cap where rivets were removed for short edge distance. If an existing edge distance will be less than 1.5 times the diameter of the drill or reamed hole, repairs must be performed and must be FAA approved before proceeding.

(iv) Fasten the forward left-hand fin skin and the retainer, P/N 212–030–121–037, to the spar assembly using Hi-Loks and blind rivets as specified in Figure 2 of the ASB. Reinstall the clip and radius block, if existing, that were removed in accordance with paragraph 2 of Part II (A1) of the ASB.

(v) Refinish the reworked area.

(vi) Install the inspection door, intermediate gearbox cover, and tail rotor driveshaft cover.

(2) After initially modifying and inspecting the fin, inspect the fin spar for cracks at intervals not to exceed 8 hours TIS as follows:

(i) Accomplish Part II (A2), paragraphs 1 through 3, of the ASB.

(ii) If a crack is discovered on the fin spar, replace the fin spar cap or assembly with airworthy parts before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(iii) After inspecting, accomplish Part II (A2), paragraphs 5 and 6, of the ASB.

(3) Within 25 hours TIS, modify and inspect the vertical fin as follows:

(i) Accomplish Part II (C1), paragraph 1, of the ASB.

(ii) Remove the clip, P/N 212–030–099–091, and radius block, P/N 212–030–099–095, if existing. Remove the retainer, P/N 212–030–121–037, and sufficient rivets from the bottom row of the forward left-hand fin skin to allow trimming of the forward left-hand fin skin along the skin "cutline", approximately fin station 66.31 (see Figure 2 of the ASB).

(iii) Before drilling or reaming, inspect all holes in the spar cap where rivets were removed for short edge distance. If an existing edge distance will be less than 1.5 times the diameter of the drill or reamed hole, repairs must be performed and must be FAA approved before proceeding.

(iv) Accomplish Part II (C1), paragraphs 3, 4, and 6, of the ASB.

(v) If a crack is discovered on the fin spar, replace the fin spar cap or assembly with airworthy parts before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(vi) Accomplish Part II (C1), paragraphs 10 through 14, of the ASB.

(4) After initially modifying and dye-penetrant inspecting the fin spar, inspect the fin spar at intervals not to exceed 300 hours TIS as follows:

(i) Accomplish Part II (C2), paragraphs 1 through 7, of the ASB.

(ii) If a crack is discovered on the fin spar, replace the fin spar cap or assembly with airworthy parts before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(iii) Accomplish Part II (C2), paragraphs 11 through 14, of the ASB.

(5) Within 25 hours TIS, and thereafter at intervals not to exceed 300 hours TIS, inspect the fin spar as follows:

(i) Accomplish Part II (B), paragraphs 1 through 13, of the ASB.

(ii) Repair any disbonding discovered during the inspection before further flight.

(6) Within 12 calendar months, remove the left-hand fin spar cap, P/N 212–030–447–101. Replace it with an airworthy fin spar cap or spar assembly configuration that has been demonstrated to the FAA to satisfy the structural fatigue requirements of repeated high-torque events and is approved by the Manager, Rotorcraft Standards Staff.

(7) Installation of a fin spar that has been approved by the Manager, Rotorcraft Standards Staff, that satisfies the requirements of paragraph (b)(6) of this AD constitutes terminating action for the requirements of this AD.

(c) For Model 205B helicopters with a fin spar cap, P/N 212–030–447–101, installed, accomplish the following:

(1) Within 8 hours TIS, modify the fin and visually inspect the fin spar for cracks in accordance with Part I (A1), paragraphs 1 through 5, of Bell Helicopter Textron, Inc. Alert Service Bulletin No. 205B–98–26, Revision A, dated September 21, 1998 (205B ASB).

(i) If a crack is discovered on the fin spar, replace the fin spar cap or assembly with airworthy parts before further flight. Repair any corrosion or disbonding discovered during the inspection before further flight.

(ii) After inspecting, apply MIL–PRF–81352 clear lacquer or an equivalent coating to the two lower rivet holes and on the surface where paint and primer were removed. Spray, brush, or wipe on a protective coat of MIL–C–16173, Grade 2, or equivalent compound, over the clear lacquer. To facilitate subsequent inspections, do not replace the two lower rivets (see Figure 2 of the 205B ASB).

(iii) Before drilling or reaming, inspect all holes in the spar cap where rivets were removed for short edge distance. If an existing edge distance will be less than 1.5 times the diameter of the drill or reamed hole, repairs must be performed and must be FAA approved before proceeding.

(iv) Fasten the forward left-hand fin skin and the retainer. P/N 212–030–121–037, to the spar assembly using Hi-Loks and blind rivets as specified in Figure 2 of the 205B ASB. Reinstall the clip and radius block, if existing, removed in paragraph 2 of Part I (A1) of the 205B ASB.

(v) Install the inspection door, intermediate gearbox cover, and tail rotor driveshaft cover.

(2) After initially modifying and inspecting the fin, inspect the fin spar for cracks at intervals not to exceed 8 hours TIS as follows:

(i) Accomplish Part I (A2), paragraphs 1 through 3, of the 205B ASB.

(ii) If a crack is discovered on the spar, replace the fin spar cap or assembly with airworthy parts before further flight. Any corrosion or disbonding discovered during the inspection must be repaired before further flight.

(iii) After inspecting, accomplish Part I (A2), paragraphs 5 and 6, of the 205B ASB.

(3) Within 25 hours TIS, modify and inspect the fin as follows:

(i) Accomplish Part I (C1), paragraph 1 of the 205B ASB.

(ii) Remove the clip, P/N 212–030–099–091, and radius block, P/N 212–030–099–095, if existing. Remove the retainer, P/N 212–030–121–037, and sufficient rivets from the bottom row of the forward left-hand fin skin to allow trimming of the forward left-hand fin skin along the skin "cutline", approximately fin station 66.31 (see Figure 2 of the 205B ASB).

(iii) Before drilling or reaming, inspect all holes in the spar cap where rivets were removed for short edge distance. If an existing edge distance will be less than 1.5 times the diameter of the drill or reamed hole, repairs must be performed and must be FAA approved before proceeding.

(iv) Accomplish Part I (C1), paragraphs 3, 4, and 6, in the 205B ASB.

(v) If a crack is discovered on the spar, replace the fin spar cap or assembly with airworthy parts before further flight. Any corrosion or disbonding discovered during the inspection must be repaired before further flight.

(vi) Accomplish Part I (C1), paragraphs 10 through 14, of the 205B ASB.

(4) After initially modifying and dye-penetrant inspecting the fin spar, inspect the fin spar at intervals not to exceed 300 hours TIS as follows:

(i) Accomplish Part I (C2), paragraphs 1, 2, 3, 4, 5, and 7, of the 205B ASB.

(ii) If a crack is discovered on the spar, replace the fin spar cap or assembly with airworthy parts before further flight. Any corrosion or disbonding discovered during the inspection must be repaired before further flight.

(iii) Accomplish Part I (C2), paragraphs 11 through 14, of the 205B ASB.

(5) Within 25 hours TIS, inspect the fin spar at intervals not to exceed 300 hours TIS as follows:

(i) Accomplish Part I (B), paragraphs 1 through 13, of the 205B ASB.

(ii) Any disbonding discovered during the inspection must be repaired before further flight.

(6) Within 12 calendar months, remove the left-hand fin spar cap, P/N 212–030–447–101. Replace it with an airworthy fin spar cap configuration that has been demonstrated to the FAA to satisfy the structural fatigue requirements of repeated high-torque events and is approved by the Manager, Rotorcraft Standards Staff.

(7) Installation of a fin spar that satisfies the above requirements and has been approved by the Manager, Rotorcraft Standards Staff, constitutes a terminating action for the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through a FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) The modification of the vertical fin, the visual and dye-penetrant inspections, and any necessary repairs shall be done in accordance with Bell Helicopter Textron, Inc. Alert Service Bulletin No. 205–98–70, Revision A, or No. 205B–98–26, Revision A, both dated September 21, 1998, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101, telephone (817) 280–3391, fax (817) 280–6466. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on October 5, 1999.

Issued in Fort Worth, Texas, on August 18, 1999.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–22077 Filed 8–30–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–77–AD; Amendment 39–11269; AD 99–18–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes. This action requires repetitive inspections and tests of the thrust reverser control and indication system on each engine, and corrective actions, if necessary; installation of a terminating modification; and repetitive operational checks of that installation, and repair, if necessary. This amendment is prompted by the results of a safety review, which revealed that in-flight deployment of a thrust reverser could result in significant reduction in airplane controllability. The actions specified in this AD are intended to ensure the integrity of the fail-safe features of the thrust reverser system by preventing possible failure modes, which could result in inadvertent deployment of a thrust reverser during flight, and consequent reduced controllability of the airplane.

DATES: Effective September 15, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of September 15, 1999.

Comments for inclusion in the Rules Docket must be received on or before November 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–77–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ed Hormel, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2681; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: On May 26, 1991, a Boeing Model 767–300ER series airplane was involved in an accident as a result of an uncommanded in-flight deployment of a thrust reverser. Following that accident, a study was conducted to evaluate the potential effects of an uncommanded thrust reverser deployment throughout the flight regime of the Boeing Model 747 series airplane. The study included a re-evaluation of the thrust reverser control system fault analysis and airplane controllability. The results of the evaluation indicated that, in the event of thrust reverser deployment during high-speed climb using high engine power, these airplanes also could experience control problems. This condition, if not corrected, could result in possible failure modes in the thrust reverser control system, inadvertent deployment of a thrust reverser during flight, and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–78A2148, dated June 1, 1995, and Boeing Service Bulletin 747–78A2148, Revision 1, dated July 20, 1995, which describe procedures for certain repetitive inspections and tests of the thrust reverser system, and corrective actions, if necessary. The inspections and tests include inspection of the thrust reverser control microswitch; a test of the thrust reverser indication system; an integrity check of the number three gear box lock and air motor brake; an inspection of the thrust reverser wire bundle; and an operational test of the thrust reverser. The corrective actions include, among other things:

- Adjustment, or replacement and adjustment, of any microswitch which fails to perform its intended function during movement of the respective forward or reverse thrust lever.
- Replacement of the number 3 gearbox lock or deactivation of the thrust reverser on any engine if the thrust reverser translating cowl moves when the number 3 gearbox lock should be engaged.
- Replacement of the air motor on any engine if the thrust reverser translating cowl moves when the air motor brake should be engaged.
- Replacement of worn or damaged wire clamps and wiring if chafing or other damage is detected.

The FAA also has reviewed and approved Boeing Service Bulletin 747–78–2136, dated May 11, 1995, which describes procedures for installation of provisional wiring:

- Between the P8 panel aisle stand and relay panels P252 and P253;
- Between the P6 overhead panel and relay panels P252 and P253;
- Between relay panels P252 and P253;
- Between relay panels P252 and P253 and wing/body disconnect area;
- Between left wing/body disconnect area and strut No. 1 and 2; and
- Between right wing/body disconnect area and strut No. 3 and 4.

This service bulletin references the Boeing Standard Wiring Practices Manual, which describes wire installation procedures, and the Boeing 747 Airplane Maintenance Manual (AMM) as additional sources of service information for accomplishment of this modification.

In addition, the FAA has reviewed and approved Boeing Service Bulletin 747–78–2156, dated October 31, 1996, which describes procedures for installation of the following:

- Four additional microswitches and associated wiring in the aisle stand P8 panel;
- Four circuit breakers and associated wiring changes in the P6 panel;
- New relay panels P252 and P253; and
- Left and right wing/body disconnect panel and associated wiring.

Boeing Service Bulletin 747–78–2156 references Boeing Service Bulletin 747–78–2136; and the following Rolls-Royce Service Bulletins:

- RB.211–71–B545, Revision 2, dated August 8, 1997, and RB.211–71–B551, Revision 1, dated March 20, 1998, which describe procedures for the installation of provisions on the engines to accommodate the installation of an additional thrust reverser locking gearbox; and
- RB.211–78–B552, dated June 21, 1996, which describes procedures for installation of an additional thrust reverser locking gearbox.

Accomplishment of Boeing Service Bulletin 747–78–2156 requires prior or

concurrent accomplishment of Boeing Service Bulletin 747–78–2136; and Rolls-Royce Service Bulletins RB.211–71–B545, Revision 2; RB.211–71–B551, Revision 1; and RB.211–78–B552, and eliminates the need for the repetitive inspections and tests specified in Boeing Alert Service Bulletin 747–78A2148, and Boeing Service Bulletin 747–78A2148, Revision 1.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent possible failure modes that can result in inadvertent deployment of a thrust reverser during flight and consequent reduced controllability of the airplane. This AD requires repetitive inspections and tests of the thrust reverser system, and corrective actions, if necessary; installation of a terminating modification; and repetitive operational checks of the gearbox locks and the air motor brake following accomplishment of the installation, and repair, if necessary. The actions are required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

This AD also includes a provision for deactivation of one thrust reverser in accordance with Section 78–1 of Boeing Document D6–33391, "Boeing 747–100/–200/–300/SP Dispatch Deviations Procedures Guide," Revision 22, dated January 30, 1998. No more than one reverser on any airplane may be deactivated under the provisions of this document.

This AD also requires repetitive operational checks of the gearbox locks and the air motor brake following accomplishment of Boeing Service Bulletin 747–78–2156. Those checks are required to be performed in accordance with the procedures described in Chapter 78–30–00, Section 5, of the FAA-approved Boeing 747 Airplane Maintenance Manual (AMM).

Differences Between Service Bulletins and This AD

Operators should note that, although Boeing Alert Service Bulletin 747–78A2148 and Boeing Service Bulletin 747–78A2148, Revision 1, recommend accomplishing the initial inspection at the next convenient maintenance period, the FAA has determined that such a compliance time would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspections (6 hours per engine). In light of all of these factors, the FAA finds a 90-day compliance time for the initial inspection to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Operators also should note that, although Boeing Service Bulletin 747–78–2156 does not specify any compliance time for accomplishment of the modification, the FAA has determined that this does not address the identified unsafe condition in a timely manner, as described above. The FAA finds a 36-month compliance time for accomplishment of the modification is warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

None of the Model 747 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future:

It would require approximately 24 work hours (6 work hours per engine) to accomplish the required inspections and tests, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections and tests required by this AD would be approximately $1,440 per airplane, per inspection/test cycle.

It would require approximately 392 work hours to accomplish the required installation of provisional wiring, at an average labor rate of $60 per work hour. Required parts would cost approximately $22,298 per airplane. Based on these figures, the cost impact of this modification required by this AD would be approximately $45,818 per airplane.

It would require approximately 306 work hours to accomplish the required installation of the locking gearbox, at an average labor rate of $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the installation required by this AD would be approximately $18,360 per airplane.

It would require approximately 2 work hours to accomplish the required operational check, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the operational check required by this AD would be approximately $120 per airplane, per check.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register.**

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–77–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–18–03 Boeing: Amendment 39–11269. Docket 99–NM–77–AD.

Applicability: Model 747–100B, –200, –300, and SP series airplanes, equipped with Rolls Royce RB211–524B2, C2, and D4 engines; certificated in any category, as listed in the following service bulletins:

- Boeing Alert Service Bulletin 747–78A2148, dated June 1, 1995;
- Boeing Service Bulletin 747–78A2148, Revision 1, dated July 20, 1995;
- Boeing Service Bulletin 747–78–2136, dated May 11, 1995; and
- Boeing Service Bulletin 747–78–2156, dated October 31, 1996.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent deployment of a thrust reverser during flight and consequent reduced controllability of the airplane, accomplish the following:

Repetitive Inspections and Tests

(a) Within 90 days after the effective date of this AD: Perform the applicable inspections and tests of the thrust reverser control and indication system on each engine, in accordance with Part III.A. through III.G. of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–78A2148, dated June 1, 1995, or Boeing Service Bulletin 747–78A2148, Revision 1, dated July 20, 1995. Repeat the applicable inspections and tests thereafter at intervals not to exceed 18 months, until accomplishment of paragraph (c) of this AD.

Corrective Actions

(b) If any inspection or test required by paragraph (a) of this AD cannot be successfully performed as specified in the service bulletin, or if any discrepancy is detected during any inspection or test, accomplish paragraphs (b)(1) and (b)(2) of this AD.

(1) Prior to further flight, deactivate the associated thrust reverser in accordance with Section 78–1 of Boeing Document D6–33391, "Boeing 747–100/–200/–300/SP Dispatch Deviations Procedures Guide," Revision 22, dated January 30, 1998. No more than one reverser on any airplane may be deactivated under the provisions of this paragraph.

Note 2: The airplane may be operated in accordance with the provisions and limitations specified in the operator's FAA-approved Master Minimum Equipment List (MMEL), provided that no more than one thrust reverser on the airplane is inoperative.

(2) Within 10 days after deactivation of any thrust reverser in accordance with this paragraph, the thrust reverser must be repaired in accordance with Boeing Alert Service Bulletin 747–78A2148, dated June 1, 1995, or Boeing Service Bulletin 767–78A2148, Revision 1, dated July 20, 1995. Additionally, the inspections and tests required by paragraph (a) of this AD must be successfully accomplished as specified in the service bulletin; once this is accomplished, the thrust reverser must then be reactivated.

Modification

(c) Within 36 months after the effective date of this AD, install an additional locking system on the thrust reversers in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–78–2156, dated October 31, 1996. Prior to or concurrent with accomplishment of Boeing Service Bulletin 747–78–2156, dated October 31, 1996: Accomplish Boeing Service Bulletin 747–78–2136, dated May 11, 1995; and Rolls-Royce Service Bulletins RB.211–71–B545, Revision 2, dated August 8, 1997, RB.211–71–B551, Revision 1, dated March 20, 1998, and RB.211–78–B552, dated June 21, 1996. Accomplishment of these actions constitutes terminating action for the repetitive inspections and tests required by paragraph (a) of this AD.

Operational Checks

(d) Within 3,000 flight hours after accomplishing the modification required by paragraph (c) of this AD, or within 1,000 flight hours after the effective date of this AD, whichever occurs later: Perform operational checks of the number 2 and number 3 gearbox locks and of the air motor brake, in accordance with the procedures described in Chapter 78–30–00, Section 5, of the FAA-approved Boeing 747 Airplane Maintenance Manual (AMM).

Corrective Actions

(e) If any operational check required by paragraph (d) of this AD cannot be successfully performed as specified in the procedures described in Chapter 78–30–00, Section 5, of the AMM, or if any discrepancy is detected during any operational check, accomplish paragraphs (e)(1) and (e)(2) of this AD. Repeat the operational checks thereafter at intervals not to exceed 3,000 flight hours.

(1) Prior to further flight, deactivate the associated thrust reverser in accordance with Section 78–1 of Boeing Document D6–33391, "Boeing 747–100/-200/-300/SP Dispatch Deviations Procedures Guide," Revision 22, dated January 30, 1998. No more than one reverser on any airplane may be deactivated under the provisions of this paragraph.

Note 3: The airplane may be operated in accordance with the provisions and limitations specified in the operator's FAA-approved MMEL, provided that no more than one thrust reverser on the airplane is inoperative.

(2) Within 10 days after deactivation of any thrust reverser in accordance with this paragraph, the thrust reverser must be repaired in accordance the AMM. Additionally, the operational checks required by paragraph (d) of this AD must be successfully accomplished as specified in the AMM; once this is accomplished, the thrust reverser must then be reactivated.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) Except as provided by paragraphs (b)(1), (d), (e), (e)(1), and (e)(2) of this AD, the actions shall be done in accordance with the applicable service bulletins, which contain the specified list of effective pages:

Service bulletin referenced and date	Page No. shown on page	Revision level shown on page	Date shown on page
Boeing 747–78–2136, May 11, 1995	1–161	Original	May 11, 1995.
Boeing 747–78A2148, June 1, 1995	1–50	Original	June 1, 1995.
Boeing 747–78A2148, Revision 1, July 20, 1995	1–50	1	July 20, 1995.
Boeing 747–78–2156, October 31, 1996	1–283	Original	October 31, 1996.
Rolls-Royce, RB.211–78–B552 June 21, 1996	1–33	Original	June 21, 1996.
Supplement			
Rolls-Royce, RB.211–71–B545, Revision 2, August 8, 1997	1, 2	Original	June 21, 1996.
	1, 4	2	August 8, 1997.
	2, 3, 5–45	Original	December 22, 1995.
Supplement			
Rolls-Royce, RB.211–71–B551, Revision 1, March 20, 1998	1, 2	2	August 8, 1997.
	1, 5, 85	1	March 20, 1998.
	2–4, 6–84, 86–106	Original	June 21, 1996.
Supplement			
	1–5	1	March 20, 1998.

This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on September 15, 1999.

Issued in Renton, Washington, on August 19, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22193 Filed 8–30–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–369–AD; Amendment 39–11276; AD 99–18–10]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–SHERPA, SD3–60 SHERPA, SD3–30, and SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Short Brothers Model SD3–SHERPA, SD3–60 SHERPA, SD3–30, and SD3–60 series airplanes, that requires a one-time detailed visual inspection of the emergency brake accumulator mounting structure for evidence of cracking; and corrective action, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the mounting angle that supports the emergency brake system due to cracking, which could result in loss of the emergency brake system.

DATES: Effective October 5, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 5, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Short Brothers Model SD3–SHERPA, SD3–60 SHERPA, SD3–30, and SD3–60 series airplanes was published in the **Federal Register** on June 28, 1999 (64 FR 34575). That action proposed to require a one-time visual inspection of the emergency brake accumulator mounting structure for evidence of cracking; and corrective action, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Explanation of Change Made to Proposal

The FAA has added a note to the final rule to clarify the definition of a detailed visual inspection.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 56 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the required AD on U.S. operators is estimated to be $3,360, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–18–10 Short Brothers PLC: Amendment 39–11276. Docket 98–NM–369–AD.

Applicability: All Model SD3–SHERPA, SD3–60 SHERPA, SD3–30, and SD3–60 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the mounting angle that supports the emergency brake system due to cracking, which could result in loss of the emergency brake system, accomplish the following:

Inspection

(a) Within 3 months after the effective date of this AD, perform a detailed visual inspection of the emergency brake accumulator mounting angle for evidence of cracking in accordance with Shorts Service Bulletin SD3 SHERPA–29–2 (for Model SD3–SHERPA series airplanes); SD360 SHERPA–29–1 (for Model SD3–60 SHERPA series airplanes); SD330–29–19 (for Model SD3–30 series airplanes); or SD360–29–06 (for Model SD3–60 series airplanes); all dated October 22, 1998; as applicable. If any cracking is found, prior to further flight, remove and replace the mounting angle with a new or serviceable part in accordance with the applicable service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Reporting

(b) Within 10 days after accomplishing the inspection required by paragraph (a) of this AD, submit a report of the inspection results (both positive and negative findings) to Short Brothers PLC, Mel Smith, Team Leader Customer Support, facsimile number: 44–1232–733024. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The inspection and replacement shall be done in accordance with Shorts Service Bulletin SD3 SHERPA–29–2, dated October 22, 1998; Shorts Service Bulletin SD360 SHERPA–29–1, dated October 22, 1998; Shorts Service Bulletin SD330–29–19, dated October 22, 1998; or Shorts Service Bulletin SD360–29–06, dated October 22, 1998; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in British airworthiness directives 009–10–98, 011–10–98, 008–10–98, and 010–10–98.

(f) This amendment becomes effective on October 5, 1999.

Issued in Renton, Washington, on August 23, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22385 Filed 8–30–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–349–AD; Amendment 39–11275; AD 99–18–09]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–30 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Short Brothers Model SD3–30 series airplanes, that requires modification of electrical wiring associated with heater components. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the autofeather system, which could result in reduced controllability of the airplane in the event of engine failure during takeoff.

DATES: Effective October 5, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 5, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Short Brothers Model SD3–30 series airplanes was published in the **Federal Register** on June 28, 1999 (64 FR 34577). That action proposed to require modification of electrical wiring associated with heater components.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 27 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required actions and that the average labor rate is $60 per work hour. The cost for required parts will be minimal. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $9,720, or $360 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–18–09 Short Brothers PLC: Amendment 39–11275. Docket 98–NM–349–AD.

Applicability: Model SD3–30 series airplanes that have been modified in accordance with Shorts Service Bulletin SD330–30–30, dated June 1988; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the autofeather system, which could result in reduced controllability of the airplane in the event of engine failure during takeoff, accomplish the following:

Required Modification

(a) Within 60 days after the effective date of this AD, modify electrical wiring associated with component heaters in accordance with Shorts Service Bulletin SD330–30–33, dated June 1998.

Note 2: Shorts Service Bulletin SD330–30–33, dated June 1998, references Shorts Service Bulletin SD330–30–30, Revision 1, dated September 1997, as an additional source of service information for modifying the electrical wiring and removing equipment associated with component heaters. Operators should note that Shorts Service Bulletin SD330–30–30, Revision 1, dated September 1997, requires that Pratt & Whitney Service Bulletin No. 3222, Revision No. 2, be incorporated prior to or in conjunction with the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The modification shall be done in accordance with Shorts Service Bulletin SD330–30–33, dated June 1998. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in British airworthiness directive 003–06–98.

(e) This amendment becomes effective on October 5, 1999.

Issued in Renton, Washington, on August 23, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22386 Filed 8–30–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–332–AD; Amendment 39–11274; AD 99–18–08]

RIN 2120–AA64

Airworthiness Directives; Israel Aircraft Industries, Ltd. (IAI), Model 1124 and 1124A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all IAI Model 1124 and 1124A series airplanes, that requires installation of an independent circuit breaker and associated wiring changes for the hydraulic low pressure warning lights. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent loss of the hydraulic low pressure warning lights. Low pressure in the hydraulic system can result in reduced controllability of the airplane.

DATES: Effective October 5, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 5, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Galaxy Aerospace Corporation, One Galaxy Way, Fort Worth Alliance Airport, Fort Worth, Texas 76177. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all IAI Model 1124 and 1124A series airplanes was published in the **Federal Register** on July 7, 1999 (64 FR 36628). That action proposed to require installation of an independent circuit breaker and associated wiring changes for the hydraulic low pressure warning lights.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 218 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required modification, and that the average labor rate is $60 per work hour. Required parts will cost approximately $142 per airplane. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $109,436, or $502 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–18–08 Israel Aircraft Industries, Ltd.: Amendment 39–11274. Docket 98–NM–332–AD.

Applicability: All Model 1124 and 1124A series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the hydraulic low pressure warning lights which could result in unknown low pressure in the hydraulic system and consequent reduced controllability of the airplane accomplish the following:

(a) Within 400 hours time-in-service or 1 year after the effective date of this AD, whichever occurs first: Install an independent circuit breaker and associated wiring changes for the hydraulic low pressure warning lights, in accordance with IAI 1124-Westwind Alert Service Bulletin 1124–29A–140, dated August 15, 1998.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The installation shall be done in accordance with IAI 1124-Westwind Alert Service Bulletin 1124–29A–140, dated August 15, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Galaxy Aerospace Corporation, One Galaxy Way, Fort Worth Alliance Airport, Fort Worth, Texas 76177. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Israeli airworthiness directive 29–98–09–01, dated September 23, 1998.

(e) This amendment becomes effective on October 5, 1999.

Issued in Renton, Washington, on August 23, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22387 Filed 8–30–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–222–AD; Amendment 39–11273; AD 99–18–07]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–400 series airplanes, that requires installation of strap assemblies on the ceiling panels and rails that support the video monitors. This amendment is prompted by reports of the video monitor ceiling panels falling into the cabin area due to the failure of certain latch assemblies during turbulence. The actions specified by this AD are intended to prevent ceiling panels from falling into the passenger area in the event of failure of certain latch assemblies on the ceiling panels, which could result in consequent injury to the crew and passengers.

DATES: Effective October 5, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 5, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jan Risheim, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1675; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747–400 series airplanes was published in the **Federal Register** on November 9, 1998 (63 FR 60222). That action proposed to require installation of strap assemblies on the ceiling panels and rails that support the video monitors.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter states that the proposed AD is not applicable to any airplane in its fleet and offers no further comment.

Request To Revise Language of Unsafe Condition

One commenter, the manufacturer, requests that the language used to describe the unsafe condition be revised to more accurately reflect the intent of the service bulletin. In the body of the proposal, the statement of the unsafe condition reads, "To prevent failure of certain latch assemblies on the ceiling panels, which could cause the ceiling panels to fall into the cabin area, and consequent injury to the crew and passengers, accomplish the following." The commenter states that the strap assemblies installed in accordance with the service bulletin "* * *" are not intended to, and will not, prevent failure of the latch assemblies. The function of the strap assemblies is to prevent the panels from falling in the event that the latches do fail."

The FAA concurs with the commenter's request. Therefore, the statement of unsafe condition has been revised accordingly in both the "Summary" and "Compliance" sections of the final rule.

Request To Reduce Cost Estimate

One commenter, the manufacturer, requests that the estimated number of work hours be reduced from the 476 work hours stated in the proposal. The commenter points out that, in Boeing Service Bulletin 747–25A3142, Revision 1, dated August 6, 1998, the estimated number of work hours necessary for the installation of strap assemblies on the ceiling panels is reduced from 34 work hours per panel (as stated in the original issue of the service bulletin, dated October 16, 1997) to 9 work hours per panel. Furthermore, the commenter states that the number of work hours that would be necessary for the proposed actions to be accomplished on an airplane ranges from a minimum of 18 work hours (2 panels at 9 work hours each) to a maximum of 126 work hours (14 panels at 9 work hours each). Similarly, the commenter states that the estimated cost of parts ranges from $1,366 to $9,575, depending on the number of ceiling panels that need to be modified.

The FAA concurs with the commenter's request to reduce the estimated number of work hours. Though the commenter does not make a specific request with regard to the range of minimum-to-maximum work hours and parts costs, the FAA infers that the commenter wants the cost impact section of the proposal to be revised to reflect the range of costs rather than the maximum cost only. The FAA concurs with this request, and the "Cost Impact" section of this final rule has been revised accordingly.

Request To Increase Compliance Time

One commenter requests that the proposed compliance time for accomplishment of the installation of strap assemblies be increased from 24 to 36 months to minimize impact on its operations.

The FAA does not concur with the commenter's request. In developing an appropriate compliance time for this action, the FAA considered the safety implications and normal operator maintenance schedules. The 24-month compliance time was chosen to ensure that affected airplanes complete one required major maintenance period ("C" check) during the proposed compliance time. The FAA finds that the 24-month compliance time represents an appropriate interval of time allowable wherein the installation can be accomplished during scheduled maintenance intervals for the majority of affected operators, and an acceptable level of safety can be maintained. No change to the final rule is necessary in this regard.

Request To Decrease Compliance Time

One commenter recommends that the proposed compliance time for accomplishment of the installation of strap assemblies be reduced from 24 to 12 months. The commenter states that a compliance time of 12 months would better ensure the safety of the traveling public. The commenter also suggests that a requirement to block seats in the "drop zone" would be another option to ensure passenger safety.

The FAA does not concur with the commenter's request. As explained above, in establishing a compliance time for the proposed requirement, the FAA considered the safety implications and normal maintenance schedules for affected operators. The FAA finds that 24 months represents an appropriate interval of time allowable for the operators to continue to operate the affected airplanes, while not affecting the safety of the flight crew or passengers. The FAA also finds that reducing the compliance time from 24 to 12 months or requiring blockage of seats would add an additional burden on operators and require issuance of a supplemental NPRM and reopening of the public comment period. The FAA finds that, considering the safety implications associated with the identified unsafe condition, it would be inappropriate to delay the issuance of the rule in this way. No change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 280 airplanes of the affected design in the worldwide fleet. The FAA estimates that 40 airplanes of U.S. registry will be affected by this AD.

It will take approximately 9 work hours per ceiling panel, and between 18 and 126 work hours per airplane, to accomplish the required installation, at an average labor rate of $60 per work hour. Required parts will cost between $1,366 and $9,575 per airplane. Based on these figures, the cost impact of the installation required by this AD on U.S. operators is estimated to be between $2,446 and $17,135 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the

Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–18–07 Boeing: Amendment 39–11273. Docket 98–NM–222–AD.

Applicability: Model 747–400 series airplanes, as listed in Boeing Alert Service Bulletin 747–25A3142, Revision 1, dated August 6, 1998, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent ceiling panels from falling into the passenger area in the event of failure of certain latch assemblies on the ceiling panels, which could result in consequent injury to the crew and passengers, accomplish the following:

(a) Within 24 months after the effective date of this AD, install strap assemblies on the ceiling panels and rails that support the video monitors, in accordance with Boeing Alert Service Bulletin 747–25A3142, dated October 16, 1997, or Revision 1, dated August 6, 1998.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The installation shall be done in accordance with Boeing Alert Service Bulletin 747–25A3142, dated October 16, 1997, or Boeing Service Bulletin 747–25A3142, Revision 1, dated August 6, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 5, 1999.

Issued in Renton, Washington, on August 23, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22388 Filed 8–30–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–10–AD; Amendment 39–11279; AD 99–18–13]

RIN 2120–AA64

Airworthiness Directives; de Havilland Inc. Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all de Havilland Inc. Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes. This AD requires amending the Limitations Section of the airplane flight manual (AFM) to prohibit the positioning of the power levers aft of the flight idle stop while the airplane is in flight. The AFM amendment includes a statement of consequences if the limitation is not followed. This AD is a result of numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight. None of the incidents or accidents involved de Havilland Inc. Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes. The actions specified by this AD are intended to prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned aft of the flight idle stop while the airplane is in flight.

EFFECTIVE DATE: October 8, 1999.

ADDRESSES: This information may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–10–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Peter LeVoci, Flight Test Pilot, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone: (516) 256–7514; facsimile: (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all de Havilland Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 22, 1998 (63 FR 56582). The NPRM proposed to require amending the Limitations Section of the AFM to prohibit the positioning of the power levers aft of the flight idle stop while the airplane is in flight, including a statement of consequences if the limitation is not followed. This AFM amendment shall consist of the following language:

> Positioning of power levers aft of the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.

The NPRM was the result of numerous incidents and five documented accidents involving airplanes equipped with turboprop engines where the propeller beta was improperly utilized during flight. None of the incidents or accidents involved de Havilland Inc. Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

Comment Disposition

The commenter supports the AD as written and believes that the FAA should issue additional AD action that mandates a modification that would prevent the flight crews from intentionally or inadvertently selecting the power levers below the flight idle stop while in flight. The commenter suggests this modification be in the form of a mechanical lockout device to preclude such power lever selection.

The FAA is currently evaluating each of the aircraft where AD's were issued to address this issue with a flight manual revision. The purpose of this evaluation is to determine whether a mechanical lockout device is necessary. Among those aircraft the FAA is evaluating are the de Havilland DHC–6 series airplanes. If the FAA determines that such a device is necessary, additional rulemaking may be initiated. No changes have been made to the final rule as a result of this comment.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Compliance Time of This AD

The FAA has determined that the compliance time of this AD will be specified in calendar time instead of hours time-in-service. While the condition addressed by this AD is unsafe while the airplane is in flight, the condition is not a result of repetitive airplane operation; the potential of the unsafe condition occurring is the same on the first flight as it is for subsequent flights. The compliance time of "30 days after the effective date of this AD" will not inadvertently ground airplanes and will assure that all owners/operators of the affected airplanes accomplish this action in a reasonable time period.

Cost Impact

The FAA estimates that 114 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to incorporate the AFM amendment, and that the average labor rate is approximately $60 an hour. Accomplishing the AFM revision requirements of this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of this AD is the time it would take each owner/operator of the affected airplanes to insert the information into the AFM.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

99–18–13 De Havilland Inc: Amendment 39–11279; Docket No. 97–CE–10–AD.

Applicability: Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes, all serial numbers, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 30 days after the effective date of this AD, unless already accomplished.

To prevent loss of airplane control or engine overspeed with consequent loss of engine power caused by the power levers being positioned aft of the flight idle stop while the airplane is in flight, accomplish the following:

(a) Amend the Limitations Section of the airplane flight manual (AFM) by inserting the following language:

> Positioning of power levers aft of the flight idle stop while the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power.

(b) This action may be accomplished by incorporating a copy of this AD into the Limitations Section of the AFM.

(c) Amending the AFM, as required by this AD, may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, FAA, New York Aircraft Certification Office (ACO), 10 Fifth Street, Third Floor, Valley Stream, New York 11581. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(f) This amendment becomes effective on October 8, 1999.

Issued in Kansas City, Missouri, on August 23, 1999.

Terry L. Chasteen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22535 Filed 8–30–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–56–AD; Amendment 39–11281; AD 99–18–15]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Models C90A, B200, B300, and 1900D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Raytheon Aircraft Company (Raytheon) Beech Models C90A, B200, B300, and 1900D airplanes. This AD requires replacing the landing gear hand pump for airplanes that had a pump within a certain serial number range installed at manufacture; and prohibits the future installation of any of these pumps on all of the affected airplanes. This AD is the result of information from the manufacturer of improper machining of the pump housing on certain landing gear emergency hand pumps on the affected airplanes. This resulted in an insufficient groove depth to retain a snap ring, which retains the check valve in its proper position within the housing. The actions specified in this AD are intended to detect any improperly machined landing gear emergency hand pumps, which, if not removed from service, could result in the inability to properly lower and lock the landing gear in the event of failure of the primary retraction/extension system.

DATES: Effective September 27, 1999.

Comments for inclusion in the Rules Docket must be received on or before October 27, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–56–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

This information may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–56–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Paul DeVore, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4142; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA has received information from the Raytheon Aircraft Corporation (Raytheon) of improper machining of the pump housing on landing gear emergency hand pumps, part number 101–388007–3, serial numbers 2702 through 2833; that are installed on certain Raytheon Beech Models C90A, B200, B300, and 1900D airplanes. This resulted in an insufficient groove depth to retain a snap ring, which retains the check valve in its proper position within the housing. These landing gear emergency hand pumps may have been installed at manufacture on airplanes within the following serial number range:

Model	Serial numbers
C90A	LJ–1526 through LJ–1550.
B200	BB–1628 through BB–1659.
B300	FL–213 through FL–237.
1900D	UE–346 through UE–356, UE–358, and UE–367.

Continuing to utilize these pumps in service could result in the inability to properly lower and lock the landing gear in the event of failure of the primary retraction/extension system.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that:

—These improperly machined landing gear emergency hand pumps should be removed from service; and

—AD action should be taken to prevent the above-referenced condition from occurring.

Explanation of the Provisions of the AD

Since an unsafe condition has been identified that is likely to exist or develop in other Raytheon Beech Models C90A, B200, B300, and 1900D airplanes of the same type design, the FAA is taking AD action. This AD requires replacing the landing gear hand pump for airplanes that had a pump within a certain serial number range installed at manufacture; and prohibits the future installation of any of these pumps on all of the affected airplanes.

Determination of the Effective Date of the AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–CE–56–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

99–18–15 Raytheon Aircraft Company (All type certificates of the affected airplanes previously held by the Beech Aircraft Corporation): Amendment 39–11281; Docket No. 99–CE–56–AD.

Applicability: The following Raytheon Beech airplane models and serial numbers, certificated in any category:

REPLACEMENT REQUIREMENTS OF PARAGRAPH (A) OF THIS AD

Model	Serial numbers
C90A	LJ–1526 through LJ–1550.
B200	BB–1628 through BB–1659.
B300	FL–213 through FL–237.
1900D	UE–346 through UE–356, UE–358, and UE–367.

INSTALLATION REQUIREMENTS OF PARAGRAPH (B) OF THIS AD

Model	Serial numbers
C90A	All serial numbers.
B200	All serial numbers.
B300	All serial numbers.
1900D	All serial numbers.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To detect any improperly machined landing gear emergency hand pumps, which, if not removed from service, could result in the inability to properly lower and lock the landing gear in the event of failure of the primary retraction/extension system, accomplish the following:

(a) *For the airplanes referenced in the Replacement Requirements of Paragraph (a) of this AD portion of the Applicability section of this AD:* Within the next 25 hours time-in-service (TIS) after the effective date of this AD, replace any landing gear emergency hand pump, part number 101–388007–3, that incorporates a serial number in the range of 2702 through 2833.

Note 2: This AD allows the aircraft owner or pilot to check the maintenance records to determine whether the landing gear emergency hand pump, part number 101–388007–3, has been replaced with one outside the serial number range of 2702 through 2833. See paragraph (c) of this AD for authorization.

(b) *For the airplanes referenced in the Installation Requirements of Paragraph (b) of this AD portion of the Applicability section of this AD:* As of the effective date of this AD, no person may install a landing gear emergency hand pump, part number 101–388007–3, that incorporates a serial number in the range of 2702 through 2833.

(c) The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may check the maintenance records to determine whether the landing gear emergency hand pump, part number 101–388007–3, that is installed incorporates a serial number outside the range of 2702 through 2833. If, by checking the maintenance records, it can be positively shown that an actuator with a serial number outside of the range of 2702 through 2833 is installed, the requirements of paragraph (a) of this AD do not apply and the owner/operator must make an entry into the aircraft records showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(f) This amendment becomes effective on September 27, 1999.

Issued in Kansas City, Missouri, on August 23, 1999.

Terry L. Chasteen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22534 Filed 8–30–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–03–AD; Amendment 39–11271; AD 99–18–05]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 727 series airplanes, that requires repetitive inspections to detect cracks in the forward flange of the vertical beam of the aft pressure bulkhead at certain buttock lines, and installation of a splice repair, if necessary. The amendment also requires installation of a preventative modification on the vertical beam of the door frame in certain cases. This amendment is prompted by reports of fatigue cracks found in the vertical beam web and forward flange of the aft pressure bulkhead. The actions specified by this AD are intended to detect and correct

such fatigue cracking, which could result in the inability of the subject vertical beam to withstand the fail-safe loads, and consequent loss of cabin pressurization.

DATES: Effective October 5, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 5, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2774; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 727 series airplanes was published in the **Federal Register** on July 18, 1997 (62 FR 38493). That action proposed to require repetitive inspections to detect cracks in the forward flange of the vertical beam of the aft pressure bulkhead at certain buttock lines, and installation of a splice repair, if necessary. That action also proposed to require installation of a preventative modification on the vertical beam of the door frames in certain cases.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters support the proposed rule.

Request to Correct Service Information

One commenter states that the last sentence under the heading "Explanation of Relevant Service Information" of the proposed AD incorrectly references Boeing Service Bulletin 727–53–0055 as "an additional source of service information for identical procedures to repair and modify the affected area." The commenter adds that Boeing Service Bulletin 727–53–0055 specifies a splice installation only if cracks are beyond repair/modification limits, whereas Boeing Service Bulletin 727–53–0210, dated April 1, 1993, specifies a splice repair and modification any time cracks are found.

The FAA does not concur that the reference to Boeing Service Bulletin 727–53–0055 is incorrect in the proposed AD. Although Boeing Service Bulletins 727–53–0055 and 727–53–0210 specify an inspection of the vertical beam at different locations, both service bulletins specify the same procedures for accomplishing the preventative modification and the splice repair. In light of this, the FAA considers that the reference to Boeing Service Bulletin 727–53–0055 is correct. However, the "Explanation of Relevant Service Information" does not reappear in the final rule; therefore, no change to the final rule is necessary in this regard.

Requests to Revise the Cost Estimate

Three commenters request that the cost estimate in the proposed AD be revised.

One commenter estimates that access to the affected area and removal and installation of the lavatories and walls would require 80 hours for a fleet cost of $389,000 for the inspection, total out-of-service costs of $1,285,380, additional inspection costs of $728,382 because of a disruption of normal "C" checks, and an inspection-only cost of $2,402,762. The commenter adds that the proposed AD requires inspections within 1,500 flight cycles, which would not allow the airplane to be scheduled into normal "C" checks and would necessitate its removal from service for approximately 90 days.

Another commenter estimates approximately 10 hours for the inspections. This estimate is based on 4 hours to gain access to the inspection area, 2 hours to accomplish the inspection, and 4 hours to close up the inspection area, with a cost per airplane of approximately $600 and a fleet cost of $632,400.

Another commenter estimates 200 hours (two mechanics for 5 working days) to remove/replace the lavatories and perform the inspections. The commenter states that, because the proposed initial inspection interval of 1,500 flight cycles is 500 flight cycles less than its current "C" check interval, 25 percent of its Model 727 fleet would need to be removed from service on a "special route" basis and flown to a maintenance base to accomplish the inspection. The commenter adds that this schedule disruption and the downtime added to routine "C" check visits would severely impact operations and result in unnecessary expense and burden.

The FAA does not concur with the commenters' requests to revise the cost estimate in the AD. The FAA based its estimate on the cost estimate recommended in Boeing Service Bulletin 727–53–0210, dated April 1, 1993; as revised by Notice of Status Change 727–53–0210 NSC 1, dated June 17, 1993; and Notice of Status Change 727–53–0210 NSC 2, dated September 21, 1995. In that service bulletin, the time for removal and installation of lavatories is not included in the estimate because those times vary significantly based on the type of lavatories installed and whether lavatory galleys are installed (freighters have neither), and whether or not other inspections are being accomplished.

The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur "incidental" costs in addition to the "direct" costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up; planning time; or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate.

In addition, where safety considerations allow, the FAA attempts to impose compliance times that generally coincide with operators' maintenance schedules. However, because operators' schedules vary substantially, the FAA is unable to accommodate every operator's optimal scheduling in each AD. Each AD does allow individual operators to obtain approval for extensions of compliance times, based on a showing that the extension will not affect safety adversely. Therefore, the FAA does not consider it appropriate to attribute to the AD, the costs associated with the type of special scheduling that might otherwise be required. Furthermore, because the FAA generally attempts to impose compliance times that coincide with operators' scheduled maintenance, the FAA considers it inappropriate to attribute the cost associated with aircraft "downtime" to the cost of the AD, because, normally, compliance with the AD will not necessitate any additional downtime beyond that of a regularly scheduled maintenance hold. Even if, in some cases, additional downtime is necessary for some airplanes, the FAA does not possess sufficient information to evaluate the number of airplanes that may be so affected or the amount of additional downtime that may be required. No change to the final rule is necessary in this regard.

Request to Revise Compliance Time

One commenter requests revising **Note 2** [following paragraph (a)(2) of the proposed AD]. The commenter states that **Note 2** does not agree with the service bulletin. The commenter considers that if the splice repair has been accomplished, the inspection threshold should be 20,000 flight cycles since installation of the splice repair; whereas, if the splice repair has not been accomplished, the threshold should be 20,000 flight cycles from time of delivery.

The FAA agrees with the commenter's remark that **Note 2** of the proposed AD does not correspond with the service bulletin, and has removed the note from this final rule. In reviewing this comment, the FAA notes that the compliance time specified in the proposed AD differs from the service bulletin. However, the FAA's intent was that the compliance times coincide with the service bulletin.

Further, the FAA notes that the splice repair or the preventative modification may have been installed independently on the left and right vertical beams. In such cases, in order to allow those beams to be inspected independently, the FAA has revised the final rule to specify compliance times from the time of installation of the splice repair or preventative modification of the vertical beams. The compliance times in paragraphs (a)(1) and (a)(2) of this AD have been revised to coincide with the service bulletin, as follows:

- For any vertical beam on which neither the preventative modification nor the splice repair have been accomplished, paragraph (a)(1) of this AD requires an inspection prior to the accumulation of 20,000 total flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later.
- For any vertical beam on which the preventative modification has not been accomplished and the splice repair has been accomplished, paragraph (a)(2) of this AD requires an inspection prior to the accumulation of 20,000 flight cycles since installation of the splice repair, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later.

Request to Extend Compliance Time for Inspections

One commenter requests an inspection interval of 4,000 flight cycles, with repeat inspections every 4,000 flight cycles if the preventative modification has not been accomplished. The commenter states that the 4,000 flight cycle limit would allow the operator to remove the lavatories, accomplish the inspection, and install the preventative modification during scheduled corrosion (R–check) visits. The commenter adds that these corrosion visits are of sufficient duration to absorb the additional work without undue impact, and that its current fleet plans include the initial inspection and installation of the preventative modification during the same visit. The commenter considers that the 4,000 flight cycles for the initial inspection is justified from a technical standpoint because it has been conducting routine intensified inspections and repairs of the aft pressure bulkhead vertical beam at scheduled heavy maintenance visits since 1988. The commenter also states that the inspection interval of 1,500 flight cycles is 500 flight cycles less than its current "C–check" interval. The commenter adds that, unless the inspection intervals are increased, 25% of its 727 fleet would be removed from service on a "special route" basis and flown to base maintenance. The commenter considers that this schedule disruption and the additional downtime added to routine C–checks would severely impact operations and result in unnecessary expense and burden, whereas inspection intervals of 4,000 flight cycles would allow sufficient time to accomplish the work without undue impact.

The FAA does not concur with the commenter's request to revise the compliance times, as described. The grace period for the initial inspection and the inspection intervals specified in this AD were determined based on engineering analysis of crack growth rates and the type of detection methods used. The compliance times proposed by the commenter do not ensure that cracking will be detected in a timely manner.

Another commenter requests that the initial inspection threshold required by paragraph (a)(1) of the proposed AD be increased from "18,500 total flight cycles" to "30,000 total flight cycles." The commenter states that the two reports of cracks have both occurred at 48,000 and 48,500 flight cycles. The commenter adds that it considers the inspection threshold of 18,500 flight cycles to be premature because cracking did not occur before 48,000 flight cycles.

The FAA does not concur that the inspection threshold required by paragraph (a)(1) of the final rule, should be increased to 30,000 total flight cycles. While Boeing Service Bulletin 727–53–0210 specifies that cracks occurred at thresholds exceeding 48,000 flight cycles, the FAA considers that the extent of such cracking was unsafe. In developing an appropriate compliance time for this AD, the FAA considered the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, the time necessary to perform the inspection, and the practical aspects of performing the inspections. In consideration of these factors, the FAA finds that the compliance time required by paragraph (a)(1) of this AD represents an appropriate threshold for accomplishment of the inspection in a timely manner within the fleet and still maintain an adequate level of safety. The FAA considers that the inspections can be accomplished within an interval of time that parallels normal scheduled maintenance for a majority of affected operators, and within an appropriate interval to prevent the initiation and propagation of fatigue cracking in the vertical beam web and forward flange of the aft pressure bulkhead.

Because the objective of the proposed inspections is to detect and correct these cracks before the extent of the cracking found on those airplanes, the FAA has determined that the inspection threshold specified in paragraph (a)(1) of the AD is appropriate. No change was made to the final rule in this regard.

Request to Defer Accomplishment of Modification on Both Frames

One commenter states that operators should have the option of "terminating the inspection" on both frames. The FAA infers that the commenter requests that the repair be required for cracked door frames only, and that operators be allowed to accomplish the modification at a time established by the operator. The FAA has determined that an appropriate level of safety can be assured by accomplishment of both the repair and modification on all cracked door frames prior to further flight, as recommended by the manufacturer. Additionally, repetitive inspections of uncracked door frames must be accomplished at the intervals specified in this AD. Paragraphs (b) and (c) of this AD have been revised accordingly.

Request to Change Installation Requirement for Splice Repair

One commenter requests that an operator should be allowed to install the splice repair only (not the preventative modification) on a cracked door frame, followed by repeat inspections beginning at 18,500 flight cycles.

The FAA does not concur that an adequate level of safety can be ensured

by requiring only the splice repair and continued inspection beginning at 18,500 flight cycles after repair of the cracked vertical beam. The FAA points out that the commenter provided no technical justification for accomplishing only the repair with repetitive inspections of a cracked vertical beam; the FAA considers cracking in the forward flange of the vertical beam of the aft pressure bulkhead to be a significant safety issue.

In developing the appropriate actions (i.e., repair, modification, and repetitive inspections) for this AD, the FAA considered not only those safety issues but the recommendations of the manufacturer, the availability of parts, and the practical aspect of accomplishing the required inspections within an interval of time that parallels normal scheduled maintenance for the majority of affected operators. The FAA considers that the repair, modification, and repetitive inspections required by the proposed AD are necessary to ensure the timely detection of cracking.

To further clarify the required repetitive inspection intervals of uncracked vertical beams and the required actions for cracked vertical beams, paragraphs (b)(1)(i) and (b)(1)(ii) have been added, and paragraphs (b), (b)(1), (b)(2), and (c) have been revised in the final rule.

Requests to Clarify the Repetitive Inspection Intervals

One commenter requests that paragraph (a)(2) of the proposed AD, which specifies repetitive inspections at intervals not to exceed 6,000 flight cycles, be divided into two sections, one for airplanes inspected at 3,000 flight cycles and another for airplanes inspected at 6,000 flight cycles. The commenter states that, for airplanes with the modification accomplished previously, paragraph (a)(2) requires repetitive inspections thereafter at intervals not to exceed 6,000 flight cycles; however, paragraph (b)(2) requires such inspections at intervals not to exceed 3,000 flight cycles. The commenter considers that the FAA's intent was to require such inspections thereafter at intervals not to exceed 3,000 flight cycles for airplanes that do not have preventative modifications installed.

Another commenter states that the actions required by paragraphs (a)(2) and (b)(2) seem to conflict. That commenter suggests changing the wording in those paragraphs to clarify that repetitive inspections are not to exceed 3,000 flight cycles for unmodified structure or 6,000 flight cycles for modified structure.

The FAA concurs. The FAA agrees that clarification of the number of repetitive inspection intervals specified in paragraphs (a)(2) and (b)(2) of the proposed AD is necessary. The FAA also agrees that it is necessary to distinguish between the number of flight cycles required for modified and unmodified structures in the final rule. In light of this, the FAA has deleted the repetitive inspections specified in paragraph (a)(2) of the proposed AD, and has specified the repetitive inspection intervals required for modified and unmodified structures in paragraphs (b)(1)(i) and (b)(1)(ii) of the final rule.

Request to Allow Repair/Modification During D-Check

One commenter requests that the repair and modification required by the proposed AD be accomplished during "D-check" opportunities because the actions required could exceed 200 hours and possibly 4 days.

The FAA does not concur. The FAA points out that the compliance times specified in the AD for the repair and preventative modification were based on the information included in Boeing Service Bulletin 727–53–0210, and that it considers these estimates appropriate. The FAA has determined that continued flight with unmodified structure, which has begun to crack and is likely to continue cracking, does not provide an acceptable level of safety. In light of these considerations, no change has been made to the final rule in this regard.

Request to Correct Typographical Error

Two commenters request a correction to paragraph (c) of the NPRM to delete a reference to paragraph (a)(3). The FAA agrees that paragraph (a)(3) did not exist in the NPRM and that a reference to that paragraph should not have been included in paragraph (c) of the NPRM. However, the final rule now includes a paragraph (a)(3), which is appropriately referenced in paragraph (c) of this final rule.

Request to Permit "Industry-Accepted Shop Practices"

One commenter requests including a statement in the final rule allowing the use of industry-accepted shop practices in lieu of processes and finishes (e.g., primer, paint, or sealant) that are specified by the original equipment manufacturer (OEM) and that have no effect on the intent of the AD. The commenter states that industry-accepted shop practices would allow operators to use equivalent methods and types of finishes without first having to seek approval from the FAA for an alternative method of compliance.

The FAA does not concur with the request to allow the use of industry-accepted shop practices instead of the alternative method of compliance required by paragraph (d) of the proposed AD. The FAA points out that such practices could vary from operator to operator and, thus, make it impossible to ensure the appropriate level of safety required. In light of this, the FAA has determined that it is unacceptable to delegate an undefined practice. This final rule requires that the actions be accomplished in accordance with the procedures specified in Boeing Service Bulletin 727–53–0210. An industry-accepted shop practice may be used only if approved as an alternative method of compliance in accordance with paragraph (d) of the final rule. No change has been made to paragraph (d) of the final rule.

Explanation of Changes Made to the Proposal

Operators should note that the following changes were made to this AD to clarify certain terminology:

- The term "aft fuselage bulkhead," which was used in the proposed AD, has been changed to "aft pressure bulkhead" in the final rule. This change was made in the Summary and throughout this AD to correlate with the term used in Boeing Service Bulletin 727–53–0210 and because it more accurately describes the bulkhead.
- The term "close visual inspections," as specified in certain paragraphs of the proposed AD, has been changed to "detailed visual inspections." This terminology is considered to be technically equivalent. This change was made in paragraphs (b)(1)(i), (b)(1)(ii), (b)(2), and (c) of the final rule. In addition, **Note 2** has been added to the final rule, following paragraph (a)(3), to include the definition of a "detailed visual inspection."

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,560 Model 727 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,054 airplanes of U.S. registry will be affected by this AD.

It will take approximately 2 work hours per airplane to accomplish the required inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $126,480, or $120 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator be required to accomplish the preventative modification, it will take approximately 100 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. The cost of required parts could range between $910 and $1,042 per preventative modification kit (2 kits per airplane). Based on these figures, the cost impact of the preventative modification required by this AD on U.S. operators is estimated to be between $7,820, and $8,084 per airplane.

Should an operator be required to accomplish the splice repair, it will take approximately 148 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $3,545 per airplane ($1,756 for the splice repair kit on the left side, and $1,789 for the splice repair kit on the right side). Based on these figures, the cost impact of the splice repair required by this AD on U.S. operators is estimated to be $12,425 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–18–05 Boeing: Amendment 39–11271. Docket 97–NM–03–AD.

Applicability: All Model 727 airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the forward flange of the vertical beam of the aft pressure bulkhead, which could result in the inability of the subject vertical beam to withstand the fail-safe loads, and consequent loss of cabin pressurization, accomplish the following:

Initial Inspections

(a) Perform a detailed visual inspection and a high frequency eddy current (HFEC) inspection to detect cracks in the forward flange of the vertical beam at left and right buttock line 17.8 from water lines 265 through 288 inclusive, in accordance with Boeing Service Bulletin 727–53–0210, dated April 1, 1993, as revised by Notice of Status Change 727–53–0210 NSC 1, dated June 17, 1993, and Notice of Status Change 727–53–0210 NSC 2, dated September 21, 1995; at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

(1) For any vertical beam on which neither the preventative modification nor the splice repair have been accomplished, as specified in Boeing Service Bulletin 727–53–0210, dated April 1, 1993; or Boeing Service Bulletin 727–53–0055, Revision 6, dated February 28, 1986, Revision 7, dated March 5, 1987, Revision 8, dated December 17, 1987, or Revision 9, dated August 3, 1989: Inspect prior to the accumulation of 20,000 total flight cycles, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later.

(2) For any vertical beam on which the preventative modification has not been accomplished and the splice repair has been accomplished, as specified in Boeing Service Bulletin 727–53–0210, dated April 1, 1993, or Boeing Service Bulletin 727–53–0055, Revision 6, dated February 28, 1986, Revision 7, dated March 5, 1987, Revision 8, dated December 17, 1987, or Revision 9, dated August 3, 1989: Inspect prior to the accumulation of 20,000 flight cycles since installation of the splice repair, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later.

(3) For any vertical beam on which the preventative modification has been accomplished and the splice repair has or has not been accomplished, as specified in Boeing Service Bulletin 727–53–0210, dated April 1, 1993, or Boeing Service Bulletin 727–53–0055, Revision 6, dated February 28, 1986, Revision 7, dated March 5, 1987, Revision 8, dated December 17, 1987, or Revision 9, dated August 3, 1989: Inspect prior to the accumulation of 40,000 flight cycles since installation of the preventative modification, or within 1,500 flight cycles after the effective date of this AD, whichever occurs later.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

Repetitive Inspections and Corrective Action

(b) If no crack is detected during any inspection required by paragraph (a)(1), (a)(2), or (a)(3) of this AD, accomplish either paragraph (b)(1) or (b)(2) of this AD, as applicable, in accordance with Boeing Service Bulletin 727–53–0210, dated April 1, 1993, as revised by Notice of Status Change 727–53–0210 NSC 1, dated June 17, 1993, and Notice of Status Change 727–53–0210 NSC 2, dated September 21, 1995.

(1) For any vertical beam on which the preventative modification has not been accomplished, as specified in paragraphs (a)(1) and (a)(2) of this AD, accomplish either paragraph (b)(1)(i) or (b)(1)(ii) of this AD in accordance with the service bulletin.

(i) Prior to further flight, install the preventative modification. Prior to the accumulation of 40,000 flight cycles following accomplishment of a preventative modification, accomplish the detailed visual and HFEC inspections specified in paragraph (a) of this AD for any modified area. Repeat those inspections thereafter at intervals not to exceed 6,000 flight cycles for that modified area. Or

(ii) Repeat the detailed visual and HFEC inspections specified in paragraph (a) of this AD for any unmodified area at intervals not to exceed 3,000 flight cycles.

(2) For any vertical beam on which the preventative modification has been accomplished, repeat the detailed visual and HFEC inspections specified in paragraph (a) of this AD thereafter at intervals not to exceed 6,000 flight cycles.

(c) If any crack is detected during any inspection required by paragraph (a)(1), (a)(2), or (a)(3) of this AD, prior to further flight, install a splice repair and preventative modification to all cracked door frames, in accordance with Boeing Service Bulletin 727–53–0210, dated April 1, 1993, as revised by Notice of Status Change 727–53–0210 NSC 1, dated June 17, 1993, and Notice of Status Change 727–53–0210 NSC 2, dated September 21, 1995. Prior to the accumulation of 40,000 flight cycles following accomplishment of the preventative modification, accomplish the detailed visual and HFEC inspections specified in paragraph (a) of this AD. Repeat those inspections specified in paragraph (a) for that repaired and modified area thereafter at intervals not to exceed 6,000 flight cycles.

Alternative Method of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The actions shall be done in accordance with Boeing Service Bulletin 727–53–0210, dated April 1, 1993, as revised by Notice of Status Change 727–53–0210 NSC 1, dated June 17, 1993, and Notice of Status Change 727–53–0210 NSC 2, dated September 21, 1995. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on October 5, 1999.

Issued in Renton, Washington, on August 23, 1999.

Vi L. Lipski,

Acting Manager,

Transport Airplane Directorate,

Aircraft Certification Service.

[FR Doc. 99–22397 Filed 8–30–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–224–AD; Amendment 39–11278; AD 99–18–12]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Mark 050 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Fokker Model F27 Mark 050 series airplanes. This action requires a one-time inspection to detect cracking of the fuselage between stations 15375 and 16275, at the skin splice above the cabin windows; and corrective action, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to detect and correct such cracking, which could result in depressurization of the cabin and reduced structural integrity of the airplane fuselage.

DATES: Effective September 15, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 15, 1999.

Comments for inclusion in the Rules Docket must be received on or before September 30, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–224–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, The Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on all Fokker Model F27 Mark 050 series airplanes. The RLD advises that a report was received of a crack that had been discovered on the left-hand side of the fuselage between stations 15375 and 16275, at the skin splice above the cabin windows. Subsequent investigation of the skin splice revealed that the crack had initiated at a scratch in the bonded doubler at the edge of the lower skin. Fatigue caused the crack to grow to 21.3 inches (540 mm) undetected, until the skin splice opened, due to overload. This resulted in pressurization problems during climb of the airplane, leading to the detection of the crack. This condition, if not corrected, could result in depressurization of the cabin and reduced structural integrity of the airplane fuselage.

Explanation of Relevant Service Information

Fokker has issued Service Bulletin SBF50–53–053, dated February 1, 1997, which describes procedures for a one-time eddy current inspection to detect cracking of the fuselage between stations 15375 and 16275, at the skin splice above the cabin windows. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive 1997–022 (A), dated February 28, 1997, in order to assure the continued airworthiness of these airplanes in the Netherlands.

FAA's Conclusions

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to detect and correct cracking of the fuselage between stations 15375 and 16275, at the skin splice above the cabin windows, and corrective action, if necessary. This AD requires accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Information/Dutch Airworthiness Directive

Operators should note that, although the service bulletin and Dutch airworthiness directive specify that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 2 work hours to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $120 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register.**

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–224–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–18–12 Fokker Services B.V.: Amendment 39–11278. Docket 99–NM–224–AD.

Applicability: All Model F27 Mark 050 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect cracking of the fuselage between stations 15375 and 16275, at the skin splice above the cabin windows, which could result in depressurization of the cabin and reduced structural integrity of the airplane fuselage, accomplish the following:

(a) Prior to the accumulation of 10,000 total flight cycles, or within 6 months after the effective date of this AD, whichever occurs later, perform a one-time eddy current inspection to detect cracking of the fuselage

between stations 15375 and 16275, at the skin splice above the cabin windows, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF50–53–053, dated February 1, 1997.

(b) If any crack is found during the inspection required by paragraph (a) of this AD: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) Except as provided by paragraph (b) of this AD, the actions shall be done in accordance with Fokker Service Bulletin SBF50–53–053, dated February 1, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, The Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in Dutch airworthiness directive 1997–022 (A), dated February 28, 1997.

(f) This amendment becomes effective on September 15, 1999.

Issued in Renton, Washington, on August 23, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22392 Filed 8–30–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–201–AD; Amendment 39–11272; AD 99–18–06]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–300 and ATR42–320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42–300 and ATR42–320 series airplanes, that requires a one-time inspection for cracking of a fastener hole located on the lower surface of the outer wing, and repair, if necessary; and cold working of the hole and installation of a new fastener in the hole. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent fatigue damage on the outer wing and consequent reduced structural integrity of the wing.

DATES: Effective October 5, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 5, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW, Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42–300 and ATR42–320 series airplanes was published in the **Federal Register** on June 23, 1999 (64 FR 33441). That action proposed to require a one-time inspection for cracking of a fastener hole located on the lower surface of the outer wing, and repair, if necessary; and cold working of the hole and installation of a new fastener in the hole.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 14 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operator. Based on these figures, the cost impact of the required AD on U.S. operators is estimated to be $6,720, or $480 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–18–06 Aerospatiale: Amendment 39–11272. Docket 98–NM–201–AD.

Applicability: Model ATR42–300 and ATR42–320 series airplanes, serial numbers 3 through 59 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue damage on the outer wing and consequent reduced structural integrity of the wing, accomplish the following:

Corrective Action

(a) Prior to the accumulation of 33,000 total landings, or within 2,000 landings after the effective date of this AD, whichever occurs later, accomplish paragraphs (a)(1) and (a)(2) of this AD in accordance with Avions de Transport Regional Service Bulletin ATR42–57–0050, dated April 17, 1998.

(1) Perform a high frequency eddy current inspection to detect cracking of the fastener hole located on the lower surface of the outer wing near the spar/rib 15 junction. If any cracking is found, prior to further flight, repair the cracking in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Direction Generale de l'Aviation Civile (or its delegated agent).

(2) Perform cold working of the fastener hole located on the lower surface of the outer wing near the spar/rib 15 junction, and install a new fastener in the hole.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) Except as provided by paragraph (a)(1) of this AD, the actions shall be done in accordance with Avions de Transport Regional Service Bulletin ATR42–57–0050, dated April 17, 1998. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 98–147–075(B), dated April 8, 1998.

(e) This amendment becomes effective on October 5, 1999.

Issued in Renton, Washington, on August 23, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22389 Filed 8–30–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWA–1]

RIN 2120–AA66

Revision to the Legal Description of the Riverside, March Air Force Base (AFB), Class C Airspace Area; CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the legal description of the Riverside March AFB, CA, Class C airspace area by replacing references to the former active duty AFB with the current civil/military joint-use designation of "March Field." Additionally, this action changes the legal description to reflect the current operating hours for the Class C airspace area which are consistent with the current mission requirements of the U.S. Air Force (USAF) Reserve, the U.S. Customs Service, and other tenants operating at this airport. The Class C airspace area is designated effective during the specific days and times of operation of the March Ground Controlled Approach (GCA) facility as established in advance by a Notice to Airmen (NOTAM). The effective dates and times will thereafter be continuously published in the Airport/Facility Directory. This action will not change the actual dimensions, configuration, or operating requirements of the Riverside, March Field, CA, Class C airspace area.

EFFECTIVE DATE: November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On May 7, 1997, the USAF Reserve and the March Joint Powers Authority (JPA) entered into a formal agreement for military-civilian joint-use of the former Riverside, March AFB. The Riverside, March Field, Class C airspace area remains an essential safety measure in support of the ongoing mission requirements of key March Field tenants which include the 336th Air Refueling Squadron and the 729th Airlift Squadron of the U.S. Air Force Reserve's 452nd Air Mobility Wing, the U. S. Customs Service Domestic Air

Interdiction Center, the 163rd Air Refueling Wing of the California Air National Guard, and the March Aero Club.

On March 25, 1999, the FAA published an NPRM (64 FR 14410) that proposed to modify the Riverside, March Field, Class C airspace area. Interested parties were invited to participate in this rulemaking proceeding by submitting comments on the proposal to the FAA. No comments were received. Except for editorial changes, this amendment is the same as that proposed in the notice.

The Rule

This amendment to part 71 of The Federal Aviation Regulations (14 CFR part 71) revises the legal description of the Riverside, March AFB Class C airspace area located at Riverside, CA. The current legal description for the Riverside, March AFB Class C airspace area refers to an AFB that has been deactivated. This action is a technical amendment to the legal description and will not change the actual dimensions, configuration, or operating requirements of the Riverside, March AFB Class C airspace area.

The coordinates for this airspace docket are based on North American Datum 83. Class C airspace areas are published in paragraph 4000 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class C airspace area listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this Regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "Significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 4000 Class C Airspace

* * * * *

AWP CA C Riverside March Field, CA [Revised]

Riverside, March Field, CA
(Lat. 33°52'50" N., long. 117°15'34" W.)

That airspace extending upward from the surface to and including 5,500 feet MSL within a 5-mile radius of March Field; and that airspace extending upward from 3,900 feet MSL to and including 5,500 feet MSL within the 10-mile radius of March Field from the centerline of V–16/V–370 east of the airport clockwise to the 216° bearing from the airport and that airspace extending upward from 2,900 feet MSL to but not including 3,900 feet MSL within 2 miles east and 1.5 miles west of the 150° bearing from the airport extending from the 5-mile radius to the 10-mile radius of the airport. This Class C airspace area is effective during the specific days and hours of operation of the March GCA facility as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Washington, DC on August 25, 1999.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 99–22609 Filed 8–30–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–40]

Amendment to Class E Airspace; Nevada, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Nevada Municipal Airport, Nevada, MO. A review of the Class E airspace area for Nevada Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D.

In addition, the Nevada Non Directional Radio Beacon (NDB) and coordinates have been included in the text header and the legal description for Nevada Municipal Airport.

The intended effect of this rules to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), include reference to Nevada NDB, and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, November 4, 1999.

Comments for inclusion in the Rules Docket must be received on or before September 19, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 99–ACE–40, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Nevada, MO. A review of the Class E airspace for Nevada Municipal Airport, MO, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Nevada Municipal, MO, will provide additional controlled airspace for aircraft operating under IFR, include reference to the Nevada NDB, and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of the FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous action of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designation an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and conforming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comments, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of a proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rule Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ACE–40." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulation adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Nevada, MO [Revised]

Nevada Municipal Airport, MO
(Lat. 35°51'07" N., long. 94°18'18" W.)
Nevada NDB
(Lat. 37°51'32" N., long. 95°18'10" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Nevada Municipal Airport and within 2.6 miles each side of the 036° bearing from the Nevada NDB, extending from the 6l6-mile radius to 7.5 miles northeast of the airport.

Issued in Kansas City, MO, on August 11, 1999.

Richard L. Day,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–22220 Filed 8–30–99 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29708; Amdt. No. 1946]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies my be obtain from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS—420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on August 20, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective September 9, 1999

Atlanta, GA, The William B. Hartsfield Atlanta Intl, ILS RWY 9L, Amdt 6
Atlanta, GA, The William B. Hartsfield Atlanta Intl, ILS RWY 27R, Amdt 3
Falfurrias, TX, Brooks County, NDB RWY 35, Amdt 1
Falfurrias, TX, Brooks County, GPS RWY 17, Orig

Effective October 7, 1999

Denver, CO, Denver Intl, ILS RWY 34, Orig
Denver, CO, Denver Intl, ILS RWY 35L, Amdt 2
Denver, CO, Denver Intl, ILS RWY 35R, Orig
Denver, CO, Denver Intl, ILS/DME RWY 34, Amdt 1, CANCELLED
Denver, CO, Denver Intl, ILS/DME RWY 35R, Amdt 1, CANCELLED
Laredo, TX, Laredo Intl, ILS RWY 17R, Amdt 9
Blacksburg, VA, Virginia Tech, LOC/DME RWY 12, Orig
Blacksburg, VA, Virginia Tech, LOC/RWY RWY 12, Amdt 5, CANCELLED

Effective November 4, 1999

Little Rock, AR, Adams Field, GPS RWY 36, Orig
Little Rock, AR, Adams Field, VOR/DME RNAV or GPS RWY 36, Amdt 10 CANCELLED
Milton, FL, Peter Prince Field, GPS RWY 36, Amdt 1
Pompano Beach, FL, Pompano Beach Airpark, GPS RWY 33, Orig
Brunswick, GA, Glynco Jetport, GPS RWY 7, Orig
Brunswick, GA, Glynco Jetport, VOR/DME RNAV RWY 7, Amdt 6B, CANCELLED
Brunswick, GA, Glynco Jetport, GPS RWY 25, Orig
Brunswick, GA, Glynco Jetport, VOR/DME RNAV RWY 25, Amdt 6B, CANCELLED
Sheridan, IN, Sheridan, GPS RWY 5, Orig
Sheridan, IN, Sheridan, GPS RWY 23, Orig
Carroll, IA, Arthur N. Neu, GPS RWY 13, Amdt 1
Carroll, IA, Arthur N. Neu, GPS RWY 31, Amdt 1
Boston, MA, General Edward Lawrence Logan Intl, GPS RWY 27, Orig
Boston, MA, General Edward Lawrence Logan Intl, GPS RWY 33L, Orig
Ava, MO, Ava Bill Martin Memorial, VOR-A, Amdt 2
Ava, MO, Ava Bill Martin Memorial, NDB RWY 31, Amdt 1
Ava, MO, Ava Bill Martin Memorial, GPO RWY 13, Orig
Ava, MO, Ava Bill Martin Memorial, GPO RWY 31, Orig
York, NE, York Muni, NDB RWY 17, Amdt 4
Raton, NM, Raton Municipal/Crews Field, VOR/DME RWY 2, Amdt 7
Raton, NM, Raton Municipal/Crews Field, NDB RWY 2, Amdt 5
Raton, NM, Raton Municipal/Crews Field, GPS RWY 2, Amdt 1
Raton, NM, Raton Municipal/Crews Field, GPS RWY 25, Amdt 1
Greenville, NC, Pitt-Greenville, GPS RWY 1, Orig
Greenville, NC, Pitt-Greenville, GPS RWY 19, Orig
Barnesville, OH, Barnesville-Bradfield, GPS RWY 27, Orig
Chambersburg, PA, Chamberburg Muni, GPS RWY 24, Amdt 1
Indiana, PA, Indiana County/Jimmy Stewart Field, GPS RWY 10, Orig
Zelienople, PA, Zelienople Muni, GPS RWY 17, Amdt 1
Zelienople, PA, Zelienople Muni, GPS RWY 35, Amdt 1
North Kingstown, RI, Quonset State, VOR–A, Amdt 5
North Kingstown, RI, Quonset State, VOR RWY 34, Amdt 1
North Kingstown, RI, Quonset State, ILS RWY 16, Amdt 8
North Kingstown, RI, Quonset State, GPS RWY 34, Amdt 1
North Kingstown, RI, Quonset State, VOR/DME RNAV RWY 34, Amdt 2
Beaumont/Port Arthur, TX, Southeast Texas Regional, GPS RWY 12, Orig
Beaumont/Port Arthur, TX, Southeast Texas Regional, GPS RWY 16, Orig
Beaumont/Port Arthur, TX, Southeast Texas Regional, GPS RWY 30, Orig
College Station, TX, Easterwood Field, GPS RWY 16, Orig
College Station, TX, Easterwood Field, GPS RWY 28, Orig
Lockhart, TX, Lockhart Muni, GPS RWY 18, Orig
Lockhart, TX, Lockhart Muni, GPS RWY 36, Orig
Berkeley Springs, WV, Potomac Airpark, GPS RWY 11, Orig
Berkeley Springs, WV, Potomac Airpark, GPS RWY 29, Orig
Berkeley Springs, WV, Potomac Airpark, VOR/DME RNAV–A, Amdt 2
Morgantown, WV, Morgantown Muni-Walter L. Bill Hart Field, VOR OR GPS–A, Amdt 12
Morgantown, WV, Morgantown Muni-Walter L. Bill Hart Field, VOR/DME RWY 18, Amdt 7
Morgantown, WV, Morgantown Muni-Walter L. Bill Hart Field, ILS RWY 18, Amdt 12
Guernsey, WY, Camp Guernsey, GPS RWY 32, Orig

[FR Doc. 99–22611 Filed 8–30–99; 8:45 am]

BILLING CODE 4010–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–153]

Drawbridge Operation Regulations: Hutchinson River, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, first Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations governing the operation of the Pelham Bay Railroad Bridge, mile 0.5, across the Hutchinson River in New York City, New York. This deviation allows the bridge owner to keep the bridge in the closed position from 7 a.m., on August 25, 1999, to 5 p.m., on August 27, 1999, and from 7 a.m., on September 1, 1999, to 5 p.m., on September 3, 1999. This action is necessary to facilitate replacement of the bridge miter rails and counterweight modifications.

DATES: This deviation is effective from August 25, 1999, to August 27, 1999, and from September 1, 1999, to September 3, 1999.

FOR FURTHER INFORMATION CONTACT: Joe Schmied, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Pelham Bay Railroad Bridge, at mile 0.5, across the Hutchinson River in New York City, New York, has a vertical clearance of 8 feet at mean high water, and 15 feet at mean low water in the closed position. The bridge is required to open on signal at all times. The bridge owner, AMTRAK, has requested a temporary deviation from the drawbridge operating regulations to facilitate necessary maintenance for the replacement of the bridge miter rails and counterweight modifications. This deviation from the operating regulations allows the bridge owner to keep the Pelham Bay Railroad Bridge in the closed position from 7 a.m., on August 25, 1999, to 5 p.m., on August 27, 1999, and from 7 a.m., on September 1, 1999, to 5 p.m., on September 3, 1999. Vessels that can pass under the bridge without an opening may do so at all times during the closed period.

The bridge owner did not provide the required thirty-day notice to the Coast Guard for approval of scheduled maintenance repair which would require a drawbridge to deviate from the normal operating regulations. The Coast Guard has approved AMTRAK's request to close the bridge, however, because the work was determined to be necessary for public safety and the continued operation of the bridge.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: August 23, 1999.

R. M. Larrabee,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 99–22656 Filed 8–30–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 217–0170a; FRL–6423–1]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on a revision to the California State Implementation Plan. The revision concerns a rule from the South Coast Air Quality Management District (SCAQMD). This approval action will incorporate this rule into the federally approved SIP. The intended effect of approving this rule is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rule controls VOC emissions from commercial and industrial adhesive applications. EPA is finalizing the approval of this revision into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on November 1, 1999 without further notice, unless EPA receives adverse comments by September 30, 1999. If EPA receives such comment, it will publish a timely withdrawal **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revisions and EPA's evaluation report for the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office [AIR–4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office [AIR–4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1199.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being approved into the California SIP is SCAQMD Rule 1168, Adhesive Application. This rule was submitted by the California Air Resources Board to EPA on September 29, 1998.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the Los Angeles-South Coast Air Basin Area. 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above district's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP–Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172 (b) as interpreted in pre-amendment guidance.[1] EPA's SIP–Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Los Angeles-South Coast Air Basin Area is classified as extreme[2]; therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on September 29, 1998, including the rule being acted on in this document. This document addresses EPA's direct-final action for SCAQMD Rule 1168, Adhesive Applications. SCAQMD adopted Rule 1168 on February 13, 1998. EPA found the submitted rule complete on January 26, 1999 pursuant to criteria set forth in 40 CFR part 51, appendix V[3] and is finalizing the rule for approval into the SIP.

SCAQMD Rule 1168 limits the VOC emissions resulting from commercial and industrial adhesive applications. VOCs contribute to the production of ground level ozone and smog. This rule was originally adopted as part of SCAQMD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP–Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for this rule.

III. EPA Evaluation and Action

To determine the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** document" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The Los Angeles-South Coast Air Basin Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

In addition, this rule was evaluated against the SIP enforceability guidelines found in the EPA Region IX—California Air Resources Board document entitled, "Guidance Document for Correcting VOC Rule Deficiencies" (April 1991) and against other EPA policies. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

There is currently no version of SCAQMD 1168, Adhesive Applications in the SIP. The submitted rule includes provisions which:

- clearly delineate rule applicability (sections a, i, and j),
- limit the VOC content of adhesives, sealants, and primers (sections c1–3),
- specify application techniques and good housekeeping practices (sections c4–6),
- require persons opting to use control equipment to use equipment with a combined control and capture efficiency of at least 80 percent (section c7),
- specify that the lowest VOC standard shall apply for any adhesive product making multiple application claims (section c9),
- require records be maintained in accordance with Rule 109 (section e),
- reference test methods for determining VOC content and capture and control efficiency (sections f and g), and
- prohibit specification of the use of non-complying adhesive products within the District (section h).

Earlier versions of this rule were adopted on December 4, 1992 and December 10, 1993, and submitted to EPA. While EPA can only act on the most recently submitted version, EPA reviewed relevant materials associated with the superseded versions.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, SCAQMD Rule 1168, Adhesive Applications is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective November 1, 1999 without further notice unless the Agency receives adverse comments by September 30, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule is effective on November 1, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This

final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 1, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 6, 1999.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(266) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(266) New and amended regulations for the following APCDs were submitted on September 29, 1998 by the Governor's designee.

(i) Incorporation by reference.

(A) South Coast Air Quality Management District.

(*1*) Rule 1168, adopted on April 7, 1989, and amended February 13, 1998.

* * * * *

[FR Doc. 99–22179 Filed 8–30–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 224–0168a; FRL–6425–5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from the following special districts: South Coast Air Quality Management District (SCAQMD); and, Ventura County Air Pollution Control District (VCAPCD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) according to the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from pleasure craft coating operations. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on November 1, 1999 without further notice, unless EPA receives adverse comments by September 30, 1999. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105;

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW, Washington, DC 20460;

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812;

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765–4182; and,

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1226.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP are SCAQMD Rule 1106.1—Pleasure Craft Coating Operations and VCAPCD Rule 74.24.1—Pleasure Craft Coating and Commercial Boatyard Operations. These rules were submitted by the California Air Resources Board (CARB) to EPA on June 3, 1999 and February 16, 1999, respectively.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the South Coast air basin and Ventura County. See 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172 (b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The South Coast air basin is classified as extreme and Ventura County is classified as severe.[2] Therefore, these areas were subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on both June 3, 1999 and February 16, 1999, including the rules being acted on in this document. This document addresses EPA's direct-final action for SCAQMD Rule 1106.1—Pleasure Craft Coating Operations and VCAPCD Rule 74.24.1—Pleasure Craft Coating and Commercial Boatyard Operations. SCAQMD adopted Rule 1106.1 on February 12, 1999. VCAPCD adopted Rule 74.24.1 on November 19, 1998. EPA found both of these submitted rules to be complete on June 24, 1999 and April 23, 1999, respectively; pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V.[3] SCAQMD Rule 1106.1 and VCAPCD Rule 74.24.1 are being finalized for approval into the SIP with today's action.

SCAQMD Rule 1106.1 and VCAPCD Rule 74.24.1 are designed to reduce volatile organic compound (VOC) emissions at industrial sites engaged in manufacturing or repairing vessels which are operated, leased, rented, or chartered to a person or business for recreational purposes. VOCs contribute to the production of ground level ozone and smog. These rules were adopted as part of SCAQMD and VCAPCD efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for this rule.

III. EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote one. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). Further interpretations of EPA policy are found in the Blue Book, referred to in footnote one. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

However, there is no CTG applicable to the pleasure craft coating operations source category. Along with SCAQMD Rule 1106.1 and VCAPCD 74.24.1, one other pleasure craft coating rule, San Diego County Air Pollution Control District Rule 67.18, has been adopted within California. Together, these three rules provide a basis for determining what controls are reasonably available within California. This rulemaking will not establish EPA's national definition of RACT for the pleasure craft coating industry across the United States.

On April 13, 1995, EPA approved into the SIP a version of SCAQMD Rule 1106.1—Pleasure Craft Coating Operations that had been adopted on May 1, 1992. (See 60 FR 18750.) Revisions to this Rule 1106.1 were adopted subsequently on March 8, 1996 and June 13, 1997, and submitted to EPA. While EPA can only act on this most recently submitted version, EPA reviewed relevant materials associated

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] Both the South Coast air basin and Ventura County retained their designation of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

with these prior and superseded versions of the rule. SCAQMD's submitted Rule 1106.1 includes the following significant changes from the current SIP:

—Increase temporarily the VOC emission limits for Extreme High Gloss Topcoats from 490 gr/l to 650 gr/l and Finish Primers from 420 gr/l to 600 gr/l returning these emission limits to the previously lower limits on January 1, 2001;
—Increase the VOC emissions limit for Antifoulants from 150 gr/l to 400 gr/l and lowering the emissions limit to 300 gr/l on January 1, 2001;
—Remove the requirement that sprayed coatings be applied using high volume low pressure (HVLP) or equivalent methods; and,
—Provide related editorial amendments such as removing irrelevant past compliance dates and emission limits and renumbering test method designations.

The modified VOC content limits and compliance dates in the submitted Rule 1106.1 neither interfere with reasonable further progress, nor attainment of the NAAQS. Considering progress requirements, enough surplus emission reductions exist between 1999 and 2005 in the EPA approved ozone attainment plan to allow a delay in emission reductions from Rule 1106.1 while still meeting the CAA's progress requirements. (See 62 FR 1181, January 8, 1997.) Regarding attainment of the NAAQS in 2010, the relaxed emission limits in the submitted rule add less than 0.0063% (40.5 pounds per day) to the EPA approved 2010 VOC emissions budget of 323 tons per day. For these reasons, the changes within submitted Rule 1106.1 are consistent with the requirements of section 110(l) of the CAA.

EPA has evaluated submitted Rule 1106.1 and determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, SCAQMD Rule 1106.1—Pleasure Craft Coating Operations is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D. Although the VOC emissions increases due to Rule 1106.1 can be considered a de minimus amount by themselves, SCAQMD should account for the cumulative effect of such emission increases in future attainment plan revisions.

There is no version of VCAPCD Rule 74.24.1—Pleasure Craft Coating and Commercial Boatyard Operations in the SIP. The submitted rule includes the following general provisions:

—Applicability;
—Requirements for ROC (reactive organic compounds) content of coatings, surface preparation, and storage of ROC containing materials;
—Exemptions from the rule;
—Record keeping to demonstrate compliance with the rule;
—Test methods for determining compliance with the rule;
—Violations; and
—Definitions of terms used within the rule

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, VCAPCD Rule 74.24.1—Pleasure Craft Coating and Boatyard Operations is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

EPA is publishing this rulemaking action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective November 1, 1999 without further notice unless the Agency receives adverse comments by September 30, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule did not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule is effective on November 1, 1999, and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 1, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 6, 1999.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(262)(i)(B)(*2*) and (c)(264)(i)(A)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(262) * * *

(i) * * *

(B) * * *

(*2*) Rule 74.24.1, adopted on November 10, 1998.

* * * * *

(264) * * *

(i) * * *

(A) * * *

(*2*) Rule 1106.1, adopted on May 1, 1992, and amended on February 12, 1999.

* * * * *

[FR Doc. 99–22183 Filed 8–30–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 60

[ND–001–0006a; FRL–6426–5]

Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for North Dakota; Revisions to the Air Pollution Control Rules; Delegation of Authority for New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule and delegation of authority.

SUMMARY: EPA approves revisions to the State Implementation Plan (SIP) submitted by the Governor of North Dakota with a letter dated September 28, 1998. The revisions affect air pollution control rules regarding general

provisions, the State SO_2 ambient air quality standard, emissions of particulate matter and organic compounds, and permits to construct. EPA will handle separately the revisions to the Title V operating permit program, a direct delegation request for emission standards for hazardous air pollutants for source categories, and the State's plan for hospital, medical, and infectious waste incinerators.

Finally, EPA is providing notice that on May 7, 1999, North Dakota was delegated authority to implement and enforce the New Source Performance Standards (NSPS) in 40 CFR part 60, as of November 1, 1997, (excluding subpart Eb).

DATES: This direct final rule is effective on November 1, 1999 without further notice, unless EPA receives adverse comment by September 30, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Mail written comments to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado, 80202–2405. Documents relevant to this action can be perused during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado, 80202–2405. Copies of the incorporation by reference material are available at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Copies of the State documents relevant to this action are available at the North Dakota Department of Health, Division of Environmental Engineering, 1200 Missouri Avenue, Bismarck, North Dakota, 58504–5264.

FOR FURTHER INFORMATION CONTACT: Amy Platt, Environmental Protection Agency, Region VIII, (303) 312–6449.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" are used we mean EPA.

I. Background

In response to a petition by the Lignite Energy Council, the North Dakota Legislature adopted Senate Bill No. 2356 in the spring of 1997. This bill created a new section in chapter 23–25 of the North Dakota Century Code which, among other things, prohibits the adoption of ambient air quality rules or standards for sulfur dioxide that affect coal conversion facilities or petroleum refineries that are more strict than federal rules or standards under the Clean Air Act. As a result, the North Dakota Department of Health revised Chapter 33–15–02, Ambient Air Quality Standards, of the North Dakota Administrative Code (N.D.A.C.), to, among other things, exempt coal conversion facilities and petroleum refineries from the North Dakota ambient air quality standards (AAQS) for sulfur dioxide (SO_2), which are more stringent than the National Ambient Air Quality Standards (NAAQS) for SO_2. The revision is considered a relaxation. Because of the change in State law, coal conversion facilities and petroleum refineries will no longer be limited by the North Dakota AAQS and will not be allowed to emit SO_2 up to the NAAQs, unless limited by Prevention of Significant Deterioration (PSD) increment. The September 28, 1998 SIP revision addresses, among other things, this rule revision.

II. Analysis of State Submission

A. Procedural Background

The Act requires States to follow certain procedures in developing implementation plans and plan revisions for submission to EPA. Sections 110(a)(2) and 110(1) of the Act provide that each implementation plan a State submits must be adopted after reasonable notice and public hearing.

We also must determine whether a submittal is complete and therefore warrants further review and action (see section 110(k)(1) of the Act and 57 FR 13565). EPA's completeness criteria for SIP submittals can be found in 40 CFR part 51 appendix V. EPA attempts to determine completeness within 60 days of receiving a submission. However, the law considers a submittal complete if we don't determine completeness within six months after we receive it.

To provide for public comment, the North Dakota Department of Health (NDDOH), after providing adequate notice, held a public hearing on May 7, 1998 to address the revisions to the SIP and Air Pollution Control Rules. Following the public hearing, public comment period, and legal review by the North Dakota Attorney General's Office, the North Dakota State Health Council adopted the rule revisions, which became effective on September 1, 1998.

The Governor of North Dakota submitted the SIP revisions to EPA with a letter dated September 28, 1998. We reviewed them to determine completeness under the completeness criteria in 40 CFR part 51, appendix V. We found the submittal complete and so notified the Governor in a letter dated December 3, 1998. That letter also described the next steps to be taken in our review.

B. September 28, 1998 Revisions

As noted above, we will handle separately the revisions in the September 28, 1998 submittal regarding Chapter 33–15–14 (section specific to the Title V operating permit program), a direct delegation request for North Dakota Air Pollution Control Rules Chapter 33–15–22, regarding emission standards for hazardous air pollutants for source categories, as well as the State's plan for hospital, medical, and infectious waste incinerators. The submittal also included a direct delegation request for standards of performance for new stationary sources (see below). Finally, the submittal addressed revisions to general provisions, the State SO_2 ambient air quality standard, emissions of particulate matter and organic compounds, and the permit to construct program, which involve the following chapters of the N.D.A.C. to be addressed in this document: 33–15–01 General Provisions; 33–15–02 Ambient Air Quality Standards; 33–15–05 Emissions of Particulate Matter Restricted; 33–15–07 Control of Organic Compound Emissions; and 33–15–14 Designated Air Contaminant Source, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate (subsection specific to permit to construct only).

1. Chapter 33–15–01, N.D.A.C., General Provisions

Definitions for "coal conversion facility" and "petroleum refinery" were added to this chapter. This chapter was also revised to update the definition of volatile organic compounds ("VOCs") in 33–15–01–04.51 to match the Federal definition as published by EPA on April 9, 1998 (63 FR 17331). These revisions are consistent with Federal requirements, and therefore, approvable.

2. Chapter 33–15–02, N.D.A.C., Ambient Air Quality Standards

In section 33–15–02–07, Concentrations of Air Contaminants in the Ambient Air Restricted, two new subsections were added. The new subsection 3 allows coal conversion facilities and petroleum refineries to emit sulfur dioxide up to the National Ambient Air Quality Standards (NAAQS). This subsection also reiterates that affected facilities must still comply with the Prevention of Significant Deterioration (PSD) increments. The new subsection 4 allows facilities that experience a malfunction, or that need to shut down air pollution control equipment for maintenance, to emit sulfur dioxide in quantities that may exceed the 1-hour and 24-hour State Ambient Air Quality Standards (AAQS), but not to exceed the NAAQS. These revisions are a relaxation of requirements for affected sources because the NAAQS are less stringent than the State standards.

In addition, Table 2 was added to this chapter. Table 2 lists the NAAQS for sulfur dioxide.

In a March 28, 1997 letter from Richard Long, EPA, to Dana Mount, North Dakota Department of Health (NDDOH), EPA requested more information from the State regarding the implementation of Senate Bill No. 2356, which had recently been adopted by the State legislature and signed by the Governor. This bill prohibits the NDDOH from adopting sulfur dioxide ambient air quality standards affecting coal conversion facilities or petroleum refineries that are more strict than federal standards. The bill also provides for retroactive application, thus affecting earlier permitting decisions by NDDOH. EPA requested information to support a demonstration that the NAAQS and PSD increments would be protected in light of this change in State standards. In a series of letters from the NDDOH dated April 10 and November 17, 1997, and March 23, June 10, and December 1, 1998, the State provided EPA with adequate technical support information to demonstrate that the NAAQS and PSD increments would be protected.

a. *State's Technical Support Information.* According to NDDOH, Senate Bill No. 2356 allows existing and new coal conversion facilities and petroleum refineries to emit sulfur dioxide in amounts that could raise ambient concentrations up to the NAAQS. The sources would, however, have to comply with all other applicable requirements of the State Implementation Plan (SIP), including PSD increment. Note that the new law only applies to nine existing facilities (seven power plants, one coal gasification plant, and one petroleum refinery). For facilities that indicate a desire to increase their allowable emission rates based on this legislation, the State intends to review associated PSD increment consumption and NAAQS impacts. The State does not believe any increase in emissions from these facilities will endanger the NAAQS because air quality in North Dakota is good based on moniotring conducted around the State, and ambient SO_2 levels are well below both the State AAQS and the NAAQS.

At EPA's request, the State outlined how it intended to implement the requirements of SB2356 in a November 17, 1997 letter from William Delmore, North Dakota Assistant Attorney General, to Terry Lukas, EPA. The State provided a list of existing sources which are subject to Senate Bill No. 2356, a proposed rule amendment, and SIP revision schedule. The State proposed to revised two chapters of its Air Pollution Control Rules to implement SB2356, namely Chapters 33–15–01, General Provisions, and 33–15–02, Ambient Air Quality Standard. In Chapter 33–15–01, the NDDOH proposed definitions for "coal conversion facility" and "petroleum refinery." In Chapter 33–15–02, the NDDOH proposed to include the substantive requirements of SB2356. The State also declared its intent to enforce compliance with these revisions.

Upon review of Mr. Delmore's November 17, 1997 letter, EPA provided further guidance to the State regarding the necessary demonstration to show that the revisions would ensure protection of the NAAQS and PSD increments in light of the change in applicability of the State AAQS mandated by Senate Bill No. 2356. In a January 8, 1998 letter, EPA indicated that the requirement for making such a demonstration could not be fulfilled at the time of SIP revision because the effect of the relaxation on ambient air quality would depend on future permitting actions. Therefore, the demonstration would have to be built into the revised SIP so that EPA could consider approval of the revision.

EPA provided wording changes to the proposed regulatory language to ensure that emissions would not be permitted in any manner or amount that would cause or contribute to a violation of the NAAQS or PSD increments and to require a demonstration through modeling, with opportunity for EPA review, that a revised emission limit would not cause or contribute to a violation of the NAAQS, PSD increments, or any other requirement under the Federal Clean Air Act.

EPA also instructed the State to provide additional information as technical support documentation which would be necessary for EPA to consider approval of the final SIP revision, as follows:

—General modeling requirements that sources will have to meet if they seek to raise their emissions limits as a result of this change in applicability of the State AAQS. These general modeling requirements should follow the requirements contained in EPA's Guidedline on Air Quality Modeling (40 CFR part 51, appendix W) and should include consideration of cumulative impacts.

—An explanation of how the State intends to determine "that any source * * * causes a verifiable ambient air quality standard violation which is attributable to the source * * * for compliance purposes, as indicated in Mr. Delmore's November 17, 1997 letter.

In a March 23, 1998 letter, the NDDOH provided its draft SIP revision to EPA for review and comment prior to public hearing. This draft SIP revision included, among other things, the proposed regulatory revisions for implementing SB2356.

With an April 29, 1998 comment letter for public hearing, EPA noted that, for the most part, our concerns about the proposed revisions as described in Mr. Delmore's November 17, 1997 letter had been addressed. The State addressed our suggested language changes by incorporating them into Chapter 33–15–02, Ambient Air Quality Standards, and Chapter 33–15–14, Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate (subsection related to alterations to a source under the permit to construct section—see II.B.5. below). The State believed it was reasonable to address our concerns through Chapter 33–15–14 (as well as Chapter 33–15–02) because any request for an increase in emissions will have to go through the State's permit process.

EPA also requested additional information related to how to model different source categories subject to different SO_2 standards (State AAQS vs. NAAQS) in the same airshed, *i.e.*, which standard would apply.

In a June 10, 1998 letter from Dana Mount, NDDOH, to Richard Long, EPA, the State responded to our public hearing comments and provided some of the technical support documentation necessary. The State indicated that all modeling would be conducted in accordance with the "Guideline on Air Quality Models" published by EPA. With respect to modeling different source categories subject to different SO_2 standards in the same airshed, the State addressed the following scenarios:

Existing source subject to State standard and new source subject to the NAAOS—A new source subject to the NAAQS will be permitted as long as modeling results indicate that the new source plus all existing sources do not cause or contribute to a violation of the NAAQS or PSD increments.

Existing source subject to the NAAQS and a new source subject to the State standard—The new source will be permitted as long as it does not cause or contribute to a violation of the State AAQS or PSD increments. If modeling for this source plus all existing sources predicts a violation of the State standard or PSD increments, the new facility will not be permitted if it significantly contributes to these violations. If the new source would not significantly contribute to these violations, then it will be permitted. (However, a SIP revision will be required to address the predicted increment violation. See 40 CFR 51.166(a)(3).)

Existing source subject to the NAAQS seeking to increase its emission limit in an air shed with existing sources subject to the State standard—The existing NAAQS source will be allowed to increase its emissions as long as the modeling (which includes all sources) does not predict a violation of the NAAQS or PSD increments.

As the State's final piece of technical support documentation, a December 1, 1998 letter from Dana Mount, NDDOH, to Richard Long, EPA, summarized the State's approach to enforcement of its revised SO_2 standard. In the event that data from the state-wide ambient air quality monitoring network indicates an exceedance of the SO_2 standard, that data will be used along with dispersion modeling to determine what source or sources contributed to the exceedance. Both ambient monitoring and dispersion modeling will be used as the primary tools to determine corrective actions or enforcement activity. Dispersion modeling also will be used in the case of suspected exceedances to determine the necessity of establishing monitoring sites at locations of prime impact.

b. *EPA's Rationale for Approving Change.* EPA believes that we can approve this change in applicability of more stringent State standards because the NAAQS, PSD increments, and other Clean Air Act programs appear to be protected, based on the information provided by the State in the letters discussed above and the State's incorporation of EPA's suggested regulatory language. The protective features of this SIP revision and the State's policy for implementing it are as follows:

i. Demonstration is built into the SIP revision through regulatory language to ensure that the NAAQS, PSD increments, and other Clean Air Act requirements are protected. (See Chapter 33–15–02–07. 3 and 4 and Chapter 33–15–14–02.3c)

ii. Sources that seek to raise their emissions limits as a result of this change in applicability of the State AAQS will have to meet modeling requirements that follow EPA's Guideline on Air Quality Modeling (40 CFR part 51, appendix W) and will have to include consideration of cumulative impacts.

iii. Both ambient monitoring and dispersion modeling will be used to determine corrective actions or enforcement activity in the event that monitoring data indicates an exceedance of the SO_2 standard. Dispersion modeling also will be used in the case of suspected exceedances to determine the need for new monitoring sites at locations or prime impact.

For a more detailed discussion of EPA's rationable for approving this revision, please refer to the Technical Support Document (TSD) accompanying this action.

3. Chapter 33–15–05, N.D.A.C., Emissions of Particulate Matter Restricted

The State deleted its requirements for new infectious waste incinerators since the units will be covered by the requirements in Chapter 33–15–12, Subpart Ec, Standards of performance for hospital/medical/infectious waste incinerators for which construction is commenced after June 20, 1996. This change was made to avoid duplication of Federal rules; however, the State considers it a relaxation of State rules.

The State has been delegated authority to implement and enforce the Federal New Source Performance Standard (NSPS) for hospital/medical/infectious waste incinerators (HMIWI) for which construction is commenced after June 20, 1996 (subpart Ec—see below), and also has received approval of its State Plan to implement the Emission Guidelines for existing HMIWI (see 64 FR 25831, May 13, 1999). Given that the State is implementing that NSPS and State Plan, any change in particulate matter emissions requirements for affected sources in North Dakota is of a de minimus nature. Thus, EPA believes the overall impact of this revision, if any, is minor, and therefore, approvable.

4. Chapter 33–15–07, N.D.A.C., Control of Organic Compounds Emissions

This revision is an administrative correction to the "Scope" section to correct the reference to Chapter 1 of the rules. It is minor in nature and approvable.

5. Chapter 33–15–14, N.D.A.C., Designated Air Contaminant Sources, Permit To Construct, Minor Source Permit To Operate, Title V Permit To Operate (Revisions Specific to Permit To Construct Section)

Subsection 33–15–14–02.3.c, regarding alterations to a source under the permit to construct section, was added to clarify that any owner or operator of a source who requests an increase in the source's sulfur dioxide emission rate pursuant to Chapter 33–15–02–07.3 (see II.B.2 above) must demonstrate through a dispersion modeling analysis that the revised allowable emissions will not cause or contribute to a violation of the NAAQS, PSD increments, or any other Federal Clean Air Act requirements. The revision also provides for public and EPA review of such requests.

This language was added at EPA's request to ensure that the NAAQS, PSD increments, or any other Federal Clean Air Act requirements would be protected in light of the change in applicability of the State SO_2 AAQS, as discussed in section II.B.2 above. This revision is approvable.

C. Delegation of Authority for NSPS

With the September 28, 1998 submittal, North Dakota requested delegation of authority for implementation and enforcement of the NSPS (40 CFR part 60, subpart Ec) for hospital/medical/infectious waste incinerators pursuant to section 111(c) of the Clean Air Act, 42 U.S.C. 7411(c), as amended. On May 7, 1999, delegation was given with the following letter:

Ref: 8P–AR

Honorable Edward T. Schafer,
Goveror of North Dakota, State Capitol, Bismarck, North Dakota 58505–0001.

Re: Delegation of Clean Air Act New Source Performance Standards

Dear Governor Schafer: In a September 28, 1998, letter from you and an October 6, 1998, letter from Francis Schwindt, North Dakota Department of Health, the State of North Dakota requested delegation of authority for revisions to the New Source Performance Standards (NSPS), promulgated in Chapter 33–15–12 of the North Dakota Administrative Code. The State's NSPS regulations incorporate by reference the Federal NSPS in 40 CFR Part 60 as in effect on November 1, 1997, with the exception of subpart Eb, which the State has not adopted. In the above-mentioned letters, the State requests authority for implementation and enforcement of the NSPS through the delegation of authority process pursuant to section 111(c) of the Clean Air Act, 42 U.S.C. § 7411(c), as amended.

Subsequent to States adopting NSPS regulations, EPA delegates the authority for the implementation and enforcement of those standards, so long as the State's regulations are not less stringent than the Federal regulations. EPA has reviewed the pertinent statutes and regulations of the State of North Dakota and has determined that they provide an adequate and effective procedure for the implementation and enforcement of the NSPS by the State of North Dakota. Therefore, pursuant to Section 111(c) of the Clean Air Act (Act), as amended, and 40 CFR Part 60, EPA hereby delegates its authority for the implementation and enforcement of one NSPS to the State of North Dakota as follows:

(A) Responsibility for all sources located, or to be located, in the State of North Dakota subject to the standards of performance for new stationary sources promulgated in 40 CFR Part 60 as in effect on November 1, 1997, with the exception of subpart Eb, which the State has not adopted. The additional category of new stationary sources covered by this delegation is hospital/medical/infectious waste incinerators for which construction is commenced after June 20, 1996 (subpart Ec).

(B) Not all authorities of NSPS can be delegated to states under Section 111(c) of the Act, as amended. The EPA Administrator retains authority to implement those sections of the NSPS that require: (1) approving equivalency determinations and alternative test methods, (2) decision making to ensure national consistency, and (3) EPA rulemaking to implement. Therefore, in delegating to North Dakota the implementation and enforcement authority for Subpart Ec, the following authorities shall be retained by the EPA Administrator and not transferred to the State: (1) the requirements of § 60.56c(i) establishing operating parameters when using controls other than those listed in § 60.56c(d); and (2) alternative methods of demonstrating compliance under § 60.8. For the other NSPS categories previously delegated to the State, our May 28, 1998, delegation letter lists those sections which can't be delegated to the State.

(C) As 40 CFR Part 60 is updated, North Dakota should revise its regulations accordingly and in a timely manner and submit to EPA requests for updates to its delegated authority.

This delegation is based upon and is a continuation of the conditions stated in EPA's original delegation letter of August 30, 1976, to the Honorable Arthur A. Link, then Governor of North Dakota, except that condition 5, relating to Federal facilities, has been voided by the Clean Air Act Amendments of 1977. It is also important to note that EPA retains concurrent enforcement authority, as stated in condition 2. In addition, if at any time there is a conflict between a State and a Federal NSPS regulation, the Federal regulation must be applied if it is more stringent than that of the State, as stated in condition 7. A copy of the August 30, 1976, letter was published in the notices section of the **Federal Register** on October 13, 1976 (41 FR 44884), along with the associated rulemaking notifying the public that certain reports and applications required from operators of new and modified sources shall be submitted to the State of North Dakota (41 FR 44859). Copies of the **Federal Register** notices are enclosed for your convenience.

Since this delegation is effective immediately, there is no need for the State to notify the EPA of its acceptance. Unless we receive written notice of objection from you within ten days of the date on which you receive this letter, the State of North Dakota will be deemed to have accepted all the terms of this delegation. An information notice will be published in the **Federal Register** in the near future informing the public of this delegation, in which this letter will appear in its entirety.

If you have any questions on this matter, please call me, or have your staff contact Richard Long, Director of our Air and Radiation Program, at 303–312–6005.

Sincerely yours,

William P. Yellowtail,

Regional Administrator.

Enclosures

cc: Francis Schwindt, ND Department of Health; Dana Mount, ND Department of Health

III. Final Action

EPA is approving North Dakota's SIP revision, as submitted by the Governor with a letter dated September 28, 1998. The revisions in the September 28, 1998 submittal which are being approved in this document involve the following chapters of the North Dakota Administrative Code: 33–15–01 General Provisions; 33–15–02 Ambient Air Quality Standards; 33–15–05 Emissions of Particulate Matter Restricted; 33–15–07 Control of Organic Compounds Emissions; and 33–15–14 Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate (revisions specific to the Permit to Construct program only).

In addition, the September 28, 1998 submittal included revisions to Chapter 33–15–14, N.D.A.C., Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate (section specific to Title V Permit to Operate program), the State's 111(d) plan for existing hospital/medical/infectious waste incinerators, and a request for direct delegation of Chapter 33–15–22, N.D.A.C., Emission Standards for Hazardous Air Pollutants for Source Categories, all of which are being handled separately.

Finally, as requested by the State with its September 28, 1998 submittal, EPA is providing notice that it granted delegation of authority to North Dakota on May 7, 1999, to implement and enforce the NSPS promulgated in 40 CFR part 60, promulgated as of November 1, 1997 (except subpart Eb, which the State has not adopted). However, the State's NSPS authorities do not include those authorities which cannot be delegated to the states, as defined in 40 CFR part 60.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. The State requested this action. However, in the "Proposed Rules" section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments should be filed. This rule will be effective November 1, 1999 without further notice unless the Agency receives adverse comments by September 30, 1999. If the EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rules does not impose any enforceable duties on these entities. This rule has the effect of making existing, state-enforceable requirements federally enforceable. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997),

applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it approves a state rule implementing a Federal standard.

D. Executive Order 13084

Executive Order 13084: Consultation with Coordination With Indian Tribal Governments

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This rule does not create a mandate on tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 1, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, and Volatile organic compounds.

40 CFR Part 60

Environmental protection, Air pollution control, Aluminum, Ammonium sulfate plants, Beverages, Carbon monoxide, Cement industry, Coal, Copper, Dry cleaners, Electric power plants, Fertilizers, Fluoride, Gasoline, Glass and glass products, Grains, Graphic arts industry, Household appliances, Insulation, Intergovernmental relations, Iron, Lead, Lime, Metallic and nonmetallic mineral processing plants, Metals, Motor vehicles, Natural gas, Nitric acid plants, Nitrogen dioxide, Paper and paper products industry, Particulate matter, Paving and roofing materials, Petroleum, Phosphate, Plastics materials and synthetics, Reporting and recordkeeping requirements, Sewage disposal, Steel, Sulfur oxides, Tires, Urethane, Vinyl, Waste treatment and disposal, Wool, and Zinc.

Dated: August 5, 1999.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart JJ—North Dakota

2. Section 52.1820 is amended by adding paragraph (c)(31) to read as follows:

§ 52.1820 Identification of plan.

* * * * *

(c) * * *

(31) The Governor of North Dakota submitted revisions to the North Dakota State Implementation Plan and Air Pollution Control Rules with a letter dated September 28, 1998. The revisions address air pollution control rules regarding general provisions, ambient air quality standards, emissions of particulate matter and organic compounds, and the permit to construct program.

(i) Incorporation by reference.

(A) Revisions to the Air Pollution Control Rules as follows: General Provisions 33–15–01–04.6–52; Ambient Air Quality Standards 33–15–02–04, 33–15–02–0.3, 33–15–02–07.4, and Table 2; Emissions of Particulate Matter Restricted 33–15–05–03.1; Control of Organic Compound Emissions 33–15–07–01.1; and Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate 33–15–14–02.3.c, effective September 1, 1998.

(ii) Additional material.

(A) An April 10, 1997 letter from Dana Mount, North Dakota Department of Health, to Richard Long, EPA, to provide technical support documentation regarding the impact of SB2356 on sulfur dioxide emission limits for existing and new coal conversion facilities and petroleum refineries.

(B) A November 17, 1997 letter from William Delmore, North Dakota Assistant Attorney General, to Terry Lukas, EPA, to propose how the North Dakota Department of Health will implement the requirements of SB2356.

(c) A June 10, 1998 letter from Dana Mount, North Dakota Department of Health, to Richard Long, EPA, to provide technical support documentation regarding the revisions to Chapter 33–15–02, Ambient Air Quality Standards, and Chapter 33–15–14, Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate (revisions specific to the permit to construct section only).

(D) A December 1, 1998 letter from Dana Mount, North Dakota Department of Health, to Richard Long, EPA, to provide technical support documentation regarding how the State will enforce the revised sulfur dioxide standards in Chapter 33–15–02.

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601 as amended by the Clean Air Act Amendments of 1990, Pub. L. 101–549, 104 Stat. 2399 (November 15, 1990; 402, 409, 415 of the Clean Air Act as amended, 104 Stat. 2399, unless otherwise noted).

Subpart A—General Provisions

2. In section 60.4 the table entitled "Delegation Status of New Source Performance Standards ((NSPS) for Region VIII)" is amended by adding the entry for "Ec—Hospital/Medical/Infectious Waste Incinerators" in alphabetical order to read as follows:

§ 60.4 Address.

* * * * *

(c) * * *

DELEGATION STATUS OF NEW SOURCE PERFORMANCE STANDARDS

[(NSPS) for Region VIII]

Subpart	CO	MT[1]	ND	SD[1]	UT[1]	WY
• • • • • • •						
Ec—Hospital/Medical/Infectious Waste Incinerators	.....	.....	..... (*).			
• • • • • • •						

* Indicates approval of State regulation.

[1] Indicates approval of New Source Performance Standards as part of the State Implementation Plan (SIP).

[FR Doc. 99–22177 Filed 8–30–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6430–3]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Old Inland Pit Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA), Region 10, announces the deletion of the Old Inland Pit Site from the National Priorities List (NPL). The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended.

EFFECTIVE DATE: August 31, 1999.

FOR FURTHER INFORMATION CONTACT: Beverly Gaines, U.S. Environmental Protection Agency, 1200 Sixth Avenue, Mail Stop ECL–110, Seattle, WA 98101, (206) 553–1066.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Old Inland Pit Site, Cowlitz County, Washington. The EPA and the State of Washington Department of Ecology have determined that no further cleanup under CERCLA is appropriate and that the selected remedy has been protective of human health and the environment.

Pit, Spokane County, Spokane, Washington.

A Notice of Intent to Delete for this site was published on June 17, 1999, (64 FR 32468). The closing date for comments was July 16, 1999. EPA received no comments.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund-financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425 of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede Agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: August 18, 1999.

Charles E. Findley,

Acting Regional Administrator, Region 10.

For the reasons set out in the preamble, 40 CFR Part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B [Amended]

2. Table 1 of appendix B to part 300 is amended by removing "Old Inland Pit, Spokane, Washington."

[FR Doc. 99–22454 Filed 8–30–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

Federal Disaster Assistance for Disasters Declared on or after November 23, 1988

CFR Correction

In Title 44 of the Code of Federal Regulations, revised as of Oct. 1, 1998, page 471, part 206 is corrected by reinstating § 206.207 to read as follows:

§ 206.207 Administrative and audit requirements.

(a) *General.* Uniform administrative requirements which are set forth in 44 CFR part 13 apply to all disaster assistance grants and subgrants.

(b) *State administrative plan.* (1) The State shall develop a plan for the administration of the Public Assistance program that includes at a minimum, the items listed below:

(i) The designation of the State agency or agencies which will have the responsibility for program administration.

(ii) The identification of staffing functions in the Public Assistance program, the sources of staff to fill these functions, and the management and oversight responsibilities of each.

(iii) Procedures for:

(A) Notifying potential applicants of the availability of the program;

(B) Conducting briefings for potential applicants and application procedures, program eligibility guidance and program deadlines;

(C) Assisting FEMA in determining applicant eligibility;

(D) Participating with FEMA in conducting damage surveys to serve as a basis for obligations of funds to subgrantees;

(E) Participating with FEMA in the establishment of hazard mitigation and insurance requirements;

(F) Processing appeal requests, requests for time extensions and requests for approval of overruns, and for processing appeals of grantee decisions;

(G) Compliance with the administrative requirements of 44 CFR parts 13 and 206;

(H) Compliance with the audit requirements of 44 CFR part 14;

(I) Processing requests for advances of funds and reimbursement; and

(J) Determining staffing and budgeting requirements necessary for proper program management.

(2) The Grantee may request the RD to provide technical assistance in the preparation of such administrative plan.

(3) In accordance with the Interim Rule published March 21, 1989, the Grantee was to have submitted an administrative plan to the RD for approval by September 18, 1989. An approved plan must be on file with FEMA before grants will be approved in a future major disaster. Thereafter, the Grantee shall submit a revised plan to the RD annually. In each disaster for which Public Assistance is included, the RD shall request the Grantee to prepare any amendments required to meet current policy guidance.

(4) The Grantee shall ensure that the approved administrative plan is incorporated into the State emergency plan.

(c) *Audit*—(1) *Nonfederal audit.* For grantees or subgrantees, requirements for nonfederal audit are contained in FEMA regulations at 44 CFR Part 14 or OMB Circular A–110 as appropriate.

(2) *Federal audit.* In accordance with 44 CFR part 14, Appendix A, Para. 10, FEMA may elect to conduct a Federal audit of the disaster assistance grant or any of the subgrants.

[55 FR 2304, Jan. 23, 1990; 55 FR 5458, Feb. 15, 1990]

[FR Doc. 99–55526 Filed 8–30–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 69

[USCG–1999–5118]

RIN 2115–AF76

Standard Measurement System Exemption from Gross Tonnage

AGENCY: Coast Guard, DOT.

ACTION: Direct final rule.

SUMMARY: By this direct final rule, the Coast Guard amends its vessel tonnage regulations to reinstate a previously allowed method of holding tonnage opening cover plates in place. This amendment will increase flexibility and can decrease costs in vessel design and construction, while in no way diminishing vessel safety. The reinstated method was omitted in error during a comprehensive revision of the tonnage regulations in 1989.

DATES: This rule is effective November 29, 1999, unless a written adverse comment, or written notice of intent to submit an adverse comment, reaches the Docket Management Facility on or before November 1, 1999. If an adverse comment, or notice of intent to submit an adverse comment, is received, the Coast Guard will withdraw this direct final rule and publish a timely notice of withdrawal in the **Federal Register**.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–1999–5118), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m., and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, call Mr. Peter Eareckson, Marine Safety Center, Coast Guard, telephone 202–366–6441. For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–1999–5118), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES;** but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this rule in view of them.

Regulatory Information

The Coast Guard is publishing a direct final rule, the procedures of which are outlined in 33 CFR 1.05–55, because no adverse comment is anticipated. If no adverse comment or written notice of intent to submit an adverse comment is received within the specified comment period, this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days before the effective date, we will publish a document in the **Federal Register** stating that no adverse comment was received and confirming that this rule will become effective as scheduled. However, if we receive a written adverse comment or written notice of intent to submit an adverse comment, we will publish a document in the **Federal Register** announcing withdrawal of all or part of this direct final rule. If an adverse comment applies to only part of this rule and it is possible to remove that part without defeating the purpose of this rule, we may adopt as final those parts of this rule on which no adverse comment was received. The part of this rule that was the subject of an adverse comment will be withdrawn. If we decide to proceed with a rulemaking following receipt of an adverse comment, we will publish a separate Notice of Proposed Rulemaking (NPRM) and provide a new opportunity for comment.

A comment is considered "adverse" if the comment explains why this rule would be inappropriate, including a challenge to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change.

Background and Discussion of Changes

Coast Guard tonnage regulations in 46 CFR part 69, subpart C, provide exemptions from gross tonnage for superstructure spaces open to the weather. To qualify the associated space as open to weather, the end bulkhead is fitted either with shifting boards dropped into channel sections or with a temporary coverplate or boards held in place with hook bolts meeting the specific criteria stated in 46 CFR 69.117(d). Before 1989, the tonnage regulations allowed a bolting and crosspiece holding arrangement to keep the boards/plates in place. This alternative arrangement effectively "sandwiched" the associated bulkhead between the boards/plates and crosspieces. In a 1989 rulemaking (54 FR 37657, September 12, 1989), we revised and clarified the tonnage measurement regulations in 46 CFR part 69 without "substantive change not called for under Public Law 99–509" (which revised and consolidated the tonnage measurement laws into a new part J of 46 U.S.C. subtitle II). In revising part 69, we omitted this alternative holding method in error.

Recently the Coast Guard received complaints from vessel designers and builders that the deletion of the bolting and crosspiece option for tonnage opening covers reduced flexibility and increased costs in vessel design and construction with no advantage in safety or function. These complaints prompted the Coast Guard to review the 1989 rulemaking. We found that Public Law 99–509, the basis for the 1989 rule, did not address tonnage openings, and no Coast Guard records indicate any disadvantages to the bolting and crosspiece arrangement alternative. Our review determined that the bolting and crosspiece arrangement option was omitted in error during the 1989 rulemaking. We are reinstating this option by amending 46 CFR 69.117(d) and (e) accordingly. Additionally, we are making several editorial changes to this section to improve clarity. Paragraphs (d)(2) and (e)(3) are amended to add references to newly revised paragraphs (d)(5) and (d)(6).

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This rule will not impose any additional costs on industry. The reinstatement of the bolting and crosspiece arrangement, which was deleted in error in 1989, will allow for increased flexibility in vessel design and construction, while in no way diminishing vessel safety. This

regulation will make the use of the bolting and crosspiece arrangement, already an accepted industry practice, a legal alternative.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This regulation will not add any additional costs to industry and will give industry increased flexibility in vessel design and construction. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Comments submitted in response to this finding will be evaluated under the criteria in the "Regulatory Information" section of this preamble.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact Mr. Peter Eareckson, Marine Safety Center, Coast Guard, telephone 202–366–6441.

Collection of Information

This rule will call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

We have analyzed this rule under E.O. 12612 and have determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act and Enhancing the Intergovernmental Partnership

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and E.O. 12875, Enhancing the Intergovernmental Partnership, (58 FR 58093, October 28, 1993) govern the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraphs (34)(d) and (e) of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 46 CFR Part 69

Measurement standards, Reporting and recordkeeping requirements, Vessels.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 69 as follows:

PART 69—STANDARD MEASUREMENT SYSTEM EXEMPTION FROM GROSS TONNAGE

1. The authority citation for part 69 continues to read as follows:

Authority: 46 U.S.C. 2301, 14103; 49 CFR 1.46.

2. In § 69.117—

a. In paragraph (d)(2) introductory text, remove the words "paragraph (d)(4)" and add, in their place, the words "paragraphs (d)(4), (d)(5), and (d)(6)";

b. Revise paragraph (d)(4) to read as follows;

c. Redesignate paragraph (d)(5) as paragraph (d)(7);

d. Add new paragraphs (d)(5) and (d)(6) to read as follows; and

e. In paragraph (e)(3), remove the words "paragraph (d)(4)" and add, in their place, the words "paragraphs (d)(4), (d)(5), and (d)(6)":

§ 69.117 Spaces exempt from inclusion in gross tonnage.

* * * * *

(d) * * *

(4) An interior or exterior opening that is temporarily closed by shifting boards dropped into channel sections at the sides of the opening is considered open to the weather if battening, caulking, or gaskets of any material are not used.

(5) An interior or exterior opening that is temporarily closed by cover plates or boards held in place only by hook bolts (see § 69.123, Figure 12) is considered open to the weather—

(i) If hook bolts used to secure cover plates or boards are spaced at least one foot apart and hook over a stiffener installed around the perimeter of the opening;

(ii) If the cover plates or boards fit tightly against the bulkhead; and

(iii) If battening, caulking, or gaskets of any material are not used.

(6) An interior or exterior opening that is temporarily closed by cover plates or boards held in place only by bolts and crosspieces is considered open to the weather—

(i) If the bolts are not installed through the bulkhead;

(ii) If the bolts and crosspieces are not held in place by cleats or other attachments to or through the bulkhead;

(iii) If the cover plates or boards fit tightly against the bulkhead; and

(iv) If battening, caulking, or gaskets of any material are not used.

* * * * *

Dated: August 19, 1999.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 99–22213 Filed 8–30–99; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1668; MM Docket No. 98–223; RM–9340; RM–9481; RM–9482]

Radio Broadcasting Services; Cherry Valley, AR; Cotton Plant, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission denies a petition for rule making filed by ALALATEX Broadcasters, proposing the allotment of FM Channel 257A to Cherry Valley, Arkansas (RM–9340). *See* 63 FR 69609, December 17, 1998. In response to separate counterproposals filed on behalf of Woodruff County Broadcasting (RM–9481) and Bobby Caldwell (RM–9482), the Commission allots Channel 257A to Cotton Plant, Arkansas. Our determination was reached after comparatively evaluating each proposal. That analysis revealed that each community receives at least five full-time aural reception services. Therefore, Cotton Plant was preferred as it is the larger community. Coordinates used for Channel 257A at Cotton Plant are 34–55–32 NL and 91–09–32 WL. With this action, the proceeding is terminated.

DATES: Effective October 4, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180. Questions related to the application filing process should be addressed to the Audio Services Division, (202) 418–2700.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–223, adopted August 11, 1999, and released August 20, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Cotton Plant, Channel 257A.

Federal Connunications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–22506 Filed 8–30–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1669; MM Docket No. 98–179; RM–9344]

Radio Broadcasting Services; Oraibi and Leupp, Arizona

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants the request of Oraibi Media Association, permittee of Station KBDT(FM), Channel 255C, Oraibi, Arizona, to reallot Channel 255C to Leupp, Arizona, and modify its authorization accordingly. The new allotment to Leupp is preferred over the existing allotment at Oraibi because it will provide a first local transmission service to a more populous community. The transmitter site of Station KBDT(FM) will remain the same after the reallotment [42.2 kilometers (26.2 miles) north of Leupp at coordinates 35–26–34 NL and 110–58–40 WL]. This document terminates the proceeding.

DATES: Effective October 4, 1999.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–179, adopted August 11, 1999, and released August 20, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, located at 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Leupp, Channel 255C, and removing Oraibi, Channel 255C.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–22505 Filed 8–30–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1665; MM Docket No. 99–113; RM–9544]

Radio Broadcasting Services; Cimarron, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 222A to Cimarron, Kansas, as that community's first local aural transmission service in response to a petition for rule making filed by Nancy Puopolo. *See* 64 FR 17143, April 8, 1999. Coordinates used for Channel 222A at Cimarron are 37–48–41 NL and 100–23–09 WL. With this action, the proceeding is terminated.

DATES: Effective October 4, 1999. A filing window for Channel 222A at Cimarron, Kansas, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–113, adopted August 11, 1999, and released August 20, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by adding Cimarron, Channel 222A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–22501 Filed 8–30–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1665; MM Docket No. 99–111; RM–9539]

Radio Broadcasting Services; Taft, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 293A to Taft, California, as that community's second local FM transmission service in response to a petition for rule making filed by Mountain West Broadcasting. See 64 FR 17140, April 8, 1999. Coordinates used for Channel 293A at Taft are 35–08–18 NL and 119–27–30 WL. With this action, the proceeding is terminated.

DATES: Effective October 4, 1999. A filing window for Channel 293A at Taft, California, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–111, adopted August 11, 1999, and released August 20, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 293A at Taft.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–22500 Filed 8–30–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1665; MM Docket No. 99–109; RM–9512]

Radio Broadcasting Services; Walsenburg, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 267C3 to Walsenburg, Colorado, as that community's second local FM transmission service in response to a petition for rule making filed by Mountain West Broadcasting. See 64 FR 17139, April 8, 1999. Coordinates used for Channel 267C3 at Walsenburg are 37–37–27 NL and 104–46–47 WL. With this action, the proceeding is terminated.

DATES: Effective October 4, 1999. A filing window for Channel 267C3 at Walsenburg, Colorado, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–109, adopted August 11, 1999, and released August 20, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Channel 267C3 at Walsenburg.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–22499 Filed 8–30–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1665; MM Docket No. 99–107; RM–9510]

Radio Broadcasting Services; La Veta, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 277A to La Veta, Colorado, as that community's first local aural transmission service in response to a petition for rule making filed by Mountain West Broadcasting. *See* 64 FR 17139, April 8, 1999. Coordinates used for Channel 277A at La Veta are 37–30–54 NL and 105–00–18 WL. With this action, the proceeding is terminated.

DATES: Effective October 4, 1999. A filing window for Channel 277A at La Veta, Colorado, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–107, adopted August 11, 1999, and released August 20, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding La Veta, Channel 277A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–22498 Filed 8–30–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1665; MM Docket No. 99–99; RM–9484]

Radio Broadcasting Services; Kensett, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 289A to Kensett, Arkansas, as that community's first local aural transmission service in response to a petition for rule making filed on behalf of White County Broadcasters. *See* 64 FR 17137, April 8, 1999. Coordinates used for Channel 289A at Kensett are 35–14–00 NL and 91–39–54 WL. With this action, the proceeding is terminated.

DATES: Effective October 4, 1999. A filing window for Channel 289A at Kensett, Arkansas, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–99, adopted August 11, 1999, and released August 20, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Kensett, Channel 289A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–22497 Filed 8–30–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1665; MM Docket No. 99–100; RM–9491]

Radio Broadcasting Services; Somerton, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 260C3 to Somerton, Arizona, as that community's first local aural transmission service in response to a petition for rule making filed by L. Topaz Enterprises, Inc. See 64 FR 17137, April 8, 1999. Coordinates used for Channel 260C3 at Somerton are 32–35–00 NL and 114–35–05 WL. As Somerton is located within 320 kilometers (199 miles) of the U.S.-Mexico border, concurrence of the Mexican government to this allotment was obtained. With this action, the proceeding is terminated.

DATES: Effective October 4, 1999. A filing window for Channel 260C3 at Somerton, Arizona, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–100, adopted August 11, 1999, and released August 20, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Somerton, Channel 260C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–22496 Filed 8–30–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1665; MM Docket No. 99–101; RM–9494]

Radio Broadcasting Services; Augusta, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 263A to Augusta, Kansas, as that community's second local FM transmission service in response to a petition for rule making filed by L. Topaz Enterprises, Inc. *See* 64 FR 17137, April 8, 1999. Coordinates used for Channel 263A at Augusta are 37–41–12 NL and 96–58–30 WL. With this action, the proceeding is terminated.

DATES: Effective October 4, 1999. A filing window for Channel 263A at Augusta, Kansas, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–101, adopted August 11, 1999, and released August 20, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by adding Channel 263A at Augusta.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–22495 Filed 8–30–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1665; MM Docket No. 99–102; RM–9495]

Radio Broadcasting Services; Wellton, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 240A to Wellton, Arizona, as that community's second local FM transmission service in response to a petition for rule making filed by L. Topaz Enterprises, Inc. *See* 64 FR 17142, April 8, 1999. Coordinates used for Channel 240A at Wellton are 32–40–18 NL and 114–08–18 WL. As Wellton is located within 320 kilometers (199 miles) of the U.S.-Mexico border, concurrence of the Mexican government to this allotment was requested but has not been received. Therefore, Channel 240A has been allotted to Wellton with the following interim condition: "Operation with the facilities specified herein is subject to modification, suspension, or termination without right to a hearing if found by the Commission to be necessary in order to conform to the 1992 USA-Mexico FM Broadcast Agreement, or if specifically objected to by Mexico." The condition is a temporary measure as the Commission has determined that Channel 240A at Wellton complies with the Agreement. Upon receipt of an official response from the Mexican government, the interim condition may be removed. With this action, the proceeding is terminated.

DATES: Effective October 4, 1999. A filing window for Channel 240A at Wellton, Arizona, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–102, adopted August 11, 1999, and released August 20, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Channel 240A at Wellton.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–22494 Filed 8–30–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1665; MM Docket No. 99–105; RM–9508]

Radio Broadcasting Services; Center, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 287A to Center, Colorado, as that community's first local aural transmission service in response to a petition for rule making filed by Mountain West Broadcasting. *See* 64 FR 17141, April 8, 1999. Coordinates used for Channel 287A at Center are 37–45–00 NL and 106–06–24 WL. With this action, the proceeding is terminated.

DATES: Effective October 4, 1999. A filing window for Channel 287A at Center, Colorado, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–105, adopted August 11, 1999, and released August 20, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

. 2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Center, Channel 287A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–22493 Filed 8–30–99; 8:45 am]

BILLING CODE 6712–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6428–3]

48 CFR Parts 1503, 1515, and 1552

Acquisition Regulation: Contracting by Negotiation

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing this rule to amend the EPA Acquisition Regulation (EPAAR) regarding contracting by negotiation so that it will conform to the Federal Acquisition Regulation, as revised by Federal Acquisition Circular (FAC) 97–02.

EFFECTIVE DATE: September 30, 1999.

FOR FURTHER INFORMATION CONTACT: Leigh Pomponio, U.S. Environmental Protection Agency, Office of Acquisition Management (3802R), 401 M Street, SW., Washington, DC 20460, (202) 564–4364.

SUPPLEMENTARY INFORMATION:

A. Background

FAC 97–02, published in the **Federal Register** (62 FR 51224) on September 30, 1997, completely revised FAR Part 15, Contracting by Negotiation. The final rule allowed agencies to delay implementation until January 1, 1998. EPA began implementation of the revised Part 15 as of December 19, 1997. The EPAAR was in substantive compliance with the revised FAR, but extensive redesignation of EPAAR subparts and sections was required for structural conformance. Accordingly, EPAAR Part 1515, Contracting by Negotiation, is revised in its entirety, and parts 1503, Improper Business Practices and Personal Conflicts of Interest, and 1552, Solicitation Provisions and Contract Clauses, are amended. No public comments were received.

B. Executive Order 12866

This rule is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

D. Regulatory Flexibility Act

The EPA certifies that this rule does not exert a significant economic impact on a substantial number of small entities. The requirements to contractors under the rule impose no reporting, record-keeping, or any compliance costs.

E. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess their regulatory actions on State, local, and tribal governments, and the private sector. This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in one year. Any private sector costs for this action relate to paperwork requirements and associated expenditures that are far below the level established for UMRA applicability. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

F. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (6 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

G. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of

section 1(a) of Executive Order 12875 do not apply to this rule.

H. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

The rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective September 30, 1999.

Authority: The provisions of this regulation are issued under 5 U.S.C. 301; section 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

List of Subjects in 48 CFR Parts 1503, 1515, and 1552

Government procurement.

Therefore, 48 CFR Chapter 15 is amended as set forth below:

1. The authority citation for parts 1503, 1515, and 1552 continues to read as follows:

Authority: Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

PART 1503—[AMENDED]

2. Part 1503 is amended by revising subpart 1503.1 to read as follows:

Subpart 1503.1—Safeguards

Sec.
1503.101–370 Personal conflicts of interest.
1503.104–5 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

Subpart 1503.1—Safeguards

1503.101–370 Personal conflicts of interest.

(a) Each EPA employee (including special employees) engaged in source evaluation and selection is required to be familiar with the provisions of 40 CFR part 3 regarding personal conflicts of interest. The employee shall inform the Source Selection Authority (SSA) in writing if his/her participation in the source evaluation and selection process could be interpreted as a possible or apparent conflict of interest. The SSA will consult with appropriate Agency officials prior to the SSA's determination. The SSA shall relieve any EPA employee who has a conflict of interest of further duties in connection with the evaluation and selection process.

(b) Each EPA employee (including special employees, as defined by 1503.600–71(b)) involved in source evaluation and selection is required to comply with the Office of Government Ethics ethics provisions at 5 CFR part 2635.

1503.104–5 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a)(1) The Chief of the Contracting Office (CCO) is the designated official to make the decision whether support contractors are used in proposal evaluation (as authorized at FAR 15.305(c) and as restricted at FAR 37.203(d)).

(2) The following written certification and agreement shall be obtained from the non-Government evaluator prior to the release of any proposal to that evaluator:

"Certification on the Use and Disclosure of Proposals"

RFP #: _____
Offeror: _____

1. I hereby certify that to the best of my knowledge and belief, no conflict of interest exists that may diminish my capacity to perform an impartial, technically sound, objective review of this proposal(s) or otherwise result in a biased opinion or unfair competitive advantage.

2. I agree to use any proposal information only for evaluation purposes. I agree not to copy any information from the proposal(s), to use my best effort to safeguard such information physically, and not to disclose the contents of nor release any information relating to the proposal(s) to anyone outside of the evaluation team assembled for this acquisition or individuals designated by the contracting officer.

3. I agree to return to the Government all copies of proposals, as well as any abstracts, upon completion of the evaluation.

_____
(Name and Organization)

_____
(Date of Execution)
(End of Certificate)

(b) Information contained in proposals will be protected and disclosed to the extent permitted by law, and in accordance with FAR 3.104–5, 15.207, and Agency procedures at 40 CFR part 2.

3. Part 1515 is revised to read as follows.

PART 1515—CONTRACTING BY NEGOTIATION

Sec.
1515.000 Scope of part.

Subpart 1515.2—Solicitation and Receipt of Proposals and Information

1515.209 Solicitation provisions and contract clauses.

Subpart 1515.3—Source Selection

1515.302 Applicability.
1515.303 Responsibilities.
1515.305 Proposal evaluation.
1515.305–70 Scoring plans.
1515.305–71 Documentation of proposal evaluation.
1515.305–72 Release of cost information.
1515.308–71 Documentation of source selection.

Subpart 1515.4—Contract Pricing

1515.404–4 Profit.
1515.404–470 Policy.
1515.404–471 EPA structured approach for developing profit or fee objectives.
1515.404–472 Other methods.
1515.404–473 Limitations.
1515.404–474 Waivers.
1515.404–475 Cost realism.
1515.408 Solicitation provisions and contract clauses.

Subpart 1515.6—Unsolicited proposals

1515.604 Agency points of contact.
1515.606–70 Contracting methods.

1515.000 Scope of part.

This part implements and supplements FAR part 15. It prescribes the Environmental Protection Agency policies and procedures for contracting for supplies and services by negotiation.

Subpart 1515.2—Solicitation and Receipt of Proposals and Information

1515.209 Solicitation provisions and contract clauses.

In addition to those provisions prescribed at FAR 15.209 and in accordance with FAR 15.203(a)(4), the contracting officer shall identify and include the evaluation factors that will be considered in making the source selection and their relative importance in each solicitation.

(a) The contracting officer shall insert the provisions at 1552.215–70, "EPA Source Evaluation and Selection Procedures—Negotiated Procurement" and either: the provision at 1552.215–71, "Evaluation Factors for Award," where all evaluation factors other than cost or price when combined are significantly more important than cost or price; or the provision in Alternate I to 1552.215–71, where all evaluation factors other than cost or price when combined are significantly less important than cost or price; or the provision in Alternate II to 1552.215–71, where all evaluation factors other than cost or price when combined are approximately equal to cost or price; or Alternate III to 1552.215–71 where award will be made to the offeror with the lowest-evaluated cost or price whose proposal meets or exceeds the acceptability standards for non-cost factors.

(b) Evaluation factors and significant subfactors should be prepared in accordance with FAR 15.305 and inserted into paragraph (b) of the provision at 1552.215–71, Alternate I, Alternate II, and if used, in Alternate III.

Subpart 1515.3—Source Selection

1515.302 Applicability.

FAR subpart 15.3 and this subpart apply to the selection of source or sources in competitive negotiation acquisitions in excess of the simplified acquisition threshold, except architect-engineering services which are covered in 1536.6.

1515.303 Responsibilities.

The Source Selection Authority (SSA) shall be established at the levels specified as follows:

(a) Acquisitions having a potential value exceeding $25,000,000: CCO.

(b) Acquisitions having a potential value exceeding $10,000,000 to $25,000,000: To be determined by the CCO, unless otherwise restricted in his/her delegation of procurement authority.

(c) Acquisitions having a potential value of $10,000,000 or less: The contracting officer.

1515.305 Proposal evaluation.

1515.305–70 Scoring plans.

When trade-offs are performed (in accordance with FAR 15.101–1), the evaluation of technical and past performance shall be accomplished using the following scoring plan or one specifically developed for the solicitation, e.g., other numeric, adjectival, color rating systems, etc.

SCORING PLAN

Value	Descriptive statement
0	The factor is not addressed, or is totally deficient and without merit.
1	The factor is addressed, but contains deficiencies and/or weaknesses that can be corrected only by major or significant changes to relevant portions of the proposal, or the factor is addressed so minimally or vaguely that there are widespread information gaps. In addition, because of the deficiencies, weaknesses, and/or information gaps, serious concerns exist on the part of the technical evaluation team about the offeror's ability to perform the required work.
2	Information related to the factor is incomplete, unclear, or indicates an inadequate approach to, or understanding of the factor. The technical evaluation team believes there is question as to whether the offeror would be able to perform satisfactorily.
3	The response to the factor is adequate. Overall, it meets the specifications and requirements, such that the technical evaluation team believes that the offeror could perform to meet the Government's minimum requirements.
4	The response to the factor is good with some superior features. Information provided is generally clear, and the demonstrated ability to accomplish the technical requirements is acceptable with the possibility of more than adequate performance.
5	The response to the factor is superior in most features.

1515.305–71 Documentation of proposal evaluation.

In addition to the information required by FAR 15.305(a)(3), the technical evaluation documentation shall include:

(a) Score sheets prepared by each individual team member must be made available upon the contracting officer's request. For contracts valued at $10,000,000 or less, the technical evaluation may be recorded on the short form technical evaluation format (EPA Form 1900–61) or another form specifically developed for the solicitation; and

(b) A statement that the respective team members are free from actual or potential personal conflicts of interest, and are in compliance with the Office of Government Ethics ethics provisions at 5 CFR part 2635.

(c) Any information which might reveal that an offeror has an actual or

potential organizational conflict of interest.

(d) Any documentation related to exchanges with individual offerors.

1515.305–72 Release of cost information.

(a) In accordance with FAR 15.305(a)(4), the contracting officer may release the cost/price proposals to those members of the evaluation team who are evaluating proposals at his/her discretion.

(b) These individuals would then use this information to perform a cost realism analysis as described in FAR 15.404–1(d). Any inconsistencies between the proposals and the solicitation requirements and/or any inconsistencies between the cost/price and other than cost/price proposals should be identified.

1515.308–71 Documentation of source selection.

In addition to the information required by FAR 15.308, the source selection decision shall include:

(a) When there is only one proposal received or only one proposal in the competitive range, the contracting officer shall examine the solicitation to determine if it was unduly restrictive or flawed. As part of the source selection decision, the contracting officer shall address at a minimum, the following five factors: whether the requirement could have been broken up into smaller components; whether the solicitation provided adequate response time; whether the requirement could have been satisfied with reduced staffing levels (discussion may be combined with the first factor); if applicable, whether the work required on-site could otherwise be performed at a contractor's facility, avoiding the cost and logistical implications of relocating employees; and whether the geographical area of consideration was either too narrow or too broad, so as to adversely impact competition. If the contracting officer determines that the solicitation requirements unduly restrict competition, the contracting officer shall consider making appropriate changes to the solicitation, canceling the solicitation, and reissuing the solicitation incorporating the appropriate changes. For 8(a) competitive or small business competitive set-asides, if the contracting officer in consultation with the Office of Small and Disadvantaged Business Utilization determines that the solicitation requirements unduly restrict competition, the contracting officer shall consider making appropriate changes to the solicitation, canceling the solicitation, and reissuing the solicitation incorporating the appropriate changes.

(b) The contracting officer shall provide a copy of any source selection decision that includes an analysis of the five factors described in paragraph (a) of this section to the Competition Advocate after approval of the decision by the designated Source Selection Authority.

Subpart 1515.4—Contract Pricing

1515.404–4 Profit.

This section implements FAR 15.404–4 and prescribes the EPA structured approach for establishing profit or fee prenegotiation objectives.

1515.404–470 Policy.

(a) The Agency's policy is to utilize profit to attract contractors who possess talents and skills necessary to the accomplishment of the objectives of the Agency, and to stimulate efficient contract performance. In negotiating profit/fee, it is necessary that all relevant factors be considered, and that fair and reasonable amounts be negotiated which give the contractor a profit objective commensurate with the nature of the work to be performed, the contractor's input to the total performance, and the risks assumed by the contractor.

(b) The purpose of EPA's structured approach is:

(1) To provide a standard method of evaluation;

(2) To ensure consideration of all relevant factors;

(3) To provide a basis for documentation and explanation of the profit or fee negotiation objective; and

(4) To allow contractors to earn profits commensurate with the assumption of risk.

(c) The profit-analysis factors prescribed in the EPA structured approach for analyzing profit or fee include those prescribed by FAR 15.404(d)(1), and additional factors authorized by FAR 15.404(d)(2) to foster achievement of program objectives. These profit or fee factors are prescribed in 1515.404–471.

1515.404–471 EPA structured approach for developing profit or fee objectives.

(a) *General.* To properly reflect differences among contracts, and to select an appropriate relative profit/fee in consideration of these differences, weightings have been developed for application by the contracting officer to standard measurement bases representative of the prescribed profit factors cited in FAR 15.404(d) and EPAAR 1515.404–471(b)(1). Each profit factor or subfactor, or its components, has been assigned weights relative to their value to the contract's overall effort, and the range of weights to be applied to each profit factor.

(b)(1) *Profit/fee factors.* The factors set forth in this paragraph, and the weighted ranges listed after each factor, shall be used in all instances where the profit/fee is negotiated.

CONTRACTOR'S INPUT TO TOTAL PERFORMANCE

	Weight Range (Percent)
Direct material	1 to 4.
Professional/technical labor	8 to 15.
Professional/technical overhead	6 to 9.
General labor	5 to 9.
General overhead	4 to 7.
Subcontractors	1 to 4.
Other direct costs	1 to 3.
General and administrative expenses.	5 to 8.
Contractor's assumption of contract cost risk.	0 to 6.

(2) The contracting officer shall first measure the "Contractor's Input to Total Performance" by the assignment of a profit percentage within the designated weight ranges to each element of contract cost. Such costs are multiplied by the specific percentages to arrive at a specific dollar profit or fee.

(3) The amount calculated for facilities capital cost of money (FCCM) shall not be included as part of the cost base for computation of profit or fee. The profit or fee objective shall be reduced by an amount equal to the amount of facilities capital cost of money allowed. A complete discussion of the determination of facilities capital cost of money and its application and administration is set forth in FAR 31.205–10, and the Appendix to the FAR (see 48 CFR 9904.414).

(4) After computing a total dollar profit or fee for the Contractor's Input to Total Performance, the contracting officer shall calculate the specific profit dollars assigned for cost risk and performance. This is accomplished by multiplying the total Government cost objective, exclusive of any FCCM, by the specific weight assigned to cost risk and performance. The contracting officer shall then determine the profit or fee objective by adding the total profit dollars for the Contractor's Input to Total Performance to the specific dollar profits assigned to cost risk and performance. The contracting officer shall use EPA Form 1900–2 in hardcopy or electronic copy equivalent to facilitate the calculation of the profit or fee objective.

(5) The weight factors discussed in this section are designed for arriving at profit or fee objectives for other than nonprofit and not-for-profit organizations. Nonprofit and not-for-profit organizations are addressed as follows:

(i) Nonprofit and not-for-profit organizations are defined as those business entities organized and operated:

(A) Exclusively for charitable, scientific, or or educational purposes;

(B) Where no part of the net earnings inure to the benefit of any private shareholder or individual;

(C) Where no substantial part of the activities is for propaganda or otherwise attempting to influence legislation or participating in any political campaign on behalf of any candidate for public office; and

(D) Which are exempt from Federal income taxation under Section 51 of the Internal Revenue Code. (26 U.S.C.)

(ii) For contracts with nonprofit and not-for-profit organizations where fees are involved, special factor of −3 percent shall be assigned in all cases.

(c) *Assignment of values to specific factors*—(1) *General.* In making a judgment on the value of each factor, the contracting officer should be governed by the definition, description, and purpose of the factors, together with considerations for evaluation set forth in this paragraph.

(2) *Contractor's input to total performance.* This factor is a measure of how much the contractor is expected to contribute to the overall effort necessary to meet the contract performance requirements in an efficient manner. This factor, which is separate from the contractor's responsibility for contract performance, takes into account what resources are necessary, and the creativity and ingenuity needed for the contractor to perform the statement of work successfully. This is a recognition that within a given performance output, or within a given sales dollar figure, necessary efforts on the part of individual contractors can vary widely in both value, quantity, and quality, and that the profit or fee objective should reflect the extent and nature of the contractor's contribution to total performance. Greater profit opportunity should be provided under contracts requiring a high degree of professional and managerial skill and to prospective contractors whose skills, facilities, and technical assets can be expected to lead to efficient and economical contract performance. The evaluation of this factor requires an analysis of the cost content of the proposed contract as follows:

(i) *Direct material (purchased parts and other material).* (A) Analysis of these cost items shall include an evaluation of the managerial and technical effort necessary to obtain the required material. This evaluation shall include consideration of the number of orders and suppliers, and whether established sources are available or new sources must be developed. The contracting officer shall also determine whether the contractor will, for example, obtain the materials by routine orders or readily available supplies (particularly those of substantial value in relation to the total contract costs), or by detailed subcontracts for which the prime contractor will be required to develop complex specifications involving creative design.

(B) Consideration should be given to the managerial and technical efforts necessary for the prime contractor to administer subcontracts, and to select subcontractors, including efforts to break out subcontracts from sole sources, through the introduction of competition.

(C) Recognized costs proposed as direct material costs such as scrap charges shall be treated as material for profit evaluation.

(D) If intracompany transfers are accepted at price, in accordance with FAR 31.205–26(e), they should be excluded from the profit or fee computation. Other intracompany transfers shall be evaluated by individual components of cost, i.e., material, labor, and overhead.

(ii) *Professional/technical and general labor.* Analysis of labor should include evaluation of the comparative quality and level of the talents and experience to be employed. In evaluating labor for the purpose of assigning profit dollars, consideration should be given to the amount of notable scientific talent or unusual or scarce talent needed, in contrast to journeyman effort or supporting personnel. The diversity, or lack thereof, of scientific and engineering specialties required for contract performance, and the corresponding need for supervision and coordination, should also be evaluated.

(iii) *Overhead and general and administrative expenses.* (A) Where practicable, analysis of these overhead items of cost should include the evaluation of the individual elements of these expenses, and how much they contribute to contract performance. This analysis should include a determination of the amount of labor within these overhead pools, and how this labor would be treated if it were considered as direct labor under the contract. The allocable labor elements should be given the same profit consideration as if they were direct labor. The other elements of indirect cost pools should be evaluated to determine whether they are routine expenses such as utilities, depreciation, and maintenance, and therefore given less profit consideration.

(B) The contractor's accounting system need not break down its overhead expenses within the classification of professional/technical overhead, general overhead and general and administrative expenses.

(iv) *Subcontractors.* (A) Subcontract costs should be analyzed from the standpoint of the talents and skills of the subcontractors. The analysis should consider if the prime contractor normally should be expected to have people with comparable expertise employed as full-time staff, or if the contract requires skills not normally available in an employer-employee relationship. Where the prime contractor is using subcontractors to perform labor which would normally be expected to be done in-house, the rating factor should generally be at or near 1 percent. Where exceptional expertise is retained, or the prime contractor is participating in the mentor-protégé program, the assigned weight should be nearer to the high end of the range.

(v) *Other direct costs.* The analysis of these costs should be similar to the analysis of direct material.

(3) *Contractor's assumption of contract cost risk.* (i) The risk of contract costs should be shifted to the fullest extent practicable to contractors, and the Government should assign a rating that reflects the degree of risk assumption. Evaluation of this risk requires a determination of the degree of cost responsibility the contractor assumes, the reliability of the cost estimates in relation to the task assumed, and the chance of the contractor's success or failure. This factor is specifically limited to the risk of contract costs. Thus, such risks of losing potential profits in other fields are not within the scope of this factor.

(ii) The first determination of the degree of cost responsibility assumed by the contractor is related to the sharing of total risk of contract cost by the Government and the contractor, depending on selection of contract type. The extremes are a cost-plus-fixed-fee contract requiring only that the contractor use its best efforts to perform a task, and a firm-fixed-price contract for a complex item. A cost-plus-fixed-fee contract would reflect a minimum assumption of cost responsibility by the contractor, whereas a firm-fixed-price contract would reflect a complete assumption of cost responsibility by the

contractor. Therefore, in the first step of determining the value given for the contractor's assumption of contract cost risk, a lower rating would be assigned to a proposed cost-plus-fixed-fee best efforts contract, and a higher rating would be assigned to a firm-fixed-price contract.

(iii) The second determination is that of the reliability of the cost estimates. Sound price negotiation requires well-defined contract objectives and reliable cost estimates. An excessive cost estimate reduces the possibility that the cost of performance will exceed the contract price, thereby reducing the contractor's assumption of contract cost risk.

(iv) The third determination is that of the difficulty of the contractor's task. The contractor's task may be difficult or easy, regardless of the type of contract.

(v) Contractors are likely to assume greater cost risks only if the contracting officer objectively analyzes the risk incident to the proposed contract, and is willing to compensate contractors for it. Generally, a cost-plus-fixed-fee contract would not justify a reward for risk in excess of 1 percent, nor would a firm-fixed-price contract normally justify a reward of less than 4 percent. Where proper contract type selection has been made, the reward for risk by contract type would usually fall into the following percentage ranges:

Type of contract	Percentage ranges
Cost-plus-fixed-fee	0 to 1.
Prospective price determination	4 to 5.
Firm-fixed-price	4 to 6.

(A) These ranges may not be appropriate for all acquisitions. The contracting officer might determine that a basis exists for high confidence in the reasonableness of the estimate, and that little opportunity exists for cost reduction without extraordinary efforts. The contractor's willingness to accept ceilings on their burden rates should be considered as a risk factor for cost-plus-fixed-fee contracts.

(B) In making a contract cost risk evaluation in an acquisition that involves definitization of a letter contract, consideration should be given to the effect on total contract cost risk as a result of partial performance under a letter contract. Under some circumstances, the total amount of cost risk may have been effectively reduced by the existence of a letter contract. Under other circumstances, it may be apparent that the contractor's cost risk remained substantially as great as though a letter contract had not been used. Where a contractor has begun work under an anticipatory cost letter, the risk assumed is greater than normal. To be equitable, the determination of a profit weight for application to the total of all recognized costs, both those incurred and those yet to be expended, must be made with consideration to all relevant circumstances, not just to the portion of costs incurred or percentage of work completed prior to definitization.

1515.404–472 Other methods.

(a) Contracting officers may use methods other than those prescribed in 1515.404–470 for establishing profit or fee objectives under the following types of contracts and circumstances:

(1) Architect-engineering contracts;

(2) Personal service contracts;

(3) Management contracts, e.g., for maintenance or operation of Government facilities;

(4) Termination settlements;

(5) Services under labor-hour and time and material contracts which provide for payment on an hourly, daily, or monthly basis, and where the contractor's contribution constitutes the furnishing of personnel.

(6) Construction contracts; and

(7) Cost-plus-award-fee contracts.

(b) Generally, it is expected that such methods will:

(1) Provide the contracting officer with a technique that will ensure consideration of the relative value of the appropriate profit factors described under "Profit Factors," in FAR 15.404–4(d) and

(2) Serve as a basis for documentation of the profit or fee objective.

1515.404–473 Limitations.

(a) In addition to the limitations established by statute (see FAR 15.404–4(b)(4)(i)), no administrative ceilings on profits or fees shall be established, except those identified in EPAAR (48 CFR) 1516.404–273(b).

(b) The contracting officer shall not consider any known subcontractor profit/fee as part of the basis for determining the contractor profit/fee.

1515.404–474 Waivers.

Under unusual circumstances, the CCO may specifically waive the requirement for the use of the guidelines. Such exceptions shall be justified in writing, and authorized only in situations where the guidelines method is unsuitable.

1515.404–475 Cost realism.

The EPA structured approach is not required when the contracting officer is evaluating cost realism in a competitive acquisition.

1515.408 Solicitation provisions and contract clauses.

(a) In addition to those provisions and clauses prescribed in FAR 15.408, when an exception to FAR 15.403–1 does not apply and no other means available can be used to ascertain whether a fair and reasonable price can be determined, the contracting officer may insert in negotiated solicitations the provisions at—

(1) 1552.215–72 when requesting information other than cost or pricing data, for cost-reimbursable, level-of-effort-contracts. Use Alternate I for cost-reimbursable, level-of-effort contracts when the Government's requirement is for fully dedicated staff for a twelve month period(s) of performance and performance is on a Government facility; Alternate II for acquisitions for cost-reimbursable, level-of-effort contracts when the Government's requirement is for fully dedicated staff for a twelve month period(s) of performance and performance is not on a Government facility; and Alternate III if the Government's requirement is for the acquisition of supplies or equipment. The contracting officer may make revisions, deletions, or additions to 1552.215–72 and its Alternates I–III as needed to fit an individual acquisition, and

(2) 1552.215–73, General Financial and Organizational Information.

(b) If uncompensated overtime is proposed, the resultant contract shall include the provisions at FAR 52.237–10 and include the provision at 1552.215–74. The contracting officer may use provisions substantially the same as 1552.215–74 without requesting a deviation to the EPAAR.

Subpart 1515.6—Unsolicited Proposals

1515.604 Agency points of contact.

The Director, Grants Administration Division (3903R), EPA, 401 M Street, SW, Washington, D.C. 20460, is the Agency contact point established to coordinate the receipt and handling of unsolicited proposals.

1515.606–70 Contracting methods.

The Department of Housing and Urban Development-Independent Agencies Appropriation Act contains a requirement that none of the funds provided in the Act may be used for payment through grants or contracts to recipients that do not share in the cost of conducting research resulting from proposals that are not specifically solicited by the Government. Accordingly, contracts for research which result from unsolicited proposals shall provide for the contractor to bear a portion of the cost of performance for work subject to the Act. The extent of the cost sharing shall reflect the mutuality of interest of the contractor and the Government. Therefore, where there is no measurable gain to the performing organization, cost sharing is not required.

4. In 1552.215–70, the section heading, the introductory text, and the provision heading are revised to read as follows:

1552.215–70 EPA Source Evaluation and Selection Procedures—Negotiated Procurements

As prescribed in 1515.209(a), insert the following provision:

1552.215–70 EPA Source Evaluation and Selection Procedures—Negotiated Procurements (Aug 1999)

* * * * *

5. 1552.215–71 is revised to read as follows:

1552.215–71 Evaluation factors for award.

As prescribed in 1515.209(a), insert one of the following provisions.

Evaluation Factors for Award (Aug 1999)

(a) The Government will make award to the responsible offeror(s) whose offer conforms to the solicitation and is most advantageous to the Government cost or other factors considered. For this solicitation, all evaluation factors other than cost or price when combined are significantly more important than cost or price.

(b) Evaluation factors and significant subfactors to determine quality of product or service:

_____

_____

[End of provision]

Evaluation Factors for Award (Aug 1999)—Alternate I (Aug 2000)

(a) The Government will make award to the responsible offeror(s) whose offer conforms to the solicitation and is most advantageous to the Government cost or other factors considered. For this solicitation, all evaluation factors other than cost or price when combined are significantly less important than cost or price.

(b) Evaluation factors and significant subfactors to determine quality of product or service:

_____

_____

[End of provision]

Evaluation Factors for Award, Aug 1999—Alternate II, Aug 2000

(a) The Government will make award to the responsible offeror(s) whose offer conforms to the solicitation and is most advantageous to the Government cost or other factors considered. For this solicitation, all evaluation factors other than cost or price when combined are approximately equal to cost or price.

(b) Evaluation factors and significant subfactors to determine the quality of product or service:

_____

_____

[End of provision]

Evaluation Factors for Award, Aug 1999—Alternate III, (Aug 2000)

(a) The Government will make award to the offeror with the lowest-evaluated cost or price, whose proposal meets or exceeds the acceptability standards for non-cost factors. In the event that there are two or more technically acceptable, equal price (cost) offers, the Government will consider socioeconomic, environmental and other similar factors, as listed below in descending order of importance:

_____

_____

(b) Factors and significant subfactors for technical acceptability evaluation:

_____

_____

(c) Factors for past performance evaluation (optional):

_____

_____

[End of provision]

6. 1552.215–73 is redesignated as 1552.215–72 and revised to read as follows:

1552.215–72 Instructions for the Preparation of Proposals

As prescribed in 1515.408(a)(1) insert the following provision:

Instructions for the Preparation of Proposals, (Aug 1999)

(a) Other than cost proposal instructions.

(1) Submit proposal for than cost factors as a separate part of the total proposal package. Omit all cost or pricing details from this proposal.

(2) Special proposal instructions:

_____

_____

(b) Cost or pricing proposal instructions. The offeror shall prepare and submit cost or pricing information data and supporting attachments in accordance with Table 15–2 of FAR 15.408. In addition to a hard copy of the information, to expedite review of the proposal, submit a 3.5" high density IBM-compatible formatted computer disk containing the financial data required, if this information is available using a commercial spreadsheet program on a personal computer. Submit this information using LOTUS 1–2–3, if available. Identify which version of LOTUS used. If the offeror used another spreadsheet program, indicate the software program used to create this information. Offerors should include the formulas and factors used in calculating the financial data. Although submission of a computer disk will expedite review, failure to submit a disk will not affect consideration of the proposal.

(1) General—Submit cost or pricing information prepared in accordance with FAR Table 15–2, Instructions for Submitting Cost/Price Proposals When Cost or Pricing Information Are Required and the following:

(i) Clearly identify separate cost or pricing information associated with any:

(A) Options to extend the term of the contract;

(B) Options for the Government to order incremental quantities; and/or

(C) Major tasks, if required by the special instructions.

(ii) If the contract schedule includes a "Fixed Rate for Services" clause, please provide in the cost proposal a schedule duplicating the format in the clause and include proposed fixed hourly rates per labor category for the base and any optional contract periods.

(iii) If the contract includes the clause at EPAAR 1552.232–73 "Payments—Fixed-Rate Services Contract," or the clause at FAR 52.232–7, "Payments Under Time and Materials and Labor-Hour Contracts," include in the cost proposal the estimated costs and burden rate to be applied to materials, other direct costs, or subcontracts. The Government will include these costs as part of its cost proposal evaluation.

(iv) If other divisions, subsidiaries, a parent or affiliated companies will perform work, provide the name and location of such affiliate and offeror's intercompany pricing policy. Separately identify costs and supporting data for each entity proposed.

(v) The realism of costs, including personnel compensation rates (including effective hourly rates due to uncompensated overtime) will be part of the proposal evaluation. Any reductions to proposed costs or differences between proposed and known EPA/DCAA recommended rates must be fully explained. If an offeror makes a reduction which makes its offer or portions of its offer below anticipated costs, the offeror shall identify where (i.e., which elements of costs) the proposed reductions will be made. Unsubstantiated rates may result in an upward or downward adjustment of the cost proposals to reflect more realistic costs. Based on this analysis, a projected cost for the offeror will be calculated to reflect the Government's estimate of the offeror's probable costs. Any inconsistency, whether real or apparent, between the promised performance and cost or price should be explained. The burden of proof for cost credibility rests with the offeror.

(2) Direct Labor.

(i) The direct technical labor hours (level-of-effort) appearing in the solicitation are for professional and technical labor only. These hours do not include management at a level higher than project management, e.g., corporate and day-to-day management, nor do they include clerical and support staff at a level lower than technician. If it is the offeror's normal practice to charge these types of costs as direct costs, include these costs along with an estimate of the directly chargeable labor-hours for these personnel. These direct charges are to be shown separately from the technical (level-of-effort) effort. If this type of effort is normally included in the offeror's indirect cost allocations, no estimate is required. However, direct charging of these on any resulting contract will not be allowed. Additionally the direct technical labor hours are the workable hours required by the Government and do not include release time (i.e., holidays, vacation, etc.) Submit the proposal utilizing the labor categories and distribution of the level-of-effort specified in the

solicitation. These are approximate distribution levels and do not necessarily represent the actual levels which may be experienced during contract performance.

(ii) Explain the basis of the proposed labor rates, including a complete justification for all judgmental factors used to develop weights applied to company's category or individual rates that comprise the rates for labor categories specified in the solicitation. This explanation should describe how technical approach coincides with the proposed costs. If the proposed direct labor rates are based on an average of the individuals proposed to work on the contract, provide a list of the individuals proposed and the hours associated with each individual in deriving the rates. If the proposed direct labor rates are based on an average of company category rates, identify and describe the labor categories and the percentages associated with each category in deriving the rates, explaining in detail the basis for the percentages assigned.

(iii) Describe for each labor category proposed, the company's qualifications and experience requirements. If individual rates are used, provide the employee's name. If specific individuals are identified in the technical proposal, correlate these individuals with the labor categories specified in the solicitation.

(iv) Provide a matrix summarizing the effort proposed, including the subcontracts, by professional and technical level specified in the solicitation.

(v) Indicate whether current rates or escalated rates are used. If escalation is included, state the degree (percent) and methodology. The methodology shall include the effective date of the base rates and the policy on salary reviews (e.g. anniversary date of employee or salary reviews for all employees on a specific date).

(vi) State whether any additional direct labor (new hire or temporary hires) will be required during the performance period of this acquisition. If so, state the number required, the professional or technical level and the methodology used to estimate proposed labor rates.

(vii) With respect to educational institutions, include the following information for those professional staff members whose salary is expected to be covered by a stipulated salary support agreement pursuant to OMB Circular A–21.

(A) Individual's name;

(B) Annual salary and the period for which the salary is applicable;

(C) List of other research Projects or proposals for which salaries are allocated, and the proportionate time charged to each; and

(D) Other duties, such as teaching assignments, administrative assignments, and other institutional activities. Show the proportionate time charged to each. (Show proportionate time charges as a percentage of 100% of time for the entire academic year, exclusive of vacation or sabbatical leave.)

(viii) Uncompensated overtime. The decision to propose uncompensated overtime is the offeror's decision. Should the offeror, however, elect to propose uncompensated overtime, the offeror must propose a methodology that is consistent with their cost accounting practices and company policy. If proposed, provide an estimate of any uncompensated overtime proposed for exempt personnel working at the offeror's facilities. This estimate should identify the number of uncompensated labor hours and the percentage of compensated labor. Uncompensated labor hours are defined as hours for exempt personnel in excess of regular hours for a pay period which are actually worked and recorded in accordance with company policy. Provide a copy of the company policy on uncompensated overtime. Provide historical percentages of uncompensated overtime for the past three years. If proposed for subcontractors, provide separately with subcontractor information.

(ix) For labor rate contracts, for each fixed labor rate, offerors shall identify the basis for for the loaded fixed hourly rate for each contract period for example, the rate might consist of the following cost elements: raw wage or salary rate, plus fringe benefits (if applicable), plus overhead rate (if applicable), plus G&A expense rate (if applicable), plus profit.

When determining the composite raw wage for a labor category, the offeror shall:

(A) provide in narrative form the basis for the raw wage for each labor category. If actual wages of current employees are used, the basis for the projections should be explained.

(B) If employees are subject to the Service Contract Act or Davis Bacon Act, they must be compensated at least at the minimum wage rate required by the applicable Wage Determination.

(3) Indirect costs (fringe, overhead, general, and administrative expenses).

(i) If the rates have been recently approved, include a copy of the rate agreement. If the agreement does not cover the projected performance period of the proposed effort, provide the rationale and any estimated rate calculations for the proposed performance period.

(ii) Submit supporting documentation for rates which have not been approved or audited. Indicate whether computations are based upon historical or projected data.

(iii) Provide actual pool expenses, base dollars, or hours (as applicable for the past five years). Include the actual indirect rates for the past five years including the indirect rates proposed, the actual indirect rates experienced and, if available, the final negotiated rate. Indicate the amount of unallowable costs included in the historical data.

(iv) Offerors who propose indirect rates for new or substantially reorganized cost centers should consider offering to accept ceilings on the indirect rates at the proposed rates. Similarly, offerors whose subcontractors propose indirect rates for new or substantially reorganized cost centers should likewise consider offering to accept ceilings on the subcontractors' indirect rates at the proposed rates.

Note to paragraph (b)(3)(iv): The Government reserves the right to adjust an offeror's or its subcontractor's estimated indirect costs for evaluation purposes based on the Agency's judgment of the most probable costs up to the amount of any stated ceiling.

(v) If the employees are subject to the Service Contract Act or Davis Bacon Act, employees must receive the minimum level of benefits stated in the applicable Wage Determination.

(4) Travel expense.

(i) If the solicitation specifies the amount of travel costs, this amount is exclusive of any applicable indirect costs and fee.

(ii) If the solicitation does not specify the amount of travel costs, attach a schedule illustrating how travel was computed. Include a breakdown indicating number of trips, number of travelers, destinations from and to, purpose and cost, e.g., mileage, transportation costs, subsistence rates.

(5) Equipment, facilities and special equipment, including tooling.

(i) If direct charges for use of existing contractor equipment are proposed, provide a description of these items, including estimated usage hours, rates, and total costs.

(ii) If equipment purchases are proposed, provide a description of these items, and a justification as to why the Government should furnish the equipment or allow its purchase with contract funds. (Unless specified elsewhere in this solicitation, FAR 45.302–1 requires contractors to furnish all facilities in performance of contracts with certain limited exceptions.)

(iii) Identify Government-owned property in the possession of the offeror or proposed to be used in the performance of the contract, and the Government agency which has cognizance over the property.

(iv) Submit proposed rates or use charges for equipment, along with documentation to support those rates.

(v) If special purposes facilities or equipment are being proposed, provide a description of these items, details for the proposed costs including competitive prices, and justification as to why the Government should furnish the equipment or allow its purchase with contract funds.

(vi) If fabrication by the prime contractor is contemplated, include details of material, labor, and overhead.

(6) Other Direct Costs (ODC).

(i) If the solicitation specifies the amount of other direct costs, this amount is exclusive of any applicable indirect cost and fee.

(ii) If the amount is not specified in the solicitation, attach a schedule detailing how other direct costs were computed. Identify the major ODC items that under the accounting system would be a direct charge on any resulting contract.

(iii) If any of the cost elements identified as part of the specified other direct costs are recovered as an indirect cost, in accordance with the offeror's accounting system, those costs should not be included as a direct cost. Complete explanation of this adjustment and the contractor's practice should be provided.

(iv) Provide historical other direct costs dollars per level of effort hour on similar contracts or work assignments.

(7) Team Subcontracts. When the cost of a subcontract is substantial (5 percent of the total estimated contract dollar value or $100,000, whichever is less), the offeror shall include the following subcontractor information:

(i) Provide details of subcontract costs in the same format as the prime contractor's

costs. This detailed information may be provided separately to the EPA if the subcontractor does not wish to provide this data to the prime contractor. Cost data provided separately by a contractor must be received by the time, date and at the location specified for the receipt of proposals. The subcontractor's package should be clearly marked with the RFP number, the name of the prime offeror, and a statement that the package is subcontractor data relevant to the proposal from the prime offeror. If submitted with the prime contractor's proposal, identify the subcontractors. State the amount of service estimated to be required and the quoted daily or hourly rate. Offerors are encouraged to provide letters of intent, signed by subcontractors, agreeing to a specified rate for life of the contract. Include a cost or price analysis of the subcontractor cost showing the reasons why the costs are considered reasonable;

(ii) Describe how the prospective team subcontractors were chosen as part of the offeror's proposed team; and rationale for selection;

(iii) Describe the necessity for the subcontractor's effort as either a supplement or complement to the offeror's in-house expertise;

(iv) Identify the areas of the scope of work and the level of effort the subcontractors are anticipated to perform. Provide a reconciliation summary of the proposed hours and ODCs for the prime contractor and proposed subcontractor(s).

(v) Describe the prime contractor's management structure and internal controls to ensure efficient and quality performance of team subcontractors.

(8) Facilities Capital Cost of Money (FCCM). When an offeror elects to claim FCCM as an allowable cost, the offeror must submit Form CASB-CNF and show calculation of the proposed amount. FCCM will be an allowable cost under the contemplated contract, if the criteria for allowability at FAR 31.205–10(a)(2) are met.

[End of Provision]

Alternate I, Aug 1999. If the Government's requirement is a fully dedicated staff person for a twelve month period(s) for each specified position and performance is on a Government facility, add the following paragraph (b)(2)(x) to the basic provision:

(x) The level of effort for each position is to be proposed in work years. A work year is considered to consist of 2080 hours inclusive of direct and indirect time (40 hours per week × 52 weeks per year=2080 hours). The proposal must identify proposed work years and clearly identify how many hours in each work year are direct (i.e., productive working hours) and how many are indirect (i.e., paid absences). If the company policy includes a different base work week, the total available hours would be different. For example, if the company's policy calls for a 37.5 hour work week, offeror would deduct paid absences from 1950 hour (37.5 hours/week × 52 weeks/year=1950 hours). Offeror should clearly identify the paid absences as to how many hours are for holiday and how many hours are for vacation and sick leave. The amount of indirect time (paid absences) identified in the proposal must be consistent with company policy and must allow for the ten Federal government holidays.

Alternate II, Aug 1999. If the Government's requirement is a fully dedicated staff person for a twelve month period(s) for each specified position and performance is not on a Government facility; add the following paragraph (b)(2)(x) to the basic provision:

(x) The level of effort for each position is to be proposed in work years. A work year is considered to consist of 2080 hours inclusive of direct and indirect time (40 hours per week × 52 weeks per year=2080 hours). The proposal must identify proposed work years and clearly identify how many hours in each work year are direct (i.e., productive working hours) and how many are indirect (i.e., paid absences). If the company policy includes a different base work week, the total available hours would be different. For example, if the company's policy calls for a 37.5 hour work week, offeror would deduct paid absences from 1950 hour (37.5 hours/week × 52 weeks/year=1950 hours). Offeror should clearly identify the paid absences as to how many hours are for holiday and how many hours are for vacation and sick leave.

Alternate III, Aug 1999. If the requirement is for the acquisition of supplies or equipment, substitute the following paragraphs (a)(iv)—(viii) and add (a)(ix) and (b).

(iv) Provide information as to how the proposed supplies or equipment meet the salient characteristics required by the contract line item;

(v) Provide published brochures, catalogs, or other technical literature by contract line item;

(vi) Meet any interface or compatibility requirements by contract line item;

(vii) Describe warranty services and how delivered by contract line item;

(viii) Assumptions, deviations and exceptions (as necessary); and

(ix) Additional information.

(b) Supplies—Provide unit pricing by contract line items for:

(i) each line item;
(ii) delivery;
(iii) installation;
(iv) sets of operating manuals;
(v) training;
(vi) warranty;
(vii) maintenance; and
(viii) volume discounts.

7. 1552.215–74, is redesignated as 1552.215-73 and revised to read as follows:

1552.215–73 General Financial and Organizational Information.

As prescribed in 1515.408(a)(2), insert the following provision:

General Financial and Organizational Informaiton: (Aug 1999)

Offerors or quoters are requested to provide information regarding the following items in sufficient detail to allow a full and complete business evaluation. If the question indicated is not applicable or the answer is none, it should be annotated. If the offeror has previously submitted the information, it should certify the validity of that data currently on file at EPA and to whom and where it was submitted or update all outdated information on file.

(a) Contractor's Name: _____

(b) Address (If financial records are maintained at some other location, show the address of the place where the records are kept):

_____

_____

(c) Telephone Number: _____

(d) Individual(s) to contact re. this proposal: _____

_____

(e) Cognizant Government:

Audit Agency: _____

Address: _____

Auditor: _____

(f)(1) Work Distribution for the Last Completed Fiscal Accounting Period:

Sales:

Government cost-reimbursement type prime contracts and subcontracts ...	$_____
Government fixed-price prime contracts and subcontracts	$_____
Commercial Sales	$_____
Total Sales	$_____

(2) Total Sales for first and second fiscal years immediately preceding last completed fiscal year.

Total Sales for First Preceding Fiscal Year	$_____
Total Sales for Second Preceding Fiscal Year	$_____

(g) Is company a separate rate entity or division?.

Yes_____

No_____

If a division or subsidiary corporation, name parent company:

_____

(h) Date Company Organized: _____

(i) Manpower:

Total Employees: _____

Direct: _____

Indirect: _____

Standard Work Week (Hours): _____

(j) Commercial Products: _____

(k) Attach a current organizational chart of the company.

(l) Description of Contractor's system of estimating and accumulating costs under Government contracts. (Check appropriate blocks.)

	Estimated/ actual cost	Standard cost
Estimating System:		
Job Order	_____	_____
Process	_____	_____

	Estimated/ actual cost	Standard cost
Accumulating System:		
Job Order	_____	_____
Process	_____	_____

Has your cost estimating system been approved by any Government agency?
Yes _____ No _____
If yes, give name, date or approval, and location of agency:

Has your cost accumulation system been approved by any Government agency?
Yes _____ No _____
If yes, give name, date of approval, and address of agency:

(m) What is your fiscal year period? (Give month-to-month dates):

What were the indirect cost rates for your last completed fiscal year?

Fiscal year	Indirect cost rate	Basis of allocation
Fringe Benefits	_____	_____
Overhead	_____	_____
G&A Expense	_____	_____
Other	_____	_____

(n) Have the proposed indirect cost rate(s) been evaluated and accepted by any Government agency?
Yes _____ No _____
If yes, give name, date of approval, and location of the Government agency:

Date of last preaward audit review by a Government agency:

If the answer is no, data supporting the proposed rates must accompany the cost or price proposal. A breakdown of the items comprising overhead and G&A must be furnished.
(o) Cost estimating is performed by:
Accounting Department _____
Contracting Department _____
Other (describe) _____
(p) Has system of control of Government property been approved by a Government agency?
Yes _____ No _____
If yes, give name, date of approval, and location of the Government agency:

(q) Purchasing System: FAR 44.302 requires EPA, where it is the cognizant Government agency, to conduct a Contractor Purchasing System Review for each contractor whose sales to the Government, using other than sealed bid procedures, are expected to exceed $25 million (annual billings) during the next twelve months. The $25 million sales threshold is comprised of prime contracts, subcontractors under Government prime contracts, and modifications (except when the negotiated price is based on established catalog or market prices or is set by law or regulation).
Has your purchasing system been approved by a Government agency?
Yes _____ No _____
If yes, name and location of the Government agency:

Period of Approval: _____
If no, do you estimate that your negotiated sales to the Government during the next twelve months will meet the $25 million threshold? Yes _____ No _____
If you responded yes to the $25 million threshold question, is EPA the cognizant agency for your organization based on the preponderance of Government contract dollars?
Yes _____ No _____
If EPA is not your cognizant Government agency, provide the name and location of the cognizant agency _____

Are your purchasing policies and procedures written?
Yes _____ No _____
(r) Does your firm have an established written incentive compensation or bonus plan?
Yes _____ No _____
(s) Additionally, offerors shall submit current financial statements, including a Balance Sheet, Statement of Income (Loss), and Cash Flow for the last two completed fiscal years. Specify resources available to perform the contract without assistance from any outside source. If sufficient resources are not available, indicate in proposal the amount required and the anticipated source (i.e., bank loans, letter or lines of credit, etc.).
(End of Provision)

8. A new 1552. 215–74 is added to read as follows:

1552.215–74 Advanced Understanding—Uncompensated Time.

As prescribed in 1515.408(b), insert the following provision or one substantially the same as the following provision:

Advanced Understanding—Uncompensated Time (Aug 1999)

(a) The estimated cost of this contract is based upon the Contractor's proposal which specified that exempt personnel identified to work at the Contractor's facilities will provide uncompensated labor hours to the contract totaling _____ percent of compensated labor. (Note: the commitment for uncompensated time, and the formula elements in paragraph (b) below, apply only to exempt personnel working at the Contractor's facilities and does not include non-exempt personnel or exempt personnel working at other facilities.) Uncompensated labor hours are defined as hours of exempt personnel in excess of regular hours for a _____ pay period which are actually worked and recorded in accordance with the company policy, entitled, _____.
(b) Recognizing that the probable cost to the Government for the labor provided under this contract is calculated assuming a proposed level of uncompensated labor hours, it is hereby agreed that in the event the proposed level of uncompensated labor hours are not provided, an adjustment, calculated in accordance with the following formula will be made to the contract amount.
Formula:
Adjustment equals estimated value of uncompensated time hours not provided.
Target uncompensated time percent minus _____ percent.
Shortage of uncompensated time percent minus actual cost percent.
Estimated value of uncompensated time hours not provided equals shortage of uncompensated time percent times total exempt applicable direct labor costs (including applicable indirect costs).
(c) Within three weeks after the end of the contract, the Contractor shall submit a statement concerning the amount of uncompensated time hours delivered during the contract. In the event there is a shortage of uncompensated time hours provided, a calculation, utilizing the above formula will be made and this calculation will be the basis for an adjustment in the contract amount.
(d) In the event adjustments are made to the contract, the adjusted amounts shall not be allowable as a direct or indirect cost to this or any other Government contract.
[End of clause]

Dated: August 6, 1999.

Betty L. Bailey,

Director, Office of Acquisition Management.

[FR Doc. 99–22048 Filed 8–30–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AF24

Migratory Bird Hunting; Early Seasons and Bag and Possession Limits for Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits of mourning, white-winged, and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sandhill cranes; sea ducks; early (September) waterfowl seasons; migratory game birds in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; and some extended falconry seasons. Taking of migratory birds is prohibited unless specifically provided for by annual regulations. This rule permits taking of designated species during the 1999–2000 season.

DATES: This rule is effective on September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Jonathan Andrew, Chief, or Ron W. Kokel, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 1999

On May 3, 1999, the U.S. Fish and Wildlife Service (hereinafter Service or we) published in the **Federal Register** (64 FR 23742) a proposal to amend 50 CFR part 20. The proposal dealt with the establishment of seasons, limits, and other regulations for migratory game birds under § 20.101 through 20.107, 20.109, and 20.110 of subpart K. On June 17, we published in the **Federal Register** (64 FR 32758) a second document providing supplemental proposals for early-and late-season migratory bird hunting regulations frameworks and the proposed regulatory alternatives for the 1999–2000 duck hunting season. The June 17 supplement also provided detailed information on the 1999–2000 regulatory schedule and announced the Service Migratory Bird Regulations Committee and Flyway Council meetings.

On June 22–23, we held meetings that reviewed information on the current status of migratory shore and upland game birds and developed 1999–2000 migratory game bird regulations recommendations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 1999–2000 regular waterfowl seasons. On July 22, we published in the **Federal Register** (64 FR 39460) a third document specifically dealing with the proposed frameworks for early-season regulations for the 1999–2000 duck hunting season.

On August 3–4, 1999, we held a public meeting in Washington, DC, as announced in the May 3, and June 17 **Federal Registers**, to review the status of waterfowl. Proposed hunting regulations were discussed for late seasons. On August 27, 1999, we published a fifth document on migratory bird hunting. The fifth document dealt specifically with proposed frameworks for the 1999–2000 late-season migratory bird hunting regulations. On August 27, 1999, we also published a sixth document on migratory bird hunting. The document contained final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits.

The final rule described here is the seventh in the series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations and deals specifically with amending subpart K of 50 CFR 20. It sets hunting seasons, hours, areas, and limits for mourning, white-winged, and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sandhill cranes; sea ducks; early (September) waterfowl seasons; mourning doves in Hawaii; migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; youth waterfowl hunting day; and some extended falconry seasons.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published a Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). Copies are available from the address indicated under the caption **ADDRESSES**.

Endangered Species Act Consideration

As in the past, we design hunting regulations to remove or alleviate chances of conflict between migratory game bird hunting seasons and the protection and conservation of endangered and threatened species. We conducted consultations to ensure that actions resulting from these regulatory proposals will not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion and may have caused modification of some regulatory measures previously proposed. The final frameworks reflect any modifications. The biological opinions resulting from our Section 7 consultation are public documents available for public inspection in the Service's Division of Endangered Species and MBMO, at the address indicated under the caption **ADDRESSES**.

Executive Order (E.O.) 12866

Collectively, the rules covering the overall frameworks for migratory bird hunting are economically significant and have been reviewed by the Office of Management and Budget (OMB) under E.O. 12866. This rule is a small portion of the overall migratory bird hunting frameworks and was not individually submitted and reviewed by OMB under E.O. 12866.

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail and issued a Small Entity Flexibility Analysis (Analysis) in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis was based on the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns from which it was estimated that migratory bird hunters would spend between $429 and $1,084 million at small businesses in 1998. Copies of the Analysis are available upon request.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808(1) .

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. We utilize the various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015

(expires 9/30/2001). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires 9/30/2000). The information from this survey is used to estimate the magnitude, the geographical and temporal distribution of harvest, and the portion it constitutes of the total population. A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform-Executive Order 12988

The Department, in promulgating this rule, has determined that these regulations meet the applicable standards found in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges; and, therefore, reduce restrictions on the use of private and public property.

Federalism Effects (E.O. 12612)

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with E.O. 12612, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant a Federalism Assessment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment on the regulations. Thus, when the preliminary proposed rulemaking was published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, the States would have insufficient time to implement their selected season dates and limits and start their seasons in a timely manner.

We therefore find that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these regulations will, therefore, take effect immediately upon publication. Accordingly, with each conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State or Territory on those species of migratory birds for which open seasons are now prescribed, and consideration having been given to all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby amended as set forth below.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Dated: August 24, 1999.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

PART 20—[AMENDED]

For the reasons set out in the preamble, title 50, chapter I, subchapter B, Part 20, subpart K of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712 and 16 U.S.C. 742a–j.

BILLING CODE 4310–55–P

(b) Virgin Islands

	Season Dates	Limits: Bag	Limits: Possession
Zenaida doves	Sept. 1-Sept. 30	10	10
Ducks	CLOSED		

Restrictions: In the Virgin Islands, the seasons are closed for ground or quail doves, pigeons, ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, masked duck, and purple gallinule.

Closed Areas: Ruth Cay, just south of St. Croix, is closed to the hunting of migratory game birds.

3. Section 20.102 is revised to read as follows:

§ 20.102 Seasons, limits, and shooting hours for Alaska.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset. Area descriptions were published in the August 27, 1999, Federal Register.

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Area Seasons	Dates
North Zone	Sept. 1-Dec. 16
Gulf Coast Zone	Sept. 1-Dec. 16
Southeast Zone	Sept. 1-Dec. 16
Pribilof & Aleutian Islands Zone	Oct. 8-Jan. 22
Kodiak Zone	Oct. 8-Jan. 22

Note - The following annual hunting regulations provided for by §§20.101 through 20.106 and 20.109 of 50 CFR 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

2. Section 20.101 is revised to read as follows:

§ 20.101 Seasons, limits, and shooting hours for Puerto Rico and the Virgin Islands.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset.

CHECK COMMONWEALTH REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

(a) Puerto Rico

	Season Dates	Limits: Bag	Limits: Possession
Doves and Pigeons			
Zenaida, white-winged, and mourning doves	Sept. 4-Nov. 1	10	10
Scaly-naped pigeons	Sept. 4-Nov. 1	5	5
Ducks	Nov. 13-Dec. 20 & Jan. 15-Jan. 31	6 6	12 12
Common Moorhens	Nov. 13-Dec. 20 & Jan. 15-Jan. 31	6 6	12 12
Common Snipe	Nov. 13-Dec. 20 & Jan. 15-Jan. 31	8 8	16 16

Restrictions: In Puerto Rico, the season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, masked duck, purple gallinule, American coot, and Caribbean coot, white-crowned pigeon and plain pigeon.

Closed Areas: Closed areas are described in the August 27, 1999, Federal Register.

Daily Bag and Possession Limits

Area	Ducks(1)	Dark Geese(2)(3)	Light Geese (2)	Brant	Common Snipe	Sandhill Cranes(4)
North Zone	10-30	4-8	3-6	2-4	8-16	3-6
Gulf Coast Zone	8-24	4-8	3-6	2-4	8-16	2-4
Southeast Zone	7-21	4-8	3-6	2-4	8-16	2-4
Pribilof and Aleutian Islands Zone	7-21	4-8	3-6	2-4	8-16	2-4
Kodiak Zone	7-21	4-8	3-6	2-4	8-16	2-4

(1) In State Game Management Units (Units) 1-26 (Statewide), the basic bag limits may include not more than 1 canvasback daily, 3 in possession. In addition to the basic daily bag and possession limits, a daily bag limit of 10 and a possession limit of 20 is permitted singly or in the aggregate of the following species: scoter, king and common eider, and common and red-breasted mergansers. The season is closed for Steller's and spectacled eiders.

(2) Dark geese include Canada and white-fronted geese. Light geese include snow geese and Ross' geese. Separate limits apply to brant and emperor geese. The season for Aleutian Canada geese and emperor geese is closed Statewide.

(3) In Units 5 and 6, the taking of Canada geese is only permitted from September 28 through December 16. In Units 1-26 (Statewide), the taking of Aleutian Canada geese and emperor geese is prohibited. In Unit 9(d) and the Unimak Island portion of Unit 10, the limits for dark geese are 6 daily and 12 in possession. In the Middleton Island portion of Unit 6, the taking of Canada geese is by special permit only, with a daily bag and possession limit of 1.

(4) In Unit 17, the daily bag limit for sandhill cranes is 2 and the possession limit is 4.

Falconry: The total combined bag and possession limit for migratory game birds taken with the use of a falcon under a falconry permit is 3 per day, 6 in possession, and may not exceed a more restrictive limit for any species listed in this subsection.

Special Tundra Swan Season: In Unit 22 and 18, there will be a tundra swan season from September 1 through October 31 with a season limit of 3 tundra swans per hunter. This season is by registration permit only; hunters will be issued 1 permit allowing the take of up to 3 tundra swans. Hunters will be required to file a harvest report after the season is completed. Up to 300 permits may be issued in Unit 22 and 500 permits in Unit 18. In Unit 23, there will be an experimental tundra swan season from September 1 through October 31, with a season limit of 3 tundra swans per hunter. This season is by registration permit only; hunters will be issued 1 permit allowing the take of up to 3 tundra swans. Hunters will be required to file a harvest report after the season is completed. Up to 300 permits may be issued. Season evaluation to adhere to guidelines for experimental seasons as described in the Pacific Flyway Management Plan for the Western Population of (Tundra) swans.

4. Section 20.103 is revised to read as follows:

§20.103 Seasons, limits, and shooting hours for doves and pigeons.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the August 27, 1999, Federal Register.

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

(a) Doves

Note: Unless otherwise specified, the seasons listed below are for mourning doves only.

	Season Dates	Limits: Bag	Limits: Possession
EASTERN MANAGEMENT UNIT			
Alabama			
North Zone			
12 noon to sunset	Sept. 11 only &	15	15
	Dec. 25-Jan. 4	15	15
1/2 hour before sunrise to sunset	Sept. 12-Oct. 24	15	15
South Zone			
12 noon to sunset	Oct. 2-Nov. 20 &	12	12
	Dec. 25-Jan. 13	12	12
Delaware			
12 noon to sunset	Sept. 4-Sept. 25	12	24
1/2 hour before sunrise to sunset	Oct. 18-Oct. 30 &	12	24
	Dec. 8-Jan. 8	12	24
Florida (1)			
12 noon to sunset	Oct. 2-Oct. 25	12	24
1/2 hour before sunrise to sunset	Nov. 13-Nov. 28 &	12	24
	Dec. 11-Jan. 9	12	24
Georgia			
Zone 1			
12 noon to sunset	Sept. 4 only	12	24
1/2 hour before sunrise to sunset	Sept. 5-Oct. 3 &	12	24
	Nov. 25-Nov. 27 &	12	24
	Dec. 10-Jan. 15	12	24
Zone 2			
12 noon to sunset	Sept. 25 only	12	24
1/2 hour before sunrise to sunset	Sept. 26-Oct. 24 &	12	24
	Nov. 25-Nov. 27 &	12	24
	Dec. 10-Jan. 15	12	24
Illinois			
sunrise to sunset	Sept. 1-Oct. 17 &	15	30
	Nov. 6-Nov. 18	15	30
Indiana	Sept. 1-Oct. 16 &	15	30
	Nov. 5-Nov. 14 &	15	30
	Nov. 25-Nov. 28	15	30
Kentucky			
11 a.m. to sunset	Sept. 1-Oct. 24	15	30
1/2 hour before sunrise to sunset	Nov. 25-Nov. 30	15	30
Louisiana			
12 noon to sunset	Sept. 4-Sept. 5 &	12	24
	Oct. 16-Oct. 17 &	12	24
	Dec. 11-Dec. 12	12	24
1/2 hour before sunrise to sunset	Sept. 6-Sept. 12 &	12	24
	Oct. 18-Nov. 15 &	12	24
	Dec. 13-Jan. 9	12	24
Maryland			
12 noon to sunset	Sept. 1-Oct. 21	12	24
1/2 hour before sunrise to sunset	Nov. 15-Nov. 20 &	12	24
	Dec. 20-Jan. 1	12	24
Mississippi			
North Zone	Sept. 4-Sept. 25 &	15	30
	Oct. 9-Nov. 7 &	15	30
	Dec. 25-Jan. 1	15	30
South Zone	Sept. 25-Oct. 16 &	15	30
	Nov. 13-Nov. 28 &	15	30
	Dec. 18-Jan. 8	15	30
North Carolina			
12 noon to sunset	Sept. 4-Sept. 10	12	24
1/2 hour before sunrise to sunset	Sept. 11-Oct. 9 &	12	24
	Nov. 22-Nov. 27 &		
	Dec. 20-Jan. 15	12	24
Ohio	Sept. 1-Oct. 16 &	12	24
	Nov. 5-Nov. 28	12	24
Pennsylvania			
12 noon to sunset	Sept. 1-Oct. 6 &	12	24
	Oct. 30-Nov. 27 &	12	24
	Dec. 27-Jan. 1	12	24
Rhode Island			
12 noon to sunset	Sept. 11-Oct. 3	12	24
1/2 hour before sunrise to sunset	Oct. 16-Dec. 1	12	24
South Carolina			
12 noon to sunset	Sept. 4-Sept. 6	12	24
1/2 hour before sunrise to sunset	Sept. 7-Oct. 9 &	12	24
	Nov. 20-Nov. 27 &	12	24
	Dec. 21-Jan. 15	12	24
Tennessee			
12 noon to sunset	Sept. 1 only	15	30
1/2 hour before sunrise to sunset	Sept. 2-Sept. 26 &	15	30
	Oct. 9-Oct. 24 &	15	30
	Dec. 18-Jan. 4	15	30
Virginia			
12 noon to sunset	Sept. 4-Sept. 25	12	24
1/2 hour before sunrise to sunset	Oct. 2-Nov. 6 &	12	24
	Dec. 25-Jan. 5	12	24

	Season Dates	Limits Bag	Limits Possession
West Virginia			
12 noon to sunset	Sept. 1 only	12	24
1/2 hour before sunrise to sunset	Sept. 2-Oct. 2 &	12	24
	Oct. 25-Nov. 6 &	12	24
	Dec. 15-Jan. 6	12	24
CENTRAL MANAGEMENT UNIT			
Arkansas	Sept. 4-Sept. 26 &	15	30
	Oct. 9-Oct. 31 &	15	30
	Dec. 18-Dec. 31	15	30
Colorado	Sept. 1-Oct. 30	15	30
Kansas	Sept. 1-Oct. 30	15	30
Missouri	Sept. 1-Sept. 30 &	15	30
	Nov. 1-Nov. 30	15	30
Montana	Sept. 1-Oct. 30	15	30
Nebraska	Sept. 1-Oct. 30	15	30
New Mexico (2)			
North Zone	Sept. 1-Oct. 30	15	30
South Zone	Sept. 1-Sept. 30 &	15	30
	Dec. 1-Dec. 30	15	30
North Dakota	Sept. 1-Oct. 30	15	30
Oklahoma	Sept. 1-Oct. 30	15	30
South Dakota (3)	Sept. 1-Oct. 15	15	30
Texas (4)			
North Zone	Sept. 1-Oct. 30	15	30
Central Zone	Sept. 1-Oct. 17 &	15	30
	Dec. 26-Jan. 7	15	30
South Zone			
Special Area	Sept. 24-Nov. 7 &	15	30
	Dec. 26-Jan. 5	15	30
(Special Season) 12 noon to sunset	Sept. 4-Sept. 5 &	10	20
	Sept. 11-Sept. 12	10	20
Texas (cont)			
Remainder of the South Zone	Sept. 24-Nov. 7 &	15	30
	Dec. 26-Jan. 9	15	30
Wyoming	Sept. 1-Oct. 30	15	30
WESTERN MANAGEMENT UNIT			
Arizona (5)	Sept. 1-Sept. 15 &	10	20
	Nov. 20-Jan. 3	10	20
California (6)	Sept. 1-Sept. 15 &	10	20
	Nov. 13-Dec. 27	10	20
Idaho	Sept. 1-Sept. 30	10	20
Nevada (6)	Sept. 1-Sept. 30	10	20
Oregon	Sept. 1-Sept. 30	10	20
Utah	Sept. 1-Sept. 30	10	20
Washington	Sept. 1-Sept. 15	10	20
OTHER POPULATIONS			
Hawaii (7)	Nov. 6-Nov. 28 &	10	10
	Dec. 4-Dec. 31 &	10	10
	Jan. 1-Jan. 17	10	10

(1) In Florida, the daily bag limit is 12 mourning and white-winged doves in the aggregate, of which not more than 4 may be white-winged doves. The possession limit is twice the daily bag limit.

(2) In New Mexico, the daily bag limit is 15 and the possession limit is 30 mourning and white-winged doves in the aggregate.

(3) In South Dakota, shooting hours are from sunrise to sunset.

(4) In Texas, the daily bag limit is 15 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 2 may be white-tipped doves. Possession limits are twice the daily bag limit. During the special season in the Special White-winged Dove Area of the South Zone, the daily bag limit is 10 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 5 may be mourning doves and 2 may be white-tipped doves. Possession limits are twice the daily bag limit.

(5) In Arizona, during September 1 through 10, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. During November 20 through January 3, the daily bag limit is 10 mourning doves. The possession limit is twice the daily bag limit. See State regulations for restrictive shooting hours in certain areas.

(6) In the areas of California and Nevada open to white-winged dove hunting, the daily bag limit is 10 and the possession limit is 20 mourning and white-winged doves in the aggregate.

(7) In Hawaii, the season is only open on the island of Hawaii. The daily bag and possession limits are 10 mourning and lace-necked doves in the aggregate. Shooting hours are from one-half hour before sunrise through one-half hour after sunset. Hunting is only permitted on weekends and State holidays.

(b) Band-tailed Pigeons

	Season Dates	Limits Bag	Limits Possession
Arizona	Oct. 1-Oct. 8	4	8
California			
North Zone	Sept. 18-Sept. 26	2	2
South Zone	Dec. 18-Dec. 26	2	2
Colorado	Sept. 1-Sept. 30	5	10
New Mexico			
North Zone	Sept. 1-Sept. 20	5	10
South Zone	Oct. 1-Oct. 20	5	10
Oregon	Sept. 15-Sept. 23	2	2
Utah	Sept. 1-Sept. 30	5	10

5. Section 20.104 is revised to read as follows:

§20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the August 27, 1999, Federal Register.

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-season regulations for further information.

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Common Snipe
Daily bag limit	25 (1)	15 (2)	3	8
Possession limit	25 (1)	30 (2)	6	16
ATLANTIC FLYWAY				
Connecticut (3)	Sept. 1-Nov. 6	Sept. 1-Nov. 6	Oct. 30-Nov. 27	Oct. 30-Nov. 27
Delaware	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 18-Oct. 30 & Nov. 22-Dec. 8	Oct. 18-Oct.30 & Nov. 22-Jan.31
Florida	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Dec. 18-Jan. 16	Nov. 1-Feb. 15
Georgia	Sept. 25-Dec. 3	Sept. 25-Dec. 3	Dec. 24-Jan. 22	Nov. 15-Feb. 28
Maine	Sept. 1-Nov. 9	Closed	Oct. 6-Nov. 4	Sept. 1-Dec. 16
Maryland	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Oct. 25-Nov. 13 & Jan. 10-Jan. 19	Sept. 13-Nov. 20 & Dec. 13-Jan. 19
Massachusetts (4)	Sept. 1-Nov. 9	Closed	Deferred	Sept. 1-Dec. 16
New Hampshire	Closed	Closed	Oct. 6-Nov. 4	Sept. 15-Nov. 4
New Jersey (5)				
North Zone	Sept. 1-Nov. 6	Sept. 1-Nov. 6	Oct. 19-Nov. 11	Sept. 24-Jan. 8
South Zone	Sept. 1-Nov. 6	Sept. 1-Nov. 6	Nov. 13-Nov. 27 & Dec. 17-Dec. 25	Sept. 24-Jan. 8
New York (6)	Sept. 1-Nov. 9	Closed	Oct. 6-Nov. 4	Sept. 1-Dec. 16
North Carolina	Sept. 4-Nov. 12	Sept. 4-Nov. 12	Dec. 17-Jan. 15	Nov. 15-Feb. 28
Pennsylvania	Sept. 1-Nov. 9	Closed	Oct. 23-Nov. 6	Oct. 23-Nov. 27
Rhode Island (7)	Sept. 11-Nov. 19	Sept. 11-Nov. 19	Nov. 8-Dec. 3	Sept. 11-Dec. 3
South Carolina	Sept. 25-Sept. 30 & Oct. 23-Dec. 25	Sept. 25-Sept. 30 & Oct. 23-Dec. 25	Dec. 31-Jan. 29	Nov. 12-Feb. 26
Vermont	Deferred	Deferred	Deferred	Deferred
Virginia	Sept. 18-Oct. 12 & Oct. 22-Nov. 27	Sept. 10-Oct. 12 & Oct. 22-Nov. 27	Oct. 30-Nov. 13 & Dec. 18-Jan. 1	Oct. 6-Oct. 9 & Oct. 21-Jan. 31

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Common Snipe
West Virginia	Sept. 1-Nov. 9	Closed	Oct. 18-Nov. 16	Sept. 1-Dec. 16
MISSISSIPPI FLYWAY				
Alabama (6)	Sept. 4-Sept. 19 & Nov. 28-Jan. 20	Sept. 4-Sept. 19 & Nov. 28-Jan. 20	Dec. 18-Jan. 31	Nov. 14-Feb. 28
Arkansas	Sept. 1-Nov. 9	Closed	Nov. 13-Dec. 12 & Jan. 1-Jan. 15	Nov. 6-Feb. 20
Illinois (9)	Sept. 4-Nov. 12	Closed	Oct. 16-Nov. 29	Sept. 4-Dec. 19
Indiana (10)	Sept. 1-Nov. 9	Closed	Oct. 8-Nov. 21	Sept. 1-Dec. 16
Iowa (11)	Sept. 4-Nov. 12	Closed	Oct. 2-Nov. 15	Sept. 4-Nov. 30
Kentucky	Sept. 1-Nov. 9	Closed	Oct. 23-Dec. 6	Sept. 15-Oct. 31 & Nov. 25-Jan. 23
Louisiana (12)	Sept. 11-Sept. 26	Sept. 11-Sept. 26	Dec. 18-Jan. 31	Nov. 6-Feb. 20
Michigan (13)	Sept. 15-Nov. 14	Closed	Sept. 25-Nov. 8	Sept. 15-Nov. 14
Minnesota	Sept. 1-Nov. 4	Closed	Sept. 25-Nov. 8	Sept. 1-Nov. 4
Mississippi	Oct. 12-Dec. 20	Oct. 12-Dec. 20	Dec. 18-Jan. 31	Nov. 13-Feb. 27
Missouri	Sept. 1-Nov. 9	Closed	Oct. 15-Nov. 28	Sept. 1-Dec. 16
Ohio	Sept. 1-Nov. 9	Closed	Oct. 15-Nov. 28	Sept. 1-Nov. 28 & Dec. 11-Dec. 26
Tennessee	Deferred	Closed	Oct. 30-Dec. 13	Nov. 14-Feb. 28
Wisconsin	Deferred	Closed	Sept. 25-Nov. 8	Deferred
CENTRAL FLYWAY				
Colorado	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16
Kansas	Sept. 1-Nov. 9	Closed	Oct. 15-Nov. 28	Sept. 1-Dec. 16
Montana	Closed	Closed	Closed	Sept. 1-Dec. 16
Nebraska (14)	Sept. 1-Nov. 9	Closed	Sept. 25-Nov. 1	Sept. 1-Dec. 16
New Mexico	Oct. 9-Dec. 17	Closed	Closed	Oct. 9-Jan. 23
North Dakota	Closed	Closed	Sept. 18-Oct. 31	Sept. 18-Nov. 28
Oklahoma	Sept. 1-Nov. 9	Closed	Nov. 1-Dec. 15	Oct. 1-Jan. 15
South Dakota (15)	Closed	Closed	Closed	Sept. 1-Oct. 31
Texas	Sept. 11-Sept. 26 & Oct. 23-Dec. 15	Sept. 11-Sept. 26 & Oct. 23-Dec. 15	Dec. 18-Jan. 31	Oct. 17-Jan. 31
Wyoming	Sept. 1-Nov. 4	Closed	Closed	Sept. 1-Dec. 2
PACIFIC FLYWAY				
Colorado	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16
Idaho	Closed	Closed	Closed	Oct. 2-Jan. 15
Montana	Closed	Closed	Closed	Sept. 1-Dec. 16
New Mexico	Oct. 9-Dec. 17	Closed	Closed	Oct. 9-Jan. 23
Wyoming	Sept. 1-Nov. 4	Closed	Closed	Sept. 1-Dec. 2

NOTE: For all other States in the Pacific Flyway, snipe seasons have been deferred and no seasons are prescribed for woodcock and rails.

(1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these species.

(2) All bag and possession limits for clapper and king rails apply singly or in the aggregate of the two species and, unless otherwise specified, the limits are in addition to the limits on sora and Virginia rails in all States. In Connecticut, Delaware, Maryland, and New Jersey, the limits for clapper and king rails are 10 daily and 20 in possession.

(3) In Connecticut, the daily bag and possession limits may not contain more than 1 king rail. The common snipe daily bag and possession limit is 3 and 6, respectively.

(4) In Massachusetts, the sora bag limit is 5 daily and 10 in possession; the Virginia rail bag limit is 10 daily and 20 in possession.

(5) In New Jersey, the season for king rails is closed by State regulation.

(6) In New York, seasons for sora and Virginia rails and common snipe are closed on Long Island.

(7) In Rhode Island, the sora and Virginia rails bag limit is 5 daily and 10 in possession, singly or in the aggregate; the clapper and king rail bag limit is 5 daily and 10 in possession, singly or in the aggregate; the common snipe bag limit is 5 daily and 10 in possession.

(8) In Alabama, the rail limits are 15 daily and 15 in possession, singly or in the aggregate.

(9) In Illinois, shooting hours are from sunrise to sunset.

(10) In Indiana, the sora rail limit is 25 daily and 25 in possession. The season on Virginia rails is closed.

(11) In Iowa, the limits for sora and Virginia rails are 12 daily and 24 in possession.

(12) Additional days occurring after September 30 will be published with the late season selections.

(13) In Michigan, the season opens concurrently with the duck season in certain areas.

(14) In Nebraska, the rail limits are 10 daily and 20 in possession.

(15) In South Dakota, the snipe limits are 5 daily and 15 in possession.

6. Section 20.105 is amended by revising paragraphs (a) through (f) to read as follows:

§20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise noted. Area descriptions were published in the August 27, 1999, Federal Register.

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-seasons regulations for further information.

(a) Common Moorhens and Purple Gallinules

	Season Dates	Limits Bag	Limits Possession
ATLANTIC FLYWAY			
Delaware	Sept. 1-Nov. 9	15	30
Florida (1)	Sept. 1-Nov.9	15	30
Georgia	Nov. 20-Jan. 20	15	30
Maine	Sept. 1-Nov. 9	15	30
New Jersey	Sept. 1-Nov. 6	10	20
New York			
Long Island	Closed	–	–
Remainder of State	Sept. 1-Nov. 9	15	30
North Carolina	Sept. 4-Nov. 12	15	30
Pennsylvania	Sept. 1-Nov. 9	15	30
South Carolina	Sept. 25-Sept. 30 & Oct. 23-Dec. 25	15 15	30 30
Virginia	Deferred	–	–
West Virginia	Deferred	–	–
MISSISSIPPI FLYWAY			
Alabama	Sept. 4-Sept. 19 & Nov. 28-Jan. 20	15 15	15 15
Arkansas	Sept. 1-Nov. 9	15	30
Indiana	Sept. 1-Nov. 9	15	30
Kentucky	Sept. 1-Nov. 9	15	30
Louisiana (2)	Sept. 11-Sept. 26	15	30
Michigan	Deferred	–	–
Minnesota	Deferred	–	–
Mississippi	Oct. 12-Dec. 20	15	30
Ohio	Sept. 1-Nov. 9	15	30
Tennessee	Deferred	–	–
Wisconsin	Deferred	–	–

	Season Dates	Limits Bag	Limits Possession
CENTRAL FLYWAY			
New Mexico			
Zone 1	Oct. 9-Dec. 17	1	2
Zone 2	Oct. 9-Dec. 17	1	2
Oklahoma	Sept. 1-Nov. 9	15	30
Texas	Sept. 11-Sept. 26 & Oct. 23-Dec. 15	15 15	30 30
Wyoming	Deferred	–	–
PACIFIC FLYWAY			
All States	Deferred	–	–

(1) The season applies to common moorhens only.

(2) Additional days occurring after September 30 will be published with the late season selections.

(b) Sea Ducks (scoter, eider, and oldsquaw ducks in Atlantic Flyway).

Within the special sea duck areas, the daily bag limit is 7 scoter, eider, and oldsquaw ducks, singly or in the aggregate, of which no more than 4 may be scoters. Possession limits are twice the daily bag limit. These limits may be in addition to regular duck bag limits only during the regular duck season in the special sea duck hunting areas.

	Season Dates	Limits Bag	Limits Possession
Connecticut	Sept. 18-Jan. 20	7	14
Delaware	Sept. 18-Jan. 20	7	14
Georgia	Nov. 20-Jan.18	7	14
Maine	Deferred	–	–
Maryland	Deferred	–	–
Massachusetts	Deferred	–	–
New Hampshire	Sept. 15-Dec. 30	7	14
New Jersey	Sept. 18-Jan. 20	7	14
New York	Oct. 9-Jan. 20	7	14
North Carolina	Deferred	–	–
Rhode Island	Oct. 9-Jan. 20	7	14
South Carolina	Deferred	–	–
Virginia	Deferred	–	–

NOTE: Notwithstanding the provisions of this Part 20, the shooting of crippled waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia and Maryland in those areas described, delineated, and designated in their respective hunting regulations as special sea duck hunting areas.

(c) Early (September) Duck Seasons.

Note: Unless otherwise specified, the seasons listed below are for teal only.

	Season Dates	Limits Bag	Limits Possession
ATLANTIC FLYWAY			
Delaware (1)(2)	Sept. 9-Sept. 18	4	8
Florida (3)	Sept. 25-Sept. 29	4	8
Georgia	Sept. 18-Sept. 26	4	8
Maryland (1)	Sept. 11-Sept. 21	4	8
North Carolina (1)	Sept. 9-Sept. 18	4	8
South Carolina (5)	Sept. 17-Sept. 26	4	8
Virginia (1)	Sept. 16- Sept. 25	4	8
MISSISSIPPI FLYWAY			
Alabama	Sept. 4-Sept. 19	4	8
Arkansas (4)	Sept. 11-Sept. 26	4	8
Illinois (4)	Sept. 4-Sept. 19	4	8
Indiana (4)	Sept. 4-Sept. 19	4	8
Iowa (6)			
North Zone	Sept. 18-Sept. 22	–	–
South Zone	Sept. 18-Sept. 22	–	–
Kentucky (7)	Sept. 15-Sept. 19	4	8
Louisiana	Sept. 11-Sept. 26	4	8
Mississippi	Sept. 11-Sept. 26	4	8
Missouri (4)	Sept. 11-Sept. 26	4	8
Ohio (4)	Sept. 1-Sept. 16	4	8
Tennessee (7)	Sept. 11-Sept. 15	4	8
CENTRAL FLYWAY			
Colorado	Sept. 4-Sept. 12	4	8
Kansas			
Low Plains	Sept. 11-Sept. 26	4	8
High Plains	Sept. 11-Sept. 19	4	8
New Mexico	Sept. 18-Sept. 26	4	8
Oklahoma			
Low Plains	Sept. 11-Sept. 26	4	8
High Plains	Sept. 11-Sept. 19	4	8
Texas	Sept. 11-Sept. 26	4	8

(1) Area restrictions. See State regulations.

(2) In Delaware, the shooting hours are from ½ hour before sunrise to 10:00 a.m.

(3) In Florida, the daily bag limit is 4 wood ducks and teal in the aggregate. The possession limit is twice the daily bag limit.

(4) Shooting hours are from sunrise to sunset.

(5) In South Carolina, shooting hours are from sunrise to noon.

(6) In Iowa, the September season is part of the regular season, and limits will conform to those set for the regular season.

(7) In Kentucky and Tennessee, the daily bag limit is 4 wood ducks and teal in the aggregate, of which no more than 2 may be wood ducks. The possession limit is twice the daily bag limit.

(d) Special Early Canada Goose Seasons.

	Season Dates	Limits Bag	Limits Possession
ATLANTIC FLYWAY			
Connecticut			
North Zone	Sept. 1- Sept. 3 & Sept. 7-Sept. 25	5 5	10 10
Delaware	Sept. 1-Sept. 15	5	10
Maine	Sept. 7-Sept. 25	3	6
Maryland			
Eastern Unit	Sept. 1-Sept. 15	5	10
Western Unit	Sept. 1-Sept. 25	5	10
Massachusetts (1)			
Central Zone	Sept. 7-Sept. 25	5	10
Coastal Zone	Sept. 7-Sept. 25	5	10
Western Zone	Sept. 7-Sept. 25	3	6
New Hampshire	Sept. 7-Sept. 25	3	6
New Jersey	Sept. 1-Sept. 30	5	10
New York			
Lake Champlain Zone	Sept. 7-Sept. 15	2	4
Northeastern Zone	Sept. 1-Sept. 25	5	10
Western Zone	Sept. 1-Sept. 25	5	10
Montezuma Zone	Sept. 1-Sept. 20	5	10
Southeastern Zone	Sept. 1-Sept. 25	5	10
Long Island Zone (2)	Sept. 7-Sept. 30	5	10
North Carolina (1)			
Northeast Hunt Unit	Sept. 1-Sept. 20	3	6
Rest of State	Sept. 7-Sept. 30	3	6

	Season Dates	Limits Bag	Limits Possession
Pennsylvania			
Southeast Hunt Area	Sept. 1-Sept. 25	5	10
Rest of State	Sept. 1-Sept. 25	3	6
Rhode Island	Sept. 11-Sept. 25	5	10
South Carolina (1)			
Early-Season Hunt Unit	Sept. 11-Sept. 25	4	8
Vermont			
Lake Champlain Zone	Sept. 7-Sept. 15	2	4
Interior Vermont Zone:			
Bennington, Rutland, & Windham Counties	Sept. 7-Sept. 15	5	10
Rest of Zone	Sept. 7-Sept. 15	2	4
Virginia	Sept. 1-Sept. 3	5	10
	Sept. 7-Sept. 25	5	10
West Virginia	Sept. 1-Sept. 15	3	6
MISSISSIPPI FLYWAY			
Alabama	Sept. 4-Sept. 15	5	10
Illinois			
Northeast Zone	Sept. 1-Sept. 15	5	10
North Zone	Sept. 1-Sept. 15	2	4
Central Zone	Sept. 1-Sept. 15	2	4
South Zone	Sept. 1-Sept. 15	2	4
Indiana	Sept. 1-Sept. 15	5	10
Iowa			
North Zone	Sept. 11-Sept. 12	2	4
Michigan			
Upper Peninsula	Sept. 1-Sept. 10	5	10
Lower Peninsula (3)	Sept. 1-Sept. 15	5	10
Minnesota			
Twin Cities Metro Zone	Sept. 4-Sept. 22	5	10
Two Goose Zone	Sept. 4-Sept. 22	2	4
Five Goose Zone	Sept. 4-Sept. 22	5	10
Northwest Goose Zone	Sept. 4-Sept. 15	2	4
Mississippi (4)	Sept. 1-Sept. 15	5	10
Ohio (2)	Sept. 1-Sept. 15	4	8
Tennessee			
Middle Tennessee Zone	Sept. 4-Sept. 8	3	6
East Tennessee Zone	Sept. 1-Sept. 15	5	10
Wisconsin			
Early-Season Subzone A	Sept. 1-Sept. 15	5	10
Early-Season Subzone B	Sept. 1-Sept. 15	3	6
CENTRAL FLYWAY			
Kansas			
Sept. Canada Goose Unit	Sept. 1-Sept. 13	3	6
North Dakota (2)	Sept. 1-Sept. 15	3	6
South Dakota (2)	Sept. 1-Sept. 15	5	10
PACIFIC FLYWAY			
California			
Humboldt County	Sept. 4-Sept. 12	2	2
Idaho			
East Canada Goose Zone (1)(2)	Sept. 1-Sept. 12	2	4
Nez Perce County	Sept. 5-Sept. 11	4	8
Oregon			
Northwest Zone	Sept. 11-Sept. 18	5	10
Southwest Zone	Sept. 4-Sept. 10	5	10
East Zone	Sept. 4-Sept. 10	5	10
Washington			
Statewide	Sept. 7-Sept. 12	3	6
Wyoming (1)	Sept. 1-Sept. 7	2	4 per season

(1) State permit required.

(2) See State regulations for additional information.

(3) In Michigan, the season is closed in Huron, Saginaw, and Tuscola Counties.

(4) In Mississippi, the season is closed on Roebuck Lake in Leflore County.

(e) Regular Goose Seasons.

Note: Bag and possession limits will conform to those set for the regular season.

	Season Dates
MISSISSIPPI FLYWAY	
Michigan (1)	Sept. 19-Oct. 3
Wisconsin	
Horicon Zone	Sept. 18-Sept. 30
Collins Zone	Sept. 18-Sept. 30
Exterior Zone	Sept. 25-Sept. 30

(1) In Michigan, season dates for the Muskegon Wastewater, Saginaw County, Allegan County, Tuscola/Huron Goose Management Units in the South Zone will be established in the late-season regulatory process.

(f) Youth Waterfowl Hunting Day

The following seasons are open only to youth hunters. Youth Hunters must be accompanied into the field by an adult at least 18 years of age. This adult can not duck hunt but may participate in other open seasons.

Definitions

Youth Hunters: Includes youths 15 years of age or younger.

The Atlantic Flyway: Includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

The Mississippi Flyway: Includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

The Central Flyway: Includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

The Pacific Flyway: Includes the States of Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

Note: Bag and possession limits will conform to those set for the regular season.

	Season Dates
ATLANTIC FLYWAY	
Connecticut	Deferred
Delaware	
Ducks, geese, mergansers, coots, moorhens and gallinules	Oct. 23
Florida	Deferred
Georgia	
Ducks, geese, mergansers, coots, moorhens and gallinules	Nov. 13
Maine (1)	
Ducks, mergansers, and coots	
Statewide	Sept. 18
Maryland (2)	
Ducks, mergansers and coots	Oct. 2
Massachusetts	Deferred
New Hampshire	Deferred
New Jersey	
Ducks, geese, mergansers, coots, moorhens and gallinules	
Statewide	Sept. 25
New York	
Ducks, mergansers and coots	
Long Island Zone	Oct. 24
Lake Champlain Zone	Sept. 26
Northeastern Zone	Sept. 26
Southeastern Zone	Sept. 26
Western Zone	Oct. 10
North Carolina	Deferred
Pennsylvania	
Ducks, mergansers, coots and moorhens	
Statewide	Sept. 25
Rhode Island	
Ducks, mergansers and coots	Nov. 6
South Carolina	
Ducks, mergansers and coots	Jan. [illegible]

	Season Dates
Vermont	
Ducks, mergansers and coots	
Statewide	Sept. 26
Virginia	Deferred
West Virginia	
Ducks, geese, mergansers, coots, moorhens, and gallinules	
Statewide	Sept. 18
MISSISSIPPI FLYWAY	
Alabama	
Ducks, mergansers, coots, geese, moorhens and gallinules	
Statewide	Feb. 5
Arkansas	Deferred
Illinois	
Ducks, mergansers, coots and geese	
North Zone	Oct. 2
Central Zone	Oct. 16
South Zone	Nov. 6
Indiana	Deferred
Iowa	
Ducks, Canada geese, mergansers and coots	
Statewide	Oct. 9
Kentucky	Deferred
Louisiana	Deferred
Michigan	
Ducks, geese, mergansers, coots, moorhens and gallinules	
Statewide	Sept. 18
Minnesota (3)	
Ducks, Canada geese, mergansers, coots, moorhens and gallinules	Sept. 18
Mississippi	Deferred
Missouri	Deferred
Ohio	Deferred
Tennessee	Deferred
Wisconsin	
Ducks, geese, mergansers, coots, moorhens and gallinules	
Statewide	Sept. 18
CENTRAL FLYWAY	
Colorado	
Ducks, dark geese, mergansers and coots	Sept. 25
Kansas (4)	
Ducks, dark geese, mergansers and coots	
High Plains	Sept. 25
Low Plains	
Early Zone	Deferred
Late Zone	Deferred
Montana	
Ducks, geese, mergansers and coots	Sept. 25
Nebraska (5)	
Ducks, mergansers, coots, and geese	Sept. 18
New Mexico	
Ducks, mergansers, coots, geese, and moorhens	
North Zone	Oct. 2
South Zone	Oct. 9
North Dakota	
Ducks, geese, mergansers and coots	
Statewide	Sept. 25
Oklahoma	Deferred
South Dakota (6)	
Ducks, Canada geese, and mergansers	
Statewide	Sept. 25
Texas	Deferred
Wyoming	
Ducks, dark geese, mergansers and coots	
Statewide	Sept. 25
PACIFIC FLYWAY (7)	
Arizona	
Ducks, geese, coots, moorhens and gallinules	
North Zone	Oct. 2
South Zone	Jan. 22
California	
Ducks, brant, geese, and coots	
Northeastern Zone	Oct. 2
Colorado River Zone	Jan. 22
Southern Zone	Jan. 29
Southern San Joaquin Valley Zone	Jan. 29
Balance-of-State Zone	Jan. 29
Colorado	
Ducks, dark geese and coots	Sept. 25
Idaho	
Ducks, Canada geese, and coots	
Statewide	Sept. 25
Montana	
Ducks, geese, and coots	Sept. 25
Nevada	
Ducks, geese, coots, moorhens, and gallinules	
Clark and Lincoln Counties	Jan. 29
Rest of State	Sept. 25
Utah	
Ducks, geese, and coots	
Statewide	Sept. 25
Washington (8)	
Ducks, Canada geese, and coots	
Statewide	Sept. 25
Wyoming	
Ducks, dark geese, and coots	Sept. 25

(1) In Maine, the season is closed for black ducks. Shooting hours are sunrise to sunset.

(2) In Maryland, the accompanying adult must be at least 21 years of age and possess a valid Maryland hunting license (or be exempt from the license requirement). This accompanying adult may not shoot or possess a firearm.

(3) In Minnesota, the Canada goose limit is 1, except that in the West Goose Zone, the limit is 5.

(4) In Kansas, the adult accompanying the youth must possess any licenses and/or stamps required by law for that individual to hunt waterfowl.

(5) In Nebraska, see State regulations for additional information on the daily bag limit.

(6) In South Dakota, the limit for Canada geese is 3.

(7) In the Pacific Flyway, the daily bag limit for ducks includes mergansers.

(8) In Washington, the bag limit for Canada geese is 4.

7. Section 20.106 is revised to read as follows:

§20.106 Seasons, limits, and shooting hours for sandhill cranes.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting and Hawking hours are one-half hour before sunrise until sunset, except as otherwise noted. Area descriptions were published in the August 27, 1999, Federal Register.

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-season regulations for further information.

	Season Dates	Limits: Bag	Limits: Possession
CENTRAL FLYWAY			
Colorado (1)	Oct. 2-Nov. 28	3	6
Kansas (1)(2)	Nov. 6-Jan. 2	2	4
Montana			
Regular Season Area (1)	Oct. 2-Nov. 28	3	6
Special Season Area (3)	Sept. 11-Sept. 19	1 per season	
New Mexico			
Regular Season Area (1)	Oct. 30-Jan. 30	3	6
Middle Rio Grande Valley Area (3)(4)(5)	Oct. 23-Oct. 24 &	2	2
	Nov. 20-Nov. 21 &	2	2
	Dec. 11-Dec. 12 &	2	2
	Jan. 8-Jan. 9	2	2
Southwest Area (3)(4)(5)	Dec. 18-Dec. 19	2	2
North Dakota (1)	Sept. 11-Nov. 7	3	6
Oklahoma (1)	Deferred	–	–
South Dakota (1)	Sept. 25-Nov. 21	3	6

	Season Dates	Limits Bag	Limits Possession
Texas (1)			
Zone A	Nov. 13-Feb. 13	3	6
Zone B	Dec. 4-Feb. 13	3	6
Zone C	Jan. 8-Feb. 13	3	6
Wyoming			
Regular Season Area (1)	Sept. 11-Nov. 7	3	6
Riverton-Boysen Unit (3)	Sept. 18-Sept. 28	1 per season	
Big Horn and Park Counties (3)	Sept. 18-Sept. 29	1 per season	
PACIFIC FLYWAY			
Arizona (3)	Oct. 29-Oct. 31 & Nov. 1-Nov. 3 & Nov. 5-Nov. 7 & Nov. 9-Nov. 11 & Nov. 13-Nov. 15	2 per season 2 per season 2 per season 2 per season 2 per season	
Idaho (3)	Sept. 1-Sept. 15	1 per season	
Montana			
Special Season Area (3)	Sept. 11-Sept. 12 & Sept. 18-Sept. 19	1 per season 1 per season	
Utah (3)	Sept. 5-Sept. 13	1 per season	
Wyoming			
Bear River Area (3)	Sept. 1-Sept. 14	1 per season	
Salt River Area (3)	Sept. 1-Sept. 7	1 per season	
Eden-Farson Area (3)	Sept. 1-Sept. 7	1 per season	

(1) Each hunter participating in a regular sandhill crane hunting season must obtain and carry in his possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit available without cost from conservation agencies in the States where crane hunting seasons are allowed. The permit must be displayed to any authorized law enforcement official upon request.

(2) In Kansas, the Federal sandhill crane permit must be validated by the State. No person while hunting cranes shall use or possess shot other than steel or such shot approved as nontoxic shot. Shooting hours are sunrise to 2:00 p.m.

(3) Hunting is by State permit only.

(4) The seasonal bag limit is 2 in the Middle Rio Grande Valley Area and 4 in the Southwest Area.

(5) Shooting hours are sunrise to sunset.

8. Section 20.109 is revised to read as follows:

§20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the August 27, 1999, Federal Register. For those extended seasons for Ducks, Mergansers, and Coots, area descriptions were published in the September 29, 1998, Federal Register (63 FR 51998) and will be published again in a September 1999 Federal Register.

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Daily bag limit . . . . . 3 migratory birds, singly or in the aggregate.

Possession limit . . . . . 6 migratory birds, singly or in the aggregate.

These limits apply to falconry during both regular hunting seasons and extended falconry seasons -- unless further restricted by State regulations. The falconry bag and possession limits are not in addition to regular season limits. Unless otherwise specified, extended falconry for ducks does not include sea ducks within the special sea duck areas. Only extended falconry seasons are shown below. Many States permit falconry during the gun seasons. Please consult State regulations for details.

For ducks, mergansers, coots, geese, and some moorhen seasons; additional season days occurring after September 30 will be published with the late-season selections. Some States have deferred selections. Consult late-season regulations for further information.

	Extended Falconry Dates
ATLANTIC FLYWAY	
Delaware	
Mourning dove	Sept. 1-Sept. 3 & Sept. 27- Oct. 16 & Nov. 1-Nov. 11
Rail	Nov. 10- Dec. 18
Woodcock	Oct. 1-Oct. 16 & Nov. 1-Nov. 20 & Dec. 6-Jan. 18
Snipe	Nov. 1-Nov. 20
Florida	
Mourning and white-winged doves	Oct. 26-Nov. 12 & Nov. 29-Dec. 10 & Jan. 10-Jan. 16

	Extended Falconry Dates
Florida (cont.)	
Rails	Nov. 10-Dec. 18
Woodcock	Nov. 24-Dec. 17 & Jan. 17-Mar. 9
Common moorhens	Nov. 10-Dec. 15
Georgia	
Moorhens, gallinules, and sea ducks	Nov. 13-Nov. 19 & Jan. 21-Feb. 18
Maryland	
Mourning doves	Oct. 22-Nov. 14 & Dec. 12-Dec. 19 & Jan. 2-Jan. 6
Rails	Nov. 10-Dec. 18
Woodcock	Oct. 1-Oct. 24 & Nov. 14-Nov. 26 & Dec. 12-Jan. 9
Pennsylvania	
Mourning doves	Oct. 7-Oct. 29 & Nov. 29-Dec. 17
Virginia	
Doves	Sept. 26-Oct. 1 & Dec. 11-Dec. 24 & Jan. 6-Jan. 22
Rails	Oct. 13-Oct. 21 & Dec. 24-Jan. 20
Woodcock	Nov. 14-Dec. 17 & Jan. 2-Jan. 31
Canada geese	Sept. 4 & Sept. 6
MISSISSIPPI FLYWAY	
Illinois	
Mourning doves	Oct. 18-Nov. 5 & Nov. 19-Dec. 18

	Extended Falconry Dates
Illinois (cont.)	
Rails	Nov. 13-Dec. 19
Woodcock	Sept. 1-Oct. 15 & Nov. 30-Dec. 18
Indiana	
Mourning doves	Oct. 17-Nov. 4 & Jan. 1-Jan. 28
Woodcock	Sept. 25-Oct. 7 & Nov. 22-Jan. 9
Ducks, mergansers, and coots (1) North Zone	Sept. 23-Sept. 30
Michigan	
Rails and snipe	Sept. 7-Sept. 14 & Nov. 15-Dec. 12 & Mar. 1-Mar. 10
Ducks, mergansers, coots, and moorhens (1)	Sept. 7-Sept. 30
Woodcock	Sept. 7-Sept. 18 & Nov. 9-Dec. 12 & Mar. 1-Mar. 10
Minnesota	
Woodcock	Sept. 1-Sept. 24 & Nov. 9-Dec. 16
Rails and snipe	Nov. 5-Dec. 16
Missouri	
Mourning doves	Oct. 1-Oct. 31 & Dec. 1-Dec. 16
Ducks, mergansers, and coots	Sept. 11-Sept. 26
Tennessee	
Mourning doves	Sept. 27-Oct. 8 & Oct. 25-Nov. 29
Ducks (1)	Sept. 16-Sept. 29

	Extended Falconry Dates
Wisconsin	
Rails, snipe, moorhens, and gallinules (1)	Sept. 1-Sept. 30
Woodcock	Sept. 1-Sept. 24
Ducks, mergansers, and coots (1)	Sept. 11-Sept. 30
CENTRAL FLYWAY	
Montana (2)	
Ducks, mergansers, and coots (1)	Sept. 22-Sept. 30
New Mexico (2)	
Doves	
North Zone	Oct. 31-Nov. 5 & Nov. 28-Jan. 7
South Zone	Oct. 1-Nov. 5 & Nov. 28-Nov. 30 & Dec. 31-Jan. 7
Band-tailed pigeons	
North Zone	Sept. 21-Dec. 16
South Zone	Oct. 21-Jan. 15
Sandhill cranes	
Regular Season Area	Oct. 16-Oct. 30
North Dakota	
Ducks, mergansers, and coots	Sept. 18-Oct. 1
Snipe	Sept. 1-Sept. 17
South Dakota	
Ducks, mergansers, and coots (1)	
High Plains	Sept. 4-Sept. 12
Low Plains	
North & Middle Zones	Sept. 4-Sept. 24 & Sept. 26-Sept. 30
South Zone	Sept. 6-Sept. 24 & Sept. 26-Sept. 30
Texas	
Mourning and white-winged doves	Nov. 9-Dec. 25
Rails and gallinules	Dec. 16-Jan. 21
Woodcock	Nov. 24-Dec. 17 & Feb. 1-Mar. 9
Wyoming	
Rails	Nov. 5-Dec. 2
Ducks, mergansers, and coots (1)	Sept. 22-Oct. 1
PACIFIC FLYWAY	
Arizona	
Doves	Sept. 16-Nov. 1
Idaho	
Mourning doves	Nov. 1-Jan. 16
New Mexico (2)	
Doves	
North Zone	Oct. 31-Nov. 5 & Nov. 28-Jan. 7
South Zone	Oct. 1-Nov. 5 & Nov. 28-Nov. 30 & Dec. 31-Jan.7
Band-tailed pigeons	
North Zone	Sept. 21-Dec. 16
South Zone	Oct. 21-Jan. 15
Oregon (3)	
Mourning doves	Oct. 1-Dec. 16
Band-tailed pigeons	Sept. 1-Sept. 14 & Sept. 24-Dec. 16
Utah	
Mourning doves and band-tailed pigeons	Oct. 1-Dec. 16
Washington	
Mourning doves	Oct. 1-Dec. 31
Wyoming	
Rails	Nov. 5-Dec. 2

(1) Additional days occurring after September 30 will be published with the late-season selections.

(2) In Montana and New Mexico, the bag limit is 2 and the possession limit is 6.

(3) In Oregon, no more than 1 pigeon daily in bag or possession.

[FR Doc. 99-22384 Filed 8-30-99; 8:45 am]
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Proposed Rules

Federal Register
Vol. 64, No. 168
Tuesday, August 31, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–167–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of two existing airworthiness directives (AD), applicable to certain McDonnell Douglas Model MD–11 series airplanes, that currently require inspections in the lower center cargo compartment at frame 1681 to verify that a certain bracket and a certain open face nylon clamp were installed to a specific wire bundle support and to detect damage of the subject wire bundle; and corrective actions, if necessary. Those AD's were prompted by an incident in which the insulation blanket in the lower center cargo compartment was found to be burnt due to a missing wiring harness support bracket/clamp on a wire bundle. This action would require a similar inspection and corrective actions required by the existing AD's and would remove certain airplanes from the applicability of the existing AD's. This action also would add a requirement to install a wire assembly support bracket, clamp, and spacer, or revise the wire assembly support bracket and clamp installation; as applicable. The actions specified by the proposed AD are intended to prevent sparks, smoke, and possible fire in the lower center cargo compartment.

DATES: Comments must be received by October 15, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–167–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–167–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–167–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 15, 1999, the FAA issued AD 99–08–51, amendment 39–11138 (64 FR 22544, April 27, 1999), which is applicable to certain McDonnell Douglas Model MD–11 series airplanes. (These airplanes are equipped with a 72-inch cargo door and use the light-weight cargo handling system.) That AD requires visual inspections under the floorboards in the lower center cargo compartment at frame 1681 to verify that a certain bracket and a certain open face nylon clamp are installed to a specific support wire bundle and to detect damage of the subject wire bundle; repair of damaged wiring; and installation of certain silicone rubber coated with a glass cloth protective wrap around the wire bundle, if necessary. That action was prompted by an incident in which the insulation blanket between frames 1661 and 1681 in the lower center cargo compartment was found to be burnt due to a missing wiring harness support bracket/clamp on the wire bundle at frame 1681. The requirements of that AD are intended to ensure that such a wire harness support bracket/clamp is installed; a missing bracket/clamp could cause the wire bundle to chafe against the frame, which could result in sparks, smoke, and possible fire in the lower center cargo compartment.

After issuance of AD 99–08–51, the FAA determined that the wire routing on McDonnell Douglas Model MD–11 series airplanes that are equipped with a 72-inch cargo door and use any cargo handling system must also be inspected. Therefore, on April 23, 1999, the FAA issued a similar action [i.e., AD 99–09–51, amendment 39–11154 (64 FR 23179, April 30, 1999)], to address these additional airplanes that were not included in the applicability of AD 99–08–51.

Actions Since Issuance of Previous Rule

Since the issuance of AD 99–08–51 and AD 99–09–51, the FAA has determined that inspecting the wire assembly, structure, and blankets for evidence of arcing and chafing damage; and installing a support, clamp, and spacer, or revising the existing support installation to add a spacer; will further minimize the possibility of wire chafing.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–24A155, dated June 1, 1999. The service bulletin describes procedures for an inspection of the wire assembly, structure, and blankets for evidence of arcing burns and chafing damage under the center cargo compartment floor; installation of protective sleeving on the wire assembly in the area of the frame; and corrective actions, if necessary. The corrective actions involve repairing damaged wire and structure; and repairing or replacing the damaged blanket with a new blanket. For certain airplanes, the service bulletin also describes procedures for installation of a wire assembly support bracket, clamp, and spacer. For certain other airplanes, the service bulletin also describes procedures for revising the wire assembly support bracket and clamp installation. In addition, the service bulletin describes procedures for submitting a report of the inspection results to Boeing. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 99–08–51 and AD 99–09–51 to require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between the Proposed AD and Relevant Service Information

McDonnell Douglas Alert Service Bulletin MD11–24A155, dated June 1, 1999, specifies that certain corrective actions required by this proposed AD may be accomplished in accordance with "operator's shop practice." However, this proposed AD requires that the actions be accomplished in accordance with the procedures specified in "Chapter 25 of the Aircraft Maintenance Manual." An "operator's shop practice" may be used only if approved as an alternative method of compliance in accordance with paragraph (c) of this AD.

Operators should note that although the referenced service bulletin recommends that operators submit a report of the inspection results to Boeing, this proposed AD does not require such reporting. As a result of the reporting requirements in AD's 99–08–51 and 99–09–51, the FAA has received an adequate amount of inspection reports from operators to identify the affected aircraft configurations and determine the proper corrective action.

Explanation of Changes to the Applicability

Operators also should note that the applicability of the proposed AD differs from the applicability of AD's 99–08–51 and 99–09–51. Subsequent to issuance of AD 99–08–51, one of the affected airplanes was involved in a hull loss accident. Subsequent to issuance of AD 99–09–51, investigation revealed that twelve early production aircraft had adequate wire routing such that the potential for wire assembly chafing was adequately minimized. Therefore, these airplanes have been removed from the applicability of this proposed AD.

Other Related Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This proposed AD is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Cost Impact

There are approximately 183 airplanes of the affected design in the worldwide fleet. The FAA estimates that 63 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $3,780, or $60 per airplane.

It would take approximately 1 work hour to accomplish the proposed modification, at an average labor rate of $60 per work hour. The cost of required parts would be nominal. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $3,780, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. However, the FAA has been advised that manufacturer warranty remedies are available for some labor costs associated with accomplishing the proposed actions. Therefore, the future economic cost impact of this rule on U.S. operators may be less than the cost impact figures indicated above.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–11138 (64 FR 22544, April 27, 1999) and amendment 39–11154 (64 FR 23179, April 30, 1999), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 99–NM–167–AD. Supersedes AD 99–08–51, amendment 39–11138; and AD 99–09–51, amendment 39–11154.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–24A155, dated June 1, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent sparks, smoke and possible fire in the lower center cargo compartment, accomplish the following:

Phase 1: Inspection and Corrective Actions

(a) Within 30 days after the effective date of this AD, perform an inspection of the wire assembly, structure, and blankets for evidence of arcing burns and chafing damage under the center cargo compartment floor, in accordance with Phase 1 of the Work Instructions of McDonnell Douglas Alert Service Bulletin MD11–24A155, dated June 1, 1999.

(1) Condition 1. If no arcing or chafing damage is detected, prior to further flight, install protective sleeving on the wire assembly in the area of the frame in accordance with the service bulletin.

(2) Condition 2. If any damaged wire, structure, or blanket is detected, prior to further flight, accomplish the actions specified in paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) of this AD.

(i) Repair damaged wire and structure in accordance with the service bulletin.

(ii) Repair or replace any damaged blanket with a new blanket, in accordance with Chapter 25 of the Aircraft Maintenance Manual; however, insulation blankets made of metallized polyethyleneteraphthalate (MPET) may not be used.

(iii) Install protective sleeving on the wire assembly in the area of the frame in accordance with the service bulletin.

Note 2: Accomplishment of the actions required by AD 99–08–51, amendment 39–11138, and AD 99–09–51, amendment 39–11154, prior to the effective date of this AD is considered acceptable for compliance with the requirements of paragraph (a) of this AD.

Phase 2: Modification

(b) Within 18 months after the effective date of this AD, accomplish the actions specified in paragraph (b)(1) or (b)(2) of this AD, as applicable, in accordance with Phase 2 of the Work Instructions of McDonnell Douglas Alert Service Bulletin MD11–24A155, dated June 1, 1999.

(1) For airplanes identified as Group 1 in the service bulletin: Install the wire assembly support bracket, clamp, and spacer.

(2) For airplanes identified as Group 2 in the service bulletin: Revise the wire assembly support bracket and clamp installation.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 24, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22530 Filed 8–30–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–339–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, –200 and 747SP Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–100, –200 and 747SP series airplanes. This proposal would require repetitive detailed visual and ultrasonic inspections to detect missing, damaged, or broken taperlock bolts in the diagonal brace underwing fittings; and corrective actions, if necessary. This proposal also would require eventual replacement of the aft 10 taperlock bolts with new bolts, which would constitute terminating action for the repetitive inspections. This proposal is prompted by reports of damaged, broken, and corroded taperlock bolts of the diagonal brace underwing fittings on the outboard strut due to stress corrosion cracking. The actions specified by the proposed AD are intended to prevent loss of the underwing fitting load path due to missing, damaged, or broken taperlock bolts, which could result in separation of the engine and strut from the airplane.

DATES: Comments must be received by October 15, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–339–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–339–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–339–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that damaged, broken, and corroded taperlock bolts were found on Boeing Model 747–100 and –200 series airplanes. The cause of the broken taperlock bolts is stress corrosion. The bolts are located on the diagonal brace underwing fittings on the outboard strut at the Number 1 and Number 4 pylon engine positions. This condition, if not corrected, could result in separation of the engine and strut from the airplane.

The subject taperlock bolts on Boeing Model 747SP series airplanes are identical to those on the affected Boeing Model 747–100 and –200 series airplanes. Therefore, all of these airplanes may be subjected to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–57A2308, dated August 6, 1998, which describes procedures for repetitive detailed visual and ultrasonic inspections to detect missing, damaged, or broken taperlock bolts; and corrective actions, if necessary. The corrective actions involve performing an open hole high frequency eddy current inspection to detect cracks at the bolt hole locations; and replacing missing, damaged, or broken taperlock bolt with a new bolt. This service bulletin also describes procedures for an optional terminating action for the repetitive inspections. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although incorporation of the terminating action specified in the referenced service bulletin is optional, this AD proposes to mandate, within 48 months after the effective date of this AD, the open hole inspection and replacement of the aft 10 taperlock bolts with new bolts specified in the referenced service bulletin as terminating action for the repetitive inspections.

The FAA has determined that long-term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continued inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed replacement requirement is in consonance with these conditions.

In addition, operators should note that, although the service bulletin specifies that the manufacturer must be contacted for disposition of certain conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings. For a method to be approved, the approval letter must specifically reference this AD.

Cost Impact

There are approximately 274 airplanes of the affected design in the worldwide fleet. The FAA estimates that 122 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $7,320, or $60 per airplane, per inspection cycle.

It would take approximately 8 work hours per airplane to accomplish the proposed terminating action, at an average labor rate of $60 per work hour. Required parts would cost approximately $8,008 per airplane. Based on these figures, the cost impact of the proposed terminating action on U.S. operators is estimated to be $1,035,536, or $8,488 per airplane.

The cost impact figures discussed above are based on the assumption that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 98–NM–339–AD.

Applicability: Model 747–100, –200, and 747SP series airplanes, line numbers 1 through 567 inclusive; equipped with aluminum diagonal brace underwing fittings; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the underwing fitting load path due to missing, damaged, or broken taperlock bolts, which could result in separation of the engine and strut from the airplane, accomplish the following:

Repetitive Inspections

(a) Prior to the accumulation of 9,000 total flight cycles, or within 18 months after the effective date of this AD, whichever occurs later, accomplish the actions required by paragraphs (a)(1) and (a)(2) of this AD in accordance with Boeing Alert Service Bulletin 747–57A2308, dated August 6, 1998. Thereafter, repeat the inspections at intervals not to exceed 18 months until accomplishment of the actions specified in paragraph (d) of this AD.

(1) Perform a detailed visual inspection to detect missing taperlock bolts in the diagonal brace underwing fitting at the Number 1 and Number 4 pylons.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(2) Perform an ultrasonic inspection to detect damaged or broken taperlock bolts in the diagonal brace underwing fitting at the Number 1 and Number 4 pylons.

Corrective Actions

(b) If any missing, damaged, or broken taperlock bolt is detected during any inspection required by paragraph (a) of this AD, prior to further flight, perform the applicable corrective actions (i.e., inspection, drill/ream, and replacement) in accordance with Boeing Alert Service Bulletin 747–57A2308, dated August 6, 1998; except as provided in paragraph (c) of this AD. Replacement of any taperlock bolt with a new bolt in accordance with this paragraph constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD for that bolt only.

(c) If any crack is detected during the inspection required by paragraph (b) of this AD and the damage to a bolt hole exceeds first oversize (for 0.5-inch bolts) or second oversize (for 0.4375-inch bolts); and the service bulletin specifies to contact Boeing for appropriate Action: Prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Terminating Action

(d) Within 48 months after the effective date of this AD, accomplish the actions required by paragraphs (d)(1) and (d)(2) of this AD in accordance with Boeing Alert Service Bulletin 747–57A2308, dated August 6, 1998. Accomplishment of the actions specified in this paragraph constitutes terminating action for the repetitive inspection requirements of this AD.

(1) Prior to accomplishing the replacement required by paragraph (d)(2) of this AD, perform an open hole high frequency eddy current inspection to detect cracks at the bolt hole locations of the aft 10 taperlock bolts. If any cracking is detected, prior to further flight, perform applicable corrective actions in accordance with paragraph (c) of this AD.

(2) Replace the aft 10 taperlock bolts with new bolts in the diagonal brace underwing fitting at the Number 1 and Number 4 pylons.

Spares

(e) As of the effective date of this AD, no person shall install a bolt, part number BACB30PE( ) * ( ), or any other bolt made of 4340, 8740, or PH13–8 Mo steel, in the locations specified in this AD, on any airplane.

Alternate Method of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 24, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22529 Filed 8–30–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–300–AD]

RIN 2120–AA64

Airworthiness Directives; Mitsubishi Model YS–11 and YS–11A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Mitsubishi Model YS–11 and YS–11A series airplanes. This proposal would require repetitive removal of the spinner; repetitive detailed visual inspections of the propeller hub to detect fatigue cracking; and replacement of a propeller hub with a new propeller hub, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct fatigue cracking of the propeller hub, which could cause the loss of the propeller.

DATES: Comments must be received by September 30, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–300–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Nihon Aeroplane Manufacturing, Toranomon Daiichi, Kotohire-Cho, Shiba, Minato-Ku, Tokyo, Japan. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Jon Mowery, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5322; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–300–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–300–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Japan Civil Aviation Bureau (JCAB), which is the airworthiness authority for Japan, notified the FAA that an unsafe condition may exist on all Mitsubishi YS–11 and YS–11A series airplanes. The JCAB advises that cracking has been found on propeller hubs. This cracking has been attributed to material fatigue. This condition, if not corrected, could result in the loss of the propeller.

The JCAB has issued Japanese airworthiness directive TCD–4667–97, dated October 13, 1997, which describes procedures for repetitive removal of the spinner; repetitive detailed visual inspections to detect fatigue cracking of the propeller hub; and replacement of cracked propeller hubs with new propeller hubs, if necessary. The JCAB classified these actions as mandatory in order to assure the continued airworthiness of these airplanes in Japan.

FAA's Conclusions

These airplane models are manufactured in Japan and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the JCAB has kept the FAA informed of the situation described above. The FAA has examined the findings of the JCAB, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the Japanese airworthiness directive described previously.

Differences Between Proposed Rule and Foreign Airworthiness Directive

The proposed AD would differ from the parallel Japanese airworthiness directive in that it would require accomplishment of the inspection within 25 flight hours or 30 days after the effective date of this AD, whichever occurs first. The parallel Japanese airworthiness directive requires accomplishment of the inspection prior to further flight, unless an inspection was performed within 25 flight hours before the effective date of the Japanese airworthiness directive. In developing an appropriate compliance time for this AD, the FAA considered not only the safety implications, but the Japanese airworthiness authority's requirements, the availability of required parts, and the practical aspect of accomplishing the inspection within an interval of time that parallels normal scheduled maintenance for affected operators. The FAA also considered the fact that the Japanese airworthiness directive (containing the procedures for accomplishing the required actions) has been available to all operators of Mitsubishi Model YS–11 and YS–11A series airplanes since October 1997. Therefore, U.S. operators have had ample time since then to consider initiating those actions, which this proposed AD ultimately mandates.

Cost Impact

The FAA estimates that 25 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 32 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $48,000, or $1,920 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT

Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Mitsubish Heavy Industries, Ltd.: Docket 98–NM–300–AD.

Applicability: All Model YS–11 and YS–11A series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the propeller hub, which could cause the loss of the propeller, accomplish the following:

Inspection and Replacement

(a) Within 25 flight hours or 30 days after the effective date of this AD, whichever occurs first, remove the spinner and perform a detailed visual inspection for cracking of the propeller hub in the crack area shown in Figure 1 of this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) If no crack is found, repeat the actions required by paragraph (a) of this AD thereafter at intervals not to exceed 25 flight hours.

(2) If any crack is detected, prior to further flight, replace the hub with a new hub. Repeat the actions required by paragraph (a) of this AD thereafter at intervals not to exceed 25 flight hours.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued for non-revenue bearing flights with essential crew only in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Japanese airworthiness directive TCD–4667–97, dated October 13, 1997.

BILLING CODE 4910–13–P

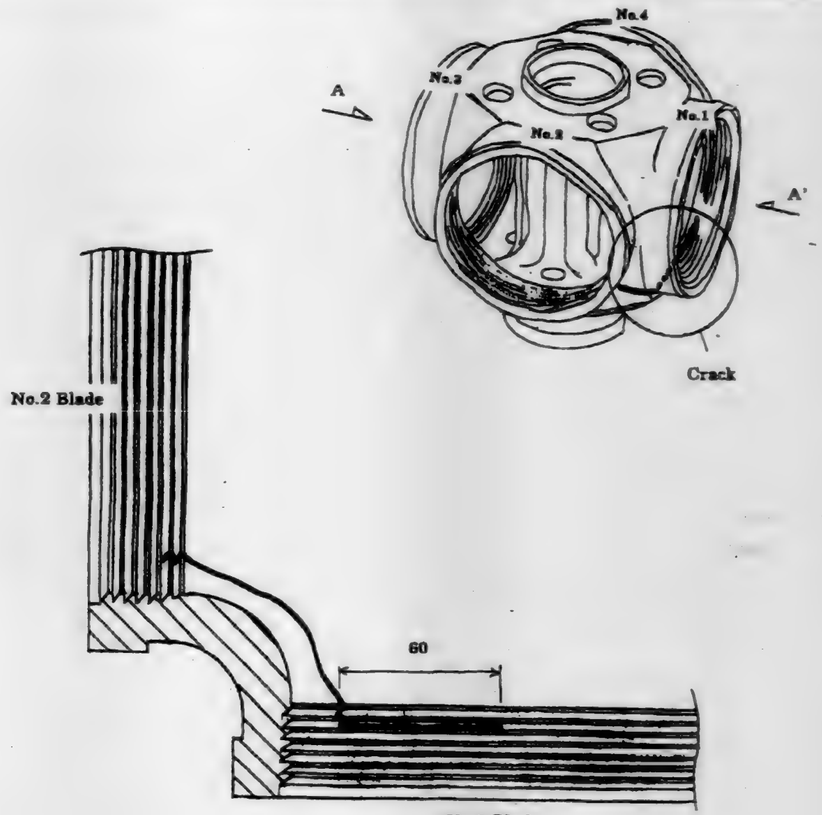

Figure 1 (Sheet 1 of 2)

HUB CRACK - VIEW FROM TOP

(Cut A – A')

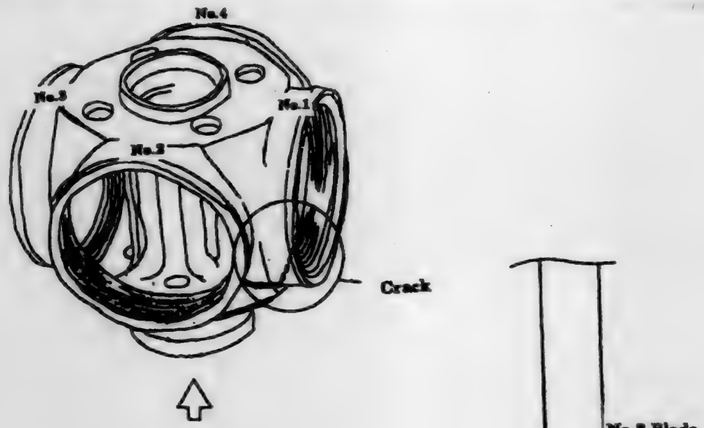

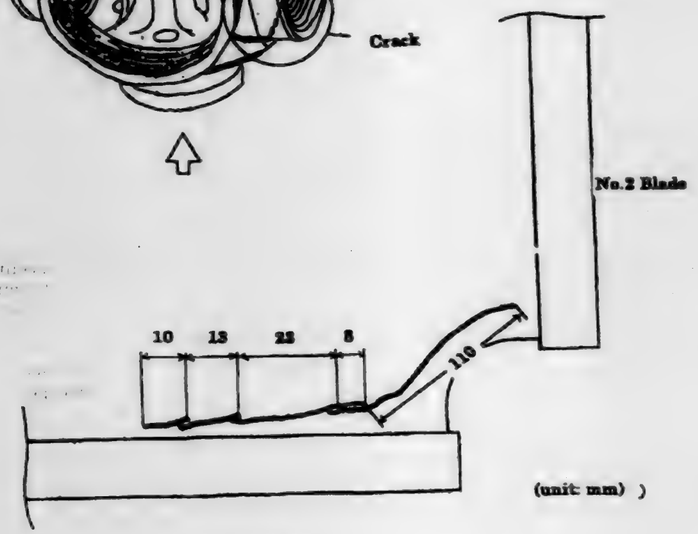

Figure 1 (Sheet 2 of 2)

HUB CRACK - VIEW FROM BOTTOM

Issued in Renton, Washington, on August 24, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22528 Filed 8–30–99; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–ANE–16]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce, plc. RB211 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Rolls-Royce, plc. (R–R) RB211 series turbofan engines, that currently requires removing from service intermediate pressure (IP) compressor stage 6–7 rotor shafts that exceed reduced cyclic life limits. This action would further reduce cyclic life limits and introduce new reduced cyclic bands for rework. This proposal is prompted by additional stress analysis conducted following failure of an IP compressor stage 6 disk. The actions specified by the proposed AD are intended to prevent an uncontained engine failure due to rupture of an IP compressor stage 6–7 rotor shaft.

DATES: Comments must be received by November 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 94–ANE–16, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Rolls-Royce, plc, Technical Publications Department, P.O. Box 31, Derby, England. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7747, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–ANE–16." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 94–ANE–16, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On September 1, 1994, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 94–18–03, Amendment 39–9016 (59 FR 46536, September 9, 1994), applicable to Rolls-Royce, plc (R–R) RB211–22B and –524 series turbofan engines, to require removing from service intermediate pressure (IP) compressor stage 6–7 rotor shafts that exceed reduced cyclic life limits. That action was prompted by information from the Civil Aviation Authority (CAA) of the United Kingdom (UK), which advised the Federal Aviation Administration (FAA) that they received a report of an uncontained failure of an IP compressor stage 6–7 rotor shaft installed in an R–R RB211–22B engine that failed during takeoff roll. Investigation determined that the failure has been caused by a crack which emanated from a corrosion pit and extended radially inward from the bolt holes to the rotor shaft diaphragm. The manufacturer, R–R, determined that the rotor shaft would not reach its published life limit without cracking under normal operating conditions.

Since the issuance of that AD, R–R performed refined stress and critical parts lifing analyses that revealed the cyclic life limits for affected IP compressor stage 6–7 rotor shafts must be further reduced. The affected rotor shafts include both reworked and non-reworked IP compressor stage 6–7 rotor shafts. R–R also introduced a new rework bands to rework the existing rotor shafts.

R–R has issued Service Bulletin (SB) No. RB.211–72–C538, dated January 14, 1999, that specifies reduced cyclic life limits for IP compressor stage 6–7 rotor shafts and reduced cyclic bands for rework. To extend the life of the existing rotor shafts, R–R has issued SB RB.211–72–9594, Revision 5, dated February 12, 1993, that specifies rework of the IP compressor stage 6–7 rotor shaft when the cyclic life falls within the rework bands described in the SB. Rework of the rotor shafts includes machining out corrosion and creating new bolt holes between the previous holes. The SB specifies a two-stage life reduction for the affected rotor shafts, removing certain high cycle time disks by the end of the calendar year 2000 prior to the removal of all disks from the fleet by the end of calendar year 2001. The CAA classified SB No. RB.211–72–C538 as mandatory and issued AD 003–01–99 in order to assure the airworthiness of these engines in the UK.

This engine model is manufactured in the UK and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other products of the same type design, the proposed AD would supersede AD 94–18–03 to specify reduced cyclic life limits for IP

compressor stage 6–7 rotor shafts and to introduce reduced cyclic bands for rework. Rework of IP compressor stage 6–7 rotor shafts in accordance with R–R SB No. RB.211 72–9594, or SB No. RB.211–72–9618 enables the parts to achieve their full, assigned cyclic life limits. This AD is not applicable to those engines that incorporate new intermediate pressure (IP) compressor stage 6–7 rotor shafts assemblies with redesigned stage 6 disks in accordance with R–R SB No. RB.211–72–9993, dated August 26, 1994.

Based on a risk analysis performed by the manufacturer, which considers corrosion as one factor bearing on this condition, the AD proposes a two-stage life reduction for the affected rotor shafts, removing certain high cycle time disks by the end of the calendar year 2000, prior to the removal of all disks from the fleet by the end of calendar year 2001.

There are approximately 1,300 engines of the affected design in the worldwide fleet. The manufacturer has advised the FAA that there are 228 engines installed on aircraft of U.S. registry that would be affected by this proposed AD. It would take approximately 24 work hours or $1,440 per engine to accomplish the proposed rework actions, if rework of the rotor shafts was selected. Otherwise, to maintain the record of the cyclic life of IP compressor stage 6–7 rotor shafts has minimum economic impact to U.S operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be less than $330,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9016 (59 FR 46536, September 9, 1994) and by adding a new airworthiness directive to read as follows:

Rolls-Royce, plc: Docket No. 94–ANE–16. Supersedes AD 94–18–03, Amendment 39–9016.

Applicability: Rolls-Royce plc (R–R) Model RB211–22B and –524 series turbofan engines, not incorporating new intermediate pressure (IP) compressor stage 6–7 rotor shafts assemblies with redesigned stage 6 disks in accordance with R–R Service Bulletin (SB) No. RB.211–72–9993, dated August 26, 1994. These engines are installed on but not limited to Boeing 747 series and 767 series, and Lockheed L–1011 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained engine failure due to rupture of an IP compressor stage 6–7 rotor shaft, accomplish the following:

(a) For IP compressor stage 6–7 rotor shafts that have not been reworked in accordance with SB RB.211–72–9594, Revision 8, dated January 14, 1999, Revision 7, dated September 16, 1994, Revision 6, dated August 12, 1994, or Revision 5, dated February 12, 1993, remove the rotor shafts prior to exceeding the life limits established in Table 1 of this AD under subtitle "Pre SB 72–9594," and replace with serviceable parts.

TABLE 1

Engine mark and mod standard	Pre SB72–9594			Rework bands			Post SB72–9594			Post SB72–9618		
	Life limits through 12/31/00	Life limits after 12/31/00	Life limits after 12/31/01	Rework bands through 12/31/00	Rework bands after 12/31/00	Rework bands after 12/31/01	Life limits through 12/31/00	Life limits after 12/31/00	Life limits after 12/31/01	Life limits through 12/31/00	Life limits after 12/31/00	Life limits after 12/31/01
RB.211–22B–02, Pre SB72–5787 and Pre SB72–8700	11000	10000	9000	8000–11000	7500–10000	7500–9000	18000	17600	16600	N/A	N/A	N/A
RB.211–22B–02, Pre SB72–5787, and Post SB72–8700	11000	10000	10000	8000–11000	7500–10000	7500–10000	17310	16960	15960	N/A	N/A	N/A
RB.211–22B–02, Post SB72–5787, and Pre SB72–8700	11000	11000	11000	8000–11000	8000–11000	8000–11000	18000	18000	18000	N/A	N/A	N/A
RB.211–22B–02, Post SB72–5787 and Post SB72–8700	11000	11000	11000	8000–11000	8000–11000	8000–11000	17310	17310	17310	N/A	N/A	N/A
RB.211–524B–02, RB.211–524B3–02, RB.211–524B4–02, Pre SB72–5787	7500	7250	6250	6000–7500	4750–7250	4750–6250	13500	13500	12750	17500	17500	17500
RB.211–524B–02, RB.211–524B3–02, RB.211–524B4–02, Post SB72–5787	8500	8200	7200	6500–8500	5700–8200	5700–7200	15000	14700	13700	19000	19000	18000
RB.211–524B–B–02, RB.211–524B4–D–02, Pre SB72–5787	7500	7500	7400	6000–7500	6000–7500	5500–7400	13500	13500	13500	17500	17500	17500

TABLE 1—Continued

Engine mark and mod standard	Pre SB72–9594			Rework bands			Post SB72–9594			Post SB72–9618		
	Life limits through 12/31/00	Life limits after 12/31/00	Life limits after 12/31/01	Rework bands through 12/31/00	Rework bands after 12/31/00	Rework bands after 12/31/01	Life limits through 12/31/00	Life limits after 12/31/00	Life limits after 12/31/01	Life limits through 12/31/00	Life limits after 12/31/00	Life limits after 12/31/01
RB.211–524B—B02, RB.211–524B4–D–02, Post SB72–5787	8500	8200	7200	6500–8500	5700–8200	5700–7200	15000	14700	13700	19000	19000	18000
RB.211–524B2, RB.211–524C2, RB211–524D4, RB211–524D4X, Pre SB72–5787	7500	7500	7300	6000–7500	6000–7500	5800–7300	13500	13500	13500	17500	17500	17500
RB.211–524B2, RB.211–524C2, RB211–524D4, RB211–524D4X, Post SB72–5787	8500	8250	7250	6500–8500	5800–8250	5800–7250	15000	14500	13500	19000	18750	17750
RB.211–524B2–B, RB.211–524C2–B, Pre SB72–5787	7500	7500	7300	6000–7500	6000–7500	5800–7300	13500	13500	13500	17500	17500	17500
RB.211–524B2–B, RB.211–524C2–B, Post SB72–5787	8500	8200	7250	6500–8500	5800–8200	5800–7250	15000	14500	13500	19000	18650	17650
RB.211–524D4–B, RB.211–524D4X–B, Post SB72–5787	8500	8500	7750	6500–8500	6500–8500	5750–7750	15000	15000	15000	19000	19000	19000
RB.211–524G, RB.211–524G–T, RB.211–524H, RB.211–524H–T, Post SB72–5787	8500	8150	7150	6500–8500	5750–8150	5750–7150	13950	13950	13950	N/A	N/A	N/A

(b) Remove from service IP stage 6–7 rotor shafts that have been reworked in accordance with R–R SB RB.211–72–9594, Revision 8, dated January 14, 1999, Revision 7, dated September 16, 1994, Revision 6, dated August 12, 1994, or Revision 5, dated February 12, 1993, prior to exceeding the new, reduced cyclic life listed in Table 1 of this AD under the sub-title "Post SB72–9594" and replace with serviceable part.

(c) Remove from service IP compressor stage 6–7 rotor shafts that have been reworked in accordance with R–R SB RB.211–72–9618, dated August 7, 1992, prior to exceeding the new, reduced cyclic life limits listed in Table 1 of this AD under the sub–title "Post SB72–9618," and replace with serviceable parts.

(d) IP compressor stage 6–7 rotor shaft rework in accordance with R–R SB RB.211–72–9594 can only be accomplished when the cyclic life of the part falls within the rework bands established in the Table 1 of this AD. To accomplish rework of IP compressor stage 6–7 rotor prior to reaching the lower limit of the rework bands specified in the Table 1 of this AD, the part must be artificially aged to the cyclic life which defines the lower limit of the applicable rework bands in Table 1 of this AD.

Note 2: For example, if the lower limit of the rework band is 8,000 cycles, and the part is reworked at 7,000 cycles, the part must be artificially aged by adding 1,000 cycles to the cycles since new recorded on the part; i.e., on return to service the cycles since new on this part would be 8,000 cycles.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on August 25, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–22562 Filed 8–30–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ANM–01]

Proposed Revision of Class E Airspace, Lewiston, ID; Proposed Establishment of Class E Airspace, Grangeville, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposal would amend the Lewiston, ID, Class E area and establish additional controlled airspace at Grangeville, ID, to accommodate the development of new Standard Instrument Approach Procedures (SIAP) utilizing the Global Positioning System (GPS) at the Idaho County Airport, Grangeville, ID.

DATES: Comments must be received on or before October 15, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 99–ANM–01, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the officer of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 99–ANM–01, 1601 Lind Avenue SW, Renton, Washington 98055–4056: telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their

comments on this notice must submit, with those comments, a self-addressed stamped postcard on which the following state is made: "Comments to Airspace Docket No. 99–ANM–01." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace at Lewiston, ID, and establishing Class E airspace at Grangeville, ID, in order to accommodate two new GPS SIAP's to the Idaho County Airport, Grangeville, ID. This amendment would provide additional airspace at Lewiston, ID, to encompass newly established waypoints in order to meet current criteria standards associated with SIAP holding patterns. This action also allows for the establishment of airspace at Grangeville, ID, providing controlled airspace for the final approach phase of flight for the newly established SIAP's. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. The intended effects of this proposal is designed to provide for the safe and efficient use of the navigable airspace. This proposal would promote safe flight operations under Instrument Flight Rules (IFR) at the Idaho County Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth, are published Paragraph 6005, of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ANM ID E5 Grangeville, ID [New]

Idaho County Airport, Grangeville, ID
(Lat. 45°56′33″N., long. 116°07′27″W)

That airspace extending upward from 700 feet above the surface within a 9-mile radius of Idaho County Airport

* * * * *

ANM ID E5 Lewiston, ID [Revised]

Lewiston-Nez Perce County Airport, Lewiston, ID
(Lat. 46°22′28″N., long. 117°00′55″W)
Nez Perce VOR/DME
(Lat. 46°22′54″N., long. 116°52′10″W)
Walla Walla VOR/DME
(Lat. 46°05′13″N., long. 118°17′33″W)

That airspace extending upward 700 feet above the surface bounded by a line beginning at lat. 46°29′25″ No., long. 117°34′09″W; to lat. 46°30′45″ No., long. 117°00′49″W; to lat. 46°34′25″N, long. 117°04′44″W; thence via the 14.4-mile arc centered on the Nez Perce VOR/DME to lat. 46°27′00″N, long. 116°32′09″W; to lat. 46°25′30″N, long. 116°26′03″W; to lat. 46°13′20″N, long. 116°30′04″W; to lat. 46°14′33″N, long. 116°35′15″W; thence via the Nez Perce VOR/DME 14.4-mile arc to lat. 46°09′00″N, long. 116°46′54″W; to lat. 46°17′00″N, long. 116°49′14″W; to lat. 46°18′05″N. long. 117°00′15″W; to lat. 46°17′42″N, long. 117°22′04″W; to lat. 46°10′30″N, long. 117°26′24″W; to lat. 46°12′00″N, long. 117°35′44″W; north to point of beginning; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 46°00′00″N, long. 116°00′04″W; to lat. 46°00′00″N, long. 116°19′00″W; to lat. 45°39′00″N, long. 116°10′03″W; to lat. 45°30′00″N, long. 116°14′03″W; to lat. 45°23′00″N, long. 116°21′03″W; to lat. 45°25′00″N, long. 116°34′04″W; to lat. 45°30′00″N, long. 116°46′04″W; to lat. 46°00′00″N, long. 116°56′04″W; thence along the Walla Walla VOR/DME 16.6-mile radius, thence north along the Walla Walla VOR/DME 16.6-mile radius until intercepting V–536, thence northeast along V–536 and southeast along V–2 until intercepting long. 115°15′04″W, thence south along long. 115°15′04″W, until intercepting V–187, thence southeast along V–187 until intercepting long. 116°00′00″W, thence south along long. 116°00′00″W, to lat. 46°15′00″N; to lat. 46°00′00″N, long. 115°50′00″W, thence to the point of beginning; excluding all Federal airways.

* * * * *

Issued in Seattle, Washington, on August 16, 1999.

George L. Orr,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 99–22612 Filed 8–30–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWP–16]

Proposed Establishment of Class E Airspace; Lakeport, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Class E airspace area on Lakeport, CA. The establishment of a Special Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) Copter 293 Point In Space approach serving Sutter Lake Heliport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain helicopters executing the Special Copter GPS 293 Point In Space approach to Sutter Lakeside Hospital Heliport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Sutter Lakeside Hospital Heliport, Lakeport, CA.

DATES: Comment must be received on or before September 16, 1999.

ADDRESSES: Send comments on the proposal in triplicate: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 99–AWP–16, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California, 90261.

An informal docket may be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Air Traffic Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Boulevard, Lawndale, California, 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and may be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AWP–16." The postcard will be date-time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Boulevard, Lawndale, California, 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Boulevard, Lawndale, California, 90261. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 by establishing a Class E airspace area at Lakeport, CA. The establishment of a Special Copter GPS 293 Point In Space approach at Sutter Lakeside Hospital Heliport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain helicopters executing the Special Copter GPS 293 Point In Space approach to the Sutter Lakeside Hospital Heliport. The intended effect of this proposal is to provide adequate controlled airspace for helicopters executing the Special Copter 293 Point In Space approach to the Sutter Lakeside Hospital Heliport, Lakeport, CA. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AWP CA E5 Lakeport, CA [New]

Sutter Lakeside Hospital Heliport

Point In Space Coordinates
(Lat. 39°06'09"N, long. 122°53'19"W)

That airspace extending upward from 700 feet above the surface and within a 5-mile radius of a Point In Space serving the Sutter Lakeside Hospital Heliport, excluding that portion within the Santa Rosa, CA, Class E airspace area.

* * * * *

Issued In Los Angeles, California, on August 2, 1999.

John Clancy,

Manager, All Traffic Division, Western-Pacific Region.

[FR Doc. 99–22610 Filed 8–30–99; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 3 and 32

Trade Options on the Enumerated Agricultural Commodities

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rulemaking.

SUMMARY: In April 1998, the Commodity Futures Trading Commission (Commission or CFTC) removed the prohibition on off-exchange trade options on the enumerated agricultural commodities subject to a number of regulatory requirements. The Commission has reconsidered several of these requirements with a view toward streamlining regulatory or paperwork burdens in order to increase agricultural trade option's commercial utility while maintaining basic customer protections. In particular, the Commission is proposing to streamline the registration requirements for Agricultural Trade Option Merchants (ATOMs) and their sales agents by, among other things, removing the training requirement for associated persons and limiting the number of principals that must certify that they are not subject to statutory disqualification from registration. In addition, the Commission is proposing to permit cash settlement and offset or cancellation of agricultural trade options, by removing the requirement that such options, if exercised, must result in physical delivery. The Commission is also proposing to eliminate the currently required transaction-specific disclosure statement and to revise the summary disclosure statement provided to customers when opening an account. The Commission is proposing to streamline certain reporting and recordkeeping requirements, as well.

DATES: Comments must be received by September 30, 1999.

ADDRESSES: Comments should be mailed to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, attention: Office of the Secretariat; transmitted by facsimile at (202) 418–5521; or transmitted electronically at [secretary@cftc.gov]. Reference should be made to "Agricultural Trade Options."

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5260, or electronically at [PArchitzel@cftc.gov].

SUPPLEMENTARY INFORMATION:

I. Background

Generally, the offer or sale of commodity options is prohibited except on designated contract markets. 17 CFR 32.11. One of several specified exceptions to the general prohibition on off-exchange options is for "trade options." Trade options are off-exchange options "offered by a person having a reasonable basis to believe that the option is offered to" a person or entity within the categories of commercial users specified in the rule, where such commercial user "is offered or enters into the commodity option transaction solely for purposes related to its business as such." 17 CFR 32.4(a). However, this exception from the general ban on off-exchange options does not apply to trade options on the agricultural commodities enumerated in the Commodity Exchange Act (Act).[1] 7 U.S.C. 1a(3).

In April, 1998, the Commission promulgated interim final rules to permit the trading of agricultural trade options subject to various regulatory requirements. 63 FR 18821 (April 16, 1998). These requirements were designed to provide a number of customer protections. They included provisions for registration of ATOMs, disclosure of risks to option buyers, financial safeguards, and recordkeeping. In addition, option vendors were required to have a system of internal controls and to report to the Commission on their option activity. The rules also included a number of provisions to discourage the use of trade options for speculative purposes. These included the requirement that agricultural trade options, if exercised, be physically delivered, and limitations on producers granting options, including prohibiting producers from writing covered call options.

No one has applied for registration as an ATOM since the interim rules went into effect in June, 1998. Reportedly, agricultural trade options are being offered to some extent pursuant to the rules' exemption for high net worth entities. However, because there are no reporting requirements for options offered pursuant to the exemption, the Commission cannot ascertain to what extent such options are being traded between exempt entities.

The current lack of interest in offering these instruments could well be a result of the current depressed prices for many commodities.[2] However, some observers have suggested a different explanation for the lack of interest in these instruments. Various agricultural groups have voiced concern that the interim final rules are too onerous, thereby discouraging participation. Particular concerns have been raised that the registration, reporting and disclosure requirements are too burdensome and that certain of the restrictions on the form of options that producers may enter into limit their usefulness. These groups maintain that if the regulatory requirements were relaxed agricultural trade options would be offered more readily.

In issuing the interim final rules, the Commission noted that the rules were an experiment and that the Commission "has not foreclosed reconsideration of any specific issue." 62 FR 18823. In this regard, since the rules' promulgation, a number of groups have recommended the the Commission reconsider various aspects of the current rules. The Commission receives the views of a cross-section of the agricultural sector through its Agricultural Advisory Committee (AAC). The AAC, at its most recent meeting on April 21, 1999, heard presentations on the agricultural trade option rules by representatives of the National Grain and Feed Association (NGFA) and the National Introducing Brokers Association. AAC members then engaged in a detailed discussion of various possible rule alternatives and the policy issues that such alternatives would raise. Subsequently, nine organizations representing a broad cross-section of production agriculture submitted to the Commission their common views on these issues by letter dated April 23, 1999.[3]

The dialogue over the interm final rules has not resulted in a unified industry-wide view on recommended changes to those rules. Nevertheless, seven letters were submitted to the Commission recommending various changes. These include the April 23 letter from the nine producer organizations, a letter dated April 19, 1999 from the Farm Credit Council, a letter dated April 21, 1999, from the Illinois Farm Bureau, a letter dated June 15, 1999, from the NGFA, a letter dated June 16, 1999, from the Chicago Board of Trade (CBT), a letter dated July 9, 1999, from the National Grain Sorghum Producers and a letter dated August 9, 1999, from the American Farm Bureau Federation, the National Association of What Growers, the American Soybean Association and the National Farmers Union.[4] Based in part on the various views expressed in these letters, the Commission is proposing a number of revisions to the interim final rules.

II. Proposed Revisions to the Agricultural Trade Option Rules

The Commission has reconsidered a number of the requirements of the agricultural trade option rules with a view toward maintaining their basic customer protection while increasing the commercial utility of the instruments or trading strategies permitted and streamlining regulatory or paperwork burdens. The Commission specifically revisited the particular rules relating to the registration requirements and procedures for ATOMs and their sales agents (associated persons or APs), whether physical delivery should be required upon exercise of the option, whether producers should be able to write call options, whether a different form of risk disclosure would be more appropriate and whether the $10 million exemptive level should be changed. The Commission also considered a number of additional revisions to reduce paperwork and reporting burdens or to bring certain contracting requirements into closer alignment with certain cash market practice. An analysis of each of these issues follows.

A. Registration

The requirement that all market professions be registered, and the authority to approve or revoke registrations, is an important means of policing conduct in a market. The requirement that market professionals be registered gives the Commission an important tool for protecting customers. Registration of market professionals helps assure customers of the registrant's probity, and a testing or training requirement helps ensure a minimum level of competency. Every commodity professional, unless excluded or exempted, that deals with a member of the public is required to be registered with the Commission.

As part of these customer protections, section 14 of the Act provides that "any person complaining of any violation of any provision of this Act or any rule . . . issued pursuant to this Act by any person who is registered under this Act" may bring a reparations action therefore the Commission. Accordingly, complaints that do not relate to violations of the Act or Commission rules are not subject to Commission reparations proceedings. A dispute arising solely out of a cash market transaction, therefore, would be dismissed and not be heard the Commission. *See* 17 CFR 12.26.

By long-standing rule (17 CFR 180.3(b)(3)), the Commission does not permit a customer to waive the right to seek reparations through a predisute arbitration agreement. However, if the customer declines to institute reparations proceedings, the claim or grievance is subject to such a preexisting arbitration agreement.

NGFA, in particular, supports an alternative means of qualification to offer or solicit agricultural trade options short of registration so that its members would not be subject to the Commission's reparations authority. NGFA provides an arbitration service to resolve cash grain contract disputes involving its members, and supports its members' right to require customers through account opening agreements to use NGFA arbitration as the sole means to resolve disputes involving agricultural trade options. In contrast, several producer organizations support the registration requirement as a means "to protect customers and reduce the likelihood that unscrupulous individuals will qualify as agricultural trade options merchants" preferring that "a full range of dispute resolution options . . . remain available to contract participants ranging from arbitration under industry trade rules to CFTC reparations actions." *See* letter of April 23. *See also* letters of July 9 and August 9, 1999.

It appears that there may be substantial public support for a registration requirement, both because of the higher level of customer protection it provides, and a desire to have available the Commission's reparations forum for dispute resolution. Although some sectors of agriculture may have well-regarded industry arbitration fora available, many do not. For these sectors, reparations may be the only readily available non-judicial avenue for dispute resolution. Accordingly, the Commission is retaining the registration requirement at this time. However, the Commission certainly would consider deleting the registration requirement in favor of a simple notification filing stating one's intent to enter into the trade option business if that alternative is preferred by those whom the regulations are

[1] In 1936, responding to a history of large price movements and disruptions in the futures markets attributed to speculative trading in options, Congress completely prohibited the offer or sales of option contracts both on and off exchange in the specific list of agricultural commodities enumerated in the Act. After its creation in 1974, the Commission promulgated a comprehensive regulatory framework applicable to off-exchange commodity option transactions in the non-enumerated commodities. This comprehensive framework exempted "trade options" from most of its provisions except for a rule prohibiting fraud (rule 32.9). In contrast, the prohibition on the offer and sale of all options on the enumerated agricultural commodities remained as a consequence of both statutory provision and Commission rule. The statutory bar was repealed as part of the Commission's reauthorization in 1982. Public Law No. 97–444, 96 Stat. 2294, 2301 (1983). A full statement of the statutory and regulatory history is provided in the notice of final rulemaking promulgating the interim final rules. 63 FR 18821 (April 16, 1998).

[2] In addition to low prices, lack of familiarity among many in the agricultural sector with risk management techniques generally and agricultural trade options, specifically, may also have hampered development of demand for trade option products. To address this, widespread educational efforts will be necessary to give producers a better understanding of what the instruments are and how to use them safely. To this end, the Commission recently released three educational pamphlets on agricultural trade options prepared by its Division of Economic Analysis. These pamphlets provide an overview of agricultural trade options and the rules for trading them. The first of these brochures, entitled "Agricultural Trade Options—What Agricultural Producers Need to Know," was issued in December 1998. This brochure acquaints agricultural producers with how they can use agricultural trade options to manage risk. The second and third brochures, issued in February 1999, summarize how to become an agricultural trade option merchant and provide general information to lenders and extension agents, respectively. They are entitled "How to Become an Agricultural Trade Options Merchant," and "Agricultural Trade Options—Information for Lenders and Extension Agents." All three of these brochures are available on the Commission's website.

[3] These nine producer organizations include the: (1) American Farm Bureau Federation, (2) National Association of Wheat Growers, (3) National Corn Growers Association, (4) National Farmers Union; (5) National Pork Producers, (6) American Soybean Association, (7) National Cattlemen's Beef Association, (8) National Cotton Council of America, and (9) National Grain Sorghum Producers.

[4] In addition, various views concerning the interim final rules were expressed by participants in the United States Senate Agriculture, Nutrition and Forestry Committee's (Senate Agriculture Committee) roundtable to discuss futures, derivatives and related public policy issues held on February 25 and 26, 1999 and by witnesses at the committee's hearings to examine crop insurance and risk management strategies held on March 10 and 17, 1999.

intended to protect. The Commission specifically invites comments on whether the registration requirement should be retained.[5]

Despite this fundamental disagreement over whether registration should be required, there is broad agreement that the registration procedures for ATOMs and their sales agents be streamlined and simple. Unlike other categories of registrants, under current rules an ATOM's principals and sales agents need not provide fingerprints or pass a proficiency test. In other respects the registration requirements are similar to those for other Commission registrants, including processing of registration applications by the National Futures Association (NFA), the requirement that each applicant certify that it is not disqualified from engaging in a commodity-related business under the statutory disqualification provisions of sections 8a(2) or 8a(3) of the Act and the requirement that an ATOM certify that, to the best of its knowledge, each of its associated persons meets the final rules' registration requirements. Those seeking registration as associated persons are required to complete six hours of instruction in the requirements of the Act and the rules thereunder, the economic functioning and risks of agricultural trade options, and the registrant's responsibility to observe just and equitable principles of trade relating to such options.

The Commission is proposing to streamline registration of ATOMs and their APs by removing the requirement that ATOMs separately certify the truth of their principal's and APs' applications. The Commission also proposes to limit the principals required to file as part of an ATOM's application to those principals who exercise direct control over the ATOM's business affairs. For an ATOM that is part of a larger agribusiness, this should greatly lessen the number of principals who are required to file. This is because, unlike financial service companies that commonly use a holding company structure, many companies engaged in agriculture are structured as unitary corporations with separate operating divisions, potentially increasing the number of principals within the organization.

The Commission is also proposing to delete the mandatory six hour training course for sales agents. The offer or sale of agricultural trade options is not expected to be the primary commercial activity for many, if not most ATOMs, increasing the relative burden of the mandatory training requirement. Instead, each ATOM would decide the amount and nature of training it will require of its sales agents, presumably based upon the nature of its trade option business.

In addition, paperwork associated with the registration process could be streamlined by deleting the requirement that ATOMs notify the Commission when an associated person leaves its employ and a new associated person begins. Because many ATOMs may employ individuals well-known in their local communities, such filings may be less necessary. On the other hand, staff turnover at such locations would tend to be low, reducing the burden of filing updates on affiliated staff. Some ATOMs may employ widely dispersed sales forces and may prefer to have a means of providing public notice of their officially authorized sales agents through such updates. Accordingly, the Commission is not now proposing to delete the requirement that ATOMs notify the NFA when an associated person leaves its employ or is hired. However, it specifically requests commenters to address the relative burden and benefits of this requirement.

Finally, NGFA, in particular, suggests that the Commission directly process applications for registration as an ATOM or an AP of an ATOM, an administrative task that the interim final rules delegate to the National Futures Association. 17 CFR 3.13(e). NGFA suggests that, "it is inappropriate to involve the NFA in any form of 'registration' process. . . . The NFA is a self-regulatory agency for futures, not cash markets." However, the interim final rules strictly limit NFA's role. NFA does not become a self-regulatory authority for ATOMs simply by administratively processing their registration applications on the Commission's behalf. NFA exercises no regulatory authority over the offer or sale of agricultural trade options by ATOMs as a consequence of that administrative function, nor do ATOMs or their APs thereby become members of NFA.[6]

Moreover, the Commission faces a number of challenges in directly processing applications for registration of ATOMs and their APs. The Commission completely transferred this administrative function to NFA during the 1980s and no longer has systems in place to process this type of registration application. Accordingly, the Commission would have to rebuild this capability from the ground up before it could begin reviewing and approving registrations once again. Moreover, rebuilding such administrative systems would, in the short-run, compete for technical resources that are being devoted to Y2K compliance. In contrast, NFA can process these additional categories of registrants with only minor changes to its existing systems.

In light of the above, the Commission requests comment on the possible benefits to ATOMs, their APs or potential customers from the Commission's direct processing of registration applications, and the relative cost of such a proposal, including the indirect costs caused by the increased implementation time needed by the Commission to reestablish this administrative capability.

B. Physical Delivery

The interim rules prohibit agricultural trade options from being off-set, and require that if exercised, agricultural trade options result in physical delivery of the underlying commodity. The interim rules, however, permit substitution of a forward contract agreement prior to the option's expiration. Commission Rule 32.13(a)(3). This provision, by requiring agricultural trade options explicitly to serve a merchandising function, helps assure a close relationship between the agricultural trade option transaction and the producer's cash market activities. It also helps to assure that such options would be transacted between those having pre-existing cash market relationships and that their functioning would likely be easily understood. See, 63 FR at 59627.

Support is widespread among all sectors of agriculture for some permitted types of cash settlement, offset or cancellation of agricultural trade options.[7] The bar on cash settlement/ offset was adopted, in part, to discourage speculative use of agricultural trade options by purchasers and as a means of limiting vendors to entities with a strong, on-going connection to the cash markets. On the other hand, observers have suggested many situations when cash settlement/ offset would be consistent with sound business practice, such as when hail wipes out a producer's ability to deliver on an option having time-value remaining or when localized conditions may make delivery at an alternate location relatively more attractive. Others have suggested that more highly engineered option products can be offered only if cash-settlement is permitted.

Some observers have suggested that the Commission permit cash settlement/ offset of agricultural trade options only as a one-time alternative to delivery. Although such a requirement would discourage speculation, it could be easily evaded simply by establishing a new option position with a second vendor or by identifying a new option as covering additional production capacity. In light of the obvious enforcement difficulties in enforcing a one-time cash-settlement rule and the likelihood that other regulatory provisions, such as the registration of ATOMs and the requirement that ATOMs be commercials, to some degree would discourage unscrupulous entities from offering, and purchasers from buying, agricultural trade options merely for speculative purposes, the Commission is proposing simply to remove the requirement that agricultural trade options, if exercised, result in physical delivery.[8]

However, the Commission is proposing to require ATOMs to provide customers with an account statement following the termination, cancellation, cash settlement or amendment of an option's expiration date (rolling the contract). Customers could have expected to have their accounts settled upon physical delivery, and this proposed requirement will ensure that customers who cash settle their contracts are provided with similar information.[9] Moreover, by receiving an accounting and knowing with certainty the outcome of their closed position, customers should better be able to ascertain the potential outcome of entering into a subsequent transaction. In addition, the Disclosure Statement continues to advise potential purchasers that trade options are required to have a business purpose and are not to be used for speculation.

C. Risk Disclosure, Customer Account Information and Reports to the Commission

The interim final rules mandate that customers be provided with both a general, summary disclosure statement upon opening an account and transaction-specific disclosures before entering into a specific transaction. Commission Rules 32.13(a) (7) and (8). The transaction-specific disclosure includes information relating to the specific terms of a particular transaction. The ATOM is required to disclose the customer's worst possible financial outcome when the option premium is not collected up front or when an option contract is amended.

There is general agreement among representatives of both potential vendors and customers that the risk disclosure mandated by the interim final rules should be streamlined and made administratively simpler by eliminating the transaction-specific disclosure statement. Many of the transaction-specific disclosures could be made in the summary disclosure statement. Others may be readily ascertainable from the face of the option contract itself. The CBT suggested that the existing statement regarding the availability of exchange-traded options offering greater regulatory and financial protections be enhanced to state explicitly that the trade option is not guaranteed in any way by a contract market.

The Commission is proposing to eliminate the transaction-specific disclosure statement and to revise the summary disclosure to include some of the deleted material. For example, the Commission is proposing to add a paragraph to the summary disclosure statement advising customers to understand each option's procedure for exercise, time of expiration, cost (including the amount of, and method of paying, the premium) and associated fees. In addition, as noted above, the Commission is proposing that before the expiration date of a contract is amended the customer be given a current account statement. This is in lieu of the worst-case outcome disclosure which is currently required. A current account statement will provide the information necessary for the customer to determine the possible financial outcome resulting from the contract's amendment.

In addition, the Commission is proposing to amend the requirements relating to reporting of account information to customers. A number of sources, including several state-level representatives of producers and commodity first-handlers, suggested that the requirements that ATOMs provide customers with account-related information potentially created too great a paperwork burden for smaller firms. Specifically, Rule 32.13(b) requires ATOMs to provide customers with written confirmation of contracts within 24 hours of execution and within 48 hours of a customer request, a written response regarding the customer's account or position. In addition, ATOMs are required to notify customers in writing of an option's expiration within the coming calendar month. This requirement was intended to assist customers in managing their option positions and, in particular, to "provide customers with notice sufficient to reduce the occasions on which customers permit in-the-money options to expire due to inattention." 63 FR 18828.

Representatives of agricultural organizations opined that many of the required writings would be required during harvest time, when smaller businesses, including producers, would prefer the immediacy of telephonic communication over written notice. Accordingly, the Commission is proposing to increase the ATOM's flexibility in meeting these requirements by permitting oral communications and notice to customers.[10]

[5] The Commission is also proposing to clarify the enforceability of pre-dispute arbitration clauses for agricultural trade options and the procedures by which customers can waive their right to use Commission reparations procedures to resolve disputes with an ATOM by incorporating into these rules streamlined procedures similar to those included in Commission Rule 180.3(b) which are applicable to other commodity professionals.

[6] This is similar to floor brokers and floor traders, whose registration applications are processed by NFA but who do not become NFA members and are not regulated by NFA. Rather, they are generally governed by the exchanges that have granted them trading privileges. Moreover, NFA arbitration is only available for the resolution of disputes involving NFA members. Accordingly, NFA arbitration would not be available to ATOMs and their customers.

[7] Unlike forward contracts which are commercial, merchandizing transactions resulting in delivery, options can be settled in a number of ways. For example, various exchange-traded options may be settled through the delivery of a futures position, delivery of a commodity such as gold, or the payment of the option's value based upon a reference price such as the London gold fix. Cash settlement of a trade option differs from physical delivery on the option in that the option's holder, upon exercise, is paid the option's value rather than delivering the commodity at the strike price specified in the option contract.

[8] Although Rule 32.13(a) requires that an ATOM be a commercial involved in the production, processing or handling of the underlying commodity, the interim final rules did not limit eligibility to become an ATOM to a commodity's first handler. Nevertheless, permitting cash settlement likely will enable a greater variety of commercial enterprises engaged in agriculture to offer these contracts. The Commission therefore is proposing to clarify that eligible commercial enterprises include those selling inputs used in the production of the commodity as well as banks that routinely finance businesses involved in the production, processing or handling of the commodity.

[9] For example, if a customer initially purchases an option for $1000 and later offsets that option by selling the option back to the ATOM for $500, the customer will have to be notified that the purchase and resale of the option netted a $500 loss. This rule would have the effect of keeping customers informed of any losses incurred on option trades and discourage them from "speculating on account."

[10] The Commission also is proposing to delete the requirement that the ATOM provide the option purchaser with a separate written confirmation. Elsewhere, the Commission is requiring that an executed copy of the written contract or a written confirmation of oral contracts be provided to the

Continued

Similarly, some have observed that oral contracting is still the prevailing means of transacting business in certain agricultural cash markets, and they suggests that the interim rules, which require agricultural trade option contracts to be written, should be amended to reflect that reality. In this regard, state law has recognized this practice by recognizing the validity of such oral contracts when they have been confirmed in writing. The Commission is proposing to amended its rules to recognize this practice. However in doing so, the Commission is requiring that the written confirmation, which must be signed by the ATOM, include all material terms of the option contract. In this way, option contracts can be made over the telephone, as are cash forward contracts, and both ATOMs and customers will be certain of the contract's terms, thereby reducing potential disputes between the parties over vaguely defined contract terms.[11]

In addition, there has been widespread support among agricultural groups for reducing ATOMs' required reports. The interim rules require ATOMs to file reports on volume and open interest four times a year with the NFA. Many claim that such a filing requirement would be onerous on small ATOMs that do not have staffs dedicated only to back office operations. In this regard, they note that one of the quarterly filings would be due during harvest, a time when smaller business are stretched thin and may have no available staff to compile such a report. They further maintain that lacking programming support, such reports would often have to be compiled manually. In addition, they prefer that such reports be filed with the Commission rather than the NFA, an organization in which they are not members. The Commission is proposing to reduce periodic reporting to one annual report, filed by the ATOM with the Commission within 90 days of the end of its fiscal year.[12] In that way, the report can be generated as one more step in the year-end closing of an ATOM's routine business accounts.

This yearly report obviously will provide the Commission with less information. However, it will provide an overall picture of the industry over time. Moreover, the Commission is retaining authority to obtain information as needed for regulatory purposes through inspections of the books and records of a particular firm, as needed. In addition, the Commission will likely conduct a market-wide survey, by special call, in order to evaluate the success of the rules. The information that would be required in a special call is specified in the rules.[13]

D. Required Contract Terms and Limitations on Certain Strategies

As noted above, one cause of a number of disputes involving hedge-to-arive contracts was inadequate of vague contract specifications. To avoid a similar problem with agricultural trade options, Commission Rule 32.13(a)(6) requires that an agricultural trade option specify a number of contract terms, including the procedure for exercise, the expiration date and latest time on that date for exercise; the strike price; the total quantity of the commodity underlying the option; the quality or grade of commodity to be delivered if the option is exercised and any adjustments to price for deviations from stated quality or grade, or the range of, and a statement of the method for calculating such adjustments; the delivery location; the elements comprising the purchase price to be charged, including the premium, mark-ups on the premium, costs, fees and other charges; and additional costs, if any, which may be incurred if the commodity option is exercised. Commission Rule 32.13(a)(6)(i)–(vii). These terms would be expected to be found in any fully-specified physical delivery option contract.

However, representatives of some agricultural first handlers have objected to these requirements, arguing that they are overly restrictive, reducing an ATOM's ability to engineer instruments that offer greater flexibility to producers. One example given is the requirement that the option specify a delivery location and adjustments from par value. Although it is not clear to what degree these requirements actually would restrict an ATOM's design creativity, the current rules would have to be amended substantially to make conforming changes providing for cash settled options. Accordingly, and in light of the fact that even in the absence of the current rule options would ordinarily include the above terms, the Commission is proposing to delete this rule as a separate design requirement on ATOMS. Instead, the Commission is proposing to include in the Disclosure Document a statement that option customers should be sure that the contract includes, and that the customer understands the operation of, all of the above contract provisions.

Another common source of dispute involving hedge-to-arrive contracts involved situations where customers were the grantors or writers of call options. In return for the premium income paid to enhance their current grain prices, customers granted elevators the right to demand delivery in the future of grain that the producer did not yet own. Many producers entering into these transactions appear not to have fully understood the transaction's risk. Accordingly, the interim rules permit call writing by producers only to the extent the written call is paired with a purchased or long put option in a window or fence strategy. Some observers have suggested that producers, if they desire, should be able to grant or write call options if the position is covered by expected production. However, this position is not riskless. For example, if the producer suffers a production shortfall or loss, the producer's liability could be significant. For this reason, many of the producer representatives opposed changing the interim rules in this respect. The Commission, therefore, is not now proposing to change the prohibition against writing covered calls. In taking this position, the Commission is not ruling out its reconsideration after producers have had an opportunity to gain experience generally with the offer and sale of trade options.

E. Exemption Level for Sophisticated Entities

The interim rules exempt transactions in which each party to the option contract has a net worth of not less than $10 million from compliance with all of the specific conditions for trading agricultural trade options. Commission

customer. Accordingly, a separate confirmation is redundant.

[11] As the Commission explained in its notice of proposed rulemaking, the "lack of written terms and conditions in [hedge-to-arrive] contracts led to widespread disagreement among parties over the terms of the instruments, complicating the resolution of various issues."

[12] Unlike the processing of registrations which has been delegated to the NFA and for which the Commission has no existing systems capability, the Commission has an extensive reporting system on which to build this reporting requirement. Accordingly, it would not be an undue or an unreasonable administrative burden for the Commission to undertake direct administration of the reporting requirement. Moreover, the Commission and not the NFA would be the primary user of the information reported. For these reasons, the Commission is proposing to revise the requirement to provide that ATOMs file their annual reports directly with the Commission.

[13] The Commission is also proposing to revise the requirement that, except for funds used to purchase exchange-traded contracts as cover, ATOMs keep in segregation 100% of customer funds paid up front. In its rules governing the off or sale of dealer options, another type of over-the-counter option, the Commission required the option grantor to hold not less than 90% of funds paid by a customer in segregation (17 CFR 32.6(a)). The Commission is proposing to apply that practice to agricultural trade options, as well. This will provide ATOMs greater flexibility in structuring their business.

Rule 32.13(g). The Commission determined that the exemption should apply only to those entities with a very high net worth and that a greater level of regulatory protection was appropriate for transactions involving less well-financed entities. In particular, the Commission was of the view that "only the larger and better financed entities will consistently have available the legal and financial resources needed to protect their interests in an unregulated environment." 62 FR 59634.

While some in the agricultural community support lowering the exemption level, others oppose a lower exemption or even any exemption at all. NGFA, in particular, has argued that a lower exemption level ". . . would permit greater creativity to the market to more thoroughly assess what forms of agricultural trade options are most likely to be useful and successful for both buyers and sellers" and ". . . would permit wholesale, or secondary markets for certain forms of agricultural trade options to develop." *See* letter of June 15, 1999. Those opposing a lower exemption level fear that a lower exemption level "will create a competitive inequity across the merchandizing sector." These organizations instead favor increasing participation in regulated transactions by making them more user-friendly through the across-the-board revisions that the Commission is proposing. In light of the lack of consensus to lower the exemption level and the very broad changes to the rules being proposed, the Commission is not proposing to reduce the current exemption level.

III. Other Matters

A. Paperwork Reduction Act (PRA)

When publishing proposed rules, the PRA of 1995 (Pub. L. 104–13 (May 13, 1996)) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the Act, the Commission, through this rule proposal, solicits comments to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used. (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used. (3) Enhance the quality, utility, and clarity of the information to be collected. (4) Minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses. The Commission has previously received approval from OMB for the collection of information related to off-exchange agricultural trade options, which OMB designated as information collection 2028–0048. The approved burden associated with 3038–0048 is as follows:

Average burden hours per response: 5.420.

Number of respondents per year: 3,610.

Frequency of response: Quarterly and on occasion.

The Commission has submitted the proposed agricultural trade options rules and amendments of OMB for approval. The proposed rules would change the burden as follows:

Average burden hours per response: 5.59.

Number of respondents per year: 3,605.

Frequency of response: Annually and on occasion.

Persons wishing to comment on the information that would be required by this proposed/amended rule should contact the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW, Washington, DC 20581, (202) 418–5160.

B. Regulatory Flexibility Act (RFA)

The RFA, 5 U.S.C. 601 et seq., requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has not previously determined whether all or some agricultural trade option merchants should be considered "small entities" for purposes of the RFA and, if so, to analyze the economic impact on such entities. However, the Commission is proposing that one of the conditions for registration as an agricultural trade option merchant is maintenance of a minimum level of net worth. The Commission previously found that other entities which were required to maintain minimum levels of net capital were not small entities for purposes of the RFA. See, 47 FR 18618, 18619 (April 30, 1982).

The Commission has also found, however, that one category of Commission registrant—introducing brokers (IBs)—which is required to maintain a minimum level of net capital, may include small entities for purposes of the RFA. Nevertheless, in addition to the $50,000 minimum net worth required for registration as an agricultural trade option merchant, such registrants must be in business in the underlying cash commodity. This will require that they have additional resources invested in order to qualify as an agricultural trade option merchant, in contrast to an IB whose additional investment beyond the minimum net capital may be relatively small. For this reason, the Commission believes that agricultural trade option merchants are more appropriately treated as not being small entities under the RFA.

The Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the proposed rules will revise rules removing a complete ban on the offer or sale of trade options on the agricultural commodities enumerated under the Act. The proposed rules permitting such transactions subject to the specified conditions therefore remove a burden for all entities, regardless of size.

List of Subjects

17 CFR Part 3

Administrative practice and procedure, Brokers, Commodity futures.

17 CFR Part 32

Commodity futures, Commodity options, Prohibited transactions, Trade options.

In consideration of the foregoing, and pursuant to the authority contained in the Act, and in particular sections 2(a)(1)(A), 4c, and 8a, 7 U.S.C. 2, 6c, and 12A, as amended, the Commission hereby proposes to amend parts 3 and 32 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 3—REGISTRATION

1. The authority citation for part 3 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 4a, 6, 6b, 6c, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a, 12, 12a, 13b, 13c, 16a, 18, 19, 21, 23; 5 U.S.C. 552, 552b.

2. Section 3.13 is proposed to be revised to read as follows:

§ 3.13 Registration of agricultural trade option merchants and their associated persons.

(a) *Definitions.* (1) *Agricultural trade option merchant.* "Agricultural trade option merchant" means any person that is in the business of soliciting,

offering to enter into, entering into, confirming the execution of, or maintaining a position in, transactions or agreements in interstate commerce which are not conducted or executed on or subject to the rules of a contract market, and which are or are held out to be of the character of, or are commonly known to the trade as, an "option," "privilege," "indemnity," "bid," "offer," "put," "call," "advance guarantee," or "decline guarantee," involving wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice. Provided, however, that any person entering into such transactions solely for the purpose of managing the risk arising from the conduct of his or her own commercial enterprise is not considered to be in the business described in this paragraph.

(2) *Associated person of an agricultural trade option merchant.* "Associated person of an agricultural trade option merchant" means a partner, employee, or agent (or any person occupying a similar status or performing similar functions) that:

(i) Solicits or accepts customers' orders (other than in a clerical capacity) or

(ii) Supervises any person or persons so engaged.

(b) *Registration required.* It shall be unlawful for any person in the business of soliciting, offering or selling the instruments listed in § 32.2 of this chapter to solicit, to offer to enter into, or to enter into, to confirm the execution of, or to maintain transactions in such instruments or to supervise persons so engaged except if registered as an agricultural trade option merchant or as an associated person of such a registered agricultural trade option merchant under this section.

(c) *Duration of registration.* (1) A person registered in accordance with the provisions of this section shall continue to be registered until the revocation or withdrawal of registration.

(2) Agricultural trade option merchants must notify the National Futures Association within twenty days when an associated person has ceased to be so associated.

(3) An associated person who ceases to be associated with a registered agricultural trade option merchant is prohibited from engaging in activities requiring registration under § 32.13 of this chapter or representing himself or herself to be a registrant until:

(i) A registered agricultural trade option merchant notifies the National Futures Association of the person's association; and

(ii) The associated person certifies to the National Futures Association that he or she is not disqualified from registration for the reasons listed in section 8a (2) and (3) of the Act; *Provided, however,* no such certification is required when the associated person becomes associated with the new agricultural trade option merchant within ninety days from when the associated person ceased the previous association.

(d) *Conditions for registration.* (1) Applicants for registration as an agricultural trade option merchant must meet the following conditions:

(i) The agricultural trade option merchant must have and maintain at all times net worth of at least $50,000 computed in accordance with generally accepted accounting principles;

(ii) The agricultural trade option merchant must identify each of the natural persons who controls or directs the offer or sale of trade options or associated trading activity by the agricultural trade option merchant or who supervises any associated person of the agricultural trade option merchant and each such natural person must certify that he or she is not disqualified from registration for the reasons listed in sections 8a(2) and (3) of the Act; and

(iii) The agricultural trade option merchant must provide access to any representative of the Commission of the U.S. Department of Justice for the purpose of inspecting books and records.

(2) Applicants for registration as an associated person of an agricultural trade option merchant must meet the following conditions. Such persons must:

(i) Identify the agricultural trade option merchant with whom the person is associated or to be associated within thirty days of the person's registration; and

(ii) Certify that he or she is not disqualified from registration for the reasons listed in sections 8a(2) and (3) of the Act.

(e) *Applications for registration.* (1) The agricultural trade option merchant, including its principals, and associated persons of an agricultural trade option merchant must apply for registration on the appropriate forms specified by the National Futures Association and approved by the Commission, in accordance with the instructions thereto, including the separate certifications from each natural person that he or she is not disqualified for any of the reasons listed in sections 8a(2) and (3) of the Act and such other identifying background information as may be specified.

(2) The agricultural trade option merchant's application must also include its most recent annual financial statements certified by an independent certified public accountant in accordance with generally accepted auditing standards prepared within the prior 12 months.

(3) These applications must be supplemented to include any changes in the information required to be provided thereon on a form specified by the National Futures Association and approved by the Commission.

(f) *Withdrawal of application for registration; denial, suspension and revocation of registration.* The provisions of §§ 3.51, 3.55, 3.56 and 3.60 shall apply to applicants for registration and registrants as agricultural trade options merchants and their associated persons under this part 3 as though they were an applicant or registrant in any capacity under the Act.

(g) *Withdrawal from registration.* An agricultural trade option merchant that has ceased or has not commenced engaging in activities requiring registration may withdraw from registration 30 days after notifying the National Futures Association on the specified form of its intent to do so, unless otherwise notified by the Commission. Such a withdrawal notification must include information identifying the location of, and the custodian authorized to release, the agricultural trade option merchant's records, a statement of the disposition of customer positions, cash balances, securities or other property and a statement that no obligations to customers arising from agricultural trade options remain outstanding.

(h) *Dual registration of associated persons.* An associated person of an agricultural trade option merchant may be associated with other registrants subject to the provision of § 3.12(f).

3. Section 3.14 is proposed to be removed and reserved.

PART 32—REGULATION OF COMMODITY OPTION TRANSACTIONS

4. The authority citation for part 32 continues to read as follows:

Authority: 7 U.S.C. 2, 6c and 12a.

5. Section 32.2 is republished for the convenience of the reader:

§ 32.2 Prohibited transactions.

Notwithstanding the provisions of § 32.11, no person may offer to enter into, confirm the execution of, or maintain a position in, any transaction in interstate commerce involving wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products, and frozen concentrated orange juice if the transaction is or is held out to be of the character of, or is commonly known to the trade as an "option," "privilege," "indemnity," "bid," "offer," "put," "call," "advance guarantee," or "decline guarantee," except as provided under § 32.13 of this part.

6. Section 32.13 is proposed to be revised to read as follows:

§ 32.13 Exemption from prohibition of commodity option transactions for trade options on certain agricultural commodities.

(a) The provisions of § 32.11 shall not apply to the solicitation or acceptance of orders for, or the acceptance of money, securities or property in connection with, the purchase or sale of any commodity option of a physical commodity listed in § 32.2 by a person who is a producer, processor, or commercial user of, or a merchant handing or selling inputs used in the production of, the commodity which is the subject of the commodity option transaction, or the products or byproducts thereof, or a bank routinely engaged in the financing of such businesses, if all of the following conditions are met at the time of the solicitation or acceptance:

(1) That person is registered with the Commission as an agricultural trade option merchant and that person's associated persons and their supervisors are registered as associated persons of an agricultural trade option merchant under § 3.13 of this chapter.

(2) The option offered by the agricultural trade option merchant is offered to a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or byproducts thereof, and such producer, processor, commercial user, or merchant is offered of enters into the commodity option transaction soley for purposes related to its business as such.

(3) [Reserved]

(4) To the extent that payment by the customer of the purchase price is made to the agricultural trade option merchant prior to option expiration or exercise, that amount:

(i) May only be used by the agrciultural trade option merchant to purchase a covering position on a contract market designated under section 6 of the Act or part 33 of this chapter; and

(ii) Any amount not so used shall be treated as belonging to the customer until option expiration or exercise as provided under and in accordance with § 32.6 of this part.

(5) Producers may not:

(i) Grant or sell a put option; or

(ii) Grant or sell a call option, except to the extent that such a call option is purchased or combined with a purchased or long put option position, and only to the extent that the customer's call option position does not exceed ghe customer's put option position in the amount to be delivered. Provided, however, that the option must be entered into simultaneously and expire simultaneously or at any time that one or the other option is exercised.

(6) All option contracts, including all terms and conditions, offered or sold pursuant to this section shall be in writing, a signed copy of which shall be provided to the customer, of if the contract is verbal, it shall be confirmed in a writing which includes all terms and conditions, signed by the agricultural trade option merchant, and provided to the customer within 48 hours.

(7) Prior to the entry by a customer into the first option transaction with an agrcultural trade option merhant, the agrciultural trade option merchant shall furnish, through written or electronic media, a summary disclosure statement to the option customer. The summary disclosure statement shall include:

(i) The following statements in boldface type on the first page(s) of the summary disclosure statement:

This brief statement does not disclose all of the risks and other significant aspects of trading in community trade options. You are encouraged to seek out as much information as possible from sources other than the person selling you this option about the use and risks of option contracts before entering into this contract. The issuer of your option should be willing and able to answer clearly any of your questions.

Appropriateness of Option Contracts

Option contracts may result in the total loss of any funds you pay to the issuer of your option. You should carefully consider whether trading in such instruments is appropriate for you in light of your experience, objectives, financial resources and other relevant circumstances. The issuer of your option contract should be willing and able to explain the financial outcome of your option contract under different market conditions. You should also be aware that this option is not issued by, guaranteed by, or traded on or subject to the rules of a futures exchange. You may be able to obtain a similar contract or execute a similar risk management strategy using an instrument traded on a futures exchange which offers greater regulatory and financial protections.

Costs and Fees Associated With an Option Contract

Before entering into an option contract, you should understand all of the costs associated with it. These include the option premium, commissions, fees, costs associated with delivery if the option requires settlement by delivery upon its exercise and any other charges which may be incurred. All of these costs and fees must be specified in the terms of your option contract.

Know and Understand the Terms of the Option Contract

Before entering into an option contract, you should know and understand all of the option contract's terms. All of the option contract's terms should be included in the written contract, or for a verbal agreement, in a written confirmation. You should receive a signed copy of either the written contract or of the written confirmation. Your option contract should include contract terms setting:

(A) The total quantity of commodity underlying the option contract;

(B) The strike price(s) of the option contract;

(C) The procedure for exercise of the option contract, including when you can exercise and the latest time and date for exercise;

(D) Whether the option can be off-set or canceled prior to expiration;

(E) Whether settlement of the option is for cash or by delivery of the commodity;

(F) If settlement is by delivery, the delivery location or locations, the quality or grade of commodity to be delivered and how adjustments to price for deviations from stated quality or grade are determined;

(G) If settlement is by cash, the method for determining the cash-settlement price; and

(H) The cost and method of payment.

Business Use of Trade Options

In order to comply with the law, you must be buying this option for business-related purposes. The terms and structure of the contracts must therefore relate to your activity or commitments in the underlying cash market. Any amendments allowed to the option contract or its cancellation or off-set prior to its expiration date must reflect changes in your activity, in your commitments in the underlying cash market or in the carrying of inventory. Producers are not permitted to enter into short call options unless the producer also enters into a long put option contract for the same amount or more of the commodity, at the same time and with the same expiration date. Producers are not permitted to sell put options, whether alone or in combination with a call option.

Dispute Resolution

If a dispute should arise under the terms of this trade option contract, you have the right to choose to use the reparations program run by the Commodity Futures Trading Commission or any other dispute resolution forum provided to you under the terms of your customer agreement or by law. For more information on the Commission's Reparations Program contact: Office of Proceedings, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5250.

Acknowledgment of Receipt

The Commodity Futures Trading Commission requires that all customers receive and acknowledge receipt of this disclosure statement. The Commodity Futures Trading Commission does not intend this statement as a recommendation or endorsement of agricultural trade options. These commodity options have not been approved or disapproved by the Commodity Futures Trading Commission, nor has the Commission passed upon the accuracy or adequacy of this disclosure statement. Any representation to the contrary is a violation of the Commodity Exchange Act and Federal regulations.

(ii) The following acknowledgment section:

I hereby acknowledge that I have received and understood this summary risk disclosure statement.

_____

Date.

_____

Signature of Customer.

(8) An agricultural trade option merchant may not require a customer to waive the right to seek reparations under section 14 of the Act and part 12 of this chapter by an agreement or understanding to submit a claim or grievance to a specified settlement procedure prior to the time a claim or grievance arises. An agricultural trade option merchant, when notifying a customer of its intent to submit a claim or grievance to arbitration under a pre-existing agreement, must advise the customer in writing that the customer within forty-five days may elect to seek reparations under Section 14 of the Act and part 12 of this chapter.

(b) *Report of account information.* Registered agricultural trade option merchants must provide customers with open positions the following information:

(1) Within two business days of the off-set, cancellation or settlement of the option for cash, or of the amendment of the expiration of the option, a statement of profit or loss on the transaction and on the account;

(2) In response to a customer's request, current commodity price quotes, all other information relevant to the customer's position or account, and the amount of any funds owed by, or to, the customer within one business day if responding orally and within two business days if responding in writing;

(3) Written, verbal or electronic notice of the expiration date of each option which will expire within the subsequent calendar month.

(c) *Recordkeeping.* Registered agricultural trade option merchants shall keep full, complete and systematic books and records together with all pertinent data and memoranda of or relating to such transactions, including customer solicitations and covering transactions, maintain such books and records as specified in § 1.31 of this chapter, and make such reports to the Commission as provided for in paragraphs (c) and (d) of this section and as the Commission may otherwise require by rule, regulation, or order. Such books and records shall be open at all times to inspection by any representative of the Commission and the United States Department of Justice.

(d) *Reports.* Registered agricultural trade option merchants must file annual reports with the Commission at its Washington, DC, headquarters within ninety days after the close of the agricultural trade option merchant's fiscal year, in the form and manner specified by the Commission, which shall contain the following information:

(1) By commodity and put, call or combined option:

(i) Total number of new contracts entered into during the reporting period;

(ii) Total quantity of commodity underlying new contracts entered into during the reporting period;

(iii) Total number of contracts outstanding at the end of the reporting period;

(iv) Total quantity of underlying commodity outstanding under option contracts at the end of the reporting period;

(v) Total number of options exercised during the reporting period; and

(vi) Total quantity of commodity underlying the options-exercised during the reporting period.

(2) Total number of customers by commodity with open option contracts at the end of the reporting period.

(e) *Special calls.* Upon special call by the Commission for information relating to agricultural trade options offered or sold on the dates specified in the call, each agricultural trade option merchant shall furnish to the Commission within the time specified the following information as specified in the call:

(1) All positions and transactions in agricultural trade options, including information on the identity of agricultural trade option customers and on the value of premiums, fees, commissions, or charges other than option premiums, collected on such transactions.

(2) All related positions and transactions for future delivery or options on contracts for future delivery or on physicals on all contract markets.

(3) All related positions and transactions in cash commodities, their products, and by-products.

(f) *Internal controls.* (1) Each agricultural trade option merchant registered with the Commission shall prepare, maintain and preserve information relating to its written policies, procedures, or systems concerning the agricultural trade option merchant's internal controls with respect to market risk, credit risk, and other risks created by the agricultural trade option merchant's activities, including systems and policies for supervising, monitoring, reporting and reviewing trading activities in agricultural trade options; policies for hedging or managing risk created by trading activities in agricultural trade options, including a description of the types of reviews conducted to monitor positions; and policies relating to restrictions or limitations on trading activities.

(2) The financial statements of the agricultural trade option merchant must on an annual basis be audited by a certified public accountant in accordance with generally accepted auditing standards.

(3) The agricultural trade option merchant must file with the Commission a copy of its certified financial statements within 90 days after the close of the agricultural trade option merchant's fiscal year.

(4) The agricultural trade option merchant must perform a reconciliation of its books at least monthly.

(5) The agricultural trade option merchant:

(i) Most report immediately if its net worth falls below the level prescribed in § 3.13(d)(1)(i) of this chapter, and must report within three days discovery of a material inadequacy in its financial statements by an independent public accountant or any state or federal agency performing an audit of its financial statements, to the Commission by facsimile, telegraphic or other similar electronic notice; and

(ii) Within five business days after giving such notice, the agricultural trade option merchant must file a written report with the Commission stating what steps have been taken or are being taken to correct the material inadequacy.

(6) If the agricultural trade option merchant's net worth falls below the level prescribed in § 3.13(d)(1)(i) of this chapter, it must immediately cease offering or entering into new option transactions and must notify customers having premiums which the agricultural trade option merchant is holding under paragraph (a)(4) of this section that such customers can obtain an immediate refund of that premium amount, thereby closing the option position.

(g) *Exemption.* (1) The provisions of §§ 3.13, 32.2, 32.11 and this section shall not apply to a commodity option offered by a person which has a reasonable basis to believe that:

(i) The option is offered to a producer, processor, or commercial user of, or a merchant handling, the commodity which is the subject of the commodity option transaction, or the products or byproducts thereof;

(ii) Such producer, processor, commercial user or merchant is offered or enters into the commodity option transaction solely for purposes related to its business as such; and

(iii) Each party to the option contract has a net worth of not less than $10 million or the party's obligations on the option are guaranteed by a person which has a net worth of $10 million and has a majority ownership interest in, is owned by, or is under common ownership with, the party to the option.

(2) Provided, however, that § 32.9 continues to apply to such option transactions.

Issued this 25th day of August, 1999, in Washington, DC, by the Commodity Futures Trading Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 99–22555 Filed 8–30–99; 8:45 am]

BILLING CODE6351–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S–206C]

RIN 1218–AB62

Safety Standards for Fall Protection in the Construction Industry; Correction

AGENCY: Occupational Safety and Health Administration, U.S. Department of Labor.

ACTION: Advance notice of proposed rulemaking; correction.

SUMMARY: On July 14, 1999, OSHA published an Advanced Notice of Proposed Rulemaking (ANPR) titled, "Safety Standards for Fall Protection in the Construction Industry." The ANPR was published with an incorrect Regulation Identifier Number (RIN). This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Ms. Bonnie Friedman, Occupational Safety and Health Administration, Office of Public Affairs, Room N3647, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, Telephone: (202) 693–1999. Anyone with questions regarding this correction or the July 14 ANPR, should contact Ms. Jule Jones at (202) 693–2345.

SUPPLEMENTARY INFORMATION: On July 14, 1999, at 64 FR 38078, OSHA published an Advanced Notice of Proposed Rulemaking (ANPR) titled "Safety Standards for Fall Protection in the Construction Industry." In that document, OSHA requested comments and information on fall protection for workers engaged in certain construction activities currently covered by OSHA's standards. The ANPR was published with an incorrect RIN. The correct RIN, as printed in the Semiannual Regulatory Agenda, is 1218–AB62.

Authority: This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 23rd day of August, 1999.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 99–22422 Filed 8–30–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF TRANSPORTATION

33 CFR Part 100

[CGD07–99–057]

RIN 2115–AE46

Special Local Regulations: Puerto Rico International Cup, Fajardo, Puerto Rico

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: Temporary special local regulations are being proposed for the Puerto Rico International Cup, in Fajardo, Puerto Rico. The event will be held from 1 p.m. to 2:30 p.m. Atlantic Standard Time (AST) on December 5, 1999 in Fajardo, Puerto Rico. These regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: Comments must be received on or before November 1, 1999.

ADDRESSES: Comments may be mailed to Commander, U.S. Coast Guard Greater Antilles Section (aton), P.O. Box S–3666, San Juan, Puerto Rico 00902, or may be delivered to the Aids to Navigation Office at the Coast Guard Base in Old San Juan between 7:30 a.m. and 3:30 p.m. Monday through Friday, except federal holidays. The telephone number is (787) 729–5381.

FOR FURTHER INFORMATION CONTACT: Mr. John Reyes at (787) 729–5381.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD07–99–057) and the specific section of this proposal to which each comment applies, and give a reason for each comment.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in the view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentations will aid this rulemaking, it will hold a public hearing at the time and place announced by a notice in the **Federal Register.**

Background and Purpose

These proposed regulations would create a regulated area offshore Fajardo, that would prohibit entry to non-participating vessels during the race. The participating race boats will be competing at high speeds with numerous spectator craft in the area, thus creating an extra or unusual hazard on the navigable waterways. These regulations are required to provide for the safety of life on navigable waters during the Puerto Rico International Cup, Fajardo, Puerto Rico.

Regulatory Evaluation

This proposed regulation is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(f) of that order. The Office of Management and Budget has excepted it from review under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The

Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation under paragraph 10e of the regulated policies and procedures of DOT is unnecessary. The regulated area encompasses Rada Fajardo, Puerto Rico, entry into which is only prohibited for 3½ hours on the day of the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C.601 et seq.) the Coast Guard must consider whether this proposed rulemaking will have a significant economic impact on a substantial number of small entities. Small entities include small business, not-for-profit organizations that are independently owned and operated and are not dominant under their fields, and governmental jusridictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities, as the regulations will only be in effect for approximately 3½ hours in a limited area off Fajardo.

If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposed rule consistent with Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1C, and has determined that this action is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 100 of Title 33, Code of Federal Regulations as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.49 CFR 1.46, and 33 CFR 100.35.

2. Add temporary § 100.35T–07–057 to read as follows:

§ 100.35T–07–057 Puerto Rico International Offshore Cup, Fajardo, Puerto Rico.

(a) *Regulated area:* A regulated area is established for the waters in Rada Fajardo, encompassing an area bounded by point 1 in position 18°21′12″N, 065° 36′51″W, thence to point 2 in position 18°19′48″N, 065°34′34″ W, thence to point 3 in position 18°19′50″ N, 065°34′26″ W, thence to point 4 in position 18°22′22″N, 065°35′19″W, thence to point 5 in position 18°23′08″N, 065°36′00″W, thence to point 6 in position 18°23′08″N, 065°36′09″W, thence to point 7 in position 18°22′40″N, 065°36′28″W, thence to point 8 in position 18°21′20″N, 065°36′55″W, thence return to point 1. All coordinates referenced use Datum: NAD 1983.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commanding Officer, Greater Antilles Section, San Juan, Puerto Rico.

(c) *Regulations:* Entry into the regulated area by other than event participants is prohibited, unless otherwise authorized by the Patrol Commander. Spectator craft are required to remain in a spectator area to be established by the event sponsor, the Puerto Rico Offshore Association.

(d) *Dates:* This section is effective at 12 p.m. and terminates at 3:30 p.m. AST on December 5, 1999.

Dated: August 11, 1999.

G.W. Sutton,

Captain, U.S. Coast Guard, Commander, Seventh Coast Guard District, Acting.

[FR Doc. 99–22655 Filed 8–30–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF DEFENSE

Corps of Engineers; Department of the Army

33 CFR Part 207

St. Marys Falls Canal and Locks, MI; Use, Administration and Navigation

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Corps of Engineers proposes to amend its regulations on procedures to navigate the St. Marys Falls Canal and Soo Locks at Sault St. Marie, Michigan to incorporate changes in navigation procedures published in Notice to Navigation Interests over the last three years. We propose to change the location where up bound vessels seeking passage through the Soo Locks request lock dispatch. We also propose to establish the minimum number of line handlers that vessels should have while locking through the Soo Locks, place a restriction on the use of bow/stern thrusters while transiting through the Soo Locks, add a procedure for vessels departing from the MacArthur and Poe Locks simultaneously or at approximately the same time, and add a tug assist procedure for self-powered vessels.

DATES: Written comments must be received by October 15, 1999.

ADDRESSES: Army Corps of Engineers, ATTN: CECW–OD, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000. Comments may also be faxed to (202) 761–1685 or e-mail to james.d.hilton@usace.army.mil.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Hilton, Dredging and Navigation Branch (CECW–OD) at (202) 761–8830 or Mr. Michael O'Bryan, Assistant Chief, Construction-Operations Division, Detroit District at (313) 226–6444.

SUPPLEMENTARY INFORMATION: Pursuant to its authority in section 4 of the Rivers and Harbors Act of August 18, 1894 (28 Stat. 362; 33 U.S.C. 1), the Corps is proposing to amend the regulations in 33 CFR part 207.440(c), (e), (f), (h), and (r). The regulation governing the operation of the St. Marys Falls Canal and locks, 33 CFR 207.440 was adopted on November 27, 1945 (10 F.R. 14451) and has been amended at various times.

Paragraph (c) is being amended to formally establish the call-in location and change in call sign currently being utilized by vessel owners. The current call-in location was published in the Notice to Navigation Interests on September 13, 1990. The call sign was changed due to the realignment of the Corps of Engineers Division Offices and was published in a Notice to Navigation Interests on November 25, 1997. Amending paragraph (c) responds to a request from users of the Soo Locks to further formalize the up bound call-in point by changing the regulation for operating the locks.

Paragraph (e) is being amended to establish a requirement for vessels passing through the locks to provide line handlers. Over the past decade, the number of line handlers provided by the Government has decreased. On April 19, 1996, the Corps Detroit District published a Notice to Navigation Interests indicating that the Government would no longer provide pier line handlers. This amendment adds a requirement that vessels provide line handlers for passage through the locks and delineates the number of line handlers required based on weather and vessel conditions.

Paragraph (f) is being amended to restrict the use of bow and stern thrusters while the vessel is in the locks. The purpose of this change is to reduce the negative effects caused by the currents and water movement created by use of thrusters that may damage the locks walls and gates. Restrictions on the use of bow/stern thrusters were first published in a Notice to Navigation Interests in 1978.

Paragraph (h) is being amended to establish a procedure for the order of departure for vessels attempting to leave the MacArthur and Poe Locks simultaneously. This procedure is a safety measure to prevent two vessels from being in the lock canals at the same time. The procedure was published in a Notice to Navigation Interests dated April 19, 1996.

Paragraph (r) is being amended to establish a tug-assist requirement for vessels without bow and stern thrusters and for other types of powered vessels that may have difficulty maneuvering in close quarters while navigating at low speed. High winds, changing currents and inclement weather may affect a vessel's ability to maneuver within close quarters while at low speeds. This procedure was published in a Notice to Navigation Interests dated March 18, 1997.

This proposed rule is not a major rule for the purposes of Executive Order 12866. As required by the Regulatory Flexibility Act, the Corps of Engineers certifies that this proposed rule will not have a significant impact on small business entities.

List of Subjects in 33 CFR Part 207

Navigation (water), Water transportation, Vessels.

For reasons set out in the preamble, Title 33, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 207—NAVIGATION REGULATIONS

1. The authority citation for part 207 continues to read as follows:

Authority: 28 Stat. 362 (33 U.S.C.-1).

2. Section 207.440 is amended by revising paragraphs (c), (e), (f), (h) and (r) to read as follows:

§ 207.440 St. Marys Falls Canal and Locks, Mich.; use, administration, and navigation.

* * * * *

(c) Upon approaching the canal, vessel masters shall request lock dispatch by radiotelephone to the Corps of Engineers Chief Lockmaster at St. Marys Falls Canal dispatch tower (Radio Call WUE–21). Every up bound vessel requiring lock transit shall request lock dispatch immediately before initiating the turn at Mission Point at the intersection of Course 1, Bayfield Channel, and Course 2, Little Rapids Cut. Every down bound vessel shall call when approximately one-half mile downstream from Big Point.

* * * * *

(e)(1) *Manning requirements.* On all vessels of 400 gross tons or over navigating the canal under their own power, the following ship's officers shall be on duty: In the pilot house, on the bridge, or in the immediate vicinity thereof, the master, one mate, and one wheelsman; in the engine room, the chief engineer, one assistant engineer, and one oiler or other member of the crew familiar with the operation of the engine. During transit of the locks, all vessels of 400 gross tons or over equipped with power operated mooring deck winches shall have, in addition to the winch operators, mates or signalman at the forward and after ends of the vessel to direct operations from points providing maximum vision of both the winch operators and canal linesmen.

(2) *Linehandlers.*—(i) *Cargo vessels equipped with bow thrusters and friction winches.* Two line handlers from the vessel are required on the piers under normal weather conditions. Lockmasters can ask for three persons under severe weather conditions. If a vessel is experiencing mechanical problems or in extreme severe weather situations, the lockmaster may require four vessel-supplied line handlers on the pier.

(ii) *Vessels with non-friction winches or lack of both bow and stern thrusters.* Four vessel-supplied line handlers are required on the pier at all times.

(f) *Vessel restrictions.* (1) *Speed limits.* Within the limits of the canal, vessels approaching the locks shall not navigate at a speed greater than 2½ miles per hour, and vessels leaving the locks shall not navigate at a speed greater than 6 miles per hour. Tugs assisting vessels in passing through the locks may be authorized by the District Engineer or his authorized agents to navigate at a higher speed when considered necessary to expedite canal operations.

(2) *Use of bow/stern thrusters.* Bow and/or stern thruster use shall be kept to a minimum while transiting the Soo Locks. Thrusters shall not be used while the thrusters are opposite lock gates. They may be used sparingly for short durations within the lock to maintain the ship position near the mooring wall or in an emergency. Thrusters shall be at zero thrust during the period the ship is stopped and moored to the wall with all lines out, and during raising and lowering of pool levels within the chamber.

* * * * *

(h) *Vessel lockage order.* (1) *Arrival.* All registered vessels will be passed through the locks in the order of their arrival at the dispatch point unless otherwise directed by the District Engineer or his authorized agents. When a vessel that has stopped on its own business is ready to proceed, it is not entitled to precedence over other vessels already dispatched.

(2) *Departure.* The following order of departure procedure will apply to vessels leaving the MacArthur Lock and Poe Lock simultaneously or at approximately the same time:

(i) The first vessel to leave will be the vessel in the lock which is ready for vessel release first. The vessel in the other lock will be restrained by the gates remaining closed and the wire rope fender remaining in the down position.

(A) On down bound passages, the vessel retained shall not leave the lock until such time as the bow of the vessel leaving first reaches the end of the East Center pier.

(B) On up bound passages, the vessel retained shall not leave the lock until such time as the bow of the vessel leaving first reaches the railroad bridge.

(ii) When a 1,000 foot vessel is ready to depart the Poe Lock and a vessel has left the MacArthur Lock already, the 1,000 foot vessel may start to leave once the bow of the other vessel reaches the end of the respective nose pier.

(A) Vessels will remain in radio contact with each other and with the Chief Lockmaster at all times until clear of the lock area.

(B) The need for a deviation from the procedures set forth in

§§ 207.440(h)(2)(i)(A) and (B) and 207.440(h)(2)(i) will be determined on a case by case basis by the Chief Lockmaster.

* * * * *

(r) *Tug assist procedure.* (1) *Self-powered vessels.* Mariners are advised that oftentimes adverse local weather conditions, i.e., high winds, current conditions and/or inclement weather, exists as vessels approach, enter and/or depart the Soo Locks. These conditions combined with close quarters slow speed maneuvering, particularly with large vessels not equipped with bow or stern thrusters, may cause control difficulties for certain classes of vessels. Therefore, any vessel requesting lockage which in the opinion of the Vessel Master in consultation with the Pilot on board, where applicable may experience severe control problems due to the above conditions, must request assistance by one or more tugs to ensure full control over the vessel at all times. Vessel Masters and Pilots must consult with the Lockmaster concerning local conditions well in advance of arrival at the lock to allow tug assistance to be arranged if necessary. These guidelines apply to all vessels.

(2) *Non self-powered vessels.* All barges or other vessels navigating within the canal and not operating under their own power, whether approaching or leaving the locks, are required to be assisted by one or more tugs of sufficient power to insure full control at all times.

* * * * *

Dated: August 26, 1999.

Eric R. Potts,

Colonel, U.S. Army, Executive Director of Civil Works.

[FR Doc. 99–22622 Filed 8–30–99; 8:45 am]

BILLING CODE 3710–GA–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 217–0170b; FRL–6423–2]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a revision to the California State Implementation Plan (SIP) which concerns the control of volatile organic compound (VOC) emissions from commercial and industrial adhesive applications.

The intended effect of this action is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by September 30, 1999.

ADDRESSES: Comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1199.

SUPPLEMENTARY INFORMATION: This document concerns South Coast Air Quality Management District Rule 1168, Adhesive Applications, submitted to EPA on September 29, 1998 by the California Air Resources Board. For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: August 6, 1999.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 99–22180 Filed 8–30–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 224–0166b; FRL–6425–6]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District, Ventura County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from pleasure craft coating operations.

The intended effect of this action is to regulate emissions of VOCs according to the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by September 30, 1999.

ADDRESSES: Comments should be addressed to Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812;

South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, CA 91765–4182; and,

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office, [AIR–4], Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1226.

SUPPLEMENTARY INFORMATION: This document concerns South Coast Air Quality Management District (SCAQMD) Rule 1106.1—Pleasure Craft Coating Operations and Ventura County Air Pollution Control District (VCAPCD) Rule 74.24.1—Pleasure Craft Coating and Commercial Boatyard Operations. The California Air Resources Board (CARB) submitted these rules to EPA on June 3, 1999 and February 16, 1999, respectively. For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: August 6, 1999.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 99–22184 Filed 8–30–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 60

[ND–001–0006b; FRL–6426–4]

Clean Air Act Approval and Promulgation of Air Quality Implementation Plan Revision for North Dakota; Revisions to the Air Pollution Control Rules; Delegation of Authority for New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the State Implementation Plan (SIP) submitted by the Governor of North Dakota with a letter dated September 28, 1998. The revisions affect air pollution control rules regarding general provisions, the State SO_2 ambient air quality standard, emissions of particulate matter and organic compounds, and permits to construct. EPA will handle separately the revisions to the Title V operating permit program, a direct delegation request for emission standards for hazardous air pollutants for source categories, and the State's plan for hospital, medical, and infectious waste incinerators.

Finally, EPA is providing notice that on May 7, 1999, North Dakota was delegated authority to implement and enforce the New Source Performance Standards (NSPS) in 40 CFR part 60, as of November 1, 1997 (excluding subpart Eb).

In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing on or before September 30, 1999.

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, suite 500, Denver, Colorado, 80202. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado, 80202. Copies of the State documents relevant to this action are available for public inspection at the North Dakota State Department of Health, Division of Environmental Engineering, 1200 Missouri Avenue, Bismarck, North Dakota 58506.

FOR FURTHER INFORMATION CONTACT: Amy Platt, EPA, Region VIII, (303) 312–6449.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final action of the same title which is located in the Rules and Regulations section of this **Federal Register**.

Authority: 42 U.S.C. 7401 et seq.

Dated: August 5, 1999.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 99–22178 Filed 8–30–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6429–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the PAB Oil and Chemical Services, Inc. superfund site from the National Priorities List and request for comments.

SUMMARY: The U.S. Environmental Protection Agency (EPA) Region II announces its intent to delete the PAB Oil and Chemical Services, Inc. Superfund Site (the "Site") from the National Priorities List (NPL) and requests public comment on this proposed action. All public comments regarding this proposed action which are submitted within 30 days of the date of this notice, to the address indicated below, will be considered by EPA. The NPL, promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, 42 U.S.C. 9605, is codified at appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). The EPA in consultation with the State of Louisiana, through the Louisiana Department of Environmental Quality (LDEQ), has determined that no further response is appropriate, and that, consequently, the Site should be deleted from the NPL.

DATES: Comments should be submitted regarding its proposal to delete this Site from the NPL on or before September 30, 1999.

ADDRESSES: Comments may be mailed to: Ms. Janetta Coats, Community Involvement Coordinator (6SF–PO), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–7308.

Information Repositories

Comprehensive information on the Site has been compiled in a public deletion docket which may be reviewed and copied during normal business hours at the following PAB Oil and

Chemical Services, Inc., Superfund Site information repositories:

U.S. EPA Region 6 Library (12th Floor), 1445 Ross Avenue, Dallas, Texas 75202–2733, 1–800–533–3508; and

Vermilion Parish Public Library, 200 N. Magdalen Square, Abbeville, Louisiana 70511, (318) 893–2674.

FOR FURTHER INFORMATION CONTACT: Ms. Caroline A. Ziegler, Remedial Project Manager (6SF–LP), U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–2178.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

Appendices

A. Site Map
B. Deletion Docket Information

I. Introduction

This is the Region 6 Notice of Intent to Delete (NOID) the Site from the NPL. The NPL is the list, compiled by EPA pursuant to CERCLA section 105, of uncontrolled hazardous substance releases in the United States that are priorities for long-term remedial evaluation and response. As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for remedial actions in the unlikely event that conditions at the site warrant such action.

The EPA will consider comments concerning this NOID which are submitted within thirty days of the date of this NOID. The EPA has also published a notice of the availability of this NOID in a major local newspaper of general circulation at or near the Site.

Section II of this NOID explains the NCP criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the PAB Oil and Chemical Services, Inc., Superfund Site and explains that the Site meets the NCP deletion criteria.

II. NPL Deletion Criteria

The NCP, at 40 CFR 300.425(e), provides that releases may be deleted from the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the State, whether any of the following criteria have been met:

i. Responsible parties or other persons have implemented all appropriate response actions required;

ii. All appropriate Fund-financed [1] response under CERCLA has been implemented, and no further action by responsible parties is appropriate; or

iii. The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

If, at the site of a release, EPA selects a remedial action that results in any hazardous substances, pollutants, or contaminants remaining at the site, CERCLA subsection 121(c), 42 U.S.C. 121(c), requires that EPA review such remedial action no less often than each five years to assure that human health and the environment are being protected by the remedial action. Since hazardous substances will remain at the Site,[2] EPA shall conduct such reviews. If new information becomes available which indicates a need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without application of the Hazard Ranking System.[3]

III. Deletion Procedures

The EPA followed these procedures regarding the proposed deletion:

(1) EPA Region 6 made a determination that no further response action is appropriate and that the Site may be deleted from the NPL;

(2) EPA has consulted with LDEQ, and by letter dated July 14, 1999, LDEQ concurred in EPA's deletion decision;

(3) EPA has published, in a major local newspaper of general circulation at or near the Site, a notice of availability of the NOID, which includes an announcement of a 30-day public comment period regarding the NOID, and EPA distributed the NOID to appropriate State, local and Federal officials, and to other interested parties; and,

(4) EPA placed copies of information supporting the proposed deletion (i.e., the public deletion docket) in the Site information repositories (the locations of these repositories are identified above).

Deletion of a site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist EPA management. As mentioned in Section II of this Notice, 40 CFR 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility of the site for future response actions.

The EPA Region 6 will accept and evaluate public comments on this NOID before making a final decision to delete. If necessary, EPA will prepare a Responsiveness Summary to address any significant public comments received.

Deletion of the Site from the NPL will occur when the EPA Regional Administrator places a final notice in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the NOID. Public notices and copies of the Responsiveness Summary will be made available to local residents upon request to the EPA Remedial Project Manager, Caroline Ziegler, at the address listed above. These will also be placed in both repository locations listed above, where they can be obtained by request.

IV. Basis for Intended Site Deletion

The following information provides the EPA's rationale for the proposal to delete the Site from the NPL.

A. Site Location

The Site is located approximately three miles north of Abbeville, Louisiana, adjacent to U.S. Route 167, in Vermilion Parish. The site encompasses approximately 16.7 acres of land located in a generally rural area. Adjacent properties are used primarily for livestock grazing and crops. Residential properties are situated sparsely along U.S. Route 167 west of the site and Parish Road.

The majority of the Site had consisted of disposal pits/ponds and related berms or levees. The pits contained solid and/or liquid wastes that had the potential to migrate into the surrounding environment. The pits extended to within less than ten feet of a ground water-bearing zone in the area, the Upper Chicot Aquifer. Hazardous substances present in the pits, could have migrated into the Upper Chicot Aquifer. There are more than fifty-five residential wells within ½ mile of the Site used for drinking water and agricultural purposes.

B. Site History

The Site was used for the disposal of oil and gas exploration and production wastes including drilling muds, drilling fluids and produced waters between 1979 and 1983. The Site consisted of three impoundments or pits that were used to receive the drilling wastes: Northwest, Northeast and South pits. The pits are believed to have been operated in series—where the solids would settle out, oil would be skimmed off and the remaining water flowed to the next pit through connecting piping. The series began in the Northwest pit and ended in the South pit. The Site also contained one other impounded area called the Saltwater Pond. This area was used to receive produced water (i.e., production waters generated from oil field activites) and the residual water from the South pit during the years of operation.

In June, 1980, a citizen's complaint of discharge from the site to an off-site drainage ditch led to site identification by EPA. As a result, site inspections were conducted by EPA, the Louisiana Department of Natural Resources (LDNR) and the Louisiana Department of Environmental Quality (LDEQ), including initial preliminary assessments, sampling inspections and expanded site inspections during the time period between 1980 and August 1987. Significant inorganic contamination was found at the Site. The main contaminants included arsenic, barium, cadmium, chromium, copper, lead, mercury, zinc, benzene, xylene, naphthalene, 2-methylnaphthalene, fluorene, phenanthrene, and pyrene. Based in part on the findings from these investigations, the site was proposed to the Superfund National Priorities List (NPL) in June, 1988. The Site was finalized on the NPL in March, 1989, 54 FR 13296, as set forth at 40 CFR part 300, appendix B.

An emergency removal action was conducted by the Potentially Responsible Party (PRP) group in accordance with an Administrative Order on Consent (AOC), effective date October 8, 1991. Four tanks were present on site and were the target of the removal action. Three of the four tanks were located in a bermed area near the Northwest pit and the fourth tank was located at the northwest corner of the Saltwater Pond. Two of the larger tanks in the bermed area contained only minor amounts of material, but the third tank contained an estimated 10,500 gallons of an oil and waste mixture. The "oil" phase of this waste mixture had a measured flash point of 90 °F. Materials with flash points below 140 °F are potential fire or explosion threats. In the event of tank collapse, fumes from a fire or explosion could drift off-site. There are residences nearby and a highway borders the Site. In addition, the tank contents could flow through breaks in the dikes into the saltwater pond and via surface drainage into the nearby irrigation canals, resulting in the potential for direct human contact. The fourth tank had a capacity of about 250 gallons and reportedly contained about 85 gallons of sludge/oil mixture and a thin layer of oil on top. Analysis of the contents of this fourth tank indicated the presence of the following parameters: chromium, lead, benzene, xylene, naphthalene and toluene. All of these substances are listed in 40 CFR Table 302.4 as hazardous substances. It was deemed necessary to perform the removal action due to the potential for release of these hazardous substances to the environment. The removal action was deemed complete by EPA in February 1992.

Remedial Investigation (RI) field activities for the Site were conducted from January, 1991 through October, 1991 and the final report was issued in February, 1993. In association with the RI activities, a baseline risk assessment was prepared to evaluate the potential adverse health effects resulting from human exposure to hazardous substances found to be present at the site. In addition, an environmental baseline risk assessment was conducted to evaluate risks to environmental species.

The main site features or potential contaminant source areas that were identified and investigated as part of the RI field activities include three open waste impoundments or pits and their associated berms, another impounded area referred to as the Saltwater Pond, four aboveground storage tanks and their associated underlying soils, site drainage/runoff areas, an adjacent abandoned canal which borders the eastern edge of the site and other areas of suspected waste dumping. Additionally, on-site and off-site subsurface geologic and hydrogeologic conditions and contaminant impacts to groundwater were investigated through drilling of soil borings and the installation of groundwater monitoring wells. The result of the investigation indicated that the principal concerns were from contaminated sludges, soil and sediments, surface water, and to a lesser extent, ground water.

The EPA issued a Record of Decision (ROD) [4] on September 22, 1993. The selected remedy called for removal and on-site treatment of surface water; excavation and biological treatment of organic sludge, soil and sediment; solidification/stabilization of biologically treated residuals to address inorganic contamination and any remaining organic contaminants; final disposal of treated residuals in an on-site disposal unit; long-term ground water monitoring and long-term site operation and maintenance. The estimated cost of the cleanup was $13 million including annual operation and maintenance costs.

The biological treatment portion of the originally prescribed remedy was to treat all carcinogenic polycyclic aromatic hydrocarbons (cPAHs) in soils and sludges to below the established Remedial Action Objective (RAO) of 3 ppm. During pre-design investigation activities, new EPA-approved laboratory procedures for cPAHs which were not previously available during Remedial Investigation and Feasibility Study (RI/FS) activities were used to test the soils and sludges. The analytical data from this testing, which took place in 1993 and 1995, showed that all cPAHs in the site soils and sludges were below the RAO of 3 ppm. Biological treatment, therefore, was deemed unnecessary as part of the remedial action. All aspects of the remedy remained the same, with the exception of biological treatment, resulting in a cost savings of approximately $4 million dollars. This change to the remedy was made and documented in the Explanation of Significant Differences (ESD) signed by EPA on March 12, 1997.

On September 27, 1994, EPA issued a Unilateral Administrative Order (UAO) for Remedial Design and Remedial Action. It also included the performance of operation and maintenance subsequent to completion of implementation of the remedy. Under the terms of the UAO, the PRP group, known as PAB Site Remediation Group, L.L.C. (PAB Group) conducted the remedial action with EPA oversight. The remedial action began in June, 1997 with the site mobilization and ended in June, 1998 with the completion of capping, grading and revegetation.

Dewatering and backfilling of the Saltwater Pond began soon after site mobilization. Approximately six million gallons of water were removed from this large pond; all of the water was treated in an electro-precipitation unit and tested for the discharge standards prior to being discharged into a drainage ditch which leads to the drainage system along Highway 167.

The pond bottom sediment was sampled and tested for both total arsenic and barium, as well as for PAHs. Some of the samples exceeded the RAOs of 5,400 ppm for barium and 10 ppm for arsenic. Therefore, the top six inches of

[1] The "Fund" referred to here is the Hazardous Substance Superfund established by section 9507 of the Internal Revenue Code of 1986.

[2] Hazardous substances remain on the Site under a multi-layer soil cap which covers approximately seven acres of the Site. EPA considers the cap to be protective; nonetheless, since hazardous substances will remain on the Site, EPA must conduct the CERCLA-required five-year reviews.

[3] The Hazardous Ranking System is the method used by EPA to evaluate the relative potential of hazardous substance releases to cause health or safety problems, or ecological or environmental damage.

[4] EPA's Record of Decision documents the selection of the remedial alternative which will be used to cleanup the site in question.

the entire saltwater pond bottom was removed, and this material was incorporated into the soils/sludges that were being treated by solidification/stabilization in the pit area. Approximately 7,000 cubic yards of this material were treated. The entire area was then brought up to grade with clean backfill and revegetated with grass seed.

The major component of the remedial program was to stabilize/solidify the sludge pit material. The contaminated soils and sludges were combined with reagent materials including cement, ferrous sulfate, and organophyllic clay in order to achieve the main performance standards which included an unconfined compressive strength exceeding 50 psi and Toxicity Characteristic Leaching Procedure (TCLP) values for arsenic and barium of less than 0.05 ppm and 2.0 ppm, respectively. Once the treated material was tested and found to meet these standards, it was placed back into the pit area for final disposal, after verification sampling of the pit bottoms was conducted and found to be free of contamination. A total of approximately 25,000 cubic yards of material was treated in this manner. Once the pits were filled up with treated material, all of the pits were brought up to grade and the low permeability cap was installed according to the approved grading specifications. A topsoil layer was then applied, and the area was revegetated with grass seed.

The cleanup levels and all cleanup actions and other measures identified in the ROD were met by the successful implementation of the remedial action. The constructed remedies are operational and performing according to engineering specifications. The EPA and the LDEQ have determined that the remedy, which includes long-term groundwater monitoring as well as an inspection and maintenance program for the Site, is performing as designed, and is operational and functional. No additional treatment or other measures to restore ground-or surface-water quality have been identified as being required.

C. Characterization of Risk

Continued monitoring of groundwater demonstrates that no significant risk to public health or the environment is posed by the hazardous materials remaining at the Site. Based on the successful remedial actions addressing the hazardous materials onsite, the monitoring results of operation and maintenance (O & M) activities to date, and the public health consultation by the Agency for Toxic Substances and Disease Registry (ATSDR), EPA verifies the implemented Site remedy is protective of human health and the environment.

D. Community Involvement

As required in CERCLA section 113(k)(2)(B)(i–v) and 117, public participation activities for this site were met by holding open houses and public meetings and by mailing fact sheets. The EPA conducted numerous open houses and informal meetings prior to remedy selection. Community interest in the site has been relatively low. At the November 8, 1997 community open house, EPA reported on the progress of the remedial action underway at that time. The majority of the people attending were pleased with the site status. There were no complaints or opposition.

Documents in the deletion docket on which EPA relied for recommendation of the Site deletion from the NPL have been made available to the public in the two information repositories, the location of which is identified above.

E. Proposed Action

In consultation with the LDEQ, EPA has concluded that responsible parties have implemented all appropriate response actions required at the Site (neither the CERCLA-required five-year reviews, nor operation and maintenance of the constructed remedy is considered further response action for these purposes), that all appropriate Fund-financed response actions under CERCLA have been implemented, and that no further response action by responsible parties is appropriate.

Moreover, EPA, in consultation with LDEQ, has determined that Site investigations show that the Site now poses no significant threat to public health or the environment. Consequently, EPA proposes to delete the Site from the NPL.

Dated: August 16, 1999.

Jerry Clifford,

Deputy Regional Administrator, Region 6.

BILLING CODE 6560–50–P

APPENDIX A

PAB OIL AND CHEMICAL SERVICES, INC. SITE MAP

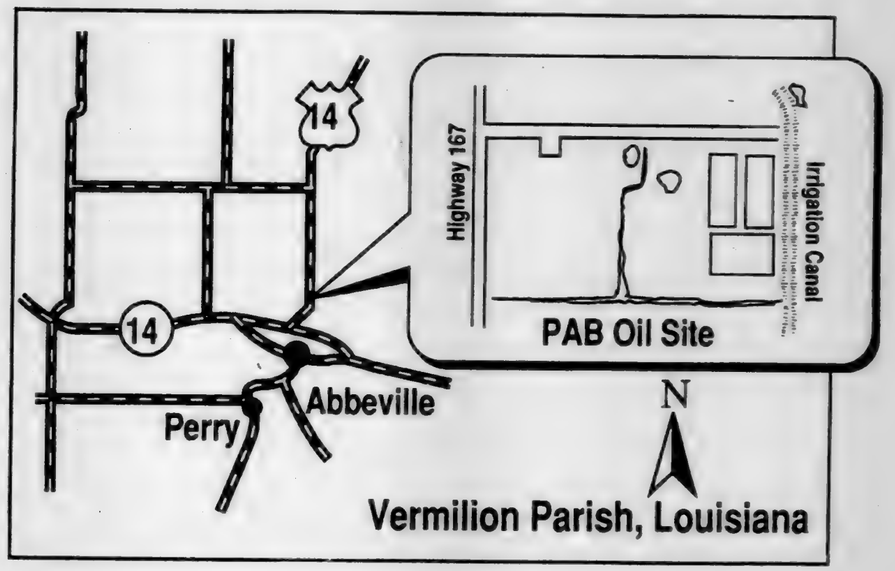

APPENDIX B

PAB OIL AND CHEMICAL SERVICES, INC. DELETION DOCKET INDEX

Prepared for

United States Environmental Protection Agency

Region 6

Deletion Docket
for

PAB Oil and Chemical Service, Inc. Superfund Site
EPA ID No. LAD980749139

ESS VI
Work Assignment No. ESS8033

Caroline A. Ziegler
Remedial Project Manager
U.S. EPA Region 6

Prepared by

TechLaw, Incorporated
750 N. St. Paul Street, Suite 600
Dallas, Texas 75201

August 10, 1999

INTRODUCTION

The public is provided herewith copies of information supporting the proposed deletion of part of the PAB Oil and Chemical Service, Inc. Superfund site (the "Site") from the National Priorities List (NPL). This information is referred to herein as the deletion docket.

Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. Section 9605, requires the U.S. Environmental Protection Agency (EPA) to maintain the NPL. The NPL is the list of priority releases of hazardous substances, pollutants, or contaminants for long-term remedial evaluation and response under CERCLA.

The EPA may delete all or part of a site from the NPL if it determines that no further response is appropriate at the site, or at the portion of the site in question. For further information regarding deletion, see the EPA guidance document entitled, "Close Out Procedures for National Priorities List Sites" (August 1996) produced by EPA's Office of Solid Waste and Emergency Response, and see also 60 Fed. Reg. 55466 (November 1, 1995).

To ensure public involvement during the proposal to delete all or part of the site of a release from the NPL, EPA must place copies of information supporting the proposed deletion in an information repository at or near the site so that the public may inspect and copy the information. Accordingly, EPA has made the attached deletion docket, along with the attached index to the deletion docket, available at the following repositories:

Vermilion Parish Library
200 North Street
Abbeville, Louisiana 70510
(318) 893-2674

Louisiana Department of Environmental Quality-Inactive and Abandoned Sites Division
7290 Bluebonnet Road, 4th Floor
Baton Rouge, Louisiana 70809
(225) 765-0487

The public may also review the deletion docket at EPA Region 6 offices in Dallas, Texas by contacting the Remedial Project Manager (RPM), Ms. Caroline A. Ziegler at:

U.S. EPA Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733
(214) 665-2178

The deletion docket for the site is available for inspection and copying at the above locations during normal business hours. The deletion docket is treated as a non-circulating reference document. Any document in the deletion docket may be photocopied according to procedures listed in the repository or at EPA Region 6 offices. EPA guidance documents relied upon by EPA in making this deletion decision, including those guidance documents referenced in this introduction or in any other deletion docket documents, are incorporated by reference as a part of the deletion docket, but may not be physically included among the documents placed at the repositories. Such guidance documents will be sent to the repositories upon request to the Remedial Project Manager (RPM) at the address given above, or furnished directly to the requestor.

EPA will respond to each significant comment and any significant new data submitted during the comment period, and EPA will include its response document in the final deletion package. EPA will place the final deletion package in the local information repositories once the notice of final deletion has been placed in the Federal Register. If you have any questions, call the RPM at the telephone number given above.

The deletion docket index helps readers locate and retrieve documents in the docket. The index includes the following information for each document:

- **Page No.** - The sequential numbers stamped on each page of the deletion docket. The six digit numbers are located in the upper right corner of each page.
- **Document Date** - The date the document was published and/or released. "01/01/3333" means no date recorded.
- **Number of Pages** - Total number of printed pages in the document, including attachments.
- **Author** - Name, title and affiliation of author.
- **Recipient** - Name, title and affiliation of recipient
- **Document Type** - General identification, e.g., Correspondence, report/study, etc.
- **Document Title** - Descriptive title or synopsis.

ADMINISTRATIVE RECORD INDEX

FINAL 8/10/1999

DELETION DOCKET

Site Name: LAD980749139 - PAB OIL & CHEMICAL SERVICES, INC.
SSID: 06D5 - PAB OIL & CHEMICAL SERVICES, INC.
Oper Unit: N/A

Bates: 000001
Date: 01/01/3333
Pages: 1
Title PAB OIL AND CHEMICAL SERVICE, INC SUPERFUND SITE DELETION FROM THE NATIONAL PRIORITIES LIST (ENCLOSURE NOT INCLUDED WITH LETTER)
Doc Type: CORRESPONDENCE

Author(s):
Name: KNUDSON, P.E., MYRON O
Organization: U.S. EPA
JobTitle: DIRECTOR
Department(s)
REGION 6
SUPERFUND DIVISION

Recipient(s):
Name: GIVENS, DALE
Organization: LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY (LDEQ)
JobTitle: SECRETARY
Location(s)
BATON ROUGE, LOUISIANA

Bates: From: 000002 To: 000103
Date: 08/01/1995
Pages: 102
Title CLOSE OUT PROCEDURES FOR NATIONAL PRIORITIES LIST SITES
Doc Type: REPORT

Author(s):
Name: N/A,
Organization: U.S. EPA
JobTitle: N/A
Department(s)
HEADQUARTERS
OFFICE OF EMERGENCY AND REMEDIAL RESPONSE
Location(s)
WASHINGTON D.C.

Recipient(s):
Name: UNSPECIFIED,
Organization: N/A
JobTitle: N/A

ADMINISTRATIVE RECORD INDEX

FINAL 8/10/1999

DELETION DOCKET

Site Name: LAD980749139 - PAB OIL & CHEMICAL SERVICES, INC.
SSID: 06D5 - PAB OIL & CHEMICAL SERVICES, INC.
Oper Unit: N/A

Bates: From: 000104 To: 000249
Date: 08/27/1998
Pages: 146
Title REMEDIAL ACTION REPORT
Doc Type: REPORT/STUDY
Author(s):
Name: N/A,
Organization: TRC ENVIRONMENTAL SOLUTIONS, INC.
JobTitle: N/A
Location(s)
IRVINE, CALIFORNIA
Recipient(s):
Name: N/A,
Organization: PAB SITE REMEDIATION GROUP, LLC.
JobTitle: N/A
Location(s)
ABBEVILLE, LOUISIANA

Bates: 000250
Date: 08/28/1998
Pages: 1
Title PAB OIL AND CHEMICAL SERVICES, INC SUPERFUND SITE (LAD980749139) - ACCEPTANCE OF THE REMEDIAL ACTION REPORT
Doc Type: CORRESPONDENCE
Author(s):
Name: ZIEGLER, CAROLINE
Organization: U.S. EPA
JobTitle: REMEDIAL PROJECT MANAGER
Department(s)
LOUISIANA SECTION
REGION 6
Recipient(s):
Name: EDLUND, CARL E
Organization: U.S. EPA
JobTitle: CHIEF
Department(s)
LOUISIANA/NEW MEXICO BRANCH
Location(s)
FILE

ADMINISTRATIVE RECORD INDEX

FINAL 8/10/1999

DELETION DOCKET

Site Name: LAD980749139 - PAB OIL & CHEMICAL SERVICES, INC.
SSID: 06D5 - PAB OIL & CHEMICAL SERVICES, INC.
Oper Unit: N/A

Bates: From: 000251 To: 000262
Date: 08/28/1998
Pages: 12
Title FINAL CLOSE OUT REPORT
PAB OIL AND CHEMICAL SERVICES, INC SUPERFUND SITE
ABBEVILLE, LOUISIANA
Doc Type: REPORT/STUDY
Author(s):
Name: COOKE, GREGG A
Organization: U.S. EPA
JobTitle: REGIONAL ADMINISTRATOR
Department(s)
REGION 6
Recipient(s):
Name: UNSPECIFIED,
Organization: N/A
JobTitle: N/A

Bates: From: 000263 To: 000305
Date: 10/06/1998
Pages: 43
Title FINAL OPERATIONS AND MAINTENANCE PLAN (COVER LETTER INCLUDED)
Doc Type: CORRESPONDENCE
Doc Type: REPORT/STUDY
Author(s):
Name: N/A,
Organization: TRC ENVIRONMENTAL SOLUTIONS, INC.
JobTitle: N/A
Location(s)
IRVINE, CALIFORNIA
Recipient(s):
Name: N/A,
Organization: PAB SITE REMEDIATION GROUP, LLC.
JobTitle: N/A
Location(s)
ABBEVILLE, LOUISIANA

ADMINISTRATIVE RECORD INDEX

FINAL 8/10/1999

DELETION DOCKET

Site Name: LAD980749139 - PAB OIL & CHEMICAL SERVICES, INC.
SSID: 06D5 - PAB OIL & CHEMICAL SERVICES, INC.
Oper Unit: N/A

Bates: From: 000306 To: 000313
Date: 12/14/1998
Pages: 8
Title FOURTH QUARTER 1998 INSPECTION REPORT OPERATIONS AND MAINTENANCE ACTIVITIES FOR PAB OIL AND CHEMICAL SERVICES, INC SITE LOCATED AT ABBEVILLE, LOUISIANA
Doc Type: REPORT/STUDY
Author(s):
Name: WEBSTER, IAN A
Organization: PROJECT NAVIGATOR, LTD
JobTitle: PAB GROUP PROJECT COORDINATOR
Recipient(s):
Name: ZIEGLER, CAROLINE
Organization: U.S. EPA
JobTitle: REMEDIAL PROJECT MANAGER
Department(s)
REGION 6

Bates: 000314
Date: 07/14/1999
Pages: 1
Title THE LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY IS CONCURRING WITH EPA'S DECISION TO DELETE THE SITE FROM THE NATIONAL PRIORITIES LIST
Doc Type: CORRESPONDENCE
Author(s):
Name: GIVENS, DALE
Organization: LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
JobTitle: SECRETARY
Recipient(s):
Name: KNUDSON, P.E., MYRON O
Organization: U.S. EPA
JobTitle: DIRECTOR
Department(s)
REGION 6
SUPERFUND DIVISION

ADMINISTRATIVE RECORD INDEX

FINAL 8/10/1999

DELETION DOCKET

Site Name: LAD980749139 - PAB OIL & CHEMICAL SERVICES, INC.
SSID: 06D5 - PAB OIL & CHEMICAL SERVICES, INC.
Oper Unit: N/A

Bates: From: 000315 To: 000322
Date: 08/10/1999
Pages: 8
Title DELETION DOCKET INDEX FOR PAB OIL AND CHEMICAL SERVICES, INC
Doc Type: INDEX
Author(s):
Name: N/A,
Organization: TECHLAW INCORPORATED
JobTitle: N/A
Recipient(s):
Name: ZIEGLER, CAROLINE
Organization: U.S. EPA
JobTitle: REMEDIAL PROJECT MANAGER
Department(s)
REGION 6

[FR Doc. 99–22318 Filed 8–30–99; 8:45 am]
BILLING CODE 6560–50–C

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6430–8]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete Joseph Forest Products site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA), Region 10, announces its intent to delete the Joseph Forest Products (JFP) Site in Wallowa County, Oregon from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Oregon Department of Environmental Quality (ODEQ) have determined that the Site poses no significant threat to public health or the environment and, therefore, further remedial measures pursuant to CERCLA are not appropriate.

DATES: Comments concerning this Site may be submitted on or before September 30, 1999.

ADDRESSES: Comments may be mailed to Chip Humphrey, Environmental Protection Agency, 811 SW Sixth Avenue, Portland, Oregon 97204.

Comprehensive information on this Site is available through the Region 10 public docket which is available for viewing at the JFP Site information repositories at the following locations:

Wallowa County Planning Department, County Courthouse, Enterprise, Oregon 97828; or

United States Environmental Protection Agency, Region 10 Office of Environmental Cleanup—Records Center, Attn: Bob Phillips, 1200 Sixth Avenue, Mail Stop ECL–110, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Chip Humphrey, U.S. EPA Region 10, 811 SW Sixth Avenue, Portland, Oregon 97204, (503) 326–2678.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis of Intended Site Deletion

I. Introduction

The Environmental Protection Agency (EPA), Region 10 announces its intent to delete the Joseph Forest Products Site ("Site"), located on Russell Lane approximately ¾ mile northwest of the City of Joseph in Wallowa County, Oregon, from the National Priorities List (NPL), appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, and requests comments to this deletion. EPA identifies sites on the NPL that appear to present a significant risk to human health or the environment. As described in § 300.425(e)(3) of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such actions.

EPA will accept comments on the plan to delete this Site for thirty days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the JFP Site and explains how the Site meets deletion criteria.

II. NPL Deletion Criteria

Section 300.425 (e) of the NCP provides that "releases" (sites) may be deleted from, or recategorized on, the NPL where no further response is appropriate. In making a determination to delete a site from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria have been met:

(i) Responsible parties or other parties have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants or contaminants remain at the site *above* levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. The first five-year review of the Site was completed in September 1998 in accordance with section 121 (c) of SARA. EPA concluded that the Joseph Forest Products Site remains protective of the human health and the environment. If, however, new information becomes available that indicates a need for further action, EPA may require remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazard Ranking System.

III. Deletion Procedures

The following procedures were used for the intended deletion of this Site: (1) EPA Region 10 issued a final close out report documenting the achievement of cleanup goals; (2) the Oregon Department of Environmental Quality (ODEQ) concurred with the proposed deletion decision; (3) a notice has been published in the local newspaper and has been distributed to appropriate federal, state, and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete; and (4) all relevant documents have been made available for public review in the local Site information repository.

Deletion of the Site from the NPL does not itself, create, alter or revoke any individual rights or obligations. The NPL is designed primarily for information purposes to assist EPA management. As mentioned in section II of this document, 40 CFR 300.425(e)(3) states that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

EPA's Regional Office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision. The Agency will prepare a Responsiveness Summary if any significant public comments are received.

A deletion occurs when the Regional Administrator places a final notice in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by EPA's Regional Office in Seattle, Washington.

IV. Basis for Intended Site Deletion

The following Site summary provides the Agency's rationale for the intention to delete this Site from the NPL.

A. Site Background

The Joseph Forest Products (JFP) Superfund Site is located on Russell Lane about ¾ mile northwest of the City of Joseph, in Wallowa County, Oregon. The Site is approximately 18 acres and encompasses an inactive wood-treating facility located at the site of a former lumber mill. The property is bounded by Russell Lane to the north, and is bordered by property owned by the Clifford C. Hinkley Estate on the east, Sequoia Forest Products to the south, and by the Joseph Airport to the west.

The Site is located within the City of Enterprise Watershed Protection Area. Two developed springs, located approximately 4,000 feet north of the JFP Site, supply municipal water to the City of Enterprise (population 2,121). The Wallowa River flows within 400 feet of the Site at its closest point on the eastern side.

B. History

The Joseph Forest Products Site was a former wood treatment facility which operated at this location from 1974 to 1985, using a vacuum-pressure (retort) treatment process. JFP used a water-based chromated copper arsenate preservative. Process wastes, including wood chips, sludge and other materials remaining in the retort, were periodically removed and placed in a cement pit adjacent to the east side of the treatment building.

The treatment building and surrounding buildings were destroyed by a fire in 1974. An estimated 200 gallons of concentrated treatment paste and approximately 3,000 gallons of treatment solution in the storage tank were lost. It is assumed that the material was washed onto nearby soil during fire fighting operations. JFP did not resume treatment operations until late 1977.

The Oregon DEQ issued JFP a Notice of Violation for unauthorized disposal and storage of hazardous waste in 1985. JFP responded by removing empty containers and arranging for disposal of chemical wastes from the Site. The company filed for bankruptcy and ceased operations in 1985. By late 1985, it had become apparent that JFP's insolvency would prevent any further corrective actions on the part of JFP.

An EPA site inspection was conducted from September 1985 through April 1986. Field activities during the SI included installation of monitoring wells and collection of samples of soil, surface water, and groundwater. Water level measurements from groundwater monitoring wells installed at the Site indicated a moderate gradient toward to the northeast in the shallow surficial aquifer. The principal contamination of concern identified in the SI was elevated levels of metals, primarily arsenic, chromium, and copper, in soils at the Site. In addition, the SI results indicated detectable levels of total metals in some groundwater and surface water samples. As a result of the SI and the subsequent HRS score, the JFP Site was nominated to the NPL.

The Joseph Forest Products Site was placed on the National Priorities List (NPL) in 1989. ICF Technology, an EPA contractor, was issued a work assignment by EPA to conduct a remedial investigation/feasibility study (RI/FS) of the Site in January 1990. The RI field investigation located and characterized highly contaminated soils in the treatment building and drip pad areas of the Site. The following summarizes the range (low-high) of soil contaminant concentrations (mg/kg) for the contaminants of concern from the first phase of the RI:

PHASE 1 RI SOIL CONTAMINANT CONCENTRATIONS

Area	Arsenic	Chromium	Copper
Treatment Building	641–104,000	412–46,100	405–33,300
Drip Pad Area	26–23,200	33–16,200	68–18,700
Storage Areas	6–661	14–781	33–825

Based on the results of the first phase of RI activities, a removal action was carried out by the EPA Emergency Response Contractor in October and November 1991. EPA determined that the removal action was necessary because the highly contaminated soils posed a threat to groundwater. Approximately 1,068 tons of highly contaminated soils adjacent to the treatment building and drip pad were excavated and transported to the ESI hazardous waste disposal facility in Idaho for disposal. Security fencing was also installed around the treatment building to prevent access. During the excavation it was determined that the treatment building foundation and soil beneath the building were also contaminated, and that the contaminated material could not be removed without demolishing the treatment building.

ICF Technology, the EPA contractor, collected and analyzed post-removal data for soils in the drip pad area, and completed the characterization of contamination at the treatment building, the lumber storage areas, and lumber drying building. Although a significant reduction in the volume of highly contaminated soil in the treatment building/drip pad areas was achieved during the removal action in the fall of 1991, highly contaminated soil (similar to pre-removal maximum values) remained where the soil was not removed. The contractor also performed quarterly monitoring of the monitor wells, on-site spring, and City of Enterprise water supply springs. Groundwater monitoring was performed in October 1990; January, April, and September 1991; and April 1992. Results for the October 1990 sampling event showed that monitoring well MW2, which is located directly downstream and adjacent to the treatment building location, showed levels of arsenic (82 ug/l and 168 ug/l for the sample and the sample duplicate, respectively) above the Safe Drinking Water Act Maximum Contaminant Level (MCL). Three on-site monitoring wells also showed total chromium levels slightly above the MCL. Results for the other sampling events showed very low but detectable levels of metals (below the MCL) for all of the on-site and off-site monitoring wells. There has been no evidence of contamination of the City of Enterprise's water supply.

The risk assessment indicated a potential risk of exposure by ingestion of soil and groundwater under current and future use scenarios. The greatest potential risk at the Site was due to carcinogenic and noncarcinogenic effects from ingestion of contaminated soils. Arsenic was the contaminant posing the greatest health risk.

The RI/FS were completed in September 1992. EPA issued a Proposed Plan describing the preferred alternative for Site cleanup in August 1992.

EPA issued a ROD on September 30, 1992 which selected the following remedy:

- Excavation of contaminated surface and subsurface soil to specified cleanup levels, demolition of the treatment building, decontamination of the drip pad and treatment equipment, and off-site disposal of soils and debris.

• Excavation of abandoned Underground Storage Tanks (USTs), decontamination of the tanks if any residuals are present, and transport of the tanks off-site for disposal or salvage as scrap metal. Contaminated soil would be excavated and disposed off-site.

• Removal of asbestos from the abandoned wood drying building and off-site disposal in a trench meeting regulatory requirements for asbestos waste disposal.

• Use of institutional controls such as deed restrictions, or use of an environmental notice to ensure appropriate consideration of Site conditions in future land use decisions.

• Implement a groundwater monitoring program to verify that contaminant levels in all wells and the City of Enterprise water supply allow for unlimited use.

The selected remedy eliminates the principal threat posed by the conditions at the Site by reducing the potential for human exposure to high concentrations of metals detected in the Site soils.

Based on the nature of the cleanup and EPA's desire to complete the remedy prior to the early summer high groundwater season, EPA decided to complete the remedy through a Removal Action. EPA executed an Interagency Agreement with the US Army Corps of Engineers (USACE) to carry out the remedy and a Final Project Work Plan was completed in February 1993. The JFP Site Removal Action was initiated on March 31, 1993. The removal action was carried out by OHM Remediation Services under a contract with the Corps of Engineers.

Demolition of the treatment building began on April 1, 1993. The wooden structure was completely removed and shredded and internal tanks were relocated to a staging area for cleaning. Contaminated pipes and pump equipment were stockpiled for disposal. The concrete slab and sump were broken and removed to a stockpile area.

The mixing tank, solution holding tank and retort vessel from the treatment building were cleaned using a vacublast system. The system used an aluminum oxide grit that was applied under pressure to the contaminated surface and collected the contaminated grit. After cleaning, the tanks were inspected and picked up by a local scrap dealer for recycling. Decontamination of the drip pad was also completed using the vacublast equipment.

Asbestos fabric removal was completed and a penetrating encapsulant was applied to the walls of the lumber drying building by a licensed asbestos subcontractor. The underground storage tanks were removed and disposal was completed in accordance with state requirements.

Excavation, off-site disposal of contaminated soils and debris, and backfilling with clean fill was completed on May 9, 1993. A total of 1,642 tons of soil and debris was disposed at the ESI hazardous waste disposal facility and 4,801 tons of contaminated soil and debris was disposed at the Finley Buttes special waste landfill in Oregon.

C. Characterization of Risk

Prior to cleanup, the preliminary environmental pathways of concern were potential direct contact with contaminated soil and debris and potential ingestion of contaminated ground water. The arsenic and chromium contamination in the Site soils were associated with an excess lifetime cancer risk of approximately 5 $\times 10^{-3}$. The risk assessment estimated a Hazard Index value of 82 for noncancer health effects for the highly contaminated soil in the treatment building area. Cleanup standards for the Site were developed based on risk-based remedial action objectives in the ROD. EPA selected cleanup goals of 36 mg/kg arsenic for surface soil and 336 mg/kg arsenic for subsurface (greater than 2 ft. depth) soil. EPA selected the more stringent cleanup level for surface soil because this is where the greatest potential for human contact exists. It is also approximately equal to the $1 * 10^{-4}$ risk level assuming future residential scenarios and, although the current zoning is for industrial use, there are residents located near the Site. The ROD also established chromium and copper cleanup levels of 1,351 mg/kg and 10,000 mg/kg, respectively, associated with Hazard Index of 1.

The remedial action objectives for groundwater protection were to prevent migration of arsenic and chromium from soil resulting in groundwater concentrations above MCLs. The MCLs are 50 ug/l for arsenic and 100 ug/l for chromium. The soil cleanup meets the objectives for groundwater protection by removing the source of contamination.

Confirmatory soil sampling verifies that the Site has achieved the ROD cleanup objective, that arsenic has been removed to levels below 36 mg/kg for surface soil and 336 mg/kg for subsurface soil and that chromium and copper have been removed to levels below 1,351 mg/kg and 10,000 mg/kg, respectively for both surface and subsurface soil. The ROD required that the existing monitoring network of wells and springs be sampled semi-annually for a period of two years following completion of the remedial action. The primary purpose of the monitoring was to verify that the City's water supply has been adequately protected. The results from samples collected by EPA and DEQ since the cleanup was completed have shown that none of the monitoring well locations or springs have measured levels of metal concentrations above the MCLs for either total or dissolved metals. The ROD also provided that monitoring results be evaluated after two years to determine whether monitoring should be continued. DEQ completed the final round of groundwater and surface water sampling in 1996. EPA and DEQ subsequently determined that the groundwater and surface water monitoring required by the ROD has been completed and no further monitoring will be required.

All cleanup actions specified in the ROD have been implemented. Furthermore, EPA has removed all other contamination detected to acceptable risk levels. Confirmatory groundwater sampling and backfilling the Site with clean soil provide further assurance that the Site no longer poses any threats to human health or the environment. Removal of contaminated soil and debris has eliminated direct contact as a potential route of exposure and removed the source of ground-water contamination.

With the implementation and completion of all remedial activities, the Site no longer poses any threat to human health or the environment, insuring that no further action is required. With the exception of abandoning of monitoring wells, there are no other operation and maintenance activities to be performed at the Site.

The ROD required institutional controls such as deed restrictions, or use of an environmental notice to ensure appropriate consideration of Site conditions in future land use decisions. EPA reviewed a copy of the warranty deed to confirm that it includes the environmental notice, and provides for EPA and DEQ access for cleanup activities, including water sampling and testing, and monitor well abandonment. EPA believes that the institutional controls as stated in the ROD and as implemented are protective.

EPA conducted a five-year review of the Site in September, 1998. The review included a visual inspection of the Site and review of the institutional controls. EPA determined that the Site remains protective of human health and the environment.

D. Public Participation

EPA conducted meetings and interviews with local officials and other members of the community in April 1990, and published the Community Relations Plan for the Site in June 1990. EPA also established a mailing list for distribution of fact sheets and other information updating Site activities. An information repository, which included the administrative record for the Site, was established at the Wallowa County Planning Department to make information about the Site available for public review. EPA attended Enterprise City Council meetings during the investigation and cleanup to provide updates on planning and construction activities.

A public comment period was held from August 17, 1992 to September 16, 1992 on EPA's proposed remedial action and other alternatives. No comments were received and no public hearings were requested.

A copy of the Deletion Docket can be reviewed by the public at the Wallowa County Planning Department, or the EPA Region 10 Superfund Records Center. The Deletion Docket includes this Notice, the Removal Action Memos, the ROD, Remedial Action Construction Report, and Final Site Close-Out Report. EPA Region 10 will also announce the availability of the Deletion Docket for public review in a local newspaper and informational fact sheet.

One of the three criteria for deletion specifies that EPA may delete a site from the NPL if "all appropriate Fund-financed responses under CERCLA have been implemented, and no further action by responsible parties is appropriate." EPA, with the concurrence of ODEQ, believes that this criterion for deletion has been met. Soil and groundwater data from the Site confirm that the ROD cleanup goals have been achieved. There is no significant threat to human health or the environment and, therefore, no further remedial action is necessary.

Consequently, EPA is proposing deletion of this Site from the NPL. Documents supporting this action are available in the docket at the information repositories.

Dated: August 24, 1999.

Charles E. Findley,

Acting Regional Administrator, Region 10.

[FR Doc. 99–22632 Filed 8–30–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6430–9]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete McCarty's/Pacific Hide and Fur Site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA), Region 10, announces its intent to delete the McCarty's/Pacific Hide and Fur Site in Pocatello, Idaho from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Idaho Division of Environmental Quality (IDEQ) have determined that the Site poses no significant threat to public health or the environment and, therefore, further remedial measures pursuant to CERCLA are not appropriate.

DATES: Comments concerning this Site may be submitted on or before September 30, 1999.

ADDRESSES: Comments may be mailed to Beverly Gaines, Environmental Protection Agency, 1200 Sixth Avenue, Mail Stop ECL–110, Seattle, Washington 98101.

Comprehensive information on this Site is available through the Region 10 public docket which is available for viewing at the McCarty's/Pacific Hide and Fur Site information repositories at the following locations:

Pocatello Public Library, 812 E. Clark Street, Pocatello, Idaho 83201; or

United States Environmental Protection Agency, Region 10 Office of Environmental Cleanup—Records Center, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Beverly Gaines, U.S. EPA Region 10, 1200 Sixth Avenue, Mail Stop ECL–110, Seattle, Washington 98101, (206) 553–1066.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis of Intended Site Deletion

I. Introduction

The Environmental Protection Agency (EPA), Region 10 announces its intent to delete a site from the National Priorities List (NPL), appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, and requests comments to this deletion. EPA identifies sites on the NPL that appear to present a significant risk to human health or the environment. As described in § 300.425(e)(3)of the NCP, sites deleted from the NPL remain eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such actions.

EPA plans to delete the McCarty's/Pacific Hide and Fur Site ("Site") at 3575 Highway 30 West, Pocatello Idaho, 83201, from the NPL.

EPA will accept comments on the plan to delete this Site for thirty days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the McCarty's/Pacific Hide and Fur Site and explains how the Site meets deletion criteria.

II. NPL Deletion Criteria

Section 300.425(e) of the NCP provides that "releases" (sites) may be deleted from, or recategorized on, the NPL where no further response is appropriate. In making a determination to delete a site from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria have been met:

(i) Responsible parties or other parties have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further action by responsible parties is appropriate, or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants or contaminants remain at the site *above* levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action

at the site to ensure that the site remains protective of public health and the environment. In the case of the McCarty's/Pacific Hide and Fur Site, no hazardous substances were left onsite, making "unlimited use and unrestricted exposure" possible. Therefore, the five-year review requirement of section 121 (c) of SARA is not applicable. If, however, new information becomes available that indicates a need for further action, EPA may require remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazard Ranking System.

III. Deletion Procedures

The following procedures were used for the intended deletion of this Site: (1) EPA Region 10 issued a final close out report documenting the achievement of cleanup goals; (2) the Idaho Division of Environmental Quality (IDEQ) concurred with the proposed deletion decision; (3) a notice has been published in the local newspaper and has been distributed to appropriate federal, state, and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete; and (4) all relevant documents have been made available for public review in the local Site information repository.

Deletion of the Site from the NPL does not itself, create, alter or revoke any individual rights or obligations. The NPL is designed primarily for information purposes to assist EPA management. As mentioned in section II of this document, 40 CFR 300.425(e)(3) states that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

EPA's Regional Office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision. The Agency will prepare a Responsiveness Summary if any significant public comments are received.

A deletion occurs when the Regional Administrator places a final notice in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by EPA's Regional Office in Seattle, Washington.

IV. Basis for Intended Site Deletion

The following Site summary provides the Agency's rationale for the intention to delete this Site from the NPL.

A. Site Background

The McCarty's/Pacific Hide and Fur Site is located at 3575 Highway 30 West in the northwest part of Pocatello, Bannock County, Idaho. The Site is approximately 16.9 acres in size and is bounded on the north by State Highway 30 and on the south by the Union Pacific Railroad (UPRR) right-of-way. The Site is an aggregate of three contiguous properties, currently owned by UPRR and Pacific Hide and Fur. The McCarty's part comprised approximately 8.3 acres and included a former gravel pit approximately 20 feet deep and 3 acres in area. The Site is located in an area of mixed commercial and light industrial property.

B. History

The Site was originally a small 3-acre gravel mining operation on the McCarty's property but prior to 1983 changed and expanded to a metal recycling operation on an adjacent parcel and along the railroad. The entire Site is currently used as part of the Pacific Steel Recycling business' metals storage and recycling operation.

Polychlorinated biphenyls (PCBs) were detected in the Site soil in 1983 and EPA conducted an Emergency Response Action that year to remove nearly 600 PCB-containing capacitors, about 30 cubic yards of contaminated soil, and 20 drums of miscellaneous hazardous wastes for off-site disposal. The Site was listed on the National Priorities List (NPL) on September 21, 1984, because of the PCB-containing articles and PCB contaminated soil.

Several remedial actions were conducted on the Site between 1983 and 1988 when the first EPA Record of Decision (ROD) was signed on June 28, 1988. The first ROD identified PCB-contaminated soil as an unacceptable risk to human health. Solidification and stabilization were the preferred cleanup remedies identified in the ROD. Additional investigative sampling in 1990 and 1991 lead to the first ROD being amended on April 22, 1992, dividing the Site into two Operable Units (OUs); the first OU addressing the PCB-contaminated and commingled lead-contaminated soil, and a second OU, the Final Operable Unit dealing with the remaining lead-contaminated soil. Over 15,000 tons of contaminated soil and scrap were disposed in 1992 during implementation of the first OU. The first ROD for OU1 was amended to include lead contamination of soil; the remedy was changed from solidification and stabilization to excavation and disposal off-site of PCB and commingled lead-contaminated soil.

In 1993, a Remedial Investigation and Feasibility Study (RIFS) for the Final OU (the remaining lead-contaminated soil) was conducted. The RIFS evaluated all of the data collected from the Site and the findings were incorporated into the Final OU ROD, signed on September 27, 1995.

Site cleanup objectives were to remediate the PCB- and lead-contaminated soil to meet or surpass the health-based cleanup levels for future industrial land use. The cleanup levels identified in the RODs were 25 ppm for PCB and 1000 ppm for lead. The RODs objectives were met by: (1) Removal of the hazardous materials, i.e., PCB capacitors, asbestos, battery casings, etc.; (2) removal and recycling of scrap materials that were stockpiled within areas of the Site requiring remediation; (3) excavation of soil with PCB or lead concentrations greater than the cleanup goals and treatment of the soil exceeding the RCRA-characteristic level for lead, such that the treated materials were acceptable for disposal as a non-hazardous waste; (4) disposal of excavated soil in an approved, off-site disposal facility; and (5) backfilling of excavated areas with clean soil from off-site and/or regrading of disturbed areas of the Site to the extent necessary to promote positive surface drainage and site stability and to avoid erosion problems. Solidification and stabilization of lead contaminated soils were incorporated in the soil treatment to allow disposal at a local landfill.

The PRPs requested a more comprehensive cleanup than was required by the RODs, with the intent of reducing soil contamination to levels below those which would pose any risk to human health or the environment, which is referred to as residential cleanup criteria. On April 20, 1998, EPA signed an Explanation of Significant Differences (ESD) to the Final Operable Unit ROD changing the cleanup level for lead levels in the soil from 1000 ppm (industrial use criteria) to 400 ppm (the health-based residential use criteria) and lowered the PCB cleanup level from 25 ppm to 1 ppm to meet the same criteria. The Site was cleaned up to these lower levels by excavating and removing contaminated soil above the revised cleanup levels, thereby allowing unrestricted use of the property. Based on post cleanup sampling, no hazardous wastes above health-based levels remain on-site.

C. Characterization of Risk

Prior to cleanup, the preliminary environmental pathways of concern were potential direct contact and ingestion of PCB- and lead-contaminated soil and potential ingestion of contaminated ground water. Initially, it was not known if the groundwater had been contaminated by activities at the Site.

Remedial action began in 1983, when EPA conducted an Emergency Response Action which included the installation of ten groundwater monitoring wells to determine if Site contamination had impacted the groundwater. No groundwater contamination was identified. Further remedial actions removed approximately 37,000 tons of contaminated soil of which over 10,000 tons required treatment prior to disposal.

The initial ROD cleanup levels required removal of contaminants down to industrial use criteria which allows for hazardous materials to remain on-Site. The ESD, signed in 1998, lowered the cleanup levels to require compliance with residential health-based criteria.

With the implementation and completion of all remedial activities, the Site no longer poses any threat to human health or the environment, ensuring that no further action is required. Site monitoring wells and a domestic well have been abandoned, and, at this time, there are no other operation and maintenance activities to be performed at the Site. EPA required institutional controls are unnecessary because no hazardous substances were left on-Site above levels that allow for unlimited use and unrestricted exposure. The five-year review requirement of section 121 (c) of SARA is not applicable.

D. Public Participation

Community input has been sought by EPA Region 10 throughout the cleanup process at the Site. Information repositories were established at the Pocatello Public Library and the EPA Region 10 office. Community concern about the Site has generally been limited. Community relations activities have included several public meetings, fact sheets, and newspaper notice of the two proposed plans. A limited number of comments were received on the proposed plans for the Site. EPA's response to these comments can be found in the Responsiveness Summaries of the RODs.

A copy of the Deletion Docket can be reviewed by the public at the Pocatello Public Library, or the EPA Region 10 Superfund Records Center. The Deletion Docket includes this document, the RODs, Amended ROD, Remedial Action Construction Report, and Final Site Close-Out Report. EPA Region 10 will also announce the availability of the Deletion Docket for public review in a local newspaper and informational fact sheet.

One of the three criteria for deletion specifies that EPA may delete a site from the NPL if "responsible parties or other persons have implemented all appropriate response actions required." EPA, with the concurrence of IDEQ, believes that this criterion for deletion has been met. Groundwater and soil data from the Site confirm that the ROD cleanup goals have been achieved. There is no significant threat to human health or the environment and, therefore, no further remedial action is necessary. Consequently, EPA is proposing deletion of this Site from the NPL. Documents supporting this action are available in the docket at the information repositories.

Dated: August 24, 1999.

Charles E. Findley,

Acting Regional Administrator, Region 10.

[FR Doc. 99–22630 Filed 8–30–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1676, MM Docket No. 99–271, RM–9696]

Radio Broadcasting Services; Boulder City, NV, Bullhead City, Lake Havasu City, Kingman, AZ, Ludlow, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Centennial Broadcasting Licensee, LLC ("petitioner"), licensee of Station KSTJ, Boulder City, Nevada, requesting the substitution of Channel 274C for Channel 288C2 at Boulder City and the modification of Station KSTJ's license to specify operation on the higher powered channel. To accommodate the allotment at Boulder City, petitioner requests the following channel substitutions and license modifications: (1) substitute Channel 289C for Channel 274C at Bullhead City, Arizona, and modify the license of Station KFLG; (2) substitute Channel 272C2 for Channel 224C2 at Lake Havasu City, Arizona, and modify the license of Station KJJJ; (3) substitute Channel 224C1 for Channel 290C1 at Kingman, Arizona, and modify the license of Station KRCY; and (4) substitute Channel 273A for Channel 289A at Ludlow, California, and modify the license of Station KDUQ. We also propose to editorially amend Section 73.202(b) to reflect the deletion of Channel 286C2 at Kingman, AZ, pursuant to the *Report and Order* in MM Docket 90–468, 56 FR 43884, September 5, 1991.

DATES: Comments must be filed on or before October 12, 1999, and reply comments on or before October 27, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John S. Logan, M. Anne Swanson, Dow, Lohnes & Albertson, PLLC, 1200 New Hampshire Avenue, N.W., Suite 800, Washington, D.C. 20036 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: Channel 274C can be allotted to Boulder City in compliance with the Commission's minimum distance separation requirements at Station KSTJ's presently licensed transmitter site, at coordinates 35–59–45 NL; 114–51–51 WL. Channel 289C can be allotted to Bullhead City at Station KFLG's licensed transmitter site, at coordinates 35–14–56 NL; 114–44–37 WL. Channel 272C2 can be allotted to Lake Havasu City at Station KJJJ's licensed transmitter site, at coordinates 34–33–06 NL; 114–11–37 WL. Channel 224C1 can be allotted to Kingman at Station KRCY's licensed transmitter site, at coordinates 35–01–58 NL; 114–21–57 WL. Channel 273A can be allotted to Ludlow at Station KDUQ's licensed transmitter site, at coordinates 34–43–21 NL; 116–10–04. This is a synopsis of the Commission's Notice of Proposed Rule Making and Orders to Show Cause, MM Docket No. 99–271, adopted August 11, 1999, and released August 20, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this

one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–22504 Filed 8–30–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1675, MM Docket No. 99–270, RM–9703]

Radio Broadcasting Services; Taos, NM

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Darren Cordova seeking the allotment of Channel 240A to Taos, NM, as the community's third local FM service. Channel 240A can be allotted to Taos in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.7 kilometers (6.0 miles) southeast, at coordinates 36–21–48 NL; 105–28–51 WL, to avoid a short-spacing to the proposed allotment of Channel 240A at Chama, NM. *See* MM Docket 99–116, 64 FR 23036, April 29, 1999.

DATES: Comments must be filed on or before October 12, 1999, and reply comments on or before October 27, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: James R. Bayes, Todd M. Stansbury, Wiley, Rein & Fielding, 1776 K Street, N.W., Washington, DC 20006 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–270, adopted August 11, 1999, and released August 20, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–22503 Filed 8–30–99; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 64, No. 168

Tuesday, August 31, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Deschutes Provincial Interagency Executive Committee (PIEC), Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Deschutes PIEC Advisory Committee will meet on September 21 and 22, 1999, at the Prineville/BLM conference room at 3160 E. 3rd in Prineville, Oregon. The first day will be a field trip to the Prineville District to receive training in the proper functioning condition of riparian ecosystems and then review how the BLM Standards for Rangeland Management and Guidelines for Livestock Grazing are being implemented. The second day will be a business meeting which will begin at 9:00 a.m. and finish at 4:00 p.m. Agenda items include a briefing on the status of the Interior Columbia Basin Ecosystem Management Project Supplemental Draft Environmental Impact Statement, finalize the Hosmer Lake Working Group Recommendations, an update on Survey and Manage species, and the upcoming Interagency Advisory Committee/Provincial Advisory Committee summit. A public forum will start at 3:30 p.m. All Deschutes Province Advisory Committee Meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Mollie Chaudet, Province Liaison, USDA, Bend-Ft. Rock Ranger District, 1230 NE 3rd., Bend, OR, 97701, phone (541) 383–4769.

Dated: August 23, 1999.

Sally Collins,

Forest Supervisor.

[FR Doc. 99–22524 Filed 8–30–99; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines; Republication

Editorial Note: FR Doc. 99–21478 was originally published Thursday, August 19, 1999 at 64 FR 45239–45240, however, due to coding errors it is being republished in its entirety.

August 12, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 19, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota reopenings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 67050, published on December 4, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 12, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 30, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man–made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on August 19, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
352/652	2,212,828 dozen.
369–S [2]	9,917 kilograms.
611	5,201,529 square meters.
633	56,384 dozen.
636	1,910,481 dozen.
643	606,355 numbers.
645/646	736,831 dozen.
649	5,714,665 dozen.
659–H [3]	1,659,613 kilograms.
847	330,211 dozen.
Group II	
200–227, 300–326, 332, 359–O [4], 360, 362, 363, 369–O [5], 400–414, 434–438, 440, 442, 444, 448, 459pt. [6], 464, 469pt. [7], 600–607, 613–629, 644, 659–O [8], 666, 669–O [9], 670–O [10], 831, 833–838, 840–846, 850–858 and 859pt. [11], as a group.	239,200,611 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[4] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); and 6406.99.1550 (Category 359pt.).

[5] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700 (Category 369pt.).

[6] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[7] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[8] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[9] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040 (Category 669pt.).

[10] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[11] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Editorial Note: FR Doc. 99–21478 was originally published Thursday, August 19, 1999 at 64 FR 45239–45240, however, due to coding errors it is being republished in its entirety.

[FR Doc. 99–21478 Filed 8–18–99; 8:45 am]

BILLING CODE 1505–01–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

The Corporation for National and Community Service (hereinafter the "Corporation"), has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, (44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Office of Evaluation, Chuck Helfer, (202) 606–5000, Extension 248. Individuals who use a telecommunications device for the deaf (TTY/TDD) may call (202) 606–5256 between the hours of 9:00 a.m. and 4:30 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: Mr. Danny Werfel, OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, DC, 20503, (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information to those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submissions of responses.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: Outcome Evaluation of Literacy and Tutoring Programs.

OMB Number: None.

Agency Number: None.

Affected Public: Public school students in grades 1–3; Public school teachers in grades 1–3; Public school principals; Corporation members (the tutors).

Total Respondents: Approximately 1755 students; Approximately 500 teachers; Approximately 100 principals; Approximately 500 Corporation members (tutors).

Frequency: Two waves of data collection for students and teachers; Three for tutors; One for Principals.

Average Time Per Response: Students—40 minutes (reading test); Teachers—25 minutes per student (SSRS); 30 minutes (school climate); 15 minutes (program implementation); Principals—30 minutes (school climate); Tutors—10 minutes per student.

Estimated Total Burden Hours: 5,130 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Description: The Corporation seeks approval to conduct an outcome evaluation of the literacy and tutoring programs that it supports through grants. The study will provide estimates of the impact on students' (in grades 1–3) reading proficiencies and other outcomes as a result of their participation in the literacy and tutoring programs.

The national study will provide important information to the Corporation in the form of generalizations about overall program effects on students' reading skills and other school-related behaviors, as well as information about relationships between program characteristics and student outcomes. The study will also provide nationally representative estimates of student impact from participation in 'high-quality' literacy programs. This will be based on information about the programs' implementation activities and current state of knowledge of effective tutoring practices. This will help to ensure that it is the tutoring models being evaluated rather than level of implementation of the model.

The burden estimates are somewhat higher than originally projected in the 60-day notice. There are 500 teachers instead of 200, 100 principals instead of none, and the teacher time has increased. This is due to several factors. First, in order to obtain national estimates that can attribute change to the tutoring programs, comparisons using a self-norming technique have been substituted for three local evaluations. Second, in order to learn more about school climate principals will be surveyed. In addition, the time necessary to obtain useful information from teachers was reassessed.

Dated: August 25, 1999.

Thomas L. Bryant,

Associate General Counsel.

[FR Doc. 99–22509 Filed 8–30–99; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Department of Defense, Office of the Under Secretary of Defense (Acquisition and Technology)/Office of the Assistant Deputy Under Secretary of Defense (Environmental Cleanup).

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Deputy Under Secretary of Defense (Environmental Cleanup) announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 1, 1999.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Assistant Deputy Under Secretary of Defense (Environmental Cleanup), Attention: Ms. Mary Raguso, 3400 Defense Pentagon, Washington, 20301–3400.

FOR FURTHER INFORMATION CONTACT: To request further information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Ms. Mary Raguso, Office of the Assistant Deputy Under Secretary of Defense (Environmental Cleanup), (703) 697–9106.

Title, Associated form, and OMB Number: Technical Assistance for Public Participation (TAPP) Application, DD Form 2749, OMB Control Number 0704–0392.

Needs and Uses: The collection of information is necessary to identify products or services requested by community members of restoration advisory boards or technical review committees to aid in their participation in the Department of Defense's environmental restoration program, and to meet Congressional reporting requirements.

Affected Public: Not-for-Profit Institutions.

Annual Burden Hours: 1,060.

Number of Respondents: 265.

Responses to Respondent: 1.

Average Burden per Response: 4 Hour.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are community members of restoration advisory boards or technical review committees requesting technical assistance to interpret scientific and engineering issues regarding the nature of environmental hazards at an installation. This assistance will assist communities in participating in the cleanup process. The information, directed by 10 U.S.C. 2705, will be used to determine the eligibility of the proposed project, begin the procurement process to obtain the requested products or services, and determine the satisfaction of community members of restoration advisory boards and technical review committees receiving the products and services.

Dated: August 24, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–22565 Filed 8–30–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE Formerly Known as the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Fiscal Year 2000 Mental Health Rate Updates

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of updated mental health per diem rates.

SUMMARY: This notice provides for the updating of hospital-specific per diem rates for high volume providers and regional per diem rates for low volume providers; the updated cap per diem for high volume providers; the beneficiary per diem cost-share amount for low volume providers for FY 2000 under the TRICARE Mental Health Per Diem Payment System; and the updated per diem rates for both full-day and half-day TRICARE Partial Hospitalization Programs for fiscal year 2000. It also corrects partial hospitalization per diem rates for fiscal year 1999 that were published September 28, 1998.

EFFECTIVE DATE: The fiscal year 2000 rates contained in this notice are effective for services occurring on or after October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Stan Regensberg, Office of Medical Benefits and Reimbursement Systems, TRICARE Management Activity, telephone (303) 676–3742.

SUPPLEMENTARY INFORMATION: The final rule published in the **Federal Register** on September 6, 1988, (53 FR 34285) set forth reimbursement changes that were effective for all inpatient hospital admissions in psychiatric hospitals and exempt psychiatric units occurring on or after January 1, 1989. The final rule published in the **Federal Register** on July 1, 1993, (58 FR 35–400) set forth maximum per diem rates for all partial hospitalization admissions on or after September 29, 1993. Included in these final rules were provisions for updating reimbursement rates for each federal fiscal year. As stated in the final rules, each per diem shall be updated by the Medicare update factor for hospitals and units exempt from the Medicare Prospective Payment System. For fiscal year 2000, Medicare has recommended a rate of increase of 2.9 percent for hospitals and units excluded from the prospective payment system. TRICARE will adopt this update factor for FY 2000 as the final update factor. Hospitals and units with hospital-specific rates (hospitals and units with high TRICARE volume) and regional specific rates for psychiatric hospitals and units with low TRICARE volume will have their TRICARE rates for FY 2000 updated by 2.9 percent for FY 2000. Partial hospitalization rates for full day and half day programs will also be updated by 2.9 percent for FY 2000. The cap amount for high volume hospitals and units will also be updated by the 2.9 percent for FY 2000. The beneficiary cost-share of low volume hospitals and units will also be updated by the 2.9 percent for FY 2000. Consistent with Medicare, the wage portion of the regional rate subject to the area wage adjustment will remain at 71.1 percent for FY 2000.

The following reflect an update of 2.9 percent.

REGIONAL SPECIFIC RATES FOR PSYCHIATRIC HOSPITALS AND UNITS WITH LOW TRICARE VOLUME

United States census region	Rate*
Northeast:	
New England	$542
Mid-Atlantic	519
Midwest:	
East North Central	449
West North Central	424
South:	
South Atlantic	536
East South Central	579
West South Central	488
West:	
Mountain	487
Pacific	574

*Wage portion of the rate, subject to the area wage adjustment—71.1 percent

Beneficiary Cost-Share: Beneficiary cost-share (other than dependents of active duty members) for care paid on the basis of a regional per diem rate is the lower of $144 per day or 25 percent of the hospital billed charges effective for services rendered on or after October 1, 1999.

Cap Amount: Updated cap amount for hospitals and units with high TRICARE volume is $679 per day for FY 2000.

The following reflect an update of 2.9 percent for FY 2000.

PARTIAL HOSPITALIZATION RATES FOR FULL-DAY AND HALF-DAY PROGRAMS FY 2000

United States census region	Full-day rate (6 hours or more)	Half-day rate (3–5 hours)
Northeast:		
New England (ME, NH, VT, MA, RI, CT)	$218	$164
Mid-Atlantic (NY, NJ, PA)	234	176
Midwest:		
East North Central (OH, IN, IL, MI, WI)	206	155
West North Central (MN, IA, MO, ND, SD, NE, KS)	206	155
South:		
South Atlantic (DE, MD, DC, VA, WV, NC, SC, GA, FL)	223	167
East South Central (KY, TN, AL, MS)	241	181
West South Central (AR, LA, TX, OK)	241	181
West:		
Mountain (MT, ID, WY, CO, NM, AZ, UT, NV)	244	183
Pacific (WA, OR, CA, AK, HI)	238	179

The following reflect a correction to the partial hospitalization rates for FY 1999.

PARTIAL HOSPITALIZATION RATES FOR FULL-DAY AND HALF-DAY PROGRAMS FY 1999

United States census region	Full-day rate (6 hours or more)	Half-day rate (3–5 hours)
Northeast:		
New England (ME, NH, VT, MA, RI, CT)	$212	$159
Mid-Atlantic (NY, NJ, PA)	227	170
Midwest:		
East North Central (OH, IN, IL, MI, WI)	200	150
West North Central (MN, IA, MO, ND, SD, NE, KS)	200	150
South:		
South Atlantic (DE, MD, DC, VA, WV, NC, SC, GA, FL)	217	163
East South Central (KY, TN, AL, MS)	234	176
West south Central (AR, LA, TX, OK)	234	176
West:		
Mountain (MT, ID, WY, CO, NM, AZ, UT, NV)	237	178
Pacific (WA, OR, CA, AK, HI)	231	173

These partial hospitalization rates are the new calculated rates that reflect the 2.4 percent increase for FY 1999. The FY 2000, 2.9 percent increase, effective October 1, 1999, is applied to these new calculated rates.

Dated: August 25, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–22567 Filed 8–30–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory Board has been scheduled as follows:

DATES: September 1999 (800 a.m. to 1600 p.m.).

ADDRESSES: The Defense Intelligence Agency, 200 MacDill Blvd, Washington, D.C. 20340.

FOR FURTHER INFORMATION CONTACT: Maj Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, D.C. 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(l), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 99–22568 Filed 8–30–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Special Presidential Panel on Military Operations on Vieques

AGENCY: Special Presidential Panel on Military Operations on Vieques.

ACTION: Notice.

SUMMARY: The Panel will meet in closed session on August 27, 1999. The Panel was chartered by the Secretary of Defense on 25 June 1999 to provide advice and recommendations to him regarding the need for the continuation of military operations on the island Vieques, Puerto Rico and the extent to which alternative sites or methods are available that would fulfill national security requirements. The Panel will meet in closed session on August 27, 1999 to discuss classified national security information related to Vieques.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended [5 U.S.C., Appendix II, (1982)], matters affecting national security, as covered by 5 U.S.C. 552 b(c)(1)(1988), will be discussed throughout the meeting, and accordingly, the meeting will be closed to the public. Because of the short timeframe of the panel's review, and the accelerated pace of the meting schedule, this announcement must be made less than 15 days before the meeting will take place.

DATES: August 27, 1999, 8:30 a.m. to 12:30 p.m.

ADDRESSES: 4000 Defense Pentagon, Washington, D.C. 20301–4000

FOR FURTHER INFORMATION CONTACT: Dr. Hector O. Nevarez, the Designated Federal Officer, 1401 Wilson Boulevard, Suite 400, Arlington, VA 22209, phone (703) 696–9456, fax (703) 696–9482, or via Email at *Hector.Nevarez@osd.pentagon.mil.*

Dated: August 25, 1999.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 99–22569 Filed 8–30–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Global Positioning System (GPS) Spectrum Protection Report to Congress

AGENCY: Department of Defense.

ACTION: Notice of request for comments on Global Positioning system (GPS) spectrum report to Congress.

SUMMARY: An interagency working group chaired by the Department of Defense requests comments and recommendations from industry and end users relating to the development of a report to Congress addressing the national strategy for protection of the radionavigation spectrum used by GPS. All persons and firms having relevant views on this subject are invited to reply through the Department of Defense.

DATES: Pleas submit comments by November 1, 1999.

ADDRESSES: Submit comments to the Office of Space Commercialization, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 4817, Washington, DC 20230. Materials may be faxed to 202–482–5173 or transmitted via email to jkim@ta.doc.gov. Comments can also be sent via the following website URL which will contain a reprint of this RFC: http://www.ta.doc.gov/space.spectrum.

FOR FURTHER INFORMATION CONTACT: Jason Y. Kim, Policy Analyst, 202–482–6125.

SUPPLEMENTARY INFORMATION: In order to guard against disruption of GPS services that are vital to the national security and economic interests of the Untied States, the Department of Defense is preparing a report, at the request of Congress, setting forth a national strategy to: "(1) protect the integrity of the Global Positioning System frequency spectrum against interference and disruption; (2) achieve full and effective use by GPS of radio frequency spectrum currently allocated by the International Telecommunications Union (ITU) for transmission of satellite navigation signals; and (3) provide for any additional allocation of spectrum necessary for GPS evolution." The report is required under Section 8137 of the Department of Defense Appropriations Act of 1999.

The Government is issuing this public Request for Comments in the hope of developing an appropriate overall national strategy that incorporates and reflects the important interests of the industry and end users. For the purposes of this RFC, all commercial, terrestrial, and space-based radionavigation and radio communication users and ventures are invited to participate, including, but not limited to, GPS equipment manufactures, satellite manufactures, users of GPS equipment and services. In addition, we seek comment from any entity that (1) uses or has an interest in the protection of the radionavigation spectrum used by GPS in general, or (2) has an interest in other spectrum bands on which the services may be required to configure their operations to accommodate provision of GPS. Responses to this RFC should include any plans for collection and analysis of test and demonstration data, and recommendations for additional filings for both space-based and ground-based services, as appropriate, to meet civil safety-of-life applications within existing international spectrum bands allocated for radionavigation satellite operations.

An interagency working group chaired by the Department of Defense and including participants from the Department of Commerce (which includes the National Department of Commerce (which includes the National Telecommunications and Information Administration), Department of State, Department of Transportation, Office of Science and Technology Policy, and National Aeronautics and Space Administration will review all replies.

The staff of the Federal Communications Commission will provide technical assistance in the preparation of this report. A single hardcopy and softcopy is requested for all submittals. Appropriately labeled competition-sensitive or proprietary data will be protected as required. This is not a request for proposal and it shall not be construed as a commitment by the government to issue a solicitation or ultimately award a contract.

Dated: August 25, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–22566 Filed 8–30–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Public Meeting With the Community College of the Air Force Board of Visitors to Review and Discuss Academic Policies and Issues Relative to the Operation of the College

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of Meeting.

SUMMARY: The Community College of the Air Force (CCAF) Board of Visitors will hold a meeting to review and discuss academic policies and issues relative to the operation of the college. Agenda items include a review of the operations of the CCAF and an update on the activities of the CCAF Policy Council.

Members of the public who wish to make oral or written statements at the meeting should contact First Lieutenant Matthew Groleau, Designated Federal Officer for the Board, at the address below no later than 4:00 p.m. on October 26, 1999. Please mail or electronically mail all requests. Telephone requests will not be honored. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. A minimum of 35 copies of the presentation materials must be provided to First Lieutenant Groleau no later than 3 days prior to the time of the board meeting for distribution. Visual aids must be submitted to First Lieutenant Groleau on a 3–½" computer disc in Microsoft PowerPoint format no later than 4:00 p.m. on October 26, 1999 to allow sufficient time for virus scanning and formatting of the slides.

DATES: The meeting will be held on Tuesday, November 9, 1999, at 8:00 a.m. in the AETC Conference Center, Building 905, 1 F Street, Randolph Air Force Base, Texas 78150.

FOR FURTHER INFORMATION CONTACT: First Lieutenant Matthew Groleau, (334) 953–7322, Community College of the Air Force, 130 West Maxwell Boulevard, Maxwell Air Force Base, Alabama, 36112–6613, or through electronic mail to matthew.groleau@maxwell.af.mil.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–22544 Filed 8–30–99; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

National Commission on Mathematics and Science Teaching for the 21st Century; Meeting

AGENCY: National Commission on Mathematics and Science Teaching for the 21st Century, Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Commission on Mathematics and Science Teaching for the 21st Century (Commission). This notice also describes the functions of the Commission. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the general public of their opportunity to attend.

DATE AND TIME: Thursday, September 23, 1999, beginning at 9:00 a.m. and ending at approximately 5:00 p.m.

ADDRESSES: The Washington Court Hotel, 525 New Jersey Avenue, SW, Washington, DC 20001–1527.

FOR FURTHER INFORMATION CONTACT: Dr. Linda P. Rosen, The National Commission on Mathematics and Science Teaching for the 21st Century, U.S. Department of Education, Room 6W252, 400 Maryland Avenue, SW, Washington, DC 20202, telephone: (202) 260–8229, fax: (202) 260–7216.

SUPPLEMENTARY INFORMATION: The National Commission on Mathematics and Science Teaching for the 21st Century is established by the Secretary of Education and is governed by the provisions of the Federal Advisory Committee Act (FACA) (Pub. L. 92–463, as amended; 5 U.S.C.A. Appendix 2). The Commission is established to address the pressing need to significantly raise student achievement in mathematics and science. The Commission will develop a multifaceted action strategy aimed at improving the recruitment, preparation, support systems, and opportunities for growth needed for high quality mathematics and science instruction in K–12 classrooms nationwide.

The meeting of the Commission is open to the public. The proposed agenda includes sessions on: (a) How the Commission will solicit and process public input and reach consensus on its ultimate recommendations; (b) the characteristics of high-quality mathematics and science teaching; (c) the link between higher student achievement and teaching quality; and (d) supply and demand issues nationwide for teachers who provide mathematics and science instruction in grades K–12. The agenda will include plenary discussions as well as presentations by James Stigler, Professor of Psychology at the University of California at Los Angeles and Director of the Third International Mathematics and Science Video Study, and Linda Darling-Hammon, Professor of Education at Stanford University and Executive Director of the National Commission on Teaching and America's Future.

Space is limited and you are encouraged to register if you plan to attend. You may register through the Internet at *AmericaCounts@ed.gov* or *Jamila Rattler@ed.gov*. Please include your name, title, affiliation, complete address (including e-mail, if available), telephone and fax numbers. If you are unable to register through the Internet, you may fax your registration information to The National Commission on Mathematics and Science Teaching for the 21st Century at (202) 260–7216 or mail to The National Commission on Mathematics and Science Teaching for the 21st Century, U.S. Department of Education, Room 6W252, 400 Maryland Avenue, SW, Washington, DC 20202. The registration deadline is September 16, 1999. Any individual who will need accommodations for a disability in order to participate in the meeting (i.e., interpreting services, assistive listening devices, materials in alternative format) should notify Jamila Rattler at (202) 260–8229 by no later than September 14, 1999. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

Records will be kept of all Commission proceedings, and will be available for public inspection at The National Commission on Mathematics and Science Teaching for the 21st Century, 400 Maryland Avenue, SW, Room 6W252 from the hours of 8:30 a.m. to 5:00 p.m. weekdays, except Federal holidays.

Marshall S. Smith,

Acting Deputy Secretary.

[FR Doc. 99–22647 Filed 8–30–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.038, 84.033, and 84.007]

Office of Student Financial Assistance Programs; Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs

AGENCY: Department of Education.

ACTION: Notice of the closing date for institutions to submit a request for a waiver of the allocation reduction for the underuse of funds under the Federal Perkins Loan, Federal Work-Study (FWS), and Federal Supplemental Educational Opportunity Grant (FSEOG) programs (known collectively as the campus-based programs).

SUMMARY: The Secretary gives notice to institutions of higher education of the deadline for an institution to submit a written request for a waiver of the allocation reduction being applied to its Federal Perkins Loan, FWS, or FSEOG allocation for the 2000–2001 award year (July 1, 2000 through June 30, 2001) because the institution returned more than 10 percent of its allocation for that program for the 1998–1999 award year (July 1, 1998 through June 30, 1999).

DATES: *Closing Date and Methods for Submitting a Waiver Request and Supporting Information or Documents.* For an institution that returned more than 10 percent of its Federal Perkins Loan, FWS, or FSEOG allocation for the 1998–1999 award year to be considered for a waiver of the allocation reduction for its 2000–2001 award year allocation, it must request a waiver of the underuse penalty, provide a written explanation of the circumstances that caused the underuse of its allocation, and submit any additional documentation to support the explanation by October 1, 1999.

An institution may request a waiver of the underuse penalty by selecting the "Yes" box in Part II, Section E, Line 8 of its Fiscal Operation Report for 1998–99 and Application to Participate for 2000–2001 (FISAP), and provide a written explanation of the circumstances that caused the underuse of its allocation on the electronic FISAP "Additional Information Screen." This request and explanation must be transmitted electronically by the established FISAP deadline of October 1, 1999.

In addition, an institution may mail or have hand-delivered any additional documentation that supports its written explanation of the circumstances that caused the underuse of its allocation. The documentation may be included with the FISAP signature page and certification forms. The documentation must be mailed or delivered by hand to one of the addresses indicated in this notice by the established deadline date of October 1, 1999.

ADDRESSES: *Supporting Documents Delivered by Mail.* If these documents are delivered by mail, they must be addressed to Electronic FISAP Administrator, c/o Universal Automation Labs (UAL), Suite 500, 8300 Colesville Road, Silver Spring, Maryland 20910.

An institution must show proof of mailing these documents by October 1, 1999. Proof of mailing consists of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (2) a legibly dated U.S. Postal Service postmark, (3) a dated shipping label, invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If these documents are sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. An institution is encouraged to use certified or at least first-class mail.

Supporting Documents Delivered by Hand. If these documents are delivered by hand, they must be taken to Universal Automation Labs (UAL), Suite 500, 8300 Colesville Road, Silver Spring, Maryland.

Documents that are hand-delivered will be accepted between 9 a.m. and 5 p.m. daily (Eastern time), except Saturdays, Sundays, and Federal holidays. Documents that are hand-delivered will not be accepted after 5 p.m. on October 1, 1999.

SUPPLEMENTARY INFORMATION:

Under sections 413D(d)(2), 442(d)(2), and 462(i)(4) of the Higher Education Act of 1965, as amended, if an institution returns more than 10 percent of its Federal Perkins Loan, FWS, or FSEOG allocation for an award year, the institution will have its allocation for the second succeeding award year for that program reduced by the dollar amount returned. The Secretary may waive this requirement for a specific institution if the Secretary finds that enforcement of the requirement would be contrary to the interest of the affected campus-based program. The institution must provide a waiver request and any supporting information or documents by the established October 1, 1999 closing date. If the institution submits a waiver request and any supporting information or documents after the closing date, the request will not be considered.

Applicable Regulations

The following regulations apply to the campus-based programs:

(1) Student Assistance General Provisions, 34 CFR Part 668.

(2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR Part 673.

(3) Federal Perkins Loan Program, 34 CFR Part 674.

(4) Federal Work-Study Programs, 34 CFR Part 675.

(5) Federal Supplemental Educational Opportunity Grant Program, 34 CFR Part 676.

(6) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR Part 600.

(7) New Restrictions on Lobbying, 34 CFR Part 82.

(8) Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 34 CFR Part 85.

(9) Drug-Free Schools and Campuses, 34 CFR Part 86.

FOR FURTHER INFORMATION CONTACT: For technical assistance concerning the waiver request or other operational procedures of the campus-based programs, contact: Ms. Sandra K. Donelson, Institutional Financial Management Division, U.S. Department of Education, P.O. Box 23781, Washington, DC 20026–0781. Telephone (202) 708–9751.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the person listed in the preceding paragraph.

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Program Authority: 20 U.S.C. 1087aa *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*

Dated: August 25, 1999.

Greg Woods,

Chief Operating Officer, Office of Student Financial Assistance.

[FR Doc. 99–22637 Filed 8–30–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.038, 84.033, and 84.007]

Office of Student Financial Assistance Programs; Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs

AGENCY: Department of Education.

ACTION: Notice of the closing date for the submission of the Fiscal Operations Report for 1998–1999 and Application to Participate for 2000–2001 (FISAP) in the Federal Perkins Loan, Federal Supplemental Educational Opportunity Grant (FSEOG), and Federal Work-Study (FWS) Programs (ED FORM 646–1; OMB No. 1840–0073).

SUMMARY: The Secretary gives notice to institutions of higher education of the deadline for an institution to apply for fiscal year 2000 funds—for use in the 2000–2001 award year (July 1, 2000 through June 30, 2001)—under the Federal Perkins Loan, FWS, and FSEOG programs. Under these programs, the Secretary allocates funds to institutions for students who need financial aid to meet the costs of postsecondary education. An institution is not required to establish eligibility prior to applying for funds. However, the Secretary will not allocate funds under the Federal Perkins Loan, FWS, and FSEOG programs for the 2000–2001 award year to any currently ineligible institution unless the institution files its institutional participation application and other documents required for an eligibility and certification determination by the closing date that will appear in a separate notice in the **Federal Register**. The Secretary further gives notice that an institution that had a Federal Perkins Loan fund or expended FWS or FSEOG funds during the 1998–1999 award year (July 1, 1998, through June 30, 1999) is required to submit a Fiscal Operations Report to the Secretary to report its program expenditures as of June 30, 1999.

Applicants that did not participate in the Federal Perkins Loan Program, FWS Program, or FSEOG Program in the 1998–1999 award year will be required to submit data for the application portion of the FISAP only.

In addition, an institution must complete, sign, and submit one original FISAP signature page and one original combined lobbying, debarment, and drug-free workplace certifications form (ED 80–0013, referred to as the "compliance certifications" form) for the 2000–2001 award year.

The Federal Perkins Loan, FWS, and FSEOG programs are authorized by parts E and C, and part A, Subpart 3, respectively, of title IV of the Higher Education Act of 1965, as amended.

DATES: *Closing Date and Methods for Submitting a FISAP and Required Signed Documents.* To ensure consideration for 2000–2001 funds, an institution must submit an electronic FISAP, the FISAP signature page, and the "compliance certifications" form by October 1, 1999.

An institution must submit its FISAP to the Campus-Based contractor via the Department's Title IV Wide Area Network (WAN) using EDConnect. The Title IV WAN enables an institution to receive and transmit FISAP information electronically.

The FISAP electronic data transmission must be completed prior to midnight, Eastern time, on October 1, 1999. (For purposes of this notice, this deadline means that an institution has all of October 1, 1999, to transmit electronically.) In addition, one original completed FISAP signature page and one original signed "compliance certifications" form must be mailed or delivered by hand to the address indicated below by the established deadline date of October 1, 1999.

ADDRESSES: *Signature Page and Compliance Certifications Form Delivered by Mail.* If these documents are delivered by mail, they must be addressed to Electronic FISAP Administrator, c/o Universal Automation Labs (UAL), Suite 500, 8300 Colesville Road, Silver Spring, Maryland 20910.

An institution must show proof of mailing these documents by October 1, 1999. Proof of mailing consists of one of the following: (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service, (2) a legibly dated U.S. Postal Service postmark, (3) a dated shipping label, invoice, or receipt from a commercial carrier, or (4) any other proof of mailing acceptable to the U.S. Secretary of Education.

If these documents are sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service. An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office. An institution is encouraged to use certified or at least first-class mail.

Signature Page and Compliance Certifications Form Delivered by Hand

If these documents are delivered by hand, they must be taken to Universal Automation Labs (UAL), Suite 500, 8300 Colesville Road, Silver Spring, Maryland.

Documents that are hand-delivered will be accepted between 9 a.m. and 5 p.m. daily (Eastern time), except Saturdays, Sundays, and Federal holidays. Documents that are hand-delivered will not be accepted after 5 p.m. on October 1, 1999.

SUPPLEMENTARY INFORMATION: FISAP materials were mailed by the Department in July 1999. An institution must prepare and submit its FISAP in accordance with the information included in the FISAP program information package.

This program information package is intended to aid applicants in applying for assistance under these programs. Nothing in the program information package is intended to impose any paperwork, application content, reporting, or grantee performance requirements beyond those specifically imposed under the statute and regulations governing the programs.

Applicable Regulations

The following regulations apply to these programs:

(1) Student Assistance General Provisions, 34 CFR Part 668.

(2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR Part 673.

(3) Federal Perkins Loan Program, 34 CFR Part 674.

(4) Federal Work-Study Programs, 34 CFR Part 675.

(5) Federal Supplemental Educational Opportunity Grant Program, 34 CFR Part 676.

(6) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR Part 600.

(7) New Restrictions on Lobbying, 34 CFR Part 82.

(8) Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 34 CFR Part 85.

(9) Drug-Free Schools and Campuses, 34 CFR Part 86.

FOR FURTHER INFORMATION CONTACT: Ms.Sandra Donelson, Campus-Based Financial Operations Branch, Institutional Financial Management Division, Accounting and Financial Management Service, Student Financial Assistance Programs, U.S. Department of Education, 400 Maryland Avenue, SW, (Room 4714, ROB–3), Washington, DC 20202–5458. Telephone (202) 708–9751. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

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Program Authority: 20 U.S.C. 1087aa *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*

Dated: August 25, 1999.

Greg Woods,

Chief Operating Officer, Office of Student Financial Assistance.

[FR Doc. 99–22638 Filed 8–30–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Membership of the Performance Review Board (PRB)

SUMMARY: The Secretary announces the names of members of the PRB for the Department of Education. Under 5 U.S.C. 4314(c)(1) through (5), each agency is required to establish one or more Senior Executive Service (SES) PRBs. The PRB reviews and evaluates the initial appraisal of a senior executive's performance along with any comments by senior executives and any higher level executive and makes recommendations to the appointing authority relative to the performance of the senior executive, including making recommendations on performance awards. Recommendations on SES pay level adjustments are also made by the PRB.

Membership

The following executives of the Department of Education have been selected to serve on the Performance Review Board of the Department of Education: Willie Gilmore, Chair, Judith Winston, Co-Chair, Philip Link, Steven Winnick, Jeanette Lim, Carol Cichowski, Thomas Skelly, Ricky Takai, Maureen McLaughlin, Linda Paulsen, John Higgins, Steven McNamara, Mary Jean LeTendre, Arthur Cole, Patricia Guard, Francis Corrigan, Gary Phillips, Edward Fuentes, Dennis Berry, William Smith, Hazel Fiers, Diane Rossi, Carol Rasco, Linda Roberts, Raymond Pierce, Katherine Seelman, D. Jean Veta. The following executives have been selected to serve as alternate members of the PRB: Peirce Hammond, Thomas Pestka, Arthur Coleman, Claudio Prieto.

FOR FURTHER INFORMATION CONTACT: Althea Watson, Director, Executive Resources Team, Human Resources Group, Office of Management, Department of Education, Room 2E124, FB–6, 400 Maryland Avenue, SW, Washington, DC 20202, Telephone: (202) 401–0546. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

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Dated: August 25, 1999.

Richard W. Riley,

Secretary of Education.

[FR Doc. 99–22639 Filed 8–30–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[Docket No. FE C&E 99–16–Certification Notice—177]

Tenaska Gateway Partners, Ltd.; Notice of Filing of Coal Capability; Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: On August 10, 1999, Tenaska Gateway Partners, Ltd. submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Coal & Power Im/Ex, Fossil Energy,

Room 4G–039, FE–27, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of the proposed new baseload powerplant has filed a self-certification in acccordance with section 201(d).

Owner: Tenaska Gateway Partners, Ltd.

Operator: Tenaska Gateway Partners, Ltd.

Location: Rusk County, TX.

Plant Configuration: Combined-cycle.

Capacity: 800 MW.

Fuel: Natural gas.

Purchasing Entities: Coral Power, L.L.C. and Coral Energy, L.P.

In-Service Date: June 2001.

Issued in Washington, D.C., August 25, 1999.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 99–22625 Filed 8–30–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–476–000]

Gas Transport, Inc.; Notice of Proposed Changes in FERC Gas Tariff

August 25, 1999.

Take notice that on August 20, 1999, Gas Transport, Inc. (GTI) tendered for filing Seventh Revised Sheet No. 162 and Sixth Revised Sheet No. 162A to its FERC Gas Tariff, Second Revised Volume No. 1, with a proposed effective date of August 1, 1999.

GTI states that the purpose of this filing is to comply with Order No. 587–K (Order). The order amends Section 284.10 of the Commission's Regulations to incorporate by reference the most recent standards, version 1.3, promulgated by the Gas Industry Standards Board. GTI's filing also indicated that a correction was also made to remove the reference to principles 1.1.17–1.1.19.

GTI states that copies of this filing were served upon its firm customers and interested state commissions. Copies were also served on all interruptible customers as of the date of the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22522 Filed 8–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99–3208–000, ER99–3320–000, ER99–3368–000, ER99–3420–000, ER99–3446–000, ER99–3450–000, ER99–3491–000, ER99–3502–000, and ER99–3554–000 (Not consolidated)]

Illinova Power Marketing, Inc., Rathdrum Power, LLC, DTE Energy Marketing Company, Sunbury Generation, LLC, PP&L Resources, Inc. and PP&L, Inc., Foote Creek II, LLC, PP&L Montana, LLC, PP&L Colstrip I, LLC, PP&L Colstrip II, LLC and PP&L Colstrip III, LLC, Berkshire Power Company, LLC, and Lone Star Steel Sales Company; Notice of Issurance of Order

August 25, 1999.

Illinova Power Marketing, Inc., Rathdrum Power, LLC, DTE Energy Marketing Company, Sunbury Generation, LLC, PP&L Resources, Inc. and PP&L, Inc., Foote Creek II, PP&L Montana, LLC, PP&L Colstrip I, LLC, PP&L Colstrip II, LLC, PP&L Colstrip III, LLC, Berkshire Power Company, LLC, and Lone Star Steel Sales Company (hereafter, "the Applicants") filed with the Commission rate schedules in the above-captioned proceedings, respectively, under which the Applicants will engage in wholesale electric power and energy transactions at market-based rates, and for certain waivers and authorizations. In particular, certain of the Applicants may also have requested in their respective applications that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by the Applicants. On August 24, 1999, the Commission issued an order that accepted the rate schedules for sales of capacity and energy at market-based rates (Order), in the above-docketed proceedings.

The Commission's August 24, 1999 Order granted, for those Applicants that sought such approval, their request for blanket approval under Part 34, subject to the conditions found in Appendix B in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by the Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, if the Applicants have requested such authorization, the Applicants are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of the Applicants' issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is September 23, 1999.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. This issuance may also be viewed on the Internet at *http://www.ferc.fed.us*/online/rims.htm (call 202–208–222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22578 Filed 8–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM00–1–131–000]

KO Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

August 25, 1999.

Take notice that on August 20, 1999, KO Transmission Company (KO Transmission) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet with a proposed effective date of October 1, 1999:

Seventh Revised Sheet No. 10

KO Transmission states that the purpose of this filing is to revise the Annual Charge Adjustment surcharge to $0.0022 per dekatherm in accordance with 18 CFR 154.402(c).

KO Transmission states that copies of this filing were served to all of its customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22523 Filed 8–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–474–000]

Natural Gas Pipeline Company of America; Notice of Changes in FERC Gas Tariff

August 25, 1999.

Take notice that on August 20, 1999, Natural Gas Pipeline Company of America (Natural) tendered for filing certain tariff sheets to be part of its FERC Gas Tariff, Sixth Revised Volume No. 1 (Tariff), to be effective October 1, 1999.

Natural states that the filing has been submitted to reflect a series of changes to update Natural's Tariff by removing or revising provisions which are outmoded, incorporating modifications to existing provisions consistent with Federal Energy Regulatory Commission action on other pipelines, correcting errors and modifying certain existing provisions to achieve greater clarity and effectiveness.

Natural requests any waivers which may be required to permit the tendered tariff sheets to become effective October 1, 1999.

Natural states that copies of the filing have been mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22520 Filed 8–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–473–000]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

August 25, 1999.

Take notice that on August 20, 1999, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets to be effective September 20, 1999:

First Revised Sheet No. 526
First Revised Sheet No. 527
First Revised Sheet No. 528
First Revised Sheet No. 529
First Revised Sheet No. 530
First Revised Sheet No. 531
First Revised Sheet No. 532
Original Sheet No. 533
Original Sheet No. 534
Original Sheet No. 535

REGT states that the purpose of this filing is to replace its Electronic Data Interchange (EDI) Trading Partner Agreement (TPA) with the current GISB EDI TPA model.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance

with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22519 Filed 8–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–436–001]

Texas Gas Transmission Corporation; Notice of Filing of Tariff Sheets

August 25, 1999.

Take notice that on August 20, 1999, Texas Gas Transmission Corporation (Texas Gas) tendered for filing, as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective August 1, 1999:

Fifth Revised Sheet No. 147
Fourth Revised Sheet No. 148

Texas Gas States that the purpose of this filing is to comply with Commission Letter Order dated August 6, 1999, in the above-referenced docket and in accordance with Order No. 587–K, final Rule issued on April 2, 1999, in Docket No. RM96–1–011.

Copies of the tariff sheets are being served upon Texas Gas's jurisdictional customers and interested state commissions, as well as those parties appearing on the service list for this docket.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22518 Filed 8–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–475–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 25, 1999.

Take notice that on August 20, 1999, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, first Revised Volume No. 1, the following tariff sheets to become effective November 1, 1999:

Third Revised Sheet No. 193
Original Sheet No. 193A

The purpose of this filing pursuant to Section 4 of the Natural Gas Act is to revise Texas Gas' tariff to bring it into compliance with the policies of the Federal Energy Regulatory Commission ("Commission") as stated in Tennessee Gas Pipeline Company, 86 FERC ¶ 61,290 (1999) by allowing both the releasing shipper who retains some capacity in a zone and the replacement shipper who acquires some capacity in a zone to have access to all secondary points in that zone and to eliminate abuses of Texas Gas' capacity release program that permit shippers to multiple their use of capacity in excess of their contract demand.

Copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22521 Filed 8–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–408–009]

Trailblazer Pipeline Company; Notice of Compliance Filing

August 25, 1999.

Take notice that on August 20, 1999, Trailblazer Pipeline Company (Trailblazer) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets to be effective September 1, 1999.

Trailblazer states that the purpose of this filing is to implement base rates and tariff provisions reflected in its Amended Stipulation and Agreement (Settlement) in Docket No. RP97–408. The Federal Energy Regulatory Commission (Commission) approved the Settlement in its orders issued April 28, 1999 and August 3, 1999 as to Consenting parties. Trailblazer also states that it has provided rates to be charged to Consenting and Contesting parties to the Settlement.

Trailblazer requests waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets submitted to become effective September 1, 1999.

Trailblazer states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22517 Filed 8–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4118–000, et al.]

Virginia Electric and Power Company, et al.; Electric Rate and Corporate Regulation Filings

August 24, 1999.

Take notice that the following filings have been made with the Commission:

1. Virginia Electric and Power Company

[Docket No. ER99–4118–000]

Take notice that on August 18, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and Southeastern Power Administration. Under the Service Agreement, Virginia Power will provide services to Southeastern Power Administration under the terms of the Company's Revised Market-Based Rate Tariff designated as FERC Electric Tariff (Second Revised Volume No. 4), which was accepted by order of the Commission dated August 13, 1998 in Docket No. ER98–3771–000.

Virginia Power requests an effective date of August 18, 1999.

Copies of the filing were served upon Southeastern Power Administration, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. West Texas Utilities Company

[Docket No. ER99–4119–000]

Take notice that on August 18, 1999, West Texas Utilities Company (WTU) tendered for filing an Interconnection Agreement, dated June 19, 1998, between WTU and Texas Utilities Electric Company (TXU Electric) and the first Amendment, dated June 2, 1999, to the Interconnection Agreement. The two agreements provide for service from WTU to Big Country Electric Cooperative, Inc. (Big Country) at points of delivery on the TXU Electric System.

WTU seeks an effective date of June 24, 1998 for the Interconnection Agreement and of June 2, 1999 for the first Amendment. Accordingly, WTU seeks waiver of the Commission's notice requirements.

WTU served copies of the filing on TXU Electric, Big Country and the Public Utility Commission of Texas.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Atlantic City Electric Company

[Docket No. ER99–4120–000]

Take notice that on August 19, 1999, Atlantic City Electric Company (Atlantic), tendered for filing an unexecuted umbrella service agreement with Enron Power Marketing, Inc., under Atlantic's market rate sales tariff.

Atlantic requests an effective date of July 20, 1999.

Comment date: September 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Central Illinois Public Service Company, Union Electric Company and Ameren Generating Company

[Docket Nos. EC99–108–000 and ER99–4115–000

Take notice that on August 19, 1999, Central Illinois Public Service Company (CIPS), Union Electric Company and Ameren Generating Company (Genco) (Collectively, the Companies) filed an amendment to their August 17, 1999 filing in the above-referenced proceeding.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Mantua Creek Generating Company, L.P.

[Docket No. EG99–215–000]

Take notice that on August 20, 1999, Mantua Creek Generating Company, L.P. (Mantua Creek), a Delaware limited partnership with its principal place of business at 7500 Old Georgetown Road, Bethesda, MD 20814, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Mantua Creek proposed to construct, own or lease, and to operate, a nominally rated 800 MW natural gas-fired, combined cycle power plant (the Eligible Facility) in the township of West Deptford, New Jersey and to sell electricity exclusively at wholesale. The proposed Eligible Facilities expected to commence commercial operation in the second quarter of 2002. All capacity, energy, and ancillary services from the Eligible Facility will be sold by Mantua Creek exclusively at wholesale.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. New York State Electric & Gas Corporation

[Docket No. ER99–86–000]

Take notice that on August 18, 1999, New York State Electric & Gas Corporation (NYSEG) submitted a Petition for Declaratory Order requesting that the Commission issue a declaration order disclaiming jurisdiction over standby service that is provided by NYSEG as a bundled retail service.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Business Discount Plan, Inc.

[Docket No. ER99–581–002]

Take notice that on August 5, 1999, the above-mentioned power marketer/or public utility tendered for filing its quarterly report with the Commission in above-referenced proceeding for information only. This filing is available for public inspection and copying in the Public Referenced Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

Comment date: September 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. New England Power Company

[Docket No. ER99–2175–001]

Take notice that on August 12, 1999, New England Power Company (NEPOOL), tendered for filing information regarding Market Rule 15 actions for May 1999 in the above-referenced docket.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Entergy Services, Inc.

[Docket No. ER99–3867–000]

Take notice that on August 5, 1999, Entergy Services, Inc., tendered for filing corrected version of the quarterly report for short-term transactions for the second quarter of 1999 originally filed with the Commission on July 30, 1999.

Comment date: September 3, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Cleco Utility Group, Inc.

[Docket No. ER99–4116–000]

Take notice that on August 18, 1999, Cleco Utility Group, Inc. (Cleco).

tendered for filing a service agreement under which Cleco will make market based power sales under its MR–1 tariff with the Enserch Energy Services, Inc.

Cleco states that a copy of the filing has been served on the Enserch Energy Services, Inc.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Indianapolis Power & Light Company

[Docket No. ER99–4117–000]

Take notice that on August 18, 1999, Indianapolis Power & Light Company (IPL), tendered for filing an interchange agreement, dated August 17, 1999, between IPL and Aquila Energy Marketing Corporation (Aquila Energy).

Copies of this filing were served on Aquila Energy, the Missouri Public Service Commission and the Indiana Utility Regulatory Commission.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Delmarva Power & Light Company

[Docket No. ER99–4121–000]

Take notice that on August 19, 1999, Delmarva Power & Light Company (Delmarva), tendered for filing an unexecuted umbrella service agreement with Constellation Power Source, Inc., under Delmarva's market rate sales tariff.

Delmarva requests an effective date of July 23, 1999.

Comment date: September 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. APS Energy Services Company, Inc.

[Docket No. ER99–4122–000]

Take notice that on August 19, 1999, APS Energy Services Company, Inc. (APSES), tendered for filing an application for an order authorizing it to make wholesale sales of electric power at market-based rates and approving the Code of Conduct governing its relationship with its affiliated public utility.

Comment date: September 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. PJM Interconnection, L.L.C.

[Docket No. ER99–4123–000]

Take notice that on August 19, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing 7 executed service agreements for transmission service under the PJM Open Access Transmission Tariff. The agreements are as follows: 3 umbrella agreements for firm point-to-point transmission service agreements with AES Power Direct, L.L.C., Central Hudson Enterprises Corp., and NRG Power Marketing, Inc.; 2 umbrella non-firm point-to-point transmission service agreements with AES Power Direct, L.L.C., and NRG Power Marketing, Inc.; and 2 umbrella agreement for network integration transmission service under state required retail access programs with AES Power Direct, L.L.C. and NRG Power Marketing, Inc.

Copies of this filing were served upon the parties to the service agreements.

Comment date: September 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Arizona Public Service Company

[Docket No. ER99–4124–000]

Take notice that on August 19, 1999, Arizona Public Service Company (APS), tendered for filing an application for an order accepting its revised Market Rate Tariff and approving the Code of Conduct governing APS' relationship with its affiliate.

Copies of this filing have been served upon customers taking service under APS' Market Rate Tariff and the Arizona Corporation Commission.

Comment date: September 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Cinergy Services, Inc.

[Docket No. ER99–4125–000]

Take notice that on August 19, 1999, Cinergy Services, Inc., on behalf of its Operating Company affiliates, The Cincinnati Gas & Electric Company and PSI Energy, Inc. (COC), tendered for filing an executed service agreement between COC and Griffin Energy Marketing, L.L.C. (Griffin) replacing the unexecuted service agreement filed on April 16, 1999 under Docket No. ER99–2511–000 per COC FERC Electric Market-Based Power Sales Tariff, Original Volume No. 7–MB.

Cinergy is requesting an effective date of May 1, 1999 and the same Rate Designation as per the original filing.

Comment date: September 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Georgia Natural Gas Company

[Docket No. ER99–4126–000]

Take notice that on August 19, 1999, Atlanta Gas Light Services, Inc., tendered for filing notice of name change in accordance with the provisions of 18 CFR 35.16 and 131.51, advising the Commission that effective April 30, 1999, Atlanta Gas Light Services, Inc., has legally changed its name to Georgia Natural Gas Company. Georgia Natural Gas Company adopts, ratifies, and makes its own, in every respect all applicable rate schedules, and supplements thereto, listed below, heretofore filed with the Federal Energy Regulatory Commission by Atlanta Gas Light Services, Inc., effective April 30, 1999:

Atlanta Gas Light Services, Inc.
Rate Schedule FERC No. 1

Georgia Natural Gas Company's filing is available for public inspection at its offices in Atlanta, Georgia.

Comment date: September 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Sithe Power Marketing, L.P.

[Docket No. ER99–4130–000]

Take notice that on August 19, 1999, Sithe Power Marketing, L.P., petitioned the Commission for acceptance of its proposed revised FERC Rate Schedule No. 2. Applicant requests certain authority to make sales of ancillary services at market-based rates, requests certain blanket authorizations, and waiver of certain of the Commission's Regulations.

Comment date: September 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER99–4131–000]

Take notice that on August 19, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 60 to add Louisville Gas and Electric Company/Kentucky Utilities Company to Allegheny Power Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreement is August 18, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: September 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–4132–000]

Take notice that on August 19, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) tendered for filing Supplement No. 33 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of July 22, 1999, to Horizon Energy Company, d/b/a Exelon Energy.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: September 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Astoria Generating Company, L.P.

[Docket No. ER99–4133–000]

Take notice that on August 18, 1999, Astoria Generating Company, L.P. (Applicant), with its principal office at c/o Orion Power Holdings, Inc., 7 E. Redwood Street, 10th Floor, Baltimore, Maryland 21202, tendered for filing with the Federal Energy Regulatory Commission (Commission) long-term service agreements for the sale of energy and capacity under its market-based rate tariff, FERC Electric Rate Tariff, Original Volume No. 1.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Southern California Edison Company

[Docket No. ER99–4134–000]

Take notice that on August 19, 1999, Southern California Edison Company (SCE), tendered for filing the Second Amendment to the District-Edison 1987 Service and Interchange Agreement (Second Amendment) between The Metropolitan Water District (MWD) of Southern California and SCE.

The Second Amendment revises the termination date of existing arrangements between SCE and MWD to provide a methodology for pricing Edison Purchased Power and valuing Exchange Energy based upon the California Power Exchange's market clearing price.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: September 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Cinergy Services, Inc.

[Docket No. ER99–4135–000]

Take notice that on August 19, 1999, Cinergy Services, Inc. (Cinergy) and Reliant Energy Services, Inc. (Reliant), are requesting via a Notice of Assignment that Reliant will replace NorAm Energy Services, Inc., of Cinergy's Market-Based Power Sales Tariff Original Volume No. 7–MB, Service Agreement No. 76, dated October 25, 1997.

Cinergy and Reliant are requesting an effective date of February 2, 1999.

Comment date: September 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Avista Corporation

[Docket No. ER99–4136–000]

Take notice that on August 19, 1999, Avista Corporation (AVA), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, an executed Mutual Netting Agreement allowing for arrangements of amounts which become due and owing to one Party to be set off against amounts which are due and owing to the other Party with Benton County PUD.

Avista Corporation requests waiver of the prior notice requirement and requests an effective date of July 1, 1999.

Comment date: September 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Cinergy Services, Inc.

[Docket No. ER99–4137–000]

Take notice that on August 19, 1999, Cinergy Services, Inc. (Cinergy) and Reliant Energy Services, Inc. (Reliant), tendered for filing Notice of Assignment that Reliant will replace NorAm Energy Services, Inc., of Cinergy's Cost-Based Power Sales Tariff Original Volume No. 6–CB, Service Agreement No. 76, dated October 25, 1997.

Cinergy and Reliant are requesting an effective date of February 2, 1999.

Comment date: September 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. UtiliCorp United Inc.

[Docket No. ER99–4138–000]

Take notice that on August 19, 1999, UtiliCorp United Inc., tendered for filing, a Service Agreement under its Market-Based Power Sales Tariff, FERC Electric Tariff Original Volume No. 28, with Tennessee Valley Authority. The Service Agreement provides for the sale of capacity and energy by UtiliCorp United Inc., to Tennessee Valley Authority pursuant to the tariff.

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: September 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. MidAmerican Energy Company

[Docket No. ER99–4139–000]

Take notice that on August 19, 1999, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, tendered for filing with the Commission a Firm Transmission Service Agreement with Minnesota Municipal Power Agency (Minnesota Municipal), dated August 4, 1999, and a Non-Firm Transmission Service Agreement with Minnesota Municipal, dated August 4, 1999, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of August 4, 1999, for the Agreements with Minnesota Municipal and accordingly seeks a waiver of the Commission's notice requirement.

Comment date: September 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Cinergy Services, Inc. and Reliant Energy Services, Inc.

[Docket No. ER99–4140–000]

Take notice that on August 19 1999, Cinergy Services, Inc. (Cinergy) and Reliant Energy Services, Inc. (Reliant), tendered for filing Notice of Assignment that Reliant will replace NorAm Energy Services, Inc., of Cinergy's Interchange Agreement Rate Schedule No. 3.

Cinergy and Reliant are requesting an effective date of February 2, 1999.

Comment date: September 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Entergy Services, Inc.

[Docket No. ER99–4141–000]

Take notice that on August 19, 1999, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the

Entergy Operating Companies) tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Point-to-Point Transportation Agreement both between Entergy Services, Inc. as agent for the Entergy Operating Companies, and Scana Energy Marketing, Inc.

Comment date: September 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Virginia Electric and Power Company

[Docket No. ER99–4142–000]

Take notice that on August 19, 1999, Virginia Electric and Power Company, d/b/a North Carolina Power, tendered for filing a letter agreement supplementing Rate Schedules 102, 114 and 115 of North Carolina Power for service to the Town of Belhaven, North Carolina (Town), a member municipality of the North Carolina Municipal Power Agency Number 3 of the North Carolina Eastern Municipal Power Agency (Power Agency). The letter agreement dated June 18, 1999, establishes the terms and conditions for temporary modification of the substation and the permanent modification of metering facilities leased by the Power agency for the Town in conjunction with the Town's upgrade of its own electric system.

Copies of the filing were served upon the Power Agency, the North Carolina Utilities Commission and the Virginia State Corporation Commission.

Comment date: September 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. Nevada Power Company

[Docket No. ER99–4143–000]

Take notice that on August 19, 1999, Nevada Power Company (NPC), tended for filing Service Agreement to provide Non-Firm Point-to-Point Transmission Service under NPC's (Transmission Provider) Open Access Transmission Tariff with Electric Clearinghouse, Inc., (Transmission Customer).

A copy of this filing has been served on Electric Clearinghouse, Inc. (Transmission Customer) and the Nevada Public Service Commission.

Comment date: September 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. Jersey Central Power & Light Company

[Docket No. ER99–4144–000]

Take notice that on August 19, 1999, Jersey Central Power & Light Company d/b/a/ GPU Energy (Jersey Central), tendered for filing an amendment to an Interconnection Agreement between Jersey Central and Atlantic City Electric Company. The amendment revises a component of the rate for service under the Interconnection Agreement relating to Jersey Central's O&M expense for 1999.

Comment date: September 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

33. Dayton Power and Light Company

[Docket No. ER99–4145–000]

Take notice that on August 19, 1999, Dayton Power and Light Company (Dayton), tendered for filing service agreements establishing Citizens Power Sales and El Paso Power Services Company as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon Citizens Power Sales and El Paso Power Services Company and the Public Utilities Commission of Ohio.

Comment date: September 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

34. Southern Company Services, Inc.

[Docket No. ER99–4165–000]

Take notice that on August 19, 1999, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Company), tendered for filing four (4) service agreements for firm point-to-point transmission service between SCS, as agent for Southern Company, and (i) Constellation Power Source, Inc. (Constellation), (ii) Coral Energy L.P., (iii) Southern Company Energy Marketing L.P. and (iv) Tenaska Power Services, Co. and two (2) service agreement for non-firm point-to-point transmission service between SCS, as agent for Southern Company, and (i) Constellation and (ii) West Penn Power Company d/b/a Allegheny Energy under the Open Access Transmission Tariff of Southern Company (FERC Electric Tariff, Original Volume No. 5).

Comment date: September 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22514 Filed 8–30–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–522–000]

Transwestern Pipeline Company; Notice of Availability of the Environmental Assessment For The Proposed Gallup Expansion Project

August 25, 1999.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Transwestern Pipeline Company (Transwestern) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed Gallup Expansion project. Transwestern proposes to construct and operate a new 10,000-horsepower electric motor-driven Gallup Compressor Station near the interconnect between its mainline and San Juan Lateral in McKinley County, New Mexico. Transwestern also proposes to install gas coolers at its Bloomfield and LaPlata "A" Compressor Stations on its San Juan Lateral in San Juan County, New Mexico and LaPlata County, Colorado, respectively.

The proposed facilities would create incremental firm capacity of approximately 50,000 cubic feet per day (Mcfd) on the San Juan Lateral downstream of the Bloomfield Compressor Station. The project would also allow Transwestern to operate its mainline facilities at their certificated capacity of 1,090,000 Mcfd on a firm basis. The primary purpose of installing the gas coolers is to reduce the temperature of the gas flowing within the pipeline and protect the integrity of the pipeline coating. As a result of the reduced gas temperatures, the pipeline and associated downstream compression would operate more efficiently, creating additional incremental firm capacity on the San Juan Lateral.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE, Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.1
- Reference Docket No. CP99–522–000; and
- Mail your comments so that they will be received in Washington, DC on or before September 24, 1999.

Comments will be considered by the Commission but will not serve to make the commenter a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and procedures (18 CFR 285.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your comments considered.

Additional information about the proposed project is available from Paul McKee in the Commission's Office of External Affairs, at (202) 208–1088 or on the FERC Internet website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–22515 Filed 8–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of an Amendment of Application for an Amendment of Exemption and Soliciting Comments Motions to Intervene, and Protests

August 25, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of Application for Amendment of Exemption.

b. *Project No.:* 2869–007.

c. *Date Filed:* January 4, 1999.

d. *Applicant:* Village of Postdam.

e. *Name of Project:* Postsdam Water Power Project.

f. *Location:* On the Raquette River in St. Lawrence County, New York.

g. *Filed Pursuant to:* 18 CFR 4.104.

h. *Applicant Contact:* Frank O. Christie, Christie Engineering, 8 East Main St., Malone, NY 12953, (518) 483–1945.

i. *FERC Contact:* Any questions on this notice should be addressed to Mohamad Fayyad at mohamad.fayyad@ferc.fed.us or 202–219–2665.

j. *Deadline for filing comments and/or motions:* October 8, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (2869–007) on any comments filed.

k. *Description of Filing:* On November 16, 1998, the Commission issued a Notice of Amendment of Exemption for the Postdam Water Power Project, FERC No. 2869. The Notice described the filing by stating that the exemptee is proposing to add a new powerhouse at the site. The existing project consists of the East Dam and West Dam separated by an island, a 300-acre reservoir, and an 800-kW powerhouse at the East Dam. The proposed powerhouse would consist of an intake and powerhouse at the West Dam with a capacity of 700 kW.

On January 4, 1999, the exemptee filed additional information that included a discussion of comments received from the U.S. Fish and Wildlife and the New York State Department of Environmental Conservation. To alleviate the concerns of those agencies about changes in the pond level, the exemptee is proposing to install a small inflatable rubber dam on top of the crest of the spillway. The rubber dam would be about 9-inch-high when inflated. The purpose of the rubber dam would be to maintain approximately the same impoundment level that currently exists, during the operation of the proposed powerhouse.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm, (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item "h" above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but

only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc 99–22516 Filed 8–30–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6431–1]

National Environmental Justice Advisory Council; Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of charter renewal.

The Charter for the Environmental Protection Agency's National Environmental Justice Advisory Council (NEJAC) will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. II section 9(c). The purpose of NEJAC is to provide advice and consensus recommendations to the Administrator of EPA on issues associated with integrating environmental justice concerns into EPA's outreach activities, public policies, science, regulatory, enforcement, and compliance decisions.

It is determined that NEJAC is in the public interest in connection with the performance of duties imposed on the Agency by law.

Inquiries may be directed to Charles Lee, Designated Federal Officer, NEJAC, U.S. EPA, (mail code 2201A), 401 M Street, SW, Washington, D.C. 20460.

Dated: July 8, 1999.

Sylvia K. Lowrance,

Deputy Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. 99–22631 Filed 8–30–99; 8:45 am]

BILLING CODE 6560–50–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Meeting of the President's Committee of Advisors on Science and Technology

AGENCY: Office of Science and Technology Policy.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for a meeting of the President's Committee of Advisors on Science and Technology (PCAST), and describes the functions of the Committee. Notice of this meeting is required under the Federal Advisory Committee Act.

DATES AND PLACE: September 16, 1999, Washington, DC. This meeting will take place in the Truman Room (Third Floor) of the White House Conference Center, 726 Jackson Place, NW, Washington, DC.

TYPE OF MEETING: Open.

PROPOSED SCHEDULE AND AGENDA: The President's Committee of Advisors on Science and Technology (PCAST) is tentatively scheduled to meet in open session on Thursday, September 16, 1999, at approximately 12:30 p.m., to discuss (1) the Science and Technology Budget for FY2000; (2) the work of the PCAST panels. This session will end at approximately 2:00 p.m.

PUBLIC COMMENTS: There will be a time allocated for the public to speak on any of the above agenda items. Please make your request for the opportunity to make a public comment five (5) days in advance of the meeting. Written comments are welcome any time prior to or following the meeting. Please notify Joan P. Porter, PCAST Executive Secretary, at (202) 456–6101 or fax your requests/comments to (202) 456–6026.

FOR FURTHER INFORMATION CONTACT: For information regarding time, place, and agenda, please call Joan P. Porter, PCAST Executive Secretary, at (202) 456–6101, prior to 3:00 p.m. on Tuesday, September 14, 1999. Information may also be available at the PCAST website at http://www.whitehouse.gov/WH/EOP/PCAST/html/PCAST—home.html. Please note that public seating for this meeting is limited, and is available on a first-come first served basis.

SUPPLEMENTARY INFORMATION: The President's Committee of Advisors on Science and Technology was established by Executive Order 12882, as amended, on November 23, 1993. The purpose of PCAST is to advise the President on matters of national importance that have significant science and technology content, and to assist the President's National Science and Technology Council in securing private sector participation in its activities. The Committee members are distinguished individuals appointed by the President from non-Federal sectors. The PCAST is co-chaired by the Assistant to the President for Science and Technology and, by John Young, former President and CEO of the Hewlett-Packard Company.

Barbara Ann Ferguson,

Assistant Director, Budget and Administration, Office of Science and Technology Policy.

[FR Doc. 99–22543 Filed 8–30–99; 8:45 am]

BILLING CODE 3170–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–1473]

Public Safety National Coordination Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document advises interested persons of a meeting of the Public Safety National Coordination Committee ("NCC"), which will be held at The Holiday Inn—Lansing West Conference Center, Lansing, Michigan. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC. This notice advises interested persons of the third meeting of the Public Safety National Coordination Committee.

DATES: September 24, 1999 at 1:30 p.m.–5:00 p.m.

ADDRESSES: The Holiday Inn—Lansing West Conference Center, 7501 W. Saginaw Highway, Lansing, Michigan 48917.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer, Michael J. Wilhelm, (202) 418–0680, e-mail mwilhelm@fcc.gov. Press Contact, Meribeth McCarrick, Wireless Telecommunications Bureau, 202–418–0600, or e-mail mmccarri@fcc.gov.

SUPPLEMENTARY INFORMATION: Following is the complete text of the Public Notice:

This Public Notice advises interested persons of a meeting of the Public Safety National Coordination Committee ("NCC"), which will be held in Lansing, Michigan. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC. This notice advises interested persons of the third meeting of the Public Safety National Coordination Committee.

Date: September 24, 1999.

Meeting Time: General Membership Meeting—1:30 p.m.–5 p.m.

Address: The Holiday Inn—Lansing West Conference Center, 7501 W. Saginaw Highway, Lansing, Michigan 48917.

The NCC Subcommittees will meet from 10 a.m. to 12 noon, continuing from the previous day; the NCC General Membership Meeting will commence at 1:30 p.m. and continue until 5 p.m. The agenda for the NCC membership meeting is as follows:

1. Introduction and Welcoming Remarks
2. Approval of Agenda
3. Other Administrative Matters
4. Report from the Interoperability Subcommittee
5. Report from the Technology Subcommittee
6. Report from the Implementation Subcommittee
7. Public Discussion
8. Other Business
9. Upcoming Meeting Dates and Locations
10. Closing Remarks

The FCC has established the Public Safety National Coordination Committee, pursuant to the provisions of the Federal Advisory Committee Act, to advise the Commission on a variety of issues relating to the use of the 24 MHz of spectrum in the 764–776/794–806 MHz frequency bands (collectively, the 700 MHz band) that has been allocated to public safety services. See The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010 and Establishment of Rules and Requirements For Priority Access Service, WT Docket No. 96–86, *First Report and Order and Third Notice of Proposed Rulemaking*, FCC 98–191 (1998). 63 FR 58645 (November 2, 1998)

The NCC has an open membership. Previous expressions of interest in membership have been received in response to several Public Notices inviting interested persons to become members and to participate in the NCC's processes. All persons who have previously identified themselves or have been designated as a representative of an organization are deemed members and are invited to attend. All other interested parties are hereby invited to attend and to participate in the NCC processes and its meetings and to become members of the Committee. This policy will ensure balanced participation. Members of the general public may attend the meeting. To attend the third meeting of the Public Safety National Coordination Committee, please RSVP to Joy Alford or Bertram Weintraub of the Policy and Rules Branch of the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau of the FCC by calling (202) 418–0680, by faxing (202) 418–2643, or by e-mailing at jalford@fcc.gov or bweintra@fcc.gov. Please provide your name, the organization you represent, your phone number, fax number and email address. This RSVP is for the purpose of determining the number of people who will attend this third meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. The public may submit written comments to the NCC's Designated Federal Officer before the meeting.

Additional information about the NCC and NCC-related matters can be found on the NCC website located at: http://www.fcc.gov/wtb/publicsafety/ncc.html.

Federal Communications Commission.

Herb Zeiler,

Deputy Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 99–22507 Filed 8–30–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1282–DR]

Iowa; Amendment No. 6 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa, (FEMA–1282–DR), dated July 22, 1999, and related determinations.

EFFECTIVE DATE: August 17, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Iowa is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 22, 1999:

Harrison, Mills, and Pottawattamie Counties for Public Assistance (already designated for Individual Assistance).

Montgomery County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–22512 Filed 8–30–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1282–DR]

Iowa; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa, (FEMA–1282–DR), dated July 22, 1999, and related determinations.

EFFECTIVE DATE: August 13, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery

Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Iowa is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 22, 1999:

Harrison and Mills Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–22643 Filed 8–30–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1282–DR]

Iowa; Amendment No. 5 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa (FEMA–1282–DR), dated July 22, 1999, and related determinations.

EFFECTIVE DATE: August 10, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 10, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–22644 Filed 8–30–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1283–DR]

Minnesota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Minnesota (FEMA–1283–DR), dated July 28, 1999, and related determinations.

EFFECTIVE DATE: July 28, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated July 28, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Minnesota, resulting from severe storms, winds, and flooding beginning on July 4, 1999, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Minnesota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implemeptation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Ron Sherman of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Minnesota to have been affected adversely by this declared major disaster:

Cook, Itasca, and St. Louis Counties for Individual Assistance.

Aitkin, Cass, Clay, Cook, Hubbard, Itasca, Lake, and St. Louis Counties for Public Assistance.

All counties within the State of Minnesota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–22513 Filed 8–30–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1283–DR]

Minnesota; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota (FEMA–1283–DR), dated July 28, 1999, and related determinations.

EFFECTIVE DATE: August 2, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 2, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–22640 Filed 8–30–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1283–DR]

Minnesota; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota, (FEMA–1283-DR), dated July 28, 1999, and related determinations.

EFFECTIVE DATE: August 5, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Minnesota is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 28, 1999:

Lake County for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–22641 Filed 8–30–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL TRADE COMMISSION

[File No. 991 0041]

The Kroger Co., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 1, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: William Baer, FTC/H–374, 600 Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–2932 or Laurel Price and Michael Rose, Federal Trade Commission, East Central Regional Office, 1111 Superior Ave., Suite 200, Cleveland, OH 44114. (216) 263–3417.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 23, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted for public comment from The Kroger Co. ("Kroger") and The John C. Groub Company, Inc. ("Groub") (collectively "the Proposed Respondents") an Agreement Containing consent order ("Order"). The Order, requiring the divestiture of three supermarkets to Roundy's Inc., is designed to remedy likely anticompetitive effects arising from Kroger's acquisition of substantially all of the assets of Groub.

Kroger is an Ohio corporation headquartered in Cincinnati, Ohio. It is the largest supermarket firm in the United States, with 1997 fiscal year sales in excess of $26 billion. Kroger operates more than 2,200 supermarkets and convenience stores in 37 states. Kroger operates 89 supermarkets in Indiana. Two Kroger supermarkets directly compete with four Groub stores subject to this transaction.

Groub, an Indiana corporation headquartered in Seymour, Indiana, operates 30 retail supermarkets in southern and central Indiana under the names "Jay C," "Foods Plus," and "Ruler." Groub sales for the 1997 fiscal year were approximately $252,000,000.

The proposed complaint alleges that the relevant line of commerce (i.e., the product market) is the retail sale of food and grocery items in supermarkets. Supermarkets provide a distinct set of products and services for consumers who desire one-stop shopping for food and grocery products. Supermarkets carry a full line and wide selection of both food and nonfood products (typically more than 10,000 different stock-keeping units ("SKUs")), as well as a deep inventory of those SKUs. In order to accommodate the large number of food and nonfood products necessary for one-stop shopping, supermarkets are large stores that typically have at least 10,000 square feet of selling space.

Supermarkets compete primarily with other supermarkets that provide one-stop shopping for food and grocery products. Supermarkets primarily base their food and grocery prices on the prices of food and grocery products sold at other nearby supermarkets. Supermarkets do not regularly price-check food and grocery products sold at other types of stores, and do not

significantly change their food and grocery prices in response to prices at other types of stores. Most consumers shopping for food and grocery products at supermarkets are not likely to shop elsewhere in response to a small price increase by supermarkets.

Retail stores other than supermarkets that sell food and grocery products, such as neighborhood "mom & pop" grocery stores, convenience stores, specialty food stores (e.g., seafood markets, bakeries, etc.), club stores, military commissaries, and mass merchants, do not effectively constrain prices at supermarkets. These other stores operate significantly different retail formats. None of these stores offers a supermarket's distinct set of products and services that enable consumers to one-stop shop for food and grocery products.

Kroger and Groub are direct competitors in the retail sale of food and grocery items in supermarkets in Columbus and Madison, Indiana. Columbus has a population of approximately 34,000 people; Madison's population is around 40,000. According to the proposed complaint, the Columbus and Madison relevant markets are highly concentrated, whether measured by the Herfindahl-Hirschman Index (commonly referred to as "HHI") or by two-firm and four-firm concentration ratios.[1] The acquisition would substantially increase concentration in each market. Kroger and Groub would have a combined market share in the geographic markets of Columbus and Madison of near or greater than 66% and 54%, respectively. The post-acquisition HHIs would be 5,254 in Columbus and 4,262 in Madison. According to the proposed complaint, entry is difficult and would not be timely, likely, or sufficient to prevent anticompetitive effects in the relevant geographic markets.

According to the proposed complaint, Kroger's acquisition of Groub may substantially lessen competition in the relevant markets in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by eliminating direct competition between supermarkets owned or controlled by Kroger and supermarkets owned or controlled by Groub; by increasing the likelihood that Kroger will unilaterally exercise market power; and by increasing the likelihood of, or facilitating, collusion or coordinated interaction among the remaining supermarket firms. Each of these effects increases the likelihood that the prices of food, groceries or services will increase, and the quality and selection of food, groceries or services will decrease, in the relevant sections of the country.

To remedy the antitrust concerns in these markets, under the terms of the Order, the Proposed Respondents must divest three supermarkets in the relevant markets. The Proposed Respondents must divest: (1) one Groub "Jay C" and one Groub "Foods Plus" in Columbus, Indiana, and (2) one "Kroger" in Madison, Indiana, to Roundy's, Inc. ("Roundy's"). Roundy's is one of the largest food wholesalers in the United States and an operator of company-owned supermarkets.

These divestitures include every Kroger supermarket or every Groub supermarket in each relevant market. Roundy's owns no supermarkets in the same market where it is acquiring one or more divested supermarkets from the Proposed Respondents. The specific supermarkets that the Proposed Respondents must divest to Roundy's are:

1. Groub store no. 92 operating under the "Foods Plus" trade name, which is located at 1343 North National Road, Columbus, Indiana 47201 (Bartholomew County)

2. Groub store no. 89 operating under the "Jay C" trade name, which is located at 2540 Eastbrook Plaza, Columbus, Indiana 47201 (Bartholomew County); and

3. Kroger store no. 304 operating under the "Kroger" trade name, which is located at 748 Jefferson Court, Madison, Indiana 47250 (Jefferson County).

From the time Kroger acquires substantially all of the assets of Groub until the divestitures have been completed, the Proposed Respondents are required to maintain the viability, competitiveness, and marketability of the assets to be divested, must not cause their wasting or deterioration, and cannot sell, transfer, or otherwise impair their marketability or viability

The Order, which was executed on July 13, 1999, specifically requires that the divestitures occur no later than 20 days after Kroger acquires substantially all of the assets of Groub or four months after the proposed Respondents signed the Order, whichever is earlier. The Order also requires Kroger and Groub to include rescission provisions in their up-front buyer agreements that allow them to rescind the transaction(s) if the Commission, after the comment period, decides to reject any up-front buyer(s). If Kroger divests the supermarkets to be divested prior to the date the Order becomes final, and if, at the time the Commission decides to make the Order final, the Commission notifies Kroger or Groub that the up-front buyer is not an acceptable acquirer or that any of the up-front buyer agreements is not an acceptable manner of divestiture, then Kroger or Groub must immediately rescind the transaction in question and divest those assets within three months after the Order becomes final. At that time, Kroger or Groub must divest those assets only to an acquirer that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission.

The Commission's goal in evaluating possible purchasers of divested assets is to maintain the competitive environment that existed prior to the acquisition. When divestiture is an appropriate remedy for a supermarket acquisition, the Commission requires the parties to find a buyer for the divested stores. A proposed buyer must not itself present competitive problems. For example, the Commission is less likely to approve a buyer that already has a large retail presence in the relevant geographic area than a buyer without such a presence. The Commission is satisfied that the purchaser presented by the parties is well qualified to run the divested stores and that divestiture to that purchaser poses no separate competitive issues.

For a period of 10 years from the date the Order becomes final, Kroger is required to provide notice to the Commission prior to acquiring supermarket assets located in, or any interest (such as stock) in any entity that owns or operates a supermarket located in, Bartholomew or Jefferson counties, Indiana. Kroger may not complete such an acquisition until it has provided information requested by the Commission. This provision does not restrict Kroger from constructing new supermarket facilities on its own; nor does it restrict Kroger from leasing facilities not operated as supermarkets within the previous six months.

For a period of 10 years, the Order also prohibits Kroger from entering into or enforcing any agreement that restricts the ability of any person that acquires any supermarket, any leasehold interest in any supermarket, or any interest in any retail location used as a supermarket on or after July 13, 1999, to operate a supermarket at that site if such a supermarket was formerly owned or operated by the Kroger in Batholomew or Jefferson counties, Indiana. In addition, Kroger may not remove fixtures or equipment from a store or property owned or leased in Bartholomew or Jefferson counties, Indiana, that is no longer in operation as a supermarket, except (1) prior to sale, sublease, assignment, or change in occupancy or (2) to relocate such fixtures or equipment in the ordinary course of business to any other supermarket owned or operated by Kroger.

The Proposed Respondents are required to provide to the Commission a report of compliance with the Order within 30 days following the date on which they signed the consent agreement and every 30 days thereafter until the diversitures are completed: and Kroger must report annually for a period of 10 years from the date the proposed order becomes final. The obligations of Group under the Order will terminate upon the date it becomes final.

The Order has been placed on the public record for 60 days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make the Order final.

By accepting the Order subject to final approval, the Commission anticipates that the competitive problems alleged in the compliant will be resolved. The purpose of this analysis is to invite public comment on the Order, including the proposed sale of supermarkets to Roundy's, in order to aid the Commission in its determination of whether to make the Order final. This analysis is not intended to constitute an official interpretation of the Order nor is it intended to modify the terms of the Order in any way.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 99–22575 Filed 8–30–99; 8:45 am]

BILLING CODE 6750–01–M

[1] The HHI is a measurement of market concentration calculated by summing the squares of the individual market shares of all the participants.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) Announces the Following Meeting

Name: Pediatric Centers Directors Meeting.

Times and Dates: 8 a.m.–4:30 p.m., October 25, 1999; 8 a.m.–4:30 p.m., October 26, 1999.

Place: Sheraton Buckhead, 3405 Lenox Road NE, Atlanta, Georgia 30326, telephone 404–261–9250.

Status: Open to the public, limited only by space available. The meeting room accommodates approximately 100 people.

Purpose: The purpose of this meeting is to provide a forum for the Directors of the funded Pediatric Centers to review program progress and discuss future plans, prevention issues and concerns.

Matters to be Discussed: Agenda items include perspectives of funding agencies and updates from funded centers.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: James Rifenburg, Air Pollution and Respiratory Health Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, M/S F–39, Atlanta, Georgia 30341–3724, telephone 770/488–7320.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 24, 1999.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–22526 Filed 8–30–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Vaccine Advisory Committee, Subcommittee on Future Vaccines, Subcommittee on Immunization Coverage, and Subcommittee on Vaccine Safety and Communication Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee meetings.

Name: National Vaccine Advisory Committee (NVAC).

Times and Dates: 9 a.m.–2 p.m., September 16, 1999; 8:30 a.m.–12:45 p.m., September 17, 1999.

Place: Hubert H. Humphrey Building, Room 505A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, persons without a government identification card should plan to arrive at the building each day either between 8 and 8:30 a.m. or 12:30 and 1 p.m. Entrance to the meeting at other times during the day cannot be assured.

Purpose: This committee advises and makes recommendations to the Director of the National Vaccine Program on matters related to the Program responsibilities.

Matters To Be Discussed: Agenda items will include: an update on the National Vaccine Program Office (NVPO) activities; a workshop report on thimerasol in vaccines; an update on rotavirus vaccine recommendations; an update on the Vaccine Safety and Communication Subcommittee; decision making and communication issues in vaccine safety; an update on the immunization registries initiative; reports from the Future Vaccines Subcommittee, Vaccine Safety and Communication Subcommittee and the Immunization Coverage Subcommittee; an update on pandemic preparedness planning; and discussions on immunization challenges in Mexico and Canada.

Name: Subcommittee on Future Vaccines.

Time and Date: 2:45 p.m.–5 p.m., September 16, 1999.

Place: Hubert H. Humphrey Building, Room 305A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee develops policy options and guides national activities that lead to accelerated development, licensure, and the best use of new vaccines in the simplest possible immunization schedules.

Matters To Be Discussed: Agenda items will include discussions regarding the Institute of Medicine (IOM) report concerning cytomegalovirus vaccines and the IOM report concerning enteric bacteria vaccines.

Name: Subcommittee on Immunization Coverage.

Time and Date: 2:45 p.m.–5 p.m., September 16, 1999.

Place: Hubert H. Humphrey Building, Room 505A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee will identify and propose solutions that provide a multifaceted and holistic approach to reducing barriers that result in low immunization coverage for children.

Matters To Be Discussed: Agenda items will include updates on the roll out process for the "Strategies to Sustain Success" initiative; the status of the paper on adult immunizations at non-traditional sites and standards for adult immunizations at non-

traditional sites; and, adolescent immunizations. The subcommittee will also discuss revisions of adult immunization standards in conjunction with the National Coalition for Adult Immunization; and assessment of vaccine coverage in view of recent vaccine safety issues.

Name: Subcommittee on Vaccine Safety and Communication.

Time and Date: 2:45 p.m.–5 p.m., September 16, 1999.

Place: Hubert H. Humphrey Building, Room 325A, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee reviews issues relevant to vaccine safety and adverse reactions to vaccines.

Matters To Be Discussed: Agenda items include a discussion on Thimerosal in vaccines, rotavirus vaccine and intussusception and the private governmental communications/response to acute vaccine safety issues.

Agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Gloria Sagar, Committee Management Specialist, NVPO, CDC, 1600 Clifton Road, NE, M/S A–11, Atlanta, Georgia 30333, telephone 404/639–4450.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 24, 1999.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–22525 Filed 8–30–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Program Enhancement Supplement of National Adoption Information Exchange

AGENCY: Administration for Children and Families (ACYF)—Children's Bureau, ACF, DHHS.

ACTION: Notice.

SUMMARY: Notice is hereby given concerning the intention of the Children's Bureau to award a noncompetitive supplement of the National Adoption Information Exchange (NAE) project of $500,000 for an additional year—not to extend beyond September 29, 2000 to the National Adoption Center, Philadelphia, Pennsylvania. This noncompetitive supplement will allow for the continuation of a current NAE in order to facilitate the adoption of children with special needs in preparation for full competition of an expanded effort in FY 2000.

On November 24, 1998, the President issued an Executive Memorandum to the Secretary of Health and Human Services, directing the Secretary to develop a plan to expand the use of the Internet as a tool for finding homes for children waiting to be adopted from the public child welfare system. The plan calls for an extensive consultation process with state social services agencies, courts, private agencies and other interested stakeholders, to identify and address important issues and strategies and build on promising existing efforts to create an effective national registry system.

The Administration on Children, Youth and Families is awarding this supplement until the expanded scope of the project has been established and all eligible organizations will have a fair and equitable opportunity to compete for the multiyear project. This will ensure that the project offered to the field for competition is the project described by the Executive Memorandum. It will also ensure that the successful applicant is the best qualified to perform the activities called for by the expanded scope.

Authority: The award will be made under the authority of the Adoption Opportunities Program, Title II of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, as amended [42 U.S.C. 5111].

FOR FURTHER INFORMATION CONTACT: Geneva Ware-Rice, Children's Bureau, Administration on Children, Youth and Families, 330 C Street, SW, Room 2424, Washington, DC 20447; Telephone: (202) 205–8305.

Dated: August 25, 1999.

Patricia Montoya,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 99–22606 Filed 8–30–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1522]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Temporary Marketing Permit Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by September 30, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Temporary Marketing Permit Applications—21 CFR 130.17(c) and (l) (OMB Control Number 0910–0133)—Extension

Section 401 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 341) directs FDA to issue regulations establishing definitions and standards of identity for food "whenever * * * such action will promote honesty and fair dealing in the interest of consumers." Under section 403(g) of the act (21 U.S.C. 343(g)), a food that is subject to a definition and standard of identity prescribed by regulation is misbranded if it does not conform to such definition and standard of identity. Section 130.17 (21 CFR 130.17) provides for the issuance by FDA of temporary marketing permits that enable the food industry to test consumer acceptance and measure the technological and commercial feasibility in interstate commerce of experimental packs of food that deviate from applicable definitions and standards of identity. Section 130.17(c) specifies the information that a firm must submit to FDA to obtain a temporary marketing permit. The information required in a temporary marketing permit application under § 130.17(c) enables the agency to monitor the manufacture, labeling, and distribution of experimental packs of food that deviate from applicable definitions or standards of identity. The information so obtained can be used in support of a petition to establish or amend the applicable definition or standard of identity to provide for the variations. Section 130.17(l) specifies the information that a firm must submit to FDA to obtain an extension of a temporary marketing permit.

In the **Federal Register** of June 8, 1999 (64 FR 30524), the agency requested comments on the proposed collections of information. No significant comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
130.17(c)	3	1	3	25	75
130.17(l)	4	2	8	2	16
Total					91

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated number of temporary marketing permit applications and hours per response is an average based on the agency's experience with applications received from October 1, 1995, through September 30, 1998, and information from firms that have submitted recent requests for temporary marketing permits.

Dated: August 25, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–22605 Filed 8–30–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Ophthalmic Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Ophthalmic Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 23, 1999, 8:30 a.m. to 5 p.m.

Location: Holiday Inn, Lincoln Ballroom, 8777 Georgia Ave., Silver Spring, MD.

Contact Person: Sara M. Thornton, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2053, or by e-mail at smt@cdrh.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12396. Please call the Information Line for up-to-date information on this meeting.

Agenda: On September 23, 1999, from 8:30 a.m. to 1:30 p.m., the committee will hear formal presentations followed by public participation in a discussion of keratomes. Public participants in the group discussion are requested to develop a comprehensive list of problems associated with keratomes, the related causes, and the steps that can be taken to mitigate the problems. From 1:30 p.m. to 5 p.m., the committee will discuss issues related to defining the scope and purpose of a proposed keratome guidance to be developed from an outline of contents currently recommended for keratome premarket notification submissions. Single copies of the outline are available to the public by contacting the person noted above.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 7, 1999. Formal oral presentations from the public will be scheduled between approximately 9:15 a.m. and 10:15 a.m. on September 23, 1999. Those desiring to make formal oral presentations should notify the contact person before September 10, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation. Those desiring to be a participant in the open group discussion should notify the contact person by September 10, 1999, to reserve a place at a discussion table.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 23, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99–22604 Filed 8–30–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRBC (C1).

Date: September 10, 1999.
Time: 1 P.M. to 3 P.M.
Agenda: To review and evaluate contract proposals.
Place: National Institutes of Health; Natcher Bldg., 45 Center Drive, Room 6AS–37, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Dan E. Matsumoto, Phd, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37B, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.
(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)
Dated: August 24, 1999.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 99–22557 Filed 8–30–99; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Dental and Craniofacial Research Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Dental and Craniofacial Research Council, Discussion of Blue Ribbon Panel on Training and Career Development.
Date: September 27–28, 1999.
Open: September 27, 1999, 9:30 a.m. to 5 p.m.
Agenda: Other.
Place: Building 31, C Wing, 6th Floor, Conference Room 10, National Institutes of Health, 3100 Center Drive, Bethesda, MD 20892.
Closed: September 28, 1999, 9 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications and/or proposals.
Place: Building 31, C Wing, 6th Floor, Conference Room 10, National Institutes of Health, 3100 Center Drive, Bethesda, MD 20892.
Contact Person: Dushanka V. Kleinman, Deputy Director, National Institutes of Dental and Craniofacial Res., National Institutes of Health, 9000 Rockville Pike, 31/2C39, Bethesda, MD 20892.
(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)
Dated: August 24, 1999.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy, NIH.
[FR Doc. 99–22558 Filed 8–30–99; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Drug Abuse.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Drug Abuse.
Date: September 14–15, 1999.
Closed: September 14, 1999, 1 PM to adjournment.
Agenda: To review and evaluate grant applications.
Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.
Open: September 15, 1999, 9 AM to adjournment.
Agenda: This portion of the meeting will be open to the public for announcements and reports of administrative, legislative and program developments in the drug abuse field.
Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.
Contact Person: Teresa Levitin, PhD; Director, Office of Extramural Program Review, National Institutes on Drug Abuse, National Institute of Health, DHHS, Bethesda, MD 20892–9547; (301) 443–2755.
(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)
Dated: August 24, 1999.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy, NIH.
[FR Doc. 99–22559 Filed 8–30–99; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Scientific, Technical, and Logistics Support for the DEA, NIAID.

Date: September 28, 1999.
Time: 8:30 AM to 5 PM.
Agenda: To review and evaluate contract proposals.
Place: NHLBI, NIH (Room 9100), 6701 Rockledge Drive, Bethesda, MD 20892–7924.
Contact Person: C. James Scheirer, PhD, Chief, Review Branch, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, Rockledge Center II, 6701 Rockledge Drive, Suite 7216, Bethesda, MD 20892–7924; 301–435–0266.
(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)
Dated: August 24, 1999.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy, NIH.
[FR Doc. 99–22560 Filed 8–30–99; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institutes of Health, National Institute of Environmental Health Sciences; Notice of Workshop on "The Role of Human Exposure Assessment in the Prevention of Environmental Disease," Doubletree Hotel, 1750 Rockville Pike, Rockville, MD, September 22–24, 1999

Overview

Knowledge of human exposures to agents of potential public health concern is critical for a successful and scientifically sound approach to the evaluation of human health risks resulting from environmental and occupational exposures. This workshop will focus on the exposure-dose-response-disease paradigm and will describe current opportunities and challenges in exposure assessment research, provide usable information on disease-specific chemical exposures that will enhance integration of exposure assessment with epidemiology and toxicology studies, and highlight approaches for further research and the development of effective prevention and intervention strategies. The two and one-half day workshop is structured so that most of the time will be spent in organized breakout sessions on the state of the science and case studies that will gain focus from the plenary sessions. A Workshop Proceedings Report summarizing the workshop and sessions, and report/recommendations from the breakout groups is planned.

The meeting is open to the public, limited only by space available. The program includes time for open discussion. In addition, time will be allotted to persons wishing to make oral comments. The time allotted for each presenter will be dependent on the number of speakers. Those wishing to speak are encouraged to preregister. A poster session will be held the first evening of the workshop. Those interested in presenting a poster must submit an abstract. The deadline for receipt of abstracts is Tuesday, September 7, 1999.

Co-sponsors for the workshop include the National Institutes of Health's Office of Rare Diseases, National Institute of Environmental Health Sciences and National Cancer Institute; the National Toxicology Program; the Centers for Disease Control and Prevention's National Institute for Occupational Safety and Health and National Center for Environmental Health; the U.S. Environmental Protection Agency's Office of Research and Development; and the American Industrial Health Council.

The preliminary program follows:

Wednesday, September 22

7:30 AM Registration
8:45 AM Welcome
Dr. Kenneth Olden, NIEHS
9 AM Opening Remarks: Human Exposure Assessment and Environmental Disease
Dr. Samuel Wilson, NIEHS
9:15 AM Workshop Charge: Utility and Applications of Exposure Assessment
Dr. George Lucier, NIEHS
Dr. Scott Masten, NIEHS
9:30 AM–12:15 PM Plenary Session I: Exposure Assessment in Perspective Chair:
Dr. Noorine Noonan, USEPA
9:30 AM Exposure Assessment: Present and Future
Dr. Paul Lioy, UMDNJ, EOHSI
10:15 AM Break
10:45 AM Human Exposure Assessment: Challenges and Opportunities for improving the Linkage between Exposure and Disease
Dr. Howard Hu, Harvard University
11:30 AM Exposure Assessment: Regulatory and Legislative Issues
Dr. Lynn Goldman, Johns Hopkins University and NIEHS
12:15 PM Lunch
1:30 PM–3:30 PM Plenary Session II: Emerging Issues in Exposure Assessment
Chair: Dr. John Spengler, Harvard University
1:30 PM Sensitive Populations at Risk
Dr. Philip Landrigan, Mt. Sinai School of Medicine
2:10 PM Gene-Environment Interactions: Bringing Together Molecular Epidemiology and Exposure Assessment
Dr. John Groopman, Johns Hopkins University
2:50 PM Disease Prevention and Intervention: Role of Exposure Assessment
Dr. Richard Jackson, NCEH
3:30 PM Break
4:00 PM–5:30 PM Plenary Session III: Some Federal Initiatives in Exposure Assessment
Chair: Dr. Ken Sexton, University of Minnesota
4 PM National Human Exposure Assessment Survey (NHEXAS): Opportunities and Lessons Learned
Dr. Judith Graham, USEPA
4:30 PM A National Occupational Exposure Survey: Planning and Implementation
Dr. DeLon Hull, NIOSH
5 PM National Health and Nutrition Examination Survey (NHANES): A National Biomonitoring Strategy
Dr. Larry Needham, NCEH
5:30 PM-7:30 PM Poster Session and Reception

Thursday, September 23

7:30 AM Registration
8:30 AM–5:30 PM Breakout Group Sessions (concurrent)
Group 1: Aggregate and Cumulative Exposure and Risk Assessment
Group 2: Disproportionate Exposures and Disease Impact
Group 3: Assessing Environmental Influences on Children's Health
Group 4: Integrating Exposure, Dose, Response, and Susceptibility
Group 5: Exposure Assessment in Occupational and Environmental Epidemiology
8:30 AM Introduction and Charge Breakout Group Chairs
8:40 AM Breakout Group Presentations and Discussion
10 AM Break
10:30 AM Breakout Group Presentations and Discussion continued
12 PM Lunch
1:30 PM Breakout Group Presentations and Discussion continued
3 PM Break
3:30 PM Breakout Group Presentations and Discussion continued

Friday, September 24

7:30 AM Registration
8 AM Public Comments
9:15 AM–1:15 PM Plenary Session IV: Conclusions
Chair: Dr. George Lucier, NIEHS
9:15 AM Closing Address: A Public Health Perspective

Dr. Bernard Goldstein, UMDNJ, EOHSI
10 AM Break
10:30 AM Conclusions and Recommendations
Summary of Plenary Sessions
Breakout Group Reports
Open Discussion
1 PM Wrap-Up and Closing Remarks
Dr. George Lucier, NIEHS
1:15 PM Workshop Adjourns

To register or for additional information, please access the NIEHS homepage at *http://www.niehs.nih.gov* or contact Anna Lee Sabella at (919) 541–4982 or e-mail to *sabella@niehs.nih.gov*.

Dated: August 23, 1999.

Kenneth Olden,

Director, National Institute of Environmental Health Sciences.

[FR Doc. 99–22556 Filed 8–30–99; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[WO–640–1020–00–241E]

Front Range Resource Advisory Council, Northwest Resource Advisory Council, and Southwest Resource Advisory Council (State of Colorado); Renewal

AGENCY: Bureau of Land Management, Interior.

ACTION: Front Range Resource Advisory Council, Northwest Resource Advisory Council, and Southwest Resource Advisory Council (State of Colorado)—Notice of renewal.

SUMMARY: This notice announces the renewal of the Bureau of Land Management's Front Range Resource Advisory Council, Northwest Resource Advisory Council, and Southwest Resource Advisory Council by the Secretary of the Interior (Secretary) in accordance with the provisions of the Federal Advisory Committee Act (FACA) of 1972, 5 U.S.C. Appendix. The Secretary has determined the Councils are necessary and in the public interest. Copies of the Council charters will be filed with the appropriate committees of Congress and the Library of Congress in accordance with Section 9(c) of FACA.

The Federal Land Policy and Management Act, as amended, requires the Secretary to establish advisory councils to provide advice concerning the problems relating to land use planning and the management of public lands within the area for which the advisory councils are established. The Councils will provide representative counsel and advice to BLM on the planning and management of public lands as well as advice on public land resource issues. Council members will be residents of the State(s) in which the Councils have jurisdiction and will be appointed by the Secretary.

The purpose of the Councils is to advise the Secretary, through the BLM, on a variety of planning and management issues associated with the management of the public lands. The Council responsibilities include providing advice to BLM regarding the preparation, amendment, and implementation of land use plans; providing advice on long-range planning and establishing resource management priorities; and assisting the BLM in identifying State or regional standards for ecological health and guidelines for grazing.

Council members are representative of various industries and interests concerned with the management, protection, and utilization of the public lands. These include (a) holders of Federal grazing permits and representatives of energy and mining development, the timber industry, rights-of-way interests, off-road vehicle use, and commercial recreation; (b) representatives of nationally or regionally recognized environmental organizations, archaeological and historic interests, dispersed recreation, and wild horse and burro groups; and (c) representatives of State, county, and local government, employees of a State agency responsible for management of natural resources, Native American tribes, academia involved with natural sciences, and the public-at-large.

Membership will include individuals who have expertise, education, training, or practical experience in the planning and management of the public lands and their resources and who have a knowledge of the geographical jurisdiction(s) of the Councils.

FOR FURTHER INFORMATION CONTACT: Melanie Wilson, Intergovernmental Affairs (640), Bureau of Land Management, 1620 L Street, NW., Room 406 LS, Washington, DC 20240, telephone (202) 452–0377.

Certification Statement

I hereby certify that the renewals of the Front Range Resource Advisory Council, Northwest Resource Advisory Council, and Southwest Resource Advisory Council are necessary and in the public interest in connection with the Secretary of the Interior's responsibilities to manage the lands, resources, and facilities administered by the Bureau of Land Management.

Dated: August 20, 1999.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 99–22508 Filed 8–30–99; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Updated Policy Regarding Harvest of Migratory Birds in Alaska Between March 10 and September 1

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Fish and Wildlife Service (Service) is updating the 1988 policy regarding subsistence harvest of migratory birds in Alaska. The policy is a statement regarding enforcement priorities the Service follows in Alaska to conserve waterfowl between March 10 and September 1. The original policy concentrated enforcement efforts on violations that have the most serious impacts on the resource, with particular emphasis on the protection of four diminished populations of geese: cackling Canada geese, emperor geese, Pacific white-fronted geese, and black brant. Due to the status of some eider populations, this updated policy also includes spectacled and Steller's eiders in this first priority protection. In addition, the policy prohibits wasting any migratory bird, using private and charter aircraft to assist in hunting, and possessing lead shot while hunting waterfowl.

In 1997, the United States Senate gave its advice and consent to ratification of two protocols amending, respectively, the 1916 Convention for the Protection of Migratory Birds in Canada and the United States (the "Canada Treaty") and the 1936 U.S.-Mexico Convention for the Protection of Migratory Birds and Game Mammals (the "Mexico Treaty") (together the "Protocols"). These Protocols provide for legal, regulated spring subsistence hunting in Alaska. In particular, the Protocol with Canada provides in Article II that:

> In the case of the United States * * * [m]igratory birds and their eggs may be harvested by the indigenous inhabitants of the State of Alaska. Seasons and other regulations implementing the non-wasteful taking of migratory birds and the collection of their eggs by indigenous inhabitants of the State of Alaska shall be consistent with the customary and traditional uses by such indigenous inhabitants for their own nutritional and other essential needs.

Similarly, Article I of the Protocol with Mexico provides that:

> The establishment of a closed season for wild ducks from the tenth of March to the first of September, except in the State of Alaska, United States of America, where wild ducks and their eggs may be harvested by the indigenous inhabitants thereof provided that seasons and other regulations implementing the non-wasteful taking of wild ducks and their eggs in such cases shall be consistent with the customary and traditional uses by such indigenous inhabitants for their own nutritional and other essential needs.

The Canada Protocol, which along with the Mexico Protocol will enter into force once the Parties exchange instruments of ratification, contemplates the establishment of management bodies in Alaska that will develop recommendations to the Service for specific hunting regulations. The Service is currently involved in an extensive public involvement process in Alaska to develop the required management bodies and the subsequent regulations allowing spring and summer harvest of migratory birds. The Service expects to have the management bodies in place in the year 2000 and specific hunting regulations in 2001. Until that time, consistent with the two Protocols and pursuant to existing statutory authority under 16 U.S.C. 712, this enforcement policy will guide our conservation measures.

DATES: The Service's policy regarding harvest of migratory birds in Alaska during the closed season became effective on April 22, 1988. The policy, as updated, will remain in effect until regulations are promulgated to implement the 1997 Protocols to the migratory bird treaties with Canada and Mexico.

ADDRESSES: Address correspondence to: Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Mimi Hogan, Migratory Bird Subsistence Coordinator, (907) 786–3673; or John Gavitt, Assistant Regional Director, Division of Law Enforcement, (907) 786–3311.

SUPPLEMENTARY INFORMATION: In the **Federal Register** dated December 31, 1987, the Service gave notice of, and invited public comments on, a proposed policy statement regarding subsistence taking of migratory birds in Alaska during the closed season as required by the 1918 Treaty Act (16 U.S.C. 703 *et seq.*) and implemented by regulations. The notice also terminated a proposed rulemaking announced to the public on May 19, 1986, (51 FR 18349) to permit and regulate subsistence hunting for migratory birds in Alaska. The rulemaking was halted by an October 9, 1987, ruling from the U.S. Court of Appeals for the Ninth Circuit that any regulations for subsistence hunting of migratory birds promulgated pursuant to the 1978 Fish and Wildlife Improvement Act must be in accordance with the Canada Treaty implemented by the Treaty Act. The Canada Treaty specifically prohibits hunting for most migratory birds between March 10 and September 1. Finally, the notice indicated Service support for continuation of a Yukon-Kuskokwim Delta Goose Management Plan, a cooperative management agreement for the conservation of geese that nest primarily in western Alaska.

Following the court decision, the Service worked toward legalizing subsistence harvest in Alaska during the closed season by proposing amendments to the Canada Treaty and the Mexico Treaty. The U.S. Senate gave its advice and consent to ratification of the Protocols on October 23, 1997, paving the way for ratification and a regulatory process to ensure proper implementation of these amendments.

Issuance by the Service of a law enforcement policy is not subject to the notice and comment procedures of the Administrative Procedures Act. However, the legal status of subsistence hunting in Alaska was for years the subject of litigation that was confusing to the public. In light of this, and because of great interest in the issue and need for understanding of the policy, the Service believed that it would be beneficial in this instance to provide for public review of the proposed policy. Public comments were reviewed in the Final Policy Statement (53 FR 16878).

Need for Policy and Relation to Yukon-Kuskokwim Delta Goose Management Plan

The Treaty Act prohibits the taking of migratory birds except as permitted by regulations published by the Service. The Treaty Act further requires that the regulations must be consistent with the provisions of the 1916 Canada Treaty. Accordingly, the Service publishes regulations annually that establish open seasons and bag limits for migratory game birds within the September 1 to March 10 period provided by that treaty. Except in Alaska, the Service has always strictly enforced the prohibitions against taking migratory birds during closed seasons; that is, during those times of year outside the hunting seasons established in the annual hunting regulations.

The Service has recognized for many years that residents of certain rural areas in Alaska depend on waterfowl and some other migratory birds as customary and traditional sources of food, primarily during spring and early summer. Because of this long established dependence, the Service generally has exercised its discretion to not strictly enforce the closed season in these areas provided that subsistence harvest of a particular species will not adversely affect its populations and that birds are not wasted. The Service recognizes the need for conservation measures to protect those species where population levels are of concern or are most susceptible to declines.

Since 1984, efforts to halt declines of the four populations of geese on the Yukon-Kuskokwim Delta have been undertaken pursuant to a Yukon-Kuskokwim Delta Goose Management Plan which has been renewed annually until 1995, and biannually since then. The biannual renewal of the plan is an essential element in the conservation of the geese on their nesting grounds. It retains an established mechanism for communication with the subsistence hunters most affected by the policy and encourages the cooperation needed to achieve population objectives incorporated into previous plans. This cooperative management includes provisions to reduce sport harvest of these species and to reduce or minimize subsistence harvest that is not in accordance with the Plan. The Service views the plan as an effective mechanism in providing for cooperative management of geese on the Yukon-Kuskokwim Delta, and has therefore applied similar provisions to the policy that applies throughout the remainder of the state.

The Closed Season Enforcement Policy in Alaska, in accordance with the Yukon-Kuskokwim Delta Management Plan, has changed somewhat from the original policy as populations of cackling Canada geese and Pacific white-fronted geese have increased. The updated policy reflects these population changes. In addition, there have been changes concerning other species.

The spectacled eider was listed in 1993 as a threatened species under the Endangered Species Act of 1973, as amended, primarily on the basis of estimates that the number of nesting pairs on the Yukon-Kuskokwim Delta declined over 96% between the 1970s and the 1990s. The Alaska population of Steller's eider was listed as a threatened species in 1997 because of a decline in the number of birds breeding in Alaska. Spectacled and Steller's eiders were added to the list of species to receive special enforcement concern under the Service's closed season policy. In 1997, a Spectacled and Steller's Eider Management Plan, containing similar enforcement provisions, was added as

an attachment to the Yukon-Kuskokwim Delta Goose Management Plan.

The Service recognizes that among subsistence users there is a wide range in the level of understanding of the impacts of spring and summer harvest of waterfowl and the need to reduce mortality, especially when populations become depressed. The Service will continue educational efforts to expand the understanding of this relationship and will consider the varying levels of understanding when carrying out enforcement efforts on a statewide basis.

The Protocols allow regulations to be written opening the season on subsistence harvest of migratory birds between March 10 and September 1. The process to develop regulations is currently in progress and is expected to result in the establishment of management bodies in 2000 and specific hunting regulations in 2001. In the meantime, this Enforcement Policy will guide conservation.

Closed Season Enforcement Policy in Alaska

The enforcement policy described below applies only during the closed season, between March 10 and September 1. The policy applies only to residents of rural areas in Alaska where people have long relied on locally harvested waterfowl for food during spring and summer. On the Yukon-Kuskokwim Delta, we will engage in enforcement actions in accordance with the Yukon-Kuskokwim Delta Goose Management Plan. In areas other than those described above, we will enforce the closed season and all other regulations for hunting migratory birds from September 1 to March 10 as throughout the rest of the nation.

Service enforcement efforts in Alaska during the closed season will concentrate on violations that have the most serious impacts on the resource. We will give special attention to the protection of spectacled and Steller's eiders, cackling Canada geese, emperor geese, Pacific white-fronted geese, and black brant. These species have suffered severe population declines in recent years and need special protection.

Although all waterfowl hunters in Alaska have been required to use non-toxic shot since 1991, this has not been an enforcement priority in the past with regard to subsistence hunting. However, recent studies have confirmed lead shot poisoning in spectacled eiders and other species of waterfowl harvested by subsistence hunters in Alaska. Therefore anyone possessing lead shot while waterfowl hunting will be subject to enforcement action, regardless of time or place.

Under the Closed Season Policy we will give enforcement priority to the following violations:

- No taking of spectacled or Steller's eiders at any time;
- No taking of emperor geese at any time;
- No taking of cackling Canada geese or black brant during the nesting, brood-rearing, and flightless period;
- No taking of Pacific white-fronted geese, in the coastal areas of western Alaska south of Norton Sound, during the nesting, brood-rearing, and flightless periods;
- No taking of the eggs of spectacled or Steller's eiders, emperor geese, cackling Canada geese or black brant;
- No wasting of any migratory bird;
- No use of private or charter aircraft to assist hunting of any migratory bird;
- No possession or use of lead shot while hunting waterfowl.

Status of populations will guide identification of circumstances warranting additional protection for migratory birds during the closed season. This will involve consultation with affected interests. Of greatest concern will be situations involving continuing harvest of species of concern, waste or harvest exceeding reasonable levels of need under existing circumstances.

Dated: August 20, 1999.

David B. Allen,

Regional Director, Anchorage, Alaska.

[FR Doc. 99–22652 Filed 8–30–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–700–5101–00–CO21; COC–62716]

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for Construction of Pipeline Facilities and Transportation of Refined Petroleum Products via Under-ground Pipeline in San Juan County, New Mexico; La Plata, Montezuma, Dolores, San Miguel, Montrose, Delta and Mesa Counties, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, the Bureau of Land Management (BLM), Southwest Center Office, Montrose, Colorado, will be the lead office and will direct the preparation of an EIS on the Impacts of construction of a proposed pipeline for the transportation of refined petroleum products, located on public land, National Forest System land, and private land in northwest New Mexico and southwest Colorado. The U.S. Forest Service, San Juan and Grand Mesa, Uncompahgre and Gunnison National Forests, will be participating in the EIS preparation as cooperating agencies in accordance with Title 40, Code of Federal Regulations, Section 1501.6. The EIS may also address the potential to place future utility projects in portions of an existing utility corridor in New Mexico and Colorado.

SUPPLEMENTARY INFORMATION: Navajo Pipeline Company has proposed to construct a new 232 mile 12.75 inch diameter pipeline and transport refined petroleum products from Bloomfield, NM to a terminal distribution facility in Grand Junction, CO. The refined petroleum products could include diesel fuel, fuel oil, jet fuel, and gasoline. Navajo Pipeline Company would use the pipeline to distribute products to distinct markets in western Colorado. The proposed pipeline route would parallel and use the existing TransColorado Pipeline Corridor for approximately 210 miles. The proposed pipeline would utilize new corridor for approximately 4 miles near Bloomfield, NM, and for approximately 18 miles from Whitewater, CO to Grand Junction, CO. Other appurtenant pipeline facilities may include four new pump stations located in Colorado, check valves (approximately every 10 to 15 miles), cathodic protection systems, serial markers, scraper launchers, traps, and minor road maintenance. The BLM is preparing an EIS to analyze the effects of the proposed pipeline and appurtenant facilities in New Mexico and Colorado.

Tentatively identified issues of concern may include cultural resources, wildlife, water resources, land use, socioeconomics, visual resources, slope stability and corridor capacity. The EIS will analyze the Proposed Action and No-Action Alternatives. Other alternatives may include different routes for portions of the pipeline, optional sites for pipeline facilities, as well as mitigating measures to minimize impacts. A Record of Decision will be issued for the Navajo Pipeline Proposal.

Tentative Project Schedule:

Begin Public Comment Period—August 1999
Hold Scoping Meetings—September 1999
File Draft EIS—January 2000
File Final EIS—April 2000
Record of Decision—May 2000

Public Comment Period

The comment period for scoping of the EIS will commence with publication of this notice. Written comments must be submitted on or before October 8, 1999. Comments concerning the Proposed Action and EIS should address issues to be considered, feasible alternatives to examine, possible mitigation, and information relevant to or having bearing on the Proposed Action. Several public scoping meetings will be held during the month of September to receive oral comments. Dates, times and locations of the public meetings will be announced later and published in newspapers.

ADDRESSES: Written comments should be sent to Paul Peck, Navajo Pipeline Project Manager, Public Lands Office, 15 Burnett Ct., Durango, CO 81301, or email: navajopipeline/r2__sanjuan@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Paul Peck (970) 385–1234.

Dated: August 23, 1999.

Mark W. Stiles,

SW Center Manager.

[FR Doc. 99–22527 Filed 8–30–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–1410–01; F–07195]

Public Land Order No. 7408; Partial Revocation of Air Navigation Site No. 172; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a Secretarial Order dated December 31, 1941, as amended, insofar as it affects 7.21 acres of public lands withdrawn for use of the Department of Commerce in the maintenance of air navigation facilities at Galena. The lands are no longer needed for the purpose for which they were withdrawn. This action would allow the conveyance of the lands to the State of Alaska, if such lands are otherwise available. Lands described herein that are not conveyed to the State will be subject to the terms and conditions of Public Land Order No. 5180, as amended, and any other withdrawal or segregation of record.

EFFECTIVE DATE: August 31, 1999.

FOR FURTHER INFORMATION CONTACT: Shirley J. Macke, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5049.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), and by Section 17(d)(1) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(d)(1) (1994), it is ordered as follows:

1. The Secretarial Order dated December 31, 1941, as amended, which withdrew public land for Air Navigation Site No. 172, is hereby revoked insofar as it affects the following described lands:

Kateel River Meridian, Alaska

T. 9 S., R. 10 E.,
U.S. Survey No. 6664, lots 11 and 13.
The areas described aggregate 7.21 acres.

2. The State of Alaska application for selection made under Section 6(b) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1994), and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1994), becomes effective without further action by the State upon publication of this public land order in the **Federal Register**, if such lands are otherwise available. Land not conveyed to the State will be subject to the terms and conditions of Public Land Order No. 5180, as amended, and any other withdrawal or segregation of record.

Dated: August 12, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–22546 Filed 8–30–99; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–940–5700–00; CACA 38601]

Public Land Order No. 7406; Withdrawal of National Forest System Land for the Soda Rock Special Interest Area; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 40 acres of National Forest System land from location and entry under the United States mining laws for 50 years to protect the Soda Rock Special Interest Area. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: August 31, 1999.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825–1886, 916–978–4675.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, to protect the Soda Rock Special Interest Area:

Mount Diablo Meridian

Plumas National Forest

T. 25 N., R. 9 E.,
Sec. 3, SW¼SW¼.
The area described contains 40 acres in Plumas County.

2. The withdrawal made by this order does not alter the applicability of those land laws governing the use of the National Forest System land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: August 12, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–22547 Filed 8–30–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–01; COC 012292]

Public Land Order No. 7407; Partial Revocation of Public Land Order No. 1742, Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes Public Land Order No. 1742 insofar as it affects 1,522.85 acres of National Forest System lands withdrawn for the State Highway 14 Roadside Zone. The lands are no longer needed for this purpose and the revocation is needed to make a portion of the lands available for exchange and to remove the unneeded withdrawal from the records. This action will open the lands to such forms

of disposition as may by law be made of National Forest System lands and to mining, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Most of the lands are located within the Cache la Poudre Wild and Scenic River area. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: September 30, 1999.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 1742, which withdrew National Forest System lands for the Forest Service's State Highway 14 Roadside Zone, is hereby revoked insofar as it affects the following described lands:

Sixth Principal Meridian

Roosevelt National Forest

A strip of land 200 feet on either side of the center line of Colorado State Highway No. 14 through the following legal subdivisions:

T. 8 N., R. 70 W.,
Sec. 4, SW¼NW¼;
Sec. 5, NE¼NE¼.
T. 9 N., 70 W.,
Sec. 31, S½SW¼.
T. 8 N., R. 71 W.,
Sec. 1, N½SE¼;
Sec. 2, W½SE¼ and N½SW¼;
Sec. 3, N½ and NE¼SE¼;
Sec. 4, SE¼NE¼ and N½S½;
Sec. 5, SW¼NE¼ and W½;
Sec. 6, SE¼SE¼.
T. 8 N., R. 72 W.,
Sec. 1, SW¼SE¼ and SE¼SW¼;
Sec. 2, W½;
Sec. 3, W½ and W½SE¼;
Sec. 4, S½SE¼ and SE¼SW¼;
Sec. 5, N½, N½SE¼, and SE¼SE¼;
Sec. 6, N½;
Sec. 8, E½NE¼;
Sec. 9, NW¼;
Sec. 10, NW¼NW¼;
Sec. 11, N½;
Sec. 12, N½ and NW¼SW¼.
T. 9 N., R. 72 W.,
Sec. 34, SW¼SW¼;
Sec. 35, SW¼SW¼.
T. 8 N., R. 73 W.,
Sec. 1, NE¼.
T. 9 N., R. 73 W.,
Sec. 31, NW¼SW¼;
Sec. 32, NE¼SE¼;
Sec. 34, S½N½.
T. 9 N., R. 74 W.,
Sec. 30, W½SE¼ and NE¼SW¼;
Sec. 31, NW¼NE¼;
Sec. 32, NE¼SE¼;
Sec. 33, SE¼SE¼ and NW¼SW¼;
Sec. 34, SE¼, NE¼SW¼, and SW¼SW¼;
Sec. 35, N½SW¼.
T. 7 N., R. 75 W.,
Sec. 5, NW¼NE¼ and E½NW¼;
Sec. 7, W½E½ and E½W½;
Sec. 18, NW¼ and NW¼SW¼.
T. 8 N., R. 75 W.,
Sec. 2, SE¼NE, NE¼SE¼, and SW¼SE¼;
Sec. 9, SE¼SE¼;
Sec. 10, NE¼SE¼ and SW¼SW¼;
Sec. 11, NW¼NE¼, E½NW¼, and SW¼NW¼;
Sec. 16, E½ and E½SW¼;
Sec. 21, E½;
Sec. 28, E½NE¼, SE¼SW¼, and SE¼;
Sec. 32, S½SE¼;
Sec. 33, W½.
T. 9 N., R. 75 W.,
Sec. 36, NE¼NE¼.
T. 6 N., R. 76 W.,
Sec. 2, E½NW¼.
T. 7 N., R. 76 W.,
Sec. 13, E½SE¼;
Sec. 24, NE¼, E½SW¼, and NW¼SE¼;
Sec. 25, W½W½ and NE¼NW¼;
Sec. 26, E½SE¼;
Sec. 35, NE¼, E½SW¼, and NW¼SE¼.

The areas described aggregate 1,522.85 acres in Jackson and Larimer Counties.

2. At 9 a.m. on September 30, 1999, the lands described above, except those located within the Cache la Poudre Wild and Scenic River designated area, shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: August 12, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–22545 Filed 8–30–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 21, 1999.

Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by September 15, 1999.

Paul R. Lusignan,

Acting Keeper of the National Register.

COLORADO

Arapahoe County

Owen Estate, 3901 S. Gilpin St., Cherry Hills Village, 99001143

Garfield County

Missouri Heights School (Rural School Buildings in Colorado MPS), Cty Rd. 102, 0.5 mi. E of jct. with Cty Rd. 100, Carbondale vicinity, 99001145

Gunnison County

Marble City State Bank Building, 105 W. Main St., Marble, 99001146

Routt County

Hayden Rooming House, 295 S. Poplar St., Hayden, 99001144

FLORIDA

Gadsden County

Planter's Exchange, Inc., 204 Second St., NW, Hanvna, 99001147

Orange County

Winter Park Country Club and Golf Course, 761 Old England Ave., Winter Park, 99001148

INDIANA

Benton County

Heath, David S., House, 202 W. McConnell, Oxford, 99001153

Cass County

Bankers Row Historic District, Eel River Ave., from Market to Third, Logansport, 99001149
Point Historic District, roughly bet. Eel River Ave., Third St., and E. Melbourne Ave., Logansport, 99001150

Clay County

Clay County Hospital, 1200 E. National Ave., Brazil, 99001154

Henry County

Chrysler Enclosure, Address Restricted, New Castle vicinity, 99001156

Lake County

State Street Commercial Historic District, Roughly State St., bet. Sohl and Bulletin Ave., Hammond, 99001157

Ohio County

Clore Plow Works—J.W. Whitlock and Company, 212 S. Walnut St., Rising Sun, 99001152

Pulaski County

Mallon Building, 102 E. Montgomery St., Francesville, 99001151

Wayne County

Birdsall, Mary, House, 504 North West Fifth St., Richmond, 99001155

MISSOURI

Benton County

Upper Bridge, Old Highway A, over Osage River, Warsaw vicinity, 99001159

Jackson County

Walnut Street Warehouse and Commercial Historic District, Roughly bounded by Main St., 15th St., Grand St. and 17th St., Kansas City, 99001158

St. Louis Independent City

Antioch Baptist Church (The Ville, St. Louis, Missouri MPS), 4213 N. Market St., St. Louis, 99001166
Charles Turner Open Air School (The Ville, St. Louis, Missouri MPS), 4235 W. Kennerly Ave., St. Louis, 99001165
Marshall School (The Ville, St. Louis, Missouri MPS); 4342 Aldine Ave., St. Louis, 99001162
Simmons Colored School (The Ville, St. Louis, Missouri MPS), 4306–4318 St. Louis Ave., St. Louis, 99001163
St. Louis Colored Orphans Home (The Ville, St. Louis, Missouri MPS), 2612 Annie Malone Dr., St. Louis, 99001164
Stowe Teachers College (The Ville, St. Louis, Missouri MPS), 2615 Billups, St. Louis, 99001161
Tandy Community Center (The Ville, St. Louis, Missouri MPS), 4206 W. Kennerly Ave., St. Louis, 99001160

NEBRASKA

Lancaster County

Hurlbut, Aeneas—Yates, Charles, House, 720 S. 16th St., Lincoln, 99001167

NEW JERSEY

Middlesex County

Randolphville Bridge, Near 618 S. Randolphville Rd., Piscataway, 99001169

Passaic County

Rea, John W., House, 675 Goffle Rd., Hawthorne, 99001168

Warren County

Vass Farmstead, 109 Stillwater Rd., Hardwick vicinity, 99001170

NEW MEXICO

Eddy County

Abo Elementary School and Fallout Shelter, 1802 Center Ave., Artesia, 99001171

San Miguel County

King, Norman L., Memorial Stadium (New Deal in New Mexico MPS), 2.7 mi. NW of jct. of NM 65 and Mill Ave., Las Vegas vicinity, 99001172

WISCONSIN

Dane County

Tenney Park—Yahara River Parkway, 1220 E. Johnson St.; 501 S. Thornton Ave., Madison, 99001173

Grant County

Wyalusing State Park Mounds Archeological District (Late Woodland Stage in Archeological Region 8 MPS), 13342 Cty. Hwy. C, Bagley vicinity, 99001175

Winnebago County

Mayer—Bankerob House, 809 Ceape Ave., Oshkosh, 99001174

A request for removal has been made for the following resources:

ARKANSAS

Chicot County

Bunker House, AR 159 W of jct. with US 65/82, Lake Village, 92001622

Pike County

O'Neel-Blackburn House, W of Daisy off US 70, Daisy, 76000446

Sharp County

Cochran Store (Evening Shade MRA), Main St., Evening Shade, 82002133
Herrn House (Evening Shade MRA), W. Main St., Evening Shade, 76000469

[FR Doc. 99–22620 Filed 8–30–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Technical Work Group

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meeting.

SUMMARY: The Glen Canyon Technical Work Group (TWG) was formed as an official subcommittee of the Glen Canyon Dam Adaptive Management Work Group (AMWG). The TWG members were named by members of the AMWG and provide advice and information for the AMWG to act upon. The AMWG uses this information to form recommendations to the Secretary of the Interior for guidance of the Grand Canyon Monitoring and Research Center (GCMRC) science program, and other direction as requested by the Secretary.

DATES AND LOCATIONS: The Glen Canyon Technical Work Group will conduct an open public meeting as follows:

Phoenix, Arizona—September 7–8, 1999. The meeting will begin at 9:30 a.m. and conclude at 5:00 p.m. on the first day and begin at 8:00 a.m. and conclude at 3:00 p.m. on the second day. The meeting will be held at the Arizona Department of Water Resources Office, Conference Room A (3rd Floor), 500 North 3rd Street, Phoenix, Arizona.

ADDRESSES: Randall Peterson, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102; telephone (801) 524–3758; faxogram (801) 524–3858; E-mail at: rpeterson@uc.usbr.gov

FOR FURTHER INFORMATION CONTACT: Randall Peterson, telephone (801) 524–3758; faxogram (801) 524–3858; E-mail at: rpeterson@uc.usbr.gov.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss administrative issues, environmental compliance issues, the fiscal year 2001 GCMRC work plan, the Adaptive Management Program strategic plan, and Ad Hoc group reports. In addition, the following items will be discussed: SWCA Synthesis Report, Protocol Evaluation Panel Sediment Workshop, State of the Natural and Cultural Resources Report, and other TWG activities.

Time will be allowed on the agenda for any individual or organization wishing to make formal oral comments (limited to 10 minutes) at the meeting. To allow full consideration of information by the TWG members, written notice must be provided to Randall Peterson at the address above (see **ADDRESSES**) at least five (5) days prior to the meeting. Any written comments received will be provided to the TWG members at the meeting.

Dated: August 26, 1999.

Eluid Martinez,

Commissioner, Bureau of Reclamation.

[FR Doc. 99–22653 Filed 8–30–99; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: September 3, 1999 at 10:00 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: None.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–856 (Preliminary) (Ammonium Nitrate from Russia)—

briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on September 7, 1999.)

5. Inv. No. 731–TA–384 (Review) (Nitrile Rubber from Japan)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on September 10, 1999.)

6. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: August 25, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–22762 Filed 8–27–99; 2:16 pm]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Applicant Survey.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection in published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty-days" until November 1, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Applicant Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form G–942. Human Resources Branch, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or households. This form is required to ensure compliance with Federal laws and regulations which mandate equal opportunity in the recruitment of applicants for Federal employment.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 75,000 responses at 4 minutes (.066 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 4,950 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: August 25, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–22538 Filed 8–30–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Petition for Alien Fiance(e).

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty-days" until November 1, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Petition for Alien Fiance(e).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–129F. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or households. Through the filing of this form a United States citizen may facilitate the entry of his/her fiance(e) into the United States so that a marriage may be conclude within 90 days of entry between the U.S. citizen and the beneficiary of the petition.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 20,000 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 10,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated August 25, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–22539 Filed 8–30–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: Guam Visa Waiver Information.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty-days" until November 1, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Guam Visa Waiver Information.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–736. Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or households. This form is used to record an alien's application for a waiver of the non-immigrant visa requirement for entry into Guam in compliance with 8 CFR 212.1(e).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 170,000 responses at 5 minutes (.083 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 14,110 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: August 25, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–22540 Filed 8–30–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Immigration and Naturalization Service, Department of Justice.

ACTION: Notice of Information Collection under Review: Application for Posthumous Citizenship.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments for the public and affected agencies. Comments are encouraged and will be accepted for "sixty-days" until November 1, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application of Posthumous Citizenship.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–644. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or households. The information collected will be used to determine an applicant's eligibility to request posthumous citizenship status for a decedent and to determine the decedent's eligibility for such status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 responses at 1 hour and 50 minutes (1.83 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 92 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy directives and Instructions Branch, Immigration and Naturalization Service, US Department of Justice, room 5307, 425 I Street, NW, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: August 28, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–22541 Filed 8–30–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Immigration and Naturalization Service, Department of Justice.

ACTION: Notice of information collection under review: Arrival Departure Record (Transit Without Visa).

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty-days" until November 1, 1999.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Arrival Departure Record (Transit Without Visa).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–94T. Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or households. The information collection is used to track the arrival and departure of aliens under the Transit Without Visa program to ensure compliance with 8 CFR 212.1(f) and 8 CFR 214.2(c).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 200,000 responses at 4 minutes (.066 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 13,200 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: August 23, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–22542 Filed 8–30–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review: HRIFA Supplement to Form I–485 Instructions.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on April 2, 1999 at 64 FR 15990, allowing for emergency OMB review with a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until September 30, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* HRIFA supplement to Form I–485 Instructions.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–485C. Office of Programs, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information collected on this application will be used to determine whether an alien applying for adjustment of status under the provisions of section 902 of Division A, Title IX of Public Law 105–277, is eligible to become a permanent resident of the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50,000 responses at approximately 30 minutes (.50) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 25,000 annual burden hours.

If you have additional comments, suggestions or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Inmigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: August 25, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–22537 Filed 8–30–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,769]

Arrow Automotive Industries, Morrilton, Arkansas; Notice of Affirmative Determination Regarding Application for Reconsideration

By letters of May 13 and July 15, 1999, the company requested administrative reconsideration of the Department of Labor's Notices of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, petition TA–W–35,769. The denial notices were signed on May 3, 1999 and published in the **Federal Register** on June 3, 1999 (64 FR 29888).

The Department has reviewed the request for reconsideration and has determined that a survey of additional customers of the subject firm would be appropriate.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 17th day of August 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–22584 Filed 8–30–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,108 and NAFTA—03104]

Sherman Lumber Company, Sherman Station, Maine; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of August 8, 1999, the petitioner requested administrative reconsideration of the Department of Labor's Notices of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, petition TA–W–36,108 and NAFTA—03104. The denial notices were signed on August 2, 1999 and will soon be published in the **Federal Register**.

The Department has reviewed the request for reconsideration and has determined that a survey of additional customers of the subject firm would be appropriate.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 17th day of August 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–22595 Filed 8–30–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,492]

Banko Petroleum Management, Inc. Denver, CO; Notice of Termination Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 28, 1999, in response to a worker petition which was filed by the company on behalf of one of its workers at Banko Petroleum Management, Inc., Denver, Colorado.

The petition has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 11th day of August, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–22594 Filed 8–30–99; 8:45 am]

BILLING CODE 4510–3–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,030]

Butch Spurlin Mud Consulting, Abilene, Texas; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 12, 1999 in response to a worker petition which was filed on behalf of workers at Butch Spurlin Mud Consulting, Abilene, Texas.

The only petitioner was separated from the subject firm more than a year prior to the date of the petition (March 24, 1999). Section 223(b)(1) of the Trade Act of 1974 specifies that no certification may apply to any worker whose last separation occurred more than a year before the date of the petition. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this 11th day of August 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–22590 Filed 8–30–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,981]

Corning Incorporated, Greenville, Ohio; Notice of Negative Determination Regarding Application for Reconsideration

By application dated July 16, 1999, the American Flint Glass Workers Union Local 1018 and a company official (the petitioners) requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of Corning, Incorporated. The denial notice was signed on June 18, 1999 and published in the **Federal Register** on June 30, 1999 (64 FR 35183).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petitioners basis for the request for reconsideration is that the Department incorrectly stated that the lost business was being transferred to another domestic facility and that the Department's investigation focused on Greenville's lighting business.

The TAA petition, filed on behalf of workers of Corning Incorporated, Greenville, Ohio, producing auto glass components and Pyrex bakeware was denied in part because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The investigation revealed that none of the subject firm customers reported increased import purchases of auto glass or bakeware. Furthermore, criterion (2) of Section 222 of the group eligibility requirements was not met for workers producing auto glass components; sales and production did not decline in the relevant time period. The Department also reported that worker separations were attributable to a transfer of production to another company-owned domestic facility.

The Department stands corrected that Corning sold the bakeware business to another company that will continue to produce the product domestically.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 10th day of August 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–22597 Filed 8–30–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Fina Oil and Chemical Company, Exploration and Production Division; [TA–W–36,252, MIDLAND, TEXAS, TA–W–36,252A, HOUSTON, TEXAS, (TA–W–36,252B POST, TEXAS; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 13, 1999, applicable to all workers of Fina Oil and Chemical Company located in Midland and Houston, Texas. The notice will soon be published in the Federal Register.

At the request of the Company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in employment related to the production of crude oil and natural gas. New findings show that the Department's certification inadvertently omitted workers of Fina Oil and Chemical Company at the Post, Texas location. Other findings show that the subject firm has various divisions.

The intent of the certification is provide coverage to those workers of the subject firm engaged in crude oil and natural gas production. Therefore, the Department is amending the certification to limit coverage to those workers in the Exploration and Production Division of Fina Oil and Chemical Company and include the workers at the Post, Texas location.

The amended notice applicable to TA–W–36,252 is hereby issued as follows:

"All workers of Fina Oil and Chemical Company, Exploration and Production Division, Midland, Texas (TA–W–36,252), Houston, Texas (TA–W–36,252A), and Post, Texas (TA–W–36,252B), who became totally or partially separated from employment on or after April 23, 1998 through July 13, 2001, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed in Washington, D.C. this 10th day of August 1999

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–22586 Filed 8–30–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,895; TA–W–35,895A]

Guilford of Maine; Newport, ME and Guilford, ME; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certificaione of Eligibility to Apply for Worker Adjustment Assistance on May 13, 1999, applicable to workers of Guilford of Maine, Newport, Maine. The notice was published in the **Federal Register** on June 3, 1999 (64 FR 29889).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the State shows that worker separations occurred at Guilford of Maine's Guilford, Maine facility in July and August 1999. The workers are engaged in employment related to the production of polyester and polyester/wool fabric for office furniture. Accordingly, the Department is amending certification to cover workers of Guilford of Maine, Guilford, Maine.

The intent of the Department's certification is to include all workers of Guilford of Maine adversely affected by increased imports.

The amended notice applicable to TA–W–35,895 is hereby issued as follows:

All workers of Guilford of Maine, Newport, Maine (TA–W–35,895) and Guilford, Maine (TA–W–35,895A) who became totally or partially separated from employment on or after April 18, 1999 through May 13, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 13th day of August, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–22599 Filed 8–30–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36, 235]

Horner Flooring Company, Incorporated; Dollar Bay, Michigan; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on May 17, 1999 in response to a petition which was filed by Horner Flooring Company, Incorporated on behalf of its workers at Dollar Bay, Michigan.

Since layoffs have not yet occurred and not expected to occur until later this year, the petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 5th day of August 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–22582 Filed 8–30–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,614, Jacksonville, NC; TA–W–35,614A, Whiteville, NC]

Jasper Textiles, Inc. a/k/a Outer Banks; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 31, 1999, applicable to workers of Jasper Textiles, Inc., a/k/a Outer Banks, Jacksonville, North Carolina. The notice was published in the Federal Register on May 21, 1999 (64 FR 27811).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations will occur at the Whiteville, North Carolina facility of Jasper Textiles, Inc., a/k/a Outer banks when it closes in October, 1999. The workers are engaged in the production of men's and women's knit shirts.

Accordingly, the Department is amending the certification to cover workers at Jasper Textiles, Inc., a/k/a/ Outer Banks, Whiteville, North Carolina. The intent of the Department's certification is to include all workers of Jasper Textiles, Inc., a/k/a/ Outer Banks adversely affected by increased imports.

The amended notice applicable to TA–W–35,614 is hereby issued as follows:

All workers of Jasper Textiles, Inc., a/k/a Outer Banks, Jacksonville, North Carolina (TA–W–35,614) and Whiteville, North Carolina (TA–W–35,614A) who became totally or partially separated from employment on or after January 20, 1998 through March 31, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington D.C. this 17th day of August, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–22600 Filed 8–30–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,958]

Jencraft Corporation, McAllen, TX; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Jencraft Corporation, McAllen, Texas. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–35,958; Jencraft Corporation, McAllen, Texas (August 4, 1999)

Signed at Washington, D.C., this 6th day of August, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–22588 Filed 8–30–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33,955]

Koh–I–Noor Inc. a/k/a Sanford Limited; Bloomsbury, NJ; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 8, 1998, applicable to workers of Koh-I-Noor, Inc. located in Bloomsbury, New Jersey. The notice was published in the **Federal Register** on February 6, 1998 (63 FR 6209).

At the request of the State agency, the Department reviewed the determination for workers of the subjects firm. The workers of the subject firm are engaged in employment related to the production of pens. New information provided by the State indicates that on January 6, 1999, the subject firm was sold to Sanford Limited and workers at the plant continued to manufacture pens. Sanford Limited is continuing to layoff workers.

The intent of the Department's certification is to include all workers of the subject firm adversely affected by increase imports. Accordingly, the Department is amending the certification to include workers whose wages are being reported to Sanford Limited, formerly known as Koh-I-Noor.

The amended notice applicable to TA–W–33,955 is hereby issued as follows:

All workers of Koh-I-Noor, Inc., also known as Sanford Limited, Bloomsbury, New Jersey, engaged in employment related to the production of pens, who became totally or partially separated from employment on or after August 31, 1997 through January 8, 2000, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 19th day of August 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–22587 Filed 8–30–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,389]

Safe Car, Inc., San Angelo, TX; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Safe Car, Inc., San Angelo, Texas. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–35,389: Safe Car, Inc., San Angelo, Texas (August 19, 1999)

Signed at Washington, DC, this 20th day of August, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–22598 Filed 8–30–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,874]

Southwestern Energy Production Co., Oklahoma City, Oklahoma; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Southwestern Energy Production Co., Oklahoma City, Oklahoma. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–35,874; Southwestern Energy Production Co., Oklahoma City, Oklahoma (August 12, 1999)

Signed at Washington, DC this 12th day of August, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–22589 Filed 8–30–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

TA–W–36,650; Tektronix, Incorporated, Wilsonville, Oregon; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on August 9, 1999 in response to a worker petition which was filed on behalf of all workers at Tektronix, Incorporated, located in Wilsonville, Oregon (TA–W–36,650).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 13th day of August 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–22580 Filed 8–30–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,477]

Thomson Precision Ball Company, LLC, Unionville, Connecticut; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, and investigation was initiated on June 28, 1999, in response to a petition filed by a company official on behalf of workers at Thomson Precision Ball Company, LLC, Unionville, Connecticut.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 4th day of August, 1999

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–22583 Filed 8–30–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,202 Eveleth, MN and TA–W–36,202A Forbes, MN]

Thunderbird Mining; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of June 25, 1999, the United Steelworkers of America, Local Union 6860, requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance applicable to workers of the subject firm. On July 26, 1999, the Department dismissed the application because no evidence was presented that the Department erred in its findings. The notice will soon be published in the **Federal Register**.

New information has been provided to the Department regarding possible customer import purchases of articles considered to be like or directly competitive with the taconite pellets produced by workers at the subject firm.

Conclusion

After careful review of the new information, I conclude that the claim is of sufficient weight to justify reopening the petition investigation and reconsider the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 11th day of August 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–22601 Filed 8–27–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,864 and TA–W–35,864A]

The Timken Company, Canton, Ohio; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of July 30, 1999, the petitioners requested administrative reconsideration of the Department of Labor's Notices of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, petition TA–W–35,864 and TA–W–35,864A. The denial notices were signed on June 7, 1999 and published in the **Federal Register** on June 30, 1999 (64 FR 35183).

The Department has reviewed the request for reconsideration and has determined that a survey of additional customers of the subject firm would be appropriate.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 17th day of August, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–22596 Filed 8–30–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,376]

Trim Master, Inc.; Rancho Cucamonga, California; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on June 14, 1999, in response to a petition filed by a company official on behalf of workers at Trim Master, Inc., Rancho Cucamonga, California.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 6th day of August, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–22581 Filed 8–30–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,560]

Viskase Corporation, Chicago, IL; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 19, 1999 in response to a worker petition which was filed June 12, 1999 on behalf of workers at Viskase Corporation, Chicago, Illinois.

The petitioning group of workers are covered under a recent negative Trade Adjustment Assistance determination (TA–W–35,071). No new information was included in this most recent petition. Consequently, further investigation in this case would service no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 2nd day of August 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–22593 Filed 8–30–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the data on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 10, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 10, 1999.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 2nd day of August, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

APPENDIX

PETITIONS INSTITUTED ON 08/02/1999

Subject firm (petitioners)	TA–W	Location	Date of petition	Product(s)
Weldon Machine Tool (Wkrs)	36,610	York, PA	07/09/1999	Original Auto Equipment.
Parker Aerospace (UAW)	36,611	Kalamazoo, MI	07/19/1999	Flight Controls Systems.
Buffalo Color Corp (Co.)	36,612	Buffalo, NY	07/20/1999	Ingigo Liquid Paste and Powder.
Lincoln Industrial (IAMAW)	36,613	St. Louis, MO	07/20/1999	Grease Fittings, Spindle Screw Machines.
IBM Corp. (Wkrs)	36,614	San Jose, CA	07/19/1999	Hard Disk Drives.
Lynn Fashion (UNITE)	36,615	Hoboken, NJ	07/20/1999	Ladies' Coats.
Investext Group (The) (Wkrs)	36,616	Boston, MA	07/20/1999	Financial Service Industry.
Lee Textiles Corp (Wrks)	36,617	Ewing, VA	07/15/1999	Tee Shirt (Knit).
Jewelry Fashions, Inc (Wkrs)	36,618	New York, NY	07/19/1999	Costume Jewelry.
Hillin Simon Prime Explor (Co.)	36,619	Midland, TX	07/01/1999	Oil and Gas.
Corcom (Co.)	36,620	El Paso, TX	07/14/1999	Radio Frequency Filters.
Dart Energy Corp (Co.)	36,621	Mason, MI	07/20/1999	Drill Oil and Gas.
Dawson Geophysical Co. (Co.)	36,622	Midland, TX	07/19/1999	Seismic Data.
Interplast Universal (Wkrs)	36,623	Lodi, NJ	07/19/1999	Vinly—Car Seats.
AMI–DDC (IBEW)	36,624	Cedar Knolls, NJ	07/20/1999	Rivets.
Phelps Dodge Refining (Co.)	36,625	El Paso, TX	07/22/1999	Copper Refining.
Black Diamond Sportswear (Co.)	36,626	Barre, VT	07/19/1999	Men, Ladies and Children's Sportswear.
American National Can (Wkrs)	36,627	Longview, TX	07/15/1999	Aluminum Cans.
Paramount Headwear (Wkrs)	36,628	Bourbon, MO	06/25/1999	Caps, Hats and Strawhats.
ASARCO, Inc (Co.)	36,629	Sahuarita, AZ	07/14/1999	Copper Concentrate.
Tower Automotive (Wkrs)	36,630	Rockford, IL	07/23/1999	Frames for GM Trucks and SUV's.
Rexam Release (Wkrs)	36,631	Beford Park, IL	07/17/1999	Release Liners.
Dailey International (Wkrs)	36,632	Conroe, TX	07/23/1999	Oilfield Drilling Jars.
Levi Strauss and Co (Comp)	36,633A	Harlingen, TX	07/26/1999	Denim and Docker Apparel.
Levi Strauss and Co (Comp)	36,633B	El Paso, TX	07/26/1999	Denim and Docker Apparel.
Levi Strauss and Co (Comp)	36,633C	McAllen, TX	07/26/1999	Denim and Docker Apparel.
Levi Strauss and Co (Comp)	36,633D	Johnson City, TN	07/26/1999	Denim and Docker Apparel.
Levi Strauss and Co (Comp)	36,633E	Mountain C. Plt. N	07/26/1999	Denim and Docker Apparel.
Levi Strauss and Co (Comp)	36,633F	Warsaw, VA	07/26/1999	Denim and Docker Apparel.
Levi Strauss and Co (Comp)	36,633G	Valdosta, GA	07/26/1999	Denim and Docker Apparel.
Levi Strauss and Co (Comp)	36,633H	El Paso, TX	07/26/1999	Denim and Docker Apparel.
Levi Strauss and Co (Comp)	36,633I	Brownsville, TX	07/26/1999	Denim and Docker Apparel.
Levi Strauss and Co (Comp)	36,633J	San Benito, TX	07/26/1999	Denim and Docker Apparel.
Levi Strauss and Co (Comp)	36,633K	San Antonio, TX	07/26/1999	Denim and Docker Apparel.
Levi Strauss and Co (Comp)	36,633L	San Antonio, TX	07/26/1999	Denim and Docker Apparel.
Levi Strauss and Co (Comp)	36,633M	Powell, TN	07/26/1999	Denim and Docker Apparel.
Levi Strauss and Co (Comp)	36,633N	San Francisco, CA	07/26/1999	Denim and Docker Apparel.
Levi Strauss and Co (Comp)	36,633O	Blue Ridge, GA	07/26/1999	Denim and Docker Apparel.
Levi Strauss and Co (Comp)	36,633	El Paso, TX	07/26/1999	Denim and Docker Apparel.
Hirsch Speidel, Inc (Co.)	36,634	Providence, RI	07/22/1999	Watch Bands and ID Bracelets.
AMP, Inc., Pike Plant (Wkrs)	36,635	Carlisle, PA	07/07/1999	Stamp Electrical & Electronic Connectors.
Southwestern Cutting (Wkrs)	36,636	El Paso, TX	07/21/1999	Cloth Cutting.
Motorola Cellular (Wkrs)	36,637	Libertyville, IL	07/19/1999	Digital Cellular Phones.
Pabst Engineering (Wkrs)	36,638	Onalaska, WI	07/21/1999	Custom Tooling and Fixtures.
American International (Wkrs)	36,639	Oscoda, MI	07/22/1999	Aircraft Maintenance.
Huck Jacobson (Co.)	36,640	Kenilworth, NJ	07/19/1999	Electrical Fittings—Couplings.
Chatha Enterprise (Wkrs)	36,641	De Lisle, MS	07/19/1999	Wire Harnesses.
General Instrument Corp (Wrks)	36,642	Horsham, PA	07/21/1999	Cable TV Amplifiers.
Walker McDonald (Wkrs)	36,643	Greenville, TX	07/21/1999	Tri-Cone Roller Bits.
G.H. Bass & Co. (Co.)	36,644	S. Portland, ME	07/14/1999	Men's, Ladies' and Children's Footwear.
Jet Composites (Co.)	36,645	Bluffton, IN	07/23/1999	Fiberglass Insulators.
J and R Consulting Serv. (Co.)	36,646	Tioga, ND	07/19/1999	Oil and Gas.
Cluett Peabody & Co (Comp)	36,647	Atlanta, GA	07/27/1999	Men's Dress Shirts.

[FR Doc. 99–22585 Filed 8–30–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—01994]

Champion Aviation Products, Weatherly, PA; Notice of Negative Determination on Remand

On June 4, 1999, the United States Court of International Trade remanded this matter to the Secretary of Labor for further investigation in *Former Employees of Champion Aviation Products* v. *Secretary of Labor*, No. 98–02–00299 (Ct. Int'l Trade 1999).

The Department's initial negative determination of eligibility to apply for NAFTA Transitional Adjustment Assistance ("NAFTA–TAA") for the workers and former workers of Champion Aviation Products, Weatherly, Pennsylvania was issued on December 11, 1997 and published in the **Federal Register** on January 6, 1998, *see* 63 FR 577 (1998). The denial was based on the finding that criteria (3) and (4) of the group eligibility requirements of Section 222 of the Trade Act of 1974, as amended, 19 U.S.C. 2231(a)(1)(A)(iii) and (B), were not met: i.e., there were no increases in imports from Mexico or Canada of articles like or directly competitive with articles produced by the workers' firm or appropriate subdivision that contributed importantly to the workers' separations; and there was no shift in production of such articles from the workers' firm or subdivision to Mexico or Canada. *See* Administrative Record ("AR") 58–60.

The petitioners' request for reconsideration resulted in a negative determination, which was issued on January 27, 1998 and published in the **Federal Register** on February 6, 1998, *see* 63 FR 6208 (1998). The Department's determination reaffirmed its finding that imports did not contribute importantly to the workers' separations and that the workers' firm did not shift production of aircraft displays or power supplies to Mexico or Canada. AR 63–66.

On remand, the court ordered the Department to make additional findings (1) determining the appropriate subdivision in light of the intent of NAFTA–TAA and accounting for the possibility that a two-step shift in production may have occurred; (2) providing a more detailed explanation of whether the articles produced at the Pennsylvania facility are like or directly competitive with the articles produced in Mexico; and (3) describing the types and amount of equipment that moved to Mexico from Pennsylvania. *Champion Aviation*, No. 98–02–00299, slip op. at 10. In addition, the court suggested that the Department develop a methodology that does not rely on product lines alone to determine what constitutes the appropriate subdivision in a "shift in production" case. *Id.* at 7.

The court further suggested that the Department.

1. Describe the parent company's (Cooper Industries) organizational structure and the Weatherly's plant's position within it; *id.* at 8;

2. Interview other sources besides the former Weatherly plant manager, *id.* at 9; and

3. Provide evidence that it did not base its denial of the plaintiffs' two-step shift-in-production argument on the sole ground that the workers at the Sparta, Tennessee facility did not apply for adjustment assistance, *ibid.*

The Department contacted the successor parent firm of Champion Aviation—Federal Mogul Corporation—to obtain the additional information required by the Court.

New Methodology

At the outset, the Department respectfully disagrees with the court that a new methodology for determining the appropriate subdivision in a shift-in-production case is either apposite or warranted by the statute or its legislative history. It is well settled under the Trade Adjustment Assistance provision for group eligibility of the Trade Act, 19 U.S.C. 2271(a), that the "determination of what constitutes an appropriate subdivision must be made along product lines." *See Kelley* v. *Secretary, United States Dep't of Labor*, 626 F Supp. 398, 402 (Ct. Int'l Trade 1985). The Department's use of the same methodology for determining what an appropriate subdivision is under the NAFTA–TAA increased-import criterion for group eligibility, 19 U.S.C. 2332(a)(1)(A), is not in dispute. The court's broader interpretation of the same "firm or appropriate subdivision" language in the NAFTA–TAA "shift in production" criterion for group eligibility, 19 U.S.C.(a)(1)(B), seems to rest on its inference that because Congress intended to expand coverage of workers in NAFTA–TAA by adding that criterion, it must also have intended to use these terms more expansively in that criterion. We think that Congress achieved the intended expansion by adding the "shift in production" criterion, which accounts for over half of the certifications under NAFTA–TAA, and that the Congressional desire to expand the program does not evince an intent to use terms with a well-established judicial meaning in a radically different manner.[1]

Appropriate Subdivision and Like or Directly Competitive Articles

The petition was filed on behalf of workers and former workers who produced aircraft power supplies (power converters) and cockpit displays in the Weatherly, Pennsylvania plant, part of Cooper Automotive's Ignition/Aviation Products Division, *see* Supplemental Administrative Record ("SAR") 28, 32. Weatherly was the only Cooper facility that made these products before its closure. *see* SAR 36, and it produced only these articles during the period covered by the investigation. The articles were produced from 1994 until the plant closed. The plant had previously manufactured automotive headlamps, but production of these articles was stopped before 1994 and moved to Cooper's Hampton, Virginia facility. *See* SAR 17. Workers who lost their jobs as a result of this transfer of automotive headlamps cannot be certified on the present petition because the transfer was domestic and because any such workers lost their jobs more than a year before the NAFT–TAA petition was filed.[2]

By contrast, the Sparta, Tennessee facility is a part of Cooper's Automotive Lighting Products Division. *See* SAR 29. The Sparta plant produces automotive incandescent miniature lamps, halogen capsules and molds, and assembles some automotive interior lighting fixtures. SAR 18. There were no common or similar products or production processes at the Weatherly and Sparta plants from 1994 through the closure of the Weatherly plant. *See* SAR 4, 18. The aviation display products produced at Weatherly cannot

[1] In this regard is revealing that the court's quotation of the NAFTA–TAA legislative history, *Champion Aviation*, No. 98–02–00299, slip op. at 6 ("[T]he new program is designed to remedy what has been identified as one of the current shortcomings of the current TAA program") omits the explanatory preceding clause "By expanding eligibility to include those who lose their jobs as a result of shifts in production to Mexico or Canada, not only as a result of increased imports.", Senate Proceedings and Debates of the 103rd Congress, First Session, 139 Cong. Rec. S16092–01, S16107 (Nov. 18, 1993). Contrary to the court's interpretation, this passage demonstrates Congress's intent to expand coverage by adding a new criterion but provides no evidence of a Congressional desire to redefine established terms within that new criterion in a way that would further expand coverage.

[2] The petition was received by the Commonwealth of Pennsylvania on October 27, 1998. *See* SAR 35.

reasonably be considered like or directly competitive with the Sparta automotive headlamps that were transferred to Mexico. The two products are not substantially identical in their inherent or intrinsic characteristics, nor are they commercially interchangeable or substitutable. The aviation lamps made in Weatherly were very different in size and method of production from the automotive lighting produced in Sparta. *See* SAR 4, 18. Aviation lamps and automotive lamps are produced by very different processes. *See* SAR 21, 24. Aviation lamps are made by a very manual process. SAR 24. "The lamp is extremely small and the assembly requires the use of a microscope. The automotive lamps are made of highly automated production lines and are of a much larger size." *Ibid.*

In view of the fact that the Weatherly plant, the plaintiffs' plant, was the only Cooper facility that produced aviation products during the period covered by the investigation and that Weatherly produced only those products during that period, I find that Weatherly was the appropriate subdivision for determining wheather a shift in production occurred. I have considered whether the automotive articles produced at Sparta were sufficiently similar to Weatherly's aviation products to warrant finding Sparta an appropriate subdivision. I conclude, however, that the products' differences in inherent or intrinsic characteristics, production process and commercial use preclude such a finding. I also note that the facts that the two plants that made these products belonged to different divisions of Cooper and that neither plant made components or finished products for the other provide additional support for my conclusion.

Two-Step Shift in Production

According to a vice president of Cooper, there was no relationship between the transfer of automotive products from Sparta to Matamoros, Mexico and the transfer of aviation lamp production from Weatherly to Sparta. *See* SAR 4, 18. The same official stated that the move of aviation lighting from Weatherly to Sparta could have happened even if Cooper had not moved any operations to Mexico; in his opinion, the two transfers were totally unrelated. *See* SAR 24. He also observed that the Weatherly production that was moved to Sparta was a very small lamp assembly operation, especially in comparison to the automotive lamp production in Sparta. *See ibid.*

Both in our initial investigation and in our remand investigation, the former Weatherly plant manager (who co-signed the plaintiffs' petition for administrative reconsideration, *see* AR 62) asserted that the plaintiffs lost their jobs because of the shift in production of automotive lamps from Sparta to Mexico. *See* AR Business Confidential Information ("BCI") 5, 36; SAR 23. As noted above, however, a Cooper vice president flatly rejected this contention. When informed of the conflict the former plant manager's and the higher company official's views on this matter, Cooper told us that the plant manager had no responsibility for Sparta and that the vice president was more knowledgeable about Sparta's operations. *See* SAR 24.

I also note that, during the initial investigation, the former Weatherly plant manager gave us an inconsistent explanation of why his plant closed. At that time, he attributed the closing to the plant's loss of 80% of its capacity when it shifted its automotive line to another Cooper domestic plant in 1992. *See* BCI 36 ("The Weatherly plant is being closed because you can't support this size plant with what's left"). As noted earlier, a 1992 domestic transfer of production is not a ground for certifying workers who lost their jobs in late 1997 or early 1998 under the NAFTA–TAA shift-in-production criterion.

I conclude that the record does not support the theory that the plaintiffs lost their jobs because of a two-step shift in production form Weatherly to Mexico. The unrelated nature of the domestic shift of aviation lamp production from Weatherly to Sparta and the shift of automotive lamp production from Sparta to Mexico, and the great differences between these two product lines both refute the notion that a two-step shift in production occurred here. This conclusion is further supported by the finding of our original negative determination that the real cause of the plaintiff's separation was their employer's failure to procure avionics contracts that were awarded to domestic competitors. *See* AR 59.

Equipment Moved From Pennsylvania to Mexico

Notes taken during the initial investigation indicated that some equipment was transferred from Weatherly to Mexico. On remand, the Department queried Cooper executives and the former Weatherly plant manager about the company's equipment transfers. The former plant manager clarified his comments and stated that the only equipment Cooper moved from Weatherly to Mexico consisted of two large air compressors, which are not production equipment. *See* SAR 23. Two Cooper vice presidents stated that the company transferred no equipment from Weatherly to Mexico. Production equipment from Weatherly was either sold at auction or transferred either to Cooper's Liberty, South Carolina or Sparta, Tennessee facilities. *See* SAR 18, 24, 34.

Conclusion

After careful consideration of the results of the remand investigation, I affirm the original notice of negative determination of eligibility to apply for NAFTA–TAA for workers and former workers of Champion Aviation Products, Weatherly, Pennsylvania.

Signed at Washington, DC this 17th day of August 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–22591 Filed 8–30–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03247]

Procter and Gamble Paper Products Co., Greenville Plant, Greenville, NC; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on July 14, 1999, applicable to workers of Procter and Gamble Paper Products Co., Greenville Plant, Greenville, North Carolina engaged in the assembly of feminine hygiene products. The notice was published in the **Federal Register** on August 11, 1999 (64 FR 43725).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that the Department incorrectly limited the certification to "all workers engaged in employment related to the assembly of feminine hygiene products."

The intent of the Department's certification is to include "all workers" of Procter and Gamble Paper Products Co., Greenville Plant, Greenville, North Carolina adversely affected by increased imports from Canada.

The Department is amending the certification determination to correctly identify the worker group to read "all workers."

The amended notice applicable to NAFTA–03247 is hereby issued as follows:

All workers of Procter and Gamble Paper Products Co., Greenville Plant, Greenville, North Carolina who became totally or partially separated from employment on or after June 9, 1998, through July 14, 2001 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC, this 18th day of August, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–22592 Filed 8–30–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

NAFTA—03015; Quest Petroleum Corporation, Reno, Nevada; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 22, 1999 in response to a worker petition which was dated March 1, 1999, and filed on behalf of workers at Quest Petroleum Corporation, Reno, Nevada.

The Department of Labor has determined that the petition is invalid. Under the Trade Act of 1974, as amended, a NAFTA–TAA petition may be filed by a group of three or more workers in an appropriate subdivision of a firm, by a company official, by their union, or other duly authorized representative, including community-based organizations. The petition was signed by one petitioner who is not authorized to file on behalf of all workers of the company. Consequently, further investigation in this matter would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC, this 11th day of August, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–22579 Filed 8–30–99; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules for Electronic Copies Previously Covered by General Records Schedule 20; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal.

This request for comments pertains solely to schedules for electronic copies of records created using word processing and electronic mail where the recordkeeping copies are already scheduled. (Electronic copies are records created using word processing or electronic mail software that remain in storage on the computer system after the recordkeeping copies are produced.)

These records were previously approved for disposal under General Records Schedule 20, Items 13 and 14. Pursuant to NARA Bulletin 99–04, agencies must submit schedules for the electronic copies associated with program records and administrative records not covered by the General Records Schedules. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a). To facilitate review of these schedules, their availability for comment is announced in **Federal Register** notices separate from those used for other records disposition schedules.

DATES: Requests for copies must be received in writing on or before October 15, 1999. On request, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums concerning a proposed schedule. These, too, may be requested. Requesters will be given 30 days to submit comments.

Some schedules submitted in accordance with NARA Bulletin 99–04 group records by program, function, or organizational element. These schedules do not include descriptions at the file series level, but, instead, provide citations to previously approved schedules or agency records disposition manuals (see Supplementary Information section of this notice). To facilitate review of such disposition requests, previously approved schedules or manuals that are cited may be requested in addition to schedules for the electronic copies. NARA will provide the first 100 pages at no cost. NARA may charge $.20 per page for additional copies. These materials also may be examined at no cost at the National Archives at College Park (8601 Adelphi Road, College Park, MD).

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@ arch2.nara.gov.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports and/or copies of previously approved schedules or manuals should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs the records to conduct its business.

Routine administrative records common to most agencies are approved for disposal in the General Records Schedules (GRS), which are disposition schedules issued by NARA that apply Government-wide.

In the past, NARA approved the disposal of electronic copies of records created using electronic mail and word processing via General Records Schedule 20, Items 13 (word processing documents) and 14 (electronic mail). However, NARA has determined that a different approach to the disposition of electronic copies is needed. In 1998, the Archivist of the United States established an interagency Electronic Records Work Group to address this issue and pursuant to its recommendations, decided that agencies must submit schedules for the electronic copies of program records and administrative records not covered by the GRS. On March 25, 1999, the Archivist issued NARA Bulletin 99–04, which tells agencies what they must do to schedule electronic copies associated with previously scheduled program records and certain administrative records that were previously scheduled under GRS 20, Items 13 and 14.

Schedules submitted in accordance with NARA Bulletin 99–04 only cover the electronic copies associated with previously scheduled series. Agencies that wish to schedule hitherto unscheduled series must submit separate SF 115s that cover both recordkeeping copies and electronic copies used to create them.

In developing SF 115s for the electronic copies of scheduled records, agencies may use either of two scheduling models. They may add an appropriate disposition for the electronic copies formerly covered by GRS 20, Items 13 and 14, to every item in their manuals or records schedules where the recordkeeping copy has been created with a word processing or electronic mail application. This approach is described as Model 1 in Bulletin 99–04. Alternatively, agencies may group records by program, function, or organizational component and propose disposition instructions for the electronic copies associated with each grouping. This approach is described as Model 2 in the Bulletin. Schedules that follow Model 2 do not describe records at the series level.

For each schedule covered by this notice the following information is provided: Name of the Federal agency and any subdivisions requesting disposition authority; the organizational unit(s) accumulating the records or a statement that the schedule has agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency; the control number assigned to each schedule; the total number of schedule items; the number of temporary items (the record series proposed for destruction); a brief description of the temporary electronic copies; and citations to previously approved SF 115s or printed disposition manuals that scheduled the recordkeeping copies associated with the electronic copies covered by the pending schedule. If a cited manual or schedule is available from the Government Printing Office or has been posted to a publicly available Web site, this too is noted.

Further information about the disposition process is available on request.

Schedules Pending

1. Department of Labor, Office of the Inspector General (N9–174–99–2, 2 items, 2 temporary items). Electronic copies of records created using electronic mail and word processing that relate to investigations of labor racketeering. This schedule follows Model 1 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Disposition Job No. N1–174–93–1.

2. Department of Labor, Office of the Inspector General (N9–174–99–3, 1 item, 1 temporary item). Electronic copies of records created using electronic mail and word processing that relate to the Semiannual Report to Congress prepared by the Office of the Inspector General. This schedule follows Model 1 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Disposition Job No. N1–174–96–2.

Dated: August 24, 1999.

Geraldine Phillips,

Acting Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 99–22619 Filed 8–30–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on Presidential Libraries Meeting

Notice is hereby given that the Advisory Committee on Presidential Libraries will meet on October 14, 1999, from 10:30 a.m. to 2 p.m., in room 105 of the National Archives Building, 700 Pennsylvania Avenue, NW, Washington, DC.

The agenda for the meeting will be the Presidential library programs and a discussion of several critical issues.

The meeting will be open to the public. For further information, call David F. Peterson at 301–713–6050.

Dated: August 18, 1999.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 99–22618 Filed 8–30–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: National Transportation Safety Board.

TIME AND DATE: 9:30 a.m., Wednesday, September 8, 1999.

PLACE: NTSB Board Room, 5th Floor, 490 L'Enfant Plaza, SW, Washington, DC 20594.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

7047A—Aviation Accident Report: Crash During Landing, Federal Express, Inc., Flight 14, McDonnell Douglas MD–11, N611FE, Newark International Airport, Newark, New Jersey, July 31, 1997.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100. Individuals requesting specific accommodation should contact Mrs. Barbara Bush at (202) 314–6220 by Friday, August 6, 1999.

FOR MORE INFORMATION CONTACT: Rhonda Underwood, (202) 314–6065.

Dated: August 27, 1999.

Rhonda Underwood,

Federal Register Liaison Office.

[FR Doc. 99–22761 Filed 8–27–99; 2:10 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–19405; License No.37–20553–01 (Suspended); EA 99–057]

In the Matter of Alfonso Deleo, Jr., Ardmore, Pennsylvania, Order Imposing Civil Monetary Penalty

I

Alfonso Deleo, Jr.(Mr. Deleo or licensee) is the holder of suspended Byproduct Material License No. 37–20553–01 (license) that was originally issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR part 30 on April 4, 1982. The license authorized: (1) Possession and use of cesium-137 and americium-241 sealed sources (gauges)

at temporary jobsites of the licensee anywhere in the United States where the Commission maintained jurisdiction for regulating the use of licensed material; and (2) storage of the licensed material at 141 Golf Hills Road, Havertown, PA. The license has an expiration date of March 31, 2004. Licensees of the Commission are required to pay annual fees. Mr. Deleo has failed to pay annual fees since 1991.

II

On September 20, 1993, the NRC contacted Mr. Deleo to inform him of the need to renew the license and pay annual fees, which he had not done for the preceding two years. After Mr. Deleo indicated that it was his intent to terminate the license and that he had found a licensee to take the two gauges in his possession, the NRC outlined the steps that he would have to take to terminate the license once the licensed material was properly transferred.

Subsequently, the NRC conducted an inspection at Mr. Deleo's Havertown, PA, facility on November 16, 1994, at which time he still possessed the gauges, and had not paid the annual fees. As a result of Mr. Deleo's continued non-payment of fees, the NRC issued an Order Suspending License on February 12, 1996.

During a subsequent inspection by the NRC at Mr. Deleo's Havertown, PA, facility on December 5, 1996, the NRC determined that he failed to notify the Commission in accordance with 10 CFR 30.36(d)(3) of the cessation of principal licensed activities. Specifically, Mr. Deleo had ceased activities prior to August 15, 1994, the regulation's effective date. As a result, a Notice of Violation was issued on December 16, 1996. Mr. Deleo failed to reply to the Notice within 30 days of its issuance as required by 10 CFR 2.201. The NRC contacted Mr. Deleo on February 13, 1997, concerning his failure to reply to the December 16, 1996 Notice, and he indicated that he would reply to the Notice.

Subsequently, the NRC sent Mr. Deleo another letter on February 24, 1997, describing the Decommissioning Timeliness rule (10 CFR 30.36), and indicating that the licensed material in his possession needed to be transferred to another authorized recipient by October 15, 1998. The letter further stated that failure to dispose of licensed material by that date could result in significant enforcement action, including the imposition of monetary civil penalties. Nonetheless, Mr. Deleo did not transfer the gauges. During another inspection of Mr. Deleo's Havertown, PA, facility on March 16, 1998, he was again informed that 10 CFR 30.36 required him to transfer licensed material to an authorized recipient by October 15, 1998.

The NRC attempted to contact Mr. Deleo several times between December 30, 1998 and March 10, 1999 by leaving messages on his answering machine to determine the status of the licensed material. As of April 1, 1999, Mr. Deleo had not returned the telephone calls. As a result, a joint inspection/investigation by the NRC Office of Investigations and Division of Nuclear Materials Safety was conducted on April 1, 1999, at his Havertown, PA, facility. That investigation disclosed that Mr. Deleo still retained possession of the gauges. Based on the above, including the OI investigation, the NRC concluded that Mr. Deleo was in willful violation of NRC requirements.

Since the Licensee had not conducted its activities in full compliance with NRC requirements, a written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated June 2, 1999. The Notice states the nature of the violation, the provision of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violation.

III

Although Mr. Deleo has confirmed to the NRC, during a telephone conversation on June 18, 1999, that he has received the NRC's June 2, 1999 letter transmitting the Notice of Violation and Proposed Imposition of Civil Penalty, he has failed to respond to it and is still in possession of the gauges. Therefore, the NRC staff has determined, as set forth in the Appendix to this Order, that the violation occurred as stated and that the penalty proposed for the violation designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The Licensee pay a civil penalty in the amount of $5,500 within 30 days of the date of this Order, in accordance with NUREG/BR–0254. In addition, at the time of making the payment, the licensee shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above, and

(b) Whether, on the basis of such violation, this Order should be sustained.

Dated this 23rd day of August 1999.

For the Nuclear Regulatory Commission.

R.W. Borchardt,

Director, Office of Enforcement.

Appendix: Evaluation(s) and Conclusion

On June 2, 1999, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued to Alfonso Deleo for a violation identified during an NRC inspection and investigation. Mr. Deleo has failed to respond to the Notice. Accordingly, the NRC has concluded that the violation occurred as stated in the Notice and the licensee has not provided any basis for a reduction of the severity level or for mitigation of

the civil penalty. Therefore, the proposed civil penalty in the amount of $5,500 should be imposed.

[FR Doc. 99–22651 Filed 8–30–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR–58 and DPR–74 issued to Indiana Michigan Power Company (the licensee) for operation of the Donald C. Cook Nuclear Power Plant, Units 1 and 2, located in Berrien County, Michigan.

The proposed amendments would revise Technical Specification (TS) 3.3.3.8 for Unit 1 and TS 3.3.3.6 for Unit 2, "Post-Accident Instrumentation." The proposed changes to the TSs will place tighter restrictions on the amount of time the refueling water storage tank (RWST) water level instrumentation may be inoperable before the limiting conditions for operation in the TSs are applied.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1

This amendment request does not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed changes do not change or add to any of the accidents previously evaluated. The T/S changes do not change the available instrumentation nor change the readability of the instrumentation. The T/S changes make the allowable out of service time more conservative for the RWST water level instrumentation, reducing the allowable time from 30-days to 72-hours for a single channel out-of-service, with T/S 3.0.3 being entered if both channels of instrumentation are lost.

Criterion 2

The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated. The T/S change only reduces the allowable out of service time for the RWST water level instrumentation. It does not involve a physical change and does not create a new type of accident.

Criterion 3

This proposed change does not involve a significant reduction in a margin of safety. The T/S change is limited to the allowable out of service time and does not change the number of instrument channels available, the testing of the instruments or the range of the instruments.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 30, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jeremy J. Euto, Esquire, 500 Circle Drive, Buchanan, MI 49107, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated October 8, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085.

Dated at Rockville, Maryland, this 24th day of August, 1999.

For the Nuclear Regulatory Commission.

John F. Stang,

Sr. Project Manager, Section 1,

Sr. Project Directorate III,

Division of Licensing Project Management,

Office of Nuclear Reactor Regulation.

[FR Doc. 99–22488 Filed 8–30–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 AND 50–316]

Indiana Michigan Power Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–58 and DPR–74 issued to Indiana Michigan Power Company (the licensee) for operation of the Donald C. Cook Nuclear Power Plant, Units 1 and 2, located in Berrien County, Michigan.

The proposed amendments would change the runout limits for a safety injection (SI) pump to 675 gallons per minute (gpm), unless the pump is specifically tested to a higher flow rate, not exceeding 700 gpm for both Units 1 and 2. This change was initiated upon reevaluation of correspondence from Westinghouse sent to the licensee in 1991, which indicated that the generic runout limits for Pacific 2" JTCH pumps was 675 gpm unless each specific pump is tested to a higher flow rate. Individual testing is necessary due to test variations between pumps which may limit the applicability of testing of one pump to another pump due to manufacturing tolerances in the sand cast impellers and material changes in the pump casing.

Furthermore, the bases section is being clarified to describe why the injection rather than the recirculation mode during flow balancing is the minimum resistance and, consequently, more conservative configuration for runout considerations.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its

analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with 10 CFR 50.92, this proposed amendment does not involve a significant hazard consideration if it does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed reduction in the SI pump runout flow does not increase the probability of occurrence of any previously evaluated accident because the SI pumps are not considered to be accident initiators. In addition, flow balancing performed at Cook Nuclear Plant has proven the ability to deliver the minimum T/S flow of 300 gpm to each pair of cold leg injection points without exceeding the 675 gpm (or 700 gpm) pump runout limits. Therefore, the emergency core cooling system performance objectives of 10 CFR 50.46 are not impacted and this change does not involve a significant increase in the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposed change imposes a generic limit on maximum allowable flow for untested SI pumps. No physical system changes or changes in operating modes are being made that could introduce new or different kinds of accidents from those previously evaluated. As discussed in (1) above, the SI pumps are not considered accident initiators, and this status is not affected by the change to the SI pump runout limits.

3. Involve a significant reduction in a margin of safety.

This change reflects a reduced maximum single pump flow to be observed during flow balancing of the SI system. Flow balance testing at Cook Nuclear Plant has demonstrated the ability to meet the SI flow requirements while maintaining an adequate margin to the revised lower runout limits being proposed by this submittal. Because the minimum required SI flow delivered to the core has not been reduced by this change, the change does not involve a reduction in a margin of safety.

Based on the preceding, the evaluation concluded that the proposed change to the SI pump runout limits does not involve a significant hazards consideration as defined in 10 CFR 50.92.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92 are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 30, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jeremy J. Euto, Esquire, 500 Circle Drive, Buchanan, MI 49107, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(I)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 21, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085.

Dated at Rockville, Maryland, this 25th day of August 1999.

For the Nuclear Regulatory Commission.

John F. Stang, Sr.,

Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–22489 Filed 8–30–99; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–58 and DPR–74 issued to Indiana Michigan Power Company (the licensee) for operation of the Donald C. Cook Nuclear Power Plant, Units 1 and 2, located in Berrien County, Michigan.

The proposed amendments would make administrative changes to several Technical Specifications to remove obsolete information, provide consistency between Unit 1 and Unit 2, provide consistency with the Standard Technical Specifications, provide clarification, and correct typographical errors.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The proposed change for boron sampling requirements in mode 6 does not affect the probability of a fuel handling accident. The unlikely event of a fuel assembly being misloaded is independent of the sampling frequency for fuel pool boron concentration. It has no impact on the event initiator, which is a human error while positioning a fuel assembly. The change has no impact on the assumptions for a fuel handling accident. The boron concentration requirement is not changed; there is sufficient boron in the fuel storage pool to maintain k_{eff} below 0.95 to preclude an inadvertent criticality. Therefore, the consequences of the accident will be mitigated as previously evaluated. The 72-hour maximum interval between samples is maintained. Operating experience has shown 72 hours to be adequate. Removing the additional limitation of sampling at least three times per week would allow the sample to be collected two or three times per week, consistent with the maximum 72-hour interval. This is acceptable because boron concentration changes occur slowly due to the large volume of water in the system and relatively small volumes of dilution sources. The consequences are not increased because there are no changes to the spent fuel, shielding (water), or systems used to mitigate the consequences of an accident. Additionally, there is no change in the types or significant increase in the amounts of any effluents released offsite.

Deleting the redundant figure for equivalent reactivity criteria for regions in the spent fuel storage racks does not impact the storage requirements because the equations provide equivalent requirements. The unlikely event of a fuel assembly being misloaded is independent of the characteristics of the spent fuel in the pool. It has no impact on the event initiator, which is a human error while positioning a fuel assembly. The change has no impact the assumptions for a fuel handling accident because the fuel storage requirements are not changed. The consequences of an accident are not increased because the fuel storage requirements are not changed and no other changes are made to systems that mitigate the consequences of an accident.

The proposed changes to correct a reference to another requirement, delete obsolete notes, revise the name of drumming room roll-up door, and correct typographical errors are considered administrative. The reference leads to a section that no longer exists; the proposed change corrects the error. The notes permitted exceptions to requirements, and they are no longer required. The normal requirements have applied since the provisions expired. Deleting them eliminates extraneous information. The revised description of the door reflects the current use of the installed door. Correcting the typographical errors improves readability. The corrections are not intended to change the meaning. These changes do not affect accidents described in the UFSAR.

Adding new surveillance requirements to test the Unit 2 pump performance pursuant

to T/S 4.0.5 does not affect accident initiators or precursors. The change reflects ASME code requirements. Including the requirements in the corresponding section provides assurance that the pumps will operate as assumed in the accident analyses. As such, the probability and consequences of previously evaluated accidents is unchanged.

The proposed change to the description of instrumentation configuration is considered administrative because the configuration had been reviewed and approved by the NRC Staff, as documented in the Safety Evaluation Report for amendment 39 for DPR–58 and amendment 22 for DPR–74. There are no changes to the actual plant configuration. The change is intended to describe the installed equipment more clearly. The change does not affect the probability and consequences of previously evaluated accidents because the equipment is installed and operated as described in the correspondence related to the previous amendments.

Based on this review, it is concluded that the proposed changes do not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes remove obsolete information, provide consistency between Unit 1 and Unit 2, provide consistency with the Standard Technical Specifications, provide clarification, and correct typographical errors. These changes are considered administrative because they do not affect the design or operation of any system, structure, or component in the plant. The accident analysis assumptions and results are unchanged. No new failures or interactions have been created. Based on this review, it is concluded that the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The proposed changes are considered administrative in nature. They do not affect any safety limits or T/S parameter limits. The proposed changes do not introduce new equipment, equipment modifications, or new or different modes of plant operation. These changes do not affect the operational characteristics of any equipment or systems. Based on this review, it is concluded that no reduction in the margin of safety will occur as a result of the changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92 are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 30, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jeremy J. Euto, Esquire, 500 Circle Drive, Buchanan, MI 49107, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(I)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 21, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085.

Dated at Rockville, Maryland, this 25th day of August, 1999.

For the Nuclear Regulatory Commission.

John F. Stang,

Sr. Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–22490 Filed 8–30–99; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271]

Vermont Yankee Nuclear Power Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–28 issued to Vermont Yankee Nuclear Power Corporation (the licensee) for operation of the Vermont Yankee Nuclear Power Station (VY) located in Vernon, Vermont.

The proposed amendment would modify the operability requirements for the high pressure cooling systems—High Pressure Coolant Injection (HPCI), Reactor Core Isolation Cooling (RCIC) and Automatic Depressurization System (ADS)—and the safety and relief valves, and add a time limitation for conducting operability testing of HPCI and RCIC.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes proposed add clarity, additional limitations, and relaxation to operability requirements and also reflect current surveillance practices. The proposed changes do not change the function nor needed range of operability pressures for the affected systems. The revisions ensure the applicability of operating requirements consistent with the design and operational bases of these systems.

The high pressure cooling systems (HPCI, RCIC and ADS) and the steam safety and relief valves do not initiate any accident considered in the Updated Final Safety Analysis Report. HPCI and ADS (with relief valves), as emergency core cooling systems, do function to mitigate accidents. Credit is not taken for RCIC in this regard. This change will not alter assumptions relative to the initiation or mitigation of any accident event.

The less restrictive changes proposed to not require operability of HPCI, ADS (and safety and relief valves) and RCIC at reactor steam pressures below 150 psig when irradiated fuel is in the reactor vessel and do not affect the probability of any accident previously evaluated. These changes furthermore do not significantly increase the consequences of accidents previously evaluated since reliance on these systems is not assumed below 150 psig.

The addition of required surveillance testing and completion times are intended to require a reduction in reactor pressure if HPCI and RCIC system operability requirements are not met. These additional Technical Specifications testing requirements and completion times are consistent with the current licensing basis and represent current practice.

The proposed changes do not involve accident initiators, do not change the configuration or method of operation of any equipment used to mitigate the consequences of an accident, and do not alter any conditions assumed in the plant accident analysis. Therefore, operation in accordance with the proposed changes would not involve a significant increase in the probability or consequences of an accident previously evaluated since there is no physical alteration of the plant configuration or relaxation of required setpoints or operating parameters.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will not modify the physical plant or the modes of plant operation. The changes do not involve the addition or modification of equipment nor do they alter the design or operation of plant systems. These changes to operability requirements do not create any new or different kind of accident since they do not

involve any change in the physical configuration of the plant, nor relaxation of required setpoints or operating parameters. Operation and design of the subject high pressure cooling systems (and the steam relief function) are not altered by the proposed changes.

The changes in operability requirements governing normal plant operation are consistent with the current safety analysis assumptions. These changes ensure adequate emergency core cooling system capability exists to mitigate the consequences of loss of coolant accidents without introducing new modes of operation.

Therefore, VY has determined that the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes are designed to clarify and add limitations to operation.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The proposed changes involve adding clarity, additional restrictions, and less restrictive requirements to current Technical Specifications without changing the safety bases. The added restrictions require an operability demonstration of HPCI and RCIC within an acceptable period of time following plant startup when testing is required.

These changes do not involve a significant reduction in a margin of safety because the assumptions used in analyses of postulated accidents are unchanged. The functional requirements of safety systems are also unaffected. Since equipment is expected to be operable, the delay (of up to 24 hours) in testing certain systems is acceptable based on the short time interval and is consistent with the allowable equipment out-of-service intervals.

The proposed changes to raise the Technical Specification minimum reactor steam pressure for operability to a consistent 150 psig for these systems do not involve a significant reduction in a margin of safety since these systems are not credited in the safety analyses to operate below 150 psig. The basis for any Technical Specification that is related to the establishment or maintenance of safety margins is not altered. Consequently, VY has determined that the proposed changes do not involve a significant reduction in a margin of safety since operation of the plant remains consistent with the plant's design and operational bases.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By September 30, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Brooks Memorial Library, 224 Main Street, Brattleboro, VT. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to David R. Lewis, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC, 20037–1128 attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 20, 1999, as supplemented August 17, 1999; which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Brooks Memorial Library, 224 Main Street, Brattletoro, VT.

Dated at Rockville, Maryland, this 25th day of August, 1999.

For the Nuclear Regulatory Commission.

Richard P. Croteau,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–22650 Filed 8–30–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on September 15–16, 1999, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The agenda for the subject meeting shall be as follows:

Wednesday, September 15, 1999—8:30 a.m. until the conclusion of business

Thursday, September 16, 1999—8:30 a.m. until 12:00 Noon

The Subcommittee will continue its review of the NRC Office of Nuclear Regulatory Research's thermal-hydraulic research program, including its plan for consolidating thermal-hydraulic codes, and the proposed resolution of Generic Safety Issue 23: "Reactor Coolant Pump Seal Failures". The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman. Written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding this review. Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the scheduling of sessions which are open to the public, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: August 23, 1999.

Richard P. Savio,

Associate Director.

for Technical Support, ACRS/ACNW.

[FR Doc. 99–22491 Filed 8–30–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Severe Accident Management; Notice of Meeting

The ACRS Subcommittee on Severe Accident Management will hold a meeting on September 16 (Room T–2B1) and 17 (Room T–2B3), 1999, 11545 Rockville Pike, Rockville, Maryland.

The agenda for the subject meeting shall be as follows:

Thursday, September 16, 1999—1:00 p.m. until the conclusion of business

Friday, September 17, 1999—8:30 a.m. until the conclusion of business

The Subcommittee will review the modifications proposed by the Combustion Engineering Owners Group (CEOG) to the Post Accident Sampling System requirements for CEOG nuclear power plant utilities. The Subcommittee will also review the status of NRC staff and nuclear industry activities pertaining to the issue of control room integrity. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman. Written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, the Combustion Engineering Owners Group and other interested persons regarding this review. Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the scheduling of sessions which are open to the public, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: August 23, 1999.

Richard P. Savio,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–22492 Filed 8–30–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of August 30, September 6, 12, 30, and October 18, 1999.

PLACE: Commissioner's Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of August 30

Wednesday, September 1

9:25 a.m.—Affirmation Session (Public Meeting) (If needed)

Week of September 6—Tenative

Tuesday, September 7

9:15 a.m.—Affirmation Session (Public Meeting) (if needed)

9:20 a.m.—Briefing on PRA Implementation Plan (Pubic Meeting) (Contact: Tom King, 301–415–5790)

Week of September 13—Tenative

There are no meetings scheduled for the Week of September 13.

Week of September 20—Tenative

Tuesday, September 21

9:25 a.m.—Affirmative Session (Public Meeting) (if needed)

9:30 a.m.—Briefing by DOE on Draft Environmental Impact Statement (DEIS) for a Proposed HLW Geologic Repository (Public Meeting)

Week of October 18—Tentative

Thursday, October 21

9:30 a.m.—Briefing on Part 35—Rule on Medical Use of Byproduct Material (Contact: Cathy Haney, 301–415–6825) (SECY–99–201, *Draft Final Rule—10 CFR Part 35, Medical Use of Byproduct Material*, is available in the NRC Public Document Room or on NRC web site at "www.nrc.gov/NRC/COMMISSION/SECY/index.html". Download the *zipped version* to obtain all attachments.)

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

* * * * *

ADDITIONAL INFORMATION: By a vote of 4–0 on August 24, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Final Rule—Changes to Requirements for Environmental Review for Nuclear Power Plant Operating Licenses (10 CFR Part 51)" (PUBLIC MEETINGS) be held on August 24, and on less than one week's notice to the public.

By vote of 4–0 on August 25, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Final Rule: Expand Applicability of 10 CFR Part 72 to Holders of, and Applicants for, Certificates of Compliance, and Their Contractors and Subcontractors" (PUBLIC MEETING) be held on August 25, and on less than one week's notice to the public.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: August 27, 1999.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 99–22763 Filed 8–27–99; 2:12 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Notice of Availability of the Interagency Steering Committee on Radiation Standards 1998 Annual Report

The Interagency Steering Committee on Radiation Standards (ISCORS) is noticing issuance of NUREG–1707, "Interagency Steering Committee on Radiation Standards: 1998 Annual Report." ISCORS was formed to foster early resolution and coordination of regulatory issues associated with radiation standards. The 1998 Annual Report was prepared to report to ISCORS member agencies on ISCORS' activities and plans. The report identifies both the past accomplishments and goals for the future that will be a basis for assessing performance in 1999. The report provides the contacts for each agency and describes the subcommittee activities. The subcommittees include Clean-up, Mixed Waste, Recycle, Risk Harmonization, Sewage Sludge, NORM, and Federal Guidance. Agencies represented on ISCORS include the U.S. Nuclear Regulatory Commission, U.S. Environmental Protection Agency, U.S. Department of Energy, U.S. Department of Defense, U.S. Department of Labor's Occupational Health and Safety Administration, U.S. Department of Transportation, and U.S. Department of Health and Human Services. Representatives from the Office of Science and Technology Policy, Office of Management and Budget, and States are observer members on ISCORS.

NUREG–1707 is on the NRC website at *http://www.nrc.gov/NRC/NUREGS/SR1707/index.html*. Copies of NUREG–1707 may also be examined or copied for a fee at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20555–0001; telephone 202–634–3273; fax 202–634–3343. NRC publications in the NUREG series may also be purchased from one of the following sources:

The Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328, *http://www.access.gpo.gov/su_docs* 202–512–1800

The National Technical Information Service, Springfield, VA 22161–0002, *http://www.ntis.gov/ordernow*, 703–487–4650

For Further Information, Contact: Patricia A. Santiago, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555; telephone 301–415–7269; fax 301–415–5398; E-mail *pas2@NRC.GOV*.

Dated at Rockville, Maryland, this 17th day of June, 1999.

For the Nuclear Regulatory Commission.

John W. N. Hickey,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–22649 Filed 8–30–99; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Medical Reports.

(2) *Form(s) submitted:* G–3EMP, G–250, G–250a, G–260, RL–11b, RL–11d.

(3) *OMB Number:* 3220–0038.

(4) *Expiration date of current OMB clearance:* 12/31/1999.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Business or other-for-profit, non-profit institutions, state, local or tribal government.

(7) *Estimated annual number of respondents:* 29,950.

(8) *Total annual responses:* 29,950.

(9) *Total annual reporting hours:* 12,417.

(10) *Collection description:* The Railroad Retirement Act provides disability annuities for qualified railroad employees whose physical or mental condition renders them incapable of working in their regular (occupational disability) or any occupation (total disability). The medical reports obtain information needed for determining the nature and severity of the impairment.

Additional Information or Comments

Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and the OMB reviewer, Laurie Schack (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc 99–22548 Filed 8–30–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17a–19 and Form X–17A–19, SEC File No. 270–148, OMB Control No. 3235–0133

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for approval of extension on the following rule:

Rule 17a–19 requires National Securities Exchange and Registered National Securities Associations to file a Form X–17A–19 with the Commission within 5 days of the initiation, suspension or termination of a member in order to notify the Commission that a change in designated examinating authority may be necessary.

It is anticipated that approximately eight National Securities Exchanges and Registered National Securities Associations collectively will make 3,000 total annual filings pursuant to Rule 17a–19 and that each filing will take approximately 15 minutes. The total burden is estimated to be approximately 750 total annual hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 23, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22549 Filed 8–30–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23966; File No. 812–11516]

Mitchell Hutchins Series Trust, et al.; Notice of Application

August 24, 1999.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 ("1940 Act"), granting exemptive relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

Summary of Application

Applicants seek an order of exemption to the extent necessary to permit shares of the Mitchell Hutchins Series Trust ("Fund") and shares of other Insurance Products Funds, as defined below, to be sold to and held by: (a) variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance

companies; and (b) qualified pension and retirement plans outside of the separate account context ("Qualified Plans" or "Plans").

Applicants

Mitchell Hutchins Series Trust and Mitchell Hutchins Asset Management Inc.("Mitchell Hutchins").

Filing Date

The Application was filed on February 19, 1999, and amended and restated on August 13, 1999.

Hearing or Notification of Hearing

An order ("Order") granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on September 20, 1999, and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, c/o Dianne E. O'Donnell, Deputy General Counsel, Mitchell Hutchins Asset Management Inc., 1285 Avenue of the Americas, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Paul G. Cellupica, Senior Counsel, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549 (202–942–8090).

Applicants' Representations

1. The fund is a Massachusetts business trust registered under the 1940 Act as an open-end management company. The Fund currently is comprised of thirteen separately managed series, each of which consists of two classes of shares and has its own investment objective and policies. Additional series could be added in the future. Other Insurance Products Funds are those other investment companies or investment company series for which Mitchell Hutchins, PaineWebber Incorporated ("PaineWebber") or any of their affiliates serve, now or in the future, an investment adviser, administrator, manager, principal underwriter or sponsor and which offer their shares only to insurance company separate accounts.

2. Mitchell Hutchins serves as the investment adviser and administrator for each of the Fund's series. Mitchell Hutchins is a wholly owned asset management subsidiary of Paine Webber, which in turn is a wholly owned subsidiary of Paine Webber Group Inc. ("PW Group"), a publicly held financial services holding company.

3. Pacific Investment Management Company ("PIMCO") serves as the sub-adviser for Strategic Fixed Income Portfolio. PIMCO is a subsidiary partnership of PIMCO Advisers L.P., a publicly held investment advisory firm.

4. Nicholas-Applegate Capital Management ("NACM"), a California limited partnership, serves as the sub-adviser for Aggressive Growth Portfolio. NACM's general partner is Nicholas-Applegate Capital Management Holdings, L.P., a California limited partnership controlled by Arthur E. Nicholas.

5. Invista Capital Management Inc. ("Invista") serves as the sub-adviser for Global Growth Portfolio's foreign investments. Invista is an indirect wholly owned subsidiary of Principal Life Insurance Company.

6. The Fund currently offers its shares exclusively to insurance company separate accounts that fund variable annuity contracts. Applicants propose that shares of each Insurance Product Fund be offered to affiliated and unaffiliated insurance companies for their separate accounts as an investment vehicle to fund various insurance products including, among others, variable annuity contracts, variable group life insurance contracts, scheduled premium variable life insurance contracts, single premium and modified single premium variable life insurance contracts, and flexible premium variable life insurance contracts (collectively, "Variable Contracts"). Some of these separate accounts may not be registered as investment companies under the 1940 Act pursuant to the exceptions from registration in Section 3(c)(1), 3(c)((7) and 3(c)(11) of the Act. In addition, Applicants propose that shares of each Insurance Product Fund also be offered directly to Qualified Plans. Separate accounts owning shares of the Insurance Product Funds and their insurance company depositors are referred to herein as "Participating Separate Accounts" and "Participating Insurance Companies," respectively.

7. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of a single insurance company (or of two or more affiliated insurance companies) is referred to as "mixed funding." The use of a common investment company as the underlying investment medium for separate accounts of unaffiliated insurance companies is referred to as "shared funding." The use of a common investment company as the underlying investment medium for variable annuity and variable life separate accounts of affiliated and unaffiliated insurance companies and for Qualified Plans is referred to as "extended mixed and shared funding."

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of person, securities or transactions from any provisions of the 1940 Act or the rules or regulations thereunder, if and to the extend that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. In connection with scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust ("UIT"), Rule 6e–2(b)(15) provides partial exemptions from the following sections of the 1940 Act: (a) Section 9(a), which makes it unlawful for any company to serve as an investment adviser or principal underwriter of any registered UIT if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a) (1) or (2); and (b) Sections 13(a), 15(a) and 15(b) of the 1940 Act, to the extent that those sections might be deemed to require "pass-through" voting with respect to an underlying investment company's shares.

3. The exemptions granted by Rule 6e–2(b)(15), however, are available only if the management investment companies underlying the UIT ("underlying funds") offer their shares "*exclusively* to variable life insurance separate accounts of the life insurer, or any affiliated life insurance company" (emphasis added). Therefore, Rule 6e–2 does not permit either mixed or shared funding because the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity or a flexible premium variable life insurance account of the same company or of any affiliated or unaffiliated life insurance company. This rule also does not contemplate that shares of the underlying fund might also be sold to Qualified Plans.

4. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a UIT, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), and from Sections 13(a), 15(a) and 15(b) of the 1940 Act to the extent that those sections might be deemed by the Commission to require "pass-through" voting with respect to an underlying fund's shares.

5. The exemptions granted by Rule 6e–3(T) are available only where the UIT's underlying funds offer their shares "*exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company" (emphasis added). Therefore, Rule 6e–3(T) permits mixed funding but does not permit shared funding. Rule 6e–3(T) also does not contemplate that shares of the underlying fund might also be sold to Qualified Plans.

6. Section 817(h) of the Internal Revenue Code of 1986, as amended ("Code"), imposes certain diversification standards on the underlying assets of Variable Contracts held in the portfolios of management investment companies. The Code provides that a Variable Contract shall not be treated as an annuity contract or life insurance contract, as applicable, for any period (and any subsequent period) for which the investments are not adequately diversified in accordance with regulations issued by the Treasury Department. Treasury Regulation § 1.817–5, which establishes diversification requirements for such portfolios, specifically permits, among other things, qualified pension or retirement plans, general accounts and separate accounts to share the same underlying management investment company. As a result, Qualified Plans may invest in Insurance Product Funds without endangering the tax status of Variable Contracts issued through Participating Insurance Companies. Shares of the Insurance Product Funds sold to Qualified Plans would be held by the trustees of those Plans as required by Section 403(a) of the Employee Retirement Income Security Act ("ERISA").

7. The promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Treasury regulations that made it possible for shares of an investment company to be held by the trustees of Qualified Plans without adversely affecting the ability of separate accounts of insurance companies to hold shares of the same investment company in connection with their variable annuity and variable life contracts. Thus, the sale of shares of the same investment company to separate accounts and Qualified Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T) (b)(15).

8. Applicants note that if the Insurance Product Funds were to sell shares only to Qualified Plans, exemptive relief under Rule 6e–2 and Rule 6e–3(T) would not be necessary. The relief provided by Rule 6e–2(b)(15) and Rule 6e–3(T)(b)(15) does not relate to qualified pension and retirement plans or to a registered investment company's ability to sell its shares to such entities.

9. Applicants are not aware of any stated rationale for excluding separate accounts and investment companies, or series thereof, engaged in shared funding from the exemptive relief provided under Rules 6e–2(b)(15) and 6e–3T (b)(15) or for excluding separate accounts and investment companies, or series thereof, engaged in mixed funding from the exemptive relief provided under Rule 6e–2(b)(15). Indeed, the Commission's proposed amendments to Rule 6e–2 would eliminate the exclusion of mixed funding from the relief provided under Rule 6e–2(b)(15) and numerous exemptions permitting both mixed and shared funding have been granted since the adoption of Rules 6e–2 and 6e–3.

10. Applicants similarly are not aware of any stated rationale for excluding Participating Insurance Companies from the exemptive relief requested because shares of the Insurance Products Funds may also sell their respective shares to Qualified Plans. The relief provided under Rules 6e–2(b)(15) and 6e–3(T)(b)(15) does not relate to Qualified Plans or to a registered investment company's ability to sell its shares to such entities. Because the relief accorded under such Rules is available where shares are offered *exclusively* to separate accounts, Applicants believe that additional exemptive relief is required if shares of Insurance Product Funds are also to be sold to Plans. The Commission has granted numerous exemptions permitting extended mixed and shared funding.

11. Applicants believe that the same policies and considerations that led the Commission to grant exemptions to other applicants for extended mixed and shared funding are present here. Moreover, Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

12. Section 9(a)(3) of the 1940 Act provides that it is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Section 9(a) (1) or (2). However, Rules 6e–2(b)(15) (i) and (ii) and 6e–3(T)(b)(15) (i) and (ii) provide partial exemptions from Section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. These exemptions limit the eligibility restrictions to affiliated individuals or companies that directly participate in the management or administration of the underlying investment company or series thereof.

13. Rules 6e–2(b)(15)(i) and 6e–3(T)(b)(15)(i) allow an individual disqualified under Section 9(a) (1) or (2) to be an officer, director, or employee of an insurance company, or any of its affiliates that serves in any capacity with respect to an underlying investment company, so long as the disqualified individual does not participate directly in the management or administration of the underlying investment company. Similarly, Rules 6e–2(b)(15)(ii) and 6e–3(T)(b)(15)(ii) permit an insurance company disqualified under Section 9(a)(3) of the 1940 Act to serve in any capacity with respect to an underlying investment company, provided that the affiliated person of the disqualified company, ineligible under Section 9(a) (1) or (2) of the 1940 Act, does not participate directly in the management or administration of the investment company.

14. The partial relief granted in Rules 6–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9 limits, in effect, the amount of monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and

purposes of Section 9. These rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply Section 9(a) to the many individuals who may be involved in a large insurance company but would have no connection with the investment company funding the separate accounts. Applicants believe that it is unnecessary to limit the applicability of these rules merely because shares of the Insurance Products Funds may be sold in connection with mixed and shared funding. Since the Participating Insurance Companies and Qualified Plans are not expected to play any role in the management or administration of the Insurance Products Funds, Applicants assert that applying the restrictions of Section 9(a) serves no regulatory purpose. Applicants further assert that applying such restrictions would increase the monitoring costs incurred by the Participating Insurance Companies and, therefore, would reduce the net rates of return realized by Variable Contract owners.

15. Moreover, appropriateness of the relief requested will not be affected by the proposed sale of shares of Insurance Products Funds to Qualified Plans. The insulation of the Insurance Product Fund from those individuals who are disqualified under the 1940 Act remains in place. Applying the requirements of section 9(a) because of investment by Qualified Plans would be unjustified and would not serve any regulatory purpose. Since the Qualified Plans are not investment companies and will not be deemed to be affiliated solely by virtue of their shareholdings, no additional relief is necessary.

16. Rules 6e–2(b)915)(iii) and 6e–3(T)(b)(15)(iii) assume that contract owners are entitled to pass-through voting privileges with respect to investment company shares held by a related separate account. However, if the limitations on mixed and shared funding are satisfied, Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide exemptions from the pass-through requirements in limited situations. These rules provide that an insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying investment company or any contract between an investment company and its investment adviser, when an insurance regulatory authority so requires (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of the rules). In addition, Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(2) provide that the insurance company may disregard contract owners' voting instructions with regard to certain changes initiated by the contract owners in the investment company's investment policies, principal underwriter or investment adviser.

17. The Commission has deemed exemptions from the pass-through voting requirements as necessary to assure the solvency of the life insurer and the performance of its contractual obligations and therefore has enabled an insurance regulatory authority or the life insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer. Applicants assert that these considerations are no less important or necessary when an insurance company funds its separate accounts in connection with mixed and shared funding. Such funding does not compromise the goals of the insurance regulatory authorities or of the Commission. While the Commission may have wished to reserve wide latitude with respect to the once unfamiliar variable annuity product, that product is now familiar and there appears to be no reason for the maintenance of prohibitions against mixed and shared funding arrangements. Indeed, by permitting such arrangements, the Commission eliminates needless duplication of start-up and administrative expenses and potentially increases an investment company's assets, thereby making effective portfolio management strategies easier to implement and promoting other economies of scale.

18. In addition, the Insurance Products funds' sale of shares to Qualified Plans will have no impact on the relief requested in this regard. Shares of the Insurance Products Funds sold to Qualified Plans would be held by the trustees of said Plans as mandated by Section 403(a) of ERISA. Section 403(a) provides that the trustee(s) must have exclusive authority and discretion to manage and control the Plan with two exceptions: (a) when the Plan expressly provides that the trustee(s) is (are) subject to the direction of a named fiduciary who is not a trustee, in which case the trustee(s) is (are) subject to proper directions made in accordance with the terms of the Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. Accordingly, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to Qualified Plans since such plans are not entitled to pass-through voting privileges.

19. Even if a Qualified Plan were to hold a controlling interest in an Insurance Product Fund, Applicants do not believe that such control would disadvantage other investors in that Insurance Product Fund to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, Applicants submit that investment in an Insurance Product Fund by a Qualified Plan will not create any of the voting complications occasioned by mixed or shared funding. Unlike mixed or shared funding, Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

20. The Qualified Plan may have their trustees or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plan in their discretion. Some of the Qualified Plans, however, may provide for the trustees, an investment adviser or another named fiduciary to exercise voting rights in accordance with instructions from participants.

21. Where a Qualified Plan does not provide participants with the right to give voting instructions, the Applicants submit that there is no potential for material irreconcilable conflicts of interest between or among Variable Contract owners and Plan investors with respect to voting of the respective Insurance Product Fund's shares.

22. Where a Plan provides participants with the right to give voting instructions, Applicants likewise submit that there is no reason to believe that participants in Qualified Plans generally or those in a particular Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage Variable Contract owners. The purchase of shares of the Insurance Product Funds by Qualified Plans that provide voting rights does not present an complications not otherwise occasioned by mixed or shared funding.

23. Applicants assert that shared funding does not present any conflict of interest issues that do not already exist

when a single insurance company is licensed to do business in several states. For example, when different Participating Insurance Companies are domiciled in different states, it is possible that the state insurance regulatory body in a state in which one Participating Insurance Company is domiciled could require action that is inconsistent with the requirements of insurance regulators in one or more other states in which other Participating Insurance Companies are domiciled. That possibility, however, is no different and no greater than that which exists when a single insurer and its affiliates offer their insurance products in several states, as currently is permitted.

24. In addition, affiliations among insurers do not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions discussed below (which are adapted from the conditions included in Rule 6e-3(T)(b)(15)) are designed to safeguard against any adverse effects that differences among state regulatory requirements may produce. Similarly, affiliation does not eliminate the potential, if any exists, for divergent judgments as to when a Participating Insurance Company could disregard contract owner voting instructions. The potential for disagreement in limited by the requirement that disregarding voting instructions be reasonable and based on specified good faith determinations. However, if a particular state insurance regulator's decision conflicts with the majority of other state regulators or if a Participating Insurance Company's decision to disregard contract owner voting instructions represents a minority position or would preclude a majority vote approving a particular change, the Participating Insurance Company may be required, at the election of the relevant Insurance Products Fund, to withdraw its Participating Separate Accounts' investment in that fund and no charge or penalty will be imposed as a result of such withdrawal.

25. Similarly, there is no reason why the investment policies of an Insurance Products Fund that engages in mixed funding would or should materially differ from what those policies would or should be if that fund only supported variable annuity or only variable life insurance contracts. Hence, there is no reason to believe that conflicts of interest would result from mixed funding. Moreover, no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. Those diversities are of greater significance than any differences in insurance products. An investment company supporting even one type of insurance product must accommodate those diverse factors. The sale of shares to Qualified Plans should not increase the potential for material irreconcilable conflicts of interest between or among different types of investors. There should be very little potential for such conflicts beyond that which would otherwise exist between variable annuity and variable life contract owners.

26. Moreover, the Code, Treasury regulations, and revenue rulings do not present any inherent conflicts of interest if Qualified Plans and separate accounts invest in the same underlying investment company. As described above, Section 817(h) imposes certain diversification standards on the underlying assets of variable annuity contracts and variable life contracts held in the portfolios of management investment companies. However, Treasury Regulation § 1.817–5(f)(3), which established diversification requirements for such portfolios, specifically permits, among other things, qualified pension or retirement plans, general accounts and separate accounts to share the same underlying management investment company.

27. While there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, these tax consequences do not raise any conflicts of interest. When distributions are to be made, and a Participating Separate Account or Qualified Plan cannot net purchase payments to make the distributions, the Participating Separate Account and Qualified Plan will redeem shares of the Insurance Product Funds at their respective net asset value in conformity with Rule 22c-1 under the 1940 Act to provide proceeds to meet distribution needs. The Qualified Plan will then make distributions in accordance with the terms of the Plan. The Participating Life Insurance Company will surrender values from the Participating Separate Account into the general account to make distributions in accordance with the terms of the Variable Contract.

28. It is possible to provide an equitable means of giving voting rights to Participating Separate Account contract owners and Qualified Plans. The transfer agent for the Insurance Product Fund will inform each Participating Insurance Company of each Participating Separate Account's share ownership in the Fund, as well as inform the trustees of Qualified Plans of their holdings. Each Participating Insurance Company then will solicit voting instructions in accordance with Rules 6e-2 and 6e-3(T), as applicable, and its participation agreement with the relevant Insurance Product Fund. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of Insurance Product Funds would be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public.

29. The ability of Insurance Products Funds to sell their respective shares directly to Qualified Plans does not create a "senior security," as such term is defined under Section 18(g) of the 1940 Act, with respect to any contract owner as opposed to a Qualified Plan participant. As noted above, regardless of the rights and benefits of Qualified Plan participants or contract owners, the Qualified Plans and Participating Separate Accounts only have rights with respect to their respective shares of the Fund. They can only redeem such shares at their net asset value. No shareholder of any of the Insurance Products Funds has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

30. There are no conflicts between the contract owners of Participating Separate Accounts and Qualified Plan participants with respect to the state insurance commissioner's veto powers (direct with respect to variable life and indirect with respect to variable annuity) over investment objectives. The basic premise of shareholder voting is that shareholders may not all agree with a particular proposal. While the interests and opinions of shareholders may differ, however, this does not mean that there are any inherent conflicts of interest between or among such shareholders. State insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. Trustees of Qualified Plans, on the other hand, can make the decision quickly and redeem their shares of an Insurance Products Fund and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts or, as is the case with most Plans, even hold cash pending

suitable investment. Based on the foregoing, even if there should arise issues where the interests of contract owners and the interests of Qualified Plan participants are in conflict, the issues can be almost immediately resolved because the trustees of the Qualified Plans can, on their own, redeem the shares out of the Insurance Product Funds.

31. There does not appear to be any greater potential for material irreconcilable conflicts arising between the interests of Qualified Plan participants and the contract owners from possible future changes in federal tax laws than that which already exists between variable annuity contract owners and variable life contract owners.

32. Applicants have concluded that even if there should arise issues where the interests of Variable Contract owners and the interests of Qualified Plan participants are in conflict, the issues can be almost immediately resolved since the trustees of (or participants in) the Qualified Plans can, on their own, redeem the shares out of the Insurance Product Funds.

33. Various factors have prevented more insurance companies from offering variable annuity and variable life insurance contracts than currently do so. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments) and the lack of public name recognition as investment professionals. In particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own. Use of the Insurance Products Funds as common investment media for Variable Contracts would ameliorate these concerns. Participating Insurance Companies would benefit not only from the investment advisory and administrative expertise of Mitchell Hutchins and its affiliates, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Insurance Products Funds available for mixed and shared funding will encourage more insurance companies to offer Variable Contracts. This should result in increased competition with respect to both Variable Contract design and pricing, which can be expected to result in more product variation and lower charges. Mixed and shared funding should also benefit Variable Contracts by eliminating a significant portion of the costs of establishing and administering separate funds.

34. Moreover, sale of the shares of Insurance Products Funds to Qualified Plans should further increase the amount of assets available for investment by such funds. This, in turn, should benefit Variable Contract owners by promoting economies of scale, by permitting greater safety through greater diversification, and by making the addition of new portfolios to an Insurance Product Fund more feasible.

Applicants' Conditions

To the extent required by the Commission, Applicants consent to the following conditions:

1. A majority of the board of trustees or board directors (each a "Board") of each Insurance Products Fund will consist of persons who are not "interested persons" thereof, as defined by Section 2(a)(19) of the 1940 Act and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended: (a) for a period of 45 days if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor its respective Insurance Products Fund for the existence of any material irreconcilable conflict between the interests of the contract owners of all Participating Separate Accounts and the interests of Qualified Plan participants investing in the Insurance Products Fund and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) an action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax, or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Insurance Products Fund are being managed; (e) a difference in voting instructions given by variable annuity contract owners and variable life insurance contract owners and trustees of the Qualified Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Plan to disregard the voting instructions of its participants.

3. Participating Insurance Companies, Mitchell Hutchins (or any other investment adviser of an Insurance Products Fund), and Qualified Plans that execute a participating agreement upon becoming an owner of 10% or more of an Insurance Product Fund's assets (collectively, "Participants") will report any potential or existing conflicts to the Board of any relevant Insurance Products Fund. Participants will be responsible for assisting the appropriate Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation of each Participating Insurance Company to inform the Board whenever it has determined to disregard voting instructions from contract owners and, when pass-through voting is applicable, an obligation of each Plan to inform the Board whenever it has determined to disregard voting instructions from Plan participants. The responsibilities to report such information and conflicts and to assist the Boards will be contractual obligations of all Participants under their agreements governing participation in the Insurance Products Funds and these agreements shall provide, in the case of Participating Insurance Companies, that these responsibilities will be carried out with a view only to the interests of contract owners, and, in the case of Qualified Plans, that these responsibilities will be carried out with a view only to the interest of Plan participants.

4. If a majority of the Board of an Insurance Products Fund, or a majority of its disinterested members, determines that a material irreconcilable conflict exists, the relevant Participants will, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested board members), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, including: (a) withdrawing the assets allocable to some or all of the Participating Separate Accounts or Plans from the Insurance Products Fund or any series thereof and reinvesting such assets in a different investment medium, which may include another series of an Insurance Products Fund or another Insurance Products Fund, or submitting the question of whether such reinvestment should be implemented to a vote of all affected contract owners and Plan participants and, as appropriate, reinvesting the assets of any appropriate group (*i.e.*, variable annuity contract owners or variable life insurance contract owners of one or more Participating Insurance Companies or Plan participants) that votes in favor of such reinvestment, or offering to the affected contract owners and Plan participants the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participant's decision to disregard voting instructions of contract owners or Plan participants and that decision represents a minority position or would preclude a majority vote, the Participant may be required, at the election of the Insurance Products Fund, to withdraw its investment in such Fund, and no charge or penalty will be imposed as a result of such withdrawal. To the extent permitted by applicable law, the responsibility to take remedial action in the event of a Board determination of material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participants under their agreements governing participation in the Insurance Products Fund, and these responsibilities will be carried out with a view only to the interests of contract owners and Plan participants.

5. For purposes of Condition 4, a majority of the disinterested members of the applicable Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Insurance Products Fund or Mitchell Hutchins or an affiliate be required to establish a new funding medium for any Participant. No Participting Insurance Company or Qualified Plan shall be required to establish a new funding medium for any Variable Contract or Plan if: (a) an offer to do so has been declined by vote of a majority of the contract owners or Plan participants materially and adversely affected by the material irreconcilable conflict; or (b) pursuant to governing Plan or Variable Contract documents and applicable law, the Plan or Participating Insurance Company makes such decision without a vote of the Plan participants or Variable Contract owners.

6. Any Board's determination of the existence of a material irreconcilable conflict and its implications will be made known promptly and in writing to all Participants.

7. Participating Insurance Companies will provide pass-through voting privileges to contract owners who invest in Participating Separate Accounts so long as the Commission interprets the 1940 Act to require pass-through voting for contract owners. Accordingly, the Participating Insurance Companies will vote shares of an Insurance Products Fund held in their Participating Separate Accounts in a manner consistent with voting instructions timely received from contract owners. Participating Insurance Companies will be responsible for assuring that each of their Participating Separate Accounts investing in an Insurance Products Fund calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to calculate voting privilege in this manner will be a contractual obligation of all Participating Insurance Companies under the agreements governing participation in the Insurance Products Fund. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions, as well as shares attributable to it, in the same proportion as it votes shares for which it has received instructions.

8. Each Qualified Plan will vote as required by applicable law and governing Plan documents.

9. All reports of potential or existing conflicts by a Board, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the appropriate Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

10. Each Insurance Products Fund will notify all Participants that disclosure in separate account prospectuses or Plan prospectuses or other Plan disclosure documents regarding potential risks of mixed and shared funding may be appropriate. Each Insurance Products Fund will disclose in its prospectus that: (a) the Insurance Product Fund is intended to be a funding vehicle for variable annuity and variable life insurance contracts offered by various insurance companies and for Plans; (b) due to differences of tax treatment and other considerations, the interests of various contract owners participating in an Insurance Products Fund and the interests of Qualified Plans investing in that Insurance Product Fund may conflict; and (c) the Board of that Insurance Product Fund will monitor for the existence of any material conflicts and determine what action, if any, should be taken.

11. Each Insurance Products Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in shares of the Insurance Products Fund), and, in particular, each Insurance Product Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(a), and, if applicable, Section 16(b) of the 1940 Act. Further, each Insurance Products Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors or trustees and with whatever rules the Commission may promulgate with respect thereto.

12. If, and to the extent that, Rule 6e–2 and 6e–3(T) are amended (or if Rule 6e–3 under the 1940 Act is adopted) to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the Order requested by Applicants, then the Insurance Products Funds and the Participants, as appropriate, shall take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, and Rule 6e–3, as adopted, to the extent applicable.

13. No less than annually, the Participants shall submit to the Boards of the Insurance Products Funds such reports, materials, or data as such Boards may reasonably request so that the Boards may carry out fully the obligations imposed upon them by the conditions contained in the Application. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by the applicable Boards. The obligations of the Participating Insurance Companies and Qualified Plans to provide these reports, materials, and data to the Boards shall be a contractual obligation under the agreements governing their participation in the Insurance Products Funds.

14. In the event that a Plan should ever become an owner of 10% or more of the assets of an Insurance Products Fund, such Plan will execute a fund participation agreement including the conditions set forth herein, to the extent applicable, with that Insurance Product Fund. A Plan will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of the Insurance Products Fund.

Conclusion

For the reasons summarized above, Applicants believe that the requested exemptions, in accordance with the standards of Section 6(c) of the 1940 Act, are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22550 Filed 8–31–99 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23968; No. 812–11556]

The Union Central Life Insurance Company, et al.; Notice of Application

August 24, 1999.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order pursuant to Section 26(b) of the Investment Company Act of 1940 (the "Act").

Summary of Application

Applicants seek an order approving the substitution of: (a) Shares of the Balanced Index Portfolio of Carillon Fund ("Balanced Index Portfolio") for shares of the Capital Portfolio of Carillon Fund ("Capital Portfolio"); and (b) shares of the AIM V.I. Capital Appreciation Fund of the AIM Fund ("AIM Portfolio") for shares of the American Century VP Capital Appreciation Portfolio of American Century Fund ("American Century Portfolio").

Applicants

The Union Central Life Insurance Company ("Union Central"), Carillon Account and Carillon Life Account.

Filing Date

The application was filed on March 31, 1999, and amended and restated on July 23, 1999. Applicants represent that they will file a second amended and restated application during the notice period to conform to the representations set forth herein.

Hearing or Notification of Hearing

An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission no later than 5:30 p.m. on September 20, 1999, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Union Central Life Insurance Company, 1876 Waycross Road, P.O. Box 40888, Cincinnati, Ohio 45240.

FOR FURTHER INFORMATION CONTACT: Paul G. Cellupica, Senior Counsel, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Union Central is a mutual insurance company organized in 1867 under the laws of Ohio. Union Central is primarily engaged in the sale of life and disability insurance and annuities and is currently licensed to operate in all states and the District of Columbia.

2. Carillon Account is a separate account of Union Central that is registered with the Commission as a unit investment trust. Carillon Account is used in connection with Union Central's variable annuity contracts (the "VA Contracts"). Carillon Life Account is a separate account of Union Central that is registered with the Commission as a unit investment trust. Carillon Life Account is used in connection with Union Central's variable life insurance policies (the "VUL Contracts," collectively with the VA Contracts, the "Contracts").

3. The VA Contracts are individual flexible premium, combination fixed and variable annuity contracts. The VA Contracts' variable investment options consist of 12 portfolios. Prior to annunitization, contract owners may transfer accumulation values among the subaccounts or from Carillon Account to Union Central's general account as frequently as they want. The first six transfers in a contract year may be made without charge. A charge (currently $10) is imposed for each transaction in excess of six in a contract year.

4. The VUL Contracts are individual, combination fixed and variable universal life insurance contracts. Contractowners may transfer accumulation values among the subaccounts or from Carillon Life Account to Union Central's general account as frequently as they want. The first twelve transfers in a contract year may be made without charge. A charge (currently $10) is imposed for each transaction in excess of twelve in a contract year.

5. The Contracts permit Union Central (subject to any applicable law) to make additions to, deletions from, or substitutions for, the portfolio shares purchased by any subaccount. Substitutions are specifically permitted if the shares of a portfolio are no longer available for investment, or if in Union Central's judgment, investment in any portfolio would be inappropriate. To the extent required by applicable law, substitutions of shares attributable to a subaccount will not be made unless affected contractowners have been notified of the change and until the Commission has approved the change. In the case of such a substitution, VA Contract owners have the right, within 30 days after notification, to surrender their VA Contract without the imposition of any surrender charge.

6. Applicants proposed the following substitutions: (a) the substitution of shares of the Balanced Index Portfolio for shares of the Capital Portfolio, and (b) the substitution of shares of the AIM Portfolio for shares of the American Century Portfolio.

7. The Capital Portfolio is currently an investment option under each of the Contracts. The Capital Portfolio is managed by Carillon Advisers, Inc. Its investment objective is to provide the highest total return through a combination of income and capital appreciation consistent with the reasonable risks associated with an investment portfolio of above-average quality to investing in equity securities, debt instruments and money market instruments.

8. The expense ratio of the Capital Portfolio for 1998 was 0.79%. The total return of the Capital Portfolio (exclusive of Contract or subaccount charges) was −13.25% and 4.30% respectively for the one-year and five-year periods ending December 31, 1998, and 7.60% for the period from its inception on May 2, 1990 to December 31, 1998.

9. On or shortly after the date of the proposed substitutions, Union Central will eliminate the subaccounts that invest in the Capital Portfolio. Union Central has decided to eliminate this portfolio as an investment option under the Contracts because of its investment performance.

10. The American Century Portfolio (collectively with the Capital Portfolio, the "Eliminated Portfolios") is another investment option currently available under the Contracts. The investment adviser of the American Century Portfolio is American Century Investment Management, Inc. Its investment objective is to seek capital growth. It seeks to achieve its investment objective by investing primarily in common stocks that are considered by its investment adviser to have better than average prospects for appreciation.

11. The expense ratio of the American Century Portfolio for 1998 was 1.00%. The total return of the American Century Portfolio (exclusive of Contract or subaccount charges) was −2.16%, 3.25% and 8.70% respectively for the one-year, five-year, and ten-year periods ending on December 31, 1998.

12. On or shortly after the date of the proposed substitutions, Union Central will eliminate the subaccounts that invest in the American Century Portfolio. The reason for eliminating this portfolio as an investment option under the Contracts is its investment performance.

13. The Balanced Index Portfolio became an investment option under the VA Contracts on or about May 3, 1999 and will become an investment option under the VUL Contracts shortly before the date of the substitutions. The Balanced Index Portfolio is managed by Carillon Advisers, Inc. Its investment objectives is to seek investment results, with respect to 60% of its assets, that correspond to the total return performance of U.S. common stocks, as represented by the S&P 500 Index and, with respect to 40% of its assets, that correspond to the total return performance of investment grade bonds, as represented by the Lehman Brothers Aggregate Bond Index (the "Lehman Index").

14. The Balanced Index Portfolio is a new portfolio that has had no meaningful historical expense ratio or investment performance data. Its expense ratio is estimated at 0.60%. Because management of the Balanced Index Portfolio involves almost no discretionary investments, it is possible to estimate pro forma performance based on the performance of the benchmark indices and estimated portfolio expenses. While there can, of course, be no guarantee that the two segments of the Balanced Index Portfolio could have tracked their respective benchmarks exactly, or that expenses would have been precisely as estimated, these estimates should provide a useful "order of magnitude" with which to compare the performance of the Capital Portfolio that is to be eliminated. The estimated pro forma performance of the Balanced Index Portfolio (40% of the portfolio's assets assumed to have the total return of the Lehman Index, minus estimated portfolio expenses, and 60% of the portfolio's assets assumed to have the total return of the S&P 500 Index, minus portfolio expenses) would be 20.38%. 16.73% and 14.71% for the one-year, five-year and ten-year periods ending December 31, 1998.

15. The AIM Portfolio (collectively with the Balanced Index Portfolio, the "Substitute Portfolios") became an investment option under the VA Contracts on or about May 3, 1999 and will become an investment option under the VA Contracts shortly before the date of the substitutions. The AIM Portfolio is managed by AIM Advisors, Inc. Its investment objective is to seek capital appreciation through investments in common stocks, with emphasis on medium-sized and smaller emerging growth companies.

16. The expense ratio of the AIM Portfolio for 1998 was 0.67%. The total return of the AIM Portfolio (exclusive of Contract or subaccount charges) was 19.30% and 17.23% respectively for the one-year and five-year periods ending on December 31, 1998 and 18.77% for the period from its exception on May 5, 1993 to December 31, 1998.

17. Applicants represent that each substitution will take place at the relative share values determined on the date of the substitution in accordance with Section 22 of the Act and Rule 22c–1 thereunder. Accordingly, there will be no financial impact to any contractowner. The substitutions will be effective by: (a) redeeming the shares of the Capital Portfolio held in the subaccounts that invest in that portfolio and substituting for them shares of the Balanced Index Portfolio; and (b) redeeming the shares of the American Century Portfolio held in the subaccounts that invest in that portfolio and substituting for them shares of the AIM Portfolio.

18. Immediately following the substitutions, Union Central will: (a) combine the Capital and Balanced Index Subaccounts that each hold shares of the Balanced Index Portfolio after the substitution; and (b) combine the American Century and AIM Subaccounts that each hold shares of the AIM Portfolio after the substitution. Union Central will reflect this treatment in disclosure documents for the Carillon Account and Carillon Life Account and in the financial statements and Form N–SAR annual reports filed by the Carillon Account and Carillon Life Account.

19. Applicants represent that the proposed substitutions have been described in supplements to the prospectuses for the Contracts ("Stickers") that were filed with the Commission and mailed to contractowners. Since that filing, a Sticker has been affixed to each prospectus for the Contracts. The Stickers gave contractowners notice of the substitutions and described the reasons for engaging in the substitutions. The Stickers also informed existing contractowners that no additional amounts may be allocated to the subaccounts that invest in the Eliminated Portfolios on or after the date of substitution. In addition, the Stickers informed affected contractowners that they will have an opportunity to reallocate accumulation value:

(a) Prior to the substitutions, from the subaccounts investing in the Eliminated Portfolios; or

(b) For 30 days after the substitutions, from the subaccounts investing in the Substitute Portfolios, to subaccounts investing in other portfolios available under the Contracts,

without the imposition of any transfer charge. Any such transfer will not count against the number of free transfers permitted under that Contract.

20. Applicants represent that within five days after the substitutions, Union Central will send to affected contractowners written confirmation that the substitutions have occurred. At least 30 days prior to the substitutions, a notice of the substitutions will be sent to all affected contractowners and any affected contractowner who has not already received a fund prospectus that includes a description of the Substitute Portfolios will be mailed such a prospectus with that notice.

21. Applicants represent that Union Central will pay all fees and expenses of the substitutions, including legal, accounting brokerage commissions and other fees and expenses; none will be borne by contractowners. Affected contractowners will not incur any fees or charges as a result of the substitutions, nor will their rights or the obligations of Union Central under the Contracts be altered in any way. The substitutions will not cause the fees and

charges under the Contracts currently being paid by contractowners to be greater after the substitutions than before the substitutions. The substitutions will have no adverse tax consequences to contractowners and will in no way alter the tax benefits to contractowners.

22. Applicants believe that their request satisfies the standards for relief of Section 26(b) because:

(a) Each substitution involves portfolios with similar investment objectives;

(b) after each substitution, affected contractowners will be invested in a Substitute Portfolio whose actual performance, or pro-forma performance, has been better on a historical basis than that of the Eliminated Portfolio; and

(c) after each substitution affected contractowners will be invested in a Substitute Portfolio whose expenses have been less, or are expected to be less on an estimated basis, than those of the Eliminated Portfolio.

Applicants' Legal Analysis

1. Applicants request an order pursuant to Section 26(b) of the Act approving the substitutions. Section 26(b) of the Act makes it unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission approves the substitution. The Commission will approve such a substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants assert that the purposes, terms and conditions of the substitutions are consistent with the principles and purposes of Section 26(b) and do not entail any of the abuses that Section 26(b) is designed to prevent. Substitution is an appropriate solution to the unfavorable relative performance and higher relative expenses of the portfolio to be eliminated. Applicants believe that each Substitute Portfolio will better serve constractowner interests because its performance has been significantly better than the performance of, and its expenses have been lower than the expenses of, the corresponding Eliminated Portfolio. Moreover, Union Central has reserved this right in each of the Contracts and disclosed this reserved right in the prospectus for each Contract.

3. Applicants represent that the substitutions will not result in the type of costly forced redemption that Section 26(b) was intended to guard against and, for the following reasons, are consistent with the protection of investors and the purposes fairly intended by the Act:

(a) Each Substitute portfolio has investment objectives that are similar to those of the corresponding Eliminated Portfolio, and permits contractowners continuity of their investment objectives and expectations.

(b) The costs of the substitutions will be borne by Union Central and will not be borne by contractowners. No charges will be assessed to effect the substitutions.

(c) The substitutions will, in all cases, be at net asset values of the respective portfolio shares, without the imposition of any transfer or similar charge and with no change in the amount of any contractowner's accumulation value.

(d) The substitutions will not cause the fees and charges under the Contracts currently being paid by contractowners to be greater after the substitutions than before the substitutions.

(e) The contractowners will be given notice prior to the substitutions and will have an opportunity to reallocate accumulation value among other available subaccounts without the imposition of any transfer charge or limitation. No transfer:

(i) from a subaccount investing in an Eliminated Portfolio from the date of the notice through the date of the substitutions, or

(ii) for 30 days after the substitutions, of accumulation value that had been transferred to a subaccount that invests in a Substitute Portfolio as a result of the substitutions, will count as one of the limited number of transfers permitted in a contract year free of charge.

(f) Within five days after the substitutions, Union Central will send to affected contractowners written confirmation that the substitutions have occurred.

(g) The substitutions will in no way alter the insurance benefits to contractowners or the contractual obligations of Union Central.

(h) The substitutions will have no adverse tax consequences to contractowners and will in no way alter the tax benefits to contractowners.

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the substitutions should be granted.

For the Commission, by the Division of Investment Management pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22551 Filed 8–30–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23967; File No. 812–11552]

Target/United Funds, Inc., et al.

August 24, 1999.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of Application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 ("1940 Act") granting exemptive relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

Summary of Application

Applicants seek an order to permit shares of Target/United Funds, Inc. ("Fund") and any other similar investment company or investment company series that Waddell & Reed Investment Management Company ("WRIMCO") or any of its affiliates serve, now or in the future, as investment adviser, administrator, manager, principal underwriter or sponsor (the Fund and such other investment companies and series thereof, the "Insurance Products Funds"), to be offered and sold to and held by: (1) Separate accounts funding variable annunity and variable life insurance contracts issued by both affiliated and unaffiliated life insurance companies; and (2) qualified pension and retirement plans outside of the separate account context.

Applicants

Target/United Funds, Inc. and Waddell & Reed Investment Management Company.

Filing Date

The application was filed on March 30, 1999, and amended and restated on July 16, 1999.

Hearing or Notification of Hearing

An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 17, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Helge K. Lee, Esq., Senior Vice President, Secretary and General Counsel, Waddell & Reed, Inc., 6300 Lamar Avenue, Overland Park, Kansas 66202.

FOR FURTHER INFORMATION CONTACT: Keith E. Carpenter, Senior Counsel, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 ((202) 942–8090).

Applicant's Representations

1. The Fund is an open-end management investment company organized as a corporation under the laws of the State of Maryland. The Fund currently consists of eleven separately managed series, each of which has its own investment objective and policies. Additional series could be added to the Fund in the future.

2. WRIMCO is registered as an investment adviser under the Investment Advisers Act of 1940, and serves as the investment manager and accounting services agent for each of the Fund's series.

3. The Fund currently offers its shares exclusively to insurance company separate accounts that fund variable insurance products. The Fund's shares are offered only to the separate accounts of United Investors Life Insurance Company ("United Investors"). United Investors receives no payments from the Fund for services in connection with the distribution of the shares. Applicants propose that shares of each Insurance Products Fund be offered to United Investors and/or one or more other insurance companies, whether affiliated or unaffiliated, for their separate accounts as an investment vehicle to fund various insurance products including, among others, variable annuity contracts, variable group life insurance contracts, scheduled premium variable life insurance contracts, single premium and modified single premium variable life insurance contracts, and flexible premium variable life insurance contracts ("Variable Contracts"). Some of these separate accounts may not be registered as investment companies under the 1940 Act pursuant to the exceptions from registration in Sections 3(c)(1), 3(c)(7) or 3(c)(11) of the 1940 Act. In addition, Applicants propose that shares of each Insurance Products Fund be eligible to be offered directly to qualified pension and retirement plans ("Qualified Plans" or "Plans") outside of the separate account context. Separate accounts owning shares of the Insurance Products Funds and their insurance company depositors are referred to herein as "Participating Separate Accounts" and "Participating Insurance Companies," respectively.

4. Participating Insurance Companies establish their own Participating Separate Accounts and design their own Variable Contracts. Each such Variable Contract has or will have certain unique features and probably will differ from other Variable Contracts supported by the Insurance Products Funds with respect to insurance guarantees, premium structure, charges, options, distribution method, marketing techniques, sales literature, and other aspects. Each Participating Insurance Company, on behalf of its Participating Separate Account(s), will enter into a fund participation agreement with each Insurance Products Fund in which such Participating Separate Account invests, and will have the legal obligation of satisfying all applicable requirements under state and federal law. The role of the Insurance Products Funds, so far as the federal securities laws are applicable, will be limited to that of offering their shares to separate accounts of various insurance companies and fulfilling any conditions the Commission may impose upon granting the order requested herein.

5. The Plans will be pension or retirement plans intended to qualify under sections 401(a) and 501(c) of the Internet Revenue Code of 1986, as amended ("Code"). A plan may include a cash or deferred arrangement (permitting salary reduction contributions) intended to qualify under Section 401(k) of the Code. The Plans will also be subject to, and will be designed to comply with, the provisions of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), applicable to pension benefit plans, specifically "Title I—Protection of Employee Benefit Rights." The Plans, therefore, will be subject requirements under the Code and ERISA regarding, for example, reporting and disclosure, participation and vesting, funding, fiduciary responsibility, and enforcement.

6. The Qualified Plans may choose any of the Insurance Products Funds as their sole investments or as one of several investments. Plan participants may or may not be given an investment choice depending on the Plan itself. Shares of any of the Insurance Products Funds sold to Qualified Plans would be held by the trustees of those Plans as mandated by Section 403(a) of ERISA. WRIMCO (or any other investment adviser to an Insurance Products Fund) may, to the extent permitted by law, act as investment adviser to any of the Qualified Plans that purchase shares of any of the Insurance Products Funds. Applicants state that there likely will be no pass-through voting to the participants in such Qualified Plans as it is not required to be provided to such participants pursuant to ERISA.

Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust ("UIT"), Rule 6e–2(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted by Rule 6e–2(b)(15) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares "*exclusively* to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company" (emphasis added). Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an investment company that also offers its shares to a variable annuity separate account or a flexible premium variable life insurance account of the same company or of any affiliated or unaffiliated insurance company. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts is referred to as "mixed funding."

2. The relief granted by Rule 6e-2(b)(15) also is not available if the scheduled premium variable life insurance separate account owns shares of an underlying investment company that also offers its shares to separate accounts funding Variable Contracts of one or more unaffiliated life insurance companies. The use of a common investment company as the underlying investment medium for separate accounts of unaffiliated insurance companies is referred to herein as "shared funding."

3. Applicants assert that the relief granted by rule 6e–2(b)(15) does not

relate to Qualified Plans, or to a registered investment company's ability to sell its shares to these entities. However, because the relief under rule 6e–2(b)(15) is available only where shares are offered exclusively to separate accounts, additional exemptive relief is necessary if the shares of the Insurance Products Funds are also to be sold to Plans. The use of a common investment company as the underlying investment medium for variable annuity and variable life insurance separate accounts of affiliated and unaffiliated insurance companies and Qualified Plans is referred to as "extended mixed and shared funding."

4. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a UIT, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The exemptions granted by rule 6e3(T) are available only where all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares "*exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company." (emphasis added). Therefore, Rule 6e–3(T)(b)(15) permits mixed funding for flexible premium variable life insurance separate accounts but does not permit shared funding, because the relief granted by Rule 6e–3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of an investment company that also offers its shares to separate accounts (including flexible premium variable life insurance separate accounts) of unaffiliated life insurance companies.

5. Applicants assert that if shares of the Insurance Products Funds were sold only to Qualified Plans, exemptive relief under rule 6e–3(T) would not be necessary. Applicants, however, state that because the relief under rule 6e–3(T) is available only if shares are offered exclusively to separate accounts, additional exemptive relief is necessary if the shares of the Insurance Products Funds are also to be sold to Plans.

6. Applicants state that Section 817(h) of the Code imposes certain diversification standards on the assets underlying the Variable Contracts held by the portfolios of the Insurance Production Funds. The Code provides that Variable Contracts will not be treated as annuity contracts or life insurance contracts for any period (and any subsequent period) for which the investments are not adequately diversified in accordance with regulations issued by the Treasury Department. Applicants also state that on March 2, 1989, the Treasury Department issued Regulations (Treas. Reg § 1.817–5) which established diversification requirements for the investment portfolios underlying Variable Contracts. The Regulations generally provide that, in order to meet the diversification requirements, all of the beneficial interests in the underlying investment company must be held by the segregated asset accounts of one or more insurance companies. However, the Regulations also contain certain exceptions to this requirement, one of which allows trustees of Qualified Plans to hold shares of an investment company without adversely affecting the status of the investment company as an adequately diversified underlying investment for Variable Contracts issued through separate accounts of insurance companies (Treas. Reg. § 1.817–5(f)(3)(iii)). As a result of this exception to the general diversification requirements, Applicants assert that Qualified Plans may select the Insurance Products Funds as investment options without endangering the tax status of Variable Contracts issued through Participating Insurance Companies.

7. Applicants state that the promulgation of rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the treasury Regulations which made it possible for shares of an investment company to be held by the trustees of Qualified Plans without adversely affecting the ability of separate accounts of insurance companies to hold shares of the same investment company in connection with their variable annuity and variable life contracts. Thus, Applicants assert that the sale of shares of the same investment company to separate accounts and Qualified Plans could not have been envisioned at the time of the adoption of Rules 6e–2(b)(15) and 6e-3(T)(b)(15).

8. Accordingly, Applicants request that the Commission issue an order pursuant to Section 6(c) of the 1940 Act exempting scheduled and flexible premium variable life insurance separate accounts (and, to the extent necessary, any investment adviser, sub-adviser, principal underwriter and depositor of such an account) from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act, and subparagraph (b)(15) of rules 6e2 and 6e3(T) (and any comparable permanent rule) thereunder, to the extent necessary to permit shares of the Insurance Products Funds to be offered and sold in connection with extended mixed and shared funding.

9. In general, Section 9(a) of the 1940 Act disqualifies any person convicted of certain offenses, and any company affiliated with that person from acting or serving in various capacities with respect to a registered investment company. More specifically, Section 9(a)(3) provides that it is unlawful for any company to serve as a investment adviser to, or principal underwriter for, any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(a)(1) or (2).

10. Rules 6e2(b)(15)(i) and (ii) and 6e–3(T)(b)(15)(i) and (ii) however, provide partial exemptions from Section 9(a) under certain circumstances, subject to the limitations discussed above on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management or administration of the underlying investment company or series thereof. The relief provided by the rules permits a person disqualified under Section 9(a)(1) or (2) to be an officer, director, or employee of an insurance company, or any of its affiliates that serves in any capacity with respect to any underlying investment company, so long as the disqualified individual does not participate directly in the management or administration of the underlying investment company.

11. Applicants state that the partial relief granted in Rules 6e–2 and 6e–3(T) from the requirements of Section 9 of the 1940 Act limits, in effect, the amount of monitoring necessary to ensure compliance with Section 9 to that which is appropriate in light of the policy and purposes of that section. Applicants state the exemptions contained in Rules 6e–29(b)(15) and 6e–3(T) recognize that it is not necessary for the protection of investors or the purposes fairly intended under the 1940 Act to apply Section 9(a) to the many individuals who may be involved in a large insurance company but would have no connection with the investment company, or any series thereof, funding the separate accounts. Applicants believe that is unnecessary to limit the applicability of the rules merely because shares of the Insurance Products funds may be sold in connection with mixed and shared funding. Applicants state that neither the Participating Insurance Companies nor the Qualified Plans are expected to play any role in the management or administration of the

Insurance Products Funds. Applicants assert that, therefore, applying the restrictions of Section 9(a) serves no regulatory purpose. Furthermore, Applicants assert that applying such restrictions would increase the monitoring costs incurred by the Participating Insurance Companies and, therefore, would reduce the net rates of return realized by Variable Contract owners. Applicants further assert that the relief requested will in no way be affected by the proposed sale of shares of the Insurance Products Funds to Qualified Plans, and that the insulation of the Insurance Products Funds from those individuals who are disqualified under the 1940 Act will remain intact even if shares of the Insurance Products Funds are sold to Qualified Plans. Applicants state that since the Qualified Plans are not investment companies and will not be deemed to be affiliated solely by virtue of their shareholdings, no additional relief is necessary.

12. Subgaragraph (b(15)(iii) of Rules 6e–2 and 6e–3(T) under the 1940 Act assumes that contract owners are entitled to pass-through voting privileges with respect to investment company shares held by a related separate account. However, subparagraph (b)(15)(iii) of Rules 6e–2 and 6e3(T) provides exemptions from the pass-through voting requirement in limited situations, if the limitations on mixed and shared funding are satisfied.

13. Subparagraph (b)(15)(iii) of Rules 6e–2 and 6e–3(T) provides that an insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying investment company or any contract between and investment company and its adviser, when an insurance regulatory authority so requires. In addition, Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) provide that the insurance company may disregard contract owners voting instructions with regard to certain changes initiated by the contract owners in the investment company's policies, principal underwriter, or investment adviser. Voting instructions with respect to a change in investment policies may be disregarded only if the insurance company makes a good-faith determination that such change would: (a) Violate state law; or (b) result in investments that either would not be consistent with the investment objectives of the separate account; or (c) result in investments that would vary from the general quality and nature of investments and investment and techniques used by other separate accounts of the company or of an affiliated life insurance company with similar investment objectives. Voting instructions with respect to a change in the principal underwriter may be disregarded if such disapproval is reasonable. Voting instructions with respect to a change in an investment adviser may be disregarded only if the insurance company makes a good-faith determination that: (a) The adviser's fees would exceed the maximum rate that may be charged against the separate account's assets; (b) the proposed adviser may be expected to employ investment techniques that vary from the general techniques used by the current adviser; or (c) the proposed adviser may be expected to manage the investment company's investments in a manner that would be inconsistent with its investment objectives or in a manner that would result in investments that vary from certain standards.

14. Applicants state that Rule 6e–2 recognizes that variable life insurance contracts have important elements unique to insurance contracts and are subjects to extensive state regulation. Applicants maintain that in adopting Rule 6e–2, the Commission recognized that state insurance regulators have authority, pursuant to state insurance laws or regulations, to disapprove or require changes in investment policies, investment advisers or principal underwriters. Applicants also state that the Commission expressly recognized that state insurance regulators have authority to require an insurance company to draw from its general account to cover costs imposed upon the insurance company by a change approved by contract owners over the insurance company's objections. Therefore, the Commission deemed exemptions from pass-through voting requirements necessary "to assure the solvency of the life insurer and the performance of its contractual obligations by enabling an insurance regulatory authority of the insurer to act when certain proposals reasonably could be expected to increase the risks undertaken by the life insurer." Applicants assert that in this respect, flexible premium variable life insurance contracts and variable annuity contracts are subject to substantially the same state insurance regulatory authority and, therefore, the corresponding provisions of Rule 6e–3(T) for flexible premium insurance contracts presumably were adopted in recognition of the same factors.

15. Applicants assert that these considerations are no less important or necessary in connection with mixed and shared funding. Applicants state that mixed and shared funding does not compromise the goals of state insurance regulatory authorities or of the Commission. Indeed, Applicants assert that by permitting these arrangements, the Commission eliminates needless duplication of start-up and administrative expenses and potentially increases an investment company's assets, thereby making effective portfolio management strategies easier to implement and promoting other economies of scale. Applicants further state that the sale of Fund shares to Qualified Plans will not have any impact on the relief requested in this regard. Shares of the Insurance Products Funds sold to Qualified Plans will be held by the trustees of those Plans as required by Section 403(a) of ERISA. Section 403(a) also provides that the trustees must have exclusive authority and discretion to manage and control the plan investments with two exceptions: (a) When the plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of assets of the plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two exceptions stated in Section 403(a) applies, Plan trustees have the exclusive authority and responsibility for voting proxies. If a abed fiduciary appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. Accordingly, Applicant assert that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to Qualified Plans since such plans are not entitled to pass-though voting privileges.

16. Applicants submit that even if a Qualified Plan were to hold a controlling interest in an Insurance Products Fund, Applicants do not believe that such control would disadvantage other investors in that Insurance Products Fund to any greater extent than is the case when any institutional shareholder holds a controlling interest in the voting securities of any open-end management investment company. In this regard, Applicants submit that investment in an Insurance Products Fund by a Qualified Plan will not create any of the voting complications occasioned by mixed or

shared funding. Unlike mixed or shared funding, Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

17. Applicants generally expect many Qualified Plans to have their trustees or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plan in their discretion. Some of the Qualified Plans, however, may provide for the trustees, investment advisers or another named fiduciary to exercise voting rights in accordance with instructions from participants. Where a Qualified Plan does not provide participants with the right to given voting instructions, the Applicants submit that there is no potential or material irreconcilable conflicts of interest between or among contract owners and Plan investors with respect to voting of an Insurance Products Fund's shares. Where a Plan provides participants with the right to give voting instructions, Applicants likewise submit that there is no reason to believe that participants in Qualified Plans generally or those in a particular Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage contract owners. In this regard, Applicants submit that the purchase of shares of an Insurance Product Fund by Qualified Plans that provide voting rights does not present any complications nor otherwise occasioned by mixed or shared funding.

18. Applicants assert that no increased conflicts of interest would be presented by the granting of the requested relief. Applicants assert that shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several states. Applicants note that it is possible that the state insurance regulatory body in a state in which one Participant Insurance Company is domiciled could require action that is inconsistent with the requirements of insurance regulators in one or more states in which other Participating Insurance Companies are domiciled. Applicants submit that this possibility is no different and no greater than that which exists when a single insurer and its affiliates offer their insurance products in several states, as currently is permitted.

19. Applicants further submit that affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, the conditions (adapted from the conditions included in Rule 6e–3(T)(b)(15)) discussed below are designed to safeguard against any adverse effects that differences among state regulatory requirements may produce. For example, if a particular state insurance regulator's decision conflicts with the majority of other state regulators, the affected insurer may be required to withdraw its Participating Separate Account's investment in the relevant Insurance Products Funds.

20. Applicants also argue that affiliation does not eliminate the potential, if any exists, for divergent judgments as to when a Participating Insurance Company could disregard contract owner voting instructions. The potential for disagreement is limited by the requirement that disregarding voting instructions be reasonable and based on specific good faith determinations. However, if Participating Insurance Company's decision to disregard contract owner voting instructions represent a minority position or would preclude a majority vote approving a particular change, the Participating Insurance Company may be required, at the election of the relevant Insurance Products Fund, to withdraw its separate account's investment in that fund, and no charge or penalty will be imposed as a result of such a withdrawal.

21. Applicants submit that there is no reason why the investment policies of an Insurance Products Fund that engages in mixed funding would or should materially differ from what those policies would or should be if that fund, or a series thereof, supported only variable annuity or only variable life insurance contracts. Hence, Applicants assert there is no reason to believe that conflicts of interest would result from mixed funding. Moreover, Applicants state that the Insurance Products Funds will not be managed to favor or disfavor any particular insurer or type of contract.

22. Applicants submit that no one investment strategy can be identified as appropriate to a particular insurance product. Each pool of variable annuity and variable life insurance contract owners is composed of individuals of diverse financial status, age, insurance and investment goals. An investment company supporting even one type of insurance product must accommodate these diverse factors. Applicants assert that the sale of shares to Qualified Plans should not increase the potential for material irreconcilable conflicts of interest between or among different types of investors. Applicants also assert that regardless of the type of shareholder in each Insurance Product Fund, WRIMCO is or would be contractually or otherwise obligated to manage each Insurance Products Fund solely and exclusively in accordance with that fund's investment objectives, policies and restrictions as well as any guidelines established by the board of directors (or trustees) of each Insurance Products Fund.

23. As noted above, Section 817(h) of the Code imposes certain diversification standards on the assets underlying Variable Contracts held in the portfolios of management investment companies. Treasury Regulation § 1.817–5, which establishes diversification requirements for such portfolios, specifically permits, among other things, qualified pension or retirement plans and separate accounts to share the same underlying management investment company. Therefore, Applicants assert that neither the Code, nor the Treasury regulations, nor the revenue rulings thereunder, present any inherent conflicts of interest if Qualified Plans, variable annuity separate accounts and variable life separate accounts all invest in the same management investment company.

24. Applicants note that while there may be differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, the tax consequences do not raise any conflict of interest. When distributions are to be made, and Participating Separate Account or the Qualified Plan cannot net purchase payments to make the distributions, the Separate Account or Qualified Plan will redeem shares of the relevant Insurance Products Funds at their net asset value. The Qualified Plan will then make distributions in accordance with the terms of the Plan. The Participating Insurance Company will surrender values from the Separate Account into the general account to make distributions in accordance with the terms of the Variable Contract.

25. Applicants also state that it is possible to provide an equitable means of giving voting rights to Participating Separate Account Variable Contract owners and to Qualified Plans. Each Insurance Products Fund or its agent will inform each Participating Insurance Company of each Participating Separate Account's ownership in the Fund shares, as well as inform the trustees of Qualified Plans of their holdings. Each Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable, and its participation agreement with the relevant Insurance Products Fund. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of Insurance Products Funds would be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public.

26. Applicants submit that the ability of the Insurance Products Funds to sell their respective shares directly to Qualified Plans does not create a "senior security," as this term is defined under Section 18(g) of the 1940 Act, with respect to any contract owner as opposed to a participant in a Qualified Plan. Regardless of the rights and benefits of participants in the Qualified Plans or contract owners, the Qualified Plans and the Participating Separate Accounts have rights only with respect to their respective shares of the Insurance Products Funds. They can only redeem such shares at their net asset value. No shareholder of any of the Insurance Products Funds has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

27. Applicants state that there are no conflicts between the contract owners of Participating Separate Accounts and Qualified Plan participants with respect to the state insurance commissioners' veto power over investment objectives. The state insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, time-consuming, complex transactions must be undertaken to accomplish these redemptions and transfers. On the other hand, trustees of Qualified Plans can make the decision quickly and redeem their shares of an Insurance Products Fund and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts, or, as is the case with most plans, even hold cash pending suitable investment. Based on the foregoing, Applicants represent that even if conflicts of interest arise between contract owners and Qualified Plans participants, the issues can be almost immediately resolved because the trustees of the Qualified Plans can, on their own, redeem the shares of the Insurance Products Funds.

28. Applicants assert that various factors have prevented more insurance companies from offering variable annuity and variable life insurance contracts than currently do so. Applicants state that these factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments), and the lack of public name recognition as investment professionals. Applicants state that in particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the Variable Contract business on their own. Applicants assert that use of the Insurance Products Funds as common investment medium for Variable Contracts would alleviate these concerns. Participating Insurance Companies would benefit not only from the investment advisory and administrative expertise of WRIMCO, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, Applicants assert, making the Insurance Products Funds available for mixed and shared funding may encourage more insurance companies to offer Variable Contracts. This should result in increased competition with respect to both Variable Contract design and pricing, which can be expected to result in more product variation and lower charges.

29. Applicants also submit that mixed and shared funding also should benefit Variable Contract owners by eliminating a significant portion of the costs of establishing and administering separate funds. Furthermore, the sale of shares of the Insurance Products Funds to Qualified Plans should further increase the amount of assets available for investment by those funds. This should benefit Variable Contract owners by promoting economies of scale, by permitting greater safety through greater diversification, and by making the addition of new portfolios to an Insurance Products Fund more feasible.

Applicants' Conditions

Applicants have consented to the following conditions:

1. A majority of the board of directors ("Board") of each Insurance Products Fund will consist of persons who are not "interested persons" thereof, as defined by Section 2(a)(19) of the 1940 Act and the Rules thereunder and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification, or bona fide resignation of any trustee or director, then the operation of this condition shall be suspended for: (a) For a period of 45 days, if the vacancy or vacancies may be filled by the Board; (b) for a period of 60 days, if a vote of shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor its respective Insurance Products Fund for the existence of any material irreconcilable conflict between the interests of the contract owners of all Participating Separate Accounts and the interests of the participants in Qualified Plans investing in the Insurance Products Fund and determine what action, if any, should be taken in response to such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) An action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax, or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Insurance Products Fund are being managed; (e) a difference in voting instructions given by variable annuity contract owners, variable life insurance contract owners and trustees of the Qualified Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Plan to disregard voting instructions of its participants.

3. Participating Insurance Companies, WRIMCO (or any other investment adviser of an Insurance Products Fund), and Qualified Plans that execute a fund participation agreement upon becoming an owner of 10% or more of an Insurance Products Fund's assets ("Participants") will report any potential or existing conflicts to the Board of any relevant Insurance Products Fund. Participants will be responsible for assisting the appropriate Board in carrying out its responsibilities under these conditions by providing the Board with all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation of each Participating Insurance Company to inform the Board whenever it has determined to disregard voting instructions from contract owners, and, when pass-through voting is applicable, an obligation of each Plan to inform the Board whenever it has determined to disregard voting instructions from Plan participants. The responsibilities to report such information and conflicts and to assist the Boards will be contractual obligations of all Participants under their agreements governing participation in the Insurance Products Funds and such agreements shall provide, in the case of Participating Insurance Companies, that these responsibilities will be carried out with a view only to the interests of the contract owners, and,

in the case of Qualified Plans, that these responsibilities will be carried out with a view only to the interest of Plan participants.

4. If a majority of the Board of an Insurance Products Fund, or a majority of its disinterested members, determines that a material irreconcilable conflict exists, the relevant Participants will, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested Board members), take whatever steps are necessary to remedy or eliminate the irreconcilable material conflict, including: (a) Withdrawing the assets allocable to some or all of the Participating Separate Accounts or Plans from the Insurance Products Fund or any series thereof and reinvesting such assets in a different investment medium, which may include another series of an Insurance Products fund or another Insurance Products fund, or submitting the question of whether such reinvestment should be implemented to a vote of all affected contract owners and Plan participants and, as appropriate, segregating the assets of any appropriate group (*i.e.*, variable annuity contract owners or variable life insurance contract owners of one or more Participating Insurance Companies or Plan participants) that votes in favor of such reinvestment, or offering to the affected contract owners and Plan participants the option of making such a change; and (b) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of a Participant's decision to disregard contract owner voting instructions and that decision represents a minority position or would preclude a majority vote, the Participant may be required, at the election of the Insurance Products Fund, to withdraw its investment in such fund, and no charge or penalty will be imposed as a result of the withdrawal. To the extent permitted by applicable law, the responsibility to take remedial action in the event of a Board determination of material irreconcilable conflict and to bear the cost of such remedial action will be a contractual obligation of all Participants under their agreements governing participation in the Insurance Products Fund, and these responsibilities will be carried out with a view only to the interests of the contract owners and Plan participants.

5. For the purposes of condition 4, a majority of the disinterested members of the applicable Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Insurance Products Fund, WRIMCO or any of their respective affiliates be required to establish a new funding medium for any Participant. No Participating Insurance Company or Qualified Plan shall be required by condition 4 to establish a new funding medium for any variable Contract or Plan if: (a) An offer to do so has been declined by a vote of a majority of the Variable Contract owners or Plan participants materially and adversely affected by the irreconcilable material conflict; or (b) pursuant to governing Plan or Variable Contract documents and applicable law, the Plan or Participating Insurance Company makes such decision without a vote of the Plan participants or Variable Contract owners.

6. Any Board's determination of the existence of a material irreconcilable conflict and its implications will be made known promptly in writing to all Participants.

7. Participating Insurance Companies will provide pass-through voting privileges to contract owners who invest in Participating Separate Accounts so long as the Commission interprets the 1940 Act to require pass-through voting for contract owners. Accordingly, the Participating Insurance Companies will vote shares of an Insurance Products fund held in their Participating Separate Accounts in a manner consistent with voting instructions timely received from contract owners. Participating Insurance Companies will be responsible for assuring that each of their Participating Separate Accounts investing in an Insurance Products Fund calculates voting privileges in a manner consistent with all other Participating Insurance Companies. The obligation to calculate voting privileges as provided in the Application will be a contractual obligation of all Participating Insurance Companies under the agreements governing participation in the Insurance Products Fund. Each Participating Insurance Company will vote shares for which it has not received timely voting instructions, as well as shares attributable to it, in the same proportion as it votes shares for which it has received voting instructions. Each Qualified Plan will vote as required by applicable law and governing Plan documents.

8. All reports of potential or existing conflicts received by a Board, and all Board action with regard to determining the existence of a conflict, notifying Participants of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the appropriate Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

9. Each Insurance Products fund will notify all Participants that disclosure in separate account prospectuses or Plan prospectuses or other Plan disclosure documents regarding potential risks of mixed and shared funding may be appropriate. Each Insurance Products Fund will disclose in its prospectus that: (a) The Insurance Products Fund is intended to be a funding vehicle for variable annuity and variable life insurance contracts offered by various insurance companies and for Plans; (b) due to the differences of tax treatment and other considerations, the interests of various contract owners participating in an Insurance Products Fund and the interests of Qualified Plans investing in that Insurance Products Fund may conflict; and (c) the Board of that Insurance Products Fund will monitor for the existence of any material conflicts and determine what action, if any, should be taken.

10. Each Insurance Products Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, will be the persons having a voting interest in shares of the Insurance Products Fund), and in particular, each Insurance Products Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(a), and if applicable, Section 16(b) of the 1940 Act. Further, each Insurance Products Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors or trustees and with whatever rules the Commission may promulgate with respect thereto.

11. if, and to the extent that, Rules 6e–2 and 6e–3(T) are amended (or Rule 6e–3 under the 1940 Act is adopted) to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed or shared funding on terms and conditions materially different from any exemptions granted in the Order requested by Applicants, then the Insurance Products Funds and the Participants, as appropriate, will take such steps as may be necessary to comply with Rules 6e–2 and 6e–3(T), as amended, or Rule 6e–3, as adopted, to the extent applicable.

12. No less than annually, the Participants shall submit to the Boards such reports materials, or data as the Boards may reasonably request so that the Boards may carry out fully the obligations imposed upon them by the conditions contained in the Application. Such reports, materials, and data shall be submitted more frequently if deemed appropriate by the applicable Boards. The obligations of the Participating Insurance Companies and Qualified Plans to provide these reports, materials, and data to the Boards shall be a contractual obligation of all Participating Insurance Companies and Qualified plans under the agreements governing their participation in the Insurance Products Funds.

13. In the event that a Plan should ever become an owner of 10% or more of the assets of an Insurance Products Fund, such Plan will execute a fund participation agreement including the conditions set forth herein, to the extent applicable, with that Insurance Products Fund. A plan will execute an application containing an acknowledge of this condition at the time of its initial purchase of shares of the Insurance Products Fund.

Conclusion

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22621 Filed 8–30–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41781; File No. SR–MCC–99–01]

Self-Regulatory Organizations; Midwest Clearing Corporation; Order Approving a Proposed Rule Change Relating to Sponsored Account Fund Deposits

August 23, 1999.

On February 26, 1999, the Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–MCC–99–01) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on May 26, 1999.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

MCC sponsors accounts ("sponsored accounts") at qualified clearing agencies[3] for certain eligible Chicago Stock Exchange specialists, floor brokers, and market makers ("sponsored participants") to provide them with access to the clearance, settlement, and depository services of the qualified clearing agencies. To cover any losses that MCC may incur from maintaining the sponsored accounts, MCC requires sponsored participants to contribute to MCC's sponsored account fund. A sponsored participant's required contribution to MCC's sponsored account fund currently is the greater of $15,000 ("minimum contribution") or 110% of the amount calculated pursuant to the formula of NSCC and DTC ("alternative contribution"). According to MCC, both NSCC and DTC require a minimum deposit of $10,000.[4] Therefore, the current minimum amount a sponsored participant must contribute to the sponsored account fund is $22,000, which is based on the alternative contribution formula.[5]

The proposed rule change increases the minimum contribution from $15,000 to $150,000. The increase will be phased-in over a twelve month period. To announce the actual phase-in dates, MCC will issue an administrative bulletin no later than thirty days after the Commission's order approving the proposal. The first phase-in date will be no more than 60 days from the date the bulletin is published and will increase the minimum contribution to $50,000. The second and third phase-in dates will be six months and twelve months from the initial phase-in date and increase the minimum contribution to $10,000 and $150,000, respectively.

II. Discussion

Section 17A(b)(3)(F)[6] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission finds that increasing the sponsored account fund deposit is consistent with MCC's obligations under Section 17A(b)(3)(F) of the Act because the additional funds should increase the likelihood that MCC will have sufficient funds to settle the securities transactions of a sponsored participant that becomes insolvent.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–MCC–99–01) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22552 Filed 8–30–99; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 41427 (May 19, 1999), 64 FR 28542.

[3] MCC uses the services of two qualified clearing agencies on behalf of its sponsored participants: the National Securities Clearing Corporation ("NSCC") and The Depository Trust Company ("DTC")

[4] Letter from Paul B. O'Kelly, Executive Vice President, Market Regulation and Legal, Chicago Stock Exchange (March 19, 1999).

[5] Using NSCC's and DTC's minimum deposit of $10,000 each, MCC's alternative contribution formula is as follows: 110% of $10,000 + 110% of $100,000 = $22,000.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before November 1, 1999.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to James E. Rivera, Senior Loan Officer, Office of Disaster Assistance, Small Business Administration, 409 3rd Street, S.W. Suite 6050, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: James E. Rivera, Senior Loan Officer, 202–205–6734 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: "Pre-Disaster Mitigation Loan Program".

Form No: SBA Form 5M.

Description of Respondents: Business located in communities participating in the Federal Emergency Management Agency's "Project Impact" and may only be used for mitigation measures against disasters identified as high risk by the participating Project Impact Community.

Annual Responses: 2,500.

Annual Burden: 7,500.

Dated: August 24, 1999.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 99–22561 Filed 8–30–99; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of this publication. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed at the end of this publication.

1. *Statement of Living Arrangements, In-Kind Support and Maintenance-0960–0174.* Form SSA–8006 provides a nationally-uniform vehicle for collecting information from SSI applicants and recipients about whether they receive income from in-kind support and maintenance. Responses are used to determine eligibility for SSI benefits payable. The respondents are individuals applying for SSI or whose eligibility is being reevaluated.

Number of Respondents: 438,400.

Frequency of Response: 1.

Average Burden Per Response: 7 minutes.

Estimated Annual Burden: 51,147 hours.

2. *Quickstart Enrollment Form-0960–0564.* The information collected on this form is needed by SSA to facilitate electronic transmission of data for direct deposit of funds to a payee's account. The respondents are Social Security and SSI recipients requesting direct deposit to their financial institutions.

Number of Respondents: 3,950,000.

Frequency of Response: 1.

Average Burden Per Response: 3 minutes.

Estimated Annual Burden: 197,500 hours.

3. *Supplemental Security Income Claim Information Notice-0960–0324.* The information collected on Form SSA–L8050–U3 will be used by SSA to ensure that all sources of potential income which can be used to provide for an individual's own support and maintenance are utilized. The respondents are applicants for SSI and recipients who are potentially eligible for benefits from other public or private programs.

Number of Respondents: 7,500.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 1,250 hours.

4. *Marital Relationship Questionnaire-0960–0460.* The information collected on Form SSA–4178 is needed by SSA to determine whether unrelated individuals of the opposite sex who are living together, and present themselves to the public as husband and wife, should be paid as a couple or two eligible individuals. The information is used to determine whether correct payment is being made to SSI couples and individuals. The respondents are applicants for and recipients of SSI who are living together in a questionable relationship.

Number of Respondents: 5,100.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 425 hours.

5. *Letter to Employer Requesting Information About Wages Earned by Beneficiary—0960–0034.* The information on Form SSA–L725 is used by SSA to establish the exact amount of wages earned by a beneficiary and to determine the amount of benefit payment, should one be due. The respondents are employers of the beneficiaries.

Number of Respondents: 150,000.

Frequency of Response: 1.

Average Burden Per Response: 40 minutes.

Estimated Annual Burden: 100,000 hours.

II. The information collections listed below have been submitted to OMB for clearance. Written comments and recommendations on the information collections would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed at the end of this publication. You can obtain copies of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. *Application for Widow's or Widower's Insurance Benefits—0960–0004.* SSA uses the information collected on Form SSA–10–BK to determine whether the applicant meets the statutory and regulatory conditions for entitlement to widow(er)'s benefits. The respondents are applicants for widow(er)'s benefits.

Number of Respondents: 288,580.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 72,145 hours.

2. *Request for Waiver of Overpayment Recovery Or Change in Repayment Notice—0960–0037.* Form SSA–632 collects information on the circumstances surrounding overpayment of Social Security Benefits to recipients. SSA uses the information to determine whether recovery of an overpayment amount can be waived or must be repaid and, if repaid, how recovery will be made. The respondents are recipients of Social Security, Medicare, Black Lung or Supplemental Security Income overpayments.

Number of Respondents: 500,000.

Frequency of Response: 1.

Average Burden Per Response: 120 minutes.

Estimated Annual Burden: 1,000,000 hours.

3. *Application for Supplemental Security Income—0960–0444.* The information collected on Form SSA–8001 is used by SSA to determine whether applicants for SSI benefits meet all statutory and regulatory requirements for eligibility and, if so, the amount of benefits payable. The respondents are applicants for SSI benefits.

Number of Respondents: 1,011,046.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 252,762 hours.

4. *Disability Evaluation Study—0960–NEW.* The Social Security Administration is sponsoring the Disability Evaluation Study (DES), a national disability study of the civilian non-institutionalized population of working-age adults aged 18–69. The DES will provide a key source of data for disability program and policy goals of critical interest to SSA, Congress, and others. SSA will collect information from individuals, aged 18 to 69 years, and their medical providers. SSA will use the information to:

- Estimate and project the size of the potential pool of eligible persons, that is, severely impaired working age individuals who, but for work or other reasons, meet SSA's definition of disability;
- Determine what enables individuals with severe impairments to work;
- Construct self-reported disability measures to be included on national surveys to monitor future program changes and changes in the pool of eligible persons;
- Examine relationships between disability and retirement for older workers;
- Evaluate ways to improve the current disability decision process, such as use of additional objective performance measures.

Following is a listing of the information that will be collected and the burden imposed on the public:

Title of collection	Number of respondents	Frequency of response	Average burden hours per response	Estimated annual burden hours
Pilot Study:				
Focus groups, cognitive laboratory studies, and pretest	100	1	2.00	200
In-person canvassing for area probability sample	11,795	1	0.08	944
Initial Screening	11,882	1	0.50	5,941
Follow-up Screening, Comprehensive Survey Interview, Forms for obtaining informed consent, release of medical records, and release of SSA records	1,800	1	1.50	2,700
Medical Examination	1,000	1	2.00	2,000
Provide Medical Records	2,000	1	0.50	1,000
Total (Pilot)	28,577	.....	.....	12,785
Main Study:				
In-person canvassing for area probability sample	55,405	1	0.08	4,432
Initial Screening	56,031	1	0.50	28,016
Follow-up Screening, Comprehensive Survey Interview, Forms for obtaining informed consent, release of medical records, and release of SSA records	10,000	1	1.50	15,000
Medical Examination	5,500	1	2.00	11,000
Provide Medical Records	11,000	1	0.50	5,500
Total (Main)	137,936	.....	.....	63,948
Total (Overall)	166,513	.....	.....	76,733

(SSA Address): Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

(OMB Address): Office of Management and Budget, OIRA, Attn: Lori Schack, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, DC 20503.

Dated: August 25, 1999.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 99–22623 Filed 8–30–99; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice No. 3119]

Secretary of State's Advisory Committee on Private International Law (ACPIL), Study Group on Judgments; Meeting Notice

There will be a public meeting of the Study Group on Judgments of the Secretary of State's Advisory Committee on Private International Law on Friday, September 10, 1999, from 9:00 a.m. to 4:00 p.m. in Room 1107 of the U.S. Department of State, 2201 C Street, NW, Washington, DC.

The purpose of the meeting is to consider legal issues related to the project of the Hague Conference on Private International Law to prepare a multilateral convention on jurisdiction and the recognition and enforcement of foreign civil judgments. The meeting will assist the Department of State to prepare the U.S. position for the fifth negotiating session of the Hague Conference's Special Commission on October 25–30, 1999.

The Study Group will consider a provisional draft of the convention reported out of the fourth negotiating session in June 1999, and which will be before the delegates to the fifth session in October 1999. The provisional draft represents an important revision of the preliminary text considered in June at the Hague.

Major issues that will be before the Study Group include: the substantive scope of the convention, including whether it should apply to government litigation, and maritime and nuclear litigation; the scope of application to defendants; jurisdiction in contract, tort, over branches, and based on minimum contacts; prohibited bases of jurisdiction, including tag jurisdiction and general doing business jurisdiction; concurrent filings in separate national courts; *forum non conveniens*; provisional and protective measures; exceptions to enforcement such as lack of fairness or impartiality in the judgment court; and treatment of punitive, noncompensatory, and "excessive" damages.

It is expected that changes to the provisional draft convention decided at the October negotiating session in the Hague will be reported to a Diplomatic Conference in October 2000 charged with final consideration and adoption of the convention.

Persons interested in the provisional draft convention or in attending the

September 10 Study Group meeting in Washington may request a copy of the draft. Requests may be sent to Ms. Rosie Gonzales by fax at 202–776–8482, by phone at 202–776–8420, by email to <pildb@his.com>, or by letter to the address below. Please include your request, name, phone number, and mailing address. Alternatively, the text of the draft may be found at the Hague Conference website: <www.hcch.net/events/e/events.html>.

The Study Group meeting is open to the public up to the capacity of the meeting room. As access to the State Department building is controlled, any person wishing to attend should provide Ms. Gonzales with his or her name, social security number, and date of birth by no later than Monday, September 6, to ensure admission to the building.

It would also be helpful to include affiliation, address, telefax and telephone numbers, and email address for purposes of updating the Department's contact list. Participants should be sure to use only the 23rd Street entrance of the State Department, between C and D Streets, NW, where someone will be present to assist them. Due to revised security procedures all participants must arrive prior to 10:30 a.m., and re-admission to the building may not be possible.

Those unable to attend but wishing to have their views considered may send their views, attention Ms. Gonzales, to the above fax number or email address, or to the following address: Office of the Assistant Legal Adviser for Private International Law, Suite 203, South Building, 2430 E St., NW, Washington, DC 20037–2800.

Jeffrey D. Kovar,

Assistant Legal Adviser for Private International Law.

[FR Doc. 99–22657 Filed 8–30–99; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3120]

Director General of the Foreign Service and Director of Personnel; State Department Performance Review Board Members (At-Large Board)

In accordance with section 4312(c)(4) of the Civil Service Reform Act of 1978 (Pub. L. 95–454), The Executive Resources Board of the Department of State has appointed the following individuals to the State Department Performance Review Board (At-Large Board) register.

Todd F. Buchwald, Assistant Legal Advisor for Political and Military Affairs, Office of the Legal Advisor, Department of State

Margaret Grafeld, Director, Information Resource Management Programs & Services, Bureau of Information Resource Management, Department of State

Marilyn Hulbert, Director, Office of African Affairs, United States Information Agency

Edward J. Lacey, Director, Office of Verification and Compliance, Bureau of Arms Control, Department of State

Cathrine J. Russell, Executive Director, Foreign Service Institute, Department of State

William B. Wood, Geographer, Bureau of Intelligence and Research, Department of State

Dated: August 24, 1999.

Edward W. Gnehm, Jr.,

Director General of the Foreign Service and Director of Personnel.

[FR Doc. 99–22658 Filed 8–30–99; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending August 20, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–6134
Date Filed: August 17, 1999
Parties: Members of the International Air Transport Association
Subject:
PTC COMP 0494 dated 13 August 1999
Composite Expedited Resolution 024j
Special Construction Rules (Amending)
Intended effective date: 1 October 1999

Docket Number: OST–99–6142
Date Filed: August 18, 1999
Parties: Members of the International Air Transport Association
Subject:
PTC COMP 0495 dated 13 August 1999
Composite Expedited Resolutions
Intended effective date: 15 October 1999 for implementation 1 April 2000

Docket Number: OST–99–6144
Date Filed: August 18, 1999
Parties: Members of the International Air Transport Association
Subject:
PTC2 EUR–ME 0083 dated 13 July 1999
Europe-Middle East Resolutions r1–r36
Minutes—PTC2 EUR–ME 0084 dated 13 August 1999
Tables—PTC2 EUR–ME Fares 0034 dated 20 July 1999
Intended effective date: 1 January 2000

Docket Number: OST–99–6145
Date Filed: August 18, 1999
Parties: Members of the International Air Transport Association
Subject:
CTC COMP 0210 dated 20 August 1999
Mail Vote 030—Resolution 010qq
Special Cargo Amending Resolution from Bangladesh (all rates from Bangladesh converted into US Dollars)
Intended effective date: 1 September 1999

Docket Number: OST–99–6146
Date Filed: August 18, 1999
Parties: Members of the International Air Transport Association
Subject:
PTC1 0115 dated 13 August 1999
Expedited TC1 Caribbean Resolution 015v
PTC1 0017 dated 13 August 1999
Expedited Within South America Resolutions
Intended effective date: 1 October 1999

Docket Number: OST–99–6147
Date Filed: August 18, 1999
Parties: Members of the International Air Transport Association
Subject:
PTC2 AFR 0068 dated 20 August 1999
Mail Vote 031—Resolution 010d
TC2 Within Africa Special Passenger Amending Resolution from Mozambique
Intended effective date: 25 August 1999

Docket Number: OST–99–6148
Date Filed: August 18, 1999
Parties: Members of the International Air Transport Association
Subject:
PTC1 0116 dated 13 August 1999
TC1 Longhaul Expedited Resolutions r1–r5
Intended effective date: 1 October 1999

Docket Number: OST–99–6149
Date Filed: August 18, 1999
Parties: Members of the International Air Transport Association
Subject:
PTC2 EUR–AFR 0087 dated 20 August 1999
Mail Vote 033—Resolution 010f
TC2 Europe-Africa Special Passenger Amending Resolution from Libya to Croatia
Intended effective date: 1 October 1999

Docket Number: OST–99–6152
Date Filed: August 19, 1999
Parties: Members of the International Air Transport Association
Subject:
PTC COMP 0496 dated 13 August 1999
Composite Expedited Resolution 024d (Amending) Rounding units for Hungary (Extract of Minutes and Summary included)
Intended effective date: 1 November 1999

Docket Number: OST–99–6153
Date Filed: August 19, 1999
Parties: Members of the International Air Transport Association
Subject:
PTC2 AFR 0067 dated 20 August 1999 (Adoption)
PTC2 AFR 0065 dated 27 July 1999 (Issuance)
Mail Vote 026—Resolution 010z
TC2 Within Africa Special Passenger Amending Resolution from Malawi
Intended effective date: 1 September 1999

Docket Number: OST–99–6155
Date Filed: August 20, 1999
Parties: Members of the International Air Transport Association
Subject:
PTC23 AFR–TC3 0067 dated 20 August 1999 (Adoption)
Mail Vote 028—Resolution 010b
TC23 Africa-TC3 Special Passenger Amending Resolution
Intended effective date 1 September 1999

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–22608 Filed 8–30–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending August 20, 1999

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–99–6150.

Date Filed: August 18, 1999.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 15, 1999.

Description: Application of Smokey Bay Air, Inc. pursuant to 49 U.S.C. Section 41102 and Subpart Q, applies for a certificate of public convenience and necessity authorizing interstate air transportation of mail, passengers, and property between any point in any state in the United States or District of Columbia, or any territory or possession of the United States, and any other point in any state of the United States or the District of Columbia, or any territory or possession of the United States.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–22607 Filed 8–30–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 1, 1999, [FR 64, page 29404–29405].

DATES: Comments must be submitted on or before September 30, 1999. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: General Aviation/Air Taxi Activity and Avionics Survey.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0060.

Form(s): FAA Form 1800–54.

Affected Public: 30,000 Owners of general aviation aircraft.

Abstract: The information collected on this survey, such as number of active aircraft by aircraft type, distribution of aircraft by state and FAA region, annual operations, airframe hours, engine hours, annual hours flown by day/night, and by weather conditions, fuel consumption, etc. is used by the FAA, NTSB, and other government agencies, the aviation industry, and others for safety assessment, planning forecasting, cost/benefit analysis, and to target areas for research.

Estimated Annual Burden Hours: 4,875 burden hours annually at 15 minutes per respondent.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention: FAA Desk Officer.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 25, 1999.

Patricia W. Carter,

Acting Manager, Standards and Information Division, APF–100.

[FR Doc. 99–22617 Filed 8–30–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Paulding and Defiance Counties, Ohio and Allen County, Indiana

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an

environmental impact statement will be prepared for a proposed highway project in Paulding and Defiance Counties, Ohio and Allen County, Indiana.

FOR FURTHER INFORMATION CONTACT: Mark L. Vonder Embse, Field Operations Engineer, Federal Highway Administration, 200 North High Street, Room 328, Columbus, Ohio 43215, Telephone: (614) 280–6854.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Ohio Department of Transportation (ODOT), will prepare an environmental impact statement (EIS) on a proposal to improve US–24 between the I–469 bypass around the City of Fort Wayne, Indiana. and the City of Defiance, Ohio. This segment of US–24 is approximately 40 miles in length.

Improvement to US–24 is considered necessary to enhance the operational characteristics of east- and west-bound traffic between Fort Wayne, Indiana and Defiance, Ohio.

Alternatives under consideration include: (1) Taking no action; (2) constructing the highway on new alignment; (3) upgrading the existing alignment. The alternative on new alignment has sub-alternatives providing for various access options.

Letters describing the proposed action and soliciting comments were sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public meetings will be held in the project area. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. Scoping activities are planned for 1999.

To ensure that the full range of issues relating to this proposed action are addressed, and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be sent to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on August 18, 1999.

Mark L. Vonder Embse,

Field Operations Engineer, Federal Highway Administration, Columbus, Ohio.

[FR Doc. 99–22624 Filed 8–30–99; 8:45 am]

BILLING CODE 4910–22–P

Corrections

Federal Register

Vol. 64, No. 168

Tuesday, August 31, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Comments on Information Collection Package

Correction

In notice document 99–19293 appearing on page 40814 in the issue of Wednesday, July 28,1999, make the following correction:

On page 40814, in the third column, under the heading **DATES:**, "August 27, 1999" should read "September 27, 1999".

[FR Doc. C9–19293 Filed 8–30–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 27

[Docket No. 29247; Amendment No. 27-37]

RIN 2120-AF33

Normal Category Rotorcraft Maximum Weight and Passenger Seat Limitation

Correction

In rule document 99–21378, beginning on page 45092, in the issue of Wednesday, August 18, 1999, make the following corrections:

1. On page 45092, in the second column, under the heading **Background**, in the second paragraph, in the 11th line, "manufacturers." should read "manufacturers,".

2. On page 45092, in the second column, in the fourth paragraph, in the eighth line, "of" should read "or".

3. On page 45094, in the first column, under the heading **Federalism Implications**, in the first paragraph, in the 11th line, "the" should read "a " .

4. On page 45094, in the first column, under the heading **Unfunded Mandates Assessment**, in the first paragraph, in the sixth line, "by" should read "of".

§ 27.1305 [Corrected]

5. On page 45095, in the third column, in § 27.1305, in the heading "powrplant" should read "powerplant".

[FR Doc. C9–21378 Filed 8-30-99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 29

[Docket No. 24802; Amendment No. 29-44]

RIN 2120-AG86

Airworthiness Standards; Transport Category Rotorcraft Performance

Correction

In rule document 99–21380, beginning on page 45336, in the issue of Thursday, August 19, 1999, make the following correction(s):

§ 29.62 [Corrected]

1. On page 45337, in the third column, in paragraph 4., in the first line, "Secti8on"should read "Section".

§ 29.67 [Corrected]

2. On page 45338, in the first column, in paragraph (a)(3)(i), in the first line, "operative" should read "inoperative".

[FR Doc. C9–21380 Filed 8-30-99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–14]

RIN 2120–AA66

Modification of VOR Federal Airways, MO

Correction

In rule document 99–20394 beginning on page 43069 in the issue of Monday, August 9, 1999, make the following corrections:

§71.1 [Corrected]

1. On page 43070, in the second column, in paragraph **V–10 [Revised]**, in the fourth line from the bottom, "INT Revloc;" should be removed.

2. On the same page, in the third column, in paragraph **V–116 [Revised]**, in the ninth line, "Mackson" should read "Jackson".

3. On the same page, in the same column, in paragraph **V–159 [Revised]**, in the sixth line, "Valcan" should read "Vulcan".

[FR Doc. C9–20394 Filed 8–30–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 29279; SFAR No. 86]

RIN 2120-AG79

Airspace and Flight Operations Requirements for the Kodak Albuquerque International Balloon Fiesta; Albuquerque, NM

Correction

In rule document 99–21268, appearing on page 44814, in the issue of Tuesday, August 17, 1999, make the following correction:

On page 44814, in the first column, the subject line is corrected to read as set forth above.

[FR Doc. C9–21268 Filed 8-30-99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Tuesday
August 31, 1999

Part II

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Child Restraint Systems; Child Restraint Anchorage Systems; Final Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–99–6160]

RIN 2127–AH65

Federal Motor Vehicle Safety Standards; Child Restraint Systems; Child Restraint Anchorage Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule, response to petitions for reconsideration.

SUMMARY: This document responds to some of the issues raised by petitions for reconsideration of a March 1999 final rule establishing Federal Motor Vehicle Safety Standard No. 225, Child Restraint Anchorage Systems. The standard requires vehicle manufacturers to install the upper (tether) anchorages of universal child restraint anchorage systems, beginning September 1, 1999, and lower anchorages of those systems beginning September 1, 2000. This fall, we plan to publish a second document responding further to the petitions.

In response to concerns of several petitioners about leadtime for and the stringency of the anchorage strength and other requirements in the March 1999 final rule, this document permits vehicle manufacturers to meet alternative requirements during an initial several year period. During this period, manufacturers have the alternative of meeting either the requirements in the March 1999 final rule or the less stringent Canadian requirements for tether anchorages, and those set forth in a draft standard being developed by a working group of the International Organization for Standardization (ISO) for lower anchorages. The temporary alternative for tether anchorages lasts until September 1, 2001, and that for lower anchorages until September 1, 2002.

This document also clarifies the test procedures used to test tether anchorages and the lower child restraint anchorage systems; excludes shuttle buses from the standard; denies petitions from the Coalition of Small Volume Automobile Manufacturers and Indiana Mills and Manufacturing; and makes technical amendments to correct some of the figures and other portions of the March 1999 final rule, including amendments to Standard No. 213.

DATES: The amendments made in this rule are effective September 1, 1999.

Petitions for reconsideration of this rule must be received by October 15, 1999.

ADDRESSES: Petitions for reconsideration should refer to the docket number of this document and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street SW, Washington, DC, 20590.

FOR FURTHER INFORMATION CONTACT:

For nonlegal issues: George Mouchahoir, PhD., (202–366–4919), Office of Crashworthiness Standards, NHTSA.

For legal issues: Deirdre R. Fujita, Esq., Office of the Chief Counsel (202–366–2992), NHTSA.

Both of these officials can be reached at the National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC, 20590.

SUPPLEMENTARY INFORMATION:

I. Summary of March 1999 Final Rule
a. Final rule
b. Key implementation dates
c. Rationale for the compliance dates for the final rule
II. Petitions for Reconsideration of Final Rule
III. Response to Petitions
a. Universal child restraint anchorage systems for motor vehicles
1. Leadtime
A. Tether anchorage
B. Lower anchorages
C. General issues about the options
2. Harmonization
3. Notice and opportunity to comment
4. Other issues
A. Procedures for testing tether anchorages
B. Issues relating to the application of the standard
C. Written instructions
b. Requirements for child restraints relating to September 1, 1999 compliance date
1. Audible or visual indication of attachment
2. Attachments must be permanent
c. Reasons for the effective date of this rule
IV. Corrections to Final Rule
V. Rulemaking Analyses and Notices
a. Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures
b. Regulatory Flexibility Act
c. Executive Order 12612
d. Unfunded Mandates Reform Act
e. National Technology Transfer and Advancement Act
f. National Environmental Policy Act
g. Executive Order 12778 (Civil Justice Reform)
h. Paperwork Reduction Act

I. Summary of March 1999 Final Rule

a. Final Rule

On February 27, 1999, President Clinton announced a new motor vehicle safety standard to improve the installation of child restraints in motor vehicles. The new rule, published by NHTSA on March 5, 1999, requires the installation of universal systems for attaching child restraints in vehicles (64 FR 10786). Most vehicles will be required to have these systems at two rear seating positions. Each system will have three anchorages: two lower anchorages and one upper anchorage. The lower anchorages are two 6 mm round steel bars fastened to the vehicle roughly a foot apart and positioned where the vehicle seat cushion and seat back meet. The upper anchorage is a ring to which the upper tether of a child restraint can be attached. In addition, an upper anchorage will be required at a third seating position. New child seats will have components that snap or hook onto these anchorages. By requiring an easy-to-use anchorage system that is independent of the vehicle seat belts, the new rule makes it easier to install child restraints securely and will thereby increase safety for children.

To the extent consistent with safety, we sought to harmonize our rule with requirements being considered by standard bodies and regulatory authorities in Europe and elsewhere. We considered a number of alternatives to the anchorage system we ultimately adopted, including anchorage system designs developed by General Motors and by Cosco, a child restraint manufacturer. Ultimately, we chose to establish performance requirements that were based on a draft standard [1] developed by the International Organization for Standardization (ISO), a worldwide voluntary federation of ISO member bodies. While safety was the overriding consideration, we made this decision due, in part, to the global standardization advantages associated with a harmonized standard. We stated that we anticipated that the ISO, which began work on an independent child restraint anchorage system in the early 1990's, will be adopting the draft standard as a final standard within the next year, and that incorporation of the ISO standard into the regulations of the European Community is likely to follow. Our rule harmonized also with a regulatory initiative by Transport Canada to require user-ready tether anchorages in vehicles sold in Canada.

In our final rule, we adopted most of the draft ISO standard for the lower bars and most of the requirements of the Canadian requirements for the tether anchorages. However, our final rule also imposed strength requirements for tether anchorages and the lower bars that, while essentially equivalent to the requirements we proposed in our NPRM, are higher than those that are specified by the draft ISO and the Canadian standards.

[1] ISO/DIS 13216–1, Road vehicles—Child restraint systems—Anchorages in vehicles and attachments to anchorages—Part 1: Dimensions, strength requirements and general requirements, June 22, 1998.

Tether Anchorage

The NPRM proposed that the tether anchorage would be tested in a static pull test. A force of 5,300 Newtons (N) would be applied by a belt strap that attaches to the tether anchorage, and applied in the forward horizontal direction. The 5,300 N force would be attained within 30 seconds, with an onset force rate not exceeding 135,000 N per second, and maintained at the 5,300 N level for one second. We proposed that each structural component of the anchorage must withstand the 5,300 N force, and that there must not be any complete separation or failure of any anchorage component. Each tether anchorage would be tested separately. However, if two or more designated seating positions on a bench seat are equipped with a tether anchorage, separate 5,300 N forces would be simultaneously applied to each tether anchorage.

The final rule adopted a static pull test using a test fixture, instead of a belt strap, to apply the test forces to the tether anchorage. The fixture has a configuration representative of a child restraint system. The fixture is attached to the tether anchorage at the fixture's top, and is attached to the vehicle seat at the fixture's bottom end (at the intersection of the vehicle seat cushion and back) using the vehicle's seat belt or the lower bars of a child restraint anchorage system. The test force is applied pulling on a cable that is attached to a point on the fixture. A force of 15,000 N is applied to the fixture, which in turn, applies the force to the three anchorage points (the tether anchorage and the seat belt anchorages or the lower bars). Since the fixture is attached to three anchorage points, only a portion of the 15,000 N force is actually applied to the tether anchorage. The 15,000 N force is attained within 30 seconds, at an onset force rate of not more than 135,000 N per second; and maintained at the 15,000 N level for one second. The final rule requires that (a) there must not be any point on the tether anchorage displaced more than 125 millimeters (mm) (approximately 5 inches); and (b) there must not be complete separation of any anchorage component. Each tether anchorage is tested separately, unless two or more designated seating positions in a row of seats have a tether anchorage. In that case, NHTSA has the option of testing both tether anchorages simultaneously.

Lower Anchorages

The NPRM proposed that the lower anchorages would also be tested in a static pull test using a belt strap. Each lower anchorage at a seating position would be tested separately from the other. A force of 5,300 N would be applied to the anchorage in the forward horizontal direction. The 5,300 N force would be attained within 30 seconds, with an onset force rate not exceeding 135,000 N per second, and maintained at the 5,300 N level for ten seconds. The NPRM proposed that lower bars conforming to the draft ISO standard were one of the means that could be installed to meet the requirement to provide the lower anchorages of a child restraint anchorage system. The NPRM proposed requiring that no portion of any component attaching to the lower bar could move forward more than 125 mm, and that there must not be complete separation of any anchorage component.

The final rule required that bars be used as the lower anchorages and adopted the method of testing lower bars set forth in the draft ISO standard. That method uses a test fixture, representing a child restraint system, that has attachments at the bottom end of the fixture (at the intersection of the vehicle seat cushion and back) to attach to the lower bars. The test force is applied by pulling on a cable that is attached to a point on the fixture. A horizontal force of 11,000 N is applied to the fixture, which in turn, simultaneously applies the force to the two lower bars (the tether anchor is not attached). Since the fixture is attached to both bars, the force is divided between them. The 11,000 N force is attained within 30 seconds, at an onset force rate of not more than 135,000 N per second; and maintained at the 11,000 N level for ten seconds. The final rule requires that the lower bars must not allow a specified point on the test fixture to be displaced more than 125 mm during the pull. The final rule specifies that in the case of vehicle seat assemblies equipped with more than one child restraint anchorage system, NHTSA has the option of testing the child restraint anchorage systems simultaneously or testing the systems separately.

b. Key Implementation Dates

The key implementation dates (mandatory compliance dates) in the March 1999 final rule were:

1. Beginning September 1, 1999—

Motor vehicles

Eighty (80) percent of passenger cars must have a tether anchorage for each of a specified number of designated seating positions. Any voluntarily-provided lower bars of a child restraint anchorage system, and any voluntarily-provided additional tether anchorages, in any passenger car, light truck, bus and multipurpose passenger vehicle (MPV) must meet the strength and other requirements of the standard.

Child restraints

Child restraint systems are required to comply with a more stringent head excursion performance requirement. Effectively, this means most must have top tether straps.

2. Beginning September 1, 2000—

Motor vehicles

All passenger cars and light trucks, buses and multipurpose passenger vehicles (MPVs) must have specified number of tether anchorages.

A specified percentage of passenger cars, and light trucks, buses and MPVs must have lower anchorages.

3. On or after September 1, 2002—

Motor vehicles

All passenger cars, and all light trucks, buses and MPVs must have the new lower anchorages for a specified number of seating positions.

Child restraints

Child restraint systems must have components that attach to the lower bars.

c. Rationale for the Compliance Dates for the Rule

Our effective dates for requiring the universal child restraint anchorages balanced several real world needs. Manufacturers need lead time to develop and implement designs for the anchorage system, particularly those for the lower bars, and to test their vehicles for compliance with the standard and to so certify. However, we wanted manufacturers to begin to provide the anchorages as quickly as possible because a universal child restraint anchorage system will enhance the safety of child restraints by making them easier to install securely than by means of a vehicle's seat belt system. Our rule sought to balance those needs by:

(1) Phasing-in the requirement for the lower bars over a three-year period, beginning in 2000 (S4.3); and

(2) Requiring manufacturers to begin providing the user-ready upper anchorages on September 1, 1999 (S4.2).

We believed that the requirement for user-ready upper anchorages could be

implemented in most passenger cars[2] beginning September 1, 1999 and a year later in other types of vehicles because almost all new vehicles sold in this country already have (unexposed, non-user-ready) tether anchorages to meet a longstanding Canadian requirement for non-user-ready anchorages. We also selected the September 1, 1999 date because it is the compliance date that Canada had adopted for user-ready tether anchorages in new passenger cars sold in that country.

Another need addressed by our implementation dates for the final rule was to assure that any child restraint anchorage system or tether anchorage installed in a vehicle will meet minimum performance requirements, regardless of whether the system was a "required system" or a "voluntarily-installed system." This was done to ensure that all of the 3-point child restraint anchorage systems provide at least a minimum level of safety. Accordingly, we required that:

(3) any child restraint anchorage system or tether anchorage installed in any new vehicle after September 1, 1999, must meet the configuration, location and strength requirements of the standard (S4.1).[3]

II. Petitions for Reconsideration of Final Rule

We received petitions for reconsideration of the final rule from the Alliance of Automobile Manufacturers ("Alliance") (whose members are BMW, DaimlerChrysler, Ford, General Motors, Mazda, Nissan, Toyota, Volkswagen, Volvo, Fiat and Isuzu), and from Honda, Volkswagen, Porsche, DaimlerChrysler, General Motors, Mitsubishi, the National Truck Equipment Association, Kolcraft, E-Z-On Products, Cosco, Toyota, Ford, the Coalition of Small Volume Automobile Manufacturers, and Indiana Mills and Manufacturing. *See* NHTSA Docket No. 98–3390, Notice 2.

The petitioners generally embrace the underlying tenet of the rule that there is a need for tether anchorages and universal child restraint anchorage systems to improve the securement of child restraints in vehicles. Nevertheless, vehicle manufacturers ask us to reconsider certain performance and other requirements. Some of them are concerned about the strength requirements for the tether anchorage and the lower bars, and assert that: (1) There is no safety need for requirements as stringent as those specified;[4] (2) tether anchorages installed in their model year (MY) 2000 vehicles were designed to meet the less stringent Canadian requirements and they will not be able to meet the requirements in the final rule by September 1, 1999; (3) they are unable to assure that voluntarily-installed anchorages planned for their MY 2000 vehicles will meet the requirements by September 1 of this year, and thus would have to "tear out" voluntarily-installed additional anchorages that they had already installed in vehicles slated for completion after September 1, 1999; and (4) sufficient notice and opportunity to comment was not provided for the requirements. The Alliance suggests that the agency either adopt the Canadian requirements for the tether and the draft ISO requirements for the lower bars, or delay the effective date for the rule to allow manufacturers to modify their current anchorage designs. These and the other petitioners also petition for reconsideration of a number of other issues, including issues regarding the specific test procedures of the rule and the application of the requirements to particular types of vehicles or seating positions.

III. Response to Petitions

This document focuses on immediate problems that vehicle manufacturers are having in certifying compliance with requirements that will apply to them beginning on September 1, 1999. As noted above, that is the date on which they must begin equipping new passenger cars with tether anchorages meeting the configuration, location, strength and marking requirements in the March 1999 final rule. It is also the date on which voluntarily-installed tether anchorages and lower anchorage bars must meet those requirements. This document also addresses some other concerns as well, including suggestions for clarifying certain steps and procedures for testing the anchorages and requests to reconsider requirements of the final rule for child restraint systems. We will respond to the remaining issues raised in the petitions in separate documents that will be published in the near future.

The key changes to those implementation dates made by today's final rule are as follows:

- *From September 1, 1999 to August 31, 2001:* tether anchorages may meet strength and other requirements (i.e., those specifying where anchorages may be located, and how many must be provided in vehicles and in what seating positions they must be provided) promulgated by Transport Canada instead of the requirements set forth in the March 1999 final rule. This option will cease to be available on September 1, 2001.
- *From September 1, 1999 to August 31, 2002:* lower anchorage bars may meet strength and other requirements (i.e., those specifying anchorage dimension and location, stow ability, and marking) set forth in a draft standard issued by the ISO instead of the requirements set forth in the March 1999 final rule. This option will cease to be available on September 1, 2002.

a. Universal Child Restraint Anchorage Systems for Motor Vehicles

1. Leadtime

As noted above, two requirements relating to child restraint anchorage systems go into effect on September 1, 1999: (a) manufacturers of passenger cars must provide the user-ready tether anchorages;[5] and (b) manufacturers must ensure that any tether anchorage or child restraint anchorage system installed in any new vehicle, voluntarily or pursuant to the standard, meets the configuration, location, strength and marking requirements of the standard (S4.1).

The Alliance petitioned for reconsideration of the rule on the basis of the practicability of meeting the September 1, 1999 effective date requiring installation of user-ready tether anchorages in passenger cars, stating that they cannot, by that date, complete the testing that they need to do to certify that their vehicles will meet the requirements of the final rule. They also need more time to make interior trim and structural changes to the extent necessary to meet the strength requirements. The Alliance states that member companies had geared up to meet the Canadian requirements, and had completed certification testing in passenger cars in preparation for certifying to the same requirements in the U.S.[6] The Alliance states that the strength requirements of our rule necessitate vehicle structure and interior trim changes and that these involve "significant tooling and lead time" to implement. Thus, many of their passenger car tether anchorage designs cannot be modified in time to meet the compliance date. The Alliance suggests that the agency either (a) Adopt the Canadian requirements for the tether and the draft ISO requirements for the lower bars, or (b) "at a minimum delay the effective date for tether and child restraint lower anchors for one year to allow manufacturers time to modify their current anchor designs to meet these new, unique requirements."

In addition, petitioners state that practicability problems arise also from the requirement in S4.1 that manufacturers must ensure that any tether anchorage or child restraint anchorage system voluntarily installed in any new vehicle after September 1, 1999 meets the performance requirements of the standard. The Alliance states that member companies had completed certification testing in multipurpose passenger vehicles, trucks and buses to comply voluntarily with the tether anchorage requirements earlier than the September 2000 compliance date. Because the voluntarily-installed anchorages would not meet the standard's requirements by September 1, 1999 as they are required to under S4.1, some manufacturers would be forced to remove anchorages in vehicles that will be completed after September 1, 1999, or prevented from installing such anchorages in those vehicles, "thus depriving customers of [the anchorages'] safety benefit." Volkswagen (VW) states in its separate petition that it already provides lower anchorages designed to the draft ISO standard in its vehicles. That petitioner states: "if NHTSA * * * continues to maintain the requirement in S4.1, then the provision of the systems would have to be terminated." VW and the Alliance suggest that S4.1 be amended so that voluntary systems complying with the draft ISO standard[7] (for the lower bars) and with Canadian requirements (for the tether anchorage) are permitted.

A. Tether anchorage. NHTSA has reviewed the issues raised by the petitioners relating to whether it is practicable to meet the September 1, 1999 effective date for installing tether anchorages that satisfy the requirements of the March 1999 final rule. The agency concludes that the vehicle manufacturers are capable of meeting the strength requirements in our March 1999 final rule for the tether anchorage with sufficient leadtime. In fact, data from Transport Canada indicates that many vehicles already have tether anchorages that can meet the 15,000 N requirement. Transport Canada tested a series of 15 vehicles (1999 models), using the test procedures of its tether anchorage standard, Canadian Motor Vehicle Safety Standard (CMVSS) 210.1, to measure loads attained at tether anchorages of these vehicles. Tether anchorages of 12 of these vehicles did not fail when the applied load (applied by means of a belt strap) reached a load ranging from 7,450 N to 7,884 N. We have determined that applying a horizontal 15,000 N force to the SFAD test fixtures results in forces of about 5,400 N applied horizontally to the tether anchorage using SFAD 1, and about 7,000 N applied horizontally to that anchorage using SFAD 2. (The difference is primarily due to differences between SFAD 1 and SFAD 2 as to the location of Point X on the test devices. Point X is where the force is applied to the SFAD.) Thus, tether anchorages on most of the vehicles tested by Canada sustained loads greater than the load that is specified in our March 1999 final rule. Tether anchorages of three of the 15 vehicles tested by Canada sustained between 6,979 N to 7,385 N. The tether anchorages on these vehicle may or may not need to be reinforced to meet our requirement. (These data were presented by Transport Canada at a March 31, 1999 meeting with manufacturers in Ottawa.)

While many vehicles may already meet the strength requirement of the March 1999 final rule, a number of manufacturers have said that they need time to run certification tests and analyses based on the requirements of our final rule, as opposed to the Canadian requirements. Some vehicle structure and trim might also have to be changed to meet the strength requirements of the final rule. Thus, while manufacturers that do not already comply can achieve the 15,000 N performance required of tether anchorages in the near future, they will need more time than the lead time provided in the final rule to make any necessary changes and certify compliance of their vehicles with the requirements of the final rule.

At the same time, user-ready tether anchorages installed as soon as possible would serve a child passenger safety need because they will increase the likelihood that parents will attach a top tether on the child restraint system. A tethered child restraint offers improved protection against head impact in a crash. A tether anchorage that complies with the Canadian strength requirement will be better than no tether anchorage at all (which would be the end result of manufacturers removing voluntarily installed tether anchorages after September 1, 1999). Accordingly, we are amending the standard to permit manufacturers the option of installing tether anchorages that meet Canada's strength requirements, for a two-year interim period (until August 31, 2001). During the interim, manufacturers can choose to meet the Canadian requirements. The most significant differences between the Canadian requirements and those in our final rule are Canada's specification of a lower force (10,000 N, instead of 15,000 N) and Canada's method of applying the force (permitting the manufacturer the option of specifying the force application rate, instead of specifying a range of application rates that the agency could use). During the interim, manufacturers can assess their vehicles' ability to comply with the 15,000 N force requirement and make structural changes to their vehicles, as needed. Beginning September 1, 2001, all vehicles will have to meet the 15,000 N strength requirement for all tether anchorages, whether installed voluntarily or pursuant to our standard.[8]

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[2] The requirements are phased-in to apply to 80 percent of a manufacturer's production of passenger cars manufactured between September 1, 1999 and August 31, 2000, and to all passenger cars manufactured on or after September 1, 2000.

[3] Today's document also corrects S4.1 to include marking requirements among those that voluntarily-installed anchorage systems must meet.

[4] Not all petitioners addressing this subject believe the strength requirements were too stringent. Petitioner E-Z-On Products suggest in its petition for reconsideration that we should consider *increasing* the strength requirements for the tether anchorage.

[5] The requirement for passenger cars is phased-in, beginning September 1, 1999, with all cars required to meet the requirement as of September 1, 2000. The compliance date for installing user-ready tether anchorages in light trucks, multipurpose passenger vehicles, and buses is September 1, 2000.

[6] The most significant differences between the Canadian requirements and those in our final rule are:

—the magnitude of the force that is applied to the tether anchorage (10,000 N, instead of 15,000 N);

—the rate that the force is applied to a tether anchorage in a compliance test (Canada permits the manufacturer to specify the force application rate, while under our test procedure NHTSA specifies the rate; the rate of force application can affect the stringency of the test);

—the number of tether anchorages required in multipurpose passenger vehicles that have five or fewer seats (Canada requires two tether anchorages, while we require three, in vehicles that have three or more seating positions rearward of the driver); and

—the requirement to provide a tether anchorage at a center rear seating position (Canada does not have such a requirement, while we do).

[7] It is noted that ISO has not completed finalization of its draft standard. On May 3, 1999, ISO revised the draft again.

[8] Some petitioners suggest that the 15,000 N requirement is unnecessary because Transport Canada adopted a 10,000 N requirement and because, so they believe, a tether meeting Canada's requirements will adequately withstand the forces that are imposed on a tether anchorage in a crash. On the other hand, one petitioner (E-Z-On Products) suggests that Canada's strength requirement should be increased to a higher level, to adequately withstand forces generated by children weighing 120 pounds or more.

To enable us to publish this document regarding the September 1, 1999 effective date of our rule as quickly as possible, we have deferred our response

Continued

The Alliance raises other issues related to their members' designing and manufacturing vehicles to meet the requirements established by Transport Canada for tether anchorages. Transport Canada requires only two tether anchorages in MPVs with five or fewer designated seating positions, while our final rule requires three tether anchorages in these vehicles (the same number of tether anchorages required of passenger cars). (For convenience, since most MPVs with fewer than 6 seating positions are sport utility vehicles (SUVs), we will refer to those MPVs as SUVs.) The Alliance states that Transport Canada's requirement to mandate only two tether anchorages for SUVs was based on comments submitted to it "which stated that the seating configurations and vehicle design constraints made the mandate of three tether anchors in the rear seat impracticable for such vehicles." Some manufacturers state in their owner's manual not to install child restraints in the center position. The petitioner asks that we amend our standard to require only two tether anchorages for MPVs with five or fewer designated seating positions.

In evaluating this suggestion, we note that manufacturers have not submitted information to NHTSA that explains why SUVs, as a vehicle class, should have fewer tether anchorages than passenger cars or why a third tether anchor in the rear seat of these vehicles is impracticable. SUVs are used as passenger-carrying vehicles and are increasing in popularity. Further, we note that the occupancy rate of SUVs for children under 12 in the right front seat is 2.4 times that of passenger cars. We also note that Transport Canada has indicated that it might be revisiting this issue concerning the number of tether anchorages it should require in SUVs. In view of the above information and the absence of information as to why SUVs should have fewer tether anchorages than passenger cars, we have decided to retain the requirement for three tether anchorages in the long run. However, to provide manufacturers with lead time to design and manufacture SUVs with three anchorages, this rule allows manufacturers to provide only two tether anchorages until August 31, 2001. Beginning September 1, 2001, three tether anchorages will have to be provided, if there are at least three rear designated seating positions.

The Alliance also petitioned for reconsideration of our requirement that a tether anchorage must be installed at a designated seating position other than an outboard seating position, if the vehicle has such a (center) seating position. Transport Canada does not have a comparable requirement. The petitioner states that not all MPVs scheduled for introduction by the 2001 model year (i.e., September 1, 2000) have designs that meet the requirement. Petitioner also states that: "this requirement is not practical for all [MPVs with six or more designated seating positions]. For example, a child restraint installed in the center position will block ingress/egress for the third row outboard seating position in certain vehicles."

NHTSA is relieving manufacturers from the requirement that one of the tether anchorages must be at a center seating position, until September 1, 2001. As a practical matter, this relief will only affect manufacturers of vehicles with more than three rear designated seating positions, i.e., vehicles other than passenger cars. Vehicles with three rear designated seating positions must be equipped with three tether anchorages. In passenger cars, the rear seat only has at most three rear designated seating positions, so a center rear seat—assuming there is one—will be equipped with a tether anchorage. This amendment gives manufacturers (primarily of vehicles other than passenger cars) until September 1, 2001 to design and manufacture vehicles with a tether anchorage in a center seat. Until that date, manufacturers will have the option of not providing a tether anchorage at a center seating position, assuming they can provide the requisite number of tether anchorages without equipping a center position. On or after that date, a tether anchorage must be provided at a center (i.e., non-outboard) seating position, in vehicles with such a position.[9]

B. Lower anchorages. This final rule also specifies that, from September 1, 1999 until August 31, 2002, manufacturers installing the lower bars of a child restraint anchorage system will have available a compliance option. They may meet either all the requirements for lower anchorages in our March 1999 final rule, or requirements in the draft ISO standard for alternative configuration, location, strength and marking requirements, and the requirements in our March 1999 final rule on all other matters.[10] As discussed in section III.a.1.C of this preamble, a manufacturer's selection of a compliance option will be irrevocable.

These amendments are made to provide manufacturers lead time to develop lower anchorages that meet the strength requirements of our standard. Lower anchorages meeting the draft ISO requirements will provide an improved means of attaching child restraints. While the 11,000 N strength requirement is preferable to the ISO 8,000 N requirement, we are balancing the benefits associated with lower anchorages meeting the draft ISO requirements in the short run against the possibility of there being no improved means of attaching child restraints. Lower anchorages meeting the draft ISO requirements will still provide an improvement to parents who have difficulty attaching a child restraint correctly in a vehicle or whose vehicle seats are incompatible with child restraints. In the short term, we are adopting an alternative allowing compliance with a lesser requirement as a practicable temporary approach that would reap benefits not otherwise obtainable during the interim. The agency is thus amending the standard to enable manufacturers to provide child restraint anchorage systems in vehicles as quickly as possible.

Many of the petitioners suggested that we permit rigid but stowable/fold-away lower anchorages, as allowed in the draft ISO standard. These petitioners have been developing stowable/fold-away lower anchorages and believed that our final rule was going to permit these anchorages to be installed in vehicles. Apparently these petitioners believed that the final rule would incorporate all aspects of the draft ISO standard, including provisions in the draft standard for stowable anchorages. The draft standard does not expressly allow stowable anchorages, but instead occasionally refers to various requirements that lower anchorages have to meet while in a stored and/or "deployed" condition. We are permitting stowable/fold-away anchors during this interim period (until August 31, 2002) within which manufacturer may meet the requirements of the draft ISO standard.

Specifications in the draft ISO standard that we have adopted in this final rule state that the 8,000 N force that is applied in the forward pull test and the 5,000 N force that is applied in the lateral pull test is maintained for a period of 0.25 seconds ± 0.05 seconds. We interpret this hold period to mean that we may hold the maximum force for several seconds or longer; however, the lower anchorages must withstand the required force (i.e., meet the 125 mm displacement limit) only for up to 0.30 seconds.

Several petitions ask us to reconsider the need for the 11,000 N strength requirement for the lower anchorages. The 11,000 N is applied to the lower anchorages by way of a test fixture that attaches to both lower anchorages. NHTSA will respond to these issues in a subsequent document responding to other issues in the petitions. In addition, we will address suggestions concerning the test procedure used to test the lower anchorages that are not addressed by today's document.

C. General issues about the options. This rule specifies that a manufacturer's selection of a compliance option must be made prior to, or at the time of vehicle certification and that selection is irrevocable for that vehicle. The rationale for such a requirement was explained in the March 1999 final rule as well as in other recent agency rulemakings. To summarize, where a safety standard provides manufacturers more than one compliance option, the agency needs to know which option has been selected in order to conduct a compliance test. Moreover, based on previous experience with enforcing standards that include compliance options, the agency is aware that a manufacturer confronted with an apparent noncompliance for the option it has selected (based on a compliance test) may respond by arguing that its vehicles comply with a different option for which the agency has not conducted a compliance test. This response creates obvious difficulties for the agency in managing its available resources for carrying out its enforcement responsibilities, e.g., the possible need to conduct multiple compliance tests for first one compliance option, then another, to determine whether there is a noncompliance. To address this problem, the agency is requiring that where manufacturer options are specified, the manufacturer must select the option by the time it certifies the vehicle and may not thereafter select a different option for the vehicle. This will mean that failure to comply with the selected option will constitute a noncompliance regardless of whether a vehicle complies with another option. (Of course, as we have noted in other rulemaking proceedings, a manufacturer may petition for an exemption from the recall requirements of the statute on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.)

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that isn't clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

While we generally complied with those requirements in drafting this document, we did not make any significant changes to the Canadian and ISO provisions regarding child restraint anchorage systems in adding them to Standard No. 225. Since those additions are only temporary, we did not attempt to determine whether there are any significant opportunities for simplification or clarification of those provisions. If anyone believes that simplification or clarification of any of those provisions, or of any other part of the regulatory text, is necessary, please write and tell us.

b. Harmonization

The Alliance also petitioned for reconsideration of the final rule based on "the lack of harmonization with other child restraint anchor activities around the world." Petitioner states that the rule creates a unique set of performance requirements that is not applied anywhere else in the world and is not consistent with the Canadian requirements for the tether or draft ISO requirements for the lower bars.

The most significant differences between the Canadian requirements for tether anchorages and those in our final rule are set forth in footnote 6, *supra*, and concern the magnitude of the force that is applied to the tether anchorage and the rate that the force is applied to a tether anchorage in a compliance test. The most significant differences between the draft ISO requirements for the lower anchorages of child restraint anchorage systems and those in our final rule are set forth in footnote 10, *supra*, and relate to the magnitude of the force that is applied to the lower anchorages, the rate that the force is applied in a compliance test, and the period of time that the force is held.

We believe that our final rule fully conforms to the agency's policies and priorities in this area. The agency's policy is to advance vehicle safety by identifying and adopting best safety practices from around the world and by developing new standards reflecting technological advances and current and anticipated safety problems. Thus, while we seek to harmonize our safety standards with those of other countries, we do so only to the extent consistent

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to those comments to a later date. We are evaluating these comments and will respond to them and to other issues not addressed by today's document in a later document. For the purposes of this notice, we believe that the 15,000 N strength requirement is preferable to the 10,000 N requirement, for the reasons discussed in the March 1999 final rule. Transport Canada has publicly stated that it too is considering increasing its tether strength requirement to 15,000 N, based on data obtained since that country's implementation of its user-ready tether anchorage requirement (see technical proposal, Canada Gazette Part I, March 6, 1999).

While the 15,000 N strength requirement is preferable in the long run, we are balancing the benefits associated with tether anchorages meeting only the Canadian requirements in the short run against the possibility of there being no tether anchorages. Tether anchorages meeting the Canadian requirement will still provide an improvement to parents who might have attached a tether but did not do so because a user-ready anchorage was not present in the vehicle. In the short term, we are adopting an alternative allowing compliance with a lesser requirement as a practicable temporary approach that would reap benefits not otherwise obtainable during the interim.

[9] The final rule required a tether at a non-outboard seating position (a center position) to address the concerns of many commenters that the center rear seating position in cars would not have an improved means of attaching child restraints, even though that is the position many parents in this country prefer to place their child. (This belief is shared by the petitioner. Commenting on a different issue, the Alliance stated on page 17 of its petition for reconsideration that "Alliance members believe that many customers will want the flexibility to install a child restraint at the center rear seat position. . . .") We believe that many parents will want to place their child in a non-outboard seating position in MPVs as well. These parents will either be frustrated if an improved means of attaching child restraints is not provided at a center position, and/or may use the non-tethered center position anyway, and will not be able to attain for their child the improved safety benefits of a tethered child restraint. As for practical problems with blocking ingress/egress for the third row, we believe the tether can be located to avoid such blockage. For example, the tether anchor could be attached to the ceiling or to the back of the lower part of the seat structure.

[10] The most significant differences between the draft ISO requirements for the lower anchorages of child restraint anchorage systems and those in our final rule are:

a. the magnitude of the force that is applied to the lower anchorages (11,000 N, instead of 8,000 N);

b. the rate that the force is applied to the lower anchorages in a compliance test (the draft ISO standard specifies that the force is fully applied within a time period of two seconds or less, while under our test procedure NHTSA specifies the rate and the time period for full application of the force may be up to 30 seconds);

c. the period of time that the force is held (the draft ISO standard specifies that the 8,000 N force is held for a period of 0.25 seconds, while we specify that it is held for 10 seconds); and

d. the allowance of stowable/foldable anchorages (the draft ISO standard permits these anchorages, while our final rule has a requirement that precludes a stowable/foldable feature, S9.1.1(g)).

e. Other differences between our rule and the draft ISO standard are discussed in the March 1999 final rule at 43 FR 10801–10802.

with preserving our ability to adopt standards that meet U.S. vehicle safety needs. "Statement of Policy: NHTSA Priorities and Public Participation in the Implementation of the UN/ECE 1998 Agreement on Global Technical Regulations" (January 5, 1999, 64 FR 563). In our effort to harmonize with the Canadian requirements for the tether anchorage and the draft ISO requirements for the lower anchorages, we undertook an independent analysis of the basis for the strength requirements for the respective anchorages. We were not aware of any information warranting a 10,000 N force requirement for the tether. The only data we had indicate that the level should be 15,000 N. Further, as we said in the preamble to the final rule, we did not know why the drafters of the draft ISO standard chose the 8,000 N requirement. We also explained in the final rule document our reasons for differing from the specifications in the draft ISO standard for applying the force to the lower anchorages in the compliance test. That we set the performance requirements based on an independent analyses is fully consistent with NHTSA's policies and priorities on international harmonization.

We also note that with regard to the strength requirements for the lower bars, the draft ISO standard has not yet been adopted in final form by any country. The draft ISO standard is still undergoing revision by the working group charged with developing the standard. Because no country has adopted strength or any other requirements for the lower bars, our 11,000 N requirement, the first of its kind, is not discordant with any other standard. We should also note that our requirements are generally not mutually exclusive from those of Canada for tether anchorages and those of the draft ISO standard for the lower bars. Anchorages that are produced to meet the requirements of our March 1999 final rule will meet all the requirements of the Canadian and draft ISO standards.

3. Notice and Opportunity To Comment

The Alliance petitioned the agency to reconsider the strength test procedures and requirements for tether anchorages and the lower anchorages of a child restraint anchorage system. The Alliance argues that the agency included these provisions in the final rule without first giving the public an opportunity to comment on the provisions and thus violated the informal rulemaking provisions of the Administrative Procedure Act. The Alliance states that:

> [T]he test procedures and strength requirements for the top tether anchors and the test procedures for lower anchors were neither proposed in the NPRM nor logically grow from it. The NPRM published on February 20, 1997 discussed the strength requirement and test procedure for top tethers in Part 571.210b, Section S4.4. It states ". . . the tether anchorage with the tether anchorage hardware installed shall, when tested in accordance with S5, withstand a force of 5,300 N. There shall be no complete separation or failure of any anchorage component." The final rule, in Section 6.3 imposes a 125 mm deflection requirement that was not proposed or discussed in the NPRM. In addition, the final rule, in Section 8 imposes a test procedure that applies a 15,000 N force to a test fixture which was not proposed or discussed in the NPRM.
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> The NPRM discusses the test procedure for lower anchorages in Part 571.210a, Section S5. It states "Test each lower anchorage separately, with or without connectors provided with the vehicle. Apply a force of 5,300 N to each anchorage in the forward horizontal direction . . ." The final rule, in Section 11, imposes a test procedure which applies an 11,000 N force to a test fixture. This test procedure is not proposed or discussed in the NPRM.

The agency disagrees with the Alliance. The test method adopted in the final rule is similar to one of two alternative test methods discussed in the NPRM in connection with assessing the real-world performance of child restraint anchorage systems. The first approach was to apply test forces to all anchorages, simultaneously, by means of a child restraint. This method would also have tested child restraints for compliance with Standard No. 213 by attaching the child restraint to an actual vehicle anchorage system. Testing actual vehicle anchorage systems with actual child restraints would have increased the real-world representativeness of the test method. However, in the section of the NPRM entitled "Proposal for New Vehicle Standard, Highlights of Proposal," we acknowledged that there were difficulties with this approach:

> If vehicles were tested with actual child seats, and vice versa, and if a vehicle anchorage system, for example, were found to fail the proposed requirements, an issue could arise as to whether the failure was with the vehicle system, or with the child seat attached to the vehicle system. To avoid this complication, the compliance tests must be as controlled as possible to remove unknown influences on the performance of regulated parts.

62 FR 7870.

Because NHTSA was concerned that testing a vehicle anchorage system with an actual child restraint could possibly introduce factors that could complicate enforcement efforts, the agency tentatively rejected that alternative. We favored an alternative approach, which was to test each anchor of a child restraint anchorage system individually by attaching a belt strap to the anchor and pulling it at a specified force. We discussed in the NPRM our tentative conclusion that this alternative would replicate real-world performance, but acknowledged that this approach also had limitations:

> A potential but seemingly necessary limitation in the proposed compliance tests is that the vehicle system is statically tested by devices that replicate the loads imposed by a child seat, and a child restraint is dynamically tested on a seat assembly simulating a vehicle seat. That is, an actual vehicle anchorage system would not be tested with an actual child restraint, and vice versa. This is to avoid possibly complicating enforcement efforts if an apparent failure arises in a compliance test. . . .
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> While the actual vehicle-to-child seat attachment would not be tested, NHTSA believes that the performance obtained in the compliance test will reflect the real-world performance of the anchorage system and the child restraint. This is because the geometry of the belts and latchplates primarily responsible for the vehicle-to-child seat interface would be precisely specified by this proposal. These components would have to be provided on vehicles and child seats precisely as specified in the standards. In turn, these components, in the same geometry as that specified in the standards, would be used in the compliance tests. Thus, the vehicle-to-child seat interface should be adequately tested.

Id.

Since use of the straps would avoid the problems associated with use of child restraint systems, although at the cost of some loss of real-world representativeness, we proposed a strength requirement and a static pull test for the tether anchorage that were the same as the then-Canadian proposal for user-ready tether anchorages. The agency proposed that the anchorage would have to withstand a force of not less than 5,300 N, applied to the tether anchorage by a belt strap (see I.a. of this preamble, supra, for discussion of the provisions for the strength requirements in the NPRM and final rule). In the section of the NPRM entitled "Proposal for New Vehicle Standard, Performance," the agency requested comments "on whether more specificity is needed for these strength requirements and on whether other performance requirements should be included in the standard." 62 FR 7873.

In the final rule, we decided to apply the test forces to child restraint anchorage systems by means of surrogates for child restraint systems. We adopted use of the surrogates because they better simulate the real-world interaction between a child restraint and the vehicle anchorages than testing the anchorages individually by means of a belt strap.

The adopted approach is very similar to the one we tentatively rejected in the NPRM, i.e., the one that used actual child restraint systems to apply the test forces. We had tentatively rejected that approach out of concern that using child restraints in the compliance test would introduce too many additional variables into the compliance testing process. The decision to substitute child restraint surrogates for actual child restraint systems adequately addressed the problem of uncontrollable factors. The surrogates, called "static force application devices (SFADs)" in the final rule, distribute the forces generated in a crash as a child restraint does in dynamic crash testing. However, because they are controlled test devices, their use in compliance testing does not introduce the same potential concerns noted above that using an actual child restraint could pose. In the final rule, thus, we balanced the concerns underlying the interest expressed in the NPRM in using actual child restraints to more assuredly obtain test results related to real world performance with the concerns also expressed in the NPRM in having the test be as controlled as possible to remove unknown influences on the test results.[11]

The use of child restraint surrogates to test child restraint anchorage systems in vehicles was strongly supported by the commenters. Many vehicle manufacturers suggested that applying the load, by way of a child restraint surrogate, to all three anchorages simultaneously better evaluates how the tether anchorage would perform in the real world than by testing the anchorages individually. GM suggested that using a test fixture representative of a child restraint to apply a test force is a more relevant measure of child restraint excursion than the proposal. The fixture it suggested was the SFAD 1 fixture (which GM calls "the Structural Fixture") ultimately adopted by our final rule. "By using the Structural Fixture, the displacement of the CRS [child restraint system] due to structural deformation of the anchorages is more accurately demonstrated." (GM comment, page 8, and Attachment E thereto, page 1, May 21, 1997, Item No. 96–095–N03–027 in Docket No. 96–095–N03.) GM and Ford suggested that loading all three anchorages at one time (the two lower anchorages and the top tether anchorage) is the most appropriate method to evaluate in a static load test how a child restraint will perform dynamically in limiting forward excursion.

The fixtures we selected were jointly developed by the vehicle manufacturers and Transport Canada for use in testing child restraint anchorages in Canadian vehicles. Similar to this agency, Transport Canada will use the SFAD 1 fixture to test tether anchorages at a seating position that does not have the lower bars of a child restraint anchorage system. (The fixture is attached at its bottom, at the vehicle seat bight, by the vehicle's seat belt.) The other fixture, "SFAD 2," will be used to test tether anchorages at a seating position that has the lower bars of a child restraint anchorage system. SFAD 2 is from the draft ISO standard ISO/DIS 13216–1. Both of these fixtures were discussed for use in Canada's tether anchorage regulation at a September 11, 1998 meeting between Canadian and US representatives of vehicle and child restraint manufacturers and Canadian officials. The meeting was organized by the Canadian Vehicle Manufacturers' Association (CVMA). We placed a memorandum describing what we were informed about the meeting into the docket; see 96–95–N3–00071, dated October 31, 1997, as corrected in 96–95–N3–00071A, dated July 20, 1999.

The magnitude of the load that is to be applied to each test fixture (15,000 N) is essentially equivalent to the magnitude of the load that was proposed in the NPRM. Applying a horizontal 15,000 N force to the SFAD 1 fixture, which in turn applies the load to three anchor points on the vehicle (one of which is the tether anchor), results in a horizontal force of about 5,400 N applied to the tether anchorage, assuming no interference of the fixture with other vehicle components. This was explained in the final rule, 64 FR 10808. ("This final rule has increased this [the proposed strength requirement of 5,300 N applied horizontally to an individual anchor] to 15,000 N to reflect the use of the fixture in testing tether anchorages.") Applying a horizontal 15,000 N force to SFAD 2, which in turn applies the load to three anchor points on the vehicle, results in a horizontal force of about 7,000 N applied to the tether anchorage, which is only about 30 percent higher than the horizontal 5,300 N proposed in the NPRM. In addition, as noted in the preamble to the final rule, we also chose the force level because test data indicated that it is needed to help ensure that tether anchorages will be able to bear the loads generated by children in forward-facing child restraints (64 FR 10808).

In the final rule, we adopted a performance measure based on the amount of deflection, i.e., it specified that tether anchorages must not deflect such that a point on a test fixture moves more than 125 mm during the application of test forces. We adopted the deflection limit because it is a more objective measure of performance than the requirement originally proposed in the NPRM, i.e., that an anchorage "withstand" the required force. The NPRM expressly requested comments as to whether the "withstand" requirement and the other strength requirements should be more specific, i.e., more objective. 62 FR 7873. GM suggested in its comment to the NPRM that measuring movement of the child restraint test fixture is a more relevant measure of child restraint excursion. GM suggested in its comment that a final rule require that a "point I" on the fixture must not displace more than 125 mm longitudinally from its initial position. Finally, the 125 mm deflection requirement was proposed in the NPRM as the proposed performance requirement for the two lower anchorages of the child restraint anchorage system. Because those lower anchorages and the tether anchorage together constitute a "child restraint anchorage system," it was a logical outgrowth of the NPRM that all three are subject to the same deflection limit as a measure of acceptable performance. By giving the public notice of the subjects and issues being considered, and adopting changes that are a logical outgrowth of the NPRM, the agency fully satisfied the requirements of the Administrative Procedure Act.

With regard to the lower anchorages, we proposed that they could consist of either a flexible latchplate system or a rigid bar anchorage system (the system permitted by the draft ISO standard). Since the testing of those systems presented essentially the same problems as testing tether anchorages, we resolved those problems in the same way. We tentatively rejected the use of child restraint systems to apply test forces simultaneously to the lower anchorages and proposed instead to apply test forces separately by means of a strap. Further, our statements in the NPRM provided notice that we were determining the appropriate level of

[11] Standard No. 210 also uses test devices to apply test loads to seat belt assembly anchorages. The devices are a pelvic body block that represents a human pelvis and a torso block that represents a human upper torso. Prior to our March 1999 final rule, seat belts and seat belt anchorages were the standardized anchorage system used to anchor child restraints in vehicles. The approach taken by our March 1999 final rule, to use a test device to apply the loads, is logically related to the method now used to test the current anchorage system for child restraints.

performance to mandate for the lower anchorages, and that the requirements and procedures of the draft ISO standard were being considered.

In response, a number of commenters urged us to adopt use of the test fixture, representing a child restraint system, specified in the draft ISO standard for the purpose of applying an 8,000 N force to the lower anchorages. Comments were also provided on the levels of force that should be applied to the anchorages, and the length of time those should be held.

The procedures and requirements we adopted for the lower anchorages are a logical outgrowth of the proposal. The test procedures we adopted for testing the rigid bars are directly based on those in the draft ISO standard. These procedures include use of a test fixture that applies test loads to the two lower anchorages simultaneously, rather than individually. For the reasons discussed above with respect to tether anchorages, use of a test fixture is preferable both to testing the lower anchorages separately using a strap and to testing them simultaneously using actual child restraint systems. Finally, the magnitude of the load that the final rule applies to the lower anchorages simultaneously by way of the fixture (11,000 N) is almost the same as the sum of the horizontal loads (10,600 N) that we proposed in the NPRM for testing the strength of the lower anchorages (5,300 N applied horizontally to each lower anchorage). We note that that force level is also supported by test data (see discussion in preamble to final rule, 64 FR 10805).

The Alliance also states that we did not provide notice and an opportunity to comment on the requirement in the final rule to provide three tether anchorages. The petitioner states:

> The agency proposal would have had the effect of requiring only two tether anchors, at seating positions with lower anchors. Thus the agency has provided no notice of a requirement for a third anchor at the center seat position, and no lead time.

We disagree with the Alliance that about the adequacy of notice. The NPRM requested comments on the number of anchorage systems we should require. The agency stated in the NPRM:

> There was no consensus among the [14 rulemaking] petitioners as to the number of child restraint anchorage systems that should be required and where in the rear they should be. Many believe that the system should be installed at each of the outermost designated seating positions of the second row (and a tether anchorage in the rear lap-belt center position). The Japanese vehicle manufacturers believe that only one rear seat position should be required to have the system. Fisher-Price, a child restraint manufacturer, believes that the rear center seating position is recognized as the safest and that the system should therefore be required there. * * * NHTSA has tentatively determined that each vehicle with a rear seat should have at least two rear seating positions that can properly hold a child restraint system. The agency is concerned whether there is a need for an anchorage system at more than two seating positions. NHTSA requests information on this issue, such as demographic data on the number of children in child restraints typically transported in a family vehicle. * * * This proposal does not specify that both anchorage systems would have to be provided at an outboard position. In some vehicles with large interiors, it may be possible to install one of the required systems in a center seating position.* * *
>
> 62 FR 7871.

These statements in the preamble to the NPRM provided clear notice that we were exploring alternatives to the proposed number of required child restraint anchorage systems. The notice specifically raised the issues of requiring a tether anchorage in a center rear seating position, of providing a tether anchorage at the location (center rear seat) preferred by many parents for placing a child, and of how many improved attachment systems are needed. Many commenters addressed the issue of how many seating positions should have a child restraint anchorage system, with most suggesting that an additional (i.e., third) tether anchor should be required (if not a full child restraint anchorage system). From these comments, we learned that many parents will want an improved means of attaching child restraints in the center rear seating position. We did not require that one of the two full child restraint anchorage systems be installed in the rear center position because it may be difficult to fit the lower anchorages of two child restraint anchorage systems adjacent to each other in the rear seat of small vehicles. However, we decided that a tether anchorage at the center rear position will improve the attachment of child restraints at that desired position and will provide parents with flexibility in deciding where they restrain their children. Based on the foregoing, we conclude that requiring a third tether anchorage and one at a center seating position was a logical outgrowth of the NPRM and that the agency fully satisfied the requirements of the APA.

4. Other issues

A. Procedures for testing tether anchorages. This section responds to suggestions in some of the petitions for reconsideration for amending the final rule's test conditions and procedures for testing tether anchorages. Some petitioners believe that some of the test conditions and procedures could be clearer and made more objective.

We have decided to adopt some of the suggestions and not adopt others. The test conditions and procedures discussed in this section of the document are those set forth in S7 and S8 of the final rule to test tether anchorages that are certified as meeting the requirements of the March 1999 final rule. As discussed today in Section III, above, until September 1, 2001, manufacturers have the option of certifying their tether anchorages to the requirements set by Transport Canada. Such tethers will be tested according to the conditions and procedures in the Canadian standard.

The Alliance suggests several changes to S8.1 of the final rule, which specifies how the 15,000 N force will be applied to the tether anchorage. Petitioner suggests that the initial angle of pull specified in S8.1.(c)(2) should be 10 ±5 degrees, rather than "not more than 5 degrees." Petitioner explains that the angle of pull in the final rule can cause the force application cable to rub on the SFAD test device, thus potentially affecting the force on the tether strap. NHTSA has made the suggested change. Interference of the SFAD on the cable could affect the loads that are actually applied to the tether anchorage, which is undesirable. Increasing the angle of pull to 10 ±5 degrees, from not more than 5 degrees, will eliminate the potential for interference and will not significantly affect the magnitude of the load applied to the device (the horizontal component of the applied load may be reduced by about 3 percent).

The Alliance suggests other changes to the manner in which the test force is applied to the tether anchorage. Petitioner suggests that S8.1(c)(3) be amended to clarify that the requisite force is held for one second, and not longer. We have made this change. Petitioner also suggests that S8.1(c)(3) should permit manufacturers to select the time period for application of the test force, as long as it is within the 30-second time limit. Such an amendment would permit the manufacturer to load the tether anchorage with the maximum 15,000 N load in a short period of time (relative to the 30-second time limit), e.g., 3 to 5 seconds. The petitioner states that Canada allows the vehicle manufacturer to select the time period for application of the test force, as long as the period is within the 30-second time limit, and will use the manufacturer's selected force application time period in compliance testing. (We have confirmed with Transport Canada that this is correct.)

The Alliance also questioned the absence of a specified rate of increase of force during the test:

> Because S8.1(c)(3) does not specify a linear increase in force (or any other force/time profile), . . . [does] the agency mean to specify a linear increase in force? Or does the agency intend to include an infinite number of force application variations, including increasing the force to just below the full load in less than 1 second, and then holding at that level for the remainder of the 30-second force application time? The results of such a force application would vary significantly from a linear increase in force.

We agree with the Alliance that, as written, this provision would allow the agency to test compliance at a variety of force onset rates and force/time profiles. While we believe that we could legitimately provide for such variation, we are amending S8.1(c)(3) to provide for a more specific rate of force application. Today's document specifies that we will increase the pull force as linearly as practicable, from the pre-load pull force of 500 N to the full force application of 15,000 N in 27 ± 3 seconds, (i.e., not less than 24 seconds and not more than 30 seconds).[12] This means that the compliance test laboratory will be instructed to attempt to increase the force at a constant rate, but that variations due to the limitations of the test equipment or the characteristics of the vehicle will not invalidate the test. Equivalent changes will be made to S11 concerning the rate of force application for testing the lower bars of child restraint anchorage systems.

We are denying petitioner's request that manufacturers be permitted to specify the force application rate because we believe that the force should be applied at a constant rate for as long a time period as possible. This is to assure that the test adequately measures the strength of the anchorage. Metal structures generally can withstand greater forces under a faster rate of application than under a slower one. This means that an anchorage that fails when the required force is reached after 30 seconds might not fail if the required force is reached in a very short period of time. Adopting the petitioner's request could allow the use of weaker anchorages, resulting in a possible reduction in safety. However, we will permit manufacturers who have chosen the option of complying with the Transport Canada requirements to specify the rate of load application during the interim period. Manufacturers have been designing tether anchorages to meet the Canadian requirement and will need time to reassess and possibly reinforce the anchorage to meet the load requirement of our March 1999 final rule when the load is applied over a 27 ±3 second period. We will provide them the needed leadtime, i.e., until September 1, 2001. On or after September 1, 2001, we will achieve the 15,000 N load by increasing the load at an approximately constant rate over a 27 ±3 second period.

The Alliance also refers to a December 30, 1970 NHTSA interpretation letter to Mr. Shuman of International Harvester Company on the force application rate in Standard No. 210 to support petitioner's view that the force application rate in Standard No. 225 is unrealistically long. Petitioner believes that the letter indicates that we believed there is no significant difference between applying the Standard No. 210 force in 0.1 seconds and holding it for 10 seconds and holding the force for 39.9 seconds. Petitioner asks: "Does the agency now maintain that there is no significant difference between applying peak forces for 1 second and applying peak forces for 30.9 seconds? If so, why does the agency specify unrealistically long force application and hold times?'

The International Harvester letter concerns Standard No. 210's specification that the force applied to seat belt anchorages is applied within 30 seconds, and held at the maximum force level for 10 seconds. The letter enunciates the position that if an anchorage is strong enough to withstand the maximum force level of Standard No. 210 for 10 seconds when the required force is attained in 0.1 seconds, the anchorage will likely be able to withstand the force held at 10 seconds when the force is applied in a constant rate over about 30 seconds. Even if this is correct in the context of Standard No. 210, the same can not be assumed for child restraint tether anchorages. The force applied to these anchorages is held for only 1 second, rather than 10 seconds. Because metal structures can generally withstand greater forces under a faster rate of application than under a slower one, there is a margin of safety incorporated into the load application rate of Standard No. 225 to increase the likelihood that the anchorage will not fail even under the most severe crash conditions.

The Alliance states that S8 specifies that the tether strap attached to the test fixture is permitted too much variation in elongation to objectively test the tether anchorage. The petitioner suggests that a narrow range of elongation be specified, such as between 7 and 9 percent at a force of 11,000 N. We have addressed this concern by amending S8 to provide that a steel cable will be used to attach the SFAD to the tether anchorage. The elongation of a steel cable under load is both minimal and predictable.

The Alliance suggests that a tether hook be used to attach the strap to the tether anchorage, rather than a "bracket." Petitioner states that without an objective bracket specification, manufacturers cannot determine how the device will apply loads along the anchor (e.g., along the entire anchor or concentrated at the center). However, the Alliance states, attempts by vehicle manufacturers to apply test forces specified in the final rule frequently break typical tether hooks. NHTSA has amended S8 to specify use of a tether hook. The hook that we will use will have the same overall dimensions as tether hooks on child restraints, but will be made of high strength steel. Tether hooks are required by S5.9(b) of Standard No. 213 to meet specified configuration and geometry requirements.

With regard to the comment that tether hooks have broken under the test loads specified in the final rule, we note that Transport Canada has conducted tests that have not resulted in such breakage. In recent tensile strength tests performed by Transport Canada, tether hooks were able to sustain much higher loads than the loads expected in the test specified by the final rule. Three hooks from each of four manufacturers were tested to failure by applying a static tensile force at an onset force rate of 135,000 N/s with a target load of 6,500 N and held for a duration of 10 seconds. The average maximum loads observed ranged from 8,870 N to 11,800 N. These loads are substantially higher than the ones specified in the final rule. (These data were presented by Transport Canada at a meeting with manufacturers, importers and interested parties in Ottawa, Ontario, on March 30, 1999. A copy of these data has been placed in the docket for our March 5, 1999 final rule, 98–3390, notice 2.)

The Alliance petitioned for reconsideration of the 125 mm displacement limit specified in S6.3.1(a) and in S6.3.2 for the tether anchorage. As discussed in Section I of this document, the Alliance has stated that 125 mm displacement limit was adopted without providing the public notice of it and an opportunity to

[12] Standard No. 210 does not provide any specific rate of force increase, linear or otherwise. However, as set forth in our Laboratory Test Procedure for Standard No. 210, we have conducted our compliance tests using a linear increase in force over a 25-second period.

comment. We responded to this comment in Section III, *supra*. Further, we believe that the displacement limit is preferable to the alternative that the tether anchorage "withstand" the required forces because a displacement limit is far more objective than the latter in determining whether an anchorage met the performance criteria. The petitioner also states that the requirement is unclear:

> It is not clear whether the agency will measure displacement only in the direction of the tether strap, or if the total resultant displacement calculated by combining displacement in all three dimensions is intended. It is also not clear if the reference point for the displacement is to be taken before or after the application of the 500 N pre-load force. It is also unclear whether the maximum displacement is measured under load or after the load is released.

NHTSA has amended S6.3.1 to specify that we will determine the displacement for the tether anchor by measuring the horizontal excursion of point X on the test device. The reference datum for this measurement is where point X is located after preloading the SFAD with a preload force of 500 N. From that datum, the displacement is the total horizontal excursion that point X experiences during the loading. This is consistent with the displacement criterion for the lower anchorages. Standard No. 225 specifies that point X on SFAD 2 must not be displaced more than 125 mm from where point X was after preloading.

The Alliance petitions to amend S6.2 to provide that the location of a tether anchorage is found using the design H-point for a seat position, rather than the actual H-point of the seat. The latter point is determined using a three-dimensional H-point machine (3-Dimensional seating manikin). The petitioner believes that "[b]ecause of variability in position of the 3-Dimensional Seating Manikin when installed by different individuals and laboratories, the actual H-Point as determined with the Manikin will also vary in location with respect to the 'design H-Point' for that seat position. These variations also occur, in part, because of the poor fit of the Manikin in certain seating positions, and differences in trim materials (e.g., cloth vs. leather). Because of this inherent variability, the NHTSA procedure does not objectively measure the proper position for a tether anchorage."

We disagree with the petitioner's concerns about the 3-dimensional seating manikin and its use in the standard's test procedure to locate the H-point of a vehicle seating position. We have not encountered variability problems in our tests using the manikin. The manikin is presently used in Federal Motor Vehicle Safety Standard No. 208, "Occupant Crash Protection" (49 CFR 571.208), to determine the H-point of a seating position for positioning Hybrid III test dummies (49 CFR part 572, subpart E) in Standard No. 208 crash tests. It is also used in Federal Motor Vehicle Safety Standard No. 214, "Side Impact Protection" (49 CFR 571.214), to determine the H-point for positioning side impact test dummies (49 CFR part 572, subpart M). Manufacturer's representatives are usually present during our compliance tests for these standards and are asked to check the dummy's positioning prior to a test. The 3-dimensional seating manikin produces dummy positioning equivalent to that obtained by manufacturers using the device in their own test laboratories. Further, the manikin produces repeatable results when used repeatedly in the same vehicle. We also believe that using the 3-dimensional machine results in an H-point measurement that is more representative of the real world than the H-point obtained through use of the alternative suggested by the Alliance. This is because the 3-dimensional machine compresses the actual seat and provides a more realistic H-point than that achieved on paper using the 2-dimensional template. Further, it should also be noted that the position of the H-point obtained using the 3-dimensional seating manikin is very close to the H-point obtained using the 2-dimensional template. To the extent needed, manufacturers can compensate for and design around the small differences. Because we believe that the 3-dimensional seating manikin yields data that are highly repeatable and reproducible and more realistic than those obtained by the 2-dimensional template, the request to specify the template is denied. (We are, however, specifying that the template may be used during the two-year interim period as part of the option allowing manufacturers to meet Canadian requirements for the tether anchorages. Canada uses the template to determine the location of tether anchorages.)

The Alliance suggests that the tether anchorage test procedure of S8.1(b) be amended by adding an instruction for adjusting the fore-aft position of the rear attaching bars of the test device used to test a tether anchor at a seating position with a child restraint anchorage system (the test device referred to as SFAD 2). We have added the suggested instruction to S8.1(b). Petitioner also suggests that the shape of the SFAD 2 attachments that contact the lower anchor bars be specified because the shape could affect the outcome of the test. We have modified Figure 17 of the standard to show in Detail B that the rear of the slot in the SFAD 2 connecting arms has a diameter of 6.5 mm. The petitioner also suggests that a stiffness specification for SFAD 2 be added as in the draft ISO standard, to ensure that the test fixture is sufficiently strong to withstand the forces in the test. We have added a stiffness specification, from the draft ISO standard, to Figure 17.

Volkswagen (VW) petitioned to change the test device used to test a tether anchor at a seating position that does not have the lower anchorages of a child restraint anchorage system (the test device referred to as SFAD 1). The vehicle's belts are used to attach SFAD 1 to the vehicle seat at the seat bight. A cable is used to attach the top of SFAD 1 to the tether anchorage. VW states that "[s]ome testing has indicated that the design of the fixture interferes with belt system routing requirements or geometry such that the stiff portion of the buckle sits at the opening of the fixture rather than being inside or outside the opening." The petitioner suggests that the SFAD 1 openings for the belt routing be consistent with the fixture in the Society of Automotive Engineers (SAE) Recommended Practice J1819, "Securing Child Restraint Systems in Motor Vehicle Rear Seats." J1819 specifies a common reference tool, a "Child Restraint System Accommodation Fixture," that approximates a child restraint system. Both vehicle and child restraint manufacturers can use the fixture to assess the degree to which their products are compatible.

NHTSA has addressed VW's comment by amending S8.1(b) of the final rule to specify that if SFAD 1 cannot be attached to the vehicle seat using the belts because of the location of the vehicle belt buckle, the vehicle belt will not be used. Instead, SFAD 1 will be attached by material whose breaking strength is equal to or greater than the breaking strength of the webbing for the seat belt assembly installed as original equipment at that seating position. We also specify that the geometry of the attachment must duplicate the geometry, at the pre-load point, of the attachment of the originally installed seat belt assembly. These provisions are essentially the same as those specified in Standard No. 210, "Seat Belt Assembly Anchorages." We believe these provisions address VW's concern, while providing more flexibility to address the problem VW describes than the approach suggested by VW. Our adopted approach will not affect the outcome of the assessment of the tether anchor's strength.

Toyota suggests amending the provision that states that, for the purpose of testing a tether anchorage at a seating position that has a child restraint anchorage system, place the seat back in its most upright position:

> When the seat back is placed in its most upright position, in some vehicle seats the SFAD 2 cannot attach to the lower anchorages. In the real world, if a CRS [child restraint system] cannot attach to the anchorages, we believe the vehicle owner will adjust the seat back such that the CRS can be attached. Therefore, Toyota requests that the agency amend S7(a) * * * to allow for adjustment of the seat back for cases where the SFAD 2 cannot be attached to the lower anchorages with the seat back in its most upright position.

To address Toyota's concern, we have added a statement to S7(a), which states:

> When SFAD 2 is used in testing and cannot be attached to the lower anchorages with the seat back in this position, adjust the seat back as recommended by the manufacturer in its instructions for attaching child restraints. If no instructions are provided, adjust the seat back to the position that enables SFAD 2 to attach to the lower anchorages that is the closest to the most upright position.

B. Issues relating to the application of the standard. Several petitioners ask us to reconsider the application of the standard to certain vehicle types or seating positions, or ask for clarification of the applicability of particular requirements. The Alliance asks that the rule be amended to specify that the requirements of the standard only apply to forward-facing rear designated seating positions, and not to rearward-or side-facing rear seats. The petitioner states that neither of the latter types of seats are recommended for child restraint installation, so the requirement for the installation of child restraint anchorage systems or tether anchorages should not apply to them. The agency agrees and has amended the provisions of S4 of the final rule to make clear that rear-and side-facing seats are not counted in determining the number of required anchorages.

The Alliance asks us to confirm that a convertible that has no rear designated seating position or which has an on-off switch for the passenger air bag will only have to have lower anchorages in the front passenger seating position, and not a tether anchorage. This is partially correct. Vehicles that have no rear designated seating position, and no on-off switch, are generally required to have a tether anchorage at the front passenger seat (see, e.g., S4.4(c)). Convertibles, however, are excluded on practicability grounds from the requirement to have a tether anchorage (S5(a)). Thus, a convertible with no rear designated seating position, and no on-off switch, is not required to have a tether or a child restraint anchorage system in the front passenger seat. Vehicles that have no rear designated seating position but which have an on-off switch are generally required to have a child restraint anchorage system in the front passenger seating position (S5(c)(1)). Again, however, because convertibles are excluded from the requirement to have a tether anchorage (S5(a)), a convertible with no rear designated seating position and an on-off switch is required to have the lower anchorages of a child restraint anchorage system in the front passenger seating position, but is not required to have a tether anchorage at that position. We have added language to S5(c) to clarify these requirements.

Global Vehicle Services, Corporation asks us to clarify the provisions of the standard as they apply to vehicles that have received temporary exemptions under 49 CFR Part 555 from the requirement in Standard No. 208 that an air bag be provided for the front passenger seating position. This and other requests for reconsideration of S5(d)'s prohibition against placing a child restraint anchorage system in an air bag-equipped front passenger seating position will be addressed in the next document we will be publishing in response to the petitions for reconsideration.

The Coalition of Small Volume Automobile Manufacturers, Inc. (Cosvam), asks us to reconsider the requirement that vehicles without any rear designated seating position (and without an air bag on-off switch) must be equipped with a tether anchorage at each front passenger seating position (see, e.g., S4.4(c)). Cosvam asks that we permit manufacturers to label the vehicle as "unsuitable for child seats" and exclude so labeled vehicles from requirements to have a tether anchorage. Cosvam said it believes that, because manufacturers know their vehicles better than anyone else, and are ultimately held responsible for issues involving vehicle design and performance, they should be permitted to decide whether the use of a child restraint is appropriate in their vehicles.

NHTSA is denying this request. We are concerned that child restraints could be used in vehicles that do not have rear seating positions, but have air bags at front passenger seating positions. Our rule prohibits the installation of a full child restraint anchorage system at the front seating position if the vehicle does not have an on-off switch. The purpose of this prohibition is to reduce the likelihood that a child restraint system would be used in the front seat. However, because there could be parents who would use the vehicle, notwithstanding the lack of a child restraint anchorage system, to transport their children, we decided to require the installation of a tether anchorage. The provision to which Cosvam objects is primarily for the benefit of toddlers in forward-facing child restraints. In the event the vehicle were used to carry these toddlers, a tether anchorage would help keep the child restraint and the restrained child as far as possible from a deploying air bag. (NHTSA has received a number of telephone calls from owners of vehicles with no rear seat asking for help in installing child restraints in front seats.) A tether anchorage would be very helpful in reducing head excursion toward the dashboard in the event of a crash. Further, although we encourage vehicle manufacturers to fully inform potential buyers of possible incompatibility problems between their vehicles and child restraints, we are concerned that Cosvam's suggestion that the vehicles in question should be permitted to be labeled as not suitable for child restraints may not dissuade some parents from using the vehicle to carry children. Parents do in fact use sports cars to transport children in child restraint systems. NHTSA has received a number of phone calls from owners of sports cars wanting to know which child restraint system fits best in their vehicles. We believe that a tether anchorage should be provided in these vehicles to improve the securement of the child in the event the toddler is transported in the vehicle. Accordingly, this request is denied.

Several petitioners ask us to reconsider the requirement in S9.3, *Adequate fit of the lower anchorages*, that each vehicle and each child restraint anchorage system in that vehicle must be designed such that the child restraint fixture (CRF) specified in the standard can be placed inside the vehicle and attached to the lower anchorages of each child restraint anchorage system. Cosvam argues that this requirement amounts to a "prohibited design standard," and would require the manufacturers of sports cars and similar vehicles to redesign or eliminate rear seats of those vehicles. Cosvam asks us to add a provision to the rule stating that vehicles having rear seats that cannot accommodate the CRF, but lacking an

on-off switch for the air bag, need have neither a tether nor child restraint anchorage system in the rear seat of the vehicle, nor a tether anchorage in the front seating position. In other words, they are excluded from the standard. The petitioner states: "Manufacturers should be permitted to exclude 'small rear seat vehicles' because they are, from a child restraint point of view, the same as vehicles without rear seats."

American Honda states in its petition that it can be very difficult or impossible to get the CRF into the rear seating area of some vehicles, such as small two-door cars. The commenter states that the draft ISO standard (which developed the CRF and the procedures for its use) specifies that "To facilitate installation of the CRF in a vehicle seat, the CRF may be constructed of smaller parts and assembled in the vehicle seat. Alternatively, vehicle components maybe removed to allow access." Honda requests that similar language be added to Standard No. 225. Honda also states "From a practical standpoint, we believe that child restraints will be offered in various sizes, including child restraints that are somewhat smaller than the CRF for use in small vehicles. * * * Thus, if the CRF, in its full shape and size, can be fitted to the lower anchorages, we believe it is not important whether the CRF had to be assembled in place or some vehicle components (e.g., front seat) had to be removed to facilitate getting the CRF into the seat position where the lower anchorage fit was being checked."

Toyota, in its petition for reconsideration, states that some of the rear seating positions in some carlines can not accommodate the CRF, but are able to accommodate existing child restraints and will be able to accommodate new child restraints that will use the child restraint anchorage system. Toyota suggests that we exclude vehicles that cannot accommodate the CRF, due to a lack of rear seating space, from the fit requirements of S9.3, as long as the lower anchorages that are required to be installed are designed to accommodate the lower anchorages of the CRF.

We are amending S9.3 along the line suggested by Honda and not adopting the suggestions of Cosvam and Toyota. We agree that S9.3 as currently written could result in unnecessary design changes for some vehicles. The CRF is larger than many child restraint systems. Even if the CRF does not fit in a vehicle's rear seat, there will likely be child restraint models that will be small enough to fit. Accordingly, we are amending S9.3 to specify that, to facilitate installation of the CRF in a vehicle seat, the side and top frames of the CRF may be removed in order to place it in the vehicle. To illustrate the CRF with the side and top frames removed, we are adding a Figure 1A to the standard. We believe that this approach responds to Cosvam's and Toyota's concerns about the ability of their vehicles to fit the CRF in the rear seating system and makes it unnecessary to exclude vehicles as these petitioners have requested. We do not believe sufficient information has been provided to justify excluding vehicles with one or two designated rear seating positions from the requirement to provide a child restraint anchorage system at those positions. Some parents may use the vehicle to transport children regardless of a label that tells them that the vehicle is unsuitable for child restraints. (See response, above, to Cosvam's request to label vehicles.) A child restraint anchorage system in rear seating positions will provide benefits to the children using them.

The Alliance asks us to confirm its understanding that the new standard does not apply to tether anchorages and child restraint anchorage systems installed in vehicles not listed in the *Application* section of the standard (S2). That understanding is correct. We had proposed in the NPRM the issuance of a separate standard establishing requirements for the strength and location of tether anchorages, and the application of this standard to any tether anchorage installed in new passenger cars and multipurpose passenger vehicles, trucks and buses (see proposed Standard No. 210b, 62 FR 7885). However, the final rule applies to vehicles listed in the application section of Standard No. 225, and not to anchorages installed in new vehicles. The Alliance is correct that S4.1 of the standard (which requires that each tether anchorage and each child restraint anchorage system installed, either voluntarily or pursuant to Standard No. 225, in any new vehicle manufactured on or after September 1, 1999, shall comply with the configuration, location and strength requirements of the standard) does not limit the voluntary installation of child restraint anchorage systems or tether anchorages in vehicles not listed in S2 of the standard. Although anchorage systems installed in these vehicles will not be subject to the standard's requirements, they will be subject to our defect authority. Manufacturers would therefore have to ensure that the systems are free of safety-related defects. (The agency encourages manufacturers to ensure that anchorage systems installed in vehicles not subject to Standard No. 225 nonetheless voluntarily meet the performance requirements of the standard to ensure that the systems offer adequate crash protection. A parent is likely to assume that such systems meet minimum performance requirements.)

The Alliance, and Ford, in a separate petition, ask NHTSA to clarify S4.1 of the standard to permit what petitioners call "ISO-compatible anchorage systems." The Alliance explains that:

> Installing two child restraint anchorage systems in the two outboard positions of a typical three-passenger rear seat creates a third non-complying "child restraint anchorage system" at the center seat position. This anchorage system consists of the tether anchorage and the inboard lower anchors of the two child restraint anchorage systems at the outboard seating positions. This anchorage system sometimes referred to as ISO-compatible, can be used to install child restraints with webbing-based attachment systems, but it does not meet all the technical requirements of the final rule. * * *
>
> S4.1 appears to prohibit installing child restraint anchorage systems at both outboard-seating positions because doing so would create a non-complying voluntary anchorage system at the center seat position. The essential difference between complying anchorage systems and ISO-compatible anchorage systems is that the lateral spacing of anchors is not 280 mm in an ISO-compatible anchorage. Because of non-standard lateral spacing, ISO-compatible anchorage systems cannot be used to install child restraints using rigid attachments. But these ISO-compatible anchorage systems can typically be used to install child restraints equipped with webbing-based round-bar attachments. * * * Because of non-standard spacing, the SFAD 2 cannot be used to test the strength and stiffness of these lower anchors and tether anchor as a system, but the lower anchors would be subject to testing of the anchorage systems for the outboard position. Alliance members would test the center tether anchorage using the SFAD 1 or the 5.3 kN single-strap test.
>
> Some Alliance members had planned to treat these center anchor systems as voluntary, non-standard anchorage systems and to advise customers that these center positions could be used to secure child restraints equipped with webbing-mounted attachments. No Alliance members plan to test these ISO-compatible anchorage systems as a separate system, because all parts of such a system are subject to testing as a tether anchorage or as part of the outboard child restraint anchorage system. * * *
>
> The Alliance petitions the agency to clarify S4.1 to allow voluntary "ISO-compatible" systems. Such systems should not be subject to the position and spacing requirements of FMVSS 225, provided the manufacturer provides instructions for the proper installation of child restraints in these positions in the vehicle owner's manual. * * *

Standard No. 225 does not prohibit the installation of these so-called "ISO-compatible" anchorage systems. An ISO-compatible system is a system consisting of lower anchorage bars from adjacent, properly-designed, child restraint anchorage systems. We do not consider an ISO-compatible anchorage system to be a "child restraint anchorage system" under Standard No. 225, because it does not have lower anchorages of its own. The strength of the tether anchorage of the ISO-compatible system will be tested using the SFAD 1 (attached by the vehicle's belt system at the seating position where the ISO-compatible system is located), or the single-strap (until 2004, see S6.3.2).

The National Truck Equipment Association (NTEA) asks us to exclude shuttle-type buses from the standard. Petitioner states that these vehicles are most often used as hotel or rental car shuttle vehicles and as paratransit vehicles. Petitioner believes that these vehicles should be excluded because almost all of the seats in them are side-facing, and "[w]e don't know that it is appropriate for child restraint seats to be placed in a side-facing seat." NTEA also states that the only forward-facing passenger seats in these vehicles is often the rear bench, which is placed against the back wall of the vehicle. Petitioner believes that there is no practicable method of anchoring the tether strap.

We agree that it is unlikely that child restraints will be used in shuttle type buses (with side-facing seats along the side perimeter walls of the passenger compartment and whose only forward facing seating positions in the passenger compartment are those along the rear wall of the bus). These buses also have limited use geographically, moving people relatively short distances. A tether anchorage may also be more costly to install in the rear row of these buses, given the proximity of the rear bench to the rear wall of the vehicle. In view of these factors, the combination of higher costs and much lower usage probably makes application of the standard not cost beneficial. We are thus excluding "shuttle buses" from the standard. A definition of shuttle bus is added to the standard to read as follows: *Shuttle bus* means a bus with only one row of forward-facing seating positions rearward of the driver's seat.

C. Written instructions. The Alliance and Porsche Cars North America petitioned to delete S12 of the standard, which requires vehicle manufacturers to provide written instructions for using the tether anchorage and the child restraint anchorage system in the vehicle. Included among the required instructions are those that provide "a step-by-step procedure, including diagrams, for properly attaching a child restraint system to the tether anchorages and the child restraint anchorage system." The Alliance states that S12 requires

> too much detail for a vehicle owner's manual because of the great variety of possible child restraint attachments on the market, even if the vehicle manufacturer could know in advance, before the publication of its owner's manual, the details regarding each child restraint attachment likely to be offered during the vehicle's anticipated period of useful service. Obviously, no manufacturer will have such knowledge.

General instructions on using a child restraint anchorage system are required by the introductory paragraph of S12. Instructions on using the child restraint anchorage system will help increase the likelihood that a child restraint anchorage system and a tether anchorage would be properly used. However, the agency recognizes that it may be difficult for vehicle manufacturers to anticipate how child restraint manufacturers will design the components that attach to the lower anchorage bars of a child restraint anchorage system. With these considerations in mind, we have amended S12(c) to delete the requirement for detailed instructions on attaching a child restraint to a child restraint anchorage system. However, detailed instructions on attaching a tether strap to the tether anchorage will still be required. This requirement is being retained because the child restraint standard (Standard No. 213) specifies the configuration and geometry of the tether hook. Vehicle manufacturers, therefore, can develop their written instructions with the tether hook design in mind. We have also declined to delete S12 entirely, because S12(a) and (b) will help parents identify which seating positions have the child restraint anchorage systems, how to access the anchorages if they are covered, and how to interpret the marks required by S9.5(a) of the standard. This information will help increase the likelihood that the anchorages will be properly used.

b. Requirements for Child Restraints Relating to September 1, 1999 Compliance Date

1. Audible or Visual Indication of Attachment

Kolcraft Enterprises petitioned for reconsideration asking NHTSA to clarify or reconsider S5.9(d) of the final rule. That section requires each child restraint system, other than a system with hooks for attaching to the lower anchorages of the child restraint anchorage system, to provide either an audible indication when each attachment to the lower anchorages becomes fully latched or attached, or a visual indication that all attachments to the lower anchorages are fully latched or attached. Visual indications shall be detectable under normal daylight lighting conditions.

Kolcraft states that:

> While this provision makes sense after September 1, 2002 when each new child restraint must be equipped with lower anchorage attachment components, compliance with the provision is impracticable in advance of that date (except for child restraints that are voluntarily equipped with lower anchorage attachment components in advance of the regulatory deadline). Yet, it appears that Section 5.9(d) takes effect for all child restraints manufactured on or after September 1, 1999, because the provision does not explicitly specify a later effective date.

NHTSA did not intend to imply that child restraints that do not have the means for attaching to the lower bars of a vehicle's child restraint anchorage system must provide the audible or visual indicators described in S5.9(d). Such a requirement does not make sense for child restraints that do not have the attachments. For a child restraint that has such attachments, the audible or visual indicators would be needed to better ensure that parents properly latch the attachments. Accordingly, we have revised S5.9(d) to make clear that it applies only to child restraints with components that enable the restraints to be securely fastened to the lower anchorages of a child restraint anchorage system (other than child restraints with hooks for attaching to the lower anchorages).

2. Attachments Must be Permanent

Indiana Mills & Manufacturing (IMMI) has petitioned us to reconsider the requirement in S5.9(a) of Standard No. 213 that each child restraint system must have the components that attach to the lower bars of a child restraint anchorage system permanently attached to the child restraint. We are denying this petition.

IMMI states that it believes that almost all child restraint manufacturers will use a snap hook (on a strap) to fasten the child restraint system to the lower bars. IMMI believes that "a snap hook and adjuster is virtually impossible to release when excessively tightened." To overcome this perceived problem, petitioner wishes to put a seat belt type push-button buckle on the webbing strap that connects to the snap

hook. A latch plate would be permanently welded on to the child restraint to couple with and unbuckle from the buckle on the snap hook strap.

This design would not meet S5.9(a) of Standard No. 213 because the snap hook is not permanently attached to the child restraint. While IMMI believes that the design would make it easier to unfasten a child restraint from the lower bars, we are concerned about the likelihood that some parents will lose the non-permanent piece, which will render them unable to use the child restraint anchorage system. In the NPRM for the March 5, 1999 final rule, we raised the issue of whether a final rule should encompass a scheme whereby a non-permanent piece (similar to IMMI's webbing piece with the snap hook on one end and buckle on the other) could be provided to consumers by vehicle manufacturers to enable parents to adapt a child restraint anchorage system for use with child restraints not originally made for such a system. Commenters overwhelmingly opposed an adapter, believing that the adapter would be lost or misused by consumers. (This issue is discussed in the final rule at 64 FR 10798–10799.) Because of those comments, we decided to mandate a single child restraint anchorage system, and to require in S5.9(a) of Standard No. 213 that the components that attach to the lower bars must be permanently attached to the child restraint. With IMMI's system, some parents might forget or lose the snap hook piece, and would not be able to attach the child restraint to the anchorage system. We continue to believe that the "permanently attached" requirement serves a safety need by increasing the likelihood that the components will be present when the child restraint needs to be installed in a child restraint anchorage system.

With regard to IMMI's belief that excessively tightened snap hooks will be virtually impossible to release, the March 1999 final rule added a requirement to Standard No. 213 that the belt webbing has to be adjustable so that the child restraint can be tightly attached to the vehicle (S5.9(d)). We believe that most, if not all adjusters will also be capable of releasing the tension of the belt so that the snap hook can be easily unfastened. If we were to find that parents are having difficult releasing snap hooks, we will consider rulemaking possibly to require a release mechanism that will facilitate the easy release of highly tightened snap hooks.

Ford states in its petition that although it supports the intent of the requirement in S5.9(a) that components must be "permanently attached," Ford believes that the meaning of what constitutes permanently attached needs to be clarified. Ford states on page 8:

> Are existing child restraint belt harnesses "permanently attached," even though they can be removed for repositioning? For example, is a buckle and crotch strap assembly "permanently attached" if it can be removed for relocation to an alternate position that is further forward? Are belts on a hybrid harness booster that are designed to be removed when the restraint is converted into a belt-positioning booster "permanently attached?" Can lower anchor attachments be removable so they can be relocated to different positions depending on whether the child restraint is being used rear-or forward-facing? Because attachment to lower anchors is not appropriate for belt-positioning boosters, it would be appropriate to allow lower anchor attachments to be removed from harness boosters when they are converted into belt-positioning boosters.

We have granted this part of the petition to clarify the meaning of permanently attached. For maximum design flexibility in designing the components on child restraints that attach to the lower bars, child restraint manufacturers might want consumers to move or remove the components that attach to the lower bars. Opposed to this is the interest in ensuring that the components are present on child restraints when needed. To balance these concerns, we have amended S5.9(a) to add a sentence that "The components must be attached such that they can only be removed by use of a tool, such as a screwdriver." We believe that this provision will permit child restraint manufacturers some design flexibility, yet will limit how easily the components can be removed. Limiting easy removal of the components will increase the likelihood that components are in place when needed.

c. Reasons for the Effective Date of This Rule

Section 30111(d) of our motor vehicle safety statute (Title 49 U.S.C. Chapter 301) requires that a safety standard may not become effective before the 180th day after the standard is prescribed or later than one year after it is prescribed, unless we find, for good cause shown, that a different effective date is in the public interest and publish the reasons for the finding. The effective date for this final rule is September 1, 1999, which is the same effective date as for the March 1999 final rule which today's rule amends. Today's rule does not impose new requirements on manufacturers but permits them to begin meeting, at the manufacturer's option, alternative strength requirements for an interim period. This rule also clarifies test procedures specified in the March 1999 final rule. Because today's rule provides an alternative to manufacturers which they may begin meeting in lieu of the requirements which come into effect September 1, 1999, and clarifies test requirements that come into effect September 1, it is in the public interest for the effective dates for today's rule to be the same as that of the March 1999 rule: September 1, 1999.

IV. Corrections to Final Rule

This document makes the following corrections to the March 1999 final rule which have been brought to our attention by petitioners and by other parties:

- Standard No. 213 is amended by correcting the table to S5.1.3.1(a) to show that backless booster seats are excluded from the new 720 mm head excursion limit. These seats were excluded because, as discussed in the preamble, the manufacturers of backless booster seats may have practicability problems in meeting the requirement. In addition, S5.9(a) of the standard is corrected to specify that for rear-facing child restraints with detachable bases, only the base need have the permanently attached components that enable the restraint to be securely fastened to the lower bars of a child restraint anchorages system (as opposed to requiring the components on both the base and the restraint system itself). The agency intended to specify this limitation in Standard No. 213 (see 64 FR at 10806–10807), but did not do so in the regulatory text of the final rule.
- Figures 1B and 1B' of Standard No. 213 are corrected by revising some of the dimensions for the test assembly.
- Paragraph S4.1 of Standard No. 225 is corrected to specify that voluntarily-installed lower bars must meet marking requirements along with configuration, location and strength requirements of the standard. We stated in the preamble to the final rule that we were specifying marking requirements: "The agency has drafted this final rule to apply the standard's configuration, location, strength and marking requirements to any additional voluntarily-installed rigid bar anchorage system installed on a new school bus, or on any other vehicle." (64 FR at 10803, column 2.) However, we inadvertently did not refer to marking requirements in S4.1.
- S9.4.1 of Standard No. 225 is corrected by adding a tolerance for defining the vertical longitudinal plane for the forward direction force. The tolerance is from the draft ISO standard. In addition, we added S9.4.1.1 to specify the vertical angles for the forward and lateral direction forces. The specified angles are also from the draft ISO standard.
- S11(a) and (b) of Standard No. 225 are corrected by adding a 135 N rearward force to remove slack or tension to the device prior to its loading. The specified force is from the draft ISO standard.
- The following figures in Standard No. 225 are corrected: Figure 1 (added yaw/pitch/roll); Figure 2 (added mass of CRF and corrected dimensions on top view); Figures 3 to 11 (darkened shading); Figure 15 and 16 (corrected dimension that Transport Canada also has on top view); Figure 17 (added 6.5 mm diameter on detail B, deleted point Y on detail A, corrected 270 dimension on side view and added stiffness details to side and back views and to note 5); Figure 18 (made force application attachment as in Figure 17); and Figure 19 (degree sign).

V. Rulemaking Analyses and Notices

a. Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." We have considered the impacts of this rulemaking action and have determined that this action is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. We have further determined that the effects of this rulemaking are sufficiently minimal that preparation of a full preliminary regulatory evaluation is not warranted. We believe that manufacturers will be minimally affected by this rulemaking because it does not change manufacturers' responsibilities to begin installing tether anchorages and the lower bars of child restraint anchorage systems on the compliance dates of the March 5, 1999 final rule. The rule instead permits manufacturers to begin meeting, at the manufacturer's option, alterative strength requirements for an interim period. We believe there will be no additional testing costs associated with this final rule. This rule clarifies testing requirements but does not impose new test burdens. The method of testing tether anchorages and the lower bars of child restraint anchorage systems will be basically the same as they are under the March 1999 final rule. Further, since the amendment is permissive in nature, there are no costs associated with it.

b. Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. This rule affects motor vehicle manufacturers, almost all of which are not small business. Even if there are motor vehicle manufacturers that qualify as small entities, this rule will not have a significant economic impact on them because these amendments are generally permissive in nature, and have no costs associated with it. Accordingly, the agency has not prepared a regulatory flexibility analysis.

c. Executive Order 12612 (Federalism)

This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

d. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. This rule does not impose any unfunded mandates as defined by that Act.

e. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA)(Public Law 104–113), "all Federal agencies and departments shall use technical standards that are developed or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments." This final rule permits manufacturers to meet the specifications in the draft ISO standard for child restraint anchorage systems during an interim period, as an alternative to meeting the requirements of the March 1999 final rule. The International Organization for Standardization (ISO) is a worldwide voluntary federation of ISO member bodies. By permitting the alternative in the short run, this rule is consistent with the NTTAA's goals of encouraging long-term growth for U.S. enterprises and promoting efficiency and economic competition through harmonization of standards.

f. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

g. Executive Order 12778 (Civil Justice Reform)

This rule does not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

h. Paperwork Reduction Act.

This rule does not contain any collection of information requirements requiring review under the Paperwork Reduction Act of 1995 (Public Law 104–13). We noted in the March 1999 final rule that the phase-in production reporting requirements described in that rule are considered to be information collection requirements as defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. NHTSA will be submitting a clearance request to OMB for review and clearance in the near future. The agency notes that the clearance for the information collection requirements of Standard 213, "Child Restraint Systems," will expire September 1, 2000 (OMB Clearance No. 2127–0511). NHTSA anticipates it will submit a request to OMB to renew the clearance of that standard and, at or near the same time, will be submitting an information collection request to OMB for review and clearance of the information collections in the March 1999 final rule.

Pursuant to the Paperwork Reduction Act and OMB's regulations at 5 CFR section 1320.5(b)(2), NHTSA informs the potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. The agency's current

OMB control numbers are displayed in NHTSA's regulations at 49 CFR Part 509, *OMB Control Numbers for Information Collection Requirements.*

List of Subjects in 49 CFR Part 571

Imports, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

In consideration of the foregoing, NHTSA amends 49 CFR Chapter V as set forth below.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for Part 571 is revised to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30166 and 30177; delegation of authority at 49 CFR 1.50.

2. In § 571.213—

a. S5.1.3.1 as amended at 64 FR 10815, effective September 1, 1999, is amended by revising "Table to S5.1.3.1(A)—Add-On Forward-Facing Child Restraints";

b. S5.9(a) and (d) are revised; and

c. Figure 1B and Figure 1B', as amended at 64 FR 10820, effective September 1, 1999, are revised.

The revised text reads as follows:

§ 571.213 Standard No. 213; Child restraint systems.

* * * * *

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Table to S5.1.3.1(a) - Add-On Forward-Facing Child Restraints

When this type of child restraint	is tested in accordance with--	these excursion limits apply	*Explanatory note*: In the test specified in 2nd column, the child restraint is attached to the test seat assembly in the manner described below, subject to certain conditions
Harnesses, backless booster seats and restraints designed for use by physically handicapped children	S6.1.2(a)(1)(i)(A)	Head 813 mm; Knee 915 mm	Attached with lap belt; in addition, if a tether is provided, it is attached
Belt-positioning seats	S6.1.2(a)(1)(ii)	Head 813 mm; Knee 915 mm	Attached with lap and shoulder belt; no tether is attached
All other child restraints, manufactured before September 1, 1999	S6.1.2(a)(1)(i)(B)	Head 813 mm; Knee 915 mm	Attached with lap belt; no tether is attached
All other child restraints, manufactured on or after September 1, 1999	S6.1.2(a)(1)(i)(B)	Head 813 mm; Knee 915 mm	Attached with lap belt; no tether is attached
	S6.1.2(a)(1)(i)(D) (beginning September 1, 2002)		Attached to lower anchorages of child restraint anchorage system; no tether is attached
	S6.1.2(a)(1)(i)(A)	Head 720 mm; Knee 915 mm	Attached with lap belt; in addition, if a tether is provided, it is attached
	S6.1.2(a)(1)(i)(C) (beginning September 1, 2002)		Attached to lower anchorages of child restraint anchorage system; in addition, if a tether is provided, it is attached

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* * * * *

S5.9 *Attachment to child restraint anchorage system.*

(a) Each add-on child restraint system manufactured on or after September 1, 2002, other than a car bed, harness and belt-positioning seat, shall have components permanently attached to the system that enable the restraint to be securely fastened to the lower anchorages of the child restraint anchorage system specified in Standard No. 225 (§ 571.225) and depicted in Drawing Package 100–1000 with Addendum A: Seat Base Weldment (consisting of drawings and a bill of materials) dated October 23, 1998, (incorporated by reference; see § 571.5). The components must be attached such that they can only be removed by use of a tool, such as a screwdriver. In the case of rear-facing child restraints with detachable bases, only the base is required to have the components.

* * * * *

(d) Beginning September 1, 1999, each child restraint system with components that enable the restraint to be securely fastened to the lower anchorages of a child restraint anchorage system, other than a system with hooks for attaching to the lower anchorages, shall provide either an indication when each attachment to the lower anchorages becomes fully latched or attached, or a visual indication that all attachments to the lower anchorages are fully latched or attached. Visual indications shall be detectable under normal daylight lighting conditions.

* * * * *

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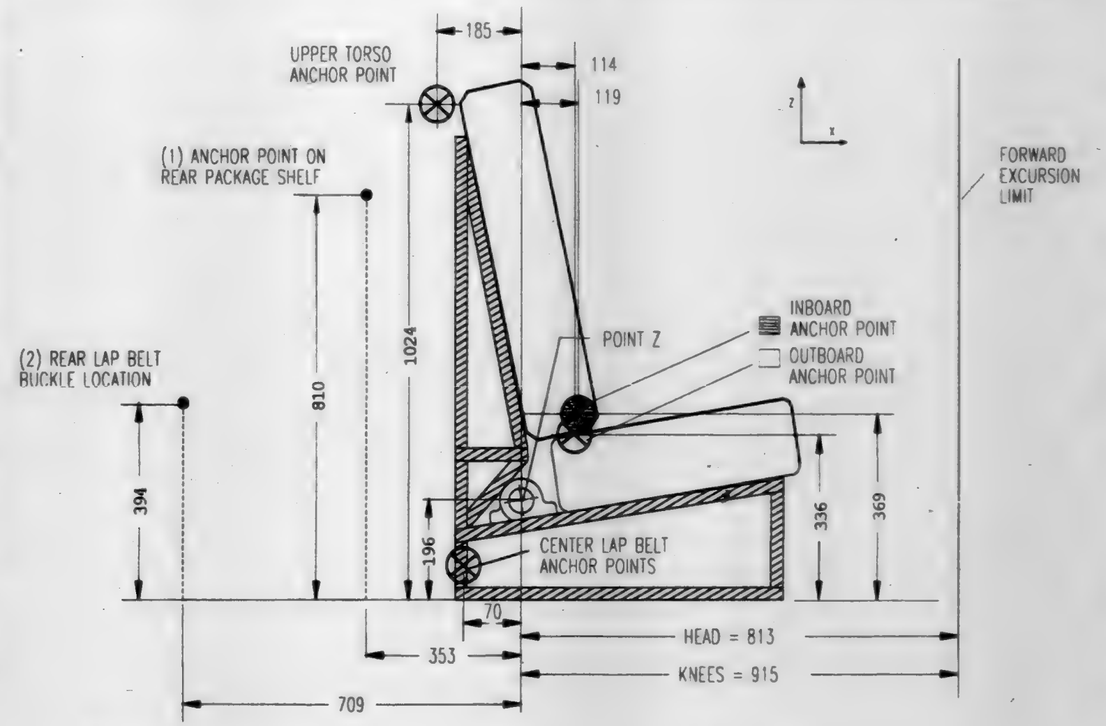

NOTES:
(1) Anchor Point on Rear Package Shelf Located 544 mm Right or Left of the Center SORL as shown in Fig. 1A
(2) Rear Lap Belt Buckle Located 178 mm Right or Left of the Center SORL as shown in Fig. 1A

METRIC (mm)
NOT TO SCALE

LOCATION OF BELT ANCHORAGE POINTS AND FORWARD EXCURSION LIMITS ON THE STANDARD SEAT ASSEMBLY
Figure 1B

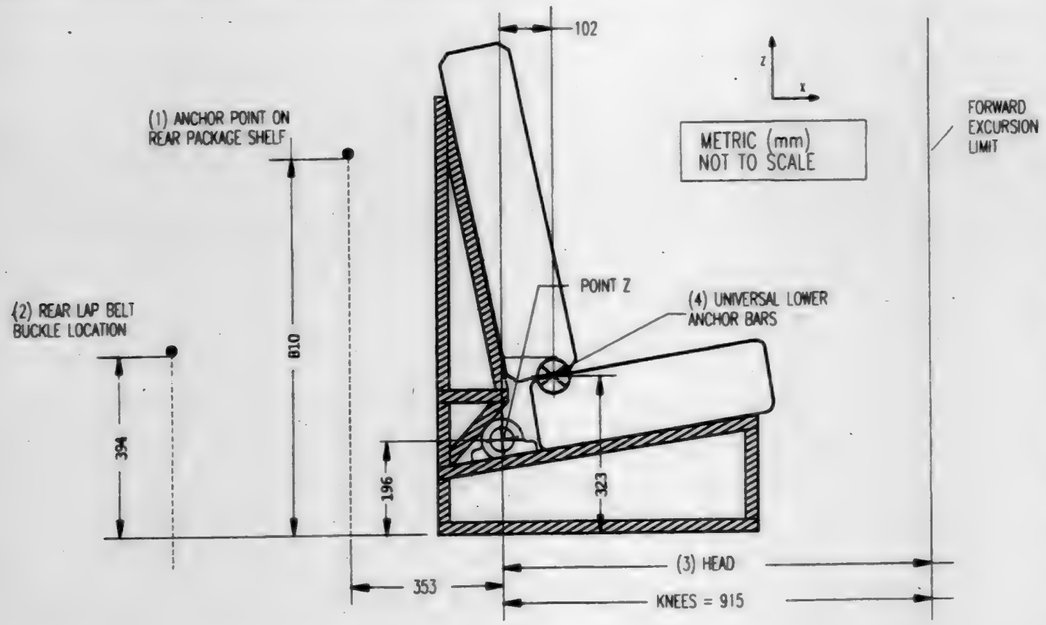

NOTES:
(1) Anchor Point on Rear Package Shelf Located 544 mm Right or Left of the Center SORL as shown in Fig. 1A'
(2) Rear Lap Belt Buckle Located 178 mm Right or Left of the Center SORL as shown in Fig. 1A'
(3) Head Excursion Limit is: (i) 720 mm with Tether Attached and (ii) 813 mm with Tether Unattached
(4) Universal Lower Anchor Bars Located 102 mm Forward of Pt Z and 279 mm Upward from Floor

LOCATION OF UNIVERSAL CHILD RESTRAINT ANCHORAGE SYSTEM AND FORWARD EXCURSION LIMITS FOR THE STANDARD SEAT ASSEMBLY
Figure 1B'

BILLING CODE 4910-59-C

3. Section 571.225 is amended by:

a. Revising S2, and by amending S3 by adding, in alphabetical order, a definition for "Seat bight" and for "Shuttle bus';

b. Revising S4.1, S4.2(a), S4.2(b), S4.2(c), S4.3(a)(1), S4.3(a)(2), S4.3(b)(1), S4.3(b)(2), S4.3(b)(3), S4.4(a), S4.4(a)(1), S4.4(a)(2), S4.4(b), and S4.4(c);

c. Adding S4.5;

d. Revising S5(c)(1)(ii) and (c)(2) in its entirety;

e. By designating the text of S6.2 as S6.2.1 and revising the introductory text, and adding new text to S6.2 and new S6.2.2, S6.2.2.1 and S6.2.2.2;

f. Adding text to S6.3, revising S6.3.1 in its entirety, and adding S6.3.4 and S6.3.4.1 through S6.3.4.4;

g. Revising S7(a), S8, S8.1, and the introductory paragraph of S8.2;

h. Amending S9 by adding text following the heading of S9;

i. Revising S9.1.1(a) and S9.1.1(f); and adding S9.3(c);

j. Revising the introductory paragraph of S9.4.1 and revising S9.4.1(a), and adding S9.4.1.1;

k. Revising S11(a), S11(b), S12(b) and S12(c);

l. Adding S15, S15.1, S15.1.1, S15.1.2, S15.1.2.1, S15.1.2.2, S15.2, S15.2.1, S15.2.2, S15.3, S15.3.1, S15.3.2, S15.3.3 and S15.3.4;

m. Revising Figures 1 through 11, and Figures 15 through 19; and

n. Adding a Figure 1A between Figures 1 and 2.

The revised and added text and figures read as follows:

§ 571.225 Standard No. 225; Child restraint anchorage systems.

* * * * *

S2. *Application.* This standard applies to passenger cars; to trucks and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 3,855 kilograms (8,500 pounds) or less, except walk-in van-type vehicles and vehicles manufactured to be sold exclusively to the U.S. Postal Service; and to buses (including school buses) with a GVWR of 4,536 kg (10,000 lb) or less, except shuttle buses.

* * * * *

S3. Definitions.

* * * * *

Seat bight means the area close to and including the intersection of the surfaces of the vehicle seat cushion and the seat back.

Shuttle bus means a bus with only one row of forward-facing seating positions rearward of the driver's seat.

* * * * *

S4.1 Each tether anchorage and each child restraint anchorage system installed, either voluntarily or pursuant to this standard, in any new vehicle manufactured on or after September 1, 1999, shall comply with the configuration, location, marking and strength requirements of this standard. The vehicle shall be delivered with written information, in English, on how to appropriately use those anchorages and systems.

S4.2 * * *

(a) Each vehicle with three or more forward-facing rear designated seating positions shall be equipped with a tether anchorage conforming to the requirements of S6 at no fewer than three forward-facing rear designated seating positions. The tether anchorage of a child restraint anchorage system may count towards the three required tether anchorages. In each vehicle with a forward-facing rear designated seating position other than an outboard designated seating position, at least one tether anchorage (with or without the lower anchorages of a child restraint anchorage system) shall be at such a designated seating position. In a vehicle with three or more rows of seating positions, at least one of the tether anchorages (with or without the lower anchorages of a child restraint anchorage system) shall be installed at a forward-facing seating position in the second row if such a forward-facing seating position is available in that row.

(b) Each vehicle with not more than two forward-facing rear designated seating positions shall be equipped with a tether anchorage conforming to the requirements of S6 at each forward-facing rear designated seating position. The tether anchorage of a child restraint anchorage system may count toward the required tether anchorages.

(c) Each vehicle without any forward-facing rear designated seating position shall be equipped with a tether anchorage conforming to the requirements of S6 at each front forward-facing passenger seating position.

S4.3 * * *

(a) * * *

(1) Each vehicle with three or more forward-facing rear designated seating positions shall be equipped with a child restraint anchorage system conforming to the requirements of S9 at not fewer than two forward-facing rear designated seating positions. In a vehicle with three or more rows of seating positions, at least one of the child restraint anchorage systems shall be at a forward-facing seating position in the second row if such a forward-facing seating position is available in that row.

(2) Each vehicle with not more than two forward-facing rear designated seating positions shall be equipped with a child restraint anchorage system conforming to the requirements of S9 at each forward-facing rear designated seating position.

(b) * * *

(1) Each vehicle with three or more forward-facing rear designated seating positions shall be equipped with a tether anchorage conforming to the requirements of S6 at no fewer than three forward-facing rear designated seating positions. The tether anchorage of a child restraint anchorage system may count towards the three required tether anchorages. In each vehicle with a forward-facing rear designated seating position other than an outboard designated seating position, at least one tether anchorage (with or without the lower anchorages of a child restraint anchorage system) shall be at such a designated seating position. In a vehicle with three or more rows of seating positions, at least one of the tether anchorages (with or without the lower anchorages of a child restraint anchorage system) shall be installed at a forward-facing seating position in the second row if such a forward-facing seating position is available in that row.

(2) Each vehicle with not more than two forward-facing rear designated seating positions shall be equipped with a tether anchorage conforming to the requirements of S6 at each forward-facing rear designated seating position. The tether anchorage of a child restraint anchorage system may count toward the required tether anchorages.

(3) Each vehicle without any forward-facing rear designated seating position shall be equipped with a tether anchorage conforming to the requirements of S6 at each front passenger seating position.

S4.4 * * *

(a) Each vehicle with three or more forward-facing rear designated seating positions shall be equipped as specified in S4.4(a)(1) and (2).

(1) Each vehicle shall be equipped with a child restraint anchorage system conforming to the requirements of S9 at not fewer than two forward-facing rear designated seating positions. At least one of the child restraint anchorage systems shall be installed at a forward-facing seating position in the second row in each vehicle that has three or more rows, if such a forward-facing seating position is available in that row.

(2) Each vehicle shall be equipped with a tether anchorage conforming to the requirements of S6 at a third forward-facing rear designated seating position. The tether anchorage of a child

restraint anchorage system may count towards the third required tether anchorage. In each vehicle with a forward-facing rear designated seating position other than an outboard designated seating position, at least one tether anchorage (with or without the lower anchorages of a child restraint anchorage system) shall be at such a designated seating position.

(b) Each vehicle with not more than two forward-facing rear designated seating positions shall be equipped with a child restraint anchorage system conforming to the requirements of S9 at each forward-facing rear designated seating position.

(c) Each vehicle without any forward-facing rear designated seating position shall be equipped with a tether anchorage conforming to the requirements of S6 at each front forward-facing passenger seating position.

S4.5 As an alternative to complying with the requirements of S4.2 through S4.4 that specify the number of tether anchorages that are required in a vehicle and the designated seating positions for which tether anchorages must be provided, a vehicle manufactured from September 1, 1999 to August 31, 2001 may, at the manufacturer's option (with said option irrevocably selected prior to, or at the time of, certification of the vehicle), meet the requirements of this S4.5. This alternative ceases to be available on and after September 1, 2001. A tether anchorage conforming to the requirements of S6 shall be installed—

(a) for each designated seating position, other than that of the driver, in a vehicle that has only one row of designated seating positions;

(b) for each forward-facing designated seating position in the second row of seating positions in a passenger car or truck;

(c) for each of any two forward-facing designated seating positions in the second row of seating positions in a multipurpose passenger vehicle that has five or fewer designated seating positions; and,

(d) for each of any three forward-facing designated seating positions that are located to the rear of the first row of designated seating positions in a multipurpose passenger vehicle that has six or more designated seating positions.

* * * * *

S5. *General exceptions.*

* * * * *

(c)(1) * * *

(ii) Has an air bag on-off switch meeting the requirements of S4.5.4 of Standard No. 208 (§ 571.208), shall have a child restraint anchorage system for a designated passenger seating position in the front seat, instead of only a tether anchorage. In the case of convertibles, the front designated passenger seating position need have only the two lower anchorages meeting the requirements of S9 of this standard.

(2) Each vehicle that—

(i) Has a rear designated seating position and meets the conditions in S4.5.4.1(b) of Standard No. 208 (§ 571.208); and,

(ii) Has an air bag on-off switch meeting the requirements of S4.5.4 of Standard 208 (§ 571.208), shall have a child restraint anchorage system for a designated passenger seating position in the front seat, instead of a child restraint anchorage system that is required for the rear seat. In the case of convertibles, the front designated passenger seating position need have only the two lower anchorages meeting the requirements of S9 of this standard.

* * * * *

S6.2 *Location of the tether anchorage.* A vehicle manufactured from September 1, 1999 to August 31, 2001 may, at the manufacturer's option (with said option irrevocably selected prior to, or at the time of, certification of the vehicle), meet the requirements of S6.2.1 or S6.2.2. Vehicles manufactured on or after September 1, 2001 must meet the requirements of S6.2.1 of this standard.

S6.2.1 Subject to S6.2.1.1 and S6.2.1.2, the part of each tether anchorage that attaches to a tether hook shall be located within the shaded zone shown in Figures 3 to 7 of this standard of the designated seating position for which it is installed, such that—

* * * * *

S6.2.2 Subject to S6.2.2.1 and S6.2.2.2, the portion of each user-ready tether anchorage that is designed to bind with a tether strap hook shall be located within the shaded zone shown in Figures 3 to 7 of this standard of the designated seating position for which it is installed, with reference to the H-point of a template described in section 3.1 of SAE Standard J826 (June 1992) (incorporation by reference; see § 571.5), if:

(a) the H-point of the template is located—

(1) At the unique Design H-point of the designated seating position, as defined in section 2.2.11.1 of SAE Recommended Practice J1100 (June 1993) (incorporation by reference; see § 571.5), at the full downward and full rearward position of the seat, or—

(2) In the case of a designated seating position that has a means of affixing the lower portion of a child restraint system to the vehicle, other than a vehicle seat belt, midway between the two lower restraint system anchorages;

(b) the torso line of the template is at the same angle to the transverse vertical plane as the vehicle seat back with the seat adjusted to its full rearward and full downward position and the seat back in its most upright position; and

(c) the template is positioned in the vertical longitudinal plane that contains the H-point of the template.

S6.2.2.1 Until September 1, 2001, the portion of each user-ready tether anchorage that is designed to bind with the tether strap hook may be located in a passenger car or multipurpose passenger vehicle within the shaded zone shown in Figures 8 to 11 of the designated seating position for which it is installed, with reference to the shoulder reference point of a template described in section 3.1 of SAE Standard J826 (June 1992) (incorporation by reference; see § 571.5), if:

(a) the H-point of the template is located—

(1) at the unique Design H-point of the designated seating position, as defined in section 2.2.11.1 of SAE Recommended Practice J1100 (June 1993) (incorporation by reference; see § 571.5), at the full downward and full rearward position of the seat, or—

(2) in the case of a designated seating position that has a means of affixing the lower portion of a child restraint system to the vehicle, other than a vehicle seat belt, midway between the two lower restraint system anchorages;

(b) the torso line of the template is at the same angle to the transverse vertical plane as the vehicle seat back with the seat adjusted to its full rearward and full downward position and the seat back in its most upright position; and

(c) the template is positioned in the vertical longitudinal plane that contains the H-point of the template.

S6.2.2.2 The portion of a user-ready tether anchorage in a vehicle that is designed to bind with the tether strap hook may be located outside the shaded zone referred to in S6.2.2, if no part of the shaded zone is accessible without removing a seating component of the vehicle and the vehicle is equipped with a routing device that—

(a) ensures that the tether strap functions as if the portion of the anchorage designed to bind with the tether strap hook were located within the shaded zone;

(b) is at least 65 mm behind the torso line, in the case of a non-rigid-webbing-type routing device or a deployable routing device, or at least 100 mm behind the torso line, in the case of a fixed rigid routing device; and

(c) when tested after being installed as it is intended to be used, is of sufficient strength to withstand, with the user-ready tether anchorage, the load referred to in S6.3.4 or S6.3.4.1, as applicable.

S6.3 *Strength requirements for tether anchorages.* Subject to S6.3.2, a vehicle manufactured from September 1, 1999 to August 31, 2001 may, at the manufacturer's option (with said option irrevocably selected prior to, or at the time of, certification of the vehicle), meet the requirements of S6.3.1 or S6.3.4. Subject to S6.3.2, vehicles manufactured on or after September 1, 2001 must meet the requirements of S6.3.1 of this standard.

S6.3.1 Subject to S6.3.2, when tested in accordance with S8, after preloading the device with a force of 500 N, point X of the SFAD must not be displaced horizontally more than 125 mm during the application of the force.

* * * * *

S6.3.4 Subject to subsections S6.3.4.1 and S6.3.4.2, every user-ready tether anchorage in a row of designated seating positions shall, when tested, withstand the application of a force of 10,000 N—

(a) applied by means of one of the following types of test devices, installed as a child restraint system would be installed in accordance with the manufacturer's installation instructions, namely,

(1) SFAD 1, to test a tether anchorage at a designated seating position that does not have a child restraint anchorage system; or

(2) SFAD 2, to test a tether anchorage at a designated seating position that has a child restraint anchorage system;

(b) applied—

(1) in a forward direction parallel to the vehicle's vertical longitudinal plane through the X point on the test device, and,

(2) initially, along a horizontal line or along any line below or above that line that is at an angle to that line of not more than 5 degrees;

(c) approximately linearly over a time, at the option of the vehicle manufacturer, of not more than 30 seconds, at any onset force rate of not more than 135 000 N/s; and

(d) maintained at a 10,000 N level for one second.

S6.3.4.1 Until September 1, 2001, every user-ready tether anchorage in a row of designated seating positions in a passenger car may, when tested, subject to subsection S6.3.4.2, withstand the application of a force of 5,300 N, which force shall be—

(a) applied by means of a belt strap that—

(1) extends not less than 250 mm forward from the vertical plane touching the rear top edge of the vehicle seat back,

(2) is fitted at one end with suitable hardware for applying the force and at the other end with a bracket for the attachment of the user-ready tether anchorage, and

(3) passes over the top of the vehicle seat back as shown in Figure 19 of this standard;

(b) applied—

(1) in a forward direction parallel to the vehicle's longitudinal vertical plane, and

(2) initially, along a horizontal line or along any line below that line that is at an angle to that line of not more than 20 degrees;

(c) attained within 30 seconds, at any onset force rate of not more than 135,000 N/s; and

(d) maintained at a 5,300 N level for one second.

S6.3.4.2 If the zones in which tether anchorages are located overlap and if, in the overlap area, a user-ready tether anchorage is installed that is designed to accept the tether strap hooks of two restraint systems simultaneously, both portions of the tether anchorage that are designed to bind with a tether strap hook shall withstand the force referred to in subsection S6.3.4 or S6.3.4.1, as the case may be, applied to both portions simultaneously.

S6.3.4.3 If a row of designated seating positions has more than one user-ready tether anchorage, the force referred to in S6.3.4, S6.3.4.1 or S6.3.4.2, as the case may be, shall be applied simultaneously in the manner specified in the relevant subsection.

S6.3.4.4 The strength requirement tests shall be conducted with the vehicle seat adjusted to its full rearward and full downward position and the seat back in its most upright position. When SFAD 2 is used in testing and cannot be attached to the lower anchorages with the seat back in this position, adjust the seat back as recommended by the manufacturer in its instructions for attaching child restraints. If no instructions are provided, adjust the seat back to the position that enables SFAD 2 to attach to the lower anchorages that is the closest to the most upright position.

S7. *Test conditions for testing tether anchorages.*

* * * * *

(a) Vehicle seats are adjusted to their full rearward and full downward position and the seat back is placed in its most upright position. When SFAD 2 is used in testing and cannot be attached to the lower anchorages with the seat back in this position, adjust the seat back as recommended by the manufacturer in its instructions for attaching child restraints. If no instructions are provided, adjust the seat back to the position that enables SFAD 2 to attach to the lower anchorages that is the closest to the most upright position.

* * * * *

S8. *Test procedures.* Each vehicle shall meet the requirements of S6.3.1 and S6.3.3 when tested according to the following procedures. Where a range of values is specified, the vehicle shall be able to meet the requirements at all points within the range. For testing specified in the procedures, the SFAD used in the test is connected to the anchorage by means of a steel cable that is fitted at one end with a high strength steel tether hook for attachment to the tether anchorage. The tether hook meets the specifications in Standard No. 213 (§ 571.213) as to the configuration and geometry of tether hooks required by that standard. A second steel cable is connected to the X point through which the test force is applied.

S8.1 Apply the force specified in S6.3.1 as follows—

(a) Use the following specified test device, as appropriate:

(1) SFAD 1, to test a tether anchorage at a designated seating position that does not have a child restraint anchorage system; or,

(2) SFAD 2, to test a tether anchorage at a designated seating position that has a child restraint anchorage system.

(b) Attach the SFAD 1 to the vehicle seat using the vehicle belts or the SFAD 2 to the lower anchorages of the child restraint anchorage system, as appropriate, and attach the test device to the tether anchorage, in accordance with the manufacturer's instructions provided pursuant to S12 of this standard. For the testing specified in this procedure, if SFAD 1 cannot be attached using the vehicle belts because of the location of the vehicle belt buckle, the test device shall be attached by material whose breaking strength is equal to or greater than the breaking strength of the webbing for the seat belt assembly installed as original equipment at that seating position. The geometry of the attachment shall duplicate the geometry, at the pre-load point, of the attachment of the originally installed seat belt assembly. All belt systems used to attach SFAD 1 shall be tightened to a tension of not less than 53.5 N and not more than 67 N, as

measured by a load cell used on the webbing portion of the belt. A rearward force of 135 N ± 15 N shall be applied to the center of the lower front crossmember of SFAD 2 to press the device against the seat back as the fore-aft position of the rearward extensions of the SFAD is adjusted to remove any slack or tension.

(c) Apply the force—

(1) Initially, in a forward direction in a vertical longitudinal plane and through the Point X on the test device; and

(2) Initially, along a line through the X point and at an angle of 10 ± 5 degrees above the horizontal. Apply a preload force of 500 N to measure the angle; and then

(3) Increase the pull force as linearly as practicable to a full force application of 15,000 N in not less than 24 seconds and not more than 30 seconds, and maintain at a 15,000 N level for 1 second.

S8.2 Apply the force specified in S6.3.2 as follows:

* * * * *

S9 *Requirements for the lower anchorages of the child restraint anchorage system.* As an alternative to complying with the requirements of S9, a vehicle manufactured from September 1, 1999 to August 31, 2002 may, at the manufacturer's option (with said option irrevocably selected prior to, or at the time of, certification of the vehicle), meet the requirements in S15 of this standard. Vehicles manufactured on or after September 1, 2002 must meet the requirements of S9 of this standard.

* * * * *

S9.1.1 * * *

(a) Are 6 mm ± .1 mm in diameter;

* * * * *

(f) Are an integral and permanent part of the vehicle or vehicle seat; and

* * * * *

S9.3 * * *

(c) To facilitate installation of the CRF in a vehicle seat, the side, back and top frames of the CRF may be removed for installation in the vehicle, as indicated in Figure 1A of this standard.

* * * * *

S9.4.1 When tested in accordance with S11, the lower anchorages shall not allow point X on SFAD 2 to be displaced horizontally more than 125 mm, after preloading the device, when—

(a) A force of 11,000 N is applied in a forward direction in a vertical longitudinal plane that is parallel (0 ± 5 degrees) to the vehicle's longitudinal centerline; and

* * * * *

S9.4.1.1 Forces described in S9.4.1(a), forward direction, shall be applied with an initial force application angle of 10 ± 5 degrees above the horizontal. Forces described in S9.4.1(b), lateral direction, shall be applied horizontally (0 ± 5 degrees).

* * * * *

S11. Test procedure. * * *

(a) *Forward force direction.* Place SFAD 2 in the vehicle seating position and attach it to the two lower anchorages of the child restraint anchorage system. Do not attach the tether anchorage. A rearward force of 135 ± 15 N shall be applied to the center of the lower front crossbar of SFAD 2 to press the device against the seat back as the fore-aft position of the rearward extensions of the SFAD is adjusted to remove any slack or tension. Apply a preload force of 500 N at point X of the test device. Increase the pull force as linearly as practicable to a full force application of 11,000 N in not less than 24 seconds and not more than 30 seconds, and maintain at an 11,000 N level for 10 seconds.

(b) *Lateral force direction.* Place SFAD 2 in the vehicle seating position and attach it to the two lower anchorages of the child restraint anchorage system. Do not attach the tether anchorage. A rearward force of 135 ± 15 N shall be applied to the center of the lower front crossbar of SFAD 2 to press the device against the seat back as the fore-aft position of the rearward extensions of the SFAD is adjusted to remove any slack or tension. Apply a preload force of 500 N at point X of the test device. Increase the pull force as linearly as practicable to a full force application of 5,000 N in not less than 24 seconds and not more than 30 seconds, and maintain at a 5,000 N level for 10 seconds.

S12. * * *

(b) In the case of vehicles required to be marked as specified in paragraphs S4.1, S9.5(a), or S15.4, explain the meaning of markings provided to locate the lower anchorages of child restraint anchorage systems; and

(c) Include instructions that provide a step-by-step procedure, including diagrams, for properly attaching a child restraint system's tether strap to the tether anchorages.

* * * * *

S15 Alternative to complying with the requirements of S9. As an alternative to complying with the requirements of S9, a vehicle manufactured from September 1, 1999 to August 31, 2002 may, at the manufacturer's option (with said option irrevocably selected prior to, or at the time of, certification of the vehicle), meet the requirements in S15 of this standard. Vehicles manufactured on or after September 1, 2002 must meet the requirements of S9 of this standard.

S15.1 *Dimensions and installation requirements.*

S15.1.1 *General.* The vehicle anchorages are positioned near the seat bight. The location of the anchorages is defined with respect to the CRF. If the vehicle seat is adjustable, it is adjusted as recommended by the vehicle manufacturer for use with child restraint systems.

S15.1.2 *Anchorage dimensions and location*

S15.1.2.1 The lower anchorages shall consist of two bars that—

(a) Are 6 mm ± .1 mm in diameter;

(b) Are straight, horizontal and transverse;

(c) Are not less than 25 mm in length;

(d) Can be connected to, over their entire length, as specified in paragraph S15.1.2.1(c), by the connectors of a child restraint system;

(e) Are 280 mm apart, measured from the center of the length of one bar to the center of the length of the other bar; and

(f) Are an integral and permanent part of the vehicle or vehicle seat.

S15.1.2.2 (a) The anchorage bars are located at the vehicle seating position with the aid of and with respect to the CRF rearward extensions, with the CRF placed against or near the vehicle seat back. With the CRF attached to the anchorages and resting on the seat cushion, the bottom surface shall have attitude angles within the limits in the following table, angles measured relative to the vehicle horizontal, longitudinal and transverse reference planes.

TABLE TO S15.1.2.2(A)

Pitch	15° ± 10°
Roll	0° ± 5°
Yaw	0° ± 10°

Note: An explanation of the above angles is given in Figure 1.

(b) With adjustable seats adjusted as described in S15.1.2.2(c), each lower anchorage bar shall be located so that a vertical transverse plane intersecting the center of the bar is:

(1) Not more than 70 mm behind point Z of the CRF, measured parallel to the bottom surface of the CRF and to the center of the bar, with the CRF rear surface against the seat back; and

(2) Not less than 120 mm behind the vehicle seating reference point, measured horizontally and to the center of the bar. (**Note:** To facilitate installation of the CRF in a vehicle seat, the CRF may be constructed of smaller separable parts and assembled in the vehicle seat. Alternatively, vehicle components may be removed to allow access.)

(c) Adjustable seats are adjusted as recommended by the vehicle manufacturer for use with child restraint systems.

S15.2 *Static Strength Requirements.*

S15.2.1 The strength of the anchorages shall be determined using the procedure of S15.3 to apply forces to the SFAD 2, installed in the vehicle seating position and engaged with the anchorages. The vehicle seat shall be installed in the vehicle, or in sufficient parts of the vehicle so as to be representative of the strength and rigidity of the vehicle structure. If the seat is adjustable, it shall be placed in the position recommended by the vehicle manufacturer for use with child restraint systems. If no adjusted position is recommended, the seat shall be placed in any position, at the agency's option.

S15.2.2 Horizontal excursion of point X during application of the 8 kN and 5 kN forces shall be not more than 125 mm, after preloading the device.

S15.3 *Forces and directions.*

S15.3.1 A rearward force of 135 N ± 15 N shall be applied to the center of the lower front crossbar of SFAD 2 to press the device against the seat back as the fore-aft position of the rearward extensions of the SFAD is adjusted to remove any slack or tension. Forces shall be applied to SFAD 2 in forward and lateral directions according to the following table.

TABLE TO S15.3.1.—DIRECTIONS OF TEST FORCES

Forward	0° ± 5°	8 kN ± 0.25 kN
Lateral	75° ± 5° (to both sides of straight forward)	5 kN ± 0.25 kN

S15.3.2 Forces in the forward direction shall be applied with an initial force application angle of 10 ± 5 degrees above the horizontal. Lateral forces shall be applied horizontally (0° ± 5°). A pre-load force of 500 N ± 25 N shall be applied at the prescribed loading point (point X) in Figure 17. The force shall be increased to 8 kN ± 0.25 kN for forward tests, or to 5 kN ± 0.25 kN for lateral tests. Full application of the force shall be achieved within a time period of 2 seconds or less. The force shall be maintained for a period of 0.25 seconds ± 0.05 seconds.

S15.3.3 If anchorages for more than one child restraint anchorage system are installed in the vehicle seat assembly and not directly into the vehicle structure, the forces described in S15.3 shall be applied simultaneously to SFADs engaged with the anchorages at each seating position.

S15.4 *Marking and conspicuity of the lower anchorages.* At least one anchorage bar (when deployed for use), one guidance fixture, or one seat marking feature shall be readily visible to the person installing a CRF. Storable anchorages shall be provided with a telltale or label that is visible when the anchorage is stored.

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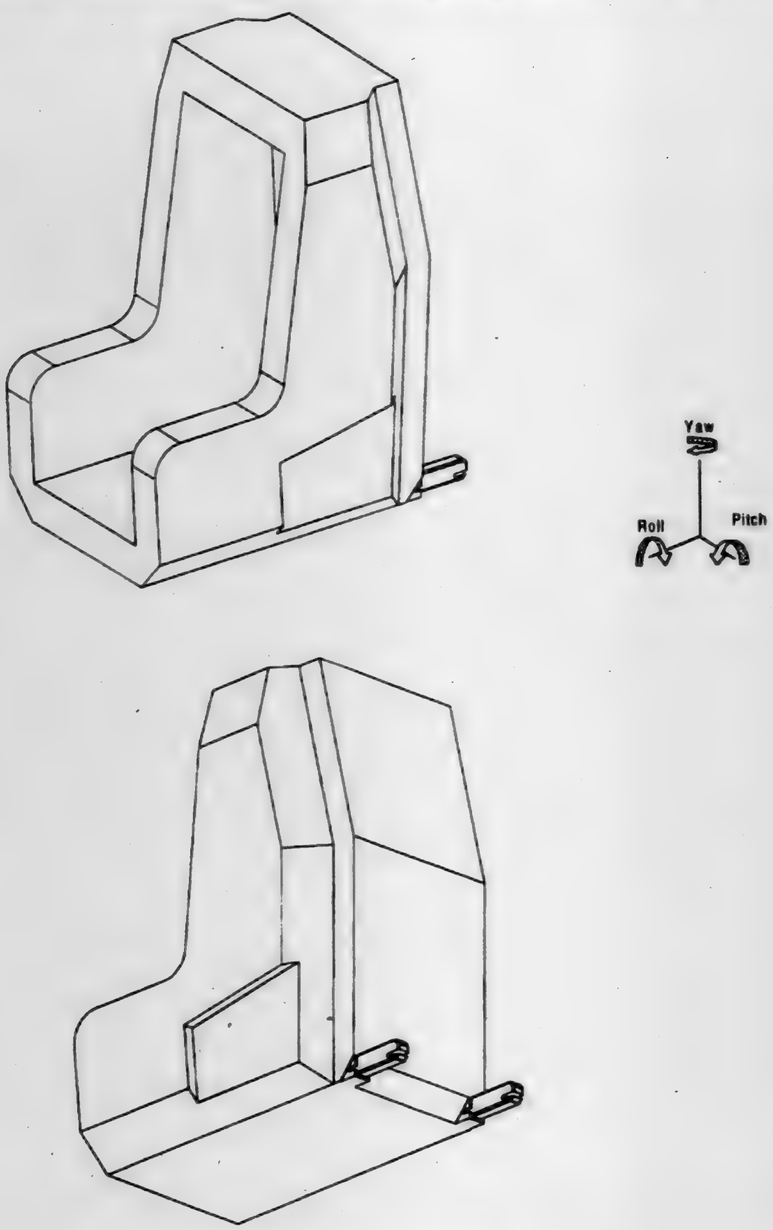

Figure 1 – Child restraint fixture (CRF)

Figure 1A - Child Restraint Fixture (CRF) with Side and Top Frames Removed

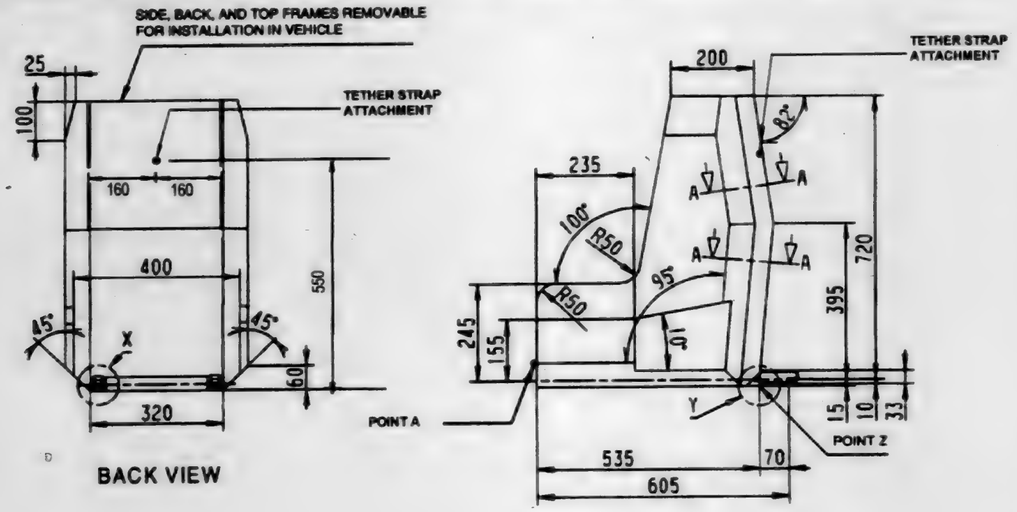

Note:
1. Mass of CRF 5 to 8 kg

Figure 2 - Child restraint fixture (CRF)

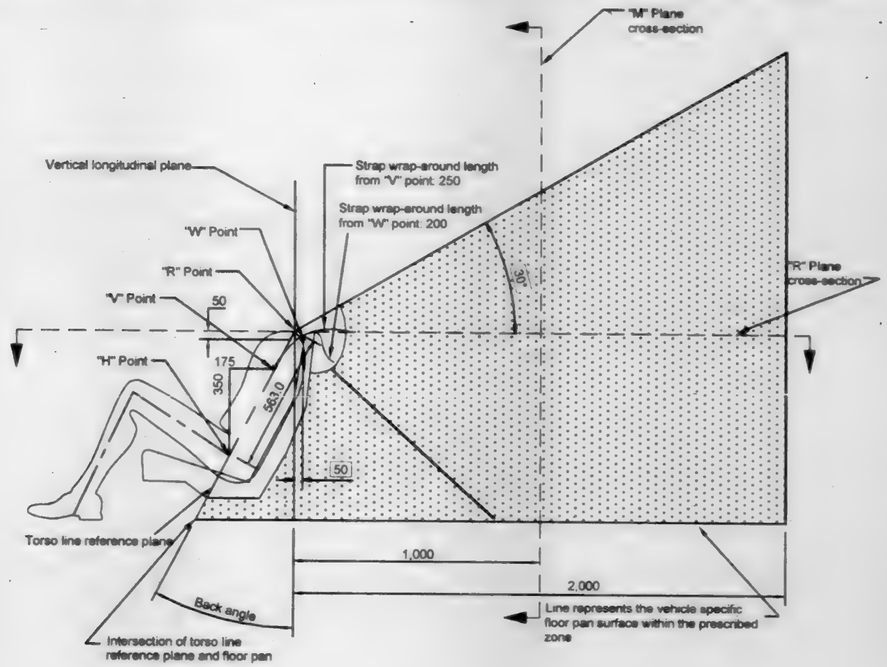

Notes

1. Dimensions in mm, except where otherwise indicated
2. Portion of user-ready tether anchorage that is designed to bind with the tether strap hook to be located within shaded zone
3. Drawing not to scale
4. "R" Point: Shoulder reference point
5. "V" Point: V-reference point, 350 mm vertically above and 175 mm horizontally back from H-point
6. "W" Point: W-reference point, 50 mm vertically below and 50 mm horizontally back from "R" Point
7. "M" Plane: M-reference plane, 1 000 mm horizontally back from "R" Point

Figure 3 – Side View, User-ready Tether Anchorage Location

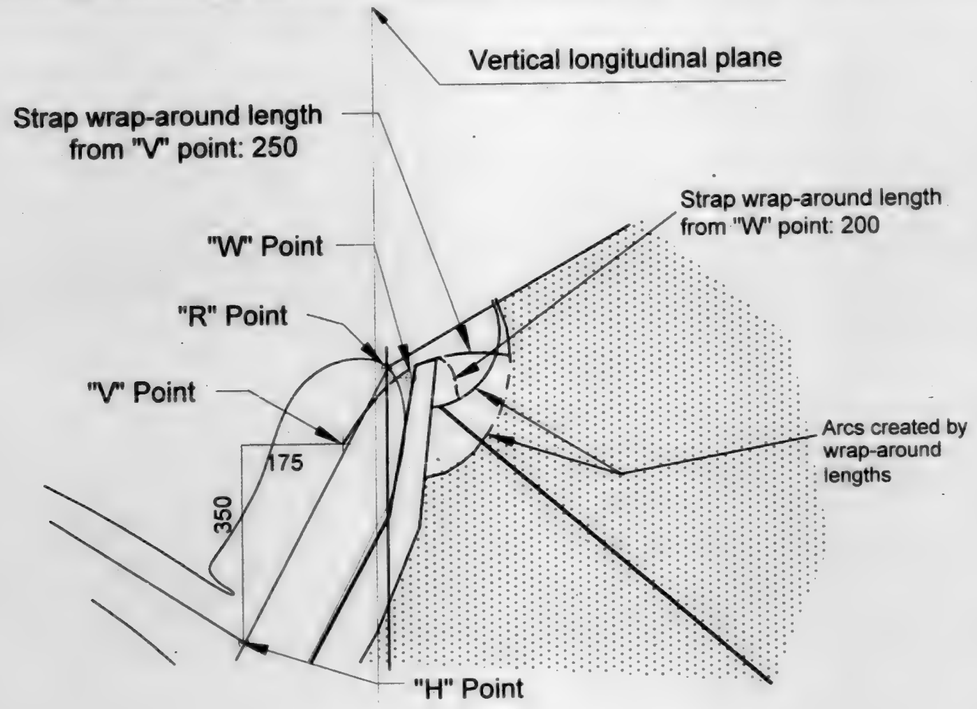

Notes

1. Dimensions in mm, except where otherwise indicated
2. Portion of user-ready tether anchorage that is designed to bind with the tether strap hook to be located within shaded zone
3. Drawing not to scale
4. "R" Point: Shoulder reference point
5. "V" Point: V-reference point, 350 mm vertically above and 175 mm horizontally back from H-point
6. "W" Point: W-reference point, 50 mm vertically below and 50 mm horizontally back from "R" Point
7. "M" Plane: M-reference plane, 1 000 mm horizontally back from "R" Point

Figure 4 -- Enlarged Side View of Strap Wrap-around Area, User-ready Tether Anchorage Location

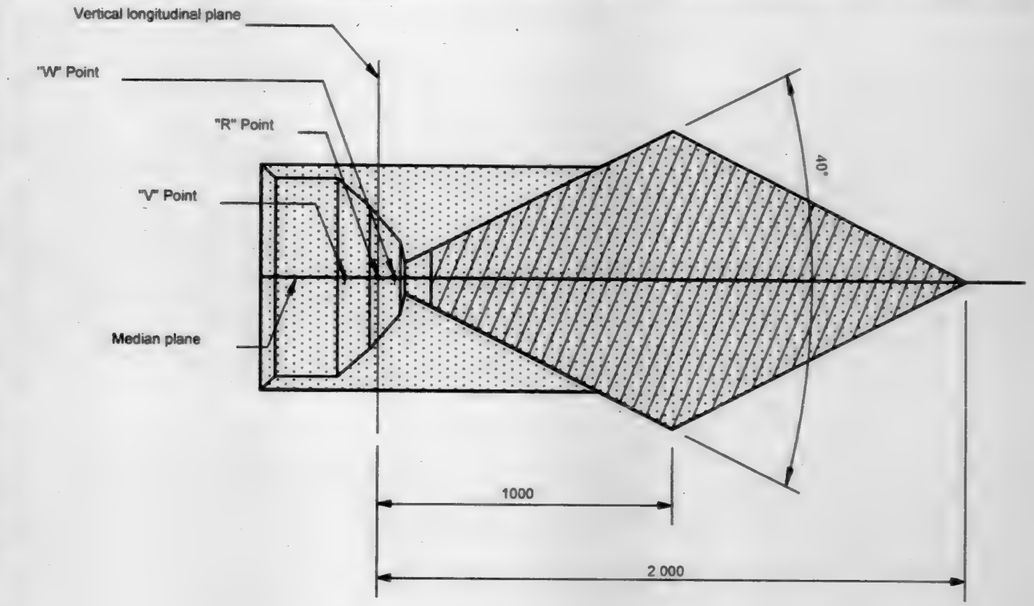

1. Dimensions in mm, except where otherwise indicated
2. Portion of user-ready tether anchorage that is designed to bind with the tether strap hook to be located within shaded zone
3. Drawing not to scale
4. "R" Point: Shoulder reference point
5. "V" Point: V-reference point, 350 mm vertically above and 175 mm horizontally back from H-point.
6. "W" Point: W-reference point, 50 mm vertically below and 50 mm horizontally back from "R" Point

Figure 5. Plan View (R-plane Cross Section), User-ready Tether Anchorage Location

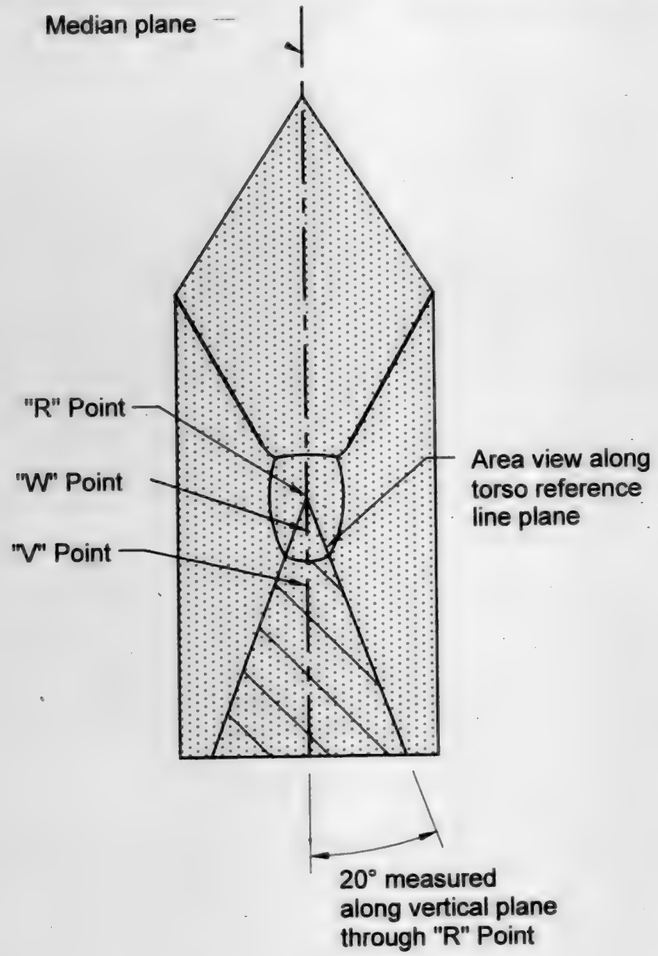

Notes
1. Portion of user-ready tether anchorage that is designed to bind with the tether strap hook to be located within shaded zone
2. Drawing not to scale
3. "R" Point: Shoulder reference point
4. "V" Point: V-reference point, 350 mm vertically above and 175 mm horizontally back from H-point
5. "W" Point: W-reference point, 50 mm vertically below and 50 mm horizontally back from "R" Point

Figure 6 -- Front View, User-ready Tether Anchorage Location

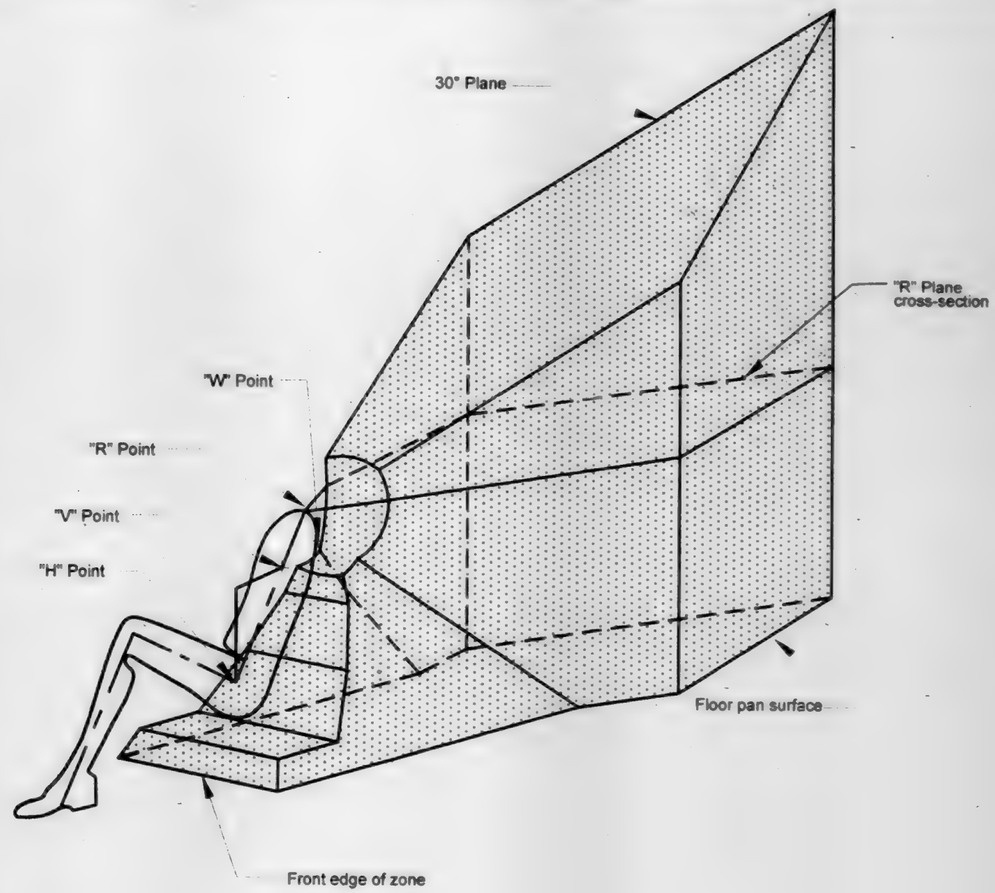

Notes
1. Portion of user-ready tether anchorage that is designed to bind with the tether strap hook to be located within shaded zone
2. Drawing not to scale
3. "R" Point: Shoulder reference point
4. "V" Point: V-reference point, 350 mm vertically above and 175 mm horizontally back from H-point
5. "W" Point: W-reference point, 50 mm vertically below and 50 mm horizontally back from "R" Point

Figure 7 -- Three-dimensional Schematic View of User-ready Tether Anchorage Location

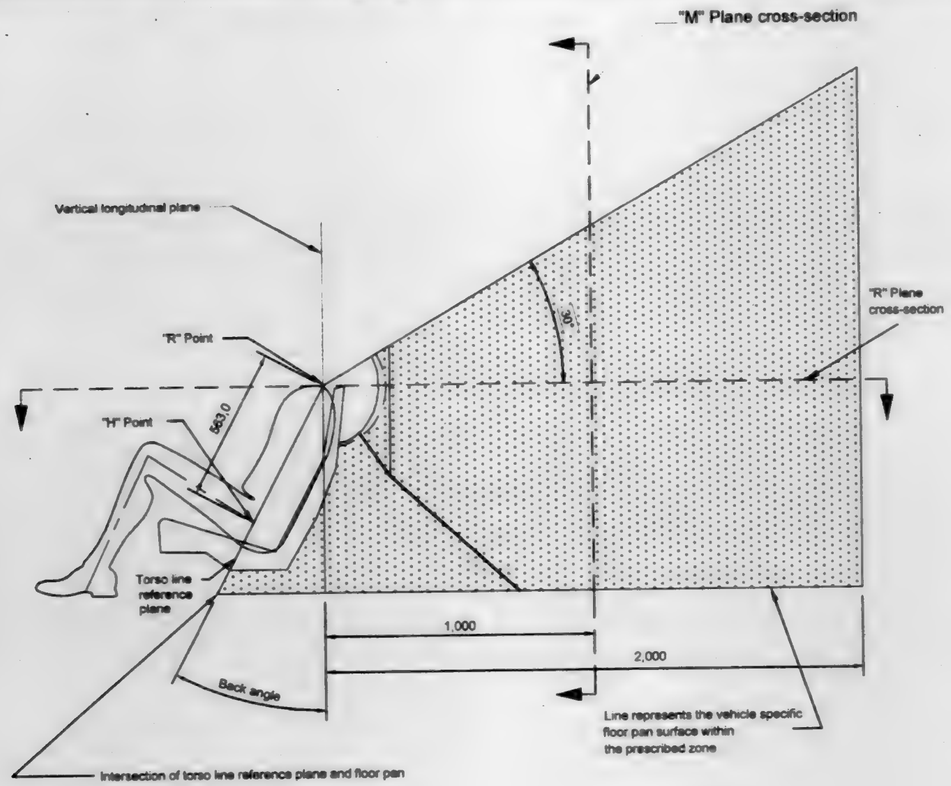

Notes

1. Dimensions in mm, except where otherwise indicated
2. Portion of user-ready tether anchorage that is designed to bind with the tether strap hook to be located within shaded zone
3. Drawing not to scale
4. "R" Point: Shoulder reference point
5. "M" Plane: M-reference plane, 1 000 mm horizontally back from "R" Point

Figure 8 -- Side View, User-ready Tether Anchorage Optional Location for Passenger Cars and Multipurpose Passenger Vehicles until September 1, 2004

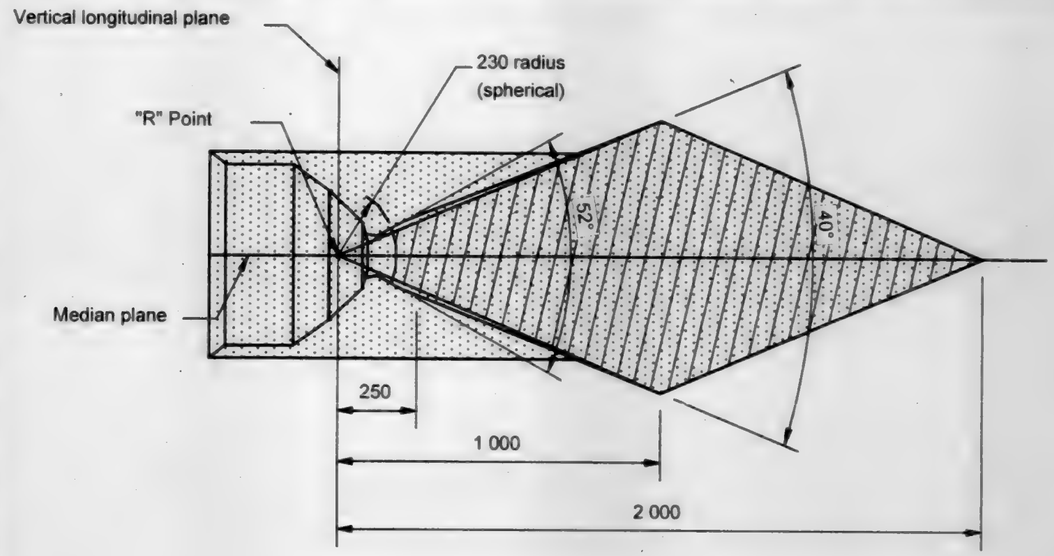

Notes

1. Dimensions in mm, except where otherwise indicated
2. Portion of user-ready tether anchorage that is designed to bind with the tether strap hook to be located within shaded zone
3. Drawing not to scale
4. "R" Point: Shoulder reference point

Figure 9 -- Plan View (R-point Level), User-ready Tether Anchorage Optional Location for Passenger Cars and Multipurpose Passenger Vehicles until September 1, 2004

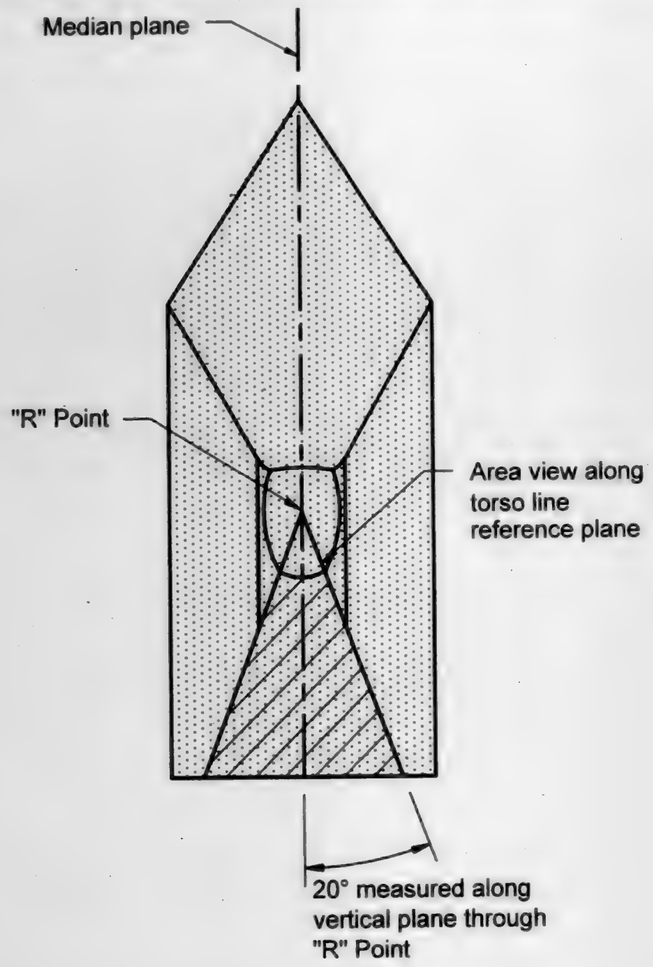

Notes

1. Portion of user-ready tether anchorage that is designed to bind with the tether strap hook to be located within shaded zone
2. Drawing not to scale
3. "R" Point: Shoulder reference point

Figure 10 -- Front View, User-ready Tether Anchorage Optional Location for Passenger Cars and Multipurpose Passenger Vehicles until September 1, 2004

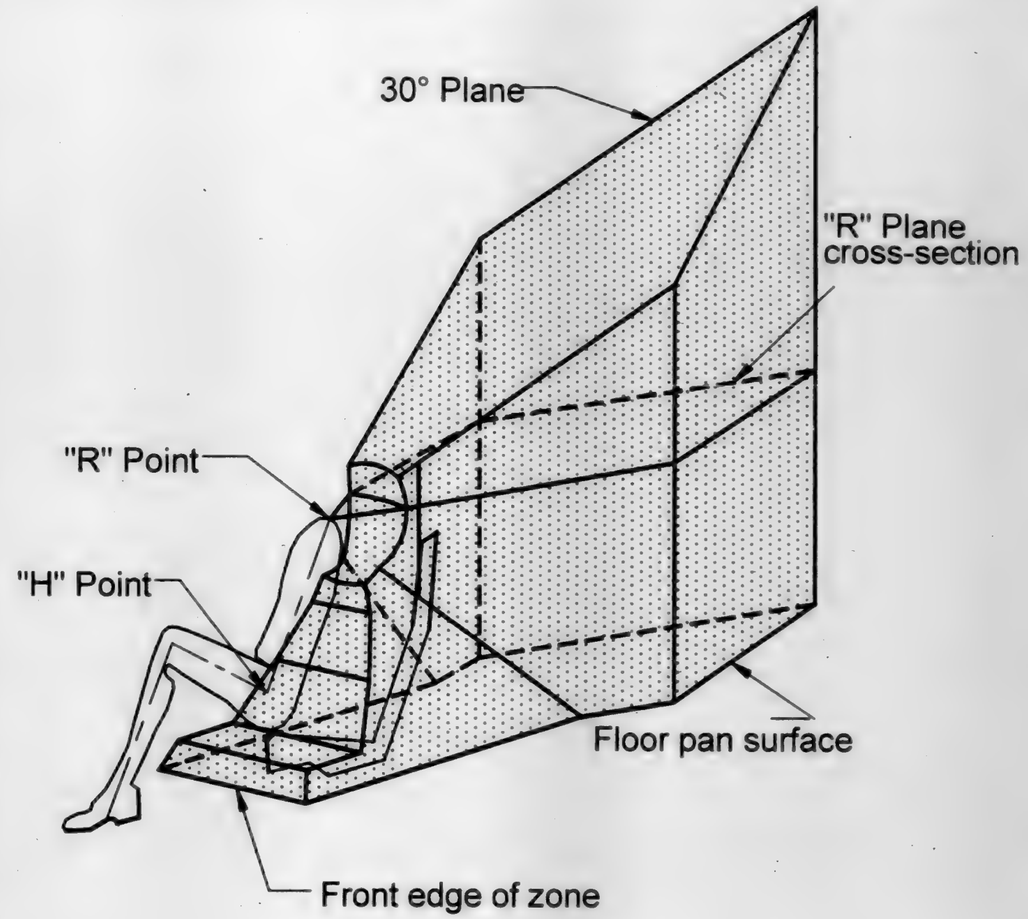

Notes

1. Portion of user-ready tether anchorage that is designed to bind with the tether strap hook to be located within shaded zone
2. Drawing not to scale
3. "R" Point: Shoulder reference point

Figure 11 -- Three-dimensional Schematic View of User-ready Tether Anchorage Optional Location for Passenger Cars and Multipurpose Passenger Vehicles until September 1, 2004

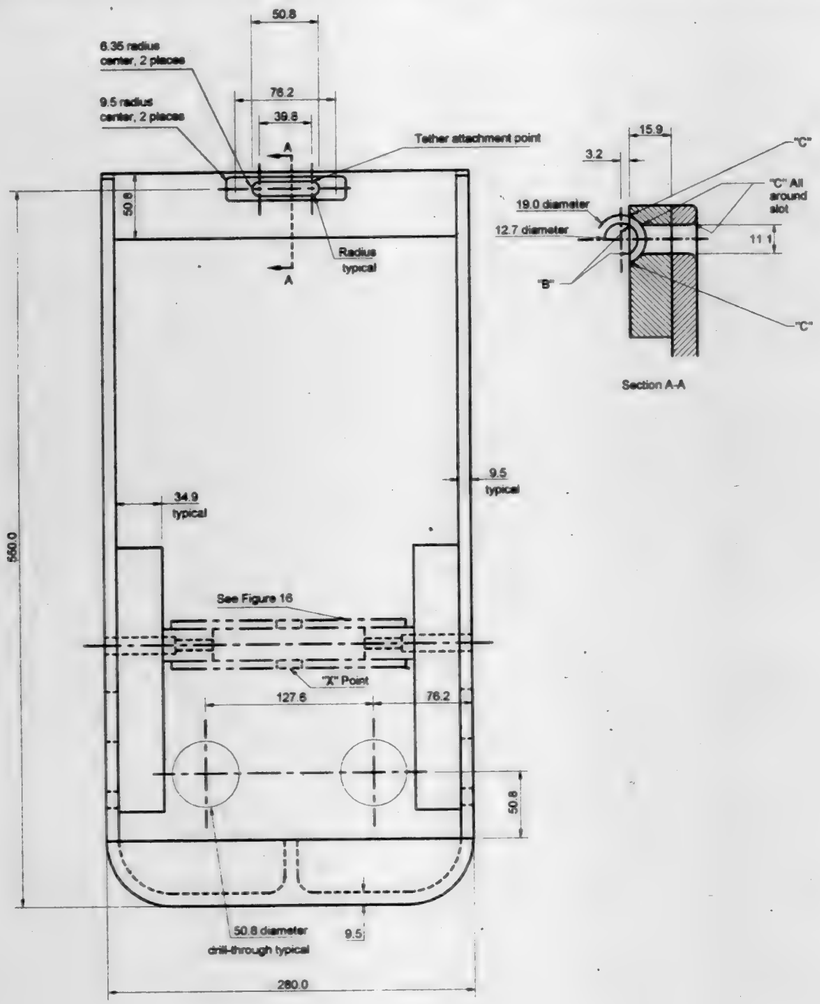

Notes
1. Material: 6061-T6-910 Aluminum
2. Dimensions in mm, except where otherwise indicated
3. Drawing not to scale
4. "B" = approximately 0.8 mm
5. "C" = approximately 3.2 mm

Figure 15 – Front View, Static Force Application Device 1 (SFAD 1)

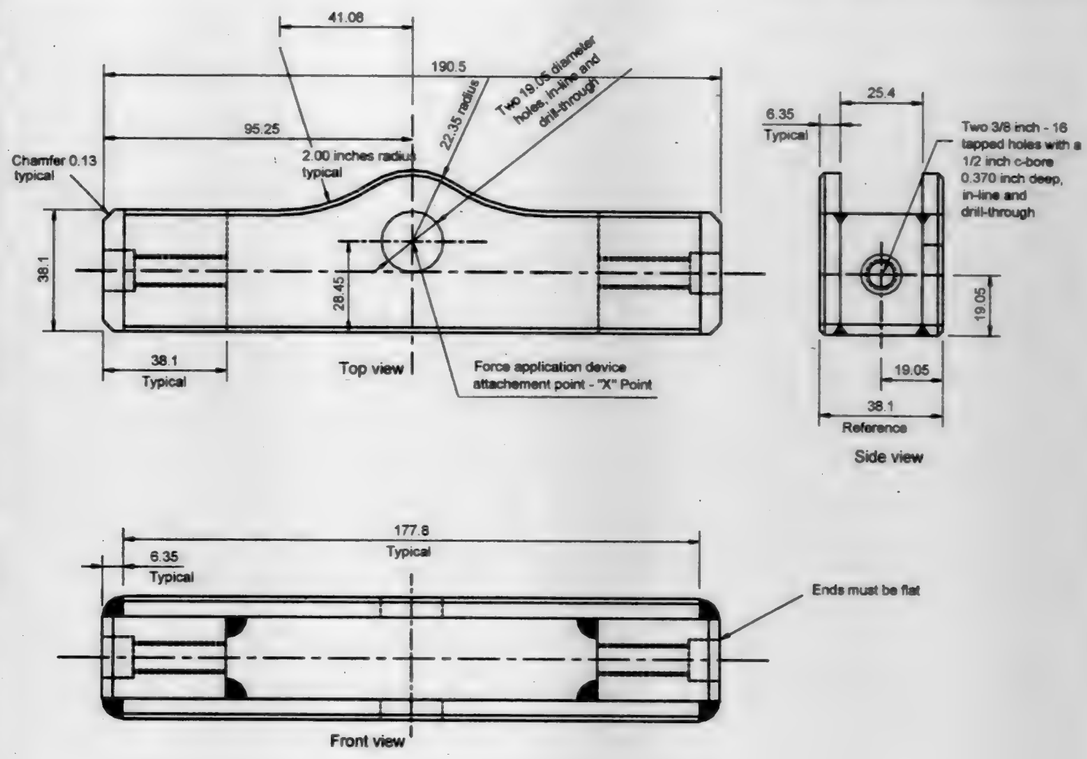

Notes
1. Material: Steel
2. Dimensions in mm, except where otherwise indicated
3. Drawing not to scale
4. Break all outside corners approximately 1.5 mm
5. Surfaces and edges are not to be machined unless otherwise specified for tolerance.
6. Saw-cut or stock size material whenever possible.
7. Construction to be securely welded.

Figure 16 -- Cross Bar, Static Force Application Device 1 (SFAD 1)

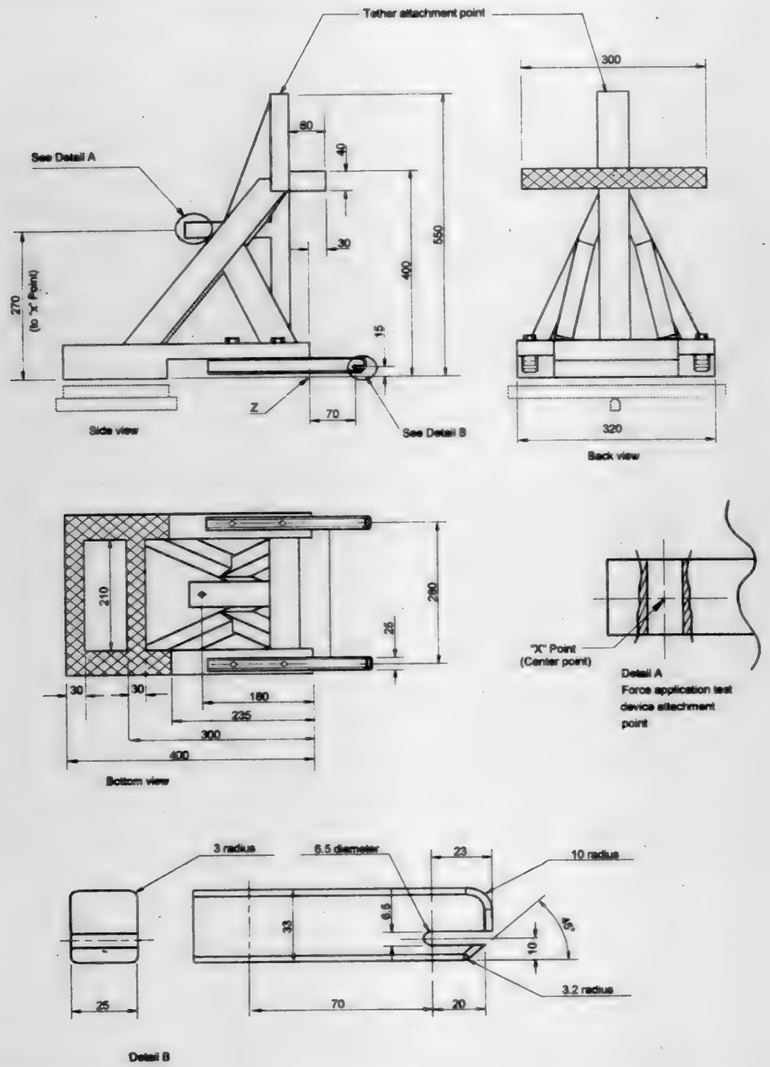

Notes:
1. Drawing not to scale
2. Dimensions in mm, except where otherwise indicated
3. Device stiffness satisfied when using a securely welded construction consisting of rectangular 3 mm steel tubing and 6 mm thick load application plate
4. If construction not as per note 3, stiffness of device is satisfied if movement of point "X" is not more than 2 mm in any direction when forces are applied as specified in S15.2.1, with device attached to rigid anchorage bars and the front cross member supported by a rigid bar that is held at the center by a longitudinal pivot 25 mm below the SFAD2 base (as shown in broken lines) to allow bending and twisting of the base of the device. Any deformation of the anchorage bars to be excluded from the measurements of the movement of point "X".

Figure 17- Side, Back and Bottom Views, ISO 13216-1 Static Force Application Device 2 (SFAD 2)

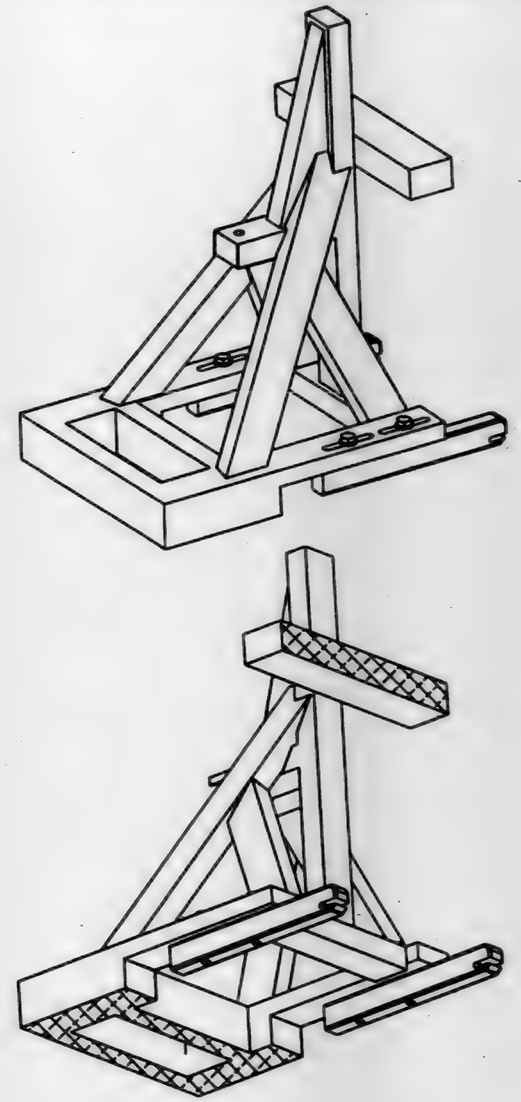

Figure 18 -- Three-dimensional Schematic Views of the ISO 13216-1 Static Force Application Device 2 (SFAD 2)

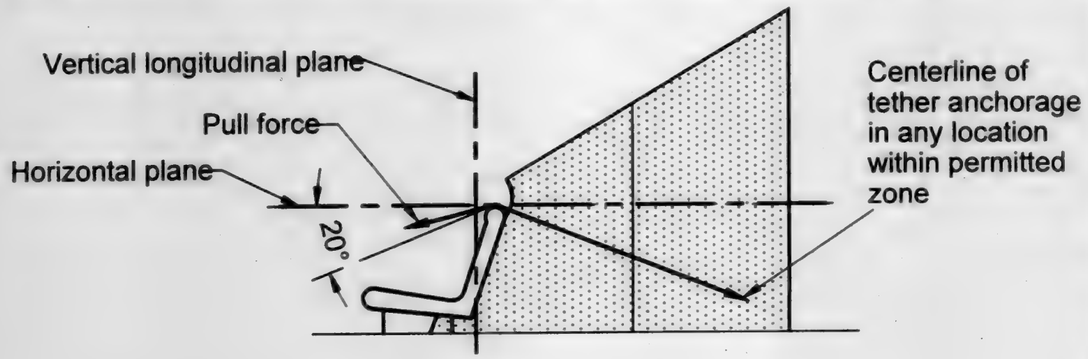

Figure 19 – Side View, Optional Tether Anchorage Test for Passenger Cars until September 1, 2004

Issued on August 18, 1999.

Ricardo Martinez,

Administrator.

[FR Doc. 99–22174 Filed 8–25–99; 3:38 pm]

BILLING CODE 4910–59–C

federal register

Tuesday
August 31, 1999

Part III

State Justice Institute

Grant Guideline; Notice

STATE JUSTICE INSTITUTE

Grant Guideline

AGENCY: State Justice Institute.

ACTION: Proposed grant guideline.

SUMMARY: This Guideline sets forth the administrative, programmatic, and financial requirements attendant to Fiscal Year 2000 State Justice Institute grants, cooperative agreements, and contracts.

DATES: The Institute invites public comment on the Guideline until September 30, 1999.

ADDRESSES: Comments should be mailed to the State Justice Institute, 1650 King St. (Suite 600), Alexandria, VA 22314 or e-mailed to kschwartz@statejustice.org.

FOR FURTHER INFORMATION CONTACT: David I. Tevelin, Executive Director, or Kathy Schwartz, Deputy Director, State Justice Institute, 1650 King St. (Suite 600), Alexandria, VA 22314, (703) 684–6100.

SUPPLEMENTARY INFORMATION: Pursuant to the State Justice Institute Act of 1984, 42 U.S.C. 10701, *et seq.*, as amended, the Institute is authorized to award grants, cooperative agreements, and contracts to State and local courts, nonprofit organizations, and others for the purpose of improving the quality of justice in the State courts of the United States.

Status of FY 2000 Appropriations

The Senate has approved an FY 2000 appropriation of $6.85 million for the Institute. The House of Representatives has recommended no funding for SJI in FY 2000. The level of the Institute's appropriation, if any, will be determined by a Conference Committee this fall. The grant program proposed in this Guideline and the funding targets noted for specific programs are based on funding at the level approved by the Senate. The Final Grant Guideline may be modified after final Congressional action on the appropriation.

Types of Grants Available and Funding Schedules

The SJI grant program is designed to be responsive to the most important needs of the State courts. To meet the full range of the courts' diverse needs, the Institute offers five different categories of grants. The types of grants available in FY 2000 and the funding cycles for each program are provided below:

Project Grants. These grants are awarded to support innovative education, research, demonstration, and technical assistance projects that can improve the administration of justice in State courts nationwide. Except for "Single Jurisdiction" project grants awarded under section II.D. (see below), project grants are intended to support innovative projects of national significance. As provided in section V. of the Guideline, project grants may ordinarily not exceed $200,000 for 15 months; however, grants in excess of $150,000 are likely to be rare, and awarded only to support projects likely to have a significant national impact.

Applicants must submit a concept paper (see section VI.) and, ordinarily, an application (see section VII.) in order to obtain a project grant. As indicated in section VI.C., the Board may make an "accelerated" grant of less than $40,000 on the basis of the concept paper alone when the need for the project is clear and little additional information about the operation of the project would be provided in an application.

With the exception of papers following up on the National Conference on Pro Se Litigants Appearing in Court, the FY 2000 mailing deadline for project grant concept papers is November 24, 1999. Papers must be postmarked or bear other evidence of submission by that date. The Board of Directors will meet in early March 2000 to invite formal applications based on the most promising concept papers. Applications will be due on May 10, 2000, and awards will be approved by the Board in July. Papers following up on the National Conference on Pro Se Litigants Appearing in Court must be mailed by March 17, 2000. The Board of Directors will review these papers in early May 2000 and invite applications based on the most promising concept papers. Applications will be due by June 10, 2000, and awards will be approved by the Board in July. See section VII.A. for Project Grant application procedures.

Single Jurisdiction Project Grants. Section II.D. reserves up to $300,000 for Projects Addressing a Critical Need of a Single State or Local Jurisdiction. To receive a grant under this program, an applicant must demonstrate that (1) the proposed project is essential to meeting a critical need of the jurisdiction and (2) the need cannot be met solely with State and local resources within the foreseeable future. Applicants are encouraged to submit proposals to replicate approaches or programs that have been evaluated as effective under an SJI grant. Examples of projects that could be replicated are listed in Appendix F. See section VII.A for Single Jurisdiction Grant application procedures.

Technical Assistance Grants. Section II.E. reserves up to $400,000 for Technical Assistance Grants. Under this program, a State or local court may receive a grant of up to $30,000 to engage outside experts to provide technical assistance to diagnose, develop, and implement a response to a jurisdiction's problems.

Letters of application for a Technical Assistance grant may be submitted at any time. Applicants submitting letters between June 12 and September 30, 1999 will be notified of the Board's decision by December 10, 1999; those submitting letters between October 1, 1999 and January 14, 2000 will be notified by March 31, 2000; those submitting letters between January 15, 2000 and March 10, 2000 will be notified by May 26, 2000; and those submitting letters between March 11, 2000 and June 10, 2000 will be notified by August 25, 2000. Applicants submitting letters between June 11 and September 29, 2000 will be notified of the Board's decision by December 15, 2000. See section VII.D. for Technical Assistance Grant application procedures.

Curriculum Adaptation Grants. A grant of up to $20,000 may be awarded to a State or local court to replicate or modify a model training program developed with SJI funds. The Guideline allocates up to $100,000 for these grants in FY 2000.

Letters requesting Curriculum Adaptation grants may be submitted at any time during the fiscal year. However, in order to permit the Institute sufficient time to evaluate these proposals, letters must be submitted no later than 90 days before the projected date of the training program. See section VII.E. for Curriculum Adaptation Grant application procedures.

Scholarships. The Guideline allocates up to $200,000 of FY 2000 funds for scholarships to enable judges and court managers to attend out-of-State education and training programs.

Scholarships for eligible applicants are approved largely on a "first come, first served" basis, although the Institute may approve or disapprove scholarship requests in order to achieve appropriate balances on the basis of geography, program provider, and type of court or applicant (e.g., trial judge, appellate judge, court administrator). Scholarships will be approved only for programs that either (1) address topics included in the Guideline's Special Interest categories (section II.B.); (2) enhance the skills of judges and court managers; or (3) are part of a graduate program for judges or court personnel.

Applicants interested in obtaining a scholarship for a program beginning between January 1 and March 31, 2000 must submit their applications and any required accompanying documents between October 1 and December 1, 1999. For programs beginning between April 1 and June 30, 2000, the applications and documents must be submitted between January 7 and March 7, 2000. For programs beginning between July 1 and September 30, 2000, the applications and documents must be submitted between April 3 and June 1, 2000. For programs beginning between October 1 and December 31, 2000, the applications and documents must be submitted between July 5 and September 1, 2000. For programs beginning between January 1 and March 31, 2001, the applications and documents must be submitted between October 2 and December 1, 2000. See section VII.F for Scholarship application procedures.

Continuation and On-going Support Grants. Continuation grants (see sections III.E., V.C. and D., and VII.B) are intended to enhance the specific program or service begun during the initial grant period. On-going support grants (see sections III.O., V.C. and D., and VII.C.) may be awarded for up to a three-year period to support national-scope projects that provide the State courts with critically needed services, programs, or products.

The Guideline establishes a combined target for continuation and on-going support of approximately 25% of the total amount projected to be available for all grants in FY 2000. Grantees should accordingly be aware that the award of a grant to support a project does not constitute a commitment to provide either continuation funding or on-going support.

An applicant for a continuation or on-going support grant must submit a letter notifying the Institute of its intent to seek such funding, no later than 120 days before the end of the current grant period. The Institute will then notify the applicant of the deadline for its application. See section VII.B. and C. for continuation and on-going support grant application procedures.

Special Interest Categories

The Guideline includes nine Special Interest categories, i.e., those project areas that the Board has identified as being of particular importance to the State courts this year. The selection of these categories was based on the Board and staff's experience and observations over the past year; the recommendations received from judges, court managers, lawyers, members of the public, and other groups interested in the administration of justice; and the issues identified in recent years' concept papers and applications.

Section II.B. of the Proposed Guideline includes the following Special Interest categories:

Improving Public Confidence in the Courts;

Education and Training for Judges and Other Key Court Personnel;

Dispute Resolution and the Courts;

Application of Technology;

Court Management, Financing, and Planning;

Substance Abuse and the Courts;

Children and Families in Court;

Improving the Courts' Response to Domestic Violence; and

The Relationship Between State and Federal Courts.

Conferences

The Institute is soliciting proposals to conduct a National Conference on Improving the Adversary System. See section II.B.2.b.(4).

Recommendations to Grantwriters

Recommendations to Grantwriters may be found in Appendix A.

The following Grant Guideline is proposed by the State Justice Institute for FY 2000:

State Justice Institute Grant Guideline

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IX. Compliance Requirements
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XI. Grant Adjustments
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Appendix B Questions Frequently Asked by Grantees
Appendix C List of State Contacts Regarding Administration of Institute Grants to State and Local Courts
Appendix D SJI Libraries: Designated Sites and Contacts
Appendix E Illustrative List of Model Curricula
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Appendix G State Justice Institute Scholarship Application Forms (Forms S1 and S2)
Appendix H Line-Item Budget Form (Form E)
Appendix I Certificate of State Approval Form (Form B)

I. The Mission of the State Justice Institute

The Institute was established by Pub. L. 98–620 to improve the administration of justice in the State courts in the United States. Incorporated in the State of Virginia as a private, nonprofit corporation, the Institute is charged, by statute, with the responsibility to:

A. Direct a national program of financial assistance designed to assure that each citizen of the United States is provided ready access to a fair and effective system of justice;

B. Foster coordination and cooperation with the Federal judiciary;

C. Promote recognition of the importance of the separation of powers doctrine to an independent judiciary; and

D. Encourage education for judges and support personnel of State court systems through national and State organizations, including universities.

To accomplish these broad objectives, the Institute is authorized to provide funds to State courts, national organizations which support and are supported by State courts, national judicial education organizations, and other organizations that can assist in improving the quality of justice in the State courts.

The Institute is supervised by an 11-member Board of Directors appointed by the President, by and with the consent of the Senate. The Board is statutorily composed of six judges, a State court administrator, and four members of the public, no more than two of whom can be of the same political party.

Through the award of grants, contracts, and cooperative agreements, the Institute is authorized to perform the following activities:

A. Support research, demonstrations, special projects, technical assistance, and training to improve the administration of justice in the State courts;

B. Provide for the preparation, publication, and dissemination of information regarding State judicial systems;

C. Participate in joint projects with Federal agencies and other private grantors;

D. Evaluate or provide for the evaluation of programs and projects funded by the Institute to determine their impact upon the quality of criminal, civil, and juvenile justice and the extent to which they have contributed to improving the quality of justice in the State courts;

E. Encourage and assist in furthering judicial education;

F. Encourage, assist, and serve in a consulting capacity to State and local

justice system agencies in the development, maintenance, and coordination of criminal, civil, and juvenile justice programs and services; and

G. Be responsible for the certification of national programs that are intended to aid and improve State judicial systems.

II. Scope of the Program

During FY 2000, the Institute will consider applications for funding support that address any of the areas specified in its enabling legislation. The Board, however, has designated nine program categories as being of special interest. See section II.B.

A. Authorized Program Areas

The Institute is authorized to fund projects addressing one or more of the following program areas listed in the State Justice Institute Act, the Battered Women's Testimony Act, the Judicial Training and Research for Child Custody Litigation Act, and the International Parental Kidnapping Crime Act.

1. Assistance to State and local court systems in establishing appropriate procedures for the selection and removal of judges and other court personnel and in determining appropriate levels of compensation;

2. Education and training programs for judges and other court personnel for the performance of their general duties and for specialized functions, and national and regional conferences and seminars for the dissemination of information on new developments and innovative techniques;

3. Research on alternative means for using judicial and nonjudicial personnel in court decisionmaking activities, implementation of demonstration programs to test such innovative approaches, and evaluations of their effectiveness;

4. Studies of the appropriateness and efficacy of court organizations and financing structures in particular States, and support to States to implement plans for improved court organization and financing;

5. Support for State court planning and budgeting staffs and the provision of technical assistance in resource allocation and service forecasting techniques;

6. Studies of the adequacy of court management systems in State and local courts, and implementation and evaluation of innovative responses to records management, data processing, court personnel management, reporting and transcription of court proceedings, and juror utilization and management;

7. Collection and compilation of statistical data and other information on the work of the courts and on the work of other agencies which relates to and affects the work of courts;

8. Studies of the causes of trial and appellate court delay in resolving cases, and establishing and evaluating experimental programs for reducing case processing time;

9. Development and testing of methods for measuring the performance of judges and courts, and experiments in the use of such measures to improve the functioning of judges and the courts;

10. Studies of court rules and procedures, discovery devices, and evidentiary standards to identify problems with the operation of such rules, procedures, devices, and standards, and the development of alternative approaches to better reconcile the requirements of due process with the need for swift and certain justice, and testing of the utility of those alternative approaches;

11. Studies of the outcomes of cases in selected areas to identify instances in which the substance of justice meted out by the courts diverges from public expectations of fairness, consistency, or equity, and the development, testing, and evaluation of alternative approaches to resolving cases in such problem areas;

12. Support for programs to increase court responsiveness to the needs of citizens through citizen education, improvement of court treatment of witnesses, victims, and jurors, and development of procedures for obtaining and using measures of public satisfaction with court processes to improve court performance;

13. Testing and evaluating experimental approaches to provide increased citizen access to justice, including processes which reduce the cost of litigating common grievances, and alternative techniques and mechanisms for resolving disputes between citizens;

14. Collection and analysis of information regarding the admissibility and quality of expert testimony on the experiences of battered women offered as part of the defense in criminal cases under State law, as well as sources of and methods to obtain funds to pay costs incurred to provide such testimony, particularly in cases involving indigent women defendants;

15. Development of training materials to assist battered women, operators of domestic violence shelters, battered women's advocates, and attorneys to use expert testimony on the experiences of battered women in appropriate cases, and individuals with expertise in the experiences of battered women to develop skills appropriate to providing such testimony;

16. Research regarding State judicial decisions relating to child custody litigation involving domestic violence;

17. Development of training curricula to assist State courts to develop an understanding of, and appropriate responses to child custody litigation involving domestic violence;

18. Dissemination of information and training materials and provision of technical assistance regarding the issues listed in paragraphs 14–17 above;

19. Development of national, regional, and in-State training and educational programs dealing with criminal and civil aspects of interstate and international parental child abduction; and

20. Other programs, consistent with the purposes of the State Justice Institute Act, as may be deemed appropriate by the Institute, including projects dealing with the relationship between Federal and State court systems such as where there is concurrent State-Federal jurisdiction and where Federal courts, directly or indirectly, review State court proceedings.

Funds will not be made available for the ordinary, routine operation of court systems or programs in any of these areas.

B. Special Interest Program Categories

1. General Description

The Institute is interested in funding both innovative programs and programs of proven merit that can be replicated in other jurisdictions. Although applications in any of the statutory program areas are eligible for funding in FY 2000, the Institute is especially interested in funding projects that:

a. Formulate new procedures and techniques, or creatively enhance existing arrangements to improve the courts;

b. Address aspects of the State judicial systems that are in special need of serious attention;

c. Have national significance by developing products, services, and techniques that may be used in other States; and

d. Create and disseminate products that effectively transfer the information and ideas developed to relevant audiences in State and local judicial systems, or provide technical assistance to facilitate the adaptation of effective programs and procedures in other State and local jurisdictions.

A project will be identified as a Special Interest project if it meets the four criteria set forth above and (1) it falls within the scope of the Special Interest program areas designated below, or (2) information coming to the attention of the Institute from the State courts, their affiliated organizations, the research literature, or other sources demonstrates that the project responds to another special need or interest of the State courts.

Concept papers and applications which address a Special Interest category will be accorded a preference in the rating process. (See the selection criteria listed in sections VI.C.2. and VIII.)

2. Specific Categories

The Board has designated the areas set forth below as Special Interest program categories. The order of listing does not imply any ordering of priorities among the categories. For a complete list of projects supported in previous years in each of these categories, please visit the Institute's Internet homepage at http://www.statejustice.org and click on Awarded Grants List.

a. Improving Public Confidence in the Courts. This category includes demonstration, evaluation, research, and education projects designed to improve the responsiveness of courts to public concerns regarding the fairness, equity, accessibility, timeliness, and comprehensibility of the court process, and test innovative methods for increasing the public's trust and confidence in the State courts.

(1) The Institute is particularly interested in supporting innovative projects that demonstrate and test methods to:

- Develop national strategies to promote the progress of State court task forces and other court-sponsored programs to eliminate race and ethnic bias in the courts, including national projects that would support planning and program development at the State and local level; develop products that highlight effective model programs and best practices; and educate judges and court personnel about relevant products developed in different States (e.g., model judicial education curricula, bench books, court conduct handbooks, codes of ethics, and relevant legislation);
- Address court-community problems resulting from the influx of legal and illegal immigrants, including projects to inform judges about the effects of recent Federal and State legislation regarding immigrants; design and assess procedures for use in custody, visitation, and other domestic relations cases when key family members or property are outside the United States; and develop protocols to facilitate service of process, the enforcement of orders of judgment, and the disposition of criminal and juvenile cases when a non-U.S. citizen or corporation is involved;
- Demonstrate and evaluate approaches to implement the concept of restorative justice, including methods for involving the community in the sentencing process;
- Identify and test the elements of successful long-term volunteer or other court-community collaborative programs;
- Educate and clearly communicate information to litigants and the public about judicial decisions, the trial and appellate court process, and court operations, and the standards courts maintain with respect to timeliness, access, and the elimination of bias; and
- Assure that judges and court employees meet the highest ethical standards and that judicial disciplinary procedures are known, fair, and effective.

(2) The Institute is interested in supporting projects that facilitate implementation of State and local plans developed at or as a result of the National Conference on Public Trust and Confidence in the Justice System held in Washington, D.C., on May 13–14, 1999. In particular, the Institute seeks to support projects that would:

- Compile and disseminate information about practices being used by courts around the country that show the promise of enhancing public trust and confidence in the justice system;
- Educate the public about the business of the courts and their role in the community;
- Examine the role of lawyers and their impact on public trust in the courts; and
- Test and evaluate technological approaches designed to enhance public access to the courts.

(3) The Institute also is interested in supporting State and local court projects to implement the action plans developed by the teams participating in the Institute-supported National Conference on Self-Represented Litigants Appearing in Court to be held in Scottsdale, Arizona, on November 18–21, 1999. Concept papers proposing such projects must be mailed by March 17, 2000, for consideration by the Institute's Board of Directors in May 2000. Applications based on these concept papers will be considered by the Board in July 2000. Applicants are advised that Institute funds may not be used to directly or indirectly support legal representation of individuals in specific cases.

b. Education and Training for Judges and Other Key Court Personnel. The Institute is interested in supporting an array of projects that will continue to strengthen and broaden the availability of court education programs at the State, regional, and national levels. This category is divided into four subsections: (1) Innovative Educational Programs; (2) Curriculum Adaptation Projects; (3) Scholarships; and (4) National Conferences.

(1) Innovative Educational Programs. This category includes support for the development and pilot-testing of innovative, high-quality educational programs for trial and appellate judges or court personnel that address key substantive and administrative issues of concern to the nation's courts, or help local courts or State court systems develop or enhance their capacity to deliver quality continuing education. Programs may be designed for presentation at the local, State, regional, or national level. Ordinarily, court education programs should be based on some form of assessment of the needs of the target audience; include clearly stated learning objectives that delineate the new knowledge or skills that participants will acquire (as opposed to a description of what will be taught); incorporate adult education principles and multiple teaching/learning methods; and result in the development of a disseminable curriculum as defined in section III.F.

(a) The Institute is particularly interested in the development of education programs that:

- Include innovative self-directed learning packages for use by appellate, trial, juvenile and family court judges and personnel, and distance-learning approaches for these audiences to assist those who do not have ready access to classroom-centered programs. These packages and approaches should include the appropriate use of various media and technologies such as Internet-based programming, interactive CD-ROM or computer disk-based programs, videos, or other audio and visual media, supported by written materials or manuals. They also should include a meaningful program evaluation and a self-evaluation process that assesses pre-and post-program knowledge and skills;
- Familiarize faculty with the effective use of instructional technology including methods for effectively presenting information through distance learning approaches including the Internet, videos, and satellite teleconferences;
- Assist local courts, State court systems, and court systems in a geographic region to develop or enhance a comprehensive program of continuing education, training, and career development for judges and court personnel as an integral part of court operations;
- Test the effectiveness of including a variety of experiential instructional approaches in judicial branch education programs such as field studies and interchanges with community programs, organizations, and institutions;
- Encourage intergovernmental team-building, collaboration, and planning among the judicial, executive, and legislative branches of government, or courts within a metropolitan area or multi-State region;
- Develop and test curricula on the specific knowledge and skills needed to manage drug court programs for adults, juveniles, or families;

- Develop and test innovative curricula designed to enhance trial and appellate judges' awareness and understanding of Federal and State environmental laws and the effect those laws have on court processes in the impacted jurisdictions;
- Develop and test innovative curricula and materials to educate appellate, trial, and juvenile and family court judges about adolescent and youth development, including the role and impact of youth culture (cults and gangs), and the impact that exposure to violence at home, in school, and in the community has on children;
- Develop and test innovative training programs to enhance the ability of court personnel to protect their safety and that of jurors, litigants, witnesses, and other members of the public in court facilities, and in managing cases involving individuals or organizations unwilling to cooperate with legal or administrative procedures;
- Develop and test innovative short (one-half or one full day) educational programs on events or issues of critical importance to local courts or courts in a particular region; and
- Develop and test methods to determine the cost-effectiveness of judicial branch education and training.

(b) The Institute is also very interested in supporting projects that would implement action plans and strategies developed by the State teams at the National Symposium on the Future of Judicial Branch Education that will be held in St. Louis, Missouri, on October 7–9, 1999, as well as proposals from other applicants designed to assist in implementing and disseminating the findings and strategies discussed at the Conference.

(c) The Institute also is interested in supporting the development and testing of curricula on issues of critical importance to the courts, including those listed in the other Special Interest categories described in this Chapter.

(2) Curriculum Adaptation Projects. The Board is reserving up to $160,000 to support projects that adapt a model curriculum previously developed with SJI funds and to pilot-test it to determine its appropriateness, quality, and effectiveness for inclusion in the jurisdiction's judicial branch education program. An illustrative but non-inclusive list of the curricula that may be appropriate for adaptation is contained in Appendix E.

The goal of the Curriculum Adaptation program is to provide State and local courts with sufficient support to modify a model curriculum, course module, or national or regional conference program developed with SJI funds to meet a particular State's or local jurisdiction's educational needs; pilot-test it to determine its appropriateness, quality, and effectiveness; and train instructors to present portions or all of the curriculum. It is anticipated that the adapted curriculum will become part of the grantee's ongoing educational offerings.

Only State or local courts may apply for Curriculum Adaptation funding. Application procedures may be found in Section VII.E.

(3) Scholarships for Judges and Court Personnel. The Institute is reserving up to $200,000 to support a scholarship program for State court trial and appellate court managers. The purposes of the Institute scholarship program are to:

- Enhance the skills, knowledge, and abilities of judges and court managers;
- Enable State court judges and court managers to attend out-of-State educational programs sponsored by national and State providers that they could not otherwise attend because of limited State, local and personal budgets; and
- Provide States, judicial educators, and the Institute with evaluative information on a range of judicial and court-related education programs.

Scholarships will be granted to individuals only for the purpose of attending an out-of-State educational program within the United States. Application procedures may be found in Section VII.F.

(4) National Conferences. This category includes support for national conferences on topics of major concern to State court trial and appellate judges and personnel across the nation. Applicants are encouraged to consider the use of videoconferences, the Internet, and other technologies to increase participation and limit travel expenses in planning and presenting conferences. In planning a conference, applicants should provide for a written, video, CD–ROM, or other product that would widely disseminate information, findings, and any recommendations resulting from the conference.

This year, the Institute is particularly interested in supporting a National Conference on Improvement of the Adversary System that would explore the fundamental assumptions underlying the adversary system, its strengths and weaknesses, and what steps can be taken to improve both the system and the public's perception of the system.

The many topics that such a conference could address include:

- The types of cases for which the adversary process may be the most appropriate and the least appropriate;
- Improving access to justice for poor and middle-income litigants;
- Methods for reducing trial length and expediting the trial process;
- The best ways of presenting, adjudicating, or otherwise resolving complex litigation;
- The education of trial counsel and litigants about settlement techniques and methods for determining the value of their cases;
- The use of special or blue-ribbon juries; and
- The use of technology to facilitate the resolution of disputes.

The conference should involve the participation of judges, attorneys, court managers, legal scholars, researchers, business leaders, citizen organizations, dispute resolution specialists, and media representatives.

c. Dispute Resolution and the Courts. This category includes research, evaluation, and demonstration projects to evaluate or enhance the effectiveness of court-connected dispute resolution programs. The Institute is interested in projects that facilitate comparison among research studies by using similar measures and definitions; address the nature and operation of ADR programs within the context of the court system as a whole; and compare dispute resolution processes to attorney settlement as well as trial. Specific topics of interest include:

- Examining the timing for referrals to dispute resolution services, and the effect of different referral methods, on case outcomes and time to disposition;
- Comparing the appropriateness and effectiveness of facilitative and evaluative mediation in various types of cases;
- Evaluating the effectiveness of the use of family group conferencing procedures in dependency, delinquency, and status offense cases;
- Evaluating innovative court-connected dispute resolution programs for resolving specific types of cases, such as minor criminal cases, probate proceedings, land-use disputes, and complex and multi-party litigation;
- Testing of procedures that courts can use to assure the quality of court-connected dispute resolution programs, including methods of establishing and maintaining competency standards, training standards, and other techniques for assuring program excellence;
- Testing innovative approaches involving community partnerships, particularly in the contexts of juvenile and restorative justice, and examining the benefits such partnerships offer in ensuring the quality of dispute resolution programs;
- Evaluating innovative applications of technology to facilitate dispute resolution processes; and
- Developing methods to eliminate race, ethnic, or gender bias in court connected dispute resolution programs, testing approaches for assuring that such programs are open to all members of the community served by the court, and assessing whether having a mediator pool that reflects the diversity of the community it serves has an impact on the use of mediation by minorities and its effectiveness.

Applicants should be aware that the Institute will not provide operational support for on-going ADR programs or start-up costs of non-innovative ADR programs. Courts also should be advised that it is preferable for an applicant to use its own funds to support the operational costs of an innovative program and request Institute funds to support related technical assistance, training, and evaluation elements of the program.

d. Application of Technology. This category includes the testing of innovative applications of technology to improve the operation of court management systems and judicial practices at both the trial and appellate court levels.

The Institute seeks to support local experiments with promising but untested applications of technology in the courts that include an evaluation of the impact of the technology in terms of costs, benefits, and staff workload, and a training component to assure that staff is appropriately educated about the purpose and use of the new technology. In this context, untested includes novel applications of technology developed for the private sector that have not previously been applied to the courts.

The Institute is particularly interested in supporting efforts to:

- Test and evaluate technologies that, if successfully implemented, would significantly re-engineer the way that courts currently do business;
- Test and evaluate technological innovations in the jury room to enhance jurors' deliberations;
- Develop and test standards governing electronic access to court records by the public;
- Evaluate approaches for electronically filing pleadings, briefs, and other documents; approaches to integrate electronic filing and electronic document management; and the impact of electronic court record systems on case management and court procedures;
- Develop model rules or standards to govern the use of electronic filing and electronic court records;
- Test innovative telecommunications links among courts, and between courts and executive branch or private agencies and services;
- Test innovative applications of voice recognition technology by judges and clerks in the adjudication process;
- Demonstrate and evaluate the use of technology to assist judicial decisionmaking;
- Evaluate the use of digital audio and video technology for making a record of court proceedings;
- Demonstrate and evaluate the use of videoconferencing technology to present testimony by witnesses in remote locations, and appellate arguments (but see the limitations specified below);
- Assess the impact of the use of multimedia CD–ROM-based briefs on the courts, parties, counsel, and the trial or appellate process; and
- Evaluate innovative applications of technology designed to prevent courthouse incidents that endanger the lives and property of judges, court personnel, and courtroom participants.

Ordinarily, the Institute will not provide support for the purchase of equipment or software to implement a technology that is commonly used by courts, such as videoconferencing between courts and jails, optical imaging for recordkeeping, and automated management information systems. (See also section X.I.2.b. regarding other limits on the use of grant funds to purchase equipment and software.)

e. Court Planning, Management, Financing. The Institute is interested in supporting projects that explore emerging issues that will affect the State courts as they enter the 21st Century, as well as projects that develop and test innovative approaches for managing the courts, and securing, managing, and demonstrating the effective use of the resources required to fully meet the responsibilities of the judicial branch, and institutionalizing long-range planning processes.

(1) In particular, the Institute is interested in demonstration, evaluation, education, research, and technical assistance projects to:

- Facilitate communication, information-sharing, and coordination between the juvenile and criminal courts;
- Assess the effects of innovative management approaches designed to assure quality services to court users;
- Strengthen the judge's and court manager's skills in leadership, planning, and building community confidence in the courts;
- Enhance the core competencies required of court managers and staff;
- Facilitate and implement change and encourage excellence in court operations;
- Demonstrate and assess the effective use of staff teams in court operations; and
- Prevent harassment, threats, and incidents endangering the lives and property of judges, court employees, jurors, litigants, witnesses, and other members of the public in court facilities.

(2) In addition, the Institute is interested in a research and evaluation project that would analyze and assess the impact of the "future and the courts" activities that have been conducted over the past decade; identify the reasons why some States have been more successful than others in implementing change; assess what steps can be taken or methods developed to facilitate the recommended changes that are still appropriate; more fully institutionalize long-range planning by State court systems and, where appropriate, local courts; and assist each State court system or local court in developing the capacity to identify future trends that may significantly affect its ability to deliver justice.

f. Substance Abuse. This category includes education, technical assistance, research, and evaluation projects to assist courts in handling a large volume of substance abuse-related criminal, civil, juvenile, and domestic relations cases fairly and expeditiously. (It does not include providing support for planning, establishing, operating, or enhancing a local drug court. Applicants interested in obtaining grants to plan, implement, operate, or enhance a drug court program should contact the Drug Court Program Office, Office of Justice Programs, U.S. Department of Justice.)

The Institute is particularly interested in projects to:

- Evaluate the effectiveness of "family drug court" programs (i.e., specialized calendars that provide intensely supervised, court-enforced substance abuse treatment and other services to families involved in child neglect, child abuse, domestic violence, or other family cases);
- Evaluate the effectiveness of re-entry drug courts on the management of drug offenders' behavior following their release from incarceration and the impact of this additional responsibility on court operation and caseload management;
- Develop and test effective approaches for identifying and treating substance abuse by judges, lawyers, and court staff, and determining and lessening the impact on the courts of such substance abuse;
- Document public sector and private sector managed care programs that effectively provide court-ordered treatment and other services to adults and juveniles; and
- Develop and test State, regional, and local educational programs for judges and court staff on the implications of managed care for the provision of drug and alcohol treatment, mental health treatment, and other services to adult and juvenile offenders, neglected and abused children and their families, and persons subject to civil commitment.

g. Children and Families in Court. This category includes education, demonstration, evaluation, technical assistance, and research projects to identify and inform judges of innovative, effective approaches for handling cases involving children and families. The Institute is particularly interested in projects to:

- Develop and test innovative protocol, procedures, educational programs, and other measures to determine and address the service needs of children exposed to family violence and the methods for mitigating

those effects when issuing protection, custody, visitation, or other orders;

• Assess the impact of procedures to determine whether improper investigatory techniques may have suggested children's testimony (e.g., "taint hearings") on the speed and fairness of child sexual abuse trials;

• Develop and test guidelines, curricula, and other materials to assist judges in establishing and enforcing custody and support orders in cases in which a child's parents were never married to each other;

• Develop guidelines and materials to assist judges and other court officers and personnel in critically analyzing psychological evaluations of children and the credibility of clinical experts, their reports, and methods of evaluating children;

• Compile and distribute information about innovative and successful approaches to sentencing and treatment alternatives for serious youthful offenders;

• Develop and test procedures and programs that include victims of offenses committed by juveniles in the juvenile court process (other than victim-offender mediation programs);

• Create and test educational programs, guidelines, and monitoring systems to assure that the juvenile justice system meets the needs of girls and children of color;

• Develop and test innovative techniques for improving communication, sharing information, and coordinating juvenile and criminal courts and divisions;

• Design or evaluate information systems that not only provide aggregate data, but also are able to track individual cases, individual juveniles, and specific families, so that judges and court managers can manage their caseloads effectively, track placement and service delivery, and coordinate orders in different proceedings involving members of the same family; and

• Develop and test educational programs to assure that everyone coming into contact with courts serving children and families is treated with dignity, respect, and courtesy.

h. Improving the Courts' Response to Domestic Violence. This category includes innovative education, demonstration, technical assistance, evaluation, and research projects to improve the fair and effective processing, consideration, and disposition of cases concerning domestic violence and gender-related violent crimes, including projects to:

Train custody evaluators, guardians ad litem, and other independent professionals appearing in custody and visitation cases about domestic violence and the impact witnessing such violence has on children;

• Coordinate juvenile, family, and criminal court management of domestic violence cases;

• Evaluate the effectiveness of domestic violence courts (i.e., specialized calendars or divisions for considering domestic violence cases and related matters), including their impact on victims, offenders, and court operations;

• Assess the effectiveness of including jurisdiction over family violence in a unified family court;

• Demonstrate effective ways to coordinate the response to domestic violence and gender-related crimes of violence among courts, criminal justice agencies, and social services programs, and to assure that courts are fully accessible to victims of domestic violence and other gender-related violent crimes; Develop and test methods for facilitating recognition and enforcement of protection orders issued by a State, Federal, or tribal court in another jurisdiction;

• Determine the effective use of information contained in protection order files stored in court electronic databases, consistent with the protection of the privacy and safety of victims of violence;

• Test the effectiveness of innovative sentencing and treatment approaches in cases involving domestic violence and other gender-related crimes including sentences that incorporate restorative justice measures; and

• Implement and train judges and court personnel on recommended protocols and procedures identified at the National Summit on Fatality Reviews held on October 25–27, 1998, in Key West, Florida. Recommendations from the Summit and an educational module are available from your in-state library or from the National Council of Juvenile and Family Court Judges' Family Violence Department (1–800–527–3223).

Institute funds may not be used to provide operational support to programs offering direct services or compensation to victims of crimes. (Applicants interested in obtaining such operational support should contact the Office for Victims of Crime (OVC), Office of Justice Programs, U.S. Department of Justice, or the agency in their State that awards OVC funds to State and local victim assistance and compensation programs.)

i. The Relationship Between State and Federal Courts. This category includes education, research, demonstration, and evaluation projects designed to facilitate appropriate and effective communication, cooperation, and coordination between State and Federal courts. The Institute is particularly interested in innovative projects that:

(1) Develop and test curricula and disseminate information regarding effective methods being used at the trial court, State, and circuit levels to coordinate cases and administrative activities, and share facilities; and

(2) Develop and test new approaches to:

(a) Implement the habeas corpus provisions of the Anti-Terrorism Act of 1996;

(b) Handle capital habeas corpus cases fairly and efficiently;

(c) Coordinate and process mass tort cases fairly and efficiently at the trial and appellate levels;

(d) Coordinate cases in which there is concurrent jurisdiction including State and Federal cases brought under the Violence Against Women Act;

(e) Develop a guidebook for judges to assist in determining whether punitive damages should be awarded, calculating the amount in which they should be awarded, and instructing jurors regarding these issues;

(f) Exchange information and coordinate calendars among State and Federal courts; and

(g) Share facilities, jury pools, alternative dispute resolution programs, information regarding persons on pretrial release or probation, and court services.

C. "Think Pieces"

This category addresses the development of essays of publishable quality directed to the court community. The essays should explore emerging issues that could result in significant changes in court process or judicial administration and their implications for judges, court managers, policy-makers, and the public. Grants supporting such projects are limited to no more than $10,000. Applicants should follow the procedures for concept papers requesting an accelerated award of a grant of less than $40,000, which are explained in Section VI.3.(b) of this Guideline.

Possible topics include, but are not limited to:

• The implications of changing expectations about the proper role of judges—from adjudicators to problem-solvers—on court procedures, court operations, and judicial selection;

• A re-examination of judicial ethics as they relate to the evolving role of the judge as "off-the-bench" problem-solver, e.g., participating in domestic violence or other local coordinating councils, working with State legislatures, and collaborating with community groups;

• The potential use of local court advisory councils rooted in the community as a method of promoting public trust and confidence in the court;

• The implications of increasing commerce via the Internet for the State courts, including unique problems that may arise and the new rules and procedures that may be needed to address them;

• An exploration of issues related to privacy, data security, and public access to court records in our increasingly technological society; and

• The potential for the creation of "cyber-courts" through the use of the Internet—a "courthouse-less court" instead of a paperless court—and how the courts would have to be re-engineered to accommodate such a development.

D. Single Jurisdiction Projects

The Board will set aside up to $300,000 to support projects proposed by State or local courts that address the needs of only the applicant State or local jurisdiction. A project under this section may address any of the topics included in the Special Interest Categories or Statutory Program Areas, but it need not be innovative. The Board is particularly interested in supporting projects to replicate programs, procedures, or strategies that have been developed, demonstrated, or evaluated through an SJI grant. (A list of examples of such grants is contained in Appendix F.) Grants to support replications are subject to the same limits on amount and duration as other project grants. (See section V.) Ordinarily, the Institute will not provide support solely for the purchase of equipment or software.

Concept papers for single jurisdiction projects may be submitted by a State court system, an appellate court, or a limited or general jurisdiction trial court. All awards under this category are subject to the matching requirements set forth in section IX.A.7.a.

The application procedures for Single Jurisdiction grants are the same as the procedures for Project Grants. See Section VII.A.

E. Technical Assistance Grants

The Board will set aside up to $400,000 to support the provision of technical assistance to State and local courts. The program is designed to provide State and local courts with sufficient support to obtain technical assistance to diagnose a problem, develop a response to that problem, and initiate implementation of any needed changes. The exact amount to be awarded for these grants will depend on the number and quality of the applications submitted in this category and other categories of the Guideline. The Committee will reserve sufficient funds each quarter to assure the availability of technical assistance grants throughout the year.

Technical Assistance grants are limited to no more than $30,000 each, and may cover the cost of obtaining the services of expert consultants; travel by a team of officials from one court to examine a practice, program, or facility in another jurisdiction that the applicant court is interested in replicating; or both. Technical assistance grant funds ordinarily may not be used to support production of a videotape. Normally, the technical assistance must be completed within 12 months after the start-date of the grant.

Only a State or local court may apply for a Technical Assistance grant. The application procedures may be found in section VII.D.

III. Definitions

The following definitions apply for the purposes of this Guideline:

A. Accelerated Award

A grant of up to $40,000 awarded on the basis of a concept paper (including a budget and budget narrative) when the need for and benefits of the proposed project are clear and an application would not be needed to provide additional information about the project's methodology and budget. See section VI.C.1. for a more complete description of the criteria to approve an accelerated award.

B. Acknowledgment of SJI Support

The prominent display of the SJI logo on the front cover of a written product or in the opening frames of a videotape developed with Institute support, and inclusion of a brief statement on the inside front cover or title page of the document or the opening frames of the videotape identifying the grant number. See section IX.A.10. for precise wording of the statement.

C. Application

A formal request for an Institute grant that is invited by the Board of Directors after approval of a concept paper. A complete application consists of: Form A—Application; Form B—Certificate of State Approval (for applications from local trial or appellate courts or agencies); Form C—Project Budget/Tabular Format or Form C1—Project Budget/Spreadsheet Format; Form D—Assurances; Disclosure of Lobbying Activities; a detailed 25-page description of the need for the project and all related tasks, including the time frame for completion of each task, and staffing requirements; and a detailed budget narrative that provides the basis for all costs. See section VII. for a complete description of application submission requirements.

D. Concept Paper

A proposal of no more than eight double-spaced pages that outlines the nature and scope of a project that would be supported with State Justice Institute funds, accompanied by a preliminary budget. See section VI. for a complete description of concept paper submission requirements.

E. Continuation Grant

A grant lasting no longer than 15 months to permit completion of activities initiated under an existing Institute grant or enhancement of the products or services produced during the prior grant period. See section VII.B. for a complete description of continuation application requirements.

F. Curriculum

The materials needed to replicate an education or training program developed with grant funds including, but not limited to: the learning objectives; the presentation methods; a sample agenda or schedule; an outline of presentations and relevant instructors' notes; copies of overhead transparencies or other visual aids; exercises, case studies, hypotheticals, quizzes, and other materials for involving the participants; background materials for participants; evaluation forms; and suggestions for replicating the program including possible faculty or the preferred qualifications or experience of those selected as faculty.

G. Curriculum Adaptation Grant

A grant of up to $20,000 to support an adaptation and pilot test of an educational program previously developed with SJI funds. See section VII.E. for a complete description of curriculum grant application requirements.

H. Designated Agency or Council

The office or judicial body which is authorized under State law or by delegation from the State Supreme Court to approve applications for funds and to receive, administer, and be accountable for those funds.

I. Disclaimer

A brief statement that must be included at the beginning of a document or in the opening frames of a videotape produced with State Justice Institute funding that specifies that the points of view expressed in the document or tape do not necessarily represent the official position or policies of the Institute. See section IX.A.10 for the precise wording of this statement.

J. Grant Adjustment

A change in the design or scope of a project from that described in the approved application, acknowledged in writing by the Institute. See section XI.A for a list of the types of changes requiring a formal grant adjustment.

K. Grantee

The organization, entity, or individual to which an award of Institute funds is made. For a grant based on an application from a State or local court, grantee refers to the State Supreme Court or its designee.

L. Human Subjects

Individuals who are participants in an experimental procedure or who are asked to provide information about themselves, their attitudes, feelings, opinions, and/or experiences through an interview, questionnaire, or other data collection technique.

M. Institute

The State Justice Institute.

N. Match

The portion of project costs not borne by the Institute. Match includes both in-kind and cash contributions. Cash match is the direct outlay of funds by the grantee to support the project. In-kind match consists of contributions of time, services, space, supplies, etc., made to the project by the grantee or others (e.g., advisory board members) working directly on the project. Under normal circumstances, allowable match may be incurred only during the project period. When appropriate, and with the prior written permission of the Institute, match may be incurred from the date of the Board of Directors' approval of an award. Match does not include project-related income such as tuition or revenue from the sale of grant products, or the time of participants attending an education program. Amounts contributed as cash or in-kind match may not be recovered through the sale of grant products during or following the grant period.

O. On-Going Support Grant

A grant lasting 36 months to support a project that is national in scope and that provides the State courts with services, programs or products for which there is a continuing important need. See section VIII.B. for a complete description of on-going support application requirements.

P. Products

Tangible materials resulting from funded projects including, but not limited to: curricula; curriculum guidelines; monographs; reports; books; articles; manuals; handbooks; benchbooks; guidelines; videotapes; audiotapes; computer software; and CD–ROM disks.

Q. Project Grant

An initial grant lasting up to 15 months to support an innovative education, research, demonstration, or technical assistance project that can improve the administration of justice in State courts nationwide. Ordinarily, a project grant may not exceed $200,000 a year; however, a grant in excess of $150,000 is likely to be rare and awarded only to support highly promising projects that will have a significant national impact. See section VII.A. for a complete description of project grant application requirements.

R. Project-Related Income

Interest, royalties, registration and tuition fees, proceeds from the sale of products, and other earnings generated as a result of a State Justice Institute grant. Project-related income may not be counted as match. For a more complete description of different types of project-related income, see section X.G.

S. Scholarship

A grant of up to $1,500 awarded to a judge or court employee to cover the cost of tuition for and transportation to and from an out-of-State educational program within the United States. See section VII.F. for a complete description of scholarship application requirements.

T. Single Jurisdiction Project Grant

A grant that addresses a critical but not necessarily innovative need of a single State or local jurisdiction that cannot be met solely with State and/or local resources within the foreseeable future. See section II.D. for a description of single jurisdiction projects and section VI. and VII.A. for a complete description of single jurisdiction project application requirements.

U. Special Condition

A requirement attached to a grant award that is unique to a particular project.

V. State Supreme Court

The highest appellate court in a State, or, for the purposes of the Institute program, a constitutionally or legislatively established judicial council that acts in place of that court. In States having more than one court with final appellate authority, State Supreme Court shall mean that court which also has administrative responsibility for the State's judicial system. State Supreme Court also includes the office of the court or council, if any, it designates to perform the functions described in this Guideline.

W. Subgrantee

A State or local court which receives Institute funds through the State Supreme Court.

X. Technical Assistance Grant

A grant, lasting up to 12 months, of up to $30,000 to a State or local court to support outside expert assistance in diagnosing a problem and developing and implementing a response to that problem. See section VII.D. for a complete description of technical assistance grant application requirements.

IV. Eligibility for Award

The Institute is authorized by Congress to award grants, cooperative agreements, and contracts to State and local courts and their agencies (42 U.S.C. 10705(b)(1)(A)); national nonprofit organizations controlled by, operating in conjunction with, and serving the judicial branches of State governments (42 U.S.C. 10705(b)(1)(B)); and national nonprofit organizations for the education and training of judges and support personnel of the judicial branch of State governments (42 U.S.C. 10705(b)(1)(C)).

An applicant is considered a national education and training applicant under section 10705(b)(1)(C) if: (1) the principal purpose or activity of the applicant is to provide education and training to State and local judges and court personnel; and (2) the applicant demonstrates a record of substantial experience in the field of judicial education and training.

The Institute also is authorized to make awards to other nonprofit organizations with expertise in judicial administration, institutions of higher education, individuals, partnerships, firms, corporations, and private agencies with expertise in judicial administration, provided that the objectives of the project can be served better (42 U.S.C. 10705(b)(2)). In making this judgment, the Institute will consider the likely replicability in jurisdictions around the country of the methodology and results of the projects proposed by these applicants. For-profit organizations are also eligible for grants and cooperative agreements; however, they must waive their fees.

The Institute may also make awards to Federal, State or local agencies and institutions other than courts for services that cannot be adequately provided through nongovernmental arrangements.

In addition, the Institute may enter into inter-agency agreements with other public or private funders to support projects consistent with the purpose of the State Justice Institute Act.

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court or its designated agency or council. The latter shall receive all Institute funds awarded to such courts and be responsible for assuring proper administration of Institute funds, in accordance with section X.C.2. of this Guideline. A list of persons to contact in each State regarding approval of applications from State and local courts and administration of Institute grants to those courts is contained in Appendix C.

V. Types of Projects and Grants; Size of Awards

A. Types of Projects

The Institute supports the following general types of projects:

1. Education and training;
2. Research and evaluation;
3. Demonstration; and
4. Technical assistance.

B. Types of Grants

The Institute supports the following types of grants:

1. Project Grants.

See sections II.B. and D., VI., and VII.A. The Institute places no annual limitations on the overall number of project grant awards or the number of awards in each special interest category.

2. Continuation Grants.

See sections III.E. and VII.B. In FY 2000, the Institute is allocating no more than 25% of available grant funds for continuation and on-going support grants.

3. On-going Support Grants.

See sections III.O. and VII.C. See Continuation Grants above for limitations on funding availability in FY 2000.

4. Technical Assistance Grants

See section II.E. In FY 2000, the Institute is reserving up to $400,000 for these grants.

5. Curriculum Adaptation Grants.

See sections II.B.2.b.(2), III.G., and VII.E. In FY 2000, the Institute is reserving up to $100,000 for adaptations of curricula previously developed with SJI funding.

6. Scholarships.

See section II.B.2.b.(3), III.S, and VII.F. In FY 2000, the Institute is reserving up to $200,000 for scholarships for judges and court employees. The Institute will reserve sufficient funds each quarter to assure the availability of scholarships throughout the year.

C. Maximum Size of Awards

1. Except as specified below, applicants for new project grants and continuation grants may request funding in amounts up to $200,000 for 15 months, although new and continuation awards in excess of $150,000 are likely to be rare and to be made, if at all, only for highly promising proposals that will have a significant impact nationally.

2. Applicants for on-going support grants may request funding in amounts up to $600,000 over three years, although awards in excess of $450,000 are likely to be rare. The Institute will ordinarily release funds for the second and third years of on-going support grants on the following conditions: (1) the project is performing satisfactorily; (2) appropriations are available to support the project that fiscal year; and (3) the Board of Directors determines that the project continues to fall within the Institute's priorities.

3. Applicants for technical assistance grants may request funding in amounts up to $30,000.

4. Applicants for curriculum adaptation grants may request funding in amounts up to $20,000.

5. Applicants for scholarships may request funding in amounts up to $1,500.

D. Length of Grant Periods

1. Grant periods for all new and continuation projects ordinarily may not exceed 15 months.

2. Grant periods for on-going support grants ordinarily may not exceed 36 months.

3. Grant periods for technical assistance grants and curriculum adaptation grants ordinarily may not exceed 12 months.

VI. Concept Papers

Concept papers are an extremely important part of the application process because they enable the Institute to learn the program areas of primary interest to the courts and to explore innovative ideas, without imposing heavy burdens on prospective applicants. The use of concept papers also permits the Institute to better project the nature and amount of grant awards. The concept paper requirement and the submission deadlines for concept papers and applications may be waived by the Executive Director for good cause (e.g., the proposed project could provide a significant benefit to the State courts or the opportunity to conduct the project did not arise until after the deadline).

A. Format and Content

All concept papers must include a cover sheet, a program narrative, and a preliminary budget.

1. The Cover Sheet

The cover sheet for all concept papers must contain:

a. A title that clearly describes the proposed project;

b. The name and address of the court, organization, or individual submitting the paper;

c. The name, title, address (if different from that in b.), and telephone number of a contact person who can provide further information about the paper;

d. The letter of the Special Interest Category (see section II.B.2.) or the number of the statutory Program Area (see section II.A.) that the proposed project addresses most directly; and

e. The estimated length of the proposed project.

Applicants requesting the Board to waive the application requirement and approve a grant of less than $40,000 based on the concept paper should add APPLICATION WAIVER REQUESTED to the information on the cover page.

2. The Program Narrative

The program narrative of a concept paper should be no longer than necessary, but must not exceed eight (8) double-spaced pages on 8½ by 11 inch paper. Margins must be at least 1 inch and type size must be at least 12 point and 12 cpi. The pages should be numbered. The narrative should describe:

a. Why is this project needed and how would it benefit State courts? If the project is to be conducted in a specific location(s), applicants should discuss the particular needs of the project site(s) to be addressed by the project, why those needs are not being met through the use of existing materials, programs, procedures, services, or other resources, and the benefits that would be realized by the proposed site(s).

If the project is not site-specific, applicants should discuss the problems that the proposed project would address, why existing materials, programs, procedures, services, or other resources cannot adequately resolve those problems, and the benefits that would be realized from the project by State courts generally.

b. What would be done if a grant is awarded? Applicants should include a summary description of the project to be conducted and the approach to be taken, including the anticipated length of the grant period. Applicants requesting a waiver of the application requirement for a grant of less than $40,000 should explain the proposed methods for conducting the project as fully as space allows, and include a detailed task schedule as an attachment to the concept paper.

c. How would the effects and quality of the project be determined? Applicants should include a summary description of how the project would be evaluated, including the criteria that would be used to measure its success or impact.

d. How would others find out about the project and be able to use the results? Applicants should describe the

products that would result, the degree to which they would be applicable to courts across the nation, and to whom the products and results of the project would be disseminated in addition to the SJI-designated libraries (e.g., State chief justices, specified groups of trial judges, State court administrators, specified groups of trial court administrators, State judicial educators, or other audiences).

3. The Budget

a. Preliminary Budget. A preliminary budget must be attached to the narrative that includes the information specified on Form E included in Appendix H of this Guideline. Applicants should be aware that prior written Institute approval is required for any consultant rate in excess of $300 per day and that Institute funds may not be used to pay a consultant in excess of $900 per day.

b. Concept Papers Requesting Accelerated Award of a Grant of Less than $40,000. Applicants requesting a waiver of the application requirement and approval of a grant based on a concept paper under C. in this section must attach to Form E (see Appendix H) a budget narrative that explains the basis for each of the items listed and indicates whether the costs would be paid from grant funds, through a matching contribution, or from other sources. Courts requesting an accelerated award must also attach a Certificate of State Approval—Form B (Appendix I) signed by the Chief Justice of the State Supreme Court or the Chief Justice's designee.

4. Letters of Cooperation or Support

The Institute encourages concept paper applicants to attach letters of cooperation and support from the courts and related agencies that would be involved in or directly affected by the proposed project. Letters of support may be sent under separate cover; however, to ensure sufficient time to bring them to the Board's attention, support letters sent under separate cover must be received no later than January 5, 2000.

5. Page Limits

a. The Institute will not accept concept papers with program narratives exceeding eight double-spaced pages (see A.2. of this section). This page limit does not include the cover page, budget form, the budget narrative (for papers requesting consideration for accelerated awards), the task schedule (for papers requesting accelerated awards), and any letters of cooperation or endorsements. Additional material should not be attached unless it is essential to impart a clear understanding of the project.

b. Applicants submitting more than one concept paper may include material that would be identical in each concept paper in a cover letter. This material will be incorporated by reference into each paper and counted against the eight-page limit for each. A copy of the cover letter should be attached to each copy of each concept paper.

6. Sample Concept Papers

Sample concept papers from previous funding cycles are available from the Institute upon request.

B. Submission Requirements

With the exception of papers following up on the National Conference on Pro Se Litigants Appearing in Court, an original and three copies of all concept papers submitted for consideration in Fiscal Year 2000—including those proposing projects emanating from the National Summit on Fatality Reviews held in October 1998; the National Conference on Public Trust and Confidence in the Justice System held in May 1999; and the National Symposium on the Future of Judicial Branch Education scheduled for October 1999—must be sent by first class or overnight mail or by courier (but not by fax or e-mail) no later than November 24, 1999.

Concept papers following up on the National Conference on Pro Se Litigants Appearing in Court must be sent by first class or overnight mail or by courier by March 17, 2000.

A postmark or courier receipt will constitute evidence of the submission date. All envelopes containing concept papers should be marked CONCEPT PAPER and sent to: State Justice Institute, 1650 King Street, Suite 600, Alexandria, Virginia 22314.

Receipt of each concept paper will be acknowledged by the Institute in writing. Extensions of the deadlines for submission of concept papers will not be granted.

C. Institute Review

1. Review Process

Concept papers will be reviewed competitively by the Institute's Board of Directors. Institute staff will prepare a narrative summary and a rating sheet assigning points for each relevant selection criterion for those concept papers which fall within the scope of the Institute's funding program and merit serious consideration by the Board. Staff will also prepare a list of those papers that, in the judgment of the Executive Director, propose projects that lie outside the scope of the Institute's program or are not likely to merit serious consideration by the Board. The narrative summaries, rating sheets, and list of non-reviewed papers will be presented to the Board for its review. Committees of the Board will review concept paper summaries within assigned program areas and prepare recommendations for the full Board. The full Board of Directors will then decide which concept paper applicants will be invited to submit formal applications for funding. The decision to invite an application is solely that of the Board of Directors.

The Board may waive the application requirement and approve a grant based on a concept paper for a project requiring less than $40,000 when the need for and benefits of the project are clear and the methodology and budget require little additional explanation. Applicants considering whether to request consideration for an accelerated award should make certain that the proposed budget is sufficient to accomplish the project objectives in a quality manner. Because the Institute's experience has been that projects to conduct empirical research or a program evaluation ordinarily require a more thorough explanation of the methodology to be used than can be provided within the space limitations of a concept paper, the Board is unlikely to waive the application requirement for such projects.

2. Selection Criteria

a. All concept papers will be evaluated on the basis of the following criteria:

(1) The demonstration of need for the project;

(2) The soundness and innovativeness of the approach described;

(3) The benefits to be derived from the project;

(4) The reasonableness of the proposed budget;

(5) The proposed project's relationship to one of the "Special Interest" categories set forth in section II.B; and

(6) The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

Single jurisdiction concept papers will be rated on the proposed project's relation to one of the "Special Interest" categories set forth in section II.B. and the special requirements listed in section II.D. and VII.A.

b. In determining which concept papers will be approved for award or selected for development into full applications, the Institute will also consider the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the applicant's anticipated match; whether the applicant is a State court, a national court support or education organization, a non-court unit of government, or another type of entity eligible to receive grants under the Institute's enabling legislation (see 42 U.S.C. 10705(b)), as amended, and section IV of this Grant Guideline); the extent to which the proposed project would also benefit the Federal courts or help the State courts enforce Federal constitutional and legislative requirements, and the level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

3. Notification to Applicants

The Institute will send written notice to all persons submitting concept papers, informing them of the Board's decisions regarding their papers and of the key issues and questions that arose during the review process. A decision by the Board not to invite an application may not be appealed, but applicants may resubmit the concept paper or a revision thereof in a subsequent funding cycle. The Institute will also notify the relevant State contact (all of whom are listed in Appendix C) when the Board invites applications submitted by courts within that State or that specify a participating site within that State.

VII. Applications

An application for Institute funding must include an application form; budget forms (with appropriate documentation); a project abstract and program narrative; a disclosure of lobbying form, when applicable; and certain certifications and assurances. The required application forms will be sent to applicants invited to submit a full application. Applicants may photocopy the forms to make completion easier.

A. Project Grants

1. Forms

a. Application Form (FORM A). The application form requests basic information regarding the proposed project, the applicant, and the total amount of funding requested from the Institute. It also requires the signature of an individual authorized to certify on behalf of the applicant that the information contained in the application is true and complete; that submission of the application has been authorized by the applicant; and that if funding for the proposed project is approved, the applicant will comply with the requirements and conditions of the award, including the assurances set forth in Form D.

b. Certificate of State Approval (FORM B). An application from a State or local court must include a copy of FORM B signed by the State's Chief Justice or Chief Judge, the director of the designated agency, or the head of the designated council. The signature denotes that the proposed project has been approved by the State's highest court or the agency or council it has designated. It denotes further that if funding for the project is approved by the Institute, the court or the specified designee will receive, administer, and be accountable for the awarded funds.

c. Budget Forms (FORM C or C1). Applicants may submit the proposed project budget either in the tabular format of FORM C or in the spreadsheet format of FORM C1. Applicants requesting $100,000 or more are strongly encouraged to use the spreadsheet format. If the proposed project period is for more than a year, a separate form should be submitted for each year or portion of a year for which grant support is requested, as well as for the total length of the project.

In addition to FORM C or C1, applicants must provide a detailed budget narrative providing an explanation of the basis for the estimates in each budget category. (See 4. below in this section.)

If funds from other sources are required to conduct the project, either as match or to support other aspects of the project, the source, current status of the request, and anticipated decision date must be provided.

d. Assurances (FORM D). This form lists the statutory, regulatory, and policy requirements with which recipients of Institute funds must comply.

e. Disclosure of Lobbying Activities. Applicants other than units of State or local government are required to disclose whether they, or another entity that is part of the same organization as the applicant, have advocated a position before Congress on any issue, and to identify the specific subjects of their lobbying efforts. (See section IX.A.6.)

2. Project Abstract

The abstract should highlight the purposes, goals, methods and anticipated benefits of the proposed project. It should not exceed 1 single-spaced page on 8½ by 11 inch paper.

3. Program Narrative

The program narrative for an application may not exceed 25 double-spaced pages on 8½ by 11 inch paper. Margins must be at least 1 inch, and type size must be at least 12-point and 12 cpi. The pages should be numbered. This page limit does not include the forms, the abstract, the budget narrative, and any appendices containing resumes and letters of cooperation or endorsement. Additional background material should be attached only if it is essential to impart a clear understanding of the proposed project. Numerous and lengthy appendices are strongly discouraged.

The program narrative should address the following topics:

a. Project Objectives. The applicant should include a clear, concise statement of what the proposed project is intended to accomplish. In stating the objectives of the project, applicants should focus on the overall programmatic objective (e.g., to enhance understanding and skills regarding a specific subject, or to determine how a certain procedure affects the court and litigants) rather than on operational objectives (e.g., provide training for 32 judges and court managers, or review data from 300 cases).

b. Program Areas to be Covered. The applicant should note the Special Interest Category or Categories that are addressed by the proposed project (see section II.B.). If the proposed project does not fall within one of the Institute's Special Interest Categories, the applicant should list the Statutory Program Area or Areas that are addressed by the proposed project. (See section II.A.)

c. Need for the Project. If the project is to be conducted in a specific location(s), the applicant should discuss the particular needs of the project site(s) to be addressed by the project and why those needs are not being met through the use of existing materials, programs, procedures, services, or other resources.

If the project is not site-specific, the applicant should discuss the problems that the proposed project would address, and why existing materials, programs, procedures, services, or other resources cannot adequately resolve those problems. The discussion should include specific references to the relevant literature and to the experience in the field.

d. Tasks, Methods and Evaluation. (1) Tasks and Methods. The applicant should delineate the tasks to be performed in achieving the project objectives and the methods to be used for accomplishing each task. For example:

(a) For research and evaluation projects, the applicant should include the data sources, data collection strategies, variables to be examined, and analytic procedures to be used for

conducting the research or evaluation and ensuring the validity and general applicability of the results. For projects involving human subjects, the discussion of methods should address the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and the protection of others who are not the subjects of research but would be affected by the research. If the potential exists for risk or harm to the human subjects, a discussion should be included that explains the value of the proposed research and the methods to be used to minimize or eliminate such risk.

(b) For education and training projects, the applicant should include the adult education techniques to be used in designing and presenting the program, including the teaching/learning objectives of the educational design, the teaching methods to be used, and the opportunities for structured interaction among the participants; how faculty would be recruited, selected, and trained; the proposed number and length of the conferences, courses, seminars, or workshops to be conducted and the estimated number of persons who would attend them; the materials to be provided and how they would be developed; and the cost to participants.

(c) For demonstration projects, the applicant should include the demonstration sites and the reasons they were selected, or if the sites have not been chosen, how they would be identified and their cooperation obtained; and how the program or procedures would be implemented and monitored.

(d) For technical assistance projects, the applicant should explain the types of assistance that would be provided; the particular issues and problems for which assistance would be provided; how requests would be obtained and the type of assistance determined; how suitable providers would be selected and briefed; how reports would be reviewed; and the cost to recipients.

(2) Evaluation. Every project design must include an evaluation plan to determine whether the project met its objectives. The evaluation should be designed to provide an objective and independent assessment of the effectiveness or usefulness of the training or services provided; the impact of the procedures, technology, or services tested; or the validity and applicability of the research conducted. In addition, where appropriate, the evaluation process should be designed to provide on-going or periodic feedback on the effectiveness or utility of the project in order to promote its continuing improvement. The plan should present the qualifications of the evaluator(s); describe the criteria that would be used to evaluate the project's effectiveness in meeting its objectives; explain how the evaluation would be conducted, including the specific data collection and analysis techniques to be used; discuss why this approach would be appropriate; and present a schedule for completion of the evaluation within the proposed project period.

The evaluation plan should be appropriate to the type of project proposed.

For example:

(a) *Research.* An evaluation approach suited to many research projects is a review by an advisory panel of the research methodology, data collection instruments, preliminary analyses, and products as they are drafted. The panel should be comprised of independent researchers and practitioners representing the perspectives affected by the proposed project.

(b) *Education and Training.* The most valuable approaches to evaluating educational or training programs reinforce the participants' learning experience while providing useful feedback on the impact of the program and possible areas for improvement. One appropriate evaluation approach is to assess the acquisition of new knowledge, skills, attitudes or understanding through participant feedback on the seminar or training event. Such feedback might include a self-assessment on what was learned along with the participant's response to the quality and effectiveness of faculty presentations, the format of sessions, the value or usefulness of the material presented, and other relevant factors. Another appropriate approach would be to use an independent observer who might request both verbal and written responses from participants in the program. When an education project involves the development of curricular materials, an advisory panel of relevant experts can be coupled with a test of the curriculum to obtain the reactions of participants and faculty as indicated above.

(c) *Demonstration.* The evaluation plan for a demonstration project should encompass an assessment of program effectiveness (e.g., how well did it work?); user satisfaction, if appropriate; the cost-effectiveness of the program; a process analysis of the program (e.g., was the program implemented as designed, and/or did it provide the services intended to the targeted population?); the impact of the program (e.g., what effect did the program have on the court, and/or what benefits resulted from the program?); and the replicability of the program or components of the program.

(d) *Technical Assistance.* For technical assistance projects, applicants should explain how the quality, timeliness, and impact of the assistance provided would be determined, and develop a mechanism for feedback from both the users and providers of the technical assistance.

Evaluation plans involving human subjects should include a discussion of the procedures for obtaining respondents' informed consent, ensuring the respondents' privacy and freedom from risk or harm, and the protection of others who are not the subjects of evaluation but would be affected by it. Other than the provision of confidentiality to respondents, human subject protection issues ordinarily are not applicable to participants evaluating an education program.

e. *Project Management.* The applicant should present a detailed management plan, including the starting and completion date for each task; the time commitments to the project of key staff and their responsibilities regarding each project task; and the procedures that would ensure that all tasks are performed on time, within budget, and at the highest level of quality. In preparing the project time line, Gantt Chart, or schedule, applicants should make certain that all project activities, including publication or reproduction of project products and their initial dissemination, would occur within the proposed project period. The management plan must also provide for the submission of Quarterly Progress and Financial Reports within 30 days after the close of each calendar quarter (i.e., no later than January 30, April 30, July 30, and October 30).

Applicants should be aware that the Institute is unlikely to approve more than one limited extension of the grant period. Therefore, the management plan should be as realistic as possible and fully reflect the time commitments of the proposed project staff and consultants.

f. *Products.* The program narrative in the application should contain a description of the products to be developed (e.g., training curricula and materials, videotapes, articles, manuals, or handbooks), including when they would be submitted to the Institute. The budget should include the cost of producing and disseminating the product to each in-State SJI library, State chief justice, State court administrator, and other judges or court personnel.

(1) Dissemination Plan. The application must explain how and to whom the products would be disseminated; describe how they would benefit the State courts, including how they could be used by judges and court personnel; identify development, production, and dissemination costs covered by the project budget; and present the basis on which products and services developed or provided under the grant would be offered to the courts community and the public at large (i.e., whether products would be distributed at no cost to recipients, or if costs are involved, the reason for charging recipients and the estimated price of the product). (See section IX.A.10.b.) Ordinarily, applicants should schedule all product preparation and distribution activities within the project period.

A copy of each product must be sent to the library established in each State to collect the materials developed with Institute support. (A list of these libraries is contained in Appendix D.) To facilitate their use, all videotaped products should be distributed in VHS format.

Seventeen (17) copies of all project products must be submitted to the Institute. A master copy of each videotape, in addition to 17 copies of each videotape product, must also be provided to the Institute.

(2) Types of Products and Press Releases. The type of product to be prepared depends on the nature of the project. For example, in most instances, the products of a research, evaluation, or demonstration project should include an article summarizing the project findings that is publishable in a journal serving the courts community nationally, an executive summary that would be disseminated to the project's primary audience, or both. Applicants proposing to conduct empirical research or evaluation projects with national import should describe how they would make their data available for secondary analysis after the grant period. (See section IX.A.13.a.)

The curricula and other products developed by education and training projects should be designed for use outside the classroom so that they may be used again by original participants and others in the course of their duties.

In addition, recipients of project grants must prepare a press release describing the project and announcing the results and distribute the release to a list of national and State judicial branch organizations. SJI will provide press release guidelines and a list of recipients to grantees at least 30 days before the end of the grant period.

(3) Institute Review. Applicants must submit a final draft of all written grant products to the Institute for review and approval at least 30 days before the products are submitted for publication or reproduction. For products in a videotape or CD-ROM format, applicants must provide for incremental Institute review of the product at the treatment, script, rough-cut, and final stages of development, or their equivalents. No grant funds may be obligated for publication or reproduction of a final grant product without the written approval of the Institute. See section IX.A.10e.)

(4) Acknowledgment, Disclaimer, and Logo. Applicants must also include in all project products a prominent acknowledgment that support was received from the Institute and a disclaimer paragraph based on the example provided in section IX.A.10. of the Guideline. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a video, unless the Institute approves another placement.

g. Applicant Status. An applicant that is not a State or local court and has not received a grant from the Institute within the past two years should state whether it is either a national non-profit organization controlled by, operating in conjunction with, and serving the judicial branches of State governments; or a national non-profit organization for the education and training of State court judges and support personnel. See section IV. If the applicant is a nonjudicial unit of Federal, State, or local government, it must explain whether the proposed services could be adequately provided by non-governmental entities.

h. Staff Capability. The applicant should include a summary of the training and experience of the key staff members and consultants that qualify them for conducting and managing the proposed project. Resumes of identified staff should be attached to the application. If one or more key staff members and consultants are not known at the time of the application, a description of the criteria that would be used to select persons for these positions should be included. The applicant also should identify the person who would be responsible for the financial management and financial reporting for the proposed project.

i. Organizational Capacity. Applicants that have not received a grant from the Institute within the past two years should include a statement describing their capacity to administer grant funds, including the financial systems used to monitor project expenditures (and income, if any), and a summary of their past experience in administering grants, as well as any resources or capabilities that they have that would particularly assist in the successful completion of the project.

Unless requested otherwise, an applicant that has received a grant from the Institute within the past two years should describe only the changes in its organizational capacity, tax status, or financial capability that may affect its capacity to administer a grant.

If the applicant is a non-profit organization (other than a university), it must also provide documentation of its 501(c) tax-exempt status as determined by the Internal Revenue Service and a copy of a current certified audit report. For purposes of this requirement, current means no earlier than two years prior to the current calendar year.

If a current audit report is not available, the Institute will require the organization to complete a financial capability questionnaire which must be signed by a Certified Public Accountant. Other applicants may be required to provide a current audit report, a financial capability questionnaire, or both, if specifically requested to do so by the Institute.

j. Statement of Lobbying Activities. Non-governmental applicants must submit the Institute's Disclosure of Lobbying Activities Form, which documents whether they, or another entity that is a part of the same organization as the applicant, have advocated a position before Congress on any issue, and identifies the specific subjects of their lobbying efforts.

k. Letters of Cooperation or Support. If the cooperation of courts, organizations, agencies, or individuals other than the applicant is required to conduct the project, the applicant should attach written assurances of cooperation and availability to the application, or send them under separate cover. To ensure sufficient time to bring them to the Board's attention, letters of support sent under separate cover must be received no more than 30 days after the deadline for mailing the application.

4. Budget Narrative

The budget narrative should provide the basis for the computation of all project-related costs. When the proposed project would be partially supported by grants from other funding sources, applicants should make clear what costs would be covered by those other grants. Additional background or schedules may be attached if they are

essential to obtaining a clear understanding of the proposed budget. Numerous and lengthy appendices are strongly discouraged.

The budget narrative should cover the costs of all components of the project and clearly identify costs attributable to the project evaluation. Under OMB grant guidelines incorporated by reference in this Guideline, grant funds may not be used to purchase alcoholic beverages.

a. Justification of Personnel Compensation. The applicant should set forth the percentages of time to be devoted by the individuals who would staff the proposed project, the annual salary of each of those persons, and the number of work days per year used for calculating the percentages of time or daily rates of those individuals. The applicant should explain any deviations from current rates or established written organizational policies. If grant funds are requested to pay the salary and related costs for a current employee of a court or other unit of government, the applicant should explain why this would not constitute a supplantation of State or local funds in violation of 42 U.S.C. 10706(d)(1). An acceptable explanation may be that the position to be filled is a new one established in conjunction with the project or that the grant funds would support only the portion of the employee's time that would be dedicated to new or additional duties related to the project.

b. Fringe Benefit Computation. The applicant should provide a description of the fringe benefits provided to employees. If percentages are used, the authority for such use should be presented, as well as a description of the elements included in the determination of the percentage rate.

c. Consultant/Contractual Services and Honoraria. The applicant should describe the tasks each consultant would perform, the estimated total amount to be paid to each consultant, the basis for compensation rates (e.g., the number of days multiplied by the daily consultant rates), and the method for selection. Rates for consultant services must be set in accordance with section X.I.2.c. Honorarium payments must be justified in the same manner as other consultant payments. Prior written Institute approval is required for any consultant rate in excess of $300 per day; Institute funds may not be used to pay a consultant more than $900 per day.

d. Travel. Transportation costs and per diem rates must comply with the policies of the applicant organization. If the applicant does not have an established travel policy, then travel rates must be consistent with those established by the Institute or the Federal Government. (A copy of the Institute's travel policy is available upon request.) The budget narrative should include an explanation of the rate used, including the components of the per diem rate and the basis for the estimated transportation expenses. The purpose of the travel should also be included in the narrative.

e. Equipment. Grant funds may be used to purchase only the equipment necessary to demonstrate a new technological application in a court or that is otherwise essential to accomplishing the objectives of the project. Equipment purchases to support basic court operations ordinarily will not be approved. The applicant should describe the equipment to be purchased or leased and explain why the acquisition of that equipment is essential to accomplish the project's goals and objectives. The narrative should clearly identify which equipment is to be leased and which is to be purchased. The method of procurement should also be described. Purchases for automatic data processing equipment must comply with section X.I.2.b.

f. Supplies. The applicant should provide a general description of the supplies necessary to accomplish the goals and objectives of the grant. In addition, the applicant should provide the basis for the amount requested for this expenditure category.

g. Construction. Construction expenses are prohibited except for the limited purposes set forth in section IX.A.15. Any allowable construction or renovation expense should be described in detail in the budget narrative.

h. Telephone. Applicants should include anticipated telephone charges, distinguishing between monthly charges and long distance charges in the budget narrative. Also, applicants should provide the basis used to calculate the monthly and long distance estimates.

i. Postage. Anticipated postage costs for project-related mailings, including distribution of the final product(s), should be described in the budget narrative. The cost of special mailings, such as for a survey or for announcing a workshop, should be distinguished from routine operational mailing costs. The bases for all postage estimates should be included in the budget narrative.

j. Printing/Photocopying. Anticipated costs for printing or photocopying project documents, reports, and publications should be included in the budget narrative, along with the bases used to calculate these estimates.

k. Indirect Costs. Applicants should describe the indirect cost rates applicable to the grant in detail. If costs often included within an indirect cost rate are charged directly (e.g., a percentage of the time of senior managers to supervise product activities), the applicant should specify that these costs are not included within its approved indirect cost rate. These rates must be established in accordance with section X.I.4. If the applicant has an indirect cost rate or allocation plan approved by any Federal granting agency, a copy of the approved rate agreement should be attached to the application.

l. Match. The applicant should describe the source of any matching contribution and the nature of the match provided. Any additional contributions to the project should be described in this section of the budget narrative as well. If in-kind match is to be provided, the applicant should describe how the amount and value of the time, services, or materials actually contributed would be documented for audit purposes. Applicants should be aware that the time spent by participants in education courses does not qualify as in-kind match.

Applicants that do not contemplate making matching contributions continuously throughout the course of the project or on a task-by-task basis must provide a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions would be made. (See sections III.N., VIII.B., IX.A.7., and X.E.1.)

5. Submission Requirements

a. Every applicant must submit an original and four copies of the application package consisting of FORM A; FORM B, if the application is from a State or local court, or a Disclosure of Lobbying Form, if the applicant is not a unit of State or local government; the Budget Forms (either FORM C or C–1); the Application Abstract; Program Narrative; Budget Narrative; and any necessary appendices.

All applications invited by the Institute's Board of Directors must be sent by first class or overnight mail or by courier no later than May 10, 2000. A postmark or courier receipt will constitute evidence of the submission date. Please mark APPLICATION on the application package envelope and send it to: State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314.

Receipt of each application will be acknowledged in writing. Extensions of the deadline for submission of applications will not be granted. See 3.k. above in this section for deadlines for letters of support.

b. Applicants submitting more than one application may include material that would be identical in each application in a cover letter. This material will be incorporated by reference into each application and counted against the 25-page limit for the program narrative. A copy of the cover letter should be attached to each copy of each application.

B. Continuation Grant Applications

1. Purpose and Scope

Continuation grants are intended to support projects with a limited duration that involve the same type of activities as the previous project. They are intended to enhance the specific program or service produced or established during the prior grant period. They may be used, for example, when a project is divided into two or more sequential phases, for secondary analysis of data obtained in an Institute-supported research project, or for more extensive testing of an innovative technology, procedure, or program developed with SJI grant support. Continuation grants should be distinguished from on-going support grants, which are awarded to support critically needed long-term national scope projects. See C. below in this section.

The award of an initial grant to support a project does not constitute a commitment by the Institute to continue funding. For a project to be considered for continuation funding, the grantee must have completed all project tasks and met all grant requirements and conditions in a timely manner, absent extenuating circumstances or prior Institute approval of changes to the project design. Continuation grants are not intended to provide support for a project for which the grantee has underestimated the amount of time or funds needed to accomplish the project tasks.

2. Letters of Intent

In lieu of a concept paper, a grantee seeking a continuation grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for continued funding becomes apparent but no less than 120 days before the end of the current grant period.

a. A letter of intent must be no more than 3 single-spaced pages on 8½ by 11 inch paper and contain a concise but thorough explanation of the need for continuation; an estimate of the funds to be requested; and a brief description of anticipated changes in the scope, focus, or audience of the project.

b. Within 30 days after receiving a letter of intent, Institute staff will review the proposed activities for the next project period and inform the grantee of specific issues to be addressed in the continuation application and the date by which the application must be submitted.

3. Application Format

An application for a continuation grant must include an application form, budget forms (with appropriate documentation), a project abstract conforming to the format set forth in A.2. of this section, a program narrative, a budget narrative, a Certificate of State Approval—FORM B (Appendix I) if the applicant is a State or local court, a disclosure of lobbying form (from applicants other than units of State or local government), and any necessary appendices.

The program narrative should conform to the length and format requirements set forth in A.3. of this section. However, rather than the topics listed there, the program narrative of a continuation application should include:

a. Project Objectives. The applicant should clearly and concisely state what the continuation project is intended to accomplish.

b. Need for Continuation. The applicant should explain why continuation of the project is necessary to achieve the goals of the project, and how the continuation would benefit the participating courts or the courts community generally, by explaining, for example, how the original goals and objectives of the project would be unfulfilled if it were not continued; or how the value of the project would be enhanced by its continuation.

c. Report of Current Project Activities. The applicant should discuss the status of all activities conducted during the previous project period. Applicants should identify any activities that were not completed, and explain why.

d. Evaluation Findings. The applicant should present the key findings, impact, or recommendations resulting from the evaluation of the project, if available, and how they would be addressed during the proposed continuation. If the findings are not yet available, the applicant should provide the date by which they would be submitted to the Institute. Ordinarily, the Board will not consider an application for continuation funding until the Institute has received the evaluator's report.

e. Tasks, Methods, Staff and Grantee Capability. The applicant should fully describe any changes in the tasks to be performed, the methods to be used, the products of the project, and how and to whom those products would be disseminated, as well as any changes in the assigned staff or the grantee's organizational capacity. Applicants should include, in addition, the criteria and methods by which the proposed continuation project would be evaluated.

f. Task Schedule. The applicant should present a detailed task schedule and timeline for the next project period.

g. Other Sources of Support. The applicant should indicate why other sources of support would be inadequate, inappropriate, or unavailable.

4. Budget and Budget Narrative

The applicant should provide a complete budget and budget narrative conforming to the requirements set forth in A.4. in this section. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. In addition, the applicant should estimate the amount of grant funds that would remain unobligated at the end of the current grant period.

5. References to Previously Submitted Material

A continuation application should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

6. Submission Requirements

The submission requirements set forth in A.5. in this section, other than the mailing deadline, apply to continuation applications.

C. On-Going Support Grants

1. Purpose and Scope

On-going support grants are intended to support projects that are national in scope and provide the State courts with services, programs or products for which there is a continuing critical need. An on-going support grant may also be used to fund longitudinal research that directly benefits the State courts. On-going support grants are subject to the limits on size and duration set forth in V.C.2. and V.D.2. The Board will consider awarding an on-going support grant for a period of up to 36 months. The total amount of the grant will be fixed at the time of the initial award. Funds ordinarily will be

made available in annual increments as specified in section V.C.2.

The award of an initial grant to support a project does not constitute a commitment by the Institute to provide on-going support at the end of the original project period. A project is eligible for consideration for an on-going support grant if:

a. The project is supported by and has been evaluated under a grant from the Institute;

b. The project is national in scope and provides a significant benefit to the State courts;

c. There is a continuing critical need for the services, programs or products provided by the project, indicated by the level of use and support by members of the court community;

d. The project is accomplishing its objectives in an effective and efficient manner; and

e. It is likely that the service or program provided by the project would be curtailed or significantly reduced without Institute support.

Each on-going support application must include an evaluation component assessing its effectiveness and operation throughout the grant period. The evaluation should be independent but may be designed collaboratively by the evaluator and the grantee. The design should call for regular feedback from the evaluator to the grantee throughout the project period concerning recommendations for mid-course corrections or improvement of the project, as well as periodic reports to the Institute at relevant points in the project.

An interim evaluation report must be submitted 18 months into the 3-year grant period. The decision to release Institute funds to support the third year of the project will be based on the interim evaluation findings and the applicant's response to any deficiencies noted in the report, as well as the availability of appropriations and the project's consistency with the Institute's priorities.

A final evaluation assessing the effectiveness, operation of, and continuing need for the project must be submitted 90 days before the end of the 3-year project period. In addition, a detailed annual task schedule must be submitted not later than 45 days before the end of the first and second years of the grant period, along with an explanation of any necessary revisions in the projected costs for the remainder of the project period.

2. Letters of Intent

In lieu of a concept paper, an applicant seeking an on-going support grant must inform the Institute, by letter, of its intent to submit an application for such funding as soon as the need for continuing funding becomes apparent but no less than 120 days before the end of the current grant period. The letter of intent should be in the same format as that prescribed for continuation grants in B.2. of this section.

3. Format

An application for an on-going support grant must include an application form; budget forms (with appropriate documentation); a Certificate of State Approval—FORM B (Appendix I) if the applicant is a State or local court; a Disclosure of Lobbying Activities form (from applicants other than units of State or local government); a project abstract conforming to the format set forth in A.2. of this section; a program narrative; a budget narrative; and any necessary appendices.

The program narrative should conform to the length and format requirements set forth in A.3. of this section; however, rather than the topics listed there, the program narrative of applications for on-going support grants should address:

a. Description of Need for and Benefits of the Project. The applicant should provide a detailed discussion of the benefits provided by the project to the State courts around the country, including the degree to which State courts, State court judges, or State court managers and personnel are using the services or programs provided by the project.

b. Demonstration of Court Support. The applicant should demonstrate support for the continuation of the project from the courts community.

c. Report on Current Project Activities. The applicant should discuss the extent to which the project has met its goals and objectives, identify any activities that have not been completed, and explain why they have not been completed.

d. Evaluation Findings. The applicant should attach a copy of the final evaluation report regarding the effectiveness, impact, and operation of the project, specify the key findings or recommendations resulting from the evaluation, and explain how they would be addressed during the next three years. Ordinarily, the Board will not consider an application for on-going support until the Institute has received the evaluator's report.

e. Objectives, Tasks, Methods, Staff and Grantee Capability. The applicant should describe fully any changes in the objectives; tasks to be performed; the methods to be used; the products of the project; how and to whom those products would be disseminated; the assigned staff; and the grantee's organizational capacity. The grantee also should describe the steps it would take to obtain support from other sources for the continued operation of the project.

f. Task Schedule. The applicant should present a general schedule for the full proposed project period and a detailed task schedule for the first year of the proposed new project period.

g. Other Sources of Support. The applicant should describe what efforts it has taken to secure support for the project from other sources.

4. Budget and Budget Narrative

The applicant should provide a complete three-year budget and budget narrative conforming to the requirements set forth in A.4. of this section, and estimate the amount of grant funds that would remain unobligated at the end of the current grant period. Changes in the funding level requested should be discussed in terms of corresponding increases or decreases in the scope of activities or services to be rendered. A complete budget narrative should be provided for the full project as well as for each year, or portion of a year, for which grant support is requested. The budget should provide for realistic cost-of-living and staff salary increases over the course of the requested project period. Applicants should be aware that the Institute is unlikely to approve a supplemental budget increase for an on-going support grant in the absence of well-documented, unanticipated factors that would clearly justify the requested increase.

5. References to Previously Submitted Material

An application for an on-going support grant should not repeat information contained in a previously approved application or other previously submitted materials, but should provide specific references to such materials where appropriate.

6. Submission Requirements

The submission requirements set forth in A.5. of this section, other than the mailing deadline, apply to applications for on-going support grants.

D. Technical Assistance Grants

1. Purpose and Scope

Technical assistance grants are awarded to State and local courts to obtain the assistance of outside experts in diagnosing, developing, and implementing a response to a particular problem in a jurisdiction.

2. Application Procedures

In lieu of formal applications, applicants for Technical Assistance grants may submit, at any time, an original and three copies of a detailed letter describing the proposed project. Letters from an individual trial or appellate court must be signed by the presiding judge or manager of that court. Letters from the State court system must be signed by the Chief Justice or State Court Administrator.

3. Application Format

Although there is no prescribed form for the letter nor a minimum or maximum page limit, letters of application should include the following information:

a. Need for Funding. What is the critical need facing the court? How would the proposed technical assistance help the court meet this critical need? Why cannot State or local resources fully support the costs of the required consultant services?

b. Project Description. What tasks would the consultant be expected to perform, and how would they be accomplished? Which organization or individual would be hired to provide the assistance, and how was this consultant selected? If a consultant has not yet been identified, what procedures and criteria would be used to select the consultant? (Applicants are expected to follow their jurisdictions' normal procedures for procuring consultant services.) What is the time frame for completion of the technical assistance? How would the court oversee the project and provide guidance to the consultant, and who at the court would be responsible for coordinating all project tasks and submitting quarterly progress and financial status reports?

If the consultant has been identified, the applicant should provide a letter from that individual or organization documenting interest in and availability for the project, as well as the consultant's ability to complete the assignment within the proposed time frame and for the proposed cost. The consultant must agree to submit a detailed written report to the court and the Institute upon completion of the technical assistance.

c. Likelihood of Implementation. What steps have been or would be taken to facilitate implementation of the consultant's recommendations upon completion of the technical assistance? For example, if the support or cooperation of specific court officials or committees, other agencies, funding bodies, organizations, or a court other than the applicant would be needed to adopt the changes recommended by the consultant and approved by the court, how would they be involved in the review of the recommendations and development of the implementation plan?

d. Support for the Project from the State Supreme Court or its Designated Agency or Council. Written concurrence on the need for the technical assistance must be submitted. This concurrence may be a copy of SJI Form B (see Appendix I) signed by the Chief Justice of the State Supreme Court or the Chief Justice's designee, or a letter from the State Chief Justice or designee. The concurrence may be submitted with the applicant's letter or under separate cover prior to consideration of the application. The concurrence also must specify whether the State Supreme Court would receive, administer, and account for the grant funds, if awarded, or would designate the local court or a specified agency or council to receive the funds directly.

4. Budget and Matching State Contribution

A completed Form E, Preliminary Budget (see Appendix H) and budget narrative must be included with the letter requesting technical assistance. The estimated cost of the technical assistance services should be broken down into the categories listed on the budget form rather than aggregated under the Consultant/Contractual category.

The budget narrative should provide the basis for all project-related costs, including the basis for determining the estimated consultant costs, if compensation of the consultant is required (e.g., the number of days per task times the requested daily consultant rate). Applicants should be aware that consultant rates above $300 per day must be approved in advance by the Institute, and that no consultant will be paid more than $900 per day. In addition, the budget should provide for submission of two copies of the consultant's final report to the Institute.

Recipients of technical assistance grants do not have to submit an audit but must maintain appropriate documentation to support expenditures. (See section IX.A.3.)

5. Submission Requirements

Letters of application may be submitted at any time; however, all of the letters received during a calendar quarter will be considered at one time. Applicants submitting letters between June 12 and September 30, 1999 will be notified of the Board's decision by December 10, 1999; those submitting letters between October 1, 1999 and January 14, 2000 will be notified by March 31, 2000; notification of the Board's decisions concerning letters mailed between January 15 and March 11, 2000, will be made by May 26, 2000; and notice of decisions regarding letters submitted between March 11 and June 10, 2000 will be made by August 25, 2000. Subject to the availability of sufficient appropriations for fiscal year 2000, applicants submitting letters between June 11 and September 29, 2000, will be notified by December 15, 2000.

If the support or cooperation of agencies, funding bodies, organizations, or courts other than the applicant would be needed in order for the consultant to perform the required tasks, written assurances of such support or cooperation should accompany the application letter. Support letters also may be submitted under separate cover; however, to ensure that there is sufficient time to bring them to the attention of the Board's Technical Assistance Committee, letters sent under separate cover must be received not less than three weeks prior to the Board meeting at which the technical assistance requests will be considered (i.e., by October 21, 1999, and February 10, April 13, and July 7, 2000).

E. Curriculum Adaptation Grants

1. Purpose and Scope

Curriculum Adaptation grants are awarded to State and local courts to support replication or modification of a model training program originally developed with Institute funds.

2. Application Procedures

In lieu of concept papers and formal applications, applicants should submit an original and three photocopies of a detailed letter.

3. Application Format

Although there is no prescribed format for the letter, or a minimum or maximum page limit, letters of application should include the following information:

a. Project Description. What is the title of the model curriculum to be adapted and who developed it? What are the project's goals? Why is this education program needed at the present time? What program components would be implemented, and what types of modifications, if any, are anticipated in length, format, learning objectives, teaching methods, or content? Who would be responsible

for adapting the model curriculum? Who would the participants be, how many would there be, how would they be recruited, and from where would they come (e.g., from across the State, from a single local jurisdiction, from a multi-State region)?

b. Need for Funding. Why are sufficient State or local resources unavailable to fully support the modification and presentation of the model curriculum? What is the potential for replicating or integrating the program in the future using State or local funds, once it has been successfully adapted and tested?

c. Likelihood of Implementation. What is the proposed timeline for modifying and presenting the program? Who would serve as faculty, and how were they selected? What measures would be taken to facilitate subsequent presentations of the adapted program? (Ordinarily, an independent evaluation of a curriculum adaptation project is not required; however, the results of any evaluation should be included in the final report.)

d. Expressions of Interest By Judges and/or Court Personnel. Does the proposed program have the support of the court system leadership, and of judges, court managers, and judicial education personnel who are expected to attend? (This may be demonstrated by attaching letters of support.)

e. Chief Justice's Concurrence. Local courts should attach a concurrence form signed by the Chief Justice of the State or his or her designee. (See Form B, Appendix I.)

4. Budget and Matching State Contribution

Applicants should attach a copy of budget Form E (see Appendix H) and a budget narrative (see A.4. in this section) that describes the basis for the computation of all project-related costs and the source of the match offered. As with other awards to State or local courts, cash or in-kind match must be provided in an amount equal to at least 50% of the grant amount requested.

5. Submission Requirements

Letters of application may be submitted at any time. However, applicants should allow at least 90 days between the date of submission and the date of the proposed program to allow sufficient time for needed planning.

F. Scholarships

1. Purpose and Scope

The purposes of the Institute scholarship program are to enhance the skills, knowledge, and abilities of judges and court managers; enable State court judges and court managers to attend out-of-State educational programs sponsored by national and State providers that they could not otherwise attend because of limited State, local and personal budgets; and provide States, judicial educators, and the Institute with evaluative information on a range of judicial and court-related education programs.

Scholarships will be granted to individuals only for the purpose of attending an out-of-State educational program within the United States. An applicant may apply for a scholarship for only one educational program during any one application cycle.

Scholarship funds may be used only to cover the costs of tuition and transportation expenses. Transportation expenses may include round-trip coach airfare or train fare. Recipients who drive to a program site may receive $.31/mile up to the amount of the advanced-purchase round-trip airfare between their homes and the program sites. Funds to pay tuition and transportation expenses in excess of $1,500 and other costs of attending the program—such as lodging, meals, materials, transportation to and from airports, and local transportation (including rental cars)—at the program site must be obtained from other sources or be borne by the scholarship recipient. Scholarship applicants are encouraged to check other sources of financial assistance and to combine aid from various sources whenever possible.

A scholarship is not transferable to another individual. It may be used only for the course specified in the application unless attendance at a different course that meets the eligibility requirements is approved in writing by the Institute. Decisions on such requests will be made within 30 days after the receipt of the request letter.

2. Eligibility Requirements

a. Recipients. Scholarships can be awarded only to full-time judges of State or local trial and appellate courts; full-time professional, State or local court personnel with management responsibilities; and supervisory and management probation personnel in judicial branch probation offices. Senior judges, part-time judges, quasi-judicial hearing officers including referees and commissioners, State administrative law judges, staff attorneys, law clerks, line staff, law enforcement officers, and other executive branch personnel are not eligible to receive a scholarship.

b. Courses. A Scholarship can be awarded only for a course presented in a U.S. jurisdiction other than the one in which the applicant resides that is designed to enhance the skills of new or experienced judges and court managers; address any of the topics listed in the Institute's Special Interest categories; or is offered by a recognized graduate program for judges or court managers. The annual or mid-year meeting of a State or national organization of which the applicant is a member does not qualify as an out-of-State educational program for scholarship purposes, even though it may include workshops or other training sessions.

Applicants are encouraged not to wait for the decision on a scholarship to register for an educational program they wish to attend.

3. Forms

a. Judicial Education Scholarship Application—FORM S–1 (Appendix G). The application form requests basic information about the applicant and the educational program the applicant would like to attend. It also addresses the applicant's commitment to share the skills and knowledge gained with local court colleagues and to submit an evaluation of the program the applicant attends.

b. Scholarship Application Concurrence—FORM S–2 (Appendix G). Judges and court managers applying for a scholarship must submit the written concurrence of the Chief Justice of the State's Supreme Court (or the Chief Justice's designee) on the Institute's Judicial Education Scholarship Concurrence form (see Appendix V). The signature of the presiding judge of the applicant's court cannot be substituted for that of the Chief Justice or the Chief Justice's designee. Court managers, other than elected clerks of court, also must submit a letter of support from their immediate supervisors.

4. Submission Requirements

Scholarship applications must be submitted during the periods specified below:

October 1–December 1, 1999, for programs beginning between January 1 and March 31, 2000;

January 7–March 7, 2000, for programs beginning between April 1 and June 30, 2000;

April 3–June 1, 2000, for programs beginning between July 1 and September 30, 2000;

July 5–September 1, 2000, for programs beginning between October 1 and December 31, 2000; and

October 2–December 1, 2000, for programs beginning between January 1 and March 31, 2001.

No exceptions or extensions will be granted. Applications sent prior to the beginning of an application period will be treated as having been sent one week *after the beginning of that application period.* All the required items must be received for an application to be considered. If the Concurrence form or letter of support is sent separately from the application, the postmark date of the last item to be sent will be used in applying the above criteria.

All applications should be sent by mail or courier (not fax or e-mail) to: Scholarship Program Coordinator, State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314.

VIII. Application Review Procedures

A. Preliminary Inquiries

The Institute staff will answer inquiries concerning application procedures. The staff contact will be named in the Institute's letter acknowledging receipt of the application.

B. Selection Criteria

1. Project, Continuation, and On-going Support Grant Applications

a. All applications will be rated on the basis of the criteria set forth below. The Institute will accord the greatest weight to the following criteria:

(1) The soundness of the methodology;

(2) The demonstration of need for the project;

(3) The appropriateness of the proposed evaluation design;

(4) The applicant's management plan and organizational capabilities;

(5) The qualifications of the project's staff;

(6) The products and benefits resulting from the project including the extent to which the project will have long-term benefits for State courts across the nation;

(7) The degree to which the findings, procedures, training, technology, or other results of the project can be transferred to other jurisdictions.

(8) The reasonableness of the proposed budget;

(9) The demonstration of cooperation and support of other agencies that may be affected by the project; and

(10) The proposed project's relationship to one of the "Special Interest" categories set forth in section II.B.

b. For continuation and on-going support grant applications, the key findings and recommendations of evaluations and the proposed responses to those findings and recommendations also will be considered.

c. In determining which applicants to fund, the Institute will also consider whether the applicant is a State court, a national court support or education organization, a non-court unit of government, or other type of entity eligible to receive grants under the Institute's enabling legislation (see 42 U.S.C. 10705(6) (as amended) and Section IV. above); the availability of financial assistance from other sources for the project; the amount and nature (cash or in-kind) of the applicant's match; the extent to which the proposed project would also benefit the Federal courts or help State courts enforce Federal constitutional and legislative requirements; and the level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

2. Technical Assistance Grant Applications

Technical Assistance grant applications will be rated on the basis of the following criteria:

a. Whether the assistance would address a critical need of the court;

b. The soundness of the technical assistance approach to the problem;

c. The qualifications of the consultant(s) to be hired, or the specific criteria that will be used to select the consultant(s);

d. Commitment on the part of the court to act on the consultant's recommendations; and

e. The reasonableness of the proposed budget.

The Institute also will consider factors such as the level and nature of the match that would be provided, diversity of subject matter, geographic diversity, the level of appropriations available to the Institute in the current year, and the amount expected to be available in succeeding fiscal years.

3. Curriculum Adaptation Grant Applications

Curriculum Adaptation grant applications will be rated on the basis of the following criteria:

a. The goals and objectives of the proposed project;

b. The need for outside funding to support the program;

c. The appropriateness of the approach in achieving the project's educational objectives;

d. The likelihood of effective implementation and integration into the State's or local jurisdiction's ongoing educational programming; and

e. Expressions of interest by the judges and/or court personnel who would be directly involved in or affected by the project.

The Institute will also consider factors such as the reasonableness of the amount requested, compliance with match requirements, diversity of subject matter, geographic diversity, the level of appropriations available in the current year, and the amount expected to be available in succeeding fiscal years.

4. Scholarships

Scholarships will be awarded on the basis of:

a. The date on which the application and concurrence (and support letter, if required) were received;

b. The unavailability of State or local funds to cover the costs of attending the program or scholarship funds from another source;

c. The absence of educational programs in the applicant's State addressing the topic(s) covered by the educational program for which the scholarship is being sought;

d. Geographic balance among the recipients;

e. The balance of scholarships among educational programs;

f. The balance of scholarships among the types of courts represented; and

g. The level of appropriations available to the Institute in the current year and the amount expected to be available in succeeding fiscal years.

The postmark or courier receipt will be used to determine the date on which the application form and other required items were sent

C. Review and Approval Process

1. Project, Continuation, and On-going Support Grant Applications

Applications will be reviewed competitively by the Board of Directors. The Institute staff will prepare a narrative summary of each application and a rating sheet assigning points for each relevant selection criterion. When necessary, applications may also be reviewed by outside experts. Committees of the Board will review applications within assigned program categories and prepare recommendations to the full Board. The full Board of Directors will then decide which applications to approve for grants. The decision to award a grant is solely that of the Board of Directors.

Awards approved by the Board will be signed by the Chairman of the Board on behalf of the Institute.

2. Technical Assistance and Curriculum Adaptation Grant Applications

The Institute staff will prepare a narrative summary of each application and a rating sheet assigning points for each relevant selection criterion.

Applications will be reviewed competitively by a committee of the Board of Directors. The Board of Directors has delegated its authority to approve Technical Assistance and Curriculum Adaptation grants to the committee established for each program.

Approved awards will be signed by the Chairman of the Board on behalf of the Institute.

3. Scholarships

Scholarship applications are reviewed quarterly by a committee of the Institute's Board of Directors. The Board of Directors has delegated its authority to approve Scholarships to the committee established for the program.

Approved awards will be signed by the Chairman of the Board on behalf of the Institute.

D. Return Policy

Unless a specific request is made, unsuccessful applications will not be returned. Applicants are advised that Institute records are subject to the provisions of the Federal Freedom of Information Act, 5 U.S.C. 552.

E. Notification of Board Decision

1. The Institute will send written notice to applicants concerning all Board decisions to approve, defer, or deny their respective applications. For all except Scholarship applications, the Institute also will convey the key issues and questions that arose during the review process. A decision by the Board to deny an application may not be appealed, but it does not prohibit resubmission of a proposal based on that application in a subsequent funding cycle. With respect to awards other than Scholarships, the Institute will also notify the designated State contact listed in Appendix C when grants are approved by the Board to support projects that will be conducted by or involve courts in that State.

2. The Board anticipates acting upon Curriculum Adaptation grant applications within 45 days after receipt. Grant funds will be available only after Board approval, and negotiation of the final terms of the grant.

3. The Institute intends to notify each Scholarship applicant of the Board committee's decision within 30 days after the close of the relevant application period.

F. Response to Notification of Approval

With the exception of those approved for Scholarships, applicants have 30 days from the date of the letter notifying them that the Board has approved their application to respond to any revisions requested by the Board. If the requested revisions (or a reasonable schedule for submitting such revisions) have not been submitted to the Institute within 30 days after notification, the approval may be automatically rescinded and the application presented to the Board for reconsideration.

IX. Compliance Requirements

The State Justice Institute Act contains limitations and conditions on grants, contracts, and cooperative agreements awarded by the Institute. The Board of Directors has approved additional policies governing the use of Institute grant funds. These statutory and policy requirements are set forth below.

A. Recipients of Project Grants

1. Advocacy

No funds made available by the Institute may be used to support or conduct training programs for the purpose of advocating particular nonjudicial public policies or encouraging nonjudicial political activities. (42 U.S.C. 10706(b)).

2. Approval of Key Staff

If the qualifications of an employee or consultant assigned to a key project staff position are not described in the application or if there is a change of a person assigned to such a position, the recipient must submit a description of the qualifications of the newly assigned person to the Institute. Prior written approval of the qualifications of the new person assigned to a key staff position must be received from the Institute before the salary or consulting fee of that person and associated costs may be paid or reimbursed from grant funds.

3. Audit

Recipients of project grants must provide for an annual fiscal audit which includes an opinion on whether the financial statements of the grantee present fairly its financial position and financial operations are in accordance with generally accepted accounting principles. (See section X.K. of the Guideline for the requirements of such audits.) Recipients of scholarships or curriculum adaptation or technical assistance grants are not required to submit an audit, but must maintain appropriate documentation to support all expenditures.

4. Conflict of Interest

Personnel and other officials connected with Institute-funded programs must adhere to the following requirements:

a. No official or employee of a recipient court or organization shall participate personally through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in any proceeding, application, request for a ruling or other determination, contract, grant, cooperative agreement, claim, controversy, or other particular matter in which Institute funds are used, where, to his or her knowledge, he or she or his or her immediate family, partners, organization other than a public agency in which he or she is serving as officer, director, trustee, partner, or employee or any person or organization with whom he or she is negotiating or has any arrangement concerning prospective employment, or has a financial interest.

b. In the use of Institute project funds, an official or employee of a recipient court or organization shall avoid any action which might result in or create the appearance of:

(1) Using an official position for private gain; or

(2) Affecting adversely the confidence of the public in the integrity of the Institute program.

c. Requests for proposals or invitations for bids issued by a recipient of Institute funds or a subgrantee or subcontractor will provide notice to prospective bidders that the contractors who develop or draft specifications, requirements, statements of work, and/or requests for proposals for a proposed procurement will be excluded from bidding on or submitting a proposal to compete for the award of such procurement.

5. Inventions and Patents

If any patentable items, patent rights, processes, or inventions are produced in the course of Institute-sponsored work, such fact shall be promptly and fully reported to the Institute. Unless there is a prior agreement between the grantee and the Institute on disposition of such items, the Institute shall determine whether protection of the invention or discovery shall be sought. The Institute will also determine how the rights in the invention or discovery, including rights under any patent issued thereon, shall be allocated and administered in order to protect the public interest consistent with "Government Patent Policy" (President's Memorandum for Heads of Executive Departments and Agencies, February 18, 1983, and statement of Government Patent Policy).

6. Lobbying

a. Funds awarded to recipients by the Institute shall not be used, indirectly or directly, to influence Executive orders or similar promulgations by Federal, State or local agencies, or to influence the passage or defeat of any legislation by Federal, State or local legislative bodies. 42 U.S.C. 10706(a).

b. It is the policy of the Board of Directors to award funds only to support applications submitted by organizations that would carry out the objectives of their applications in an unbiased manner. Consistent with this policy and the provisions of 42 U.S.C. 10706, the Institute will not knowingly award a grant to an applicant that has, directly or through an entity that is part of the same organization as the applicant, advocated a position before Congress on the specific subject matter of the application.

7. Matching Requirements

a. All awards to courts or other units of State or local government (not including publicly supported institutions of higher education) require a match from private or public sources of not less than 50% of the total amount of the Institute's award. For example, if the total cost of a project is anticipated to be $150,000, a State court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as a match. A cash match, non-cash match, or both may be provided, but the Institute will give preference to those applicants that provide a cash match to the Institute's award. (For a further definition of match, see section III.N.)

b. The requirement to provide match may be waived in exceptionally rare circumstances upon the request of the Chief Justice of the highest court in the State and approval by the Board of Directors. 42 U.S.C. 10705(d).

c. Other eligible recipients of Institute funds are not required to provide a match, but are encouraged to contribute to meeting the costs of the project. In instances where match is proposed, the grantee is responsible for ensuring that the total amount proposed is actually contributed. If a proposed contribution is not fully met, the Institute may reduce the award amount accordingly, in order to maintain the ratio originally provided for in the award agreement (see sections VIII.B. and X.E).

8. Nondiscrimination

No person may, on the basis of race, sex, national origin, disability, color, or creed be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under any program or activity supported by Institute funds. Recipients of Institute funds must immediately take any measures necessary to effectuate this provision.

9. Political Activities

No recipient may contribute or make available Institute funds, program personnel, or equipment to any political party or association, or the campaign of any candidate for public or party office. Recipients are also prohibited from using funds in advocating or opposing any ballot measure, initiative, or referendum. Officers and employees of recipients shall not intentionally identify the Institute or recipients with any partisan or nonpartisan political activity associated with a political party or association, or the campaign of any candidate for public or party office. 42 U.S.C. 10706(a).

10. Products

a. Acknowledgment, Logo, and Disclaimer. (1) Recipients of Institute funds must acknowledge prominently on all products developed with grant funds that support was received from the Institute. The "SJI" logo must appear on the front cover of a written product, or in the opening frames of a video product, unless another placement is approved in writing by the Institute. This includes final products printed or otherwise reproduced during the grant period, as well as reprintings or reproductions of those materials following the end of the grant period. A camera-ready logo sheet is available from the Institute upon request.

(2) Recipients also must display the following disclaimer on all grant products: "This [document, film, videotape, etc.] was developed under [grant/cooperative agreement, number SJI–(insert number)] from the State Justice Institute. The points of view expressed are those of the [author(s), filmmaker(s), etc.] and do not necessarily represent the official position or policies of the State Justice Institute."

b. Charges for Grant-Related Products/Recovery of Costs. (1) When Institute funds fully cover the cost of developing, producing, and disseminating a product, (e.g., a report, curriculum, videotape or software), the product should be distributed to the field without charge. When Institute funds only partially cover the development, production, or dissemination costs, the grantee may, with the Institute's prior written approval, recover its costs for developing, producing, and disseminating the material to those requesting it, to the extent that those costs were not covered by Institute funds or grantee matching contributions.

(2) Applicants should disclose their intent to sell grant-related products in both the concept paper and the application. Grantees must obtain the written prior approval of the Institute of their plans to recover project costs through the sale of grant products. Written requests to recover costs ordinarily should be received during the grant period and should specify the nature and extent of the costs to be recouped, the reason that such costs were not budgeted (if the rationale was not disclosed in the approved application), the number of copies to be sold, the intended audience for the products to be sold, and the proposed sale price. If the product is to be sold for more than $25, the written request also should include a detailed itemization of costs that will be recovered and a certification that the costs were not supported by either Institute grant funds or grantee matching contributions.

(3) In the event that the sale of grant products results in revenues that exceed the costs to develop, produce, and disseminate the product, the revenue must continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act that have been approved by the Institute. See sections III.R. and X.G. for requirements regarding project-related income realized during the project period.

c. Copyrights. Except as otherwise provided in the terms and conditions of an Institute award, a recipient is free to copyright any books, publications, or other copyrightable materials developed in the course of an Institute-supported project, but the Institute shall reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the materials for purposes consistent with the State Justice Institute Act.

d. Distribution. In addition to the distribution specified in the grant application, grantees shall send:

(1) Seventeen (17) copies of each final product developed with grant funds to the Institute, unless the product was developed under either a curriculum adaptation or a technical assistance grant, in which case submission of 2 copies is required.

(2) A mastercopy of each videotape produced with grant funds to the Institute.

(3) One copy of each final product developed with grant funds to the

library established in each State to collect materials prepared with Institute support. (A list of these libraries is contained in Appendix D. Labels for these libraries are available from the Institute upon request.) Recipients of curriculum adaptation and technical assistance grants are not required to submit final products to State libraries.

(4) A press release describing the project and announcing the results to a list of national and State judicial branch organizations provided by the Institute.

e. Institute Approval. No grant funds may be obligated for publication or reproduction of a final product developed with grant funds without the written approval of the Institute. Grantees shall submit a final draft of each written product to the Institute for review and approval. These drafts shall be submitted at least 30 days before the product is scheduled to be sent for publication or reproduction to permit Institute review and incorporation of any appropriate changes agreed upon by the grantee and the Institute. Grantees shall provide for timely reviews by the Institute of videotape or CD–ROM products at the treatment, script, rough cut, and final stages of development or their equivalents, prior to initiating the next stage of product development.

f. Original Material. All products prepared as the result of Institute-supported projects must be originally-developed material unless otherwise specified in the award documents. Material not originally developed that is included in such products must be properly identified, whether the material is in a verbatim or extensive paraphrase format.

11. Prohibition Against Litigation Support

No funds made available by the Institute may be used directly or indirectly to support legal assistance to parties in litigation, including cases involving capital punishment.

12. Reporting Requirements

a. Recipients of Institute funds other than Scholarships must submit Quarterly Progress and Financial Reports within 30 days of the close of each calendar quarter (that is, no later than January 30, April 30, July 30, and October 30). Two copies of each report must be sent. The Quarterly Progress Reports shall include a narrative description of project activities during the calendar quarter, the relationship between those activities and the task schedule and objectives set forth in the approved application or an approved adjustment thereto, any significant problem areas that have developed and how they will be resolved, and the activities scheduled during the next reporting period.

b. The quarterly financial status report must be submitted in accordance with section X.H.2. of this Guideline. A final project progress report and financial status report shall be submitted within 90 days after the end of the grant period in accordance with section X.L.2. of this Guideline.

13. Research

a. Availability of Research Data for Secondary Analysis. Upon request, grantees must make available for secondary analysis a diskette(s) or data tape(s) containing research and evaluation data collected under an Institute grant and the accompanying code manual. Grantees may recover the actual cost of duplicating and mailing or otherwise transmitting the data set and manual from the person or organization requesting the data. Grantees may provide the requested data set in the format in which it was created and analyzed.

b. Confidentiality of Information. Except as provided by Federal law other than the State Justice Institute Act, no recipient of financial assistance from SJI may use or reveal any research or statistical information furnished under the Act by any person and identifiable to any specific private person for any purpose other than the purpose for which the information was obtained. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

c. Human Subject Protection. All research involving human subjects shall be conducted with the informed consent of those subjects and in a manner that will ensure their privacy and freedom from risk or harm and the protection of persons who are not subjects of the research but would be affected by it, unless such procedures and safeguards would make the research impractical. In such instances, the Institute must approve procedures designed by the grantee to provide human subjects with relevant information about the research after their involvement and to minimize or eliminate risk or harm to those subjects due to their participation.

14. State and Local Court Applications

Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. The Supreme Court or its designee shall receive, administer, and be accountable for all funds awarded on the basis of such an application. 42 U.S.C. 10705(b)(4). Appendix C to this Guideline lists the person to contact in each State regarding the administration of Institute grants to State and local courts.

15. Supplantation and Construction

To ensure that funds are used to supplement and improve the operation of State courts, rather than to support basic court services, funds shall not be used for the following purposes:

a. To supplant State or local funds supporting a program or activity (such as paying the salary of court employees who would be performing their normal duties as part of the project, or paying rent for space which is part of the court's normal operations);

b. To construct court facilities or structures, except to remodel existing facilities or to demonstrate new architectural or technological techniques, or to provide temporary facilities for new personnel or for personnel involved in a demonstration or experimental program; or

c. Solely to purchase equipment.

16. Suspension of Funding

After providing a recipient reasonable notice and opportunity to submit written documentation demonstrating why fund termination or suspension should not occur, the Institute may terminate or suspend funding of a project that fails to comply substantially with the Act, the Guideline, or the terms and conditions of the award. 42 U.S.C. 10708(a).

17. Title to Property

At the conclusion of the project, title to all expendable and nonexpendable personal property purchased with Institute funds shall vest in the recipient court, organization, or individual that purchased the property if certification is made to and approved by the Institute that the property will continue to be used for the authorized purposes of the Institute-funded project or other purposes consistent with the State Justice Institute Act. If such certification is not made or the Institute disapproves such certification, title to all such property with an aggregate or individual value of $1,000 or more shall vest in the Institute, which will direct the disposition of the property.

B. Recipients of Curriculum Adaptation and Technical Assistance Grants

In addition to the compliance requirements in A. in this section, recipients of Curriculum Adaptation and Technical Assistance grants must comply with the following requirements:

1. Curriculum Adaptation Grantees

Recipients of Curriculum Adaptation grants must:

a. Comply with the same quarterly reporting requirements as other Institute grantees (see A.12. above in this section);

b. Include in each grant product a prominent acknowledgment that support was received from the Institute, along with the "SJI" logo and a disclaimer paragraph (see A.10.a. above in this section); and

c. Submit one copy of the manuals, handbooks, or conference packets developed under the grant at the conclusion of the grant period, along with a final report that includes any evaluation results and explains how the grantee intends to present the program in the future.

2. Technical Assistance Grantees

Technical Assistance grantees are subject to the same quarterly reporting requirements as other Institute grantees. (See A.12. above in this section.) At the conclusion of the grant period, a Technical Assistance grantee must complete a Technical Assistance Evaluation Form. The grantee also must submit to the Institute one copy of a final report that explains how it intends to act on the consultant's recommendations, as well as a copy of the consultant's written report.

3. Scholarship Recipients

a. Scholarship recipients are responsible for disseminating the information received from the course to their court colleagues locally, and if possible, throughout the State (e.g., by developing a formal seminar, circulating the written material, or discussing the information at a meeting or conference).

Recipients also must submit to the Institute a certificate of attendance at the program, an evaluation of the educational program they attended, and a copy of the notice of any scholarship funds received from other sources. A copy of the evaluation must be sent to the Chief Justice of their State. A State or local jurisdiction may impose additional requirements on scholarship recipients.

b. To receive the funds authorized by a scholarship award, recipients must submit a Scholarship Payment Voucher (Form S3) together with a tuition statement from the program sponsor, and a transportation fare receipt (or statement of the driving mileage to and from the recipient's home to the site of the educational program).

Scholarship Payment Vouchers should be submitted within 90 days after the end of the course which the recipient attended.

c. Scholarship recipients are encouraged to check with their tax advisors to determine whether the scholarship constitutes taxable income under Federal and State law.

X. Financial Requirements

A. Purpose

The purpose of this section is to establish accounting system requirements and offer guidance on procedures to assist all grantees, subgrantees, contractors, and other organizations in:

1. Complying with the statutory requirements for the award, disbursement, and accounting of funds;

2. Complying with regulatory requirements of the Institute for the financial management and disposition of funds;

3. Generating financial data to be used in planning, managing, and controlling projects; and

4. Facilitating an effective audit of funded programs and projects.

B. References

Except where inconsistent with specific provisions of this Guideline, the following regulations, directives and reports are applicable to Institute grants and cooperative agreements under the same terms and conditions that apply to Federal grantees. The following circulars supplement the requirements of this section for accounting systems and financial recordkeeping and provide additional guidance on how these requirements may be satisfied. (Circulars may be obtained from OMB by calling 202–395–3080 or visiting the OMB website at www.whitehouse.gov/OMB).

1. Office of Management and Budget (OMB) Circular A–21, Cost Principles for Educational Institutions.

2. Office of Management and Budget (OMB) Circular A–87, Cost Principles for State and Local Governments.

3. Office of Management and Budget (OMB) Circular A–88 (revised), Indirect Cost Rates, Audit and Audit Follow-up at Educational Institutions.

4. Office of Management and Budget (OMB) Circular A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

5. Office of Management and Budget (OMB) Circular A–110, Grants and Agreements with Institutions of Higher Education, Hospitals and other Non-Profit Organizations.

6. Office of Management and Budget (OMB) Circular A–128, Audits of State and Local Governments.

7. Office of Management and Budget (OMB) Circular A–122, Cost Principles for Non-profit Organizations.

8. Office of Management and Budget (OMB) Circular A–133, Audits of Institutions of Higher Education and Other Non-profit Institutions.

C. Supervision and Monitoring Responsibilities

1. Grantee Responsibilities

All grantees receiving awards from the Institute are responsible for the management and fiscal control of all funds. Responsibilities include accounting for receipts and expenditures, maintaining adequate financial records, and refunding expenditures disallowed by audits.

2. Responsibilities of State Supreme Court

a. Each application for funding from a State or local court must be approved, consistent with State law, by the State's Supreme Court, or its designated agency or council. (See III.H.)

b. The State Supreme Court or its designee shall receive all Institute funds awarded to such courts; be responsible for assuring proper administration of Institute funds; and be responsible for all aspects of the project, including proper accounting and financial recordkeeping by the subgrantee. These responsibilities include:

(1) Reviewing Financial Operations. The State Supreme Court or its designee should be familiar with, and periodically monitor, its subgrantees' financial operations, records system, and procedures. Particular attention should be directed to the maintenance of current financial data.

(2) Recording Financial Activities. The subgrantee's grant award or contract obligation, as well as cash advances and other financial activities, should be recorded in the financial records of the State Supreme Court or its designee in summary form. Subgrantee expenditures should be recorded on the books of the State Supreme Court OR evidenced by report forms duly filed by the subgrantee. Non-Institute contributions applied to projects by subgrantees should likewise be recorded, as should any project income resulting from program operations.

(3) Budgeting and Budget Review. The State Supreme Court or its designee should ensure that each subgrantee prepares an adequate budget as the basis

for its award commitment. The detail of each project budget should be maintained on file by the State Supreme Court.

(4) Accounting for Non-Institute Contributions. The State Supreme Court or its designee will ensure, in those instances where subgrantees are required to furnish non-Institute matching funds, that the requirements and limitations of the SJI Grant Guideline are applied to such funds.

(5) Audit Requirement. The State Supreme Court or its designee is required to ensure that subgrantees have met the necessary audit requirements set forth by the Institute (see sections K. below and IX.C.)

(6) Reporting Irregularities. The State Supreme Court, its designees, and its subgrantees are responsible for promptly reporting to the Institute the nature and circumstances surrounding any financial irregularities discovered.

D. Accounting System

The grantee is responsible for establishing and maintaining an adequate system of accounting and internal controls for itself and for ensuring that an adequate system exists for each of its subgrantees and contractors. An acceptable and adequate accounting system:

1. Properly accounts for receipt of funds under each grant awarded and the expenditure of funds for each grant by category of expenditure (including matching contributions and project income);

2. Assures that expended funds are applied to the appropriate budget category included within the approved grant;

3. Presents and classifies historical costs of the grant as required for budgetary and evaluation purposes;

4. Provides cost and property controls to assure optimal use of grant funds;

5. Is integrated with a system of internal controls adequate to safeguard the funds and assets covered, check the accuracy and reliability of the accounting data, promote operational efficiency, and assure conformance with any general or special conditions of the grant;

6. Meets the prescribed requirements for periodic financial reporting of operations; and

7. Provides financial data for planning, control, measurement, and evaluation of direct and indirect costs.

E. Total Cost Budgeting and Accounting

Accounting for all funds awarded by the Institute must be structured and executed on a total project cost basis. That is, total project costs, including Institute funds, State and local matching shares, and any other fund sources included in the approved project budget serve as the foundation for fiscal administration and accounting. Grant applications and financial reports require budget and cost estimates on the basis of total costs.

1. Timing of Matching Contributions

Matching contributions need not be applied at the exact time of the obligation of Institute funds. Ordinarily, the full matching share must be obligated during the award period; however, with the prior written permission of the Institute, contributions made following approval of the grant by the Institute's Board of Directors but before the beginning of the grant may be counted as match. Grantees that do not contemplate making matching contributions continuously throughout the course of a project, or on a task-by-task basis, are required to submit a schedule within 30 days after the beginning of the project period indicating at what points during the project period the matching contributions will be made. If a proposed cash match is not fully met, the Institute may reduce the award amount accordingly to maintain the ratio of grant funds to matching funds stated in the award agreement.

2. Records for Match

All grantees must maintain records which clearly show the source, amount, and timing of all matching contributions. In addition, if a project has included, within its approved budget, contributions which exceed the required matching portion, the grantee must maintain records of those contributions in the same manner as it does Institute funds and required matching shares. For all grants made to State and local courts, the State Supreme Court has primary responsibility for grantee/subgrantee compliance with the requirements of this section. (See C.2. above in this section.)

F. Maintenance and Retention of Records

All financial records, supporting documents, statistical records, and all other records pertinent to grants, subgrants, cooperative agreements, or contracts under grants must be retained by each organization participating in a project for at least three years for purposes of examination and audit. State Supreme Courts may impose record retention and maintenance requirements in addition to those prescribed in this section.

1. Coverage

The retention requirement extends to books of original entry, source documents supporting accounting transactions, the general ledger, subsidiary ledgers, personnel and payroll records, canceled checks, and related documents and records. Source documents include copies of all grant and subgrant awards, applications, and required grantee/subgrantee financial and narrative reports. Personnel and payroll records shall include the time and attendance reports for all individuals reimbursed under a grant, subgrant or contract, whether they are employed full-time or part-time. Time and effort reports will be required for consultants.

2. Retention Period

The three-year retention period starts from the date of the submission of the final expenditure report or, for grants which are renewed annually, from the date of submission of the annual expenditure report.

3. Maintenance

Grantees and subgrantees are expected to see that records of different fiscal years are separately identified and maintained so that requested information can be readily located. Grantees and subgrantees are also obligated to protect records adequately against fire or other damage. When records are stored away from the grantee's/subgrantee's principal office, a written index of the location of stored records should be on hand, and ready access should be assured.

4. Access

Grantees and subgrantees must give any authorized representative of the Institute access to and the right to examine all records, books, papers, and documents related to an Institute grant.

G. Project-Related Income

Records of the receipt and disposition of project-related income must be maintained by the grantee in the same manner as required for the project funds that gave rise to the income and must be reported to the Institute. (See H.2. below in this section) The policies governing the disposition of the various types of project-related income are listed below.

1. Interest

A State and any agency or instrumentality of a State, including institutions of higher education and hospitals, shall not be held accountable for interest earned on advances of project funds. When funds are awarded to subgrantees through a State, the subgrantees are not held accountable for interest earned on advances of project funds. Local units of government and nonprofit organizations that are grantees must refund any interest earned. Grantees shall ensure minimum balances in their respective grant cash accounts.

2. Royalties

The grantee/subgrantee may retain all royalties received from copyrights or other works developed under projects or from patents and inventions, unless the terms and conditions of the grant provide otherwise.

3. Registration and Tuition Fees

Registration and tuition fees shall be used to pay project-related costs not covered by the grant, or to reduce the amount of grant funds needed to support the project. Registration and tuition fees may be used for other purposes only with the prior written approval of the Institute. Estimates of registration and tuition fees, and any expenses to be offset by the fees, should be included in the application budget forms and narrative.

4. Income From the Sale of Grant Products

a. When grant funds fully cover the cost of producing and disseminating a limited number of copies of a product, the grantee may, with the written prior approval of the Institute, sell additional copies reproduced at its expense at a reasonable market price, as long as the income is applied to court improvement projects consistent with the State Justice Institute Act. When grant funds only partially cover the costs of developing, producing and disseminating a product, the grantee may, with the written prior approval of the Institute, recover costs for developing, reproducing, and disseminating the material to the extent that those costs were not covered by Institute grant funds or grantee matching contributions. If the grantee recovers its costs in this manner, then amounts expended by the grantee to develop, produce, and disseminate the material may not be considered match.

b. If the sale of products occurs during the project period, the costs and income generated by the sales must be reported on the Quarterly Financial Status Reports and documented in an auditable manner. Whenever possible, the intent to sell a product should be disclosed in the concept paper and application or reported to the Institute in writing once a decision to sell products has been made. The grantee must request approval to recover its product development, reproduction, and dissemination costs as specified in section X.A.10.b.

5. Other

Other project income shall be treated in accordance with disposition instructions set forth in the grant's terms and conditions.

H. Payments and Financial Reporting Requirements

1. Payment of Grant Funds

The procedures and regulations set forth below are applicable to all Institute grant funds and grantees.

a. Request for Advance or Reimbursement of Funds. Grantees will receive funds on a "check-issued" basis. Upon receipt, review, and approval of a Request for Advance or Reimbursement by the Institute, a check will be issued directly to the grantee or its designated fiscal agent. A request must be limited to the grantee's immediate cash needs. The Request for Advance or Reimbursement, along with the instructions for its preparation, will be included in the official Institute award package.

b. Continuation and On-Going Support Awards. For purposes of submitting Requests for Advance or Reimbursement, recipients of continuation and on-going support grants should treat each grant as a new project and number the requests accordingly (i.e., on a grant rather than a project basis). For example, the first request for payment from a continuation grant or each year of an on-going support would be number 1, the second number 2, etc. (See Appendix B, Questions Frequently Asked by Grantees, for further guidance.)

c. Termination of Advance and Reimbursement Funding. When a grantee organization receiving cash advances from the Institute:

(1) Demonstrates an unwillingness or inability to attain program or project goals, or to establish procedures that will minimize the time elapsing between cash advances and disbursements, or cannot adhere to guideline requirements or special conditions;

(2) Engages in the improper award and administration of subgrants or contracts; or

(3) Is unable to submit reliable and/or timely reports; the Institute may terminate advance financing and require the grantee organization to finance its operations with its own working capital. Payments to the grantee shall then be made by check to reimburse the grantee for actual cash disbursements. In the event the grantee continues to be deficient, the Institute may suspend reimbursement payments until the deficiencies are corrected.

d. Principle of Minimum Cash on Hand. Grantees should request funds based upon immediate disbursement requirements. Grantees should time their requests to ensure that cash on hand is the minimum needed for disbursements to be made immediately or within a few days. Idle funds in the hands of subgrantees impair the goals of good cash management.

2. Financial Reporting

a. *General Requirements.* To obtain financial information concerning the use of funds, the Institute requires that grantees/subgrantees submit timely reports for review.

b. Two copies of the Financial Status Report are required from all grantees, other than scholarship recipients, for each active quarter on a calendar-quarter basis. This report is due within 30 days after the close of the calendar quarter. It is designed to provide financial information relating to Institute funds, State and local matching shares, project income, and any other sources of funds for the project, as well as information on obligations and outlays. A copy of the Financial Status Report, along with instructions for its preparation, is included in each official Institute Award package. If a grantee requests substantial payments for a project prior to the completion of a given quarter, the Institute may request a brief summary of the amount requested, by object class, to support the Request for Advance or Reimbursement.

c. *Additional Requirements for Continuation and On-going Support Grants.* Grantees receiving continuation or on-going support grants should number their quarterly Financial Status Reports on a grant rather than a project basis. For example, the first quarterly report for a continuation grant or each year of an on-going support award should be number 1, the second number 2, etc.

3. Consequences of Non-Compliance With Submission Requirement

Failure of the grantee to submit required financial and progress reports may result in suspension or termination of grant payments.

I. Allowability of Costs

1. General

Except as may be otherwise provided in the conditions of a particular grant, cost allowability is determined in accordance with the principles set forth in *OMB Circular A–87*, Cost Principles

for State and Local Governments; *A–21*, Cost Principles Applicable to Grants and Contracts with Educational Institutions; and *A–122*, Cost Principles for Non-Profit Organizations. No costs may be recovered to liquidate obligations incurred after the approved grant period. Circulars may be obtained from OMB by calling 202–395–3080 or visiting the OMB website at www.whitehouse.gov/OMB.

2. Costs Requiring Prior Approval

a. Pre-agreement Costs. The written prior approval of the Institute is required for costs considered necessary to the project but which occur prior to the award date of the grant.

b. Equipment. Grant funds may be used to purchase or lease only that equipment essential to accomplishing the goals and objectives of the project. The written prior approval of the Institute is required when the amount of automated data processing (ADP) equipment to be purchased or leased exceeds $10,000 or software to be purchased exceeds $3,000.

c. Consultants. The written prior approval of the Institute is required when the rate of compensation to be paid a consultant exceeds $300 a day. Institute funds may not be used to pay a consultant more than $900 per day.

3. Travel Costs

Transportation and per diem rates must comply with the policies of the grantee. If the grantee does not have an established written travel policy, then travel rates must be consistent with those established by the Institute or the Federal Government. Institute funds may not be used to cover the transportation or per diem costs of a member of a national organization to attend an annual or other regular meeting of that organization.

4. Indirect Costs

These are costs of an organization that are not readily assignable to a particular project but are necessary to the operation of the organization and the performance of the project. The cost of operating and maintaining facilities, depreciation, and administrative salaries are examples of the types of costs that are usually treated as indirect costs. The Institute's policy requires all costs to be budgeted directly; however, if a grantee has an indirect cost rate approved by a Federal agency as set forth below, the Institute will accept that rate.

a. Approved Plan Available. (1) The Institute will accept an indirect cost rate or allocation plan approved for a grantee during the preceding two years by any Federal granting agency on the basis of allocation methods substantially in accord with those set forth in the applicable cost circulars. A copy of the approved rate agreement must be submitted to the Institute.

(2) Where flat rates are accepted in lieu of actual indirect costs, grantees may not also charge expenses normally included in overhead pools, e.g., accounting services, legal services, building occupancy and maintenance, etc., as direct costs.

(3) When utilizing total direct costs as the base, organizations with approved indirect cost rates usually exclude contracts under grants from any overhead recovery. The negotiated agreement will stipulate that contracts are excluded from the base for overhead recovery.

b. Establishment of Indirect Cost Rates. To be reimbursed for indirect costs, a grantee must first establish an appropriate indirect cost rate. To do this, the grantee must prepare an indirect cost rate proposal and submit it to the Institute within three months after the start of the grant period to assure recovery of the full amount of allowable indirect costs. The rate must be developed in accordance with principles and procedures appropriate to the type of grantee institution involved as specified in the applicable OMB Circular.

c. No Approved Plan. If an indirect cost proposal for recovery of actual indirect costs is not submitted to the Institute within three months after the start of the grant period, indirect costs will be irrevocably disallowed for all months prior to the month that the indirect cost proposal is received.

J. Procurement and Property Management Standards

1. Procurement Standards

For State and local governments, the Institute has adopted the standards set forth in Attachment O of *OMB Circular A–102*. Institutions of higher education, hospitals; other non-profit organizations will be governed by the standards set forth in Attachment O of *OMB Circular A–110*.

2. Property Management Standards

The property management standards as prescribed in Attachment N of *OMB Circulars A–10?* and *A–110* apply to all Institute grantees and subgrantees except as provided in section IX.A.17. All grantees/subgrantees are required to be prudent in the acquisition and management of property with grant funds. If suitable property required for the successful execution of projects is already available within the grantee or subgrantee organization, expenditures of grant funds for the acquisition of new property will be considered unnecessary.

K. Audit Requirements

1. Implementation

Each recipient of a grant from the Institute other than a scholarship, curriculum adaptation, or technical assistance grant must provide for an annual fiscal audit. This requirement also applies to a State or local court receiving a subgrant from the State Supreme Court). The audit may be of the entire grantee or subgrantee organization or of the specific project funded by the Institute. Audits conducted in accordance with the Single Audit Act of 1984 and *OMB Circular A–128*, or *OMB Circular A–133* will satisfy the requirement for an annual fiscal audit. The audit must be conducted by an independent Certified Public Accountant, or a State or local agency authorized to audit government agencies. Grantees must send two copies of the audit report to the Institute. Grantees that receive funds from a Federal agency and satisfy audit requirements of the cognizant Federal agency must submit two copies of the audit report prepared for that Federal agency to the Institute in order to satisfy the provisions of this section. Cognizant Federal agencies do not send reports to the Institute. Therefore, each grantee must send copies of this report directly to the Institute.

2. Resolution and Clearance of Audit Reports

Timely action on recommendations by responsible management officials is an integral part of the effectiveness of an audit. Each grantee must have policies and procedures for acting on audit recommendations by designating officials responsible for: follow-up; maintaining a record of the actions taken on recommendations and time schedules; responding to and acting on audit recommendations; and submitting periodic reports to the Institute on recommendations and actions taken.

3. Consequences of Non-Resolution of Audit Issues

Ordinarily, the Institute will not make a new grant award to an applicant that has an unresolved audit report involving Institute awards. Failure of the grantee to resolve audit questions may also result in the suspension or termination of payments for active Institute grants to that organization.

L. Close-Out of Grants

1. Definition

Close-out is the process by which the Institute determines that all applicable administrative and financial actions and all required grant work have been completed by both the grantee and the Institute.

2. Grantee Close-Out Requirements

Within 90 days after the end date of the grant or any approved extension thereof (see L.3. below in this section), the following documents must be submitted to the Institute by grantees (other than scholarship recipients):

a. Financial Status Report. The final report of expenditures must have no unliquidated obligations and must indicate the exact balance of unobligated funds. Any unobligated/unexpended funds will be deobligated from the award by the Institute. Final payment requests for obligations incurred during the award period must be submitted to the Institute prior to the end of the 90-day close-out period. Grantees on a check-issued basis, who have drawn down funds in excess of their obligations/expenditures, must return any unused funds as soon as it is determined that the funds are not required. In no case should any unused funds remain with the grantee beyond the submission date of the final financial status report.

b. Final Progress Report. This report should describe the project activities during the final calendar quarter of the project and the close-out period, including to whom project products have been disseminated; provide a summary of activities during the entire project; specify whether all the objectives set forth in the approved application or an approved adjustment have been met and, if any of the objectives have not been met, explain why not; and discuss what, if anything, could have been done differently that might have enhanced the impact of the project or improved its operation.

These reporting requirements apply at the conclusion of any non-scholarship grant, even when the project will continue under a continuation or on-going support grant.

3. Extension of Close-Out Period

Upon the written request of the grantee, the Institute may extend the close-out period to assure completion of the Grantee's close-out requirements. Requests for an extension must be submitted at least 14 days before the end of the close-out period and must explain why the extension is necessary and what steps will be taken to assure that all the grantee's responsibilities will be met by the end of the extension period.

XI. Grant Adjustments

All requests for programmatic or budgetary adjustments requiring Institute approval must be submitted in a timely manner by the project director. All requests for changes from the approved application will be carefully reviewed for both consistency with this Guideline and the enhancement of grant goals and objectives.

A. Grant Adjustments Requiring Prior Written Approval

There are several types of grant adjustments that require the prior written approval of the Institute. Examples of these adjustments include:

1. Budget revisions among direct cost categories that individually or in the aggregate exceed five percent of the approved original budget or the most recently approved revised budget. The Institute will view budget revisions cumulatively.

For continuation and on-going support grants, funds from the original award may be used during the new grant period and funds awarded through a continuation or on-going support grant may be used to cover project-related expenditures incurred during the original award period, with the prior written approval of the Institute.

2. A change in the scope of work to be performed or the objectives of the project (see D. below in this section).

3. A change in the project site.

4. A change in the project period, such as an extension of the grant period and/or extension of the final financial or progress report deadline (see E. below).

5. Satisfaction of special conditions, if required.

6. A change in or temporary absence of the project director (see F. and G. below).

7. The assignment of an employee or consultant to a key staff position whose qualifications were not described in the application, or a change of a person assigned to a key project staff position (see section IX.A.2.).

8. A change in or temporary absence of the person responsible for the financial management and financial reporting for the grant.

9. A change in the name of the grantee organization.

10. A transfer or contracting out of grant-supported activities (see H. below).

11. A transfer of the grant to another recipient.

12. Preagreement costs (see section X.I.2.a.).

13. The purchase of automated data processing equipment and software (see section X.I.2.b.)

14. Consultant rates (see section X.I.2.c.).

15. A change in the nature or number of the products to be prepared or the manner in which a product would be distributed.

B. Requests for Grant Adjustments

All grantees and subgrantees must promptly notify their SJI program managers, in writing, of events or proposed changes that may require adjustments to the approved project design. In requesting an adjustment, the grantee must set forth the reasons and basis for the proposed adjustment and any other information the program manager determines would help the Institute's review.

C. Notification of Approval/Disapproval

If the request is approved, the grantee will be sent a Grant Adjustment signed by the Executive Director or his designee. If the request is denied, the grantee will be sent a written explanation of the reasons for the denial.

D. Changes in the Scope of the Grant

Major changes in scope, duration, training methodology, or other significant areas must be approved in advance by the Institute. A grantee may make minor changes in methodology, approach, or other aspects of the grant to expedite achievement of the grant's objectives with subsequent notification of the SJI program manager.

E. Date Changes

A request to change or extend the grant period must be made at least 30 days in advance of the end date of the grant. A revised task plan should accompany a request for a no-cost extension of the grant period, along with a revised budget if shifts among budget categories will be needed. A request to change or extend the deadline for the final financial report or final progress report must be made at least 14 days in advance of the report deadline (see section X.L.3.).

F. Temporary Absence of the Project Director

Whenever an absence of the project director is expected to exceed a continuous period of one month, the plans for the conduct of the project director's duties during such absence must be approved in advance by the Institute. This information must be provided in a letter signed by an authorized representative of the grantee/

subgrantee at least 30 days before the departure of the project director, or as soon as it is known that the project director will be absent. The grant may be terminated if arrangements are not approved in advance by the Institute.

G. Withdrawal of/Change in Project Director

If the project director relinquishes or expects to relinquish active direction of the project, the Institute must be notified immediately. In such cases, if the grantee/subgrantee wishes to terminate the project, the Institute will forward procedural instructions upon notification of such intent. If the grantee wishes to continue the project under the direction of another individual, a statement of the candidate's qualifications should be sent to the Institute for review and approval. The grant may be terminated if the qualifications of the proposed individual are not approved in advance by the Institute.

H. Transferring or Contracting Out of Grant-Supported Activities

No principal activity of a grant-supported project may be transferred or contracted out to another organization without specific prior approval by the Institute. All such arrangements must be formalized in a contract or other written agreement between the parties involved. Copies of the proposed contract or agreement must be submitted for prior approval of the Institute at the earliest possible time. The contract or agreement must state, at a minimum, the activities to be performed, the time schedule, the policies and procedures to be followed, the dollar limitation of the agreement, and the cost principles to be followed in determining what costs, both direct and indirect, will be allowed. The contract or other written agreement must not affect the grantee's overall responsibility for the direction of the project and accountability to the Institute.

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David I. Tevelin,

Executive Director.

Appendix A—Recommendations to Grant Writers

Over the past 13 years, Institute staff have reviewed approximately 3,600 concept papers and 1,700 applications. On the basis of those reviews, inquiries from applicants, and the views of the Board, the Institute offers the following recommendations to help potential applicants present workable, understandable proposals that can meet the funding criteria set forth in this Guideline.

The Institute suggests that applicants make certain that they address the questions and issues set forth below when preparing a concept paper or application. Concept papers and applications should, however, be presented in the formats specified in sections VI. and VII. of the Guideline, respectively.

1. What is the subject or problem you wish to address?

Describe the subject or problem and how it affects the courts and the public. Discuss how your approach will improve the situation or advance the state of the art or knowledge, and explain why it is the most appropriate approach to take. When statistics or research findings are cited to support a statement or position, the source of the citation should be referenced in a footnote or a reference list.

2. What do you want to do?

Explain the goal(s) of the project in simple, straightforward terms. The goals should describe the intended consequences or expected overall effect of the proposed project (e.g., to enable judges to sentence drug-abusing offenders more effectively, or to dispose of civil cases within 24 months), rather than the tasks or activities to be conducted (e.g., hold three training sessions, or install a new computer system).

To the greatest extent possible, an applicant should avoid a specialized vocabulary that is not readily understood by the general public. Technical jargon does not enhance a paper, nor does a clever but uninformative title.

3. How will you do it?

Describe the methodology carefully so that what you propose to do and how you would do it are clear. All proposed tasks should be set forth so that a reviewer can see a logical progression of tasks, and relate those tasks directly to the accomplishment of the project's goal(s). When in doubt about whether to provide a more detailed explanation or to assume a particular level of knowledge or expertise on the part of the reviewers, provide the additional information. A description of project tasks also will help identify necessary budget items. All staff positions and project costs should relate directly to the tasks described. The Institute encourages applicants to attach letters of cooperation and support from the courts and related agencies that will be involved in or directly affected by the proposed project.

4. How will you know it works?

Include an evaluation component that will determine whether the proposed training, procedure, service, or technology accomplished the objectives it was designed to meet. Concept papers and applications should present the criteria that will be used to evaluate the project's effectiveness; identify program elements which will require further modification; and describe how the evaluation will be conducted, when it will occur during the project period, who will conduct it, and what specific measures will be used. In most instances, the evaluation should be conducted by persons not connected with the implementation of the procedure, training, service, or technique, or the administration of the project.

The Institute has also prepared a more thorough list of recommendations to grant writers regarding the development of project evaluation plans. Those recommendations are available from the Institute upon request.

5. How will others find out about it?

Include a plan to disseminate the results of the training, research, or demonstration beyond the jurisdictions and individuals directly affected by the project. The plan should identify the specific methods which will be used to inform the field about the project, such as the publication of law review or journal articles, or the distribution of key materials. A statement that a report or research findings "will be made available to" the field is not sufficient. The specific means of distribution or dissemination as well as the types of recipients should be identified. Reproduction and dissemination costs are allowable budget items.

6. What are the specific costs involved?

The budget in both concept papers and applications should be presented clearly. Major budget categories such as personnel, benefits, travel, supplies, equipment, and indirect costs should be identified separately. The components of "Other" or "Miscellaneous" items should be specified in the application budget narrative, and should not include set-asides for undefined contingencies.

7. What, if any, match is being offered?

Courts and other units of State and local government (not including publicly-supported institutions of higher education) are required by the State Justice Institute Act to contribute a match (cash, non-cash, or both) of at least 50 percent of the grant funds requested from the Institute. All other applicants also are encouraged to provide a matching contribution to assist in meeting the costs of a project.

The match requirement works as follows: If, for example, the total cost of a project is anticipated to be $150,000, a State or local court or executive branch agency may request up to $100,000 from the Institute to implement the project. The remaining $50,000 (50% of the $100,000 requested from SJI) must be provided as match.

Cash match includes funds directly contributed to the project by the applicant, or by other public or private sources. It does not include income generated from tuition fees or the sale of project products. Non-cash match refers to in-kind contributions by the applicant, or other public or private sources. This includes, for example, the monetary value of time contributed by existing personnel or members of an advisory committee (but not the time spent by participants in an educational program attending program sessions). When match is offered, the nature of the match (cash or in-kind) should be explained and, at the application stage, the tasks and line items for which costs will be covered wholly or in part by match should be specified.

8. Which of the two budget forms should be used?

Section VII.A.1.c. of the SJI Grant Guideline encourages use of the spreadsheet format of Form C1 if the application requests $100,000 or more. Form C1 also works well for projects with discrete tasks, regardless of the dollar value of the project. Form C, the tabular format, is preferred for projects lacking a number of discrete tasks, or for projects requiring less than $100,000 of Institute funding. Generally, use the form that best lends itself to representing most accurately the budget estimates for the project.

9. How much detail should be included in the budget narrative?

The budget narrative of an application should provide the basis for computing all project-related costs, as indicated in section VII.A.4. of the Guideline. To avoid common shortcomings of application budget narratives, applicants should include the following information:

Personnel estimates that accurately provide the amount of time to be spent by personnel involved with the project and the total associated costs, including current salaries for the designated personnel (e.g., Project Director, 50% for one year, annual salary of $50,000 = $25,000). If salary costs are computed using an hourly or daily rate, the annual salary and number of hours or days in a work-year should be shown.

Estimates for supplies and expenses supported by a complete description of the supplies to be used, the nature and extent of printing to be done, anticipated telephone charges, and other common expenditures, with the basis for computing the estimates included (e.g., 100 reports × 75 pages each × .05/page = $375.00). Supply and expense estimates offered simply as "based on experience" are not sufficient.

In order to expedite Institute review of the budget, make a final comparison of the amounts listed in the budget narrative with those listed on the budget form. In the rush to complete all parts of the application on time, there may be many last-minute changes; unfortunately, when there are discrepancies between the budget narrative and the budget form or the amount listed on the application cover sheet, it is not possible for the Institute to verify the amount of the request. A final check of the numbers on the form against those in the narrative will preclude such confusion.

10. What travel regulations apply to the budget estimates?

Transportation costs and per diem rates must comply with the policies of the applicant organization, and a copy of the applicant's travel policy should be submitted as an appendix to the application. If the applicant does not have a travel policy established in writing, then travel rates must be consistent with those established by the Institute or the Federal Government (a copy of the Institute's travel policy is available upon request). The budget narrative should state which policies apply to the project.

The budget narrative also should include the estimated fare, the number of persons traveling, the number of trips to be taken, and the length of stay. The estimated costs of travel, lodging, ground transportation, and other subsistence should be listed and explained separately. It is preferable for the budget to be based on the actual costs of traveling to and from the project or meeting sites. If the points of origin or destination are not known at the time the budget is prepared, an average airfare may be used to estimate the travel costs. For example, if it is anticipated that a project advisory committee will include members from around the country, a reasonable airfare from a central point to the meeting site, or the average of airfares from each coast to the meeting site may be used. Applicants should arrange travel so as to be able to take advantage of advance-purchase price discounts whenever possible.

11. May grant funds be used to purchase equipment?

Generally, grant funds may be used to purchase only the equipment that is necessary to demonstrate a new technological application in a court, or that is otherwise essential to accomplishing the objectives of the project. The budget narrative must list the equipment to be purchased and explain why the equipment is necessary to the success of the project. Written prior approval is required when the amount of computer hardware to be purchased or leased exceeds $10,000, or the software to be purchased exceeds $3000.

12. To what extent may indirect costs be included in the budget estimates?

It is the policy of the Institute that all costs should be budgeted directly; however, if an indirect cost rate has been approved by a Federal agency within the last two years, an indirect cost recovery estimate may be included in the budget. A copy of the approved rate agreement should be submitted as an appendix to the application.

If an applicant does not have an approved rate agreement and cannot budget directly for all costs, an indirect cost rate proposal should be prepared in accordance with Section X.I.4. of the Guideline, based on the applicant's audited financial statements for the prior fiscal year. (Applicants lacking an audit should budget all project costs directly.)

13. What meeting costs may be covered with grant funds?

SJI grant funds may cover the reasonable cost of meeting rooms, necessary audio-visual equipment, meeting supplies, and working meals.

14. Does the budget truly reflect all costs required to complete the project?

After preparing the program narrative portion of the application, applicants may find it helpful to list all the major tasks or activities required by the proposed project, including the preparation of products, and note the individual expenses, including personnel time, related to each. This will help to ensure that, for all tasks described in the application (e.g., development of a videotape, research site visits, distribution of a final report), the related costs appear in the budget and are explained correctly in the budget narrative.

Appendix B—Questions Frequently Asked by Grantees

The Institute's staff works with grantees to help assure the smooth operation of the project and compliance with the Guideline. On the basis of monitoring more than 1,000 grants, the Institute staff offers the following suggestions to aid grantees in meeting the administrative and substantive requirements of their grants.

1. After the grant has been awarded, when are the first quarterly reports due?

Quarterly Progress Reports and Financial Status Reports must be submitted within 30 days after the end of every calendar quarter—i.e., no later than January 30, April 30, July 30, and October 30—regardless of the project's start date. The reporting periods covered by each quarterly report end 30 days before the respective deadline for the report. When an award period begins December 1, for example, the first Quarterly Progress Report describing project activities between December 1 and December 31 will be due on January 30. A Financial Status Report should be submitted even if funds have not been obligated or expended.

By documenting what has happened over the past three months, Quarterly Progress Reports provide an opportunity for project staff and Institute staff to resolve any questions before they become problems, and make any necessary changes in the project time schedule, budget allocations, etc. The Quarterly Project Report should describe project activities, their relationship to the approved timeline, and any problems encountered and how they were resolved, and outline the tasks scheduled for the coming quarter. It is helpful to attach copies of relevant memos, draft products, or other requested information. An original and one copy of a Quarterly Progress Report and attachments should be submitted to the Institute.

Additional Quarterly Progress Report or Financial Status Report forms may be obtained from the grantee's Program Manager at SJI, or photocopies may be made from the supply received with the award.

2. Do reporting requirements differ for continuation and on-going support grants?

Recipients of continuation or on-going support grants are required to submit quarterly progress and financial status reports on the same schedule and with the same information as recipients of a grant for a single new project.

A continuation grant and each yearly grant under an on-going support award should be considered as a separate phase of the project. The reports should be numbered on a grant rather than project basis. Thus, the first quarterly report filed under a continuation grant or a yearly increment of an on-going support award should be designated as number one, the second as number two, and so on, through the final progress and financial status reports due within 90 days after the end of the grant period.

3. What information about project activities should be communicated to SJI?

In general, grantees should provide prior notice of critical project events such as advisory board meetings or training sessions so that the Institute Program Manager can attend if possible. If methodological, schedule, staff, budget allocations, or other significant changes become necessary, the grantee should contact the Program Manager prior to implementing any of these changes, so that possible questions may be addressed in advance. Questions concerning the financial requirements section of the Guideline, quarterly financial reporting, or payment requests, should be addressed to the Grants Financial Manager listed in the award letter.

It is helpful to include the grant number assigned to the award on all correspondence to the Institute.

4. Why are special conditions attached to the award document?

In some instances, a list of special conditions is attached to the award document. Special conditions may be imposed to establish a schedule for reporting certain key information, assure that the Institute has an opportunity to offer suggestions at critical stages of the project, and provide reminders of some (but not necessarily all) of the requirements contained in the Grant Guideline. Accordingly, it is important for grantees to check the special conditions carefully and discuss with their Program Managers any questions or problems they may have with the conditions. Most concerns about timing, response time, and the level of detail required can be resolved in advance through a telephone conversation. The Institute's primary concern is to work with grantees to assure that their projects accomplish their objectives, not to enforce rigid bureaucratic requirements. However, if a grantee fails to comply with a special condition or with other grant requirements, the Institute may, after proper notice, suspend payment of grant funds or terminate the grant.

Sections IX., X., and XI. of the Grant Guideline contain the Institute's administrative and financial requirements. Institute Finance Division staff are always available to answer questions and provide assistance regarding these provisions.

5. What is a Grant Adjustment?

A Grant Adjustment is the Institute's form for acknowledging the satisfaction of special conditions, or approving changes in grant activities, schedule, staffing, sites, or budget allocations requested by the project director. It also may be used to correct errors in grant documents or deobligate funds from the grant.

6. What schedule should be followed in submitting requests for reimbursements or advance payments?

Requests for reimbursements or advance payments may be made at any time after the project start date and before the end of the 90-day close-out period. However, the Institute follows the U.S. Treasury's policy limiting advances to the minimum amount required to meet immediate cash needs. Given normal processing time, grantees should not seek to draw down funds for periods greater than 30 days from the date of the request.

7. Do procedures for submitting requests for reimbursement or advance payment differ for continuation or on-going support grants?

The basic procedures are the same for any grant. A continuation grant or the yearly grant under an on-going support award should be considered as a separate phase of the project. Payment requests should be numbered on a grant rather than a project basis. The first request for funds from a continuation grant or a yearly increment under an on-going support award should be designated as number one, the second as number two, and so on through the final payment request for that grant.

8. If things change during the grant period, can funds be reallocated from one budget category to another?

The Institute recognizes that some flexibility is required in implementing a project design and budget. Thus, grantees may shift funds among direct cost budget categories. When any one reallocation or the cumulative total of reallocations are expected to exceed five percent of the approved project budget, a grantee must specify the proposed changes, explain the reasons for the changes, and request Institute approval.

The same standard applies to continuation and on-going support grants. In addition, prior written Institute approval is required to shift leftover funds from the original award to cover activities to be conducted under the renewal award, or to use renewal grant monies to cover costs incurred during the original grant period.

9. What is the 90-day close-out period?

Following the last day of the grant, a 90-day period is provided to allow for all grant-related bills to be received and posted, and grant funds drawn down to cover these expenses. No obligations of grant funds may be incurred during this period. The last day on which an expenditure of grant funds can be obligated is the end date of the grant period. Similarly, the 90-day period is not intended as an opportunity to finish and disseminate grant products. This should occur before the end of the grant period.

During the 90 days following the end of the award period, all monies that have been obligated should be expended. All payment requests must be received by the end of the 90-day "close-out-period." Any unexpended monies held by the grantee that remain after the 90-day follow-up period must be returned to the Institute. Any funds remaining in the grant that have not been drawn down by the grantee will be deobligated.

10. Are funds granted by SJI "Federal" funds?

The State Justice Institute Act provides that, except for purposes unrelated to this question, "the Institute shall not be considered a department, agency, or instrumentality of the Federal Government." 42 U.S.C. § 10704(c)(1). Because SJI receives appropriations from Congress, some grantee auditors have reported SJI grants funds as "Other Federal Assistance." This classification is acceptable to SJI but is not required.

11. If SJI is not a Federal Agency, do OMB circulars apply with respect to audits?

Unless they are inconsistent with the express provisions of the SJI Grant Guideline, Office of Management and Budget (OMB) Circulars A–110, A–21, A–87, A–88, A–102, A–122, A–128 and A–133 are incorporated into the Grant Guideline by reference. Because the Institute's enabling legislation specifically requires the Institute to "conduct, or require each recipient to provide for, an annual fiscal audit" [see 42 U.S.C. § 10711(c)(1)], the Grant Guideline sets forth options for grantees to comply with this statutory requirement. (See Section X.K.)

SJI will accept audits conducted in accordance with the Single Audit Act of 1984 and OMB Circulars A–128, or A–133, in satisfaction of the annual fiscal audit requirement. Grantees that are required to undertake these audits in conjunction with Federal grants may include SJI funds as part of the audit even if the receipt of SJI funds would not require such audits. This approach gives grantees an option to fold SJI funds into the governmental audit rather than to undertake a separate audit to satisfy SJI's Guideline requirements.

In sum, educational and nonprofit organizations that receive payments from the Institute that are sufficient to meet the applicability thresholds of OMB Circular A–133 must have their annual audit conducted in accordance with Government Auditing Standards issued by the Comptroller General of the United States rather than with generally accepted auditing standards. Grantees in this category that receive amounts below the minimum threshold referenced in Circular A–133 must also submit an annual audit to SJI, but they would have the option to conduct an audit of the entire grantee organization in accordance with generally accepted auditing standards; include SJI funds in an audit of Federal funds conducted in accordance with the Single Audit Act of 1984 and OMB Circulars A–128 or A–133; or conduct an audit of only the SJI funds in accordance with generally accepted auditing standards. (See Guideline Section X.K.) Circulars may be obtained from OMB by calling 202–395–3080 or visiting the OMB website at www.whitehouse.gov/OMB.

12. Does SJI have a CFDA number?

Auditors often request that a grantee provide the Institute's Catalog of Federal Domestic Assistance (CFDA) number for guidance in conducting an audit in accordance with Government Accounting Standards.

Because SJI is not a Federal agency, it has not been issued such a number, and there are no additional compliance tests to satisfy under the Institute's audit requirements beyond those of a standard governmental audit.

Moreover, because SJI is not a Federal agency, SJI funds should not be aggregated with Federal funds to determine if the applicability threshold of Circular A–133 has been reached. For example, if in fiscal year 1997 grantee "X" received $10,000 in Federal funds from a Department of Justice (DOJ) grant program and $20,000 in grant funds from SJI, the minimum A–133 threshold would not be met. The same distinction would preclude an auditor from considering the additional SJI funds in determining what Federal requirements apply to the DOJ funds.

Grantees who are required to satisfy either the Single Audit Act, OMB Circulars A–128, or A–133 and who include SJI grant funds in those audits, need to remember that because of its status as a private non-profit corporation, SJI is not on routing lists of cognizant Federal agencies. Therefore, the grantee needs to submit a copy of the audit report prepared for such a cognizant Federal agency directly to SJI. The Institute's audit requirements may be found in Section X.K. of the Grant Guideline.

Appendix C—List of State Contacts Regarding Administration of Institute Grants to State and Local Courts

Mr. Frank Gregory, Administrative Director, Administrative Office of the Courts, 300 Dexter Avenue, Montgomery, AL 36104, (334) 242–0300

Ms. Stephanie J. Cole, Administrative Director, Alaska Court System, 303 K Street, Anchorage, AK 99501, (907) 264–0547

Mr. Eliu F. Paopao, Court Administrator, High Court of American Samoa, P.O. Box 309, Pago Pago, AS 96799, 011 (684) 633–1150

Mr. David K. Byers, Administrative Director of the Courts, Supreme Court of Arizona, 1501 West Washington Street, Suite 411, Phoenix, AZ 85007, (602) 542–9301

Mr. James D. Gingerich, Director, Administrative Office of the Courts, Supreme Court of Arkansas, Justice Building, Little Rock, AR 72201, (501) 682–9400

Mr. William C. Vickrey, State Court Administrator, Administrative Office of the Courts, 455 Golden Gate Avenue, Suite 5622, San Francisco, CA 94107, (415) 865–4200

Mr. Steven V. Berson, State Court Administrator, Colorado Judicial Department, 1301 Pennsylvania Street, Suite 300, Denver, CO 80203–5012, (303) 861–1111

Honorable Robert C. Leuba, Chief Court Administrator, Supreme Court of Connecticut, 231 Capitol Avenue, Drawer N, Station A, Hartford, CT 06106, (860) 566–4461

Mr. Lawrence P. Webster, Director, Administrative Office of the Courts, Carvel State Office Building, 11th Floor, 820 N. French Street, Wilmington, DE 19801, (302) 577–8481

Mr. Ulysses Hammond, Executive Officer, District of Columbia Courts, 500 Indiana Avenue, N.W., Washington, D.C. 20001, (202) 879–1700

Mr. Kenneth Palmer, State Courts Administrator, Supreme Court Building, 500 South Duval Street, Tallahassee, FL 32399–0156, (850) 922–5081

Mr. George Lange III, Director, Administrative Office of the Courts, 47 Trinity Avenue, Suite 414, Atlanta, GA 30334, (404) 656–5171

Mr. Daniel J. Tydingco, Executive Officer, Supreme Court of Guam, Guam Judicial Center, 120 West O'Brien Drive, Agana, Guam 96910, 011 (671) 475–3278

Mr. Michael F. Broderick, Administrative Director of the Courts, The Judiciary, State of Hawaii, 417 S. King Street, Room 206, Honolulu, HI 96813, (808) 539–4900

Ms. Patricia Tobias, Administrative Director of the Courts, Supreme Court Building, 451 West State Street, Boise, ID 83702, (208) 334–2246

Mr. Joseph A. Schillaci, Director, Administrative Office of the Illinois Courts, 222 N. LaSalle Street, 13th Floor, Chicago, IL 60601, (312) 793–3250

Ms. Lilia G. Judson, Executive Director, Division of State Court Administration, Indiana Supreme Court, 115 W. Washington, Suite 1080, Indianapolis, IN 46204–3417, (317) 232–2542

Mr. William J. O'Brien, State Court Administrator, Supreme Court of Iowa, State House, Des Moines, IA 50319, (515) 281–5241

Dr. Howard P. Schwartz, Judicial Administrator, Kansas Judicial Center, 301 West 10th Street, Topeka, KS 66612, (785) 296–4873

Ms. Cicely Jaracz Lambert, Director, Administrative Office of the Courts, 100 Mill Creek Park, Frankfort, KY 40601–9230, (502) 573–2350

Dr. Hugh M. Collins, Judicial Administrator, Supreme Court of Louisiana, 1555 Poydras Street, Suite 1540, New Orleans, LA 70112–3701, (504) 568–5747

Mr. James T. Glessner, State Court Administrator, Administrative Office of the Courts, P.O. Box 4820, Portland, ME 04112–4820, (207) 822–0792

Mr. George B. Riggin, Jr., State Court Administrator, Administrative Office of the Courts, Courts of Appeal Bldg., 361 Rowe Boulevard, Annapolis, MD 21401, (410) 260–1401

Honorable Barbara A. Dortch-Okara, Chief Justice for Administration and Management, Administrative Office of the Trial Courts, Two Center Plaza, Fifth Floor, Boston, MA 02108, (617) 742–8575

Mr. John D. Ferry, Jr., State Court Administrator, 309 N. Washington Square, Lansing, MI 48909, (517) 373–2222

Ms. Sue K. Dosal, State Court Administrator, Supreme Court of Minnesota, 25 Constitution Avenue, St. Paul, MN 55155, (651) 296–2474

Mr. Rick D. Patt, Acting Director, Administrative Office of the Courts, Supreme Court of Mississippi, P.O. Box 117, Jackson, MS 39205, (601) 354–7408

Mr. Ronald L. Larkin, State Courts Administrator, Supreme Court of Missouri, P.O. Box 104480, Jefferson City, MO 65110, (573) 751–3585

Mr. Patrick A. Chenovick, State Court Administrator, Supreme Court of Montana, Justice Building, Room 315, 215 North Sanders, Helena, MT 59620–3002, (406) 444–2621

Mr. Joseph C. Steele, State Court Administrator, Administrative Office of the Courts/Probation, State Capitol Building, Room 1220, Lincoln, NE 68509, (404) 471–3730

Ms. Karen Kavenau, State Court Administrator, Administrative Office of the Courts, Supreme Court Building, 201 South Carson Street, Suite 250, Carson City, NV 89701–4702, (702) 687–5076

Mr. Donald Goodnow, Director, Administrative Office of the Courts, Two Noble Drive, Concord, NH 03301, (603) 271–2521

Honorable Richard J. Williams, Acting Administrative Director, Administrative Office of the Courts, 25 Market Street, Trenton, NJ 08625, (609) 984–0275

Mr. John M. Greacen, Director, Administrative Office of the Courts, 237 Don Gaspar, Room 25, Sante Fe, NM 87501–2178, (505) 827–4800

Honorable Jonathan Lippman, Chief Administrative Judge, Office of Court Administration, 25 Beaver Street, 11th Floor, New York, NY 10004 (212) 428–2100

Honorable Thomas W. Ross, Administrative Director of the Courts, North Carolina Administrative Office of the Courts, 2 East Morgan Street, Raleigh, NC 27601, (919) 733–7107

Mr. Keithe E. Nelson, State Court Administrator, Supreme Court of North Dakota, State Capitol Building, 600 East Boulevard Avenue, Dept. 180, Bismarck, ND 58505–0530, (701) 328–4216.

Ms. Margarita M. Palacios, Acting Director, Supreme Court of the Commonwealth of the Northern Mariana Islands, P.O. Box 2165 CK, Saipan, MP 96950, (670) 236–9800

Mr. Steven C. Hollon, Administrative Director, Supreme Court of Ohio, State Office Tower, 30 East Broad Street, Columbus, OH 43266–0419, (614) 466–2653

Mr. Howard W. Conyers, Administrative Director of the Courts, Administrative Office of the Courts, 1925 N. Stiles, Suite 305, Oklahoma City, OK 73105, (405) 521–2450

Ms. Kingsley W. Click, State Court Administrator, Office of the State Court

Administrator, Supreme Court Building, Salem, OR 97310, (503) 986–5900
Ms. Nancy M. Sobolevitch, Court Administrator, Administrative Office of Pennsylvania Courts, Supreme Court of Pennsylvania, 1515 Market Street, Suite 1414, Philadelphia, PA 19102, (215) 560–6337
Ms. Mercedes M. Bauermeister, Administrative Director of the Courts, General Court of Justice, Office of Court Administration, 6 Vela Street, Hato Rey, PR 00919, (787) 763–3358
Dr. Robert C. Harrall, State Court Administrator, Supreme Court of Rhode Island, 250 Benefit Street, Providence, RI 02903, (401) 277–3263
Ms. Rosalyn Woodson Frierson, Director, South Carolina Court Administration, 1015 Sumter Street, Suite 200, Columbia, SC 29201, (803) 734–1800
Mr. Michael L. Buenger, State Court Administrator, Unified Judicial System, 500 East Capitol Avenue, Pierre, SD 57501, (605) 773–3474
Ms. Cornelia A. Clark, Director, Administrative Office of the Courts, Tennessee Supreme Court, 511 Union Street, Suite 600, Nashville, TN 37243–0607, (615) 741–2687
Mr. Jerry L. Benedict, Administrative Director, Office of Court Administration, Tom C. Clark State Courts Building 205 West 14th Street, Suite 600, Austin, TX 78701, (512) 463–1625
Mr. Daniel Becker, State Court Administrator 450 South State, Salt Lake City, UT 84114–0241, (801) 578–3806
Mr. Lee Suskin, Court Administrator, Supreme Court of Vermont, 109 State Street, Montpelier, VT 05609–0701, (802) 828–3278
Ms. Viola E. Smith, Court Administrator, Territorial Court of the Virgin Islands, P.O. Box 70, Charlotte Amalie, St. Thomas, Virgin Islands 00804, (340) 774–6680
Mr. Robert N. Baldwin, State Court Administrator, Supreme Court of Virginia, 100 North Ninth Street, 3rd Floor, Richmond, VA 23219, (804) 786–6455
Ms. Mary Campbell McQueen, State Court Administrator, Supreme Court of Washington, Temple of Justice, P.O. Box 41174, Olympia, WA 98504–1174, (360) 357–2121
Mr. James M. Albert, Acting Administrative Director, West Virginia Supreme Court of Appeals, E–100, State Capitol Bldg., 1900 Kanawha Blvd. East, Charleston, WV 25305–0833, (304) 558–0145
Mr. J. Denis Moran, Director of State Courts, 213 Northeast State Capitol, Madison, WI 53702, (608) 266–6828
Ms. Holly A. Hansen, State Court Administrator, Supreme Court of Wyoming, Supreme Court Building, 2301 Capital Avenue, Cheyenne, WY 82002, (307) 777–7480

Appendix D—SJI Libraries: Designated Sites and Contacts

Alabama

Supreme Court Library

Mr. Timothy A. Lewis, State Law Librarian, Alabama Supreme Court Bldg., 300 Dexter Avenue, Montgomery, AL 36104, (334) 242–4347

Alaska

Anchorage Law Library

Ms. Cynthia S. Fellows, State Law Librarian, Alaska State Court Law Library, 820 W. Fourth Ave., Anchorage, AK 99501, (907) 264–0583

Arizona

State Law Library

Ms. Gladys Ann Wells, Collection Development, Research Division, Arizona Dept. of Library, Archives and Public Records, State Law Library, 1501 W. Washington, Phoenix, AZ 85007, (602) 542–4035, (602) 542–4035

Arkansas

Administrative Office of the Courts

Mr. James D. Gingerich, Director, Supreme Court of Arkansas, Justice Building, Little Rock, AR 72201–1078, (501) 682–9400

California

Administrative Office of the Courts

Mr. William C. Vickrey, State Court Administrator, Administrative Office of the Courts, 455 Golden Gate Avenue, Suite 5622, San Francisco, CA 94107, (415) 865–4200

Colorado

Supreme Court Library

Ms. Lois Calvert, Supreme Court Law Librarian, Colorado State Judicial Building, 2 East 14th Avenue, Denver, CO 80203, (303) 837–3720

Connecticut

State Library

Ms. Denise D. Jernigan, Head, Law/Legislative Reference Unit, Connecticut State Library, Hartford, CT 06106, (860) 566–2516

Delaware

Administrative Office of the Courts

Mr. Michael E. McLaughlin, Deputy Director, Administrative Office of the Courts, Carvel State Office Building, 820 North French Street, 11th Floor, P.O. Box 8911, Wilmington, DE 19801, (302) 577–8481

District of Columbia

Executive Office, District of Columbia Courts

Mr. Ulysses Hammond, Executive Officer, District of Columbia Courts, 500 Indiana Avenue, N.W., Washington, D.C. 20001, (202) 879–1700

Florida

Administrative Office of the Courts

Mr. Kenneth Palmer, State Court Administrator, Supreme Court Building, 500 South Duval Street, Tallahassee, FL 32399–1900, (850) 922–5081

Georgia

Administrative Office of the Courts

George Lange III, Director, Administrative Office of the Courts, 47 Trinity Avenue, Suite 414, Atlanta, GA 30334, (404) 656–5171

Hawaii

Supreme Court Library

Ms. Ann Koto, State Law Librarian, The Supreme Court Law Library, 417 South King St., Room 119, Honolulu, HI 96813, (808) 539–4965

Idaho

AOC Judicial Education Library/State Law Library

Ms. Beth Peterson, State Law Librarian, Idaho State Law Library, Supreme Court Building, 451 West State St., Boise, ID 83720, (208) 334–3316

Illinois

Supreme Court Library

Ms. Brenda Larison, Supreme Court of Illinois Library, 200 East Capitol Avenue, Springfield, IL 62701–1791, (217) 782–2425

Indiana

Supreme Court Library

Dennis Lager, Supreme Court Librarian, Supreme Court Library, State House, Room 316, Indianapolis, IN 46204, (317) 232–2557

Iowa

Administrative Office of the Court

Dr. Jerry K. Beatty, Executive Director, Judicial, Education & Planning, Administrative Office of the Courts, State Capital Building, Des Moines, IA 50319, (515) 281–8279

Kansas

Supreme Court Library

Mr. Fred Knecht, Law Librarian, Kansas Supreme Court Library, 301 West 10th Street, Topeka, KS 66612, (913) 296–3257

Kentucky

State Law Library

Ms. Sallie Howard, State Law Librarian, State Law Library, State Capital, Room 200, Frankfort, KY 40601, (502) 564–4848

Louisiana

State Law Library

Ms. Carol Billings, Director, Louisiana Law Library, 301 Loyola Avenue, New Orleans, LA 70112, (504) 568–5705

Maine

State Law and Legislative Reference Library

Ms. Lynn E. Randall, State Law Librarian, 43 State House Station, Augusta, ME 04333, (207) 287–1600

Maryland

State Law Library

Mr. Michael S. Miller, Director, Maryland State Law Library, Court of Appeal Building, 361 Rowe Boulevard, Annapolis, MD 21401, (410) 260–1430

Massachusetts

Middlesex Law Library

Ms. Sandra Lindheimer, Librarian, Middlesex Law Library, Superior Court House, 40 Thorndike Street, Cambridge, MA 02141, (617) 494–4148

Michigan

Michigan Judicial Institute,

Mr. Kevin Bowling, Director, Michigan Judicial Institute, 222 Washington Square North, P.O. Box 30205, Lansing, MI 48909, (517) 334–7804

Minnesota

State Law Library (Minnesota Judicial Center)

Mr. Marvin R. Anderson, State Law Librarian, Supreme Court of Minnesota, 25 Constitution Avenue, St. Paul, MN 55155, (612) 2972084

Mississippi

Mississippi Judicial College

Mr. Leslie Johnson, Director, University of Mississippi, P.O. Box 8850, University, MS 38677, (601) 232–5955

Montana

State Law Library

Ms. Judith Meadows, State Law Librarian, State Law Library of Montana, 215 North Sanders, Helena, MT 59620, (406) 444–3660

Nebraska

Administrative Office of the Courts

Mr. Joseph C. Steele, State Court Administrator, Administrative Office of the Courts/Probation, State Capitol Building, Room 1220, Lincoln, NE 68509, (402) 471–3730

Nevada

National Judicial College

Clara Kelly, Law Librarian, National Judicial College, Judicial College Building, University of Nevada, Reno, NV 89550, (702) 784–6747

New Jersey

New Jersey State Library

Marjorie Garwig, Supervising Law Librarian, New Jersey State Law Library, 185 West State Street, P.O. Box 520, Trenton, NJ 08625–0250, (609) 292–6230

New Mexico

Supreme Court Library

Mr. Thaddeus Bejnar, Librarian, Supreme Court Library, Post Office Drawer L, Santa Fe, NM 87504, (505) 827–4850

New York

Supreme Court Library

Ms. Colleen Stella, Principal Law Librarian, New York State Supreme Court Law Library, Onondaga County Court House, 401 Montgomery Street, Syracuse, NY 13202, (315) 435–2063

North Carolina

Supreme Court Library

Ms. Louise Stafford, Librarian, North Carolina Supreme Court Library, P.O. Box 28006, 2 East Morgan Street, Raleigh, NC 27601, (919) 733–3425

North Dakota

Supreme Court Library

Ms. Marcella Kramer, Assistant Law Librarian, Supreme Court Law Library, 600 East Boulevard Avenue, Dept. 182, 2nd Floor, Judicial Wing, Bismarck, ND 58505–0540, (701) 328–2229

Northern Mariana Islands

Supreme Court of the Northern Mariana Islands

Honorable Marty W.K. Taylor, Chief Justice, Supreme Court of the Northern Mariana Islands, P.O. Box 2165, Saipan, MP 96950, (670) 234–5275

Ohio

Supreme Court Library

Mr. Paul S. Fu, Law Librarian, Supreme Court Law Library, Supreme Court of Ohio, 30 East Broad Street, Columbus, OH 43266–0419, (614) 466–2044

Oklahoma

Administrative Office of the Courts

Mr. Howard W. Conyers, Administrative Director, 1915 North Stiles, Suite 305, Oklahoma City, OK 73105, (405) 521–2450

Oregon

Administrative Office of the Courts

Ms. Kingsley W. Click, State Court Administrator, Office of the State Court Administrator, Supreme Court Building, Salem, OR 97310, (503) 986–5900

Pennsylvania

State Library of Pennsylvania

Ms. Sharon Anderson, State Justice Depository, State Library of Pennsylvania, Collection Management, Room G–48 Forum Building, P.O. Box 1601, Harrisburg, PA 17105–1601, (717) 787–5718

Puerto Rico

Office of Court Administration

Alfredo Rivera-Mendoza, Esq., Director, Area of Planning and Management, Office of Court Administration, P.O. Box 917, Hato Rey, R 00919

Rhode Island

Roger Williams Law School Library

Mr. Kendall Svengalis, Law Librarian, Licht Judicial Complex, 250 Benefit Street, Providence, RI, (401) 254–4546

South Carolina

Coleman Karesh Law Library (University of South Carolina School of Law)

Mr. Bruce S. Johnson, Law Librarian, Associate Professor of Law, Coleman Karesh Law Library, U.S.C. Law Center, University of South Carolina, Columbia, SC 29208, (803) 777–5944

Tennessee

Tennessee State Law Library

Judge Connie Clark, Director, Administrative Office of the Courts, State of Tennessee, 511 Union, Nashville, TN 37243–0607, (615) 741–2687

Texas

State Law Library

Ms. Kay Schleuter, Director, State Law Library, P.O. Box 12367, Austin, TX 78711, (512) 463–1722

U.S. Virgin Islands

Library of the Territorial Court of the Virgin Islands (St. Thomas)

Librarian, The Library, Territorial Court of the Virgin Islands, Post Office Box 70, Charlotte Amalie, St. Thomas, U.S. Virgin Islands 00804

Utah

Utah State Judicial Administration Library

Ms. Debbie Christiansen, Utah State Judicial, Administration Library, AOC, 450 South State, P.O. Box 140241, Salt Lake City, UT 84114–0241, (801) 533–6371

Vermont

Supreme Court of Vermont

Mr. Lee Suskin, Court Administrator, Supreme Court of Vermont, 109 State Street, Montpelier, VT 05609–0701, (802) 828–3278

Virginia

Administrative Office of the Courts

Mr. Robert N. Baldwin, State Court Administrator, Supreme Court of Virginia, Administrative Offices, 100 North Ninth Street, 3rd Floor, Richmond, VA 23219, (804) 786–6455

Washington

Washington State Law Library

Ms. Deborah Norwood, State Law Librarian, Washington State Law Library, Temple of Justice, P.O. Box 40751, Olympia, WA 98504–0751, (206) 357–2136

West Virginia

Administrative Office of the Courts

Mr. Richard H. Rosswurm, Chief Deputy, West Virginia Supreme Court of Appeals, State Capitol, 1900 Kanawha, Charleston, WV 25305, (304) 348–0145

Wisconsin

State Law Library

Ms. Marcia Koslov, State Law Librarian, State Law Library, 310E State Capitol, P.O. Box 7881, Madison, WI 53707, (608) 266–1424

Wyoming

Wyoming State Law Library

Ms. Kathy Carlson, Law Librarian, Wyoming State Law Library, Supreme Court Building, 2301 Capitol Avenue, Cheyenne, WY 82002, (307) 777–7509

National

American Judicature Society

Ms. Clara Wells, Assistant for Information and Library Services, 25 East Washington Street, Suite 1600, Chicago, IL 60602, (312) 558–6900,

National Center for State Courts

Ms. Peggy Rogers, Acquisitions/Serials Librarian, 300 Newport Avenue, Williamsburg, VA 23187–8798, (804) 253–2000

JERITT

Maureen Conner, Project Director, Judicial Education Reference, Information and Technical Transfer Project (JERITT), Michigan State University, 560 Baker Hall, East Lansing, MI 48824, (517) 353–8603

Appendix E—Illustrative List of Model Curricula

The following list includes examples of model SJI-supported curricula that State judicial educators may wish to adapt for presentation in education programs for judges and other court personnel with the assistance of a Curriculum Adaptation Grant. *Please refer to section VII.E. for information on submitting a letter application for a Curriculum Adaptation Grant.* A list of all SJI-supported education projects is available on the SJI website (http://www.statejustice.org). Please also check with the JERITT project (517/353–8603) and with your State SJI-designated library (see Appendix D) for information on other SJI-supported curricula that may be appropriate for in-State adaptation.

Alternative Dispute Resolution

Judicial Settlement Manual (National Judicial College: SJI–89–089)

Improving the Quality of Dispute Resolution (Ohio State University College of Law: SJI–93–277)

Comprehensive ADR Curriculum for Judges (American Bar Association: SJI–95–002)

Domestic Violence and Custody Mediation (American Bar Association: SJI–96–038)

Court Coordination

Bankruptcy Issues for State Trial Court Judges (American Bankruptcy Institute: SJI–91–027)

Intermediate Sanctions Handbook: Experiences and Tools for Policymakers (Center for Effective Public Policy: IAA–88–NIC–001)

Regional Conference Cookbook: A Practical Guide to Planning and Presenting a Regional Conference on State-Federal Judicial Relationships (U.S. Court of Appeals for the 9th Circuit: SJI–92–087)

Bankruptcy Issues and Domestic Relations Cases (American Bankruptcy Institute: SJI–96–175)

Court Management

Managing Trials Effectively: A Program for State Trial Judges (National Center for State Courts/National Judicial College: SJI–87–066/067, SJI–89–054/055, SJI–91–025/026)

Caseflow Management Principles and Practices (Institute for Court Management/National Center for State Courts: SJI–87–056)

A Manual for Workshops on Processing Felony Dispositions in Limited Jurisdiction Courts (National Center for State Courts: SJI–90–052)

Managerial Budgeting in the Courts; Performance Appraisal in the Courts; Managing Change in the Courts; Court Automation Design; Case Management for Trial Judges; Trial Court Performance Standards (Institute for Court Management/National Center for State Courts: SJI–91–043)

Strengthening Rural Courts of Limited Jurisdiction and Team Training for Judges and Clerks (Rural Justice Center: SJI–90–014, SJI–91–082)

Interbranch Relations Workshop (Ohio Judicial Conference: SJI–92–079)

Integrating Trial Management and Caseflow Management (Justice Management Institute: SJI–93–214)

Leading Organizational Change (California Administrative Office of the Courts: SJI–94–068)

Privacy Issues in Computerized Court Record Keeping: An Instructional Guide for Judges and Judicial Educators (National Judicial College: SJI–94–015)

Managing Mass Tort Cases (National Judicial College: SJI–94–141) Employment Responsibilities of State Court Judges (National Judicial College: SJI–95–025)

Dealing with the Common Law Courts: A Model Curriculum for Judges and Court Staff (Institute for Court Management/ National Center for State Courts: SJI–96–159)

Caseflow Management (Justice Management Institute: SJI–98–041)

Courts and Communities

A National Program for Reporting on the Courts and the Law (American Judicature Society: SJI–88–014)

Victim Rights and the Judiciary: A Training and Implementation Project (National Organization for Victim Assistance: SJI–89–083)

National Guardianship Monitoring Project: Trainer and Trainee's Manual (American Association of Retired Persons: SJI–91–013)

Access to Justice: The Impartial Jury and the Justice Systemand When Implementing the Court-Related Needs of Older People and Persons with Disabilities: An Instructional Guide (National Judicial College: SJI–91–054)

You Are the Court System: A Focus on Customer Service (Alaska Court System: SJI–94–048)

Serving the Public: A Curriculum for Court Employees (American Judicature Society: SJI–96–040)

Courts and Their Communities: Local Planning and the Renewal of Public Trust and Confidence: A California Statewide Conference (California Administrative Office of the Courts: SJI–98–008)

Public Trust and Confidence in the Courts (Mid-Atlantic Association for Court Management: SJI–98–208)

ACA National Conference: Public Trust and Confidence (Arizona Courts Association: SJI–99–063)

Criminal Process

Search Warrants: A Curriculum Guide for Magistrates (American Bar Association Criminal Justice Section: SJI–88–035)

Diversity, Values, and Attitudes

Troubled Families, Troubled Judges (Brandeis University: SJI–89–071)

The Crucial Nature of Attitudes and Values in Judicial Education (National Council of Juvenile and Family Court Judges: SJI–90–058)

Enhancing Diversity in the Court and Community (Institute for Court Management/National Center for State Courts: SJI–91–043)

Cultural Diversity Awareness in Nebraska Courts from Native American Alternatives to Incarceration Project (Nebraska Urban Indian Health Coalition: SJI–93–028)

Race Fairness and Cultural Awareness Faculty Development Workshop (National Judicial College: SJI–93–063)

A Videotape Training Program in Ethics and Professional Conduct for Nonjudicial Court Personnel and The Ethics Fieldbook: Tool For Trainers (American Judicature Society: SJI–93–068)

Court Interpreter Training Course for Spanish Interpreters (International Institute of Buffalo: SJI–93–075)

Doing Justice: Improving Equality Before the Law Through Literature-Based Seminars for Judges and Court Personnel (Brandeis University: SJI–94–019)

Indian Welfare Act"; "Defendants, Victims, and Witnesses with Mental Retardation (National Judicial College: SJI–94–142)

Multi-Cultural Training for Judges and Court Personnel (St. Petersburg Junior College: SJI–95–006)

Ethical Standards for Judicial Settlement: Developing a Judicial Education Module (American Judicature Society: SJI–95–082)

Code of Ethics for the Court Employees of California (California Administrative Office of the Courts: SJI 95–245)

Workplace Sexual Harassment Awareness and Prevention (California Administrative Office of the Courts: SJI 96–089)

Just Us On Justice: A Dialogue on Diversity Issues Facing Virginia Courts (Virginia Supreme Court: SJI–96–150)

When Bias Compounds: Insuring Equal Treatment for Women of Color in the Courts (National Judicial Education Program: SJI 96–161)

When Judges Speak Up: Ethics, the Public, and the Media (American judicature Society: SJI–96–152)

Family Violence and Gender-Related Violent Crime

National Judicial Response to Domestic Violence: Civil and Criminal Curricula (Family Violence Prevention Fund: SJI–87–061, SJI–89–070, SJI–91–055).

Domestic Violence: A Curriculum for Rural Courts (Rural Justice Center: SJI–88–081)

Judicial Training Materials on Spousal Support; Judicial Training Materials on Child Custody and Visitation (Women Judges' Fund for Justice: SJI–89–062)

Judicial Response to Stranger and Nonstranger Rape and Sexual Assault (National Judicial Education Program: SJI–92–003)

Domestic Violence & Children: Resolving Custody and Visitation Disputes (Family Violence Prevention Fund: SJI–93–255)

Adjudicating Allegations of Child Sexual Abuse When Custody Is In Dispute (National Judicial Education Program: SJI 95–019)

Handling Cases of Elder Abuse: Interdisciplinary Curricula for Judges and Court Staff (American Bar Association: SJI–93–274)

Health and Science

Environmental Law Resource Handbook (University of New Mexico Institute for Public Law: SJI–92–162)

A Judge's Deskbook on the Basic Philosophies and Methods of Science: Model Curriculum (University of Nevada, Reno: SJI–97–030)

Judicial Education For Appellate Court Judges

Career Writing Program for Appellate Judges (American Academy of Judicial Education: SJI–88–086)

Civil and Criminal Procedural Innovations for Appellate Courts (National Center for State Courts: SJI–94–002)

Judicial Education Faculty, and Program Development

The Leadership Institute in Judicial Education and The Advanced Leadership Institute in Judicial Education (University of Memphis: SJI–91–021)

"Faculty Development Instructional Program" from Curriculum Review (National Judicial College: SJI–91–039)

Resource Manual and Training for Judicial Education Mentors (National Association of State Judicial Educators: SJI–95–233)

Institute for Faculty Excellence in Judicial Education, (National Council of Juvenile and Family Court Judges: SJI–96–042)

Orientation and Mentoring of Judges and Court Personnel

Legal Institute for Special and Limited Jurisdiction Judges (National Judicial College: SJI–89–043, SJI–91–040)

Pre-Bench Training for New Judges (American Judicature Society: SJI–90–028)

A Unified Orientation and Mentoring Program for New Judges of All Arizona Trial Courts (Arizona Supreme Court: SJI–90–078)

Court Organization and Structure (Institute for Court Management/National Center for State Courts: SJI–91–043)

Judicial Review of Administrative Agency Decisions (National Judicial College: SJI–91–080)

New Employee Orientation Facilitators Guide (Minnesota Supreme Court: SJI–92–155)

Magistrates Correspondence Course (Alaska Court System: SJI–92–156)

Computer-Assisted Instruction for Court Employees (Utah Administrative Office of the Courts: SJI–94–012)

Bench Trial Skills and Demeanor: An Interactive Manual (National Judicial College: SJI 94–058)

Ethical Issues in the Election of Judges (National Judicial College: SJI–94–142)

Juveniles and Families in Court

Fundamental Skills Training Curriculum for Juvenile Probation Officers (National Council of Juvenile and Family Court Judges: SJI–90–017)

Child Support Across State Lines: The Uniform Interstate Family Support Act from Uniform Interstate Family Support Act: Development and Delivery of a Judicial Training Curriculum (ABA Center on Children and the Law: SJI 94–321)

Strategic and Futures Planning

Minding the Courts into the Twentieth Century (Michigan Judicial Institute: SJI–89–029)

An Approach to Long-Range Strategic Planning in the Courts (Center for Public Policy Studies: SJI–91–045)

Substance Abuse

Effective Treatment for Drug-Involved Offenders: A Review & Synthesis for Judges and Court Personnel (Education Development Center, Inc.: SJI–90–051)

Good Times, Bad Times: Drugs, Youth, and the Judiciary (Professional Development and Training Center, Inc.: SJI–91–095)

Gaining Momentum: A Model Curriculum for Drug Courts (Florida Office of the State Courts Administrator: SJI–94–291)

Judicial Response to Substance Abuse: Children, Adolescents, and Families (National Council of Juvenile and Family Court Judges: SJI–95–030)

Appendix F—Illustrative List of Replicable Projects

The following list includes examples of SJI-supported projects that might successfully adapted and replicated in other in other jurisdictions. Please see section VI. for information on submitting a concept paper requesting a grant to replicate one of these or another SJI-supported project. A list of all SJI-supported projects is available on the Institute's website (http://www.statejustice.org).

Application of Technology

Automated Teller Machines for Juror Payment

Grantee: District of Columbia Courts
Contact: Philip Braxton, 500 Indiana Avenue, N.W., Washington, DC 20001, (202) 879–1700
Grant No: SJI–92–139

Analytical Judicial Desktop

Grantee: Fund for the City of New York
Contact: Michele Sviridoff, Mid-Town Community Court, 314 W. 54th Street, New York, New York 10019, (212) 484–2721
Grant No: SJI–94–323

Children and Families in Court

Parent Education and Custody Effectiveness (PEACE) Program

Grantee: Hofstra University
Contact: Andrew Shephard, 1000 Fulton Avenue, Hampstead, NY 11550–1090, (516) 463–5890
Grant No: SJI–93–265

A Judge's Guide to Culturally Competent Responses to Latino Family Violence

Grantee: Center for Public Policy Studies
Contacts: Stephen Weller, John Martin 999 18th Street, Suite 900, Denver, Colorado 80202
Grant No: SJI–96–230

Court Management, Coordination and Planning

Tribal Court-State Court Forums: A How To-Do-It Guide to Prevent and Resolve Jurisdictional Disputes and Improve Cooperation Between Tribal and State Courts:

Grantee: National Center for State Courts
Contact: Frederick Miller, 1331 17th Street, Suite 402, Denver, Colorado 80202–1554, (303) 293–3063
Grant No: SJI–91–011)

Measurement of Trial Court Performance

Grantee: Supreme Court of Virginia
Contact: Beatrice Monahan, 100 North Ninth Street, Third Floor, Richmond, VA 23219, (804) 786–6455
Grant No: SJI–91–042

Probate Caseflow Management Project

Grantee: Ohio Supreme Court/Trumball County Probate Court
Contact: Hon. Susan Lightbody, 160 High Street, N.W., Warren, OH 44481, (216) 675–2566
Grant No: SJI–92–081; SJI–92–081–P94–1; SJI–92–081–P95–1

Implementing Quality Methods in Court Operations

Grantee: Oregon Supreme Court
Contact: Scott Crampton, Supreme Court Building, Salem, OR 97310, (503) 378–5845
Grant No: SJI–92–170

Applying TQM Concepts to Systemwide Problems of the Maine Judicial Branch

Grantee: Maine Supreme Judicial Court
Contact: James T. Glessner, P.O. Box 4820, Portland, Maine 04101, (207) 822–0792
Grant No: SJI–93–072

Arizona-Sonora Judicial Relations Project

Grantee: Arizona Supreme Court
Contact: Dennis Metrick, 1501 W. Washington Street, Phoenix, Arizona 85007–3327, (602) 542–4532
Grant Nos: SJI–93–202

Implementing Strategic Planning in the Trial Courts

Grantee: Center for Public Policy Studies
Contact: David Price, 999 18th Street, Suite 900, Denver, CO 80202, (303) 863–0900
Grant No: SJI–94–021

Interstate Compacts and Cooperation in Guardianship Cases

Grantee: National College of Probate Judges
Contact: Paula Hannaford, P.O. Box 8978, Williamsburg, Virginia 23187–8798, (757) 253–2000
Grant No: SJI–97–241

Courts and Communities

AARP Volunteers: A Resource for Strengthening Guardianship Services

Grantee: American Association of Retired Persons
Contact: Wayne Moore, 601 E Street, N.W., Washington, DC 20049, (202) 434–2165
Grant Nos: SJI–88–033/SJI–91–013

Establishing a Consumer Research and Service Development Process Within the Judicial System

Grantee: Supreme Court of Virginia

Contact: Beatrice Monahan, Administrative Offices, Third Floor, 100 North Ninth Street, Richmond, VA 23219, (804) 786–6455
Grant No: SJI–89–068

Tele-Court: A Michigan Judicial System Public Information Program

Grantee: Michigan Supreme Court
Contact: Judy Bartell, State Court Administrative Office, 611 West Ottawa Street, P.O. Box 30048, Lansing, MI 48909, (517) 373–0130
Grant No: SJI–91–015

Arizona Pro Per Information System (QuickCourt)

Grantee: Arizona Supreme Court
Contact: Jeannie Lynch, Administrative Office of the Court, 1501 West Washington Street, Suite 411, Phoenix, AZ 85007–3330, (602) 542–9554
Grant No: SJI–91–084

Using Judges and Court Personnel to Facilitate Access to Courts by Limited English Speakers

Grantee: Washington Office of the Administrator for the Courts
Contact: Joanne Moore, 1206 South Quince Street, P.O. Box 41170, Olympia, WA 98504–1170, (206) 753–3365
Grant No: SJI–92–147

Pro se Forms and Instructions Packets

Grantee: Michigan Supreme Court
Contact: Pamela Creighton, 611 W. Ottawa Street, Lansing, MI 48909
Grant No: SJI–94–003

Understanding the Judicial Process: A Curriculum and Community Service Program

Grantee: Drake University
Contact: Timothy Buzzell, Opperman Hall, Des Moines, IA 50311, (515) 271–3205
Grant No: SJI–94–022

Court Self-Service Center

Grantee: Maricopa County Superior Court
Contact: Bob James, 201 W. Jefferson, 4th Floor, Phoenix, AZ 85003, (602) 506–6314
Grant No: SJI–94–324

Computer-Based Interpreter Test Delivery System

Grantee: Maryland Administrative Office of the Courts
Contact: Elizabeth Veronis, 361 Rowe Boulevard, Annapolis, Maryland 21401, (410) 974–2141
Grant No: SJI–96–164

Public Opinion and the Courts

Grantee: New Mexico Administrative Office of the Courts
Contact: John M. Greacen, 237 Don Gaspar, Room 25, Santa Fe, New Mexico 87501–2178, (505) 827–4800
Grant No: SJI–97–026

Sentencing

Facilitating the Appropriate Use of Intermediate Sanctions

Grantee: Center for Effective Public Policy
Contact: Peggy McGarry, 8403 Colesville Road, Suite 720, (301) 589–9383
Grant No: SJI–95–078

Substance Abuse

Alabama Alcohol and Drug Abuse Court Referral Officer Program

Grantee: Alabama Administrative Office of the Courts
Contact: Angelo Trimble, 817 South Court Street, Montgomery, AL 36130–0101, (334) 834–7990
Grant Nos: SJI–88–030/SJI–89–080/SJI–90–005

Substance Abuse Assessment and Intervention to Reduce Driving Under the Influence of Alcohol Recidivism

Grantee: California Administrative Office of the Courts c/o El Cajon Municipal Court
Contact: Fred Lear, 250 E. Main Street, El Cajon, CA 92020, (619) 441–4336
Grant No: SJI–88–029/SJI–90–008

Court Referral Officer Program

Grantee: New Hampshire Supreme Court
Contact: Jim Kelley, Supreme Court Building, Concord, NH 03301, (603) 271–2521
Grant No: SJI–92–142

Appendix G—State Justice Institute Scholarship Application

This application does not serve as a registration for the course. Please contact the education provider.

Applicant Information:
1. Applicant Name: _____ (Last First M)
2. Position: _____
3. Name of Court: _____
4. Address: _____ (Street/P.O. Box)
_____ (City state zip code)
5. Telephone No. _____
6. Congressional District: _____

Program Information:
7. Course Name: _____
8. Course Dates: _____
9. Course Provider: _____
10. Location Offered: _____

Estimated Expenses: (Please note, scholarships are limited to tuition and transportation expenses to and from the site of the course up to a maximum of $1,500.)
Tuition: $ _____
Transportation: $ _____ (Airfare, train fare, or if you plan to drive)
Amount Requested: $ _____

Are you seeking/have you received a scholarship for this course from another source? ___ Yes ___ No.
If so, please specify the source(s) and amounts(s) _____

Additional Information: Please attach a current resume or professional summary, and provide the information requested below. (You may attach additional pages if necessary.)

1. Please describe your need to acquire the skills and knowledge taught in this course.
2. Please describe how will taking this course benefit you, your court, and the State's courts generally.
3. Is there an educational program currently available through your State on this topic?
4. Are State or local funds available to support your attendance at the proposed course? If so, what amount(s) will be provided?
5. How long have you served as a judge or court manager? _____
6. How long do you anticipate serving as a judge or court manager, assuming reelection or reappointment?
0–1 year 2–4 years 5–7 years 8–10 years 11+ years
7. What continuing professional education programs have you attended in the past year? Please indicate which were mandatory (M) and which were non-mandatory (V).

Statement of Applicant's Commitment

If a scholarship is awarded, I will share the skills and knowledge I have gained with my court colleagues locally, and if possible, Statewide, and I will submit an evaluation of the educational program to the State Justice Institute and to the Chief Justice of my State.

_____
Signature/Date

Please return this form and Form S–2 to: Scholarship Coordinator, State Justice Institute, 1650 King Street, Suite 600, Alexandria Virginia 22314 (Form S2)

State Justice Institute Scholarship Application Concurrence

I, _____
Name of chief justice (or chief justice's designee)
have reviewed the application for a scholarship to attend the program entitled _____
prepared by _____
Name of applicant
and concur in its submission to the State Justice Institute. The applicant's participation in the program would benefit the State; the applicant's absence to attend the program would not present an undue hardship to the court; public funds are not available to enable the applicant to attend this course; and receipt of a scholarship would not diminish the amount of funds made available by the State for judicial branch education.

_____
Signature
_____
Name
_____
Title
_____
Date

Appendix H—Line-Item Budget Form

For Concept Papers, Curriculum Adaptation & Technical Assistance Grant Requests

Category match	SJI funds	Cash match	In-kind
Personnel ..	$_____	$_____	$_____
Fringe Benefits	$_____	$_____	$_____
Consultant/ Contractual	$_____	$_____	$_____

Category match	SJI funds	Cash match	In-kind
Travel	$_____	$_____	$_____
Equipment	$_____	$_____	$_____
Supplies	$_____	$_____	$_____
Telephone	$_____	$_____	$_____
Postage	$_____	$_____	$_____
Printing/ Photocopying	$_____	$_____	$_____
Audit	$_____	$_____	$_____
Other	$_____	$_____	$_____
Indirect Costs (%)	$_____	$_____	$_____
Total	$_____	$_____	$_____

Project Total: $_____

Financial assistance has been or will be sought for this project from the following other sources:
_____

Concept papers requesting an acccelerated award, Curriculum Adaptation grant requests, and Technical Assistance grant requests should be accompanied by a budget narrative explaining the basis for each line-item listed in the proposed budget.

Appendix I— State Justice Institute Certificate of State Approval

The _____
Name of State Supreme Court or designated agency or council
has reviewed the application entitled _____
prepared by _____
Name of applicant
approves its submission to the State Justice Institute, and

[ ] agrees to receive and administer and be accountable for all funds awarded by the Institute pursuant to the application.
[ ] designates
Name of trial or appellate court or agency
as the entity to receive, administer, and be accountable for all funds awarded by the Institute pursuant to the application.

_____
Signature
_____
Date
_____
Name
_____
Title

[FR Doc. 99–22418 Filed 8–30–99; 8:45 am]
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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 211/P.L. 106–48
To designate the Federal building and United States courthouse located at 920 West Riverside Avenue in Spokane, Washington, as the "Thomas S. Foley United States Courthouse", and the plaza at the south entrance of such building and courthouse as the "Walter F. Horan Plaza". (Aug. 17, 1999; 113 Stat. 230)

H.R. 1219/P.L. 106–49
Construction Industry Payment Protection Act of 1999 (Aug. 17, 1999; 113 Stat. 231)

H.R. 1568/P.L. 106–50
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Emergency Steel Loan Guarantee and Emergency Oil and Gas Guaranteed Loan Act of 1999 (Aug. 17, 1999; 113 Stat. 252)

H.R. 2465/P.L. 106–52
Military Construction Appropriations Act, 2000 (Aug. 17, 1999; 113 Stat. 259)

S. 507/P.L. 106–53
Water Resources Development Act of 1999. (Aug. 17, 1999; 113 Stat. 269)

S. 606/P.L. 106–54
For the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical, LLC (successor to Kerr-McGee Chemical Corporation), and for other purposes. (Aug. 17, 1999; 113 Stat. 398)

S. 1546/P.L. 106–55
To amend the International Religious Freedom Act of 1998 to provide additional administrative authorities to the United States Commission on International Religious Freedom, and to make technical corrections to that Act, and for other purposes. (Aug. 17, 1999; 113 Stat. 401)

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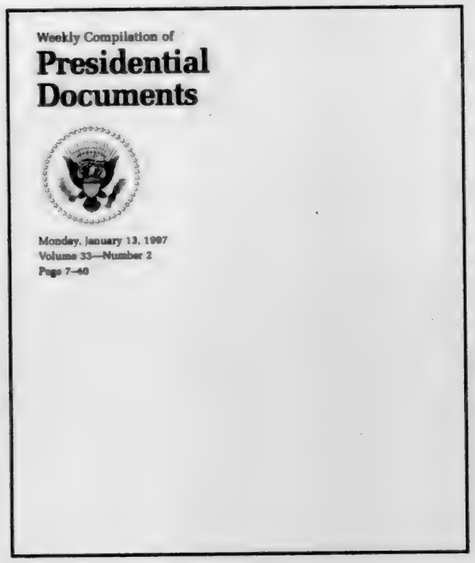

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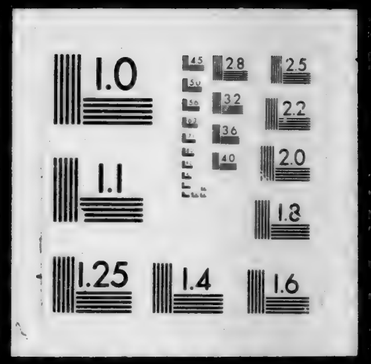

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Federal Register
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–163; Special Conditions No. 25–147–SC]

Special Conditions: Rockwell Collins; Boeing Model 737–300/–400/–500 Series Airplanes; High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Boeing Model 737–300/–400/–500 series airplanes modified by Rockwell Collins. These modified airplanes will have a novel or unusual design feature associated with the Rockwell Collins Multi-Mode Receiver (MMR) System. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is August 23, 1999. Comments must be received on or before October 1, 1999.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–114), Docket No. NM–163, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: Docket No. NM–163. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2145; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

FAA's Determination as to Need for Public Process

The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because those procedures would significantly delay issuance of the approval design and, thus, the delivery of the affected aircraft. (The aircraft are scheduled for delivery in mid-September 1999.)

In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. Thus, the FAA has previously provided the public with a number of opportunities to comment on proposed special conditions that are substantively identical to those at issue; and the FAA is reasonably assured that all interested members of the public have had an opportunity to comment and that their comments have been fully considered. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Although this action is in the form of final special conditions and, for the reasons stated above, is not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket NM–163." The postcard will be date stamped and returned to the commenter.

Background

On October 15, 1998, Rockwell Collins, Business and Regional Systems, 400 Collins Road NE., Cedar Rapids, Iowa 52498, made application to the FAA for a Supplemental Type Certificate (STC) for the Boeing Model 737–300/–400/–500 series airplanes. These airplanes are low-wing, pressurized transport category airplanes with twin, wing-mounted, jet engines. They are capable of seating between 110 and 147 passengers, depending upon the model and configuration. The proposed configuration of these modified airplanes will incorporate a Multi-Mode Receiver (MMR) system manufactured by Rockwell Collins. The affected aircraft are scheduled for delivery to the first customers in mid-September 1999.

The Rockwell Collins MMR is a single integrated unit that enables approaches using instrument landing systems, microwave landing systems, and global navigation satellite system functions. These functions can be susceptible to disruption of both command and response signals as a result of electrical and magnetic interference caused by high-intensity radiated fields (HIRF) external to the airplane. This disruption of signals could result in loss of critical flight displays and annunciations, or could present misleading information to the pilot.

Type Certification Basis

Under the provisions of 14 CFR 21.101 ("Designation of applicable regulations"), Rockwell Collins must show that the Boeing Model 737–300/–400/–500 series airplanes, as modified to include the MMR installation, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A16WE or the applicable regulations in effect on the date of

application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The specific regulations included in the certification basis for the Boeing Model 737–300/–400/–500 series airplanes include 14 CFR part 25, as amended by amendment 25–1 through 25–3, 25–7, 25–8, and 25–15.

Purpose of Special Conditions

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25) do not contain adequate or appropriate safety standards for the Boeing Model 737–300/–400/–500 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 ("Special conditions").

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 737–300/–400/–500 must comply with the part 25 fuel vent and exhaust emission requirements of 14 CFR part 34, and the part 25 noise certification requirements of 14 CFR part 36.

Special conditions, as appropriate, are issued in accordance with § 11.49, as required by §§ 11.28 and 11.29, and become part of the airplane's type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should Rockwell Collins apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The modified Boeing Model 737–300/–400/–500 series airplanes will incorporate the Rockwell Collins MMR system, which performs critical functions. The MMR system contains electronic equipment for which the current airworthiness standards (14 CFR part 25) do not contain adequate or appropriate safety standards that address protecting this equipment from the adverse effects of HIRF. Accordingly, this system is considered to be a "novel or unusual design feature."

Discussion

There is no specific regulation that addresses requirements for protection of electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved that is equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the Boeing Model 737–300/–400/–500 airplanes modified to include the Rockwell Collins MMR system. These special conditions will require that this system, which performs critical functions, must be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1 OR 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Field Strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF, in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee. In general, these standards are less critical than the threat level that was previously used as the basis for some earlier special conditions.

Applicability

As discussed above, these special conditions are applicable to the Boeing Model 737–300/–400/–500 series airplanes modified by Rockwell Collins to include the MMR system. Should Rockwell Collins apply at a later date for a design change approval to modify any other model that may be included on Type Certificate A16WE and incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain design features on the Boeing 737–300/–400/–500 airplanes as modified to include the Rockwell Collins MMR system installation. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplanes.

The substance of the special conditions for these airplanes has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the supplemental type certification basis for the Boeing Model 737–300/–400/–500 series airplanes as modified by Rockwell Collins to include the Rockwell Collins Multi-Mode Receiver.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operations and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on August 23, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22751 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–NM–113–AD; Amendment 39–11270; AD 99–18–04]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 series airplanes, that requires repetitive inspections to detect cracking of the support beam of the main landing gear (MLG) fairing, and a permanent repair, if necessary. This AD also requires installation of reinforcement parts for the longitudinal beam of the MLG fairing, which terminates the requirements of this AD. This amendment is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent cracking of the support beam of the MLG fairing, which could result in reduced structural integrity of the lower part of the MLG fairing, and consequent separation of part of the fairing from the airplane and possible damage to the airplane or injury to persons on the ground.

DATES: Effective October 6, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 6, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington: or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on June 9, 1998 (63 FR 31382). That action proposed to require repetitive inspections to detect cracking of the support beam of the main landing gear (MLG) fairing, and a permanent repair, if necessary. That action also proposed to require installation of reinforcement parts for the longitudinal beam of the MLG fairing, which would terminate the requirements of the AD. In addition, that action proposed to limit the applicability of the original NPRM.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Revise Compliance Time

The manufacturer provides an additional statement to comments submitted in response to the original NPRM regarding continued flight after detection of cracking. The manufacturer notes that inspections, repair, and reinforcement of the support beam of the MLG fairing are intended to prevent

the possibility of separation of part of the fairing from the aircraft and injury to persons on the ground. Since the support beam and MLG fairing are secondary structure, the manufacturer states that if cracks of less than 50 millimeters are found, allowing temporary repairs along with follow-on repetitive inspections every 300 flight hours, as recommended in Dornier Alert Service Bulletin ASB–328–53–010, dated October 13, 1995, does not impair safe operation.

From this comment, the FAA infers that the manufacturer is again requesting that the FAA reconsider the requirement to accomplish a permanent repair prior to further flight if any crack is found during inspection, as specified in paragraph (a)(2) of the proposed AD. The FAA acknowledges that the structure for which repairs may be necessary is considered to be secondary structure, and that an acceptable temporary repair is available. After further consideration, the FAA partially concurs with the request.

The FAA does not concur with all procedures recommended in the alert service bulletin for continued flight following detection of cracking. Specifically, the FAA does not concur that inspections may be allowed to continue indefinitely until crack length exceeds 50 millimeters. The FAA has determined that although continued flight can be allowed under restricted conditions following accomplishment of a temporary repair, the permanent repair must be accomplished within a period of 6 months. Additionally, the FAA does not concur that repeated stop drilling of the crack should be performed as a continuing temporary repair where further cracking is detected. The FAA has determined that, if any subsequent inspection reveals crack growth beyond the stop drilled area, the permanent repair should be accomplished prior to further flight.

However, since the manufacturer has outlined circumstances of unusual need, the FAA concurs that the airplane can be operated safely with a known crack of less than 50 millimeters for a limited period of time under certain conditions. These conditions include accomplishment of a one-time temporary repair prior to further flight after cracking is detected; reinspection at intervals not to exceed 300 flight hours until the permanent repair is accomplished; accomplishment of the pernanent repair within 6 months after cracking is detected; and, immediate accomplishment of the permanent repair if cracking beyond the stop drilling is found in subsequent inspections. Paragraph (a) of the final rule has been revised to specify these requirements following detection of cracks.

Request To Revise Applicability

The manufacturer requests that the applicability statement of the proposed AD be revised to include only airplanes on which the procedures specified in Dornier Service Bulletin SB–328–53–184, Revision 1, dated July 2, 1997 (which is referenced in the proposed AD as the appropriate source of service information for accomplishment of terminating action) have not been accomplished. The manufacturer states that some operators have already incorporated the subject service bulletin, and provides an updated list of airplane serial numbers on which the service bulletin has not yet been accomplished.

The FAA concurs with the manufacturers request to limit the applicability to airplanes on which the terminating action described in Service Bulletin SB–328–53–184 has not been accomplished. However, since operators may be accomplishing such action on an ongoing basis, revising airplane serial numbers in the applicability of this AD would not provide an accurate effectivity in the future. Therefore, the FAA has limited the applicability of the final rule to those airplanes on which Dornier Service Bulletin SB–328–53–184, Revision 1, dated July 2, 1997, has not been accomplished.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 47 Dornier Model 328–100 series airplanes of U.S. registry will be affected by this AD.

It will take approximately I work hour per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $2,820, or $60 per airplane, per inspection cycle.

It will take approximately 8 work hours per airplane to accomplish the required installation of reinforcement parts, at an average labor rate of $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the installation required by this AD on U.S. operators is estimated to be $22,560, or $480 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator be required to accomplish the permanent repair of cracked structure, it would take approximately 3 work hours per airplane to accomplish it, at an average labor rate of $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the repair action, if accomplished, is estimated to be $180 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–18–04 Dornier Luftfahrt GMBH: Amendment 39–11270. Docket 96–NM–113–AD.

Applicability: Model 328–100 series airplanes, serial numbers 3005, 3008, 3009, and 3011 through 3079 inclusive; except airplanes on which Dornier Service Bulletin SB–328–53–184, Revision 1, dated July 2, 1997, has been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the lower part of the main landing gear (MLG) fairing, and consequent separation of part of the fairing from the airplane and possible damgae to the airplane or injury to persons on the ground, accomplish the following:

Inspections and Repairs

(a) Within 300 hours time-in-service after the effective date of this AD, perform a visual inspection to detect cracking of the lower attachment flanges in the area of the bend radii of the forward and aft support beams of the MLG, in accordance with Dornier Alert Service Bulletin ASB–328–53–010, dated October 13, 1995.

(1) If no cracking is found, repeat the inspection thereafter at intervals not to exceed 300 hours time-in-service, until the actions required by either paragraph (a)(2)(iii) or (b) of this AD have been accomplished.

(2) If any cracking is found and the crack is less than 50 millimeters (1.97 inches) in length, accomplish paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) of this AD.

(i) Prior to further flight, accomplish stop drilling as a one-time temporary repair in accordance with the alert service bulletin.

(ii) Repeat the inspection thereafter at intervals not to exceed 300 hours time-in-service until accomplishment of paragraph (a)(2)(iii) of this AD. If any inspection reveals that the cracking has grown beyond the stop drilled area, prior to further flight, accomplish paragraph (a)(2)(iii) of this AD.

(iii) Within 6 months after the cracking is detected, accomplish the permanent repair in accordance with the alert service bulletin. Accomplishment of the permanent repair constitutes terminating action for the repetitive inspections required by this AD.

(3) If any crack is found and the crack is greater than or equal to 50 millimeters (1.97 inches) in length, prior to further flight, accomplish the permanent repair in accordance with the alert service bulletin. Accomplishment of the permanent repair constitutes terminating action for the repetitive inspections by this AD.

Terminating Modification

(b) Within 3,000 hours time-in-service after the effective date of this AD, install reinforcement parts for the longitudinal beam of the MLG, in accordance wtih Dornier Service Bulletin SB–328–53–184, Revision 1, dated July 2, 1997. Accomplishment of this installation constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Dornier Alert Service Bulletin ASB–328–53–010, dated October 13, 1995; and Dornier Service Bulletin SB–328–53–184, Revision 1, dated July 2, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German airworthiness directives 95–413, dated November 2, 1995, and 97–073, dated March 27, 1997.

(f) This amendment becomes effective on October 6, 1999.

Issued in Renton, Washington, on August 23, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22390 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–111–AD; Amendment 39–11282; AD 99–18–16]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400, 757–200, 767–200, and 767–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–400, 757–200, 767–200, and 767–300 series airplanes. This action requires repetitive checks to detect certain failures in the warning electronic unit (WEU) or modular avionic warning electronic assembly (MAWEA); repetitive tests to detect any failure of tactile, visual, or aural alert generated by the WEU or MAWEA; and corrective action, if necessary. This AD also provides for an optional terminating action for the repetitive checks and tests. This amendment is prompted by a report of a MAWEA power supply failure due to inadequate over-voltage protection. The actions specified in this AD are intended to detect and correct such a failure, which could result in loss of visual, aural, and tactile alerts to the flightcrew. Absence of such alerts could result in the flightcrew being unaware that an immediate or appropriate action should be taken in the event of an unsafe condition.

DATES: Effective September 16, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 16, 1999.

Comments for inclusion in the Rules Docket must be received on or before November 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–

111–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sheila I. Mariano, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2675; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received a report that, during a production flight test of a Boeing Model 747–400 series airplane, the flight test group noticed a power supply failure on the status page of the engine indication and crew alerting system (EICAS). Investigation revealed that the automated bench test procedure for the modular avionic warning electronic assembly (MAWEA) overstressed the 5.7 volt over-voltage clamp circuit which resulted in the failure of the circuit to protect the warning cards in the MAWEA. A slow failure of the MAWEA power supply could result in the gradual degradation of available visual, aural, and tactile alerts. Absence of such alerts could result in the flightcrew not being aware and not taking immediate or appropriate action in the event of an unsafe condition (i.e., a fire, overspeed condition, autopilot disconnect, stall, not in takeoff configuration, or landing gear not extended).

The warning electronic unit (WEU) power supply units on certain Boeing 757–200, 767–200, and 767–300 series airplanes are identical to those on the MAWEA power supply on the affected Boeing Model 747–400 series airplanes. Therefore, all of these airplanes may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletins 747–31–2288, dated December 17, 1998, and Revision 1, dated January 28, 1999 (for Model 747–400 series airplanes); 757–31–0066, Revision 1, dated December 17, 1998 (for Model 757–200 series airplanes); and 767–31–0106, Revision 1, dated December 17, 1998 (for Model 767–200 and 767–300 series airplanes). These service bulletins describe procedures for replacement (including system functional tests) of the MAWEA or WEU power supply with a new power supply.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other Boeing Model 747–400, 757–200, 767–200, and 767–300 series airplanes of the same type design, this AD is being issued to detect and correct failure of the MAWEA or WEU, which could result in loss of any visual, aural, or tactile alert to the flightcrew when an unsafe condition exists. This AD requires repetitive checks of the status page on the EICAS display system for any MAWEA or WEU failure; repetitive system functional tests to detect the loss of any visual, aural, or tactile alert; and replacement of the MAWEA or WEU power supply with a new power supply, if necessary. This AD also provides for an optional terminating action for the repetitive checks and functional tests. The replacement, if accomplished, shall be accomplished in accordance with the service bulletins described previously.

Interim Action

This is considered to be interim action. The FAA may consider further rulemaking action to require the accomplishment of the optional terminating action currently specified in this AD. However, the proposed compliance time for accomplishment of that action is sufficiently long so that prior notice and time for public comment will be practicable.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–111–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–18–16 Boeing: Amendment 39–11282. Docket 99–NM–111–AD.

Applicability: Model 747–400 series airplanes, line numbers 1121 through 1177 inclusive; Model 757–200 series airplanes, line numbers 761 through 828 inclusive; and Model 767–200 and 767–3300 series airplanes, line numbers 668 through 723 inclusive; equipped with either a modular avionics warning electronic assembly (MAWEA) or a warning electronics unit (WEU) power supply, part number 285T0035–201; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct failure of the MAWEA or WEU, which could result in a gradual degradation and eventual loss of visual, aural, or tactile alerts to the flightcrew, accomplish the following:

Model 747–400 Series Airplanes: Checks and Functional Tests

(a) For Model 747–400 series airplanes: Within 15 days after the effective date of this AD, check the status page of the engine indication and crew alerting system (EICAS) for any MAWEA failure; and perform the system functional tests required by paragraphs (a)(1), (a)(2), (a)(3), (a)(4), and (a)(5) of this AD to detect loss of any visual, aural, or tactile alert. Thereafter, repeat the EICAS status page check and the system functional tests before each flight.

Note 2: The following tests are an abbreviated version of Section 3, Work Instructions, of Boeing Service Bulletin 747–31–2288, dated December 17, 1998, and Revision 1, dated January 28, 1999.

(1) Perform a takeoff (T/O) configuration warning test to check the T/O configuration warning card, master monitors A and B, and left and right aural synthesizer cards.

(i) Set the parking brake.

(ii) Initiate the following central maintenance computer (CMC) ground test—31 indication/recording: T/O warning.

(iii) Verify that the left and right master warning lights (MWL) illuminate and the siren is heard from both the left and right speakers.

(2) Perform an altitude alert test to check the crew alert module.

(i) Verify the parking brake is still set.

(ii) Set the selected altitude on the mode control panel (MCP) to approximately 400 feet above the current altitude.

(iii) Verify that the box around the current altitude on the altitude tape becomes bright white.

(iv) Set the selected altitude on the MCP to 10,000 feet.

(v) Verify the aural warning owl is not activated.

(3) Perform a stall warning test to check the left and right stall management module cards.

(i) Ensure that the air data computers (ADC) are operational.

(ii) Initiate the following CMC ground test—27 stall warning: Left.

(iii) Verify that both stick shakers activate.

(iv) Initiate the following CMC ground test—27 stall warning: Right.

(v) Verify that both stick shakers activate.

(4) Perform an autopilot (A/P) disconnect test to check the left and right clacker wailer card.

(i) Press and hold the A/P disconnect on either control wheel.

(ii) Verify the wailer aural is heard over the left and right speakers and MWL's.

(iii) Release the A/P disconnect switch.

(5) Perform a MAWEA card light emitting diode (LED) test per Airplane Maintenance Manual (AMM) task 31–51–00–715–014, "MAWEA operational test," to verify that no red LED on the MAWEA circuit cards illuminate.

Note 3: The EICAS status page check and the system functional tests are considered maintenance functions that require airplane log book entree and maintenance release prior to flight.

Model 757–200, 767–200, and 767–300 Series Airplanes: Checks and Functional Tests

(b) For Model 757–200, 767–200, and 767–300 series airplanes: Within 15 days after the effective date of this AD, check the status page of the EICAS for any WEU failure; and perform the Work Instructions in Section 3, Part 1, of Boeing Service Bulletin 757–31–0066, Revision 1, dated December 17, 1998 (for Model 757–200 series airplanes); or Boeing Service Bulletin 767–31–0106, Revision 1, dated December 17, 1998 (for Model 767–200 and 767–300 series airplanes); as applicable; to detect loss of any visual, aural, or tactile alert. Thereafter, repeat the EICAS status page check and the Work Instructions in Section 3, Part 1 of the applicable service bulletin before each flight.

Note 4: The EICAS status page check and performance of the Work Instructions in Section 3, Part 1, of the applicable service bulletin are considered maintenance functions that require airplane log book entree and maintenance release prior to flight.

Corrective Action

(c) If any failure of the MAWEA or WEU, as applicable, or the loss of any visual, aural, or tactile alert is detected during any test required by either paragraph (a) or (b) of this AD, prior to further flight, replace the power supply of the MAWEA or WEU with a new power supply, P/N 285T0035–202 Mod A, in accordance with either Boeing Service Bulletin 747–31–2288, dated December 17, 1998, or Revision 1, dated January 28, 1999 (for Model 747–400 series airplanes); 757–31–0066, Revision 1, dated December 17, 1998 (for Model 757–200 series airplanes); or 767–31–0106, Revision 1, dated December 17, 1998 (for Model 767–200 and 767–300 series airplanes); as applicable. Accomplishment of this action constitutes terminating action for the repetitive inspection requirements of this AD.

Note 5: Page 59 of Boeing Service Bulletin 747–31–2288, Revision 1, dated January 28, 1999, incorrectly references the Boeing 767 AMM as the appropriate source of service information for accomplishment of the removal and installation of the power supply. However, the correct reference is the Boeing 747 AMM.

Spares

(d) As of the effective date of this AD, no person shall install a MAWEA or WEU power supply, part number 285T0035–201, on any airplane.

Optional Terminating Action

(e) Replacement of the power supply of the MAWEA or WEU with a new power supply, P/N 285T0035–202 Mod A, in accordance with Boeing Service Bulletin 747–31–2288, dated December 17, 1998, or Revision 1, dated January 28, 1999 (for Model 747–400 series airplanes); 757–31–0066, Revision 1, dated December 17, 1998 (for Model 757–200 series airplanes); or 767–31–0106, Revision 1, dated December 17, 1998 (for Model 767–200 and 767–300 series airplanes); as applicable; constitutes terminating action for the repetitive system functional tests and EICAS status page checks required by this AD.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Seattle ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) The replacement, if accomplished, shall be done in accordance with Boeing Service Bulletin 747–31–2288, dated December 17, 1998, or Boeing Service Bulletin 747–31–2288, Revision 1, dated January 28, 1999; Boeing Service Bulletin 757–31–0066, Revision 1, dated December 17, 1998; or Boeing Service Bulletin 767–31–0106, Revision 1, dated December 17, 1998; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on September 16, 1999.

Issued in Renton, Washington, on August 24, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22532 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–187–AD; Amendment 39–11283; AD 99–18–17]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes. This action requires repetitive replacements of the airplane battery with a new or reconditioned battery, and for certain airplanes, replacement of the battery charger with a new or serviceable battery charger. This action also requires performing repetitive tests to determine the condition of a certain diode of the Generator Control Units (GCU); and corrective actions, if necessary. This amendment is prompted by an incident during which all electrical power was lost due to a combination of a weak or depleted battery and the failure of a certain diode of the GCU. The actions specified in this AD are intended to prevent failure of all electrically powered airplane systems, which could result in the inability to continue safe flight and landing.

DATES: Effective September 16, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 16, 1999.

Comments for inclusion in the Rules Docket must be received on or before November 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–187–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen S. Oshiro, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2793; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received a report of an incident during which all electrical power was lost due to a combination of a weak or depleted battery and the failure of a certain diode of the GCU on a Boeing Model 737–200 series airplane. The electrical configuration of a Boeing Model 737–200 series airplane is similar in design to that of Boeing Model 737–100, –300, –400, and –500 series airplanes. Therefore, Boeing Model 737–100, –300, –400, and –500 series airplanes maybe subject to the same unsafe condition revealed on the Model 737–200 series airplane. The report revealed that, during an approach for landing, all electrical power was lost while the flight crew attempted a routine, in-flight start of the Auxiliary Power Unit (APU).

Following from that incident, an assessment of airplane battery maintenance was conducted, which resulted in the determination that some operators have extended the maintenance intervals beyond those recommended by the manufacturer. Such extended maintenance intervals increase the likelihood of allowing an airplane to operate with a weak or depleted airplane battery. The risk of a weak or depleted battery is greater on Model 737–100 and –200 series airplanes than the Model 737–300, –400 and –500 series airplanes because some of these airplanes utilize an older version of a battery charger. This older version of a battery charger has charging characteristics (overcharges and dries out the battery) that are not compatible with the extended airplane battery maintenance intervals. Additionally, certain diodes of the GCU have exhibited a susceptibility to short-circuit failure. The cause of these failures is under investigation.

If an attempt is made to start the APU during flight with a weak or depleted battery, and a short-circuit failure of a certain diode of the GCU has occurred, all electrical power could be lost for all airplane systems. Such failure could result in the inability to continue safe flight and landing.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Telex Message M–7200–99–01528, dated March 5, 1999, which describes procedures for performing repetitive tests to determine the condition of a certain diode of the GCU; and corrective actions, if necessary. The corrective actions include replacement of any GCU with a new or serviceable GCU if a failed diode is detected, and for certain conditions, replacement of the airplane battery with a new or reconditioned airplane battery.

The FAA also has reviewed and approved Boeing 737 Airplane Maintenance Manual (AMM) Chapters 20–10–111 and 24–31–11. These service documents describe the following:

- AMM 20–10–111: For Model 737–100 and –200 series airplanes, this AMM describes procedures for removal and installation of black box units. For these airplane models, the airplane battery charger is considered to be a black box unit.
- AMM 24–31–11: For all Model 737–100, –200, –300, –400, and –500 series airplanes this AMM describes procedures for removal and installation of the airplane battery with a new or reconditioned airplane battery. Additionally, the AMM describes procedures for cleaning and checking any installed airplane battery.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent failure of all electrically powered airplane systems, which could result in the inability to continue safe flight and landing. This AD requires accomplishment of the actions specified in the service documents described previously. This AD also requires that operators report results of inspection findings to the FAA.

Interim Action

Since the cause of the failures of the GCU's is under investigation, this is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–187–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–18–17 Boeing: Amendment 39–11283. Docket 99–NM–187–AD.

Applicability: All Model 737–100, –200, –300, –400, and –500 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of all electrically powered airplane systems, which could result in the inability to continue safe flight and landing, accomplish the following:

(a) For Model 737–100 and –200 series airplanes equipped with battery charger Boeing part number (P/N) 10–60701–1: Within 90 days after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Replace the airplane battery charger with a new or serviceable airplane battery charger, Boeing P/N 10–60701–3, in accordance with Chapter 20–10–111 of the Boeing 737 Airplane Maintenance Manual (AMM); and

(2) Replace the airplane battery with a new or reconditioned airplane battery in accordance with Chapter 24–31–11 of the Boeing 737 AMM. Thereafter, replace the airplane battery with a new or reconditioned airplane battery at intervals not to exceed 750 flight hours.

(b) For Model 737–300, -400, and -500 series airplanes: Within 90 days after the effective date of this AD, replace the airplane battery with a new or reconditioned airplane battery in accordance with Chapter 24–31–11 of the Boeing 737 AMM. Thereafter, replace the airplane battery with a new or reconditioned airplane battery at intervals not to exceed 750 flight hours.

(c) For all airplanes: Within 90 days after the effective date of this AD, perform a test to determine the condition of diode CR910 of the Generator Control Units (GCU) in accordance with Boeing Telex Message M–7200–99–01528, dated March 5, 1999.

Note 2: Any tests performed prior to the effective date of this AD, in accordance with Boeing Telex Message M–7200–99–01528, dated February 19, 1999, or dated March 4, 1999, are not considered acceptable for compliance with the applicable action specified by this AD.

(1) If all diodes pass the test, repeat the diode test thereafter, at intervals not to exceed 600 flight hours.

(2) If any diode fails the test: Prior to further flight, replace the GCU with a new or serviceable GCU, and if necessary, the airplane battery with new or reconditioned airplane battery, and repeat the diode test for the replaced GCU in accordance with the telex message until successful completion of the test is achieved. Repeat the diode test thereafter, at intervals not to exceed 600 flight hours.

(d) As of the effective date of this AD, no person shall install a battery charger having P/N 10–60701–1 on any Model 737 series airplane.

(e) Within 10 days after accomplishing the initial diode test required by paragraph (c) of this AD, submit a report of the test results (negative findings) to the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; fax (425) 227–1181. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) Except as provided by paragraphs (a) and (b) of this AD, the test shall be done in accordance with Boeing Telex Message M–7200–99–01528, dated March 5, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on September 16, 1999.

Issued in Renton, Washington, on August 24, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22531 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–55–AD; Amendment 39–11280; AD 99–18–14]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Model 172R Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Cessna Aircraft Company (Cessna) Model 172R airplanes equipped with a certain modification kit that reduces friction in the elevator control system. This AD requires inspecting the control yoke pivot bolt to assure positive clearance between the pivot bolt's threaded end and aileron direct cable. If positive clearance is not found, this AD requires replacing the control yoke pivot bolt, inspecting the adjacent aileron control cables for damage, and replacing any damaged aileron control cable. This AD is the result of the manufacturer supplying incorrect length control yoke pivot bolts in Cessna Modification Kits MK 172–27–01 that were shipped from September 21, 1998, through April 18, 1999. The actions specified by this AD are intended to prevent failure of an aileron control cable because of an incorrect length control yoke pivot bolt rubbing on one of these cables, which could result in loss of aileron control with loss of directional control of the airplane.

DATES: Effective September 27, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of September 27, 1999.

Comments for inclusion in the Rules Docket must be received on or before October 27, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–55–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from the Cessna Aircraft Company, Product Support, P. O. Box 7706, Wichita, Kansas 67277; telephone: (316) 571–5800; facsimile: (316) 942–9008. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–55–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Paul C. DeVore, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Rm. 100, Mid-Continent Airport, Wichita, Kansas, 67209; telephone: (316) 946–4142; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

Cessna has informed the FAA that incorrect length control yoke pivot bolts may have been shipped in Modification Kit MK 172–27–01 to certain owners/operators of Cessna Model 172R airplanes from September 21, 1998, through April 18, 1999. This kit was issued to reduce friction in the elevator control system.

The incorrect length bolts are longer than design specifications call for and could come in contact with or rub on one of the adjacent aileron control cables. This condition, if not detected and corrected in a timely manner, could result in loss of aileron control with loss of directional control of the airplane.

Relevant Service Information

Cessna has issued Service Bul' tin SB99–27–01, dated July 12, 1999, which specifies procedures for:

—Inspecting the control yoke pivot bolt to assure positive clearance between the pivot bolt's threaded end and aileron direct cable; and

—If positive clearance is not found, replacing the control yoke pivot bolt, inspecting the adjacent aileron control cables for damage, and replacing any damaged aileron control cable.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the relevant service information, the FAA has determined that AD action should be taken to prevent failure of an aileron control cable because of an incorrect length control yoke pivot bolt rubbing on one of these cables, which could result in loss of aileron control with loss of directional control of the airplane.

Explanation of the Provisions of the AD

Since an unsafe condition has been identified that is likely to exist or develop in other Cessna Model 172R airplanes of the same type design that are equipped with a Cessna Modification Kit MK 172–27–01 that was shipped sometime between September 21, 1998, and April 18, 1999, the FAA is taking AD action. This AD requires inspecting the control yoke pivot bolt to assure positive clearance between the pivot bolt's threaded end and aileron direct cable. If positive clearance is not found, this AD requires replacing the control yoke pivot bolt, inspecting the adjacent aileron control cables for damage, and replacing any damaged aileron control cable.

Accomplishment of these actions is required in accordance with Cessna Service Bulletin SB99–27–01, dated July 12, 1999.

Determination of the Effective Date of the AD

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–CE–55–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

99–18–14 CESSNA AIRCRAFT COMPANY: Amendment 39–11280; Docket No. 99–CE–55–AD.

Applicability: The following serial numbers of Model 172R airplanes, certificated in any category; that are equipped with a Cessna Modification Kit MK 172–27–01 that was shipped sometime between September 21, 1998, and April 18, 1999:

Serial Numbers

17280003 through 17280016, 17280018 through 17280060, 17280062, 17280063, 17280065 through 17280071, 17280073 through 17280083, 17280085 through 17280088, 17280090, 17280091, and 17280093 through 17280096

Note 1: Modification Kit MK172–27–01 was issued to reduce friction in the elevator control system.

Note 2: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent failure of an aileron control cable because of an incorrect length control yoke pivot bolt rubbing on one of these cables, which could result in loss of aileron control with loss of directional control of the airplane, accomplish the following:

(a) Within the next 25 hours time-in-service (TIS) after the effective date of this AD, inspect the control yoke pivot bolt to assure positive clearance between the pivot bolt's threaded end and the aileron direct cable. Accomplish this inspection in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Cessna Service Bulletin SB99–27–01, dated July 12, 1999. If positive clearance is not found, prior to further flight, accomplish the following in accordance with the service bulletin:

(1) Replace the control yoke pivot bolt; and

(2) Inspect the adjacent aileron control cables for damage and replace any damaged aileron control cable.

Note 3: This AD allows the aircraft owner or pilot to check the maintenance records to determine whether a Cessna Modification Kit MK 172–27–01 was incorporated after September 21, 1998, and before the effective date of this AD. Those kits shipped between

September 21, 1998, and April 18, 1999, could contain incorrect length control yoke pivot bolts and, when installed, could rub on one of the adjacent aileron control cables. See paragraph (c) of this AD for authorization.

(b) As of the effective date of this AD, no person may incorporate on any airplane, a Cessna Modification Kit MK 172–27–01 that was shipped sometime between September 21, 1998, and April 18, 1999, unless a replacement control yoke pivot bolt is obtained from the manufacturer, and incorporated with the modification kit.

(c) The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may check the maintenance records to determine whether a Cessna Modification Kit MK 172–27–01 was incorporated after September 21, 1998, and before the effective date of this AD. Those kits shipped between September 21, 1998, and April 18, 1999, could contain incorrect length control yoke pivot bolts and, when installed, could rub on one of the adjacent aileron control cables. If, by checking the maintenance records, it can be positively determined that one of these suspect kits is not incorporated on the airplane, the requirements of paragraph (a) of this AD do not apply and the owner/operator must make an entry into the aircraft records showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Rm 100, Mid-Continent Airport, Wichita, Kansas, 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(f) The inspections and replacements required by this AD shall be done in accordance with Cessna Service Bulletin SB99–27–01, dated July 12, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Cessna Aircraft Company, Product Support, P. O. Box 7706, Wichita, Kansas 67277. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment becomes effective on September 27, 1999.

Issued in Kansas City, Missouri, on August 23, 1999.

Terry L. Chasteen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22536 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–12–AD; Amendment 39–11277; AD 99–18–11]

RIN 2120–AA64

Airworthiness Directives; Short Brothers Model SD3–SHERPA, SD3–60 SHERPA, SD3–30, and SD3–60 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Short Brothers Model SD3–SHERPA, SD3–60 SHERPA, SD3–30, and SD3–60 series airplanes, that requires replacement of the existing bolts that secure the elevator control torque tube bearing housing retaining plate with hex head bolts. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent reduced movement of the elevator controls and consequent reduced controllability of the airplane, as a result of bolts coming loose on the elevator control torque tube bearing housing retaining plate.

DATES: Effective October 6, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 6, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Short Brothers Model SD3–SHERPA, SD3–60 SHERPA, SD3–30, and SD3–60 series airplanes was published in the **Federal Register** on June 28, 1999 (64 FR 34581). That action proposed to require replacement of the existing bolts that secure the elevator control torque tube bearing housing retaining plate with hex head bolts.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 46 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will come from the operator's existing supply. Based on these figures, the cost impact of the required AD on U.S. operators is estimated to be $11,040, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–18–11 Short Brothers PLC: Amendment 39–11277. Docket 99–NM–12–AD.

Applicability: All Model SD3–SHERPA, SD3–60 SHERPA, SD3–30, and SD3–60 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced movement of the elevator controls and consequent reduced controllability of the airplane, as a result of bolts coming loose on the elevator control torque tube bearing housing retaining plate, accomplish the following:

Replacement

(a) Within 6 months after the effective date of this AD, replace the existing bolts of the elevator control torque tube bearing housing retaining plate with hex head bolts torqued to a value of 35 lb-ins, in accordance with Shorts Service Bulletins SD3 Sherpa–27–3, Revision 1, dated November 23, 1998 (for Model SD3–SHERPA series airplanes); SD3–60 Sherpa–27–3, Revision 1, dated November 23, 1998 (for Model SD3–60 SHERPA series airplanes); SD330–27–37, Revision 1, dated November 23, 1998 (for Model SD3–30 series airplanes); or SD360–27–28, Revision 1, dated November 23, 1998 (for Model SD3–60 series airplanes); as applicable.

Alternative Method of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The replacement shall be done in accordance with the following Shorts Service Bulletins, which contain the specified effective pages:

Service bulletin referenced and date	Page/Number	Revision level shown on page	Date shown on page
SD3 SHERPA–27–3, Revision 1, November 23, 1998	1	1	Nov. 23, 1998
	2–5	Original	Nov. 16, 1998.
SD3 SHERPA–27–3, Revision 1, November 23, 1998	1	1	Nov. 23, 1998
	2–5	Original	Nov. 16, 1998.
SD330–27–37, Revision 1, November 23, 1998	1	1	Nov. 23, 1998
	2–5	Original	Nov. 16, 1998.
SD360–27–28, Revision 1, November 23, 1998	1	1	Nov. 23, 1998
	2–5	Original	Nov. 16, 1998.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directives 009–11–98, 010–11–98, 013–11–98, and 017–11–98.

(e) This amendment becomes effective on October 6, 1999.

Issued in Renton, Washington, on August 23, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22533 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–43–AD; Amendment 39–11284; AD 99–18–18]

RIN 2120–AA64

Airworthiness Directives; Dowty Aerospace Propellers Model R381/6–123–F/5 Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Dowty Aerospace Propellers Model R381/6–123–F/5 propellers. This action requires initial and repetitive visual and ultrasonic (UT) inspections of propeller blades for cracks across the camber face, and, if blades are found cracked, replacement with serviceable blades. This amendment is prompted by reports of a cracked composite propeller blade. The actions specified in this AD are intended to prevent propeller blade cracks and propagation, which could result in propeller blade separation and possible aircraft loss of control.

DATES: Effective September 16, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 16, 1999.

Comments for inclusion in the Rules Docket must be received on or before November 1, 1999.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–43–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Dowty Aerospace Propellers, Anson Business Park, Cheltenham Road East, Gloucester GL29QN, England; telephone +44 1452 716000, fax +44 1452 716001. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Frank Walsh, Aerospace Engineer, Boston Aircraft Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7158, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Dowty Aerospace Propellers Model R381/6–123–F/5 propellers. The CAA advises that they have received a report of a crack that had developed on a de-iced propeller blade assembly across the camber face at a blade station of approximately 13.5" up from the base of the blade cuff. Engineering evaluation of X-ray examination and subsequent CAT scan inspections of the camber face of the spar indicated a crack had developed internally from a composite defect in the spar and had propagated outward through the blade skin. The defective blade was found visually during a pre-flight pilot walk-around inspection. The results of this pre-flight inspection resulted in removal of the propeller and replacement of the de-iced propeller blade assembly by maintenance crews. This condition, if not corrected, could result in propeller blade cracks and propagation, which could result in propeller blade separation and possible aircraft loss of control.

Service Information

Dowty Aerospace Propellers has issued Service Bulletin (SB) No. S2000–61–75, Revision 1, dated June 11, 1999, that specifies procedures for visual and ultrasonic (UT) inspections of propeller blades for cracks across the camber face, and provides reject procedures for cracked blades. The CAA classified this SB as mandatory and issued Airworthiness Directive (AD) 003–05–99 in order to assure the airworthiness of these propellers in the UK.

This propeller model is manufactured in the UK and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other propellers of the same type design registered in the United States, this AD requires initial and repetitive visual inspections for blade cracks at intervals of 50 hours time-in-service (TIS), and UT inspections at intervals of 200 hours TIS. Blades found cracked must be replaced with serviceable blades prior to further flight. The actions would be required to be accomplished in accordance with the SB described previously.

Interim Action

The manufacturer is reviewing the design of the propeller blades and changes to the manufacturing process; hence future rulemaking may be forthcoming requiring installation of improved blades or changes to the inspection procedures.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NE–43–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–18–18 Dowty Aerospace Propellers: Amendment 39–11284. Docket 99–NE–43–AD.

Applicability: Dowty Aerospace Propellers Model R381/6–123–F/5 propellers, installed on but not limited to SAAB 2000 series airplanes.

Note 1: This airworthiness directive (AD) applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent propeller blade cracks and propagation, which could result in propeller blade separation and possible aircraft loss of control, accomplish the following:

Visual Inspections

(a) Perform initial and repetitive visual inspections of propeller blades for cracks across the camber face in accordance with the Accomplishment Instructions of Dowty Aerospace Propellers Service Bulletin (SB) No. S2000–61–75, Revision 1, dated June 11, 1999, as follows:

(1) Initially inspect within 50 hours time-in-service (TIS) after the effective date of this AD.

(2) Thereafter, inspect at intervals not to exceed 50 hours TIS since last inspection.

(3) Replace cracked propeller blades prior to further flight with serviceable blades.

Ultrasonic (UT) Inspections

(b) Perform initial and repetitive UT inspections of propeller blades for cracks across the camber face in accordance with the Accomplishment Instructions of Dowty Aerospace Propellers SB No. S2000–61–75, Revision 1, dated June 11, 1999, as follows:

(1) Initially inspect within 200 hours TIS after the effective date of this AD.

(2) Thereafter, inspect at intervals not to exceed 200 hours TIS since last inspection.

(3) Replace cracked propeller blades prior to further flight with serviceable blades.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office (ACO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Boston ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Boston ACO.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the inspection requirements of this AD can be accomplished.

(e) The actions required by this AD shall be performed in accordance with Dowty Aerospace Propellers SB No. S2000–61–75, Revision 1, dated June 11, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Dowty Aerospace Propellers, Anson Business Park, Cheltenham Road East, Gloucester GL29QN, England; telephone +44 1452 716000, fax +44 1452 716001. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(f) This amendment becomes effective on September 16, 1999.

Issued in Burlington, Massachusetts, on August 25, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–22563 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWA–11]

RIN 2120–AA66

Amend Title of the Vancouver, BC, Class C and D Airspace, Point Roberts, Washington (WA)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the name of the Vancouver, BC, Class C and the Abbotsford, BC, Class D, airspace by inserting a reference to Point Roberts, Washington, in their titles. The purpose of this action is to accurately identify the location of the airspace on the United States side of the United States/Canadian border.

EFFECTIVE DATES: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On August 20, 1997, the FAA issued a final rule, Airspace Docket Number 93–AWA–16, for the modification of Class D airspace south of Abbotsford, BC, on the United States side of the U.S./Canadian border, and the establishment of a Class C airspace area in the vicinity of Point Roberts, WA (62 FR 45526). The effective date of the modification of the Class D airspace was May 20, 1999, and the effective date of the establishment of the Class C airspace was June 18, 1998.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR

part 71) changes the title of the Vancouver, BC, Class C and the Abbotsford, BC, Class D by inserting a reference to Point Roberts, WA into the title. This action is being taken to more accurately identify the location of the airspace on the United States side of the U.S./Canadian border. This is an administrative change only to the title of the Class B and Class D airspace areas in Vancouver, BC, and does not involve a change in the dimensions or operating requirements of these areas, therefore, I find that notice and public procedure under 5 U.S.C 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a significant regulatory action under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR part 71 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 4000—Subpart C—Class C Airspace

* * * * *

ANM BC C Vancouver, BC [Amended]

By removing the words "ANM BC C Vancouver, BC," in the title and substituting the words "ANM BC C Vancouver, BC (Point Roberts, WA)" in the title.

* * * * *

Paragraph 5000—Subpart D—Class D Airspace

* * * * *

ANM BC D Abbotsford, BC [Amended]

By removing the words "ANM BC D Abbotsford, BC," in the title and substituting the words "ANM BC D Abbotsford, BC (Point Roberts, WA)" in the title.

* * * * *

Issued in Washington, DC, on August 25, 1999.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 99–22752 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–10]

Establishment of Class D Airspace; Tupelo, MS.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the geographic coordinates of a final rule that was published in the **Federal Register** of August 24, 1999, (64 FR 46114), Airspace Docket No. 99–ASO–10.

EFFECTIVE DATE: September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document DOCID: fr24au99–2, Airspace Docket No. 99–ASO–10, published on August 24, 1999, (64 FR46114), established Class D surface area airspace at Tupelo, MS. Errors were discovered in the geographic coordinates of the Tupelo Municipal-C.D. Lemons Airport, Tupelo, MS. This action corrects those errors.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the geographic coordinates for the Tupelo Municipal-C.D. Lemons Airport, Tupelo, MS. for the Class D surface area airspace at Tupelo, MS, as published in the **Federal Register** on August 24, 1999, (64 FR46114), (Federal Register Document DOCID: fr24au99–2; page 46115), are corrected as follows:

§ 71.71 [Corrected]

* * * * *

ASO MS D Tupelo, MS [Corrected]

By removing "Lat. 34°16′00″N, long. 88°46′11″W" and substituting "Lat. 34°16′05″N, long. 88°46′12″W".

* * * * *

Issued in College Park, Georgia, on August 28, 1999.

Signed by:

Nancy B. Shelton,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 99–22755 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–28]

Amendment to Class E Airspace; Grain Valley, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Grain Valley, MO.

DATE: The direct final rule published at 64 FR 39009 is effective on 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 21, 1999 (64 FR 39009). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on November 4, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on August 20, 1999.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 99–22614 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–25]

Amendment to Class E Airspace, York, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at York, NE.

DATES: This direct final rule published at 64 FR 33013 is effective on 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on June 21, 1999 (64 FR 33013). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on November 4, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on August 20, 1999.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 99–22615 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–36]

Amendment to Class E Airspace; Parsons, KS

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Parsons, KS.

DATES: The final rule published at 64 FR 39007 is effective on 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on July 21, 1999 (64 FR 39007). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on November 4, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO, on August 20, 1999.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 99–22616 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 99–ASO–11]

RIN 2120–AA66

Amend Controlling Agency Title for Restricted Area R–7104, Vieques Island, PR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action corrects the title of the controlling agency for Restricted Area R–7104 from "FAA, San Juan ARTCC," to "FAA, San Juan CERAP." This change is required to reflect the proper classification of the San Juan air traffic control facility.

EFFECTIVE DATE: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

The legal description for Restricted Area R–7104 incorrectly identifies the controlling agency as San Juan ARTCC. "ARTCC" applies to an FAA "air route traffic control center" which performs primarily en route air traffic control functions. The San Juan facility, instead, is a Combined Center/Radar Approach Control (CERAP) facility that performs the combined functions of an en route center and a terminal radar approach control. The proper title of the R–7104 controlling agency is "San Juan CERAP."

The Rule

This action amends 14 CFR part 73 by correcting the title of the controlling agency for Restricted Area R–7104, Vieques Island, PR, from "FAA, San Juan ARTCC," to "FAA, San Juan CERAP." This change is necessary to reflect the correct classification and function of that facility.

Since this administrative change will not alter the boundaries, altitudes or time of designation for Restricted Area R–7104, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

Section 73.71 of part 73 was republished in FAA Order 7400.8F, dated October 27, 1998.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action is a minor administrative change to amend the name of the controlling agency of an existing restricted area. There are no changes to air traffic control procedures or routes as a result of this action. Therefore, this action is not subject to environmental assessments and procedures in accordance with FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts," and the National Environmental Policy Act of 1969.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.71 [Amended]

2. § 73.71 is amended as follows:

* * * * *

R–7104 Vieques Island, PR [Amended]

By removing the words "Controlling agency. FAA, San Juan ARTCC," and adding the words "Controlling agency. FAA, San Juan CERAP."

* * * * *

Issued in Washington, DC, on August 25, 1999.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 99–22753 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 742 and 774

[Docket No. 990811214–9214–01]

RIN 0694–AB79

Exports and Reexports of Commercial Charges and Devices Containing Energetic Materials

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule with request for comments.

SUMMARY: The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL), which identifies those items subject to the Department of Commerce export controls. This interim rule amends the CCL by revising and clarifying controls on certain commercial charges and devices containing energetic materials commonly used in mining and oil well development as well as in air bags and fire extinguishers and also certain pyrotechnic/explosive devices, of the type commonly used by the U.S. motion picture and television industry. Specifically, this rule revises Export Control Classification Numbers (ECCNs) 1C018 and 1C992 to better distinguish the types of charges and explosive devices controlled by these entries and to provide clear thresholds of control. Military explosive devices or charges that utilize United States Munitions List (USML) controlled energetic materials are subject to the export licensing authority of the Department of State. In addition, individual USML controlled energetic materials, even when compounded with other materials, are subject to the export licensing authority of the Department of State, when not incorporated into explosive devices or charges controlled by ECCNs 1C018 or 1C992. Commercial charges and devices containing energetic materials that are not subject to the export licensing authority of the Department of State or are not controlled by ECCN 1C018 are controlled by ECCN 1C992 for anti-terrorism reasons.

This rule removes ECCN 1C998. Items previously controlled by ECCN 1C998 have been moved to ECCN 1C992.

In addition, this rule corrects an inadvertent error to License Exception LVS for ECCN 0A018 that was published on July 14, 1998 (63 FR 37767).

DATES: Effective Date: This rule is effective September 1, 1999.

COMMENT DATES: Comments on this rule must be received on or before October 18, 1999.

ADDRESSES: Written comments on this rule should be sent to Hillary Hess, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Tanya Mottley, Director, Strategic Trade Division, Bureau of Export Administration, Telephone: (202) 482–1837.

SUPPLEMENTARY INFORMATION:

Background

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect, the Export Administration Regulations and, to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), August 13, 1998 (63 FR 44121), and August 10, 1999 (64 FR 44101, August 13, 1999.

Rulemaking Requirements

1. This interim rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves a collection of information approved by the Office of Management and Budget under control number 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 45 minutes manually per submission and 40 minutes electronically, per submission. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing the burden, to OMB Desk Officer, New Executive Office Building, Washington, DC 20503; and to the Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044 .

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

However, because of the importance of the issues raised by these regulations, this rule is being issued in interim form and BXA will consider comments in the development of the final regulations.

Accordingly, the Department encourages interested persons who wish to comment to do it at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close October 18, 1999. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 6883, Department of Commerce, 14th Street and Pennsylvania Avenue, NW, Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of Title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Henry Gaston, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 482–0500.

List of Subjects

15 CFR Part 742

Exports, Foreign trade.

15 CFR Part 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, parts 742 and 774 of the Export Administration Regulations (15 CFR parts 730-799) are amended as follows:

1. The authority citation for part 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 3 CFR, 1996 Comp., p. 228; Notice of August 13, 1997 (62 FR 43629, August 15, 1997); Notice of August 13, 1998 (63 FR 44121, August 13, 1998); and Notice of August 10, 1999 (64 FR 44101, August 13, 1999).

2. The authority citation for part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 720; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 15, 1995, 60 FR 42767, 3 CFR, 1995 Comp., p. 501; Notice of August 14, 1996, 61 FR 42527, 3 CFR, 1996 Comp., p. 298; Notice of August 13, 1997, 62 FR 43629, 3 CFR, 1997 Comp. p. 306; Notice of August 13, 1998, 63 FR 44121, 3 CFR, 1998 Comp. p. 294; and Notice of August 10, 1999 (64 FR 44101, August 13, 1999).

PART 742—[AMENDED]

3. Section 742.9 is amended by adding a new paragraph (b)(1)(vii), to read as follows:

§ 742.9 Anti-terrorism: Syria

* * * * *

(b) * * *

(1) * * *

(vii) Commercial charges and devices controlled under ECCN 1C992.

* * * * *

4. Section 742.10 is amended by adding a new paragraph (b)(1)(vii), to read as follows:

§ 742.10 Anti-terrorism: Sudan

* * * * *

(b) * * *

(1) * * *

(vii) Commercial charges and devices controlled under ECCN 1C992.

* * * * *

PART 774—[AMENDED]

5. In Supplement No. 1 to part 774, the Commerce Control List, Category 0 (Nuclear Materials, Facilities, and Equipment [and Miscellaneous Items]), Export Control Classification Number (ECCN) 0A018 is amended by revising the License Exceptions section to read as follows:

0A018 Items on the International Munitions List.

* * * * *

LICENSE EXCEPTIONS

LVS:

$5000 for 0A018.a and .b

$3000 for 0A018.c

$1500 for 0A018.d through .f

$0 for Rwanda and the Federal Republic of Yugoslavia (Serbia and Montenegro)

GBS: N/A

CIV: N/A

* * * * *

6. In Supplement No. 1 to part 774, the Commerce Control List, Category 1 (Materials, Chemicals, Microorganisms, and Toxins), the following Export Control Classification Numbers (ECCNs) are amended:

a. By revising the entry heading and the List of Items Controlled section ECCN 1C018;

b. By revising ECCN 1C992; and

c. By removing ECCN 1C998, to read as follows:

1C018 Commercial charges and devices containing energetic materials on the International Munitions List.

* * * * *

List of Items Controlled

Unit: Number.

Related Controls: (1) Explosive devices or charges that utilize USML controlled energetic materials (See 22 CFR 121.1, Category V) are subject to the licensing authority of the U.S. Department of State, Office of Defense Trade Controls if they have been specifically designed, developed, configured, adapted, or modified for a military application. (2) With the exception of slurries, cutters and severing tools, if the USML controlled materials utilized in devices and charges controlled by this entry can be easily extracted without destroying the device or charge, then they are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Controls. (3) Commercial prefabricated slurries and emulsions containing greater than 35% of USML controlled energetic materials are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Control. (4) The individual USML controlled energetic materials, even when compounded with other materials, remain subject to the export licensing authority of the Department of State when not incorporated into explosive devices or charges controlled by this entry or 1C992. (5) See also ECCNs 1C011, 1C111, and 1C239 for additional controlled energetic materials.

Related Definitions: (1) For purposes of this entry, the term "controlled materials" means controlled energetic materials (see ECCNs 1C011, 1C111, 1C239 and 22 CFR 121.1, Category V). (2) For purposes of this entry, the mass of aluminum powder, potassium perchlorate, and any of the substances listed in the note to the USML (see 22 CFR Part 121.12) (such as ammonium pictrate, black powder, etc.) contained in commercial explosive devices and in the charges are omitted when determining the total mass of controlled material.

Items:

a. Shaped charges specially designed for oil well operations, utilizing one charge functioning along a single axis, that upon detonation produce a hole; and

a.1. Contain any controlled materials;

a.2. Have a uniform shaped conical liner with an included angle of 90 degrees or less;

a.3. Have more than 0.090 kg but not more that 2.0 kg of controlled materials; and

a.4. Have a diameter not exceeding 4.5 inches.

b. Detonating cord or shock tubes containing greater than 0.064 kg per meter (300 grains per foot), but not more than 0.1 kg per meter (470 grains per foot) of controlled materials;

c. Cartridge power devices containing greater than 0.70 kg, but not more than 1.0 kg of controlled materials;

d. Detonators (electric or nonelectric) and assemblies thereof containing greater than 0.01 kg, but not more than 0.1 kg of controlled materials;

e. Igniters containing greater than 0.01 kg, but not more than 0.1 kg of controlled materials;

f. Oil well cartridges containing greater than 0.015 kg, but not more than 0.1 kg of controlled materials;

g. Commercial cast or pressed boosters containing greater than 1.0 kg, but not more than 5.0 kg of controlled materials;

h. Commercial prefabricated slurries and emulsions containing greater than 10 kg and less than or equal to thirty-five percent by weight of USML controlled materials;

i. Cutters and severing tools containing greater than 3.5 kg, but not more than 10 kg of controlled materials;

j. Pyrotechnic devices when designed exclusively for commercial purposes (e.g., theatrical stages, motion picture special effects, and fireworks displays), and containing greater than 3.0 kg, but not more than 5.0 kg of controlled materials; or

k. Other commercial explosive devices and charges, not controlled by 1C018.a through g above, when used for commercial applications and containing greater than 1.0 kg but not more than 5.0 kg of controlled materials.

1C992 Commercial charges and devices containing energetic materials, n.e.s.

License Requirements

Reason for Control: AT, UN.

Control(s)	Country chart
AT applies to entire entry .. UN applies to 1C992. b through k.	AT Column 1 Federal Republic of Yugoslavia (Serbia and Montenegro)

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: $ value.

Related Controls: Commercial charges and devices containing USML controlled energetic materials that exceed the quantities noted or that are not covered by this entry are controlled under 1C018.

Related Definitions: (1) Items controlled by this entry 1C992 are those materials not subject to the licensing authority of the U.S. Department of State, Office of Defense Trade Controls (see 22 CFR part 121) or controlled by ECCN 1C018. (2) For purposes of this entry, the term "controlled materials" means controlled energetic materials (see ECCNs 1C011, 1C111, 1C239 and 22 CFR 121.1, Category V). (3) The individual USML controlled energetic materials, even when compounded with other materials, remain subject to the export licensing authority of the Department of State when not incorporated into explosive devices or charges controlled by this entry. (4) Commercial prefabricated slurries and emulsions containing greater than 35% of USML controlled energetic materials are subject to the export licensing authority of the U.S. Department of State, Office of Defense Trade Control. (5) For purposes of this entry, the mass of aluminum powder, potassium perchlorate, and any of the substances listed in the note to the USML (see 22 CFR 121.12) (such as ammonium pictrate, black powder, etc.) contained in commercial explosive devices and in the charges are omitted when determining the total mass of controlled material.

Items:

a. Shaped charges specially designed for oil well operations, utilizing one charge functioning along a single axis, that upon detonation produce a hole, and

a.1. Contain any formulation of controlled materials;

a.2. Have only a uniform shaped conical liner with an included angle of 90 degrees or less;

a.3. Contain more than 0.010 kg but less than or equal to 0.090 kg of controlled materials; and

a.4. Have a diameter not exceeding 4.5 inches;

b. Shaped charges specially designed for oil well operations containing less than or equal to 0.010 kg of controlled materials;

c. Detonation cord or shock tubes containing less than or equal to 0.064 kg per meter (300 grains per foot) of controlled materials;

d. Cartridge power devices, that contain less than or equal to 0.70 kg of controlled materials in the deflagration material;

e. Detonators (electric or nonelectric) and assemblies thereof, that contain less than or equal to 0.01 kg of controlled materials;

f. Igniters, that contain less than or equal to 0.01 kg of controlled materials;

g. Oil well cartridges, that contain less than or equal to 0.015 kg of controlled energetic materials;

h. Commercial cast or pressed boosters containing less than or equal to 1.0 kg of controlled materials;

i. Commercial prefabricated slurries and emulsions containing less than or equal to 10.0 kg and less than or equal to thirty-five percent by weight of USML controlled materials;

j. Cutters and severing tools containing less than or equal to 3.5 kg of controlled materials;

k. Pyrotechnic devices when designed exclusively for commercial purposes (e.g., theatrical stages, motion picture special effects, and fireworks displays) and containing less than or equal to 3.0 kg of controlled materials; or

l. Other commercial explosive devices and charges not controlled by 1C992.a through .k containing less than or equal to 1.0 kg of controlled materials.

Note: 1C992.l includes automotive safety devices; extinguishing systems; cartridges for riveting guns; explosive charges for agricultural, oil and gas operations, sporting goods, commercial mining, or public works purposes; and delay tubes used in the assembly of commercial explosive devices.

Dated: August 27, 1999.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 99–22768 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Redelegation to Officials Within the Center for Biologics Evaluation and Research

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the statements of redelegations of authority to reflect a new redelegation that enables the Director and Deputy Directors of the Center for Biologics Evaluation and Research (CBER) to issue license suspension notifications under the authority given to the Commissioner of Food and Drugs (the Commissioner). This amendment is intended to reflect those redelegations.

EFFECTIVE DATE: September 1, 1999.

FOR FURTHER INFORMATION CONTACT:

Anita F. Richardson, Center for Biologics Evaluation and Research (HFM–610), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20850, 301–827–6206, or

Donna G. Page, Division of Management Systems and Policy (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4816.

SUPPLEMENTARY INFORMATION: FDA is amending the redelegations of authority statement in § 5.67 (21 CFR 5.67) by revising the section heading and adding an authority to certain FDA officials. In order to ensure efficient program operations, the Commissioner has further redelegated this authority to the Center Director and the Deputy Center Directors, CBER, the authority to issue license suspensions under section 351(a)(2)(A) of the Public Health Service Act (42 U.S.C. 262(a)(2)(A)), as amended. The Commissioner's authority is currently codified under 21 CFR 5.10(a)(5) and the associated regulation is currently codified under 21 CFR 601.6. This authority may not be further redelegated at this time.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; 15 U.S.C. 1451–1461; 21 U.S.C. 41–50, 61–63, 141–149, 321–394, 467f, 679(b), 801–886, 1031–1309; 35 U.S.C. 156; 42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1; 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O 11921, 41 FR 24294, 3 CFR, 1997 Comp., p. 124–131; E.O. 12591, 52 FR 13414, 3 CFR, 1988 Comp., p. 220–223.

2. Section 5.67 is amended by revising the section heading and the introductory paragraph, and by adding paragraph (e) to read as follows:

§ 5.67 Issuance of notices of opportunity for a hearing on proposals for denial of approval of applications for licenses, suspension of licenses, or revocation of licenses and certain notices of revocation of licenses.

The Center Director and Deputy Center Directors, Center for Biologics Evaluation and Research are authorized to issue:

* * * * *

(e) Notice of license suspensions under § 601.6 of this chapter.

Dated: August 25, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–22676 Filed 8–31–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 99F–0994]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of phosphorothioic acid, *O,O,O*-triphenyl ester, *tert*-butyl derivatives, as extreme pressure-antiwear adjuvants for lubricants intended for incidental contact with food. This action responds to a petition filed by Ciba Specialty Chemicals Corp.

DATES: This regulation is effective September 1, 1999; submit written objections and requests for a hearing by October 1, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 27, 1999 (64 FR 22615), FDA announced that a food additive petition (FAP 9B4657) had been filed by Ciba Specialty Chemical Corp., 540 White Plains Rd., P.O. Box 2005, Tarrytown, NY 10591–9005. The petition proposed to amend the food additive regulations in § 178.3570 *Lubricants with incidental food contact* (21 CFR 178.3570) to provide for the safe use of phosphorothioic acid, *O,O,O*-triphenyl ester, *tert*-butyl derivatives, as extreme pressure-antiwear adjuvants for lubricants intended for incidental contact with food.

The filing notice for the petition (64 FR 22615) stated that the action resulting from the petition qualified for a categorical exclusion under 21 CFR 25.32(i). This was a misprint. The correct citation is 21 CFR 25.32(j). The agency reviewed the claim and concluded that the exclusion listed in 21 CFR 25.32(j) applies.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and therefore, (3) the regulations in § 178.3570 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this final rule under 21 CFR 25.32(j), as stated above. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before October 1, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS.

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.3570 is amended in the table in paragraph (a)(3) by alphabetically adding an entry under the headings "Substances" and "Limitations" to read as follows:

§ 178.3570 Lubricants with incidental food contact.

* * * * *

(a) * * *

(3) * * *

Substances	Limitations
* * *	* * *
Phosphorothioic acid, *O,O,O*-triphenyl ester, *tert*-butyl derivatives (CAS Reg. No. 192268–65–8).	For use only as an extreme pressure-antiwear adjuvant at a level not to exceed 0.5 percent by weight of the lubricant.
* * *	* * *

* * * * *

Dated: August 20, 1999.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–22679 Filed 8–31–99; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA092/098–5044; FRL–6428–8]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia; Enhanced Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We are converting the conditional approval of Virginia's enhanced vehicle inspection and maintenance (I/M) program, which was granted on May 15, 1997 (62 FR 26746), to a full approval. The Virginia program was conditionally approved as a revision to its State Implementation Plan (SIP) in the rule published on May 15, 1997. The conditions for full approval were described in that rulemaking, and are also discussed in this document. We have determined that Virginia has met all of the conditions for a full approval of its enhanced I/M program, and that the Virginia program meets all the requirements of the Clean Air Act.

DATES: This rule is effective on October 18, 1999, unless EPA receives adverse written comment by October 1, 1999. If adverse comment is received, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Send written comments to: David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. You may inspect copies of the documents relevant to this action during normal business hours at the following locations: Air Protection Division, 14th floor, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219. Please contact Catherine L. Magliocchetti at (215) 814–2174 if you wish to arrange an appointment to view the docket at the Philadelphia office.

FOR FURTHER INFORMATION CONTACT: Catherine L. Magliocchetti, (215) 814–2174, or by e-mail at magliocchetti.catherine@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: This Supplementary Information section is organized as follows:

What action is EPA taking today?
Who is affected by this action?
Who will benefit from this action?
What were the requirements for full approval of the Virginia program?
How did Virginia fulfill these requirements for full approval?

What Action Is EPA Taking Today?

In this action, we are converting our conditional approval of Virginia's I/M program as a revision to the SIP to a full approval. We are also approving Virginia's plan for conducting vehicle emissions evaluation testing in an alternative manner to Mass Emissions Transient Testing as described and provided for by 40 CFR 51.353. And, we are also approving Virginia's short-term evaluation credit demonstration, as required by provisions of the National Highway Systems Designation Act of 1995.

Who Is Affected by This Action?

Residents of the following jurisdictions in Northern Virginia: the counties of Arlington, Fairfax, Loudoun, Prince William, and Stafford; and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park. It is important to note that our action today does not impose any new requirements on Virginia residents; we are merely granting full federal approval (versus the conditional federal approval previously in place) to the Virginia law and regulations that are already in place at the state level to implement the enhanced I/M program in the Commonwealth. These laws and regulations were made part of the Virginia SIP by the final rule that was published on May 15, 1997.

Who Will Benefit From This Action?

The residents of Virginia will benefit from this program, which is designed to keep vehicles maintained and operating within pollution control standards. Since air pollution does not recognize political boundaries, neighboring states' residents will also benefit from implementation of this program, designed to prevent excessive vehicle pollution.

What Were the Requirements for Full Approval of the Virginia Program?

As specified in the rulemaking published on May 15, 1997, final approval of Virginia's plan would be granted based upon the following four requirements:

(1) Virginia complies with all the conditions of its commitment to EPA, (2) EPA's review of Virginia's program evaluation confirms that the appropriate amount of program credit was claimed by Virginia, and achieved with the interim program, (3) Final program regulations are submitted to EPA, and (4) Virginia's I/M program meets all of the requirements of EPA's I/M rule, including those deminimis deficiencies identified in the May 15, 1997 interim final rulemaking.

How Did Virginia Fulfill These Requirements for Full Approval?

On June 16, 1998, Virginia submitted its revised SIP revision to EPA, correcting the major and deminimis conditions for full approval (items 1 and 4 above), as detailed in Table 1. This submittal also contained final program regulations, which fulfilled item 3. The requirement under item 2, review and approval of Virginia's interim program credit demonstration, was fulfilled by Virginia's February 2, 1999 submittal which contained an analysis of the program credits, as demonstrated during the first 6 months of program operation.

TABLE 1: SATISFACTION OF THE CONDITIONS FOR FULL APPROVAL

Requirement for full approval	How Virginia satisfied the requirement
Major Rulemaking Conditions—as summarized from the 5–15–97 rule	
(1) Submit revised program modeling demonstrating compliance with the I/M performance standard, using actual in-use program configuration for inputs.	As part of the June 16, 1998 submittal, Virginia included revised modeling that demonstrated compliance with the enhanced I/M performance standard in all applicable jurisdictions, using appropriate program inputs.
(2) Submit the final program regulations, including a METT-based evaluation as required under 40 CFR 51.353. (NOTE: This condition was subsequently amended in a July 9, 1998 rulemaking by EPA. This revision extended the deadline for submittal of the evaluation plan to November 30, 1998, and allowed for technologies other than METT-based testing to be used in the program evaluation).	On November 30, 1998, Virginia submitted an amendment to its I/M SIP revision, consisting of a proposed plan for conducting vehicle emissions evaluation testing in an alternative manner to Mass Emissions Transient Testing as described and provided for by the revised regulation under 40 CFR 51.353. This submittal was supplemented by Virginia on February 22, 1999.
(3) Submit final regulations which require and detail approvable test procedures and equipment specifications for all of the evaporative and exhaust tests to be used in the Virginia program.	Final regulations were included in the June 16, 1998 submittal, and included test procedures and equipment specifications for all evaporative and exhaust tests to be used in the Virginia program.
Deminimis Rulemaking Conditions—as summarized from the 5–15–97 rule	
(1) Satisfy the test frequency requirements under 40 CFR 51.355(a), and describe how test frequency will be integrated into the registration denial motorist enforcement program.	As part of the June 16 submittal, Virginia adopted and submitted regulations and procedures that ensure proper enforcement system safeguards, including registration denial procedures and integrated scheduling of vehicle testing.

TABLE 1: SATISFACTION OF THE CONDITIONS FOR FULL APPROVAL—Continued

Requirement for full approval	How Virginia satisfied the requirement
(2) Account for testing exemptions in the performance standard modeling demonstration, per 40 CFR 51.356(b)(2).	As part of the June 16 submittal, Virginia adequately addressed the requirements of this section, and appropriately modeled the performance standards credits using acceptable compliance rates and vehicle exemption inputs.
(3) Satisfy the quality control requirements, per 40 CFR 51.359	As part of the June 16 submittal, Virginia submitted its procedures for quality control and recordkeeping, in accordance with this section.
(4) Amend the Virginia regulation to comply with 40 CFR 51.360(c)(1)	As part of the June 16 submittal, Virginia included its regulation and plan for allowing issuance of the program waivers to be administered by the inspector, with oversight of the process by the DEQ. Virginia's description of, and reasoning for this plan are further detailed in an April 16, 1997 letter from DEQ to EPA. Most importantly, VA commits to monitoring the waiver rate under this proposed plan, and to make changes to the waiver issuance system if the modeled waiver rate of 3% is exceeded. EPA believes this is a reasonable alternative to agency-issued waivers. Furthermore, EPA believes that in passing the NHSDA, Congress did not intend for this element of the 1992 I/M Program Requirements to pertain to decentralized programs such as the one in Virginia. Therefore, EPA will allow Virginia to implement this plan, with the noted precautionary oversight measures in place to prevent fraud and abuse of this unique waiver issuance system.
(5) Satisfy the motorist compliance enforcement program oversight requirements, per 40 CFR 51.362.	As part of the June 16 submittal, Virginia included acceptable compliance enforcement program oversight procedures and documentation.
(6) Satisfy the quality assurance oversight requirements, per 40 CFR 51.363(e).	As part of the June 16 submittal, Virginia included acceptable quality assurance oversight procedures and documentation.
(7) Satisfy the penalty schedule requirements, per 40 CFR 51.364(a) and (d).	As part of the June 16 submittal, Virginia included a procedures document which includes an acceptable penalty schedule.
(8) Satisfy the data collection and reporting requirements, per 40 CFR 51.365(a).	As part of the June 16 submittal, Virginia included the procedures and documentation that adequately address the data collection and reporting requirements of this section.
(9) Satisfy the public information requirements, per 40 CFR 51.383(a) and (b).	As part of the June 16 submittal, Virginia included a Public Information Plan that adequately addresses the requirements of this section.
(10) Satisfy the repair performance monitoring requirements, per 40 CFR 51.369.	As part of the June 16 submittal, Virginia included the regulations and documentation that adequately address this requirement.
(11) Satisfy the recall compliance requirements, per 40 CFR 51.370	As part of the June 16 submittal, Virginia committed to adopt final recall compliance requirements within 6 months of final guidance from EPA. Since EPA has not provided this guidance to the states, EPA considers Virginia to have met all obligations up to date concerning this requirement.
(12) Satisfy the on-road testing requirements, per 40 CFR 51.371	As part of the June 16 submittal, Virginia committed to obtain a contractor to perform the necessary duties for on-road testing by July 1999.
(13) Submit a list of implementation milestone deadlines	All implementation milestone deadlines have been met by Virginia, and are included as part of the June 16 submittal.

EPA Action

We are converting the conditional approval of Virginia's enhanced I/M SIP to full approval. An extensive discussion of Virginia's plan, and our rationale for its approval was provided in the previous final rule which conditionally approved the I/M SIP (*see* 62 FR 26745 and 61 FR 57343), and our Technical Support Documents dated July 19, 1998 and September 4, 1996. This action to convert our conditional approval to full approval is being published without prior proposal because we view this as a noncontroversial revision and we anticipate no adverse comment. However, in a separate document in this **Federal Register** publication, we are proposing this action, should adverse written comments be filed. This action will be effective without further notice unless we receive relevant adverse comment by October 1, 1999. Should we receive adverse comments, we will publish a withdrawal and inform the public that this action will not take effect. Anyone interested in commenting on this action should do so at this time. If no such comments are received, you are advised that this action will be effective on October 18, 1999.

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) "privilege" for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Section 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) that are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1997, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege Law, Va. Code Section 10.1–1198, precludes granting a privilege to documents and information "required by law," including documents and information "required by federal law to maintain program delegation, authorization or approval," since Virginia must "enforce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts. * * *" The opinion concludes that "[r]egarding section 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by federal law to maintain program delegation, authorization or approval."

Virginia's Immunity law, Va. Code Section 10.1–1199, provides that "[t]o the extent consistent with requirements imposed by Federal law," any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1997 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since "no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity."

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its enhanced inspection and maintenance program consistent with the federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis

would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. Union Electric Co. v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this approval of Virginia's Enhanced Inspection and Maintenance Program must be filed in the United States Court of Appeals for the appropriate circuit by November 1, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: August 16, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart VV—Virginia

2. Section 52.2420 is amended by adding paragraphs (c)(134) to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

(134) Revisions to the Virginia Regulations, Establishment of the Vehicle Emissions Inspection and Maintenance Program in the Northern Virginia Area, submitted on June 16, 1998, November 30, 1998, February 2, 1999 and February 22, 1999, by the Virginia Department of Environmental Quality:

(i) Incorporation by reference.

(A) Letter of June 16, 1998 from the Virginia Department of Environmental Quality transmitting an Enhanced Vehicle Emissions Inspection Program for the Northern Virginia Area.

(B) Regulations for the Enhanced Motor Vehicle Emissions Inspection Program in the Northern Virginia Area: 9 VAC 5–91–10 *et seq.*

(C) Letter of November 30, 1998 from the Virginia Department of Environmental Quality transmitting an Alternative Program Credit Evaluation Program.

(D) Letter of February 2, 1999 from the Virginia Department of Environmental Quality, transmitting an Evaluation of Virginia's Enhanced I/M Program Credits.

(E) Letter of February 22, 1999 from the Virginia Department of Environmental Quality, supplementing the November 30, 1998 transmittal.

(ii) Additional material.

(A) Remainder of June 16, 1998 submittal,

(B) Remainder of November 30, 1998 submittal, as supplemented on February 22, 1999, and

(C) Remainder of February 2, 1999 submittal.

§ 52.2450 [Amended]

3. In section 52.2450, paragraphs (b), (c) and (d) are removed and reserved.

[FR Doc. 99–22452 Filed 8–31–99; 8:45 am]

BILLING CODE 6560–60–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AK–21–1709–a; FRL–6412–7]

Approval and Promulgation of State Implementation Plans: Alaska

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) approves various amendments to the carbon monoxide (CO) Alaska State Implementation Plan (SIP) for Alaska. These amendments to the Alaska State Air Quality Control Plan are contained in three separate submittals to EPA, dated February 6, 1997, June 1, 1998, and September 10, 1998.

The submittals include revisions to Alaska's Air Quality Control Regulations (18 AAC 50), Emissions Inspection and Maintenance (I/M) requirements for Motor Vehicles (18 AAC 52), and Fuel Requirements for Motor Vehicles (18 AAC 53).

In addition, the revisions include changing the I/M program schedule for cars subject to I/M from annual to biennial, replacing the CO contingency measures for Anchorage, updating Alaska's General and Transportation conformity programs, and streamlining several portions of the Alaska Air Quality Control Plan for more efficient reading and organization.

DATES: This direct final rule is effective on November 1, 1999 without further notice, unless EPA receives adverse comment by October 1, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to: Ms. Montel Livingston, SIP Manager, Office of Air Quality (OAQ–107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Office of Air Quality, 1200 Sixth Avenue (OAQ–107), Seattle, Washington 98101, and the Alaska Department of Environmental Conservation, 410 Willoughby Avenue, Suite 105, Juneau, Alaska 99801–1795.

FOR FURTHER INFORMATION CONTACT: Ms. Montel Livingston, Office of Air Quality (OAQ–107), EPA, Seattle, Washington 98101, (206) 553-0180.

I. SUPPLEMENTARY INFORMATION:

Overview

ADEC submitted three revisions to EPA over the course of two years for inclusion into its SIP. These revisions amend the I/M program in Anchorage and Fairbanks, CO contingency measures for Anchorage, various regulations, and streamline a wide variety of CO air quality plan descriptions for easier, more organized reading.

The information in this section is organized as follows:

A. What SIP amendments is EPA approving?

B. What are the significant changes to Alaska's CO air quality control plan?

C. What are the significant changes to Alaska's I/M air quality program and regulations (AAC 52)?

D. What are the overall changes to Alaska's regulations AAC 50 and 53?

E. What are the effects to Alaska's transportation conformity program?

A. What SIP Amendments Is EPA Approving?

The following table outlines the revisions EPA received and is approving in this action:

Date of submittal to EPA	Items revised
2–6–97	—Alaska State Air Quality Control Plan: Volume II, Section I. —Alaska State Inspection and Maintenance Program Manual. —Biennial Vehicle Inspection program. —Revised Rollback Calculation.
6–1–98	—Emission Inspection and Maintenance Requirements.
9–10–98	—Alaska State Air Quality Control Plan: Volume II, sections II and III. —Air Quality Control Regulations 18 AAC 50. —Fuel Requirements for Motor Vehicles: Regulations 18 AAC 53. —Anchorage Carbon Monoxide Contingency Measures. —Transportation Conformity.

B. What Are the Significant Changes to Alaska's CO Air Quality Control Plan?

• EPA approves a new CO contingency measure for Anchorage that replaces its past two CO contingency measures.

In the September 10, 1998 submittal from ADEC, ADEC requests EPA's approval of its new CO contingency measure, an enhanced technician training certification (TTC) program in Anchorage. The TTC contingency measure consists of additional local training and certification for mechanics. The TTC program includes a series of enhanced technician training modules aimed at competency areas such as electrical theory, emission control systems, electronic ignitions, fuel injection, on-board diagnostics, advanced diagnostic tools and procedures, oxygen sensors, catalytic converters, and the use of current analytical equipment.

The TTC program helps ensure that mechanics are trained to properly maintain and repair newer vehicles with advanced technology. It may also enhance efficiency, which would provide a cost benefit to consumers.

The TTC program, found in State regulation 18 AAC 52.400–410, was adopted by the State as a CO contingency measure for Anchorage upon Anchorage's reclassification to a serious CO nonattainment area. In addition, the TTC program was already approved by EPA on February 14, 1996 (61 FR 5704) as a CO contingency measure for Fairbanks, Alaska.

The TTC program also becomes the contingency measure for the vehicle miles traveled (VMT) forecasting and tracking requirement found in section 187 of the Clean Air Act Amendments of 1990.

The two replaced contingency measures for Anchorage were (1) compressed natural gas vehicles (CNG) procurement requirements for government fleets, and, (2) the expansion of the oxygenated fuels program to the Matanuska-Susitna Valley. Both of these contingency measures were impractical to initiate upon Anchorage's CO reclassification to serious.

Using the CNG procurement requirements for government fleets as a contingency measure was determined unworkable at this time. Major issues included lack of a refueling infrastructure for CNG vehicles in and around Anchorage, and there are only selected models available now which are dedicated CNG vehicles certified to ultra low emission vehicle standards. The extent of these issues were such that it would be infeasible to implement the CNG contingency measure in Anchorage and expect to gain meaningful reductions in emissions.

The second contingency measure was the expansion of the oxygenated fuels program. With the continued fleet turnover to newer, cleaner (technologically improved) cars, the information from the oxygenated fuels program in Anchorage indicates that oxyfuel expansion to the Matanuska-Susitna Valley was unlikely to provide the benefits originally projected.

Expanding the oxygenated gasoline control area to the Matanuska-Susitna Valley was inherently less cost effective than an oxyfuel requirement in Anchorage. Expanding the requirement to the valley is less effective because vehicles fueled in the valley spend less time, on average, traveling in the nonattainment area than those fueled in Anchorage itself.

Although the benefits of oxygenated gasoline were estimated on the basis of the best information available at the time, recent MOBILE model updates have suggested that oxygenated gasoline CO emission reductions may be overestimated in some cases. Extending the program to the valley is likely to

result in even smaller benefits than were originally anticipated in the plan.

EPA concurs with ADEC's request to repeal and replace the past contingency measures with the TTC program.

• *How does approval of the new contingency measure change Alaska's Air Quality Control Regulations in 18 AAC 53, Fuel Requirements for Motor Vehicles?*

Regulation 18 AAC 53.015, Expansion of Control Area (found under Chapter 53, Article I, Oxygenated Gasoline Requirements), is repealed. This regulation had served as a CO contingency measure for Anchorage and described the geographic boundaries of an expanded oxygenated fuels programs in Anchorage if implemented as a contingency measure.

• *The Rollback Modeling Calculation Used To Determine CO Emission Reductions Is Clarified*

ADEC typically uses rollback modeling to determine CO emission reductions needed to reach attainment of the CO national ambient air quality and standards (NAAQS). The rollback calculation determines a percentage reduction target by taking the ratio of the difference between the second highest CO exceedance value in the emission inventory base year and the ambient standard, and the second highest value in the base year adjusted for the ambient background concentration. ADEC clarifies in Alaska's CO SIP that the target CO level for SIP revisions is 9.0 ppm, or the CO NAAQS. Using 9 ppm as the appropriate target level gives ADEC the amount of control necessary to attain and maintain the CO NAAQS.

• *Long Term Air Quality Projections Are Updated.*

The on-road mobile source portion of Anchorage's 1990 base year CO emission inventory was updated, using MOBILE5a which was the latest emission estimation model available as of December 1, 1994. The 1993 periodic inventory was developed and adjusted for population growth factors, and for changes in the Inspection and Maintenance program. The 1995 projected year inventory was also developed and adjusted for population growth factors, and for changes in the inspection and maintenance program and oxygenated fuels program. Tables provide summaries of the 1990 base year and 1995 projected year emissions by source category. In addition, daily emissions are calculated.

Also, data was updated to include 1995 2nd highest 8-hour ambient CO concentrations recorded at Anchorage monitoring sites.

In addition, best estimates of future VMT projections in Anchorage were completed through 1995.

• *Information is Streamlined and Reorganized in Alaska's CO SIP*

The numerous non-substantive reformatting and restructuring changes streamline the Alaska SIP and make for more efficient and customer-friendly reading. They collectively, rather than individually, result in a much more significant impact on the SIP's organization.

As an example, a table was created showing the 1998 Transportation Control Strategies for Anchorage. Headings include Federal Control Strategies, State Control Strategies, and Local Primary Control Strategies. Only one footnote accompanied the table, and that was an explanation of the oxygenated fuels program. The table is easy to understand and effectively summarizes important information.

Other similar edits and revisions found in Volume II, sections II and III of the State Air Quality Control Plan removed out-of-date references, eliminated duplicity and redundancy, reflected changes to Alaska's Inspection and Maintenance program, and generally reorganized for better sequence of information and requirements, while graphing projections and trends in population and average daily traffic.

C. What Are the Significant Changes to Alaska's I/M Air Quality Program and Regulations (AAC 52)?

EPA approves all the changes to Alaska's I/M regulations submitted by the Alaska Department of Environmental Conservation (ADEC) on February 6, 1997 and June 1, 1998. The revisions include streamlining and clarifications that make requirements easier to understand. Following are some of the major changes to Alaska's I/M air quality program:

• *I/M Program Changes From Annual to Biennial*

In 1995, the Alaska State Legislature in Senate Bill 28 required that all State I/M programs implement biennial I/M testing beginning no later than January 1, 1997. In February 1997, ADEC submitted to EPA the updated State I/M regulations that reflect this change. Many States nationwide have changed their I/M programs from annual to biennial programs. This change has provided more convenience to vehicle owners (inspections are required less frequently, except when ownership of a vehicle is transferred), only negligible increases in vehicle emissions, and improved I/M program efficiency. ADEC analyzed the impact of changing the I/M program from an annual to a biennial program on motor vehicle emissions and found it would not significantly impact emission reductions. The I/M regulations also reflect a change in fees. Alaska's I/M programs in Fairbanks and Anchorage are operated by local government, Fairbanks North Star Borough and the Municipality of Anchorage, respectively, who have the authority to set their own program fees. In addition, in June 1998 the vehicle inspection schedule was changed to match the vehicle registration schedule (required by Alaska Statute 28.10.108), resulting in vehicle inspection and registration occurring on the same biennial schedule. The certificate of inspection is $18 in both Anchorage and Fairbanks. Anchorage has set a maximum of $60 and Fairbanks $35 for inspection testing.

• *Provisions for Waivers and Emissions-Related Repair Costs Changed*

The provisions for waivers granted to motorists from passing an I/M program inspection have been revised. Waivers are now valid for one inspection cycle (every two years), instead of for one year. ADEC offset the change by proposing more stringent requirements for repair cost waivers. Section 18AAC 52.065 ("Emissions-Related Repair Cost Minimum") was updated to require motorists to meet the minimum necessary repair costs of $450 per inspection cycle before qualifying for a waiver, as opposed to spending a maximum of $450 annually. The new requirements should increase the number of repairs completed, which could benefit air quality. This change should address public concern over waivers being valid for two years (one inspection cycle).

• *New Requirements for Dealers of Used Motor Vehicles*

In accordance with Alaska statute 45.45.400 ("Prohibited transfer of used motor vehicle"), the I/M regulations contain new requirements for dealers of used motor vehicles. The requirements apply only to cars tested by a dealership and held in inventory on a used car lot, since these cars are not likely to pollute the air. In general, an I/M certificate is good for one year for cars that are inspected while in the dealer's inventory or if the dealer registers the vehicle in the buyer's name. The new requirements are outlined in the I/M regulation under 18 AAC 52.020 ("Certificate of Inspection Requirements").

• *ADEC's Dual Authority With an Implementing Agency Clarified*

The regulations clarify ADEC's dual authority with the implementing agencies, Fairbanks North Star Borough and the Municipality of Anchorage, under the provisions for enforcement procedures. ADEC has the authority to take an enforcement action against a motorist, certified mechanic, or station with or without the participation of the implementing agency to ensure compliance with enforcement provisions (18 AAC 52.100 and AAC 52.105).

• *Notice of Violation Provisions Pertaining to Motorist Updated*

More stringent enforcement procedures for violations by motorists are outlined in 18 AAC 52.100. "If a motorist fails to respond or provide appropriate proof of compliance with this chapter within 30 days after receiving a notice of violation," the implementing agency may refer the matter for prosecution under the provision of Alaska state law pertaining to Local Air Quality Control Programs (AS 46.14.400(j)) or as a Class A misdemeanor under the provision for Criminal Penalties (AS 46.03.790). The penalty for motorists who fail to respond to a notice of violation (or fail to provide appropriate proof of compliance) was changed from potential loss of vehicle registration to the possibility of prosecution under Alaska's misdemeanor statutes.

• *New Provision Allows for Visual Identification of Certificate of Inspection ("Sticker Program")*

A new provision allows the implementing agency to require a visual identification, such as windshield sticker or license plate tab, that clearly shows compliance with inspection requirements. A sticker program (or similar program) provides easy visual verification of program compliance, which improves enforcement and provides incentive to motorists to have their cars inspected. Details of this provision are outlined in 18 AAC 52.025.

• *Update to Requirements for Grey Market Vehicles*

Grey market vehicles are manufactured for use outside of, and imported into, the United States. The revised provision for grey market vehicles (18 AAC 52.080) reduces the requirements for issuing a certificate of inspection on a grey market vehicle when it has a United States title. However, grey market vehicles are required to pass visual and functional inspections and/or tailpipe emission standards required by the I/M program manual. In addition, motorists are still required to obtain the applicable importation documents issued by EPA or the U.S. Department of Transportation.

D. What Are the Overall Changes to Alaska's Regulations AAC 50 and 53?

EPA is approving in part and taking no action on the majority of Alaska's 18 AAC 50 Air Quality Control regulations.

Approvals 18 AAC 50

EPA is approving the following provisions of 18 AAC 50 as adopted by ADEC and effective on September 4, 1998: section 700; section 705; section 710; section 715; and section 720. These regulations relate to transportation conformity.

No Action 18 AAC 50

EPA is taking no action at this time on any of the 18 AAC 50 regulations submitted on September 10, 1998, with the exception of sections 700 through 720 which are approved. The regulations that are not being acted upon relate to the permitting of new and modified stationary sources or do not relate to the purposes of the SIP under section 110 of the Act or implement other provisions of the Clean Air Act.

Approvals 18 AAC 53

EPA is approving all of section of 18 AAC 53 regulations regarding fuel requirements for motor vehicles, with the exception of section 015 which is repealed (see below). These regulations had minor, non-substantive and streamlining changes.

Repeals 18 AAC 53

Regulation 18 AAC 53.015, Expansion of Control Area (found under Chapter 53, Article I, Oxygenated Gasoline Requirements), is repealed. This regulation had served as a CO contingency measure for Anchorage and described the geographic boundaries of an expanded oxygenated fuels programs in Anchorage if implemented as a contingency measure.

E. What Are the Effects to Alaska's Transportation Conformity Program?

This action has no impact on the transportation emissions budget. However, the switch to bienniel I/M does make it somewhat more difficult to demonstrate regional conformity, since it results in small increases in future emissions projections (while the allowable emissions budgets do not increase). However, this impact has not caused a significant problem in continuing to demonstrate conformity in Anchorage and Fairbanks, largely due to the continued decline in projected emissions resulting from fleet turnover.

Updated baseline and attainment inventories are scheduled for Anchorage and Fairbanks as part of the revised air quality attainment plans that must be prepared due to the redesignation to serious CO nonattainment status. As part of this process, the biennial I/M programs will become part of both the baseline and attainment inventories (and thus emissions budgets associated with each inventory), thereby totally eliminating any impact on regional conformity determinations.

II. Summary of Action

EPA approves the following SIP regulations submitted by the State of Alaska for inclusion into its SIP. EPA also approves some deletions (listed below) from the Alaska SIP, and takes no action on part of Alaska's submittal. The revisions pertain to the State's Carbon Monoxide Air Quality Control Plan; Transportation Conformity; and portions of Alaska regulations 18 AAC 50, 52 and 53.

EPA takes no action on the entire set of 18 AAC 50 regulations with the exceptions of: section 700; section 705; section 710; section 715; and ssction 720 which are approved by EPA. These section 700 regulations were effective September 4, 1998.

The 18 AAC 52 Inspection and Maintenance Air Quality Program and Regulations that are approved by EPA are: Effective January 1, 1998, section 005; section 010; section 015; section 020; section 025; section 035; section 037; section 050; section 060, except for subsections (8)(c), (8)(d)(2) and (8)(e); section 065; section 070; section 080; section 085; section 095; section 100; section 105; section 400; section 405; section 415, except subsection (f)(1); section 420, except subsection (a)(11); section 425; section 440; section 500; section 515; section 520, except subsection (c)(9); section 525; section 527; section 530, except subsections (b)(3), (c)(4)(C) and (d)(9); section 535; section 540; section 545; section 546; section 990.

Effective January 1, 1997: section 055; 090.

Remove the following provisions of 18 AAC 52: effective January 1, 1997, section 060, subsection 8(c) and 8(e); section 520, subsection (c)(9).

Remove the following provisions of 18 AAC 52: effective January 1, 1998: section 060, subsection 8(d)(2); section

415, subsection (f)(1); section 420, subsection (a)(11); section 530, subsection (b)(3) and (d)(9).

Remove the following provisions of 18 AAC 52, effective January 4, 1995: section 530, subsection (c)(4)(c).

The 18 AAC 53 Fuel Requirements for Motor Vehicles Regulations that are approved by EPA are: Effective October 31, 1997, section 05; section 07; section 10; section 20; section 30; section 35; section 40; section 45; section 60; section 70; section 80; section 90; section 200; section 105; section 120; section 130; section 140; section 150; section 160; section 170; and section 190; and effective September 4, 1998, 18 AAC 53.990.

Remove the following provision of 18 AAC 53.015, Expansion of Control Area, effective October 31, 1997.

In addition to the above regulations, the revisions submitted by ADEC include updates, streamlining, and editing to the narrative parts of its CO plan for easier reading and understanding.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective November 1, 1999 without further notice unless the Agency receives adverse comments by October 1, 1999.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 1, 1999 and no further action will be taken on the proposed rule.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be Economically significant as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments To provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 1, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: July 22, 1999.

Chuck Clarke,

Regional Administrator, Region 10.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1.The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart C—Alaska

2. Section 52.70 is amended by adding paragraph (c)(29) to read as follows:

§ 52.70 Identification of plan.

* * * * *

(c) * * *

(29) The Environmental Protection Agency (EPA) approves various amendments to the Alaska State Air Quality Control Plan which are contained in three separate submittals to EPA, dated February 6, 1997, June 1, 1998, and September 10, 1998, and which include the inspection and maintenance program.

(i) Incorporation by reference.

(A) Air Quality Control Regulations, 18 AAC 50. Effective September 4, 1998: Section 700; Section 705; Section 710; Section 715; and Section 720.

(B) Emissions Inspection and Maintenance Requirements for Motor Vehicles 18 AAC 52. (*1*) Effective January 1, 1998: Section 005; Section 010; Section 015; Section 020; Section 025; Section 035; Section 037; Section 050; Section 060, except for subsections (8)(c), (8)(d)(2) and (8)(e); Section 065; Section 070; Section 080; Section 085; Section 095; Section 100; Section 105; Section 400; Section 405; Section 415, except subsection (f)(1); Section 420, except subsection (a)(11); Section 425; Section 440; Section 500; Section 515; Section 520, except subsection (c)(9); Section 525; Section 527; Section 530, except subsections (b)(3), (c)(4)(C) and (d)(9); Section 535; Section 540; Section 545; Section 546; Section 990.

(*2*) Effective January 1, 1997: Section 055; 090.

(*3*) Remove the following provisions of 18 AAC 52, effective January 1, 1997: Section 060, subsection 8(c) and 8(e); Section 520, subsection (c)(9).

(*4*) Remove the following provisions of 18 AAC 52, effective January 1, 1998: Section 060, subsection 8(d)(2); Section 415, subsection (f)(1); Section 420, subsection (a)(11); Section 530, subsection (b)(3) and (d)(9).

(*5*) Remove the following provisions of 18 AAC 52, effective January 4, 1995: Section 530, subsection (c)(4)(c).

(C) Fuel Requirements for Motor Vehicles 18 AAC 53.

(*1*) Effective October 31, 1997: Section 05; Section 07; Section 10; Section 20; Section 30; Section 35; Section 40; Section 45; Section 60; Section 70; Section 80; Section 90; Section 200; Section 105; Section 120; Section 130; Section 140; Section 150; Section 160; Section 170; Section 190 and effective September 4, 1998, Section 990.

(*2*) Remove the following provision of 18 AAC 53.015, Expansion of Control Area, effective October 31, 1997.

(ii) Additional material.

(A) Revisions to Alaska's State Air Quality Control Plan, Volume II: Section I, "Background," I.A; I.B., I.C., I.D., and I.E., adopted 11/26/96; Part B—Anchorage Contingency Measures, adopted 5/18/98; Section II, "State Air Quality Control Program," pages II–1 through II–4, adopted 5/18/98; Section III.A. "Statewide Carbon Monoxide Control Program," pages III.A.1–1 through III.A.3–4, adopted 5/18/98; III.B. "Anchorage Transportation Control Program," pages III.B.1–1 through III.B.6–7, adopted 5/18/98; III.B.8. "Modeling and Projections," pages III.B.8–1 through III.B.9–2, adopted 5/18/98; III.B.10, "Anchorage Air Pollution Episode Curtailment Plan," pages III.B.10–1 and III.B.10–2, revised 12/19/93; III.B.11. "Assurance of Adequacy," pages III.B.11–1 through III.B.11–3, revised 5/18/98; III.B.12. "Emissions Budget," page III.B.12–1, adopted 11/26/96; and various CO SIP streamlining edits throughout Volume II and Volume III of the State Air Quality Control Plan which make the document easier to read and better organized, adopted 5/18/98.

[FR Doc. 99–22450 Filed 8–31–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Docket# MA–068–7203c; FRL–6430–6]

Approval and Promulgation of State Plans For Designated Facilities and Pollutants: Massachusetts; Plan for Controlling MWC Emissions From Existing MWC Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; withdrawal.

SUMMARY: On July 14, 1999, EPA published a direct final rule (64 FR 37851) approving, and an accompanying proposed rule (64 FR 37923) proposing to approve, a State Plan submitted by the Commonwealth of Massachusetts on January 11, 1999. This State Plan, which is under sections 129 and 111(d) of the Clean Air Act, proposes provisions that are at least as protective as EPA's Emission Guidelines (EG). The EG are applicable to existing Municipal Waste Combustor (MWC) units with a capacity to combust more than 250 tons/day of municipal solid waste. *See* 40 CFR part 60, subpart Cb. EPA is withdrawing this direct final rule because adverse comments have been received. EPA will now consider, summarize and respond to any comments received before taking final action on the State Plan.

DATES: As of September 1, 1999, EPA withdraws the direct final rulemaking published on July 14, 1999.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA.

FOR FURTHER INFORMATION CONTACT: John J. Courcier, (617) 918–1659.

Dated: August 23, 1999.

John P. DeVillars,

Regional Administrator, Region 1.

[FR Doc. 99–22629 Filed 8–31–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300904; FRL–6094–3]

RIN 2070–AB78

Difenoconazole; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of difenoconazole [[(2S,4R)/(2R,4S)/(2R,4R)/(2S,4S)]1-[2-[4-(4-chlorophenoxy)-2-chlorophenyl]-4-methyl-1,3-dioxolan-2-yl-methyl]-1*H*-1,2,4-triazole] in or on sweet corn commodities. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on sweet corn seed. This regulation establishes a maximum permissible level for residues of difenoconazole in these food and feed commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances will expire and are revoked on January 31, 2001.

DATES: This regulation is effective September 1, 1999. Objections and requests for hearings must be received by EPA on or before November 1, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300904], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300904], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300904]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 271, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9356, beard.andrea@epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for residues of the fungicide difenoconazole, in or on sweet corn seed, forage, and stover at 0.1 part per million (ppm). These tolerances will expire and are revoked on January 31, 2001. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

I. Background and Statutory Findings

The Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) was signed into law August 3, 1996. FQPA amends both the FFDCA, 21 U.S.C. 301 *et seq.*, and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.* The FQPA amendments went into effect immediately. Among other things, FQPA amends FFDCA to bring all EPA pesticide tolerance-setting activities under a new section 408 with a new safety standard and new procedures. These activities are described in this preamble and discussed in greater detail in the final rule establishing the time-limited tolerance associated with the emergency exemption for use of propiconazole on sorghum (61 FR 58135, November 13, 1996) (FRL–5572–9).

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ."

Section 18 of FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that "emergency conditions exist which require such exemption." This provision was not amended by FQPA. EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment.

Because decisions on section 18-related tolerances must proceed before EPA reaches closure on several policy issues relating to interpretation and implementation of the FQPA, EPA does not intend for its actions on such tolerances to set binding precedents for the application of section 408 and the new safety standard to other tolerances and exemptions.

II. Emergency Exemption for Difenoconazole on Sweet Corn Seed and FFDCA Tolerances

Idaho leads the nation in production of SH2 hybrid sweet corn seed, accounting for more than 90% of the total U.S. production. SH2 hybrids are used in the production of super sweet varieties of fresh market and processing sweet corn. In the past, captafol was used in combination with other registered fungicides as a sweet corn seed protectant. However, all captafol uses were voluntarily canceled in May of 1987 as a result of the captafol Special Review. According to the Applicant, the currently registered fungicides available for use on sweet corn provide only marginal control of dieback syndrome (brought on by fungal pathogens, *Penicillium*, *Pythium*, and *Fusarium* species) on hybrid sweet corn varieties. If difenoconazole is not available for use, stand reductions of 20–60% could occur, resulting in significant economic losses for Idaho's sweet corn seed producers, and sweet corn growers in other States, such as Florida where the disease problem is particularly severe. Prior to this year, Idaho received exemptions for use of another material, imazalil, for this situation; however, issues surfaced last year concerning imazalil and EPA could not make the safety finding as required under FQPA for the imazalil use. EPA has authorized under FIFRA section 18 the use of difenoconazole on sweet corn seed for control of fungal pathogens in Idaho. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of difenoconazole in or on sweet corn commodities. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing these tolerances without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although these tolerances will expire and are revoked on January 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on sweet corn commodities after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed levels that were authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether difenoconazole meets EPA's registration requirements for use on sweet corn seed or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as basis for registration of difenoconazole by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than Idaho to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for difenoconazole, contact the Agency's Registration Division at the address provided under the "ADDRESSES" section.

III. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of difenoconazole and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of difenoconazole on sweet corn seed, stover, and forage at 0.1 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by difenoconazole are discussed in this unit.

B. Toxicological Endpoints

1. *Acute toxicity.* Based on the available acute toxicity data, EPA has determined that the no observable adverse effect level (NOAEL) of 25

milligrams per kilograms body weight per day (mg/kg/bwt/day) from the developmental study in rabbits should be used to assess risk from acute toxicity. Increases in post-implantation loss and resorption, decreases in fetal body weight, and decreases in body weight gains and food consumption in dams, were observed at the lowest obsevable adverse effect level (LOAEL) of 75 mg/kg/day. Using the uncertainty factors (UFs) of 10x for interspecies and 10x for intraspecies variations, the acute Reference Dose (RfD) is 0.25 mg/kg/day. The acute risk assessment will evaluate acute dietary risk to females 13+ years, the population subgroup of concern.

2. *Short- and intermediate-term toxicity.* For short-term Margin of Exposure (MOE) calculations, the developmental NOAEL of 25 mg/kg/day, from the developmental rabbit study will be used, with a dermal absorption factor adjustment of 75%. At the LOAEL of 75 mg/kg/day, there were increased post-implantation losses and resorptions per dose, a significant decrease in fetal body weight, and decrease in body weight gains and food consumption in the dams.

For intermediate-term MOE calculations, the NOAEL of 1.25 mg/kg/day from the 2–generation study in rats will be used. At the LOAEL of 12.5 mg/kg/day, there were decreased pup weights.

3. *Chronic toxicity.* EPA has established the RfD for difenoconazole at 0.01 mg/kg/day. This RfD is based on cumulative decreases in body weight gains at the LOAEL of 24.0 mg/kg/day from the chronic feeding/oncogenicity study in rats with a NOAEL of 0.96 mg/kg/day, and an uncertainty factor of 100.

4. *Carcinogenicity.* Difenoconazole has been classified as a Group C possible carcinogen, based on statistically significant increases in liver adenomas, carcinomas, and combined adenomas and carcinomas in both sexes of CD–1 mice, only at doses that were considered to be excessively high for carcinogenicity testing. The MOE approach was recommended for risk assessments, because there was only very weak evidence of carcinogenic potential at dose levels not considered to be excessive, with significant changes seen only at excessive doses. Additionally, there was no evidence of genotoxicity. However, at this time, the Agency has not defined the acceptable level of concern for cancer risk using the MOE approach. Therefore, a quantitative risk analysis was conducted utilizing the Q_1^* approach. The Q_1^* was calculated to be 1.57×10^{-1} (mg/kg/day)$^{-1}$.

C. Exposures and Risks

1. *From food and feed uses.* Permanent tolerances have been established (40 CFR 180.475) for the residues of difenoconazole, in or on wheat and livestock commodities ranging from 0.05 to 0.1 ppm and on bananas (import) at 0.2 ppm. Risk assessments were conducted by EPA to assess dietary exposures and risks from difenoconazole as follows:

i. Acute exposure and risk. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. EPA's detailed acute analysis estimated the distribution of single-day exposures for the subgroup Females 13+ Years Old. An evaluation was not conducted for the overall U.S. population and infant and children subgroups, because oral toxicological studies did not demonstrate effects on these groups that could be attributable to a single dose exposure. The Dietary Exposure Evaluation Model (DEEM) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–91 Nationwide Continuing Surveys for Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. This acute exposure analysis was performed assuming tolerance level residues and 100% crop treated. Taking into account published and proposed tolerances (including these for sweet corn commodities), at the 95th percentile, the exposure utilized less than 1% of the RfD for the population subgroup of concern, Females 13+ Yrs. Old. Therefore, the level of concern is not exceeded.

ii. *Chronic exposure and risk.* The chronic risk assessment was conducted using mean consumption (3–day average) values, and was refined using anticipated residues and percent of crop treated (PCT) information for select commodities. The RfD of 0.01 mg/kg/day and an uncertainty factor of 100 were used. Since it was determined that the FQPA UF of 3x was not necessary, acceptable dietary exposure must not exceed 100% of the chronic RfD for all population subgroups. The Novigen DEEM system was used for this chronic dietary exposure analysis.The subgroups listed below are: (1) the U.S. Population (48 contiguous States); (2) those for infants and children; and, (3) the other subgroups (adult) for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. Population (48 contiguous States). The results are summarized below.

Population Subgroup	Exposure (mg/kg bwt/day)	% Chronic RfD
U.S. Population (48 contiguous States).	0.000005	< 1
All Infants (< 1 yr)	0.000016	< 1
Nursing Infants (<1 yr).	0.000007	< 1
Non-nursing Infants (<1 yr).	0.000019	< 1
Children (1–6 yrs)	0.000011	< 1
Children (7–12 yrs) ..	0.000005	< 1
Females (13+ yrs / Nursing).	0.000006	< 1
Seniors (55+ yrs)	0.000006	< 1
Non-Hispanic, Other than Black/White.	0.000006	< 1

As shown in the above table, chronic dietary risk does not exceed the level of concern for any of the population subgroups.

iii. *Cancer exposure and risk.* The Agency previously classified difenoconazole as a possible human carcinogen; this chemical would now be classified as a likely human carcinogen in accordance with the Agency's "Proposed Guidelines for Carcinogenic Risk Assessment" (April 10, 1996). As previously explained in this document, a non-linear, MOE approach was recommended to quantify human cancer risk from difenoconazole. However, at this time the Agency has not defined the acceptable level of concern for cancer risk using the MOE approach. Therefore, the linear Q_1^* approach was used for calculating cancer risk. A Q_1^* of 0.157 (mg/kg/day)$^{-1}$ was determined based on the male mouse liver adenoma and/or carcinoma combined tumor rates in the 78–week cancer study in mice. The exposure analysis estimating potential cancer risks for difenoconazole was performed using anticipated residues and PCT or percent imported, as refinements, for selected commodities, to determine Estimated Lifetime Cancer Risk for the general population. The DEEM analysis was used, as described previously, and the partially refined exposure estimate calculated for the U.S. population (48 contiguous States) was 0.000005 mg/kg/day, translating to a lifetime cancer risk estimate of 8.4×10^{-7} from residues in food. This cancer risk estimate does not exceed the Agency's level of concern.

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Anticipated residue data used in the current dietary risk analysis were calculated from field trial data. The anticipated residues used were 0.01 ppm for bananas; 0.000019 for eggs; 0.0000043 ppm for egg whites; 0.000046 ppm for egg yolks; 0.000041 ppm for fat of cattle, goats, hogs, horses, and sheep; 0.00012 ppm for kidney of cattle, goats, hogs, horses, and sheep; 0.000014 ppm for meat of cattle, goats, hogs, horses, and sheep; 0.00044 ppm for meat byproducts (except kidney) of cattle, goats, hogs, horses, and sheep; 0.000013 ppm for milk; 0.01 ppm for plantains; 0.0000030 ppm for poultry fat; 0.000034 ppm for poultry kidney; 0.000006 ppm for poultry meat; 0.000023 ppm for poultry meat byproducts (except kidney); 0.005 ppm for sweet corn; and 0.005 ppm for wheat grain.

Section 408(b)(2)(F) States that the Agency may use data on the actual PCT for assessing chronic dietary risk only if the Agency can make the following findings: That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; that the exposure estimate does not underestimate exposure for any significant subpopulation group; and if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by the section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used PCT information as follows:

Three PCT for sweet corn, 9 PCT for wheat, and 10.5% imported for barley. The percent imported data are used in the same way PCT data are used. This refinement is used because difenoconazole is not registered for use in the United States. The percentage means that 10.5% of the barley used (potentially or actually) for human consumption in the United States is imported; it is even more conservative because it also assumes that all such imported barley has difenoconazole residues.

The Agency believes that the three conditions, discussed in section 408(b)(2)(F) in this unit concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. The PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of the PCT, the Agency is reasonably certain that the percentage of the food treated is not likely to be underestimated. The regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which difenoconazole may be applied in a particular area.

2. *From drinking water.* The Agency lacks sufficient water-related exposure data to complete a comprehensive drinking water exposure analysis and risk assessment for difenoconazole. Because the Agency does not have comprehensive and reliable monitoring data, drinking water concentration estimates must be made by reliance on some sort of simulation or modeling. To date, there are no validated modeling approaches for reliably predicting pesticide levels in drinking water. The Agency is currently relying on GENEEC and PRZM/EXAMS for surface water, which are used to produce estimates of pesticide concentrations in a farm pond and SCI-GROW, which predicts pesticide concentrations in ground water. None of these models include consideration of the impact that processing of raw water, for distribution as drinking water, would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

In the absence of monitoring data for pesticides, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, drinking water, and residential uses. A DWLOC will vary depending on the toxic endpoint, with drinking water consumption, and body weights. Different populations will have different DWLOCs. DWLOCs are used in the risk assessment process as a surrogate measure of potential exposure associated with pesticide exposure through drinking water. DWLOC values are not regulatory standards for drinking water. Since DWLOCs address total aggregate exposure to difenoconazole, they are further discussed in the aggregate risk sections below.

3. *From non-dietary exposure.* Difenoconazole is not currently registered for use on any residential non-food sites. Therefore, there are no exposures and risks from non-dietary residential exposure.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether difenoconazole has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, difenoconazole does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that difenoconazole has a common mechanism of toxicity with other substances. For more information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for

Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* From the acute dietary (food only) risk assessment, a high-end exposure estimate was calculated for the population subgroup of concern, Females 13+ years. For this group, less than 1% of the RfD is occupied by dietary (food only) exposure. This small percentage of the acute RfD utilized by this exposure provides assurance that there is reasonable certainty that no harm will result to both Females 13+ years, and to the prenatal development of infants. Acute effects for the general population are not expected.

The maximum estimated concentrations of difenoconazole in surface and ground water are less than the DWLOCs for difenoconazole as a contribution to acute aggregate exposure. Therefore, EPA concludes with reasonable certainty that residues of difenoconazole in drinking water will not contribute significantly to the aggregate acute human health risk.

2. *Chronic risk.* Using the ARC exposure assumptions described in this unit, EPA has concluded that aggregate exposure to difenoconazole from food will utilize <1% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants (<1 yr. old), still at <1% of the RfD. This is further discussed below in the section on infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The estimated concentrations of difenoconazole in surface and ground water are less than the DWLOCs for difenoconazole as a contribution to chronic aggregate exposure. Therefore, EPA concludes with reasonable certainty that residues of difenoconazole in drinking water will not contribute significantly to the aggregate chronic human health risk. Despite the potential for exposure to difenoconazole in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure.

Since no registered residential uses or exposure scenarios were identified for short- and intermediate-term exposure, these risk assessments are not required.

4. *Aggregate cancer risk for U.S. population.* The DEEM dietary exposure analysis used anticipated residues and PCT information for selected commodities, to estimate the lifetime cancer risk for the general population. Using the dietary exposure estimate of 0.000005 mg/kg/day, the lifetime dietary cancer risk was calculated to be 8.4×10^{-7}. The estimated average concentrations of difenoconazole in surface and ground water are less than the DWLOCs for difenoconazole as a contribution to cancer aggregate exposure. Therefore, EPA concludes with reasonable certainty that residues which may occur in drinking water do not contribute significantly to the aggregate chronic human health risk. Thus, aggregate cancer risk estimates associated with exposure to difenoconazole from food and water do not exceed levels of concern.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is reasonable certainty that no harm will result from aggregate exposure to difenoconazole residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children* —i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of difenoconazole, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined interspecies and intraspecies variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In a developmental study in rats, the NOAEL for maternal toxicity was 20 mg/kg/day, based upon statistically significant decreases in maternal body weight gain and feed consumption at the LOAEL of 100 mg/kg/day. The NOAEL for developmental toxicity was 100 mg/kg/day, based upon the incidence of bifid or unilateral ossification of the thoracic vertebrae, and significant increases in the average number of ossified hyoid and decreases in the number of sternal centers of ossification. The average number of ribs was also significantly increased with accompanying increases in the number of thoracic vertebrae and decreases in the number of lumbar vertebrae. These effects were observed at the LOAEL of 200 mg/kg/day.

In a developmental study in rabbits, the NOAEL for maternal toxicity was 25 mg/kg/day, based upon decreases in body weight gain and food consumption seen at the LOAEL of 75 mg/kg/day. The developmental toxicity NOAEL was also 25 mg/kg/day, with increases in post-implantation loss and resorptions, and decreases in fetal body weight, seen at the LOAEL of 75 mg/kg/day.

iii. *Reproductive toxicity study.* In a 2–generation reproduction study in rats, the NOAEL for parental toxicity was 25 ppm (1.25 mg/kg/day), based upon decreased maternal body weight gain at the LOAEL of 250 ppm (12.5 mg/kg/day). The NOAEL for reproductive toxicity was also 25 ppm, based upon decreased pup weights at day 21, at the LOAEL of 250 ppm.

iv. *Prenatal and postnatal sensitivity.* The FQPA Safety Factor Committee recommended that the 10x safety factor for enhanced sensitivity to infants and children be reduced to a 1x factor, since the toxicology data base is complete, and there is no indication of increased susceptibility of rats or rabbit fetuses to prenatal or postnatal exposure.

v. *Conclusion.* There is a complete toxicity data base for difenoconazole and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures.

2. *Acute risk.* An acute RfD is not established for the general population, including infants and children, because there were no effects observed in toxicity studies (including maternal toxicity in the rabbit and rat developmental studies), which were attributable to a single exposure. Therefore, the Agency concludes that acute risks to infants and children are negligible.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to difenoconazole from food will utilize <1% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The estimated average concentrations of difenoconazole in surface and ground water are less than the Agency's DWLOC for chronic exposure among nursing infants (<1 year old) to difenoconazole. Despite the potential for exposure to difenoconazole in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- or intermediate-term risk.* Since no registered residential uses or exposure scenarios were identified for short- and intermediate-term exposure, these risk assessments are not required.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to difenoconazole residues.

IV. Other Considerations

A. Metabolism in Plants and Animals

The nature of the residues of difenoconazole in plants and animals is considered to be adequately understood. Based on acceptable metabolism studies, the Agency concluded that none of the difenoconazole metabolites warrant inclusion in the tolerance regulation, separate regulation, inclusion in the dietary risk assessment, or additional metabolism or toxicological studies. Therefore, the residue of concern is the parent compound, difenoconazole per se, as specified in 40 CFR 180.475.

B. Analytical Enforcement Methodology

An adequate enforcement method (Method AG–575B, MRID# 428065–04) is available for enforcement purposes. The method is Gas-Liquid Chromatography, using a nitrogen/phosphorus detector, which has been validated for wheat, barley, and bananas. EPA expects that this method will be adequate for these proposed tolerances for sweet corn commodities as well.

The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

C. Magnitude of Residues.

Residues of difenoconazole are not expected to exceed 0.1 ppm in/on corn, sweet (kernel + corn with husk removed); corn, sweet, forage; or corn, sweet, stover, as a result of the section 18 use. Secondary residues are not expected in animal commodities as a result of this use.

D. International Residue Limits.

There are pending Codex MRLs for this compound in Mexico for oat, wheat, and barley. There are MRLs for this compound in Australia for carrots (0.5 ppm), potatoes (0.02 ppm), and bananas (0.5 ppm). There are no Codex residue limits established for difenoconazole in/on the sweet corn commodities listed above, and thus harmonization is not an issue for this action.

E. Rotational Crop Restrictions.

There is a 30–day plantback restriction for all rotational crops.

V. Conclusion

Therefore, the tolerances are established for residues of difenoconazole [(2S,4R)/(2R,4S)/(2R,4R)/(2S,4S)]1-[2-[4-(4-chlorophenoxy)-2-chlorophenyl]-4-methyl-1,3-dioxolan-2-yl-methyl]-1*H*-1,2,4-triazole in/on corn, sweet (kernel + corn with husk removed); corn, sweet, forage; and corn, sweet, stover at 0.1 ppm.

VI. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by November 1, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record.

Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300904] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VIII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 13, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. In § 180.475, by adding paragraph (b) to read as follows:

§ 180.475 Difenoconazole; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of difenoconazole in connection with use of this pesticide under a section 18 emergency exemption granted by EPA. The tolerances will expire on the dates specified in the following table.

Commodity	Parts per million	Expiration/revocation date
Corn, sweet (kernel + corn with husk removed).	0.1	1/31/01
Corn, sweet, forage ..	0.1	1/31/01
Corn, sweet, stover ...	0.1	1/31/01

* * * * *

[FR Doc. 99–22635 Filed 8–31–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300903; FRL–6094–4]

RIN 2070–AB78

Cymoxanil; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for residues of the fungicide cymoxanil in or on dried hops at 1 part per million (ppm) for an additional 1½–year period. This tolerance will expire and is revoked on October 15, 2001. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on hops. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation becomes effective September 1, 1999. Objections and requests for hearings must be received by EPA, on or before November 1, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300903], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300903], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300903]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Libby Pemberton, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 280, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703 308–9364, pemberton.libby@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of December 2, 1998 (63 FR 66459) (FRL–6038–5), which announced that on its own initiative under section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established a time-limited tolerance for the residues of cymoxanil in or on dried hops at 1 ppm, with an expiration date of April 15, 2000. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of cymoxanil on hops for this year's growing season due to the continued need for control of downy mildew. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of cymoxanil on hops for control of downy mildew in Idaho and Oregon.

EPA assessed the potential risks presented by residues of cymoxanil in or on dried hops. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of December 2, 1998 (63 FR 66459). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 1½-year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on

October 15, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on dried hops after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by November 1, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300903] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under section 408(l)(6) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 13, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.503 [Amended]

2. In § 180.503, by amending the table in paragraph (b) by revising the date "4/15/00" to read "10/15/01".

[FR Doc. 99–22634 Filed 8–31–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300910; FRL–6095–8]

RIN 2070–AB78

Chlorfenapyr; Re-Establishment of Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation re-establishes time-limited tolerances for residues of the insecticide chlorfenapyr and its metabolites in or on cottonseed and cotton gin byproducts at 0.5 and 2.0 part per million (ppm), respectively, and in livestock commodities at levels ranging from 0.01 to 0.3 ppm, for an additional 1½–year period. These tolerances will expire and are revoked on January 31, 2001. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on cotton. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the FIFRA.

DATES: This regulation is effective September 1, 1999. Objections and requests for hearings, identified by docket control number OPP–300910, must be received by EPA on or before November 1, 1999.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION" section. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300910 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–9356; and e-mail address: beard.andrea@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
.....	112	Animal production
.....	311	Food manufacturing
.....	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register--Environmental Documents." You can also go directly to the Federal Register listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300910. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

EPA issued a final rule, published in the **Federal Register** of August 22, 1997 (62 FR 44565) (FRL–5737–7), which announced that on its own initiative under section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) it established time-limited tolerances for the residues of chlorfenapyr and its metabolites in or on cotton and livestock commodities at levels ranging from 0.01 to 2.0 ppm, with an expiration date of July 31, 1999. EPA established the tolerances because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of the FIFRA. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of chlorfenapyr on cotton for this year's growing season due to the situation remaining an emergency. Beet armyworm has infested cotton fields to a high degree in recent growing seasons. EPA received requests from 11 states for this use this year: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas. This pest had not previously been a significant pest in cotton, and had been controlled with available alternatives. However, in recent years, beet armyworm populations have reached devastating levels in southeastern cotton-growing areas, and registered alternatives have proven to provide inadequate control to prevent significant economic losses from occurring. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of chlorfenapyr on cotton for control of beet armyworm in cotton in the above-named 11 states.

EPA assessed the potential risks presented by residues of chlorfenapyr in or on cotton. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of August 22, 1997 (62 FR 44565) (FRL–5737–7). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are re-established for an additional 1½–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on January 31, 2001, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on cotton after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300910 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 1, 1999.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. M3708, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission be labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A. of this preamble, you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. of this preamble. Mail your copies, identified by docket number OPP–300910, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. of this preamble. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IV. Regulatory Assessment Requirements

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994) or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides

and pests, Reporting and recordkeeping requirements.

Dated: August 13, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

§ 180.513 [Amended]

2. In § 180.513, by amending the table in paragraph (b) by revising the date "7/31/99" wherever it appears to read "1/31/01".

[FR Doc. 99–22633 Filed 8–31–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6430–4]

Indiana: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Indiana has applied for final authorization of the revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The revision basically covers regulatory changes that appeared in the **Federal Register** between July 1, 1992 and June 30, 1995, in addition, the revision includes Miscellaneous Units, and all minor rules appearing in the **Federal Register** between July 1, 1995 and June 30, 1997. The EPA has reviewed Indiana's application and determined that its hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. EPA is authorizing the state program revision through this immediate final action. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial action and does not anticipate adverse comments. However, in the proposed rules section of this **Federal Register**, EPA is publishing a separate document that will serve as a proposal to authorize the revision should the Agency receive adverse comment. Unless EPA receives adverse written comments during the review and comment period, the decision to authorize Indiana's hazardous waste program revision will take effect as provided below.

DATES: This final authorization for Indiana will become effective without further notice on November 30, 1999, unless EPA receives adverse comment by October 1, 1999. Should EPA receive such comments it will publish a timely withdrawal informing the public that the rule will not take effect.

ADDRESSES: Send written comments referring to Docket Number Indiana ARA 14, to Gary Westefer, Indiana Regulatory Specialist, U.S. EPA Region 5, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–7450. Copies of the Indiana program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 9:00 am to 4:00 pm at the following addresses: Indiana Department of Environmental Management, 100 North Senate, Indianapolis, Indiana, contact Lynn West, (317) 232–3593, and EPA Region 5, contact Gary Westefer at the following address.

FOR FURTHER INFORMATION CONTACT: Gary Westefer, Indiana Regulatory Specialist, U.S. EPA Region 5, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. As the Federal hazardous waste program changes, the States must revise their programs and apply for authorization of the revisions. Revisions to State hazardous waste programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must revise their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. Indiana

Indiana initially received Final Authorization on January 31, 1986, effective January 31, 1986 (51 FR 3955) to implement its base hazardous waste management program. Indiana received authorization for revisions to its program on October 31, 1986 (51 FR 39752) effective December 31, 1986, on January 5, 1988 (53 FR 128), effective January 19, 1988, on July 13, 1989 (54 FR29557), effective September 11, 1989, on july 23, 1991 (56 FR 33717), effective September 23, 1991, on July 24, 1991 (56 FR 33866), effective September 23, 1991, on July 29, 1991 (56 FR 35831), effective September 27, 1991, on July 30, 1991 (56 FR 36010), effective September 30, 1991, on August 20, 1996 (61 FR 43008), effective October 21, 1996, and on August 20, 1996 (61 FR 43018), effective October 21, 1996.

EPA uses 40 CFR part 272 for codification of the decision to authorize Indiana's program and for incorporation by reference of those provisions of its statutes and regulations that EPA will enforce under sections 3008, 3013 and 7003 of RCRA. The authorized Indiana RCRA program was incorporated by reference into the CFR on August 23, 1989 (54 FR 34988) effective October 23, 1989. An update to this incorporation by reference is in process and will appear in 40 CFR part 272, subpart P at a later date.

On May 1, 1997, February 18, 1998 and June 22, 1999, Indiana submitted final complete program revision applications, seeking authorization of its program revision in accordance with 40 CFR 271.21. The EPA reviewed Indiana's applications, and now makes an immediate final decision, subject to receipt of adverse written comment, that Indiana's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final Authorization. Consequently, EPA intends to grant Indiana Final Authorization for the program modifications contained in the revision.

Indiana is applying for authorization for changes and additions to the Federal RCRA implementing regulations that were promulgated between December 10, 1987 and June 30, 1997, as listed below:

Description of federal requirement	**Federal Register** date and page *[and/or RCRA statutory authority]*	Analogous state authority [1]
Hazardous Waste Miscellaneous Units/Checklist 45 ...	December 10, 1987, 52 FR 46496	329 IAC 3.1–4–1, 3.1–9–1, 3.1–13–1 effective February 24, 1992.

Description of federal requirement	**Federal Register** date and page *[and/or RCRA statutory authority]*	Analogous state authority [1]
Hazardous Waste Miscellaneous Units (Clarification and Correction)/Checklist 59.	January 9, 1989, 54 FR 615	329 IAC 3.1–13–1, 3.1–13–2(8),(9) effective February 24, 1992.
Used Oil Filter Exclusion; Technical Correction/Checklist 107.	July 1, 1992, 57 FR 29220	329 IAC 3.1–6–1, 3.1–6–2(6) effective March 5, 1997.
Toxicity Characteristics Revision/Checklist 108	July 7, 1992, 57 FR 30657	329 IAC 3.1–6–1, 3.1–6–2(6), 3.1–10–1, 3.1–10–2(18),(19) effective August 17, 1996.
Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris/Checklist 109.	August 18, 1992, 57 FR 37194	329 IAC 3.1–4–1, 3.1–6–1, 3.1–7–1, 3.1–9–1, 3.1–9–2(8), 3.1–10–1, 3.1–10–2, 3.1–10–2(12), 3.1–10–2(13), 3.1–12–1, 3.1–12–2(1),(2),(3), 3.1–12–2(6), 3.1–12–2(8),(9), 3.1–13–1, 3.1–13–2(8),(9), 3.1–14, 3.1–15, 3.1–15–3 effective August 17, 1996.
Coke By-Product Listings/Checklist 110	August 18, 1992, 57 FR 37284	329 IAC 3.1–6–1, 3.1–6–2(6) effective August 17, 1996.
Financial Responsibility for Third Party Liability, Closure and Post Closure/Checklist 113.	September 16, 1992, 57 FR 42832.	329 IAC 3.1–9–1, 3.1–9–2(8), 3.1–10–1, 3.1–10–2(13), 3.1–14, 3.1–14–26 through 3.1–14–40, 3.1–15, 3.1–15–4, 3.1–15–8, 3.1–15–9, 3.1–15–10 effective May 1, 1996.
Standards Applicable to Owners and Operators of Hazardous Waste treatment, storage and Disposal Facilities; Liability Coverage/Checklist 113.1.	September 1, 1988, 53 FR 33938	329 IAC 3.1–9–1, 3.1–9–2(8), 3.1–10–1, 3.1–10–2(13), 3.1–14, 3.1–14–26 through 3.1–14–40, 3.1–15, 3.1–15–2, 3.1–15–8, 3.1–15–9, 3.1–15–10 effective May 1, 1996.
Liability Requirements; Technical Amendment/Checklist 113.2.	July 1, 1991, 56 FR 30200	329 IAC 3.1–9–1, 3.1–9–2(8), 3.1–10–1, 3.1–10–2(13), 3.1–14, 3.1–15, 3.1–15–8, 3.1–15–9, 3.1–15–10 effective May 1, 1996.
Chlorinated Toluene Production Waste Listing/Checklist 115.	October 15, 1992, 57 FR 47376	329 IAC 3.1–6–1 effective August 17, 1996.
Hazardous Soil Case-By-Case Capacity Variance/Checklist 116.	October 20, 1992, 57 FR 47772	329 IAC 3.1–12–1, 3.1–12–2(10) effective August 17, 1996.
Mixture and Derived-From Rules; Response to Court Remand/Checklist 117A.	March 3, 1992, 57 FR 7628	329 IAC 3.1–6–1 effective August 17, 1996.
Mixture and Derived-From Rules; Technical Correction/Checklist 117A.1.	June 1, 1992 57 FR 23062	329 IAC 3.1–6–1 effective August 17, 1996.
Mixture and Derived-From Rules; Final Rule/Checklist 117A.2.	October 20, 1992 57 FR 49278	329 IAC 3.1–6–1 effective August 17, 1996.
Toxicity Characteristic Revision/Checklist 117B	June 1, 1992 57 FR 23062	329 IAC. 3.1–6–1 effective August 17, 1996.
Liquids in Landfills II/Checklist 118	November 18, 1992 57 FR 54452	329 IAC 3.1–4–1, 3.1–9–1, 3.1–10–1, 3.1–10–2(20) effective August 17, 1996.
Toxicity Characteristic Revision; TCLP/Checklist 119 as amended/Checklist 119.1.	November 24, 1992 57 FR 55114 February 2, 1993 58 FR 6854	329 IAC 3.1–6–1 effective August 17, 1996.
Wood Preserving; Amendments to Listings and Technical Requirements/Checklist 120.	December 24, 1992 57 FR 61492	329 IAC 3.1–6–1, 3.1–9–1, 3.1–10–1 effective August 17, 1996.
Corrective Action Management Units and Temporary Units; Corrective Action Provisions Under Subtitle C/Checklist 121.	February 16, 1993 58 FR 8658	329 IAC 3.1–4–1, 3.1–9–1, 3.1–10–1, 3.1–10–2(1),(2),(3), 3.1–12–1, 3.1–12–2(6), 3.1–13–1 effective August 17, 1996.
Land Disposal Restrictions; Renewal of the Hazardous Waste Debris Case-By-Case Capacity Variance/Checklist 123.	May 14, 1993 58 FR 28506	329 IAC 3.1–12–1, 3.1–12–2(10) effective August 17, 1996.
Land Disposal Restrictions for Ignitable and Corrosive Characteristic Wastes Whose Treatment Standards. Were Vacated/Checklist 124.	May 24, 1993 58 FR 29860	329 IAC 3.1–9–1, 3.1–9–2(1),(2), 3.1–10–1, 3.1–10–2(1),(2),(3), 3.1–12–1, 3.1–12–2(1),(2),(3),(4),(5),(6), 3.1–12–2(8) effective August 17, 1996.
Testing and Monitoring Activities/Checklist 126 as amended/Checklist 126.1.	August 31, 1993 58 FR 46040 September 19, 1994 59 FR 47980	329 IAC 3.1–1–7, 3.1–5–2, 3.1–6–1. 3.1–9–1, 3.1–10–1, 3.1–10–2(20), 3.1–12–1, 3.1–13–1 effective August 17, 1996.
Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Wastes from Wood Surface Protection/Checklist 128.	January 4, 1994 59 FR 458	329 IAC 3.1–1–7, 3.1–6–1 effective August 17, 1996.
Hazardous Waste Management System; Identification and Listing of Hazardous Waste, Treatability Studies Sample Exclusion/Checklist 129.	March 24, 1994 59 FR 13891	329 IAC 3.1–9–1, 3.1–10–1 effective August 17, 1996.
Recordkeeping Instructions/Checklist 131	March 24, 1994 59 FR 13891	329 IAC 3.1–9–1, 3.1–10–1 effective August 17, 1996.
Hazardous Waste Management System; Identification and Listing of Hazardous Wastes; Wastes from Wood Surface Protection; Correction/Checklist 132.	June 2, 1994 59 FR 28484	329 IAC 3.1–1–7 effective Augest 17, 1996.
Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilites, Underground Storage Tanks, and Underground Injection Control Systems; Financial Assurance; Letter of Credit/Checklist 133.	June 10, 1994 59 FR 29958	329 IAC 3.1–9–1, 3.1–9–2(8), 3.1–14–26 through 3.1–14–40 effective May 1, 1996.
Hazardous Waste Management System; Correction of Listing of P015–Beryllium Powder/Checklist 134.	June 20, 1994 59 FR 31551	329 IAC 3.1–6–1, 3.1–12–1, 3.1–12–2(1),(2),(3) effective August 17, 1996.

Description of federal requirement	**Federal Register** date and page [*and/or RCRA statutory authority*]	Analogous state authority [1]
Identification and Listing of Hazardous Waste; Amendments to Definition of Hazardous Waste/Checklist 135.	July 28, 1994 59 FR 38536	329 IAC 3.1–6–1, 3.1–6–2(4), 3.1–6–2(6), 3.1–11–1 effective August 17, 1996.
Standards for the Management of Specific Hazardous Wastes; Amendment to Subpart C—Recyclable Materials Used in a Manner Constituting Disposal; Final Rule/Checklist 136.	August 24, 1994 59 FR 43496	329 IAC 3.1–11–1, 3.1–12–1 effective August 17, 1996.
Land Disposal Restrictions Phase II—Universal Treatment Standards, and Treatment Standards for Organic Toxicity Characteristic Waste and Newly Listed Waste/Checklist 137 as amended/Checklist 137.1.	September 19, 1994 59 FR 47982 January 3, 1995 60 FR 242	329 IAC 3.1–5–4, 3.1–6–1, 3.1–6–2(2), 3.1–9–1, 3.1–9–2(1),(2), 3.1–10–1, 3.1–10–2(1),(2),(3), 3.1–11–1, 3.1–11–2(1), 3.1–12–1, 3.1–12–2 (1 through 6), 3.1–12–2(8) effective August 17, 1996.
Hazardus Waste Management System; Testing and Monitoring Activities/Checklist 139.	January 13, 1995 60 FR 3089	329 IAC 3.1–1–7 effective August 17, 1996.
Hazardous Waste Management System; Carbamate Production Identification and Listing of Harzardous Waste; and CERCLA Hazardous Substance Designation and Reportable Quantities/Checklist 140 as amended/Checklist 140.1 as amended/Checklist 140.2.	February 9, 1995 60 FR 7824 April 17, 1995 60 FR 19165 May 12, 1995 60 FR 25619	329 IAC 3.1–6–1 effective August 17, 1996.
Hazardous Waste Management System; Testing and Monitoring Activities/Checklist 141.	April 4, 1995 60 FR 17001	329 IAC 3.1–1–7 effective August 17, 1996.
Universal Waste Rule (Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program); General Provisions/Checklist 142A.	May 11, 1995 60 FR 25492	329 IAC 3.1–1–1, 3.1–1–9, 3.1–4–1, 3.1–6–1, 3.1–6–2(3), 3.1–7–1, 3.1–9–1, 3.1–9–2(1),(2), 3.1–10–1, 3.1–10–2(1),(2),(3), 3.1–12–1, 3.1–12–2(4),(5), 3.1–13–1, 3.1–16–1, 3.1–16–2(1), 3.1–16–2(3), 3.1–16–2(5), 3.1–16–2(7) effective September 6, 1996.
Universal Waste Rule (Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program); Specific Provisions for Batteries/Checklist 142B.	May 11, 1995 60 FR 25492	329 IAC 3.1–4–1, 3.1–6–1, 3.1–6–2(4), 3.1–9–1, 3.1–9–2(1),(2), 3.1–10–1, 3.1–10–2(1),(2),(3), 3.1–11–1, 3.1–12–1, 3.1–12–2(4),(5), 3.1–13–1, 3.1–16–1, 3.1–16–2(1 through 7) effective September 6, 1996.
Universal Waste Rule (Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program); Specific Provisions for Pesticides/Checklist 142C.	May 11, 1995 60 FR 25492	329 IAC 3.1–4–1, 3.1–6–1, 3.1–9–1, 3.1–9–2(1),(2), 3.1–10–1, 3.1–10–2(1),(2),(3), 3.1–12–1, 3.1–12–2(4),(5), 3.1–13–1, 3.1–16–1, 3.1–16–2(1 through 7) effective September 6, 1996.
Universal Waste Rule (Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program); Specific Provisions for Thermostats/Checklist 142D.	May 11, 1995 60 FR 25492	329 IAC 3.1–4–1, 3.1–6–1, 3.1–9–1, 3.1–9–2(1),(2), 3.1–10–1, 3.1–10–2(1),(2),(3), 3.1–12–1, 3.1–12–2(4),(5), 3.1–13–1, 3.1–16–1, 3.1–16–2(1 through 7) effective September 6, 1996.
Universal Waste Rule (Hazardous Waste Management System; Modification of the Hazardous Waste Recycling Regulatory Program); Provisions for Petitions to add a New Universal Waste/Checklist 142E.	May 11, 1995 60 FR 25492	329 IAC 3.1–5–2, 3.1–16–1, 3.1–16–2(8) effective September 6, 1996.
Solid Waste, Hazardous Waste, Oil Discharge and Superfund Programs; Removal of Legally Obsolete Rules/Checklist 144.	June 29, 1995 60 FR 33912	329 IAC 3.1–6–1, 3.1–11–1, 3.1–13–1, 3.1–13–2(6), 3.1–13–3 effective August 17, 1996.
Hazardous Waste Management; Liquids in Landfills/Checklist 145.	July 11, 1995 60 FR 35703	329 IAC 3.1–9–1, 3.1–10–1, 3.1–10–2(20) effective February 8, 1997.
Identification and Listing of Hazardous Waste; Amendments to Definition of Solid Waste/Checklist 150.	March 26, 1996 61 FR 13103	329 IAC 3.1–6–1, 3.1–6–2(6) effective February 8, 1997.
Imports and Exports of Hazardous Waste: Implementation of OECD Council Decision/Checklist 152.	April 12, 1996 61 FR 16289	329 IAC 3.1–6–1, 3.1–6–2(4), 3.1–7–1, 3.1–7–2(5), 3.1–7–2(7),(8), 3.1–7–16, 3.1–8–1, 3.1–8–2(1 through 3), 3.1–9–1, 3.1–9–2(6), 3.1–10–1, 3.1–10–2(8), 3.1–11–1, 3.1–16–1 effective April 18, 1998.
Criteria for Classification of Solid Waste Disposal Facilities and Practices; Identification and Listing of Hazardous Waste; Requirements for Authorization of State Hazardous Waste Programs/Checklist 153.	July 1, 1996 61 FR 34252	329 IAC 3.1–6–1 effective April 18, 1998.
Land Disposal Restrictions Phase III Emergency Extension of the K088 Capacity Variance/Checklist 155.	January 14, 1997 62 FR 1992	329 IAC 3.1–12–1 effective April 18, 1998.

[1] The Indiana provisions are from the Indiana Administrative Code, unless otherwise stated.

EPA shall administer any RCRA hazardous waste permits, or portions of permits, that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization. This program revision does not grant Indiana the authority to operate the Federal program in Indian country, within the State of Indiana, as defined in 18 U.S.C. 1151.

EPA is publishing this rule without prior proposal because we view this as a noncontroversial program revision and do not anticipate adverse comment. However in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to authorize the revision if we receive adverse comments. This authorization will become effective without further notice on November 30, 1999, unless EPA receives adverse comment by October 1, 1999. Should EPA receive such comments it will publish a timely withdrawal informing the public that the rule will not take effect. We will address all public comments in a subsequent final action based on the proposed rule. EPA may not provide additional opportunity for comment. Any parties interested in commenting must do so at this time.

The public may submit written comments on EPA's immediate final decision until October 1, 1999. Copies of Indiana's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document. The **ADDRESSES** section also indicates where to send written comments on this action.

C. Decision

I conclude that Indiana's application for program revision authorization meets all of the statutory and regulatory requirements established by RCRA. Accordingly, EPA grants Indiana Final Authorization to operate its hazardous waste program as revised. Indiana now has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Indiana also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

D. Codification in Part 272

The EPA uses 40 CFR part 272 for codification of the decision to authorize Indiana's program and for incorporation by reference of those provisions of its statutes and regulations that EPA will enforce under sections 3008, 3013 and 7003 of RCRA. EPA reserves amendment of 40 CFR part 272, subpart P until a later date.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the Indiana program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action because this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, they are already subject to the regulatory requirements under the existing State laws that are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Certification Under the Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the regulatory requirements under the existing State laws that are now being authorized by EPA. The EPA's authorization does not impose any significant additional burdens on these small entities. This is because EPA's authorization would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Pursuant to the provision at 5 U.S.C. 605(b), the Agency hereby certifies that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on

small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Compliance with Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies with consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. The State administers its hazardous waste program voluntarily, and any duties on other State, local or tribal governmental entities arise from that program, not from this action. Accordingly, the requirements of Executive Order 12875 do not apply to this rule.

Compliance With Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," applies to any rule that: (1) the Office of Management and Budget determines is "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

Compliance With Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies with consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule is not subject to E.O. 13084 because it does not significantly or uniquely affects the communities of Indian tribal governments. Indiana is not authorized to implement the RCRA hazardous waste program in Indian country.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 272

Environmental Protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 99–22448 Filed 8–31–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AC94

Disaster Assistance; Factors Considered When Evaluating a Governor's Request for a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: The Robert T. Stafford Disaster Relief and Emergency Assistance Act (the Stafford Act) grants the President the authority for declarations of major disasters and emergencies. We, FEMA, provide a recommendation to the President whether Federal disaster assistance is warranted. This rule establishes the factors that we take into consideration when evaluating a Governor's request for a major disaster declaration under the Stafford Act. This rule does not affect presidential discretion, nor does it change published regulations and policies established under the Stafford Act.

EFFECTIVE DATE: This rule is effective October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Patricia Stahlschmidt, Response and Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, 202–646–4066, (facsimile) 202–646–4060, or (email) patricia.stahlschmidt@fema.gov.

SUPPLEMENTARY INFORMATION: On January 26, 1999, we published a proposed rule on factors considered when evaluating a Governor's request for a major disaster declaration under the Stafford Act, 42 U.S.C. 5121 *et seq.* in the **Federal Register** at 64 FR 3910. We invited comments for 90 days ending on April 26, 1999. We received nineteen sets of comments: seven from States; eight from various organizations; and, four from individuals. Comments varied widely. Some commentors objected to putting any factors in regulation; some thought that certain evaluation factors were too rigorous and restrictive; some thought them too vague and weak or subject to political influence; and, some supported the rule as written. All comments were appreciated and reviewed carefully. Following is a summary of the comments and our responses.

One State and one nongovernmental organization supported the proposed rule. All other States and most non-governmental organizations opposed the establishment of any "declaration criteria" in regulation on the grounds that it limits presidential discretion. Several commented that they prefer the current declaration process because it provides the appropriate level of executive discretion and flexibility for the President and for Governors. We do not agree with the perception that the rule limits presidential discretion. First, the rule clearly states that it would not affect presidential discretion. In fact, the rule specifically states that these evaluation factors are used to make a *recommendation* to the President in recognition of the fact that it is the President, not FEMA, who determines whether a major disaster declaration is warranted. Secondly, the rule generally mirrors the process that we currently use in evaluating a Governor's request. It does not change regulations and policies established under the Stafford Act.

Several commentors approved the concept of publishing the evaluation factors but criticized them for being too vague and subjective. Conversely, some criticized the evaluation factors for being too stringent and inflexible. A number of commentors criticized specific evaluation factors. Saying, for example, that they do not adequately measure State capability or commitment to hazard mitigation. However, commentors as a whole offered no specific or consistently agreed-upon alternatives to the evaluation factors that we proposed. With respect to the lack of specificity in some of the evaluation factors, we are purposely general because we look at the collective impact of all of the factors when making a recommendation to the President. Our goal is to provide consistency in the evaluation process and in the types of factors that we consider, while at the same time allowing us to consider the total impact and unique circumstances of a disaster within a particular State. If further specificity or elaboration is needed on individual factors, such as how we might measure the impact of hazard mitigation on the disaster, or how we would measure the impact of recent disasters, we believe that such detail would be more appropriate in policy than in regulation.

The factor that received the greatest number of comments is the use of $1.00 per capita as an indicator for Public Assistance; the use of a minimum $1 million dollar threshold for this indicator; and, the intent to begin adjusting this indicator annually for inflation using the Consumer Price Index. Some felt that this indicator does not really provide the best measurement of the size disaster that a State should be expected to manage without Federal assistance. Several commentors objected to this factor because they did not feel that it adequately addressed localized impacts or unique circumstances of a disaster. We recognize that a straight per capita figure may not be the best measurement of a State's capability, but it does provide a simple, clear, consistent and long-standing means of evaluating the size of a disaster relative to the size of the State. We also believe that it is time to begin to peg this indicator to inflation since it has been in use without change for the past fifteen years. One commentor felt that we should adjust the $1 per capita figure now from 1985 to 1999 dollars, but we chose to begin adjusting from this rule forward. Several commentors noted that the addition of a $1 million minimum indicator for States that are under one million in population is a change to current practice. No States or territories affected by this provision commented on it. We continue to maintain that even the lowest population States can reasonably be expected to cover this level of public assistance damage and have made no change in the rule.

Several commentors objected to using $1 per capita as a statewide indicator rather than a localized indicator. This statewide indicator is not the sole factor that we use in recommending a major disaster. In fact, one of the evaluation factors specifically addresses impacts at the local level as well as specific types of impacts, such as damage to critical facilities. The proposed rule labels this factor "Impacts at the County Level." We have renamed this to be "Localized Impacts" to make it clear that we look at the impacts for other units of government, not just the county. The history of major disaster declarations clearly demonstrates that the statewide $1 per capita indicator is not the sole determinant in recommending or granting declarations. Rather, we look at all of them in concert to determine whether a declaration should be recommended. For this reason we do not believe that use of this factor is in conflict with § 320 of the Stafford Act regarding arithmetic formulas or sliding scales.

One Tribal organization commented that the rule does not address how Tribal governments fit within the declaration process. By law, only the Governor can request a major disaster declaration under the Stafford Act. We then evaluate the impacts at the State and local level. While the proposed rule did not mention Tribal governments specifically, we do, and will continue to, evaluate impacts at the Tribal level

just as we would evaluate localized impacts at the county or other government level. We revised the rule to add a reference to Tribal governments under both the Public Assistance and Individual Assistance evaluation factors so that this is clear.

A number of commentors felt that the evaluation factors should be more rigorous so that we can ensure that Federal disaster assistance is truly supplemental in nature to State and local assistance. Along those lines, several noted that the evaluation factors should consider and/or encourage State "Trust Funds" for disaster assistance. While we do not specifically mention trust funds we do encourage States to develop their own programs of disaster assistance. If a State were inclined to develop its own programs, the statewide $1 per capita indicator under the Public Assistance Program and the average amounts of assistance shown under the Individual Assistance Program could serve as targets for sizing State programs of assistance.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. We have not prepared an environmental assessment.

Executive Order 12866, Regulatory Planning and Review

This rule is not a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, but attempts to adhere to the regulatory principles set forth in E.O. 12866. The rule has not been reviewed by the Office of Management and Budget under E.O. 12866.

Paperwork Reduction Act

This rule does not contain a collection of information and therefore is not subject to the provisions of the Paperwork Reduction Act of 1995.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under E.O. 12612, Federalism, dated October 16, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of E.O. 12778.

Congressional Review of Agency Rulemaking

We have submitted this final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Pub. L. 104–121. The rule is not a "major rule" within the meaning of that Act. It is an administrative action in support of normal day-to-day activities. It does not result in nor is it likely to result in an annual effect on the economy of $100,000,000 or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have "significant adverse effects" on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

This final rule is exempt (1) from the requirements of the Regulatory Flexibility Act, and (2) from the Paperwork Reduction Act. The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4. It does not meet the $100,000,000 threshold of that Act, and any enforceable duties are imposed as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Part 206

Administrative practice and procedure, Disaster assistance, Intergovernmental relations, Reporting and recordkeeping requirements.

Accordingly, we amend 44 CFR part 206 as follows:

PART 206—[AMENDED]

1. The authority citation for part 206 continues to read as follows:

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

2. We are adding § 206.48 to read as follows.

§ 206.48 Factors considered when evaluating a Governor's request for a major disaster declaration.

When we review a Governor's request for major disaster assistance under the Stafford Act, these are the primary factors in making a recommendation to the President whether assistance is warranted. We consider other relevant information as well.

(a) *Public Assistance Program.* We evaluate the following factors to evaluate the need for assistance under the Public Assistance Program.

(1) *Estimated cost of the assistance.* We evaluate the estimated cost of Federal and nonfederal public assistance against the statewide population to give some measure of the per capita impact within the State. We use a figure of $1 per capita as an indicator that the disaster is of such size that it might warrant Federal assistance, and adjust this figure annually based on the Consumer Price Index for all Urban Consumers. We are establishing a minimum threshold of $1 million in public assistance damages per disaster in the belief that we can reasonably expect even the lowest population States to cover this level of public assistance damage.

(2) *Localized impacts.* We evaluate the impact of the disaster at the county and local government level, as well as impacts at the American Indian and Alaskan Native Tribal Government levels, because at times there are extraordinary concentrations of damages that might warrant Federal assistance even if the statewide per capita is not met. This is particularly true where critical facilities are involved or where localized per capita impacts might be extremely high. For example, we have at times seen localized damages in the tens or even hundreds of dollars per capita though the statewide per capita impact was low.

(3) *Insurance coverage in force.* We consider the amount of insurance coverage that is in force or should have been in force as required by law and regulation at the time of the disaster, and reduce the amount of anticipated assistance by that amount.

(4) *Hazard mitigation.* To recognize and encourage mitigation, we consider the extent to which State and local government measures contributed to the reduction of disaster damages for the disaster under consideration. For example, if a State can demonstrate in its disaster request that a Statewide building code or other mitigation measures are likely to have reduced the damages from a particular disaster, we consider that in the evaluation of the request. This could be especially significant in those disasters where, because of mitigation, the estimated public assistance damages fell below the per capita indicator.

(5) *Recent multiple disasters.* We look at the disaster history within the last twelve-month period to evaluate better the overall impact on the State or locality. We consider declarations under the Stafford Act as well as declarations by the Governor and the extent to which the State has spent its own funds.

(6) *Programs of other Federal assistance.* We also consider programs of other Federal agencies because at times their programs of assistance might more appropriately meet the needs created by the disaster.

(b) *Factors for the Individual Assistance Program.* We consider the following factors to measure the severity, magnitude and impact of the disaster and to evaluate the need for assistance to individuals under the Stafford Act.

(1) *Concentration of damages.* We evaluate the concentrations of damages to individuals. High concentrations of damages generally indicate a greater need for Federal assistance than widespread and scattered damages throughout a State.

(2) *Trauma.* We consider the degree of trauma to a State and to communities. Some of the conditions that might cause trauma are:

(i) Large numbers of injuries and deaths;

(ii) Large scale disruption of normal community functions and services; and

(iii) Emergency needs such as extended or widespread loss of power or water.

(3) *Special populations.* We consider whether special populations, such as low-income, the elderly, or the unemployed are affected, and whether they may have a greater need for assistance. We also consider the effect on American Indian and Alaskan Native Tribal populations in the event that there are any unique needs for people in these governmental entities.

(4) *Voluntary agency assistance.* We consider the extent to which voluntary agencies and State or local programs can meet the needs of the disaster victims.

(5) *Insurance.* We consider the amount of insurance coverage because, by law, Federal disaster assistance cannot duplicate insurance coverage.

(6) *Average amount of individual assistance by State.* There is *no set threshold* for recommending Individual Assistance, but the following averages may prove useful to States and voluntary agencies as they develop plans and programs to meet the needs of disaster victims.

AVERAGE AMOUNT OF ASSISTANCE PER DISASTER

[July 1994 to July 1999]

	Small states (under 2 million pop.)	Medium states (2–10 million pop.)	Large states (over 10 million pop.)
Average Population (1990 census data)	1,000,057	4,713,548	15,522,791
Number of Disaster Housing Applications Approved	1,507	2,747	4,679
Number of Homes Estimated Major Damage/Destroyed	173	582	801
Dollar Amount of Housing Assistance	$2.8 million	$4.6 million	$9.5 million
Number of Individual and Family Grant Applications Approved	495	1,377	2,071
Dollar Amount of Individual and Family Grant Assistance	1.1 million	2.9 million	4.6 million
Disaster Housing/IFG Combined Assistance	3.9 million	7.5 million	14.1 million

Note: The high 3 and low 3 disasters, based on Disaster Housing Applications, are not considered in the averages. Number of Damaged/Destroyed Homes is estimated based on the number of owner-occupants who qualify for Eligible Emergency Rental Resources. Data source is FEMA's National Processing Service Centers. Data are only available from July 1994 to the present.

Small Size States (under 2 million population, listed in order of 1990 population): Wyoming, Alaska, Vermont, District of Columbia, North Dakota, Delaware, South Dakota, Montana, Rhode Island, Idaho, Hawaii, New Hampshire, Nevada, Maine, New Mexico, Nebraska, Utah, West Virginia. U.S. Virgin Islands and all Pacific Island dependencies.

Medium Size States (2–10 million population, listed in order of 1990 population): Arkansas, Kansas, Mississippi, Iowa, Oregon, Oklahoma, Connecticut, Colorado, South Carolina, Arizona, Kentucky, Alabama, Louisiana, Minnesota, Maryland, Washington, Tennessee, Wisconsin, Missouri, Indiana, Massachusetts, Virginia, Georgia, North Carolina, New Jersey, Michigan. Puerto Rico.

Large Size States (over 10 million population, listed in order of 1990 population): Ohio, Illinois, Pennsylvania, Florida, Texas, New York, California.

Dated: August 24, 1999.

James L. Witt,

Director.

[FR Doc. 99–22510 Filed 8–31–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 63

[IB Docket No. 96–261; FCC 99–124]

International Settlement Rates, Report and Order on Reconsideration and Order Lifting Stay

AGENCY: Federal Communications Commission.

ACTION: Final rule; reconsideration.

SUMMARY: This document affirms a previous finding that the Commission has authority under the Communications Act to establish settlement rate benchmarks and to require U.S. carriers to negotiate settlement rates that comply with those benchmarks. In addition, the Commission amended the Section 214 condition for facilities-based service to affiliated markets, so that it applies only to U.S. affiliates of carriers that have market power in the destination country. The Commission took this action in response to petitions for reconsideration filed in this proceeding.

DATES: Effective October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Lisa Choi, Telecommunications Division, International Bureau, (202) 418–1480.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order on Reconsideration and Order Lifting Stay, FCC 99–124, adopted on May 28, 1999, and released on June 11, 1999. The full text of this Order is available for inspection and copying during normal business hours in the FCC Reference Room (Room CY–A257) of the Federal Communications Commission, 445 12th Street, SW, Washington, D.C. 20554. The document is also available for download over the internet at *http://www.fcc.gov/bureaus/international/orders/1999/fcc99124.wp.* The complete text of this Order also may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857–3800.

Summary of Report and Order on Reconsideration and Order Lifting Stay

1. In the *Benchmarks Order* (62 FR 45758, August 29, 1997), the Commission established benchmarks that govern the international settlement rates that U.S. carriers may pay foreign carriers to terminate international traffic originating in the United States. In the Final Rule on reconsideration, the Commission upheld its *Benchmarks Order* with one modification.

2. In the *Benchmarks Order*, the Commission calculated the benchmark rates using foreign carriers' publicly available tariff rates and information published by the International Telecommunication Union (ITU). The Commission developed a methodology for calculating the benchmarks called the "tariffed component price" (TCP) methodology. It grouped countries by their level of economic development, using a World Bank and ITU classification scheme, and calculated benchmarks using the TCP methodology for each category. The benchmarks are: 15¢ for upper income countries; 19¢ for upper-middle and lower-middle income countries; and 23¢ for lower income countries.

3. The Commission established a transition schedule for U.S. carriers to negotiate settlement rates that comply with the benchmarks. The transition schedule is also based on level of economic development, with an additional category for countries with very low levels of telecommunications network development. Under the transition schedule, U.S. carriers are required to negotiate settlement rates that comply with the benchmarks according to the following schedule: one year from implementation of the *Benchmarks Order* for carriers in upper income countries; two years for carriers in upper-middle income countries; three years for carriers in lower-middle income countries; four years for carriers in lower income countries; and five years for carriers in countries with teledensity (lines per 100 inhabitants) less than one.

4. The Philippines Parties, AT&T, and MCI filed petitions requesting reconsideration or clarification of various aspects of the *Benchmarks Order*. The Philippines Parties asserted that the benchmark rules violate the Due Process Clause of the Fifth Amendment and that the Commission does not have jurisdiction to adopt benchmark rates. In the Final Order on Reconsideration, the Commission affirmed its conclusion in the *Benchmarks Order* that it has jurisdiction to adopt settlement rate benchmarks under the Communications Act and relevant case law. The Commission determined that above-cost settlement rates paid by U.S. carriers to terminate international traffic are neither just nor reasonable, and it acted pursuant to its statutory authority in Section 201(b) of the Communications Act to prohibit U.S. carriers from continuing to pay such charges. The Commission also concluded that its benchmarks are consistent with international obligations of the United States.

5. In the final order on reconsideration, the Commission disagreed with the Philippines Parties and found that the complaint procedures satisfy whatever process rights a foreign correspondent may have by affording them an opportunity to participate in the proceedings.

6. The Commission adopted two authorization conditions in the *Benchmarks Order*, one that applies to authorizations to provide facilities-based service to affiliated markets and one that applies to all authorizations to provide switched services over facilities-based or resold international private lines. These two authorization conditions are intended to address different competitive concerns.

7. The condition for facilities-based service to affiliated markets addresses the potential for a carrier to engage in a predatory price squeeze, *i.e.*, to price below the level of its imputed costs when providing service from the United States to a foreign market where it has an affiliate. In the *Benchmarks Order*, the Commission found that a U.S.-licensed carrier has both the ability and incentive to engage in a price squeeze when it provides facilities-based service to a market in which its affiliated foreign carrier provides the terminating service and collects above-cost settlement rates. The Commission's facilities-based condition addresses the concern about price squeeze behavior by requiring that a carrier's settlement rates be at or below the relevant benchmark before its U.S.-licensed affiliate may provide facilities-based service on the affiliated route. This condition substantially reduces the above-cost settlement rates that could be used to execute a price squeeze on affiliated routes. However, the Commission recognized in the *Benchmarks Order* that the facilities-based condition does not completely eliminate the incentives or the ability of a carrier to execute a price squeeze because the settlement rate benchmarks are still above-cost. The Commission therefore decided that it will take enforcement action if, after the U.S.-licensed carrier has commenced service to the affiliated market, the Commission discovers that the carrier has attempted to execute a predatory price squeeze or engaged in other anticompetitive behavior that distorts market performance. That action may include a requirement that the foreign affiliate reduce its settlement rate for the route to a level at or below the best practices rate the Commission adopted in the *Benchmarks Order*, 8 cents, or a revocation of the U.S.-licensed carrier's authorization to serve the affiliated market. The Commission adopted a rebuttable presumption that a carrier has distorted market performance if any of the carrier's tariffed collection rates on the affiliated route are less than the carrier's average variable costs on that route. For purposes of this presumption, the Commission adopted a proxy for average variable costs that is equal to the carrier's net settlement rate plus any originating access charges.

8. The Commission decided in the *Benchmarks Order* to apply the facilities-based condition to existing Section 214 authorization holders that serve affiliated markets (*i.e.*, those that were authorized to provide service prior to the January 1, 1998 effective date of the *Benchmarks Order*). The Commission required that existing authorization holders comply with the condition by having their foreign affiliates negotiate with U.S. international carriers a settlement rate for affiliated routes that complies with the appropriate benchmark and is in effect within ninety days of the January 1, 1998 effective date. The Commission, subsequently, issued a temporary stay of the effectiveness of the condition for facilities-based service to affiliated markets as it applies to existing Section 214 authorization holders in a March 30, 1998 Stay Order pending action on reconsideration.

9. The condition for provision of switched services over private lines, also known as ISR, addresses the potential for "one-way bypass" of the settlements system to occur. To address the concern about one-way bypass, the Commission adopted an authorization condition that requires that at least 50 percent of the traffic on a route be settled at rates at or below the appropriate benchmark level before carriers may provide switched services over private lines. The Commission reasoned that, if settlement rates are closer to cost, the impact of one-way bypass on the level of U.S. settlement payments will be diminished. As with the condition for facilities-based service to affiliated markets, the Commission recognized that the condition for provision of switched services over private lines does not completely eliminate the potential for one-way bypass to occur. The Commission, therefore, decided that it will take enforcement action if the Commission learns that one-way bypass has occurred. That enforcement action may include a requirement that carriers be prohibited from using their authorizations to provide switched services over private lines on a given route until settlement rates for at least half of the traffic on that route are at or below the best practice rate of 8 cents. It could also include a revocation of carriers' authorizations. The Commission adopted a test for determining when one-way bypass has occurred. Pursuant to that test, the Commission will presume that one-way bypass has occurred if the ratio of outbound to inbound settled traffic increases more than 10 percent in two successive quarterly traffic measurement periods.

10. In the Order on Reconsideration, the Commission declined to modify the benchmark conditions to require compliance with the best practice rate rather than the benchmark rates, as AT&T requested. The Commission concluded that the combination of this requirement and the tests to detect one-way bypass and price squeeze behavior is sufficient to prevent anticompetitive distortions in the U.S. market. The Commission also declined to revise the proxy for average variable costs for purposes of the Commission's test to detect price squeeze behavior. The Commission concluded that the more complex test AT&T urged it to adopt is not necessary for purposes of the test. The Commission's intent was to adopt a "bright line" test with a proxy for average variable costs that would allow either the Commission or other interested parties to identify readily whether a carrier is pricing its services at a predatory level. The Commission thus adopted a proxy for average variable costs that is based on publicly available data. The data necessary to calculate a U.S. carrier's net settlement rate are included in carrier's quarterly traffic reports and information on U.S. carrier's access charges is available in tariffs filed with the Commission and in the Commission's annual Monitoring Report. In contrast, the data necessary to identify all possible average variable costs will be in the hands of the carrier whose prices are at issue. Including all variable costs in the test, as AT&T requested, would defeat the purpose of applying a bright line test.

11. In response to a petition by MCI, the Commission is persuaded that it should modify the condition for facilities-based service to affiliated markets to apply solely to U.S. carriers that are providing service on a route where they have an affiliate with market power. Upon review of the record, the Commission concluded that there is not a substantial threat of price squeeze behavior by an integrated carrier that lacks market power in the foreign market. As a result, the Commission will apply the condition for facilities-based service to affiliated markets solely to carriers that are providing service on a route where they have a foreign affiliate with market power.

12. Given the decision to apply the condition for facilities based service to affiliate markets solely to carriers that are providing service on a route where they have an affiliate with market power, the Commission also decided to include the condition in the section of the Commission's rules that contains the dominant carrier safeguards, § 63.10. In the *Foreign Participation Order*, the Commission concluded that it would streamline the Section 214 application of any applicant not otherwise eligible for streamlined processing so long as the applicant's affiliate is a foreign carrier in a WTO Member country and the applicant certifies that it will comply with the Commission's dominant carrier regulations. By our action in this Order, those regulations now include the condition for facilities-based service to affiliated markets.

13. For purposes of determining which carriers must comply with the condition, for facilities-based service to affiliated markets, the Commission will apply the rebuttable presumption the Commission adopted in our Foreign *Participation Order* that foreign carriers with less than 50 percent market share in each relevant market on the foreign end lack sufficient market power to affect competition adversely in the U.S. market. For purposes of the condition for facilities-based service to an affiliated market, the relevant market is international transport and facilities, including cable landing station access and backhaul facilities.

14. The Commission also lifted its stay of the effectiveness of the condition for facilities-based service to affiliated markets as it applies to Section 214 authorization holders that were authorized to provide service prior to January 1, 1998. Pursuant to the *Benchmarks Order*, existing Section 214 authorization holders that serve affiliated markets would have been required to negotiate with U.S. international carriers a settlement rate for affiliated routes that complies with the appropriate benchmark within ninety days of January 1, 1998, if the Commission had not issued the Stay Order. In accordance with the Order on Reconsideration, only Section 214 authorization holders that are affiliated with a carrier that has market power in the foreign market must comply with the condition for facilities-based service to affiliated markets. The Commission will require such existing Section 214 authorization holders to negotiate with U.S. international carriers a rate for terminating traffic for affiliated routes that complies with the appropriate benchmark and is in effect within thirty days of the effective date of the final rule on reconsideration.

Supplemental Final Regulatory Flexibility Analysis

15. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was included in the Notice in IB Docket No. 96–261 (61 FR 68702 (December 30, 1996), and a Final Regulatory Flexibility Analysis (FRFA) was included in the *Benchmarks Order*. As required by the RFA, the Commission includes the FRFA contained in the *Benchmarks Order* as the Supplemental FRFA for this document. The Commission released a public notice announcing that the Supplemental FRFA is available to the public (see Public Notice, DA 99–1655, released, August 18, 1999).

Ordering Clauses

16. Accordingly, *it is ordered*, pursuant to Sections 1, 2, 4(i), 5(c), 201, 211, 214 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 155(c)(5), 201, 211, 214, and 303(r), and § 1.106 of the Commission's Rules, 47 CFR Part 1.106, that the AT&T Petition for Partial Reconsideration and the Petition for Reconsideration of the Philippines Parties are denied.

17. *It is further ordered* that the MCI Telecommunication Corp. Petition for Clarification or Reconsideration is granted in part and *denied* in part.

18. *It is further ordered*, pursuant to Sections 1 and 4(i) of the Communications Act, 47 U.S.C. 151 and 154(i), that the stay of the effectiveness of the condition for facilities-based service to affiliated markets as it applies to Section 214 authorization holders that were authorized to provide service prior to January 1, 1998, is *lifted*.

19. *It is further ordered*, pursuant to Sections 1, 2, 4(i), 5(c)(5), 201, 211, 214 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154(i), 155(c)(5), 201, 211, 214, and 303(r), that Part 63 of the Commission's rules, 47 CFR Part 63, *is amended* as set forth in the rule changes.

List of Subjects in 47 CFR Part 63

Communications common carriers, Reporting and recordkeeping requirements.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 63 as follows:

PART 63—EXTENSION OF LINES AND DISCONTINUANCE, REDUCTION, OUTAGE AND IMPAIRMENT OF SERVICE BY COMMON CARRIERS; AND GRANTS OF RECOGNIZED PRIVATE OPERATING AGENCY STATUS

1. The authority citation for Part 63 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 160, 161, 201–205, 218, 403, 533 unless otherwise noted.

2. Section 63.10 is amended by adding paragraphs (c)(6) and (e) to read as follows:

§ 63.10 Regulatory classification of U.S. international carriers.

* * * * *

(c)(6) If authorized to provide facilities-based service, comply with paragraph (e) of this section.

* * *

(e) Except as otherwise ordered by the Commission, a carrier that is classified as dominant under this section for the provision of facilities-based services on a particular route and that is affiliated with a carrier that collects settlement payments for terminating U.S. international switched traffic at the foreign end of that route may not provide facilities-based service on that route unless the current rates the affiliate charges U.S. international carriers to terminate traffic are at or below the Commission's relevant benchmark adopted in IB Docket No. 96–261. *See* FCC 97–280 (12 FCC Rcd 19806 (1997) (62 FR 45758, August 29, 1997)), (available at the FCC's Reference Operations Division, Washington, D.C. 20554, and on the FCC's World Wide Web Site at http://www.fcc.gov).

[FR Doc. 99–22722 Filed 8–31–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 87–268; FCC 98–315]

Advanced Television Systems and Their Impact Upon the Existing Television Service

AGENCY: Federal Communications Commission.

ACTION: Final rule, correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of January 28, 1999 (64 FR 4322), a *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders* (*Second MO&O*) in this proceeding that revised and clarified certain aspects of the Commission's policies relating to digital television (DTV) service in response to requests from petitioners. The amended rules in that decision inadvertently removed a portion of § 73.622(e) of the rules. This notice restores the text that was removed from § 73.622. This notice also changes the FCC address in that section to reflect the recent relocation of the agency's headquarters office.

DATES: Effective October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell (202–418–2470), Office of Engineering and Technology.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a *Second Memorandum Opinion and Order on Reconsideration of the Fifth and Sixth Report and Orders* in MM Docket No. 87–268, FCC 98–315, on January 28, 1999 (64 FR 4322). The *Second MO&O* revised and clarified certain aspects of the Commission's policies relating to channel allotments for digital television (DTV) service in response to requests from petitioners. This notice restores portions of § 73.622(e) of the Commission's rules that were inadvertently removed in the *Second MO&O*. This notice also changes the FCC address in that section to reflect the recent relocation of the agency's headquarters office.

In rule FR Doc. 99–1941 published on January 28, 1999 make the following corrections:

1. On page 4327, in the first column, § 73.622 is amended by revising paragraph (e) to read as follows:

§ 73.622 Digital television table of allotments.

* * * * *

(e) *DTV Service Areas.* (1) The service area of a DTV station is the geographic area within the station's noise-limited F(50,90) contour where its signal strength is predicted to exceed the noise-limited service level. The noise-limited contour is the area in which the predicted F(50,90) field strength of the station's signal, in dB above 1 microvolt per meter (dBu) as determined using the method in section 73.625(b) exceeds the following levels (these are the levels at which reception of DTV service is limited by noise):

	dBu
Channels 2–6	28
Channels 7–13	36
Channels 14–69	41

(2) Within this contour, service is considered available at locations where the station's signal strength, as predicted using the terrain dependent Longley-Rice point-to-point propagation model, exceeds the levels above. Guidance for evaluating coverage areas using the Longley-Rice methodology is provided in *OET Bulletin No. 69*. Copies of *OET Bulletin No. 69* may be inspected during normal business hours at the Federal Communications Commission, 445 12th Street, S.W, Dockets Branch (Room CY A–257), Washington, DC 20554. This document is also available through the Internet on the *FCC Home Page* at http://www.fcc.gov.

Note to paragraph (e)(2): During the transition, in cases where the assigned power of a UHF DTV station in the initial DTV Table is 1000 kW, the Grade B contour of the associated analog television station, as authorized on April 3, 1997, shall be used instead of the noise-limited contour of the DTV station in determining the DTV station's service area. In such cases, the DTV service area is the geographic area within the station's analog Grade B contour where its DTV signal strength is predicted to exceed the noise-limited service level, *i.e.*, 41 dB, as determined using the Longley-Rice methodology.

(3) For purposes of determining whether interference is caused to a DTV station's service area, the maximum technical facilities, *i.e.*, antenna height above average terrain (antenna HAAT) and effective radiated power (ERP), specified for the station's allotment are to be used in determining its service area.

* * * * *

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–22502 Filed 8–31–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[FHWA Docket No. FHWA–97–3201]

RIN 2125–AE15

Parts and Accessories Necessary for Safe Operation; Rear Impact Guards and Rear Impact Protection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending the Federal Motor Carrier Safety Regulations (FMCSRs) to require that certain trailers and semitrailers with a gross vehicle weight rating (GVWR) of 4,536 kilograms (kg) (10,000 pounds) or more, and manufactured on or after January 26, 1998, be equipped with rear impact guards that meet the requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 223. The rear impact guards must be installed to ensure that the trailer or semitrailer meets the rear impact protection requirements of FMVSS No. 224. This rulemaking is intended to ensure that the rear impact protection requirements of the FMCSRs are consistent with the FMVSSs and to improve the safety of operation of commercial motor vehicles (CMVs) by reducing the incidence of passenger compartment intrusion during underride accidents in which the passenger vehicle strikes the rear of the trailer. With regard to trailers and semitrailers manufactured before January 26, 1998, motor carriers are not required to retrofit a rear impact guard that conforms to FMVSS No. 223. However, motor carriers operating these trailers and semitrailers are required to continue complying with the FHWA's requirements for rear end protection on CMVs that are not covered by FMVSSs Nos. 223 and 224.

EFFECTIVE DATE: This rule is effective on October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, (202) 366–4009, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's (GPO) Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the GPO's web page at *http://www.access.gpo.gov/nara* and the Office of the Federal Register's home page at *http://www.nara.gov/fedreg*.

Background

On January 24, 1996 (61 FR 2003), the National Highway Traffic Safety Administration (NHTSA) published a final rule creating FMVSSs Nos. 223, Rear Impact Guards, and 224, Rear Impact Protection. The requirements apply to trailers and semitrailers manufactured on or after January 26, 1998.

The first standard, FMVSS No. 223 (49 CFR 571.223), specifies performance requirements that rear impact guards must meet before they can be installed on new trailers and semitrailers. It specifies strength and energy absorption requirements for the impact guards as well as test procedures that manufacturers and the NHTSA will use to determine compliance with the standard. The standard also requires the guard manufacturer to permanently label the impact guard to certify that the device meets the requirements and to provide instructions on the proper installation of the guard.

The second standard, FMVSS No. 224 (49 CFR 571.224), requires that most new trailers and semitrailers with a gross vehicle weight rating (GVWR) of 4,536 kg (10,000 pounds) or more be equipped with a rear impact guard meeting FMVSS No. 223. Requirements for the location of the guard relative to the rear end and sides of the trailer are also specified in the vehicle standard. In addition, the vehicle standard requires that the guard be mounted on the trailer or semitrailer in accordance with the instructions of the guard manufacturer.

On January 26, 1998, the NHTSA issued a final rule responding to petitions for reconsideration of the 1996 final rule, and making technical amendments to the rear impact guard requirements (63 FR 3654). The 1998 final rule clarified the applicability of the energy-absorption requirements with regard to cargo tank motor vehicles, as defined in 49 CFR 171.8, excluded pulpwood trailers from the rear impact protection requirements (a definition of pulpwood trailer was added to § 571.224), and revised the definition of special purpose vehicle.

On May 14, 1998, the FHWA proposed amending § 393.86 to ensure that the rear impact protection requirements of the FMCSRs are consistent with the FMVSSs and to improve the safety of operation of CMVs by reducing the incidence of passenger compartment intrusion during underride accidents in which the passenger vehicle strikes the rear of the trailer (63 FR 26759). The agency indicated that this action is necessary because the FMVSSs are applicable only to vehicle and vehicle component manufacturers. In the absence of an amendment to the FMCSRs, there would be no Federal requirement that motor carriers maintain their trailers to conform to the rear impact protection requirements of FMVSS No. 224, or repair damaged rear impact guards. Motor carriers could also replace rear impact guards with devices that failed to comply with the NHTSA requirements.

Discussion of Comments to the NPRM

The FHWA received 5 comments in response to the notice of proposed rulemaking (NPRM). The commenters were: the Advocates for Highway and Auto Safety (Advocates); the American Trucking Associations (ATA); the Insurance Institute for Highway Safety (IIHS); the National Automobile Dealers Association, American Truck Dealers Division (NADA); and, Torcomian Industries, Inc.

All of the commenters supported the rulemaking. However, the ATA requested changes to certain portions of the regulatory language.

General Comments

The Advocates stated:

> This initiative to parallel the current NHTSA standard with an in-service [requirement] for motor carrier operations clearly will enhance safety. We especially commend the agency for proposing the additional benefits of public safety gained by requiring foreign carriers to abide by the same safety standards as domestic carriers. Given the prospective increases in trilateral freight movements because of the North American Free Trade Agreement, this action appropriately anticipates and counters a potentially serious threat to highway safety from numerous new trailers/semi-trailers being operated on U.S. highways by Canadian and Mexican carriers. This proposal is a textbook example of an agency acting in the public interest and it should be adopted.

The IIHS stated:

The operational requirements for commercial motor vehicles should conform to the [F]ederal safety standards applicable to new vehicles. Interagency cooperation and consistency are particularly important for vehicle safety systems such as underride guards. Properly functioning underride guards on trailers will reduce occupant compartment intrusion in passenger vehicles striking trailers from the rear and thus reduce deaths and injuries.

Comments About the Proposed Regulatory Language

The ATA believes the proposed language requiring rear impact guards to be no more than 22 inches above the ground at any point across the horizontal member is too strict a requirement for motor carriers. The proposed requirement fails to take into account minor damage that may occur to the impact guard in motor carrier operations.

The ATA stated:

An ATA survey conducted earlier this year of guards built to the Truck Trailer Manufacturers Association (TTMA) Recommended Practice—which is dimensionally identical to FMVSS 224—found that only 8.6 percent contained noticeable damage. Further, only 3.5 percent of the guards suffered harm that would raise their height. It typically occurred at a point near their center and consisted of an upward "vee-shaped" bend.

These narrow bends ranged up to three inches high. They typically originate from complications caused by malfunctioning dock locking mechanisms. Dock locks are devices found at shipper facilities. They lock onto the underride guard and hold trailers during loading or unloading to prevent an unexpected roll-away. Upward, center bending of underride guards occurs when the dock lock does not completely retract and a spotting tractor moves the trailer. These tractors use a hydraulic fifth wheel to lift the front of a trailer, freeing the driver from having to retract its landing gear before moving it. Much like a teeter-totter, raising the front of a trailer lowers the rear. This drives the underride guard into the top of the dock lock, causing the bending.

ATA and one of its affiliated organizations—The Maintenance Council (TMC), which consists of thousands of truck equipment professionals—explored the consequences of such damage with trailer manufacturers. We found that the degree of bending which typically occurs does not impair the guard's capability to fulfill the requirements of FMVSS 223.

The ATA also requested that the FHWA revise the proposed definitions of "low chassis vehicles," "special purpose vehicles," and "wheels back vehicles" to cover any type of motor vehicle. The ATA believes this is necessary to retain exemptions currently provided for several types of straight trucks. The ATA recommends replacing "trailer or semitrailer" with "a motor vehicle."

Comments About Retrofitting

The ATA, Torcomian Industries, and the NADA responded to the FHWA's request for comments on whether the agency should consider a retrofitting requirement for trailers and semitrailers manufactured before January 26, 1998. The ATA believes retrofitting trailers with new rear impact guards would be impractical and cost prohibitive, without contributing anything to safety. The ATA stated:

Retrofitting would be impractical because trailer manufacturers design the guard and the rear of the trailer to act in combination to meet the energy absorption requirements of FMVSS 223. Therefore, attaching a new rear underride guard to an older trailer might be a recipe for disaster. Older trailers may not have an attaching understructure to accommodate the new equipment, and may not function as expected.

In addition, truck operators would have no way of knowing if new guards fitted to older trailers would meet the new standards.

The cost of fitting a new guard to a new trailer—with no unexpected complications—is $300. Since there are approximately 3 million trailers in service, the direct cost of retrofit would exceed $900 million. Adding in the indirect cost of revenue lost due to down time and the complications of retrofitting old trailers not designed to meet FMVSS 224, the total balloons to over $1 billion.

The NADA suggests that the FHWA "continue to examine both the costs and benefits associated with applying these new standards retroactively, as well as any technical constraints that may be involved."

Torcomian Industries stated:

[Our] position is why not have all vehicles, regardless of year of manufacture or design, come up to standards. The technology is here, now * * * an ideal method of providing vehicles with underride guards.

The transportation industry needs an underride bumper that will bridge all of the various configurations in today's vehicles, therefore removing any objections from the end users.

Torcomian Industries believes that establishing specific standards of performance for underride bumpers by application is important to help the [original equipment manufacturer] and fleet service facilities customers better to determine how Torcomian Industries Articulating Patented Underride Bumper Guard can help reduce operating costs.

Torcomian Industries believes its articulating rear impact guard can be "easily retrofitted to all existing vehicles, whether semi-trailer or straight truck."

FHWA Response to Comments

The FHWA agrees with the ATA's comments about the need to revise certain portions of the regulatory text. The agency believes it is important to maintain the spirit and intent of § 393.86(e) of the FHWA's current requirements which states "[m]otor vehicles constructed and maintained so that the body, chassis, or other parts of the vehicle afford the rear end protection contemplated shall be deemed to be in compliance with this section." The FHWA has revised the proposed definitions of "low chassis vehicles," "special purpose vehicles," and "wheels back vehicles" to make them applicable to single-unit trucks. This action will help to make the FHWA's requirements for single unit trucks, and trailers and semitrailers manufactured prior to January 26, 1998, easier to understand, use and enforce.

The FHWA notes that there is a difference between the agency's special purpose vehicle exception for single-unit trucks, and semitrailers and trailers manufactured before January 26, 1998, and the NHTSA's special purpose vehicle exclusion. The FHWA's exception requires that the work-performing equipment provide some level of protection against underride. Since the FHWA's rear impact guard requirements for single unit trucks, and semitrailers and trailers manufactured before January 26, 1998, do not include specific performance criteria, the level of protection would have to be comparable to a rear impact guard that is substantially constructed and firmly attached.

By contrast, the NHTSA's special purpose vehicle exclusion is based on the impracticability of installing a rear impact guard to satisfy the requirements of FMVSS Nos. 223 and 224. The work-performing equipment is not required to provide protection against underride.

Although the FHWA agrees with the NHTSA's special purpose vehicle exclusion for new semitrailers and trailers, the FHWA does not believe it is appropriate to provide such a broad exception for single-unit trucks, and semitrailers and trailers built before January 26, 1998. Since the strength and dimensional requirements for the FHWA's requirements for single unit trucks, and semitrailers and trailers not covered by the NHTSA rule, are less stringent than NHTSA's requirements, motor carriers should not experience difficulty achieving compliance. Motor carriers that have maintained their vehicles to comply with the FHWA's requirements in effect prior to the publication of this final rule will not have to take any actions as a result of this rulemaking.

The FHWA does not agree with the ATA's comment about the need to remove the words "at any point across the full width of the member." The removal of these words would not preclude State officials from citing motor carriers for violating § 393.86 if there is minor damage to the rear impact guard. Since § 393.86 cross-references FMVSS Nos. 223 and 224, State officials can cite the motor carrier for failing to meet the referenced standards if the ground clearance exceeds 22 inches at any point across the full width of the member, irrespective of whether § 393.86 explicitly states "at any point across the full width of the member."

The FHWA intends that the rear impact guard requirements be enforced by State officials during roadside inspections and must rely on the enforcement discretion of these officials to determine if the rear impact guard has minor damage, or damage that appears severe enough to adversely affect the ability of the rear impact guard to perform its function. The FHWA did not propose enforcement tolerances and cannot as part of this final rule provide regulatory language to make the distinction between minor damage and more severe damage that would necessitate repairs or replacement of the rear impact guard. The agency believes that penalizing motor carriers for minor damage that would not adversely affect the performance of the rear impact guard serves no practical purpose and discourages States from taking such actions.

With regard to the comments about retrofitting, the FHWA does not intend to propose a retrofitting requirement for improved rear impact protection on trailers and semitrailers manufactured before January 26, 1998. The agency continues to believe there is insufficient accident, cost, and research data to support such a proposal, and that the obstacles to obtaining such data are essentially insurmountable.

The rear impact guard requirements applicable to single-unit trucks, and trailers manufactured prior to January 26, 1998, do not specify minimum strength, or energy absorption capabilities, nor do they prohibit the use of impact guards that have a ground clearance less than 762 mm (30 inches), or are closer than 61 cm (24 inches) to the rear and 45.7 cm (18 inches) to the sides of the vehicle. In addition, the current regulation allows impact guards to be constructed of more than one section provided the lateral distance between the sections does not exceed 610 mm (24 inches). As a result, manufacturers have used a number of rear impact guard designs to satisfy the FHWA's requirements.

To develop a sound technical basis for a retrofitting proposal, the FHWA would have to establish criteria for determining which of the older impact guard designs should be considered acceptable and which ones should be replaced. The FHWA would then have to estimate the total number of guards that would have to be replaced or modified, the per-unit and total cost for replacing or modifying those guards (including lost revenues while the trailer was being retrofitted), and the benefits in lives saved and injuries prevented if a certain number of vehicles were retrofitted. This is particularly difficult because some rear impact guards currently in use may meet or exceed the NHTSA's strength requirements but fail to meet dimensional or energy absorption requirements. Others may meet the dimensional requirements but fall short of the minimum strength requirements.

The FHWA indicated in its NPRM that the agency does not have test data or engineering analyses concerning the performance capabilities of the rear impact guard designs currently in use. The Interstate Commerce Commission (ICC) did not have authority to regulate vehicle and component manufacturers when it issued the first rear underride protection requirements in 1952 and, consequently, had no authority to compel manufacturers to provide technical data on their products. Also, the initial FMVSSs issued by the FHWA (before the NHTSA became a separate agency) did not include rear impact protection requirements. Therefore, the agency did not have access to this information during the relatively short period of time (between 1966 and 1970, when the NHTSA was established) in which vehicle and component manufacturers were regulated by the FHWA. Because of the lack of technical data concerning the performance capabilities of underride devices currently in use, the agency cannot prepare an accurate estimate of the costs and benefits associated with a retrofitting requirement.

The FHWA cannot determine whether the ATA's estimate of more than $1 billion dollars is accurate. However, the agency believes the cost per trailer for retrofitting impact guards is likely to be greater than the cost per trailer for installing rear impact protection on new trailers. Generally, the costs associated with retrofitting components on motor vehicles exceeds the cost of installing those components while the vehicle is being manufactured.

For the purpose of determining a lower bound of a cost range for retrofitting trailers with rear impact guards, the cost estimates provided by the NHTSA in its final rule on rear impact guards and rear impact protection and some of those used by the FHWA in its conspicuity retrofitting rulemaking may be used.

The NHTSA estimates rear impact guards meeting the requirements of FMVSS No. 223 cost approximately $128 to $148 per trailer or semitrailer (61 FR 2004, January 24, 1996). This cost includes an incremental increase (above the cost of current rear impact guards) of between $77 and $96 per guard to satisfy the rear impact guard and rear impact protection requirements.

The FHWA indicated in its NPRM concerning trailer conspicuity that the estimated costs for retrofitting approximately 1.4 million trailers with retroreflective sheeting is $339 million if a two-year phase-in period is allowed (63 FR 33611, June 19, 1998). These figures include an estimate of $144 per trailer for the value of revenues that cannot be generated while the trailer is being retrofitted. It is difficult to estimate the loss in revenues because of the variety of trailer types, the variety of motor carrier operations and the rates that are charged, and the overall manner in which some trailers are used—being left idle at the motor carrier's terminals for periods of time that may be as short as a few hours to several days.

It is acknowledged by most interested parties that the costs for retrofitting a trailer to meet the requirements of FMVSSs Nos. 223 and 224 generally would be greater than the costs of retrofitting a trailer to meet the conspicuity requirements of FMVSS No. 108. At a minimum, the time required to retrofit new underride devices would be greater than that associated with applying retroreflective tape. The result would be significantly higher labor and lost-revenue costs. The lower bound for the cost range of retrofitting would therefore exceed $339 million. This would certainly be the case if more than 1.4 million trailers were required to be retrofitted within a short timeframe.

If, as Torcomian Industries argues, the agency attempted to require retrofitting all CMVs, the lower bound for the cost range would almost certainly exceed $1 billion. The significant increase in the lower bound for the cost range would be due to the large number of single-unit trucks that would be subject to a retrofitting requirement. The number of registered trucks in 1996 (excluding Federal, State, County, and municipal trucks; truck tractors; farm trucks;

pickups; vans; sport utilities; and other light trucks) was 73,983,774, while the number of registered private and commercial trailers and semitrailers was only 4,339, 079.[1] Even if only a fraction of the registered trucks were subject to the FMCSRs—a fraction that cannot be determined accurately—the number of trucks that would have to be retrofitted would greatly exceed the number of trailers.

The FHWA believes it is inappropriate to initiate a retrofitting rulemaking when the data to develop more detailed cost estimates does not exist and cannot be generated without a massive program of economic research.

Discussion of Final Rule

Paragraph (a)(1) of § 393.86 provides a general statement of the applicability of the new rear impact guard requirements and cross references FMVSS Nos. 223 and 224. Paragraph (a)(1) also identifies the types of trailers (which are defined in § 390.5 and § 393.5) that are exempted from the new rear impact guard requirements. Paragraphs (a)(2) through (a)(5) specify the following requirements, respectively: The minimum width for the impact guard; the maximum ground clearance; the maximum distance from the rear of the vehicle to the rear surface of the impact guard; and the cross-sectional vertical height of the horizontal member of the guard. Paragraph (a)(6) specifies the certification and labeling requirements. The agency has included detailed requirements in § 393.86 (a)(2) through (a)(6) to help motor carriers quickly determine if the underride device on a newly manufactured trailer meets the NHTSA's requirements, and to assist State agencies responsible for enforcing motor carrier safety regulations.

The existing requirements (for all CMVs manufactured after December 31, 1952, except trailers or semitrailers manufactured on or after January 26, 1998) are covered under paragraphs (b)(1) through (b)(3). Paragraph (b)(1) specifies the minimum dimensions for the rear impact guard as installed on the motor vehicle. Paragraph (b)(2) requires that the impact guard must be substantially constructed and attached by bolts, welding, or other comparable means. Paragraph (b)(2) differs from the current attachment requirements in that the phrase "firmly attached" has been replaced with "attached by means of bolts, welding, or other comparable means" to make the regulations easier to understand and enforce.

[1] "Highway Statistics 1996," Federal Highway Administration, November 1997 (FHWA–PL–003).

The current language contained in paragraph (e) has been revised and included in a new paragraph (b)(3). The final rule indicates that low chassis vehicles, special purpose vehicles, and wheels back vehicles which are constructed and maintained so that the body, chassis, or other parts of the vehicle provide rear end protection comparable to an impact guard(s) conforming to the requirements of paragraph (b)(1) of § 393.86 shall be considered in compliance with the requirements.

Applicability to Canadian and Mexican Vehicles

The final rule is applicable to vehicles operated in the United States by Canada- and Mexico-based motor carriers. Although the Federal governments of Canada and Mexico have not indicated whether they intend to require rear impact guards (which meet the NHTSA standard) on newly manufactured trailers operating in their countries, the FHWA believes that it is appropriate to require such guards on foreign-based trailers manufactured on or after the effective date of the NHTSA requirements if those vehicles are operated within the United States.

Commercial motor vehicles operated in the United States by Canada- and Mexico-based motor carriers are currently required to comply with the rear underride device requirements for single-unit trucks, and trailers manufactured before January 26, 1998. The revision of § 393.86 requires that trailers and semitrailers manufactured on or after January 26, 1998, and operated by foreign-based motor carriers meet the NHTSA standards.

Although the FHWA specifically requested comments from Canada- and Mexico-based motor carriers and original equipment manufacturers that sell trailers and semitrailers for the Canadian and Mexican markets, the agency did not receive comments from such parties. The FHWA has received numerous telephone inquiries from Canada-based motor carriers and trailer manufacturers that sell trailers and semitrailers for the Canadian market. The agency advised each caller that foreign motor carriers are currently required to comply with all the requirements of part 393 and that the proposed revision of § 393.86 did not include an exception for foreign-based motor carriers. The agency also advised these companies of the process for submitting comments to the rulemaking docket and, on several occasions, sent via facsimile a copy of the NPRM to Canada-based motor carriers that were unable to access the **Federal Register** via the Internet. The agency believes that ample opportunity has been provided to foreign-based motor carriers to raise any issues which would necessitate consideration of an exception to the requirements of § 393.86 and that it is appropriate to require all motor carriers operating in the United States to comply with this rule.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866, and is significant within the meaning of Department of Transportation regulatory policies and procedures because of the substantial public interest in the prevention of rear-underride accidents involving CMVs. This rule requires that certain trailers and semitrailers manufactured on or after January 26, 1998, be equipped with rear impact protection devices meeting the requirements of FMVSS No. 223 and installed on trailers in accordance with FMVSS 224. Motor carriers are responsible for maintaining the underride protection devices on these trailers. It is anticipated that the economic impact of this requirement will be minimal because the NHTSA requires trailer manufacturers to equip new trailers and semitrailers with rear impact guards and the FHWA's rulemaking only requires motor carriers to maintain the improved underride protection devices. It is expected that the costs of repairing damaged underride devices will be the only economic burden placed upon motor carriers and that this burden generally will not exceed the costs of properly repairing underride devices on trailers manufactured prior to the effective date of the NHTSA's requirements. Accordingly, further regulatory evaluation is not necessary.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. This rule modifies the rear impact protection standards for trailers in the FMCSRs to make them consistent with the manufacturing standards in the FMVSS No. 224, which requires the installation of rear impact protection devices conforming to FMVSS No. 223 on certain newly-manufactured semitrailers and trailers. The FHWA believes that maintenance costs of the rear impact protection devices required under the new FMVSSs will be minimal. The maintenance costs only apply to small entities that have trailers that were manufactured on or after January 26, 1998, and are required to be equipped with rear impact guard protection meeting the requirements of FMVSS Nos. 223 and 224.

As of September 1996, the FHWA estimates that there were approximately 382,128 interstate motor carriers. Of these carriers, 136,360 own, term-lease or trip-lease 6 or fewer trailers (68,405 have 1 trailer, 45,770 have 2–3 trailers, and 22,185 have 4–6 trailers). The number of motor carriers that own, term-lease or trip-lease more than 6 trailers, but fewer than 21 is 21,793 (6,658 carriers have 7–8 trailers, 6,197 have 9–11 trailers, 3,887 carriers have 12–14 trailers, 2,779 carriers have 15–17 trailers, and 2,272 carriers have 18–20 trailers). If only those motor carriers that own, term-lease, or trip-lease 20 or fewer trailers are considered small entities, this rulemaking could have an economic impact on up to 158,153 small entities.

The economic impact on each of the motor carriers will vary depending on the number of trailers that the carrier would be responsible for maintaining and the severity of the damage to the rear impact guard. For the most severe level of damage (e.g., damage from a passenger car crashing into the rear of the trailer), the motor carrier would be required to replace the rear impact guard.

The Small Business Administration (SBA), which oversees agencies' compliance with the Regulatory Flexibility Act, has published guidelines to classify small business. The SBA has indicated that for entities engaged in motor freight transportation and warehousing, small businesses are those with $18.5 million or fewer dollars in annual receipts. For a private motor carrier with a principal business other than transportation that operates 20 trailers and has annual receipts of $18.5 million, the total economic impact would most likely be less than one tenth of one percent of the carrier's annual receipts. For example, if all 20 trailers had to have the rear impact guards replaced and the total costs for parts and labor for each trailer reached $1,000, the economic impact would be one tenth of one percent ($20,000/$18.5 million). Although the FHWA does not have documentation concerning the replacement costs for a rear impact guard meeting the requirements of FMVSS Nos. 223 and 224, the agency believes the costs would be less than $1,000.

Based on its analysis of impacts on small entities summarized above, the FHWA believes that this rule will affect a substantial number of small entities, but will not have a significant economic impact on these entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Unfunded Mandates Reform Act

This rule does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Paperwork Reduction Act

This document does not contain information collection requirements for the purposes of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*].

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 393

Highways and roads, Motor carriers, Motor vehicle equipment, Motor vehicle safety.

Issued on: August 26, 1999.

Gloria J. Jeff,

Federal Highway Deputy Administrator.

In consideration of the foregoing, the FHWA is amending title 49, Code of Federal Regulations, chapter III, as follows:

PART 393—[AMENDED]

1. The authority citation for part 393 continues to read as follows:

Authority: Section 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); 49 U.S.C. 31136 and 31502; 49 CFR 1.48.

2. Section 393.5 is amended by adding the definitions of "low chassis vehicle," "special purpose vehicle," and "wheels back vehicle," and by revising the definitions of "pulpwood trailer," "rear extremity," and "side extremities" (now "side extremity"), placing them in alphabetical order, to read as follows:

§ 393.5 Definitions.

* * * * *

Low chassis vehicle. (1) A trailer or semitrailer manufactured on or after January 26, 1998, having a chassis which extends behind the rearmost point of the rearmost tires and which has a lower rear surface that meets the guard width, height, and rear surface requirements of § 571.224 in effect on the date of manufacture, or a subsequent edition.

(2) A motor vehicle, not described by paragraph (1) of this definition, having a chassis which extends behind the rearmost point of the rearmost tires and which has a lower rear surface that meets the guard configuration requirements of § 393.86(b)(1).

* * * * *

Pulpwood trailer. A trailer or semitrailer that is designed exclusively for harvesting logs or pulpwood and constructed with a skeletal frame with no means for attachment of a solid bed, body, or container.

Rear extremity. The rearmost point on a motor vehicle that falls above a horizontal plane located 560 mm (22 inches) above the ground and below a horizontal plane located 1,900 mm (75 inches) above the ground when the motor vehicle is stopped on level ground; unloaded; its fuel tanks are full; the tires (and air suspension, if so equipped) are inflated in accordance with the manufacturer's recommendations; and the motor vehicle's cargo doors, tailgate, or other permanent structures are positioned as they normally are when the vehicle is in motion. Nonstructural protrusions such as taillamps, rubber bumpers, hinges

and latches are excluded from the determination of the rearmost point.

* * * * *

Side extremity. The outermost point on a side of the motor vehicle that is above a horizontal plane located 560 mm (22 inches) above the ground, below a horizontal plane located 1,900 mm (75 inches) above the ground, and between a transverse vertical plane tangent to the rear extremity of the vehicle and a transverse vertical plane located 305 mm (12 inches) forward of that plane when the vehicle is unloaded; its fuel tanks are full; and the tires (and air suspension, if so equipped) are inflated in accordance with the manufacturer's recommendations. Non-structural protrusions such as taillights, hinges and latches are excluded from the determination of the outermost point.

* * * * *

Special purpose vehicle. (1) A trailer or semitrailer manufactured on or after January 26, 1998, having work-performing equipment that, while the motor vehicle is in transit, resides in or moves through the area that could be occupied by the horizontal member of the rear impact guard, as defined by the guard width, height and rear surface requirements of § 571.224 (paragraphs S5.1.1 through S5.1.3), in effect on the date of manufacture, or a subsequent edition.

(2) A motor vehicle, not described by paragraph (1) of this definition, having work-performing equipment that, while the motor vehicle is in transit, resides in or moves through the area that could be occupied by the horizontal member of the rear impact guard, as defined by the guard width, height and rear surface requirements of § 393.86(b)(1).

* * * * *

Wheels back vehicle. (1) A trailer or semitrailer manufactured on or after January 26, 1998, whose rearmost axle is permanently fixed and is located such that the rearmost surface of the tires (of the size recommended by the vehicle manufacturer for the rear axle) is not more than 305 mm (12 inches) forward of the transverse vertical plane tangent to the rear extremity of the vehicle.

(2) A motor vehicle, not described by paragraph (1) of this definition, whose rearmost axle is permanently fixed and is located such that the rearmost surface of the tires (of the size recommended by the vehicle manufacturer for the rear axle) is not more than 610 mm (24 inches) forward of the transverse vertical plane tangent to the rear extremity of the vehicle.

* * * * *

3. Section 393.86 is revised to read as follows:

§ 393.86 Rear impact guards and rear end protection.

(a)(1) *General requirements for trailers and semitrailers manufactured on or after January 26, 1998.* Each trailer and semitrailer with a gross vehicle weight rating of 4,536 kg (10,000 pounds) or more, and manufactured on or after January 26, 1998, must be equipped with a rear impact guard that meets the requirements of Federal Motor Vehicle Safety Standard No. 223 (49 CFR 571.223) in effect at the time the vehicle was manufactured. When the rear impact guard is installed on the trailer or semitrailer, the vehicle must, at a minimum, meet the requirements of FMVSS No. 224 (49 CFR 571.224) in effect at the time the vehicle was manufactured. The requirements of paragraph (a) of this section do not apply to pole trailers (as defined in § 390.5 of this chapter); pulpwood trailers, low chassis vehicles, special purpose vehicles, wheels back vehicles (as defined in § 393.5); and trailers towed in driveaway-towaway operations (as defined in § 390.5).

(2) *Impact guard width.* The outermost surfaces of the horizontal member of the guard must extend to within 100 mm (4 inches) of the side extremities of the vehicle. The outermost surface of the horizontal member shall not extend beyond the side extremity of the vehicle.

(3) *Guard height.* The vertical distance between the bottom edge of the horizontal member of the guard and the ground shall not exceed 560 mm (22 inches) at any point across the full width of the member. Guards with rounded corners may curve upward within 255 mm (10 inches) of the longitudinal vertical planes that are tangent to the side extremities of the vehicle.

(4) *Guard rear surface.* At any height 560 mm (22 inches) or more above the ground, the rearmost surface of the horizontal member of the guard must be within 305 mm (12 inches) of the rear extremity of the vehicle. This paragraph shall not be construed to prohibit the rear surface of the guard from extending beyond the rear extremity of the vehicle. Guards with rounded corners may curve forward within 255 mm (10 inches) of the side extremity.

(5) *Cross-sectional vertical height.* The horizontal member of each guard must have a cross sectional vertical height of at least 100 mm (3.94 inches) at any point across the guard width.

(6) *Certification and labeling requirements for rear impact protection guards.* Each rear impact guard used to satisfy the requirements of paragraph (a)(1) of this section must be permanently marked or labeled as required by FMVSS No. 223 (49 CFR 571.223, S5.3). The label must be on the forward-facing surface of the horizontal member of the guard, 305 mm (12 inches) inboard of the right end of the guard. The certification label must contain the following information:

(i) The impact guard manufacturer's name and address;

(ii) The statement "Manufactured in ____" (inserting the month and year that the guard was manufactured); and,

(iii) The letters "DOT", constituting a certification by the guard manufacturer that the guard conforms to all requirements of FMVSS No. 223.

(b)(1) *Requirements for motor vehicles manufactured after December 31, 1952 (except trailers or semitrailers manufactured on or after January 26, 1998).* Each motor vehicle manufactured after December 31, 1952, (except truck tractors, pole trailers, pulpwood trailers, or vehicles in driveaway-towaway operations) in which the vertical distance between the rear bottom edge of the body (or the chassis assembly if the chassis is the rearmost part of the vehicle) and the ground is greater than 76.2 cm (30 inches) when the motor vehicle is empty, shall be equipped with a rear impact guard(s). The rear impact guard(s) must be installed and maintained in such a manner that:

(i) The vertical distance between the bottom of the guard(s) and the ground does not exceed 76.2 cm (30 inches) when the motor vehicle is empty;

(ii) The maximum lateral distance between the closest points between guards, if more than one is used, does not exceed 61 cm (24 inches);

(iii) The outermost surfaces of the horizontal member of the guard are no more than 45.7 cm (18 inches) from each side extremity of the motor vehicle;

(iv) The impact guard(s) are no more than 61 cm (24 inches) forward of the rear extremity of the motor vehicle.

(2) *Construction and attachment.* The rear impact guard(s) must be substantially constructed and attached by means of bolts, welding, or other comparable means.

(3) *Vehicle components and structures that may be used to satisfy the requirements of paragraph (g) of this section.* Low chassis vehicles, special purpose vehicles, or wheels back vehicles constructed and maintained so that the body, chassis, or other parts of the vehicle provide the rear end protection comparable to impact guard(s) conforming to the requirements of paragraph (b)(1) of this section shall be considered to be in compliance with those requirements.

[FR Doc. 99–22699 Filed 8–31–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Parts 1000, 1001, and 1004

[STB Ex Parte No. 572 (Sub–No. 1)]

Removal, Revision, and Redesignation of Miscellaneous Regulations

AGENCY: Surface Transportation Board.

ACTION: Final Rules.

SUMMARY: The Surface Transportation Board (Board) is revising and updating regulations pertaining to indexing and making documents available, and incorporating them into the Board's regulations on inspection of records. The Board is also removing seven sections from 49 CFR part 1004 that have been incorporated by the Federal Highway Administration (FHWA) into FHWA regulations, and redesignating and updating the remainder of that part.

EFFECTIVE DATE: These rules are effective October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: The Board is removing the regulations at 49 CFR part 1000, revising language from that part concerning indexing and making documents publicly available, and incorporating that revised rule into 49 CFR part 1001. We are also removing unnecessary sections of 49 CFR part 1004, and updating the remaining sections in that part.

Parts 1000 and 1001 (Availability and Indexing)

We are removing the regulations at 49 CFR part 1000, but we are also revising and updating the portions of that rule that deal with indexing and the availability of documents, and we are incorporating them into a new 49 CFR 1001.1(b). The Interstate Commerce Commission (ICC) issued the rules now found in part 1000 on June 24, 1967 (32 FR 9020) (Ex Parte No. 37) [1] in response to the passage of the Freedom of Information Act, 5 U.S.C 552 (FOIA). Under the FOIA, government records are divided into three categories: (1) Those required to be published in the **Federal Register** [section 552(a)(1)]; (2) those that must be made publicly available for inspection and copying and indexed—the so-called "reading room" documents [section 552(a)(2)]; and (3) all others that are to be furnished upon request unless an exception applies [section 552(a)(3) and 552(b)]. Rule 1000.10 implemented the section 552(a)(2) requirement that the three categories of reading room documents—final decisions, including concurring and dissenting opinions, made in the adjudication of cases; statements of policy and interpretation adopted by the agency and not published in the **Federal Register**; and administrative staff manuals and instructions to staff that affect a member of the public [sections 552(a)(2)(A), (B) and (C)]—be made available and indexed.[2]

The Electronic Freedom of Information Act of 1996, Pub. L. No. 104–231, 110 Stat. 3049 (1996) (EFOIA), amends the FOIA. Among other things, EFOIA adds a fourth category of reading room documents: records released pursuant to a request under section 552(a)(3) that have become or are likely to become the subject of a subsequent request—the so-called "subsequent request" documents [section 552(a)(2)(D)]. It also requires agencies to make available to the public a general index of subsequent request documents [section 552(a)(2)(E)] and to make that index available via computer telecommunications by December 31, 1999. In addition, EFOIA requires that all reading room documents created on and after November 1, 1996, be made available, preferably via computer telecommunications, by November 1, 1997. *Id.* [3]

Thus, section 552(a)(2) requires that we make publicly available for inspection and copying at our offices four types of documents: final decisions, policy statements, staff manuals, and subsequent request documents. Our new rule at 49 CFR 1001.1(b) provides for the availability of these documents in paper format, and it requires that those same four types of documents that were created on and after November 1, 1996, be available via computer telecommunications as well.

With respect to indexing, section 552(a)(2) provides that (a) indexes furnishing "identifying information" of the four types of documents be made available for public inspection and copying; (b) indexes be published and distributed quarterly or more frequently, unless such publication is "unnecessary and impracticable"; and (c) a general index of subsequent request documents be made available on the Internet by December 31, 1999:

> Each agency shall also maintain and make available for public inspection and copying current indexes providing identifying information for the public as to any matter issued, adopted, or promulgated after July 5, 1967, and required by this paragraph to be made available or published. Each agency shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplements thereto unless it determines by order published in the **Federal Register** that the publication would be unnecessary and impracticable, in which case the agency shall nonetheless provide copies of such index on request at a cost not to exceed the direct cost of duplication. Each agency shall make the index referred to in subparagraph (E) [a general index of subsequent request documents] available by computer telecommunications by December 31, 1999.

Beyond the statutory requirement that the index "provide[] identifying information to the public as to any matter issued * * * and required by this paragraph to be made available or published," there is little authority as to what constitutes an appropriate index. "Congress has imposed some very limited record-creating obligations with regard to indexing under the FOIA." *Kissinger* v. *Reporters Committee*, 445 U.S. 136, 152, n.17 (1980) (citation omitted). See also *Irons & Sears* v. *Dann*, 606 F.2d 1215, 1223 (D.C. Cir.

[1] The rules were originally codified at 49 CFR 100. The current part 1000 has also been revised and consists of one section, section 1000.10.

[2] Section 1000.10 also refers to the Interstate Commerce Acts Annotated (the ICAA). The ICAA was published in accordance with a 1928 Senate resolution requesting the ICC to prepare a comprehensive manuscript covering the text of laws administered by and affecting the work of the ICC, suitably annotated with digests and indexes, and to be published as a Senate document. S. Res. 17, 70th Congress, 1st Sess, January 14, 1928. Twenty-two volumes of the ICAA were published between 1930 and 1977.

Effective January 1, 1996, the ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803 (ICCTA), abolished the ICC and created the Board. Section 204(a) of the ICCTA directs the Board to rescind all regulations established by the ICC that are based on provisions of law repealed and not substantively reenacted by the ICCTA. Although the Senate Resolution was not a law, because the ICC has been abolished and the ICCTA contains no mention of an annotated compendium of laws administered by the Board, we are under no legal obligation to resurrect the ICAA (which, as noted, was last published in 1977), and the new rules delete references to the ICAA. We note that today there are many sources of information about the laws the Board implements and how we implement them, and there appears to be no reason for the Board to expend its limited resources to duplicate readily available information.

[3] The Board maintains an Electronic Reading Room at its Internet website at www.stb.dot.gov, in compliance with the EFOIA requirement that all reading room documents created on and after November 1, 1996, be accessible via computer telecommunications by November 1, 1997. All documents are available for inspection and copying from the site. We are also making available on our website FOIA annual reports. 5 U.S.C. 552(e)(2).

1979), indicating only that an agency is to "provide[] a reasonable index. * * *"

The Board issues every business day the "Surface Transportation Board Daily Releases" (Daily Releases). Each Daily Releases lists all the decisional documents issued by the Board (including documents required to be published in the **Federal Register** pursuant to section 552(a)(1)) as of 10:30 a.m. on that day.[4] These documents are categorized by the decisional body that issues them (such as the entire Board, Director of the Office of Proceedings, Chief of the Section of Environmental Analysis, Secretary). Within each of these categories, the documents are further indexed in alpha-numeric order, by an alphabetical docket prefix (such as AB for abandonment-related matters, and FD for finance matters) and docket number. The title of the case, the date the matter was decided, and the document type (decision, notice, or environmental review, for example) are also provided. Finally, a brief summary of the content of the document is given. The Daily Releases also indicate how copies of the documents can be purchased. The Board's Electronic Reading Room provides the same indexing information as contained in the Daily Releases for all decisional documents in that database.

We believe that the Daily Releases, individually and collectively, in paper and electronic format, meet the section 552(a)(2) indexing requirements for decisional documents. These issuances, which represent the bulk of the Board's section 552(a)(2) documents, contain sufficient information about all (not just final) Board decisions (including policy statements in decisional format) to permit the public to identify the underlying document. Additionally, they are available for inspection and copying at the Board's office and via the Board's Electronic Reading Room. All other reading room documents (such as staff manuals that affect the public, subsequent request documents, and any policy statement that might not be issued as a decisional document) will be available for inspection and copying at the Board's offices and via the Board's Electronic Reading Room, indexed by the date of issuance and document title.

The FOIA, 5 U.S.C. 552(a)(2), requires agencies to "publish and distribute" the indexes on at least a quarterly basis, unless an agency finds such publication to be "impracticable and unnecessary." Although we do not place the indexes in bound volumes for distribution, we believe that our practice of making all indexes conveniently available for inspection and copying and purchase satisfies the publication and distribution requirement. In the event that the publication requirement is construed to refer to bound volumes, we hereby find it unnecessary and impracticable to publish and distribute the indexes.

Part 1004

The ICCTA abolished the ICC and transferred certain of the ICC's functions and proceedings to either the Board or the Department of Transportation. Certain motor carrier functions formerly under the jurisdiction of the ICC were transferred to the Secretary of Transportation, who subsequently delegated those functions to the Federal Highway Administration (FHWA). Then, in final rules issued by the Board and FHWA, many of the regulations pertaining to these functions found in 49 CFR chapter X were transferred to and redesignated in 49 CFR chapter III. *Motor Carrier Transportation; Redesignation of Regulations from the Surface Transportation Board Pursuant to the ICC Termination Act of 1995* (61 FR 54706, Oct. 21, 1996) (*Redesignation*).

In *Redesignation*, the Board and FHWA also noted, *inter alia*, that 49 CFR part 1004 embraced matters that fell within the jurisdiction of both agencies, and that the transfer of such dual jurisdiction regulations would be effected in a separate action. Subsequently, the regulations in seven sections of part 1004 (49 CFR 1004.10 and 1004.20 to 1004.25) involving motor carrier routing and the interpretation of motor carrier operating rights were incorporated with appropriate technical changes into 49 CFR part 356 by FHWA. 62 FR 32040 (June 12, 1997). These regulations, however, were not removed from 49 CFR Chapter X. Also, the remaining two sections of 49 CFR part 1004 were not incorporated into 49 CFR Chapter III: 49 CFR 1004.10, pertaining to gifts and donations by carriers, and 49 CFR 1004.26, concerning the adjustment of claims for misrouting.

We are removing the regulations at 49 CFR 1004.2, 1004.20, 1004.21, 1004.22, 1004.23, 1004.24, and 1004.25 that have been incorporated in substance into 49 CFR part 356. These rules pertain to matters that are within the exclusive jurisdiction of FHWA .

The two remaining sections of part 1004—49 CFR 1004.10 and 49 CFR 1004.26—concern functions that are still within the Board's jurisdiction.[5] The gifts and donations regulations at 49 CFR 1004.10 were originally issued on July 24, 1969 (34 FR 12221). They were revised without substantive change in *Non-Rail Interpretations and Routing Regulations*, Ex Parte No. 55 (Sub-No. 67) (served and published in the **Federal Register** on November 22, 1988, 53 FR 47219) (*Ex Parte No. 55*).[6] We are redesignating this section as 49 CFR 1004.1 but otherwise leaving the rule unchanged.

The misrouting regulations at 49 CFR 1004.26 were originally issued in *Adjustment for Claims for Damages—Misrouting*, 319 I.C.C. 462 (1963). They were also revised without substantive change in *Ex Parte No. 55*. We are updating the regulations without making substantive changes, but we are deleting the statutory references to the statutes of limitations, and we are redesignating this section as 49 CFR part 1004.2. Finally, we are updating the authority citation while removing obsolete and unnecessary authority references.

Because these changes to Parts 1000, 1001, and 1004 either remove obsolete regulations, make revisions that are not substantive, or update rules to reflect current agency practice, we find good cause to dispense with notice and comment. 5 U.S.C. 553(b)(3)(A) and (B).

Small Entities

The Board certifies that this rule will not have a significant economic effect on a substantial number of small entities, because obsolete rules are being removed, and the changes to the remaining rules are either not substantive or reflect current agency practice.

Environment

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

[4] The Board sometimes issues "late releases," which are decisional documents served after 10:30 a.m. These documents are listed in the Daily Release for the following day.

[5] In *Revision of Authority Citations*, STB Ex Parte No. 571 (STB served Sept. 26, 1997) at 2, we "question[ed] whether the portions of part 1004 that are not obsolete are still necessary," and we indicated that we would "seek comment in a separate proceeding as to whether this rule should be maintained." We now believe that the two remaining sections of part 1004 do have relevance, although parties may petition the Board if they wish to have any portion of part 1004 removed.

[6] The Ex Parte No. 55 decision also consolidated the interpretations and routing regulations then found at 49 CFR 1041 and 1042 with the gifts and donations regulations and the misrouting regulations found in former part 1004. The final rules we are issuing will be similar to the pre-*Ex Parte No. 55* part 1004, pertaining only to gifts and donations and misrouting.

List of Subjects

49 CFR Part 1000

Administrative practice and procedure, Conflict of interests, Seals and insignia.

49 CFR Part 1001

Confidential business information, Freedom of information.

49 CFR Part 1004

Administrative practice and procedure.

By the Board, Chairman Morgan, Vice Chairman Morgan, and Commissioner Burkes.

Decided: August 23, 1999.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, of the Code of Federal Regulations is amended as follows:

PART 1000—[REMOVED]

1. Under the authority of 49 U.S.C. 721, part 1000 is removed.

PART 1001—INSPECTION OF RECORDS

2. The authority citation for part 1001 continues to read as follows:

Authority: 5 U.S.C. 552, 49 U.S.C. 702, and 49 U.S.C. 721.

3. Section 1001.1 is revised to read as follows:

§ 1001.1. Records available from the Board.

(a) The following specific files and records in the custody of the Secretary of the Surface Transportation Board are available to the public and may be inspected at the Board's office upon reasonable request during business hours (between 8:30 a.m. and 5 p.m., Monday through Friday):

(1) Copies of tariffs and railroad transportation contract summaries filed with the Board pursuant to 49 U.S.C. 13702(b) and 10709(d), respectively.

(2) Annual and other periodic reports filed with the Board pursuant to 49 U.S.C. 11145.

(3) All docket files, which include documents of record in a proceeding.

(4) File and index of instruments or documents recorded pursuant to 49 U.S.C. 11301.

(5) Surface Transportation Board Administrative Issuances.

(b) The following records, so-called "reading room" documents, are available for inspection and copying at the Board's office:

(1) Final decisions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(2) Those statements of policy and interpretations that have been adopted by the agency and are not published in the **Federal Register**;

(3) Administrative staff manuals and instructions to staff that affect a member of the public; and

(4) Copies of all records, regardless of form or format, that have been released to any person under 5 U.S.C. 552(a)(3) and that, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records.

(c) The Board maintains, and makes available for inspection and copying, indexes of the documents described in paragraph (b) of this section. Final decisions are indexed in the "Surface Transportation Board Daily Releases", which is issued by the Board every working day. This document also explains how copies of decisions can be purchased. The remaining documents are indexed as they are made available.

(d) Documents described in paragraph (b) of this section that were created on and after November 1, 1996, are indexed by service date or date of issuance and are available for viewing and downloading from the Board's Electronic Reading Room at www.stb.dot.gov, the Board's website. Final decisions are maintained in a database that is full text searchable.

4. Part 1004 is revised to read as follows:

PART 1004—INTERPRETATIONS AND ROUTING REGULATIONS

Sec.

1004.1 Gifts, donations, and hospitality by carriers.
1004.2 Misrouting, adjustment of claims.

Authority: 49 U.S.C. 721.

§ 1004.1 Gifts, donations, and hospitality by carriers.

It is unlawful for any common carrier engaged in interstate or foreign commerce to offer, make, or cause any undue or unreasonable preference or advantage to any person. Gifts or services or anything of substantial value to particular shippers or their representatives are considered violations of the law. Expenditures for such gifts may not support requests to increase carrier rates. The Board shall take appropriate enforcement action to redress such unlawful expenditures.

§ 1004.2 Misrouting, adjustment of claims.

Carriers should adjust claims for damages resulting from misrouting. Where a carrier admits responsibility for billing, forwarding, or diverting a shipment over a higher rated route than that directed by the shipper or otherwise available, the misrouting carrier should refund the difference to the shipper (or reimburse the delivering carrier, as the case may be). Where the misrouting carrier alleges justification for using the higher rated route, the Board may, at its discretion and upon appropriate petition, determine or express an advisory opinion on the lawfulness of such routing. This interpretation must not be used to evade or defeat tariff rates or to meet the rate of a competing carrier or route, nor to relieve a shipper from responsibility for routing instruction. Damages caused by misrouting are not overcharges.

[FR Doc. 99–22648 Filed 8–31–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 990506119–9236–02; I.D. 040799B]

RIN 0648–AM66

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Red Snapper Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement the approved provisions of a regulatory amendment prepared by the Gulf of Mexico Fishery Management Council (Council) in accordance with the framework procedures for adjusting management measures of the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The rule establishes a 4–fish recreational red snapper bag limit with a 0–fish bag limit for the captain (operator) and crew of a charter vessel or headboat and changes the open periods of the fall red snapper commercial season from the first 15 days of each month to the first 10 days of each month, beginning September 1 each year. The rule's intended effect is to maximize the economic benefits from the overfished red snapper resource within the constraints of the red snapper stock rebuilding program.

DATES: This final rule is effective October 1, 1999, except for the amendments to §§ 622.34(l) and 622.34(m), which are effective September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Roy E. Crabtree, 727–570–5305.

SUPPLEMENTARY INFORMATION: The reef fish fishery in the exclusive economic zone of the Gulf of Mexico is managed under the FMP. The Council prepared the FMP, which was approved by NMFS and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

In accordance with the framework procedures of the FMP, the Council recommended, and NMFS published, a proposed rule (64 FR 34756, June 29, 1999) to: Set the opening date of the recreational red snapper fishing season at March 1, beginning with the 2000 fishing year; establish a 4–fish recreational red snapper bag limit with a 0–fish bag limit for captain and crew of a charter vessel or headboat; and change the open periods of the fall red snapper commercial season from the first 15 days of each month to the first 10 days of each month, beginning September 1 each year. The Council also recommended a reduction in the minimum size limit for red snapper from 15 (38.1 cm) inches to 14 inches (35.6 cm) total length. NMFS disapproved this measure under the FMP framework procedures prior to publication of the proposed rule; the preamble to the proposed rule explained NMFS' rationale for this disapproval action. After considering the Council's proposed red snapper measures and the public comments, NMFS has approved the proposed 0–fish bag limit for captain and crew of the for-hire vessels, the 4–fish bag limit for persons not fishing under the commercial quota, and the change in the duration of the commercial fall season open periods. NMFS has disapproved the proposed delay in the opening of the recreational red snapper fishing season (see response to comment 2 under "Comments and Responses"). The preamble to the proposed rule described the need and rationale for these approved measures and also explained NMFS' rationale for disapproving the Council's recommendation to reduce the minimum size limit for red snapper to 14 inches. That information is not repeated here.

Comments and Responses

NMFS received 197 written comments on the proposed rule. A summary of the comments and NMFS' responses follow.

Comment 1: The Council requested that NMFS disapprove the 0–fish bag limit for captain and crew of for-hire vessels. The Council contends that this measure was explicitly linked with its proposal for a 4–fish bag limit and a 14–inch (35.6–cm) minimum size limit. The intent of these combined measures was to provide a substantial extension of the recreational season. The Council states that because NMFS disapproved the 14–inch (35.6–cm) minimum size limit, approval of the 0–fish bag limit for captain and crew measure would be inconsistent with its original intent.

Response: NMFS has approved the 0–fish bag limit for captain and crew of for-hire vessels based on analyses that suggest that this measure reduces catch rates by about 3 percent. The 0–fish bag limit for captain and crew, along with the 4–fish bag limit, will extend the recreational season substantially. In contrast, the 14-inch (35.6–cm) minimum size limit requested by the Council would have reduced the length of the recreational season, which is contrary to the intent of the Council, with little or no corresponding benefit to the stock.

Comment 2: One hundred ninety-four commenters opposed the delay of the start of the recreational season from January 1 to March 1. They argued that this delay would result in a 6-month closure of the recreational fishery and would cause economic hardship in the Texas tourism and hospitality industries.

Response: NMFS agrees that a delay in the opening of the recreational fishery until March 1 would cause economic hardship in areas such as South Texas that are dependent on winter tourism and that the adverse economic impact of the lost fishing days in January and February would be greatest in Texas. With a January 1 opening date, preliminary projections indicate the year 2000 fishing season would close on July 29; with a March 1 opening these analyses project an August 27 closure. Thus, the measure would extend the season further into the summer but would result in a net loss of 30 fishing days. The Council's economic analysis based on a total allowable catch of 9.12 million lb, a 5–fish bag limit, and a 15–inch minimum size limit suggests a net loss of 6,891 total fishing trips—a 1.76 percent reduction. Of these, 1,566 would be for-hire trips. While a reduction in recreational fishing effort and an extension of the season further into the summer were the intent of the Council in proposing to delay the start of the season until March 1, NMFS has disapproved this measure based upon finding it inconsistent with national standard 4 of the Magnuson-Stevens Act, which requires that the allocation of fishing privileges be fair and equitable. Approval of this measure would place an unfair economic burden on the Texas for-hire sector and would shorten the red snapper recreational fishing season.

Comment 3: Nineteen commenters supported a 4–fish bag limit; 171 commenters supported a 5–fish bag limit.

Response: NMFS believes that a bag limit of no more than 4 fish per person is necessary to reduce catch rates and extend the recreational fishing season. The Magnuson-Stevens Act requires NMFS to close the red snapper recreational fishery once the quota is caught. The Council's Socioeconomic Panel has noted that a lower bag limit with a longer season yields more economic benefits than a higher bag limit with a closure, provided the lower bag limit does not discourage anglers from fishing. Based on public testimony, the Council believes that a 4–fish bag limit would not significantly discourage anglers from fishing.

Comment 4: One individual commented on the proposed change in the duration of the commercial fall season from the first 15 days of each month to the first 10 days of each month until the fall subquota is reached. This individual believes the current commercial season has caused economic hardship in the commercial sector and suggested a continuation of the spring commercial season along with a 100–lb (45.5–kg) trip limit for the remainder of the year. This individual suggested that the fall season be eliminated if necessary to prevent exceeding the commercial quota.

Response: Trip limits to allow a red snapper bycatch were not part of the regulatory amendment submitted by the Council. The Council may wish to consider additional changes for its 2000 red snapper commercial season specifications.

Changes From the Proposed Rule

For the reasons discussed under the Response to Comment 2, NMFS has disapproved the measure delaying the opening of the recreational red snapper fishing season until March 1. That measure has been removed from this final rule.

Classification

This final rule has been determined to be significant for purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

The amendments to §§ 622.34(l) and 622.34(m) are necessary to mitigate derby fishery effects, e.g., market gluts and lower exvessel prices, and to prevent associated adverse social and economic impacts. It is essential that these amendments are effective when the fall commercial red snapper season opens on September 1, 1999. Accordingly, under authority set forth at 5 U.S.C. 553(d)(3), the Assistant Administrator for Fisheries, NOAA, finds for good cause that a 30-day delay in the effective date of those measures would be contrary to the public interest.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: August 27, 1999.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.34, the suspension of paragraph (l) is lifted; paragraph (m) is removed; and paragraph (l) is revised to read as follows:

§ 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(l) *Closures of the commercial fishery for red snapper.* The commercial fishery for red snapper in or from the Gulf EEZ is closed from January 1 to noon on February 1 and thereafter from noon on the 15th of each month to noon on the first of each succeeding month until the quota specified in § 622.42(a)(1)(i)(A) is reached or until noon on September 1, whichever occurs first. From September 1 to December 1, the commercial fishery for red snapper in or from the Gulf EEZ is closed from noon on the 10th of each month to noon on the first of each succeeding month until the quota specified in § 622.42(a)(1)(i)(B) is reached or until the end of the fishing year, whichever occurs first. All times are local times. During these closed periods, the possession of red snapper in or from the Gulf EEZ and in the Gulf on board a vessel for which a commercial permit for Gulf reef fish has been issued, as required under § 622.4(a)(2)(v), without regard to where such red snapper were harvested, is limited to the bag and possession limits, as specified in § 622.39(b)(1)(iii) and (b)(2), respectively, and such red snapper are subject to the prohibition on sale or purchase of red snapper possessed under the bag limit, as specified in § 622.45(c)(1). However, when the recreational quota for red snapper has been reached and the bag and possession limit has been reduced to zero, the limit for such possession during a closed period is zero.

* * * * *

3. In § 622.39, the suspension of paragraph (b)(1)(iii) is lifted; paragraph (b)(1)(vi) is removed; and paragraph (b)(1)(iii), is revised to read as follows:

§ 622.39 Bag and possession limits.

* * * * *

(b) * * *

(1) * * *

(iii) Red snapper—4, except that for an operator or member of the crew of a charter vessel or headboat, the bag limit is 0.

* * * * *

[FR Doc. 99–22760 Filed 8–27–99; 4:44 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 052499C]

Atlantic Highly Migratory Species (HMS) Fisheries; Large Coastal Shark Species; Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishery reopening; fishing season notification.

SUMMARY: NMFS has determined that the large coastal shark (LCS) commercial fishery quota for the second semiannual fishing season has not been reached. Therefore, NMFS notifies eligible participants that the commercial fishery for LCS in the Western North Atlantic Ocean, including the Gulf of Mexico and the Caribbean Sea, will open beginning September 1, 1999, and will close September 30, 1999, at 11:30 p.m. local time. Both the ridgeback and non-ridgeback sectors of the LCS fishery will open and close on these dates. This action is necessary to ensure adequate opportunity for eligible fishery participants to harvest the available quota and to ensure that the adjusted semiannual quota for LCS for the period July 1 through December 31, 1999, is not exceeded.

DATES: The commercial fishery for LCS will open effective September 1, 1999, and will close effective 11:30 p.m. local time September 30, 1999, and will remain closed through December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Margo Schulze or Steve Meyers, 301–713–2347; fax 301–713–1917.

SUPPLEMENTARY INFORMATION: The Atlantic shark fishery is managed under the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), and its implementing regulations found at 50 CFR part 635 issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*).

The annual commercial quota of LCS to be harvested from Atlantic, Caribbean, and Gulf of Mexico waters is apportioned between two equal semiannual fishing seasons. The second semiannual quota for LCS of 642 mt dw was reduced by the overharvest of 57 mt dw in the first semiannual fishing season such that 585 mt dw was available for harvest for the semiannual period beginning July 1, 1999.

Dealer reports and state landings summaries for the period July 1 through July 28, 1999, indicate that approximately 278.5 mt dw of the available second semiannual LCS subquota of 585 mt dw have been harvested at a rate of 9.9 mt dw per day. Approximately 306.5 mt dw of the LCS subquota have not been harvested. Therefore, given a catch rate of approximately 9.9 mt dw per day, NMFS believes that the available quota will be attained within 30 days and that a LCS commercial fishery reopening from September 1 through September 30, 1999, will allow adequate opportunity for fishermen to harvest the available quota and will ensure that the quota is not exceeded. Therefore, the LCS commercial fishery will open

beginning September 1, 1999, and will close at 11:30 p.m. local time September 30, 1999, and will remain closed through December 31, 1999. NMFS will continue to monitor landings and will close the fishery if landings indicate that the quota will be exceeded, as required under § 635.28(b).

During a closure, retention of, fishing for, possessing or selling LCS are prohibited for persons fishing aboard vessels issued a limited access permit under § 635.4. After September 30, 1999, the sale, purchase, trade, or barter of carcasses and/or fins of LCS harvested by a person aboard a vessel that has been issued a permit under § 635.4 are prohibited, except for those that were harvested, offloaded, and sold, traded, or bartered prior to the closure and were held in storage by a dealer or processor.

Commercial fishing for pelagic and small coastal sharks may continue until further notice. When quotas are projected to be reached, the AA will file notice of closure at the Office of the Federal Register. Those vessels that have not been issued a limited access permit under § 635.4 may not sell sharks and are subject to the recreational retention limits and size limits specified at §§ 635.22(c) and 635.20(d). The recreational fishery is not affected by this action.

Classification

This action is taken under 50 CFR part 635 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 26, 1999.

Gary C. Matlock

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–22672 Filed 8–26–99; 4:54 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304063–9063–01; I.D. 082699E]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock by Vessels Catching Pollock for Processing by the Inshore Component in the Bering Sea Subarea

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1999 B season pollock total allowable catch (TAC) specified to the inshore component in the Bering Sea subarea of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 26, 1999, until 1200 hrs, A.l.t., September 15, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with Section 206(b)(1) of the American Fisheries Act, 50 percent of the remainder of the pollock TAC in the BSAI after the subtraction of the allocation to the pollock Community Development Quota and the subtraction of allowances for the incidental catch of pollock by vessels harvesting other groundfish species, shall be allocated as a directed fishing allowance to catcher vessels harvesting pollock for processing by the inshore component. In accordance with § 679.20(a)(5)(i)(C)(1), the Bering Sea pollock TAC allocated for processing by the inshore component is divided into four seasonal allowances. The final 1999 amount for B season pollock in the Bering Sea subarea is 125,885 metric tons (64 FR 12103, March 11, 1999) and (64 FR 39087, July 21, 1999).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, finds that this directed fishing allowance soon will be reached. Consequently, NMFS is prohibiting directed fishing for pollock by vessels catching pollock for processing by the inshore component in the Bering Sea subarea of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent exceeding the final 1999 B season pollock TAC specified to the inshore component in the Bering Sea subarea of the BSAI. A delay in the effective date is impracticable and contrary to the public interest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 26, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service

[FR Doc. 99–22662 Filed 8–26–99; 4:47 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 169
Wednesday, September 1, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–33–AD]

Airworthiness Directives; Aircraft Belts, Inc. Model CS, CT, FM, FN, GK, GL, JD, JE, JT, JU, MD, ME, MM, MN, NB, PM, PN, RG, and RH Seat Restraint Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to revise an existing airworthiness directive (AD), applicable to Aircraft Belts, Inc. Model CS, CT, FM, FN, GK, GL, JD, JE, JT, JU, MD, ME, MM, MN, NB, PM, PN, RG, and RH seat restraint systems installed on, but not limited to, Beech Aircraft Corp., Bell Helicopter Textron, Inc., Cessna Aircraft Co., Dassault Aviation, Eurocopter Deutschland, Eurocopter France, Gulfstream Aerospace, Learjet Corp., Lockheed Aircraft Corp., and Piper Aircraft Corp. aircraft, that currently requires an inspection to ensure the locking mechanism is engaging properly, and replacing the buckle-half of the seat restraint system, if necessary. This action would allow an owner/operator (pilot) to determine if the locking mechanism is engaging properly, but would still require replacing the buckle-half of the seat restraint system, if necessary. This proposal is prompted by a determination made by the FAA that pilots may perform the one-time check, and that only affected seat restraint systems manufactured between March, 1997 and November, 1998 need to be checked. The actions specified by the proposed AD are intended to prevent failure of the seat restraint system due to the buckle assembly locking mechanism not engaging properly, which could result in the seat restraint system failing to properly secure the occupant during turbulence or landing.

DATES: Comments must be received by November 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–33–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Rob Romero, Aerospace Engineer, Airplane Certification Office, ASW–150, FAA, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5102, fax (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 98–SW–33–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 98–SW–33–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

On December 3, 1998, the FAA issued AD 98–25–10, Amendment 39–10936 (63 FR 67775, December 9, 1998), to require, within 10 hours time-in-service (TIS), a one-time inspection to ensure the locking mechanism is engaging properly, and replacing the buckle-half of the seat restraint system, if necessary. That action was prompted by manufacturer's reports of two failures of the seat restraint system that occurred in the field. That condition, if not corrected, could result in the seat restraint system failing to properly secure the occupant during turbulence or landing. Since the issuance of that AD, the FAA has re-evaluated its previous position and determined that ensuring the locking mechanism is engaging properly may be accomplished by a pilot. Additionally, since the issuance of that AD, the manufacturer has notified the FAA that only model-numbered seat restraint systems manufactured between March, 1997 and November, 1998 are affected, as opposed to those same model-numbered seat restraint systems manufactured during other years. In December, 1998, the FAA received a comment requesting the inclusion of the address of the manufacturer so that defective buckles could be returned for replacement. Defective buckles should be sent to Aircraft Belts, Inc., 2000 Anders Lane, Kemah, Texas 77565.

Since an unsafe condition has been identified that is likely to exist or develop on other Aircraft Belts, Inc. Model CS, CT, FM, FN, GK, GL, JD, JE, JT, JU, MD, ME, MM, MN, NB, PM, PN, RG, and RH seat restraint systems of the same type design, the proposed AD would revise AD 98–25–10 to require, within 10 hours TIS, a check to ensure the locking mechanism is engaging properly, and replacing the buckle-half of the seat restraint system, if necessary. The visual check required by this AD may be performed by an owner/operator (pilot), but must be entered into the aircraft records showing compliance

with this AD in accordance with sections 43.11 and 91.417(a)(2)(v) of the Federal Aviation Regulations (14 CFR sections 43.11 and 91.417(a)(2)(v)). This AD allows a pilot to perform this check because it involves only a visual check to ensure the locking mechanism is engaging properly and also allows a pilot to replace any buckle half since it is such a simple procedure.

The FAA estimates that 12,278 seat restraint systems would be affected by this proposed AD, that it would take approximately one-half work hour to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $10 per buckle half. The manufacturer has stated that it will provide the buckle half to owner/operators at no cost. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $368,340.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40114, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10936 (63 FR 67775, December 9, 1998), and by adding a new airworthiness directive (AD), to read as follows:

Aircraft Belts, Inc.: Docket No. 98–SW–33–AD. Revises AD 98–25–10, Amendment 39–10936.

Applicability: Model CS, CT, FM, FN, GK, GL, JD, JE, JT, JU, MD, ME, MM, MN, NB, PM, PN, RG, and RH seat restraint systems manufactured between March 1997 and November 1998 that are installed on, but not limited to, Beech Aircraft Corp., Bell Helicopter Textron, Inc., Cessna Aircraft Co., Dassault Aviation, Eurocopter Deutschland, Eurocopter France, Gulfstream Aerospace, Learjet Corp., Lockheed Aircraft Corp., and Piper Aircraft Corp. aircraft, certificated in any category.

Note 1: This AD applies to each seat restraint system identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For seat restraint systems that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 10 hours time-in-service after the effective date of this AD, unless accomplished previously.

To prevent failure of the seat restraint system due to the buckle assembly (buckle) locking mechanism not engaging properly, which could result in the seat restraint system failing to properly secure the occupant during turbulence or landing, accomplish the following:

Note 2: The part number (P/N) of the seat restraint system is on the identification label located on each end of the seat restraint system near the anchor point (Example: P/N MD A2626–E010). The model is designated by the first two letters of the P/N.

(a) Visually check all affected seat restraint systems to determine if the locking mechanism is engaging properly in accordance with the following:

(1) Open the lift lever of the buckle fully until it will not open any further. This will cause the locking mechanism to pivot on the pivot pin.

(2) Allow the spring to close the lift lever slowly until the lift lever is back to its at-rest position.

(3) After the lever is completely closed, examine the slot in the bottom of the buckle. The locking mechanism should be firmly seated against the edge of the slot as shown in Figure 1.

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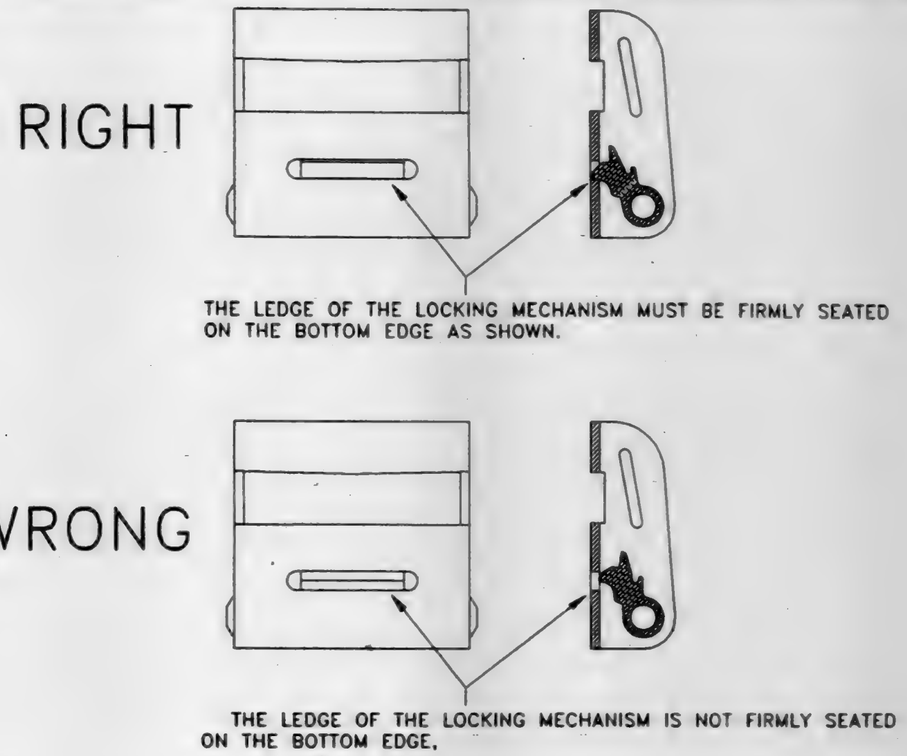

Figure 1

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(b) If the locking mechanism does not seat properly, replace the buckle with an airworthy buckle.

(c) The requirements of this AD may be performed by an owner/operator (pilot) holding at least a private pilot certificate, and must be entered into the aircraft records showing compliance with this AD in accordance with §§ 43.11 and 91.417(a)(2)(v) of the Federal Aviation Regulations (14 CFR sections 43.11 and 91.417(a)(2)(v)).

Note 3: If the seat restraint systems' locking mechanisms are found to be functioning properly after the visual check described in paragraph (a) of this AD, the following is an example of a maintenance record entry that may be used:

"AD (number), paragraph (a) complied with by visual check. Seat belt buckle locking mechanism(s) found serviceable. (Date) (Aircraft total time-in-service). (Signature) (Certificate number and type of certificate held)"

If any of the seat restraint systems' locking mechanisms are found to malfunction after the visual check described in paragraph (a), the following is an example of a maintenance record entry that may be used:

"AD (number), paragraphs (a) and (b) complied with by visual check and replacement of seat belt buckle locking mechanism(s) on (seat location(s)) with airworthy buckle(s). (Date) (Aircraft total time-in-service). (Signature) (Certificate number and type of certificate held)"

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Airplane Certification Office, FAA. Operators shall submit their requests through a FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Airplane Certification Office.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Airplane Certification Office.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on July 27, 1999.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–22774 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ANM–08]

Proposed Establishment of Class E Airspace, Glendive, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This proposal would establish a Class E En Route Domestic Airspace Area in the vicinity of Glendive, MT. The intended effect of this action is to provide controlled airspace for the development of an off-airway route between Bismarck, ND, and Glendive, MT.

DATES: Comments must be received on or before October 18, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 99–ANM–08, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 99–ANM–08, 1601 Lind Avenue SW, Renton, Washington 98055–4056: telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–ANM–08." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above, both before and after the closing date, for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) to establish a Class E En Route Domestic Airspace Area in the vicinity of Glendive, MT. this proposal is in support of an air taxi operator request to reclassify Class G uncontrolled airspace to Class E airspace for the purpose of conducting direct routing in Instrument Flight Conditions (IFR) between Bismarck, ND, and Glendive, MT. The FAA establishes Class E airspace in those areas where there is a requirement to provide IFR en route air traffic control services but the Federal airway segment is inadequate. This proposal would allow controlled airspace between the two cities, thereby allowing direct route flight and saving considerable time over present available non-direct routes.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as en route domestic airspace areas are published in Paragraph 6006 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6006 Class E airspace designated as an en route domestic airspace area

* * * * *

Glendive, MT

That airspace extending upward from 1,200 feet AGL bounded on the east by the west edge of V–493, on the south by the north edge of V–2, and on the northwest by the southeast edge of V–545.

* * * * *

Issued in Seattle, Washington, on August 18, 1999.

Daniel A. Boyle,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 99–22754 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 2

[Docket No. 97N–0023]

RIN 0910–AA99

Use of Ozone-Depleting Substances; Essential Use Determinations

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulation on the use of chlorofluorocarbon (CFC) propellants in self-pressurized containers to make it consistent with other laws. FDA is proposing to set the standard it will use to determine when the use of an ozone-depleting substance (ODS) in a product regulated by FDA is essential under the Clean Air Act. Under the Clean Air Act, FDA, in consultation with the Environmental Protection Agency (EPA), is required to determine whether the use of an ODS in an FDA-regulated product is essential. FDA is also proposing in this rule to remove current essential-use designations for products no longer marketed and for metered-dose steroid human drugs for nasal inhalation. FDA would add or remove specific essential use designations for other products by engaging in separate notice-and-comment rulemaking.

DATES: Written comments on the proposed rule should be submitted by November 30, 1999. See section V of this document for the proposed effective date of a final rule based on this document.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. See section III.B.15 of this document for electronic access addresses.

FOR FURTHER INFORMATION CONTACT: Leanne Cusumano, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

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I. Background

The United States, as a party to an international agreement called the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol) (September 16, 1987, S. Treaty Doc. No. 10, 100th Cong., 1st sess., 26 I. L. M. 1541 (1987)), has agreed to phase out production and importation of ODS's, including CFC's. The United States has generally banned the use of CFC's in consumer aerosols for decades and eliminated almost all manufacture and importation of CFC's as of January 1, 1996. The Montreal Protocol permits Parties to the Protocol to continue to produce or import CFC's for use in essential medical products upon approval by the Parties.

FDA, in consultation with EPA, determines whether a medical product is essential under the Clean Air Act. FDA lists essential medical products in § 2.125 (21 CFR 2.125). Most of the medical products listed as essential are metered-dose inhalers (MDI's). FDA will continue to designate ODS medical products such as MDI's as essential until non-ODS medical products adequately serve the needs of patients. The United States, through EPA, must apply annually to the Parties to the Montreal Protocol for a specific CFC production or importation allowance for CFC–MDI's that FDA has designated as essential. However, the United States has agreed to eventually phase out all uses of CFC's. FDA is developing a strategy to ensure that the health and safety of patients in the United States are protected during the transition away from CFC use in medical products.

In the **Federal Register** of March 6, 1997 (62 FR 10242), FDA published an advanced notice of proposed rulemaking (ANPRM) that sought public comment on transition options. One approach that FDA suggested was that ODS products be considered nonessential if: (1) Alternative product(s) is (are) being marketed (a) with the same active moiety, (b) by the same route of administration, (c) for the same indication, and (d) with approximately the same level of convenience of use compared to the product containing CFC's; (2) adequate supplies and production capacity exist for the alternative products to meet the needs of the population; (3) at least 1 year of postmarketing use data for each product are available and persuasive evidence shows patient acceptance of the alternative product(s) in the United States; and (4) there is no persuasive evidence to rebut a presumption that all significant patient subpopulations are served by the alternative product(s). FDA received almost 10,000 comments on the ANPRM, and addresses those comments later in this proposed rule.

II. Description of the Proposed Rule

FDA is proposing to make the following changes to § 2.125: (1) Use the phrase "ozone-depleting substance" instead of the word "chlorofluorocarbon" in the title and text of the regulation; (2) eliminate current § 2.125(b) because it is explanatory material that has no regulatory effect; (3) in current § 2.125(c), define the products that are subject to § 2.125 as any food, drug, device, or cosmetic that is, consists in part of, or is contained in, an aerosol product or other pressurized dispenser that releases an ODS, rather than limiting the definition to those products that use CFC's as a propellant; (4) change the designation of ODS products not listed in § 2.125(e) from adulterated and misbranded to nonessential; (5) list as separate essential uses each active moiety marketed under the current essential uses for metered-dose steroid human drugs for oral inhalation and metered-dose adrenergic bronchodilator human drugs for oral inhalation; (6) eliminate the essential-use designation in current § 2.125(e) for metered-dose steroid human drugs for nasal inhalation; (7) eliminate the essential-use designations in current § 2.125(e) for products that are no longer marketed; (8) set the standard to determine when a new essential-use designation should be added to § 2.125; (9) eliminate outdated transitional provisions in current § 2.125(g), (h), (i), (j), (k), and (l); and (10) set standards to determine whether the use of an ODS in a medical product remains essential.

A. Major Changes From the ANPRM

This proposed rule contains many changes from the ANPRM. FDA is proposing these changes in response to comments received and as the agency's thinking on the issue evolved. This document discusses in detail the changes and the reasons for the changes. FDA is highlighting the following major components here to allow for a clearer understanding of the proposed rule:

1. The agency is not proposing to use a therapeutic class approach as discussed in the ANPRM. FDA proposes to use a moiety-by-moiety approach to determine whether the use of an ODS in a medical product remains essential. An active moiety is the part of a drug that makes the drug work the way it does. Many different drug products may be marketed with the same active moiety.

21 CFR 314.108(a) defines active moiety as "the molecule or ion, excluding those appended portions of the molecule that cause the drug to be an ester, salt (including a salt with hydrogen or coordination bonds), or other noncovalent derivative (such as a complex, chelate, or clathrate) of the molecule, responsible for the physiological or pharmacological action of the drug substance."[1]

2. FDA is proposing to require more than one acceptable non-ODS alternative per an active moiety to be marketed before FDA would consider removing an essential use designation for the same active moiety if that active moiety is represented by multiple products or multiple strengths.

3. FDA had planned to publish a separate proposed rule to reorganize and update § 2.125 and to change the criteria for adding new essential use listings. FDA has decided not to publish a separate proposed rule. FDA combined the proposals into this proposed rule to prevent confusion and to present all proposed revisions to § 2.125 in the same proposed rule.

B. "Ozone-Depleting Substance" Versus "Chlorofluorocarbon"

FDA is proposing to use the term "ozone-depleting substance" instead of the word "chlorofluorocarbon" in § 2.125. The use of the term "ozone-depleting substance" would bring § 2.125 into conformity with other Federal laws governing ODS's. The term would be defined by cross-reference to the list of substances subject to control under the Clean Air Act (40 CFR part 82, subpart A, appendices A and B). The Clean Air Act contains comprehensive lists of chemical substances considered by EPA to be ozone-depleting. CFC's are only one of the many ODS's listed by EPA. If the change from the term CFC to ODS does bring additional products within the scope of § 2.125, manufacturers of those products must seek an essential-use exemption under § 2.125 in compliance with the Clean Air Act. However, FDA believes the only ODS's released by FDA-regulated products are the CFC's released by drug products already listed in § 2.125(e). Accordingly, the agency does not believe that this change will have any substantive effect on FDA regulated products in use today.

C. Elimination of Current § 2.125(b)

The agency is proposing to eliminate current § 2.125(b), which describes the effects of CFC's on the atmosphere. This explanatory material has no regulatory effect.

D. Removal of the Term "Propellant"

FDA is proposing to eliminate the definition of propellant under current § 2.125(a) because the word is not used in the proposed regulation. The agency is proposing to define the products that are subject to § 2.125 as any food, drug, device, or cosmetic that is, consists in part of, or is contained in, an aerosol product or other pressurized dispenser that releases an ODS, rather than limiting the application of § 2.125 to the use of a CFC as a propellant in a self-pressurized container. This definition is intended to encompass all products that are regulated by FDA.

E. Change to Essentiality Determinations

FDA proposes to change the adulterated and misbranded provisions of current § 2.125(c). Current § 2.125(c) states that any CFC product not found in § 2.125(e) is adulterated and/or misbranded in violation of the Federal Food, Drug, and Cosmetic Act (the act). FDA is proposing to make § 2.125 correspond with its authority under the Clean Air Act to determine whether an ODS product is essential. FDA notes that EPA is responsible for enforcing the provisions of the Clean Air Act. However, FDA is not stating by its removal of the adulterated and/or misbranded provision from § 2.125 that a nonessential ODS product is not adulterated or misbranded. Such products are still adulterated and misbranded under the act.

Current § 2.125(c) will become § 2.125(b) once current § 2.125(b) is eliminated.

F. Listing of Active Moieties

FDA is proposing to reorganize the list of essential uses for metered-dose steroid human drugs for oral inhalation (current § 2.125(e)(2))[2] and metered-dose adrenergic bronchodilator human drugs for oral inhalation (current § 2.125(e)(3)). FDA is proposing to list separately each currently marketed active moiety designated as essential in proposed § 2.125(e)(1) and (e)(2). This reorganization would not change the essential-use listings substantively. Any person wishing to market a product not listed in § 2.125 that uses an ODS would need to petition the agency under proposed § 2.125(f) to have the use of the active moiety added to § 2.125.

G. Metered–Dose Steroid Human Drugs for Nasal Inhalation

FDA is proposing to remove the essential-use designation in current § 2.125(e)(1) for metered-dose steroid human drugs for nasal inhalation. FDA bases this proposal on the following: (1) Adequate alternative non-ODS products for steroid human drugs for nasal inhalation are currently available, including metering atomizing pumps for administering nasal corticosteroids, other nonsteroidal nasal topical therapies, and systemic therapies; (2) patients use the alternative products on a widespread basis; and (3) these alternative products have been and continue to be produced and supplied at sufficient levels to meet patient needs. FDA notes that, unlike other ODS medical products currently being marketed, the diseases for which these products are indicated are not life threatening and the Parties to the Montreal Protocol no longer grant essential-use allocations for nasal steroids. FDA also notes that only the three active moieties beclomethasone, budesonide, and triamcinolone are marketed as CFC-nasal steroids. Beclomethasone and triamcinolone are also marketed in non-CFC formulations.

H. Products No Longer Marketed

FDA proposes to remove the essential-use designations listed in current § 2.125(e)(4), (e)(6), (e)(7), and (e)(9), respectively, for the following no longer marketed ODS products: (1) Contraceptive vaginal foams for human use; (2) intrarectal hydrocortisone acetate for human use; (3) polymyxin B sulfate-bacitracin zinc-neomycin sulfate soluble antibiotic powder without excipients, for use on humans; and (4) metered-dose nitroglycerin human drugs administered to the oral cavity. These drug products are either no longer being marketed or are no longer being marketed in a formulation containing CFC's (see section II.K of this document).

I. Petitions to Add New Essential Uses

FDA believes that it would be inappropriate to add new essential uses to § 2.125 in all but the most extraordinary circumstances because of the relatively near-term phaseout of the production and importation of ODS's.

FDA is proposing to require compelling evidence in support of a petition for a new essential use. For purposes of this proposed rule, compelling evidence is evidence sufficient to establish with reasonable scientific certainty the truth of the matter asserted. The evidence should be detailed and capable of scientific analysis and discussion. Unsupported, conclusory statements are not compelling evidence. Because the Clean Air Act mandates an opportunity for public comment before FDA makes a determination of essential use, a petitioner must disclose all relevant information in a petition filed under proposed § 2.125. Such information will become publicly available.

1. Commercially Marketed Drugs

FDA is proposing to limit initiation of rulemaking to establish a new essential use for those noninvestigational products for which compelling evidence shows: (1) Substantial technical barriers exist to formulating the product without ODS's; (2) the product will provide an unavailable important public health benefit; and (3) use of the product does not release cumulatively significant amounts of ODS into the atmosphere or the release is warranted in view of the unavailable important public health benefit.

This new standard would apply to all requests for essential-use exemptions submitted after the effective date of the final rule.

2. Investigational New Drugs

FDA is proposing to amend § 2.125 to remove paragraphs (i) and (j) and to revise paragraph (f) to provide a process for adding investigational uses to § 2.125(e). FDA would permit investigational use of an ODS medical product if compelling evidence shows: (1) Substantial technical barriers exist to formulating the investigational product without ODS's; (2) a high probability that the investigational product will provide an unavailable important public health benefit; and (3) use of the investigational product does not release cumulatively significant amounts of ODS into the atmosphere or the release is warranted in view of the high probability that the investigational product will provide an unavailable important public health benefit.

Although FDA regulations at current § 2.125(j) allow an investigational drug product sponsor to collect data to demonstrate that a CFC use is essential upon a lesser showing than that required under current § 2.125(f),[3] the sponsor is not permitted by EPA regulations to obtain CFC's until the sponsor's proposed use is listed in § 2.125(e). This has prevented any investigational new drug use from being added to current § 2.125(e) as an essential use.

FDA would decide whether an investigational use should be added to § 2.125(e) in response to a citizen petition submitted under § 10.30 (21 CFR 10.30) and after notice-and-comment rulemaking. If FDA amended proposed § 2.125(e)(4) to include an investigational use, that determination would not allow commercial manufacture and marketing of an ODS product. A sponsor would need to file a separate petition under § 2.125(f)(1) to provide for a new essential-use determination for commercial marketing of the ODS product.

3. Evidence to Support New Essential Uses for Investigational and Noninvestigational Products

First, the petitioner must demonstrate through compelling evidence that substantial technical barriers exist to formulating the product without ODS's. Generally, FDA intends the term "technical barriers" to refer to difficulties encountered in chemistry and manufacturing. A petitioner would have to establish that it evaluated all available alternative technologies and explain in detail why each alternative was deemed to be unusable to demonstrate that substantial technical barriers exist. Alternative technologies not suitable for use by general patient populations may be suitable for use in a clinical investigation due to the increased medical supervision provided and the limited use of the investigational new drug (see FDA Response to Biovail Citizen Petition, Docket No. 95P–0045). Also, if a petitioner shows that the cost of using

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[1] For purposes of this proposed rule, an essential use for an active moiety would cover all enantiomers of molecules containing the active moiety, as well as racemic and nonracemic mixtures of those enantiomers. In cases where an enantiomer has substantial clinical differences from the racemate, a petition could be submitted under proposed § 2.125(f) to list the use of the enantiomer as a new essential use.

Stereoisomers are molecules that have the same constitution (i.e., molecular formula and chemical connectivity), but differ in the spatial orientation of the atoms. When two stereoisomers are mirror images, but are not superimposable upon each other (like left and right hands), they are referred to as enantiomers. Enantiomeric molecules are identical in all physical and chemical properties, except in an environment that is also chiral (characterized by handedness). Polarized light is such an environment, and pairs of enantiomers rotate the plane of polarization by equal amounts in opposite directions. Enantiomers may be either right-handed (dextro-rotary) S(+)-isomers or left-handed (levo-rotary) R(-)-isomers. Racemates are equimolar mixtures of enantiomers of the same molecule. See 62 FR 2167, January 15, 1997, for additional explanation.

[2] FDA proposes to use the term corticosteroids rather than the general term steroids to describe the marketed metered-dose steroid human drugs for nasal and oral inhalation.

[3] Under current § 2.125(j), a sponsor may use a CFC product under an investigational new drug application (IND) if the sponsor explains why a CFC propellant is used in the product rather than another propellant or another dosage form, the benefit the investigational product is believed to have, and the benefit the sponsor hopes to demonstrate by the studies.

Under current § 2.125(f), a sponsor cannot market a CFC product unless the sponsor demonstrates that there are no technically feasible alternatives to the use of a CFC in the product; that the product provides a substantial health benefit, environmental benefit, or other public benefit that would not be obtainable without the use of the CFC; and that the use does not involve a significant release of CFC's into the atmosphere or that the release is warranted in view of the consequence if the use were not permitted.

a non-ODS in a product is prohibitively high in comparison to the cost of using an ODS, the agency might consider cost as a technical barrier.

Second, the petitioner for a new essential use for a noninvestigational product must include in their petition compelling evidence of an unavailable important public health benefit. For investigational products, FDA proposes requiring a petitioner to provide compelling evidence that there is a high probability that the investigational product will provide an unavailable important public health benefit. "High probability" means that it is substantially more likely than not that the investigational product will provide an unavailable important public health benefit.

The agency intends to give the phrase "unavailable important public health benefit" a markedly different construction from the current phrase "substantial health benefit." A petitioner should show that the use of an ODS would save lives, significantly reduce or prevent an important morbidity, or significantly increase patient quality of life to support a claim of important public health benefit. A petitioner should also show that patients cannot access non-ODS products and that no technology is readily available to produce and distribute non-ODS products. In unusual cases, FDA might accept a showing of nonclinical health benefit, such as the safety of the health care practitioner using the product.

Third, the proposed new criteria require a showing supported by compelling evidence that the use of the product does not release significant amounts of ODS into the atmosphere or that the release is warranted in view of the important public health benefit.[4] A petitioner should submit a well-documented statement of the number of products to be manufactured and the amount of ODS to be released by each product.

J. Elimination of Outdated Transitional Provisions

FDA is proposing to eliminate § 2.125(h). Section 2.125(h)(1) is an out-of-date transition provision requiring the submission of new drug applications (NDA's) for products without an NDA but covered under § 2.125. Section 2.125(h)(2) describes which drug products may be the subject of an abbreviated new drug application (ANDA). This provision predates passage of the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the Hatch-Waxman Amendments). The Hatch-Waxman Amendments and regulations implementing the Hatch-Waxman Amendments govern the generic drug approval process and have rendered § 2.125(h)(2) out of date. FDA is proposing to eliminate § 2.125(g), (k), and (l) because they are also transition provisions.

Section 2.125(d) is reserved in this proposal so that proposed § 2.125(e) will correspond to current § 2.125(e), which is cross-referenced in 40 CFR 82.66.

K. Determinations of Continued Essentiality

In § 2.125(g), FDA proposes criteria to determine whether an essential-use designation should be removed from § 2.125(e).

Under proposed § 2.125(g)(1), FDA would propose to remove an active moiety from the essential-use list (§ 2.125(e)) if it were no longer marketed in an ODS formulation. FDA believes failure to market indicates nonessentiality because the absence of a demand for the product sufficient for even one company to market it is highly indicative that the use is not essential.

Under the proposed second criterion, after January 1, 2005, FDA could find a CFC product containing a particular active moiety nonessential if the product no longer met the essential-use criteria (§ 2.125(f)). Even if all current essential-use moieties are not reformulated, sufficient alternative products may exist in the future to fully meet the needs of patients. FDA would designate any remaining CFC products as nonessential. FDA would consult with an advisory committee and provide the opportunity for public comment before making such a determination.

Under proposed § 2.125(g)(3) and (g)(4), an ODS product would remain essential until: (1) A non-ODS product(s) with the same active moiety is(are) marketed with the same route of administration, for the same indication, and with approximately the same level of convenience of use; (2) supplies and production capacity for the alternative(s) exist or would exist at levels sufficient to meet patient need; (3) at least 1 year of U.S. postmarketing data exist; and (4) patients who medically require the ODS product are adequately served by available alternatives.

In addition, under § 2.125(g)(4), an active moiety containing ODS that is marketed under more than one NDA or marketed in multiple strengths would not be removed from the essential-use list unless at least two non-ODS products with the same active moiety were marketed. FDA anticipates that ODS products of the same active moiety marketed in distinct strengths will need to be replaced by non-ODS products of the same active moiety with more than one strength.

In evaluating indications, FDA will require a non-ODS alternative to have a broader indication or (an) identical indication(s) to that of the ODS product containing the active moiety to be removed from the list of essential uses, except for minor wording changes that do not materially change the meaning of the indication.[5]

In evaluating whether an alternative has approximately the same level of convenience of use, FDA will consider whether the product has approximately the same or better portability and requires approximately the same amount of or less preparation before use as the ODS product containing the same active moiety. FDA is aware that the MDI is the most widely used delivery system for administering drugs by oral inhalation for the treatment of asthma, chronic obstructive pulmonary disease (COPD), and other respiratory diseases. Physicians and patients value the compact size and ease of use of MDI's. At present, FDA considers non-ODS MDI's and multiple-dose dry powder inhalers (DPI's) to have approximately the same level of convenience of use as MDI's.[6] FDA does not consider single-dose DPI's currently marketed in the United States to have the same level of convenience of use as CFC–MDI's because patients must carry the device and a supply of the drug and must load the device prior to each use. Manufacturers may develop additional products that FDA will evaluate on a case-by-case basis to determine whether the products have approximately the same level of convenience of use as MDI's.

In evaluating whether supplies and production capacity for the non-ODS product(s) exist or will exist at levels sufficient to meet patient need, FDA will consider whether a manufacturer of a non-ODS alternative is able to manufacture the non-ODS alternative in sufficient quantities to satisfy patient demand once the ODS product containing the same active moiety is no longer marketed. FDA expects that the non-ODS product will be manufactured at multiple manufacturing sites if the ODS product was manufactured at multiple manufacturing sites. FDA will always work to ensure that no harm to the public health of the United States occurs because of drug product shortages during the transition to non-ODS products.

In evaluating postmarketing data, FDA will look at a composite of all available information. FDA expects to see data showing the acceptance of a non-ODS product in widespread use outside of controlled trials and in subgroups not represented adequately in the clinical trials that served as the basis for marketing approval. FDA will also look for information on device performance in uncontrolled settings, tolerability of products in widespread use, unusual adverse reactions not previously identified in premarketing studies, and effectiveness in broader patient populations.

FDA will evaluate whether patients who medically require the ODS product are adequately served by available alternatives by determining whether adequate safety, tolerability, effectiveness, and compliance exist for the indicated populations and other populations known to medically rely on the ODS product.

FDA will encourage sponsors to obtain postmarketing use data and to assess the safety, effectiveness, tolerability, and patient acceptance of possible alternatives in postmarketing clinical studies. In particular, FDA will encourage sponsors to seek data regarding patient subpopulations not fully represented in premarketing clinical trials. FDA will also evaluate data on acceptance, device performance, tolerability, adverse events, and effectiveness by using postmarketing studies and postmarketing use and surveillance data, including FDA's MEDWATCH data. Health professionals who monitor for and report serious adverse events and product problems to FDA either directly or through the manufacturer are integral to this process. MEDWATCH makes it easier for health professionals to report adverse events and product problems to FDA by operating a single system for reporting. The MEDWATCH program is supported by over 140 organizations, representing health professionals and industry, that have signed on as MEDWATCH Partners to help achieve these goals.

CDER's Office of Post-Marketing Drug Risk Assessment actively analyzes MEDWATCH data on adverse drug reaction reports from hospitals, health care providers and lay persons to identify Adverse Drug Reaction patterns that might indicate a public health problem (a "signal"). FDA staff trained in the analysis of these data critically and individually review the reports of serious adverse events to detect serious unlabeled reactions. FDA staff epidemiologists and the relevant review division evaluate these signals for further action.

In addition, FDA will consider foreign data supportive of U.S. postmarketing use data if U.S. and foreign formulations, patient populations, and clinical practices were the same or substantially similar. FDA will monitor events related to the transition to non-ODS alternatives in other developed nations for any information relevant to the U.S. transition, including information regarding the safety, effectiveness, tolerabiltiy, performance, and patient acceptance of non-ODS alternative products.

In addition, the public will have the opportunity to comment on the acceptability of alternatives before FDA removes the essential use designation for any particular active moiety. FDA encourages health care professionals and patients to submit medically significant data based on actual use regarding the acceptability of alternatives and whether alternatives adequately serve patient subpopulations.

FDA will also consider whether a high-priced non-ODS product is effectively unavailable to a portion of the patient population because they cannot afford to buy the product.

III. Comments on the ANPRM

FDA received 9,596 comments on the ANPRM. FDA categorized the comments as general comments about the ANPRM and specific comments on the proposed criteria for phaseout. Unless otherwise noted, the comments address the criteria FDA proposed to use to determine when to eliminate the essential-use designations for metered-dose steroid human drugs for oral inhalation and metered-dose adrenergic bronchodilator human drugs for oral inhalation.

A. General Comments About the ANPRM

FDA received 8,979 general comments about the ANPRM. The general comments were submitted by 7,371 users of MDI's, 1,015 parents of MDI users, 847 relatives of MDI users, 417 health care professionals, 160 organizations, 3 industry members, 1 consultant, and 42 government entities. Many comments fell within multiple submitter categories.

1. Approximately 4,000 of these comments expressed general opposition to the phaseout of CFC–MDI's. The Clean Air Act requires the phaseout of CFC–MDI's, when they are no longer essential.

FDA is issuing this proposed rule as part of a transition process to ensure that the phaseout is safe for the users of MDI's. FDA expects CFC–MDI's to remain on the market until FDA determines under the criteria in this proposed rule that safe and effective alternatives exist.

2. More than 1,400 comments asked that the agency not remove MDI's until alternatives are available. Nearly 800 comments requested that the agency not remove any MDI's until alternatives exist for all CFC–MDI's.

The agency will not remove essential-use designations for MDI's until sufficient alternatives are available to serve the patients who require these CFC–MDI's. This was the intent of the ANPRM, and is the mandate under the Clean Air Act and the Montreal Protocol. However, the agency cannot require companies to produce a non-CFC product for every CFC–MDI currently marketed. Accordingly, the agency cannot guarantee that every CFC–MDI on the market today will be replaced by a non-CFC product containing the same active moiety. However, users of CFC–MDI's not replaced by non-CFC products with the same active moiety could use other non-CFC alternatives. Thus, there may be a time, even if all currently available CFC–MDI's are not replaced by non-CFC products with the same active moiety, that the use of CFC's in MDI's would no longer be essential. The public will have the opportunity to comment on all essential use designations and the removal of any designation.

3. Over 500 comments asked that the agency proceed cautiously.

The agency is proceeding with full caution. To obtain the largest possible number of public comments, the agency first published an ANPRM before proceeding with rulemaking. FDA is now in rulemaking, a process that includes publishing this proposed rule, receiving and incorporating further comments on the proposal, and issuing a final rule. As proposed, the final rule would not phase out any CFC–MDI for the treatment of COPD or asthma. Rather, the final rule will finalize the criteria by which FDA will determine whether to begin rulemaking to eliminate an essential use because of the existence of acceptable non-CFC alternative products. Any such rulemaking would provide to the public the opportunity for further comment.

[4] The petitioner must show only a high probability of an important public health benefit for an investigational product.

[5] For example, the non-ODS product could be indicated for treatment of asthma and chronic obstructive pulmonary disease (COPD), whereas the ODS product might only be indicated for asthma.

[6] Although multiple-dose DPI's may offer a similar level of convenience of use, FDA is not at this time proposing that they meet the other criteria in § 2.125(g) necessary to qualify as acceptable alternatives.

4. Over 1,500 comments stated that there are problems switching between products, and about 600 comments requested a long transition period. About 1,000 comments stated that MDI's provide benefits unavailable with alternatives.

FDA is working to ensure that the patient's transition from CFC to non-CFC products is as easy as possible. The agency wants patients to have adequate time to find acceptable replacement products. In recognition of the fact that MDI's provide certain benefits not available with some current alternatives, the agency is proposing to require that an alternative have the same route of delivery, indication, and approximate level of convenience of use as a CFC–MDI.

5. More than 900 comments expressed concern about the cost of replacement products and the removal of generics.

As part of any subsequent proposed rule to eliminate an essential-use listing for a CFC–MDI, FDA will consider the cost of alternative products in determining whether patients are adequately served by the non-ODS products.

6. Approximately 890 comments did not discuss the ANPRM, 21 comments were indecipherable, 2 comments were abusive or insulting, and 1 comment was threatening.

FDA will not address these comments.

7. Numerous comments focused on the environmental impact of CFC use. About 1,700 comments stated that MDI's are responsible for minimal amounts of CFC's, 117 comments said that there was no proof that CFC's harm the environment, 10 comments said they wanted MDI's to remain on the market regardless of the effect on the environment, 254 comments said FDA should focus on other sources of CFC's, 271 comments said FDA should focus on consumer aerosols, 743 comments said FDA should focus on other environmental problems, and 400 comments said that MDI's do not release CFC's into the atmosphere because they are inhaled.

Through the Clean Air Act and the Montreal Protocol, the United States has committed to eliminate the use of all CFC's, including use of CFC's in MDI's when no longer essential. The agency notes that EPA has found the release of CFC's to be harmful. MDI's do release CFC's into the atmosphere after inhalation because the vast majority of the aerosol puff released is CFC, and the CFC contained in each puff is either directly released into the atmosphere or inhaled and subsequently exhaled by the patient. The agency also notes that, for nearly two decades, no consumer aerosols other than CFC–MDI's and other products listed in § 2.125 have been allowed to use CFC's in the United States.

B. Specific Comments on the ANPRM

FDA received a number of specific comments on the phaseout criteria proposed in the ANPRM. The agency categorized the comments and responds to them in the following section of this document.

1. Number of Alternatives Proposed

In the ANPRM, FDA sought comments on phasing out CFC–MDI's using either a therapeutic class approach or a moiety-by-moiety approach. Under the therapeutic class approach, FDA would eliminate the essential-use designation for a class of CFC–MDI's once three acceptable non-CFC alternatives existed for the class. FDA would require two of the three alternatives to contain different active moieties. Under the moiety-by-moiety approach, FDA would eliminate the essential-use designation for an active moiety's CFC–MDI's once at least one acceptable non-CFC alternative existed that contained that active moiety.

8. Five comments requested that FDA phase out a CFC product once one non-ODS product was on the market. One comment requested that the agency allow phaseout only if there were a non-ODS product for each active moiety. One comment said it was very important that the non-ODS product contain the same active moiety.

FDA is proposing to use the moiety-by-moiety approach overall. However, FDA notes that some companies are unlikely to reformulate their CFC products into non-ODS products because of economic considerations. Some manufacturers of CFC–MDI's with small market shares have already stopped marketing their products. Therefore, in addition to using the moiety-by-moiety approach, FDA is proposing a process to remove products from the essential-use list if the products are no longer marketed or, after January 1, 2005, if available non-ODS products fully meet the needs of patients who previously required the product on the essential-use list.

9. One comment requested that FDA phase out long-acting CFC–MDI's but permit rescue inhalers to remain on the market as CFC–MDI's.

U.S. law does not permit CFC use to continue once acceptable alternatives exist. FDA is proposing this rule to protect the public health by setting criteria designed to ensure that adequate treatments exist throughout the CFC phaseout.

10. One comment asked that FDA not allow a phaseout until there are at least three or more non-CFC containing alternatives.

FDA is proposing to require that at least one acceptable alternative for each active moiety be marketed before elimination of an essential-use designation. This means that many alternatives representing many different active moieties will exist before the transition to non-ODS products is complete.

11. Four comments stated that two different active moieties within a therapeutic class were not sufficient, but did not explain why or offer an alternative number. One comment stated that the therapeutic class approach would not permit sufficient alternatives to serve all patient subgroups because it would reduce the number of products available once three non-CFC products were available. Nine comments claimed that there are medically significant differences among individual members within the therapeutic classes of drugs proposed by FDA. One comment stated that the various short-acting beta-2 agonists on the market such as albuterol, terbutaline, and pirbuterol are essentially identical. One comment asked that no CFC products be removed until 75 percent of all products had been replaced, but did not provide a justification for using an exact percentage. Six comments stated that the proposal to eliminate all CFC products within a class once two alternatives were on the market could lead to a situation in which no high-potency formulations, such as fluticasone propionate, were available. The comments noted that the high-potency formulations are more convenient to use because they require fewer puffs per dose. One comment asked that FDA require one low-, one medium-, and one high-potency inhaled steroid to maintain asthma control and compliance. One comment requested that FDA ensure that alternatives existed for not only fast-acting MDI's, but also corticosteroids. One comment requested that inhaled salmeterol not be banned without an exact replacement. One comment stated that 30 percent of patients using inhaled corticosteroid use Aerobid, yet Aerobid could be deemed nonessential if three other products reach the market first.

After careful consideration of the public comments, FDA has decided not to propose to use the therapeutic class approach. Rather, FDA is proposing to use a moiety-by-moiety approach. This means that FDA would not propose eliminating the essential use for an active moiety unless patients had access to the same active moiety in at least one non-ODS product. FDA is proposing to require at least two different non-ODS products for an active moiety if an active moiety is marketed under multiple NDA's or exists in multiple strengths.

12. Three comments requested that more than one alternative for albuterol exist before phaseout of albuterol CFC–MDI's.

FDA is proposing to require at least two acceptable alternative non-CFC products for all active moieties manufactured under multiple NDA's from multiple sponsors, including albuterol, before it will consider eliminating the essential use designation for that active moiety.

13. Two comments stated that not all short-acting bronchodilators or inhaled steroids are therapeutically equivalent. One comment requested that the agency require well-documented bioequivalency before CFC–MDI's are removed from the market. One comment requested that FDA demonstrate that all products within a class are substitutable for all patient subpopulations. One comment suggested considering safety and efficacy, potency, delivery to target, bioavailability, and bioequivalence in evaluating replacements.

The agency will evaluate safety and efficacy, potency, product quality, and bioavailability in the course of evaluating new non-CFC products for approval, as it does in evaluating all new drugs. The agency agrees that not all drugs for the treatment of asthma and COPD are therapeutically equivalent or bioequivalent. However, drugs need not be strictly therapeutically equivalent or bioequivalent to each other to provide effective alternative treatment for a disease. It is not the agency's goal to replace CFC–MDI's with only bioequivalent non-ODS products. Rather, it is the agency's goal to ensure that adequate acceptable alternatives exist to meet the needs of patients who have relied on CFC–MDI's.

14. One comment stated that there are few scientific studies that demonstrate the equivalent doses between different inhaled corticosteroid preparations.

FDA agrees that such data are for many reasons lacking for the currently available CFC products. FDA is encouraging sponsors of alternative products to submit clinical trials with comparator arms using a currently available CFC formulation to provide data to assess comparability of clinical effects.

15. One comment stated that anti-inflammatories, also called corticosteroids, are the mainstay of asthma control, and therefore FDA should not phase out CFC corticosteroids until there are sufficient non-CFC corticosteroids.

As explained previously, FDA is not proposing to eliminate the essential-use designation for any individual active moiety until at least one non-CFC alternative exists that contains the same active moiety or, after January 1, 2005, until adequate alternatives exist, as described in proposed § 2.125(g).

16. Five comments stated that over-the-counter (OTC) epinephrine-containing bronchodilator drugs should not be given an essential-use exemption. Of those comments, one stated that FDA's assertion that OTC medications are used only by the poor or those without access to medical care was not supported by their research. One comment stated that OTC–MDI's are relied upon by people who do not choose traditional medicine or who do not have access to medical care.

Epinephrine CFC–MDI's are manufactured under multiple NDA's. FDA will evaluate the essentiality of epinephrine the same way it will evaluate the essentiality of all active moieties manufactured under multiple NDA's. As explained previously, FDA is not proposing to eliminate the essential-use designation for any individual active moiety marketed under multiple NDA's until at least two non-CFC alternatives exists that contain the same active moiety or, after January 1, 2005, until adequate alternatives exist, as described in proposed § 2.125(g).

17. Two comments stated that the use of spacers may affect the delivery and effectiveness of new drugs. One of the comments stated that even with the same drug and dose, different delivery systems could result in different distribution of particle size with different spacers and, therefore, different patterns of deposition in the lung and different effectiveness levels. The other comment stated that in the case of albuterol, the actuator orifice with the CFC-based product is 0.022 inch while the hydrofluoroalkanes (HFA) orifice is 0.009 inch, with both canisters having the same internal pressure. The comment stated that the difference in orifice size results in significant differences in aerosol characteristics when used with an improperly sized adaptor and requested that the manufacturers of adapters be provided adequate time to modify their products to accommodate the new, HFA-based preparations.

FDA agrees that interactions between spacers and non-ODS–MDI's and CFC–MDI's may differ, given the different pharmaceutical properties of these products. However, spacers and holding chambers are usually approved for general use rather than for use with specific products. A patient decides with his or her health care practitioner whether to use such a device with an MDI, regardless of whether the MDI is a CFC–MDI or a non-CFC alternative.

2. Specific Comments on the Proposed Criteria for Phaseout

18. One comment requested that FDA compress the time it takes to develop a final regulation and to phase out nonessential CFC–MDI's.

FDA recognizes that it often takes an extended period of time to publish a final rule. However, this time is necessary, particularly in the context of this rule, for FDA to fully consider the comments provided and to make sound policy decisions based on strong science and responsiveness to important public concerns.

19. Two comments requested that FDA define the terms "postmarketing surveillance, subpopulations, therapeutic class, [and] convenience of use" to reduce the likelihood and viability of administrative or legal challenges.

Since FDA has chosen not to propose to use the therapeutic class approach, FDA is not defining the term "therapeutic class." FDA has provided explanations regarding its proposed application of the other terms in section II of this document.

20. One comment requested that FDA require the same delivery system rather than the same route of delivery for replacements.

FDA believes advances in technology may bring even more convenient delivery systems to market, and therefore it is not requiring the same delivery system.

21. One comment stated that FDA's requirement of "same indication" should include all current indications and patient populations covered by CFC products containing the same active moiety. One comment asked FDA to require replacements for all currently approved indications, including indications for exercise-induced asthma and for children age 4 and older.

FDA agrees generally that non-CFC products with the same active moiety should be approved for the same indications as their CFC counterparts prior to being considered as alternatives. For example, if a CFC–MDI is approved for use in the pediatric population down to age 6 but non-ODS products are only labeled down to age 12, a significant patient subpopulation would exist that would not be adequately served by non-ODS products. Absent other data, the agency would not eliminate the

essential-use designation for the CFC–MDI based on this factor alone.

22. One comment stated that evaluation of the level of convenience should consider dosing regimes, including number of refills per month; type, size, and shape of the product; and physical and mental ability of the patient to operate the product, taking into account patient education. One comment said it is appropriate to consider tolerability, patient compliance, or convenience only if these factors relate to safety and effectiveness.

FDA will consider such factors in determining whether replacement products are adequate replacements, even if the factors do not directly affect efficacy and safety. For instance, FDA would not consider a product that needs to be administered with an air-pressure driven nonportable nebulizer a viable replacement for a CFC–MDI because of its lack of portability and ease of use, even if it were as safe and effective as an MDI.

23. One comment stated that FDA should require convincing evidence of adequate production capacity and component supply from non-CFC product manufacturers. One comment said that a manufacturer should not be required to demonstrate supply capacity as long as there is a reasonable transition period, and that supply capacity should be considered inadequate only if due to limited capacity or manufacturing problems. One comment said that FDA needs to account for the potential risk of an out of stock situation in implementing any phaseout.

FDA already has mechanisms in place to determine whether a drug shortage exists and to manage supply (see *Manual of Policies and Procedures (MAPP) 4730.1—Drug Shortage Management, Center for Drug Evaluation and Research, FDA*). FDA will use such procedures to evaluate whether non-CFC product manufacturers have sufficient production capacity and potential capacity to manufacture non-CFC products for all patients who currently use the CFC product(s).

24. Two comments requested that the agency collect scientific evidence on the effectiveness of alternatives.

FDA will continue to require NDA's to comply with all applicable new drug laws and regulations (see, e.g., section 505 of the act (21 U.S.C. 355)). As with all new drug products, FDA is requiring clinical data from adequate and well-controlled trials to establish the safety and effectiveness of non-CFC products prior to approval. FDA is also requiring at least 1 year of postmarketing data on the use of alternatives by the general population before it will propose removing the essential-use designation for any CFC–MDI.

25. One comment requested that the agency not base the phaseout proposal on the assumption that manufacturers are developing alternatives.

The agency is not assuming that manufacturers are developing alternatives, nor is it projecting a timetable for availability of any such products. Rather, FDA is establishing a framework to use once alternatives are available.

26. One comment asked that FDA eliminate broad exemptions from § 2.125.

The agency is proposing to narrow the exemptions in § 2.125 by listing the individual active moieties exempted rather than listing classes of drugs. For convenience, FDA proposes listing each active moiety under a heading describing its use.

27. One comment suggested that FDA follow the Australian model for phaseout. Australia has proposed reducing CFC use over time by simply eliminating a percentage of the amount of CFC's used in MDI production each year.

FDA is not proposing this approach because it is concerned that in the U.S. market such an approach would not ensure that patients' needs were met throughout the transition.

3. Intolerance or Allergy to Drug Products or Propellants

28. Eleven comments pointed out that many asthmatics are allergic to propellants and inactive ingredients such as alcohol, sulfate, oleic acid, trisorbitan oleate, lecithin, and lactose. Two comments stated specifically that albuterol alone was not a sufficient alternative because of patient intolerance. One comment requested that, with a doctor's written authorization, patients be permitted to continue to use CFC–MDI's until a non-CFC alternative to which they were not allergic was available. One comment noted that some patients develop a potentially fatal addiction to the aerosol component of MDI's and requested that FDA require manufacturers to put warnings on CFC–MDI labels and develop nonaerosol alternatives.

FDA acknowledges that intolerance and sometimes true allergies or addiction to drug products or components are a concern for patients any time new medications are used, regardless of whether the medication is CFC-based. To address this concern, FDA is requiring at least 1 year of postmarketing data to ensure that subpopulations are served by the available alternatives without widespread intolerance or allergy. If subpopulations of patients cannot use a product because of intolerance or allergic reactions and no other medically suitable options exist for those patients, that product would not be considered an acceptable alternative to the CFC–MDI counterpart.

29. One comment stated that the side effects experienced from one drug within a class might not be experienced in using another drug in the same class. One comment stated that asthma patients need to change drugs over the course of the disease, since one drug does not always continue to work.

FDA agrees that patients may tolerate some drugs better than others or might need to switch therapies and therefore is proposing a transition strategy that would ensure that many acceptable alternatives exist before the transition to non-CFC products is complete.

4. Patient Subpopulations

a. *Children*

30. One comment stated that one of the major problems for asthma patients, particularly children, is getting the drug to the site of action.

FDA agrees that children present special concerns in terms of optimally utilizing inhalation devices. FDA intends to consider such factors when assessing the adequacy of an alternative as a replacement for a CFC-based product.

31. One comment stated that not all alternatives, including DPI's, are acceptable alternatives for children.

FDA acknowledges that devices relying on patient inspiratory efforts for the delivery of drug, such as DPI's, may not be acceptable alternatives in very young children or those with severe airflow obstruction. However, FDA anticipates that multiple-dose DPI's will serve as viable alternatives for at least some patients. In practice, FDA expects that non-ODS MDI's will most commonly serve as replacements for CFC–MDI's.

32. One comment expressed the belief that the proposed phaseout would limit access to asthma treatments and might endanger the medical stability of children with asthma.

It is not FDA's intent to limit access to therapies for any patient group. Rather, by developing a transition strategy, FDA is attempting to ensure patient access to acceptable and safe treatment throughout the mandated phaseout of CFC's.

33. One comment noted that, in the past, new products have generally been marketed without a pediatric indication and asked how FDA would address this issue.

FDA is working on several pediatric initiatives to encourage the labeling of drugs for pediatric use. FDA recently published a final rule requiring certain sponsors to submit pediatric studies and labeling (see 63 FR 66632, December 2, 1998). In addition, the Food and Drug Administration Modernization Act of 1997 (the Modernization Act) (Public Law 105–115) provides incentives for sponsors to perform pediatric studies. Section 505A of the act (21 U.S.C. 355a) permits certain applications to obtain an additional 6 months of exclusivity if, in accordance with the requirements of the statute, a sponsor submits information relating to the use of a drug in the pediatric population. The Modernization Act also exempts from payment of prescription drug user fees supplements to NDA's proposing to include a new indication for use in pediatric populations. FDA anticipates that these provisions will result in increased pediatric labeling. Of course, FDA will evaluate whether patients, including pediatric subpopulations, are served by acceptable alternatives before proposing to remove essential-use exemptions for CFC–MDI's.

b. *Elderly*

34. One comment stated that the elderly require special education and an extended time period to become comfortable with new medications.

FDA acknowledges this comment (though disagreeing with it as a statement of general applicability to all elders) and reiterates that the intent of the proposed rule is to allow for such considerations in all patient subgroups.

c. *Other subpopulations*

35. One comment stated that medical studies have documented that African-Americans, especially in Chicago, IL, experienced consistently higher asthma mortality than Caucasians between 1968 and 1991. Two other comments stated that a study conducted in Brooklyn, NY, found that the prevalence of asthma was significantly higher among Hispanics, African-Americans, and children from the lowest income families. Another comment stated that African-Americans represent a disproportionate share of asthma sufferers and requested that any new rule issued by FDA ensure that it does not have a disproportionate adverse impact, either perceived or real, on minority persons.

FDA is aware of epidemiological data that show minorities and inner-city residents disproportionately experience asthma morbidity and mortality compared to the general population. FDA intends to take into account the needs of the entire asthma population. FDA plans to take into account the medical needs of demographic subgroups, including racial and ethnic groups, economic groups, or other socioeconomic or medical groups.

36. One comment stated that many patients in Hawaii, for genetic reasons, are sensitive to alcohol and therefore cannot use non-ODS products that contain alcohol. FDA would invite data in support of special sensitivities to be submitted to the agency at the time that any removal of an essential-use listing is proposed.

FDA stresses that the intent of the proposed rule is to ensure that adequate numbers of alternatives exist at all times in the transition to address such concerns.

37. One comment suggested that if a patient subpopulation is not served by non-ODS products, FDA allow the CFC product to remain on the market but: (1) Require the labeling to be changed to reflect use for that subpopulation only, and (2) reduce the manufacturer's CFC allowance.

The use of CFC's in a product is either nonessential or essential. If there is a portion of the population that cannot be medically served by the available alternatives, then such CFC use would remain essential.

38. One comment stated that only one CFC–MDI, terbutaline, is rated Pregnancy Category B, and that all others are rated Pregnancy Category C.

FDA acknowledges this comment. FDA believes that not all manufacturers will perform human pregnancy studies for alternative products. However, the moiety-by-moiety approach proposed is not intended to and should not reduce the number of MDI's available within each pregnancy category.

39. Two comments stated that acceptance in "significant" subpopulations is not a sufficient measure of the adequacy of alternatives. One comment stated that, to an asthma patient, a significant group is one. One comment asked that FDA require an affirmative showing that all patient subpopulations are served before eliminating the essential use for any product.

As the mandated phaseout of CFC's occurs, FDA intends to ensure that the U.S. market contains an acceptable number of products at all times to meet patient needs. Just as all patients are not served by one CFC–MDI, all patients will not be served by any single alternative product. FDA is proposing to make determinations of essentiality on a moiety-by-moiety approach. FDA will take into account all other available therapies, whether CFC-based or non-CFC-based, in making a determination about the essentiality of a product.

5. Experimental Nature of Alternative MDI's

40. One comment stated that the person had seen an alternative MDI manufactured by Glaxo Pharmaceuticals in limited use and that the alternative did not receive a favorable response from most of the patients who tried it. Another comment stated that the person had participated in Glaxo Wellcome studies on the non-CFC Ventolin and found that the delivery method was not as effective. One comment stated that the person had participated in a University of Arizona study to test a new drug and had to drop out before the 12-week study was over because he did not do as well with the new drug. One comment stated that five new studies on potential asthma medications were being conducted at the University of Nebraska Medical Center and that the studies should be have been completed in late 1997.

FDA is aware that sponsors are conducting extensive research to determine which CFC–MDI replacements are safe and effective in the treatment of asthma and COPD patients. FDA expects that, as a result of reformulation efforts and extensive clinical programs, asthma and COPD patients will have adequate treatment alternatives throughout the transition. FDA also expects that not every treatment alternative will be equally effective for every patient, just as not every CFC–MDI works the same for every patient. However, in making essential-use determinations, FDA will assess whether the entire market, including specific non-ODS alternatives for a particular CFC–MDI, other non-CFC products, and remaining CFC products, is adequate to serve patient needs.

41. One comment stated that Pulmicort is a good alternative. Two comments stated that budesonide is a good alternative that does not use CFC's and asked when it would be approved in the United States.

Budesonide (Pulmicort) is approved for marketing in the United States as a multiple-dose DPI. Because budesonide is not marketed as a CFC–MDI in the United States or listed as an essential-use exemption in § 2.125(e), the factors proposed in this rule would not apply to budesonide. However, FDA will consider all available treatment options, including budesonide DPI's, in evaluating whether the use of CFC's remains essential.

42. One comment stated that the long-term effect of using other medications with CFC replacements is unknown and

that replacements may be endocrine disruptors or have other adverse effects.

All drugs, including CFC–MDI replacements, are required to meet FDA standards of safety and effectiveness before approval. After approval, FDA may require sponsors to collect and report use data that characterizes the long-term safety of the drug in humans. FDA is proposing to require at least 1 year of postmarketing data on alternatives before FDA would propose to eliminate the essential-use designation for any CFC product. Sponsors have already collected a large amount of animal and human safety data for alternative propellants used in non-CFC products. Sponsors have collected and reported pharmacology and toxicology data on alternative propellants at levels comparable to or in excess of that developed for many new drug substances and at greater levels than for most other drug product excipients.

43. One comment stated that most physicians are brand loyal and therefore will not prescribe a CFC-free product. The comment went on to state that even if a physician does prescribe the CFC-free product, a pharmacist may substitute a cheaper generic CFC product to comply with third-party payer rules.

FDA plans to continue to work with other government and nongovernment bodies to further a campaign of physician, pharmacist, and patient education to address these issues and to ensure that patients are allowed the opportunity to try non-CFC products. FDA anticipates that the non-CFC products will not be rated as bioequivalent to the CFC–MDI's. Therefore, pharmacists will not be able to substitute a CFC–MDI for a prescription written specifically for a non-CFC product.

6. Choice of Technically Feasible Alternatives

44. Numerous comments discussed DPI's. One comment said that DPI's are not an alternative to MDI's. Another comment said that powders are not the answer because one is not certain if the dosage has been inhaled or how much powder remains. Three comments said powders did not work for them. Two comments said that powders cannot be used in certain areas of the country because of high humidity. Two comments said that powders aggravate or cause dry mouth. Three comments said that many patients, most notably elderly and children, are not capable of properly using DPI's. One comment said that DPI's require patients to breathe at an inspiratory flow rate ≤60 1/minute, which may not be possible for all patients. One comment said that DPI's should not be considered a substitute because not all drugs are available as powders. One comment said that DPI's cannot be used with spacers to reduce systemic side effects and oral candidiasis and dysphonia. One comment said that Swedish experience shows that DPI's can be used by 80 to 90 percent of asthma patients. One comment said that DPI's are better than CFC–MDI's and their use should be expedited.

Manufacturers began marketing the first multiple-dose DPI's in the United States very recently. At present, FDA cannot predict whether any multiple-dose DPI will be an acceptable alternative to a CFC–MDI. FDA will use the factors determined by this rulemaking and through public comment to determine whether any particular multiple-dose DPI is an acceptable alternative.

45. One comment said that atomizers do not deliver consistent doses. Two comments said that spinhalers, because they use dry powder, can irritate the lungs. Two comments said that sometimes, when using spinhalers, the whole top of a capsule will break off, causing the user to inhale the top of the capsule and choke. One comment said that spinhalers do not deliver even dosages. One comment said that spinhalers could be used as an alternative. One comment said that breath activated inhalers are useless during a full-blown attack because there is minimal breath available to actuate the inhaler. One comment said that turbuhaler dispensers do not force the medication into the lungs and therefore are not a good alternative for fast-acting MDI's. One comment said that rotohalers are not a good replacement because it is difficult to insert the pill into the rotohaler while having an asthma attack. Three comments said that nebulizers should not be considered an alternative because they are large and not portable, require a source of electricity, and take about 15 minutes to deliver treatment. One comment said that MDI's have advantages over all alternatives.

FDA cannot predict which products will be acceptable alternatives to CFC–MDI's. FDA anticipates that non-CFC MDI's will be the primary replacements for CFC–MDI's. However, advances in technology may mean that manufacturers develop new alternatives that are even better than CFC–MDI's. In addition, non-MDI products can serve at least a portion of the patient population, even if they cannot serve the entire population. Accordingly, FDA is not limiting the rule to require that all CFC–MDI's be replaced by non-CFC MDI's. FDA will consider such products as part of an overall determination regarding whether the patient population is adequately served by available alternatives.

FDA notes that MDI's do not force medication into the lungs. MDI's deliver the medication to the mouth, but the patient must breathe in the medicine at the time they use the MDI or no medicine will reach their lungs. DPI's can be used more effectively by some patients because patients do not need to go through a two-step process to get the medicine to their lungs. Patients deliver the medication to their lungs as they inhale from the DPI.

46. Three comments said that the new inhalers should be able to use the same old Aerochambers. Two comments said that use of steroid inhalers without an Aerochamber leads to tooth decay and oral candidiasis and dysphonia. One comment suggested that manufacturers use a carbon dioxide cartridge to propel the medicine from disposable inhalers. One comment said that the specifications for a replacement inhaler should include: (1) Pocket size, (2) lightweight, (3) easy to clean, and (4) separate medicine from propellant. Five comments recommended that manufacturers put MDI's into another form, like spinhalers, injections, pumps, glass atomizers, or hand-pumped dispensers.

FDA does not control the design of new drug products. FDA is attempting to ensure that new alternatives are adequate by requiring these alternatives to meet the criteria in this proposed rule before FDA will propose the elimination of an essential use of CFC's for any active moiety.

7. Proventil HFA

47. Numerous patients commented on whether Proventil HFA, the first non-CFC MDI approved in the United States, which contains the active moiety albuterol, should replace all albuterol CFC–MDI's.

Because FDA is not proposing to eliminate the essential-use designation for albuterol in this proposed rule or in the resulting final rule, these comments will not be addressed here.

8. Postmarketing Data and Suggested Duration

48. Many comments suggested varying lengths of time to collect postmarketing data. One comment suggested that CFC–MDI's should be banned immediately. One comment stated that patient acceptance should be judged in a shorter time than 1 year. One comment suggested collecting data during the first 6 to 12 months of marketing. One comment suggested 12 months for phaseout of individual products and 6 months for phaseout of classes. One comment said that FDA should require at least 1 year of postmarketing data on alternatives before removing any comparable inhalers. One comment said FDA should wait to ban any CFC–MDI's until 1 year after all the replacements are in place. Two comments said that a postmarketing evaluation cannot be completed in less than 1 year. One comment said that inhalers should be phased out within 18 months of availability of an alternative. Two comments said FDA should require 2 to 3 years of postmarketing data. One comment recommended at least 5 years notice before banning CFC–MDI's. One comment requested that the phaseout not be completed until 2005. Three comments said FDA should allow a 10- to 15-year phaseout period. Two comments said that 1 year of postmarketing data is insufficient because most asthmatics must try a number of medications and different seasons affect the efficacy of medications. Four comments said that 1 year of postmarketing data is insufficient because it will not reveal the side effects of long-term usage.

Under this proposed rule, FDA will not begin to assess the acceptability of an alternative product as a replacement for any CFC–MDI until at least 1 year of postmarketing data is available for the non-ODS product. FDA stresses that even after it does issue a proposed rule to amend § 2.125(e) to remove an essential-use listing for a particular active moiety, the public will have time to comment on the proposal before it is finalized. FDA also anticipates that any final rule to remove an essential-use listing will permit some time for patient use of already manufactured CFC–MDI's.

49. One comment recommended that FDA implement the use of non-CFC products as rapidly as possible, provided that all patient protection and physician education elements and safeguards explained in the ANPRM are in fact carried out.

FDA does not dictate medical practice. FDA is proposing this rule to ensure that patients have medically acceptable treatments. FDA agrees that patient and health care practitioner education is an important part of the transition and is therefore actively participating in education efforts.

50. One comment said that MDI's should not be phased out until manufacturers produce a full range of MDI products with highly effective delivery, at practical prices, and a sound degree of availability. One comment requested that phaseout not occur until patients have sufficient experience with alternatives. One comment said that phaseout should not occur until replacements: (1) Are as effective as the present products, (2) are tested by FDA, and (3) cost the same as the products they replace.

FDA believes that the criteria proposed in this rule (see section II of this document) will ensure that sufficient experience exists with a full range of alternative products with highly effective delivery, at practical prices, and with a sound degree of availability before any CFC–MDI's are phased out. FDA expects that the price of replacement products will be equivalent. However, FDA does intend to consider relative costs in considering whether alternatives adequately serve patients.

51. One comment requested that FDA set a specific timeframe for the elimination of the essential-use exemption once alternatives are available but did not recommend a particular timeframe. One comment said that it is difficult to set an arbitrary time period for determining patient acceptance, because the length of time a product is on the market does not necessarily measure usage.

FDA believes it is premature to set a specific timeframe for the elimination of all essential-use exemptions because too many variables exist as to when applications for new products will be submitted to the agency, when they will gain approval, and when the products might be considered clinically acceptable alternatives to CFC–MDI's.

52. Another comment suggested that FDA should not designate a CFC–MDI as nonessential if the sponsor is exercising due diligence in developing, testing, and evaluating an alternative.

FDA expects that under the moiety-by-moiety approach in this proposal companies will not lose essential-use exemptions prior to approval of an alternative product if they are exercising due diligence in reformulating their products. However, FDA cannot guarantee that a company's CFC–MDI will remain essential merely because a company is exercising due diligence.

53. One comment stated that FDA should leave it to physicians, patients, and the market to establish when the switch to non-CFC products should be completed. Another comment said that FDA should let patients choose which product meets their needs.

Patients and their health care providers can now and will continue to be able to choose any product available on the market. However, the Clean Air Act will not allow CFC products to remain on the market if the products are not essential. FDA is required by U.S. law and regulations to determine, in conjunction with EPA, whether a medical product remains an essential use of CFC's. FDA wants to ensure through development of a planned transition strategy that the transition occurs in a manner that protects the safety of patients.

54. Another comment stated that the phaseout should not occur before 5 years of marketing because at least 5 years on the market in combination with widespread exposure in all patient subgroups is necessary to detect serious or important adverse events (citing 61 FR 51625 at 51629, October 3, 1996).

FDA notes that the alternative products will contain the same active moieties as the CFC products. Therefore, FDA has more than 5 years of exposure information from U.S. marketing for the large majority of these moieties. FDA does not believe it is necessary to have 5 years of marketing data before proposing the elimination of an essential-use designation because the active moieties in the non-ODS products will not be newly marketed.

55. One comment said that postmarketing data should address not only market penetration but also physician education; patient education; patient acceptance, particularly in the subpopulations of children and the elderly; and patient compliance. One comment said that FDA should contact patients through their doctors and have them complete a survey to determine what kind of asthmatic they are, what substitute medications have already been tried, and the result. Another comment suggested that FDA survey a representative sample of all allergists, including private practitioners, rather than relying on drug companies or selected clinics in assessing the adequacy of replacements. Another comment said that FDA should let pharmacists, not MDI manufacturers, determine the adequacy of supplies, effectiveness, and other criteria through customer surveys. One comment said that new products should contain an insert that makes comment possible or that consists of a brief "satisfaction survey" to be filled out. Another comment said that FDA should require objective postmarketing studies that include a sample of at least 20 percent of diagnosed asthmatics. One comment said that any postmarketing study should be limited to showing that adverse events related to a new CFC-free formulation, but not found in the CFC product's labeling: (1) Occur at very low rates; (2) do not develop in patient populations not generally included in

premarketing trials; or (3) expose drug-drug or drug-disease interactions not seen in the pivotal clinical trials, as determined by the equivalent of 100,000 patient years of exposure or a more formal postmarketing surveillance study, at the manufacturer's discretion.

One comment said that postmarketing evaluation should include FDA's factors and an analysis of the first year's postmarketing experience with regard to adverse event reports, consumer and health care professional comments, and extent of market uptake; an assessment of the ability of the manufacturer to meet the market demand for the CFC–MDI with the replacement product; and an assessment of the need for revised patient and health care professional education efforts to facilitate conversion to the replacement. Another comment said that patient acceptance should be measured through postmarketing reports that evaluate: Efficacy of the product compared to the previously used CFC product (this can include quality of life); whether the replacement product is compatible with other CFC products that the patient is also using (i.e., the new combination of inhalers); confusion regarding changes in daily dose regimens; product taste, feel, and device dimensions; mechanical performance of inhalation device; and confidence that the new product is a dependable replacement. One comment simply said that FDA should disclose the types of studies that it believes are necessary to demonstrate product comparability for phaseout purposes.

FDA's intent in requesting at least 1 year of postmarketing use data and in suggesting a postmarketing study is to gain data that demonstrate the acceptance of the product in widespread use outside of controlled clinical trial settings and in subgroups not represented in clinical trials. Although FDA will have found newly marketed products to be safe and effective through its approval process, FDA cannot assess the ability of a new non-CFC product to adequately replace in widespread use an existing CFC product without additional postmarketing data. FDA believes issues such as device performance in uncontrolled settings and tolerability of the product in widespread use are important. FDA believes that properly designed postmarketing studies would characterize the acceptability of these products better than standard postmarketing data that rely on anecdotal self-reporting.

56. One comment said that FDA should not consider the absence of a postmarketing study the basis for extending an exemption.

FDA will not require a postmarketing study if available data, including more traditional postmarketing surveillance data, are sufficient to support a finding that the CFC product is no longer essential.

57. One comment said that European postmarketing data are just as valid as United States data and should be accepted by FDA.

FDA may accept European postmarketing data and find the information useful. However, dramatic differences exist between U.S. and European health care practices and drug pricing systems. For example, products available in Europe are not necessarily pharmaceutically equivalent to those marketed in the United States. Although FDA would consider European data in making essential-use determinations, FDA would not propose to eliminate an essential-use designation unless it had additional data from U.S. populations.

58. One comment noted that medications may be accepted in different ways by patients, different medicines may not compare on a microgram (µg) per µg basis, and taste may affect patient acceptance. Another comment stated that propellants can have a significant effect on the distribution of the medication into the airways and, therefore, the effectiveness of the treatment.

FDA will evaluate these issues through premarketing comparability testing and postmarketing data before proposing the elimination of an essential-use designation from § 2.125(e).

59. One comment said that FDA may not be able to enforce current good manufacturing practice (CGMP) regulations at companies making one of three alternatives if the United States is dependent on the companies to supply the patient population.

FDA is committed to ensuring that CGMP standards are met by all manufacturers, including those producing CFC products and new alternatives. FDA does not believe that CGMP violations are any more likely to occur with alternatives than with currently available products.

9. Timing of Phaseout

60. Four comments suggested that FDA should allow the sale of CFC–MDI's in conjunction with alternatives.

Under the proposed rule, CFC–MDI's and alternatives will necessarily be sold at the same time for a period.

61. Two comments suggested that FDA require the use of non-CFC products at home and work, and CFC–MDI use only as necessary.

FDA is proposing this rule to fulfill its obligation under the Clean Air Act to make essential-use determinations that will lead to the eventual phaseout of CFC–MDI's. Once FDA has determined that a product is essential, a consumer can use the product for the essential use as needed and prescribed.

62. One comment asked why FDA is preparing this proposal now.

The Parties to the Montreal Protocol, through the Technical and Economic Assessment Panels, have asked that all Parties develop transition strategies. Parties were required to present a draft transition strategy no later than January 31, 1999, and were encouraged to present a strategy before January 31, 1998. In publishing the ANPRM, FDA provided a draft proposal for public comment and consideration domestically and internationally. FDA recognizes that rulemaking can take many months or years to complete. FDA published the ANPRM early to give the public time to comment and to give FDA time to develop a final rule that would be most protective of public health.

63. One comment asked why one is able to obtain CFC's for a car air conditioner but not for MDI's.

A consumer can obtain recycled CFC's to use in a car air conditioner but cannot obtain new CFC's. Since 1996, no new CFC's have been manufactured or imported into the United States for any use other than those uses designated as essential under the Clean Air Act. Recycled CFC's can contain impurities that would prohibit use in MDI's inhaled directly into human lungs on a chronic, recurrent basis. Manufacturers must use pharmaceutical grade CFC's in CFC–MDI's to ensure that they are safe to use.

64. One comment said that patient safety should take precedence over all other factors. One comment said that FDA should allow the phaseout to occur according to the Montreal Protocol timeframe and should not take any steps to phase out CFC–MDI's. One comment said that once patients understand the FDA proposal, they agree that it makes more sense to set up guidelines now, rather than waiting until no CFC–MDI's remain on the market and insufficient non-CFC products exist to meet patient needs.

FDA's priority is to protect and promote the public health. FDA is proposing this rule to develop a transition strategy as required under the Montreal Protocol. Through this rule, FDA seeks to ensure that public and patient health and safety are determining factors in deciding whether alternatives can replace CFC–MDI's.

65. One comment said that as more people use non-ODS products, CFC use will decrease and the problem of CFC use will solve itself.

Although it is possible that the phaseout would occur without intervention, Title VI of the Clean Air Act mandates FDA involvement in the process. Accordingly, FDA is issuing this proposal to develop a phaseout process that will ensure that patients have adequate alternatives.

10. Nasal Steroids

66. One comment stated that nasal pumps cause postnasal drip, which can aggravate an asthmatic cough. Another comment stated that nasal pumps cause liquid to drain down the throat, so they cannot be used by people with gastroesophageal reflux disease and ulcers. Another comment claimed that nasal pumps make symptoms worse and are not appropriate for all patients. Two comments said that for noses that are very swollen and inflamed, wet sprays do not work. Another comment said that there are still substantial numbers of patients who cannot stand the sensation/taste/smell of the aqueous solutions and much prefer the aerosols.

One comment said that alternative propellants should be developed for nasal steroids, and these should be considered alternatives. Another comment suggested FDA first limit nasal steroid inhalers, which are available as both aqueous preparations and CFC-propellant preparations. Another comment stated that nasal steroid inhalers need not be exempted because there are sufficient alternatives.

For the reasons set forth previously, FDA is proposing to remove the essential-use designation in current § 2.125(e)(1) for metered-dose steroid human drugs for nasal inhalation. FDA notes that the Parties to the Montreal Protocol have not granted essential-use exemptions for manufacture of nasal steroid CFC–MDI's since the general ban on CFC production went into effect in industrialized nations on January 1, 1996. The Parties do not consider CFC-based nasal steroids to be medically essential products because of the available alternatives. Any CFC-based nasal steroids currently being manufactured are presumably being manufactured with CFC's manufactured prior to 1996. In addition, the indications for which these products are approved and used are not life threatening.

67. One comment claimed that topical nasal dexamethasone is more effective than any other product in treating nasal polyps and sinusitis. Another comment claimed that nasal steroids are superior for treatment of nasal polyps because they permit effective penetration of the nose.

FDA is unaware of any substantiating data to support the clinical superiority of any one MDI over all aqueous formulations for these or any other indications, and these comments did not themselves include any data substantiating these assertions.

68. One comment asked that FDA grant an exception for Dexacort Turbinaire because clinical trials are being done to show it has unique potential in the treatment of chronic sinusitis.

An applicant should apply for an essential-use exemption if data shows a unique use for a particular CFC product.

69. One comment said that Vancenase AQ does not dispense properly and therefore is not an adequate replacement for the old Vancenase.

FDA approved both Vancenase AQ formulations (42 µg and 84 µg) as safe and effective and, therefore, concluded that the product was of sufficient quality. FDA has no basis to believe this determination to be in error. A CFC-based nasal corticosteroid could, in theory, meet the proposed standards to become an essential use of CFC's, and the manufacturer could successfully petition the agency for a new listing under § 2.125(e). However, at this time, FDA does not believe that the current nasal corticosteroid CFC–MDI's meet the standards of essential use.

11. Miscellaneous Comments

70. One comment stated that FDA is intruding on the practice of medicine.

FDA is not intruding on the practice of medicine. FDA is fulfilling its statutorily mandated obligation to determine whether a medical product remains essential under the Clean Air Act.

71. One comment asked whether FR–12 is a replacement for CFC's in MDI's.

FR–12 is another term for CFC–12, a chlorofluorocarbon that cannot be used as a replacement.

72. One comment said that the United States was really phasing out CFC's because they can be used to make bombs.

FDA is unaware of any such motivation on the part of the United States. The Parties to the Montreal Protocol, including the United States, have agreed to phase out the use of CFC's to protect the ozone layer and the public health.

73. One comment stated that people with asthma should be on the deciding committee.

Thousands of patients provided their input through the public comment process. FDA will seek further input from patients when individual drug moieties are proposed for removal from the list of essential uses of CFC's.

74. One comment suggested that instead of removing CFC–MDI's, FDA should remove sulfites from the U.S. food supply, and that doing so would lead to a decrease in CFC–MDI use.

These issues are independent. FDA is required to make essential-use determinations under the Clean Air Act and the Montreal Protocol, regardless of the amount of sulfites in the food supply.

75. One comment said that FDA should only allow CFC–MDI use in minimally acceptable dosages for physician-certified, life threatening risks.

If the use of a CFC–MDI remains medically necessary to treat life-threatening conditions and no satisfactory alternatives exist, then the CFC use would remain essential.

76. Two comments said that FDA should publicize the proposal more, define terms for laymen, and allow adequate time for response to encourage more comments. One comment argued against granting any extension of the comment period.

FDA received approximately 9,600 comments on the ANPRM, more than on almost any other proposal in the history of the agency. The public will have further opportunities for comment as FDA finalizes the transition process and proposes to remove individual moieties from the essential-use listing. FDA plans to publicize these additional opportunities for comment in its educational programs, through its Internet site, and through press releases.

77. One comment said that if benefit outweighs risk, FDA should allow drugs to stay on the market.

FDA intends to use the criteria proposed to ensure public and patient health and safety before elimination of an essential use for an active moiety.

78. One comment said that FDA must reveal the amount of CFC's companies have stockpiled for interested parties to evaluate whether a rational basis exists for the proposed rule.

FDA does not have these data. If FDA did have the data, FDA could not disclose the data because the information is confidential and exempt from disclosure. FDA notes that the Technology and Economic Assessment Panel (TEAP) recently recommended to the Parties to the Montreal Protocol that members be permitted to maintain a maximum of 1 year of stockpiled CFC's (April 1998 TEAP Report at p. 16, section 1.2.4).

12. Incentives for Development of Alternatives

79. Fourteen comments stated that FDA should accelerate approval of CFC replacement products.

The agency is committed to the timely review of all drug applications. FDA does not believe that NDA's with CFC replacement products meet the criteria for priority review at the current time.

80. Eight comments stated that FDA should halt approval of new CFC–MDI's. One comment stated that FDA should not approve any CFC–MDI's for an active moiety for which there is an approved non-ODS product, even if it has not yet determined that the non-ODS product is an alternative.

FDA will not withhold approval for a drug product that contains a moiety listed as an essential use under § 2.125(e). FDA will not approve ODS-products not currently listed in § 2.215(e) unless FDA has determined they are essential.

81. Four comments stated that FDA should impose fines on companies who do not produce alternatives within a reasonable time or institute a tax advantage for introducing an approved replacement.

FDA does not have the authority to take either of these actions.

82. Five comments requested that FDA require MDI manufacturers to pursue the development and marketing of alternative propellants with due diligence. Two comments stated that FDA should set standards for evaluating industry's pursuit of alternatives. One comment stated that elimination of an essential use because of a lack of due diligence on the part of the manufacturer unfairly penalizes patients.

The Parties to the Montreal Protocol, including the United States, request MDI manufacturers that receive CFC allowances to demonstrate that they are pursuing alternatives with due diligence.

83. Ten comments requested that FDA support research and development of safe and effective alternatives. One comment stated that FDA should organize research using pooled resources to develop new, unpatented delivery systems.

FDA is working with industry to facilitate the development of safe and effective alternatives.

84. One comment stated that FDA should seek money from the tobacco industry for research to develop safe and effective MDI's that do not contain CFC's.

FDA does not have the statutory authority to require funding of a particular research project.

85. One comment stated that inventors of non-CFC products should be rewarded with the same patent protections as all other inventors. One comment stated that non-CFC formulations of CFC–MDI's should not be patented.

The Patent and Trademark Office of the United States awards patents in compliance with laws enacted by the U.S. Congress. FDA has no authority to award patents to new drug products.

86. One comment requested that FDA ease the rules for generic availability by allowing a non-CFC generic to become immediately available for each MDI class which has a CFC generic.

FDA does not have the authority to permit this. The act, as enacted by Congress, governs when FDA may approve a generic. FDA does not have the authority to change the act.

87. One comment stated that FDA should demand more effective delivery systems.

FDA believes that the modern MDI is an effective delivery system. Although FDA encourages advances in delivery systems, the Montreal Protocol does not mandate changes to delivery systems.

88. One comment stated that FDA should reward those who develop CFC-free products by phasing out CFC products.

FDA plans to eliminate essential uses according to the standards it develops through this rulemaking process. FDA is not considering whether any particular standard rewards non-CFC product developers. FDA is simply promoting and protecting the public and patient health and safety as it complies with the terms of the Clean Air Act and the Montreal Protocol.

89. One comment stated that FDA should allow non-CFC product manufacturers to advertise performance improvements without conducting clinical trials to prove those benefits.

FDA requires all claims to be supported by adequate evidence. FDA does not permit manufacturers to make claims of superior performance without supporting comparative evidence.

90. One comment stated that manufacturers should be allowed to advertise important technological attributes of the CFC-free MDI's.

Manufacturers may advertise claims supported by adequate evidence.

91. One comment stated that the Federal Government should favor the reimbursement of non-CFC products.

FDA does not have the authority to control drug costs or reimbursement.

92. One comment stated that it is not within FDA's statutory purview to offer incentives to spur market innovation to phase out CFC–MDI's. One comment said that it is not necessary for FDA to offer development incentives since incentives exist. Another comment said that FDA should focus on market-oriented incentives rather than "command and control" techniques.

FDA does not have the authority to offer incentives. FDA is simply determining whether the use of an ODS in an FDA regulated product is essential.

93. One comment said that instead of implementing the proposal in the ANPRM, FDA should: (1) Stop production of CFC's, (2) tighten issuance of essential-use allowances, (3) reimpose an excise tax, (4) subsidize use of non-CFC propellants, (5) purchase CFC stockpiles, and (6) allow production and use of CFC–MDI's until stockpiles are exhausted.

FDA does not have the authority to take these measures. FDA can only make determinations in consultation with EPA regarding whether the use of CFC's in an MDI is essential.

94. Four comments stated that users should be required to recycle their empty inhalers.

FDA does not have the authority to require specific types of CFC–MDI disposal.

95. Two comments said that the release of CFC's at MDI manufacturing plants should be regulated.

FDA may regulate the release of CFC's at manufacturing plants if the release violates CGMP's. FDA notes that the Parties to the Montreal Protocol, including the United States, encourage manufacturers to release the lowest possible amount of CFC's during manufacturing.

96. One comment stated that no new exemptions should be granted unless there is a demonstration of special medical need and benefit (e.g., an indicated use that is not available for any other approved product with the same moiety).

FDA is proposing in this rule the standards it will use to grant and maintain essential use exemptions. FDA believes the standards require a showing of special medical need and benefit.

13. Cost of New Products

97. Two comments stated that FDA should consider whether lack of competition will increase costs. Another comment requested that FDA not allow phaseout unless alternative products are manufactured by at least two independent manufacturers. A third comment requested that FDA not allow phaseout until there are at least three competitors available in each of the three categories: Quick-acting, 12-hour, and cortisone-based inhalers. One comment asked that FDA not eliminate CFC–MDI's until generic competition for the non-CFC products exists. Two comments said that if CFC substitutes are produced using proprietary technology, phaseout should not be mandated until the technology is in the public domain. Another comment asked that asthma medicine continue to be available at the lowest possible prices. One comment stated that non-CFC products would likely be higher priced than current MDI's. Five comments stated that FDA's proposal, if implemented, would have an enormous financial impact for state Medicaid drug costs, Medicare patients, and uninsured or inadequately insured individuals who could not afford the new non-CFC agent. Another comment evaluated their institution's cost of replacing generic albuterol CFC–MDI's with Proventil HFA and concluded that the annual cost for albuterol MDI's would increase from approximately $25,000 to more than $200,000.

FDA recognizes that cost is a concern for many patients and health care providers. However, when generic products become available is dictated by manufacturers' decisions whether to produce a generic product, by U.S. patent laws, by the exclusivity provisions of the act, and by the approvability of any particular generic drug application. The agency notes that in the current market of CFC–MDI's, only the four active moieties of epinephrine, isoetharine, albuterol, and beclomethasone are marketed by more than one sponsor. Generic products are available for only one active moiety: albuterol. In part due to considerations such as those raised in these comments, FDA has proposed requiring that multiple-source CFC–MDI products be replaced by at least two non-CFC alternative products. FDA has also proposed to consider cost in determining whether alternatives meet patient needs. In addition, FDA expects that the price for most non-CFC products will approximate the price for branded CFC products (see section VII of this document).

98. Another comment stated that any FDA action should consider the research and development costs borne by all parties who strive to replace CFC in their inhalants. One comment stated that FDA should evaluate the cost of postmarketing requirements because they could also drive up costs. One comment asked how much the transition will cost. Two comments predicted that increased costs will result in decreased compliance. One comment stated that lack of generics and additional physician visits due to medication switching will increase costs.

FDA has completed an analysis of the economic impact of its proposal that addresses these issues (see section VII.B of this document).

99. Four comments stated that FDA should undertake a cost/benefits study comparing the benefits of removing CFC–MDI's from the market to the benefits of allowing continued marketing of CFC devices. One comment stated that FDA should determine whether to eliminate CFC products based on sound science that includes a cost/benefit study whose methodology is published in the **Federal Register**.

FDA has not completed such a study because a statute mandates the removal of nonessential CFC–MDI's from the market.

100. One comment said that large- and small-volume nebulizers and the hand-held ultrasonic nebulizers have been discontinued as covered Medicare devices. The comment asked that FDA work with the Health Care Financing Administration to reverse this policy.

At this time FDA does not consider traditional nebulizers to be alternatives to MDI's because they are not as portable. Therefore, the cost of these products is not addressed in this proposed rule.

101. One comment requested that FDA require new inhalers to be dispensed in the same number of "puffs" as the old inhalers to prevent a cost increase.

Manufacturers determine the number of puffs or the amount of medication given per puff.

102. One comment asked that new medications be available in less expensive sample sizes to allow patients to determine whether they are effective.

FDA cannot mandate the creation or distribution of physician samples. However, manufacturers generally produce such samples for new products to promote familiarity with the new product.

103. One comment requested that FDA require medicine and hospital treatments for asthma and COPD to be free to patients, or otherwise insure all asthma and COPD patients with health and life insurance.

FDA does not have the authority to require either the free distribution of medicine or the provision of health insurance.

14. Environmental Impact of CFC–MDI Use

104. One comment claimed that a continuing exemption for MDI's is permitted under the Montreal Protocol, Title VI of the Clean Air Act, and the regulatory and policy actions of EPA. The comment went on to question whether termination of the essential-use exemption for MDI's will materially advance stratospheric ozone protection and whether this benefit outweighs the potential social and economic costs of phaseout.

Eight comments stated that the pharmaceutical use of CFC aerosols accounts for less than 1 percent of worldwide consumption. One comment stated that only 0.1 percent of the fluorocarbons in today's world are generated by MDI's used for the treatment of asthma. One comment stated that only one-half of 1 percent of CFC's are generated by MDI's. One comment stated that the environmental impact of CFC's used in MDI's is minimal; therefore, it would be an inefficient use of limited regulatory resources to eliminate CFC–MDI's. One comment stated that there is no way to quantify the effect of eliminating CFC use in MDI's. One comment asked whether the continued use of CFC's in MDI's would be fatally detrimental to the health and well-being of the people of the world.

Three comments stated that CFC's do not cause ozone depletion. Four comments questioned how CFC's could reach the ozone layer.

One comment asked whether anyone knows how thick the ozone layer is supposed to be.

One comment requested that FDA provide figures for: (1) Stockpiled amounts of CFC's; (2) a comparison of CFC amounts to be released over the next decade, particularly MDI and air conditioning use; and (3) measurable change in CFC release due to FDA policy.

One comment asked whether use of an aerochamber reduces CFC release into the atmosphere and requested that if it does, FDA mandate that MDI's be manufactured with the adapters. Another comment asked whether there is a way to use inhalers without releasing CFC's into the atmosphere.

Two comments stated that CFC replacements, including the ones approved for use in MDI's, also cause ozone depletion, but to a lesser extent, and asked why FDA is planning to replace CFC's, which have a long history of safe use in humans, with toxic chemicals that also may be phased out.

One comment stated that FDA is required to prepare an environmental impact statement under the National Environmental Protection Act.

One comment stated that stratospheric ozone is our main global protectant against ultraviolet B light (UVB), and international restrictions on CFC releases will allow the progressive destruction of stratospheric ozone to cease and begin to rebuild in the early 21st century. The comment also noted

that the current generation of children face a 1:70 risk of melanoma. In addition, the comment stated that basal and squamous cell carcinoma, cancer precursor lesions, premature skin aging (spotting, wrinkling, fragility, sallow color, sagging), photo-induced medication reactions, autoimmune disease (i.e. lupus), immune suppression, porphyria, and regular sunburn are all exacerbated by the UVB rays in sunlight, which will become more intense on an increasing basis by 2010 due to ozone depletion.

One comment asked that FDA cut the CFC allocations for companies manufacturing products with technically feasible alternatives rather than for all companies across the board.

One comment stated that FDA should not assess the potential beneficial effects of reducing CFC emissions from drug products since the United States has already assessed the effects and made the decision to eliminate CFC's.

The United States evaluated the environmental effect of eliminating the use of all CFC's in an environmental impact statement in the 1970's (see 43 FR 11301, March 17, 1978). As part of that evaluation, FDA concluded that the continued use of CFC's in medical products posed an unreasonable risk of long-term biological and climatic impacts (see Docket No. 96N–0057). Congress later enacted provisions of the Clean Air Act that codified the decision to fully phase out the use of CFC's over time (see 42 U.S.C. 7671 *et seq.* (enacted November 15, 1990)). FDA notes that the environmental impact of individual uses of nonessential CFC's must not be evaluated independently, but rather must be evaluated in the context of the overall use of CFC's. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time (40 CFR 1508.7). Significance cannot be avoided by breaking an action down into small components (40 CFR 1508.27(b)(7)). Although it may appear to some that CFC–MDI use is only a small part of total CFC use and therefore should be exempted, the elimination of CFC use in MDI's is only one of many steps that are part of the overall phaseout of CFC use. If each small step were provided an exemption, the cumulative effect would be to prevent environmental improvements. FDA is merely fulfilling its obligation to make essential-use determinations for FDA-regulated products, in accordance with the Clean Air Act.

FDA notes that CFC–MDI's do release CFC's as part of their intended use. Tube spacers, inhalation techniques, and other factors do not alter this release.

15. Proposed Mechanism for Phaseout

105. One comment requested that FDA publish this proposed rule by September 1997.

FDA was not able to meet this request. The comment period for the ANPRM did not close until May 5, 1997. During the comment period, FDA received approximately 9,400 comments and has since received approximately another 200 comments. FDA required a sufficient amount of time to carefully review and analyze these numerous comments, and therefore could not publish this proposed rule by September 1997.

106. One comment said that FDA should establish target dates by which significant reductions in CFC–MDI use should be accomplished. The first date should be by the end of the year 2000.

FDA's authority under the Clean Air Act is to determine whether ODS products are essential. This proposed rule is designed to set forth the criteria FDA will use to make those determinations.

107. One comment requested that, as part of the phaseout procedure, FDA require industry to educate physicians and patients that: (1) CFC's serve no medical purpose, and (2) the transition is not about removing drugs but about getting rid of CFC's. Two comments said that FDA should require patient and physician education. One comment said that a seamless transition scheme should be developed and should include patient and health care provider educational resources and programs as well as public awareness campaigns well before projected phaseout dates. Another comment said that transition should be undertaken as a joint project by FDA, the National Asthma Education and Prevention Program (NAEPP) of the National Heart, Lung and Blood Institute of the National Institutes of Health (NIH), industry (e.g., International Consortium of Pharmaceutical Aerosol Manufacturers (IPAC), professional organizations (e.g., American Lung Association) and patient advocacy groups (e.g., Mothers of Asthmatics) to ensure dissemination of consistent information. The comment went on to say that educational efforts should include presentations at national scientific and professional meetings and seminars, consultations with public interest groups, one-on-one instruction, and publications in professional as well as lay media (e.g., flyers, posters, newspaper articles, videos, stories, plays). One comment said that FDA should consider psychological factors that could result in slow acceptance of new products. Ten comments said that patients, physicians, and managed care companies need education.

FDA recognizes the need to educate patients, health care providers, and interested parties about the planned phaseout of CFC–MDI's for the transition to non-CFC products to occur as smoothly as possible. Although FDA cannot require industry to undertake an educational plan, FDA has been involved in public education for the past several years. Members of the Center for Drug Evaluation and Research's (CDER's) Division of Pulmonary Drug Products have made presentations and participated in panel discussions on the phaseout of CFC's at national scientific and professional society meetings and will continue to do so.

The division has also worked in close cooperation with the NAEPP, an ongoing comprehensive national asthma education, treatment, and prevention program directed by the staff of the National Heart, Lung, and Blood Institute of NIH. NAEPP educates physicians, other health care providers, and patients about issues related to the prevention and treatment of asthma, including the phaseout of CFC's. The NAEPP Coordinating Committee formed a CFC Workgroup to educate patients and physicians about the CFC phaseout. The NAEPP CFC Workgroup, in cooperation with IPAC, recently developed a "fact sheet" for patients entitled "Your Metered-Dose Inhaler Will Be Changing * * * Here Are the Facts." The fact sheet is available through the FDA web site http://www.fda.gov/cder/mdi/. The NAEPP CFC Workgroup is continuing to broaden its educational effort. FDA provides appropriate advice and assistance to the NAEPP CFC Workgroup.

FDA has also published articles on the phaseout of CFC's in FDA Consumer, Journal of the American Medical Association (JAMA), and the FDA Medical Bulletin to educate health care providers and patients about FDA actions, or proposed actions, related to the transition to non-ODS inhalation products.

The agency views these educational efforts as a critical component of the transition process and intends to continue these efforts as the transition to non-ODS products moves forward.

108. One comment stated that FDA must provide notice and an opportunity for hearing before withdrawing any drug.

FDA uses the procedures in 21 CFR 314.200 to withdraw approval of a drug. Under proposed § 2.125, FDA is not proposing to withdraw approval of any drug. FDA is simply proposing a process for determining whether the use of an ODS in a particular medical device continues to be essential. To maximize public input, FDA will use notice-and-comment rulemaking to evaluate whether a moiety should remain on the list of essential uses.

109. One comment stated that, upon publication of a proposed rule, FDA must disclose in appropriate detail and specificity the data and technical information upon which the agency relied in reaching its policy decisions.

FDA has disclosed in the ANPRM and in this proposed rule the data and technical information upon which it relied in drafting this proposal.

16. International Mandate (Montreal Protocol)

110. Three comments said that FDA should take no further action until the plenary meeting of the Montreal Protocol Parties scheduled for November 1998.

Although FDA did not publish this proposed rule before the November 1998 meeting, it has continued to work to develop the proposal. The Parties to the Montreal Protocol suggested that Parties requesting essential-use allowances submit an initial transition strategy by January 31, 1998, and required these Parties to submit an initial strategy no later than January 31, 1999. FDA is acting now to ensure that patients in the United States are not put at risk by the phaseout.

111. Three comments stated that medical use of CFC's should be permitted and should be the only worldwide exception. One comment noted that although the total amount of CFC's used in MDI's represents a small portion of total use, that use is increasing and it is inconsistent with the Montreal Protocol to claim that a small use justifies delay.

The Clean Air Act requires the phaseout of nonessential CFC MDI's.

17. Legal Arguments

112. Seven comments challenged FDA's authority to withdraw an application because of failure to meet the essential-use requirements of § 2.125.

FDA is not proposing to withdraw approval of any applications in applying proposed § 2.125. Rather, FDA is determining whether the use of a CFC in a particular medical device remains essential as alternative products become available and are accepted. Even when a moiety is removed from the essential-use listing of § 2.125(e), the NDA's for the affected moiety need not necessarily be withdrawn under section 505(e) of the act. FDA notes that manufacturers may not be eligible to receive CFC allowances under the Montreal Protocol and the Clean Air Act even if they have approved applications.

One comment stated that FDA has no legal authority to prohibit the continued use of existing inventories of CFC's used in medical devices.

This proposed rule does not necessarily prohibit the continued use of existing inventories of CFC's in medical devices. Rather, the proposal sets forth the factors FDA would use to determine whether the use of CFC's in a medical product is essential.

113. Several comments stated that FDA does not have the statutory authority under the act to declare that a drug product is adulterated or misbranded simply because the product contains an ODS.

The agency is proposing to remove the provisions of § 2.125 that state that a product in a self-pressurized container that contains an ODS is adulterated and/or misbranded. This change should not be interpreted to mean that FDA agrees with these comments. Such nonessential products are adulterated and/or misbranded under certain act provisions, including sections 402, 403, 409, 501, 502, 601, and 602 of the act (21 U.S.C. 342, 343, 348, 351, 352, 361, and 362). The basis for FDA's authority to declare such products adulterated and/or misbranded is discussed in the preambles for the current § 2.125 and related rules and proposed rules (see 43 FR 11301, March 17, 1978; 42 FR 24536, May 13, 1977; 42 FR 22018, April 29, 1977; and 41 FR 52071, November 26, 1976). However, FDA is changing the regulation to conform to the authority delegated to it under the Clean Air Act. FDA notes that EPA is responsible for enforcement of provisions of the Clean Air Act.

114. One comment stated that all CFC–MDI's with the same active moiety as an approved non-CFC alternative must be phased out upon approval of the non-CFC alternative because: (1) Section 601(8) of the Clean Air Act (42 U.S.C. 7671(8)) indicates that as soon as a non-CFC product receives FDA approval, all CFC–MDI's for which the non-CFC product is an alternative can no longer qualify as essential; and (2) non-CFC product approval by FDA constitutes a formal administrative adjudication by FDA that there is a technically feasible alternative to the use of CFC's in certain adrenergic bronchodilator MDI's.

FDA disagrees with this comment. Section 601(8) of the Clean Air Act (42 U.S.C. 7671(8)) defines which medical products may continue to use ozone-depleting substances. The definition states:

> (8) Medical device. The term "medical device" means any device (as defined in the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321)), diagnostic product, drug (as defined in the Federal Food, Drug, and Cosmetic Act), and drug delivery system—
>
> (A) if such device, product, drug, or drug delivery system utilizes a class I or class II substance for which no safe and effective alternative has been developed, and where necessary, approved by the Commissioner; and
>
> (B) if such device, product, drug, or drug delivery system, has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner in consultation with the Administrator.

The comment wrongly assumes that a non-CFC product with the same active moiety as a CFC product is a "safe and effective alternative" to that CFC product. A non-CFC product simply having the same active moiety as a CFC product is only one factor to be considered. Other factors, such as whether the non-CFC product has the same route of administration, the same indication, and can be used with approximately the same level of convenience, are important considerations. Additionally, FDA must consider whether patients who medically need the CFC product are adequately served by the non-CFC product. In those instances where an active moiety is marketed by two or more NDA's or marketed in multiple, distinct strengths, at least two non-CFC products that contain the same active moiety must be marketed to adequately serve the consumer.

This comment also demonstrates a misunderstanding of the meaning of an FDA-approval of a non-CFC product. FDA's approval of a non-CFC product is a determination that the product is safe and effective, but it is *not* a determination that the product is a safe and effective *alternative* to any other product. That requires a separate and distinct analysis.

The comment is correct to the extent that it indicates that once a non-CFC product that is a safe and effective alternative is approved, the CFC-product must be phased out. Those factors described previously and those incorporated into this proposed rule are factors to be considered when determining whether a non-CFC product is a safe and effective alternative to a CFC-product. FDA believes these factors are also an important part of the analysis used to determine whether a product is essential. FDA and EPA will be consulting to determine whether such medical products are essential and safe and effective alternatives.

115. One comment stated that under the Montreal Protocol, for use of an ODS in a product to be no longer essential there must be multiple alternatives and the alternatives must be: (1) Technically feasible, (2) economically feasible, (3) acceptable from an environmental standpoint, and (4) acceptable from a health standpoint. The comment stated that FDA is responsible for making determinations (1), (2), and (4), and that EPA is responsible for making the third determination.

Under this proposal, FDA is requiring the existence of feasible alternatives that are acceptable from a health standpoint before it will find any CFC–MDI no longer essential.

116. Two comments stated that there is no need for FDA to make a determination of essential use under the Clean Air Act, although it does have the authority to do so, because the determination is to be made under the Montreal Protocol.

Section 601 of the Clean Air Act explicitly directs "the Commissioner [of FDA] in consultation with the Administrator" of EPA to determine whether a device, product, drug, or drug delivery system is essential under the Clean Air Act (42 U.S.C. 7671(8)). This determination is different from the essential use determination made under the Montreal Protocol.

117. One comment stated that the Clean Air Act does not require a preferable or popular alternative but only an alternative that is FDA approved (safe and effective) and technically feasible.

As explained previously, although FDA approval does constitute a determination that a product is safe and effective on its own, this finding does not constitute a determination regarding whether one product is a medically acceptable alternative for another.

118. One comment discussed extensively products EPA has allowed to stay on the market and concluded that FDA should not ban MDI's.

First, FDA is not banning any MDI's. Rather, FDA is making a determination regarding whether the use of CFC's in particular medical products continues to be essential. Second, FDA cannot speak on behalf of EPA regarding why certain products may remain on the market. However, FDA notes that the comment's analysis relies on 42 U.S.C. 7671i(e), which states specifically that it does not apply to medical devices as defined in the Clean Air Act (42 U.S.C. 7671(8)).

119. One comment stated that FDA cannot find products nonessential if they do not have a therapeutically equivalent replacement.

Neither the Clean Air Act or the Montreal Protocol requires alternative products to be therapeutically equivalent to a CFC product before the CFC product can be considered nonessential.

120. One comment stated that the ANPRM conflicts with the Drug Price Competition and Patent Term Restoration Act of 1984 by impeding generic competition, because under section 505(c)(3)(D) of the act, products with an active ingredient that do not contain a new chemical entity will receive 3 years of market exclusivity and products with an active ingredient that is a new chemical entity will receive 5 years of market exclusivity. Further, patent protections may extend the time during which generic competition is prevented.

FDA recognizes that the phaseout of CFC–MDI's may affect the availability of generic products, depending on whether the phaseout occurs before generic versions of non-CFC products may be marketed. However, the Clean Air Act and the Montreal Protocol mandate the phaseout of non-essential uses of CFC's.

121. One comment noted that, in the case of Seldane, FDA acknowledged that not all patients are well-served when there are only two drugs available, and questioned whether the therapeutic class approach proposed in the ANPRM is consistent with this.

Although FDA disputes this interpretation of the Seldane notice of opportunity for hearing (62 FR 1889, January 14, 1997), FDA is no longer proposing to use the therapeutic class approach to remove essential uses from § 2.125(e).

122. One comment noted that FDA expressed concern about the differences between MDI's in its proposed rule to amend the OTC monograph for bronchodilator drug products (60 FR 13014, March 9, 1995).

FDA did express concern about the differences between MDI's in the OTC proposed rule. FDA noted that the differences meant that all new MDI's should be approved by FDA under an NDA supported by clinical trials designed to examine the effect of MDI differences. In recognition of the complexities of this dosage form, FDA is requiring each non-CFC MDI to be reviewed as a new NDA, rather than as a supplement to an existing CFC–MDI NDA. In addition, FDA has been encouraging sponsors to include in these clinical trials comparators representing the currently available CFC-based products. FDA believes its action regarding the development of the non-ODS products is consistent with its concerns expressed in the OTC proposal of March 9, 1995.

123. One comment noted that de minimis exemptions from statutory requirements are permitted and therefore requested that MDI's be exempted from the Clean Air Act requirement that all uses of CFC's cease.

FDA does not have the discretion to decide how to implement the Clean Air Act because EPA is the primary agency charged with implementing these provisions. However, as a matter of general statutory construction, provision of a specific exemption for medical products makes it unlikely that de minimis exemptions for medical products would also be permitted under the Clean Air Act.

124. One comment posited that FDA is operating under a false construct whereby the agency assumes it must follow environmental recommendations made by EPA and Parties to the Montreal Protocol.

FDA is not taking this action as a result of recommendations made by EPA or the Parties to the Montreal Protocol. Rather, FDA is complying with the statutory mandate of U.S. law as embodied in the Clean Air Act, which implements the Montreal Protocol and requires the phaseout of CFC use. FDA is taking this action to ensure that patient health is protected throughout the transition.

125. Two comments stated that FDA must comply with Executive Order 12866. One of those comments also said that FDA must comply with Executive Orders 12291, 12606, 12898, and the Regulatory Flexibility Act.

Executive Order 12291 was revoked by Executive Order 12866 section 11. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits. The agency has complied with this requirement to the extent necessary (see section VII of this document).

Executive Order 12606 was revoked and replaced by Executive Order 13045 section 7–702. Executive Order 13045 applies only to regulatory actions initiated after the date of the Executive Order (Executive Order 13045 section 2–202). The ANPRM was published on March 6, 1997, before the Executive Order was signed on April 21, 1997. Accordingly, this proposed regulatory action is exempt from Executive Order 13045. In addition, Executive Order 13045 applies only to significant regulatory actions that concern an environmental health risk or safety risk that an agency has reason to believe may disproportionately affect children. First, this proposal is not a significant regulatory action because it is not anticipated that it will have an annual net effect on the economy of $100 million or more, nor would it adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Second, the phaseout of CFC–MDI's is not an environmental health risk. Rather, the phaseout constitutes an environmental health benefit, since reduction in CFC use could decrease ongoing damage to the ozone layer and thereby decrease related health problems. In particular, children will benefit from a phaseout because they are more susceptible to skin cancers due to increased sensitivity and lifetime exposure. Therefore, Executive Order 13045 does not apply to this proposal.

Executive Order 12898 requires agencies to identify and address disproportionately high adverse human health or environmental effects on minority populations and low-income populations. The agency does not anticipate that this proposed rule, if implemented, will have any adverse effects on human health or the environment.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The agency has complied with this requirement (see section VII.A of this document).

126. One comment stated that FDA must assess environmental impacts under 2 U.S.C. 1532 and 1535.

The primary purpose of the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) is to end the imposition of unfunded Federal mandates on other governments without the full consideration of the Federal Government (2 U.S.C. 1501(2)). However, the Unfunded Mandates Reform Act does also ask agencies to estimate the impact of unfunded Federal mandates on the private sector (2 U.S.C. 1501(3)). As part of that estimate, the agency is to examine the effect of the Federal mandate on health, safety, and the natural environment. FDA has complied with this requirement (see section VII of this document). In addition, FDA believes that environmental benefits are analyzed with the regulations implementing the Clean Air Act.

IV. Legal Authority

FDA's proposal to determine when CFC uses are essential in medical devices is authorized by the Clean Air Act. EPA regulations implementing the provisions of section 610 of the Clean Air Act (42 U.S.C. 7671i) contain a general ban on the use of CFC's in pressurized dispensers (40 CFR 82.64(c) and 82.66(d)). The Clean Air Act and EPA regulations exempt from the general ban "medical devices" that FDA considers essential and that are listed in § 2.125(e) (42 U.S.C. 7671i(e); 40 CFR 82.66(d)(2)). Section 601(8) of the Clean Air Act defines "medical device" as any device (as defined in the act), diagnostic product, drug (as defined in the act), and drug delivery system, if such device, product, drug, or drug delivery system uses a class I or class II ozone-depleting substance for which no safe and effective alternative has been developed (and, where necessary, approved by the Commissioner of Food and Drugs (the Commissioner)); and if such device, product, drug, or drug delivery system has, after notice and opportunity for public comment, been approved and determined to be essential by the Commissioner in consultation with the Administrator of EPA (the Administrator). Class I substances include CFC's, halons, carbon tetrachloride, methyl chloroform, methyl bromide, and other chemicals not relevant to this document (see 40 CFR part 82, appendix A to subpart A). Class II substances include hydrochlorofluorocarbons (HCFC's) (see 40 CFR part 82, appendix B to subpart A). Essential-use products are listed in § 2.125(e). Although § 2.125 includes a mechanism for adding essential-use products to the regulations, the regulations do not include a mechanism for removing products from the essential-use list. This proposed rule, if enacted, would provide a mechanism for FDA to remove products from the essential-use list in an orderly and rational fashion.

V. Proposed Implementation Plan

FDA proposes that any final rule that may issue based on this proposal become effective 1 year after its date of publication in the **Federal Register**. After that date, FDA would evaluate products on the essential-use list according to the criteria set forth in the rule. As the criteria for eliminating essential uses are met, FDA will publish proposals to eliminate essential uses for the appropriate individual active moieties. FDA intends that such proposals will be published and finalized in an expeditious manner.

VI. Request for Comments

Interested persons may, on or before November 30, 1999, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

In particular, FDA seeks comment on the following issues:

1. The criteria FDA should use to determine whether a subpopulation is significant;

2. The type of postmarketing information FDA should consider in evaluating the adequacy of alternatives; and

3. The timing of the removal of the essential-use designation for nasal steroids.

VII. Analysis of Impacts

A. Introduction

FDA has examined the impacts of the proposed rule under Executive Order 12866, under the Regulatory Flexibility Act (5 U.S.C. 601–612), and under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs regulatory agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Unless the agency certifies that the rule is not expected to have a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant economic impact of a rule on small entities. Section 202 of the Unfunded Mandates Reform Act requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year (adjusted annually for inflation). The agency has conducted analyses of the proposed rule, and has determined that the rule is consistent with the principles set forth in the Executive Order and in these statutes. FDA finds that this proposed rule will not result in costs in excess of $100 million, and therefore no further analysis is required under the Unfunded Mandates Reform Act. In addition, FDA certifies that this

proposed regulation would not result in a significant economic impact on a substantial number of small entities. Thus, the agency need not prepare an interim Regulatory Flexibility Analysis.

This proposed rule would amend the regulation that permits the use of ODS's in particular circumstances by setting the standards that FDA will use to determine when the use of ODS's in FDA-regulated products is essential under the Clean Air Act. In 1987, the United States became a party to an international agreement known as the Montreal Protocol. The Parties to the Protocol have agreed to eventually eliminate all uses of ODS's. However, the Parties currently permit the use of ODS's in essential medical products. FDA, in consultation with EPA, must determine whether the uses of ODS's in medical products are essential. Currently, the United States has secured essential-use designations for the use of CFC's (which are ODS's) in MDI's through the year 2000 and will continue to seek such designations until acceptable alternatives make CFC–MDI's nonessential.

CFC's are presently used as propellants in MDI's. FDA has approved 17 active moieties that use CFC's in MDI's, although only 16 are marketed as either prescription or OTC products (see Table 1 of this document). These CFC–MDI's are approved for the treatment of asthma and other COPD's. Several manufacturers are in the process of reformulating their CFC–MDI's to use non-ODS propellants in the United States. In some foreign markets, reformulated products are already in the process of displacing or have already displaced products containing ODS's.

FDA is also proposing to remove the essential-use designation for metered-dose steroid human drugs for nasal inhalation. Four manufacturers market five CFC-nasal inhalation drug products, which constitute less than 20 percent of the nasal inhalation product market. The drug products contain either beclomethasone, budesonide, or triamcinolone. Beclomethasone and triamcinolone are also marketed in non-CFC formulations. The manufacturer of budesonide has represented publicly that it intends to market a non-CFC formulation.

B. Economic Impacts

The proposed regulation articulates the standards used by FDA to determine whether the use of CFC–MDI's is essential. This proposal would not have any economic impact, since it simply establishes the criteria FDA would use to make essential-use determinations. However, application of the rule in future rulemakings would generate both regulatory benefits and costs. FDA discusses some of those possible benefits and costs here, but notes that it would conduct additional analyses as part of its notice-and-comment rulemaking for essential-use designations for particular products.

1. Regulatory Benefits

The potential benefits of the rule are the environmental gains associated with the diminished use of ODS's in medical products. FDA has not attempted to quantify the value of these environmental improvements, which would constitute only a small fraction of the overall benefits of compliance with the Clean Air Act and Montreal Protocol. Nevertheless, even a relatively small percentage would represent a significant value. EPA has estimated in prior regulatory impact analyses that the aggregate public health benefit of the phaseout of ODS's due to reduced cases of skin cancer, cataracts, and other health effects ranges between $8 and $32 trillion (Ref. 1).

Currently, about 14.6 million patients are being treated for asthma and COPD (Ref. 2). FDA believes that these patients are treated with MDI's. Over 120 million prescriptions for the affected drug substances are dispensed each year. Although the Clean Air Act and the Montreal Protocol require the eventual elimination of essential-use designations for these products, the agency has carefully structured its rule to avoid negative impacts on the nation's public health. Most importantly, the proposed regulation would ensure that adequate supplies of reformulated products with comparable therapeutic roles are available prior to recision of an essential-use designation. An alternative product that could not demonstrate comparable therapeutic outcomes would not be considered a medically acceptable alternative and the essential-use designation for the CFC–MDI would remain in place. Thus, the rule would ensure that treatment outcomes would not be threatened as products are reformulated with acceptable, non-ODS propellants.

FDA notes that upon approval, new non-ODS products could be eligible for market protections under the Hatch-Waxman Amendments. Thus, existing lower-priced generic CFC–MDI's could disappear from the market if their active moiety were no longer designated as essential. However, FDA finds that the total number of pharmaceutical prescriptions purchased has not typically increased following the introduction of generic competition (Ref. 3). Consequently, FDA does not anticipate a significant decrease in the total number of prescriptions purchased due to curtailment of generic competition. However, these impacts may vary for particular products or markets and FDA asks for public comment on this issue, with particular attention to evaluating effects on patient affordability.

FDA also notes that removal of the essential-use designation for nasal steroids would not have a negative impact on the nation's public health. Adequate supplies of reformulated products with comparable therapeutic roles exist and are used widely by patients for the treatment of seasonal and perennial allergic rhinitis. FDA also notes that the price of the alternative nasal inhalation drugs are approximately the same as for the CFC-products on a dose per dose basis.

2. Regulatory Costs

Sponsors who elect to reformulate their products will incur significant costs to collect the detailed clinical data necessary for approval of reformulated products. One sponsor that has developed alternative formulations has stated that the total development costs of reformulated MDI's have approached $250 million (Ref. 4). FDA has no empirical data to confirm these costs, but notes that these outlays imply global expenses for replacing propellants, as required by various environmental agreements, such as the Montreal Protocol. Product manufacturers are well aware of the mandate to eliminate the marketing of ODS's and are already engaged in the development of reformulated products. Because these international development activities will continue regardless of FDA's precise standards for rescinding essential-use determinations, FDA considers these reformulation costs a direct consequence of the statutory requirements of the Clean Air Act, rather than of FDA's forthcoming regulation. Postmarketing studies of reformulated products would be part of these development costs. Thus, FDA finds that the aggregate costs of the rule are directly attributable to the enactment of the Clean Air Act.

For nasal steroids, FDA does not anticipate any regulatory costs as a result of this proposal, since the manufacturers that market the CFC-products are the same manufacturers that market non-CFC alternatives or have filed an application to do so.

3. Distributive Impacts

The future establishment of specific rules for the elimination of essential-use designations could have significant distributional impacts on various economic sectors. In particular, FDA's essential-use designation recisions would determine when individual generic CFC–MDI's would no longer be considered essential. Such decisions could force generic consumers to switch to higher-priced reformulated, branded products until non-ODS generic products became available. These consumers could face significant cost increases, of which third-party payers, including the nation's Medicaid system, might bear roughly 70 percent. Alternatively, patients that use brand name products should experience little change in either costs or outcomes due to this rule. Experience from the United Kingdom (Ref. 4) and comments from potential manufacturers indicate that the reformulated brand name products would likely be priced comparably to current brand name products. Diminished generic alternatives are not expected to alter this expectation, as several studies have shown that the availability of generic substitutes has had little impact on the price of branded products (Refs. 3, 5, 6, 7, and 8).

Distribution systems (warehouses, distribution centers, and retail pharmacies) for pharmaceutical products are reported to generate higher profit rates per prescription for generic products than for branded products (Refs. 9 and 10).[7] Accordingly, each branded prescription substituted for a generic prescription could result in lost revenue for distributors and retailers. Generic manufacturers could also lose sales revenues following the recision of an essential-use designation, although these firms might mitigate these losses by shifting production resources to other generic products. In total, therefore, patients, third-party payers, distributors, and generic manufacturers could experience overall sector losses due to the removal of a product from the essential-use list in § 2.125.

On the other hand, manufacturers of reformulated branded products would receive increased revenues, because sales of branded products would increase by capturing the current demand for generic prescriptions.

These distributional impacts will not be triggered, however, until the completion of a future rulemaking on each ODS-containing product. FDA plans to conduct specific market analyses to determine the approximate magnitude of these economic effects prior to determining the essentiality of these ODS products.

[7] Data indicate this to be true in both absolute and proportional terms.

FDA does not anticipate any distributive impacts due to the removal of the essential-use designations for nasal inhalation products because the alternative products are marketed by the same manufacturers.

C. Small Business Impact

1. Initial Analysis

The proposed standards provide a framework for FDA's future decisions regarding essential-use designations for particular CFC–MDI's and would remove the essential-use designations for metered-dose steroid human drugs for nasal inhalation. FDA certifies that this rule would not have a significant impact on a substantial number of small entities. Nevertheless, FDA has prepared the elements of an Initial Regulatory Flexibility Analysis to alert any potentially affected small entities of the opportunity to submit comments to the agency. FDA notes that the direct regulatory costs are attributable to the Clean Air Act and Montreal Protocol mandate to phase out the use of ODS's and are not dependent upon the enactment of this proposed rule.

2. Description of Impact

The objective of the proposed regulation is to provide the basis for essential-use designations for ODS's in FDA-regulated products, without jeopardizing the public health. The proposed regulation would accomplish this objective by articulating the standards to be used for revising essential-use designations for approved drug products. The statutory authority for the proposed rulemaking is discussed in section IV of this document.

The industry primarily affected by the rescission of essential-use designations would be manufacturers of pharmaceutical preparations (Ref. 11, SIC 2834). Census data indicate that more than 92 percent of the approximately 700 manufacturing establishments and 87 percent of the 650 firms in this industry have fewer than 500 employees. The Small Business Administration (SBA) considers firms with fewer than 750 employees in this sector to be small, but census size categories do not correspond to the SBA designation. Nevertheless, when the procedures of this proposed regulation are implemented, the major impact would likely be incurred by fewer than five small manufacturers of generic products and even fewer small manufacturers of branded products.

Table 1 of this document shows that seven drug substances will be eligible for generic competition in the next several years. However, even in the absence of any FDA decision, many of these drug substances are unlikely to attract generic competition because of their relatively small market share and the knowledge that ODS's are to be removed from the market. In fact, several drug substances that have lost market exclusivity have not been subject to generic competition.

FDA notes that metered-dose steroid human drugs for nasal inhalation are manufactured by four manufacturers, none of whom are small. Therefore, FDA does not expect its proposal to remove the essential-use designation for metered-dose steroid human drugs for nasal inhalation to have a significant impact on a substantial number of small entities.

FDA does not expect significant impacts on wholesalers of pharmaceutical products (Ref. 11, SIC 5122) or retail pharmacies (Ref. 11, SIC 5912) because only a few of the thousands of pharmaceutical products sold by these firms is likely to be affected.

3. Analysis of Alternatives

FDA examined several alternatives to the proposed rule. First, FDA considered denying new essential-use designations but allowing currently exempted drug products to continue to use ODS's. This alternative would continue the availability of current therapies at no additional transfer of costs. However, there would be no incentive to reformulate products. Thus, this alternative would not meet the environmental requirement to eliminate the use of ODS's.

Next, FDA considered allowing essential-use designations for all CFC–MDI's to remain in place until a specific time. However, this alternative imposes a risk of significant market disruption when products are removed. FDA preliminarily estimated that disruption of therapies and additional costs of shortages could cost almost $1 billion. In addition, allocations of ODS's are not guaranteed. The United States must seek and be granted allocations through procedures established by the Montreal Protocol. As part of those procedures, the United States has committed to a yearly examination of essential-uses.

FDA also considered removing essential-use designations for all drug products within a therapeutic class as soon as any two active moieties within the class were available in non-ODS formulations. Defining alternative therapies to include all active moieties within a therapeutic class would hasten the removal of ODS's from the environment. However, FDA rejected

this alternative because of concerns about the ability of a few products to replace all products within a therapeutic class.

Another option would have been for the United States to remove essential-use designations for products on a regular basis or by reduction in CFC allocations. FDA is not encouraging selection of this option because there would be inadequate consideration of the public health impact of essential-use designations.

D. Conclusion

This analysis examined the impact of FDA's proposed rule to set the conditions and standards for determining the essentiality of using ODS's in MDI's and to remove the essential-use designations for metered-dose steroid human drugs for nasal inhalation. FDA believes that this rule would ensure adequate product availability without jeopardizing the desired therapeutic outcomes associated with the affected products. Also, the agency finds that its rule would impose nominal net societal costs, although FDA recognizes that removing essential-use designations for products for the treatment of asthma and COPD could generate substantial losses and gains for particular sectors of the economy. As each essential-use removal for such products would be made through notice-and-comment rulemaking, FDA would examine the particular impact of each essential-use designation at the time of the specific proposal.

TABLE 1.—DESCRIPTION OF THE AFFECTED DRUG SUBSTANCE (AS OF SEPTEMBER 1998)[1]

Drug Substance in MDI	Generic Available?	Number Distributed Annually (millions)	Approximate Market Share (percent)	Off Patent Date
Albuterol	Yes	48.80[2]	40.5	Off
Beclomethasone	No	21.31	17.7	December 1999
Ipratropium	No	13.47	11.2	Off
Triamcinolone	No	9.26	7.7	October 1999
Salmeterol	No	6.84	5.7	January 2012
Flunisolide	No	4.45	3.7	June 2007
Fluticasone	No	3.37	2.8	November 2003
Albuterol/Ipratropium	No	2.15	1.8	June 2015
Pirbuterol	No	2.07	1.7	May 2004
Metaproterenol	No	1.52	1.3	Off
Cromolyn	No	1.47	1.2	September 2000
Nedocromil	No	0.87	0.7	October 2006
Bitolerol	No	0.12	0.1	Off
Isoetharine	No	0.07	0.1	Off
Terbutaline	No	0.02	0.0	Off
Total		115.79	96.2[3]	

[1] Source: FDA CDER data and *Approved Therapeutic Drug Products*, 19th ed.
[2] Including 34.96 million generic and relabeled prescriptions.
[3] Percentages do not add to 100 percent because data are not available for epinephrine and isoproterenol.

VIII. The Paperwork Reduction Act of 1995

The proposed rule does not require information collections subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Section 2.125(f) provides that a person may seek to add or remove an essential use listed under § 2.125(e) by filing a petition under part 10 (21 CFR part 10). Section 10.30(b) requires that a petitioner submit to the agency a statement of grounds, including the factual and legal grounds on which the petitioner relies. Section 2.125(f) describes the factual grounds necessary to document a petition to add or remove an essential use, as required by § 10.30(b). The burden hours required to provide the factual grounds for a petition have been calculated under § 10.30 and have been approved under OMB control No. 0910–0183, which expires on June 30, 2000.

IX. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. ICF Inc., *Regulatory Impact Analysis: Compliance with Section 604 of the Clean Air Act for the Phaseout of Ozone Depleting Chemicals*, ch. 6, July 1, 1992.
2. U.S. National Center for Health Statistics, Vital and Health Statistics, Series 10, No. 193, 1996.
3. Caves, R. E. et al., "Patent Expiration, Entry, and Competition in the U.S. Pharmaceutical Industry," in "Brookings Papers on Economic Activity: Microeconomics," edited by M. N. Brady, pp. 1–66, 1991.
4. "Glaxo Ventolin Evohaler U.K. Launch Stresses Consistency With Predecessor," *Pink Sheet*, vol. 60:37, 1998.
5. Grabowski, H. G., and J. M. Vernon, "Brand Loyalty, Entry, and Price Competition in Pharmaceuticals After the 1984 Drug Act," *Journal of Law and Economics*, 35:10(331–350), 1992.
6. Wiggins, S., and R. Maness, "Price Competition in Pharmaceutical Markets," PERC Working Paper No. 9409, Texas A&M University, Economics Department, 1993.
7. Ellison, S. F. et al., "Characteristics of Demand for Pharmaceutical Products: An Examination of Four Cephalosporins," *RAND Journal of Economics*, 28:3(426–446), 1997.
8. Frank, R. G., and D. S. Salkever, "Generic Entry and the Pricing of Pharmaceuticals," *Journal of Economics and Management Strategy*, 6:1(75–90), 1997.
9. Grabowski, H. G., and J. M. Vernon, "Longer Patents for Increased Generic Competition in the United States: The Waxman-Hatch Act After One Decade," *PharmacoEconomics*, 10 (Suppl. 2):110–123; 1996.
10. U.S. Congressional Budget Office, *How Increased Competition From Generic Drugs Has Affected Prices and Returns in the Pharmaceutical Industry*, 1998.
11. U.S. Small Business Administration, *Table of Size Standards*, 1996.

List of Subjects in 21 CFR Part 2

Administrative practice and procedure, Cosmetics, Devices, Drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and the Clean Air Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 2 be amended as follows:

PART 2—GENERAL ADMINISTRATIVE RULINGS AND DECISIONS

1. The authority citation for 21 CFR part 2 is revised to read as follows:

Authority: 15 U.S.C. 402, 409; 21 U.S.C. 321, 331, 335, 342, 343, 346a, 348, 351, 352, 355, 360b, 361, 362, 371, 372, 374; 42 U.S.C. 7671 *et seq.*

2. Section 2.125 is revised to read as follows:

§ 2.125 Use of ozone-depleting substances in foods, drugs, devices, or cosmetics.

(a) As used in this section, *ozone-depleting substance* (ODS) means any class I substance as defined in 40 CFR part 82, appendix A to subpart A, or class II substance as defined in 40 CFR part 82, appendix B to subpart A.

(b) Except as provided in paragraph (c) of this section, any food, drug, device, or cosmetic that is, consists in part of, or is contained in, an aerosol product or other pressurized dispenser that releases an ODS is not an essential use of the ODS under the Clean Air Act.

(c) A food, drug, device, or cosmetic that is, consists in part of, or is contained in, an aerosol product or other pressurized dispenser that releases an ODS is an essential use of the ODS under the Clean Air Act if paragraph (e) of this section specifies the use of that product as essential. For drugs, including biologics and animal drugs, and for devices, an investigational application or an approved marketing application must be in effect, as applicable.

(d) [Reserved]

(e) The use of ODS's in the following products is essential:

(1) *Metered-dose corticosteroid human drugs for oral inhalation.* Oral pressurized metered-dose inhalers containing the following active moieties:

(i) Beclomethasone.
(ii) Dexamethasone.
(iii) Flunisolide.
(iv) Fluticasone.
(v) Triamcinolone.

(2) *Metered-dose short-acting adrenergic bronchodilator human drugs for oral inhalation.* Oral pressurized metered-dose inhalers containing the following active moieties:

(i) Albuterol.
(ii) Bitolterol.
(iii) Metaproterenol.
(iv) Pirbuterol.
(v) Terbutaline.
(vi) Epinephrine.

(3) [Reserved]

(4) *Other essential uses.* (i) Metered-dose salmeterol drug products administered by oral inhalation for use in humans.

(ii) Metered-dose ergotamine tartrate drug products administered by oral inhalation for use in humans.

(iii) Anesthetic drugs for topical use on accessible mucous membranes of humans where a cannula is used for application.

(iv) Metered-dose cromolyn sodium human drugs administered by oral inhalation.

(v) Metered-dose ipratropium bromide for oral inhalation.

(vi) Metered-dose atropine sulfate aerosol human drugs administered by oral inhalation.

(vii) Metered-dose nedocromil sodium human drugs administered by oral inhalation.

(viii) Metered-dose ipratropium bromide and albuterol sulfate, in combination, administered by oral inhalation for human use.

(ix) Sterile aerosol talc administered intrapleurally by thoracoscopy for human use.

(f) Any person may file a petition under part 10 of this chapter to amend paragraph (e) of this section to add or remove an essential use.

(1) If the petition is to add use of a noninvestigational product, the petitioner must submit compelling evidence that:

(i) Substantial technical barriers exist to formulating the product without ODS's;

(ii) The product will provide an unavailable important public health benefit; and

(iii) Use of the product does not release cumulatively significant amounts of ODS's into the atmosphere or the release is warranted in view of the unavailable important public health benefit.

(2) If the petition is to add use of an investigational product, the petitioner must submit compelling evidence that:

(i) Substantial technical barriers exist to formulating the investigational product without ODS's;

(ii) A high probability exists that the investigational product will provide an unavailable important public health benefit; and

(iii) Use of the investigational product does not release cumulatively significant amounts of ODS's into the atmosphere or the release is warranted in view of the high probability of an unavailable important public health benefit.

(g) FDA will use notice-and-comment rulemaking to remove the essential-use listing of a product in paragraph (e) of this section if the product meets any one of the following criteria:

(1) The product using an ODS is no longer being marketed; or

(2) After January 1, 2005, the product is not available without an ODS and FDA determines that the product no longer meets the criteria in paragraph (f) of this section after consultation with a relevant advisory committee(s) and after an open public meeting; or

(3) For individual active moieties marketed as ODS products and represented by one new drug application (NDA) and one strength:

(i) At least one non-ODS product with the same active moiety is marketed with the same route of administration, for the same indication, and with approximately the same level of convenience of use as the ODS product containing that active moiety;

(ii) Supplies and production capacity for the non-ODS product(s) exist or will exist at levels sufficient to meet patient need;

(iii) At least 1 year of U.S. postmarketing use data is available for the non-ODS product(s); and

(iv) Patients who medically required the ODS product are adequately served by the non-ODS product(s) containing that active moiety and other available products; or

(4) For individual active moieties marketed as ODS products and represented by two or more NDA's or marketed in multiple distinct strengths;

(i) At least two non-ODS products that contain the same active moiety are being marketed with the same route of delivery, for the same indication, and with approximately the same level of convenience of use as the ODS products; and

(ii) The requirements of paragraphs (g)(3)(ii), (g)(3)(iii), and (g)(3)(iv) of this section are met.

Dated: August 19, 1999.

Jane E. Henney,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 99–22887 Filed 8–30–99; 12:40 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Chapter I

[FHWA Docket No. FHWA–98–4970]

RIN 2125–AE54

Federal Lands Highway Program; Transportation Planning Procedures and Management Systems Pertaining to the Fish and Wildlife Service and the Refuge Roads Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); request for comments.

SUMMARY: The FHWA seeks public comment concerning the development of transportation planning procedures affecting Federal land management agencies and management systems pertaining to pavement, bridge, safety and congestion for roads funded under the Federal lands highway program (FLHP). This ANPRM requests comments on the advisability of the FHWA, in consultation with the Fish and Wildlife Service (FWS), to develop a rule to meet the transportation planning and management systems requirements of the Transportation Equity Act for the 21st Century (TEA–21) pertaining to the FWS and the refuge roads program. This ANPRM also requests comments on a number of specific issues concerning transportation planning procedures and management systems pertaining to the FWS and the refuge roads program. Section 1115(d) of the TEA–21 requires the Secretary of Transportation, in consultation with appropriate Federal land management agencies, to develop transportation planning procedures that are consistent with the metropolitan and statewide transportation planning processes required under 23 U.S.C. 134 and 135. The TEA–21 also requires the Secretary of Transportation and the Secretary of each appropriate Federal land management agency to develop, to the extent appropriate, safety, bridge, pavement, and congestion management systems for roads funded under the FLHP. The roads funded under the FLHP include park roads and parkways, forest highways, refuge roads, and Indian reservation roads. The FHWA was delegated the authority by the Secretary to serve as the lead agency within the DOT to implement the FLHP.

DATES: Comments must be received on or before November 1, 1999.

ADDRESSES: Your signed, written comments must refer to the docket number appearing at the top of this document and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Schneider, Federal Lands Highway Office, HFPD–2, (202) 366–6799; or Ms. Grace Reidy, Office of the Chief Counsel, HCC–32, (202) 366–6226, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

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Background

Section 1115(d) of TEA–21 (Pub. L. 105–178, 112 Stat. 107, 156 (1998)) amended 23 U.S.C. 204. Section 204 now requires the development of transportation planning procedures affecting Federal land management agencies and management systems pertaining to roads funded under the FLHP. Section 1115(d)(1) of TEA–21 requires the Secretary of Transportation, in consultation with the Secretary of each appropriate Federal land management agency, to develop transportation planning procedures that are consistent with the metropolitan and statewide transportation planning processes required under 23 U.S.C. 134 and 135. Section 1115(d)(1) of TEA–21 also requires the Secretary of Transportation and the Secretary of each appropriate Federal land management agency, to the extent appropriate, to develop by rule safety, bridge, pavement and congestion management systems for roads funded under the FLHP. The roads funded under the FLHP include park roads and parkways, forest highways, refuge roads and Indian reservation roads. The FHWA has the lead for the Department of Transportation in these efforts.

The FHWA is contemplating developing four rules to meet the requirements of TEA–21. Under this approach, separate rules would be developed pertaining to the National Park Service and the park roads and parkways program; the FWS and the refuge roads program; the Bureau of Indian Affairs and the Indian reservations roads program; and the Forest Service and the forest highway program. The FHWA would consider developing a "separate rule" pertaining to each agency and program area because the ownership, jurisdictional, and maintenance responsibilities for the roads in each program area are significantly different; therefore, we anticipate that each rule would be moderately different. The variances between the rules would allow for the significant differences in the ownership, jurisdictional, and maintenance responsibilities that the agencies exercise over the subject roadways to be addressed in the rules. To ensure uniformity between the four separate rules, however, the FHWA would coordinate the development of each rule, ensuring that similar text and format is contained in each of the rules. This ANPRM requests comments on the proposal for the FHWA, in consultation with the FWS, to develop a "separate rule" to meet the transportation planning and management systems requirements of TEA–21 pertaining to the FWS and the refuge roads program. Additionally, this ANPRM requests comments on the alternative of developing "one rule" that would apply to all four agencies and programs. Finally, this ANPRM also requests comments on a number of other specific issues concerning transportation planning procedures and management systems pertaining to the FWS and the refuge roads program. The specific issues are listed, as follows:

- What types of institutions or coordination efforts are needed to coordinate an FWS unit's transportation planning with State, local and tribal governments?
- How should an FWS unit's transportation planning and development be coordinated with the metropolitan and statewide planning processes?
- How should the transportation planning process address the need to minimize transportation's adverse impacts on fish and wildlife areas owned and maintained by the FWS and on surrounding areas?
- How should the transportation planning procedures address the accommodation of various modes of transportation in FWS units?
- How should the management systems requirements be addressed?

Refuge roads are public roads that provide access to or within a unit of the National Wildlife Refuge System and for which the title and maintenance responsibilities are vested in the United States. A vast majority of the refuge roads are owned and maintained by the FWS. Changes to the refuge transportation system may affect the surrounding transportation system; and changes to the surrounding transportation system may significantly affect the refuge transportation system. Therefore, transportation planning procedures would be developed to provide guidance for systematizing transportation planning within the refuges and to coordinate their transportation planning efforts with other agencies and organizations. Management systems would be developed that support the transportation planning efforts.

To ensure that the full range of issues related to this anticipated rulemaking process are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action should be directed to the FHWA at the address provided above. Likewise, in separate advance notices of proposed rulemaking published elsewhere in today's **Federal Register**, FHWA Docket No. FHWA–99–4967, *Federal Lands Highway Program; Transportation Planning Procedures and Management Systems Pertaining to the National Park Service and the Park Roads and Parkways Program*, FHWA Docket No. FHWA–99–4968, *Federal Lands Highway Program; Transportation Planning Procedures and Management Systems Pertaining to the Bureau of Indian Affairs and the Indian Reservation Roads Program*, FHWA Docket No. FHWA–99–4969, *Federal Lands Highway Program; Transportation Planning Procedures and Management Systems Pertaining to the Forest Service and the Forest Highways Program*, the FHWA is seeking public comment on the propriety of developing transportation planning procedures affecting other Federal land management agencies and management systems pertaining to other roads funded under the FLHP.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. The FHWA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. In addition to late comments, the FHWA will also continue to file, in the docket, relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that the contemplated rule would be a significant regulatory action within the meaning of Executive Order 12866 and the regulatory policies and procedures of the Department of Transportation because of the substantial public interest anticipated in the transportation facilities on Fish and Wildlife system units. There is also substantial interest by Federal, State, regional, local and tribal governments, and private groups due to the necessary coordination with these organizations when transportation planning is being performed for transportation facilities within and approaching the Fish and Wildlife system units.

It is anticipated that the economic impact of any action taken in this rulemaking process will be minimal. Any changes are not anticipated to adversely affect, in a material way, any sector of the economy. In addition, any changes are not likely to interfere with any action taken or planned by another agency or to materially alter the budgetary impact of any entitlement, grants, user fees, or loan programs.

Based upon the information received in response to this action, the FHWA intends to carefully consider the costs and benefits associated with this rulemaking. Accordingly, comments, information, and data are solicited on the economic impact of the changes described in this document or any alternative proposal submitted.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), and based upon the information received in response to this ANPRM, the FHWA will evaluate the effects of any action proposed on small entities. This ANPRM will only generate comments and discussions on transportation planning procedures and management systems pertaining to pavement, bridge, safety, and congestion for FLHP-funded roads in accordance with existing laws, regulations, and guidance. If the final rule contemplated in this ANPRM is promulgated, States may be affected by the rule due to the possibility of expending additional resources during the transportation planning process, although it is anticipated that any additional expenditures would be minor. Because the States are not included in the definition of "small entity" set forth in 5 U.S.C. 601, we do not anticipate that any transportation planning procedures or management systems requirements would have substantial economic impact on small entities within the meaning of the Regulatory Flexibility Act. We encourage commenters to evaluate any options addressed here with regard to the potential for impact, however, and to formulate their comments accordingly.

Unfunded Mandates Reform Act of 1995

This ANPRM would not impose a Federal mandate resulting in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and tribal governments and the private sector.

Executive Order 12612 (Federalism Assessment)

Any action that might be proposed in subsequent stages of this proceeding will be analyzed in accordance with the principles and criteria contained in Executive Order 12612. Given the nature of the issues involved in this proceeding, the FHWA anticipates that any action contemplated will not have sufficient federalism implications to warrant the preparation of a federalism assessment. Nor does the FHWA anticipate that any action taken would preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. We encourage commenters to consider these issues, however, as well as matters concerning any costs or burdens that might be imposed on the States as a result of actions considered here.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. Accordingly, the FHWA solicits comment on this issue.

Paperwork Reduction Act

Any action that might be contemplated in subsequent phases of this proceeding is not likely to involve a collection of information requirement for the purposes of the Paperwork

Reduction Act of 1995, 44 U.S.C. 3501–3520, or information collection requirements not already approved for transportation planning and management systems. The FHWA, however, will evaluate any actions that might be considered in accordance with the terms of the Paperwork Reduction Act.

National Environmental Policy Act

The agency also will analyze any action that might be proposed for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) to assess whether there would be any affect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Chapter I

Bridge and congestion management systems, Bridges, Defense access roads, Forest highways, Highways and roads, Metropolitan transportation planning, Pavement, Safety, Statewide transportation planning, and Traffic monitoring systems.

(Authority: 23 U.S.C. 134, 135, 204, and 315; sec. 1115, Pub. L. 105–178, 112 Stat. 107 (1998); 49 CFR 1.48.)

Issued on: August 25,1999.

Gloria J. Jeff,

Federal Highway Deputy Administrator.

[FR Doc. 99–22703 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Chapter I

[FHWA Docket No. FHWA–99–4969]

RIN 2125–AE55

Federal Lands Highway Program; Transportation Planning Procedures and Management Systems Pertaining to the Forest Service and the Forest Highway Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); request for comments.

SUMMARY: The FHWA seeks public comment concerning the development of transportation planning procedures affecting Federal land management agencies and management systems pertaining to pavement, bridge, safety, and congestion for roads funded under the Federal lands highway program (FLHP). This ANPRM requests comments on the advisability of the FHWA, in consultation with the Forest Service (FS), to develop a rule to meet the transportation planning and management systems requirements of the Transportation Equity Act for the 21st Century (TEA–21) pertaining to the FS and the forest highway program. This ANPRM also requests comments on a number of specific issues concerning transportation planning procedures and management systems pertaining to the FS and the forest highway program. Section 1115(d) of the TEA–21 requires the Secretary of Transportation, in consultation with appropriate Federal land management agencies, to develop transportation planning procedures that are consistent with the metropolitan and statewide transportation planning processes required under 23 U.S.C. 134 and 135. The TEA–21 also requires the Secretary of Transportation and the Secretary of each appropriate Federal land management agency to develop, to the extent appropriate, safety, bridge, pavement, and congestion management systems for roads funded under the FLHP. The roads funded under the FLHP include park roads and parkways, forest highways, refuge roads, and Indian reservation roads. The FHWA was delegated the authority by the Secretary to serve as the lead agency within the DOT to implement the FLHP.

DATES: Comments must be received on or before November 1, 1999.

ADDRESSES: Your signed, written comments must refer to the docket number appearing at the top of this document and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Schneider, Federal Lands Highway Office, HFPD–2, (202) 366–6799; or Ms. Grace Reidy, Office of the Chief Counsel, HCC–32, (202) 366–6226, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

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Background

Section 1115(d) of TEA–21 (Pub. L. 105–178, 112 Stat 107, 156 (1998)) amended 23 U.S.C. 204. Section 204 now requires the development of uniform transportation planning procedures affecting Federal land management agencies and management systems pertaining to roads funded under the FLHP. Section 1115(d)(1) of TEA–21 requires the Secretary of Transportation, in consultation with the Secretary of each appropriate Federal land management agency, to develop transportation planning procedures that are consistent with the metropolitan and statewide transportation planning processes required under 23 U.S.C. 134 and 135. Section 1115(d)(1) of TEA–21 also requires the Secretary of Transportation and the Secretary of each appropriate Federal land management agency, to the extent appropriate, to develop safety, bridge, pavement and congestion management systems for roads funded under the FLHP. The roads funded under the FLHP include park roads and parkways, forest highways, refuge roads and Indian reservation roads. The FHWA has the lead for the Department of Transportation in these efforts.

The FHWA is contemplating developing four rules to meet the requirements of TEA–21. Under this approach, separate rules would be developed pertaining to the National Park Service and the park roads and parkways program; the FWS and the refuge roads program; the Bureau of Indian Affairs and the Indian reservations roads program; and the Forest Service and the forest highway program. The FHWA would consider developing a "separate rule" pertaining to each agency and program area because the ownership, jurisdictional, and maintenance responsibilities for the roads in each program area are significantly different; therefore, we anticipate that each rule would be moderately different. The variances between the rules would allow for the significant differences in the ownership, jurisdictional, and maintenance responsibilities that the agencies exercise over the subject roadways to be addressed in the rules. To ensure uniformity between the four separate rules, however, the FHWA would coordinate the development of each rule, ensuring that similar text and format is contained in each of the rules. This ANPRM requests comments on the proposal for the FHWA, in consultation with the FS, to develop a "separate rule" to meet the transportation planning and management systems requirements of TEA–21 pertaining to the FS and the forest highway program. Additionally, this ANPRM requests comments on the alternative of developing "one rule" that would apply to all four agencies and programs. Finally, this ANPRM also requests comments on a number of other specific issues concerning transportation planning procedures and management systems pertaining to the FS and the forest highway program. The specific issues are listed, as follows:

- What types of institutions or efforts are needed to coordinate an forest's transportation planning with State, local and tribal governments?
- How should a forest's transportation planning and development be coordinated with the metropolitan and statewide planning processes?
- How should the transportation planning process address the need to minimize transportation's adverse impacts on forests and surrounding areas?
- How should the transportation planning procedures address the accommodation of various modes of transportation in forests?
- How should the management systems requirements be addressed?

Forest highways are under the jurisdiction of, and maintained by, a public authority and open to public travel. A majority of forest highways are under the jurisdiction of, and maintained by, State departments of transportation or county or township authorities. Under most circumstances, the State department of transportation, the FHWA and the FS work together to perform transportation planning for this roadway network. Therefore, transportation planning procedures would be developed that provide guidance for performing and systematizing coordinated transportation planning among these agencies. Management systems would be developed that support the transportation planning efforts.

To ensure that the full range of issues related to this anticipated rulemaking process are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action should be directed to the FHWA at the address provided above. Likewise, in separate advance notices of proposed rulemaking published elsewhere in today's **Federal Register**, FHWA Docket No. FHWA–99–4967, *Federal Lands Highway Program; Transportation Planning Procedures and Management Systems Pertaining to the National Park Service and the Park Roads and Parkways Program*, FHWA Docket No. FHWA–99–4968, *Federal Lands Highway Program; Transportation Planning Procedures and Management Systems Pertaining to the Bureau of Indian Affairs and the Indian Reservation Roads Program, FHWA Docket No. FHWA–99–4970, Federal Lands Highway Program; Transportation Planning Procedures and Management Systems Pertaining to the Fish and Wildlife Service and the Refuge Roads Program*, the FHWA is seeking public comment on the propriety of developing transportation planning procedures affecting other Federal land management agencies and management systems pertaining to other roads funded under the FLHP.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. The FHWA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. In addition to late comments, the FHWA will also continue to file, in the docket, relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that the contemplated rule would be a significant regulatory action within the meaning of Executive Order 12866 and the regulatory policies and procedures of the Department of Transportation because of the substantial public interest anticipated in the transportation facilities within and approaching national forests. There is also substantial interest by Federal, State, regional, local and tribal governments, and private groups due to the necessary coordination with these organizations when transportation planning is being performed for transportation facilities within and approaching the national forests.

It is anticipated that the economic impact of any action taken in this rulemaking process will be minimal. Any changes are not anticipated to adversely affect, in a material way, any sector of the economy. In addition, any changes are not likely to interfere with any action taken or planned by another agency or to materially alter the budgetary impact of any entitlement, grants, user fees, or loan programs.

Based upon the information received in response to this action, the FHWA intends to carefully consider the costs and benefits associated with this rulemaking. Accordingly, comments, information, and data are solicited on the economic impact of the changes described in this document or any alternative proposal submitted.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), and based on the information received in response to this ANPRM, the FHWA will evaluate the effects of any action proposed on small entities. This ANPRM will only generate comments and discussions on transportation planning procedures and management systems pertaining to pavement, bridge, safety, and congestion for FLHP-funded roads in accordance with existing laws, regulations, and guidance. If the final rule contemplated in this ANPRM is promulgated, States may be affected by the rule due to the possibility of expending additional resources during the transportation planning process, although it is anticipated that any additional expenditures would be minor. Because the States are not included in the definition of "small entity" set forth in 5 U.S.C. 601, we do not anticipate that any transportation planning procedures or management

systems requirements would have substantial economic impact on small entities within the meaning of the Regulatory Flexibility Act. We encourage commenters to evaluate any options addressed here with regard to the potential for impact, however, and to formulate their comments accordingly.

Unfunded Mandates Reform Act of 1995

This ANPRM would not impose a Federal mandate resulting in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and tribal governments and the private sector.

Executive Order 12612 (Federalism Assessment)

Any action that might be proposed in subsequent stages of this proceeding will be analyzed in accordance with the principles and criteria contained in Executive Order 12612. Given the nature of the issues involved in this proceeding, the FHWA anticipates that any action contemplated will not have sufficient federalism implications to warrant the preparation of a federalism assessment. Nor does the FHWA anticipate that any action taken would preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. We encourage commenters to consider these issues, however, as well as matters concerning any costs or burdens that might be imposed on the States as a result of actions considered here.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. Accordingly, the FHWA solicits comment on this issue.

Paperwork Reduction Act

Any action that might be contemplated in subsequent phases of this proceeding is not likely to involve a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501—3520, or information collection requirements not already approved for transportation planning and management systems. The FHWA, however, will evaluate any actions that might be considered in accordance with the terms of the Paperwork Reduction Act.

National Environmental Policy Act

The agency also will analyze any action that might be proposed for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321—4347) to assess whether there would be any affect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Chapter I

Bridge and congestion management systems, Bridges, Defense access roads, Forest highways, Highways and Roads, Metropolitan transportation planning, Pavement, Safety, Statewide transportation planning, and Traffic monitoring systems.

(Authority: 23 U.S.C. 134, 135, 204, and 315; sec. 1115, Pub. L. 105–178, 112 Stat. 107 (1998); 49 CFR 1.48.)

Issued on: August 25, 1999.

Gloria J. Jeff,

Federal Highway Deputy Administrator.

[FR Doc. 99–22702 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Chapter I

[FHWA Docket No. FHWA–99–4968]

RIN 2125–AE53

Federal Lands Highway Program; Transportation Planning Procedures and Management Systems Pertaining to the Bureau of Indian Affairs and the Indian Reservation Roads Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); request for comments.

SUMMARY: The FHWA seeks public comment concerning the development of transportation planning procedures affecting Federal land management agencies and management systems pertaining to pavement, bridge, safety and congestion for roads funded under the Federal lands highway program (FLHP). This ANPRM requests comments on the advisability of the FHWA, in consultation with the Bureau of Indian Affairs (BIA), to develop a rule to meet the transportation planning and management systems requirements of the Transportation Equity Act for the 21st Century (TEA–21) pertaining to the BIA and the Indian reservation roads program. This ANPRM also requests comments on a number of specific issues concerning transportation planning procedures and management systems pertaining to the BIA and the Indian reservation roads program. Section 1115(d) of the TEA–21 requires the Secretary of Transportation, in consultation with appropriate Federal land management agencies, to develop transportation planning procedures that are consistent with the metropolitan and statewide transportation planning processes required under 23 U.S.C. 134 and 135. The TEA–21 also requires the Secretary of Transportation and the Secretary of each appropriate Federal land management agency to develop, to the extent appropriate, safety, bridge, pavement, and congestion management systems for roads funded under the FLHP. The roads funded under the FLHP include park roads and parkways, forest highways, refuge roads, and Indian reservation roads. The FHWA was delegated the authority by the Secretary to serve as the lead agency within the DOT to implement the FLHP.

DATES: Comments must be received on or before November 1, 1999.

ADDRESSES: Your signed, written comments must refer to the docket number appearing at the top of this document and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Schneider, Federal Lands Highway Office, HFPD–2, (202) 366–6799; or Ms. Grace Reidy, Office of the Chief Counsel, HCC–32, (202) 366–6226, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

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Background

Section 1115(d) of TEA–21 (Pub. L. 105–178, 112 Stat. 107, 156 (1998)) amended 23 U.S.C. 204. Section 204 now requires the development of uniform transportation planning procedures affecting Federal land management agencies and management systems pertaining to roads funded under the FLHP. Section 1115(d)(1) of TEA–21 requires the Secretary of Transportation, in consultation with the Secretary of each appropriate Federal land management agency, to develop transportation planning procedures that are consistent with the metropolitan and statewide transportation planning processes required under 23 U.S.C. 134 and 135. Section 1115(d)(1) of TEA–21 also requires the Secretary of Transportation and the Secretary of each appropriate Federal land management agency, to the extent appropriate, to develop safety, bridge, pavement and congestion management systems for roads funded under the FLHP. The roads funded under the FLHP include park roads and parkways, forest highways, refuge roads and Indian reservation roads. The FHWA has the lead for the Department of Transportation in these efforts.

The FHWA is contemplating developing four rules to meet the requirements of TEA–21. Under this approach, separate rules would be developed pertaining to the National Park Service and the park roads and parkways program; the FWS and the refuge roads program; the Bureau of Indian Affairs and the Indian reservations roads program; and the Forest Service and the forest highway program. The FHWA would consider developing a "separate rule" pertaining to each agency and program area because the ownership, jurisdictional, and maintenance responsibilities for the roads in each program area are significantly different; therefore, we anticipate that each rule would be moderately different. The variances between the rules would allow for the significant differences in the ownership, jurisdictional, and maintenance responsibilities that the agencies exercise over the subject roadways to be addressed in the rules. To ensure uniformity between the four separate rules, however, the FHWA would coordinate the development of each rule, ensuring that similar text and format is contained in each of the rules. This ANPRM requests comments on the proposal for the FHWA, in consultation with the BIA, to develop a "separate rule" to meet the transportation planning and management systems requirements of TEA–21 pertaining to the BIA and the Indian reservation roads program. Additionally, this ANPRM requests comments on the alternative of developing "one rule" that would apply to all four agencies and programs. Finally, this ANPRM also requests comments on a number of other specific issues concerning transportation planning procedures and management systems pertaining to the BIA and the Indian reservation roads program. The specific issues are listed, as follows:

- What types of institutions or efforts are needed to coordinate an Indian reservation's or Indian trust land's or restricted Indian land's transportation planning with State, local and tribal governments?
- How should an Indian reservation's or Indian trust land's or restricted Indian land's transportation planning and development be coordinated with the metropolitan and statewide planning processes?
- How should the transportation planning process address the need to minimize transportation's adverse impacts on Indian reservations or Indian trust lands or restricted Indian lands and surrounding areas?
- How should the transportation planning procedures address the accommodation of various modes of transportation in Indian reservations or Indian trust lands or restricted Indian lands?
- How should the management systems requirements be addressed?

Indian reservation roads are public roads that are located within or provide access to an Indian reservation, or Indian trust land, or restricted Indian land which is not subject to fee title alienation without approval of the Federal Government, or Indian and Alaska Native villages, groups, or communities in which reside Indians or Alaskan Natives, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians. Indian reservation roads are under the jurisdiction of, and maintained by, State departments of transportation, local authorities, the BIA or tribal governments. Transportation planning for this roadway network is performed by numerous public entities depending upon ownership, liability, and construction and maintenance agreements of the roadways. Therefore, transportation planning procedures would be developed that provide guidance for performing and systematizing coordinated transportation planning for this roadway network. Management systems would be developed that support the transportation planning efforts.

To ensure that the full range of issues related to this anticipated rulemaking process are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action should be directed to the FHWA at the address provided above. Likewise, in separate advance notices of proposed rulemaking published elsewhere in today's **Federal Register**, FHWA Docket No. FHWA–99–4967, *Federal Lands Highway Program; Transportation Planning Procedures and Management Systems Pertaining to the National Park Service and the Park Roads and Parkways Program*, FHWA Docket No. FHWA–99–4969, *Federal Lands Highway Program; Transportation Planning Procedures and Management Systems Pertaining to the Forest Service and the Forest Highways Program*, FHWA Docket No. FHWA–99–4970, *Federal Lands Highway Program; Transportation Planning Procedures and Management Systems Pertaining to the Fish and Wildlife Service and the Refuge Roads Program*, the FHWA is seeking public comment on the propriety of developing transportation planning procedures affecting other Federal land management agencies and management systems pertaining to other roads funded under the FLHP.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in

the docket room at the above address. The FHWA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. In addition to late comments, the FHWA will also continue to file, in the docket, relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that the contemplated rule would be a significant regulatory action within the meaning of Executive Order 12866 and the regulatory policies and procedures of the Department of Transportation because of the substantial public interest anticipated in the transportation facilities on Indian reservations or Indian trust lands or restricted Indian lands which are not subject to fee title alienation without approval of the Federal Government, or Indian and Alaska Native villages, groups, or communities in which reside Indians or Alaskan Natives, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians. There is also substantial interest by Federal, State, regional, local and tribal governments, and private groups due to the necessary coordination with these organizations when transportation planning is being performed for transportation facilities within and approaching Indian reservations or Indian trust lands or restricted Indian lands which are not subject to fee title alienation without approval of the Federal Government, or Indian and Alaska Native villages, groups, or communities in which reside Indians or Alaskan Natives, whom the Secretary of the Interior has determined are eligible for services generally available to Indians under Federal laws specifically applicable to Indians.

It is anticipated that the economic impact of any action taken in this rulemaking process will be minimal. Any changes are not anticipated to adversely affect, in a material way, any sector of the economy. In addition, any changes are not likely to interfere with any action taken or planned by another agency or to materially alter the budgetary impact of any entitlement, grants, user fees, or loan programs.

Based upon the information received in response to this action, the FHWA intends to carefully consider the costs and benefits associated with this rulemaking. Accordingly, comments, information, and data are solicited on the economic impact of the changes described in this document or any alternative proposal submitted.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), and based upon the information received in response to this ANPRM, the FHWA will evaluate the effects of any action proposed on small entities. This ANPRM will only generate comments and discussions on transportation planning procedures and management systems pertaining to pavement, bridge, safety, and congestion for FLHP-funded roads in accordance with existing laws, regulations, and guidance. If the final rule contemplated in this ANPRM is promulgated, States may be affected by the rule due to the possibility of expending additional resources during the transportation planning process, although it is anticipated that any additional expenditures would be minor. Because the States are not included in the definition of "small entity" set forth in 5 U.S.C. 601, we do not anticipate that any transportation planning procedures or management systems requirements would have substantial economic impact on small entities within the meaning of the Regulatory Flexibility Act. We encourage commenters to evaluate any options addressed here with regard to the potential for impact, however, and to formulate their comments accordingly.

Unfunded Mandates Reform Act of 1995

This ANPRM would not impose a Federal mandate resulting in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and tribal governments and the private sector.

Executive Order 12612 (Federalism Assessment)

Any action that might be proposed in subsequent stages of this proceeding will be analyzed in accordance with the principles and criteria contained in Executive Order 12612. Given the nature of the issues involved in this proceeding, the FHWA anticipates that any action contemplated will not have sufficient federalism implications to warrant the preparation of a federalism assessment. Nor does the FHWA anticipate that any action taken would preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. We encourage commenters to consider these issues, however, as well as matters concerning any costs or burdens that might be imposed on the States as a result of actions considered here.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. Accordingly, the FHWA solicits comment on this issue.

Paperwork Reduction Act

Any action that might be contemplated in subsequent phases of this proceeding is not likely to involve a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520, or information collection requirements not already approved for transportation planning and management systems. The FHWA, however, will evaluate any actions that might be considered in accordance with the terms of the Paperwork Reduction Act.

National Environmental Policy Act

The agency also will analyze any action that might be proposed for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) to assess whether there would be any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Chapter I

Bridge and congestion management systems, Bridges, Defense access roads, Forest highways, Highways and roads, Metropolitan transportation planning, Pavement, Safety, Statewide transportation planning, and Traffic monitoring systems.

(Authority: 23 U.S.C. 134, 135, 204, and 315; sec. 1115, Pub.L. 105–178, 112 Stat. 107 (1998); 49 CFR 1.48.)

Issued on: August 25, 1999.

Gloria J. Jeff,

Federal Highway Deputy Administrator.

[FR Doc. 99–22701 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Chapter I

[FHWA Docket No. FHWA–99–4967]

RIN 2125–AE52

Federal Lands Highway Program; Transportation Planning Procedures and Management Systems Pertaining to the National Park Service and the Park Roads and Parkways Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM); request for comments.

SUMMARY: The FHWA seeks public comment concerning the development of transportation planning procedures affecting Federal land management agencies and management systems pertaining to pavement, bridge, safety and congestion for roads funded under the Federal lands highway program (FLHP). This ANPRM requests comments on the advisability of the FHWA, in consultation with the National Park Service (NPS), to develop a rule to meet the transportation planning and management systems requirements of the Transportation Equity Act for the 21st Century (TEA–21) pertaining to the NPS and the park roads and parkways program. This ANPRM also requests comments on a number of specific issues concerning transportation planning procedures and management systems pertaining to the NPS and the park roads and parkways program. Section 1115(d) of the TEA–21 requires the Secretary of Transportation, in consultation with appropriate Federal land management agencies, to develop transportation planning procedures that are consistent with the metropolitan and statewide transportation planning processes required under 23 U.S.C. 134 and 135. The TEA–21 also requires the Secretary of Transportation and the Secretary of each appropriate Federal land management agency to develop, to the extent appropriate, safety, bridge, pavement, and congestion management systems for roads funded under the FLHP. The roads funded under the FLHP include park roads and parkways, forest highways, refuge roads, and Indian reservation roads. The FHWA was delegated the authority by the Secretary to serve as the lead agency within the DOT to implement the FLHP.

DATES: Comments must be received on or before November 1, 1999.

ADDRESSES: Your signed, written comments must refer to the docket number appearing at the top of this document and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Schneider, Federal Lands Highway, HFPD–2, (202) 366–6799; or Ms. Grace Reidy, Office of the Chief Counsel, HCC–32, (202) 366–6226, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: *http://www.access.gpo.gov/nara.*

Background

Section 1115(d) of TEA–21 (Pub. L. 105–178, 112 Stat. 107, 156 (1998)) amended 23 U.S.C. 204. Section 204 now requires the development of uniform transportation planning procedures affecting Federal land management agencies and management systems pertaining to roads funded under the FLHP. Section 1115(d)(1) of TEA–21 requires the Secretary of Transportation, in consultation with the Secretary of each appropriate Federal land management agency, to develop transportation planning procedures that are consistent with the metropolitan and statewide transportation planning processes required under 23 U.S.C. 134 and 135. Section 1115(d)(1) of TEA–21 also requires the Secretary of Transportation and the Secretary of each appropriate Federal land management agency, to the extent appropriate, to develop safety, bridge, pavement and congestion management systems for roads funded under the FLHP. The roads funded under the FLHP include park roads and parkways, forest highways, refuge roads and Indian reservation roads. The FHWA has the lead for the Department of Transportation in these efforts.

The FHWA is contemplating developing four rules to meet the requirements of TEA–21. Under this approach, separate rules would be developed pertaining to the National Park Service and the park roads and parkways program; the FWS and the refuge roads program; the Bureau of Indian Affairs and the Indian reservations roads program; and the Forest Service and the forest highway program. The FHWA would consider developing a "separate rule" pertaining to each agency and program area because the ownership, jurisdictional, and maintenance responsibilities for the roads in each program area are significantly different; therefore, we anticipate that each rule would be moderately different. The variances between the rules would allow for the significant differences in the ownership, jurisdictional, and maintenance responsibilities that the agencies exercise over the subject roadways to be addressed in the rules. To ensure uniformity between the four separate rules, however, the FHWA would coordinate the development of each rule, ensuring that similar text and format is contained in each of the rules. This ANPRM requests comments on the proposal for the FHWA, in consultation with the NPS, to develop a "separate rule" to meet the transportation planning and management systems requirements of TEA–21 pertaining to the NPS and the park roads and parkways program. Additionally, this ANPRM requests comments on the alternative of developing "one rule" that would apply to all four agencies and programs. Finally, this ANPRM also requests comments on a number of other specific issues concerning transportation planning procedures and

management systems pertaining to the NPS and the park roads and parkways program. The specific issues are listed, as follows:

- What types of institutions or coordination efforts are needed to coordinate an NPS unit's transportation planning with State, local and tribal governments?
- What kinds of institutions or links are needed to coordinate park transportation circulation planning and access with adjacent affected communities?
- How should an NPS unit's transportation planning and development be coordinated with the metropolitan and statewide planning processes?
- How should the transportation planning process address the need to minimize transportation's adverse impacts on the national parks and surrounding areas?
- How can we minimize adverse community and environmental impacts associated with park transportation circulation systems and access to parks?
- How should the transportation planning procedures address the accommodation of various modes of transportation in NPS units?
- How can other modes of transport, such as transit, biking and walking, be better accommodated?
- How can transportation be planned that allows for the conversion to or integration of multiple occupant vehicles, such as vans, buses or rail as demand for services increases?
- What is the role of peripheral parking?
- How should the management systems requirements be addressed?

Park roads are public roads that are located within, or provide access to, an area in the national park system with title and maintenance responsibilities vested in the United States. Parkways are authorized by an Act of Congress on lands to which title is vested in the United States. A vast majority of park roads and parkways are owned and maintained by the NPS. Many of the NPS field units generate large traffic volumes. Changes to the park units transportation system may significantly affect the surrounding transportation network; and changes to the surrounding transportation network may significantly affect the park units transportation system. Therefore, transportation planning procedures would be developed that provide guidance for systematizing transportation planning within the park units and for coordinating their transportation planning efforts with other agencies and organizations. Management systems would be developed that support the transportation planning efforts.

To ensure that the full range of issues related to this anticipated rulemaking process are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action should be directed to the FHWA at the address provided above. Likewise, in separate advance notices of proposed rulemaking published elsewhere in today's **Federal Register**, FHWA Docket No. FHWA–99–4968, *Federal Lands Highway Program; Transportation Planning Procedures and Management Systems Pertaining to the Bureau of Indian Affairs and the Indian Reservation Roads Program*, FHWA Docket No. FHWA–99–4969, *Federal Lands Highway Program; Transportation Planning Procedures and Management Systems Pertaining to the Forest Service and the Forest Highways Program*, FHWA Docket No. FHWA–99–4970, *Federal Lands Highway Program; Transportation Planning Procedures and Management Systems Pertaining to the Fish and Wildlife Service and the Refuge Roads Program*, the FHWA is seeking public comment on the propriety of developing transportation planning procedures affecting other Federal land management agencies and management systems pertaining to other roads funded under the FLHP.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. The FHWA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. In addition to late comments, the FHWA will also continue to file, in the docket, relevant information becoming available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined preliminarily that the contemplated rule would be a significant regulatory action within the meaning of Executive Order 12866 and under the regulatory policies and procedures of the Department of Transportation because of the substantial public interest anticipated in the transportation facilities of the national park units. There is also substantial interest by Federal, State, regional, local and tribal governments, and private groups due to the necessary coordination with these organizations when transportation planning is being performed for transportation facilities within and approaching the national park units.

It is anticipated that the economic impact of any action taken in this rulemaking process will be minimal. Any changes are not anticipated to adversely affect, in a material way, any sector of the economy. In addition, any changes are not likely to interfere with any action taken or planned by another agency or to materially alter the budgetary impact of any entitlement, grants, user fees, or loan programs.

Based upon the information received in response to this action, the FHWA intends to carefully consider the costs and benefits associated with this rulemaking. Accordingly, comments, information, and data are solicited on the economic impact of the changes described in this document or any alternative proposal submitted.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), and based upon the information received in response to this ANPRM, the FHWA will evaluate the effects of any action proposed on small entities. This ANPRM will only generate comments and discussions on transportation planning procedures and management systems pertaining to pavement, bridge, safety, and congestion for FLHP-funded roads in accordance with existing laws, regulations, and guidance. If the final rule contemplated in this ANPRM is promulgated, States may be affected by the rule due to the possibility of expending additional resources during the transportation planning process, although it is anticipated that any additional expenditures would be minor. Because the States are not included in the definition of "small entity" set forth in 5 U.S.C. 601, we do not anticipate that any transportation planning procedures or management systems requirements would have substantial economic impact on small entities within the meaning of the Regulatory Flexibility Act. We encourage commenters to evaluate any options addressed here with regard to the potential for impact, however, and to formulate their comments accordingly.

Unfunded Mandates Reform Act of 1995

This ANPRM would not impose a Federal mandate resulting in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532). Further, in compliance with the Unfunded Mandates Reform Act of 1995, the FHWA will evaluate any regulatory action that might be proposed in subsequent stages of the proceeding to assess the effects on State, local, and tribal governments and the private sector.

Executive Order 12612 (Federalism Assessment)

Any action that might be proposed in subsequent stages of this proceeding will be analyzed in accordance with the principles and criteria contained in Executive Order 12612. Given the nature of the issues involved in this proceeding, the FHWA anticipates that any action contemplated will not have sufficient federalism implications to warrant the preparation of a federalism assessment. Nor does the FHWA anticipate that any action taken would preempt any State law or State regulation or affect the States' ability to discharge traditional State governmental functions. We encourage commenters to consider these issues, however, as well as matters concerning any costs or burdens that might be imposed on the States as a result of actions considered here.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program. Accordingly, the FHWA solicits comment on this issue.

Paperwork Reduction Act

Any action that might be contemplated in subsequent phases of this proceeding is not likely to involve a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520, or information collection requirements not already approved for transportation planning and management systems. The FHWA, however, will evaluate any actions that might be considered in accordance with the terms of the Paperwork Reduction Act.

National Environmental Policy Act

The agency also will analyze any action that might be proposed for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) to assess whether there would be any affect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Chapter I

Bridge and congestion management systems, Bridges, Defense access roads, Forest highways, Highways and roads, Metropolitan transportation planning, Pavement, Safety, Statewide transportation planning, and Traffic monitoring systems.

(Authority: 23 U.S.C. 134, 135, 204, and 315; sec. 1115, Pub. L. 105–178, 112 Stat. 107 (1998); 49 CFR 1.48.)

Issued on: August 25, 1999.

Gloria J. Jeff,

Federal Highway Deputy Administrator.

[FR Doc. 99–22700 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–075]

RIN 2115–AE47

Drawbridge Operation Regulations; Navesink River, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating regulations which govern the Oceanic Bridge, at mile 4.5, across the Navesink River at Locust Point, New Jersey. The bridge owner has asked the Coast Guard to change the regulations to require a twenty-four hour advance notice for bridge openings from December through March because there have been few requests to open the bridge during the winter months. This rulemaking is expected to relieve the bridge owner of the burden of crewing the bridge at all times and still meet the needs of navigation.

DATES: Comments must reach the Coast Guard on or before November 1, 1999.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, 408 Atlantic Avenue, Boston, MA 02110–3350, or deliver them at the same address between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364. The First Coast Guard District Bridge Branch maintains the public docket for this rulemaking. Comments and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at the above address 7 a.m. to 3 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–99–075) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background

The Oceanic Bridge at mile 4.5 across the Navesink River at Locust Point, New Jersey, has a vertical clearance of 22 feet at mean high water and 25 feet at mean low water. The existing operating regulations for the Oceanic Bridge requires the bridge to open on signal at all times.

The bridge owner, the County of Monmouth, asked the Coast Guard to

change the regulations for the bridge and submitted bridge opening log data for the Coast Guard to evaluate. The log data indicated the following openings for December, January, February, and March, from 1994 through 1998: December 4, 12, 9, 6 and 8; January 1, 1, 14, 2 and 6; February 1, 1, 0, 1 and 10; March 11, 13, 4, 6 and 13; respectively.

The bridge owner has asked for relief from crewing this bridge during the winter months and has requested that the bridge regulations be changed to require a twenty-four hour advance notice for openings from December through March.

Discussion of Proposal

The Coast Guard proposes to revise the operating rules, listed at 33 CFR 117.734, which govern drawbridges across the Navesink River. Operating regulations for the Oceanic Bridge, at mile 4.5, across the Navesink River, in Locust Point, New Jersey will be added to the above section. This change will require the Oceanic Bridge to open on signal; except that, from December 1 through March 31, the draw will open on signal if at least a twenty-four hour advance notice is given by calling the number posted at the bridge. The bridge will continue to open on signal at all other times.

This proposal will relieve the bridge owner of the requirement to have personnel available to crew the bridge during the winter months while meeting the reasonable needs of navigation.

The Coast Guard believes this proposal is reasonable based upon the low number of opening requests received during the winter months.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; Feb. 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the fact that the bridge has not had many requests to open during the winter months. Mariners will still be able to obtain bridge openings during the winter months provided they give twenty-four hour notice.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Therefore, the Coast Guard certifies under section 5 U.S.C. 605(b), for the reasons discussed in the Regulatory Evaluation section above, that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under Section 2.B.2., Figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation because promulgation of drawbridge regulations has been found not to have a significant effect on the environment. A written "Categorical Exclusion Determination" is not required for the proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.734 is revised to read as follows:

§ 117.734 Navesink River (Swimming River).

The Oceanic Bridge, mile 4.5, shall open on signal; except that, from December 1 through March 31, the draw shall open on signal, if at least a twenty-four hour notice is given by calling the number posted at the bridge. The owner of this bridge shall provide and keep in good legible condition clearance gages with figures not less than eight inches high, designed, installed and maintained according to the provisions of § 118.160 of this chapter.

Dated: August 17, 1999.

Robert F. Duncan,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 99–22749 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Tampa 99–042]

RIN 2115 AA97

Safety Zone; Tampa Bay, Tampa, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend the permanent regulations for floating safety zones around Anhydrous Ammonia (NH3) vessels transiting the waters of Tampa Bay. These revisions will allow for nighttime vessel transits, and will replace the requirement for a safety zone at the berth with a requirement to provide 30 minute advanced notice to the NH3 vessel or facility. Safety improvements in Tampa Bay have alleviated the need for such restrictions.

DATES: Comments must be received on or before November 1, 1999.

ADDRESSES: You may mail comments and related material to Commanding Officer, Marine Safety Office Tampa, 155 Columbia Drive, Tampa, Florida 33606. Marine Safety Office (MSO) Tampa maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at MSO Tampa between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Warren Weedon, Chief, Waterways Management Branch at (813) 228–2189.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [COTP Tampa 99–042] and the specific section of this proposal to which each comment applies and give the reason for each comment.

The Coast Guard will consider all comments received during the comment period. It may change this rule in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to LT Weedon at the address under **ADDRESSES**. The request should include why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a notice in the **Federal Register**.

Background and Purpose

After extensive discussions from the Tampa Bay Harbor Safety Committee and the formation of a Safety Zone Subcommittee consisting of Coast Guard representatives, vessel agents, pilots, tug operators and port authority representatives, recommendations were forwarded to the Coast Guard Captain of the Port to amend the regulations for NH3 vessels transiting the Port of Tampa.

In 1991, Coast Guard Marine Safety Office Tampa temporarily amended the transit requirements for Anhydrous Ammonia (NH3) vessels, through Port Community Information Bulletin (PCIB) 6–91 which allowed NH3 vessels to enter and transit the Port of Tampa during the nighttime with a minimum of three mile visibility. It also replaced the safety zone extending 150 feet waterside while the vessel is moored, with a requirement calling for vessels over 5000 gross tons to provide a 30 minute notification allowing the NH3 vessel time to take appropriate safety precautions. PCIB 6–91 has been replaced with a case by waiver from the current regulations, utilizing the operational restriction initially identified in the PCIB. The Captain of the Port is not seeking to incorporate these proven operational guidelines to regulation.

In the late 1980's and early 1990's, many safety changes were made to the port, including the widening and deepening of the shipping channels, installation of centerline range marks, inbound and outbound, an increased brightness in range lights and a new Vessel Traffic Advisory System (VTAS). These changes have enhanced the level of safety on the navigable waters of Tampa Bay.

In addition to implementing the amendments to the operational requirements for NH3 vessels, the Coast Guard is also seeking comment on the NH3 safety zone as a whole. During the subcommittee meetings, discussion ranged from the total removal of the NH3 safety zone regulations to no changes at all. The Coast Guard welcomes any comments on the Safety Zone regulations as they stand in 33 CFR 165.703.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of the order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This regulation already exists. The rulemaking will have minimal affect on vessel traffic as it will only extend the hours of operation to include the nighttime.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposed rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their field and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under section 605(b) that this rule will not have a significant effect upon a substantial number of small entities, as this regulation will only be in effect approximately twice a week for two hours in a limited area of the Port of Tampa.

If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action and has determined under Figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C, that this proposed rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination has been prepared and is available in the docket for inspection and copying.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 165 of Title 33, Code of Federal Regulations as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Revise § 165.703 (b) and (g) to read as follows:

§ 165.703 Tampa Bay, Florida—Safety Zone.

* * * * *

(b) All vessels over 5000 gross tons intending to pass anhydrous ammonia vessels moored in Port Sutton, and all vessels intending to moor in the R. E. Knight facilities at Hookers Point while an anhydrous ammonia vessel is moored in this facility, must give 30 minutes notice to the anhydrous ammonia vessel so it may take appropriate safety precautions.

* * * * *

(g) Vessels carrying anhydrous ammonia are permitted to enter and transit Tampa and Hillsborough Bay and approaches only with a minimum of three miles visibility.

* * * * *

Dated: August 5, 1999.

A.L. Thompson, Jr.,

Captain, U.S. Coast Guard, Captain of the Port, Tampa.

[FR Doc. 99–22654 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA092/098–5044b; FRL–6428–9]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia; Enhanced Inspection and Maintenance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to convert our conditional approval of the Virginia enhanced inspection and maintenance (I/M) program as a revision to the Virginia State Implementation Plan (SIP) to a full approval. In the "Rules and Regulations" section of this **Federal Register**, we are converting our conditional approval as a direct final rule without prior proposal because we view this as a noncontroversial action and we anticipate no adverse comments. If we receive no adverse comments, we will not take further action on this proposed rule. If we receive adverse comments. we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Anyone interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by October 1, 1999.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Ozone & Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. You may inspect copies of the documents relevant to this action during normal business hours at the following locations: Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103, and the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Catherine L. Magliocchetti, (215) 814–2174, at the EPA Region III address above, or by e-mail at magliocchetti.catherine@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Virginia; Enhanced Inspection & Maintenance Program, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: August 16, 1999.

W. Michael McCabe,

Regional Administrator, Region III.

[FR Doc. 99–22453 Filed 8–31–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AK–21–1709–b; FRL–6412–8]

Approval and Promulgation of State Implementation Plans: Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the State of Alaska which include revisions to Alaska's Air Quality Control Regulations (18 AAC 50), Emissions Inspection and Maintenance (I/M) requirements for Motor Vehicles (18 AAC 52), and Fuel Requirements for Motor Vehicles (18 AAC 53).

In addition, the revisions include changing the I/M program schedule for cars subject to I/M from annual to biennial, replacing the CO contingency measures for Anchorage, updating Alaska's General and Transportation conformity programs, and streamlining several portions of the Alaska Air Quality Control Plan for more efficient reading and organization. In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received in writing by October 1, 1999.

ADDRESSES: Written comments should be addressed to Montel Livingston, Environmental Protection Specialist (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below. Copies of the state submittal are available at the following addresses for inspection during normal business hours. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 10, Office of Air Quality, 1200 6th Avenue, Seattle, WA 98101. The Alaska Department of Environmental Conservation, 410 Willoughby Avenue, Suite 105, Juneau, AK 99801–1795.

FOR FURTHER INFORMATION CONTACT: Ms. Montel Livingston, Office of Air Quality, (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–0180.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**.

Dated: July 22, 1999.

Chuck Clarke,

Regional Administrator, Region 10.

[FR Doc. 99–22451 Filed 8–31–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6430–5]

Indiana: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to grant final authorization to the hazardous waste program revisions submitted by Indiana. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the State's program revisions as an immediate final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. The Agency has explained the reasons for this authorization in the preamble to the immediate final rule. If EPA does not receive adverse written comments, the immediate final rule will become effective and the Agency will not take further action on this proposal. If EPA receives adverse written comments, EPA will withdraw the immediate final rule and it will not take effect. EPA will then address public comments in a later final rule based on this proposal. EPA may not provide further opportunity for comment. Any parties interested in commenting on this action must do so at this time.

DATES: Written comments must be received on or before October 1, 1999.

ADDRESSES: Mail written comments to Gary Westefer, Indiana Regulatory Specialist, U.S. EPA Region 5, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone 312/886–7450. You can examine copies of the materials submitted by Indiana during normal business hours at the following locations: EPA Region 5, contact Gary Westefer at the above address and telephone number; or Lynn West, Chief, Regulatory Development Section, Indiana Department of Environmental Management, 100 North Senate, P.O. Box 6015, Indianapolis, Indiana 46206–6015, Phone number: 317/232–3593.

FOR FURTHER INFORMATION CONTACT: Gary Westefer at U.S. EPA Region 5, DM–7J, 77 West Jackson Boulevard, Chicago, Illinois 60604, Telephone 312/886–7450.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 99–22449 Filed 8–31–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 403

[FRL–6431–5]

Streamlining the General Pretreatment Regulations for Existing and New Sources of Pollution

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of extension of public comment period.

SUMMARY: Today, EPA is providing notice that the public comment period for the proposed rule that would revise several provisions of the General Pretreatment Regulations for Existing and New Sources of Pollution (40 CFR Part 403) published in the **Federal Register** on July 22, 1999 (64 FR 39563) is being extended.

DATES: Written comments on this proposed rule must be submitted on or before November 19, 1999. Comments provided electronically will be considered timely if they are submitted by 11:59 p.m. (Eastern time) November 19, 1999.

ADDRESSES: Commenters are requested to submit an original and two copies of their comments and enclosures (including references) to the Comments Clerk for Pretreatment Program Streamlining, Water Docket (MC–4101), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Commenters who would like acknowledgment of their comments should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

EPA will also accept comments electronically. Comments should be addressed to the following Internet address: "ow-docket@epa.gov". Electronic comments must be submitted as an ASCII or WordPerfect file avoiding the use of special characters and any form of encryption. Electronic comments must be identified by the docket number W–97–09, and may be filed online at many Federal Depository Libraries. No confidential business information (CBI) should be sent via e-mail.

FOR FURTHER INFORMATION CONTACT: Jeffrey B. Smith, U.S. EPA, Office of Wastewater Management (OWM), Permits Division (4203), 401 M Street, S.W., Washington, D.C. 20460, (202) 260–5586.

SUPPLEMENTARY INFORMATION: On July 22, 1999, EPA published proposed revisions for "Streamlining the General Pretreatment Streamlining Regulations for Existing and New Sources of Pollution, 40 CFR Part 403" (64 FR 39563). The July 22 notice provided a deadline of 60 days from the date of publication for receipt of public comments. Since the publication of the July 22 notice EPA has received requests to extend the comment period to allow sufficient time for all parties potentially impacted by these revisions to consider and provide comprehensive comments on the proposed regulatory changes. In response to these requests, EPA has decided to extend the public comment period by an incremental 60 days to November 19, 1999.

Dated: August 24, 1999.

J. Charles Fox,

Assistant Administrator for Water.

[FR Doc. 99–22743 Filed 8–31–99; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC48

Endangered and Threatened Wildlife and Plants; Notice of Public Hearings on Proposed Rule To Remove the Bald Eagle From the List of Endangered and Threatened Species in the Lower 48 States.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; Notice of public hearings.

SUMMARY: The Service gives notice of the agency's intent to hold public hearings on the proposed rule to remove the bald eagle from the List of Endangered and Threatened Species in the lower 48 States. The public hearings are being held in response to written requests received within the 45-day hearing request period. The comment period remains open through October 5, 1999. Public hearings will be held within the comment period and will allow appropriate time for the public to provide further comments.

DATES AND ADDRESSES: The first public hearing will be held on Monday, September 13, 1999, in Nashville, Tennessee, at the McGavock High

School Auditorium, 3150 McGavock Pike, Nashville, Tennessee, from 6:30 pm–8:30 pm. The second public hearing will be held on Tuesday, September 21, 1999, in Yorktown, Virginia, at the York High School Auditorium, 9300 George Washington Highway (U.S. Route 17), Yorktown, Virginia, from 6:00 pm–9:00 pm. The final public hearing will be held on Thursday, September 23, 1999, in Phoenix, Arizona, in the 4th Floor Music Room of the Phoenix Public Library, 1221 North Central Avenue, Phoenix, Arizona, from 6:30 pm to 8:30 pm.

The comment period remains open until October 5, 1999, as originally published in the July 6, 1999, **Federal Register** Notice. Comments and materials concerning this proposal should be sent to Jody Gustitus Millar, Bald Eagle Recovery Coordinator, U.S. Fish and Wildlife Service, 4469–48th Avenue Court, Rock Island, Illinois 61201, or may be sent through our website at www.fws.gov/r3pao/eagle. Comments and materials received will be available for public inspection, by appointment, during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Jody Gustitus Millar, Bald Eagle Recovery Coordinator, at 309/793–5800 x 524.

SUPPLEMENTARY INFORMATION: The bald eagle (*Haliaeetus leucocephalus*) is listed as threatened under the Endangered Species Act of 1973 throughout the lower 48 States. The bald eagle also occurs in Alaska, Canada, and in small numbers in northern Mexico, where it is not protected under the Act. The Fish and Wildlife Service proposes to remove the bald eagle from the List of Endangered and Threatened Species in the lower 48 States. This action would not alter those conservation measures already in force to protect the species and its habitats.

The **Federal Register** notice announcing the proposed rule was published on July 6, 1999 (64 FR 36454). The comment period ends on October 5, 1999, and the deadline for receipt of public hearing requests was August 20, 1999. Six requests for public hearings have been received within the deadline, including one from New York, one from Virginia, two from Kentucky, one from Arkansas, and one from Arizona. Those parties wishing to make statements for the record should have available a copy of their statements to be presented to the Service at the start of the hearing. Oral statements may be limited to 5 or 10 minutes if the number of parties present necessitates some limitation. There are no limits to the length of written comments presented at this hearing or mailed to the Service.

Dated: August 27, 1999.

Charles M. Wooley,

Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 99–22917 Filed 8–31–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 990105002–9234–02; I.D. 071599B]

RIN 0648–AH41

Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery; Control Date for American Lobster

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; consideration of a control date for the American lobster fishery.

SUMMARY: NMFS announces that it is considering, and is seeking public comment on, whether there is a need under the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act) to limit or restrict future access to the American lobster (*Homarus americanus*) fishery in certain geographic areas. This notice is intended to promote awareness of the potential eligibility criteria for future access to lobster management areas, and to discourage shifts into new areas by lobster trap vessels subject to Federal lobster regulations. It also discourages non-trap vessels from entering the trap fishery based on economic speculation while NMFS, in consultation with the Atlantic States Marine Fisheries Commission (Commission), considers whether and how access and effort should be controlled. The potential eligibility criteria may be based on historical participation and/or historical trap levels in lobster conservation management areas (LCMAs). NMFS is considering September 1, 1999 as a possible "control date," and such date may be used as a cut-off date for establishing eligibility criteria for future access in the lobster trap fishery subject to Federal authority. This document, therefore, gives the public notification that interested participants should locate and preserve records that substantiate and verify their participation in the American lobster fishery in Federal waters.

DATES: Comments must be received by October 1, 1999.

ADDRESSES: Comments should be addressed to Harold Mears, Director, State, Federal and Constituent Programs Office, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Bob Ross, Fishery Management Specialist, 978–281–9234.

SUPPLEMENTARY INFORMATION: The lobster fishery takes place from North Carolina to Maine. Over one-half of all American lobsters are landed in Maine, with most of the other landings occurring in or from Massachusetts, Rhode Island, Long Island Sound, and Georges Bank. Most lobsters (over 80 percent) are taken in state waters, which extend from the coast to 3 nautical miles (5.56 kilometers) from shore. The offshore trap fishery, which occurs primarily in the offshore canyon areas at the edge of the continental shelf, has developed only in the past 15 years and accounts for most of the remaining landings. The lobster fishery is a year-round fishery in the United States, including the summer and fall months when the lobsters are molting. Approximately 97 percent of lobsters are taken in lobster traps. The rest are taken in trawls, gillnets, dredges, and by divers.

There has been a dramatic increase in fishing effort since the 1970s and effort is now at an all-time high. NMFS estimates that each trap remains in the water about 30 percent longer than in 1970 before being hauled. Current fishing effort removes a large proportion of lobsters before they have had a chance to spawn even once, and the average size of lobsters landed continues to drop. Harvesters depend heavily on lobsters within one molt of the legal size (3–1/4 inches or 8.26 cm carapace length). In recent years, 85 percent or more of landings have been composed of animals in this size range.

The most recent NMFS assessment of the American lobster stock concluded that it is overfished throughout its range (22nd Northeast Regional Stock Assessment Workshop Document 96–13, dated September, 1996). In the Report to Congress on the Status of Fisheries of the United States, dated September 1997, NMFS included American lobster on the list of overfished fisheries. The lobster stock is considered to be overfished because the number of eggs produced each year is less than 10 percent of the number that would have been produced if the stock were not fished. The more eggs produced, the greater the margin of safety for the population if environmental conditions become unfavorable for the survival of juvenile lobsters to marketable size and the greater the likelihood of rebuilding. Increasing egg production will reduce the risk that the stock will collapse and increase the chances of rebuilding the resource.

The lobster fishery has been managed from the Federal perspective under regulations at 50 CFR part 649 pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The fishery in state waters is mostly managed through an interstate plan developed by the Commission, consistent with the Atlantic Coastal Act. Since the majority of lobsters are harvested from state waters, NMFS has proposed that lobsters would be managed more effectively through an interstate plan and Federal regulations issued under the authority of Atlantic Coastal Act [61 FR 13478]. Accordingly, this potential control date would be associated with Federal lobster regulations under either the Magnuson-Stevens Act or the Atlantic Coastal Act, depending on if and when NMFS withdraw the Magnson-Stevens Act regulations.

The Commission approved Amendment 3 to the American Lobster Interstate Fishery Management Plan (ISFMP) in December 1997. The states, through adoption of Amendment 3 to the Commission's American Lobster ISFMP, recognized the need to end overfishing and rebuild stocks of American lobster. Amendment 3 identified a variety of new requirements in state waters, including the establishment of a procedure whereby fishermen, including some who fish exclusively in Federal waters, may make recommendations for further management measures on an area by area basis. In the spring of 1998, in each of the seven lobster management areas identified in the ISFMP, Lobster Conservation Management Teams (LCMTs) were formed to advise and make recommendations to the Commission on management measures necessary to restore egg production for the American lobster resource in each of the management areas to greater than the overfishing definition. For each LCMT that submitted a management proposal, the recommended management measures were reviewed by the Commission's Lobster Technical Committee to assess their ability to achieve the egg production milestones for the year 2000. The proposals vary by management area, and each proposal includes one or more of the following management measures: Increasing the minimum gauge size, implementing a maximum gauge size, increasing the escape vent size, capping fishing effort, limiting the number of traps per vessel, and closing areas. In April and May 1999, the Commission took a selective list of management measures identified in the LCMT area proposals to public hearings as a draft Addendum 1 to Amendment 3 of the ISFMP.

The Commission approved Addendum 1 on August 3, 1999. It includes area management measures to further limit access to the lobster fishery. Subsequent implementation of these measures is intended by the Commission to be based upon historic participation guidelines approved as part of Addendum 1. These guidelines include consideration of unique limitations, fishing practices, and records for evaluating previous fishing history, which would lead to resource allocation decisions in selected management areas. As a result of this addendum to the ISFMP, the Commission will likely recommend area-specific actions for Federal waters, which could include management measures based upon the historic participation guidelines. The Commission intends to assess other aspects of the area based management proposals, including an increase in the minimum gauge size and increases in the escape vent size, after the status of the stock is updated during the fall, 1999. This assessment could also lead to additional recommendations for management measures in Federal waters.

NMFS is also aware that recent constraints on participation in several traditional otter trawl fisheries, including the Mid-Atlantic summer flounder, scup, and black sea bass fisheries and the New England multispecies fisheries, and broader use of area closures may result in a shift in fishing effort to the lobster trap fishery by vessels that have traditionally harvested lobsters by non-trap methods. An unchecked increase in effort in the lobster trap fishery, as a result of a shift from non-trap to trap gear, may jeopardize current efforts to end overfishing and rebuild stocks.

For these reasons, NMFS, in consultation with the Commission, is considering proposed rulemaking to address whether and how to limit entry of vessels currently holding a Federal American lobster limited access fishing permit, or vessels that are subject to Federal lobster regulations, in to LCMAs where such vessels have not historically fished, as well as limiting or restricting non-trap vessels from using traps to fish for lobsters. Proposed rulemaking may include potential eligibility criteria based on historical participation and/or historical trap levels in LCMAs. NMFS is considering September 1, 1999 as a possible control date and NMFS may use such date as a cut-off date for establishing eligibility criteria for future access in the lobster fishery subject to Federal authority. The establishment of this control date is intended, in part, to discourage speculative shifting of effort by fishermen subject to Federal lobster regulations into certain LCMAs or from non-trap to trap gear.

Consideration of a control date does not commit NMFS to any particular management regime or criteria, either for entry into lobster management areas not historically fished by Federal permit holders, or for the restrictions on the transfer of non-trap fishing effort. Fishermen are not guaranteed future participation in any lobster management area, regardless of their entry date or intensity of participation in the fishery before or after the control date under consideration. NMFS subsequently may choose a different control date or may choose a management regime that does not make use of a control date. NMFS may choose to give variably weighted consideration to fishermen active in the fisheries before and after the control date. Other qualifying criteria, such as, but not limited to, documentation of landings and sales, may be applied for entry. NMFS may also choose to take no further action to control entry or access into the lobster management areas or address the shift in effort from non-trap to trap gear, in which case the control date may be rescinded. Any action will be taken pursuant to the requirements established under the Atlantic Coastal Act. This document, therefore, gives the public notification that interested participants should locate and preserve records that substantiate and verify their participation in the American lobster fishery in Federal waters.

NMFS is seeking public comment on this advance notice of proposed rulemaking (see **ADDRESSES**) under the Atlantic Coastal Act. Public comment is sought as to whether there is a need to limit or restrict future access to the American lobster fishery in certain geographic areas, known as LCMTs, and, if there is a need, as to what should be the eligibility criteria.

Authority: 16 U.S.C. 1851 note; 16 U.S.C. 5101 *et seq.*

Dated: August 24, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–22669 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 64, No. 169

Wednesday, September 01, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Solicitation for Membership to the National Genetic Resources Advisory Council.

AGENCY: Agricultural Research Service, USDA.

ACTION: Solicitation for membership.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App., the United States Department of Agriculture announces solicitation for nominations to fill five vacancies on the National Genetic Resources Advisory Council.

DATE: Written nominations must be postmarked no later than September 22, 1999.

FOR FURTHER INFORMATION CONTACT: Henry L. Shands, Director, National Genetic Resources Program, Room 323-A Jamie L. Whitten Federal Building, USDA, 1400 Independence Avenue SW, Washington, D.C. 20250–0300. Telephone 202–205–7835, Fax 202-690–1434.

SUPPLEMENTARY INFORMATION: The National Genetic Resources Advisory Council consists of seven ex-officio members and up to nine members appointed by the Secretary of Agriculture to provide advice to the Secretary and Director, National Genetic Resources Program, regarding the advancement of the Program administered by the Agricultural Research Service. Detailed information about the Council may be located at: http://ars-grin.gov/ngrac. The members of the advisory council who are not ex officio members shall be appointed by the Secretary as follows: (1) Two-thirds of the members shall be appointed from among the leading representatives of the scientific disciplines relevant to the activities of the program, including agricultural sciences, environmental sciences, natural resource sciences, health sciences, and nutritional sciences. (2) One-third of the members shall be appointed from the general public and shall include leaders in fields of public policy, trade, international development, law, or management. The term of office of a member is four years. Incumbent members represent the fields of law, research management, microbiology and animal genetic resources. Expertise is desired in applied anthropology, forest tree genetics, nutrition, plant genetic resources, genetic resources collections management and genomics.

Members of the advisory council shall serve without compensation, if not otherwise officers or employees of the United States, except that they shall, while away from their homes or regular places of business in the performance of services for the advisory council, be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under sections 5701 through 5707 of title 5, United States Code.

USDA is actively soliciting nominations of qualified minorities, women, persons with disabilities and members of low income populations through outreach to minority-focused media outlets, Historically Black Colleges and Universities, including Clark Atlanta University, the Hispanic Association of Colleges and Universities, the National Congress of Native American Indians, the Intertribal Agriculture Council, Gallaudet and Purdue Universities, and the Rural Coalition. To ensure that recommendations of the NGRAC take into account the needs of underserved and diverse communities served by the USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Nominations for NGRAC membership must be typed and provide the appropriate background documents required by USDA policy: (1) a brief summary of no more than two (2) pages explaining the nominee's suitability to serve on the NGRAC, (2) a resume or curriculum vitae, and (3) a completed copy of Form AD–755. Form AD755 may be downloaded in PDF form at http://www.ars.usda.gov/afm2/divisions/itd/ISB/ Forms/DOWNLOADS/RECORDS/AD-755.PDF. Nominations should be sent to Henry L. Shands at the address listed above, and be post marked no later than September 22, 1999.

Henry L. Shands,

Assistant Administrator for Genetic Resources, USDA–ARS.

[FR Doc. 99–22704 Filed 8–31–99; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designations for the Hastings (NE), Aberdeen (SD), Missouri, Decatur (IL), Grand Forks (ND), McCrea (IA), and South Carolina Areas

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces designation of the following organizations to provide official services under the United States Grain Standards Act, as amended (Act):

Hastings Grain Inspection, Inc. (Hastings);
Aberdeen Grain Inspection, Inc. (Aberdeen);
Missouri Department of Agriculture (Missouri);
Decatur Grain Inspection, Inc. (Decatur);
Grand Forks Grain Inspection Department, Inc. (Grand Forks);
John R. McCrea Agency, Inc. (McCrea); and
South Carolina Department of Agriculture (South Carolina).

EFFECTIVE DATES: November 1, 1999, for Hastings, December 1, 1999, for Aberdeen and Missouri, and January 1, 2000, for Decatur, Grand Forks, McCrea, and South Carolina.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, SW, Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202–720–8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the April 1, 1999, **Federal Register** (64 FR 15724), GIPSA asked persons interested in providing official services in the geographic areas assigned to Hastings, Aberdeen, Missouri, Decatur, Grand Forks, McCrea, and South Carolina to submit an application for designation. Applications were due by April 30, 1999. Aberdeen, Decatur, Grand Forks, McCrea, and South Carolina were the only applicants for their respective areas, and each applied for designation to provide official services in the entire area currently assigned to them.

There were two applicants for the Hastings area: Hastings and Kansas Grain Inspection Service, Inc. (Kansas). Hastings applied for designation to provide official services in the entire area currently assigned to them. Kansas, a designated official grain inspection agency operating in Kansas, Colorado, and Wyoming, applied for designation to provide official services in the western portion of the Hastings area.

There were three applicants for the Missouri area: Missouri, Kansas, and North Dakota Grain Inspection Services, Inc. (North Dakota). Missouri applied for designation to provide official services in the entire area currently assigned to them. Kansas applied for designation to provide official services in the western portion of the Missouri area. North Dakota, a designated official grain inspection agency operating in Illinois as Illinois Official Grain Inspection, applied for the eastern portion of the Missouri area.

In the April 1, 1999, **Federal Register**, GIPSA asked for comments on the official services provided by Hastings, Aberdeen, Missouri, Decatur, Grand Forks, McCrea, and South Carolina. There were two comments to the April 1, 1999, **Federal Register**, both from grain industry customers of Missouri, and both supporting designation of Missouri.

In the June 1, 1999, **Federal Register** (64 FR 29259), GIPSA asked for comments on the applicants for the Hastings and Missouri areas. Since Aberdeen, Decatur, Grand Forks, McCrea, and South Carolina were the only applicants for their respective areas, GIPSA did not ask for comments on them.

There were 19 comments to the June 1, 1999, **Federal Register**, on the applicants for the Hastings area: 13 comments from Hastings grain customers supporting Hastings, 1 from Hastings supporting themselves, and 5 comments (3 from grain firms, 1 from a railroad, and 1 from a popcorn company) supported designation of Kansas.

There were 21 comments to the June 1, 1999, **Federal Register** on the applicants for the Missouri area: 19 comments from legislators of Missouri and 2 from grain companies all supporting designation of Missouri. There were no comments on Kansas or North Dakota.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act and, according to Section 7(f)(1)(B), determined that Hastings and Missouri are better able than any other applicant to provide official services in the geographic areas for which they applied.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act and, according to Section 7(f)(l)(B), determined that Aberdeen, Decatur, Grand Forks, McCrea, and South Carolina are able to provide official services in the geographic areas for which they applied.

The following organizations are designated to provide official services in the geographic areas specified in the April 1, 1999, **Federal Register**.

Official agency	Designation start	Designation end	Telephone
Hastings	11/01/1999	9/30/2002	402–462–4254
Aberdeen	12/01/1999	9/30/2002	605–225–8432
Missouri	12/01/1999	9/30/2002	573–751–5515
Decatur	01/01/2000	9/30/2002	217–429–2466
Grand Forks	01/01/2000	9/30/2002	701–772–0151
McCrea	01/01/2000	9/30/2002	319–242–2073
South Carolina	01/01/2000	9/30/2002	843–554–1311

Interested persons may obtain official services by calling the telephone numbers listed above.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 et seq.).

Dated: August 23, 1999.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 99–22553 Filed 8–31–99; 8:45 am]

BILLING CODE 3410–EN–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alabama Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Alabama Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:00 p.m. on September 27, 1999, at the Christian Tutwiler Hotel, Park Place 21st Street North, Birmingham, Alabama 35203. The purpose of the meeting is to plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 23, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–22685 Filed 8–31–99; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arkansas Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Arkansas Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 8:00 p.m. on September 21, 1999, at the Fayetteville Hilton, 70 North East Avenue, Fayetteville, Arkansas 72701. The purpose of the meeting is to plan future activities and review draft report.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 23, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–22684 Filed 8–31–99; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Delaware Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Delaware Advisory Committee to the Commission will convene at 11:00 a.m. and adjourn at 5:00 p.m. on September 29, 1999, at the Brandywine Suites Hotel, 707 King Street, Wilmington, DE 19301. The Committee will review milestones and plans for its reference guide project, discuss topics for future briefings on civil rights issues, schedule meetings, and receive staff reports on administrative matters.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson James E. Newton, 302–831–8683, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 23, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–22683 Filed 8–31–99; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Florida Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Florida Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 5:00 p.m. on September 22, 1999, at the Courtyard by Marriott, Meeting Room B, 3805 Cypress Street, Tampa, Florida 33607. The purpose of the meeting is to plan future projects and to receive information from invited guests on affirmative action, and Federal civil rights enforcement efforts in Florida.

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern Regional Office, 404–562–7000 (TDD 404–562–7004). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 20, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–22682 Filed 8–31–99; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Oklahoma Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Oklahoma Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 12:00 p.m. on September 24, 1999, at the Travelodge (formerly the Best Western), 534 South 32nd Street, Muskogee, Oklahoma 74401. The purpose of the meeting is to plan future activities and review draft report.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 23, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–22686 Filed 8–31–99; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Performance Review Board Membership

AGENCY: Economics and Statistics Administration, Commerce.

ACTION: Performance Review Board Membership.

SUMMARY: Below is a listing of individuals who are eligible to serve on the Performance Review Board in accordance with the Economics and Statistics Administration Senior Executive Service (SES) Performance Appraisal System:

Carol A. Ambler
William G. Bostic, Jr.
Chester E. Bowie
Cynthia Z.F. Clark
Nancy M. Gordon
John F. Long
Rosemary D. Marcuss
Marilia A. Matos
Michael S. McKay
C. Harvey Monk
Walter C. Odom, Jr.
Sumiye Okubo
Judith N. Petty
Marvin D. Raines
John H. Thompson
Preston J. Waite
Katherine Wallman
James K. White
Tommy Wright

Dated: August 25, 1999.

James K. White,

Executive Director, Performance Review Board.

[FR Doc. 99–22738 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–BS–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Technical Advisory Committee will meet September 16, 1999, 10:30 a.m., Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues, N.W., Washington, DC. The

Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

Agenda

General Session

1. Opening remarks.

2. Presentation of papers and comments by the public.

3. Presentation on status of implementation of the Chemical Weapons Convention.

4. Discussion of documents regarding Biological Weapons Convention triggers.

Executive Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. Reservations are not required. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members; the materials should be forwarded prior to the meeting to the address below: Ms. Lee Ann Carpenter, BXA MS: 3876, U.S. Department of Commerce, 15 St. & Pennsylvania Ave., NW., Washington, D.C. 20230. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on February 24, 1998, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For more information call Ms. Lee Ann Carpenter at (202) 482–2583.

Dated: October 26, 1999.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 99–22769 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

President's Export Council Subcommittee on Export Administration; Notice of Partially Closed Meeting

A partially closed meeting of the President's Export Council Subcommittee on Export Administration (PECSEA) will be held September 27, 1999, 2:00 p.m., at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 4832, 14th Street between Pennsylvania and Constitution Avenues, N.W., Washington, D.C. The PECSEA provides advice on matters pertinent to those portions of the Export Administration Act, as amended, that deal with United States policies of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on Administration export control initiatives.
4. Task Force reports.

Closed Session

5. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

The General Session of the meeting is open to the public and a limited number of seats will be available. Reservations are not required. To the extent time permits, members of the public may present oral statements to the PECSEA. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to PECSEA members, the PECSEA suggests that public presentation materials or comments be forwarded before the meeting to the address listed below: Ms. Lee Ann Carpenter, Advisory Committees MS: 3876, Bureau of Export Administration, 15th St. & Pennsylvania Ave., N.W., U.S. Department of Commerce, Washington, D.C. 20230. A Notice of Determination to close meetings, or portions of meetings, of the PECSEA to the public on the basis of 5 U.S.C. 522(c)(1) was approved October 16, 1997, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For further information, contact Ms. Lee Ann Carpenter on (202) 482–2583.

Dated: August 26, 1999.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 99–22770 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

June 1999 Sunset Reviews: Final Results and Revocations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of sunset reviews and revocations of antidumping duty orders: Small Business Telephone Systems from Japan (A–588–809), Small Business Telephone Systems from Taiwan (A–583–806), Small Business Telephone Systems from South Korea (A–580–803), Multi-angle Laser Light Scattering Instruments from Japan (A–588–813), and Benzyl Paraben from Japan (A–588–816).

SUMMARY: On June 1, 1999, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty orders on small business telephone systems from Japan, small business telephone systems from Taiwan, small business telephone systems from South Korea, multi-angle laser light scattering instruments from Japan, and benzyl paraben from Japan. Because no domestic party responded to the sunset review notice of initiation by the applicable deadline, the Department is revoking these orders.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, DC 20230; telephone: (202) 482–5050.

SUPPLEMENTARY INFORMATION:

Background

The Department issued antidumping duty orders on small business telephone systems from Japan (54 FR 50789) and small business telephone systems from Taiwan (54 FR 50790) on December 11, 1989. The Department also issued antidumping duty orders on small business telephone systems from South Korea (55 FR 4215) on February 7, 1990, multi-angle laser light scattering instruments (55 FR 48144) from Japan on November 19, 1990, and benzyl paraben from Japan (56 FR 5795) on February 13, 1991. Pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department initiated sunset reviews of these orders by publishing notice of the initiation in the **Federal Register** (64 FR 29261 (June 1, 1999)). In addition, as a courtesy to interested parties, the Department sent letters, via certified and registered mail, to each party listed on the Department's most current service list for these proceedings to inform them of the automatic initiation of sunset reviews on these orders.

No domestic interested parties in the sunset reviews on these orders responded to the notice of initiation by the June 16, 1999, deadline (*see* section 351.218(d)(1)(i) of the *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13520 (March 20, 1998) ("*Sunset Regulations*")).

Determination To Revoke

Pursuant to section 751(c)(3)(A) of the Act and § 351.218(d)(1)(iii)(B)(3) of the *Sunset Regulations*, if no domestic interested party responds to the notice of initiation, the Department shall issue a final determination, within 90 days after the initiation of the review, revoking the finding or order. Because no domestic interested party responded to the notice of initiation by the applicable deadline, June 16, 1999, we are revoking these antidumping duty orders.

Effective Date of Revocation

Pursuant to section 751(c)(6)(A)(iv) of the Act, the Department will instruct the United States Customs Service to terminate the suspension of liquidation of the merchandise subject to these orders entered, or withdrawn from warehouse, on or after January 1, 2000. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending administrative reviews on these orders and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: August 26, 1999.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–22790 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

July 1999 Sunset Reviews: Final Results and Revocation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of sunset review and revocation of antidumping duty order: Stainless steel hollow products from Sweden (A–401–603).

SUMMARY: On July 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on stainless steel hollow products from Sweden. Because no domestic party responded to the sunset review notice of initiation by the applicable deadline, the Department is revoking this order.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Scott Smith or Melissa G. Skinner, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 3, 1987, the Department issued the antidumping duty order on stainless steel hollow products from Sweden (52 FR 45985).[1] Pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department initiated sunset reviews of this order by publishing notice of the initiation in the **Federal Register** (64 FR 35588, July 1, 1999). In addition, as a courtesy to interested parties, the Department sent letters, via certified and registered mail, to each party listed on the Department's most current service list for this proceeding to inform them of the automatic initiation of the sunset review on stainless steel hollow products from Sweden.

No domestic interested party in the sunset review of this order responded to the notice of initiation by the July 16, 1999, deadline (*see* section 351.218(d)(1)(i) of *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13520 (March 20, 1998) ("*Sunset Regulations*")).

Determination To Revoke

Pursuant to section 751(c)(3)(A) of the Act, and section 351.218(d)(1)(iii)(B)(3) of the *Sunset Regulations*, if no domestic interested party responds to the notice of initiation, the Department shall issue a final determination, within 90 days after the initiation of the review, revoking the finding or order or terminating the suspended investigation. Because no domestic interested party responded to the notice of initiation by the applicable deadline, July 16, 1999, we are revoking this antidumping duty order.

Effective Date of Revocation and Termination

Pursuant to section 751(c)(6)(A)(iv) of the Act, the Department will instruct the United States Customs Service to terminate the suspension of liquidation of the merchandise subject to this order entered, or withdrawn from warehouse, on or after January 1, 2000. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: August 26, 1999.

Barnard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–22794 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–DS–P

[1] On November 5, 1992, the Department amended the antidumping duty order to include welded stainless steel hollow products from Sweden in the scope of the order (57 FR 52761). On August 16, 1995, the Department revoked this order with respect to seamless stainless steel hollow products from Sweden (60 FR 42529). The order remains in effect for welded stainless steel hollow products from Sweden.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–801, A–588–804]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From Italy and Japan: Notice of Amended Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative reviews.

SUMMARY: On July 1, 1999, the Department of Commerce published the final results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. The period of review is May 1, 1997, through April 30, 1998. Based on the correction of a typographical error and the correction of certain ministerial errors, we have changed the margins for ball bearings for two companies and for cylindrical roller bearings for one company.

EFFECTIVE DATE: September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Minoo Hatten or Robin Gray, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1690 or (202) 482–4023, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act.

Background

On July 1, 1999, the Department published the final results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom (64 FR 35590)(Final Results). The reviews covered 21 manufacturers/exporters and the period May 1, 1997, through April 30, 1998.

After publication of our final results, we received a timely allegation from a respondent, Somecat S.p.A.(Somecat), that the margin for ball bearings (BBs) was reported inaccurately in the final results notice. We agree with the respondent. The margin for Somecat should be 0.25 percent, not 0.45 percent as reported in the Final Results.

We also received a timely allegation from NSK Ltd. and NSK Corporation (collectively, NSK) that we had made two ministerial errors in calculating the final results. We agree with the respondent. We are unable to summarize these errors due to their proprietary nature. See analysis memorandum from analyst to file dated July 29, 1999, for a description of the changes we made to correct the ministerial errors.

Amended Final Results of Review

As a result of the correction of the typographical error and amended margin calculations, the following weighted-average margins exist for Somecat and NSK for the period May 1, 1997, through April 30, 1998:

[In percent]

Country: Manufacturer Exporter	BB rate	CRBs rate
Italy: Somecat S.p.A	0.25	(1)
Japan: NSK Ltd.	0.76	4.36

[1] No shipments or sales subject to this review. The firm has no individual rate from any segment of this proceeding.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We will also direct Customs Service to collect cash deposits of estimated antidumping duties on all appropriate entries in accordance with the procedures discussed in the final results of review (64 FR 35590) and as amended by this determination. The amended deposit requirements are effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until publication of the final results of the next administrative reviews.

We are issuing and publishing this determination and notice in accordance with sections 751(h) and 777(i)(1) of the Act.

Dated: August 25, 1999.

Bernard T. Carreau,

Assistant Secretary for Import Administration.

[FR Doc. 99–22789 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–056]

Continuation of Antidumping Finding: Melamine From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of continuation of antidumping finding: Melamine from Japan.

SUMMARY: On December 8, 1998, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the antidumping finding on melamine from Japan would be likely to lead to continuation or recurrence of dumping (63 FR 67654 (December 8, 1998)). On July 28, 1999, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping finding on melamine from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 40895 (July 28, 1999)). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping finding on melamine from Japan.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: September 1, 1999.

Background

On August 3, 1998, the Department initiated, and the Commission instituted, a sunset review (63 FR 41227 and 63 FR 41282, respectively) of the antidumping finding on melamine from Japan pursuant to section 751(c) of the Act. As a result of this review, the Department found that revocation of the antidumping finding would be likely to lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the finding to be revoked. (*See Final Results of Expedited Sunset Review: Melamine from Japan*, 63 FR 67654 (December 8, 1998)).

On July 28, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping finding on melamine from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. (*See Melamine from Japan*, 64 FR 40895 (July 28, 1999) and USITC Pub. 3209, Inv. No. AA1921–162 (Review) (July 1999)).

Scope

The merchandise covered by this antidumping finding is imports of melamine in crystal form from Japan, which is a fine white crystalline powder used to manufacture melamine formaldehyde resins, and is classifiable under item 425.1020 of the Tariff Schedules of the United States Annotated (TSUSA). This merchandise is currently classifiable under item number 2933.61.00 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and customs purposes. The written description remains dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of this antidumping finding would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping finding on melamine from Japan. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rate in effect at the time of entry for all imports of subject merchandise. Pursuant to section 751(c)(6)(A)(iii) of the Act, any subsequent five-year review of this finding will be initiated not later than the fifth anniversary of the effective date of continuation of this finding.

The effective date of continuation of a finding, order, or suspension agreement will be the date of publication in the **Federal Register** of the Notice of Continuation. As provided in 19 CFR 351.218(f)(4), the Department normally will issue its determination to continue a finding, order, or suspended investigation not later than seven days after the date of publication in the **Federal Register** of the Commission's determination concluding the sunset review and immediately thereafter will publish its notice of continuation in the **Federal Register**. Pursuant to sections 751(c)(2) and 751(c)(6)(A) of the Act, therefore the Department intends to initiate the next five-year review of this finding not later than thirty (30) days before the fifth anniversary of the effective date of this notice.

Dated: August 26, 1999.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–22791 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–046]

Continuation of Antidumping Finding: Polychloroprene Rubber From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of continuation of antidumping finding: polychloroprene rubber from Japan.

SUMMARY: On December 8, 1998, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the antidumping finding on polychloroprene rubber from Japan would be likely to lead to continuation or recurrence of dumping (63 FR 67656 (December 8, 1998)). On July 30, 1999, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping finding on polychloroprene rubber from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 41458 (July 30, 1999)). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping finding on polychloroprene rubber from Japan.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: August 6, 1999.

Background

On August 3, 1998, the Department initiated, and the Commission instituted, a sunset review (63 FR 41227 and 63 FR 41284, respectively) of the antidumping finding on polychloroprene rubber from Japan pursuant to section 751(c) of the Act. As a result of its review, the Department found that revocation of the antidumping finding would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the finding to be revoked. (*See Final Results of Expedited Sunset Review: Polychloroprene Rubber from Japan*, 63 FR 67656 (December 8, 1998)).

On July 30, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping finding on polychloroprene rubber from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. (*See Polychloroprene Rubber from Japan*, 64 FR 41458 (July 30, 1999) and USITC Pub. 3212, Inv. No. AA1921–129 (Review) (July 1999)).

Scope

The merchandise covered by this antidumping finding is imports of polychloroprene rubber from Japan, an oil resistant synthetic rubber also known as polymerized chlorobutadiene or neoprene, currently classifiable under items 4002.42.00, 4002.49.00, 4003.00.00, 4462.15.21 and 4462.00.00. HTS item numbers are provided for convenience and for customs purposes. The written descriptions remain dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of this antidumping finding would be likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping finding on polychloroprene rubber from Japan. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rate in effect at the time of entry for all imports of subject merchandise. Pursuant to section 751(c)(6)(A)(iii) of the Act, any subsequent five-year review of this finding will be initiated not later than the fifth anniversary of the effective date of continuation of this finding.

Normally, the effective date of continuation of a finding, order, or suspension agreement will be the date of publication in the **Federal Register** of the Notice of Continuation. As provided in 19 CFR 351.218(f)(4), the Department will issue its determination to continue a finding, order, or suspended investigation not later than seven days after the date of publication in the **Federal Register** of the Commission's determination concluding the sunset review and immediately thereafter will publish its notice of continuation in the **Federal Register**. In the instant case, however, the Department's publication of the Notice of Continuation was delayed. The Department has explicitly indicated that the effective date of continuation of this finding is August 6, 1999, seven days after the publication in the **Federal Register** of the Commission's determination. As a result, pursuant to sections 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of this finding not later than July 2004.

Dated: August 26, 1999.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–22792 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–839, A–583–833]

Notice of Postponement of Preliminary Antidumping Duty Determinations: Certain Polyester Staple Fiber From the Republic of Korea and Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Vincent Kane (Republic of Korea) or Alysia Wilson (Taiwan), AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0176 or 482–0108, respectively.

Postponement of Preliminary Determinations

On April 29, 1999, the Department of Commerce (the Department) published its notice of initiation of antidumping investigations of certain polyester staple fiber from the Republic of Korea and Taiwan. *See Initiation of Antidumping Duty Investigations: Certain Polyester Staple Fiber from the Republic of Korea and Taiwan*, 64 FR 23053, 23055. The notice stated we would issue our preliminary determinations by September 9, 1999.

On August 16, 1999, pursuant to section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), E.I. DuPont de Nemours, Inc.; Arteva Specialities S.a..r.l., d/b/a KoSa; Wellman, Inc.; and Intercontinental Polymers, Inc. (the petitioners) [1] requested that the Department postpone the issuance of the preliminary determinations in these investigations. The petitioners' request for postponement was timely, and the Department finds no compelling reason to deny the request. Therefore, we are postponing the deadline for issuing these determinations until no later than September 29, 1999.

This extension and notice are in accordance with section 733(c) of the Act.

Dated: August 25, 1999.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–22786 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–825]

Continuation of Antidumping Duty Order: Sebacic Acid From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of continuation of antidumping duty order: Sebacic acid from the People's Republic of China.

SUMMARY: On April 7, 1999, the Department of Commerce ("the Department"), pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"), determined that revocation of the antidumping duty order on sebacic acid from the People's Republic of China would likely to lead to continuation or recurrence of dumping (64 FR 16910 (April 7, 1999)). On May 19, 1999, the International Trade Commission ("the Commission"), pursuant to section 751(c) of the Act, determined that revocation of the antidumping duty order on sebacic acid from the People's Republic of China would likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (64 FR 27297 (May 19, 1999)). Therefore, pursuant to 19 CFR 351.218(f)(4), the Department is publishing notice of the continuation of the antidumping duty order on sebacic acid from the People's Republic of China.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Ave., NW, Washington, DC 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: May 26, 1999.

Background

On December 2, 1998, the Department initiated, and the Commission instituted, a sunset review (63 FR 66527 and 63 FR 66567, respectively) of the antidumping duty order on sebacic acid from the People's Republic of China pursuant to section 751(c) of the Act. As a result of this review, the Department found that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping and notified the Commission of the magnitude of the margin likely to prevail were the order to be revoked (see Final Results of Expedited Sunset Review: Sebacic Acid from the People's Republic of China, 64 FR 16910 (April 7, 1999)).

On May 19, 1999, the Commission determined, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on sebacic acid from the People's Republic of China would likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time (*see Sebacic acid from the People's Republic of China*, 64 FR 27297 (May 19, 1999) and USITC Pub. 3189, Inv. No. 731–TA–653 (Review) (May 1999)).

Scope

The merchandise covered by this antidumping duty order is all grades of sebacic acid, a dicarboxylic acid with the formula (CH2)8(COOH)2, which include but are not limited to CP Grade (500ppm maximum ash, 25 maximum APHA color), Purified Grade (1000ppm maximum ash, 50 maximum APHA color), and Nylon Grade (500ppm maximum ash, 70 maximum ICV color), from the People's Republic of China. The principal difference between the grades is the quantity of ash and color. Sebacic acid contains a minimum of 85 percent dibasic acids of which the predominant species is the C10 dibasic acid. Sebacic acid is sold generally as a free-flowing powder/flake. Sebacic acid has numerous industrial uses, including the production of nylon 6/10 (a polymer used for paintbrush and toothbrush bristles and paper machine felts), plasticizers, esters, automotive coolants, polyamides, polyester castings and films, inks and adhesives, lubricants, and polyurethane castings and coatings. Sebacic acid is currently classifiable under subheading 2917.13.00.00 of the Harmonized Tariff Schedule (HTS). The HTS subheading/ item number is provided for convenience and customs purposes. The written product description of the scope of this proceeding remains dispositive.

Determination

As a result of the determinations by the Department and the Commission that revocation of this antidumping duty order would likely to lead to continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping duty order on sebacic acid from the People's Republic of China. The Department will instruct the U.S. Customs Service to continue to collect antidumping duty deposits at the rate in effect at the time of entry for all imports of subject merchandise. Pursuant to section 751(c)(6)(A)(iii) of the Act, any subsequent five-year review of this order will be initiated not later than the fifth anniversary of the effective date of continuation of this order.

Normally, the effective date of continuation of a finding, order, or suspension agreement will be the date of publication in the **Federal Register** of the Notice of Continuation. As provided in 19 CFR 351.218(f)(4), the Department normally will issue its determination to continue a finding, order, or suspended investigation not later than seven days after the date of publication in the **Federal Register** of the Commission's determination concluding the sunset review and immediately thereafter will publish its notice of continuation in the **Federal Register**. In the instant case, however, the Department's publication of the Notice of Continuation was delayed. The Department has explicitly indicated that the effective date of continuation of this order is May 26, 1999, seven days after the date of publication in the **Federal Register** of the Commission's determination. As a result, pursuant to sections 751(c)(2) and 751(c)(6)(A) of the Act, the Department intends to initiate the next five-year review of this order not later than April 2004.

Dated: August 26, 1999.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–22793 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

President's Export Council: Meeting of the President's Export Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The President's Export Council (PEC) will hold a full Council meeting to discuss topics related to export expansion. The meeting will include briefings on trade priorities and issues, the World Trade Organization, economic sanctions and Virtual Trade Mission activities. The PEC was established on December 20, 1973, and reconstituted May 4, 1979, to advise the President on matters relating to U.S. trade. It was most recently renewed by Executive Order 13062.

DATES: September 22, 1999.

TIME: 9:45 a.m. to 3:30 p.m.

ADDRESSES: U.S. Capitol, Room SC–5, Washington, DC, 20510. This program is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be submitted no later than September 8, 1999, to J. Marc Chittum, President's Export Council, Room 2015B, Washington, DC, 20230. Seating is limited and will be on a first come first serve basis.

FOR FURTHER INFORMATION CONTACT: J. Marc Chittum, President's Export Council, Room 2015B, Washington, DC, 20230 (Phone: 202–482–1124).

Dated August 25, 1999.

J. Marc Chittum,

Staff Director and Executive Secretary, President's Export Council.

[FR Doc. 99–22727 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–DR–U

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders or Investigations of Carbon Steel Plates and Flat Products

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of five-year ("Sunset") reviews.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating five-year ("Sunset") reviews of the antidumping and countervailing duty orders or suspended investigations listed below. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notices of *Institution of Five-Year Reviews* covering these same orders.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner, Scott E. Smith, or Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–1560, (202) 482–6397 or (202) 482–5050, respectively, or Vera Libeau, Office of Investigations, U.S. International Trade Commission, at (202) 205-3176.

SUPPLEMENTARY INFORMATION:

Initiation of Reviews

In accordance with 19 CFR 351.218 (*see Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998)), we are initiating sunset reviews of the following antidumping and countervailing duty orders or suspended investigations:

DOC case No.	ITC case No.	Country	Product
A–583–080	AA–197	Taiwan	Carbon Steel Plate.
C–401–401	C–231	Sweden	Carbon Steel Products.
C–423–806	C–319	Belgium	Cut-to-Length Carbon Steel Plate.
C–351–818	C–320	Brazil	Cut-to-Length Carbon Steel Plate.

[1] E.I. DuPont de Nemours, Inc. is not a petitioner in the Taiwan case.

DOC case No.	ITC case No.	Country	Product
C–427–810	C–348	France	Corrosion-Resistant Carbon Steel Flat Products.
C–428–817	C–322	Germany	Cut-to-Length Carbon Steel Plate.
C–428–817	C–349	Germany	Corrosion-Resistant Carbon Steel Flat Products.
C–428–817	C–340	Germany	Cold-Rolled Carbon Steel Flat Products.
C–580–818	C–342	Korea	Cold-Rolled Carbon Steel Flat Products.
C–580–818	C–350	Korea	Corrosion-Resistant Carbon Steel Flat Products.
C–201–810	C–325	Mexico	Cut-to-Length Carbon Steel Plate.
C–469–804	C–326	Spain	Cut-to-Length Carbon Steel Plate.
C–401–804	C–327	Sweden	Cut-to-Length Carbon Steel Plate.
C–412–815	C–328	United Kingdom	Cut-to-Length Carbon Steel Plate.
A–602–803	A–612	Australia	Corrosion-Resistant Carbon Steel Flat Products.
A–423–805	A–573	Belgium	Cut-to-Length Carbon Steel Plate.
A–351–817	A–574	Brazil	Cut-to-Length Carbon Steel Plate.
A–122–822	A–614	Canada	Corrosion-Resistant Carbon Steel Flat Products.
A–122–823	A–575	Canada	Cut-to-Length Carbon Steel Plate.
A–405–802	A–576	Finland	Cut-to-Length Carbon Steel Plate.
A–427–808	A–615	France	Corrosion-Resistant Carbon Steel Flat Products.
A–428–815	A–616	Germany	Corrosion-Resistant Carbon Steel Flat Products.
A–428–814	A–604	Germany	Cold-Rolled Carbon Steel Flat Products.
A–428–816	A–578	Germany	Cut-to-Length Carbon Steel Plate.
A–588–826	A–617	Japan	Corrosion-Resistant Carbon Steel Flat Products.
A–580–816	A–618	Korea	Corrosion-Resistant Carbon Steel Flat Products.
A–580–815	A–607	Korea	Cold-Rolled Carbon Steel Flat Products.
A–201–809	A–582	Mexico	Cut-to-Length Carbon Steel Plate.
A–421–804	A–608	Netherlands	Cold-Rolled Carbon Steel Flat Products.
A–455–802	A–583	Poland	Cut-to-Length Carbon Steel Plate.
A–485–803	A–584	Romania	Cut-to-Length Carbon Steel Plate.
A–469–803	A–585	Spain	Cut-to-Length Carbon Steel Plate.
A–401–805	A–586	Sweden	Cut-to-Length Carbon Steel Plate.
A–412–814	A–587	United Kingdom	Cut-to-Length Carbon Steel Plate.

Statute and Regulations

Pursuant to sections 751(c) and 752 of the Act, an antidumping ("AD") or countervailing duty ("CVD") order will be revoked, or the suspended investigation will be terminated, unless revocation or termination would be likely to lead to continuation or recurrence of (1) dumping or a countervailable subsidy, and (2) material injury to the domestic industry.

The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (*"Sunset Regulations"*). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the *Sunset Regulations* and *Sunset Policy Bulletin*, the Department's schedule of sunset reviews, case history information (*e.g.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists, available to the public on the Department's sunset internet website at the following address: "http://www.ita.doc.gov/import_admin/records/sunset/".

All submissions in the sunset review must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303 (1998). Also, we suggest that parties check the Department's sunset website for any updates to the service list before filing any submissions. We ask that parties notify the Department in writing of any additions or corrections to the list. We also would appreciate written notification if you no longer represent a party on the service list.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306 (*see Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order*, 63 FR 24391 (May 4, 1998)).

Information Required From Interested Parties

Domestic interested parties (defined in 19 CFR 351.102 (1998)) wishing to participate in the sunset review must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(1)(ii). We note that the Department considers each of the orders listed above as separate and distinct orders and, therefore, requires order-specific submissions. Because the case number is the same for three countervailing duty orders from Germany and two countervailing duty orders from Korea covering different products, we request that all submissions clearly identify the order for which the submission is being made by product name as listed above. In accordance with the *Sunset Regulations*, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.

If we receive a notice of intent to participate from a domestic interested party, the *Sunset Regulations* provide that *all parties* wishing to participate in the sunset review must file substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(3). Note that certain information requirements differ for foreign and domestic parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the *Sunset Regulations* for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR part 351 (1998) for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: August 26, 1999.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–22787 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–DS–P

[1] A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation (*Sunset Regulations*, 19 CFR 351.218(d)(4)). As provided in 19 CFR 351.302(b) (1998), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of the Computer System Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board (CSSPAB) will meet Tuesday, September 14, 1999, and Wednesday, September 15, 1999, from 9:00 a.m. to 5:00 p.m. and Thursday, September 16, 1999 from 9:00 a.m to 2:00 p.m. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. All sessions will be open to the public. Details regarding the Board's activities are available at http://csrc.nist.gov/csspab/.

DATES: The meeting will be held on September 14 and 15, 1999, from 9:00 a.m. to 5:00 p.m. and on September 16, 1999, from 9:00 a.m. until 2:00 p.m.

ADDRESSES: The meeting will take place at the National Institute of Standards and Technology, Gaithersburg, MD, Administration Building, Lecture Room B.

Agenda

—Welcome and Overview
—Issues Update and Briefings
—Federal Intrusion Detection Network Briefing
—Office of Management and Budget/ Office of Information and Regulatory Affairs Briefing
—Briefing on the Activities of the Transatlantic Consumer Dialogue Privacy Coalition
—NIST Computer Security Updates
—Planning for Security Program Metrics Workshop
—Pending Business/Discussion
—Public Participation
—Agenda Development for December 1999 Meeting
—Wrap-Up

Note that agenda items may change without notice because of possible unexpected schedule conflicts of presenters.

Public Participation: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the CSSPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930. It would be appreciated in 35 copies of written material were submitted for distribution to the Board and attendees no later than September 13, 1999. Approximately 15 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Roback, Board Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–3696.

Dated: August 23, 1999.

Karen Brown,

Deputy Director, NIST.

[FR Doc. 99–22731 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a closed meeting of the Judges Panel of the Malcolm Baldrige National Quality Award on Thursday, September 23, 1999. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to review the consensus process, determine possible conflict of interest for site visited companies, select applicants for site visits, begin stage III of the judging process, and review feedback to first stage applicants. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene September 23, 1999 at 9:00 a.m. and adjourn at 4:30 p.m. on September 23, 1999. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building Tenth Floor Conference Room, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on April 26, 1999, that the meeting of the Judges Panel will be closed pursuant to Section 10(d) of the Federal Advisory

Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act, Public Law 94–409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Dated: August 23, 1999.

Karen H. Brown,

Deputy Director.

[FR Doc. 99–22730 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 990416102–9232–02]

RIN 0648–ZA64

Notice and Request for Proposals; Correction

AGENCY: National Weather Service (NWS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Request for proposals; correction.

SUMMARY: NOAA/NWS Collaborative Science, Technology, and Applied Research Program issued a Request for Proposals on June 10, 1999. This notice will correct and clarify two issues from the Request for Proposals.

FOR FURTHER INFORMATION CONTACT: Sam Contorno, 301–713–1970 ext. 193, or fax to 301–713–1520, or on the Internet at samuel.contorno@noaa.gov.

Correction

In the **Federal Register** issue dated June 10, 1999, 64 FR 31188–31192 make the following corrections to clarify information regarding principal investigators and proposal submissions. On page 64 FR 31189, line 25 in third column, under "Program Priorities" insert the following text:

A proposal must be submitted by multiple principal investigators from the same college or university. NOAA or other Government employees are not allowed to be listed as principal investigators, although collaboration between the academic community and NOAA within the project is strongly encouraged.

On page 31191, second column, under "Proposal Submission," add as the third sentence the following:

Failure to be in compliance with or address all 5 elements under "Proposals," all 7 elements under "Required Elements," and all 13 elements under "Other Requirements," by the deadline of October 1, 1999, will result in proposals being returned to the submitter.

Authority: 15 U.S.C. 313; 49 U.S.C. 44720 (b); 33 U.S.C. 883d, 883e; 15 U.S.C. 2904; 15 U.S.C. 2931 et seq.

(CFDA No. 11.468)—Applied Meteorological Research.

Dated: August 26, 1999.

John J. Kelly, Jr.,

Assistant Administrator for Weather Services.

[FR Doc. 99–22772 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–KE–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082399E]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene public meetings.

DATES: The meetings will be held on September 13–16, 1999.

ADDRESSES: These meetings will be held at the Gulf State Park Resort Hotel, 21250 East Beach Boulevard, Gulf Shores, AL; telephone: 334–948–4853.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: Council

September 14

8:30 a.m.—Convene.

8:45 a.m. - 9:30 a.m.—Receive public testimony on the Shrimp Bycatch Reduction Device (BRD) Certification Standard.

9:30 a.m. - 10:00 a.m.—Receive the Shrimp Management Committee Report.

10:00 a.m. - 12:00 p.m.—Receive the Mackerel Management Committee Report.

1:30 p.m. - 1:45 p.m.—Receive the Budget Committee Report.

1:45 p.m. - 3:45 p.m.—Receive the Joint Reef Fish/Mackerel Management Committee Report.

3:45 p.m. - 4:45 p.m.—Receive the Ad Hoc Marine Reserves Committee Report.

4:45 p.m. - 5:15 p.m.—(Closed Session) Receive the Advisory Panel (AP) Selection Committee report and the Scientific and Statistical Committee (SSC) Selection Committee Report.

Thursday, September 16

8:30 a.m. - 8:45 a.m.—Receive the AP Selection Committee report and the SSC Selection Committee Report.

8:45 a.m. - 9:45 a.m.—Receive the Reef Fish Management Committee Report.

9:45 a.m. - 10:15 a.m.—Receive the Ad Hoc Vessel Monitoring System (VMS) Committee Report.

10:15 a.m. - 10:30 a.m.—Receive Enforcement Reports.

10:30 a.m. - 10:45 a.m.—Receive the International Commission for the Conservation of Atlantic Tunas (ICCAT) Advisory Committee Report.

10:45 a.m. - 11:00 a.m.—Receive the NMFS Highly Migratory Species/Billfish APs Report.

11:00 a.m. - 11:30 a.m.—Receive Director's Reports.

11:30 a.m.- 11:45 a.m.—Other Business.

11:45 a.m. - 12:00 p.m.—Election of Chairman and Vice Chairman.

September 13

10:00 a.m. - 11:00 a.m.—(Closed Session) Convene the AP Selection Committee to select members for a Dolphin/Wahoo AP.

11:00 a.m. - 11:30 a.m.—(Closed Session) Convene the SSC Selection Committee to select members for a special Dolphin/Wahoo SSC.

1:00 p.m. - 2:00 p.m.—Convene the Budget Committee to hear a status report on the CY 1999 budget and develop its recommendations to the Council on the CY 2000 budget.

2:00 p.m. - 3:00 p.m.—Convene the Shrimp Management Committee to hear recommendations from the BRD Evaluation AP and develop recommendations to the Council.

3:00 p.m. - 5:30 p.m.—Convene the Mackerel Management Committee to review an options paper for a joint Dolphin/Wahoo Fishery Management Plan (FMP) between the Gulf, South Atlantic, and Caribbean Fishery Management Councils.

September 14

8:00 a.m. - 10:30 a.m.—Convene the Joint Reef Fish/Mackerel Management Committees to review a preliminary options paper on a charter vessel permit moratorium and develop recommendations to the Council.

10:30 a.m. - 12:00 p.m.—Convene the Ad Hoc Vessel Monitoring System Committee to consider a Law Enforcement Committee recommendation that certain vessels be required to have VMS.

1:30 p.m - 3:30 p.m.—Convene the Reef Fish Management Committee to hear a status report on the red snapper regulatory amendment, NMFS recommendation for management of the red snapper recreational fishery, a report on a NMFS red snapper stakeholders meetings, and select stocks for which assessments will be completed in 2000.

3:30 p.m. - 5:30 p.m.—Convene the Ad Hoc Marine Reserves Committee to hear a summary of the marine reserves workshops and develop recommendations for future Council actions regarding marine reserves.

Although other issues not contained in this agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by September 3, 1999.

Dated: August 25, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–22670 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

August 26, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 67046, published on December 4, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 26, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 30, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on September 1, 1999, you are directed to adjust the limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Group I	
200, 218, 219, 226, 237, 239, 300/301, 313–315, 317/326, 331, 333–336, 338/339, 340–342, 345, 347/348, 350–352, 359–C [2], 359–V [3], 360–363, 369–D [4], 369–H [5], 369–L [6], 410, 433–436, 438, 440, 442–444, 445/446, 447, 448, 607, 611, 613–615, 617, 631, 633–636, 638/639, 640–643, 644/844, 645/646, 647–652, 659–C [7], 659–H [8], 659–S [9], 666, 669–P [10], 670–L [11], 831, 833, 835, 836, 840, 842 and 845–847, as a group.	1,499,477,833 square meters equivalent.
Sublevels in Group I	
218	12,088,817 square meters.
219	2,598,589 square meters.
226	11,799,484 square meters.
300/301	2,447,836 kilograms.
313	45,130,973 square meters.
315	134,976,464 square meters
317/326	23,084,333 square meters of which not more than 4,416,487 square meters shall be in Category 326.
333	106,070 dozen.
334	348,606 dozen.
335	415,480 dozen.
338/339	2,497,322 dozen of which not more than 1,807,420 dozen shall be in Categories 338–S/339–S [12].
345	138,065 dozen.
359–V	953,366 kilograms.
360	8,390,603 numbers of which not more than 5,637,250 numbers shall be in Category 360–P [13].
369–H	5,384,841 kilograms.
410	1,068,980 square meters of which not more than 856,904 square meters shall be in Category 410–A [14] and not more than 832,958 square meters shall be in Category 410–B [15].
434	14,266 dozen.
435	26,201 dozen.
436	16,142 dozen.

Category	Adjusted twelve-month limit [1]
440	40,355 dozen of which not more than 23,060 dozen shall be in Category 440–M [16].
442	42,718 dozen.
444	221,400 numbers.
448	23,837 dozen.
607	3,501,206 kilograms.
611	5,805,019 square meters.
613	8,214,096 square meters.
615	26,871,825 square meters.
617	18,488,346 square meters.
631	1,405,714 dozen pairs.
634	674,075 dozen.
635	711,031 dozen.
636	591,193 dozen.
641	1,405,431 dozen.
645/646	882,834 dozen.
659–C	442,698 kilograms.
669–P	2,182,500 kilograms.
831	607,624 dozen pairs.
833	31,243 dozen.
842	290,440 dozen.
845	2,508,679 dozen
846	191,644 dozen.
Levels not in a Group	
369–S [17]	626,103 kilograms.
863–S [18]	8,834,854 numbers.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[3] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[4] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[5] Category 369–H: only HTS numbers 4202.22.4020, 4202.22.4500 and 4202.22.8030.

[6] Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091 and 6307.90.9905.

[7] Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[8] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[9] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[10] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[11] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907.

[12] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[13] Category 360–P: only HTS numbers 6302.21.3010, 6302.21.5010, 6302.21.7010, 6302.21.9010, 6302.31.3010, 6302.31.5010, 6302.31.7010 and 6302.31.9010.

[14] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[15] Category 410–S: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[16] Category 440–M: Only HTS numbers 6203.21.0030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.3020, 6205.90.4020 and 6211.31.0030.

[17] Category 369–S: only HTS number 6307.10.2005.

[18] Category 863–S: only HTS number 6307.10.2015.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–22729 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the United Arab Emirates

August 26, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 60308, published on November 9, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 26, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on September 1, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
326	2,578,853 square meters.
334/634	279,758 dozen.
335/635/835	223,496 dozen.
336/636	256,893 dozen.
338/339	805,254 dozen of which not more than 486,363 dozen shall be in Categories 338–S/339–S [2].
340/640	428,906 dozen.
341/641	437,139 dozen.
342/642	347,281 dozen.
347/348	544,616 dozen of which not more than 286,312 dozen shall be in Categories 347–T/348–T [3].
351/651	228,004 dozen.
352	134,151 dozen.
363	7,385,494 numbers.
369–O [4]	848,756 kilograms.
369–S [5]	119,659 kilograms.
638/639	325,573 dozen.
647/648	422,783 dozen.

Category	Adjusted twelve-month limit [1]
847	91,275 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

[3] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[4] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700 (Category 369pt.).

[5] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–22728 Filed 8–31–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of intent to renew information collection 3038–0043—Rules relating to review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration, and Member Responsibility Actions.

SUMMARY: The Commodity Futures Trading Commission is planning to renew information collection 3038–0043, Rules Relating to Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration, and Member Responsibility Actions, which is due to expire November 30, 1999. 17 CFR part 171 rules require a registered futures association to provide fair and orderly procedures for membership and disciplinary actions. The Commission's review of decisions of registered futures associations in disciplinary, membership denial, registration, and member responsibility actions is governed by Section 17(h)(2) of the Commodity Exchange Act, 7 U.S.C. Section 21(h)(2) (1994). The rules establish procedures and standards for Commission review of such actions, and the reporting requirements included in the procedural rules are either directly required by Section 17 of the Act or are necessary to the type of appellate review role Congress intended the Commission to undertake when it adopted that provision.

In compliance with the Paperwork Reduction Act of 1995, the Commission solicits comments to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

DATES: Comments must be received on or before November 1, 1999.

ADDRESS: Persons wishing to comment on this information collection should contact the CFTC Clearance Officer, 1155 21st Street NW, Washington, DC 20581, (202) 418–5160.

Title: Rules Relating to Review of National Futures Association Decisions in Disciplinary, Membership Denial, Registration, and Member Responsibility Actions.

Control number: 3038–0043.

Action: Extension.

Respondents: National Futures Association and parties to Part 171 proceedings.

Estimated Annual Burden: 126 hours.

Respondents	Regulation (17 CFR)	Estimated number of respondents	Annual responses	Est. avg. hours per response
National Futures association and parties to Part 171 proceedings	Part 171	14	55	3.5

Issued in Washington, D.C. on August 26, 1999.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 99–22736 Filed 8–31–99; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, September 3, 1999.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 99–22812 Filed 8–27–99; 4:31 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, September 10, 1999.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 99–22813 Filed 8–27–99; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, September 17, 1999.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 99–22814 Filed 8–27–99; 4:31 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading.

TIME AND DATE: 11:00 a.m., Friday, September 24, 1999.

PLACE: 1155 21st St., NW, Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 99–22815 Filed 8–27–99; 4:31 pm]

BILLING CODE 6351–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

The Corporation for National and Community Service (hereinafter the "Corporation") has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, (44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Office of Evaluation, Carol Hafford, (202) 606–5000, extension 232. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information to those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Corporation for National and Community Service.

Title: AmeriCorps*VISTA 1999 Project Accomplishment Survey.

OMB Number: 3045–0020 (expired).

Agency Number: None.

Affected Public: AmeriCorps*VISTA projects that have been active for at least nine months prior to September 30, 1999.

Total Respondents: FY 1999—946; FY 2000—1,182, FY 2001—1,182.

Frequency: Annually.

Average Time Per Response: FY 1999—1 hour; FY 2000—30 minutes; FY 2001—30 minutes.

Estimated Total Burden Hours: FY 1999—946 hours; FY 2000—591 hours; FY 2001—591 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Description

One of the missions of the Corporation is to "provide opportunities to engage in service that addresses the nation's unmet human, educational, environmental, and public safety needs" (42 U.S.C. 12501(b)). Through the AmeriCorps*VISTA (Volunteers in Service to America) program, the Corporation supports VISTA's 34 year mission to engage Americans in community service activities and build the capacity of low-income communities. AmeriCorps*VISTA activities address issues of poverty and poverty-related problems by generating private sector resources, encouraging volunteer service at the local level, and strengthening the capacity of local organizations and agencies to meet the needs of low-income communities.

VISTA is a full-time, full-year service program for men and women ages 18 and older. AmeriCorps*VISTA places federally funded national service participants in ongoing programs managed by public agencies or private, nonprofit organizations. AmeriCorps*VISTA members work within these agencies or organizations to help them expand services to people in economically disadvantaged communities. Members are involved in a wide variety of community-oriented efforts, such as developing literacy programs, organizing outreach programs in health care, training low-income people in business management, and establishing transitional housing programs for the homeless. Since 1996, the Corporation has conducted an annual survey and collected data from AmeriCorps*VISTA projects to describe program accomplishments. These responses assist the Corporation in addressing policy and programming issues about AmeriCorps*VISTA and the projects it supports throughout the country.

Therefore, the Corporation seeks approval of a survey form to collect data from a sample of AmeriCorps*VISTA projects. The 1999 AmeriCorps*VISTA Project Accomplishments Survey will be administered by mail. In FY 2000 and FY 2001 the data will be collected through a computerized data tracking system. The survey will cover VISTA project activities and accomplishments during the 12-month period of October 1, 1998, through September 30, 1999. Approximately 1,182 projects will be surveyed, of which we expect 946 respondents. The survey will collect data on project characteristics and on specific AmeriCorps*VISTA activities and accomplishments in each of seven program emphasis areas and in organizational capacity building. Accomplishment data from the FY 1999 survey will be used to provide a report on AmeriCorps*VISTA accomplishments to the Congress in FY 2000 and to satisfy the Government and Performance and Results Act of 1993 requirements.

Dated: August 26, 1999.

Thomasenia P. Duncan,

General Counsel.

[FR Doc. 99–22665 Filed 8–31–99; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Request for Extension, Without Change, of a Previously Approved Information Collection

AGENCY: Office of the Secretary, DOT.

ACTION: Notice and Request for Comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) this notice announces the Department of Transportation's (DOT) intention to request extension without change, of a previously approved information collection.

DATES: Comments on this notice must be received by November 1, 1999.

ADDRESSES: Comments should be sent to the Special Authorities Division (X–57), Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0002.

FOR FURTHER INFORMATION CONTACT: Ms. Torlanda Archer or Mr. Charles McGuire, Office of the Secretary, Office of Aviation Analysis, X–57, Department of Transportation, at the above address. Telephone (202) 366–1037.

SUPPLEMENTARY INFORMATION:

Title: Aviation Charter Rules.

OMB Control Number: 2106–0005.

Expiration Date: October 31, 1999.

Type of Request: Extension without change, of a previously approved information collection.

Abstract: In 14 CFR Part 380 (adopted 1979) of its Special Regulations the Department established the terms and conditions governing the furnishing of Public Charters in air transportation by direct air carriers and Public Charter operators. Public Charter operators arrange transportation for groups of persons on aircraft chartered from direct air carriers. This arrangement is less expensive for the travelers than individually buying a ticket. Further, the charter operator books hotel rooms, tours, etc., at destination for the convenience of the traveler. Part 380 exempts charter operators from certain provisions of the U.S. Code in order that they may provide this service.

A primary goal of Part 380 is to seek protection for the consumer. Accordingly, the rule stipulates that the charter operator must file evidence (a prospectus) with the Department for each charter program certifying that it has entered into a binding contract with a direct air carrier to provide air transportation and that it has also entered into agreements with Department-approved financial institutions for the protection of charter participants' funds. The prospectus must be approved by the Department prior to the operator's advertising, selling or operating the charter. The forms (OST Forms 4532, 4533, 4534 and 4535) that comprise the operator's filing is the information collection at issue here.

In September 1992, the Department issued a notice of proposed rulemaking (NPRM), [57 FR 42864, 9–16–92) to propose, among other revisions, that charter operators need no longer file prospectuses. The NPRM was in response to comments that prospectus filings were burdensome and unnecessary. However, the majority of respondents to the NPRM urged the Department to retain the existing prospectus filing requirements because they desired the more complete consumer protection provided by the current rule. Without a complete prospectus it would be extremely difficult to assure that financial security and other consumer protection requirements are in place for each Public Charter operation.

On May 22, 1998 the Department of Transportation published a Final Rule amending its charter air transportation regulations to update the rules, make changes reflecting current operating procedures and including the following specific modifications:

Eliminate the 10-day waiting period after the filing of a prospectus or an amendment before Public Charters may be advertised or sold;

Allow charter operators to accept payment by credit cards for Public Charter flights;

Delete the minimum contract size of 20 seats for passenger charters;

Permit direct air carriers to sell charter flights within 7 days of departure;

Codify the Department's practice allowing a "sub-operator" to buy into another Public Charter operator's prospectus as a principal;

Eliminate the requirement for a brief or "mini" prospectus to be filed by direct air carriers conducting foreign-originating flights for foreign charter operators;

Consolidate the rules applicable to U.S. and foreign direct air carriers into a single part; and

Broaden the definitions of "immediate family" in parts 212 and 380 to include the member's (or student participant's) spouse, children, and parents, whether or not they share a household with the member. This action is taken at the Department's initiative and responds to President Clinton's Regulatory Reinvention Initiative.

With these exceptions, the Department decided not to adopt many of the rule changes proposed in the NPRM. The Final Rule includes a full discussion of comments offered to the NPRM and the reasons for adopting or not adopting proposed changes in the rule. No comments have been received on the Final Aviation Charter Rules.

The collection involved here under 14 CFR part 380 requests general information about the charter operator and direct air carrier that will provide a Public Charter and requires each to certify that it has contracted with the other to provide the transportation. The routing, charter price and tour itinerary of the proposed charter are also identified. The collection also requires the charter operator, direct air carrier and financial institution(s) involved to certify that proper financial instruments are in place or other arrangements have been made to protect the charter participants' funds and that all parties will abide by the Department's Public Charter regulations.

Respondents: Public Charter operators.

Estimated Number of Respondents: 316.

Average Annual Burden per respondents: 4.25 hours.

Estimated Total Burden on Respondents: 1,343 hours.

The information collection is available for inspection at the Special Authorities Division (X–57), Office of Aviation Analysis, DOT, at the address above. Copies of 14 CFR part 380 can be obtained from Ms. Torlanda Archer at the address and telephone number shown above.

Comments Are Invited On

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC on August 26, 1999.

John V. Coleman,

Office of Aviation Analysis.

[FR Doc. 99–22698 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD

ACTION: Notice to amend record systems.

SUMMARY: The Department of the Air Force proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on October 1, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/ITC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 588–6187.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record system being amended are set forth below followed by the notice as amended, published in its entirety.

Dated: August 25, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AFRE A

SYSTEM NAME:

Statutory Tour Program *(June 11, 1997, 62 FR 31793).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Personnel Directorate, Office of Air Force Reserve, Headquarters U.S. Air Force, 1150 Air Force Pentagon, Washington, DC 20330-1150.'

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Approval/disapproval on original correspondence relating to the application, Department of the Air Force Orders, comments from Deputy to the Chief of Air Force Reserve and Deputy Assistant Secretary of the Air Force (Reserve Affairs).'

* * * * *

PURPOSE(S):

Delete entry and replace with 'Documentary support of tour applications; approval/disapproval; initiation, termination and extension of statutory tours; used as historical reference; used by Air Reserve Forces Advisors as record of approval/disapproval, authority to issue Department of the Air Force Special Orders, by the Deputy to the Chief of Air Force Reserve and Deputy Assistant Secretary of the Air Force (Reserve Affairs).'

* * * * *

SAFEGUARDS:

Add to entry 'Database is password access only.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Chief, Senior Officer Management, Personnel Directorate, Office of Air Force Reserve, Headquarters U.S. Air Force, 1150 Air Force Pentagon, Washington, DC 20330-1150.

* * * * *

F036 AFRE A

SYSTEM NAME:

Statutory Tour Program.

SYSTEM LOCATION:

Personnel Directorate, Office of Air Force Reserve, Headquarters U.S. Air Force, 1150 Air Force Pentagon, Washington, DC 20330-1150.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Reserve Component Officers (United States Air Force Reserve/Air National Guard United States) on Extended Active Duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Approval/disapproval on original correspondence relating to the application, Department of the Air Force Orders, comments from Deputy to the Chief of Air Force Reserve and Deputy Assistant Secretary of the Air Force (Reserve Affairs).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; 10 U.S.C. Chapter 11, Reserve Components; Chapter 805, The Air Staff; Chapter 841, Active Duty; 32 U.S.C. Chapter 7, Service, Supply and Procurement, Section 708 - Regulatory Authority; implemented by Air Force Instruction 36-2116, Extended Active Duty for Reserve Component Officers.

PURPOSE(S):

Documentary support of tour applications; approval/disapproval; initiation, termination and extension of statutory tours; used as historical reference; used by Air Reserve Forces Advisors as record of approval/disapproval, authority to issue Department of the Air Force Special Orders, by the Deputy to the Chief of Air Force Reserve and Deputy Assistant Secretary of the Air Force (Reserve Affairs).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/cabinets, and on electronic media for statistical analysis.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms. Controlled entry building. Database is password access only.

RETENTION AND DISPOSAL:

Retained two years after completion of tour. Retained for two years after end of year in which the case was closed, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Senior Officer Management, Personnel Directorate, Office of Air Force Reserve, Headquarters U.S. Air Force, 1150 Air Force Pentagon, Washington, DC 20330-1150.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit Personnel Directorate, Office of Air Force Reserve, Headquarters U.S. Air Force, 1150 Air Force Pentagon, Washington, DC 20330-1150.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit Personnel Directorate, Office of Air Force Reserve, Headquarters U.S. Air Force, 1150 Air Force Pentagon, Washington, DC 20330-1150.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Member's application and correspondence generated in transmission and consideration of the application.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–22570 Filed 8–31–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend record systems.

SUMMARY: The Department of the Air Force proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on October 1, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/ITC, 1250 Air Force Pentagon, Washington, DC 203301250.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 5886187.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record system being amended are set forth below followed by the notice as amended, published in its entirety.

Dated: August 25, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F035 AF SAFPA B

SYSTEM NAME:

Hometown News Release Background Data File *(June 11, 1997, 62 FR 31793).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'F035 AF AFNEWS A'.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Add to entry 'Under certain categories, DoD civilians are also authorized to participate.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Records are accessed by person(s) responsible for servicing the record system in performance of their official duties, and by authorized personnel who are properly screened and cleared for need-to know. Records are stored in locked cabinets and rooms. Those in computer storage devices are protected by computer system software.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Disposition pending. No records will be destroyed until authorization is granted from the National Archives and Records Administration. All records will be retained until approval is granted.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Chief, Print Division, Army and Air Force Hometown News Service, 203 Norton Street, Kelly Air Force Base, TX 78241-6105.'

* * * * *

F035 AF AFNEWS A

SYSTEM NAME:

Hometown News Release Background Data File.

SYSTEM LOCATION:

Headquarters Air Force News Agency, 203 Norton Street, Kelly Air Force Base, TX 78241-6105. Subsystems of the main system may be located at the Public Affairs Office at the Army/Air Force Base, Army/Air National Guard or Army/Air Force Reserve or similar installation to which an individual is assigned.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Army/Air Force active duty military personnel, Army/Air Force Reserve Army/Air National Guard personnel recently selected for promotion, reassigned, awarded a medal or decoration, or who otherwise participated in a newsworthy event. Under certain categories, DoD civilians are also authorized to participate.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographical information including, but not necessarily limited to name, Social Security Number, current grade, marital status, local address, name and address of parents or guardians, educational background and military history, photographs. Information is usually, but not necessarily, contained in an Information for Hometown News Release Form, DD form 2266, or similar form.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force, and 8034, and E.O. 9397 (SSN).

PURPOSE(S):

Preparation of news releases for distribution to newspapers and broadcast stations throughout the United States.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information from this system of records may be disclosed to the media as part of a news release.

The 'Blanket Routine Uses' that appear at the beginning of the Air Force's compilation of systems of records apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and visible file binders/cabinets, as well as on computers and computer output products.

RETRIEVABILITY:

Retrieved by name and Social Security Number within date of release.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties, and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked cabinets and rooms. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Disposition pending. No records will be destroyed until authorization is granted from the National Archives and Records Administration. All records will be retained until approval is granted.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Print Division, Army and Air Force Hometown News Service, Kelly Air Force Base, TX 78241–6105.

NOTIFICATION PROCEDURE:

Individual seeking to determine whether this system of records contains information about themselves should address written requests to or visit the Print Division, Army and Air Force Hometown News Service, 203 Norton Street, Kelly Air Force Base, TX 78241–6105. Inquiries about a subsystem should be addressed to the Public Affairs Officer at the base or installation of the individual's assignment. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to or visit the Print Division, Army and Air Force Hometown News Service, 203 Norton Street, Kelly Air Force Base, TX 78241–6105 or the installation Public Affairs Officer. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and contesting contents and appealing initial determinations are published in Air Force Instruction 37–132, 32 CFR part 806b, or maybe obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from the individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–22571 Filed 8–31–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Defense Logistics Agency is deleting a system of records notice from its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The system of records is not subject to the provisions of the Privacy Act of 1974. In this case, the records cover entities that have been given Federal contracts to investigate EEO complaints. Because these contractors are acting in an entrepreneurial capacity rather than a personal capacity, they do not meet the definition of 'individuals' as contemplated by the Office of Management and Budget in their formal guidelines to federal agencies in implementing the Privacy Act (July 9, 1975, 40 FR 28948).

DATES: This proposed action will be effective without further notice on October 1, 1999, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 25, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S390.01 DLA-KE

SYSTEM NAME:

Grievance Examiners and Equal Employment Opportunity (EEO) Investigators Program *(February 22, 1993, 58 FR 10854).*

Reason: It has been determined that the notice is not required by the Privacy Act. In this case, the records cover entities that have been given Federal contracts to investigate EEO complaints. Because these contractors are acting in an entrepreneurial capacity rather than a personal capacity, they do not meet the definition of 'individuals' as contemplated by the Office of Management and Budget in their formal guidelines to federal agencies in implementing the Privacy Act (July 9, 1975, 40 FR 28948).

[FR Doc. 99–22572 Filed 8–31–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 1, 1999.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 27, 1999.

Joseph Schubart,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: New.

Title: Electronic Debit Payment Option for Student Loans.

Frequency: One time.

Affected Public: Individuals or households; Federal Government.

Reporting and Recordkeeping Burden: Responses: 108,541; Burden Hours: 2 minutes each.

Abstract: The need for an Electronic Debit Account Program will give the borrower another option in which to repay federally funded student loans via automatic debit deductions from their checking accounts.

Written comments or requests for copies of the proposed information collection request should be addressed to Vivian Reese, U.S. Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the Internet address OCIO_IMG_Issues@ed.gov, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Joseph Schubart at 202–708–9266 or by e-mail at joe_schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–22732 Filed 8–31–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133B–12]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Notice Inviting Applications and Pre-application Meeting for a New Award for a Rehabilitation Research and Training Center (RRTC) for Fiscal Year (FY) 2000

Purpose

On May 4, 1999 a notice was published in the **Federal Register** (64 FR 23988) inviting applications for a new FY 1999 award for an RRTC on rehabilitation for children with disabilities and special health care needs. Satisfactory applications were not received for this priority area. There is a continuing need for this center.

The purposes of this notice are to: (1) Invite applications for an RRTC on rehabilitation for children with disabilities and special health care needs for FY 2000; and (2) invite interested parties to participate in a pre-application meeting to discuss the funding priority and receive technical assistance through individual consultation and information about the funding priority.

Eligible Applicants: Parties eligible to apply for grants under this program are States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

Applications Available: September 1, 1999.

Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting to discuss the funding priority for an RRTC on rehabilitation for children with disabilities and special health care needs and to receive technical assistance through individual consultation and information about the funding priority. The pre-application meeting will be held on September 22, 1999 at the Department of Education, Office of Special Education and Rehabilitative Services, Switzer Building, Room 3065, 330 C St., SW, Washington, DC, between 10 a.m. and 12:00 p.m. NIDRR staff will also be available at this location from 1:30 p.m. to 5 p.m. on that same day to provide technical assistance through individual consultation and information about the funding priority. NIDRR will make alternate arrangements to accommodate interested parties who are unable to

attend the pre-application meeting in person. *Assistance to Individuals With Disabilities at the Public Meeting:*

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed below at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR parts 74, 75, 77, 78, 80, 81, 82, 85, 86, 97; (b) the regulations for this program in 34 CFR Part 350; and (c) the notice of final priorities published on May 4, 1999 in the **Federal Register** (64 FR 23988); and the notice inviting applications published on May 4, 1999 in the **Federal Register** (64 FR 23993).

Deadline for Transmittal of Applications: November 1, 1999.

Maximum Award Amount Per Year: $700,000.

Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

Estimated Number of Awards: 1.

Note: The estimate of funding level and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants.

Project Period: 60 months.

For Applications Contact: Education Publications Center (ED Pubs), PO Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll-free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: http://www.ed.gov/pubs/edpubs.html or you may contact ED Pubs at its E-mail address: edpubs@inet.ed.gov

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202)205–8207. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

FOR FURTHER INFORMATION CONTACT: In order to obtain further information about the funding priority and the pre-application meeting on the RRTC on rehabilitation for children with disabilities and special health care needs contact Roseann Rafferty, U.S. Department of Education, Room 3428, Switzer Building, 330 C St, S.W., Washington, DC 20202, or call (202) 205–5867. Individuals who use a telecommunications device (TDD) may call the TDD number at (202) 205–4475. Internet: Roseann__Rafferty@ed.gov

Individuals with disabilities may obtain a copy of this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document: You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at:

http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number 84.133B, Rehabilitation Research and Training Centers)

Program Authority: 29 U.S.C. 761a and 762.

Dated: August 27, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–22783 Filed 8–31–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site

AGENCY: U. S. Department of Energy.

ACTION: Amendment to a record of decision.

SUMMARY: The Department of Energy (DOE) has decided to revise the approach to be used to dispose of approximately 3,360 kg of sand, slag and crucible plutonium residues (containing approximately 130 kg of plutonium) that is currently stored at the Rocky Flats Environmental Technology Site. In an earlier Record of Decision on Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site (63 FR 66136, December 1, 1998), DOE decided that the sand, slag and crucible residues would be shipped to the Savannah River Site for processing and storage pending disposition. With the opening of the Waste Isolation Pilot Plant (WIPP) in New Mexico on March 26, 1999, DOE has now decided instead to prepare the sand, slag and crucible residues for direct shipment to the repository for disposal. This will result in final disposition of this material several years earlier than the previous approach and would be more cost effective. The environmental impacts of alternative approaches for management of these residues are presented in the Final Environmental Impact Statement on Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site (the EIS, DOE/EIS–0277F, August 1998).

ADDRESSES: Copies of the EIS, the first and second Records of Decision published by DOE on this subject, and this Amended Record of Decision are available in the public reading rooms and libraries identified in the **Federal Register** notice that announced the availability of the EIS (63 FR 46006, August 28, 1998), or please write or call: Center for Environmental Management Information, P.O. Box 23769, Washington, DC 20026–3769, telephone 1–800–736–3282 (in Washington, DC: 202–863–5084). These documents may also be accessed on the DOE Office of Environmental Management's World Wide Web site at http://www.em.doe.gov/em60/documents.

FOR FURTHER INFORMATION CONTACT: For further information on management of plutonium residues and scrub alloy currently stored at the Rocky Flats Environmental Technology Site, contact: Ms. Patrice M. Bubar, Acting Director, Rocky Flats Office (EM–64), Office of Nuclear Material and Facility Stabilization, Environmental Management, U.S. Department of Energy 1000 Independence Avenue, SW, Washington, DC 20585, Telephone: 301–903–7130.

For information concerning the EIS, the first or second Records of Decision, or this Amended Record of Decision, contact: Mr. Charles R. Head, Senior Technical Advisor, Office of Nuclear Material and Facility Stabilization, Environmental Management, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, Telephone: 202–586–5151.

For further information on DOE's National Environmental Policy Act (NEPA) process, contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, Telephone (202) 586–4600, or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION:

I. Background

The U.S. Department of Energy (DOE) issued the Final Environmental Impact Statement on Management of Certain Plutonium Residues and Scrub Alloy Stored at the Rocky Flats Environmental Technology Site (EIS, DOE/EIS–0277F) in August 1998. In this EIS, DOE assessed the potential environmental impacts of processing certain plutonium residues and scrub alloy currently stored at the Rocky Flats Environmental Technology Site (Rocky Flats) near Golden, Colorado in preparation for disposal or other disposition. These materials were produced during nuclear weapons production activities conducted by DOE during the Cold War, and are no longer needed. DOE is currently conducting activities to safely manage, clean up, and dispose (where appropriate) such intermediate products of its prior nuclear weapons production activities. The plutonium residues analyzed in the EIS include approximately 3,360 kg of sand, slag and crucible residues (containing approximately 130 kg of plutonium).

The EIS evaluated four alternatives for management of the sand, slag and crucible residues, as shown in Table 1.

TABLE 1.—ALTERNATIVES FOR MANAGEMENT OF SAND, SLAG AND CRUCIBLE PLUTONIUM RESIDUES

Alternative 1—No Action:
- Calcination/Cementation at Rocky Flats, followed by storage at Rocky Flats.

Alternative 2—Processing without Plutonium Separation:
- Vitrification at Rocky Flats, in preparation for disposal in WIPP [1], or
- Calcination & Blend Down at Rocky Flats, in preparation for disposal in WIPP

Alternative 3—Process with Plutonium Separation:
- Purex Process at the Savannah River Site, in preparation for disposition of the plutonium as either mixed oxide nuclear fuel or immobilized in highly radioactive waste in a mined geologic repository.

Alternative 4—Combination of Processing Technologies:
- Calcination/Cementation at Rocky Flats, in preparation for disposal in WIPP, or
- Repackaging at Rocky Flats, in preparation for disposal in WIPP.

[1] The "Waste Isolation Pilot Plant" is DOE's mined geologic repository for disposal of transuranic radioactive wastes. WIPP is located near Carlsbad, New Mexico. Transuranic is a term for any element whose atomic number is higher than that of uranium (i.e., atomic number 92). All transuranic elements are produced artificially.

II. Original Decision

DOE issued a first Record of Decision (63 FR 66136, December 1, 1998) that covered eight categories of Rocky Flats plutonium residues (including sand, slag and crucible residues) and the scrub alloy.[2] The first Record of Decision stated in Section VII.A.1. that "DOE has decided to preprocess the sand, slag and crucible residues at the Rocky Flats site and then transport them to the Savannah River Site for stabilization in the F-Canyon. The Purex process will be used to chemically separate the plutonium from the other residue constituents (i.e., Alternative 3). The separated plutonium will then be placed in storage at the Savannah River Site until it is dispositioned as determined by DOE after completion of the Surplus Plutonium Disposition Environmental Impact Statement (DOE/EIS–0283, under preparation, draft issued in July 1998)."

Section VII.A.2. of the first Record of Decision explained that Alternative 3 (processing at the Savannah River Site) was selected because it would provide the most expeditious approach for stabilization of the sand, slag and crucible residues. Because repackaging at Rocky Flats under Alternative 4 (preparation of the sand, slag and crucible residues for disposal in WIPP) also appeared to be a desirable alternative, Section VII.A.2 went on to explain the following:

"Consideration of alternative processing technologies that would result in sending the Rocky Flats sand, slag and crucible residues directly to WIPP for disposal as transuranic waste revealed that significant further characterization of the material would be required to verify its suitability for disposal in WIPP, due to the presence of reactive calcium in the residues. Resolution of the issues raised by the reactive calcium would require (1) further testing to demonstrate that no more than 5 percent of the residues contain enough reactive calcium to be pyrophoric, (2) approval by the Nuclear Regulatory Commission of a change to the WIPP TRUCON Shipping Code to change the allowable passivated calcium metal content from a trace (i.e., less than 1 percent) to a minor (i.e., 1 to 10 percent) constituent, and (3) obtaining WIPP certification of the material. This strategy, if successful, would take about one year longer to implement than processing at the Savannah River Site."

III. Events Since Issuance of the First Record of Decision

Since issuance of the first Record of Decision, sand, slag and crucible residues have been packaged in preparation for shipment to the Savannah River Site. A small quantity of these residues (approximately 112 kg containing about 2.7 kg of plutonium) has been shipped to the Savannah River Site as test samples to determine how best to process the bulk of the sand, slag and crucible residues yet to be shipped. The shipping schedule for the remainder of the materials has been delayed, however, by approximately one year, while issues associated with certifying a new transportation package continue to be addressed. Meanwhile, the following activities regarding

[2] DOE issued a second Record of Decision (64 FR 8068, February 18, 1999) for the remaining seven categories of residues.

sending the sand, slag and crucible residues to WIPP have been completed:

A. In July 1999, DOE completed sampling and analysis of the sand, slag and crucible residues to a greater than 95 percent confidence level and has concluded that there would be no pyrophoric hazards with this material. The analysis also showed that the sand, slag and crucible residues are sufficiently passivated (i.e. made less chemically reactive) to be shipped to WIPP.

B. DOE obtained Nuclear Regulatory Commission approval of Revision 11 of the TRUCON Codes in June 1999. This revision allows shipment to WIPP of residues with a passivated calcium constituent greater than that present in the sand, slag and crucible residues.

C. WIPP began disposal operations on March 26, 1999. In the process of preparing other transuranic wastes for shipment to WIPP, the Rocky Flats Site has developed a record keeping and management system that meets stringent WIPP certification requirements. This new record keeping and management system has passed several audits by both the DOE Carlsbad Area Office (the DOE organization that operates WIPP) and the U. S. Environmental Protection Agency. The system provides the technical information needed to certify transuranic wastes for disposal in WIPP. Rocky Flats has obtained WIPP certification for several waste streams and is currently shipping these waste streams to WIPP for disposal. This proven system could be used to obtain WIPP certification for the sand, slag and crucible residues. These residues are not hazardous waste, subject to Resource Conservation and Recovery Act regulations.

Completion of the activities discussed above resolves the three issues identified in the first Record of Decision as requiring resolution before disposal of the sand, slag and crucible residues at WIPP would be possible. Their resolution prompted DOE to reconsider its decision.

IV. Need to Change the Initial Decision

Shipment of the sand, slag and crucible residues to the Savannah River Site for processing would result in separation of approximately 130 kg of nuclear weapons usable plutonium from the other constituents of the sand, slag and crucible residues. While plutonium can be safely stored at the Savannah River Site, DOE prefers not to separate weapons usable plutonium unless such separation is required by health and safety concerns. With the resolution of the issues that led to DOE's original decision not to dispose of the sand, slag and crucible residues at WIPP, and the delay in shipping material to Savannah River Site, there is no longer any advantage in shipping the sand, slag and crucible residues to the Savannah River Site for processing.

In addition, if the plutonium were separated from the sand, slag and crucible residues at the Savannah River Site, the separated plutonium would then have to be stored at the Savannah River Site for several years before it would be further dispositioned, e.g., by immobilization. If the plutonium were to be immobilized, it would likely be several additional years before the immobilized plutonium could be shipped to a geologic repository for disposal. Direct disposal at WIPP would require further repackaging at Rocky Flats, and shipment to WIPP for disposal would occur somewhat later than shipments to the Savannah River Site. Nevertheless, DOE has confirmed that this delay would not adversely affect DOE's plan to close Rocky Flats by 2006.

V. Environmental Impacts Analysis

As indicated in the Records of Decision issued under the Final EIS, because of the small risks that potentially could result from implementation of any of the action alternatives and the absence of any clear basis for discerning an environmental preference, no one action alternative is clearly environmentally preferable over any other action alternative. On the other hand, because the residues would be left in storage at Rocky Flats with no defined disposal path under the No Action Alternative, all of the action alternatives are environmentally preferable to the No Action Alternative. Since the estimates of the impacts that could potentially occur under the various alternatives for management of the sand, slag and crucible residues have not changed since issuance of the Records of Decision, DOE believes that the conclusions it previously reached regarding the environmentally preferable alternative are still valid.

VI. Amended Decision

After review of the potential impacts considered in the EIS and the new information discussed above, DOE has decided to dispose of the sand, slag and crucible residues at WIPP (i.e., DOE will implement the repackaging option of Alternative 4). Termination of safeguards (as discussed in Section III.D. of the first Record of Decision) will be accomplished through the continued use of an approved variance to the safeguards requirements, as is already being done for several other categories of Rocky Flats plutonium residues.

Basis for the Decision

As discussed above, disposal at WIPP of the sand, slag and crucible residues will avoid separation of up to 130 kg of plutonium and result in permanent disposal of the plutonium several years sooner than it could be disposed of under the Savannah River Site plutonium separation alternative. DOE estimates that packaging the material for direct disposal is a more cost effective approach than processing at the Savannah River Site. Additionally, this would allow other materials from Rocky Flats, which would have been processed after the sand, slag and crucible residues, to be processed earlier in the F Canyon and F–B line facilities.

VII. Conclusion

The decision specified in this Amended Record of Decision is effective upon being made public, in accordance with DOE's NEPA implementation regulations (10 CFR 1021.315). The goals of this decision remain as stated in the first Record of Decision, namely to prepare the sand, slag and crucible residues for disposal in a manner that addresses health and safety concerns associated with storage of the sand, slag and crucible residues and to support closure of the Rocky Flats Site.

Issued in Washington, DC this 25th day of August, 1999.

Carolyn L. Huntoon,

Assistant Secretary for Environmental Management.

[FR Doc. 99–22671 Filed 8–31–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments

August 26, 1999.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection.

a. *Type of Application:* Non-project Use of Project Lands (Development of a New Marina).

b. *Project No.:* 2105–079.

c. *Date Filed:* August 9, 1999.

d. *Applicant:* Pacific Gas & Electric Company (PG & E).

e. *Name of Project:* Upper North Fork Feather River Project (Lake Almanor).

f. *Location:* The proposed recreation facilities would be located in Big Cove on the northern shore of Lake Almanor in Plumas County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant contact:* Bill Zemke, Pacific Gas & Electric Company, Mail Code N11C, P.O. Box 770000, San Francisco, CA 94177, (415) 973–1646.

i. *FERC contact:* Any questions on this notice should be addressed to J.K. Hannula, E-mail address *john.hannula@ferc.fed.us*, or telephone (202) 219–0116.

j. *Description of the Application:* PG & E requests approval to permit the construction of a marina containing 18 to 20 slips. The marina will be operated by an RV campground and will be used exclusively by its own residents. The proposed marina would be located across from Big Cove Resort's marina. All RV sites will be located outside the project boundary.

k. *Deadline for filing comments:* 20 days from issuance date of this notice.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The Application may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item "h" above.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official serve list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on the resource agency.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

David P. Boergers,

Secretary.

[FR Doc. 99–22735 Filed 8–31–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6431–6]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Clean Water Act Section 404 State-Assumed Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Clean Water Act Section 404 State-Assumed Programs; OMB No. 2040–0168; EPA ICR No. 0220.08; expiration date 10/31/99. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 0220.08.

SUPPLEMENTARY INFORMATION:

Title: Clean Water Act Section 404 State-Assumed Programs (OMB Control No. 2040–0168; EPA ICR No. 0220.08) expiring 10/31/99. This is a request for extension of a currently approved collection.

Abstract: The Clean Water Act authorizes states [and tribes] to assume the Section 404 permit program. States/tribes must demonstrate that they meet the statutory and regulatory requirements (40 CFR Part 233) for an approvable program. When EPA has a complete assumption request, the statutory time clock for EPA's decision starts. This information is made available to the other involved federal agencies (Corps of Engineers, Fish and Wildlife Service and National Marine Fisheries Service) and to the general public for review and comment.

EPA's assumption regulations establish recommended elements that should be included in a state/tribe's permit application, to ensure a thorough analysis of anticipated impacts and to comply with the 404(b)(1) Guidelines. These minimum information requirements are based on the information that must be submitted when applying for a federal Section 404 permit.

EPA is responsible for oversight of assumed programs to ensure that state/tribal programs are in compliance with applicable requirements and that state/tribal permit decisions adequately consider and minimize anticipated impacts. States/tribes must evaluate their programs annually and submit an annual report to EPA assessing their program. EPA's assumption regulations establish minimum requirements for the annual report.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on April 27, 1999 (64 FR 22607); no comments were received.

Burden Statement: This collection of information is separated into three pieces. The annual public reporting and record keeping burden for this collection of information is estimated to average 520 hours to request program assumption, 5 hours to complete a permit application and 80 hours to prepare the annual report. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: States, Tribes, permit applicants.

Estimated Number of Respondents: 20,005.

Frequency of Response: One time; annually.

Estimated Total Annual Hour Burden: 100,667 hours.

Estimated Total Annualized Cost Burden (non-labor): $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondents burden, including through the use of automated collection techniques to the following addresses. Please refer to the EPA ICR No. 0220.08 and OMB Control No. 2040–0168 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503

Dated: August 26, 1999.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 99–22742 Filed 8–31–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6431–7]

Effluent Guidelines Task Force Open Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The Effluent Guidelines Task Force, an EPA advisory committee, will hold a meeting to discuss the Agency's Effluent Guidelines Program. The meeting is open to the public.

DATES: The meeting will be held on Tuesday, September 21, 1999 from 9:00 a.m. to 5:00 p.m., and Wednesday, September 22, 1999 from 8:30 a.m. to 3:00 p.m.

ADDRESSES: The meeting will take place at the Holiday Inn Eisenhower Metro Center, 2460 Eisenhower Avenue, Alexandria, Virginia (Potomac/Mt. Vernon II Rooms).

FOR FURTHER INFORMATION CONTACT: Beverly Randolph, Office of Water (4303), 401 M Street, SW, Washington, D.C. 20460; telephone (202) 260–5373; fax (202) 260–7185.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the Environmental Protection Agency gives notice of a meeting of the Effluent Guidelines Task Force (EGTF). The EGTF is a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT), the external policy advisory board to the Administrator of EPA.

The EGTF was established in July of 1992 to advise EPA on the Effluent Guidelines Program, which develops regulations for dischargers of industrial wastewater pursuant to Title III of the Clean Water Act (33 U.S.C. 1251 *et seq.*). The Task Force consists of members appointed by EPA from industry, citizen groups, state and local government, the academic and scientific communities, and EPA regional offices. The Task Force was created to offer advice to the Administrator on the long-term strategy for the effluent guidelines program, and particularly to provide recommendations on a process for expediting the promulgation of effluent guidelines. The Task Force generally does not discuss specific effluent guideline regulations currently under development.

The meeting is open to the public, and limited seating for the public is available on a first-come, first-served basis. The public may submit written comments to the Task Force regarding improvements to the Effluent Guidelines Program. Comments should be sent to Beverly Randolph at the above address. Comments submitted by September 10, 1999 will be considered by the Task Force at or subsequent to the meeting.

Dated: August 26, 1999.

Tudor T. Davies,

Director, Office of Science and Technology.

[FR Doc. 99–22744 Filed 8–31–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34195; FRL–6099–9]

Organophosphate Pesticides: Ethoprop, Fenamiphos, Phorate, and Terbufos; Availability of Revised Risk Assessments and Public Participation on Risk Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the revised risk assessments and related documents for four organophosphate pesticides: Ethoprop, fenamiphos, phorate, and terbufos. In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management ideas or proposals. These actions are in response to a joint initiative between EPA and the Department of Agriculture (USDA) to increase transparency in the tolerance reassessment process for organophosphate pesticides.

DATES: Comments, identified by docket control numbers OPP–34144C for ethoprop, OPP–34134B for fenamiphos, OPP–34137B for phorate, and OPP–34139C for terbufos must be received by EPA on or before November 1, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION" section. To ensure proper receipt by EPA, it is imperative that you identify docket control numbers OPP–34144C for ethoprop, OPP–34134B for fenamiphos, OPP–34137B for phorate, and OPP–34139C for terbufos in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the revised risk assessments and submitting risk management comments on ethoprop, fenamiphos, phorate, and terbufos, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

A. Electronically

You may obtain electronic copies of this document and other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about organophosphate pesticides and obtain electronic copies of the revised risk assessments and related documents mentioned in this notice, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/op/.

B. In Person

The Agency has established official records for these actions under docket control numbers OPP–34144C for ethoprop, OPP–34134B for fenamiphos, OPP–34137B for phorate, and OPP–34139C for terbufos. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch (PIRIB) telephone number is (703) 305–5805.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, you must identify docket control numbers OPP–34144C for ethoprop, OPP–34134B for fenamiphos, OPP–34137B for phorate, and OPP–34139C for terbufos in the subject line on the first page of your response.

1. *By mail.* Submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The Document Control Office (DCO) is open 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* Submit electronic comments by e-mail to: "opp-docket@epa.gov," or you may mail or deliver your standard computer disk using the addresses in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by the docket control numbers OPP–34144C for ethoprop, OPP–34134B for fenamiphos, OPP–34137B for phorate, and OPP–34139C for terbufos. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

IV. What Action is EPA Taking in this Notice?

EPA is making available for public viewing the revised risk assessments and related documents for four organophosphate pesticides, ethoprop, fenamiphos, phorate, and terbufos. These documents have been developed as part of the pilot public participation process that EPA and USDA are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation. The documents being released to the public through this notice provide information on the revisions that were made to ethoprop, fenamiphos, phorate, and terbufos preliminary risk assessments, which where released to the public August 12, 1998 (63 FR 43175) (FRL–6024–3) (fenamiphos, phorate, and terbufos) and September12, 1998 (63 FR 48213) (FRL–6030–2) (ethoprop) through notices in the **Federal Register**.

In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management proposals or otherwise comment on risk management for ethoprop, fenamiphos, phorate, and terbufos. The Agency is providing an opportunity, through this notice, for interested parties to provide written risk management proposals or ideas to the Agency on the chemicals specified in this notice. Such comments and proposals could address ideas about how to manage dietary, occupational, or ecological risks on specific ethoprop, fenamiphos, phorate, and terbufos use sites or crops across the United States or in a particular geographic region of the country. To address dietary risk, for example, commentors may choose to

discuss the feasibility of lower application rates, increasing the time interval between application and harvest ("pre-harvest intervals"), modifications in use, or suggest alternative measures to reduce residues contributing to dietary exposure. For occupational risks, commentors may suggest personal protective equipment or technologies to reduce exposure to workers and pesticide handlers. For ecological risks, commentors may suggest ways to reduce environmental exposure, e.g., exposure to birds, fish, mammals, and other non-target organisms. EPA will provide other opportunities for public participation and comment on issues associated with the organophosphate tolerance reassessment program. Failure to participate or comment as part of this opportunity will in no way prejudice or limit a commentor's opportunity to participate fully in later notice and comment processes. All comments and proposals must be received by EPA on or before November 1, 1999, using the instructions in Unit III. of this document. Comments and proposals will become part of the Agency record for the organophosphate specified in this notice.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: August 24, 1999.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–22456 Filed 8–31–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66270; FRL 6096–9]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on March 9, 2000.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery, telephone number and e-mail address: Rm., 224, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761; e-mail: hollins.james@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–66270. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. What Action is the Agency Taking?

This notice announces receipt by the Agency of applications from registrants to cancel some 34 pesticide product registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1:

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000004–00084	Bonide Borer - Miner Killer 20%	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer)
000004–00220	Bonide Borer Miner Killer-5	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer
000100 AR–88–0006	Triumph 4e Insecticide	*O,O*-Diethyl phosphorothioate *O*-(5-chloro-1-(1-methylethyl)-1*H*-1,2,4-triazol-3-yl)
000100 FL–88–0021	Triumph 4E Insecticide	*O,O*-Diethyl phosphorothioate *O*-(5-chloro-1-(1-methylethyl)-1*H*-1,2,4-triazol-3-yl)

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
000100 IA–88–0004	Triumph 4E Insecticide	*O,O*-Diethyl phosphorothioate *O*-(5-chloro-1-(1-methylethyl)-1*H*-1,2,4-triazol-3-yl)
000100 LA–88–0013	Triumph 4E Insecticide	*O,O*-Diethyl phosphorothioate *O*-(5-chloro-1-(1-methylethyl)-1*H*-1,2,4-triazol-3-yl)
000100 MO–89–0003	Triumph 4E Insecticide	*O,O*-Diethyl phosphorothioate *O*-(5-chloro-1-(1-methylethyl)-1*H*-1,2,4-triazol-3-yl)
000100 MS–88–0007	Triumph 4E Insecticide	*O,O*-Dimethyl phosphorothioate *O*-(1-isopropyl-5-chloro-1,2,4-triazol-3-yl)
000100 NC–89–0002	Triumph 4E Insecticide	*O,O*-Diethyl phosphorothioate *O*-(5-chloro-1-(1-methylethyl)-1*H*-1,2,4-triazol-3-yl)
000100 SC–88–0005	Triumph 4E Insecticide	*O,O*-Dimethyl phosphorothioate *O*-(1-isopropyl-5-chloro-1,2,4-triazol-3-yl)
000100 TN–93–0010	Triumph 4E Insecticide	*O,O*-Diethyl phosphorothioate *O*-(5-chloro-1-(1-methylethyl)-1*H*-1,2,4-triazol-3-yl)
000100 TX–83–0011	Dual 8E Herbicide	2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylphenyl)acetamide (9Cl)
000100 TX–98–0002	Dual 8E Herbicide	2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylphenyl)acetamide (9Cl)
000100 TX–98–0003	Dual Herbicide	2-Chloro-*N*-(2-ethyl-6-methylphenyl)-*N*-(2-methoxy-1-methylphenyl)acetamide (9Cl)
000270–00266	Farnam Dog Dip	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer)
000400 TX–82–0011	Ded-Weed Sulv-Amine	Dimethylamine 2,4-dichlorophenoxyacetate
000769–00159	20% Lindane Emulsifiable Concentrate	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer)
000769–00869	Pratt 5% Landane Borer Spray	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer)
000769–00949	Pratt Borer Spray	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer)
000769–00960	Pratt Lindane 25% W.P.	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer)
000769–00973	Lindane 2E	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer)
001258–01184	Omacide P–10 D Industrial Fungicide	Zinc 2-pyridinethiol-1-oxide
002781–00017	Paracide II	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
002781–00019	Kennel Dip II	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
002781–00034	Happy Jack Streaker Insecticide for Dogs	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl) phosphorothioate
002935–00514	Bonide Garden & Ornamental Fungicide 75% WP	Tetrachloroisophthalonitrile
003487–00018	Eagles-7 Mange Treatment	Lindane (Gamma isomer of benzene hexachloride) (99% pure gamma isomer) Rotenone
003876–00156	Dearcide 702	5-Chloro-2-methyl-3(2*H*)-isothiazolone 2-Methyl-3(2*H*)-isothiazolone
004816–00409	Fairfield Residual B	o-Isopropoxyphenyl methylcarbamate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
008591–00034	AG–480	5-Chloro-2-methyl-3(2*H*)-isothiazolone 2-Methyl-3(2*H*)-isothiazolone
009404–00075	Liquid Lawn Edger	6,7-Dihydrodipyrido(1,2-a:2',1'-c)pyrazinediium dibromide
010163 IL–97–0002	Imidan 70–WSB & 70–WP	*N*-(Mercaptomethyl)phthalimide S-(*O,O*-dimethyl phosphorodithioate)
010182 VA–93–0006	Gramoxone Extra Herbicide	1,1'-Dimethyl-4,4'-bipyridinium dichloride
045017–00044	Paper-Tek 6202	5-Chloro-2-methyl-3(2*H*)-isothiazolone 2-Methyl-3(2*H*)-isothiazolone

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued canceling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180–day period.

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number:

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000004	Bonide Products Inc., 2 Wurz Ave., Yorkville, NY 13495.
000100	Novartis Crop Protection, Inc., Box 18300, Greensboro, NC 27419.
000270	Farnam Companies Inc., 301 W. Osborn Rd., Phoenix, AZ 85013.
000400	Uniroyal Chemical Co., Inc., 74 Amity Rd., Bethany, CT 06524.
000769	Sureco Inc., An Indirect Subsidiary of Verdant Brands, 9555 James Ave., South, Suite 200, Bloomington, MN 55431.
001258	Arch Chemicals, Inc., 501 Merritt 7, Norwalk, CT 06856.
002781	Happy Jack Inc., Box 475, Snow Hill, NC 28580.
002935	Wilbur Ellis Co., 191 W. Shaw Ave, #107, Fresno, CA 93704.
003487	Bacon Products Co., Inc., Box 22187, Chattanooga, TN 37422.
003876	Betzdearborn Inc., (Attn: Kevin Manning), Water Management Group, 4636 Somerton Rd., Trevose, PA 19053.
004816	Agrevo Environmental Health, 95 Chestnut Ridge Rd., Montvale, NJ 07645.
008591	Nalco Diversified Technologies, Inc., Box 200, Chagrin Falls, OH 44022.
009404	Sunniland Corp., Box 8001, Sanford, FL 32772.
010163	Gowan Co., Box 5569, Yuma, AZ 85366.
010182	Zeneca Ag Products, Box 15458, Wilmington, DE 19850.
045017	Betzdearborn Inc., (Attn: Kevin Manning), Paper Process Group, Inc., 4636 Somerton Rd., Trevose, PA 19053.

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be cancelled. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked March 9, 2000. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** of June 26, 1991; (56 FR 29362) [FRL 3846–4]. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exception to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review action, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: August 18, 1999.

Richard D. Schmitt,

Acting Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 99–22329 Filed 8–31–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–889; FRL–6098–6]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–889, must be received on or before October 1, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION" section. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–889 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Vera Soltero, Minor Use, Inerts and Emergency Response Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–9359; and e-mail address: Soltero.vera@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer.

Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–889. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–889 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by E-mail to: *"opp-docket@epa.gov,"* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by docket control number PF–889. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the "FOR FURTHER INFORMATION CONTACT" section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 20, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represent the views of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Agricultural Research Service (ARS), U.S. Dept. of Agriculture

PP 9E6047

EPA has received a pesticide petition (PP 9E6047) from Agricultural Research Service (ARS), U.S. Dept. of Agriculture, Beltsville Agricultural Reseach Center, Beltsville, MD 20705, proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for cucurbitacins in the powders and juices of the wild and domestic members of the plant family Cucurbitaceae. These powders and juices are the source materials for cucurbitacins added as inert ingredients in field prepared tank mixes of pesticides. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

As defined in 40 CFR 153.125, inert ingredients include, but are not limited to the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents, surfactants, thickners, wetting, spreading, and dispersing agents, carriers, or emulsifiers. The proposed change in source materials requires an amendment to the existing tolerance exemption (40 CFR 180.1001(d)) for buffalo gourd root powder, zucchini juice and cucurbitacins. ARS proposes the following amendment which changes only the inert ingredient, not the limits or the uses:

Inert Ingredients	Limits	Uses
Cucurbitacins as components of powders or juices of wild or domestic species of the plant family Cucurbitaceae.	No more than 2.5 pounds (lbs)/acre/season (3.4 grams (gm)/acre/season of cucurbitacin).	Gustatory stimulant

Cucurbitacins are ubiquitous in wild and domestic members of the plant family Cucurbitaceae, e.g., cucumbers, squash, melons, and gourds. Many species in this family have been used as food by humans for centuries and some have been valued for their medicinal properties. The cucurbitacins occur in mixtures and are found in many tissues of the plant including fruits and seeds. They act specifically on Diabriticine beetles (corn rootworms and cucumber beetles) as movement arresters and compulsive feeding stimulants. Cucurbitacins from the buffalo gourd and zucchini squash are currently used in pesticide products.

Cucurbitacins are oxygenated tetracyclic terpenes. At least 19 cucurbitacins, A-S, have been described from the family Cucurbitaceae. Two or more alcoholic hydroxyl groups characterize the bitter principles and cucurbitacins A-C and E also contain one acetoxy group. Keto groups are characteristic of these cucurbitacins. Cucurbitacins B, D, E, C, and I-L contain a diospenol grouping that can combine with glucose to form naturally occurring enolglycocides. The cucurbitacins occur in nature in mixtures. Cucurbitacin B [25-(acetyloxy)-2,16,20-trihydroxy-9-methyl-19-norlanosta- 5,23-diene-3,11,22-trione;1,2-dihydro-α-elaterin] and E [25-(acetyloxy-2,16,20-trihydroxy-9-methyl- 19-nor-9β, 10α-lanosta-1,5,23-triene-3,11,22,trione; α-elaterin] are the most effective feeding stimulants. Measurements from 11 species of Cucurbita fruit showed a total level of cucurbitacins ranging from 3.20 miligrams/kilograms (mg/kg) to 0.02 mg/kg.

When combined with an approved pesticide and applied according to good agricultural practices, they provide pest control with a significant reduction of the amount of toxic pesticide required. Based upon the data provided and passed experience, ARS believes that the limitations on application rate provide adequate safety and a tolerance is not necessary to protect the public health.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA as amended, ARS has submitted the following summary of information, data, and arguments in support of their pesticide petition.

A. Residue Chemistry

Magnitude of residues. Based upon the limited amount of cucurbitacin (3.4 gm/acre/season) that can be applied, the rate of deterioration of the chemicals, and early season time of application, no residue is expected on the crop at harvest time. A number of methods including high performance liquid chromatography, mass spectrometry, thin layer chromatography or insect feeding response, are available for the detection of residues.

B. Toxicological Profile

1. *Acute toxicity.* Studies have shown that the acute oral toxicity (LD_{50}) in mice of the various cucurbitacins ranges from 5 to 650 mg/kg body weight. Cucurbitacin I is the most toxic. The LD_{50} of cucurbitacin E-glycoside, one of the more effective insect feeding stimulants, is 40 mg/kg body weight.

2. *Chronic toxicity.* Because of the low levels of cucurbitacins required and their rapid degradation in the field, no chronic effects are expected. Neither cucurbitacins nor their metabolites are known or expected to have any effect on the immune or the endocrine systems. Cucurbitacins are not known to be carcinogenic, in fact, some have been shown to inhibit the growth of solid tumors *in vivo*.

C. Aggregate Exposure

1. *Dietary exposure.* Species of the Family Cucurbitaceae "cucurbits" have been commonly used as fruits and vegetables throughout the world for centuries. They are valuable sources of vitamins and minerals. Seeds of several species are used as sources of flavorings in bakery goods or for oils and proteins. All of these species contain some assortment of cucurbitacins in varying concentrations. At the allowable rate of application the use of these compounds as inert ingredients to control pests will add little to the aggregate exposure. The use to control corn rootworm is given as an example. Assuming that the maximum permitted level of 3.4 gm/acre/season is applied, with no loss either in the field or during processing, and that all the material is concentrated in the grain, the following exposure would result. The average yield of corn in the United States is 120–130 bushels per acre. At 56 pounds per bushel the minimum yield is 6,720 pounds per acre and the level of cucurbitacin would be 0.88951 gram per pound. A gram of "straightneck" squash contains 0.00139 gram cucurbitacin per gram of squash. Thus, consumption of a pound of treated corn would add less cucurbitacin to the diet than a gram serving of squash. To have consumed the sufficient amount of the most toxic cucurbitacin, LD_{50}=5 mg/kg body weight, a 50 kg human would have to eat over 400 pounds of the treated corn.

i. *Drinking water.* Most cucurbitacins are insoluble in water and transfer of these cucurbitacins to ground water is unlikely. The glycosylated forms which are more water soluble are less toxic to humans. No uses are registered for application to bodies of water and none are anticipated.

2. *Non-dietary exposure.* Registered uses are limited to agricultural crops.

D. Cumulative Effects

Exposure through other pesticides and substances with the common mode of toxicity as this compound. No information indicates that toxic effects would be cumulative with any other compounds. Further, no other pesticides or substances are registered with this mode of action.

E. Safety Determination

1. *U.S. population.* The fact that cucurbitacins are ubiquitous in many plants regularly consumed by the general public, the maximum projected additional exposure to these compounds is significantly less than that from a normal serving of these plants, and the previously granted temporary exemption for buffalo gourd root powder as a specific source of cucurbitacins (55 FR 49700, November 30, 1990), and a permanent exemption from the requirement of a tolerance (57 FR 40128, September 2, 1992), later amended to include zucchini juice (63 FR 43085, August 12, 1998), (FRL–6017–5) support an amendment to the existing tolerance exemption.

2. *Infants and children.* The use sites of the cucurbitacins are all agricultural for the control of Diabrotine beetles. Therefore, non-dietary exposure to infants and children is not expected. The limited application rate and correspondingly low maximum residue requiring that a 1 kg child would have to consume almost 10 pounds of corn in a single meal to obtain a LD_{50} dose and that the aggregate exposure and cumulative exposure pose little, if any, risk all; all provide reasonable certainty that no harm will result to infants and children from exposure to residue of the cucurbitacins.

F. International Tolerances

There are no international tolerances or tolerance exemptions for cucurbitacins. However, prior EPA findings of significant relevance to this petition include a temporary exemption from the requirements of a tolerance for residues of the buffalo gourd (*Cucurbita foetidissima*) root powder as source of cucurbitacins in or on the raw agricultural commodity field corn for the control of adult corn rootworms (55 FR 49700, November 30, 1990).

In addition, the Agency established a permanent exemption from the requirement of a tolerance for residues of buffalo gourd root powder when used as an inert ingredient (gustatory stimulant) in pesticide formulations applied to growing crops only (57 FR 40128, September 2, 1992).

In 1998 EPA amended the permanent exemption from the requirement of a tolerance to add the residues of zucchini juice (*Cucurbita pepo*) to the list of "inert ingredients" (63 FR 43085, August 12, 1998).

[FR Doc. 99–22328 Filed 8–31–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–881; FRL–6090–8]

Ecolab Inc.; Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–881, must be received on or before October 1, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION" section. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–881 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Amelia M. Acierto, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–8375; and e-mail address: acierto.amelia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–881. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to

this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–881 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by E-mail to: *"opp-docket@epa.gov,"* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by docket control number PF–881. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the "FOR FURTHER INFORMATION CONTACT" section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 23, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

1. PP 9E5081

Summary of Petitions

EPA has received a pesticide petition (PP 9E5081) from Ecolab Inc., 370 N. Wabasha Street, St. Paul, MN 55102 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for hydroxyethylidene-1,1-diphosphonic acid (HEDP) in or on the raw agricultural commodities, in processed commodities, and in or on meat and meat byproducts of cattle, sheep, hogs, goats, horses, and poultry, milk, and dairy products, eggs, seafood and shellfish, and fruit and fruits and vegetables when such residues result from the use of HEDP as a component of a food contact surface sanitizing solution up to 34 parts per million (ppm) for use in food handling establishments. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Analytical method.* Because Ecolab Inc. is petitioning for an exemption from the requirement of a tolerance, an enforcement method for HEDP is not needed.

2. *Magnitude of residues* . The residues which transfer from the sanitized dish or utensil to food are not of toxicological significance.

B. Toxicological Profile

1. *Acute toxicity.* This material has been reviewed by the EPA as an inert ingredient in antimicrobial pesticide formulations used in or on raw agricultural commodities. The summary that follows is from the May 22, 1998 **Federal Register** Final Rule ((63 FR 28253), (FRL–5790–1)). The rat acute oral lethal dose $(LD)_{50}$ is 2,400 miligrams/kilograms (mg/kg).

2. *Genotoxicty.* HEDP was reported to be non-mutagenic in a Salmonella/Mammalian microsome test or in a L5178Y TK mouse lymphoma cell point mutation assay, with and without mammalian microsomal activation.

3. *Reproductive and developmental toxicity.* In a combined 2–generation reproduction/developmental toxicity study, rats (22 rats/sex/dose) were administered HEDP at doses of 0, 0.1, and 0.5% in the diet. The no obseverable adverse effect level (NOAEL) for developmental and reproductive findings was 50 mg/kg/day (0.1% in the diet) and the lowest observable adverse effect level (LOAEL) was 250 mg/kg/day (0.5% in the diet) based on reduced litter size in the first litter (F1a) and an increase in stillborn pups in the second litter (F1b). These effects occurred in the absence of maternal toxicity and were seen in both reproductive litters of the first generation. In a developmental toxicity study, rabbits were administered HEDP at doses of 0, 25, 50 and 100 mg/kg/day, either incorporated into feed or by gavage with water. The NOAEL for both systemic and developmental effects was 50 mg/kg/day and the LOAEL was 100 mg/kg/day by gavage based on decreased maternal weight gain/ food consumption and decreased fetal body weights.

4. *Subchronic toxicity.* —i. *Dogs.* In a subchronic feeding study in beagle dogs (4 dogs/sex/dose), HEDP was administered via the diet at 0, 1,881, 3,881, or 10,881 ppm for 90 days. The NOAEL was 10,881 ppm (250 mg/kg/day).

ii. *Rats.* In a subchronic feeding study in rats, Sprague-Dawley strain rats were fed HEDP at dietary concentrations of 0, 3,881, 10,881 and 30,881 ppm for 90 days. The NOAEL was 10,881 ppm (approximately 500 mg/kg/day) and the LOAEL was 30,881 ppm (approximately 1,500 mg/kg/day) based on decreased body weight decreased food consumption, slight anemia, and decreased heart, liver, and kidney weights.

5. *Chronic toxicity.* Chronic exposure to HEDP is not expected to demonstrate any additional toxicity beyond what was noted in subchronic toxicity tests. Since this compound is not considered to be genotoxic and is not structurally similar to known carcinogens, it is not likely to be carcinogenic.

6. *Endocrine disruption.* To the best of our knowledge, nothing in the literature suggests HEDP is an endocrine disruptor. HEDP does not act like hormones or inhibit hormonal activity.

C. Aggregate Exposure

1. *Dietary exposure.* Acute: There are no acute toxicological concerns for HEDP, therefore, an acute dietary risk assessment is not required.

i. *Food.* Chronic: Indirect using the worst case scenario of HEDP in a sanitizing solution at the maximum proposed level of 34 ppm, in a restaurant where all food consumed by an individual in a single day has contacted sanitized dishes and food preparation surfaces, and there is 100% transference of the sanitizer from the surface to the food, the exposure would be 0.002 mg/kg/day for a 70 kg person (adult) and 0.0025 mg/kg/day for a 28 kg person (child). Chronic: Direct Antimicrobial fruit and vegetable wash exposure calculated to be 0.88104 mg/kg/day for a 70 kg person and 0.8811 mg/kg/day for a 28 kg person (see **Federal Register** May 22, 1998 (63 FR 28253)).

ii. *Drinking water.* Acute: Since there are no acute toxicological concerns for HEDP, an acute drinking water risk assessment should not be required. Chronic: Not expected to exceed 0.8817 mg/kg/day for adults and 0.0025 mg/kg/day for children (see **Federal Register** May 22, 1998 (63 FR 28253)).

2. *Non-dietary exposure.* Acute: Since there are no acute toxicological concerns for HEDP, an acute non-dietary risk assessment should not be required. Chronic: Not expected to exceed 0.0049 mg/kg/day for adults and 0.0204 mg/kg/day for children (see **Federal Register** May 22, 1998 (63 FR 28253)).

D. Cumulative Effects

Chronic drinking water: Not to exceed 0.8817 mg/kg/day adults and 0.0025 mg/kg/day children (see **Federal Register** May 22, 1998 (63 FR 28253)). Chronic dietary: Previous clearance as a component of an antimicrobial formulation for use on fruit and vegetables resulted in an overestimation of 0.88104 mg/kg/day for adults and 0.8811 mg/kg/day for children (see **Federal Register** May 22, 1998 (63 FR 28253)). The proposed use as a component of a food contact surface sanitizer is not to exceed 0.002 mg/kg/day for adults and 0.0025 mg/kg/day for children. Non-dietary exposure: Not to exceed 0.0049 mg/kg/day for adults and 0.0204 mg/kg/day children.

E. Safety Determination

1. *U.S. population.* Using the extremely conservative exposure assumptions described above, the aggregate exposure to HEDP from all uses, including the proposed use will not exceed 0.0076 mg/kg/day for adults and 0.0255 mg/kg/day for children.

2. *Infants and children.* Nothing in the available literature indicates that infants or children are more sensitive to the effects of this compound. Exposure of this inert ingredient (from the use proposed in this petition) should not pose a health risk to the U.S. population subgroup of infants and children.

F. International Tolerances

No Codex maximum residue levels have been established for HEDP.

2. PP 9E5086

Summary of Petition

EPA has received a pesticide petition (PP 9E5086) from Ecolab Inc., 370 N. Wabasha Street, St. Paul, MM 55102 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for acetic acid in or on the raw agricultural commodities, in processed commodities, and in or on meat and meat byproducts of cattle, sheep, hogs, goats, horses, and poultry, milk, and dairy products, eggs, seafood and shellfish, and fruit and fruits and vegetables when such residues result from the use of acetic acid as a component of a food contact surface sanitizing solution for use in food handling establishments. The request is for an unlimited clearance. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Analytical method.* Because Ecolab Inc. is petitioning for an exemption from the requirement of a tolerance, an enforcement method for acetic acid is not needed.

2. *Magnitude of residues.* The residues which transfer from the sanitized dish or utensil to food are not of toxicological significance.

B. Toxicological Profile

1. *Acute toxicity.* Acetic acid is a direct food additive. It is considered

generally recognized as safe by the Food and Drug Administration and is a normal constituent in the human diet. Acetic acid is allowed under 40 CFR 180.1001(c) as an inert ingredient in pesticide formulation applied to growing crops or to raw agricultural commodities after harvest without limit in the formula. Acute oral lethel dose (LD_{50}) (rat): 3310 3530 milligrams/kilograms (mg/kg); Acute oral LD_{50} (mouse): 4960 mg/kg; Inhalation LC_{50} (mouse): 5620 parts per million (ppm)/1 hour(s); Dermal LD_{50} (rabbit): 1060 mg/kg.

2. *Genotoxicty.* Nothing in the available literature indicates that acetic acid is a genotoxic or mutagenic compound. It is generally recognized as safe and is a normal constituent in the human diet.

3. *Reproductive and developmental toxicity.* Nothing in the available literature indicates that acetic acid is a developmental or reproductive toxin. It is generally recognized as safe and is a normal constituent in the human diet.

4. *Subchronic toxicity.* Nothing in the available literature indicates long term exposure to acetic acid produces any adverse toxicological effects unless it is ingested at a concentration where it produces corrosive or other effects on the gastric mucosa. There are no studies indicating that prolonged exposure to acetic acid produces cumulative toxicity since acetic acid is a normal constituent of cellular metabolism. Acetic acid is a catabolic breakdown product of fatty endogenous acid metabolism and is also used in the synthesis of lipids. Estimated daily intakes of acetic acid/acetate ion are in the range of 2 grams per day for an adult. As a normal constituent of the human diet, there are no toxicological concerns with acetic acid.

5. *Chronic toxicity.* Chronic exposure would not produce any additional effect beyond what is noted in subchronic exposure, therefore, no additional concerns are warranted. Nothing in the literature indicates that acetic acid may be carcinogenic.

6. *Animal metabolism.* Acetic acid and its derivatives are used in the metabolism fatty acids. It is a normal constituent of mammalian metabolism, therefore, a discussion of acetic acid metabolites is not relevant.

7. *Metabolite toxicology.* "Metabolites" of acetic acid are used in several processes of cellular metabolism. These metabolites are normal constituents of the cell, therefore a discussion of metabolite toxicity of acetic acid is not relevant.

8. *Endocrine disruption.* Acetic acid does not act like hormones or inhibit hormonal activity. It is not strucurally related to any known endocrine disruptor. Nothing in the literature suggests that it is an endocrine disruptor or possesses intrinsic hormonal activity.

C. Aggregate Exposure

1. *Dietary exposure.* Acute: There are no acute toxicological concerns for acetic acid, an acute dietary risk assessment is not required. Chronic Indirect: Using a worst-case scenario, the additional exposure from food contact surface sanitizers would be 0.03 mg/kg/day for a 70 kg person (adult) and 0.04 mg/kg/day for a 28 kg person (child).

i. *Food.* Chronic Direct: A typical adult ingests approximately 2 grams (2000 mg) of acetic acid/acetate per day via the diet. The incremental increase in exposure as a result of the use in food contact surface sanitizing solutions is negligible.

ii. *Drinking water.* Acute: Since there are no acute toxicological concerns for acetic acid, an acute drinking water risk assessment should not be required. Chronic: There is no concern about the potential for transfer of acetic acid residues to human drinking water. It is essentially impossible that residues from the proposed use will transfer acetic acid residues to any sources of human drinking water.

2. *Non-dietary exposure.* The potential for significant additional non-occupational exposure under the use proposed to the general population (including children) is unlikely.

D. Cumulative Effects

Well over 99% of the exposure to acetic acid will be via the diet. Most of this exposure will be through ingestion of "vinegar" in the diet. Small amounts of acetic acid exposure will be the result of non-food uses. The amount of acetic acid exposure resulting from indirect exposure to sanitizing solutions will be virtually zero. Since acetic acid in the diet poses no toxicological risk, the cumulative toxicity resulting from this additional exposure is negligible.

E. Safety Determination

1. *U.S. population.* Since there are not adverse toxicological effects resulting from normal dietary concentrations of acetic acid, there is no need to determine aggregate risks, or to conduct a safety determination. Acetic acid is generally recognized as safe and the incremental exposure due to its us as an inert in a food contact surface sanitizer is negligible.

2. *Infants and children.* As in adults, infants and children use acetic acid as a basic constituent of cellular metabolism. Children are at no greater "risk" from exposure to acetic acid. Therefore, as with adults, a safety determination is not appropriate.

F. International Tolerances

No Codex maximum residue levels have been established for acetic acid.

3. PP 9E6014

Summary of Petition

EPA has received a pesticide petition (PP 9E6014) from Ecolab Inc., 370 N. Wabasha Street, St. Paul, MN 55120 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for residues of phosphoric acid in or on raw agricultural commodities, in processed commodities, and in or on meat and meat byproducts of cattle, sheep, hogs, goats, horses, and poultry, milk, and dairy products, eggs, seafood and shellfish, and fruit and fruits and vegetables when such residues result from the use of phosphoric acid as a component of a food contact surface sanitizing solution for use in food handling establishments. The request is for an unlimited clearance. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Analytical method.* Because Ecolab Inc. is petitioning for an exemption from the requirement of a tolerance, an enforcement method for phosphoric acid is not needed.

2. *Magnitude of residues.* The residues which transfer from the sanitized dish or utensil to food are not of toxicological significance.

B. Toxicological Profile

1. *Acute toxicity.* Phosphoric acid is a direct food additive. It is considered generally recognized as safe by the Food and Drug Administration and is a normal constituent in the human diet. Phosphoric acid is allowed under 40 CFR 180.1001(c) as an inert ingredient in pesticide formulation applied to growing crops or to raw agricultural commodities after harvest without limit in the formula. From the Reregistration Eligibility Decision (RED) document for Mineral Acids: Acute oral lethal dose

(LD_{50}): 1530 milligrams/kilograms (mg/kg); Dermal LD_{50}: 2740 mg/kg.

2. *Genotoxicty.* Nothing in the available literature indicates that phosphoric acid or phosphate ion are considered to be genotoxic or mutagenic.

3. *Reproductive and developmental toxicity.* Nothing in the available literature indicates that phosphoric acid or phosphate ion are developmental or reproductive toxins. They are generally recognized as safe and are normal constituents in the human diet.

4. *Subchronic toxicity.* Nothing in the available literature indicates long-term exposure of phosphoric acid/phosphate ion produces any adverse toxicological effects unless it is ingested at a concentration where it produces corrosive or other effects on the gastric mucosa. There are no studies that indicate that prolonged exposure to low concentrations of phosphoric acid/phosphate ion produce cumulative toxicity since they are normal constituents of cells.

5. *Chronic toxicity.* Chronic exposure would not produce any additional effect over what is noted in subchronic exposure, therefore, no additional concerns are warranted. Nothing in the literature indicates that phosphoric acid may be carcinogenic.

6. *Animal metabolism.* Phosphoric acid is a normal constituent of cells. It is used for many purposes including buffering of the blood, high energy bonds, DNA synthesis, etc. A discussion of the metabolism is not relevant.

7. *Metabolite toxicology.* Phosphoric acid and phosphate are not metabolized by the body, but rather serve as major components in cellular structure and processes. A discussion of metabolite toxicity is not relevant.

8. *Endocrine disruption.* A review of information from the Agency for Toxic Substances and Disease Registry indicates that potential endocrine effects from exposure to phosphoric acid or phosphate ion have not been studied. To the best of our knowledge, nothing in the available literature suggests that phosphoric acid acts as an endocrine disrupter or that it possesses intrinsic hormonal activity.

C. Aggregate Exposure

1. *Dietary exposure.* Acute: There are no acute toxicological concerns for phosphoric acid, therefore, an acute dietary risk assessment is not required. Chronic Indirect: Using a worst-case scenario, the exposure would be 0.0065 mg/kg/day for a 70 kg person (adult) and 0.008 mg/kg/day for a 28 kg person (child).

i. *Food.* Chronic Direct: A typical adult ingests approximately one to two grams of phosphoric acid/phosphate per day as phosphorus via the diet. Following ingestion, it is absorbed by the gastrointestinal tract. In the plasma and in intra and extracellular fluid, the pH is such that the phosphoric acid exists in its ionized form, phosphate. The approximate concentration of phosphate in the plasma is 4 mg/100 milliliters (mls). Phosphate serves many biological purposes including buffering the blood, serving as a constituent of cell membranes, providing high energy phosphate bonds for cellular energy demands, maintaining DNA structure and many other functions. Phosphate is also a major constituent of the skeletal system. It is excreted in the urine and needs to be replenished on an ongoing basis. The normal human diet contains significant quantities of phosphate. Phosphate is also derived from phosphoric acid as a consequence of its direct addition to food, as approved under 21 CFR 582.1073. When used as a food contact surface sanitizer, the residue that would be introduced into food will be insignificant compared to the normal dietary intake of phosphoric acid/phosphate ion. Based on this, there are no toxicological concerns resulting from exposures to residues of phosphoric acid resulting from the use of sanitizing solutions.

ii. *Drinking water.* Acute: Since there are no acute toxicological concerns for phosphoric acid, an acute drinking water risk assessment should not be required. Chronic: There are no toxicological concerns about the exposure of low concentrations of phosphate ion in the drinking water. Although it is possible that trace amounts of phosphates used as a sanitizer may ultimately get into drinking water, no adverse health effects would result. The amount of "naturally occurring phosphate" in water will greatly exceed the amount derived from sanitizing solutions.

2. *Non-dietary exposure.* The exposure phosphoric acid/phosphates in non-occupational settings is minimal. Phosphates may be present in some products including general purpose cleaners, soaps, etc. however, dermal absorption would be insignificant. Since phosphate is a relatively significant constituent of the diet, non-occupational exposure will be small by comparison.

D. Cumulative Effects

Over 99% of the exposure to phosphoric acid/phosphates is expected to be via the diet. Small amounts of phosphoric acid/phosphate exposure will be the result of non-food uses. The amount of phosphoric acid/phosphate exposure resulting from indirect exposure to sanitizing solutions will be virtually zero. Since phosphoric acid/phosphate in the diet poses no toxicological risk, the cumulative toxicity resulting from this additional exposure is negligible.

E. Safety Determination

1. *U.S. population.* Since there are not adverse toxicological effects resulting from normal dietary concentrations of phosphoric acid/phosphate ion, there is no need to determine aggregate risks, or to conduct a safety determination. Phosphoric acid is generally recognized as safe and the incremental exposure due to its us as an inert in a food contact surface sanitizer is negligible.

2. *Infants and children.* As in adults, infants and children use phosphoric acid as a basic constituent of cellular metabolism, energy production and cell structure. Children are at no greater "risk" from exposure to phosphoric acid. Therefore, as with adults, a safety determination is not appropriate.

F. International Tolerances

No Codex maximum residue levels have been established for phosphoric acid.

[FR Doc. 99-22747 Filed 8-31-99; 8:45 am]
BILLING CODE 6560-50-F

ENVIRONMENTAL PROTECTION AGENCY

[PF-885; FRL-6096-8]

Notice of Filing Pesticide Petitions to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number [PF-885], must be received on or before October 1, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** section. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF-885 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja Brothers, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–3194; and e-mail address: brothers.shaja@epa.gov.

For technical questions, contact the appropriate Product Manager: Joseph Tavano, telephone number: (703) 305–6411 and e-mail address: tavano.joseph@epa.gov.; or Cynthia Giles-Parker (PM 22), telephone number: (703) 305–7740 and e-mail address: giles-parker.cynthia@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**–Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. In person. The Agency has established an official record for this action under docket control number PF–885. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–885 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by E-mail to: "*opp-docket@epa.gov*," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by docket control number PF–885. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the "FOR FURTHER INFORMATION CONTACT" section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 19, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required bysection 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. IR-4 Project

PP 6E4603, 6E4787, and 7E4878

EPA has received pesticide petitions [PP 6E4603, 6E4787, and 7E4878] from the Interregional Research Project Number 4 (IR-4), New Jersey Agricultural Experiment Station, P. O. Box 231 Rutgers University, New Brunswick, NJ 08903 proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for combined residues of the herbicide, pendimethalin [N-(1-ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine, and its 3, 5-dinitrobenzyl alcohol metabolite (CL 202347) in or on the food commodities as follows:

1 *PP 6E4603.* Proposes the establishment of a tolerance for carrots at 0.5 parts per million (ppm).

2 *PP 6E4787.* Proposes the establishment of a tolerance for citrus fruit crop group at 0.1 ppm.

3. *PP 7E4878.* Proposes the establishment of tolerances, with regional registration for peppermint and spearmint tops at 0.2 ppm, and peppermint and spearmint oil at 1.0 ppm. Registration will be limited to Idaho, Oregon, and Washington based on the geographical representation of the residue data submitted to EPA.

EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions.

A. Residue Chemistry

1. *Plant metabolism.* The qualitative nature of the residues of pendimethalin in plants is understood based on adequate studies conducted with [^{14}C]-pendimethalin on various crops. Pendimethalin and its 3,5-dinitrobenzyl alcohol metabolite (CL202347) are the only residues of concern.

2. *Analytical method.* Section 408 (b)(3) of the amended FFDCA requires EPA to determine that there is a practical method for detecting and measuring levels of the pesticide chemical residue in or on food and that the tolerance be set at a level at or above limit of detection of the designated method. The Gas Chromatography (GC) of pendimethalin and (CL202347) analytical methods, M691 and M692, are proposed as the enforcement methods for the residues in carrots; M1999 is the proposed method for citrus fruit crop group, and processed citrus commodities; and M1930.01 has been proposed for mint and mint oil. All methods utilize electron capture detectors and have a limit of quantitation (LOQ) of 0.05 ppm for the respective residues of concern.

3. *Magnitude of residues*—i. Residue field trials were conducted in seven major carrot producing states in the United States at both the 1x rate of 2 pounds (lbs) active ingredient/acre (ai/A) and an exaggerated rate of 4 lbs ai/A (2x the typical application rate). Maximum pendimethalin residues recovered from carrot samples treated with these applications were 0.10 ppm from the 1x treatment and 0.16 ppm from the 2x treatment. For the alcohol metabolite, CL202347, the maximum recovered residues ranged from 0.29 ppm from the 1x treatment to 0.44 ppm from the 2x treatment. The registrant believes that the results from these studies support the proposed tolerance of 0.5 ppm pendimethalin in or on carrots.

ii. Residue field trials were conducted on oranges, grapefruits, and lemons in major citrus fruit crop group producing states in the United States at a 1.5x rate of 6 lbs ai/A and an exaggerated 3x rate of 12 lbs ai/A. The plots were treated with pendimethalin at a variety of different intervals prior to harvest. The raw agricultural commodity (RAC) samples were also processed into wet and dried pulp, molasses, oil and juice. RAC samples taken from plots treated one day prior to harvest, a worst case residue situation, resulted in residues of 0.008 ppm (in grapefruit) or less. No residues were recovered from wet pulp and juice samples at the 0.005 ppm level. Residues of pendimethalin were recovered at 0.005 ppm in dried pulp, 0.009 ppm in molasses and 0.026 ppm in orange oil. It should be noted that data for wet pulp and molasses are no longer required as per Table I of the Residue Chemistry Test Guidelines EPA OPPTS 860.1000. The registrant believes that the results from these studies are adequate to support the proposed tolerance of 0.1 ppm pendimethalin in or on citrus fruit crop group, and in processed citrus commodities.

iii. Residue field trials were conducted in two major mint producing states in the United States at both the 1x rate of 2 lbs ai/A and an exaggerated rate of 10 lbs ai/A (5x the typical application rate). Fresh mint foliage samples were either harvested and directly analyzed or processed into mint oil before analyses. The registrant believes that the results from these studies support the proposed tolerances of 0.2 ppm pendimethalin in mint foliage (leaves and stems) and 1.0 ppm pendimethalin in mint oil.

B. Toxicological Profile

1. *Acute toxicity.* The acute oral lethal dose (LD_{50}) values for pendimethalin technical in the Wistar rat are 1,250 milligrams/kilograms/body weight (mg/kg/bwt) (males) and 1,050 mg/kg/bwt (females). The acute dermal LD_{50} was greater than 5,000 mg/kg in New Zealand white rabbits. The 4–hour rat inhalation lethal concentration (LC_{50}) was > 320 milligram per liter (mg/L) (nominal concentration). Pendimethalin was shown to be slightly irritating to rabbit eyes and non-irritating to rabbit skin. Pendimethalin did not cause skin sensitization in guinea pigs.

2. *Genotoxicity.* Extensive mutagenicity studies conducted to investigate point and gene mutations, DNA damage and chromosomal aberration, using *in vitro* and *in vivo* test systems show pendimethalin to be non-genotoxic.

3. *Reproductive and developmental toxicity.* Results from a 2-generation rat reproduction study showed the no-observed adverse effect level (NOAEL) for parental and reproductive toxicity to be 2,500 ppm (172 mg/kg bwt/day) and the lowest-observed adverse effect level (LOAEL) to be 5,000 ppm (346 mg/kg/bwt/day). No developmental toxicity was observed in either the rat or rabbit developmental toxicity studies, nor was there any evidence in the 2-generation rat reproduction study that there was developmental or reproductive toxicity at dose levels below those in which parental toxicity was observed. For rabbits, the developmental toxicity NOAEL was > 60 mg/kg/day, the highest dose tested (HDT). The maternal NOAEL was > 60 mg/kg/day, based on mortality observed at 125 mg/kg/day in a pilot study. For rats, there were no maternal or developmental effects at any dose level and the NOAELs for both maternal and developmental effects were ≥ 500 mg/kg/day, the HDT.

4. *Subchronic toxicity.* A 90–day feeding study was conducted in rats and dogs. The NOAELs for these studies were 500 ppm (50 mg/kg/bwt/day) and 2,500 ppm (62.5 mg/kg/bwt/day) for the rat and dog studies, respectively.

5. *Chronic toxicity.* The chronic toxicity of pendimethalin has been extensively investigated in three species (i. e., the rat, mouse, and dog). The results are as follows:

i. *Rats.* In an initial 2–year feeding study in Sprague-Dawley rats, conducted at dose levels of 0, 100, 500, and 5,000 ppm (corresponding to dietary intakes of 0, 5, 25, and 250 mg/kg/bwt/day, respectively), a clear NOAEL was established at 500 ppm (25 mg/kg/bwt/day). The LOAEL was set at 5,000 ppm (250 mg/kg/bwt/day) based on decreased survival, body weight gain and food consumption, increased gamma glutamyl transferase and cholesterol, an increase in absolute and/or relative liver weight, generalized icterus, dark adipose tissue in females, diffusely dark thyroids and follicular cell hyperplasia of the thyroid. In a second 2–year feeding study in rats, conducted at dose levels of 0, 1,250, 2,500, 3,750, and 5,000 ppm (corresponding to dietary intakes of 0, 51, 103, 154, and 213 mg/kg/bwt/day, respectively), a NOAEL was not determined. The LOAEL of less than or equal to 1,250 ppm (≥ 51 mg/kg/bwt/day) was based on non-neoplastic thyroid follicular cell changes and increased liver weight.

ii. *Mouse.* Pendimethalin technical was administered at dietary concentrations of 100, 500, and 5,000 ppm (corresponding to dose levels of 12.3, 62.3 and 622.1 mg/kg/bwt/day in males and 15.6, 78.3, and 806.9 mg/kg/bwt/day in females) to CD-1 mice for 18-months. In this study, the NOAEL was 500 ppm (62.3 mg/kg/bwt/day) and the LOAEL, based on mortality, body weight decrease, organ weight changes and amyloidosis, was 5,000 ppm (622.1 mg/kg/ bwt/day).

iii. *Dog.* In a 2–year oral (capsule) study, conducted at dose levels of 0, 12.5, 50 and 200 mg/kg/bwt/day, the NOAEL was equal to or greater than the maximum dose tested ≥ 200 mg/kg/bwt/day with no LOAEL established.

Pendimethalin has been classified as a Group C, "possible human carcinogen," chemical by EPA based on a statistically significant increased trend and pairwise comparison between the high dose group and controls for thyroid follicular cell adenomas in male and female rats. EPA recommended using the chronic population adjusted dose (cPAD) approach for quantification of human risk. Therefore, the cPAD is deemed protective of all chronic human health effects, including cancer.

6. *Animal metabolism.* Adequate goat and poultry metabolism studies are available for pendimethalin. As no poultry feed items are associated with carrots, citrus fruit crop group processed citrus commodities, or mint, poultry metabolism studies are not relevant to this petition. In addition, the registrant has determined that there is no reasonable expectation of finite pendimethalin residues of concern in animal commodities as a result of use on multiple crops and no tolerances for pendimethalin residues of concern in livestock commodities are needed.

7. *Endocrine disruption.* Collective results from several mechanistic studies provide support that pendimethalin disrupts thyroid-pituitary hormonal balance. An analysis of the data obtained from these studies supports fluctuations in thyroid hormones (T3 and/or T4) at dietary concentrations of 500 ppm (31 mg/kg/bwt/day) and greater. However, no fluctuations in thyroid hormones were observed at 100 ppm (10 mg/kg/bwt/day) in either of the 14–day special feeding studies, supporting a NOAEL for thyroid effects of 100 ppm or 10 mg/kg/bwt/day. As the cPAD is based on the NOAEL of 10 mg/kg/bwt/day obtained from these studies, thyroid hormonal changes are already accounted for in the characterization of the potential risks to humans. Moreover, because of species differences in thyroid gland physiology, slight fluctuations in thyroid hormone levels noted in rats may not be applicable to humans. In addition, collective organ weights and histopathological findings from the 2-generation rat reproduction study, as well as from the subchronic and chronic toxicity studies in 3 different animal species demonstrate no apparent estrogenic effects or treatment-related effects on any other component of the endocrine system.

C. Aggregate Exposure

Pendimethalin is widely used as a pre-emergent herbicide to control broad-leaf weeds in both food and non-food crops, as well as non-agricultural use sites including residential lawns. In examining aggregate exposure, FQPA directs EPA to consider available information concerning exposures from the pesticide residue in food and water (dietary) and all other non-occupational exposures. The primary non-food sources of exposure the Agency evaluates include drinking water (whether from groundwater or surface water), and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). The potential for aggregate exposure from all registered and proposed uses is discussed below:

1. *Dietary (food) exposure.* Tolerances have been established (40 CFR 180.361) for the combined residues of pendimethalin and its 3,5-dinitrobenzyl alcohol metabolite (CL 202347) in or on a variety of food commodities at levels ranging from 0.05 ppm in rice grain to 0.1 ppm in corn, peanuts, soybeans and other commodities. Based on conservative assumptions of tolerance level residues and 100% crop treatment with pendimethalin, the EPA's Dietary Exposure Evaluation Model (DEEM) estimates chronic dietary exposure to pendimethalin from all currently registered uses to be only 0.00042 mg/kg/day (< 1% cPAD) for the overall U. S. population. The estimated most highly exposed DEEM subgroup for pendimethalin is non-nursing infants at a level of 0.00140 mg/kg/day (< 2%).

Additional maximum dietary contributions, (of up to 0.000498 mg/kg/bwt/day and 0.001294 mg/kg/bwt/day for the general U.S. population and for non-nursing infants less than 1–year old, respectively) anticipated from use on carrots and citrus fruit crop group will still utilize < 1% (actual 0.5%) and < 2% (actual 1.3%) of the cPAD for the respective population subgroups. The additional dietary burden that will result from the pendimethalin tolerances in mint and mint oil will also be insignificant. Thus, the American Cyanamid Company believes that there should be no reason for concern from the additional dietary burden that will result from the proposed tolerances of pendimethalin in carrots, citrus fruit crop group, and mint because the contribution to the cPAD will be insignificant.

i. *Drinking water.* Pendimethalin has low water solubility and a strong absorption to soil, which makes it essentially immobile in all soil types. Therefore, American Cyanamid Company concludes that there is no concern for the potential for pendimethalin to runoff to surface water or leach to ground water. No Maximum Concentration Level and no Health Advisory Level has been established for residues of pendimethalin in drinking water. A pendimethalin drinking water exposure analysis for a 10 kg child shows that a chronic exposure from a worst case dietary intake (drinking water only) of 0.0018 mg/kg/day would utilize < 2% of the cPAD. Thus, the American Cyanamid Company believes that contributions to the dietary burden from residues of pendimethalin in water, alone, would be inconsequential.

2. *Non-dietary exposure.* Pendimethalin is currently registered for use on the following residential and non-food sites: ornamental lawns, grasses, ground covers, turf, and ornamental plantings, which are short- and intermediate-term non-occupational exposure scenarios. Thus, the American Cyanamid Company believes that the estimates margins of exposure (MOEs) for residential applicators (MOE = 833) and residential post-application exposures to children (MOE = 111) are more than adequate.

D. Cumulative Effects

The Agency has not yet published guidelines to determine whether pendimethalin has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, pendimethalin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, the American Cyanamid Company assumes that pendimethalin does not have a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions described above and based on the completeness and reliability of the toxicity data, the American Cyanamid Company concludes that the total aggregate exposure to pendimethalin from food will utilizes less than 1% of the cPAD for the overall U.S. population. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to pendimethalin in drinking water and from non-dietary non-occupational exposures, the American Cyanamid Company does not expect the aggregate exposure to exceed 100% of the cPAD. The registrant concludes that the aggregate risks estimated from the following three scenarios: (i) < 4% of the cPAD for chronic dietary exposures (food plus water), (ii) MOE = 680 for chronic dietary exposures (food plus water) plus residential applicator exposures, and (iii) MOE = 107 for chronic dietary exposures (food plus water) plus residential post-application exposures to children, do not exceed the Agency's levels of concern. Thus, the American Cyanamid Company concludes that there is a reasonable certainty that no harm will result from aggregate exposure to pendimethalin residues as a result of the establishment of the proposed tolerance in carrots, citrus fruit crop group, and processed citrus commodities, mint and mint oil.

2. *Infants and children.* The major identifiable subgroup with the highest aggregate exposure is non-nursing infants less than 1–year old. In assessing the potential for additional sensitivity of infants and children to residues of pendimethalin, the data from developmental toxicity studies in the rat and rabbit, and a 2-generation reproduction study in the rat has been considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during prenatal development. Reproduction studies provide information relating to effects on the reproductive capabilities of parental animals from exposure to the pesticide as well as additional data on systemic toxicity.

The prenatal and postnatal toxicology data base for pendimethalin is complete with respect to current toxicological data requirements. The data base does not indicate a potential for increased sensitivity from prenatal or postnatal exposure. As mentioned in item B.3. above, no developmental toxicity was observed in either the rat or rabbit developmental toxicity studies, nor was there any evidence in the 2-generation rat reproduction study that there was developmental or reproductive toxicity at dose levels below those in which parental toxicity was observed. For rabbits, the developmental toxicity NOAEL was > 60 mg/kg/day, the HDT. The maternal NOAEL was > 60 mg/kg/day, based mortality observed at 125 mg/kg/day in a pilot study. For rats, there were no maternal or developmental effects at any dose level and the NOAELs for both maternal and developmental effects were ≥ 500 mg/kg/day, the HDT. In the 2-generation reproductive toxicity study in rats, the parental and reproductive NOAELs were 172 mg/kg/day. The reproductive LOAEL of 346 mg/kg/day was based on decreased pup weight, which occurred in the presence of parental (systemic) toxicity at 346 mg/kg/day.

FFDCA section 408 provides that EPA may apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base. Based on current toxicological data requirements, the toxicology data base for pendimethalin is complete. Furthermore, the reproductive NOAEL of 172 mg/kg/day is seventeen-fold higher than the NOAEL of 10 mg/kg/day used for the cPAD. Additionally, the reproductive LOAEL occurred in the presence of parental (systemic) toxicity, and there was no evidence of developmental toxicity in either the rat or the rabbit studies. Therefore, the American Cyanamid Company believes that these proposed tolerances do not represent any unacceptable prenatal or postnatal risk to infants and children.

Using the conservative exposure assumptions described above, and based on previous EPA reports, the American Cyanamid Company has concluded that aggregate exposure to pendimethalin from food will utilize less than 2% of the cPAD for infants and children. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to pendimethalin in drinking water and from non-dietary, non-occupational exposure, the American Cyanamid Company does not expect the aggregate exposure to exceed 100% of the cPAD. Thus, the registrant concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to pendimethalin residues.

F. International Tolerances

There are no Codex, Canadian or Mexican International Maximum Residue Levels established for residues of pendimethalin in carrots, citrus fruit

crop group and processed citrus commodities, or mint at this time.

2. Rohm and Haas Company

PP 7F4824

EPA has received a pesticide petition (PP 7F4824) from Rohm and Haas Company, 100 Independence Mall West, Phila., PA 19106-2399 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for indirect or inadvertent residues of tebufenozide [benzoic acid, 3,5-dimethyl-, 1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide] and its metabolite [Benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-[4-(1-hydroxyethyl) benzoyl] hydrazide] in or on the RAC grass forage, fodder and hay at 0.5 parts per million (ppm) and forage, fodder, straw and hay of nongrass animal feeds at 0.5 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of tebufenozide in plants (grapes, apples, rice and sugar beets) is adequately understood for the purpose of this tolerance. The metabolism of tebufenozide in all crops was similar and involves oxidation of the alkyl substituents of the aromatic rings primarily at the benzylic positions. The extent of metabolism and degree of oxidation are a function of time from application to harvest. In all crops, parent compound comprised the majority of the total dosage. None of the metabolites were in excess of 10% of the total dosage. Tebufenozide, the metabolite, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-[4-(1-hydroxyethyl) benzoyl, and sugar conjugates of the metabolite were detected in a confined rotation crop study.

2. *Analytical method*. Validated high performance liquid chromatographic (HPLC) analytical methods using ultraviolet (UV) or mass selective (MS) detection are employed for measuring residues of tebufenozide and its metabolite in grains, forage, fodder, stover, hay, and straw. The methods involve extraction by blending with solvents, purification of the extracts by liquid-liquid partitions and final purification of the residues using solid phase extraction column chromatography. The limit of quantitation (LOQ) of the method for all matrices is 0.02 ppm for tebufenozide and its metabolite.

3. *Magnitude of residues*. Field rotation crop residue trials were conducted and residues of tebufenozide and its metabolite were measured. Results of analyses showed that residues of tebufenozide and its metabolite will not exceed 0.1 ppm in forage of legumes and 0.5 ppm in forage, hay or straw of cereal grains.

B. Toxicological Profile

1. *Acute toxicity*—Acute toxicity studies with technical grade. Oral LD_{50} in the rat is > 5 grams for males and females - Toxicity Category IV; dermal LD_{50} in the rat is = 5,000 mg/kg for males and females - Toxicity Category III; inhalation LD_{50} in the rat is > 4.5 mg/l - Toxicity Category III; primary eye irritation study in the rabbit is a non-irritant; primary skin irritation in the rabbit > 5 mg - Toxicity Category IV. Tebufenozide is not a sensitizer.

2. *Genotoxicty*. Several mutagenicity tests which were all negative. These include an Ames assay with and without metabolic activation, an in vivo cytogenetic assay in rat bone marrow cells, and *in vitro* chromosome aberration assay in CHO cells, a CHO/HGPRT assay, a reverse mutation assay with *E. Coli*, and an unscheduled DNA synthesis (UDS) assay in rat hepatocytes.

3. *Reproductive and developmental toxicity*—i. In a prenatal developmental toxicity study in Sprague-Dawley rats 25/group Tebufenozide was administered on gestation days 6-15 by gavage in aqueous methyl cellulose at dose levels of 50, 250, or 1,000 mg/kg/day and a dose volume of 10 ml/kg. There was no evidence of maternal or developmental toxicity; the maternal and developmental toxicity NOAEL was 1,000 mg/kg/day.

ii. In a prenatal developmental toxicity study conducted in New Zealand white rabbits 20/group Tebufenozide was administered in 5 ml/kg of aqueous methyl cellulose at gavage doses of 50, 250, or 1,000 mg/kg/day on gestation days 7-19. No evidence of maternal or developmental toxicity was observed; the maternal and developmental toxicity NOAEL was 1,000 mg/kg/day.

iii. In a 1993 2-generation reproduction study in Sprague-Dawley rats Tebufenozide was administered at dietary concentrations of 0, 10, 150, or 1,000 ppm (0, 0.8, 11.5, or 154.8 mg/kg/day for males and 0, 0.9, 12.8, or 171.1 mg/kg/day for females). The parental systemic NOAEL was 10 ppm (0.8/0.9 mg/kg/day for males and females, respectively) and the lowest observed adverse effect level (LOAEL) was 150 ppm (11.5/12.8 mg/kg/day for males and females, respectively) based on decreased body weight, body weight gain, and food consumption in males, and increased incidence and/or severity of splenic pigmentation. In addition, there was an increased incidence and severity of extramedullary hematopoiesis at 2,000 ppm. The reproductive NOAEL was 150 ppm. (11.5/12.8 mg/kg/day for males and females, respectively) and the LOAEL was 2,000 ppm (154.8/171.1 mg/kg/day for males and females, respectively) based on an increase in the number of pregnant females with increased gestation duration and dystocia. Effects in the offspring consisted of decreased number of pups per litter on postnatal days 0 and/or 4 at 2,000 ppm (154.8/171.1 mg/kg/day for males and females, respectively) with a NOEL of 150 ppm (11.5/12.8 mg/kg/day for males and females, respectively).

In a 1995 2-generation réproduction study in rats Tebufenozide was administered at dietary concentrations of 0, 25, 200, or 2,000 ppm (0, 1.6, 12.6, or 126.0 mg/kg/day for males and 0, 1.8, 14.6, or 143.2 mg/kg/day for females). For parental systemic toxicity, the NOAEL was 25 ppm (1.6/1.8 mg/kg/day in males and females, respectively), and the LOAEL was 200 ppm (12.6/14.6 mg/kg/day in males and females), based on histopathological findings (congestion and extramedullary hematopoiesis) in the spleen. Additionally, at 2,000 ppm (126.0/143.2 mg/kg/day in M/F), treatment-related findings included reduced parental body weight gain and increased incidence of hemosiderin-laden cells in the spleen. Columnar changes in the vaginal squamous epithelium and reduced uterine and ovarian weights were also observed at 2,000 ppm, but the toxicological significance was unknown. For offspring, the systemic NOAEL was 200 ppm. (12.6/14.6 mg/kg/day in males and females), and the LOAEL was 2,000 ppm (126.0/143.2 mg/kg/day in M/F) based on decreased body weight on postnatal days 14 and 21.

4. *Subchronic toxicity*. In a 21–day dermal toxicity study, Crl: CD rats (6/sex/dose) received repeated dermal administration of either the technical 96.1% product RH-75,992 at 1,000 mg/kg/day limit-dose or the formulation 23.1% a.i. product RH-755,992 2F at 0, 62.5, 250, or 1,000 mg/kg/day, 6 hours/day, 5 days/week for 21 days. Under conditions of this study, RH-75,992 Technical or RH-75,992 2F demonstrated no systemic toxicity or dermal irritation at the HDT 1,000 mg/kg/ during the 21–day study. Based on these results, the NOAEL for systemic toxicity and dermal irritation in both sexes is 1,000 mg/kg/day HDT. A LOAEL for systemic toxicity and dermal irritation was not established.

5. *Chronic toxicity*— i. A 1–year dog feeding study with a (LOAEL) of 250 ppm, 9 mg/kg/day for male and female dogs based on decreases in red blood cells (RBC), HCT, and HGB, increases in Heinz bodies, methemoglobin, MCV, MCH, reticulocytes, platelets, plasma total bilirubin, spleen weight, and spleen/body weight ratio, and liver/body weight ratio. Hematopoiesis and sinusoidal engorgement occurred in the spleen, and hyperplasia occurred in the marrow of the femur and sternum. The liver showed an increased pigment in the Kupffer cells. The NOAEL for systemic toxicity in both sexes is 50 ppm (1.9 mg/kg/day).

ii. An 18–month mouse carcinogenicity study with no carcinogenicity observed at dosage levels up to and including 1,000 ppm.

iii. A 2–year rat carcinogenicity with no carcinogenicity observed at dosage levels up to and including 2,000 ppm (97 mg/kg/day and 125 mg/kg/day for males and females, respectively).

6. *Animal metabolism*. The pharmacokinetics and metabolism of tebufenozide were studied in female Sprague-Dawley rats (3-6/sex/group) receiving a single oral dose of 3 or 250 mg/kg of RH-5992 ^{14}C labeled in one of three positions (A-ring, B-ring or N-butylcarbon). The extent of absorption was not established. The majority of the radiolabeled material was eliminated or excreted in the feces within 48 hours within 48 hours; small amounts (1 to 7% of the administered dose) were excreted in the urine and only traces were excreted in expired air or remained in the tissues. There was no tendency for bioaccumulation. Absorption and excretion were rapid. A total of 11 metabolites, in addition to the parent compound, were identified in the feces; the parent compound accounted for 96 to 99% of the administered radioactivity in the high dose group and 35 to 43% in the low dose group. No parent compound was found in the urine; urinary metabolites were not characterized. The identity of several fecal metabolites was confirmed by mass spectral analysis and other fecal metabolites were tentatively identified by cochromatography with synthetic standards. A pathway of metabolism was proposed based on these data. Metabolism proceeded primarily by oxidation of the three benzyl carbons, two methyl groups on the B-ring and an ethyl group on the A-ring to alcohols, aldehydes or acids. The type of metabolite produced varies depending on the position oxidized and extent of oxidation. The butyl group on the quaternary nitrogen also can be cleaved (minor), but there was no fragmentation of the molecule between the benzyl rings.

No qualitative differences in metabolism were observed between sexes, when high or low dose groups were compared or when different labeled versions of the molecule were compared.

7. *Metabolite toxicology*. The absorption and metabolism of tebufenozide were studied in a group of male and female bile-duct cannulated rats. Over a 72 hour period, biliary excretion accounted for 30% male to 34% female of the administered dose while urinary excretion accounted for about 5% of the administered dose and the carcass accounted for < 0.5% of the administered dose for both males and females. Thus systemic absorption (percent of dose recovered in the bile, urine and carcass) was 35% male to 39% female. The majority of the radioactivity in the bile (20% male to 24% female of the administered dose) was excreted within the first 6 hours post-dosing indicating rapid absorption. Furthermore, urinary excretion of the metabolites was essentially complete within 24 hours post-dosing. A large amount [67% (female) to 70% (male) of the administered dose was unabsorbed and excreted in the feces by 72 hours. Total recovery of radioactivity was 105% of the administered dose.

A total of 13 metabolites were identified in the bile; the parent compound was not identified, i.e., unabsorbed compound, nor were the primary oxidation products seen in the feces in the pharmacokinetics study. The proposed metabolic pathway proceeded primarily by oxidation of the benzylic carbons to alcohols, aldehydes or acids. Bile contained most of the other highly oxidizedproducts found in the feces. The most significant individual bile metabolites accounted for 5% to 18% of the total radioactivity (female and/or male). Bile also contained the previously undetected (in the pharmacokinetics study] "A" Ring ketone and the "B" Ring diol. The other major components were characterized as high molecular weight conjugates. No individual bile metabolite accounted for > 5% of the total administered dose. Total bile radioactivity accounted for about 17% of the total administered dose.

No major qualitative differences in biliary metabolites were observed between sexes. The metabolic profile in the bile was similar to the metabolic profile in the feces and urine.

C. Aggregate Exposure

1. *Dietary exposure— From food and feed uses*. Tolerances have been established (40 CFR 180.482) for the residues of tebufenozide, in or on walnuts at 0.1 ppm, pome fruit at 1.5 ppm, pecans at 0.01, kiwifruit at 0.5ppm, leafy and cole crop vegetables at 10 ppm and wine grapes at 0.5 ppm. Numerous section 18 tolerances have been established at levels ranging from 0.3 ppm in sugar beet roots to 5.0 ppm in turnip tops. The current petition requests establishment of tolerances due to indirect or inadvertent residues of tebufenozide and its metabolite in or on grass forage, fodder and hay and forage, fodder, straw and hay of nongrass animal feeds Risk assessments were conducted by Rohm and Haas to assess dietary exposures and risks from tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide and are presented in the followingdiscussion:

i. *Food—Acute exposure and risk*. Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. Toxicity observed in oral toxicity studies were not attributable to a single dose (exposure). No neuro- or systemic toxicity was observed in rats given a single oral administration of tebufenozide at 0, 500, 1,000 or 2,000 mg/kg. No maternal or developmental toxicity was observed following oral administration of tebufenozide at 1,000 mg/kg/day (limit-dose) during gestation to pregnant rats or rabbits. This risk is considered to be negligible.

ii. *Chronic exposure and risk*. The RfD used for the chronic dietary analysis is 0.018 mg/kg/day. In conducting this chronic dietary (food) exposure assessment, Rohm and Haas used (a) tolerance level residues for pecans, walnuts, wine and sherry, imported apples and all other commodities with established or pending tebufenozide tolerances; and (b) percent crop-treated (%CT) information on some of these crops. Further refinement using anticipated residue values and additional %CT information would result in a lower estimate of chronic dietary exposure. The Novigen DEEM system was used for this chronic dietary exposure analysis. The subgroups listed below are (c) the U.S. Population (48

States); (d) those for infants and children; and (e) the other subgroups (adult) for which the percentage of the reference dose (RfD) occupied is greater than that occupied by the subgroup U.S. population (48 States). The results are summarized below:

Groups	%RfD (percentage)
U.S. Population	10.0%
All Infants (< 1–year)	12.2%
Nursing Infants (< 1–year old)	5.7%
Non-Nursing Infants (< 1–year old)	15.0%
Children (1-6 years old)	22.5%
Children (7-12 years old)	14.1%
Females (13 + years old, nursing)	10.1%
U.S. Population autumn season	10.3%
U.S. Population winter season	10.1%
Non-Hispanic Blacks	10.4%
Non-Hispanic Other than Black or White	11.0%
Northeast Region	10.3%
Southern Region	10.1%
Western Region	10.5%
Pacific Region	10.7%

iii. *Drinking water*— i. *Acute exposure and risk.* Because no acute dietary endpoint was determined, Rohm and Haas concludes that there is a reasonable certainty of no harm from acute exposure from drinking water.

iv. *Chronic exposure and risk.* Submitted environmental fate studies suggest that tebufenozide is moderately persistent to persistent and mobile. Under certain conditions tebufenozide appears to have the potential to contaminate ground and surface water through runoff and leaching; subsequently potentially contaminating drinking water. There are no established Maximum Contaminant Levels (MCL) for residues of tebufenozide in drinking water and no Health Advisories (HA) have been issued for tebufenozide therefore these could not be used as comparative values for risk assessment. Therefore, potential residue levels for drinking water exposure were calculated previously by EPA using GENEEC (surface water) and SCIGROW (ground water) for human health risk assessment. Because of the wide range of half-life values (66-729 days) reported for the aerobic soil metabolism input parameter a range of potential exposure values were calculated. In each case the worst case upper bound exposure limits were then compared to appropriate chronic drinking water level of concern (DWLOC). In each case the calculated exposures based on model data were below the DWLOC.

2. *Non-dietary exposure.* Tebufenozide is not currently registered for use on any residential non-food sites. Therefore , there is no chronic, short- or intermediate-term exposure scenario.

D. Cumulative Effects

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." The Agency believes that "available information" in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, Rohm and Haas has not assumed that tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide has a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population*— i. *Acute risk.* Since no acute toxicological endpoints were established, no acute aggregate risk exists.

ii. *Chronic risk.* Using the conservative exposure assumptions described above, and taking into account the completeness and reliability of the toxicity data, Rohm and Haas has concluded that dietary (food only) exposure to tebufenozide will utilize 10.0% of the RfD for the U.S. population. Submitted environmental fate studies suggest that tebufenozide is moderately persistent to persistent and mobile; thus, tebufenozide could potentially leach to groundwater and runoff to surface water under certain environmental conditions. The modeling data for tebufenozide indicate levels less than OPP's drinking water levels concern (DWLOC). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. There are no registered residential uses of tebufenozide. Since there is no potential for exposure to tebufenozide from residential uses, Rohm and Haas does not expect the aggregate exposure to exceed 100% of the RfD.

iii. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. Since there are currently no registered indoor or outdoor residential non-dietary uses of tebufenozide and no short- or intermediate-term toxic endpoints, short- or intermediate-term aggregate risk does not exist.

2. *Infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide, EPA previously considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability)) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

The toxicology data base for tebufenozide is complete and includes acceptable developmental toxicity studies in both rats and rabbits as well as a 2-generation reproductive toxicity studies in rats.

The EPA determined that the data provided no indication of increased sensitivity of rats or rabbits to in utero and/or postnatal exposure to tebufenozide. No maternal or developmental findings were observed in the prenatal developmental toxicity studies at doses up to 1,000 mg/kg/day in rats and rabbits. In the 2-generation reproduction studies in rats, effects occurred at the same or lower treatment levels in the adults as in the offspring.

Rohm and Haas concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to tebufenozide, benzoic acid, 3,5-dimethyl-1-(1,1-dimethylethyl)-2-(4-ethylbenzoyl) hydrazide residues.

F. International Tolerances

There are currently no CODEX, Canadian or Mexican maximum residue levels (MRLs) established for tebufenozide in rotation crops so no harmonization issues are required for this action.

3. Rohm and Haas Company

PP 9F5058

EPA has received a pesticide petition (PP 9F5058) from Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for combined residues of RH-117281 Technical Benzamide-3,5-dichloro-N-(3-chloro-1-ethyl-1-methyl-2oxopropyl)-4-methyl and metabolites 3,5-dichloro-4-hydroxy methyl-benzoic acid and 3,5-dichloro-1,4-benzene dicarboxylic (RH-141452 and RH-141455) in or on the raw agricultural commodity (RAC) potatoes at 0.1 parts per million (ppm), grapes at 5 ppm, and raisins at 15 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of RH-117281 Technical in plants (grapes and potatoes) is adequately understood for the purposes of these tolerances. There were no significant metabolites other than the parent compound in grapes. Residues in grapes were surface residues of parent RH-117281 and minor amounts of hydrolysis and photolysis degradates. In potatoes, two minor rat metabolites, RH-141452 and RH-141455, comprised the majority of the residue. No other metabolites were present in excess of 10% of the total dosage. It is most likely that the source of these residues is extremely low level uptake of highly degraded metabolites from the soil, rather than metabolism within the plant, since these compounds are highly metabolized, but there are no intermediate products found in the potato.

2. *Animal metabolism.* The metabolism of RH-117281 Technical in food-producing animals (dairy goats) is adequately understood. Hen metabolism is not required for the current submission because no components of grape or potato are fed to poultry. Metabolism in laboratory and food-producing animals was similar and extensive, occurring through multiple pathways involving primary hydrolysis, glutathione-mediated reactions, and reductive dehalogenation; secondary oxidation; and terminal glucuronic and amino acid conjugation. RH-117281 Technical and its residues are rapidly excreted in animals. No significant residues in these food commodities.

3. *Analytical method.* Tolerance enforcement methods using gas chromatography/electron capture detection (GC/ECD) or gas chromatography/mass selective detection (GC/MSD), have been developed for RH-117281 in grapes, grape juice and raisins. The limit of quantification (LOQ) is 0.01 ppm for all matrices. Average recoveries are 95.8-106% for grapes, 84.2-101% for juice, and 85.9-108% for raisins, over the range of fortifications.

A tolerance enforcement method using GCECD or GC/MSD detection has also been developed for RH-117281 in potatoes and for the metabolites RH-141452 and RH-141455 in potatoes, potato chips and potato flakes. The LOQ for all analytes is 0.02 ppm for all matrices.

The methods involve extraction with solvent, filtration, liquid-liquid partition, and final purification of the residues using solid phase column chromatography. An independent validation of the methods has been completed.

4. *Magnitude of residues*—i. *Grape.* Twelve field residue trials were conducted over two seasons in four States at either 1.25 lb active ingredient (a.i)/acre and 2.50 lb a.i./acre (1.40 kiligram/hectare Kg/ha and 2.81 Kg/ha) or 2.0 lbs a.i/acre and 4.0 lbs a.i acre (2.25 Kg/ha and 4.49 Kg/ha). Ten applications were made in each trial. In two of the trials, fruit was harvested at 0, 7, 14, and 21 days after the final application. In the remaining trials, samples were taken at 13 or 14 days after the final application. The proposed seasonal use rate is 1.6 lb a.i/acre (1.8 Kg/ha) with a 14– day pre-harvest interval (PHI).

Samples were analyzed for residues of RH-117281. Residue levels in the 34 samples from the 2.0 or 2.5 lb/acre (2.25 and 2.81 kg/ha) rates and 13 or 14 day PHI ranged from 0.218 to 4.52 ppm. The average residue was 0.88 ppm.

These data support a permanent tolerance of 5.0 ppm on grapes. Grape juice (clarified and unclarified) and raisins were generated from two RAC samples from one residue trial. Residues in grape juice were much lower than in the whole fruit, roughly 10% of the levels in the RAC. Residues concentrated in the raisins. The data support a permanent tolerance of 15 ppm on raisins.

ii. *Potatoes.* Sixteen field residue trials were conducted over two seasons in 10 States at either 1.25 lb a.i./acre and 2.50 lb a.i/a (1.40 kg/ha and 2.81 kg/ha) or 2.0 lbs a.i./acre and 4.0 lbs a.i./acre (2.25 kg/ha and 4.49 kg/ha). Ten applications were made in each trial. In two of the trials, tubers were harvested at 0, 3, 7, and 14 days after the final application. In the remaining trials, samples were taken at 3 days after the final application. The proposed maximum seasonal use rate is 1.6 lb a.i./acre (1.8 kg/ha) with a 3–day PHI. Samples were analyzed for parent RH-117281 and the two metabolites RH-141452 and RH-141455.

Samples were below the LOQ in nearly all cases. These residues support the establishment of a permanent tolerance of 0.1 ppm on potatoes.

Twelve residue trials were conducted in 7 regions in Canada during 1998 at 2.0 kg/ha and a PHI of 3–days. There were no residues of any analyte above the LOQ of 0.02 ppm in any sample.

A potato process study was conducted. Residues of two metabolites concentrated in flakes, consistent with loss of water from the potato.

B. Toxicological Profile

1. *Acute toxicity.* RH-117281 Technical was practically non-toxic by ingestion of a singe oral dose in rats and mice lethal dose (LD_{50}) > 5,000 milligram/kilogram (mg/kg), practically non-toxic by dermal application to rats (LD_{50} > 2,000 mg/kg), and practically non-toxic to rats after a 4–hour inhalation exposure with an LC_{50} value of > 5.3 milligrams per liter (mg/L) (highest attainable concentration), is not considered to be a primary eye irritant or a skin irritant and is not a dermal sensitizer. The technical material was non irritating to skin after single applications and moderately irritating to eyes. RH-117281 Technical produced delayed contact hypersensitivity in the guinea pig at concentrations of 2,500 ppm and higher. An acute neurotoxicity study in rats did not produce any neurotoxic or neuropathologic effects with a NOAEL > 2,000 mg/kg.

2. *Genotoxicity.* RH-117281 was nonmutagenic in a standard battery of tests. In *in vitro* assays, RH-117281 showed no evidence of mutagenic activity in an Ames and CHO/HGPRT assays for gene mutation, and no evidence of structural chromosomal aberrations in the CHO *in vitro* cytogenetic study. As predicted by its antitubulin mode of action, mitotic accumulation and polyploidy were noted at cytotoxic doses in the *in vitro* chromosomal assay. However, there was no evidence of structural or numerical chromosomal aberrations when RH-117281 Technical was tested *in vivo* in the mouse micronucleus test.

3. *Reproductive and developmental toxicity.* NOAELs for developmental and maternal toxicity to RH-117281 Technical were established at 1,000 mg/kg/day, highest dose tested (HDT) in both the rat and rabbit. No signs of developmental toxicity were exhibited.

In a 2-generation reproduction study in the rat, RH-117281 Technical had no adverse effects on reproductive performance or pup development at doses up to and exceeding 1474 mg/kg/day, the limit dose tested (LDT). This NOAEL was 20-fold higher than the NOAEL for adult toxicity of 71 mg/kg/day. A delay in periweaning weight gain and associated spleen effects in the F1 and F2a litters were shown in the F2b litters to be a secondary effect related to feed refusal due to palatability of the treated diets, and not to a systemic toxic effect. The consequences of feed refusal due to palatability do not constitute an adverse effect relevant to human health risk assessment.

4. *Subchronic toxicity.* The NOAEL in a 90–day rat subchronic feeding study was 1,509 mg/kg/day in males and 1,622 mg/kg/day in females (HDT). RH-117281 Technical did not produce neurotoxic or neuropathologic effects.

In a 90–day feeding study with mice, the NOAEL was 436 mg/kg/day in males and 574 mg/kg/day in females based on a slight decrease in weight gain among the females only at the LOAEL of 1,666 mg/kg/day.

A 90–day dog feeding study gave a NOAEL of 55 mg/kg/day in males and 62 mg/kg/day in females based on increased liver weights without a corresponding clinical or histopathologic change in females only at 322 mg/kg/day.

No signs of systemic toxicity were observed when RH-117281 Technical was administered dermally to rats for 28 days at a limit dose of 1,000 mg/kg/day. This occurred despite skin irritation at all doses tested (150, 400, and 1,000 mg/kg/day). Similarly, *in vivo* dermal absorption was shown to be low regardless of concentration or formulation type (i.e. < 1-6% of theadministered dose was systemically absorbed after 24 hours).

5. *Chronic toxicity.* In a combined rat chronic/oncogenicity study, the NOAEL for chronic toxicity was 51 mg/kg/day in males and 65 mg/kg/day based on an equivocal increase in relative liver weight at a LOAEL of 328 mg/kg/day in females at the interim sacrifice only. The NOAEL was considered to be 1,058 mg/kg/day in males and 1,331 mg/kg/day in females (HDT, limit dose). No carcinogenicity was observed.

An 18–month mouse carcinogenicity study showed no signs of carcinogenicity or of any other compound-related effect at dosage levels up to 1,021 mg/kg/day in males and 1,289 mg/kg/day in females HDT, limit dose).

The NOAEL in a 1–year feeding study in dogs was 255 mg/kg/day in males and 48 mg/kg/day in females based on minimal effects on body weight (bwt) and body weight gain and increased liver weights in females only at a LOAEL of 278 mg/kg/day.

6. *Animal metabolism.* In pharmacokinetic and metabolism studies in the rat, RH-117281 Technical

was rapidly and extensively absorbed, metabolized and excreted following oral exposure. A total of approximately 60% of the administered dose was systemically absorbed. Plasma levels peaked within 8 hours of dosing, and declined with a half-life of 12-14 hours, consistent with the nearly complete excretion within 48 hours. No evidence of accumulation of the parent compound or its metabolites was observed. The predominant route of excretion was hepatobiliary. Metabolism was found to occur through multiple pathways involving primary hydrolysis, glutathione-mediated reactions, and reductive dehalogenation; secondary oxidation on both the aromatic methyl and the aliphatic side-chain; and terminal glucuronic acid and amino acid conjugation. Altogether, 32 separate metabolites were identified; no single metabolite other than parent RH-117281 accounted for more than 10% of the administered dose. The rapid metabolism and excretion of RH-117281 Technical was a major factor explaining the compound's overall remarkably low toxicity profile in animals.

7. *Metabolite toxicology.* Of these multiple pathways, all three are common to both laboratory (rat) and food-producing animals (goat). Extensive degradation and elimination occurs in animals such that residues are unlikely to accumulate in humans or animals exposed to these residues through the diet. There were no significant metabolites other than the parent RH-117281 in grapes. Two minor metabolites in the rat constituted a major portion of the residue in potato tubers in the ^{14}C-metabolism study. RH-141452 and RH-141455 are not considered toxicologically significant as they were practically non-toxic after acute oral administration in mice, non mutagenic in the Ames test, and rapidly excreted essentially unchanged in rats. Actual residues in field trials never exceeded trace levels approximating the LOQ.

8. *Endocrine disruption.* Based on structure-activity and mode of action information as well as the lack of developmental and reproductive toxicity, RH-117281 Technical is unlikely to exhibit endocrine activity. There was no evidence of a functional or histopathologic change in the male or female reproductive tract, and no indicators of an endocrine effect of any kind below limit doses in mammalian subchronic or chronic studies or in mammalian and avian reproduction studies. A slight thyroid effect at the limit dose (994-1139 mg/kg/day) in the subchronic dog studies was secondary to liver hypertrophy and enlargement at that dose. Collectively, the weight of evidence provides no indication of an endocrine effect of RH-117281 Technical.

9. *Toxicological endpoints*— i. *Acute and short term dietary.* No endpoint of concern was identified for acute or short term (1–7 day) dietary exposure to RH-117281 Technical, and no acute or short term risk assessment is required.

ii. *Chronic dietary.* The proposed RfD for RH-117281 Technical is 0.5 mg/kg/day, based on application of a 100-fold uncertainty factor to the chronic NOAELs in the rat and dog of 51 and 48 mg/kg/day, respectively.

iii. *Carcinogen classification.* There was no evidence of oncogenic potential in two well-conducted lifetime feeding studies in rats and mice, at doses up to and including the limit dose. Thus, RH-117281 Technical should be classified as "unlikely" to have carcinogenic potential.

C. Aggregate Exposure

1. *Dietary (food) exposure.* Tolerances are proposed for the residues of RH-117281 Technical in or on potatoes (0.1 ppm), grapes (5 ppm), and raisins (15 ppm). The goat metabolism study demonstrated that there is no reasonable expectation of transfer of residues of RH-117281 Technical into meat or milk from potatoes. There are no grape feed commodities fed to livestock, and no potato or grape feed commodities fed to poultry. There are no other established or proposed United States tolerances for RH-117281 Technical, and no currently registered uses in the United States. Risk assessments were conducted by Rohm and Haas to assess dietary exposures and risks from RH-117281 Technical as follows:

i. *Acute exposure and risk.* No acute endpoint was identified for RH-117281 Technical and no acute risk assessment is required.

ii. *Chronic exposure and risk.* For chronic dietary risk assessment, the proposed tolerance values, as well as anticipated (average) residues and processing factors, were used and the assumption that 100% of all potatoes and grapes will contain residues of RH-117281 Technical at the tolerance or anticipated residue levels. Potential chronic exposures were estimated using USDA food consumption data from the 1989-1992 survey. With the proposed tolerances and anticipated residue levels for RH-117281 Technical, the percentage of the 0.5 mg/kg/day reference dose (RfD) utilized as follows:

Group	AnticipatedResidues Total % RfD	Tolerance Levels Total % RfD
U.S. Population 48 States	0.5	0.1
Nursing Infants < 1 year old	1.0	0.2
Non-Nursing Infants,< 1–year old	1.2	< 0.1
Children 1-6 years old	1.7	.1
Children 7-12 years old	0.5	0.1

The chronic dietary risks from these uses do not exceed EPA's level of concern.

2. *Drinking water.* No direct information is available on potential for exposure to RH-117281 Technical from drinking water. However, exposure from drinking water is unlikely to occur as a result of the uses on potatoes or grapes. Submitted environmental fate studies indicat0e that Rh-117281 Technical dissipates rapidly from the environment under all conditions tested, and that is not mobile and poses no threat to groundwater. Furthermore, its environmental metabolites are very snort-lived and also have no potential to leach.

There is no established Maximum Concentration Level (MCL) for residues of RH-117281 Technical in drinking water, and no drinking water health advisory levels have been established. There is no entry for RH-117281 Technical in the "Pesticides in Groundwater Database" (EPA 734-12-001, September 1992).

i. *Chronic exposure and risk.* Nevertheless, to assess an upper bound on the potential for exposure from drinking water, chronic exposure to RH-117281 Technical in drinking water was estimated using the generic expected environmental concentration (GENEEC) V1.2 and SCI-GROW models, as directed in the Office of Pesticide Program's Interim Approach for Addressing Drinking Water Exposure. GENEEC is a highly conservative mode] used to estimate residue concentrations in surface water. SCI=GROW is an equally

conservative model used to estimate residue concentrations in shallow, highly vulnerable groundwater (i.e., sites with sandy soils and depth to groundwater of 10 to 20 feet). As indicated in EPA's drinking water exposure guidance, a very small percentage of people in the United States would derive their drinking water from such sources. GENEEC (56–Day average) and SCI-GROW water exposure values utilizes substantially less than 1% of the RfD for adults and children. •

3. *Non-dietary exposure.* RH-117281 Technical is not currently registered for any indoor or outdoor residential or structural uses, and no application is pending; therefore, no non-dietary non-occupational exposure is anticipated.

4. *Aggregate exposure and risk.* The anticipated exposure from food and drinking water combined is < 2% of the RfD, and there is no expectation of other non-occupational exposure. Thus, aggregate exposure of RH-117281 Technical does not exceed EPA's level of concern, and is essentially negligible.

D. Cumulative Effects

At this time, no data are available to determine whether RH-117281 Technical has a common mechanism of toxicity with other substances. Thus, it is not appropriate to include this fungicide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, RH-117281 Technical does not appear to produce a toxic metabolite produced by other substances. In addition, the toxicity studies submitted to support this petition indicate that RH-117281 has only limited toxic potential. No toxic endpoints of potential concern were identified. For the purposes of this tolerance action, therefore, RH-117281 Technical [Benzamide-3,5-dichloro-N-(3-Clair-1-ethyl-1-methyl-2-oxopropyl)-4- methyl] is assumed not to have a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population*— i. *Acute exposure and risk.* Since no acute endpoint was identified for RH-117281 Technical, no acute risk assessment is required.

ii. *Chronic exposure and risk.* Using the conservative exposure assumptions described above and taking into account the completeness and reliability of the toxicity data, the percentage of the RfD that will be utilized by the dietary (food only) exposure to residues of RH-117281 Technical from the proposed tolerances is 0.5% (tolerance levels) and 0.1% (anticipated residues) for the U.S. population. Aggregate exposure (food and water) are expected to be < 1% RfD. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Rohm and Haas concludes there is a reasonable certainty that no harm will result from aggregate exposure to RH-117281 Technical residues to the U.S. population.

2. *Infants and children*—i. *General.* The potential for additional sensitivity of infants and children to residues of RH-117281 Technical is assessed using data from developmental toxicity studies in the rat and rabbit and 2-generation reproduction studies in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

ii. *Developmental toxicity studies—Rats.* In a developmental toxicity study in rats, the maternal NOAEL was 1,000 mg/kg/day, HDT, and the developmental (pup) NOAEL was 1,000 mg/kg/day HDT.

Rabbits. In a developmental toxicity study in rats, the maternal NOAEL was 1,000 mg/kg/day HDT, and the developmental (pup) NOAEL was 1,000 mg/kg/day HDT.

iii. *Reproductive toxicity study—Rats.* In a multigeneration reproductive toxicity study in rats, theparental (systemic) NOAEL was 71 mg/kg/day, based on an equivocal liver effect at the lowest observed adverse effect levels (LOAEL) of 360 mg/kg/day. The NOAEL for reproductive and developmental effects was 1,471 mg/kg/day HDT. No adverse reproductive or developmental effects were observed.

iv. *Prenatal and postnatal sensitivity.* No developmental or reproductive effects were demonstrated for RH-117281 Technical as a result of systemic exposure at up to limit doses of 1,000 and 1,471 mg/kg/day. Additionally, these NOAELs are greater than 20-fold higher than the NOAELs of 48-51 mg/kg/day from the dog and rat chronic studies which are the basis of the RfD. These developmental and reproductive studies indicate that developing and maturing animals are not more sensitive either pre or postnatally than other age groups to RH-117281 Technical; i.e., RH-117281 Technical does not exhibit additional pre or postnatal sensitivity. Thus, reliable data indicate that an additional FQPA uncertainty factor is not necessary to insure an adequate margin of safety for protection of infants and children.

a. *Acute exposure and risk.* No acute endpoint was identified for RH-117281 Technical, and therefore no acute risk assessment is required.

b. *Chronic exposure and risk.* Using the conservative exposure assumptions described above and taking into account the completeness and reliability of the toxicity data, the percentage of the RfD that will be utilized by dietary (food only) exposure to residues of RH-117281 Technical from the proposed tolerances is 1.0% (tolerance levels) and 0.2% (anticipated residues) for children, 1-infants (< 1–year) and 1.7% (tolerance levels) and 0.1% (anticipated residues) for children, 1-6 years old, the most highly exposed subgroups. Aggregate exposure (food and water) are expected to be < 2% RfD. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime.

F. International Tolerances

There are currently no CODEX, Canadian or Mexican maximum residue levels (MRLs) established for RH-117281 Technical in potatoes, potato chips or flakes, grapes or raisins. Thus, no harmonization issues are required to be resolved for this action.

G. Rotation Crop Restrictions

An outdoor C rotation crop study was conducted, in which leafy, root, and grain crops and soybeans were planted back 30, 137, 210, and 365 days following four applications. No individual metabolite comprised greater than or equal to 0.01 ppm in any matrix.

[FR Doc. 99–22455 Filed 8–31–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6431–4]

Proposed CERCLA Prospective Purchaser Agreement; Canton Industrial Corporation Site; City of Canton, Fulton County, Illinois

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Reponse, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9601 *et seq.*, and the authority of the Attorney General of the United States to compromise and settle claims of the United States as delegated, notice is hereby given of a proposed prospective purchaser agreement concerning the Canton Industrial Corporation site at 260 East Elm Street, Canton, Fulton County, Illinois 61520 with the City of Canton. The agreement requires the City of Canton to pay $500.00 to the Hazardous Substance Superfund; enroll the site, or portions thereof that are reasonable amenable to redevelopment and reuse, in the State of Illinois Site Remediation Program; implement site security measures; and impose appropriate institutional controls. The agreement includes a covenant not to sue the City of Canton under sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), contribution protection for the City of Canton under section 113(f)(2), 42 U.S.C. 9613(f)(2), and removal of any liens under section 107(1) of CERCLA, 42 U.S.C. 9607(1). For thirty (30) days followed the date of publication of this notice, the United States will receive written comments relating to the agreement. The United States will consider all comments received and may modify or withdraw its consent to the agreement if comments received disclose facts or considerations which indicate that the agreement is inappropriate, improper, or inadequate. The United States' response to any comments received will be available for public inspection at U.S. EPA, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604. Please contact Nola Hicks at (312) 886–7949 to make arrangements to inspect the comments.

DATES: Comments must be submitted on or before October 1, 1999.

ADDRESSES: The proposed settlement is available for public inspection at U.S. EPA, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604. A copy of the proposed agreement may be obtained from Nola Hicks, at U.S. EPA, Region 5, 77 W. Jackson Boulevard (C–14J), Chicago, IL 60604, phone (312) 886–7949. Comments should reference the Canton Industrial Corporation prospective purchaser agreement, and should be addressed to Nola Hicks.

FOR FURTHER INFORMATION CONTACT: Nola Hicks, at U.S. EPA, Region 5, 77 W. Jackson Boulevard (C–14J), Chicago, IL 60604, phone (312) 886–7949.

Dated: July 27, 1999.

Martise Whiteurst,

Acting Director, Superfund Division, Region 5.

[FR Doc. 99–22741 Filed 8–31–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404–IL; FRL–6087–1]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of Illinois' Authorization Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comments and opportunity for public hearing.

SUMMARY: On August 19, 1998, the State of Illinois submitted a partial application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). On April 16, 1999, Illinois submitted supplemental application materials for self-certification for interim approval. This notice announces the receipt of Illinois' application, provides a 45–day public comment period, and provides an opportunity to request a public hearing on the application. Illinois has provided a certification that its program meets the requirements for interim approval of a State program under TSCA section 404 for a period of time up to 3 years. Therefore, pursuant to TSCA section 404, the program is deemed authorized as of the date of submission. If EPA finds that the program does not meet the requirements for approval of a State program, EPA will disapprove the program, at which time a notice will be issued in the **Federal Register** and the Federal program will take effect in Illinois.

DATES: Comments on the authorization application must be received on or before October 18, 1999. Public hearing requests must be received on or before September 16, 1999.

ADDRESSES: Submit all written comments and/or requests for a public hearing identified by docket number PB–402404–IL (in duplicate) to: Environmental Protection Agency, Region V, DT-8J, 77 West Jackson Blvd., Chicago, IL 60604. Comments, data, and requests for a public hearing may also be submitted electronically to: turpin.david@epamail.epa.gov. Follow the instructions under Unit IV. of this document. No information claimed to be Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: Marlyse Wiebenga, Project Officer, Environmental Protection Agency, Region V, DT–8J, 77 West Jackson Blvd., Chicago, IL 60604. Telephone: (312) 886–4437.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 1992, the Housing and Community Development Act of 1992, Public Law 102-550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681-92), entitled "Lead Exposure Reduction."

Section 402 of TSCA authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges and other structures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404, a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996 (61 FR 45777) (FRL–5389–9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. Pursuant to section 404(h) of TSCA, EPA is to establish the Federal program in any State or Tribal Nation that does not have its own authorized program in place by August 31, 1998. States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete application. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed

requirements a State or Tribal program must meet in order to obtain EPA approval.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA approval, by submitting a letter signed by the Governor or Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized until such time as EPA disapproves the program application or withdraws the program authorization.

Illinois has provided a self-certification letter stating that its program meets the requirements for authorization of a State program under section 404 of TSCA and has requested interim approval of the compliance and enforcement program portion of the Illinois Lead Program. Therefore, pursuant to section 404, the program is deemed authorized as of the date of submission (i.e., April 16, 1999). If EPA finds that the program does not meet the requirements for interim authorization of a State program, EPA will disapprove the program application, issue a notice in the **Federal Register**, and establish a Federal program in Illinois.

Section 404(b) of TSCA provides that EPA may approve a program application only after providing notice and an opportunity for a public hearing on the application. Therefore, by this notice EPA is soliciting public comment on whether Illinois' application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application. If a hearing is requested and granted, EPA will issue a **Federal Register** notice announcing the date, time, and place of the hearing. EPA's final decision on the application will be published in the **Federal Register**.

II. State Program Description Summary

The following summary of Illinois' proposed program has been provided by the applicant.

The State of Illinois Department of Public Health (the Department) implements the Lead Poisoning Prevention Act (Act), 410 Illinois Consolidated Statutes 45/1-17, and the Lead Poisoning Prevention Code (Code), 77 Illinois Administrative Code (IAC) section 845, promulgated pursuant to the Act, in order to carry out lead abatement programs that are designed to diminish the incidence of lead intoxication. The primary goal of the Department's Lead Abatement Program is to protect the public's health, safety, and environment by identifying lead-bearing substances which may be the source of exposure of lead to children, and to assure that lead hazards are managed, mitigated, or abated through the administration and enforcement of the Act and the Code, originally passed in 1973 and 1976 respectively, were last amended in August 1998. The Act enabled the Department to require provisions for licensing individuals and firms engaged in lead abatement activities, approving training course providers, and establishing appropriate work practice standards in accordance with the Federal model State plan for lead.

Individuals seeking licensure by the State of Illinois in the lead abatement industry as a worker, contractor/supervisor, inspector, or risk assessor must first make application to the Department. The application requires proof that the individual has successfully completed an appropriate lead training course. The course (and the course provider) chosen by the applicant, must be one that is approved by the Department and provides training comparable to 40 CFR 745.225 as required by section 845.28 of the Code, 77 IAC section 845.28. All lead licenses expire annually. Application for renewal includes the successful completion of an approved refresher course that is specific to the lead abatement field of interest every 3 years. Individuals or firms can also apply for a lead abatement contractor's license. This requires proof that: the applicant holds a certificate of financial responsibility in the form of liability insurance, letter of credit, or a bond for at least $250,000 that specifically covers lead work; the applicant has written standard operating procedures which include medical monitoring and a respirator training program specified in the OSHA regulations (which are incorporated by reference in section 845.12 of the Code); the applicant provides a detailed description of all legal proceedings or claims concerning any lead mitigation activities filed against the applicant; and the applicant agrees to notify the Department before beginning any lead abatement project, as required by the Code. Although contractor applicants are not required to take a lead abatement course, they need to assure the Department that all lead abatement workers will have a valid Illinois lead worker license, and that at least one supervisor will have a valid Illinois contractor/supervisor license. The supervisor must oversee the project and be on site during the entire project. A contractor's license must be renewed annually. Reciprocity requests for any lead licenses from any State or Tribe may be submitted for review. If upon review of the applicant's application it is determined that the licensing State's lead program is at least as protective as the Illinois program, the Department will issue an appropriate license. Lists of all people conducting licensed lead abatement activities are maintained by the Department and are available to the public upon request.

Training course providers seeking approval from the State of Illinois for initial and refresher courses for lead worker, contractor/supervisor, inspector, and risk assessor disciplines must first make application to the Department. The application packet includes a checklist of materials to be submitted along with other requirements that must be satisfied before approval can be granted. All approvals are renewed annually. Audits of courses are completed by Department staff, and the training course provider is notified as to the results of the audit, the deficiencies observed, and whether or not the course was determined to be satisfactory or not satisfactory. Training courses found not satisfactory are issued a notice to correct the deficiencies together with a written explanation of the items that the Department expects the provider to correct before the next training course is scheduled. A list of approved training course providers is maintained by the Department and is available to the public. Illinois does not require a licensed project designer as yet. However, additional requirements are part of the supervisor training to prepare them for large-scale lead abatement projects as cited in 40 CFR 745.225(d)(4). The Department has statutory authority to adopt rules for lead-based paint activities in public and commercial buildings. Where EPA provides guidance under 40 CFR 745.230, the Department will establish rules which will govern such activities as necessary to maintain authorization.

Work practice standards are established in the Code and in the policies and procedures of the Department. The Department has incorporated, at section 845.12(a)(2) of the Code, the Department of Housing and Urban Development (HUD) Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (June 1995) to enhance the work and performance standards throughout the Code. All inspections and risk assessments are completed only by individuals holding an appropriate inspector or risk assessor license issued by the Department. Inspections and risk assessments are to be performed per the incorporated HUD guidelines. Lead abatement activities are performed only by individuals or firms who hold the appropriate license issued by the Department. Mitigation and abatement activities which involve the destruction or disturbance of any leaded surface is the responsibility of the licensed lead abatement contractor. The contractor has the responsibility to utilize documented methodologies and state of the art procedures that ensure that the work is performed effectively and in a manner that promotes occupant protection and worker safety.

Complaint investigations, inspections, course audits and enforcement activities are accomplished by the Department's staff located in the Central and Regional Offices and through county delegate agencies. Central Office staff provide for the licensing of people who conduct all lead-based paint activities in the State. One administrative assistant, one office administrator and three office associates conduct the licensing portion of the program with one office associate dedicated to the Illinois Third Party Examination process. The third party examination is administered by the Department's Training Manager. A lead program staff person conducts reviews of ongoing program matters and also serves as the Department's Radiation Safety Officer. A public service administrator began program manager duties August 1, 1998, and will be directly responsible for the day-to-day lead program activities as well as the revision of the Department's policies to maintain state of the art procedures. Eight regional staff conduct inspections on a daily basis as well as 90 licensed risk assessors who work within the lead program as the Department's delegate agents under contract to perform the necessary inspections and investigations in their county or municipality to determine the source of environmental lead hazards. Overall program direction is covered by a senior public service administrator in the central office. Funding is established through a mandate that provides a dedicated State fund for the lead program. Revenue from licensing and training course provider's fees are also directed to that fund. The Department's policy and procedure manual provides protocol to achieve all the necessary aspects of the Illinois Lead Poisoning Prevention Program. In it, details of activities to be implemented, standard enforcement procedures with examples of all required letters may be found. Enforcement is accomplished through administrative procedures which have been referenced in the Act under section 410 ILCS 45/13.1 and in the Code. Violations of the Act subject the violator to a Class A misdemeanor. Each day the violation occurs may subject the violator to a $1,000 fine, as well as incarceration in the county jail for 6 months.

The Department participated in Environmental Justice grants from EPA to provide education and information to people who would not receive information about the hazards of lead through normal media. Not-for-profit associations are provided grant dollars to seek out parents of children who are likely to be exposed to lead and may not be aware of lead hazards or what to do to prevent lead poisoning. Additionally, the Department or its agents provide consultative services and screen all appropriate citizens of Illinois for lead poisoning.

III. Issues Upon Which EPA Requests Public Comment

EPA requests comment on whether Illinois' application meets all statutory and regulatory requirements for EPA approval. EPA especially solicits comments on whether and how Illinois' environmental audit privilege statute, (415 Illinois Compiled Statutes 5/52.2), affects Illinois' ability to meet the pertinent requirements.

IV. Federal Overfiling

TSCA section 404(b), makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

V. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established under docket control number PB–402404–IL. Copies of this notice, the State of Illinois' authorization application, and all comments received on the application are available for inspection in the Region V office, from 8:30 a.m. to 5 p.m., Monday through Friday, excluding legal holidays. The docket is located at the Toxics Program Section, Environmental Protection Agency, Region V, 8th floor, 77 West Jackson Blvd., Chicago, IL.

Commenters are encouraged to structure their comments so as not to contain information for which Confidential Business Information (CBI) claims would be made. However, any information claimed as CBI must be marked "confidential," "CBI," or with some other appropriate designation, and a commenter submitting such information must also prepare a nonconfidential version (in duplicate) that can be placed in the public record. Any information so marked will be handled in accordance with the procedures contained in 40 CFR part 2. Comments and information not claimed as CBI at the time of submission will be placed in the public record. Electronic comments can be sent directly to EPA at: turpin.david@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number PB–402404–IL. Electronic comments on this document may be filed online at many Federal Depository Libraries. Information claimed as CBI should not be submitted electronically.

VI. Regulatory Assessment Requirements

EPA's actions on State or Tribal lead-based paint activities program applications are informal adjudications, not rules. Therefore, the requirements of the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*), the Congressional Review Act (5 U.S.C. 801 *et seq.*), Executive Order 12866 ("Regulatory Planning and Review," 58 FR 51735, October 4, 1993), and Executive Order 13045 ("Protection of Children from Environmental Health Risks and Safety Risks," 62 FR 1985, April 23, 1997), do not apply to this action. In addition, this action does not contain any Federal mandates, and therefore is not subject to the requirements of the Unfunded Mandates Reform Act (2 U.S.C. 1531-1538) or Executive Order 12875 ("Enhancing the Intergovernmental Partnership," 58 FR 58093, October 28, 1993). Finally, this action does not contain any information collection requirements and therefore does not require review or approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

A. Executive Order 12875

Under Executive Order 12875, entitled "Enhancing Intergovernmental Partnerships" (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or Tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must

provide to the Office of Management and Budget (OMB) a description of the extent of EPA's prior consultation with representatives of affected State, local, and Tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and Tribal governments to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's action does not create an unfunded Federal mandate on State, local, or Tribal governments. This action does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

B. Executive Order 13084

Under Executive Order 13084, entitled "Consultation and Coordination with Indian Tribal Governments" (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's action does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

Authority: 15 U.S.C. 2682, 2684.

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: July 13, 1999.

David A. Ullrich,

Acting Regional Administrator, Region V.

[FR Doc. 99–22748 Filed 8–31–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

August 25, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 1, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0009.

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License or Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License.

Form No.: FCC Form 316.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, state, local or tribal governments.

Number of Respondents: 2,700.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 2,700 hours.

Total Annual Cost: $1,594,000.

Needs and Uses: The FCC Form 316 is required when applying for authority for a voluntary/involuntary assignment of a broadcast license or construction permit or transfer of control of corporation holding broadcast license or construction permit.

With adoption of the Report and Order contained in MM Docket No. 94–150, 92–51 and 87–154 on August 5, 1999, the Commission has revised its broadcast ownership attribution rules. The attribution rules define what constitutes a "cognizable interest" for purposes of applying the ownership rules. In the Report and Order, the Commission adopted (1) an equity/debt plus attribution rule that would narrow, but not eliminate, the current exemptions from attribution for nonvoting stock and debt, as well as the single majority shareholder exemption; (2) attribute certain television local market agreements (LMA) and modify the radio LMA rules; (3) retain the 5% voting stock benchmark, but raise the passive investor voting stock benchmark to 20%; (4) eliminate the cross-interest policy; and (5) attribute limited liability companies and other new business forms under the same attribution rules that apply to limited partnerships.

The FCC Form 316 has been revised to reflect the rules adopted in the Report and Order. There will be an increase in burden on respondents to provide the new information.

The data is used by FCC staff to determine if the applicant is qualified to become a Commission licensee or permittee of a commercial or noncommercial broadcast station and to carry out the provisions of Section 310(d) of the Communications Act of 1934, as amended.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–22724 Filed 8–31–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 94–102; DA 99–1627]

Request for Comment on Wireless E911 Report

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document solicits comment on a report filed by the Association of Public-Safety Communications Officials International, Inc., Cellular Telecommunications Industry Association, National Association of State Nine-One-One Administrators, and National Emergency Number Association, regarding issues, particularly issues pertaining to cost recovery mechanisms and choice of Phase I transmission technologies, that may be delaying implementation of Phase I of the Commission's program to improve wireless E911 service. This action is taken to ensure that all Commission decisions regarding wireless E911 are based on the most complete and accurate information possible, and to ensure that optimum wireless E911 service is achieved as soon as possible.

DATES: Comments are due on or before September 14, 1999.

ADDRESSES: Office of the Secretary, Federal Communications Commission, Washington, DC 20554

FOR FURTHER INFORMATION CONTACT: Barbara Reideler, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Public Notice in CC Docket 94–102, DA 99–1627, Released August 16, 1999. The complete text of the Public Notice is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW, Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), (202) 857–3800, CY–B400, 445 12th Street, SW, Washington, DC.

Filing Schedule and Procedural Matters

1. Comments must be filed by September 14, 1999. Parties should reference CC Docket No. 94–102 in their comments. Parties may obtain the report and the comments in this Public Notice at the FCC website, <http://www.fcc.gov/e-file/ecfs.html>. The report and comments are available for public inspection and copying in the Reference Center, 445 12th St., SW, Washington, DC 20554. Copies of the report and comments also are available from ITS, at (202) 857–3800, CY–B400, 445 12th Street, SW, Washington, DC.

2. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, including "get form <your e-mail address>" in the body of the message. A sample form and directions will be sent in reply.

3. Interested parties who choose to file by paper must file an original and four copies of their comments with the Office of the Secretary, Federal Communications Commission, 445 Twelfth St., SW, Room TW–A325, Washington, DC 20554. In addition, parties should send two copies to Barbara Reideler, Policy Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 Twelfth St., SW, Washington, DC 20554, and one copy to 900, 445 12th Street, SW, Washington, DC 20554.

4. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules. 47 CFR 1.1200(a), and 1.1206. Persons making *ex parte* presentations on an oral basis are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a two-sentence description of the views and arguments presented is generally required. See 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's Rules, 47 CFR 1.1206(b).

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–22723 Filed 8–31–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2357]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

August 26, 1999.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, S.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by September 16, 1999. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them (PR Docket No. 92–235).

and

Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Radio Services.

Number of Petitions Filed: 7

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–22726 Filed 8–31–99; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the

general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled "Customer Assistance."

DATES: Comments must be submitted on or before November 1, 1999.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room 4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429. All comments should refer to "Customer Assistance." Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to add the following collection of information:

Title: Customer Assistance.

OMB Number: new collection.

Frequency of Response: Occasional.

Affected Public: Customers of financial institutions who may have inquiries or complaints.

Estimated Number of Respondents: 5,000.

Estimated Time per Response: 30 minutes.

Estimated Total Annual Burden: 2,500 hours.

General Description of Collection: This collection permits the FDIC to collect information from customers of financial institutions who have inquiries or complaints about service. Customers may document their complaints or inquiries to the FDIC using a letter or on an optional form.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, this 25th day of August, 1999.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–22691 Filed 8–31–99; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency is submitting a request for review and approval of an expired information collection. The request is submitted under the emergency processing procedures in Office of Management and Budget (OMB) regulation 5 CFR 1320.13. FEMA is requesting that this information collection be approved by August 25, 1999, for use through February 2000.

FEMA plans to follow this emergency request with a request for a 3-year approval. The request will be processed under OMB's normal clearance procedures in accordance with the provisions of OMB regulation 5 CFR 1320.10. To help us with the timely processing of the emergency and normal clearance submissions to OMB, FEMA invites the general public to comment on the proposed collection of information. This notice and request for comments is in accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). It also seeks comments concerning the Federal Insurance Administration's Cover America II Advertising campaign to conduct market research.

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) was created by Congress in 1968 and is administered by the Federal Emergency Management Agency (FEMA). The Federal Insurance Administration (FIA) is specifically responsible for, among other things, the marketing of the NFIP. In response to the FEMA Director's goal that the FIA increase the number of people covered with flood insurance by 20 percent in two years, the FIA initiated "Cover America" a major, multi-year, multi-million dollar marketing and advertising campaign designed to increase the number of homes and businesses covered by flood insurance. The NFIP does not actually "sell" flood insurance to consumers. Under an arrangement with the FIA, private insurance companies and their agents sell and service the vast majority of the NFIP policies. Agents write the remainder directly with the Government through a servicing agent.

Collection of Information

Title. The Federal Emergency Management Agency/Federal Insurance Administration's Cover America II Project.

Type of Information Collection. Reinstatement with changes.

OMB Number: 3067–0267.

Form Numbers. Not Applicable.

Abstract. FEMA/FIA will conduct research with consumers, business-owners and insurance agents to plan, implement and evaluate a nationwide campaign to increase awareness of the NFIP and flood insurance, improve attitudes about the NFIP and flood insurance, and increase flood insurance sales.

Affected Public: Individuals or households, Business or other for-profit and not for-profit institutions.

ESTIMATED TOTAL ANNUAL BURDEN HOURS.

FY 2000	Number of respondents	Response frequency	Burden per respondent	Total burden hours
Tracking Study (twice a year)	1,200 consumers 300 agents (3,000 total)	1	25 minutes	1000 consumers 250 agents.
Consumer Satisfaction Study (once a year)	900 consumers 300 agents (1,200 total)	1	20 minutes	300 consumers 100 agents.
Stage I (Focus Groups) Advertising Development among Consumers.	130	1	2 hours	260 consumers.
Stage II Evaluating Agent Advertising	200	1	15 minutes	50 Agents.
Lender Survey (twice a year)	300 (600 total)	1	20 minutes	200 lenders.
Radio Test (four markets)	200 (800 total)	1	5 minutes	68 consumers.
Satisfaction Study with Co-op Insurance Agents.	700	1	10 minutes	117 agents.
Total	6,630	1	N/A	2,345 (1,628 Consumers, 517 Agents, 200 Lenders)

Estimated Cost. The total estimated costs to the Government would be approximately $481,150 per year with an expected 5–10% increase annually.

Comments

Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Submit comments to OMB within 30 days of the date of this notice. FEMA will, however, continue to accept comments for 60 days from the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625, FAX number (202) 646–3524, email: muriel.anderson@fema.gov.

FOR FURTHER INFORMATION CONTACT: Contact Carolyn D. Goss, Management Analyst, Federal Insurance Administration, 202–646–3468 for additional information. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Dated: August 17, 1999.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–22511 Filed 8–31–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

National Flood Insurance Program (NFIP); Interim Procedure for Letter of Map Revision Based on Fill Requests

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of interim procedures.

SUMMARY: We, FEMA, give notice of interim procedures for issuing Letters of Map Revision Based on Fill (also referred to as LOMR–Fs). We use criteria established in our regulations to determine whether we can issue a LOMR-F to remove unimproved land or land with structures from the Special Flood Hazard Area (SFHA) by raising ground elevations using engineered earthen fill.

EFFECTIVE DATE: September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Technical Services Division, Mitigation Directorate, at (202) 646–3461, or (email) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION:

Background

Congress created the National Flood Insurance Program (NFIP) in 1968 to provide federally supported flood insurance coverage, which generally had not been available through private insurance companies. The program is based on an agreement between the Federal Government and each flood-prone community that chooses to participate in the program. FEMA makes flood insurance available to property owners within a community provided that the community adopts and enforces floodplain management regulations that meet or exceed the minimum requirements of the NFIP set forth in Part 60 of the NFIP Floodplain Management Regulations (44 CFR Part 60).

Identifying and mapping flood hazards. FEMA identifies and maps flood hazard areas in each community by conducting flood hazard studies and publishing Flood Insurance Rate Maps (FIRMs). These flood hazard areas, referred to as Special Flood Hazard Areas (SFHAs), are based on a flood that would have a 1-percent chance of being equaled or exceeded in any given year (the 100-year flood or base flood). The 1-percent annual chance flood, shown on the FIRMs as Zone A or Zone V, is determined from information obtained through consultation with the community, floodplain topographic surveys, and detailed hydrologic and hydraulic analyses.

Floodplain management requirements. The NFIP minimum building and development regulations require that new or substantially improved structures in A Zones must have their lowest floors (including

basement) elevated to or above the Base Flood Elevation (BFE) (the elevation of the 1-percent annual chance flood). Non-residential structures in A Zones can either be dry floodproofed or elevated to the BFE. In V Zones, the bottom of the lowest horizontal structural member of the lowest floor of all new or substantially improved structures must be elevated to or above the BFE. The NFIP floodplain management requirements at 44 CFR 60.3 are designed to protect structures constructed in floodplains from flood damages and are the basis for actuarial flood insurance rating. For floodplain management and for flood insurance coverage purposes we define the term "structure" in 44 CFR 59.1.

Flood insurance. The National Flood Insurance Act of 1968, as amended requires that FEMA charge full actuarial rates reflecting the complete flood risk to structures built or substantially improved on or after the effective date of the initial FIRM for the community or after December 31, 1974, whichever is later, so that the risks associated with structures in flood prone areas are borne by those located in such areas and not by the taxpayers at large. These structures are referred to as Post-FIRM. The NFIP flood insurance rates for new construction are based on the degree of the flood risk reflected by the flood risk zone on the FIRM. Flood insurance rates also take into account a number of other factors including the elevation of the lowest floor above or below the BFE, type of structure, and the existence of a basement or an enclosure.

Mandatory purchase of insurance. The Flood Disaster Protection Act of 1973 and the National Flood Insurance Reform Act of 1994 mandate the purchase of flood insurance as a condition of Federal or federally-related financial assistance for acquisition or construction of structures in SFHAs of any community. The Acts prohibit Federal agency lenders, such as the Small Business Administration, United States Department of Agriculture's Rural Housing Service, and Government-Sponsored Enterprises for Housing (Freddie Mac and Fannie Mae) from making, increasing, guaranteeing, or purchasing a loan secured by improved real estate or mobile home(s) in an SFHA, unless flood insurance has been purchased and maintained during the term of the loan. The Acts also prohibit federally-regulated lenders from making, increasing, extending, or renewing any loan secured by improved real estate located in the SFHA in a participating community unless the secured property and any personal property securing the loan is covered by flood insurance. The prohibition of financial assistance also applies to non-participating communities.

Need for Interim Procedures

We revise NFIP flood maps for a number of reasons, such as the availability of improved techniques for assessing the flood risk, changes in the physical condition of the floodplain or watershed, or as additional data become available to improve the identification of flood hazards. The requirements for revising the FIRMs are established in the NFIP Regulations at 44 CFR Part 65, Identification and Mapping of Special Hazard Areas. FEMA can also revise a FIRM when property owners, whose land is in an SFHA and the elevation is below the BFE, request a map change as a result of grading and filling their site to raise the level of the land above the 1-percent annual chance flood level. The criteria for determining whether to remove unimproved land or land with structures from the SFHA by raising ground elevations using engineered earthen fill are established in § 65.5. If the criteria under § 65.5 are met, we will issue a Letter of Map Revision Based on Fill (also referred to as a LOMR–F).

Specifically, unimproved land (land without a structure) can be removed from the SFHA under 44 CFR 65.5(a)(3) if the ground elevations of the entire legally defined parcel of land are at or above the BFE. Land that is removed under paragraph 65.5(a)(3) is no longer subject to the NFIP floodplain management requirements at 44 CFR 60.3, which includes the requirement that the lowest floor (including basement) be elevated to or above the BFE. In addition, future structures placed on this unimproved land would not be subject to the mandatory flood insurance purchase requirement of the NFIP.

If a structure is involved, we will determine whether a structure is to be removed from the SFHA under 44 CFR 65.5(a)(4) by comparing the elevation of the lowest floor (including basement) and the elevation of the lowest adjacent grade with the BFE. If the entire structure and the lowest adjacent grade are at or above the BFE, the structure may be removed from the SFHA. Once we issue a LOMR–F, the NFIP floodplain management requirements at 44 CFR 60.3 and the mandatory flood insurance purchase requirement of the NFIP no longer apply. However, if the structure involved does not meet the criteria that the entire structure and the lowest adjacent grade are at or above the BFE, the structure is not removed from the SFHA and the structure is still subject to the NFIP floodplain management requirements and the mandatory flood insurance purchase requirement.

When requesting a LOMR–F, property owners are required to submit adequate supporting data according to the criteria established in § 65.5, such as a legal description of the property and information regarding the placement of fill. In addition, a community must be made aware of a request for a LOMR–F because changes in land elevations may impact other property owners. Community acknowledgement of a request for a LOMR–F confirms that the community has reviewed the LOMR–F request and found that it meets all of the community's applicable floodplain management regulations, including the requirement that no fill be placed in the regulatory floodway.

There has been considerable confusion over the provision under which a LOMR–F request will be processed [paragraph 65.5(a)(3) or paragraph 65.5(a)(4)]. At issue is what constitutes "if a structure is involved" that subjects the LOMR–F request to the elevation requirements of paragraph 65.5(a)(4). We are providing these interim procedures to clarify when we will process a LOMR–F request under paragraph 65.5(a)(3) and when we will process a LOMR–F request under paragraph 65.5(a)(4).

We also recognize the possible inconsistent treatment of structures for LOMR–F requests processed under 65.5(a)(3) or 65.5(a)(4). A structure that is constructed on unimproved land that has been removed from the SFHA under of paragraph 65(a)(3) is not required to meet the NFIP floodplain management design and construction requirements. Whereas, a structure that falls under paragraph 65.5(a)(4) must meet certain requirements to ensure that the lowest floor (including basement) is elevated to or above the BFE before the land and structure are removed from the SFHA.

We are concerned that structures built on land that was previously removed from the SFHA under § 65.5(a)(3) may still be subject to flood damages during the base flood and higher magnitude floods. This risk will vary depending on whether or not the structure has a basement below the BFE, the soil conditions at the site, duration of flooding, and the location of the structure relative to the edge of the SFHA. Therefore, we strongly encourage communities to review permit applications for structures built after a LOMR–F is issued under paragraph 65.5(a)(3) to ensure structures are reasonably protected from flood damages. When a community joins the NFIP, it must initially adopt a resolution or ordinance that expresses a "commitment to recognize and evaluate flood hazards in all official actions and to take such other official action as reasonably necessary to carry out the objectives of the program" [44 CFR 59.22(a)(8)]. This is in addition to the general requirement that the community "take into account flood hazards to the extent that they are known in all official actions relating to land management and use" [44 CFR 60.1(c)]. One way communities can ensure that structures are reasonably protected is to require that the lowest floor (including basement) of the structure be elevated to or above the BFE designated for the site prior to issuance of the LOMR–F. Another way communities can ensure that structures are reasonably safe from flooding is to require that saturated soil conditions during a base flood event do not adversely impact structures.

Interim Procedures

We will process all LOMR–F requests received after the date of this notice as follows (these procedures will apply to single and multi-lot LOMR–F requests, which may involve one structure or multiple structures):

- Paragraph 65.5(a)(3) will apply to requests to remove unimproved land elevated by placement of engineered fill if a structure is not involved at the time of the application for a LOMR–F.
- Paragraph 65.5(a)(4) will apply to requests to remove land elevated by placement of engineered fill if a structure is involved at the site at the time of the application for a LOMR–F.
- We base a determination of whether a "structure is involved" on the date the building or other floodplain development permit was issued. As part of the community acknowledgement of the LOMR–F request on MT–1 Form 4, the community must indicate (in the comments section) whether a permit has been issued, or the requestor must indicate whether a permit has been issued. If the community has issued a permit, we will consider that a structure is involved and process the LOMR–F request under Paragraph 65.5(a)(4).
- We strongly encourage community officials to review permit applications for structures built after a LOMR–F is issued under paragraph 65.5(a)(3) to minimize flood damages. One way communities can ensure that structures are adequately protected is to require that the lowest floor (including basement) of the structure be elevated to or above the BFE designated for the site prior to issuance of the LOMR–F.
- We will not actively review previously issued determinations under § 65.5 for conformity with these interim procedures. We will, however, review previously denied applications for a LOMR–F processed under paragraph 65.5(a)(4) upon written request. Such requests must include documentation on the date of "start of construction" for any structures located on the legally defined parcel that was the subject of the previously denied application for a LOMR–F.
- New LOMR–F requests and requests for LOMR–F redeterminations will be subject to the current fee schedule established in 44 CFR Part 72.

Future Actions by FEMA

We intend to address the issue of inconsistent treatment of structures under the two provisions for requesting a LOMR–F to remove unimproved land and land with structures from the SFHA. Our objectives are to ensure that flood damages are minimized and that the SFHA is identified in a consistent manner.

Dated: August 20, 1999.

Michael Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–22642 Filed 8–31–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202–011528–013.

Title: Japan/United States Eastbound Conference.

Parties: A.P. Moller-Maersk Line, American President Lines, Ltd., Hapag-Lloyd Container Line GmbH, Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., Nippon Yusen Kaisha, Orient Overseas Container Line, Inc., P&O Nedlloyd B.V., P&O Nedlloyd Limited, Sea-Land Service, Inc., Wallenius Wilhelmsen Lines AS.

Synopsis: The proposed modification would authorize the conference to reduce or eliminate the amount of funds to be maintained by each member to guarantee faithful performance during the conference suspension period.

Agreement No.: 301–200866–001.

Title: Broward-King Ocean Marine Terminal Agreement.

Parties: Broward County, Bound of County Commissioners, King Ocean Service de Venezuela, S.A.

Synopsis: The proposed amendment extends the term of the agreement through June 14, 2002.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–22800 Filed 8–31–99; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Future Enterprises, Inc. d/b/a Langham Transport Services, 7136 Zionsville Road, Indianapolis, IN 46268. Officers: John Willman, Director (Qualifying Individual), Cathy Langham, President

Vann F. Keefe, 1510 Talleyrand Avenue, Jacksonville, FL 32206, Sole Proprietor

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants:

Diane Eicher, 12121 Aneta Street, Culver City, CA 90230, Sole Proprietor

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–22799 Filed 8–31–99; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 15, 1999.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Craig G. Brewster, Butte, Nebraska; to acquire voting shares of Butte State Company, Butte, Nebraska, and thereby indirectly acquire voting shares of Butte State Bank, Butte, Nebraska.

Board of Governors of the Federal Reserve System, August 26, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–22667 Filed 8–31–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 24, 1999.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Provident Financial Group, Inc., Cincinnati, Ohio; to acquire OHSL Financial Corp., Cincinnati, Ohio, and thereby indirectly acquire Oak Hill Savings and Loan Company, Cincinnati, Ohio, and thereby engage in permissible savings association activities, pursuant to § 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, August 26, 1999.

Robert dev. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–22668 Filed 8–31–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 16, 1999.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Wells Fargo & Company, San Francisco, California; Norwest Mortgage, Inc., Des Moines, Iowa; and Southwest Partners, Inc., Des Moines, Iowa; to engage *de novo* through a joint venture, 1st Com Mortgage, Palm Springs, California, in mortgage lending, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, August 27, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–22718 Filed 8–31–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION

ANS No.	Acquiring	Acquired	Entities
		04/26/1999	
90760	B.F. Goodrich Company, (The)	Coltec Industries Inc	Coltec Industries Inc.
92111	Northside Operating Co	Doctors Community Healthcare Corporation.	Doctors Community Healthcare Corporation.
92112	ONEOK, Inc	Koch Industries, Inc	Koch Oklahoma Midstream Processing Company, LLC. Koch Oklahoma Midstream Services Company. Koch Oklahoma Midstream Transmission Company, LLC.
92163	Utilicorp United, Inc	Western Gas Resources, Inc	Western Gas Resources Storage, Inc.
92173	Steelcase Inc	Lee Pierce	Lee Pierce Holdings, Inc.
92176	GS Capital Partners II, L.P	H. Peter Claussen and Linda C. Claussen.	Gulf & Ohio Railways, Inc.
92199	Kellstrom Industries, Inc	R. Dean Stickler	The Seven Islands Foundation, Inc.
92200	Kellstrom Industries, Inc	Donald Marshall	Certified Aircraft parts, Inc.
92221	BellSouth Corporation	Champion International Corporation	Certified Aircraft parts, Inc.
92247	J.W. Childs Equity Partners, L.P	Quality Future, Inc	Champion International Corporation.
92248	Quality Future, Inc	J.W. Childs Equity Partners, L.P	Quality Stores, Inc.
92273	Quilvest American Equity Ltd	ATSCO Products, Inc	CT Holding, Inc.
92300	Weatherford International, Inc	Clearwater Holdings, Inc	ATSCO Products, Inc.
92301	Interim Services Inc	Norrell Corporation	ECD/Northwest, Inc.
92302	Guy W. Millner	Interim Services Inc	Norrell Corporation.
92319	The Hain Food Groups, Inc	Frontenac VI Limited Partnership	Interim Services, Inc.
92323	The Atlantic Foundation	Brio Technology, Inc	Natural Nutrition Group, Inc.
92324	Alistar Pilot Fund, LLC	William P. Johnson	Brio Technology, Inc.
92326	mobile mini, Inc	The 1997 Jansons Trust	Goshen Rubber Companies, Inc.
92330	American Agricultural Insurance	Nationwide Mutual Insurance Company.	National Security Containers, L.L.C. Nationwide Mutual Insurance Company.
92332	Waccamaw Corporation	HomePlace of America, Inc. (debtor in possession).	HomePlace of America, Inc. (debtor in possession).
92334	EFTC Corporation	Honeywell Inc	Honeywell, Inc.
92335	James M. Galef	DLJ Merchant Banking Partner, II,L.P	Insilco Corporation, Romac Metals Division.
92338	Robert M. Beavers, Jr	Campbell Soup Company	Fresh Start Bakeries, Inc.
92339	The Times Mirror Company	Geoffrey A. Robinson	New Mass, Media, Inc.
92340	The Times Mirror Company	G. Christine Austin	New Mass, Media, Inc.
92341	Voting Trust dated December 4, 1968 of Hallmark Cards.	The Picture People, Inc	The Picture People, Inc.
92347	Gerald W. Schwartz	American Buildings Company	American Buildings Company.
92351	Fremont Partners, L.P	Juno Lighting, Inc	Juno Lighting, Inc.
92353	Philadelphia Consolidated Holding Corp.	The Jerger Company, Inc	The Jerger Company, Inc.
92355	U.S. Concrete, Inc	Central Concrete Supply Co., Inc	Central Concrete Supply Co., Inc.
92356	Fluoroware, Inc. Employee Stock Ownership Plan.	Estate of Wayne C. Bongard	Empak, Inc.
92357	Estate of Wayne C. Bongard	Fluoroware, Inc. Employee Stock Ownership Plan.	Fluoroware, Inc. Employee Stock Ownership Plan.
92361	Roger S. Penske	United Auto Group, Inc	United Auto Group, Inc.
92363	Barry Diller	The Seagram Company Ltd	OFI Holdings, Inc. PolyGram Holdings, Inc.
92364	Great Lakes Chemical Corporation	Monsanto Company	NSC Technologies Company, LLC.
92370	B III Capital Partners, L.P	Waste Systems International, Inc	Waste Systems International, Inc.
92375	First American Financial Corporation	Donald A. Foss	Teletrack, Inc.
		04/27/1999	
92298	Banque Nationale de Paris S.A	Societe Generale S.A	Societe Generale S.A.
92299	Banque Nationale de Paris S.A	Paribas S.A	Paribas S.A.
92374	Canandaigua Brands, Inc	Bernard Arnault	Moet Hennessy, Inc. Simi Winery, Inc.
92376	J. Norman Estes	John L. Black, Jr	The Waverley Group, Inc.
92379	Samir A. Rehani	LeRoy Luther	Triangle Tool Corporation.
92384	Cisco Systems, Inc	Fibex Systems	Fibex Systems.
92389	BankBoston Corporation	American Business Products, Inc	BookCrafters, USA, Inc.
92391	Meiji-Seika Kaisha, Ltd	Howard Perley and Rona Perley Trustees.	Laguna Cookie Company, Inc.
92393	CoreComm Limited	MegINet Inc	MegINet Inc.
92395	Golder, Thoma, Cressey, Rauner Fund V, LP.	Gary W. Sneed	CNP Solutions, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
92396	Young & Rubicam Inc	KnowledgeBase Marketing, Inc	KnowledgeBase Marketing, Inc.
92400	Warburg, Pincus Equity Partners, L.P	Judith C. Inglis	American Show Management, Inc.
92401	Warburg, Pincus Equity Partners, L.P	John R. Inglis	American Show Management, Inc.
92404	Group Maintenance America Corp	C.A. Solinger	Cardinal Contracting Corporation.
92416	Lennox International Inc	Bernard J. Wallis	Livernois Engineering Holding Company.
92428	Health Management Associates, Inc	Community Hospital of Lancaster Foundation.	Community Hospital of Lancaster.
	04/28/1999		
92304	MAN Aktiengesellschaft	Mannesmann AG	Mannesmann Demag Corporation.
92305	Siemag Weiss Stiftung & Co. KG	Mannesmann AG	Mannesmann Demag Corporation.
92321	Clear Channel Communications, Inc	Alvis E. Owens, Jr	Owens Broadcasting Co., L.L.C. OwensMAC Radio, L.L.C.
92322	Clear Channel Communications, Inc	MAC America Communications, Inc	OwensMAC Radio, L.L.C.
92377	Omnicom Group Inc	Jordan Zimmerman	Zimmerman & Partners Advertising, Inc.
92381	Volex Group p.l.c	Belden Inc	Belden Wire & Cable Company.
92390	Solutia Inc	Akzo Nobel NV	CPFilms, Inc.
92397	Ion Beam Applications S.A	Griffith Laboratories, Inc	Griffith Micro Science.
92403	Houghton Mifflin Company	G. Warren Schloat, III	Sunburst Communications, Inc.
92406	Brentwood Associates Buyout Fund II, L.P.	CNF Transportation Inc	VantageParts.
92423	Cisco Systems, Inc	Sentient Networks, Inc	Sentient Networks, Inc.
92430	Jackson Products, Inc	Morton International, Inc	Morton International, Inc.
	04/29/1999		
92179	John J. Rigas	Frontier Vision Partners, L.P	Frontier Vision Partners, L.P.
92234	HarbourVest Partners V–Direct Fund, L.P.	C. Philip Rainwater	Benchmark Media, Inc.
92236	Alta Communications VII, L.P	C. Philip Rainwater	Benchmark Media, Inc.
92242	University Hospitals Health System, Inc.	Columbia/HCA Healthcare Corporation	Sisters of Charity/St. Augustine & Columbia/HCA Healthcare.
92243	Sisters of Charity of St. Augustine	Columbia/HCA Healthcare Corporation	Sisters of Charity/St. Augustine & Columbia/HCA Healthcare.
92285	John J. Rigas	Entergy Corporation	Entergy Hyperion Telecommunications of Arkansas, LLC. Entergy Hyperion Telecommunciations of Louisiana, LLC. Entergy Hyperion Telecommunications of Louisiana, LLC.
92286	John J. Rigas	John J. Rigas	Entergy Hyperion Telecommunications of Arkansas, LLC. Entergy Hyperion Telecommunications of Louisiana, LLC. Entergy Hyperion Telecommunications of Mississippi, LLC.
92336	Graham Spencer	AT&T Corp	At Home Corporation.
	04/30/1999		
92043	RWE AG	Eagle Pacific Industries, Inc	Eagle Pacific Industries, Inc.
92251	United Surgical Partners International, Inc.	Columbia/HCA Healthcare Corporation	Texas Outpatient Surgical Center, Inc.
92279	Fiskars Corporation	Fineter S.A	Syroco, Inc.
92337	George Bell	AT&T Corp	At Home Corporation.
92352	MagneTek, Inc	Richard L. Pratt	Electric Motor Systems, Inc. Electromotive Systems, Inc. EMS/Rose Automation Engineering, Inc.
92378	EMCOR Group, Inc	Energy Systems Industries, Inc	Energy Systems Industries, Inc.
92392	Acosta-PMI, Inc	Kelley-Clarke, Inc	Kelley-Clarke, Inc.
92415	New England Electric System	Eastern Utilities Associates	Eastern Utilities Associates.
92432	Fortis (B)	American Bankers Insurance Group, Inc.	American Bankers Insurance Group, Inc.
92439	Tekelec	Leslie K. Wagner and Harvey Wagner (spouses).	IEX Corporation.
92442	Cypress Merchant Banking Partners L.P.	Harvey Ball	Liberty Electrical Supply, Co., Inc.
92445	Barry Diller	Robert Diener	TMF, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
92446	Barry Diller	David Litman	TMF, Inc.
92450	Pan American Hospital Corporation	United HealthCare Corporation	CAC Medical Center, Inc. United HealthCare Services, Inc.
92451	Welsh, Carson, Anderson & Stowe VIII, L.P.	Colonial Acquisition Corp	Colonial Acquisition Corp.
92453	General Electric Company	Philip A. Belyew	Transit Group, Inc.
92460	Health Care Capital Partners, L.P	Colonial Acquisition Corp	Colonial Acquisition Corp.
92471	Quanta Services, Inc	Harold L. Chapman, Jr	H. L. Chapman Leasing Co. H. L. Chapman Pipeline Construction, Inc. Sullivan Welding, Inc.
92473	Harold L. Chapman, Jr	Quanta Services, Inc	Quanta Services, Inc.
	05/04/1999		
92435	PepsiCo, Inc	The Pepsi Bottling Group, Inc	Pepsi-Cola Metropolitan Bottling Company, Inc.
92436	The Pepsi Bottling Group, Inc	PepsiCo, Inc	Bottling Group, LLC.
92448	Inverness/ Phoenix Partners LP	Trico Marine Services, Inc	Trico Marine Services, Inc.
	05/05/1999		
92213	Triumph Group, Inc	Leona M. Scruggs	Ralee Engineering Company.
92284	Omnicare, Inc	Forrest L. Preston	Life Care Pharmacy Services, Inc.
92402	SierraPine Limited	Weyerhaeuser Company	Weyerhaeuser Company.
92418	Anglo American Corporation of South Africa Ltd.	Minorco S.A	Minorco S.A.
92422	Bell Atlantic Corporation	Bell Atlantic Corporation	Hudson Valley RSA Cellular Partnership.
92425	FirstEnergy Corp	GPU, Inc	Pennsylvania Electric Company.
92426	Quanta Services, Inc	Stephen Bauchman	Bonneville Construction Co., Incorporated.
92427	Niagara Corporation	Glynwed International plc	Glynwed Steels Limited.
92429	NCO Group, Inc	H.I.G. Investment Group, L.P	DCI Holding, Inc.
92431	Cablevision Systems Corporation	AT&T Corp	At Home Corporation.
92443	GTCR Fund VI, L.P	National City Corporation	National Processing Company. NPC Check Services, Inc.
92452	Welsh, Carson, Anderson & Stowe VIII, L.P.	Concentra Managed Care, Inc	Concentra Managed Care, Inc.
92456	TeleCorp PCS, Inc	AT&T Corp	AT&T Wireless PCS Inc.
92462	Doug Greene	Penton Media, Inc	Penton Media, Inc.
92463	Penton Media, Inc	Doug Greene	New Hope Communications, Inc.
	05/07/1999		
91027	Fox Paine Capital Fund, L.P	ATU Communications, Inc	ATU Communications, Inc.
92291	BEC Energy	Commonwealth Energy System	Commonwealth Energy System.
92292	Commonwealth Energy System	BEC Energy	BEC Energy.
92394	Cadbury Schweppes plc	The Procter & Gamble Company	Hawaiian Punch Assets.
92417	GS Capital Partners II, L.P	Niagara Mohawk Holdings, Inc	Niagara Mohawk Power Corporation.
92440	PIA Merchandising Services, Inc	Robert G. Brown	SPAR Acquisition, Inc.
92447	Professionals Group, Inc	Professionals Group, Inc	MEEMIC Holdings, Inc.
92458	AmericaWest Holdings Corporation	Candant Corporation	National Leisure Group, Inc.
92467	OCM Fund II	Aureal Semiconductor Inc	Aureal Semiconductor Inc.
92470	Glencore Holding AG	Columbia Falls Aluminum Company	Columbia Falls Aluminum Company.
92472	Franco Manufacturing Co. Inc	Sara Lee Corporation	Sara Lee Corporation.
92474	Wand Equity Portfolio II L.P	Foster & Gallagher, Inc	The Popcorn Factory, Inc.
92475	D & K Healthcare Resources, Inc	Harvey C. Jewett, IV	Jewett Drug Co., Inc.
92476	Time Warner Inc	Barry Silverstein	MetroComm AxS, L.P.
92477	Newbridge Networks Corporation	TeleHub Communications Corporation	TERAbridge Technologies Corporation.
92480	Harte-Hanks, Inc	Kenneth J. Boone	Direct Marketing Associates, Inc.
92481	General Electric Company	H.I.G. Investment Group, L.P	H.I.G. Vinyl, Inc.
92484	Charles H. Bundrant	Nichirei Corporation	Nichirei Foods America, Inc.
92485	Science Applications International Corporation.	Broadway & Seymour, Inc	Broadway & Seymour, Inc.
92487	SOFTBANK Corp	E-Loan, Inc	E-Loan, Inc.
92489	WICOR, Inc	Herbert Lipner	Omni Corporation.
92490	Toymax International, Inc	Charles D. Burkett, Jr. and Roberta M. Burkett.	Monogram International, Inc. Monogram Products (HK) Limited.
92491	True North Communications Inc	Robert C. and Jo Anne Hacker	The Hacker Group, Ltd.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
92495	Raymond James Financial, Inc	Bank One Corporation	Roney & Co., L.L.C.
92503	Group 1 Automotive, Inc	Gene Messer Ford of Amarillo, Inc	Gene Messer Ford of Amarillo, Inc.
92504	Group 1 Automotive, Inc	Gene Messer Ford, Inc	Messer Lubbock Dealership.
92506	Paul G. Allen	StadiaNet Sports, Inc	StadiaNet Sports, Inc.
92513	MedQuist, Inc	Harris Corporation	Lanier Professional Services, Inc.
92519	Plexus Corp	SeaMED Corporation	SeaMED Corporation.
92521	Amazon.com, Inc	e-Miche Incorporated	e-Miche Incorporated.
92522	President and Fellow of Harvard College.	The J.H. Heafner Company, Inc	The J.H. Heafner Company, Inc.
92523	Christopher Goldsbury, Jr	Wal-Mart Stores, Inc	McLane Foods, Inc.
92525	Ronald W. Burkle	Alliance Entertainment Corp	Alliance Entertainment Corp.
92528	Becton, Dickinson and Company	Kenneth S. Fong	Clontech Laboratories, Inc.
92529	Kenneth S. Fong	Becton, Dickinson and Company	Becton, Dickinson and Company.
92530	Fiserv, Inc	JWGenesis Financial Corp	JWGenesis Cleaning Corp.
92537	Group 1 Automotive, Inc	Robert C. Sansing	Avalon Nissan, Inc. Heritage Advertising, Inc. Sandy Sansing Chevrolet, Inc. Sandy Sansing Imports, Inc. Sandy Sansing Nissan, Inc. Southern Chevrolet-Olds-Geo, Inc.
92539	J. Baker, Inc	Edison Brothers Stores, Inc. (debtor-in-possession).	Edison Brothers Stores, Inc.
92543	E. Thomas Martin	DSI Toys, Inc	DSI Toys, Inc.
92549	Temple-Inland Inc	Fidelity Funding Financial Group, Inc	Fidelity Funding Acceptance. Fidelity Funding, Inc., Fidelity Funding of California, Inc.
92567	Windward Capital Partners II, L.P	Anacomp, Inc	Anacomp, Inc./Anacomp Limited.
92571	Stonington Capital Appreciation 1994 Fund, L.P.	Pasquale J. Santangelo	Lincoln Technical Institute Inc.
92576	Future Publishing Holdings Limited	Chris Anderson	Imagine Media, Inc.
92585	Credit Suisse Group	Arch Communications Group, Inc	Arch Communicatoins Group, Inc.
92588	Citigroup Inc	CORT Business Services Corporation	CORT Business Services Corporation.
		05/11/1999	
92420	Minorco S.A	Anglo American Corporation of South Africa Ltd.	Anglo American Corporation of South Africa Ltd.
92441	Safeguard International Fund, L.P	VIAG AG	NF Holding, Inc.
92496	Ripplewood Partners, L.P	Charles T. Meyer, III and Carole Meyer.	Meyer's Bakeries, Inc.
92497	Textron Inc	Lincolnshire Equity Fund, L.P	Energy Mfg. Co., Inc. Williams Machine & Tool Co.
92516	Golder, Thoma, Cressy, Rauner Fund V. LP.	Fluor Corporation	S&R Equipment Co., Inc.
92534	Global Crossing Ltd	Frontier Corporation	Frontier Corporation.
92535	Josephy P. Clayton	Global Crossing Ltd	Global Crossing Ltd.
92538	Francois Pinault	Elf Aquitaine	Sanofi Group.
92546	W.R. Grace & Co	Textron Inc	Textron System Corporation.
92557	Stiftung Hasler Werke	ABB AB	ABB Automation, Inc.
92558	Stiftung Hasler Werke	ABB AG	ABB Automation, Inc.
92560	Snyder Communications, Inc	David F. Kirwan	Broadwell Capital Group, Inc. d/b/a Broadwell Marketing Group, Inc.
92565	Apollo Investment Fun IV, L.P	Rate Medium Group, Inc	Rate Medium Groups, Inc.
92577	Atlantic Equity Partners International II, L.P.	CPI Holding Corporation	CPI Holding Corporation.
		05/12/1999	
92388	Randy M. Long	Tosco Corporation	Tosco Corporation.
92493	Littlejohn & Levy Fund II, L.P	Lockwood Holmes	Holmes Lumber Company.
92494	General Electric Company	iXL Enterprises, Inc	Consumer Financial Network, Inc.
92500	Henkel KGaA	The Dial Corporation	The Dial Corporation.
92501	The Dial Corporation	Henkel KGaA	Henkel KGaA.
92508	Lance, Inc	Stolberg Partners, L.P	Cape Code Holdings, Inc.
92509	Lance, Inc	Stephen F. Bernard	Cape Code Holdings, Inc.
92542	Tom Brown, Inc	Unocal Corporation	Union Oil Company of California.
92553	Susan G. Mandl	Lucent Technologies Inc	Lucent Technologies Inc.
		05/13/1999	
90822	SNIA BPD S.pA	Gambro AB	COBE Cardiovascular, Inc/COBE Laboratories, Inc.
91949	First Data Corporation	Bank One Corporation	Paymentech, Inc

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
		05/14/1999	
90804	Provident Companies, Inc	UNUM Corporation	UNUM Corporation.
92380	Sprint Corporation	People's Choice TV Corp	People's Choice TV Corp.
92465	Bull Run Corporation	Universal Sports America, Inc	Universal Sports America, Inc.
92478	General Motors Corporation	Pacifica Group Limited	PBR Automotive Tennessee, Inc.
92499	MS Acquisition Corp	Zenith Industrial Corporation	Zenith Industrial Corporation.
92532	RailWorks Corporation	Douglas Hutchinson	Neosho Incorporated.
92533	RailWorks Corporation	Steven Hutchinson	Neosho Incorporated.
92536	Northern Telecom Limited	Net2000 Communications, Inc	Net2000 Communications, Inc.
92545	Sager Electrical Supply Company, Inc	Sheila Poncher, Trustee	California Switch & Signal, Inc.
92547	Carlisle Companies Incorporated	J. Charles Peterson	Johnson Welding & Manufacturing Co., Inc.
92550	LHS Group, Inc	Priority Call Management, Inc	Priority Call Management, Inc.
92559	CBS Corporation	WinStar Communications, Inc	Office.com Inc.
92561	Sumner M. Redstone	Video City, Inc	Videoland, Inc.
92570	Thomas M. Begel	Joseph A. and Mae Butcko	Crescive Die and Tool, Inc.
92578	Apache Corporation	N.F. Koninklije Nederlandsche Petroleum Maatshappij.	Shell Oil Company.
92581	Schneider S.A	Kent J. Holce	Veris Industries, Inc.
92582	Brewster Kahle	Amazon.com, Inc	Amazon.com, Inc.
92589	Toys "R" Us, Inc	Genesis Direct, Inc	Genesis Direct Memphis Operations, LLC. Genesis Direct Memphis Services, LLC.
92590	Mr. and Mrs. Frank D. Osborn	ML Media Partners, L.P	WICC Associates, WEBE Associates.
92597	Gaylord Entertainment Company	CBS Corporation	CBS Corporation.
92598	CBS Corporation	Gaylord Entertainment Company	Gaylord Communications, Inc., Gaylord Television Company.
92599	Anthem Insurance Companies, Inc	New Hampshire-Vermont Health Service d/b/a BCBS of NH.	Health Initiatives, Inc. Matthew Thornton Health Plan, Inc. Matthew Thornton Insurance, Inc. New Hampshire-Vermont Health Services d/b/a BCBS of NH.
92609	SLI, Inc	Gary J. Siegal	Supreme Corporation.
92610	SLI, Inc	Bruce I. Siegal	Supreme Corporation.
92612	Sutton Place Gourmet, Inc	Andrew & Nina Balducci	Balducci Enterprises, Inc.
92613	General Motors Corporation	AT&T Corp	Tele-Communications, Inc.
		05/17/1999	
92502	Morgan Stanley Dean Witter & Co	Arm Holdings plc	Arm Holdings plc.
92531	International Business Machines Corporation.	Comdisco, Inc	Comdisco, Inc.
92591	Wild Oats Markets, Inc	General Nutrition Companies, Inc	Nature's Fresh Northwest, Inc.
92603	Canandaigua Brands, Inc	Franciscan Vineyards, Inc	Franciscan Vineyards, Inc.
92614	BG Media Investors, L.P	Equilease Holding Corp	Com South Telecable, Inc.
92616	Solectron Corporation	Sequel, Inc	Sequel, Inc.
92624	Kleiner Perkins Caufield & Byers VIII, L.P.	Amazon.com, Inc	Amazon.com, Inc.
92625	Greenwich Street Capital Partners II, L.P.	MC Mortgage Company	IMC Mortgage Company.
92638	Lehman Brothers Offshore Investment Partners II L.P.	Lehman Brothers Merchant Banking Partners II L.P.	Blount International, Inc.
92639	Lehman Brothers Capital Partners IV, L.P.	Lehman Brothers Merchant Banking Partners II L.P.	Blount International, Inc.
92642	Simon Property Group, Inc	Stephen R. Karp	WellsPark Group Limited Partnership.
92643	URS Corporation	Dames & Moore Group	Dames & Moore Group.
92652	SCP Private Equity Partners, L.P	Seagram Co. Ltd	Propaganda Films, Inc.
92664	Willis Stein & Partners II, L.P	Donald L. Sanneman	LISN, Inc./Arion, Inc.
92671	Ceridian Corporation	ABR Information Services, Inc	ABR Information Services, Inc.
92676	Employee Stock Ownership Plan of Krause ESOP.	Landmark Communications, Inc	Landmark Specialty Publications, Inc.
92677	Aegis Group plc	Market Facts, Inc	Market Facts, Inc.
		05/18/1999	
92548	Carlisle Companies Incorporated	Edmund A. Ricci	Johnson Welding & Manufacturing Co., Inc.
92579	Royal Dutch Company	Apache Corporation	Apache Corporation.
92644	RCBA Strategic Partners, L.P	URS Corporation	URS Corporation.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
92645	eBay Inc.*	Bernard A. Osher	Butterfield and Butterfield Auctioneers Corporation.
			HBJ Partners, LLC, 111 Potrero Partners, LLC.
92646	Bernard A. Osher	eBay Inc.*	eBay Inc.*
92647	eBay Inc.*	Irving Rabin	HBJ Partners, LLC, 111 Potrero Partners, LLC.
92648	Irving Rabin	eBay Inc.*	eBay Inc.*
92653	Daniel M. Snyder	Estate of Jack Kent Cooke	Jack Kent Cooke Incorporated.
92667	The Coca-Cola Company	Jerry Whitlock	Whitlock Packaging Corporation.
92672	CBS Corporation	W. Don Cornwell	Granite Broadcasting Corporation.
	05/19/1999		
92507	Province Healthcare Company	Columbia/HCA Healthcare Corporation	Doctors Hospital of Opelousas Limited Partnership.
92515	American Tissue Inc	Crown Vantage, Inc	Crown Paper Co.
92517	Morton Plant Hospital Association	Tenet Healthcare Corporation	RHPC, Inc.
92551	La-Z-Boy Incorporated	Martin G. and Marlene G. Silver (husband and wife).	Bauhaus USA Inc.
92562	Diageo plc	Supervalu Inc	Hazelwood Farms Bakeries, Inc.
92594	Bernard Ebbers	Compart SpA	Intermarine USA, L.L.C. and Intermarine Yachting, Inc.
92595	American Water Works Company, Inc	National Enterprises, Inc	National Enterprises, Inc.
92611	Wolseley plc	Thomas O. Moore, Jr	Summit Structures, Inc.
92628	Spartech Corporation	Alltrista Corporation	Alltrista Plastics Corporation.
92633	Michael W. Lynch	Metro Metals Corporation	Metro Metals Corporation.
92690	Bell Atlantic Corporation	Mario Gabelli	Rivgam Communicators, L.L.C.
	05/20/1999		
92584	CHRISTUS Health	Columbia/HCA Healthcare Corporation	Highland Hospital.
	05/21/1999		
92065	E.I. du Pont de Nemours and Company.	Pioneer Hi-Bred International, Inc	Pioneer Hi-Bred International, Inc.
	05/24/1999		
92469	Tyco International Ltd	The J.R. Clarkson Company	The J.R. Clarkson Company.
92488	Terumo Medical Corporation	Minnesota Mining & Manufacturing Co	Cardiovascular System Department.
92492	New York Life Insurance Company	SmithKline Beecham plc	Diversified Prescription Delivery L.L.C.
92564	Northern States Power Company	Consolidated Edison, Inc	Consolidated Edison Company of New York, Inc.
92568	Northern States Power Company	Niagra Mohawk Holdings, Inc	Niagara Mohawk Power Corporation.
92631	David L. Goldman	Bridgeport Machines, Inc	Bridgeport Machines, Inc.
92637	Mr. Thomas M. Begel	Automotive Systems International, Inc	DynAmerica Manufacturing Co.
			Flint Manufacturing Co.
92655	Royal Bank of Canada	Security First Technologies Corporation.	Security First Technologies Corporation.
9269	Kent Electronics Corporation	Tom Calicchio	Advacom, Inc.
92684	Silicoon Valley Group, Inc	Watkins-Johnson Company	SEG LLC.
92686	Atlantic American Corporation	Association Casualty Insurance Company.	Association Casualty Insurance Company.
92688	Stuart and Anita Subotnick	New Century Arizona, LLC	New Century Arizona, LLC.
92698	Craig Corporation	Craig Corporation	Angelika Film Centers, L.L.C.
92699	Pemstar, Inc	Bell Microproducts, Inc	Quadras division of Bell Microproducts.
92701	Whitman's Candies, Inc	Rocky Mountain Chocolate Factory, Inc.	Rocky Mountain Chocolate Factory, Inc.
92705	SCF-IV, L.P	Input/Output, Inc	Input/Output, Inc.
92711	Roslyck Paxson	Trustees of Boston University	Boston University Communications, Inc.
92714	Diedrich Coffee, Inc	The Second Cup, Ltd	Coffee People, Inc.
	05/25/1999		
92267	British Energy plc	GPU, Inc	Jersey Central Power & Light Company
			Metropolitan Edison Company.
			Pennsylvania Electric Company.
92510	John J. R	ATT&T Corp	InterMedia Partners of Kentucky, L.P.
92511	AT&T Corp	John J. Rigas	FrontierVision Operating Partners, L.P.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
92626	Hologic, Inc	SDI Investments Liquidating Trust	SDI Investments, L.L.C.
92627	SDI Investments Liquidating Trust	Hologic, Inc	DRC Holding Corp.
92632	John J. Rigas	AT&T Corp	TCI of East San Fernando Valley, L.P.
92640	Guitar Center, Inc	Musician's Friend Trust	Musician's Friend, Inc.
92654	Cox Enterprise, Inc	Media General, Inc	Media General Cable of Fairfax County, Inc.
92691	Stonebridge Technologies, Inc	Dewey A. Blaylock	Tactics, Incorporated.
92700	Code, Hennessy & Simmons II LLC	Kent Electronics Corporation	Kent Electronics Corporation.
92708	The Interpublic Group of Companies, Inc.	Mullen Advertising, Inc	Mullen Advertising, Inc.
92709	Marshall W. Pagon	Southeastern Indiana Rural Telephone Cooperative, Inc.	Hoosier Telcom, Inc.
92715	IWKA Aktiengesellschaft	BWI plc	BWI plc.
92717	United Fire & Casualty Company	American Indemnity Financial Corporation.	American Indemnity Financial Corporation.
92718	Thayer Equity Investors III, L.P	James F. Miller	Trase Miller Solutions, Inc.
92721	Hewlett-Packard Company	DAZEL Corporation	DAZEL Corporation.
92722	Kleiner Perkins Caufield & Byers VII, L.P.	American Telephone & Telepgraph, Inc.	At Home Corporation.
92723	Euramax International plc	Atlanta Metal Products, Inc	Atlanta Metal Products, Inc.
92724	CHEMCENTRAL Corporation	Dennis D. Lowery	Continental Industrial Chemical, Inc.
92725	Falcon Products, Inc	Shelby Williams Industries, Inc	Shelby Williams Industries, Inc.
92731	Cortec Group Fund II, L.P	Jay Hecht, two-thirds owner of Filters, Inc.	Filters, Inc.
92735	The Chase Manhattan Corporation	M2 Automotive, Inc	M2 Automotive, Inc.
	05/26/1999		
90353	Kroger Co., (The)	Fred Meyer, Inc	Fred Meyer, Inc.
92728	Mark Cuban	Yahoo! Inc	Yahoo! Inc.
92729	Todd Wagner	Yahoo! Inc	Yahoo! Inc.
92738	Citadel Communications Corporation	Robert F. Fuller	Fuller-Jeffrey Broadcasting Companies, Inc.
92739	Cox Enterprise, Inc	Stuart J. Frankenthal	Cincinnati Auto Auction, Inc.
			J.A.S. Auto Sales, Inc.
			Lousiville Auto Auction, Inc.
			SJF Group Transport, Inc.
92742	Golder, Thoma, Cressey, Rauner Fund V. L.P.	Charles C. Arredia	Form-Tech Steel Inc.
92743	TransMontaigne Inc	Amerada Hess Corporation	Amerada Hess Corporation.
92746	Celerity Partners II, L.P	Mr. James F. Matthews	MATCO Electric Company, Inc., Port City Electric Corp.
92748	Golder, Thoma, Cressey, Rauner Fund V. L.P.	Robert N. Herrington	Herrington Equipment, Inc., Elite Rentals, Ltd.
			Herrington Partners, Ltd., II.
92749	CM Equity Partners, L.P	ICF Kaiser International, Inc	ICF Consulting Group, Inc., (f/k/a Clement International Corp).
92754	The IT Group, Inc	EMCON	EMCON.
92756	Bell & Howell Company	Tab Products Co	Tab Products Co.
92785	Koninklijke Philips Electronics N.V	Voice Control Systems, Inc	Voice Control Systems, Inc., a Delaware corporation.
	05/27/1999		
92514	Crown Castle International Corp	Powertel, Inc	Powertel Atlanta Towers, LLC.
			Powertell Birmingham Towers, LLC.
			Powertell Jacksonville Towers, LLC.
			Powertell Kentucky Towers, LLC.
			Powertell Memphis Towers, LLC.
92649	Baine Capital Fund VI, L.P	DAI Statutory Trust	DAI Statutory Trust.
92666	PPG Industries, Inc	Imperial Chemical Industries, p.l.c	Imperial Chemical Industries, p.l.c.
92758	Madison Dearborn Capital Partners III, L.P.	Dakota Services, Ltd	Dakota Services, Ltd.
	05/28/1999		
92694	Mason Wells Leveraged Buyout Fund I, Limited Partnership.	Premix, Inc	Premix, Inc.
92730	Regal-Beloit Corporation	Lincoln Electric Holdings, Inc	The Lincoln Electric Motor Division.
92753	Craig Johnson and Barbara Johnson	Champion International Corporation	Champion International Corporation.
92791	William Hearst II	AT&T Corp	At Home Corporation.
92802	Concur Technologies, Inc	Seeker Software, Inc	Seeker Software, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
92803	Brentwood Associates VIII, L.P	Concur Technologies, Inc	Concur Technologies, Inc.
	06/01/1999		
92693	Sprint Corporation	American Telecasting, Inc	American Telecasting, Inc.
92697	Allied Waste Industries, Inc	Anthony H. Giordano	Giordano Recycling Corp.
92703	Pasco Acquisition Inc	Lykes Consumer Brands, Inc	Lykes Bros. Inc. Lykes Pasco Packing Co. Lykes Pasco, Inc. Lykes Transport, Inc. Vitality Foodservice, Inc.
92733	Roger S. Penske	International Speedway Corporation	International Speedway Corporation.
92734	International Speedway Corporation	Roger S. Penske	PSH Corp.
92747	Fund American Enterprises Holdings, Inc.	The Centris Group, Inc	USF RE Insurance Company.
92751	Richard B. Cohen	James Ferrera & Sons, Inc	James Ferrera & Sons, Trust.
92752	Greenwich Street Capital Partners II, L.P.	Leslie K. & Harvey Wagner	Teknekron Infoswitch Corporation.
92759	International Game Technology	Sodak Gaming Inc	Sodak Gaming Inc.
92763	O. Bruton Smith	Lucien S. Riley	Lute Riley Motors, Inc.
92764	McLeodUSA Incorporated	Frank Noverr	Noverr Publishing, Inc.
92768	United News & Media plc	CMP Media Inc	CMP Media Inc.
92771	Theodore Leonsis	Abe Pollin	Washington Capitals Limited Partnership.
92772	NationsRent, Inc	Thomas P. and Lorraine S. Dimeo	Chapman Equipment, a Division of Dimeo Construction Company.
92775	Forstmann Little & Co. Equity Partnership V, L.P.	Victor Valley Community Hospital	Victor Valley Community Hospital.
92776	JLG Industries, Inc	Gradall Industries, Inc	Gradall Industries, Inc.
92781	L. John Doerr	AT&T Corp	At Home Corporation.
92784	Swiss Reinsurance Company	Nationwide Mutual Insurance Company.	Allied Life Financial Corporation.
92787	Evening Post Publishing Company	WLEX–TV, Inc	WLEX–TV, Lexington, Kentucky.
92788	MACTEC, Inc	CILCORP Inc	QST Environment Inc.
92789	CVS Corporation	Thomas G. Pigott	Soma Corporation.
92790	Thomas G. Pigott	CVS Corporation	CVS Corporation.
92793	Claire M. White 1952 Trust	American Water Works Company, Inc	American Water Works Company, Inc.
92800	TA/Advent VIII, L.P	FCP Southeast Investors IV, L.P	Perfecto Holding Corp.
92810	Cox Enterprises, Inc	Gary Fears	Dent Wizard Southeast LLP.
92814	First Reserve Fund VIII, Limited Partnership.	Pride International, Inc	Pride International, Inc.
	06/02/1999		
92678	Quintiles Transnational Corp	John A. Henderson	SMG Marketing Group, Inc.
92679	John A. Henderson	Quintiles Transnational Corp	Quintiles Transnational Corp.
92736	ITT Industries, Inc	Gerald Moreland	HAI Molding Company. Hydro Air Industries, Inc.
92737	ITT Industries, Inc	Darrell Crosby	HAI Molding Company. Hydro Air Industries, Inc.
92740	United Rentals, Inc	James and Elizabeth Mango	Mango Equipment Co., Inc.
92755	Leviathan Gas Pipeline Partners, L.P	KN Energy, Inc	Natoco, Inc. and Naloco, Inc.
92770	GS Capital Partners III, L.P	Diginet Americas, Inc	Diginet Americas, Inc.
92786	General Electric Company	S. Kenneth Hendricks	Henderson, Black & Greene, Inc.
92795	United Rentals, Inc	Eleanor Heaton	Advance Barricandes and Signing, Inc. Coast Line Marking, Inc. JADCO Signing, Inc. Warning Safety Lights of Georgia, Inc. Warning Safety Lights, Inc.
92796	United Rentals, Inc	J. Dana Woudenberg	Woudenberg Enterprises, Inc.
92797	United Rentals, Inc	WLI Industries, Inc	WLI Industries, Inc.
92806	CRH plc	Sidney E. Blandford, III	B and B Excavating, Inc.
92817	Robert S. Howard	Westmedia Corporation	Westmedia Corporation.
92819	Wallace Computer Services, Inc	Mr. Gary Tepner	Commercial Instant Print. Commercial Press, Inc.
92820	The Progressive Corporation	The Plymouth Rock Company Incorporated.	The Plymouth Rock Company Incorporated.
92821	Bechtel Group, Inc	CBS Corporation	CBS Corporation
92824	General Atlantic Partners 46, L.P	Metapath Software International, Inc	Metapath Software International, Inc.
92825	General Atlantic Partners 30, LP	Metapath Software International, Inc	Metapath Software International, Inc.
92827	FirstAmerica Automotive, Inc	Donald L. & Sally S. Lucas	Lucas Dealership Group, Inc.
92830	Sonepar S.A	Richard Cooper	Cooper Electric Supply Co.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
92832	Andrew J. McKelvey	LAI Worldwide, Inc	LAI Worldwide, Inc.
92833	FKI, plc	Industry General Corporation	Industry General Corporation.
92834	Alliance Holdings, Inc. ESOP	Donald W. Wallace	Lazy Days R.V. Center, Inc.
92836	SOFTBANK Corp	InsWeb Corporation	InsWeb Corporation.
92841	Oak Investment Partners VIII, L.P	Metawave Communications Corporation.	Metawave Communications Corporation.
92842	Angus R. Cooper, II	Kimberly-Clark Corporation	Kimberly-Clark Worldwide, Inc., Kimberly-Clark Tissue Co.
92843	David J. Cooper, Sr	Kimberly-Clark Corporation	Kimberly-Clark Worldwide, Inc., Kimberly-Clark Tissue Co.
92845	Harcourt General, Inc	The Family Education Company	The Family Education Company.
92846	The Titan Corporation, a Delaware corporation.	Samir Desai	Systems Resources Corporation.
92847	AutoNation, Inc	Maria Smith	Dodge of Bellevue, Inc., Kirkland Pontiac-Buick-GMC, Inc. Town & Country Chrysler Jeep, Inc., Ford of Kirkland, Inc.
92849	Cox Enterprises, Inc	Michael L. Robertson	MP3.Com, Inc.
92850	Regent Corporation	Laura Ashley Holdings plc	Laura Ashley (North America), Inc.
92852	STERIS Corporation	Ishihara Sangyo Kaisha, Ltd	Ricerca, Inc.
92855	Bethesda Health Group, Inc	Tenet Healthcare Corporation	Tenet HealthSystem DI, Inc., Tenet HealthSystem DI-SNF, Inc.
92856	Joseph Littlejohn & Levy Fund III, L.P	Grupo Empresarial G, S.A. de C.V	MC II Holdings (USA), Inc.
92865	Bain Capital Fund VI, L.P	Wayne Carlisle	Carlisle Construction Co., Inc.
	06/03/1999		
91776	Eramet, S.A	Elkem ASA	Elkem Metals Company L.P.
	06/04/1999		
92662	Chester C. Davenport	GTE Consumer Services Incorporated	GTE Consumer Services Incorporated.
92741	Spring Corporation	André Chagnon	Videotron USA, Inc.
92769	Yorktown Energy Partners III, LP	Global Industrial Technologies, Inc	Ameri-Forge Corporation.
92780	Triangle Pharmaceuticals, Inc	Glaxo Welcome plc	Glaxo Group Limited plc. Glaxo Wellcome Inc. Glaxo Wellcome plc. The Wellcome Foundation Limited.
92826	Arvind Pradham	Stonach Trust	Magna Lomason, Inc.
92853	Leggett & Platt, Incorporated	Edward L. Shimmon	Beeline Group, Inc.
92854	Crescent Operating, Inc	E.L. Lester, Jr	E.L. Lester & Company, Incorporated.
92858	FS Equity Partners IV, L.P	The Limited, Inc	Gaylan's Trading Company, Inc.
92862	Linda G. Alvarado and Robert L. Alvarado (husband and wife).	Tricon global Restaurants, Inc	Pizza Hut, Inc., Pizza Hut of America, Inc.
92867	MDU Resources Group, Inc	DSS Company, a California Corporation.	DSS Company, a California Corporation.
92868	Quantum Corporation	Meridian Data, Inc	Meridian Data, Inc.
92870	Insignia Financial Group, Inc	Douglas Elliman, Inc., a New York partnership.	Douglas Elliman, Inc.
92876	Sysco Corporation	Howard N. Marcus	The Buckhead Beef Company, Inc.
92878	Summit Ventures V, L.P	Robert Horgan	Newmarket International, Inc.
92879	Joseph Littlejohn & levy Fund II, L.P	O'Donnell & Masur, L.P	MBS Holdings, Inc.
92887	Robert Bosch Industrietreuhand KG	Automotive Lighting Holding GmbH	Automotive Lighting Holding GmbH.
92888	Fiat S.p.A	Automotive Lighting Holding GmbH	Automotive Lighting Holding GmbH.
92892	Liz Claiborne, Inc	Gene Montesano	Lucky Brand Dungarees, Inc.
92895	Madison River Telephone Company, LLC.	Gulf Coast Services, Inc	Gulf Coast Services, Inc.
92897	USA Networks, Inc	Cendant Corporation	Match.com.
92898	Pentair, Inc	Essef Corporation	Essef Corporation.
92899	UBS AG	F. Holmes Lamoreux	Dimension Aviation, Inc. Sabreliner Corporation. SabreTech, Inc.
92900	AboveNet Communications, Inc	Compaq Computer Corporation	Compaq Computer Corporation.
92905	The Home Depot, Inc	Harry L. Gilham	Georgia Lighting Supply Company, Inc.
92911	CSK Auto Corporation	Richard B. Shaller and Rossy Shaller (husband & wife).	APSCO Products Company.
92915	Motor Club of America	North East Insurance Company	North East Insurance Company.
92918	Conning Insurance Capical Limited Partnership V, L.P.	Clark/Bardes Holdings, Inc	Clark/Bardes Holdings, Inc.
92935	SLK, L.L.C	National Discount Brokers Group, Inc	Equitrade Partners L.L.C.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
		06/08/1999	
92831	Ford Motor Company	Continental Grain Company	Triad Financial Corporation.
92838	Chancellor Media Corporation	Hicks, Muse, Tate & Furst Equity Fund III, L.P.	Capstar Broadcasting Corporation.
92839	Hicks, Muse, Tate & Furst Equity Fund III, L.P.	Chancellor Media Corporation	Chancellor Media Corporation.
92874	Textron Inc	RFC Capital Corporation	RFC Capital Corporation.
92908	Severn Trent Plc	TETRA Technologies, Inc	TETRA Process Technologies.
92928	Kotobuki Fudosan Ltd	Sanford L. Korschum	Pepsi-Cola Bottling Company of Goldsboro, Inc.
92931	The SKM Equity Fund II, L.P	Richard H. Behrens	Cascade Die Mold, Inc.
92942	Avis Rent A Car, Inc	Cendant Corporation	PHH Holdings Corporation.
92943	California State Automobile Association Inter-Ins. Bureau.	Western United Insurance Services, Inc.	Western United Insurance Services, Inc.
92945	James D. Wallenfelsz	M.A. Hanna Company	M.A. Hanna Resin Distribution Company.
92946	SMART Modular Technologies, Inc	Compaq Computer Corporation	Compaq Computer Corporation.
92948	Hyundai Electronics Industries Co., Ltd., a Korean company.	LG Semicon Co., Ltd	LG Semicon Co., Ltd.
92953	KACL Holdings, Inc	Roland and Maria Elena Garcia (husband and wife).	Original Impressions, Inc.
92954	UBS AG, a Swiss Banking Corporation	American Sports Products Group, Inc	American Sports Products Group, Inc.
92955	Avis Rent A Car, Inc	John R. Burch, Sr	Motorent, Inc.
92959	The Bear Stearns Companies Incorporated.	Kalb Voorhis & Co., L.L.C	Kalb Voorhis & Co., L.L.C.
92960	Computer Associates International, Inc	CHS Electronics, Inc	CHS Electronics, Inc.
92963	United Community Financial Corp	Butler Wick Corp	Butler Wick Corp.
92965	U.S. Industries, Inc	Gatsby Corporation	Gatsby Spas, Inc.
92966	Unidare plc	Robert B. Thompson and Carole L. Thompson.	Oklahoma Rig & Supply Company, Inc.
92981	General Electric Company	Associates First Capital Corporation	Avco Financial Services International, Inc.
92993	Richard O'Leary	G. Roger Crawford	Thermoguard Equipment, Inc.
92997	Bertarelli & Cie	American Home Products Corporation	American Home Products Corporation.
93001	Sumner M. Redstone	Cox Enterprises, Inc	Entertainment Tonight.
93010	American International Group, Inc	Real Time Data, Inc	Real Time Data, Inc.
93015	Wyndham International, Inc	Patriot American Hospitality, Inc	Patriot American Hospitality, Inc.
93016	Apollo Investment Fund IV, L.P	Wyndham International, Inc	Wyndham International, Inc.
93017	Apollo Real Estate Investment Fund IV, L.P.	Wyndham International, Inc	Wyndham International, Inc.
93018	Thomas H. Lee Equity Fund IV, L.P	Wyndham International, Inc	Wyndham International, Inc.
93019	Beacon Capital Partners, Inc	Wyndham International, Inc	Wyndham International, Inc.
93023	Thomas H. Lee Equity Fund IV, L.P	American Home Products Corporation	American Cyanamid Company.
93030	O. Bruton Smith	Haywood B. Hyman, Sr	Charleston Lincoln Mercury, Inc.
		06/09/1999	
92773	Vivendi S.A	Applied Materials, Inc	Applied Materials, Inc.
92886	General Electric Company	The Long Term Credit Bank of Japan, Limited.	The Long Term Credit Bank of Japan, Limited.
92952	Integrated Electrical Services, Inc	James A. Campbell	Pan American Electric, Inc.
92961	Cisco Systems, Inc	Robert Bosch GmbH	Bosch Telecom GmbH.
92967	Tweeter Home Entertainment Group, Inc.	The Romagnolo Family Trust	Dow Stereo/Video, Inc.
92974	McGraw-Hill Companies, Inc. (The)	Pearson plc	Appleton & Lange.
92976	U.S. Bancorp	Mellon Bank Corporation	Mellon Bank, N.A.
92979	Carlton Communications Plc	Seagram Company Ltd., The	Campania Limited.
92991	Warburg, Pincus Investors, L.P	Pearson plc	Master Data Center, Inc.
93012	BJ Services Company	Fracmaster Ltd	Fracmaster Ltd.
		06/11/1999	
92683	Northeast Utilities	ANG Holdings, LLC	Aurora Northeast Energy, LLC, Aurora Natural Gas, LLC.
92757	Sprint Corporation	Thomas A. Howard	Transworld Telecommunications, Inc.
92761	AmeriSource Health Corporation	C.D. Smith Healthcare, Inc	C.D. Smith Healthcare, Inc.
92765	GS Capital Partners II, L.P	Consolidated Edison,Inc	Consolidated Edison Co. of New York.
92777	Aviation Partners, Inc	The Boeing Company	The Boeing Company
92778	The Boeing Company	Aviation Partners, Inc	Aviation Partners, Inc.
92807	AT&T Corp	Everett R. Dobson Irrevocable Family Trust.	Dobson Communications Corporation.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
92816	PSINet, Inc	Timothy W. Jackson	The Internet Access Company, Inc.
92837	Playtex Products, Inc	Colgate-Palmolive Company	Colgate-Palmolive Company.
92840	Familiengesellschaft Dr. Hanns Voith GbR.	Scapa Group plc	KRC (Western) Inc. KRC Hewitt Inc. KRC Inc. KRC Northern Inc. KRC Southern Inc. KRH Rolls, Inc. Perma-Flex (Southern) Inc. Perma-Flex NA, Inc. Perma-Flex Rollers, Inc. Scapa Dryer Fabrics, Inc. Scapa Enterprises, Inc. Scapa Finance Inc. Scapa Forming Fabrics Inc. Scapa Group Inc. Scapa Group, Inc. Scapa Holdings, Inc. Scapa Paper Machine Clothing (Dryer), Inc. Scapa Paper Machine Clothing (Forming) Inc. Scapa Paper Machine Clothing (Press) Inc. Scapa Press Fabrics Limited Partnership. Scapa Press Fabrics LLC. Scapa Rolls Neenah Limited Partnership. Syn Strand, Inc.
92869	Jean-Claude Decaux	Vivendi S.A	Havas Transportation Media, Inc Sky Sites, Inc.
92894	IMRglobal Corp	Orion Consulting, Inc	Orion Consulting, Inc.
92901	ITC^DeltaCom, Inc	AvData Systems, Inc	AvData Systems, Inc.
92916	British Telecommunications plc	Welsh, Carson, Anderson & Stowe VII, L.P.	Control Data Holding Corporation.
92930	SkyNet Holdings, Inc	Greenstreet Pony Partners, L.L.C	Pony Express Delivery Services, Inc.
92932	Consolidated Edison, Inc	Northeast Utilities	Western Massachusetts Electric Company.
92934	Exodus Communications, Inc	Welsh, Carson, Anderson & Stowe VI, L.P.	Cohesive Technology Solutions, Inc.
92937	Grupo Picking Pack S.A	Berkshire Fund IV, L.P	Wagon Holdings, Inc.
92947	Niagara Mohawk Holdings, Inc	Telergy, Inc	Telergy, Inc.
92962	Motorola Inc	Robert Bosch GmbH	Robert Bosch Telecom GmbH.
92968	News Corporation Limited, (The)	Metromedia International Group, Inc	Metromedia International Group, Inc.
93058	Bernard Arnault, an individual	James F. McCann, an individual	1–800–FLOWERS.COM, Inc.
92782	Aon Corporation	Ian H. Graham	Ian H. Graham, Inc.
92808	Boston Ventures Limited Partnership V	Production Resource Group, Inc	Production Resource Group, Inc.
92809	Jeremiah J. Harris	Production Resource Group, Inc	Production Resource Group, Inc.
92896	Vision Solutions, Inc	NCR Corporation	NCR Corporation.
92927	Giant Eagle, Inc	Park Orchards, Inc	Park Orchards, Inc.
92982	AT&T Corp	ACTV, Inc	ACTV, Inc.
92989	Issam M. Fares	Arthur R. Richard	Matrix Engineering, Inc.
92994	Guide One Mutual Insurance Company.	Charles A. Smith	Anson B. Smith & Co.
92995	Guide One Mutual Insurance Company.	Ted A. Smith	Anson B. Smith & Co.
92996	AutoNation, Inc	Jon Clayton Dokmo	Downers Grove Dodge, Inc.
92998	Novartis AG	Mentor Corporation	Mentor Caribe, Inc.
93000	Apollo Investment Fund IV, L.P	Blackstone Captial Partners III Merchant Banking Fund L.P.	OTG, Inc.
93005	El Camino Resources International, Inc.	GATX Corporation	GATX Capital Corporation.
93006	GATX Corporation	El Camino Resources International, Inc.	El Camino Resources International, Inc.
93013	Millers American Group, Inc	Acceptance Insurance Companies Inc	Acceptance Insurance Companies Inc. Phoenix Indemnity Insurance Company.
93025	Crane Co	Plunkett-Webster, Inc	Plunkett-Webster, Inc.
93027	Fremont Partners, L.P	Karen Marsh MacLeod Trust	Tapco International Corporation.
93028	Marmon Holdings, Inc	Osteomed Corporation	Osteomed Corporation.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
93031	Dartford Partnership L.L.C	Aurora Foods Inc	Aurora Foods Inc.
93032	V. Parker Overton	Donald L. Kotula	Norquip Leasing, Inc.
			Northern Tool & Equipment Catalog Company, Inc.
			Northern Tool & Equipment Company, Inc.
93033	Cornell Corrections, Inc	Interventions	IDDRS Foundation.
93038	Province Healthcare Company	LifePoint Hospitals, Inc	Barrow Medical Center, LLC.
93039	Align-Rite International, Inc	Harris Corporation	Harris Corporation.
93040	Global Imaging System, Inc	Lewan & Associates, Inc	Lewan & Associates, Inc.
93042	Fedeal Signal Corporation	Clapp & Haney Tool Co., Inc	Clapp & Haney Tool Co., Inc.
93043	New England Electric System	New Century Energies, Inc	Texas-Ohio Gas, Inc.
93044	Philip F. Anschutz	Precision Systems, Inc	Precision Systems, Inc.
93045	Voting Trust, 12/4/68, for v.s. of Hallmark Cards Inc.	Cook Communications Ministries	David C. Cook Publishing Co.
93046	Eclipsys Corporation	Anna L. Bean	MSI Integrated Services, Inc., MSI Solutions, Inc.
93047	Anna L. Bean	Eclipsys Corporation	Eclipsys Corporation.
93050	David D. Smith	Trust A U/W of Douglas W. Griffith	Griffith Motor Sales, Inc.
93053	Mr. Harry J. Pappas	Value Vision International, Inc	VVI Baytown, Inc.
			VVILPTV, Inc.
93056	Foster Poultry Farms	ConAgra, Inc	Swift-Eckrich, Inc.
93057	Dowling Textile Company	Cardinal Health, Inc	Allegiance Healthcare Corporation.
93059	General Electric Company	Phoenix Home Life Mutual Insurance Company.	American Phoenix Life and Reinsurance Company.
93064	IRMC Holdings, Inc	Ruvin Schwartz and Judith Schwartz	Coldata of Arizona, Inc.
			Coldata, Inc. (a CA corporation).
			Coldata, Inc. (a FL corporation).
			Coldata, Inc. (a MI corporation).
			Coldata, Inc. (a NY corporation).
			Coldata, Inc. (a IL corporation).
93066	United Rentals, Inc	Elmen Rent All Inc. Employee Stock Ownership Plan and Trust.	Elment Rent All Inc Employee Stock Ownership Plan and Trust.
93067	Saratoga Resources, Inc	OptiCare Eye Health Centers, Inc.	OptiCare Eye Health Centers, Inc.
93068	Vanguard Health Systems, Inc	Triad Hospitals, Inc	Triad Assets.
93069	InfloUSA	First Data Corporation	DM Holdings, Inc.
93071	MacNeal-Schwendler Corporation (The).	Nearchos Irinarchos	MARC Analysis Research Corporation.
93072	TWC Virginia, Inc	Secor Family 2 Limited Partnership	Yankee Book Peddler, Inc.
93078	John Wiley & Sons, Inc	Pearshon plc	Jossey-Bass Inc.
93079	Nu Skin Enterprises, Inc	Nu Skin USA, Inc	Big Planet, Inc.
93094	Steven M. Scott, M.D	FPA Medical Management, Inc. (debtor-in-possession).	FPA Medical Management, Inc. (debtor-in-possession).
93097	Robert J. Tomsich	Allied Marine Group, Inc	Allied Marine Group, Inc.
93101	Wolters Kluwer nv	Pearson plc	Bureau of Business Practices.
9105	ABRY Broadcast Partners II, L.P	August C. Meyer	Midwest Television, Inc.
9106	Jupiter Partners II L.P	Donald R. Draughon, Jr	Convenience USA, LLC.
9107	CGI Group Inc	Deloitte & Touche USA LLP	DRT Systems International.
			DRT Systems international LL.P.
93138	Conseco, Inc	Mark A. Susz	Inter-State Service, Inc.
93141	Diageo plc	James E. Lewis	Anthony Foods, LLC.
	06/16/1999		
92906	A.H. Belo Corporation	Fred William Patterson, Sr. & Patsy C. Patterson.	Denton Publishing Company, Inc.
92914	McBride and Associates, Inc	The General Electric Company, p.l.c	Marconi Enterprise Solutions, Inc.
92923	Partek Oyj Abp	Zeteco AB	Zeteco AB.
92944	IMS Health Incorporated	Gartner Group, Inc	Gartner Group, Inc.
92950	United Rentals, Inc	Alan Udelson	National Equipment Finance Company.
92951	United Rentals, Inc	David Udelson	National Equipment Finance Company.
92964	American Physician Partners, Inc	Questar Imaging, Inc	Questar Imaging, Inc.
92984	Plains Resources, Inc	Chevron Corporation	Chevron Pipeline Company.
93020	Skanska AB	Alex J. Etkin, Inc., a Michigan Corporation.	Alex J. Etkin, Inc., a Michigan Corporation.
93037	Fisher Companies Inc	Koch Industries, Inc	Koch Fisher Mills, L.L.C.
93070	Metris Companies, Inc	General Electric Company	GE Capital Consumer Card Co. (Visa/Mastercard business).
93073	Code, Hennessy & Simmons III, L.P	A.L. Kotler and Shirley Kotler	Gleason National Corporation.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
93084	Park Place Entertainment Corporation	Starwood Hotels & Resorts Worldwide, Inc.	Caesars World, Inc.
			Sheraton Tunica Corporation.
93085	Willis Stein & Partners II, L.P	William H. Hood, III	Special Data Processing Corporation.
93103	Superior Carriers, Incorporated	Thomas & Kerry Wieringa	Carry Companies of Illinois, Inc., Fleetlease, Inc.
			Dutch Associates Limited Partnership.
	06/17/1999		
93004	Trust of Fred R. Smith and Ouida M. Smith.	Alexander & Baldwin Inc	Matson Navigation Company, Inc.
93086	Kyocera Corporation	ACX Technologies, Inc	Golden Genesis Company.
93093	Tandy Corporation	AmeriLink Corporation	AmeriLink Corporation.
93096	Willis Stein & Partners II, L.P	Colonial Acquisition Corp	Colonial Acquisition Corp.
93100	AGRA Inc	Thomas A. Simons	NPC Investments Inc.
93104	MEDIQ Incorporated	Medical Specialties Group Inc	Medical Specialties Group Inc.
93109	U.S. Foodservice	Corporate Express, Inc	Sofco, Inc.
	06/18/1999		
93009	Paul G. Allen	Datek Online Holdings Corp	The Island ECN, Inc.
93022	Heidelberger Zement AG	Scancem AB	Scancem AB.
93051	Paul G. Allen	drugstore.com Inc	drugstore.com Inc.
93075	RadiSys Corporation	Texas Micro Inc	Texas Micro Inc.
93211	BCE Inc	SkyView Media Group, Inc	SkyView Media Group, Inc.
	06/21/1999		
84490	Albertson's Inc	American Stores Company	American Stores Company.
92600	ALSTOM	ABB ALSTOM Power N.V	ABB ALSTOM Power N.V.
92601	ABB AB	ABB–ALSTOM Power N.V	ABB–ALSTOM Power N.V.
92623	ABB AG	ABB–ALSTOM Power N.V	ABB–ALSTOM Power N.V.
92829	Equilease Holding Corp	Mr. & Mrs. Mansfield Jennings	ComSouth Telecable, Inc.
92884	Kirtland Capital Partners III L.P	Instron Corporation	Instron Corporation.
92912	McKechnie plc	Western Sky Industries, Inc	Western Sky Industries, Inc.
92929	Thyssen Krupp AG	Cummins Engine Company, Inc	Atlas Crankshaft Corporation.
92949	The SKM Equity Fund II, L.P	Richard F. Schneider	Tri-Molded Plastics, Inc., Tri-Matix Corp.
92958	Genzyme Corporation	BioMarin Pharmaceutical, Inc	BioMartin Pharmaceutical, Inc.
93082	L.B. Foster Company	CXT Incorporated	CXT Incorporated.
93091	Freudenberg & Co. of Weinheim, Germany.	Freudenberg & Co. of Weinheim, Germany.	Farman-Meillor Sealing Systems, Inc.
93098	Texas Instruments Incorporated	Telogy Networks, Inc	Telogy Netowrks, Inc.
93108	HPD Holdings Corp	Britol-Meyers Squibb Company	Bristol-Myers Squibb Company.
93110	Atlantic Equity Partners International II L.P.	Tru-Circle Corporation	Tru-Circle Corporation.
93113	Cambrex Corporation	FMC Corporation	FMC Corporation.
93115	Robert G. Brown	PIA Merchandising Services, Inc	PIA Merchandising Services, Inc.
93116	The Goldman Sachs Group, Inc	Southern Pacific Funding Corporation	Southern Pacific Funding Corporation.
93120	Ira Leon Rennert	Chevron Corporation	Chevron Coal Development Company.
			Pittsburg & Midway Coal Mining Co., Farco Mining, Inc.
93121	Thomas O. Hicks	Chancellor Media Corporation	Chancellor Media Corporation.
93122	R. Steven Hicks	Chancellor Media Corporation	Chancellor Media Corporation.
93123	Phillips Petroleum Company	American Liberty Oil Company	American Liberty Oil Company.
93125	DLJ Merchant Banking Partner II, L.P	Royse and Barbara Myers	Thermal Transfer Products, Ltd.
93126	Pentair, Inc	Equilease Holding Corp	DeVibiss Air Power Company.
93128	Avery Dennison Corporation	Stimsonite Corporation	Stimsonite Corporation.
93129	Jackpot Enterprises, Inc	Players International, Inc	Players International, Inc.
93134	Marmon Holdings, Inc	John A. Gerthisch	Gerthisch Family LLC.
			PMC Corporation.
93142	Seton Scholl Healthcare plc	London International Group plc	London International Group plc.
93146	O. Bruton Smith	Manhattan Auto, Inc	Manhattan Auto, Inc.
93151	PPG Industries, Inc	Akzo Nobel NV	PRC-DeSoto International, Inc.
93165	Ford Motor Company	Insurance Holdings of America, Inc	Insurance Holdings of America, Inc.
93166	Yellow Corporation	Jevic Transportation, Inc	Jevic Transportation, Inc.
93168	J.W. Childs Equity Partners II, L.P	Tradescape.com, Inc	Tradescape.com, Inc.
93174	SER Systems AG	David Shellenbarger	MacroSoft, Inc.
93175	Meyer International PLC	Rentx Industries, Inc	Rentx Industries, Inc.
93177	SOFTBANK Corp	James F. McCann	1–800–FLOWERS.COM, Inc.
93178	General Electric Company	OnStream International, Inc	OnStream International, Inc.
93181	Trannekk Crow Company	John T. Killian	Phoenix Corporate Service, LLC.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
93183	Applied Cellular Technology, Inc	David Romano	Bostek, Inc.
93184	Applied Cellular Technology, Inc	Eric Limont	Bostek, Inc.
93186	Sun International Hotels Limited	Starwood Hotels & Resorts Worldwide, Inc.	The Desert Inn Resort & Casino.
93189	Transit Group, Inc	David L. Summitt	Bestway Trucking, Inc.
93192	Ford Motor Company	American Information Company, Inc	American Information Company, Inc.
93193	SPS Technologies, Inc	National Set Screw Corporation	National Set Screw Corporation.
93196	Waterford Wedgewood plc	Wasserstein Perella Group, Inc	All-Clad Holdings, Inc.
93199	Real Software NV	TAVA Technologies, Inc	TAVA Technologies, Inc.
93207	McLeodUSA Incorporated	Scott F. Cate	S.J. Investments Holdings, Inc.
93208	McLeodUSA Incorporated	James R. Greenbaum, Jr	S.J. Investments Holdings, Inc.
93209	Scott F. Cate	McLeodUSA Incorporated	McLeodUSA Incorporated.
93220	Invensys plc	Marcam Solutions, Inc	Marcam Solutions, Inc.
93222	Suez Lyonnaise des Eaux	Suez Lyonnaise des Eaux	Trigen-Nations Energy Company, LLP.
93239	Policy Management Systems Corporation.	Summit Ventures IV, L.P	DORN Technology Group, Inc.
93242	Benchmark Capital Partners III, L.P	James F. McCann	1–800–FLOWERS.COM, Inc.
93243	Weatherford International, Inc	Dailey International Inc	Dailey International Inc.
	06/22/1999		
92883	United Rentals, Inc	Raytheon Company	Arayco Inc.
92983	RAG Aktiengesellschaft	Cyprus Amax Minerals Company	Cyprus Amax Minerals Company.
93011	State Street Research Income Trust	Real Time Data, Inc	Real Time Data, Inc.
93152	UBS AG	Aurora Foods Inc	Aurora Foods Inc.
93172	ACNielsen Corporation	Richard C. Seal	Market Decisions.
93173	ACNielsen Corporation	William A. Zumbiel	Market Decisions.
93180	SFX Entertainment, Inc	Randal A. Hendricks	Hendricks Management Company, Inc.
93206	Letitia Corporation	Charles A. Evans, Jr	Charles Evans & Associates.
93214	TBI PLC	Airport Group International Holdings, L.L.C.	Airport Group International, Inc.
93215	Airport Group International Holdings, L.L.C.	TBI PLC	TBI PLC.
	06/23/1999		
93052	SBC Communications, Inc	The Williams Companies, Inc	Williams Communications Group, Inc.
93127	Telefonos de Mexico, S.A. de C.V	The Williams Companies, Inc	The Williams Communications Group, Inc.
	06/24/1999		
92919	Metromedia International Group, Inc	PLD Telekom Inc	PLD Telekom, Inc.
92988	AT&T Corp	BellSouth Corporation	Honolulu Cellular Telephone Co.
93021	Bioglan Pharma PLC	Medicis Pharmaceutical Corporation	Medicis Pharmaceutical Corporation.
93112	World Access, Inc	Gregory A. Somers	Comm/Net Holding Corporation.
93135	General Motors Corporation	The Bank of New YorkCompany, Inc	BNY Financial LLC.
93182	Ashland, Inc	Tommy Thompson	Rainbow Concrete Company.
93194	Synetic, Inc	Medical Manager Corporation	Medical Manager Corporation.
93200	National-Oilwell, Inc	SCF–III, L.P	CE Drilling Products, Inc.
93219	Madison Dearborn Capital Partners II, L.P.	Richard Milanowski	Central Fabricators, Inc.
93227	ZF Friedrichshafen AG	Meritor Automotive, Inc	Meritor Automotive, Inc. Mentor Clutch Co.
93228	Meritor Automotive, Inc	ZF Friedrichshafen AG	ZF Friedrichshafen AG.
93229	CAF Holdings, Inc	Monterey Carpets, Inc	Monterey Carpets, Inc.
93237	Minolta Co., Ltd	QMS, Inc	QMS, Inc.
93249	Primus Telecommunications Group, Incorporated.	Telegroup, Inc	Corporate Networks Limited. Global Access Pty. Ltd. Global Access Sales, Inc. Phone Contre Limited. South East Telecom Limited. TeleContinent S.A. Telegroup (UK) Limited. Telegroup Deutschland GmbH. Telegroup Hong Kong Ltd. Telegroup International B.V. Telegroup Italia S.r.l. Telegroup Japan Kabushikil Kaisha. Telegroup Nederland B.V. Telegroup Network Services Danmark ApS. Telegroup Network Services Deutschland GmbH. Telegroup Network Services SA. Telegroup South Europe, Inc. Telegroup, Inc.
93254	EMSIcon Investments, LLC	SMTC Corporation	SMTC Corporation.
	06/25/1999		
93221	Alistar Pilot Fund LLC	Neuvant Aerospace Corporation	Neuvant Aerospace Corporation.
	06/28/1999		
92617	Danaher Corporation	Mrs. Kathryn C. Hach-Darrow	C&K Enterprises, Ltd. Hach Company.
93048	Fresenius Aktiengesellschaft	Sisters of St Joseph of Nazareth	St John Dialysis Network, L.L.C.
93130	Park-Ohio Holdings Corp	Rones Limited Partnership	Industrial Fasteners Corporation.
93161	FirstEnergy Corp	DQE, Inc	Duquesne Light Company.
93169	Ripplewood Partners, L.P	JLC Holdings, Inc	JLC Learning Corporation.
93197	Loyd Ivey	Calvert Holdings, LLC	Calvert Holdings, LLC.
93210	McLeodUSA Incorporated	Access Communications Holdings, Inc	Access Communications Holdings, Inc.
93212	The Peninsular and Oriental Steam Navigation Company.	MSC Holding Company, L.P	International Terminal Operating Co., Inc.
93223	Joseph Littlejohn & Levy Fund II, L.P	Walter E. Kellogg III	Kellogg Lumber Company.
93224	CFI ProServices, Inc	ULTRADATA Corporation	ULTRADATA Corporation.
93226	Global Crossing Ltd	Telergy, Inc	Telergy, Inc.
93232	CBS Corporation	Banyan Systems Incorporated	Switchboard Incorporated.
93233	Allegiance Telecom, Inc	PennCorp Financial Group, Inc	KIVEX, Inc.
93235	Warburg, Pincus, Equity Partners, L.P	Edify Corporation	Edify Corporation.
9326	Aurora Equity Partners, L.P	Arlington Press, Inc	Arlington Press, Inc.
93241	Jones Apparel Group, Inc	Maxwell Shoe Company, Inc	Maxwell Shoe Company, Inc.
93244	LVI Holding N.V	Oglebay Norton Company	Global Stone Detroit Lime Company.
93248	Castle Harlan Partners III, L.P	Anthony Romeo	Miami Aircraft Support, Inc.
93250	Castle Harlan Partners III, L.P	Charles A. Micale	Miami Aircraft Support, Inc.
93251	Kleiner Perkins Caufield & Byers VIII, L.P.	NetSelect, Inc	NetSelect, Inc.
93261	Sprint Corporation	BellSouth Corporation	BellSouth Cellular Corp. BellSouth Mobility Inc. BellSouoth Personal Communications, Inc. Orlando CGSA, Inc.
93266	NCE Holdings, LLC	Decorative Concepts, Inc	Decorative Concepts, Inc.
93270	Certified Grocers of California, Ltd	United Grocers, Inc	United Grocers, Inc.
93274	Christoph Schoeller	PalEx, Inc	PalEx, Inc.
93275	Martin Schoeller	PalEx, Inc	PalEx, Inc.
93277	Ali M. Jaferi and Ather Jaferi (husband and wife).	Amerada Hess Corporation	Amerada Hess Corporation.
93278	ORIX Corporation	Bank One Corporation	Banc One Mortgage Capital Markets, LLC.
93292	Suez Lyonnaise des Eaux	Albert Frere	Anglo American Clays Corp. Calgon Corporation. Calgon InterAmerican Corp. ECC International Inc.
93293	Suez Lyonnaise des Eaux	Paul G. Desmarais	Anglo American Clays Corp. Calgon Corporation. Calgon InterAmerican Corp. ECC International Inc.
93324	MBNA Corporation	CCB Financial Corporation	Central Carolina Bank-Georgia.
93325	MBNA Corporation	First Commonwealth Financial Corporation.	First Commonwealth Financial Corporation.
93326	MBNA Corporation	The Peoples Holding Company	The Peoples Bank & Trust Company.
93327	Leggett & Platt, Incorporated	Sentinel Capital Partners, L.P	MET Displays, Inc.
	06/29/1999		
92875	GN Great Nordic AS	IFR Systems, Inc	PK Technology, Inc.
93095	Sara Lee Corporation	Dawson International PLC	J.E. Morgan Knitting Mills, Inc.
93191	Associate First Capital Corporation	BP Amoco p.l.c	BP Exploration and Oil, Inc.
93198	The Prudential Insurance Company of America.	Vector Securities International, Inc	Vector Securities International, Inc.
93247	SBC Communications Inc	MCI WorldCom, Inc	MCI WorldCom, Inc.
93256	Bank One Corporation	General Electric Company	GE Assets.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
93305	Sony Corporation	Steven Rifkind	Loud Records, LLC.
93310	Stagecoach Holdings plc	Coach USA, Inc	Coach USA, Inc.
93388	Sunrise Capital Partners, L.P	Items International, Inc	Items International, Inc.
	06/30/1999		
92413	Blackstone Capital Partners II Merchant Banking Fund LP.	USX Corporation	USS/Kobe Steel Company.
92414	Blackstone Capital Partner II Merchant Banking Fund LP.	Kobe Steel, Ltd	USS/Kobe Steel Company.
93062	Blue Cross & Blue Shield United of Wisconsin.	United Wisconsin Services, Inc.	United Wisconsin Services, Inc.
93136	SunGard Data Systems, Inc	Pentamation Enterprises, Inc	Pentamation Enterprises, Inc.
93137	UICI	Summit Ventures III, L.P	AMS Investment Group, Inc.
93160	DQE, Inc	FirstEnergy Corp	FirstEnergy Corp.
93225	Horizon Publications Inc	Hollinger Inc	American Publishing Company of Indiana. American Publishing Company of Ohio. APAC 90 Arkansas Holdings Inc. APC 1991 Arkansas Holdings Inc. APC Florida Holdings Inc. APC Missouri Holdings Inc. APC Pennsylvania Holdings Inc. APC Western Holdings Inc. Meridian Star Inc. The Naugutuck News Corporation.
93238	Windward Capital Partners II, L.P	Monitronics International, Inc	Monitronics International, Inc.
93260	BellSouth Corporation	Sprint Corporation	Sprintcom, Inc.
93279	Co-Steel Inc	Slater Steel Inc	Slater Steel Inc.
93286	Nationwide Electric, Inc	Thomas C. Neal	Neal Electric, Inc.
93287	Nationwide Electric, Inc	Casimier A. Wesolowski	Neal Electric, Inc.
93289	Lynch Corporation	Central Scott Telephone Company	Central Scott Telephone Company.
93291	VS&A Communications Partners II, L.P.	Harry F. Dubbs	Yellow Page One, Inc.
93295	Thayer Equity Investors IV, L.P	Power Circuits, Inc	Power Circuits, Inc.
93296	General Electric Company	Redon, Inc	Redon, Inc.
93300	Bell Microproducts, Inc	Future Tech International, Inc., as Debtor-in-Possession.	Future Tech International, Inc., as Debtor-in-Possession.
93302	Ford Motor Company	Automobile Protection Corporation—ARCO.	Automobile Protection Corporation—ARCO.
93308	Chemfab Corporation	UroQuest Medical Corporation	UroQuest Medical Corporation.
93309	ITT Industries, Inc	Derlan Industries Limited	K and M Electronics, Inc.
93312	Code, Hennessey & Simmons III, L.P	The United Company	Blue Ridge Industrial Supply Company. United Central Industrial Supply Company.
93315	VEBA A G	Combined Logistics International, Ltd	Combined Logistics International, Ltd.
93316	Code, Hennessey & Simmons III, L.P	The 1998 Confederation Trust	Oak Holdings Inc.
93323	National Fuel Gas Company	PennzEnergy Company	PennzEnergy Exploration and Production LLC.
93351	National-Oilwell, Inc	John R. Dupre, Jr	Dupre Supply Company, Dupre International, Inc.
93352	National-Oilwell, Inc	Cornelius Dupre	Dupre Supply Company, Dupre International, Inc.
	07/01/1999		
93102	Ruddick Corporation	Hicking Pentecost PLC	Hicking Pentecost PLC.
93179	Morgan's Foods, Inc	Tricon Global Restaurants, Inc	Kentucky Fried Chicken of California, Inc. KFC National Management Company. Taco Bell Corporation. Taco Bell of California, Inc.
93216	Bruckmann, Rosser, Sherill & Co. II, L.P.	O'Sullivan Industries Holdings, Inc	O'Sullivan Industries Holdings, Inc.
93217	J. William Carter	Thomas B. Crowley, Jr	Crowley American Transport, Inc. Crowley Sea Wolf, Inc. Vessel Management Services, Inc.
93304	Jacqueline Kotts Special Trust	Superior Energy Services, Inc	Superior Energy Services, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
	07/02/1999		
93076	Merkert American Corporation	Richard R. Rogers	Richmont Marketing Specialists Inc.
93077	Richard R. Rogers	Merkert American Corporation	Merkert American Corporation.
93092	Litton Industries, Inc	Avondale Industries, Inc	Avondale Industries, Inc.
93187	GKN plc	John Patrick Gaffey	Michigan Sintered Metals, Inc., Metafusion, Inc. U.S. Energy Systems.
93188	GKN plc	Rajeev D. Ranadive	Michigan Sintered Metals, Inc., Metafusion, Inc. U.S. Energy Systems.
93204	Michael A. Singer	Synetic, Inc	Synetic, Inc.
93240	Intel Corporation	The Williams Companies, Inc	Williams Communications Group, Inc.
93290	McDonald's Corporation	Donatos Pizza, Inc	Donatos Pizza, Inc.
93299	Bernard J. Ebbers	Kimberly-Clark Corporation	Kimberly-Clark Worldwide, Inc., Kimberly-Clark Tissue Co.
93337	Lumbermens Mutual Casualty Company.	Markel Corporation	Calvert Insurance Company.
93343	El Paso Energy Corporation	Public Service Enterprise Group Incorporated.	PSEG Global New Jersey Incorporated, PSEG Newark Bay Inc.
93346	El Paso Energy Corporation	Richard H. & Carol Dean Hertzberg	ENPEX Corporation. ENPEX Newark Bay, Inc.
93347	Bowater Incorporated	Lee A. Thompson	Nuway Paper LLC.
93377	United International Holdings, Inc	@Entertainment, Inc	@Entertainment, Inc.
	07/06/1999		
93269	Welsh, Carson, Anderson & Stowe VIII, L.P.	BancTec, Inc	BancTec, Inc.
93314	SBC Communications, Inc	Cellular Communications of Puerto Rico, Inc.	Cellular Communications of Puerto Rico, Inc.
93349	AES Corporation	Michael R. Peevey	New Energy Ventures, Inc.
93350	AES Corporation	Unisource Energy Corp	New Energy Ventures, Inc.
93356	American Capital Strategies, Ltd	Edwin S. Toporek	MBT International, Inc.
93357	Rite-Aid Corporation	drugstore.com, inc	drugstore.com, inc.
93361	News Corporation	The Hearst Trust	Avon Books, Inc. William Morrow and Company, Inc. Wilmor Warehouse and Shipping Company, Inc.
93363	Waste Systems International, Inc	James Georgoulakos and Christine Georgoulakos (husband/wife).	Alpha Waste, Inc., Londonderry Associates, LP. Londonderry Turnpike Realty Trust, Rangeway Rd., LLC. Sterling Packaging, Inc., C&J Trucking Company, Inc.
93364	Waste Systems International, Inc	Charles and Cheryl M. Georgoulakos, Jr., (husband/wife).	Sterling Packaging Inc., C&J Trucking Company, Inc.
93392	CRH plc	Robert M. Thompson	Thompson-McCully Enterprises Co. Thompson-McCully Quarry Co., Advance Asphalt Plant Co.
93393	Vereniging Aegon	Vincent J. McGuinness, Sr. and Joy A. McGuinness.	Endeavor Management Co., Endeavor Group.
93400	Pearson plc	Kenneth R. Thomson (a Canadian citizen).	Muller Data Corp. Thomson Financial Securities Management.
93401	Craig O. McCaw	Speedus.com, Inc	Speedus.com, Inc.
93402	Journal Communications, Inc	John Conte Revocable Trust u/a dated 8–19–88.	Desert Empire Television Corporation.
93408	Forest Laboratories, Inc	Princes Gate Investors II, L.P	FRXC Company, Inc.
93409	Robert E. Rich, Jr	H.J. Heinz Company	H.J. Heinz Company.
93411	Mr. O. Gene Bicknell	Tricon Global Restaurants, Inc	Pizza Hut of America, Inc. Pizza Hut of Florida, Inc. Pizza Management, Inc. Red Raider Pizza Company.
93413	John D. Jackson	Tosco Corporation	Circle K Stores Inc.
93415	Lofland Acquisition, Inc	Raymond Steel Ltd	Hausman Corporation.
93416	National Bedding Company	Famco Holdings Limited	S–N Bedding Co., Inc.
93417	Bank of Montreal	Infoworld, Inc. and Midwest Web, L.L.C.	Infoworld, Inc. and Midwest Web, L.L.C.
93433	Washington Mutual, Inc	Long Beach Financial Corporation	Long Beach Financial Corporation.
93434	Brockway Moran & Partners Fund, L.P	Derlan Industries Limited	Derlan Inc.
93435	LG&E Energy Corp	CRC Holdings Corp	CRC Holdings Corp.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
93445	TPG Partners II, L.P	Motorola, Inc	SCG Holding Corporation.
	07/07/1999		
93265	AT&T Corp	Lightspan Partnership, Inc., (The)	Lightspan Partnership, Inc., (The).
93370	Providence Equity Partners III, LP	GlobeNet Communications Group Limited.	GlobeNet Communications Group Limited.
93371	Boston Ventures Limited Partnership V	GlobeNet Communications Group Limited.	GlobeNet Communications Group Limited.
93428	Ion Beam Applications S.A	SteriGenics International, Inc	SteriGenics International, Inc.
	07/08/1999		
93379	Terex Corporation	Powerscreen International plc	Powerscreen International plc.
	07/09/1999		
93195	Stichting Administratiekantoor van aandelen Koniklijke Wessa.	A–1 International Foods, Inc	A–1 International Foods, Inc.
93205	John H. Kang	Synetic, Inc	Synetic, Inc.
93271	Telefonos de Mexico, S.A. de C.V	Comm South Companies, Inc	Comm South Companies, Inc.
93283	EMI Group plc	Fuji Television Network, Incorporated	Windswept Pacific Entertainment Company.
93297	BSKH plc	Koninklijke Hoogovens N.V	Koninklijke Hoogovens N.V.
93311	Allianz Aktiengellschaft	OnStream International, Inc	OnStream International, Inc.
93334	Siemens Aktiengesellschaft	Omnipoint Corporation	Omnipoint Technologies III, Inc.
93355	SOFTBANK Corp	OptiMark Technologies, Inc	OptiMark Technologies, Inc.
93376	St. Laurent Paperboard, Inc	Chesapeake Corporation	Chesapeake Building Products Company LLC.
93386	National Council on Compensation Insurance, Inc.	Insurance Services Office, Inc	IDR Holdings, Inc.
93389	FS Equity Partners III, a Delaware Limited Partnership.	Greg Ryberg	R&H Maxxon, Inc.
93397	Motorola, Inc	Newco Joint Venture	Newco Joint Venture.
93398	Cisco Systems, Inc	Newco Joint Venture	Newco Joint Venture.
93399	Asarco Incorporated	Coeur d' Alene Mines Corporation	Coeur d' Alene Mines Corporation.
93403	Journal Communications, Inc	Sirpuhe Conte Living Trust	Desert Empire Television Corporation.
93404	Nordic Capital Holding SA	VEBA AG	Scansped Concord, N.V.
93412	Oak Hill Capital Partners, L.P	GTE Corporation	GTE Airfone Incorporated.
93414	Welsh, Carson, Anderson & Stowe VIII, L.P.	Westower Corporation	Westower Corporation.
	07/13/99		
93218	Noranda Inc	Falconbridge Limited	Falconbridge Limited.
93267	Welsh, Carson, Anderson & Stowe VIII, L.P.	Colonial Acquisition Corp	Colonial Acquisition Corp.
93268	WCAS Capital Partners III, L.P	Colonial Acquisition Corp	Colonial Acquisition Corp.
93328	Tower Automotive, Inc	Active Products Corporation	Active Products Corporation.
93329	Tower Automotive, Inc	Active Tool & Manufacturing Co., Inc	Active Tool & Manufacturing Co., Inc.
93360	Union Planters Corporation	Jeffrey L. Grayson	Capital Credit, Inc.
93380	Tyco International Ltd	Financial Security Services, Inc	FSS Security, Inc., Emergency Alert Protection, Inc.
93382	MCI WORLDCOM, Inc	SkyTel Communications, Inc	SkyTel Communications, Inc.
93383	The Rowe Companies	Storehouse, Inc	Storehouse, Inc.
93385	Brian L. Roberts	The Lightspan Partnership, Inc	The Lightspan Partnership, Inc.
93406	Bank Austria Aktiengesellschaft	Fineter S.A	Marley Holdings (USA) Inc.
93407	Koceram, N.V	Fineter S.A	Marley Holdings (USA) Inc.
93420	Leggett & Platt, Inc	Pulsar Plastics, Inc	Pulsar Plastics, Inc.
93425	Sierra Pacific Holding Company	Surdna Foundation, Inc	Surdna Foundation, Inc.
93432	Chase Manhattan Corporation	ShopNow.com, Inc	ShowNow.com, Inc.
93438	UBS AG	Lucent Technologies Inc	Lucent Technologies Consumer Products L.P.
93440	Richard L. Breakie and Lana J. Breakie (husband & wife).	Tricon Global Restaurants, Inc	Kentucky Fried Chicken of California, Inc. KFC National Management Company.
93441	Mace Security International, Inc	Excel Legacy Corporation	Millennia Car Wash, LLC.
93442	Excel Legacy Corporation	Mace Security International, Inc	Mace Security International, Inc.
93447	Vivendi S.A	Medimedia International Limited	Medimedia USA Inc.
93449	Bell Atlantic Corporation	Mark S. Chandler	METRO Technologies, Inc. Metro Technologies, Inc. Metropolitan Technologies Incorporated.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
93463	Presbyterian Retirement Communities, Inc.	Orlando Regional Healthcare System, Inc.	Carelink Partners, Inc., Lake Highlands Associates, Inc.
93470	Galen Partners III, L.P	Halsey Drug Co., Inc	Halsey Drug Co., Inc.
93477	J. Lauritzen Foundation (The)	Aktieselskabet Potagua	DanTransport Holding a/s.
93481	CEC Entertainment, Inc	Discovery Zone, Inc	Discovery Zone Licensing, Inc.
93537	Garban plc	Intercapital Group Limited	Intercapital plc.
	07/14/1999		
93372	Textron Inc	Robert B. McNab	Edwards & Associates, Inc.
93373	Textron Inc	James A. Wolfe	Edwards & Associates, Inc.
	07/15/1999		
93245	Paul G. Allen	Abry Broadcast Partners, III, L.P	Avalon Cable LLC. Avalon Cable of Michigan Holdings, Inc.
93276	Sprint Corporation	WBS America, LLC	WBS America, LLC.
93280	Lernout and Hauspie Speech Products N.V.	Fonix Corporation	fonix/ASI corporation.
93431	Unisys Corporation	PulsePoint Communications	PulsePoint Communications.
93482	KHPP Management LLC	Gary R. Hooker	Hooker industries, Inc.
93483	Yorkshire Water plc	Aquarion Company	Aquarion Company.
93485	Sysco Corporation	Richard A. Nicholas	Newport Meat Company, Inc.
93486	Richard A. Nicholas	Sysco Corporation	Sysco Corporation.
93487	Stewart Enterprises, Inc	Service Corporation International	Cemetery Services, Inc.
93491	Swiss Reinsurance Company	Alvin Randall Townsend, Sr	Pima Capital Co.
93494	Wind Point Partners III, L.P	Settlement dated 31st December 1985	Worldwide Sports & Recreation, Inc.
93495	Allianz Aktiengesellschaft	Life USA Holding, Inc	Life USA Holding, Inc.
93499	Glenn R. Jones	Hoak Communications Partners, LP	Broadcast Electronics, Inc.
93513	UBS AG, a Swiss Banking Corporation	Edison Project Inc. (The)	Edison Project Inc. (The).
93514	White Mountains Insurance Group, Inc	Robert Rothman	Consolidated International Group, Inc.
93515	Abbott Laboratories	Triangle Pharmaceuticals, Inc	Triangle Pharmaceuticals, Inc.
93522	The Seagram Company Ltd	Frederick W. Field	Interscope Records.
93528	The Allstate Corporation	Loews Corporation	Loews Corporation.
93531	DTE Energy Company	Covol Technologies, Inc	River Hill LLC.
93532	Countrywide Credit Industries, Inc	Associates First Capital Corporation	Balboa Insurance Company.
93538	Aviation Sales Company	Kitty Hawk, Inc	Kitty Hawk International, Inc., Kitty Hawk Aircargo, Inc.
93545	Wolseley plc	Jerome A. Thrall	Thrall Distribution, Inc.
93547	Thayer Equity Investors IV, L.P	Jack McDougall	Business Solutions Group LLC.
93555	ADC Telecommunications, Inc	Saville Systems PLC	Saville Systems PLC.
	07/16/1999		
93381	International Business Machines Corporation.	CIRRUS Logic, Inc	CIRRUS Logic, Inc.
93405	Madison Dearborn Capital Partners II, L.P.	Tru-Part Manufacturing Corporation	Tru-Part Manufacturing Corporation.
93421	Hispanic Broadcasting Corporation	Amador and Rosalie L. Bustos	Z-Spanish Media Corporation.
93422	Amador S. and Rosalie L. Bustos	Hispanic Broadcasting Corporation	Hispanic Broadcasting Corporation.
93439	Jim C. Walton	Hollinger Inc	Hollinger International Inc.
93454	American Securities Capital Partners II, L.P.	CPI Corp	CPI Corp.
93469	Commonwealth Principals LLC	Young & Rubicam Inc	Young & Rubicam Inc.
93489	Pacific Health Systems, Inc	Exempla, Inc	Mutual of Omaha of Colorado, Inc., d/b/a Antero Health Plans.
93490	PacifiCare Health Systems, Inc	Mutual of Omaha Insurance Company	Mutual of Omaha of Colorado, Inc. d/b/a Antero Health Plans.
93492	Blackstone Capital Partners III Merchant Banking Fund L.P.	Newco	Newco.
93501	Fresh America Corp	Rosecliff RCD Partners	FreshPoint Holdings, Inc.
93502	Rosecliff RCD Partners	Fresh America Corp	Fresh America Corp.
93507	Oak Investment Partners VIII, L.P	Advanced Radio Telecom Corp	Advanced Radio Telecom Corp.
93508	Qwest Communications International Inc.	Advanced Radio Telecom Corp	Advanced Radio Telecom Corp.
93519	Lear Corporation	Donnelly Corporation	Lear-Donnelly Overhead Systems LLC.
93524	Myers Industries, Inc	Richard A. Bonner	Dillen Products, Inc., Dillen Products Company, Ltd. Red Creek, Inc., North Shore Plastics, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
93530	IWKA Aktiengesellschaft	Household International, Inc	B & K Corporation.
93541	Freedom Securities Corporation	Gibraltar Securities Co	Gibraltar Securities Co.
93542	R.L. Polk & Co	Estate of Martha Blackburn	Carfax, Inc.
93544	Federated Department Stores, Inc	BrandDirect Marketing, Inc	BrandDirect Marketing, Inc.
93553	Virgil R. Williams	LawGibb Group, Inc	LawGibb Group, Inc.
93557	Tessenderlo Chemie S.A	Robert V. Kerley	Sundance Ag, Inc.
93559	Amazon.com, Inc	Sotheby's Holdings, Inc	Sotheby's Holdings, Inc.
93560	Koninklijke (Royal) Numico N.V	General Nutrition Companies, Inc	General Nutrition Companies, Inc.
93561	Dover Corporation	Lee Laser, Inc	Lee Laser, Inc.
93565	Building One Services Corporation	Randall R. Stutts	Sullivan Electric, Inc.
93567	Fox Paine Capital Fund, L.P	Maxxim Medical, Inc	Maxxim Medical, Inc.
93568	Datatec Limited	General Electric Company ("GE")	General Electric Company ("GE").
93573	Freedom Communications, Inc	William J. Curtis	CurtCo Freedom Group, L.L.C.
93577	National Equipment Services, Inc	Michael J. Plank	The Plank Company, L.P. and Plank Management, Inc.
93587	Jeffrey H. Smulyan	Press Communications, LLC	Press Communications, LLC.
93589	Cisco Systems, Inc	StratumOne Communications, Inc	StratumOne Communications, Inc.
93590	Welsh, Carson, Anderson & Stowe VIII, L.P.	Alliance Data Systems Corporation	Alliance Data Systems Corporation.
	07/19/1999		
93339	Ametek, Inc	Atlantic Equity Partners, L.P	Controls Holding Corporation.
93369	MotivePower Industries, Inc	Westinghouse Air Brake Company	Westinghouse Air Brake Company.
93496	Seiko Instruments Inc	SII Marketing International, Inc	SII Marketing International, Inc.
93505	Patrick J. McGovern	Pearson plc	MacMillan General Reference USA Inc.
93516	Security First Technologies Corporation.	Edify Corporation	Edify Corporation.
93517	DLJ Merchant Banking Partner II, L.P	Hydrant Acquisition Corp	Hydrant Acquisition Corp.
93518	DLJ Merchant Banking Partners II, L.P	Tyco International Ltd	Grinnell Corporation. J.B. Smith Mfg. Co. Mueller Holdings Corp. Tyco International of Canada Ltd.
93534	John W. Kluge	AboveNet Communications, Inc	AboveNet Communications, Inc.
93569	Dominion Fund III, a California Limited Partnership.	Mortgage.com, Inc	Mortgage.com, Inc.
93574	Owens & Minor, Inc	Medix, Inc	Medix, Inc.
93591	Erik D. Prince	Advance Mixer, Inc	Advance Mixer, Inc.
93594	Charterhouse Equity Partners III, L.P	W.R. Grace & Co	Cross Country Staffing.
93599	W.R. Grace & Co	Nestor Healthcare Group plc	Nestor-BNA Holdings Corp.
93605	National Data Corporation	Medscape, Inc	Medscape, Inc.
93609	Xerox Corporation	Danka Business Systems, plc	Danka Holding Company. Danka Office Imaging Company.
93611	Joseph Littlejohn and Levy Fund II, L.P.	William A. Schwartz	Blackstone Company, Inc.
93616	Hilite Holdings L.L.C	SPX Corporation	SPX Corporation.
93618	Anacomp, Inc	Litton Industries, Inc	Litton Adesso Software, Inc.
93619	Glynwed International plc	Victory Refrigeration Company LLC	Victory Refrigeration Company LLC.
93620	Wolters Kluwer nv	Bankers Systems, Inc	Bankers Systems, Inc.
93621	KRSM Management, LLC	Nancy's Specialty Foods, Inc	Nancy's Specialty Foods, Inc.
93648	Grotech Partners V, L.P	Yorkshire Global Restaurants, Inc	Yorkshire Global Restaurants, Inc.
93662	ConAgra, Inc	Robert N. Wiviott	Choice One Foods. Compton Investors, L.L.C.
93663	Robert N. Wiviott	ConAgra, Inc	ConAgra, Inc.
93677	Michael S. Wilner	Insight Communications Company, Inc	Insight Communications Company, Inc.
93678	Sidney R. Knafel	Insight Communications Company, Inc	Insight Communications Company, Inc.
93679	Vestar Capital Partners III, L.P	Insight Communications Company, Inc	Insight Communications Company, Inc.
	07/20/1999		
93647	Candover Investments plc	Union Miniere, S.A	Diamant Boart S.A.
	07/21/1999		
93384	CEA Capital Partners USA, L.P	Mid-Missouri Telephone Company	Mid-Missouri Telephone Company.
93597	Pinnacle Systems, Inc	Hewett-Packard Company	Video Communications Division.
93601	Ferro Corporation	Cookson Group plc	TAM Ceramics, Inc.
93607	Citizens Utilities Company	GTE Corporation	Contel of Minnesota, Inc. GTE California Incorporated. GTE West Coast Incorporated.
93608	MDU Resources Group, Inc	Loy S. and Marie Clark	Loy Clark Pipeline Co.
93612	John A. Porter	ADCO Investors, L.P	Acoustics Development.
93658	Transit Group, Inc	Frank Mitchell	MDR Cartage, Inc.
93659	Transit Group, Inc	Bob Riley	MDR Cartate, Inc.
93664	Dimeling, Schreiber and Park Reorganization Fund II.	Renaissance Cosmetic, Inc	Renaissance Cosmetic, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
	07/22/1999		
93554	James M. Williams, Jr	LawGibb Group, Inc	LawGibb Group, Inc.
93558	Supervalu Inc	Richfood Holdings, Inc	Richfood Holdings, Inc.
	07/23/1999		
93147	O. Burton Smith	L.O.R. Inc	L.O.R. Inc.
93510	Blackstone Capital Partners III Merchant Banking Fund L.P.	Allied Waste Industries, Inc	Allied Waste Industries, Inc.
93511	Blackstone Offshore Capital Partners III L.P.	Allied Waste Industries, Inc	Allied Waste Industries, Inc.
93512	Blackstone Family Investment Partnership L.P.	Allied Waste Industries, Inc	Allied Waste Industries, Inc.
93546	Canaan Equity Offshore C.V	Mortgage.com, Inc	Mortgage.com, Inc.
93548	Apollo Investment Fund IV, L.P	Allied Waste Industries, Inc	Allied Waste Industries, Inc.
93549	Apollo Overseas Partners IV, L.P	Allied Waste Industries, Inc	Allied Waste Industries, Inc.
93550	Apollo Overseas Partners Fund III, L.P	Allied Waste Industries, Inc	Allied Waste Industries, Inc.
93551	Apollo U.K. Partners III, L.P	Allied Waste Industries, Inc	Allied Waste Industries, Inc.
93579	Managed Health Care Associates, Inc	Three Cities Offshore II C.V	COHR, Inc.
93623	Ares Leveraged Investment Fund II, L.P.	Allied Waste Industries, Inc	Allied Waste Industries, Inc.
93729	Wayne B. Brown	Tricon Global Restaurants, Inc	Taco Bell Corp.
	07/26/1999		
92457	Intertape Polymer Group Inc. (a Canadian company).	Lynch Corporation	Central Products Company. Spinnaker Electric Tape Company.
93902	SCANA Corportion	ITC^DeltaCom, Inc	ITC^DeltaCom, Inc.
93366	Arnold Simon	Michele Bohbot	Lola, Inc.
93500	The Albert Fisher Group PLC	Fresh America Corp	Fresh America Corp.
93593	Hellman & Friedman Capital Partners II, L.P.	Larkin-Pluznick-Larkin Company	Larkin-Pluznick-Karkin, LLC.
93504	Telefonos de Mexico, S.A. de C.V	SBC Communications, Inc	SBC International Puerto Rico, Inc.
93509	UBS AG	ETM Entertainment Network, Inc	ETM Entertainment Network, Inc.
93523	John M. Rudey	Boise Cascade Corporation	Boise Cascade Corporation.
93525	NovaCare, Inc	Unified Management of R.I., Inc	Unified Management of R.I., Inc.
93533	NovaCare, Inc	Unified Management Corporation	Unified Management Corporation.
93570	Michel Akkermans	Security First Technologies Corporation.	Security First Technologies Corporation.
93571	The Atlantic Foundation	Security First Technologies Corporation.	Security First Technologies Corporation.
93572	GAP Coinvestment Partners, L.P	Security First Technologies Corporation.	Security First Technologies Corporation.
93578	Waste Management, Inc	Guillermo M. Torres	Serrot Acquisition Corp.
93503	Mediacom LLC	Trusts under the Will dated June 3, 1982 of Roger E. Zylstra.	Zylstra Communications Corporation.
93625	Brentwood Associates Buyout Fund II, L.P.	Aurora Equity Partners II, L.P	QDSP Holdings, Inc.
93626	Aurora Equity Partners II, L.P	Brentwood Associates Buyout Fund II, L.P.	City Truck Holdings, Inc.
93639	Reckson Service Industries, Inc	Alliance National Incorporated	Alliance National Incorporated
93644	H&R Block, Inc	McGladrey & Pullen, LLP	McGladrey & Pullen, LLP.
93650	HEICO Corporation	Thermal Structures, Inc	Thermal Structures, Inc.
	07/27/1999		
92073	Allied Waste Industries, Inc	Browning-Ferris Industries, Inc	Browning-Ferris Industries, Inc.
93592	Northeast Utilities	Dennis Morrissette	Denron Plumbing & HVAC, Inc.
93596	The Seagram Company Ltd	The Seagram Company Ltd	Rush Associates Labels Recordings.
93615	Avnet, Inc	Marshall Industries	Marshall Industries.
93617	Schroder Ventures Italian Fund II	Imation Corp	Ferrania USA, Inc.
93630	Hispanic Broadcasting Corporation	SBT Communications Statutory Trust	Delaware Radio, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
93653	SAirGroup	Alpha Airports Group Plc	Alpha U.S. Holdings, Inc.
93655	S3 Incorporated	Diamond Multimedia Systems, Inc	Diamond Multimedia Systems, Inc.
93656	Benchmark Electronics, Inc	J.M. Huber Corporation	AVEX Electronics, Inc.
93660	Golden Investment Company, L.L.C	Carlos Bailey and Brenda Bailey (husband and wife).	Great Western Products Company, Inc.
93661	General Electric Company	Comdisco, Inc	Comdisco, Inc.
93667	Softbank Corp	Joseph D. Mansueto	Morningstar, Inc.
93668	Koninklijke Philips Electronics N.V	J.W. Childs Equity Partners L.P	Beltone Electronics Corporation.
93669	Innovex, Inc	ADFlex Solutions, Inc	ADFlex Solutions, Inc.
93670	Glynwed International plc	Invaco Inc	IPEX Inc.
93671	Glynwed International plc	Scepter Holdings Inc	IPEX inc.
93675	Capital Z Financial Services Fund, II, L.P.	U.S.I. Holdings Corporation	U.S.I. Holdings Corporation.
93691	Oak Hill Capital Partners, L.P	Leslie B. Otten	American Skiing Company.
93723	David Paradise	Tricon Global Restaurants, Inc	Taco Bell Corp.
	07/28/1999		
93632	MWA, P.C	MedPartners, Inc	MedPartners Acquisition Corporation.
93635	The Veritas Capital Fund, L.P	Blackstone Capital Partners II Merchant Banking Fund L.P.	Bar Technologies, Inc.
93654	RMC Group p.l.c	Timothy B. G. Youngquist	Youngquist Brothers Equities. Youngquist Brothers Rock, Inc.
93682	Wind Point Partners III, L.P	Robert A. Bosco	Anstro Manufacturing, Inc.
93683	Heritage Fund, II, L.P	Avista Corp	Store Fixtures Group.
93684	Thomas H. Lee Equity Fund IV, L.P	Vision Twenty-One, Inc	The Complete Optical Laboratory Ltd., Corp.
93685	Meadowbrook Insurance Group, Inc	TPA Associates, Inc	TPA Associates, Inc.
93686	Metals USA, Inc	Mr. Barry Wolf	Wolf Brothers, Inc.
93689	Lucent Technologies, Inc	Lucent Technologies, Inc	Cirrus Logic, Inc.
93700	Wallace K. Tsuha, Jr	SmartFlex Systems, Inc	SmartFlex Systems, Inc.
93701	TCV III (Q), L.P	eMachines, Inc	eMachines, Inc.
93702	Melbourne Internal Medicine Associates, P.A.	MedPartners, Inc	MedPartners, Inc.
93712	Glen A. Taylor	FMCI Corporation	FMCI Corporation.
93714	Health Care Horizons, Inc	Foundation Health Systems, Inc	QualMed Plans for Health, Inc.
93715	Samaritan Health Services, Inc	FirstCare Health Foundation	FirstCare Health Foundation
93718	GTCR Fund VI, L.P	Metamor Worldwide, Inc	Metamor Software Solutions, Inc.
93721	Electronics for Imaging, Inc	Management Graphics, Inc	Management Graphics, Inc.
93726	Madison Dearborn Capital Partners III, L.P.	Ruth U. Fertel, Inc	Ruth U. Fertel, Inc.
93751	Utilicorp United, Inc	Quanta Services, Inc	Quanta Services, Inc.
93771	RMC Group. p.l.c	Harvey B. Youngquist	Youngquist Brothers Equities. Youngquist Brothers Rock, Inc.
	07/29/1999		
91095	Koninklijke Philips Electronics NV	Micrion Corporation	Micrion Corporation.
93466	General Dynamics Corporation	GTE Corporation	GTE Government Systems Corp.
93595	Genesys, S.A	The Williams Companies, Inc	Conference Acquisition Corporation.
	07/30/1999		
93475	Ashland Inc	Mark Buster	B&H Bridge, Inc. Buster Concrete and Materials, Inc. Buster Paving Company, Inc. Progressive Contracting, Inc.
93583	WPS Resources Corporation	PP&L Resources, Inc	Lady Jane Collieries, Inc. PP&L, Inc.
93651	Kali P. Chaudhuri, M.D	MedPartners, Inc	MedPartners, Inc.
93666	Paul G. Allen	Falcon Holding Group, L.P	Falcon Communications, L.P.
93673	TCV II (Q), L.P	Mortgage.com, Inc	Mortgage.com, Inc.
93674	Technology Crossover Ventures II, L.P	Mortgage.com, Inc.	Mortgage.com,Inc
93697	Scottish Annuity & Life Holding, Ltd	Mrs. Amy Regan	Harbourton Reassurance, Inc.
93716	Atlantic Equity Partners International II, L.P.	Ronald L. Melby and Marilyn L. Melby	Metal Form, Inc.
93734	Accor S.A. (a French company)	Red Roof Inn, Inc	Red Roof Inn, Inc.
	08/02/1999		
93396	Xilinx, Inc	Koninklijke Philips Electronics NV	Philips Semiconductor, Inc.
93749	MDU Resources Group, Inc	Billy G. & Louise Yarbrough	Solano Concrete, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
	08/03/1999		
93631	The Bank of New York Co., Inc	The Industrial Bank of Japan, Limited	IBJ Whitehall Bank & Trust Company.
93687	Sumida Electric Co., Ltd	C.P. Clare Corp	Clare EMG Inc.
93696	KKR 1996 Fund L.P	Birch Telecom, Inc	Birch Telecom, Inc.
93706	Thomas T. Gore, an individual	Timeplex, Inc	Timeplex, Inc.
93707	Mail-Well, Inc	Russell C. Gesme	Direct Graphics, Inc.
93709	Richard C. Rainwater	GAINSCO, Inc	GAINSCO, Inc.
93711	Hajoca Corporation	Howard Weinstein	Weinstein Supply Corp.
93713	General Electric Company	Trailer Investors Partnership	Green Financial.
93728	Vestar Equity Partners, L.P	MotivePower Industries, Inc	MotivePower Industries, Inc.
93731	William E. Kassling	MotivePower Industries, Inc	MotivePower Industries, Inc.
93737	Vicat, S.A	Acadia Partners, L.P	United Concrete Service Corp. United Ready Mix Concrete Corp.
93738	Royal Bank of Canada	Judith M. Van Kampen	Marseille Brick Venture, L.P.
93741	V. Prem Watsa	Zenith National Insurance Corp	Zenith National Insurance Corp.
93745	A.H. Belo Corporation	MAC America Communications, Inc	KASW–TV, Arizona New Channel, AZFamily.com. KTVK–TV.
93759	Paul M. Montrone	Jenoptik AG	Krone AG.
93762	The DII Group, Inc	Thomas and Susie C. Albright	Circuit Board Assemblies, Inc. EMCI, Inc.
93792	Invensys plc	Ralph G. Ridenour and Isobel J. Ridenour.	Universal Enterprises Inc.
	08/04/1999		
93769	Oak Hill Capital Partners, L.P	Caribbean Restaurants Holdings, Inc	Caribbean Restaurants Holdings, Inc.
93822	Monitor Clipper Equity Partners, L.P	Corporate Wings, Inc	Corporate Wings, Inc.
	08/05/1999		
93418	Northern States Power Company	Niagara Mohawk Holdings, Inc	Niagara Mohawk Power Corp.
93479	Giant Eagle, Inc	Russo's, Inc	Russo's, Inc.
93584	Charterhouse Equity Partners III, L.P	OnStream International, Inc	OnStream International, Inc.
93622	VoiceStream Wireless Corp	Omnipoint Corp	Omnipoint Corp.
93710	American Tower Corp	Everett R. Dobson Irrevocable Family Trust.	Dobson Tower Co.
93727	Cox Enterprises, Inc	Ruth I. Kolpin	Southwest Missouri Cable TV, Inc.
93739	Celadon Group, Inc	Jerry Closser	Zipp Express, Inc.
93742	Blackstone Offshore Capital Partners, II L.P.	Blackstone Capital Partners II Merchant Banking Fund L.P.	Bar Technologies, Inc.
93752	Quanta Services, Inc	Billy Jones	Crown Fiber Communications, Inc.
93766	Briggs & Stratton Corp	Metal Technologies, Inc	Metal Technologies, Inc.
93767	Metal Technologies, Inc	Briggs & Stratton Corp	Briggs & Stratton Corp.
93768	E. Andrew Harvey	Bunzl plc	G.B. Goldman Paper Co. The Paper Group, Inc.
93773	Enron Corp	The United Company	The United Company.
93777	Reservoir Capital Partners, L.P	Orange-co, Inc	Orange-co, Inc.
93778	David Fuchs	Century Business Services, Inc	Century Business Services, Inc.
93779	Century Business Services, Inc	David Fuchs	Tri-Tek Information Services, Inc.
93780	MascoTech, Inc	Windfall Products, Inc	Windfall Products, Inc.
93784	AMSTED Industries Inc	Peter J. Seippel	Advance Products Corp.
93787	Acosta-PMI, In.	MAI-Alper, Inc	MAI-Alper, Inc.
93788	Continuum Health Partners, Inc	New York Eye and Ear Infirmary	New York Eye and Ear Infirmary.
93789	Boyd Gaming Corp	Blue Chip Casino, Inc	Blue Chip Casino, LLC.
93791	C.F. Sauer Company (The)	Lucia M. Cleveland	The Spice Hunter.
93794	Fresenius Aktiengesellschaft	Henry Ford Health System	Bay Area Regional Dialysis Partnership.
93796	PP&L Resources, Inc	The Montana Power Co	The Montana Power Company.
93798	The Allstate Corp	American Heritage Life Investment Corp.	American Heritage Life Investment Corp.
93799	ACX Technologies, Inc	Crown Cork & Seal Company, Inc	Golden Aluminum Company.
93800	Bouygues S.A	Acadia Partners, L.P	United Building Materials Corp.
93801	Rockwell International Corp	Mark Hanrahan	Intertrade Limited.
93803	Leggett & Platt, Inc	Stephen Boas	Design Fabricators Inc.
93804	Legget & Platt, Inc	Robert Coleman	Design Fabricators Inc.
93805	Bell & Howell Company	Infonautics, Inc	Infonautics, Inc.
93806	John Hancock Mutual Life Insurance Company.	Chesapeake Corporation	Chesapeake Forest Products Company LLC.
93807	Willis Stein and Partners, L.P	Kevin West and Colleen Gordon (A Married Couple).	Armed Forces Communications, Inc. d/b/a Maket Place.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
93809	U.S. Bancorp	Associate First Capital Corp	Voyager Fleet Systems, Inc.
93812	PP&L Resources, Inc	Enron Group	Portland General Electric Co.
93814	PP&L Resources, Inc	Puget Sound Energy, Inc	Puget Sound Energy, Inc.
93815	Vivendi S.A	GPU, Inc	York Haven Power Company, GPU Generation, Inc.; GPU, Inc.
93816	Code Hennessy & Simmons III, L.P	Peter Howard	Jakel Holding, Corp.
93817	Southdown, Inc	American Industrial Partners Capital Fund, L.P.	SMI Holding, Inc.
93826	Warburg, Pincus Ventures, L.P	The St. Paul Companies, Inc	Elite Premium Services, Inc. St. Paul Fire and Marine Insurance. Westchester Premium Acceptance. Westchester Premium Acceptance of California, Inc.
93841	CenturyTel, Inc	GTE Corp	GTE Southwest Inc., GTE Arkansas Inc., GTE Midwest Inc.
93852	COGNICASE, Inc	Arnold Pellegrinelli	Prism Consulting Services, Inc.
93853	COGNICASE, Inc	Paul Rothstein	Prism Consulting Services, Inc.
		08/06/1999	
93613	Devon Delaware Corp	PennzEnergy Co	PennzEnergy Co.
		08/09/1999	
93694	Waste Management, Inc	Sanitary Services Corp	Sanitary Services Corp.
93763	TPG Partners II, L.P	Magellan Health Services, Inc	Magellan Health Services, Inc.
93765	Cumulus Media Inc	M&F Calendar Holdings, L.P	Calendar Broadcasting, Inc.
93772	iVillage Inc	Lamaze Publishing Company, Inc	Lamaze Publishing Company, Inc.
93786	Boise Cascade Corp	Furman Lumber, Inc	Furman Lumber, Inc.
93797	Royal & Sun Alliance Insurance Group plc.	Orion Capital Corp	Orion Capital Corp.
93810	Terex Corp	Raytheon Co	Cedarapids, Inc.
93820	Draka Holding N.V	Siemens Aktiengesellschaft	Siecor Operations, LLC.
93821	Draka Holding H.V	Corning Inc	Siecor Operations, LLC.
93824	Norwood Promotional Products, Inc	R.L. Polk & Co	AUI Acquisition Corp.
93835	Solectron Corp	Trimble Navigation Limited	Trimble Navigation Limited.
93837	Code, Hennessy & Simmons III, L.P	Richard P. Dickson	Alternative Distribution Systems, Inc.
93844	John J. Rigas	John J. Rigas	Olympus Communications, L.P.
93845	Dover Corp	Charles A. Elliott	Crenlo, Inc.
93847	Gordon L. Stewart	AutoNation, Inc	Hoover Toyota, Inc.
93854	Louisiana-Pacific Corp	Le Groupe Forex, Inc	Le Groupe Forex Inc.
93857	FirstGroup plc	Bruce Transportation Group, Inc	Bruce Transportation Group, Inc.
93858	SENIOR plc	Jimmy W. Green	Texloc, Inc., Texloc Hose & coupling, Inc. Texmelt, Inc., Texpace, Inc.
93859	Clear Channel Communications, Inc	Jeffrey E. Trumper	KHTZ Broadcast, L.P. KHTZ License L.P. KLSK Broadcast L.P. KLSK License L.P. KTEG Broadcast L.P. KTEG License L.P. KZRR Broadcast L.P. KZRR License L.P. KZSS Broadcast L.P. KZSS License L.P.
93869	Wild Oats Markets, Inc	Henry's Marketplace, Inc	Henry's Marketplace, Inc.
93870	Marketing Services Group, Inc	Grizzard, Advertising Inc	Grizzard Advertising, Inc.
93877	Titus Interactive SA	Interplay Entertainment Corp	Interplay Entertainment Corp.
93883	Fedders Corp	Trion, Inc	Trion, Inc.
93893	Curtiss-Wright Corp	Allegheny Teledyne, Inc	Teledyne Fluid Systems, Teledyne Industries, Inc.
93898	E*Trade Group, Inc	TIR Holdings Limited	TIR Holdings Limited.
93901	Fitness Holdings, Inc	Q Clubs, Inc	Q Clubs, Inc.
93905	SSL International plc	Mr. Joel E. Bickell	Silipos, Inc.
93913	Smith & Nephew plc	Exogen, Inc	Exogen, Inc.
93914	LKQ Corp	Joseph Simone	Hunts Point Auto Wreckers, Inc.
93915	France Telecom	NTL, Inc	NTL, Inc.
93919	Advanced Communications Group, Inc	YPtel Corp	YPtel Corp.
93921	General Electric Co	Telescan, Inc	Telescan, Inc.
93934	AnswerThink Consulting Group, Inc	Think New Ideas, Inc	Think New Ideas, Inc.
93937	Sonat, Inc	Sonat, Inc	Sonat Marketing Company L.P. Sonat Power Marketing L.P.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

ANS No.	Acquiring	Acquired	Entities
93940	GRC International, Inc	Gerald R. McNichols	Management Consulting & Research, Inc.
93954	Catalytica, Inc	Wyckoff Chemical, Inc	Wyckoff Chemical, Inc.
93958	Ragione di Gilberto Benetton e C.S.A.p.A.	Host Marriott Services Corp	Host Marriott Services Corp.
		08/10/1999	
93753	Billy Jones	Quanta Services, Inc	Quanta Services, Inc.
93840	IBP, Inc	Thorn Apple Valley, Inc, debtor-in-possession.	Thorn Apple Valley, Inc.
		08/11/1999	
92696	Allied Waste Industries, Inc	Manafort Brothers, Inc	Connecticut Waste Processing.
93680	Stronach Trust	Orient Corp	Gulfstream Park Racing Association, Inc.
93754	American Tower Corp	UniSite, Inc	UniSite, Inc.
93761	Toys "R" Us, Inc	Pegasus Related Partners, L.P	Imaginarium Toy Centers, Inc.
93790	James R. Leininger, M.D	Western Resources, Inc	Protection One Alarm Monitoring, Inc.
93802	Buhrmann NV	Corporate Express, Inc	Corporate Express, Inc.
93829	Jack P. Cook, Jr	Health-Chem Corp	Hercon Environmental Corp.
93839	Gilbert Global Equity Partners, L.P	Advanced Communications Group, Inc	Herculite Products, Inc. Feist Long Distance Service, Inc. Firstel, Inc. Telecom Resources, Inc. Valu-Line of Longview, Inc.
93860	Tellabs, Inc	NetCore Systems, Inc	NetCore Systems, Inc.
93864	Cincinnati Bell Inc	IXC Communications, Inc	IXC Communications, Inc.
93889	Bruckmann, Rosser, Sherill & Co., L.P	Foundation Health Systems, Inc	Foundation Health Systems, Inc.
93923	Sister of Providence, Sacred Heart Providence.	Little Company of Mary Health Services, American Province.	Little Company of Mary Health Services, American Province.
93938	Snap-on Inc	Sandvik AB	SB Holding B.V.
93941	Gerald R. McNichols	GRC International, Inc	GRC International, Inc.
		08/13/1999	
93690	Friede Goldman International, Inc	Halter Marine Group, Inc	Halter Marine Group, Inc.
93699	VA Technologie AG	Kvaerner ASA	Kvaerner USA, Inc.
93811	AlliedSignal Inc	Johnson Matthey Public Limited Co	JM Electronics Holding Company, Inc.
93827	CMGI, Inc	Zoom Newco Inc	Zoom Newco Inc.
93828	Compaq Computer Corp	Zoom Newco Inc	Zoom Newco Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 99–22673 Filed 8–31–99 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. Baseline Survey of Youth for the Federal Evaluation of Initiatives Funded Under Section 510 of the Maternal and Child Health Block Grant Program

The Personal Responsibility and Work Opportunity Reconciliation Act (P.L. 104–193) established Section 510 of the Maternal and Child Health Block Grant Program, the purpose of which is to support state efforts promoting abstinence only education. The Balanced Budget Act of 1997 (P.L. 105–33) established a requirement to "evaluate programs under Section 510." This proposed information collection will gather baseline information for the evaluation—NEW—*Respondents:* Individuals; *Number of Respondents:* 7,000; *Average Burden per Response:* .75 hours; *Burden:* 5,250 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained

by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC, 20201. Written comments should be received within 30 days of this notice.

Dated: August 23, 1999.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 99–22681 Filed 8–31–99 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

President's Committee on Mental Retardation; Notice of Meeting

AGENCY: President's Committee on Mental Retardation. Administration for Children and Families, DHHS.

ACTION: Notice of meeting.

DATES: The meeting of the President's Committee on Mental Retardation will be held on Thursday, September 16, 1999, from 10:30 a.m. to 5 p.m., and on Friday, September 17, 1999, from 9 a.m. to 12 noon.

ADDRESSES: The meeting will be held in the Madison Hotel, 15th and M Streets, NW., Washington, DC 20001. Full Committee Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All meeting sites are barrier free.

AGENDA: The Committee plans to discuss critical issues concerning Federal Policy, Federal Research and Demonstration, State Policy Collaboration, Minority and Cultural Diversity and Mission and Public Awareness, relating to individuals with mental retardation.

FOR FURTHER INFORMATION CONTACT: Jane L. Browning, Executive Director, President's Committee on Mental Retardation, 370 L'Enfant Promenade, SW., Washington, DC 20447, (202) 619–0634.

SUPPLEMENTARY INFORMATION: The PCMR acts in an advisory capacity to the President and the Secretary of the U.S. Department of Health and Human Services on a broad range of topics relating to programs, services, and supports for persons with mental retardation. The Committee, by Executive Order, is responsible for evaluating the adequacy of current practices in programs and supports for persons with mental retardation, and for reviewing legislative proposals that impact the quality of life that is experienced by citizens with mental retardation and their families.

Dated: August 26, 1999.

Laverdia T. Roach,

Special Assistant to the Executive Director, PCMR.

[FR Doc. 99–22784 Filed 8–31–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Reallotment of Funds, for FY 1998 Low Income Home Energy Assistance Program (LIHEAP)

AGENCY: Office of Community Services, ACF, DHHS.

ACTION: Notice of determination concerning funds available for reallotment; correction.

SUMMARY: In accordance with section 2607(b)(1) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 8621 et seq.) as amended, a notice was published in the **Federal Register** on July 30, 1999 announcing the Secretary's final determination regarding funds available for reallotment. The document contained incorrect reallotment data.

FOR FURTHER INFORMATION CONTACT: Janet Fox, Director, Division of Energy Assistance, Office of Community Services, 370 L'Enfant Promenade, SW, Washington, DC 20447; telephone number (202) 401–9351.

Correction

In the **Federal Register** of July 30, 1999, in FR Doc. 99–19601, on page 41435, in the first column, the first paragraph of the "Summary" caption, correct the last sentence to read:

Therefore, the amount of funds available for reallotment is $2,207,431.00.

Dated: August 26, 1999.

Donald Sykes,

Director, Office of Community Services.

[FR Doc. 99–22785 Filed 8–31–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0721]

Agency Information Collection Activities; Announcement of OMB Approval; Premarket Approval of Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Premarket Approval of Medical Devices" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 27, 1999 (64 FR 4112), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0231. The approval expires on July 31, 2001. A copy of the supporting statement for this information collection is available on the Internet at "http://www.fda.gov/ohrms/dockets".

Dated: August 26, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–22721 Filed 8–31–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–2908]

The Goodyear Tire & Rubber Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that The Goodyear Tire & Rubber Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of piperylene/2-methyl-2-butene/alpha-methylstyrene terpolymers for use in the preparation of can end cements intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9B4685) has been filed by The Goodyear Tire & Rubber Co., c/o Keller and Heckman LLP, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposes to amend the food additive regulations in § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300) to provide for the safe use of piperylene/2-methyl-2-butene/alpha-methylstyrene terpolymers for use in the preparation of can end cements intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: August 12, 1999.

Laura M. Tarantino,

Deputy Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–22719 Filed 8–31–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Feed Safety and Compliance With Animal Protein Prohibited in Ruminant Feed Rules Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) in cooperation with the California Department of Food and Agriculture (CDFA) and the Association of American Feed Control Officials (AAFCO), is announcing a public workshop for training regulatory officials and the feed industry. The workshop is designed to increase participants' understanding of the regulatory changes that affect the feed industry. The topics to be discussed relate to feed safety and include the animal protein in ruminant feed rule, veterinary feed directives, medicated feed good manufacturing practices, feed contamination, and antibiotic drug resistance.

Date and Time: The workshop will be held on September 28, 1999, from 8 a.m. to 5 p.m., and on September 29, 1999, from 8:30 a.m. to 3:30 p.m.

Location: The workshop will be held at the Delta King Hotel, 1000 Front St., Sacramento, CA, 916–444–5464. Persons needing hotel rooms must request the special rate for the AAFCO/CDFA workshop. A special rate is available until September 7, 1999.

Contact: For further information including a registration form: Steve Wong, Branch Chief, CDFA, 1220 N St., rm. A–472, Sacramento, CA 95814–5621, 916–654–0574, FAX 916–653–2407,

For general information: Karen L. Robles, Food and Drug Administration, 801 I St., Sacramento, CA 95814, 916–498–6400, ext. 14.

Registration: Advanced registration is required. Please register on or before September 10, 1999. There is a $50 registration fee which you should make payable to the Association of American Feed Control Officials (AAFCO). The registration fee will cover the cost of the facility. Send your registration fee and completed registration form to Feed Safety/BSE Training, c/o CDFA, Attn. Office Supervisor, Feed Inspection Program, 1220 N St., rm. A-472, Sacramento, CA 95814–5621. Space is limited, therefore, you are encouraged to register early.

If you need special accommodations due to a disability, please contact Steve Wong at least 7 days in advance.

Dated: August 25, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–22680 Filed 8–31–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Neurological Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Neurological Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on September 16, 1999, 11 a.m. to 6 p.m., and September 17, 1999, 8:30 a.m. to 3:30 p.m.

Location: Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD.

Contact Person: Janet L. Scudiero, Center for Devices and Radiological Health (CDRH) (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1184, ext. 176, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12513. Please call the Information Line or access the World Wide Web at "http://www.fda.gov/cdrh/upadvmtg.html" for up-to-date information on this meeting.

Agenda: On September 16, 1999, the committee will discuss and make recommendations on: (1) The draft guidance entitled "Guidance Document for Dura Substitute Devices," and (2) the classification of processed human dura mater. FDA notes that the guidance entitled "Guidance for the Preparation of a Premarket Notification Application for Processed Human Dura Mater," which related to the classification of processed human dura mater, became effective on July 31, 1999.

On September 17, 1999, the committee will discuss and make recommendations on: (1) The draft guidance entitled "Guidance Document

for Neurological Embolization Devices," and (2) the reclassification of the totally implanted spinal cord stimulator. Single copies of the guidance and the draft guidances are available to the public by calling 1–800–899–0381 or 301–827–0111 and requesting CDRH Facts-on-Demand by assigned document number, or the documents may be obtained on the Internet at the CDRH website as follows: "Guidance Document for Dura Substitute Devices," Facts-on-Demand document number 1152, or "http://www.fda.gov/cdrh/ode/1152.pdf"; "Guidance for the Preparation of a Premarket Notification Application for Processed Human Dura Mater," Facts-on-Demand document number 054, or "http://www.fda.gov/cdrh/ode/054.pdf"; and "Guidance Document for Neurological Embolization Devices," Facts-on-Demand document number 1151, or "http://www.fda.gov/cdrh/ode/1151.pdf".

Procedure: On September 16, 1999, from 11 a.m. to 6 p.m., and on September 17, 1999, from 8:30 a.m. to 3:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 8, 1999. Oral presentations from the public will be scheduled on September 16, 1999, between approximately 12 noon and 12:30 p.m. for the discussion of the draft guidance entitled "Guidance Document for Dura Substitute Devices" and between approximately 3:45 p.m. and 4:15 p.m. and 5 p.m. and 5:30 p.m. for the classification of processed human dura mater. On September 17, 1999, oral presentations from the public will be scheduled between approximately 9:45 a.m. and 10:15 a.m. for the discussion of the draft guidance entitled "Guidance Document for Neurological Embolization Devices" and between approximately 12:15 p.m. and 12:45 p.m. and 2:30 p.m. and 3 p.m. for the reclassification of the totally implanted spinal cord stimulator. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 8, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On September 17, 1999, from 8 a.m. to 8:30 a.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential commercial information regarding pending and future FDA issues. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)). Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 25, 1999.

Linda Suydam,

Senior Associate Commissioner.

[FR Doc. 99–22713 Filed 8–27–99; 10:49 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2445]

Draft Guidance for Industry on Clinical Considerations for Accelerated and Traditional Approval of Antiretroviral Drugs Using Plasma HIV RNA Measurements; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Clinical Considerations for Accelerated and Traditional Approval of Antiretroviral Drugs Using Plasma HIV RNA Measurements." The draft guidance is intended to assist pharmaceutical sponsors in the development of antiretroviral drugs and to serve as a focus for continued discussion among the agency, the public, industry, and scientific communities regarding the use of plasma human immunodeficiency virus (HIV) ribonucleic acid (RNA) measurements in phase 3 clinical studies of antiretroviral drugs.

DATES: Written comments on the draft guidance may be submitted by November 30, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of the draft guidance for industry are available on the Internet at "http://www.fda.gov/cder/guidance/index.htm". Submit written requests for single copies of the draft guidance entitled "Clinical Considerations for Accelerated and Traditional Approval of Antiretroviral Drugs Using Plasma HIV RNA Measurements" to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments concerning the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5600 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Murray, Center for Drug Evaluation and Research (HFD–530), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2495.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled "Clinical Considerations for Accelerated and Traditional Approval of Antiretroviral Drugs Using Plasma HIV RNA Measurements." The draft guidance summarizes the scientific basis supporting the use of HIV RNA as a primary study endpoint in both accelerated and traditional approvals of antiretroviral drugs. This summary is based on scientific data presented at a July 14 and 15, 1997, meeting of the Antiviral Drugs Advisory Committee. At this meeting, there was expert consensus that the use of plasma HIV RNA endpoints in certain situations could reliably predict clinical benefit. The draft guidance suggests that accelerated approvals could be based on studies that show a drug's contribution toward shorter-term reductions in HIV RNA (e.g., 24 weeks) while traditional approvals could be based on trials that show a drug's contribution toward durability of HIV RNA suppression (e.g., at least 48 weeks) in lieu of a traditional clinical endpoint study. Changes in CD4 cell counts should be consistent with observed HIV RNA changes when considering approval of an antiretroviral drug.

The draft guidance describes the agency's current thinking on clinical trial designs using HIV RNA changes as an endpoint for accelerated and traditional approvals. Considerations regarding control arms, study procedures, endpoints, and statistical methods for analyzing HIV RNA endpoints are discussed. The draft guidance also includes recommendations for sponsors who plan to use a new or unapproved HIV RNA assay in a clinical study. When using such assays, sponsors are encouraged to provide supporting data on the assay's limits and performance characteristics as outlined in the last section of the draft guidance.

This Level 1 draft guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). It represents the agency's current thinking on certain aspects of antiretroviral drug product development for accelerated and traditional approval. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, at any time, submit written comments on the draft guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 20, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–22720 Filed 8–31–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0359]

Program Priorities in the Center for Food Safety and Applied Nutrition; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting comments concerning the establishment of program priorities in the Center for Food Safety and Applied Nutrition (CFSAN) for the year 2000. As part of its annual planning, budgeting, and resource allocation process, CFSAN is conducting a comprehensive review of its programs to set priorities and establish work product expectations. This notice is being published to give the public an opportunity to provide input into the priority-setting process.

DATES: Written comments by September 30, 1999.

ADDRESSES: Submit written comments concerning this document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Donald J. Carrington, Center for Food Safety and Applied Nutrition (HFS–666), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–260–5290, email DCarring@bangate.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On January 25, 1999, CFSAN released a document entitled "1999 CFSAN Program Priorities." The document, a copy of which is available on CFSAN's web page (www.cfsan.fda.gov), constitutes the Center's priority workplan for calendar year 1999. The workplan is based on input we received at a stakeholders meeting on June 24 and 25, 1998 (see 63 FR 30242, June 3, 1998), as well as input generated internally. Throughout the priority-setting process, we focused on one central question: "Where do we do the most good for consumers?"

Approximately half of the 1999 workplan consists of activities implementing the President's Food Safety Initiative (FSI). This is consistent with the fact that currently, approximately half the Center's resources are devoted to FSI work (i.e., all activities related to pathogen reduction in food.) Outside of FSI, the workplan identifies five program areas and four cross-cutting areas that need emphasis. The five program areas are: (1) Premarket review of food ingredients; (2) nutrition, health claims, and labeling; (3) dietary supplements; (4) chemical and other contaminants; and (5) cosmetics.

The four cross cutting areas are: (1) Enhancing the science base; (2) Federal/State/local collaborations; (3) international; and (4) human resources.

Within most major program areas in the workplan, there are two lists of activities. The first list of priorities in each section, identified as the "A" list, are activities that CFSAN is committing to complete by the end of 1999. Activities on the "B" list are those the Center plans to make progress on during the year, but may not complete. CFSAN has responsibility for many important ongoing activities that are not identified in the workplan. The workplan addresses primarily those initiatives representing something new or different that needs to be addressed in that year. In addition, the workplan does not address the myriad of unanticipated issues which often require a substantial investment of CFSAN resources e.g., recent concerns about potential dioxin-contamination in certain European imports.

II. 2000 CFSAN Program Priorities

FDA is requesting comments concerning the establishment of program priorities in CFSAN for the year 2000. The input will be used to develop CFSAN's 2000 workplan. The workplan will set forth the Center's program priorities for a 9-month period, from January 1, 2000, through September 30, 2000, the end of the fiscal year. Henceforth, to be compatible with the Federal budgetary cycle, the priority-setting process and development of annual workplans will be done on a fiscal year basis. FDA intends to make this new workplan public in January 2000.

The 2000 workplan will be organized in the same format as the 1999 workplan. Accordingly, comments are requested on specific program activities for CFSAN to complete by September 30, 2000, in each of the categories described in the document entitled "1999 CFSAN Program Priorities" (i.e., "A" list activities.) Comments are also requested on those additional activities that should be worked on during the 9-month period, but not necessarily completed by the end of the fiscal year (i.e., the "B" list activities.)

To help focus comments, FDA requests that input regarding CFSAN program priorities address the following questions:

1. With respect to products under the jurisdiction of CFSAN, do you believe there are issues that directly affect consumer safety that are not being adequately addressed?
2. Within the 10 program areas identified previously, what specific activities do you believe should be top priorities for CFSAN and why?
3. FDA needs to ensure that its research programs provide the scientific information upon which regulatory decisions are made. In CFSAN, what do you believe should be the highest priority areas for conducting research?
4. Because so much of our nation's food supply is either imported or exported, what do you believe should be the highest priority international activities? Please identify specific activities in your answer.

Interested persons may, on or before September 30, 1999, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 25, 1999.
Margaret M. Dotzel,
Acting Associate Commissioner for Policy.
[FR Doc. 99–22678 Filed 8–31–99; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2873]

Medical Devices; Draft Guidance on Evidence Models for the Least Burdensome Means to Market; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled "Evidence Models for the Least Burdensome Means to Market." This draft guidance is intended to provide guidance to the medical device industry and FDA reviewers on implementing section 205 of the Food and Drug Administration Modernization Act of 1997 (FDAMA). Section 205 requires FDA, in consultation with the product sponsor, to consider the "least burdensome" means that will allow appropriate premarket development and review of a product without unnecessary delays and expense to manufacturers. This draft guidance represents the agency's current thinking on implementing section 205 of FDAMA, and it is neither final nor is it in effect at this time.

DATES: Written comments concerning this draft guidance must be submitted by November 30, 1999.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance. Submit written requests for single copies on a 3.5" diskette of the draft guidance entitled "Evidence Models for the Least Burdensome Means to Market" to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Susan Alpert, Center for Devices and Radiological Health (HFZ–400), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2022.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance entitled "Evidence Models for the Least Burdensome Means to Market." Section 205 of FDAMA requires FDA, in consultation with the product sponsor, to consider the "least burdensome" means that will allow appropriate premarket development and review of a product without unnecessary delays and expense to manufacturers. This draft guidance is designed to help both the Center for Devices and Radiological Health (CDRH) reviewers and the medical device industry apply the new provisions of FDAMA. Through this draft guidance, CDRH intends to establish a general approach for applying the least burdensome provisions that will be applicable to any device application; this draft guidance does not attempt to establish specific clinical data requirements for any particular type of submission.

The focus of this draft guidance is the application of the least burdensome provisions to clinical data requirements because the input from stakeholders has indicated that the regulated industry is most concerned with FDA's interpretation of these provisions with respect to clinical data.

In addition, as this draft guidance was being developed, it became clear that it cannot easily be applied to in vitro diagnostic devices (IVD's) because of the unique clinical data needs associated with establishing IVD performance. The agency is soliciting comments on applying the least burdensome provisions to data requirements for IVD's.

To foster a collaborative approach to the implementation of section 205 of FDAMA, FDA's CDRH hosted a meeting with stakeholders on January 4, 1999, to solicit comments and suggestions regarding the least burdensome approach to medical device development and evaluation. CDRH heard formal presentations at that meeting and also received written comments.

This draft guidance has incorporated, in part, the written proposal dated March 11, 1999, from the "Least Burdensome Industry Task Force" convened by the Health Industry Manufacturers Association, comments from the January 4, 1999, stakeholders meeting, and other stakeholder communications.

This draft guidance represents the agency's current thinking on implementing the "least burdensome" provisions of section 205 of FDAMA. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This draft guidance is issued as a level 1 guidance consistent with GGP's.

II. Electronic Access

In order to receive the draft guidance document entitled "Evidence Models for the Least Burdensome Means to Market" via your fax machine, call the CDRH Facts-On-Demand (FOD) system at 800–899–0381 or 301–827–0111 from a touch tone telephone. At the first voice prompt press 1 to access DMSA Facts, at the second voice prompt press 2, and then enter the document number 1154 followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the Web. Updated on a regular basis, the CDRH home page includes the draft guidance document entitled "Evidence Models for the Least Burdensome Means to Market," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at "http://www.fda.gov/cdrh".

III. Comments

Interested persons may, on or before November 30, 1999, submit to the Dockets Management Branch (address above) written comments regarding this draft guidance. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments

are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 25, 1999.
Margaret M. Dotzel,
Acting Associate Commissioner for Policy.
[FR Doc. 99–22677 Filed 8–31–99; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2213]

Draft "Guidance for Industry: Revised Recommendations for the Invalidation of Test Results When Using Licensed and 510(k) Cleared Bloodborne Pathogen Assays to Test Donors;" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled "Guidance for Industry: Revised Recommendations for the Invalidation of Test Results When Using Licensed and 510(k) Cleared Bloodborne Pathogen Assays to Test Donors." This draft guidance document, when finalized, is intended to provide guidance to blood establishments on invalidating donor test results based on control reagents required by the Clinical Laboratory Improvement Act of 1988 (CLIA). The implementation of additional quality control procedures that involve the use of external control reagents should enhance overall testing accuracy and blood safety.

DATES: Written comments on the draft guidance document may be submitted at any time, however, comments should be submitted by November 30, 1999, to ensure their adequate consideration in preparation of the final document.

ADDRESSES: Submit written requests for single copies of the draft guidance document entitled "Guidance for Industry: Revised Recommendations for the Invalidation of Test Results When Using Licensed and 510(k) Cleared Bloodborne Pathogen Assays to Test Donors" to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The draft guidance document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Astrid L. Szeto, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance document entitled "Guidance for Industry: Revised Recommendations for the Invalidation of Test Results When Using Licensed and 510(k) Cleared Bloodborne Pathogen Assays to Test Donors." This draft guidance document would provide recommendations for blood establishments in integrating current CLIA requirements for invalidating donor test results based on CLIA required control reagents. When finalized, this draft guidance document would replace the January 3, 1994, guidance document entitled "Recommendations for the Invalidation of Test Results When Using Licensed Viral Marker Assays to Screen Donors." FDA has developed revised recommendations based on discussions held during the public meetings of the Blood Products Advisory Committee (BPAC) on September 26, 1996, and December 13, 1996, and additional discussions among the Centers for Disease Control and Prevention (CDC), Health Care Financing Administration (HCFA), and FDA. At this time, the draft guidance document is being made available for comment purposes only and is not intended for use by the industry. The agency has adopted good guidance practices (GGP's) that set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This document is being issued as a draft level 1 guidance document consistent with GGP's.

This draft guidance document represents the agency's current thinking with regard to the invalidation of test results based on the CLIA required external control reagents. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

II. Comments

This draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance document. Written comments may be submitted at any time, however, comments should be submitted by November 30, 1999, to ensure adequate consideration in preparation of the final guidance document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the draft guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance document by using the World Wide Web (WWW). For WWW access, connect to CBER at "http://www.fda.gov/cber/guidelines.htm".

Dated: August 9, 1999.
Margaret M. Dotzel,
Acting Associate Commissioner for Policy.
[FR Doc. 99–22801 Filed 8–31–99; 8:45 am]
BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the

Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1891.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Guidance and Forms for the Title V Application/Annual Report, OMB No. 0915–0172: Extension

The Health Resources and Services Administration (HRSA) proposes to revise the Guidance and Forms for the Application and Annual Report for the Maternal and Child Health Services Title V Block Grant Program. The guidance is used annually by the 50 States and 9 jurisdictions in making application for Block Grants under Title V of the Social Security Act, and in preparing the required annual report. The proposed revisions follow and build on extensive modifications made to the guidance and forms in 1997. The proposed revisions are of two types: (1) editorial and technical revisions based on the experiences of the States and jurisdictions in using the guidance and forms in 1998 and 1999; and, (2) the addition of a standard set of measures to be used in conducting the formal needs assessment required by Title V every five years. This needs assessment will be required of each State and jurisdiction in FY 2000.

The addition of the core set of measures for use in conducting the formal needs assessment follows discussions with State Maternal and Child Health Directors over the last two years. The changes incorporated in the 1997 revisions have been reflected in major changes in the Title V program, with much more emphasis on accountability and performance measurement as part of the performance partnership concept on which those changes were built. The inclusion now of standard measures for all States and jurisdictions to use in conducting the five-year needs assessment is a natural progression in the development of the Federal-State partnership process.

Following approval of the 1997 revisions, HRSA developed and instituted an automated electronic data collection and reporting system, the Title V Electronic Reporting Package (Title V ERP). The ERP has greatly reduced the burden on the States and jurisdictions, because it provides for automatic calculations of ratios, rates, and percentages, carries data over from year-to year, and assures that data used in multiple tables are entered only once. The ERP also provides for text entry, and facilitates the orderly printing of tables, text, and required appendices. As a result, even with the additional data that were incorporated, the expectation is that there will be a 33% reduction in the annual burden from previous levels. The estimated response burden is as follows:

Type of form	Number of respondents	Responses per respondent	Burden hours per response	Total burden hours
Application and Annual Report, with needs assessment*:				
States	50	1	450	22500
Jurisdictions	9	1	240	2160
Application and Annual Report, without needs assessment*:				
States	50	1	330	16500
Jurisdictions	9	1	133	1197

*The Application and Annual Report, with needs assessment, will be submitted in FY 2000. The Application and Annual Report, without needs assessment, will be submitted in FY 2001 and FY 2002. The average burden for the next three years is 20,018 hours.

The HRSA revision plan calls for draft versions of the new guidance to be sent to all Maternal and Child Health Directors in September, 1999. Copies will also be available to all other interested parties who request one from: Peter C. Van Dyck, M.D., M.P.H., Associate Administrator for Maternal and Child Health, Maternal and Child Health Bureau, Room 18–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. His phone number is (301) 443–2170.

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: August 26, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–22802 Filed 8–31–99; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance officer on (301) 443–1891.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance on the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: HRSA Competing Training Grant Application, Instructions and Related Regulations (OMB No. 0915–0060)—Revision

The Health Resources and Services Administration uses the information in the application to determine the eligibility of applicants for awards, to calculate the amount of each award, and to judge the relative merit of applications. The form is distributed electronically via the Internet. The budget is negotiated for all years of the project period based on this application and program-specific instructions that include greater standardization of content for the project summary and the detailed description of the project.

The Bureau of Health Professions is planning to remove from the Code of Federal Regulations the existing training grant regulations under 42 CFR parts 57 and 58. It is the intent of the Department to operate under the new statute for compliance, implementation, and administration of the training grant programs under titles VII and VIII of the PHS Act. The existing regulations are fundamentally and extensively inconsistent with the new law which takes an interdisciplinary approach (and thus inhibits the achievement of the statute's objectives). Program specific guidance and information for preparing applications are now provided in the grant application materials (which makes them now self-contained).

The estimated annual burden for the application is as follows:

Requirement	Number of respondents	Responses per respondent	Hours per response	Total burden hours
Application	1,190	1	56.25	66,938

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: August 26, 1999.

James J. Corrigan,

Associate Administrator for Management and Program Support.

[FR Doc. 99–22803 Filed 8–31–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Final Eligibility Criteria, Preferences, and Priorities for Scholarships for Disadvantaged Students

SUMMARY: The Health Resources and Services Administration (HRSA) announces final eligibility criteria, preferences, and priorities for the Scholarships for Disadvantaged Students (SDS) program, under the authority of section 737 of the Public Health Service Act (the Act), Title VII, Part B, as amended by the Health Professions Education Partnerships Act of 1998,

Pub. L. 105–392, dated November 13, 1998. A notice which proposed eligibility criteria, preferences, and priorities for the SDS program was published in the **Federal Register** at 64 FR 29660, dated June 2, 1999. A period of 30 days was established to allow public comment concerning the proposed eligibility criteria, preferences, and priorities. Five comments were received. This notice discusses these comments and sets forth the final eligibility criteria, preferences, and priorities.

EFFECTIVE DATE: The program elements described in this notice are for use in fiscal year (FY) 1999 and beyond and will become effective, except where indicated otherwise, for SDS funds awarded to schools in FY 1999 and beyond.

Purpose

The SDS program provides funds to health professions and nursing schools for the purpose of assisting such schools in providing scholarships to individuals from disadvantaged backgrounds who are enrolled (or accepted for enrollment) as full-time students in the schools.

For purposes of the SDS program in FY 1999, an "individual from a disadvantaged background" is defined in 42 CFR 57.1804, subpart S, as one who:

(1) Comes from an environment that has inhibited the individual from obtaining the knowledge, skills, and abilities required to enroll in and graduate from a health profession or nursing school, or from a program providing education or training in allied health professions; or

(2) Comes from a family with an annual income below a level based on low-income thresholds according to family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary for use in all health professions and nursing programs. The Secretary will periodically publish these low income levels in the **Federal Register**.

The following income figures determine what constitutes a low-income family for purposes of the SDS program for FY 1999.

Size of parents' family [1]	Income level [2]
1	$10,900
2	14,100
3	16,800
4	21,500
5	25,400
6 or more	28,500

[1] Includes only dependents listed on Federal income tax forms.

[2] Adjusted gross income for calendar year 1998, rounded to nearest $100.

Under the FY 1999 appropriations bill, $38.1 million has been appropriated for this program. Of the funds available for FY 1999, 16 percent shall be made available to schools agreeing to expend the funds only for nursing scholarships. The balance will support scholarships for eligible health professions students. The period of fund availability will be one academic year.

Use of Funds

Funds awarded to a school under this program may be used as follows:

(1) To award scholarships to former recipients of scholarships under the Exceptional Financial Need (EFN) Scholarship program and the Financial Assistance for Disadvantaged Health Professions Students (FADHPS) program (sections 736 and 740(d)(2)(B) of the Public Health Service Act, as such sections e isted prior to the enactment of Pub. L. 105–392), at levels comparable to what these students would have received prior to phase out of the EFN and FADHPS programs, and with service agreements that are

consistent with those the students entered into to receive EFN and FADHPS funds in FY 1998.

(2) To award scholarships to eligible students enrolled in the school, to be expended only for tuition expenses, other reasonable educational expenses, and reasonable living expenses (as defined by the school for all students attending the school) incurred while enrolled in a school as a full-time student. The amount of the scholarship may not, for any year of attendance, exceed the total amount required for the year for the expenses specified above, and may not exceed the student's financial need, as determined in accordance with a need analysis procedure approved by the Department of Education.

Any school receiving SDS funds must maintain separate accountability for these funds.

Statutory School Eligibility Requirements

An entity that is eligible to receive funds under this program is:

(1) As defined in section 799B of the Act, a school of medicine, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, veterinary medicine, public health, chiropractic, or allied health, a school offering a graduate program in behavioral and mental health practice, or an entity providing programs for the training of physician assistants; or, as defined in section 801 of the Act, is a school of nursing. Each school or program must be accredited by a recognized body or bodies approved for such purpose by the Secretary of Education, and by a specialized accrediting body approved for the health discipline applying for program participation; and

(2) Carrying out a program for recruiting and retaining students from disadvantaged backgrounds, including students who are members of underrepresented racial and ethnic minorities.

Final Administrative School and Program Eligibility Criteria

A school or program must comply with the following outcome-based measures to be eligible to receive SDS funds in FY 1999:

(1) Individuals from disadvantaged backgrounds must comprise at least 5 percent of the total enrollment in the school or program for which funds are requested, based on enrollment data for academic year 1997–98; and

(2) Individuals from disadvantaged backgrounds must comprise at least 5 percent of the total graduates from the school or program for which funds are requested, based on graduates for academic year 1997–98.

A school or program must comply with the following outcome-based measures to be eligible to receive SDS funds in FY 2000:

(1) Individuals from disadvantaged backgrounds must comprise at least 10 percent of the total enrollment in the school or program for which funds are requested, based on enrollment data for academic year 1998–99; and

(2) Individuals from disadvantaged backgrounds must comprise at least 10 percent of the total graduates from the school or program for which funds are requested, based on graduates for academic year 1998–99.

The threshold levels for determining a school or program's eligibility will continue to increase gradually beyond FY 2000 until students from disadvantaged backgrounds are represented in the health care workforce at levels that best address the HRSA goals of assuring access to health care for all Americans and eliminating health disparities among racial and ethnic minorities. Threshold levels for determining school or program eligibility for SDS funding beyond FY 2000 will be announced annually in the HRSA Preview and/or in SDS application materials.

Comments on Proposed Administrative School and Program Eligibility Criteria

Four comments were received concerning the proposed administrative school and program eligibility criteria. One comment objected to establishing a percentage quota for schools' acceptance of students from disadvantaged backgrounds, indicating that this could adversely affect the schools' decisions of acceptance. Although the commenter agreed that it is necessary to assist those from disadvantaged backgrounds, he felt that to create a "must" situation was not entirely fair.

In response, the Department points out that these criteria carry out Congressional intent as expressed in the Senate Report accompanying Pub. L. 105–392. This report states that the committee expects the Secretary to apply appropriate standards in determining which schools or programs from all eligible disciplines have complied with the requirement to be carrying out a program for recruiting and retaining students from disadvantaged backgrounds, using outcome-based measures that provide an indication of the success of the program. The report further states that the existence of a recruitment and retention program for students from disadvantaged backgrounds should not, in itself, result in the eligibility of a school or program if the school or program is unable to demonstrate that the recruitment and retention program has achieved success, based on the number and/or percentage of disadvantaged students who graduate from the school (p. 20, Senate Report 105–220).

Accordingly, the Secretary has retained the first two outcome-based eligibility criteria as proposed. However, the Secretary notes that the measures to determine eligibility for FY 1999 are low in consideration of the criteria as a new requirement. It is the Secretary's view that any school or program that cannot meet the FY 1999 thresholds and retention ratio has not evidenced a strong commitment to the recruitment and retention of individuals from disadvantaged backgrounds.

Recognizing that the FY 1999 initial levels are low, and that many schools and programs have indicated since the SDS program began that they have activities in place to support the education of individuals from disadvantaged backgrounds, the outcome-based measures with which a school or program must comply to be eligible to receive SDS funds will be increased for FY 2000 and beyond.

One commenter saw a potential problem with the third outcome-based measure which a school or program would have been required to meet to receive SDS funds. The proposed criterion had established ratios that compared graduates from disadvantaged backgrounds with the total number of students enrolled who are from disadvantaged backgrounds, based on the number of years required to complete the course of study. For example, the criterion had stated that in a four-year program, the ratio of disadvantaged students who graduate must be at least 20 percent of the total enrollment of disadvantaged students. The commenter found this reasonable if there is a steady number of disadvantaged students enrolling at the school, but inappropriate for a school that is increasing its disadvantaged enrollment. The Secretary agrees that this proposal, as drafted, could have adversely affected a school or program that is increasing its disadvantaged enrollment. In response, the Secretary has postponed use of this threshold until FY 2001, pending further analysis of how to most accurately measure this aspect of retention. For FY 2001, information on this measure will be provided in the HRSA preview and/or in SDS application materials.

Statutory Student Eligibility Requirements

To qualify for the SDS program, a student is required to:

(1) Be a resident of the U.S. and either be a U.S. citizen, a U.S. national, an alien lawfully admitted for permanent residence in the U.S., a citizen of the Commonwealth of the Northern Mariana Islands, a citizen of the Commonwealth of Puerto Rico, or a citizen of the Republic of Palau, or a citizen of the Marshall Islands, or a citizen of the Federated States of Micronesia;

(2) Meet the definition of an "individual from a disadvantaged background" as defined above;

(3) Have a financial need for a scholarship, in accordance with a need analysis procedure approved by the Department of Education (Pub. L. 105–244, Part F, The Higher Education Act of 1965 as amended). In addition, any student who is enrolled (or accepted for enrollment) in a health profession school or program must provide information on his or her parents' financial situation, regardless of the tax status of the student; and

(4) Be enrolled (or accepted for enrollment) at an eligible school for enrollment as a full-time student in a program leading to a degree in a health profession or nursing.

Statutory Student Preferences

The law requires that in providing SDS scholarships, the school or program give preference to students for whom the cost of attending an SDS school or program would constitute a severe financial hardship. Severe financial hardship is to be determined by the school or program in accordance with standard need analysis procedures prescribed by the Department of Education for its Federal student aid programs. The school or program has discretion in deciding how to determine which students have "severe financial hardship," as long as the standard is applied consistently to all eligible students.

The law also requires that schools give preference to former recipients of scholarships under sections 736 (EFN Scholarships) and 740(d)(2)(B) (FADHPS Scholarships), as such sections existed on November 12, 1998. The Secretary is implementing this preference by making a separate allocation of funds for these students, based on information provided by schools (allopathic medical, osteopathic medical, and dental schools with former EFN and FADHPS recipients only), prior to allocating the remaining SDS money for all other eligible students.

Final Administrative Student Preference

Beginning in academic year 2000–01, schools or programs must give preference, in the awarding of SDS funds, to students who have participated in an academic enrichment program funded in whole or in part by the Health Careers Opportunity Program (HCOP), authorized by section 739 of the Act, or by the Nursing Workforce Diversity (NWD) Program (formerly Nursing Educational Opportunities Program (NEOP)), authorized by section 821 of the Act. This will help assure that students who have participated in HCOP and NWD programs are not deterred from enrolling in a health professions or nursing school or program due to a lack of financial aid. Under this preference, it is the school's or program's responsibility to identify HCOP or NWD students to assure that they receive preference in the awarding of SDS funds. For example, the school or program could ask, as part of the financial aid application, whether the student participated in an academic enrichment program funded by HCOP or NWD, or could work with the admissions office to determine which students have been involved in HCOP or NWD programs. The Secretary intends that schools and programs implement this preference without a significant additional burden. Under this preference, the school or program continues to have discretion in determining the amount of funds to award to HCOP or NWD students, but must identify and fund HCOP or NWD students (provided they have financial need) before funding other eligible students who do not meet a student preference.

Schools and programs that currently have access to information on which students have participated in HCOP or NWD programs are encouraged to implement this preference beginning in academic year 1999–2000. However, since some schools and programs may not currently have access to this information, the Secretary is not requiring schools and programs to implement the preference for HCOP or NWD students until academic year 2000–01.

Comments on Proposed Administrative Student Preference

Three comments were received on the proposal that, beginning in academic year 2000–01, schools or programs give preference in the awarding of SDS funds to students who have participated in an academic enrichment program funded in whole or in part by the Health Careers Opportunity Program (HCOP), authorized by section 739 of the Act. One commenter objected that, although on the surface this proposal has merit, many schools are unable to secure this type of highly competitive grant. The Secretary clarifies that this preference does not reduce the amount of SDS funding available to schools or programs that have not received HCOP grant funding, but merely assures that when a school or program awards the SDS money that it receives, it must consider students who participated in HCOP supported programs before considering students who do not qualify for a funding preference. Therefore, no change has been made.

One commenter suggested that this provision be clarified to include, in addition to HCOP participants, students who have participated in academic enrichment programs funded in whole or in part by Nursing Workforce Diversity (NWD) grants (formerly known as Nursing Educational Opportunity Program (NEOP) grants), authorized by section 821 of the Act. The NWD grants are similar to the HCOP grants, but are directed toward nursing students. The Secretary concurs with this suggestion and has clarified the provision accordingly.

Definitions

"Black or African American" means a person having origins in any of the black racial groups of Africa.

"Hispanic or Latino" means a person of Cuban, Mexican, Puerto Rican, South or Central American or other Spanish culture or origin, regardless of race.

"American Indian or Alaska Native" means a person having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.

Definitions listed above are contained in Directive No. 15 of Office of Management and Budget Circular No. A–46, as revised.

"Native American" as defined in Pub. L. 101–527, means American Indian, Alaska Native, Aleut, or Native Hawaiian.

"Graduate program in behavioral health and mental health practice" means a graduate program in clinical psychology, clinical social work, professional counseling, or marriage and family therapy as defined in sec. 799B(1)(D) of the Act.

"Graduate program in clinical social work" means an accredited graduate program in a public or nonprofit private institution in a State that provides training in a concentration in health or mental health care leading to a graduate

degree in social work as defined in sec. 799B(1)(C) of the Act.

"Graduate program in marriage and family therapy" means an accredited graduate program in a public or nonprofit private institution in a State that provides training in a concentration leading to a graduate degree in marriage and family therapy as defined in sec. 799B(1)(C) of the Act.

"Graduate program in professional counseling" means an accredited graduate program in a public or nonprofit private institution in a State that provides training in a concentration leading to a graduate degree in gerontological counseling, mental health counseling, or rehabilitation counseling.

"Medically underserved community" means any geographic area and/or population served by any of the following practice sites—

(1) Community Health Centers (section 330 of the Act);

(2) Migrant Health Centers (section 329 of the Act);

(3) Health Care for the Homeless Grantees (section 340 of the Act);

(4) Public Housing Primary Care Grantees (section 340A of the Act);

(5) Rural Health Clinics, federally designated (section 1861(aa)(2) of the Social Security Act);

(6) National Health Service Corps sites, freestanding (section 333 of the Act);

(7) Indian Health Service sites (Pub. L. 93–638 for tribally operated sites and Pub. L. 94–437 for Indian Health Service operated sites);

(8) Federally Qualified Health Centers (section 1905(a) and (1) of the Social Security Act);

(9) Primary Medical Care, Mental Health, and Dental Health Professional Shortage Areas (HPSAs) (designated under section 332 of the Act);

(10) State or Local Health Departments as defined and published in the **Federal Register** Notice of April 4, 1994 (59 FR 15741–44); or

(11) Ambulatory practice sites designated by State Governors as serving medically underserved communities as defined and published in the **Federal Register** Notice of April 4, 1994 (59 FR 15741–44).

Final Institutional Preferences

For fiscal year 1999 and beyond, among allied health schools or programs, the Secretary will give preference to the following baccalaureate or graduate degree allied health professions schools or programs: Dental hygiene, medical laboratory technology, occupational therapy, physical therapy, radiologic technology, speech pathology, audiology, and registered dieticians.

Institutional Funding Priorities

In accordance with section 737(c) of the Act, the Secretary shall give priority to eligible entities based on the proportion of graduating students going into primary care, the proportion of underrepresented minority students, and the proportion of graduates working in medically underserved communities. Any eligible school or program that qualifies for one or more funding priorities will receive extra weighting in the allocation formula.

Final Primary Care Funding Priority

For purposes of determining which schools and programs receive priority based on the proportion of graduating students going into primary care, the Secretary is defining primary care to include:

(1) Allopathic and osteopathic medical students that enter family medicine, general internal medicine, general pediatrics, and preventive medicine, and general osteopathic medicine. This is consistent with the statutory definition of primary care for the Primary Care Loan (PCL) program, authorized under section 723 of the Act;

(2) General dentistry (including Dental Public Health and Pediatric Dentistry), which has been included as primary care for purposes of the Exceptional Financial Need (EFN) Scholarship program and the Financial Assistance for Disadvantaged Health Professions Students (FADHPS) program;

(3) Nurse practitioners and nurse midwives who are practicing primary care; and

(4) Physician assistants who are practicing primary care.

For purposes of the SDS program, the Secretary is defining "primary care" to include the above disciplines because, with the exception of general dentistry, they are involved in the provision of comprehensive and continuous care and provide an entry to the health care system. The Secretary has included general dentistry, including Dental Public Health and Pediatric Dentistry, because dentistry acts as the entry to the health care system for a particular type of care which is not covered by the other disciplines.

For the above disciplines, a school or program may qualify for the primary care priority if at least 50 percent of its graduates from the specified year are practicing primary care. For allopathic and osteopathic medical schools, the determination of which schools are eligible for the funding priority is based on the same data used to determine compliance with the PCL school requirements. Thus, for the FY 1999 award process, priority is based on the activities, during academic year 1997–98, of Post Graduate Year (PGY)–3 graduates (i.e., those who graduated during academic year 1994–95), but for FY 2000, priority will be based on the activities, during academic year 1998–99, of PGY–4 graduates (i.e., those who graduated during academic year 1994–95). Beyond FY 2000, priority will be based on the activities of PGY–4 graduates. This will allow allopathic and osteopathic medical schools to submit, for the SDS program, the same data submitted for the PCL program if they are PCL participants.

For the remaining primary care disciplines, the following measure will be used: (1) The determination of compliance for FY 1999 will be based on the activities, during academic year 1997–98, of students who graduated during academic year 1996–97; (2) the determination of compliance for FY 2000 will be based on the activities, during academic year 1998–99, of students who graduated during academic year 1997–98; and (3) the determination of compliance beyond FY 2000 will be based on the activities, during the most recently completed academic year, of students who graduated during the previous academic year.

Comments on Proposed Primary Care Funding Priority

Two comments were received on the primary care funding priority. One commenter stated that some professional schools have multiple missions (e.g., research as well as primary care) and may not be able to meet the 50 percent primary care threshold. The commenter indicated that it would be unfair not to give disadvantaged students at these schools the advantage of SDS funding, and that they would be penalized because of the school that they chose to attend.

In response, the Department notes that the statute requires that priority be given to schools based on the percentage of primary care graduates, reflecting the Congress' continued concern regarding the shortage of primary care providers. The Department also clarifies that eligible schools which do not meet this funding preference can still receive SDS funds, but will not receive the additional weighting associated with this funding preference.

Final Underrepresented Minority Funding Priority

For purposes of granting priority based on the proportion of underrepresented minority students in

FY 1999, the Secretary will give priority to any school or program that has an underrepresented minority enrollment that is above the national average for the discipline.

The percentage of underrepresented minority enrollment required to qualify for this funding priority will increase gradually beyond FY 1999 until it is equal to the underrepresented minority enrollment needed to reach parity in the health care workforce. The percentage required after FY 1999 will be announced annually in the HRSA Preview and/or SDS application materials.

Final Medically Underserved Community Funding Priority

For purposes of granting priority based on the proportion of graduates working in medically underserved communities in FY 1999, the Secretary will give priority to any school or program for which at least 10 percent of the graduates from the specified year are practicing in medically underserved communities.

The percentage of a school or program's graduates who must be practicing in medically underserved communities to qualify for this funding priority will increase gradually beyond FY 1999 until it is representative of a level that has a meaningful impact on the elimination of medically underserved communities. The percentage required after FY 1999 will be announced annually in the HRSA Preview and/or the SDS application materials.

For allopathic and osteopathic medical schools, the determination of which schools are eligible for the funding priority will be based on the same population of graduates used to determine compliance with the primary care funding priority. Thus, for the FY 1999 awards, priority will be based on the activities, during academic year 1997–98, of allopathic and osteopathic medical students who graduated 3 years earlier (academic year 1994–95), but for FY 2000, priority will be based on the activities, during academic year 1998–99, of allopathic and osteopathic medical students who graduated 4 years earlier (academic year 1994–95). Beyond FY 2000, priority will be based on the activities of PGY–4 graduates.

For other schools and programs, the following measure will be used: (1) The determination of compliance for FY 1999 will be based on the activities, during academic year 1997–98, of students who graduated during academic year 1996–97; (2) the determination of compliance for FY 2000 will be based on the activities, during academic year 1998–99, of students who graduated during academic year 1997–98; and (3) the determination of compliance beyond FY 2000 will be based on the activities, during the most recently completed academic year, of students who graduated during the previous academic year.

Schools and programs that do not have data on the percentage of their graduates who are practicing in medically underserved communities may still apply for SDS funds, but will not receive the additional weighting associated with this funding priority.

Final Procedures for Calculating Awards

Awards to eligible schools and programs will be calculated by comparing the weighted number of eligible students in each eligible school and program with the total weighted number of eligible students in all eligible schools and programs.

For FY 1999, the number of "eligible students" for each school or program will be the lesser of: (1) The number of disadvantaged graduates for academic year 1997–98 multiplied times the number of years required to complete the program (based on a 9-month academic year); or (2) the total disadvantaged enrollment during academic year 1997–98. For example, if a 4-year program had 100 disadvantaged graduates and a disadvantaged enrollment of 500, its award will be based on 400 eligible students (100 graduates times 4). If another 4-year program had 100 disadvantaged graduates and a disadvantaged enrollment of 300, its award will be based on 300 eligible students (the total disadvantaged enrollment). After determining the number of eligible students at each school or program, this number will be adjusted to reflect the extra weighting associated with any funding priorities.

For FY 2000, the number of "eligible students" for each school or program will be determined using the procedures described above for FY 1999, with the calculation based on disadvantaged data from academic year 1998–99. Beyond FY 2000, the same procedures will be followed, with the calculation based on disadvantaged data from the most recently completed academic year.

Comments on Proposed Procedures for Calculating Awards

One comment was received on the proposed procedures for calculating awards. This commenter objected to the possibility that an eligible school might not receive funding if it did not qualify for one or more of the funding priorities. The commenter stated that all schools that meet the required outcome measures are doing a credible job of enrolling and graduating disadvantaged students and should receive funding for these students. In response, the procedures for calculating awards for FY 1999 will assure that all eligible schools receive SDS funding.

National Health Objectives for the Year 2000

The Public Health Service is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Scholarships for Disadvantaged Students program is related to the priority area of Academic and Community Partnership Programs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–0325; telephone (202) 783–3238.

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Smoke-Free Workplace

The Public Health Service strongly encourages all award recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, and early childhood development services are provided to children.

(The Catalog of Federal Domestic Assistance Number for the Scholarships for Disadvantaged Students program is 93.925. This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100)).

This program is not subject to the Public Health Systems Reporting Requirements.

Dated: August 26, 1999.

Claude Earl Fox,

Administrator.

[FR Doc. 99–22804 Filed 8–31–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 19(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee.

Date: September 1, 1999.

Open: 9:30 AM to 11:00 AM.

Agenda: To discuss matters of program relevance.

Place: Doubletree Hotel (Pentagon City, National Airport), 300 Army Navy Drive, Arlington, VA 22202.

Closed: 11:00 AM to 1:30 PM.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel (Pentagon city, National Airport), 300 Army Navy Drive, Arlington, VA 22202.

Contact Person: Jerry Roberts, PhD, Scientific Review Administrator, Office of Scientific Review, National Institutes of Health, Building 38A, Bethesda, MD 20892, 301–402–0838.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: August 25, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–22708 Filed 8–31–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: September 28, 1999.

Open: 8:30 AM to 12:00 PM.

Agenda: The meeting will be open to the public to discuss administrative details relating to Council business and special reports.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Closed: 1:00 PM to 5:00 PM.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Contact Person: Steven J. Hausman, PhD, Deputy Director, NIAMS/NIH Bldg. 31, Room 4C–32, 31 Center Dr, MSC 2350, Bethesda, MD 20892–2350.

(Catalogue of Federal Domestic Assistant Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: August 25, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–22709 Filed 8–31–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Conference Grants (R13).

Date: September 1, 1999.

Time: 1:00 PM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T. W. Alexander Drive, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: J. Patrick Mastin, PhD, Scientific Review Administrator, NIEHS, P.O. Box 12233 MD EC–24, Research Triangle Park, NC 27709, (919) 541–1446.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Conference Grants (R13).

Date: September 1, 1999.

Time: 2:30 PM to 3:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T. W. Alexander Drive, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: J. Patrick Mastin, PhD, Scientific Review Administrator, NIEHS, P.O. Box 12233 MD EC–24, Research Triangle Park, NC 27709, (919) 541–1446.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Conference Grants (R13).

Date: September 2, 1999.

Time: 11:00 AM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T. W. Alexander Drive, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: J. Patrick Mastin, PhD, Scientific Review Administrator, NIEHS, P.O. Box 12233 MD EC–24, Research Triangle Park, NC 27709, (919) 541–1446.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel Conference Grants (R13).

Date: September 2, 1999.

Time: 2:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T. W. Alexander Drive, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: J. Patrick Mastin, PhD, Scientific Review Administrator, NIEHS, P.O. Box 12233 MD EC–24, Research Triangle Park, NC 27709, (919) 541–1446.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: August 25, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–22710 Filed 8–31–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Endangered Species Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application for endangered species permit.

SUMMARY: The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

DATES: Written data or comments on these applications must be received, at the address given below, by October 1, 1999.

ADDRESSES: Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: David Dell, Permit Coordinator). Telephone: 404/679–7313; Facsimile: 404/679–7081.

FOR FURTHER INFORMATION CONTACT: David Dell, Telephone: 404/679–7313; Facsimile: 404/679–7081.

SUPPLEMENTARY INFORMATION:

Applicant: Carl J. Petrick, Eglin Air Force Base, Florida, TE016260–0.

The applicant requests authorization to take (capture for banding and harass during nest monitoring and augmentation) the endangered red-cockaded woodpecker, *Picoides borealis*, throughout the species range in Florida for the purpose of enhancement of survival of the species.

Applicant: Robert W. Thomas III, Ridgeway, South Carolina, TE016212–0

The applicant requests authorization to take (capture for banding and harass during nest monitoring and augmentation) the endangered red-cockaded woodpecker, *Picoides borealis*, throughout the species range in South Carolina and Georgia for the purpose of enhancement of survival of the species.

Applicant: Peter K. Swiderek, Fort Benning, Georgia, TE016270–0.

The applicant requests authorization to take (capture, band, translocate, and harass during nest monitoring and augmentation) the endangered red-cockaded woodpecker, *Picoides borealis*, throughout the species range in Georgia, Florida, Alabama, and Mississippi for the purpose of enhancement of survival of the species.

Applicant: Stephen C. Willard, Fort Gordon, Georgia, TE016278–0.

The applicant requests authorization to take (capture, band, translocate, and harass during nest monitoring and augmentation) the endangered red-cockaded woodpecker, *Picoides borealis*, throughout the species range in Georgia, for the purpose of enhancement of survival of the species.

Dated: August 25, 1999.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 99–22715 Filed 8–31–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Wildlife Conservation Society, Bronx, NY PRT–006966.

The applicant requests a permit to re-export one Hooded Crane (*Grus monacha*) to the Vogel Park Walsrode, Germany, for the purpose of breeding and zoological display.

Applicant: Patricia Zerbini, Williston, Florida, PRT–810755.

The applicant requests a permit to re-export and re-import captive born Asian elephants (*Elephas maximus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three-year period.

Applicant: Feld Entertainment, Inc, Vienna, VA, PRT–016633.

The applicant requests a permit to re-export and re-import captive-born Bengal tigers (*Panthera tigris tigris*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted

by the applicant over a three-year period.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The following applicants have applied for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR 18).

Applicant: Alvin M. Kern, Cold Spring, MN, PRT–016094.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: August 27, 1999.

Kristen Nelson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–22737 Filed 8–31–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment, and Receipt of Application for an Incidental Take Permit for a 40.6-Acre Mixed Commercial Development Project, in Volusia County, Florida

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Home Depot, U.S.A. of Atlanta, Georgia (Applicant), seeks an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The ITP would authorize the take of three families of the threatened Florida scrub-jay, *Aphelocoma coerulescens* and the threatened Eastern indigo snake, *Drymarchon corais couperi*, in Volusia County, Florida, for a period of five (5) years. The proposed taking is incidental to land clearing activities and commercial development on a 40.6-acre project site (Project). The Project contains about 21.6 acres of occupied Florida scrub-jay habitat, and the potential exists for the entire Project to provide habitat to the Eastern indigo snake. A description of the mitigation and minimization measures is provided in the Applicant's Habitat Conservation Plan (HCP) to address the effects of the Project to the protected species and is outlined in the **SUPPLEMENTARY INFORMATION** section below.

The Service also announces the availability of an environmental assessment (EA) and HCP for the incidental take application. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended. The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6). The Service specifically requests comment on the appropriateness of the "No Surprises" assurances should the Service determine that an ITP will be granted and based upon the submitted HCP. Although not explicitly stated in the HCP, the Service has, since August 1994, announced its intention to honor a "No Surprises" Policy for applicants seeking ITPs. Copies of the Service's "No Surprises" Policy may be obtained by making a written request to the Regional Office (see **ADDRESSES**). The Service is soliciting public comments and review of the applicability of the "No Surprises" Policy to this application and HCP.

DATES: Written comments on the permit application, EA, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before October 1, 1999.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Supervisor, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216–0912. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Requests for the documentation and comments must be submitted in writing to be processed. Please reference permit number TE016169–0 in such comments, or in requests for the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional Permit Coordinator, (see ADDRESSES above), telephone: 404/679–7110; or Mr. Jay B. Herrington, Fish and Wildlife Biologist, Jacksonville Field Office, (see ADDRESSES above), telephone: 904/232–2580, extension 120.

SUPPLEMENTARY INFORMATION: The Florida scrub-jay is geographically isolated from other species of scrub-jays found in Mexico and the Western United States. The Florida scrub-jay is found almost exclusively in peninsular Florida and is restricted to scrub habitat. The total estimated population is between 7,000 and 11,000 individuals. Due to habitat loss and degradation throughout the State of Florida, it has been estimated that the Florida scrub-jay population has been reduced by at least half in the last 100 years. Surveys have indicated that one family of Florida scrub-jays inhabit the Project site. Construction of the Project's buildings and infrastructure will likely result in death of, or injury to, Florida scrub-jay incidental to the carrying out of these otherwise lawful activities. Habitat alteration associated with property development will reduce the availability of feeding, shelter, and nesting habitat.

The Project site also provides habitat suitable for Eastern indigo snakes, although none have been detected there. Due to the secretive nature of this species, and the possibility that snakes could enter the Project from adjacent undeveloped land, the applicant has requested ITP coverage.

The EA considers the environmental consequences of three alternatives. The no action alternative may result in loss of habitat for Florida scrub-jay and exposure of the Applicant under Section 9 of the Act. The on-site preservation alternative would preserve 8.2 acres of occupied habitat. This option would not require an ITP, however, the portion of commercially developable property would be reduced from 11 acres to 2.8 acres. In addition, this option would not provide any management for the Florida scrub-jay family currently located on the property. The off-site mitigation alternative would provide funds to the National Fish and Wildlife Foundation Fund for the Conservation of the Florida Scrub-jay to procure suitable Florida scrub-jay habitat in Volusia County, Florida to be managed into perpetuity. This off-site mitigation would also preserve and manage habitat suitable for Eastern indigo snakes to help ensure survival of this species throughout its range. The proposed action alternative is issuance of the ITP with off-site mitigation. The affirmative conservation measures outlined in the HCP to be employed to offset the anticipated level of incidental take to the protected species are the following:

1. To mitigate for the up to 21.6 acres of scrub habitat occupied by Florida scrub-jays that would be eliminated on site, and to mitigate for the loss of 40.6 acres of potential Eastern indigo snake habitat, the applicant will provide funds to the National Fish and Wildlife Foundation in the amount of $272,160.00 to be spent for procurement of occupied Florida scrub-jay habitat and conservation in Volusia County at a later date. This amount is based on mitigation at a ratio of 2:1 (two acres purchased for every one acre impacted and land costs of $5,000 per acre), a $1,000 per acre management endowment, and an administrative fee of five percent of the total cost for management of the National Fish and Wildlife Foundation Fund for conservation of the Florida scrub-jay. Management of mitigation lands in optimum condition for Florida scrub-jays is assumed by the Service to provide habitat of similar benefit for the Eastern indigo snake. Upon procurement, the mitigation land would first be donated to and subsequently managed by a holding company. After initial habitat restoration, the property would then be conveyed to Volusia County or other acceptable land conservation program, along with a conservation easement, requiring preservation and management for Florida scrub-jays and Eastern indigo snakes into perpetuity.

2. No clearing of scrub vegetation would occur during the nesting season of the Florida scrub jay.

3. The HCP provides a funding mechanism for these mitigation measures.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP.

The Service will also evaluate whether the issuance of a Section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: August 25, 1999.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. 99–22716 Filed 8–31–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

Letters of Authorization To Take Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of Letters of Authorization to take marine mammals incidental to oil and gas industry activities.

SUMMARY: In accordance with Section 101(a)(5)(A) of the Marine Mammal Protection Act of 1972, as amended, and the U.S. Fish and Wildlife Service implementing regulations (50 CFR 18.27), notice is hereby given that Letters of Authorization to take polar bears and Pacific walrus incidental to oil and gas industry activities have been issued to the following companies:

Company	Activity	Date issued
BP Exploration (Alaska) Inc	Exploration	July 19, 1999.
Exxon Company U.S.A	Exploration	August 5, 1999.
Fairweather Incorporated	Development	August 16, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Rosa Meehan or Mr. John W. Bridges at the U.S. Fish and Wildlife Service, Marine Mammal Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503, (800) 362–5148 or (907) 786–3800.

SUPPLEMENTARY INFORMATION: All Letters of Authorization were issued in accordance with U.S. Fish and Wildlife Service Federal Rule and Regulations "Marine Mammals; Incidental Take During Specified Activities" [64 FR 4328].

Dated: August 17, 1999.

David B. Allen,

Regional Director.

[FR Doc. 99–22420 Filed 8–31–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved Amendment VI to the Tribal-State Compact for Regulation of Class III Gaming Between the Burns-Paiute Tribe and the State of Oregon, which was executed on June 28, 1999.

DATES: This action is effective September 1, 1999.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of

Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: August 20, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–22706 Filed 8–31–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Sixth Renewal of Agreement between the Northern Cheyenne Tribe and the State of Montana regarding Class III gaming on the Northern Cheyenne Reservation which was executed on February 22, 1999.

DATES: This action is effective September 1, 1999.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: August 19, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–22705 Filed 8–31–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(CO–930–1430–01; COC–096885, COC–28267)

Public Land Order No. 7409; Revocation of Bureau of Reclamation Withdrawals; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a Secretarial order and a public land order which withdrew National Forest System lands for the Bureau of Reclamation's West Divide Project and the Bureau of Reclamation's Colorado-Big Thompson Project. These lands are no longer needed for reclamation purposes. This action will open 1,299.64 acres to such forms of disposition as may by law be made of National Forest System lands and to mining. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7076, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Order dated December 8, 1942, which withdrew National Forest System lands for the Bureau of Reclamation Haystack Reservoir Site of the West Divide Project and Public Land Order No. 3359, as amended by Public Land Order No. 3478, which withdrew National Forest System lands for the Bureau of Reclamation Green Mountain Afterbay and Dam of the Colorado-Big Thompson Project, are hereby revoked in their entireties:

Sixth Principal Meridian

White River National Forest

T. 2 S., R. 80 W.,
- Sec. 3, lot 4, SW¼NW¼, and W½SW¼;
- Sec. 9, NE¼SE¼;
- Sec. 10, SW¼NE¼, NW¼NW¼, S½NW¼, N½SW¼, SE¼SW¼, and W½SE¼.

T. 9 S., R. 91 W.,
- Sec. 13, lot 2, SE¼SW¼, and S½SE¼.
- Sec. 14, lot 10;
- Sec. 23, lots 1, 4, and 8:
- Sec. 24, lots 1 to 9, inclusive, NE¼NE¼ and S½SE¼;
- Sec. 25, N½N½.

The areas described aggregate 1,299.64 acres in Mesa and Summit Counties.

2. At 9:00 a.m. on October 1, 1999, the lands shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: August 12, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–22687 Filed 8–31–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–1230–00; 6371]

Arizona: Long-Term Visitor Area Program for 1999–2000 and Subsequent Use Seasons; Revision to Existing Supplementary Rules, Yuma Field Office, Arizona, and California Desert District, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Publication of supplementary rules for Long-Term Visitor Areas within the California Desert District, El Centro Resource Area.

SUMMARY: The Bureau of Land Management (BLM) Yuma Field Office and California Desert District announce revisions to the Long-Term Visitor Area (LTVA) Program. The program, which was instituted in 1983, established designated LTVAs and identified an annual long-term use season from September 15 to April 15. During the long-term season, visitors who wish to camp on public lands in one location for extended periods must stay in the designated LTVAs and purchase an LTVA permit.

EFFECTIVE DATE: September 15, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Lowans, Outdoor Recreation Planner, Yuma Field Office, 2555 East Gila Ridge Road, Yuma, AZ 85365, telephone (520) 317–3210; or Anna Atkinson, Outdoor Recreation Planner, Palm Springs-South Coast Resource Area, 690 West Garnet Avenue, North Palm Springs, CA 92258, telephone (760) 251–4800; or Kelley Bubolz, Outdoor Recreation Planner, El Centro Resource Area, 1661 South Fourth Street, El Centro, CA 92243, telephone (760) 337–4400.

SUPPLEMENTARY INFORMATION: The purpose of the LTVA program is to provide areas for long-term winter camping use. The sites designated as LTVAs are, in most cases, the traditional use area of long-term visitors. Designated sites were selected using criteria developed during the land management planning process, and environmental assessments were completed for each site location.

The program was established to safely and properly accommodate the increasing demand for long-term winter visitation and to provide natural resources protection through improved management of this use. The designation of LTVAs assures that specific locations are available for long-term use year after year, and that inappropriate areas are not used for extended periods.

Visitors may camp without an LTVA permit outside of LTVAs, on public lands not otherwise posted or closed to camping, for up to 14 days in any 28-day period.

Authority for the designation of LTVAs is contained in title 43, Code of Federal Regulations, Subpart 8372, Sections 0–3 and 0–5(g). Authority for the establishment of an LTVA program is contained in title 43, Code of Federal Regulations, Subpart 8372, Section 1, and for the payment of fees in title 36, Code of Federal Regulations, Subpart 71. The authority for establishing supplementary rules is contained in title 43, Subpart 8365, Section 1–6. The LTVA supplementary rules have been developed to meet the goals of individual resource management plans. These rules will be available in each local office having jurisdiction over the lands, sites, or facilities affected, and will be posted near and/or within the lands, sites, or facilities affected. Violations of supplementary rules are punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months.

The following are the supplementary rules for the designated LTVAs and are in addition to rules of conduct set forth in Title 43, Code of Federal Regulations, Subpart 8365, Section 0.1 through 1–7.

The following supplementary rules apply year-long to all public land users who enter the LTVAs.

1. *The Permit.* A permit is required to camp in a designated LTVA between September 15 and April 15. The permit authorizes the permittee to camp within any designated LTVA using those camping or dwelling unit(s) indicated on the permit between the period from September 15 to April 15. There are two types of permits: Long-term and short-visit. The long-term permit fee is $100.00, U.S. funds only, for the entire season and any part of the season. The short-term permit is $20.00 for seven (7) consecutive days. The short-visit permit may be renewed an unlimited number of times for the cost of $20.00 for seven consecutive days. *No refunds are made on permit fees.*

2. *The Permit.* To be valid, the short-visit permit decal or long-term permit decal must be affixed at the time of purchase, with the adhesive backing, to the bottom right-hand corner of the windshield of all transportation vehicles and in a clearly visible location on all camping units. A maximum of two (2) secondary vehicles is permitted.

3. *Permit Transfers.* The permit may not be reassigned or transferred by the permittee.

4. *Permit Revocation.* An authorized BLM officer may revoke, without reimbursement, any LTVA permit issued to any person when the permittee violates any BLM rule or regulation, or when the permittee, permittee's family, or guest's conduct is inconsistent with the goal of BLM's LTVA Program. Failure to return any LTVA permit to an authorized BLM officer upon demand is a violation of this supplementary rule. Any permittee whose permit is revoked must remove all property and leave the LTVA system within 12 hours of notice. The revoked permittee will not be allowed into any other LTVA in Arizona or California for the remainder of the LTVA season.

5. *Unoccupied Camping Units.* Camping units or campsites must not be left unoccupied within any LTVA for periods of greater than 5 days unless approved in advance by an authorized BLM officer.

6. *Parking.* For your safety and privacy, you must maintain a minimum of 15 feet of space between dwelling units.

7. *Removal of Wheels and Campers.* Campers, trailers, and other dwelling units must remain mobile. Wheels must remain on all wheeled vehicles. Pickup campers may be set on jacks manufactured for that purpose.

8. *Quiet Hours.* Quite hours are from 10 p.m. to 6 a.m. in accordance with applicable state time zone standards, or as otherwise posted.

9. *Noise.* Operation of audio devices or motorized equipment, including generators, in a manner that makes unreasonable noise as determined by the authorized BLM officer is prohibited. Amplified music is allowed only within La Posa and Imperial Dam LTVAs and only in locations designated by BLM or when approved in advance by an authorized BLM officer.

10. *Access.* Do not block roads or trails commonly in public use with your parked vehicles, stones, wooden barricades, or by any other means.

11. *Structures and Landscaping.* Fixed structures of any type are prohibited and temporary structures must conform to posted policies. This includes, but is not limited to fences, dog runs, storage units, and windbreaks. Alterations to the natural landscape are not allowed. Painting rocks or defacing or damaging any natural or archaeological feature is prohibited.

12. *Livestock.* Boarding of livestock (horses, cattle, sheep, goats, etc.) within LTVA boundaries is permitted only when approved in advance by an authorized BLM officer.

13. *Pets.* Pets must be kept on a leash at all times. Keep an eye on your pets. Unattended and unwatched pets may fall prey to coyotes or other desert predators. Pet owners are responsible for clean-up and sanitary disposal of pet waste.

14. *Cultural Resources.* Do not disturb any archaeological or historical values including, but not limited to, petroglyphs, ruins, historic buildings, and artifacts that may occur on public lands.

15. *Trash.* Place all trash in designated receptacles. Public trash facilities are shown in the LTVA brochure. Depositing trash or holding-tank sewage in vault toilets is prohibited. An LTVA permit is required for trash disposal within all LTVA campgrounds except for the Mule Mountain LTVA. The changing of motor oil, vehicular fluids, or disposal and possession of these used substances within the LTVA is strictly prohibited.

16. *Dumping.* Absolutely no dumping of sewage, gray water, or garbage on the ground. This includes motor oil and any other waste products: Federal, State, and county sanitation laws and county ordinances specifically prohibit these practices. Sanitary dump station locations are shown in the LTVA brochure. LTVA permits are required for dumping within all LTVA campgrounds except for the Midland LTVA.

17. *Self-Contained Vehicles.* In Pilot Knob, Midland, Tamarisk, and Hot Springs LTVAs, camping is restricted to self-contained camping units only. Self-contained units must have a permanent affixed waste water holding tank of 10-gallon minimum capacity. Port-a-potty systems, or systems which utilize portable holding tanks, or permanent holding tanks of less than 10-gallon capacity are not considered to be self-contained. The La Posa, Imperial Dam, and Mule Mountain LTVAs are restricted to self-contained camping units, except within 500 feet of a vault or rest room.

18. *Campfires.* Campfires are permitted in LTVAs subject to all local,

state, and Federal regulations. Comply with posted rules.

19. *Wood Collection.* No wood collection is permitted within the LTVAs. Possession of native firewood is prohibited. Please contact the nearest BLM office for current regulations concerning wood collection.

20. *Speed Limit.* The speed limit in LTVAs is 15 mph or as otherwise posted.

21. *Off-Highway Vehicle use.* Motorized vehicles must remain on existing roads, trails, and washes.

22. *Vehicle use.* It is prohibited to operate any vehicle in violation of state or local laws and regulations relating to use, standards, registration, operation, and inspection.

23. *Firearms.* The discharge or use of firearms or weapons is prohibited inside or within ½ mile of the LTVAs.

24. *Vending Permits.* Any commercial activity requires a vending permit. Please contact the nearest BLM office for information on vending or concession permits.

25. *Aircraft use.* Landing or taking off of aircraft, including ultralights and hot air balloons, is prohibited in LTVAs.

26. *Perimeter Camping.* No camping is allowed within 1 mile of Hot Spring, Tamarisk, Pilot Knob LTVAs and within 2 miles of Midland LTVA.

27. *Hot Spring Spa and Day Use Area.* Food, beverages, glass containers, soap, and pets are prohibited within the fenced-in area at the Hot Springs Spa. Day use hours are 5 a.m. to midnight.

28. *Mule Mountain LTVA.* All camping within Wiley's Well and Coon Hollow Campgrounds is restricted to designated sites only and is limited to one (1) camping or dwelling unit per site.

29. *Imperial Dam and La Posa LTVAs.* Overnight occupancy is prohibited in desert washes in Imperial Dam and La Posa LTVAs.

30. *La Posa LTVA.* Access to La Posa LTVA is restricted to legal access roads along U.S. Highway 95. Construction and use of other access points are prohibited. This includes removal or modification of barricades, such as fences, ditches, and berms.

31. *Posted Rules.* Observe all posted rules. Individual ITVAs may have additional specific rules. If posted rules differ from these supplemental rules, the posted rules take precedence.

32. *Other Laws.* LTVA permit holders are required to observe all Federal, state, and local laws and regulations applicable to the LTVA and shall keep the LTVA and, specifically, their campsite, in a neat, orderly, and sanitary condition.

33. *Length of Stay.* Length of stay in a LTVA between April 16 and September 14 is limited to 14 days in a 28-day period. After the 14th day of occupation campers must move outside of a 25-mile radius of the previous location.

Violation of these supplementary rules may result in revocation of the LTVA permit, issuance of a citation, and/or arrest which may require appearance before a U.S. Magistrate or penalties up to $100,000 and/or one-year imprisonment.

This notice is published under the authority of Title 43, Code of Federal Regulations, Subpart 8365, Section 1–6.

Dated: August 16, 1999.

Gail Acheson,

Field Manager, Yuma Field Office.

James G. Kenna,

Field Manager, Palm Springs-South Coast Field Office.

Greg Thomsen,

Field Manager, El Centro Field Office.

[FR Doc. 99–21976 Filed 8–31–99; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–060–08–1220–00]

Moffat Bridge Access Site, MT

AGENCY: Bureau of Land Management, Lewistown Field Office, Interior.

ACTION: Notice of proposed supplementary rules.

SUMMARY: Notice is hereby given that effective 30 days after being published, these supplementary rules will be in effect, unless protested by substantive adverse comments. The following supplementary rules and regulations will be in effect at the BLM Moffat, Pugsley and Lowry Bridge Access Sites.

Moffat Bridge Access Site

Motorized vehicles on designated roads and trails only. No off road vehicle travel allowed.

Walk in or float in camping allowed April 1 through September 1. The area is closed to camping September 2 through March 31.

Access road open June 1 through September 1.

Camping limited to three (3) days and three (3) nights.

No fireworks allowed.

No firearms or shooting allowed unless in legal pursuit of a Montana game species (big game, waterfowl and upland bird only).

No littering. Pack in/pack out area.

Quite hours are from 10 p.m. to 7 a.m.

Use only down and dead firewood for campfires. Area closed to firewood permit collection.

Pugsley Bridge Access Site

Motorized vehicles on designated roads and trails only. No off road vehicle travel allowed.

No overnight camping or use. Day use only.

No hunting or shooting of firearms, archery or fireworks. No littering. Pack in/pack out area.

Lowry Bridge Access Site

Motorized vehicles on designated roads and parking areas only. No off road vehicle travel allowed.

Camping allowed year around in the fenced parking/camping area.

Walk in or float in camping allowed on adjacent BLM lands from December 1 through August 31. The adjacent BLM lands are closed to all camping from September 1 through November 30.

Camping limited to three (3) days and three (3) nights.

No hunting or shooting of firearms, archery or fireworks within the fenced parking/camping area.

No firearms or shooting allowed on the entire Lowry Bridge Access Site unless in legal pursuit of a Montana game species (big game, waterfowl, and upland bird only). This is a shotgun or archery only area. No rifle or handgun shooting allowed.

No fireworks allowed.

Quiet hours are from 10 p.m. until 7 a.m.

Any person convicted of violating these restrictions shall be punished by a fine not to exceed $1,000.00 or by imprisonment not to exceed one year or both (43 CFR 8360.0–7).

FOR FURTHER INFORMATION CONTACT: Lewistown Field Office, P.O. Box 1160, Lewistown, Montana 59457.

Dated: August 13, 1999.

David L. Mari,

Field Manager.

[FR Doc. 99–21621 Filed 8–31–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Continuation of the Grassland Bypass Project

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) and notice of public scoping meetings.

SUMMARY: The Bureau of Reclamation (Reclamation) and the San Luis and Delta-Mendota Water Authority (Authority) are preparing a joint EIS/EIR, pursuant to the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA) to evaluate the proposal to continue the Grassland Bypass Project (Project) until 2009. The purpose of the proposed project is as follows:

1. To continue separating unusable agricultural drainage water from wetland water supply conveyance channels and discharge from the Grassland Drainage Area for the period 2001 to 2009; and

2. To facilitate drainage management that maintains the viability of agriculture in the project area and promotes continuous improvement in water quality in the San Joaquin River.

Existing drainage management in the Grassland Drainage Area is based upon use of a segment of the San Luis Drain under terms and conditions of a Use Agreement between the Authority and Reclamation. Current drainage management is also regulated by Waste Discharge Requirements (WDRs) issued by the Regional Water Quality Control Board and by the Basin Plan. The Use Agreement expires on September 30, 2001, and the WDRs require submission of a Report of Waste Discharge for discharges beyond that date. The proposed Project is needed to assure that any future use of the San Luis Drain beyond September 30, 2001, is: (1) Consistent with long-term drainage options, and (2) provides for compliance with applicable water quality objectives.

DATES: A series of public scoping meetings will be held to solicit public input on alternatives, concerns, and issues to be addressed in the EIS/EIR as follows:

- Monday, September 27, 1999, 1:30 to 4:30 p.m., Los Banos CA
- Wednesday, September 29, 1999, 7:00 to 10:00 p.m., Walnut Creek CA
- Thursday, September 30, 1999, 1:30 to 4:30 p.m., Sacramento CA.

Written comments on the scope of the EIS/EIR may be mailed to Reclamation at the address below by October 6, 1999. Comments received after this date will be considered but may not be included in the resulting EIS/EIR scope.

ADDRESSES: The meeting locations are:

- Los Banos at the Miller-Lux Building, Floor 1, 830 6th Street, Los Banos CA
- Walnut Creek at the Walnut Creek City Hall, City Council Chamber, 1666 North Main Street, Walnut Creek CA
- Sacramento at the Best Western Expo Inn, Expo Conference Room, 1413 Howe Avenue, Sacramento CA

Written comments on the scope of the EIS/EIR should be sent to Mr. Michael Delamore, Bureau of Reclamation, South-Central California Area Office, 2666 N. Grove Industrial Drive, Suite 106, Fresno CA 93727; telephone: (559) 487–5039; fax (559) 487–5130.

FOR FURTHER INFORMATION CONTACT: Mr. Delamore at the above address or by telephone at (559) 487–5039.

SUPPLEMENTARY INFORMATION: The Project and the Grassland Drainage Area are located in Merced and Fresno Counties in the Central Valley of California. The Project is designed to improve water quality in the channels used to deliver water to wetland habitat areas. Prior to 1996 when the interim project was implemented, subsurface agricultural drainage water was conveyed through those channels, which limited their availability to deliver fresh water to the wetlands.

The Project consolidates subsurface drainage flows on a regional basis and utilizes a portion of the Federal San Luis Drain (Drain) to convey the flows around wetland habitat areas. The Project collects drainage water from the 97,000-acre Grassland Drainage Area and places it into the Drain at a point near Russell Avenue (Milepost 105.72, Check 19).

The original Grassland Bypass Project was for interim use of a portion of the Drain for conveyance of drainage water through the Grassland Water District and adjacent Grassland area. It was implemented in November 1995 through an "Agreement for Use of the San Luis Drain" (Agreement No. 6–07–20–w1319) between Reclamation and the Authority. A Finding of No Significant Impact (FONSI No. 96–1–MP) was adopted by Reclamation for the original project, and environmental commitments set forth in the FONSI were made an integral component of the Use Agreement. The Use Agreement and its renewal in 1999 allow for use of the Drain for a 5-year period that concludes September 30, 2001. Continued use of the Drain after the term of the existing Use Agreement requires additional environmental compliance with NEPA and CEQA.

In March 1996, the Grassland Area Farmers (GAF) formed a regional drainage entity under the umbrella of the Authority to implement the Project and manage subsurface drainage within the Grassland Drainage Area. Participants include the Broadview Water District, Charleston Drainage District, Firebaugh Canal Water District, Pacheco Water District, Panoche Drainage District, Widren Water District, and the Camp 13 Drainers (an association of landowners located in the Central California Irrigation District). The GAF's drainage area is approximately 97,000 gross acres of irrigated farmland on the westside of the San Joaquin Valley and is known as the Grassland Drainage Area.

In September 1998, the GAF and the Authority developed a long-term drainage management strategy and plan of implementation. The Long-Term Drainage Management Plan for the Grassland Drainage Area (Plan) was submitted to the Regional Water Quality Control Board as required by Waste Discharge Requirement Order 98–171 for public review on September 30, 1998, and updated July 1, 1999. The Plan outlines several steps and measures to achieve water quality objectives in the Basin Plan and includes continuation of the Project. The long-term Plan consists of a combination of both short-and long-term approaches (GAF and Authority, September 1998). Presently, available mechanisms for the management and control of subsurface drainage discharges are inadequate to both maintain long-term viable agriculture and meet water quality objectives for selenium (and possibly for salinity and other constituents). The Project is needed in the short-term (2001–2009) to allow time for additional research and evaluation of long-term options. The proposed Project needs to be consistent with long-term drainage options and not preclude any of these options from being implemented.

The Project also includes a monitoring program with biological, water quality, and sediment components. Results of the monitoring program are reviewed by an Oversight Committee quarterly, or as necessary, to implement the Use Agreement. The Project would not involve new construction or significant alteration of canals and other drainage facilities, but instead would rely on existing canals and waterways. Minor alterations of existing facilities would be necessary in order to collect subsurface agricultural discharges from up to 5,000 acres of adjoining lands if these are added to a new Use Agreement. The proposed project is a major component of the Authority's long-term drainage management plan.

If special services are required at the meeting, please contact Janet Harp at (916) 978–5112 as far in advance of the meeting as possible, but no later than September 20, 1999, to enable the agency to secure the needed services.

Dated: August 24, 1999.

Neil Stressman,

Acting Deputy Regional Director.

[FR Doc. 99–22717 Filed 8–31–99; 8:45 am]

BILLING CODE 4310–04–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–420]

Certain Beer Products; Notice of a Commission Determination Not To Review an Initial Determination Terminating One Respondent on the Basis of a Consent Order; Issuance of Consent Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") granting the joint motion of complainant Anheuser-Busch, Inc. ("Anheuser-Busch") and respondent Argen-Wine Imports, Ltd. ("Argen") to terminate Argen from the above-referenced investigation on the basis of a consent order.

FOR FURTHER INFORMATION: Andrea C. Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3105. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On May 27, 1999, the Commission instituted this investigation based on a complaint filed by Anheuser-Busch, alleging a violation of section 337 in the importation and sale of certain beer products by reason of infringement of U.S. Trademark Registration Nos. 922,481, 952,277, or 666,637. 64 FR 30058. Two firms were named as respondents: Argen and Budejovicky Budvar, N.P.

On July 2, 1999, complainant Anheuser and respondent Argen filed a joint motion to terminate the investigation as to Argen on the basis of a consent order stipulation and proposed consent order. The remaining respondent, Budvar, opposed the motion. The Commission investigative attorney supported the motion.

On July 26, 1999, the ALJ issued an ID (Order No. 6) terminating the investigation as to Argen based on the joint stipulation and proposed consent order. No party petitioned for review of the ID pursuant to 19 CFR 210.43(a), and the Commission found no basis for ordering a review on its own initiative pursuant to 19 CFR 210.44. The ID thus became the determination of the Commission pursuant to 19 CFR 210.42(h)(3).

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42.

By order of the Commission.

Issued: August 26, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–22797 Filed 8–31–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. AA1921–197 (Review); 701–TA–231, 319–320, 322, 325–328, 340, 342, and 348–350 (Review); and 731–TA–573–576, 578, 582–587, 604, 607–608, 612, and 614–618 (Review)]

Certain Carbon Steel Products From Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and United Kingdom

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the countervailing duty and antidumping duty orders on certain carbon steel products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and United Kingdom.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty and antidumping duty orders on certain carbon steel products from Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and United Kingdom would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is October 21, 1999. Comments on the adequacy of responses may be filed with the Commission by November 12, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Elizabeth Haines (202–205–3200), or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.

On the dates listed below, countervailing duty and antidumping duty orders on the subject imports were issued:

	Order date and product/Country	Inv. No.	F.R. cite
6/13/79	Carbon steel plate/Taiwan	AA1921–197	44 F.R. 33877
8/17/93	Cut-to-length carbon steel plate/Belgium	701–TA–319	58 F.R. 43749
8/17/93	Cut-to-length carbon steel plate/Brazil	701–TA–320	58 F.R. 43751
8/17/93	Cut-to-length carbon steel plate/Germany	701–TA–322	58 F.R. 43756
8/17/93	Cut-to-length carbon steel plate/Mexico	701–TA–325	58 F.R. 43755
8/17/93	Cut-to-length carbon steel plate/Spain	701–TA–326	58 F.R. 43761
8/17/93	Cut-to-length carbon steel plate/Sweden	701–TA–327	58 F.R. 43758
8/17/93	Cut-to-length carbon steel plate/United Kingdom	701–TA–328	58 F.R. 43748
8/19/93	Cut-to-length carbon steel plate/Belgium	731–TA–573	58 F.R. 44164
8/19/93	Cut-to-length carbon steel plate/Brazil	731–TA–574	58 F.R. 44164
8/19/93	Cut-to-length carbon steel plate/Canada	731–TA–575	58 F.R. 44162
8/19/93	Cut-to-length carbon steel plate/Finland	731–TA–576	58 F.R. 44165
8/19/93	Cut-to-length carbon steel plate/Germany	731–TA–578	58 F.R. 44170
8/19/93	Cut-to-length carbon steel plate/Mexico	731–TA–582	58 F.R. 44165
8/19/93	Cut-to-length carbon steel plate/Poland	731–TA–583	58 F.R. 44166
8/19/93	Cut-to-length carbon steel plate/Romania	731–TA–584	58 F.R. 44167
8/19/93	Cut-to-length carbon steel plate/Spain	731–TA–585	58 F.R. 44167
8/19/93	Cut-to-length carbon steel plate/Sweden	731–TA–586	58 F.R. 44168
8/19/93	Cut-to-length carbon steel plate/United Kingdom	731–TA–587	58 F.R. 44168
10/11/85	Cold-rolled carbon steel flat products/Sweden	701–TA–231	50 F.R. 41547
8/17/93	Cold-rolled carbon steel flat products/Germany	701–TA–340	58 F.R. 43756
8/17/93	Cold-rolled carbon steel flat products/Korea	701–TA–342	58 F.R. 43752
8/19/93	Cold-rolled carbon steel flat products/Germany	731–TA–604	58 F.R. 44170
8/19/93	Cold-rolled carbon steel flat products/Korea	731–TA–607	58 F.R. 44159
8/19/93	Cold-rolled carbon steel flat products/Netherlands	731–TA–608	58 F.R. 44172
8/17/93	Corrosion-resistant carbon steel flat products/France	701–TA–348	58 F.R. 43759
8/17/93	Corrosion-resistant carbon steel flat products/Germany	701–TA–349	58 F.R. 43756
8/17/93	Corrosion-resistant carbon steel flat products/Korea	701–TA–350	58 F.R. 43752
8/19/93	Corrosion-resistant carbon steel flat products/Australia	731–TA–612	58 F.R. 44161
8/19/93	Corrosion-resistant carbon steel flat products/Canada	731–TA–614	58 F.R. 44162
8/19/93	Corrosion-resistant carbon steel flat products/France	731–TA–615	58 F.R. 44169
8/19/93	Corrosion-resistant carbon steel flat products/Germany	731–TA–616	58 F.R. 44170
8/19/93	Corrosion-resistant carbon steel flat products/Japan	731–TA–617	58 F.R. 44163
8/19/93	Corrosion-resistant carbon steel flat products/Korea	731–TA–618	58 F.R. 44159

The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Australia, Belgium, Brazil, Canada, Finland, France, Germany, Japan, Korea, Mexico, Netherlands, Poland, Romania, Spain, Sweden, Taiwan, and United Kingdom.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original 1979 antidumping determination concerning carbon steel plate from Taiwan, the Commission found one Domestic Like Product: Carbon steel plate. In its original 1985 countervailing duty determination concerning cold-rolled carbon steel flat products from Sweden, the Commission found one Domestic Like Product: cold-rolled carbon steel sheet. In its original 1993 determinations, the Commission found in the affirmative for four Domestic Like Products: (1) Cut-to-length plate, (2) cold-rolled carbon steel flat products, (3) corrosion-resistant carbon steel flat products other than clad plate, and (4) corrosion-resistant clad plate. One Commissioner defined the Domestic Like Product differently. For purposes of this notice, you should report information separately on each of the following Domestic Like Products: (1) Carbon steel plate, (2) cut-to-length plate, (3) cold-rolled carbon steel flat products, (4) corrosion-resistant carbon steel flat products other than clad plate, and (5) corrosion-resistant clad plate.

(4) The *Domestic Industry* is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original 1979 antidumping determination concerning carbon steel plate from Taiwan, the Commission found one regional Domestic Industry: producers of carbon steel plate located in the west coast States of California, Washington, and Oregon. Certain Commissioners defined the Domestic Industry differently. In its original 1985 countervailing duty determination concerning cold-rolled carbon steel flat products from Sweden, the Commission found one Domestic Industry: producers of cold-rolled carbon steel sheet. In its original 1993 determinations, the Commission found in the affirmative for four Domestic Industries: (1) Producers of cut-to-length plate, (2) Producers of cold-rolled carbon steel flat products, (3) producers of corrosion-resistant carbon steel flat

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–034. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

products other than clad plate, and (4) producers of corrosion-resistant clad plate. One Commissioner defined the Domestic Industry differently. For purposes of this notice, you should report information separately on each of the following Domestic Industries: (1) Producers of carbon steel plate located in California, Washington, and Oregon, (2) producers of cut-to-length plate, (3) producers of cold-rolled carbon steel flat products, (4) producers of corrosion-resistant carbon steel flat products other than clad plate, and (5) producers of corrosion-resistant clad plate.

(5) The *Order Dates* are the dates that the countervailing duty and antidumping duty orders under review became effective. In these reviews, the Order Dates are as shown in the preceding tabulation.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is October 21, 1999. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is November 12, 1999. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution

Please provide the requested information separately for each Domestic Like Product, as defined above, and for each of the products identified by Commerce as Subject Merchandise. If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product to which your response pertains, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing duty and antidumping duty orders on each Domestic Industry for which you are filing a response in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of each Domestic Like Product for which you are filing a response. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Countries that currently export or have exported Subject Merchandise to the United States or other countries since the year the petitions were filed. The Subject Merchandise, the Subject Countries, and the years the petitions were filed are listed below:

Subject Merchandise/Subject Country(ies)	Years
Carbon steel plate/Taiwan	1978
Cold-rolled carbon steel flat products/Sweden	1984
Cut-to-length carbon steel plate/Belgium, Brazil, Canada, Finland, Germany, Mexico, Poland, Romania, Spain, Sweden, and United Kingdom	1992
Cold-rolled carbon steel flat products/Germany, Korea, and Netherlands	1992
Corrosion-resistant carbon steel flat products/Australia, Canada, France, Germany, Japan, and Korea	1992

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information separately on your firm's operations on each product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of each Domestic Like Product accounted for by your firm's(s') production;

(b) The quantity and value of U.S. commercial shipments of each Domestic Like Product produced in your U.S. plant(s); and

(c) The quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries; and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for each Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Dates, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (Optional) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: August 26, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–22788 Filed 8–31–99; 8:45 am]

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INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 303–TA–23, 731–TA–566–570, and 731–TA–641 (Reconsideration) and Investigations Nos. 751–TA–21–27]

Ferrosilicon From Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela

Determinations

On the basis of the record [1] developed in these investigations, the United States International Trade Commission determines, upon reconsideration, that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela of ferrosilicon, provided for in subheadings 7202.21.10, 7202.21.50, 7202.21.75, 7202.21.90, and 7202.29.00 of the Harmonized Tariff Schedule of the United States, that have been found

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

by the Department of Commerce to be subsidized by the Government of Venezuela and sold in the United States at less than fair value (LTFV).

The Commission's determinations in the reconsideration proceedings render the changed circumstances investigations that relate to the original determinations moot. Accordingly, the United States International Trade Commission hereby terminates investigations Nos. 751–TA–21–27 concerning ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela.

Background

On April 24, 1998, the Commission received a request to review its affirmative determination as it applied to imports of ferrosilicon from Brazil (the request)[2] in light of changed circumstances, pursuant to section 751(b) of the Act. The request was filed by counsel on behalf of Associação Brasileira dos Productores de Ferroligas e de Silicio Metalico (ABRAFE), Companhia Brasileira Carbureto de Calcio (CBCC), Companhia de Ferroligas de Bahia (FERBASA), Nova Era Silicon S/A, Italmagnesio S/A-Industria e Comercio, Rima Industrial S/A, and Companhia Ferroligas Minas Gerais (Minasligas).

Pursuant to section 207.45(b) of the Commission's Rules of Practice and Procedure,[3] the Commission published a notice in the **Federal Register** on May 20, 1998,[4] requesting comments as to whether the alleged changed circumstances warranted the institution of review investigations. The Commission received comments in support of the request from C.V.G. Venezolana de Ferrosilicio C.A. (Fesilven), a Venezuelan producer of ferrosilicon; General Motors Corp., a purchaser of ferrosilicon; and the Governments of Brazil and Kazakhstan. Comments in opposition to the request were received from counsel on behalf of AIMCOR, American Alloys, Inc., Elkem Metals Co., and SKW Metals & Alloys, Inc., U.S. producers of ferrosilicon. After reviewing these comments, the Commission determined on July 28, 1998, that certain of the alleged changed circumstances were sufficient to warrant review investigations.[5] Among the issues that were briefed by the parties to the investigations was the fact that, between 1995 and 1997, two members of the domestic industry pleaded guilty to conspiring to fix prices of commodity ferrosilicon products during the periods of the Commission's original investigations, and a third member, and an officer of that member, were convicted of conspiring to fix prices of commodity ferrosilicon products during the periods of the Commission's original investigations.

On May 21, 1999, the Commission suspended investigations Nos. 751–TA–21–27, and instituted proceedings to reconsider its determinations in countervailing duty investigation No. 303–TA–23 (Final) concerning ferrosilicon from Venezuela and antidumping investigations Nos. 731–TA–566–570 and 731–TA–641 (Final) concerning ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela.[6]

The Commission transmitted its determination in these investigations to the Secretary of Commerce on August 24, 1999. The views of the Commission are contained in USITC Publication 3218 (August 1999), entitled Ferrosilicon from Brazil, China, Kazakhstan, Russia, Ukraine, and Venezuela: Investigations Nos. 303–TA–23, 731–TA–566–570, and 731–TA–641 (Reconsideration).

By order of the Commission.

Issued: August 25, 1999.

Donna R. Koehnke,

Secretary.

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BILLING CODE 3610–OS–P

[2] The request concerned only imports from Brazil. However, as the alleged changed circumstances predominantly relate to the domestic industry, the Commission solicited comments on the possibility of self-initiating reviews of the outstanding orders on imports from China, Kazakhstan, Russia, Ukraine, and Venezuela.

[3] 19 CFR 207.45(b).

[4] 63 FR 27747.

[5] *See* 63 FR 40314–15.

[6] 64 FR 28212, May 25, 1999. Chairman Bragg dissenting.

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–401 (Preliminary) and 731–TA–852–855 (Preliminary)]

Certain Structural Steel Beams From Germany, Japan, Korea, and Spain

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 703(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Korea of certain structural steel beams,[2] provided for in subheadings 7216.32.00, 7216.33.00, 7216.50.00, 7216.61.00, 7216.69.00, 7216.91.00, 7216.99.00, 7228.70.30, and 7228.70.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be subsidized by the Government of Korea.

The Commission further determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is threatened with material injury by reason of imports from Japan and Korea of certain structural steel beams,[3] provided for in subheadings 7216.32.00, 7216.33.00, 7216.50.00, 7216.61.00, 7216.69.00, 7216.91.00, 7216.99.00, 7228.70.30, and 7228.70.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

The Commission further determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Germany and Spain of certain structural steel beams,[4] provided for in subheadings 7216.32.00, 7216.33.00, 7216.50.00, 7216.61.00, 7216.69.00, 7216.91.00, 7216.99.00, 7228.70.30, and 7228.70.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at LTFV.

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in section 207.21 of the Commission's rules upon notice from

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Vice Chairman Marcia E. Miller makes a negative determination on allegedly subsidized imports from Korea. Commissioner Carol T. Crawford makes an affirmative determination that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports from Korea.

[3] Vice Chairman Marcia E. Miller makes a negative determination on imports from Japan and Korea allegedly sold at LTFV. Commissioner Carol T. Crawford makes an affirmative determination that there is a reasonable indication that an industry in the United States is materially injured by imports from Japan and Korea allegedly sold at LTFV.

[4] Chairman Lynn M. Bragg and Commissioner Carol T. Crawford dissenting.

the Department of Commerce (Commerce) of affirmative preliminary determinations in these investigations under sections 703(b) and 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in the investigations under sections 705(a) and 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On July 7, 1999, a petition was filed with the Commission and the Department of Commerce by Northwestern Steel & Wire Co., Sterling, IL; Nucor-Yamato Steel Co., Blytheville, AR; TXI-Chaparral Steel Co., Midlothian, TX; and The United Steelworkers of America AFL–CIO, Pittsburgh, PA, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of certain structural steel beams from Korea and alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of certain structural steel beams from Germany, Japan, Korea, and Spain. Accordingly, effective July 7, 1999, the Commission instituted countervailing duty investigation No. 701–TA–401 (Preliminary) and antidumping investigations Nos. 731–TA–852–855 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of July 16, 1999 (64 FR 38476). The conference was held in Washington, DC, on July 28, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on August 23, 1999. The views of the Commission are contained in USITC Publication 3225 (September 1999), entitled Certain Structural Steel Beams from Germany, Japan, Korea, and Spain: Investigations Nos. 701–TA–401 (Preliminary) and 731–TA–852–855 (Preliminary).

By order of the Commission.

Issued: August 26, 1999.

Donna R. Koehnke,

Secretary.

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BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response Compensation and Liability Act

Notice is hereby given that on August 2, 1999, a proposed Consent Decree in *United States* v. *Aiken County Forfeited Land Commission and Aiken County, South Carolina*, Civil Action No. 1:99–0264–08 was lodged with the United States District Court for the District of South Carolina.

In this action the United States sought the recovery of past costs incurred in response to releases and threatened releases of hazardous substances at the Clearwater Finishing Superfund Site in Clearwater, Aiken County, South Carolina. The Consent Decree represents a settlement with two of the potential responsible parties listed in the Amended Complaint for violations of Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9607. Under the Consent Decree, the Aiken County Forfeited Land Commission and Aiken County, South Carolina has agreed to pay the United States $250,000.00. This Consent Decree represents the third settlement to be lodged with the Court regarding the Clearwater Finishing Superfund Site. The United States has incurred approximately $1,182,000.00. The Amended Complaint names two additional parties.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Aiken County Forfeited Land Commission and Aiken County, South Carolina*, D.J. Ref. Number 90–11–3–06135.

The proposed Consent Decree may be examined at the Office of the United States Attorney, for the District of South Carolina, First Union Building, 1441 Main Street, Suite 500, Columbia, South Carolina 29201, at U.S. EPA Region IV, 61 Forsyth Street, Atlanta, Georgia 30303, and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $4.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Walker Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–22688 Filed 8–31–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant To The National Cooperative Research and Production Act of 1993—EMTEC: Enabling Technologies For Lean Manufacturing of Hardened Steel Components

Notice is hereby given that, on July 20, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), EMTEC: Enabling Technologies for Lean Manufacturing of Hardened Steel Components has file written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Delphi Automotive Systems, Dayton, OH; Torrington Company, Norcross, CA; Valenite, Madison Heights, MI; Third Wave, Minneapolis, MN; Saginaw Machine Systems, Inc., Saginaw, MI; Masco Tech, Royal Oak, MI; The George Woodruff School of Mechanical Engineering/ Georgia Institute of Technology, Atlanta, GA; Ohio State University, Columbus, OH; and Edison Materials Technology Center (EMTEC), Kettering, OH. The nature and objectives of the venture are to conduct research on Enabling

Technologies for Lean Manufacturing of Hardened Steel Components.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–22690 Filed 8–31–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant To The National Cooperative Research and Production Act of 1993—Siemens Westinghouse: Ceramic Matrix Composites For Advanced Engine Components

Notice is hereby given that, on July 20, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Siemens Westinghouse: Ceramic Matrix Composites for Advanced Engine Components has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties; and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Siemens Westinghouse Power Corporation, Orlando, FL; Engineered Ceramics, Incorporated, San Diego, CA; and Solar Turbines, Incorporated, San Diego, CA. The nature and objectives of the venture are to demonstrate the proof-of-concept viability for new ceramic matrix composite materials for gas turbine engines for the power generation industry under the subject Advanced Technology Program of NIST. The activities of the joint venture will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, Department of Commerce.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–22689 Filed 8–31–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office of Juvenile Justice and Delinquency Prevention; Proposed Information Collection Activity; Proposed Collection; Comment Request

ACTION: Notice of information collection under review; New collection; Survey of youth in residential placement.

The Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention (OJJDP), has submitted the following information collection required for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until November 1, 1999.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Joseph Moone, 202–307–5929, Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Survey of Youth in Residential Placement.

(3) *Agency form number:* None.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Individuals, Youth under 20 years of age residing in a residential facility due to the actions or orders of the juvenile justice system.

Other: Business or other for-profit, not-for-profit institutions, or State, Local or Tribal Government.

This information will be collected as part of a standard data collection effort designed to monitor the characteristics and needs of youth in residential placement. The youth will be given a survey of at most one hour using audio computer assisted survey interview techniques. The facilities in which the youth reside will be asked to assist in drawing a sample of youth and in coordinating the administration of the survey in the facilities.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 10,000 responses at 1 hour per response.

(8) *An estimate of the total public burden (in hours) associated with the collection:* 10,000 annual burden hours.

If additional information is required contact: Mr. Robert Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, 1331 Pennsylvania Avenue, NW., Washington, DC 20530.

Dated: August 27, 1999.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 99–22714 Filed 8–31–99; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Solicitation for Grant Applications (SGA) H–1B Technical Skills Training Grants; Correction

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice; correction.

SUMMARY: The Employment and Training Administration published a document in the **Federal Register** of August 16, 1999, concerning the availability of grant funds for skill training programs for unemployed and employed workers. The document contained incorrect dates.

FOR FURTHER INFORMATION CONTACT: Diemle Phan, Grants Management Specialist, Division of Federal Assistance, Fax (202) 219–8739.

Correction

In the **Federal Register** of August 16, 1999, in FR Doc. 99–21143, on page 44543, in the second column, correct the "Dates" caption to read:

DATES: Applications for grant awards will be accepted commencing August 16, 1999. The closing date for receipt of applications shall be November 1, 1999 at 4:00 p.m. (Eastern Time) at the address below.

Signed at Washington, DC, this 26th day of August, 1999.

Laura Cesario,

Grant Officer.

[FR Doc. 99–22739 Filed 8–31–99; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–107]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing:

NASA Case No. MSC–22883–1: Compact Dexterous Robotic Hand;
NASA Case No. MSC–22900–1: Advanced Structural and Inflatable Hybrid Spacecraft Module;
NASA Case No. MSC–22834–1: A Uni-Directional Cell Stretching Device;
NASA Case No. MSC–22871–1: Vapor Corrosion Cell;
NASA Case No. MSC–22738–1: Non-Intrusive Pressure Gauging Method;
NASA Case No. MSC–22679–1: Evaluation of Biofilms and the Effects of Biocides Thereon;
NASA Case No. MSC–22970–1: Solar Powered Refrigerator System;
NASA Case No. MSC–23041–1: Variable Specific Impulse Magnetoplasma Rocket Engine.

DATES: September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Edward Fein, Patent Counsel, Johnson Space Center, Mail Code HA, Houston, Texas, 77058–3696; telephone (281) 483–0837.

Dated: August 25, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–22674 Filed 8–31–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–108)]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Planetary Protection Task Force

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science Advisory Committee, Planetary Protection Task Force.

DATES: Monday, September 20, 1999, 1:00 p.m. to 5:15 p.m., Tuesday, September, 21, 1999, 8:30 a.m. to 5:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, Conference Room, 6H46, 300 E Street, SW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. John Rummel, Code SR, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–0702.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

—Review of Task Force Objectives
—International Activities in Planetary Protection
—Policy and Regulatory Aspects of Sample Return
—Muses-C Requirements
—Task Force Issues and Discussion

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: August 26, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–22675 Filed 8–31–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to a Currently Approved Information Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Public Law 104–13, 44 U.S.C. Chapter 35). This information collection was originally published on May 11, 1999. No comments were received.

DATES: Comments will be accepted until October 1, 1999.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen (703) 518–6411, National Credit Union Administration 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518–6411.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0129.

Form Number: NA.

Type of Review: Revision to the currently approved collection.

Title: Corporate Credit Unions.

Description: Part 704 of NCUA's Rules and Regulations directs corporate credit unions to maintain records concerning their activities.

Respondents: Corporate credit unions.

Estimated No. of Respondents/Recordkeepers: 38.

Estimated Burden Hours Per Response: 1,822 hours.

Frequency of Response: Reporting, Recordkeeping, On Occasion and Annually.

Estimated Total Annual Burden Hours: 69,236.

Estimated Total Annual Cost: $2,417,026.

By the National Credit Union Administration Board on August 26, 1999.

Hattie M. Ulan,

Acting Secretary of the Board.

[FR Doc. 99–22707 Filed 8–31–99; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Committee Management; Renewal

The NSF management official having responsibility for the NSB Public Service Award Committee (#5195) has determined that renewing this charter for another two years is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundaton (NSF), by 42 USC 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Authority for this Committee will expire on September 4, 2001, unless it is renewed. For more information, please contact Karen York, NSF, at (703) 306–1182.

Dated: August 26, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–22712 Filed 8–31–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Computational Infrastructure and Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Advanced Computational Infrastructure and Research (#1185).

Date and Time: September 9–10, 1999 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 320, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Charles H. Koelbel, Program Director, Advanced Computational Research Program, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1962.

Purpose of Meeting: provide recommendations and advice concerning Software proposals submitted to NSF for financial support.

Agenda: To review and evaluate Proposals in the Advanced Computational Research Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: August 26, 1999.

Karen J. York,

Committee Management Officer.

[FR Doc. 99–22711 Filed 8–31–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–348 and 50–364]

Southern Nuclear Operating Company, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. NPF–2 and NPF–8 issued to Southern Nuclear Operating Company, Inc. (SNC, or the licensee) for operation of the Joseph M. Farley Nuclear Plant, Units 1 and 2, located in Houston County, Alabama.

The proposed amendments, requested by SNC in letters dated February 22, 1999, supplemented by letters dated March 19 and June 30, 1999, would revise the technical specifications (TS) to clarify surveillance requirements for the control room emergency filtration system, penetration room filtration system, storage pool ventilation, and radiation monitoring instrumentation. SNC also proposes to delete the containment purge exhaust filter.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to convert from ANSI N510–1980 to ASME N510-1989 for specific [Farley Nuclear Plant] FNP filtration surveillance testing requirements and related changes do not affect the probability of any accident occurring. The consequences of any accident will not be affected since the proposed changes will continue to ensure that appropriate and required surveillance testing for FNP filtration systems will be performed consistent with the revised accident analyses. The results of the fuel handling accident remain well within the guidelines of 10 CFR Part 100 and the doses due to a [loss-of-coolant-accident] LOCA, including [emergency core cooling system] ECCS recirculation loop leakage, remain within the guidelines of 10 CFR Part 100 and General Design Criterion [GDC] 19 of Appendix A to 10 CFR Part 50. Relocating specific testing requirements to the FNP [Final safety Analysis Report] FSAR has no effect on the probability or consequences of any accident previously evaluated since required testing will continue to be performed.

Therefore, the proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Testing differences between ANSI N510–1980 and ASME N510–1989 have been evaluated by SNC and none of the proposed changes have the potential to create an accident at FNP. ASME N510–1989 is referenced by the NRC in NUREG 1431. Testing the additional channels of radiation monitoring and verification of penetration room boundary integrity do not require the affected systems to be placed in configurations different from design. Thus, no new system design or testing configuration is required for the changes being proposed that could create the possibility of any new or different kind of accident from any accident previously evaluated. Relocating specific testing requirements to the FSAR has no effect on the possibility of creating a new or different kind of accident from any accident previously evaluated since it is an administrative change in nature.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

Conversion from the testing requirements of ANSI N510–1980 sections 10, 12, and 13 to ASME N510–1989 sections 10, 11, and 15 has been previously approved by the NRC at other nuclear facilities. ASME N510–1989 has been approved and endorsed by the NRC in NUREG 1431. The safety factor associated with the conservative charcoal adsorber laboratory test methods and dose calculations ensures that doses will continue to meet the guidelines of 10 CFR Part 100 and GDC 19 of Appendix A to 10 CFR Part 50. The enhanced testing of radiation monitoring instrumentation and the penetration room boundary integrity provide additional assurance that the acceptance criteria of the safety analyses and the resultant margins of safety are not reduced. Relocating specific testing requirements to the FSAR has no effect on the margin of plant safety since required testing will continue to be performed. Clarifying the 10[-]hour run with heaters on is consistent with the Improved TS language and accomplishes the purpose for the surveillance. Changing the heater capacity and flow rates has been factored into the dose calculations and are within the design capacities of the systems involved.

Therefore, SNC concludes based on the above, that the proposed changes do not result in a significant reduction of margin with respect to plant safety as defined in the Final Safety Analysis Report or the bases of the FNP technical specifications.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 1, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment

and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated February 22, 1999, supplemented by letters dated March 19 and June 30, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama.

Dated at Rockville, Maryland, this 26th day of August 1999.

For the Nuclear Regulatory Commission.

L. Mark Padovan,

Project Manager, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–22766 Filed 8–31–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–08980]

Environmental Assessment, Finding of No Significant Impact, and Notice of Opportunity for a Hearing for Remediation of the Lakehurst, NJ Site

Summary and Conclusions

The environmental assessment (EA) reviews the environmental impacts of the decommissioning actions proposed by Heritage Minerals, Incorporated (HMI) of their Lakehurst, New Jersey facility. Based upon the NRC staff evaluation of the HMI Final Status Survey Plan (FSSP), dated November 3, 1997, it was determined that the proposed decommissioning can be accomplished in compliance with the NRC public and occupational dose limits, effluent release limits, and residual radioactive material limits. In addition, the approval of the proposed action, i.e., decommissioning of HMI's Lakehurst, New Jersey facility in accordance with the commitments in NRC license SMB–1541 and the FSSP (decommissioning plan), will not result in significant adverse impact on the environment.

1.0 Introduction

1.1 Background

Heritage Minerals, Inc. is the current holder of NRC radioactive source materials license SMB–1541 (NRC Docket 40–08980) for the possession of radioactive material resulting from operations at their facility located in Lakehurst, New Jersey. The license authorizes HMI to possess at any one time a maximum of 300 kg of uranium in the form of natural uranium as monazite and 15,000 kg of thorium in the form of natural thorium as monazite. Processing of licensed material is not authorized except incident to facility decommissioning activities and packaging materials for shipment.

In December 1996, HMI informed the NRC staff that it intended to decommission the Lakehurst, New Jersey facility. The licensee submitted the Final Status Survey Plan (FSSP or decommissioning plan) to the NRC for review on November 3, 1997. The license was renewed on May 26, 1998 to authorize possession, packaging, storage, and decommissioning in accordance with the FSSP and transfer of products and waste to authorized recipients. Prior to the renewal, a safety evaluation report (SER), which evaluated conformance of the proposed action with NRC regulations and regulatory guidance was prepared and the opportunity for a hearing was publicly noticed in the March 12, 1998, **Federal Register** Notice (63 Federal Register 12114). In response to NRC requests, in 1998–99, HMI provided additional information to clarify certain planned remediation activities. The NRC is considering a license amendment which include additional HMI commitments during facility decommissioning.

1.2 Purpose and Need for Proposed Action

NRC is considering approval of the FSSP to allow Heritage Minerals, Inc. to remove radioactive material attributable to licensed operations at the site, to levels that permit release of the property for unrestricted use and termination of radioactive source materials license SMB–1541.

1.3 Description of Proposed Action

The objective of HMI is to decontaminate and decommission the Lakehurst, NJ facility to permit release for unrestricted use and termination of NRC license SMB–1541. Decommissioning will involve remediation of buildings and other above-grade structures, decontamination of process equipment and sumps, excavation of soil containing monazite sands, and restoration of excavated areas. Soil and other radioactively contaminated materials will be transported to either a licensed disposal facility or recipient authorized to receive such material.

NRC staff reviewed the information provided by HMI in the FSSP describing the proposed decommissioning actions and, by letter dated March 16, 1999, requested additional information regarding specific areas that needed clarification. NRC staff concluded that the decommissioning plan (FSSP) and supplemental information (letters dated November 30, 1998, June 24, 1999, July 13, 1999 and August 17, 1999) from A.J. Thompson, Attorney for HMI, Inc., responding to NRC comments provided an adequate information base for assessing potential environmental impacts from the proposed action.

2.0 Facility Description/Operating History

2.1 Site Locale and Physical

Description The Heritage Minerals, Inc. site is located on Route 70 in Lakehurst, Manchester Township (Ocean County), New Jersey, in the Atlantic Coastal Plain. It encompasses an area of approximately 7000 acres, of which 1000–1200 acres were used for mining operations involving monazite.

Other areas remained undisturbed. The plant and production areas including mill tailings containing monazite (produced as a result of previous operations) occupied an estimated 500 acres. The monazite pile is located within a security fence and occupies approximately 700 cubic meters. Areas adjacent to the site are predominantly rural, with bands of existing or recently developed residential communities within Manchester Township.

In the Hydrogeologic Investigation Report prepared for HMI, Fellows, Read, & Associates, Inc. (1989) characterized the geology and hydrogeology of the facility. Geologic deposit formations consist of underlying sediments of stratified clay, silt, sand, and gravel on well-indurated bedrock. The topography is relatively flat, recontoured by surface mining of ilmenite surface deposits. Wetlands form the drainage of adjacent Wrangel Brook, which has an easterly streamflow. Two lakes were created along the Green Branch of Wrangel Brook as a result of mine dredging operations.

Groundwater flow occurs from areas located north and west of the site to east and northeast towards the tributaries of the Toms River. The Toms River and its tributaries represent the major groundwater discharge zones for the region. Local groundwater flow is from upland areas to lower areas where groundwater discharges to streams and wetlands. Site groundwater is recharged by precipitation and flows unconfined through underlying sands. The Green Branch, Michaels Branch, and Davenport Branch of Wrangel Brook serve as local discharge zones for shallow ground water, with subsequent discharge to the Toms River or Barnegat Bay.

2.2 Descriptions of Facility Operations

Between 1973 and 1982 the site was operated by ASARCO, Inc., for dredging and processing sand deposits to extract heavy minerals. The titanium mineral, ilmenite, was the primary mineral recovered by various physical separation methods. There was no chemical separation involved in the extraction and concentration processes. Heavy minerals, including monazite were pumped as slurry to a Wet Mill. At the Wet Mill, the heavy minerals were separated from the slurry, then stockpiled for dewatering, while the lighter fraction was returned to the dredge pond. The heavy mineral concentrate was heated in a Dry Mill, then screened to remove coarse material. The high conductivity of the titanium dioxide bearing minerals allowed electrical separation from other heavy minerals. Further magnetic refinement produced the final ilmenite product. The dry mill tailings containing essentially all the monazite from the heavy minerals concentrate were mixed with water and pumped to an area east of the dry mill building.

ASARCO ceased operations in 1982. Evaluation of residual materials by private companies for commercial use continued until the property was purchased by HMI in 1986. Plant facilities were leased to Mineral Recovery, Inc. (MRI), who performed operational testing for titanium recovery until 1987.

HMI assumed property control, conducting site operations under NRC license until 1990 when all production stopped. Operations were comparable to the ASARCO process, utilizing dry mill tailings as feed material. The tailings were mixed with water, pumped to the wet mill for mineral separation according to their conductive properties, proceeding through a dewatering and drying process. Minerals were recovered and sold as leucoxene and rutile (titanium dioxide products) and zircon. Licensable amounts of monazite were present throughout the electrical and magnetic separation processes. In early 1990, processing of feed materials continued followed by recycle of tailings from the MRI operations. Mill tailings containing monazite were deposited in a stockpile east of the dry mill. Due to economic conditions, HMI terminated all operations in August 1990. Approximately 700 cubic meters of stockpiled tailings remain licensed to HMI.

3.0 Radiological Status of the Facility

3.1 Structures and Equipment

HMI performed decontamination of building surfaces and disposed of contaminated equipment in 1990–1991. Subsequent radiation (screening) surveys were conducted of the interiors of the wet mill and dry mill. Process trains within each building were characterized according to their monazite content and operating history as affected or unaffected areas using NUREG/CR–5849, "Manual for Conducting Radiological Surveys in Support of License Termination" criteria. The methods used to dismantle and decontaminate process equipment in affected areas and for disposition of resultant materials are described in the FSSP. The same methods will be used for decontamination of building interiors prior to the final radiological survey and will serve as the basis for termination of NRC Source Material License SMB–1541.

The final release status surveys described in the FSSP will be performed in accordance with NUREG/CR–5849 criteria. Residual radioactive materials that exist in affected areas will meet current guidelines described in "Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use for Termination of Byproduct, Source, and Special Nuclear Material Licenses," (U.S. Nuclear Regulatory Commission, Policy and Guidance Directive FC 83–23, 1983). Details regarding the radiological status of affected areas within the Wet and Dry Mill buildings are described in the next sections. At present, contaminated material containing monazite is being stored in the outdoor tailings pile. A final survey of affected areas will be required by NRC after residual material is removed and decontamination is complete.

Following review of the Heritage Minerals, Inc. site radiological characterization of structures and equipment, the NRC staff finds characterization was performed in accordance with NUREG/CR–5849. The NRC staff review of the FSSP also finds it adequate for remediating structures and equipment to radiological levels below the NRC guidelines for unrestricted release (Nuclear Regulatory Commission, 1983). The staff concludes no adverse environmental impacts will result from planned remediation of the site structures and equipment.

3.1.1 Wet Mill Building. The Wet Mill Building process equipment used to extract product materials from raw feed was grouped into affected and unaffected survey units. The majority of survey units including floors, lower walls, and western mill areas are unaffected. Mechanical separation units and feed sumps involving transfer or processing of product material containing monazite were identified in the FSSP as affected areas. Final radiological surveys of interior surfaces will be within allowable release limits for natural thorium, the primary contaminant of concern. Prior to release of equipment in affected areas for unrestricted use, the NRC release limit of 1,000 dpm/100 cm2 for average surface contamination and maximum release limit of 3,000 dpm/100 cm2 will be met.

3.1.2 Dry Mill Building. Equipment in the Dry Mill Building was used to extract product materials from the Wet Mill process feed. Consistent with Wet Mill Building survey units, Dry Mill Building equipment was also grouped into affected and unaffected areas. Most

areas of the Dry Mill involving monazite including floors, ceiling, and lower walls (up to two meters above floor level) are affected. These include dryers, high tension separators, and sumps. NRC surface contamination release limits are the same as those used for Wet Mill equipment.

3.2 Surface and Subsurface Soils

Radionuclide concentrations and direct radiation levels for surface and subsurface soils at the facility have been measured in the Wet Mill, Dry Mill, dust collectors, tailings (monazite) pile, and at various outdoor locations.

Direct radiation levels inside buildings and outdoor areas were routinely measured by HMI personnel since 1990. Direct gamma exposure rates at ground level and 1 meter above the surface were reported for the monazite pile and areas in and around the Wet and Dry Mills. Average monazite pile perimeter readings ranged between 300–1700 μR/hr up to 2000 μR/hr on the pile. Readings at outdoor locations around buildings were at or near background levels. The highest exposure rates were measured on storage drums located inside the security fence surrounding the pile, at levels up to 3000 μR/hr. Small amounts of residual material (unlicensed) exists from recycled ASARCO tailings deposits in adjoining owner controlled property locations. These areas showed direct gamma radiation readings ranging between 10–150 μR/hr and will not be included in the remediation. Normal background radiation levels for other facility production areas is 7–20 μR/hr.

In July 1996, Radiation Science, Inc. issued a Report of Site Background for HMI which included soil samples at a depth of six inches from undisturbed environment, representative of natural site conditions. Background levels were established by performing gamma spectral analysis for U–238 and Th–232 on 32 samples. Mean values reported for background samples was 0.31 pCi/gm for U–238 concentration and 0.25 pCi/gm for Th–232 concentration. Average dose rates measurements from areas where samples were taken was 3.0 μR/hr.

Sample analysis of soils taken from recycled tailings, an unused settling pond, plant tailings, and new feed materials did not exceed NRC limits for total uranium and thorium (i.e., 10 pCi/g above background) for unrestricted release. Only soil in the monazite pile was measured above licensable source material quantities, and showed total concentrations of Ra–226 and Ra–228 up to 1376 pCi/gm. The FSSP identifies these soils as the material to be considered for remediation activities.

Following review of the HMI site radiological characterization studies for soils, the NRC staff finds the characterization effort and FSSP adequate for determining areas of elevated radioactivity in soils that require remediation to limit concentrations to the NRC limits for unrestricted release (46 **Federal Register** 52061–52063).

3.3 Surface Water and Groundwater

Analyses for radioactivity of surface water samples collected from existing site monitoring wells and offsite streams were reported by Camp Dresser & McKee, Inc. in 1997 as part of the Mine Tailings Radiological Assessment Plan prepared for the New Jersey Department of Environmental Protection. Concentrations measured for groundwater samples were 2.0–7.0 pCi/l for gross alpha and under 2.0–5.0 pCi/l for gross beta. Results of surface water samples were 2.0–3.9 pCi/l gross alpha and 2.0–4.2 pCi/l gross beta. Due to the insoluble properties of monazite and generally low levels of radiological contamination identified in samples, no concern was found regarding dissolution of radioactivity into groundwater and surface water.

Following staff review of the characterization of surface waters and groundwater around the HMI site, the NRC staff concludes the characterization is adequate and radiological contamination of surface waters and groundwater is below levels that would be a concern for environmental impacts.

3.4 Air

HMI reported results from 1990 air sampling measurements in three locations of the Dry Mill taken by their contractor, Teledyne Isotopes. Air filters were analyzed for gross alpha activity using an alpha scintillation counter. Activity detected was assumed to be Th–232, with reported concentrations less than 1.6×10^{-12} μCi/ml. These concentrations were less than effluent concentrations limits allowed in 10 CFR Part 20, Appendix B, and are therefore found by NRC to be below levels that could lead to adverse environmental impacts. Dust and security control measures provide confidence that air quality will not be degraded during decommissioning activities to levels that exceed NRC limits in 10 CFR Part 20.

4.0 Evaluation of Proposed Methods for Decontamination and Dismantlement of Structures, Buildings, and Equipment

4.1 Decontamination of Buildings, Equipment, and Outdoor Areas

HMI's proposal for decontamination of buildings, equipment, and outdoor areas is provided in the FSSP, supplemented by additional letters clarifying remediation activities in response to NRC's request for additional information. In 1991, process equipment, Wet and Dry Mill buildings, and survey units with operating equipment suspected to contain radioactive material were cleaned and decontaminated. Decontamination methods used for mill equipment included high pressure washing, steaming, general wipe down and scrubbing, blowing, and dusting and sweeping of surfaces. Radiation surveys of buildings and areas around the monazite pile have been performed routinely by HMI since that time.

The FSSP describes the proposed decommissioning activities and methods for protecting workers and the public during removal of monazite contaminated soil. Residual radioactivity remaining inside buildings is confined to fine sand grains present on equipment surfaces. Affected survey units may require further decontamination prior to performing the final status survey. Areas that contain only loosely adhered contamination will be HEPA vacuumed to remove contaminants. Fixtures, tanks, pumps, high tension separators, piping, and heavy equipment will be isolated, disassembled, and decontaminated as necessary, then resurveyed prior to release for unrestricted use. Equipment that cannot be economically decontaminated will be resurveyed, and all equipment with contamination above the NRC limits for unrestricted release or equipment suspected to contain radioactive material will be treated as radioactive waste.

When removal of process equipment from mill buildings is completed, building characterization surveys will be conducted. Walls up to two meters and floors are to be surveyed in accordance with the FSSP. Those buildings that contain residual contamination will be decontaminated below NRC guideline values using the most economical and reliable methods available. HMI's objective is to free release all buildings above grade to allow demolition (if deemed necessary) of clean buildings. Decontamination of ground-level floors will include the top surface of the concrete slabs, if needed. Material from demolition of ground-level floors and underlying soils will be surveyed for contamination and remediated.

Surface and subsurface soils with Th-232 concentrations greater than 10 pCi/g is restricted to the monazite pile. HMI proposes two excavations of materials with monazite concentrations greater than 10 pCi/g above background. Contaminated soil (monazite ore) will be excavated, placed into a hopper, and transferred to shipping containers. This will be followed by a second excavation of surface layer soil to be removed in a similar manner. A fenced security area near the existing pile will be established for staging of shipping containers and contaminated equipment prior to transportation off-site. After the second excavation, area radiation levels are expected to be reduced to no more than twice background. Excavation of soil to meet Th-232 cleanup criteria will also serve to remove residual uranium contamination because both contaminants are contained in the monazite-rich soil. Once remediated, the remaining soil will be resurveyed in a manner consistent with NRC-accepted methods to ensure residual thorium and uranium contamination meet the NRC unrestricted release criteria. Soil and other material will be transported from the site either to a licensed disposal facility or exported under NRC Export License XSOU8751, issued to HMI on May 2, 1997.

Under Condition 15 of Materials License SMB–1541, HMI cannot release for unrestricted use areas within plant buildings or the monazite pile without specific, written authorization from the NRC. Based on the NRC review of building and equipment decontamination methods described in the FSSP and supporting documents, NRC concludes that the methods are adequate for ensuring that equipment, buildings, and outdoor areas will meet the NRC guidelines for unrestricted use and no adverse environmental impacts will result from planned activities.

5.0 Decommissioning Alternatives and Impacts

5.1 No Action

No decommissioning action by HMI would constitute a violation of 10 CFR 40.42(d) requirements, which requires that licensees begin site decommissioning of buildings and outdoor areas that contain residual radioactivity after permanently ceasing principal activities. Impacts of the no-action alternative are maintaining an NRC license, which would significantly reduce options for future property use, and require perpetual care and security of the site in its current radiological condition to prevent radiation exposure to monazite contamination and unauthorized public access.

5.2 Proposed Action

The proposed action is the approval to implement the Heritage Minerals, Inc. Final Status Survey Plan, for decommissioning activities at the Lakehurst, New Jersey facility that will permit unrestricted use of the site and termination of License No. SMB–1541. Decommissioning the facility for unrestricted release allows productive use of the land in the future. Site remediation is expected to mitigate potential future environmental impacts attributable to existing radiological contamination resulting from past operations.

5.3 Alternatives to Proposed Action

Two alternatives to the proposed action are considered. The first alternative is to not release the site for unrestricted use and keep the property under license. This alternative is unfavorable because maintaining an NRC license for the site would provide negligible, if any, environmental benefit, but would greatly reduce options for future use of the property. The second alternative involves storage of excavated soils on-site for an indefinite period should HMI be unable to export or transfer the material for disposal. While on-site storage defers the costs associated with disposal at a licensed facility, it removes the property from productive use, resulting in a negative impact to the economic potential of the local area.

The NRC determines the proposed action to be more favorable than either no-action or alternatives to the proposed action.

6.0 Radiation Protection Program

6.1 Radioactive Waste Management and Transportation Program

The radioactive waste management program at the HMI site includes identification, characterization, segregation, packaging, labeling, manifesting, and transporting waste in accordance with NRC, U.S. Department of Transportation (DOT), and other applicable federal, state, and local regulations. Included as contaminated radioactive waste materials from decommissioning activities will be equipment, tools, process material, building debris, decontamination materials (rags, wipes, filters), decontamination waste, soils, residual process equipment waste (sludges), and used personal protective equipment.

Since HMI intends to comply with all applicable requirements, NRC finds the planned radioactive waste management and transportation programs adequate for the materials at the site, and no adverse environmental impacts are expected from waste management activities or transfer of the material offsite.

6.2 Technical and Environmental Specifications

6.2.1 Unrestricted Use Guidelines. Guidelines for unrestricted use for natural thorium and uranium for the Heritage Minerals, Inc. site are Option 1 in the 1981 Branch Technical Position on "Disposal or Onsite Storage of Thorium or Uranium Wastes From Past Operations" (46 FR 52061), and NRC "Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use for Termination of Byproduct, Source, and Special Nuclear Material Licensees," Policy and Guidance Directive, FC 83–23. The unrestricted release criteria are identified in the table below.

SOIL RELEASE CRITERIA [1]

Radionuclide	Maximum soil concentration (pCi/g)	Reference
Natural Thorium (Th-232 plus Th-228) if all daughters are in equilibrium	10	(46 *Federal Register* 52061–52063).
Natural Uranium Ores (U-238 plus U-234) if all daughters are present and in equilibrium	10	(46 FR 52061–52063).

[1] If only one radionuclide is present, the maximum concentration is the value listed in this table. If more than one radionuclide is present, however, the ratio between the measured concentration and the corresponding limit listed in this table is determined. The sum of such ratios for all radionuclides present must not exceed one.

6.2.2 Radiological Health and Safety Program. HMI will select a decommissioning contractor who will follow radiation protection procedures sufficient to administer the radiation protection program authorized by License SMB–1541. The radiation protection program has been routinely inspected by NRC staff and found to be well implemented. The proposed action is limited in scope and not expected to include unique health and safety issues outside the scope of the radiation protection program. NRC will conduct site inspections while decommissioning activities are in progress. NRC determines the radiation protection program adequate for the proposed action.

6.2.3 Corporate Organization and Management. The HMI site manager will function as the licensee representative of the decommissioning project to provide oversight for all project activities. The site manager's function is to coordinate scheduling and status reports with the contractor Project Manager (PM) and HMI legal advisor. The PM will maintain overall responsibility for performance of project operations for the duration of the project until decommissioning activities are completed. The PM and decommissioning workers report directly to the HMI technical and legal staff for all project related activities, management direction, and resolution of operational issues. Primary responsibility of the PM includes on-site workforce management to ensure agreed to work schedules are met. The HMI Radiation Safety Officer (RSO) will report to the site manager and continue to perform oversight of all radiological work-related activities throughout the decommissioning project.

From review of job descriptions and responsibilities involved in radiological safety during decommissioning, NRC determines that the designated functions are acceptable to implement the radiological safety program during proposed decommissioning activities.

6.2.4 Radiological Exposure Control. Areas where radioactive materials are used and stored will be posted to control exposures to workers and visitors and avoid the spread of contamination. Measures to be taken to ensure control of contamination include donning of anti-contamination clothing, personnel monitoring, and frequent area radiation surveys. External radiation monitoring will be conducted through the use of environmental dosimeters placed at strategic locations around the monazite pile and work areas. The need for and type of dosimetry for workers and visitors in radiologically controlled areas will be determined by the contractor, and may include issuance of a radiation work permit. The primary dosimeter will be the thermoluminescent dosimeter (TLD) for whole body exposure, however, other types such as extremity TLD's will be employed, as conditions warrant.

For activities that have the potential to generate dusts, airborne particulate monitoring will be performed to demonstrate compliance with 10 CFR Part 20 intake limits, determine whether precautionary measures are needed (engineering controls, use of respiratory equipment), and show how exposures are being maintained ALARA. To reduce the amount of airborne particulates during excavations, the monazite pile will be sprayed with water twice per day. For equipment decontamination within affected survey units, HEPA air filtration in the immediate work area will be used, as needed.

Resuspension and airborne transport of contaminated soil during excavations serves as the primary pathway for off-site releases from decommissioning activities. HMI proposes to measure air particulates in the downwind direction through the use of a high-volume air sampler. Workers involved in excavations will be required to wear respiratory protection until radiological airborne activity levels are determined. HMI does not expect the proposed action will result in the generation of off-site, airborne concentrations that would result in dose to a member of the public in excess of the dose limits in 10 CFR Part 20. Previous results of groundwater and surface water sampling have shown negligible dose contribution due to the low levels of radionuclides during site operations. Decommissioning activities will have no further impact, therefore, additional water sampling is not needed.

HMI's total dose estimates for a worker based on direct gamma exposure rate from airborne soil releases from excavation activities of the monazite pile of 1mR/h is 320 mRem, with dust inhalation dose at 6% of the annual limit of intake (ALI) for the duration of the proposed action. The off-site (public) annual dose limit in 10 CFR Part 20 is 100 mrem. Given the low estimated exposure beyond the site boundary, the air sampling is adequate for off-site monitoring of potential releases to ensure compliance with the dose limits of 10 CFR Part 20.

Following review of radiological exposure controls, NRC determines the proposed program methodologies are adequate for detecting potential environmental impacts prior to license termination.

6.2.5 Security. Security of radioactive material at the HMI facility is maintained by a fence with a locked front entry gate around the perimeter of the monazite pile. Security for mill buildings is minimal, and other site areas are left unattended for long periods. Equipment theft in mill buildings has been a known concern within buildings, but missing equipment was believed to have been decontaminated after operations shut down in 1990. These concerns should be alleviated by the presence of on-site decommissioning personnel. HMI has committed to establishing a fenced exclusion area for shipping containers and equipment removed from buildings which cannot be released for unrestricted use.

NRC determines this is an adequate level of security to ensure radiological safety will be maintained during decommissioning activities at the site.

6.3 Radiological Accident Analysis

Potential accident scenarios considered include building fire and loading or shipping incidents of radioactive materials. Due to the low potential for fire or explosion in building structures and the limited quantities of material used during transfer operations, accidental releases of radioactive materials in quantities that could affect public health and safety are unlikely. A 24-hour number will be established to provide Radiation Safety Officer notifications in the event emergency response is necessary.

The NRC concludes that HMI has adequately addressed the potential for radiological accidents.

7.0 Environmental Impacts

7.1 Radiological Impacts to the Public and Workers

Potential sources of worker exposure from decommissioning activities include characterization work, decontamination and remediation of buildings and associated structures (piping, foundations), and excavation of soils. Past NRC inspections showed activities resulted in no measurable internal or external dose to workers. These activities were similar to the proposed activities and included equipment and building decontamination, radiological characterizations, and monazite pile maintenance. NRC dose calculation based upon excavation and packaging of 700 m^3 of monazite soil at an average thorium soil concentration of 25 pCi/g (highest sample result obtained during

NRC inspection) project an occupational worker exposure under 10 mRem, primarily due to external exposure. Based on the above, the staff believes that worker exposures will be well within the 10 CFR Part 20 annual worker dose limit of 5000 mRem, and that no adverse impacts to workers will result.

Potential sources of radiological impacts to the public from decommissioning activities at the HMI site are similar to those pertaining to worker exposures (decontamination and excavation dusts), but require transport over greater distances to reach off-site receptors. As a result, lower concentrations and doses are expected for members of the public than for workers. Previous NRC inspections showed that worker exposures during past activities were undetectable. Similarly, the public doses from these activities should be undetectable. The NRC staff has determined that HMI has provided adequate plans to ensure that potential radiological impacts to members of the public from the proposed action will not exceed NRC limits and are unlikely to result in adverse environmental impacts.

7.2 Nonradiological Impacts

There are no planned direct uses of chemicals in the proposed action, only the excavation of soil, and remediation of equipment and buildings. No other operations have a potential to affect the environment. During scoping and characterization surveys, an assessment of each building will be performed to identify the presence of hazardous or mixed wastes. The survey will identify items requiring management of hazardous substances, if found.

The NRC staff has determined that HMI has acceptably addressed the control of potential releases of nonradiological hazardous materials.

8.0 Agencies and Individuals Consulted

NRC transmitted the FSSP to the New Jersey Department of Environmental Protection (NJDEP), US Environmental Protection Agency, Region 2, and Township of Manchester by letters dated February 13, 1998, for review and comment. The response letter of March 18, 1998 from the NJDEP included comments regarding characterization of areas with thorium levels below licensable quantities and extent of soil removal, was forwarded to HMI for evaluation. HMI addressed the State's comments in their letter of November 30, 1998 to NRC providing acceptable responses to the NJDEP questions. No response was received from the EPA or Manchester Township. HMI has committed to coordinate with the NJDEP and comply with applicable State and local regulations during decommissioning activities.

9.0 Finding of No Significant Impact

The Commission has prepared an EA related to the proposed unrestricted release, and removal from license SMB–1541, of 700 m^3 of monazite-rich soil from the Heritage Minerals, Inc., Lakehurst, New Jersey site. On the basis of the EA, the Commission has concluded that this licensing action would not significantly affect the environment and does not warrant the preparation of an environmental impact statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The NRC hereby provides notice that this is a proceeding on a license amendment falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings," 10 CFR Part 2. Pursuant to Sec. 2.1205(a), any person whose interest may be affected by this proceeding may file a request for hearing in accordance with Sec. 2.1205 (d). A request for hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** Notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to the Docketing and Service Branch of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville , MD 20852–2738; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555. Attention: Docketing and Service Branch.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in Sec. 2.1205(h),

3. The requestor's area of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with Sec. 2.1205(d).

In accordance with Sec. 2.1205(f), each request for hearing must also be served, by delivering it personally or by mail, to:

1. Heritage Minerals, Inc., Attention: Anthony J. Thompson, Esquire, ShawPittman, 2300 N Street, NW, Washington, DC 20037–1128; and

2. The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738 or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The documents related to this proposed action are available for public inspection and copying at the NRC Public Document Room, 2120 L Street NW., Washington, DC 20555 or at the NRC's Region I offices located at 475 Allendale Road, King of Prussia, PA 19406.

10.0 References

Berger, J.D., "Manual for Conducting Radiological Surveys in Support of License Termination," NUREG/CR–5849, Washington, DC: Nuclear Regulatory Commission. 1992.

Nuclear Regulatory Commission, "Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use for Termination of Byproduct, Source, and Special Nuclear Material Licenses," Policy and Guidance Directive FC 83–23, 1983.

Nuclear Regulatory Commission, "Final Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC Licensed Nuclear Facilities," NUREG–1496, Volume 2, 1997.

Orlando, D., et al., "NMSS Handbook for Decommissioning Fuel Cycle and Materials Licensees," NUREG/BR–0241, Washington, DC: Nuclear Regulatory Commission, 1997.

Dated at King of Prussia, Pennsylvania this 20th Day of August 1999.

For the Nuclear Regulatory Commission.

George Pangburn,

Director, Division of Nuclear Materials Safety.

[FR Doc. 99–22767 Filed 8–31–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41783; File No. SR–AMEX–98–13]

Self-Regulatory Organizations; Order Granting Accelerated Approval to a Proposed Rule Change and Amendment Nos. 1 and 2 and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 by the American Stock Exchange LLC Relating to Specialist Capital Requirements

August 23, 1999.

I. Introduction

On April 2, 1999, the American Stock Exchange LLC ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Amex Rule 950(h) to revise the minimum financial requirement for options specialists. In addition, the Amex proposes to revise Amex Rule 950(h), Commentary .01 to codify the Amex's procedures for calculating the minimum financial requirement for specialists that maintain a book in both equities and options (an "equity/option book"). On June 11, 1999, July 16, 1999, and August 23, 1999, the Amex filed with the Commission Amendment Nos. 1, 2, and 3 to the proposal.[3]

Notice of the proposed rule change and Amendment Nos. 1 and 2 were published for comment in the **Federal Register** on August 9, 1999.[4] To date, the Commission has received no comment letters regarding the proposal. This order approves the proposal and Amendment Nos. 1, 2, and 3 to the proposal on an accelerated basis.

II. Description of the Proposal

The Amex proposes to amend Amex Rule 950(h) and Commentary .01 to revise the minimum financial requirements for options specialists and to codify in Commentary .01 the Amex's procedures for calculating the minimum financial requirement for a specialist that maintains an equity/options book. Currently, Amex Rule 950(h), which incorporates by reference the specialist financial requirements set forth in Amex Rule 171,[5] requires a registered options specialist to maintain cash or liquid assets equal to the greater of $600,000 or an amount sufficient to assume a position of 60 units (*i.e.*, 60 option contracts representing 6,000 shares) of the highest priced puts and calls for each option in which the specialist is registered.[6] The Amex proposes to revise Amex Rule 950(h) to provide that the minimum financial requirement for an options specialist will be $600,000 plus $25,000 for each option issue in excess of the initial ten issues in which the specialist is registered.

For a specialist that maintains an equity/options book, the minimum $600,000 financial requirement specified in Amex Rule 171 will apply to the entirety of the specialist's business, in both equities and options, provided that the financial requirement for neither the equity allocation nor the options allocation exceeds $600,000.[7] Thus, the minimum financial requirement for a specialist allocated one equity and one option would be $600,000, provided that the financial requirement for neither the equity allocation nor the options allocation exceeded $600,000.[8]

For an equity/option book where the financial requirement for either the equity allocation or the options allocation exceeds $600,000, the specialist's minimum financial requirement will be calculated by combining the requirements of Amex Rules 171 and 950(h). For example, a specialist with three equity allocations and two options allocations, whose financial requirement for the three equity allocations exceeded $600,000, would be required to maintain capital sufficient to assume a position of 60 trading units of each equity allocation plus $50,000 for the two options allocations. A specialist allocated 11 options and one equity security would be required to maintain capital of $625,000 for the 11 options allocations plus any additional amount over $600,000 required to assume a position of 60 trading units of the equity security.[9]

The Amex recently compared its financial requirements for options specialists to the capital requirements of other exchanges. For example, the Amex notes that a Lead Market Maker ("LMM") on the Pacific Exchange ("PCX") that performs the function of an Order Book Official ("OBO") must maintain minimum net capital of $500,000 plus $25,000 for each issue over five issues for which the LMM performs the function of an OBO.[10] An LMM that does not perform the function of an OBO must maintain minimum net capital of $350,000 plus $25,000 for each issue over eight issues that has been allocated to the LMM.[11] The Chicago Board Options Exchange ("CBOE") currently requires a Designated Primary Market Maker ("DPM") to maintain cash or liquid assets equal to the greater of $100,000 or an amount sufficient to assume a position of 20 trading units of each security in which the DPM holds an appointment.[12] The Philadelphia Stock Exchange ("PHLX") requires an options specialist exempt from Securities Exchange Act Rule 15c3–1 to maintain a minimum of $75,000 in net liquid assets, and requires an equity and options specialist exempt from Securities Exchange Act Rule 15c3–1 to maintain a minimum of $100,000 in net liquid assets.[13]

The Amex submits that the cost to Amex options specialists to satisfy the Amex's financial requirements has been increasing relative to the financial requirements for competing options specialists or market makers at other exchanges. The Amex maintains that its current financial requirements effectively reduce the number of options issues that may be allocated to an Amex options specialist and provide an incentive for Amex members to consider moving their business operations to exchanges with less restrictive financial requirements. The Exchange believes that the proposed rule change is necessary to address any increase in the number of options issues traded on the Exchange that may occur as a result of competitive marketplace conditions. The Exchange believes that the proposed change in the specialist financial requirement will help to ensure that Amex options specialists continue to maintain adequate capital reserve while remaining competitive with their counterparts at other exchanges.

In addition, the Amex believes that because the financial requirements for specialists do not consider the extent to which a specialist maintains a hedged position in his registered options, the recent increases in premiums for some stock options have caused specialist financial requirements to increase dramatically beyond the level of risk associated with a specialist's market making activities.

The following charts illustrate the fluctuations in the capital requirement for an options specialist as calculated under the Amex's current rule and the impact of premium appreciation on the specialist's minimum financial requirements.[14] Both charts are based on actual capital requirements for options traded on the Amex. The calculations in the first chart are based on premiums for six options as of the close of business on May 6, 1999, while the calculations in the second chart show the premiums for the same options as of the close of business on May 13, 1999.

WEEK 1

Option	Call		Put		Total
	Premium	Requirement	Premium	Requirement	
1	56⅞	$5,687.50×60½	67¼	$6,725.00×60½	$372,375
2	14½	1,450.00×60½	7⅝	762.50×60½	66,375
3	4⅛	412.50×60½	17	1,700×60½	63,375
4	9	900.00×60½	5¼	525.00×60½	42,750
5	15¼	1,525.00×60½	5¼	525.00×60½	61,500
6	58½	5,850.00×60½	33⅝	33,362.50×60½	276,375
Total					882,750

WEEK 2

Option	Call		Put		Total
	Premium	Requirement	Premium	Requirement	
1	75⅜	$7,537.50×60½	55¾	$5,575.00×60½	$393,375
2	13⅞	1,387.50×60½	16⅛	1,612.50×60½	90,000
3	5¼	525.00×60½	22¼	2,225.00×60½	82,500
4	9⅛	912.50×60½	8⅜	837.50×60½	52,500
5	14⅞	1,487.50×60½	8⅜	837.50×60½	69,750
6	61¾	6,175.00×60½	39⅞	3,987.50×60½	304,875
Total					993,000

The Amex notes that, under the proposal, a specialist's financial requirement would not fluctuate with the premiums of the highest priced option series, but would change only when the specialist unit voluntarily changes the number of option issues it trades. Thus, the proposal will allow options specialists to maintain relative control over their level of financial requirements by determining their respective number of options allocations.

The Exchange also notes the presence of various safeguards, including circuit breakers, the Amex's daily review of specialist capital reserves, and the Exchange's early warning signals, which trigger a more intense level of surveillance of Exchange specialists during volatile market situations.[15]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 revised the proposal to: (1) Provide an example comparing the financial requirements for options specialists under the rules of the Amex, the Pacific Exchange, and the Chicago Board Options Exchange; and (2) provide examples demonstrating the calculation of the capital requirements for joint equity/options specialists. *See* letter from Scott G. Van Hatten, Legal Counsel, Derivatives and Securities, Amex, to Richard Strasser, Division of Market Regulation ("Division"), Commission, dated June 10, 1999 ("Amendment No. 1"). Amendment No. 2 to the proposal provides two charts setting forth specialist financial requirements as of two dates in May 1999. *See* letter from Scott G. Van Hatten, Legal Counsel, Derivatives and Securities, Amex, to Richard Strasser, Division, Commission, dated July 23, 1999 ("Amendment No. 2"). Amendment No. 3 indicates that the changes to Commentary .01 are a codification of the Amex's current procedures for calculating the minimum financial requirement for a specialist that maintains an equity/options book. *See* letter from Claire P. McGrath, Vice President and Special Counsel, Derivative Securities, Amex, to Richard Strasser, Assistant Director, Division, Commission, dated August 23, 1999. *See also* telephone conversation among Claire P. McGrath, Vice President and Special Counsel, Derivative Securities, Amex, James McNeal, Amex, and Yvonne Fraticelli, Special Counsel, Division, Commission, on August 23, 1999 ("August 23 Conversation").

In addition, the Amex filed a letter describing financial safeguards applicable to specialists, including the clearing firm guarantee of specialists' transactions (for specialists who are not self-clearing), the Amex's daily review of each specialist's financial condition, and the procedures the Amex follows when the Exchange determines that a specialist is approaching the early warning financial requirement level (120% of the minimum specialist financial requirement). *See* letter from Scott G. Van Hatten, Legal Counsel, Derivatives and Securities, Amex, to Richard Strasser, Assistant Director, Division, Commission, dated June 10, 1999 ("June 10 Letter").

[4] *See* Securities Exchange Act Release No. 41682 (August 2, 1999), 64 FR 43233.

[5] Amex Rule 171, "Specialist Financial Requirements," requires every registered specialist to maintain a cash or liquid asset position in the amount of $600,000 or an amount sufficient to assume a position of 60 trading units of each security in which the specialist is registered, whichever is greater.

[6] The "cost to carry" 60 option contracts is determined pursuant to Rule 15c3–1a(b)(2)(iii)(C) under the Act, which provides that a broker or dealer that is long puts or calls must deduct 50 percent of the market value of the net long put and call positions in the same options series.

[7] *See* proposed Amex rule 950(h), Commentary .01.

[8] *See* Amendment No. 1, *supra* note 3.

[9] *See* Amendment No. 1, *supra* note 4. Thus, in this example, if the cost to assume a position of 60 trading units in the equity allocation is $700,000, then the specialist's minimum financial requirement would be $725,000.

[10] *See* PCX Rule 6.82(b), Commentary .04.

[11] *See* PCX Rule 6.82(c)(11).

[12] *See* CBOE Rule 8.80, Interpretation and Policy .01. The CBOE has filed a proposal with the Commission that would require a DPM to maintain: (1) Net liquidating equity in its DPM account of not less than $100,000; and (2) net capital sufficient to comply with Securities Exchange Act Rule 15c3–1. *See* Securities Exchange Act Release No. 41325 (April 22, 1999), 64 FR 23691 (May 3, 1999) (notice of filing of File No. SR–CBOE–98–54). The Commission has not acted on the CBOE's proposal.

[13] *See* PHLX Rule 703.

[14] *See* Amendment No. 2, *supra* note 3.

[15] The Amex's June 10 Letter describes additional safeguards relating to specialists' financial requirements. Among other things, the June 10 Letter notes that a specialist unit that is not self-clearing maintains an agreement with a clearing firm that guarantees the specialist's transactions. A specialist that is self-clearing guarantees directly to the National Securities Clearing Corporation and the Options Clearing Corporation all transactions effected by its specialists on the Amex floor. In addition, the June 10 Letter states that the Amex reviews all specialist financial requirements each day and contacts the specialist's principal(s) to request the deposit of additional funds on any day when the specialist approaches the early warning financial requirement level (120% of the minimum specialist financial requirement). If the specialist is unable to deposit additional capital, the Amex obtains a written guarantee from the specialist's clearing firm stating that the clearing firm will guarantee the specialist's transactions. The process of obtaining a written guarantee serves to notify the clearing firm of the specialist's current financial condition. Finally, the Amex notes that the

Continued

III. Discussion

For the reasons discussed below, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change is consistent with the Section 6(b)(5)[16] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

The Amex proposes to amend its rules to revise the minimum financial requirement for options specialists and to codify the Exchange's procedures for calculating the minimum financial requirement for specialists that maintain an equity/options book. Under the proposal, the minimum financial requirement for an options specialist will be $600,000 plus $25,000 for each option issue in excess of the initial ten issues in which the specialist is registered. For a specialist with an equity/options book, the minimum $600,000 financial requirement specified in Amex Rule 171 will apply to the entirety of the specialist's business, in both equities and options, provided that the financial requirement for neither the equity allocation nor the options allocation exceeds $600,000. If either allocation exceeds $600,000, the specialist's minimum financial requirement of Amex Rules 171 and 950(h). Thus, as described more fully above, an equity/options specialist with a financial requirement over $600,000 for his equity allocation will be subject to a capital requirement of $25,000 for each options allocation. Similarly, an equity/options specialist with a financial requirement of $625,000 for his options allocation and $700,000 for his equity allocation will have a financial requirement of $725,00.[17] The proposal will lower the minimum financial requirement for most Amex options specialists.[18]

The Commission finds that the proposed capital requirements are designed to assure that Amex options specialists and specialists maintaining an equity/options book are capable of making deep, liquid, and competitive markets. Although the proposal will reduce the minimum financial requirement for most Amex options specialists, the Commission finds, based on the representatives of the Amex, that there are sufficient safeguards (in addition to the proposed minimum capital requirement) to assure that the Amex's options specialists are adequately capitalized. In this regard, the Amex in its June 10 Letter notes, first, that the transactions of a specialist unit that is not self-clearing are guaranteed by the specialist's clearing firm. Second, the Amex states that it reviews all specialist financial requirements each day and, on any day when it determines that a specialist is close to the early warning financial requirement level (120% of the minimum specialist financial requirement), the Amex contacts the specialist's principal(s) and requests the deposit of additional cash or liquid assets. If the specialist fails to deposit additional capital, the Amex contacts the specialist's clearing firm and obtains a written guarantee from the clearing firm that it will guarantee the specialist's transactions; this process ensures that the clearing firm is aware of the specialist's current financial condition and that the clearing firm's guarantee is based upon current market conditions. Third, the Amex believes that the proposed financial requirements will help to ensure that Amex specialists are able to make deep, liquid, and competitive markets, while competing vigorously with specialists on other options exchanges in multiply-traded issues.[19]

The Commission finds that the proposed financial requirements are comparable to the financial requirements at other options exchanges.[20] Accordingly, the Commission believes that the proposal will help Amex options specialists compete effectively with specialists at other exchanges in multiply-traded issues. Increased competition, in turn, should benefit investors by producing a more efficient marketplace.

The Amex also notes that under its current rule the financial requirement for options specialists fluctuates with the options premiums. The proposed capital requirement for options specialists will be based on the number of issues a specialist trades rather than on the fluctuating prices of the options premiums. This method for determining the minimum financial requirement has the advantages of simplifying the specialist's capital calculation and avoiding a significant increase in the capital requirement that occurs under the Amex's current rule if the price of the underlying stock rises dramatically.

Finally, the Commission finds that it is reasonable for the Amex to codify in Amex Rule 950(h), Commentary .01, its existing procedures for calculating the minimum financial requirement for specialists that maintain an equity/options book.[21] The Commission believes that codifying these provisions will clarify the Amex's procedures and help to ensure compliance with the Amex's financial requirements.

The Commission finds good cause for approving the proposed rule change and Amendment Nos. 1, 2, and 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission finds that accelerated approval of the proposal will help Amex options specialists to compete effectively with specialists and market makers on other options exchanges in multiply-traded issues. The Commission finds that Amendment Nos. 1 and 2 clarify the Amex's proposal by providing examples and additional explanations of the operation of the proposed rule. Amendment No. 3 clarifies the Amex's proposal by indicating that the provisions of the proposal relating to the minimum financial requirement for a specialist that maintains an equity/options book codify the Exchange's current procedures for calculating the minimum financial requirement for an equity/options book. Accordingly, the Commission believes that granting accelerated approval of the proposal and Amendment Nos. 1, 2, and 3 is appropriate and consistent with Sections 6(b)(5) and 19(b)(2) of the Act.[22]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether Amendment No. 3 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–99–13 and should be submitted by September 22, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR–Amex–99–13), as amended, is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

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Exchange may reallocate the specialist's allocation to another specialist unit if the specialist fails to satisfy the Amex's financial requirement. *See* June 10 Letter, *supra* note 3.

[16] 15 U.S.C. 78f(b)(5).

[17] *See* Amendment No. 1, *supra* note 3.

[18] *See* August 23 Conversation, *supra* note 3.

[19] *See* June 10 Letter, *supra* note 3.

[20] For example, as noted above, an LMM on the PCX that performs the function of an OBO must maintain minimum net capital of $500,000 plus $25,000 for each issue over five issues for which the LMM performs the function of an OBO. An LMM that does not perform the function of an OBO must maintain minimum net capital of $350,000 plus $25,000 for each issue over eight issues that has been allocated to the LMM. The CBOE currently requires a DPM to maintain cash or liquid assets equal to the greater of $100,000 or an amount sufficient to assume a position of 20 trading units of each security in which the DPM holds an appointment. The PHLX requires an option specialist exempt from Securities Exchange Act Rule 15c3–1 to maintain a minimum of $75,000 in net liquid assets, and requires an equity and options specialist exempt from Securities Exchange Act Rule 15c3–1 to maintain a minimum of $100,000 in net liquid assets.

[21] *See* Amendment No. 3 and August 23 Conversation, *supra* note 3.

[22] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[23] 15 U.S.C. 78s(b)(2).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41782; File No. SR–CBOE–99–17]

Self-Regulatory Organizations; Notice of Filing of Amendment #2 and Order Granting Partial Accelerated Approval to a Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Operation of the Retail Automatic Execution System

August 23, 1999.

I. Introduction

On April 16, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending the CBOE's rules governing the operation of its Retail Automatic Execution System ("RAES"). On May 21, 1999, the CBOE filed with the Commission Amendment No. 1 to the proposal.[3] Today, the CBOE filed Amendment No. 2 to the proposal.[4]

a. The Initial Proposal

The proposal as amended by Amendment No. 1 ("Initial Proposal") seeks to increase the maximum order size of certain RAES-eligible options from 20 to 50 contracts. It also contains provisions relating to the authority of the CBOE Floor Procedure Committees ("FPCs") to change RAES order assignment procedures (including the authority to implement a procedure called "Variable RAES," described below) and improve the execution price of RAES orders in multiple listed options to match a better price on another market. Notice of the Initial Proposal was published in the **Federal Register** on June 17, 1999.[5] The Commission received no comments on the proposal. The proposal is pending with the Commission.

b. The Current Amendment

Amendment No. 2 ("Current Amendment" or "Proposed Rule Change") will permit the CBOE to immediately implement a new order assignment procedure called "Variable RAES" for CBOE options transactions in five stocks that are dually listed on both the Philadelphia Stock Exchange ("Phlx") and the CBOE. Those stocks are Dell Computer Corporation ("DLQ"), International Business Machines ("IBM"), Johnson & Johnson ("NJN"), Coca-Cola ("KO"), and Ford Motor Company ("F"). The Current Amendment was filed in tandem with a related rule proposal, SR–CBOE–99–47, which increases the maximum RAES order size from 20 to 50 contracts in options on those five stocks only. SR–CBOE–99–47 becomes effective today. The CBOE seeks immediate Commission approval of the Current Amendment so that Variable RAES can be used today, when the new order size maximum on the five dually traded options goes into effect.

II. Description of the Proposal

Under former procedures, RAES orders were randomly assigned to market makers, and each market maker had to buy or sell the entire order assigned to him or her. By contrast, Variable RAES as implemented in the Current Amendment will enable market maker to designate a maximum number of contracts he or she is willing to buy or sell when a RAES order for any of the five dually listed options is assigned to that market maker.[6] The CBOE represents that, "[w]ith a higher size limit for RAES orders, this flexibility to choose their own maximum participation in any one RAES trade will encourage more market makers to participate in RAES, since it will give them greater control over the risks they take by participating in RAES."[7]

III. Discussion

We believe that accelerated approval of Variable RAES for the five dually listed options is appropriate for three reasons. First, it allows RAES market makers to choose the level of risk they are comfortable with. This is important because the CBOE today is increasing the maximum size of orders eligible for RAES from 20 to 50 contracts in those five dually listed options, thus increasing the potential exposure of RAES market makers to risk in those options. Second, the proposal does not otherwise change the way RAES operates from a customer perspective. Third, the Commission previously published for comment the Initial Proposal, which included a much more expansive provision permitting implementation of Variable RAES for all options classes, not just the five classes at issue here. We received no comments on the Initial Proposal, and we believe the Current Amendment does not raise any new issues.

We are not now approving the textual changes to the RAES rules proposed by the CBOE in its Initial Proposal. Rather, we are continuing to work with the CBOE to address outstanding issues raised by those rules relating to the

[1] 17 CFR 240.19b–4.

[2] *See* letter from Timothy Thompson, Director, Regulatory Affairs, CBOE, to Gordon Fuller, Special Counsel, Division of Market Regulation, SEC, dated May 20, 1999 ("Amendment No. 1").

[3] *See* letter from Christopher R. Hill, Attorney, CBOE, to Michael Walinskas, Associate Director, Division of Market Regulation, SEC, dated August 23, 1999 ("Hill Letter").

[4] *See* Securities Exchange Act Release No. 41501 (June 9, 1999), 64 FR 32568.

[5] The maximum order size selected by the market maker must be equal to or greater than a minimum order size set by the FPC. The FPC will initially set the minimum at 20 contracts per order for each of the five options covered by the Current Amendment, and may adjust that level up or down in the future for any of these options. If the FPC decides to increase the 20-contract minimum in the future, it will take into account the ability of market makers to accept the heightened risk associated with that increase. Telephone conversation between Tim Thompson, Director, Regulatory Affairs, CBOE, and Christopher R. Hill, Attorney, CBOE, and Gordon Fuller, Special Counsel, Division of Market Regulation, SEC (August 23, 1999).

[6] *See* Hill Letter, *supra* note 4, at 1.

[7] *See* Hill Letter, *supra* note 4, at 1.

manner in which CBOE will be able to employ Variable RAES. Such issues relate to the degree of authority delegated to the appropriate FPCs regarding Variable RAES, and to internal governance matters. At a later time, when we have resolved these outstanding issues, we will also consider the specific changes to the text of the rules proposed by the CBOE in its Initial Proposal.

Accordingly, after careful review, the Commission finds that the Current Amendment is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the Current Amendment is consistent with Section 6(b)(5), in that it is designed "to promote just and equitable principles of trade * * * to remove impediments to and perfect the mechanism of a free and open market * * * and, in general, to protect investors and the public interest."[8] Moreover, the Commission finds good cause for approving the Current Amendment prior to the 30th day after the date the Amendment is published for comment in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[9] Specifically, the Commission finds that Variable RAES will appropriately permit RAES market makers to limit their risk to compensate for increased exposure to the larger RAES order sizes that go into effect today.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the Current Amendment, including whether the Current Amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the Proposed Rule Change that are filed with the Commission, and all written communications relating to the Proposed Rule Change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–17 and should be submitted by September 22, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the Current Amendment to SR–CBOE–99–17, be and hereby is approved on an accelerated basis.[11]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

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[8] 15 U.S.C. 78s(b)(5).

[9] 15 U.S.C. 78s(b)(2).

[10] 15 U.S.C. 78s(b)(2).

[11] In approving the Current Amendment, the Commission has considered its impact on efficiency, competition, and capital formation, 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41786; File No. SR–DTC–99–17]

Self-Regulatory Organizations; The Depository Trust Company; Order Granting Accelerated Approval of a Proposed Rule Change Relating to Arrangements To Integrate The Depository Trust Company and the National Securities Clearing Corporation

August 24, 1999.

On July 6, 1999, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–DTC–99–17) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on August 11, 1999.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change involves arrangements to integrate DTC and the National Securities Clearing Corporation ("NSCC"). Under the rule change, DTC and NSCC will form a New York corporation ("Holding Company") that will own directly all of the outstanding stock of NSCC and will own indirectly through a Delaware subsidiary of the Holding Company all of the outstanding stock of DTC.

The Holding Company will issue two classes of stock: common and preferred. The Holding Company will conduct two exchange offers in which (1) current DTC stockholders will have the opportunity to exchange their DTC shares for Holding Company common stock on a one-for-one basis and (2) the New York Stock Exchange ("NYSE") and the National Association of Securities Dealers, Inc. ("NASD"), the two current stockholders of NSCC, will be offered shares of Holding Company preferred stock on a one-for-one basis in exchange for their NSCC shares.

In connection with the exchange offer for shares of DTC stock, the current DTC Stockholders Agreement has been amended to provide that if a specified supermajority of DTC stockholders tender their shares of DTC stock for shares of Holding Company common stock: (1) any DTC stockholders that fail to tender their shares of DTC stock will cease to be qualified holders of DTC stock; (2) their shares of DTC stock will automatically be transferred to NSCC; (3) NSCC will tender such shares of DTC stock to the Holding Company in exchange for an equivalent number of shares of Holding Company common stock; and (4) the non-tendering DTC stockholders will be paid DTC book value for their shares of DTC stock as and when NSCC, in accordance with procedures set forth in the Holding Company Shareholders Agreement, sells or transfers its shares of Holding Company common stock to other participants or members of DTC and NSCC.[3]

The Holding Company's Articles of Incorporation, By-Laws, and Shareholders Agreement ("Basic Documents")[4] contain provisions designed to preserve the rights that the stockholders of DTC and NSCC currently have and in particular to satisfy the fair representation requirement of Section 17A(b)(3)(C) of the Act.[5] Specifically, the Basic Documents provide for the following:

- As owners of Holding Company preferred stock, the NYSE and the NASD each will have the right to put one person on the Board of Directors of the Holding Company. All other directors will be elected annually by the owners of holding Company common stock. The Holding Company will elect as the Directors of DTC and NSCC the persons that the stockholders of the Holding Company elect as the directors of the Holding Company.
- The rights to purchase Holding Company common stock will be reallocated to the users of DTC and NSCC based upon the users' usage of the clearing agencies' services and facilities. Under the Basic Documents, these rights will be reallocated initially in 2000 and again in 2001. Thereafter, depending upon whether there are significant changes in entitlements and stock purchases, the Board of the Holding Company will be permitted to schedule reallocations every other year or every third year rather than annually.
- The owners of Holding Company common stock will be able to exercise cumulative voting in the election of Holding Company directors.

Each year the holding Company's Board of Directors will appoint a nominating committee that may include both members and non-members of the Board. After soliciting suggestions from all users of the clearing agencies of possible nominees to fill vacancies on the Board, the nominating committee will recommend a slate of nominees to the full Board. The Board may make changes in that slate before submitting nominations to the holders of Holding Company common stock for election. The election ballot included in the proxy materials will provide an opportunity for stockholders to vote for a person not listed as a nominee. Because the Basic Documents provide for cumulative voting, it will be possible one or more owners of Holding Company common stock to arrange to elect a person not on the slate nominated for election by the Board.

DTC and NSCC will continue to operate as they do currently, and each will offer its own services to its own participants and members pursuant to separate legal arrangements and separate risk management procedures. DTC has informed the Commission that the Holding Company will not engage in any clearing agency activities but that it will provide certain support functions, including human resources, finance, audit, general administration, corporate communications, and legal, which support functions will be centralized in the Holding Company, to DTC and NSCC pursuant to service contracts.

II. Discussion

Section 17A(b)(3)(C) of the Act[6] requires that the rules of a clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. The Commission believes that the proposed rule change is consistent with DTC's obligations under Section 17A(b)(3)(C) because it should provide DTC's participants with a reasonable opportunity to acquire common stock in the Holding Company in proportion to their use of DTC and should provide DTC's participants through their holding of Holding Company stock with adequate and fair representation in the selection of DTC's directors and in the administration of DTC's affairs.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. Approving prior to the thirtieth day after publication of notice will allow DTC to proceed with the exchange offer to its shareholders in which the shareholders may exchange their shares in DTC for common stock in the Holding Company.

III. Conclusion

On the basis of the foregoing, the Commission finds that DTC's proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–99–17) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22692 Filed 8–31–99; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 41657 (July 27, 1999), 64 FR 43795.

[3] DTC has informed the Commission that the procedures to be used by NSCC to sell or transfer Holding Company common stock are in all material respects the same as the procedures set forth in DTC's Stockholders Agreement applicable to the sale by a stockholder of DTC shares.

[4] DTC included the Basic Documents as exhibits to its filing, which is available for inspection and copying in the Commission's public reference room and through DTC.

[5] 15 U.S.C. 78q–1(b)(3)(C).

[6] 15 U.S.C. 78q–1(b)(3)(C).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41787; File No. SR–NYSE–99–31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Amending Exchange Rules 902, 903 and 906

August 25, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 30, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposed to amend NYSE Rules 902, 903 and 906 to permit coupled orders to be submitted after the official closing of the 9:30 a.m. to 4:00 p.m. trading session until 5:00 p.m. (the period after the 4:00 p.m. close until 5:00 p.m. hereafter referred to as "Crossing Session 1") where both sides represent member or member organization interest, in circumstances in which a specialist has included another member's or member organization's interest in offsetting the imbalance when setting a closing price. The text of the proposed rule change is available at the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpoe of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 1991, the Exchange established its "Off-Hours Trading Facility." In connection with its implementation, the Exchange adopted the "900" series of rules to govern trading, order eligibility, order entry and record keeping requirements.

At 4:00 p.m. each day, the Exchange completes its normal procedure for the close of trading of the 9:30 a.m.–4:00 p.m. trading session. After 4:00 p.m., a common message switch broadcast message is published announcing the commencement of Crossing Session 1, which runs until 5:00 p.m.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

During Crossing Session 1, the Off-Hours Trading Facility permits members and member organizations to enter orders to be executed at the NYSE closing price, that is, the price established by the last regular way sale in a security at the official closing of the 9:30 a.m. to 4:00 p.m. trading session. Orders may be entered for any Exchange listed issue, other than a security that is subject to a trading halt at the close of the regular trading session (including a Rule 80B trading halt) or is halted after 4:00 p.m.

The Exchange proposed to modify certain rules pertaining to Crossing Section 1 in an effort to reduce volatility and price dislocations at the 4:00 p.m. close by enabling the specialist to reflect legitimate market interest that was willing to participate in the close, but could not enter a timely order.

In circumstances in which a stock has an imbalance of market-on-close or limit-on-close orders, or when the closing price will elect a significant volume of stop orders, there may be little time to attract offsetting orders. A member, member organization or a customer may be willing to offset the imbalance, but be unable to enter an order before 4:00 p.m. The specialist may then have to acquire a substantial position or halt trading.

Under NYSE Rule 902, coupled orders to buy and sell the same amount of the same security may be entered into Crossing Session 1. However, such coupled orders may not be entered if they are both for an account of a member or member organization, or for an account in which an "associated person" of a member or member organization has an interest.

Therefore, while a specialist member organization may enter an order coupled with a contra-side order from a non-member in Crossing Section 1, it may not enter an order coupled with an order for a member's or member organization's account.

The Exchange proposes to amend NYSE Rule 902 to permit coupled orders to be submitted to Crossing Session 1 where both sides represent member or member organization interest, in circumstances in which a specialist has included another member's or member organization's interest in offsetting the imbalance when setting a closing price. Thus, the specialist will increase his or her participation at the close in anticipation of trading with a member or member organization in Crossing Session 1 and the closing price will reflect less of an imbalance.

Under NYSE Rule 903, orders entered in Crossing Session 1, including coupled orders, are executed at the 5:00 p.m. close of the session. Under NYSE Rule 906, if the Exchange determines that material news is disclosed between 4:00 p.m. and 5:00 p.m., such as about a corporate development, it will cancel orders received in Crossing Session 1 and will preclude the entry of any subsequent orders. However, in the circumstances, outlined above, it is the Exchange's view that a good faith negotiation tied to establishing the closing price should not be affected by a subsequent event which "halts" trading.

Therefore, the Exchange proposes to amend NYSE Rules 903 and 906 to permit trades for the account of a specialist and a member, member organization or a non-member to be executed immediately when entered into Crossing Session 1 and not at 5:00 p.m. regardless of whether the Exchange has determined that all other Crossing Session 1 orders be canceled and precluded from entry. In addition, the specialist will be required to obtain Floor Official approval for the entry of his or her order into Crossing Session 1 if such order is not to be at the risk of the market, *i.e.*, it will be executed immediately and will not be precluded from entry because of a trading "halt." This requirement will help to insure that these orders, which are intended to offset the specialist's participation at the close, have been reflected when the closing price was established. Other coupled orders would continue to be executed at 5:00 p.m., subject to the stock not being withdrawn from Crossing Session 1. The Exchange believes that retaining this provision for other orders is appropriate for the protection of investors who may not be aware of the corporate development.

Total executed volume for coupled orders which are executed either immediately upon entry or at 5:00 p.m. would be reported to the tape as a single print, and will continue to be reported as "sold."

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[3] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

[3] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number SR–NYSE–99–31 and should be submitted by September 22, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22693 Filed 8–31–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41789; File No. SR–Phlx–98–43]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 by the Philadelphia Stock Exchange, Inc. Adopting Proposed Rule 134 Regarding Stop-Order Bans and Amendment Rule 229 To Require the Use of Account Identifiers for PACE Users

August 25, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 18, 1998, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On December 9, 1998, February 2, 1999, and July 14, 1999, respectively, the Exchange filed Amendment Nos. 1,[3] 2,[4] and 3[5] to the proposal with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, including Amendments Nos. 1, 2, and 3, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4 of the Act, proposes to adopt Rule 134 to provide for stop order and stop limit order[6] bans whenever such orders are banned on the primary market. In addition, the Exchange proposes to amend Phlx Rule 229 to require account identifiers for orders submitted through the Phlx Automated Communication and Execution ("PACE")[7] System.

The text of the proposed rule change is available at the Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange has previously adopted circuit breaker rules, paralleling the rules of other exchanges.[8] At this time, the Exchange proposes, like other exchanges, to prohibit the entry of stop and stop limit orders during times of market stress.[9]

Proposed Rule 134 will establish a procedure prohibiting the entry of stop orders and stop limit orders in the following situations: (1) whenever the primary market for a stock admitted to dealings on the Exchange institutes a stop and stop limit order ban, the Exchange will also ban such orders in the stock until such time as the ban in the primary market is lifted; and (2) whenever the NYSE institutes a stop and stop limit order ban pursuant to NYSE Rule 80A, the Exchange will also ban stop and stop limit orders for the remainder of the day, except that a member or member organization may enter a stop or stop limit order of 2,099 shares or less for the account of an individual investor pursuant to instructions received directly from the individual investor.[10]

The first instance where a stop order ban can occur is when the primary market for the security issues a stop order ban. Following notice from the Consolidated Tape, the Exchange will announce to the floor and to PACE users that a stop order ban is in effect in the particular issue. The entry of stop and stop limit orders on the Phlx would be prohibited until the ban in the primary market is lifted and that information is disseminated on the Consolidated Tape. However, unlike the broad market ban described below, any stop or stop limit orders residing on the specialist's book when a ban goes into effect for an individual stock may[11] be canceled by the Exchange with the approval of two Floor Officials and a market regulation officer.[12] This provision is consistent with the rules of the Boston Stock Exchange.[13]

The Exchange believes that it is appropriate to ban stop orders and stop limit orders when the primary market institutes a ban because, in a volatile market, stop orders can accumulate at various prices and, if triggered, the stop orders may increase price fluctuations in a particular stock. Because other exchanges have adopted stop order ban

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Nandita Yagnik, Counsel, Phlx, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation ("Division"), Commission, dated December 8, 1998 ("Amendment No. 1"). In Amendment No. 1, the Exchange corrects the reference to the identifier "P" to refer to Principal orders not non-agency orders.

[4] *See* letter from Nandita Yagnik, Counsel, Phlx, to Michael Walinskas, Deputy Associate Director, Division, Commission, dated February 1, 1999 ("Amendment No. 2"). In Amendment No. 2, the Exchange proposes to adopt Rule 134, Commentary .01, *Stop order definition*. In addition, the Exchange has amended proposed Rule 134(c)(iii) to state that any stop orders or stop limit orders on the book *may* be canceled by the Exchange. The Exchange represents that, by changing "will" to "may," the Exchange retains flexibility to determine whether stop orders on the book should be canceled at the time the primary market institutes a stop order ban.

[5] *See* letter from Nandita Yagnik, Counsel, Phlx, to Michael Walinskas, Associate Director, Division, Commission, dated July 13, 1999 ("Amendment No. 3"). In Amendment No. 3, the Exchange clarified that outstanding stop and stop limit orders cannot be cancelled without the approval of two floor officials and a market regulation officer. The Exchange also amended Rule 134(c)(iii) to codify factors to be considered in determining whether stop and stop limit orders on the book would be cancelled in the event that the Exchange institutes a stop order ban in an individual stock. These factors include: (1) If the primary market cancels stop orders residing on their book; or (2) other unusual conditions or circumstances.

[6] A stop order to buy (sell) becomes a market order when a transaction in the security occurs at or above (below) the stop price after the order is represented at the specialist post. A stop limit order to buy (sell) becomes a limit order executable at the limit price or at a better price, if obtainable, when a transaction in the security occurs at or above (below) the stop price after the order is presented at the specialist post.

[7] PACE is an electronic order entry, delivery, and execution system which operates on the equity floor pursuant to Phlx Rule 229.

[8] *See* Securities Exchange Act Release No. 39846 (April 9, 1998), 63 FR 18477 (April 15, 1998) (Order approving SR–PHLX–98–15).

[9] *See* Boston Stock Exchange Rules Chapter II, Section 35(b); and Chicago Stock Exchange Chapter IX, Rule 10B, .01(ii).

[10] The Commission has approved a proposed rule change (SR–NYSE–98–45) to eliminate the stop and stop limit order ban under Rule 80A. *See* Securities Exchange Act Release No. 41041 (Feb. 11, 1999), 64 FR 8424 (Feb. 19, 1999).

[11] *See* Amendment No. 2, *supra* note 4. The Commission notes that, pursuant to Boston Stock Exchange Rules Chapter II, Section 35(b), any stop or stop limit orders residing on the specialist's book when a ban goes into effect for an individual stock *will* be canceled by the Exchange.

[12] *See* Amendment No. 2, *supra* note 5.

[13] *See* Boston Stock Exchange Rules Chapter II, Section 35(b).

procedures, Phlx is concerned that a migration of stop and stop limit orders to the Phlx could occur, thus causing a burden on Phlx specialists.

The second situation automatically arises, pursuant to NYSE Rule 80A, when there is a 12 point decline in the Standard and Poor's 500[14] futures contract traded on the Chicago Mercantile Exchange. Once implemented, the ban remains in effect until the end of the trading day. Any stop and stop limit orders on the specialist's book at the time the ban goes into effect remain eligible for execution.

The proposed rule creates an exception for the entry of a stop or stop limit order of 2,099 shares or less for the account of an individual investor pursuant to instructions received from the individual investor. The Exchange defines the account of an individual investor as an account covered by Section 11(a)(1)(E) of the Act.[15]

The Exchange also proposes requiring PACE users to attach account identifiers on orders submitted through PACE. Among other things, this will allow the system to distinguish orders for the account of an individual investor from other orders. Specifically, Rule 229, Commentary .20 will require that all orders sent through PACE shall include the appropriate account designator. The following are acceptable account types: "P"—principal order;[16] "A"—agency; "I"—individual investor; "D"—program trade, non-index arbitrage for member/member organization; "J"—program trade, index arbitrage for individual customers; "K"—program trade, non-index arbitrage for individual customer; "U"—program trade, index arbitrage for other agency; and "Y"—program trade, non-index arbitrage for other agency. Orders for less than 2,099 shares with the account identifier of "I" would still be able to be entered during the duration of the ban. Other orders will be automatically rejected by the PACE System.

The Exchange believes that the account identifiers proposed in the filing will enhance efficiency and accuracy of audit trail information and will facilitate surveillance investigations by readily identifying a member's proprietary trades. More accurate audit trail information should also increase the effectiveness of the Exchange's surveillance procedures.[17] Member firms will be given notice following the approval of the proposal to enable them to comply with new order identification requirements.

The purpose of the proposed rule is to reduce selling pressure by preventing market professionals from entering orders during a market sell-off as well as enhance market coordination of the circuit breaker rules; in turn, the Phlx believes that the proposal should help reduce market volatility. In addition, proposed Phlx Rule 134 should prevent the migration of stop orders from the primary markets to the Phlx in the case of extraordinary market volatility, which should prevent the transfer of market volatility to the Phlx. The exception, which allows individual investors to enter stop orders or stop limit orders for 2,099 shares or less, provides those investors who do not have the ability to continuously monitor market conditions some measure of downside protection in a rapidly moving market. Thus, the Exchange believes that the proposal represents a reasonable effort and coordinated means to address potential strain on the market that may develop should the Exchange become inundated with such orders.

2. Statutory Basis

For the reasons stated above, the Exchange believes that proposed Phlx Rule 134 and the amendment to Phlx Rule 229 are consistent with Section 6(b)(5) of the Act[18] in that they are designed to promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market, by facilitating the maintenance of an orderly market and reducing market volatility.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriated and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–98–43 and should be submitted by September 22, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22694 Filed 8–31–99; 8:45 am]

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[14] Standard & Poor's 500 Stock Index is a service mark of Standard & Poors Corporation.

[15] An account covered by Section 11(a)(1)(E) of the Act is an "account for a natural person, the estate of a natural person, or a trust created by a natural person for himself or another natural person." 15 U.S.C. 78k(a)(1)(E).

[16] See Amendment No. 1, *supra* note 3.

[17] Telephone conversation between Nandita Yagnik, Counsel, Phlx. and David Sieradzki, Special Counsel, Division, Commission, on July 21, 1999.

[18] 15 U.S.C. 78f(b)(5).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41780; File No. SR–Phlx–99–20]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Amendments to Schedule of Dues, Fees, and Charges

August 23, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 hereunder,[2] notice is hereby given that on June 23, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On June 28, June 30, and July 22, 1999, the Exchange submitted Amendment Nos. 1,[3] 2[4] and 3,[5] respectively, to the proposed rule change.[6]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its schedule of dues, fees, and charges to require all foreign currency options participants, as defined by Phlx By-Law Article I, Section (i), to pay a new annual participation fee of $2,000, billed semi-annually, to be effective July 1, 1999, and payable July 30, 1999. The Exchange also seeks to clarify that it will bill its existing technology fee semi-annually (not monthly), and that the technology fee is not applicable to foreign currency option participants who hold title to a Phlx membership. The Exchange also proposes to make typographical changes to its fee schedule. The text of the proposed changes to the Phlx fee schedule may be examined in the places specified in Item IV below.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

1. Purpose

The proposed rule change amends the Phlx's fee schedule to impose a new foreign currency option participation fee of $2,000 annually, to be billed semi-annually, effective July 1, 1999, to all foreign currency options participants. Only those foreign currency options participants who hold legal title as of July 30, 1999 are responsible for payment of the participation fee. Thus, although the fee is effective July 1, 1999, it only becomes payable by participants as of July 30, 1999.

The Exchange is proposing to implement the foreign currency options participation fee to help defray operating expenses of the foreign currency options program. The proposed participation fee will address costs associated with the foreign currency options program, including occupancy, Securities Industry Automation Corporation (SIAC) night processing, market data feeds, staffing and communications.[7]

The Exchange also proposes to amend its fee schedule to reflect that it will bill its existing technology fee in semi-annual increments of $600 (instead of monthly increments of $100). The Exchange further proposes that it will not apply the technology fee to foreign currency options participants who are also Phlx members to avoid double billing.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act[8] in general, and furthers the objectives of Section 6(b)(4)[9] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Phlx believes that the foreign currency option participation fee is reasonable and equitable because, in addition to covering costs, it is comparable to other Phlx fees and charges such as the technology fee.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee or change imposed by the Exchange and, therefore, has become effective upon filing pursuant to Rule 19(b)(3)(A) of the Act[10] and rule 19b–4(f)(2) thereunder.[11] At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange clarified that the proposed new foreign currency options "participation fee" would be effective as of July 1, 1999, but that only those foreign options participants holding legal title as of July 30, 1999 would be responsible for paying the fee. *See* Letter and attached amendment from Murray Ross, Vice President and Secretary, Phlx, to Michael Walinskas, Associate Director, Division of Market Regulation ("Division"), Commission, dated June 25, 1999 ("Amendment No. 1").

[4] In Amendment No. 2, the Exchange replaced the text of the original proposed rule change. The amendment: (a) purported to create a technology fee exemption for foreign currency options participants who *do not* hold Phlx membership; (b) incorporated the change from Amendment No. 1 regarding the effective date of the participation fee; and (c) made typographical changes to the proposed fee schedule. *See* Letter and attached amendment from Murray Ross, Phlx, to Michael Walinskas, Division, Commission, dated June 29, 1999 ("Amendment No. 2").

[5] In Amendment No. 3, the Exchange stated that the technology fee exemption was for foreign currency options participants who *also* hold Phlx memberships. The Exchange also stated that the foreign currency options participation fee was intended to address costs associated with the foreign currency options program including occupancy, Securities Industry Automation Corporation night processing, market data feeds, staffing and communications. Phlx also clarified that the proposed fee would not address Year 2000-related events. *See* Letter and attached amendment from Nandita Yagnick, Attorney, Phlx, to Michael Walinskas, Division, Commission, dated July 21, 1999 ("Amendment No. 3").

[6] Because of the substantive nature of the amendments, the Commission deems the proposal to be filed on July 22, 1999, the date the last amendment was filed.

[7] The proposed participation fee is in addition to the existing membership dues that Phlx imposes on its members, and also separate from the $2,000 user fees owed by foreign currency options participants who are not also members of the Phlx. Foreign currency options participants who also hold Phlx memberships are exempted from the foreign currency user fee.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(2).

in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–99–20 and should be submitted by September 22, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22695 Filed 8–31–99; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3207]

State of Nebraska

As a result of the President's major disaster declaration on August 20, 1999, I find that Burt, Douglas, and Washington Counties in the State of Nebraska constitute a disaster area due to damages caused by severe storms and flooding that occurred on August 6–9, 1999. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 18, 1999, and for loans for economic injury until the close of business on May 22, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Cuming, Dodge, Sarpy, Saunders, and Thurston Counties in Nebraska, and Harrison, Monona, and Pottawattamie Counties in Iowa.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	7.250
Homeowners Without Credit Available Elsewhere	3.625
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.000
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 320711. For economic injury the numbers are 9D8400 for Nebraska and 9D8500 for Iowa.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: August 24, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–22740 Filed 8–31–99; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Emergency Consideration Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is requesting emergency consideration from OMB by September 10, 1999 of the information collection listed below.

Partnership Questionnaire—0960–0025. Form SSA–7104 is used to establish several aspects of eligibility for benefits, including accuracy of reported partnership earnings, the veracity of a retirement, and lag earnings where they are needed for insured status. The respondents are applicants for old age and disability benefits.

Number of Respondents: 12,350.

Frequency of Response: 1.

Average Burden Per Response: 30 minutes.

Estimated Annual Burden: 6,175 hours.

You can obtain a copy of the collection instrument and/or OMB clearance package by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

(SSA Address), Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

Dated: August 26, 1999.

Frederick W. Brickenkamp,

Reports Clearance Officer.

[FR Doc. 99–22734 Filed 8–31–99; 8:45 am]

BILLING CODE 4190–29–U

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegation of Authority

This statement amends part S of the Statement of the Organization, Functions and Delegations of Authority, which covers the Social Security Administration (SSA). Chapter S2 covers the Deputy Commissioner, Operations. Notice is hereby given that Subchapter S2L, the Office of Automation Support, is being amended to reflect a revised mission statement and the establishment of the Electronic Service Delivery Process Team. The new material and changes are as follows:

Section S2.20 *The Office of the Deputy Commissioner, Operations*—Functions):

H. The Office of Automation Support (OAS) (S2L)

Amend the second sentence to read: "It determines and defines DCO requirements for software, hardware and electronic service delivery support".

Amend the fifth sentence to read: "OAS develops, implements and administers evaluative tools for hardware purchases, software development and electronic service delivery".

Section S2L.00 *The Office of Automation Support*—(Mission):

Amend third sentence to read: "In concert with the Deputy Commissioner for Systems (DCS) and other Central Office components, it determines and defines DCO requirements for software, hardware and electronic service delivery support". Section S2L.10 *The Office of Automation Support*—(Organization):

Amend as follows:

A. The Associate Commissioner, Office of Automation Support (S2L).

B. The Deputy Associate Commissioner, Office of Automation Support (S2L).

C. The Immediate Office of the Associate Commissioner, Office of Automation Support (S2L).

D. The Software Implementation Process Team (S2LA).

E. The Technology Support Process Team (S2LB).

Establish:

F. The Electronic Service Delivery Process Team (S2LC). Section S2L.20 *The Office of Automation Support*—(Functions):

Amend to read as follows:

A. The Associate Commissioner, Office of Automation Support (S2L).

B. The Deputy Associate Commissioner, Office of Automation Support (S2L).

C. The immediate Office of the Associate Commissioner, Office of Automation Support (S2L).

D. The Software Implementation Process Team (S2LA).

E. The Technology Support Process Team (S2LB).

Establish:

F. The Electronic Service Delivery Process Team (S2LC).

1. Serves as the focal point for user components to define operational requirements for electronic service delivery initiatives/issues. Examples of such initiatives include internet and intranet access and application development, data exchanges with local, State and Federal agencies and walk-up information systems in a kiosk environment that are self-service, client-initiated and client-specific.

2. Supports field components in integrating electronic service delivery technology into day-to-day environments.

3. Identifies operational needs and works through other Central Office components to plan, direct and evaluate the expansion of SSA monthly benefit applications and other documents that can be completed and submitted for processing via the internet.

4. Consistent with operational needs, works to promote the Agency's purchase of electronic data from private/commercial sources for use in SSA application processes.

5. Works with other SSA components to ensure that operational needs are addressed in the development of policies governing the Agency's optional use and acceptance of electronic documents and signatures.

Dated: August 17, 1999.

Paul D. Barnes,

Deputy Commissioner for Human Resources.

[FR Doc. 99–22733 Filed 8–31–99; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG 1999–6154]

Merchant Marine Personnel Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Merchant Marine Personnel Advisory Committee (MERPAC) and its working groups will meet to discuss various issues relating to the training and fitness of merchant marine personnel. MERPAC advises the Secretary of Transportation on matters relating to the training, qualifications, licensing, certification and fitness of seamen serving in the U.S. merchant marine. All meetings will be open to the public.

DATES: MERPAC will meet on Tuesday, September 28, 1999, from 8 a.m. to 4 p.m. and on Wednesday, September 29, from 8 a.m. to 3:00 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before September 14, 1999. Requests to have a copy of your material distributed to each member of the committee or subcommittee should reach the Coast Guard on or before September 14, 1999.

ADDRESSES: MERPAC will meet on both days in the Liberty Room of the Academic Building, MEBA Engineering School, 27050 St. Michaels Rd., Easton, MD 20593–0001. Further directions regarding the location of the MEBA Engineering School may be obtained by contacting Mr. Lee Kincaid of MEBA at (410) 822–5228 or (410) 822–9600. Send written material and requests to make oral presentations to Commander Steven J. Boyle, Commandant (G–MSO–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Commander Steven J. Boyle, Executive Director of MERPAC, or Mr. Mark C. Gould, Assistant to the Executive Director, telephone 202–267–0229, fax 202–267–4570, or e-mail mgould@comdt.uscg.mil.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of September 28, 1999, Meeting

The full committee will meet to discuss the objectives for the meeting. The committee will then break up into the following working groups: the working group on the International Convention on the Standards of Training, Certification and Watchkeeping (STCW), specifically addressing the Assessment of Proficiencies as Mandated by the Amended 1995 STCW Convention; and the working group addressing evidence of five-year recency in the four elements of basic training. New working groups may be formed to address any new issues or tasks. At the end of the day, the working groups will make a report to the full committee on what has been accomplished in their meetings. No action will be taken on these reports on this date.

Agenda of September 29, 1999, Meeting

Merchant Marine Personnel Advisory Committee (MERPAC)

The agenda includes the following:

(1) Introduction.
(2) Working Group Reports.
(3) Other items to be discussed:
  (a) Standing Committee—Prevention Through People
  (b) STCW developments
  (c) Assessment of Proficiencies as Mandated by the Amended 1995 STCW Convention
  (d) Other items brought up for discussion by the committee or the public

Procedural

All meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than September 14, 1999. Written material for distribution at a meeting should also reach the Coast Guard no later than September 14, 1999. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 25 copies to the Executive Director no later than September 7, 1999.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the

[12] 17 CFR 200.30–3(a)(12).

meetings, contact the Executive Director as soon as possible.

Dated: Aug 25, 1999.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 99–22750 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Dane County Regional Airport, Madison, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Dane County Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before October 1, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Peter L. Drahn, Airport Director of the County of Dane, Madison, WI at the following address: 4000 International Lane, Madison, WI 53704–3120. Air carriers and foreign air carriers may submit copies of written comments previously provided to the County of Dane under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Sandra E. DePottey, Program Manager, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, MN 55450, 612–713–4363. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Dane County Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 10, 1999 the FAA determined that the application to impose and use the revenue from a PFC submitted by County of Dane was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 9, 1999.

The following is a brief overview of the application.

PFC application number: 99–04–C–00–MSN.

Level of the proposed PFC: $3.00.

Proposed charge effective date: February 1, 2000.

Total estimated PFC revenue: $9,716,667.00.

Brief description of proposed projects: Reconstruct runway 18/36, Upgrade airport security system, Relocate terminal entrance road, Land acquisition for terminal area expansion. Class or classes of air carriers which the public agency has requested not be required to collect PFCs: FAR Part 135 Air Taxi.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the County of Dane.

Issued in Des Plaines, Illinois on August 24, 1999.

Cameron Bryan,

Acting Manager, Planning and Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 99–22757 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (99–02–C–00–PUW) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Pullman-Moscow Regional Airport, Submitted by the City of Pullman, Pullman-Moscow Regional Airport, Pullman, WA

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose an use PFC revenue at Pullman-Moscow Regional Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before October 1, 1999.

ADDRESSES: Comments on this application maybe mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW Suite 250; Renton, WA 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to David Crowner, Airport Manager, at the following address: P.O. Box 249, Pullman, WA 99163.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Pullman-Moscow Regional Airport under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mary E. Vargas, completed (425) 227–2660 SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW Suite 250; Renton, WA 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comments on the application (99–02–C–00–PUW) to impose and use PFC revenue at Pullman-Moscow Regional Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 25, 1999, the FAA determined that the application to impose and use the revenue from a PPC submitted by City of Pullman, Pullman-Moscow Regional Airport, Pullman, Washington, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 27, 1999.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: February 1, 2000.

Proposed charge expiration date: March 1, 2005.

Total requested for use approval: $714,731.00.

Brief description of proposed project: Impose and Use projects: New ARFF Vehicle, Develop Storm Water Pollution Prevention Plan, Expand General Aviation Ramp, Rehabilitate Taxiway A and four Connecting Taxiways, Rehabilitate the Aircraft Rescue and Fire Fighting (ARFF) Building, Purchase Snow Blower, Airport Drainage Improvements, Purchase RPZ Land, Storm Water Pollution Prevention Plan Update, Install PAPI–Runway 05 and 23, Runway Safety Area (RSA) Grading Improvements, Runway 23, Install REIL's and Improve Runway 5 Safety Area, Purchase of Emergency Generator, Ramp Reconstruction—General Aviation, Wildlife/Security Fencing, and Connecting Taxiway "B" Rehabilitation.

Impose Only projects: Purchase land leased from Washington State University, Purchase new Snow Plow, Rehabilitate Terminal Apron, Rehabilitate Runway 05–23, Taxiway Edge Lighting.

Class or classes of air carriers, which the public agency has requested not be required to collect PFC's: Air Taxi/Commercial operations who conduct operations in air commerce carrying persons for compensation or hire.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW, Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Pullman-Moscow Regional Airport.

Issued in Renton, Washington on August 25, 1999.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 99–22756 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Record Keeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on April 12, 1999 [64 FR 17714–17715].

DATES: Comments must be submitted on or before October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Higley at the National Highway Traffic Safety Administration, Office of State and Community Services (NSC–01), 202–366–0743. 400 Seventh Street, SW, Room 5238, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: 23 CFR Part 1210—Certification Requirements for State Laws Concerning Intoxicated Minor Age Drivers.

OMB Number: 2127–0582.

Type of Request: Extension of a currently approved collection.

Abstract: The National Highway System Designation Act of 1995, Pub. L. 104–59 was signed into law on November 28, 1995. Section 320 of the Act established a new section 161 of Title 23, United States Code (Section 161), which requires the withholding of certain Federal-aid highway funds from States that do not enact and enforce "zero tolerance" laws. States must certify that they comply with section 161 which provides that these "zero tolerance" laws must consider an individual under the age of 21 who has a blood alcohol concentration of 0.02 percent or greater while operating a motor vehicle in the State, to be driving while intoxicated or driving under the influence of alcohol.

Affected Public: Those states, local and tribal governments that do not enact or enforce the Zero Tolerance laws.

Estimated Total Annual Burden: 52.

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention NHTSA Desk Officer.

Comments Are Invited On

Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Departments estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A Comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on August 26, 1999.

Herman L. Simms,

Associate Administrator for Administration.

[FR Doc. 99–22759 Filed 8–31–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Art Advisory Panel—Notice of Closed Meeting

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of closed meeting of Art Advisory Panel.

SUMMARY: Closed meeting of the Art Advisory Panel will be held in Washington, D.C.

DATE: The meeting will be held September 28 and 29, 1999.

ADDRESSES: The closed meeting of the Art Advisory Panel will be held on September 28 and 29, 1999 in Room 4600E beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Karen Carolan, C:AP:AS 1099 14th Street, NW, Washington, DC 20005. Telephone (202) 694–1861, (not a toll free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988), that a closed meeting of the Art Advisory Panel will be held on September 28 and 29, 1999 in Room 4600E beginning at 9:30 a.m., Franklin Court Building, 1099 14th Street, NW, Washington, DC 20005.

The agenda will consist of the review and evaluation of the acceptability of fair market value appraisals of works of art involved in Federal income, estate, or gift tax returns. This will involve the discussion of material in individual tax returns made confidential by the provisions of section 6103 of Title 26 of the United States Code.

A determination as required by section 10(d) of the Federal Advisory Committee Act has been made that this meeting is concerned with matters listed in section 552b(c)(3), (4), (6), and (7) of

Title 5 of the United States Code, and that the meeting will not be open to the public.

The Commissioner of Internal Revenue has determined that this document is not a significant regulatory action as defined in Executive Order 12866 and that a regulatory impact analysis therefore is not required. Neither does this document constitute a rule subject to the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Charles O. Rossotti,

Commissioner of Internal Revenue.

[FR Doc. 99–22798 Filed 8–31–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0006]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement, without change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on VA Form 21–614, which is used by dependents of deceased veterans for the sole purpose of making a claim for accrued benefits available at the time of the veteran's death.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 1, 1999.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0006" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Accrued Amounts of Veteran's Benefits Payable to Surviving Spouse, Child or Dependent Parents, VA Form 21–614.

OMB Control Number: 2900–0006.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: VA Form 21–614 is used by dependents of deceased veterans for the sole purpose of making a claim for accrued benefits available at the time of the veteran's death.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,200 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 2,400.

Dated: July 12, 1999.

By direction of the Secretary.

Sandra S. McIntyre,

Management and Program Analyst, Information Management Service.

[FR Doc. 99–22806 Filed 8–31–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0009]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 1, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: James Good, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8001 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0009."

SUPPLEMENTARY INFORMATION:

Title: Disabled Veterans Application for Vocational Rehabilitation, VA Form 28–1900.

OMB Control Number: 2900–0009.

Type of Review: Revision of a currently approved collection.

Abstract: Veterans with compensable service-connected disabilities use this form to apply for vocational rehabilitation under 38 U.S.C. chapter 31. The application obtains information used to determine basic entitlement, schedule an evaluation, and determine final eligibility for the benefit.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 5, 1999 at page 16523–16524.

Affected Public: Individuals or households.

Estimated Annual Burden: 13,500 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 54,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0009" in any correspondence.

Dated: June 15, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–22807 Filed 8–31–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0064]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before October 1, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: James Good, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8001 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0064."

SUPPLEMENTARY INFORMATION:

Title: Application for Amounts Due Estates of Persons Entitled to Benefits, VA Form 21–609.

OMB Control Number: 2900–0064.

Type of Review: Extension of a currently approved collection.

Abstract: The VA Form 21–609 is used to gather information to determine the individual(s) who may be entitled to accrued benefits of deceased beneficiaries.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 23, 1999 at page 20059.

Affected Public: Individuals or Households.

Estimated Annual Burden: 375 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 750.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0064" in any correspondence.

Dated: June 15, 1999.

By direction of the Secretary:

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–22808 Filed 8–31–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0161]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 1, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: James Good, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8001 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0161."

SUPPLEMENTARY INFORMATION:

Title: Medical Expense Report, VA Form 21–8416.

OMB Control Number: 2900–0161.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: This form is used to collect information about unreimbursed medical expenses paid by claimants.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on April 23, 1999 at page 20060.

Affected Public: Individuals or Households.

Estimated Annual Burden: 48,200 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 96,400.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0161" in any correspondence.

Dated: July 9, 1999.

By direction of the Secretary.

Sandra S. McIntyre,

Management and Program Analyst, Information Management Service.

[FR Doc. 99–22809 Filed 8–31–99; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0408]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and

Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 1, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: James Good, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8001 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0408."

SUPPLEMENTARY INFORMATION:

Title and Form Numbers: Manufactured Home Loan Claim Under Loan Guaranty (Manufactured Home Unit Only), VA Form 26–8629, and Manufactured Home Loan Claim Under Loan Guaranty (Combination Loan—Manufactured Home Unit and Lot or Lot only), VA Form 26–8630.

OMB Control Number: 2900–0408.

Type of Review: Extension of a currently approved collection.

Abstract: VA Forms 26–8629 and 26–8630 are submitted by holders of foreclosed VA guaranteed manufactured home unit and combination loans. Information is needed to determine claim payment due.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 29, 1999 at page 4748.

Affected Public: Individuals or Households, Business or other for-profit.

Estimated Annual Burden: 36 hours.

Estimated Average Burden Per Respondent:

VA Form 26–8629—20 minutes.

VA Form 26–8630—20 minutes.

Frequency of Response: Generally one time.

Estimated Number of Respondents: 110.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0408" in any correspondence.

Dated: July 9, 1999.

By direction of the Secretary.

Sandra S. McIntyre,

Management and Program Analyst, Information Management Service

[FR Doc. 99–22810 Filed 8–31–99; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0556]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 1, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: James Good, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8001 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0556."

SUPPLEMENTARY INFORMATION:

Title: VA Advance Directive: Living Will and Durable Power of Attorney for Health Care, VA Form 10–0137.

OMB Control Number: 2900–0556.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: VA Form 10–0137, is used for the purpose of documenting a VA patient's specific instructions about health care decisions to be carried out in the event patient is no longer competent or able to give those instructions or make those choices verbally.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 23, 1998 at pages 71191–71192.

Affected Public: Individuals or Households.

Estimated Annual Burden: 101,250 hours.

Estimated Average Burden Per Respondent: 25 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 243,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0556" in any correspondence.

Dated: July 2, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–22811 Filed 8–31–99; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Cemeteries and Memorials, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice that a meeting of the Advisory Committee on Cemeteries and Memorials, authorized by 38 U.S.C. 2401, will be held Sunday, October 3, and Monday, October 4, 1999, at the Hampton Inn I–55, Joliet, IL. This will be the Committee's first meeting of Fiscal Year 2000.

The purpose of the Committee is to review the administration of VA's cemeteries and burial benefits program. The meeting will convene on Sunday, October 3, at 8:30 a.m. (CT) and adjourn at 5:00 p.m. (CT). On Monday, October 4, the meeting will reconvene at 8:00 a.m. (CT) and adjourn at 4:30 p.m. (CT).

On Sunday, October 3, the Committee will participate in the dedication ceremony of the new Abraham Lincoln National Cemetery in Joliet, Illinois.

On Monday, October 4, the Committee will reconvene for updates and reports on National Cemetery Administration (NCA) issues, including memorials, cemetery construction, and current legislation.

The meeting will be open to the public. Individuals wishing to attend the meeting should contact Mrs. Paige Lowther, Designated Federal Official, National Cemetery Administration, [phone (202) 273–5164] no later than 12 noon (EDT), September 27, 1999.

Any interested person may attend, appear before, or file a statement with the Committee. Individuals wishing to appear before the Committee should indicate this in a letter to Mrs. Paige Lowther, Designated Federal Official, National Cemetery Administration (40), 810 Vermont Avenue, NW, Washington, DC. 20420. In any such letters, the writers must fully identify themselves and state the organization, association or person(s) they represent. In addition, to the extent practicable, letters should indicate the subject matter to be discussed. Oral presentations should be limited to 10 minutes in duration. Individuals wishing to file written statements to be submitted to the Committee must also mail, or otherwise deliver, them to Mrs. Paige Lowther, Designated Federal Official, National Cemetery Administration.

Letters and written statements as discussed above must be mailed or delivered in time to reach Mrs. Paige Lowther, Designated Federal Official, National Cemetery Administration, by 12 noon (EDT), September 30, 1999. Oral statements will be heard between 1:00 p.m. and 1:30 p.m. (EDT), October 4, 1999, at the Hampton Inn, I–55, Joliet, IL.

Dated: August 16, 1999.

By Direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 99–22805 Filed 8–31–99; 8:45 am]

BILLING CODE 8320–01–M

federal register

Wednesday
September 1, 1999

Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Parts 1000, et al.
Milk in the New England and Other Marketing Areas; Order Amending the Orders; Final Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1000, 1001, 1002, 1004, 1005, 1006, 1007, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1106, 1124, 1126, 1131, 1134, 1135, 1137, 1138 and 1139

[DA–97–12]

Milk in the New England and Other Marketing Areas; Order Amending the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

7 CFR part	Marketing area
1000	General Provisions of Federal Milk Marketing Orders.
1001	New England.
1002	New York-New Jersey.
1004	Middle Atlantic.
1005	Carolina.
1006	Upper Florida.
1007	Southeast.
1012	Tampa Bay.
1013	Southeastern Florida.
1030	Chicago Regional.
1032	Southern Illinois-Eastern Missouri.
1033	Ohio Valley.
1036	Eastern Ohio-Western Pennsylvania.
1040	Southern Michigan.
1044	Michigan Upper Peninsula.
1046	Louisville-Lexington-Evansville.
1049	Indiana.
1050	Central Illinois.
1064	Greater Kansas City.
1065	Nebraska-Western Iowa.
1068	Upper Midwest.
1076	Eastern South Dakota.
1079	Iowa.
1106	Southwest Plains.
1124	Pacific Northwest.
1126	Texas.
1131	Central Arizona.
1134	Western Colorado.
1135	Southwestern Idaho-Eastern Oregon.
1137	Eastern Colorado.
1138	New Mexico-West Texas.
1139	Great Basin.

SUMMARY: This final rule consolidates the current 31 Federal milk marketing orders into 11 orders. This consolidation complies with the 1996 Farm Bill which mandates that the current Federal milk orders be consolidated into between 10 to 14 orders. This final rule will be effective for milk marketed on or after October 1, 1999, thereby conforming to the Omnibus Consolidated and Emergency Supplemental Appropriations Bill, which required that the Federal milk order reform amendments be implemented on October 1, 1999. This rule sets forth a replacement for the Class I price structure and replaces the basic formula price with a multiple component pricing system. This rule also establishes a new Class IV which includes milk used to produce nonfat dry milk, butter, and other dry milk powders; reclassifies eggnog; and addresses other minor changes. Part 1000 is expanded to include sections that are identical in all of the consolidated orders to assist in simplifying and streamlining the orders.

EFFECTIVE DATE: October 1, 1999.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Branch Chief, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6274, e-mail address John.Borovies@usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12988

The contents of this final rule were reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect and will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937 (AMAA), as amended, provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Executive Order 12866

The Department is issuing this final rule in conformance with Executive Order 12866. The final rule is determined to be economically significant for the purposes of Executive Order 12866. To comply with the requirements of Executive Order 12866, the Department prepared a final Regulatory Impact Analysis (RIA). Information contained in the RIA pertains to the costs and benefits of the revised regulatory structure contained in this final rule and is explained and summarized in detail in the final decision (64 FR 16030). Copies of the RIA can be obtained from Dairy Programs at (202) 720–4392, any Market Administrator office, or via the Internet at http://www.ams.usda.gov/dairy.

Civil Rights Impact Analysis

Pursuant to Departmental Regulation (DR) 4300–4, a Civil Rights Impact Analysis (CRIA) was completed that reviewed the reforms to the Federal milk marketing order program implemented by this final rule to identify any provisions with actual or potential adverse effects for minorities, women, and persons with disabilities. The analysis disclosed no potential for affecting dairy farmers with specific characteristics differently than the general population of dairy farmers. All producers, regardless of race, national origin, or disability choosing to deliver milk to a Federal order regulated handler will receive the minimum blend price.

Copies of the Civil Rights Impact Analysis can be obtained from Dairy Programs at (202) 720–4392; any Market Administrator office; or via the Internet at http://www.ams.usda.gov/dairy/.

Small Business Consideration

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service (AMS) considered the economic impact of the reforms to the Federal milk marketing order program implemented by this final rule on small entities and prepared a final regulatory flexibility analysis that was included in the final decision (64 FR 16034). The analysis indicates that the Department minimized the significant economic impacts of the regulations on small entities to the fullest extent reasonably possible while adhering to the stated objectives. The Department reviewed the regulatory and financial burdens resulting from the regulations and determined, to the fullest extent possible, the impact on small businesses' abilities to compete in the market place. The Department reviewed the regulations from both the small producer and small processor perspectives attempting to maintain a balance between these competing interests.

Copies of the final regulatory impact analysis can be obtained from Dairy Programs at (202) 720–4392; any Market Administrator office; or via the Internet at http://www.ams.usda.gov/dairy/.

Paperwork Reduction Act of 1995

The information collection requirements contained in this final rule previously were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) under OMB control number 0581–0032, through September 30, 2001.

Prior Documents in This Proceeding

Proposed Rule: Issued January 21, 1998; published January 30, 1998 (63 FR 4802).

Correction: Issued February 19, 1998; published February 25, 1998 (63 FR 9686).

Extension of Time: Issued March 10, 1998; published March 13,1998 (63 FR 12417).

Final Decision on Proposed Amendments: Issued March 12, 1999; published April 2, 1999 (64 FR 16026).

Correction: Issued July 8, 1999; published July 14, 1999 (64 FR 37892).

Notice of Referenda: Issued July 14, 1999; published July 21, 1999 (64 FR 39092).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the aforesaid orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to each of the aforesaid orders:

Upon the basis of the record of this proceeding it is found that:

(1) The said orders, as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the marketing areas, and the minimum prices specified in the orders, as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest;

(3) The said orders, as hereby amended, regulate the handling of milk in the same manner as, and are applicable only to persons in the respective classes of industrial and commercial activity specified in, marketing agreements;

(4) All milk and milk products handled by handlers, as defined in the orders as hereby amended, are in the current of interstate commerce or directly burden, obstruct, or affect interstate commerce in milk or its products; and

(5) It is hereby found that the necessary expense of the market administrators for the maintenance and functioning of such agency will require the payment by each handler, as his pro rata share of such expense, 5 cents per hundredweight or such lesser amount as the Secretary may prescribe, with respect to milk specified in § 1000.85 of the General Provisions.

(b) Additional Findings. It is necessary in the public interest to make these amendments to each of the orders effective for milk marketed on or after October 1, 1999. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the specified marketing areas.

The amendments to these orders are known to handlers. The final decision containing the proposed amendments to these orders was issued on March 12, 1999.

(c) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the specified marketing areas, to sign proposed marketing agreements, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending each of the specified orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the respective orders as hereby amended; and

(3) The issuance of the order amending the specified orders is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the marketing areas.

List of Subjects in 7 CFR Parts 1000, 1001, 1002, 1004, 1005, 1006, 1007, 1012, 1013, 1030, 1032, 1033, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1106, 1124, 1126, 1131, 1134, 1135, 1137, 1138 and 1139

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in each of the aforesaid marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby further amended, as follows:

For the reasons set forth in the preamble and under the authority of Title 7, chapter X, Parts 1000, 1001, 1005, 1006, 1007, 1030, 1032, 1033, 1124, 1126, 1131, and 1135 are revised and Parts 1002, 1004, 1012, 1013, 1036, 1040, 1044, 1046, 1049, 1050, 1064, 1065, 1068, 1076, 1079, 1106, 1134, 1137, 1138 and 1139 are removed and reserved as follows:

PART 1000—GENERAL PROVISIONS OF FEDERAL MILK MARKETING ORDERS

Subpart A—Scope and Purpose

Sec.
1000.1 Scope and purpose of this part 1000.

Subpart B—Definitions

1000.2 General definitions.
1000.3 Route disposition.
1000.4 Plant.
1000.5 Distributing plant.
1000.6 Supply plant.
1000.8 Nonpool plant.
1000.9 Handler.
1000.14 Other source milk.
1000.15 Fluid milk product.
1000.16 Fluid cream product.
1000.17 [Reserved]
1000.18 Cooperative association.
1000.19 Commercial food processing establishment.

Subpart C—Rules of Practice and Procedure Governing Market Administrators

1000.25 Market administrator.

Subpart D—Rules Governing Order Provisions

1000.26 Continuity and separability of provisions.

Subpart E—Rules of Practice and Procedure Governing Handlers

1000.27 Handler responsibility for records and facilities.
1000.28 Termination of obligations.

Subpart F—Classification of Milk

1000.40 Classes of utilization.
1000.41 [Reserved]
1000.42 Classification of transfers and diversions.
1000.43 General classification rules.
1000.44 Classification of producer milk.
1000.45 Market administrator's reports and announcements concerning classification.

Subpart G—Class Prices

1000.50 Class prices, component prices, and advanced pricing factors.
1000.51 [Reserved]
1000.52 Adjusted Class I differentials.
1000.53 Announcement of class prices, component prices, and advanced pricing factors.
1000.54 Equivalent price.

Subpart H—Payments for Milk

1000.70 Producer-settlement fund.
1000.76 Payments by a handler operating a partially regulated distributing plant.
1000.77 Adjustment of accounts.
1000.78 Charges on overdue accounts.

Subpart I—Administrative Assessment and Marketing Service Deduction

1000.85 Assessment for order administration.
1000.86 Deduction for marketing services.

Subpart J—Miscellaneous Provisions

1000.90 Dates.
1000.91 [Reserved]
1000.92 [Reserved]
1000.93 OMB control number assigned pursuant to the Paperwork Reduction Act.

Authority: 7 U.S.C. 601–674, and 7253.

Subpart A—Scope and Purpose

§ 1000.1 Scope and purpose of this part 1000.

This part sets forth certain terms, definitions, and provisions which shall be common to and apply to Federal milk marketing order in 7 CFR, chapter X, except as specifically defined otherwise, or modified, or otherwise provided, in an individual order in 7 CFR, chapter X.

Subpart B—Definitions

§ 1000.2 General definitions.

(a) *Act* means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*).

(b) *Order* or *Federal milk order* means the applicable part of 7 CFR, chapter X, issued pursuant to Section 8c of the Act as a Federal milk marketing order (as amended).

(c) *Department* means the U.S. Department of Agriculture.

(d) *Secretary* means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(e) *Person* means any individual, partnership, corporation, association, or other business unit.

§ 1000.3 Route disposition.

Route disposition means a delivery to a retail or wholesale outlet (except a plant), either directly or through any distribution facility (including disposition from a plant store, vendor, or vending machine) of a fluid milk product in consumer-type packages or dispenser units classified as Class I milk.

§ 1000.4 Plant.

(a) Except as provided in paragraph (b) of this section, *plant* means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products are received, processed, or packaged, including a facility described in paragraph (b)(2) of this section if the facility receives the milk of more than one dairy farmer.

(b) Plant shall not include:

(1) A separate building without stationary storage tanks that is used only as a reload point for transferring bulk milk from one tank truck to another or a separate building used only as a distribution point for storing packaged fluid milk products in transit for route disposition; or

(2) An on-farm facility operated as part of a single dairy farm entity for the separation of cream and skim or the removal of water from milk.

§ 1000.5 Distributing plant.

Distributing plant means a plant that is approved by a duly constituted regulatory agency for the handling of Grade A milk at which fluid milk products are processed or packaged and from which there is route disposition or transfers of packaged fluid milk products to other plants.

§ 1000.6 Supply plant.

Supply plant means a plant approved by a duly constituted regulatory agency for the handling of Grade A milk that receives milk directly from dairy farmers and transfers or diverts fluid milk products to other plants or manufactures dairy products on its premises.

§ 1000.8 Nonpool plant.

Nonpool plant means any milk receiving, manufacturing, or processing plant other than a pool plant. The following categories of nonpool plants are further defined as follows:

(a) *A plant fully regulated under another Federal order* means a plant that is fully subject to the pricing and pooling provisions of another Federal order.

(b) *Producer-handler plant* means a plant operated by a producer-handler as defined under any Federal order.

(c) *Partially regulated distributing plant* means a nonpool plant that is not a plant fully regulated under another Federal order, a producer-handler plant, or an exempt plant, from which there is route disposition in the marketing area during the month.

(d) *Unregulated supply plant* means a supply plant that does not qualify as a pool supply plant and is not a plant fully regulated under another Federal order, a producer-handler plant, or an exempt plant.

(e) *An exempt plant* means a plant described in this paragraph that is exempt from the pricing and pooling provisions of any order provided that the operator of the plant files reports as prescribed by the market administrator of any marketing area in which the plant distributes packaged fluid milk products to enable determination of the handler's exempt status:

(1) A plant that is operated by a governmental agency that has no route disposition in commercial channels;

(2) A plant that is operated by a duly accredited college or university disposing of fluid milk products only through the operation of its own facilities with no route disposition in commercial channels;

(3) A plant from which the total route disposition is for individuals or institutions for charitable purposes without remuneration; or

(4) A plant that has route disposition and packaged sales of fluid milk products to other plants of 150,000 pounds or less during the month.

§ 1000.9 Handler.

Handler means:

(a) Any person who operates a pool plant or a nonpool plant.

(b) Any person who receives packaged fluid milk products from a plant for resale and distribution to retail or wholesale outlets, any person who as a broker negotiates a purchase or sale of fluid milk products or fluid cream products from or to any pool or nonpool plant, and any person who by purchase or direction causes milk of producers to be picked up at the farm and/or moved to a plant. Persons who qualify as handlers only under this paragraph under any Federal milk order are not subject to the payment provisions of §§ _____.70, _____.71, _____.72, _____.73, _____.76, and _____.85 of that order.

(c) Any cooperative association with respect to milk that it receives for its account from the farm of a producer and delivers to pool plants or diverts to nonpool plants pursuant to § _____.13 of the order. The operator of a pool plant receiving milk from a cooperative association may be the handler for such milk if both parties notify the market administrator of this agreement prior to the time that the milk is delivered to the pool plant and the plant operator purchases the milk on the basis of farm bulk tank weights and samples.

§ 1000.14 Other source milk.

Other source milk means all skim milk and butterfat contained in or represented by:

(a) Receipts of fluid milk products and bulk fluid cream products from any source other than producers, handlers described in § 1000.9(c) and § 1135.11, or pool plants;

(b) Products (other than fluid milk products, fluid cream products, and products produced at the plant during the same month) from any source which are reprocessed, converted into, or combined with another product in the plant during the month; and

(c) Receipts of any milk product (other than a fluid milk product or a fluid cream product) for which the handler fails to establish a disposition.

§ 1000.15 Fluid milk product.

(a) Except as provided in paragraph (b) of this section, *fluid milk product* means any milk products in fluid or frozen form containing less than 9 percent butterfat that are intended to be used as beverages. Such products include, but are not limited to: Milk, fat-free milk, lowfat milk, light milk, reduced fat milk, milk drinks, eggnog and cultured buttermilk, including any such beverage products that are flavored, cultured, modified with added nonfat milk solids, sterilized, concentrated, or reconstituted. As used in this part, the term *concentrated milk* means milk that contains not less than 25.5 percent, and not more than 50 percent, total milk solids.

(b) The term fluid milk product shall not include:

(1) Plain or sweetened evaporated milk/skim milk, sweetened condensed milk/skim milk, formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically-sealed containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk equivalent in any modified product specified in paragraph (a) of this section that is greater than an equal volume of an unmodified product of the same nature and butterfat content.

§ 1000.16 Fluid cream product.

Fluid cream product means cream (other than plastic cream or frozen cream), including sterilized cream, or a mixture of cream and milk or skim milk containing 9 percent or more butterfat, with or without the addition of other ingredients.

§ 1000.17 [Reserved]

§ 1000.18 Cooperative association.

Cooperative association means any cooperative marketing association of producers which the Secretary determines is qualified under the provisions of the Capper-Volstead Act, has full authority in the sale of milk of its members, and is engaged in marketing milk or milk products for its members. A federation of 2 or more cooperatives incorporated under the laws of any state will be considered a cooperative association under any Federal milk order if all member cooperatives meet the requirements of this section.

§ 1000.19 Commercial food processing establishment.

Commercial food processing establishment means any facility, other than a milk plant, to which fluid milk products and fluid cream products are disposed of, or producer milk is diverted, that uses such receipts as ingredients in food products and has no other disposition of fluid milk products other than those received in consumer-type packages (1 gallon or less). Producer milk diverted to commercial food processing establishments shall be subject to the same provisions relating to diversions to plants, including, but not limited to, §§ _____.13 and _____.52 of each Federal milk order.

Subpart C—Rules of Practice and Procedure Governing Market Administrators

§ 1000.25 Market administrator.

(a) *Designation.* The agency for the administration of the order shall be a market administrator selected by the Secretary and subject to removal at the Secretary's discretion. The market administrator shall be entitled to compensation determined by the Secretary.

(b) *Powers.* The market administrator shall have the following powers with respect to each order under his/her administration:

(1) Administer the order in accordance with its terms and provisions;

(2) Maintain and invest funds outside of the United States Department of the Treasury for the purpose of administering the order;

(3) Make rules and regulations to effectuate the terms and provisions of the order;

(4) Receive, investigate, and report complaints of violations to the Secretary; and

(5) Recommend amendments to the Secretary.

(c) *Duties.* The market administrator shall perform all the duties necessary to administer the terms and provisions of each order under his/her administration, including, but not limited to, the following:

(1) Employ and fix the compensation of persons necessary to enable him/her to exercise the powers and perform the duties of the office;

(2) Pay out of funds provided by the administrative assessment, except expenses associated with functions for which the order provides a separate charge, all expenses necessarily incurred in the maintenance and functioning of the office and in the performance of the duties of the office, including the market administrator's compensation;

(3) Keep records which will clearly reflect the transactions provided for in the order and upon request by the Secretary, surrender the records to a successor or such other person as the Secretary may designate;

(4) Furnish information and reports requested by the Secretary and submit office records for examination by the Secretary;

(5) Announce publicly at his/her discretion, unless otherwise directed by the Secretary, by such means as he/she deems appropriate, the name of any handler who, after the date upon which the handler is required to perform such act, has not:

(i) Made reports required by the order;

(ii) Made payments required by the order; or

(iii) Made available records and facilities as required pursuant to § 1000.27;

(6) Prescribe reports required of each handler under the order. Verify such reports and the payments required by the order by examining records (including such papers as copies of income tax reports, fiscal and product accounts, correspondence, contracts, documents or memoranda of the handler, and the records of any other persons that are relevant to the handler's obligation under the order), by examining such handler's milk handling facilities, and by such other investigation as the market administrator deems necessary for the purpose of ascertaining the correctness of any report or any obligation under the order. Reclassify skim milk and butterfat received by any handler if such examination and investigation discloses that the original classification was incorrect;

(7) Furnish each regulated handler a written statement of such handler's accounts with the market administrator promptly each month. Furnish a

corrected statement to such handler if verification discloses that the original statement was incorrect; and

(8) Prepare and disseminate publicly for the benefit of producers, handlers, and consumers such statistics and other information concerning operation of the order and facts relevant to the provisions thereof (or proposed provisions) as do not reveal confidential information.

Subpart D—Rules Governing Order Provisions

§ 1000.26 Continuity and separability of provisions.

(a) *Effective time.* The provisions of the order or any amendment to the order shall become effective at such time as the Secretary may declare and shall continue in force until suspended or terminated.

(b) *Suspension or termination.* The Secretary shall suspend or terminate any or all of the provisions of the order whenever he/she finds that such provision(s) obstructs or does not tend to effectuate the declared policy of the Act. The order shall terminate whenever the provisions of the Act authorizing it cease to be in effect.

(c) *Continuing obligations.* If upon the suspension or termination of any or all of the provisions of the order there are any obligations arising under the order, the final accrual or ascertainment of which requires acts by any handler, by the market administrator or by any other person, the power and duty to perform such further acts shall continue notwithstanding such suspension or termination.

(d) *Liquidation.* (1) Upon the suspension or termination of any or all provisions of the order the market administrator, or such other liquidating agent designated by the Secretary, shall, if so directed by the Secretary, liquidate the business of the market administrator's office, dispose of all property in his/her possession or control, including accounts receivable, and execute and deliver all assignments or other instruments necessary or appropriate to effectuate any such disposition; and

(2) If a liquidating agent is so designated, all assets and records of the market administrator shall be transferred promptly to such liquidating agent. If, upon such liquidation, the funds on hand exceed the amounts required to pay outstanding obligations of the office of the market administrator and to pay necessary expenses of liquidation and distribution, such excess shall be distributed to contributing handlers and producers in an equitable manner.

(e) *Separability of provisions.* If any provision of the order or its application to any person or circumstances is held invalid, the application of such provision and of the remaining provisions of the order to other persons or circumstances shall not be affected thereby.

Subpart E—Rules of Practice and Procedure Governing Handlers

§ 1000.27 Handler responsibility for records and facilities.

Each handler shall maintain and retain records of its operations and make such records and its facilities available to the market administrator. If adequate records of a handler, or of any other persons, that are relevant to the obligation of such handler are not maintained and made available, any skim milk and butterfat required to be reported by such handler for which adequate records are not available shall be considered as used in the highest-priced class.

(a) *Records to be maintained.* (1) Each handler shall maintain records of its operations (including, but not limited to, records of purchases, sales, processing, packaging, and disposition) as are necessary to verify whether such handler has any obligation under the order and if so, the amount of such obligation. Such records shall be such as to establish for each plant or other receiving point for each month:

(i) The quantities of skim milk and butterfat contained in, or represented by, products received in any form, including inventories on hand at the beginning of the month, according to form, time, and source of each receipt;

(ii) The utilization of all skim milk and butterfat showing the respective quantities of such skim milk and butterfat in each form disposed of or on hand at the end of the month; and

(iii) Payments to producers, dairy farmers, and cooperative associations, including the amount and nature of any deductions and the disbursement of money so deducted.

(2) Each handler shall keep such other specific records as the market administrator deems necessary to verify or establish such handler's obligation under the order.

(b) *Availability of records and facilities.* Each handler shall make available all records pertaining to such handler's operations and all facilities the market administrator finds are necessary to verify the information required to be reported by the order and/or to ascertain such handler's reporting, monetary, or other obligation under the order. Each handler shall permit the market administrator to weigh, sample, and test milk and milk products and observe plant operations and equipment and make available to the market administrator such facilities as are necessary to carry out his/her duties.

(c) *Retention of records.* All records required under the order to be made available to the market administrator shall be retained by the handler for a period of 3 years to begin at the end of the month to which such records pertain. If, within such 3-year period, the market administrator notifies the handler in writing that the retention of such records, or of specified records, is necessary in connection with a proceeding under section 8c(15)(A) of the Act or a court action specified in such notice, the handler shall retain such records, or specified records, until further written notification from the market administrator. The market administrator shall give further written notification to the handler promptly upon the termination of the litigation or when the records are no longer necessary in connection therewith.

§ 1000.28 Termination of obligations.

(a) Except as provided in paragraphs (b) and (c) of this section, the obligation of any handler to pay money required to be paid under the terms of the order shall terminate 2 years after the last day of the month during which the market administrator receives the handler's report of receipts and utilization on which such obligation is based, unless within such 2-year period, the market administrator notifies the handler in writing that such money is due and payable. Service of such written notice shall be complete upon mailing to the handler's last known address and it shall contain, but need not be limited to, the following information:

(1) The amount of the obligation;

(2) The month(s) on which such obligation is based; and

(3) If the obligation is payable to one or more producers or to a cooperative association, the name of such producer(s) or such cooperative association, or if the obligation is payable to the market administrator, the account for which it is to be paid.

(b) If a handler fails or refuses, with respect to any obligation under the order, to make available to the market administrator all records required by the order to be made available, the market administrator may notify the handler in writing, within the 2-year period provided for in paragraph (a) of this section, of such failure or refusal. If the market administrator so notifies a handler, the said 2-year period with respect to such obligation shall not begin to run until the first day of the month following the month during which all such records pertaining to such obligation are made available to the market administrator.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, a handler's obligation under the order to pay money shall not be terminated with respect to any transaction involving fraud or willful concealment of a fact, material to the obligation, on the part of the handler against whom the obligation is sought to be imposed.

(d) Unless the handler files a petition pursuant to section 8c(15)(A) of the Act and the applicable rules and regulations (7 CFR 900.50 through 900.71) within the applicable 2-year period indicated below, the obligation of the market administrator:

(1) To pay a handler any money which such handler claims is due under the terms of the order shall terminate 2 years after the end of the month during which the skim milk and butterfat involved in the claim were received; or

(2) To refund any payment made by a handler (including a deduction or offset by the market administrator) shall terminate 2 years after the end of the month during which payment was made by the handler.

Subpart F—Classification of Milk

§ 1000.40 Classes of utilization.

Except as provided in § 1000.42, all skim milk and butterfat required to be reported pursuant to § ——.30 of each Federal milk order shall be classified as follows:

(a) *Class I milk* shall be all skim milk and butterfat:

(1) Disposed of in the form of fluid milk products, except as otherwise provided in this section;

(2) In packaged fluid milk products in inventory at the end of the month; and

(3) In shrinkage assigned pursuant to § 1000.43(b).

(b) *Class II milk* shall be all skim milk and butterfat:

(1) In fluid milk products in containers larger than 1 gallon and fluid cream products disposed of or diverted to a commercial food processing establishment if the market administrator is permitted to audit the records of the commercial food processing establishment for the purpose of verification. Otherwise, such uses shall be Class I;

(2) Used to produce:

(i) Cottage cheese, lowfat cottage cheese, dry curd cottage cheese, ricotta cheese, pot cheese, Creole cheese, and any similar soft, high-moisture cheese resembling cottage cheese in form or use;

(ii) Milkshake and ice milk mixes (or bases), frozen desserts, and frozen dessert mixes distributed in half-gallon containers or larger and intended to be used in soft or semi-solid form;

(iii) Aerated cream, frozen cream, sour cream, sour half-and-half, sour cream mixtures containing nonmilk items, yogurt, and any other semi-solid product resembling a Class II product;

(iv) Custards, puddings, pancake mixes, coatings, batter, and similar products;

(v) Buttermilk biscuit mixes and other buttermilk for baking that contain food starch in excess of 2% of the total solids, provided that the product is labeled to indicate the food starch content;

(vi) Formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically-sealed containers;

(vii) Candy, soup, bakery products and other prepared foods which are processed for general distribution to the public, and intermediate products, including sweetened condensed milk, to be used in processing such prepared food products;

(viii) A fluid cream product or any product containing artificial fat or fat substitutes that resembles a fluid cream product, except as otherwise provided in paragraph (c) of this section; and

(ix) Any product not otherwise specified in this section; and

(3) In shrinkage assigned pursuant to § 1000.43(b).

(c) *Class III milk* shall be all skim milk and butterfat:

(1) Used to produce:

(i) Cream cheese and other spreadable cheeses, and hard cheese of types that may be shredded, grated, or crumbled;

(ii) Plastic cream, anhydrous milkfat, and butteroil; and

(iii) Evaporated or sweetened condensed milk in a consumer-type package; and

(2) In shrinkage assigned pursuant to § 1000.43(b).

(d) *Class IV milk* shall be all skim milk and butterfat:

(1) Used to produce:

(i) Butter; and

(ii) Any milk product in dried form;

(2) In inventory at the end of the month of fluid milk products and fluid cream products in bulk form;

(3) In the skim milk equivalent of nonfat milk solids used to modify a fluid milk product that has not been accounted for in Class I; and

(4) In shrinkage assigned pursuant to § 1000.43(b).

(e) *Other uses.* Other uses include skim milk and butterfat used in any product described in this section that is dumped, used for animal feed, destroyed, or lost by a handler in a vehicular accident, flood, fire, or similar occurrence beyond the handler's control. Such uses of skim milk and butterfat shall be assigned to the lowest priced class for the month to the extent that the quantities destroyed or lost can be verified from records satisfactory to the market administrator.

§ 1000.41 [Reserved]

§ 1000.42 Classification of transfers and diversions.

(a) *Transfers and diversions to pool plants.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or transferred in the form of a bulk fluid cream product from a pool plant or a handler described in § 1135.11 of this chapter to another pool plant shall be classified as Class I milk unless the handlers both request the same classification in another class. In either case, the classification shall be subject to the following conditions:

(1) The skim milk and butterfat classified in each class shall be limited to the amount of skim milk and butterfat, respectively, remaining in such class at the receiving plant after the computations pursuant to § 1000.44(a)(9) and the corresponding step of § 1000.44(b);

(2) If the transferring plant received during the month other source milk to be allocated pursuant to § 1000.44(a)(3) or the corresponding step of § 1000.44(b), the skim milk or butterfat so transferred shall be classified so as to allocate the least possible Class I utilization to such other source milk; and

(3) If the transferring handler received during the month other source milk to be allocated pursuant to § 1000.44(a)(8) or (9) or the corresponding steps of § 1000.44(b), the skim milk or butterfat so transferred, up to the total of the skim milk and butterfat, respectively, in such receipts of other source milk, shall not be classified as Class I milk to a greater extent than would be the case if the other source milk had been received at the receiving plant.

(b) *Transfers and diversions to a plant regulated under another Federal order.* Skim milk or butterfat transferred or diverted in the form of a fluid milk product or transferred in the form of a bulk fluid cream product from a pool plant to a plant regulated under another Federal order shall be classified in the following manner. Such classification shall apply only to the skim milk or

butterfat that is in excess of any receipts at the pool plant from a plant regulated under another Federal order of skim milk and butterfat, respectively, in fluid milk products and bulk fluid cream products, respectively, that are in the same category as described in paragraph (b)(1) or (2) of this section:

(1) As Class I milk, if transferred as packaged fluid milk products;

(2) If transferred or diverted in bulk form, classification shall be in the classes to which allocated under the other order:

(i) If the operators of both plants so request in their reports of receipts and utilization filed with their respective market administrators, transfers in bulk form shall be classified as other than Class I to the extent that such utilization is available for such classification pursuant to the allocation provisions of the other order;

(ii) If diverted, the diverting handler must request a classification other than Class I. If the plant receiving the diverted milk does not have sufficient utilization available for the requested classification and some of the diverted milk is consequently assigned to Class I use, the diverting handler shall be given the option of designating the entire load of diverted milk as producer milk at the plant physically receiving the milk. Alternatively, if the diverting handler so chooses, it may designate which dairy farmers whose milk was diverted during the month will be designated as producers under the order physically receiving the milk. If the diverting handler declines to accept either of these options, the market administrator will prorate the portion of diverted milk in excess of Class II, III, and IV use among all the dairy farmers whose milk was received from the diverting handler on the last day of the month, then the second-to-last day, and continuing in that fashion until the excess diverted milk has been assigned as producer milk under the receiving order; and

(iii) If information concerning the classes to which such transfers or diversions were allocated under the other order is not available to the market administrator for the purpose of establishing classification under this paragraph, classification shall be Class I, subject to adjustment when such information is available.

(c) *Transfers and diversions to producer-handlers and to exempt plants.* Skim milk or butterfat that is transferred or diverted from a pool plant to a producer-handler under any Federal order or to an exempt plant shall be classified:

(1) As Class I milk if transferred or diverted to a producer-handler;

(2) As Class I milk if transferred to an exempt plant in the form of a packaged fluid milk product; and

(3) In accordance with the utilization assigned to it by the market administrator if transferred or diverted in the form of a bulk fluid milk product or transferred in the form of a bulk fluid cream product to an exempt plant. For this purpose, the receiving handler's utilization of skim milk and butterfat in each class, in series beginning with Class IV, shall be assigned to the extent possible to its receipts of skim milk and butterfat, in bulk fluid cream products, and bulk fluid milk products, respectively, pro rata to each source.

(d) *Transfers and diversions to other nonpool plants.* Skim milk or butterfat transferred or diverted in the following forms from a pool plant to a nonpool plant that is not a plant regulated under another order, an exempt plant, or a producer-handler plant shall be classified:

(1) As Class I milk, if transferred in the form of a packaged fluid milk product; and

(2) As Class I milk, if transferred or diverted in the form of a bulk fluid milk product or transferred in the form of a bulk fluid cream product, unless the following conditions apply:

(i) If the conditions described in paragraphs (d)(2)(i)(A) and (B) of this section are met, transfers or diversions in bulk form shall be classified on the basis of the assignment of the nonpool plant's utilization, excluding the milk equivalent of both nonfat milk solids and concentrated milk used in the plant during the month, to its receipts as set forth in paragraphs (d)(2)(ii) through (viii) of this section:

(A) The transferring handler or diverting handler claims such classification in such handler's report of receipts and utilization filed pursuant to § ____.30 of each Federal milk order for the month within which such transaction occurred; and

(B) The nonpool plant operator maintains books and records showing the utilization of all skim milk and butterfat received at such plant which are made available for verification purposes if requested by the market administrator;

(ii) Route disposition in the marketing area of each Federal milk order from the nonpool plant and transfers of packaged fluid milk products from such nonpool plant to plants fully regulated thereunder shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of packaged fluid milk products at such nonpool plant from pool plants;

(B) Pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from plants regulated under other Federal orders;

(C) Pro rata to receipts of bulk fluid milk products at such nonpool plant from pool plants; and

(D) Pro rata to any remaining unassigned receipts of bulk fluid milk products at such nonpool plant from plants regulated under other Federal orders;

(iii) Any remaining Class I disposition of packaged fluid milk products from the nonpool plant shall be assigned to the extent possible pro rata to any remaining unassigned receipts of packaged fluid milk products at such nonpool plant from pool plants and plants regulated under other Federal orders;

(iv) Transfers of bulk fluid milk products from the nonpool plant to a plant regulated under any Federal order, to the extent that such transfers to the regulated plant exceed receipts of fluid milk products from such plant and are allocated to Class I at the receiving plant, shall be assigned to the extent possible in the following sequence:

(A) Pro rata to receipts of fluid milk products at such nonpool plant from pool plants; and

(B) Pro rata to any remaining unassigned receipts of fluid milk products at such nonpool plant from plants regulated under other Federal orders;

(v) Any remaining unassigned Class I disposition from the nonpool plant shall be assigned to the extent possible in the following sequence:

(A) To such nonpool plant's receipts from dairy farmers who the market administrator determines constitute regular sources of Grade A milk for such nonpool plant; and

(B) To such nonpool plant's receipts of Grade A milk from plants not fully regulated under any Federal order which the market administrator determines constitute regular sources of Grade A milk for such nonpool plant;

(vi) Any remaining unassigned receipts of bulk fluid milk products at the nonpool plant from pool plants and plants regulated under other Federal orders shall be assigned, pro rata among such plants, to the extent possible first to any remaining Class I utilization and then to all other utilization, in sequence beginning with Class IV at such nonpool plant;

(vii) Receipts of bulk fluid cream products at the nonpool plant from pool plants and plants regulated under other Federal orders shall be assigned, pro rata among such plants, to the extent possible to any remaining utilization, in sequence beginning with Class IV at such nonpool plant; and

(viii) In determining the nonpool plant's utilization for purposes of this paragraph, any fluid milk products and bulk fluid cream products transferred from such nonpool plant to a plant not fully regulated under any Federal order shall be classified on the basis of the second plant's utilization using the same assignment priorities at the second plant that are set forth in this paragraph.

§ 1000.43 General classification rules.

In determining the classification of producer milk pursuant to § 1000.44, the following rules shall apply:

(a) Each month the market administrator shall correct for mathematical and other obvious errors all reports filed pursuant to § ____.30 of each Federal milk order and shall compute separately for each pool plant, for each handler described in § 1000.9(c) and § 1135.11 of this chapter, the pounds of skim milk and butterfat, respectively, in each class in accordance with §§ 1000.40 and 1000.42, and paragraph (b) of this section.

(b) *Shrinkage and Overage.* For purposes of classifying all milk reported by a handler pursuant to § ____.30 of each Federal milk order the market administrator shall determine the shrinkage or overage of skim milk and butterfat for each pool plant and each handler described in § 1000.9(c) and § 1135.11 of this chapter by subtracting total utilization from total receipts. Any positive difference shall be shrinkage, and any negative difference shall be overage.

(1) Shrinkage incurred by pool plants qualified pursuant to § ____.7 of any Federal milk order shall be assigned to the lowest-priced class to the extent that such shrinkage does not exceed:

(i) Two percent of the total quantity of milk physically received at the plant directly from producers' farms on the basis of farm weights and tests;

(ii) Plus 1.5 percent of the quantity of bulk milk physically received on a basis other than farm weights and tests, excluding concentrated milk received by agreement for other than Class I use;

(iii) Plus .5 percent of the quantity of milk diverted by the plant operator to another plant on a basis other than farm weights and tests; and

(iv) Minus 1.5 percent of the quantity of bulk milk transferred to other plants, excluding concentrated milk transferred by agreement for other than Class I use.

(2) A handler described in § 1000.9(c) or § 1135.11 of this chapter that delivers milk to plants on a basis other than farm weights and tests shall receive a lowest-priced-class shrinkage allowance of .5 percent of the total quantity of such milk picked up at producers' farms.

(3) Shrinkage in excess of the amounts provided in paragraphs (b)(1) and (2) of this section shall be assigned to existing utilization in series starting with Class I. The shrinkage assigned pursuant to this paragraph shall be added to the handler's reported utilization and the result shall be known as the *gross utilization in each class.*

(c) If any of the water contained in the milk from which a product is made is removed before the product is utilized or disposed of by the handler, the pounds of skim milk in such product that are to be considered under this part as used or disposed of by the handler shall be an amount equivalent to the nonfat milk solids contained in such product plus all of the water originally associated with such solids.

(d) Skim milk and butterfat contained in receipts of bulk concentrated fluid milk and nonfluid milk products that are reconstituted for fluid use shall be assigned to Class I use, up to the reconstituted portion of labeled reconstituted fluid milk products, on a pro rata basis (except for any Class I use of specific concentrated receipts that is established by the handler) prior to any assignments under § 1000.44. Any remaining skim milk and butterfat in concentrated receipts shall be assigned to uses under § 1000.44 on a pro rata basis, unless a specific use of such receipts is established by the handler.

§ 1000.44 Classification of producer milk.

For each month the market administrator shall determine for each handler described in § 1000.9(a) for each pool plant of the handler separately and for each handler described in § 1000.9(c) and § 1135.11 of this chapter the classification of producer milk by allocating the handler's receipts of skim milk and butterfat to the handler's gross utilization of such receipts pursuant to § 1000.43(b)(3) as follows:

(a) Skim milk shall be allocated in the following manner:

(1) Subtract from the pounds of skim milk in Class I the pounds of skim milk in:

(i) Receipts of packaged fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk disposed of to such plant by handlers fully regulated under any Federal order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

(ii) Packaged fluid milk products in inventory at the beginning of the month. This paragraph shall apply only if the pool plant was subject to the provisions of this paragraph or comparable provisions of another Federal order in the immediately preceding month;

(iii) Fluid milk products received in packaged form from plants regulated under other Federal orders; and

(iv) To the extent that the receipts described in paragraphs (a)(1)(i) through (iii) of this section exceed the gross Class I utilization of skim milk, the excess receipts shall be subtracted pursuant to paragraph (a)(3)(vi) of this section.

(2) Subtract from the pounds of skim milk in Class II the pounds of skim milk in the receipts of skim milk in bulk concentrated fluid milk products and in other source milk (except other source milk received in the form of an unconcentrated fluid milk product or a fluid cream product) that is used to produce, or added to, any product in Class II (excluding the quantity of such skim milk that was classified as Class IV milk pursuant to § 1000.40(d)(3)). To the extent that the receipts described in this paragraph exceed the gross Class II utilization of skim milk, the excess receipts shall be subtracted pursuant to paragraph (a)(3)(vi) of this section.

(3) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class IV, the pounds of skim milk in:

(i) Receipts of bulk concentrated fluid milk products and other source milk (except other source milk received in the form of an unconcentrated fluid milk product);

(ii) Receipts of fluid milk products and bulk fluid cream products for which appropriate health approval is not established and from unidentified sources;

(iii) Receipts of fluid milk products and bulk fluid cream products from an exempt plant;

(iv) Fluid milk products and bulk fluid cream products received from a producer-handler as defined under the order in this part, or any other Federal order;

(v) Receipts of fluid milk products from dairy farmers for other markets; and

(vi) The excess receipts specified in paragraphs (a)(1)(iv) and (a)(2) of this section.

(4) Subtract from the pounds of skim milk remaining in all classes other than Class I, in sequence beginning with Class IV, the receipts of fluid milk products from an unregulated supply

plant that were not previously subtracted in this section for which the handler requests classification other than Class I, but not in excess of the pounds of skim milk remaining in these other classes combined.

(5) Subtract from the pounds of skim milk remaining in all classes other than Class I, in sequence beginning with Class IV, receipts of fluid milk products from an unregulated supply plant that were not previously subtracted in this section, and which are in excess of the pounds of skim milk determined pursuant to paragraphs (a)(5)(i) and (ii) of this section;

(i) Multiply by 1.25 the pounds of skim milk remaining in Class I at this allocation step; and

(ii) Subtract from the result in paragraph (a)(5)(i) the pounds of skim milk in receipts of producer milk and fluid milk products from other pool plants.

(6) Subtract from the pounds of skim milk remaining in all classes other than Class I, in sequence beginning with Class IV, the pounds of skim milk in receipts of bulk fluid milk products from a handler regulated under another Federal order that are in excess of bulk fluid milk products transferred or diverted to such handler, if other than Class I classification is requested, but not in excess of the pounds of skim milk remaining in these classes combined.

(7) Subtract from the pounds of skim milk remaining in each class, in series beginning with Class IV, the pounds of skim milk in fluid milk products and bulk fluid cream products in inventory at the beginning of the month that were not previously subtracted in this section.

(8) Subtract from the pounds of skim milk remaining in each class at the plant receipts of skim milk in fluid milk products from an unregulated supply plant that were not previously subtracted in this section and that were not offset by transfers or diversions of fluid milk products to the unregulated supply plant from which fluid milk products to be allocated at this step were received. Such subtraction shall be pro rata to the pounds of skim milk in Class I and in Classes II, III, and IV combined, with the quantity prorated to Classes II, III, and IV combined being subtracted in sequence beginning with Class IV.

(9) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of bulk fluid milk products from a handler regulated under another Federal order that are in excess of bulk fluid milk products transferred or diverted to such handler that were not subtracted in paragraph (a)(6) of this section. Such subtraction shall be pro rata to the pounds of skim milk in Class I and in Classes II, III, and IV combined, with the quantity prorated to Classes II, III, and IV combined being subtracted in sequence beginning with Class IV, with respect to whichever of the following quantities represents the lower proportion of Class I milk:

(i) The estimated utilization of skim milk of all handlers in each class as announced for the month pursuant to § 1000.45(a); or

(ii) The total pounds of skim milk remaining in each class at this allocation step.

(10) Subtract from the pounds of skim milk remaining in each class the pounds of skim milk in receipts of fluid milk products and bulk fluid cream products from another pool plant and from a handler described in § 1135.11 of this chapter according to the classification of such products pursuant to § 1000.42(a).

(11) If the total pounds of skim milk remaining in all classes exceed the pounds of skim milk in producer milk, subtract such excess from the pounds of skim milk remaining in each class in series beginning with Class IV.

(b) Butterfat shall be allocated in accordance with the procedure outlined for skim milk in paragraph (a) of this section.

(c) The quantity of producer milk in each class shall be the combined pounds of skim milk and butterfat remaining in each class after the computations pursuant to paragraphs (a) and (b) of this section.

§ 1000.45 Market administrator's reports and announcements concerning classification.

(a) Whenever required for the purpose of allocating receipts from plants regulated under other Federal orders pursuant to § 1000.44(a)(9) and the corresponding step of § 1000.44(b), the market administrator shall estimate and publicly announce the utilization (to the nearest whole percentage) in Class I during the month of skim milk and butterfat, respectively, in producer milk of all handlers. The estimate shall be based upon the most current available data and shall be final for such purpose.

(b) The market administrator shall report to the market administrators of other Federal orders as soon as possible after the handlers' reports of receipts and utilization are received, the class to which receipts from plants regulated under other Federal orders are allocated pursuant to §§ 1000.43(d) and 1000.44 (including any reclassification of inventories of bulk concentrated fluid milk products), and thereafter any change in allocation required to correct errors disclosed on the verification of such report.

(c) The market administrator shall furnish each handler operating a pool plant and each handler described in § 1135.11 of this chapter who has shipped fluid milk products or bulk fluid cream products to a plant fully regulated under another Federal order the class to which the shipments were allocated by the market administrator of the other Federal order on the basis of the report by the receiving handler and, as necessary, any changes in the allocation arising from the verification of such report.

(d) The market administrator shall report to each cooperative association which so requests, the percentage of producer milk delivered by members of the association that was used in each class by each handler receiving the milk. For the purpose of this report, the milk so received shall be prorated to each class in accordance with the total utilization of producer milk by the handler.

Subpart G—Class Prices

§ 1000.50 Class prices, component prices, and advanced pricing factors.

Class prices per hundredweight of milk containing 3.5 percent butterfat, component prices, and advanced pricing factors shall be as follows. The prices and pricing factors described in paragraphs (a), (b), (c), (e), (f), and (q) of this section shall be based on a weighted average of the most recent 2 weekly prices announced by the National Agricultural Statistical Service (NASS) before the 24th day of the month. These prices shall be announced on or before the 23rd day of the month and shall apply to milk received during the following month. The prices described in paragraphs (g) through (p) of this section shall be based on a weighted average for the preceding month of weekly prices announced by NASS on or before the 5th day of the month and shall apply to milk received during the preceding month. The price described in paragraph (d) of this section shall be derived from the Class II skim milk price announced on or before the 23rd day of the month preceding the month to which it applies and the butterfat price announced on or before the 5th day of the month following the month to which it applies.

(a) *Class I price.* The Class I price per hundredweight, rounded to the nearest cent, shall be .965 times the Class I skim milk price plus 3.5 times the Class I butterfat price.

(b) *Class I skim milk price.* The Class I skim milk price per hundredweight shall be the adjusted Class I differential specified in § 1000.52 plus the higher of the advanced pricing factors computed in paragraph (q)(1) or (2) of this section.

(c) *Class I butterfat price.* The Class I butterfat price per pound shall be the adjusted Class I differential specified in § 1000.52 divided by 100, plus the advanced butterfat price computed in paragraph (q)(3) of this section.

(d) *The Class II price* per hundredweight, rounded to the nearest cent, shall be .965 times the Class II skim milk price plus 3.5 times the Class II butterfat price.

(e) *Class II skim milk price.* The Class II skim milk price per hundredweight shall be the advanced Class IV skim milk price computed in paragraph (q)(2) of this section plus 70 cents.

(f) *Class II nonfat solids price.* The Class II nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the Class II skim milk price divided by 9.

(g) *Class II butterfat price.* The Class II butterfat price per pound shall be the butterfat price plus $.007.

(h) *Class III price.* The Class III price per hundredweight, rounded to the nearest cent, shall be .965 times the Class III skim milk price plus 3.5 times the butterfat price.

(i) *Class III skim milk price.* The Class III skim milk price per hundredweight, rounded to the nearest cent, shall be the protein price per pound times 3.1 plus the other solids price per pound times 5.9.

(j) *Class IV price.* The Class IV price per hundredweight, rounded to the nearest cent, shall be .965 times the Class IV skim milk price plus 3.5 times the butterfat price.

(k) *Class IV skim milk price.* The Class IV skim milk price per hundredweight, rounded to the nearest cent, shall be the nonfat solids price per pound times 9.

(l) *Butterfat price.* The butterfat price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS AA Butter survey price reported by the Department for the month less 11.4 cents, with the result divided by 0.82.

(m) *Nonfat solids price.* The nonfat solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS nonfat dry milk survey price reported by the Department for the month less 13.7 cents, with the result divided by 1.02.

(n) *Protein price.* The protein price per pound, rounded to the nearest one-hundredth cent, shall be computed as follows:

(1) Compute a weighted average of the amounts described in paragraphs (n)(1)(i) and (ii) of this section:

(i) The U.S. average NASS survey price for 40-lb. block cheese reported by the Department for the month; and

(ii) The U.S. average NASS survey price for 500-pound barrel cheddar cheese (39 percent moisture) reported by the Department for the month plus 3 cents;

(2) Subtract 17.02 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.405;

(3) Add to the amount computed pursuant to paragraph (n)(2) of this section an amount computed as follows:

(i) Subtract 17.02 cents from the price computed pursuant to paragraph (n)(1) of this section and multiply the result by 1.582;

(ii) Subtract the butterfat price computed pursuant to paragraph (l) of this section from the amount computed pursuant to paragraph (n)(3)(i) of this section; and

(iii) Multiply the amount computed pursuant to paragraph (n)(3)(ii) of this section by 1.28.

(o) *Other solids price.* The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the U.S. average NASS dry whey survey price reported by the Department for the month minus 13.7 cents, with the result divided by 0.968.

(p) *Somatic cell adjustment.* The somatic cell adjustment per hundredweight of milk shall be determined as follows:

(1) Multiply .0005 by the weighted average price computed pursuant to paragraph (n)(1) of this section and round to the 5th decimal place;

(2) Subtract the somatic cell count of the milk (reported in thousands) from 350; and

(3) Multiply the amount computed in paragraph (p)(1) of this section by the amount computed in paragraph (p)(2) of this section and round to the nearest full cent.

(q) *Advanced pricing factors.* For the purpose of computing the Class I skim milk price, the Class II skim milk price, the Class II nonfat solids price, and the Class I butterfat price for the following month, the following pricing factors shall be computed using the weighted average of the 2 most recent NASS U.S. average weekly survey prices announced before the 24th day of the month:

(1) An advanced Class III skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(i) Following the procedure set forth in paragraphs (n) and (o) of this section, but using the weighted average of the 2 most recent NASS U.S. average weekly survey prices announced before the 24th day of the month, compute a protein price and an other solids price;

(ii) Multiply the protein price computed in paragraph (q)(1)(i) of this section by 3.1;

(iii) Multiply the other solids price per pound computed in paragraph (q)(1)(i) of this section by 5.9; and

(iv) Add the amounts computed in paragraphs (q)(1)(ii) and (iii) of this section.

(2) An advanced Class IV skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(i) Following the procedure set forth in paragraph (m) of this section, but using the weighted average of the 2 most recent NASS U.S. average weekly survey prices announced before the 24th day of the month, compute a nonfat solids price; and

(ii) Multiply the nonfat solids price computed in paragraph (q)(2)(i) of this section by 9.

(3) An advanced butterfat price per pound, rounded to the nearest one-hundredth cent, shall be calculated by computing a weighted average of the 2 most recent U.S. average NASS AA Butter survey prices announced before the 24th day of the month, subtracting 11.4 cents from this average, and dividing the result by 0.82.

§ 1000.51 [Reserved]

§ 1000.52 Adjusted Class I differentials.

The Class I differential adjusted for location to be used in § 1000.50(b) and (c) shall be as follows:

County/Parish/City	State	Fips code	Class I differential adjusted for location
AUTAUGA	AL	01001	2.90
BALDWIN	AL	01003	3.30
BARBOUR	AL	01005	3.20
BIBB	AL	01007	2.70

County/Parish/City	State	Fips__code	Class I differential adjusted for location
BLOUNT	AL	01009	2.55
BULLOCK	AL	01011	3.10
BUTLER	AL	01013	3.20
CALHOUN	AL	01015	2.70
CHAMBERS	AL	01017	2.90
CHEROKEE	AL	01019	2.55
CHILTON	AL	01021	2.70
CHOCTAW	AL	01023	3.10
CLARKE	AL	01025	3.10
CLAY	AL	01027	2.80
CLEBURNE	AL	01029	2.70
COFFEE	AL	01031	3.20
COLBERT	AL	01033	2.25
CONECUH	AL	01035	3.20
COOSA	AL	01037	2.80
COVINGTON	AL	01039	3.20
CRENSHAW	AL	01041	3.20
CULLMAN	AL	01043	2.55
DALE	AL	01045	3.20
DALLAS	AL	01047	2.90
DE KALB	AL	01049	2.25
ELMORE	AL	01051	2.90
ESCAMBIA	AL	01053	3.30
ETOWAH	AL	01055	2.55
FAYETTE	AL	01057	2.70
FRANKLIN	AL	01059	2.25
GENEVA	AL	01061	3.30
GREENE	AL	01063	2.70
HALE	AL	01065	2.70
HENRY	AL	01067	3.20
HOUSTON	AL	01069	3.30
JACKSON	AL	01071	2.25
JEFFERSON	AL	01073	2.70
LAMAR	AL	01075	2.70
LAUDERDALE	AL	01077	2.20
LAWRENCE	AL	01079	2.25
LEE	AL	01081	2.90
LIMESTONE	AL	01083	2.25
LOWNDES	AL	01085	3.10
MACON	AL	01087	3.10
MADISON	AL	01089	2.25
MARENGO	AL	01091	3.10
MARION	AL	01093	2.55
MARSHALL	AL	01095	2.25
MOBILE	AL	01097	3.30
MONROE	AL	01099	3.20
MONTGOMERY	AL	01101	3.10
MORGAN	AL	01103	2.25
PERRY	AL	01105	2.70
PICKENS	AL	01107	2.70
PIKE	AL	01109	3.20
RANDOLPH	AL	01111	2.80
RUSSELL	AL	01113	3.10
ST. CLAIR	AL	01115	2.70
SHELBY	AL	01117	2.70
SUMTER	AL	01119	2.70
TALLADEGA	AL	01121	2.70
TALLAPOOSA	AL	01123	2.90
TUSCALOOSA	AL	01125	2.70
WALKER	AL	01127	2.70
WASHINGTON	AL	01129	3.10
WILCOX	AL	01131	3.10
WINSTON	AL	01133	2.55
APACHE	AZ	04001	1.90
COCHISE	AZ	04003	1.60
COCONINO	AZ	04005	1.90
GILA	AZ	04007	1.60
GRAHAM	AZ	04009	1.60
GREENLEE	AZ	04011	1.60
LA PAZ	AZ	04012	1.60
MARICOPA	AZ	04013	1.55

County/Parish/City	State	Fips__code	Class I differential adjusted for location
MOHAVE	AZ	04015	1.90
NAVAJO	AZ	04017	1.90
PIMA	AZ	04019	1.60
PINAL	AZ	04021	1.55
SANTA CRUZ	AZ	04023	1.60
YAVAPAI	AZ	04025	1.60
YUMA	AZ	04027	1.60
ARKANSAS	AR	05001	2.65
ASHLEY	AR	05003	2.75
BAXTER	AR	05005	1.90
BENTON	AR	05007	1.70
BOONE	AR	05009	1.70
BRADLEY	AR	05011	2.65
CALHOUN	AR	05013	2.65
CARROLL	AR	05015	1.70
CHICOT	AR	05017	2.75
CLARK	AR	05019	2.35
CLAY	AR	05021	2.35
CLEBURNE	AR	05023	2.10
CLEVELAND	AR	05025	2.65
COLUMBIA	AR	05027	2.35
CONWAY	AR	05029	2.10
CRAIGHEAD	AR	05031	2.65
CRAWFORD	AR	05033	1.90
CRITTENDEN	AR	05035	2.65
CROSS	AR	05037	2.65
DALLAS	AR	05039	2.35
DESHA	AR	05041	2.75
DREW	AR	05043	2.75
FAULKNER	AR	05045	2.35
FRANKLIN	AR	05047	1.90
FULTON	AR	05049	2.10
GARLAND	AR	05051	2.10
GRANT	AR	05053	2.35
GREENE	AR	05055	2.35
HEMPSTEAD	AR	05057	2.10
HOT SPRING	AR	05059	2.35
HOWARD	AR	05061	2.10
INDEPENDENCE	AR	05063	2.35
IZARD	AR	05065	2.10
JACKSON	AR	05067	2.35
JEFFERSON	AR	05069	2.65
JOHNSON	AR	05071	1.90
LAFAYETTE	AR	05073	2.35
LAWRENCE	AR	05075	2.35
LEE	AR	05077	2.65
LINCOLN	AR	05079	2.65
LITTLE RIVER	AR	05081	2.10
LOGAN	AR	05083	1.90
LONOKE	AR	05085	2.35
MADISON	AR	05087	1.70
MARION	AR	05089	1.90
MILLER	AR	05091	2.10
MISSISSIPPI	AR	05093	2.65
MONROE	AR	05095	2.65
MONTGOMERY	AR	05097	2.10
NEVADA	AR	05099	2.35
NEWTON	AR	05101	1.90
OUACHITA	AR	05103	2.35
PERRY	AR	05105	2.10
PHILLIPS	AR	05107	2.65
PIKE	AR	05109	2.10
POINSETT	AR	05111	2.65
POLK	AR	05113	2.10
POPE	AR	05115	1.90
PRAIRIE	AR	05117	2.65
PULASKI	AR	05119	2.35
RANDOLPH	AR	05121	2.10
ST. FRANCIS	AR	05123	2.65
SALINE	AR	05125	2.35
SCOTT	AR	05127	1.90

County/Parish/City	State	Fips_code	Class I differential adjusted for location
SEARCY	AR	05129	1.90
SEBASTIAN	AR	05131	1.90
SEVIER	AR	05133	2.10
SHARP	AR	05135	2.10
STONE	AR	05137	2.10
UNION	AR	05139	2.65
VAN BUREN	AR	05141	2.10
WASHINGTON	AR	05143	1.70
WHITE	AR	05145	2.35
WOODRUFF	AR	05147	2.65
YELL	AR	05149	2.10
ALAMEDA	CA	06001	1.75
ALPINE	CA	06003	1.20
AMADOR	CA	06005	1.20
BUTTE	CA	06007	1.65
CALAVERAS	CA	06009	1.20
COLUSA	CA	06011	1.80
CONTRA COSTA	CA	06013	1.75
DEL NORTE	CA	06015	1.80
EL DORADO	CA	06017	1.20
FRESNO	CA	06019	1.40
GLENN	CA	06021	1.80
HUMBOLDT	CA	06023	1.80
IMPERIAL	CA	06025	1.60
INYO	CA	06027	1.50
KERN	CA	06029	1.60
KINGS	CA	06031	1.40
LAKE	CA	06033	1.80
LASSEN	CA	06035	1.65
LOS ANGELES	CA	06037	1.60
MADERA	CA	06039	1.40
MARIN	CA	06041	1.80
MARIPOSA	CA	06043	1.20
MENDOCINO	CA	06045	1.80
MERCED	CA	06047	1.40
MODOC	CA	06049	1.65
MONO	CA	06051	1.20
MONTEREY	CA	06053	2.20
NAPA	CA	06055	1.80
NEVADA	CA	06057	1.40
ORANGE	CA	06059	1.60
PLACER	CA	06061	1.40
PLUMAS	CA	06063	1.65
RIVERSIDE	CA	06065	1.60
SACRAMENTO	CA	06067	1.40
SAN BENITO	CA	06069	1.75
SAN BERNARDINO	CA	06071	1.60
SAN DIEGO	CA	06073	1.80
SAN FRANCISCO	CA	06075	1.75
SAN JOAQUIN	CA	06077	1.40
SAN LUIS OBISPO	CA	06079	2.20
SAN MATEO	CA	06081	1.75
SANTA BARBARA	CA	06083	2.20
SANTA CLARA	CA	06085	1.75
SANTA CRUZ	CA	06087	1.75
SHASTA	CA	06089	1.80
SIERRA	CA	06091	1.40
SISKIYOU	CA	06093	1.80
SOLANO	CA	06095	1.65
SONOMA	CA	06097	1.80
STANISLAUS	CA	06099	1.40
SUTTER	CA	06101	1.65
TEHAMA	CA	06103	1.80
TRINITY	CA	06105	1.80
TULARE	CA	06107	1.40
TUOLUMNE	CA	06109	1.20
VENTURA	CA	06111	2.20
YOLO	CA	06113	1.65
YUBA	CA	06115	1.65
ADAMS	CO	08001	1.55
ALAMOSA	CO	08003	1.90

County/Parish/City	State	Fips_code	Class I differential adjusted for location
ARAPAHOE	CO	08005	1.55
ARCHULETA	CO	08007	2.20
BACA	CO	08009	1.90
BENT	CO	08011	1.80
BOULDER	CO	08013	1.55
CHAFFEE	CO	08015	1.90
CHEYENNE	CO	08017	1.60
CLEAR CREEK	CO	08019	1.55
CONEJOS	CO	08021	1.90
COSTILLA	CO	08023	1.90
CROWLEY	CO	08025	1.80
CUSTER	CO	08027	1.90
DELTA	CO	08029	2.20
DENVER	CO	08031	1.55
DOLORES	CO	08033	2.20
DOUGLAS	CO	08035	1.55
EAGLE	CO	08037	1.80
ELBERT	CO	08039	1.55
EL PASO	CO	08041	1.80
FREMONT	CO	08043	1.90
GARFIELD	CO	08045	1.90
GILPIN	CO	08047	1.55
GRAND	CO	08049	1.55
GUNNISON	CO	08051	1.90
HINSDALE	CO	08053	2.20
HUERFANO	CO	08055	1.90
JACKSON	CO	08057	1.55
JEFFERSON	CO	08059	1.55
KIOWA	CO	08061	1.80
KIT CARSON	CO	08063	1.60
LAKE	CO	08065	1.90
LA PLATA	CO	08067	2.20
LARIMER	CO	08069	1.55
LAS ANIMAS	CO	08071	1.90
LINCOLN	CO	08073	1.60
LOGAN	CO	08075	1.40
MESA	CO	08077	2.20
MINERAL	CO	08079	2.20
MOFFAT	CO	08081	1.80
MONTEZUMA	CO	08083	2.20
MONTROSE	CO	08085	2.20
MORGAN	CO	08087	1.40
OTERO	CO	08089	1.80
OURAY	CO	08091	2.20
PARK	CO	08093	1.80
PHILLIPS	CO	08095	1.50
PITKIN	CO	08097	1.90
PROWERS	CO	08099	1.80
PUEBLO	CO	08101	1.80
RIO BLANCO	CO	08103	1.90
RIO GRANDE	CO	08105	1.90
ROUTT	CO	08107	1.80
SAGUACHE	CO	08109	1.90
SAN JUAN	CO	08111	2.20
SAN MIGUEL	CO	08113	2.20
SEDGWICK	CO	08115	1.40
SUMMIT	CO	08117	1.80
TELLER	CO	08119	1.80
WASHINGTON	CO	08121	1.50
WELD	CO	08123	1.40
YUMA	CO	08125	1.50
FAIRFIELD	CT	09001	2.50
HARTFORD	CT	09003	2.50
LITCHFIELD	CT	09005	2.30
MIDDLESEX	CT	09007	2.50
NEW HAVEN	CT	09009	2.30
NEW LONDON	CT	09011	2.60
TOLLAND	CT	09013	2.50
WINDHAM	CT	09015	2.60
KENT	DE	10001	2.20
NEW CASTLE	DE	10003	2.20

County/Parish/City	State	Fips__code	Class I differential adjusted for location
SUSSEX	DE	10005	2.20
DISTRICT OF COLUMBIA	DC	11001	2.05
ALACHUA	FL	12001	4.00
BAKER	FL	12003	3.80
BAY	FL	12005	3.40
BRADFORD	FL	12007	3.80
BREVARD	FL	12009	4.20
BROWARD	FL	12011	4.75
CALHOUN	FL	12013	3.40
CHARLOTTE	FL	12015	4.40
CITRUS	FL	12017	4.00
CLAY	FL	12019	3.80
COLLIER	FL	12021	4.75
COLUMBIA	FL	12023	3.80
DADE	FL	12025	4.75
DE SOTO	FL	12027	4.40
DIXIE	FL	12029	3.80
DUVAL	FL	12031	3.80
ESCAMBIA	FL	12033	3.30
FLAGLER	FL	12035	4.00
FRANKLIN	FL	12037	3.40
GADSDEN	FL	12039	3.40
GILCHRIST	FL	12041	3.80
GLADES	FL	12043	4.40
GULF	FL	12045	3.40
HAMILTON	FL	12047	3.60
HARDEE	FL	12049	4.40
HENDRY	FL	12051	4.75
HERNANDO	FL	12053	4.20
HIGHLANDS	FL	12055	4.40
HILLSBOROUGH	FL	12057	4.20
HOLMES	FL	12059	3.30
INDIAN RIVER	FL	12061	4.40
JACKSON	FL	12063	3.30
JEFFERSON	FL	12065	3.50
LAFAYETTE	FL	12067	3.80
LAKE	FL	12069	4.20
LEE	FL	12071	4.75
LEON	FL	12073	3.50
LEVY	FL	12075	4.00
LIBERTY	FL	12077	3.40
MADISON	FL	12079	3.60
MANATEE	FL	12081	4.40
MARION	FL	12083	4.00
MARTIN	FL	12085	4.40
MONROE	FL	12087	4.75
NASSAU	FL	12089	3.80
OKALOOSA	FL	12091	3.30
OKEECHOBEE	FL	12093	4.40
ORANGE	FL	12095	4.20
OSCEOLA	FL	12097	4.20
PALM BEACH	FL	12099	4.75
PASCO	FL	12101	4.20
PINELLAS	FL	12103	4.20
POLK	FL	12105	4.20
PUTNAM	FL	12107	4.00
ST. JOHNS	FL	12109	3.80
ST. LUCIE	FL	12111	4.40
SANTA ROSA	FL	12113	3.30
SARASOTA	FL	12115	4.40
SEMINOLE	FL	12117	4.20
SUMTER	FL	12119	4.20
SUWANNEE	FL	12121	3.80
TAYLOR	FL	12123	3.60
UNION	FL	12125	3.80
VOLUSIA	FL	12127	4.20
WAKULLA	FL	12129	3.50
WALTON	FL	12131	3.30
WASHINGTON	FL	12133	3.40
APPLING	GA	13001	3.30
ATKINSON	GA	13003	3.30

County/Parish/City	State	Fips__code	Class I differential adjusted for location
BACON	GA	13005	3.30
BAKER	GA	13007	3.30
BALDWIN	GA	13009	2.80
BANKS	GA	13011	2.70
BARROW	GA	13013	2.90
BARTOW	GA	13015	2.70
BEN HILL	GA	13017	3.30
BERRIEN	GA	13019	3.30
BIBB	GA	13021	2.80
BLECKLEY	GA	13023	3.10
BRANTLEY	GA	13025	3.60
BROOKS	GA	13027	3.50
BRYAN	GA	13029	3.30
BULLOCH	GA	13031	3.20
BURKE	GA	13033	2.80
BUTTS	GA	13035	2.90
CALHOUN	GA	13037	3.20
CAMDEN	GA	13039	3.60
CANDLER	GA	13043	3.20
CARROLL	GA	13045	2.90
CATOOSA	GA	13047	2.55
CHARLTON	GA	13049	3.60
CHATHAM	GA	13051	3.30
CHATTAHOOCHEE	GA	13053	3.10
CHATTOOGA	GA	13055	2.55
CHEROKEE	GA	13057	2.70
CLARKE	GA	13059	2.80
CLAY	GA	13061	3.20
CLAYTON	GA	13063	2.90
CLINCH	GA	13065	3.60
COBB	GA	13067	2.90
COFFEE	GA	13069	3.30
COLQUITT	GA	13071	3.30
COLUMBIA	GA	13073	2.80
COOK	GA	13075	3.30
COWETA	GA	13077	2.90
CRAWFORD	GA	13079	2.90
CRISP	GA	13081	3.20
DADE	GA	13083	2.55
DAWSON	GA	13085	2.70
DECATUR	GA	13087	3.30
DE KALB	GA	13089	2.90
DODGE	GA	13091	3.20
DOOLY	GA	13093	3.20
DOUGHERTY	GA	13095	3.20
DOUGLAS	GA	13097	2.90
EARLY	GA	13099	3.30
ECHOLS	GA	13101	3.60
EFFINGHAM	GA	13103	3.20
ELBERT	GA	13105	2.80
EMANUEL	GA	13107	3.10
EVANS	GA	13109	3.20
FANNIN	GA	13111	2.55
FAYETTE	GA	13113	2.90
FLOYD	GA	13115	2.55
FORSYTH	GA	13117	2.90
FRANKLIN	GA	13119	2.70
FULTON	GA	13121	2.90
GILMER	GA	13123	2.55
GLASCOCK	GA	13125	2.80
GLYNN	GA	13127	3.60
GORDON	GA	13129	2.55
GRADY	GA	13131	3.30
GREENE	GA	13133	2.80
GWINNETT	GA	13135	2.90
HABERSHAM	GA	13137	2.70
HALL	GA	13139	2.90
HANCOCK	GA	13141	2.80
HARALSON	GA	13143	2.70
HARRIS	GA	13145	2.90
HART	GA	13147	2.70

County/Parish/City	State	Fips_code	Class I differential adjusted for location
HEARD	GA	13149	2.90
HENRY	GA	13151	2.90
HOUSTON	GA	13153	3.10
IRWIN	GA	13155	3.30
JACKSON	GA	13157	2.80
JASPER	GA	13159	2.80
JEFF DAVIS	GA	13161	3.30
JEFFERSON	GA	13163	2.80
JENKINS	GA	13165	3.10
JOHNSON	GA	13167	3.10
JONES	GA	13169	2.80
LAMAR	GA	13171	2.90
LANIER	GA	13173	3.60
LAURENS	GA	13175	3.10
LEE	GA	13177	3.20
LIBERTY	GA	13179	3.30
LINCOLN	GA	13181	2.80
LONG	GA	13183	3.30
LOWNDES	GA	13185	3.60
LUMPKIN	GA	13187	2.70
MCDUFFIE	GA	13189	2.80
MCINTOSH	GA	13191	3.30
MACON	GA	13193	3.10
MADISON	GA	13195	2.80
MARION	GA	13197	3.10
MERIWETHER	GA	13199	2.90
MILLER	GA	13201	3.30
MITCHELL	GA	13205	3.30
MONROE	GA	13207	2.90
MONTGOMERY	GA	13209	3.20
MORGAN	GA	13211	2.80
MURRAY	GA	13213	2.55
MUSCOGEE	GA	13215	3.10
NEWTON	GA	13217	2.80
OCONEE	GA	13219	2.80
OGLETHORPE	GA	13221	2.80
PAULDING	GA	13223	2.90
PEACH	GA	13225	2.90
PICKENS	GA	13227	2.70
PIERCE	GA	13229	3.30
PIKE	GA	13231	2.90
POLK	GA	13233	2.70
PULASKI	GA	13235	3.20
PUTNAM	GA	13237	2.80
QUITMAN	GA	13239	3.20
RABUN	GA	13241	2.55
RANDOLPH	GA	13243	3.20
RICHMOND	GA	13245	2.80
ROCKDALE	GA	13247	2.90
SCHLEY	GA	13249	3.10
SCREVEN	GA	13251	3.10
SEMINOLE	GA	13253	3.30
SPALDING	GA	13255	2.90
STEPHENS	GA	13257	2.70
STEWART	GA	13259	3.10
SUMTER	GA	13261	3.20
TALBOT	GA	13263	2.90
TALIAFERRO	GA	13265	2.80
TATTNALL	GA	13267	3.20
TAYLOR	GA	13269	2.90
TELFAIR	GA	13271	3.20
TERRELL	GA	13273	3.20
THOMAS	GA	13275	3.50
TIFT	GA	13277	3.30
TOOMBS	GA	13279	3.20
TOWNS	GA	13281	2.55
TREUTLEN	GA	13283	3.20
TROUP	GA	13285	2.90
TURNER	GA	13287	3.30
TWIGGS	GA	13289	2.80
UNION	GA	13291	2.55

County/Parish/City	State	Fips_code	Class I differential adjusted for location
UPSON	GA	13293	2.90
WALKER	GA	13295	2.55
WALTON	GA	13297	2.80
WARE	GA	13299	3.60
WARREN	GA	13301	2.80
WASHINGTON	GA	13303	2.80
WAYNE	GA	13305	3.30
WEBSTER	GA	13307	3.20
WHEELER	GA	13309	3.20
WHITE	GA	13311	2.70
WHITFIELD	GA	13313	2.55
WILCOX	GA	13315	3.20
WILKES	GA	13317	2.80
WILKINSON	GA	13319	2.80
WORTH	GA	13321	3.30
ADA	ID	16001	1.35
ADAMS	ID	16003	1.35
BANNOCK	ID	16005	1.40
BEAR LAKE	ID	16007	1.40
BENEWAH	ID	16009	1.35
BINGHAM	ID	16011	1.35
BLAINE	ID	16013	1.35
BOISE	ID	16015	1.35
BONNER	ID	16017	1.35
BONNEVILLE	ID	16019	1.35
BOUNDARY	ID	16021	1.35
BUTTE	ID	16023	1.35
CAMAS	ID	16025	1.35
CANYON	ID	16027	1.35
CARIBOU	ID	16029	1.40
CASSIA	ID	16031	1.40
CLARK	ID	16033	1.40
CLEARWATER	ID	16035	1.40
CUSTER	ID	16037	1.35
ELMORE	ID	16039	1.35
FRANKLIN	ID	16041	1.40
FREMONT	ID	16043	1.40
GEM	ID	16045	1.35
GOODING	ID	16047	1.35
IDAHO	ID	16049	1.40
JEFFERSON	ID	16051	1.35
JEROME	ID	16053	1.35
KOOTENAI	ID	16055	1.35
LATAH	ID	16057	1.35
LEMHI	ID	16059	1.40
LEWIS	ID	16061	1.35
LINCOLN	ID	16063	1.35
MADISON	ID	16065	1.40
MINIDOKA	ID	16067	1.35
NEZ PERCE	ID	16069	1.35
ONEIDA	ID	16071	1.40
OWYHEE	ID	16073	1.35
PAYETTE	ID	16075	1.35
POWER	ID	16077	1.40
SHOSHONE	ID	16079	1.40
TETON	ID	16081	1.40
TWIN FALLS	ID	16083	1.35
VALLEY	ID	16085	1.35
WASHINGTON	ID	16087	1.35
ADAMS	IL	17001	2.00
ALEXANDER	IL	17003	2.10
BOND	IL	17005	2.00
BOONE	IL	17007	1.95
BROWN	IL	17009	2.00
BUREAU	IL	17011	2.00
CALHOUN	IL	17013	2.00
CARROLL	IL	17015	1.95
CASS	IL	17017	2.00
CHAMPAIGN	IL	17019	2.00
CHRISTIAN	IL	17021	2.00
CLARK	IL	17023	2.00

County/Parish/City	State	Fips_code	Class I differential adjusted for location
CLAY	IL	17025	2.00
CLINTON	IL	17027	2.00
COLES	IL	17029	2.00
COOK	IL	17031	1.95
CRAWFORD	IL	17033	2.00
CUMBERLAND	IL	17035	2.00
DE KALB	IL	17037	1.95
DE WITT	IL	17039	2.00
DOUGLAS	IL	17041	2.00
DU PAGE	IL	17043	1.95
EDGAR	IL	17045	2.00
EDWARDS	IL	17047	2.00
EFFINGHAM	IL	17049	2.00
FAYETTE	IL	17051	2.00
FORD	IL	17053	2.00
FRANKLIN	IL	17055	2.10
FULTON	IL	17057	2.00
GALLATIN	IL	17059	2.10
GREENE	IL	17061	2.00
GRUNDY	IL	17063	2.00
HAMILTON	IL	17065	2.10
HANCOCK	IL	17067	2.00
HARDIN	IL	17069	2.10
HENDERSON	IL	17071	2.00
HENRY	IL	17073	2.00
IROQUOIS	IL	17075	2.00
JACKSON	IL	17077	2.10
JASPER	IL	17079	2.00
JEFFERSON	IL	17081	2.00
JERSEY	IL	17083	2.00
JO DAVIESS	IL	17085	1.95
JOHNSON	IL	17087	2.10
KANE	IL	17089	1.95
KANKAKEE	IL	17091	2.00
KENDALL	IL	17093	2.00
KNOX	IL	17095	2.00
LAKE	IL	17097	1.95
LA SALLE	IL	17099	2.00
LAWRENCE	IL	17101	2.00
LEE	IL	17103	1.95
LIVINGSTON	IL	17105	2.00
LOGAN	IL	17107	2.00
MCDONOUGH	IL	17109	2.00
MCHENRY	IL	17111	1.95
MCLEAN	IL	17113	2.00
MACON	IL	17115	2.00
MACOUPIN	IL	17117	2.00
MADISON	IL	17119	2.00
MARION	IL	17121	2.00
MARSHALL	IL	17123	2.00
MASON	IL	17125	2.00
MASSAC	IL	17127	2.10
MENARD	IL	17129	2.00
MERCER	IL	17131	2.00
MONROE	IL	17133	2.10
MONTGOMERY	IL	17135	2.00
MORGAN	IL	17137	2.00
MOULTRIE	IL	17139	2.00
OGLE	IL	17141	1.95
PEORIA	IL	17143	2.00
PERRY	IL	17145	2.10
PIATT	IL	17147	2.00
PIKE	IL	17149	2.00
POPE	IL	17151	2.10
PULASKI	IL	17153	2.10
PUTNAM	IL	17155	2.00
RANDOLPH	IL	17157	2.10
RICHLAND	IL	17159	2.00
ROCK ISLAND	IL	17161	2.00
ST. CLAIR	IL	17163	2.10
SALINE	IL	17165	2.10

County/Parish/City	State	Fips_code	Class I differential adjusted for location
SANGAMON	IL	17167	2.00
SCHUYLER	IL	17169	2.00
SCOTT	IL	17171	2.00
SHELBY	IL	17173	2.00
STARK	IL	17175	2.00
STEPHENSON	IL	17177	1.95
TAZEWELL	IL	17179	2.00
UNION	IL	17181	2.10
VERMILION	IL	17183	2.00
WABASH	IL	17185	2.00
WARREN	IL	17187	2.00
WASHINGTON	IL	17189	2.10
WAYNE	IL	17191	2.00
WHITE	IL	17193	2.00
WHITESIDE	IL	17195	1.95
WILL	IL	17197	2.00
WILLIAMSON	IL	17199	2.10
WINNEBAGO	IL	17201	1.95
WOODFORD	IL	17203	2.00
ADAMS	IN	18001	2.00
ALLEN	IN	18003	1.80
BARTHOLOMEW	IN	18005	2.05
BENTON	IN	18007	2.00
BLACKFORD	IN	18009	2.00
BOONE	IN	18011	2.00
BROWN	IN	18013	2.05
CARROLL	IN	18015	2.00
CASS	IN	18017	2.00
CLARK	IN	18019	1.95
CLAY	IN	18021	2.00
CLINTON	IN	18023	2.00
CRAWFORD	IN	18025	2.10
DAVIESS	IN	18027	2.05
DEARBORN	IN	18029	1.95
DECATUR	IN	18031	1.95
DE KALB	IN	18033	1.80
DELAWARE	IN	18035	2.00
DUBOIS	IN	18037	2.10
ELKHART	IN	18039	1.80
FAYETTE	IN	18041	2.00
FLOYD	IN	18043	1.95
FOUNTAIN	IN	18045	2.00
FRANKLIN	IN	18047	1.95
FULTON	IN	18049	2.00
GIBSON	IN	18051	2.10
GRANT	IN	18053	2.00
GREENE	IN	18055	2.05
HAMILTON	IN	18057	2.00
HANCOCK	IN	18059	2.00
HARRISON	IN	18061	1.95
HENDRICKS	IN	18063	2.00
HENRY	IN	18065	2.00
HOWARD	IN	18067	2.00
HUNTINGTON	IN	18069	2.00
JACKSON	IN	18071	2.05
JASPER	IN	18073	2.00
JAY	IN	18075	2.00
JEFFERSON	IN	18077	1.95
JENNINGS	IN	18079	1.95
JOHNSON	IN	18081	2.00
KNOX	IN	18083	2.05
KOSCIUSKO	IN	18085	1.80
LAGRANGE	IN	18087	1.80
LAKE	IN	18089	1.95
LA PORTE	IN	18091	1.80
LAWRENCE	IN	18093	2.05
MADISON	IN	18095	2.00
MARION	IN	18097	2.00
MARSHALL	IN	18099	1.80
MARTIN	IN	18101	2.05
MIAMI	IN	18103	2.00

County/Parish/City	State	Fips_code	Class I differential adjusted for location
MONROE	IN	18105	2.05
MONTGOMERY	IN	18107	2.00
MORGAN	IN	18109	2.00
NEWTON	IN	18111	2.00
NOBLE	IN	18113	1.80
OHIO	IN	18115	1.95
ORANGE	IN	18117	2.05
OWEN	IN	18119	2.00
PARKE	IN	18121	2.00
PERRY	IN	18123	2.10
PIKE	IN	18125	2.10
PORTER	IN	18127	1.95
POSEY	IN	18129	2.10
PULASKI	IN	18131	2.00
PUTNAM	IN	18133	2.00
RANDOLPH	IN	18135	2.00
RIPLEY	IN	18137	1.95
RUSH	IN	18139	2.00
ST. JOSEPH	IN	18141	1.80
SCOTT	IN	18143	1.95
SHELBY	IN	18145	2.00
SPENCER	IN	18147	2.10
STARKE	IN	18149	1.80
STEUBEN	IN	18151	1.80
SULLIVAN	IN	18153	2.05
SWITZERLAND	IN	18155	1.95
TIPPECANOE	IN	18157	2.00
TIPTON	IN	18159	2.00
UNION	IN	18161	2.00
VANDERBURGH	IN	18163	2.10
VERMILLION	IN	18165	2.00
VIGO	IN	18167	2.00
WABASH	IN	18169	2.00
WARREN	IN	18171	2.00
WARRICK	IN	18173	2.10
WASHINGTON	IN	18175	1.95
WAYNE	IN	18177	2.00
WELLS	IN	18179	2.00
WHITE	IN	18181	2.00
WHITLEY	IN	18183	1.80
ADAIR	IA	19001	1.90
ADAMS	IA	19003	1.90
ALLAMAKEE	IA	19005	1.70
APPANOOSE	IA	19007	1.90
AUDUBON	IA	19009	1.90
BENTON	IA	19011	1.95
BLACK HAWK	IA	19013	1.80
BOONE	IA	19015	1.90
BREMER	IA	19017	1.80
BUCHANAN	IA	19019	1.80
BUENA VISTA	IA	19021	1.80
BUTLER	IA	19023	1.80
CALHOUN	IA	19025	1.80
CARROLL	IA	19027	1.90
CASS	IA	19029	1.90
CEDAR	IA	19031	1.95
CERRO GORDO	IA	19033	1.70
CHEROKEE	IA	19035	1.80
CHICKASAW	IA	19037	1.70
CLARKE	IA	19039	1.90
CLAY	IA	19041	1.70
CLAYTON	IA	19043	1.70
CLINTON	IA	19045	1.95
CRAWFORD	IA	19047	1.90
DALLAS	IA	19049	1.90
DAVIS	IA	19051	1.90
DECATUR	IA	19053	1.90
DELAWARE	IA	19055	1.80
DES MOINES	IA	19057	1.90
DICKINSON	IA	19059	1.70
DUBUQUE	IA	19061	1.80

County/Parish/City	State	Fips_code	Class I differential adjusted for location
EMMET	IA	19063	1.70
FAYETTE	IA	19065	1.70
FLOYD	IA	19067	1.70
FRANKLIN	IA	19069	1.80
FREMONT	IA	19071	1.90
GREENE	IA	19073	1.90
GRUNDY	IA	19075	1.80
GUTHRIE	IA	19077	1.90
HAMILTON	IA	19079	1.80
HANCOCK	IA	19081	1.70
HARDIN	IA	19083	1.80
HARRISON	IA	19085	1.90
HENRY	IA	19087	1.90
HOWARD	IA	19089	1.70
HUMBOLDT	IA	19091	1.80
IDA	IA	19093	1.80
IOWA	IA	19095	1.95
JACKSON	IA	19097	1.95
JASPER	IA	19099	1.95
JEFFERSON	IA	19101	1.90
JOHNSON	IA	19103	1.95
JONES	IA	19105	1.95
KEOKUK	IA	19107	1.90
KOSSUTH	IA	19109	1.70
LEE	IA	19111	1.90
LINN	IA	19113	1.95
LOUISA	IA	19115	1.90
LUCAS	IA	19117	1.90
LYON	IA	19119	1.70
MADISON	IA	19121	1.90
MAHASKA	IA	19123	1.90
MARION	IA	19125	1.90
MARSHALL	IA	19127	1.95
MILLS	IA	19129	1.90
MITCHELL	IA	19131	1.70
MONONA	IA	19133	1.80
MONROE	IA	19135	1.90
MONTGOMERY	IA	19137	1.90
MUSCATINE	IA	19139	1.90
O'BRIEN	IA	19141	1.70
OSCEOLA	IA	19143	1.70
PAGE	IA	19145	1.90
PALO ALTO	IA	19147	1.70
PLYMOUTH	IA	19149	1.70
POCAHONTAS	IA	19151	1.80
POLK	IA	19153	1.90
POTTAWATTAMIE	IA	19155	1.90
POWESHIEK	IA	19157	1.95
RINGGOLD	IA	19159	1.90
SAC	IA	19161	1.80
SCOTT	IA	19163	1.95
SHELBY	IA	19165	1.90
SIOUX	IA	19167	1.70
STORY	IA	19169	1.95
TAMA	IA	19171	1.95
TAYLOR	IA	19173	1.90
UNION	IA	19175	1.90
VAN BUREN	IA	19177	1.90
WAPELLO	IA	19179	1.90
WARREN	IA	19181	1.90
WASHINGTON	IA	19183	1.90
WAYNE	IA	19185	1.90
WEBSTER	IA	19187	1.80
WINNEBAGO	IA	19189	1.70
WINNESHIEK	IA	19191	1.70
WOODBURY	IA	19193	1.80
WORTH	IA	19195	1.70
WRIGHT	IA	19197	1.80
ALLEN	KS	20001	1.70
ANDERSON	KS	20003	1.70
ATCHISON	KS	20005	1.90

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BARBER	KS	20007	1.90
BARTON	KS	20009	1.90
BOURBON	KS	20011	1.70
BROWN	KS	20013	1.90
BUTLER	KS	20015	1.70
CHASE	KS	20017	1.70
CHAUTAUQUA	KS	20019	1.70
CHEROKEE	KS	20021	1.70
CHEYENNE	KS	20023	1.60
CLARK	KS	20025	1.90
CLAY	KS	20027	1.90
CLOUD	KS	20029	1.80
COFFEY	KS	20031	1.70
COMANCHE	KS	20033	1.90
COWLEY	KS	20035	1.70
CRAWFORD	KS	20037	1.70
DECATUR	KS	20039	1.60
DICKINSON	KS	20041	1.90
DONIPHAN	KS	20043	1.90
DOUGLAS	KS	20045	1.70
EDWARDS	KS	20047	1.90
ELK	KS	20049	1.70
ELLIS	KS	20051	1.80
ELLSWORTH	KS	20053	1.90
FINNEY	KS	20055	1.80
FORD	KS	20057	1.90
FRANKLIN	KS	20059	1.70
GEARY	KS	20061	1.90
GOVE	KS	20063	1.60
GRAHAM	KS	20065	1.60
GRANT	KS	20067	1.90
GRAY	KS	20069	1.90
GREELEY	KS	20071	1.80
GREENWOOD	KS	20073	1.70
HAMILTON	KS	20075	1.80
HARPER	KS	20077	1.70
HARVEY	KS	20079	1.70
HASKELL	KS	20081	1.90
HODGEMAN	KS	20083	1.80
JACKSON	KS	20085	1.90
JEFFERSON	KS	20087	1.90
JEWELL	KS	20089	1.80
JOHNSON	KS	20091	1.90
KEARNY	KS	20093	1.80
KINGMAN	KS	20095	1.70
KIOWA	KS	20097	1.90
LABETTE	KS	20099	1.70
LANE	KS	20101	1.80
LEAVENWORTH	KS	20103	1.90
LINCOLN	KS	20105	1.80
LINN	KS	20107	1.70
LOGAN	KS	20109	1.60
LYON	KS	20111	1.70
MCPHERSON	KS	20113	1.90
MARION	KS	20115	1.70
MARSHALL	KS	20117	1.90
MEADE	KS	20119	1.90
MIAMI	KS	20121	1.70
MITCHELL	KS	20123	1.80
MONTGOMERY	KS	20125	1.70
MORRIS	KS	20127	1.90
MORTON	KS	20129	1.90
NEMAHA	KS	20131	1.90
NEOSHO	KS	20133	1.70
NESS	KS	20135	1.80
NORTON	KS	20137	1.60
OSAGE	KS	20139	1.70
OSBORNE	KS	20141	1.80
OTTAWA	KS	20143	1.90
PAWNEE	KS	20145	1.90
PHILLIPS	KS	20147	1.60

County/Parish/City	State	Fips_code	Class I differential adjusted for location
POTTAWATOMIE	KS	20149	1.90
PRATT	KS	20151	1.90
RAWLINS	KS	20153	1.60
RENO	KS	20155	1.70
REPUBLIC	KS	20157	1.80
RICE	KS	20159	1.90
RILEY	KS	20161	1.90
ROOKS	KS	20163	1.60
RUSH	KS	20165	1.80
RUSSELL	KS	20167	1.80
SALINE	KS	20169	1.90
SCOTT	KS	20171	1.80
SEDGWICK	KS	20173	1.70
SEWARD	KS	20175	1.90
SHAWNEE	KS	20177	1.90
SHERIDAN	KS	20179	1.60
SHERMAN	KS	20181	1.60
SMITH	KS	20183	1.60
STAFFORD	KS	20185	1.90
STANTON	KS	20187	1.90
STEVENS	KS	20189	1.90
SUMNER	KS	20191	1.70
THOMAS	KS	20193	1.60
TREGO	KS	20195	1.80
WABAUNSEE	KS	20197	1.90
WALLACE	KS	20199	1.60
WASHINGTON	KS	20201	1.90
WICHITA	KS	20203	1.80
WILSON	KS	20205	1.70
WOODSON	KS	20207	1.70
WYANDOTTE	KS	20209	1.90
ADAIR	KY	21001	1.95
ALLEN	KY	21003	2.05
ANDERSON	KY	21005	1.95
BALLARD	KY	21007	2.30
BARREN	KY	21009	2.05
BATH	KY	21011	2.05
BELL	KY	21013	2.15
BOONE	KY	21015	1.95
BOURBON	KY	21017	2.05
BOYD	KY	21019	2.20
BOYLE	KY	21021	1.95
BRACKEN	KY	21023	2.05
BREATHITT	KY	21025	2.15
BRECKINRIDGE	KY	21027	2.10
BULLITT	KY	21029	1.95
BUTLER	KY	21031	2.20
CALDWELL	KY	21033	2.30
CALLOWAY	KY	21035	2.30
CAMPBELL	KY	21037	2.05
CARLISLE	KY	21039	2.30
CARROLL	KY	21041	1.95
CARTER	KY	21043	2.20
CASEY	KY	21045	1.95
CHRISTIAN	KY	21047	2.20
CLARK	KY	21049	2.05
CLAY	KY	21051	2.15
CLINTON	KY	21053	2.15
CRITTENDEN	KY	21055	2.30
CUMBERLAND	KY	21057	2.05
DAVIESS	KY	21059	2.10
EDMONSON	KY	21061	2.05
ELLIOTT	KY	21063	2.05
ESTILL	KY	21065	2.05
FAYETTE	KY	21067	2.05
FLEMING	KY	21069	2.05
FLOYD	KY	21071	2.15
FRANKLIN	KY	21073	1.95
FULTON	KY	21075	2.30
GALLATIN	KY	21077	1.95
GARRARD	KY	21079	1.95

County/Parish/City	State	Fips__code	Class I differential adjusted for location
GRANT	KY	21081	1.95
GRAVES	KY	21083	2.30
GRAYSON	KY	21085	2.10
GREEN	KY	21087	1.95
GREENUP	KY	21089	2.20
HANCOCK	KY	21091	2.10
HARDIN	KY	21093	1.95
HARLAN	KY	21095	2.15
HARRISON	KY	21097	2.05
HART	KY	21099	1.95
HENDERSON	KY	21101	2.10
HENRY	KY	21103	1.95
HICKMAN	KY	21105	2.30
HOPKINS	KY	21107	2.20
JACKSON	KY	21109	1.95
JEFFERSON	KY	21111	1.95
JESSAMINE	KY	21113	1.95
JOHNSON	KY	21115	2.15
KENTON	KY	21117	2.05
KNOTT	KY	21119	2.15
KNOX	KY	21121	2.15
LARUE	KY	21123	1.95
LAUREL	KY	21125	2.15
LAWRENCE	KY	21127	2.15
LEE	KY	21129	2.05
LESLIE	KY	21131	2.15
LETCHER	KY	21133	2.15
LEWIS	KY	21135	2.05
LINCOLN	KY	21137	1.95
LIVINGSTON	KY	21139	2.30
LOGAN	KY	21141	2.20
LYON	KY	21143	2.30
MCCRACKEN	KY	21145	2.30
MCCREARY	KY	21147	2.15
MCLEAN	KY	21149	2.10
MADISON	KY	21151	2.05
MAGOFFIN	KY	21153	2.15
MARION	KY	21155	1.95
MARSHALL	KY	21157	2.30
MARTIN	KY	21159	2.15
MASON	KY	21161	2.05
MEADE	KY	21163	1.95
MENIFEE	KY	21165	2.05
MERCER	KY	21167	1.95
METCALFE	KY	21169	2.05
MONROE	KY	21171	2.05
MONTGOMERY	KY	21173	2.05
MORGAN	KY	21175	2.05
MUHLENBERG	KY	21177	2.20
NELSON	KY	21179	1.95
NICHOLAS	KY	21181	2.05
OHIO	KY	21183	2.10
OLDHAM	KY	21185	1.95
OWEN	KY	21187	1.95
OWSLEY	KY	21189	2.15
PENDLETON	KY	21191	2.05
PERRY	KY	21193	2.15
PIKE	KY	21195	2.15
POWELL	KY	21197	2.05
PULASKI	KY	21199	2.15
ROBERTSON	KY	21201	2.05
ROCKCASTLE	KY	21203	1.95
ROWAN	KY	21205	2.05
RUSSELL	KY	21207	1.95
SCOTT	KY	21209	2.05
SHELBY	KY	21211	1.95
SIMPSON	KY	21213	2.05
SPENCER	KY	21215	1.95
TAYLOR	KY	21217	1.95
TODD	KY	21219	2.20
TRIGG	KY	21221	2.30

County/Parish/City	State	Fips__code	Class I differential adjusted for location
TRIMBLE	KY	21223	1.95
UNION	KY	21225	2.10
WARREN	KY	21227	2.05
WASHINGTON	KY	21229	1.95
WAYNE	KY	21231	2.15
WEBSTER	KY	21233	2.10
WHITLEY	KY	21235	2.15
WOLFE	KY	21237	2.05
WOODFORD	KY	21239	1.95
ACADIA	LA	22001	3.05
ALLEN	LA	22003	2.85
ASCENSION	LA	22005	2.85
ASSUMPTION	LA	22007	3.05
AVOYELLES	LA	22009	2.85
BEAUREGARD	LA	22011	2.85
BIENVILLE	LA	22013	2.65
BOSSIER	LA	22015	2.35
CADDO	LA	22017	2.35
CALCASIEU	LA	22019	3.05
CALDWELL	LA	22021	2.75
CAMERON	LA	22023	3.05
CATAHOULA	LA	22025	2.85
CLAIBORNE	LA	22027	2.65
CONCORDIA	LA	22029	2.85
DE SOTO	LA	22031	2.65
EAST BATON ROUGE	LA	22033	2.85
EAST CARROLL	LA	22035	2.75
EAST FELICIANA	LA	22037	2.85
EVANGELINE	LA	22039	2.85
FRANKLIN	LA	22041	2.75
GRANT	LA	22043	2.75
IBERIA	LA	22045	3.05
IBERVILLE	LA	22047	2.85
JACKSON	LA	22049	2.75
JEFFERSON	LA	22051	3.05
JEFFERSON DAVIS	LA	22053	3.05
LAFAYETTE	LA	22055	3.05
LAFOURCHE	LA	22057	3.05
LA SALLE	LA	22059	2.75
LINCOLN	LA	22061	2.65
LIVINGSTON	LA	22063	2.85
MADISON	LA	22065	2.75
MOREHOUSE	LA	22067	2.75
NATCHITOCHES	LA	22069	2.75
ORLEANS	LA	22071	3.05
OUACHITA	LA	22073	2.75
PLAQUEMINES	LA	22075	3.05
POINTE COUPEE	LA	22077	2.85
RAPIDES	LA	22079	2.85
RED RIVER	LA	22081	2.65
RICHLAND	LA	22083	2.75
SABINE	LA	22085	2.75
ST. BERNARD	LA	22087	3.05
ST. CHARLES	LA	22089	3.05
ST. HELENA	LA	22091	2.85
ST. JAMES	LA	22093	2.85
ST. JOHN THE BAPTIST	LA	22095	2.85
ST. LANDRY	LA	22097	3.05
ST. MARTIN	LA	22099	3.05
ST. MARY	LA	22101	3.05
ST. TAMMANY	LA	22103	2.85
TANGIPAHOA	LA	22105	2.85
TENSAS	LA	22107	2.85
TERREBONNE	LA	22109	3.05
UNION	LA	22111	2.65
VERMILION	LA	22113	3.05
VERNON	LA	22115	2.85
WASHINGTON	LA	22117	2.85
WEBSTER	LA	22119	2.35
WEST BATON ROUGE	LA	22121	2.85
WEST CARROLL	LA	22123	2.75

County/Parish/City	State	Fips__code	Class I differential adjusted for location
WEST FELICIANA	LA	22125	2.85
WINN	LA	22127	2.75
ANDROSCOGGIN	ME	23001	2.20
AROOSTOOK	ME	23003	2.15
CUMBERLAND	ME	23005	2.30
FRANKLIN	ME	23007	2.15
HANCOCK	ME	23009	2.15
KENNEBEC	ME	23011	2.20
KNOX	ME	23013	2.20
LINCOLN	ME	23015	2.20
OXFORD	ME	23017	2.15
PENOBSCOT	ME	23019	2.15
PISCATAQUIS	ME	23021	2.15
SAGADAHOC	ME	23023	2.30
SOMERSET	ME	23025	2.15
WALDO	ME	23027	2.20
WASHINGTON	ME	23029	2.15
YORK	ME	23031	2.45
ALLEGANY	MD	24001	2.05
ANNE ARUNDEL	MD	24003	2.05
BALTIMORE	MD	24005	2.05
CALVERT	MD	24009	2.05
CAROLINE	MD	24011	2.10
CARROLL	MD	24013	2.05
CECIL	MD	24015	2.10
CHARLES	MD	24017	2.05
DORCHESTER	MD	24019	2.10
FREDERICK	MD	24021	2.05
GARRETT	MD	24023	2.05
HARFORD	MD	24025	2.05
HOWARD	MD	24027	2.05
KENT	MD	24029	2.10
MONTGOMERY	MD	24031	2.05
PRINCE GEORGE'S	MD	24033	2.05
QUEEN ANNE'S	MD	24035	2.10
ST. MARY'S	MD	24037	2.05
SOMERSET	MD	24039	2.10
TALBOT	MD	24041	2.10
WASHINGTON	MD	24043	2.05
WICOMICO	MD	24045	2.10
WORCESTER	MD	24047	2.10
BALTIMORE CITY	MD	24510	2.05
BARNSTABLE	MA	25001	2.75
BERKSHIRE	MA	25003	2.30
BRISTOL	MA	25005	2.75
DUKES	MA	25007	2.75
ESSEX	MA	25009	2.75
FRANKLIN	MA	25011	2.40
HAMPDEN	MA	25013	2.40
HAMPSHIRE	MA	25015	2.40
MIDDLESEX	MA	25017	2.75
NANTUCKET	MA	25019	2.75
NORFOLK	MA	25021	2.75
PLYMOUTH	MA	25023	2.75
SUFFOLK	MA	25025	2.75
WORCESTER	MA	25027	2.60
ALCONA	MI	26001	1.50
ALGER	MI	26003	1.60
ALLEGAN	MI	26005	1.80
ALPENA	MI	26007	1.35
ANTRIM	MI	26009	1.35
ARENAC	MI	26011	1.70
BARAGA	MI	26013	1.50
BARRY	MI	26015	1.80
BAY	MI	26017	1.70
BENZIE	MI	26019	1.50
BERRIEN	MI	26021	1.80
BRANCH	MI	26023	1.80
CALHOUN	MI	26025	1.80
CASS	MI	26027	1.80
CHARLEVOIX	MI	26029	1.35

County/Parish/City	State	Fips__code	Class I differential adjusted for location
CHEBOYGAN	MI	26031	1.35
CHIPPEWA	MI	26033	1.70
CLARE	MI	26035	1.70
CLINTON	MI	26037	1.80
CRAWFORD	MI	26039	1.50
DELTA	MI	26041	1.60
DICKINSON	MI	26043	1.40
EATON	MI	26045	1.80
EMMET	MI	26047	1.35
GENESEE	MI	26049	1.85
GLADWIN	MI	26051	1.70
GOGEBIC	MI	26053	1.40
GRAND TRAVERSE	MI	26055	1.50
GRATIOT	MI	26057	1.70
HILLSDALE	MI	26059	1.80
HOUGHTON	MI	26061	1.50
HURON	MI	26063	1.85
INGHAM	MI	26065	1.80
IONIA	MI	26067	1.80
IOSCO	MI	26069	1.50
IRON	MI	26071	1.40
ISABELLA	MI	26073	1.70
JACKSON	MI	26075	1.80
KALAMAZOO	MI	26077	1.80
KALKASKA	MI	26079	1.50
KENT	MI	26081	1.70
KEWEENAW	MI	26083	1.50
LAKE	MI	26085	1.70
LAPEER	MI	26087	1.85
LEELANAU	MI	26089	1.50
LENAWEE	MI	26091	1.80
LIVINGSTON	MI	26093	1.85
LUCE	MI	26095	1.70
MACKINAC	MI	26097	1.70
MACOMB	MI	26099	1.85
MANISTEE	MI	26101	1.50
MARQUETTE	MI	26103	1.50
MASON	MI	26105	1.70
MECOSTA	MI	26107	1.70
MENOMINEE	MI	26109	1.50
MIDLAND	MI	26111	1.70
MISSAUKEE	MI	26113	1.50
MONROE	MI	26115	1.85
MONTCALM	MI	26117	1.70
MONTMORENCY	MI	26119	1.35
MUSKEGON	MI	26121	1.70
NEWAYGO	MI	26123	1.70
OAKLAND	MI	26125	1.85
OCEANA	MI	26127	1.70
OGEMAW	MI	26129	1.50
ONTONAGON	MI	26131	1.40
OSCEOLA	MI	26133	1.70
OSCODA	MI	26135	1.50
OTSEGO	MI	26137	1.35
OTTAWA	MI	26139	1.70
PRESQUE ISLE	MI	26141	1.35
ROSCOMMON	MI	26143	1.50
SAGINAW	MI	26145	1.85
ST. CLAIR	MI	26147	1.85
ST. JOSEPH	MI	26149	1.80
SANILAC	MI	26151	1.85
SCHOOLCRAFT	MI	26153	1.60
SHIAWASSEE	MI	26155	1.85
TUSCOLA	MI	26157	1.85
VAN BUREN	MI	26159	1.80
WASHTENAW	MI	26161	1.85
WAYNE	MI	26163	1.85
WEXFORD	MI	26165	1.50
AITKIN	MN	27001	1.30
ANOKA	MN	27003	1.60
BECKER	MN	27005	1.40

County/Parish/City	State	Fips_code	Class I differential adjusted for location
BELTRAMI	MN	27007	1.10
BENTON	MN	27009	1.50
BIG STONE	MN	27011	1.50
BLUE EARTH	MN	27013	1.60
BROWN	MN	27015	1.60
CARLTON	MN	27017	1.65
CARVER	MN	27019	1.60
CASS	MN	27021	1.30
CHIPPEWA	MN	27023	1.50
CHISAGO	MN	27025	1.60
CLAY	MN	27027	1.40
CLEARWATER	MN	27029	1.10
COOK	MN	27031	1.65
COTTONWOOD	MN	27033	1.60
CROW WING	MN	27035	1.30
DAKOTA	MN	27037	1.60
DODGE	MN	27039	1.60
DOUGLAS	MN	27041	1.50
FARIBAULT	MN	27043	1.60
FILLMORE	MN	27045	1.60
FREEBORN	MN	27047	1.60
GOODHUE	MN	27049	1.60
GRANT	MN	27051	1.50
HENNEPIN	MN	27053	1.60
HOUSTON	MN	27055	1.60
HUBBARD	MN	27057	1.30
ISANTI	MN	27059	1.60
ITASCA	MN	27061	1.30
JACKSON	MN	27063	1.60
KANABEC	MN	27065	1.50
KANDIYOHI	MN	27067	1.50
KITTSON	MN	27069	1.10
KOOCHICHING	MN	27071	1.30
LAC QUI PARLE	MN	27073	1.50
LAKE	MN	27075	1.65
LAKE OF THE WOODS	MN	27077	1.10
LE SUEUR	MN	27079	1.60
LINCOLN	MN	27081	1.50
LYON	MN	27083	1.50
MCLEOD	MN	27085	1.60
MAHNOMEN	MN	27087	1.40
MARSHALL	MN	27089	1.10
MARTIN	MN	27091	1.60
MEEKER	MN	27093	1.60
MILLE LACS	MN	27095	1.50
MORRISON	MN	27097	1.50
MOWER	MN	27099	1.60
MURRAY	MN	27101	1.60
NICOLLET	MN	27103	1.60
NOBLES	MN	27105	1.60
NORMAN	MN	27107	1.40
OLMSTED	MN	27109	1.60
OTTER TAIL	MN	27111	1.40
PENNINGTON	MN	27113	1.10
PINE	MN	27115	1.65
PIPESTONE	MN	27117	1.60
POLK	MN	27119	1.40
POPE	MN	27121	1.50
RAMSEY	MN	27123	1.60
RED LAKE	MN	27125	1.10
REDWOOD	MN	27127	1.60
RENVILLE	MN	27129	1.60
RICE	MN	27131	1.60
ROCK	MN	27133	1.60
ROSEAU	MN	27135	1.10
ST. LOUIS	MN	27137	1.65
SCOTT	MN	27139	1.60
SHERBURNE	MN	27141	1.60
SIBLEY	MN	27143	1.60
STEARNS	MN	27145	1.50
STEELE	MN	27147	1.60

County/Parish/City	State	Fips_code	Class I differential adjusted for location
STEVENS	MN	27149	1.50
SWIFT	MN	27151	1.50
TODD	MN	27153	1.50
TRAVERSE	MN	27155	1.50
WABASHA	MN	27157	1.60
WADENA	MN	27159	1.30
WASECA	MN	27161	1.60
WASHINGTON	MN	27163	1.60
WATONWAN	MN	27165	1.60
WILKIN	MN	27167	1.40
WINONA	MN	27169	1.60
WRIGHT	MN	27171	1.60
YELLOW MEDICINE	MN	27173	1.50
ADAMS	MS	28001	2.85
ALCORN	MS	28003	2.70
AMITE	MS	28005	2.85
ATTALA	MS	28007	2.85
BENTON	MS	28009	2.70
BOLIVAR	MS	28011	2.85
CALHOUN	MS	28013	2.85
CARROLL	MS	28015	2.85
CHICKASAW	MS	28017	2.85
CHOCTAW	MS	28019	2.85
CLAIBORNE	MS	28021	2.85
CLARKE	MS	28023	3.10
CLAY	MS	28025	2.85
COAHOMA	MS	28027	2.85
COPIAH	MS	28029	2.85
COVINGTON	MS	28031	3.00
DE SOTO	MS	28033	2.85
FORREST	MS	28035	3.10
FRANKLIN	MS	28037	2.85
GEORGE	MS	28039	3.00
GREENE	MS	28041	3.10
GRENADA	MS	28043	2.85
HANCOCK	MS	28045	3.00
HARRISON	MS	28047	3.00
HINDS	MS	28049	2.85
HOLMES	MS	28051	2.85
HUMPHREYS	MS	28053	2.85
ISSAQUENA	MS	28055	2.85
ITAWAMBA	MS	28057	2.55
JACKSON	MS	28059	3.00
JASPER	MS	28061	3.10
JEFFERSON	MS	28063	2.85
JEFFERSON DAVIS	MS	28065	3.00
JONES	MS	28067	3.10
KEMPER	MS	28069	2.70
LAFAYETTE	MS	28071	2.85
LAMAR	MS	28073	3.00
LAUDERDALE	MS	28075	2.70
LAWRENCE	MS	28077	2.85
LEAKE	MS	28079	2.70
LEE	MS	28081	2.70
LEFLORE	MS	28083	2.85
LINCOLN	MS	28085	2.85
LOWNDES	MS	28087	2.70
MADISON	MS	28089	2.85
MARION	MS	28091	3.00
MARSHALL	MS	28093	2.85
MONROE	MS	28095	2.70
MONTGOMERY	MS	28097	2.85
NESHOBA	MS	28099	2.70
NEWTON	MS	28101	2.70
NOXUBEE	MS	28103	2.70
OKTIBBEHA	MS	28105	2.70
PANOLA	MS	28107	2.85
PEARL RIVER	MS	28109	3.00
PERRY	MS	28111	3.10
PIKE	MS	28113	2.85
PONTOTOC	MS	28115	2.85

County/Parish/City	State	Fips__code	Class I differential adjusted for location
PRENTISS	MS	28117	2.70
QUITMAN	MS	28119	2.85
RANKIN	MS	28121	2.85
SCOTT	MS	28123	2.70
SHARKEY	MS	28125	2.85
SIMPSON	MS	28127	2.85
SMITH	MS	28129	3.00
STONE	MS	28131	3.00
SUNFLOWER	MS	28133	2.85
TALLAHATCHIE	MS	28135	2.85
TATE	MS	28137	2.85
TIPPAH	MS	28139	2.70
TISHOMINGO	MS	28141	2.50
TUNICA	MS	28143	2.85
UNION	MS	28145	2.70
WALTHALL	MS	28147	2.85
WARREN	MS	28149	2.85
WASHINGTON	MS	28151	2.85
WAYNE	MS	28153	3.10
WEBSTER	MS	28155	2.85
WILKINSON	MS	28157	2.85
WINSTON	MS	28159	2.70
YALOBUSHA	MS	28161	2.85
YAZOO	MS	28163	2.85
ADAIR	MO	29001	1.90
ANDREW	MO	29003	1.90
ATCHISON	MO	29005	1.90
AUDRAIN	MO	29007	2.00
BARRY	MO	29009	1.70
BARTON	MO	29011	1.70
BATES	MO	29013	1.70
BENTON	MO	29015	1.90
BOLLINGER	MO	29017	2.10
BOONE	MO	29019	2.00
BUCHANAN	MO	29021	1.90
BUTLER	MO	29023	2.10
CALDWELL	MO	29025	1.90
CALLAWAY	MO	29027	2.00
CAMDEN	MO	29029	1.90
CAPE GIRARDEAU	MO	29031	2.10
CARROLL	MO	29033	1.90
CARTER	MO	29035	2.10
CASS	MO	29037	1.90
CEDAR	MO	29039	1.70
CHARITON	MO	29041	1.90
CHRISTIAN	MO	29043	1.70
CLARK	MO	29045	1.90
CLAY	MO	29047	1.90
CLINTON	MO	29049	1.90
COLE	MO	29051	2.00
COOPER	MO	29053	1.90
CRAWFORD	MO	29055	1.90
DADE	MO	29057	1.70
DALLAS	MO	29059	1.70
DAVIESS	MO	29061	1.90
DE KALB	MO	29063	1.90
DENT	MO	29065	1.90
DOUGLAS	MO	29067	1.70
DUNKLIN	MO	29069	2.35
FRANKLIN	MO	29071	2.00
GASCONADE	MO	29073	2.00
GENTRY	MO	29075	1.90
GREENE	MO	29077	1.70
GRUNDY	MO	29079	1.90
HARRISON	MO	29081	1.90
HENRY	MO	29083	1.70
HICKORY	MO	29085	1.70
HOLT	MO	29087	1.90
HOWARD	MO	29089	1.90
HOWELL	MO	29091	1.90
IRON	MO	29093	2.10

County/Parish/City	State	Fips__code	Class I differential adjusted for location
JACKSON	MO	29095	1.90
JASPER	MO	29097	1.70
JEFFERSON	MO	29099	2.10
JOHNSON	MO	29101	1.90
KNOX	MO	29103	1.90
LACLEDE	MO	29105	1.70
LAFAYETTE	MO	29107	1.90
LAWRENCE	MO	29109	1.70
LEWIS	MO	29111	1.90
LINCOLN	MO	29113	2.00
LINN	MO	29115	1.90
LIVINGSTON	MO	29117	1.90
MCDONALD	MO	29119	1.70
MACON	MO	29121	1.90
MADISON	MO	29123	2.10
MARIES	MO	29125	1.90
MARION	MO	29127	2.00
MERCER	MO	29129	1.90
MILLER	MO	29131	1.90
MISSISSIPPI	MO	29133	2.10
MONITEAU	MO	29135	2.00
MONROE	MO	29137	2.00
MONTGOMERY	MO	29139	2.00
MORGAN	MO	29141	1.90
NEW MADRID	MO	29143	2.35
NEWTON	MO	29145	1.70
NODAWAY	MO	29147	1.90
OREGON	MO	29149	2.10
OSAGE	MO	29151	2.00
OZARK	MO	29153	1.90
PEMISCOT	MO	29155	2.35
PERRY	MO	29157	2.10
PETTIS	MO	29159	1.90
PHELPS	MO	29161	1.90
PIKE	MO	29163	2.00
PLATTE	MO	29165	1.90
POLK	MO	29167	1.70
PULASKI	MO	29169	1.90
PUTNAM	MO	29171	1.90
RALLS	MO	29173	2.00
RANDOLPH	MO	29175	1.90
RAY	MO	29177	1.90
REYNOLDS	MO	29179	2.10
RIPLEY	MO	29181	2.10
ST. CHARLES	MO	29183	2.00
ST. CLAIR	MO	29185	1.70
STE. GENEVIEVE	MO	29186	2.10
ST. FRANCOIS	MO	29187	2.10
ST. LOUIS	MO	29189	2.10
SALINE	MO	29195	1.90
SCHUYLER	MO	29197	1.90
SCOTLAND	MO	29199	1.90
SCOTT	MO	29201	2.10
SHANNON	MO	29203	1.90
SHELBY	MO	29205	1.90
STODDARD	MO	29207	2.10
STONE	MO	29209	1.70
SULLIVAN	MO	29211	1.90
TANEY	MO	29213	1.70
TEXAS	MO	29215	1.90
VERNON	MO	29217	1.70
WARREN	MO	29219	2.00
WASHINGTON	MO	29221	2.10
WAYNE	MO	29223	2.10
WEBSTER	MO	29225	1.70
WORTH	MO	29227	1.90
WRIGHT	MO	29229	1.70
ST. LOUIS CITY	MO	29510	2.10
BEAVERHEAD	MT	30001	1.40
BIG HORN	MT	30003	1.50
BLAINE	MT	30005	1.65

County/Parish/City	State	Fips__code	Class I differential adjusted for location
BROADWATER	MT	30007	1.40
CARBON	MT	30009	1.40
CARTER	MT	30011	1.40
CASCADE	MT	30013	1.75
CHOUTEAU	MT	30015	1.75
CUSTER	MT	30017	1.50
DANIELS	MT	30019	1.50
DAWSON	MT	30021	1.50
DEER LODGE	MT	30023	1.40
FALLON	MT	30025	1.40
FERGUS	MT	30027	1.65
FLATHEAD	MT	30029	1.50
GALLATIN	MT	30031	1.40
GARFIELD	MT	30033	1.65
GLACIER	MT	30035	1.65
GOLDEN VALLEY	MT	30037	1.65
GRANITE	MT	30039	1.65
HILL	MT	30041	1.75
JEFFERSON	MT	30043	1.40
JUDITH BASIN	MT	30045	1.65
LAKE	MT	30047	1.50
LEWIS AND CLARK	MT	30049	1.65
LIBERTY	MT	30051	1.75
LINCOLN	MT	30053	1.50
MCCONE	MT	30055	1.50
MADISON	MT	30057	1.40
MEAGHER	MT	30059	1.40
MINERAL	MT	30061	1.50
MISSOULA	MT	30063	1.50
MUSSELSHELL	MT	30065	1.65
PARK	MT	30067	1.40
PETROLEUM	MT	30069	1.65
PHILLIPS	MT	30071	1.65
PONDERA	MT	30073	1.65
POWDER RIVER	MT	30075	1.40
POWELL	MT	30077	1.65
PRAIRIE	MT	30079	1.50
RAVALLI	MT	30081	1.65
RICHLAND	MT	30083	1.50
ROOSEVELT	MT	30085	1.50
ROSEBUD	MT	30087	1.50
SANDERS	MT	30089	1.50
SHERIDAN	MT	30091	1.50
SILVER BOW	MT	30093	1.40
STILLWATER	MT	30095	1.40
SWEET GRASS	MT	30097	1.40
TETON	MT	30099	1.65
TOOLE	MT	30101	1.65
TREASURE	MT	30103	1.50
VALLEY	MT	30105	1.65
WHEATLAND	MT	30107	1.65
WIBAUX	MT	30109	1.40
YELLOWSTONE	MT	30111	1.65
YELLOWSTONE NATIONAL			
PARK	MT	30113	1.40
ADAMS	NE	31001	1.60
ANTELOPE	NE	31003	1.60
ARTHUR	NE	31005	1.40
BANNER	NE	31007	1.40
BLAINE	NE	31009	1.50
BOONE	NE	31011	1.60
BOX BUTTE	NE	31013	1.40
BOYD	NE	31015	1.50
BROWN	NE	31017	1.50
BUFFALO	NE	31019	1.60
BURT	NE	31021	1.80
BUTLER	NE	31023	1.80
CASS	NE	31025	1.90
CEDAR	NE	31027	1.60

County/Parish/City	State	Fips__code	Class I differential adjusted for location
CHASE	NE	31029	1.50
CHERRY	NE	31031	1.40
CHEYENNE	NE	31033	1.40
CLAY	NE	31035	1.80
COLFAX	NE	31037	1.80
CUMING	NE	31039	1.80
CUSTER	NE	31041	1.50
DAKOTA	NE	31043	1.80
DAWES	NE	31045	1.40
DAWSON	NE	31047	1.60
DEUEL	NE	31049	1.40
DIXON	NE	31051	1.60
DODGE	NE	31053	1.80
DOUGLAS	NE	31055	1.90
DUNDY	NE	31057	1.60
FILLMORE	NE	31059	1.80
FRANKLIN	NE	31061	1.60
FRONTIER	NE	31063	1.60
FURNAS	NE	31065	1.60
GAGE	NE	31067	1.90
GARDEN	NE	31069	1.40
GARFIELD	NE	31071	1.50
GOSPER	NE	31073	1.60
GRANT	NE	31075	1.40
GREELEY	NE	31077	1.60
HALL	NE	31079	1.60
HAMILTON	NE	31081	1.80
HARLAN	NE	31083	1.60
HAYES	NE	31085	1.60
HITCHCOCK	NE	31087	1.60
HOLT	NE	31089	1.50
HOOKER	NE	31091	1.40
HOWARD	NE	31093	1.60
JEFFERSON	NE	31095	1.80
JOHNSON	NE	31097	1.90
KEARNEY	NE	31099	1.60
KEITH	NE	31101	1.40
KEYA PAHA	NE	31103	1.50
KIMBALL	NE	31105	1.40
KNOX	NE	31107	1.60
LANCASTER	NE	31109	1.80
LINCOLN	NE	31111	1.50
LOGAN	NE	31113	1.50
LOUP	NE	31115	1.50
MCPHERSON	NE	31117	1.50
MADISON	NE	31119	1.80
MERRICK	NE	31121	1.60
MORRILL	NE	31123	1.40
NANCE	NE	31125	1.60
NEMAHA	NE	31127	1.90
NUCKOLLS	NE	31129	1.60
OTOE	NE	31131	1.90
PAWNEE	NE	31133	1.90
PERKINS	NE	31135	1.50
PHELPS	NE	31137	1.60
PIERCE	NE	31139	1.60
PLATTE	NE	31141	1.80
POLK	NE	31143	1.80
RED WILLOW	NE	31145	1.60
RICHARDSON	NE	31147	1.90
ROCK	NE	31149	1.50
SALINE	NE	31151	1.80
SARPY	NE	31153	1.90
SAUNDERS	NE	31155	1.80
SCOTTS BLUFF	NE	31157	1.40
SEWARD	NE	31159	1.80
SHERIDAN	NE	31161	1.40
SHERMAN	NE	31163	1.60
SIOUX	NE	31165	1.40
STANTON	NE	31167	1.60
THAYER	NE	31169	1.80

County/Parish/City	State	Fips__code	Class I differential adjusted for location
THOMAS	NE	31171	1.40
THURSTON	NE	31173	1.80
VALLEY	NE	31175	1.60
WASHINGTON	NE	31177	1.90
WAYNE	NE	31179	1.60
WEBSTER	NE	31181	1.60
WHEELER	NE	31183	1.60
YORK	NE	31185	1.80
CHURCHILL	NV	32001	1.40
CLARK	NV	32003	2.25
DOUGLAS	NV	32005	1.20
ELKO	NV	32007	1.40
ESMERALDA	NV	32009	1.50
EUREKA	NV	32011	1.40
HUMBOLDT	NV	32013	1.40
LANDER	NV	32015	1.40
LINCOLN	NV	32017	1.80
LYON	NV	32019	1.20
MINERAL	NV	32021	1.20
NYE	NV	32023	1.50
PERSHING	NV	32027	1.40
STOREY	NV	32029	1.20
WASHOE	NV	32031	1.40
WHITE PINE	NV	32033	1.50
CARSON CITY	NV	32510	1.20
BELKNAP	NH	33001	2.30
CARROLL	NH	33003	2.15
CHESHIRE	NH	33005	2.50
COOS	NH	33007	1.95
GRAFTON	NH	33009	2.15
HILLSBOROUGH	NH	33011	2.60
MERRIMACK	NH	33013	2.45
ROCKINGHAM	NH	33015	2.60
STRAFFORD	NH	33017	2.45
SULLIVAN	NH	33019	2.30
ATLANTIC	NJ	34001	2.20
BERGEN	NJ	34003	2.50
BURLINGTON	NJ	34005	2.20
CAMDEN	NJ	34007	2.20
CAPE MAY	NJ	34009	2.20
CUMBERLAND	NJ	34011	2.20
ESSEX	NJ	34013	2.50
GLOUCESTER	NJ	34015	2.20
HUDSON	NJ	34017	2.50
HUNTERDON	NJ	34019	2.30
MERCER	NJ	34021	2.30
MIDDLESEX	NJ	34023	2.30
MONMOUTH	NJ	34025	2.30
MORRIS	NJ	34027	2.30
OCEAN	NJ	34029	2.30
PASSAIC	NJ	34031	2.50
SALEM	NJ	34033	2.20
SOMERSET	NJ	34035	2.30
SUSSEX	NJ	34037	2.30
UNION	NJ	34039	2.50
WARREN	NJ	34041	2.30
BERNALILLO	NM	35001	2.30
CATRON	NM	35003	1.90
CHAVES	NM	35005	1.60
CIBOLA	NM	35006	1.90
COLFAX	NM	35007	1.90
CURRY	NM	35009	1.60
DE BACA	NM	35011	1.60
DONA ANA	NM	35013	1.60
EDDY	NM	35015	1.60
GRANT	NM	35017	1.60
GUADALUPE	NM	35019	1.90
HARDING	NM	35021	1.90
HIDALGO	NM	35023	1.60
LEA	NM	35025	1.60
LINCOLN	NM	35027	1.90

County/Parish/City	State	Fips__code	Class I differential adjusted for location
LOS ALAMOS	NM	35028	2.30
LUNA	NM	35029	1.60
MCKINLEY	NM	35031	1.90
MORA	NM	35033	1.90
OTERO	NM	35035	1.60
QUAY	NM	35037	1.60
RIO ARRIBA	NM	35039	2.20
ROOSEVELT	NM	35041	1.60
SANDOVAL	NM	35043	2.30
SAN JUAN	NM	35045	2.20
SAN MIGUEL	NM	35047	1.90
SANTA FE	NM	35049	2.30
SIERRA	NM	35051	1.90
SOCORRO	NM	35053	1.90
TAOS	NM	35055	1.90
TORRANCE	NM	35057	1.90
UNION	NM	35059	1.90
VALENCIA	NM	35061	1.90
ALBANY	NY	36001	2.15
ALLEGANY	NY	36003	1.85
BRONX	NY	36005	2.50
BROOME	NY	36007	1.90
CATTARAUGUS	NY	36009	1.60
CAYUGA	NY	36011	1.85
CHAUTAUQUA	NY	36013	1.60
CHEMUNG	NY	36015	1.85
CHENANGO	NY	36017	1.85
CLINTON	NY	36019	1.95
COLUMBIA	NY	36021	2.15
CORTLAND	NY	36023	1.85
DELAWARE	NY	36025	2.15
DUTCHESS	NY	36027	2.30
ERIE	NY	36029	1.85
ESSEX	NY	36031	2.05
FRANKLIN	NY	36033	1.85
FULTON	NY	36035	2.05
GENESEE	NY	36037	1.85
GREENE	NY	36039	2.15
HAMILTON	NY	36041	1.95
HERKIMER	NY	36043	1.95
JEFFERSON	NY	36045	1.85
KINGS	NY	36047	2.50
LEWIS	NY	36049	1.85
LIVINGSTON	NY	36051	1.85
MADISON	NY	36053	1.85
MONROE	NY	36055	1.85
MONTGOMERY	NY	36057	2.05
NASSAU	NY	36059	2.50
NEW YORK	NY	36061	2.50
NIAGARA	NY	36063	1.85
ONEIDA	NY	36065	1.85
ONONDAGA	NY	36067	1.85
ONTARIO	NY	36069	1.85
ORANGE	NY	36071	2.30
ORLEANS	NY	36073	1.85
OSWEGO	NY	36075	1.85
OTSEGO	NY	36077	1.95
PUTNAM	NY	36079	2.30
QUEENS	NY	36081	2.50
RENSSELAER	NY	36083	2.15
RICHMOND	NY	36085	2.50
ROCKLAND	NY	36087	2.50
ST. LAWRENCE	NY	36089	1.85
SARATOGA	NY	36091	2.05
SCHENECTADY	NY	36093	2.15
SCHOHARIE	NY	36095	2.05
SCHUYLER	NY	36097	1.85
SENECA	NY	36099	1.85
STEUBEN	NY	36101	1.85
SUFFOLK	NY	36103	2.50
SULLIVAN	NY	36105	2.15

County/Parish/City	State	Fips_code	Class I differential adjusted for location
TIOGA	NY	36107	1.90
TOMPKINS	NY	36109	1.85
ULSTER	NY	36111	2.15
WARREN	NY	36113	1.95
WASHINGTON	NY	36115	2.05
WAYNE	NY	36117	1.85
WESTCHESTER	NY	36119	2.50
WYOMING	NY	36121	1.85
YATES	NY	36123	1.85
ALAMANCE	NC	37001	2.35
ALEXANDER	NC	37003	2.35
ALLEGHANY	NC	37005	2.35
ANSON	NC	37007	2.55
ASHE	NC	37009	2.25
AVERY	NC	37011	2.25
BEAUFORT	NC	37013	2.65
BERTIE	NC	37015	2.65
BLADEN	NC	37017	2.80
BRUNSWICK	NC	37019	2.85
BUNCOMBE	NC	37021	2.55
BURKE	NC	37023	2.35
CABARRUS	NC	37025	2.55
CALDWELL	NC	37027	2.35
CAMDEN	NC	37029	2.55
CARTERET	NC	37031	2.85
CASWELL	NC	37033	2.35
CATAWBA	NC	37035	2.35
CHATHAM	NC	37037	2.35
CHEROKEE	NC	37039	2.55
CHOWAN	NC	37041	2.55
CLAY	NC	37043	2.55
CLEVELAND	NC	37045	2.55
COLUMBUS	NC	37047	3.00
CRAVEN	NC	37049	2.85
CUMBERLAND	NC	37051	2.80
CURRITUCK	NC	37053	2.55
DARE	NC	37055	2.65
DAVIDSON	NC	37057	2.35
DAVIE	NC	37059	2.35
DUPLIN	NC	37061	2.85
DURHAM	NC	37063	2.35
EDGECOMBE	NC	37065	2.65
FORSYTH	NC	37067	2.35
FRANKLIN	NC	37069	2.55
GASTON	NC	37071	2.55
GATES	NC	37073	2.55
GRAHAM	NC	37075	2.55
GRANVILLE	NC	37077	2.55
GREENE	NC	37079	2.65
GUILFORD	NC	37081	2.35
HALIFAX	NC	37083	2.55
HARNETT	NC	37085	2.55
HAYWOOD	NC	37087	2.55
HENDERSON	NC	37089	2.55
HERTFORD	NC	37091	2.55
HOKE	NC	37093	2.80
HYDE	NC	37095	2.65
IREDELL	NC	37097	2.35
JACKSON	NC	37099	2.55
JOHNSTON	NC	37101	2.65
JONES	NC	37103	2.85
LEE	NC	37105	2.55
LENOIR	NC	37107	2.85
LINCOLN	NC	37109	2.35
MCDOWELL	NC	37111	2.35
MACON	NC	37113	2.55
MADISON	NC	37115	2.25
MARTIN	NC	37117	2.65
MECKLENBURG	NC	37119	2.55
MITCHELL	NC	37121	2.25
MONTGOMERY	NC	37123	2.55

County/Parish/City	State	Fips_code	Class I differential adjusted for location
MOORE	NC	37125	2.55
NASH	NC	37127	2.65
NEW HANOVER	NC	37129	2.85
NORTHAMPTON	NC	37131	2.55
ONSLOW	NC	37133	2.85
ORANGE	NC	37135	2.35
PAMLICO	NC	37137	2.85
PASQUOTANK	NC	37139	2.55
PENDER	NC	37141	2.85
PERQUIMANS	NC	37143	2.55
PERSON	NC	37145	2.35
PITT	NC	37147	2.65
POLK	NC	37149	2.55
RANDOLPH	NC	37151	2.35
RICHMOND	NC	37153	2.55
ROBESON	NC	37155	3.00
ROCKINGHAM	NC	37157	2.35
ROWAN	NC	37159	2.35
RUTHERFORD	NC	37161	2.55
SAMPSON	NC	37163	2.80
SCOTLAND	NC	37165	2.80
STANLY	NC	37167	2.55
STOKES	NC	37169	2.35
SURRY	NC	37171	2.35
SWAIN	NC	37173	2.25
TRANSYLVANIA	NC	37175	2.55
TYRRELL	NC	37177	2.65
UNION	NC	37179	2.55
VANCE	NC	37181	2.55
WAKE	NC	37183	2.55
WARREN	NC	37185	2.55
WASHINGTON	NC	37187	2.65
WATAUGA	NC	37189	2.25
WAYNE	NC	37191	2.65
WILKES	NC	37193	2.35
WILSON	NC	37195	2.65
YADKIN	NC	37197	2.35
YANCEY	NC	37199	2.25
ADAMS	ND	38001	1.40
BARNES	ND	38003	1.40
BENSON	ND	38005	1.40
BILLINGS	ND	38007	1.40
BOTTINEAU	ND	38009	1.40
BOWMAN	ND	38011	1.40
BURKE	ND	38013	1.40
BURLEIGH	ND	38015	1.40
CASS	ND	38017	1.40
CAVALIER	ND	38019	1.40
DICKEY	ND	38021	1.40
DIVIDE	ND	38023	1.40
DUNN	ND	38025	1.40
EDDY	ND	38027	1.40
EMMONS	ND	38029	1.40
FOSTER	ND	38031	1.40
GOLDEN VALLEY	ND	38033	1.40
GRAND FORKS	ND	38035	1.40
GRANT	ND	38037	1.40
GRIGGS	ND	38039	1.40
HETTINGER	ND	38041	1.40
KIDDER	ND	38043	1.40
LA MOURE	ND	38045	1.40
LOGAN	ND	38047	1.40
MCHENRY	ND	38049	1.40
MCINTOSH	ND	38051	1.40
MCKENZIE	ND	38053	1.40
MCLEAN	ND	38055	1.40
MERCER	ND	38057	1.40
MORTON	ND	38059	1.40
MOUNTRAIL	ND	38061	1.40
NELSON	ND	38063	1.40
OLIVER	ND	38065	1.40

County/Parish/City	State	Fips_code	Class I differential adjusted for location
PEMBINA	ND	38067	1.40
PIERCE	ND	38069	1.40
RAMSEY	ND	38071	1.40
RANSOM	ND	38073	1.40
RENVILLE	ND	38075	1.40
RICHLAND	ND	38077	1.40
ROLETTE	ND	38079	1.40
SARGENT	ND	38081	1.40
SHERIDAN	ND	38083	1.40
SIOUX	ND	38085	1.40
SLOPE	ND	38087	1.40
STARK	ND	38089	1.40
STEELE	ND	38091	1.40
STUTSMAN	ND	38093	1.40
TOWNER	ND	38095	1.40
TRAILL	ND	38097	1.40
WALSH	ND	38099	1.40
WARD	ND	38101	1.40
WELLS	ND	38103	1.40
WILLIAMS	ND	38105	1.40
ADAMS	OH	39001	2.05
ALLEN	OH	39003	2.00
ASHLAND	OH	39005	2.00
ASHTABULA	OH	39007	2.00
ATHENS	OH	39009	2.00
AUGLAIZE	OH	39011	2.00
BELMONT	OH	39013	2.00
BROWN	OH	39015	2.05
BUTLER	OH	39017	2.05
CARROLL	OH	39019	1.95
CHAMPAIGN	OH	39021	2.00
CLARK	OH	39023	2.00
CLERMONT	OH	39025	2.05
CLINTON	OH	39027	2.05
COLUMBIANA	OH	39029	1.95
COSHOCTON	OH	39031	1.95
CRAWFORD	OH	39033	2.00
CUYAHOGA	OH	39035	2.00
DARKE	OH	39037	2.00
DEFIANCE	OH	39039	1.80
DELAWARE	OH	39041	2.00
ERIE	OH	39043	2.00
FAIRFIELD	OH	39045	2.00
FAYETTE	OH	39047	2.00
FRANKLIN	OH	39049	2.00
FULTON	OH	39051	1.85
GALLIA	OH	39053	2.20
GEAUGA	OH	39055	2.00
GREENE	OH	39057	2.00
GUERNSEY	OH	39059	2.00
HAMILTON	OH	39061	2.05
HANCOCK	OH	39063	2.00
HARDIN	OH	39065	2.00
HARRISON	OH	39067	1.95
HENRY	OH	39069	1.85
HIGHLAND	OH	39071	2.05
HOCKING	OH	39073	2.00
HOLMES	OH	39075	1.95
HURON	OH	39077	2.00
JACKSON	OH	39079	2.05
JEFFERSON	OH	39081	1.95
KNOX	OH	39083	2.00
LAKE	OH	39085	2.00
LAWRENCE	OH	39087	2.20
LICKING	OH	39089	2.00
LOGAN	OH	39091	2.00
LORAIN	OH	39093	2.00
LUCAS	OH	39095	1.85
MADISON	OH	39097	2.00
MAHONING	OH	39099	1.95
MARION	OH	39101	2.00

County/Parish/City	State	Fips_code	Class I differential adjusted for location
MEDINA	OH	39103	2.00
MEIGS	OH	39105	2.05
MERCER	OH	39107	2.00
MIAMI	OH	39109	2.00
MONROE	OH	39111	2.00
MONTGOMERY	OH	39113	2.00
MORGAN	OH	39115	2.00
MORROW	OH	39117	2.00
MUSKINGUM	OH	39119	2.00
NOBLE	OH	39121	2.00
OTTA	OH	39123	1.85
PAULDING	OH	39125	1.80
PERRY	OH	39127	2.00
PICKAWAY	OH	39129	2.00
PIKE	OH	39131	2.05
PORTAGE	OH	39133	2.00
PREBLE	OH	39135	2.00
PUTNAM	OH	39137	2.00
RICHLAND	OH	39139	2.00
ROSS	OH	39141	2.05
SANDUSKY	OH	39143	2.00
SCIOTO	OH	39145	2.05
SENECA	OH	39147	2.00
SHELBY	OH	39149	2.00
STARK	OH	39151	1.95
SUMMIT	OH	39153	2.00
TRUMBULL	OH	39155	2.00
TUSCARAWAS	OH	39157	1.95
UNION	OH	39159	2.00
VAN WERT	OH	39161	2.00
VINTON	OH	39163	2.05
WARREN	OH	39165	2.05
WASHINGTON	OH	39167	2.00
WAYNE	OH	39169	1.95
WILLIAMS	OH	39171	1.80
WOOD	OH	39173	1.85
WYANDOT	OH	39175	2.00
ADAIR	OK	40001	1.90
ALFALFA	OK	40003	1.90
ATOKA	OK	40005	1.95
BEAVER	OK	40007	1.90
BECKHAM	OK	40009	1.90
BLAINE	OK	40011	1.90
BRYAN	OK	40013	1.95
CADDO	OK	40015	1.90
CANADIAN	OK	40017	1.90
CARTER	OK	40019	1.95
CHEROKEE	OK	40021	1.90
CHOCTAW	OK	40023	1.95
CIMARRON	OK	40025	1.90
CLEVELAND	OK	40027	1.90
COAL	OK	40029	1.95
COMANCHE	OK	40031	1.95
COTTON	OK	40033	1.95
CRAIG	OK	40035	1.70
CREEK	OK	40037	1.90
CUSTER	OK	40039	1.90
DELAWARE	OK	40041	1.70
DEWEY	OK	40043	1.90
ELLIS	OK	40045	1.90
GARFIELD	OK	40047	1.90
GARVIN	OK	40049	1.95
GRADY	OK	40051	1.90
GRANT	OK	40053	1.90
GREER	OK	40055	1.95
HARMON	OK	40057	1.95
HARPER	OK	40059	1.90
HASKELL	OK	40061	1.90
HUGHES	OK	40063	1.90
JACKSON	OK	40065	1.95
JEFFERSON	OK	40067	1.95

County/Parish/City	State	Fips_code	Class I differential adjusted for location
JOHNSTON	OK	40069	1.95
KAY	OK	40071	1.90
KINGFISHER	OK	40073	1.90
KIOWA	OK	40075	1.95
LATIMER	OK	40077	1.90
LE FLORE	OK	40079	1.90
LINCOLN	OK	40081	1.90
LOGAN	OK	40083	1.90
LOVE	OK	40085	1.95
MCCLAIN	OK	40087	1.90
MCCURTAIN	OK	40089	1.95
MCINTOSH	OK	40091	1.90
MAJOR	OK	40093	1.90
MARSHALL	OK	40095	1.95
MAYES	OK	40097	1.70
MURRAY	OK	40099	1.95
MUSKOGEE	OK	40101	1.90
NOBLE	OK	40103	1.90
NOWATA	OK	40105	1.70
OKFUSKEE	OK	40107	1.90
OKLAHOMA	OK	40109	1.90
OKMULGEE	OK	40111	1.90
OSAGE	OK	40113	1.90
OTTAWA	OK	40115	1.70
PAWNEE	OK	40117	1.90
PAYNE	OK	40119	1.90
PITTSBURG	OK	40121	1.90
PONTOTOC	OK	40123	1.95
POTTAWATOMIE	OK	40125	1.90
PUSHMATAHA	OK	40127	1.95
ROGER MILLS	OK	40129	1.90
ROGERS	OK	40131	1.70
SEMINOLE	OK	40133	1.90
SEQUOYAH	OK	40135	1.90
STEPHENS	OK	40137	1.95
TEXAS	OK	40139	1.90
TILLMAN	OK	40141	1.95
TULSA	OK	40143	1.90
WAGONER	OK	40145	1.90
WASHINGTON	OK	40147	1.70
WASHITA	OK	40149	1.90
WOODS	OK	40151	1.90
WOODWARD	OK	40153	1.90
BAKER	OR	41001	1.35
BENTON	OR	41003	1.55
CLACKAMAS	OR	41005	1.45
CLATSOP	OR	41007	1.45
COLUMBIA	OR	41009	1.45
COOS	OR	41011	1.70
CROOK	OR	41013	1.30
CURRY	OR	41015	1.85
DESCHUTES	OR	41017	1.55
DOUGLAS	OR	41019	1.70
GILLIAM	OR	41021	1.30
GRANT	OR	41023	1.35
HARNEY	OR	41025	1.35
HOOD RIVER	OR	41027	1.45
JACKSON	OR	41029	1.85
JEFFERSON	OR	41031	1.30
JOSEPHINE	OR	41033	1.85
KLAMATH	OR	41035	1.70
LAKE	OR	41037	1.55
LANE	OR	41039	1.55
LINCOLN	OR	41041	1.55
LINN	OR	41043	1.55
MALHEUR	OR	41045	1.35
MARION	OR	41047	1.45
MORROW	OR	41049	1.30
MULTNOMAH	OR	41051	1.45
POLK	OR	41053	1.45
SHERMAN	OR	41055	1.30

County/Parish/City	State	Fips_code	Class I differential adjusted for location
TILLAMOOK	OR	41057	1.45
UMATILLA	OR	41059	1.35
UNION	OR	41061	1.35
WALLOWA	OR	41063	1.35
WASCO	OR	41065	1.30
WASHINGTON	OR	41067	1.45
WHEELER	OR	41069	1.30
YAMHILL	OR	41071	1.45
ADAMS	PA	42001	2.05
ALLEGHENY	PA	42003	1.95
ARMSTRONG	PA	42005	1.95
BEAVER	PA	42007	1.95
BEDFORD	PA	42009	2.05
BERKS	PA	42011	2.05
BLAIR	PA	42013	2.05
BRADFORD	PA	42015	1.90
BUCKS	PA	42017	2.10
BUTLER	PA	42019	1.95
CAMBRIA	PA	42021	2.05
CAMERON	PA	42023	1.95
CARBON	PA	42025	2.10
CENTRE	PA	42027	2.00
CHESTER	PA	42029	2.10
CLARION	PA	42031	1.95
CLEARFIELD	PA	42033	1.95
CLINTON	PA	42035	2.00
COLUMBIA	PA	42037	2.00
CRAWFORD	PA	42039	1.75
CUMBERLAND	PA	42041	2.05
DAUPHIN	PA	42043	2.05
DELAWARE	PA	42045	2.20
ELK	PA	42047	1.95
ERIE	PA	42049	1.75
FAYETTE	PA	42051	1.95
FOREST	PA	42053	1.75
FRANKLIN	PA	42055	2.05
FULTON	PA	42057	2.05
GREENE	PA	42059	1.95
HUNTINGDON	PA	42061	2.05
INDIANA	PA	42063	1.95
JEFFERSON	PA	42065	1.95
JUNIATA	PA	42067	2.00
LACKAWANNA	PA	42069	2.00
LANCASTER	PA	42071	2.05
LAWRENCE	PA	42073	1.95
LEBANON	PA	42075	2.05
LEHIGH	PA	42077	2.10
LUZERNE	PA	42079	2.00
LYCOMING	PA	42081	2.00
MCKEAN	PA	42083	1.85
MERCER	PA	42085	1.75
MIFFLIN	PA	42087	2.00
MONROE	PA	42089	2.10
MONTGOMERY	PA	42091	2.10
MONTOUR	PA	42093	2.00
NORTHAMPTON	PA	42095	2.10
NORTHUMBERLAND	PA	42097	2.00
PERRY	DPA	42099	2.05
PHILADELPHIA	PA	42101	2.20
PIKE	PA	42103	2.15
POTTER	PA	42105	1.90
SCHUYLKILL	PA	42107	2.05
SNYDER	PA	42109	2.00
SOMERSET	PA	42111	2.05
SULLIVAN	PA	42113	2.00
SUSQUEHANNA	PA	42115	1.90
TIOGA	PA	42117	1.90
UNION	PA	42119	2.00
VENANGO	PA	42121	1.75
WARREN	PA	42123	1.60
WASHINGTON	PA	42125	1.95

County/Parish/City	State	Fips_code	Class I differential adjusted for location
WAYNE	PA	42127	2.15
WESTMORELAND	PA	42129	1.95
WYOMING	PA	42131	2.00
YORK	PA	42133	2.05
BRISTOL	RI	44001	2.75
KENT	RI	44003	2.75
NEWPORT	RI	44005	2.75
PROVIDENCE	RI	44007	2.75
WASHINGTON	RI	44009	2.75
ABBEVILLE	SC	45001	2.70
AIKEN	SC	45003	2.80
ALLENDALE	SC	45005	3.10
ANDERSON	SC	45007	2.55
BAMBERG	SC	45009	3.10
BARNWELL	SC	45011	2.80
BEAUFORT	SC	45013	3.10
BERKELEY	SC	45015	3.00
CALHOUN	SC	45017	2.80
CHARLESTON	SC	45019	3.10
CHEROKEE	SC	45021	2.55
CHESTER	SC	45023	2.70
CHESTERFIELD	SC	45025	2.70
CLARENDON	SC	45027	2.80
COLLETON	SC	45029	3.10
DARLINGTON	SC	45031	2.80
DILLON	SC	45033	3.00
DORCHESTER	SC	45035	3.10
EDGEFIELD	SC	45037	2.80
FAIRFIELD	SC	45039	2.70
FLORENCE	SC	45041	3.00
GEORGETOWN	SC	45043	3.00
GREENVILLE	SC	45045	2.55
GREENWOOD	SC	45047	2.70
HAMPTON	SC	45049	3.20
HORRY	SC	45051	3.00
JASPER	SC	45053	3.20
KERSHAW	SC	45055	2.70
LANCASTER	SC	45057	2.70
LAURENS	SC	45059	2.55
LEE	SC	45061	2.80
LEXINGTON	SC	45063	2.80
MCCORMICK	SC	45065	2.80
MARION	SC	45067	3.00
MARLBORO	SC	45069	2.80
NEWBERRY	SC	45071	2.70
OCONEE	SC	45073	2.55
ORANGEBURG	SC	45075	2.80
PICKENS	SC	45077	2.55
RICHLAND	SC	45079	2.80
SALUDA	SC	45081	2.80
SPARTANBURG	SC	45083	2.55
SUMTER	SC	45085	2.80
UNION	SC	45087	2.55
WILLIAMSBURG	SC	45089	3.00
YORK	SC	45091	2.55
AURORA	SD	46003	1.50
BEADLE	SD	46005	1.50
BENNETT	SD	46007	1.40
BON HOMME	SD	46009	1.50
BROOKINGS	SD	46011	1.50
BROWN	SD	46013	1.40
BRULE	SD	46015	1.50
BUFFALO	SD	46017	1.40
BUTTE	SD	46019	1.40
CAMPBELL	SD	46021	1.40
CHARLES MIX	SD	46023	1.50
CLARK	SD	46025	1.50
CLAY	SD	46027	1.70
CODINGTON	SD	46029	1.50
CORSON	SD	46031	1.40
CUSTER	SD	46033	1.40

County/Parish/City	State	Fips_code	Class I differential adjusted for location
DAVISON	SD	46035	1.50
DAY	SD	46037	1.40
DEUEL	SD	46039	1.50
DEWEY	SD	46041	1.40
DOUGLAS	SD	46043	1.50
EDMUNDS	SD	46045	1.40
FALL RIVER	SD	46047	1.40
FAULK	SD	46049	1.40
GRANT	SD	46051	1.50
GREGORY	SD	46053	1.50
HAAKON	SD	46055	1.40
HAMLIN	SD	46057	1.50
HAND	SD	46059	1.40
HANSON	SD	46061	1.50
HARDING	SD	46063	1.40
HUGHES	SD	46065	1.40
HUTCHINSON	SD	46067	1.50
HYDE	SD	46069	1.40
JACKSON	SD	46071	1.40
JERAULD	SD	46073	1.50
JONES	SD	46075	1.40
KINGSBURY	SD	46077	1.50
LAKE	SD	46079	1.50
LAWRENCE	SD	46081	1.40
LINCOLN	SD	46083	1.60
LYMAN	SD	46085	1.40
MCCOOK	SD	46087	1.50
MCPHERSON	SD	46089	1.40
MARSHALL	SD	46091	1.40
MEADE	SD	46093	1.40
MELLETTE	SD	46095	1.40
MINER	SD	46097	1.50
MINNEHAHA	SD	46099	1.60
MOODY	SD	46101	1.50
PENNINGTON	SD	46103	1.40
PERKINS	SD	46105	1.40
POTTER	SD	46107	1.40
ROBERTS	SD	46109	1.50
SANBORN	SD	46111	1.50
SHANNON	SD	46113	1.40
SPINK	SD	46115	1.40
STANLEY	SD	46117	1.40
SULLY	SD	46119	1.40
TODD	SD	46121	1.40
TRIPP	SD	46123	1.40
TURNER	SD	46125	1.60
UNION	SD	46127	1.70
WALWORTH	SD	46129	1.40
YANKTON	SD	46135	1.60
ZIEBACH	SD	46137	1.40
ANDERSON	TN	47001	2.15
BEDFORD	TN	47003	2.05
BENTON	TN	47005	2.20
BLEDSOE	TN	47007	2.25
BLOUNT	TN	47009	2.25
BRADLEY	TN	47011	2.55
CAMPBELL	TN	47013	2.15
CANNON	TN	47015	2.05
CARROLL	TN	47017	2.50
CARTER	TN	47019	2.25
CHEATHAM	TN	47021	2.05
CHESTER	TN	47023	2.70
CLAIBORNE	TN	47025	2.15
CLAY	TN	47027	2.05
COCKE	TN	47029	2.25
COFFEE	TN	47031	2.05
CROCKETT	TN	47033	2.70
CUMBERLAND	TN	47035	2.15
DAVIDSON	TN	47037	2.05
DECATUR	TN	47039	2.20
DE KALB	TN	47041	2.05

County/Parish/City	State	Fips_code	Class I differential adjusted for location
DICKSON	TN	47043	2.20
DYER	TN	47045	2.50
FAYETTE	TN	47047	2.85
FENTRESS	TN	47049	2.15
FRANKLIN	TN	47051	2.25
GIBSON	TN	47053	2.50
GILES	TN	47055	2.20
GRAINGER	TN	47057	2.25
GREENE	TN	47059	2.25
GRUNDY	TN	47061	2.25
HAMBLEN	TN	47063	2.25
HAMILTON	TN	47065	2.55
HANCOCK	TN	47067	2.25
HARDEMAN	TN	47069	2.70
HARDIN	TN	47071	2.50
HAWKINS	TN	47073	2.25
HAYWOOD	TN	47075	2.70
HENDERSON	TN	47077	2.50
HENRY	TN	47079	2.30
HICKMAN	TN	47081	2.20
HOUSTON	TN	47083	2.20
HUMPHREYS	TN	47085	2.20
JACKSON	TN	47087	2.05
JEFFERSON	TN	47089	2.25
JOHNSON	TN	47091	2.25
KNOX	TN	47093	2.25
LAKE	TN	47095	2.30
LAUDERDALE	TN	47097	2.70
LAWRENCE	TN	47099	2.20
LEWIS	TN	47101	2.20
LINCOLN	TN	47103	2.25
LOUDON	TN	47105	2.25
MCMINN	TN	47107	2.55
MCNAIRY	TN	47109	2.70
MACON	TN	47111	2.05
MADISON	TN	47113	2.70
MARION	TN	47115	2.25
MARSHALL	TN	47117	2.05
MAURY	TN	47119	2.05
MEIGS	TN	47121	2.55
MONROE	TN	47123	2.55
MONTGOMERY	TN	47125	2.20
MOORE	TN	47127	2.25
MORGAN	TN	47129	2.15
OBION	TN	47131	2.30
OVERTON	TN	47133	2.15
PERRY	TN	47135	2.20
PICKETT	TN	47137	2.15
POLK	TN	47139	2.55
PUTNAM	TN	47141	2.15
RHEA	TN	47143	2.25
ROANE	TN	47145	2.25
ROBERTSON	TN	47147	2.05
RUTHERFORD	TN	47149	2.05
SCOTT	TN	47151	2.15
SEQUATCHIE	TN	47153	2.25
SEVIER	TN	47155	2.25
SHELBY	TN	47157	2.85
SMITH	TN	47159	2.05
STEWART	TN	47161	2.20
SULLIVAN	TN	47163	2.25
SUMNER	TN	47165	2.05
TIPTON	TN	47167	2.85
TROUSDALE	TN	47169	2.05
UNICOI	TN	47171	2.25
UNION	TN	47173	2.15
VAN BUREN	TN	47175	2.15
WARREN	TN	47177	2.05
WASHINGTON	TN	47179	2.25
WAYNE	TN	47181	2.20
WEAKLEY	TN	47183	2.30

County/Parish/City	State	Fips_code	Class I differential adjusted for location
WHITE	TN	47185	2.15
WILLIAMSON	TN	47187	2.05
WILSON	TN	47189	2.05
ANDERSON	TX	48001	2.35
ANDREWS	TX	48003	1.95
ANGELINA	TX	48005	2.65
ARANSAS	TX	48007	2.95
ARCHER	TX	48009	1.95
ARMSTRONG	TX	48011	1.95
ATASCOSA	TX	48013	2.75
AUSTIN	TX	48015	2.75
BAILEY	TX	48017	1.60
BANDERA	TX	48019	2.55
BASTROP	TX	48021	2.65
BAYLOR	TX	48023	1.95
BEE	TX	48025	2.95
BELL	TX	48027	2.35
BEXAR	TX	48029	2.65
BLANCO	TX	48031	2.55
BORDEN	TX	48033	2.10
BOSQUE	TX	48035	2.35
BOWIE	TX	48037	2.10
BRAZORIA	TX	48039	2.95
BRAZOS	TX	48041	2.65
BREWSTER	TX	48043	2.35
BRISCOE	TX	48045	1.95
BROOKS	TX	48047	3.15
BROWN	TX	48049	2.10
BURLESON	TX	48051	2.65
BURNET	TX	48053	2.35
CALDWELL	TX	48055	2.65
CALHOUN	TX	48057	2.95
CALLAHAN	TX	48059	2.10
CAMERON	TX	48061	3.15
CAMP	TX	48063	1.95
CARSON	TX	48065	1.95
CASS	TX	48067	2.10
CASTRO	TX	48069	1.60
CHAMBERS	TX	48071	2.95
CHEROKEE	TX	48073	2.35
CHILDRESS	TX	48075	1.95
CLAY	TX	48077	1.95
COCHRAN	TX	48079	1.60
COKE	TX	48081	2.10
COLEMAN	TX	48083	2.10
COLLIN	TX	48085	1.95
COLLINGSWORTH	TX	48087	1.95
COLORADO	TX	48089	2.75
COMAL	TX	48091	2.55
COMANCHE	TX	48093	2.10
CONCHO	TX	48095	2.10
COOKE	TX	48097	1.95
CORYELL	TX	48099	2.35
COTTLE	TX	48101	1.95
CRANE	TX	48103	2.10
CROCKETT	TX	48105	2.35
CROSBY	TX	48107	1.95
CULBERSON	TX	48109	1.95
DALLAM	TX	48111	1.90
DALLAS	TX	48113	2.10
DAWSON	TX	48115	1.95
DEAF SMITH	TX	48117	1.60
DELTA	TX	48119	1.95
DENTON	TX	48121	1.95
DE WITT	TX	48123	2.75
DICKENS	TX	48125	1.95
DIMMIT	TX	48127	2.75
DONLEY	TX	48129	1.95
DUVAL	TX	48131	2.95
EASTLAND	TX	48133	2.10
ECTOR	TX	48135	2.10

County/Parish/City	State	Fips__code	Class I differential adjusted for location
EDWARDS	TX	48137	2.35
ELLIS	TX	48139	2.10
EL PASO	TX	48141	1.75
ERATH	TX	48143	2.10
FALLS	TX	48145	2.35
FANNIN	TX	48147	1.95
FAYETTE	TX	48149	2.75
FISHER	TX	48151	2.10
FLOYD	TX	48153	1.95
FOARD	TX	48155	1.95
FORT BEND	TX	48157	2.95
FRANKLIN	TX	48159	1.95
FREESTONE	TX	48161	2.35
FRIO	TX	48163	2.75
GAINES	TX	48165	1.95
GALVESTON	TX	48167	2.95
GARZA	TX	48169	1.95
GILLESPIE	TX	48171	2.35
GLASSCOCK	TX	48173	2.10
GOLIAD	TX	48175	2.95
GONZALES	TX	48177	2.75
GRAY	TX	48179	1.95
GRAYSON	TX	48181	1.95
GREGG	TX	48183	2.10
GRIMES	TX	48185	2.75
GUADALUPE	TX	48187	2.65
HALE	TX	48189	1.95
HALL	TX	48191	1.95
HAMILTON	TX	48193	2.10
HANSFORD	TX	48195	1.90
HARDEMAN	TX	48197	1.95
HARDIN	TX	48199	2.95
HARRIS	TX	48201	2.95
HARRISON	TX	48203	2.10
HARTLEY	TX	48205	1.90
HASKELL	TX	48207	1.95
HAYS	TX	48209	2.55
HEMPHILL	TX	48211	1.90
HENDERSON	TX	48213	2.35
HIDALGO	TX	48215	3.15
HILL	TX	48217	2.35
HOCKLEY	TX	48219	1.95
HOOD	TX	48221	2.10
HOPKINS	TX	48223	1.95
HOUSTON	TX	48225	2.55
HOWARD	TX	48227	2.10
HUDSPETH	TX	48229	1.75
HUNT	TX	48231	1.95
HUTCHINSON	TX	48233	1.90
IRION	TX	48235	2.35
JACK	TX	48237	1.95
JACKSON	TX	48239	2.95
JASPER	TX	48241	2.75
JEFF DAVIS	TX	48243	2.10
JEFFERSON	TX	48245	2.95
JIM HOGG	TX	48247	2.95
JIM WELLS	TX	48249	2.95
JOHNSON	TX	48251	2.10
JONES	TX	48253	2.10
KARNES	TX	48255	2.75
KAUFMAN	TX	48257	2.10
KENDALL	TX	48259	2.55
KENEDY	TX	48261	3.15
KENT	TX	48263	2.10
KERR	TX	48265	2.55
KIMBLE	TX	48267	2.35
KING	TX	48269	1.95
KINNEY	TX	48271	2.65
KLEBERG	TX	48273	3.15
KNOX	TX	48275	1.95
LAMAR	TX	48277	1.95

County/Parish/City	State	Fips__code	Class I differential adjusted for location
LAMB	TX	48279	1.60
LAMPASAS	TX	48281	2.35
LA SALLE	TX	48283	2.75
LAVACA	TX	48285	2.75
LEE	TX	48287	2.65
LEON	TX	48289	2.55
LIBERTY	TX	48291	2.95
LIMESTONE	TX	48293	2.35
LIPSCOMB	TX	48295	1.90
LIVE OAK	TX	48297	2.95
LLANO	TX	48299	2.35
LOVING	TX	48301	1.95
LUBBOCK	TX	48303	1.95
LYNN	TX	48305	1.95
MCCULLOCH	TX	48307	2.10
MCLENNAN	TX	48309	2.35
MCMULLEN	TX	48311	2.75
MADISON	TX	48313	2.65
MARION	TX	48315	2.10
MARTIN	TX	48317	2.10
MASON	TX	48319	2.35
MATAGORDA	TX	48321	2.95
MAVERICK	TX	48323	2.65
MEDINA	TX	48325	2.65
MENARD	TX	48327	2.35
MIDLAND	TX	48329	2.10
MILAM	TX	48331	2.55
MILLS	TX	48333	2.10
MITCHELL	TX	48335	2.10
MONTAGUE	TX	48337	1.95
MONTGOMERY	TX	48339	2.95
MOORE	TX	48341	1.90
MORRIS	TX	48343	1.95
MOTLEY	TX	48345	1.95
NACOGDOCHES	TX	48347	2.55
NAVARRO	TX	48349	2.35
NEWTON	TX	48351	2.75
NOLAN	TX	48353	2.10
NUECES	TX	48355	3.15
OCHILTREE	TX	48357	1.90
OLDHAM	TX	48359	1.90
ORANGE	TX	48361	2.95
PALO PINTO	TX	48363	2.10
PANOLA	TX	48365	2.35
PARKER	TX	48367	2.10
PARMER	TX	48369	1.60
PECOS	TX	48371	2.35
POLK	TX	48373	2.75
POTTER	TX	48375	1.95
PRESIDIO	TX	48377	2.10
RAINS	TX	48379	1.95
RANDALL	TX	48381	1.95
REAGAN	TX	48383	2.35
REAL	TX	48385	2.55
RED RIVER	TX	48387	1.95
REEVES	TX	48389	2.10
REFUGIO	TX	48391	2.95
ROBERTS	TX	48393	1.90
ROBERTSON	TX	48395	2.55
ROCKWALL	TX	48397	1.95
RUNNELS	TX	48399	2.10
RUSK	TX	48401	2.35
SABINE	TX	48403	2.65
SAN AUGUSTINE	TX	48405	2.65
SAN JACINTO	TX	48407	2.75
SAN PATRICIO	TX	48409	2.95
SAN SABA	TX	48411	2.10
SCHLEICHER	TX	48413	2.35
SCURRY	TX	48415	2.10
SHACKELFORD	TX	48417	2.10
SHELBY	TX	48419	2.55

County/Parish/City	State	Fips_code	Class I differential adjusted for location
SHERMAN	TX	48421	1.90
SMITH	TX	48423	2.35
SOMERVELL	TX	48425	2.10
STARR	TX	48427	2.95
STEPHENS	TX	48429	2.10
STERLING	TX	48431	2.10
STONEWALL	TX	48433	2.10
SUTTON	TX	48435	2.35
SWISHER	TX	48437	1.95
TARRANT	TX	48439	2.10
TAYLOR	TX	48441	2.10
TERRELL	TX	48443	2.35
TERRY	TX	48445	1.95
THROCKMORTON	TX	48447	1.95
TITUS	TX	48449	1.95
TOM GREEN	TX	48451	2.10
TRAVIS	TX	48453	2.55
TRINITY	TX	48455	2.65
TYLER	TX	48457	2.75
UPSHUR	TX	48459	2.10
UPTON	TX	48461	2.35
UVALDE	TX	48463	2.65
VAL VERDE	TX	48465	2.35
VAN ZANDT	TX	48467	2.10
VICTORIA	TX	48469	2.95
WALKER	TX	48471	2.75
WALLER	TX	48473	2.75
WARD	TX	48475	2.10
WASHINGTON	TX	48477	2.75
WEBB	TX	48479	2.75
WHARTON	TX	48481	2.95
WHEELER	TX	48483	1.90
WICHITA	TX	48485	1.95
WILBARGER	TX	48487	1.95
WILLACY	TX	48489	3.15
WILLIAMSON	TX	48491	2.55
WILSON	TX	48493	2.75
WINKLER	TX	48495	1.95
WISE	TX	48497	1.95
WOOD	TX	48499	1.95
YOAKUM	TX	48501	1.95
YOUNG	TX	48503	1.95
ZAPATA	TX	48505	2.95
ZAVALA	TX	48507	2.65
BEAVER	UT	49001	1.50
BOX ELDER	UT	49003	1.50
CACHE	UT	49005	1.50
CARBON	UT	49007	1.80
DAGGETT	UT	49009	1.50
DAVIS	UT	49011	1.50
DUCHESNE	UT	49013	1.50
EMERY	UT	49015	1.80
GARFIELD	UT	49017	1.80
GRAND	UT	49019	1.90
IRON	UT	49021	1.80
JUAB	UT	49023	1.50
KANE	UT	49025	1.90
MILLARD	UT	49027	1.50
MORGAN	UT	49029	1.50
PIUTE	UT	49031	1.50
RICH	UT	49033	1.50
SALT LAKE	UT	49035	1.50
SAN JUAN	UT	49037	1.90
SANPETE	UT	49039	1.50
SEVIER	UT	49041	1.50
SUMMIT	UT	49043	1.50
TOOELE	UT	49045	1.50
UINTAH	UT	49047	1.80
UTAH	UT	49049	1.50
WASATCH	UT	49051	1.50
WASHINGTON	UT	49053	1.90

County/Parish/City	State	Fips_code	Class I differential adjusted for location
WAYNE	UT	49055	1.80
WEBER	UT	49057	1.50
ADDISON	VT	50001	2.05
BENNINGTON	VT	50003	2.15
CALEDONIA	VT	50005	1.95
CHITTENDEN	VT	50007	2.05
ESSEX	VT	50009	1.95
FRANKLIN	VT	50011	1.95
GRAND ISLE	VT	50013	1.95
LAMOILLE	VT	50015	1.95
ORANGE	VT	50017	2.05
ORLEANS	VT	50019	1.95
RUTLAND	VT	50021	2.05
WASHINGTON	VT	50023	2.05
WINDHAM	VT	50025	2.30
WINDSOR	VT	50027	2.15
ACCOMACK	VA	51001	2.10
ALBEMARLE	VA	51003	2.15
ALLEGHANY	VA	51005	2.15
AMELIA	VA	51007	2.20
AMHERST	VA	51009	2.15
APPOMATTOX	VA	51011	2.15
ARLINGTON	VA	51013	2.05
AUGUSTA	VA	51015	2.15
BATH	VA	51017	2.15
BEDFORD	VA	51019	2.15
BLAND	VA	51021	2.25
BOTETOURT	VA	51023	2.15
BRUNSWICK	VA	51025	2.35
BUCHANAN	VA	51027	2.25
BUCKINGHAM	VA	51029	2.15
CAMPBELL	VA	51031	2.15
CAROLINE	VA	51033	2.20
CARROLL	VA	51035	2.25
CHARLES CITY	VA	51036	2.20
CHARLOTTE	VA	51037	2.15
CHESTERFIELD	VA	51041	2.20
CLARKE	VA	51043	2.05
CRAIG	VA	51045	2.15
CULPEPER	VA	51047	2.05
CUMBERLAND	VA	51049	2.15
DICKENSON	VA	51051	2.25
DINWIDDIE	VA	51053	2.35
ESSEX	VA	51057	2.20
FAIRFAX	VA	51059	2.05
FAUQUIER	VA	51061	2.05
FLOYD	VA	51063	2.15
FLUVANNA	VA	51065	2.15
FRANKLIN	VA	51067	2.15
FREDERICK	VA	51069	2.05
GILES	VA	51071	2.15
GLOUCESTER	VA	51073	2.20
GOOCHLAND	VA	51075	2.20
GRAYSON	VA	51077	2.25
GREENE	VA	51079	2.15
GREENSVILLE	VA	51081	2.35
HALIFAX	VA	51083	2.35
HANOVER	VA	51085	2.20
HENRICO	VA	51087	2.20
HENRY	VA	51089	2.35
HIGHLAND	VA	51091	2.15
ISLE OF WIGHT	VA	51093	2.55
JAMES CITY	VA	51095	2.55
KING AND QUEEN	VA	51097	2.20
KING GEORGE	VA	51099	2.05
KING WILLIAM	VA	51101	2.20
LANCASTER	VA	51103	2.20
LEE	VA	51105	2.25
LOUDOUN	VA	51107	2.05
LOUISA	VA	51109	2.15
LUNENBURG	VA	51111	2.35

County/Parish/City	State	Fips_code	Class I differential adjusted for location
MADISON	VA	51113	2.15
MATHEWS	VA	51115	2.20
MECKLENBURG	VA	51117	2.35
MIDDLESEX	VA	51119	2.20
MONTGOMERY	VA	51121	2.15
NELSON	VA	51125	2.15
NEW KENT	VA	51127	2.20
NORTHAMPTON	VA	51131	2.10
NORTHUMBERLAND	VA	51133	2.20
NOTTOWAY	VA	51135	2.35
ORANGE	VA	51137	2.15
PAGE	VA	51139	2.05
PATRICK	VA	51141	2.35
PITTSYLVANIA	VA	51143	2.35
POWHATAN	VA	51145	2.20
PRINCE EDWARD	VA	51147	2.15
PRINCE GEORGE	VA	51149	2.35
PRINCE WILLIAM	VA	51153	2.05
PULASKI	VA	51155	2.15
RAPPAHANNOCK	VA	51157	2.05
RICHMOND	VA	51159	2.20
ROANOKE	VA	51161	2.15
ROCKBRIDGE	VA	51163	2.15
ROCKINGHAM	VA	51165	2.15
RUSSELL	VA	51167	2.25
SCOTT	VA	51169	2.25
SHENANDOAH	VA	51171	2.05
SMYTH	VA	51173	2.25
SOUTHAMPTON	VA	51175	2.55
SPOTSYLVANIA	VA	51177	2.15
STAFFORD	VA	51179	2.05
SURRY	VA	51181	2.55
SUSSEX	VA	51183	2.35
TAZEWELL	VA	51185	2.25
WARREN	VA	51187	2.05
WASHINGTON	VA	51191	2.25
WESTMORELAND	VA	51193	2.05
WISE	VA	51195	2.25
WYTHE	VA	51197	2.25
YORK	VA	51199	2.55
ALEXANDRIA CITY	VA	51510	2.05
BEDFORD CITY	VA	51515	2.15
BRISTOL CITY	VA	51520	2.25
BUENA VISTA CITY	VA	51530	2.15
CHARLOTTESVILLE CITY	VA	51540	2.15
CHESAPEAKE CITY	VA	51550	2.55
CLIFTON FORGE CITY	VA	51560	2.15
COLONIAL HEIGHTS CITY	VA	51570	2.30
COVINGTON CITY	VA	51580	2.15
DANVILLE CITY	VA	51590	2.35
EMPORIA CITY	VA	51595	2.35
FAIRFAX CITY	VA	51600	2.05
FALLS CHURCH CITY	VA	51610	2.05
FRANKLIN CITY	VA	51620	2.55
FREDERICKSBURG CITY	VA	51630	2.15
GALAX CITY	VA	51640	2.25
HAMPTON CITY	VA	51650	2.55
HARRISONBURG CITY	VA	51660	2.15
HOPEWELL CITY	VA	51670	2.35
LEXINGTON CITY	VA	51678	2.15
LYNCHBURG CITY	VA	51680	2.15
MANASSAS CITY	VA	51683	2.05
MANASSAS PARK CITY	VA	51685	2.05
MARTINSVILLE CITY	VA	51690	2.35
NEWPORT NEWS CITY	VA	51700	2.55
NORFOLK CITY	VA	51710	2.55
NORTON CITY	VA	51720	2.25
PETERSBURG CITY	VA	51730	2.35
POQUOSON CITY	VA	51735	2.55
PORTSMOUTH CITY	VA	51740	2.55
RADFORD CITY	VA	51750	2.15

County/Parish/City	State	Fips_code	Class I differential adjusted for location
RICHMOND CITY	VA	51760	2.20
ROANOKE CITY	VA	51770	2.15
SALEM CITY	VA	51775	2.15
STAUNTON CITY	VA	51790	2.15
SUFFOLK CITY	VA	51800	2.55
VIRGINIA BEACH CITY	VA	51810	2.55
WAYNESBORO CITY	VA	51820	2.15
WILLIAMSBURG CITY	VA	51830	2.55
WINCHESTER CITY	VA	51840	2.05
ADAMS	WA	53001	1.35
ASOTIN	WA	53003	1.35
BENTON	WA	53005	1.30
CHELAN	WA	53007	1.30
CLALLAM	WA	53009	1.45
CLARK	WA	53011	1.45
COLUMBIA	WA	53013	1.35
COWLITZ	WA	53015	1.45
DOUGLAS	WA	53017	1.30
FERRY	WA	53019	1.35
FRANKLIN	WA	53021	1.35
GARFIELD	WA	53023	1.35
GRANT	WA	53025	1.30
GRAYS HARBOR	WA	53027	1.45
ISLAND	WA	53029	1.45
JEFFERSON	WA	53031	1.45
KING	WA	53033	1.45
KITSAP	WA	53035	1.45
KITTITAS	WA	53037	1.30
KLICKITAT	WA	53039	1.30
LEWIS	WA	53041	1.45
LINCOLN	WA	53043	1.35
MASON	WA	53045	1.45
OKANOGAN	WA	53047	1.30
PACIFIC	WA	53049	1.45
PEND OREILLE	WA	53051	1.35
PIERCE	WA	53053	1.45
SAN JUAN	WA	53055	1.45
SKAGIT	WA	53057	1.20
SKAMANIA	WA	53059	1.45
SNOHOMISH	WA	53061	1.45
SPOKANE	WA	53063	1.35
STEVENS	WA	53065	1.35
THURSTON	WA	53067	1.45
WAHKIAKUM	WA	53069	1.45
WALLA WALLA	WA	53071	1.35
WHATCOM	WA	53073	1.20
WHITMAN	WA	53075	1.35
YAKIMA	WA	53077	1.30
BARBOUR	WV	54001	2.05
BERKELEY	WV	54003	2.05
BOONE	WV	54005	2.20
BRAXTON	WV	54007	2.20
BROOKE	WV	54009	1.95
CABELL	WV	54011	2.20
CALHOUN	WV	54013	2.05
CLAY	WV	54015	2.20
DODDRIDGE	WV	54017	2.05
FAYETTE	WV	54019	2.20
GILMER	WV	54021	2.05
GRANT	WV	54023	2.05
GREENBRIER	WV	54025	2.15
HAMPSHIRE	WV	54027	2.05
HANCOCK	WV	54029	1.95
HARDY	WV	54031	2.05
HARRISON	WV	54033	2.05
JACKSON	WV	54035	2.05
JEFFERSON	WV	54037	2.05
KANAWHA	WV	54039	2.20
LEWIS	WV	54041	2.05
LINCOLN	WV	54043	2.20
LOGAN	WV	54045	2.20

County/Parish/City	State	Fips_code	Class I differential adjusted for location
MCDOWELL	WV	54047	2.20
MARION	WV	54049	1.95
MARSHALL	WV	54051	1.95
MASON	WV	54053	2.05
MERCER	WV	54055	2.15
MINERAL	WV	54057	2.05
MINGO	WV	54059	2.20
MONONGALIA	WV	54061	1.95
MONROE	WV	54063	2.15
MORGAN	WV	54065	2.05
NICHOLAS	WV	54067	2.20
OHIO	WV	54069	1.95
PENDLETON	WV	54071	2.15
PLEASANTS	WV	54073	2.05
POCAHONTAS	WV	54075	2.15
PRESTON	WV	54077	1.95
PUTNAM	WV	54079	2.20
RALEIGH	WV	54081	2.20
RANDOLPH	WV	54083	2.05
RITCHIE	WV	54085	2.05
ROANE	WV	54087	2.20
SUMMERS	WV	54089	2.15
TAYLOR	WV	54091	1.95
TUCKER	WV	54093	2.05
TYLER	WV	54095	2.05
UPSHUR	WV	54097	2.05
WAYNE	WV	54099	2.20
WEBSTER	WV	54101	2.05
WETZEL	WV	54103	1.95
WIRT	WV	54105	2.05
WOOD	WV	54107	2.05
WYOMING	WV	54109	2.20
ADAMS	WI	55001	1.70
ASHLAND	WI	55003	1.60
BARRON	WI	55005	1.60
BAYFIELD	WI	55007	1.65
BROWN	WI	55009	1.80
BUFFALO	WI	55011	1.60
BURNETT	WI	55013	1.60
CALUMET	WI	55015	1.80
CHIPPEWA	WI	55017	1.60
CLARK	WI	55019	1.60
COLUMBIA	WI	55021	1.70
CRAWFORD	WI	55023	1.70
DANE	WI	55025	1.80
DODGE	WI	55027	1.80
DOOR	WI	55029	1.80
DOUGLAS	WI	55031	1.65
DUNN	WI	55033	1.60
EAU CLAIRE	WI	55035	1.60
FLORENCE	WI	55037	1.60
FOND DU LAC	WI	55039	1.80
FOREST	WI	55041	1.60
GRANT	WI	55043	1.80
GREEN	WI	55045	1.80
GREEN LAKE	WI	55047	1.70
IOWA	WI	55049	1.80
IRON	WI	55051	1.60
JACKSON	WI	55053	1.60
JEFFERSON	WI	55055	1.80
JUNEAU	WI	55057	1.70
KENOSHA	WI	55059	1.95
KEWAUNEE	WI	55061	1.80
LA CROSSE	WI	55063	1.60
LAFAYETTE	WI	55065	1.80
LANGLADE	WI	55067	1.60
LINCOLN	WI	55069	1.60
MANITOWOC	WI	55071	1.80
MARATHON	WI	55073	1.60
MARINETTE	WI	55075	1.60
MARQUETTE	WI	55077	1.70

County/Parish/City	State	Fips_code	Class I differential adjusted for location
MENOMINEE	WI	55078	1.70
MILWAUKEE	WI	55079	1.95
MONROE	WI	55081	1.60
OCONTO	WI	55083	1.70
ONEIDA	WI	55085	1.60
OUTAGAMIE	WI	55087	1.70
OZAUKEE	WI	55089	1.95
PEPIN	WI	55091	1.60
PIERCE	WI	55093	1.60
POLK	WI	55095	1.60
PORTAGE	WI	55097	1.60
PRICE	WI	55099	1.60
RACINE	WI	55101	1.95
RICHLAND	WI	55103	1.70
ROCK	WI	55105	1.80
RUSK	WI	55107	1.60
ST. CROIX	WI	55109	1.60
SAUK	WI	55111	1.70
SAWYER	WI	55113	1.60
SHAWANO	WI	55115	1.70
SHEBOYGAN	WI	55117	1.95
TAYLOR	WI	55119	1.60
TREMPEALEAU	WI	55121	1.60
VERNON	WI	55123	1.70
VILAS	WI	55125	1.60
WALWORTH	WI	55127	1.80
WASHBURN	WI	55129	1.60
WASHINGTON	WI	55131	1.80
WAUKESHA	WI	55133	1.80
WAUPACA	WI	55135	1.70
WAUSHARA	WI	55137	1.70
WINNEBAGO	WI	55139	1.70
WOOD	WI	55141	1.60
ALBANY	WY	56001	1.55
BIG HORN	WY	56003	1.40
CAMPBELL	WY	56005	1.40
CARBON	WY	56007	1.55
CONVERSE	WY	56009	1.40
CROOK	WY	56011	1.40
FREMONT	WY	56013	1.40
GOSHEN	WY	56015	1.40
HOT SPRINGS	WY	56017	1.40
JOHNSON	WY	56019	1.40
LARAMIE	WY	56021	1.55
LINCOLN	WY	56023	1.40
NATRONA	WY	56025	1.40
NIOBRARA	WY	56027	1.40
PARK	WY	56029	1.40
PLATTE	WY	56031	1.55
SHERIDAN	WY	56033	1.50
SUBLETTE	WY	56035	1.40
SWEETWATER	WY	56037	1.50
TETON	WY	56039	1.40
UINTA	WY	56041	1.50
WASHAKIE	WY	56043	1.40
WESTON	WY	56045	1.40

§ 1000.53 Announcement of class prices, component prices, and advanced pricing factors.

(a) On or before the 5th day of the month, the market administrator for each Federal milk marketing order shall announce the following prices (as applicable to that order) for the preceding month:

(1) The Class II price;

(2) The Class II butterfat price;

(3) The Class III price;

(4) The Class III skim milk price;

(5) The Class IV price;

(6) The Class IV skim milk price;

(7) The butterfat price;

(8) The nonfat solids price;

(9) The protein price;

(10) The other solids price; and

(11) The somatic cell adjustment rate.

(b) On or before the 23rd day of the month, the market administrator for each Federal milk marketing order shall announce the following prices and pricing factors for the following month:

(1) The Class I price;

(2) The Class I skim milk price;

(3) The Class I butterfat price;

(4) The Class II skim milk price;

(5) The Class II nonfat solids price; and

(6) The advanced pricing factors described in § 1000.50(q).

§ 1000.54 Equivalent price.

If for any reason a price or pricing constituent required for computing the prices described in § 1000.50 is not available, the market administrator shall use a price or pricing constituent determined by the Deputy Administrator, Dairy Programs, Agricultural Marketing Service, to be equivalent to the price or pricing constituent that is required.

Subpart H—Payments for Milk

§ 1000.70 Producer-settlement fund.

The market administrator shall establish and maintain a separate fund known as the producer-settlement fund into which the market administrator shall deposit all payments made by handlers pursuant to §§ _____.71, _____.76, and _____.77 of each Federal milk order and out of which the market administrator shall make all payments pursuant to §§ _____.72 and _____.77 of each Federal milk order. Payments due any handler shall be offset by any payments due from that handler.

§ 1000.76 Payments by a handler operating a partially regulated distributing plant.

On or before the 25th day after the end of the month (except as provided in § 1000.90), the operator of a partially regulated distributing plant, other than a plant that is subject to marketwide pooling of producer returns under a State government's milk classification and pricing program, shall pay to the market administrator for the producer-settlement fund the amount computed pursuant to paragraph (a) of this section or, if the handler submits the information specified in §§ _____.30(b) and _____.31(b) of the order, the handler may elect to pay the amount computed pursuant to paragraph (b) of this section. A partially regulated distributing plant that is subject to marketwide pooling of producer returns under a State government's milk classification and pricing program shall pay the amount computed pursuant to paragraph (c) of this section.

(a) The payment under this paragraph shall be an amount resulting from the following computations:

(1) From the plant's route disposition in the marketing area:

(i) Subtract receipts of fluid milk products classified as Class I milk from pool plants, plants fully regulated under other Federal orders, and handlers described in § 1000.9(c) and § 1135.11 of this chapter, except those receipts subtracted under a similar provision of another Federal milk order;

(ii) Subtract receipts of fluid milk products from another nonpool plant that is not a plant fully regulated under another Federal order to the extent that an equivalent amount of fluid milk products disposed of to the nonpool plant by handlers fully regulated under any Federal order is classified and priced as Class I milk and is not used as an offset for any payment obligation under any order; and

(iii) Subtract the pounds of reconstituted milk made from nonfluid milk products which are disposed of as route disposition in the marketing area;

(2) For orders with multiple component pricing, compute a Class I differential price by subtracting Class III price from the current month's Class I price. Multiply the pounds remaining after the computation in paragraph (a)(1)(iii) of this section by the amount by which the Class I differential price exceeds the producer price differential, both prices to be applicable at the location of the partially regulated distributing plant except that neither the adjusted Class I differential price nor the adjusted producer price differential shall be less than zero;

(3) For orders with skim milk and butterfat pricing, multiply the remaining pounds by the amount by which the Class I price exceeds the uniform price, both prices to be applicable at the location of the partially regulated distributing plant except that neither the adjusted Class I price nor the adjusted uniform price differential shall be less than the lowest announced class price; and

(4) Unless the payment option described in paragraph (d) is selected, add the amount obtained from multiplying the pounds of labeled reconstituted milk included in paragraph (a)(1)(iii) of this section by any positive difference between the Class I price applicable at the location of the partially regulated distributing plant (less $1.00 if the reconstituted milk is labeled as such) and the Class IV price.

(b) The payment under this paragraph shall be the amount resulting from the following computations:

(1) Determine the value that would have been computed pursuant to § _____.60 of the order for the partially regulated distributing plant if the plant had been a pool plant, subject to the following modifications:

(i) Fluid milk products and bulk fluid cream products received at the plant from a pool plant, a plant fully regulated under another Federal order, and handlers described in § 1000.9(c) and § 1135.11 of this chapter shall be allocated at the partially regulated distributing plant to the same class in which such products were classified at the fully regulated plant;

(ii) Fluid milk products and bulk fluid cream products transferred from the partially regulated distributing plant to a pool plant or a plant fully regulated under another Federal order shall be classified at the partially regulated distributing plant in the class to which allocated at the fully regulated plant. Such transfers shall be allocated to the extent possible to those receipts at the partially regulated distributing plant from the pool plant and plants fully regulated under other Federal orders that are classified in the corresponding class pursuant to paragraph (b)(1)(i) of this section. Any such transfers remaining after the above allocation which are in Class I and for which a value is computed pursuant to § _____.60 of the order for the partially regulated distributing plant shall be priced at the statistical uniform price or uniform price, whichever is applicable, of the respective order regulating the handling of milk at the receiving plant, with such statistical uniform price or uniform price adjusted to the location of the nonpool plant (but not to be less than the lowest announced class price of the respective order); and

(iii) If the operator of the partially regulated distributing plant so requests, the handler's value of milk determined pursuant to § _____.60 of the order shall include a value of milk determined for each nonpool plant that is not a plant fully regulated under another Federal order which serves as a supply plant for the partially regulated distributing plant by making shipments to the partially regulated distributing plant during the month equivalent to the requirements of § _____. 7(c) of the order subject to the following conditions:

(A) The operator of the partially regulated distributing plant submits with its reports filed pursuant to §§ _____.30(b) and _____.31(b) of the order similar reports for each such nonpool supply plant;

(B) The operator of the nonpool plant maintains books and records showing the utilization of all skim milk and butterfat received at the plant which are made available if requested by the market administrator for verification purposes; and

(C) The value of milk determined pursuant to § _____.60 for the unregulated supply plant shall be determined in the same manner prescribed for computing the obligation of the partially regulated distributing plant; and

(2) From the partially regulated distributing plant's value of milk computed pursuant to paragraph (b)(1) of this section, subtract:

(i) The gross payments that were made for milk that would have been producer milk had the plant been fully regulated;

(ii) If paragraph (b)(1)(iii) of this section applies, the gross payments by the operator of the nonpool supply plant for milk received at the plant during the month that would have been producer milk if the plant had been fully regulated; and

(iii) The payments by the operator of the partially regulated distributing plant to the producer-settlement fund of another Federal order under which the plant is also a partially regulated distributing plant and, if paragraph (b)(1)(iii) of this section applies, payments made by the operator of the nonpool supply plant to the producer-settlement fund of any order.

(c) The operator of a partially regulated distributing plant that is subject to marketwide pooling of returns under a milk classification and pricing program that is imposed under the authority of a State government shall pay on or before the 25th day after the end of the month (except as provided in § 1000.90) to the market administrator for the producer-settlement fund an amount computed as follows:

After completing the computations described in paragraphs (a)(1)(i) and (ii) of this section, determine the value of the remaining pounds of fluid milk products disposed of as route disposition in the marketing area by multiplying the hundredweight of such pounds by the amount, if greater than zero, that remains after subtracting the State program's class prices applicable to such products at the plant's location from the Federal order Class I price applicable at the location of the plant.

(d) Any handler may elect partially regulated distributing plant status for any plant with respect to receipts of nonfluid milk ingredients that are reconstituted for fluid use. Payments may be made to the producer-settlement fund of the order regulating the producer milk used to produce the nonfluid milk ingredients at the positive difference between the Class I price applicable under the other order at the location of the plant where the nonfluid milk ingredients were processed and the Class IV price. This payment option shall apply only if a majority of the total milk received at the plant that processed the nonfluid milk ingredients is regulated under one or more Federal orders and payment may only be made to the producer-settlement fund of the order pricing a plurality of the milk used to produce the nonfluid milk ingredients. This payment option shall not apply if the source of the nonfluid ingredients used in reconstituted fluid milk products cannot be determined by the market administrator.

§ 1000.77 Adjustment of accounts.

Whenever audit by the market administrator of any handler's reports, books, records, or accounts, or other verification discloses errors resulting in money due the market administrator from a handler, or due a handler from the market administrator, or due a producer or cooperative association from a handler, the market administrator shall promptly notify such handler of any amount so due and payment thereof shall be made on or before the next date for making payments as set forth in the provisions under which the error(s) occurred.

§ 1000.78 Charges on overdue accounts.

Any unpaid obligation due the market administrator, producers, or cooperative associations from a handler pursuant to the provisions of the order shall be increased 1.0 percent each month beginning with the day following the date such obligation was due under the order. Any remaining amount due shall be increased at the same rate on the corresponding day of each succeeding month until paid. The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation and shall include any unpaid charges previously computed pursuant to this section. The late charges shall accrue to the administrative assessment fund. For the purpose of this section, any obligation that was determined at a date later than prescribed by the order because of a handler's failure to submit a report to the market administrator when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

Subpart I—Administrative Assessment and Marketing Service Deduction

§ 1000.85 Assessment for order administration.

On or before the payment receipt date specified under § _____.71 of each Federal milk order each handler shall pay to the market administrator its pro rata share of the expense of administration of the order at a rate specified by the market administrator that is no more than 5 cents per hundredweight with respect to:

(a) Receipts of producer milk (including the handler's own production) other than such receipts by a handler described in § 1000.9(c) that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1000.9(c);

(c) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to § 1000.43(d) and other source milk allocated to Class I pursuant to § 1000.44(a) (3) and (8) and the corresponding steps of § 1000.44(b), except other source milk that is excluded from the computations pursuant to § _____.60 (d) and (e) of parts 1005, 1006, and 1007 of this chapter or § _____.60 (h) and (i) of parts 1001, 1030, 1032, 1033, 1124, 1126, 1131, and 1135 of this chapter; and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1000.76(a)(1) (i) and (ii).

§ 1000.86 Deduction for marketing services.

(a) Except as provided in paragraph (b) of this section, each handler in making payments to producers for milk (other than milk of such handler's own production) pursuant to § _____.73 of each Federal milk order shall deduct an amount specified by the market administrator that is no more than 7 cents per hundredweight and shall pay the amount deducted to the market administrator not later than the payment receipt date specified under § _____.71 of each Federal milk order. The money shall be used by the market administrator to verify or establish weights, samples and tests of producer milk and provide market information for producers who are not receiving such services from a cooperative association. The services shall be performed in whole or in part by the market administrator or an agent engaged by and responsible to the market administrator.

(b) In the case of producers for whom the market administrator has determined that a cooperative association is actually performing the services set forth in paragraph (a) of this section, each handler shall make deductions from the payments to be made to producers as may be authorized by the membership agreement or marketing contract between the cooperative association and the producers. On or before the 15th day after the end of the month (except as provided in § 1000.90), such deductions shall be paid to the cooperative association rendering the services accompanied by a statement showing the amount of any deductions and the

amount of milk for which the deduction was computed for each producer. These deductions shall be made in lieu of the deduction specified in paragraph (a) of this section.

Subpart J—Miscellaneous Provisions

§ 1000.90 Dates.

If a date required for a payment contained in a Federal milk order falls on a Saturday, Sunday, or national holiday, such payment will be due on the next day that the market administrator's office is open for public business.

§ 1000.91 [Reserved]

§ 1000.92 [Reserved]

§ 1000.93 OMB control number assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of Title 44 U.S.C. chapter 35 and have been assigned OMB control number 0581–0032.

PART 1001—MILK IN THE NORTHEAST MARKETING AREA

Subpart—Order Regulating Handling

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Authority: 7 U.S.C. 601–674, and 7253.

Subpart—Order Regulating Handling

General Provisions

§ 1001.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to this part 1001. In this part 1001, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1001.2 Northeast marketing area.

The marketing area means all the territory within the bounds of the following states and political subdivisions, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Connecticut, Delaware, Massachusetts, New Hampshire, New Jersey, Rhode Island, Vermont and District of Columbia

All of the States of Connecticut, Delaware, Massachusetts, New Hampshire, New Jersey, Rhode Island, Vermont and the District of Columbia.

Maryland Counties

All of the State of Maryland except the counties of Allegany and Garrett.

New York Counties, Cities, and Townships

All counties within the State of New York except Allegany, Cattaraugus, Chatauqua, Erie, Genessee, Livingston, Monroe, Niagara, Ontario, Orleans, Seneca, Wayne, and Wyoming; the townships of Conquest, Montezuma, Sterling and Victory in Cayuga County; the city of Hornell, and the townships of Avoca, Bath, Bradford, Canisteo, Cohocton, Dansville, Fremont, Pulteney, Hartsville, Hornellsville, Howard, Prattsburg, Urbana, Wayland, Wayne and Wheeler in Steuben County; and the townships of Italy, Middlesex, and Potter in Yates County.

Pennsylvania Counties

Adams, Bucks, Chester, Cumberland, Dauphin, Delaware, Franklin, Fulton, Juniata, Lancaster, Lebanon, Montgomery, Perry, Philadelphia, and York.

Virginia Counties and Cities

Arlington, Fairfax, Loudoun, and Prince William, and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park.

§ 1001.3 Route disposition.

See § 1000.3.

§ 1001.4 Plant.

(a) Except as provided in paragraph (b) of this section, plant means the land, buildings, facilities, and equipment constituting a single operating unit or establishment at which milk or milk products are received, processed, or packaged, including a facility described in paragraph (b)(2) of this section if the facility receives the milk of more than one dairy farmer.

(b) Plant shall not include:

(1) A separate building without stationary storage tanks that is used only as a reload point for transferring bulk milk from one tank truck to another or a separate building used only as a distribution point for storing packaged fluid milk products in transit for route disposition;

(2) An on-farm facility operated as part of a single dairy farm entity for the separation of cream and skim milk or the removal of water from milk; or

(3) Bulk reload points where milk is transferred from one tank truck to another while en route from dairy farmers' farms to a plant. If stationary storage tanks are used for transferring milk at the premises, the operator of the facility shall make an advance written request to the market administrator that the facility shall be treated as a reload point. The cooling of milk, collection of samples, and washing and sanitizing of tank trucks at the premises shall not disqualify it as a bulk reload point.

§ 1001.5 Distributing plant.

See § 1000.5.

§ 1001.6 Supply plant.

See § 1000.6.

§ 1001.7 Pool plant.

Pool plant means a plant, unit of plants, or system of plants as specified in paragraphs (a) through (f) of this section, but excluding a plant described in paragraph (h) of this section. The pooling standards described in paragraphs (c) and (f) of this section are subject to modification pursuant to paragraph (g) of this section.

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or § _____.7(b) of any other Federal milk order, from which during the month 25 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 25 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which fluid milk products are transferred or diverted to plants described in paragraph (a) or (b) of this section subject to the additional conditions described in this paragraph. In the case of a supply plant operated by a cooperative association handler described in § 1000.9(c), fluid milk products that the cooperative delivers to pool plants directly from producers' farms shall be treated as if transferred from the cooperative association's plant for the purpose of meeting the shipping requirements of this paragraph.

(1) During the months of August and December, such shipments must equal not less than 10 percent of the total quantity of milk that is received at the plant or diverted from it pursuant to § 1001.13 during the month;

(2) During the months of September through November, such shipments must equal not less than 20 percent of the total quantity of milk that is received at the plant or diverted from it pursuant to § 1001.13 during the month;

(3) A plant which meets the shipping requirements of this paragraph during each of the months of August through December shall be a pool plant during the following months of January through July unless the milk received at the plant fails to meet the requirements of a duly constituted regulatory agency, the plant fails to meet a shipping requirement instituted pursuant to paragraph (f) of this section, or the plant operator requests nonpool status for the plant. The shipping requirement for any plant which has not met the requirements of paragraphs (c)(1) and (c)(2) of this section must equal not less than 10 percent of the total quantity of milk that is received at the plant or diverted from it pursuant to § 1001.13 during each of the months of January through July in order for the plant to be a pool plant in each of those months;

(4) If milk is delivered directly from producers' farms that are located outside of the states included in the marketing area or outside Maine or West Virginia, such producers must be grouped by state into reporting units and each reporting unit must independently meet the shipping requirements of this paragraph; and

(5) Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the percentages in paragraphs (c)(1) and (2) of this section.

(d) [Reserved]

(e) Two or more plants that are located in the marketing area and operated by the same handler may qualify as a unit by meeting the total and in-area route distribution requirements specified in paragraph (a) of this section subject to the following additional requirements:

(1) At least one of the plants in the unit qualifies as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process only Class I or Class II products and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit; and

(3) A written request to form a unit, or to add or remove plants from a unit, or to cancel a unit, must be filed with the market administrator prior to the first day of the month for which unit formation is to be effective.

(f) Two or more supply plants operated by the same handler, or by one or more cooperative associations, may qualify for pooling as a system of plants by meeting the applicable percentage requirements of paragraph (c) of this section in the same manner as a single plant subject to the following additional requirements:

(1) A supply plant system will be effective for the period of August 1 through July 31 of the following year. Written notification must be given to the market administrator listing the plants to be included in the system prior to the first day of July preceding the effective date of the system. The plants included in the system shall be listed in the sequence in which they shall qualify for pool plant status based on the minimum deliveries required. If the deliveries made are insufficient to qualify the entire system for pooling, the last listed plant shall be excluded from the system, followed by the plant next-to-last on the list, and continuing in this sequence until remaining listed plants have met the minimum shipping requirements; and

(2) Each plant that qualifies as a pool plant within a system shall continue each month as a plant in the system through the following July unless the plant subsequently fails to qualify for pooling, the handler submits a written notification to the market administrator prior to the first day of the month that the plant be deleted from the system, or that the system be discontinued. Any plant that has been so deleted from the system, or that has failed to qualify as a pool plant in any month, will not be part of the system for the remaining months through July. For any system that qualifies in August, no plant may be added in any subsequent month through the following July unless the plant replaces another plant in the system that has ceased operations and the market administrator is notified of such replacement prior to the first day of the month for which it is to be effective.

(g) The applicable shipping percentages of paragraphs (c) and (f) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator

shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(h) The term pool plant shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant qualified pursuant to paragraph (a) of this section that is located within the marketing area if the plant also meets the pooling requirements of another Federal order and more than 50 percent of its route distribution has been in such other Federal order marketing area for 3 consecutive months;

(4) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;

(5) A plant qualified pursuant to paragraph (a) of this section that is located in another Federal order marketing area if the plant meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under the order in this part, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a pool plant designated as a "nonpool plant" that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in writing by the handler and must be approved by the market administrator.

§ 1001.8 Nonpool plant.

See § 1000.8.

§ 1001.9 Handler.

See § 1000.9.

§ 1001.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in the marketing area during the month;

(b) Receives milk solely from own farm production or receives milk that is fully subject to the pricing and pooling provisions of this or any other Federal order;

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month;

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products; and

(e) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing and packaging operations are the producer-handler's own enterprise and at its own risk.

§ 1001.11 [Reserved]

§ 1001.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1001.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include a dairy farmer described in paragraphs (b)(1) through (6) of this section. A dairy farmer described in paragraphs (b)(5) or (6) of this section shall be known as a *dairy farmer for other markets*.

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1001.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I;

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order;

(5) For any month of December through June, any dairy farmer whose milk is received at a pool plant or by a cooperative association handler described in § 1000.9(c) if the pool plant operator or the cooperative association caused milk from the same farm to be delivered to any plant as other than producer milk, as defined under the order in this part or any other Federal milk order, during the same month, either of the 2 preceding months, or during any of the preceding months of July through November; and

(6) For any month of July through November, any dairy farmer whose milk is received at a pool plant or by a cooperative association handler described in § 1000.9(c) if the pool plant operator or the cooperative association caused milk from the same farm to be delivered to any plant as other than producer milk, as defined under the order in this part or any other Federal milk order, during the same month.

§ 1001.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk) and butterfat contained in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or from a handler described in § 1000.9(c). Any milk which is picked up from the producer's farm in a tank truck under the control of the operator of a pool plant or a handler described in § 1000.9(c) but which is not received at a plant until the following month shall be considered as having been received by the handler during the month in which it is picked up at the farm. All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by the operator of a pool plant or a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants subject to the following conditions:

(1) The producers whose farms are outside of the states included in the marketing area and outside the states of Maine or West Virginia shall be organized into state units and each such unit shall be reported separately; and

(2) For pooling purposes, each reporting unit must satisfy the shipping standards specified for a supply plant pursuant to § 1001.7(c);

(c) Diverted by a proprietary pool plant operator to another pool plant.

Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or by a handler described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless milk of such dairy farmer was physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under the order in this part (except as a result of a temporary loss of Grade A approval), the dairy farmer's milk shall not be eligible for diversion until milk of the dairy farmer has been physically received as producer milk at a pool plant; and

(2) Diverted milk shall be priced at the location of the plant to which diverted.

§ 1001.14 Other source milk.

See § 1000.14.

§ 1001.15 Fluid milk product.

See § 1000.15.

§ 1001.16 Fluid cream product.

See § 1000.16.

§ 1001.17 [Reserved]

§ 1001.18 Cooperative association.

See § 1000.18.

§ 1001.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1001.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 9th day after the end of the month, in the detail and on prescribed forms, as follows:

(a) Each pool plant operator shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, and pounds of nonfat solids other than protein (other solids) contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c); and

(ii) Receipts of milk from handlers described in § 1000.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

(3) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, and other nonfat solids as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The product pounds, pounds of butterfat, pounds of protein, and the pounds of solids-not-fat other than protein (other solids) contained in receipts of milk from producers; and

(2) The utilization or disposition of such receipts.

(d) Each handler not specified in paragraph (a) or (b) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1001.31 Payroll reports.

(a) On or before the 22nd day after the end of each month, each handler that operates a pool plant pursuant to § 1001.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in detail prescribed by the market administrator, showing for each producer the information specified in § 1001.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1001.32 Other reports.

In addition to the reports required pursuant to §§ 1001.30 and 1001.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1001.40 Classes of utilization.

See § 1000.40.

§ 1001.41 [Reserved]

§ 1001.42 Classification of transfers and diversions.

See § 1000.42.

§ 1001.43 General classification rules.

See § 1000.43.

§ 1001.44 Classification of producer milk.

See § 1000.44.

§ 1001.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1001.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1001.51 Class I differential and price.

The Class I differential shall be the differential established for Suffolk County, Massachusetts, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Suffolk County, Massachusetts.

§ 1001.52 Adjusted Class I differentials.

See § 1000.52.

§ 1001.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1001.54 Equivalent price.

See § 1000.54.

Producer Price Differential

§ 1001.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (h) of this section and subtracting from that total amount the value computed in paragraph (i) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a),

(b), and (c), respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Class I value. (1) Multiply the pounds of skim milk in Class I by the Class I skim milk price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I by the Class I butterfat price.

(b) Class II value. (1) Multiply the pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class II times the Class II butterfat price.

(c) Class III value. (1) Multiply the pounds of protein in Class III skim milk by the protein price;

(2) Add an amount obtained by multiplying the pounds of other solids in Class III skim milk by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) Class IV value. (1) Multiply the pounds of nonfat solids in Class IV skim milk by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

(e) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) and the corresponding step of § 1000.44(b) by the skim milk prices and butterfat prices applicable to each class.

(f) Multiply the difference between the current month's Class I, II, or III price, as the case may be, and the Class IV price for the preceding month by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(g) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants.

(h) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(i) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1001.61 Computation of producer price differential.

For each month, the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1001.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions in this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1001.60 for all handlers required to file reports prescribed in § 1001.30;

(b) Subtract the total of the values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1001.60 by the protein price, other solids price, and the butterfat price, respectively;

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1001.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1001.60(h); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result, rounded to the nearest cent, shall be known as the *producer price differential* for the month.

§ 1001.62 Announcement of producer prices.

On or before the 13th day after the end of the month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat computed by combining the Class III price and the producer price differential.

Payments for Milk

§ 1001.70 Producer-settlement fund.

See § 1000.70.

§ 1001.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 15th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1001.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1001.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively; and

(3) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1001.60(h) by the producer price differential as adjusted pursuant to § 1001.75 for the location of the plant from which received.

§ 1001.72 Payments from the producer-settlement fund.

No later than the 16th day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1001.71(b) exceeds the amount computed pursuant to § 1001.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1001.73 Payments to producers and to cooperative associations.

(a) Each pool plant operator that is not paying a cooperative association for producer milk shall pay each producer as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the 23rd day of the month, payment shall be made so that it is received by the producer on or before the 26th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer no later than the day after the payment date required in § 1001.72 in an amount computed as follows:

(i) Multiply the hundredweight of producer milk received by the producer price differential for the month as adjusted pursuant to § 1001.75;

(ii) Multiply the pounds of butterfat received by the butterfat price for the month;

(iii) Multiply the pounds of protein received by the protein price for the month;

(iv) Multiply the pounds of other solids received by the other solids price for the month; and

(v) Add the amounts computed in paragraphs (a)(2)(i) through (iv) of this section, and from that sum:

(A) Subtract the partial payment made pursuant to paragraph (a)(1) of this section;

(B) Subtract the deduction for marketing services pursuant to § 1000.86;

(C) Add or subtract for errors made in previous payments to the producer; and

(D) Subtract proper deductions authorized in writing by the producer.

(b) One day before partial and final payments are due pursuant to paragraph (a) of this section, each pool plant operator shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk (including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk) received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, the payment shall be equal to the hundredweight of milk received multiplied by the lowest announced class price for the preceding month.

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk milk/skimmed milk products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available at the receiving plant's location.

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* Following the classification of bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment for such receipts shall be determined as follows:

(i) Multiply the hundredweight of Class I skim milk by the Class I skim milk price for the month at the receiving plant;

(ii) Multiply the pounds of Class I butterfat by the Class I butterfat price for the month at the receiving plant;

(iii) Multiply the pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price;

(iv) Multiply the pounds of butterfat in Class II times the Class II butterfat price;

(v) Multiply the pounds of nonfat solids in Class IV milk by the nonfat solids price for the month;

(vi) Multiply the pounds of butterfat in Class III and IV milk by the butterfat price for the month;

(vii) Multiply the pounds of protein in Class III milk by the protein price for the month;

(viii) Multiply the pounds of other solids in Class III milk by the other solids price for the month; and

(ix) Add together the amounts computed in paragraphs (b)(3)(i) through (viii) of this section and from that sum deduct any payment made pursuant to paragraph (b)(2) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1001.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce payments pursuant to paragraphs (a) and (b) of this section, but by not more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

(e) In making payments to producers pursuant to this section, each pool plant operator shall furnish each producer, except a producer whose milk was

received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and the payroll number of the producer;

(2) The month and dates that milk was received from the producer, including the daily and total pounds of milk received;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

(4) The minimum rate or rates at which payment to the producer is required pursuant to the order in this part;

(5) The rate used in making payment if the rate is other than the applicable minimum rate;

(6) The amount, or rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(7) The net amount of payment to the producer or cooperative association.

§ 1001.74 [Reserved]

§ 1001.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1001.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1001.73 and 1000.76.

§ 1001.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1001.77 Adjustment of accounts.

See § 1000.77.

§ 1001.78 Charges on overdue accounts.

See § 1000.78.

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§ 1001.85 Assessment for order administration.

See § 1000.85.

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See § 1000.86.

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

Subpart—Order Regulating Handling

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Authority: 7 U.S.C. 601–674, and 7253.

Subpart—Order Regulating Handling

General Provisions

§ 1005.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to this part 1005. In this part 1005, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1005.2 Appalachian marketing area.

The marketing area means all the territory within the bounds of the following states and political subdivisions, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Georgia Counties

Catoosa, Chattooga, Dade, Fannin, Murray, Walker, and Whitfield.

Indiana Counties

Clark, Crawford, Daviess, Dubois, Floyd, Gibson, Greene, Harrison, Knox, Martin, Orange, Perry, Pike, Posey, Scott, Spencer, Sullivan, Vanderburgh, Warrick, and Washington.

Kentucky Counties

Adair, Anderson, Bath, Bell, Bourbon, Boyle, Breathitt, Breckinridge, Bullitt, Butler, Carroll, Carter, Casey, Clark, Clay, Clinton, Cumberland, Daviess, Edmonson, Elliott, Estill, Fayette, Fleming, Franklin, Gallatin, Garrard, Grayson, Green, Hancock, Hardin, Harlan, Hart, Henderson, Henry, Hopkins, Jackson, Jefferson, Jessamine, Knott, Knox, Larue, Laurel, Lee, Leslie, Letcher, Lincoln, Madison, Marion, McCreary, McLean, Meade, Menifee, Mercer, Montgomery, Morgan, Muhlenberg, Nelson, Nicholas, Ohio, Oldham, Owen, Owsley, Perry, Powell, Pulaski, Rockcastle, Rowan, Russell, Scott, Shelby, Spencer, Taylor, Trimble, Union, Washington, Wayne, Webster, Whitley, Wolfe, and Woodford.

North Carolina and South Carolina

All of the States of North Carolina and South Carolina.

Tennessee Counties

Anderson, Blount, Bradley, Campbell, Carter, Claiborne, Cocke, Cumberland, Grainger, Greene, Hamblen, Hamilton, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Polk, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, and Washington.

Virginia Counties and Cities

Buchanan, Dickenson, Lee, Russell, Scott, Tazewell, Washington, and Wise; and the cities of Bristol and Norton.

West Virginia Counties

McDowell and Mercer.

§ 1005.3 Route disposition.

See § 1000.3.

§ 1005.4 Plant.

See § 1000.4.

§ 1005.5 Distributing plant.

See § 1000.5.

§ 1005.6 Supply plant.

See § 1000.6.

§ 1005.7 Pool plant.

Pool plant means a plant specified in paragraphs (a) through (d) of this section, or a unit of plants as specified in paragraph (e) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (c) and (d) of this section are subject to modification pursuant to paragraph (f) of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or § _____.7(b) of any other Federal milk order, from which during the month 50 percent or more of the fluid milk products physically received at such plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 50 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which 50 percent or more of the total quantity of milk that is physically received during the month from dairy farmers and handlers described in § 1000.9(c), including milk that is diverted from the plant, is transferred to pool distributing plants. Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the plant's shipping percentage.

(d) A plant located within the marketing area or in the State of Virginia that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month at least 60 percent of the producer milk of members of such cooperative association is delivered directly from farms to pool distributing plants or is transferred to such plants as a fluid milk product (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) from the cooperative's plant.

(e) Two or more plants operated by the same handler and that are located within the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements specified in paragraph (a) of this section and the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process only Class I or Class II products and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) A written request to form a unit, or to add or remove plants from a unit, must be filed with the market administrator prior to the first day of the month for which it is to be effective.

(f) The applicable shipping percentages of paragraphs (c) and (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the date for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(g) The term pool plant shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area, meets the pooling requirements of another Federal order, and has had greater route disposition in such other Federal order marketing area for 3 consecutive months;

(4) A plant qualified pursuant to paragraph (a) of this section which is located in another Federal order marketing area, meets the pooling standards of the other Federal order, and has not had a majority of its route disposition in this marketing area for 3 consecutive months or is locked into pool status under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(5) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under such other order than are made to plants regulated under the order in this part, or such plant has automatic pooling status under such other order; and

(6) That portion of a pool plant designated as a "nonpool plant" that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in writing by the handler and must be approved by the market administrator.

§ 1005.8 Nonpool plant.

See § 1000.8.

§ 1005.9 Handler.

See § 1000.9.

§ 1005.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in the marketing area;

(b) Receives no fluid milk products, and acquires no fluid milk products for route disposition, from sources other than own farm production;

(c) Disposes of no other source milk as Class I milk except by increasing the

nonfat milk solids content of the fluid milk products received from own farm production; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled, and the processing and packaging operations are the producer-handler's own enterprise and are operated at the producer-handler's own risk.

§ 1005.11 [Reserved]

§ 1005.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1005.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1005.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1005.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk) and butterfat contained in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a handler described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) In any month of July through December, not less than 6 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(2) In any month of January through June, not less than 2 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(3) The total quantity of milk so diverted during the month by a cooperative association shall not exceed 25 percent during the months of July through November, January, and February, and 40 percent during the months of December and March through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 25 percent during the months of July through November, January, and February, and 40 percent during the months of December and March through June, of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1005.7(d)) during the month, excluding the quantity of producer milk received from a handler described in § 1000.9(c);

(5) Any milk diverted in excess of the limits prescribed in paragraphs (d)(3) and (4) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that will not be producer milk, no milk diverted by the handler or cooperative association shall be producer milk;

(6) Diverted milk shall be priced at the location of the plant to which diverted; and

(7) The delivery day requirements and the diversion percentages in paragraphs (d)(1) through (4) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1005.14 Other source milk.

See § 1000.14.

§ 1005.15 Fluid milk product.

See § 1000.15.

§ 1005.16 Fluid cream product.

See § 1000.16.

§ 1005.17 [Reserved]

§ 1005.18 Cooperative association.

See § 1000.18.

§ 1005.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1005.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 7th day after the end of the month, in the detail and on prescribed forms, as follows:

(a) With respect to each of its pool plants, the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c);

(2) Receipts of milk from handlers described in § 1000.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Receipts of bulk milk from a plant regulated under another Federal order, except Federal Order 1007, for which a transportation credit is requested pursuant to § 1005.82;

(6) Receipts of producer milk described in § 1005.82(c)(2), including the identity of the individual producers whose milk is eligible for the transportation credit pursuant to that paragraph and the date that such milk was received;

(7) For handlers submitting transportation credit requests, transfers of bulk milk to nonpool plants, including the dates that such milk was transferred;

(8) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products; and

(9) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers;

(2) The utilization or disposition of all such receipts; and

(3) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1005.82, all of the information required in paragraphs (a)(5), (a)(6), and (a)(7) of this section.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1005.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1005.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in detail prescribed by the market administrator, showing for each producer the information specified in § 1005.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1005.32 Other reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1000.9(a) and (c) shall report to the market administrator any adjustments to transportation credit requests as reported pursuant to § 1005.30(a)(5), (6), and (7).

(b) In addition to the reports required pursuant to §§ 1005.30, 1005.31, and 1005.32(a), each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1005.40 Classes of utilization.

See § 1000.40.

§ 1005.41 [Reserved]

§ 1005.42 Classification of transfers and diversions.

See § 1000.42.

§ 1005.43 General classification rules.

See § 1000.43.

§ 1005.44 Classification of producer milk.

See § 1000.44.

§ 1005.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1005.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1005.51 Class I differential and price.

The Class I differential shall be the differential established for Mecklenburg County, North Carolina, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Mecklenburg County, North Carolina.

§ 1005.52 Adjusted Class I differentials.

See § 1000.52.

§ 1005.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1005.54 Equivalent price.

See § 1000.54.

Uniform Prices

§ 1005.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (e) of this section and subtracting from that total amount the value computed in paragraph (f) of this section. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) by the applicable skim milk and butterfat prices, and add the resulting amounts;

(b) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) by the respective skim milk and butterfat prices applicable at the location of the pool plant;

(c) Multiply the difference between the Class IV price for the preceding month and the current month's Class I, II, or III price, as the case may be, by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(d) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants;

(e) Multiply the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(f) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are

allocated to Class I use pursuant to § 1000.43(d).

§ 1005.61 Computation of uniform prices.

On or before the 11th day of each month, the market administrator shall compute a uniform butterfat price, a uniform skim milk price, and a uniform price for producer milk receipts reported for the prior month. The report of any handler who has not made payments required pursuant to § 1005.71 for the preceding month shall not be included in the computation of these prices, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations.

(a) *Uniform butterfat price.* The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices and dividing the sum of such values by the total pounds of such butterfat.

(b) *Uniform skim milk price.* The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(1) Combine into one total the values computed pursuant to § 1005.60 for all handlers;

(2) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1005.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the pounds of butterfat by the butterfat price computed in paragraph (a) of this section;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total skim pounds of producer milk; and

(ii) The total skim pounds for which a value is computed pursuant to § 1005.60(e); and

(6) Subtract not less than 4 cents and not more than 5 cents.

(c) *Uniform price.* The uniform price per hundredweight, rounded to the nearest cent, shall be the sum of the following:

(1) Multiply the uniform butterfat price for the month pursuant to paragraph (a) of this section times 3.5 pounds of butterfat; and

(2) Multiply the uniform skim milk price for the month pursuant to paragraph (b) of this section times 96.5 pounds of skim milk.

§ 1005.62 Announcement of uniform prices.

On or before the 11th day after the end of the month, the market administrator shall announce the uniform prices for the month computed pursuant to § 1005.61.

Payments for Milk

§ 1005.70 Producer-settlement fund.

See § 1000.70.

§ 1005.71 Payments to the producer-settlement fund.

Each handler shall make a payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 12th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk of the handler for the month as determined pursuant to § 1005.60; and

(b) The sum of the value at the uniform prices for skim milk and butterfat, adjusted for plant location, of the handler's receipts of producer milk; and the value at the uniform price, as adjusted pursuant to § 1005.75, applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1005.60(e).

§ 1005.72 Payments from the producer-settlement fund.

No later than one day after the date of payment receipt required under § 1005.71, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1005.71(b) exceeds the amount computed pursuant to § 1005.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1005.73 Payments to producers and to cooperative associations.

(a) Each pool plant operator that is not paying a cooperative association for producer milk shall pay each producer as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the 23rd day of the month, payment shall be made so that it is received by the producer on or before the 26th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month at not less than 90 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1005.75 and proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, a payment computed as follows shall be made so that it is received by each producer one day after the payment date required in § 1005.72:

(i) Multiply the hundredweight of producer skim milk received times the uniform skim milk price for the month;

(ii) Multiply the pounds of butterfat received times the uniform butterfat price for the month;

(iii) Multiply the hundredweight of producer milk received times the plant location adjustment pursuant to § 1005.75; and

(iv) Add the amounts computed in paragraph (a)(2)(i), (ii), and (iii) of this section, and from that sum:

(A) Subtract the partial payment made pursuant to paragraph (a)(1) of this section;

(B) Subtract the deduction for marketing services pursuant to § 1000.86;

(C) Add or subtract for errors made in previous payments to the producer; and

(D) Subtract proper deductions authorized in writing by the producer.

(b) One day before partial and final payments are due pursuant to paragraph (a) of this section, each pool plant operator shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk (including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk) received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, the payment shall be equal to the hundredweight of milk received multiplied by 90 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1005.75.

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available for skim milk and butterfat at the receiving plant's location.

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment shall be the classified value of such milk as determined by multiplying the pounds of skim milk and butterfat assigned to each class pursuant to § 1000.44 by the class prices for the month at the receiving plant's location, and subtracting from this sum the partial payment made pursuant to paragraph (b)(2) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1005.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce payments pursuant to paragraphs (a) and (b) of this section, but by not more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

(e) In making payments to producers pursuant to this section, each pool plant operator shall furnish each producer, except a producer whose milk was received from a cooperative association described in § 1000.9(a) or (c), a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and the payroll number of the producer;

(2) The month and dates that milk was received from the producer, including the daily and total pounds of milk received;

(3) The total pounds of butterfat in the producer's milk;

(4) The minimum rate or rates at which payment to the producer is required pursuant to the order in this part;

(5) The rate used in making payment if the rate is other than the applicable minimum rate;

(6) The amount, or rate per hundredweight, and nature of each deduction claimed by the handler; and

(7) The net amount of payment to the producer or cooperative association.

§ 1005.74 [Reserved]

§ 1005.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1005.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1005.73 and 1000.76.

§ 1005.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1005.77 Adjustment of accounts.

See § 1000.77.

§ 1005.78 Charges on overdue accounts.

See § 1000.78.

Marketwide Service Payments

§ 1005.80 Transportation credit balancing fund.

The market administrator shall maintain a separate fund known as the *Transportation Credit Balancing Fund* into which shall be deposited the payments made by handlers pursuant to § 1005.81 and out of which shall be made the payments due handlers pursuant to § 1005.82. Payments due a handler shall be offset against payments due from the handler.

§ 1005.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month (except as provided in § 1000.90), each handler operating a pool plant and each handler specified in § 1000.9(c) shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1005.44 by $0.065 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June–January period. In the event that during any month of the June–January period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

(b) The market administrator shall announce publicly on or before the 5th day of the month (except as provided in § 1000.90) the assessment pursuant to paragraph (a) of this section for the following month.

§ 1005.82 Payments from the transportation credit balancing fund.

(a) Payments from the transportation credit balancing fund to handlers and cooperative associations requesting transportation credits shall be made as follows:

(1) On or before the 13th day (except as provided in § 1000.90) after the end of each of the months of July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1005.30(a)(5), bulk milk transferred from a plant fully regulated under another Federal order as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1005.30(a)(6), milk directly from producers' farms as specified in paragraph (c)(2) of this section, a preliminary amount determined pursuant to paragraph (d) of this section to the extent that funds are available in the transportation credit balancing fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the transportation credit balancing fund by reducing payments prorata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (a)(2) of this section.

(2) The market administrator shall accept adjusted requests for transportation credits on or before the 20th day of the month following the month for which such credits were requested pursuant to § 1005.32(a). After such date, a preliminary audit will be conducted by the market administrator, who will recalculate any necessary proration of transportation credit payments for the preceding month pursuant to paragraph (a) of this section. Handlers will be promptly notified of an overpayment of credits based upon this final computation and remedial payments to or from the transportation credit balancing fund will be made on or before the next payment date for the following month.

(3) Transportation credits paid pursuant to paragraphs (a)(1) and (2) of this section shall be subject to final verification by the market administrator pursuant to § 1000.77. Adjusted payments to or from the transportation credit balancing fund will remain subject to the final proration established pursuant to paragraph (a)(2) of this section.

(4) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1005.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(b) The market administrator may extend the period during which transportation credits are in effect (i.e., the transportation credit period) to the months of January and June if a written request to do so is received 15 days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. Before making such a finding, the market administrator shall notify the Director of the Dairy Division and all handlers in the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

(c) Transportation credits shall apply to the following milk:

(1) Bulk milk received from a plant regulated under another Federal order, except Federal Order 1007, and allocated to Class I milk pursuant to § 1000.44(a)(9); and

(2) Bulk milk received directly from the farms of dairy farmers at pool distributing plants subject to the following conditions:

(i) The quantity of such milk that shall be eligible for the transportation credit shall be determined by multiplying the total pounds of milk received from producers meeting the conditions of this paragraph by the lower of:

(A) The marketwide estimated Class I utilization of all handlers for the month pursuant to § 1000.45(a); or

(B) The Class I utilization of all producer milk of the pool plant operator receiving the milk after the computations described in § 1000.44;

(ii) The dairy farmer was not a "producer" under this order during more than 2 of the immediately preceding months of February through May and not more than 50 percent of the production of the dairy farmer during those 2 months, in aggregate, was received as producer milk under this order during those 2 months; and

(iii) The farm on which the milk was produced is not located within the specified marketing area of the order in this part or the marketing area of Federal Order 1007 (7 CFR part 1007).

(d) Transportation credits shall be computed as follows:

(1) The market administrator shall subtract from the pounds of milk described in paragraphs (c)(1) and (2) of this section the pounds of bulk milk transferred from the pool plant receiving the supplemental milk if milk was transferred to a nonpool plant on the same calendar day that the supplemental milk was received. For this purpose, the transferred milk shall be subtracted from the most distant load of supplemental milk received, and then in sequence with the next most distant load until all of the transfers have been offset.

(2) With respect to the pounds of milk described in paragraph (c)(1) of this section that remain after the computations described in paragraph (d)(1) of this section, the market administrator shall:

(i) Determine the shortest hard-surface highway distance between the shipping plant and the receiving plant;

(ii) Multiply the number of miles so determined by 0.35 cent;

(iii) Subtract the applicable Class I differential in § 1000.52 for the county in which the shipping plant is located from the Class I differential applicable for the county in which the receiving plant is located;

(iv) Subtract any positive difference computed in paragraph (d)(2)(iii) of this section from the amount computed in paragraph (d)(2)(ii) of this section; and

(v) Multiply the remainder computed in paragraph (d)(2)(iv) of this section by the hundredweight of milk described in paragraph (d)(2) of this section.

(3) For the remaining milk described in paragraph (c)(2) of this section after computations described in paragraph (d)(1) of this section, the market administrator shall:

(i) Determine an origination point for each load of milk by locating the nearest city to the last producer's farm from which milk was picked up for delivery to the receiving pool plant;

(ii) Determine the shortest hard-surface highway distance between the receiving pool plant and the origination point;

(iii) Subtract 85 miles from the mileage so determined;

(iv) Multiply the remaining miles so computed by 0.35 cent;

(v) Subtract the Class I differential specified in § 1000.52 applicable for the county in which the origination point is located from the Class I differential applicable at the receiving pool plant's location;

(vi) Subtract any positive difference computed in paragraph (d)(3)(v) of this section from the amount computed in paragraph (d)(3)(iv) of this section; and

(vii) Multiply the remainder computed in paragraph (d)(3)(vi) of this section by the hundredweight of milk described in paragraph (d)(3) of this section.

Administrative Assessment and Marketing Service Deduction

§ 1005.85 Assessment for order administration.

See § 1000.85.

§ 1005.86 Deduction for marketing services.

See § 1000.86.

PART 1006—MILK IN THE FLORIDA MARKETING AREA

Subpart—Order Regulating Handling

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1006.85 Assessment for order administration.
1006.86 Deduction for marketing services.

Authority: 7 U.S.C. 601–674, and 7253.

Subpart—Order Regulating Handling

General Provisions

§ 1006.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to this part 1006. In this part 1006, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1006.2 Florida marketing area.

The marketing area means all the territory within the State of Florida, except the counties of Escambia, Okaloosa, Santa Rosa, and Walton, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions.

§ 1006.3 Route disposition.

See § 1000.3.

§ 1006.4 Plant.

See § 1000.4.

§ 1006.5 Distributing plant.

See § 1000.5.

§ 1006.6 Supply plant.

See § 1000.6.

§ 1006.7 Pool plant.

Pool plant means a plant specified in paragraphs (a) through (d) of this section, or a unit of plants as specified in paragraph (e) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (c) and (d) of this section are subject to modification pursuant to paragraph (f) of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or § _____.7(b) of any other Federal milk order, from which during the month 50 percent or more of the fluid milk products physically received at such plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 50 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which 60 percent or more of the total quantity of milk that is physically received during the month from dairy farmers and handlers described in § 1000.9(c), including milk that is diverted from the plant, is transferred to pool distributing plants. Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the plant's shipping percentage.

(d) A plant located within the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month 60 percent of the producer milk of members of such cooperative association is delivered directly from farms to pool distributing plants or is transferred to such plants as a fluid milk product (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) from the cooperative's plant.

(e) Two or more plants operated by the same handler and that are located within the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements specified in paragraph (a) of this section and the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process only Class I or Class II products and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) A written request to form a unit, or to add or remove plants from a unit, must be filed with the market administrator prior to the first day of the month for which it is to be effective.

(f) The applicable shipping percentages of paragraphs (c) and (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the date for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and

invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(g) The term pool plant shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area, meets the pooling requirements of another Federal order, and has had greater route disposition in such other Federal order marketing area for 3 consecutive months;

(4) A plant qualified pursuant to paragraph (a) of this section which is located in another Federal order marketing area, meets the pooling standards of the other Federal order, and has not had a majority of its route disposition in this marketing area for 3 consecutive months or is locked into pool status under such other Federal order without regard to its route disposition in any other Federal order marketing area; and

(5) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under such other order than are made to plants regulated under the order in this part, or such plant has automatic pooling status under such other order.

§ 1006.8 Nonpool plant.

See § 1000.8.

§ 1006.9 Handler.

See § 1000.9.

§ 1006.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in the marketing area;

(b) Receives no fluid milk products, and acquires no fluid milk products for route disposition, from sources other than own farm production;

(c) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from own farm production; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled, and the processing and packaging operations, are the producer-handler's own enterprise and are operated at the producer-handler's own risk.

§ 1006.11 [Reserved]

§ 1006.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1006.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1006.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1006.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk) and butterfat contained in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a handler described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) In any month, not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(2) The total quantity of milk so diverted during the month by a cooperative association shall not exceed 20 percent during the months of July through November, 25 percent during the months of December through February, and 40 percent during all other months, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month;

(3) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 20 percent during the months of July through November, 25 percent during the months of December through February, and 40 percent during all other months, of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1006.7(d)) during the month, excluding the quantity of producer milk received from a handler described in § 1000.9(c);

(4) Any milk diverted in excess of the limits prescribed in paragraphs (d) (3) and (4) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that will not be producer milk, no milk diverted by the handler or cooperative association shall be producer milk;

(5) Diverted milk shall be priced at the location of the plant to which diverted; and

(6) The delivery day requirements and the diversion percentages in paragraphs (d) (1) through (3) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1006.14 Other source milk.

See § 1000.14.

§ 1006.15 Fluid milk product.

See § 1000.15.

§ 1006.16 Fluid cream product.

See § 1000.16.

§ 1006.17 [Reserved]

§ 1006.18 Cooperative association.

See § 1000.18.

§ 1006.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1006.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 7th day after the end of the month, in the detail and on prescribed forms, as follows:

(a) With respect to each of its pool plants, the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c);

(2) Receipts of milk from handlers described in § 1000.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products; and

(6) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1006.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1006.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in detail prescribed by the market administrator, showing for each producer the information specified in § 1006.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1006.32 Other reports.

In addition to the reports required pursuant to §§ 1006.30 and 1006.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1006.40 Classes of utilization.

See § 1000.40.

§ 1006.41 [Reserved]

§ 1006.42 Classification of transfers and diversions.

See § 1000.42.

§ 1006.43 General classification rules.

See § 1000.43.

§ 1006.44 Classification of producer milk.

See § 1000.44.

§ 1006.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1006.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1006.51 Class I differential and price.

The Class I differential shall be the differential established for Hillsborough County, Florida, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Hillsborough County, Florida.

§ 1006.52 Adjusted Class I differentials.

See § 1000.52.

§ 1006.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1006.54 Equivalent price.

See § 1000.54.

Uniform Prices

§ 1006.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (e) of this section and subtracting from that total amount the value computed in paragraph (f) of this section. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) by the applicable skim milk and butterfat prices, and add the resulting amounts;

(b) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) by the respective skim milk and butterfat prices applicable at the location of the pool plant;

(c) Multiply the difference between the Class IV price for the preceding month and the current month's Class I, II, or III price, as the case may be, by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(d) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants;

(e) Multiply the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat

in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(f) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1006.61 Computation of uniform prices.

On or before the 11th day of each month, the market administrator shall compute a uniform butterfat price, a uniform skim milk price, and a uniform price for producer milk receipts reported for the prior month. The report of any handler who has not made payments required pursuant to § 1006.71 for the preceding month shall not be included in the computation of these prices, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations.

(a) *Uniform butterfat price.* The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices and dividing the sum of such values by the total pounds of such butterfat.

(b) *Uniform skim milk price.* The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(1) Combine into one total the values computed pursuant to § 1006.60 for all handlers;

(2) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1006.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the pounds of butterfat by the butterfat price computed in paragraph (a) of this section;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total skim pounds of producer milk; and

(ii) The total skim pounds for which a value is computed pursuant to § 1006.60(e); and

(6) Subtract not less than 4 cents and not more than 5 cents.

(c) *Uniform price.* The uniform price per hundredweight, rounded to the nearest cent, shall be the sum of the following:

(1) Multiply the uniform butterfat price for the month pursuant to paragraph (a) of this section times 3.5 pounds of butterfat; and

(2) Multiply the uniform skim milk price for the month pursuant to paragraph (b) of this section times 96.5 pounds of skim milk.

§ 1006.62 Announcement of uniform prices.

On or before the 11th day after the end of the month, the market administrator shall announce the uniform prices for the month computed pursuant to § 1006.61.

Payments for Milk

§ 1006.70 Producer-settlement fund.

See § 1000.70.

§ 1006.71 Payments to the producer-settlement fund.

Each handler shall make a payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 12th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk of the handler for the month as determined pursuant to § 1006.60; and

(b) The sum of the value at the uniform prices for skim milk and butterfat, adjusted for plant location, of the handler's receipts of producer milk; and the value at the uniform price, as adjusted pursuant to § 1006.75, applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1006.60(e).

§ 1006.72 Payments from the producer-settlement fund.

No later than one day after the date of payment receipt required under § 1006.71, the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1006.71(b) exceeds the amount computed pursuant to § 1006.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1006.73 Payments to producers and to cooperative associations.

(a) Each pool plant operator that is not paying a cooperative association for producer milk shall pay each producer as follows:

(1) *Partial payments.* (i) For each producer who has not discontinued shipments as of the 15th day of the month, payment shall be made so that it is received by the producer on or before the 20th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month at not less than 85 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1006.75 and proper deductions authorized in writing by the producer; and

(ii) For each producer who has not discontinued shipments as of the last day of the month, payment shall be made so that it is received by the producer on or before the 5th day of the following month (except as provided in § 1000.90) for milk received from the 16th to the last day of the month at not less than 85 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1006.75 and proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, a payment computed as follows shall be made so that it is received by each producer one day after the payment date required in § 1006.72:

(i) Multiply the hundredweight of producer skim milk received times the uniform skim milk price for the month;

(ii) Multiply the pounds of butterfat received times the uniform butterfat price for the month;

(iii) Multiply the hundredweight of producer milk received times the plant location adjustment pursuant to § 1006.75; and

(iv) Add the amounts computed in paragraphs (a)(2)(i), (ii), and (iii) of this section, and from that sum:

(A) Subtract the partial payments made pursuant to paragraph (a)(1) of this section;

(B) Subtract the deduction for marketing services pursuant to § 1000.86;

(C) Add or subtract for errors made in previous payments to the producer; and

(D) Subtract proper deductions authorized in writing by the producer.

(b) One day before partial and final payments are due pursuant to paragraph (a) of this section, each pool plant operator shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk (including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk) received from a cooperative association in any capacity, except as the operator of a pool plant, the payment shall be equal to the hundredweight of milk received multiplied by 90 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1006.75.

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available for skim milk and butterfat at the receiving plant's location.

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment shall be the classified value of such milk as determined by multiplying the pounds of skim milk and butterfat assigned to each class pursuant to § 1000.44 by the class prices for the month at the receiving plant's location, and subtracting from this sum the partial payment made pursuant to paragraph (b)(2) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1006.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce payments pursuant to paragraphs (a) and (b) of this section, but by not more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

(e) In making payments to producers pursuant to this section, each pool plant operator shall furnish each producer, except a producer whose milk was received from a cooperative association described in § 1000.9(a) or (c), a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and the payroll number of the producer;

(2) The month and dates that milk was received from the producer, including the daily and total pounds of milk received;

(3) The total pounds of butterfat in the producer's milk;

(4) The minimum rate or rates at which payment to the producer is required pursuant to the order in this part;

(5) The rate used in making payment if the rate is other than the applicable minimum rate;

(6) The amount, or rate per hundredweight, and nature of each deduction claimed by the handler; and

(7) The net amount of payment to the producer or cooperative association.

§ 1006.74 [Reserved]

§ 1006.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1006.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1006.73 and 1000.76.

§ 1006.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1006.77 Adjustment of accounts.

See § 1000.77.

§ 1006.78 Charges on overdue accounts.

See § 1000.78.

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See § 1000.85.

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See § 1000.86.

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

Subpart—Order Regulating Handling

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Authority: 7 U.S.C. 601–674, and 7253.

Subpart—Order Regulating Handling

General Provisions

§ 1007.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to this part 1007. In this part 1007, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1007.2 Southeast marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Alabama, Arkansas, Louisiana, and Mississippi

All of the States of Alabama, Arkansas, Louisiana, and Mississippi.

Florida Counties

Escambia, Okaloosa, Santa Rosa, and Walton.

Georgia Counties

All of the State of Georgia except for the counties of Catoosa, Chattooga, Dade, Fannin, Murray, Walker, and Whitfield.

Kentucky Counties

Allen, Ballard, Barren, Caldwell, Calloway, Carlisle, Christian, Crittenden, Fulton, Graves, Hickman, Livingston, Logan, Lyon, Marshall,McCracken, Metcalfe, Monroe, Simpson, Todd, Trigg, and Warren.

Missouri Counties

Barry, Barton, Bollinger, Butler, Cape Girardeau, Carter, Cedar, Christian, Crawford, Dade, Dallas, Dent, Douglas, Dunklin, Greene, Howell, Iron, Jasper, Laclede, Lawrence, Madison, McDonald, Mississippi, New Madrid, Newton, Oregon, Ozark, Pemiscot, Perry, Polk, Reynolds, Ripley, Scott, Shannon, St. Francois, Stoddard, Stone, Taney, Texas, Vernon, Washington, Wayne, Webster, and Wright.

Tennessee Counties

All of the State of Tennessee except for the counties of Anderson, Blount, Bradley, Campbell, Carter, Claiborne, Cocke, Cumberland, Grainger, Greene, Hamblen, Hamilton, Hancock, Hawkins, Jefferson, Johnson, Knox, Loudon, Marion, McMinn, Meigs, Monroe, Morgan, Polk, Rhea, Roane, Scott, Sequatchie, Sevier, Sullivan, Unicoi, Union, and Washington.

§ 1007.3 Route disposition.

See § 1000.3.

§ 1007.4 Plant.

See § 1000.4.

§ 1007.5 Distributing plant.

See § 1000.5.

§ 1007.6 Supply plant.

See § 1000.6.

§ 1007.7 Pool plant.

Pool plant means a plant specified in paragraphs (a) through (d) of this section, or a unit of plants as specified in paragraph (e) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (c) and (d) of this section are subject to modification pursuant to paragraph (f) of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or § _____.7(b) of any other Federal milk order, from which during the month 50 percent or more of the fluid milk products physically received at such plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 50 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which 50 percent or more of the total quantity of milk that is physically received during the month from dairy farmers and handlers described in § 1000.9(c), including milk that is diverted from the plant, is transferred to pool distributing plants. Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the plant's shipping percentage.

(d) A plant located within the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month at least 60 percent of the producer milk of members of such cooperative association is delivered directly from farms to pool distributing plants or is transferred to such plants as a fluid milk product (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) from the cooperative's plant.

(e) Two or more plants operated by the same handler and located within the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements specified in paragraph (a) of this section and the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process only Class I or Class II products and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) A written request to form a unit, or to add or remove plants from a unit, must be filed with the market administrator prior to the first day of the month for which it is to be effective.

(f) The applicable shipping percentages of paragraphs (c) and (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the date for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(g) The term pool plant shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area, meets the pooling requirements of another Federal order, and has had greater route disposition in such other Federal order marketing area for 3 consecutive months;

(4) A plant qualified pursuant to paragraph (a) of this section which is located in another Federal order marketing area, meets the pooling standards of the other Federal order, and has not had a majority of its route disposition in this marketing area for 3 consecutive months or is locked into pool status under such other Federal order without regard to its route disposition in any other Federal order marketing area; and

(5) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under such other order than are made to plants regulated under the order in this part, or such plant has automatic pooling status under such other order.

§ 1007.8 Nonpool plant.

See § 1000.8.

§ 1007.9 Handler.

See § 1000.9.

§ 1007.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in the marketing area;

(b) Receives no fluid milk products, and acquires no fluid milk products for route disposition, from sources other than own farm production;

(c) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products received from own farm production; and

(d) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled, and the processing and packaging operations, are the producer-handler's own enterprise and are operated at the producer-handler's own risk.

§ 1007.11 [Reserved]

§ 1007.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1007.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1007.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1007.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk) and butterfat contained in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a handler described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) In any month of January through June, not less than 4 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(2) In any month of July through December, not less than 10 days' production of the producer whose milk is diverted is physically received at a pool plant during the month;

(3) The total quantity of milk so diverted during the month by a cooperative association shall not exceed 33 percent during the months of July through December, and 50 percent during the months of January through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 33 percent during the months of July through December, or 50 percent during the months of January through June, of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1007.7(e)) during the month, excluding the quantity of producer milk received from a handler described in § 1000.9(c);

(5) Any milk diverted in excess of the limits prescribed in paragraphs (d)(3) and (4) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that will not be producer milk, no milk

diverted by the handler or cooperative association shall be producer milk;

(6) Diverted milk shall be priced at the location of the plant to which diverted; and

(7) The delivery day requirements and the diversion percentages in paragraphs (d)(1) through (4) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1007.14 Other source milk.

See § 1000.14.

§ 1007.15 Fluid milk product.

See § 1000.15.

§ 1007.16 Fluid cream product.

See § 1000.16.

§ 1007.17 [Reserved]

§ 1007.18 Cooperative association.

See § 1000.18.

§ 1007.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1007.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 7th day after the end of the month, in the detail and on prescribed forms, as follows:

(a) With respect to each of its pool plants, the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c);

(2) Receipts of milk from handlers described in § 1000.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Receipts of bulk milk from a plant regulated under another Federal order, except Federal Order 1005, for which a transportation credit is requested pursuant to § 1007.82;

(6) Receipts of producer milk described in § 1007.82(c)(2), including the identity of the individual producers whose milk is eligible for the transportation credit pursuant to that paragraph and the date that such milk was received;

(7) For handlers submitting transportation credit requests, transfers of bulk milk to nonpool plants, including the dates that such milk was transferred;

(8) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products; and

(9) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraphs (a)(1), (a)(2), (a)(3), (a)(4), and (a)(8) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers;

(2) The utilization or disposition of all such receipts; and

(3) With respect to milk for which a cooperative association is requesting a transportation credit pursuant to § 1007.82, all of the information required in paragraphs (a)(5), (a)(6), and (a)(7) of this section.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1007.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1007.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in detail prescribed by the market administrator, showing for each producer the information specified in § 1007.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1007.32 Other reports.

(a) On or before the 20th day after the end of each month, each handler described in § 1000.9(a) and (c) shall report to the market administrator any adjustments to transportation credit requests as reported pursuant to § 1007.30(a)(5), (6), and (7).

(b) In addition to the reports required pursuant to §§ 1007.30, 31, and 32(a), each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1007.40 Classes of utilization.

See § 1000.40.

§ 1007.41 [Reserved]

§ 1007.42 Classification of transfers and diversions.

See § 1000.42.

§ 1007.43 General classification rules.

See § 1000.43.

§ 1007.44 Classification of producer milk.

See § 1000.44.

§ 1007.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1007.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1007.51 Class I differential and price.

The Class I differential shall be the differential established for Fulton County, Georgia, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Fulton County, Georgia.

§ 1007.52 Adjusted Class I differentials.

See § 1000.52.

§ 1007.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1007.54 Equivalent price.

See § 1000.54.

Uniform Prices

§ 1007.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (e) of this section and subtracting from that total amount the value computed in paragraph (f) of this section. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) by the applicable skim milk and butterfat prices, and add the resulting amounts;

(b) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) by the respective skim milk and butterfat prices applicable at the location of the pool plant;

(c) Multiply the difference between the Class IV price for the preceding month and the current month's Class I, II, or III price, as the case may be, by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(d) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants;

(e) Multiply the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(f) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1007.61 Computation of uniform prices.

On or before the 11th day of each month, the market administrator shall compute a uniform butterfat price, a uniform skim milk price, and a uniform price for producer milk receipts reported for the prior month. The report of any handler who has not made payments required pursuant to § 1007.71 for the preceding month shall not be included in the computation of these prices, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations.

(a) *Uniform butterfat price.* The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices and dividing the sum of such values by the total pounds of such butterfat.

(b) *Uniform skim milk price.* The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(1) Combine into one total the values computed pursuant to § 1007.60 for all handlers;

(2) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1007.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the pounds of butterfat by the butterfat price computed in paragraph (a) of this section;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total skim pounds of producer milk; and

(ii) The total skim pounds for which a value is computed pursuant to § 1007.60(e); and

(6) Subtract not less than 4 cents and not more than 5 cents.

(c) *Uniform price.* The uniform price per hundredweight, rounded to the nearest cent, shall be the sum of the following:

(1) Multiply the uniform butterfat price for the month pursuant to paragraph (a) of this section times 3.5 pounds of butterfat; and

(2) Multiply the uniform skim milk price for the month pursuant to paragraph (b) of this section times 96.5 pounds of skim milk.

§ 1007.62 Announcement of uniform prices.

On or before the 11th day after the end of the month, the market administrator shall announce the uniform prices for the month computed pursuant to § 1007.61.

Payments for Milk

§ 1007.70 Producer-settlement fund.

See § 1000.70.

§ 1007.71 Payments to the producer-settlement fund.

Each handler shall make a payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 12th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk of the handler for the month as determined pursuant to § 1007.60; and

(b) The sum of the value at the uniform prices for skim milk and butterfat, adjusted for plant location, of the handler's receipts of producer milk; and the value at the uniform price, as adjusted pursuant to § 1007.75, applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1007.60(e).

§ 1007.72 Payments from the producer-settlement fund.

No later than one day after the date of payment receipt required under § 1007.71, the market administrator shall pay to each handler the amount, if any, by which the amount computed

pursuant to § 1007.71(b) exceeds the amount computed pursuant to § 1007.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1007.73 Payments to producers and to cooperative associations.

(a) Each pool plant operator that is not paying a cooperative association for producer milk shall pay each producer as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the 23rd day of the month, payment shall be made so that it is received by the producer on or before the 26th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month at not less than 90 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1007.75 and proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, a payment computed as follows shall be made so that it is received by each producer one day after the payment date required in § 1007.72:

(i) Multiply the hundredweight of producer skim milk received times the uniform skim milk price for the month;

(ii) Multiply the pounds of butterfat received times the uniform butterfat price for the month;

(iii) Multiply the hundredweight of producer milk received times the plant location adjustment pursuant to § 1007.75; and

(iv) Add the amounts computed in paragraph (a)(2)(i), (ii), and (iii) of this section, and from that sum:

(A) Subtract the partial payment made pursuant to paragraph (a)(1) of this section;

(B) Subtract the deduction for marketing services pursuant to § 1000.86;

(C) Add or subtract for errors made in previous payments to the producer; and

(D) Subtract proper deductions authorized in writing by the producer.

(b) One day before partial and final payments are due pursuant to paragraph (a) of this section, each pool plant operator shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk (including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk) received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, the payment shall be equal to the hundredweight of milk received multiplied by 90 percent of the preceding month's uniform price, adjusted for plant location pursuant to § 1007.75.

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available for skim milk and butterfat at the receiving plant's location.

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment shall be the classified value of such milk as determined by multiplying the pounds of skim milk and butterfat assigned to each class pursuant to § 1000.44 by the class prices for the month at the receiving plant's location, and subtracting from this sum the partial payment made pursuant to paragraph (b)(2) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1007.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce payments pursuant to paragraphs (a) and (b) of this section, but by not more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

(e) In making payments to producers pursuant to this section, each pool plant operator shall furnish each producer, except a producer whose milk was received from a cooperative association described in § 1000.9(a) or (c), a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and the payroll number of the producer;

(2) The month and dates that milk was received from the producer, including the daily and total pounds of milk received;

(3) The total pounds of butterfat in the producer's milk;

(4) The minimum rate or rates at which payment to the producer is required pursuant to this order;

(5) The rate used in making payment if the rate is other than the applicable minimum rate;

(6) The amount, or rate per hundredweight, and nature of each deduction claimed by the handler; and

(7) The net amount of payment to the producer or cooperative association.

§ 1007.74 [Reserved]

§ 1007.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1007.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1007.73 and 1000.76.

§ 1007.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1007.77 Adjustment of accounts.

See § 1000.77.

§ 1007.78 Charges on overdue accounts.

See § 1000.78.

Marketwide Service Payments

§ 1007.80 Transportation credit balancing fund.

The market administrator shall maintain a separate fund known as the *Transportation Credit Balancing Fund* into which shall be deposited the payments made by handlers pursuant to § 1007.81 and out of which shall be made the payments due handlers pursuant to § 1007.82. Payments due a handler shall be offset against payments due from the handler.

§ 1007.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month (except as provided in § 1000.90), each handler operating a pool plant and each handler specified in § 1000.9(c) shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1000.44 by $0.07 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June–January period. In the event that during any month of the June–January period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would have been disbursed had the fund balance been sufficient.

(b) The market administrator shall announce publicly on or before the 5th day of the month (except as provided in § 1000.90) the assessment pursuant to paragraph (a) of this section for the following month.

§ 1007.82 Payments from the transportation credit balancing fund.

(a) Payments from the transportation credit balancing fund to handlers and cooperative associations requesting transportation credits shall be made as follows:

(1) On or before the 13th day (except as provided in § 1000.90) after the end of each of the months of July through December and any other month in which transportation credits are in effect pursuant to paragraph (b) of this section, the market administrator shall pay to each handler that received, and reported pursuant to § 1007.30(a)(5), bulk milk transferred from a plant fully regulated under another Federal order as described in paragraph (c)(1) of this section or that received, and reported pursuant to § 1007.30(a)(6), milk directly from producers' farms as specified in paragraph (c)(2) of this section, a preliminary amount determined pursuant to paragraph (d) of this section to the extent that funds are available in the transportation credit balancing fund. If an insufficient balance exists to pay all of the credits computed pursuant to this section, the market administrator shall distribute the balance available in the transportation credit balancing fund by reducing payments pro rata using the percentage derived by dividing the balance in the fund by the total credits that are due for the month. The amount of credits resulting from this initial proration shall be subject to audit adjustment pursuant to paragraph (a)(2) of this section;

(2) The market administrator shall accept adjusted requests for transportation credits on or before the 20th day of the month following the month for which such credits were requested pursuant to § 1007.32(a). After such date, a preliminary audit will be conducted by the market administrator, who will recalculate any necessary proration of transportation credit payments for the preceding month pursuant to paragraph (a) of this section. Handlers will be promptly notified of an overpayment of credits based upon this final computation and remedial payments to or from the transportation credit balancing fund will be made on or before the next payment date for the following month;

(3) Transportation credits paid pursuant to paragraphs (a)(1) and (2) of this section shall be subject to final verification by the market administrator pursuant to § 1000.77. Adjusted payments to or from the transportation credit balancing fund will remain subject to the final proration established pursuant to paragraph (a)(2) of this section; and

(4) In the event that a qualified cooperative association is the responsible party for whose account such milk is received and written documentation of this fact is provided to the market administrator pursuant to § 1007.30(c)(3) prior to the date payment is due, the transportation credits for such milk computed pursuant to this section shall be made to such cooperative association rather than to the operator of the pool plant at which the milk was received.

(b) The market administrator may extend the period during which transportation credits are in effect (i.e., the transportation credit period) to the months of January and June if a written request to do so is received 15 days prior to the beginning of the month for which the request is made and, after conducting an independent investigation, finds that such extension is necessary to assure the market of an adequate supply of milk for fluid use. Before making such a finding, the market administrator shall notify the Director of the Dairy Division and all handlers in the market that an extension is being considered and invite written data, views, and arguments. Any decision to extend the transportation credit period must be issued in writing prior to the first day of the month for which the extension is to be effective.

(c) Transportation credits shall apply to the following milk:

(1) Bulk milk received from a plant regulated under another Federal order, except Federal Order 1005, and allocated to Class I milk pursuant to § 1000.44(a)(9); and

(2) Bulk milk received directly from the farms of dairy farmers at pool distributing plants subject to the following conditions:

(i) The quantity of such milk that shall be eligible for the transportation credit shall be determined by multiplying the total pounds of milk received from producers meeting the conditions of this paragraph by the lower of:

(A) The marketwide estimated Class I utilization of all handlers for the month pursuant to § 1000.45(a); or

(B) The Class I utilization of all producer milk of the pool plant operator receiving the milk after the computations described in § 1000.44;

(ii) The dairy farmer was not a "producer" under the order in this part during more than 2 of the immediately preceding months of February through May and not more than 50 percent of the production of the dairy farmer during those 2 months, in aggregate, was received as producer milk under the order in this part during those 2 months; and

(iii) The farm on which the milk was produced is not located within the specified marketing area of the order in this part or the marketing area of Federal Order 1005 (7 CFR part 1005).

(d) Transportation credits shall be computed as follows:

(1) The market administrator shall subtract from the pounds of milk described in paragraphs (c)(1) and (2) of this section the pounds of bulk milk transferred from the pool plant receiving the supplemental milk if milk was transferred to a nonpool plant on the same calendar day that the supplemental milk was received. For this purpose, the transferred milk shall be subtracted from the most distant load of supplemental milk received, and then

in sequence with the next most distant load until all of the transfers have been offset;

(2) With respect to the pounds of milk described in paragraph (c)(1) of this section that remain after the computations described in paragraph (d)(1) of this section, the market administrator shall:

(i) Determine the shortest hard-surface highway distance between the shipping plant and the receiving plant;

(ii) Multiply the number of miles so determined by 0.35 cent;

(iii) Subtract the applicable Class I differential in § 1000.52 for the county in which the shipping plant is located from the Class I differential applicable for the county in which the receiving plant is located;

(iv) Subtract any positive difference computed in paragraph (d)(2)(iii) of this section from the amount computed in paragraph (d)(2)(ii) of this section; and

(v) Multiply the remainder computed in paragraph (d)(2)(iv) of this section by the hundredweight of milk described in paragraph (d)(2) of this section.

(3) For the remaining milk described in paragraph (c)(2) of this section after computations described in paragraph (d)(1) of this section, the market administrator shall:

(i) Determine an origination point for each load of milk by locating the nearest city to the last producer's farm from which milk was picked up for delivery to the receiving pool plant;

(ii) Determine the shortest hard-surface highway distance between the receiving pool plant and the origination point;

(iii) Subtract 85 miles from the mileage so determined;

(iv) Multiply the remaining miles so computed by 0.35 cent;

(v) Subtract the Class I differential specified in § 1000.52 applicable for the county in which the origination point is located from the Class I differential applicable at the receiving pool plant's location;

(vi) Subtract any positive difference computed in paragraph (d)(3)(v) of this section from the amount computed in paragraph (d)(3)(iv) of this section; and

(vii) Multiply the remainder computed in paragraph (d)(3)(vi) of this section by the hundredweight of milk described in paragraph (d)(3) of this section.

Administrative Assessment and Marketing Service Deduction

§ 1007.85 Assessment for order administration.

See § 1000.85.

§ 1007.86 Deduction for marketing services.

See § 1000.86.

PART 1030—MILK IN THE UPPER MIDWEST MARKETING AREA

Subpart—Order Regulating Handling

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Administrative Assessment and Marketing Service Deduction

1030.85 Assessment for order administration.
1030.86 Deduction for marketing services.

Authority: 7 U.S.C. 601–674, and 7253.

Subpart—Order Regulating Handling

General Provisions

§ 1030.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to this part 1030. In this part 1030, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1030.2 Upper Midwest marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Illinois Counties

Boone, Carroll, Cook, De Kalb, Du Page, Jo Daviess, Kane, Kendall, Lake, Lee, McHenry, Ogle, Stephenson, Will, and Winnebago.

Iowa Counties

Howard, Kossuth, Mitchell, Winnebago, Winneshiek, and Worth.

Michigan Counties

Delta, Dickinson, Gogebic, Iron, Menominee, and Ontonagon.

Minnesota

All counties except Lincoln, Nobles, Pipestone, and Rock.

North Dakota Counties

Barnes, Cass, Cavalier, Dickey, Grand Forks, Griggs, La Moure, Nelson, Pembina, Ramsey, Ransom, Richland, Sargent, Steele, Traill, and Walsh.

South Dakota Counties

Brown, Day, Edmunds, Grant, Marshall, McPherson, Roberts, and Walworth.

Wisconsin Counties

All counties except Crawford and Grant.

§ 1030.3 Route disposition.

See § 1000.3.

§ 1030.4 Plant.

See § 1000.4.

§ 1030.5 Distributing plant.

See § 1000.5.

§ 1030.6 Supply plant.

See § 1000.6.

§ 1030.7 Pool plant.

Pool plant means a plant, unit of plants, or system of plants as specified in paragraphs (a) through (f) of this section, but excluding a plant specified in paragraph (h) of this section. The pooling standards described in paragraphs (c) and (f) of this section are subject to modification pursuant to paragraph (g) of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or (§ _____.7b) of any other Federal milk order, from which during the month 15 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 15 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which the quantity of bulk fluid milk products shipped to (and physically unloaded into) plants described in paragraph (c)(1) of this section is not less than 10 percent of the Grade A milk received from dairy farmers (except dairy farmers described in § 1030.12(b)) and handlers described in § 1000.9(c), including milk diverted pursuant to § 1030.13, subject to the following conditions:

(1) Qualifying shipments may be made to plants described in paragraphs (c)(1)(i) through (iv) of this section, except that whenever shipping requirements are increased pursuant to paragraph (g) of this section, only shipments to pool plants described in paragraphs (a), (b), and (e) of this section shall count as qualifying shipments for the purpose of meeting the increased shipments:

(i) Pool plants described in § 1030.7(a), (b) and (e);

(ii) Plants of producer-handlers;

(iii) Partially regulated distributing plants, except that credit for such shipments shall be limited to the amount of such milk classified as Class I at the transferee plant; and

(iv) Distributing plants fully regulated under other Federal orders, except that credit for shipments to such plants shall be limited to the quantity shipped to pool distributing plants during the month and credits for shipments to other order plants shall not include any such shipments made on the basis of agreed-upon Class II, Class III, or Class IV utilization.

(2) The operator of a supply plant may include as qualifying shipments under this paragraph milk delivered directly from producers' farms pursuant to §§ 1000.9(c) or 1030.13(c) to plants described in paragraphs (a), (b), and (e) of this section.

(3) Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the supply plant's shipping percentage.

(d) [Reserved]

(e) Two or more plants operated by the same handler and located in the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements of a pool distributing plant specified in paragraph (a) of this section and subject to the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process Class I or Class II products, using 50 percent or more of the total Grade A fluid milk products received in bulk form at such plant or diverted therefrom by the plant operator in Class I or Class II products; and

(3) The operator of the unit has filed a written request with the market administrator prior to the first day of the month for which such status is desired to be effective. The unit shall continue from month-to-month thereafter without further notification. The handler shall notify the market administrator in writing prior to the first day of any month for which termination or any change of the unit is desired.

(f) A system of 2 or more supply plants operated by one or more handlers may qualify for pooling by meeting the shipping requirements of paragraph (c) of this section in the same manner as a single plant subject to the following additional requirements:

(1) Each plant in the system is located within the marketing area or was a pool supply plant pursuant to § 1030.7(c) for each of the 3 months immediately preceding the applicability date of this paragraph so long as it continues to maintain pool status. Cooperative associations may not use shipments pursuant to § 1000.9(c) to qualify plants located outside the marketing area;

(2) The handler(s) establishing the system submits a written request to the market administrator on or before July 15 requesting that such plants qualify as a system for the period of August through July of the following year. Such request will contain a list of the plants participating in the system in the order, beginning with the last plant, in which the plants will be dropped from the system if the system fails to qualify. Each plant that qualifies as a pool plant within a system shall continue each month as a plant in the system through the following July unless the handler(s) establishing the system submits a written request to the market administrator that the plant be deleted from the system or that the system be discontinued. Any plant that has been so deleted from a system, or that has failed to qualify in any month, will not be part of any system for the remaining months through July. The handler(s) that established a system may add a plant operated by such handler(s) to a system if such plant has been a pool plant each of the 6 prior months and would otherwise be eligible to be in a system, upon written request to the market administrator no later than the 15th day of the prior month. In the event of an ownership change or the business failure of a handler that is a participant in a system, the system may be reorganized to reflect such changes if a written request to file a new marketing agreement is submitted to the market administrator; and

(3) If a system fails to qualify under the requirements of this paragraph, the handler responsible for qualifying the system shall notify the market administrator which plant or plants will be deleted from the system so that the remaining plants may be pooled as a system. If the handler fails to do so, the market administrator shall exclude one or more plants, beginning at the bottom of the list of plants in the system and continuing up the list as necessary until the deliveries are sufficient to qualify the remaining plants in the system.

(g) The applicable shipping percentages of paragraphs (c) and (f) of this section and the diversion limits described in § 1030.13(d)(2) may be increased or decreased, for all or part of the marketing area, by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making

such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping or diversion percentage must be issued in writing at least one day before the effective date.

(h) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal order;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) of this section which meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for 3 consecutive months;

(4) A plant located outside any Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under the order in this part, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a regulated plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in advance and in writing by the handler and must be approved by the market administrator.

(i) Any plant that qualifies as a pool plant in each of the immediately preceding 3 months pursuant to paragraph (a) of this section or the shipping percentages in paragraph (c) of this section that is unable to meet such performance standards for the current month because of unavoidable circumstances determined by the market administrator to be beyond the control of the handler operating the plant, such as a natural disaster (ice storm, wind storm, flood), fire, breakdown of equipment, or work stoppage, shall be considered to have met the minimum performance standards during the period of such unavoidable circumstances, but such relief shall not be granted for more than 2 consecutive months.

§ 1030.8 Nonpool plant.

See § 1000.8.

§ 1030.9 Handler.

See § 1000.9.

§ 1030.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is route disposition in the marketing area during the month;

(b) Receives fluid milk from own farm production or milk that is fully subject to the pricing and pooling provisions of the order in this part or any other Federal order;

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month;

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products; and

(e) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing and packaging operations are the producer-handler's own enterprise and at its own risk.

§ 1030.11 [Reserved]

§ 1030.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1030.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1030.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1030.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a cooperative association described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least one day's production of such dairy farmer is physically received as producer milk at a pool plant during the first month the dairy farmer is a producer. If a dairy farmer loses producer status under the order in this part (except as a result of a temporary loss of Grade A approval or as a result of the handler of the dairy farmer's milk failing to pool the milk under any order), the dairy farmer's milk shall not be eligible for diversion unless at least one day's production of the dairy farmer has been physically received as producer milk at a pool plant during the first month the dairy farmer is re-associated with the market;

(2) The quantity of milk diverted by a handler described in § 1000.9(c) may not exceed 90 percent of the producer milk receipts reported by the handler pursuant to § 1030.30(c) provided that not less than 10 percent of such receipts are delivered to plants described in § 1030.7(c)(1)(i) through (iii). These percentages are subject to any adjustments that may be made pursuant to § 1030.7(g); and

(3) Diverted milk shall be priced at the location of the plant to which diverted.

§ 1030.14 Other source milk.

See § 1000.14.

§ 1030.15 Fluid milk product.

See § 1000.15.

§ 1030.16 Fluid cream product.

See § 1000.16.

§ 1030.17 [Reserved]

§ 1030.18 Cooperative association.

See § 1000.18.

§ 1030.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1030.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 9th day after the end of the month, in the detail and on the prescribed forms, as follows:

(a) Each handler that operates a pool plant shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p), contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c); and

(ii) Receipts of milk from handlers described in § 1000.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

(3) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, other nonfat solids, and somatic cell information, as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p), contained in receipts of milk from producers; and

(2) The utilization or disposition of such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1030.31 Payroll reports.

(a) On or before the 22nd day after the end of each month, each handler that operates a pool plant pursuant to § 1030.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1030.73(f).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1030.32 Other reports.

In addition to the reports required pursuant to §§ 1030.30 and 1030.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1030.40 Classes of utilization.

See § 1000.40.

§ 1030.41 [Reserved]

§ 1030.42 Classification of transfers and diversions.

See § 1000.42.

§ 1030.43 General classification rules.

See § 1000.43.

§ 1030.44 Classification of producer milk.

See § 1000.44.

§ 1030.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1030.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1030.51 Class I differential and price.

The Class I differential shall be the differential established for Cook County, Illinois, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Cook County, Illinois.

§ 1030.52 Adjusted Class I differentials.

See § 1000.52.

§ 1030.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1030.54 Equivalent price.

See § 1000.54.

§ 1030.55 Transportation credits and assembly credits.

(a) Each handler operating a pool distributing plant described in § 1030.7(a), (b), or (e) that receives bulk milk from another pool plant shall receive a transportation credit for such milk computed as follows:

(1) Determine the hundredweight of milk eligible for the credit by completing the steps in paragraph (c) of this section;

(2) Multiply the hundredweight of milk eligible for the credit by .28 cents times the number of miles between the transferor plant and the transferee plant;

(3) Subtract the effective Class I price at the transferor plant from the effective Class I price at the transferee plant;

(4) Multiply any positive amount resulting from the subtraction in paragraph (a)(3) of this section by the hundredweight of milk eligible for the credit; and

(5) Subtract the amount computed in paragraph (a)(4) of this section from the amount computed in paragraph (a)(2) of this section. If the amount computed in paragraph (a)(4) of this section exceeds the amount computed in paragraph (a)(2) of this section, the transportation credit shall be zero.

(b) Each handler operating a pool distributing plant described in § 1030.7(a), (b), or (e) that receives milk from dairy farmers, each handler that transfers or diverts bulk milk from a pool plant to a pool distributing plant, and each handler described in § 1000.9(c) that delivers producer milk to a pool distributing plant shall receive an assembly credit on the portion of such milk eligible for the credit pursuant to paragraph (c) of this section. The credit shall be computed by multiplying the hundredweight of milk eligible for the credit by 8 cents.

(c) The following procedure shall be used to determine the amount of milk eligible for transportation and assembly credits pursuant to paragraphs (a) and (b) of this section:

(1) At each pool distributing plant, determine the aggregate quantity of Class I milk, excluding beginning inventory of packaged fluid milk products;

(2) Subtract the quantity of packaged fluid milk products received at the pool distributing plant from other pool plants and from nonpool plants if such receipts are assigned to Class I;

(3) Subtract the quantity of bulk milk shipped from the pool distributing plant to other plants to the extent that such milk is classified as Class I milk;

(4) Subtract the quantity of bulk milk received at the pool distributing plant from other order plants and unregulated supply plants that is assigned to Class I pursuant to §§ 1000.43(d) and 1000.44; and

(5) Assign the remaining quantity pro rata to physical receipts during the month from:

(i) Producers;

(ii) Handlers described in § 1000.9(c); and

(iii) Other pool plants.

(d) For purposes of this section, the distances to be computed shall be determined by the market administrator using the shortest available state and/or Federal highway mileage. Mileage determinations are subject to redetermination at all times. In the event a handler requests a redetermination of the mileage pertaining to any plant, the market administrator shall notify the handler of such redetermination within 30 days after the receipt of such request. Any financial obligations resulting from a change in mileage shall not be retroactive for any periods prior to the redetermination by the market administrator.

Producer Price Differential

§ 1030.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (i) of this section and subtracting from that total amount the values computed in paragraphs (j) and (l) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a), (b), and (c), respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Class I value. (1) Multiply the pounds of skim milk in Class I by the Class I skim milk price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I by the Class I butterfat price.

(b) Class II value. (1) Multiply the pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class II times the Class II butterfat price.

(c) Class III value. (1) Multiply the pounds of protein in Class III skim milk by the protein price;

(2) Add an amount obtained by multiplying the pounds of other solids in Class III skim milk by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) Class IV value. (1) Multiply the pounds of nonfat solids in Class IV skim milk by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

(e) Compute an adjustment for the somatic cell content of producer milk by multiplying the values reported pursuant to § 1030.30(a)(1) and (c)(1) by the percentage of total producer milk allocated to Class II, Class III, and Class IV pursuant to § 1000.44(c);

(f) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) and the corresponding step of § 1000.44(b) by the skim milk prices and butterfat prices applicable to each class.

(g) Multiply the difference between the current month's Class I, II, or III price, as the case may be, and the Class IV price for the preceding month and by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(h) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from plants regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants.

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(j) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

(k) Compute the amount of credits applicable pursuant to § 1030.55.

§ 1030.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1030.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1030.60 for all handlers required to file reports prescribed in § 1030.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1030.60 by the protein price, the other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1030.30 (a)(1) and (c)(1);

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1030.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1030.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

§ 1030.62 Announcement of producer prices.

On or before the 13th day after the end of each month, the market administrator shall announce publicly the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The somatic cell adjustment rate;

(g) The average butterfat, nonfat solids, protein and other solids content of producer milk; and

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

Payments for Milk

§ 1030.70 Producer-settlement fund.

See § 1000.70.

§ 1030.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 15th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1030.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1030.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

(3) The total value of the somatic cell adjustment to producer milk; and

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1030.60(i) by the producer price differential as adjusted pursuant to § 1030.75 for the location of the plant from which received.

§ 1030.72 Payments from the producer-settlement fund.

No later than the 16th day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1030.71(b) exceeds the amount computed pursuant to § 1030.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1030.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the date of this partial payment, payment shall be made so that it is received by each producer on or before the 26th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month from the producer at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer no later than the 17th day after the end of the month (except as provided in § 1000.90) in an amount equal to not less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1030.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a)(1) of this section;

(vii) Less proper deductions authorized in writing by such producer, and plus or minus adjustments for errors in previous payments to such producer subject to approval by the market administrator; and

(viii) Less deductions for marketing services pursuant to § 1000.86.

(b) *Payments for milk received from cooperative association members.* On or before the day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section (except as provided in § 1000.90), each handler shall pay to a cooperative association for milk from producers who market their milk through the cooperative association and who have authorized the cooperative to collect such payments on their behalf an amount equal to the sum of the

individual payments otherwise payable for such producer milk pursuant to paragraphs (a)(1) and (a)(2) of this section.

(c) *Payment for milk received from cooperative association pool plants or from cooperatives as handlers pursuant to § 1000.9(c).* On or before the day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section (except as provided in § 1000.90), each handler who receives fluid milk products at its plant from a cooperative association in its capacity as the operator of a pool plant or who receives milk from a cooperative association in its capacity as a handler pursuant to § 1000.9(c), including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, shall pay the cooperative for such milk as follows:

(1) For bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant and for milk received from a cooperative association in its capacity as a handler pursuant to § 1000.9(c) during the first 15 days of the month, at not less than the lowest announced class prices per hundredweight for the preceding month;

(2) For the total quantity of bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant, at not less than the total value of such products received from the association's pool plants, as determined by multiplying the respective quantities assigned to each class under § 1000.44, as follows:

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of Class I butterfat times the Class I butterfat price for the month. The Class I price to be used shall be that price effective at the location of the receiving plant;

(ii) The pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price;

(iii) The pounds of butterfat in Class II times the Class II butterfat price;

(iv) The pounds of nonfat solids in Class IV times the nonfat solids price;

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

(vi) The pounds of protein in Class III milk times the protein price;

(vii) The pounds of other solids in Class III milk times the other solids price;

(viii) The hundredweight of Class II, Class III, and Class IV milk times the somatic cell adjustment; and

(ix) Add together the amounts computed in paragraphs (c)(2)(i) through (viii) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section; and

(3) For the total quantity of milk received during the month from a cooperative association in its capacity as a handler under § 1000.9(c) as follows:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to § 1030.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month; and

(vi) Add together the amounts computed in paragraphs (c)(3)(i) through (v) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section.

(d) If a handler has not received full payment from the market administrator pursuant to § 1030.72 by the payment date specified in paragraph (a), (b) or (c) of this section, the handler may reduce pro rata its payments to producers or to the cooperative association (with respect to receipts described in paragraph (b) of this section, prorating the underpayment to the volume of milk received from the cooperative association in proportion to the total milk received from producers by the handler), but not by more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(e) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

(f) In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and payroll number of the producer;

(2) The daily and total pounds, and the month and dates such milk was received from that producer;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

(4) The somatic cell count of the producer's milk;

(5) The minimum rate or rates at which payment to the producer is required pursuant to the order in this part;

(6) The rate used in making payment if the rate is other than the applicable minimum rate;

(7) The amount, or rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(8) The net amount of payment to the producer or cooperative association.

§ 1030.74 [Reserved]

§ 1030.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1030.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1030.73 and 1000.76.

§ 1030.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1030.77 Adjustment of accounts.

See § 1000.77.

§ 1030.78 Charges on overdue accounts.

See § 1000.78.

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See § 1000.85.

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See § 1000.86.

PART 1032—MILK IN THE CENTRAL MARKETING AREA

Subpart—Order Regulating Handling

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Administrative Assessment and Marketing Service Deduction

1032.85 Assessment for order administration.
1032.86 Deduction for marketing services.

Authority: 7 U.S.C. 601–674, and 7253.

Subpart—Order Regulating Handling

General Provisions

§ 1032.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to this part 1032. In this part 1032, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1032.2 Central marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Colorado Counties

Adams, Arapahoe, Baca, Bent, Boulder, Chaffee, Clear Creek, Cheyenne, Crowley, Custer, Delta, Denver, Douglas, Eagle, El Paso, Elbert, Fremont, Garfield, Gilpin, Gunnison, Huerfano, Jefferson, Kiowa, Kit Carson, Lake, Larimer, Las Animas, Lincoln, Logan, Mesa, Montrose, Morgan, Otero, Park, Phillips, Pitkin, Prowers, Pueblo, Sedgwick, Summit, Teller, Washington, Weld, and Yuma.

Illinois Counties

Adams, Alexander, Bond, Brown, Bureau, Calhoun, Cass, Champaign, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, De Witt, Douglas, Edgar, Edwards, Effingham, Fayette, Ford, Franklin, Fulton, Gallatin, Greene, Grundy, Hamilton, Hancock, Hardin, Henderson, Henry, Iroquois, Jackson, Jasper, Jefferson, Jersey, Johnson, Kankakee, Knox, La Salle, Lawrence, Livingston, Logan, McDonough, McLean, Macon, Macoupin, Madison, Marion, Marshall, Mason, Massac, Menard, Mercer, Monroe, Montgomery, Morgan, Moultrie, Peoria, Perry, Piatt, Pike, Pope, Pulaski, Putnam, Randolph, Richland, Rock Island, Saline, Sangamon, Schuyler, Scott, Shelby, St. Clair, Stark, Tazewell, Union, Vermilion, Wabash, Warren, Washington, Wayne, White, Whiteside, Williamson, and Woodford.

Iowa Counties

All Iowa counties except Howard, Kossuth, Mitchell, Winnebago, Winneshiek, and Worth.

Kansas

All of the State of Kansas.

Minnesota Counties

Lincoln, Nobles, Pipestone, and Rock.

Missouri Counties and Cities

The counties of Andrew, Atchison, Bates, Buchanan, Caldwell, Carroll, Cass, Clay, Clinton, Daviess, De Kalb, Franklin, Gentry, Grundy, Harrison, Henry, Hickory, Holt, Jackson, Jefferson, Johnson, Lafayette, Lincoln, Livingston, Mercer, Nodaway, Pettis, Platte, Putnam, Ray, Saline, Schuyler, St. Charles, St. Clair, Ste. Genevieve, St. Louis, Sullivan, Warren, and Worth; and the city of St. Louis.

Nebraska Counties

Adams, Antelope, Boone, Buffalo, Burt, Butler, Cass, Cedar, Chase, Clay, Colfax, Cuming, Custer, Dakota, Dawson, Dixon, Dodge, Douglas, Dundy, Fillmore, Franklin, Frontier, Furnas, Gage, Gosper, Greeley, Hall, Hamilton, Harlan, Hayes, Hitchcock, Howard, Jefferson, Johnson, Kearney, Keith, Knox, Lancaster, Lincoln, Madison, Merrick, Nance, Nemaha, Nuckolls, Otoe, Pawnee, Perkins, Phelps, Pierce, Platte, Polk, Red Willow, Richardson, Saline, Sarpy, Saunders, Seward, Sherman, Stanton, Thayer, Thurston, Valley, Washington, Wayne, Webster, and York.

Oklahoma

All of the State of Oklahoma.

South Dakota Counties

Aurora, Beadle, Bon Homme, Brookings, Clark, Clay, Codington, Davison, Deuel, Douglas, Hamlin, Hanson, Hutchinson, Jerauld, Kingsbury, Lake, Lincoln, McCook, Miner, Minnehaha, Moody, Sanborn, Spink, Turner, Union, and Yankton.

Wisconsin Counties

Crawford and Grant.

§ 1032.3 Route disposition.

See § 1000.3.

§ 1032.4 Plant.

See § 1000.4.

§ 1032.5 Distributing plant.

See § 1000.5.

§ 1032.6 Supply plant.

See § 1000.6.

§ 1032.7 Pool plant.

Pool plant means a plant, unit of plants, or system of plants as specified in paragraphs (a) through (f) of this section, but excluding a plant specified in paragraph (h) of this section. The pooling standards described in paragraphs (c), (d), and (f) of this section are subject to modification pursuant to paragraph (g) of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or _____.7(b) of any other Federal milk order, from which during the month 25

percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 25 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which the quantity of bulk fluid milk products transferred or diverted to plants described in paragraph (a) or (b) of this section during each of the months of September through November and January is 35 percent or more of the total Grade A milk received at the plant from dairy farmers (except dairy farmers described in § 1032.12(b)) and handlers described in § 1000.9(c), including milk diverted by the plant operator, and 25 percent for all other months, subject to the following conditions:

(1) A supply plant that has qualified as a pool plant during each of the immediately preceding months of August through April shall continue to so qualify in each of the following months of May through July, unless the plant operator files a written request with the market administrator that such plant not be a pool plant, such nonpool status to be effective the first month following such request and thereafter until the plant qualifies as a pool plant on the basis of milk shipments;

(2) A pool plant operator may include as qualifying shipments milk diverted to pool distributing plants pursuant to § 1032.13(c);

(3) Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the supply plant's shipping percentage;

(4) The operator of a supply plant may include as qualifying shipments transfers of fluid milk products to distributing plants regulated under any other Federal order, except that credit for such transfers shall be limited to the amount of milk, including milk shipped directly from producers' farms, delivered to distributing plants qualified as pool plants pursuant to paragraph (a) or (b) of this section; and

(5) No plant may qualify as a pool plant due to a reduction in the shipping percentage pursuant to paragraph (g) of this section unless it has been a pool supply plant during each of the immediately preceding 3 months.

(d) A plant located in the marketing area and operated by a cooperative association if, during the month or the immediately preceding 12-month period, 35 percent or more of the producer milk of members of the association (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received in the form of bulk fluid milk products (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) at plants specified in paragraph (a) or (b) of this section either directly from farms or by transfer from supply plants operated by the cooperative association and from plants of the cooperative association for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a), (b) or (c) of this section or under comparable provisions of another Federal order; and

(2) The plant is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption in the marketing area.

(e) Two or more plants operated by the same handler and located in the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements of a pool distributing plant specified in paragraph (a) of this section subject to the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process Class I or Class II products, using 50 percent or more of the total Grade A fluid milk products received in bulk form at such plant or diverted therefrom by the plant operator in Class I or Class II products, and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) The operator of the unit has filed a written request with the market administrator prior to the first day of the month for which such status is desired to be effective. The unit shall continue from month to month thereafter without further notification. The handler shall notify the market administrator in writing prior to the first day of any month for which termination or any change of the unit is desired.

(f) A system of supply plants may qualify for pooling if 2 or more plants operated by one or more handlers meet the applicable percentage requirements of paragraph (c) of this section in the same manner as a single plant, subject to the following additional requirements:

(1) Each plant in the system is located within the marketing area;

(2) The handler(s) establishing the system submits a written request to the market administrator on or before September 1 requesting that such plants qualify as a system for the period of September through August of the following year. Such request will contain a list of the plants participating in the system;

(3) Each plant included within a pool supply plant system shall continue each month as a plant in the system through the following August unless the handler(s) establishing the system submits a written request to the market administrator that the plant be deleted from the system or that the system be discontinued. Any plant that has been so deleted from a system, or that has failed to qualify in any month, will not be part of any system for the remaining months through August. No plant may be added in any subsequent month through the following August to a system that qualifies in September; and

(4) If a system fails to qualify under the requirements of this paragraph, the handler responsible for qualifying the system shall notify the market administrator which plant or plants will be deleted from the system so that the remaining plants may be pooled as a system. If the handler fails to do so, the market administrator shall exclude one or more plants, beginning at the bottom of the list of plants in the system and continuing up the list as necessary until the deliveries are sufficient to qualify the remaining plants in the system.

(g) The applicable shipping percentages of paragraphs (c), (d), and (f) of this section may be increased or decreased, for all or part of the marketing area, by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(h) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal order;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) of this section which meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for 3 consecutive months. On the basis of a written application made by the plant operator at least 15 days prior to the date for which a determination of the market administrator is to be effective, the market administrator may determine that the route disposition in the respective marketing areas to be used for purposes of this paragraph shall exclude (for a specified period of time) route disposition made under limited term contracts to governmental bases and institutions;

(4) A plant located outside any Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under the order in this part, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a regulated plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in advance and in writing by the handler and must be approved by the market administrator.

§ 1032.8 Nonpool plant.

See § 1000.8.

§ 1032.9 Handler.

See § 1000.9.

§ 1032.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is route disposition in the marketing area during the month;

(b) Receives fluid milk from own farm production or milk that is fully subject to the pricing and pooling provisions of the order in this part or any other Federal order;

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month;

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products; and

(e) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing and packaging operations are the producer-handler's own enterprise and at its own risk.

§ 1032.11 [Reserved]

§ 1032.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1032.13; or (2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1032.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1032.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a cooperative association described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion until at least one day's production of such dairy farmer has been physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under the order in this part (except as a result of a temporary loss of Grade A approval), the dairy farmer's milk shall not be eligible for diversion until milk of the dairy farmer has been physically received as producer milk at a pool plant;

(2) Of the quantity of producer milk received during the month (including diversions, but excluding the quantity of producer milk received from a handler described in § 1000.9(c)) the handler diverts to nonpool plants not more than 65 percent during the months of September through November and January, and not more than 75 percent during the months of February through April and December;

(3) Diverted milk shall be priced at the location of the plant to which diverted;

(4) Any milk diverted in excess of the limits prescribed in paragraph (d)(2) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler or cooperative association during the month to a nonpool plant shall be producer milk; and

(5) The applicable diversion limits in paragraph (d)(2) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1032.14 Other source milk.

See § 1000.14.

§ 1032.15 Fluid milk product.

See § 1000.15.

§ 1032.16 Fluid cream product.

See § 1000.16.

§ 1032.17 [Reserved]

§ 1032.18 Cooperative association.

See § 1000.18.

§ 1032.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1032.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 7th day after the end of the month, in the detail and on the prescribed forms, as follows:

(a) Each handler that operates a pool plant pursuant to § 1032.7 shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p), contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c); and

(ii) Receipts of milk from handlers described in § 1000.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

(3) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, other nonfat solids, and somatic cell information, as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p), contained in receipts of milk from producers; and

(2) The utilization or disposition of such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1032.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1032.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1032.73(f).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1032.32 Other reports.

In addition to the reports required pursuant to §§ 1032.30 and 1032.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1032.40 Classes of utilization.

See § 1000.40.

§ 1032.41 [Reserved]

§ 1032.42 Classification of transfers and diversions.

See § 1000.42.

§ 1032.43 General classification rules.

See § 1000.43.

§ 1032.44 Classification of producer milk.

See § 1000.44.

§ 1032.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1032.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1032.51 Class I differential and price.

The Class I differential shall be the differential established for Jackson County, Missouri, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Jackson County, Missouri.

§ 1032.52 Adjusted Class I differentials.

See § 1000.52.

§ 1032.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1032.54 Equivalent price.

See § 1000.54.

Producer Price Differential

§ 1032.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (i) of this section and subtracting from that total amount the value computed in paragraph (j) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a), (b), and (c), respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) *Class I value.* (1) Multiply the pounds of skim milk in Class I by the Class I skim milk price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I by the Class I butterfat price.

(b) *Class II value.* (1) Multiply the pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class II times the Class II butterfat price.

(c) *Class III value.* (1) Multiply the pounds of protein in Class III skim milk by the protein price;

(2) Add an amount obtained by multiplying the pounds of other solids in Class III skim milk by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) *Class IV value.* (1) Multiply the pounds of nonfat solids in Class IV skim milk by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

(e) Compute an adjustment for the somatic cell content of producer milk by multiplying the values reported pursuant to § 1032.30(a)(1) and (c)(1) by the percentage of total producer milk allocated to Class II, Class III, and Class IV pursuant to § 1000.44(c);

(f) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) and the corresponding step of § 1000.44(b) by the skim milk prices and butterfat prices applicable to each class.

(g) Multiply the difference between the current month's Class I, II, or III price, as the case may be, and the Class IV price for the preceding month by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(h) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants.

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(j) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1032.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1032.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1032.60 for all handlers required to file reports prescribed in § 1032.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1032.60 by the protein price, the other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1032.30(a)(1) and (c)(1);

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1032.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1032.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

§ 1032.62 Announcement of producer prices.

On or before the 11th day after the end of each month, the market administrator shall announce publicly the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The somatic cell adjustment rate;

(g) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

Payments for Milk

§ 1032.70 Producer-settlement fund.

See § 1000.70.

§ 1032.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 14th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1032.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1032.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

(3) The total value of the somatic cell adjustment to producer milk; and

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1032.60(i) by the producer price differential as adjusted pursuant to § 1032.75 for the location of the plant from which received.

§ 1032.72 Payments from the producer-settlement fund.

No later than the 15th day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1032.71(b) exceeds the amount computed pursuant to § 1032.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1032.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the date of this partial payment, payment shall be made so that it is received by each producer on or before the 26th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month from the producer at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer no later than the 17th day after the end of the month (except as provided in § 1000.90) in an amount equal to not less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1032.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a)(1) of this section;

(vii) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments to such producer; and

(viii) Less deductions for marketing services pursuant to § 1000.86.

(b) *Payments for milk received from cooperative association members.* On or before the day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section (except as provided in § 1000.90), each handler shall pay to a cooperative association for milk from producers who market their milk through the cooperative association and who have authorized the cooperative to collect such payments on their behalf an amount equal to the sum of the individual payments otherwise payable for such producer milk pursuant to paragraphs (a)(1) and (a)(2) of this section.

(c) *Payment for milk received from cooperative association pool plants or from cooperatives as handlers pursuant to § 1000.9(c).* On or before the day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section (except as provided in § 1000.90), each handler who receives fluid milk products at its plant from a cooperative association in its capacity as the operator of a pool plant or who receives milk from a cooperative association in its capacity as a handler pursuant to § 1000.9(c), including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, shall pay the cooperative for such milk as follows:

(1) For bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant and for milk received from a cooperative association in its capacity as a handler pursuant to § 1000.9(c) during the first 15 days of the month, at not less than the lowest announced class prices per hundredweight for the preceding month;

(2) For the total quantity of bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant, at not less than the total value of such products received from the association's pool plants, as determined by multiplying the respective quantities assigned to each class under § 1000.44 as follows:

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of Class I butterfat times the Class I butterfat price for the month. The Class I prices to be used shall be the prices effective at the location of the receiving plant;

(ii) The pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price;

(iii) The pounds of butterfat in Class II times the Class II butterfat price;

(iv) The pounds of nonfat solids in Class IV times the nonfat solids price;

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

(vi) The pounds of protein in Class III milk times the protein price;

(vii) The pounds of other solids in Class III milk times the other solids price;

(viii) The hundredweight of Class II, Class III, and Class IV milk times the somatic cell adjustment; and

(ix) Add together the amounts computed in paragraphs (c)(2)(i) through (viii) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section; and

(3) For the total quantity of milk received during the month from a cooperative association in its capacity as a handler under § 1000.9(c) as follows:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to § 1032.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month; and

(vi) Add together the amounts computed in paragraphs (c)(3)(i) through (v) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section.

(d) If a handler has not received full payment from the market administrator pursuant to § 1032.72 by the payment date specified in paragraph (a), (b) or (c) of this section, the handler may reduce pro rata its payments to producers or to the cooperative association (with respect to receipts described in paragraph (b) of this section, prorating the underpayment to the volume of milk received from the cooperative association in proportion to the total milk received from producers by the handler), but not by more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(e) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

(f) In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and payroll number of the producer;

(2) The daily and total pounds, and the month and dates such milk was received from that producer;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

(4) The somatic cell count of the producer's milk;

(5) The minimum rate or rates at which payment to the producer is required pursuant to the order in this part;

(6) The rate used in making payment if the rate is other than the applicable minimum rate;

(7) The amount, or rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(8) The net amount of payment to the producer or cooperative association.

§ 1032.74 [Reserved]

§ 1032.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1032.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1032.73 and 1000.76.

§ 1032.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1032.77 Adjustment of accounts.

See § 1000.77.

§ 1032.78 Charges on overdue accounts.

See § 1000.78.

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See § 1000.85.

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See § 1000.86.

PART 1033—MILK IN THE MIDEAST MARKETING AREA

Subpart—Order Regulating Handling

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1033.86 Deduction for marketing services.

Authority: 7 U.S.C. 601–674, and 7253.

Subpart—Order Regulating Handling

General Provisions

§ 1033.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to this part 1033. In this part 1033, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1033.2 Mideast marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Indiana Counties

Adams, Allen, Bartholomew, Benton, Blackford, Boone, Brown, Carroll, Cass, Clay, Clinton, Dearborn, Decatur, De Kalb, Delaware, Elkhart, Fayette, Fountain, Franklin, Fulton, Grant, Hamilton, Hancock, Hendricks, Henry, Howard, Huntington, Jackson, Jasper, Jay, Jefferson, Jennings, Johnson, Kosciusko, Lagrange, Lake, La Porte, Lawrence, Madison, Marion, Marshall, Miami, Monroe, Montgomery, Morgan, Newton, Noble, Ohio, Owen, Parke, Porter, Pulaski, Putnam, Randolph, Ripley, Rush, Shelby, St. Joseph, Starke, Steuben, Switzerland, Tippecanoe, Tipton, Union, Vermillion, Vigo, Wabash, Warren, Wayne, Wells, White, and Whitley.

Kentucky Counties

Boone, Boyd, Bracken, Campbell, Floyd, Grant, Greenup, Harrison, Johnson, Kenton, Lawrence, Lewis, Magoffin, Martin, Mason, Pendleton, Pike, and Robertson.

Michigan Counties

All counties except Delta, Dickinson, Gogebic, Iron, Menominee, and Ontonagon.

Ohio

The townships of Woodville and Madison in Sandusky County and all other counties in Ohio except Erie, Huron, and Ottawa.

Pennsylvania Counties

Allegheny, Armstrong, Beaver, Butler, Crawford, Erie, Fayette, Greene, Lawrence, Mercer, Venango, and Washington.

In Clarion County only the townships of Ashland, Beaver, Licking, Madison, Perry, Piney, Richland, Salem, and Toby.

All of Westmoreland County except the townships of Cook, Donegal, Fairfield, Ligonier, and St. Clair, and the boroughs of Bolivar, Donegal, Ligonier, New Florence, and Seward.

West Virginia Counties

Barbour, Boone, Brooke, Cabell, Calhoun, Doddridge, Fayette, Gilmer, Hancock, Harrison, Jackson, Kanawha, Lewis, Lincoln, Logan, Marion, Marshall, Mason, Mingo, Monongalia, Ohio, Pleasants, Preston, Putnam, Raleigh, Randolph, Ritchie, Roane, Taylor, Tucker, Tyler, Upshur, Wayne, Wetzel, Wirt, Wood, and Wyoming.

§ 1033.3 Route disposition.

See § 1000.3.

§ 1033.4 Plant.

See § 1000.4.

§ 1033.5 Distributing plant.

See § 1000.5.

§ 1033.6 Supply plant.

See § 1000.6.

§ 1033.7 Pool plant.

Pool plant means a plant, unit of plants, or a system of plants as specified in paragraphs (a) through (f) of this section, but excluding a plant specified in paragraph (h) of this section. The pooling standards described in paragraphs (c) through (f) of this section are subject to modification pursuant to paragraph (g) of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or § _____.7(b) of any other Federal milk order, from which during the month 30 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 30 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which the quantity of bulk fluid milk products shipped to, received at, and physically unloaded into plants described in paragraph (a) or (b) of this section as a percent of the Grade A milk received at the plant from dairy farmers (except dairy farmers described in § 1033.12(b)) and handlers described in § 1033.9(c), as reported in § 1033.30(a), is not less than 30 percent of the milk received from dairy farmers, including milk diverted pursuant to § 1033.13, subject to the following conditions:

(1) Qualifying shipments pursuant to this paragraph may be made to the following plants, except whenever the authority provided in paragraph (g) of this section is applied to increase the shipping requirements specified in this section, only shipments to pool plants described in § 1033.7(a) and (b), shall count as qualifying shipments for the purpose of meeting the increased shipments:

(i) Pool plants described in § 1033.7(a) and (b);

(ii) Plants of producer-handlers;

(iii) Partially regulated distributing plants, except that credit for such shipments shall be limited to the amount of such milk classified as Class I at the transferee plant; and

(iv) Distributing plants fully regulated under other Federal orders, except that credit for transfers to such plants shall be limited to the quantity shipped to pool distributing plants during the month. Qualifying transfers to other order plants shall not include transfers made on the basis of agreed-upon Class II, Class III, or Class IV utilization.

(2) The operator of a supply plant may include deliveries to pool distributing plants directly from farms of producers pursuant to § 1033.13(c) as up to 90 percent of the supply plant's qualifying shipments.

(3) Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the supply plant's shipping percentage.

(4) A supply plant that meets the shipping requirements of this paragraph during each of the immediately preceding months of September through February shall be a pool plant during the following months of March through August unless the milk received at the plant fails to meet the requirements of a duly constituted regulatory agency, the plant fails to meet a shipping requirement instituted pursuant to paragraph (g) of this section, or the plant operator requests nonpool status for the plant. Such nonpool status shall be effective on the first day of the month following the receipt of such request and thereafter until the plant again qualifies as a pool plant on the basis of its deliveries to a pool distributing plant(s). The automatic pool qualification of a plant can be waived if the handler or cooperative requests in writing to the market administrator the nonpool status of such plant. The request must be made prior to the beginning of any month during the March through August period. The plant shall be a nonpool plant for such month and thereafter until it requalifies under paragraph (c) of this section on the basis of actual shipments therefrom. To requalify as a pool plant under paragraph (d), (e) or (f) of this section, such plant must first have met the percentage shipping requirements of paragraph (c) of this section for 6 consecutive months.

(5) A supply plant that does not meet the minimum delivery requirements specified in this paragraph to qualify for pool status in the current month because a distributing plant to which the supply plant delivered its fluid milk products during such month failed to qualify as a pool plant pursuant to paragraph (a) or (b) of this section shall continue to be a pool plant for the current month if such supply plant qualified as a pool plant in the 3 immediately preceding months.

(d) A plant operated by a cooperative association if, during the month, 30 percent or more of the producer milk of members of the association is delivered to a distributing pool plant(s) or to a nonpool plant(s), and classification other than Class I is not requested. Deliveries for qualification purposes may be made directly from the farm or by transfer from such association's plant, subject to the following conditions:

(1) The cooperative requests pool status for such plant;

(2) The 30-percent delivery requirement may be met for the current month or it may be met on the basis of deliveries during the preceding 12-month period ending with the current month;

(3) The plant is approved by a duly constituted regulatory authority to handle milk for fluid consumption; and

(4) The plant does not qualify as a pool plant under paragraph (a), (b), or (c) of this section or under the similar provisions of another Federal order applicable to a distributing plant or supply plant.

(e) A plant located inside the marketing area which has been a pool plant under this order or its predecessor orders for twelve consecutive months, but is not otherwise qualified under this paragraph, if it has a marketing agreement with a cooperative association and it fulfills the following conditions:

(1) The aggregate monthly quantity supplied by all parties to such an agreement as a percentage of the producer milk receipts included in the unit during the month is not less than 35 percent; and

(2) Shipments for qualification purposes shall include both transfers from supply plants to plants described in paragraph (c)(1) of this section, and deliveries made direct from the farm to plants qualified under paragraph (a) of this section.

(f) A system of supply plants may qualify for pooling if 2 or more plants operated by one or more handlers meet the applicable percentage requirements of paragraph (c) of this section in the same manner as a single plant subject to the following additional requirements:

(1) Each plant in the system is located within the marketing area, or was a pool supply plant for each of the 3 months immediately preceding the effective date of this paragraph so long as it continues to maintain pool status. Cooperative associations may not use shipments pursuant to § 1033.9(c) to qualify plants located outside the marketing area;

(2) A written notification to the market administrator listing the plants to be included in the system and the handler that is responsible for meeting the performance requirements of this paragraph under a marketing agreement certified to the market administrator by the designated handler and any others included in the system, and the period during which such consideration shall apply. Such notice, and notice of any change in designation, shall be furnished on or before the 5th working day following the month to which the notice applies. The listed plants included in the system shall also be in the sequence in which they shall qualify for pool plant status based on the minimum deliveries required. If the deliveries made are insufficient to qualify the entire system for pooling, the last listed plant shall be excluded from the system, followed by the plant next-to-last on the list, and continuing in this sequence until remaining listed plants have met the minimum shipping requirements; and

(3) Each plant that qualifies as a pool plant within a system shall continue each month as a plant in the system unless the plant subsequently fails to qualify for pooling, or the responsible handler submits a written notification to the market administrator prior to the first day of the month that the plant is to be deleted from the system, or that the system is to be discontinued. In any month of March through August, a system shall not contain any plant which was not qualified under this paragraph, either individually or as a member of a system, during the previous September through February.

(g) The applicable shipping percentages of paragraphs (c) through (f) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(h) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal order;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for 3 consecutive months;

(4) A plant located outside any Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) of this section that also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under the order in this part, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a regulated plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a

regulated plant as a nonpool plant must be requested in advance and in writing by the handler and must be approved by the market administrator.

(i) Any plant that qualifies as a pool plant in each of the immediately preceding 3 months pursuant to paragraph (a) of this section or the shipping percentages in paragraph (c) of this section that is unable to meet such performance standards for the current month because of unavoidable circumstances determined by the market administrator to be beyond the control of the handler operating the plant, such as a natural disaster (ice storm, wind storm, flood), fire, breakdown of equipment, or work stoppage, shall be considered to have met the minimum performance standards during the period of such unavoidable circumstances, but such relief shall not be granted for more than 2 consecutive months.

§ 1033.8 Nonpool plant.

See § 1000.8.

§ 1033.9 Handler.

See § 1000.9.

§ 1033.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is route disposition in the marketing area during the month;

(b) Receives fluid milk from own farm production or that is fully subject to the pricing and pooling provisions of the order in this part or any other Federal order;

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month;

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products; and

(e) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing and packaging operations are the producer-handler's own enterprise and at its own risk.

§ 1033.11 [Reserved]

§ 1033.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1033.13; or

(2) Received by a handler described in § 1033.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1033.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1033.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or by a cooperative association described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion until milk of such dairy farmer has been physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under the order in this part (except as a result of a temporary loss of Grade A approval), the dairy farmer's milk shall not be eligible for diversion until milk of the dairy farmer has been physically received as producer milk at a pool plant;

(2) The equivalent of at least one day's production is caused by the handler to be physically received at a pool plant in each of the months of September through November;

(3) Of the total quantity of producer milk received during the month (including diversions but excluding the quantity of producer milk received from a handler described in § 1000.9(c)), the handler diverted to nonpool plants not more than 60 percent during the months of September through February;

(4) Diverted milk shall be priced at the location of the plant to which diverted;

(5) Any milk diverted in excess of the limits set forth in paragraph (d)(3) of this section shall not be producer milk. The diverting handler shall designate the dairy farmer deliveries that shall not be producer milk. If the handler fails to designate the dairy farmer deliveries which are ineligible, producer milk status shall be forfeited with respect to all milk diverted to nonpool plants by such handler; and

(6) The delivery day requirements and the diversion percentages in paragraphs (d)(2) and (d)(3) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1033.14 Other source milk.

See § 1000.14.

§ 1033.15 Fluid milk products.

See § 1000.15.

§ 1033.16 Fluid cream product.

See § 1000.16.

§ 1033.17 [Reserved]

§ 1033.18 Cooperative association.

See § 1000.18.

§ 1033.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1033.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 7th day after the end of the month, in the detail and on the prescribed forms, as follows:

(a) Each handler that operates a pool plant pursuant to § 1033.7 shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p), contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c); and

(ii) Receipts of milk from handlers described in § 1000.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

(3) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, other nonfat solids, and somatic cell information as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p), contained in receipts of milk from producers; and

(2) The utilization or disposition of such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1033.31 Payroll reports.

(a) On or before the 22nd day after the end of each month, each handler that operates a pool plant pursuant to § 1033.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1033.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1033.32 Other reports.

In addition to the reports required pursuant to §§ 1033.30 and 1033.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1033.40 Classes of utilization.

See § 1000.40.

§ 1033.41 [Reserved]

§ 1033.42 Classification of transfers and diversions.

See § 1000.42.

§ 1033.43 General classification rules.

See § 1000.43.

§ 1033.44 Classification of producer milk.

See § 1000.44.

§ 1033.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1033.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1033.51 Class I differential and price.

The Class I differential shall be the differential established for Cuyahoga County, Ohio which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Cuyahoga County, Ohio.

§ 1033.52 Adjusted Class I differentials.

See § 1000.52.

§ 1033.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1033.54 Equivalent price.

See § 1000.54.

Producer Price Differential

§ 1033.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (i) of this section and subtracting from that total amount the value computed in paragraph (j) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a), (b), and (c), respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Class I value.

(1) Multiply the pounds of skim milk in Class I by the Class I skim milk price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I by the Class I butterfat price.

(b) Class II value.

(1) Multiply the pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class II times the Class II butterfat price.

(c) Class III value.

(1) Multiply the pounds of protein in Class III skim milk by the protein price;

(2) Add an amount obtained by multiplying the pounds of other solids

in Class III skim milk by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) Class IV value.

(1) Multiply the pounds of nonfat solids in Class IV skim milk by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

(e) Compute an adjustment for the somatic cell content of producer milk by multiplying the values reported pursuant to § 033.30(a)(1) and (c)(1) by the percentage of total producer milk allocated to Class II, Class III, and Class IV pursuant to § 1000.44(c);

(f) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) and the corresponding step of § 1000.44(b) by the skim milk prices and butterfat prices applicable to each class.

(g) Multiply the difference between the current month's Class I, II, or III price, as the case may be, and the Class IV price for the preceding month by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(h) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from a plant regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants.

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(j) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1033.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1033.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1033.60 for all handlers required to file reports prescribed in § 1033.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1033.60 by the protein price, the other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1033.30(a)(1) and (c)(1);

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1033.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1033.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

§ 1033.62 Announcement of producer prices.

On or before the 13th day after the end of each month, the market administrator shall announce publicly the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The somatic cell adjustment rate;

(g) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

Payments for Milk

§ 1033.70 Producer-settlement fund.

See § 1000.70.

§ 1033.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 15th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1033.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1033.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices, respectively;

(3) The total value of the somatic cell adjustment to producer milk; and

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1033.60(i) by the producer price differential as adjusted pursuant to § 1033.75 for the location of the plant from which received.

§ 1033.72 Payments from the producer-settlement fund.

No later than the 16th day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1033.71(b) exceeds the amount computed pursuant to § 1033.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1033.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the date of this partial payment, payment shall be made so that it is received by each producer on or before the 26th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month from the producer at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer no later than the 17th day after the end of the month (except as provided in § 1000.90) in an amount equal to not less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1033.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) The hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Less any payment made pursuant to paragraph (a)(1) of this section;

(vii) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments to such producer; and

(viii) Less deductions for marketing services pursuant to § 1000.86.

(b) *Payments for milk received from cooperative associations.* On or before the day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section (except as provided in § 1000.90), each handler shall pay to a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association.* For bulk fluid milk/skimmed milk received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, the partial payment shall be equal to the hundredweight of milk received multiplied by the lowest announced class price for the preceding month.

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk/skimmed milk products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available at the receiving plant's location.

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* Following the classification of bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment for such receipts shall be determined as follows:

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of Class I butterfat times the Class I butterfat price for the month. The Class I prices to be used shall be the prices effective at the location of the receiving plant;

(ii) The pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price;

(iii) The pounds of butterfat in Class II times the Class II butterfat price;

(iv) The pounds of nonfat solids in Class IV times the nonfat solids price;

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

(vi) The pounds of protein in Class III milk times the protein price;

(vii) The pounds of other solids in Class III milk times the other solids price;

(viii) The hundredweight of Class II, Class III, and Class IV milk times the somatic cell adjustment; and

(ix) Add together the amounts computed in paragraphs (b)(3)(i) through (viii) of this section and from that sum deduct any payment made pursuant to paragraph (b)(2) of this section; and

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1033.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce payments pursuant to paragraphs (a) and (b) of this section, but not by more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

(e) In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and payroll number of the producer;

(2) The daily and total pounds, and the month and dates such milk was received from that producer;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

(4) The somatic cell count of the producer's milk;

(5) The minimum rate or rates at which payment to the producer is required pursuant to the order in this part;

(6) The rate used in making payment if the rate is other than the applicable minimum rate;

(7) The amount, or rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(8) The net amount of payment to the producer or cooperative association.

§ 1033.74 [Reserved]

§ 1033.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1033.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1033.73 and 1000.76.

§ 1033.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1033.77 Adjustment of accounts.

See § 1000.77.

§ 1033.78 Charges on overdue accounts.

See § 1000.78.

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§ 1033.85 Assessment for order administration.

See § 1000.85.

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See § 1000.86.

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

Subpart—Order Regulating Handling

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Authority: 7 U.S.C. 601–674, and 7253.

Subpart—Order Regulating Handling

General Provisions

§ 1124.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to this part 1124. In this part 1124, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1124.2 Pacific Northwest marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks, and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State, or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Idaho Counties

Benewah, Bonner, Boundary, Kootenai, Latah, and Shoshone.

Oregon Counties

Benton, Clackamas, Clatsop, Columbia, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Hood River, Jackson, Jefferson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Marion, Morrow, Multnomah, Polk, Sherman, Tillamook, Umatilla, Wasco, Washington, Wheeler, and Yamhill.

Washington

All of the State of Washington.

§ 1124.3 Route disposition.

See § 1000.3.

§ 1124.4 Plant.

See § 1000.4.

§ 1124.5 Distributing plant.

See § 1000.5.

§ 1124.6 Supply plant.

See § 1000.6.

§ 1124.7 Pool plant.

Pool plant means a plant, unit of plants, or a system of plants as specified in paragraphs (a) through (f) of this section, but excluding a plant specified in paragraph (h) of this section. The pooling standards described in paragraph (c) of this section are subject to modification pursuant to paragraph (g) of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or § _____.7(b) of any other Federal milk order, from which during the month 25 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 25 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which during any month not less than 20 percent of the total quantity of milk that is physically received at such plant from dairy farmers eligible to be producers pursuant to § 1124.12 (excluding milk received at such plant as diverted milk from another plant, which milk is classified other than Class I under the order in this part and is subject to the pricing and pooling provisions of this or another order issued pursuant to the Act) or diverted as producer milk to another plant pursuant to § 1124.13, is shipped in the form of a fluid milk product (excluding concentrated milk transferred by agreement for other than Class I use) to a pool distributing plant or is a route disposition in the marketing area of fluid milk products processed and packaged at such plant;

(1) A supply plant that has qualified as a pool plant during each of the immediately preceding months of September through February shall continue to so qualify in each of the following months of March through August, unless the plant operator files a written request with the market administrator that such plant not be a pool plant, such nonpool status to be effective the first month following such request and thereafter until the plant qualifies as a pool plant on the basis of milk shipments;

(2) A cooperative association that operates a supply plant may include as qualifying shipments its deliveries to pool distributing plants directly from farms of producers pursuant to § 1000.9(c);

(3) A pool plant operator may include as qualifying shipments milk diverted to pool distributing plants pursuant to § 1124.13(d);

(4) No plant may qualify as a pool plant due to a reduction in the shipping percentage pursuant to paragraph (g) of this section unless it has been a pool supply plant during each of the immediately preceding 3 months.

(d)–(f) [Reserved]

(g) The applicable shipping percentage of paragraph (c) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(h) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal order;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) of this section which meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for 3 consecutive months;

(4) A plant located outside any Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area; and

(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under the order in this part, or the plant has automatic pooling status under the other Federal order.

§ 1124.8 Nonpool plant.

See § 1000.8.

§ 1124.9 Handler.

See § 1000.9.

§ 1124.10 Producer-handler.

Producer-handler means a person who operates a dairy farm and a distributing plant from which there is route disposition within the marketing area during the month and who the market administrator has designated a producer-handler after determining that all of the requirements of this section have been met.

(a) *Requirements for designation.* Designation of any person as a producer-handler by the market administrator shall be contingent upon meeting the conditions set forth in paragraphs (a)(1) through (4) of this section. Following the cancellation of a previous producer-handler designation, a person seeking to have his/her producer-handler designation reinstated must demonstrate that these conditions have been met for the preceding month.

(1) The care and management of the dairy animals and other resources and facilities designated in paragraph (b)(1) of this section necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) are under the complete and exclusive control and management of the producer-handler and are operated as the producer-handler's own enterprise and at its own risk.

(2) The plant operation designated in paragraph (b)(2) of this section at which the producer-handler processes and packages, and from which it distributes, its own milk production is under the complete and exclusive control and management of the producer-handler and is operated as the producer-handler's own enterprise and at its sole risk.

(3) The producer-handler neither receives at its designated milk production resources and facilities nor receives, handles, processes, or distributes at or through any of its designated milk handling, processing, or distributing resources and facilities other source milk products for reconstitution into fluid milk products or fluid milk products derived from any source other than:

(i) Its designated milk production resources and facilities (own farm production);

(ii) Pool handlers and plants regulated under any Federal order within the limitation specified in paragraph (c)(2) of this section; or

(iii) Nonfat milk solids which are used to fortify fluid milk products.

(4) The producer-handler is neither directly nor indirectly associated with the business control or management of, nor has a financial interest in, another handler's operation; nor is any other handler so associated with the producer-handler's operation.

(b) *Designation of resources and facilities.* Designation of a person as a producer-handler shall include the determination of what shall constitute the person's milk production, handling,

processing, and distribution resources and facilities, all of which shall be considered an integrated operation.

(1) Milk production resources and facilities shall include all resources and facilities (milking herd(s), buildings housing such herd(s), and the land on which such buildings are located) used for the production of milk which are directly or indirectly, solely or partially, owned, operated, or controlled by the producer-handler, in which the producer-handler in any way has an interest, including any contractual arrangement, or which are directly, indirectly, or partially owned, operated, or controlled by any partner or stockholder of the producer-handler. However, for purposes of this paragraph, any such milk production resources and facilities which do not constitute an actual or potential source of milk supply for the producer-handler's operation shall not be considered a part of the producer-handler's milk production resources and facilities.

(2) Milk handling, processing, and distribution resources and facilities shall include all resources and facilities (including store outlets) used for handling, processing, and distributing fluid milk products which are solely or partially owned by, and directly or indirectly operated or controlled by, the producer-handler or in which the producer-handler in any way has an interest, including any contractual arrangement, or over which the producer-handler directly or indirectly exercises any degree of management or control.

(3) All designations shall remain in effect until canceled pursuant to paragraph (c) of this section.

(c) *Cancellation.* The designation as a producer-handler shall be canceled upon determination by the market administrator that any of the requirements of paragraphs (a)(1) through (4) of this section are not continuing to be met, or under any of the conditions described in paragraphs (c)(1) and (2) of this section. Cancellation of a producer-handler's status pursuant to this paragraph shall be effective on the first day of the month following the month in which the requirements were not met or the conditions for cancellation occurred.

(1) Milk from the milk production resources and facilities of the producer-handler, designated in paragraph (b)(1) of this section, is delivered in the name of another person as producer milk to another handler.

(2) The producer-handler handles fluid milk products derived from sources other than the milk production facilities and resources designated in paragraph (b)(1) of this section, except that it may receive at its plant, or acquire for route disposition, fluid milk products from fully regulated plants and handlers under any Federal order if such receipts do not exceed 150,000 pounds monthly. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month.

(d) *Public announcement.* The market administrator shall publicly announce:

(1) The name, plant location(s), and farm location(s) of persons designated as producer-handlers;

(2) The names of those persons whose designations have been canceled; and

(3) The effective dates of producer-handler status or loss of producer-handler status for each. Such announcements shall be controlling with respect to the accounting at plants of other handlers for fluid milk products received from any producer-handler.

(e) *Burden of establishing and maintaining producer-handler status.* The burden rests upon the handler who is designated as a producer-handler to establish through records required pursuant to § 1000.27 that the requirements set forth in paragraph (a) of this section have been and are continuing to be met, and that the conditions set forth in paragraph (c) of this section for cancellation of designation do not exist.

§ 1124.11 Cooperative reserve supply unit.

Cooperative reserve supply unit means any cooperative association or its agent that is a handler pursuant to § 1000.9(c) that does not own or operate a plant, if such cooperative has been qualified to receive payments pursuant to § 1124.73 and has been a handler of producer milk under the order in this part or its predecessor order during each of the 12 previous months, and if a majority of the cooperative's member producers are located within 125 miles of a plant described in § 1124.7(a). A cooperative reserve supply unit shall be subject to the following conditions:

(a) The cooperative shall file a request with the market administrator for cooperative reserve supply unit status at least 15 days prior to the first day of the month in which such status is desired to be effective. Once qualified as a cooperative reserve supply unit pursuant to this paragraph, such status shall continue to be effective unless the cooperative requests termination prior to the first day of the month that change of status is requested, or the cooperative fails to meet all of the conditions of this section.

(b) The cooperative reserve supply unit supplies fluid milk products to pool distributing plants located within 125 miles of a majority of the cooperative's member producers in compliance with any announcement by the market administrator requesting a minimum level of shipments as follows:

(1) The market administrator may require such supplies of bulk fluid milk from cooperative reserve supply units whenever the market administrator finds that milk supplies for Class I use are needed for plants defined in § 1124.7(a) or (b). Before making such a finding, the market administrator shall investigate the need for such shipments either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the market administrator's investigation shows that such shipments might be appropriate, the market administrator shall issue a notice stating that a shipping announcement is being considered and inviting data, views and arguments with respect to the proposed shipping announcement. Any decision on the required shipment of bulk fluid milk from cooperative reserve supply units must be made in writing at least one day before the effective date.

(2) Failure of a cooperative reserve supply unit to comply with any announced shipping requirements, including making any significant change in the unit's marketing operation that the market administrator determines has the impact of evading or forcing such an announcement, shall result in immediate loss of cooperative reserve supply unit status until such time as the unit has been a handler pursuant to § 1000.9(c) for at least 12 consecutive months.

§ 1124.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1124.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1124.13(e);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I;

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order; and

(5) A dairy farmer whose milk was received at a nonpool plant during the month from the same farm as other than producer milk under the order in this part or any other Federal order. Such a dairy farmer shall be known as a *dairy farmer for other markets.*

§ 1124.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a cooperative reserve supply unit described in § 1124.11. All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received and shall not be subject to the conditions specified in paragraph (e) of this section;

(c) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(d) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(e) Diverted by the operator of a pool plant or a cooperative association described in § 1000.9(c), excluding a cooperative reserve supply unit described in § 1124.11, to a nonpool plant, subject to the following conditions:

(1) Of the quantity of producer milk received during the month (including diversions, but excluding the quantity of producer milk received from a handler described in § 1000.9(c)) the handler diverts to nonpool plants not more than 80 percent during the months of September through February, and not more than 99 percent during the months of March through August;

(2) Two or more handlers described in § 1000.9(c) may have their allowable diversions computed on the basis of their combined deliveries of producer milk which they caused to be delivered to pool plants or diverted during the month if each has filed a request in writing with the market administrator before the first day of the month the agreement is to be effective. The request shall specify the basis for assigning overdiverted milk to the producer deliveries of each according to a method approved by the market administrator.

(3) Diverted milk shall be priced at the location of the plant to which diverted;

(4) Any milk diverted in excess of the limits prescribed in paragraph (e)(1) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler or cooperative association during the month to a nonpool plant shall be producer milk. In the event some of the milk of any producer is determined not to be producer milk pursuant to this paragraph, other milk delivered by such producer as producer milk during the month will not be subject to § 1124.12(b)(5); and

(5) The applicable diversion limits in paragraph (e)(1) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise an applicable percentage must be issued in writing at least one day before the effective date.

§ 1124.14 Other source milk.

See § 1000.14.

§ 1124.15 Fluid milk product.

See § 1000.15.

§ 1124.16 Fluid cream product.

See § 1000.16.

§ 1124.17 [Reserved]

§ 1124.18 Cooperative association.

See § 1000.18.

§ 1124.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1124.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 9th day after the end of the month, in the detail and on the prescribed forms, as follows:

(a) Each handler that operates a pool plant pursuant to § 1124.7 shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, and pounds of solids-not-fat other than protein (other solids) contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c); and

(ii) Receipts of milk from handlers described in § 1000.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

(3) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, and other nonfat solids, as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The product pounds, pounds of butterfat, pounds of protein, and the pounds of solids-not-fat other than protein (other solids) contained in receipts of milk from producers; and

(2) The utilization or disposition of such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1124.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1124.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1124.73(f).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1124.32 Other reports.

In addition to the reports required pursuant to §§ 1124.30 and 1124.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1124.40 Classes of utilization.

See § 1000.40.

§ 1124.41 [Reserved]

§ 1124.42 Classification of transfers and diversions.

See § 1000.42.

§ 1124.43 General classification rules.

See § 1000.43.

§ 1124.44 Classification of producer milk.

In addition to the provisions provided in § 1000.44, for purposes of this part 1124, § 1000.44(a)(3)(iv) applies to fluid milk products and bulk fluid cream products received or acquired for distribution from a producer-handler.

§ 1124.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1124.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1124.51 Class I differential and price.

The Class I differential shall be the differential established for King County, Washington, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for King County, Washington.

§ 1124.52 Adjusted Class I differentials.

See § 1000.52.

§ 1124.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1124.54 Equivalent price.

See § 1000.54.

Producer Price Differential

§ 1124.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (h) of this section and subtracting from that total amount the value computed in paragraph (i) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44 (a), (b), and (c), respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76 (a)(4) or (d) shall be excluded from pricing under this section.

(a) Class I value.

(1) Multiply the hundredweight of skim milk in Class I by the Class I skim milk price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I by the Class I butterfat price.

(b) Class II value.

(1) Multiply the pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class II times the Class II butterfat price.

(c) Class III value.

(1) Multiply the pounds of protein in Class III skim milk by the protein price;

(2) Add an amount obtained by multiplying the pounds of other solids in Class III skim milk by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) Class IV value.

(1) Multiply the pounds of nonfat solids in Class IV skim milk by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

(e) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) and the corresponding steps of § 1000.44(b) by the skim milk prices and butterfat prices applicable to each class.

(f) Multiply the difference between the current month's Class I, II, or III price, as the case may be, and the Class IV price for the preceding month by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(g) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3) (i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from plants regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants.

(h) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(i) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1124.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1124.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1124.60 for all handlers required to file reports prescribed in § 1124.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1124.60 by the protein price, the other solids price, and the butterfat price, respectively;

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1124.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1124.60(h); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

§ 1124.62 Announcement of producer prices.

On or before the 14th day after the end of each month, the market administrator shall announce publicly the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(g) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

Payments for Milk

§ 1124.70 Producer-settlement fund.

See § 1000.70.

§ 1124.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 16th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1124.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1124.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices, respectively; and

(3) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1124.60(h) by the producer price differential as adjusted pursuant to § 1124.75 for the location of the plant from which received.

§ 1124.72 Payments from the producer-settlement fund.

No later than the 18th day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1124.71(b) exceeds the amount computed pursuant to § 1124.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1124.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the 18th day of the month, partial payment shall be made so that it is received by each producer on or before the last day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month from the producer at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer no later than the 19th day after the end of the month (except as provided in § 1000.90) in an amount equal to not less than the sum of:

(i) The hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1124.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) Less any payment made pursuant to paragraph (a)(1) of this section;

(vi) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments to such producer subject to approval by the market administrator; and

(vii) Less deductions for marketing services pursuant to § 1000.86.

(b) *Payments for milk received from cooperative association members.* On or before the 2nd day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section (except as provided in § 1000.90), each handler shall pay to a cooperative association for milk from producers who market their milk through the cooperative association and who have authorized the cooperative to collect such payments on their behalf an amount equal to the sum of the individual payments otherwise payable for such producer milk pursuant to

paragraphs (a)(1) and (a)(2) of this section.

(c) *Payment for milk received from cooperative association pool plants or from cooperatives as handlers pursuant to § 1000.9(c).* On or before the 2nd day prior to the dates specified in paragraphs (a)(1) and (a)(2) of this section (except as provided in § 1000.90), each handler who receives fluid milk products at its plant from a cooperative association in its capacity as the operator of a pool plant or who receives milk from a cooperative association in its capacity as a handler pursuant to § 1000.9(c), including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, shall pay the cooperative for such milk as follows:

(1) For bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant and for milk received from a cooperative association in its capacity as a handler pursuant to § 1000.9(c) during the first 15 days of the month, at not less than the lowest announced class price per hundredweight for the preceding month.

(2) For the total quantity of bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant, at not less than the total value of such products received from the association's pool plants, as determined by multiplying the respective quantities assigned to each class under § 1000.44, as follows:

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of Class I butterfat times the Class I butterfat price for the month. The Class I prices to be used shall be the prices effective at the location of the receiving plant;

(ii) The pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price;

(iii) The pounds of butterfat in Class II times the Class II butterfat price;

(iv) The pounds of nonfat solids in Class IV times the nonfat solids price;

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

(vi) The pounds of protein in Class III milk times the protein price;

(vii) The pounds of other solids in Class III milk times the other solids price; and

(viii) Add together the amounts computed in paragraphs (c)(2)(i) through (vii) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section; and

(3) For the total quantity of milk received during the month from a cooperative association in its capacity as a handler under § 1000.9(c) as follows:

(i) The hundredweight of producer milk received times the producer price differential as adjusted pursuant to § 1124.75;

(ii) The pounds of butterfat received times the butterfat price for the month;

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month; and

(v) Add together the amounts computed in paragraphs (c)(3)(i) through (iv) of this section and from that sum deduct any payment made pursuant to paragraph (c)(1) of this section.

(d) If a handler has not received full payment from the market administrator pursuant to § 1124.72 by the payment date specified in paragraph (a), (b) or (c) of this section, the handler may reduce pro rata its payments to producers or to the cooperative association (with respect to receipts described in paragraph (b) of this section, prorating the underpayment to the volume of milk received from the cooperative association in proportion to the total milk received from producers by the handler), but not by more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(e) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

(f) In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and payroll number of the producer;

(2) The daily and total pounds, and the month and dates such milk was received from that producer;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

(4) The minimum rate or rates at which payment to the producer is required pursuant to the order in this part;

(5) The rate used in making payment if the rate is other than the applicable minimum rate;

(6) The amount, or rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(7) The net amount of payment to the producer or cooperative association.

§ 1124.74 [Reserved]

§ 1124.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1124.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1124.73 and 1000.76.

§ 1124.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1124.77 Adjustment of accounts.

See § 1000.77.

§ 1124.78 Charges on overdue accounts.

See § 1000.78.

Administrative Assessment and Marketing Service Deduction

§ 1124.85 Assessment for order administration.

See § 1000.85.

§ 1124.86 Deduction for marketing services.

See § 1000.86.

PART 1126—MILK IN THE SOUTHWEST MARKETING AREA

Subpart—Order Regulating Handling

General Provisions

Sec.
1126.1 General provisions.

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Authority: 7 U.S.C. 601–674, and 7253.

Subpart—Order Regulating Handling

General Provisions

§ 1126.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to this part 1126. In this part 1126, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1126.2 Southwest marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Colorado Counties

Archuleta, LaPlata, and Montezuma.

New Mexico and Texas

All of the States of New Mexico and Texas.

§ 1126.3 Route disposition.

See § 1000.3.

§ 1126.4 Plant.

See § 1000.4.

§ 1126.5 Distributing plant.

See § 1000.5.

§ 1126.6 Supply plant.

See § 1000.6.

§ 1126.7 Pool plant.

Pool plant means a plant specified in paragraphs (a) through (d) of this section, or a unit of plants as specified in paragraph (e) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (c) and (d) of this section are subject to modification pursuant to paragraph (f) of this section:

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or § _____.7(b) of any other Federal milk order, from which during the month 25 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 25 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which 50 percent or more of the total quantity of milk that is physically received during the month from dairy farmers and handlers described in § 1000.9(c), including milk that is diverted as producer milk to other plants, is transferred to pool distributing plants. Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the plant's shipping percentage.

(d) A plant located within the marketing area that is operated by a cooperative association if pool plant status under this paragraph is requested for such plant by the cooperative association and during the month at least 30 percent of the producer milk of members of such cooperative association is delivered directly from farms to pool distributing plants or is transferred to such plants as a fluid milk product (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) from the cooperative's plant.

(e) Two or more plants operated by the same handler and located within the marketing area may qualify for pool status as a unit by meeting the total and in-area route disposition requirements specified in paragraph (a) of this section and the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process only Class I or Class II products and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) A written request to form a unit, or to add or remove plants from a unit, must be filed with the market administrator prior to the first day of the month for which it is to be effective.

(f) The applicable shipping percentages of paragraphs (c) and (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage

needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(g) The term pool plant shall not apply to the following plants:

(1) A producer-handler plant;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant qualified pursuant to paragraph (a) of this section that is located within the marketing area if the plant also meets the pooling requirements of another Federal order, and more than 50 percent of its route distribution has been in such other Federal order marketing area for 3 consecutive months;

(4) A plant qualified pursuant to paragraph (a) of this section which is not located within any Federal order marketing area that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;

(5) A plant qualified pursuant to paragraph (a) of this section that is located in another Federal order marketing area if the plant meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) or (d) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under the order in this part, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a pool plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in writing by the handler and must be approved by the market administrator.

§ 1126.8 Nonpool plant.

See § 1000.8.

§ 1126.9 Handler.

See § 1000.9.

§ 1126.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is route disposition in the marketing area during the month;

(b) Receives fluid milk products from own farm production or milk that is fully subject to the pricing and pooling provisions of the order in this part or another Federal order;

(c) Receives no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order, including such products received at a location other than the producer-handler's processing plant for distribution on routes. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month;

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products; and

(e) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing and packaging operations are the producer-handler's own enterprise and at its own risk.

§ 1126.11 [Reserved]

§ 1126.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1126.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1126.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and the milk is allocated by request to a utilization other than Class I; and

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order.

§ 1126.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat contained in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator for the account of the handler operating such plant to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a handler described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless a delivery of at least 40,000 pounds or one day's milk production, whichever is less, of such dairy farmer has been physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time;

(2) The total quantity of milk diverted during the month by a cooperative association shall not exceed 50 percent of the total quantity of producer milk that the cooperative association caused to be received at pool plants and diverted;

(3) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to this paragraph. The total quantity of milk so diverted during the month shall not exceed 50 percent of the total quantity of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1126.7(e)) and diverted;

(4) Any milk diverted in excess of the limits prescribed in paragraphs (d)(2) and (3) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that will not be producer milk, no milk diverted by the handler or cooperative association shall be producer milk;

(5) Diverted milk shall be priced at the location of the plant to which diverted; and

(6) The delivery requirement in paragraph (d)(1) and the diversion percentages in paragraphs (d)(2) and (3) of this section may be increased or decreased by the market administrator if there is a finding that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise the delivery day requirement or any diversion percentage must be issued in writing at least one day before the effective date.

§ 1126.14 Other source milk.

See § 1000.14.

§ 1126.15 Fluid milk product.

See § 1000.15.

§ 1126.16 Fluid cream product.

See § 1000.16.

§ 1126.17 [Reserved]

§ 1126.18 Cooperative association.

See § 1000.18.

§ 1126.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1126.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 8th day after the end of the month, in the detail and on prescribed forms, as follows:

(a) Each pool plant operator shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, pounds of nonfat solids other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p) contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c); and

(ii) Receipts of milk from handlers described in § 1000.9(c);

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

(3) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, other nonfat solids, and somatic cell information, as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The product pounds, pounds of butterfat, pounds of protein, pounds of solids-not-fat other than protein (other solids), and the value of the somatic cell adjustment pursuant to § 1000.50(p), contained in receipts of milk from producers; and

(2) The utilization or disposition of such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1126.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1126.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information specified in § 1126.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1126.32 Other reports.

In addition to the reports required pursuant to §§ 1126.30 and 1126.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1126.40 Classes of utilization.

See § 1000.40.

§ 1126.41 [Reserved]

§ 1126.42 Classification of transfers and diversions.

See § 1000.42.

§ 1126.43 General classification rules.

See § 1000.43.

§ 1126.44 Classification of producer milk.

See § 1000.44.

§ 1126.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1126.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1126.51 Class I differential and price.

The Class I differential shall be the differential established for Dallas County, Texas, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Dallas County, Texas.

§ 1126.52 Adjusted Class I differentials.

See § 1000.52.

§ 1126.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1126.54 Equivalent price.

See § 1000.54.

Producer Price Differential

§ 1126.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (i) of this section and subtracting from that total amount the value computed in paragraph (j) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44(a), (b), and (c), respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Class I value.

(1) Multiply the pounds of skim milk in Class I by the Class I skim milk price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I by the Class I butterfat price.

(b) Class II value.

(1) Multiply the pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class II times the Class II butterfat price.

(c) Class III value.

(1) Multiply the pounds of protein in Class III skim milk by the protein price;

(2) Add an amount obtained by multiplying the pounds of other solids in Class III skim milk by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) Class IV value.

(1) Multiply the pounds of nonfat solids in Class IV skim milk by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

(e) Compute an adjustment for the somatic cell content of producer milk by multiplying the values reported pursuant to § 1126.30(a)(1) and (c)(1) by the percentage of total producer milk allocated to Class II, Class III, and Class IV pursuant to § 1000.44(c);

(f) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) and the corresponding step of § 1000.44(b) by the skim milk prices and butterfat prices applicable to each class.

(g) Multiply the difference between the current month's Class I, II, or III price, as the case may be, and the Class IV price for the preceding month by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(h) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from plants regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants.

(i) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(j) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1126.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1126.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1126.60 for all handlers required to file reports prescribed in § 1126.30;

(b) Subtract the total of the values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1126.60 by the protein price, other solids price, and the butterfat price, respectively, and the total value of the somatic cell adjustment pursuant to § 1126.30(a)(1) and (c)(1);

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1126.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1126.60(i); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

§ 1126.62 Announcement of producer prices.

On or before the 13th day after the end of each month, the market administrator shall announce the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) The somatic cell adjustment rate;

(g) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

Payments for Milk

§ 1126.70 Producer-settlement fund.

See § 1000.70.

§ 1126.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 16th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1126.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1126.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

(3) The total value of the somatic cell adjustment to producer milk; and

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1126.60(i) by the producer price differential as adjusted pursuant to § 1126.75 for the location of the plant from which received.

§ 1126.72 Payments from the producer-settlement fund.

No later than the 17th day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1126.71(b) exceeds the amount computed pursuant to § 1126.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1126.73 Payments to producers and to cooperative associations.

(a) Each handler shall pay each producer for producer milk for which payment is not made to a cooperative association pursuant to paragraph (b) of this section, as follows:

(1) *Partial payment.* For each producer who has not discontinued shipments as of the 23rd day of the month, payment shall be made so that it is received by the producer on or before the 26th day of the month (except as provided in § 1000.90) for milk received during the first 15 days of the month at not less than the lowest announced class price for the preceding month, less proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, payment shall be made so that it is received by each producer no later than the 18th day after the end of the month (except as provided in § 1000.90) in an amount computed as follows:

(i) Multiply the hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1126.75;

(ii) Multiply the pounds of butterfat received times the butterfat price for the month;

(iii) Multiply the pounds of protein received times the protein price for the month;

(iv) Multiply the pounds of other solids received times the other solids price for the month;

(v) Multiply the hundredweight of milk received times the somatic cell adjustment for the month;

(vi) Add the amounts computed in paragraphs (a)(2)(i) through (v) of this section, and from that sum:

(A) Subtract the partial payment made pursuant to paragraph (a)(1) of this section;

(B) Subtract the deduction for marketing services pursuant to § 1000.86;

(C) Add or subtract for errors made in previous payments to the producer subject to approval by the market administrator; and

(D) Subtract proper deductions authorized in writing by the producer.

(b) On or before the day prior to the dates specified for partial and final payments pursuant to paragraph (a) of this section (except as provided in § 1000.90), each pool plant operator shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk (including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk) received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, the payment shall be equal to the hundredweight of milk received multiplied by the lowest announced class price for the preceding month.

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk milk/skimmed milk products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available at the receiving plant's location.

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* Following the classification of bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment for such receipts shall be determined as follows:

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of Class I butterfat times the Class I butterfat price for the month. The Class I prices to be used shall be the prices effective at the location of the receiving plant;

(ii) The pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price;

(iii) The pounds of butterfat in Class II times the Class II butterfat price;

(iv) The pounds of nonfat solids in Class IV times the nonfat solids price;

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

(vi) The pounds of protein in Class III milk times the protein price;

(vii) The pounds of other solids in Class III milk times the other solids price;

(viii) The hundredweight of Class II, Class III, and Class IV milk times the somatic cell adjustment; and

(ix) Add together the amounts computed in paragraphs (b)(3)(i) through (viii) of this section and from that sum deduct any payments made pursuant to paragraph (b)(2) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative

association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1126.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce pro rata its payments to producers or to cooperative associations pursuant to paragraphs (a) and (b) of this section, but by not more than the amount of the underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund, and in the event that the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant as the case may be.

(e) In making payments to producers pursuant to this section, each pool plant operator shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and the payroll number of the producer;

(2) The month and dates that milk was received from the producer, including the daily and total pounds of milk received;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

(4) The somatic cell count of the producer's milk;

(5) The minimum rate or rates at which payment to the producer is required pursuant to the order in this part;

(6) The rate used in making payment if the rate is other than the applicable minimum rate;

(7) The amount, or rate per hundredweight, or rate per pound of component, and the nature of each deduction claimed by the handler; and

(8) The net amount of payment to the producer or cooperative association.

§ 1126.74 [Reserved]

§ 1126.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1126.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1126.73 and 1000.76.

§ 1126.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1126.77 Adjustment of accounts.

See § 1000.77.

§ 1126.78 Charges on overdue accounts.

See § 1000.78.

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§ 1126.85 Assessment for order administration.

See § 1000.85.

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See § 1000.86.

PART 1131—MILK IN ARIZONA-LAS VEGAS MARKETING AREA

Subpart—Order Regulating Handling

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1131.86 Deduction for marketing services.

Authority: 7 U.S.C. 601–674, and 7253.

Subpart—Order Regulating Handling

General Provisions

§ 1131.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to this part 1131. In this part 1131, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1131.2 Arizona-Las Vegas marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks and wharves

connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Arizona

All of the State of Arizona.

Nevada Counties

Clark.

§ 1131.3 Route disposition.

See § 1000.3.

§ 1131.4 Plant.

See § 1000.4.

§ 1131.5 Distributing plant.

See § 1000.5.

§ 1131.6 Supply plant.

See § 1000.6.

§ 1131.7 Pool plant.

Pool Plant means a plant or unit of plants specified in paragraphs (a) through (e) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (c) and (d) of this section are subject to modification pursuant to paragraph (f) of this section.

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this § _____. 7(b) of any other Federal milk order, from which during the month 25 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 25 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which 50 percent or more of the total quantity of milk that is physically received at such plant from dairy farmers and handlers described in § 1000.9(c), including milk that is diverted as producer milk to other plants, is transferred to pool distributing plants. Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the plant's shipping percentage.

(d) A plant located within the marketing area and operated by a cooperative association if, during the month, or the immediately preceding 12-month period ending with the current month, 35 percent or more of the producer milk of members of the association (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received in the form of bulk fluid milk products (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) at plants specified in paragraph (a) or (b) of this section either directly from farms or by transfer from supply plants operated by the cooperative association and from plants of the cooperative association for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a), (b) or (c) of this section or under comparable provisions of another Federal order; and

(2) The plant is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption in the marketing area.

(e) Two or more plants operated by the same handler and located in the marketing area may qualify for pool plant status as a unit by together meeting the requirements specified in paragraph (a) of this section and subject to all of the following additional requirements:

(1) At least one of the plants in the unit must qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process Class I or Class II products, using 50 percent or more of the total Grade A fluid milk products received in bulk form at such plant or diverted therefrom by the plant operator in Class I or Class II products, and must be located in a pricing zone providing the same or lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) A written request to form a unit must be filed by the handler with the market administrator prior to the first day of the month for which such status is desired to be effective. The unit shall continue from month to month thereafter without further notification. The handler shall notify the market administrator in writing prior to the first day of any month for which termination or any change of the unit is desired.

(f) The applicable shipping percentages of paragraphs (c) and (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(g) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal order;

(2) An exempt plant as defined in § 1000.8(e);

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) of this section which meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for 3 consecutive months;

(4) A plant located outside any Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made

to plants regulated under the other Federal order than are made to plants regulated under the order in this part, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a regulated plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in advance and in writing by the handler and must be approved by the market administrator.

§ 1131.8 Nonpool plant.

See § 1000.8.

§ 1131.9 Handler.

See § 1000.9.

§ 1131.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is route disposition in the marketing area during the month;

(b) Receives fluid milk products from own farm production or milk that is fully subject to the pricing and pooling provisions of the order in this part or another Federal order;

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month;

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products;

(e) Does not distribute fluid milk products to a wholesale customer who also is serviced by a plant described in § 1131.7(a), (b), or (e), or a handler described in § 1000.8(c) that supplied the same product in the same-sized package with a similar label to the wholesale customer during the month; and

(f) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the operation of the distributing plant are the personal enterprise of, and at the personal risk of, such person in his/her capacity as a producer-handler.

§ 1131.11 [Reserved]

§ 1131.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1131.13; or

(2) Received by a handler described in § 1000.9(c).

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is received at an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1131.13(d);

(3) A dairy farmer whose milk is received by diversion at a pool plant from a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I;

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order; and

(5) A dairy farmer whose milk is received at a pool plant if during the month milk from the same farm is received at a nonpool plant (except a nonpool plant that has no utilization of milk products in any class other than Class III or Class IV) other than as producer milk under the order in this part or some other Federal order. Such a dairy farmer shall be known as a *dairy farmer for other markets.*

§ 1131.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk) and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer or a handler described in § 1000.9(c). All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant or a cooperative association described in § 1000.9(c) to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least one day's production of such dairy farmer is physically received at a pool plant during the month;

(2) The total quantity of milk diverted by a handler in any month shall not exceed 50 percent of the total producer milk caused by the handler to be received at pool plants and diverted;

(3) Diverted milk shall be priced at the location of the plant to which diverted;

(4) Any milk diverted in excess of the limits prescribed in paragraph (d)(2) of this section shall not be producer milk. If the diverting handler or cooperative association fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler or cooperative association during the month to a nonpool plant shall be producer milk. In the event some of the milk of any producer is determined not to be producer milk pursuant to this paragraph, other milk delivered by such producer as producer milk during the month will not be subject to § 1131.12(b)(5); and

(5) The delivery day requirement in paragraph (d)(1) of this section and diversion percentage in paragraph (d)(2) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise the delivery day requirement or the diversion percentage must be issued in writing at least one day before the effective date.

§ 1131.14 Other source milk.

See § 1000.14.

§ 1131.15 Fluid milk product.

See § 1000.15.

§ 1131.16 Fluid cream product.

See § 1000.16.

§ 1131.17 [Reserved]

§ 1131.18 Cooperative association.

See § 1000.18.

§ 1131.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1131.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator's office receives the report on or before the 7th day after the end of the month, in the detail and on the forms prescribed by the market administrator, as follows:

(a) With respect to each of its pool plants, the quantities of skim milk and butterfat contained in or represented by:

(1) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c);

(2) Receipts of milk from handlers described in § 1000.9(c);

(3) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(4) Receipts of other source milk;

(5) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products; and

(6) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in § 1000.9(c) shall report:

(1) The quantities of all skim milk and butterfat contained in receipts of milk from producers; and

(2) The utilization or disposition of all such receipts.

(d) Each handler described in § 1131.10 shall report:

(1) The pounds of milk received from each of the handler's own-farm production units, showing separately the production of each farm unit and the number of dairy cows in production at each farm unit;

(2) Fluid milk products and bulk fluid cream products received at its plant or acquired for route disposition from pool plants, other order plants, and handlers described in § 1000.9(c);

(3) Receipts of other source milk not reported pursuant to paragraph (d)(2) of this section;

(4) Inventories at the beginning and end of the month of fluid milk products and fluid cream products; and

(5) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph.

(e) Each handler not specified in paragraphs (a) through (d) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1131.31 Payroll reports.

(a) On or before the 20th day after the end of each month, each handler that operates a pool plant pursuant to § 1131.7 and each handler described in § 1000.9(c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) The month;

(2) The producer's name and address;

(3) The daily and total pounds of milk received from the producer;

(4) The total butterfat content of such milk; and

(5) The price per hundredweight, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1131.32 Other reports.

In addition to the reports required pursuant to § 1131.30 and § 1131.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1131.40 Classes of utilization.

See § 1000.40.

§ 1131.41 [Reserved]

§ 1131.42 Classification of transfers and diversions.

See § 1000.42.

§ 1131.43 General classification rules.

See § 1000.43.

§ 1131.44 Classification of producer milk.

See § 1000.44.

§ 1131.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1131.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1131.51 Class I differential and price.

The Class I differential shall be the differential established for Maricopa County, Arizona, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Maricopa County, Arizona.

§ 1131.52 Adjusted Class I differentials.

See § 1000.52.

§ 1131.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1131.54 Equivalent price.

See § 1000.54.

Uniform Prices

§ 1131.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1000.9(c) with respect to milk that was not received at a pool plant by adding the amounts computed in paragraphs (a) through (e) of this section and subtracting from that total amount the value computed in paragraph (f) of this section. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76(a)(4) or (d) shall be excluded from pricing under this section.

(a) Multiply the pounds of skim milk and butterfat in producer milk that were classified in each class pursuant to § 1000.44(c) by the applicable skim milk and butterfat prices, and add the resulting amounts;

(b) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) and the corresponding steps of § 1000.44(b) by the respective skim milk and butterfat prices applicable at the location of the pool plant;

(c) Multiply the difference between the current month's Class I, II, or III price, as the case may be, and the Class IV price for the preceding month by the hundredweight of skim milk and

butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(d) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3)(i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from plants regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants;

(e) Multiply the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding steps of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order; and

(f) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1131.61 Computation of uniform prices.

On or before the 11th day of each month, the market administrator shall compute a uniform butterfat price, a uniform skim milk price, and a uniform price for producer milk receipts reported for the prior month. The report of any handler who has not made payments required pursuant to § 1131.71 for the preceding month shall not be included in the computation of these prices, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations.

(a) *Uniform butterfat price.* The uniform butterfat price per pound, rounded to the nearest one-hundredth cent, shall be computed by multiplying the pounds of butterfat in producer milk allocated to each class pursuant to § 1000.44(b) by the respective class butterfat prices and dividing the sum of such values by the total pounds of such butterfat.

(b) *Uniform skim milk price.* The uniform skim milk price per hundredweight, rounded to the nearest cent, shall be computed as follows:

(1) Combine into one total the values computed pursuant to § 1131.60 for all handlers;

(2) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1131.75;

(3) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(4) Subtract the value of the total pounds of butterfat for all handlers. The butterfat value shall be computed by multiplying the pounds of butterfat by the butterfat price computed in paragraph (a) of this section;

(5) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(i) The total skim pounds of producer milk; and

(ii) The total skim pounds for which a value is computed pursuant to § 1131.60(e); and

(6) Subtract not less than 4 cents and not more than 5 cents.

(c) *Uniform price.* The uniform price per hundredweight, rounded to the nearest cent, shall be the sum of the following:

(1) Multiply the uniform butterfat price for the month pursuant to paragraph (a) of this section times 3.5 pounds of butterfat; and

(2) Multiply the uniform skim milk price for the month pursuant to paragraph (b) of this section times .965.

§ 1131.62 Announcement of uniform prices.

On or before the 11th day after the end of the month, the market administrator shall announce the uniform prices for the month computed pursuant to § 1131.61.

Payments for Milk

§ 1131.70 Producer-settlement fund.

See § 1000.70.

§ 1131.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 13th day after the end of the month (except as provided in § 1000.90). Payments due the market administrator shall be deemed not to have been made until the money owed has been received at the market administrator's office, or deposited into the market administrator's bank account. Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1131.60.

(b) The sum of:

(1) The value at the uniform prices for skim milk and butterfat, adjusted for plant location, of the handler's receipts of producer milk; and

(2) The value at the uniform price as adjusted pursuant to § 1131.75 applicable at the location of the plant from which received of other source milk for which a value is computed pursuant to § 1131.60(e).

§ 1131.72 Payments from the producer-settlement fund.

No later than the 14th day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1131.71(b) exceeds the amount computed pursuant to § 1131.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1131.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraphs (b) and (c) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) *Partial Payment.* For each producer who has not discontinued shipments as of the 25th day of the month, payment shall be made so that it is received by the producer on or before the 27th day of each month (except as provided in § 1000.90) for milk received from such producer during the first 15 days of the month at not less than 1.3 times the lowest class price for the preceding month less proper deductions authorized in writing by the producer.

(2) *Final payment.* For milk received during the month, a payment computed as follows shall be made so that it is received by each producer one day after the payment date required in § 1131.72:

(i) Multiply the hundredweight of producer skim milk received times the uniform skim milk price for the month;

(ii) Multiply the pounds of producer butterfat received times the uniform butterfat price for the month;

(iii) Multiply the hundredweight of producer milk received times the plant location adjustment pursuant to § 1131.75; and

(iv) Add the amounts computed in paragraph (a)(2)(i), (ii), and (iii) of this section, and from that sum:

(A) Subtract the partial payment made pursuant to paragraph (a)(1) of this section;

(B) Subtract the deduction for marketing services pursuant to § 1000.86;

(C) Add or subtract for errors made in previous payments to the producer, subject to approval by the market administrator; and

(D) Subtract proper deductions authorized in writing by the producer.

(b) Two days prior to the dates on which partial and final payments are due pursuant to paragraph (a) of this section, each pool plant operator shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk (including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk) received during the first 15 days of the month from a cooperative association in any capacity except as the operator of a pool plant, the payment shall be an amount not less than 1.3 times the lowest class price for the preceding month multiplied by the hundredweight of milk.

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available for skim milk and butterfat at the receiving plant's location.

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the month from a cooperative association in its capacity as the operator of a pool plant, the final payment shall be the classified value of such milk as determined by multiplying the pounds of skim milk and butterfat assigned to each class pursuant to § 1000.44 by the class prices for the month at the receiving plant's location, and subtracting from this sum the partial payment made pursuant to paragraph (b)(2) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1131.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce pro rata his payments pursuant to such paragraphs, but by not more than the amount of such underpayment. Payments to producers shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer-settlement fund. In the event the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or the lawful claimant, as the case may be.

(e) In making payments to producers pursuant to this section, each pool plant operator shall furnish each producer, except a producer whose milk was received from a cooperative association described in § 1000.9(a) or (c), a supporting statement in such form that it may be retained by the recipient which shall show:

(1) The month, and identity of the producer;

(2) The daily and total pounds and the total pounds of butterfat content of producer milk;

(3) The minimum rate at which payment to the producer is required pursuant to the order in this part;

(4) The rate used in making payments if the rate is other than the applicable minimum rate;

(5) The amount, rate per hundredweight, and nature of each deduction claimed by the handler; and

(6) The net amount of payment to the producer or cooperative association.

§ 1131.74 [Reserved]

§ 1131.75 Plant location adjustments for producers and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1131.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1131.73 and 1000.76.

§ 1131.76 Payments by handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1131.77 Adjustment of accounts.

See § 1000.77.

§ 1131.78 Charges on overdue accounts.

See § 1000.78.

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See § 1000.86.

PART 1135—MILK IN THE WESTERN MARKETING AREA

Subpart—Order Regulating Handling

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1135.86 Deduction for marketing services.

Authority: 7 U.S.C. 601–674, and 7253.

Subpart—Order Regulating Handling

General Provisions

§ 1135.1 General provisions.

The terms, definitions, and provisions in part 1000 of this chapter apply to this part 1135. In this part 1135, all references to sections in part 1000 refer to part 1000 of this chapter.

Definitions

§ 1135.2 Western marketing area.

The marketing area means all territory within the bounds of the following states and political subdivisions, including all piers, docks and wharves connected therewith and all craft moored thereat, and all territory occupied by government (municipal, State or Federal) reservations, installations, institutions, or other similar establishments if any part thereof is within any of the listed states or political subdivisions:

Idaho Counties

Ada, Adams, Bannock, Bear Lake, Bingham, Blaine, Boise, Bonneville, Camas, Canyon, Caribou, Cassia, Elmore, Franklin, Gem, Gooding, Jefferson, Jerome, Lincoln, Madison, Minidoka, Oneida, Owyhee, Payette, Power, Twin Falls, Valley, and Washington.

Nevada Counties

Elko, Lincoln, and White Pine.

Oregon Counties

Baker, Grant, Harney, Malheur, and Union.

Utah

All of the state of Utah.

Wyoming Counties

Lincoln and Uinta.

§ 1135.3 Route disposition.

See § 1000.3.

§ 1135.4 Plant.

See § 1000.4.

§ 1135.5 Distributing plant.

See § 1000.5.

§ 1135.6 Supply plant.

See § 1000.6.

§ 1135.7 Pool plant.

Pool Plant means a plant or unit of plants specified in paragraphs (a) through (e) of this section, but excluding a plant specified in paragraph (g) of this section. The pooling standards described in paragraphs (c) and (d) of this section are subject to modification pursuant to paragraph (f) of this section.

(a) A distributing plant, other than a plant qualified as a pool plant pursuant to paragraph (b) of this section or §_____.7(b) of any other Federal milk order, from which during the month 25 percent or more of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) are disposed of as route disposition or are transferred in the form of packaged fluid milk products to other distributing plants. At least 25 percent of such route disposition and transfers must be to outlets in the marketing area.

(b) Any distributing plant located in the marketing area which during the month processed at least 25 percent of the total quantity of fluid milk products physically received at the plant (excluding concentrated milk received from another plant by agreement for other than Class I use) into ultra-pasteurized or aseptically-processed fluid milk products.

(c) A supply plant from which during the month the quantity of bulk fluid milk products transferred or diverted to plants described in paragraph (a) or (b) of this section is 35 percent or more of the total Grade A milk received at the plant from dairy farmers (except dairy farmers described in § 1135.12(b)) and handlers described in § 1000.9(c) and § 1135.11, including milk diverted by the plant operator, subject to the following conditions:

(1) A supply plant that has qualified as a pool plant during each of the immediately preceding months of September through February shall continue to so qualify in each of the following months of March through August unless the plant operator files a written request with the market administrator that such plant not be a pool plant, such nonpool status to be effective the first month following such request. A plant withdrawn from pool supply plant status may not be reinstated for any subsequent month of the March through July period unless it qualifies as a pool plant on the basis of milk shipments;

(2) A pool plant operator may include as qualifying shipments milk diverted to pool distributing plants pursuant to § 1135.13(c);

(3) Concentrated milk transferred from the supply plant to a distributing plant for an agreed-upon use other than Class I shall be excluded from the supply plant's shipments in computing the plant's shipping percentage; and

(4) No plant may qualify as a pool plant due to a reduction in the shipping percentage pursuant to paragraph (f) of this section unless it has been a pool supply plant during each of the immediately preceding 3 months.

(d) A milk manufacturing plant located within the marketing area that is operated by a cooperative association if, during the month or the immediately preceding 12-month period ending with the current month, 35% or more of such cooperative's member producer milk (and any producer milk of nonmembers and members of another cooperative association which may be marketed by the cooperative association) is physically received in the form of bulk fluid milk products (excluding concentrated milk transferred to a distributing plant for an agreed-upon use other than Class I) at plants specified in paragraph (a) or (b) of this section either directly from farms or by transfer from supply plants operated by the cooperative association and from plants of the cooperative association for which pool plant status has been requested under this paragraph subject to the following conditions:

(1) The plant does not qualify as a pool plant under paragraph (a), (b) or (c) of this section or under comparable provisions of another Federal order; and

(2) The plant is approved by a duly constituted regulatory agency for the handling of milk approved for fluid consumption in the marketing area.

(e) Two or more plants located in the marketing area and operated by the same handler may qualify for pool plant status as a unit by together meeting the requirements specified in paragraph (a) of this section and subject to the following additional requirements:

(1) At least one of the plants in the unit must individually qualify as a pool plant pursuant to paragraph (a) of this section;

(2) Other plants in the unit must process Class I or Class II products, using 50 percent or more of the total Grade A fluid milk products received in bulk form at such plant or diverted therefrom by the plant operator in Class I or Class II products, and must be located in a pricing zone providing the same or a lower Class I price than the price applicable at the distributing plant included in the unit pursuant to paragraph (e)(1) of this section; and

(3) A written request to form a unit must be filed by the handler with the market administrator prior to the first day of the month for which such status is to be effective. The unit shall continue from month to month thereafter without further notification. The handler shall notify the market administrator in writing prior to the first day of any month for which termination or any change of the unit is desired.

(f) The applicable shipping percentages of paragraphs (c) and (d) of this section may be increased or decreased by the market administrator if the market administrator finds that such adjustment is necessary to encourage needed shipments or to prevent uneconomic shipments. Before making such a finding, the market administrator shall investigate the need for adjustment either on the market administrator's own initiative or at the request of interested parties if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that an adjustment of the shipping percentages might be appropriate, the market administrator shall issue a notice stating that an adjustment is being considered and invite data, views and arguments. Any decision to revise an applicable shipping percentage must be issued in writing at least one day before the effective date.

(g) The term pool plant shall not apply to the following plants:

(1) A producer-handler as defined under any Federal order;

(2) An exempt plant as defined in 1000.8(e);

(3) A plant located within the marketing area and qualified pursuant to paragraph (a) of this section which meets the pooling requirements of another Federal order, and from which more than 50 percent of its route disposition has been in the other Federal order marketing area for 3 consecutive months;

(4) A plant located outside any Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of another Federal order and has had greater route disposition in such other Federal order's marketing area for 3 consecutive months;

(5) A plant located in another Federal order marketing area and qualified pursuant to paragraph (a) of this section that meets the pooling requirements of such other Federal order and does not have a majority of its route distribution in this marketing area for 3 consecutive months or if the plant is required to be regulated under such other Federal order without regard to its route disposition in any other Federal order marketing area;

(6) A plant qualified pursuant to paragraph (c) of this section which also meets the pooling requirements of another Federal order and from which greater qualifying shipments are made to plants regulated under the other Federal order than are made to plants regulated under the order in this part, or the plant has automatic pooling status under the other Federal order; and

(7) That portion of a regulated plant designated as a nonpool plant that is physically separate and operated separately from the pool portion of such plant. The designation of a portion of a regulated plant as a nonpool plant must be requested in advance and in writing by the handler and must be approved by the market administrator.

§ 1135.8 Nonpool plant.

See § 1000.8.

§ 1135.9 Handler.

In addition to the handlers defined in § 1000.9, handler shall include a person meeting the standards set forth in § 1135.11.

§ 1135.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is route disposition in the marketing area during the month;

(b) Receives fluid milk products from own farm production or milk that is fully subject to the pricing and pooling provisions of the order in this part or another Federal order;

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month;

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products; and

(e) Provides proof satisfactory to the market administrator that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing and packaging operations are the producer-handler's own enterprise and are operated at its own risk.

§ 1135.11 Proprietary bulk tank handler.

Any person, except a cooperative association, with respect to milk that it receives for its account from the farm of a producer in a tank truck owned and operated by, or under the control of, such person and which is delivered during the month for the account of such person to the pool plant of another handler or diverted pursuant to § 1135.13, subject to the following conditions:

(a) Such person must operate a plant located in the marketing area at which milk is processed only into Class II, Class III, or Class IV products; and

(b) Prior to operating as a handler pursuant to this paragraph, such person must submit to the marker administrator a statement signed by the applicant and the operator of the pool plant to which the milk will be delivered specifying that the applicant will be the responsible handler for the milk.

§ 1135.12 Producer.

(a) Except as provided in paragraph (b) of this section, *producer* means any

person who produces milk approved by a duly constituted regulatory agency for fluid consumption as Grade A milk and whose milk (or components of milk) is:

(1) Received at a pool plant directly from the producer or diverted by the plant operator in accordance with § 1135.13; or

(2) Received by a handler described in § 1000.9(c) or § 1135.11.

(b) Producer shall not include:

(1) A producer-handler as defined in any Federal order;

(2) A dairy farmer whose milk is delivered to an exempt plant, excluding producer milk diverted to the exempt plant pursuant to § 1135.13(d);

(3) A dairy farmer whose milk is diverted to a pool plant by a handler regulated under another Federal order if the other Federal order designates the dairy farmer as a producer under that order and that milk is allocated by request to a utilization other than Class I;

(4) A dairy farmer whose milk is reported as diverted to a plant fully regulated under another Federal order with respect to that portion of the milk so diverted that is assigned to Class I under the provisions of such other order; and

(5) A dairy farmer whose milk was received at a nonpool plant during the month from the same farm (except a nonpool plant that has no utilization of milk products in any Class other than Class III or Class IV) as other than producer milk under the order in this part or any other Federal order. Such a dairy farmer shall be known as a *dairy farmer for other markets.*

§ 1135.13 Producer milk.

Producer milk means the skim milk (or the skim equivalent of components of skim milk), including nonfat components, and butterfat in milk of a producer that is:

(a) Received by the operator of a pool plant directly from a producer, a handler described in § 1000.9(c), or a handler described in § 1135.11. All milk received pursuant to this paragraph shall be priced at the location of the plant where it is first physically received;

(b) Received by a handler described in § 1000.9(c) or in § 1135.11 in excess of the quantity delivered to pool plants;

(c) Diverted by a pool plant operator to another pool plant. Milk so diverted shall be priced at the location of the plant to which diverted; or

(d) Diverted by the operator of a pool plant, a cooperative association described in § 1000.9(c), or a proprietary bulk tank handler described in § 1135.11, to a nonpool plant, subject to the following conditions:

(1) Milk of a dairy farmer shall not be eligible for diversion unless at least one day's milk production of such dairy farmer has been physically received as producer milk at a pool plant and the dairy farmer has continuously retained producer status since that time. If a dairy farmer loses producer status under the order in this part (except as a result of a temporary loss of Grade A approval), the dairy farmer's milk shall not be eligible for diversion until one day's milk production has been physically received as producer milk at a pool plant;

(2) Of the quantity of producer milk received during the month (including diversions) the handler diverts to nonpool plants not more than 90 percent;

(3) Two or more handlers described in § 1000.9(c) may have their allowable diversions computed on the basis of their combined deliveries of producer milk which they caused to be delivered to pool plants or diverted during the month if each has filed a request in writing with the market administrator before the first day of the month the agreement is to be effective. The request shall specify the basis for assigning overdiverted milk to the producer deliveries of each according to a method approved by the market administrator.

(4) Diverted milk shall be priced at the location of the plant to which diverted;

(5) Any milk diverted in excess of the limits prescribed in paragraph (d)(2) of this section shall not be producer milk. If the diverting handler, cooperative association, or proprietary bulk tank handler fails to designate the dairy farmers' deliveries that are not to be producer milk, no milk diverted by the handler, cooperative association, or proprietary bulk tank handler during the month to a nonpool plant shall be producer milk. In the event some of the milk of any producer is determined not to be producer milk pursuant to this paragraph, other milk delivered by such producer as producer milk during the month will not be subject to § 1135.12(b)(5); and

(6) The delivery day requirement in paragraph (d)(1) and the diversion percentage in paragraph (d)(2) of this section may be increased or decreased by the market administrator if the market administrator finds that such revision is necessary to assure orderly marketing and efficient handling of milk in the marketing area. Before making such a finding, the market administrator shall investigate the need for the revision either on the market administrator's own initiative or at the request of interested persons if the request is made in writing at least 15 days prior to the month for which the requested revision is desired effective. If the investigation shows that a revision might be appropriate, the market administrator shall issue a notice stating that the revision is being considered and inviting written data, views, and arguments. Any decision to revise the delivery day requirement or the diversion percentage must be issued in writing at least one day before the effective date.

§ 1135.14 Other source milk.

See § 1000.14.

§ 1135.15 Fluid milk product.

See § 1000.15.

§ 1135.16 Fluid cream product.

See § 1000.16.

§ 1135.17 [Reserved]

§ 1135.18 Cooperative association.

See § 1000.18.

§ 1135.19 Commercial food processing establishment.

See § 1000.19.

Handler Reports

§ 1135.30 Reports of receipts and utilization.

Each handler shall report monthly so that the market administrator receives the report on or before the 7th day after the end of each month, in the detail and on the forms prescribed by the market administrator, as follows:

(a) Each handler that operates a pool plant pursuant to § 1135.7 shall report for each of its operations the following information:

(1) Product pounds, pounds of butterfat, pounds of protein, and pounds of solids-not-fat other than protein (other solids), contained in or represented by:

(i) Receipts of producer milk, including producer milk diverted by the reporting handler, from sources other than handlers described in § 1000.9(c) and § 1135.11; and

(ii) Receipts of milk from handlers described in § 1000.9(c) and § 1135.11;

(2) Product pounds and pounds of butterfat contained in:

(i) Receipts of fluid milk products and bulk fluid cream products from other pool plants;

(ii) Receipts of other source milk; and

(iii) Inventories at the beginning and end of the month of fluid milk products and bulk fluid cream products;

(3) The utilization or disposition of all milk and milk products required to be reported pursuant to this paragraph; and

(4) Such other information with respect to the receipts and utilization of skim milk, butterfat, milk protein, and other nonfat solids, as the market administrator may prescribe.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. The report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler described in §§ 1000.9(c) or 1135.11 shall report:

(1) The product pounds, pounds of butterfat, pounds of protein, and the pounds of solids-not-fat other than protein (other solids) contained in receipts of milk from producers; and

(2) The utilization or disposition of such receipts.

(d) Each handler not specified in paragraphs (a) through (c) of this section shall report with respect to its receipts and utilization of milk and milk products in such manner as the market administrator may prescribe.

§ 1135.31 Payroll reports.

(a) On or before the 21st day after the end of each month, each handler that operates a pool plant pursuant to § 1135.7 and each handler described in § 1000.9(c) and in § 1135.11 shall report to the market administrator its producer payroll for the month, in the detail prescribed by the market administrator, showing for each producer the information described in § 1135.73(e).

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1000.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

§ 1135.32 Other reports.

In addition to the reports required pursuant to §§ 1135.30 and 1135.31, each handler shall report any information the market administrator deems necessary to verify or establish each handler's obligation under the order.

Classification of Milk

§ 1135.40 Classes of utilization.

See § 1000.40.

§ 1135.41 [Reserved]

§ 1135.42 Classification of transfers and diversions.

See § 1000.42.

§ 1135.43 General classification rules.

See § 1000.43.

§ 1135.44 Classification of producer milk.

See § 1000.44.

§ 1135.45 Market administrator's reports and announcements concerning classification.

See § 1000.45.

Class Prices

§ 1135.50 Class prices, component prices, and advanced pricing factors.

See § 1000.50.

§ 1135.51 Class I differential and price.

The Class I differential shall be the differential established at Salt Lake County, Utah, which is reported in § 1000.52. The Class I price shall be the price computed pursuant to § 1000.50(a) for Salt Lake County, Utah.

§ 1135.52 Adjusted Class I differentials.

See § 1000.52.

§ 1135.53 Announcement of class prices, component prices, and advanced pricing factors.

See § 1000.53.

§ 1135.54 Equivalent price.

See § 1000.54.

Producer Price Differential

§ 1135.60 Handler's value of milk.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants, and of each handler described in § 1000.9(c) and each handler described in § 1135.11, with respect to milk that was not received at a pool plant, by adding the amounts computed in paragraphs (a) through (h) of this section and subtracting from that total amount the value computed in paragraph (i) of this section. Unless otherwise specified, the skim milk, butterfat, and the combined pounds of skim milk and butterfat referred to in this section shall result from the steps set forth in § 1000.44 (a), (b), and (c), respectively, and the nonfat components of producer milk in each class shall be based upon the proportion of such nonfat components in producer skim milk. Receipts of nonfluid milk products that are distributed as labeled reconstituted milk for which payments are made to the producer-settlement fund of another Federal order under § 1000.76 (a)(4) or (d) shall be excluded from pricing under this section.

(a) Class I value.

(1) Multiply the hundredweight of skim milk in Class I by the Class I skim milk price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class I by the Class I butterfat price.

(b) Class II value.

(1) Multiply the pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class II times the Class II butterfat price.

(c) Class III value.

(1) Multiply the pounds of protein in Class III skim milk by the protein price;

(2) Add an amount obtained by multiplying the pounds of other solids in Class III skim milk by the other solids price; and

(3) Add an amount obtained by multiplying the pounds of butterfat in Class III by the butterfat price.

(d) Class IV value.

(1) Multiply the pounds of nonfat solids in Class IV skim milk by the nonfat solids price; and

(2) Add an amount obtained by multiplying the pounds of butterfat in Class IV by the butterfat price.

(e) Multiply the pounds of skim milk and butterfat overage assigned to each class pursuant to § 1000.44(a)(11) and the corresponding step of § 1000.44(b) by the skim milk prices and butterfat prices applicable to each class.

(f) Multiply the difference between the current month's Class I, II, or III price, as the case may be, and the Class IV price for the preceding month by the hundredweight of skim milk and butterfat subtracted from Class I, II, or III, respectively, pursuant to § 1000.44(a)(7) and the corresponding step of § 1000.44(b);

(g) Multiply the difference between the Class I price applicable at the location of the pool plant and the Class IV price by the hundredweight of skim milk and butterfat assigned to Class I pursuant to § 1000.43(d) and the hundredweight of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(3) (i) through (vi) and the corresponding step of § 1000.44(b), excluding receipts of bulk fluid cream products from plants regulated under other Federal orders and bulk concentrated fluid milk products from pool plants, plants regulated under other Federal orders, and unregulated supply plants.

(h) Multiply the difference between the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received and the Class III price by the pounds of skim milk and butterfat in receipts of concentrated

fluid milk products assigned to Class I pursuant to § 1000.43(d) and § 1000.44(a)(3)(i) and the corresponding step of § 1000.44(b) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1000.44(a)(8) and the corresponding step of § 1000.44(b), excluding such skim milk and butterfat in receipts of fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order.

(i) For reconstituted milk made from receipts of nonfluid milk products, multiply $1.00 (but not more than the difference between the Class I price applicable at the location of the pool plant and the Class IV price) by the hundredweight of skim milk and butterfat contained in receipts of nonfluid milk products that are allocated to Class I use pursuant to § 1000.43(d).

§ 1135.61 Computation of producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight. The report of any handler who has not made payments required pursuant to § 1135.71 for the preceding month shall not be included in the computation of the producer price differential, and such handler's report shall not be included in the computation for succeeding months until the handler has made full payment of outstanding monthly obligations. Subject to the conditions of this paragraph, the market administrator shall compute the producer price differential in the following manner:

(a) Combine into one total the values computed pursuant to § 1135.60 for all handlers required to file reports prescribed in § 1135.30;

(b) Subtract the total values obtained by multiplying each handler's total pounds of protein, other solids, and butterfat contained in the milk for which an obligation was computed pursuant to § 1135.60 by the protein price, the other solids price, and the butterfat price, respectively;

(c) Add an amount equal to the minus location adjustments and subtract an amount equal to the plus location adjustments computed pursuant to § 1135.75;

(d) Add an amount equal to not less than one-half of the unobligated balance in the producer-settlement fund;

(e) Divide the resulting amount by the sum of the following for all handlers included in these computations:

(1) The total hundredweight of producer milk; and

(2) The total hundredweight for which a value is computed pursuant to § 1135.60(h); and

(f) Subtract not less than 4 cents nor more than 5 cents from the price computed pursuant to paragraph (e) of this section. The result shall be known as the *producer price differential* for the month.

§ 1135.62 Announcement of producer prices.

On or before the 12th day after the end of each month, the market administrator shall announce publicly the following prices and information:

(a) The producer price differential;

(b) The protein price;

(c) The nonfat solids price;

(d) The other solids price;

(e) The butterfat price;

(f) [Reserved]

(g) The average butterfat, protein, nonfat solids, and other solids content of producer milk; and

(h) The statistical uniform price for milk containing 3.5 percent butterfat, computed by combining the Class III price and the producer price differential.

Payments for Milk

§ 1135.70 Producer-settlement fund.

See § 1000.70.

§ 1135.71 Payments to the producer-settlement fund.

Each handler shall make payment to the producer-settlement fund in a manner that provides receipt of the funds by the market administrator no later than the 14th day after the end of the month (except as provided in § 1000.90). Payment shall be the amount, if any, by which the amount specified in paragraph (a) of this section exceeds the amount specified in paragraph (b) of this section:

(a) The total value of milk to the handler for the month as determined pursuant to § 1135.60.

(b) The sum of:

(1) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1000.44(c) by the producer price differential as adjusted pursuant to § 1135.75;

(2) An amount obtained by multiplying the total pounds of protein, other solids, and butterfat contained in producer milk by the protein, other solids, and butterfat prices respectively;

(3) [Reserved]

(4) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1135.60(h) by the producer price differential as adjusted pursuant to § 1135.75 for the location of the plant from which received.

§ 1135.72 Payments from the producer-settlement fund.

No later than the 15th day after the end of each month (except as provided in § 1000.90), the market administrator shall pay to each handler the amount, if any, by which the amount computed pursuant to § 1135.71(b) exceeds the amount computed pursuant to § 1135.71(a). If, at such time, the balance in the producer-settlement fund is insufficient to make all payments pursuant to this section, the market administrator shall reduce uniformly such payments and shall complete the payments as soon as the funds are available.

§ 1135.73 Payments to producers and to cooperative associations.

(a) Except as provided in paragraph (b) of this section, each handler shall make payment to each producer from whom milk is received during the month as follows:

(1) *Partial payment.* On or before the 25th day of each month (except as provided in § 1000.90) to each producer an amount not less than 1.2 times the lowest class price for the preceding month multiplied by the hundredweight of milk received from such producer during the first 15 days of the month, less proper deductions authorized in writing by such producer to be made from payments due pursuant to this paragraph.

(2) *Final payment.* On or before the 17th day of the following month (except as provided in § 1000.90), not less than an amount computed by the sum of the following:

(i) The hundredweight of producer milk received times the producer price differential for the month as adjusted pursuant to § 1135.75;

(ii) The pounds of butterfat in producer milk received times the butterfat price for the month;

(iii) The pounds of protein in producer milk received times the protein price for the month;

(iv) The pounds of other solids in producer milk received times the other solids price for the month;

(v) [Reserved]

(vi) Less any payments made pursuant to paragraph (a)(1) of this section;

(vii) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments to such producer subject to approval by the market administrator; and

(viii) Less deductions made for marketing service pursuant to § 1000.86.

(b) One day prior to the dates on which partial and final payments are due pursuant to paragraph (a) of this section, each pool plant operator shall pay a cooperative association for milk received as follows:

(1) *Partial payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk (including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk) received during the first 15 days of the month from a cooperative association in any capacity, except as the operator of a pool plant, the payment shall be an amount not less than 1.2 times the lowest class price for the preceding month multiplied by the hundredweight of milk.

(2) *Partial payment to a cooperative association for milk transferred from its pool plant.* For bulk fluid milk products and bulk fluid cream products received during the first 15 days of the month from a cooperative association in its capacity as the operator of a pool plant, the partial payment shall be at the pool plant operator's estimated use value of the milk using the most recent class prices available at the receiving plant's location.

(3) *Final payment to a cooperative association for milk transferred from its pool plant.* For the total quantity of bulk fluid milk products and bulk fluid cream products received from a cooperative association in its capacity as the operator of a pool plant, the final payment shall be at not less than the total value of such products received from the association's pool plants, as determined by multiplying the respective quantities assigned to each class under § 1000.44, as follows:

(i) The hundredweight of Class I skim milk times the Class I skim milk price for the month plus the pounds of Class I butterfat times the Class I butterfat price for the month. The Class I prices to be used shall be the prices effective at the location of the receiving plant;

(ii) The pounds of nonfat solids in Class II skim milk by the Class II nonfat solids price;

(iii) The pounds of butterfat in Class II times the Class II butterfat price;

(iv) The pounds of nonfat solids in Class IV times the nonfat solids price;

(v) The pounds of butterfat in Class III and Class IV milk times the butterfat price;

(vi) The pounds of protein in Class III milk times the protein price;

(vii) The pounds of other solids in Class III milk times the other solids price; and

(viii) Add together the amounts computed in paragraphs (b)(3)(i) through (vii) of this section and from that sum deduct any payment made pursuant to paragraph (b)(1) of this section.

(4) *Final payment to a cooperative association for bulk milk received directly from producers' farms.* For bulk milk received from a cooperative association during the month, including the milk of producers who are not members of such association and who the market administrator determines have authorized the cooperative association to collect payment for their milk, the final payment for such milk shall be an amount equal to the sum of the individual payments otherwise payable for such milk pursuant to paragraph (a)(2) of this section.

(c) If a handler has not received full payment from the market administrator pursuant to § 1135.72 by the payment date specified in paragraph (a) or (b) of this section, the handler may reduce pro rata its payments to producers or to the cooperative association by not more than the amount of such underpayment. The payments shall be completed on the next scheduled payment date after receipt of the balance due from the market administrator.

(d) If a handler claims that a required payment to a producer cannot be made because the producer is deceased or cannot be located, or because the cooperative association or its lawful successor or assignee is no longer in existence, the payment shall be made to the producer settlement fund, and in the event the handler subsequently locates and pays the producer or a lawful claimant, or in the event that the handler no longer exists and a lawful claim is later established, the market administrator shall make the required payment from the producer-settlement fund to the handler or to the lawful claimant, as the case may be.

(e) In making payments to producers pursuant to this section, each handler shall furnish each producer, except a producer whose milk was received from a cooperative association handler described in § 1000.9(a) or (c), a supporting statement in a form that may be retained by the recipient which shall show:

(1) The name, address, Grade A identifier assigned by a duly constituted regulatory agency, and payroll number of the producer;

(2) The daily and total pounds, and the month and dates such milk was received from that producer;

(3) The total pounds of butterfat, protein, and other solids contained in the producer's milk;

(4) [Reserved]

(5) The minimum rate or rates at which payment to the producer is required pursuant to the order in this part;

(6) The rate used in making payment if the rate is other than the applicable minimum rate;

(7) The amount, or rate per hundredweight, or rate per pounds of component, and the nature of each deduction claimed by the handler; and

(8) The net amount of payment to the producer or cooperative association.

§ 1135.74 [Reserved]

§ 1135.75 Plant location adjustments for producer milk and nonpool milk.

For purposes of making payments for producer milk and nonpool milk, a plant location adjustment shall be determined by subtracting the Class I price specified in § 1135.51 from the Class I price at the plant's location. The difference, plus or minus as the case may be, shall be used to adjust the payments required pursuant to §§ 1135.73 and 1000.76.

§ 1135.76 Payments by a handler operating a partially regulated distributing plant.

See § 1000.76.

§ 1135.77 Adjustment of accounts.

See § 1000.77.

§ 1135.78 Charges on overdue accounts.

See § 1000.78.

Administrative Assessment and Marketing Service Deduction

§ 1135.85 Assessment for order administration.

See § 1000.85.

§ 1135.86 Deduction for marketing services.

See § 1000.86.

Dated: August 23, 1999.

Michael V. Dunn,

Under Secretary, Marketing and Regulatory Programs.

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Wednesday
September 1, 1999

Part III

Federal Trade Commission

16 CFR Part 460

Trade Regulation Rule: Labeling and Advertising of Home Insulation; Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Part 460

Trade Regulation Rule: Labeling and Advertising of Home Insulation

AGENCY: Federal Trade Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission ("Commission") proposes commencing a rulemaking proceeding to amend its Trade Regulation Rule Concerning the Labeling and Advertising of Home Insulation ("R-value Rule" or "Rule"). The purpose of the rulemaking is to streamline and increase the benefits of the Rule to consumers and sellers, minimize its costs, and respond to the development and utilization of new technologies to make American homes more energy efficient and less costly to operate. This document: First, summarizes public comments the Commission received in response to a request for comments about the need for the rule and its benefits and burdens; second, proposes amendments to recognize technological advances in R-value testing and specimen preparation procedures, and to clarify and streamline the Rule's requirements; and third, solicits comments on the proposed amendments and additional issues.

DATES: Written comments must be submitted on or before November 15, 1999.

ADDRESSES: Five paper copies of each written comment should be submitted to the Office of the Secretary, Federal Trade Commission, Room 159, 600 Pennsylvania Ave., N.W., Washington, D.C. 20580. All comments also should be submitted, if possible, in electronic form, on a 3½ inch personal computer diskette, with a label on the diskette stating the name of the commenter and the name and version of the word processing program used to create the document. Programs based on DOS are preferred. Files from other operating systems should be submitted in ASCII text format. Individuals filing comments need not submit multiple copies or comments in electronic form. Comments alternatively may be submitted by electronic mail (e-mail) to <rvalue@ftc.gov>. Submissions should be identified as "ANPR Comment, R-value Rule, 16 CFR Part 460."

FOR FURTHER INFORMATION CONTACT: Kent C. Howerton or James G. Mills, Attorneys, Federal Trade Commission, Washington, DC 20580, (202) 326–3013 or (202) 326–3035 (voice), or (202) 326–3259 (FAX).

SUPPLEMENTARY INFORMATION:

I. Introduction

According to the U.S. Department of Energy ("DOE"), the typical U.S. family spends close to $1,300 each year on energy bills. DOE statistics show that, typically, 44% of a homeowner's utility bill goes for heating and cooling costs. DOE states that homeowners may be able to reduce their energy bills from 10% to 50% by taking certain steps.[1] One of the major steps is increasing the amount of thermal insulation in their existing homes, or purchasing additional insulation when purchasing new homes.

To assist consumers in reducing energy bills, the President of the United States announced in 1998 the Partnership for Advancing Technology in Housing ("PATH"). PATH is a public/private sector initiative that seeks to expand the development and utilization of new technologies in order to make American homes stronger, safer and more durable; more energy efficient and environmentally friendly; easier to maintain and less costly to operate; and more comfortable and exciting to live in. The PATH effort is expected to result in, among other things, improved energy efficiency and the increased market acceptance of new housing technologies.

The FTC has long recognized the importance of energy expenditures on housing to homeowners and other consumers. In 1979, the Commission promulgated the R-value Rule, 16 CFR Part 460. The R-value Rule requires that thermal insulation manufacturers and other sellers disclose the thermal performance of their products, based on uniform testing procedures adopted by the thermal insulation industry. The purpose of this Rule is to provide consumers with information about thermal insulation products, based on uniform standards, that allows them to make meaningful, cost-based purchasing decisions among competing products. As part of its ongoing program to review all its rules and guides to ensure that they provide the maximum benefits at the lowest cost, the Commission reviewed the R-value Rule in 1995 and adopted amendments in 1996 to support the use of the most current testing procedures available and to streamline the Rule.

To increase further the benefits of the Rule, reduce its costs, and support PATH's goals to make American homes more energy efficient, and less costly to operate, the Commission now proposes to consider amending the Rule to recognize the latest technology available. At this time the Commission proposes only a few limited amendments, which are designed to clarify the Rule, make disclosure requirements consistent for competing types of loose-fill insulation products, require the most current procedures for preparing R-value test specimens and conducting R-value tests, delete disclosures for a type of insulation that no longer is sold, and reduce disclosure requirements for retailers. Regarding these issues, the Commission believes that there is sufficient information to propose amendments. Regarding other issues, the Commission is not proposing amendments at this time, but seeks additional comment that could ultimately result in proposed amendments. The Commission, therefore, requests comments on additional issues, such as whether the Commission should revise the Rule to cover additional products or to require the disclosure of in-use performance values (as opposed to laboratory tests that are conducted under static, uniform conditions) or of the performance of building systems. In addition, the Commission requests comments on whether it should adopt additional test specimen preparation requirements for specific types and forms of insulation products to account for various factors that affect R-values; adopt additional or updated testing requirements; and revise the disclosure requirements for manufacturers' label and fact sheets, advertisements and other promotional materials, and for professional installers, new home sellers, and retailers.

II. The R-Value Rule

The Commission promulgated the R-value Rule on August 29, 1979[2] under section 18 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 57a. The Rule became effective on September 30, 1980. The Rule specifies substantiation and disclosure requirements for those who sell thermal insulation products for use in the residential market, and prohibits certain claims unless they are true. The primary disclosure required is the insulation product's "R-value" "R-value" is the recognized numerical measure of the ability of an insulation product to restrict the flow of heat and, therefore, to reduce energy costs. R-values may be expressed per unit of thickness (*e.g.*, one inch) or for the total thickness of a particular insulation product or installation. The higher the R-value, the better the product's insulating ability.

On April 6, 1995, as part of its ongoing regulatory review program, the Commission solicited public comments about the economic impact of and current need for the R-value Rule.[3] 60 FR 17492 (1995). At the same time, the Commission solicited comments on a petition ("Petition") from Ronald S. Graves, who at that time was a Research Staff Member, Materials Analysis Group, Martin Marietta Energy System, Inc. (which operates Oak Ridge National Laboratory ("ORNL") for the U.S. Department of Energy ("DOE")). The Petition requested that the Commission approve an additional (fifth) R-value test procedures, as an optional test procedure for determining the R-value of home insulation under the Rule. The test procedure had been issued by the American Society for Testing and Material ("ASTM"), a voluntary industry standards organization.

In response to the request for comments, the Commission received 42 comments from manufacturers of cellular plastics, cellulosic, mineral fiber, and reflective insulation products; manufacturers of structural insulated panels; trade associations comprised of manufacturers of insulation products and structural insulated panels, professional installers, and roofing contractors; independent technical consultants to industry; a government contractor; and individual consumers.[4]

Thirty of the 31 comments that addressed the current need for the Rule stated that there is a continuing need for the Rule (and its requirements that manufacturers and other sellers substantiate and disclose the R-values of home insulation products). Twenty-four comments described benefits that the current Rule, and the disclosure of R-values and related information, confer on consumers and home insulation sellers, including: (1) Giving consumers the basic thermal performance information (i.e., R-values) they need to select products with the R-value they want; (2) giving consumers R-value information in a uniform manner that facilitates easy comparison of competing products; (3) requiring that R-value claims be substantiated so consumers receive what they are promised; (4) helping consumers save energy (and heating and cooling costs) by preventing misrepresentations about R-values of insulation products; (5) saving consumers money by eliminating marketing practices that lead them to over- or underinsulate; (6) improving the quality and consistency of home insulation and encouraging the development of advanced products; and (7) creating a "level playing field" for competing insulation sellers.[5] Most of the comments stated that the costs the Rule imposes on consumers and sellers are minimal.

Based on the comments, the Commission determined that there is a continuing need for the Rule, published its determination to retain it, and adopted several technical, non-substantive amendments to support the use of the most current testing procedures available and to streamline the Rule.[6] 61 FR 13659, at 13659–62, 13665 (1996). The comments also discussed other issues and recommended that the Commission consider additional Rule amendments. These comments, the Commission's discussion of the issues the comments raised, proposed revisions to the Rule, and objectives and regulatory alternatives to the proposed revisions, are summarized in Part IV.

III. Overview of the Rule[7]

A. Products Covered

The R-value Rule covers all "home insulation products." Under the Rule, "insulation" is any product mainly used to slow down the flow of heat from a warmer area to cooler area, for example, from the heated interior of a house to the exterior during the winter through exterior walls, attic, floors over crawl spaces, or basement. "Home insulation" includes insulation used in all types of residential structures. The Rule automatically covers new types or forms of insulation marketed for use in the residential market, whether or not they are specifically referred to in the Rule. The Rule does not cover pipe insulation, or any type of duct insulation except for duct wrap. The Rule does not cover insulation products sold for use in commercial (including industrial) buildings. It does not apply to other products with insulating characteristics, such as storm windows or storm doors.

Home insulation includes two basic categories: "mass" insulations and

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[1] The amount of energy savings a particular homeowner can save, of course, will vary depending on individual circumstances. DOE provides recommendations about the amount of insulation homeowners need, based on local heating and cooling costs and climate conditions. DOE's recommendations are based on the cost-effectiveness of the recommended insulation levels. for more information, see <http://www.eren.doe.gov/consumerinfo/energy_>savers/ ≤ on the Internet, or telephone the U.S. Department of Energy's Energy Efficiency and Renewable Energy Clearinghouse ("EREC") at (800) 363-3732.

[2] Final trade regulation rule ("Statement of Basis and Purpose" or "SBP"), 44 FR 50218 (1979).

[3] The Commission previously reviewed the Rule in 1985 under the Regulatory Flexibility Act, 5 U.S.C. 610, to determine the economic impact of the Rule on small entities. Based on that review, the Commission determined that: there was a continuing need for the Rule; there was no basis to conclude that the Rule had a significant impact on a substantial number of small entities; there was no basis to conclude that the Rule should be amended to minimize its economic impact on small entities; the Rule did not generally overlap, duplicate, or conflict with other regulations; and technological, economic, and other changes had not affected the Rule in any way that would warrant amending the Rule. 50 FR 13246 (1985).

[4] The April 6, 1995 request for comments is filed as document number B172394. The comments filed in response to the request for comments are listed in the attached Appendix, alphabetically according to the citation abbreviations used in this notice. The comments are filed as document numbers B17239400001, B17239400002, etc. In today's notice, the comments are cited as #01, #02, etc. They are available for inspection in Room 130 at the Commission's Headquarters at 600 Pennsylvania Avenue, NW, Washington, DC.

[5] In addition to these benefits, one comment explained that utility companies have embraced the Rule and developed their own energy savings programs that depend on the Rule to protect consumers. The comment also stated that state departments of consumer affairs have used the Rule as a model in writing their regulations, which has led to state enforcement that has generated publicity and educated consumers.

[6] These amendments: (1) Revised section 460.5 of the Rule to allow the use of an additional ASTM test procedure as an optional, but not required, test procedure to determine the R-value of home insulation; (2) revised section 460.5 to require the use of current, updated versions of other ASTM R-value test methods cited in the rule; (3) added an Appendix summarizing the exemptions from specific requirements of the Rule that the Commission previously granted for certain classes of persons covered by the Rule; and (4) revised section 460.10 of the Rule to cross-reference the Commission's enforcement policy statement for foreign language advertising in 16 CFR 14.9 and deleted the previous Appendix to the Rule because it merely repeated the text of 16 CFR 14.9.

[7] This part of the notice outlines the coverage and requirements of the R-value Rule. Home insulation sellers should be aware, however, that additional Commission rules or guides may also apply to them. For example, the Commission's rules concerning Disclosure of Written Consumer Product Warranty Terms and Conditions, and the Pre-sale Availability of Written Warranty Terms, 16 CFR Parts 701 and 702, specify requirements concerning warranties for home insulation products; the Commission's Guides for the Use of Environmental Marketing Claims, 16 CFR Part 260, address the application of section 5 of the FTC Act, 15 U.S.C. 45, to environmental advertising and marketing claims (e.g., claims concerning the amount of recycled material a product contains). Further, section 5 of the FTC Act declares that unfair or deceptive acts or practices are unlawful, and requires that advertisers and other sellers have a reasonable basis for advertising and other promotional claims before they are disseminated. See Deception Policy Statement, Letter from the Commission to the Honorable John D. Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives (Oct. 14, 1983), reprinted in Cliffdale Assocs., Inc., 103 F.T.C. 110 (1984); Statement of Policy on the Scope of the Consumer Unfairness Jurisdiction, Letter from the Commission to the Honorable Wendell H. Ford, Chairman, Consumer Subcommittee, Committee on Commerce, Science, and Transportation, U.S. House of Representatives, and the Honorable John C. Danforth, Ranking Minority Member, Consumer Subcommittee, Committee on Commerce, Science, and Transportation, U.S. Senate (Dec. 17, 1980), reprinted in International Harvester Co., 104 F.T.C. 949 (1984); and Policy Statement Regarding Advertising Substantiation, 49 FR 30999 (1984), reprinted in Thompson Medical Co., 104 F.T.C. 839 (1984).

"reflective" insulations. Mass insulations reduce heat transfer by conduction (through the insulation's mass), convection (by air movement within and through the air spaces inside the insulation's mass), and radiation. Reflective insulations (primarily aluminum foil) reduce heat transfer not through the mass of the product, but, when installed facing an airspace, by increasing the thermal resistance of the airspace by reducing heat transfer by radiation through it. 44 FR at 50219. Within these basic categories, home insulation is sold in various types ("type" refers to the material from which the insulation is made, e.g., fiberglass, cellulose, polyurethane, aluminum foil) and forms ("form" refers to the physical form of the product, e.g., batt, dry-applied loose-fill, spray-applied, boardstock, multi-sheet reflective).

B. Parties Covered

The Rules applies to home insulation manufacturers, professional installers, retailers who sell insulation to consumers for do-it-yourself installation, and new home sellers (including sellers of manufactured housing). It also applies to testing laboratories that conduct R-value tests for home insulation manufacturers or other sellers who use the test results as the basis for making R-value claims about home insulation products.

C. Purpose of the Rule

The main reason consumers purchase home insulation is to reduce energy expenditures to heat and cool their homes. To assist consumers, the Rule requires sellers (including insulation manufacturers, professional installers, new home sellers, and retailers) to disclose the insulation product's R-value and related information, prior to retail sale, based on uniform, industry-adopted standards. This information enables consumers to evaluate how well a particular insulation product is likely to perform, to determine whether the cost of the insulation is justified, and to make meaningful, cost-based purchasing decisions among competing products.

D. Basis for the Rule

The Commission issued the R-value Rule to prohibit, on an industry-wide basis, specific unfair or deceptive acts or practices. When it issued the Rule, the Commission found that the following acts or practices were prevalent in the home insulation industry and were deceptive or unfair, in violation of section 5 of the FTC Act, 15 U.S.C. 45: (1) Sellers had failed to disclose R-value, and caused substantial consumer injury by impeding the ability of consumers to make informed purchasing decisions, 44 FR at 50222–23; (2) the failure to disclose R-values, which vary significantly among competing home insulation products of the same thickness and price, misled consumers when they bought insulation on the basis of price or thickness alone, *Id.* at 50223; (3) sellers had exaggerated R-values, often failing to take into account factors (*e.g.*, aging, settling) known to reduce thermal performance, *Id.* at 50223–24; (4) sellers had failed to inform consumers about the meaning and importance of R-value, which consumers need to understand R-values, *Id.* at 50224; (5) sellers had exaggerated the amount of savings of fuel bills that consumers could expect, and often failed to disclose that savings will vary depending on the consumer's particular circumstances, *Id.*; and (6) sellers had falsely claimed that consumers would qualify for tax credits through the purchase of home insulation, or that products had been "certified" or "favored" by federal agencies, *Id.*

E. Requirements of the Rule

The Rule requires that manufacturers and others who sell home insulation determine and disclose each product's R-value (and related information—*e.g.*, thickness, coverage area per package) on package labels and manufacturers' fact sheets. R-value ratings vary among different types and forms of home insulations and among products of the same type and form. The Rule requires that R-value claims to consumers about specific home insulation products be based on uniform R-value test procedures that measure thermal performance under "steady-state" (*i.e.* "static") conditions.[8] Mass insulation products may be tested under any of the test methods, reflective insulation products must be tested according to either ASTM C 236–89 (1993) or ASTM C 976–90, which can determine the R-value of insulation systems (such as those that include one or more air spaces).[9] The tests must be conducted at a mean temperature of 75°F. The tests on mass insulation products must be conducted on the insulation material alone (excluding any airspace).

When it promulgated the Rule, the Commission found that certain factors, such as aging or settling, affect the thermal performance of home insulation products. 44 FR at 50219–20, 50227–28. To ensure that R-value claims take these factors into account, the Rule mandates that the required R-value tests for polyurethane, polyisocyanurate, and extruded polystyrene insulation products be conducted on test specimens that fully reflect the effect of aging,[10] and for loose-fill insulation products on test specimens that fully reflect the effect of settling.[11]

Specific disclosures must be made: (1) By manufacturers on product labels and manufacturers' fact sheets; (2) by professional installers and new home sellers on receipts or contracts; and (3) by manufacturers, professional installers, and retailers in advertising and other promotional materials (including those on the Internet) that contain an R-value, price, thickness, or energy-savings claim, or compare one type of insulation to another. Manufacturers and other sellers must have a "reasonable basis" for any energy savings claims they make.[12]

[8] Section 460.5 of the Rule requires that the R-values of home insulation products be based on one of the following R-value test procedures adopted by ASTM: (1) ASTM C 177–85 (Reapproved 1993): Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transition Properties by Means of the Guarded-Hot-Plate Apparatus ("ASTMC C 177–85 (1993)"or "Guarded Hot Plate"); (2) ASTM C 236–89 (Reapproved 1993): Standard Test Method for Steady-State Thermal Performance of Building Assemblies by Means of a Guarded Hot Box ("ASTM C 236–89 (1993)" or "Guarded Hot Box"); (3) ASTM C 518–91: Standard Test Method for Steady-State Heat Flux Measurements and Thermal Transmission Properties by Means of the Heat Flow Meter Apparatus ("ASTM C 518–91" or "Heat Flow Meter"); (4) ASTM C 976–90: Standard Test Method for Thermal Performance of Building Assemblies by Means of a Calibrated Hot Box ("ASTM C 976–90" or "Calibrated Hot Box")); and (5) ASTM C 1114–95; Standard Test Method for Steady-State Thermal Transmission Properties by Means of the Thin-Heater Apparatus ("ASTM C 1114–92"or "Thin-Heater Apparatus"). R-values determined according to ASTM C 177–85 (1993) or ASTM C 518–91 must be reported in accordance with ASTM C 1045–90: Standard Practice for Calculating Thermal Transmission Properties from Steady-Heat Flux Measurements ("ASTM C 1045–90"). The Commission gave manufacturers and others the option of choosing among those test procedures because it determined that all are highly accurate and reproducibly steady-state test methods that yield uniform and reliable results. 44 FR at 50226; Final rule, 55 FR 10053, at 10054 (1990); Final rule, 61 FR 13659, at 13662–63 (1996). ASTM reviews and revises each of these procedures periodically. Under section 460.7 of the Rule, the Commission will accept, but not require, the use of a revised version of any of these standards 90 days after ASTM adopts and publishes the revision. The Commission may, however, reopen the rulemaking proceeding during a 90-day period or at any later time to consider whether it should require use of the revised procedure or reject it under section 460.5 of the Rule. 61 FR at 13663.

[9] The R-value of a single-sheet reflective insulation product may be determined according to an alternative method. See Part IV.D.2, *infra*.

[10] See Part IV.C.1.a, *infra*.

[11] See Part IV.C.2.a, *infra*.

[12] Although the Rule does not specify how energy savings claims must be substantiated, the Commission explained that scientifically reliable measurements of fuel use in actual houses or reliable computer models or methods of heat flow calculations would meet the reasonable basis standard. 44 FR at 50233–334. Sellers other than manufacturers can rely on the manufacturer's claims unless they know or should know that the manufacturer does not have a reasonable basis for the claims.

IV. Discussion of Comments, Proposed Amendments, Objectives, and Regulatory alternatives

This part of the notice summarizes and discusses the issues raised by the comments, including suggestions that the Commission revise the Rule. In analyzing the comments, the Commission has considered whether the suggested revisions would further the Commission's objective of ensuring that consumers receive information about home insulation products prior to purchase in a uniform, reliable, and substantiated manner, so that they can evaluate how well a particular product is likely to perform and make meaningful, cost-based purchasing decisions. In addition, the Commission has considered alternatives to amending the Rule to impose new requirements on an industry-wide basis, such as dealing with questionable claims or practices on a case-by-case basis, or exploring other mechanisms such as consumer and business education or industry self-regulation. Below, the Commission explains, on an issue-by-issue basis, whether it proposes amending the Rule as suggested by the comments. Both Parts IV and V include specific issues and questions on which the Commission solicits public comments.

A. Disclosing Thermal Performance of Additional Products

1. Residential Pipe and Duct Insulations

Comments

Dr. Kenneth E. Wilkes, for ORNL, recommended amending the Rule to include pipe insulations and all types of duct insulations, and listed the applicable ASTM test methods that apply to these products. Dr. Wilkes stated that the disclosure of R-value information would provide important information for purchasers of these products.[13]

Discussion

The Commission excluded pipe insulation based on uncontroverted evidence in the original rulemaking proceeding that it was used primarily to prevent moisture condensation on low temperature lines, not for energy conservation; that R-value was not a reliable basis for comparing the performance of pipe insulations; and that pipe insulations were not commonly advertised in terms of energy-savings potential.[14] Similarly, it excluded duct insulations other than duct wrap because only duct wrap was used extensively in the residential setting. 44 FR at 50238 n.170. The Commission's staff has reviewed current consumer advertising for these products and found no information to indicate that these facts have changed. Unless interested parties have information that sellers are misrepresenting the thermal performance of these products to consumers, the Commission will not propose extending the Rule to cover them.

2. Non-residential Insulations

Comments

Two comments suggested extending the Rule to cover insulation products used in all buildings, not just residential applications. Dr. David W. Yarbrough, for Tennessee Technological University ("TN Tech."), asserted that extending the Rule to cover commercial building insulations would improve the energy efficiency of buildings and would contribute to the nation's energy conservation effort without imposing a measurable increased cost on manufacturers.[15] Dr. Wilkes, for ORNL, stated that the Rule has improved both the marketplace and the technology for home insulations and contended that similar improvements are needed in the commercial market and would occur if the Rule's coverage were expanded.[16] In contrast, Celotex stated that the Commission should not extend the Rule to cover commercial applications because commercial insulations are purchased primarily by professional architects, engineers, and specification writers.[17]

Discussion

Although applying the Rule to thermal insulation products used in commercial buildings might provide information to purchasers that could improve the energy efficiency of buildings, and otherwise prove useful, the comments do not demonstrate that sellers of commercial insulations are engaged in unfair or deceptive acts or practices that would justify expanding the Rule. Furthermore, in many instances, thermal insulation purchasing decisions for commercial building applications are made by architects or engineers. These professionals may require R-value and other performance information based on circumstances different than the uniform approach the Commission determined was necessary to provide accurate and understandable information to individual consumers to compare competing products and make purchasing decisions.

In limiting the disclosure requirements to materials distributed "for consumer use," the Commission recognized that insulation manufacturers often prepare detailed, technical data for building industry professionals, who should already be informed concerning thermal insulation performance. The Commission also recognized that manufacturers may wish to provide these professionals with additional information or with information in a different form from that required for consumer use. 44 FR at 50225.

For these reasons, the Commission does not propose extending the Rule to cover sales to the commercial market. If interested parties have evidence that sellers in this market are misrepresenting the thermal performance of insulation products or are engaging in other unfair or deceptive practices, however, the Commission invites them to submit this information.

B. Disclosing In-Use Thermal Performance Values

1. Performance of Insulations in Actual Use

Eleven comments discussed seasonal and other variables that can affect the R-value of insulation products in actual use, and suggested that the Rule does not sufficiently account for these factors.[18]

Comments Regarding Factors That Affect Performance in Attics During Winter Conditions

Ten of these comments discussed the reduction in R-value of very low density fibrous insulations (*e.g.*, those at approximately 0.7 pounds per cubic foot or less) installed in open or vented attics that can result from convective currents when the outside temperature (and that in the attic) is particularly low.[19] CIMA stated that when the Rule was promulgated it was assumed that R-

[13] ORNL/Wilkes, #29, at 3.

[14] See Final Staff Report to the Federal Trade Commission and Proposed Trade Regulation Rule (16 CFR Part 460), July 1978 ("Staff Report"), at 21–22, 188.

[15] TN Tech, #26, at 1.

[16] ORNL/Wilkes, #29, at 3.

[17] Celotex, #25, at 1.

[18] Benchmark #04, at 1; Regal, #16, at 3; CIMA, #19, at 3–5; GreenStone/Tranmer, #20, at 2; BASF, #21, at 1; Hamilton, #22, at 1–2; ECI, #23, at 1; Superior, #27, at 1; ORNL/Wilkes, #29, at 4–5; GreenStone/Smith, #32, at 2; Tascon, #35, at 2.

[19] Regal, #16, at 3; CIMA, #19, at 3–5; GreenStone/Tranmer, #20, at 2; Hamilton, #22, at 1–2; ORNL/Wilkes, #29, at 4–5; GreenStone/Smith, #32, at 2; Tascon, #35, at 2.

value was relatively unchanging over a wide range of temperatures. CIMA asserted that subsequent research by ORNL has shown a reduction of steady-state R-values caused by convective heat loss in very low density fiber insulation materials during very cold periods, when the temperature difference (delta T) between the heat area of a home and its cold attic becomes particularly great. CIMA stated that this phenomenon can reduce the steady-state R-value of affected products from 10% of a delta T of 50 °F to 55 °F (17 °F to 25 °F in the attic of a home heated to 72 °F) to as much as 40% at a delta T of 90 °F (−18 °F in the attic of a home heated to 72 °F), which can occur during the most severe winter conditions in some portions of the United States. CIMA recommended that the Commission require that insulation manufacturers provide winter design correction factors in coverage charts to compensate for R-value erosion due to convective heat loss, and require that, if insulation material is not subject to R-value loss under cold conditions, the manufacturer state on the package label that the insulation is not subject to convective heat loss at winter attic temperatures above −20 °F.[20]

Dr. Wilkes, for ORNL, pointed out that tests on very low density loose-fill fiberglass insulations with an airspace above the insulation (as in an open attic application) gave R-values that decreased by more than 50% from those determined at a mean test temperature of 75 °F value, when they were tested with a delta T greater than 72 °F and a mean test temperature of 70 °F. Dr. Wilkes explained that ASTM is developing a method of determining the thermal performance of attic insulations during winter conditions, ASTM C 1373,[21] and suggested that the Commission incorporate it into the Rule when it is adopted. This method is still under consideration by ASTM.

Mr. Tranmer, for GreenStone, asserted that several factors in addition to R-values that are determined under steady-state conditions have a major effect on product performance, such as air permeability and temperature differential. Mr. Tranmer stated that a measurement known as the Rayleigh number[22] provides a more complete indication of the effect that the combination of R-value, air permeability, and temperature differential have on insulation materials under specific conditions, and that it represents a more accurate measure of insulating capabilities than R-value alone. He suggested that the Commission require the Rayleigh number on packages and promotional materials to give consumers a better measure of the overall effectiveness of insulation products.[23]

Mr. Tranmer also recommended that the Commission specify testing with the ORNL Large Scale Climate Simulator to provide more accurate information for all attic insulation products, and that these products be tested at temperatures from −20°F to +120°F to provide consumers with performance information specific to a particular climate zone. He stated that, while the cost of testing in this apparatus is approximately $20,000 (significantly more than the usual R-value test), the benefits through increased energy savings would more than offset the increase in testing costs.[24]

Citing research that heating energy consumption can vary 25% to 30% in structures insulated to the same nominal R-value with different insulation materials, CIMA similarly asserted that, by focusing only on R-value, the current Rule has the effect of misleading consumers into thinking that R-value is the only consideration when buying or specifying insulation. Recognizing that presently there is no perfect solution to this dilemma, CIMA suggested that Commission expand the Rule to require manufacturers to disclose Rayleigh numbers for materials under specific conditions. CIMA asserted that the Rayleigh number combines the effects of R-value, air permeability, and temperature difference to produce an expression of relative insulation performance.

Comments Regarding Factors That Affect Performance Under Winter Versus Summer Conditions

One commenter, Superior, contended that the R-value test procedures presently required as the primary means of identifying heat transfer are no longer valid, because they were developed almost exclusively for winter conditions. Superior asserted that, with the post-World War II advent of air conditioning and a higher concern for summer comfort, the primary mode of heat transfer that should be measured is radiant heat. Superior explained that R-value is a component of conductive heat transfer, while radiant heat should be measured by its emissivity,[25] and contended that reflective insulations with one-half or less the steady-state R-value of fiberglass will stop more heat transfer into the home during summer conditions. Superior recommended that the Commission require manufacturers of all insulations to disclose winter and summer performance values, with the summer value determined according to a test procedure other than R-value tests, which have very little significance for radiant heat transfer during summer conditions.[26]

Discussion

The Rule requires that R-values be determined according to ASTM test methods that provide R-value measurements under "steady-state" or "static" laboratory conditions. These test methods do not take into account transient environmental factors, such as air circulation, that can have a significant effect on insulation performance in actual use (*i.e.*, on site, or *in situ*). When it promulgated the Rule, the Commission determined that, notwithstanding this limitation, these steady-state tests were the most reliable and accurate test methods available. In addition, evidence on the rulemaking record indicated that, although environmental conditions might affect the R-value number determined in steady-state tests, these conditions would affect competing home insulation products in approximately the same manner. Accordingly, the Commission determined that use of the ASTM steady-state R-value test methods would permit fair comparisons of product R-values on a standardized basis to provide consumers with a reliable, uniform, and comparative base for their purchasing decisions. 44 FR at 50225–26. At the same time, while the Rule requires that R-values claimed must be based on the uniform test methods specified in the Rule, manufacturers and other sellers may provide additional, truthful, substantial information voluntarily to consumers about the manner in which their products perform in actual use.

The Commission recognizes that the testing of insulation products by means of steady-state laboratory testing procedures may not duplicate precisely the performance of an insulation product *in situ*. The thermal performance of any insulation product in actual use, however, is a highly complex subject that involves a broad range of parameters, including the design characteristics of the building and the specific application in which the product is installed (*e.g.*, open attic, enclosed wall cavity), the geographical location, outside and inside temperatures, air and moisture movement, proper installation, and other variables. Determining the disclosing R-values under these varying circumstances, only some of which may apply to a particular use by a specific consumer, could result in multiple R-value disclosures that might overload rather than assist consumers in comparing insulation products and making purchase decisions. For these reasons, the Commission does not at this time propose specific amendments to require disclosures regarding *in situ* performance or multiple R-values for different uses.

Consumers, however, could benefit from the most up-to-date, accurate, and useful information, based on the best available research and substantiation. For example, in areas where a significant delta T is predictable, consumers might want to install additional insulation to take into account the reduction in R-value that might occur during extreme conditions, or consider installing a higher density product. The Commission, therefore, solicits comments on the alternatives to steady-state R-values (*e.g.*, Rayleigh numbers, R-value disclosures based on temperature ranges for different regions of the country or for different applications) suggested by the commenters, or other alternatives, that would provide consumers with accurate, meaningful, and understandable information relevant to their individual circumstances. The Commission requests that commenters address: (1) Specific alternative measurements that are available to describe the *in situ* use of home insulation products better than the steady-state R-values required by the rule; (2) which *in situ* conditions should be accounted for (and why); (3) whether (and how and to what extent) different types or forms of home insulation products perform differently under specific *in situ* conditions, and how significant this different performance is under specific circumstances (*e.g.*, how much would the difference in performance in actual use make on the consumer's annual fuel bill); (4) whether accepted test methods are available to measure *in situ* performance (and the identity of specific test methods); (5) how the results of *in situ* performance measurements could be described in a meaningful manner to consumers; and (6) the benefits and costs to consumers and sellers that would be associated with the use of the alternatives. Among other things, comments are requested to include data such as consumer research that demonstrate whether disclosures of *in situ* performance would be meaningful and understandable to consumers.

2. Performance of Building System Components That Include Insulation

Comments

Four manufacturers of structural insulation panels (building systems products that include insulation as a major component)[27] and a trade association representing such manufacturers[28] supported requiring the thermal efficiency testing of insulation systems, rather than testing only individual insulation products. These comments asserted that the Structural Insulated Panel ("SIP") industry is penalized by reporting R-values of the insulation components as the measure of the thermal efficiency of panel system because such R-values do not adequately represent the energy efficiency and thermal effectiveness of the panel systems in comparison to insulated panels may appear to have the same total R-value as some fiberglass batts used in stick construction, "[in a typical installation, using EPS foam in a structural insulated panel, the EPS panel outperforms [a] fiberglass batt by 20%."

Three of the manufacturers[29] and the trade association, however, apparently recognized that additional research and development would be necessary before the Commission could require the testing and disclosure of systems performance values. These comments recommended that the Commission, along with several other federal agencies, work with industry to develop consensus testing procedures to consider factors such as air infiltration, thermal bridging, and moisture effects on the performance of building systems, and provide resources for testing and evaluation of the thermal performance and energy efficiency of construction systems.

Discussion

The Rule covers home insulation products, including products made up of home insulation and other components (such as structural insulation panels) when they are marketed primarily to slow down the flow of heat. These comments appear to be concerned primarily that the Rule may penalize them by requiring that they disclose the R-value of the insulation component of their panels, instead of the thermal performance of their panels compared to the use of competing home insulation products in other types of building construction. Although the Rule requires that those who market home insulation test and disclose the R-value of their insulation, it does not restrict sellers from providing additional information about how their products perform in actual use, if they are able to substantiate their claims. The comments acknowledge that additional research would be required to develop the procedures necessary to implement a requirement that sellers include in their R-value disclosures information about how their products perform in various types of construction, which would depend on multiple variables. Even if such procedures were developed, as a practical matter, it might be extremely difficult, and perhaps impossible, to draft testing and disclosure requirements that could take such variables into account in a manner that would be meaningful to consumers, and where the benefits (*e.g.*, better information for consumers) outweighed the additional costs (*e.g.* for additional testing and disclosures) that would be imposed.

Accordingly, while the commission acknowledges the concerns underlying these comments, it has determined not to propose amending the Rule at this time to require the disclosure of insulation performance based on testing of home insulation products in different types of applications. The Commission

[20] CIMA, #19, at 3–4.

[21] Standard Practice for Determination of Thermal Resistance of Attic Insulation Systems Under Simulated Winter Conditions ("ASTM C 1373").

[22] The Rayleigh number is a measure of the tendency of air to move. In the context of very low density thermal insulations installed on the floor of an open attic during very cold periods, the Rayleigh number is a ratio between the buoyant force of warmer air (the air at the bottom of the insulation near the heated interior of the house) attempting to move upward and the resistance of the insulation fibers against that upward air movement. The higher the number, the stronger the buoyant force, and the greater the reduction of the insulation's steady-state R-value.

[23] GreenStone/Tranmer, #20, at 2–3. *See also* GreenStone/Smith, #32, at 2 (Rule leads consumers to believe that R-value is the most important factor in comparing insulations; not sufficient merely to state that other factors may affect insulation thermal performance if other important factors can be quantified; require testing for air permeability, R-value, and temperature difference to enable disclosure of a relative insulation performance factor (Rayleigh Number)), Hamilton, #22, at 2 (effects of convective heat loss on R-value could be communicated to consumers by an "air resistance index" number to give them a reference to compare insulation for certain applications; bag label should include warning about convection effect on lighter-density materials below 20 °F); Tascon, #35, at 1–2 (require determination of the effects of air convection on R-value and depiction of that effect at representative temperatures on coverage charts; require disclosure of the Rayleigh number); Regal, #16, at 3 (insulation performance and cost effectiveness should address not only R-value, but also resistance to heat flow and to convective effects under winter design conditions.).

[24] GreenStone/Tranmer, #20, at 2–3.

[25] "Emissivity" is a numerical measurement of the ability of a surface to reflect back radiant heat transfer. It is expressed as a number between 0.0 and 1.0. The lower the emissivity, the greater the ability to reflect radiant heat back. The inverse of emissivity is the product's "reflectivity" (also called the "reflectance").

[26] Superior, #27, at 1.

[27] Porter, #03; BASF, #21; Insulspan, #33; Fischer Sips, #36.

[28] SIPA, #11.

[29] BASF, #21; Insulspan, #33; FischerSips, #36.

encourages interested parties to pursue the additional testing and research that support a system-type disclosure format, and the Commission's staff is available to provide advice about the type of documentation that would be necessary for the Commission to propose formal testing and disclosure requirements that include these applications.

C. Disclosing R-values that Account for Factors Affecting R-value

The comments described in this section addressed issuers relating to the Rule's R-value test specimen preparation requirements for specific types and forms of home insulation products. All home insulation products are covered by the Rule, regardless of whether they are specifically referred to in the test specimen preparation requirements or other provisions of the Rule. That is, they must be tested for R-value under the test procedures specified in section 460.5 of the Rule and the R-value results of those tests must be disclosed to consumers. In some instances the Rule specifies how test specimens must be prepared for R-value tests. In other instances it does not, either because the Commission determined it was not necessary to specify R-value test specimen preparation requirements, or because those products were not being sold when the Commission conducted the original rulemaking. These comments suggested adopting updated test specimen preparation requirements or specifying test specimen preparation requirements not currently required by the Rule.[30]

1. Aging

a. Cellular Plastics Insulations

Certain types of cellular plastics insulations (polyurethane, polyisocyanurate, extruded polystyrene boardstock insulations) are manufactured in a process that results in a gas other than normal air being incorporated into the voids in the products. This gives the product an initial R-value higher than it would have if it contained normal air (as do other types of insulations). A chemical process, known as aging, causes the R-value of these insulations to decrease over time as the gas is replaced by normal air. 44 FR at 50219–20. The length of this aging process, which may continue over several years, depends on whether the product is faced or unfaced, the permeability of the facing, how well the facing adheres to the product, and other factors.

The Rule addresses this aging process by requiring that R-value tests be performed on specimens that "fully reflect the effect of aging on the product's R-value." Section 460.5(a)(1) of the Rule accepts the use of the "accelerated aging" procedure in General Services Administration ("GSA") purchase Specification HH–I–530A (which was in effect at the time the Commission promulgated the Rule) as a permissible "safe harbor" procedure, but also allows manufacturers to use "another reliable procedure." 44 FR at 50227–28. The "accelerated" procedure was designed to age these insulations in a shorter period than they would age under normal usage conditions. Under the "accelerated aging" method in the GSA specification, test specimens are aged for 90 days at 140 °F dry heat.

GSA amended its specification in 1982 to allow the use of an optional aging procedure (in addition to the "accelerated" method) under which test specimens are aged for six months at 73 °F± 4 °F and 50 percent ±5 percent relative humidity (with air circulation to expose all surfaces to the surrounding environmental conditions). An industry group, the Roof Insulation Committee of the Thermal Insulation Manufacturers Association ("RIC/TIMA"), specified the use of similar conditions in a technical bulletin it adopted at about the same time. In response to adoption of the alternative aging procedure by GSA and RIC/TIMA, the Commission's staff advised home insulation sellers that the alternative procedure appeared to be reliable and could be used to age cellular plastics insulations. The staff cautioned, however, the manufacturers of insulations faced with materials that significantly retard aging may need to age test specimens for a longer period of time, and that the staff would consider whether the alternative procedure was acceptable for specific products on a case-by-case basis.[31]

Comments Regarding Which Aging Procedures Should Be Required

Ten comments addressed how the Rule should treat the reduction in R-values that occurs when cellular plastics insulation products age.[32] Two recommended requiring the use of aging procedures in current ASTM specifications; one recommended requiring the use of a different method being developed by ASTM; and one association (representing 37 manufacturers) and two manufacturers appear to question the accuracy of current aging procedures in determining long-term performance.

Celotex and PIMA [33] recommended deleting the reference to the aging procedures in former GSA Specification HH–I–530A and instead requiring the use of the aging procedures in ASTM C 1289–95 (for faced polyisocyanurate and faced polyurethane),[34] ASTM C 591–85 (for unfaced polyisocyanurate and unfaced polyurethane),[35] and ASTM C 578–92 (for polystyrene).[36] The aging procedures in these ASTM specifications are essentially the same as the optional procedures contained in the revised GSA specification, although ASTM C 591–94 specifies that aging must be conducted according to the 180-day procedure.

Dr. Wilkes, for ORNL, stated that the Rule's aging requirement should be improved and modified to account for technological changes. He reported that ASTM was developing a new method of determining the aged R-value of unfaced cellular plastics board stock insulations and those with permeable facings based on R-value tests of thin samples sliced from the center of the boards (which ASTM has now adopted as ASTM C 1303–95).[37] Under this method, a thin test specimen is sliced from close to the center of the insulation board. R-value measurements are taken over time, normally a 180-day period, and the test specimen is kept in an environmental chamber when R-value tests are not being conducted. The resulting R-values over time are converted into an average value according to a specific mathematical formula. Dr. Wilkes recommended that the Commission adopt this ASTM method as the required procedure for deriving aged R-values for these insulation products.

Dr. Wilkes asserted that a satisfactory aging method for these boardstock insulations with impermeable facers (*e.g.*, aluminum) has not yet been developed. He recommended that the Rule state this fact and require "direct" aging of products with impermeable facers (*i.e.*, aging over time of samples as they are produced—at full thickness and with facers attached). Finally, Dr. Wilkes recommended that the Commission delete the phrase "or another reliable procedure" because of its lack of specificity.[38]

AMF, for itself and its 37 manufacturing partners, stated that the reporting of different R-values for insulations that use gases, and that are known to lose R-value over time as those gases diffuse, has frustrated the original objective of the Rule to provide, a "level playing field." [39] Plymouth Foam Products complained that "[s]ome [cellular plastics] foam insulation manufacturers are allowed to represent their products with installed R-values of as high as eight per inch, when, in fact, that value will reduce substantially over the life of the product/structure." [40] These comments recommended that the Rule require testing and disclosure of R-values that more accurately reflect the effect of aging on the R-value of cellular plastics insulation products.

Big Sky and Western contended that the practice of aging a test specimen for six months, even at an elevated temperature, does not provide a true picture of the R-value a consumer can expect over the full life of the product.[41] Big Sky suggested three options: (1) A six-month accelerated aging process, with an additional 18-month hold on the test specimens before they are tested for R-value; (2) accelerated aging for 18 months; or (3) holding the test specimens for three years. Western suggested that the Commission adopt an accelerated aging test either from ASTM methods or the Corps of Engineers System.

Discussion Regarding Which Aging Procedures Should Be Required

Requiring manufacturers to age their insulation products for several years before being able to test and market them would impose a significant burden. Instead, the Rule allows the use of the GSA "accelerated aging" procedure, or another reliable procedure. Because some of the comments question whether the GSA accelerated aging procedure or the procedures in ASTM specifications are adequate for all types of cellular plastics insulation products (particularly those with less permeable facers), the Commission solicits comments regarding the length of time over which specific types and forms of cellular plastics insulations age (including both unfaced products and those with different kinds of facings); the effect of the aging process on specific types and forms of cellular plastics insulations (*i.e.*, the overall reduction of R-value over time); the accuracy of different aging procedures to reflect long-term aging of specific types and forms of cellular plastics insulation products; which aging procedures the Commission should require for which types of cellular plastics insulation products; the burdens that would be imposed on manufacturers and other sellers by requiring the use of specific aging procedures; and how the Commission should deal with products for which adequate aging procedures do not currently exist (*e.g.*, those with relatively non-permeable facings).

Comments Regarding Which Cellular Plastics Insulations Should Be Aged for R-value Testing

NAIMA recommended requiring R-value testing on aged samples of "other foam plastic insulation" products (in addition to the types currently enumerated) and recordkeeping of the age of the test specimen. NAIMA asserted that present and future foam insulations not currently covered by the aging requirement should be tested and labeled to reflect the effects of aging, but did not submit data to demonstrate whether other existing cellular plastics, or foam, insulations are subject to aging. According to NAIMA, the requirement would impose no extra testing or labeling burdens on manufacturers of insulations that are not subject to aging.[42]

Discussion Regarding Which Cellular Plastics Insulations Should Be Aged for R-value Testing

The Commission required R-value testing of aged specimens only for extruded polystyrene, polyurethane, and polyisocyanurate insulations because these were the only types of insulations discussed during the rulemaking proceeding that included blowing agents subject to the aging process. The Commission agrees that manufacturers of additional types of cellular plastics, or foam, insulations that are subject to the aging process should be required to test aged specimens and disclose aged R-values, and to maintain testing records identifying the aging procedure used. The Commission, therefore, solicits comments on what additional types or forms of insulations are subject to the aging process.

b. Reflective Insulations

Comments

NAIMA recommended that the Commission require that reflective (aluminum foil) insulation products be tested for emissivity and R-value "using samples that fully reflect the effect of aging" on the product's emissivity and R-value. NAIMA asserted that thermal performance claims for reflective insulations, as for cellular plastics insulations, should reflect the effects of aging (in this case, the accumulation of dust or corrosion of the foil). NAIMA did not submit evidence that dusting or corrosion is a problem that degrades the R-value of reflective insulations in actual applications, and did not suggest a specific test method or procedure that should be used to determine the effects of this type of aging on reflective insulations.[43]

Discussion

The Commission believes that claims for all types of home insulation products should take into account factors that affect the products' thermal performance. The Commission, therefore, invites interested parties to comment on whether dusting or

[30] In some instances, comments suggested that a specific test specimen preparation procedure, although appropriate for the most products of a certain type and form, might not be appropriate for a specific product, for example, a loose-fill cellulose insulation product with a lower than normal initial density. In such instances, these comments suggested that use of *in situ* data to determine test specimen preparation might be preferable to the specific procedure designated in the Rule. Although the Commission is not proposing to amend specific test specimen preparation requirements in the Rule to include such a provision, manufacturers may file petitions for exemption from the Rule's test specimen preparation requirements under section 18(g) of the FTC Act, 15 U.S.C. 57a(g). Petitioners should submit evidence substantiating why the test specimen preparation procedure required by the Rule is not appropriate for a particular product and why an alternative procedure or method would be appropriate. The Commission will determine whether to grant an exemption based on the petition, substantiating evidence submitted with the petition, and public comments.

[31] *See, e.g.*, staff opinion letter dated May 5, 1983, to Manville Corporation. GSA thereafter rescinded its specification (along with other insulation specifications) and now requires that insulations purchased by the federal government comply with ASTM insulation material specifications.

[32] Plymouth, #01, at 1; Big Sky, #05, at 1; Anderson, #08, at 2–3; EPSMA, #13, at 1; Western, #14, at 1–2; NAIMA, #24, at 2, Celotex, #25, at 4; ORNL/Wilkes, #29, at 3–4; PIMA, #30, at 5–6; AFM, #35, at 1.

[33] Celotex, #25, at 4; PIMA, #30, at 5–6.

[34] Standard Specification for Faced Rigid Cellular Polyisocyanurate Thermal Insulation Board ("ASTM C 1289–95").

[35] Standard Specification for Unfaced Preformed Rigid Cellular Polyisocyanurate Thermal Insulation ("ASTM C 591–94"). This is the current version of the specification cited by Celotex and PIMA.

[36] Standard Specification for Rigid, Cellular Polystyrene Thermal Insulation ("ASTM C 578–92").

[37] Standard Test Method for Estimating the Long-Term Change in the Thermal Resistance of Unfaced Rigid Closed Cell Plastic Foams by Slicing and Scaling Under Controlled Laboratory Conditions ("ASTM C 1303–95").

[38] ORNL/Wilkes, #29, at 3–4.

[39] AFM, #38, at 1.

[40] Plymouth, #01, at 1.

[41] Big Sky, #05 (many manufacturers advertise what they call an aged R-value, when in fact it is only an R-value for insulation aged for six months at elevated temperatures; this R-value is not a true indication of the in-service R-value, which can drop over 30% within three years); Western, #14, at 1–2 (because polyisocyanurate insulation has been sold based on R-values derived after six months of aging under RIC/TIMA 281 or PIMA 100, consumers have been duped into believing they are purchasing insulation that will deliver an R-value of 7.2 per inch for the duration of its service; although the true aged R-value of polyisocyanurate cannot be agreed upon, 5.56 per inch is often used and would be a more realistic figure).

[42] NAIMA, #24, at 2, 4.

[43] Id. at 3.

corrosion of reflective insulations in actual applications is a problem resulting in lower R-values than claimed, the extent of any degradation of R-value, and how the effect of dusting or corrosion on R-value could most accurately be determined.

2. Settling

a. Loose-fill and Stabilized Insulations in Attics

In the original rulemaking proceeding, the Commission determined that all dry-applied loose-fill insulation products tend to settle after being installed in open (or unconfined) areas such as attics. Settling lowers the product's thickness, increases its density, and affects its total R-value.[44] The amount of settling depends on several factors, including the raw materials and manufacturing process used, and the installer's application techniques (which affect the insulation's initial thickness and density).

To ensure that claims made to consumers are based on long-term thickness and density after settling, the Rule requires that the R-value of each dry-applied loose-fill home insulation product for these applications be determined at its "settled density." The Rule requires that manufacturers of dry-applied loose-fill cellulose insulation for attic applications test and disclose the R-value (as well as coverage area and related information) at the long-term, settled density determined according to paragraph 8 of ASTM C 739–91, commonly referred to as the "Blower Cyclone Shaker" ("BCS") test.[45] Because a consensus-based test procedure had not been adopted for determining the long-term, settled density of dry-applied loose-fill mineral-fiber insulation for this type of application, the Rule does not specify the procedure for determining the density of the R-value test specimen, but it requires that R-values claimed to consumers be based on long-term thickness and density after settling.[46]

Since the Commission promulgated the Rule, new forms of loose-fill-type home insulation products have been introduced for use in attic applications, including "stabilized" cellulose. "Stabilized" cellulose refers to a form of loose-fill cellulose insulation that contains a glue binder and is applied on attic floors with a small amount of liquid. Application of the insulation with the glue binder and liquid purportedly results in lower-density cellulose insulations that do not settle like dry-applied loose-fill cellulose insulations. The Rule does not currently specify a procedure for determining the long-term, settled density of stabilized cellulose insulation.

Comments

Dry-applied Loose-Fill Cellulose. Dr. Wilkes, for ORNL, stated that settling decreases the R-value obtained when a loose-fill insulation product is applied, although limited information exists about the amount of settling that occurs. Dr. Wilkes supported use of the BCS test procedures to determine the settled density of dry-applied loose-fill cellulose insulation. He suggested that the BCS procedure may be inappropriate for new products such as those with initial densities as low as 1.0 to 1.5 pounds per cubic foot. For such products, Dr. Wilkes stated that *in situ* data would be more appropriate than the BCS procedure in determining long-term, settled density, and recommended that the Commission permit manufacturers to submit *in-situ* data to demonstrate the actual settled density of their products.[47]

Dry-applied Loose-Fill Mineral Fiber. Eleven comments addressed how the settled density of dry-applied loose-fill mineral fiber insulation products in open attic applications should be determined for R-value testing.[48] Regal contended that the Rule's objective of creating a level playing field has been compromised because of the failure of GSA, ASTM, and the mineral fiber industry to develop a uniform standard for determining the settled density of dry-applied loose-fill mineral fiber insulations.[49] Other comments agreed.[50] Three stated that this uneven playing field (*i.e.*, requiring cellulose manufacturers, but not mineral fiber manufacturers, to use a specific test procedure) imposes a competitive disadvantage for the cellulose industry.[51] CIMA, for example, stated that the BCS test typically produces 30% settling for loose-fill cellulose, while long-term studies of actual installations rarely find cellulose settling as much as 20%. CIMA asserted that the Rule places the cellulose industry at a competitive disadvantage of as much as 10% to 15% compared to loose-fill fiberglass, and that, if this discrimination has affected the cellulose market share by as little as 5%, it has resulted in an annual revenue loss of approximately $50 million for cellulose producers.

Four comments stated this uneven treatment is unfair to consumers.[52] GreenStone/Smith, for example, stated that mineral fiber manufacturers have not developed a standard test method to measure the settling of loose-fill mineral fiber insulations, but instead claim that if their products are installed at the density they recommend, the amount of settling will be minimal (less than 5%). He asserted that the mineral fiber manufacturers construct coverage charts at this density and represent to consumers that no settling is expected. According to GreenStone/Smith, installers who desire to minimize costs can install loose-fill mineral fiber insulations at less than the density claimed by manufacturers (and at a lower total R-value than claimed), without consumers' knowledge, and thereby save time and material and defraud consumers of the energy savings they anticipate.

As a short-term solution, five comments recommended that the Commission impose a settlement factor of up to 10% or more for dry-applied loose-fill mineral insulation products, pending the adoption of a suitable industry standard to address how much these products settle.[53] Dr. Yarbrough, for TN Tech., and Dr. Wilkes, for ORNL, suggested that, until a uniform test procedure is developed, manufacturers should determine settled density based on *in situ* data.[54]

Stablized Cellulose. Dr. Wilkes, for ORNL,[55] and Dr. Yarbrough, for TN Tech.,[56] stated that the BCS test is inappropriate for determining the settled density of stabilized cellulose insulation. Dr. Yarbrough explained that "stabilized" cellulose insulation contains a binder, or other means, for bonding particles in the insulation to reduce settling, and that the fan used in the BCS test breaks the bond. Dr. Wilkes and Dr. Yarbrough recommended allowing the use of *in situ* observations of the degree of settling to establish the settled density at which the R-value of a stabilized cellulose product must be determined. Dr. Yarbrough stated that a methodology for obtaining *in situ* data is available.[57] He explained that an ASTM task group is working on a material specification for stabilized cellulose insulation that he expects will include a method for determining settled density, and recommended that the Commission consider requiring the use of the ASTM standard when it has been adopted by ASTM.[58]

NAIMA recommended requiring that R-value tests on stabilized cellulose insulations be "done on samples that fully reflect the effect of settling on the product's R-value." NAIMA stated that ASTM C 1149[59] has been modified to include products containing an adhesive that is mixed with water during installation and is intended for use in attic applications. NAIMA stated that a task group is developing a method to determine and quantify the amount of settling.[60]

Discussion

Dry-applied Loose-fill Cellulose. Although the rule requires manufacturers of dry-applied loose-fill cellulose to determine the R-values and coverage of their products at the settled density determined according to the BCS procedure, manufacturers who can demonstrate that the BCS procedure is inappropriate for their products can petition the Commission for an exemption that would allow them to determine the settled density of their products according to a more appropriate methods. See note 30, above.

Dry-Applied Loose-fill Mineral Fiber. The Rule specifies the procedures to be used in determining the settled density only for cellulosic, and not mineral fiber, insulation products. When the Commission promulgated the Rule in 1979, it expected that GSA soon would adopt a specific test procedure for determining the settled density of dry-applied loose-fill mineral fiber insulation products. 44 FR at 50228, 50239 n.239. GSA did not do so, and now accepts the use of ASTM standards, which do not specify procedures for determining the settled density of dry-applied loose-fill mineral fiber insulations.

Reports of studies conducted by Oak Ridge National Laboratory during the 1980s demonstrate that certain loose-fill mineral fiber insulation products can settle following installation, resulting in a reduction of R-value.[61] The results differed in the amount of settling, and the effect of settling on the R-values of the specific insulation products studied, depending on the type of mineral fiber insulations studied (fiberglass versus rock wool products) due to differences in density.

The Commission agrees that it would be preferable to specify a uniform procedure for determining the long-term, settled density of dry-applied loose-fill mineral fiber insulation products. Unfortunately, none of the comments suggested a specific procedure that the Commission could adopt at this time. In addition, the comments that suggested requiring an across-the-board settlement factor of 10% have not submitted documentation that would justify the Commission imposing it on all dry-applied loose-fill mineral fiber insulation products.

The Commission, therefore, solicits comments on specific reliable and uniform procedures that would be appropriate for determining the long-term, settled density of dry-applied loose-fill mineral fiber insulation products, and the submission of data to demonstrate that those procedures will result in uniform and accurate results. For example, the Commission requests any data that demonstrate that any of the following, currently available test procedures, or others, would produce accurate and reliable, long-term settled density results for mineral fiber insulation products in attic applications: the BCS test procedure in ASTM C 739–91 (which currently is required for dry-applied, loose-fill cellulose insulation products); the "Canadian drop box procedure," which previously was proposed by GSA for loose-fill mineral fiber insulations under Federal Specification HH–I–1030B;[62] the British Standard Vibration Test; and the procedure developed in Scandinavia by Dr. Svennerstedt. In the meantime, the Commission will continue to examine the data specific manufacturers use to substantiate their R-value, long-term settled density, and coverage claims.

Stabilized Cellulose. Because of the manner in which stabilized cellulose insulation is installed, the Commission agrees that the BCS test procedure may not be appropriate for determining its long-term, settled density. Further, the Commission does not believe that the procedure for determining density in ASTM C 1149, which NAIMA suggested, is the appropriate measure of the long-term, settled density of stabilized cellulose insulations installed in attic applications. ASTM C 1149 is designed for insulations sprayed onto walls (most often being applied to metal walls in commercial buildings, where they are left exposed, without being covered by an internal wall), and requires that these insulations be able to support themselves in that type of application. The settling characteristics of stabilized cellulose insulations in attic applications are different from those of self-supported insulations sprayed onto walls. ASTM has not yet adopted a specific method for determining the long-term density of stabilized cellulose insulation for attic applications. When ASTM, or others, adopt an appropriate procedure, the Commission will consider whether to require its use. In the meantime, under section 5 of the FTC Act, manufacturers must have a reasonable basis for the density at which they conduct the R-value tests required by the Rule and make R-value claims to consumers.

Loose-fill and Stabilized Insulations Used in Manufactured Housing Attics. No comments addressed whether the procedures currently used to determine the settled density of dry-applied loose-fill insulations or stabilized insulations when they are used in attics of site-built homes are appropriate for determining

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[44] Settling of loose-fill cellulose insulation reduces the product's total R-value, often decreasing it proportionate to the amount of settling. Settling of loose-fill mineral fiber insulation also affects the product's total R-value, but the reduction in total R-value may be less than the reduction in thickness. E.g., ORNL/Yarbrough, #28, at References 1, 2; ORNL/Wilkes, #29, at References 9, 10.

[45] Standard Specification for Cellulosic Fiber (Wood-Base) Loose-Fill Thermal Insulation ("ASTM C 739–91").

[46] At the time the Commission promulgated the Rule, GSA had proposed adopting a settled density test procedure for loose-fill mineral fiber insulation products similar to the one it had adopted for loose-fill cellulose insulation products. Mineral fiber manufacturers contended, however, that they took settling into account in their coverage charts, and that if their insulations were installed according to their coverage charts, consumers would receive the R-values they claimed. The Commission imposed a general requirement that R-values of dry-applied loose-fill mineral fiber insulations be based on tests that take the adverse effects of settling into account, but did not specify how the settled density was to be determined. 44 FR at 50228. GSA never adopted a procedure for determining the settled density of mineral fiber insulations.

[47] ORNL/Wilkes, #29, at 4.

[48] Regal #16, at 1–2; England, #18, at 3; CIMA, #19, at 2–3; GreenStone/Tranmer, #20, at 2–3; Hamilton, #22, at 3; NAIMA, #24, at 2; TN Tech/Yarbrugh, #26, at 4–5; ORNL/Wilkes, #29, at 4; GreenStone/Smith, #32, at 2; Clayville, #34, at 1–2; Tascon, #35, at 1.

[49] Regal, #16, at 1–2.

[50] England, #18, at 3 1–2; CIMA, #19, at 2–3; GreenStone/Tranmer, #20, at 2–3; Hamilton, #22, at 3; GreenStone/Smith, #32, at 2; Clayville, #34, at 1–2; Tascon, #35, at 1.

[51] CIMA, #19, at 2–3; GreenStone/Tranmer, #20, at 2–3; Clayville, #34, at 1–2.

[52] GreenStone/Tranmer, #20, at 2–3; Hamilton, #22, at 3; GreenStone/Smith, #32, at 2; Clayville, #34, at 1–2.

[53] Regal, #16, at 1–2; England, #18, at 3; CIMA, #19, at 2–3 (impute 10% settling for all loose-fill insulations for which there is no standard settled density methodology published by a recognized, independent materials-standards organization); GreenStone/Tranmer, #20, at 2 (impute 5% to 10% settling); GreenStone/Smith, #32, at 2–3 (absent a standard test method, require disclosures based on at least 10% settling; if a product has been determined not to settle, require disclosure of that fact as an assurance to consumers); Tascon, #35, at 1 (impute settlement not less than 10% if a technically supportable method of determining settlement has not been established within a reasonable time, *e.g.*, 5 years).

[54] TN Tech/Yarbrough, #26, at 4–5; ORNL/Wilkes, #29, at 4.

[55] ORNL/Wilkes, #29, at 3.

[56] TN Tech/Yarbrough, #26, at 2.

[57] *Id.* at 2, references 1, 2.

[58] *Id.* at 3.

[59] ASTM C 1149–90: Standard Specification for Self-Supported Spray Applied Cellulosic Thermal/Acoustical Insulation ("ASTM C 1149").

[60] NAIMA, #24, at 2–3.

[61] ORNL/Yarbrough, #28, at Refs. 1, 2; ORNL/Wilkes, #29, at Refs. 9, 10.

[62] *See* 44 FR at 50228, 50239 n.239.

their settled density when they are used in attics of manufactured housing. Industry members have raised this question separately, however, with the Commission's staff. At issue is whether these insulations, which are installed in attic assemblies in a factory and then transported to the site where the manufactured home will be located, settle more, or differently, than those used in site-built homes because of additional vibrations and other factors during transportation. The Commission solicits comments regarding the extent of settling of dry-applied loose-fill insulations and stabilized insulations when they are used in attics of manufactured housing, the density at which the R-value of these insulations should be determined for use in attics of manufactured housing, and how that density should be determined.

b. Loose-fill and Self-supported Insulations in Walls

Dry-applied loose-fill insulations and spray-applied, self, supported insulations can be installed in walls in residential applications. Dry-applied loose-fill insulations normally can only be applied to existing wall cavities (primarily in retrofit applications). Spray-applied, self-supported insulations can be applied to open wall cavities before installation of internal walls.

Dry-applied loose-fill insulations may settle when blown into a confined area, such as an enclosed wall cavity, leaving a gap at the top of the wall cavity if they are not sufficiently compressed during installation. Manufacturers who claim an R-value for a dry-applied loose-fill insulation must disclose the R-value at the applied density, determined according to the R-value test procedures specified in the Rule. The Rule, however, does not specify how manufacturers must determine that density because there was no standard procedure for measuring the applied density in wall applications for all products at the time the Commission promulgated the Rule. Because dry-applied loose-fill insulations installed in closed wall cavities must be compressed during application to ensure that they do not settle, the applied density in wall applications is likely to be greater than the settled density of the product when it is installed in an open attic.

Self-supported, spray-applied insulations, mixed with water and adhesives (also referred to as "wet-spray" insulations), are installed pneumatically on-site by professional installers. They may be made of either cellulose or mineral fiber. When applied, this form of insulation requires no support other than the insulation itself or the substrate to which it is attached. These products most often are used in walls in commercial applications, where they may be left exposed after they are installed. They are rarely used in residences, primarily because this application requires the use of more insulation material for a given thickness (*i.e.* the insulation is installed at a higher density and cost), often without any increase in total R-value, and sometimes at a reduced R-value. They are not used in attics because of their additional weight (and cost). Because these products are applied at a greater density than either dry-applied loose-fill or stabilized insulations, they are not likely to settle. Although this form of insulation was not discussed during the original rulemaking proceeding and the Rule does not specify how R-value these specimens must be prepared, it is covered by the Rule if it is sold for use in the residential market. Because the density at which these insulations are applied affects their R-values, the Commission's staff has advised industry members that they should prepare test specimens according to the manufacturer's installation instructions, using equipment, materials, and procedures representative of the manner in which the insulation is applied in the field.

Comments Regarding the Use of Dry-applied Loose-fill Insulations in Wall Cavities

Two comments recommended requiring the disclosure of R-values and related information for loose-fill insulations intended in walls or other enclosed cavities. NAIMA recommended requiring that coverage charts for these products include R-values maximum net coverage area, and minimum weight per square foot for the thicknesses of common cavities (*e.g.* 3½"). NAIMA asserted that separate disclosures for installations of these insulation products in enclosed cavities is necessary to provide guidance about the proper amount of material that must be installed.[63] Mr. Smith, for GreenStone, agreed and suggested requiring disclosure of a coverage chart for "Gross Coverage," for cavities using 2x4 and 2x6 on 16" center construction. He recommended requiring the disclosure of the density at which the loose-fill insulation should be installed, along with a statement that applications below this density may be subject to settling and may create gaps at the top of or within wall cavities that may significantly reduce the insulating value of the product. Lastly, he stated that the R-value for each of the wall thicknesses claimed must be determined at the applied density the manufacturer recommends.[64]

Discussion Regarding the Use of Dry-applied Loose-fill Insulations in Wall Cavities

The Commission agrees that specific requirements for determining the appropriate density for the R-value test specimen and for disclosures on coverage charts for applications in enclosed wall cavities would be appropriate and desirable. GreenStone's suggestion of requiring a statement of "applied density" could provide helpful information to installers in determining whether they have installed the requisite amount of insulation material, but it does not address how that density should be determined. The Commission, therefore, solicits comments on whether there are reliable procedures that could be used to determine the density of dry-applied loose-fill insulations when installed in enclosed wall cavities, and the specific disclosures that should be required (*e.g.*, how coverage area for enclosed wall cavities should be described).

Comments Regarding the Use of Self-Supported Insulations in Wall Cavities

ECI recommended adopting the test specimen preparation procedures in ASTM C 1149 when testing insulations that are sprayed into wall cavities.[65] England recommended requiring use of either HUD UM–80[66] or ASTM C 1149, both of which apply to spray-applied cellulose insulation, to ensure that R-value and related information is accurate.[67]

Discussion Regarding the Use of Self-supported Insulations in Wall Cavities

The procedures in paragraph 5.1 of ASTM C 1149–90 and in paragraph 9.1.1 of HUD UM–80, which require the R-value test specimens be prepared using the maufacturer's recommended equipment and procedures and at the manufacturer's maximum recommended thickness, appear to be appropriate procedures for preparing R-value test specimens of self-supported, spray-applied cellulose insulation products.

[63] NAIMA, #24, at 5.

[64] GreenStone/Smith, #32, at 3.

[65] ECI, #23, at 1.

[66] U.S. Department of Housing and Urban Development Materials Bulletin No. 80 ("HUD UM–80"), dated October 31, 1979. This specification includes additional requirements, *e.g.*, the surface to which the specimen is to be applied, and post-preparation conditioning.

[67] England, #18, at 2–3.

Accordingly, the Commission proposes amending the Rule to require preparation of R-value test specimens of self-supported, spray-applied cellulose insulation products according to either of these specifications. The Commission solicits public comments regarding the accuracy and reliability of the two procedures, whether the Commission should allow use of either procedure or only one, how the Commission should define specifically the products to which the procedures apply, and whether the same procedures (or others) should be required for other types of spray-applied insulations (*e.g.*, mineral fiber insulations) that are used in residential applications.

Discussion Regarding the Use of Loose-fill Insulations and Self-supported Insulations in Wall Cavities of Manufactured Housing

No comment addressed whether the procedures currently used to determine the settled density of dry-applied loose-fill insulations or self-supported insulations when they are used in wall cavities of site-built homes are appropriate for determining their settled density when they are used in wall cavities of manufactured housing. Industry members have raised this question separately, however, with the Commission's staff. At issue is whether the settling of these insulations, which are installed in wall assemblies in a factory and then transported to the site where the manufactured home will be located, settled more, or differently, than those used in site-built homes because of additional vibrations and other factors during transportation. The Commission solicits comments regarding the extent of settling of dry-applied loose-fill insulations and self-supported insulations when they are used in wall cavities of manufactured housing, the density at which the R-value of these insulations should be determined for use in wall cavities of manufactured housing, and how that density should be determined.

3. Density Variations

The Rule's testing and labeling requirements assume that the long-term settled density of a dry-applied loose-fill insulation product does not change with variations in thickness. The Rule, therefore, simply requires that manufacturers of dry-applied loose-fill cellulose insulation determine the settled density of each product according to the BCS test procedure and test it for R-value at that density, and that manufacturers of dry-applied loose-fill mineral fiber insulation determine the R-value of each product on samples that fully reflect the effect of settling on R-value. As long as the R-value test has been conducted at that density and at the product's "representative thickness,"[68] the manufacturer can construct the required coverage chart for various total R-value levels based on the R-value result at the tested density.

Comments

Ivan Smith, for GreenStone, recommended revising section 460.6 of the Rule to require testing of loose-fill insulations at each thickness shown on a label unless there is a limitation caused by the physical constraints of the test equipment. Mr. Smith believes it is likely that density will be different at each different thickness of loose-fill material, and that this variation of density potentially affects the thickness necessary to obtain the claimed total R-value. He contended that this requirement would not result in a substantial expense to the manufacturer.[69]

Discussion

The Commission cannot determine whether it would be appropriate to propose amending the Rule as Mr. Smith recommended without specific data to demonstrate whether or how much the density of particular types of loose-fill insulations varies with differences in thickness. The Commission solicits comments and data, therefore, on whether, and how much, the density of specific loose-fill insulations varies with thickness, the effect of any such variations on the total R-value at different thickness, and how the Commission should amend the Rule to ensure that R-values and related claims for loose-fill insulation products are accurate.

4. Installation in Closed Cavities of Variable Thickness

Comments

Dr. Yarbrough, for TN Tech, stated that the evaluation of the thermal performance of insulations used in attics of manufactured housing represents a special challenge because, in some cases, the roof cavity (and the insulation installed in it) varies in thickness and density. For example, these roof cavities often slope to the edge of the roof assembly, where the cavity may be only 1½" to 2" thick. Any insulation (whether it is a batt or blanket, dry-applied loose-fill, or stabilized product) installed in such an application can vary in thickness across the cavity, and may be compressed more than normal in the thinnest portions of the cavity. These factors result in different total R-values at different places. Dr. Yarbrough recommended specifying how R-values for such variable thickness and density applications should be calculated, and suggested using a method such as the one he and others have described in a paper published by the American Society of Mechanical Engineers.[70] He stated that the manner in which R-values are expressed for this type of application could affect a major portion of new manufactured homes and could determine whether insulations installed in these applications achieve the total R-values claimed.[71]

Discussion

The Commission agrees that it is important to address how R-values should be determined and disclosed to consumers where the insulation varies in thickness and/or density in particular applications, so that R-values claimed to consumers under these circumstances will be accurate and determined according to a uniform standard. The Commission solicits comments, therefore, regarding the method (such as that recommended by Dr. Yarbrough) that should be used to determine and disclose R-values under these circumstances, and how different variables (*e.g.*, thickness, density) should be accounted for in the determination.

D. Other Testing Requirements

1. Accreditation of Testing Laboratories

Comments

The Celotex Corporation recommended requiring that testing laboratories either be accredited by the National Voluntary Laboratory Accreditation Program ("NCLAP"), administered by the U.S. Department of Commerce's National Institute of

[68] The mathematical extrapolation of R-value for a mass insulation product from thin-sample tests can be misleading because it fails to recognize that, up to at least some thickness, R-value does not increase linearly with increases in thickness. This is referred to as the "thickness effect." To account for the thickness effect, section 460.6 requires that R-value tests of mass insulations be conducted at the product's "representative thickness," which it defines as the thickness at which the R-value per unit will vary no more than plus or minus two percent with increases in thickness. For thicknesses less than the representative thickness, however, the R-value claimed may be based on testing at the claimed thickness. 44 FR at 50226.

[69] GreenStone/Smith, #32, at 3.

[70] D.W. Yarbrough, R.S. Graves, and D.L. McElroy, Effectiveness of Thermal Insulation in Attic Spaces of Manufactured Homes, Collected Papers in Heat Transfer 1988, K.J. Yang, Ed., The American Society of Mechanical Engineers, HTD-Vol. 104 (1988), at 71–80.

[71] TN Tech/Yarbrough, #26, at 4.

Standards and Technology ("NIST"), for the specific test methods listed in the Rule, or by the International Organization for Standardization ("ISO") as an ISO/IEC Guide 25 Testing Laboratory. Further, Celotex stated that accreditation as an ISO/IEC Guide 25 Laboratory provides global acceptance of a laboratory's test results.[72]

Discussion

Although accreditation of testing laboratories by a qualified, professional accreditation program generally is useful and important, the Commission is not aware of any significant testing problems with unaccredited laboratories that would justify the Commission's imposing this additional burden under the Rule. Further, to the extent that accreditation of a laboratory provides either domestic or global acceptance of that laboratory's test results, manufacturers and other sellers should already have sufficient incentive to use accredited laboratories, and testing laboratories should have sufficient incentive to seek accreditation, without the Commission imposing an accreditation requirement.

The Rule already includes several interrelated safeguards to ensure testing integrity that make a separate accreditation requirement unnecessary, absent evidence of testing abuse. First, the Rule requires manufacturers to test or have their products tested to substantiate the R-values they claim, and to maintain specific records concerning the testing methods and results. Second, it enables the Commission to analyze the substantiation tests by evaluating the required testing records. Third, it includes a quality control requirement, under which industry members must ensure that the R-value of the insulation they sell is not more than 10% below the R-value they claim. Thus, even if the manufacturer or other covered party has a test result that purports to verify the claimed R-value, the Commission can obtain samples and conduct its own testing to ensure that accurate, properly determined R-values are being disclosed to consumers.

Although the Commission is not proposing to require laboratory accreditation at this time, it solicits comments on the extent to which manufacturers presently use accredited versus nonaccredited labs. In addition, the Commission seeks comments on whether it should require additional recordkeeping to make the records more clearly demonstrate whether the tests have been conducted accurately and in accordance with the required procedures.

2. Test Temperature Requirements

Several test temperature parameters are involved in R-value testing: (1) The temperature on the cold side of the testing apparatus; (2) the temperature on the hot side of the testing apparatus; (3) the mean (or average) test temperature within the test chamber; and (4) the temperature differential (*i.e.*, the temperature spread between the cold and hot sides). The record in the original rulemaking proceeding indicated that variations in these test parameters affected the ASTM steady-state R-value results for mass insulations and reflective insulations differently.

For mass insulations, the record indicated that R-values decreased as the mean test temperature rose, and that this inverse relationship between R-value and mean test temperature was approximately the same for all mass insulations. On the other hand, the record indicated that variations in the temperature differential between the hot and cold sides did not significantly affect the R-value results. For these reasons and other explained below, the Commission determined the R-value tests of mass insulations should be conducted at a mean test temperature of 75 °F, but that it was not necessary to specify a required test temperature differential for testing mass insulations.

For traditional reflective foil insulations, on the other hand, the record indicated that variations in mean test temperature did not affect the R-value results, but that variations in the temperature differential between the hot and cold sides did affect the R-value results. At least at smaller temperature differentials, the record indicated that there was an inverse relationship between R-value and the temperature differential, as the temperature differential increased, the R-value result went down. The Commission determined, therefore, that it was necessary to specify both the mean test temperature and the temperature differential for R-value testing of reflective insulations.

The R-value of a reflective insulation is related to its emissivity.[73] Based on evidence that single-sheet reflective foil insulation products with a given emissivity installed in an airspace of the same thickness and configuration will have the same R-value, the Commission minimized manufacturers' testing burdens by allowing them to use the R-values for those products listed in a specific table published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. ("ASHRAE"). Thus, manufacturers of single-sheet reflective insulation products need only to measure the product's emissivity according to a specific ASTM test procedure (or an alternative procedure that provides comparable results)[74] and find the appropriate R-value in the ASHRAE table for that emissivity.[75] The ASHRAE table contained R-values for only certain mean test temperatures and temperature differentials. To ensure that claims were based, to the extent possible, on a standard that would allow comparison on a uniform basis of R-values for single-sheet reflective insulations and mass insulations, the Commission specified that single-sheet reflective insulation manufacturers must use the R-value in the ASHRAE table for a mean test temperature of 50 °F (the table did not include a mean test temperature of 75 °F, so the Commission selected the mean test temperature closest to 75 °F) and a temperature differential of 30 °F.

For multi-sheet reflective foil insulations (used to create multiple airspaces), the record indicated that extrapolation of a total R-value from the ASHRAE R-value for a single airspace was unreliable. 44 FR at 50228. The Commission, therefore, required that R-values be determined through R-value testing according to specific ASTM procedures. So that the results of these tests would be comparable to those for single-sheet insulations and for mass insulations, the Commission determined that the tests must be conducted at a mean test temperature of 75 °F and a temperature differential of 30 °F.

a. Mean Temperature

Comments

Plymouth Foam Products asserted that a mean test temperature of 40 °F would more accurately represent the climate(s) for the majority of the United Sates than the required 75 °F mean test temperature.[76]

Discussion

The Commission addressed this issue when it originally promulgated the Rule.[77] To ensure that R-values claimed to consumers are made on a uniform basis, the Commission required that R-values disclosed to consumers be based on steady-state ASTM R-value tests conducted at a mean temperature of 75 °F. The Commission concluded that 75 °F (which was incorporated in many voluntary industry standards and federal procurement specifications) would be as effective as any other mean temperature in providing a standard mean test temperature for R-value comparison purposes, although it otherwise had not particular advantage over any other temperature. By requiring that R-value testing be conducted at this mean test temperature, the Commission did not intend to specify a mean test temperature that would be representative of any particular geographical region, or particular season or of actual performance conditions. Indeed the Commission concluded that requiring sellers to test and disclose R-values at a mean temperature representative of any specific geographical region, or season of the year, would yield R-value results that would be inappropriate for other regions or seasons. Further, it concluded that requiring sellers to test and disclose R-values separately for different regions of seasons would yield multiple disclosures that could confuse consumers and discourage them from using R-values in making purchasing decisions. Thus, the Commission selected a single mean test temperature to establish a uniform standard for disclosing R-values. Although the Commission received no new information that would indicate that any other single mean test temperature would be preferable to 75 °F, the Commission invites public comments on this issue, along with comments regarding the testing and the disclosure of *in situ* performance information. See also the discussion in Part IV.B.1, above.

b. Temperature Differential

Comments

One comment recommended amending the Rule to specify the temperature differential. NAIMA recommended requiring not only that R-value tests be preformed at the mean temperature of 75 °F, but also requiring a test temperature differential of "50 °F ±10 °F." NAIMA explained that the thermal properties of a specimen may change both with mean temperature and with the temperature difference across the test specimen, and that data and information at standard temperatures are therefore necessary for valid comparison of thermal properties. NAIMA stated that ASTM C 1058[78] specifies a temperature difference of 50 °F ±10 °F when conducting tests at a mean temperature of 75 °F according to ASTM test methods C 177, C 236, C 581, and C 1114.[79]

Discussion

The Commission agrees that, if current evidence demonstrates that different test temperature differentials affect R-value results, it may be appropriate to consider specifying a test temperature differential in the Rule to ensure the comparability of R-value claims for competing home insulation products. The Commission, therefore, solicits comments on whether, to what extent, and for what types and forms of insulation, variations in the test temperature differential affect R-value results; and what specific test temperature differential(s) the Commission should impose for tests conducted according to each of the R-value test procedures cited in the Rule. See also the discussion in Part IV.B.1, above.

3. Tolerance

Comments Regarding Responsibilities of Manufacturers Versus Installers

NAIMA[80] and ICAA[81] proposed limiting application of the Rule's 10% tolerance limit to manufacturers by replacing the words "industry member" with "manufacturer."

Discussion Regarding Responsibilities of Manufacturers Versus Installers

The Commission designed the tolerance limit provision to apply to the manufacturer. Strictly speaking, the tolerance does not apply to professional installers or new home sellers. The Rule requires that professional installers and new home sellers apply loose-fill insulations according to the manufacturer's installation instructions, but allows them to rely on the accuracy of the manufacturer's R-value and installation instructions. Installers and new home sellers therefore have the benefit of the 10% tolerance limit for variances occurring in the manufacturing process. But the tolerance is not intended to allow installers or new home sellers to deviate from the manufacturer's installation instructions. Consequently, the Commission proposes amending the Rule to clarify that the tolerance provision applies solely to claims made by manufacturers.

Comments Regarding How the Tolerance Limit Will Be Applied

NAIMA and Dow suggested clarifying the Rule to state more precisely how the tolerance limit would be applied. NAIMA suggested specifically requiring manufacturers to design their products to 100% of the claimed R-value, rather than aiming at the tolerance. NAIMA further recommended that the section require that the R-value of home insulation to be no more than 5% below the listed R-value for the average of four randomly selected samples, and that the R-value of any single sample to be no more than 10% below the listed R-value. NAIMA explained that limiting the tolerance to the average of four samples would make this section of the Rule consistent with current ASTM material standards. Dow asked that the Commission clarify the intent of § 460.8, and suggested the following language to allow some variability in a production lot (rather than simply permitting an R-value of up to 10% below the claimed value):

> The mean R-value of sampled specimens of a production lot must meet or exceed the R-Value shown in a label, fact sheet, ad or other promotional material. No individual specimen can have an R-Value more than 10% below the claimed R-Value.[82]

Discussion Regarding How the Tolerance Limit Will Be Applied

The tolerance limit provision was designed to give manufacturers the flexibility to use the most effective and least burdensome or costly quality control procedures necessary to maintain each product's R-value (and the density necessary to obtain the claimed R-value) within an acceptable limit. At this time, however, the Commission agrees that it would be appropriate to consider whether the Commission should include in the Rule additional, more specific, guidance about how manufacturers should apply the tolerance limit. Possible alternatives include the suggestions made by NAIMA and Dow. Consequently, the

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[72] Celotex, #25, at 3.

[73] See note 25, *supra*.

[74] See Part IV.D.5.a.i., *infra*

[75] The values in the table apply only to air spaces of uniform thickness bounded by plane, smooth, parallel surfaces with no leakage of air to or from the space. Further, the table lists only certain emissivities and airspace thicknesses. The Rule specifies that the emissivity must be determined according to ASTM E 406, or another test method that provides comparable results. The R-value of a traditional single-sheet reflective foil insulation product that will be installed in an air space that is not of uniform thickness bounded by plane, smooth, parallel surfaces with no leakage of air to or from the space should be tested according to the Rule's requirements for traditional multi-sheet reflective foil insulations.

[76] Plymouth, #01, at 1.

[77] 44 FR at 50219, 50227.

[78] Standard Practice for Selecting Temperatures for Evaluating and Reporting Thermal Properties of Thermal Insulation ("ASTM C 1058–92").

[79] NAIMA, #24, at 1.

[80] Id. at 4.

[81] ICCA/1, #17, at 8. See also Rock Wool Mfg./1, #06 (fully supports ICAA's submittal).

[82] Dow, #37, at 1.

Commission solicits comments on whether and how it should propose amending the tolerance provision, and the benefits and burdens such an amendment would confer on consumers and insulation sellers.

Comments Regarding Sampling Procedures for the Tolerance Limit

NAIMA recommended amending § 460.8 to require manufacturers to select test specimens in accordance with ASTM C 390–79[83] which is the sampling procedure required by all ASTM thermal insulation standards.[84]

Discussion Regarding Sampling Procedures for the Tolerance Limit

In the original rulemaking proceeding, the Commission concluded that the available sampling standards—specifically ASTM C 390 and Military Standard 105[85]—were not suitable for inclusion as requirements of the Rule because they were extremely complex and were not designed for sampling from a continual production process but, instead, were "lot" sampling procedures designed for use in individual transactions. Accordingly, the Commission left the choice of specific sampling methods to the manufacturer's discretion. Likewise, paragraph 3.1.6 of the current ASTM sampling specification, ASTM C 390–79 (1995), establishes sampling standards applicable to a specific "lot" or "batch" (which is defined as "a definite quantity of some product manufactured under conditions of production that are considered uniform"). Although the Rule does not require specific sampling procedures, it requires that manufacturers be able to prove that test samples they select are representative of ongoing production.

To address this issue, the Commission solicits comments on whether manufacturers currently use sampling procedures that do not result in the selection of test specimens that are representative of ongoing production; which specific procedures currently are available for use in sampling from continuing production (or how sampling procedures designed for specific lots could be used to select samples from continuing production); and whether the Commission should require the use of specific sampling procedures.

4. Use of Current Test Data

Comments

Dr. Yarbrough, for TN Tech, asserted that required R-Value disclosures should be based on test data no more than two years old. He contended that normal quality control activities should require more frequent thermal tests than are currently performed, and that this would not unduly burden the industry. He also recommended that, because the properties of thermal insulation can change when the manufacturing process changes, thermal test data should be based on the current manufacturing process and equipment being used.[86] Dr. Yarbrough would exclude reflective insulations from this requirement because the thermal measurements for these products are much more expensive than tests for mass insulations. He recommended that a test on a reflective insulation be considered current if it conforms to ASTM C 1224 and the measurements were made on the product being marketed.[87]

Discussion

When the Commission promulgated the Rule, it considered, but rejected, a recommendation in the Staff Report that the Commission require manufacturers to repeat their R-value substantiation tests every 60 days, coupled with a 5% tolerance limit. The Commission explained that the rulemaking record pointed no single retesting frequency that would be superior for all manufacturers, regardless of the type and amount of insulation they produce and sell and regardless of the variables that might affect the production of each type of insulation product. In addition, the record indicated that there was a limited availability of testing laboratories and testing equipment at that time to conduct the required testing for all manufacturers on a frequent basis.

Instead, the Commission determined to rely on a tolerance limit provision as the governing quality control mechanism.[88] It specified 10% as the acceptable tolerance limit, and required manufacturers to institute in-plant quality control procedures necessary to stay within that tolerance limit. This mechanism was designed to give manufacturers the flexibility to use whatever quality control procedures are necessary to ensure the accuracy of their R-value claims, using the most effective and efficient, but the least burdensome or costly, means possible within their technical expertise. If the manufacturer changed the raw materials used or the manufacturing process, however, the resulting insulation product would be a new home insulation product. The Rule requires manufacturers to conduct a new R-value test on each new home insulation product, and to disclose the R-value (and related information) of each new product based on the new test.

The Commission agrees that it is appropriate to consider whether current conditions would justify the Commission's requiring a more specific retesting quality control mechanism. In this regard, the Commission is interested in comments regarding how frequently manufacturers currently test their insulation products, how much the R-value of current production varies,[89] how frequently manufacturers change their products, whether they retest products that have changed, and what retesting schedule would be most appropriate to ensure the accuracy of R-value claims made to consumers. After considering the comments, the Commission will determine whether it should propose requiring a specific retesting schedule.

5. Determining the Thermal Performance of Reflective Insulations

Two basic forms of reflective insulation products are marketed for use in the residential market: (1) Traditional single-sheet and multi-sheet reflective insulations; and (2) single-sheet radiant barrier reflective insulations. Traditional reflective insulation products normally are installed in closed cavities, such as walls. As explained in Part IV.D.2, above, the Rule requires that manufacturers of traditional reflective insulation products use specific test procedures to determine the R-values of their products, and that manufacturers and other sellers disclose R-values to consumers for specific applications.

Radiant barrier reflective insulations, on the other hand, are installed in attics facing the attic's open airspace. Although radiant barrier reflective insulations are covered by the R-value Rule, R-value claims are not appropriate for them because no generally accepted test procedure exists to determine the R-value of a radiant barrier reflective insulation in an open attic. Sellers who make energy savings claims for radiant barrier insulations, however, must have a reasonable basis for the claims under Section 460.19(a) of the Rule.

a. Traditional Reflective Insulations

i. Single-sheet Products

Comments

Three comments recommended allowing the use of updated or alternative test procedures to measure the emissivity of traditional single-sheet reflective insulations.[90] Celotex and PIMA[91] recommended requiring that emissivity be determined under ASTM E 408–71 (1990),[92] ASTM C 835–82 (1988),[93] or another method that provides comparable results. Dr. Wilkes, for ORNL, reported that ASTM is in the final stages of developing a procedure to measure the emittance of foil sheets with a portable Emissometer, and recommended that the Commission include this procedure in section 460.5(c) when ASTM adopts it.[94]

Discussion

ASTM now has adopted the procedure (ASTM 1371–97)[95] that Dr. Wilkes recommended Dr. Wilkes informed the Commission's staff that the procedure is a very simple, quick measurement, using an instrument that costs about $1,000. He also informed the staff that, while there is no meaningful statistical difference between the results of measurements under ASTM C 1371–97 and ASTM C 835–95, the ASTM C 835–95 procedure is considerably more complicated.

The Commission solicits comments on the accuracy, reliability, and consistency of each of these procedures in measuring emissivity; the costs of conducting the procedures; and whether the Commission should require the emissivity be measured by only one procedure to ensure that measurements of emissivity are accurate and reliable.

ii. Multi-sheet Products

Comments

The five comments that addressed the Rule's R-value testing requirements for traditional multi-sheet reflective foil insulations recommended requiring that R-values be determined according to the procedures specified in ASTM C 1224–93, either in addition to or instead of the two ASTM R-value test procedures specified in the Rule.[96] Dr. Wilkes, for ORNL, explained that ASTM C 1224–93 requires R-value testing according to ASTM C 236 or ASTM C 976, but specifies additional instrumentation for the tests and a method of calculating R-values based on the R-value test procedure measurements. He further recommended requiring that the tests be conducted at the mean test temperature and temperature differential specified in ASTM C 1224–93.[97]

Discussion

Traditional multi-sheet reflective insulations must be tested in an enclosed cavity system that includes air spaces. Testing such a system requires the construction of a test panel to contain the reflective insulation. R-values determined in these systems tests may vary depending on the size and configuration of the test panel, the materials used to construct the test panel, how mean temperature and temperature differential are measured, and the corrections for components such as framing members used in the test panel that are made in the calculation of R-values based on the test results. ASTM C 1224–93 includes requirements concerning the construction of the test panel, verification of the R-value measurement, and calculation of the R-value of the reflective insulation from the R-value measurement of the entire system. The Commission concludes that requiring standardization of these variables would be comparable to the Rule's requirements that test specimens of certain mass insulation products be prepared according to specified procedures and that R-values determined under ASTM C 177–85 (1993) or ASTM C 518–91 be reported in accordance with the requirements of ASTM C 1045–90, and would benefit consumers by making R-value claims for these products more accurate and reliable.

For these reasons, the Commission proposes requiring that R-values for reflective insulations be tested according to ASTM C 236–89 (1993) or ASTM C 976–90 in a test panel constructed according to ASTM C 1224–93, and under the test conditions specified in ASTM C 1224–93, and that the R-values be calculated according to the formula specified in ASTM C 1224–93, from the results of those R-value tests. The Commission solicits comments on this proposal.

b. Radiant Barrier Products

Comments

Dr. Wilkes, for ORNL, states that ASTM is developing a method for evaluating the thermal performance of low-emittance foils used in residential attics to reduce radiative transport across the attic air space. He recommended that the Commission incorporate this method into the Rule once ASTM adopts it.[98]

Discussion

ASTM has now adopted the standard referred to by Dr. Wilkes. The standard, ASTM C 1340–96,[99] incorporates a complicated calculation (and computer program) to determine the heat flux through an attic containing a radiant barrier. The results do not determine an R-value rating, but instead a performance value that might serve as a reasonable basis for energy savings claims (and related performance claims) made about radiant barrier insulations. The Commission solicits comments concerning the specific type of performance the standard measures, how the standard may be used to substantiate energy savings claims or other performance claims for radiant barrier insulations, the types of installations of radiant barrier insulations for which the standard may be used, the accuracy of the determinations made under the standard, and whether the Commission should require that energy savings or other performance claims for radiant

[83] The current version of this specification is ASTM C 390–79 (Reapproved 1995): Standard Criteria for Sampling and Acceptance of Preformed Thermal Insulation Lots ("ASTM C 390–79 (1995)").

[84] NAIMA, #24, at 4.

[85] The version of the military standard in effect at that time was: Sampling Procedures and Tables for Inspection by Attributes, MIL–STD–105D ("Military Standard 105").

[86] TN Tech/Yarbrough, #26, at 2.

[87] *Id.* at 3.

[88] 44 FR at 50229.

[89] For example, is the R-value of the insulation being produced consistently below the R-value claimed and previously determined, even if it is within the Rule's 10% tolerance?

[90] NAIMA, #24, at 3; Celotex, #25, at 4; PIMA, #30, at 6–7. See Part IV.D.2, supra, for a discussion regarding the use of emissivity in determining the R-value of a single-sheet reflective insulation product.

[91] Celotex, #25, at 4; PIMA, #30, at 6–7.

[92] The current version of this specification is ASTM E 408–71 (Reapproved 1996): Standard Test Methods for Total Normal Emittance of Surfaces Using Inspection Meter Techniques ("ASTM E 408–71 (1996)").

[93] The current version of this specification is ASTM C 835–95: Standard Test Method for Total Hemispherical Emittance of Surfaces from 20 to 1400° C ("ASTM C 835–95").

[94] ORNL/Wilkes, #29, at 5.

[95] Standard Test Method for Determination of Emittance of Materials Near Room Temperature Using Portable Emissometers ("ASTM C 1371–97").

[96] NAIMA, #24, at 3 (ASTM C 1224–93 was not developed when the Rule was issued; reference in the Rule to C 236 and C 976 is unnecessary because those standards are incorporated into C 1224); Celotex, #25, at 4; TN Tech, #26, at 3; ORNL/Wilkes, #29, at 6; PIMA, #30, at 6.

[97] ORNL/Wilkes, #29, at 6. ASTM C 1224–93 requires testing at a cavity mean test temperature of 75±4 °F (24±2 °C) with a temperature difference across the insulated cavity of 30±2 °F (16.5±1 °C). These temperature requirements are similar to those currently required by the Rule, but ASTM C 1224–93 specifies that the temperatures are those within the cavity (not including the cavity walls, or the air temperatures inside or outside the house) and incorporates tolerances to allow minor temperature variations.

[98] Id. at 5.

[99] Standard Practice for Estimation of Heat Gain or Loss through Ceilings Under Attics Containing Radiant Barriers by Use of Computer Program (ASTM C 1340–96").

barrier insulations be based on the standard.

6. Additional Laboratory Procedures for Testing Loose-fill Insulations

Comments

NAIMA recommended that the Commission require testing of loose-fill insulations "in full conformance with ASTM C 687–93."[100] NAIMA explained that C 687 has been significantly improved since the Rule became effective and that it now deals more specifically with test specimen preparation techniques, stabilization times, and measurement of the specimen density in the test area, resulting in a significant improvement in test precision.[101]

Discussion

ASTM C 687–95 (the current ASTM specification) is a standard practice, rather than a test procedure. It specifies procedures to be followed in testing a variety of loose-fill insulations to be used in other than enclosed applications. It is a detailed laboratory procedures guide that appears to be both comprehensive and complicated. In an attempt to minimize burdens imposed by the rule, the Commission limited its testing requirements to the minimums necessary to ensure the accuracy and reliability of test results. The Rule, therefore, specifies only the basic R-value test procedures and test specimen preparation procedures for certain products that are necessary to account for factors that can significantly affect R-value results (*e.g.*, aging, settling). In the original rulemaking proceeding, the Commission considered, but rejected as unnecessary, requiring adherence to more detailed standard practice or standard guide specifications, such as ASTM C 687. Without data substantiating the need to specify detailed laboratory operating procedures, for these insulations or others, the Commission is reluctant to consider imposing additional requirements. The Commission invites public comments, however, on whether and why there is a need to specify in more detail the laboratory procedures that should be followed in preparing test specimens and conducting R-value test procedures, for loose-fill insulations as well as other forms of insulations, and the benefits and burdens from such additional requirements.

[100] The current specification is: Standard Practice for Determination of Thermal Resistance of Loose-fill Building Insulation ("ASTM C 687–95").

[101] NAIMA, #24, at 2.

E. Other Disclosure Issues

1. Disclosures on Labels and Fact Sheets

a. "What You Should Know About R-values"

Comments

The Rule requires the manufacturer's fact sheet to include a specific statement entitled "What You Should Know About R-values" that explains the meaning of R-value and lists factors consumers should consider when purchasing insulation.[102] Regal suggested that this statement should be more specific in explaining how consumers can determine the amount of insulation they need. Regal commended the Insulation Fact Sheet published by the DOE for providing the best such information for consumers, but contended that it is not readily available in the marketplace. Regal also explained that the DOE ZIP Computer Program can be used to make a cost-benefit analysis for specific insulation products based on their cost per R-value and expected benefits.[103]

Corbond suggested that the current Rule has four negative effects that the Commission should address: (1) The Rule codifies the least effective measure of insulation performance, conductivity, as the sole measure widely used for comparing insulation value; (2) the Rule's emphasis on a product's R-value, as opposed to factors that affect installed performance, retards the development and acceptance of new products that perform better than fiberglass insulations because their performance appears the same when measured by R-value alone; (3) energy codes that require the installation of specific R-values favor products such as fiberglass insulations because the code requirements do not recognize the superior performance of insulations that are not subject to degradation of R-value in actual use due to factors such as venting, wind, convection, and moisture accumulation; and (4) the Rule perpetuates the use of an obsolete product, fiberglass insulation, which requires supplementation by other products and techniques (*e.g.*, foam caulk, house-wrap, sheet vapor barriers, foam insulation sheathing, and venting) to help it do the job it should be able to do on its own.[104]

CIMA and Corbond recommended that the Commission add language to the required statement to address these concerns. CIMA recommended the following statement:[105]

> R-value is important, but it is only one of many factors that affect the actual performance of insulation as installed. Other important factors to consider include air permeability, ability of the insulation to "tighten" the building against air infiltration, susceptibility to convective heat loss under cold conditions, and proper installation.

Corbond supported CIMA's suggestion, but recommended the use of an expanded version of the statement:

> R-value is important, but it is only one of the many factors that affect the actual performance of insulation as installed. Other important factors to consider include air permeability, ability of the insulation to "tighten" the building against air infiltration, susceptibility to convective heat loss under cold conditions, the potential for moisture permeation and accumulation and its deteriorating effects, and proper installation. Consult your insulation manufacturer for information regarding the true performance efficiency of the insulation under conditions appropriate to your climate.

Discussion

The original purpose of the required explanation in fact sheets was to minimize disclosure burdens on industry members who advertise energy or fuel savings. Instead of requiring them to provide lengthy disclosures in ads that claim energy savings, the ad simply could refer consumers to information in the manufacturer's fact sheet.[106] This approach would ensure that the explanatory information would be made available to consumers, while keeping advertisements less cluttered.

The Commission recognizes that, as the comments have indicated, more information could be provided in the explanation about how consumers can purchase the most cost-effective amount of insulation, and that there are additional factors that can affect R-value and performance in actual use. The Commission drafted the statement to balance consumers' need for information against keeping the statement simple enough to be useful and not detract from its basic purpose—making consumers aware that there are various factors they should consider when purchasing products to make their homes more energy efficient.

Because new information may be available about the factors that affect insulation performance, the Commission is willing to consider revising the explanation. The Commission is concerned, however, that many consumers would not understand the meaning or impact of a general cautionary statement that contains terms such as "air permeability," "susceptibility to convective heat loss under cold conditions," "the potential for moisture permeation and accumulation and its deteriorating effects." The Commission, therefore, solicits comments regarding how the explanation could be revised to provide the most useful information to assist consumers in making purchasing decisions. In particular, the Commission is interested in receiving information about the factors that should be included, why those factors are important, how the information could be explained in a meaningful and helpful manner, and how the information would assist consumers in making purchasing decisions. Among other things, commenters are requested to include data such as consumer perception studies that demonstrate whether suggested alternative disclosures would be meaningful to consumers.

[102] The required statement is:

READ THIS BEFORE YOU BUY

What You Should Know About R-values.

The chart shows the R-value of this insulation. R means resistance to heat flow. The higher the R-value, the greater the insulating power. Compare insulation R-values before you buy.

There are other factors to consider. The amount of insulation you need depends mainly on the climate you live in. Also, your fuel savings from insulation will depend upon the climate, the type and size of your house, the amount of insulation already in your house, and your fuel use patterns and family size. If you buy too much insulation, it will cost you more than what you'll save on fuel.

To get the marked R-value, it is essential that this insulation be installed properly.

[103] Regal, #16, at 2–3.

[104] Carbond, #41, at 1–2.

[105] CIMA, #19, 4–5.

[106] 44 FR at 50233–34.

b. Disclosures for Batt, Blanket, and Boardstock Insulations

Subsections 460.12(b)(1) and 460.12(B)(4) of the Rule require that manufacturers label all packages of batt/blanket insulations and boardstock insulations, respectively, with a chart showing the R-value, length, width, thickness, and square feet of insulation in the package, and 460.13(c)(1) requires that they include the chart on the manufacturer's fact sheets.

Comments Regarding Batt and Blanket Insulations

NAIMA recommended amending 460.12(b)(1) to apply to all batt and blanket insulation products by deleting the reference to "mineral fiber." NAIMA asserted that batts and blankets made of other materials, such as cotton, other cellulosic materials, and plastic fiber, have been introduced into the marketplace and that the Rule should specify labeling requirements for these new batt and blanket products.[107]

[107] NAIMA, #24, at 4.

Discussion Regarding Batt and Blanket Insulations

The Commission agrees that all types of batt and blanket insulations should be labeled with the same basic R-value and coverage area information, and that manufactures' fact sheets for these insulation products should include these disclosures. Like other basic coverage chart disclosure requirements in section 460.12(b), the Commission designed this coverage chart disclosure requirement to apply to the form of the product (batt or blanket), not the type (*e.g.*, mineral fiber). The Rule refers to "mineral fiber" batts and blankets because when the Rule was promulgated the batt and blanket insulation products being sold in the residential market were mineral fiber insulation products, primarily fiberglass. The Commission, therefore, proposes amending the Rule to clarify the requirement by deleting the phrase "mineral fiber" from section 460.12(b)(1), and solicits comments on this proposal.

Comments Regarding Disclosures to Assist Installers and Post-Installation Inspectors

ICAA recommended that the Commission require manufacturers of batt and blanket insulations to mark their products with the R-value in numerical terms only. ICAA contended that the method some manufacturers use of applying stripes on unfaced batt and blanket products to indicate the product's R-value is not understood by installers, code compliance officials, and others in the building inspection community.[108]

To assist building code officials and others who perform post-installation inspections in determining whether the correct R-value has been installed, ICAA also recommended that the Commission require manufacturers of unfaced batt and blanket insulation products to include the following statement on their product packages:

The unfaced batt should be installed so that the R-value identification is visible for inspection. ICAA reported that the 1955 version of the Model Energy Code ("CABO/MEC"), issued by the Council of American Building Officials ("CABO"), recommends that insulation be installed in a manner that will permit inspection of the manufacturer's R-value identification mark. ICAA asserted that that is important that contractors who install unfaced batts and blanket do so in a way that will make it possible to verify R-value quickly and easily.[109]

[108] ICAA/1, #17, at 3. ICAA provided an article from *Insulation Contractors Monthly* (Appendix A to the comment) describing guidelines, issued by NAIMA, for identifying, by means of stripes, the R-values of unfaced fiberglass insulation. *See also* NAIMA, #24m at 6–7.

Discussion Regarding Disclosures To Assist Installers and Post-Installation Inspectors

The R-value Rule does not require that individual pieces of insulation be marked, but instead requires point-of-sale disclosures to consumers prior to purchase on manufacturers' package labels and fact sheets, and on receipts or contracts professional installers and new home sellers must give to consumers. These prepurchase disclosures enable consumers to compare competing insulation products and make purchasing decisions. As ICAA's comment suggests, however, many manufacturers also mark individual insulation products such as faced or unfaced batts and blankets and boardstock products in some way to identify their R-value.

Under provisions of the Energy Policy and Conservation Act of 1992, DOE, the U.S. Department of Housing and Urban Development ("HUD"), and the U.S. Department of Agriculture ("USDA") have adopted the CABO/MEC for federal residential buildings or federally insured residential housing, and 33 states have adopted, at some level, some version of the CABO/MEC, or its equivalent. The CABO/MEC (including the 1995 version) requires for new residential construction (including new additions to existing residential buildings), that, among other things: (1) An R-value identification mark appear on each piece of insulation that is 12 inches wide or greater; and (2) individual pieces of insulation be installed in attics, floors, and wall cavities in a manner that permits post-installation inspection of the manufacturer's R-value identification mark. These requirements assist building inspectors in determining, after installation, whether the proper amount of insulation has been installed to meet the minimum thermal performance requirements of the CABO/MEC.

Marking individual batt, blanket, and boardstock insulation products with R-values would not provide additional prepurchase information to consumers (beyond the required disclosures on product packages, manufacturers' fact sheets, and in contracts or receipts). It would, however, facilitate R-value verification. But, the CABO/MEC already requires such marking and it has

[109] ICAA/1, #17, at 2. *See also* Rock Wool Mfg./1, #06, at 1 (fully supportin ICAA's submittal).

been adopted for new residential construction by other agencies of the federal government and the majority of states. Thus, it does not appear necessary for the Commission to amend the Rule to require that individual batts, blankets, or other insulation products be marked. The Commission solicits comments, however, regarding whether this additional disclosure requirement in the Rule would assist consumers in making purchasing decisions, whether (and why) CABO/MEC requirements are insufficient to provide this information to building inspectors, and whether (and to what extent) there currently are abuses in the sale and installation of home insulation that could be remedied by duplicating the CABO/MEC requirements in the R-value Rule, as well as the costs that such an amendment would impose on manufacturers.

Comments Regarding Disclosure of Thickness

Celotex and PIMA recommended requiring the disclosure, on the required coverage charts on manufacturer's package labels and fact sheets for boardstock insulations, of the "nominal thickness" of the boards in the package. The comments asserted that boardstock insulations are produced in nominal (or average) thicknesses and expressed concern that the current wording of the section implies exact thickness.[110]

Discussion Regarding Disclosure of Thickness

Subsections 460.12(b)(1) and 460.12(b)(4) of the Rule require the disclosure of "thickness" for batts, blankets, and boardstock products, without defining whether the thickness disclosed must be the actual, minimum, nominal, or average thickness.[111] Although variations in the manufacturing process may make it difficult for manufacturers to ensure that they produce products of exact thickness, it is essential that the thickness delivered to consumers be within a reasonable tolerance because the total R-value of a batt, blanket or boardstock insulation product is directly related to its thickness. In order to provide guidance to sellers, the Commission solicits comments on: (1) Whether it should propose amending the Rule to specify individual tolerances for the required thickness disclosure (as well as required disclosures of net weight and other dimensions of packaged insulation products) and procedures for determining whether products are within those tolerances; (2) what tolerances and procedures it should consider, for example, the procedures and tolerances adopted by the National Conference of Weights and Measures ("NCMW");[112] and (3) the benefits and burdens to consumers and sellers of specifying individual tolerances and procedures for these measurements.

c. Disclosures for Loose-fill Insulations

Section 460.12(b) of the rule requires that labels on loose-fill insulation packages disclose the minimum net weight of the insulation in the package and include a coverage chart disclosing minimum thickness (after settling), maximum net coverage area, minimum weight per square foot, and (for loose-fill cellulose insulation only) number of bags per 1,000 square feet for each of several specified total R-values for installation in open attics. The Rule currently specifies different total R-values for which the disclosures must be made for loose-fill cellulose insulations and other types of loose-fill insulations. The rule requires professional installers to calculate the number of square feet to be insulated and to install the number of bags indicated on the manufacturer's coverage chart that are necessary for the desired R-value (commonly referred to as "bag count").

Comments Regarding Required Disclosures

Four comments recommended that the Commission amend section 460.12(b) to require the same total R-value and other disclosures for all types of loose-fill insulations.[113]

Discussion Regarding Required Disclosures

The Commission agrees that it would be appropriate to require the same disclosures for all types of loose-fill insulations for application in attics or other open areas. The Commission originally prescribed separate disclosure requirements for loose-fill cellulose insulations and other types of loose-fill insulations (primarily material fiber loose-fill insulations) in response to requests that the Rule, where possible, apply labeling requirements consistent with GSA's purchasing specifications. 44 FR at 50230. GSA's specifications at that time required that labels for loose-fill cellulose insulation disclose the number of bags required to cover 1,000 square feet, but did not require this disclosure on labels for loose-fill mineral fiber insulation, and it required that the mandatory disclosures be made at different total R-values for the two types of loose-fill insulations.[114] After the Commission promulgated the Rule, GSA eliminated its own specifications and now uses ASTM material specifications for determining which insulation products may be purchased by the federal government (or in connection with programs operated by the federal government).[115] The Commission believes that there no longer is any justification for requiring different disclosures for different types of loose-fill insulations for application in attics or other open areas, and proposes to apply a single set of disclosures requirements for all types. The Commission solicits comments regarding this proposal, including the total R-values for which it would be most appropriate to require the disclosures, and whether the same disclosures should apply to both dry-applied loose-fill insulations and stabilized insulations.

[110] Celotex, #25, at 5; PIMA, #30, at 7. The Commission understands that, by "nominal thickness," the comments mean the "average thickness" of each board.

[111] The Commission, on the other hand, required the disclosure of "minimum thickness" for loose-fill insulations in subsections 460.12(b)(2)–(3) to address the issue of settling, which is discussed *supra*.

[112] *See* "Checking the Net Contents of Packaged Goods," NBS/NIST Handbook 133, Third Edition (including Supplements 1, 2, and 3) (Sept. 1998), and "Checking the Net Contents of Packaged Goods," NIST Handbook 133, Third Edition, Supplement 4 (Oct. 1994). The NCWM procedures provide mean and maximum allowable variations for the net contents of packaged items, including weight, dimensions, and other measurements.

[113] Hamilton, #22, at 2 (recommending disclosures at R–13, R–19, R–30, R–38, and R–42, and recommending that the combined subsection require that mineral fiber loose-fill coverage charts list number of bags per 1000 square feet); ICAA/1, #17, at 9 (R–11, R–19, R–30, and R–38); NAIMA, #24, at 5 (recommending disclosures at R–13, R–19, R–30, R–38—these are the common R-values typically installed to satisfy the roof/ceiling requirements of the CABO/MEC and many state energy codes; also recommending disclosures at all other R-values listed on the chart); GreenStone/Smith, #32, at 3 (recommending disclosures at R–11, R–13, R–19, R–22, R–24, R–30, R–32, R–38, and R–40). *See also* Rock Wool Mfg./1, #06 (fully supporting ICAA's submittal).

[114] Consistent with the GSA specification, subsection 460.12(b)(2) requires that the disclosures be made at R-values of 11, 19, and 22 and all loose-fill insulation except cellulose, and subsection 460.12(b)(3) requires the disclosures at R-values of 13, 19, 24, 32, and 40 for loose-file cellulose insulation.

[115] In its compliance guidelines published in 1980, the Commission's staff explained that GSA had eliminated its own specifications and recommended that manufacturers of mineral fiber and other loose-file insulations other than cellulose include a column disclosing number of bags per 1,000 square feet in their coverage charts. Staff compliance guidelines, 45 FR 68920, at 68923–24 (1980). The Commission believes that virtually all manufacturers of loose-file insulation currently includes this information.

Comments Regarding Disclosure of "Minimum Net Weight"

One comment recommended requiring the disclosure of "net weight" on loose-fill insulation packages, instead of "minimum net weight."[116]

Discussion Regarding Disclosure of "Minimum Net Weight"

Subsections 460.12(b)(2) and 460.12(b)(3) require that "minimum net weight" be disclosed on package labels of all types of loose-fill insulations, but do not require all the disclosure be made in those exact words. Some state weights and measures regulations, on the other hand, require the disclosure of "net weight" or "nominal net weight," using specific words. To ensure that manufacturers and other sellers can conform to the requirements of both the Rule and the states' regulations, the Commission's staff had advised home insulation manufacturers that the Rule does not require that the word "minimum" appear in the disclosure, and that they can use the terms required by the state regulations. The Commission affirms the staff's advice.

Further, the Commission intended the term "minimum net weight" in the Rule to mean that the package contains at least the weight claimed, because the accuracy of the information in the coverage chart depends on the package containing that amount of insulation material. Terms such as "net weight" or "nominal net weight" in state weights and measures regulations, on the other hand, have been interpreted to mean average weight per package, within a specific tolerance, over a given lot of packages or production runs. As with the thickness of batt, blanket, and boardstock insulations, discussed in Part IV.E.1.b, above variations in the manufacturing process may make it difficult for manufacturers to ensure that they produce loose-fill insulation packages filled with an exact weight of material; but it is essential that sufficient loose-fill insulation material be installed for consumers to received the total R-value they are purchasing. If an insufficient amount of material is contained in the packages used to install insulation in a particular consumer's home, even if the average weight is correct over the sampling lot considered, that consumer will receive less insulation R-value than promised.

The Commission is committed to ensuring that consumers receive what they are promised, while also minimizing unnecessary burdens and costs on sellers. The Commission, therefore, solicits comments on: (1) Whether it should propose amending the Rule to specify individual tolerances for the required net weight disclosure for loose-fill insulation and procedures for determining whether packages are within those tolerances; (2) what tolerances and procedures it should consider, for example, the tolerances and procedures adopted by the NCWN;[117] and (3) the benefits and burdens to consumers and sellers of specifying individual tolerances and procedures for the measurement of net weight.

Comments Regarding Disclosure of "Minimum Thickness"

Seven comments discussed issues relating to the requirement in subsections 460.12(b)(2)–(3) that labels include a coverage chart disclosing, among other information, the "minimum thickness" [118] of loose-fill insulations for application in attics and other open areas.[119] ICAA proposed that the Commission amend the Rule to require that manufacturers of loose-fill cellulose insulations disclose "minimum initially installed thickness" in addition to "minimum thickness." ICAA contended that this additional information would assist installers by preventing them from mistakenly initially installing loose fill cellulose insulation only to the "minimum thickness" currently shown on the coverage chart (that is, the minimum thickness required to obtain the claimed total R-value after the product has settled). ICAA believes that is a long-standing industry practice that violates the Rule. ICAA asserted that CIMA agrees that this additional information would result in a marked improvement in consumer protection. ICAA contended that manufacturers' failure to provide this information on coverage charts effectively results in the installation of loose-fill insulation at total R-values below what is claimed.[116]

NAIMA supported ICAA's proposal and recommended requiring disclosures on coverage charts of the "minimum initial installed thickness," in addition to "minimum settled thickness," for products that settle enough to reduce the total R-value by more than five percent. NAIMA reported that ICAA has requested that loose-fill cellulose insulation manufacturers include "initial installed thickness" disclosures on coverage charts, that several manufacturers currently put this information on their coverage charts, and that ASTM has developed a test method to determine initial installed thickness to support ICAA's initiative.[117] Mr. Smith, for GreenStone, similarly recommended requiring the disclosure of both "minimum settled thickness' and "approximate initial installed thickness" on coverage charts of loose-fill insulations.[118]

Two comments specifically opposed requiring the disclosure of initial installed thickness. Hamilton contended that it is very difficult to arrive at a single thickness that will apply to all installation blowing equipment and installers' application techniques, and suggested that manufacturers should place more emphasis on training and instructions for professional installers instead of emphasizing an initially installed thickness.[119] Clayville commented that the issue of disclosing an initial installed thickness has been raised primarily by ICAA, whose members installed predominantly mineral fiber insulation, and that the proposal appears calculated to take advantage of the lack of a recognized test procedure to determine the settlement of (dry-applied) loose-fill mineral fiber insulations after installation. Clayville contended that requiring the addition of an initial installed thickness column would create even more confusion in the industry and would not benefit consumers.[120]

Tascon stated that the thickness of loose-fill insulation does not accurately determine its total R-value because there are different types of installation equipment and application techniques, including some that deliberately "fluff" (dry-applied) loose-fill insulation products; that is, that increase a product's thickness (by applying it with more air at a lower density) at the expense of its density and total R-value. Tascon recommended that the Commission continue to emphasize bag

[116] GreenStone/Smith, #32, at 3.

[117] See note 112, *supra*.

[118] The term "minimum thickness" in subsections 460.12(b)(2)–(3) refers to the thickness of installed loose-fill insulation after settling, not to the thickness of a packaged product. The discussion in the text of tolerances and procedures for measuring the thickness of packaged products, therefore, does not apply to the discussion of "minimum thickness" in subsections 460.12(b)(2)–(3).

[119] ICAA/1, #17, at 3–4; Hamilton, #22, at 2–3; NAIMA, #24, at 5: GreeneStone/Smith, #32, at 2; Clayville, #34, at 2–3; Tascon, #35, at 2; Rock Wool Mfg./2, #39, at 1–3.

[116] ICAA/1, #17, at 3–4. *See also* Rock Wool Mfg./1, #, #06 (fully supporting ICAA's submittal.)

[117] NAIMA, #24, at 5. NAIMA stated that the ASTM C 16 committee has developed a test method to determine initial installed thickness, and that ASTM C 16.23 has developed a draft standard guide for development of coverage charts for loose-fill insulation that includes the initial installed thickness language NAIMA recommended

[118] GreenStone/Smith #32, at 2–3.

[119] Hamilton, #22, at 2–3.

[120] Clayville, #34, at 2–3.

account to ensure that installers apply the necessary amount of loose-fill insulation in attics to attain the desired total R-value.[121]

As an alternative to disclosing minimum installed thickness for their products, several manufacturers now guarantee that the installer will attain the claimed total R-value (and the weight per square foot and density necessary for that R-value) by initially applying at least a specific "guaranteed thickness." ICAA proposed requiring manufacturers who offer this guarantee to add a "Guaranteed Thickness" column to the required coverage charts.[122] Rock Wool Mfg. supported ICAA's proposal as one method of assuring that consumers receive the total R-value claimed for (dry-applied) loose-fill insulations in attics and other open areas.[123] ICAA also proposed adding the following language to section 460.8 to spell out the obligations of manufacturers and installers regarding how the Rule's tolerance provision applies where manufacturers guarantee that the claimed R-value will be obtained when the installer applies at least the "guaranteed thickness":

If you are a manufacturer of loose-fill insulation and you guarantee R-value based upon thickness, your "guaranteed thickness" must be an installed thickness that will result in at least the minimum weight per square foot indicated on your label.

If you are an installer, you must install at least the minimum thickness and the minimum weight per square foot as indicated on the manufacturer's label. If you install a "Guaranteed Inches equal R-value" loose-fill insulation product, you must install at least the minimum thickness for the corresponding R-value as indicated of the manufacturer's label.

Disussion Regarding Disclosure of "Minimum Thickness"

ICAA has long taken the position that installers have difficulty using bag count (or weight of insulation material installed) as the measure of their compliance with the Rule (and of whether they have installed the required amount of insulation material). ICAA contends that the reason for this problem is that the person applying loose-fill insulation through a blowing hose in the attic has no way of knowing at any given point how many bags have been loaded into the hopper of the blowing machine located in the truck outside. Requiring manufacturers to add a disclosure of "initial installed thickness" to coverage charts would give installers an additional tool to help them when they are applying dry-applied loose-fill insulation products. This additional information would not, however, allow installers to comply with the Rule simply by installing the claimed initial installed thickness, without having to count the number of bags they have installed (or otherwise ensure they have applied the required amount of insulation material) that is necessary, along with thickness, to achieve the claimed total R-value. Because dry-applied loose-fill insulation products normally settle after installation, the Rule requires: (1) That each manufacturer determine the R-value of its home insulation product at settled density and construct coverage charts showing the minimum settled thickness, minimum weight per square foot, and coverage area per bag for various total R-values; and (2) that installers measure the area to be covered and install the number of bags (and weight of insulation material) indicated on the insulation product's coverage chart for the total R-value desired. These requirements are necessary because the claimed total R-value for a specific dry-applied loose-fill insulation can be attained only when the requisite amount of insulation material in both thickness and density has been installed.

Further, it does not appear that recognized procedures are currently available that could be used to determine, on a uniform basis, a required initial thickness for all types of dry-applied loose-fill insulations. The settled density test procedure in ASTM C 739–91, which is required for determining the R-value test specimen density for dry-applied cellulose insulation, includes an initial blown step that could serve as the basis for determining an initial installed thickness for cellulose; but ASTM has not adopted a similar test procedure for dry-applied loose-fill mineral fiber insulations. Without reliable procedures to determine initial installed thickness, claims on coverage charts of competing insulations might not be consistent, and could be misleading. Further, because the initial thickness applied may vary with the blowing equipment and application technique used, even for cellulose (where a standardized test procedure is available to use in determining an initial installed thickness), an installer who applied the initial thickness determined under the required settled density test procedure would still have to ensure that he had applied the necessary amount of insulation material.

Requiring (or allowing) manufacturers who claim a "guaranteed thickness" for their dry-applied loose-fill insulations to include a "guaranteed thickness" column in their coverage charts on labels and fact sheets required by the Rule, as suggested by ICAA and Rock Wool Mfg., raises similar, but even more complicated, issues. Adding this disclosure might provide useful information. Without a uniform, verifiable means of determining an initial thickness that will achieve the claimed total R-value in all applications,[124] however, the Commission does not believe it would be appropriate to require, or allow, manufacturers to add this information to the required manufacturers' coverage charts, or to allow installers to rely on the "guaranteed thickness" alone (and not also on bag count) in determining the amount of insulation to apply to achieve the claimed total R-value.

For these reasons, the Commission does not propose amending the Rule to require the disclosure of an "initial installed thickness" or of a manufacturer's voluntary "guaranteed thickness" at this time. The Commission, however, solicits comments regarding how manufacturers of all types of dry-applied loose-fill insulations and stabilized insulations could determine an initial installed thickness, or a guaranteed thickness, for each total R-value claimed, whether the Commission should require the addition of this information to the required coverage chart for either dry-applied loose-fill insulations or stabilized insulations, and under what circumstances installing the "initial installed thickness" or "guaranteed thickness" of insulation could be a sufficient basis alone for installers to ensure that they have applied the requisite amount of insulation material.

Comments Regarding the Use of Tabs or Seals on Packages

NAIMA recommended requiring manufacturers to attach to or print on each bag of loose-fill insulation a single, unique tab or seal identifying the product, and that installers clip the tabs from each bag used and attach them to the customer's receipt.[125] Tascon asserted that requiring installers to give the consumer the tabs or labels from each bag installed would be an effective way to prevent cheating.[126] Rock Wool Mfg. and ICAA opposed requiring the use of bag tabs.[127]

Discussion Regarding the Use of Tabs or Seals on Packages

The Commission does not believe that sufficient evidence has been presented that requiring the use of bag tabs would add materially to the Rule's existing requirements that installers install the appropriate amount the insulation and disclose, in receipt to customers, the number of bags of loose-fill insulation installed. The Commission, therefore, does not propose amending the Rule to require the use of tabs.

Comments Regarding Advising Consumers How To Verify R-value Installed

ICAA recommended that the Commission amend the Rule to include a statement in fact sheets for loose-fill insulations advising consumers that ICAA can provide them with information about how they can verify the total R-value of loose-fill insulations installed in attics of new homes or added to existing attics.[128]

Discussion Regarding Advising Consumers How To Verify R-value Installed

To the extent that the CABO/MEC already includes requirements and procedures for building inspectors to determine whether the required amount of insulation has been installed in new construction, it may not be necessary or appropriate for the Commission to require additional disclosures in manufacturers' fact sheets or elsewhere. For this reason, the Commission does not propose amending the Rule to require this additional disclosure, although this information may be provided voluntarily in other promotional materials. The Commission solicits comments, however, regarding whether (and in what manner) the proposed disclosure would provide benefits beyond the CABO/MEC requirements and procedures relating to building inspections, and whether (and to what extent) there currently are abuses in the sale and installation of home insulation that could be remedied by requiring this additional disclosure, and the costs of manufacturers that would be imposed by a requirement that they include this disclosure on labels or in fact sheets.

d. Disclosures for Urea-based Foam Insulations

Comments

In the original rulemaking proceeding, the Commission determined that the inherent qualities of urea-formaldehyde ("UF") foam insulations, which were being installed at that time in wall cavities only by professional installers, would cause the products to lose volume, or "shrink." This shrinkage caused the insulation to pull away from the wall cavity in all three directions after installation, leaving the wall partially uninsulated and resulting in a lower than claimed R-value. Although both the rate and extent of shrinkage depended somewhat on the the quality of the chemicals and the product's on-site formulation and application, even if a UF insulation product was installed perfectly, it would shrink and its R-value would decrease. To address this problem, the Rule requires that manufacturers' disclosure the product's R-value in a manner that accounts for the product's shrinkage, or include a specific disclosure about the effect of shrinkage on R-value. 44 FR at 50220, 50231.

Celotex and PIMA recommended that the Commission revise the statement to refer to "urea-based form insulation," because the reference to "foam insulation" implies that all foam-type insulation products (including other types of cellular plastics insulations) shrink after installation, resulting in lower R-values than claimed.[129] PIMA stated that UF insulation is no longer sold, and that this disclosure is unnecessary and may cause consumer confusion about other foam-type insulations.[130]

Discussion

The Commission intended to limit this disclosure to UF insulations. Because it appears that UF foam insulation no longer is being sold, however, instead of clarifying this reference, the Commission proposes amending the Rule to delete this obsolete requirement. The Commission solicits commends on this proposal, especially regarding whether any UF insulation products are still being sold, and whether there are other insulation products currently on the market that may be subject to shrinkage that affects R-value.

2. Disclosures in Advertising and Other Promotional Materials

1. Disclosures Required

Background

Sections 460.18 and 460.19 of the Rule specify disclosure requirements for advertisements and other promotional materials (including those on the Internet) for home insulation products aimed at consumers that are distributed by manufactures, professional installers, or retailers. They require disclosures only if the advertisement or other promotional material includes certain claims about a specific insulation product. The disclosure requirements do not apply to advertisements on television. In general, any advertisement or other promotional material that includes an R-value, thickness, or price must disclose the type of insulation, the product's R-value and the thickness needed to get that R-value, and the following R-value explanatory statement: "The higher the R-value, the greater the insulating power. Ask your seller for the fact sheet on R-values.[131]

Advertisements and other promotional materials that state a price also must include the coverage area at the stated thickness. Those that state the price per square foot need not disclose the coverage area. If the advertisement or other promotional material compares one type of insulation to another, the comparison must be based on the same coverage area and the R-value of each at a specific thickness must be disclosed. It it includes the price of each insulation, it must include the coverage area for the price and thickness claimed. If it claims only price per square foot, it need not disclose coverage area.

Advertisements, labels, and other promotional materials that contain an energy savings claim for an insulation product (*e.g.*, "save 25% on heating bills") must include the following energy savings explanatory statement: "Savings vary. Find out why in the seller's fact sheet on R-values. Higher R-values mean greater insulating power." When both the energy savings explanatory statement and the R-value explanatory statement are triggered by the claims, the seller need only include the energy savings explanatory statement.

Advertisements, labels and other promotional materials that contain a

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[121] Tascon, #35, at 2.

[122] ICAA/1, #17, at 9.

[123] Rock Wool Mfg./2, #39, at 1–3. *See also* Rock Wool Manufacturing's comments concerning bag tabs, below.

[124] From a practical standpoint, providing a "guaranteed thickness" may make many insulation products less competitive. Because of variabilities in blowing equipment and application techniques among installers, manufacturers making such a guarantee may have to claim on their coverage chart that a considerably greater thickness (and more insulation material) than normal is necessary to guarantee that if the installer applies the "guaranteed thickness," the claimed total R-value will be achieved under all possible circumstances.

[125] NAIMA, #24, at 5–7.

[126] Tascon, #35, at 2.

[127] ICAA/2, #40, at 1; Rock Wool Mfg./2, t39, at 1–3 (any method of R-value verification dependent on an installer correctly measuring the dimensions of a house and calculating the attic's square footage to be insulated with loose-fill insulation is inherently flawed because even the best installers make errors in measuring and arithmetic, suggested alternatives it considered superior for assuring the accuracy of R-value representations).

[128] ICAA/1, #17, at 9.

[129] Celotex, #25, at 5; PIMA, t30, at 7–8.

[130] PIMA, #30, AT 8 n.4.

[131] All labels and fact sheets must include a version of the R-value explanatory statement, specifically: "R means resistance to heat flow. The higher the R-value, the greater the insulating power."

claim that a combination of products including insulation can cut fuel bills or fuel use must also list the products used and state how much of the savings comes from each product, in addition to giving the energy savings explanatory statement. If the advertiser cannot give exact or approximate figures, it must give a ranking of the products.

Discussion

No comment addressed the required disclosures for advertisements and other promotional materials or suggested amending the rule to eliminate any of them. The Commission, however, wants to ensure that the rule does not impose unnecessary burdens on advertising and other promotional materials. When the Commission promulgated the Rule, it considered but rejected a proposal that it limit the required disclosure of the R-value explanatory statement to a specific period of time following the rule's effective date. Because insulation is a very infrequently purchased commodity, the Commission was uncertain that the R-value concept would become widely and permanently understood in a short period of time. The Commission stated it would reexamine in the future the need to continue requiring the R-value explanatory statement in advertisements. 44 FR at 50233. The Commission, therefore, solicits comments on whether it should propose amending the rule to eliminate the requirement that advertisements and other promotional materials that include the triggering claims specified in the Rule include the R-value explanatory statement, or the portion of the savings explanatory statement that explains the meaning of R-value.

In raising this issue for comment, the Commission is not considering eliminating the other disclosures for advertisements and other promotional materials that include an R-value, thickness, price, comparison claim, or energy savings claim. Those required disclosures are necessary to prevent the triggering claims from being unfair or deceptive. Further, the Commission is not considering eliminating the required disclosure of the meaning of R-value from labels or manufacturers' fact sheets. The disclosure on labels and fact sheets is necessary to ensure that consumers have the information they need to understand the R-value information contained on labels, fact sheets, and in advertising and other promotional materials; but the definition on labels and fact sheets that are available to consumers at the point of purchase may make the additional disclosure in advertisements and other promotional materials unnecessary.

Comments should address specifically the current need for the definition of R-value in advertisements and other promotional materials, the current state of consumers' understanding of the term R-value, and whether the availability of the meaning of R-value on labels and manufacturers' fact sheets is sufficient to provide this necessary information to consumers prior to purchase. Commenters are requested to include data such as consumer perception studies that are relevant to these questions.

b. Advertising on Radio

Comments

NAIMA recommended that the Commission exclude radio ads from the Rule's disclosure requirements for advertisements. NAIMA contended that radio advertisements are similar to television advertisements, which the Rule excludes from any disclosure requirements.[132]

Discussion

The Rule originally applied the advertising disclosure requirements, which require disclosures only in advertisements that contain specific triggering claims, to television advertisements as well as all other types of advertising and promotional materials. Unlike other types of advertising, which simply must include the required disclosures "clearly and conspicuously," the Rule as originally promulgated included very specific requirements regarding the manner in which required disclosures would have to be made in television advertising.[133] Four insulation manufacturers appealed the disclosure requirements for television advertising, asserting that the requirements, particularly in light of the manner in which the disclosures would have to be made, were particularly burdensome for short television ads. The Commission settled the appeal by agreeing not to impose disclosure requirements on television ads without conducting further rulemaking proceedings, and rescinded the requirements without conducting further proceedings.[134] No evidence was presented in the original rulemaking or in the appeal concerning any similar burdens that the disclosure requirements would impose on radio ads. Accordingly, the Commission does not propose revising the Rule to exempt radio ads from making these important disclosures, but will accept comments on how the costs of making the required disclosures in radio ads compare to the benefits the disclosures provide to consumers.

3. Disclosures by Installers or New Home Sellers

a. Fact Sheets

Comments

Celotex and PIMA recommended that the Commission require that professional installers (under section 460.15) give a copy of the manufacturer's fact sheet to consumers upon completion of the installation, and that new home sellers (under section 460.16) give a copy of the fact sheet to new home buyers.[135] Celotex and PIMA asserted that these requirements would ensure the dissemination of fact sheets to consumers and promote the purpose of the Rule—that consumers receive accurate and meaningful information.

Discussion

The Commission required fact sheets to provide pre-purchase information to consumers who otherwise probably would not see the information on package labels. Moreover, to minimize the burdens that the Rule imposes on industry members, the Commission required only that installers show the fact sheets to consumers prior to purchase and give them specific disclosures in contracts or receipts about the insulation installed. Similarly, it required new home sellers to disclose in the sales contract, prior to purchase, specific information about the insulation installed (or to be installed) in the new home. The Commission has received no evidence that would justify requiring that installers or new home sellers provide fact sheets, after the purchase, that disclosure R-value information other than for the insulation the consumer has purchased. Accordingly, the Commission does not propose amending the Rule to require that the additional information suggested by the comments be provided.

[132] NAIMA, #24, at 7.

[133] 44 FR at 5045 Appendix B (1979). For example, TV ads containing triggering claims would have been required to make the disclosures simultaneously in both the audio and video portions of the ad, the video portion of the disclosure would have to have appeared in letters of sufficient size to be easily seen and read on television sets of all sizes, and the disclosures would have been required each time a triggering claim was made. The Rule also would have restricted the video background and other sounds during the audio disclosures. The Rule contains no similar restrictions concerning the manner in which disclosures must be made in radio advertising, as long as they are made clearly and conspicuously.

[134] Final rule, 51 FR 39650 (1986).

[135] Celotex, #25, at 2; PIMA, #30, at 3.

b. Attic Cards and Certificates

Comments

ICAA proposed that the Commission require new home sellers to make disclosures to purchasers in attic cards signed by the new home seller, builder, and/or building inspector. These attic cards would be used only to make disclosures concerning the insulation installed in the attic of the new home, would include the information required on the package label of the insulation, and would be posted adjacent to the attic access or scuttle. ICAA contended that attic cards would provide consumers with pertinent information at no significant cost to industry members, would reduce confusion for building inspectors and homeowners, and would be a constructive tool to help ensure that installers meet specifications. ICAA stated that attic cards have been required by the State of Florida since 1991, by the Bonneville Power Administration, by Georgia Power Company's energy efficiency program, and by several other jurisdictions throughout the country. ICAA also stated that the 1995 CABO/MEC recommends that the installer provide a signed, dated, and posted certification for insulation installed in each element of the building envelope, listing the type of insulation, the manufacturer, and the R-value.[136] NAIMA similarly recommended that the Commission amend the Rule to add language, similar to that in the 1995 CABO/MEC, to require professional installers to provide certification of the insulation installed and to post the certification in a conspicuous place on the job site.[137]

Discussion

Although the Commission's staff in the original rulemaking recommended that the Commission require the use of attic cards to make disclosures to consumers,[138] the Commission determined that such a requirement was not necessary in light of the Rule's requirement that new home sellers and installers give consumers written disclosures in contracts or written receipts. Attic cards are usually posted in the attic near the access opening, for later reference by building code inspectors and future owners of the home (as well as the original purchaser), or by the homeowner who has insulation added to an existing home. The Rule, on the other hand, already requires installers and new home sellers to provide consumers with the same information in contracts that would be disclosed on an attic card or in a certification. If the seller or consumer prefers, the contract or receipt can be posted in the form on an attic card after the seller has given the written disclosures to the consumer.

Further, for insulations installed in attics of new residential construction, the CABO/MEC requires that installers provide a signed and dated certification for the insulation installed in each part of the home, listing the type of insulation, the insulation manufacturer, and the total R-value, and post the certification in a conspicuous place on the job site.[139] These requirements have been adopted for use in federal government programs covering new residential construction and by 33 states, at some level.[140]

For these reasons, the Commission does not propose amending the Rule to require additional certification or the use of attic cards. The Commission solicits comments, however, regarding whether (and in what manner, and to what extent) amending the Rule to require that disclosures be made in certifications or attic cards would provide benefits beyond those currently required by the Rule or the CABO/MEC for consumers or building inspectors, and whether (and to what extent) there currently are abuses in the sale and installation of home insulation that could be remedied by including these additional disclosure requirements in the Rule, and the costs to installers and new home sellers of providing the disclosures in certifications and attic cards.

c. Attic Rulers

Comments

ICAA recommended that the Commission require that new home sellers and professional installers apply attic rulers (or thickness markers) for every 500 square feet of attic space, with a minimum of three rulers, when loose-fill insulation is installed in the attics of new or existing homes. ICAA asserted that, like attic cards, attic rulers have been required by the State of Florida since 1991, and are required under the Georgia Power Company's program to encourage energy efficient homes. ICAA contended that the rulers would assist inspectors and consumers in evaluating settled thickness levels and determining whether consumers received the R-value of loose-fill insulation claimed. According to ICAA, the 1995 CABO/MEC proposes the use of attic rulers, installed at least one for every 300 square feet in the attic, and requires that they be affixed to the attic trusses or joists, be marked with minimum initial thickness and minimum settled thickness, and face the attic access.[141] NAIMA similarly recommended that the Commission amend the Rule to require that blown-in loose-fill and spray-applied attic insulations be installed in a manner that would permit verification that the necessary thickness of insulation was installed; specifically, by requiring that thickness markers or attic rulers labeled in inches be installed at least one for every 300 square feet. NAIMA stated that this requirement is similar to requirements in the 1995 CABO/MEC and to requirements of some states.[142]

Discussion

It is essential that both the required density (and weight per square foot) and thickness of loose-fill insulations and stabilized insulations be installed to attain a specific total R-value. The use of attic rulers could help installers apply a sufficient thickness to achieve a specific total R-value, and to apply it in a level and consistent manner (although they still would have to ensure that they apply the required number of bags and weight of insulation material). The use of attic rulers could be particularly beneficial if manufacturers included a verified initial installed thickness disclosure or a guaranteed thickness disclosure on the bag label coverage chart.[143] Attic rulers also could give consumers a ready means of determining, both initially and over time, whether the required minimum thickness has been installed.

The CABO/MEC already requires, for new residential construction, that installers apply blown loose-fill or sprayed (e.g., stabilized) insulation in atticks with the use of thickness markers labeled in inches, attached to the trusses or joists at least one for every 300 square feet (28 m^2), marked with the minimum initial installed thickness and minimum settled thickness, and installed facing the attic access. Because the CABO/MEC requires the use of attic rulers in new construction, the Commission does not propose amending the Rule to require their use. The Commission solicts comments, however, regarding whether (and in what manner, and to what

[136] ICAA/1, #17, at 7–10. *See also* Rock Wool Mfg./1, #06 (fully supporting ICAA's submittal).

[137] NAIMA, #24, at 6–7.

[138] Staff Report at 237–38.

[139] For blown or sprayed insulation, the installer must also provide the initial installed thickness, the settled thickness, the coverage area, and the number of bags installed.

[140] *See* Part III.E.1.b, *supra*.

[141] ICAA/1, #17, at 4–5, 10. *See also* Rock Wool Mfg./1, #06 (fully supporting ICAA's submittal).

[142] NAIMA, #, at 6–7.

[143] *See* Part III.E.1.c, *supra*.

extent) amending the Rule to require the use of thickness markers would provide benefits beyond those currently required by the CABO/MEC for consumers or building inspectors, whether (and to what extent) there currently are abuses in the sale and installation of home insulation that could be remedied by amending the Rule to require the use of thickness markers, and the costs to installers and new home sellers of installing and using thickness markers.

4. Disclosures by Retailers

Background

Section 460.14 of the Rule requires retailers who sell insulation to do-it-yourself consumers to make the manufacturers' fact sheets for the home insulation they sell available to consumers prior to purchase. The retailer can decide how to do so, as long as consumers are likely to notice the fact sheets. For example, the retailer can put them in displays and let consumers take copies, or can keep them in a binder and have a sign telling consumers where the fact sheets are. The purpose of this requirement is to ensure that consumers have the information they need about home insulation prior to purchase to enable them to make cost-based purchasing decisions. When the Commission promulgated the Rule, bulky insulation packages were not normally available on the retailer's sales floor, so the consumer would not see the disclosures on labels prior to purchase. In addition, the fact sheets contain additional information about energy savings and other factors the consumer should consider when purchasing home insulation. See Part IV.E.1.a, above.

Discussion

No comment addressed the requirement that retailers make the manufacturers' fact sheets available to consumers. In the years since the Commission promulgated the Rule, however, the nature of retail sales of home insulation to do-it-yourself consumers has changed. Today, retailers often sell home insulation directly from warehouse-type sales floors where consumers select the packages of insulation they want. Therefore, the R-value and related information on the packages is available to consumers prior to purchase. In response to questions from retailers, the Commission's staff has advised that retailers need not make separate fact sheets available at the point of purchase if all the required fact sheet disclosures are made on the insulation package and if the insulation packages are available on the sales floor for the consumer to inspect prior to purchase. The Commission affirms the staff's advice, proposes amending the Rule to codify this option, and solicits comments on the proposal.

V. Questions for Comment

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of the proposed amendments to the R-value Rule, or about other issues and questions the Commission raises in the discussion in Part IV, above. The Commission requests that factual data, including consumer perception or survey data, upon which the comments are based be submitted with the comments.

To assist commenters, the Commission provides the following list of proposed amendments. The proposed amendments would: (1) Clarify specific provisions of the Rule (Parts IV.D.3 and IV.E.1.b); (2) require disclosure of the same R-value information for competing types of loose-fill insulation products (Part IV.E.1.c); (3) specify the use of current ASTM or other recognized procedures for preparing R-value test specimens of spray-applied insulations (Part IV.C.2.b) and for conducting R-value tests of multi-sheet reflective insulation products (Part IV.D.5.a.ii); (4) delete specific disclosure requirements for urea formaldehyde insulation, which no longer is sold (Part IV.E.1.d); and (5) excuse retailers from making available to consumers separate manufacturers' fact sheets under certain circumstances (Part IV.E.4).

The Commission also requests comments on whether the Commission should propose amendments to: (1) Cover additional products (*i.e.*, residential pipe and duct insulations, and insulation sold for use in commercial buildings) (Part IV.A); (2) require the disclosure of in-use performance values, as opposed to laboratory tests under static, uniform conditions, or of the performance of building systems (Part IV.B); (3) adopt additional test specimen preparation requirements to account for various factors that affect R-values (Part IV.C); (4) adopt additional or updated testing requirements (Part IV.D); and (5) revise the disclosure requirements for manufacturers' labels and fact sheets, advertisements and other promotional materials, and for professional installers, new home sellers, and retailers (Part IV.E).

In addition to the specific questions regarding each of these issues raised in the cited portions of this notice, the Commission solicits comments on the questions below. The questions are designed to assist the public and should not be construed as a limitation on the issues on which public comments may be submitted.

To maximize the benefits and minimize the costs for consumers and sellers (including specifically small businesses), for each amendment proposed by the Commission, and by comments filed in response to this notice, the Commission in general solicits views and data on the following questions:

(1) What benefits would the proposed requirements confer, and on whom?

(2) What paperwork burdens would the proposed requirements impose, and on whom?

(3) What other costs or burdens would the proposed requirements impose, and on whom?

(4) What regulatory alternatives to the proposed requirements are available that would reduce the burdens of the proposed requirements, while providing the same benefits?

(5) What impact, either positive or negative, would the proposed requirements likely have on the environment?

List of Subjects in 16 CFR Part 460

Advertising, Insulation, Labeling, Reporting and recordkeeping requirements, Trade practices.

Authority: 15 U.S.C. 41–58.

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

Appendix—List of Comments

Name, Symbol, and Number

AFM Corporation (AFM)—#38
Advanced Foil Systems (AFS)—#02
Matt Anderson (Anderson)—#08
BASF Corporation (BASF)—#21
Benchmark Foam, Inc. (Benchmark)—#04
Big Sky Insulations, Inc. (Big Sky)—#05
The Celotex Corporation (Celotex)—#25
Cellulose Insulation Manufacturers Association (CIMA)—#19
Clayville Insulation (Clayville)—#34
Corbond Corp (Corbond)—#41
Dow Chemical Canada Inc. (Dow)—#37
Energy Control, Inc. (ECI)—#23
England & Associates (England)—#18
EPS Molders Association (EPSMA)—#13
Fi-Foil Co., Inc., by William Lippy (Fi-Foil/Lippy)—#42
Fi-Foil Co., Inc., by Ed Nowman (Fi-Foil/Nowman)—#15
FischerSips Inc. (FischerSips)—#36
GreenStone Industries, by Ivan T. Smith (GreenStone/Smith)—#32
GreenStone Industries, by Joel Tranmer (GreenStone/Tranmer)—#20

Hamilton Mfg., Inc. (Hamilton)—#22
Insulation Contractors Association of America (ICAA/1)—#17
Insulation Contractors Association of America (ICAA/2)—#40
Insulspan, Inc. (Insulspan)—#33
Rose E. Kettering (Kettering)—#07
James A. McGarry (McGarry)—#10
Midwest Roofing Contractors Association (MRCA)—#31
North American Insulation Manufacturers Association (NAIMA)—#24
Oak Ridge National Laboratory, by Kenneth E. Wilkes, PhD, PE (ORNL/Wilkes)—#29
Oak Ridge National Laboratory, by David W. Yarbrough, PhD, PE (ORNL/Yarbrough)—#28
Polyisocyanurate Insulation Manufacturers Association (PIMA)—#30
Plymouth Foam Products (Plymouth)—#01
W.H. Porter, Inc. (Porter)—#03
Marilyn Raeth (Raeth)—#09
Regal Industries, Inc. (Regal)—#16
Rock Wool Manufacturing Co. (Rock Wool Mfg./1)—#06
Rock Wool Manufacturing Co. (Rock Wool Mfg./2)—#39
Structural Insulated Panel Association (SIPA)—#11
Superior Aluminum Insulation Inc. (Superior)—#27
Tascon, Inc. (Tascon)—#35
Tierra Consulting Group (Tierra)—#12
Tennessee Technological University, by David W. Yarbrough, PhD, PE (TN Tech/Yarbrough)—#26
Western Insulfoam, Division of Premier Industries, Inc. (Western)—#14

[FR Doc. 99–22577 Filed 8–31–99; 8:45 am]
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Wednesday
September 1, 1999

Part IV

DEPARTMENT OF EDUCATION

34 CFR Part 379
Projects With Industry; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 379

Projects With Industry

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education

ACTION: Final Regulations.

SUMMARY: The Secretary amends the regulations governing the Projects With Industry (PWI) program administered by the Rehabilitation Services Administration (RSA). The Rehabilitation Act Amendments of 1998 (1998 Amendments), Title IV of the Workforce Investment Act of 1998 (WIA), made certain amendments to the Rehabilitation Act of 1973 that affect the PWI program. These regulations implement those amendments to the PWI program.

DATES: These regulations are effective October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas E. Finch, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 3315, Mary E. Switzer Building, Washington, D.C. 20202–2575. Telephone: (202) 205–8292. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g. Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The 1998 Amendments, Pub. L. 105–220, enacted August 7, 1998, makes a number of changes to programs under the Rehabilitation Act of 1973, as amended (Act), intended to increase the employment and employment retention of individuals with disabilities, including streamlined program requirements, enhanced consumer choice, enhanced program accountability, and improved coordination between employment and training programs through statewide and local workforce investment systems.

Statutory amendments to the PWI program change the composition and functions of the Business Advisory Council (BAC), the specific services required to be provided by PWI projects, the eligibility determination process, and data and information collection requirements.

Specifically, the 1998 Amendments require the project's BAC to include a representative of the appropriate designated State unit. In addition, the functions of the BAC pertaining to the identification of job and career availability have been modified to require that the analysis be consistent with the current and projected local employment opportunities identified by the local workforce investment board for the community under section 118(b)(1)(B) of WIA. The 1998 Amendments also now gives the BAC the option to prescribe either training programs or job placement programs in fields related to the job and career availability identified previously. These requirements are implemented in §§ 379.10(a), 379.21(a)(1), and 379.30(b)(1) of the regulations.

With respect to project services, PWI projects now are required to provide job development, in addition to providing job placement and career advancement services. However, the 1998 Amendments now require that training in realistic work settings must be provided only to the extent appropriate. The 1998 Amendments also change the eligibility determination process to allow the recipient of a PWI grant to determine an individual's eligibility for services, to the extent that the determination is made consistent with the requirements of section 102(a) of the Act. These requirements are implemented in §§ 379.3(b), 379.10(b) and (c), 379.21(a)(1) through (3), and 379.30(b)(1) and (6) of these regulations.

The 1998 Amendments also now require that data and information collected for use in conducting the annual review and evaluation of the operation of the project be the same types as described in subparagraphs (A) through (C) of section 101(a)(10) of the Act governing the State Vocational Rehabilitation (VR) Services program, as determined appropriate by the Commissioner. These requirements are implemented in §§ 379.21(a)(6), 379.21(b)(5), and 379.30(b)(6) of these regulations. Specific data and information collection requirements were published for comment in a separate notice published in the **Federal Register** on May 25, 1999 (64 FR 28164).

Finally, we also wish to note that new § 379.4 no longer makes 34 CFR part 369 applicable to the PWI program. The Secretary will be deleting part 369 from the Department's regulations in the near future. Therefore, the Secretary has incorporated into these regulations the following requirements from part 369 that apply to the PWI program:

§ 369.3(a)—The applicability of the Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86 to the PWI program. This requirement is now found in § 379.4(a).

§ 369.4(a)—The following definitions from part 77:
Applicant
Application
Award
Department
EDGAR
Nonprofit
Secretary
These definitions are now found in § 379.5(a).

§ 369.20—Application procedures for this program. This requirement is now found in § 379.22.

§ 369.42(b)—Notification of the availability and purposes of the State's Client Assistance Program. This requirement is now found in § 379.42.

369.46—Special requirements pertaining to the protection, use, and release of personal information. These are now found in § 379.43.

All other requirements in part 369 that were applicable to the PWI program either have been superseded by statutory changes made by the 1998 Amendments, are duplicative of requirements already in part 379, or are not applicable to the PWI program.

Waiver of Notice of Proposed Rulemaking

Section 553(b) of the Administrative Procedure Act (APA) requires the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, these amendments merely incorporate statutory changes into the regulations and do not implement substantive policy. Therefore, pursuant to the exception in section 553(b)(B) of the APA, the Secretary has determined that public comment on the regulations is unnecessary and contrary to the public interest.

Goals 2000: Educate America Act

The Goals 2000. Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These regulations address the National Education Goal that every adult American will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The regulations further the objectives of this Goal by implementing a program that affords individuals with disabilities opportunities for job training, job placement, placement in competitive employment, and career advancement.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number assigned to the collection of information in these final regulations is displayed at the end of the affected sections of the regulations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance. The order and regulations do not apply to Indian tribes or tribal organizations.

In accordance with the order, this document provides early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

Based on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

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List of Subjects in 34 CFR part 379

Education, Grant programs—education, Grant programs—social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

(Catalog of Federal Domestic Assistance Number 84.234 Projects With Industry.)

Dated: August 26, 1999.

Curtis L. Richards,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

The Secretary amends Title 34 of the Code of Federal Regulations by revising part 379 to read as follows:

PART 379—PROJECTS WITH INDUSTRY

Subpart A—General

Sec.
379.1 What is the Projects With Industry (PWI) program?
379.2 Who is eligible for a grant award under this program?
379.3 Who is eligible for services under this program?
379.4 What regulations apply?
379.5 What definitions apply?

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

379.10 What types of project activities are required of each grantee under this program?
379.11 What additional types of project activities may be authorized under this program?

Subpart C—How Does One Apply for an Award?

379.20 How does an eligible entity apply for an award?
379.21 What is the content of an application for an award?
379.22 What are the application procedures for this program?

Subpart D—How Does the Secretary Make a Grant?

379.30 What selection criteria does the Secretary use under this program?
379.31 What other factors does the Secretary consider in reviewing an application?

Subpart E—What Conditions Must Be Met by a Grantee?

379.40 What are the matching requirements?
379.41 What are allowable costs?
379.42 What are the special requirements pertaining to the Client Assistance Program?
379.43 What are the special requirements pertaining to the protection, use, and release of personal information?
379.44 What are the requirements for a continuation award?
379.45 What are the additional reporting requirements?

Subpart F—What Compliance Indicator Requirements Must a Grantee Meet To Receive Continuation Funding?

379.50 What are the requirements for continuation funding?
379.51 What are the program compliance indicators?
379.52 How is grantee performance measured using the compliance indicators?
379.53 What are the weights, minimum performance levels, and performance ranges for each compliance indicator?
379.54 What are the reporting requirements for the compliance indicators?

Appendix A to Part 379—Evaluation Standards

Appendix B to Part 379—Presumption of Eligibility

Appendix C to Part 379—Calculating Required Matching Amount

Authority: 29 U.S.C. 711(c) and 795, unless otherwise noted.

Subpart A—General

§ 379.1 What is the Projects With Industry (PWI) program?

The purpose of this program is to

(a) Create and expand job and career opportunities for individuals with disabilities in the competitive labor market by engaging the talent and leadership of private industry as partners in the rehabilitation process;

(b) Identify competitive job and career opportunities and the skills needed to perform these jobs;

(c) Create practical settings for job readiness and job training programs; and

(d) Provide job placements and career advancement.

(Authority: 29 U.S.C. 795(a)(1))

§ 379.2 Who is eligible for a grant award under this program?

(a) The Secretary may, in consultation with the Secretary of Labor and with the appropriate designated State unit or units, make a grant under this program to any—

(1) Community rehabilitation program provider;

(2) Designated State unit (DSU);

(3) Employer;

(4) Indian tribe or tribal organization;

(5) Labor union;

(6) Nonprofit agency or organization;

(7) Trade association; or

(8) Other agency or organization with the capacity to create and expand job and career opportunities for individuals with disabilities.

(b) The Secretary may make new awards only to those eligible entities identified in paragraph (a) of this section that propose to serve individuals with disabilities in States, portions of States, Indian tribes, or tribal organizations that are currently unserved or underserved by the PWI program.

(Authority: 29 U.S.C. 795(a)(2) and 795(e)(2))

§ 379.3 Who is eligible for services under this program?

(a) An individual is eligible for services under this program if—

(1) The individual is an individual with a disability or an individual with a significant disability;

(2) The individual requires vocational services to prepare for, secure, retain, or regain employment; and

(3) The determination of eligibility is consistent with section 102(a) of the Rehabilitation Act of 1973, as amended (Act), 29 U.S.C. 701–796l.

(b) The recipient of the grant under which the services are provided may determine an individual's eligibility for services under this program, to the extent that the determination is appropriate and consistent with the requirements of section 102(a) of the Act. See Appendix B to this part for further information.

(c) Except as provided in paragraph (d) of this section, an individual who has a disability or is blind, as determined pursuant to title II or title XVI of the Social Security Act (42 U.S.C. 401–433 and 1381–1385)—

(1) Is considered to be an individual with a significant disability; and

(2) Is presumed to be eligible for vocational rehabilitation (VR) services under this program (provided that the individual intends to achieve an employment outcome consistent with the unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individual).

(d) The DSU or recipient of the grant involved may deny an individual services if the DSU or recipient of the grant involved can demonstrate, by clear and convincing evidence, that the individual is incapable of benefiting in terms of an employment outcome from VR services due to the significance of the disability of the individual.

(Authority: 29 U.S.C. 722(a)(3) and 795(a)(3))

§ 379.4 What regulations apply?

The following regulations apply to the Projects With Industry program:

(a) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR part 74 (Administration of Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-profit Organizations).

(2) 34 CFR part 75 (Direct Grant Programs).

(3) 34 CFR part 77 (Definitions that Apply to Department Regulations).

(4) 34 CFR part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) 34 CFR part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) 34 CFR part 81 (General Education Provisions Act—Enforcement).

(7) 34 CFR part 82 (New Restrictions on Lobbying).

(8) 34 CFR part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) 34 CFR part 86 (Drug and Alcohol Abuse Prevention).

(b) The regulations in this part 379.

(Authority: 29 U.S.C. 711(c) and 795)

§ 379.5 What definitions apply?

(a) The following terms used in this part are defined in 34 CFR part 361:

Act
Community rehabilitation program
Designated State unit
Individual who is blind
Individual with a disability
Individual with a significant disability
Physical or mental impairment
Substantial impediment to employment

(b) The following definitions also apply to this part:

(1) *Career advancement services* mean services that develop specific job skills beyond those required by the position currently held by an individual with a disability to assist the individual to compete for a promotion or achieve an advanced position.

(2) *Competitive employment*, as the placement outcome under this program, means work—

(i) In the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and

(ii) For which an individual is compensated at or above the minimum wage, but not less than the customary or usual wage and terms and benefits provided by the employer for the same or similar work performed by individuals who are not disabled.

(3) *Integrated setting*, as part of the definition of "competitive employment," means a setting typically found in the community in which individuals with disabilities interact with non-disabled individuals, other than non-disabled individuals who are providing services to them, to the same extent that non-disabled individuals in comparable positions interact with other persons.

(4) *Job readiness training*, as used in § 379.41(a), means—

(i) Training in job-seeking skills;

(ii) Training in the preparation of resumes or job applications;

(iii) Training in interviewing skills;

(iv) Participating in a job club; or

(v) Other related activities that may assist an individual to secure competitive employment.

(5) *Job training*, as used in this part, means one or more of the following training activities provided prior to placement, as that term is defined in § 379.5(b)(7):

(i) Occupational skills training.

(ii) On-the-job training.

(iii) Workplace training combined with related instruction.

(iv) Job skill upgrading and retraining.

(v) Training to enhance basic work skills and workplace competencies.

(vi) On-site job coaching.

(6) *Person served* means an individual for whom services by a PWI project have been initiated with the objective that those services will result in a placement in competitive employment.

(7) *Placement* means the attainment of competitive employment by a person who has received services from a PWI project and has maintained employment for a period of at least 90 days.

(Authority: 29 U.S.C. 711(c) and 795)

Subpart B—What Kinds of Activities Does the Department of Education Assist Under This Program?

§ 379.10 What types of project activities are required of each grantee under this program?

Each grantee under the PWI program must—

(a) Provide for the establishment of a Business Advisory Council (BAC), comprised of representatives of private industry, business concerns, organized labor, individuals with disabilities and their representatives, and a representative of the appropriate DSU, that will—

(1) Identify job and career availability within the community, consistent with the current and projected local employment opportunities identified by the local workforce investment board for the community under section 118(b)(1)(B) of the Workforce Investment Act of 1998;

(2) Identify the skills necessary to perform those jobs and careers; and

(3) Prescribe for individuals with disabilities in fields related to the job and career availability identified in § 379.10(a)(1) either—

(i) training programs designed to develop appropriate job and career skills; or

(ii) job placement programs designed to identify and develop job placement and career advancement opportunities;

(b) Provide job development, job placement, and career advancement services;

(c) To the extent appropriate, arrange for the provision of, or provide for—

(1) Training in realistic work settings to prepare individuals with disabilities for employment and career advancement in the competitive labor market; and

(2) To the extent practicable, the modification of any facilities or equipment of the employer involved that are to be used by individuals with disabilities under this program. However, a project may not be required to provide for this modification if the modification is required as a reasonable accommodation under the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101–12213; and

(d) Provide individuals with disabilities with supportive services that are necessary to permit them to maintain the employment and career advancement for which they have received training under this program.

(Authority: 29 U.S.C. 795)

379.11 What additional types of project activities may be authorized under this program?

The Secretary may include, as part of agreements with grant recipients under this program, authority for the grant recipients to provide technical assistance to—

(a) Assist employers in hiring individuals with disabilities; or

(b) Improve or develop relationships between grant recipients or prospective grant recipients and employers or organized labor; or

(c) Assist employers in understanding and meeting the requirements of the ADA, as that Act relates to employment of individuals with disabilities.

(Authority: 29 U.S.C. 795)

Subpart C—How Does One Apply for an Award?

§ 379.20 How does an eligible entity apply for an award?

To apply for a grant, an eligible entity must submit an application to the Secretary in response to an application notice published in the **Federal Register**.

(Approved by the Office of Management and Budget under control number 1820–0566)

(Authority: 29 U.S.C. 795(e)(1)(B))

§ 379.21 What is the content of an application for an award?

(a) The grant application must include a description of—

(1) The responsibilities and membership of the BAC, consistent with section 611(a)(2)(A) of the Act, and how it will interact with the project in carrying out grant activities, including how the BAC will—

(i) Identify job and career availability within the community, consistent with the current and projected local employment opportunities identified by the local workforce investment board for the community under section 118(b)(1)(B) of the Workforce Investment Act of 1998;

(ii) Identify the skills necessary to perform the jobs and careers identified; and

(iii) For individuals with disabilities in fields related to the job and career availability identified under paragraph (i) of this section, prescribe either—

(A) Training programs designed to develop appropriate job and career skills; or

(B) Job placement programs designed to identify and develop job placement and career advancement opportunities;

(2) How the project will provide job development, job placement, and career advancement services to project participants;

(3) To the extent appropriate, how the project will provide for—

(i) Training in realistic work settings to prepare individuals with disabilities for employment and career advancement in the competitive market; and

(ii) To the extent practicable, the modification of any facilities or equipment of the employer involved that are used primarily by individuals with disabilities, except that a project will not be required to provide for the modification if the modification is required as a reasonable accommodation under the ADA;

(4) How the project will provide individuals with disabilities with the support services that may be required to maintain the employment and career advancement for which the individuals have received training under this part;

(5) How the project will involve private industry in the design of the proposed project and the manner in which the project will collaborate with private industry in planning, implementing, and evaluating job development, job placement, career advancement activities and, to the extent included as part of the activities to be carried out by the project, job training activities;

(6) A plan to conduct annually a review and evaluation of the operation of the proposed project in accordance with the program compliance indicators and standards established in Subpart F of this part and, in conducting the review and evaluation, to collect data and information of the type described in subparagraphs (A) through (C) of section 101(a)(10) of the Act, as determined to be appropriate by the Secretary;

(7) The geographic area to be served by the project, including an explanation of how the area is currently unserved or underserved by the PWI program; and

(8) How the project will address the needs of individuals with disabilities from minority backgrounds, as required by section 21(c) of the Act.

(b) The grant application also must include assurances from the applicant that—

(1) The project will carry out all activities required in § 379.10;

(2) Individuals with disabilities who are placed by the project will receive compensation at or above the minimum wage, but not less than the customary or usual wage paid by the employer for the same or similar work performed by individuals who are not disabled;

(3) Individuals with disabilities who are placed by the project will—

(i) Be given terms and benefits of employment equal to terms and benefits that are given to similarly situated nondisabled co-workers; and

(ii) Not be segregated from their co-workers;

(4) The project will maintain any records required by the Secretary and make those records available for monitoring and audit purposes;

(5) The project will provide to the Secretary an annual evaluation report of project operations as required in § 379.21(a)(6) and will submit reports in the form and detail and at the time required by the Secretary; and

(6) The applicant will comply with any requirements necessary to ensure the correctness and verification of those reports.

(Approved by the Office of Management and Budget under control number 1820–0566)

(Authority: 29 U.S.C. 718(c), 795(a), 795(b), and 795(e)(1)(B))

§ 379.22 What are the application procedures for this program?

The Secretary gives the appropriate DSU an opportunity to review and comment on applications submitted from within the State that it serves. The procedures to be followed by the

applicant and the State are described in §§ 75.155 through 75.159 of EDGAR.

(Authority: 20 U.S.C. 711(c))

Subpart D—How Does the Secretary Make a Grant?

§ 379.30 What selection criteria does the Secretary use under this program?

(a) The Secretary uses the procedures in 34 CFR part 75 to select applications and award new grants.

(b) The Secretary uses the following selection criteria to evaluate an application:

(1) *Extent of need for project* (20 points). The Secretary reviews each application to determine the extent to which the project meets demonstrated needs. The Secretary looks for evidence that—

(i) The applicant has demonstrated a demand in the competitive labor market of the geographic area to be served for the types of jobs for which project participants will be placed and, if appropriate, trained.

(A) The applicant may demonstrate the demand for those jobs by describing an existing current labor market analysis, other needs assessment, or one that it has performed in collaboration with private industry.

(B) The labor market analysis or needs assessment must be consistent with the current and projected local employment opportunities identified by the local workforce investment board for the community under section 118(b)(1)(B) of the Workforce Investment Act of 1998; and

(ii) The job placement and, if appropriate, job training to be provided meets the identified needs for personnel in specific occupations or occupational categories in the geographic area to be served.

(2) *Partnership with industry* (25 points). The Secretary looks for information that demonstrates—

(i) The extent of the project's proposed collaboration with private industry in the planning, implementation, and evaluation of job development, job placement, career advancement activities, and, to the extent included as part of the activities to be carried out by the project, job training activities; and

(ii) The extent of proposed participation of the BAC in—

(A) The identification of job and career opportunities within the community, consistent with the current and projected local employment opportunities identified by the local workforce investment board for the community under section 118(b)(1)(B) of the Workforce Investment Act of 1998;

(B) The identification of the skills necessary to perform the jobs and careers identified; and

(C) For individuals with disabilities in fields related to the job and career availability identified under paragraph (b)(1)(i) of this section, prescribing either—

(1) Training programs designed to develop appropriate job and career skills; or

(2) Job placement programs designed to identify and develop job placement and career advancement opportunities.

(3) *Project design and plan of operation for achieving competitive employment* (25 points). The Secretary reviews each application to determine—

(i) The extent to which the project goals and objectives for achieving competitive employment for individuals with disabilities to be served by the project are clearly stated and meet the needs identified by the applicant and the purposes of the program;

(ii) The extent to which the project provides for all services and activities required under § 379.10;

(iii) The feasibility of proposed strategies and methods for achieving project goals and objectives for competitive employment for project participants;

(iv) The extent to which project activities will be coordinated with the DSU and with other appropriate community resources to ensure an adequate number of referrals and a maximum use of comparable benefits and services;

(v) The extent to which the applicant's management plan will ensure proper and efficient administration of the project; and

(vi) Whether the applicant has proposed a realistic timeline for the implementation of project activities to ensure timely accomplishment of proposed goals and objectives to achieve competitive employment for individuals with disabilities to be served by the project.

(4) *Adequacy of resources and quality of key personnel* (10 points). The Secretary reviews each application to determine—

(i) The adequacy of the resources (including facilities, equipment, and supplies) that the applicant plans to devote to the project;

(ii) The quality of key personnel who will be involved in the project, including—

(A) The qualifications of the project director;

(B) The qualifications of each of the other key personnel to be used in the project; and

(C) The experience and training of key personnel in fields related to the objectives and activities of the project; and

(D) The way the applicant plans to use its resources and personnel to achieve the project's goals and objectives, including the time that key personnel will commit to the project.

(5) *Budget and cost effectiveness* (10 points). The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Project evaluation* (10 points). The Secretary reviews each application to determine the quality of the proposed evaluation plan with respect to—

(i) Evaluating project operations and outcomes;

(ii) Involving the BAC in evaluating the project's job development, job placement, career advancement activities, and, to the extent included as part of the activities to be carried out by the project, job training activities;

(iii) Meeting the annual evaluation reporting requirements in § 379.21(a)(6);

(iv) Determining compliance with the indicators; and

(v) Addressing any deficiencies identified through project evaluation.

(Approved by the Office of Management and Budget under control number 1820–0566)

(Authority: 29 U.S.C. 711(c) and 795)

§ 379.31 What other factors does the Secretary consider in reviewing an application?

In addition to the selection criteria in § 379.30, the Secretary, in making awards under this program, considers—

(a) The equitable distribution of projects among the States; and

(b) The past performance of the applicant in carrying out a similar PWI project under previously awarded grants, as indicated by factors such as compliance with grant conditions, soundness of programmatic and financial management practices, and meeting the requirements of Subpart F of this part.

(Authority: 29 U.S.C. 795(e)(2) and 795(f)(4))

Subpart E—What Conditions Must Be Met by a Grantee?

§ 379.40 What are the matching requirements?

The Federal share may not be more than 80 percent of the total cost of a project under this program. For assistance in calculating the required matching amount, see Appendix C to this part.

(Authority: 29 U.S.C. 795(c))

§ 379.41 What are allowable costs?

In addition to those costs that are allowable in accordance with 34 CFR 74.27 and 34 CFR 80.22, the following items are allowable costs under this program:

(a) The costs of job readiness training, as defined in § 379.5(b)(5); job training, as defined in § 379.5(b)(6); job placement services; job development and modification; and related support services.

(b) Instruction and supervision of trainees.

(c) Training materials and supplies, including consumable materials.

(d) Instructional aids.

(e) The purchase or modification of rehabilitation technology to meet the needs of individuals with disabilities.

(f) Alteration and renovation appropriate and necessary to ensure access to and use of buildings by individuals with disabilities served by the project.

(g) To the extent practicable, the modification of any facilities or equipment of the employer involved that are to be used by individuals with disabilities under this program. However, a project may not be required to provide for that modification if the modification is required as a reasonable accommodation under the ADA.

(Authority: 29 U.S.C. 711(c) and 795)

§ 379.42 What are the special requirements pertaining to the Client Assistance Program?

Each grantee under a program covered by this part must advise applicants for or recipients of services under its project, or as appropriate, the parents, family members, guardians, advocates, or authorized representatives of those individuals, of the availability and purposes of the State's Client Assistance Program, including information on seeking assistance from that program.

(Authority: 29 U.S.C. 718a)

§ 379.43 What are the special requirements pertaining to the protection, use, and release of personal information?

(a) All personal information about individuals served by any project under this part, including lists of names, addresses, photographs, and records of evaluation, must be held confidential.

(b) The use of information and records concerning individuals must be limited only to purposes directly connected with the project, including project evaluation activities.

(c) This information may not be disclosed, directly or indirectly, other than in the administration of the project, unless the consent of the agency providing the information and the individual to whom the information applies, or his or her representative, have been obtained in writing.

(d) The Secretary or other Federal or State officials responsible for enforcing legal requirements have access to this information without the written consent of the individual.

(e) The final product of the project may not reveal any personally identifying information without the written consent of the individual or his or her representative.

(Authority: 29 U.S.C. 711(c))

§ 379.44 What are the requirements for a continuation award?

(a) A grantee that wants to receive a continuation award must—

(1) Comply with the provisions of 34 CFR 75.253(a), including making substantial progress toward meeting the objectives in its approved application and submitting all performance and financial reports required by 34 CFR 75.118; and

(2) Submit data in accordance with § 379.54 showing that it has met the program compliance indicators established in Subpart F of this part.

(b) In addition to the requirements in paragraph (a) of this section, the following other conditions in 34 CFR 75.253(a) must be met before the Secretary makes a continuation award:

(1) Congress must appropriate sufficient funds under the program.

(2) Continuation of the project must be in the best interest of the Federal Government.

(Approved by the Office of Management and Budget under control number 1820–0566)

(Authority: 29 U.S.C. 711(c) and 795(f)(4))

§ 379.45 What are the additional reporting requirements?

Each grantee must submit the data from its annual evaluation of project operations required under § 379.21(a)(5) no later than 60 days after the end of each project year, unless the Secretary authorizes a later submission date.

(Approved by the Office of Management and Budget under control number 1820–0566)

(Authority: 29 U.S.C. 711(c) and 795)

Subpart F—What Compliance Indicator Requirements Must a Grantee Meet to Receive Continuation Funding?

§ 379.50 What are the requirements for continuation funding?

To receive a continuation award for the third or any subsequent year of a PWI grant, a grantee must adhere to the provisions of its approved application and must receive a minimum composite score of at least 70 points on the program compliance indicators contained in § 379.53.

(Authority: 29 U.S.C. 795(f)(4))

§ 379.51 What are the program compliance indicators?

The program compliance indicators implement program evaluation standards, which are contained in an appendix to this part, by establishing minimum performance levels and performance ranges in essential project areas to measure the effectiveness of individual grantees.

(Authority: 29 U.S.C. 795(d)(1) and 795(f)(1))

§ 379.52 How is grantee performance measured using the compliance indicators?

(a) Each compliance indicator establishes a minimum performance level.

(b) Each compliance indicator also establishes three performance ranges with points assigned to each range. The higher the performance range, the greater the number of points assigned to that range.

(c) If a grantee does not achieve the minimum performance level for a compliance indicator, the grantee receives no points.

(d) If a grantee achieves or exceeds the minimum performance level, the grantee receives the points assigned to the particular performance range that corresponds to its actual level of performance.

(e) The maximum possible composite score that a grantee can receive is 150 points.

(f) A grantee must receive a composite score of at least 70 points to meet the evaluation standards and qualify for continuation funding.

(Authority: 29 U.S.C. 795(f)(1))

§ 379.53 What are the weights, minimum performance levels, and performance ranges for each compliance indicator?

(a) *Percent of individuals served whose disabilities are significant.* (3–10 points) A minimum of 50 percent of individuals served by the project are individuals who have significant disabilities. The performance ranges and the points assigned to each range are as follows:

(1) 50 percent to 59 percent—3 points.

(2) 60 percent to 75 percent—7 points.

(3) 76 percent or more—10 points.

(b) *Percent of individuals served who have been unemployed for at least six months at the time of project entry.* (5–15 points) A minimum of 50 percent of individuals served by the project have been unemployed for at least 6 months at the time of project entry. The

performance ranges and the points assigned to each range are as follows:

(1) 50 percent to 59 percent—5 points.

(2) 60 percent to 75 percent—10 points.

(3) 76 percent or more—15 points.

(c) *Cost per placement.* (8–25 points) The average cost per placement of individuals served by the project does not exceed $1600.00. The performance ranges and the points assigned to each range are as follows:

(1) $1351 to $1600—8 points.

(2) $1000 to $1350—17 points.

(3) Less than $1000–25 points.

(d) *Projected cost per placement.* (5–15 points) The actual average cost per placement of individuals served by the project does not exceed 140 percent of the projected average cost per placement in the grantee's application. The performance ranges and the points assigned to each range are as follows:

(1) 126 percent to 140 percent—5 points.

(2) 111 percent to 125 percent—10 points.

(3) 110 percent or less—15 points.

(e) *Placement rate.* (8–25 points) A minimum of 40 percent of individuals served by the project are placed in competitive employment. The performance ranges and the points assigned to each range are as follows:

(1) 40 percent to 49 percent—8 points.

(2) 50 percent to 69 percent—17 points.

(3) 70 percent or more—25 points.

(f) *Projected placement rate.* (5–15 points) The actual number of individuals served by the project that are placed into competitive employment is at least 50 percent of the number of individuals that the grantee projected in its grant application would be placed. The performance ranges and the points assigned to each range are as follows:

(1) 50 percent to 74 percent—5 points.

(2) 75 percent to 94 percent—10 points.

(3) 95 percent or more—15 points.

(g) *Change in earnings.* (7–20 points) The earnings of individuals served by the project who are placed into competitive employment have increased by an average of at least $75.00 a week over earnings at project entry. The performance ranges and the points assigned to each range are as follows:

(1) $75 to $124—7 points.

(2) $125 to $199—14 points.

(3) $200 or more—20 points.

(h) *Percent placed who have significant disabilities.* (3–10 points) At least 50 percent of individuals served by the project who are placed into competitive employment are individuals who have significant disabilities. The performance ranges and the points assigned to each range are as follows:

(1) 50 percent to 59 percent—3 points.

(2) 60 percent to 75 percent—7 points.

(3) 76 percent or more—10 points.

(i) *Percent unemployed placed.* (5–15 points) At least 50 percent of individuals served by the project who are placed into competitive employment are individuals who were unemployed for at least 6 months at the time of project entry. The performance ranges and the points assigned to each range are as follows:

(1) 50 percent to 59 percent—5 points.

(2) 60 percent to 75 percent—10 points.

(3) 76 percent or more—15 points.

(j) *Summary chart of weights and performance ranges.* The following composite chart shows the weights assigned to the performance ranges for each compliance indicator.

	Performance ranges:		
	Range	Range	Range
Indicator:	1	2	3
Individuals with significant disabilities served	3	7	10
Unemployed served	5	10	15
Cost per placement	8	17	25
Projected cost per placement	5	10	15
Placement rate	8	17	25
Projected placement rate	5	10	15
Change in earnings	7	14	20
Percent placed who have significant disabilities	3	7	10
Percent unemployed placed	5	10	15
Total possible score	49	102	150

(Authority: 29 U.S.C. 795(f)(1))

§ 379.54 What are the reporting requirements for the compliance indicators?

(a) To allow the Secretary to determine whether a grantee is eligible to receive continuation funding for the third year of funding (or the second continuation award) or any subsequent year of a PWI grant, each grantee must submit data to the Secretary for the first project year or for the most recent complete project year no later than 60 days after the end of that project year, unless—

(1) The Secretary authorizes a later submission date; or

(2) The grantee exercises the option in paragraph (c) of this section.

(b) The Secretary uses the data provided pursuant to paragraph (a) of this section to determine if the grantee has met the program compliance indicators established in this Subpart F.

(c) If the data provided under paragraph (a) of this section for the most recent complete project year shows that a grantee has failed to achieve the minimum composite score required to meet the program compliance indicators (see § 379.52(f)), the grantee may, at its option, submit data from the first six months of the current project year. The data must demonstrate that the grantee's project performance has improved sufficiently to meet the minimum composite score.

(d) The grantee must submit data submitted pursuant to paragraph (c) of this section no later than 60 days after the end of that 6 month period, unless the Secretary authorizes a later submission date.

(Approved by the Office of Management and Budget under control number 1820–0566)
(Authority: 29 U.S.C. 795(f)(2) and 795(f)(4))

Appendix A To Part 379—Evaluation Standards

Standard 1: The primary objective of the project must be to assist individuals with disabilities to obtain competitive employment. The activities carried out by the project must support the accomplishment of this objective.

Standard 2: The project must serve individuals with disabilities that impair their capacity to obtain competitive employment. In selecting persons to receive services, priority must be given to individuals with significant disabilities.

Standard 3: The project must ensure the provision of services that will assist in the placement of individuals with disabilities.

Standard 4: Funds must be used to achieve the project's primary objective at minimum cost to the Federal Government.

Standard 5: The project's advisory council must provide policy guidance and assistance in the conduct of the project.

Standard 6: Working relationships, including partnerships, must be established with agencies and organizations to expand the project's capacity to meet its objectives.

Standard 7: The project must obtain positive results in assisting individuals with disabilities to obtain competitive employment.

Appendix B To Part 379—Presumption of Eligibility

If a DSU determines that an individual is an eligible individual under section 102(a) of the Act, including that the individual meets the definition of an "individual with a significant disability," and refers the individual to a PWI project, the PWI grantee may initiate services to that individual without the need for an additional determination of eligibility. In these instances, the PWI grantee should obtain appropriate documentation of this determination from the DSU.

Appendix C To Part 379—Calculating Required Matching Amount

1. The method for calculating the required matching amount may be stated by the following formula:

X = (Y ÷ .8) − Y

X = Required Match (provided in cash or through third party in-kind contributions)

Y = Amount of Federal Funds

This equation holds true regardless of the total cost of the project. The amount of Federal funds spent in a fiscal year (FY) can never be more than 80 percent (hence, the ".8" in the formula) of the total funds (Federal and non-Federal) spent by the project. Thus, the formula is not dependent on knowing the total cost of the project. One needs to know only that the Federal share can be no more than 80 percent of whatever the total costs may turn out to be. In all cases, the matching contribution is calculated by dividing the amount of the Federal grant award by 80 percent (.8) and subtracting from that result the amount of the Federal grant award.

For example: If the amount of the Federal PWI grant award is $400,000, the amount of the required match is $100,000, calculated as follows:

Required match	=	(Am't. of Fed. Funds in FY	+	Max. Fed. % of Total)	−	(Am't. of Fed. Funds in FY)
X	=	($400,000	+	.8)	−	400,000
X	=	$500,000–400,000.				
X	=	$100,000.				

The matching contribution is never simply 20 percent of the amount of the Federal grant award (i.e., in the above example, NOT .2 x $400,000).

2. Another consideration is what happens if a grantee carries over unspent Federal funds it received in a fiscal year. If the grantee spends or obligates less than the amount of its Federal grant award in a particular fiscal year and carries over the unspent or unobligated amount of its Federal grant award, its required matching contribution stays the same because the amount of its required matching expenditures or obligations is based on the amount of Federal dollars received in a particular fiscal year. That is, if the grantee carries over any unspent or unobligated Federal funds, the grantee must have spent or obligated the amount of non-Federal funds required for its matching contribution in the same fiscal year in which the Federal funds were received.

For example: If a PWI grantee receives a grant award of $80,000 in FY 2000, its matching requirement for these funds is $20,000. If the grantee spends and obligates only $64,000 in FY 2000, it may "carry over" $16,000 to FY 2001. However, the grantee must spend or obligate $20,000 in non-Federal funds in FY 2000 to meet its matching requirements for the $80,000 it received in FY 2000, even though it does not spend or obligate the entire $80,000 in FY 2000. If the grantee fails to spend or obligate in FY 2000 the entire $20,000 in non-Federal funds, the grantee will fail to meet the matching requirement for the $80,000 it received in FY 2000 and may not carry over the unspent or unobligated $16,000 to FY 2001.

3. The matching contribution also must comply with the requirements of 34 CFR 74.23 (for grantees that are institutions of higher education, hospitals, or other nonprofit organizations) or 34 CFR 80.24 (for grantees that are State, local, or Indian tribal governments). The term "third party in-kind contributions" is defined in either 34 CFR 74.2 or 34 CFR 80.3, as applicable to the type of grantee.

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Part V

Department of the Treasury

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the Bank Enterprise Award Program; Notice

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Notice of Funds Availability (NOFA) Inviting Applications for the Bank Enterprise Award Program

AGENCY: Community Development Financial Institutions Fund, Department of the Treasury.

ACTION: Notice of Funds Availability (NOFA) inviting applications.

SUMMARY: The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*) authorizes the Community Development Financial Institutions Fund (hereafter referred to as "the Fund") to provide incentives to insured depository institutions for the purposes of promoting investments in or other support to Community Development Financial Institutions ("CDFIs") and facilitating increased lending and provision of financial and other services in economically distressed communities. Insured depository institutions and CDFIs are defined terms in 12 CFR part 1806, which governs the Bank Enterprise Award ("BEA") Program. The Fund intends to award funds under this NOFA up to the maximum amount authorized by law. As of the date of this NOFA, the Fund intends to make available up to $25 million in BEA Program funds, subject to the availability of appropriated funds. The Fund may award in excess of $25 million if it deems it appropriate, subject to the availability of appropriated funds.

In connection with this NOFA, the Fund is conducting information sessions to disseminate information to organizations contemplating applying to, and other organizations interested in learning about, the BEA Program. The schedule for the information sessions is as follows:

Monday, September 13, 1999.(New York, New York);
Thursday, September 16, 1999 (Boston, Massachusetts);
Friday, September 17, 1999 (Miami, Florida and Minneapolis, Minnesota);
Tuesday, September 21, 1999 (New Orleans, Louisiana);
Wednesday, September 22, 1999 (Billings, Montana and Kansas City, Missouri);
Thursday, September 23, 1999 (San Antonio, Texas);
Friday, September 24, 1999 (Chicago, Illinois; San Diego, California, and Seattle, Washington);
Monday, September 27, 1999 (Albuquerque, New Mexico; Pittsburgh, Pennsylvania; San Francisco, California); and
Tuesday, September 28, 1999 (Denver, Colorado and Nashville, Tennessee).

For more information, or to register for an information session, call the Fund at (202) 622–8662.

DATES: Applications may be submitted at any time after September 1, 1999. The deadline for receipt of an application is 6 p.m. Eastern Standard Time on Tuesday, November 23, 1999. Applications received in the offices of the Fund after that date and time will not be accepted and will be returned to the sender. Any entity seeking certification as a CDFI (as described in 12 CFR 1805.200) for the purposes of 12 CFR part 1806 is strongly encouraged to submit the Application Form for Certification, the contents of which are described in 12 CFR 1805.701(b)(1) through (8), by Tuesday, November 23, 1999. If an entity fails to submit such application by this deadline, the Fund cannot guarantee that it will have sufficient time to complete a certification review for the purposes of the current funding round of the BEA Program. In addition, with respect to all requests for certification, the Fund reserves the right to request clarifying or technical information after reviewing materials submitted as described in 12 CFR 1805.701(b)(1) through (8). If the entity seeking certification does not respond to such requests in a timely manner, the Fund cannot guarantee that it will have sufficient time to complete a certification review for the purposes of the current funding round of the BEA Program.

ADDRESSES: Applications shall be sent to: Awards Manager, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005. Applications sent by fax or electronic transfer will not be accepted.

FOR FURTHER INFORMATION CONTACT: All questions regarding this NOFA, the application package, or BEA Program requirements should be directed to the Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Washington, DC 20005, by telephone at (202) 622–8662 or by facsimile at (202) 622–7754. These are not toll free numbers. If you are requesting an application package, you must allow at least two weeks for delivery. Information on, and application materials for, the Fund's programs may also be obtained through its Website at *www.treas.gov/cdfi.*

SUPPLEMENTARY INFORMATION:

I. Background

As part of a national strategy to facilitate revitalization and increase the availability of credit and investment capital in distressed communities, the Community Development Banking and Financial Institutions Act of 1994 ("Act") authorizes a portion of funds appropriated to the Fund to be made available for distribution through the BEA Program. The BEA Program is largely based on the Bank Enterprise Act of 1991, although Congress significantly amended the program to facilitate greater coordination with other activities of the Fund. The BEA Program and the Community Development Financial Institutions Program (12 CFR part 1805) are intended to be complementary initiatives that support a wide range of community development activities and facilitate partnerships between traditional lenders and CDFIs. This NOFA invites applications from insured depository institutions for the purpose of promoting community development activities and revitalization.

II. Eligibility

The Act specifies that eligible Applicants must be insured depository institutions as defined in 12 U.S.C. 1813(c)(2).

III. Designation of Distressed Community

In accordance with 12 CFR 1806.200(d), in the case of Applicants carrying out Qualified Activities requiring the designation of a Distressed Community (as defined in 12 CFR 1806.103(r)), the Fund will provide Applicants with data and other information to help identify areas eligible to be designated as Distressed Communities. Specifically, the Fund will provide such information through its CDFI Fund Help Desk Website, a new service that will be available as of September 1, 1999. The Fund requires all Applicants to utilize the Help Desk to produce the Distressed Community worksheets and corresponding maps.

The Help Desk is found at *www.cdfifundhelp.gov* or through a link at the Fund's main Website at www.treas.gov/cdfi. The Help Desk will provide easy step-by-step instructions on how to designate a Distressed Community. The Help Desk will allow an Applicant to instantly create and print a Distressed Community designation worksheet(s) and corresponding map(s). The Help Desk also lists a customer service telephone number that Applicants may call to ask questions.

IV. Designation Factors

Regulations codified at 12 CFR part 1806 describe the process for selecting Applicants to receive assistance and for determining award amounts. The rating and selection process will give priority to Applicants in the following order: (1) Equity Investments in CDFIs serving Distressed Communities; (2) Equity Investments in CDFIs not serving Distressed Communities; (3) CDFI Support Activities; and (4) Development and Service Activities (as such activities are defined in 12 CFR 1806.103). Assistance amounts will be calculated based on increases in Qualified Activities that occur during a 6-month Assessment Period in excess of activities that occurred during a 6-month Baseline Period. In general, estimated award amounts for applicants making Equity Investments in CDFIs will be equal to 15 percent of the projected increase in such activities. An Applicant may choose to accept less than the maximum amount of assistance in order to increase the ranking of its application. Estimated award amounts for CDFI Applicants for carrying out CDFI Support Activities will be equal to 33 percent of the projected increase in such activities. Estimated award amounts for non-CDFI Applicants for carrying out CDFI Support Activities will be equal to 11 percent of the projected increase in such activities.

The Regulations at 12 CFR part 1806 also establish the ranking and selection process. For an Applicant pursuing Development and Service Activities, a multi-step procedure is outlined in the interim rule that will be used to calculate the estimated award amount. In general, if an Applicant is a CDFI, such estimated award amount will be equal to 15 percent of the total score calculated in the multi-step procedure. If an Applicant is not a CDFI, such estimated award amount will be equal to 5 percent of the total score calculated in the multi-step procedure. In ranking and funding such Applicants within each category, the Fund will apply criteria contained in the interim rule. The Fund, in its sole discretion: (1) may adjust the estimated award amount that an Applicant may receive prior to the end of the Assessment Period; (2) may establish a maximum amount that may be awarded to an Applicant; and (3) reserves the right to limit the amount of an award to any Awardee if the Fund deems it appropriate.

V. Baseline Period and Assessment Period Dates

As part of its application, an Applicant shall report the Qualified Activities that it actually carried out during the 6-month Baseline beginning January 1, 1999 and ending June 30, 1999. An applicant shall also project the Qualified Activities that it expects to carry out during the 6-month Assessment Period beginning January 1, 2000 and ending June 30, 2000. Applicants selected to participate in the BEA Program during the Assessment Period will be required to submit to the Fund a Final Report (Part II of the Application) of Qualified Activities actually carried out during the Assessment Period. The deadline for receipt of the Final Report is 6 p.m. Eastern Daylight Time on Tuesday, August 1, 2000. Final Reports received in the offices of the Fund after that date and time will not be accepted and will be returned to the sender. The Fund will evaluate the performance of Applicants in carrying out projected activities to determine actual award amounts. The Fund may request clarifying or technical information after receiving an Applicant's Final Report.

VI. Targeted Financial Services

The lack of availability of Financial Services (as defined in the BEA Program Regulations at 12 CFR 1806.103(u)) tailored to the needs of Low-and Moderate-Income people is a significant challenge in many urban, rural and Native American communities. In an effort to encourage insured depository institutions to provide two specific types of targeted Financial Services, Electronic Transfer Accounts ("ETAs") and Individual Development Accounts ("IDAs"), the Fund is providing the following guidance to BEA Program Applicants.

A. Electronic Transfer Accounts

On September 25, 1998, the U.S. Department of the Treasury ("Treasury") published a final rule in the **Federal Register**, 31 CFR part 208 (the "EFT Rule"), implementing the mandatory electronic funds transfer ("EFT") requirements of the Debt Collection Improvement Act of 1996. The Debt Collection Improvement Act of 1996 requires Treasury to ensure that individuals required to have an account at a financial institution due to the EFT Rule have access to an account at a reasonable cost and with certain consumer protections. The EFT Rule provides that any individual who receives a Federal benefit, wage, salary, or retirement payment shall be eligible to open an electronic transfer account ("ETA") at any Federally insured financial institution offering ETAs. Treasury subsequently published the ETA Notice ("ETA Notice") in the **Federal Register** on July 16, 1999, setting forth the attributes for ETAs.

For purposes of this NOFA, the term ETA and all terms related to Treasury's EFT initiative that are not defined in the BEA Program Regulations shall have the same meanings as defined in the EFT Rule and the ETA Notice. Only insured depository institutions that have entered into, and are in compliance with, the Financial Agency Agreement published as an appendix to the ETA Notice may receive an award under the BEA Program for providing ETAs. An Applicant's ETA product must meet all of the requirements set forth in the ETA Notice, and any subsequent guidance issued by Treasury, and be in compliance with the terms and conditions of its Financial Agency Agreement with Treasury. Furthermore, an Applicant's ETA product must be held by individuals who are Low-or Moderate-Income Residents of Distressed Communities, as required by 12 CFR 1806.103(u). Thus, Applicants must collect data on: (1) the geographic unit in which an ETA holder resides as evidence that he or she is a Resident of a designated Distressed Community; and (2) the annual income of said ETA holder as evidence that his or her income meets Low-or Moderate-Income criteria.

As provided in the BEA Program Regulations at 12 CFR 1806.202(c)(3), all Financial Service activities must be valued "based on the administrative costs of providing such services." For purposes of this NOFA, the Fund will value the administrative cost of providing an ETA at $50.00 per account. Thus, an Applicant seeking a BEA grant for ETA activities does not need to submit documentation of administrative expenses incurred in delivering its product. (However, at a later date, the Fund may distribute a survey questionnaire to Awardees for the purpose of obtaining information regarding the administrative costs incurred in the provision of ETAs.) Instead, the Applicant must indicate the number of ETAs held by Low- and Moderate-Income Residents of designated Distressed Communities, which shall be multiplied by $50.00 to yield the respective Baseline Period and Assessment Period levels of ETA activity. For purposes of this NOFA, and in keeping with 12 CFR 1806.201(b)(3)–(4) of the BEA Program Regulations, the Fund will assign a priority factor of 2.0 for establishment of ETAs held by Low- and Moderate-Income Residents of Distressed Communities.

The Fund is aware that Treasury will provide insured depository institutions that offer ETAs compensation equal to

$12.60 per ETA to offset the variable set-up costs of opening an ETA. However, the BEA award amount provided in this NOFA is intended to assist insured depository institutions to cover other costs associated with offering ETAs.

If an Applicant seeks a BEA grant for providing financial literacy classes, related training or one-on-one technical assistance to ETA holders, the Applicant must submit documentation of the costs of providing such services and report such activities as Community Service activities, as described in 12 CFR 1806.103(p).

B. Individual Development Accounts

On January 27, 1999 and July 2, 1999, the Office of Community Services of the Administration for Children and Families of the U.S. Department of Health and Human Services ("HHS") published Program Announcements in the **Federal Register** (OCS–99–04 and OCS–99–08, respectively) to implement the Assets for Independence Demonstration Program ("IDA Program") authorized pursuant to the Assets for Independence Act, 42 U.S.C. 604. Together, the Program Announcements state that HHS intends to provide up to $9.3 million in FY 1999 appropriated funds over five years to organizations selected to participate as Project Grantees in the IDA Program. The IDA Program is intended, among other things, to determine the extent to which Individual Development Accounts ("IDAs") may be used to enable individuals and families with limited means to increase their economic self-sufficiency. This NOFA provides guidance to BEA Program Applicants on how IDAs can be used to serve Residents of Distressed Communities under the BEA Program.

In brief, IDAs are savings accounts for income-eligible individuals that are specifically restricted for use in activities associated with purchasing a home, obtaining post-secondary education, or capitalizing a business. IDA programs: (1) Are generally targeted to lower income individuals; (2) create savings incentives through the provision of matching funds from third parties; (3) may combine matching fund incentives with financial literacy education and other training or technical assistance; and (4) may be provided by non-profit organizations collaborating with financial institutions (which includes Insured Depository Institutions, as defined under the BEA Program) that may be acting as Trustees, Custodians or in some other capacity. Interested parties are instructed to refer to the HHS Program Announcements for further IDA Program information. Such information may be found at *www.acf.dhhs.gov/programs/ocs/99ASSETS.HTM* or through a link at the Fund's main Website at *www.treas.gov/cdfi*.

While an Applicant is not required to be a participant in the IDA Program to receive a BEA grant for its IDA activities, IDAs must meet the requirements set forth in Part IV (Section G(3) and (4)) of Program Announcement OCS–99–08.

For purposes of this NOFA, the term IDA and all terms related to the IDA Program not defined in the BEA Program Regulations shall have the same meanings as defined in the July 2, 1999 HHS Program Announcement, OCS–99–08.

For purposes of this NOFA, the Fund will presume that IDAs established for Project Participants by financial institutions, as discussed in OCS–99–08, Part IV (G)(2), benefit Low- and Moderate-Income individuals based on the requirements for Eligible Individuals described under Program Announcement OCS–99–08, Part IV G(2)(a), which states that "[e]ligibility for participation in the demonstration projects is limited to individuals who are members of households eligible for assistance under TANF [Temporary Assistance for Needy Families] or of households whose adjusted gross income does not exceed the earned income amount described in Section 32 of the Internal Revenue Code of 1986 (taking into account the size of the household), and whose net worth as of the end of the calendar preceding the determination of eligibility does not exceed $10,000, excluding the primary dwelling unit and one motor vehicle owned by a member of the household." However, such Applicants must collect data on the geographic unit in which an IDA holder resides to verify that he or she is a Resident of a Distressed Community, as required by 12 CFR 1806.103(u).

In the case of Applicants that are not a participant in the HHS' IDA Program, such Applicants must collect data on: (1) the geographic unit in which an IDA holder resides to verify that he or she is a Resident of a Distressed Community; and (2) the annual income of said IDA holder to verify that his or her income meets Low- or Moderate-Income criteria.

As provided in BEA Program Regulations at 12 CFR 1806.202(c)(3), all Financial Service activities must be valued "based on the administrative costs of providing such services." In order to reduce Applicants' paperwork and administrative burden, the Fund will value the administrative cost of providing an IDA at $50.00 per account. Thus, an Applicant seeking a BEA grant for IDA activities does not need to submit documentation of administrative expenses incurred in delivering its product (However, at a later date the Fund may distribute a survey questionnaire to Awardees for the purpose of obtaining information regarding the administrative costs incurred in the provision of IDAs). Instead, the Applicant must indicate the number of IDAs held by Low- and Moderate-Income Residents of Distressed Communities, which numbers shall be multiplied by $50.00 to yield the respective Baseline Period and Assessment Period levels of IDA activities. For purposes of this NOFA, and in keeping with 12 CFR § 1806.201(b)(3)–(4) of the BEA Program Regulations, the Fund will assign a priority factor of 2.0 for establishment of IDAs held by Low- and Moderate-Income Residents of Distressed Communities.

If an Applicant seeks a BEA grant for providing financial literacy classes, related training or one-on-one technical assistance to IDA holders, the Applicant must submit documentation of the costs of providing such services and report such activities as Community Service activities, as described in 12 CFR 1806.103(p). If an Applicant seeks a BEA grant for providing matching fund grants directly to IDA Program Project Participants' accounts or to Project Grantees for the purpose of providing matching fund grants to Project Participants' accounts, the Fund will consider such activity an administrative cost and it must be reported as a Community Service activity. Such an Applicant must provide documentation that such grant monies have been disbursed to Project Participants' accounts or a Project Grantee.

VII. Disbursement on Lines of Credit

This NOFA provides guidance to Applicants regarding the manner in which the Fund will obligate and disburse a BEA grant to an Awardee for a Qualified Activity that is based on a loan in the form of a line of credit or other similar credit facility. The Fund will obligate an award based on the face amount only of such a line of credit provided that it meets the requirements of a closed transaction set forth in 12 CFR 1806.202(d). The Fund will disburse such obligated amounts after it receives documentation that the Awardee has disbursed monies to the borrower under said line of credit. The Fund will make a disbursement of its award to the Awardee in amounts equal to the corresponding award amount for the Awardee's disbursement to the borrower, up to the face amount of the line of credit.

Catalog of Federal Domestic Assistance: 21.021.

Authority: 12 U.S.C. 1834a, 4703, 4703 note, 4713; 12 CFR part 1806.

Dated: August 26, 1999.

Maurice A. Jones,

Deputy Director for Policy and Programs, Community Development Financial Institutions Fund.

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Part VI

Department of Education

Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind; Notices

DEPARTMENT OF EDUCATION

Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priorities for fiscal year (FY) 2000 and subsequent fiscal years.

SUMMARY: The Secretary announces final funding priorities for fiscal year (FY) 2000 and subsequent fiscal years under the Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind program. The Secretary takes this action to assist with the establishment of interpreter training programs or to assist ongoing programs to train a sufficient number of skilled interpreters throughout the country to meet the communication needs of individuals who are deaf and individuals who are deaf-blind by—(a) Training manual, tactile, oral, and cued speech interpreters; (b) ensuring the maintenance of the skills of interpreters; and (c) providing opportunities for interpreters to raise their level of competence.

EFFECTIVE DATE: These priorities are effective October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Lovley, U.S. Department of Education, 400 Maryland Avenue, SW., room 3217 Mary E. Switzer Building, Room 3217, Washington, DC 20202–2736. Telephone: (202) 205–9393. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 401–3664. Internet address: Mary_Lovley@ed.gov.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind program is authorized under section 302(f) of the Rehabilitation Act of 1973, as amended.

On May 10, 1999 the Secretary published a notice of proposed priorities for this program in the **Federal Register** (64 FR 25140). This notice of final priorities contains three changes from the notice of proposed priorities. All three changes are to Priority 1—National Project with Major Emphasis on Distance Education as a Medium for Interpreter Training. The first change added Hawaii to the list of States that have no degree-granting interpreter training program. The second change added a requirement that a project must ensure that curricula are developed or modified with input from a culturally diverse, consumer-based consortium. The third change added a requirement that the project must evaluate the effectiveness of training interpreters using the distance education curricula. The changes are fully explained in the Analysis of Comments and Changes located elsewhere in this notice.

Note: This notice of final priorities does *not* solicit applications. In any year in which the Secretary chooses to use these priorities, the Secretary invites applications through a notice in the **Federal Register**. A notice inviting applications under these competitions is published in a separate notice elsewhere in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, 27 parties submitted comments on or before the June 9, 1999 deadline. An analysis of the comments and of the changes in the priorities since publication of the notice of proposed priorities follows. Please note that we address only those issues on which substantive comments were received. Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize the Secretary to make.

General Comments

Comments: Two commenters suggested that a priority to train educational interpreters be added.

Discussion: We recognize the importance of training interpreters to work in the educational environment. We support projects to train educational interpreters through the Personnel Preparation to Improve Services and Results for Children with Disabilities, Preparation of Special Education, Related Services, and Early Intervention Personnel to Serve Infants, Toddlers, and Children with Low-Incidence Disabilities competition (CFDA 84.029A) in the Office of Special Education Programs (OSEP). In addition, in fiscal year (FY) 1990 we supported a national project under the Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind program in the Rehabilitation Services Administration (RSA) to focus on the development of a curriculum on interpreting in the educational environment. This curriculum is currently being used by OSEP educational interpreter training grantees and continues to be distributed by Northwestern Connecticut Community-Technical College and the National Clearinghouse of Rehabilitation Training Materials. Feedback received from the field is that this curriculum is still current and appropriate. Further, Priority 2 requires the use of model curricula developed by recent and current RSA-funded national interpreter training projects, including the curriculum that emphasizes interpreting in educational settings. Finally, the training conducted by the regional programs may have an impact on educational settings in addition to other settings.

Changes: None.

Comments: Two commenters supported the two proposed funding priorities, but also recommended that the Department support research on the value of educational interpreting for students who are deaf and hard of hearing at all educational levels. One commenter recommended that research be conducted to investigate the problem of how best to remedy the need for interpreters. Another commenter recommended numerous research questions regarding interpreter training and interpreter ethics and suggested that this research would best be done by a national center committed to research.

Discussion: We appreciate this support and note that the regulations in 34 CFR 396.1 define the Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind program as a training program. Research is beyond the scope of this program. We will share these comments with the appropriate individuals in OSEP and the National Institute on Disability and Rehabilitation Research (NIDRR).

Changes: None.

Comments: One commenter supported the two proposed funding priorities, and two commenters recommended that the Department establish an additional priority to support the cost of establishing additional distance education sites and enhance existing technologies to allow for quality skill-based training via video technologies.

Discussion: As previously stated, the regulations for this program define it as a training program. Developing and enhancing the technological infrastructure is beyond the scope of this program.

Changes: None.

Comments: Three commenters recommended that the priorities include the provision of stipends to students.

Discussion: Training stipends are not authorized under the Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind program.

Changes: None.

Comment: One commenter indicated that there is a need for small, centrally located programs that are nationally funded to help train new interpreters and upgrade the skills of the persons working in the field.

Discussion: We recognize the need for centrally located interpreter training programs and plan to continue to support 10 regional interpreter training programs.

Changes: None.

Comment: One commenter recommended that funding needs to go to an organization or company to ensure that interpreters are current with their training and are receiving training in all aspects of interpreting and that more stringent renewal of interpreters' certification is needed.

Discussion: We believe that it is the role of the professional interpreter certifying organizations to monitor the training activities and certification requirements of the professionals in the field and not the role of the Federal Government.

Changes: None.

Priority 1—National Project with Major Emphasis on Distance Education as a Medium for Interpreter Training

Comments: Two commenters indicated that Hawaii has no degree-granting interpreter training program.

Discussion: The interpreter training program currently offered through the Office of Continuing Education and Training at Kapiolani Community College on the island of Oahu is a 2-year, non-credit, non-degree-granting program. Therefore, Hawaii should be listed among those States that do not have a degree-granting interpreter training program.

Changes: Language in the priority has been changed to include Hawaii.

Comment: One commenter stated that the proposed priority lacked formal recognition of the need for various stakeholders to collaborate and work together effectively to make needs known and devise methods or provide feedback about the appropriate technology to meet the needs in any given locality.

Discussion: We note that Priority 2—National Project with Major Emphasis on Training Interpreter Educators requires that the curricula be developed with input from a culturally diverse, consumer-based consortium. Priority 1—National Project with Major Emphasis on Distance Education as a Medium for Interpreter Training does not have such a statement, and we recognize the value of stakeholders' participation in funded activities.

Changes: We have added a statement to Priority 1 requiring that curricula be developed or modified with input from a culturally diverse, consumer-based consortium.

Comment: One commenter supported Priority 1 and recommended placing an emphasis on a specific brand of video conferencing equipment and providing general information on the most advanced and appropriate equipment.

Discussion: We refrain from making reference to specific technology or from providing descriptions of the most advanced equipment in this priority because the rate of technology advancement may render those statements obsolete prior to the start of the project.

Changes: None.

Comment: One commenter supported Priority 1 and recommended the inclusion of a statement requiring the development and implementation of strategic planning approaches focusing on collaborative working relationships between two or more higher education institutions.

Discussion: One of the requirements of the priority is to provide technical assistance, and the commenter's recommendation is one action that could fall under the required technical assistance. We do not wish to dictate any specific technical assistance activities.

Changes: None.

Comment: One commenter supported both funding priorities, but questioned the necessity of requiring the National Project with Major Emphasis on Distance Education as a Medium for Interpreter Training to be national in scope. The commenter stated that having the training project regionally or locally based may be a more effective way of recruiting, developing, and maintaining interpreters in underserved areas.

Discussion: We recognize the need for regionally based interpreter training programs and plan to continue to support 10 regional interpreter training programs.

Changes: None.

Comments: Two commenters supported both priorities, but questioned whether the technology of video conferencing is an adequate tool for teaching the signing skills necessary for quality interpreting and cautioned against replacing the mentor-student interaction needed to provide comprehensive interpreter training through practicum and fieldwork experiences.

Discussion: We recognize that video conferencing, if it were used alone, may not be an adequate tool for teaching sign language and interpreting. However, as with any distance education instruction, distance interpreter education is not limited to video conferencing technology. While the priority requires technical assistance on the proper use of the most current and available technologies, such as video conferencing, videotaping, Internet web classes and chat rooms, e-mail, and voice mail, this does not preclude the simultaneous use of non-technical approaches to distance education such as on-site mentoring, use of printed or videotaped material, association with deaf, hard of hearing, or deaf-blind individuals or groups, and practicum experiences.

Changes: None.

Comment: One commenter expressed concern about the computer and technology literacy of individuals who would be engaged in distance learning and recommended providing funds to employ geographically proximate "circuit riders" to address this concern.

Discussion: We recognize that the use of "circuit riders" is one possible approach to improving or ensuring the computer and technology literacy of individuals interested in participating in distance interpreter education opportunities. We expect that proposals will address this, among other concerns, and do not wish to prescribe any one method or approach.

Changes: None.

Comment: One commenter stated that there is no discussion of any type of evaluation or methods of measuring the effectiveness of training interpreters using the distance education curricula prior to its dissemination.

Discussion: There is a requirement to provide technical assistance to interpreter training programs on the feasibility and effectiveness of distance interpreter education. We agree with the importance of evaluating the effectiveness of training interpreters using the distance education curricula.

Changes: We have added an evaluation requirement to the priority.

Comment: One commenter stated that dissemination is a critical issue and that having the information in several different formats or ways would be beneficial.

Discussion: There is a requirement that the packaged distance education curricula be disseminated to interpreter educators nationwide. The proposals would identify how the potential projects plan to carry out this requirement.

Changes: None.

Priority 2—National Project with Major Emphasis on Training Interpreter Educators

Comments: Two commenters supported Priority 2, with one commenter requesting that this priority be weighted more heavily than Priority 1 and the other commenter requesting that the mentoring portion of this priority be given sufficient weight and earmarked funding to ensure that it is addressed.

Discussion: We appreciate this support, but note that these priorities are not assigned weights.

Changes: None.

Comment: One commenter supported both priorities including the focus on identifying and updating or developing a model mentor training curriculum and training experienced interpreters or interpreter educators to serve as mentors, but only if the rural and island areas of Hawaii will have effective use of them.

Discussion: The priority requires that the mentor training program train mentors to serve in a variety of situations or environments, including various regions and culturally diverse environments. We believe that this requirement will allow Hawaii, and other States with unique needs, to make effective use of the curriculum and the trained mentors.

Changes: None.

Comments: Two commenters supported both priorities, but suggested that Priority 2 also include curriculum for training interpreters in mental health, educational, medical, legal, and other environments requiring specialized training.

Discussion: We recognize the need for training interpreters to work in environments requiring specialized training and believe that the priority is broad enough to permit the development of curriculum, or training of interpreters, in specialized settings. However, there is no basis to require the grantee to include the settings requested by the commenter.

Changes: None.

Comment: One commenter supported both priorities, but asked that steps be taken to ensure that members of the deaf, hard of hearing, and deaf-blind communities are afforded the opportunity to participate in the training programs and, for those who are qualified, to become part of the interpreter educator staff. This commenter also requested that the material adaptation and interpreter educator training not overlook the regional and often local diversity in sign language and cultural backgrounds.

Discussion: We agree that consumer involvement is crucial to a successful program and note that the priority specifically requires that the curricula be developed with input from a culturally diverse, consumer-based consortium. We also note that the priority requires that training be available to culturally diverse audiences and be sensitive to the needs of all audiences. These culturally diverse audiences would include, among the many other forms of diversity, training available to individuals who are deaf, hard of hearing, or deaf-blind.

Changes: None.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet one of the following priorities. The Secretary funds under these competitions only applications that meet one of these absolute priorities:

Priority 1—National Project with Major Emphasis on Distance Education as a Medium for Interpreter Training (84.160B)

Background: Historically interpreter training programs have been located in colleges and universities in metropolitan areas or in areas of high population. While demand for interpreter services exceeds the supply of interpreters even in metropolitan areas, the dearth of interpreters in rural areas is marked. *A Study of Interpreter Services for Persons Who are Deaf or Hard of Hearing,* published in 1993, concluded that "there is sufficient work/need for additional professional interpreters in every state and many major communities." Organizations such as the National Association of the Deaf (NAD) and the Registry of Interpreters for the Deaf (RID) have also identified the shortage of qualified interpreters. Some States, such as Alaska, Hawaii, Idaho, Montana, Nebraska, Nevada, North Dakota, Rhode Island, Vermont, and West Virginia, as well as Puerto Rico, the U.S. Virgin Islands, and the Trust Territories of the Pacific other than Guam, have no degree-granting interpreter training program. Due to the relatively sparse population in large geographical areas, student enrollment may not be sufficient to support interpreter training programs should they be established in these areas. As a result, individuals living in these States or areas who are interested in obtaining interpreter training must seek that training at a great distance from their homes. Further, the few working interpreters living in these States or areas who wish to maintain or upgrade their skills often find it difficult to locate nearby sources for continuing education. Distance education can help fill this void. The challenge, however, is to effectively deliver the interpreter training curricula, which is a skill-based, visual-based curricula rather than a knowledge-based or text-based curricula. Therefore, it is of critical importance that interpreter-training curricula be modified to make the best use of a blend of all of the available technologies, such as video conferencing, Internet web classes and chat rooms, e-mail, and voice mail. With proper curricular modifications, interpreter training can be provided via distance education to rural areas, remote locations, and areas with low populations in a cost-effective manner.

RSA has determined that a national project is needed that will focus on adapting existing model interpreter training curricula used by 2-year and 4-year interpreter training programs for delivery via distance education. In addition, there is a need for technical assistance to, and coordination and cooperation with, interpreter training programs across the Nation on matters related to the use of distance education as a medium for interpreter training.

Priority: A project must—

- Be national in scope;
- Adapt or modify existing model interpreter training curricula or develop new appropriate interpreter training curricula for delivery via distance education and package it for easy use by the RSA-funded regional interpreter training projects and other trainers and interpreter training programs;
- Ensure that the curricula are developed or modified with input from a culturally diverse, consumer-based consortium;
- Evaluate the effectiveness of training interpreters using the distance education curricula;
- Develop detailed instruction manuals to accompany each packaged curriculum;
- Provide technical assistance to interpreter training programs on the feasibility and effectiveness of distance interpreter education;
- Establish cooperative working relationships with the RSA-funded regional interpreter training projects;
- Furnish technical assistance to the RSA-funded regional interpreter training projects in developing and using distance education as a mechanism for training interpreters to meet the communication needs of individuals who are deaf, hard of hearing, or deaf-blind in their regions;
- Provide technical assistance and professional development opportunities for interpreter trainers across the Nation on the development and use of distance education as a mechanism for training interpreters to meet the communication needs of individuals who are deaf, hard of hearing, or deaf-blind. The technical assistance must address matters such as the proper use of the distance interpreter education curriculum; the proper use of the most current and available technologies, such as video conferencing, videotaping, Internet web classes and chat rooms, e-mail, and voice mail; the technical infrastructure needed to successfully conduct distance interpreter education; and the policy implications and barriers that exist in providing distance interpreter education across a State or across State lines (e.g., classification of distance education students as in-State or out-of-State, the geographic area the institution is designed to serve, etc.); and
- Disseminate the packaged distance education curricula to interpreter educators nationwide.

Priority 2—National Project with Major Emphasis on Training Interpreter Educators (84.160C)

Background: In order to train qualified interpreters, interpreter educators must be both sufficient in number and current in knowledge and best practices. There are, however, very few programs that prepare interpreter educators to teach the interpreting process and the skill of interpreting. As a result, many faculty teaching at the 100-plus interpreter training programs have had little or no opportunity to study how to teach interpretation. Further, over the last 10 years RSA has funded the development of model curricula emphasizing the interpreting needs of culturally diverse communities, deaf-blind interpreting, and interpreting in educational and rehabilitation environments. Due to the low number of programs to train interpreter educators, this curriculum is not being shared widely and, as a result, is not being used extensively.

The model curricula on interpreting in educational environments and interpreting in rehabilitation environments is available at the National Clearinghouse of Rehabilitation Training Materials at Oklahoma State University, 5202 Richmond Hill Drive, Stillwater, OK 74078–4080. The model curricula on the interpreting needs of culturally diverse communities and interpreting for individuals who are deaf-blind are being developed under currently funded projects. These curricula will be available at the National Clearinghouse of Rehabilitation Training Materials once these projects have completed their activities. The project developing the model curriculum on the interpreting needs of culturally diverse communities ends on December 31, 2000, and the project developing the model curriculum on interpreting for individuals who are deaf-blind ends on September 30, 2000.

Another aspect of training a sufficient number of qualified interpreters is the practice of mentoring. Mentors are experienced interpreters and interpreter educators who provide one-on-one technical assistance to novice interpreters or to working interpreters who wish to improve or expand their skills or work toward certification. While "mentoring is not a substitute for comprehensive interpreter education or for the internships and practicums associated with such formal training" (RID Standard Practice Paper on "Mentoring"), it supports and augments the training received in those settings. While the field of interpreting embraces the use of mentoring, there is no established uniform mechanism for training individuals to serve as mentors.

In order to train a sufficient number of qualified interpreters throughout the country, there is a need to increase the number of highly trained interpreter educators and mentors. A national project is needed to address these issues.

Priority: A project must—

- Be national in scope;
- Develop a new curriculum, or update a former or existing curriculum, to prepare interpreter educators and, once this is developed, use it to train both working interpreter educators who need to obtain, enhance, or update their training and new interpreter educators. This newly developed or updated curriculum must include all issues pertinent to the training of interpreters and the use of the model curricula developed by recent and current RSA-funded national interpreter training projects that emphasize the interpreting needs of culturally diverse communities, interpreting for deaf-blind individuals, and interpreting in educational and rehabilitation environments;
- Identify and update or develop a model mentor training curriculum that includes elements such as diagnostic assessment, goal setting, discourse analysis, and effective feedback provision and, once this is developed, train experienced interpreters or interpreter educators to serve as mentors. This mentor training program must train mentors to serve in a variety of situations or environments (i.e., in urban and rural settings; in various regions; in culturally diverse environments; in situations in which various modes of communication (deaf-blind, oral, cued speech, etc.) are present; in specialized settings (legal, medical, educational, etc.); and with interns at varying skill levels, etc.);
- Provide technical assistance to organizations or bodies establishing mentorship programs and to existing mentorship programs on all aspects of mentoring, including the identification of trained mentors;
- Ensure that the curricula are developed with input from a culturally diverse, consumer-based consortium;
- Ensure that training is available to culturally diverse audiences and is sensitive to the needs of all audiences;
- Use innovative as well as traditional approaches to the provision of training (i.e., distance education, short-term intensive training sessions or seminars, delivering training to communities in need, etc.); and
- Establish cooperative relationships with the regional interpreter training projects the Secretary plans to propose in fiscal year 2000.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These priorities support the National Education Goal that, by the year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The priorities further the objectives of this Goal by focusing available funds on projects that train a sufficient number of qualified interpreters throughout the country to meet the communication needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind. Training and improving the manual, tactile, oral, and cued speech interpreting skills of interpreters working in vocational rehabilitation environments will improve the ability of individuals who are deaf or hard of hearing and individuals who are deaf-blind to function successfully in their vocational pursuits.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

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(Catalog of Federal Domestic Assistance Number 84.160, Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind)

Program Authority: 29 U.S.C. 772(f).

Dated: August 27, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–22775 Filed 8–31–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.160A, 84.160B, and 84.160C]

Training of Interpreters for Individuals Who Are Deaf and Individuals Who Are Deaf-Blind; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

Purpose of Program: The purpose of this program is to assist with the establishment of interpreter training programs or to assist ongoing programs to train a sufficient number of skilled interpreters throughout the country to meet the communication needs of individuals who are deaf and individuals who are deaf-blind by—(a) Training manual, tactile, oral, and cued speech interpreters; (b) Ensuring the maintenance of the skills of interpreters; and (c) Providing opportunities for interpreters to raise their level of competence.

Eligible Applicants; Public and private nonprofit agencies and organizations, including institutions of higher education, are eligible for assistance under this program.

Deadline for Transmittal of Applications: November 8, 1999.

Deadline for Intergovernmental Review: January 7, 2000.

Applications Available: September 7, 1999.

Estimated Available Funds: $2,100,000.

Estimated Range of Awards: Regional projects: $120,000 to $160,000; National Projects: $250,000 to $300,000.

Estimated Average Size of Awards: Regional projects: $140,000; National Projects: $270,800.

Estimated Number of Awards: Regional projects: 10. One project will be awarded in each of the 10 RSA regions; National projects: 2.

Note: The Department is not bound by any estimates in this notice.

Maximum Award: Regional Projects: In no case does the Secretary make an award greater than $160,000 for a single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this maximum amount.

National Projects: In no case does the Secretary make an award greater than $300,000 for a single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this maximum amount.

Project Period: Up to 60 months.

Page Limit: Part III of the application, the application narrative, is where you, the applicant, address the selection criteria used by reviewers in evaluating the application. You must limit Part III to the equivalent of no more than 35 pages for regional projects and no more than 50 pages for national projects, using the following standards:

(1) A "page" is 8.5"×11", on one side only with 1" margins at the top, bottom, and both sides.

(2) You must double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

If you use a proportional computer font, you may not use a font smaller than a 12-point font or an average character density greater than 18 characters per inch. If you use a nonproportional font or a typewriter, you may not use more than 12 characters per inch.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

If, in order to meet the page limit, you use print size, spacing, or margins smaller than the standards specified in this notice, we will not consider your application for funding.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 385 and 396.

Priorities

National Projects (CFDA Nos. 84.160B and 84.160C): The competitions focus on projects designed to meet one or more of the priorities in the notice of final priorities for this program published elsewhere in this issue of the **Federal Register**. These priorities are as follows:

Priority 1 (CFDA No. 84.160B)—
National Project with Major Emphasis on Distance Education as a Medium for Interpreter Training

Priority 2 (CFDA No. 84.160C)—
National Project with Major Emphasis on Training Interpreter Educators

For FY 2000 each of the priorities is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet one of the priorities.

Regional Projects (CFDA No. 84.160A): For FY 2000, the competition for new awards focuses on projects designed to meet the priority in the regulations for this program (34 CFR 396.5), as follows:

Projects that provide training in interpreting skills for persons preparing to serve, and persons who are already serving, as interpreters for individuals who are deaf and as interpreters for individuals who are deaf-blind in public and private agencies, schools, and other service-providing institutions.

For FY 2000 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet the priority.

Selection Criteria: In evaluating an application for a new grant under these competitions, the Secretary uses selection criteria chosen from the general selection criteria in 34 CFR 75.210 of EDGAR and the selection criterion in 34 CFR 396.31. The selection criteria to be used for these competitions will be provided in the application package for these competitions.

For Applications Contact: Education Publications Center (ED Pubs), PO Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734. You may also contact ED Pubs via its web site (http://www.ed.gov/pubs/edpubs.html) or its E-mail address (edpubs@inet.ed.gov).

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the Grants and Contracts Service Team, U.S. Department of Education, 400 Maryland Avenue, SW, room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8351. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

For Further Information Contact: Mary Lovley, US Department of Education, 400 Maryland Avenue, SW, (room 3217, Switzer Building), Washington, DC 20202–2736. Telephone: (202) 205–9393. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 401–3664.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Program Authority: 29 U.S.C. 772(f).

Dated: August 27, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–22776 Filed 8–31–99; 8:45 am]

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CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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LIST OF PUBLIC LAWS

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H.R. 211/P.L. 106–48
To designate the Federal building and United States courthouse located at 920 West Riverside Avenue in Spokane, Washington, as the "Thomas S. Foley United States Courthouse", and the plaza at the south entrance of such building and courthouse as the "Walter F. Horan Plaza". (Aug. 17, 1999; 113 Stat. 230)

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H.R. 1568/P.L. 106–50
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S. 507/P.L. 106–53
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S. 606/P.L. 106–54
For the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical, LLC (successor to Kerr-McGee Chemical Corporation), and for other purposes. (Aug. 17, 1999; 113 Stat. 398)

S. 1546/P.L. 106–55
To amend the International Religious Freedom Act of 1998 to provide additional administrative authorities to the United States Commission on International Religious Freedom, and to make technical corrections to that Act, and for other purposes. (Aug. 17, 1999; 113 Stat. 401)

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This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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September 20	October 5	October 20	November 4	November 19	December 20
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September 22	October 7	October 22	November 8	November 22	December 21
September 23	October 8	October 25	November 8	November 22	December 22
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September 27	October 12	October 27	November 12	November 26	December 27
September 28	October 13	October 28	November 12	November 29	December 27
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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AC80

WIC Farmers' Market Nutrition Program: Legislative Changes From the William F. Goodling Child Nutrition Reauthorization Act of 1998

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements three WIC Farmers' Market Nutrition Program (FMNP) related nondiscretionary provisions mandated in the William F. Goodling Child Nutrition Reauthorization Act of 1998. The three provisions pertain to the use of program income as a State matching fund source, elimination of specific State Plan ranking criteria used to determine funding preferences, and use of expansion funds to increase the value of benefits to recipients.

DATES: This regulation is effective October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Debra Whitford, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 542, Alexandria, Virginia 22302. (703) 305–2746.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 1998, the President signed Pub. L. 105–336, the William F. Goodling Child Nutrition Reauthorization Act of 1998 (the Goodling Act), which included three non-discretionary provisions regarding the FMNP. The three provisions address: program income as an allowable State matching fund source, elimination of specific State Plan ranking criteria used to determine funding preferences, and use of expansion funds to increase the value of benefits to recipients. This final rule implements those nondiscretionary FMNP provisions as reflected in section 203(o) of the Goodling Act. These provisions serve the interests of the President and Congress by providing greater flexibility for FMNP State agencies in the operation of the program, and expanding the allowable sources for meeting the State matching fund requirement. Because of the nondiscretionary nature of these legislative provisions, the Administrator of the Food and Nutrition Service has determined that, in accordance with 5 U.S.C. 553, prior notice and comment is unnecessary and contrary to the public interest, and for the same reason, that good cause exists for the publication of this rule less than 30 days prior to its effective date. The effective date of this rule is October 1, 1998, the same date on which the Goodling Act was signed.

Program Income

Section 203(o)(1) of the Goodling Act amended section 17(m)(3) of the Child Nutrition Act of 1966 (CNA) (42 U.S.C. 1786(m)(3)) to allow States to use program income as a source for meeting the FMNP State matching fund requirement. The conference report accompanying the Goodling Act [House Report No. 105–786, October 6, 1998] stated that the term "program income" was to be defined as in the Uniform Federal Assistance Regulations (7 CFR Part 3016.25), thereby permitting donations by companies and vendor fines for violations in the WIC Program to be used to meet the State matching fund requirement. Sections 248.2 and 248.14(a)(1) of the FMNP regulations are hereby amended to reflect this change. Current section 248.13 defines program income for FMNP purposes.

Expansion Funds

Section 203(o)(2) of the Goodling Act amended Section 17(m)(6)(C) of the CNA, (42 U.S.C. 1786(m)(6)(C)) by permitting use of Federal expansion funds for increases in the value of benefits in lieu of, or in addition to, the criterion that State agencies must serve additional recipients in order to receive the expansion funds. It also replaced the requirement for documentation that justifies the need for an increase in participation when seeking expansion funds with language requiring the Department of Agriculture (the Department) to consider the State agency's need for an increase in funding, and whether the use of the increased funding would be consistent with serving nutritionally at-risk persons and expanding program awareness. The law also added a requirement that the Department consider whether the rate of coupon redemption will be increased in those State agencies that use expansion funds to increase the value of benefits provided to individual recipients. The Department wishes to point out that under section 17(m)(5)(C) 42 U.S.C. 1786(m)(5)(C), the maximum Federal FMNP benefit level remains unchanged at $20 per recipient, per year. Sections 248.4(a)(19) and 248.14(e) are hereby amended to reflect these changes.

Selection of New State Agencies

Section 203(o)(3) of the Goodling Act eliminated section 17(m)(6)(F) of the CNA (42 U.S.C. 1786(m)(6)(F)) which outlined specific criteria and preferences for consideration by the Department in ranking State Plans from new FMNP State agencies for the purposes of determining the amount of Federal funds to be allocated. Accordingly, section 248.5 is hereby amended to reflect elimination of the criteria and preferences.

Executive Order 12866

This final rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Samuel Chambers, Jr., Administrator of the Food and Nutrition Service, has certified that this rule will not have a significant impact on a substantial number of small entities. This rule provides additional flexibility in program initiation and operation for FMNP State agencies, some of whom are small entities.

Paperwork Reduction Act

This final rule imposes no new reporting or recordkeeping requirements that are subject to OMB review in accordance with the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501–20).

Executive Order 12372

The WIC Farmers Market Nutrition Program is listed in the Catalog of Federal Domestic Assistance Programs under 10.572. For reasons set forth in the final rule in 7 CFR part 3015, subpart V, and related notice (48 FR 29115), this program is included in the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **DATES** paragraph of the final rule. Prior to any judicial challenge to the application of provisions of this rule, all applicable administrative procedures must be exhausted.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law (Pub. L.) 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local or tribal governments, in the aggregate, or the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

List of Subjects in 7 CFR Part 248

Administrative practice and procedure, Civil rights, Food assistance programs, Food donations, Grant programs—health, Grant programs—social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Penalties, Public assistance programs, Reporting and recordkeeping requirements, WIC, Women.

For the reasons set forth in the preamble, 7 CFR part 248 is amended as follows:

PART 248—WIC FARMERS' MARKET NUTRITION PROGRAM (FMNP)

1. The authority citation for part 248 continues to read as follows:

Authority: 42 U.S.C. 1786.

2. In § 248.2 the definitions of "FMNP funds" and "Matching requirement" are revised to read as follows:

§ 248.2 Definitions.

* * * * *

FMNP funds means Federal grant funds provided for the FMNP, plus the required matching funds.

* * * * *

Matching requirement means State, local or private funds, or program income equal to not less than 30 percent of the total FMNP costs for the fiscal year. The Secretary may negotiate with an Indian State agency a lower percentage of matching funds, but not less than 10 percent of the total cost of the program, if the Indian State agency demonstrates to the Secretary financial hardship for the affected Indian tribe, band, group, or council. The match may be satisfied through expenditures for similar farmers' market programs which operate during the same period as the FMNP. Similar programs include other farmers' market programs which serve low-income women, infants and children (who may or may not be WIC participants or on the waiting list for WIC services), as well as other categories of low-income recipients, such as, but not limited to, low-income elderly persons.

* * * * *

3. In § 248.4, paragraph (a)(19) is revised to read as follows:

§ 248.4 State Plan.

(a) * * *

(19) For States making expansion requests, documentation which demonstrates:

(i) The need for an increase in funding;

(ii) That the use of the increased funding will be consistent with serving WIC participants, or persons on a waiting list for WIC benefits, by expanding benefits to more persons, by enhancing current benefits, or a combination of both, and expanding the awareness and use of farmers' markets;

(iii) The ability to satisfactorily operate the existing FMNP;

(iv) The management capabilities of the State agency to expand; and

(v) Whether, in the case of a State agency that intends to use the funding to increase the value of the Federal share of the benefits received by a recipient, the funding provided will increase the rate of coupon redemption.

* * * * *

4. Section 248.5 is revised to read as follows:

§ 248.5 Selection of new State agencies.

In selecting new State agencies, the Department will use objective criteria to rank and approve State plans submitted in accordance with § 248.4. In making this ranking, the Department will consider the amount of funds necessary to successfully operate the FMNP in the State compared with other States and with the total amount of funds available to the FMNP. Approval of a State Plan does not equate to an obligation on the part of the Department to fund the FMNP within that State agency.

5. In § 248.14, paragraphs (a)(1)(i) and (e) are revised to read as follows.

§ 248.14 Distribution of funds.

(a) * * *

(1) * * *

(i) *Match amount.* As a prerequisite to the receipt of Federal funds, a State agency must agree to contribute State, local or private funds, or program income, equal to not less than 30 percent of its total FMNP cost. The Secretary may negotiate a lower percentage of matching funds, but not lower than 10 percent of the total cost of the program, in the case of an Indian State agency that demonstrates to the Secretary financial hardship for the affected Indian tribe, band, group, or council. The State agency may contribute more than this minimum amount. State, local or private funds for similar programs as defined in (248.2 may satisfy the State matching requirement.

* * * * *

(e) *Expansion for current State agencies.* In providing funds to State agencies that participated in the FMNP in the previous fiscal year, the Department shall consider on a case-by-case basis, the following:

(1) Whether the State agency utilized at least 80 percent of its prior year food grant. States that did not spend at least 80 percent of their prior year food grant may still be eligible for expansion funding if, in the judgment of the Department, good cause existed which was beyond the management control of the State, such as severe weather conditions, or unanticipated decreases in participant caseload in the WIC Program.

(2) Documentation supporting the funds expansion request as outlined in § 248.4(a)(19).

* * * * *

Dated: August 23, 1999.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 99–22903 Filed 9–1–99; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 924

[Docket No. FV99–924–1 FR]

Fresh Prunes Grown in Designated Counties in Washington and Umatilla County, Oregon; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Washington-Oregon Fresh Prune Marketing Committee (Committee) under Marketing Order No. 924 for the 1999–2000 and subsequent fiscal periods from $1.00 to $1.50 per ton of fresh prunes handled. The Committee is responsible for local administration of the marketing order which regulates the handling of fresh prunes grown in designated counties in Washington and Umatilla County, Oregon. Authorization to assess fresh prune handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 1999–2000 fiscal period began April 1 and ends March 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: September 3, 1999.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 924, as amended (7 CFR part 924), regulating the handling of fresh prunes grown in designated counties in Washington and Umatilla County, Oregon, hereinafter referred to as the "order." The marketing order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Washington-Oregon fresh prune handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable fresh prunes beginning April 1, 1999, and continue until modified, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 1999–2000 and subsequent fiscal periods from $1.00 to $1.50 per ton of fresh prunes handled.

The Washington-Oregon fresh prune marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The Committee consists of six producer members and three handler members, each of whom is familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The budget and assessment rate were discussed at a public meeting and all directly affected persons had an opportunity to participate and provide input.

For the 1998–99 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate of $1.00 per ton that would continue in effect from fiscal period to fiscal period indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on May 27, 1999, and unanimously recommended 1999–2000 expenditures of $7,630 and an assessment rate of $1.50 per ton of fresh prunes handled. In comparison, last year's budgeted expenditures were $7,003. The assessment rate of $1.50 is $0.50 higher than the rate currently in effect. The Committee recommended an increased assessment rate because assessable 1999–2000 tonnage is expected to be less than the 5-year average of 4,985 tons, and the current rate will not generate enough income to adequately administer the program. The Committee also plans on hiring an additional part-time staff person which will increase its salary expense.

Major expenses recommended by the Committee for the 1999–2000 fiscal period include $3,560 for salaries, $1,000 for travel, $528 for rent and maintenance, and $475 for its annual audit. Budgeted expenses for these items in 1998–99 were $2,880, $1,000, $528, and $475, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Washington-Oregon fresh prunes. Fresh prune shipments for the year are estimated at 4,600 tons, which should provide $6,900 in assessment

income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (currently $6,013) will be kept within the maximum permitted by the order of approximately one fiscal period's operational expenses (§ 924.42).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1999–2000 budget and those for subsequent fiscal periods will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, the AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 producers of fresh prunes in the production area and approximately 12 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000 and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Currently, all of the Washington-Oregon fresh prune handlers ship under $5,000,000 worth of fresh prunes. In addition, based on acreage, production, and producer prices reported by the National Agricultural Statistics Service, and the total number of Washington-Oregon fresh prune producers, the average annual producer revenue is approximately $21,000. In view of the foregoing, it can be concluded that the majority of Washington-Oregon fresh prune producers and handlers may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 1999–2000 and subsequent fiscal periods from $1.00 to $1.50 per ton of fresh prunes handled. The Committee met on May 27, 1999, and unanimously recommended 1999–2000 expenditures of $7,630 and an assessment rate of $1.50 per ton of fresh prunes handled. In comparison, last year's budgeted expenditures were $7,003. The assessment rate of $1.50 is $0.50 higher than the 1998–99 rate. The Committee recommended an increased assessment rate because assessable 1999–2000 tonnage is expected to be smaller than the 5-year average of 4,985 tons, and the current rate will not generate enough income to adequately administer the program. The Committee also plans on hiring an additional part-time staff person which will increase its salary expense.

Major expenses recommended by the Committee for the 1999–2000 fiscal period include $3,560 for salaries, $1,000 for travel, $528 for rent and maintenance, and $475 for its annual audit. Budgeted expenses for these items in 1998–99 were $2,880, $1,000, $528, and $475, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of fresh prunes. Fresh prune shipments for the year are estimated at 4,600 tons, which should provide $6,900 in assessment income. Income derived from handler assessments, along with funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. The reserve is within the maximum permitted by the order of approximately one fiscal period's operational expenses (§ 924.42).

The Committee considered alternative levels of assessment but determined that, with the reduced estimate of assessable tonnage, increasing the assessment rate to $1.50 per ton would be appropriate. The Committee decided that an assessment rate of more than $1.50 per ton would generate income in excess of that needed to adequately administer the program.

A review of historical information and preliminary information pertaining to the upcoming crop indicates that the producer price for the 1999–2000 marketing season could range between $200 and $500 per ton of fresh prunes handled. Therefore, the estimated assessment revenue for the 1999–2000 fiscal period as a percentage of total producer revenue should range between 0.30 and 0.75 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Washington-Oregon fresh prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 27, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Washington-Oregon fresh prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on July 14, 1999 (64 FR 37888). The proposal was made available through the Internet by the Office of the Federal Register. A copy of the proposed rule was also mailed to the Committee's administrative office for distribution to producers and handlers. A 30-day comment period ending August 13, 1999, was provided for interested persons to respond to the proposal. No comments were received.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 1999–2000 fiscal period began on April 1, 1999, and the order requires that the rate of assessment for each fiscal period apply to all assessable fresh prunes handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years. Also, a 30-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 924

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 924 is amended as follows:

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND UMATILLA COUNTY, OREGON

1. The authority citation for 7 CFR part 924 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 924.236 is revised to read as follows:

§ 924.236 Assessment rate.

On and after April 1, 1999, an assessment rate of $1.50 per ton is established for the Washington-Oregon Fresh Prune Marketing Committee.

Dated: August 26, 1999.

Bernadine M. Baker,

Acting Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–22906 Filed 9–1–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV99–948–1 FR]

Irish Potatoes Grown in Colorado; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Colorado Potato Administrative Committee, Area III (Committee) under Marketing Order No. 948 for the 1999–2000 and subsequent fiscal periods from $0.01 per hundredweight to $0.02 per hundredweight of potatoes handled. The Committee is responsible for local administration of the marketing order which regulates the handling of potatoes grown in Colorado. Authorization to assess Colorado potato handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 1999–2000 fiscal period began July 1 and ends June 30. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: September 3, 1999.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948 [7 CFR Part 948], both as amended, regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order now in effect, Colorado potato handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate issued herein will be applicable to all assessable potatoes beginning on July 1, 1999, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 1999–2000 and subsequent fiscal periods from $0.01 per hundredweight to $0.02 per hundredweight of potatoes handled.

The Colorado potato order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The Committee consists of five producer members and four handler members, each of whom is familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate.

For the 1996–97 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

A meeting of the Committee was scheduled for May 13, 1999, to review the assessment rate and budget needs of the program for the 1999–2000 fiscal

period. However, a quorum was not present. Based upon discussion among those Committee members who showed up for the meeting, the manager of the Committee prepared information and voting material that was sent by facsimile copy (fax) to Committee members and alternates. Voting by telegraph, telephone, or other means of communication is provided for in § 948.61(c) of the marketing order. Seven members subsequently faxed completed votes back to the manager during the voting period May 14 through May 19, 1999. Thus, a fax vote was used to determined the Committee's level of support for an increased rate of assessment and to recommend an operating budget for the 1999–2000 fiscal period. All seven members approved the $0.02 assessment rate. The 1999–2000 budget of $24,450 was approved by a vote of 6 to 1. Those voting confirmed their votes at the Committee meeting held on June 20, 1999.

Based on the fax vote, the Committee approved an assessment rate of $0.02 per hundredweight of potatoes handled during the 1999–2000 and subsequent fiscal periods. This is a $0.01 increase over the rate previously in effect. The increased assessment rate was recommended because the $.01 rate would not generate enough income to adequately administer the program, given the projected short crop for 1999. The assessment rate increase is based on the 1999–2000 crop estimate, the 1999–2000 fiscal period expenditures estimate, and the current and projected balance of the operating reserve.

The estimated Area III assessable potato crop for 1999–2000 is approximately 792,000 hundredweight. This is about 380,000 hundredweight less than the assessed crop of 1998–99 due to a reduction in the acreage planted this season. The increased assessment ensures that the operating reserve is not depleted at the end of the 1999–2000 fiscal period because of the projected short crop.

The increased assessment rate of $.02 per hundredweight should provide $15,840 in assessment income. This amount, when supplemented with an estimated $3,000 interest income, $1,500 rental income from the sublease of office space to the State Inspection Service, and $4,110 from the operating reserve, should be adequate to cover the budgeted expenses of $24,450. The recommended budget is $1,603 less than the 1998–99 budget of $26,053.

The major expenditures recommended by the Committee for the 1999–2000 fiscal period include $10,500 for the manager's salary, $3,000 for rent, and $2,000 for office supplies. Budgeted expenses for these items in the 1998–99 fiscal period were $11,500, $3,000, and $2,000, respectively.

The Committee estimates it has approximately $38,245 in its operating reserve, which should be adequate to cover any income shortages for the current fiscal period. This amount is within the maximum permitted by the order of approximately two fiscal periods' expenditures (§ 948.78).

The assessment rate of $.02 will continue in effect for the 2000–2001 and subsequent fiscal periods unless modified, suspended, or terminated by the Secretary, based on recommendation and information submitted by the Committee, or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department and are locally published. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, the AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 17 handlers of Colorado Area III potatoes who are subject to regulation under the order and approximately 60 potato producers in the regulated production area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of Colorado Area III potato handlers and producers may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 1999–2000 and subsequent fiscal periods from $0.01 per hundredweight to $0.02 per hundredweight of potatoes handled. The $0.02 assessment rate was approved by all seven of the Committee members who cast votes during a fax vote held between May 14 and May 19, 1999. The assessment rate is $0.01 greater than the rate previously in effect. The Committee recommended the increased assessment rate because the previous rate would not have generated enough income to adequately administer the program. The anticipated fresh potato crop of 792,000 hundredweight is approximately 380,000 hundredweight less than the 1998–99 crop. The $0.02 rate should provide $15,840 in assessment income, which, when combined with interest income of $3,000, rental income of $1,500 from the sublease of office space to the State Inspection Service, and $4,110 from the operating reserve, should be adequate to meet the 1999–2000 fiscal period's budgeted expenses. The 1999–2000 budget of $24,450 was approved by a vote of 6 to 1.

The Committee's 1999–2000 budget of $24,450 is $1,603 less than last year's budgeted expenses. Prior to recommending this budget, the Committee considered historical income and expenses, current income and expense levels, the 1999–2000 estimated crop production, current and projected operating reserve levels, and input from the Committee officers. The major expenditures recommended by the Committee for the 1999–2000 fiscal period include $10,500 for the manager's salary, $3,000 for rent, and $2,000 for office supplies. Budgeted expenses for these items in the 1998–99 fiscal period were $11,500, $3,000, and $2,000, respectively.

A review of historical data and preliminary information pertaining to the upcoming season indicates that the price to producers for the 1999–2000 Colorado Area III potato season could average $5.30 per hundredweight of potatoes. Therefore, the estimated assessment revenue for the 1999–2000 fiscal period ($0.02 × 792,000 cwt = $15,840) as a percentage of the projected total revenue at the farm gate ($5.30 × 792,000 cwt = $4,197,600) would be 0.37 percent. This figure indicates that the $0.02 assessment rate will have an insignificant impact on the Colorado potato industry.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the order. In addition, the Committee's meeting was widely publicized throughout the Colorado potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 13, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small businesses.

This rule imposes no additional reporting or recordkeeping requirements on either small or large potato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on July 14, 1999 (64 FR 37890). A copy of the proposed rule was mailed to the Committee's administrative office for distribution to producers and handlers. The proposed rule was also made available through the Internet by the Office of the Federal Register. A 30-day comment period ending August 13, 1999, was provided for interested persons to respond to the proposal. No comments were received.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis, the 1999–2000 fiscal period began on July 1, 1999, and the order requires that the rate of assessment for each fiscal period apply to all assessable potatoes handled during such fiscal period. Further, handlers are aware of this action which is similar to other assessment rate actions issued in past years. Also, a 30-day comment period was provided for in the proposed rule, and no comments were received.

List of Subjects in 7 CFR Part 948

Potatoes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 948.215 is revised to read as follows:

§ 948.215 Assessment rate.

On and after July 1, 1999, an assessment rate of $0.02 per hundredweight is established for Colorado Area III potatoes.

Dated: August 26, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–22907 Filed 9–1–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1106

[DA–99–06]

Milk in the Southwest Plains Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final Rule; Suspension of rule.

SUMMARY: This document suspends certain provisions of the Southwest Plains Federal milk marketing order (Order 106) from September 1, 1999, through August 31, 2000, or until implementation of Federal order reform. The suspension removes a portion of the supply plant shipping standard and the producer delivery requirement. The action was requested by Kraft Foods, Inc. (Kraft), and is necessary to prevent the uneconomical and inefficient movement of milk and to ensure that producers historically associated with the market will continue to have their milk pooled under Order 106.

EFFECTIVE DATE: September 1, 1999, through August 31, 2000.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932, e-mail address Nicholas.Memoli@usda.gov.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued August 3, 1999; published August 6, 1999 (64 FR 42860).

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. For the purposes of determining which dairy farms are

"small businesses," the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

For the month of June 1999, 2,045 dairy farmers were producers under Order 106. Of these producers, 2,001 producers (i.e., 98%) were considered small businesses. For the same month, there were 12 regulated handlers under Order 106. Five of these handlers were considered small businesses.

The supply plant shipping standard and the producer delivery requirement are designed to attract an adequate supply of milk to the market to meet fluid needs. This final rule will allow a supply plant that has been associated with the Southwest Plains market during the months of September 1998 through January 1999 to qualify as a pool plant without shipping any milk to a pool distributing plant during the following months of September 1999 through August 2000 or until implementation of Federal order reform. The rule also will suspend the requirement that a producer's milk must first be received at a pool distributing plant during the month before the milk is eligible to be diverted to an unregulated manufacturing plant.

Marketing conditions in the Southwest Plains order indicate that there should be a sufficient amount of local milk available during the requested suspension period to supply the fluid needs of the market. Therefore, supplemental milk supplies should not be needed. The existing order provisions would require milk to be shipped longer distances than necessary for the sole purpose of fulfilling order standards. Thus, this rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Southwest Plains marketing area.

Statement of Consideration

This rule suspends a portion of the supply plant shipping standard and the producer delivery requirement of the Southwest Plains order for the period of September 1999 through August 2000 or until Federal order reform is completed. The suspension will allow a supply plant that has been associated with the Southwest Plains order during the months of September 1998 through January 1999 to qualify as a pool plant without shipping any milk to a pool distributing plant during the following months of September 1999 through August 2000 or until completion of Federal order reform. Without the suspension, a supply plant would be required to ship 50 percent of its producer receipts to pool distributing plants during the months of September through January and 20 percent of its producer receipts to pool distributing plants during the months of February through August to qualify as a pool plant under the order.

The rule also suspends the requirement that a producer's milk must be received at a pool plant during the month before it is eligible for diversion to a unregulated manufacturing plant. By suspending this provision, producer milk would not be required to be delivered to pool plants before going to such plants.

According to Kraft, the proponent of the suspension, supplemental milk supplies will not be needed to meet the fluid needs of distributing plants. Kraft anticipates that there will be an adequate supply of direct-ship producer milk located in the general area of distributing plants available to meet the Class I needs of the market. The handler notes that the supply plant shipping provision and the producer delivery requirement have been suspended since 1993 and 1992, respectively.

Kraft states there is no need to require producers located some distance from pool distributing plants to deliver their milk to such plants when their milk can more economically be diverted directly to manufacturing plants in the production area. Thus, the handler contends the suspension is necessary to prevent the uneconomical and inefficient movement of milk and to ensure producers historically associated with Order 106 will continue to have their milk pooled under the order.

A notice of proposed rulemaking was published in the **Federal Register** on August 6, 1999 (64 FR 42860), concerning the proposed suspension. Interested persons were afforded opportunity to file written data, views and arguments thereon. One comment supporting the proposed suspension was received. No comment was filed in opposition.

Dairy Farmers of America (DFA), a cooperative association representing producers whose milk is the largest volume marketed under the Southwest Plains order, filed a comment in favor of the proposed suspension. DFA states that both the supply plant standard and producer delivery requirement have been suspended for a number of years. The cooperative contends that the market has had an adequate supply of milk available to meet the fluid needs of the market and that the existing order provisions would cause milk to be shipped longer distances than necessary for the sole purpose of meeting order requirements. Moreover, DFA notes, these provisions have been modified to reflect current industry needs under the proposed language for Federal order reform.

As noted by Kraft and DFA, the supply plant shipping standard and the producer milk delivery requirement have been suspended for a number of years. Market conditions in the Order 106 marketing area indicate that there should be sufficient amounts of milk available in the local area to meet the fluid needs of the order for the requested time period. Therefore, supplemental milk supplies should not be needed.

The suspension is found to be necessary for the purpose of assuring that producers' milk will not have to be moved in an uneconomic and inefficient manner to assure that producers whose milk has long been associated with the Southwest Plains marketing area will continue to benefit from pooling and pricing under the order. In addition, the provisions have been modified in the proposed language for Federal order reform.

After consideration of all relevant material, including the proposal in the notice, the comment received, and other available information, it is hereby found and determined that for the months of September 1, 1999, through August 31, 2000, or until implementation of Federal order reform, the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1106.6, the words "during the month".

In § 1106.7(b)(1), beginning with the words "of February through August" and continuing to the end of the paragraph.

In § 1106.13, paragraph (d)(1) in its entirety.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such rule is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. One comment supporting the suspension was received.

Therefore, good cause exists for making this order effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1106

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR Part 1106 is amended as follows for the period of September 1, 1999, through August 31, 2000:

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

1. The authority citation for 7 CFR Part 1106 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 1106.6 [Suspended in part]

2. In § 1106.6, the words "during the month" are suspended.

§ 1106.7 [Suspended in part]

3. In § 1106.7 paragraph (b)(1), the words beginning with "of February through August" and continuing to the end of the paragraph are suspended.

§ 1106.13 [Suspended in part]

4. In § 1106.13, paragraph (d)(1) is suspended in its entirety.

Dated: August 26, 1999.

Richard M. McKee,

Deputy Administrator, Dairy Programs.

[FR Doc. 99–22905 Filed 9–1–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1924

RIN 0575–AC11

Manufactured Housing Thermal Requirements

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS), a part of the former Farmers Home Administration (FmHA), and now an agency within the Rural Development mission area of the U.S. Department of Agriculture, is amending its regulations regarding the thermal requirements for manufactured homes. The intended effect is to make the references to thermal requirements for manufactured homes consistent with requirements for the U.S. Department of Housing and Urban Development (HUD) zones that correspond to the RHS climatic zones. This will reduce the burden on the manufactured housing industry, RHS field personnel, and most importantly RHS customers.

EFFECTIVE DATE: October 4, 1999.

FOR FURTHER INFORMATION CONTACT: Samuel J. Hodges III, Architect, Program Support Staff, Rural Housing Service, U.S. Department of Agriculture, Stop 0761, Washington, DC 20250–0761, Telephone: (202) 720–9653.

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of the issuing agency that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Intergovernmental Consultation

This action affects the following programs as listed in the Catalog of Federal Domestic Assistance:

10.405 Farm Labor Housing Loans and Grants
10.410 Very Low to Moderate Income Housing Loans
10.415 Rural Rental Housing Loans

All of the affected programs, except 10.410 Very Low to Moderate Income Housing Loans, are subject to the provisions of Executive Order 12372 that requires intergovernmental consultation with State and local officials prior to making individual loans.

Civil Justice Reform

The final rule has been reviewed under Executive Order 12998, Civil Justice Reform. In accordance with this rule:

(1) Unless otherwise specifically provided all state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule: and (3) administrative proceedings of the National Appeals Division (7 CFR part 11) must be exhausted before bringing suit.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3507), the information collection requirements included in this rule have been approved through 7 CFR part 3550. The assigned OMB number is 0575–0172. This rule does not impose any new information collection or recordkeeping requirements from those approved by the Office of Management and Budget.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RHS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RHS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome

alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. Thus today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Background

Subsection 502(e)(1) of the Housing Act of 1949, 42 U.S.C. 1472(e)(1), establishes standards for manufactured homes which will be financed with RHS single family housing loans under section 502 of the Housing Act of 1949. Subsection 502(e)(1)(C) provides that manufactured homes must meet the energy conservation requirements applicable to other non-manufactured housing financed by RHS single family housing loans until the agency established energy conserving requirements under section 502(e)(2). The purpose of this regulation is to establish energy conserving requirements specifically designed for manufactured homes pursuant to section 502(e)(2).

The section 502(e) criteria for energy conserving requirements for RHS financed manufactured housing require that the requirements: "(A) reduce the operating costs for a borrower by maximizing the energy savings and be cost-effective over the life of the manufactured home or the term of the loan, whichever is shorter, taking into account variations in climate, types of energy used, the cost to modify the home to meet such requirements, and the estimated value of the energy saved over the term of the mortgage; and (B) be established so that the increase in the annual loan payment resulting from the added energy conserving requirements in excess of those required by the standards prescribed under title VI of the Housing and Community Development Act of 1974 [42 U.S.C. 5401 *et seq.*] shall not exceed the projected savings in annual energy costs."

The agency is adopting the energy conserving standards established by HUD under title VI of the Housing and Community Development Act of 1974 and, as hereinafter discussed, has determined that these zoned standards maximize energy savings and are cost-effective to the borrower. Under this final rule manufactured homes will no longer be required to meet the RHS thermal requirements applicable to non-manufactured single family housing financed by RHS. Exhibit D of 7 CFR part 1924, subpart A, adopts the HUD thermal design zone requirements for the Federal Manufactured Home Construction and Safety Standards (FMHCSS) that correspond to the RHS climatic zones.

The existing RHS requirements for a manufactured unit are: (1) The unit must meet the FMHCSS, and (2) the unit must meet the same RHS thermal requirements as are applicable to other, non-manufactured single family housing, financed by RHS prior to the National Energy Policy Act of 1992. Since HUD increased its energy requirements for manufactured homes (58 FR 54975, Oct. 25, 1993, effective Oct. 25, 1994), RHS has compared these new requirements with the RHS thermal requirements to evaluate the differences.

Our analysis indicates that the thermal performance of a unit built to the HUD requirements is roughly comparable to the thermal performance of a unit built to the requirements of the corresponding RHS climatic zones. The table below lists the HUD zones that are roughly comparable to the RHS climatic zones.

RHS climate zone (degree-days)	HUD zones (state boundary)
0–1000	1
1001–2500	2
2501–4500	2
4501–6000	3
>6000	3

The HUD increases in the thermal requirements of the building envelope are substantial. However, HUD's requirements are not based on climatic region; instead, they are based on state boundary. As an example, in the State of California there are 5 RHS climatic zones; whereas, HUD has identified the entire state as a single zone (HUD Zone 2). In California, the HUD-code home would be acceptable to RHS in climatic zones with 4500 or less heating degree days. However, in colder climates of California, the HUD Zone 2 unit would not be adequate. The HUD Zone 3 requirements are roughly comparable to the RHS requirements for climatic zones with 4501 or more heating degree days. Similar comparisons can be made in other states.

On this basis, in order to simplify requirements we are amending our current energy requirements for manufactured housing to adopt the design requirements for the HUD zones that correspond to the RHS climatic zones.

These are the benefits to the manufactured housing industry, RHS, and most importantly, RHS customers:

1. Manufacturers will no longer have to conform with the energy requirements of two Federal agencies. As required by federal law, manufacturers will continue to follow the FMHCSS for non-thermal requirements.
2. Manufacturers will not have to retain qualified consultants to certify that designs conform with the existing RHS thermal requirements.
3. Manufacturers will no longer have to substantiate design conformance to RHS thermal standards.
4. Loan processing will be expedited since less paperwork will have to be reviewed by RHS loan approval officials.
5. RHS will reduce its regulatory requirements.
6. This will simplify on-site inspection by the RHS Community Development Managers (CDM). Since each local office already knows their climatic zone, and since HUD requires the thermal zone for which a unit is built to be posted on a sticker in the unit, a CDM could quickly determine if a unit is acceptable by simply inspecting the HUD required sticker. RHS's current requirement for a separate certification sticker would be deleted.
7. The RHS customer will have a wider selection of manufactured homes to chose from.
8. The energy efficiency of the manufactured home will be roughly the same and in some cases exceed existing RHS thermal requirements.
9. The elimination of a separate energy efficiency requirement applicable only to RHS manufactured homes will make lending institutions more willing to make loans to guarantee RHS customers for manufactured homes.

Discussion of Comments

On October 6, 1998 RHS published a proposed rule in the **Federal Register**, 63 FR 53616. The five comments received were from persons representing organizations that are directly affected by the rule. The commenters included a housing developer and rural development consultant, an engineer with a manufactured housing producer and representatives from federal agencies involved in financing manufactured homes.

All commenters approved or supported the adoption of the FMHCSS thermal design zone requirements that correspond to RHS climatic zones. The positive comments on the proposed rule included such statements as it "is a positive measure", "reduce paper work", "improves loan processing", "streamlines lending procedure for manufactured housing in rural areas", "eliminates the need for manufacturers and RHS staff becoming familiar with different standards", "will reduce the cost of housing for low and moderate income applicants", "will give loan applicants a greater range of choices of housing design, style and size for their family needs", "improves the agencies relationship with the manufactured housing industry and lending community" and "improves the services to the customer." The Agency has not changed the basic structure or content of the proposed rule.

Finally, one commenter suggested that a requirement be added to Rural Development (RD) Form 1924–25, "Plan Certification", that would require the dealer-contractor to certify the unit meet the FMHCSS thermal design zone requirements that correspond to RHS climatic zones. The FMHCSS requires that the manufacturer permanently affix a "Heating Certificate" that certifies the design zone that the manufactured home complies with. This Heating Certificate is affixed to an interior surface of the home that is readily visible to the Agency staff and the homeowner. It is the Agency's position that the determination as to which FMHCSS thermal design zone requirement corresponds to the appropriate RHS climatic zones is best covered early in the loan making process and will be addressed at or before the pre-construction conference. Therefore, the Agency has not changed RD Form 1924–25.

List of Subjects in 7 CFR part 1924

Agriculture, Construction and repair, Construction management, Energy conservation, Housing, Loan programs—Agriculture, Low and moderate income housing.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1924—CONSTRUCTION AND REPAIR

1. The authority citation for part 1924 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

Subpart A—Planning and Performing Construction And Other Development

2. Exhibit D of subpart A to part 1924 is amended by adding paragraph IV. G to read as follows:

Exhibit D to Subpart A—Thermal Performance Construction Standards

* * * * *

IV. Minimum Requirements

* * * * *

G. New Manufactured Housing

The Uo Value Zone indicated on the "Heating Certificate" for comfort heating shall be equal to or greater than the HUD Zone listed in the following table:

RHS climate zones (winter degree days)	FMHCSS (HUD code) Uo value zones
0–1000	1
1001–2500	2
2501–4500	2
4501–6000	3
> 6000	3

Example: If a manufactured home is to be located in a geographic area having between 2501 and 4500 RHS winter degree days, the Agency will accept a Uo value Zone 2 unit or Zone 3 unit constructed to the HUD FMHCSS.

If a central air conditioning system is provided by the home manufacturer, a "Comfort Cooling Certificate" must be permanently affixed to an interior surface of the unit that is readily visible. This certificate may be combined with the heating certificate on the data plate.

* * * * *

Dated: August 26, 1999.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 99–22902 Filed 9–1–99; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWP–9]

Name Change of Guam Island, Agana NAS, GU Class D Airspace Area

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule, correction and delay of effective date.

SUMMARY: This action corrects a final rule that was published in the **Federal Register** on Monday, August 2, 1999 (64 FR 41780), Airspace Docket No. 99–AWP–9, changing the name of Guam Island, Agana NAS, GU, Class D airspace area to Guam International Airport, GU, Class D airspace area and delaying the effective date to November 4, 1999. The geographical coordinates for the airport were published incorrectly.

EFFECTIVE DATE: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Airspace Specialist, Airspace Branch, AWP–520.10, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, CA 90261, telephone (310) 725–6613.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 99–19692, Airspace Docket No. 99–AWP–9, published on August 2, 1999, changed the name of Guam Island, Agana NAS, GU, Class D airspace area to Guam International Airport, GU, Class D airspace area. The geographical airport reference points listed in that document were incorrect. This action corrects those errors.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description for Guam International Airport, GU, Class D airspace area is corrected as follows:

PART 71—[CORRECTED]

§ 71.1 [Corrected]

On page 41780, column 3, correct the geographical coordinates of the Guam International Airport, GU, Class D airspace area, incorporated by reference in § 71.1, as follows:

* * * * *

AWP GU D Guam International Airport, GU—[Corrected]

Guam International Airport, GU
(Lat. 13°29′00″N, long. 144°47′46″E)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.3 mile radius of Guam International Airport.

* * * * *

Issued in Los Angeles, California, on August 19, 1999.

Dawna J. Vicars,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 99–22892 Filed 9–1–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AAL–16]

Revision of Class D Airspace; Lake Hood, Elmendorf AFB, and Merrill Field, AK; Revision of Class E Airspace; Elmendorf AFB and Merrill Field, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, correction.

SUMMARY: This action corrects the error in the geographic description of a final rule that was published in the **Federal Register** on August 13, 1999 (64 FR 44114), Airspace Docket 99–AAL–6.

EFFECTIVE DATE: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Durand, Operations Branch, AAL–531, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: Bob.Durand@faa.gov. Internet address: http://www.alaska.faa.gov/at.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 99–21039, Airspace Docket 99–AAL–6, published on August 13, 1999, (64 FR 44114), revised the Class D and Class E airspace areas at Lake Hood, Elmendorf AFB, and Merrill Field, AK. The geographic descriptions for the Merrill Field Class D and Class E are in error. The Class D and Class E descriptions incorrectly read ". . . west along Tudor Road to the New Seward Highway, thence direct to the Mouth of Fish Creek, thence direct to the Northern Lights Blvd railroad bridge, thence direct to Point MacKenzie, . . ." The Northern Lights Blvd railroad bridge should be listed before the Mouth of Fish Creek and the descriptions should read ". . . west along Tudor Road to the New Seward Highway, thence direct to the Northern Lights Blvd railroad bridge, thence direct to the Mouth of Fish Creek, thence direct to Point MacKenzie, . . ." This action corrects these errors.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the geographic descriptions listed for the Merrill Field Class D and Class E as published in the **Federal Register** on August 13, 1999, (64 FR 44114), (**Federal Register** Document 99–21039, pages 44115–44116), is corrected as follows:

§ 71.1 [Corrected]

* * * * *

AAL AK D Anchorage, Merrill Field, AK [Corrected]

Anchorage, Merrill Field, AK
(Lat. 61° 12′ 52″ N., long. 149° 50′ 46″ W.)
Point Noname
(Lat. 61° 15′ 36″ N., long. 149° 55′ 39″ W.)
Point MacKenzie
(Lat. 61° 14′ 14″ N., long. 149° 59′ 12″ W.)
Ship Creek
(Lat. 61° 13′ 26″ N., long. 149° 53′ 37″ W.)
Northern Lights Blvd Railroad bridge
(Lat. 61° 11′ 43″ N., long. 149° 55′ 48″ W.)
Mouth of Fish Creek
(Lat. 61° 12′ 21″ N., long. 149° 55′ 59″ W.)
That airspace extending upward from the surface to and including 2,500 feet MSL within a line beginning at Point Noname, thence direct to the Mouth of Ship Creek, thence direct to the intersection of the Glenn Highway and Muldoon Road, thence south along Muldoon Road to Tudor Road, thence west along Tudor Road to the New Seward Highway, thence direct to the Northern Lights Blvd railroad bridge, thence direct to the Mouth of Fish Creek, thence direct to Point MacKenzie, thence via the north bank of Knik Arm to the point of beginning; excluding that airspace within the Anchorage International Airport, AK, Class C airspace. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AAL AK E2 Anchorage, Merrill Field, AK [Corrected]

Anchorage, Merrill Field, AK

(Lat. 61° 12′ 52″ N., long. 149° 50′ 46″ W.)
Point Noname
(Lat. 61° 15′ 36″ N., long. 149° 55′ 39″ W.)
Point MacKenzie
(Lat. 61° 14′ 14″ N., long. 149° 59′ 12″ W.)
Ship Creek
(Lat. 61° 13′ 26″ N., long. 149° 53′ 37″ W.)
Northern Lights Blvd railroad bridge
(Lat. 61° 11′ 43″ N., long. 149° 55′ 48″ W.)
Mouth of Fish Creek
(Lat. 61° 12′ 21″ N., long. 149° 55′ 59″ W.)
That airspace extending upward from the surface to and including 2,500 feet MSL within a line beginning at Point Noname, thence direct to the Mouth of Ship Creek, thence direct to the intersection of the Glenn Highway and Muldoon Road, thence south along Muldoon Road to Tudor Road, thence west along Tudor Road to the New Seward Highway, thence direct to the Northern Lights Blvd railroad bridge, thence direct to the Mouth of Fish Creek, thence direct to Point MacKenzie, thence via the north bank of Knik Arm to the point of beginning; excluding that airspace within the Anchorage International Airport, AK, Class C airspace. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Anchorage, AK, on August 25, 1999.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 99–22894 Filed 9–1–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–41]

Amendment to Class E Airspace; Herrington, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Herrington Regional Airport, Herrington, KS. A review of the Class E airspace area for Herrington Regional Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D.

In addition, a minor revision to the Airport Reference Point (ARP) coordinates is included in this document.

The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), revise the ARP, and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, December 30, 1999.

Comments for inclusion in the Rules Docket must be received on or before October 19, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 99–ACE–41, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours

in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Herrington, KS. A review of the Class E airspace for Herrington Regional Airport, KS, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 100 feet per mile plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Herrington Regional Airport, KS, will provide additional controlled airspace for aircraft operating under IFR, revise the ARP, and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipates the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket and be submitted in triplicate to the address specified under the captain **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules of Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ACE–41." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national governments and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designation and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Pargraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More above the Surface of the Earth.

* * * * *

ACE KS E5 Herrington, KS [Revised]

Herrington Regional Airport, KS
(Lat. 39°41′54″N., long. 96°48′29″W.)
Herrington NDB
(Lat. 38°41′34″N., long. 96°48′40″W.)
That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Herrington Regional Airport and within 2.6 miles each side of the 010°bearing from Herrington NDB extending from the 6.6-mile radius to 7.4 miles north of the airport and within 2.6 miles each side of the 168° bearing from the Herrington NDB extending from the 6.6-mile radius to 7.4 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on August 23, 1999.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 99–22890 Filed 9–1–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–39]

Amendment to Class E Airspace; Emmetsburg, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Emmetsburg Municipal Airport, Emmetsburg, IA. The FAA has revised the Nondirectional Radio Beacon (NDB) or Global Positioning System (GPS) Runway (RWY) 13 Standard Instrument Approach Procedure (SIAP) to serve Emmetsburg Municipal Airport, IA. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate this SIAP and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the revised NDB or GPS RWY 13 SIAP in controlled airspace.

In addition, a minor revision to Airport Reference Point (ARP) is included in this document.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing the NDB or GPS RWY 13 SIAP, amend the ARP, and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, December 30, 1999.

Comments for inclusion in the Rules Docket must be received on or before October 18, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 99–ACE–39, 601 East 12th Street, Kansas City MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has revised the NDB or GPS RWY 13 SIAP to serve the Emmetsburg Municipal Airport, Emmetsburg, IA.

The amendment to Class E airspace at Emmetsburg, IA, will provide additional controlled airspace at and above 700 feet AGL in order to contain the revised SIAP within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules (IFR). The ARP is amended and included in this document. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ACE–39." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 19998, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.

* * * * *

ACE IA E5 Emmetsburg, IA [Revised]

Emmetsburg Municipal Airport, IA
(Lat. 43°06′07″N., long. 94°42′18″W.)
Emmetsburg NDB
(Lat. 43°06′04″N., long. 94°42′26″W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Emmetsburg Municipal Airport and within 2.6 miles each side of the 128° bearing from the Emmetsburg NDB extending from the 6.5-mile radius to 7.4 miles southeast of the airport and within 2.5 miles each side of the 324° bearing from the Emmetsburg NDB extending from the 6.5-mile radius to 7 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on August 23, 1999.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 99–22889 Filed 9–1–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWP–2]

Modification of Class E Airspace; Mojave, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class E airspace area at Mojave, CA. The establishment of a Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 4 and GPS RWY 22 at Mojave Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the GPS RWY 4 and GPS RWY 22 SIAP to Mojave Airport. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Mojave Airport, Mojave, CA. This action also corrects an error in the geographic coordinates of the Mojave Airport, CA, and removes the Edward AFB, CA, header of the Notice of Proposed Rulemaking that was published in the **Federal Register** on July 7, 1999 (64 FR 36631) Airspace Docket No. 99–AWP–2.

EFFECTIVE DATE: 0901 UTC November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

History

On July 7, 1999, the FAA proposed to amend 14 CFR part 71 by modifying the Class E airspace area at Mojave, CA (64 FR 36631). Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the GPS RWY 4 and GPS RWY 22 SIAP at Mojave Airport. This action will provide adequate controlled airspace for aircraft executing the GPS RWY 4 and GPS RWY 22 SIAP at Mojave Airport, Mojave, CA.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. Class E airspace designations for airspace extending from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies the Class E airspace area at Mojave, CA. The development of a GPS RWY 4 and GPS RWY 22 SIAP has made this action necessary. The effect of this action will provide adequate airspace for aircraft executing the GPS RWY 4 and GPS RWY 22 SIAP at Mojave Airport, Mojave, CA.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective

September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AWP CA E5 Mojave, CA—[Revised]

Mojave Airport, CA
(Lat 35°03'34"N, long. 118°09'07"W)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Mojave Airport.

* * * * *

Issued in Los Angeles, California, on August 13, 1999.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 99–22897 Filed 9–1–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 99–AAL–13]

RIN 2120–AA66

Amendment to Time of Designation and Using Agency for Restricted Area R–2211 (R–2211), Blair Lakes, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the using agency and eliminates the 24-hour Notice to Airmen (NOTAM) requirement for the activation of R–2211, Blair Lakes, AK. The FAA is taking this action in response to a request from the United States Air Force (USAF) and the Alaska Regional Air Traffic Division to standardize procedures for the activation of airspace in Alaska.

EFFECTIVE DATE: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

As a result of a review of restricted area operation, the USAF and the FAA Alaska Air Traffic Division requested to change the requirements for the activation of R–2211, Blair Lakes, AK, by eliminating the requirement for a 24-hour NOTAM to activate the airspace. The USAF Special Use Airspace Information System, operated by the USAF in interior Alaska, provides real-time information on the status of R–2211 and makes the advanced NOTAM requirement unnecessary.

The Rule

This amendment to 14 CFR part 73 changes the times of designation for R–2211, Blair Lakes, AK, by removing the words "NOTAM issued by the using agency at least 24 hours in advance," and inserting the words "NOTAM issued by the using agency," and changes the using agency. This is an administrative change and does not affect the boundaries, designated altitudes, or activities conducted within the restricted areas. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are unnecessary. Section 73.22 of part 73 was republished in FAA Order 7400.8F, dated October 27, 1998.

The FAA has determined that this action only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

In accordance with FAA Order 1050.1D, "Polices and Procedures for Considering Environmental Impacts," and the National Environmental Policy Act of 1969, this action is not subject to environmental assessments and procedures.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.22 [Amended]

2. Section 73.22 is amended as follows:

* * * * *

R–2211 Blair Lakes, AK [Amended]

By removing the words "Time of designation. 0800 to 1800, local time, Monday–Friday and at other times as activated by NOTAM issued by the using agency at least 24 hours in advance" and inserting the words "Time of designation. 0800 to 1800, local time, Monday–Friday and at other times as activated by NOTAM issued by the using agency"; and by removing the words "Using agency. U.S. Air Force, 345th Fighting Wing, Eielson AFB, AK" and inserting the words "Using agency. U.S. Air Force, 354th Fighter Wing, Eielson AFB, AK."

* * * * *

Issued in Washington, DC, August 25, 1999.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 99–22893 Filed 9–1–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 99–AWP–18]

RIN 2120–AA66

Change Using Agency for Restricted Areas R–2510A and R–2510B; El Centro, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the using agency for R–2510A and R–2510B, El Centro, CA, from "U.S. Navy, Commander, Fleet Area Control and Surveillance Facility, San Diego, CA" to "Commanding Officer (CO), Yuma Marine Corps Air Station (MCAS), AZ." This is an administrative change that was initiated by the U.S. Navy to reflect the current using organization. There are no changes to the boundaries, designated altitudes, times of designation, or activities conducted within the affected restricted areas.

EFFECTIVE DATE: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Joseph C. White, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

The Rule

This action amends 14 CFR part 73 by changing the name of the using agency for R–2510A and R–2510B, from "U.S. Navy, Commander, Fleet Area Control and Surveillance Facility, San Diego, CA" to "CO, Yuma MCAS, AZ."

This administrative change will not alter the existing boundaries, altitudes, times of designation, or the activities conducted within the affected restricted areas. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested.

Section 73.25 of part 73 was republished in FAA Order 7400.8F, dated October 27, 1998.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action is a minor administrative change to amend the name of the using agency of existing restricted areas. There are no changes to the dimensions of the restricted areas, or to air traffic control procedures or routes as a result of this action. Therefore, this action is not subject to environmental assessments and procedures in accordance with FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts," and the National Environmental Policy Act of 1969.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.25 [Amended]

2. Section 73.25 is amended as follows:

* * * * *

R–2510A El Centro, CA [Amended]

By removing "Using agency. U.S. Navy, Commander, Fleet Area Control and Surveillance Facility, San Diego, CA" and substituting "Using agency. CO, Yuma MCAS, AZ."

R–2510B El Centro, CA [Amended]

By removing "Using agency. U.S. Navy, Commander, Fleet Area Control and Surveillance Facility, San Diego, CA" and substituting "Using agency. CO, Yuma MCAS, AZ."

* * * * *

Issued in Washington, DC, on August 26, 1999.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 99–22898 Filed 9–1–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 99–68]

RIN 1515–AC49

Textiles and Textile Products; Denial of Entry

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide that textiles and textile products that are covered by textile trade agreements negotiated under section 204 of the Agricultural Act of 1956, as amended, will be denied entry if entry documents show that the textiles or textile products have been produced at certain factories that are named in a Directive published in the **Federal Register** by the Committee for the Implementation of Textile Agreements (CITA) as companies found to be illegally transshipping, closed or unable to produce records to verify production. The purpose of this action is to avoid the circumvention of textile trade agreements.

EFFECTIVE DATE: September 2, 1999.

FOR FURTHER INFORMATION CONTACT: William Trujillo, Office of Field Operations, 202–927–1959.

SUPPLEMENTARY INFORMATION:

Background

In order to implement import policies with respect to textiles and textile products, Congress provided authority to the President to negotiate textile agreements in section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and authority to issue regulations governing the entry of such products to carry out any such agreement. The Committee for the Implementation of Textile Agreements (CITA) was established by Executive Order 11651 on March 3, 1972 to supervise the implementation of textile trade agreements. Section 2(a) of that Executive Order requires the Commissioner of Customs to take such actions as CITA, through its Chairman, shall recommend to carry out those agreements.

Moreover, Executive Order 12475 of May 9, 1984, directed the Secretary of the Treasury, in accordance with policy guidance provided by CITA through its Chairman, to issue regulations governing the entry of textiles and textile products subject to section 204 of the Agricultural Act of 1956, as amended, to the extent necessary to implement more effectively the United States textile program.

In 1995, the World Trade Organization Agreement on Textiles and Clothing (ATC) entered into force with respect to the United States. Article 5 of the ATC recognizes that circumvention of textile and textile product quotas, including through illegal transshipment of textiles and textile products from one country through another, frustrates the implementation of that Agreement.

Customs has attempted to combat illegal transshipment through various efforts, including on-site production verification visits and working with foreign governments and the domestic textile and apparel industry.

If, during a textile production verification visit, Customs finds that a textile manufacturer, factory, or producer shown on U.S. entry documents is closed, or engages in illegal transshipment, or is unable to provide adequate proof of production for previous shipments of merchandise to the United States, in accordance with § 12.130(g), Customs Regulations (19 CFR 12.130(g)), Customs may require additional information from importers claiming their shipments were manufactured at the factory in question.

On July 27, 1999, the Chairman of CITA directed the Commissioner of

Customs, as soon as possible, to issue regulations permitting U.S. Customs to deny entry to textiles and textile products where the declared manufacturer has been named in a CITA directive as a company found to be illegally transshipping, closed or unable to produce records to verify production. This document amends the Customs Regulations accordingly.

Customs will deny entry to textiles and textile products subject to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), where the factory, producer or manufacturer is named in a Directive issued by CITA to Customs that is published in the **Federal Register**. In these circumstances, additional information will not be accepted or considered by Customs for purposes of determining the admissibility of the textiles or textile products in question.

The Regulatory Flexibility Act, Executive Order 12866 and Inapplicability of Public Notice and Comment and Delayed Effective Date Requirements

In accordance with the provisions of 5 U.S.C. 553(a)(1), prior public notice and comment procedures are inapplicable to this regulation. This regulation is promulgated pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and is thus within the foreign affairs function of the United States. This regulation is necessary in order to prevent circumvention or frustration of bilateral and multilateral agreements to which the United States is a party and to facilitate efficient and equitable administration of the U.S. textile import program as authorized in section 204. The authority to promulgate this regulation was delegated by the President to the Secretary of the Treasury by Executive Order 12475. Since this document is not subject to the requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Nor does the amendment result in a "significant regulatory action" under E.O. 12866.

List of Subjects in 19 CFR Part 12

Customs duties and inspection, Entry of merchandise, Imports, Reporting and recordkeeping requirements, Textiles and textile products, Trade agreements.

Amendment to the Regulations

Part 12, Customs Regulations (19 CFR part 12), is amended as set forth below.

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for part 12 continues to read in part as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Sections 12.130 and 12.131 also issued under 7 U.S.C. 1854;

* * * * *

2. Section 12.131 is amended by designating the existing text as paragraph (a), and by adding a heading to newly designated paragraph (a), and adding a new paragraph (b) to read as follows:

§ 12.131 Entry of textiles and textile products.

(a) *General.* * * *

(b) *Denial of entry pursuant to directive.* Textiles and textile products subject to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), whether or not the requirements set forth in § 12.130 have been met, will be denied entry where the factory, producer or manufacturer named in the entry documents for such textiles or textile products is named in a directive published in the **Federal Register** by the Committee for the Implementation of Textile Agreements as a company found to be illegally transshipping, closed or unable to produce records to verify production. In these circumstances, no additional information will be accepted or considered by Customs for purposes of determining the admissibility of such textiles or textile products.

Approved: August 20, 1999.

Raymond W. Kelly,

Commissioner of Customs.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 99–23032 Filed 8–31–99; 2:28 pm]

BILLING CODE 4820–02–P

POSTAL SERVICE

39 CFR Part 111

Eligibility Requirements for Certain Nonprofit Standard Mail Rate Matter

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This document adopts a proposed rule, which was published in the **Federal Register** on March 6, 1998 (63 FR 11199–11200). It amends the standards for mail matter eligible to be sent at the Nonprofit Standard Mail rates. Specifically, mail matter that seeks or solicits membership dues payments may contain "promotional" material concerning membership benefits when certain criteria are met. This final rule adopts the proposal as it was published with an explanation below.

EFFECTIVE DATE: September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Jerome M. Lease, 202–268–5188.

SUPPLEMENTARY INFORMATION: Eligibility to mail at Nonprofit Standard Mail rates (referred to below as "nonprofit" rates) is established by statute. These statutes prescribe which organizations may mail at these rates along with the limitations on what may be mailed. As it has noted in numerous rulemakings concerning nonprofit rates (see, for example, 56 FR 46551 (September 13, 1991)), the Postal Service views its role in this area as that of an administrator, rather than that of a policymaker. That is, the Postal Service simply seeks to administer the eligibility provisions on nonprofit mail as set forth by Congress.

On two occasions at the beginning of this decade, Congress enacted limitations on the inclusion of advertising matter at the nonprofit rates. The first of these, codified to a large extent as 39 U.S.C. 3626(j)(1)(A–C), limited solicitations for credit cards and other financial instruments, insurance, and travel. The second, codified as 39 U.S.C. 3626(j)(1)(D), limited solicitations for all other products and services. There are no exceptions listed to the restrictions on advertising for financial instruments; the statute does set forth exceptions to the restrictions on advertising for travel, insurance, and all other products and services. Unfortunately, there is little legislative history concerning these provisions.

The statutes contain two additional exceptions that apply to each of the categories in 39 U.S.C. 3626(j)(1). These exceptions, which are set forth in 39 U.S.C. 3626(j)(2), allow certain acknowledgments of sponsors and references to member benefits to be mailed at the nonprofit rates. The latter exception, which is codified at 39 U.S.C. 3626(j)(2)(B), is the subject of this rulemaking. Again, there is little legislative history concerning these provisions.

The membership benefit exception states that a mailpiece shall not be excluded from being mailed at nonprofit rates solely because that material contains, but is not primarily devoted to, references to and a response card or other instructions for making inquiries about services or benefits available from membership in the authorized organization, if advertising, promotional, or application materials for such services or benefits are not included. Up to now, the Postal Service has applied this rule in a literal, straightforward manner. That is, nonprofit organizations have been permitted to list a product or service available to members and a response card or instructions for inquiring about the product or service. They have not, however, been permitted to provide additional information concerning the product, such as a description, brand name, price or other terms of purchase that would be promotional in nature. For instance, an organization could state: "An affinity credit card is available to members. For information, please call John Doe at xxx–xxxx," assuming the mailpiece did not consist to a primary degree (i.e., was "not primarily devoted to" under the statute) such product and service references. Contrary to arguments made by mailers, the Postal Service interpretation of the statute was consistent with the statute and created an exception to the blanket preclusion of 3626(j)(1), since the example quoted above would be prohibited by 39 U.S.C. 3626(j)(1)(A) if not for the member benefit exception. However, the Postal Service has not permitted a description of the credit card as "low cost" or as having "no annual fee" or a "five percent interest rate" under the exception since these descriptions would constitute "advertising, promotional, or application materials" prohibited under the statute.

Consideration of the proposed policy was prompted by concerns that the literal reading and Postal Service application of the statute was hindering the efforts of nonprofit organizations to attract and retain members. That is, nonprofit organizations claim that their goal in these mailings is to attract or retain members, rather than to sell benefits, and that the success of these membership efforts hinges on their ability to provide a favorable description of the nonprofit's membership benefits. Although the Postal Service was sympathetic to the concerns raised by some nonprofit organizations, it was mindful, as discussed above, that the accommodation sought appeared to go beyond the literal language of the statute. Moreover, as noted above, there was little legislative history to support the nonprofit organizations' view. Nevertheless, in the belief that the statute was not intended to create an impediment to membership in nonprofit organizations, the Postal Service determined to propose this rule to alleviate this effect. Accordingly, as discussed in its proposal, 63 FR 11199, the Postal Service proposed to follow the principles utilized in an earlier rule change concerning "back end premiums" by looking at the mailpiece as a single solicitation and considering whether it was primarily intended to attract or retain members or solicit sales of other products and services (citing 62 FR 61014–61015 (November 14, 1997)). This was to be accomplished by objective criteria concerning the relative amount of space devoted in the mailpiece to these purposes.

The application of the new standards is prospective. The former standards were clear, rational, and, as discussed above, consistent with the statute. Therefore, the new standard will not be applied retroactively to any previously assessed revenue deficiencies.

The proposed rule offered standards under which a membership solicitation could be entered at the nonprofit rates, notwithstanding the inclusion of promotional material for products and services. For purposes of this exception, "minor" is defined as less than half. Measurement of contents would be performed in accordance with the same standards for measuring advertising and nonadvertising in a Periodicals publication as described in Domestic Mail Manual (DMM) P200.1.7. Except as allowed below, only the solicitation letter is eligible to contain information about membership benefits under this standard. It does not apply to any brochures, circulars, flyers, or other separate, distinct, or independent documents. Any advertising, promotional, or benefit application materials in these latter documents will cause the entire mailpiece to be ineligible for the nonprofit rates unless other provisions allow it to be entered at those rates. The proposed rule did establish a limited exception for an organization that prepares a standard, preprinted document, consisting of a single sheet, that lists and describes its membership benefits. This document may be enclosed with and considered part of the solicitation letter for purposes of applying the proposed test, provided that the membership letter does not itself list or describe the member benefits. The membership letter may, however, refer the addressee to the separate list of benefits. (For example, the letter may state "For a description of benefits available to members, please see the attached sheet," as long as no promotional material concerning the benefits is included in the letter.)

The Postal Service received a total of 29 comments on the proposed rule. A majority of commenters supported the rule, but in some cases with reservations that the proposal does not go far enough to allow nonprofit organizations to describe membership benefits in the mails. There were two commenters who expressed disagreement with the proposed rule or any change that would make it easier to describe such benefits.

Evaluation of Comments Received

Written comments were received from 26 organizations and associations representing nonprofit organizations, one individual, and two organizations representing the travel industry. Of primary concern to 23 of the commenters is the Postal Service's proposed limitation of mailpieces eligible to contain descriptive material about membership benefits to mailpieces that are a solicitation for membership, renewal of membership, or requests to become a contributing member. These commenters, many of which operate on a monthly dues cycle, do not communicate with members by solicitation or renewal letter, but by newsletter. This group of commenters wants the proposal to extend to nonprofit organizations the ability to describe with favorable terms membership benefits in newsletters. One individual simply requested a copy of the proposed rule, which has been provided. One commenter believes the proposed rule does not make clear that among membership benefits that may be described under the proposal are credit cards, travel arrangements, and insurance. These services, advertising for which has been restricted since 1991 under 39 U.S.C. 3626(j)(1)(A–C), are subject to restrictions whether they are described in a stand-alone mailpiece or a newsletter. This same commenter also was concerned about the limitations of the proposal to membership solicitations. Two additional commenters expressed concern that the proposed rule would create an overly narrow definition of a membership solicitation or renewal mailpiece. Like the previous commenters, they suggested that the proposal be extended to include all membership mailings, not just membership solicitations or renewals. They also stated that the Postal Service should exclude membership benefits that are substantially related to a nonprofit organization's purposes when determining whether a mailpiece contains a "minor" description of benefits under the rule.

The two commenters representing the travel industry strongly opposed the proposed rule change. These commenters requested that the Postal Service withdraw the proposed

modification to standards on the bases that the proposed rule's literal language contravenes the statute on which it is based; the rule conflicts with federal policy pronouncements on competition between small firms and nonprofit organizations; the rule constitutes a faulty interpretation of the statute; and the rule reflects unsound postal policy.

The Postal Service considered the comments, and has determined to adopt the rule as proposed. The requests to extend the policy beyond membership solicitation letters but to newsletters sent to all members are beyond the scope of the proposal. The standards adopted here were undertaken to ensure that the advertising restrictions did not have a detrimental effect on the ability of nonprofit organizations to attract and retain members. They are intended to apply where the mailpiece is intended only to attract or retain members, rather than to sell the products or services described in them, and the proposal was limited to membership solicitation letters for that reason. Moreover, this decision does not prohibit organizations from mentioning their benefits in member newsletters. Indeed, unless the benefit concerns travel, insurance, or financial instruments (the so-called TIF advertisements), the organization likely is already free to describe them in newsletters under 39 U.S.C. 3626(j)(1)(D)(III) and DMM E670.5.4(d)(2). Further, even if a "TIF" benefit is involved and it is not within the statutory exceptions in 39 U.S.C. 3626(j)(1), the newsletter can, as described above, include an announcement such as: "(Product) is available to members. For further information, contact . . ."

The request that the calculation of the percentage of membership benefits not include "substantially related" advertisements appears to the Postal Service to be inconsistent with the language of the statute. That is, nothing indicates that all relevant references to benefits should not be included in determining whether the mailpiece is "primarily devoted" to member benefit references. If the Postal Service were to adopt this proposal, it would permit, at the nonprofit rate, letters consisting entirely, or nearly entirely, of descriptions of membership benefits. This would seem to be inconsistent with the underlying reason for this policy change (i.e., that the letters are primarily intended to attract or retain members rather than to sell products or services).

The Postal Service agrees that the policy adopted here applies to all member benefits, including travel, insurance, and financial instruments, but does not believe that the proposed rule is misleading or requires revision concerning this issue.

The Postal Service disagrees with the commenters who oppose the proposal. As discussed above, although the Postal Service does not believe that the proposed policy represents the most literal reading of the underlying statute, it disputes the assertion that it is contrary to the language of the statute or beyond the authority of the Postal Service to adopt. The Postal Service acknowledges the keen financial interest that these commenters have in this policy, and commenters' concern that the use of nonprofit rates will put them or their members at a competitive disadvantage. The Postal Service does not believe that it can establish a special policy for membership benefits concerning travel arrangements; the language of 39 U.S.C. 3626(j)(2)(B) provides no basis for distinguishing travel from other products and services. Nevertheless, the Postal Service believes that the limited scope of the policy change will minimize any adverse effect on for-profit businesses. The rules are intended to help nonprofit organizations attract and maintain members, rather than to compete in the sale of products and services. Thus, mailings should be made to prospective members only and existing members only at the time when renewals are due, rather than to the membership or public at large. Should circumstances require, the Postal Service will consider revisiting this policy.

After full consideration of the comments received and for the reasons discussed above, the Postal Service believes it appropriate to adopt, without revisions, the proposed changes in eligibility requirements.

List of Subjects in 39 CFR Part 111

Postal Service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend Domestic Mail Manual E670.5.7, by revising b. to read as follows:

Domestic Mail Manual (DMM)

* * * * *

E Eligibility

* * * * *

E670 Nonprofit Standard Mail

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5.0 Eligible and Ineligible Matter

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5.7 Other Matter

An authorized nonprofit organization's material is not disqualified from being mailed at the Nonprofit Standard Mail rates solely because that material contains, but is not primarily devoted to:

* * * * *

b. References to and a response card or other instructions for making inquiries about services or benefits available from membership in the authorized organization, if advertising, promotional, or application materials for such services or benefits are not included. For purposes of this section, descriptions of membership benefits available as a part of membership, including the use of adjectives, terms, conditions, and brand names, are permissible when they are a minor part of a solicitation or renewal request for membership payments. For purposes of this provision, "minor" is defined as "less than half." Measurement is made in accordance with P200. The solicitation or renewal request in which, to a minor degree, membership benefits may be promoted is considered to include only a printed letter to prospective members or current members whose membership is about to expire, and not to any separate, distinct, or independent brochure, circular, flyer, or other documents. Such separate documents will be considered advertising if they contain any advertising, promotional, or application materials. Exception: A separate document prepared by the qualifying organization, consisting of one sheet, will be considered to be part of the solicitation letter if it describes the organization's membership benefits and the solicitation letter does not describe the organization's benefits but instead refers the reader to the separate document.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–22822 Filed 9–1–99; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA–35–1–6659a; A–1–FRL–6425–4]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Reasonably Available Control Technology for Major Stationary Sources of Nitrogen Oxides and Nitrogen Oxide Requirements at Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Massachusetts. These revisions establish and require the implementation of reasonably available control technology (RACT) at major stationary sources of nitrogen oxides (NO_X). Additionally, Massachusetts has requested SIP approval of NO_X emission limits, monitoring, record keeping, and reporting requirements for municipal waste combustors. The intended effect of this action is to approve regulations and facility-specific requirements in accordance with the Clean Air Act.

DATES: This direct final rule is effective on November 1, 1999 without further notice, unless EPA receives adverse comment by October 4, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Steven A. Rapp, at (617) 918–1048, or by e-mail at: Rapp.Steve@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION: The following questions will be covered in this section:

A. What action is EPA taking?
B. What air pollutants are reduced by the Massachusetts regulation?
C. Who is affected by today's action?
D. When does today's action take effect?
E. What is "reasonably available control technology" (RACT) for sources of nitrogen oxides (NO_X)?
F. Where is NO_X RACT required?
G. Why is the Massachusetts submittal approvable as NO_X RACT?
H. Why is EPA approving the municpal waste combustor NO_X requirements as a SIP revision?
I. Where to go for more information on NO_X RACT?
J. What does "direct final rulemaking" mean?

A. What Action is EPA Taking?

Today, EPA is approving Massachusetts regulation, 310 CMR 7.19, "Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO_X)," as well as facility-specific NO_X RACT emission control plans (ECPs) for Specialty Minerals, Incorporated in Adams, Monsanto Company's Indian Orchard facility in Springfield, Medusa Minerals Company (formerly Lee Lime) in Lee, Turners Falls Limited Partnership/Indeck Energy Services Turners Falls, Inc., in Montague (Turners Falls). These SIP revisions were submitted in response to the Clean Air Act (CAA) requirement that States require Reasonably Available Control Technology (RACT) at all major stationary sources of NO_X. EPA is taking this approval action under section 110, Implementation Plans, of the CAA. By adding this regulation and ECPs to its SIP, Massachusetts meets the nitrogen oxides (NO_X) reasonably available control technology (RACT) requirements of the Clean Air Act (CAA) found in sections 182(b)(2), Reasonably Available Control Technology; 182(f), NO_X Requirements; and 184(b) Plan Provisions for States in Ozone Transport Regions.

Additionally, EPA is approving the NO_X emission limits, monitoring, record keeping, and reporting requirements for municipal waste combustors (MWCs) that were promulgated under Massachusetts' regulation 310 CMR 7.08(2), "Municipal Waste Combustors." These requirements were developed pursuant to requirements under sections 111 and 129 of the CAA but will reduce NO_X emissions at MWCs and were therefore submitted as a SIP revision under section 110 as well.

B. What Air Pollutants Are Reduced by the Massachusetts Regulation?

Massachusetts' NO_X RACT regulation and facility-specific RACT determinations require certain stationary sources, for example, powerplants and factories with boilers, to limit their daily, or in some cases monthly, airborne emissions of nitrogen oxides. Since June 1995, the regulation has reduced NO_X emissions at major stationary sources by almost 50% each year from a 1990 baseline. The NO_X requirements under 310 CMR 7.08(2) will reduce NO_X emissions at MWC facilities by as much as 45% below RACT emission levels.

Decreases in NO_X emissions help improve the environment in several important ways. First, because NO_X, is an ozone precursor, reducing NO_X reduces concentrations of ground level ozone. Decreases in NO_X emissions also reduce concentrations of nitrogen dioxide, particulate matter, and certain other types of toxic air pollutants. Additionally, decreases in NO_X emissions to the air also decrease acidic rain and snow, nitrates in drinking water, and nitrogen loadings to water and land ecosystems. And, on a global scale, decreases in NO_X emissions help reduce greenhouse gases and stratospheric ozone depletion.

C. Who Is Affected By Today's Action?

All sources that are subject to 310 CMR 7.19, the facility-specific ECPs, and 310 CMR 7.08(2) are affected by this action. EPA's approval today does not change the applicability of 310 CMR 7.19, the facility-specific ECPs, or 310 CMR 7.08(2). But, today's action makes the requirements of 310 CMR 7.19, the facility-specific ECPs, and 310 CMR 7.08(2) enforceable by EPA as well as by the Massachusetts DEP.

D. When Does Today's Action Take Effect?

If EPA receives no adverse comments during the 30-day public comment period that follows the publication of this document, EPA approval action will be effective 60 days after the date of publication.

E. What Is "Reasonably Available Control Technology" (RACT) for Sources of Nitrogen Oxides (NO_X)?

EPA defines RACT as the lowest emission limit that a polluting source is capable of meeting if it uses pollution control equipment and/or material or process changes that are reasonably available considering costs and current technology. In general, EPA considers a 30 to 50% reduction in NO_X from a 1990 baseline emission level to be reasonable. EPA believes such a reduction is available at a cost between $250 to $1,300 per ton of NO_X reduced. EPA allows States to require the reduction from each and every piece of equipment or as an average among sources or categories of sources.

F. Where Is NO_X RACT Required?

The CAA required certain States to develop RACT regulations for major stationary sources of NO_X. Section 182(b)(2) requires States with areas that were classified as "moderate," "serious," "severe," and "extreme" nonattainment of the ozone NAAQS, subsequent to the passage of the 1990 Clean Air Act Amendments, to impose RACT requirements on major sources of volatile organic compounds (VOCs). Section 182(f) of the CAA extends the RACT requirement of section 182(b)(2) to major stationary sources of NO_X as well. Under the CAA, the definition of major stationary source is based on the tons per year of air pollution a source emits and the quality of the air in the area of the source. In "serious" non-attainment areas, a major stationary source is defined as a source with the potential to emit 50 tons per year.

The entire Commonwealth of Massachusetts was classified as serious nonattainment when it developed its NO_X RACT regulations. The reader should refer to the November 6, 1991, **Federal Register** document at 56 FR 56694 for more information regarding nonattainment classifications. The NO_X RACT requirements approved today apply the 50 tons per year threshold to the entire Commonwealth. Thus, any stationary source with the potential to emit 50 tons or more per year of NO_X must install and operate NO_X RACT.

G. Why is the Massachusetts Submittal Approvable as NO_X RACT?

EPA considers an aggregate reduction in NO_X of 30% to 50% from a 1990 baseline emission level to be RACT. Since June 1995, the emission limits and requirements in regulation 310 CMR 7.19 and facility-specific ECPs have reduced NO_X by almost 50% each year from the major stationary sources in Massachusetts. Therefore, EPA considers the regulation and ECPs to meet the CAA NO_X RACT requirements.

H. Why Is EPA Approving the Municipal Waste Combustor NO_X Requirements as a SIP Revision?

On July 3, 1999, EPA approved all of the requirements for municipal waste combustors (MWCs) in 310 CMR 7.08(2) as meeting sections 111(d) and 129 of the Clean Air Act. However, because NO_X is a ground level ozone precursor and 310 CMR 7.08(2) will reduce NO_X from 1995 levels, Massachusetts requested that EPA approve the NO_X related requirements of 310 CMR 7.08(2) into the State implementation plan (SIP) to reduce ozone pursuant to section 110 as well.

I. Where To Go for More Information on NO_X RACT?

EPA provides additional guidance on determining NO_X RACT in a **Federal Register** document entitled, "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," published November 25, 1992 (57 FR 55620). The November 25, 1992 notice is also known as "The NO_X Supplement." EPA also published additional NO_X RACT guidance memoranda in the "NO_X Policy Document for the Clean Air Act of 1990," also known as "The NO_X Policy Document," (EPA–452/R–96–005, March 1996). You can refer to The NO_X Supplement and The NO_X Policy Document for more information on NO_X RACT.

Additionally, for a more detailed discussion of Massachusetts' NO_X RACT regulation and EPA's proposed action, you can refer to the Technical Support Document, entitled, "Technical Support Document for Massachusetts' Regulation 310 CMR 7.19, Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO_X)," dated April 1999. For copies of the Technical Support Document, contact the EPA or Massachusetts Department of Environmental Protection at the addresses listed in the **ADDRESSES** section of this notice.

J. What Does "Direct Final Rulemaking" Mean?

Essentially, direct final rulemaking means that the EPA is publishing this rule without prior proposal. EPA is doing so because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This action will be effective November 1, 1999 without further notice unless the Agency receives adverse comments by October 4, 1999.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 1, 1999 and no further action will be taken on the proposed rule.

II. Final Action

EPA is approving Massachusetts' regulation, 310 CMR 7.19, "Reasonably Available Control Technology (RACT) for Oxides of Nitrogen (NO_X)," as well as facility-specific NO_X RACT emission control plans (ECPs) for Specialty Minerals, Incorporated in Adams, Monsanto Company's Indian Orchard facility in Springfield, Medusa Minerals Company (formerly Lee Lime) in Lee, Turners Falls Limited Partnership/ Indeck Energy Services Turners Falls, Inc., in Montague (Turners Falls). Additionally, EPA is approving the NO_X emission limits, monitoring, recordkeeping, and reporting requirements for municipal waste combustors (MWCs) that were promulgated under Massachusetts' regulation 310 CMR 7.08(2), "Municipal Waste Combustors."

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the promulgated approval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 1, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the Commonwealth of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

Dated: August 10, 1999.

John P. DeVillars,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(119) to read as follows:

§ 52.1120 Identification of plan

* * * * * *

(c) * * *

(119) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on July 15, 1994, October 4, 1996, December 2, 1996, January 11, 1999, and April 16, 1999.

(i) Incorporation by reference.

(A) Letters from the Massachusetts Department of Environmental Protection dated July 15, 1994, October 4, 1996, December 2, 1996, January 11, 1999, and April 16, 1999 submitting revisions to the Massachusetts State Implementation Plan.

(B) Regulation, 310 CMR 7.19, "Reasonably Available Control Technology (RACT) for Sources of Oxides of Nitrogen (NO_X)" as adopted by the Commonwealth of Massachusetts on June 29, 1994 and effective on July 1, 1994.

(C) Emission Control Plan for Specialty Minerals, Incorporated, in Adams, issued by Massachusetts and effective on June 16, 1995.

(D) Emission Control Plan for Monsanto Company's Indian Orchard facility in Springfield, issued by Massachusetts and effective on October 28, 1996.

(E) Emission Control Plan for Turners Falls Limited Partnership/Indeck Energy Services Turners Falls, Inc., in Montague, issued by Massachusetts and effective on March 10, 1998.

(F) Emission Control Plan for Medusa Minerals Company in Lee, issued by Massachusetts and effective on April 17, 1998.

(G) Regulation 310 CMR 7.08(2), "Municipal Waste Combustors, adopted on July 24, 1998 and effective on August 21, 1998, excluding the following sections which were not submitted as part of the SIP revision: (a); the definition of "Material Separation Plan" in (c); (d)1; (d)2; (d)3; (d)4; (d)5; (d)6; (d)8; (f)1; (f)2; (f)5; (f)6; (f)7; (g)1; (g)2; (g)3; (g)4; (h)2.a; (h)2.b; (h)2.d; (h)2.e; (h)2.g; (h)2.h; (h)4; (h)5.a; (h)5.c; (h)5.d; (h)9; (h)10; (h)13; (i)1.b; (i)1.g; (i)2.c; (i)2.d; (i)2.e; and (k)3.

(H) Amendments to regulation 310 CMR 7.19, "Reasonably Available Control Technology (RACT) for Sources of Oxides of Nitrogen (NO_X)" as adopted by the Commonwealth of Massachusetts on January 5, 1999 and effective on January 22, 1999.

For the State of Massachusetts:

3. In § 52.1167, Table 52.1167 is amended by adding new entries to existing state citations for 310 CMR 7.08 and 310 CMR 7.19 to read as follows:

§ 52.1167 EPA-approved Massachusetts State regulations.

* * * * *

TABLE 52.1167—EPA—APPROVED MASSACHUSETTS REGULATIONS

State citation	Title/Subject	Date submitted by state	Date approved by EPA	Federal Register citation	52.1120(c)	Explanations/unapproved sections
310 CMR 7.08(2), except sections: (a); the definition of "Material Separation Plan" in (c); (d)1; (d)2; (d)3; (d)4; (d)5; (d)6; (d)8; (f)1; (f)2; (f)5; (f)6; (f)7; (g)1; (g)2; (g)3; (g)4; (h)2.a; (h)2.b; (h)2.d; (h)2.e; (h)2.g; (h)2.h; (h)4; (h)5.a; (h)5.c; (h)5.d; (h)9; (h)10; (h)13; (i)1.b; (i)1.g; (i)2.c; (i)2.d; (i)2.e; and (k)3..	MWC NO_X requirements.	1/11/99	9/2/99	[Insert *FR* citation from published date].	119	Only approved NO_X related requirements of state plan for MWCs. The following sections were not submitted as part of the SIP: (a), the definition of "Material Separation Plan" in (c), (d)1, (d)2, (d)3, (d)4, (d)5, (d)6, (d)8, (f)1, (f)2, (f)5, (f)6, (f)7, (g)1, (g)2, (g)3, (g)4, (h)2.a, (h)2.b, (h)2.d, (h)2.e, (h)2.g, (h)2.h, (h)4, (h)5.a, (h)5.c, (h)5.d, (h)9, (h)10, (h)13, (i)1.b, (i)1.g, (i)2.c, (i)2.d, (i)2.e, and (k)3.
310 CMR 7.19	NO_X RACT	7/15/94	9/2/99	[Insert *FR* citation from published date].	119	NO_X RACT regulations.
310 CMR 7.19	NO_X RACT	10/4/96	9/2/99	[Insert *FR* citation from published date].	119	Facility specific NO_X RACT for Specialty Minerals, Incorporated.
310 CMR 7.19	NO_X RACT	12/2/96	9/2/99	[Insert *FR* citation from published date].	119	Facility specific NO_X RACT for Monsanto Company's Indian Orchard facility.
310 CMR 7.19	NO_X RACT	4/16/99	9/2/99	[Insert *FR* citation from published date].	119	Facility specific NO_X RACT for Turners Falls Limited Partnership/Indeck Energy Services Turners Falls, Inc., in Montague.
310 CMR 7.19	NO_X RACT	4/16/99	9/2/99	[Insert *FR* citation from published date].	119	Facility specific NO_X RACT for Medusa Minerals Company in Lee.
310 CMR 7.19	NO_X RACT	4/16/99	9/2/99	[Insert *FR* citation from published date].	119	Approval of the replacement of section 310 CMR 7.19(1)(c)1, (1)(c)8, (2)(b), (3)(a), (3)(c)2, (4)(a)3.b, (7)(a)4, (9), (13)(a), (13)(a)3, (13)(a)9, and (13)(a)13.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6431–2]

Louisiana: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The State of Louisiana has applied for final authorization to revise its Hazardous Waste Program under the Resource Conservation and Recovery Act (RCRA). The EPA has determined that these changes satisfy all requirements needed to qualify for final authorization. The EPA reviewed Louisiana's application, and now makes an immediate final decision, subject to receipt of adverse written comment, that Louisiana's Hazardous Waste Program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant Louisiana final authorization for the program modifications contained in the revision.

DATES: This action is effective on November 1, 1999 without further notice, unless the EPA receives relevant adverse comments by October 4, 1999. If adverse comments are received, EPA will publish a timely withdrawal of the immediate final rule or identify the issues raised, respond to the comments, and affirm that the immediate final rule will take effect as scheduled.

ADDRESSES: Mail written comments to Alima Patterson, Region 6, Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, at the address shown below. You can examine copies of the materials submitted by the State of Louisiana during normal business hours at the following locations: EPA Region 6, 1445 Ross Avenue, Dallas Texas 75202–2733, (214) 665–8533: or Louisiana Department of Environmental Quality, H.B. Garlock Building, 7290 Bluebonnet, Baton Rouge, Louisiana 70810,(504) 765–0617.

FOR FURTHER INFORMATION CONTACT: Alima Patterson (214) 665–8533.

SUPPLEMENTARY INFORMATION:

A. What Is Resource Conservation and Recovery Act State Authorization?

RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), provides for authorization of State hazardous waste programs under subtitle C. Under RCRA section 3006, EPA may authorize a State to administer and enforce the RCRA hazardous waste program. See 40 CFR part 271. In fact, Congress designed RCRA so that the entire subtitle C program would eventually be administered by the States in lieu of the Federal Government. This is because the States are closer to, and more familiar with, the regulated community and therefore are in a better position to administer the programs and respond to local needs effectively.

After receiving authorization, the State administers the program in lieu of the Federal government, although EPA retains enforcement authority under RCRA sections 3008, 3013, and 7003. Authorized States must revise their programs when EPA promulgates Federal Standards that are more stringent or broader in scope than existing federal standards. States are not required to modify their programs when Federal changes that are less stringent than the existing Federal program or when changes reduce the scope of the existing Federal program. These changes are optional and are noted as such in the **Federal Register** (FR) documents. However, EPA encourages States to adopt optional rules because they provide benefit to environmental protection.

B. Why Are Revisions to State Programs Necessary?

States that receives final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal Hazardous Waste Program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260–266, 268, 270, 273, and 279.

What Is the Effect of This Authorization?

This authorization should not have little impact because the State's requirements are already effective. However, upon approval of the revisions, Louisiana will have authority to regulate the rules pertaining to RCRA Cluster VII. Currently, the EPA regulates this waste. Louisiana will have authority to issue permits in RCRA Cluster VII rules and to ensure that all permits issued to hazardous waste facilities protect of human health and the environment.

D. What Is the History of Louisiana's Final Authorization and Its Revisions?

The State of Louisiana initially received final authorization on February 7, 1985 (50 FR 3348), to implement its

base Hazardous Waste Management program. Louisiana received authorization for revisions to its program on January 29, 1990 (54 FR 48889), October 25, 1991 (56 FR 41958), and technical corrections at (56 FR 51762), effective January 23, 1995 and another technical corrections was made at (59 FR 55368–55371), (60 FR 18360), March 8, 1995. We authorized the additional following revisions: (59 FR 66200), October 17, 1995, (60 FR 53707) effective January 2, 1996, March 28, (61 FR 13777–13782) effective June 11, 1996, December 29, 1997, (62 FR 67572–67577) effective March 16, 1998 and October 23, 1998 (63 FR 56830–56891) effective December 22, 1998, August 25, 1999 (64 FR 46302–46333), effective October 25, 1999. On January 26, 1999, Louisiana applied for approval of its complete final program. In this application, Louisiana is seeking additional approval of its program revision in accordance with 40 CFR 271.21(b)(3).

In 1983, the Louisiana legislature adopted Act 97, which amended and reenacted Louisiana Revised Statutes 30:1051 *et seq.*, the Environmental Affairs Act. This Act created the LDEQ, which has lead agency jurisdictional authority for administering the RCRA Subtitle C program in the State. Also, LDEQ is designated to facilitate communication between EPA and the State. The State of Louisiana has adopted the Federal regulations in cluster VII promulgated from July 1, 1996, through June 30, 1997; the State of Louisiana regulations became effective September 20, 1998.

E. What Revisions Are We Approving With Today's Action?

The State of Louisiana submitted a final complete program revision application, seeking authorization of their revisions in accordance with 40 CFR 271.21. Louisiana's revisions consist of regulations which specifically govern's RCRA cluster VII rules. Louisiana requirements appear on the chart included in this document. The EPA is now making a final decision, subject to receipt of written comments that oppose this action, that Louisiana's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Therefore, we grant Louisiana final authorization for the following program revisions:

Federal Citation	State Analog
1. Criteria for Classification of Solid Waste Disposal Facilities and Practices; Identification and Listing of Hazardous Waste; Requirements for Authorization of State Hazardous Waste Programs, [61 FR 34252] July 1, 1996. (Checklist 153).	Louisiana Revised States (LRS) 30:§2180 et seq., as amended June 14, 1991, effective June 14, 1991; Louisiana Hazardous Waste Regulations (LHWR) §§3911, as amended October 20, 1994, effective October 20, 1994; 3915.B, 3915.B.1–3, 3915.B.4, 3915.B.4.a–b, 3915.B.5, as amended September 20, 1998; effective September 20, 1998, 301.B.1, as amended April 20, 1996, effective April 20, 1996; 315.N, as amended September 20, 1997, effective September 20, 1997; and 521.H, as amended September 20, 1993, effective September 20, 1993. LAC 33:V.3913 and LAC 33:V.3915.B are more stringent than the 40 CFR 261.5(f)–(g). The State does not recognize the class of generators generating 0–100 kilogram per month as "conditionally exempt small quantity generators". Generators in Louisiana who generate 0–100 kg/mth must follow more stringent guidelines, such as filing annual reports for small quantity generators. The State regulations are more stringent because generators who generate more than 1 kg acutely hazardous waste are subject to full regulations. LAC 33:VII.301.B.1, LAC 33:VII.315.N. and LAC 33:VII.521.H) is more stringent than 40 CFR 261.5(f)(3)(iv)(v) and (g)(3)(iv)–(v) because solid waste landfills are prohibited from accepting hazardous waste, with the exception of household hazardous waste.
2. Land Disposal Restrictions Phase III—Emergency Extension of the K088 Capacity Variance, [62 FR 1992] January 14, 1997. (Checklist 155).	LRS 30:2180 et seq., as amended June 14, 1991, effective June 14, 1991; LHWR §§109 Excluded Scrap Metal, 109. Processed Scrap Metal, 109. Home Scrap Metal, 109. Prompt Scrap Metal, 109. Table 1, 105.D.1.m–n, 105.D.1.n.i–ii, 4105.B.4, 2201.I–I.2, 2201.I.3, 2237.A.2.d, 2237.A.4, 2245.A, 2245.A, 2245.B.1–6, 2245.B, 2245.C.1.a–d, 2245.C.2, 2245.C, 2245.C.1.a, 2245.C.1.b, 2245.D.3–7, 2245.D, 2245.E, 2245.E.1–3, 2245.F, 2245.G, 2245.H, 2245.L, 2245.L.1–3, 2747.A, 2247.A.1–2, 2247.B, 2247.B.1–2, 2247.B.2.a–e, 2247.C, 2247.C.1–3, 2247.D–E, 2247.F.1–2, 2246.A, 2246.D.1.b, 2209.A, 2209.A.1–3, 2209.B–D, 2209.D.2–3, 2209.D.1, 2209.D.4, 2209.E, 2213–2219, Chapter 22 Tables 2–3, 2231.L, Chapter 22. Table 10 and Chapter 22 Tables 5 and 11, as amended September 20, 1998, effective September 20, 1998. The State has no equivalent citation to 40 CFR 268.1(e)(1). The State does not recognize the class of generators generating 0=100 kg/mth as "conditionally small quantity generators (SQGs)" Generators in Louisiana who generate 0–100 kg/mth must follow more stringent guidelines for SQGs). LAC 33:V.2237.A.4 is more stringent than 40 CFR 268.4(a)(4) because Louisiana specifies that the owner or operator must submit to the administrative authority a written certification. There is not an equivalent citation to 40 CFR 268.7(a)(10). In this case the State does not offer the relief to SQG and thus the State is more stringent.
3. Military Munition Rule: Hazardous Waste Identification and Management; Explosive emergencies; Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways on Contiguous Properties, [62 FR 6622] February 12, 1997. (Checklist 156).	LRS 30:2180 et seq., as amended June 14, 1991, effective June 14, 1991; LHWR §§109, 109. Active Range, 109. Administrative Authority, 109. Chemical Agents and Munitions, 109. Explosives or Emergency, Response Specialist, 109. Inactive Range, 109. Military, 109. Military Munitions, 109. Military Range, 109. Unexploded Ordnance (UXO), 109. Solid Waste.1.b.iii–iv, 305.C.12–13, 321.C.8, 321.C.8.a–c, 321.C.9, 1101, 1107A.11, 1301.G, 1301.H, 1501.C.7.a.iv, 1501.C.7.d, 1501.C.12, 901, 2401, 2403.A, 2403.A.1–5, 2403.B, 2403.B.1, 2403.B.1.a–b, 2403.B.1.b.1–iii, 2403.B.1.c, 2403.B.2–3, 2403.C–F, 2405.A–B, 4307, 4351, 4707, 4709.A, 4709.A.1–5, 4709.B, 4709.B.1, 4709.B.1.a–b, 4709.B.b.1–iii, 4709.B.1.c, 4709.B.2–3, 4709.C–F, 4711.A–B, 5301.A–B, 5303.A, 5303.A.1, 5303.A.1.a–c, 5303.A.2, 5303.B, 5303.B.1–4, 5303.C, 5303.C.1–2, 5303.D, 5305.A, 5305.A.1, 5305.A.I.a–c, 5305.A.2–4, 5305.B–C, 5307, 5309, 5309.A.1, 5309.A.1.a–g, 5309.A.2–3, 5309.B–D, 5309.D.1–2, 5309.E, 5311, 305.C.13.d, 305.C.15, as amended September 20, 1998, effective September 20, 1998.

Federal Citation	State Analog
4. Land Disposal Restrictions—Phase IV: Treatment Standards for Wood Preserving Waste, Paperwork Reduction and Streamlining, Exemptions From RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste Provisions, [62 FR 25998] May 12, 1997. (Checklist 157).	LRS 30:2180 et seq., as amended June 14, 1991, effective June 14, 1991; LHWR §§109. Excluded Scrap Metal, 109. Processed Scrap Metal, 109. Home Scrap Metal, 109. Prompt Scrap Metal, 109. Table 1, 105.D.1.m–n, 105.D.1.n.i–ii, 4105.B.4, 2201.I.I–2, 2201.I.3, 2237.A.2.d, 2237.A.4, 2245.A, 2245.B.1–6, 2246.B, 2245.C.1.a–d, 2245.C.2, 2245.C, 2245.C.1.a–b, 2245.D.3–7, 2245.D, 2245.E, 2245.E.1–4, 2245.F–H, 2245.I, 2245.I.1, 2245.I.2–3, 2245.I.3, 2747.A, 2247.A.1–2, 2247.B, 2247.B.1–2, 2247.B.a–e, 2247.C, 2247.C.1–3, 2247.D, 2247.E, 2247.F.1–2, 2246.A, 2246.D.1.b, 2209.A, 2209.A.1–3, 2209.B–D, 2209.D.2–3, 2209.D.1, 2209.D.4, 2209.E, 2213–2219, Chapter 22. Table 2, Chapter 22. Table 3, 2231.L, Chapter 22. Table 10, 5 and 11, as amended September 20, 1998, effective September 20, 1998
5. Hazardous Waste Management System; Testing and Monitoring Activities, [62 FR 32452] June 13, 1997. (Checklist 158).	LRS 30:2180 et seq., as amended June 14, 1991, effective June 14, 1991; LHWR §§110.A, 110.A.1–10, as amended April 20, 1998, effective April 20, 1998; 110.A.11, as amended September 20, 1998, effective September 20, 1998, 110.A.12–15, as amended April 20, 1998, effective April 20, 1998, 1711.D.1.c, 1711.F, 1741.D.2, Chapter 33. Table 4, 4557, 4587, 3009.E.1, 3013.G.1–2, 3015.F, as amended September 20, 1998, effective September 20, 1998; and Chapter 30. Appendix I, as amended December 20, 1992, effective December 20, 1992

F. What Decisions Has the EPA Made?

We conclude that Louisiana's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, we grant Louisiana final authorization to operate its hazardous waste program as revised, assuming we receive no adverse comments as discussed above. Upon effective final approval Louisiana will be responsible for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Louisiana also will have primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

G. How Do the Revised State Rules Differ From the Federal Rules?

EPA considers the following State requirements to be more stringent than the Federal: The State has no equivalent citation to 40 CFR 268.1(e)(1). The State does not recognize the class of generators generating 0–100kg/mth as "conditionally exempt small quantity generators". Generators in Louisiana who generates 0–100kg/mth must follow more stringent guidelines for small quantity generators. LAC 33:V.2237.A.4 is more stringent than the 40 CFR 266.4(a)(4) because Louisiana specify that the owner or operator must submit to the administrative authority a written certification. There is no equivalent citation to 40 CFR 268.7(a)(10) because the State of Louisiana does not offer the relief to small quantity generators. LAC 33:VII.301.B.1, LAC 33:VII.315.N, and LAC 33:VII.521.H is more stringent than the 40 CFR 261.5(f)(3)(iv)(v) and (g)(3)(iv)–(v) because solid waste landfills are prohibited from accepting hazardous waste, with the exception of household hazardous waste. These requirements are part of Louisiana's authorized program and are federally enforceable. In this authorization of the State of Louisiana's program revisions for RCRA cluster VII, there are no provisions that are broader in scope. Broader in scope requirements are not part of the authorized program and EPA can not enforce them.

H. Who Handles Permits After This Authorization Takes Effect?

Louisiana will issue permits for all the provisions for which it has authority and will administer the permits it issues.

EPA will continue to administer any RCRA hazardous waste permits or portions of permits which it issued before the effective date of this authorization until they expire or are terminated. EPA will not issue any more permits or portions of permits for the provisions listed in this document after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which the State is not yet authorized.

I. Why Wasn't There a Proposed Rule Before Today's Notice?

EPA is authorizing the State's changes through this immediate final action and is publishing this rule without a prior proposal to authorize the changes because EPA believes it is not controversial and we expect no comments that oppose this action. EPA is providing an opportunity for public comment now. In the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State changes. If EPA receives comments which oppose this authorization, that document will serve as a proposal to authorize the changes.

J. Where Do I Send My Comments and When Are They Due?

You should send written comments to Alima Patterson, Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533. Please refer to Docket Number LA–99–2. We must receive your comments by October 4, 1999. You may not have an opportunity to comment again. If you want to comment on this action, you must do so at this time.

K. What Happens if EPA Receives Comments Opposing This Action?

If EPA receives comments opposing this authorization, a second **Federal Register** document will be published before the immediate final rule takes effect. The second document may withdraw the immediate final rule or identify the issues raised, respond to the comments, and affirm that the immediate final rule will take effect as scheduled.

L. When Will This Approval Take Effect?

Unless EPA receives comments opposing this action, this final authorization approval will become effective without further notice on November 1, 1999.

M. Where Can I Review the State's Application?

You can view and copy the State of Louisiana's application from 8:30 a.m. to 4 p.m. Monday through Friday at the following addresses: Louisiana Department of Environmental Quality, H.B. Garlock Building, 7290 Bluebonnet, Baton Rouge, Louisiana 70810, (504) 765–0617 and EPA, Region

6 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444. For further information contact Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533.

N. Now Does Today's Action Affect Indian Country in Louisiana?

Louisiana is not authorized to carry out its hazardous waste program in Indian country within the State. This authority remains with EPA. Therefore, this action has no effect Indian country.

O. What Is Codification?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the CFR. The EPA does this by referencing the authorized State rules in 40 CFR part 272. The EPA reserves the amendment of 40 CFR part 272, subpart T for this authorization of Louisiana's program changes until a later date.

Regulatory Requirements

Compliance With Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this rule from the requirements of section 3 of E.O. 12866.

Compliance Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" applies to any rule that: (1) The OMB determines is "economically significant" as defined under E.O. 12866; and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involved technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 and 205 of the UMRA, the EPA must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by the UMRA, that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. The EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the State of Louisiana's program, and today's action does not impose any additional obligations on regulated entities. In fact, the EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary Federal program.

The requirements of section 203 of UMRA also do not apply to today's action. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, section 203 of the UMRA requires the EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate hazardous waste treatments, storage or disposal facilities (TSDFs), they are already subject to the regulatory requirements under the existing State laws that are being authorized by the EPA, and thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Certification Under the Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1966), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if any agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the regulatory requirements under the existing State laws that are now being authorized by EPA. The EPA's authorization does not impose any significant additional burdens on these small entities. This is because EPA's authorization would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Pursuant to the provision at 5 U.S.C. 605(b), the Agency hereby certifies that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This rule therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" defined by 5 U.S.C. 804(2).

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

Executive Order 12875 Enhancing Intergovernmental Partnerships

Under E.O. 12875, the EPA may not issue regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, the EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.

This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

Executive Order 13084 Consultation and Coordination With Indian Tribal Governments

Under E.O. 13084, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance cost incurred by the tribal governments. If the mandate is unfunded, the EPA must provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires the EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

This rule is not subject to E.O. 13084 because it does not significantly or uniquely affect the communities of Indian governments. The State of Louisiana is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that the EPA implements in the Indian country within the State.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority

This document is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 15, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 99–22627 Filed 9–1–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 439

[FRL–6431–8]

RIN 2040–AA13

Pharmaceutical Manufacturing Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards; Correcting Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting amendments.

SUMMARY: EPA is correcting minor errors in the effluent limitations guidelines and standards for the pharmaceutical manufacturing point source category which appeared in the **Federal Register** on September 21, 1998.

DATES: These corrections shall become effective September 2, 1999. In accordance with 40 CFR 23.2, this rule will be considered promulgated for purposes of judicial review at 1:00 p.m. Eastern Time on September 16, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. Frank H. Hund, Office of Water, Engineering and Analysis Division (4303), U. S. Environmental Protection Agency, 401 M St., SW, Washington, DC 20460, (202) 260–7182, *hund.frank@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In a final rule published on September 21, 1998 (63 FR 50388), EPA established final effluent limitations and standards for the pharmaceutical manufacturing point source category for the control of wastewater pollutants. The final rule omitted a clarifying abbreviation and contained four incorrect subsections. This notice inserts a clarifying abbreviation, deletes four incorrect subsections, changes the parenthetical letters identifying two subsections and deletes the parenthetical letters identifying two other subsections. The clarifying abbreviation "Mg/L" (milligrams per liter) is necessary to avoid confusion with the abbreviation "Mg " (megagrams) which is used in the preamble section devoted to the discussion of the MACT rule which was promulgated at the same time as the pharmaceuticals effluent guidelines rule. The subsection deletions are in the Pretreatment Standards for New Sources (PSNS) sections of the rule. These subsections contained a cite from the regulations concerning new source direct dischargers which is inconsistent

with the definition of new source contained in section 403.3(k) of the general pretreatment regulations. As a result of today's correction, the PSNS sections of the pharmaceuticals effluent guidelines will be consistent with the general pretreatment regulations. The PSNS sections will also be consistent with PSNS sections in other recently promulgated effluent guidelines rules. Today's correction also "renumbers" (by revising or deleting) the labels for the PSNS sections. For example, if paragraph (d) is deleted, paragraph (e) is renamed as (d).

II. Administrative Requirements

Under Executive Order 12886 (58 FR 51735, October 4, 1993), this is not a "significant regulatory action" and, is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655, May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this action is not subject to the notice-and-comment requirements under the Administrative Procedure Act, 5 U.S.C. 533, or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined under E.O. 12866. Further, EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health and safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. This rule is not subject to the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) because it does not involve any technical standards. This action contains no information collection requirements. Therefore, it is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 1501, *et seq.* EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the **Federal Register** notice of September 21, 1998.

The revisions in this final rule are not substantive. These revisions add a clarifying abbreviation, delete four incorrect subsections of the rule, change parenthetical letters identifying two subsections and delete parenthetical letters identifying two other subsections. For this reason, EPA has determined that public participation in this action is unnecessary and constitutes good cause for issuing this rule without notice and comment. For the same reason, the Agency has determined that good cause exists to waive the requirement for a 30-day period before the amendments become effective. Therefore, the amendments are effective immediately.

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. Section 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of September 2, 1999. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 439

Environmental protection, Reporting and recordkeeping requirements, Water pollution control.

Dated: August 25, 1999.

J. Charles Fox,

Assistant Administrator for Water.

For reasons set out in the preamble, part 439, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 439—PHARMACEUTICAL MANUFACTURING POINT SOURCE CATEGORY

1. The authority citation for part 439 continues to read:

Authority: Secs. 301, 304, 306, 307, 308, 402 and 501 of the Clean Water Act, as amended; 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, and 1361.

2. Section 439.1 is amended by adding paragraph (n) to read as follows:

§ 439.1 General definitions.

* * * * *

(n) The abbreviation Mg/L means milligrams per liter or parts per million (ppm).

§ 439.17 [Amended]

3. Section 439.17 is amended by removing paragraph (d) and redesignating paragraph (e) as (d).

4. Section 439.27 is amended by removing paragraph (b) and removing the paragraph designation from paragraph (a) and revising the newly designated introductory text before the table to read as follows:

§ 439.27 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart must achieve the following pretreatment standards:

* * * * *

§ 439.37 [Amended]

5. Section 439.37 is amended by removing paragraph (d) and redesignating paragraph (e) as (d).

§ 439.47 [Amended]

6. Section 439.47 is amended by removing the paragraph designation from paragraph (a) and by removing paragraph (b).

[FR Doc. 99–22745 Filed 9–1–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 383 and 384

[FHWA Docket No. FHWA–97–3103]

RIN 2125–AE28

Commercial Driver Disqualification Provision

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA revises its regulations to require that commercial motor vehicle (CMV) drivers who are convicted of violating Federal, State, or local laws or regulations pertaining to railroad-highway grade crossings be disqualified from operating a CMV. Penalties also will be assessed against employing motor carriers found to have knowingly allowed, permitted, authorized, or required a driver to operate a CMV in violation of laws or regulations pertaining to railroad-highway grade crossings. This final rule completes an action initiated in response to the requirements specified in section 403 of the ICC Termination Act (ICCTA) of 1995. The purpose of this action is to enhance the safety of CMV operations on our nation's highways.

EFFECTIVE DATE: October 4, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. David Goettee, Driver Division, Office of Motor Carrier Research and Standards, (202) 366–4001, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the **Federal Register**'s home page at: http://www.nara.gov/fedreg and the Government Printing Office's web page at: http://www.access.gpo.gov/nara.

Background

This final rule completes action initiated under section 403 of the ICCTA (Pub. L. 104–88, 109 Stat. 803, 956, December 29, 1995, codified at 49 U.S.C. 31310(h) and 31311(a)(18)) to achieve safer CMV driver behavior when CMVs are crossing railroad-highway grade crossings. Section 403 amended the Commercial Motor Vehicle Safety Act (CMVSA) of 1986, Pub. L. 99–570, 100 Stat. 3207–170, by adding subsection (h) to 49 U.S.C. 31310. The amendment requires sanctions and penalties for CMV drivers who are convicted of violating laws or regulations pertaining to railroad-highway grade crossings.

The amendment also requires that monetary penalties be assessed against employers found to have knowingly allowed, permitted, authorized, or required an employee to operate a CMV in violation of a law or regulation pertaining to railroad-highway grade crossings. It requires States to adopt and enforce the Federal sanctions and penalties prescribed for CMV drivers and employing motor carriers who violate laws or regulations pertaining to railroad-highway grade crossings.

The FHWA published a notice of proposed rulemaking (NPRM) in the **Federal Register** on March 2, 1998, (63 FR 10180) to request comment on the proposed changes to 49 CFR Parts 383 and 384 in regard to violations of railroad-highway grade crossing by drivers operating CMVs. The comment period closed on May 1, 1998.

Discussion of Petitions

The FHWA received five petitions between April 23, 1998, and May 1, 1998, to extend the comment period for the NPRM. The FHWA has decided not to grant an extension because it believes the petitioners were given more than adequate time to provide additional data to the docket.

Shell Oil Products Company and Linden Bulk Transportation Company believed more time was necessary to examine this subject. In particular they wished to know if the proposed rule would apply only to the Federal regulations at 49 CFR 392.10 and 392.11, or if it would apply to all traffic laws of any jurisdiction. They also wanted to know what protection a motor carrier has in the event a driver violates such a law or regulation.

Textile Chemical Company asked the same questions as Shell and Linden. The Company also asked: "If a carrier provides training under HM–126F requirements for drivers concerning railroad crossings and documents such training, would this action protect the carrier from violating the proposed 49 CFR 383.37(d), if no complicity in the violation was discovered?"

North American Transportation Consultants wanted the same information as requested by the Textile Chemical. They also asked whether railroad-highway grade crossing safety violations were required to be compatible with 49 CFR 392.10 and 392.11 to preserve uniformity. If so, would the FHWA establish a review system to approve or reject local laws covered under this proposal? They proposed to gather and submit information to the docket regarding various local laws and ordinances associated with railroad-highway grade crossing requirements, and asked that the comment period be extended at least 90 days to accomplish those tasks.

Decker Transport Company asked the same questions but inquired more specifically how local laws that conflict with the provisions of 49 CFR 392.10 would be handled. They proposed to gather and submit to the docket information concerning various local laws and ordinances associated with railroad-highway grade crossing requirements.

All five petitioners either wanted more time to collect data regarding variations in State and local laws and regulations regarding railroad-highway grade crossings, or additional information to help them understand the scope of the rulemaking. It is unclear to the FHWA how the data to be collected would be relevant to the specifications contained in the ICCTA of 1995. In any case, no such information was provided to the docket. The additional information requested in the petitions is given below in a question and answer format.

Question: What regulations and laws are included under the proposed new regulation?

Response: This final rule specifically covers convictions for six types of offenses, including failing to slow down, stop, check for clear track, obey traffic control devices or law enforcement officials. Also included are crossing without having sufficient undercarriage clearance or sufficient space on the other side to clear the track without stopping. It does not matter whether the offense involves Federal, State, or local laws or regulations regarding railroad-highway operations.

Question: Are there any proposed Federal fines for drivers who are convicted of such a violation?

Response: No. This rule follows the process established by the Commercial Motor Vehicle Safety Act of 1986. It sets a minimum disqualification period for a driver convicted of one of these six offenses. Any fines or penalties are left to the discretion of the convicting jurisdiction.

Due to the seriousness of this offense, Congress mandated that an employer be subject to a civil penalty of up to $10,000, if the employer knowingly allows, requires, permits, or authorizes a driver to violate laws or regulations pertaining to railroad-highway grade crossings.

Question: Will the FHWA establish a review system to achieve compatibility of State and local laws and regulations with 49 CFR 392.10 and 392.11 regarding railroad-highway grade crossing violations?

Response: The FHWA has a system under 49 CFR part 350 of the Federal Motor Carrier Safety Regulations (FMCSRs) that requires the States to have laws and regulations compatible with the Federal regulations. Under 49 CFR 350.15, States must certify annually that they are enforcing the FMCSRs or compatible State laws. Section 355.21 also requires States to review their laws for compatibility every year, and

§ 355.23 requires them to submit the results of the review along with the annual State Enforcement Plan. Failure to adopt State laws and regulations that are compatible with 49 CFR 392.10 and 392.11 can result in a loss of Motor Carrier Safety Assistance Program funds.

Failure of the States to adopt the penalties specified by 49 U.S.C. 31310(h) and this rule can result in the withholding of certain Federal-aid funds under 49 U.S.C. 31314 for not being in substantial compliance with the CDL program requirements.

Question: If a local law or regulation contradicts the provisions of 49 CFR 392.10, is that law or regulation covered by this rule?

Response: See the previous question. The answer to that question also applies to this one.

Question: If a driver violates a law or regulation, how is it determined if the employer is also in violation?

Response: As previously established in 49 CFR 383.37 for other employer responsibilities under the CDL program, it must be proven that the employer knowingly allowed, required, permitted, or authorized a driver to violate the law or regulation.

Question: Why isn't violation of a railroad-highway grade crossing law or regulation being included as an addition to the existing CDL serious traffic violations?

Response: These convictions have different conditions for disqualification as specified in the ICCTA. The offenses classified as serious traffic violations require a second conviction before a driver receives at least a 60-day disqualification. Under this rule, a conviction for a violation of any railroad-highway grade crossing law or regulation requires at least a 60-day disqualification for a first conviction.

Question: Why doesn't this rule address other railroad-grade crossing issues?

Response: This rule was developed only to carry out the statutory requirements in section 403 of the ICCTA.

The NPRM stated that comments received after the comment closing date would be filed in the docket and considered to the extent practicable in developing the final rule. No new data or comments were filed in the docket after the initial 23 submissions. The FHWA believes it has given the petitioners more than adequate time to provide their additional data since the docket closed on May 1, 1998. This is more time than a formal extension of the comment period would have provided. Based on this fact and the responses given above to questions raised by the petitioners, the FHWA has decided to deny the five petitioners' request for a formal extension of the comment period for the NPRM.

Discussion of Comments

List of Commenters

Comments to the docket on the NPRM were received from 23 States, individuals, companies, and organizations as follows:

Five States (Colorado Department of Public Safety, Missouri Department of Revenue, California Highway Patrol, Florida Department of Highway Safety, Wisconsin Department of Transportation);
Three individuals (Steven A. Tudor, E. Lowell Lewis, E. A. Brown);
Nine Companies (Decker Transport Company; Farmland Industries, Inc.; Federal Express Corporation; Grammer Industries, Inc.; Linden Bulk Transportation; National Railroad Passenger Corporation; Phibro-Tech; Shell Oil Products Company; Textile Chemical Company);
Four associations (American Trucking Associations (ATA), National Association of Railroad Passengers, Owner Operator Independent Drivers Association, Truckload Carriers Association);
One safety advocacy group (Advocates for Highway and Auto Safety); and
One consultant (North American Transportation Consultants).

Commenters in Favor of Rule

Three commenters (National Association of Railroad Passengers, Advocates for Highway and Auto Safety, and National Railroad Passenger Corporation (Amtrak)) strongly supported all the provisions of the rule.

Comments by Petitioners

The questions and issues raised by the five petitioners (Shell Oil Products Company, Linden Bulk Transportation Company, Textile Chemical Company, North American Transportation Consultants, Decker Transport Company) requesting an extension of the comment period are addressed in the "Discussion of Petitions" section of this preamble.

Proposal Too Broad

A significant concern raised by many of the commenters either directly through their comments or through their questions asking for clarification was that the wording of the offenses to be covered is too vague. For example, Decker Transport Company asked for clarification regarding which Federal and/or local regulations constitute a violation covered under this rule. It felt the language in the NPRM was too vague and open to abuse. Similar comments were expressed by the other commenters.

Farmland Industries, the Truckload Carriers Association, and ATA expressed concern about motor carriers being charged when drivers violated railroad-highway grade crossing laws or regulations. Farmland Industries stated that it would be unfair to apply penalties to motor carriers when drivers violate company policy requiring them to comply with railroad-highway grade crossing rules and regulations.

FHWA Response

The FHWA agrees with the commenters that the language defining a railroad-highway grade crossing violation needs to be more specific. The final rule therefore lists six offenses under § 383.51(e) that pertain to a railroad-highway grade crossing. The FHWA believes that this change will make the final rule more enforceable and more likely to achieve the intended legislative effect.

The FHWA does not agree that motor carriers are being treated unfairly under this rule. Motor carriers are treated the same as under the existing provisions of § 383.37 that cover offenses for using a disqualified driver, a driver with more than one license, or using a driver while he or she has been ordered out of service. The key wording in all of these offenses, including the new one for railroad-highway grade crossings, is that the motor carrier must ". . . knowingly allow, require, permit, or authorize a driver to operate a CMV . . ." A motor carrier is not guilty of a "knowing" violation simply because one of its drivers violates a railroad-highway grade crossing law or regulation. The penalty can only be imposed if it can be shown that the motor carrier knew, or should have known, of the driver's violation because it actually ordered or authorized him or her to ignore the grade crossing laws or regulations, or because the motor carrier, after learning of previous violations by drivers, failed to take action to prevent them from happening again.

Abandoned Tracks

Five commenters (Grammer Industries, Farmland Industries, E. Lowell Lewis, Truckload Carriers Association, ATA) expressed concern about the many abandoned railroad tracks around the country that are not marked as such with a sign. A driver could be disqualified for not stopping at the grade crossing of these abandoned tracks. The commenters want the railroads or the Federal Railroad Administration to identify these abandoned tracks with highway signs.

FHWA Response

Under 49 CFR 392.10(b)(4), a railroad track is considered to be abandoned only if it is so signed. This rule makes the failure to stop at a grade crossing that is still considered to be active a CDL disqualifying offense. While the FHWA agrees that abandoned tracks should be so marked, the decision to declare tracks abandoned and erect a sign declaring them abandoned is a process involving the railroads and the States. This issue is outside of the scope of this rule.

Responsibilities of Railroads

Three commenters (Farmland Industries, Federal Express, Owner Operator Independent Drivers Association) expressed the concern that many of the problems at grade crossings are the responsibility of the railroads which should provide warning devices and better signing at all active grade crossings.

FHWA Response

This rule is only one part of a concerted effort to improve safety at railroad-highway grade crossings. Other actions are being implemented to provide better grade crossing safety through a cooperative effort of the FHWA, Federal Railroad Administration (FRA), National Highway Traffic Safety Administration, the railroads and public interest groups.

Just in the past five years, crashes have been reduced by 30 percent and fatalities by 33 percent through the closing of some at-grade railroad-highway crossings, grade separation of rails and highways, better engineering of highways, more effective signage, warning devices that use the latest technology such as four way gates, train-borne devices to provide audible and visual warning of the train's approach and public education programs.

Serious Traffic Violations

The Colorado Department of Public Safety and the Missouri Department of Revenue stated that violations of railroad-highway grade crossing laws and regulations should be included in the existing category of serious traffic violations rather than creating a new category of violations.

E. A. Brown, a Florida police officer, stated that railroad-highway safety grade crossing violations should be treated the same as other serious traffic safety violations because minor crossing violations are in fact less serious than a violation such as reckless driving.

FHWA Response

Convictions for serious traffic violations such as speeding in excess of 15 miles per hour over the posted speed limit, improper or erratic traffic lane changes, or following the vehicle ahead too closely only lead to a driver disqualification if two or more convictions occur in separate incidents. The ICCTA specifically requires disqualification upon a first conviction of a violation of railroad-highway grade crossing safety laws or regulations.

Grade crossing violations can cause death and injury on a large scale. The agency has therefore established a separate category of violations and sanctions that reflects the intent of Congress in the ICCTA by requiring a driver disqualification on the first conviction.

Traffic Jams and Rear-End Collisions

Grammer Industries stated that the growth of towns in the vicinity of railroad-highway grade crossings has created engineering problems. The commenter stated that when CMVs stop at a railroad-highway grade crossing, they create traffic jams. Both Grammer Industries and Farmland Industries felt that these vehicles, when stopped on the highway, cause rear-end collisions. The Truckload Carriers Association stated that slowing down or stopping at railroad-highway grade crossings could significantly disrupt the flow of traffic and be deadly.

The Truckload Carriers Association, ATA, and Federal Express Corporation support the elimination of a stopping requirement at all actively-controlled grade crossings.

The California Highway Patrol stated that requiring CMVs to stop or slow down at railroad-highway grade crossings poses a greater safety risk to the public.

The Owner Operator Independent Drivers Association (OOIDA) stated that the FHWA has failed to provide statistics on the number of rear-end collisions at railroad-highway grade crossings that were due to vehicles rear-ending CMVs that had stopped even though there was no train present. The OOIDA also believes that this final rule will increase the risk of rear-end collisions and gridlock because CMV drivers will be stopping at every railroad-highway crossing to protect their CDL.

FHWA Response

The FHWA is not entertaining any changes to 49 CFR 392.10 and 392.11 in this rulemaking. The ICCTA and this rule only require the States to impose sanctions and penalties for CMV operators convicted of violations of railroad-highway grade crossing laws or regulations which are at least as stringent as the requirements of this rulemaking.

This rulemaking will not increase the number of rear-end collisions since no changes are being made to the current railroad-highway grade crossings requirements for CMV drivers. Whether stopping at a railroad-highway grade crossing can be more of a safety problem than not stopping, was addressed in more detail in the June 18, 1998, final notice on "Review of the Federal Motor Carrier Safety Regulations; Regulatory Removals and Substantive Amendments" (63 FR 33254).

Current Prohibitions Adequate

The Colorado Department of Public Safety and the Missouri Department of Revenue believe that the existing requirements in 49 CFR 392.10 and 392.11 adequately address the railroad-highway grade crossing safety issue.

The California Highway Patrol (CHP) opposes any new requirements that would require the State of California to legislate stricter laws and harsher penalties against drivers who violate railroad-highway grade crossing laws and regulations and civil penalties against employers. Motor carriers transporting passengers or placarded hazardous materials are the only vehicles required to stop at railroad-highway grade crossings. The CHP believes the hazardous materials industry has the best safety record in California.

The Wisconsin Department of Transportation states that its data does not indicate that CMV drivers are over represented in crashes or citations issued involving railroad-highway grade crossings.

FHWA Response

The FHWA agrees that the existing Federal requirements in 49 CFR 392.10 and 392.11 adequately address the railroad-highway grade crossing safety issue, but only from the standpoint of prohibitions and their related fines; not sanctions and penalties. The minimum period of disqualification for a driver and the maximum fine to be levied against a motor carrier in this rule reflect FHWA's concern about the potentially severe safety consequences, including loss of life, that may result

from the violation of a railroad-highway grade crossing law or regulation. The FHWA believes most States currently have laws and regulations regarding violations at railroad-highway grade crossings by any driver, commercial or non-commercial, but that State law may only require fines. As is the case with other CDL disqualifying offenses, the CDL driver should be held to a higher standard than other drivers due to the potential for injuries and loss of life in a crash between a CMV and a train. The FHWA acknowledges that there are far more violations by non-CDL drivers at railroad-highway grade crossings, but the severity of a crash, in injuries, fatalities, and property damage, is far greater when a commercial vehicle is involved.

State Legislative Changes

The Missouri Department of Revenue states that because the rule does not follow the provisions of serious traffic violations, the State must pass new legislation. The Wisconsin Department of Transportation stated that this rule will require legislative and information system changes.

FHWA Response

The ICCTA requires disqualification upon a first conviction of a violation of railroad-highway grade crossing safety laws or regulations. For this reason, the FHWA cannot include these offenses under the serious traffic violation category which requires two convictions before a driver can be disqualified.

As discussed in the "Substantial Compliance" section of the preamble, the FHWA acknowledges that the complexity of revising State legislation and establishing procedures to incorporate the new requirements into existing systems will require time. The FHWA is therefore allowing three years after the effective date of the rule for the States to come into substantial compliance with these new requirements.

Severity of Sanctions and Penalties

The Owner Operator Independent Drivers Association strongly opposes the rulemaking because it will not substantially improve highway safety. The rule will have a substantial effect on small business owners. Owner-operators may have to defend themselves against a $10,000 fine because they are "employers" as well as drivers. They also stated that the penalties are too severe given the number or severity of collisions between trains and CMVs. Only a conviction for ignoring a railroad-highway safety grade crossing signal device should be disqualifying.

The Colorado Department of Public Safety stated that disqualification should not include a conviction for stopping too close to a railroad-highway grade crossing.

The Truckload Carriers Association stated that drivers who violate railroad-highway grade crossing laws or regulations after making a "good faith" effort to comply with such regulations should not be penalized.

The Florida Department of Highway Safety and Motor Vehicles stated that the penalties are too severe. This commenter believes drivers should only be subject to fines on a first offense, not a disqualification. Drivers should be disqualified for a second conviction.

Mr. E. Lowell Lewis stated that fines and duration of driver license disqualification are excessively high for a violation at an unmarked abandoned railroad-highway grade crossing.

Grammer Industries believes that the potential fines are out of proportion to other serious traffic violations. They stated that road rage is a more important problem and should be addressed instead of railroad-highway grade crossing violations.

E. A. Brown, a police officer, stated that the majority of railroad-highway safety grade crossing violations do not endanger safety.

The Owner Operator Independent Drivers Association stated that the combination of up to a $10,000 penalty as an employer for the first conviction, and the loss of revenue for the length of the disqualification as a driver, will put owner/operators out of business. Further, because they are owner/operators, it will be a hardship for them to be able to make a court appearance to defend themselves.

The Colorado Department of Public Safety believes that disqualification for disobeying a railroad-highway grade crossing requirement would cause drivers to plea bargain down to a non-serious offense.

The Advocates for Highway and Auto Safety (AHAS) recommend that a one year penalty be established for third and subsequent violations of railroad-highway grade crossings because of the especially severe nature of railroad-highway grade crossing violations. They also recommended that the time limit for compiling two or more convictions be increased from three to five years.

FHWA Response

As stated previously, the minimum period of disqualification and the maximum fine levied in this rule reflect the concern of the Congress and the FHWA about the potentially severe safety consequences, including loss of life, that may result from a violation of a railroad-highway grade crossing law or regulation. As discussed later in the Section Analysis under § 383.51, Disqualification of Drivers, the FHWA agrees with AHAS that the potentially severe consequences of this violation warrant a one year disqualification period for a third or subsequent conviction over a three year period.

This final rule requires a penalty of not more than $10,000 to be assessed against a motor carrier who is convicted of knowingly allowing a driver to commit a railroad-highway safety grade crossing violation. The rule allows for flexibility in assessing the penalty based on the severity of the offense and the circumstances involved in the incident. The FHWA believes that the issue of "good faith effort" and other mitigating circumstances should be left to the discretion of the judge or administrative hearing officer.

Changes to Current Regulations

The ATA state that the FHWA should eliminate the prohibition against changing gears while crossing railroad tracks. The ATA and Federal Express Corporation believe that the Agency should require States to change their railroad-highway grade crossing laws and regulations to be in conformity with the Federal requirements. Railroad-highway grade crossing regulations should be uniform for both CMVs and non-CMVs.

FHWA Response

All of the suggestions for changing current regulations related to railroad-highway grade crossings are outside of the scope of this rulemaking. The purpose of this rule is to implement the requirements of section 403 of the ICCTA.

If the commenters feel there is a need to change current regulations, they should submit to the FHWA a formal petition for rulemaking along with supporting documentation and justifications.

Substantial Compliance

Section 403(c) of the ICCTA , codified at 49 U.S.C. 31311(a)(18), adds to the list of conditions necessary to achieve substantial compliance, the adoption and enforcement of FHWA sanctions and penalties for violations of laws and regulations pertaining to railroad-highway grade crossings. Substantial compliance is required to avoid having apportioned Federal-aid highway funds withheld. The FHWA understands the complexity of revising State legislation and establishing procedures to incorporate the new requirements into existing systems. The FHWA is therefore setting the deadline for achieving substantial compliance with this 23rd requirement for State participation in the CDL program as no later than three years after the effective date of this rule.

Federal Enforcement

While the States are being given up to 3 years to implement these new disqualifying offenses, the FHWA has the authority, and will continue to exercise its authority to subject drivers and motor carriers operating in interstate commerce to the appropriate civil or criminal penalties if they are found guilty of violating any of the Federal prohibitions defined in 49 CFR 392.10 and 392.11.

Section Analysis

Section 383.21 Number of Drivers' Licenses

Section 4011(b)(1) of the Transportation Equity Act for the 21st Century [Pub. L. 105–178, 112 Stat. 107, 407, June 9, 1998, codified at 49 U.S.C. 31302] removed the exception in § 383.21(b)(1) allowing a driver to hold more than one driver's license during the 10-day period beginning on the date the CDL is issued. This section is revised to reflect this change and to remove the obsolete exception in § 383.21(b)(2) allowing more than one driver's license if a State required it; that exception has been invalid since January 1, 1990.

Section 383.37 Employer Responsibilities

Section 403 of the ICCTA prescribes a more stringent penalty for employers who knowingly require or allow railroad-highway grade crossing violations than the existing sanctions imposed on employers using a driver while disqualified. Because there is no specific prohibition in the current regulation to which the prescribed sanction would apply, a provision is added to § 383.37 implementing this requirement.

Section 383.51 Disqualification of Drivers

Section 403 of the ICCTA requires the Secretary to establish by regulation, sanctions and penalties for drivers convicted of violating railroad-highway grade crossing laws or regulations.

While the ICCTA only refers in general to violations of laws and regulations pertaining to railroad-highway grade crossings, the FHWA, as explained earlier in this preamble, agrees with the commenters that the violations should be more specific, in keeping with the descriptions of other CDL major and serious traffic violations under 49 CFR 383.51. Six categories of violations are added to paragraph (e)(1) of this section to provide more specificity to the violations.

The ICCTA requires the penalty for a single violation to be not less than a 60-day disqualification, but is silent on how to treat subsequent convictions. Based on the precedents established for all other types of violations which apply a longer penalty for subsequent convictions, and the inherent authority to establish higher penalties for the violations described, 49 CFR 383.51 is amended to provide an increased period of disqualification for subsequent convictions.

Compared to other sanctions imposed in the CMVSA, violations at railroad-highway grade crossings rank higher than serious traffic violations, which require no sanction for a first conviction and disqualifications of not less than 60 days for the second conviction and not less than 120 days for a third or subsequent conviction. The FHWA initially believed a two tier sanctioning system with a minimum disqualification period of 60 days for a first conviction and 120 days for a second or subsequent conviction was a reasonable penalty structure for convictions of railroad-highway grade crossing violations. That was the proposal published in the NPRM. However, based on the severity of the railroad-highway grade crossing crashes involving commercial motor vehicles that have taken place in recent months, including the crashes in Illinois and Texas, the FHWA believes there is a need for a stronger penalty deterrent. As recommended by the Advocates for Highway and Auto Safety and the Federal Railroad Administration, the FHWA is revising the penalty structure to include a one year penalty for third and subsequent convictions for violations of railroad-highway grade crossing laws and regulations. The one year disqualification for a third conviction will bring the penalties more in line with the graduated penalty structure under 49 CFR 240.117 for railroad engineers who fail to comply with requirements for the safe operation of trains. These safety standards for railroad engineers are comparable to commercial motor vehicle driver requirements, including such offenses as failure to control a locomotive or train in accordance with a signal indication that requires a complete stop before proceeding, failure to adhere to speed limitations and occupying main track without proper authority.

The ICCTA is also silent regarding the time limit between first and subsequent violations. Referring again to the sanctions required for serious traffic violations in 49 U.S.C. 31310(e), which employ a three-year period, a three-year period is also set for these violations. A second conviction for a grade crossing violation in a CMV within a three-year period will result in a disqualification of at least 120 days and a third or subsequent conviction within a three-year period will result in a disqualification of at least one year.

Section 383.53 Penalties

The ICCTA amendment to 49 U.S.C. 31310 specifically provides that any motor carrier that knowingly allows, permits, authorizes, or requires a driver to operate a CMV in violation of a law or regulation pertaining to railroad-highway grade crossings must be subject to a civil penalty of not more than $10,000. This reflects congressional concern about the potentially disastrous consequences of illegally crossing a railroad track. The FHWA has therefore added a new paragraph (c) to the penalty provisions of 49 CFR 383.53 to incorporate this sanction.

Section 384.223 Railroad-Highway Grade Crossing Violation

As indicated in the ICCTA, the States are required to adopt and enforce the sanctions and penalties relating to violations of railroad-highway grade crossing laws or regulations codified in §§ 383.37, 383.51, and 383.53. A new § 384.223, Railroad-highway grade crossing violation, is added to part 384 as the 23rd substantial compliance requirement for State CDL programs. For State compliance purposes, existing laws or regulations applicable to violation of railroad-highway grade crossing restrictions, such as reckless driving or driving to endanger, will be acceptable provided a conviction for these offenses invokes at least the specified minimum disqualification periods.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or a significant regulation within the meaning of Department of Transportation regulatory policies and procedures.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the

FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA believes the actual imposition of these fines and disqualifications will be required only infrequently. This is based on the fact that the FHWA believes the overwhelming majority of motor carriers, including small carriers, currently instruct their drivers to comply with all safety related laws and regulations, including those pertaining to railroad-highway grade crossings. Further, the FHWA believes this final rule establishing driver disqualification and employer civil penalties will serve as a further deterrent for drivers and/or carriers who might otherwise have violated such laws or regulations. Accordingly, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995 and Executive Order 12875 (Enhancing the Intergovernmental Partnership)

This rule does not impose a Federal mandate resulting in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. (2 U.S.C. 1531 *et seq.*).

Each of these final rule changes is a small incremental addition to an existing process. Drivers are already being disqualified as a matter of course when convicted of certain violations. This merely standardizes the minimum disqualification time drivers must receive for violating existing laws or regulations pertaining to railroad-highway grade crossings.

There is a potential one-time minor cost to States that need to modify existing laws to incorporate these standardized railroad-highway grade crossing provisions. The costs of being in substantial compliance with the provisions in this final rule are part of an existing State monitoring program, and therefore will have very little impact on ongoing State operations.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under E. O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that it will have significant implications for Federalism.

The federalism implications of the CDL program were addressed in detail in the rule which established the initial minimum standards (53 FR 27628, Thursday, July 21, 1988). A summary of the points covered in that rule follows:

(a) The Congress determined that minimum Federal standards were required because medium and heavy trucks are involved in a disproportionately large percentage of fatal accidents. The States were carefully consulted in establishing the minimum standards adopted by the FHWA.

(b) The safety problem associated with CMVs is national in scope, requiring a consistent and reciprocal approach to licensing, which retained the basic role of the States in issuing licenses.

(c) The standards adopted deliberately allowed maximum flexibility to the States in implementation of this program.

Thus, it is certified that the specifications contained in this document have been assessed in light of the principles, criteria, and requirements of the Federalism Executive Order, and they accord fully with the letter and spirit of the President's Federalism initiative.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain information collection requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520, that are not already approved for the CDL program and its associated commercial driver's license information system (CDLIS).

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and has determined that this action will not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Parts 383 and 384

Commercial driver's license, Commercial motor vehicles, Motor carriers, Motor vehicle safety, and Railroad-highway grade crossing.

Issued on: August 25, 1999.

Gloria J. Jeff,

Federal Highway Deputy Administrator.

In consideration of the foregoing, the FHWA hereby amends title 49, Code of Federal Regulations, Chapter III, parts 383 and 384 as set forth below.

PART 383—[AMENDED]

1. Revise the authority citation for 49 CFR part 383 to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.*, and 31502; and 49 CFR 1.48.

2. Revise § 383.21 to read as follows:

§ 383.21 Number of drivers' licenses.

No person who operates a commercial motor vehicle shall at any time have more than one driver's license.

3. Revise § 383.37 to read as follows:

§ 383.37 Employer responsibilities.

No employer may knowingly allow, require, permit, or authorize a driver to operate a CMV in the United States:

(a) During any period in which the driver has a CMV driver's license suspended, revoked, or canceled by a State, has lost the right to operate a CMV in a State, or has been disqualified from operating a CMV;

(b) During any period in which the driver has more than one CMV driver's license;

(c) During any period in which the driver, or the CMV he or she is driving, or the motor carrier operation, is subject to an out-of-service order; or

(d) In violation of a Federal, State, or local law or regulation pertaining to railroad-highway grade crossings.

4. Amend § 383.51, to redesignate paragraph (e) as paragraph (f), and to add a new paragraph (e) to read as follows:

§ 383.51. Disqualification of drivers.

* * * * *

(e) Disqualification for railroad-highway grade crossing violation—

(1) *General rule.* A driver who is convicted of operating a CMV in violation of a Federal, State, or local law or regulation pertaining to one of the following six offenses at a railroad-highway grade crossing must be disqualified for the period of time specified in paragraph (e)(2) of this section:

(i) For drivers who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train;

(ii) For drivers who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear;

(iii) For drivers who are always required to stop, failing to stop before driving onto the crossing;

(iv) For all drivers, failing to have sufficient space to drive completely through the crossing without stopping;

(v) For all drivers, failing to obey a traffic control device or the directions of an enforcement official at the crossing;

(vi) For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance.

(2) *Duration of disqualification for railroad-highway grade crossing violation.—(i) First violation.* A driver must be disqualified for not less than 60 days if the driver is convicted of a first violation of a railroad-highway grade crossing violation.

(ii) *Second violation.* A driver must be disqualified for not less than 120 days if, during any three-year period, the driver is convicted of a second railroad-highway grade crossing violation in separate incidents.

(iii) *Third or subsequent violation.* A driver must be disqualified for not less than 1 year if, during any three-year period, the driver is convicted of a third or subsequent railroad-highway grade crossing violation in separate incidents.

* * * * *

5. Amend § 383.53 to add a new paragraph (c) to read as follows:

§ 383.53. Penalties.

* * * * *

(c) *Special penalties pertaining to railroad-highway grade crossing violations.* An employer who is convicted of a violation of § 383.37(d) must be subject to a civil penalty of not more than $10,000.

PART 384—[AMENDED]

6. The authority citation for 49 CFR part 384 continues to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.*, and 31502; and 49 CFR 1.48.

7. Add § 384.223 to read as follows:

§ 384.223 Railroad-highway grade crossing violation.

The State must have and enforce laws and/or regulations applicable to CMV drivers and their employers, as defined in § 383.5 of this title, which meet the minimum requirements of §§ 383.37(d), 383.51(e), and 383.53(c) of this title.

[FR Doc. 99–22900 Filed 9–1–99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 080999K]

Atlantic Highly Migratory Species Fisheries; Bluefin Tuna Quota Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason quota adjustments.

SUMMARY: NMFS adjusts the 1999 Atlantic bluefin tuna (BFT) Angling and Longline category quotas and the Reserve category to account for underharvest and overharvest of these fishing category quotas during January 1 through May 31, 1999. These actions are being taken to prevent overharvest of the 1999 fishing category quotas for the affected fishing categories, to ensure maximum utilization of the quota while maintaining a fair distribution of fishing opportunities, and to be consistent with the Fishery Management Plan (FMP) for Atlantic Tunas, Sharks, and Swordfish.

DATES: Effective August 27, 1999, until May 31, 2000.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, 978-281-9260.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed by the Secretary of Commerce (Secretary) under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*). The authority to issue regulations has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA. Within NMFS, daily responsibility for management of Atlantic Highly Migratory Species (HMS) fisheries rests with the Office of Sustainable Fisheries, and is administered by the HMS Management Division.

On January 20, 1999, NMFS proposed regulations to implement the draft Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) and draft Amendment 1 to the Atlantic Billfish Fishery Management Plan (64 FR 3154). As part of these regulations NMFS proposed to change the way annual catch quotas are applied by changing the fishing year for Atlantic tunas from the calender year to a "fishing year," beginning June 1 of one year and continuing through May 31 of the following year. The intent was to facilitate implementation of catch quota recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) that are issued at its annual meeting in November. In past years, fishing activity for certain BFT categories would commence on January 1, before NMFS could issue a final rule to implement the ICCAT catch quota recommendation.

After the proposed change to the fishing year was published, specific quota allocations for the 1999 BFT fishery, to begin on June 1, 1999, were proposed in a supplement to the proposed rule (64 FR 9299, February 25, 1999). That supplemental proposal included a separate quota to cover fishing activity that would occur in the "bridge" or transition period of January 1 to May 31, 1999. Additionally, the supplemental rule proposed that any underharvest or overharvest from the bridge period would be added to or subtracted from the annual quota for the proposed new fishing year, to begin on June 1, 1999.

NMFS adopted the final HMS FMP, including the 1999 adjusted quotas and the bridge period quota, in April 1999. The final rule implementing the new fishing year was published on May 28, 1999 (64 FR 29090). Final BFT quota specifications for the new fishing year starting June 1 were published on June 3, 1999 (64 FR 29806) and quotas for the bridge period (January 1 to May 31, 1999) were published on July 13, 1999 (64 FR 37700).

Quota Adjustments

Under the HMS FMP implementing regulations at 50 CFR 635.27(a)(9), if NMFS determines, based on landings statistics and other available information, that a BFT quota in any category or, as appropriate, subcategory has been exceeded or has not been reached, NMFS shall subtract the overharvest from, or add the underharvest to, that quota category for the following fishing year, provided that the total of the adjusted category quotas and the Reserve is consistent with a recommendation of ICCAT regarding country quotas, the take of school BFT, and the allowance for dead discards. Adjustments to the Angling category, the Longline category, and the Reserve for the 1999 fishing year (June 1, 1999, to May 31, 2000) are necessary to account for underharvest and overharvest of these fishing category quotas during the bridge period from January 1 - May 31, 1999.

Based on reported landings during the bridge period, adjustments are necessary for the Angling, Longline, and Reserve categories. Because no quota of school BFT was allocated to the Angling category for the bridge period of January 1 through May 31, 1999, and an estimated total of 0.17 mt of school BFT were landed during this time, NMFS adjusts the 1999–2000 fishing year school BFT subquota for the southern area from 38 mt to 37.83 mt. Because there were no landings of large school or small medium BFT in the northern area during the bridge period (for which the subquota was 16 mt), NMFS adjusts the 1999–2000 fishing year northern area large school/small medium subquota from 83 mt to 99 mt. Because only 8.62 mt of the 59 mt allocated for the landing of large school or small medium BFT in the southern area during the bridge period was used, NMFS adjusts the 1999–2000 fishing year southern area large school/small medium subquota from 73 mt to 123.38 mt. Finally, because only 3.16 mt of the 4 mt allocated for the landing of large medium or giant BFT in the southern area was used, NMFS adjusts the 1999–2000 fishing year southern area large medium/giant subquota from 4 mt to 4.84 mt.

In the Longline category, landings of large medium and giant BFT by longline vessels in the northern area (1.94 mt) exceeded the bridge period quota for this subcategory of 1 mt. NMFS, therefore, adjusts the 1999–2000 fishing year Longline north subquota from 24 mt to 23.06 mt. Because landings of large medium and giant BFT by longline vessels in the southern area (47.8 mt) exceeded the bridge period quota for this subcategory of 25 mt, NMFS adjusts the 1999–2000 fishing year Longline north subquota from 89 mt to 66.2 mt.

In addition, quota adjustments are necessary for the Reserve, due to landings during the bridge period and to a prior inseason transfer for the 1999 fishing year. Pursuant to § 285.7 (applicable regulations prior July 1, 1999) and under the authority of the Atlantic Tunas Convention Act, NMFS authorized fisheries biologists from the Stanford Aquarium to conduct research and to initiate studies on the use of pop-up archival tags on small medium, large medium, and giant Atlantic bluefin tuna (BFT) and authorized the North Carolina State University to conduct studies on BFT reproductive biology. These authorized studies have resulted in the landings of 1.27 mt of BFT; these landings have been deducted from the bridge period Reserve of 15 mt. Also, NMFS recently transferred 8 mt of the 1999 Reserve to the Purse Seine category, creating an adjusted Reserve quota of 35 mt for the 1999 fishing season (64 FR 36818, July 8, 1999). The 1999 fishing year Reserve is now further adjusted by the addition of 13.73 mt from the bridge period, for a revised total of 48.73 mt.

Classification

This action is taken under 50 CFR 635.27(a)(7). This action is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: August 27, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–22817 Filed 8–27–99; 5:03 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 082399A]

Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Retention limit adjustment.

SUMMARY: NMFS adjusts the daily retention limit for the Angling category fishery for Atlantic bluefin tuna (BFT) in all areas to two school BFT (measuring 27 to less than 47 inches (69 to less than 119 cm) curved fork length) and one large school or small medium BFT (measuring 47 to less than 73 inches (119 to less than 150 cm) curved fork length) per vessel. This daily retention limit adjustment is effective September 1 through October 6, 1999, after which it will be one large school or small medium BFT per vessel. This action is being taken to provide increased fishing and data collection opportunities in all areas without risking overharvest of this category.

DATES: The daily retention limit adjustment is effective 1 a.m., local time, September 1, 1999, until 11:30 p.m., local time, October 6, 1999.

FOR FURTHER INFORMATION CONTACT: Pat Scida or Sarah McLaughlin, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635.

Implementing regulations for the Atlantic tuna fisheries at § 635.23 allow for adjustments to the daily retention limits in order to provide for maximum utilization of the quota spread over the longest possible period of time. NMFS may increase or reduce the per angler retention limit for any size class BFT or may change the per angler limit to a per boat limit or a per boat limit to a per angler limit.

NMFS is responsible for implementing a recommendation of the International Commission for the Conservation of Atlantic Tunas (ICCAT) to limit the catch of school BFT to no more than 8 percent by weight of the total domestic quota over each 4–consecutive-year period. NMFS is implementing this ICCAT recommendation through annual and inseason adjustments to the school BFT landings and school BFT reserve categories, as necessary, and through the establishment of a school BFT reserve (64 FR 29090, May 28, 1999; 64 FR 29806, June 3, 1999). The recent ICCAT recommendation allows NMFS more flexibility to make interannual adjustments for overharvests and underharvests, provided that the 8–percent landings limit is met over the applicable 4–consecutive-year period. This approach provides NMFS with the flexibility to enhance fishing opportunities and the collection of information on a broad range of BFT size classes and responds to requests from the recreational fishing community for more advance notice of retention limit adjustments and greater certainty in planning for the fishing season.

Since July 26, 1999, NMFS has maintained the daily retention limit at one large school or small medium BFT per vessel. In the announcement for the daily retention limit effective June 25 through July 25, 1999 (64 FR 31992, June 15, 1999), NMFS announced the intention to adjust the daily retention limit once again during late summer and early fall season when BFT have moved further north to the waters off Rhode Island, New York, and northern New Jersey, contingent upon the availability of BFT Angling category quota. NMFS has received comment from mid-Atlantic fishermen, earlier this year and since the June daily retention limit adjustment, that the implementation of an increased daily retention limit over a date-certain period is preferable to a longer season with a lower daily retention limit as it facilitates the scheduling of fishing trips, particularly charter trips. NMFS is encouraged by the positive feedback surrounding the June adjustment and, as information received from fishermen indicates that BFT are available in the northern area (New Jersey and north), has determined that a late-season daily retention limit adjustment is warranted to ensure reasonable fishing opportunities in all geographic areas without risking overharvest.

Landings of the North Carolina winter fishery BFT are deducted from the bridge period in a BFT quota adjustment action published elsewhere in this *Federal Register* issue. Preliminary Large Pelagic Survey estimates of landings for June through August 15, 1999, indicate that approximately 3.2 metric tons (mt) of school BFT and approximately 39 mt of large school/small medium BFT have been landed; reported landings of large medium and giant BFT total approximately 3.1 mt.

NMFS adjusts the BFT Angling category daily retention limit for all areas to two school BFT (measuring 27 to less than 47 inches (69 to less than 119 cm) curved fork length) and one large school or small medium BFT (measuring 47 to less than 73 inches (119 to less than 150 cm) curved fork length) per vessel.

This daily retention limit adjustment is effective September 1 through October 6, 1999, after which it will be one large school or small medium BFT per vessel. The daily retention limit and the duration of daily retention limit adjustment have been selected based on an examination of past catch and effort rates. NMFS will continue to monitor the Angling category fishery closely through the Automated Catch Reporting System, the state harvest tagging programs in North Carolina and Maryland, and the Large Pelagic Survey. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that an interim closure or additional retention limit adjustment is necessary to enhance scientific data collection from, and fishing opportunities in, all geographic areas. Additionally, NMFS may determine that an allocation from the school BFT reserve is warranted to further fishery management objectives.

Closures or subsequent adjustments to the daily retention limit, if any, shall be announced through publication in the **Federal Register**. In addition, anglers may call the Atlantic Tunas Information Line at 888–USA-TUNA (888–872–8862) or 978–281–9305 for updates on quota monitoring and retention limit adjustments. Anglers aboard Charter/Headboat category vessels, when engaged in recreational fishing for school, large school, and small medium BFT, are subject to the same rules as anglers aboard Angling category vessels. All BFT landed under the Angling category quota must be reported within 24 hours of landing to the NMFS Automated Catch Reporting System by calling 888–USA-TUNA (888–872–8862) or, if landed in the states of North Carolina or Maryland, to a reporting station prior to offloading. Information about these state harvest tagging programs, including reporting station locations, can be obtained in North Carolina by calling (800) 338–7804, and in Maryland by calling (410) 213–1531.

Classification

This action is taken under 50 CFR 635.23(b)(3). This action is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: August 27, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–22818 Filed 8–27–99; 5:03 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

RIN 0648–AM20

[Docket No. 990823233–9233–01; I.D. 072799C]

Fisheries off West Coast States and in the Western Pacific; Northern Anchovy Fishery; Quotas for the 1999–2000 Fishing Year

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final quotas.

SUMMARY: NMFS announces the interim final harvest quotas for the northern anchovy fishery in the exclusive economic zone south of Point Reyes, California, for the 1999–2000 fishing year. These quotas were established according to the current regulations implementing the Northern Anchovy Fishery Management Plan (FMP). Amendment 8 to the FMP, which was partially approved by NMFS on June 10, 1999, will change the methodology of establishing the quota. However, the final rule implementing Amendment 8 was not published by August 1, when the fishery began. Therefore, existing regulations must be used to set the quotas for the 1999–2000 fishing season. The intended effect of this action is to establish allowable harvest levels for the central subpopulation of northern anchovy.

DATES: Effective August 27, 1999. Comments will be accepted until September 27, 1999.

ADDRESSES: Submit comments on the interim final quotas to Rodney R. McInnis, Acting Administrator, Southwest Region, (Regional Administrator), NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Administrative Reports LJ–95–11 and LJ–97–08 are available from this same address.

FOR FURTHER INFORMATION CONTACT: James J. Morgan, Southwest Region, NMFS, (562) 980–4030.

SUPPLEMENTARY INFORMATION: In consultation with the California Department of Fish and Game and with the NMFS Southwest Fisheries Science Center, the Administrator, Southwest Region, NMFS, has decided to use the 1995 estimate of 388,000 metric tons (mt) spawning biomass for the central subpopulation of northern anchovy, *Engraulis mordax*, to set interim harvest

limits for the 1999–2000 fishing year. This is the same biomass estimate that was used for the 1995–96 through 1998–99 fishing years, and is being used because no new assessment of the resource has been made. Indices of relative abundance from airplane fish-spotter logs and egg production from research cruises in 1997 (Administrative Report LJ–97–08) indicated that the biomass remained at or above that estimated in 1995.

The biomass estimate was derived from a stock assessment model using spawning biomass estimated by five indices of abundance. Documentation of the spawning biomass is described in Administrative Report LJ–95–11, published by the Southwest Fisheries Science Center, NMFS (see **ADDRESSES**). Information on the status of the resource was last provided at a public meeting of the Pacific Fishery Management Council's (Council) Coastal Pelagic Species Plan Development Team (Planning Team) and Advisory Subpanel in Long Beach, CA, on June 11, 1998. At that time, a review of the status of the anchovy resource was presented by the Planning Team, and NMFS requested estimates of domestic processing needs from the fishing industry so that a basis could be established for setting annual quotas. The industry estimated that 13,000 mt would meet the needs of the reduction industry.

No meeting between the Planning Team and the AdvisorySubpanel was held in 1999, because no new information on the anchovy resource was available and harvests have been consistently low.

Existing regulations establish optimum yield at 100 percentof the amount of the biomass above 300,000 mt (88,000 mt) for reduction fishing plus 7,000 mt for nonreduction fishing. In allocations for reduction and nonreduction fishing, 70 percent is allocated to the U.S. fishery and 30 percent is set aside to account for the Mexican fishery.

The Council reviewed the information available at its public meeting in Portland, OR, on June 22, 1999. The Council acknowledged that the domestic reduction harvest will be low and recommended that the reduction allocation should comprise an amount consistent with recent allocations for reduction fishing (13,000 mt) and the 3,000 mt that the Council recommended as a limit for harvest by two vessels participating in an experimental fishery in the Farallon Islands Closed Area off San Francisco. This would result in a Domestic Allowable Harvest (DAH) of 16,000 mt.

The Council recommended that the total allowable level offoreign fishing (TALFF) be zero; however, the existing regulations require that the amount not allocated to the domestic fishery be reserved for TALFF.

According to the formula in the FMP, the U.S. optimum yield (OY) is 66,500 mt (70 percent of the 95,000–mt international OY). The U.S. OY includes 61,600 mt, which is allocated to reduction fisheries, plus 4,900 mt for non-reduction fisheries. There is no agreement with Mexico on the management of northern anchovy; a portion of the biomass (30 percent) above 300,000 mt is designated as the amount to account for this unregulated harvest. TALFF constitutes any portion of U.S. OY that U.S. fishermen will not use, minus the amount harvested by Mexican vessels in excess of that assumed in the FMP. The Mexican harvest increased significantly in 1995, but dropped to a moderate level in 1996. In recent years, the Mexican harvest has not exceeded the catch levels defined in the FMP.

After considering the above, the Regional Administrator made the following determinations for the 1999–2000 fishing year by applying the formulas in the FMP and in 50 CFR 660.509(b).

1. The total U.S. OY for northern anchovy is 66,500 mt.

2. The total U.S. harvest quota for reduction purposesis 16,000 mt.

a. Of the total reduction harvest quota, 1,600 mt is reserved for the reduction fishery in Subarea A (the northern portion of the Pacific anchovy fishery area (PAFA) between 38° N. lat., (Point Reyes), and a southern limit at 35°14 N. lat. (Point Buchon)). The FMP requires that 10 percent of the U.S. reduction quota or 9,072 mt, whichever is less, be reserved for the northern fishery. This is not a special quota, but only a reduction in the amount allocated to the southern fishery south of Pt. Buchon Subarea B (the southern portion of the PAFA between 35°14' N. lat. (Point Buchon), and the United States-Mexico International Boundary. After the northern fishery has harvested 1,600 mt, any unused portion of the Subarea B allocation may also be harvested north of Pt. Buchon.

b. The reduction quota for subarea B (south of Pt. Buchon) is 14,400 mt.

3. The U.S. harvest quota for non-reduction fishing(i.e., fishing for anchovy for use as dead bait or human consumption) is 4,900 mt (as set by § 660.509(b)).

4. There is no U.S. harvest limit for the live baitfishery.

5. The domestic annual processing capacity (DAP) is16,000 mt.

6. The amount allocated to joint venture processing(JVP) is zero, because there is no history of, nor are there applications for, joint ventures.

7. Domestic annual harvest capacity (DAH) is 16,000mt. DAH is the sum of DAP and joint venture processing.

8. The TALFF is 45,600 mt.

The fishery will be monitored during the year and evaluated with respect to the OY and the estimated needs of the fishing industry.

Classification

This action is authorized by 50 CFR 660.509 and is exempt from review under E.O. 12866.

The Assistant Administrator for Fisheries, NOAA (AA) finds for good cause under 5 U.S.C. 553(b)(B) that providing prior notice and an opportunity for public comment on this action is unnecessary because establishing the quota is a ministerial act, determined by applying a formula in the FMP. Accordingly, providing prior notice and an opportunity for public comment would serve no useful purpose.

Because this rule merely establishes a quota and does not require any participants in the fishery to take action or to come into compliance, the AA finds for good cause under 5 U.S.C. 553(d)(3) that delaying the effective date of this rule for 30 days is unnecessary. Accordingly, the AA makes the quota effective upon the date of filing for public inspection with the Office of the Federal Register.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 27, 1999.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–22816 Filed 8–27–99; 5:03 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol., 64, No. 170
Thursday, September 2, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AA80

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Food Delivery Systems

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule; Extension of public comment period.

SUMMARY: The proposed rule entitled Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Food Delivery Systems was published in the **Federal Register** (64 FR 32308–32343) on June 16, 1999. Public comments were requested to be postmarked on or before September 14, 1999. This action extends the public comment period to October 14, 1999. This extension gives the public additional time to analyze the provisions of the proposed rulemaking and to develop substantive comments which will assist the Department in modifying the requirements regarding WIC Food Delivery Systems.

DATES: To be assured of consideration, comments must be submitted or postmarked on or before October 14, 1999.

ADDRESSES: Comments may be mailed to: Patricia Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302. All written submissions will be available for public inspection during regular business hours (8:30 a.m. to 5:00 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Debra R. Whitford, at the above address or by telephone at (703) 305–2730.

SUPPLEMENTARY INFORMATION:

Background

The Department published the proposed rule addressing WIC Food Delivery Systems in the **Federal Register** (64 FR 32308–32343) on June 16, 1999. The Department provided a 90-day comment period. Commenters have indicated that because this rule is expected to affect a significant number of vendors in the retail food industry, the 90-day comment period is not enough to provide a thorough analysis and to develop detailed comments.

The Department acknowledges the importance of providing commenters with sufficient time to evaluate the proposal and to develop substantive comments. To achieve this end, the Department will continue to accept comments submitted or postmarked on or before October 14, 1999.

Dated: August 25, 1999.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 99–22904 Filed 9–1–99; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 928

[Docket No. FV99–928–1 PR]

Papayas Grown in Hawaii; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule would increase the assessment rate from $.0063 to $.008 per pound of assessable papayas established for the Papaya Administrative Committee (Committee) under Marketing Order No. 928 for the 1999–2000 and subsequent fiscal years. The Committee is responsible for local administration of the marketing order which regulates the handling of papayas grown in Hawaii. Authorization to assess papaya handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal year began July 1 and ends June 30. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Comments must be received by October 4, 1999.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 155 and Order No. 928, both as amended (7 CFR part 928), regulating the handling of papayas grown in Hawaii, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, papaya handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as proposed herein would be applicable to all assessable papayas beginning on July 1, 1999, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would increase the assessment rate established for the Committee for the 1999–2000 and subsequent fiscal years from $0.0063 per pound to $0.008 per pound of assessable papayas.

The papaya marketing order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of papayas. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1998–1999 and subsequent fiscal years, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from fiscal year to fiscal year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on April 22, 1999, to discuss the crop estimate, the budget, and the assessment rate for the 1999–2000 fiscal year. On July 15, 1999, the Committee completed a mail ballot on the crop estimate and assessment rate, and on an eight to one vote, adopted a crop estimate of 40 million pounds of assessable papayas and an assessment rate of $0.008 per pound for the 1999–2000 and subsequent fiscal years. The person who voted no objected to the higher assessment rate. The Committee unanimously recommended a 1999–2000 fiscal year budget of $522,500.

The assessment rate of $0.008 is $0.0017 higher than the rate currently in effect. The budgeted expenses are $39,000 less than the $561,500 budgeted for last year. The Committee determined that a higher assessment rate was necessary to meet the recommended expenses and maintain a reserve fund for the 1999–2000 fiscal year. For several fiscal years, money from the reserve fund has been used to meet a portion of budgeted expenses in an effort to keep the assessment rate as low as possible. The Committee believes a further reduction of the reserve fund would not be prudent.

The Committee is authorized to maintain reserve funds in an amount not to exceed approximately one fiscal year's operational expenses. Last year, the reserve fund was $25,200. This year it is expected to be $25,000, which is approximately one percent lower than the previous year and considered adequate by the Committee. After consideration of the estimated crop size and anticipated expenses for the 1999–2000 fiscal year, it was determined that increasing the assessment rate by approximately 27 percent would provide sufficient funds to meet anticipated expenses and maintain an adequate reserve fund.

The major expenditures recommended by the Committee for the 1999–2000 year include $230,000 for marketing and promotion, $90,500 for research and development, and $98,000 for salaries. Budgeted expenses for these items in 1998–99 were $183,000 for marketing and promotion, $171,500 for research and development, and $98,000 for salaries, respectively.

The assessment rate recommended by the Committee was derived by dividing assessment income needed by expected shipments of papayas. Papaya shipments for the year are estimated at 40 million pounds which should provide $320,000 in assessment income. Income derived from handler assessments, when combined with income from the Hawaii Department of Agriculture, State of Hawaii (Research), USDA's Foreign Agricultural Service, County of Hawaii, and the Japanese Inspection program, along with interest income of $16,000, would be adequate to cover budgeted expenses. Funds in the reserve (estimated to be $25,000 at the end of the 1999–2000 fiscal year) would be kept within the maximum permitted in § 928.42(a)(2) of the order. The order authorizes approximately one fiscal year's expenses for the reserve.

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons are encouraged to express their views at these meetings. The Department would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Committee's 1999–2000 budget and those for subsequent fiscal years would be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 400 producers of papayas in the production area and approximately 60 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on a reported average f.o.b. price of $1.30 per pound of papayas, a handler would have to ship in excess of 3.85 million pounds of papayas to have annual receipts of $5,000,000. Last year, two handlers each shipped in excess of 3.85 million pounds of papayas, and, therefore, could be considered large businesses. The remaining handlers could be considered small businesses under SBA's definition.

Based on a reported average grower price of $0.45 per pound and industry shipments of 36 million pounds, total grower revenues would be $16.2 million. Average grower revenue would, thus, be $40,500. Based on the foregoing, the majority of handlers and producers of papayas may be classified as small entities.

This rule would increase the assessment rate established for the Committee and collected from handlers for the 1999–2000 and subsequent fiscal years from $0.0063 per pound to $0.008 per pound of assessable papayas. The Committee recommended 1999–2000 expenditures of $522,500 and the $0.008 per pound assessment rate. The proposed assessment rate of $0.008 is $0.0017 higher than the 1998–99 rate. The quantity of assessable papayas for the 1999–2000 fiscal year is estimated at 40 million pounds. Thus, the $0.008 rate should provide $320,000 in assessment income. Income derived from handler assessments, the Hawaii Department of Agriculture, State of Hawaii (Research), USDA's Foreign Agricultural Service, County of Hawaii, and the Japanese Inspection program, along with interest income of $16,000, would be adequate to cover budgeted expenses. Funds in the reserve (estimated to be about $25,000 at the end of the 1999–2000 fiscal year) would be kept within the maximum permitted in § 928.42(a)(2) of the order. The order authorizes approximately one fiscal year's expenses for the reserve.

The Committee recommended 1999–2000 expenditures of $522,500. The major expenditures recommended by the Committee for the 1999–2000 year include $230,000 for marketing and promotion, $90,500 for research and development, and $98,000 for salaries. Budgeted expenses for these items in 1998–99 were $183,000 for marketing and promotion, $171,500 for research and development, and $98,000 for salaries, respectively.

Regarding alternatives, the Committee discussed decreasing expenditure levels for marketing and promotion, and further reductions in research and development expenditures to avoid increasing the assessment rate, but it determined that the programs should be funded at the recommended levels. The assessment rate of $0.008 per pound of assessable papayas was determined by dividing the assessment income needed by the quantity of assessable papayas, estimated at 40 million pounds for the 1999–2000 fiscal year. This estimate would generate $320,000 in assessment income. When combined with $208,800 in anticipated income from the previously mentioned sources, and $16,000 in interest income, the Committee would have adequate funds to meet its 1999–2000 expenses.

A review of historical information and preliminary information pertaining to the 1999–2000 fiscal year indicates that the grower price for the season could range between $.30 and $0.45 per pound of papayas. Therefore, the estimated assessment revenue for the 1999–2000 fiscal year as a percentage of total grower revenue could range between 1.8 and 2.7 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the papaya industry, and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the April 22, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large papaya handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 1999–2000 fiscal year began on July 1, 1999, and the marketing order requires that the rate of assessment for each fiscal year apply to all assessable papayas handled during such fiscal year; and (3) handlers are aware of this action which was discussed by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 928 is proposed to be amended as follows:

PART 928—PAPAYAS GROWN IN HAWAII

1. The authority citation for 7 CFR part 928 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 928.226 is revised to read as follows:

§ 928.226 Assessment rate.

On and after July 1, 1999, an assessment rate of $0.008 per pound is established for papayas grown in Hawaii.

Dated: August 26, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–22908 Filed 9–1–99; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

[Docket No. PRM–51–7]

Nuclear Energy Institute; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by the Nuclear Energy Institute (NEI). The petition has been docketed by the Commission and

has been assigned Docket No. PRM–51–7. The petitioner requests that the NRC amend its regulations to delete the requirement for the NRC to evaluate Severe Accident Mitigation Alternatives as part of its National Environmental Policy Act (NEPA) review associated with license renewal. The petitioner requests that the NRC take this action to achieve consistency in the scope of its regulatory requirements associated with NEPA and license renewal.

DATES: Submit comments by November 16, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

For a copy of the petition, write to David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

You may also provide comments via the NRC's interactive rulemaking website at http://ruleforum.llnl.gov. This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: CAG@nrc.gov).

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7162 or Toll-free: 1–800–368–5642 or E-mail: DLM1@NRC.GOV.

SUPPLEMENTARY INFORMATION:

Background

On July 14, 1999, the NRC received a petition for rulemaking submitted by the NEI. The petitioner requests that the NRC amend its regulations to delete the requirement for the NRC to evaluate Severe Accident Mitigation Alternatives (SAMAs) as part of its NEPA review associated with license renewal. The petitioner requests that the NRC take this action to achieve consistency in the scope of its regulatory requirements associated with NEPA and license renewal. The petition has been docketed as PRM–51–7. The NRC is soliciting public comment on the petition for rulemaking.

The NRC's regulations implementing NEPA appear in 10 CFR part 51. Paragraph (c)(3)(ii)(L) of § 51.53 requires that an applicant to evaluate SAMAs as part of its environmental report for license renewal if the NRC staff has not previously considered SAMAs for the plant in an environmental impact statement or a related supplement or in an environmental assessment. The NRC's regulations governing the renewal of operating licenses for nuclear power plants appear in 10 CFR part 54.

The Petitioner's Request

The petitioner requests that the NRC amend its regulations to remove 10 CFR 51.53 (c)(3)(ii)(L). This would eliminate the requirement that the NRC evaluate SAMAs as part of its review of a nuclear power plants application for renewal of its operating license. The petitioner suggests that the rulemaking also include conforming amendments to 10 CFR part 51, Appendix B and that NUREG–1437 be amended to conform with the suggested change.

The petitioner believes that the suggested action would eliminate a conflict with the technical requirements for license renewal. The petitioner states that 10 CFR part 54 is founded on the principle that each plant's current licensing basis remains adequate and carries forward into the renewal term. The petitioner characterizes the Commission as concluding that the adequacy of plant design and operating procedures is beyond the substantive scope of part 54. Yet, the petitioner states that § 51.53(c)(3)(ii)(L) requires that these subjects be extensively analyzed under the procedural requirements in part 51. The petitioner asserts that its suggested approach resolves the conflict between part 51 and part 54 requirements. The petitioner believes that this approach recognizes that the scope of NRC's proposed actions, license renewal determinations under part 54, defines and bounds the scope of environmental review for these actions. The petitioner goes on to state that the courts have held that there is no significant environmental impact requiring further assessment if a proposed action maintains an equivalent level of safety, *City of Aurora* v. *Hunt*, 749 F.2d 1457 (10th Cir. 1984). The petitioner contends that, because part 54 assures that the current level of safety is maintained, there is no increase in risk required to be considered for mitigation under NEPA. Furthermore, the petitioner states that the court action cited by the NRC as the basis for requiring consideration of SAMAs in NEPA evaluations for license renewal, *Limerick Ecology Action* v. *U.S. Nuclear Regulatory Commission*, 869 F. 2d 719 (3rd Cir. 1989), does not preclude the suggested rulemaking. The petitioner also believes that, under established precedent, an EIS does not have to include beyond-design-basis accidents as long as the Commission considers them highly improbable events, *San Luis Obispo Mothers for Peace* v. *NRC*, 751 F2 1287, 1301 (D.C. Cir 1984).

The Petitioner

The NEI characterizes itself as an organization of the nuclear industry responsible for coordinating the efforts of all utilities licensed by the NRC to construct or operate nuclear power plants, and of other nuclear organizations, in all matters involving generic regulatory policy issues and regulatory aspects of generic operating and technical issues affecting the nuclear power industry. Its members include every utility responsible for constructing or operating a commercial nuclear power plant in the United States, as well as major architect/engineering firms and all major nuclear steam supply system vendors.

The Petitioner's Interest in the Requested Action

The petitioner states that 45 commercial nuclear power plants will reach the end of their original 40-year operating license term by 2015. These plants represent billions of dollars in capital investment and generate electricity for 17 million households. Two NRC licensees have submitted license renewal applications; Baltimore Gas and Electric for its two-unit Calvert Cliffs plant and Duke Power for its three-unit Oconee plant. The NEI anticipates that many of the licensees whose licenses will expire in the near future will apply for renewed licenses.

The petitioner characterizes continued plant operation as primarily an economic decision. When considering license renewal, the utility must evaluate future electricity demand, the cost of other electricity supply options versus the cost of continued plant operation, and the efficiency of the NRC license renewal process. The commercial power industry is interested in promoting a license renewal process that focuses on those items the NRC has determined could have a potential effect on the ability of structures and components to function during the extended period of operation. The industry also is interested in ensuring that the NRC properly defines its NEPA review obligations for license renewal so that an efficient, effective process can be achieved. The petitioner believes that retaining the requirement that the NRC evaluate SAMAs as part of its review of a nuclear power plant's application for renewal of its operating license unnecessarily increases the cost of a license application, and potentially increases the review time for an application by introducing issues that conflict with the fundamental principles underlying part 54.

Discussion

Part 54 Requirements

The NRC adopted regulations governing the renewal of nuclear power plant operating licenses in a final rule adding part 54 to 10 CFR chapter I (56 FR 64943; December 13, 1991). The NRC subsequently revised part 54 in a final rule published May 8, 1995 (60 FR 22461). The petitioner describes this revision as an attempt to make license renewal a more focused, stable, and predictable regulatory process.

The petitioner states that the Statement of Considerations for each rule carefully explained the scope of license renewal for the rule. The petitioner cites NRC's commitment to two critical principles. First, with the exception of the detrimental effects of aging during the period of extended operation, the regulatory process is adequate to ensure that the licensing bases of all currently operating plants provide and maintain an acceptable level of safety so that operation will not be inimical to public health and safety or common defense and security. Second, the current licensing basis continues during the renewal term. The petitioner states that the NRC specifically rejected a requirement for a general demonstration of compliance with the current licensing basis as a prerequisite for issuing a renewed license by narrowing the findings required to be made for issuing a renewed license under 10 CFR 54.29. The petitioner contends that the scope of part 54 focuses license renewal only on those matters that relate to the detrimental effects of aging and that are not currently managed and on certain issues analyzed for a period covering the original term and the renewal term. The petitioner believes that the scope of part 54 is directly relevant to industry's view, as characterized by the petitioner, that SAMAs should not be part of the NEPA review for license renewal.

Part 51 Requirements

As indicated, part 51 contains NRC's regulations implementing NEPA. Section 102(2) of NEPA requires the preparation of an environmental impact statement for every major Federal action significantly affecting the quality of the human environment. Section 51.53 defines the environmental impacts that are to be addressed in the NEPA review for license renewal. The petitioner indicates that many of the environmental issues found to be relevant to license renewal were addressed in a generic environmental impact statement (GEIS) issued as NUREG–1437, Generic Environmental Impact Statement for License Renewal of Nuclear Plants, in December 1995. The findings of the GEIS are summarized in Appendix B to part 51, which was issued through formal rulemaking in a final rule published December 18, 1996 (61 FR 66543). The GEIS identified and evaluated the potential environmental impacts that the NRC staff determined could be evaluated generically. The GEIS also identified 22 environmental impacts that the NRC staff concluded were not susceptible to generic evaluation and must be evaluated for each plant as part of the license renewal review process.

The petitioner points out that SAMAs are among the items the NRC has designated for plant-specific review. The petitioner describes SAMAs as plant modifications or procedure changes that do not necessarily prevent severe accidents but reduce the offsite consequences or severity of the impact should a severe accident occur. The petitioner indicates that the NRC has defined severe accidents as those that would cause substantial damage to the reactor core, regardless of whether there are severe offsite consequences. The petitioner believes that in codifying the determination to consider SAMAs in conjunction with license renewal at § 51.53(c)(3)(ii)(L), the NRC interpreted the *Limerick Ecology Action* v. *U.S. Nuclear Regulatory Commission* decision to require this action.

Evaluation and Addressing of SAMAs Under the Current Licensing Basis

The petitioner describes actions preformed by licensees to analyze severe accident vulnerabilities and ways to mitigate these vulnerabilities. These actions include conducting Individual Plant Examinations, employing Probabilistic Safety Assessment methodology to evaluate possibly significant, plant-specific risk contributors to severe accidents, and Individual Plant Examination for External Events that focus on external event risks involving fires and seismic events. The petitioner indicates that the results of these examinations indicate that generic upgrades beyond current levels of safety are not justified on a cost-beneficial basis and that the relatively limited risk from external events does not require additional licensee action. However, the petitioner indicates that these actions and any resulting modifications will carry forward into the renewal term.

Bases for Eliminating SAMAs

Scope of License Renewal

The petitioner classifies NEPA as a procedural statute that was enacted to ensure that Federal agency decisionmaking evaluates environmental consequences that may result from a proposed action and informs the public of this decisionmaking process. The petitioner contends that NEPA is not intended to force a particular result. It does not require that any particular environmental issue be considered or that potential environmental impacts control the decision regarding a proposed action. The petitioner describes NEPA case law as providing that the adequacy of an environmental impact statement is dependent on the facts and circumstances related to the proposed action and that a court will apply the "rule of reason" in reviewing the adequacy of an environmental impact statement. The petitioner contends that the "rule of reason" analysis has not been interpreted to require an exhaustive, detailed discussion of all environmental impacts and that an environmental impact statement will be considered adequate if it provides information reasonably necessary to evaluate the project.

The petitioner states that the NRC must evaluate those impacts resulting from the requested license renewal that have not been evaluated generically in a plant-specific environmental impact statement for license renewal. The petitioner indicates that the NRC specifically determined that extending a license to operate a nuclear power plant does not require the NRC to review all aspects of plant operation or administration, and that the NRC deliberately limited its license renewal process to items related to the extension of the license term or for which aging management does not exist or would be insufficient. Therefore, the petitioner concludes that the impacts appropriately considered under NEPA would be those that reasonably flow from the license renewal decision under part 54. The petitioner references and describes court analyses and decisions in the *City of Aurora* v. *Hunt*, 749 F.2d 1457 (10th Cir. 1984), and *Upper Snake River Chapter of Trout Unlimited* v. *Hodel*, 921 F.2d 232 (9th Cir. 1990),

cases. The petitioner contends that these court actions support industry's contention that because the current licensing basis (of which severe accident management is a part) carries forward to the license renewal term, the status quo will be maintained and because an equivalent level of safety is maintained, SAMAs may be properly excluded from NRC consideration in an environmental impact statement for license renewal.

The petitioner asserts that individual licensee and generic industry actions to address severe accidents demonstrate that this issue is part of the license in the current term and that the increase of the license term does not limit or diminish the value of these actions. The petitioner contends that because items in the current licensing basis are not subject to evaluation as part of the license renewal review, the license renewal rule also eliminates the need to consider the impact of their alternatives under NEPA. The petitioner concludes that there can be no NEPA inquiry of the environmental impacts and the mitigation alternatives of severe accidents if there is no change in the risk of a severe accident generated by license renewal.

The Limerick Decision

The petitioner examines the decision *Limerick Ecology Action* v. *U.S. Nuclear Regulatory Commission* and concludes that the holding in this decision is appropriately limited to the facts based on the context in which the decision was made.

First, the NRC relied on a Policy Statement to conclude that it could exclude consideration of severe accident mitigation design alternatives (SAMDAs) from individual licensing proceedings. Although the court found that the policy statement had the effect of a substantive rule, it was unwilling to treat it as a rule and allowed the policy statement to be challenged in an individual proceeding.

Second, the court was influenced by its perception that the NRC failed to give sufficiently careful consideration to SAMDAs before determining that they should not be subject to review in individual proceedings. The court highlighted the differences between the facts in *Limerick* and those in *Baltimore Gas & Electric Co.* v *Natural Resources Defense Council*, 462 U.S. 87 (1985), where the Supreme Court held that it was permissible under NEPA to treat the environmental effects of nuclear fuel storage generically. The court indicated that under the facts of BG&E, the NRC had proceeded under the basis of an extensive formal rulemaking. In *Limerick*, the NRC failed to permit consideration of SAMDAs without an explanation for doing so that was satisfactory to the court. The court concluded that this failure to evaluate SAMDAs in individual licensing proceedings meant that the NRC had concluded inappropriately that no design mitigation alternative would be worthwhile.

Third, the court was not persuaded by the NRC argument on judicial review that the risks of a severe accident are "remote and speculative." The court held that the NRC had not based its decision on this determination and refused to substitute this argument for the reasons NRC articulated in the policy statement. Based on the facts presented, the court was unwilling to read into the policy statement and find that the risk is remote and speculative.

The petitioner contends that the courts articulated bases for deciding that SAMDAs should not have been excluded from consideration in an individual licensing proceeding support limiting the holding of *Limerick* to its facts. The petitioner further contends that *Limerick* does not affect the proposition that the "rule of reason" defines whether the environmental impact statement has addressed the significant aspects of probable environmental consequences for the proposed action. Finally, the petitioner contends that the limited nature of license renewal limits NEPA evaluation only to those environmental consequences that may reasonably flow from the proposed action, renewing a plant's license as that plant is currently designed and operated.

Finding That Severe Accidents Are Highly Unlikely

The petitioner contends that, because a "rule of reason" applies to all NEPA reviews and because a court has described it as a "probabilistic rule of reason" with respect to SAMAs, the NRC is not required to consider beyond design-basis accidents if the Commission reasonably believes that this type of accident is highly unlikely to occur. The petitioner states that the court, in *Limerick*, recognized that NEPA does not require consideration of remote and speculative risks. However, because the NRC's decision to exclude SAMAs in the *Limerick* licensing proceeding had not been based on such a determination, the court declined to uphold the NRC's action on grounds that had not been invoked by the NRC. Therefore, the petitioner contends that the *Limerick* decision did not and cannot preclude the NRC from elimination SAMAs from NEPA consideration based on an NRC finding that these accidents are highly unlikely to occur. As a result, the petitioner believes that the NRC has an ample basis to proceed with a rulemaking to delete § 51.53(c)(3)(ii)(L). The petitioner states that, based on the assessment of severe accident risk in the GEIS and the results of Individual Plant Examinations and Individual Plant Examinations for External Events, the NRC has concluded that the risk of a severe accident significantly affecting the environment is extremely small. Therefore, the petitioner believes that considering further mitigation is not worthwhile and SAMAs should be excluded from part 51 review for license renewal.

The Petitioner's Conclusion

The petitioner believes that the NRC should conduct a rulemaking to exclude the consideration of SAMAs from the NRC's NEPA review for license renewal. The petitioner contends that the requirement to include SAMAs was based on an overly broad application of language in the *Limerick* case. The petitioner states that under NEPA the NRC is responsible for reviewing those impacts that directly and indirectly relate to license renewal. The petitioner contends that this evaluation is bounded by the fact that an applicant's current licensing basis continues in the renewal term and the impacts associated with the current license are not subject to license renewal evaluation unless they can be shown to be potentially greater in the renewal term. The petitioner contends that such a demonstration has not been made for severe accidents and, therefore, cannot be demonstrated for SAMAs.

Dated at Rockville, Maryland, this 27th day of August, 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–22915 Filed 9–1–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–56–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require repetitive inspections or checks to detect broken H–11 steel bolts at the wing rear spar side-of-body on the lower chord splice plate and kick fitting; and corrective actions, if necessary. This proposal also would require eventual replacement of the existing bolts with new inconel bolts, which would constitute terminating action for the repetitive inspections. This proposal is prompted by a report of broken bolts at the wing rear spar side-of-body on the lower chord splice plate. The actions specified by the proposed AD are intended to prevent cracking of the bolts due to stress corrosion, which could result in reduced structural integrity of the wing-to-body joint structure.

DATES: Comments must be received by October 18, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–56–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–56–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–56–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report indicating that an operator found four broken high strength H–11 steel bolts on a Boeing Model 747 series airplane. The broken bolts were on one side of the wing rear spar side-of-body on the lower chord splice plate. The broken bolts were attributed to stress corrosion cracking. This condition, if not detected, could result in reduced structural integrity of the wing-to-body joint structure.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–57A2309, dated February 25, 1999. The service bulletin describes procedures for repetitive detailed visual inspections, or alternatively, ultrasonic inspections or torque checks, to detect broken H–11 steel bolts common to the rear spar lower chord splice plate and H–11 steel bolts on the wing rear spar lower kick fitting; and corrective actions, if necessary. The corrective actions involve performing either an ultrasonic inspection or torque check for broken bolts, if necessary; an open hole high frequency eddy current (HFEC) inspection to detect cracks at the broken bolt hole location; and installing an inconel bolt, which would eliminate the need for the repetitive inspections at this bolt location, as applicable. The service bulletin also describes procedures for an optional terminating action for the repetitive inspections. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although incorporation of the terminating action specified in the referenced service bulletin is optional, this AD proposes to mandate, within 48 months after the effective date of this AD, the open hole inspection and replacement specified in the referenced service bulletin as terminating action for the repetitive inspections.

The FAA has determined that long-term continued operational safety would be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed replacement requirement is in consonance with these conditions.

In addition, operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings. For a repair method to be approved, the approval letter must specifically reference this AD.

Cost Impact

There are approximately 523 airplanes of the affected design in the worldwide fleet. The FAA estimates that

115 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection of the wing rear spar side-of-body lower chord splice plate and kick fitting high strength H–11 steel bolts proposed by this AD on U.S. operators is estimated to be $6,900, or $60 per airplane, per inspection cycle.

It would take approximately 13 (Groups 1, 3, 4, and 5 airplanes) and 10 (Group 2 airplanes) work hours per airplane to accomplish the proposed open hole HFEC inspection and replacement, at an average labor rate of $60 per work hour. Required parts would cost approximately $4,500 per airplane. Based on these figures, the cost impact of the open hole HFEC inspection and replacement proposed by this AD on U.S. operators is estimated to be $5,280 (Groups 1, 3, 4, and 5 airplanes) and $5,100 (Group 2 airplanes) per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 99–NM–56–AD.

Applicability: Model 747 series airplanes, as listed in Boeing Alert Service Bulletin 747–57A2309, dated February 25, 1999, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and prevent cracking of the high strength H–11 steel bolts on the wing rear spar side-of-body on the lower chord splice plate and kick fitting due to stress corrosion, which could result in reduced structural integrity of the wing-to-body joint structure, accomplish the following:

Repetitive Inspections

(a) Within 12 months after the effective date of this AD, perform a detailed visual inspection, or alternatively, an ultrasonic inspection or torque check, to detect broken H–11 steel bolts common to the rear spar lower chord splice plate and the H–11 steel bolts common to the wing rear spar lower chord kick fitting, in accordance with Boeing Alert Service Bulletin 747–57A2309, dated February 25, 1999. Thereafter, repeat the applicable inspection or torque check at intervals not to exceed 18 months, until accomplishment of the actions specified in paragraph (d) of this AD.

Note 2: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

Corrective Actions

(b) If there is any detection or indication that any bolt is broken during the inspection required by paragraph (a) of this AD, prior to further flight, perform the applicable corrective action [i.e., ultrasonic inspection, torque check, high frequency eddy current (HFEC) inspection, repair, and replacement] in accordance with Boeing Alert Service Bulletin 747–57A2309, dated February 25, 1999; except as provided in paragraph (c) of this AD. Replacement of a broken bolt with a new inconel bolt in accordance with the service bulletin constitutes terminating action for the repetitive inspection requirements of paragraph (a) of this AD for that bolt only.

(c) If any crack is detected during any corrective action required by paragraph (b) of this AD; and the service bulletin specifies to contact Boeing for appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Terminating Action

(d) Within 48 months after the effective date of this AD, accomplish the actions required by paragraphs (d)(1) and (d)(2) of this AD in accordance with Boeing Alert Service Bulletin 747–57A2309, dated February 25, 1999. Accomplishment of the actions specified in this paragraph constitutes terminating action for the repetitive inspection requirements of this AD.

(1) Prior to accomplishing the replacement required by paragraph (d)(2) of this AD, perform an open hole HFEC inspection to detect cracks at the bolt hole location for the eight high strength H–11 steel bolts common to the rear spar lower chord splice plate and the four high strength H–11 steel bolts common to the wing rear spar lower chord kick fitting. If any crack is detected, prior to further flight, perform applicable corrective actions in accordance with paragraph (c) of this AD.

(2) Replace all eight high strength H–11 steel bolts common to the rear spar lower chord splice plate and all four high strength H–11 steel bolts common to the wing rear spar lower chord kick fitting with new inconel bolts.

Spares

(e) As of the effective date of this AD, no person shall install an H–11 steel bolt having part number (P/N) BACB30MT ( ) * ( ) or BACB30TR ( ) * ( ), or any other H–11 steel bolt in the locations specified in this AD, on any airplane.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on August 27, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22921 Filed 9–1–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AAL–15]

Proposed Establishment of Class E Airspace; Koliganek, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish Class E airspace at Koliganek, AK. The establishment of Global Positioning System (GPS) instrument approach procedures at Koliganek Airport have made this action necessary. The Koliganek Airport status will change from Visual Flight Rules (VFR) to Instrument Flight Rules (IFR). Adoption of this proposal would result in adequate controlled airspace for aircraft flying IFR procedures at Koliganek, AK.

DATES: Comments must be received on or before October 18, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AAL–530, Docket No. 99–AAL–15, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's homepage at http://www.alaska.faa.gov/at or at address http://162.58.28.41/at.

FOR FURTHER INFORMATION CONTACT: Bob Durand, Operations Branch, AAL–531, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: Bob.Durand@faa.gov. Internet address: http://www.alaska.faa.gov/at.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AAL–15." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the **Federal Register**'s web page for access to recently published rulemaking documents at http://www.access.gpo.gov/su—docs/aces/aces140.html.

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the individual(s) identified in the **FOR FURTHER INFORMATION CONTACT** section.

The Proposal

The FAA proposes to amend 14 CFR part 71 by establishing Class E airspace at Koliganek, AK, due to the development of two GPS instrument approach procedures. The intended effect of this proposal is to provide controlled airspace for IFR operations at Koliganek, AK.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 (63 FR 50139; September 21, 1998). The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as

the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continués to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, is to be amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Koliganek, AK [New]

Koliganek Airport
(Lat. 61° 32′ 11″ N., long. 160° 20′ 29″ W.)

That airspace extending upward from 700 feet above the surface within 6.3-mile radius of the Koliganek Airport, and that airspace extending upward from 1,200 feet above the surface within an area bounded by lat. 59° 08′ 00″ N. long. 158° 30′ 00″ W., to lat. 59° 55′ 00″ N. long. 158° 30′ 00″ W., to lat. 59° 55′ 00″ N. long. 155° 00′ 00″ W., to 59° 08′ 00″ N. long. 155° 00′ 00″ W., the point of beginning.

* * * * *

Issued in Anchorage, AK, on August 25, 1999.

Willis C. Nelson,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 99–22895 Filed 9–1–99; 8:45 am]

BILLING CODE 4910–13–P

POSTAL SERVICE

39 CFR Part 776

Floodplain and Wetland Procedures

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposal would revise existing procedures for the acquisition and management of real property and construction of facilities in floodplains and wetlands. These proposed changes would simplify and clarify the responsibilities of the Postal Service with regard to public notification and procedures to be followed when evaluating postal facility actions that may involve construction projects in floodplains or wetlands.

DATES: Comments must be submitted on or before October 4, 1999.

ADDRESSES: Written comments should be directed to the Manager, Real Estate, Facilities, 4301 Wilson Blvd, Suite 300, Arlington, VA 22203–1861.

FOR FURTHER INFORMATION CONTACT: Technical information: Hank Burmeister, (201) 714–5431. Legal information: Jeff Meadows, (202) 268–3009.

SUPPLEMENTARY INFORMATION: The Postal Service is proposing to clarify and simplify its regulations concerning its internal evaluation and decision-making processes for constructing facilities in floodplain and wetland areas, while ensuring public input and notice of these decisions. Experience over the years has demonstrated that the current regulations in many cases do not address the needs of local communities.

The Postal Service must balance local needs with its national mandate to provide universal, prompt, and efficient mail service while complying with environmental protection policies. Often the only suitable and available property requires construction in a floodplain or wetland. In these situations, an analysis which presumes that the Postal Service has an unlimited number of options available to provide community postal services is inefficient.

The proposed floodplain regulations would apply to construction of new postal facilities in floodplains. They would also apply to other construction projects, including the expansion or renovation of existing facilities, which would increase the amount of impervious area in a floodplain, such as paving over a dirt and gravel parking lot. However, the procedural requirement to conduct a no practicable alternatives analysis will not apply to every construction project located in a floodplain. For example, it would not apply to construction or improvements to facilities such as boat docks and piers, which necessarily have to be placed in the floodplain, or to new construction of facilities where all contending sites are located in the floodplain. The no practicable alternatives analysis also would not apply where the entire preferred area for the location of a postal facility, whether expanded, renovated, or replaced, is in the floodplain.

These regulations attempt to balance the need to limit development in floodplains while addressing community inputs and needs. The Postal Service will continue to review the potential environmental impacts and effects of facility actions and to incorporate appropriate mitigation measures into facilities projects.

The wetland regulations, based on Executive Order (EO) 11990, are being simplified and clarified to separate them from the floodplain requirements, based on EO 11988. EO 11990 directs all federal agencies to avoid destruction or modification of wetlands whenever a practicable alternative can be found. The proposed regulations separate the requirements and procedures for floodplains and wetlands. These proposed regulations do not alter the basic procedure the Postal Service follows pursuant to EO 11990. For example, if the construction is proposed in a wetland, the Postal Service must still issue a written determination that there is no practicable alternative to such construction and that the proposed action includes all practicable mitigation measures. The Postal Service will continue to review the potential environmental impacts and effects of facility actions in wetlands and incorporate appropriate mitigation measures.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c) regarding proposed rulemaking) by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed amendments to part 776 of subchapter K of title 39, Code of Federal Regulations.

List of Subjects in 39 CFR Part 776

Floodplains, Postal Service.

For the reasons discussed in the preamble, the Postal Service proposes to revise title 39 CFR part 776 to read as follows:

PART 776—FLOODPLAIN AND WETLAND PROCEDURES

Subpart A—General Provisions

Sec.
776.1 Purpose and policy.
776.2 Responsibility.
776.3 Definitions.

Subpart B—Floodplain Management

776.4 Scope.
776.5 Review procedures.
776.6 Design requirements for construction.
776.7 Lease, easement, right-of-way, or disposal of property to non-federal parties.

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Authority: 39 U.S.C. 401.

§ 776.1 Purpose and policy.

(a) The regulations in this part implement the goals of Executive Orders 11990, Protection of Wetlands, and 11988, Floodplain Management, and are adopted pursuant to the Postal Reorganization Act, as the Postal Service does not meet the definition of the term "agency" used in the Executive Orders.

(b) The Postal Service intends to exercise leadership in the acquisition and management of real property, construction of facilities, and disposal of real property, located in floodplains and wetlands. Consistent with the goals of the Executive Orders, the regulations in this part are not intended to prohibit floodplain and wetland development in all circumstances, but rather to create a consistent policy to minimize adverse impacts.

§ 776.2 Responsibility.

The appropriate Manager, Facilities Service Office, or functional equivalent within the Postal Service's facilities organization, in conjunction with the appropriate Vice President, Area Operations, or functional equivalent within the Postal Service's operations organization, are responsible for overall compliance with the regulations in this part pertaining to facilities projects. The Vice President, Area Operations, is responsible for compliance with these regulations for those projects within the Vice President's delegated authority.

§ 776.3 Definitions.

Construction means construction, alterations, renovations, and expansions of buildings, structures, and improvements.

Contending site means a site or existing building for a proposed postal facility action, which meets the requirements of the Postal Service as determined by the operations organization.

Facility means any building, appurtenant structures, or associated infrastructure.

Floodplain means the lowland and relatively flat areas adjoining inland and coastal waters including flood-prone areas of offshore islands, including, at a minimum, those areas subject to a one percent or greater chance of flooding in any given year (also known as a 100-year floodplain).

Practicable means capable of being accomplished within existing constraints. The test of what is practicable depends on the situation and includes consideration of many factors, such as environment, cost, technology, implementation time, and postal operational needs.

Preferred area means the specific geographical area proposed for a new postal facility, as developed by the operations organization within the Postal Service. A preferred area's boundaries are unique for each proposed facility based on the operational and customer service needs of the Postal Service.

Preferred site means the most advantageous site for a proposed facility, taking into consideration postal operational and customer service needs, cost, and availability, as determined by the operations organization within the Postal Service.

Wetlands means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

Subpart B—Floodplain management

§ 776.4 Scope.

(a) The regulations in this subpart are applicable to the following proposed postal facility actions located in a floodplain:

(1) New construction, owned or leased; or

(2) Construction projects at an existing facility that would increase the amount of impervious surface at the site.

(b) These procedures are not applicable to the following postal facility actions:

(1) Those actions identified in paragraphs (a)(1) and (a)(2) of this section, when the entire preferred area, or all contending sites, for such actions lies within a floodplain;

(2) Incidental construction, such as construction of athletic fields, recreational facilities, sidewalks, and other minor alteration projects;

(3) Construction at existing postal facilities pursuant to the Architectural Barriers Act or postal accessibility standards;

(4) Any facility construction project deemed necessary to comply with federal, state, or local health, sanitary, or safety code standards to ensure safe working conditions;

(5) Construction of facilities that are functionally dependent on water, such as piers, docks, or boat ramps;

(6) Maintenance, repair, or renovation of existing facilities; or

(7) Leasing or other use of space for not more than one year.

§ 776.5 Review procedures.

Officials shall follow the decision-making process outlined in paragraphs (a) through (f) of this section, when a facility action may involve floodplain issues. Under certain circumstances, this process may be carried out with fewer steps if all objectives of the decision-making process can be achieved. A general principle underlying this process is that a postal facility action requiring construction in a floodplain may be considered only when there is no practicable alternative.

(a) *Analysis of alternatives.* If a postal facility action would involve construction in a floodplain, alternative actions shall be considered.

(b) *Early public notice.* If a facility action at the contending site(s) could require construction in a floodplain, public notice must be provided.

(c) *Floodplain location and information.* (1) Personnel shall determine whether construction would occur within a floodplain. The determination shall be made by reference to appropriate Department of Housing and Urban Development (HUD) floodplain maps (sometimes referred to as Floodplain Insurance Rate Maps (FIRM)), or Federal Emergency Management Agency (FEMA) maps, or more detailed maps if available. If such maps are not available, floodplain location must be determined on the basis of the best available information.

(2) Once the preferred site has been identified, potential floodplain impacts must be determined. As part of this determination process, specific floodplain information should be developed, which is to consider:

(i) Whether the proposed action will directly or indirectly support floodplain development;

(ii) Flood hazard and risk to lives and property;

(iii) Effects on natural and beneficial floodplain values, such as water quality maintenance, groundwater recharge, and agriculture; and

(iv) Possible measures to minimize harm to, or impact on, the floodplain.

(d) *Reevaluation.* After the above steps have been followed, if the determination is that there appears to be no practicable alternative to constructing in a floodplain, a further review of alternatives must be conducted by the facilities organization in conjunction with the operations organization requesting the construction of the facility. The further review of alternatives must be conducted by the operations organization for projects within the delegated authority of the Vice President, Area Operations.

(e) *Final public notice.* As a result of the reevaluation, if it is determined that there is no practicable alternative to constructing in a floodplain, public notice shall be provided as soon as possible for the proposed action. The notice should be publicized and should include:

(1) Identification of the project's location;

(2) Provision for a 30-day public comment period before irrevocable action is taken by the Postal Service; and

(3) Name and complete address of a postal contact person responsible for providing further information on the decision to proceed with a facility action or construction project in a floodplain. Upon request, that person shall provide further information as follows:

(i) A description of why the proposed action must be located in a floodplain;

(ii) A listing of alternative actions considered in making the determination; and

(iii) A statement indicating whether the action conforms to applicable state and local floodplain protection standards.

(f) *Distribution.* The above public notice will be sent to appropriate officials, local newspaper reporters, and other parties who express interest in the project.

(g) *NEPA coordination.* If either an Environmental Impact Statement or an Environmental Assessment is required under the Postal Service's National Environmental Policy Act (NEPA) regulations, the above review procedures must be incorporated into and evaluated in that document.

§ 776.6 Design requirements for construction.

If structures impact, are located in, or support development in a floodplain, construction must conform, at a minimum, to the standards and criteria of the National Flood Insurance Program (NFIP), except where those standards are demonstrably inappropriate for postal purposes.

§ 776.7 Lease, easement, right-of-way, or disposal of property to non-federal parties.

When postal property in floodplains is proposed for lease, easement, right-of-way, or disposal to non-federal public or private parties, the Postal Service shall:

(a) Reference in the conveyance document that the parcel is located in a floodplain and may be restricted in use pursuant to federal, state, or local floodplain regulations; or

(b) Withhold the property from conveyance.

Subpart C—Wetlands Protection

§ 776.8 Scope.

(a) The regulations in this subpart are applicable to the following proposed postal facility actions located in a wetland:

(1) New construction, owned or leased; or

(2) Construction projects at an existing facility that would alter the external configuration of the facility.

(b) These procedures are not applicable to the following postal facility actions:

(1) Construction of foot and bike trails or boardwalks, including signs, the primary purposes of which are public education, interpretation, or enjoyment of wetland resources;

(2) Construction at existing postal facilities pursuant to the Architectural Barriers Act or postal accessibility standards;

(3) Any facility construction project deemed necessary to comply with federal, state, or local health, sanitary, or safety code standards to ensure safe working conditions;

(4) Construction of facilities that are functionally dependent on water, such as piers, docks, or boat ramps; or

(5) Maintenance, repair, or renovation of existing facilities.

§ 776.9 Review procedures.

(a) *Early public notice.* If a facility action at the contending site(s) could require construction in a wetland, public notice must be provided.

(b) *Finding of no practicable alternative.* The Postal Service shall avoid construction located in a wetland unless it issues a finding of no practicable alternative. The facilities organization, in conjunction with the operations organization, or, for projects within the delegated authority of the Vice President, Area Operations, the operations organization, shall make a written determination that:

(1) There is no practicable alternative to such construction; and

(2) The proposed action includes all practicable measures to minimize harm to wetlands.

(c) *NEPA coordination.* If either an Environmental Impact Statement or an Environmental Assessment is required under the Postal Service's National Environmental Policy Act (NEPA) regulations, the above review procedures must be incorporated into and evaluated in that document.

§ 776.10 Lease, easement, right-of-way, or disposal of property to non-federal parties.

When postal-owned wetlands or portions of wetlands are proposed for lease, easement, right-of-way, or disposal to non-federal public or private parties, the Postal Service shall:

(a) Reference in the conveyance document that the parcel contains wetlands and may be restricted in use pursuant to federal, state, or local wetlands regulations; or

(b) Withhold the property from conveyance.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 99–22823 Filed 9–1–99; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA–35–1–6659b; A–1–FRL–6425–3]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Reasonably Available Control Technology for Major Stationary Sources of Nitrogen Oxides and Nitrogen Oxide Requirements at Municipal Waste Combustors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Massachusetts. These revisions establish and require the implementation of reasonably available control technology (RACT) for major stationary sources of nitrogen oxides (NOx). Additionally, Massachusetts has requested SIP approval of NOx emission limits, monitoring, recordkeeping, and reporting requirements at municipal waste combustors. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittals as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before October 4, 1999.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114–2023. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA and the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Steven A. Rapp, at (617) 918–1048, or by e-mail at: Rapp.Steve@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: August 10, 1999.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 99–22186 Filed 9–1–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO–001–0031; FRL–6432–7]

Approval and Promulgation of State Implementation Plans; Colorado; Revisions to Opacity and Sulfur Dioxide Requirements

AGENCY: Environmental Protection Agency (EPA).2

ACTION: Proposed rule.

SUMMARY: On May 27, 1998, the Governor of Colorado submitted revisions to the State Implementation Plan (SIP). Specifically, the State submitted revisions to Colorado Regulation No. 1 to provide coal-fired electric utility boilers with certain exemptions from the State's pre-existing limitations on opacity and sulfur dioxide (SO_2) emissions during periods of startup, shutdown, and upset. The EPA is proposing to disapprove these revisions to the Colorado SIP because the revisions are not consistent with the Clean Air Act (Act) and applicable Federal requirements. The effect of this disapproval will be that the previous version of Colorado Regulation No. 1 (which did not contain any exemptions from the SO_2 emission limitations and which generally provided for a 30% opacity limit during periods of startup, as well as fire building, cleaning of fire boxes, soot blowing, process modification, or adjustment of control equipment) will remain part of the Federally enforceable SIP.2

DATES: Written comments must be received on or before October 4, 1999.2

ADDRESSES: Written comments may be mailed to Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, Environmental Protection Agency (EPA), Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the State documents relevant to this action are available for public inspection at the Air Pollution Control Division, Colorado Department of Public Health and Environment, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530.2

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, EPA Region VIII, (303) 312–6445.2

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I. Background of State Submittal

On May 27, 1998, the Governor of Colorado submitted revisions to the Colorado SIP. The SIP submittal consisted of revisions to Colorado Regulation No. 1 to provide exemptions from the existing limitations on opacity and SO_2 emissions for coal-fired electric utility boilers during periods of startup, shutdown, and upset.

These revisions were adopted by the Colorado Air Quality Control Commission (AQCC) on December 23, 1996. The revisions became effective at the State level on March 2, 1997 for most sources. However, for coal-fired electric utility boilers located within the Denver Metro PM–10 non-attainment area, the AQCC specified that the provisions will not become State-effective until EPA issues a final rule adopting the revisions to Regulation No. 1 as a permanent part of the SIP.

The following explains in detail the revisions to Regulation No. 1 that the Governor submitted on May 27, 1998:

A. Revisions to Opacity Standards

Prior to these revisions to Regulation No. 1, sections II.A.1. and 4. of Regulation No. 1 generally required all sources to meet a 20% opacity limit, except during periods of fire building, cleaning of fire boxes, soot blowing, startup, process modification, or adjustment of control equipment. During these periods, a 30% opacity limit applied, except the regulation allowed one 6-minute period in excess of 30% opacity in any sixty consecutive minutes. (In both the revised Regulation No. 1 and the pre-existing Regulation No. 1, compliance with the opacity limits is based on a six-minute average.) The revisions to Regulation No. 1 that the Governor submitted on May 27, 1998 amended these opacity requirements for coal-fired electric utility boilers. Specifically, the State

added a provision in section II.A.10. of Regulation No. 1 governing opacity at coal-fired electric utility boilers during startup, shutdown, and upset. (Colorado defines "upset conditions" in its Common Provisions Regulation as "an unpredictable failure of air pollution control or process equipment which results in the violation of emission control regulations and which is not due to poor maintenance, improper or careless operations, or is otherwise preventable through exercise of reasonable care.") Section II.A.10. provides that, during periods of startup, shutdown, and upset, owners and operators of coal-fired electric utility boilers must, to the extent practicable, maintain and operate each such source including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions. This provision also states that determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the State, including monitoring results, opacity observations, review of operating and maintenance procedures, operator training, and inspection of the source.

Another provision in section II.A.10.c. of Regulation No. 1 states that a source is not being maintained and operated in accordance with good air pollution control practice for minimizing emissions if the source's exceedance time (excluding exceedance time related to (1) significant planned maintenance outage (PMO) startups, and (2) emissions associated with periods that the unit is not "on line," where "on line" is defined as fuel being fed to the boilers and the fans are on) expressed as a percentage of total operating time, calculated on a quarterly basis, exceeds the following "exceedance percentage time allowance:" (1) for sources using baghouses for the control of particulate matter, 0.8%; and (2) for sources using electrostatic precipitators (ESPs) for the control of particulate matter, 2% through March 31, 2000 and 1.5% beginning April 1, 2000. In enforcing this exceedance percentage time allowance, section II.A.10.e. of Regulation No. 1 provides that the State may consider each day on which one or more excess emission periods occur during the remainder of a given quarter, following the day on which the exceedance percentage time allowance is exceeded in that quarter, to be a separate day of violation for the purposes of assessing any penalties that may be allowed.

Last, a provision was added in section II.A.10.d. of Regulation No. 3 stating that no specific opacity limits shall be in effect for coal-fired electric utility boilers for the startup period following a significant PMO, provided the following conditions are met:

1. Written notification is provided to the State no less than 30 days prior to shutting the unit down for the PMO. The notification must include a plan for minimizing emissions during the startup and an estimation of the period that the control equipment will not be operated while the boiler is started up;

2. Throughout the startup following the PMO, the operator shall, to the extent practicable, maintain and operate each source including the associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions; and

3. During any PMO startup, the source shall place any air pollution control equipment in service no later than the manufacturer's specifications allow.

Section II.A.10.d. also provides that significant PMO startups shall not exceed one event in any two consecutive years, and that a PMO startup shall "not normally exceed 14 days in duration," although the State may extend this time period for good cause. Last, this provision defines startup for the purposes of significant PMOs to be the period of time beginning with the point of setting the unit into operation and ending with the points when: (1) the generator is synchronized and is operating at or greater than a specific unit's minimum load; (2) primary fuel is being burned and the burners are in service without stabilizing fuel being burned in the boiler; and (3) any air pollution control equipment has reached minimum normal operating design conditions consistent with manufacturer's specifications (as defined by temperature, on a unit-by-unit basis).

B. Revisions to SO2 Emission Limitations

Section VI. of Regulation No. 1 contains SO2 emission limitations for various source categories which vary depending on whether the source was issued an emission permit before August 1, 1977 (i.e., defined as an "existing source") or issued an emissions permit on or after August 1, 1977 (i.e., defined as a "new source"). Before the revisions to Regulation No. 1 that the Governor submitted on May 27, 1998, section VI.B.4.a. of Regulation No. 1 required new coal-fired operations, including coal-fired steam generators, to meet the following SO2 emission limits:

(1) 1.2 pounds (lbs) SO2 per million British Thermal Units (BTU) of coal heat input for units converted from other fuels to coal and for units with a coal heat input of less than 250 million BTU per hour; and

(2) 0.4 lbs SO2 per million BTU coal heat input for units with a coal heat input of 250 million BTU per hour or greater.

There were no exemptions from these SO2 emission limits.

In the May 27, 1998 submittal, the State revised section VI.B.4.a. to add a new subsection (iv), which states that, during periods of startup, shutdown, and upset, owners and operators of coal-fired electric utility boilers must, to the extent practicable, maintain and operate each such source including associated air pollution control equipment in a manner consistent with good air pollution practice for minimizing emissions. This provision also states that determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the State, including monitoring results, opacity observations, review of operating and maintenance procedures, operator training and inspection of the source. The State also added a provision stating that, for those coal-fired electric utility boilers subject to 40 CFR part 60, subpart Da (i.e., those coal-fired electric utility boilers for which construction or modification commenced after September 18, 1978), the source is not being maintained and operated in accordance with good air pollution control practice for minimizing emissions if the source's exceedance time expressed as a percentage of total operating time, calculated on a quarterly basis, exceeds 1%.

Last, the State revised section VI.B.2. of Regulation No. 1. Section VI.B.2. of Regulation No. 1 previously specified a 3-hour averaging time for all new source emission standards for SO2. This section further stated that any 3-hour rolling average of emission rates which exceeded the emission standards in section VI.B. of Regulation No. 1 would be a violation of the State's regulation. The State added the phrase "unless specified in a permit" to the beginning of this section, in order to allow the State to use the permit process to specify an averaging time other than 3 hours for a specific source.

II. EPA's Analysis of State's Submittal

A. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Sections 110(a)(2) and 110(l) of the Act provides that each revision to an implementation plan submitted by a State must be adopted after reasonable notice and public hearing. The EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565, April 16, 1992). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V. The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law under section 110(k)(1)(B) if a completeness determination is not made by EPA within six months after receipt of the submission.

To entertain public comment on the revisions to Regulation No. 1 regarding coal-fired electric utility boilers, the Colorado AQCC held public hearings on December 19, 20, and 23, 1996. Following the public hearings, the regulation revisions were adopted by the AQCC. The Governor initially submitted the revisions to EPA for approval on October 31, 1997.

EPA found the initial SIP submittal incomplete and notified the State of such finding in a January 12, 1998 letter. EPA requested further information from the State pertaining to the AQCC's adoption of the Regulation No. 1 revisions, due to the fact that the Sierra Club and other plaintiffs had challenged the revisions in State court on the grounds that the AQCC had failed to follow applicable State law procedures in adopting the revisions. (See *Cunningham* v. *Colorado Air Quality Control Commission*, Denver District Court, Case No. 97 CV 1808).

On May 27, 1998, the Governor of Colorado resubmitted the revisions to Regulation No. 1 to EPA for approval. The resubmittal included a letter from the Colorado Attorney General's Office opining that the AQCC had followed applicable procedures in adopting the revisions. On August 7, 1998, the Denver District Court issued an Order Affirming Administrative Action that affirmed the AQCC's adoption of the revisions.

EPA did not issue a completeness or an incompleteness finding for the May 27, 1998 SIP submittal. Thus, pursuant to section 110(k)(1)(B), the May 27, 1998 submittal was deemed complete by operation of law on November 29, 1998 (i.e., six months from the date of receipt).

B. Analysis of State's Submittal

EPA has reviewed the State's May 1998 SIP submittal against the relevant requirements of the Act, Federal regulations, and EPA policy and guidance. EPA has identified several issues with the State's SIP revision, as follows:

1. It Does Not Appear the State Has Adequately Addressed the Requirements of Section 193 of the Act

For SIP provisions which EPA approved before November 15, 1990, section 193 prohibits SIP modifications applicable within a nonattainment area unless the modification insures equivalent or greater emissions reductions of the pollutant for which the area is nonattainment.

EPA approved the existing opacity and SO2 provisions in Regulation No. 1 as part of the SIP prior to the enactment of the 1990 amendments to the Act (i.e., prior to November 15, 1990). There are four coal-fired power plants in the Denver metro PM–10 nonattainment area that are affected by the State's revisions. The State's SIP revisions do not impact any other nonattainment area in Colorado because there are no affected coal-fired power plants in any of the State's other PM–10 nonattainment areas, and because the State does not have any SO2 nonattainment areas.

In the Denver metro PM–10 nonattainment area, SO2 emissions have been determined to contribute significantly to PM–10 exceedances (see section 189(e) of the Act and 58 FR 66331, December 20, 1993). However, the revisions to the SO2 requirements in Regulation No. 1 only impact coal-fired electric utility boilers which are subject to 40 CFR part 60, subpart Da, and there are no such coal-fired electric utility boilers located within the Denver metro PM–10 nonattainment area. Thus, the requirements of section 193 of the Act apply only to the State's changes to the opacity requirements in Regulation No. 1, as they impact the four coal-fired power plants in the Denver metro PM–10 nonattainment area.

The AQCC concluded that the revisions to Regulation No. 1 would result in at least equivalent emissions reductions as the pre-existing Regulation No. 1 provisions. In other words, the AQCC believed that the revisions did not represent a relaxation of the existing rule. Specifically, the AQCC's Statement of Basis states the following:

> The regulatory change removing application of the 30% opacity limit appears on first impression to relax requirements for these units. However, by limiting the overall time during which the units may exceed the 20% opacity limit, the Commission believes this approach will result in at least the same levels of compliance with the opacity standard and will likely result in lower overall emissions.[1]

EPA does not believe the AQCC's conclusion is adequately supported. The Statement of Basis explains that the State's enforcement discretion has been exercised to effectively allow 5% noncompliance by electric power plants. It also states that "substantial regulatory ambiguity" in the opacity limitations that previously applied during startup and other periods led to lower compliance levels. Thus, the AQCC concluded that the revisions to Regulation No. 1 are substantially equivalent or better in their impact on emissions because a higher rate of compliance is expected under the revised Regulation No. 1.[2]

EPA does not agree that the State's enforcement practices under the previous version of Regulation No. 1 should be taken into account in determining the stringency of the previous version of the rule or in determining whether a SIP modification meets the requirements of section 193 of the Act. The language of Regulation No. 1, on its face, did not permit sources to exceed the applicable opacity limitations up to 5% of the time. Thus, the fact that the State used enforcement discretion in determining which types of violations to spend resources and time pursuing has no impact on whether EPA or citizens could enforce the requirements of Regulation No. 1 or whether sources were obligated to comply with those requirements on a continuous basis. In fact, a citizens group successfully enforced the opacity provisions of Regulation No. 1 for violations at a coal-fired power plant that complied with the opacity limitations of Regulation No. 1 more than 95% of the time. See *Sierra Club*

[1] The State's Statement of Basis is somewhat unclear regarding the reduced application of the 30% opacity standard and the baseline for analyzing whether the rule change represents a relaxation. The language of the revised Regulation No. 1 appears to be clear that the 30% opacity limit continues to apply to fire building, cleaning of fire boxes, soot blowing, process modification, or adjustment of control equipment (unless these activities occur during a significant PMO startup or a period when fuel is not being fed to the boiler). In its discussion of section 193 of the Act, the State does not draw this distinction. The State also fails to mention that, under the provisions of Regulation No. 1, sources were required to meet a 20% opacity limit during shutdown.

[2] In another part of the Statement of Basis, the AQCC concluded that "the changes made in this rulemaking will not lead to increased emissions in amounts substantial enough to interfere with the State's programs to attain and maintain the National Ambient Air Quality Standards (NAAQS) or other federal requirements." Here, the AQCC appears to concede that increased emissions will result from the rule change.

v. *Public Service Company of Colorado*, 894 F. Supp. 1455 (D. Colo. 1995).

Application of the AQCC's rationale regarding enforcement discretion would lead to an odd result: States with the least robust enforcement programs could most easily meet section 193's equivalency requirements. EPA does not believe Congress intended such a result when it enacted section 193 of the Act.

Further, even though the revisions to Regulation No. 1 define when a coal-fired electric utility boiler is not complying with good air pollution control practices for minimizing emissions by specifying an exceedance percentage time allowance, there is nothing in the revisions that prevents the State from continuing to use enforcement discretion in implementing the new provisions. Thus, there is no guarantee that this new provision will be enforced any more stringently than the previous version of Regulation No. 1. In fact, section II.A.10.e. of Regulation No. 1 merely states that the State *may* assess penalties on a violation-per-day basis.

EPA also disagrees with the AQCC's assertion that the prior version of Regulation No. 1 was ambiguous. The AQCC does not explain what was ambiguous about the prior version of the regulation. EPA believes the previous version of Regulation No. 1 was clear in requiring a 20% opacity limit to be met at all times, except for periods of fire building, cleaning of fire boxes, soot blowing, startup, process modification, or adjustment of control equipment. During those periods, a 30% opacity limit applied, with one 6-minute period in excess of 30% opacity allowed in any sixty consecutive minutes. The only provision in the State's rules that explained when an exceedance would not be considered to be a violation of the rules was the State's upset provision in section II.E. of the Common Provisions Regulation, which provided that upset conditions (as defined in the Common Provisions Regulation) would not be considered to be a violation if certain notification requirements were met (and, presumably, if the upset met the State's definition—i.e., it was not due to poor maintenance, improper or careless operation, or was otherwise preventable through exercise of reasonable care).

EPA also believes the AQCC's analysis ignores critical features of the proposed revisions to Regulation No. 1. Specifically, the AQCC ignores the fact that, under the revisions to Regulation No. 1, exceedances of the exceedance percentage time allowance during startup, shutdown, or upset conditions would not be considered violations of the opacity limitation and would not be penalized for each 6-minute exceedance. Instead, exceedances of the exceedance percentage time allowance during startup, shutdown, or upset conditions would only be considered violations of the requirement for good air pollution control practice for minimizing emissions and would only be penalized on a one-violation-per-day basis. The prospect of fewer violations and lower penalties would reduce sources' incentive to keep their emissions low during startup, shutdown, and upset, and would likely lead to higher emissions of PM–10 under the revised rule than under the Federally approved rule.

Also, under the State's revisions, instead of being subject to a 20% opacity limit during shutdowns and a 30% opacity limit during startups, sources may emit up to 100% opacity during startup, shutdown, and upset conditions if, to the extent practicable, they exercised good air pollution control practice for minimizing emissions. These sources are potentially allowed up to 43.2 hours of 100% opacity in one calendar quarter, if equipped with ESPs, and up to 17.3 hours of 100% opacity in one calendar quarter, if equipped with baghouses, without being considered in violation of the good air pollution control practice standard.

In addition, the AQCC's analysis ignores the provision in the revised regulation that exempts significant PMO startups from the opacity limits. Under the revised Regulation No. 1, sources engaged in a significant PMO startup could potentially emit at 100% opacity for fourteen days or longer. Under the previous version of Regulation No. 1, emissions during a significant PMO startup would have been subject to a 30%, and sometimes to a 20%, opacity limit. It appears that the State's analysis fails to consider equivalency on a short-term basis, such as 24 hours, that is directly relevant to the National Ambient Air Quality Standards (NAAQS).

For the reasons stated, EPA does not believe the revisions to Regulation No. 1 will insure equivalent or greater reductions of PM–10 as required by section 193 of the Act. Thus, EPA does not believe it can approve the revisions.

2. It Does Not Appear the State Has Adequately Addressed the Requirements of Section 110(l) of the Act

Section 110(l) of the Act provides that EPA cannot approve a revision to a SIP if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the Act. Section 110(l) applies to SIP revisions affecting both attainment or unclassifiable areas, as well as nonattainment areas. For attainment or unclassifiable areas, analysis of proposed changes under this provision should, among other things, focus on the 110(a)(1) requirement for maintenance of the NAAQS.

As discussed above, the State does not consider the revisions to Regulation No. 1 regarding coal-fired electric utility boilers to be a relaxation of the SIP, a conclusion with which EPA disagrees. However, the State's submittal did include a study commissioned by the Colorado Utilities Coalition for Clean Air regarding the ambient impacts during startup and shutdown at electric utility units, which the AQCC relied upon in its rulemaking.[3]

EPA has reviewed the study included in the SIP submittal and has found many flaws in the analysis. The study was based on startup and shutdown data from four coal-fired electric utility boilers (out of twenty-five in the entire State), but there was no information provided to explain why these four units were chosen or how they were representative of the potential ambient air issues from all of the twenty-five coal-fired electric utility boilers in the State. The modeling analysis projected ambient particulate matter impacts from each of the four units, in addition to background PM concentrations, that were less than the 24-hour PM–10 NAAQS. However, based on the information submitted, it is apparent that the modeling analysis did not follow the requirements contained in the EPA Guideline on Air Quality Models. (See 40 CFR part 51, appendix W).

The emissions used in the modeling demonstration did not capture the potentially most adverse emissions scenarios associated with startup and shutdown. For example, it appears that the modeling analysis was based on actual emissions from a sample start-up/shutdown sequence that was simply repeated in the model throughout the year. The EPA's Guideline on Air Quality Models requires that, in testing for compliance with 24-hour standards, worst case hourly emission rates (from the test sequence) must be used in the model for every hour of the year. Also, the meteorological data and selection of modeling input options was problematic. It appears that only one year of National Weather Service meteorology data was used in the modeling analysis, while the EPA Modeling Guideline requires that five years of such data be used. If the additional four years of meteorology data had been used in the modeling, it is likely that more adverse dispersion situations and higher ambient impacts would have been predicted. Further, the modeling only analyzed whether emissions from one unit, considering background concentrations, would cause a violation of the NAAQS. The modeling did not analyze whether the emissions from one unit during startup or shutdown would contribute to a violation, considering emissions from other nearby sources in the area. (Each of the units modeled in the study is collocated with two to four other coal-fired electric utility boilers.)

In addition, the study only looked at particulate matter impacts, and it did not address the revisions to the SO2 limits whatsoever.

Thus, EPA believes the modeling analysis included in the SIP submittal cannot be relied upon because of its overall noncompliance with the EPA Guideline on Air Quality Models, nor can the Agency rely on it to conclude that the SIP revision will not interfere with attainment or maintenance of the NAAQS.

3. It Does Not Appear the State Has Addressed the Requirements of 40 CFR 51.166(a)(2)

40 CFR 51.166(a)(2) requires that, if a SIP revision would result in increased air quality deterioration over any baseline concentration, the SIP revision must include a demonstration that it will not cause or contribute to a violation of the applicable increment(s). The demonstration does not need to be done for those section 107 attainment/unclassifiable areas (as identified in 40 CFR part 81) where the minor source baseline date has not been triggered prior to submittal of the SIP revision, although the State is still required under 40 CFR 51.166(a)(4) to periodically review the adequacy of its plan to prevent significant deterioration of air quality.

According to EPA's prevention of significant deterioration (PSD) regulations, the "baseline concentration" represents the ambient concentration that exists in the baseline area at the time of the applicable minor source baseline date. The baseline concentration includes the actual emissions of sources in existence on the minor source baseline date, excluding (1) the actual emissions from any major stationary source on which construction occurred after the "major source baseline date"—January 6, 1975 for sources of particulate matter and SO2; and (2) the actual emissions increases and decreases at any stationary source occurring after the minor source baseline date. (See 40 CFR 51.166(b)(13).) Thus, once the minor source baseline date is triggered for an area, any changes in emissions at any stationary source impact the available maximum increase allowed over the baseline concentration (i.e., the increment). In Colorado, the SO2 minor source baseline date was triggered Statewide as of October 12, 1977 and the particulate matter minor source baseline dates have been triggered for a large part of the State (each "air quality control region" in the State has a different minor source baseline date for particulate matter).

As discussed above, EPA believes the changes to the opacity provisions in Regulation No. 1 represent a relaxation from existing requirements that will allow increased emissions into the air. EPA also believes the revisions to the SO2 provisions are a relaxation that would allow more SO2 emissions into the air. Thus, in those parts of Colorado where the minor source baseline date has been triggered, this SIP revision would potentially allow increased deterioration over baseline concentration. As discussed above, the State did not consider the revised Regulation No. 1 to be a relaxation of existing emission limits. Thus, the State did not address the requirements of 40 CFR 51.166(a)(2). However, EPA believes this SIP revision would allow increased deterioration of air quality over the baseline concentration in some parts of the State and, therefore, a demonstration is required to show that the SIP revision will not cause or contribute to a violation of the applicable increment(s).

4. The SIP Revision Does Not Appear To Meet the Act's Requirements That SIP Measures Be Enforceable

Section 110(a)(2)(A) of the Act requires the SIP to include, among other things, "*enforceable* emission limitations" [emphasis added]. 40 CFR 51.281 further requires that SIPs must be "adopted as rules and regulations enforceable by the State agency." On September 23, 1987, EPA issued a memorandum entitled "Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency." This memo provided guidance on how to determine whether a rule or regulation was enforceable. This memo also directed the EPA Regional Offices to not approve SIPs or SIP revisions which fail to satisfy the enforceability criteria detailed in the September 23, 1987, memo. EPA has reviewed the revised Regulation No. 1 and believes that the revised rule does not meet the Act's requirement that SIP measures be enforceable as EPA has interpreted that requirement. EPA's reasoning is as follows:

(a) EPA reads the revisions to Regulation No. 1 as substituting the good air pollution control practice standard in section II.A.10. for the opacity limits specified in sections II.A.1. and 4. during startups, shutdowns, and upsets. In defining the "exceedance percentage time allowance" in section II.A.10., the State does not specify whether exceedances will be measured against the 20% opacity limit of section II.A.1., the 30% opacity limit of section II.A.4., or both. This lack of clarity undermines the enforceability of the regulation.

(b) The State's Regulation No. 1 revisions either fail to specify a test method for evaluating a source's performance against its exceedance percentage time allowance, or specify an inadequate test method. Section II.A.1. of Regulation No. 1 states that visible emissions shall be measured by EPA Method 9 (40 CFR part 60, appendix A) in all subsections of section II.A. and B. of Regulation No. 1, unless otherwise specified. Section II.A.10. does not specify any other method for measuring visible emissions for the purposes of determining whether a source has exceeded the exceedance allowance. If, as EPA suspects, the State intended continuous opacity monitoring (COM) data to be used to evaluate a source's performance against the exceedance percentage time allowance, the State needed to make this explicit in the regulation to ensure enforceability. In the alternative, EPA believes EPA Method 9 is inadequate to evaluate a source's performance against the exceedance percentage time allowance because Method 9 observations cannot be made on a continuous basis. The revised SO2 provisions in section VI.A.2. also do not specify any test method for determining whether or not a source has exceeded the SO2 exceedance allowance.

(c) Regulation No. 1 specifies that section II.A.10. governs opacity during startup, shutdown, and upset, but the

[3] The study analyzed impacts on PM–10 and PM–2.5. The recent U.S. Court of Appeals decision in *American Trucking Associations, Inc.* v. *USEPA*, Nos. 97–1440 and 97–1441 (D.C. Cir., May 14, 1999) did not vacate the PM–2.5 standard promulgated on July 18, 1997. In any event, EPA is not relying on potential adverse impacts on PM–2.5 as a basis to disapprove the revisions to Regulation No. 1. The D.C. Circuit's decision had no impact on the pre-July 18, 1997 PM–10 standard. That standard remains in place in Colorado, and EPA has an ongoing responsibility under the Act to ensure the standard is attained and maintained.

AQCC's Statement of Basis states that excess emissions due to fire building, process modification, and adjustment of control equipment will also be counted in determining compliance with the exceedance allowance. It is not clear from the actual language of the rule whether exceedances due to fire building, process modification, and adjustment of control equipment are to be counted in determining the number of exceedances in a given quarter. Thus, there is a potential inconsistency between the language of the rule and the State's intent. The enforceability of the State's intent, without clear rule language, is questionable.

(d) EPA's September 23, 1987, guidance memo states that there must be a clear, enforceable requirement that records be kept. While there is no specific provision requiring recordkeeping and reporting in section II.A.10. of Regulation No. 1, section IV.G. of Regulation No. 1 requires recordkeeping and reporting on a quarterly basis of periods of excess emissions for sources required to operate continuous emission monitoring systems for opacity and/or SO2 (which applies to most of the coal-fired electric utility boilers). However, Regulation No. 1 does not appear to require recordkeeping and reporting of total operating time on a quarterly basis. Without such information, it is not clear how the State could implement the exceedance percentage time allowance. Further, section IV.G. of Regulation No. 1 does not require the recordkeeping and reporting of the type of information that might be needed to determine (1) whether a source is being maintained and operated in accordance with good air pollution control practices for minimizing emissions, or (2) whether or not a source is engaged in a significant PMO startup.

(e) Significant PMO startups are not subject to an enforceable time limit. Specifically, section II.A.10.d.iii. states that a significant PMO startup "shall not normally exceed 14 days in duration, but the (Colorado Air Pollution Control) Division may extend this period for good cause shown." This language constitutes a "director's discretion" provision that undermines the enforceability of the time limit and undercuts any benefit the time limit would have for protecting the NAAQS.

(f) For significant PMO startups, section II.A.10.d.i requires the source to submit to the Division a plan for minimizing emissions during the startup, but the revisions do not require the source to follow the plan. Thus, the plan is unenforceable.

(g) Section II.A.10.d.iii. describes the duration of significant PMO startups. The duration is defined according to various events that occur during the course of a startup, but it is not clear from the language of the regulation that these events are adequately defined or that the information needed to adequately define these events for enforcement purposes is or will be available. For example, this section of the regulation refers to a specific unit's minimum load. It is not clear what this means or whether it is a constant and well-understood value.

(h) In the Statement of Basis for the revisions to Regulation No. 1, the Commission states that the significant PMO startup exception "is not intended to allow exclusion of excess emissions resulting from routine maintenance outages, such as annual replacement of standard equipment * * *." Instead, "the Commission restricts the application of the planned maintenance outage exception to events requiring significant changes at the facility, such as replacement of major facility components or installation of new processes * * *." However, the language of the regulation does not restrict significant PMOs in this way: Section II.A.10.d describes a significant PMO as "a scheduled, infrequent yet extended maintenance shutdown * * *." Thus, it does not appear that the restriction the AQCC intended is enforceable.

(i) The State revised section VI.B.2. of Regulation No. 1 to allow a permit to specify a different averaging time for SO2 limits than the 3-hour averaging time contained in the regulation. This revision would allow the State to change the Federally enforceable averaging time in the SIP without EPA approval or Federal notice and comment rulemaking. EPA is unwilling to approve such a director's discretion provision, because it undermines the enforceability of the regulatory limit and allows the State to change the SIP without meeting the Act's requirements for SIP revisions. EPA believes it is impossible to judge in advance whether the State's potential changes to averaging times under such an open-ended provision would be consistent with maintenance of the NAAQS. In addition, EPA generally cannot approve a SIP provision that would be inconsistent with the averaging time of the NAAQS the SIP provision is designed to protect. Thus, to ensure protection of the secondary SO2 NAAQS, EPA believes the averaging time must not be longer than three hours, and EPA cannot approve a discretionary provision in the SIP that might allow averaging times longer than three hours.

(j) Section VI.B.4.a.(iv) of Regulation No. 1 states that, during periods of startup, shutdown, and upset, owners and operators of coal-fired electric utility boilers shall maintain and operate such sources in accordance with good air pollution control practice for minimizing emissions. However, the regulation does not state that such sources are exempt from the SO2 emission limit during startup, shutdown, and upset. Thus, the regulation reads as if both the SO2 emission limit and the good air pollution control practice standard apply during startup, shutdown, and upset at coal-fired electric utility boilers. However, the AQCC's Statement of Basis strongly implies that the good air pollution control practice standard applies in place of the SO2 emission limitation. This discrepancy between the Statement of Basis and the regulation creates confusion and undermines the enforceability of the regulation.

In addition to the above issues, section II.A.10.e. of Regulation No. 1 states that, in enforcing the exceedance percentage time allowance for opacity, the State may consider each day on which one or more excess emission periods occur following the day on which the exceedance percentage time allowance is exceeded for that quarter to be a separate day of violation for the purposes of assessing any penalties that may be allowed. This is much less stringent than considering each six-minute average of excess emissions a separate violation, as was previously required under the State's Regulation No. 1. Thus, the compliance incentive during startup, shutdown, and upset will be substantially reduced. This will, in turn, reduce the effectiveness of the rule in controlling particulate emissions.

In summary, EPA does not believe that the revisions to Regulation No. 1 meet the Act's requirements that SIP measures be enforceable.

5. The SIP Revision Appears To Be Inconsistent With the Requirements of the Act Regarding Continuous Compliance

The Act requires continuous compliance with emission limitations to ensure continuous protection of public health and the environment. The exemptions the State has written into Regulation No. 1 eliminate the requirement in the SIP that coal-fired electric utility boilers comply with Regulation No. 1's opacity and SO2 limits on a continuous basis. Under the State's revisions to Regulation No. 1, emissions during startup, shutdown, upset, significant PMO startups and certain other conditions are automatically exempted from the otherwise applicable opacity and SO2 limits, and are subject to no emission limit. Consistent with its interpretation that emission limits must be met continuously, EPA has interpreted the Act to not permit SIP revisions that automatically exempt sources from emission limits.

More specifically, section 110(a)(1) of the Act requires SIPs to provide for attainment and maintenance of the NAAQS. Because the NAAQS are health and welfare-based standards, Congress intended that they must be met continuously, not just intermittently. Accordingly, section 110(a)(2) of the Act requires SIPs to contain enforceable emission limitations, and section 302(k) of the Act defines "emission limitations" as a requirement "which limits the quantity, rate, or concentration of emissions of air pollutants on a *continuous basis*" [emphasis added].

EPA explained its interpretation of the term "continuous compliance" in a June 21, 1982 memorandum from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation, to the Regional Air Division Directors. That guidance states that "continuous compliance is essentially the avoidance of preventable excess emissions over time as a result of the proper design, operation, and maintenance of an air pollution source." The guidance also emphasizes that excess emissions resulting from malfunctions or other emergency situations must be minimized and terminated quickly.

On September 28, 1982 and February 15, 1983, EPA issued policy statements regarding exemptions from emission limitations during startup, shutdown, and malfunction, based on EPA's interpretation of the Act's requirements for continuous compliance and attainment and maintenance of the NAAQS.[4] For most situations, these policies indicate that all excess emissions must be considered violations, which may or may not be enforced based on the exercise of enforcement discretion. These policies also indicate that events like startup, shutdown, and maintenance are part of the normal operation of a source and should be accounted for in the planning, design, and implementation of operating procedures for the process and control equipment.

EPA realizes that a few sources cannot avoid short periods of excess emissions during startup and shutdown, despite careful and prudent planning and design. For these few sources, the February 15, 1983 policy states that excess emissions during these infrequent, short periods need not be treated as violations provided that the source adequately shows that the excess could not have been prevented through careful planning and design and that bypassing of control equipment was unavoidable to prevent loss of life, personal injury, or severe property damage. Similarly, excess emissions during periods of scheduled maintenance should be treated as a violation, unless a source can demonstrate that such emissions could not have been avoided through better scheduling for maintenance or through better operation and maintenance practices.

These policy statements are consistent with EPA's view that SIP limits must be met continuously because they are intended to protect the NAAQS; any exceptions should be narrowly drawn and clearly place the burden on the source to demonstrate that an exceedance was unavoidable. EPA believes the revisions to Regulation No. 1 are inconsistent with the Act's requirement for continuous compliance and attainment and maintenance of the NAAQS, and believes the revisions must be disapproved.

The revisions eliminate the requirement for coal-fired electric utility boilers to meet any opacity limit during periods of startup, shutdown, and upset. It appears the State intended to provide the same exemption for SO2 limits. Instead, during these periods, coal-fired electric utility boilers are only obligated to exercise good air pollution control practice for minimizing emissions.

As noted in the Background section, above, the revisions establish an "exceedance percentage time allowance." The exceedance of this exceedance percentage time allowance in a quarter is considered a violation of the duty to exercise good air pollution control practice for minimizing emissions. However, it is not considered a violation of the underlying emission limit, and violations may only be penalized on a per-day basis.

With respect to SO2 limits, Regulation No. 1 does not specify how the State will treat exceedances of the exceedance allowance described in section VI.B.4.a.(iv)(B) of Regulation No. 1, but it appears the State intends to approach such exceedances in the same manner as exceedances of the opacity exceedance percentage time allowance.

In order to ensure continuous compliance with the SIP's opacity and SO2 limits, EPA believes it is essential that exceedances during startup, shutdown, and upsets be considered violations of such limits, that may only be excused in an enforcement action if the source properly demonstrates that the exceedances were unavoidable.

EPA has the same objection to the SIP revision's exemption of emissions during significant PMO startups and periods when fuel is not being fed to the boiler. For significant PMO startups, revised Regulation No. 1 requires sources to exercise good air pollution control practices for minimizing emissions but states that no opacity limit applies during these periods. As noted above, significant PMO startups may last 14 days or longer. For emissions during periods when fuel is not being fed to the boiler, the revisions do not appear to impose any emission limit or requirement on sources. These exemptions from the opacity limits are inconsistent with the Act's requirement for continuous compliance and attainment and maintenance of the NAAQS.

EPA does not believe the requirement for the use of good air pollution control practice for minimizing emissions during startups, shutdowns, malfunctions, and significant PMO startups is an adequate substitute for the opacity and SO2 limits. This provision in the revisions to Regulation No. 1 is not adequate to ensure continuous compliance as required by the Act.

First, the revisions to Regulation No. 1 do not require a source to show that the exceedance during startup, shutdown, or upset was unavoidable. In fact, the revisions do not even require a source to demonstrate that it has exercised good air pollution control practice for minimizing emissions. Instead, section II.A.10.b and section VI.B.4.a.(iv) provide that a determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Division. This appears to put no burden on the source to justify an exceedance and does not appear calculated to determine whether or not the exceedance could have been prevented through careful planning and design or whether bypassing of the control equipment was unavoidable to prevent loss of life, personal injury, or severe property damage.

[4] See September 28, 1982 and February 15, 1983 Memorandums, both entitled "Policy on Excess Emissions During Startup, Shutdown, and Malfunctions", from Kathleen M. Bennett, Assistant Administrator for Air, Noise, and Radiation, to the Regional Administrators.

Second, the State's requirement that the source exercise good air pollution control practice only appears to apply during startup, shutdown, and malfunction. Clearly, a problem could arise during startup, shutdown, and malfunction that could have been prevented by careful planning, design, or implementation before the startup, shutdown or malfunction. Also, the Bennett memoranda describe good air pollution control practice for minimizing emissions as only one criterion to examine in evaluating exceedances, and indicate that good air pollution control practice for minimizing emissions should be exercised to the "maximum extent practicable," not just to the "extent practicable" as the State provides.

Furthermore, according to the AQCC's Statement of Basis for this Regulation No. 1 revision, the exceedance percentage time allowance was adopted to provide more certainty for the State and for sources in enforcing the good air pollution control practice standard. Thus, the Statement of Basis and the language of the regulation itself ("exceedance percentage time *allowance*") strongly imply that excess emissions during startup, shutdown, and upset will only be considered to be violations if the exceedance percentage time allowance is exceeded (although the Statement of Basis also states that the State is not precluded from taking enforcement action when the exceedance percentage time allowance has not been exceeded).

The State's rationale, in part, for revising the existing opacity and SO2 provisions in Regulation No. 1 during periods of startup, shutdown, and upset appears to have been to make the revised Regulation No. 1 more consistent with the requirements in EPA's New Source Performance Standards (NSPS) regarding startup, shutdown, and malfunction (see 40 CFR part 60, subparts D and Da). However, emission limitations and other control requirements of the NSPS were not designed to ensure compliance with the NAAQS or to meet other SIP requirements. Rather, the NSPS were designed to reflect best demonstrated technology (taking into account costs) for the affected sources. Further, because NSPS are based on the best system of emission reduction which "the Administrator determines has been adequately demonstrated," EPA generally views the NSPS as the "floor" in determining the emissions control technology that is feasible for a source. Thus, the NSPS are intended to complement the SIP program, but do not necessarily satisfy the requirements of section 110(a)(1) of the Act, which requires control measures to provide for attainment and maintenance of the NAAQS, or of other sections of the Act related to SIP content.

In summary, EPA believes the revisions to Regulation No. 1 are not consistent with the Act because the revisions allow less than continuous compliance with SIP emission limits that are designed to attain and maintain the NAAQS without requiring sources to demonstrate that excess emissions could not have been prevented or avoided. The revisions to Regulation No. 1 significantly reduce the incentive for continuous compliance by sources.

6. EPA Invites Comment on Whether the SIP Revision Conflicts With EPA's Any Credible Evidence Rule

On February 24, 1997, EPA promulgated changes to Federal Regulations to clarify that any credible evidence can be used to demonstrate compliance or noncompliance with emission standards (see 62 FR 8314–8328). In that rulemaking, EPA revised the SIP requirements in 40 CFR 51.212 to state that the SIP "must not preclude the use, including the exclusive use, of any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test or procedure had been performed."

As discussed above, section II.A.1. of Regulation No. 1 states that visible emissions shall be measured by EPA Method 9 (40 CFR part 60, appendix A) "in all subsections of section II.A and B of this regulation, unless otherwise specified." It is EPA's belief that this language does not preclude the use of other credible evidence or information to determine compliance with the opacity limits contained in Regulation No. 1, or to determine whether a source has exceeded the exceedance allowance specified in section II.A.10. of Regulation No. 1.

Recently, the United States District Court for the District of Colorado held that the language of Regulation No. 1 does not preclude the use of other credible evidence to show opacity violations, at least in citizens suits. *See Sierra Club* v. *Tri-State Generation and Transmission Association, Inc., et al.*, Order and Memorandum of Decision, Civil Action No. 96 N 2368, March 8, 1999, at 19, 20. However, it is not clear from the Court's opinion whether the Court was examining the language of the Regulation No. 1 revision or the Federally-approved version of Regulation No. 1. The revision to Regulation No. 1 adds the language "unless otherwise specified" to the end of the language that specifies Method 9 for measuring opacity. Also, it is not clear whether the Court would reach the same conclusion in an enforcement action brought by EPA or the State.

Thus, EPA invites comment on whether the language of section II.A.1. of Regulation No. 1 is consistent with the requirements of 40 CFR 51.212(c), and whether failure to comport with EPA's any credible evidence rule should be an additional basis for disapproving the revisions to Regulation No. 1.

For the reasons discussed above, EPA is proposing to disapprove Colorado's May 27, 1998 SIP submittal of revisions to Regulation No. 1. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

III. Proposed Action

EPA is proposing to disapprove the revision to the Colorado SIP pertaining to the opacity and SO2 provisions in Regulation No. 1, which was submitted by the Governor of Colorado on May 27, 1998. The effect of this action, once final, will be that the pre-existing version of Regulation No. 1 will remain in effect as part of the Federally enforceable SIP and will continue to apply to opacity and SO2 emissions from coal-fired electric utility boilers.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this proposed regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation.

In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's proposed rule would not create a mandate on State, local or tribal governments. The rule would not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's proposed rule would not significantly or uniquely affect the communities of Indian tribal governments. EPA is proposing disapproval of a State rule revision, which will have no impact on the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because EPA's proposed disapproval of the State request under section 110 and subchapter I, part D of the Clean Air Act, would not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements would remain in place after this disapproval. Federal disapproval of the State submittal would not affect State-enforceability. Moreover, EPA's disapproval of the submittal would not impose any new Federal requirements. Therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the disapproval action being proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. The proposed disapproval would not change existing requirements and would include no Federal mandate. If EPA were to disapprove the State's SIP submittal, pre-existing requirements would remain in place and State enforceability of the submittal would be unaffected. The action would impose no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, would result from this proposed action.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this proposed action. Today's proposed action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, and Sulfur oxides.

Dated: August 19, 1999.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 99–22937 Filed 9–1–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6431–3]

Hazardous Waste Management Program: Final Authorization of State Hazardous Waste Management Program Revisions for State of Louisiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA (also, "the Agency" in this preamble) is proposing to grant final authorization to the hazardous waste program revisions submitted by the State of Louisiana Department of Environmental Quality (LDEQ) for its hazardous waste program revisions, specifically, revisions needed to meet the Resource Conservation and Recovery Act (RCRA) Cluster VII, which contains Federal rules promulgated between July 1, 1996 to June 30, 1997. In the "Rules and Regulations" section of this **Federal Register** (FR), EPA is authorizing the State's program revisions as an immediate final rule without prior proposal because the EPA views this action as noncontroversial and anticipates no adverse comments. The Agency has explained the reasons for this authorization in the preamble to the immediate final rule. If the EPA does not receive adverse written comments, the immediate final rule will become effective and the Agency will not take further action on this proposal. If the EPA receives adverse written comments, a second **Federal Register** document will be published before the time the immediate final rule takes effect. The second document may withdraw the immediate final rule or identify the issues raised, respond to the comments and affirm that the immediate final rule will take effect as scheduled. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before October 4, 1999.

ADDRESSES: Mail written comments to Alima Patterson, Region 6, Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, at the address shown below. You can examine copies of the materials submitted by the State of Louisiana during normal business hours at the following locations: EPA Region 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444; or Louisiana Department of Environmental Quality, H.B. Garlock Building, 7290 Bluebonnet, Baton Rouge Louisiana 70810, (225) 765–0617.

FOR FURTHER INFORMATION CONTACT: Alima Patterson at (214) 665–8533.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: June 15, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

[FR Doc. 99–22628 Filed 9–1–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 10, 15, 90, 98, 125–134, 170, 174, and 175

[USCG–1999–5951]

Offshore Supply Vessels

AGENCY: Coast Guard, DOT.

ACTION: Correction to Notice of meeting; request for comments.

SUMMARY: This document contains corrections to the notice of meeting and request for comments [USCG–1999–5951], which was published on July 22, 1999 (64 FR 39455). The meeting was held on August 26, 1999. The purpose of the public meeting was to discuss potential revisions to the Offshore Supply Vessel (OSV) regulations. The meeting focused on the possible establishment of International Tonnage Convention (ITC) tonnage values for OSVs; additional standards for larger OSVs including licensing and manning; and standards for crewboats as a new category of OSVs. Because the Coast Guard also requests written comments from interested public on this issue, this document clarifies the docket number for this project where interested persons can submit their comments. The proper docket number is "USCG–1999–5951."

FOR FURTHER INFORMATION CONTACT: For information concerning this notice or public meeting, contact Mr. James Magill, Project Manager, Office of Operating and Environmental Standards (G–MSO), U.S. Coast Guard Headquarters, telephone 202–267–1082 or LT Charles Srioudom, Office of Operating and Environmental Standards (G–MSO), U.S. Coast Guard Headquarters, telephone 202–267–2498. For questions on viewing, or submitting material to the docket, contact Dorothy Walker, Chief, Documentary Services Division, U.S. Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the notice of meeting and request for comments used three separate docket numbers that may prove to be confusing and misleading, and is in need of correction.

Correction of Publication

Accordingly, the publication on July 22, 1999, of the notice of meeting; request for comments (64 FR 39455) is corrected as follows:

1. On page 39455, in the third column, under **ADDRESSES:** section, third paragraph, remove the docket number "(USCG–1999–4974)", and add in its place, the docket number "(USCG–1999–5951)".

2. On page 39456, in the first column, under "Request for comments" section, remove the docket number "(USCG–1999–XXXX)", and add in its place, the docket number "(USCG–1999–5951)".

Dated: August 27, 1999.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 99–22940 Filed 9–1–99; 8:45 am]

BILLING CODE 4910–15–P

Notices

Federal Register

Vol. 64, No. 170

Thursday, September 2, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Study of the Implementation of the School Meals Initiative for Healthy Children

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Food and Nutrition Service's intention to request Office of Management and Budget approval of the Study of the Implementation of the School Meals Initiative for Healthy Children.

DATES: Written comments on this notice must be received by November 1, 1999.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Alberta C. Frost, Director, Office of Analysis and Evaluation, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget (OMB) approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection forms should be directed to Alberta C. Frost, (703) 305–2117.

SUPPLEMENTARY INFORMATION:

Title: The Study of the Implementation of the School Meals Initiative for Healthy Children.

OMB Number: 0584–0485.

Expiration Date: 03/31/2002.

Type of Request: New collection of information for third year of study.

Abstract: The Study of the Implementation of the School Meals Initiative (SMI) for Healthy Children is a three-year study designed to collect information needed to address current policy issues including those associated with the School Meals Initiative for Healthy Children and Team Nutrition. A major part of this study is intended to provide the Food and Nutrition Service (FNS) with descriptive data on the status of School Food Authorities' (SFAs) implementation of the School Meals Initiative for Healthy Children and the changes that have occurred in the food service operations as a result of implementing this new regulation. FNS will examine trends in SMI implementation and characteristics of SFAs implementing certain elements of SMI and Team Nutrition.

A nationally representative sample of approximately 2,250 public school districts was selected in 1997 to participate in a three-year longitudinal survey which began in School Year 1997–98. Data is being collected from the SFA directors using a mixed mode approach of mail/telephone surveys. The study combines elements of longitudinal research and cross-sectional surveys. A brief self-administered mail survey of all State Child Nutrition Directors will be included each year. This request for OMB approval is for the third year data collection instrumentation only. Estimates of burden shown below are based upon field experience from the first two years of data collection.

Estimate of Burden: Public reporting burden is estimated to range between 45 and 60 minutes for School Food Service Authority directors; and range between 20 and 30 minutes for State Child Nutrition directors;

Respondents: State Child Nutrition directors and SFA directors will be asked to respond to a self-administered mail survey with telephone follow-up.

Estimated Number of Respondents: 50 State Child Nutrition directors, 2,250 SFA directors.

Estimated Number of Responses per Respondent: One.

Estimated Total Annual Burden on Respondents: 1,850 hours.

Dated: August 26, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99–22871 Filed 9–1–99; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 99–043N]

Codex Alimentarius Commission (Codex): Conference on International Food Trade Beyond 2000

AGENCY: Office of Food Safety, USDA.

ACTION: Notice of public meeting, request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, and the Agricultural Marketing Service, United States Department of Agriculture; the Food and Drug Administration, and the Centers for Disease Control, U.S. Department of Health and Human Services; the National Marine Fisheries Service, United States Department of Commerce; and the Environmental Protection Agency, are sponsoring a public meeting on September 16, 1999, to provide information and receive public comments on agenda items for the Conference on International Food Trade Beyond 2000, which will be held in Melbourne, Australia, October 11–15, 1999. The co-sponsors of the September 16, 1999, public meeting recognize the importance of providing interested parties the opportunity to obtain background information on this session and to address items on the agenda.

DATES: The public meeting is scheduled for Thursday, September 16, 1999, from 2:30 p.m. to 4:30 p.m.

The Uruguay Round Agreements have been in effect for five years now and a further round of multilateral trade negotiations—under the World Trade Organization (WTO)—will be starting in

the near future. In light of this new round, FAO believes it is opportune to hold an intergovernmental conference on the implementation of Codex work. The aim is to achieve the full involvement of member Governments in existing and proposed activities related to Codex and WTO.

One objective of the Conference on International Food Trade Beyond 2000 will be to enhance the capacity of developing countries both to enjoy the benefits they accrued on signing the Uruguay Round Agreements and to fulfill their commitments. The conference will address how food quality and safety issues affect trade, health, and development at both domestic and international levels. Pointing the way from 2000 onward, it will take into account recommendations of the 1991 conference, current needs in the field of food trade, the Uruguay Round Agreements and the forthcoming round of WTO negotiations.

The Conference will review the response to the earlier FAO/WHO conference and the action taken by these two organizations, with WTO, to assist Member Governments in meeting their SPS and TBT obligations. This will necessarily entail a full analysis of current Codex, SPS and TBT the upcoming Conference on International Food Trade Beyond 2000:

The Uruguay Round of Multilateral Trade Negotiations, which began in 1985 under the General Agreement on Tariffs and Trade (GATT), for the first time included discussions on agriculture and agricultural products. The negotiations also covered sanitary and phytosanitary measures as well as other standards and activities that could cause unjustified non-tariff barriers to trade in food and agricultural products. When the Uruguay Round was concluded in 1994, among the final Agreements were those on the Application of Sanitary and Phytosanitary Measures (SPS) and Technical Barriers to Trade (TBT).

In 1991, FAO and the World Health Organization (WHO) jointly convened the Conference on Food Standards, Chemicals in Food and Food Trade, in cooperation with GATT. The occasion provided a forum for member Governments to discuss, among other things, the probable impact of the proposed SPS and TBT Agreements on international and domestic food trade. The conference was highly successful and the subsequent implementation of its recommendations on strategies and priorities allowed all parties concerned—FAO, WHO, Codex, GATT, national governments, industries, and consumers—to be better prepared for the food quality and safety obligations of the two Agreements in question.

ADDRESSES: The public meeting will be held in Room 104A, Jamie L. Whitten Building, U.S. Department of Agriculture, Washington, DC 20250. The document website of the Food and Agriculture Organization (FAO) of the United Nations is *http://www.fao.org/es/esn/austral/alicom99/alicom-e.htm*. Send an original and two copies of comments to: FSIS Docket Clerk, Docket *#99–043N*, Room 102, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700. Please state that your comments relate to Docket *#99–043N*, and specify which issues your comments address. All comments submitted in response to this notice will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: F. Edward Scarbrough, Ph.D., U.S. Manager for Codex Alimentarius, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue, SW, Washington, DC 20250–3700, telephone: (202) 205–7760, FAX: (202) 720–3157. Persons requiring a sign language interpreter or other special accommodations should notify Ms. Yolande Mitchell, telephone (202) 205–7760, FAX: (202) 720–3157.

SUPPLEMENTARY INFORMATION:

Background

The Food and Agriculture Organization (FAO) of the United Nations has developed the following objectives for procedures and of the prospects for further change. Carried out within the context of an international conference, such a review should generate coherent recommendations on scientifically based approaches to promoting better-quality and safer foods in domestic and international trade.

Issues To Be Discussed at the Public Meeting

The following specific issues are included on the published agenda for the Conference on International Food Trade Beyond 2000. Prior to the conference FAO will make papers available which will include recommendations on each of the issues listed. These papers will be available through the FAO documents website (see **ADDRESSES**). As the papers become available from FAO they will be placed on file in the FSIS Docket Clerk's office. These issues will be discussed during the public meeting:

1. Response to the 1991 Joint FAO/WHO Conference on Food Standards, Chemicals in Food and Food Trade
2. The Codex Alimentarius Commission
3. Current Status of Food Trade, Including Food Quality and Safety Problems
4. Review of the Implementation of the SPS/TBT Agreements
5. Challenges for Developing Countries in Meeting the Obligations of the SPS/TBT/Codex
6. Basic Approaches to Consumer Protection—FAO/WHO Model Food Act; Control Procedures
7. Harmonization of Food Regulations and Food Quality/Safety Measures Based on Codex Standards, Guidelines and Recommendations
8. Assuring Food Quality and Safety: Back to the Basics—Quality Control Throughout the Food Chain; the role of industry, governments, consumers and academia
9. Prospects for the future:
   a. Emerging Technologies—Ensuring the Quality and Safety of Food
   b. Emerging Problems: Chemical/Biological
   c. Emerging Problems: Allergens
   d. Nutritional, Environmental and Sustainable Food Production Considerations
   (i) Changes in cultural and consumer habits
   (ii) Promoting science-based dialogue on emerging technologies and problems
   (iii) Nutrition, environment and sustainable food production
10. Assuring Science-based Decisions
    a. Expert Advice and Risk Analysis—Validity of the Process and Dealing with Uncertainty
    b. Determining the Appropriate Level of Protection; Threshold of Regulations—Implementation
11. Harmonization, Mutual Recognition and Equivalence
    a. How and what is attainable?
    b. Labelling and Nutritional Aspects—How much information is necessary?
12. Technical Assistance Needs of Developing Countries and Mechanisms to Provide Technical Assistance

Public Meeting

Those attending the public meeting on September 16, 1999, will hear brief descriptions of the issues, and will have the opportunity to pose questions and offer comments.

Additional Public Notification

Pursuant to Departmental Regulation 4300–4, "Civil Rights Impact Analysis," dated September 22, 1993, FSIS has considered the potential civil rights impact of this notice on minorities, women, and persons with disabilities. Therefore, to better ensure that these groups and others are made aware of this meeting, FSIS will announce it and provide copies of the **Federal Register** publication in the FSIS Constituent Update.

The Agency provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding Agency policies, procedures, regulations, **Federal Register** Notices, FSIS public meetings, recalls and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals and other individuals that have requested to be included. Through these various channels, the Agency is able to provide information with a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Office of Congressional and Public Affairs, at (202) 720–5704.

Done at Washington, DC.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 99–22901 Filed 9–1–99; 8:45 am]

BILLING CODE 3410–DM–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arizona Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Arizona Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on Friday, September 24, 1999, at the Clarion Hotel, Tucson Airport, 6801 South Tucson Boulevard, Tucson, Arizona 85706. The purpose of the meeting is to discuss civil rights issues in Arizona and a draft report.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 27, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–22855 Filed 9–1–99; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Michigan Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the Michigan Advisory Committee to the Commission will convene a community forum at 10:00 a.m. and adjourn at 6:00 p.m. on Monday, September 27, 1999, at the Holiday Inn, Fairlane-Dearborn Conference Center, 5801 Southfield Service Drive, Detroit, Michigan. The purpose of the community forum is to receive information regarding "Civil Rights Issues Facing Arab Americans."

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Roland Hwang, 517–373–1480, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 25, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–22853 Filed 9–1–99; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Rhode Island Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island Advisory Committee to the U.S. Commission on Civil Rights will convene at 4:00 p.m. and adjourn at 8:30 p.m. on September 29, 1999, at the Providence Marriott, One Orms Street, Providence, Rhode Island 02904. The purpose of the meeting is to receive information on police-community relations in Providence from invited presenters. The Committee will also discuss and plan for future events.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Olga Noguera, 401–464–1876, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 27, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–22856 Filed 9–1–99; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Wisconsin Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the Wisconsin Advisory Committee to the Commission will convene a community forum at 9:30 a.m. and recess at 4:30 p.m. on Tuesday, September 21, 1999, at the Radisson Inn Harbourwalk, 223 Gaslight Circle, Racine, Wisconsin. The Committee will reconvene at 6:30 p.m. and adjourn at 8:30 p.m. at the Parks, Recreation and Cultural Services Department-Community Center, 601 21st Street, Racine, Wisconsin. The purpose of the community forum is to gather information on "Race Relations in Racine County, Wisconsin."

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Geraldine McFadden, 414–444–1952, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 25, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–22854 Filed 9–1–99; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Foreign Trade Zones Board

[FTZ Dockets (41(1)–99 to 41(58)–99)]

Requests for Extension of Authority (Crude Oil Refineries/Petrochemical Complexes)

Requests have been submitted to the Foreign-Trade Zones Board (the Board) by the following grantees, pursuant to § 400.32(b)(1) of the Board's regulations, for a time extension of their authority to elect non-privileged foreign status (NPF) on crude oil used in the production of certain petrochemical feedstocks and refinery by-products at the crude oil refineries/petrochemical complexes of the companies listed below. The requests were formally filed on August 23, 1999.

The FTZ Board has authorized 62 refineries/petrochemical complexes to conduct crude oil/petrochemical product refining activity under FTZ procedures, subject to certain standard restrictions listed below:

1. Foreign status (19 CFR 146.41, 146.42) products consumed as fuel for the refinery shall be subject to the applicable duty rate.

2. Privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone, except that non-privileged foreign (NPF) status (19 CFR 146.42) may be elected on refinery inputs covered under HTSUS Subheadings #2709.00.1000–#2710.00.1050, #2710.00.2500 and #2710.00.4510 which are used in the production of:

—certain petrochemical feedstocks and refinery by-products; -products for export;

—and, products eligible for entry under HTSUS #9808.00.30 and #9808.00.40 (U.S. Government purchases).

3. The authority with regard to the NPF option is initially granted until September 30, 2000, subject to extension.

The zone grantees on behalf of the refining facilities listed below are now requesting that the authority for the NPF option be extended.

The refineries/petrochemical complexes produce fuels and petrochemical feedstocks from crude oil and other inputs, such as naphtha and natural gas condensate. Fuel products include gasoline, jet fuel, distillates, residual fuels, and motor fuel blendstocks. Petrochemical feedstocks and refinery by-products produced under zone procedures (NPF option) have included: benzene, toluene, xylene, naphthalene, natural gas—liquified & gaseous, ethane, propane, butane, ethylene, propylene, butylene, butadiene, paraffin waxes & petroleum jelly, carbon black oil, petroleum coke, asphalt, sulfur, sulfuric acid, cumene, pseudocumene, other aromatic hydrocarbon mixtures, and mixtures of hydrocarbons not elsewhere specified. The requests seek to expand the scope of NPF authority to include additional petrochemical feedstocks that have recently become duty-free under staged tariff reductions of the Uruguay Round of GATT. These product categories include: calcined petroleum coke, n-pentane and isopentane, isoprene, dicyclopentadiene, styrene, and certain other saturated and unsaturated acyclic and cyclic hydrocarbons. (Although the refineries vary in their product mix, the review would generally include the full range of products listed above for all refineries.)

Zone procedures exempt the refineries from Customs duty payments on the foreign products used in exports. On domestic sales, the NPF option allows the companies to choose the Customs duty rates that apply to certain petrochemical feedstocks and refinery by-products (HTSUS duty rates for most of these products are zero) by admitting incoming foreign crude oil and natural gas condensate in non-privileged foreign status. Such petrochemicals and by-products account for about 25 to 30 percent of refinery activity, on average. The duty rates on inputs range from 5.25¢/barrel to 10.5¢/barrel. Duties on inputs used to make fuel products (motor gasoline, jet fuel, blendstocks), which constitute some 70 to 75 percent of production, will continue to be dutiable at the crude oil rate. The applications indicate that the continuation of authority to elect non-privileged foreign status will contribute to the refineries' international competitiveness.

Board order	Subzone	Company	Location	Docket No.
Grantee: Board of Commissioners of the Port of New Orleans:				
791	2H	Chalmette Refinery LC	Chalmette, LA	Doc. 41(1)–99
821	2I	BP Amoco, plc	Belle Chasse, LA	Doc. 41(2)–99
895	2J	Murphy Oil USA, Inc	St. Bernard Parish, LA	Doc. 41(3)–99
Grantee: Port of San Francisco: 974	3B	Chevron U.S.A. Inc	Richmond, CA	Doc. 41(4)–99
Grantee: Toledo-Lucas County Port Authority:				
822	8F	BP Amoco, plc	Toledo, OH	Doc. 41(5)–99
822	8G	Clark Refining and Marketing, Inc	Lima, OH	Doc. 41(6)–99
Grantee: State of Hawaii: 415	9E	Chevron Products Co	Oahu, HI	Doc. 41(7)–99
Grantee: Virginia Port Authority: 761	20C	BP Amoco plc	Yorktown, VA	Doc. 41(8)–99
Grantee: Illinois International Port District:				
779	22I	PDV Midwest Refining	Will County, IL	Doc. 41(9)–99
960	22J	Mobil Oil Corporation	Chicago, IL	Doc. 41(10)–99
Grantee: Tri-City Regional Port District: 878.	31B	Motiva Enterprises LLC	Madison Co., IL	Doc. 41(11)–99
Grantee: Philadelphia Regional Port Authority:				
838	35C	Sun Company, Inc	Philadelphia, PA	Doc. 41(12)–99
891	35D	Tosco Corporation	Delaware Co., PA	Doc. 41(13)–99
Grantee: Greater Cincinnati FTZ, Inc.: 865.	47B	Marathon Ashland Petroleum LLC	Boone Co., KY	Doc. 41(14)–99

Board order	Subzone	Company	Location	Docket No.
Grantee: The Port Authority of New York and New Jersey:				
792	49E	Tosco Corp.	Linden, NJ	Doc. 41(15)–99
880	49F	Chevron Products Co	Perth Amboy, NJ	Doc. 41(16)–99
Grantee: Greater Detroit Foreign-Trade Zone, Inc.: 879.	70T	Marathon Ashland Petroleum LLC	Detroit, MI	Doc. 41(17)–99
Grantee: City of Mobile:				
921	82F	Coastal Mobile Refining	Mobile, AL	Doc. 41(18)–99
962	82G	Shell Oil Company	Mobile, AL	Doc. 41(19)–99
Grantee: The Port of Houston Authority:				
552	84F	Valero Refining Co	Houston; TX	Doc. 41(20)–99
669	84J	Shell Oil Company	Harris County, TX	Doc. 41(21)–99
793	84N	Crown Central Petroleum	Houston, TX	Doc. 41(22)–99
837	84O	Exxon Corporation	Baytown, TX	Doc. 41(23)–99
961	84P	LYONDELL-CITGO Refining LP	Houston, TX	Doc. 41(24)–99
975	84Q	Equistar Chemicals LP	Houston, TX	Doc. 41(25)–99
Grantee: Lake Charles Harbor and Terminal District:				
808	87A	Conoco, Inc	Lake Charles, LA	Doc. 41(26)–99
760	87B	Citgo Petroleum Corp	Lake Charles, LA	Doc. 41(27)–99
Grantee: Greater Gulfport/Biloxi Foreign Trade Zone, Inc.: 747.	92D	Chevron U.S.A. Products Company	Pascagoula, MS	Doc. 41(28)–99
Grantee: Delaware Economic Development Office: 831.	99E	Motiva Enterprises, LLC	Delaware City, DE	Doc. 41(29)–99
Grantee: Savannah Airport Commission: 805.	104C	Citgo Asphalt Refining Co	Savannah, GA	Doc. 41(30)–99
Grantee: Foreign Trade Zone of Southeast Texas, Inc.:				
780	115B	Mobil Corporation	Beaumont, TX	Doc. 41(31)–99
740	116A	Motiva Enterprises, LLC	Port Arthur, TX	Doc. 41(32)–99
772	116B	Fina Oil Company	Port Arthur, TX	Doc. 41(33)–99
848	116C	Clark Refining & Marketing Inc	Port Arthur, TX	Doc. 41(34)–99
Grantee: Port of Corpus Christi Authority:				
782	122A	Coastal Refining & Marketing, Inc	Corpus Christi, TX	Doc. 41(35)–99
765	122C	Trifinery Petroleum	Corpus Christi, TX	Doc. 41(36)–99
407	122I	Citgo Refining & Chemicals Co., LP	Corpus Christi, TX	Doc. 41(37)–99
414	122J	Valero Refining Company	Corpus Christi, TX	Doc. 41(38)–99
535	122L	Koch Petroleum Group	Corpus Christi, TX	Doc. 41(39)–99
1031	122M	Diamond Shamrock Refining Co., LP.	Three Rivers, TX	Doc. 41(40)–99
Grantee: South Louisiana Port Commission:				
379	124A	Orion Refining Corp	Destrehan, LA	Doc. 41(41)–99
739	124C	Motiva Enterprises, LLC	Convent, LA	Doc. 41(42)–99
773	124E	Marathon Ashland Petroleum, LP	Garyville, LA	Doc. 41(43)–99
839	124F	Motiva Enterprises, LLC	Norco, LA	Doc. 41(44)–99
Grantee: Port of Philadelphia and Camden, Inc.:				
790	142A	Valero Refining Co	Paulsboro, NJ	Doc. 41(45)–99
806	142B	Citgo Asphalt Refinery	Paulsboro, NJ	Doc. 41(46)–99
894	142C	Coastal Eagle Point Oil	Eagle Point, NJ	Doc. 41(47)–99
Grantee: Bi-State Authority: 781	146D	Marathon Ashland Petroleum, LLC	Robinson, Il	Doc. 41(48)–99
Grantee: Port Freeport Brazos River Harbor Navigation District:				
920	149C	Phillips Petroleum Co	Sweeney, TX	Doc. 41(49)–99
999	149E	BP Amoco Chemical, plc	Brazoria Co., TX	Doc. 41(50)–99
Grantee: Indiana Port Commission: 762.	152B	BP Amoco, plc	Whiting, IN	Doc. 41(51)–99
Grantee: Greater Baton Rouge Port Commission: 847.	154A	Exxon Corporation	Baton Rouge, LA	Doc. 41(52)–99
Grantee: Board of County Commissioners of Sedgwick County, Kansas: 862.	161B	Equilon Enterprises, LLC	El Dorado, KS	Doc. 41(53)–99
Grantee: Northeast Ohio Trade and Economic Consortium: 864.	181A	Marathon Ashland Petroleum, LLC	Canton, OH	Doc. 41(54)–99
Grantee: Texas City Foreign Trade Zone Corporation:				
731	199A	BP Amoco, plc	Texas City, TX	Doc. 41(55)–99
830	199B	Marathon Ashland Petroleum, LLC	Texas City, TX	Doc. 41(56)–99
863	199C	Valero Refining Co	Texas City, TX	Doc. 41(57)–99
Grantee: Port Of Los Angeles: 959	202B	Chevron U.S.A. Inc	El Segundo, CA	Doc. 41(58)–99

Public comment on the proposals is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 1, 1999.

Copies of the requests will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW, Washington, DC 20230.

Dated: August 24, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–22925 Filed 9–1–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 99–00003." A summary of the application follows.

Summary of the Application

Applicant: JV Export Trading Company, Inc., 16468 SW 95th Lane, Miami, Florida 33196.

Contact: Kevin M. Dyer, Attorney at Law.

Telephone: (212) 599–2396.

Application No.: 99–00003.

Date Deemed Submitted: August 27, 1999.

Members (in addition to applicant): None.

JV Export Trading Company, Inc. seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

1. Products

All products.

2. Services

All services.

3. Technology Rights

Technology Rights, including, but not limited to, patents, trademarks, copyrights and trade secrets that relate to Products and Services.

4. Export Trade Facilitation Services (as They Relate to the Export of Products, Services and Technology Rights)

Export Trade Facilitation Services, including, but not limited to: Professional services in the areas of government relations and assistance with state and federal export programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping and export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; bonding; warehousing; export trade promotion; trade show exhibitions; organizational development; management and labor strategies; transfer of technology; transportation; and facilitating the formation of shippers' associations.

Export Markets

The Export Markets include all parts of Latin America.

Export Trade Activities and Methods of Operation

JV Export Trading Company, Inc. seeks to have the following conduct certified:

1. Entering into exclusive export distribution agreements with U.S. manufacturers for export to the Latin American markets or sub-markets within Latin America;

2. Entering into agreements, exclusive and otherwise, with U.S. manufacturers regarding the prices for which subject products will be sold in Latin American market;

3. Entering into agreements with other exporters to Latin America regarding products, price and territories; and

4. Entering into agreements with U.S. manufacturers and exporters, including those in competition with one another regarding the sharing of price, technical know-how, marketing, research and related information.

Dated: August 30, 1999.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 99–22888 Filed 9–1–99; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Designation of the Grand Bay National Estuarine Research Reserve, Mississippi

AGENCY: Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of Designation.

SUMMARY: Notice is hereby given that the National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, has designated certain lands and waters of Grand Bay in Mississippi as the Grand Bay National Estuarine Research Reserve.

On June 16, 1999, D. James Baker, Under Secretary for Oceans and Atmosphere, signed findings of designation for the Grand Bay National Estuarine Research Reserve in Mississippi pursuant to section 315 of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1461, and its implementing regulations at 15 CFR part 921. The Reserve duly received certification from the State of Mississippi Coastal Zone Management Program that Reserve designation is consistent to the maximum extent practicable with its program. A copy of the official Record of Decision is available for public review from NOAA's Office of Ocean and Coastal Resource Management at the address below.

FOR FURTHER INFORMATION CONTACT: Nathalie Peter at (301) 713–3132, Extension 119, Estuarine Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, NOAA, 1305 East West Highway, N/ORM5, Silver Spring, Maryland 20910. A copy of the Record of Decision for the Grand Bay Reserve is available upon request.

Federal Domestic Assistance Catalog Number 11.420 (Coastal Zone Management) Research Reserves

Dated: August 23, 1999.

Captain Ted Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 99–22841 Filed 9–1–99; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Membership of the National Oceanic and Atmospheric Administration Performance Review Board

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of membership of NOAA performance review board.

SUMMARY: In accordance with 5 USC 4314(c)(4), NOAA announces the appointment of persons to serve as members of the NOAA Performance Review Board (PRB). The NOAA PRB is responsible for reviewing performance appraisals and ratings of Senior Executive Service (SES) members and making written recommendations to the appointing authority on SES retention and compensation matters, including performance-based pay adjustments, awarding of bonuses and reviewing recommendations for potential Presidential Rank Award-nominees. The appointment of members to the NOAA PRB will be for periods of 24 months.

EFFECTIVE DATE: The effective date of service of appointees to the NOAA Performance Review Board is September 3, 1999.

FOR FURTHER INFORMATION CONTACT: Monica M.P. Matthews, Executive Resources Program Manager, Human Resources Management Office, Office of Finance and Administration, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, (301) 713–0530 (ext. 204).

SUPPLEMENTARY INFORMATION: The names and position titles of the members of the NOAA PRB (*NOAA officials unless otherwise identified*) are set forth below:

Daniel J. Basta: Chief, Strategic Environmental Assessment Division, National Ocean Service

James D. Belville: Director, NEXRAD Operational Support Facility, National Weather Service

Eddie N. Bernard: Director, Pacific Marine Environmental Laboratory, Office of Oceanic and Atmospheric Research

Steven F. Clifford: Director, Environmental Technology Laboratory, Office of Oceanic and Atmospheric Research

Irwin T. David: Chief Financial Officer/ Chief Administrative Officer, National Weather Service

Gary K. Davis: Director, Office of Satellite Operations, National Environmental Satellite, Data and Information Service

Rudolph J. Dominic: Director, Finance Office/Comptroller, Office of Finance and Administration

John T. Forsing: Director, Eastern Region, National Weather Service

William W. Fox, Jr.: Director, Office of Science and Technology, National Marine Fisheries Service

Susan B. Fruchter: Counselor to the Under Secretary, Office of Policy and Strategic Planning

Margaret F. Hayes: Assistant General Counsel for Fisheries, Office of the General Counsel

Jay S. Johnson: Deputy General Counsel for Fisheries, Enforcement and Regions, Office of the General Counsel

John E. Jones, Jr.: Deputy Assistant Administrator for Weather Services, National Weather Service

Kristina B. Katsaros: Director, Atlantic Oceanographic and Meteorological Laboratories, Office of Oceanic and Atmospheric Research

Andrew J. Kemmerer: Director, Office of Habitat Conservation, National Marine Fisheries Service

David M. Kennedy: Chief, Hazardous Materials Response and Assessment Division, National Ocean Service

Gerald R. Lucas: Director, Eastern Administrative Support Center, Office of Finance and Administration

Gary C. Matlock: Director, Office of Sustainable Fisheries, National Marine Fisheries Service

Willie E. May: Chief, Analytical Chemistry Division, Chemical Science and Technology Laboratory, (National Institute for Standards and Technology)

Martha R. McBroome: Director, Central Administrative Support Center, Office of Finance and Administration

Craig R. O'Connor: Deputy General Counsel for Atmospheric and Ocean Research and Services, Office of the General Counsel

John E. Oliver, Jr.: Chief Financial Officer/Chief Administrative Officer, National Ocean Service

James F.W. Purdom: Director, Office of Research and Applications, National Environmental Satellite, Data and Information Service

Stewart S. Remer: Chief, Human Resources Division, (U.S. Census Bureau)

Donald Scavia: Director, National Centers for Coastal Ocean Science and Senior Scientist for the National Ocean Service

Rolland A. Schmitten: Deputy Assistant Secretary for International Interests, Office of International Affairs

James K. White: Executive Director for the Economics and Statistics Administration (Economics and Statistics Administration)

W. Stan Wilson: Deputy Chief Scientist, Office of the Chief Scientist

Helen M. Wood: Director, Office of Satellite Data Processing and Distribution, National Environmental Satellite, Data and Information Service

Sally J. Yozell: Deputy Assistant Secretary, Office of the Assistant Secretary

Dated: August 27, 1999.

D. James Baker,

Under Secretary for Oceans and Atmosphere.

[FR Doc. 99–22870 Filed 9–1–99; 8:45 am]

BILLING CODE 3510–12–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 16 September 1999 at 10:00 AM in the Commission's offices at the National Building Museum (Pension Building), Suite 312, Judiciary Square, 441 F Street, NW, Washington, DC, 20001. Items of discussion will include designs for projects affecting the appearance of Washington, DC, including buildings and parks.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, August 26, 1999.

Charles H. Atherton,

Secretary.

[FR Doc. 99–22840 Filed 9–1–99 8:45 am]

BILLING CODE 6330–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

The Corporation for National and Community Service (hereinafter the "Corporation") has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, (44 U.S.C. Chapter 35). Copies of these individual ICRs, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Office of Evaluation, Wade Gatling, (202) 606–5000, extension 451. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5:00 p.m. Eastern time, Monday through Friday.

Comments should be sent to the Office of Information and Regulatory Affairs, Attn: Mr. Danny Werfel, OMB Desk Officer for the Corporation for National and Community Service, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information to those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submissions of responses.

Type of Review: Existing collection in use without an OMB control number.

Agency: Corporation for National and Community Service.

Title: Program Development Assistance and Training (PDAT) Budget Form.

OMB Number: None.

Agency Number: None.

Affected Public: Sixty-eight entities (49 state commissions, 15 tribes and 4 territories).

Frequency: Annually.

Total Respondents: Sixty-eight respondents.

Average Time Per Response: Two Minutes.

Estimated Total Burden Hours: 2.25 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Description: In the past, Program Development Assistance and Training (PDAT) Budget Information was requested informally without the form being proposed in this notice. As a result, the PDAT financial information submitted to the Corporation by applicants did not consistently provide the information that was requested. The Corporation anticipates that the use of the one-page budget form being proposed here will result in the submission of more complete PDAT-related financial information by the applicants.

Each year the Corporation seeks to collect PDAT budget information from the 49 state commissions, 15 tribes, and four territories. The information that will be collected on the proposed one-page PDAT budget form will be used during the Corporation's annual review of PDAT applications. The proposed PDAT budget form will be useful to the Corporation in the PDAT application review process that leads to the allocation of PDAT funds to the 49 state commissions, 15 tribes, and four territories.

The **Federal Register** Notice dated May 1, 1998, incorrectly listed the Total Respondents as 48 rather than 68. Further, the Notice indicated that the average time per response as two hours rather than two minutes. These two errors have been corrected in this Notice.

Dated: August 27, 1999.

Thomas L. Bryant,

Associate General Counsel.

[FR Doc. 99–22944 Filed 9–1–99; 8:45 am]

BILLING CODE 6050–28–U

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

AmeriCorps*National Civilian Community Corps (NCCC)

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of AmeriCorps*NCCC teams for collaboration.

SUMMARY: The AmeriCorps*NCCC seeks community partners in the performance of service projects in the areas of the environment, education, public safety, other unmet human needs, and disaster relief.

DATES: Proposals are accepted and reviewed on an on-going basis.

FOR FURTHER INFORMATION CONTACT: See AmeriCorps*National Civilian Community Corps' projects brochure on the World-wide Web at http://www.nationalservice.org.

SUPPLEMENTARY INFORMATION: The National Civilian Community Corps is an AmeriCorps program of the Corporation for National and Community Service. The AmeriCorps*NCCC manages teams of young adults to conduct service projects across the nation. Teams include approximately twelve 18–24 year old men and women of diverse social, economic, and educational backgrounds, and a trained team leader. Projects are typically 6 to 8 weeks in duration; the period of service for larger, more complex projects can be extended.

ELIGIBILITY: Private nonprofit organizations; governmental entities at the federal, state, and local levels; educational institutions; community-based organizations; and Native American Tribal Councils are eligible to submit proposals. Proposals are accepted, reviewed, and approved with consideration for compelling needs, geographical distribution, availability of teams, and AmeriCorps*NCCC costs related to team deployment.

COST: There is no charge for the services of an AmeriCorps*NCCC team or its transportation; however, collaborating organizations are expected to provide the necessary materials, equipment, and technical supervision for projects, as well as assist with food and lodging if the project site is beyond a reasonable commuting distance from the AmeriCorps*NCCC campus. AmeriCorps*NCCC does not provide financial grants of any kind in association with this program.

ADDRESSES: For interested organizations in Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont, contact: AmeriCorps*NCCC Northeast Region Campus, Attn: Ms. LaQuine Roberson, Director of Projects and Training, P.O. Box 27, Perry Point, MD 21902–0027, (410) 642–2411, ext. 6264.

For interested organizations in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Puerto Rico, South Carolina, Tennessee, and the Virgin Islands, contact: AmeriCorps*NCCC Southeast Region Campus, Attn: Mr. Mikel Herrington, Director of Projects and Training, 2231 South Hobson Avenue, Charleston, SC 29405–2438, (843) 743–8600, ext. 3008.

For interested organizations in Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Wisconsin, and Wyoming, contact: AmeriCorps*NCCC Central Region Campus, Attn: Ms. Karen LaBat, Director of Projects and Training, 1059 Yosemite Street, Building 758, Room 213, Aurora, CO 80010–6062, (303) 340–7305.

For interested organizations in Alaska, Arizona, California, Hawaii, Idaho, Nevada, Oregon, Utah, Washington, and the Pacific U.S. territories, contact: AmeriCorps*NCCC Western Region Campus, Attn: Mr. Charles Davenport, Director of Projects and Training, 2650 Truxtun Road, San Diego, CA 92106–6001, (619) 524–0749.

For interested organizations in the District of Columbia, Ohio, Pennsylvania, Virginia, and West Virginia, contact: AmeriCorps*NCCC Capital Region Campus, Attn: Mr. Walt Auburn, Assistant Project Director, Two D.C. Village Lane, S.W., Washington, D.C. 20032, (202) 561–1382.

Dated: August 27, 1999.

Thomas L. Bryant,

Associate General Counsel.

[FR Doc. 99–22943 Filed 9–1–99; 8:45 am]

BILLING CODE 6050–28–U

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting To Discuss Gulf War Illness Research

AGENCY: Special Oversight Board for Department of Defense Investigations of Gulf War Chemical and Biological Incidents, Department of Defense.

ACTION: Notice.

SUMMARY: The Board will conduct a three-hour public meeting to receive a presentation by the Special Assistant for Gulf War Illnesses on the recommended disposition of case narratives and environmental exposure reports that his office are currently investigating.

DATES: September 16, 1999.

ADDRESSES: Conference Room, 1401 Wilson Boulevard, Suite 400, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Contact Sandra Robinson, Administrative Assistant, Special Oversight Board, 1401 Wilson Blvd, Suite 401, Arlington, VA 22209, phone (703) 696–9477, fax (703) 696–4062, or via Email at *Gulfsyn@osd.pentagon.mil.*

SUPPLEMENTARY INFORMATION: The hearing is scheduled from 2:00 p.m. until no later than 5:00 p.m. EDT. Seating is limited and will be available on a first-come, first-served basis beginning at 1:45 p.m. EDT.

Dated: August 27, 1999.

L.M. Bynum,

Alternate OSD Federal Liaison Officer, DoD.

[FR Doc. 99–22832 Filed 9–1–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Historical Records Declassification Advisory Panel

AGENCY: Department of Defense, Historical Advisory Committee.

ACTION: Notice of closed meeting.

SUMMARY: The Historical Records Declassification Advisory Panel will meet in closed session on September 16–17, 1999. The Panel was originally chartered by the Secretary of Defense on November 29, 1995 to make recommendations to the Department of Defense on topical areas of interest that, from a historical perspective, would be of the greatest benefit if declassified. This is the second session held in 1999.

The Panel will meet in closed session on September 16–17, 1999 to receive briefings and participate in discussions of national security matters, and is projected to include classified and sensitive, unclassified information. The afternoon of September 16, 1999, the Panel will be touring the Army Declassification Facility, which is a secure facility. The Panel also plans to meet with the Deputy Secretary of Defense for part of the afternoon of September 17, 1999.

In accordances with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended [5 U.S.C., Appendix II], it is anticipated that matters affecting national security, as covered by 5 U.S.C. 522b(c)(1)(1988), will be presented throughout the meeting, and that, accordingly, the meeting will be closed to the public.

DATES: Thursday, September 16, 8:30 a.m.–4:00 p.m.; Friday, September 17, 8:30 a.m.–2:30 p.m.

ADDRESSES: The Pentagon, 6000 Defense Pentagon, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Contact Mr. Jeffrey Ross, Room 1D760B, Office of the Assistant Secretary of Defense (Command, Control, Communications and Intelligence), 6000 Defense Pentagon, Washington, DC 20301–6000. Telephone 703–614–5995 .

Dated: August 27, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–22830 Filed 9–1–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the President's Security Policy Advisory Board; Action Notice

SUMMARY: The President's Security Policy Advisory Board has been established pursuant to Presidential Decision Directive/NSC–29, which was signed by the President on September 16, 1994

The Board will advise the President on proposed legislative initiatives and executive orders pertaining to U.S. security policy, procedures and

practices as developed by the U.S. Security Policy Board, and will function as a federal advisory committee in accordance with the provisions of Pub. L. 92–463, the "Federal Advisory Committee Act."

The President has appointed from the private sector, three of five Board members each with a prominent background and expertise related to security policy matters. General Larry Welch, USAF (Ret.) will chair the Board. Other members include: Rear Admiral Thomas Brooks, USN (Ret.) and Ms. Nina Stewart.

The next meeting of the Advisory Board will be held on 27 September 1999 at 1,330 hours at the Las Vegas Convention Center, Las Vegas, Nevada. The meeting will be held coincident with the American Society for Industrial Security Annual Seminar and Exhibits. The meeting will be open to the public.

For further information, please contact Mr. Bill Isaacs telephone: 703–602–0815.

Dated: August 23, 1999.

L.M. Bynum,

Alternte OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–22831 Filed 9–1–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Inspector General, DoD

Privacy Act of 1974; System of Records

AGENCY: Office of the Inspector General, DoD.

ACTION: Notice to delete a record systems.

SUMMARY: The Office of the Inspector General, DoD proposes to delete two systems of records from its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The action will be effective on October 4, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Chief, Administrative Service, Assistant Inspector General for Administration, Information Management, 400 Army Navy Drive, Room 405, Arlington, VA 22202-2884.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Allison at telephone (703) 604-9785.

SUPPLEMENTARY INFORMATION: The Office of the Inspector General's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed deletions are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system.

Dated: August 27, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

CIG–03

SYSTEM NAME:

Personnel Locator Cards *(February 22, 1993, 58 FR 10213).*

Reason: This program was never initiated within the Office of the Inspector General, therefore, the notice is being deleted.

CIG–05

SYSTEM NAME:

DoD Motions for Discovery of Electronic Surveillance Files *(February 22, 1993, 58 FR 10213).*

Reason: This program was never initiated within the Office of the Inspector General, therefore, the notice is being deleted.

[FR Doc. 99–22834 Filed 9–1–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Active Duty Service Determinations for Civilian or Contractual Groups

On August 11, 1999, the Secretary of the Air Force, acting as Executive Agent of the Secretary of Defense, determined that the service of the group known as "American Merchant Marine Mariners Who Were in Active Ocean-Going Service" during the period of August 15, 1945 to December 31, 1946, shall not be considered "active duty" under the provisions of Public Law 95–202 for the purposes of all laws administered by the Department of Veterans Affairs (VA).

For further information contact Mr. James D. Johnston at the Secretary of the Air Force Personnel Council (SAFPC), DoD Civilian/Military Service Review Board, 1535 Command Drive, 3rd Floor–EE Wing, Andrews AFB, MD 20762–7002.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–22842 Filed 9–1–99; 8:45 am]

BILLING CODE 5005–05–P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend record systems.

SUMMARY: The Defense Logistics Agency proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The action will be effective on october 4, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Defense Logistics Agency proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems report. The record system being amended is set forth below, as amended, published in its entirety.

Dated: Augus. 27, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S600.30 CAAE

SYSTEM NAME:

Safety and Health Accident Case Files *(September 19, 1994, 59 FR 47845).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Add to beginning of entry 'Environment and Safety Policy,'.

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Records are maintained in areas accessible only to DLA personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during nonduty hours.'

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Fort Belvoir, VA 22060-6221, or the Privacy Act Officer of the particular DLA PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Fort Belvoir, VA 22060-6221, or the Privacy Act Officer of the particular DLA PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Record subject, supervisors, medical units, security offices, police, fire departments, investigating officers, or witnesses to accident.'

* * * * *

S600.30 CAAE

SYSTEM NAME:

Safety and Health Accident Case Files.

SYSTEM LOCATION:

Environment and Safety Policy, Headquarters Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221, and the DLA Primary Level Field Activity Safety and Health offices. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who are injured, made ill, or suffer property damage resulting from DLA operations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, age, home address and telephone number, accident reports, witness statements, photographs, and proposed or actual corrective action, where appropriate.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 29 U.S.C. 651 et seq., The Occupational Safety and Health Act of 1970 (OSHA); E.O. 9397 (SSN); E.O. 12196, Occupational Safety and Health Programs for Federal Employees; 29 CFR part 1960, Subpart I, Recordkeeping and Reporting Requirements for Federal Occupational Safety and Health Programs.

PURPOSE(S):

Information is maintained to comply with regulatory reporting requirements; to identify cause of accident; to formulate accident prevention programs; to identify individuals involved in repeated accidents; and to prepare statistical reports as required.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Labor to comply with the requirement to report Federal civilian employee on-the-job accidents (29 CFR 1960).

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper and electronic formats.

RETRIEVABILITY:

Retrieved by name, Social Security Number, or mishap report number.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during nonduty hours.

RETENTION AND DISPOSAL:

Cases involving reportable mishaps are destroyed five years after case is closed. Cases involving non-reportable mishaps are destroyed three years after case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Environment and Safety Policy, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221; and the Safety and Health Offices of the Defense Logistics Agency Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Fort Belvoir, VA 22060-6221, or the Privacy Act Officer of the particular DLA PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Fort Belvoir, VA 22060-6221, or the Privacy Act Officer of the particular DLA PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Record subject, supervisors, medical units, security offices, police, fire departments, investigating officers, or witnesses to accident.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–22833 Filed 9–1–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.
ACTION: Notice to amend record system.

SUMMARY: The Department of the Navy proposes to amend three systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.
DATES: The amendments will be effective on October 4, 1999, unless comments are received that would result in a contrary determination.
ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.
FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.
SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to amend three systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the systems of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports. The records systems being amended are set forth below, as amended, published in their entirety.

Dated: August 27, 1999.

L. M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01070–3

SYSTEM NAME:

Navy Personnel Records System *(December 17, 1997, 62 FR 66066).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete first paragraph and replace with 'Primary locations: Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055-3130; Naval Reserve Personnel Center, 4400 Dauphine Street, New Orleans, LA 70149-7800; and local activity to which individual is assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Transfer to Naval Reserve Personnel Center, New Orleans, LA 70149 six months after discharge, retirement, or death of service member. Naval Reserve Personnel Center will forward to the National Personnel Records Center, (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132-5000. Transfer to the National Archives and Records Administration 75 years after separation of service member. [Note: An exception is made for copies of officer fitness reports, enlisted evaluations, and officer and enlisted counseling forms which may be maintained by the member's commanding officer or command for a period not to exceed five years.]'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055-3130; Commanding Officers, Officers in Charge, and Heads of Department of the Navy activities. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.'

* * * * *

N01070–3

SYSTEM NAME:

Navy Personnel Records System.

SYSTEM LOCATION:

Primary locations: Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055-3130; Naval Reserve Personnel Center, 4400 Dauphine Street, New Orleans, LA 70149-7800; and local activity to which individual is assigned. Official mailing addresses are published as an appendix to the Navy's compilationof system of record notices.

Secondary locations: Department of the Navy Activities in the chain of command between the local activity and the headquarters level; Federal Records Storage Centers; National Archives. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy military personnel: officers, enlisted, active, inactive, reserve, fleet reserve, retired, midshipmen, officer candidates, and Naval Reserve Officer Training Corps personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel service jackets and service records, correspondence and records in both automated and non-automated form concerning classification, assignment, distribution, promotion, advancement, performance, recruiting, retention, reenlistment, separation, training, education, morale, personal affairs, benefits, entitlements, discipline and administration of naval personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To assist officials and employees of the Navy in the management, supervision and administration of Navy personnel (officer and enlisted) and the operations of related personnel affairs and functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees of the National Research Council in Cooperative Studies of the National History of Disease, of Prognosis and of Epidemiology. Each study in which the records of members and former members of the naval service are used must be approved by the Chief of Naval Personnel.

To officials and employees of the Department of Health and Human Services, Department of Veteran Affairs, and Selective Service Administration in the performance of their official duties related to eligibility, notification and assistance in obtaining benefits by members and former members of the Navy.

To officials and employees of the Department of Veteran Affairs in the performance of their duties relating to approved research projects.

To officials and employees of Navy Relief and the American Red Cross in the performance of their duties relating to the assistance of the members and their dependents and relatives, or related to assistance previously furnished such individuals, without regard to whether the individual assisted or his/her sponsor continues to be a member of the Navy.

To duly appointed Family Ombudsmen in the performance of their duties related to the assistance of the members and their families.

To state and local agencies in the performance of their official duties related to verification of status for determination of eligibility for Veterans Bonuses and other benefits and entitlements, including Department of Labor and state unemployment agencies for unemployment compensation for ex-service members.

To officials and employees of the Office of the Sergeant at Arms of the United States House of Representatives in the performance of their official duties related to the verification of the active duty naval service of Members of Congress.

Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged or retired from the Armed Forces information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual the United States Government will be liable for the losses the facility may incur.

To federal, state, local, and foreign (within Status of Forces agreements) law enforcement agencies or their authorized representatives in connection with litigation, law enforcement, or other matters under the jurisdiction of such agencies.

Information relating to professional qualifications of chaplains may be provided to civilian certification boards and committees, including, but not limited to, state and federal licensing authorities and ecclesiastical endorsing organizations.

To governmental entities or private organizations under government contract to perform random analytical research into specific aspects of military personnel management and administrative procedures.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of system of record notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on magnetic tapes, disc, and drums. Manual records may be stored in paper file folders, microfiche or microfilm.

RETRIEVABILITY:

Automated records may be retrieved by name and Social Security Number. Manual records may be retrieved by name, Social Security Number, enlisted service number, or officer file number.

SAFEGUARDS:

Computer facilities and terminals are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained. Manual records and computer printouts are available only to authorized personnel having a need-to-know.

RETENTION AND DISPOSAL:

Transfer to Naval Reserve Personnel Center, New Orleans, LA 70149 six months after discharge, retirement, or death of service member. Naval Reserve Personnel Center will forward to the National Personnel Records Center, (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132-5000. Transfer to the National Archives and Records Administration 75 years after separation of service member.

Note: An exception is made for copies of officer fitness reports, enlisted evaluations, and officer and enlisted counseling forms which may be maintained by the member's commanding officer or command for a period not to exceed five years.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055-3130; Commanding Officers, Officers in Charge, and Heads of Department of the Navy activities. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commander, Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055-3130; or contact the personnel officer where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

The letter should contain full name, Social Security Number (and/or enlisted service number/officer file number), rank/rate, designator, military status, address, and signature of the requester.

The individual may visit the Navy Personnel Command, Records Review Room, Building 769, Room K615, Millington, TN for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Commander, Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055-3130, or contact the personnel officer where assigned. Official mailing addresses arepublished as an appendix to the Navy's compilation of system of records notices.

The letter should contain full name, Social Security Number (and/or enlisted service number/officer file number), rank/rate, designator, military status, address, and signature of the requester.

The individual may visit the Navy Personnel Command, Records Review Room, Building 769, Room K615, Millington, TN for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Correspondence; educational institutions; federal, state, and local court documents; civilian and military investigatory reports; general correspondence concerning the individual; official records of professional qualifications; Navy Relief and American Red Cross requests for verification of status.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05520–1

SYSTEM NAME:

Personnel Security Eligibility Information System *(November 10, 1993, 58 FR 59710).*

CHANGES:

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SYSTEM LOCATION:

Delete entry and replace with 'Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055-0600.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, Navy Personnel Command (NPC-831), 5720 Integrity Drive, Millington, TN 38055-0600.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Department of the Navy Central Adjudication Facility; Chief of Naval Operations (N09N2) and other officials and employees of the Department of the Navy; and military investigative reports.'

* * * * *

N05520–1

SYSTEM NAME:

Personnel Security Eligibility Information System.

SYSTEM LOCATION:

Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055-0600.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the U.S. Navy and Naval Reserve, former members, and applicants for enlistment or commissioning.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of correspondence and information pertinent to an individual's eligibility for personnel security clearance, assignment to the Nuclear Weapons Personnel Reliability Program, or other 'high risk' program requiring personnel quality control.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; and E.O. 9397 (SSN).

PURPOSE(S):

To determine service member's eligibility for assignment to duties requiring personnel security clearances, assignment to the Nuclear Weapons Personnel Reliability Program, or other 'high risk' programs requiring quality control.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and index cards. Some information from the paper records is contained in an automated file.

RETRIEVABILITY:

Paper records are filed alphabetically by last name of individual. Automated files are filed by Social Security Number.

SAFEGUARDS:

Stored in locked safes and cabinets. File areas are accessible only to authorized persons who are properly screened, cleared, and trained.

RETENTION AND DISPOSAL:

Files are destroyed two years after individual separates from the Navy.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Navy Personnel Command (NPC-831), 5720 Integrity Drive, Millington, TN 38055-0600.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Navy Personnel Command (NPC-831), 5720 Integrity Drive, Millington, TN 38055-0600.

The letter should contain full name, Social Security Number, rank/rate/civilian status, and address of the requester.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, Navy Personnel Command (NPC-831), 5720 Integrity Drive, Millington, TN 38055-0600.

The letter should contain full name, Social Security Number, rank/rate/civilian status, and address of the requester.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Department of the Navy Central Adjudication Facility; Chief of Naval Operations (N09N2) and other officials and employees of the Department of the Navy; and military investigative reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1-R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

N12290–1

SYSTEM NAME:

Personnel Action Reporting System *(August 11, 1994, 59 FR 41284).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Navy Personnel Command (NPC-653), 5720 Integrity Drive, Millington, TN 38055-6530, and local activity to which individual is assigned. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.'

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Non-appropriated Fund (NAF) civilian employees attached to NAF activities under the Commander, Navy Personnel Command.'

CATEGORIES OF RECORDS IN THE SYSTEM:

In line 6, after the word 'education' insert 'training, labor management relations, worker compensation, performance based actions, business based actions,'.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to entry 'E.O. 12107.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, Navy Personnel Command (NPC-653), 5720 Integrity Drive, Millington, TN 38055-6530.'

* * * * *

N12290–1

SYSTEM NAME:

Personnel Action Reporting System.

SYSTEM LOCATION:

Navy Personnel Command (NPC-653), 5720 Integrity Drive, Millington, TN 38055-6530, and local activity to which individual is assigned. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Non-appropriated Fund (NAF) civilian employees attached to NAF activities under the Commander, Navy Personnel Command.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and records pertaining to performance, employment, pay, classification, security clearance, personnel actions, medical, insurance, retirement, tax withholdinginformation, exemptions, unemployment compensation, employee profile, education, training, labor management relations, worker compensation, performance based actions, business based actions, benefits, discipline and administration of nonappropriated fund civilian personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; Pub. L. 92–392; Fair Labor Standards Act, as amended; E.O. 9397 (SSN); and E.O. 12107.

PURPOSE(S):

To manage, supervise, and administer the nonappropriated fund civilian personnel program for employees attached to Nonappropriated Fund Activities under the Commander, Navy Personnel Command.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To insurance carriers and other third parties who administer benefits coverage to NAF employees.

To Department of Labor for unemployment compensation purposes.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on magnetic tapes or discs. Manual records may be stored in paper file folders, microfiche, or microfilm.

RETRIEVABILITY:

Name, Social Security Number, and/or activity number.

SAFEGUARDS:

Computer processing facilities are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained. Manual records and computer printouts are available only to authorized personnel having a need-to-know.

RETENTION AND DISPOSAL:

Records are transferred to the National Personnel Records Center (Civilian Personnel Records), 111 Winnebago Street, St. Louis, MO 63118, one year after the individual terminates employment.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Navy Personnel Command (NPC-653), 5720 Integrity Drive, Millington, TN 38055-6530.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Navy Personnel Command (NPC-653), 5720 Integrity Drive, Millington, TN 38055-6530, or to the local activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The letter should contain full name, Social Security Number, activity at which employed, and signature of the requester.

The individual may visit the Commander, Navy Personnel Command (NPC-653), 5720 Integrity Drive, Millington, TN 38055-6530, for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, Navy Personnel Command (NPC-653), 5720 Integrity Drive, Millington, TN 38055-6530, or to the local activity where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The letter should contain full name, Social Security Number, activity at which employed, and signature of the requester.

The individual may visit the Commander, Navy Personnel Command (NPC-653), 5720 Integrity Drive, Millington, TN 38055-6530, for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701, or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual; local activity where assigned; Defense Investigative Service; previous employers; educational institutions; employment agencies; civilian and military investigative reports; general correspondence concerning individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:
None.

[FR Doc. 99–22835 Filed 9–1–99; 8:45 am]
BILLING CODE 5001–10–F

DEPARTMENT OF ENERGY

Environmental Management Advisory Board

AGENCY: Department of Energy.
ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Advisory Board. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, September 22, 1999 and Thursday, September 23, 1999.

ADDRESSES: U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue SW (Room 1E–245), Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: James T. Melillo, Special Assistant to the Assistant Secretary for Environmental Management and Executive Director of the Environmental Management Advisory Board (EM–1), 1000 Independence Avenue SW (Room 5B–171), Washington, DC 20585. The telephone number is 202–586–4400. The Internet address is james.melillo@em.doe.gov.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on issues confronting the Environmental Management Advisory Program from the perspective of affected groups, as well as state, local, and tribal governments. The Board will contribute to the effective operation of the Environmental Management Program by providing individual citizens and representatives of interested groups an opportunity to present their views on issues facing the Office of Environmental Management and by helping to secure consensus recommendations on those issues.

Preliminary Agenda

Wednesday, September 22, 1999

1 p.m. Public Meeting Opens
—Approve Minutes of April 22, 1999 Meeting
Opening Remarks
—Technology Development & Transfer Committee Report
—Technology Deployment*
—EM Science & Technology Performance Measures*
Joint Science Committee & Technology Development & Transfer Committee Report
—Environmental Quality Research and Development Portfolio*
—Management of EM Laboratories*
—EM Science Program
Worker Health & Safety Committee Report*
Long-Term Stewardship Committee Report*
Privatization Committee Report
Board Structure
Public Comment Period
5:15 p.m. Wrap up—Adjourn

Thursday, September 23, 1999

8:30 a.m. Opening Remarks
Accelerating Closure Committee Report
—Programmatic Planning and Implementation Subcommittee
—Transportation Subcommittee
—Integration & Public Participation Subcommittee
EM Web Page Developments
Board Discussions
Public Comment Period
Board Business
—Votes on EMAB Findings & Resolutions
—Conflict of Interest Refresher
—New Business and Set Date for Next Board Meeting (April 2000)
Public Comment Period
12:05 p.m. Meeting Adjourns

* The Board anticipates recommendations to be presented.

Public Participation: This meeting is open to the public. If you would like to file a written statement with the Board, you may do so either before or after the meeting. If you would like to make an oral statement regarding any of the items on the agenda, please contact Mr. Melillo at the address or telephone number listed above, or call the Environmental Management Advisory Board office at 202–586–4400, and we will reserve time for you on the agenda. You may also register to speak at the meeting on September 22–23, or ask to speak during the public comment period. Those who call in and or register in advance will be given the opportunity to speak first. Others will be accommodated as time permits. The Board Chair will conduct the meeting in an orderly manner.

Transcript and Minutes: We will make the minutes of this meeting available for public review and copying by October 23, 1999. The minutes and transcript of the meeting will be available for viewing at the Freedom of Information Public Reading Room (Room 1E–190) in the Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, SW Washington, DC 20585. The Room is open Monday through Friday from 9:00 a.m.–4:00 p.m. except on Federal holidays.

Issued in Washington, DC on August 26, 1999.

Rachel M. Samuel,
Deputy Advisory Committee Management Officer.

[FR Doc. 99–22875 Filed 9–1–99; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).
ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, September 16, 1999: 6:00 p.m.–8:30 p.m.

ADDRESSES: DOE Site Office Conference Room, 5600 Hobbs Road, West Paducah, KY.

FOR FURTHER INFORMATION CONTACT: John D. Sheppard, Site Specific Advisory Board Coordinator, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6804.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

4:00 p.m. Tour Surface Water Operable Unit*
6:00 p.m. Call to Order/Discussion
6:05 p.m. Approve Meeting Minutes
6:30 p.m. Public Comment/Questions
7:15 p.m. Presentations
8:15 p.m. Sub Committee Reports
8:25 p.m. Administrative Issues
8:30 p.m. Adjourn

* Contact John Sheppard at (270) 441–6804 regarding a reservation for the tour.

Final copies of the agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact John D. Sheppard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday thru Friday or by writing to John D. Sheppard, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (502) 441–6804.

Issued at Washington, DC on August 26, 1999.

Rachel M. Samuel,
Deputy Advisory Committee Management Officer.

[FR Doc. 99–22876 Filed 9–1–99; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Nonproliferation and National Security; Nonproliferation and National Security Advisory Committee

AGENCY: Department of Energy.
ACTION: Notice of closed meeting.

SUMMARY: This notice announces a meeting of the Nonproliferation and National Security Advisory Committee. The Federal Advisory Committee Act, 5 U.S.C. App. 2 § 10(a)(2) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, September 14, 1999, 9:00 a.m. to 5:00 p.m.; Wednesday, September 15, 1999, 9:00 a.m. to 5:00 p.m.; and Thursday, September 16, 1999, 9:00 a.m. to 12:00 noon.

ADDRESSES: Lawrence Livermore National Laboratory Livermore, California.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Waldron (202–586–2400), Designated Federal Officer, Office of Research and Development (NN–20), Office of Nonproliferation and National Security, 1000 Independence Avenue, SW, Washington, D.C. 20585.

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* To discuss the nonproliferation and national security research and development program.

Tentative Agenda

Tuesday, September 14, 1999

09:00–09:15 NNAC Welcome
09:15–12:00 NNAC Executive Session
12:00–1:00 Working Lunch
1:00–5:00 R&D Program Briefings, Lawrence Livermore National Laboratory (LLNL)/Pacific Northwest National Laboratory (PNNL)

Wednesday, September 15, 1999

09:00–12:00 R&D Program Briefings LLNL/PNNL
12:00–1:00 Working Lunch
1:00–5:00 R&D Program Briefings LLNL/PNNL

Thursday, September 16, 1999

09:00–12:00 R&D Program Briefings LLNL/PNNL

Closed Meeting: In the interest of national security, the meeting will be closed to the public pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2 section 10 (d), and the Federal Advisory Committee Management regulation, 41 C.F.R. 101–6.1023, "Procedures for Closing an Advisory Committee Meeting", which incorporate by reference the Government in Sunshine Act, 5 U.S.C. 552b, which, at sections 552b (c)(1) and (c)(3) permits closure of meetings where restricted data or other classified matters are discussed.

Minutes: Minutes of the meeting will be recorded and classified accordingly.

Issued at Washington, D.C. on August 26. 1999.

Rachel M. Samuel,
Deputy Advisory Committee Management Officer.

[FR Doc. 99–22873 Filed 9–1–99; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board; Meeting

AGENCY: Department of Energy.
ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Secretary of Energy Advisory Board's Laboratory Operations Board. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation.

DATES: Tuesday, September 14, 1999, 8:30 A.M.–3:00 P.M.

ADDRESSES: Hilton Washington Embassy Row Hotel, Ambassador Room, 2015 Massachusetts Avenue, NW, Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–1709.

SUPPLEMENTARY INFORMATION: The purpose of the Laboratory Operations Board is to provide advice to the Secretary of Energy Advisory Board regarding the strategic direction of the Department's laboratories, the coordination of budget and policy issues affecting laboratory operations, and the reduction of unnecessary and counterproductive management burdens on the laboratories. The Laboratory Operations Board's goal is to facilitate the productive and cost-effective utilization of the Department's laboratory system and the application of best business practices.

Tentative Agenda

Tuesday, September 14, 1999

8:30–8:45 A.M. Opening Remarks—Co-Chairs: E. Moniz & J. McTague
8:45–10:00 A.M. Briefings & Discussion: Security Reform
10:00–10:15 A.M. Break
10:15–10:45 A.M. Briefings & Discussion: Legislative Action & Policy Issues
10:45–11:45 A.M. Briefings & Discussion: Performance-Based Management and Performance-Based Contracting
11:45–1:15 P.M. Lunch Break
1:15–2:00 P.M. Briefings & Discussion: Enhancing Federal Work Force Capabilities
2:00–2:30 P.M. Briefing & Discussion: New Management Structure
2:30–2:45 P.M. Discussion: Laboratory Operations Board Work Plan Issues
2:45–3:00 P.M. Public Comment Period
3:00 P.M. Adjourn

This tentative agenda may change. We will have a final agenda available at the meeting.

Public Participation: The Chairman of the Laboratory Operations Board is empowered to conduct the meeting in a way which will, in the Chairman's judgment, facilitate the orderly conduct

of business. During its meeting in Washington, D.C. the Laboratory Operations Board welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Laboratory Operations Board will make every effort to hear the views of all interested parties. You may submit written comments to Betsy Mullins, Executive Director, Secretary of Energy Advisory Board, AB–1, US Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585. This notice is being published less than 15 days before the date due to programmatic issues that needed to be resolved prior to publication.

Minutes: We will make minutes and a transcript of the meeting available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 A.M. and 4:00 P.M., Monday through Friday except Federal holidays. You can find more information on the Laboratory Operations Board at the Secretary of Energy Advisory Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on August 26, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–22874 Filed 9–1–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–479–000]

Colorado Interstate Gas Co.; Notice of Tariff Filing

August 27, 1999.

Take notice that on August 23, 1999, Colorado Interstate Gas Company (CIG), P. O. Box 1087, Colorado Springs, Colorado 80944, tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A of the filing to be effective October 1, 1999.

CIG states that in an order that issued February 24, 1999 in Docket No. RP99–211. the Federal Energy Regulatory Commission ("Commission") accepted tariff sheets filed by CIG on January 29, 1999, that revised CIG's First Revised Volume No. 1, Rate Schedules TF–1, TI–1, NNT–1, NNT–2, TF–4, FS–1, IS–1 and PAL–1. CIG further states it revised the pro forma service agreements to provide for specific examples of volume related discounts and by including this additional information in its tariff, it was seeking to avoid the need for filing individual discount agreements on the grounds that they contain "material deviations" from the pro forma service agreements.

CIG states that consistent with filings that have been made recently by other pipelines, it proposes to revise its pro forma service agreements again to reflect one additional example of volume-related discount as follows: Transporter and shipper may agree that a specified discount rate will apply in a specified relationship to the quantities actually delivered (*i.e.*, that the rates shall adjusted in a specified relationship to quantities actually delivered).

CIG further states that copies of this compliance filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–22883 Filed 9–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–603–000]

Midcoast Interstate Transmission, Inc.; Notice of Application

August 27, 1999.

Take notice that on August 18, 1999, Midcoast Interstate Transmission, Inc. (MIT), formerly Alabama-Tennessee Natural Gas Company, 3230 Second Street, Muscle Shoals, Alabama 35661, filed an application pursuant to section 7(c) of the Natural Gas Act and part 157 of the Commission's Regulations, requesting a certificate of public convenience and necessity authorizing to continue to operate certain existing compressor and related facilities at the Sheffield Compressor Station, in order to ensure its ability to satisfy its firm service requirements, all as more fully set forth in the application which is on file with the Commission and open to the public inspection. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

On October 2, 1997, the Commission issued in Docket No. CP 97–699–000 a limited-term certificate, authorizing MIT to operate for a one-year period ending November 1, 1998, two standby 350 horsepower Clark compressor units and related facilities, located at its Sheffield Compressor Station in Colbert County, Alabama. The utilization of the two standby compressor units would allow MIT time to determine whether a more permanent service arrangement would be required based on the outcome of the North Alabama Pipeline project of Southern Natural Gas Company (Southern) in Docket No. CP96–153–000 and the service decisions of the customers, the Cities of Decatur and Huntsville (Decatur and Huntsville), that the project was designed to serve. On October 28, 1998, the Commission issued an Order Amending Limited Term Certificate for a one-year extension, from November 1, 1998, until November 1, 1999.

Currently, MIT is seeking certificate authority to continue to operate the two existing compressor units, and related facilities, at the Sheffield Compressor Station. MIT's new firm service contracts that Decatur and Huntsville have executed extend to November 1, 2002, for Decatur, and to April 1, 2003, for Huntsville. According to MIT, the continued operation of the two compressors is essential to MIT fulfilling all of its firm service obligation, including those contracted by the Decatur and Huntsville. During the past two years, MIT asserts that it has used the units intermittently, during short, peak periods, in order to fulfill its firm service obligations. The compressor units are longstanding units that are already in place, and according to MIT would avoid the need for any new construction.

Any questions regarding this application should be directed to Bernard A. Foster, III, Attorney for MIT, 2001 L Street, NW, Suite 400, Washington, DC 20036 at (202) 822–8888, or Jan Rogers, Vice President Regulatory Affairs, 1100 Louisiana, Suite 2950, Houston, Texas 77002 at (713) 650–8900.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 17, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for MIT to appear or be represented at the hearing.

David P. Boergers

Secretary.

[FR Doc. 99–22877 Filed 9–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–30–002]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

August 27, 1999.

Take notice that on August 20, 1999, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheet to be effective June 6, 1999:

First Revised Sheet No. 8C

REGT states that the purpose of this filing is to reflect the correction of an administrative oversight which occurred in its filing to change the name of its tariff from NorAm Gas Transmission Company to REGT.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–22878 Filed 9–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–480–000]

Texas Eastern Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

August 27, 1999.

Take notice that on August 23, 1999, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets to be effective September 23, 1999:

Fourth Revised Sheet No. 430
Sixth Revised Sheet No. 434
Second Revised Sheet No. 456
Second Revised Sheet No. 469
Original Sheet No. 683
Sheet Nos. 684–699

Texas Eastern states that the purpose of this filing is to set forth in its tariff a negotiated rates provision pursuant to the Alternative Rates Policy Statement [74 FERC 61,076 (1996)].

Texas Eastern states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–22884 Filed 9–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–481–000]

Transwestern Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

August 27, 1999.

Take notice that on August 23, 1999, Transwestern Pipeline Company (Transwestern), tendered for filing to become part of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1 the tariff sheets attached to the filing, to be effective September 23, 1999.

Transwestern is submitting these tariff sheets to establish an Enhanced Firm Backhaul Service (EFBH) under Rate Schedule EFBH. Forward haul capacity resulting from firm backhauls will provide Transwestern with the opportunity to offer service to other shippers. To ensure that Transwestern can provide firm service on such forward haul capacity, the tariff sheets contain a minimum transportation obligation, with a provision allowing Transwestern to issue operational flow orders if a shipper fails to nominate, confirm, schedule, tender to Transporter and take delivery of the full amount of the MAXDTQ on every day during the term of the EFBH Service Agreement. Failure to comply with an operational flow order will subject the shipper to a financial penalty. Firm backhaul service

without the minimum transportation obligation will remain available under the existing provisions of Transwestern's tariff.

Copies of the filing were served upon Transwestern's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Referenced Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–22885 Filed 9–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–85–000]

Wyoming Interstate Company, Ltd.; Notice of Cancellation of Tariff

August 27, 1999.

Pursuant to Section 154.602 of the Commission's Regulations, Wyoming Interstate Company, Ltd. (WIC) filed on August 23, 1999, a Notice of Cancellation of its FERC Gas Tariff, First Revised Volume No. 1. WIC proposes that effective October 1, 1999, First Revised Volume No. 1 of the FERC Gas Tariff of Wyoming Interstate Company, Ltd. is to be canceled.

WIC states that as an open-access pipeline operating under Order No. 636, it has two tariffs: First Revised Volume No. 1 and Second Revised Volume No. 2. First Revised Volume No. 1 provides a tariff for individually-certificated service for WIC's original shippers. Second Revised Volume No. 2 is a tariff that satisfies the requirements of open-access transportation and Order No. 636.

WIC states that when the Commission originally certificated the WIC transmission facilities, the Commission also certificated the transportation service agreements supporting the project. Because WIC is a project-financed pipeline, the Commission took into consideration WIC's loan obligations pursuant to project-financing. These obligations required that the original shippers receive individually-certificated service pursuant to WIC's Volume No. 1 Tariff. WIC states that it has received authorization to abandon its original Volume No. 1 obligations. WIC states that it has executed Volume No. 2 agreements effective August 1, 1999, to replace the Volume No. 1 obligations.

WIC states that cancellation of WIC's Volume No. 1 tariff will reduce the administrative burden on WIC and shippers associated with maintaining and monitoring multiple tariffs, that it has received lender approval to cancel its Volume No. 1 Tariff, and that all agreements were converted to "open access" service effective August 1, 1999, pursuant to 18 CFR 157.217. Therefore, effective August 1, 1999, WIC has no transportation service under its Volume No. 1 Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–22879 Filed 9–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–478–000]

Wyoming Interstate Company, Ltd.; Notice of Tariff Filing

August 27, 1999.

Take notice that on August 23, 1999, Wyoming Interstate Company, Ltd. (WIC) PO box 1087, Colorado Springs, Colorado 80944, tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 2, the tariff sheets listed in Appendix A of the filing to be effective October 1, 1999.

WIC states that in an order that issued February 25, 1999 in Docket No. RP99–215, the Federal Energy Regulatory Commission (Commission) accepted tariff sheets filed by WIC on January 29, 1999, that revised WIC's Second Revised Volume No. 2, Rate Schedules FT and IT. WIC further states it revised the pro forma service agreements to provide for specific examples of volume related discounts and by including this additional information in its tariff, it was seeking to avoid the need for filing individual discount agreements on the grounds that they contain "material deviations" from the pro forma service agreements.

WIC states that consistent with filings that have been made recently by other pipelines, it proposes to revise its pro forma service agreements again to reflect one additional example of volume-related discount as follows: Transporter and shipper may agree that a specified discount rate will apply in a specified relationship to the quantities actually delivered (*i.e.*, that the rates shall be adjusted in a specified relationship to quantities actually delivered).

WIC further states that copies of this compliance filing have been served on WIC's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with §§ 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–22882 Filed 9–1–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2620–005; South Carolina]

Lockhart Power Company; Notice of Availability of Final Environmental Assessment

August 27, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the Lockhart Hydroelectric Project. The project is located on the Broad River, near the town of Lockhart, in Union, Chester, York, and Cherokee counties, South Carolina. No federal lands or facilities are occupied or used by the project.

On June 25, 1999, the Commission staff issued a draft environmental assessment (DEA) for the project and requested that comments be filed with the Commission within 30 days. Comments on the DEA were filed and are addressed in the final environmental assessment (FEA) for the project.

The FEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, NE, Washington, DC 20426. This filing may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–22880 Filed 9–1–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6432–4]

Agency Information Collection Activities: Proposed Collection; Comment Request; Spill Prevention, Control, and Countermeasure (SPCC) Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Spill Prevention, Control, and Countermeasure (SPCC) Plans, EPA ICR No. 0328.08, OMB Control No. 2050–0021, expiring December 31, 1999. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before November 1, 1999.

ADDRESSES: Interested persons may obtain a copy of the ICR without charge from the U.S. EPA, Oil Program Center, 401 M Street, SW (5203G), Washington, D.C. 20460. Materials relevant to this ICR may be inspected from 9 a.m. to 4 p.m., Monday through Friday (except holidays), by visiting the Public Docket, located at 1235 Jefferson Davis Highway (ground floor), Arlington, Virginia 22202. The docket number for this notice is SPCC–11. The telephone number for the Public Docket is (703) 603–9232. A reasonable fee may be charged for copying docket material. Comments on specific aspects of the proposed information collection notice should be addressed to the Public Docket.

FOR FURTHER INFORMATION CONTACT: Hugo Paul Fleischman, (703) 603–8769. Facsimile number: (703) 603–9116. Electronic address: fleischman.hugo@epa.gov. Note that questions concerning the notice, but not comments will be accepted electronically. As noted above, comments should be sent to the Public Docket.

SUPPLEMENTARY INFORMATION:

Affected Entities

The Spill Prevention, Control, and Countermeasure (SPCC) regulation applies only to non-transportation-related facilities that could reasonably be expected to discharge oil into or upon the navigable waters of the U.S., or adjoining shorelines, and that have: (1) A total underground buried oil storage capacity of more than 42,000 gallons; or (2) a total aboveground oil storage capacity of more than 660 gallons in a single container.

The specific private industry sectors expected to be affected by this action include: (1) Petroleum and coal products manufacturing (NAICS 324); (2) petroleum bulk stations and terminals (NAICS 42271); (3) crude petroleum and natural gas extraction (NAICS 211111); (4) transportation (including pipelines), warehousing, and marinas (NAICS 482–486/488112–48819/4883/4889/492–493/71393); (5) electric power generation, transmission, and distribution (NAICS 2211); (6) other manufacturing (NAICS 31–33); (7) gasoline stations/automotive rental and leasing (NAICS 4471/5321); (8) heating oil dealers (NAICS 454311); (9) coal mining, non-metallic mineral mining and quarrying (NAICS 2121/2123/213114/213116); (10) heavy construction (NAICS 234); (11) elementary and secondary schools, colleges (NAICS 6111–6113); (12) hospitals/nursing and residential care facilities (NAICS 622–623); and (13) crop and animal production (NAICS 111–112).

Title: "Spill Prevention, Control, and Countermeasure (SPCC) Plans," OMB Control Number 2050–0021. EPA Control Number 328.08. Expiration date: December 31, 1999.

Abstract

Under section 311 of the Clean Water Act, EPA's SPCC regulation requires facilities to prepare and implement SPCC Plans to help "minimize the potential for oil discharges." This regulation is codified at 40 CFR part 112. The SPCC Plan must be "a carefully thought-out plan, prepared in accordance with good engineering practices." Preparation of the SPCC Plan requires that a facility's staff analyze how the facility will prevent oil discharges, thereby encouraging appropriate facility design and operations. The information in the SPCC Plan also promotes efficient response in the event of a discharge. Finally, proper maintenance of the SPCC Plan will promote important spill-reducing measures, facilitate leak detection, and generally ensure that the facility is at peak capability for deterring discharges. The specific activities and reasons for the information collection are described below.

New Plan

Preparation of the Plan, required under § 112.3, involves several tasks, mostly conducted by the facility's technical personnel. These tasks include: field investigations to understand facility design and possible failures and to predict the flow paths of spilled oil and the potential harm that the spilled oil would have on navigable waters; a regulatory review to ensure that personnel are fully aware of all requirements and limitations imposed in the rule; an evaluation of current spill prevention and control practices the facility employs; preparation of the Plan according to the specification of § 112.7, and certification by a Registered Professional Engineer (P.E.)

Modification of Plan

Under § 112.5(a) the SPCC Plan must be amended whenever there is a change in the facility's design, construction, operation, and maintenance that materially affects the facility's potential to discharge oil into navigable waters or onto adjoining shorelines. The amended Plan must also be certified by a P.E.

Triennial Review

Under § 112.5(b), owners or operators of regulated facilities must review and evaluate the Plan at least once every three years. This involves review of spill prevention and control procedures being implemented under the current Plan, as well as a regulatory review. Facility owners/operators must amend the SPCC Plan within six months of the review to include more effective prevention and control technology if: (1) Such technology will significantly reduce the likelihood of a spill event; and (2) such technology has been field-proven at the time of the review. If amended, the Plan must also be certified by a P.E.

Oil Discharge

Under § 112.4, in the event of certain oil discharges, facility owner/operators must submit information to the Regional Administrator within 60 days. Discharges of oil that trigger the reporting requirements are: (1) A single spill event of more than 1,000 U.S. gallons into navigable waters; or (2) two or more spills (in a twelve month period) of harmful quantities as defined in 40 CFR part 110.

Submitting a Plan after a discharge involves time to collect the required information, as well as time for review by management. The facility must also submit a copy of this information to the appropriate state agency in charge of water pollution control activities. After the Regional Administrator and the appropriate state agency have reviewed the Plan, the Regional Administrator may require amendment of the SPCC Plan. The amended Plan must be certified by a P.E. prior to implementation. Facilities may appeal a decision made by the Regional Administrator requiring an amendment to an SPCC Plan.

Recordkeeping

Under § 112.3, the facility owner/operator must maintain a copy of the SPCC Plan at the facility, or under certain circumstances, at the nearest field office. The Plan must be available for review during normal working hours. In addition, facilities must maintain (and update) records of Plan-specific inspections as outlined under § 112.7(e).

Purpose of Data Collection

EPA does not collect the information required by the Oil Pollution Prevention regulation (i.e., the SPCC Plan) on a routine basis. Preparation, implementation, and maintenance of the SPCC Plan by the facility help prevent oil discharges, and mitigate environmental damage caused by such discharges. Therefore, the primary user of the data is the facility itself. For example:

(i) As facility staff accumulate the necessary data, they must analyze the facility's capability to prevent oil discharges, facilitate safety awareness, and promote appropriate modifications to facility design and operations;

(ii) Because facility staff keep the required information in a single document, they can respond efficiently in the event of a discharge;

(iii) To implement the Plan according to the specifications of § 112.7, the facility must meet certain design and operational standards that reduce the likelihood of an oil discharge;

(iv) Inspection records help facilities to promote important maintenance, facilitate leak detection, and demonstrate compliance with the SPCC requirements; and

(v) When facility staff review the Plan every three years, they ensure implementation of more effective spill prevention control technology.

Although the facility is the primary data user, EPA also uses the data in certain situations. EPA primarily uses SPCC plan data to ensure that facilities comply with the regulation, including design and operation specifications and inspection requirements. EPA reviews SPCC Plans: (1) When facilities submit the Plans because of oil discharges, and (2) as part of EPA's inspection program. State and local governments also use the data, which is not necessarily available elsewhere and can greatly assist local emergency preparedness planning efforts. Coordination with state governments is facilitated when, after certain spill events, a facility sends a copy of the SPCC Plan and additional information on the spill to the relevant state agency.

As part of the Agency's efforts to reduce the overall paperwork burden on regulated facilities, EPA would like to solicit comments on how the Agency could best reduce the total paperwork burden hours for this rule while maintaining an effective level of environmental protection.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

EPA would also like to solicit public comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques, or other forms of information technology, e.g., permitting electronic submission of responses.

Additionally, the Agency has recently proposed revisions to the SPCC rule to reduce the burden imposed on regulated facilities (December 2, 1997, 62 FR 63812). Proposed revisions would: (1) Give facility owners or operators flexibility to use alternative formats for SPCC Plans; (2) allow the use of certain records maintained pursuant to usual and customary business practices, or pursuant to the National Pollutant Discharge Elimination System (NPDES) program, to be used in lieu of records mandated by the SPCC requirements; (3) reduce the information required to be submitted after certain spill events; and (4) extend the period in which SPCC Plans must be reviewed and evaluated. EPA is now working to finalize the 1997 proposal, as well as two earlier proposals affecting SPCC requirements, specifically, a proposal from October 22, 1991 (56 FR 54612), and one from February 17, 1993 (58 FR 8824).

Burden Statement

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

This document first presents the estimated number of existing and new storage and production facilities regulated under the Oil Pollution Prevention Regulation. Next, the estimated burden hours and costs to facilities to perform required actions are presented. Costs are composed of facility labor costs and any associated capital and operation and maintenance (O&M) expenditures. Finally, the estimated total annual burden hours and costs for all facilities to comply with the requirements of this regulation are presented. The burden hours shown for each action represent the hours in both the existing ICR and the corresponding hours in the ICR renewal, where there are differences. Costs have been updated to June 1999 dollars.

As of January 2000, approximately 460,027 existing facilities are assumed to be regulated under the SPCC program with approximately 4,600 new facilities joining the program in 2000. These numbers are based on the previous ICR estimate of approximately 460,027 existing and new facilities as of January 1999. A one percent annual growth in the number of facilities is assumed. For purposes of this ICR, all facilities were grouped into two distinct categories: production facilities (facilities whose operations and oil storage activities are exclusively limited to oil production) and storage facilities (all other SPCC-regulated facilities whose operations do not include oil production). This categorization of facilities reflects differences in the estimated burden of compliance activities depending on the nature of the facility's operations.

The current ICR assumes that storage facilities make up 65 percent of small facilities, 69 percent of medium facilities, and 98 percent of large facilities. Production facilities make up 35 percent of small facilities, 31 percent of medium facilities, and two percent of large facilities. These ratios, as well as the Agency's estimate concerning the number of regulated facilities, are based on the results of a 1995 survey of SPCC regulated facilities conducted by EPA. The results of this survey are available for public review at the Public Docket. The definitions of small, medium, and large facility are based on oil storage capacity and are defined as follows, based on the Agency's January 1991 "SPCC Facilities Study":

(i) Small facility—a facility that has aboveground storage capacity greater than 1,320 gallons (or 660 gallons in a single container), but less than or equal to 42,000 gallons;

(ii) Medium facility—a facility that has total (aboveground or underground) storage capacity greater than 42,000 gallons but less than or equal to one million gallons; and

(iii) Large facility—a facility that has total storage capacity greater than one million gallons.

An estimate of the number of existing and new storage and production facilities in 2000 are shown in Exhibits 1 and 2.

EXHIBIT 1.—ESTIMATED NUMBER OF EXISTING FACILITIES

(2000)

	Small	Medium	Large	Total
Storage	236,057	58,857	13,453	308,366
Production	125,280	26,065	315	51,661
Total	361,337	84,922	13,768	460,027

EXHIBIT 2.—ESTIMATED NUMBER OF NEW FACILITIES

(2000)

	Small	Medium	Large	Total
Storage	2,361	589	135	3,084
Production	1,253	261	3	1,517
Total	3,613	849	138	4,600

The facility cost estimates for each category of activities are based on June 1999 hourly wage rates for managerial ($41.68), technical ($30.96), and clerical ($19.41) work. These wage rates include wages and salaries, benefit costs, and overhead costs and reflect private industry averages, which were estimated by the U.S. Bureau of Labor Statistics. The Agency recognizes that these wage rates may underestimate the actual wages received by some SPCC personnel but overestimate the actual wage rate received by other facility personnel.

Each exhibit represents separate burden estimates for small, medium, and large storage and production facilities. Exhibits 3 through 8 summarize the estimated facility burden associated with performing each separate task associated with an SPCC Plan. Not all of the activities will be performed on an annual basis by all facilities.

New Plan

Exhibit 3 presents the estimated burden and costs for a facility to perform the activities associated with preparing an SPCC Plan. All new facilities must prepare and implement an SPCC Plan.

EXHIBIT 3.—ESTIMATED BURDEN HOURS AND COSTS-PREPARATION OF NEW PLAN

Type of facility	Burden hours				Cost		
	Managerial $41.68	Technical $30.96	Clerical $19.41	Total burden	Capital	O&M	Total [1]
Storage:							
Small	6.0	25.0	4.0	35.0	$0	$0	$1,102
Medium	6.0	44.0	6.0	56.0	0	0	1,729
Large	6.0	76.0	8.0	90.0	0	0	2,758
Production:							
Small	6.0	28.0	4.0	38.0	0	0	1,195
Medium	6.0	46.0	6.0	58.0	0	0	1,791
Large	6.0	77.0	8.0	91.0	0	0	2,789

[1] Total cost includes the cost of facility labor, capital, and O&M costs.

Modification of Plan

Exhibit 4 presents the burden hours and costs for a facility to revise an SPCC Plan after any modification that materially affects the facility's potential to discharge oil into navigable waters. An estimated ten percent of facilities will need to modify their SPCC Plans each year.

EXHIBIT 4.—ESTIMATED ANNUAL BURDEN HOURS AND COSTS—MODIFICATION OF PLAN

Type of facility	Burden hours				Cost		
	Managerial $41.68	Technical $30.96	Clerical $19.41	Total burden	Capital	O&M	Total [1]
Storage:							
Small	0.0	4.5	1.0	5.5	$0	$0	$159
Medium	0.0	4.5	1.0	5.5	0	0	159
Large	0.0	4.5	1.0	5.5	0	0	159
Production:							
Small	0.0	4.5	1.0	5.5	0	0	159
Medium	0.0	4.5	1.0	5.5	0	0	159
Large	0.0	4.5	1.0	5.5	0	0	159

[1] Total cost includes the cost of facility labor, capital, and O&M costs.

Triennial Review

Exhibits 5 and 6 present the estimated burden hours and costs for a facility to complete a triennial review, with and without amendment. As a result of the review process, the facility may need to amend its Plan, incurring additional costs. Annual burdens and costs per facility are one-third of the values in Exhibits 5 and 6. An estimated three percent of all existing facilities will need to amend their Plans each year.

EXHIBIT 5.—ESTIMATED ANNUAL BURDEN HOURS AND COSTS—TRIENNIAL REVIEW—NO AMENDMENT

Type of facility	Burden hours				Cost		
	Managerial $41.68	Technical $30.96	Clerical $19.41	Total burden	Capital	O&M	Total [1]
Storage:							
Small	1.0	2.4	0.5	4.0	$0	$0	$129
Medium	1.0	4.5	1.0	6.5	0	0	200
Large	1.0	8.0	1.0	10.0	0	0	309
Production:							
Small	1.0	3.5	0.5	5.0	0	0	160
Medium	1.0	5.5	1.0	7.5	0	0	231
Large	1.0	9.0	1.0	11.0	0	0	340

[1] Total cost includes the cost of facility labor, capital, and O&M costs.

EXHIBIT 6.—ESTIMATED ANNUAL BURDEN HOURS AND COSTS—TRIENNIAL REVIEW—AMENDMENT

Type of facility	Burden hours				Cost		
	Managerial $41.68	Technical $30.96	Clerical $19.41	Total burden	Capital	O&M	Total [1]
Storage:							
Small	1.0	7.0	2.0	10.0	$0	$0	$297
Medium	1.0	9.0	2.0	12.0	0	0	359
Large	1.0	12.5	2.0	15.5	0	0	468

EXHIBIT 6.—ESTIMATED ANNUAL BURDEN HOURS AND COSTS—TRIENNIAL REVIEW—AMENDMENT—Continued

Type of facility	Burden hours				Cost		
	Managerial $41.68	Technical $30.96	Clerical $19.41	Total burden	Capital	O&M	Total [1]
Production:							
Small	1.0	8.0	2.0	11.0	0	0	328
Medium	1.0	10.0	2.0	13.0	0	0	390
Large	1.0	13.5	2.0	16.5	0	0	498

[1] Total cost includes the cost of facility labor, capital, and O&M costs.

Oil Discharge

Exhibit 7 presents estimated burden hours and costs for a facility to submit information to the Regional Administrator in the event of certain discharges of oil into navigable waters. It is assumed that the probability of a facility having such a spill in any given year is 0.15 percent.

EXHIBIT 7.—ESTIMATED BURDEN HOURS AND COSTS—OIL DISCHARGE

Type of facility	Burden hours				Cost		
	Managerial $41.68	Technical $30.96	Clerical $19.41	Total burden	Capital	O&M	Total [1]
Storage:							
Small	1.0	1.0	0.0	2.0	$8	$0	$81
Medium	1.0	1.0	0.0	2.0	10	0	83
Large	1.0	1.0	0.0	2.0	14	0	87
Production:							
Small	1.0	1.0	0.0	2.0	8	0	81
Medium	1.0	1.0	0.0	2.0	10	0	83
Large	1.0	1.0	0.0	2.0	14	0	87

[1] Total cost includes the cost of facility labor, capital, and O&M costs.

Recordkeeping

Exhibit 8 presents the burden hours and costs for a facility to perform Plan maintenance and Plan-specific recordkeeping activities. All regulated facilities are subject to these requirements.

EXHIBIT 8.—ESTIMATED BURDEN HOURS AND COSTS—RECORDKEEPING

Type of facility	Burden hours				Cost		
	Managerial $41.68	Technical $30.96	Clerical $19.41	Total burden	Capital	O&M	Total [1]
Storage:							
Small	0.0	2.0	0.5	2.5	$0	$0	$72
Medium	0.0	4.5	0.5	5.0	0	0	149
Large	0.0	9.5	0.5	10.0	0	0	304
Production:							
Small	0.0	3.0	0.5	3.5	0	0	103
Medium	0.0	3.0	0.5	3.5	0	0	103
Large	0.0	3.0	0.5	3.5	0	0	103

[1] Total cost includes the cost of facility labor, capital, and O&M costs.

Annual Expected Facility Burden

The total annual burden per facility reflects the sum of the annual burdens incurred by the facility for each category of activities outlined above. The estimated annual burden for an existing and new facility is shown in Exhibit 9. These estimates were computed by estimating the annual burden for both storage and production facilities and weighting each estimate by the percentage of storage and production facilities to compute an overall model facility estimate.

EXHIBIT 9.—ESTIMATED ANNUAL BURDEN HOURS AND COSTS PER FACILITY

Type of facility	Burden hours				Cost		
	Managerial $41.68	Technical $30.96	Clerical $19.41	Total burden	Capital	O&M	Total
Existing:							
Small	0.3	3.8	0.8	4.9	$0	$0	$147
Medium	0.3	6.1	0.9	7.4	0	0	222
Large	0.3	12.5	0.9	13.8	0	0	419
New:							
Small	6.0	28.8	4.6	39.4	67	0	1,232
Medium	6.0	49.1	6.6	61.7	67	0	1,899
Large	6.0	85.8	8.6	100.4	67	0	3,074

Total Annual Expected Facility Burdens

The total annual burdens for all existing facilities and all new facilities are shown in Exhibit 10. The approximately 460,027 existing facilities will incur a combined burden of about 2.6 million hours and $42.0 million. In addition, around 4,600 new facilities will incur a combined burden of about 208,740 hours at a cost of $6.5 million. The total annual reporting and recordkeeping burden to the regulated community as a result of the SPCC Program is estimated to be approximately 2.8 million hours at a cost of about $48.5 million.

EXHIBIT 10.—ESTIMATED ANNUAL BURDEN HOURS AND COSTS-ALL FACILITIES

Type of facility	Burden hours				Cost		
	Managerial $41.68	Technical $30.96	Clerical $19.41	Total burden	Capital	O&M	Total
Existing:							
Small	120,987	1,370,233	282,445	1,773,666	$4,333	0	$17,413,617
Medium	28,434	519,585	80,109	628,129	1,195	0	18,828,671
Large	4,610	171,923	12,988	189,521	287	0	5,767,959
New:							
Small	21,686	104,204	16,622	142,511	240,935	0	4,452,849
Medium	5,097	41,701	5,605	52,402	56,626	0	1,612,362
Large	826	11,817	1,184	13,827	9,182	0	423,298

No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed at 40 CFR part 9.

Send comments regarding these matters, or any other aspects of information collection, including suggestions for reducing the burden, to the address listed above under **ADDRESSES** near the top of this document.

Dated: August 24, 1999.

Elaine F. Davies,

Deputy Director, Office of Emergency and Remedial Response.

[FR Doc. 99–22934 Filed 9–1–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6432–5]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Maui Electric Company, Limited for the Maalaea Generating Station Units M17 & M19 (Hawaii CSP No. 0067–01–C) at Maalaea, Maui, Hawaii

AGENCY: Environmental Protection Agency (EPA), Region 9.

ACTION: Notice of final order on petition to object to state operating permit.

SUMMARY: Pursuant to Clean Air Act Section 505(b)(2) and 40 CFR 70.8(d), the EPA Administrator is hereby denying a petition to object to a state operating permit issued by the Hawaii Department of Health to Maui Electric Company, Limited for the Maalaea Generating Station Units M17 & M19 at Maalaea, Maui, Hawaii. This order constitutes final action on the petition submitted by Kawaihae Cogeneration Partners (KCP). Pursuant to Section 505(b)(2) of the Clean Air Act ("Act"), petitioner may seek judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of this decision under section 307 of the Act.

ADDRESSES: Copies of the final order, the petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region IX, Air Division, 75 Hawthorne Street, San Francisco, California, 94105. The final order is also available electronically at the following address: http://www.epa.gov/ttn/nsr/poly_gui.html.

FOR FURTHER INFORMATION CONTACT: Robert Baker (AIR–3), U.S. Environmental Protection Agency, Region 9, Telephone (415) 744–1258, E-mail Baker.Robert@epa.gov. Interested parties may also contact the Hawaii Department of Health, Clean Air Branch, 919 Ala Moana Blvd.—Room 203, Honolulu, Hawaii 96814.

SUPPLEMENTARY INFORMATION: The Clean Air Act affords EPA the opportunity for a 45-day period to review, and object to as appropriate, operating permits proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to State operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

Kawaihae Cogeneration Partners (KCP) submitted a petition to the Administrator on February 17, 1998, seeking EPA's objection to the PSD/Covered Source Permit issued to Maui Electric Company (MECO) for the construction and operation of two 20 megawatt combustion turbine generators at MECO's Maalaea Generating Station at Maalaea, Maui, Hawaii. KCP's petition alleges that the Covered Source Permit's requirement of water injection and low sulfur fuel oil is not BACT for oxides of nitrogen and sulfur dioxide. The order denying this petition explains the reasons behind EPA's conclusion that the petitioner has failed to demonstrate that the Maui Electric permit is not in compliance with the requirements of the Clean Air Act.

Dated: August 22, 1999.

Nora L. McGee,

Acting Regional Administrator, Region 9.

[FR Doc. 99–22931 Filed 9–1–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6432–3]

Futures Forum Discussion of Source Water Protection; Notice of Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) will be holding a one-day public meeting from 1:00 to 4:00 on September 13, 1999 in Washington, DC. The purpose of this meeting is to discuss the protection of drinking water sources in the next 25 years, and how protection helps to provide the public with safe drinking water at the tap. Discussion of this question is part of the Safe Drinking Water Act 25th Anniversary Futures Forum.

The purpose of the Drinking Water Futures Forum is to evaluate the challenges facing the nation in ensuring a safe supply of drinking water in 25 years, and develop a plan to meet these challenges. The overall question of the futures forum is: How should we ensure safe drinking water in 25 years? There are 7 sub-questions on: treatment technologies, source water quality and quantity, sensitive subpopulations, cost, small systems, unserved populations, and research.

The discussion on September 13 will focus on source water protection. The proposed vision is that in 25 years, all public drinking water supplies will have source water protection measures in place as the first step of a multi-barrier approach to provide safe drinking water to the public. What needs to happen over the next 25 years to reach this vision? Issues related to source water protection include: Do we need to reach national consensus on a definition of source water protection? Is public health protection significantly enhanced by source water protection, or is treatment technology more effective and economical? Are there adequate institutional frameworks for protecting sources of drinking water given the diversity of authorities responsible for contaminant sources, water supply and water quality? What are the catalysts that will accomplish protection at a local level, and integration of source water protection into a public water systems' management plan?

DATES: The meeting will be held on September 13, 1999 from 1 to 4 p.m.

ADDRESSES: The meeting will be held at the EPA Ariel Rios Building, 1200 Pennsylvania Ave., NW, Washington, DC 20004, Room 4045.

FOR FURTHER INFORMATION CONTACT: To register for the meeting, please contact the Safe Drinking Water Hotline at 1–800–426–4791 or 703–285–1093 between 9:00 a.m. and 5:30 p.m. EDT. For specific meeting information, please contact Betsy Henry by telephone at 202–260–2399 or by e-mail at *henry.betsy@epa.gov.*

Elizabeth Fellows,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 99–22935 Filed 9–1–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6432–2]

Drinking Water Futures Forum—Discussions on the Future of Drinking Water Protection; Notice of Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) will be holding a one-day public meeting from 9:00–4:00 on September 24, 1999 in Washington, DC. The purpose of this meeting is to discuss questions related to the Drinking Water Futures Forum.

The purpose of the Drinking Water Futures Forum is to evaluate the challenges facing the nation in ensuring a safe supply of drinking water in 25 years, and develop a plan to meet these challenges. The question to be discussed is: How should we ensure safe drinking water in 25 years? To help discussion, this all-encompassing question has been broken into 7 sub-questions on: treatment technologies, source water quality and quantity, vulnerable subpopulations, cost, small systems, unserved populations, and research. In discussions to date, several cross-cutting themes have emerged, and these will be the focus of the September 24 meeting.

Some of the questions to be discussed on September 24 include: What are the potential challenges to drinking water protection in 2025? What potential impact does the distribution system have on drinking water quality, and are there approaches to address any negative impact? What incentives can be created to promote voluntary programs that move beyond the baseline, either in treatment or pollution prevention? How do we promote comprehensive water supply planning?

DATES: The meeting will be held on September 24, 1999 from 9 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the U.S. Environmental Protection Agency's Ariel Rios Building, 1200 Pennsylvania Avenue, NW, in Room 6226.

FOR FURTHER INFORMATION CONTACT: To register for the meeting, please contact the Safe Drinking Water Hotline at 1–800–426–4791 or 703–285–1093 between 9:00 a.m. and 5:30 p.m. EDT. For specific meeting information, please contact Ron Bergman at 202–260–6187

or by e-mail at *bergman.ronald@epa.gov.*

Elizabeth Fellows,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 99–22936 Filed 9–1–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34198; FRL–6380–9]

Availability of Preliminary Risk Assessment for the Organophosphate Pesticides Coumaphos and Fenitrothion

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of documents that were developed as part of the EPA's process for making reregistration eligibility decisions for the organophosphate pesticides and for tolerance reassessments consistent with the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). These documents are the preliminary human health risk assessments and related documents for coumaphos and fenitrothion. This notice also starts a 60-day public comment period for the preliminary risk assessments. By allowing access and opportunity for comment on the preliminary risk assessments, EPA is seeking to strengthen stakeholder involvement and help ensure our decisions under FQPA are transparent and based on the best available information. The tolerance reassessment process will ensure that the United States continues to have the safest and most abundant food supply.

DATES: Comments, identified by docket control number OPP–34196 for coumaphos and OPP–34197 for fenitrothion, must be received by EPA on or before November 1, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION** section. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34196 for coumaphos and OPP–34197 for fenitrothion in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to specifically describe all the entities potentially affect by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about the risk assessments for coumaphos and fenitrothion organophosphate pesticides, go directly to the Home Page for the Office of Pesticide Programs at http: www.epa.gov/pesticides/op.

2. *In person.* The Agency has established an official record for this action under the docket control number OPP–34196 for coumaphos and OPP–34197 for fenitrothion. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch (PIRIB) telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34196 for coumaphos and OPP–34197 for fenitrothion in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA., between 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to:" opp-docket@epa.gov" or mail or deliver your standard computer disk to the appropriate address in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–34196 for coumaphos and OPP–34197 for fenitrothion. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

II. What Action is EPA Taking?

EPA is making available preliminary risk assessments that have been developed as part of EPA's process for making reregistration eligibility decisions for the organophosphate pesticides and for tolerance reassessments consistent with the FFDCA, as amended by the FQPA. The Agency's preliminary human health effects risk assessments for these organophosphate pesticides are available in the OPP docket.

As additional comments, reviews, and risk assessment modifications become available, these will also be docketed for the two organophosphate pesticides listed in this notice. The Agency cautions that these risk assessments are preliminary assessments only and that further refinements of the risk assessments may be appropriate for the coumaphos and fenitrothion organophosphate pesticides. This document reflects only the work and analysis conducted as of the time it was produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions in it may change.

As the preliminary risk assessments for the remaining organophosphate pesticides are completed and registrants are given a 30-day review period to identify possible computational or other clear errors in the risk assessment, these risk assessments and registrant responses will be placed in the individual organophosphate pesticide dockets. A notice of availability for subsequent assessments will appear in the **Federal Register**.

The Agency is providing an opportunity, through this notice, for interested parties to provide written comments and input to the Agency on the preliminary risk assessments for the chemicals specified in this notice. Such comments and input could address, for example, the availability of additional data to further refine the risk assessments, such as percent crop treated information or submission of residue data from food processing studies, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific chemical. Comments should be limited to issues raised within the preliminary risk assessments and associated documents. EPA will provide other opportunities for public comment on other science issues associated with the organophosphate tolerance reassessment program. Failure to comment on any such issues as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments should be submitted by November 1, 1999 at the address given under **ADDRESSES**. Comments will become part of the Agency record for each individual organophosphate pesticide to which they pertain.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: August 25, 1999.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–22746 Filed 9–1–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–883; FRL–6094–5]

Notice of Filing Pesticide Petitions to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–883, must be received on or before October 4, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION" section. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–883 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number/e-mail address	Address	Petition number(s)
Dana Pilitt (PM 13) ...	Rm. 202, CM #2, 703–305–7071, e-mail: pilitt.dana@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA	PP 9F6022
Shaja Brothers	Rm. 284, CM #2, 703–308–3194, e-mail: brothers.shaja@epamail.epa.gov.	Do.	PP 7E4862, 7E4866, 8E4939, 7E4877, 7E4861, and 4E4302
Mary Waller (PM 21)	Rm. 249, CM #2, 703–308–9354, e-mail: waller.mary@epamail.epa.gov.	Do.	PP 1F4030, 2F4155, and 9F3812
Amelia M. Acierto	Rm. 707B, CM #2, 703–308–8377, e-mail: acierto.amelia@epa.gov.	Do.	PP 9E6010

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–883 The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–883 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by E-mail to: "*opp-docket@epa.gov* ," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by docket control number PF–883. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the "FOR FURTHER INFORMATION CONTACT" section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 25, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Centre Internationale d'Etudes du Lindane (C.I.E.L.) and its Member Company Inquinosa S.A.

PP 9F6022

EPA has received a pesticide petition (9F6022) from Centre Internationale d'Etudes du Lindane (C.I.E.L.) and its member company Inquinosa S.A. , c/o Charles A. O'Conner III, Esq., McKenna & Cuneo, L.L.P., 1900 K St., NW., Washington, DC 20006-1108 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a time-limited tolerance for residues of lindane in or on the raw agricultural commodities (RAC) canola seed at 0.01 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of lindane in plants is adequately understood. Lindane is rapidly absorbed and eliminated by plants. Lindane translocates rapidly from treated seeds into the growing plant but concentrates primarily in the plant root. Both lindane and its metabolites appear to be readily lost to air and to soil. In almost all studies, the metabolites found in plants were identical to those found in animals although there may be variations in the conjugates detected. The same processes found in animals metabolize lindane in plants, i.e., dehydrogenation, dehydrochlorination, hydroxylation, and conjugation.

2. *Analytical method.* There is a practical analytical method for detecting and measuring levels of lindane in or on food with a limit of quantitation (LOQ) that allows monitoring of food with residues at or above the levels set in the tolerances. The parent is analyzed by gas chromatography/electronic capture detector (GC/ECD).

3. *Magnitude of residues.* Lindane was applied to seeds of canola. The RAC canola seed was harvested at the appropriate growth stage. A portion of harvested seed was processed into meal, which is an animal feed item, and edible canola oil, which is the only canola product that constitutes an appreciable portion of the human diet. Subsequent analyses determined that the residues of lindane will not exceed the proposed tolerance of 0.01 ppm for canola seed. Residues of canola in the processed commodities were < 0.005 ppm for meal and < 0.0005 ppm for edible oil. A cattle feeding study (20 ppm) was conducted to support foliar applications of lindane. Data was derived from extrapolation of this study to the 0.024 ppm maximum theoretical dietary burden in beef and diary cattle. Anticipated residues were 0.008 ppm in milk, 0.013 ppm in beef fat, 0.0011 ppm in beef muscle, 0.00038 ppm in beef kidney, and 0.00011 ppm in beef liver. Similarly, results of a poultry feeding study and the maximum anticipated dietary burden for poultry from lindane use as a seed treatment were used to derive anticipated residues of 0.0011 ppm in eggs, 0.00014 ppm in breast muscle, 0.00086 ppm in thigh muscle, and 0.00055 ppm in liver.

B. Toxicological Profile

1. *Acute toxicity.* Lindane demonstrates moderate oral, dermal and inhalation toxicity. Reported acute oral LD_{50} values in the rat range from 90 to 250 milligrams/kilograms (mg/kg). The acute dermal LD_{50} value was 200 to 300 mg/kg for rabbits and 900 to 1,000 mg/kg in rats. The acute inhalation LC_{50} value in the rat was 1,600 milligrams per liter (mg/L)/4h. Lindane is not irritating to rabbit skin and is slightly irritating to rabbit eyes. It did not cause skin sensitization in guinea pigs.

2. *Genotoxic.* The mutagenicity of lindane has been adequately studied. Lindane has been extensively investigated for its ability to induce gene mutation in both bacteria and mammalian cells, and for its activation in the assay for sex-linked recessive lethal mutation in D. melanogaster. Negative results were obtained consistently. Lindane's ability to induce chromosomal damage and sister chromatid exchange has been investigated in mammalian cells both *in vitro* and *in vivo*, again with negative results. Both assays for DNA damage in bacteria and studies *in vivo* to investigate covalent binding to DNA in the liver of rats and mice following oral administration also gave negative results. The few studies in which positive results were obtained involved invalid study designs or lindane of unknown purity. Overall, lindane appears not to have mutagenic potential.

3. *Reproductive and developmental toxicity.* Lindane is not considered to be a reproductive or a developmental toxin. In a 2-generation reproduction study, the no observed adverse effect level (NOAEL) for reproductive and developmental toxicity was 2 mg/kg/day. In a developmental toxicity study, the rat maternal NOAEL was 5 mg/kg while the developmental NOAEL was 10 mg/kg. The developmental and parental (based on reduced food consumption, reduced weight gain, slight tachypnea and lethargy) NOAEL for the rabbit was greater than 20 mg/kg/day. or a developmental toxin.

4. *Subchronic toxicity.* 90–day feeding studies were conducted in mice and rats with lindane. The NOAEL for the mouse study was greater than 10 ppm highest dose tested (HDT) For the rat study, the NAOEL was 10 ppm (0.75 mg/kg/bwt/day). Renal effects observed were related to α_{2U}-globulin and are not relevant to human safety. Hepatocellular hypertrophy and neurotoxicity were observed at the HDT. A 14–week inhalation study in mice had a NOAEL of 0.3 mg/cubic meter. In a 90–day inhalation study in rats, the NOAEL was 0.6 mg/cubic meter. 90–day dermal toxicity studies have been conducted in rats and rabbits. In both species, the NOAELs were 10 mg/kg/bwt/day.

5. *Chronic toxicity.* A 2–year feeding study was conducted in dogs with lindane. The NOAEL for this study was 50 ppm. A chronic study in rats found a NOAEL of 10 ppm (0.47 mg/kg/bwt/day) based upon liver toxicity at higher dose levels. Lindane is not carcinogenic to rats. A 2–year combined chronic toxicity/oncogenicity study in the rat was negative for carcinogenicity. A total of 8 mouse oncogenicity studies have been conducted in several strains of mice. None of the mouse studies were considered by the Agency, however, to be adequate for a cancer risk assessment. Thus, a ninth study is in progress.

6. *Animal metabolism.* The metabolism of lindane has been thoroughly investigated. Lindane does not appear to bioaccumulate in tissues. Lindane is rapidly absorbed and metabolized. The metabolism of lindane occurs via several different pathways. Major routes of metabolism include stepwise elimination of chlorines and conjuations with sulfates and glucuronides. Another pathway is via the formation of mercapurates.

7. *Metabolite toxicology.* Dietary residues are comprised of lindane and a variety of metabolites. The dietary residues are qualitatively the same as those formed in the rat and have thus been bioassayed in the available toxicity studies. These metabolites are not considered to present a significant toxicological risk.

8. *Endocrine disruption.* An evaluation of the potential effects on the endocrine systems of mammals has not been done. Reproductive effects of lindane are observed only at dose levels higher than those causing other forms of toxicity.

C. Aggregate Exposure

1. *Dietary exposure.—Food.* Estimates dietary exposure from the proposed uses would account for approximately 1% or less of the reference dose (RfD). The available data do not indicate any evidence of significant toxicity from a 1–day or single event exposure by the oral route. The only crop use for lindane at this time is seed treatment which results in extremely low dietary exposure. Thus an acute dietary risk assessment is not necessary.

2. *Drinking water.* Studies have shown that lindane will not move into ground water; therefore water has not been included in the dietary risk assessment.

3. *Non-dietary/non-occupational exposure.* There are very few remaining registered uses of lindane and the potential for non-occupational non-dietary exposure to the general population is negligible. As a seed treatment, lindane is limited to a small number of crops with extremely limited market share. The treated seed is either planted immediately, or stored in areas with limited access to the general public prior to sale and shipment to the user. Exposure is basically limited to occupational scenarios, i.e., application to seed and planting treated seed.

D. Cumulative Effects

EPA is required to consider the potential for cumulative effects of lindane and other substances that have a common mechanism of toxicity. EPA consideration of a common mechanism of toxicity is not appropriate at this time since EPA does not have information to indicate that toxic effects produced by lindane would be cumulative with those of any other chemical compounds; thus only the potential risks of lindane are considered in this exposure assessment.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions described and based on the completeness and reliability of the toxicity data, the aggregate exposure to lindane will utilize less than 1% of the RfD for the U.S population. EPA generally has no concern for exposures below 100% of the RfD. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, there is a reasonable certainty that no harm will result from aggregate exposure to residues of lindane, including all anticipated dietary exposure and all other non-occupational exposures.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of lindane, EPA considers data from developmental toxicity studies in the rat and rabbit and the 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to effects on the reproductive capacity of males and females exposed to the pesticide. Developmental toxicity was not observed in toxicity studies using rats and rabbits. In these studies, the rat maternal NOAEL was 5 mg/kg/day and developmental NOAEL was 10 mg/kg/day. The parental and developmental NOAELs for the rabbit were greater than 20 mg/kg/day. In a 2-generation reproduction study in rats, the NOAEL for reproductive and developmental toxicity was 2 mg/kg/day. Section 408 of the FFDCA provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base. Based on the current toxicological data requirements, the data base relative to prenatal and postnatal effects for children is complete and an additional uncertainty factor is not warranted. Therefore, at this time, the RfD of 0.0047 mg/kg/bwt/day is appropriate for assessing aggregate risk to infants and children.

F. International Tolerances

Acceptable daily intake for lindane is 0.008 mg/kg/bwt. Codex Maximum Residue Levels (MRLs) have been set for several commodities for which tolerances have previously been proposed. In all cases, these MRLs are equal to or greater than the requested tolerances. The Canadian MRL for lindane in canola products is 0.1 ppm, i.e. negligible.

2. International Specialty Products

PP 9E6010

EPA has received a pesticide petition [PP 9E6010] from International Specialty Products, 1361 Alps Road, Wayne, NJ 07470, proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for N-(n-octyl)-2-pyrrolidone (Agsolex 8) in or on the RACs soybeans, soybean forage, soybean fodder and soybean hay when used as an inert ingredient (solvent) in seed treatment applied at a maximum rate of 3 grams/acre. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

The Agency does not generally require residue chemistry data or environmental fate data to rule on the exemption from the requirements of a tolerance for an inert ingredient. However, relevant dietary residue modeling has been completed on N-(n-octyl)-2-pyrrolidone and is discussed in the appropriate section below.

B. Toxicological Profile

1. *Acute toxicity.* In a battery of acute studies, N-(n-octyl)-2-pyrrolidone has a low order of mammalian toxicity by oral, dermal and inhalation exposure routes. It is a skin and eye irritant in rabbits and a dermal sensitizer in guinea pigs. However, these acute irritation and sensitization data are not relevant for oral exposures. Therefore, no special susceptibility is anticipated from minor dietary oral exposures to N-(n-octyl)-2-pyrrolidone.

i. *Acute oral toxicity in rats.* N-(n-octyl)-2-pyrrolidone was administered by gavage to groups of five male and female rats (Wistar strain albino) at graded doses of 0.63-5.00 g/kg. Mortality and clinical observations, including signs of toxicity and pharmacological effects were conducted over a 14–day period. The acute oral LD_{50} for N-(n-octyl)-2-pyrrolidone was found to be 2.05 g/kg bodyweight, placing it in Category III for acute oral toxicity.

ii. *Primary ocular irritation in rabbits.* Undiluted N-(n-octyl)-2-pyrrolidone (i.e., as sold) was intra-ocularly applied once to each of nine New Zealand white rabbits at a volume of 0.1 milliliter (mL). An additional nine animals received a single application of a 2% aqueous suspension of N-(n-octyl)-2-pyrrolidone. In both assays, the eyes of six animals remained unwashed for 24 hours while the eyes of the remaining three animals were washed 30 seconds after instillation of the test materials.

Ocular irritations were evaluated at 24, 48, and 72 hours following instillation of test material. Additional readings were made at 4, 7, 14, and 21 days in the assay with undiluted N-(n-octyl)-2-pyrrolidone. The eyes were scored for corneal opacity, iritis, conjunctivitis and other effects.

The results indicate that N-(n-octyl)-2-pyrrolidone was extremely irritating when tested as sold (i.e., undiluted), with wash procedures reducing the severity of the irritation observed. The 2% aqueous suspension was nonirritating both with and without washout procedures. Undiluted N-(n-octyl)-2-pyrrolidone is considered extremely irritating, placing it in category I or II for eye irritation. However, the 2% aqueous suspension was nonirritating both with or without washout procedures, placing it in Category IV for eye irritation.

iii. *Primary dermal irritation in rabbits.* The backs of six New Zealand white rabbits were closely clipped and the skin on the right side was abraded by making longitudinal epidermal incisions. The skin on the left side was left intact. A single application of 0.5 mL of N-(n-octyl)-2-pyrrolidone, in commercially available form, was made to each test site. In a second assay, an additional six rabbits received single applications of a 2% aqueous suspension of N-(n-octyl)-2-pyrrolidone.

In both assays, the wrapping and compound were removed at 24 hours and the sites scored at 24 and 72 hours for erythema and edema using the Draize scale. The mean scores at 24 and 72 hours were averaged to yield a Primary Irritation Index of 7.45 for N-(n-octyl)-2-pyrrolidone, when tested as sold, and 0.50 when tested as a 2% gravimetric aqueous suspension. N-(n-octyl)-2-pyrrolidone, when tested as commercially available, is therefore, considered to be extremely irritating to rabbit skin, and is minimally irritating as a 2% suspension. N-(n-octyl)-2-pyrrolidone, as sold, will therefore, be placed in Category I or II for skin irritation. However, the 2% aqueous suspension was only minimally irritating, placing it in Category II or III for skin irritation.

iv. *Acute dermal toxicity in rabbits.* Six New Zealand white rabbits each received a single dermal application of undiluted N-(n-octyl)-2-pyrrolidone at a dose level of 2 g/kg bodyweight. The skin of three animals was abraded, while the remaining animals' skin remained intact. Test sites were occluded for 24 hours at which time the occlusive wrap and any remaining test article were removed. Animals were observed for clinical signs and/or pharmacologic activity 1, 3, 6, and 24 hours after treatment and daily thereafter for a total of 14 days. On day 14, gross necropsy was performed on all animals. There was no mortality at the limit dose of 2 g/kg. The skin at the test sites showed crust formation, scaling and scarring. At necropsy, no gross internal changes and no deviations from normal were observed in any of the animals.

The acute dermal LD_{50} for N-(n-octyl)-2-pyrrolidone when tested undiluted (i.e., as sold) is greater than 2 g/kg body weight, placing it in Category III for acute dermal toxicity.

v. *D.O.T. corrosivity.* Six New Zealand white rabbits each received a single dermal application of 0.5 ml of undiluted N-(n-octyl)-2-pyrrolidone on one intact test site. The test site was occluded for 4 hours at which time the occlusive wrap and any remaining material were removed. Animals were observed for erythema, edema and other effects at 4 and 48 hours and 7–days after application. Crust formation was observed in five of the six animals.

Therefore, N-(n-octyl)-2-pyrrolidone when tested as sold, is corrosive to the skin of rabbits under conditions of this test.

vi. *Guinea pig sensitization study.* Twenty female albino guinea pigs received intradermal injections of 0.05% v/v N-(n-octyl)-2-pyrrolidone in both water and in freund's complete adjuvant (FCA) as well as FCA in water alone. One week after the injections the same interscapular area was covered occlusively for 48 hours with a patch saturated with 30%, v/v N-(n-octyl)-2-pyrrolidone in distilled water. During this induction phase, 10 control animals were treated similarly with the exception that the test material was omitted from the injections and topical applications.

Two weeks after the induction period, both the test and control animals were challenged topically using a patch saturated in 0.2 mL N-(n-octyl)-2-pyrrolidone, 10% v/v in distilled water applied to an anterior site on the flank and N-(n-octyl)-2-pyrrolidone, 5% v/v in distilled water applied in a similar manner to a posterior site. The patches were sealed to the flank covered for 24 hours. The challenge sites were evaluated at 24, 48, and 72 hours after patch removal. N-(n-octyl)-2-pyrrolidone produced evidence of delayed contact hypersensitivity in 2 of the 20 test animals.

vii. *Clinical studies.* Clinical exposure studies including phototoxicity, photoallergenicity and comedogenicity were conducted with N-(n-octyl)-2-pyrrolidone. N-(n-octyl)-2-pyrrolidone did not induce contact dermal phototoxic response, contact dermal photoallergy or contact dermal sensitization in human subjects under the exposure conditions of these tests.

viii. *Phototoxicity.* Each of 10 human subjects, all female, received 0.2 mL of a 1% suspension of test material in tap water on both volar forearms. Following a 24–hour exposure period under occlusive wrapping, the patches were removed and the sites scored for erythema and edema. Immediately following scoring one arm was irradiated with UV-A light. Test sites were scored immediately after irradiation and again at 24 and 48 hours. The nonirradiated arm served as a control.

No reactions were exhibited on either the irradiated or nonirradiated sites. N-(n-octyl)-2-pyrrolidone did not induce contact dermal phototoxic response in human subjects under the conditions of this test.

ix. *Photoallergy.* Each of 25 human subjects, 6 male and 19 females, received 0.2 mL of a 1% suspension of test material in tap water on both volar forearms. Following a 24-hour exposure period under occlusive wrapping, the patches were removed and the sites scored for erythema and edema. Immediately after scoring one arm was irradiated with both ultraviolet (UV-A) and UV-B light. The UV-A exposure period was 15 minutes; the UV-B exposure period was adjusted based on each subject's skin type. Sites were scored immediately following irradiation. A series of six induction patches was applied twice a week for 3 weeks.

Following a 2–week rest period, challenge patches were applied to virgin sites on each forearm. After a 24–hour exposure period, both sites were scored and the previously designated arm was irradiated. The sites were scored immediately after irradiation and again at 24 and 48 hours.

During the induction phase, 5 subjects exhibited a faint, minimal reaction on the irradiated contact site and one subject exhibited erythema and/or slight edema on the nonirradiated site. No reactions were exhibited at the challenge phase. N-(n-octyl)-2-pyrrolidone did not induce contact dermal photoallergy nor contact dermal sensitization in human subjects under the conditions of this test.

x. *Comedogenicity in rabbits.* The comedogenicity potential of N-(n-octyl)-2-pyrrolidone was assessed in New Zealand white rabbits. The external ear canal of six animals received dermal applications of 0.5 ml of 2% N-(n-octyl)-2-pyrrolidone in distilled water for 5 days a week, over a 4–week period. This was followed by microscopic examinations of the treated tissues.

Minimal to moderate local irritation was noted in all test animals characterized by redness, eschar, dryness and flaking. A mild to moderate comedogenic response was observed in 4 of the treated rabbits each receiving a comedogenic grade of 1.0 on a scale of 0 to 5. The remaining test animals received a grade of 0 (negative), yielding a mean comedogenic grade of 0.67. Under the conditions of this study, a mean comedogenic grade of > 2.0 in rabbits is considered to indicate a potential for comedogenesis in humans.

Therefore, N-(n-octyl)-2-pyrrolidone is not expected to be comedogenic in humans. There were no neoplastic microscopic findings in this study.

2. *Genotoxicity— Ames Salmonella/* microsome/reverse mutation assay: N-(n-octyl)-2-pyrrolidone and potential metabolite(s) formed as a result of liver S9 fraction activation was tested, as sold, in the Ames Assay with *Salmonella typhimurium* tester strains TA 1,535, TA 1,537, TA 1,538, TA 98 and TA 100. The entire 5-strain assay, with and without rat liver S9 fraction preparation, was performed twice.

In both experiments, with and without metabolic activation, there was no increase in the incidence of histidine protrotrophic mutants, relative to the negative controls. Therefore, N-(n-octyl)-2-pyrrolidone when tested as sold, using the *Ames Salmonella* assay system, is not a mutagen.

i. *Mouse micronucleus test in vivo.* N-(n-octyl)-2-pyrrolidone was tested for clastogenic (chromosome breaks) and aneugenic (numerical aberrations) effects on mouse bone marrow cells *in vivo.* Mice were administered N-(n-octyl)-2-pyrrolidone by intragastric gavage at a dose level of 1,720 mg/kg, based on results of a preliminary toxicity test. Negative controls receiving dosing vehicle alone and positive control (mitomycin C, 12 mg/kg) were also included. Bone marrow smears were obtained at 24, 48, and 72 hours post-dosing and examined for the presence of micronuclei in polychromatic and normochromatic erythrocytes. The ratio of polychromatic to normochromatic erythrocytes (P/N ratio) was also assessed.

Mice treated with N-(n-octyl)-2-pyrrolidone showed no significant increase in frequency of micronucleated polychromatic erythrocytes, and no significant decrease in P/N ratio at any of the sampling times. N-(n-octyl)-2-pyrrolidone is not mutagenic in this *in vivo* cytogenetic test system. There was no evidence of clastogenic or aneugenic effects in this test.

ii. *Mouse lymphoma mutagenesis assay.* In this assay, N-(n-octyl)-2-pyrrolidone was tested for its potential to induce mutations at the thymidine kinase (TK) locus of L5128Y TK+/- mouse lymphoma cells both in the presence and absence of exogenous metabolic activation. Based on the results of a range finding test N-(n-octyl)-2-pyrrolidone was tested at doses ranging 0.005 to 100 ul/ml which produced varying degrees of reduction in cell growth.

The results of this assay indicate that N-(n-octyl)-2-pyrrolidone did not produce mutagenic response in cultures treated in both the absence and presence of exogenous activation with Aroclor-induced rat liver S-9 preparation.

3. *Reproductive and developmental toxicity.* N-(n-octyl)-2-pyrrolidone was administered orally by gavage, once daily, to pregnant female Wistar rats from day 6 through day 15 post coitum, at dosages of 50, 200, or 800 mg/kg/body weight/day in order to assess the effects on embryonic and fetal development.

At 800 mg/kg, one dam died after the 7th and one after the 10th test article administration. The females of this group had marked treatment-related clinical signs, reduced food consumption, slight body weight loss during the first day of dosing, and reduced corrected body weight gain. The mean fetal body weight was reduced at this dosage, combined with a delay in skeletal ossification.

At 50 or 200 mg/kg, no treatment-related effects on maternal or fetal parameters were observed.

Based on these findings, the NOAEL for the maternal and fetal parameters was determined to be 200 mg/kg/bwt/day. N-(n-octyl)-2-pyrrolidone is not teratogenic to Wistar rats even at the maternally toxic dose of 800 mg/kg/bwt/day. Fetal body weight loss and delays in skeletal ossification at 800 mg/kg/day are not considered evidence of developmental toxicity since they occurred in the presence of severe maternal toxicity.

4. *Subchronic toxicity—*i. *Twenty–eight day oral toxicity in rats.* N-(n-octyl)-2-pyrrolidone, formulated as a solution in corn oil, was administered daily to rats (5 male, 5 female per dosage level) by intragastric intubation at dose levels of 5, 55 or 320 mg/kg, for 28 consecutive days. Similarly, control animals received corn oil (5 ml/kg/day).

At the high dose level (320 mg/kg/day), specific changes in general health, bwt gain, hematological and biochemical parameters were recorded. Statistically significant observations noted included:

ii. Lower body weight gains - females (week 3).

iii. Lower packed cell volume (PCV) and red blood cell counts - males.

iv. Higher mean corpuscular hemoglobin concentration (MCHC)-males.

v. Higher glutamic-pyruvic transaminase levels-females.

In all other respects including food consumption, organ weights, macro and microscopic pathology, no treatment-related changes were noted at all the tested dose levels.

In this 28–day study, the NOAEL of N-(n-octyl)-2-pyrrolidone was determined to be 55 mg/kg/day.

5. *90–Day oral toxicity in dogs.* Groups of 4 male and 4 female beagle dogs were given N-(n-octyl)-2-pyrrolidone orally via capsule at dose levels of 30, 90, and 240 mg/kg/day, for 90 days. All animals were observed daily for mortality and clinical signs of toxicity. At euthanatization, all surviving animals were subjected to histological examinations.

Dose related neurological signs and bwt loss were observed at 90 and 240 mg/kg levels. At 90 and 240 mg/kg treatment-related changes in clinical pathological parameters were also observed. In addition, dose-related increases in both absolute and relative liver weights were observed in all dose groups but was statistically significant in only the 90 and 240 mg/kg/day groups. One female death occurred on day 42 in the 240 mg/kg group. No treatment-related toxicity or clinical signs were observed in the 30 mg/kg/day group. Thirty mg/kg/day was a clear NOAEL.

6. *90–Day dietary toxicity in rats.* Groups of 10 male and 10 female rats were given diets containing 0, 60, 600, or 10,000 ppm N-(n-octyl)-2-pyrrolidone for 90 days. The approximate mean daily intakes of N-(n-octyl)-2-pyrrolidone were calculated to be 0, 5.3, 53, or 686 mg/kg/bwt.

All animals were observed daily for clinical signs of toxicity. At euthanatization, all animals were necropsied and subjected to macroscopic and microscopic examinations.

Reduced weight gain, increased absolute and relative liver weights and mild liver hypertrophy were observed at 10,000 ppm (686 mg/kg/bwt). No

treatment-related effects were observed at 60, (5.3 mg/kg bw/day), and 600 (53 mg/kg/bwt/day) ppm.

The liver was identified as a target organ and 600 ppm (53 mg/kg/day) was a clear NOAEL.

N-(n-octyl)-2-pyrrolidone is used mostly in household and institutional cleaners, especially as a constituent of hard-surface cleaners. Consistent with this public use, N-(n-octyl)-2-pyrrolidone is readily biodegradable in various microbially active matrices. It is freely soluble in water and has a relatively high polarity. For most compounds, there is a direct correlation between tissue uptake and bioaccumulation, and simple physical organic parameters such as log P, molecular mass and water solubility (Davies and Dobbs, 1984; Veith et al., 1979; Zitko and Hutzinger, 1976). The low bioaccumulation potential of N-(n-octyl)-2-pyrrolidone indicates that it is unlikely to accumulate in endocrine tissues, or disrupt endocrine functions. The safety, low uptake and low bioaccumulation potential of pyrrolidones in biological systems has also been experimentally demonstrated, even in active human sperms (Goldstein et al., 1998). These data strongly demonstrate that N-(n-octyl)-2-pyrrolidone is not an endocrine disrupter, and does not have any physiologically disruptive effects on endocrine processes. Additionally, it does not share any mechanistic or chemical similarity with currently known or suspected chemicals or chemical classes being studied for endocrine effects.

Additionally, pyrrolidones are natural products of ornithine metabolism found in many edible plant tissues, including carrots and tobacco. No physiologically disruptive effects have been reported from dietary exposures to these plants.

C. Aggregate Exposure

1. *Dietary exposure.* Residue data are generally not required for inert ingredient exemptions from a tolerance. Specific residue data for the inert ingredient N-(n-octyl)-2-pyrrolidone when used as a seed treatment are not available. Residue data are available to EPA for a number of pesticide products when applied as a seed treatment to soybeans at rates equal to or greater than 3 grams per acre. These data show that residues are non-detectable (< 0.01ppm) in soybeans, soybean forage, soybean fodder and soybean hay at harvest.

For the purpose of determining the potential dietary exposure from the proposed use of N-(n-octyl)-2-pyrrolidone as an inert ingredient in pesticides applied as a soybean seed treatment, an ultra conservative assumption was made that residues in soybean products would be 0.66 ppm. This assumption is based upon a maximum of 3 grams per acre of N-(n-octyl)-2-pyrrolidone being applied per acre as a seed treatment and resulting crop yields of 35 bushels of soybeans per acre (2,100 pounds of soybeans yield per acre based on an average weight of 60 pounds per bushel). Further, the soybean seed yield per acre is equal to approximately 36% of the total weight of soybean products at harvest per acre (soybeans equal 36%; the remaining 64% is soybean fodder, stems and roots). It is further assumed that the 3 grams of N-(n-octyl)-2-pyrrolidone is not degraded at all during the growth of the soybeans crop but instead at harvest is equally distributed in all plant parts at harvest.

N-(n-octyl)-2-pyrrolidone has been exempted from the requirement of a tolerance when used as an inert ingredient in certain pesticide products applied to defoliate cotton. No specific residue data are available for N-(n-octyl)-2-pyrrolidone in cotton products. For the purpose of this dietary assessment, the ultra conservative assumption was made that residues of N-(n-octyl)-2-pyrrolidone in cotton products would be 2x the highest residue tolerance established by EPA for any pesticide in cotton products. This results in dietary calculations based upon 70 ppm in cotton seed and cotton seed products including cotton seed oil (based on a 35 ppm tolerance for dalapon in cotton seed) and 200 ppm in cotton gin byproducts (based on a 100 ppm tolerance for glyphosate in cotton gin byproducts). Also, for the purposes of this assessment, the ultra conservative assumption was made that eggs, milk, meat, fat and meat byproducts would contain 0.5 ppm residues of N-(n-octyl)-2-pyrrolidone.

2. *Chronic dietary exposure assessment for N-(n-octyl)-2-pyrrolidone.* Chronic dietary exposure was assessed for the U.S. population and population sub-groups utilizing the Dietary Exposure Evaluation Model (DEEM™) from Novigen Sciences, Inc. Food consumption information (soybean food items only) was taken from USDA's 1994-96 Continuing Survey of Food Intake by Individuals (CSFII).

Exposure was compared to a chronic reference dose (RfD) of 0.03 mg/kg/bwt/day which was based on a no observable adverse effect level (NOAEL) of 30 mg/kg/bwt obtained from a 90–day feeding study in dogs and a 1,000-fold safety factor.

Results indicate that exposure for the overall U.S. population was 21.4% the chronic RfD for the soybean proposed plus the current use on cotton. The most sensitive subpopulation (children 1-6 years old) results in a chronic that uses 68% of the chronic RfD. This assessment is extremely conservative since residue reduction probably occurs with exposure of the treated seed to the environment as well as processing (not taken into account in this assessment) and market shares for both crops were assumed to be 100%.

3. *Acute dietary exposure assessment for N-(n-octyl)-2-pyrrolidone.* Using the same exposure estimates discussed above for soybean products results in an ultra conservative acute exposure for the overall U.S. population of 37.74% of the acute RfD for the proposed use on soybeans plus the current uses on cotton. The most sensitive subpopulation (children 1-6 years old) had an exposure of 52.85% of the acute RfD. These calculations were conducted at the 99.9% level.

i. *Food.* See exposure estimate discussed above.

ii. *Drinking water.* Based on its very low application rate, i.e., < 3 grams/acre, as well as the environmental fate studies, N-(n-octyl)-2-pyrrolidone would not be expected to persist in the environment, nor contaminate drinking water supplies.

4. *Non-dietary exposure.* N-(n-octyl)-2-pyrrolidone may also be used in certain cleaners, specifically hard-surface cleaners. Annual volumes market volume for this use is modest and is not expected to significantly contribute to the exposure profile for N-(n-octyl)-2-pyrrolidone.

D. Cumulative Effects

While the Agency has some information in its files that may be helpful in determining whether chemicals share a common mechanism of toxicity with any other substances, EPA does not at this time have the methodology to resolve the scientific issues concerning common mechanism of toxicity in a meaningful way.

E. Safety Determination

1. *U.S. population.* As per the details in the Dietary Residue Exposure System analysis, even the most sensitive population, children, 1- 6 years old, would be exposed to considerably less than 100% of the RfD even using the ultra conservative assumptions discussed above.

2. *Infants and children.* No developmental, embryotoxic, or teratogenic effects have been associated with N-(n-octyl)-2-pyrrolidone.

F. International Tolerances

The Applicant is not aware of any international tolerance or codes of Maximum Residue Limits (MRLs) for N-(n-octyl)-2-pyrrolidone on any crop or livestock commodities.

3. Interregional Research Project Number 4 and The Rohm and Haas Company

PP 7E4862, 7E4866, 8E4939, 7E4877, 7E4861, 4E4302 PP 1F4030, 2F4155, and 9F3812

EPA has received pesticide petitions [PP 7E4862, 7E4866, 8E4939, 7E4877, 7E4861, and 4E4302] from the Interregional Research Project Number 4 (IR-4), New Jersey Agricultural Experiment Station, P. O. Box 231 Rutgers University, New Brunswick, NJ 08903. EPA has also received pesticide petitions [PP 1F4030, 2F4155, and 9F3812] from the Rohm and Haas Company, 100 Independence Mall West, Philadelphia, PA 19106-2399. The petitions propose, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of the fungicide, myclobutanil [alpha-butyl-alpha-(4-chlorophenyl)-1H-1,2,4-triazole)-1-propanenitrile], and it's metabolite, alpha -(3-hydroxybutyl)-alpha-(4-chloro-phenyl)-1H-1,2,4-triazole-1-propanenitrile (free and bound) in or on the RAC commodity at the tolerance level ppm as follows:

1. *PP 7E4862.* Proposes the establishment of a tolerance for asparagus at 0.02 ppm.

2. *PP 7E4866.* Proposes the establishment of a tolerance for caneberry at 1.0 ppm.

3. *PP 8E4939.* Proposes the establishment of tolerances for currant at 3.0 ppm and gooseberry at 2.0 ppm.

4. *PP 7E4877.* Proposes the establishment of a tolerance for mint at 3.0 ppm.

5. *PP 7E4861.* Proposes the establishment of a tolerance for snap bean at 1.0 ppm.

6. *PP 4E4302.* Proposes the establishment of a tolerance for strawberry at 0.5 ppm.

7. *PP 1F4030.* Proposes the establishment of tolerances for tomato at 0.3 ppm and processed fractions for the following commodities: tomato pomace, wet at 3.0 ppm; tomato pomace, dry at 5.0 ppm; tomato juice at 0.3 ppm; tomato puree at 0.6 ppm; tomato paste at 1.2 ppm; tomato paste juice at 0.6 ppm; and tomato catsup at 0.6 ppm.

8. *PP 2F4155.* Proposes the establishment of tolerances for cucurbits at 0.5 ppm and inadvertent residues at 0.03 ppm for the following rotational crop group: root and tuber vegetables, leaves of root and tuber vegetables, leafy vegetables (except brassica vegetables), brassica (cole) leafy vegetables, legume vegetables (except snapbeans), foliage of legume vegetable group, fruiting vegetables (except cucurbits), cereal grains-commodities; cereal grains-forage, fodder, and straw; and nongrass animal feeds (forage, fodder, straw, and hay).

9. *PP 9F3812.* Proposes the establishment of a tolerance for pome fruit at 0.5 ppm.

EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions.

A. Residue Chemistry

1. *Metabolism in plants and animals*—i. *Plants.* Based on the three metabolism studies in wheat, apples, and grapes, which indicate a similar metabolic route for crops in three different crop groups, Rohm and Haas Company (the registrant) concludes that the nature of the residue is adequately understood for the purpose of these tolerances.

ii. *Animals.* The nature of the residue in animals is adequately understood. The residues of concern in animal commodities, except milk, are myclobutanil (RH-3866) and its metabolite RH-9090 (free). The residues of concern in milk are myclobutanil, and its metabolites RH-9090 (free and bound) and alpha-(4-chlorophenyl)-alpha-(3,4-dihydroxybutyl)-1H-1,2,4-triazole-1-propanenitrile; RH-80,294).

2. *Analytical method.* An adequate enforcement method is available to enforce the established and proposed tolerances. Quantitation is by gas-liquid chromatography (GLC) using a nitrogen/phosphorous (NP) detector for RH-3866 and an electron capture (^{63}Ni) for residues measured as the alcohol metabolite (RH-9090). Myclobutanil residues in animal commodities are measured in essentially the same manner with the additional diol metabolite in milk.

3. *Magnitude of residues.* Field residue trials were conducted with wettable powder formulations of myclobutanil in geographically representative regions of the United States. The registrant concludes that the results from these studies support the proposed tolerances, and clearly indicate that the RH-9090 metabolite is a minor contributor to the total residue.

B. Toxicological Profile

1. *Acute toxicity.* According to the Rohm and Haas Company, myclobutanil wettable powder formulations are essentially non-toxic after administration by the oral, dermal and respiratory routes moderately irritating to the eyes, and non-skin sensitizers. Of these test results, ocular irritation at Toxicity Category III (Caution) was shown to be the worst case acute toxicity.

2. *Genotoxicity.* Myclobutanil was negative (non-mutagenic) in an Ames assay with and without hepatic enzyme activation. Myclobutanil was negative in a hypoxanthine guanine phosphoribosyl transferase (HGPRT) gene mutation assay using Chinese hamster ovary (CHO) cells in culture when tested with and without hepatic enzyme activation. In isolated rat hepatocytes, myclobutanil did not induce unscheduled DNA synthesis (UDS) or repair. Myclobutanil did not produce chromosome effects *in vivo* using mouse bone marrow cells or *in vitro* using CHO cells. On the basis of the results from this battery of tests, it is concluded that myclobutanil is not mutagenic or genotoxic.

3. *Reproductive and developmental toxicity.* In the developmental study in rats, the maternal (systemic) no observed adverse effect level (NOAEL) was 93.8 mg/kg/day based on rough hair coat, and salivation at the lowest observed adverse effect level (LOAEL) of 312.6 mg/kg/day. The developmental (fetal) NOAEL was 93.8 mg/kg/day based on incidences of 14th rudimentary and 7th cervical ribs at the LOAEL of 312.6 mg/kg/day.

In the developmental study in rabbits, the maternal (systemic) NOAEL was 60 mg/kg/day based on reduced weight gain, clinical signs of toxicity, and abortions at the LOAEL of 200 mg/kg/day. The developmental (fetal) NOAEL was 60 mg/kg/day based on increases in number of resorptions, decreases in litter size, and a decrease in the viability index at the LOAEL of 200 mg/kg/day.

In the 2-generation reproduction toxicity study in rats, the maternal (systemic) NOAEL was 2.5 mg/kg/day based on increased liver weights and liver cell hypertrophy at the LOAEL of 10 mg/kg/day. The developmental (pup) NOAEL was 10 mg/kg/day based on decreased pup body weight during lactation at the LOAEL of 50 mg/kg/day. The reproductive (parental) NOAEL was 10 mg/kg/day, based on an increased incidence of stillborns, and atrophy of the testes, epididymides, and prostate at the LOAEL of 50 mg/kg/day.

4. *Subchronic toxicity*—i. Subchronic feeding study in rats was conducted for 13 weeks. The NOAEL was determined to be 1,000 ppm (52 and 66 mg/kg/day in males and females, respectively), and the LOAEL was 3,000 ppm based on increased liver and kidney weights, hypertrophy and necrosis in the liver, pigmentation in convoluted kidney tubules, and vacuolated adrenal cortex.

ii. A subchronic feeding study in mice was conducted for 13 weeks. The NOAEL was determined to be 300 ppm (43 and 66 mg/kg/day in males and females, respectively), and the LOAEL was 1,000 ppm based on increases in liver weight and clinical chemistry parameters, hypertrophy or necrosis and inflammation in the liver, and cytoplasmic eosinophilia and/or hypertrophy of the zona fasciculata cells of the adrenal gland.

iii. A subchronic feeding study in dogs conducted for 13 weeks resulted in a NOAEL of 10 ppm (0.34 mg/kg/day) in males and 200 ppm (8 mg/kg/day) in females. At the LOAEL of 200 ppm and above, hepatocellular centrilobular or midzonal hypertrophy was observed in males. At 800 ppm and above, the same effect was observed in females. In addition, increases in alkaline phosphatase, absolute liver weights in both sexes, and relative liver weights in males were observed. At 1,600 ppm, all the previous effects plus increases in relative liver weights in females, a suggestion of mild red cell destruction or mild anemia, and decreases in body weight and food consumption (possibly related to palatability) were observed.

iv. A 24.99% active ingredient (ai) emulsifiable concentrate (2EC) formulation was dermally applied to rats at 1, 10, or 100 mg/ai/kg/day and a 40% ai wettable powder (40 WP) formulation was dermally applied to rats at 100 mg/ ai/kg/day. Both formulations were applied once per day for a total of 19-20 treatments over a 4–week period. Application of the 2EC formulation resulted in a NOAEL for systemic effects of > 100 mg/ai/kg/day, and a NOAEL and LOAEL for skin irritation of 10 and 100 mg ai/kg/day, respectively. The 40 WP formulation at 100 mg/ai/kg/day the highest dose tested (HDT) did not produce any systemic effects and only produced minor skin irritation.

5. *Chronic toxicity*—i. A 1–year feeding study in dogs resulted in hepatocellular hypertrophy, increases in liver weights, "ballooned" hepatocytes, and increases in alkaline phosphatase, serum glutamic pyruvic transaminase (SGPT) and GGT, and possible slight hematological effects. The NOAEL and LOAEL were 100 ppm (3.1 and 3.8 mg/kg/day for males and females, respectively) and 400 ppm (14.3 and 15.7 mg/kg/day for males and females, respectively).

ii. A 24–month chronic/carcinogenicity study in male and female mice was conducted at 0, 20, 100, and 500 ppm myclobutanil, and a second 24–month chronic/carcinogenicity study was conducted in female mice at 0 and 2,000 ppm (394 mg/kg/day). No carcinogenic effects were observed in either study. The NOAEL was 100 ppm (13.7 and 16.5 mg/kg/day for males and females, respectively), and the LOAEL was 500 ppm (70 and 85 mg/kg/day for males and females, respectively) based on increased hepatic mixed-function oxidase (MFO) activity, increased SGPT (males only), increased absolute and relative liver weights, increased incidences and severity of centrilobular hepatocytic hypertrophy, Kupffer cell pigmentation, periportal punctate vacuolation, individual hepatocellular necrosis (males only), and increased incidences of focal hepatocellular alterations and multifocal hepatocellular vacuolation. At 2,000 ppm, these effects, and decreased body weight and body weight gain, and cytoplasmic eosinophilia and hypertrophy of the cells of the zona fasciculata area of the adrenal cortex were observed.

iii. A 24–month chronic/carcinogenicity study in male and female rats was conducted at 0, 25/35/50 (2 weeks/2 weeks/to termination), 100/140/200, and 400/560/800 ppm myclobutanil, and a second 24–month chronic/carcinogenicity was conducted in male and female rats at 0 and 2,500 ppm (125 mg/kg/day). No carcinogenic effects were observed in either study. The NOAEL and LOAEL were 50 ppm (2.5 mg/kg/day) and 200 ppm (10 mg/kg/day), respectively, based on a decrease in testicular weight and increase in testicular atrophy. At 2,500 ppm, these effects, and increases in the incidences of centrilobular to midzonal hepatocellular enlargement and vacuolization in the liver of both sexes, increases in bilateral aspermatogenesis in the testes, increases in the incidence of hypospermia and cellular debris in the epididymides, and increased incidence of arteritis/periarteritis in the testes were observed. The chronic population adjusted dose (cPAD) of 0.025 mg/kg/day was established based on the chronic feeding study in rats with a NOAEL of 2.5 mg/kg/day and an uncertainty factor of 100.

6. *Animal metabolism.* The absorption, distribution, excretion, and metabolism of myclobutanil in-rats was investigated. Following oral administration, myclobutanil was completely and rapidly absorbed, extensively metabolized to at least seven major metabolites, and rapidly excreted evenly distributed between urine and feces. Myclobutanil did not accumulate in tissues.

7. *Metabolite toxicology.* Common metabolic pathways for myclobutanil have been identified in both plants (grapes, apples, wheat) and animals (rat, goat, hen). The metabolic pathway common to both plants and animals involves oxidation of the n-butyl alkyl side-chain in the 3- and 4- positions, oxidation of the cyano- group, and subsequent conjugation. Extensive degradation and elimination of polar metabolites occurs in animals such that residues are unlikely to accumulate in humans or animals exposed to these residues through the diet.

8. *Endocrine disruption.* The mammalian endocrine system includes estrogen and androgens as well as other hormonal systems. Myclobutanil is not known to interfere with reproductive hormones; thus, the registrant believes that myclobutanil should not be considered to be estrogenic or androgenic. The Rohm and Haas Company is not aware of any instances of proven or alleged adverse reproductive or developmental effects to people, domestic animals, or wildlife as a result of exposure to myclobutanil or its residues.

C. Aggregate Exposure

1. *Dietary (food) exposure.* Permanent tolerances have been established (40 CFR 180.443) for the residues of myclobutanil in or on a variety of RAC including almond nutmeat at 0.1 ppm, almond hulls at 2.0 ppm, apples at 0.5 ppm, apple pomace, wet/dry at 5.0 ppm, banana whole (Post-H) at 4.0 ppm, stone fruits except cherry at 2.0 ppm, cherries, sweet/sour at 5.0 ppm, plums, dried (prunes) at 8.0 ppm, cotton seed at 0.02 ppm, grapes at 1.0 ppm, grape pomace, wet/dry at 10.0 ppm, raisins at 10.0 ppm, and raisin waste at 25.0 ppm. In addition, permanent tolerances have been established for meat and meat byproducts including cattle, fat at 0.05 ppm, cattle, liver at 1.0 ppm, cattle, meat at 0.1 ppm, cattle, meat byproducts at 0.2 ppm, poultry, fat at 0.02 ppm, poultry, meat at 0.02 ppm, poultry, meat byproducts at 0.02 ppm, eggs at 0.02 ppm, and milk at 0.2 ppm.

Risk assessments were conducted by Rohm and Haas Company to assess

dietary exposures and risks from myclobutanil as follows:

i. *Acute exposure and risk.* No acute endpoint was identified for myclobutanil, and no acute risk assessment is required.

ii. *Chronic exposure and risk.* Risk associated with chronic dietary exposure from myclobutanil was assessed on two levels using two dietary exposure models. In the first assessment, tolerance level residues were assumed (except bananas in which 0.8 ppm was used in the dietary risk assessment rather than the tolerance of 4.0 ppm on whole fruit, since residues in the pulp will not exceed 0.8 ppm), and, in the second assessment average field trial residues were used. Both assessments utilized percent of crop treated refinements. The Anticipated Residue Contribution (ARC) from all proposed and existing food uses of myclobutanil was assessed. Additional proposed food uses of myclobutanil not previously mentioned in this document include peppers, hops, and artichokes (IR-4 petitions for these crops will likely be submitted in 1999). The percent of crop values used in these assessments were 79% for grapes, 60% for apples, 47% for cherries, 40% for bananas, 22% for peaches, 8% for pears, 3% for plums, 1% for apricots, 1% for almonds, and 1% for cottonseed. Percent crop treated data were used for the above commodities in the chronic exposure assessment, but were not considered when calculating the dietary burden from which secondary residue tolerances in meat, milk and poultry were derived or for the proposed uses on tomatoes and tomato processed fractions, cucurbit vegetables, and all of the subject minor crops of this petition. For rotational crops, the assessments conservatively assumed the extreme worse-case that 100% of all plantable United States acreage contained crops with residues at the 0.03 ppm proposed tolerance level.

The cPAD used for the chronic dietary analysis is 0.025 mg/kg/day. Potential chronic exposure was estimated using NOVIGEN'S Dietary Exposure Evaluation Model (DEEM Version 5.31), which uses United States Department of Agricultural (USDA) food consumption data from the 1989-1992 survey. The existing and proposed myclobutanil tolerances, and average myclobutanil residues result in ARCs that are equivalent to the following percentages of the cPAD (assumes residues are present at tolerance levels and includes percent crop treated refinements): For the U.S. Population (48 contiguous states) subgroup, the percent cPAD utilized is 19.1%. For the most highly exposed population subgroup, children (1 to 6 years old), the percent cPAD utilized is 57.7%.

iii. *Drinking water.* There is no established Maximum Concentration Level (MCL) for residues of myclobutanil in drinking water. No drinking water health advisory levels have been established for myclobutanil. There is no entry for myclobutanil in the "Pesticides in Groundwater Database." Submitted environmental fate studies suggest that myclobutanil has low to moderate mobility potential in soil. Myclobutanil is stable to hydrolysis and soil photolysis, but does degrade photolytically in natural waters and soil. Field-trial soil dissipation studies had half-lives in the range of 50 to 400 days and indicated no significant downward movement of residues. Field trials showed myclobutanil degrades much more rapidly outdoors on foliage; the foliar decline on turf has a half-life of approximately 7 days.

The registrant believes that myclobutanil will not contaminate ground water or drinking water because of its adsorptive properties on soil, solubility in water, and degradation rate. Data from laboratory studies and field dissipation studies have been used in the PRZM/EXAMS computer model to predict the movement of myclobutanil. The model predicts that myclobutanil will not leach into ground water, even if heavy rainfall is simulated. The modeling predictions are consistent with the data from environmental studies in the laboratory and the results of actual field dissipation studies. Review of terrestrial field dissipation data indicates that myclobutanil did not leach into ground water in either sandy loam or coastal soil. Based on conducted studies to assess environmental risk, the registrant believes that significant exposure to residues of myclobutanil in drinking water is not anticipated.

2. *Non-dietary exposure.* Myclobutanil has no veterinary applications and is not approved for use in swimming pools. It is labeled for application to golf courses or other recreational areas, for use on ornamentals, and myclobutanil may be applied to residential lawns. However, this latter application represents less than 5% of myclobutanil's total non-dietary applications and is almost exclusively done by professional lawn care service companies. There are no indoor residential uses of myclobutanil; therefore, there is no indoor exposure to myclobutanil. Based on reasonable assumptions of exposure, the registrant does not anticipate significant exposure to residues of myclobutanil via non-dietary routes.

D. Cumulative Effects

The potential for cumulative effects of myclobutanil with other substances that have a common mechanism of toxicity was considered. The primary toxicological target organs for myclobutanil exposures are the rodent testes and liver. Myclobutanil can also produce phytotoxicity at high application rates. Myclobutanil belongs to the class of fungicide chemicals known as triazoles having demethylase inhibition capability. There are data available which suggest that there is a biochemical target site in fungal cell wall synthesis for myclobutanil and other fungicides in this class. However, there are no data which demonstrate that fungicides of this class have a common mode of action for exaggerated-dose phytotoxicity in plants, nor is there evidence that the toxicological effects produced by fungicides of this class in animals have a common mode of action.

EPA does not have, at this time, available data to determine whether myclobutanil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions described above and taking into account the completeness and reliability of the toxicity data, the percentage of the cPAD that will be utilized by dietary (food only) exposure to residues of myclobutanil from existing, pending, and proposed tolerances is 19.1% and 3.2% for the U.S. population assuming residues are present at their tolerance levels and average levels, respectively. The registrant believes that aggregate exposure (food, water, residential) is not expected to exceed 100% of the cPAD. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The Rohm and Haas Company concludes that there is a reasonable certainty that no harm will result from aggregate exposure to myclobutanil residues to the U.S. population.

2. *Infants and children—In general.* In assessing the potential for additional sensitivity of infants and children to residues of myclobutanil, data from developmental toxicity studies in the rat and rabbit, and 2-generation reproduction studies in the rat are considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

3. *Developmental toxicity studies*—i. *Rat.* In the developmental study in rats, the maternal (systemic) NOAEL was 93.8 mg/kg/day based on rough hair coat, and salivation at the LOAEL of 312.6 mg/kg/day. The developmental (fetal) NOAEL was 93.8 mg/kg/day based on incidences of 14th rudimentary and 7th cervical ribs at the LOAEL of 312.6 mg/kg/day.

ii. *Rabbit.* In the developmental toxicity study in rabbits, the maternal (systemic) NOAEL was 60 mg/kg/day, based on reduced weight gain, clinical signs of toxicity and abortions at the LOAEL of 200 mg/kg/day. The developmental (fetal) NOAEL was 60 mg/kg/day, based on increases in number of resorptions, decreases in litter size, and a decrease in the viability index at the LOAEL of 200 mg/kg/day.

iii. *Reproductive toxicity study.* In the 2-generation reproductive toxicity study in rats, the parental (systemic) NOAEL was 2.5 mg/kg/day, based on increased liver weights and liver cell hypertrophy at the LOAEL of 10 mg/kg/day. The developmental (pup) NOAEL was 10 mg/kg/day, based on decreased pup body weight during lactation at the LOAEL of 50 mg/kg/day. The reproductive NOAEL was 10 mg/kg/day, based on the increased incidences of stillborns, and atrophy of the testes, epididymides, and prostate at the LOAEL of 50 mg/kg/day.

iv. *Prenatal and postnatal sensitivity.* The prenatal and postnatal toxicology data base for myclobutanil is complete with respect to current toxicological data requirements. There is approximately a 25-fold difference between the developmental NOAEL of 60 mg/kg/day from the rabbit developmental toxicity study and the NOAEL of 2.5 mg/kg/day from the chronic rat feeding study which was the basis of the cPAD. It is further noted that in both the rabbit and rat developmental toxicity studies, the developmental NOAEL and maternal NOAEL are comparable (60 mg/kg/day for the rabbit and 93.8 mg/kg/day for the rat). In the rat reproduction study, the maternal NOAEL (2.5 mg/kg/day) was four times lower than the developmental (pup) and reproductive NOAELs (10 mg/kg/day). According to the registrant, these studies indicate that there is no additional sensitivity for infants and children in the absence of maternal toxicity for myclobutanil.

v. *Acute risk.* No acute dietary risk has been identified for myclobutanil.

vi. *Chronic risk.* Using the exposure assumptions described above, the exposure to myclobutanil from food will utilize 14.4% (nursing infants < 1–year old), and 40.9% (non-nursing infants < 1–year old) of the cPAD assuming residues are present at tolerance levels, and will utilize 3.0% (nursing infants < 1–year old), and 7.3% (non-nursing infants < 1–year old) of the cPAD assuming residues are present at their average field residue levels. The percent of the cPAD that will be used by the food exposure for children 1 to 6 years old is 57.7% and 8.0% assuming residues are present at tolerance levels and average field residue levels, respectively. The percent of the cPAD that will be used by the food exposure for children 7 to 12 years old is 28.5% and 4.5% assuming residues are present at tolerance levels and average field residue levels, respectively. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

2. *Non-dietary exposure.* Given the limited potential for exposure to myclobutanil from residential exposure, it is not expected that the aggregate exposure will exceed 100% of the cPAD. The registrant believes that there is a reasonable certainty that no harm will result from aggregate exposure to myclobutanil residues.

3. *Conclusion.* The Rohm and Haas Company concludes that reliable and complete data support the use of the 100-fold uncertainty factor, and that an additional 10-fold factor is not needed to ensure the safety of infants and children from dietary exposure.

F. International Tolerances

There are Codex Maximum Residue Limits (MRLs) for myclobutanil. The myclobutanil data base was evaluated by the World Health Organization (WHO) and the Food and Agricultural Organization (FAO) Expert Panels at the Joint Meeting on Pesticide Residues (JMPR) in September 1992, and an additional evaluation by the FAO Expert Panels was conducted in September 1997 and September 1998. An Acceptable Daily Intake (ADI; cPAD) of 0.025 mg/kg/day was established by the WHO panel and a total of 13 Codex MRLs are approved, including 0.01 ppm for both meat and milk. An additional nine Codex MRLs were proposed in the 1997 data submission including tomatoes (0.3 ppm), tomato paste (2.0 ppm), pome fruit (0.5 ppm), and strawberries (0.5 ppm).

The EPA has established the residue definition as the total of parent plus RH-9090, but the Codex has decided residues of parent alone are sufficient.

[FR Doc. 99–22636 Filed 9–1–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6432–9]

Proposed CERCLA Administrative Cost Recovery Settlement; In Re: Landmark Farm and Garden, Inc. Superfund Site, North Haven, Connecticut

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the Landmark Farm and Garden, Inc. Superfund site in North Haven, Connecticut with the following settling parties: Kerr-McGee Chemical, LLC; IMC Global, Inc.; Agrico Chemical Company; and Phosphate Resources Partners Limited Partnership. The settlement requires the settling parties to pay $775,000 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a). For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection with the Regional Docket Clerk, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode RCG, Boston, Massachusetts (U.S. EPA Docket No. CERCLA I–98–1037).

DATES: Comments must be submitted on or before October 4, 1999.

ADDRESSES: The proposed settlement is available for public inspection with the Regional Docket Clerk, One Congress Street, Boston, Massachusetts. A copy of the proposed settlement may be obtained from RuthAnn Sherman, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode SES, Boston, Massachusetts 02214, (617)918–1886. Comments should reference the Landmark Farm and Garden, Inc. Superfund Site, North Haven, Connecticut and EPA Docket No. I–98–1037 and should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode RCG, Boston, Massachusetts 02214.

FOR FURTHER INFORMATION CONTACT: RuthAnn Sherman, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Mailcode SES, Boston, Massachusetts 02214, (617) 918–1886.

Dated: August 12, 1999.

Patricia L. Meaney,

Director, Office of Site Remediation and Restoration.

[FR Doc. 99–22929 Filed 9–1–99; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the September 9, 1999 regular meeting of the Farm Credit Administration Board (Board) will not be held. The Board will hold a special meeting at 9:00 a.m. on Thursday, September 30, 1999. An agenda for that meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Vivian L. Portis, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: August 30, 1999.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 99–22965 Filed 8–30–99; 4:37 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

August 25, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 1, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A–804, 445 Twelfth Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0120.

Title: Broadcast Equal Employment Opportunity Model Program Report.

Form Number: FCC 396–A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 2,526.

Estimated Time Per Response: 1 hour.

Frequency of Response: Reporting, on occasion.

Total Annual Burden: 2,526 hours.

Total Annual Costs: $0.

Needs and Uses: FCC Form 396–A is filed in conjunction with applicants seeking authority to construct a new broadcast station, to obtain assignment of construction or license and/or seeking authority to acquire control of an entity holding construction permit or license. This program is designed to assist the applicant in establishing an effective EEO program for its station.

On September 30, 1998, the Commission suspended the requirement that television and radio broadcast licensees and permittees submit the FCC 396–A with their construction permit, transfer or assignment applications. This suspension is to remain in effect until the Commission revises the EEO rules to be consistent with the Court of Appeals *Lutheran* Church decision. The Commission will make such adjustments to the form as necessary to conform to the *Lutheran* Church decision consistent with the record in the rulemaking. Until such time as the Commission reaches a decision in the outstanding Notice of Proposed Rulemaking concerning the Court of Appeals *Lutheran* Church decision, the FCC 396–A needs to retain a current OMB control number.

The data is reviewed by FCC analysts to determine how stations will provide equal employment opportunity to all qualified persons without regard to race, color, religion, sex or national origin.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 99–22872 Filed 9–1–99; 8:45 am]

BILLING CODE 5712–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Tuesday, September 7, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Discussion Agenda

1. Proposed 2000–2001 Federal Reserve Board budget.
2. Proposed 2000–2001 budget for the Office of Inspector General.
3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: August 31, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–23019 Filed 8–31–99; 12:24 pm]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: Approximately 11:30 a.m., Tuesday, September 7, 1999, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: August 31, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–23020 Filed 8–31–99; 12:24 pm]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Meeting

TIME AND DATE: 9:00 a.m. (EDT), September 13, 1999.

PLACE: 4th floor, Conference Room, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the August 9, 1999, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of FY 1999 budget and projected expenditures, approval of FY 2000 proposed budget, and review of FY 2001 estimates.
4. Review of KPMG Peat Marwick audit reports.
   (a) "Pension and Welfare Benefits Administration Review of the Thrift Savings Plan Withdrawal Operations at the United States Department of Agriculture, National Finance center"
   (b) "Pension and Welfare Benefits Administration Review of Backup, Recovery, and Contingency Planning of the Thrift Savings Plan at the United States Department of Agriculture, National Finance Center"
   (c) "Pension and Welfare Benefits Administration Review of Access Controls and Security Over the Thrift Savings Plan Computerized Resources at the United States Department of Agriculture, National Finance Center"

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: August 30, 1999.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 99–22990 Filed 8–31–99; 10:36 am]

BILLING CODE 6760–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. HHS Acquisition Regulations—HHSAR Part 342—Contract Administration—Extension no change—0990–0131—HHSAR 342.7103 requires reporting information when a cost overrun is anticipated. The information is used to determine if a proposed overrun is reasonable—Respondents—State or local governments, Business or other for-profit, non-profit institutions, small businesses. *Annual number of Responses:* 45; *Average burden per response:* 20 hours; *Total burden:* 900 hours.

2. HHS Acquisition Regulation—HHSAR Part 333—Disputes and Appeals—Extension no change—0990–0133—The Litigation and Claims clause is needed to inform the government of actions filed against government contracts—*Respondents:* State or local governments, Business or other for-profit, non-profit institutions, small businesses. *Annual number of Responses:* 100; *Average burden per response:* 30 minutes; *Total burden:* 50 hours.

3. HHS Acquisition Regulation—HHSAR Part 332—Contract Financing—Extension no change—0990–0134—The requirements of HHSAR Part 332 are needed to ascertain costs associated with certain contracts so as to timely pay contractor. *Respondents:* State or local governments, small businesses—Burden Information for Cost Sharing Clause—*Number of Respondents:* 24; *Annual Number of Responses per Respondent:* 10; *Average Burden per Response:* one hour; *Annual Burden:* 240 hours—Burden Information for Letter of Credit Clause—*Number of Respondents:* 268; *Annual Number of Responses:* 4; *Burden per Response:* 1 hour; *Estimated Annual burden:* 1,072 hours—*Total Burden:* 1,312 hours.

4. HHS Acquisition Regulation—HHSAR Part 324—Protection of Privacy and Freedom of Information—Extension no change—0990–0136—The

confidentiality of Information requirements are needed to prevent improper disclosure of confidential data. *Respondents:* State or local governments, businesses or other for-profit, non-profit institutions, small businesses; *Annual Number of Responses:* 449; *Average Burden per Response:* 8 hours; *Estimated Burden:* 3,592 hours.

5. HHS Acquisition Regulation—HHSAR Part 316—Types of Contracts—Extension no change—0990–0138—The Negotiated Overhead Rate—Fixed clause is needed since fixed rates are authorized by OMB Circular and a clause is not provided in the Federal Acquisition Regulation (FAR). *Respondents:* non-profit institutions; *Annual Number of Responses:* 376; *Average Burden per Response:* 10 hours; *Estimated Burden:* 3,760 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201. Written comments should be received within 30 days of this notice.

Dated: August 23, 1999.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 99–22820 Filed 9–1–99; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science

Announcement of Anticipated Availability of Funds for Family Planning Services Grants; Correction

AGENCY: Office of Population Affairs, OPHS, HHS.

ACTION: Notice of correction.

SUMMARY: The Department of Health and Human Services (DHHS) published a document in the **Federal Register** of June 8, 1999 announcing the anticipated availability of funds for family planning services grants. Table I of this document contained incorrect information. Specifically, under the heading entitled "Populations or areas to be served," which appears in the first column of Table I, for DHHS Regions II, III, IV, V, VI, VII, IX and X, current Title X family planning services grantees are listed, rather than geographic areas/ populations.

FOR FURTHER INFORMATION CONTACT: George Jones, 301–594–4014.

Correction

In the **Federal Register** of June 8, 1999, in FR Doc. 99–14425, on page 30847, correct Table I to read:

TABLE I

Populations or areas to be served	Number of competing grants to be awarded	FY99 funding	Appl. due date	Grant funding date
Region I: No Grants Available for Competition in FY 2000				
Region II:				
Puerto Rico	1	1,735,229	03/01/00	07/01/00
New York	1	7,703,876	03/01/00	07/01/00
Region III:				
Delaware	1	690,187	12/01/99	04/01/00
Virginia	1	3,724,186	12/01/99	04/01/00
Maryland	1	3,205,729	12/01/99	04/01/00
West Virginia	1	1,693,832	12/01/99	04/01/00
Western Pennsylvania	1	2,762,425	03/01/00	07/01/00
Central Pennsylvania	1	2,086,193	03/01/00	07/01/00
Southeastern Pennsylvania	1	3,487,789	03/01/00	07/01/00
Northeastern Pennsylvania	1	1,264,753	03/01/00	07/01/00
Region IV:				
Florida	1	6,578,352	03/01/00	07/01/00
Tennessee	1	5,503,248	03/01/00	07/01/00
Kentucky	1	3,864,571	03/01/00	07/01/00
Georgia	1	5,824,306	03/01/00	07/01/00
North Carolina	1	4,736,317	03/01/00	07/01/00
Alabama	1	3,698,168	03/01/00	07/01/00
South Carolina	1	4,131,705	03/01/00	07/01/00
Mississippi	1	3,722,603	03/01/00	07/01/00
Region V:				
Ohio	1	4,133,315	11/01/99	03/01/00
Central Ohio	1	623,535	11/01/99	03/01/00
Summit, Portage and Medina Counties, Ohio	1	676,843	03/01/00	07/01/00
Region VI:				
New Mexico	1	1,995,334	09/01/99	01/01/00
Arkansas	1	2,961,564	11/01/99	03/01/00
Oklahoma	1	2,891,198	08/01/99	12/01/99
Region VII:				
Kansas	1	1,786,800	03/01/00	07/01/00
Region VIII: No grants available for competition in FY 2000				
Region IX:				
Government of Guam	1	168,408	03/01/00	07/01/00

TABLE I—Continued

Populations or areas to be served	Number of competing grants to be awarded	FY99 funding	Appl. due date	Grant funding date
Republic of Palau	1	57,971	03/01/00	07/01/00
Federated States of Micronesia	1	220,564	03/01/00	07/01/00
Gila River, Arizona	1	172,582	03/01/00	07/01/00
Region X:				
Columbia, Willamette Counties, Oregon	1	561,485	03/01/00	07/01/00
Idaho	1	961,979	03/01/00	07/01/00
Seattle, Washington	1	123,800	05/30/00	09/30/00
Total	32	83,748,838		

Dated: August 27, 1999.

Denese O. Shervington,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 99–22819 Filed 9–1–99; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS).

Times and Dates: 9:00 a.m.–5:30 p.m., September 27, 1999; 10:15 a.m.–3:30 p.m., September 28, 1999.

Place: Conference Room 705A, Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201.

Status: Open.

Purpose: The meeting will focus on a variety of health data policy and privacy issues. Department officials will update the Committee on recent activities of the HHS Data Council and the status of HHS activities in implementing the administrative simplification provisions of Pub. L. 104–191, the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Committee also will discuss its forthcoming report on Medicaid managed care data issues, as well as a report to the Secretary concerning standards for computer-based patient records, and plans for a November, 1999 workshop at the National Academy of Sciences on Health Statistics for the 21st Century. The Committee also will receive briefings on quality of care data issues and the revision of the U.S. Standard Certificates for Live Birth and Death for 2002. In addition, Subcommittee breakout sessions and reports to the full Committee are planned.

All topics are tentative and subject to change. Prior to the meeting, please check the NCVHS web site, where a detailed agenda will be posted when available.

Contact Person for More Information: Substantive information as well as summaries of NCVHS meetings and a roster of committee members may be obtained by visiting the NCVHS website (http://aspe.os.dhhs.gov.ncvhs) where an agenda for the meeting will be posted when available. Additional information may be obtained by calling James Scanlon, NCVHS Executive Staff Director, Office of the Assistant Secretary for Planning and Evaluation, DHHS, Room 440–D. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, telephone (202) 690–7100, or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Note: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, individuals without a government identification card may need to have the guard call for an escort to the meeting room.

Dated: August 26, 1999.

James Scanlon,

Director, Division of Data Policy.

[FR Doc. 99–22821 Filed 9–1–99; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–99–28]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Translating Research Into Action for Diabetes (TRIAD)—New—The National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Division of Diabetes Translation. Diabetes exerts a huge public health burden, and there are several efficacious interventions to combat the effects of this disease. Yet, the quality of care and quality of life among people with diabetes remain sub-optimal in the United States. The Centers for Disease Control and Prevention, Division of Diabetes Translation, intends to conduct a multi-center study called Translating Research Into Action for Diabetes (TRIAD). This study will assess quality of diabetes care and identify effective means of applying existing knowledge to improve care and quality of life. Data provided from TRIAD will be critical to the Division of Diabetes Translation's ongoing efforts to reduce the burden of diabetes.

Data will be collected through cooperative agreements with six

Managed Care Organizations (MCOs). Each MCO will provide data on organization of care, details of diabetes interventions, and efforts to improve diabetes care collected from interviews of health plan and provider group directors. Each MCO will also provide data from random samples of its diabetic members collected via computer-assisted telephone interviews (CATIs). Information from plan members will include demography, quality of diabetes care, quality of life, satisfaction with care, diabetes severity and duration, and barriers to care. Each MCO will collect data from directors and diabetic members at baseline and after two years of follow-up. The total cost to respondents is estimated at $1,620,000.

Respondent	Number of respondents	Number of responses/ respondent	Avg. burden of response (in hrs.)	Total burden (in hrs.)
Managed Care Organizations (MCOs)	6 MCOs—(each respondent MCO will provide information from an average of 3,000 plan members and directors).	2	0.75	27,000
Total				27,000

Dated: August 24, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–22860 Filed 9–1–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–99–30]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

II. Disease Summaries (0920–0004)—Reinstatement—National Center for Infectious Diseases (NCID), National Disease Surveillance Program. Surveillance of the incidence and distribution of disease has been an important function of the U.S. Public Health Service (PHS) since 1878. Through the years, PHS/CDC has formulated practical methods of disease control through field investigations. The CDC Surveillance program is based on the premise that diseases cannot be diagnosed, prevented, or controlled until existing knowledge is expanded and new ideas developed and implemented. Over the years, the mandate of CDC has broadened to include preventive health activities and the surveillance systems maintained have expanded.

Data on disease and preventable conditions are collected in accordance with jointly approved plans by CDC and the Council of State and Territorial Epidemiologists (CSTE). Changes in the surveillance programs and in reporting methods are effected in the same manner. At the onset of this surveillance program in 1968, the CSTE and CDC decided on which diseases warranted surveillance. These diseases are reviewed and revised based on variations in the public health. Surveillance forms are distributed to the State and local health departments who voluntarily submit these reports to CDC on variable frequencies, either weekly or monthly. CDC then calculates and publishes weekly statistics via the Morbidity and Mortality Weekly Report (MMWR), providing the states with timely aggregates of their submissions.

The following diseases/conditions are included in this program: Influenza Virus, Respiratory and Enterovirus, Arboviral Encephalitis, Rabies, Salmonella, Campylobacter, Shigella, Foodborne Outbreaks, Waterborne Outbreaks, and Enteric Virus. This request is for extension of the data collection for three years with minor revisions.

These data are essential on the Local, State, and Federal levels for measuring trends in diseases, evaluating the effectiveness of current preventive strategies, and determining the need for modifying current preventive measures. The total cost to the respondent is 0.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden of response (in hrs.)	Total burden (in hrs.)
State and Local Health Officials in 50 states/territories	864	28	.25	6048
Table				6048

Dated: August 25, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–22861 Filed 9–1–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–99–31]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Assessment of Exposure to Arsenic through Household Water—New—National Center for Environmental Health (NCEH). Arsenic is a naturally occurring element present in food and water as both inorganic and organic complexes. Epidemiologic evidence shows a strong link between ingestion of water containing inorganic arsenic and an increase in a wide variety of cancers (e.g., bladder cancer). Consumption of contaminated food is the major source of arsenic exposure for the majority of United States citizens. There are some areas of the United States where elevated levels of arsenic in water occur with appreciable frequency. In such areas, ingestion of water can be the dominant source of arsenic exposure. Currently, the preferred method of treatment of private, domestic well water containing elevated levels of arsenic is point-of-use (POU) devices. The acceptability of bottled water and POU treatment systems as effective means of managing arsenic exposure is based on the assumption that other water exposures such as bathing, brushing of teeth, cooking, and occasional water consumption from other taps contribute relatively minor amounts to a person's total daily intake of arsenic.

We propose to conduct a study to methodically test the validity of the commonly-made assumption that secondary exposures such as bathing will not result in a significant increase in arsenic intake over background dietary levels. Specifically, we are interested in assessing urine arsenic levels among individuals where ingestion of arsenic-containing water is controlled by either POU treatment or use of bottled water, combined with use of short-term diaries to record diet, water consumption, and bathing frequency. The total cost to recipients is $0.00.

Respondents	Number of Respondents	Number of responses/ respondent	Avg. burden response (in hrs.)	Total burden (in hrs.)
Recruiting telephone interview	580	1	15/60	145
Survey interview (in person)	520	1	30/60	260
Biologic specimen collection	520	1	10/60	88
Total				493

Dated: August 27, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–22863 Filed 9–1–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–99–32]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

1. Proposed Projects

National Disease Surveillance Program—I. Case Reports (0920-0009)—Reinstatement—The National Center for Infectious Disease (NCID)—Formal surveillance of 19 separate reportable diseases has been ongoing to meet the public demand and scientific interest for accurate, consistent, epidemiologic data. These ongoing diseases include: bacterial meningitis, dengue, kawasaki

syndrome, legionellosis, Hansen's Disease, lyme disease, malaria, pertussis, plague, poliomyelitis, psittacosis, Reye Syndrome, Tetanus, Tick-borne Rickettsial Disease, Toxic Shock Syndrome, toxocariasis, trichinosis, typhoid fever, and viral hepatitis. Case report forms enable CDC to collect demographic, clinical, and laboratory characteristics of cases of these diseases. This information is used to direct epidemiologic investigations, to identify and monitor trends in reemerging infectious diseases or emerging modes of transmission, to search for possible causes or sources of the diseases, and to develop guidelines for the prevention of treatment. It is also used to recommend target areas in most need of vaccinations for certain diseases and to determine development of drug resistance.

Because of the distinct nature of each of the diseases, the number of cases reported annually is different for each. The total cost to respondents is estimated at $818,184.

Respondents	Number of respondents	Number of responses/ respondent	Average burden/ response (in hrs.)	Total burden (in hrs.)
Health Care Workers	125,214	1	30/60	62,607
Total				62,607

Dated: August 27, 1999.

Nancy Cheal,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 99–22864 Filed 9–1–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–99–29]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments Are Invited On

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Supplement to HIV/AIDS Surveillance (SHAS) Project—Revision—The National Center for HIV, STD and TB Prevention (NCHSTP). NCHSTP is proposing revisions to the currently-approved questionnaire for the Supplement to HIV/AIDS Surveillance (SHAS) project (OMB No. 0920–0262). This questionnaire provides detailed information about persons with HIV infection which continues to be of significant interest to public health, community, minority groups and affected groups. Since 1989, the CDC, in collaboration with 12 state and local health agencies, has collected data through the national Supplemental HIV/AIDS Surveillance project. The objective of this project is to obtain increased descriptive information on persons with newly-reported HIV and AIDS infections, including sociodemographic characteristics, risk behaviors, use of health care services, sexual and substance abuse behaviors, minority issues and adherence to therapy. The revised questionnaire will address important emerging surveillance and prevention issues, particularly those related to the recent advances in therapy for HIV infection. This information supplements routine, national HIV/AIDS surveillance and is used to improve CDC's understanding of minority issues related to the epidemic of HIV, target educational efforts to prevent transmission, and improve services for persons with HIV infection. The total cost to the respondents is 0.

Data for Calendar Year 1998:

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden of response (In hrs.)	Total burden (In hrs.)
Georgia	292	1	.75	219
California	301	1	.75	226
Michigan	82	1	.75	62
New Mexico	81	1	.75	61
Arizona	165	1	.75	124
Colorado	139	1	.75	104
Connecticut	229	1	.75	172
Delaware	43	1	.75	32
Florida	430	1	.75	323
S. Carolina	270	1	.75	203
New Jersey	86	1	75	65
Washington	160	1	.75	120
Total	2,278	1	.75	1,709

Dated: August 25, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–22865 Filed 9–1–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–99–27]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments Are Invited On

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Evaluation of NIOSH Fire Fighter Alert (Structural Collapse)—New—The National Institute of Occupational Safety and Health (NIOSH). An Alert documents the scientific research about an occupational health and safety hazard and provides recommendations for assessing, avoiding, or reducing the hazard. The Alert is probably the National Institute for Occupational Safety and Health's (NIOSH) best tool for addressing risks of great immediate danger involving hazards to life and health. Even though the Alert can be termed an important tool, prior to 1999 no rigorous test of Alert efficacy had ever been conducted. During the past year, NIOSH began the first rigorous test of one NIOSH Alert on the dangers of structural collapse among fire fighters. This testing was done with a sample of fire fighters, and on the basis of this sample, a national distribution strategy for the Alert will follow.

This Alert contains recommendations with important safety and health implications for more than one million fire fighters in over 36,000 fire fighter units. Morbidity and mortality rates are relatively high for this occupation, which increases the need for effective communication strategies when reporting safety and health recommendations.

The formative research phase done this year by NIOSH's Health Communication Research Branch and Division for Safety Research will produce data with strong levels of internal and external validity. However, the formative phase is only aimed at designing effective messages and not aimed at understanding the impact of those messages in the final distribution of the Alert. NIOSH believes that it is reasonable to: (1) Conduct an evaluation of the national distribution of the Alert to determine its final impact and (2) identify the characteristics of those fire fighter units that may not have met optimal levels of communication effect (receiver awareness, comprehension, acceptance, and use).

The specific goals of this investigation are to: (1) Assess the communication effect of NIOSH recommendations contained within the Alert on structural collapse and (2) identify the characteristics (behavioral, normative, and control beliefs, and demographics) of receivers who fail to meet minimum levels of communication effect.

A standardized questionnaire developed and approved for the formative research phase will be used to assess communication effect. Items will identify the extent of receiver awareness, comprehension, acceptance, and use of the Alert. The Theory of Planned Behavior will be used to help identify the factors that mediate this communication effect, and relevant questions will be added to the existing questionnaire.

The data collected in this study will be used to assess the communication effect of the national distribution of the Alert by comparing the means between the respondents in the formative evaluation and the respondents in the national distribution. This data also will be used to identify the characteristics of those fire fighter units that may not have met optimal levels of communication effects. The total cost to respondents is estimated at $4,500.00.

Respondents	Number of respondents	Number of responses/ respondent	Avg. burden response (in hrs.)	Total burden (in hrs.)
Fire Fighters	1000	1	.25	250
Total				250

Dated: August 27, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–22866 Filed 9–1–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Availability of Draft Guidelines for Prevention of Opportunistic Infections in Bone Marrow Transplant Recipients

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Notice of availability and request for comments.

SUMMARY: This notice announces the availability of a draft document entitled "Guidelines for the Prevention of Opportunistic Infections in Bone Marrow Transplant Recipients," prepared by the Centers for Disease Control and Prevention (CDC), for review and comment.

DATES: To ensure consideration, written comments on this draft document must be received on or before November 1, 1999.

ADDRESSES: The draft document "Guidelines for the Prevention of Opportunistic Infections in Bone Marrow Transplant Recipients" can be accessed electronically at <http://www.cdc.gov/ncidod/dastlr/announce.html>. Alternatively, single copies of the draft are available by mail from Jackie Curlew, CDC, National Center for Infectious Diseases, Division of AIDS, STD, and TB Laboratory Research, Mailstop A–12, 1600 Clifton Rd., NE, Atlanta, GA 30333, telephone (404) 639–4581, FAX (404) 639–4664. Written comments on the draft document should be sent to the above address for receipt by November 1, 1999.

FOR FURTHER INFORMATION CONTACT: CDC, National Center for Infectious Diseases, Division of AIDS, STD, and TB Laboratory Research, Mailstop A–12, Atlanta, GA 30333; telephone (404) 639–4581, FAX (404) 639–4664.

SUPPLEMENTARY INFORMATION: Opportunistic infections constitute a major cause of morbidity and mortality in bone marrow transplant recipients. These draft guidelines, prepared by CDC, in consultation with representatives from other public and private organizations and bone marrow transplant centers, represent a comprehensive approach to preventing opportunistic infections (*e.g.*, viral, bacterial, mycotic, and parasitic infections) in bone marrow transplant recipients.

Dated: August 27, 1999.

Joseph R. Carter,

Associate Director for Management and Operations Centers for Disease Control and Prevention.

[FR Doc. 99–22867 Filed 9–1–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Office of AIDS Research Advisory Council.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Office of AIDS Research Advisory Council.

Date: October 14–15, 1999.

Time: October 14, 1999, 8:45 am to 4:30 pm.

Agenda: The role of the Federal Government in AIDS drug discovery, therapeutics, and clinical evaluation.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Time: October 15, 1999, 8:45 am to 4:30 pm.

Agenda: Continue agenda items from the previous day.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Linda Reck, Head, Program, Planning and Evaluation, Office of AIDS Research, NIH, Bethesda, MD 20892, (301) 402–8655.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals with Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 26, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–22827 Filed 9–1–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Biobehavioral Bases of CHD Risk and Management.

Date: September 15, 1999.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Rockledge Bldg. II, 6701 Rockledge Dr., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Anthony M. Coelho, Leader, Clinical Studies SRG, NIH, NHLBI, DEA, Review Branch, 6701 Rockledge Drive, Room 7194, Bethesda, MD 20892–7924, (301) 435–0288.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Coronary Artery Disease Risk Development in Young Adults Study; Computed Tomography Reading Center.

Date: September 27, 1999.

Time: 9:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: 6701 Rockledge Dr., Room 4212, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: David T. George, Scientific Review Administrator, Review Branch, NIH, NHLBI, DEA, Rockledge II, 6701 Rockledge Drive, Suite 7188, Bethesda, MD 20892–7924, (301) 435–0280.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 26, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–22826 Filed 9–1–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental and Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–C2, Contract 5–99–8.

Date: September 20–21, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: H. George Hausch, Chief, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–64, Review of R13 Grants.

Date: September 20, 1999.

Time: 12:15 pm to 2:00 pm.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (telephone Conference Call).

Contact Person: H. George Hausch, Chief, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: August 26, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–22824 Filed 9–1–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposal, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel "Preparation and Distribution of Research Drug Products".

Date: September 16, 1999.

Time: 9:00 am to 4:00 pm.

Agenda: To review and evaluate contract proposals.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 94547, Bethesda, MD 20892–9547, (301) 435–1438.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: August 26, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–22825 Filed 9–1–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–47]

Submission for OMB Review: Quality Control for Rental Assistance Subsidy Determinations

AGENCY: Office of the Assistant Secretary for Policy Development and Research, Department of Housing and Urban Development (HUD).

ACTION: Notice of proposed collection of information.

SUMMARY: The Department intends to collect data from a sampling of households receiving housing assistance subsidies. The data will be used to update HUD's estimates of the extent and type of errors associated with income, rent, and subsidy determinations for the 4.5 million households covered by Public Housing and Section 8 housing subsidies. HUD will then identify the most serious problems and their associated costs. HUD program offices will be responsible for designing and implementing corrective actions. Error rates will be compared with error rates from the first quality control study, which was completed in 1995, to measure whether corrective actions initiated after the first study have had impacts and if changes in priorities are needed.

DATES: *Comments Due Date:* October 4, 1999.

ADDRESSES: Comments should be sent to Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, telephone (202) 395–7316. This is not a toll-free number.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–2374. This is not a toll-free number, or e-mail Wayne Eddins@HUD.gov. Copies of the proposed information collection and any proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as

required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Title of Proposal: Quality control for Rental Assistance Subsidy Determinations.

OMB Approval Number: 2528–XXXX.

Description of the Need for the Information and Its Proposed Use: Date collected from households receiving HUD housing assistance subsidies will be used to determine if subsidies are calculated correctly. Impact of past corrective actions will be measured.

Form Number(s): None.

Respondents: Individuals or households business or other for-profit not-for-profit institutions.

Frequency of Submission: Biennially.

Reporting Burden:

Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
3000	....	1	....	0.79	....	2,350

Total Estimated Burden Hours: 2350.

Status: Reinstatement w/change.

Dated: August 26, 1999.

Debra Stouffer,

Acting Director, Investment Strategies, Policy, and Management.

[FR Doc. 99–22828 Filed 9–1–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4344–FA–03]

Announcement of Funding Awards; Community Development Block Grant Program for Indian Tribes and Alaska Native Villages, Fiscal Year 1998

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year 1998 for the Community Development Block Grant (CDBG) Program for Indian Tribes and Alaska Native Villages. The purpose of this Notice is to publish the names and addresses of the award winners and the amount of the awards made available by HUD to provide assistance to the Indian Tribes and Alaska Native Villages.

FOR FURTHER INFORMATION CONTACT: Robert Barth, Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, P.O. Box 36003, 450 Golden Gate Avenue, San Francisco, CA 94102; telephone (415) 436–8122 (this is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The CDBG Program for Indian Tribes and Alaska Native Villages is authorized by Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); 24 CFR part 953.

This Notice announces FY 1998 funding to be used to assist in the development of viable Indian and Alaska Native communities, including decent housing, a suitable living environment, and economic opportunities. The FY 1998 awards announced in this Notice were selected for funding consistent with the provisions in the Notice of Funding Availability (NOFA) published in the **Federal Register** on June 1, 1998 (63 FR 29834) and the amendment notice published on August 5, 1998 (63 FR 41936).

The Catalog of Federal Domestic Assistance number for the CDBG Program for Indian Tribes and Alaska Native Villages is 14.862.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is hereby publishing the names, addresses, and amounts of those awards as shown in Appendix A.

Dated: August 19, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

APPENDIX A

FISCAL YEAR 1998 INDIAN COMMUNITY DEVELOPMENT BLOCK GRANT RECIPIENTS OF FUNDING DECISIONS

Funding recipient (name and address)	Amount approved
Eastern/Woodlands ONAP	
Arrostook Band of Micmacs, 572 Main Street,Presque Isle, ME 04769	$400,000
Bay Mills Indian Community, 12140 West Lakeshore Drive, Brimley, MI 49715	400,000
Bois Forte Reservation, P.O. Box 16, Nett Lake, MN 55772	400,000
Catawba Indian Nation, P.O. Box 188, Catawba, SC 29704	400,000
Fond Du Lac Reservation, 1720 Big Lake Road, Cloquet, MN 55720	400,000
Lac Courte Oreilles Tribe, Route 2, Box 2700, Hayward, WI 54843	400,000
Lac Du Flambeau Band of Lake Superior Chippewa Indians, P.O. Box 67, Lac Du Flambeau, WI 54538	103,221

FISCAL YEAR 1998 INDIAN COMMUNITY DEVELOPMENT BLOCK GRANT RECIPIENTS OF FUNDING DECISIONS—Continued

Funding recipient (name and address)	Amount approved
Leech Lake Reservation, R.R. 3, Box 100 Cass Lake, MN 56633	400,000
Menominee Tribe of Wisconsin, P.O. Box 910 Courthouse Road, Keshena, WI 54135	400,000
Poarch Band of Creek Indians, 5811 Jack Springs Road, Atmore, AL 36502	400,000
Saint Regis Mohawk Tribe, R.R. 1, Box 8A Community Building, Hogansburg, NY 13655	200,000
Stockbribge-Munsee Community, N8476 Moh He Con Nuck Road, P.O. Box 70, Bowler, WI 54416	400,000
Upper Sioux Indian Community, P.O. Box 147, Granite Falls, MN 56241	400,000
White Earth Reservation, P.O. Box 418, White Earth, MN 56591	400,000
Southern Plains ONAP	
Cherokee Nation, P.O. Box 948, Tahlequah, OK 74465	750,000
Cheyenne-Arapaho Tribe, P.O. Box 38, Concho, OK 73022	750,000
Chickasaw Nation, P.O. Box 1548, Ada, OK 74821	750,000
Chitimacha Tribe, P.O. Box 661, Charenton, LA 70523	604,140
Choctaw Nation, P.O. Drawer 1210, Durant, OK 74702	750,000
Citizen Potawatomi Nation, 1901 S. Gordon Cooper Drive, Shawnee, OK 74801	750,000
Delaware Tribe, 220 NW Virginia Avenue, Bartlesville, OK 74003	750,000
Iowa Tribe of Oklahoma, R. R. 1, Box 721, Perkins, OK 74059	145,562
Kaw Nation, P.O. Box 50, Kaw City, OK 74641	668,000
Kickapoo Traditional Tribe of Texas, HC1, Box 9700, Eagle Pass, TX 78852	750,000
Miami Tribe, P.O. Box 1326, Miami, OK 74355	286,979
Muscogee (Creek) Nation, P.O. Box 580, Okmulgee, OK 74447	750,000
Osage Tribe, P.O. Box 53, Pawhuska, OK 74056	610,375
Pawnee Tribe, P.O. Box 470, Pawnee, OK 74058	750,000
Ponca Tribe, 20 White Eagle Drive, Ponca City, OK 74601	750,000
Seminole Nation, P.O. Box 1498, Wewoka, OK 74884	750,000
Seneca-Cayuga Tribe, P.O. Box 1283, Miami, OK 74355	672,485
Thlopthlocco Tribal Town, P.O. Box 188, Okemah, OK 74859	750,000
Northern Plains ONAP	
Assiniboine & Sioux Tribes, P.O. Box 1027, Poplar, MT 59255	400,000
Blackfeet Indian Tribe, P.O. Box 850, Browning, MT 59417	800,000
Chippewa-Cree Indians, P.O. Box 544, Box Elder, MT 59521	388,356
Crow Creek Sioux Tribe, P.O. Box 50, Fort Thompson, SD 57339	570,000
Fort Belknap Indian Community, Box R.R. 1, Box 66, Harlem, MT 59526	800,000
Goshute Tribe, P.O. Box 6104, Ibapah, UT 84034	800,000
Lower Brule Sioux Tribe, P.O. Box 187, Lower Brule, SD 57548	800,000
Northern Arapaho Tribe, P.O. Box 396, Fort Washakie, WY 82514	690,915
Paiute Indian Tribe of Utah, 440 North Paiute Drive, Cedar City, UT 84720	537,078
Rosebud Sioux Tribe, P.O. Box 430, Rosebud, SD 57570	800,000
Salish & Kootenai Tribes, P.O. Box 278, Pablo, MT 59855	800,000
Sisseton Wahpeton Sioux Tribe, P.O. Box 509, Agency Village, SD 57262	800,000
Turtle Mountain Band of Chippewa Indians, P.O. Box 900, Belcourt, ND 58316	400,000
Ute Mountain Ute Tribe, P.O. Box 248, Towaoc, CO 81334	800,000
Yankton Sioux Tribe, P.O. Box 248, Marty, SD 57361	800,000
Southwest ONAP	
Agua Caliente Band of Cahuilla Indians, 600 E. Tahquitz Canyon Way, Palm Springs, CA 92262	550,000
Big Lagoon Rancheria of Smith River Indians, P.O. Box 3060, Trinidad, CA 95570	72,010
Big Sandy Rancheria of Mono Indians, P.O. Box 337, Auberry, CA 93602	550,000
Big Valley Rancheria of Pomo and Pit River Indians, P.O. Box 430, Lakeport, CA 95453	493,669
Chicken Ranch Rancheria of Me-Wuk Indians, P.O. Box 1159, Jamestown, CA 95327	550,000
Fort Bidwell Indian Community of Paiute Indians, P.O. Box 129, Fort Bidwell, CA 96112	476,000
Fort Independence Indian Community of Paiute Indians, P.O. Box 67, Fort Independence, CA 93526	550,000
Fort Mojave Indian Tribe, 500 Merriman Avenue, Needles, CA 92363	550,000
Grindstone Rancheria of Wintun-Wailaki Indians, P.O. Box 63, Elk Creek, CA 95939	550,000
Guidiville Rancheria, P.O. Box 339, Talmage, CA 95481	529,504
Hualapai Indian Tribe, P.O. Box 179, Peach Springs, AZ 86434	750,000
Havasupai Tribe, P.O. Box 10, Supai, AZ 86435	550,000
Hoopa Valley Tribe, P.O. Box 1348, Hoopa, CA 95546	694,104
Jackson Rancheria of Me-Wuk Indians, P.O. Box 429, Jackson, CA 95642	550,000
Karuk Tribe of California, P.O. Box 1016, Happy Camp, CA 96039	750,000
Los Coyotes Band of Cahuilla Indians, P.O. Box 189, Warner Springs, CA 92086	550,000
Mechoopda Indian Tribe, 1907 F. Mangrove Avenue, Chico, CA 95926	269,858
Mesa Grande Band of Diegueno Indians, P.O. Box 270, Santa Ysabel, CA 92070	112,245
Mescalero Apache Tribe, P.O. Box 176, Mescalero, NM 88340	1,400,000
Middletown Rancheria of Pomo Indians, P.O. Box 1035, Middletown, CA 95461	550,000
Navajo Nation, P.O. Box 900, Window Rock, AZ 86515	4,996,999
Pala Band of Luiseno Indians, P.O. Box 43, Pala, CA 92059	463,580
Pueblo of Santa Ana, 02 Dove Road, Bernalillo, NM 87004	550,000
Redding Rancheria, 2000 Redding Rancheria Road, Redding, CA 96001	482,540
Reno-Sparks Indian Colony, 98 Colony Road, Reno, NV 89502	550,000

FISCAL YEAR 1998 INDIAN COMMUNITY DEVELOPMENT BLOCK GRANT RECIPIENTS OF FUNDING DECISIONS—Continued

Funding recipient (name and address)	Amount approved
Rincon Band of Luiseno Indians, P.O. Box 68, Valley Center, CA 92082	550,000
Robinson Rancheria of Pomo Indians, P.O. Box 1119, Nice, CA 95464	550,000
Round Valley Indian Tribes, P.O. Box 448, Covelo, CA 95428	415,000
Salt River Pima-Maricopa Indian Community, 1005 E. Osborn Road, Scottsdale, AZ 85256	2,000,000
San Carlos Apache Tribe, P.O. Box 0, San Carlos, AZ 85550	300,000
San Pasqual Band of Diegueno Indians, P.O. Box 365, Valley Center, CA 92082	550,000
Santa Ysabel Band of Diegueno Indians, P.O. Box 130, Santa Ysabel, CA 92070	134,373
Scotts Valley Band of Pomo Indians, 149 North Main Street, Suite 200, Lakeport, CA 95453	550,000
Shingle Springs Band of Miwok Indians, P.O. Box 1340, Shingle Springs, CA 95682	550,000
Table Bluff Rancheria of Wiyot Indians, P.O. Box 519, Loleta, CA 95551	476,829
Torres Martinez Band of Cahuilla Indians, P.O. Box 1160, Thermal, CA 92274	550,000
Tule River Indian Tribe, P.O. Box 589, Porterville, CA 93257	550,000
Tuolomne Band Band of Me-Wuk Indians, P.O. Box 699, Tuolomne, CA 95379	550,000
Washoe Tribe of Nevada and California, 919 Highway 395 South, Gardnerville, NV 89410	550,000
Yavapai-Apache Nation, P.O. Box 1188, Camp Verde, AZ 86322	550,000
Zuni Pueblo, P.O. Box 339, Zuni, NM 87327	968,709
Northwest ONAP	
Burns Paiute Tribe, HC 71, 100 Pasigo St Burns, OR 97720	335,000
Chehalis Tribe, P.O. Box 536, Oakville, WA 98568	316,825
Coeur d'Alene Tribe, W 30001, Hwy. 95, Worley, ID 83876	334,078
Coquille Tribe, P.O. Box 783, North Bend, OR 97459	335,000
Jamestown S'Klallam Tribe, 1033 Old Blyn Hwy., Sequim, WA 98382	277,733
Kalispel Tribe, P.O. Box 39, Usk, WA 99180	335,000
Nez Perce Tribe, P.O. Box 365, Lapwai, ID 83540	335,000
Samish Indian Nation, P.O. Box 217, Anacortes, WA 98221	335,000
Shoshone Bannock Tribes, P.O. Box 306, Fort Hall, ID 83203	335,000
Spokane Tribe, P.O. Box 100, Wellpinit, WA 99040	335,000
Squaxin Island Tribe, SE 70 Squaxin Land, Shelton, WA 98584	335,000
Swinomish Indian Community, P.O. Box 817, LaConner, WA 98257	335,000
Alaska ONAP	
Akiachak Native Community, P.O. Box 70, Akiachak, AK 99551	500,000
Alakanuk Traditional Council, P.O. Box 149, Alakanuk, AK 99554	497,135
Atmautluak Traditional Council, P.O. Box 6568, Atmautluak, AK 99559	500,000
Beaver Tribal Village Council, P.O. Box 24029, Beaver, AK 99724	486,506
Chenega Bay IRA Council, P.O. Box 8079, Chenega Bay, AK 99574	499,593
Craig Community Association, P.O. Box 828, Craig, AK 99921	500,000
Crooked Creek Community Council, P.O. Box 69, Crooked Creek, AK 99575	333,179
Curyung Tribal Council, 134 1st Avenue West, P.O. Box 216, Dillingham, AK 99576	500,000
Native Village of Ekuk, P.O. Box 530, Dillingham, AK 99576	500,000
Emmonak Corporation, P.O. Box 49, Emmonak, AK 99581	500,000
Evansville Tribal Council, P.O. Box 26087, Bettles Field, AK 99726	257,590
Holy Cross Tribal Council, P.O. Box 89, Holy Cross, AK 99602	321,014
Huslia Tribal Council, P.O. Box 70, Huslia, AK 99746	267,007
Kasigluk Traditional Council, P.O. Box 19, Kasigluk, AK 99609	500,000
Kwethluk IRA Council, P.O. Box 129, Kwethluk, AK 99621	500,000
Kwigillingok IRA Council, P.O. Box 49, Kwigillingok, AK 99622–0049	415,427
Lower Kalskag Traditional Council, P.O. Box 27, Lower Kalskag, AK 99626	415,427
Metlakatla Indian Community, P.O. Box 8, Metlakatla, AK 99926	500,000
Napaskiak Village Council, P.O. Box 6009, Napaskiak, AK 99559	498,000
Noorvik IRA Council, P.O. Box 71, Noorvik, AK 99763	500,000
Pedro Bay Village Council, P.O. Box 47020 Pedro Bay, AK 99647	500,000
Qagan Tayagungin Tribe, P.O. Box 447, Sand Point, AK 99661	500,000
Tuntutuliak Traditional Council, P.O. Box 8086, Tuntutuliak, AK 99680	500,000
Unga Tribal Council, P.O. Box 508, Sand Point, AK 99661	500,000

[FR Doc. 99–22829 Filed 9–1–99; 8:45 am]
BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for Incidental Take Permit During Construction on Lot 5 of a Single Family Residence on 2.75 Acres on Pearce Road in Travis County, Texas

SUMMARY: Brent Mayberry (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–012963–0. The requested permit, which is for a period of 7 years, would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*). The proposed take would occur as a result of the construction of a single family residence on Pearce Road, Travis County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the application should be received on or before October 4, 1999.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Christina Longacre, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, Ecological Services Field Office, Austin, Texas at the above address. Please refer to permit number TE–012963–0 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Christina Longacre at the above Austin Ecological Services Field Office.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Applicant

Brent Mayberry plans to construct a single family residence on Pearce Road, Travis County, Texas. This action will eliminate less than three quarters of an acre of habitat and indirectly impact less than four additional acres of golden-cheeked warbler habitat. The applicant proposes to compensate for this incidental take of golden-cheeked warbler habitat by donating $1,500 into the Balcones Canyonlands Preserve to acquire/manage lands for the conservation of the golden-cheeked warbler.

Alternatives to this action were rejected because not developing the subject property with federally listed species present was not economically feasible, and alteration of the project design would not decrease the impacts.

Geoffrey L. Haskett,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 99–22859 Filed 9–1–99; 8:45 am]
BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[TE 016724]

Endangered and Threatened Wildlife and Plants: Notice of Availability and Opening of Comment Period for an Application for an Incidental Take Permit to Allow Take of an Endangered Species by Cinergy Corporation, Gibson County, IN, and National Environmental Policy Act Determination

SUMMARY: The US Fish and Wildlife Service (Service) provides notice of the availability of a Habitat Conservation Plan (HCP) and Incidental Take Permit Application received from Cinergy Corporation, Gibson County, Indiana, and the Service's National Environmental Policy Act Determination for the proposed action of permit issuance. In 1986, a single pair of endangered interior least terns (Sterna antillarum) nested at Cinergy's Gibson Generating Station in Gibson County, Indiana. Since that time, the least tern colony at the facility has grown. The most terns ever recorded in a single year was in 1998 when an estimated 85 adult terns, 63 nests, and 72 fledged young were present. Since the initial discovery, Cinergy has worked with the Indiana Department of Natural Resources and the Service to maintain conditions favorable for successful tern production at the Gibson Generating Station. All tern nesting habitat at the Gibson Generating Station was created as the result of the construction and maintenance of the facility. No tern habitat existed at this site prior to construction of the generating station and associated facilities. Cinergy has voluntarily enhanced the habitat to maintain and improve nesting conditions for least terns. Cinergy proposes to continue efforts to enhance nesting opportunities for least terns on the facility. However, some least tern nesting has occurred in active ash disposal areas and on access roads to these areas and Cinergy acknowledges that the operation and maintenance of the Gibson Generating Station entails some potential for incidental take. The applicant has submitted an HCP detailing their proposal for management of least terns at the facility, and seeks an incidental take permit for a 5 year period. The proposed take of least terns (adults, chicks, or eggs) will not exceed 5% of the estimated maximum adult population present on the facility in any given year. The net result of activities proposed in Cinergy's HCP will be an increase in suitable tern nesting habitat; no existing habitat will be destroyed. However, attempts may be made to make ash disposal areas and associated access roads, areas where there is potential for incidental take of terns, less attractive as potential nesting sites. Cinergy will continue to maintain the core nesting area at the Gibson Generating Station in a condition favorable for least tern nesting. In addition, Cinergy will assist in the development of the 187-hectare Cane Ridge Wildlife Area, which will include creation of least tern nesting units. These tern nesting units, which will be immediately adjacent to the Gibson Generating Station, will be owned and managed by the Service and will provide additional suitable habitat for least terns. The HCP and Incidental Take Permit Application are available for public review and comment for a

period of 30 days. In addition, the Service has determined that the HCP meets the criteria for a "Low Effect" HCP and has determined that it qualifies for a Categorical Exclusion. This NEPA determination is available for review by interested parties. All comments received, including commentors names and addresses, will become part of the Service's Administrative Record and may be made available to the public.

DATES: Written comments on the Habitat Conservation Plan/Incidental Take Permit Application and the Service's NEPA Determination must be received on or before October 4, 1999.

ADDRESSES: Persons wishing to review the application and associated documents may obtain copies by writing to the Regional HCP/NEPA Coordinator, Fish and Wildlife Service, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Documents will be available for public inspection by appointment only, during normal business hours (8:00–4:30), at the US Fish and Wildlife Service, 1 Federal Drive, Fort Snelling, Minnesota, (612–713–5350) and at the US Fish and Wildlife Service, 620 South Walker Street, Bloomington, Indiana (812–334–4261). Written comments should be submitted to the Regional HCP/NEPA Coordinator at the address listed above or via FAX at 612–713–5292. Please refer to permit number TE 016724 when submitting comments.

FOR FURTHER INFORMATION, CONTACT: Ms. Lisa Mandell, Regional HCP/NEPA Coordinator, at (612) 713–5350.

Dated: August 27, 1999.

Charles M. Wooley,

Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 99–22918 Filed 9–1–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare Environmental Assessments of Environmental Impact Statements for Permit Applications To Incidentally Take the Preble's Meadow Jumping Mouse in Boulder, Douglas, Elbert, El Paso, and Jefferson Counties, Colorado; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; correction.

SUMMARY: The Fish and Wildlife Service published a document in the **Federal Register** of August 26, 1999; the document contained one incorrect date. In notice document 99–21891 beginning on page 46703 in the issue of Thursday, August 26, 1999, make the following corrections:

On page 46704, Item number 3 under the Public Participation Section, insert the following date correction: "3. October 5, 1999, 7:00 p.m., Elbert County—County Courthouse, 215 Comanche Street, Kiowa, Colorado 80117."

Dated: August 26, 1999.

Mary L. Gessner,

Acting Regional Director, Denver, Colorado.

[FR Doc. 99–22858 Filed 9–1–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Land Acquisitions; Little Traverse Bay Bands of Odawa Indians of Michigan

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of final agency determination to take land into trust under 25 CFR part 151.

SUMMARY: The Assistant Secretary—Indian Affairs made a final agency determination to acquire approximately 5 acres, more or less, of land into trust for the Little Traverse Bay Bands of Odawa Indians of Michigan on August 27, 1999. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

FOR FURTHER INFORMATION CONTACT: Nancy J. Pierskalla, Indian Gaming Management Staff Office, Bureau of Indian Affairs, MS 2070–MIB, 1849 C Street, NW, Washington, DC 20240, telephone (202) 219–4066.

SUPPLEMENTARY INFORMATION: This notice is published to comply with the requirement of 25 CFR 151.12(b) that notice be given to the public of the Secretary's decision to acquire land in trust at least 30 days prior to signatory acceptance of the land into trust. The purpose of the 30-day waiting period in 25 CFR 151.12(b) is to afford interested parties the opportunity to seek judicial review of final administrative decisions to take land in trust for Indian tribes and individual Indians before transfer of title to the property occurs. On August 27, 1999, the Assistant Secretary—Indian Affairs decided to accept approximately 5 acres, more or less, of land into trust for the Little Traverse Bay Bands of Odawa Indians pursuant to Section 1300k-4(b) and (d) of the Little Traverse Bay Bands of Odawa Indians and Little River Band of Ottawa Indians, Public Law 103–324, 25 U.S.C. 1300k—1300k–7(1994). The Secretary shall acquire title in the name of the United States in trust for the Little Traverse Bay Bands of Odawa Indians for the following parcel of land described below no sooner than 30 days after the date of this notice. A parcel of land containing 5 acres, more or less, situated near the City of Petoskey, in Emmet County, Michigan, and is more particularly described as follows:

commencing at the South ¼ corner of Section 7, Township 34 North, Range 5 West; thence North 01°02′30″ East 133.03 feet to a T-iron stake which is the Point of Beginning; thence West 425.07 feet to a T-iron stake; thence North 05°08′30″ East 120.16 feet to a T-iron stake; thence North 03°06′30″ East 408.43 feet to a T-iron stake; thence South 89°54′30″ East 401.67 feet to a T-iron stake; thence South 01°02′30″ West 526.91 feet to the Point of Beginning; being a part of the Southeast ¼ of the Southwest ¼ of said Section 7 in the Township of Bear Creek, Emmet County, Michigan.

Subject to all easements, restrictions, covenants, reservations, responsibilities and requirements of record.

Dated: August 27, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–22852 Filed 9–1–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2010–99; AG Order No. 2252–99]

RIN 1115–AE 26

Extension of Designation of Montserrat Under Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice extends the Attorney General's designation of Montserrat under the Temporary Protected Status (TPS) program until August 27, 2000. Eligible nationals of Montserrat (or aliens having no nationality who last habitually resided in Montserrat) may re-register for TPS and an extension of employment authorization. Re-registration is limited to persons who registered for the initial period of TPS, which ended on August 27, 1998, or who registered after that date under the late initial registration provision. Persons who are eligible for late initial registration may register for TPS during this extension.

EFFECTIVE DATES: The extension of the TPS designation for Montserrat is effective August 28, 1999, and will remain in effect until August 27, 2000. The 30-day re-registration period begins September 2, 1999 and will remain in effect until October 4, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Valverde, Residence and Status Service Branch, Adjudications, Immigration and Naturalization Service, Room 3214, 425 I Street, NW, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Authority Does the Attorney General Have To Extend the Designation of Montserrat Under the TPS Program?

Section 244(b)(3)(A) of the Immigration and Nationality Act (Act) states that at least 60 days before the end of an extension or a designation, the Attorney General must review conditions in the foreign state for which the designation is in effect. 8 U.S.C. 1254a(b)(3)(A). If the Attorney General determines that the foreign state continues to meet the conditions for designation, the period of designation is extended, pursuant to section 244(b)(3)(C) of the Act. 8 U.S.C. 1254(b)(3)(C). Through such an extension, TPS is available only to persons who have been continuously physically present and have continuously resided in the United States from the effective date of the initial designation, in this case, since August 28, 1997.

Why Did the Attorney General Decide To Extend the TPS Designation for Montserrat?

On August 28, 1997, the Attorney General initially designated Montserrat for TPS for a period of 12 months. 62 FR 45685. Since that date, the Departments of State and Justice have annually reviewed conditions within Montserrat. Based on this year's review, the Attorney General finds that extraordinary and temporary conditions that would prevent aliens who are nationals of Montserrat (and aliens having no nationality who last resided in Montserrat) from returning to Montserrat in safety persist and that permitting such aliens to remain temporarily in the United States is not contrary to the national interest. 8 U.S.C. 1254a(b)(1)(C).

On the basis of these findings, an extension of the TPS designation for Montserrat is warranted. 8 U.S.C. 1254a(b)(3)(C).

If I Currently Have TPS How Do I Register for an Extension?

Persons previously granted TPS under the Montserrat program may apply for an extension by filing a Form I–821, Application for Temporary Protected Status, without the fee, during the re-registration period that begins September 2, 1999 and ends October 4, 1999. Additionally, you must file a Form I–765, Application for Employment Authorization. See the chart below to determine whether you must submit the one-hundred dollar ($100) filing fee with the Form I–765.

If	Then
You are applying for employment authorization through August 27, 2000.	You must complete and file the Form I–765, Application for Employment Authorization, with the one-hundred dollar ($100) fee.
You already have employment authorization or do not require employment authorization.	You must complete and file the Form I–765, Application for Employment Authorization, with no fee.
You are applying for employment authorization and are requesting a fee waiver.	You must complete and file Form I–765, with a fee waiver request and affidavit (and any other information), in accordance with 8 CFR 244.20.

To re-register for TPS, you also must include two identification photographs (1½″×1½″).

Is Late Registration Possible?

Yes. In addition to timely re-registration, late initial registration is possible for some persons from Montserrat under 8 CFR 244.2(f)(2). The requirements for late initial registration specify that an applicant for late initial registration must:

(1) Be a national of Montserrat (or an alien having no nationality who last habitually resided on Montserrat);

(2) Have been continuously physically present in the United States since August 28, 1997;

(3) Have continuously resided in the United States since August 22, 1997; and

(4) be admissible as an immigrant, except as otherwise provided in section 244(c) of the Act, and not ineligible under section 244(c)(2)(B) of the Act. 8 CFR 244.2(f)(2).

Additionally, the applicant must be able to demonstrate that, during the initial registration period from August 28, 1997, through August 27, 1998, he or she:

(1) Was in valid immigrant or nonimmigrant status, or had been granted voluntary departure status or any relief from removal;

(2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal pending or subject to further review or appeal;

(3) Was a parolee or has a pending request for reparole; or

(4) Was the spouse or child of an alien currently eligible to be a TPS registrant. Id.

An applicant for late initial registration must register no later than sixty (60) days from the expiration or termination of the qualifying condition. Id.

Where Should I File for an Extension of TPS?

Persons seeking to register for an extension of TPS must submit an application and accompanying materials to the Immigration and Naturalization Service local office that has jurisdiction over the applicant's place of residence.

When Can I File for an Extension of TPS?

The 30-day re-registration period begins September 2, 1999 and will remain in effect until October 4, 1999.

How Does an Application for TPS Affect My Application for Asylum or Other Immigration Benefits?

An application for TPS does not preclude or affect an application for asylum or any other immigration benefit. A national of Montserrat (or alien having no nationality who last habitually resided in Montserrat) who is otherwise eligible for TPS and has applied for or plans to apply for asylum, but who has not yet been granted asylum or withholding of removal, may also apply for TPS. Denial of an application for asylum or any other immigration benefit does not affect an applicant's ability to register for TPS, although the grounds of denial may also be grounds of denial for TPS. For example, a person who has been

convicted of an aggravated felony is not eligible for asylum or TPS.

Does This Extension Allow Nationals of Montserrat (or Aliens Having No Nationality Who Last Habitually Resided in Montserrat) Who Entered the United States After August 28, 1997, To File for TPS?

No. This is a notice of an extension of the TPS designation for Montserrat. It is not a notice of redesignation of Montserrat under the TPS program. An extension of TPS does not change the required dates of continuous physical presence and residence in the United States, and does not expand the TPS program to include nationals of Montserrat (or aliens having no nationality who last habitually resided in Montserrat) who arrived in the United States after the date of the initial designation, in this case, August 28, 1997.

Notice of Extension of Designation of Montserrat Under the TPS Program

By the authority vested in me as Attorney General under sections 244(b)(3)(A) and (C) of the Act, I have consulted with the appropriate agencies of the Government concerning whether the conditions under which Montserrat was initially designated for TPS continue to exist. As a result, I determine that the conditions for the initial designation of TPS for Montserrat continue to be met. 8 U.S.C. 1254a(b)(3)(A), (C). Accordingly, I order as follows:

(1) The designation of Montserrat under section 244(b) of the Act is extended for an additional 12-month period from August 28, 1999, until August 27, 2000. 8 U.S.C. 1254a(b)(3)(C).

(2) I estimate that there are approximately 300 nationals of Montserrat (or aliens having no nationality who last habitually resided in Montserrat) who have been granted TPS and who are eligible for re-registration.

(3) In order to be eligible for TPS during the period from August 28, 1999, through August 27, 2000, a national of Montserrat (or alien having no nationality who last habitually resided in Montserrat) who received a grant of TPS during the initial period of designation from August 28, 1997, until August 27, 1998, must re-register for TPS by filing a new Application for Temporary Protected Status, Form I–821, along with an Application for Employment Authorization, Form I–765, within the 30-day period beginning September 2, 1999 and ending on October 4, 1999. Late re-registration will be allowed pursuant to 8 CFR 244.17(c).

(4) Pursuant to section 244(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before August 27, 2000, the designation of Montserrat under the TPS program to determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the reasons underlying it, will be published in the **Federal Register**.

(5) Information concerning the TPS program for nationals of Montserrat (or aliens having no nationality who last habitually resided in Montserrat) will be available at local Service offices upon publication of this notice.

Dated: August 26, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–22837 Filed 9–1–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 27, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills (202) 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility:

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology, and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Agency: Employment Standards Administration.

Title: Housing Terms and Conditions.

OMB Number: 1215–0146.

Frequency: On occasion.

Affected Public: Farms; Individuals or households; business or other for-profit.

Number of Respondents: 1,300.

Estimated Time Per Respondent: 30 minutes.

Total Burden Hours: 650.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The Migrant and Seasonal Agricultural Worker Protection Act requires any farm labor contractor, agricultural employer, or agricultural association providing housing to post or present, in writing form, to each migrant agricultural worker the terms and conditions, if any, of occupancy.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–22844 Filed 9–1–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 27, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ((202) 219–5096 ext. 143) or by E–Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA,

OSHA, PWBA, or VETS, Office of Management and Budget, Room 10234, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Title: National Compensation Survey.

OMB Number: 1220–0164.

Frequency: Quarterly; annually.

Affected Public: Business or other for-profit; not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 40,116.

Forms	Total respondents	Frequency	Total annual responses	Average minutes per response	Average time for predominant form use	Total annual burden
Earnings Initiation (NCS 99–1)	5,640	Annual or quarterly	6,204	76	82	7,821
Earnings Update (NCS 99–2)	24,106	Annual or quarterly	54,368	19	20	17,477
Benefits Initiation [1] (NCS 99–3)	2,240	Annual or quarterly	2,593	156	180	6,748
Benefits Update (NCS 99–4)	10,686	Annual or quarterly	37,807	20	20	12,464
Informed Consent (NCS 99–5)	[2]	[3]	[3]	[4]	[4]	[4]
Collection Not Tied to a Specific Form.	10,370	Annual	10,370	56	82	9,752
Total	53,041		111,342			54,262

[1] Form 3038D will continue to be used until the NCS data capture system is completed at the end of FY 2000.
[2] Unknown; dependent upon number of respondents who elect to have third parties provide data.
[3] Unknown.
[4] Negligible.

Note: All figures are based on a three-year average. The total respondents and total responses are asked to give data that will be used on several forms.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The National Compensation Survey integrates three BLS programs: The Occupational Compensation Survey Program, the Employment Cost Index, and the Employee Benefits Survey. Data are collected from both the private non-farm economy and State and local governments. Data produced from this survey are critical in determining pay increases for Federal workers; in determining monetary policy; and for use by compensation administrators and researchers in the private sector.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–22845 Filed 9–1–99; 8:45 am]

BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 27, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ((202) 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 3965–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Title: Certification of Medical Necessity.

OMB Number: 1215–0113.

Frequency: On occasion.

Affected Public: Business or other for-profit; not-for-profit institutions.

Number of Respondents: 9,000.

Estimated Time Per Respondent: 20–40 minutes.

Total Burden Hours: 3,600.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The CM–893, Certificate of Medical Necessity, is completed by the miner's doctor and is used by DCMWC to determine if the miner meets the specific impairment standards to qualify for durable medical equipment, home nursing care and/or pulmonary rehabilitation.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–22846 Filed 9–1–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act, Section 402 Migrant and Seasonal Farmworker Program and Workforce Investment Act, Sections 127 and 167 Migrant and Seasonal Farmworker Program

AGENCY: Employment and Training Administration.

ACTION: Notice of Availability of Funds and Solicitation for Grant Applications (SGA) for Migrant and Seasonal Farmworker (MSFW) Youth Program under the Workforce Investment Act (WIA).

SUMMARY: All information required to submit a grant application is contained in this announcement. The U.S. Department of Labor (the Department), Employment and Training Administration (ETA), announces the availability of funds as authorized in Section 127 (b)(1)(A)(iii) of the Workforce Investment Act, to provide MSFW youth workforce investment activities.

This notice provides the information and the process that eligible entities must use to apply for these MSFW youth funds and how grantees will be selected for the two-year designation period. It is anticipated that up to $10,000,000 will be available for the first grant year (commencing during the month of November 1999) for funding approximately 12 to 20 projects covered by this Solicitation.

The Department intends to provide non-competitive funding for the succeeding one-year period (FY 2001) for grantees who perform satisfactorily during FY 2000, subject to availability of federal funds. In accordance with WIA Section 167(c)(4)(B), the Department will establish criteria for making a determination of satisfactory performance upon which to base the non-competitive funding for the second one-year period. The Department will advise the grantees of its determination and will include the criteria to be used for determining satisfactory performance.

DATES: The closing date for receipt of proposals is October 15, 1999 at 4:00 p.m. (Eastern Time). No exceptions to the mailing and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be considered.

ADDRESSES: Applications must be mailed or hand-delivered to: Ms. Lorraine Saunders; U.S. Department of Labor; Employment and Training Administration; Division of Federal Assistance; 200 Constitution Avenue, N.W., Room S–4203; Washington, D.C. 20210. Reference: SGA/DFA–99–020.

FOR FURTHER INFORMATION CONTACT: Ms. Lorraine Saunders at (202) 219-8702, Ext. 145 (this is not a toll-free number).

Part I. Background

Introduction

The proposals solicited must consist of a two-year program strategy consisting of five sections covering the applicant's understanding of the problems of migrant and seasonal farmworker youth (Section 1); familiarity with the area to be served and capacity to work within the existing service environment (Section 2); description of planned program activities and services (Section 3); capacity to administer effectively a workforce investment program for MSFW youth (Section 4); and administrative and management capability (Section 5). The statement of programmatic experience must reflect the applicant's capacity to administer effectively a diversified program of workforce investment activities and related assistance (an employability development program under JTPA) for eligible migrant and seasonal farmworker youth.

For rating purposes, each section is assigned a range of possible points, and the sum of the maximum possible points for all five sections totals 100. The most heavily weighted section is Section 3 which covers the perceived effectiveness of the proposed MSFW youth workforce activities. The applicant's proposal for Section III should be a description of an operational plan that is appropriate to the conditions described by the proposer in Section 1.

Background

The purpose of WIA is to provide workforce investment activities, through statewide and local workforce investment systems, that increase the employment, employment retention, participant earnings, and increase occupational skill attainment by participants. As set forth in 20 CFR 669.600 (published at 64 Fed. Reg. 18750 (Apr. 15, 1999)), the purpose of the MSFW youth program is to provide an effective and comprehensive array of educational opportunities, employment skills, and life enhancement activities to at-risk and out-of-school MSFW youth that lead to success in school, economic stability and development into productive members of society.

WIA, Section 167, 29 U.S.C. 2912, and as defined in the Interim Final Regulations, provides for eligible entities, selected through a Federal competitive grants or contracts process, to deliver a diversified program of workforce investment activities, and related assistance to eligible migrant and seasonal farmworker youth who are members of families that suffer chronic seasonal unemployment and underemployment in the agriculture industry. Regulations promulgated by the Department to implement the provisions of Section 167 are set forth in 20 CFR Part 669 (published at 64 Fed. Reg. 18662, 18746 (Apr. 15, 1999)). These programs will:

(1) Strengthen the ability of eligible farmworkers and their dependents to obtain or retain unsubsidized employment, or stabilize their unsubsidized employment; and

(2) Provide related assistance and supportive services, integrated and coordinated with other appropriate services.

The portion of the regulations that specifically pertain to the MSFW youth program are set fourth in Subpart E at 20 CFR 669.600 et. seq. (64 Fed. Reg. 18750 (Apr. 15, 1999)).

In addition, migrant and seasonal farmworker programs are subject to all applicable provisions of the Interim Final WIA Regulations, 29 CFR Parts 93 (New Restrictions on Lobbying), 96 (Audit Requirements), and 98 (Debarment, Suspension and Drug-free Workplace requirements) and the Department's nondiscrimination regulations implementing Section 188. Should the regulations at Part 669 conflict with regulations elsewhere in 20 CFR, the regulations at Part 669 will control. Further, should any instructions in this notice conflict with WIA Interim Final Rules, WIA regulations will control. Applicants should consult and be familiar with WIA regulations at 20 CFR Parts 660 through 670.

Consultation With Governors and Local Boards

Executive Order No. 12372, "Intergovernmental Review of Federal Programs," and the implementing regulations at 29 CFR Part 17, are applicable to this program. Under these requirements, the applicant must provide a copy of the application for comment to the States that have established a consultation process under the Executive Order. Applications must be submitted to the State's Single Point of Contact (SPOC) no later than the deadline for submission of the application to the Department.

For States that have not established a consultative process under Executive Order No. 12372, and have established a State Workforce Investment Board (State Board), the State Board will be the SPOC. For WIA implementation purposes, this consultation process fulfills the requirement of WIA Section 167(e) concerning consultation with Governors and Local Boards. To strengthen the implementation of Executive Order No. 12372, the Department establishes the following time-frame for its treatment of comments from the State's SPOC on WIA Section 167 applications:

1. The SPOC must submit comments, if any, to the Department and to the applicant, no later than 30 days after the deadline date for submission of applications;

2. The applicant's response to the SPOC comments, if any, must be submitted to the Department no later than 15 days after the post-marked date of the comments from the SPOC;

3. The Department will notify the SPOC of its decision regarding the SPOC comments and applicant response; and

4. The Department will implement that decision within 10 days after it has notified the SPOC.

Eligible Applicants

To be eligible to operate MSFW youth programs an organization must have:

1. an understanding of the problems of migrant and seasonal farmworker youth;

2. a familiarity with the area to be served;

3. a demonstrated capacity to administer effectively a diversified workforce investment program for youth; and

4. an appropriate legal status to enter into a grant agreement with the U.S. Department of Labor (e.g. a private non-profit corporation or a unit of State of local government).

To maximize available resources, applications are encouraged to form a consortia of organizations which individually or collectively meet the above criteria.

MSFW Youth Participant Eligibility

Eligible participants are the 14 to 21 year old farmworkers and children of migrant and seasonal farmworker parents (or guardians) as defined in Section 167(h) of the Workforce Investment Act and at 20 CFR Part 669.

Grant Duration and Period of Performance

The Department anticipates that grants will be funded for two one-year time periods—with funding in the second year contingent on satisfactory performance during the first year and the availability of funding in the second year. The period of performance for the first funding cycle is expected to commence during November 1999.

Part II. Application Process and Guidelines

Submission of the Grant Application Package

Applicants must submit an original and three (3) copies of the complete application package for review. Applications must be mailed no later than five (5) days prior to the closing date for the receipt of applications. However, if applications are hand-delivered, they must be received at the designated place by 4:00 p.m., Eastern Time on the closing date for receipt of applications. All overnight mail will be considered to be hand-delivered and must be received by the specified time and closing date. Telegraphed, faxed, and e-mailed proposals will not be honored. Applications that do not adhere to the above instructions will not be honored.

Late Applications

Any application received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it

(a) Was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the closing date specified for receipt of applications (e.g. an offer submitted in response to a solicitation requiring a receipt of application by the 30th of January must have been mailed by the 25th); or

(b) Was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of application. The term "working days" excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of a late application sent by U.S. Postal Service registered or certified mail is the U.S. postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal will be processed as if it had been mailed late. "Postmark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been applied or affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk to place a legible hand cancellation "bulls eye" postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by "Express Mail Next Day Service—Post Office to Addressee" is the date entered by the post office receiving clerk on the Express Mail Next Day Service—Post Office to Addressee label and the postmarks on both the envelope and wrapper and the original receipt from the U.S. Postal Service. "Postmark" has the same meaning as defined above. Therefore, an applicant should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper.

Withdrawal of Applications

Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before the award. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

Grant Application Package

The grant application package must consist of:

(1) A Standard Form 424 (Application for Federal Assistance) found in OMB Circular A–102 and as an attachment to this Solicitation.

(2) A Standard Form 424A (Budget) found in OMB Circular A–102 and as an attachment to this Solicitation. Costs in Section B (Budget Categories), Item 6 (Object Cost Categories) should be budgeted by Administrative, Program, and Total. Administrative costs are to be included in column (1), program costs in column (2), and the total cost in column (5). Administrative costs are

limited to 10 percent. *Budgets are required only for "Year 1" of the two-year designation period.*

(3) A certification, prepared within the last six months prior to the submission of this application, attesting to the adequacy of the entity's fiscal management and accounting systems to account for and safeguard Federal funds properly. The certification is to be obtained as follows:

(a) For incorporated organizations, a certification from a Certified Public Accountant, or

(b) For public agencies, a certification by its Chief Fiscal Officer;

(4) A statement describing the entity's legally constituted authority under which the organization functions. A nonprofit organization should submit a copy of its Charter or Articles of Incorporation, including proof of the organization's nonprofit status;

(5) A copy of the current indirect cost rate agreement issued by the cognizant federal agency, *if applicable.*

(6) The entity's application for grant funding as described below.

Format of the Grant Application

The grant application is limited to 50 numbered pages, double-spaced, using type no smaller than 12 point. The page number limitation does not include letters of support or the required attachments. Proposals may be fastened using a binder clip. Please do not use 3-ring binders, or otherwise bind your proposal package.

To ensure full consideration, the application must follow the numerical sequence of the Sections 1 through 6 as listed below, and must include a table of contents. All attachments are to be included in Section 6. Credit may not be afforded in instances where items are not addressed in the proper section.

Contents of the Grant Application

Section 1—An Understanding of the Problems of Migrant and Seasonal Farmworker Youth

An understanding of the problems of migrant and seasonal farmworker youth must be demonstrated through a comprehensive description and analysis of:

(A) the needs and problems of farmworker youth; and

(B) the demographic and socio-economic characteristics of migrant and seasonal farmworker youth in the service area. The description must include an explanation of how these characteristics compare with those of non-farmworker youth and why a youth program, specifically targeted to farmworker youth, would more appropriately address the needs of farmworkers.

Specific Rating Criteria, Section 1 [0 to 15 points]—This factor rates the applicant's knowledge and analysis of the needs, problems, and demographic characteristics of the target group. Ratings are based on the degree to which the narrative is clear, concise, and demonstrates an in depth understanding of the MSFW youth population.

Section 2—A Familiarity with the Area to Be Served and Capacity to Work Within the Existing Service Environment

A familiarity with the area to be served and the capacity to work within the existing service environment is demonstrated through:

(A) The identification of the geographic boundary(ies) of the proposed service area(s)—including a map. A rationale should be provided, if the proposed service area(s) is(are) not contiguous.

(B) A description of the communities where migrant and seasonal farmworkers youth, who would be served by the proposed project, reside and or travel for work purposes. The description must include a discussion of educational, social, cultural, workforce and other relevant opportunities available for youth, and the degree to which these opportunities, if available, are appropriate for MSFW youth.

(C) A description of the relationship between the grant applicant and the JTPA Section 402/WIA Section 167 MSFW employment and training/workforce investment program sponsor(s). (If the applicant is not the current JTPA Section 402/WIA Section 167 MSFW employment and training/workforce investment program grantee in the proposed service area, describe the arrangements that have been or will be made to coordinate the delivery of services and avoid needless duplication of services.)

(D) A description of the status of the workforce investment system within the proposed service area. Describe what steps have or will be taken to coordinate the delivery of core services to MSFW youth.

(E) A description of available community programs and services that would complement the proposed program and the efforts that have been made to coordinate the delivery of services.

(F) An itemization of program linkages in a tabular format. The specific information sought is the name of the entity with whom a linkage has (or will be) established, the relationship of the linkage entity to the applicant, the specific service to be provided by the linkage, and whether or not a letter documenting the linkage is provided as an attachment. Linkages listed here must be limited to only those which are relevant to the proposed program.

Specific Rating Criteria, Section 2 [0 to 15 points]—This factor rates the applicant's familiarity with the area and capacity to work within the existing service environment. Rates will consider factors such as reasonableness of the service area in terms of program scope and funds sought; applicant's ability to work within the service environment, as evidenced by the existence of appropriate and documented linkages—especially those related to other MSFW program efforts; and applicant's knowledge and integration of local resources into the program design.

Section 3—A Description of Planned Program Activities and Services

The description of planned program activities and services (Note: Any references to time frames should be cited as year 1 and/or year 2):

(A) Identifies the goal(s) of the proposed program.

(B) Provides a detailed description of the proposed program activities and services. This description should be provided in a way that illustrates the participant flow through the various phases of the proposed program. A flow chart must be included. The description and flow chart must, at a minimum, include:

(1) Outreach, intake, and eligibility determination; and

(2) Specific youth services:

(i) Tutoring, study skills training and instruction leading to secondary school completion, including dropout prevention strategies;

(ii) Alternative secondary school offerings;

(iii) Summer employment opportunities directly linked to academic and occupational learning;

(iv) Paid and unpaid work experiences, including internships and job shadowing;

(v) Occupational skills training;

(vi) Leadership development opportunities, which may include such activities as positive social behavior and soft skills, decision making, team work, and other activities;

(vii) Supportive services;

(viii) Adult mentoring for a duration of at least twelve (12) months, that may occur both during and after program participation;

(ix) Follow-up services; and

(x) Comprehensive guidance and counseling, including drug and alcohol abuse counseling, as well as referrals to counseling, as appropriate to the needs of individual youth.

(C) Identifies the planned outcomes for youth served by the proposed program. Explain how the program goals and outcomes are related to and will address the problems of MSFW youth addressed in Section 1, including the following:

(1) A description of the involvement and participation of the parents/guardians of MSFW youth in the proposed program.

(2) A description of the plan to ensure that the provision of proposed services encourages the continued participation in school by MSFWs who have not completed the twelfth grade.

(D) Describes, in narrative form, the proposed program budget. The description should explain and justify the costs budgeted (year 1 only) to each Object Class Category (page 2, SF 424A, Section B). The description should also address how the budgeted costs support the proposed program activities and services and the staffing pattern.

(E) Description of the demographic and socio-economic characteristics of the MSFW youth who would most likely participate in the proposed program and how the program has been designed to address the needs of this population.

Specific Rating Criteria, Section 3 [0 to 40 points]—This factor rates the perceived effectiveness of the proposed MSFW youth workforce investment activities in addressing the stated farmworker problems addressed in Section 1; if proposed outcomes reflect proposed goals; the appropriateness of strategies for parental involvement and participation; and plans to ensure the continued school participation by enrolled MSFW youth who have not completed the twelfth grade. Additionally, up to 10 of the points associated with this rating criteria will be based on an assessment of the reasonableness of the budget in relation to the proposed program of activities and services and outcome to be achieved.

Section 4—A Capacity to Administer Effectively a Workforce Investment Program for MSFW Youth

The capacity to administer effectively a workforce development program for MSFW youth as evidenced by a description of:

(A) The mission/principle goals and objectives of the applicant organization.

(B) The applicant organization's experience providing services to youth, particularly MSFW youth.

(C) The programs operated by the applicant organization during the last two years, presented in tabular form. For each entry, the table must include:

(1) Funding source (Name of Agency/Organization, Address, Telephone, and Contact Person);

(2) Program Information (Type of Program, Grant/Contract/Agreement Number, Principle Activities, Period of Performance and Funding Amount);

(3) Clientele (Number of participants served, percent of MSFW participant, percent of MSFW youth (age 14–21) served);

(4) Performance standards and outcomes achieved; and

(5) Outcomes achieved for farmworker youth (ages 14–21).

Specific Rating Criteria, Section 4 [0 to 20 points]—This factor rates an applicant's capacity to provide effectively workforce investment activities for MSFW youth based on the applicant's previous relevant program performance.

Section 5—Administrative and Management Capability

Administrative and management capability is demonstrated by:

(A) A chart depicting the overall organization structure of the proposed youth program. The chart must clearly show how the proposed program fits within the overall organizational structure. It must include both staffing patterns and office locations. In addition, the chart must show which parts of the proposed MSFW youth program structure are in place and which parts would be established if the proposal were funded.

(B) A description of the proposed implementation schedule which clearly shows exactly when the proposed program will be fully operational.

(C) A description of the administrative and program management processes which include the fiscal management systems and the program management systems (including management information system). Program management must address systems for participant tracking, follow-up, program monitoring and oversight, and the provision of training and technical assistance for staff who work directly with participants.

Specific Rating Criteria, Section 5 [0 to 10 points]—This factor rates the applicant's managerial experience and the potential for efficient and effective administration of the proposed program.

Section 6—Attachments

All attachments referenced in the proposal are to be included in this section of the proposal. The first page in this section should itemize the included attachments.

Part III—Review Process of Grant Application

Panel Review

The Grant Officer will select potential grantees utilizing all information available to him/her. A review panel will rate each proposal using the specific criteria cited above. Panel results are advisory in nature and are not binding on the Grant Officer. The Grant Officer will give appropriate consideration to an entity in any service area for which the entity has been designated as a WIA section 167 MSFW program grantee (20 CFR 669.630). Further, the Grant Officer will make selections that promote a geographic distribution of funds where merited (20 CFR 669.650). The Grant Officer may, at his/her discretion, request an applicant to submit additional or clarifying information if deemed necessary to make a selection. However, selections may be made without further contact with the applicants.

Responsibility Review

Prior to awarding a grant to any applicant, the Department will conduct a responsibility review. The responsibility review is an analysis of available information and records to determine if an applicant has established a satisfactory history of accounting for Federal funds and property. The responsibility review is independent of the competitive process. Applicants failing to meet the requirements of this section may be disqualified for designation as a grantee, without respect to their standing in the competitive process. An applicant that is not selected as a result of the Grant Officer's responsibility review will be advised of its appeal rights. The responsibility tests that will be considered are presented in the WIA regulations at 20 CFR 667.170.

Notification of Non Selection

Any applicant that is not selected as a potential grantee, or that has its grant application denied in whole or in part by the Department for receipt of funds, will be notified in writing by the Grant Officer and will be advised of all appeal rights.

Notification of Selection

Applicants that are selected will be notified in writing by the Grant Officer. Formal designation as a grantee will be contingent on the successful negotiation of a grant agreement for the first year of operation.

Signed on this 26th day of August 1999.

E. Fred Tello,

Grant Officer, Department of Labor/ETA.

BILLING CODE 4510-30-P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipa
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H Independent School Dist.
I State Controlled Institution of Higher Learning
J . Private University
K Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. Federal	$ .00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____
b. Applicant	$ .00	b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
c. State	$ .00	
d. Local	$ .00	
e. Other	$ .00	
f. Program Income	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation. ☐ No
g. TOTAL	$ .00	

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number

d. Signature of Authorized Representative	e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided. - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.
12.	List only the largest political entities affected (e.g., State, counties, cities.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

BUDGET INFORMATION - Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

21. Direct Charges:

22. Indirect Charges:

23. Remarks:

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Standard Form 424A (Rev. 7-97) Page 2

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

[FR Doc. 99–22843 Filed 9–1–99; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101 of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor (Secretary) may allow the modification of the application of a mandatory safety standard to a mine if the Secretary determines either that an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons, and a field investigation of the conditions at the mine. MSHA, as designee of the Secretary, has granted or partially granted the requests for modification listed below. In some instances, the decisions are conditioned upon compliance with stipulations stated in the decision. The term "FR Notice" appears in the list of affirmative decisions below. The term refers to the **Federal Register** volume and page where MSHA published a notice of the filing of the petition for modification.

FOR FURTHER INFORMATION: Petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations, and Variances, MSHA, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Contact Barbara Barron at 703–235–1910.

Dated: August 27, 1999.

Carol J. Jones,

Acting Director, Office of Standards, Regulations and Variances.

Affirmative Decisions on Petitions for Modification

Docket No.: M–99–014–C.
FR Notice: 64 FR 16761.
Petitioner: The Ohio Valley Coal Company.
Regulation Affected: 30 CFR 75.804(a).
Summary of Findings: Petitioner's proposal is to use a high-voltage cable with an internal ground check conductor smaller than No. 10 (A.W.G.) as part of its longwall mining system. This is considered an acceptable alternative method for the Powhatan No. 6 Mine. MSHA grants the petition for modification for the Powhatan No. 6 Mine with conditions.

Docket No.: M–98–021–C.
FR Notice: 63 FR 18232.
Petitioner: Peabody Coal Company.
Regulation Affected: 30 CFR 75.364(a)(1).
Summary of Findings: Petitioner's proposal is to have a certified person conduct weekly examinations at established evaluation points immediately inby and outby the affected area to determine methane and oxygen concentrations and the volume of air, and record the results in a book maintained on the surface of the mine. This is considered an acceptable alternative method for the Camp No. 1 Mine. MSHA grants the petition for modification for the Camp No. 1 Mine with conditions.

Docket No.: M–98–032–C.
FR Notice: 63 FR 29034.
Petitioner: Mettiki Coal Corporation.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use 4,300 volt cables on high-voltage longwall electric equipment used within 150 feet from pillar workings (longwall gob). This is considered an acceptable alternative method for the Mettiki Mine. MSHA grants the petition for modification for the Mettiki Mine with conditions.

Docket No.: M–98–055–C.
FR Notice: 63 FR 44291.
Petitioner: Twentymile Coal Company.
Regulation Affected: 30 CFR 75.1002–1(a).
Summary of Findings: Petitioner's proposal is to measure the thickness of the deck plate and related components on its longwall face conveyor using a hand-held, double insulated 7.5 volt non-permissible ultrasonic thickness gauge during idle shifts when mining is not occurring; to deenergize all electrical equipment, except lighting, on the longwall face and follow all appropriate lockout and tagout procedures prior to using the gauge; and to have a certified person examine for methane in the immediate area of the longwall face conveyor and record the results, as a special examination, in the onshift examination books after the shift on which the examination is performed. This is considered an acceptable alternative method for the Foidel Creek Mine. MSHA grants the petition for modification for the Foidel Creek Mine with conditions.

Docket No.: M–98–057–C.
FR Notice: 63 FR 44291.
Petitioner: Blue Mountain Energy, Inc.
Regulation Affected: 30 CFR 75.1002–1(a).
Summary of Findings: Petitioner's proposal is to allow the use of non-permissible electronic testing or diagnostic equipment within 150 feet of pillar workings. This is considered an acceptable alternative method for the Deserado Mine. MSHA grants the petition for modification for the Deserado Mine with conditions.

Docket No.: M–98–066–C.
FR Notice: 63 FR 44292.
Petitioner: G and A Coal Company, Inc.
Regulation Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal is to use belt air to ventilate the working faces; to install carbon monoxide monitoring devices to monitor the air at each belt drive and tailpiece and at intervals not to exceed 2,000 feet along each conveyor belt entry; to have an audible alarm that would sound at the surface master station and that would give the location and type of alarm on a computer screen located at the surface master station, and the alarm system would be capable of giving a warning of a fire for a minimum of four (4) hours after the power to the belt is removed, except when the power is removed during a fan stoppage or the belt haulageway is examined. This is considered an acceptable alternative method for the No. 1 Mine. MSHA grants the petition for modification for the No. 1 Mine with conditions.

Docket No.: M–98–067–C.
FR Notice: 63 FR 45865.
Petitioner: Mettiki Coal Corporation.
Regulation Affected: 30 CFR 75.500(b)
Summary of Findings: Petitioner's proposal is to allow non-permissible hand-held, battery-powered drills and non-permissible electronic testing and diagnostic equipment to be taken into or used inby the last open crosscut. This is considered an acceptable alternative method for the Mettiki Mine. MSHA grants the petition for modification for the Mettiki Mine with conditions.

Docket No.: M–98–080–C.
FR Notice: 63 FR 50603.
Petitioner: Mettiki Coal Corporation.
Regulation Affected: 30 CFR 75.1002–1(a).
Summary of Findings: Petitioner's proposal is to use non-permissible low

horsepower testing and diagnostic equipment within 150 feet from pillar workings. This is considered an acceptable alternative method for the Mettiki Mine. MSHA grants the petition for modification for the Mettiki Mine with conditions.

Docket No.: M–98–081–C.
FR Notice: 63 FR 58430.
Petitioner: U.S. Steel Mining Company, LLC.
Regulation Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal is to use permanently installed spring-loaded locking devices on battery plugs on battery-powered equipment instead of using padlocks. This is considered an acceptable alternative method for the Gary No. 50 Mine. MSHA grants the petition for modification for the Gary No. 50 Mine with conditions.

Docket No.: M–98–085–C.
FR Notice: 63 FR 58431.
Petitioner: Rustler Coal Company.
Regulation Affected: 30 CFR 75.340.
Summary of Findings: Petitioner's proposal is for an underground battery charging station in the intake (gangway) entry. This is considered an acceptable alternative method for the Orchard Slope Mine. MSHA grants the petition for modification for the Orchard Slope Mine with conditions.

Docket No.: M–98–087–C.
FR Notice: 63 FR 58070.
Petitioner: Headache Coal Company, Inc.
Regulation Affected: 30 CFR 75.380(f)(4).
Summary of Findings: Petitioner's proposal is to install two 10 pound portable chemical fire extinguishers in the operators deck or in the scoop of each Mescher Tractor at the mine instead of a fire suppression system. This is considered an acceptable alternative method for the Roses Creek Mine. MSHA grants the petition for modification for the Roses Creek Mine with conditions.

Docket No.: M–98–089–C.
FR Notice: 63 FR 64103.
Petitioner: Consolidation Coal Company.
Regulation Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal is to increase the maximum length of their trailing cables to 1,000 feet for the mining machine, loading machine, shuttle car, roof bolter, and the section ventilation fan while developing longwall panels. This is considered an acceptable alternative method for the Loveridge No. 22 Mine. MSHA grants the petition for modification for the Loveridge No. 22 Mine with conditions.

Docket No.: M–98–099–C.
FR Notice: 64 FR 2520.
Petitioner: M & M Anthracite Coal Company.
Regulation Affected: 30 CFR 75.1400.
Summary of Findings: Petitioner's proposal is to use a slope conveyance (gunboat) in transporting persons using increased rope strength/safety factor and secondary safety rope connection in place of safety catches or other devices. This is considered an acceptable alternative method for the L.V. No. 3 Vein Slope Mine. MSHA grants the petition for modification for the L.V. No. 3 Vein Slope Mine with conditions.

Docket No.: M–98–110–C.
FR Notice: 64 FR 2519.
Petitioner: Eastern Association Coal Corp.
Regulation Affected: 30 CFR 75.503.
Summary of Findings: Petitioner's proposal is to use a threaded ring and spring-loaded device instead of a padlock on the battery plug connectors for mobile battery-powered machines to prevent the plug connector from accidently disengaging while under load. This is considered an acceptable alternative method for the Harris No. 1 Mine. MSHA grants the petition for modification for the Harris No. 1 Mine with conditions.

Docket No.: M–98–111–C.
FR Notice: 64 FR 2519.
Petitioner: The Ohio Valley Coal Company.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to amend the Decision and Order Granting Petition for Modification No. M–87–169–C to provide for the use of a high voltage shearer in the Powhatan No. 6 Mine. Petition No. M–87–169–C only addressed the use of a high voltage face conveyor. MSHA has determined that this is an acceptable alternative method for the Powhatan No. 6 Mine and grants the petition for modification with conditions. In granting this petition for modification with conditions, MSHA has modified the terms of the previously granted petition to include the same protection to miners as is provided in other recent modifications.

The petitioner represents that exceptional circumstances exist that would result in significant economic loss if the petition were not granted. MSHA has also determined that delaying the effective date would unnecessarily disrupt mining and cause dislocation of the work force. MSHA grants Petitioner's application for relief to give effect.

Docket No.: M–98–112–C.
FR Notice: 64 FR 2519.
Petitioner: G & S Coal Company.
Regulation Affected: 30 CFR 75.1100–2.
Summary of Findings: Petitioner's proposal is to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. This is considered an acceptable alternative method. MSHA grants the petition for modification for the G & S Mine with conditions.

Docket No.: M–98–114–C.
FR Notice: 64 FR 2519.
Petitioner: Snyder Coal Company.
Regulation Affected: 30 CFR 75.1202–1(a).
Summary of Findings: Petitioner's proposal is to revise and supplement mine maps annually instead of every 6 months, as required, and to update maps daily by hand notations. This is considered an acceptable alternative method for the N and L Slope Mine. MSHA grants the petition for modification for the N and L Slope Mine with conditions.

Docket No.: M–97–096–C.
FR Notice: 62 FR 51910.
Petitioner: Peabody Coal Company.
Regulation Affected: 30 CFR 75.364(b)(4).
Summary of Findings: Petitioner's proposal is to establish fixed evaluation points in lieu of traveling certain portions of the air course during weekly examination; and to have a certified person examine these evaluation points for methane and oxygen concentrations and the volume of air and record the results in a book maintained on the surface of the mine. This is considered an acceptable alternative method for the Camp No. 1 Mine. MSHA grants the petition for modification for the Camp No. 1 Mine with conditions.

Docket No.: M–97–101–C.
FR Notice: 62 FR 51908.
Petitioner: McElroy Coal Company.
Regulation Affected: 30 CFR 75.312(c) and (d).
Summary of Findings: The Petitioner has filed two petitions: Petition Docket No. M–97–101–C, seeking to modify § 75.312(c); and M–97–112–C, seeking to modify § 75.312(d). Sections 75.312(c) and 75.312(d) require a fan shutdown to test the fan stoppage signal and the air-reversal-prevention doors. MSHA has elected to dismiss Docket No. M–97–112–C and combine petitioner's request in Docket No. M–97–101–C. The Petitioner's proposes an alternate method of performing the tests without shutting down the fan(s) and without removing the miners from the mine. The alternative method proposes is considered acceptable for the McElroy Mine. MSHA grants the petition for modification with conditions.

Docket No.: M–97–106–C.
FR Notice: 62 FR 51909.
Petitioner: Mark P. Shingara Coal Company.
Regulation Affected: 30 CFR 75.1200(d) and (i).
Summary of Findings: Petitioner's proposal is to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000-foot intervals of advance from the intake slope and to limit the required mapping of the mine workings above and below to those present within 100 feet of the veins being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnel. This is considered an acceptable alternative method for the No. 4 Vein Slope Mine. MSHA grants the petition for modification for the No. 4 Vein Slope Mine with conditions.

Docket No.: M–97–107–C.
FR Notice: 62 FR 51909.
Petitioner: Mark P. Shingara Coal Company.
Regulation Affected: 30 CFR 75.1202–1(a).
Summary of Findings: Petitioner's proposal is to revise and supplement mine maps annually instead of every 6 months, as required, and to update maps daily by hand notations. This is considered an acceptable alternative method for the No. 4 Vein Slope Mine. MSHA grants the petition for modification for the No. 4 Vein Slope Mine with conditions.

Docket No.: M–97–136–C.
FR Notice: 63 FR 2699.
Petitioner: Jim Walter Resources, Inc.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: The Petitioner is operating under a previously granted modification, Docket No. M–93–209–C. Petitioner requests that paragraph 13 of the previous petition be amended to allow damaged high voltage cable to be repaired in the mine. MSHA considers this an acceptable alternative method at the No. 3 Mine. MSHA grants the petition with conditions, including the amendment of other provisions of high voltage longwall petition Docket No. M–93–209–C.

[FR Doc. 99–22836 Filed 9–1–99; 8:45 am]
BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–99–14]

Servicing Multi-Piece and Single Piece Rim Wheels (Manufacturer's Certification Record); Extension of the Office of Management and Budget's (OMB) Approval of an Information Collection (Paperwork) Requirement

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the proposed extension of the information collection requirements contained in the standard on Servicing Multi-Piece and Single Piece Rim Wheels (29 CFR 1910.177(d)(3)(iv)).

Request for Comment

The Agency seeks comments on the following issues:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated, electronic, mechanical, and other technological information and transmission collection techniques.

DATES: Submit written comments on or before November 1, 1999.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–99–14, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2222. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirement (manufacturer's certification record) contained in the standard on Servicing Multi-Piece and Single Piece Rim Wheels (29 CFR 1910.177(d)(3)(iv)) is available for inspection and copying in the Docket Office, or mailed on request by telephoning Theda Kenney at (202) 693–2222 or Barbara Bielaski at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at http://www.osha.gov/comp-links.html, and click on "Information Collection Requests."

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is correct.

The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents. (29 U.S.C. 657.) In this regard, the information collection requirement (the manufacturer's certification record) in the standard on Servicing Multi-Piece and Single Piece Rim Wheels (29 CFR 1910.177(d)(3)(iv)) ensures that employers protect employees from the hazards of a damaged restraining device in the event of a rim wheel separation or the sudden release of pressurized air.

II. Proposed Actions

OSHA proposes to retain its earlier estimate of six burden hours for the provision pertaining to the manufacturer's certification record in the standard on Servicing Multi-Piece and Single Piece Rim Wheels (29 CFR 1910.177(d)(3)(iv)).

OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirement contained in the above standard.

Type of Review: Extension of currently approved information collection requirement.

Agency: Occupational Safety and Health Administration.

Title: Servicing Multi-Piece and Single Piece Rim Wheels, Manufacturer's Certification Record (29 CFR 1910.177(d)(3)(iv)).

OMB Number: 1218–0219.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; state, local or tribal government.

Number of Respondents: 80.

Frequency: Annually.

Average Time per Response: 5 minutes (0.08 hour).

Estimated Total Burden Hours: 6.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR part 1911.

Signed at Washington, DC, this 27th day of August, 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–22847 Filed 9–1–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–99–19]

Overhead and Gantry Cranes (Inspection Certification Records); Extension of the Office of Management and Budget's (OMB) Approval of an Information Collection (Paperwork) Requirement

AGENCY: Occuptional Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the proposed decrease in, and extension of, the information collection requirements (inspection certification records) contained in the standard on Overhead and Gantry Cranes, 29 CFR 1910.179.

Request for Comment

The Agency seeks comments on the following issues:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated, electronic, mechanical, and other technological information and transmission collection techniques.

DATES: Submit written comments on or before November 1, 1999.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–99–19, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of labor, Room N–3605, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2222. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirements (inspection certification records) contained in the standard on Overhead and Gantry Cranes (29 CFR 1910.179) is available for inspection and copying in the Docket Office, or mailed on request by telephoning Theda Kenney at (202) 693–2222 or Barbara Bielaski at (202) 603–2444. For electronic copies of the ICR, contact OSHA on the Internet at http://www.osha.gov/comp-links.html, and click on "Information Collection Requests."

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is correct.

The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents. (29 U.S.C. 657.) In this regard, the information collection requirements (the inspection certification records) in the standard on Overhead and Gantry Cranes (29 CFR 1910.179) ensures that employers maintain properly overhead and gantry cranes to ensure safe operating conditions for employees.

II. Proposed Actions

OSHA proposes to decrease its earlier estimate of 367,528 burden hours to 367,500 burden hours for the provisions pertaining to the inspection certification records in the standard on Overhead and Gantry Cranes (29 CFR 1910.179).

OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the above standard.

Type of Review: Extension of currently approved information collection requirement.

Agency: Occupational Safety and Health Administration.

Title: Overhead and Gantry Cranes, Inspection Certification Records (29 CFR 1910.179(j)(2)(iii), (j)(2)(iv), (m)(1), and (m)(2)).

OMB Number: 1218–0224.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; state, local or tribal government.

Number of Respondents: 30,000.

Frequency: Varies (annually, semi-annually).

Average Time per Response: Varies from 15 minutes (0.25 hour) to 30 minutes (0.50 hour).

Estimated Total Burden Hours: 367,500.

III. Authority and signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR part 1911.

Signed at Washington, DC, this 27th day of August, 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–22848 Filed 9–1–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–99–21]

Manlifts (Inspection Certifications) Extension of the Office of Management and Budget's (OMB) Approval of an Information Collection (Paperwork) Requirement

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the proposed decrease in estimated burden hours, and the extension of the inspection certification records contained in the Manlift Standard, 29 CFR 1910.68(e)(3).

Request for Comment

The Agency seeks comments on the following issues:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated, electronic, mechanical, and other technological information and transmission collection techniques.

DATES: Submit written comments on or before November 1, 1999.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–99–21, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2222. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirements in 29 CFR 1910.68(e)(3) (inspection certification records) is available for inspection and copying in the Docket Office, or mailed on request by telephoning Theda Kenney at (202) 693–2222 or Barbara Bielaski at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at http://www.osha.gov/comp-links.html, and click on "Information Collection Requests."

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is correct.

The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents. (29 U.S.C. 657.) In this regard, the information collection requirements contained in 29 CFR 1910.68(e)(3) (inspection certification records) will ensure that manlifts are in safe operating condition, and all safety devices, such as belt switches, are working properly. The failure of belts or switches could cause serious injury or death to an employee.

II. Proposed Actions

OSHA proposes a minimal decrease in its earlier estimate of burden hours from 51,005 to 51,000 for the information collection requirements in 29 CFR 1910.68(e)(3) (inspection certification records).

OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the above provision.

Type of Review: Extension of currently approved information collection requirement.

Agency: Occupational Safety and Health Administration.

Title: Manlifts (Inspection Certifications) (29 CFR 1910.68(e)(3)).

OMB Number: 1218–0226.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal government; state, local or tribal government.

Number of Respondents: 3,000.

Frequency: Varies (monthly, daily).

Average Time per Response: Varies from 5 minutes (0.08 hour) to 69 minutes (1.15 hours).

Estimated Total Burden Hours: 51,000.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR part 1911.

Signed at Washington, DC, this 27th day of August 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–22849 Filed 9–1–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–99–22]

Forging Machines (Inspection Certification Records); Extension of the Office of Management and Budget's (OMB) Approval of an Information Collection (Paperwork) Requirement

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment

SUMMARY: OSHA solicits comments concerning the proposed extension of the information collection requirements (inspection certification records) contained in the standard on Forging Machines, 29 CFR 1910.218(a)(2)(i) and (a)(2)(ii).

REQUEST FOR COMMENT

The Agency seeks comments on the following issues:

- Whether the information collection requirements are necessary for the

proper performance of the Agency's functions, including whether the information is useful;

• The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;

• The quality, utility, and clarity of the information collected; and

• Ways to minimize the burden on employers who must comply; for example, by using automated, electronic, mechanical, and other technological information and transmission collection techniques.

DATES: Submit written comments on or before November 1, 1999.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–99–22, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW, Washington, DC 20210; telephone (202) 693–2222. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirements (inspection certification records) contained in the standard on Forging Machines (29 CFR 1910.218) is available for inspection and copying in the Docket Office, or mailed on request by telephoning Theda Kenney at (202) 693–2222 or Barbara Bielaski at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at http://www.osha.gov/complinks.html, and click on "Information Collection Requests."

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is correct.

The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents. (29 U.S.C. 657.) In this regard, the information collection requirements (the inspection certification records) in the standard on Forging Machines (29 CFR 1910.218) ensures that employers perform periodic and regular maintenance checks on forging machines to ensure safe operating conditions for employees.

II. Proposed Actions

OSHA proposes to retain its earlier estimate of 244,868 burden hours for the provisions pertaining to the inspection certification records in the standard on Forging Machines (29 CFR 1910.218(a)(2)(i) and (a)(2)(ii)).

OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the above provisions.

Type of Review: Extension of currently approved information collection requirement.

Agency: Occupational Safety and Health Administration.

Title: Forging Machines, Inspection Certification Records (29 CFR 1910.218(a)(2)(i) and (a)(2)(ii)).

OMB Number: 1218–0228.

Affected Public: Business or other for-profit; Federal government; state, local or tribal government.

Number of Respondents: 27,700.

Frequency: Bi-weekly.

Average Time per Response: 10 minutes (0.17 hour).

Estimated Total Burden Hours: 244,868.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR part 1911.

Signed at Washington, DC, this 27th day of August, 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–22850 Filed 9–1–99; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–109]

NASA Advisory Council, Minority Business Resource Advisory Committee; meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Minority Business Resource Advisory Committee.

DATES: Tuesday, September 21, 1999, 9:00 a.m. to 2:00 p.m., and Wednesday, September 22, 1999, 9:00 a.m. to 4:00 p.m.

ADDRESSES: NASA Headquarters, 300 E Street, SW, Room MIC–7, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas III, Code K, National Aeronautics and Space Administration, Room 9K70, 300 E Street, SW, Washington, DC 20546–0001, (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—MBRAC Subpanel Reports

—The Present State of Former NASA SDB Contractors

—Action Items

—Agency Small Disadvantaged Business (SDB) Program

—Report of Chair

—Public Comment

—Summary of MBRAC III Accomplishments

—Report on NASA FY 98 SDB Accomplishments

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: August 27, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–22928 Filed 9–1–99; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: Application for License to Export Nuclear Equipment and Material, NRC Form 7.

2. Current OMB approval number: 3150–0027.

3. How often the collection is required: On occasion; for each separate request for a specific export license and for exports of incidental radioactive material using existing general licenses.

4. Who is required or asked to report: Any person in the U.S. who wishes to export: (a) Nuclear material and equipment subject to the requirements of a specific license; (b) radioactive waste subject to the requirements of a specific license; and (c) incidental radioactive material that is a contaminant of shipments of more than 100 kilograms of non-waste material using existing NRC general licenses.

5. The number of annual respondents: 63.

6. The number of hours needed annually to complete the requirement or request: 150 hours (2.4 hours per response).

7. Abstract: Any person in the U.S. wishing to export nuclear material and equipment requiring a specific authorization or radioactive waste requiring a specific authorization ordinarily should file an application for a license on NRC Form 7, except that certain submittals should be filed by letter. The application will be reviewed by the NRC and by the Executive Branch, and if applicable statutory, regulatory, and policy considerations are satisfied, the NRC will issue a license authorizing the export.

A completed NRC Form 7 must also be filed by any person in the U.S. wishing to use existing NRC general licenses for the export of incidental radioactive material before the export takes place (if the total amount of the shipment containing the incidental radioactive material exceeds 100 kilograms). The form is reviewed by the NRC to ensure that the Agency is informed before the fact of these kinds of shipments and to allow NRC to inform other interested parties, as appropriate, including import control authorities in interested foreign countries.

Submit, by November 1, 1999, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC, 20555–0001, or by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 26th day of August 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–22914 Filed 9–1–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361 AND 50–362]

Southern California Edison Co.; San Onofre Nuclear Generating Station, Units 2 and 3, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. NPF–10 and NPF–15, issued to Southern California Edison (the licensee), for operation of the San Onofre Nuclear Generating Station (SONGS), Units 2 and 3, located in San Diego County, California.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt Southern California Edison from the requirements of 10 CFR 50.44, "Standards for combustible gas control system in light-water cooled power reactors," and 10 CFR part 50, Appendix A, General Design Criterion 41, "Containment atmosphere clean-up."

The proposed action is in accordance with the licensee's application for exemption dated September 10, 1998, as supplemented July 19, 1999.

The Need for the Proposed Action

The proposed action would allow the licensee to remove hydrogen control requirements from the SONGS Units 2 and 3 design basis. The hydrogen control requirements in the SONGS design basis are not required to provide assurance that the containment would not fail due to combustible gas accumulation and ignition during accidents where fission products would be present in the containment atmosphere. The exemption would also allow the licensee to modify emergency operating instructions to remove operator action requirements for controlling hydrogen concentration in containment because the hydrogen control requirements are no longer necessary.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action. Current design analyses assess the potential for offsite dose consequences based on maximum allowable leakage and the potential for containment failure. The proposed exemption does

not change the allowed leakage, and therefore does not affect the offsite dose consequences based on this criteria. The licensee has concluded and the Commission agrees that removing the hydrogen control systems will not result in containment failure for any postulated accident or normal operating conditions. The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historical sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the San Onofre Nuclear Generating Station, Units 2 and 3, dated April 1981, with Errata dated June 1981.

Agencies and Persons Consulted

In accordance with its stated policy, on August 6, 1999, the staff consulted with the California State official, Mr. Steven Hsu of the Radiologic Health Branch, State Department of Health Services, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated September 10, 1998, as supplemented by letter dated July 19, 1999, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Main Library, University of California, Irvine, California 92713.

Dated at Rockville, MD, this 25th day of August 1999.

For the Nuclear Regulatory Commission.

L. Raghavan,

Senior Project Manager, Section 2, Project Directorate IV and Decommissioning Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–22913 Filed 9–1–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request; Extension of Standard Form 113–A

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit a request to the Office of Management and Budget (OMB) for renewal of authority to collect data for the Monthly Report of Federal Civilian Employment (SF 113-A). The information that is collected provides a timely count of Governmentwide employment, payroll, and turnover data. Uses of the data include monthly reporting to OMB and publishing the bimonthly *Federal Civilian Workforce Statistics—Employment and Trends;* answering data requests from the Congress, White House, other Federal agencies, the media, and the public; Providing employment counts required by OMB; and serving as benchmark data for quality control of the Central Personnel Data File. The number of responding agencies is 130. The report is submitted 12 times a year. The total number of person-hours required by the 130 agencies to prepare and transmit the reports annually is estimated at 3,120.

Comments are particularly invited on:

—Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

—Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

—Ways to assist the Office of Personnel Management which is currently actively exploring ways to electronically transmit agency data and would like any comments that would help facilitate this process.

For copies of the clearance package, call Mary Beth Smith-Toomey, Reports and Forms Officer, on (202) 606–8358, or by e-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before November 1, 1999.

ADDRESSES: Send or deliver comments to: May Eng, U.S. Office of Personnel Management, Room 7439, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: May Eng, (202) 606–2684 U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–22912 Filed 9–1–99; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for a Revised Information Collection: OPM Form 1593

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for clearance of a revised and expired information collection. OPM Form 1593, Federal Employment Information Customer Survey, is used by the job seeking public to express their level of satisfaction with our automated employment information systems. Participation is voluntary.

We estimate 245,000 surveys will be completed annually. Each form takes approximately 1 minute to complete. The annual estimated burden is 4,083 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before October 2, 1999.

ADDRESSES: Send or deliver comments to—

Richard A. Whitford, Director, Washington Service Center/ Employment, Information Office, U.S. Office of Personnel Management, 1900 E Street, NW, Room 2455, Washington, DC 20415

and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW, Room 10235, Washington, DC 20503.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–22910 Filed 9–1–99; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees Health Benefits Program:

Medically Underserved Areas for 2000

AGENCY: Office of Personnel Management.

ACTION: Notice of Medically Underserved Areas for 2000.

SUMMARY: The Office of Personnel Management (OPM) has completed its annual determination of the States that qualify as Medically Underserved Areas under the Federal Employees Health Benefits (FEHB) Program for the calendar year 2000. This is necessary to comply with a provision of FEHB law that mandates special consideration for enrollees of certain FEHB plans who receive covered health services in States with critical shortages of primary care physicians. Accordingly, for calendar year 2000, OPM's calculations show that the following States are Medically Underserved Areas under the FEHB Program: Alabama, Idaho, Kentucky, Louisiana, Mississippi, Missouri, New Mexico, North Dakota, South Carolina, South Dakota, Utah, and Wyoming. Kentucky, Missouri, and Utah are new for 2000.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Karen Leibach, 202–606–0004.

SUPPLEMENTARY INFORMATION: FEHB law (5 U.S.C. 8902(m)(2)) mandates special consideration for enrollees of certain FEHB plans who receive covered health services in States with critical shortages of primary care physicians. Such States are designated as Medically Underserved Areas for purposes of the FEHB Program, and the law requires plan payments to all qualified providers in these States.

FEHB regulations (5 CFR 890.701) require OPM to make an annual determination of the States that qualify as Medically Underserved Areas for the next calendar year by comparing the latest Department of Health and Human Services State-by-State population counts on primary medical care manpower shortage areas with U.S. Census figures on State resident populations.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–22911 Filed 9–1–99; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

The National Partnership Council; Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

TIME AND DATE: 2 p.m., September 15, 1999.

PLACE: Alan K. Campbell Auditorium, U.S. Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Washington, DC. The Campbell Auditorium is located on the ground floor.

STATUS: This meeting will be open to the public. Seating will be available on a first-come, first-served basis. Individuals with special access needs wishing to attend should contact OPM at the number shown below to obtain appropriate accommodations.

MATTERS TO BE CONSIDERED: This meeting will consist of an awards ceremony. The 1999 John N. Sturdivant National Partnership Award will be presented to this year's winners. The John N. Sturdivant National Partnership Award is given in recognition of outstanding labor-management partnership activities.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey Sumberg, Director, Center for Partnership and Labor-Management Relations, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 7H28, Washington, DC 20415–0001, (202) 606–2930.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–22909 Filed 9–1–99; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23979; File No. 812–11682]

The American Franklin Life Insurance Company, et al.

August 26, 1999.

AGENCY: Securities and Exchange Commission (the "Commission" or "SEC").

ACTION: Notice of application for an order pursuant to Section 26(b) of the Investment Company Act of 1940 (the "1940 Act") approving certain substitutions of securities.

Summary of Application

Applicants request an order to permit a certain registered unit investment trust to substitute shares of EQ Advisors Trust, a registered open-end investment company, for shares of The Hudson River Trust, another registered open-end investment company, currently held by the unit investment trust.

Applicants

The American Franklin Life Insurance Company and Separate Account VUL of The American Franklin Life Insurance Company (collectively the "Applicants").

Filing Date

The application was filed on July 1, 1999, and amended and restarted on August 13, 1999.

Hearing or Notification of Hearing

An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 20, 1999, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington DC 20549–0609. Applicants: The American Franklin Life Insurance Company, #1 Franklin Square, Springfield, Illinois 62713, Attn: Elizabeth E. Arthur, Esq.

FOR FURTHER INFORMATION CONTACT:

Kevin P. McEnery, Senior Counsel, or Susan M. Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicant's Representations

1. The American Franklin Life Insurance Company ("American Franklin") is an Illinois stock life, accident and health insurance company. American Franklin is the depositor for Separate Account VUL of The American Franklin Life Insurance Company ("American Franklin Account").

2. American Franklin is an indirect wholly-owned subsidiary of American General Corporation ("American General"), a publicly-traded corporation. American General's operating subsidiaries provide retirement services, consumer loans, and life insurance.

3. The American Franklin Account is a segregated asset account of American Franklin, is registered with the Commission under the 1940 Act as a unit investment trust, and meets the definition of a separate account under Section 2(a)(37) of the 1940 Act. The American Franklin Account funds the variable benefits under certain variable life insurance policies issued by American Franklin (the "Policies"). The Policies are individual flexible premium variable life insurance policies. American Franklin no longer offers the Policies through the American Franklin Account, but the Policies that it issued are still outstanding.[1]

4. The Hudson River Trust ("HRT") is organized as a Massachusetts business trust. It is registered as an open-end management investment company under the 1940 Act, and its shares are registered under the Securities Act of 1933 (the "1933 Act") on Form N–1A. HRT is a series investment company, as defined by Rule 18f–2 under the 1940 Act, and currently offers shares of 14 separate portfolios, six of which ("Current Funds") would be involved in the proposed substitutions. HRT sells shares to the American Franklin Account to serve as an investment medium for the Policies.[2] Sales of HRT shares to the American Franklin Account currently account for less than 1% of HRT's total assets. HRT currently offers two classes of shares, Class IA and Class IB shares, which differ only in that Class IB shares are subject to a distribution plan adopted and administered pursuant to Rule 12b–1 under the 1940 Act. The American Franklin Account holds only Class IA shares. Each Current Fund is advised by Alliance Capital Management L.P. ("Alliance"), an investment adviser registered under the Investment Advisers Act of 1940, as amended ("Advisers Act").

5. EQ Advisors Trust ("EQAT") is organized as a Delaware business trust. It is registered as an open-end management investment company under the 1940 Act, and its shares are registered under the 1933 Act on Form N–1A. EQAT is a series investment company, as defined by Rule 18f–2 under the 1940 Act, and currently offers 25 separate portfolios of shares. EQAT currently sells shares to certain registered and unregistered separate accounts ("Equitable Separate Accounts") used as the underlying investment options for certain variable annuity contracts and/or variable life insurance policies issued by The Equitable Life Assurance Society of the United States ("Equitable"). EQAT currently offers two classes of shares, Class IA and IB shares, which differ only in that Class IB shares are subject to a distribution plan adopted and administered pursuant to Rule 12b–1 under the 1940 Act. EQ Financial Consultants, Inc. ("EQ Financial"), an indirect wholly-owned subsidiary of Equitable, serves as investment manager of each of the current 25 portfolios of EQAT under an investment management agreement with EQAT.[3] EQ Financial is an investment adviser registered under the Advisers Act and a broker-dealer registered under the Securities Exchange Act of 1934, as amended. Pursuant to the investment management agreement, the investment manager ("Manager") is responsible for the general management and administration of EQAT, including selecting the investment advisers for each of EQAT's portfolios ("Advisers"), monitoring their investment programs and results, reviewing brokerage matters, overseeing compliance issues, and carrying out the directives of the Board of Trustees. EQAT has received an exemptive order from the Commission ("Multi-Manager Order") that permits EQ Financial, or any entity controlling, controlled by, or under common control (within the meaning of Section 2(a)(9) of the 1940 Act) with EQ Financial, subject to certain conditions, including approval of the Board of Trustees of EQAT, and without the approval of shareholders, to: (a) Employ a new Adviser or Advisers for any portfolio pursuant to the terms of a new Investment Advisory Agreement, in each case either as a replacement for an existing Adviser or as an additional Adviser; (b) change the terms of any Investment Advisory Agreement; and (c) continue the employment of an existing Adviser on the same contract terms where a contract has been assigned because of a change of control of the Adviser.[4] In such circumstances, Contract owners and owners of Policies would receive notice of any such action, including information concerning any new Adviser, that normally is provided in proxy materials.

6. EQAT has filed a post-effective amendment to its registration statement on Form N–1A in order to register 14 new portfolios for which Alliance will provide the day-to-day advisory services ("Alliance Funds"), including the six portfolios ("New Funds") that American Franklin proposes to substitute for the Current Funds. EQAT intends to sell shares of the New Funds to the Equitable Separate Accounts, as well as to the American Franklin Account.

[1] Applicants represent that, in reliance on the relief in Great-West Life Insurance Company (pub. avail. Oct. 23, 1990)("Great-West"), they provide certain information to Policy owners about the Policies, American Franklin, and the underlying fund in lieu of filing post-effective amendments to the registration statement relating to those Policies or delivering updated prospectuses to those Policies owners.

[2] An exemptive order was issued by the Commission granting exemptions from the 1940 Act to permit shares of HRT to be offered to separate accounts of affiliated and unaffiliated insurance companies that offer either variable life insurance policies or variable annuity contracts. See Equitable Variable Life Insurance Company, Investment Company Act Rel. Nos. 14899 (Jan. 14, 1986) (order) and 14860 (Dec. 18, 1985) (notice). An exemptive order also was issued by the Commission granting exemptions from the 1940 Act to permit shares of EQ Advisors Trust to be offered to separate accounts of affiliated and unaffiliated insurance companies that offer either variable life insurance policies or annuity contracts ("EQAT Shared Funding Order"). See EQ Advisors Trust, Investment Company Act Rel. Nos. 22651 (April 30, 1997) (order) and 22602 (April 4, 1997) (notice).

[3] During 1999, EQ Financial plans to change its name to AXA Advisors, Inc. On July 12, 1999, the Board of Trustees of EQAT approved a transfer of the Investment Management Agreement to Equitable. That transfer of the Investment Management Agreement is expected to occur prior to October 1, 1999.

[4] See EQ Advisors Trust and EQ Financial Consultants, Inc., Investment Company Act Rel. Nos. 23128 (April 24, 1998) (order) and 23093 (March 30, 1998) (notice). Before a New Fund may rely on the Multi-Manager Order, the operation of that New Fund as a multi-manager fund, as described in the application for the Multi-Manager Order, will be approved, following the substitutions proposed in the application, by a majority of that New Fund's outstanding voting securities in a manner consistent with the EQAT Shared Funding Order.

7. The Policies expressly reserve to the Applicants the right, subject to compliance with applicable law, to change or add investment companies and add or remove investment divisions. The prospectuses describing the Policies contain appropriate disclosure of this right of substitution.

8. Applicants represent that they are not affiliates of HRT, EQAT or Equitable.

9. The Applicants propose to substitute Class IA shares issued by the six New Funds for the Class IA shares issued by the six Current Funds. Equitable and each Equitable Separate Account that is registered under the 1940 Act and that currently invests in HRT (collectively, the "Equitable Accounts") have filed an application with the Commission ("Equitable Application") requesting, *inter alia*, an order pursuant to Section 26(b) of the 1940 Act, approving the substitution of securities issued by the Alliance Funds for the securities issued by the 14 portfolios of HRT and currently used as the investment options for the contracts issued by Equitable through the Equitable Accounts.[5] If approved, Equitable will redeem more than 99% of HRT's assets, and more than 99% of the assets of the Current Funds, in connection with those substitutions. Applicants state that it is their belief that it is reasonable to conclude that, following the proposed substitutions by Equitable: (i) The expense level of the Current Funds will increase dramatically as a percentage of net assets due to the smaller asset base, which is highly unlikely to increase; (ii) the Current Funds will be more difficult to manage in conformity with the applicable diversification regulations under the Internal Revenue Code of 1986, as amended ("Code"); and (iii) the asset levels of the Current Funds will be small enough to raise concern as to whether the Current Funds will remain viable investment options. By contrast, none of these concerns will be associated with investments in EQAT. It is anticipated that if the Equitable Application is approved, all of the net assets of the Equitable Accounts attributable to the Current Funds will be transferred to the New Funds. Applicants submit that, under these circumstances, the substitution of the New Funds for the Current Funds is in the best interest of Policy owners.

10. The Applicants represent that the Manager of the 25 current portfolios of EQAT will also serve as Manager of the New Funds and that the Alliance will serve as the portfolio manager to each of the New Funds, just as it serves as portfolio manager to each of the Current Funds. The Applicants also state that each of the New Funds will have investment objectives, investment strategies and anticipated risks that are identical in all material respects to those of the corresponding Current Fund. The investment objectives of the Current fund and the corresponding New Fund are as follows:

Current fund	Investment objective	New fund	Investment objective
Alliance Aggressive Stock.	Seeks to achieve long-term growth of capital	Alliance Aggressive Stock.	Seeks to achieve long-term growth of capital
Alliance Balanced	Seeks to achieve a high return through both appreciation of capital and current income.	Alliance Balanced	Seeks to achieve a high return through both appreciation of capital and current income
Alliance Common Stock	Seeks long-term growth of its capital and increase in income.	Alliance Common Stock.	Seeks long-term growth of its capital and increase in income
Alliance Global	Seeks long-term growth of capital	Alliance Global	Seeks long-term growth of capital
Alliance High Yield	Seeks to achieve a high return by maximizing current income and, to the extent consistent with that objective, capital appreciation.	Alliance High Yield	Seeks to achieve a high return by maximizing current income and, to the extent consistent with that objective, capital appreciation
Alliance Money Market	Seeks to obtain a high level of current income, preserve its assets and maintain liquidity.	Alliance Money Market.	Seeks to obtain a high level of current income, preserve its assets and maintain liquidity

11. The Applicants state that it is expected that: (i) The management fees (i.e., the total management fees and investment advisory fees paid to the Manager and the Adviser) with respect to each New Fund will be the same as the management fees currently applicable to the corresponding Current Funds; and (ii) there may be a slight increase in the total expense ratios of each of the New Funds as compared to those of the Current Funds. The Applicants also represent that the chart below shows: (i) The management fees and total expenses for Class IA shares of each of the Current Funds for the year ending December 31, 1998; and (ii) the estimated management fees and total expenses of Class IA shares of each of the New Funds following the proposed substitutions. Estimated management fees and total expenses of Class IA shares of each of the New Funds are based on *pro forma* expenses of the New Funds following the proposed substitutions and are based upon the audited financial statements of HRT for the year ending December 31, 1998.

YEAR ENDING DECEMBER 31, 1998

[Pro Forma]

Current fund class IA	Advisory fees (as percentage of average daily net assets) (percent)	Total expenses (as percentage of average daily net assets) (percent)	New fund class IA	Management and advisory fees (as percentage of average daily net assets) (percent)	Total expenses (as percentage of average daily net assets) (percent)
Alliance aggressive stock	0.54	0.56	Alliance aggressive stock	0.54	0.57

[5] File No. 812–11602 (filed Apr. 30, 1999).

YEAR ENDING DECEMBER 31, 1998—Continued

[Pro Forma]

Current fund class IA	Advisory fees (as percentage of average daily net assets) (percent)	Total expenses (as percentage of average daily net assets) (percent)	New fund class IA	Management and advisory fees (as percentage of average daily net assets) (percent)	Total expenses (as percentage of average daily net assets) (percent)
Alliance balanced	0.41	0.45	Alliance balanced	0.41	0.46
Alliance common stock	0.36	0.39	Alliance common stock	0.36	0.40
Alliance global	0.64	0.71	Alliance global	0.64	0.72
Alliance high yield	0.60	0.63	Alliance high yield	0.60	0.64
Alliance money market	0.35	0.37	Alliance money market	0.35	0.38

12. The Applicants state that they provided Policy owners with detailed notice disclosing the proposed substitutions (the "First Notice") shortly after the application was initially filed. The Applicants state that, upon effectiveness of the post-effective amendment to the registration statement of EQAT with respect to the New Funds and publications of notice by the Commission with respect to the application, they will send the Policy owners further detailed notice concerning the proposed substitutions (the "Second Notice"). The Second Notice will state the anticipated date of the Substitution, describe each of the New Funds, identify each Current Fund that is being replaced, and disclose the impact of the substitutions on fees and expenses at the underlying fund level. The Applicants state that copies of the prospectuses for the New Funds will be sent to Policy owners with the Second Notice. Confirmation of the substitutions will be mailed to affected Policy owners within five days after the substitutions are effected.

13. The Applicants state that the substitutions will be effected by redeeming shares of the Current Funds on the effective date of the substitutions proposed in the application and proposed in the Equitable Application ("Substitution Date") at net asset value and using the proceeds to purchase shares of the New Funds at net asset value on the same date. No transfer or similar charges will be imposed by the Applicants and, on the Substitution Date, all Policy values will remain unchanged and fully invested. The Applicants expect that the substitutions will be effected by redeeming the shares of each Current Fund in-kind. Those assets will then be contributed in-kind to the corresponding New Fund to purchase shares of that New Fund. Redemptions and contributions in-kind will reduce the brokerage costs that otherwise would be incurred in connection with the proposed substitutions and will ensure that Policy values remain fully invested. In-kind redemptions and contributions will be done in a manner consistent with the investment objectives, policies and diversification requirements of each corresponding New Fund. All assets subject to in-kind redemption and purchase will be valued based on the normal valuation procedures of the redeeming and purchasing Funds, as set forth in the HRT and EQAT registration statements.

14. The significant terms of the substitutions described above include:

a. The New Funds have investment objectives, investment strategies, and anticipated risks that are identical in all material respects to those of the Current Funds. In this regard, the Applicants note that the New Funds will continue to employ the same portfolio managers currently employed by the Current Funds and are intended to mirror the investment options provided by the Current Funds.

b. The fees and expenses of the New Funds will in all cases be substantially similar to those of the Current Funds, assuming that the asset levels of the New Funds do not decrease significantly from the Current Funds' present asset levels. Again, the Applicants note in this regard that given the substantial similarity of the Current Funds and the New Funds, Applicants do not expect there to be a reduction in the asset levels of the New Funds as a result of the substitutions.

c. Policy owners may transfer assets from one variable investment division to another variable investment division available under their Policy without the imposition of any fee, charge, or other penalty that might otherwise be imposed from the date of the First Notice through a date at least thirty days following the Substitution Date.

d. The substitutions, in all cases, will be effected at the net asset value of the respective shares of the Current Fund and the corresponding New Fund in conformity with Section 22(c) of the 1940 Act and rule 22c–1 thereunder, without the imposition of any transfer or similar charge by the Applicants, and with no change in the amount of any Policy owner's Policy value or in the dollar value of his or her investment in such Policy.

e. Policy owners will not incur any fees or charges as a result of the proposed substitutions, nor will their rights or American Franklin's obligations under the Policies be altered in any way. Equitable will bear all expenses incurred in connection with the proposed substitutions and related filings and notices, including legal, accounting and other fees and expenses. The proposed substitutions will not cause the Policy fees and charges currently being paid by existing Policy owners to be greater after the proposed substitutions than before the proposed substitutions.

f. Redemptions in-kind and contributions in-kind will be done in a manner consistent with the investment objectives, policies and diversification requirements of the applicable Current and New Funds. Consistent with Rule 17a–7(d) under the 1940 Act, no brokerage commissions, fees (except customary transfer fees) or other remuneration will be paid in connection with the in-kind transactions.

g. The substitutions will not be counted as new investment selections in determining the limit, if any, on the total number of funds that policy owners can select during the life of a Policy.

h. The substitutions will not alter in any way the tax benefits, life insurance and other policy benefits, or any Policy obligations of the Applicants, under the Policies.

i. Policy owners may withdraw amounts under the Policies or terminate their interest in a Policy, under the conditions that currently exist, including payment of any applicable withdrawal or surrender charge.

j. Policy owners affected by the substitutions will be sent written confirmation of the substitutions that identify each substitution made on behalf of that Policy owner within five days following the Substitution Date.

k. Before a New Fund may rely on the Multi-Manager Order, the operation of that New Fund as a multi-manager fund as described in the application for the Multi-Manager Order will be approved, following the substitutions proposed in the application and the substitutions proposed in the Equitable Application, by a majority of that New Fund's outstanding voting securities in a manner consistent with the EQAT Shared Funding Order.

15. The Applicants state that they will not complete the substitutions as described in the application unless all of the following conditions are met:

a. The Commission will have issued an order approving the substitutions under Section 26(b) of the 1940 Act.

b. The Commission will have issued an order approving the Equitable Application.

c. The amendments to the registration statement for EQAT adding the New Funds shall have become effective.

d. Each Policy owner will have been mailed the First Notice, and, at least thirty days prior to the Substitution Date, the Second Notice and effective prospectuses for the New Funds.

e. The Applicants will have satisfied themselves, based on advice of counsel familiar with insurance laws, that the Policies allow the substitution of portfolios as described in the application, and that the transactions can be consummated as described herein under applicable insurance laws and under the Policies.

f. The Applicants will have complied with any regulatory requirements they believe are necessary to complete the transactions in each jurisdiction where the Policies have been qualified for sale.

Applicants' Legal Analysis

1. Section 26(b) of the 1940 Act provides that it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. Section 26(b) further provides that the Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

2. The Applicants submit that the Policies expressly reserve to the Applicants the right, subject to compliance with applicable law, to change or add investment companies and add or remove investment divisions, and that appropriate disclosure of this right of substitution is contained in the prospectuses describing the Policies. The Applicants assert that they have reserved this right of substitution both to protect themselves and the Policy owners in situations where either might be harmed by events affecting the issuer of the securities held by the American Franklin Account and to preserve the opportunity to replace such shares in situations where a substitution could benefit itself and its Policy owners.

3. The Applicants maintain that the proposed substitutions protect the Policy owners who have allocated Policy value to the Current Funds by: (1) Providing an underlying investment option that is essentially identical in all material aspects to the current investment option; and (2) eliminating Current Funds that will not be viable due to the low level of assets following the proposed substitutions by Equitable.

4. The Applicants further submit that the proposed substitutions meet the standards that the Commission and its staff generally have applied to other substitutions that have been approved. In addition, the Applicants contend that none of the proposed substitutions is the type of substitution that Section 26(b) was designed to prevent. Unlike traditional unit investment trusts, the Policies provide each Policy owner with the right to exercise his own judgment and transfer Policy values into any other available variable and/or fixed investment options. Additionally, Applicants state that the proposed substitutions will not, in any manner, reduce the number, nature or quality of the available investment options. The Applicants assert that the Policy owners will be offered the opportunity to transfer amounts out of the affected subaccounts without any cost or penalty that may otherwise have been imposed until thirty days after the Substitution Date. For these reasons, the Applicants maintain that the proposed substitutions will not result in the type of costly forced redemption that Section 26(b) was designed to prevent.

5. The Applicants further submit that the proposed substitutions also are unlike the type of substitution that Section 26(b) was designed to prevent in that by purchasing a Policy, Policy owners select much more than a particular underlying fund in which to invest their Policy values. The Policy owners also select the specific type of insurance coverage offered by the Applicants under the applicable Policy, as well as numerous other rights and privileges set forth in the Policy. The Applicants state that, in choosing to buy a Policy from American Franklin, the Policy owner also may have considered American Franklin's size, financial condition, and reputation for service, and that none of those considerations and factors will change as a result of the proposed substitutions.

6. The Applicants submit that, for all reasons stated above, the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the substitutions should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22839 Filed 9–1–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23980; File No. 812–11676]

Integrity Life Insurance Company, et al.

August 27, 1999.

AGENCY: Securities and Exchange Commission (the "Commission" or "SEC").

ACTION: Notice of application for an order pursuant to Section 26(b) of the Investment Company Act of 1940 (the "1940 Act") approving certain substitutions of securities.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered unit investment trusts to substitute shares of EQ Advisors Trust, a registered open-end investment company, for shares of The Hudson River Trust, another registered open-end investment company, currently held by those unit investment trusts.

Applicants: Integrity Life Insurance Company, National Integrity Life Insurance Company, Separate Account VUL of Integrity Life Insurance Company, and Separate Account VUL of National Integrity Life Insurance Company (collectively, the "Applicants").

Filing Date: The application was filed on July 1, 1999, and amended and restated on August 17, 1999.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 21, 1999, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants: c/o Integrity Life Insurance Company, 515 West Market Street, 8th Floor, Louisville, Kentucky 40202, Attn: Kevin L. Howard, Esq.

FOR FURTHER INFORMATION CONTACT: Kevin P. McEnery, Senior Counsel, or Susan M. Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Integrity Life Insurance Company ("Integrity") is an Ohio stock life insurance company. Integrity sells flexible premium variable annuity contracts, fixed single premium annuity contracts, and flexible premium annuity contracts offering both traditional fixed guaranteed interest rates along with equity indexed options. Integrity serves as depositor for Separate Account VUL of Integrity Life Insurance Company ("Integrity Account").

2. Integrity is an indirect wholly owned subsidiary of ARM Financial Group, Inc., a publicly traded corporation specializing in providing retail and institutional customers with products and services designed for long-term savings and retirement planning.

3. National Integrity Life Insurance Company ("National Integrity," and together with Integrity, the "Insurance Companies") is a New York stock life insurance company. National Integrity sells flexible premium variable annuity contracts, fixed single premium annuity contracts, and flexible premium annuity contracts offering traditional fixed guaranteed interest rates. National Integrity serves as depositor for Separate Account VUL of National Integrity Life Insurance Company ("National Integrity Account," and together with the Integrity Account, the "Insurance Company Accounts"). National Integrity is a wholly owned subsidiary of Integrity.

4. Each of the Insurance Company Accounts is a segregated asset account of its Insurance Company sponsor and is registered with the Commission under the 1940 Act as a unit investment trust. The Insurance Company Accounts fund the variable benefits available under certain variable life insurance policies issued by their respective Insurance Company sponsors (collectively, the "Policies"). The Policies are flexible premium individual variable life insurance policies. Integrity and National Integrity have not offered the Policies since 1990, but the Policies that they issued are still outstanding.[1]

5. The Hudson River Trust ("HRT") is organized as a Massachusetts business trust. It is registered as an open-end management investment company under the 1940 Act, and its shares are registered under the Securities Act of 1933 (the "1933 Act") on Form N–1A. HRT is a series investment company, as defined by Rule 18f–2 under the 1940 Act, and currently offers shares of 14 separate portfolios, six of which ("Current Funds") would be involved in the proposed substitutions. HRT sells shares to the Insurance Company Accounts to serve as an investment medium for the Policies.[2] Sales of HRT shares to the Insurance Company Accounts currently account for less than 1% of HRT's total assets. HRT currently offers two classes of shares, Class IA and Class IB shares, which differ only in that Class IB shares are subject to a distribution plan adopted and administered pursuant to Rule 12b–1 under the 1940 Act. The Insurance Company Accounts hold only Class IA shares. Each Current Fund is advised by Alliance Capital Management L.P. ("Alliance"), an investment adviser registered under the Investment Advisers Act of 1940, as amended ("Advisers Act").

6. EQ Advisors Trust ("EQAT") is organized as a Delaware business trust. It is registered as an open-end management investment company under the 1940 Act, and its shares are registered under the 1933 Act on Form N–1A. EQAT is a series investment company, as defined by Rule 18f–2 under the 1940 Act, and currently offers 25 separate portfolios of shares EQAT currently sells shares to certain registered and unregistered separate accounts ("Equitable Separate Accounts") used as the underlying investment options for certain variable annuity contracts and/or variable life insurance policies issued by The Equitable Life Assurance Society of the United States ("Equitable"). EQAT currently offers two classes of shares, Class IA and IB shares, which differ only in that Class IB shares are subject to a distribution plan adopted and administered pursuant to Rule 12b–1 under the 1940 Act. EQ Financial Consultants, Inc. ("EQ Financial"), an indirect wholly-owned subsidiary of Equitable, serves as investment manager of each of the current 25 portfolios of EQAT under an investment management agreement with EQAT.[3] EQ Financial is an investment adviser registered under the Advisers Act and a broker-dealer registered under the Securities Exchange Act of 1934, as amended. Pursuant to the investment management agreement, the investment manager ("Manager") is responsible for the general management and administration of EQAT, including selecting the investment advisers for each of EQAT's portfolios ("Advisers"), monitoring their investment programs and results, reviewing brokerage matters, overseeing compliance issues, and carrying out the directives of the Board of Trustees. EQAT has received an exemptive order from the Commission ("Multi-Manager Order") that permits EQ Financial, or any entity controlling, controlled by, or under common control (within the meaning of Section 2(a)(9) of the 1940 Act) with EQ Financial, subject to certain conditions, including approval of the Board of Trustees of EQAT, and without the approval of shareholders, to (a) Employ a new Adviser or Advisers for any portfolio pursuant to the terms of a new Investment Advisory Agreement, in each case either as a replacement for an existing Adviser or as an additional Adviser; (b) change the terms of any Investment Advisory Agreement; and (c) continue the employment of an existing Adviser on the same contract terms where a contract has been assigned because of a change of control of the Adviser.[4] In such circumstances, owners would receive notice of any such action, including information concerning any new Adviser, that normally is provided in proxy materials.

7. EQAT has filed a post-effective amendment to its registration statement on Form N–1A in order to register 14 new portfolios, including the six portfolios ("New Funds") that the Applicants propose to substitute for the Current Funds. Alliance will serve as the Adviser to each of the 14 new portfolios (the "Alliance Portfolios"), including the New Funds. EQAT intends to sell shares of the Alliance Portfolios to the Equitable Separate Accounts, as well as to the Insurance Company Accounts.

8. The Policies expressly reserve to the Applicants the right, subject to compliance with applicable law, to substitute shares of another portfolio for shares of the Current Funds held by the Insurance Company Accounts. The prospectuses describing the Policies contain appropriate disclosure of this right of substitution.

9. Applicants represent that they are not affiliates of HRT, EQAT or Equitable.

10. The Applicants propose to substitute Class IA shares issued by the six New Funds for the Class IA shares issued by six Current Funds. Equitable and each Equitable Separate Account that is registered under the 1940 Act and that currently invests in HRT (collectively, the "Equitable Accounts") have filed an application with the Commission ("Equitable Application") requesting, inter alia, an order pursuant to Section 26(b) of the 1940 Act, approving the substitution of securities issued by the Alliance Portfolios for the securities issued by the 14 portfolios of HRT and currently used as the investment options for the contracts issued by Equitable through the Equitable Accounts.[5] If approved, Equitable will redeem more than 99% of HRT's assets in connection with those substitutions. Applicants state that it is their belief that it is reasonable to conclude that, following the proposed substitutions by Equitable: (i) The expense level of the Current Funds will increase dramatically as a percentage of net assets due to the smaller asset base, which is highly unlikely to increase; (ii) the Current Funds will be difficult to manage in conformity with the applicable diversification regulations under the Internal Revenue Code of 186, as amended ("Code"); and (iii) the asset levels of the Current Funds will be small enough to raise concern as to whether the Current Funds will remain viable investment options. By contrast, none of these concerns will be associated with investments in EQAT. Applicants submit that, under these circumstances, the substitution of the New Funds for the Current Funds is in the best interest of Policy owners.

11. The Applicants represent that the Manager of the 25 current portfolios of EQAT will also serve as Manager of the New Funds, that Alliance will serve as the Adviser to each of the Alliance Portfolios, and that each of the New Funds will have the same portfolio manager(s) as those of the corresponding Current Fund. The Applicants also state that each of the New Funds will have investment objectives, investment strategies and anticipated risks that are identical in all material respects to those of the corresponding Current Fund. The investment objectives of each Current Fund and the corresponding New Fund are as follows:

Current fund	Investment objective	New fund	Investment objective
Alliance Aggressive Stock Portfolio	Seeks to achieve long-term growth of capital.	Alliance Aggressive Stock Portfolio.	Seeks to achieve long-term growth of capital.
Alliance Balanced Portfolio	Seeks to achieve a high return through both appreciation of capital and current income.	Alliance Balanced Portfolio	Seeks to achieve a high return through both appreciation of capital and current income.
Alliance Common Stock Portfolio	Seeks long-term growth of its capital and increase in income.	Alliance Common Stock Portfolio	Seeks long-term growth of its capital and increase in income.
Alliance Global Portfolio	Seeks long-term growth of capital	Alliance Global Portfolio	Seeks long-term growth of capital.
Alliance High Yield Portfolio	Seeks to achieve a high return by maximizing current income and, to the extent consistent with that objective, capital appreciation.	Alliance High Yield Portfolio	Seeks to achieve a high return by maximizing current income and, to the extent consistent with that objective, capital appreciation.
Alliance Money Market Portfolio	Seeks to obtain a high level of current income, preserve its assets and maintain liquidity.	Alliance Money Market Portfolio	Seeks to obtain a high level of current income, preserve its assets and maintain liquidity.

12. The Applicants state that it is expected that: (i) The management fees (*i.e.*, the total management fees paid to the Manager and from which the Manager will compensate the Adviser) with respect to each New Fund will be the same as the management fees currently applicable to the corresponding Current Funds; and (ii) there may be a slight increase in the total expense ratios of each of the New Funds as compared to those of the corresponding Current Fund. The Applicants also represent that the chart below shows: (i) The Management Fees

[1] Applicants represent that, in reliance on the relief in Great-West Life Insurance Company (pub. avail. Oct. 23, 1990) ("Great-West"), they provide certain information to Policy owners about the policies, the relevant Insurance Company, and the underlying fund in lieu of filing post-effective amendments to the registration statements relating to those Policies or delivering updated prospectuses to those Policies owners.

[2] An exemptive order was issued by the Commission granting exemptions from the 1940 Act to permit shares of HRT to be offered to separate accounts of affiliated and unaffiliated insurance companies that offer either variable life insurance policies or variable annuity contracts. *See* Equitable Variable Life Insurance Company, Investment Company Act Rel. Nos. 14899 (Jan. 14, 1986) (order) and 14860 (Dec. 18, 1985) (notice). An exemptive order also was issued by the Commission granting exemptions from the 1940 Act to permit shares of EQ Advisors Trust to be offered to separate accounts of affiliated and unaffiliated insurance companies that offer either variable life insurance policies or annuity contracts ("EQAT Shared Funding Order"). *See* EQ Advisors Trust, Investment Company Act Rel. Nos. 22651 (April 30, 1997) (order) and 22602 (April 4, 1997) (notice).

[3] During 1999, EQ Financial plans to change its name to AXA Advisors, Inc. On July 12, 1999, the Board of trustees of EQAT approved a transfer of the Investment Management Agreement to Equitable. That transfer of the Investment Management Agreement is expected to occur prior to October 1, 1999.

[4] *See* EQ Advisors Trust and EQ Financial Consultants, Inc., Investment Company Act Rel. Nos. 23128 (April 24, 1998) (order) and 23093 (March 30, 1998) (notice). Before a New Fund may rely on the Multi-Manager Order, the operation of that New Fund as a multi-manager fund, as described in the application for the Multi-Manager Order, will be approved, following the substitutions proposed in the application, by a majority of that New Fund's outstanding voting securities in a manner consistent with the EQAT Shared Funding Order.

[5] File No. 812–11602 (filed Apr. 30, 1999).

and total expenses for Class IA shares of each of the Current Funds for the year ending December 31, 1998; and (ii) the estimated management fees and total expenses of Class IA shares of each of the New Funds following the proposed substitutions. Estimated management fees and total expenses of Class IA shares of each of the New Funds are based on pro forma expenses of the New Funds following the proposed substitutions and are based upon the audited financial statements of HRT for the year ending December 31, 1998.

Year ending December 31, 1998			Pro forma		
Current fund class IA	Advisory fees (as percentage of average daily net assets)	Total expenses (as percentage of average daily net assets)	New fund class IA	Managemet and advisory fees (as percentage of average daily net assets)	Total expenses (as percentage of average daily net assets)
Alliance Aggressive Stock Portfolio	0.54	0.56	Alliance Aggressive Stock Portfolio	0.54	0.57
Alliance Balanced Portfolio	0.41	0.45	Alliance Balanced Portfolio	0.41	0.46
Alliance Common Stock Portfolio	0.36	0.39	Alliance Common Stock Portfolio	0.36	0.40
Alliance Global Stock Portfolio	0.64	0.71	Alliance Global Stock Portfolio	0.64	0.72
Alliance High Yield Portfolio	0.60	0.63	Alliance High Yield Portfolio	0.60	0.64
Alliance Money Market Portfolio	0.35	0.37	Alliance Money Market Portfolio	0.35	0.38

13. The Applicants state that they provided their respective Policy owners with detailed notice disclosing the proposed substitutions shortly after the application was initially filed. The Applicants state that, upon effectiveness of the post-effective amendment to the registration statement of EQAT with respect to the New Funds and publication of notice by the Commission with respect to the application, they will send the Policy owners further detailed notice concerning the proposed substitutions, together with a prospectus for the New Funds. The notices will describe each of the New Funds, identify each Current Fund that is being replaced, and disclose the impact of other substitutions on fees and expenses at the underlying fund level. The Applicants state that copies of the prospectuses for the New Funds will be sent to Policy owners with the notice. The notice period will be at least thirty days after the notice is sent to affected Policy owners. Confirmation of the substitutions will be sent to affected Policy owners within five days after the substitutions are effected.

14. The Applicants state that the substitutions will be effected by redeeming shares of the Current Funds on the effective date of the substitutions proposed in the application and proposed in the Equitable Application ("Substitution Date") at net asset value and using the proceeds to purchase shares of the New Funds at net asset value on the same date. No transfer or similar changes will be imposed by the Applicants and, on the Substitution Date, all policy values will remain unchanged and fully invested. The Applicants expect that the substitutions will be effected by redeeming the shares of each Current Fund in-kind. Those assets will then be contributed in-kind to the corresponding New Fund to purchase shares of that New Fund. Redemptions and contributions in-kind will reduce the brokerage costs that otherwise would be incurred in connection with the proposed substitutions and will ensure that Policy values remain fully invested. In-kind redemptions and contributions will be done in a manner consistent with the investment objectives, policies and diversification requirements of each corresponding New Fund. The Manager of each New Fund will review the in-kind transactions to assure that the assets are suitable for the New Fund. All assets subject to in-kind redemption and purchase will be valued based on the normal valuation procedures of the redeeming and purchasing Funds, as set forth in the HRT and EQAT registration statements.

15. The significant terms of the substitutions described above include:

a. The New Funds have investment objectives, investment strategies, and anticipated risks that are identical in all material respects to those of the Current Funds. In this regard, the Applicants note that the New Funds will continue to employ the same portfolio managers currently employed by the Current Funds and are intended to mirror the investment options provided by the Current Funds.

b. The fees and expenses of the New Funds will in all cases be substantially similar to those of the Current Funds, assuming that the asset levels of the New Funds do not decrease significantly from the Current Funds' present asset levels. Again, the Applicants note in this regard that given the substantial similarity of the Current Funds and the New Funds, Applicants do not expect there to be a reduction in the asset levels of the New Funds as a result of the substitutions.

c. Policy owners may transfer assets from the Current or New Funds to another fund available under their Policy without the imposition of any fee, charge, or other penalty that might otherwise be imposed from the date of the initial notice through a date at least thirty days following the Substitution Date.

d. The substitutions, in all cases, will be effected at the net asset value of the respective shares of the Current Fund and the corresponding New Fund in conformity with Section 22(c) of the 1940 Act and Rule 22c–1 thereunder, without the imposition of any transfer or similar charge by the Applicants, and with no change in the amount of any Policy owner's Policy value or in the dollar value of his or her investment in such Policy.

e. Policy owners will not incur any fees or charges as a result of the proposed substitutions, nor will their rights or the obligations of the relevant Insurance Company under the Policies be altered in any way. Equitable will bear all expenses incurred in connection with the proposed substitutions and related filings and notices, including legal, accounting and other fees and expenses. The proposed substitutions will not cause the Policy fees and charges currently being paid by existing Policy owners to be greater after the proposed substitutions than before the proposed substitutions.

f. Redemptions in-kind and contributions in-kind will be done in a manner consistent with the investment objectives, policies and diversification requirements of the applicable Current and New Funds, and the Manager will review the in-kind transactions to assure that the assets are suitable for the New Fund. Consistent with Rule 17a–7(d) under the 1940 Act, no brokerage commissions, fees (except customary transfer fees) or other remuneration will be paid in connection with the in-kind transactions.

g. The substitutions will not be counted as new investment selections in determining the limit, if any, on the total number of funds that Policy owners can select during the life of a Policy.

h. The substitutions will not alter in any way the life benefits, tax benefits, or any Policy obligations of the Applicants, under the Policies.

i. Policy owners may withdraw amounts under the Policies or terminate their interest in a Policy, under the conditions that currently exist, including payment of any applicable withdrawal or surrender charge.

j. Policy owners affected by the substitutions will be sent written confirmation of the substitutions that identify each substitution made on behalf of that Policy owner within five days following the Substitution Date.

k. Before a New Fund may rely on the Multi-Manager Order, the operation of that New Fund as a multi-manager fund as described in the application for the Multi-Manager Order will be approved, following the substitutions proposed in the application and the substitutions proposed in the Equitable Application, by a majority of that New Fund's outstanding voting securities in a manner consistent with the EQAT Shared Funding Order.

16. The Applicants state that they will not complete the substitutions as described in the application unless all of the following conditions are met:

a. The Commission will have issued an order approving the substitutions under Section 26(b) of the 1940 Act.

b. The Commission will have issued an order approving the Equitable Application.

c. The amendments to the registration statement for EQAT adding the New Funds shall have become effective.

d. Each Policy owner will have been mailed effective prospectuses for the New Funds and relevant information about the proposed substitutions for the applicable Policies at least 30 days prior to the Substitution Date. In conjunction with this mailing, each Policy owner will have been sent a notice that describes the terms of the proposed substitutions and the Policy owners' rights in connection with them.

e. The Applicants will have satisfied themselves, based on advice of counsel familiar with insurance laws, that the Policies allow the substitution of portfolios as described in the application, and that the transactions can be consummated as described herein under applicable insurance laws and under the various Policies.

f. The Applicants will have complied with any regulatory requirements they believe are necessary to complete the transactions in each jurisdiction where the Policies have been qualified for sale.

Applicants' Legal Analysis

1. Section 26(b) of the 1940 Act provides that it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. Section 26(b) further provides that the Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

2. The Applicants submit that the Policies expressly reserve to the Applicants the right, subject to compliance with applicable law, to substitute shares of another portfolio for shares of the Current Funds held by the Insurance Company Accounts, and that appropriate disclosure of this right of substitution is contained in the prospectuses describing the Policies. The Applicants assert that they have reserved this right of substitution both to protect themselves and their Policy owners in situations where either might be harmed by events affecting the issuer of the securities held by the Insurance Company Account and to preserve the opportunity to replace such shares in situations where a substitution could benefit itself and its Policy owners.

3. The Applicants maintain that the proposed substitutions protect the Policy owners who have allocated Policy value to the Current Funds by: (1) Providing an underlying investment option that is substantially similar in all material aspects to the current investment option; and (2) eliminating Current Funds that will not be viable due to the low level of assets following the proposed substitutions by Equitable.

4. The Applicants further submit that the proposed substitutions meet the standards that the Commission and its staff generally have applied to other substitutions that have been approved. In addition, the Applicants contend that none of the proposed substitutions is the type of substitution that Section 26(b) was designed to prevent. Unlike traditional unit investment trusts, the Policies provide each Policy owner with the right to exercise his own judgment and transfer Policy values into any other available variable and/or fixed investment options. Additionally, Applicants state that the proposed substitutions will not, in any manner, reduce the number, nature or quality of the available investment options. The Applicants assert that the Policy owners will be offered the opportunity to transfer amounts out of the affected subaccounts without any cost or other penalty that may otherwise have been imposed until thirty days after the Substitution Date. For these reasons, the Applicants maintain that the proposed substitutions will not result in the type of costly forced redemption that Section 26(b) was designed to prevent.

5. The Applicants further submit that the proposed substitutions also are unlike the type of substitution that Section 26(b) was designed to prevent in that by purchasing a Policy, Policy owners select much more than a particular underlying fund in which to invest their Policy values. The Policy owners also select the specific type of insurance coverage offered by the Applicants under the applicable Policy, as well as numerous other rights and privileges set forth in the Policy. The Applicants state that, in choosing to buy a Policy from one of the Insurance Companies, it is likely that the Policy owner also may have considered that Insurance Company's size, financial condition, and reputation for service, and that none of those considerations and factors will change as a result of the proposed substitutions.

6. The Applicants submit that, for all reasons stated above, the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the substitutions should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22942 Filed 9–1–99: 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23982; File No. 812–11664]

London Pacific Life & Annuity Company, et al., Notice of Application

August 27, 1999.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under Section 26(b) of the Investment Company Act of 1940 ("1940 Act") approving the proposed substitution of securities.

SUMMARY OF APPLICATION: Applicants seek an order pursuant to Section 26(b) of the 1940 Act approving the substitution of shares of the Federated Fund for U.S. Government Securities II ("U.S. Government Securities Portfolio") of Federated Insurance Series ("Fund") for shares of the Berkeley U.S. Quality Bond Portfolio ("U.S. Quality Bond Portfolio") of LPT Variable Insurance Series Trust ("Trust").

APPLICANTS: London Pacific Life & Annuity Company ("London Pacific") and LPLA Separate Account One ("Separate Account One") (collectively, "Applicants").

FILING DATE: The application was filed on June 15, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 21, 1999, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–6500. Applicants, c/o Lynn K. Stone, Esquire, Blazzard, Grodd & Hasenauer, P.C., P.O. Box 5108, Westport, Connecticut, 06881. Copies to George C. Nicholson, London Pacific Life & Annuity Company, 3109 Poplarwood Court, Raleigh, North Carolina 27604.

FOR FURTHER INFORMATION CONTACT: Ann Vlcek, Senior Counsel, or Susan Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW, Washington DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. London Pacific was organized in 1927 in North Carolina as a stock life insurance company. London Pacific was acquired from Liberty Life in 1989 and was formerly named Southern Life Insurance Company. London Pacific is authorized to sell life insurance and annuities in forty states and the District of Columbia. London Pacific's ultimate parent is London Pacific Group Limited, an international fund management firm chartered in Jersey, Channel Islands. London Pacific is the depositor for Separate Account One.

2. Separate Account One is a separate account of London Pacific Life which was authorized by the London Pacific Board of Directors on November 21, 1994 and established in accordance with North Carolina law. Separate Account One is registered under the 1940 Act as a unit investment trust (File No. 811–8890) for the purpose of funding the Contracts which invest in the Trust and Fund, among other investment options. Security interests under the Contracts have been registered under the Securities Act of 1933 ("1933 Act") (File Nos. 33–87150 and 333–1779).

3. Separate Account One is currently divided into sub-accounts, each of which reflects the investment performance of a corresponding portfolio of the Trust, the Fund or other underlying mutual funds.

4. The U.S. Quality Bond Portfolio's primary investment objective is to seek to obtain a high level of current income. The Portfolio invests at least 65% of its total assets in higher quality bonds or securities that represent an interest in pools of higher quality debt obligations such as mortgages. Shares of the U.S. Quality Bond Portfolio are purchased, without sales charge, by the Berkeley U.S. Quality Bond Sub-Account (the "U.S. Quality Bond Sub-Account") of Separate Account One at the net asset value per share next determined following receipt of a purchase payment by the U.S. Quality Bond Sub-Account. Any dividend or capital gain distributions received from the U.S. Quality Bond Portfolio are reinvested in additional shares of the U.S. Quality Bond Portfolio and retained as assets of the U.S. Quality Bond Sub-Account. The U.S. Quality Bond Portfolio's shares are redeemed without any charge or fee to Separate Account One to the extent necessary for London Pacific to make annuity or other payments under the Contracts.

5. LPIMC Insurance Marketing Services ("LPIMC"), a registered investment adviser and wholly-owned subsidiary of London Pacific, as investment adviser to the Trust, provides overall management of the investment strategies and policies of the U.S. Quality Bond Portfolio. The subadviser of the Portfolio is Berkeley Capital Management. Effective January 25, 1999, shares of the U.S. Quality Bond Portfolio are no longer available for sale.

6. LPIMC receives the following amounts as an annual investment advisory fee with respect to the U.S. Quality Bond Portfolio, accrued daily and payable monthly based on a percentage of the Portfolio's average daily net assets:

.55% of first $50 million of average daily net assets;

.525% of next $100 million of average daily net assets;

.50% of next $150 million of average daily net assets;

.45% of next $200 million of average daily net assets; and

.425% over and above $500 million of average daily net assets.

7. On June 4, 1999, the U.S. Quality Bond Portfolio had approximately $263,329 in net assets. The total expenses of the U.S. Quality Bond Portfolio for the year ended December 31, 1998 were 3.60% of its average net assets without regard to any expense reimbursement by London Pacific.

8. Prior to May 1, 1999, London Pacific reimbursed the U.S. Quality Bond Portfolio for certain expenses. Effective May 1, 1999, this arrangement was terminated. For the year ending December 31, 1999, total annual portfolio expenses are estimated to be 3.30%.

9. The investment objective of the U.S. Government Securities Portfolio is to seek current income. The U.S. Government Securities Portfolio pursues its objective by investing primarily in U.S. government securities, including mortgage backed securities issued by U.S. government agencies.

10. Federated Investment Management Company, a registered investment adviser, is the investment adviser of the U.S. Government Securities Portfolio. Federated Investment Management Company receives an annual investment advisory fee of .60% of the Portfolio's average daily net assets.

11. On June 4, 1999, the U.S. Government Securities Portfolio had approximately $119,525,394 in net assets. For the period ended December 31, 1998, the U.S. Government Securities Portfolio's total expenses were .93% of its average net assets without regard to a waiver of fees or reimbursement of expenses undertaken by Federated Investment Management Company for the year ended December 31, 1998. This fee waiver and expense reimbursement arrangement is voluntary and may be terminated at any time without notice.

12. The total returns of the U.S. Quality Bond Portfolio and the U.S. Government Securities Portfolio are as follows:

U.S. Quality Bond Portfolio

Total Return for the period 1.31.96 (commencement of operations) to 12/31/96: 2.27%.

Total Return for the year ended 12/31/97: 9.45%.

Total Return for the year ended 12/31/98: 7.87%.

U.S. Government Securities Portfolio

Total Return for the period 3/29/94 (commencement of operations) to 12/31/94: 2.62%.

Total Return for the year ended 12/31/95: 8.77%.

Total Return for the year ended 12/31/96: 4.20%.

Total Return for the year ended 12/31/97: 8.58%.

Total Return for the year ended 12/31/98: 7.66%.

13. Applicants propose that London Pacific on its own behalf and on behalf of Separate Account One effect a substitution of shares of the U.S. Government Securities Portfolio for all shares of the U.S. Quality Bond Portfolio attributable to the Contracts ("Substitution"). For those owners of Contracts ("Contract Owners") who continue to have any of their Contract values invested in shares of the U.S. Quality Bond Portfolio on the effective date of the Substitution, the Company proposes to substitute shares of the U.S. Government Securities Portfolio for shares of the U.S. Quality Bond Portfolio on the following basis. As of the effective date of the Substitution, the shares of the U.S. Quality Bond Portfolio representing Contract values would be redeemed by London Pacific. On the same day, London Pacific would use the proceeds to purchase the appropriate number of shares of the U.S. Government Securities Portfolio. The Substitution will be a cash transaction (i.e., no securities will be exchanged in the transaction). The Substitution will take place at relative net asset values of the Portfolios, with no change in the amount of any Contract Owner's Contract values or in the dollar value of his or her investment in Separate Account One.

14. On June 8, 1999, London Pacific supplemented the prospectuses for Separate Account One to relect the proposed Substitution ("Supplement"). The Supplement also informed Contract Owners that prior to the date of the Substitution, an owner may transfer his or her Contract value in the Berkeley U.S. Quality Bond Sub-Account to any sub-account without any limitation or charge being imposed.

15. Applicants state that Contract Owners will not incur any fees or charges as a result of the proposed Substitution nor will their rights under the Contracts be altered in any way. London Pacific will pay all expenses and transaction costs of the Substitution, including legal and accounting expenses, any applicable brokerage commissions, and other fees and expenses. In addition, the Substitution will not impose any tax liability on Contract Owners. The Substitution will not cause the Contract fees and charges currently being paid by existing Contract Owners to be greater after the Substitution than before the Substitution. London Pacific will schedule the Substitution to occur as soon as practicable following the issuance of the order so as to maximize the benefits to be realized from the Substitution. Applicants state that, within five (5) days after the completion of the Substitution pursuant to the order of the Commission approving the Substitution, London Pacific will send to the Contract Owners written notice of the Substitution (the "Notice") stating that shares of the U.S. Quality Bond Portfolio have been eliminated and that the shares of the U.S. Government Securities Portfolio have been substituted.

16. Applicants state that Contract Owners will be advised in the Notice that for a period of thirty (30) days from the mailing of the Notice, they may transfer all assets, as substituted, to any other available investment option, without limitation and without charge. The period from the date of the Supplement to thirty (30) days from the mailing of the Notice is referred to as the "Free Transfer Period." Applicants state that, following the Substitution, Contract Owners will be afforded the same contract rights, including surrender and other transfer rights with regard to amounts invested under the Contracts, as they currently have. Currently there are no applicable surrender fees or redemption charges under the Contracts. Applicable contingent deferred sales charges, however, will be imposed.

17. Applicants state that the Contracts reserve to London Pacific the right to replace the shares of the U.S. Quality Bond Portfolio held by Separate Account One with shares of another portfolio, such as the U.S. Government Securities Portfolio, if (a) shares of the U.S. Quality Bond Portfolio should no longer be available for investment by Separate Account One, or (b) in the judgment of London Pacific's Board of Directors, further investment in the U.S. Quality Bond Portfolio should become inappropriate in view of the purpose of the Contracts, provided any such substitution is approved by the Commission and is in compliance with all applicable rules and regulations. London Pacific believes that further investment in shares of the U.S. Quality Bond Portfolio is no longer appropriate in view of the purposes of the Contracts.

Applicants' Legal Analysis and Conditions

1. Applicants request an order of the Commission pursuant to Section 26(b) of the 1940 Act in connection with the proposed substitution of shares of the U.S. Government Securities Portfolio of the Fund for shares of the U.S. Quality Bond Portfolio of the Trust which are currently held by Separate Account One.

2. Section 26(b) of the 1940 Act makes it unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. Section 26(b) provides that the Commission shall issue an order approving substitutions of securities if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

3. Applicants state that the purposes, terms and conditions of the Substitution are consistent with the principles and purposes of section 26(b) and do not entail any of the abuses that section 26(b) is designed to prevent. Applicants assert that the Substitution is an appropriate solution to the limited Contract Owner interest or investment in the U.S. Quality Bond Portfolio, described below, which is currently, and in the future may be expected to be, of insufficient size to promote

consistent investment performance or to reduce operating expenses.

4. Applicants state that London Pacific, on the basis of the following facts and circumstances summarized herein, has determined that it is in the best interests of Contract Owners to substitute shares of the U.S. government Securities Portfolio for shares of the U.S. Quality Bond Portfolio.

5. Applicants state that the U.S. Quality Bond Portfolio and the U.S. Government Securities Portfolio each have investment objectives and programs which are substantially the same. The U.S. quality Bond Portfolio will invest at least 65% of its total assets in higher quality bonds or securities that represent an interest in pools of higher quality debt obligations, such as mortgages. The U.S. Government Securities Portfolio invests primarily in U.S. Government securities, including mortgage backed securities issued by U.S. government agencies.

6. Applicants state that the total expense ratio of 3.6% for the U.S. quality Bond Portfolio for the year ended December 31, 1998, without regard to waiver or reimbursement of expenses by London Pacific, is relatively high for this type of Portfolio. A large portion of the U.S. Quality Bond Portfolio's expenses is fixed. Consequently, because the size of the U.S. Quality Bond Portfolio is relatively small, these fixed expenses represent and may continue to represent a relatively large percentage of the U.S. Quality Bond Portfolio's average daily net assets. Applicants assert that Contract Owners will not be exposed to higher expenses following the Substitution and should, in fact, benefit from the U.S. Government Securities Portfolio's lower total expense ratio which, for the year ended December 31, 1998, was .93% of its average daily net assets, without regard to waiver or reimbursement of expenses.

7. Applicants state that the U.S. Government Securities Portfolio accumulated approximately $119,525,394 in net assets as of June 4, 1999. The U.S. Quality Bond Portfolio accumulated approximately $263,329 in net assets as of June 4, 1999. Effective January 25, 1999, shares of the U.S. Quality Bond Portfolio are no longer available for investment. Therefore, Applicants state that the prospects for continued growth of the U.S. Government Securities Portfolio indicate that greater economies of scale would be expected for that fund than for the U.S. Quality Bond Portfolio.

8. Applicants state that, due to the relatively small asset size of the U.S. Quality Bond Portfolio, there are a limited number of attractive investments available for investment by the U.S. Quality Bond Portfolio. Thus, the ability to maintain optimal management of the Portfolio is reduced. The larger size of the U.S. Government Securities Portfolio lends itself to greater flexibility in purchasing attractive investments, and consequently the U.S. Government Securities Portfolio can more readily react to changes in market conditions. Applicants state that Contract Owners would benefit through the more effective management of a larger portfolio such as the U.S. Government Securities Portfolio.

9. Applicants state the Substitution will not result in the type of costly forced redemption that section 26(b) was intended to guard against and is consistent with the protection of investors and the purposes fairly intended by the 1940 Act for the following reasons:

(a) The Substitution is of the U.S. Government Securities Portfolio shares whose objectives, policies, and restrictions are substantially similar to the objectives, policies, and restrictions of the U.S. Quality Bond Portfolio so as to continue fulfilling the Contract Owners' objectives and risk expectations;

(b) While the advisory fees for the U.S. Government Securities Portfolio are somewhat higher than those of the U.S. Quality Bond Portfolio, the total expenses (as of December 31, 1998) of the U.S. Government Securities Portfolio, without regard to any waiver or reimbursement, were .93%, while the total expenses for the U.S. Quality Bond Portfolio were 3.60%.

(c) If during the Free Transfer Period a Contract Owner requests, assets will be reallocated for investment in a Contract Owner-selected sub-account. The Free Transfer period is sufficient time for Contract Owners to reconsider the Substitution;

(d) The Substitution will in all cases, be effected at the net asset value of the respective shares in conformity with section 22(c) of the 1940 Act and rule 22c–1 thereunder, without the imposition of any transfer or similar charge;

(e) London Pacific has undertaken to assume the expenses and transaction costs, including among others, legal and accounting fees and any brokerage commissions, relating to the Substitution;

(f) The Substitution in no way will alter the insurance benefits to Contract Owners or the contractual obligations of London Pacific;

(g) The Substitution in no way will alter the tax benefits to Contract Owners; and

(h) Contract Owners may chose simply to withdraw amounts credited to them following the Substitution under the conditions that currently exist, subject to any applicable contingent deferred sales charge.

Conclusion

Applicants submit, for all of the reasons stated herein, that the requested order approving the proposed substitution under section 26(b) of the 1940 Act is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22939 Filed 9–1–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23981]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

August 27, 1999.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of August, 1999. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., NW, Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m, on September 21, 1999, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, NW, Washington, DC 20549–0506.

The Premium Portfolios [File No. 811–7291]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 1, 1998, applicant made a liquidating distribution to its securityholders at net asset value per share. Expenses of approximately $10,175 were incurred in connection with the liquidation and were paid by Citibank, N.A., applicant's investment adviser.

Filing Dates: The application was filed on May 25, 1999, and amended on August 2, 1999.

Applicant's Address: Elizabethan Square, George Town, Grand Cayman, Cayman Islands, British West Indies.

The Baird Funds, Inc. [File No. 811–6714]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 4, 1999, applicant made a liquidating distribution to its shareholders based on net asset value per share. Expenses of approximately $35,000 were incurred in connection with the liquidation and were paid by applicant.

Filing Dates: The application was filed on June 11, 1999, and amended on August 4, 1999.

Applicant's Address: 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202.

Life Cycle Mutual Funds, Inc. [File No. 811–9058]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 30, 1998, applicant made a liquidating distribution to its shareholders at net asset value per share. Expenses incurred in connection with the liquidation were $107,796 and were allocated pro rata to each series of applicant.

Filing Dates: The application was filed on April 30, 1999, and amended on August 11, 1999.

Applicant's Address: c/o Joseph V. Del Raso, Esq., Pepper Hamilton LLP, 3000 Two Logan Square, Eighteenth and Arch Streets, Philadelphia, Pennsylvania 19103–2799.

MAP-Equity Fund (Previously Known as Mutual Benefit Fund) [File No. 811–2046]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 8, 1999, applicant transferred its assets to MainStay MAP Equity Fund based on net asset value. Expenses of approximately $84,295 incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on July 30, 1999.

Applicant's Address: 520 Broad Street, Newark, New Jersey 07102.

Security Capital EuroPacific Real Estate Shares Incorporated [File No. 811–8383], Security Capital European Real Estate Shares Incorporated [File No. 811–8533]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. Neither applicant has ever made a public offering of its securities and does not propose to make a public offering or engage in business of any kind.

Filing Date: Each application was filed on July 7, 1999, and amended on August 12, 1999.

Applicant's Address: 11 South LaSalle Street, Chicago, Illinois 60603.

Hyperion Short Duration U.S. Government Fund II [File No. 811–6210], Short Duration U.S. Government Portfolio [File No. 811–6250], Hyperion Government Mortgage Trust [File No. 811–6262]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On August 31, 1995, each applicant made a liquidating distribution to its shareholders at net asset value per share. Expenses of $93,325 were incurred in connection with each liquidation and were paid by the investment adviser to each applicant.

Filing Dates: Hyperion Short Duration U.S. Government Fund II and Short Duration U.S. Government Portfolio filed their applications on July 6, 1999, and Hyperion Government Mortgage Trust filed its application on July 9, 1999. Each application was amended on August 11, 1999.

Applicant Address: One Liberty Plaza, 165 Broadway, New York, New York 10006.

AJL PEPS Trust [File No. 811–7341]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On February 15, 1999, applicant made a liquidating distribution to its shareholders at net asset value per share. Applicant has approximately 30 shareholders who have not surrendered their shares. Assets representing the aggregate liquidation value of applicant's remaining shares are being held by The Bank of New York. Expenses of approximately $30,958 incurred in connection with the liquidation were paid by Morgan Stanley & Co., Incorporated, as sponsor of applicant.

Filing Dates: The application was filed on May 10, 1999, and amended on August 13, 1999.

Applicant's Address: c/o The Bank of new York, 101 Barclay Street, New York, New York 10286.

The New South Africa Fund, Inc. [File No. 811–8298]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 3, 1999, applicant made a liquidating distribution to its shareholders at net asset value per share. Applicant has 49 shareholders who have not surrendered their shares. Funds representing the aggregate liquidation value of applicant's remaining shares are being held by the Custodial Trust Company, applicant's custodian. Expenses of $430,250 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on July 28, 1999, and amended on August 19, 1999.

Applicant's Address: 101 Carnegie Center, Princeton, New Jersey 08540.

Smith Hayes Trust, Inc. [File No. 811–5463]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 21, 1999, applicant transferred its assets to Great Plains Funds based on net asset value. Expenses of $28,400 were incurred in connection with the reorganization and were paid by SMITH HAYES Financial Services Corporation, applicant's distributor.

Filing Dates: The application was filed on July 29, 1999, and amended on August 18, 1999.

Applicant's Address: Centre Terrace, 1225 L Street, P.O. Box 83000, Lincoln, Nebraska 68501–3000.

Scudder Spain and Portugal Fund, Inc. [File No. 811–5304]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 8, 1999, applicant made a liquidating distribution to its securityholders at net asset value. As of August 3, 1999, applicant had 48 securityholders who had not surrendered their shares. State Street Bank and Trust Company is holding funds representing the aggregate liquidation value of applicant's remaining shares. Expenses of approximately $77,600 were incurred in connection with the liquidation, of which applicant's investment adviser

paid approximately $25,800, and applicant paid the remaining expenses.

Filing Dates: The application was filed on June 30, 1999, and amended on August 17, 1999.

Applicant's Address: 345 Park Avenue, New York, New York 10154.

AIM Investment Portfolios [File No. 811–3297]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 21, 1998, applicant transferred its assets to AIM Money Market Fund, a series of AIM Funds Group, based on net asset value. Expenses of $95,249 incurred in connection with the reorganization were paid by AIM Advisors Inc., applicant's investment adviser.

Filing Date: The application was filed on August 11, 1999.

Applicant's Address: 11 Greenway Plaza, Suite 100, Houston, Texas 77046.

Franklin Life Variable Annuity Fund B [File No. 811–2110]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 8, 1999, the shareholders of applicant voted to approve the merger of applicant with two other investment companies. The name of the fund surviving the merger is Franklin Life Variable Annuity Fund, and its Investment Company Act file number 811–1990. Expenses of $287,065 were incurred in connection with the merger and were paid by The Franklin Life Insurance Company, which had been the investment adviser of applicant during the last five years.

Filing Date: The application was filed on June 4, 1999.

Applicant's Address: #1 Franklin Square, Springfield, Illinois 62713.

Franklin Life Money Market Variable Annuity Fund C [File No. 811–3289]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On April 8, 1999, the shareholders of applicant voted to approve the merger of applicant with two other investment companies. The name of the fund surviving the merger is Franklin Life Variable Annuity Fund, and its Investment Company Act file number is 811–1990. Expenses of $287,065 were incurred in connection with the merger and were paid by The Franklin Life Insurance Company, which had been the investment adviser of applicant during the last five years.

Filing Date: The application was filed on June 4, 1999.

Applicant's Address: #1 Franklin Square, Springfield, Illinois 62713.

The Sports Funds Trust [File No. 811–8563]

Summary: Applicant seeks an order declaring that it has ceased to be in investment company. On February 26, 1999, applicant made a liquidating distribution to its securityholders at net asset value per share. Expenses of $6,289 incurred in connection with the liquidation were paid by applicant.

Filing Date: The applicant was filed on August 20, 1999.

Applicant's Address: 610 Pasteur Drive, Suite 2, Greensboro, NC 27403.

Veredus Funds (Formerly Artemis Funds) [File No. 811–8771]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 4, 1998, applicant transferred all of its assets and liabilities to Allegheny/ Veredus Aggressive Growth Fund (the "Acquiring Fund") based on net asset value. Expenses of $154,701 were incurred in connection with the reorganization, of which the investment advisers for applicant and the Acquiring Fund paid $119,207 and $35,494, respectively.

Filing Dates: The application was filed on May 12, 1999, and amended on August 24, 1999.

Applicant's Address: 6900 Bowling Boulevard, Suite 250, Louisville, Kentucky 40207.

TCW/DW Global Telecom Trust [File No. 811–7591]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 28, 1999, applicant transferred its assets to Morgan Stanley Dean Witter Global Utilities Fund based on net asset value. Expenses of $145,000 incurred in connection with the reorganization were paid by applicant.

Filing Date: The application was filed on August 24, 1999.

Applicant's Address: Two World Trade Center, 70th Floor, New York, New York 10048.

Pioneer Intermediate Tax-Free Fund [File No. 811–4768]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 31, 1999, applicant transferred all of its assets to Pioneer Tax-Free Income Fund (the "Acquiring Fund") based on net asset value per share. Expenses of $45,000 incurred in connection with the reorganization were allocated between applicant and the Acquiring Fund based on their respective net assets.

Filing Date: The application was filed on August 23, 1999.

Applicant's Address: 60 State Street, Boston, Massachusetts 02109.

The United Kingdom Fund Inc. [File No. 811–5184]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 18, 1999, applicant distributed substantially all of its assets to shareholders at net asset value per share. Funds representing the aggregate liquidation value of applicant's remaining shares and a reserve to cover remaining liabilities are held in trust. Expenses of $153,646 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on July 27, 1999. Applicant has agreed to file an amendment during the notice period.

Applicant's Address: c/o Merrill Lynch Asset Management, 800 Scudders Mill Road, Legal Advisory–2A, Plainsboro, New Jersey 08536.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–22941 Filed 9–1–99; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

DATES: The meeting is scheduled for September 14 and 15, 1999, beginning at 8:30 a.m. on September 14. Arrange for oral presentations by September 7.

ADDRESSES: Boeing Commercial Airplane Group, 535 Garden Avenue, N., Building 10–16, Renton, WA.

FOR FURTHER INFORMATION CONTACT: Effie M. Upshaw, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–7626, FAX (202) 267–5075.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held September 14–15 at the Boeing Commercial Airplane Group, 535 Garden Avenue, N., Building 10–16, Renton, WA.

The agenda will include:

Tuesday, September 14

- Opening Remarks
- FAA Report
- JAA Report
- Transport Canada Report
- Engine Harmonization Working Group (HWG) Report and Vote
- General Structures HWG Report
- Airworthiness Assurance Working Group Report
- Powerplant Installation HWG Report
- Flight Guidance System HWG Report
- Systems Design and Analysis HWG Report
- Seat Test HWG Report

Wednesday, September 15

- Avionics Systems HWG Report
- Aging Systems Update
- Emergency Evacuation Issues Report
- Flight Test HWG Report
- Ice Protection HWG Report
- Human Factors HWG Report
- Electromagnetic Effects HWG Report
- Loads and Dynamics HWG Report
- Flight Control HWG Report
- Mechanical Systems HWG Report
- Electrical Systems HWG Report

The Engine Harmonization Working Group plans to request a vote to submit a technical standard order (TSO) for formal legal review. The TSO prescribes the minimum performance standards that gas turbine auxiliary power units must meet to be identified with the applicable TSO marking.

Attendance is open to the public, but will be limited to the space available. The public must make arrangements by September 7 to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 25 copies to the Assistant Executive Director for Transport Airplane and Engine issues or by providing copies at the meeting. Copies of the documents to be voted upon may be made available by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. In addition, sign and oral interpretation as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC on August 27, 1999.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 99–22896 Filed 9–1–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 99–08–U–00–PHL To Use the Revenue From a Passenger Facility Charge (PFC) at Philadelphia International Airport, Philadelphia, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Philadelphia International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 4, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Ms. Roxane Wren, Harrisburg Airports District Office, 3911 Hartzdale Drive, Suite 1100, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Alfred Testa, Jr., Director of Aviation of the City of Philadelphia at the following address: Division of Aviation, Terminal "E", Philadelphia, PA 19153.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Philadelphia, Department of Commerce, Division of Aviation under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Roxane Wren, Administrative Support Assistant, Airports District Office, 3911 Hartzdale Drive, Suite 1100, Camp Hill, PA 17011, 717–730–2830. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Philadelphia International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 13, 1999, the FAA determined that the application to use the revenue from a PFC submitted by City of Philadelphia was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 13, 1999.

The following is a brief overview of the application.

PFC Application No.: 99–08–U–00–PHL.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 1999.

Proposed charge expiration date: July 1, 2011.

Total estimated PFC revenue: $672,000,000.

Brief description of proposed project(s):

—Terminal One Building (New International Terminal)
—Terminal F Building (New Commuter Terminal)
—Aircraft Parking Apron for Terminal One
—Aircraft Parking Apron for Terminal F
—Airport Roadway Modifications—Phase II
—Acquisition of Property—West of Terminal One
—Planning & Design of New Highway Access Ramps from I–95

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/ Commercial Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional airports office located at: Fitzgerald Federal Building #111, Airports Division, AEA–610, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Philadelphia, Division of Aviation.

Issued in Camp Hill, Pennsylvania on August 18, 1999.

Sharon A. Daboin,

Manager, Harrisburg ADO, Eastern Region.

[FR Doc. 99–22891 Filed 9–1–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Reports, Forms and Recordkeeping Requirements

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following information collection was published on March 1, 1999 [64 FR 10060].

DATES: Comments must be submitted on or before October 4, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. David Longo, (202) 366–0456, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:00 a.m. to 4:00 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: No-Zone Campaign Assessment.

Type of Request: Approval of a new information collection.

Affected Public: Approximately 1,100 adult licensed drivers randomly selected from the public.

Abstract: "No-Zone" is a highway safety term used to describe danger areas around trucks and buses where crashes are more likely to occur. The purpose of the No-Zone campaign is to help reduce the number of car-truck crashes, injuries, fatalities, and property loss by increasing motorists' awareness of the No-Zone. The FHWA will conduct a quantitative analysis of the No-Zone campaign and its messages by developing and administering a baseline evaluation study designed to quantify respondents' knowledge of truck and bus limitations; their knowledge of "share the road" issues; and their knowledge of the No-Zone campaign and its messages. It is anticipated that a sample of 4,000 respondents will be drawn in order to complete 1,100 interviews in households with telephones using a national random digit dial.

Frequency: The survey will be conducted now for a baseline analysis and again in approximately three to five years to assess improvements.

Estimated Burden: The estimated total annual burden is 92 hours (1,100 responses x 5 minutes per response).

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: DOT Desk Officer. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication of this Notice.

Issued on: August 30, 1999.

Michael J. Vecchietti,

Director, Office of Information and Management Services.

[FR Doc. 99–22924 Filed 9–1–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Aroostook County, Maine

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared to improve transportation efficiency in Aroostook County, Maine. The EIS will examine highway infrastructure improvements to enhance transportation mobility and accessibility to and from Aroostook County, as well as within the County. These improvements are being considered as a means to improve the region's economy by improving access to jobs and services and by reducing travel time to markets outside Maine's northern-most County. The purpose of this study is to identify a Preferred Corridor only.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Linker, Manager, Right of Way and Environmental Programs, Maine Division, Federal Highway Administration, 40 Western Ave., Augusta, Maine 04330, Tel. 207/622–8355, ext. 23; Ray Faucher, Project Manager, Maine Department of Transportation, State House Station 16, Augusta, Maine 04333–0016, Tel. 207/287–3172.

SUPPLEMENTARY INFORMATION: The purpose of this EIS is to establish a one-half mile wide corridor for future highway development. The area under consideration, from the towns of Smyrna Mills to Madawaska, is quite large and bounded on the west by Route 11, on the south by I–95, and on the north and east by the Canadian border. The enclosed area is roughly twice the size of the state of Rhode Island.

The EIS will study up to seven corridors alternatives, including upgrades within existing highway corridors and corridors on new location. The seven corridors, plus the no-action alternative, will be selected through a screening process of up to 20 preliminary corridors. The corridors will be selected for review based on their ability to provide transportation benefits and their environmental impacts. It is anticipated that highway segments with logical termini and independent utility will be constructed in the future within the selected corridor. Each segment will be supported by a separate environmental document in the later construction phase.

An 18-member public advisory committee has been established to represent the interests within the study area and to assist in the preparation of the EIS. Public scoping meetings will be held at the following locations: the Frenchville Community Center in Frenchville, September 14, 1999; the Northern Maine Technical College in Presque Isle, September 15, 1999; and the Miller Civic Center in Houlton on September 16, 1999.

Authority: 23 U.S.C. 315; 49 CFR 1.48.

Issued on: August 27, 1999.

Paul L. Lariviere,

Division Administrator, Federal Highway Administration, Augusta, Maine.

[FR Doc. 99–22862 Filed 9–1–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Major Investment Study/Draft Environmental Impact Statement for the Metro-North Penn Station Access Study

AGENCY: Federal Transit Administration (FTA)

ACTION: Notice of intent to prepare a Major Investment Study/Draft Environmental Impact Statement (MIS/DEIS).

SUMMARY: The Federal Transit Administration (FTA) and the Metro-North Commuter Railroad Company (Metro-North) intend to prepare a Major Investment Study/Draft Environmental Impact Statement (MIS/DEIS) to study transportation access improvements from the Metro-North service territory on the New Haven, Harlem, and Hudson Lines (north of Manhattan) to Pennsylvania Station, New York (Penn Station) on the West Side of Manhattan in the City of New York. Current Metro-North service terminates at Grand Central Terminal (GCT) on the East Side of Manhattan, necessitating as many as two transfers on additional modes to reach destinations on the West Side. The MIS/DEIS is being prepared in accordance with the National Environmental Policy Act of 1969 (NEPA), as amended, and implemented by the Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500–1508), the FTA/Federal Highway Administration's Environmental Impact regulations (23 CFR Part 771), and the FTA/FHWA Statewide Planning/Metropolitan Planning regulations (23 CFR Part 450). This study will also comply with the requirements of the National Historic Preservation Act of 1966, as amended, Section 4(f) of the 1966 U.S. Department of Transportation Act, the 1990 Clean Air Act Amendments, the Executive Order 12898 on Environmental Justice, and other applicable rules, regulations, and guidance documents.

The Penn Station Access MIS/DEIS will examine alternative strategies for improving access from the Metro-North service territory to the West Side of Manhattan (Penn Station). New York-bound, Metro-North trains currently terminate at GCT on Manhattan's East Side. The study will also evaluate the possibility of station stops in Co-Op City in the Bronx and on the West Side of Manhattan, and a new rail yard. Consideration will also be given to other modes.

The Penn Station Access MIS/DEIS will develop alternatives for study that could lead to a project which would (1) Be a feasible, cost-effective, and beneficial transportation improvement that would enhance connections to other regional rail services; (2) increase Metro-North ridership and provide service flexibility for its customers; and (3) support the region's economic vitality and quality of life. The MIS/DEIS will evaluate a No-Build Alternative, a Transportation System Management (TSM) Alternative, and Build Alternatives. Build alternatives will take into consideration the use of Metro-North's Hudson, Harlem, and New Haven Lines to provide access to Penn Station, potential new stations on the West Side of Manhattan (somewhere from approximately 57th Street to 86th Street) and at Co-Op City in the Bronx, as well as other reasonable alternatives suggested through the scoping process. The type, location and need for ancillary facilities (such as new yards or shops) will also be considered for each alternative.

DATES: *Comment Due Date:* Written comments on the scope of the MIS/DEIS should be sent to Metro-North by October 22, 1999. See **ADDRESSES** below.

Scoping Meeting: Public scoping meetings for the Penn Station Access MIS/DEIS will be held on:

September 28, 1999

6 pm–9 pm (sign-in begins at 5:30), MTA Headquarters, 5th Floor Board Room, 347 Madison Avenue (btwn 44th St. & 45th St.), New York, New York

September 30, 1999

7 pm–10 pm (sign-in begins at 6:30), Einstein Community Center; 135 Einstein Loop, Co-Op City, New York

October 5, 1999

7 pm–10 pm (sign-in begins at 6:30), The Warner Library, (corner of Broadway St. and Wildey St.) Tarrytown, New York

October 7, 1999

7 pm–10 pm (sign-in begins at 6:30), Stamford Government Center, 888 Washington Blvd., 2nd Floor (Senior Center), Stamford, Connecticut

People with special needs should contact Todd DiScala at Metro-North at the address below or by calling the study hotline at 1–877–MNR–PENN. The buildings are accessible to people with disabilities. A sign language interpreter will be available for the hearing impaired.

Scoping material will be available at the meetings and may also be obtained in advance of the meetings by contacting Todd DiScala at the address below or by calling the study hotline above. Oral and written comments may be given at the scoping meetings; a stenographer will record all comments.

ADDRESSES: Written comments on the project scope should be sent to Todd DiScala, Project Manager, Metro-North Railroad, 420 Lexington Avenue, 9th Floor, New York, New York 10017. The scoping meetings will be held at the locations identified above.

FOR FURTHER INFORMATION CONTACT: If you wish to be placed on the mailing list to receive further information as the study develops, contact Todd DiScala at the above address or call the study hotline at 1–877–MNR–PENN. For further information you may also contact: Ms. Nancy Danzig, Community Planner, Federal Transit Administration, Region II, One Bowling Green, Room 429, New York, New York, 10004–1415; phone: 212–668–2170.

SUPPLEMENTARY INFORMATION:

I. Scoping

The FTA and Metro-North invite all interested individuals and organizations, and federal, state, and local agencies to provide comments on the scope of the study. During the scoping process, comments should focus on identifying specific social, economic, or environmental issues to be evaluated and suggesting alternatives, which may be less costly or have less environmental impacts, while achieving the transportation objectives of enhancing regional connectivity, providing service flexibility, and supporting the region's economic vitality and quality of life. Comments should focus on the issues and alternatives for analysis and not on a preference for a particular alternative. Scoping materials will be available at the meetings or in advance of the meetings by contacting Todd DiScala at Metro-North, as indicated above.

The Penn Station Access Study will be closely coordinated with major regional initiatives and studies that are related to this effort. These include:

- **HUDSON LINE EXTENSION MIS/DEIS**, a study by Metro-North to examine extending Hudson Line service further north in Dutchess County from its current terminus in Poughkeepsie, New York;
- **ACCESS TO THE REGION'S CORE STUDY (ARC)**, a joint study by New Jersey Transit, Port Authority of New York and New Jersey, and the Metropolitan Transportation Authority (MTA). The ARC study continues to study access to Midtown Manhattan from points east and west;
- **EAST SIDE ACCESS STUDY**, a study by MTA Long Island Rail Road of access to the East Side of Manhattan via Grand Central Terminal;
- **LOWER MANHATTAN ACCESS ALTERNATIVES STUDY**, a study by the MTA to determine feasible alternatives for improving access to Lower Manhattan;
- **MANHATTAN EAST SIDE ALTERNATIVES**, a study by MTA New York City Transit to examine alternatives for improving access in the north-south corridor on the East Side of Manhattan;
- **AMTRAK HIGH SPEED RAIL**, projects to (1) improve service in the Northeast Corridor between Washington and Boston and (2) to provide improved service in the Empire Corridor.
- **AMTRAK SERVICE TO THE FARLEY POST OFFICE BUILDING**, a project which will move Amtrak's New York City passenger operations to the Farley Post Office Building; and
- **CONRAIL/CSX/NORFOLK SOUTHERN MERGER**, a change in the ownership of the freight network, dividing the former Conrail holdings between CSX and Norfolk Southern.

Following the public scoping process, public outreach activities will include meetings with a Community Liaison Committee (CLC) established for the study and comprised of community leaders, and with Community Boards; public meetings and hearings; distribution of study fact sheets and newsletters; and use of other outreach mechanisms. Every effort will be made to ensure that the widest possible range of public participants has the opportunity to attend general public meetings (e.g., scoping meetings and public hearing(s)) held by Metro-North to solicit input on the Penn Station Access MIS/DEIS. Attendance will be sought through mailings, notices, advertisements, and press releases.

II. Description of Study Area and Transportation Needs

The study area includes: (1) The Penn Station vicinity on the West Side of Manhattan, (2) the corridors of Metro-North's service territory, including the Hudson Line (76 miles), Harlem Line (82 miles [including Wassaic Extension]), and New Haven Line (132 miles) [including the New Canaan Branch, Danbury Branch, and the Waterbury Branch) extending through Dutchess, Putnam, Westchester, Bronx, and New York (Manhattan) Counties in New York, and Fairfield and New Haven Counties in Connecticut; and (3) the corridors of Amtrak's Empire Line south of Spuyten Duyvil to Penn Station on the West Side of Manhattan, and Amtrak's Hell Gate Line south of New Rochelle and through Sunnyside, Queens. The study area also includes the vicinity of possible new stations and storage yards on the Hudson and New Haven Lines. Possible new station locations include the West Side of Manhattan from 57th Street to 86th Street, and Co-Op City in the Bronx. This study area description is generalized and considered flexible, subject both to the outcome of the scoping process and the locations of the alternatives studied in detail.

The purpose of the Penn Station Access MIS/DEIS is to thoroughly examine the demand for, and the opportunities and constraints related to, improving access to Penn Station from the Metro-North service territory to the West Side of Manhattan, and to identify a preferred study alternative that addresses the forecasted demand in a cost-effective, environmentally sound, and equitable way. The MIS/DEIS will be conducted in coordination with a regional framework of transportation studies; it will consider the findings, conclusions, and recommendations of other recent and ongoing regional transportation studies. The MIS/DEIS will examine and document the social, economic, and environmental impacts of implementing identified study alternatives.

Provision of service to the Penn Station area would address the following needs:

- Commutation to Manhattan's West Side (Penn Station and Upper West Side areas);
- Commutation to Long Island and New Jersey (via transfer at Penn Station to Long Island Rail Road (LIRR) or New Jersey Transit (NJT) service);
- Commutation to workplaces in the vicinity of possible new stations on the West Side of Manhattan and Co-Op City in the Bronx.
- Reverse commutation from the West Side and Co-Op City to communities in the Metro-North service area;
- Discretionary (non-work-related) travel to Long Island and New Jersey in peak periods, off-peak periods, and on weekends; and
- Discretionary (non-work-related) travel to Manhattan's West Side in peak periods, off-peak periods, and on weekends for visits to shops, shows and museums.

III. Alternatives

The alternatives proposed for evaluation include: (1) The No-Build Alternative, which involves the current infrastructure of highways, train, bus, and subway service, in addition to all ongoing, committed and funded roadway and transit projects outlined in the State Transportation Improvement Program (STIP); (2) the Transportation System Management (TSM) Alternative, which includes all elements of the No-Build alternative in addition to roadway and traffic improvements and improvements to existing transit services that address the defined purpose and need for Penn Station access. The TSM Alternative is a low cost alternative that uses existing facilities to the greatest extent possible to meet the study area needs. The TSM Alternative also provides the baseline against which the cost-effectiveness of other capital transit investments can be evaluated; and (3) the Build Alternatives, which include commuter rail service between Penn Station and stations on the Hudson, Harlem, and/or New Haven Lines; shuttle train service between key Metro-North stations and Penn Station, enabling riders from Grand Central Terminal-bound trains to transfer to Penn Station trains; potential new intermediate stations on the West Side of Manhattan (from 57th Street to 86th Street) and at Co-Op City in the Bronx; and potential new yard locations for storage of equipment.

Rail alternatives using the Hudson and New Haven Lines to provide access to Penn Station would use existing rail infrastructure by connecting to Amtrak's Empire Connection and Hell Gate Line, respectively. Alternatives using the Harlem Line to provide access to Penn Station may require track reconstruction at potential merge locations (e.g. Spuyten Duyvil in the Bronx).

Additional reasonable Build alternatives suggested during the scoping process, including those involving other modes, may be considered.

IV. Probable Effects

The FTA and Metro-North will evaluate all potential changes to the social, economic, and physical environment, including land acquisition and displacements; land use, zoning and economic development; parklands; community disruption; aesthetics; historic and archeological resources; traffic and parking; air quality; noise and vibration; water quality; wetlands; ecologically sensitive areas; endangered species; energy requirements and potential for conservation; hazardous waste; environmental justice; safety and security; and cumulative impacts. Key areas of environmental concern would be in the areas of potential new construction (e.g. new stations, track connections, etc.). The impacts will be evaluated both for the construction period and for the long-term period of operation of each alternative. Measures to mitigate any significant adverse impacts will be identified.

V. FTA Procedures

The DEIS will be prepared in conjunction with a major investment study and will document the results of that study, including an evaluation of the potential social, economic, and environmental impacts of the alternatives. Upon completion, the MIS/DEIS will be available for public and agency review and comment. Public hearing(s) will be held within the study area. On the basis of the MIS/DEIS and the public and agency comments received, a locally preferred alternative will be selected, to be further detailed in the final EIS.

Issued On: August 30, 1999.

Letitia Thompson,

Regional Administrator, TRO–II, Federal Transit Administration.

[FR Doc. 99–22926 Filed 9–1–99; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5461; Notice 2]

Grant of Application for Determination of Inconsequential Noncompliance With Federal Motor Vehicle Safety Standard 108, Lamps, Reflective Devices and Associated Equipment

General Motors Corporation (GM) determined that some GM 1997 EV1 electric passenger cars fail to meet the turn signal requirements of Federal Motor Vehicle Safety Standard (FMVSS) No. 108—*Lamps, reflective devices and associated equipment.* Pursuant to 49 U.S.C. 30118 and 30120, GM applied to us for a decision that the noncompliance is inconsequential to motor vehicle safety. In accordance with 49 CFR 556.4(b)(6), GM also submitted a 49 CFR part 573 noncompliance notification to the agency.

We published notice of receipt of application in the **Federal Register** (64 FR 22897) on April 28, 1999. Opportunity was afforded for comments until May 28, 1999, but none were received.

GM stated that the EV1 is equipped with an electronic turn signal module that controls turn signal operation. A subset of the module population can be affected by random inputs that cause the internal timing of the electronic circuit to become un-synchronized. If this occurs, it can cause the left turn signal circuit on affected vehicles to operate improperly and not be in compliance with FMVSS No. 108. The left front turn signal lamp may flash at a rapid rate while the left rear turn signal lamp illuminates but does not flash. These conditions can continue after the turn signal lever automatically returns to the off position, but stop if the driver manually cancels the turn signal or turns the ignition off. The right turn signal is not affected.

GM believes that this noncompliance is inconsequential to motor vehicle safety for these reasons:

- The potential for this condition is confined to a very small population of vehicles, 558.
- The condition is not found on every vehicle. Only a subset of vehicles is affected, based on the build variation of the turn signal module.
- GM knows of only eight customers who have reported the condition. The turn signal module in these vehicles has been replaced.
- While GM has not been able to determine the exact percentage of affected vehicles (the anomaly is not readily repeatable in the laboratory, and the small production run has severely limited the number of parts available for testing), the likelihood of experiencing the condition is extremely rare. The worst case part, found in laboratory testing, exhibited the anomaly 16 times in 40,000 cycles (0.0004 times per cycle). Other tested parts did not exhibit the condition as often, or at all.
- The left turn signal does not fail completely. An oncoming driver would see the front turn signal flashing at a rapid rate. A following driver would see the left turn signal lamp on, although it would not be flashing. Both of these results are similar to a vehicle that has a burned-out turn signal lamp.
- Like a vehicle with a burned out lamp, a driver experiencing this condition is alerted that the turn signal system is not functioning properly because the turn signal indicator light does not flash.
- A turn signal with this condition does not self-cancel, but it can easily be canceled manually.
- GM knows of no crashes or injuries associated with this condition.

We have concluded that the few vehicles affected by this noncompliance, as well as the fact that the turn signals show the driver that they have failed, warrant a finding that this noncompliance is inconsequential with regard to motor vehicle safety.

In consideration of the foregoing, we have decided that the applicant has met its burden of persuasion that the noncompliance described above is inconsequential to motor vehicle safety. Accordingly, its application is granted, and GM is exempted from providing the notification of the noncompliance required by 49 U.S.C. 30118, and remedy, required by 49 CFR 30120.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: August 30, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–22919 Filed 9–1–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–4430; Notice 2]

Denial of Application for Decision of Inconsequential Noncompliance; Federal Motor Vehicle Safety Standard 108—Lamps, Reflective Devices, and Associated Equipment

General Motors Corporation (GM), determined that approximately 15,300 1998 GMC Sonoma and Chevrolet S–10 pickup trucks, and GMC Jimmy and Chevrolet Blazer sport utility vehicles, equipped with the "ZR2" option package, fail to meet a requirement of Federal Motor Vehicle Safety Standard (FMVSS) 108—Lamps, Reflective Devices and Associated Equipment. Specifically, these vehicles are equipped with daytime running lamps (DRLs) mounted higher than the maximum height allowed by S5.5.11(a)(1)(ii) of FMVSS 108. Pursuant to 49 U.S.C. 30118 and 30120, GM has applied to us, the National Highway Traffic Safety Administration (NHTSA) for a decision that the noncompliance is inconsequential to motor vehicle safety. GM also submitted a 49 CFR part 573 noncompliance notification to the agency in accordance with 49 CFR 556.4(b)(6).

We published a notice of receipt of the application in the **Federal Register** (64 FR 27032) on May 18, 1999. Opportunity was afforded for comments until June 17, 1999. No comments were received.

The DRLs on the noncompliant vehicles are provided by the upper beam headlamps operating at reduced intensity, with a maximum output of approximately 6,700 candela per lamp (according to GM). As such, FMVSS 108 requires the DRL be mounted not higher than 34 inches (864 mm) from the road surface. Base-level GMC Sonomas and Jimmys and Chevrolet S–10 pickups and Blazers comply with the DRL height limitation of FMVSS 108. However, the ZR2 option package gives the vehicles a stiffer suspension and larger tires, which results in an overall increase in the height of the vehicle, including the DRL mounting height. The mean mounting height of DRLs on the noncompliant vehicles is 36 inches above the ground, with a maximum height of 37 inches. As a result, they fail to meet S5.5.11(a)(1)(ii) of FMVSS 108.

GM believes that this noncompliance is inconsequential to motor vehicles safety for the following reasons:

1. Research conducted by the University of Michigan Transportation

Research Institute (UMTRI) on the changes in glare caused by varying mounting height of high beam DRLs confirms that the DRLs on the subject vehicles do not produce significantly more glare than compliant DRLs.

2. In addition to the UMTRI research, GM conducted subjective evaluations that confirmed that the DRLs on the noncomplying vehicles do not cause a consequential increase in glare relative to complying vehicles with lamps at or just below the maximum permitted mounting height.

3. The driver of a preceding vehicle will not see more light in the rearview mirror than NHTSA intended when it adopted the DRL requirements in January, 1993. GM evaluated light from the noncomplying vehicles with the DRL mounted at 37 inches, which is in the most extreme build condition and worst case, for purposes of this analysis. The light from this condition striking a mirror mounted 44 inches above the ground and 20 feet in front of the DRL, would be below the 2,600 candela limit established by the agency in the final DRL rule.

4. The mounting height of the DRLs on the noncomplying vehicles complies with the requirements of Canada Motor Vehicle Safety Standard (CMVSS) 108.

5. GM has not identified any accidents, injuries or warranty reports that are associated with this condition on the noncomplying vehicles.

For all of the above reasons, GM argued that this noncompliance is inconsequential to motor vehicle safety, and applied for a decision that it be exempted from the notification and remedy provisions of 49 U.S.C 30118 and 30120.

We have received hundreds of letters from citizens about excessive glare from headlamp-derived DRLs and particularly upper beam-derived DRLs. Partially in response to those complaints, on August 7, 1998, we issued a proposed amendment to FMVSS 108 to reduce the intensity permitted for DRLs, starting with the upper beam DRLs such as the ones found on these vehicles (63 FR 42348). As we stated in the proposed amendment, we found that the actual intensities of some of these headlamp DRLs on vehicles were as much as 1.35 times the intensities measured when the lamps are photometrically tested in the laboratory—because vehicle voltages up to 14 volts are found on some vehicles (compared to the 12.8 volt lab test voltage). This may help explain why there are so many reports by the public of glare from DRLs.

GM submitted this application after we had issued the 1998 proposed amendments to reduce glare from DRLs and was aware that we consider glare from DRLs, even at legal mounting heights, to be a problem. We recognize that the noncompliance here is due to a small height increase, resulting in relatively small increases in glare, as reported by the test subjects GM used. However, real world experience reflecting potential safety concerns, demonstrates that an unprecedented number of citizens are complaining of glare from DRLs. We believe therefore, that manufacturers should be held to the existing location requirements so as not to exacerbate the problem of glare. The DRL intensity requirements in existence since February 10, 1993, were a significant relaxation (i.e., increase in intensity) from that originally proposed on August 12, 1991 (56 FR 38100). Even then, DRL glare was an important issue. Today, public concerns have caused NHTSA to re-examine the intensity limits for DRLs. Given these circumstances, we cannot find that a noncompliance that increases DRL glare is inconsequential to safety. This application is therefore denied.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on August 30, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–22938 Filed 9–1–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket No. BTS–99–5696]

Agency Information Collection Activity Under OMB Review; American Travel Survey

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that BTS has forwarded the Information Collection Request for the American Travel Survey (ATS) to the Office of Management and Budget (OMB) for review. The ATS provides information on the travel patterns of the American public and how travel is changing over time. On May 21, 1999, BTS published a **Federal Register** notice proposing this submission and asking for public comment (64 FR 27852). BTS did not receive any comments in response to that notice.

DATES: Please submit comments by October 4, 1999.

ADDRESSES: Please send comments to both (1) the Office of Information and Regulatory Affairs (OIRA), OMB, 725 17th Street, NW., Washington, DC 20503, attention: DOT Desk Officer; and (2) the Docket Clerk, Docket No. BTS–99–5696, Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590. Comments must include the OMB Control Number, 2139-new.

If you wish to file comments to DOT using the Internet, you may use DOT's Dockets Management System website at http://dms.dot.gov. Please follow the instructions online for more information. This website can also be used to read comments received.

FOR FURTHER INFORMATION CONTACT: Ms. Heather Contrino, Office of Statistical Programs and Services, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590, phone: (202) 366–6584, fax: (202) 366–3640, heather.contrino@bts.gov.

SUPPLEMENTARY INFORMATION:

Title: American Travel Survey (ATS).

OMB Control Number: 2139-New.

Type of Request: Reinstatement of expired information collection.

Form: American Travel Survey.

Abstract: Under 49 U.S.C. 111, BTS is authorized to and responsible for collecting data related to the performance of the nation's transportation systems. The American Travel Survey provides data on the interregional flows of passenger travel. BTS and DOT will use the information to analyze the volumes and patterns of travel, the safety risks associated with travel, the role of travel in economic productivity, and the accessibility of transportation services. The data are also used in a number of ways by other Federal agencies, State and local governments, transportation-related associations, private businesses, and consumers to better understand the amount and nature of personal travel by the American public.

Estimated Annual Burden Hours: The estimated burden is 33,816 hours annually.

Public Comments Invited

BTS requests comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the Bureau of Transportation Statistics; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information, including the use of automated collection techniques or other forms of information technology.

Electronic Availability

An electronic copy of this document may be downloaded using a modem and suitable communications software from the **Federal Register** electronic bulletin board service (telephone number: 202–512–1661). Internet users may reach the **Federal Register**'s web site at http://www.access.gpo.gov/su_docs.

Ashish Sen,

Director.

[FR Doc. 99–22899 Filed 9–1–99; 8:45 am]

BILLING CODE 4910–FE–P

UNITED STATES INFORMATION AGENCY

Office of Citizen Exchanges; Media Internship Program for Russia

ACTION: Request for proposals.

SUMMARY: The Europe/Eurasia Division of the Office of Citizen Exchanges of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for an assistance award. U.S. public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501 (c) may submit proposals to develop media internship programs. Grants are subject to the availability of funds.

Goals/Objectives

The Russian Media Internship Program has been created in response to Russia's current economic crisis that threatens the existence of its emerging free press. USIA hopes that, through participation in the Russian Media Internship Program, Russian media managers will survive the economic challenges they are facing and continue to provide non-biased and accurate reporting. The program has three objectives: (1) To help media managers address the difficult economic conditions they are currently facing by learning the techniques used by their American counterparts in overcoming similar difficulties; (2) to demonstrate that a fair and ethical media can contribute to a civil society despite economic hardships; and (3) to familiarize media managers with the unique relationship in America between the media and government.

Overview

USIA is interested in proposals that will provide hands-on internships to approximately 16 Russian mid-level managers from print media establishments with a circulation of not less than 10,000. The program should ideally be ten weeks in length and begin with a visit to Washington, DC. The Washington portion of the program should last 4–6 days and focus on the interaction and relationship between the U.S. Federal Government and the media. After completing the Washington-based component, participants will begin practical internships at medium-sized media establishments throughout the U.S. Up to three host sites for each participant may be arranged for the internship portion of the program. Proposals should list those media establishments willing to host and should describe why these media establishments have been chosen. Program format can include both individual placements as well as work in small groups (up to three at a time). If the small group format is used, the internships must have a practical program component, not just be site visits. Organizations may propose a debriefing session before participants return to Russia. The Bureau will give higher ranking to proposals that ensure lasting linkages between these participants and their American colleagues.

Organizations must demonstrate the capability to identify and recommend candidates for participation in the program. The narrative should describe how the identification process will be carried out and by whom. Recommendations for selection will be made to the Office of Public Diplomacy at the American Embassy in Moscow, which will make the final selection of participants.

Due to the interactive nature of the internship component, it is preferred that participants have a working knowledge of English, particularly a good understanding of the spoken language. If individuals with little or no English are recommended, organizations must clearly describe what provisions they would make to structure a program for those participants, including interpretation services for participants.

A strong proposal contains the following: A proven track record of conducting program activities; cost-sharing from American or in-country sources, including donations of air fares, hotel and/or housing costs, and experienced program staff with some Russian language skills.

On October 1, 1999, the Bureau of Educational and Cultural Affairs will become part of the U.S. Department of State. The integration will not affect the content of this announcement or the nature of the program described.

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries. * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations. * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through the Freedom Support Act.

Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package.

Announcement Title and Number

All correspondence with the Agency concerning this RFP should reference the above title and number: E/PN–00–7

Deadline for Proposals

All copies must be received at the U.S. Department of State's Bureau of Educational and Cultural Affairs (formerly USIA's Bureau of Educational and Cultural Affairs) by 5 p.m. Washington, DC time, on Thursday, October 7, 1999. Faxed documents will not be accepted at any time. Documents postmarked on October 7, 1999 but received on a later date will not be accepted. It is the responsibility of each grant applicant to ensure that proposals are received by the deadline. A grant decision announcement should be made by December 1, 1999. The grant should begin in January 2000, and U.S.-based internships commencing in Spring 2000.

Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Office of Citizen Exchanges or submitting their proposals. Once the RFP deadline has passed, the Office of Citizen Exchanges may not discuss this competition in any way with applicants until after the Bureau program and project review process has been completed.

FOR FURTHER INFORMATION, CONTACT: The Europe/Eurasia Division, Office of Citizen Exchanges, (E/PN), Room 220, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, attn: Henry Scott, tel: 202–619–5327 and fax: 202–619–4350 or Internet address: <hscott@usia.gov>, to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions and standard guidelines for proposal preparation.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from USIA's website at <http://e.usia.gov/education/rfps>. Please read all information before downloading.

Submissions

Applicants must follow all instructions in the Solicitation Package. The original and ten (10) copies of the application should be sent to: U.S. Information Agency, Ref.: E/PN–00–7, Office of Grants Management, E/XE, Room 336, 301 4th Street, SW., Washington, DC 20547.

Complete proposals should not exceed twenty (20) pages in length (excluding Tab F).

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support of Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with USIA. The inability to process information in accordance with Federal requirements could result in grantees being required to return funds that have not been accounted for properly.

USIA therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for lean years.

Additional information addressing the Y2K issue may be found at the General Service Administration's Office of Information Technology website at <http://www.itpolicy.gsa.gov>.

Visa Regulations

Foreign participants on programs sponsored by the Office of Citizen Exchange Programs are granted J–1 Exchange Visitor visas by a U.S. embassy or consulate in the sending country. All programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Project Funding

Applicants should submit proposals that do not exceed $225,000. Applicants are invited to provide both an all-inclusive budget as well as separate sub-budgets for each program component, phase, location or activity in order to facilitate Bureau decisions on funding. While a comprehensive line item budget based on the model in the Solicitation Package must be submitted, separate component budgets are optional.

Since Bureau grant assistance constitutes only a portion of total project funding, proposals should list and provide evidence of other sources of financial and in-kind support. Proposals with substantial private sector support from foundations, corporations and other institutions will be considered highly competitive.

The following project costs are eligible for consideration for funding:

1. International and domestic air fares; visas; transit costs; ground transportation costs.

2. Per Diem. For the US program, organizations have the option of using a flat $160/day for program participants or the published U.S. Federal per diem rates for individual U.S. cities.

3. Book and cultural allowance. Participants are entitled to a one-time cultural allowance of $150 per person, plus a participant book allowance of $50.

4. Consultants. Consultants may be used to provide specialized expertise or to make presentations. Daily honoraria should not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal.

5. Room rental. Room rental should not exceed $250 per day.

6. Materials development. Proposals may contain costs to purchase, develop and translate materials for participants.

7. One working meal per project per group. Per capita costs may not exceed $5–$8 for a lunch and $14–$20 for a dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one.

8. A return travel allowance of $70 may be provided to each participant to be used for incidental expenditures during international travel.

9. Interpreters, if needed, can be provided by the State Department's Language Services Division. If interpreters translate for groups, the number of participants should be limited to four (4) per interpreter. Grant proposal budgets should contain a flat $160/day per diem for each Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter, plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget. Locally-arranged interpreters with adequate skills and experience may be used by the grantee in lieu of State Department interpreters, with the same 1:4 interpreter/participant ratio. Costs associated with using their services may not exceed the rate for Department of State interpreters. Bureau grants do not pay for foreign interpreters to accompany delegations from their home country.

10. All program participants will be covered under the terms of the Bureau-sponsored health insurance policy. The premium is paid by the Bureau directly to the insurance company.

11. Administrative Costs. Other costs necessary for the effective administration of the program including salaries for grant organization employees, benefits and other direct and indirect costs as described in the detailed instructions in the application package. While this announcement does not proscribe a rigid ratio of administrative to program costs, in general, priority will be given to proposals whose administrative costs are less than twenty-five (25) percent of the total requested from USIA. Proposals should show cost-sharing, including both contributions from the applicant and from other sources.

Please refer to the Application Package for complete budget guidelines.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the Application Packet. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. All eligible proposals will also be reviewed by the program office, as well embassy or consular officers for advisory review, where appropriate. Proposals may also be reviewed by the Office of the Legal Advisor or by other offices in the Department of State. Funding decisions will be made at the discretion of the Assistant Secretary of State for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) will reside with a contracts officer with competency for Bureau programs.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered.

1. Program Planning and Ability to Achieve Objectives. Program objectives should be stated clearly and precisely and should reflect the applicant's expertise in the subject area and the region. Objectives should respond to the priority topics in this announcement and should relate to the current conditions in the included countries. Objectives should be reasonable and attainable. A detailed work plan should explain step by step how objectives will be achieved, including a timetable for completion of major tasks and activities and an outline of the selection process. The substance of the seminars, presentations, workshops, consulting, internships and itineraries should be spelled out in detail. Responsibilities of any in-country partners should be clearly described. Contact information for any in-country partners should be included in the proposal.

2. Multiplier Effect/Impact: Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

3. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

4. Institutional Capability: Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals. The narrative should demonstrate proven ability to handle logistics. Proposals should reflect the institution's expertise in the subject area and knowledge of the conditions in the targeted region.

5. Follow-on Activities: Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau-supported programs are not isolated events.

6. Project Evaluation: Proposals should include a plan and methodology to evaluate the program's successes, both as activities unfold and at the end of the program. The Bureau recommends that the proposal include a draft survey questionnaire or other technique plus description and/or plan for use of another measurement technique (such as a focus group) to link outcomes to original project objectives.

7. Cost-effectiveness and Cost Sharing: Overhead and administrative costs in the proposal, including salaries, subcontracts for services and honoraria, should be kept low. Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Notice

The terms and conditions published in the RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements. Organizations will be expected to cooperate with the Bureau in evaluating their programs under the principles of the Government Performance and Results Act of 1993, which requires federal agencies to measure and report on the results of their programs and activities.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated, and committed through internal Bureau procedures.

Dated: August 27, 1999.

William Kiehl,

Acting Deputy Associate, Director for Bureau of Educational and Cultural Affairs.

[FR Doc. 99–22886 Filed 9–1–99; 8:45 am]

BILLING CODE 8320–01–M

UNITED STATES INSTITUTE OF PEACE

Announcement of the 2000 Solicited Grant Competition Grant Program

AGENCY: United States Institute of Peace.

ACTION: Notice.

SUMMARY: The Agency announces its 2000 Solicited Grant Competition. The themes and topics for the 2000 Solicited competition are listed below.

- Solicitation A: Great Power Relations: United States, China, and Russia
- Solicitation B: Intervention and Humanitarian Assistance
- Solicitation C: Africa
- Solicitation D: Training

Deadline for Receipt of Applications: December 30, 1999.

Notification of Awards: March 2000.

Applications Material: Available upon request.

ADDRESSES: For Application Package: United States Institute of Peace, Grant Program, Solicited Grants-FR, 1200 17th Street, NW, Suite 200, Washington, DC 20036–3011, (202) 429–3842 (phone), (202) 429–6063 (fax), E-mail: grant__program@usip.org . Application material available on-line starting September 1: www.usip.org

FOR FURTHER INFORMATION CONTACT: The Grant Program: Phone (202) 429–3842.

Dated: August 27, 1999.

Bernice J. Carney,

Director, Office of Administration.

[FR Doc. 99–22838 Filed 9–1–99; 8:45 am]

BILLING CODE 6820–AR–M

federal register

Thursday
September 2, 1999

Part II

Department of Health and Human Services

Centers for Disease Control and Prevention

Proposed Revised Vaccine Information Materials for Polio Vaccines; Proposed Instructions for Use of Vaccine Information Materials; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Proposed Revised Vaccine Information Materials for Polio Vaccines; Proposed Instructions for Use of Vaccine Information Materials

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with Comment Period.

SUMMARY: Under the National Childhood Vaccine Injury Act (42 U.S.C. 300aa–26), the Centers for Disease Control and Prevention must develop vaccine information materials that all health care providers, both public and private, are required to give to patients/parents prior to administration of specific vaccines. CDC seeks written comment on proposed revised vaccine information materials for polio vaccines. These materials are being revised so that they will conform with the CDC's revised recommendation for use of polio vaccines effective January 1, 2000 when the recommendation will be to use only inactivated poliovirus vaccine (IPV), except in very limited circumstances.

In addition, the CDC seeks written comment on proposed instructions for use of these vaccine information materials and the other vaccine information materials mandated under 42 U.S.C. 300aa–26.

DATES: Written comments are invited and must be received on or before November 1, 1999.

ADDRESSES: Written comments should be addressed to Walter A. Orenstein, M.D., Director, National Immunization Program, Centers for Disease Control and Prevention, Mailstop E–05, 1600 Clifton Road, N.E., Atlanta, Georgia 30333.

FOR FURTHER INFORMATION CONTACT: Walter A. Orenstein, M.D., Director, National Immunization Program, Centers for Disease Control and Prevention, Mailstop E–05, 1600 Clifton Road, N.E., Atlanta, Georgia 30333, telephone (404) 639–8200.

SUPPLEMENTARY INFORMATION: The National Childhood Vaccine Injury Act of 1986 (Pub. L. 99–660), as amended by section 708 of Pub. L. 103–183, added section 2126 to the Public Health Service Act. Section 2126, codified at 42 U.S.C. 300aa–26, requires the Secretary of Health and Human Services to develop and disseminate vaccine information materials for distribution by all health care providers, both public and private, to any patient (or to the parent or legal representative in the case of a child) receiving vaccines covered under the National Vaccine Injury Compensation Program.

Development and revision of the vaccine information materials have been delegated by the Secretary to the Centers for Disease Control and Prevention (CDC). Section 2126 requires that the materials be developed, or revised, after notice to the public, with a 60-day comment period, and in consultation with the Advisory Commission on Childhood Vaccines, appropriate health care provider and parent organizations, and the Food and Drug Administration. The law also requires that the information contained in the materials be based on available data and information, be presented in understandable terms, and include:

(1) A concise description of the benefits of the vaccine,

(2) A concise description of the risks associated with the vaccine,

(3) A statement of the availability of the National Vaccine Injury Compensation Program, and

(4) Such other relevant information as may be determined by the Secretary.

The vaccines initially covered under the National Vaccine Injury Compensation Program were diphtheria, tetanus, pertussis, measles, mumps, rubella, and poliomyelitis vaccines. Since April 15, 1992, any health care provider who intends to administer one of the covered vaccines is required to provide copies of the relevant vaccine information materials prior to administration of any of these vaccines. Effective June 1, 1999, health care providers were also required to provide copies of vaccine information materials for the following vaccines that have recently been added to the National Vaccine Injury Compensation Program: hepatitis B, Haemophilus influenzae type b (Hib), and varicella (chickenpox) vaccines.

Revised Recommendations for Use of Polio Vaccines

Progress continues toward the goal of world-wide eradication of poliomyelitis by the year 2000. As the risk of polio infection has diminished, recommendations for use of polio vaccines in the United States have changed significantly during the last few years to move away from exclusive use of oral poliovirus vaccine (OPV) toward exclusive use of inactivated poliovirus vaccine (IPV) and toward an ultimate goal of being able to cease polio vaccination.

In February 1997, the CDC, in accepting the advice of its Advisory Committee on Immunization Practices (ACIP), revised its recommendation from a schedule of all OPV to a recommended sequential schedule of two doses of inactivated IPV followed by two doses of OPV as the preferred polio vaccination schedule for routine childhood immunization. At that time schedules using either all IPV or all OPV were also considered to be acceptable and preferred for some children in certain circumstances.

The CDC noted in a February 6, 1997 **Federal Register** notice (62 FR 5696) that the recommended schedules for polio immunization were expected to change further over time:

"The ACIP based their revised recommendations on a determination that the risk-benefit ratio associated with the exclusive use of OPV for routine immunization has changed because of rapid progress in global polio eradication efforts. In particular, the relative benefits of OPV to the United States population have diminished because of the elimination of wild-virus-associated poliomyelitis in the Western Hemisphere and the reduced threat of poliovirus importation into the United States. The risk for vaccine-associated poliomyelitis caused by OPV is now judged less acceptable because of the diminished risk for wild-virus-associated disease. Consequently, the ACIP recommended a transition policy that will increase use of IPV and decrease use of OPV during the next 3–5 years. Implementation of these recommendations should reduce the risk for vaccine-associated paralytic poliomyelitis and facilitate a transition to exclusive use of IPV following further progress in global polio eradication."

Noting further progress toward global eradication of wild poliovirus and ongoing concern regarding the vaccine-associated paralytic poliomyelitis risks associated with administration of OPV vaccine prior to receipt of doses of IPV, the ACIP at its meeting on October 22, 1998, voted to further revise its recommendation for administration of the two polio vaccines to discourage use of OPV vaccine for the first two doses, except in limited circumstances. Interim polio vaccine information materials reflecting this revised recommendation were published by the CDC in the **Federal Register** on February 23, 1999 (64 FR 9040).

At its meeting on June 16, 1999, the ACIP voted to recommend an all IPV schedule as of January 1, 2000, stating:

"An all IPV schedule is recommended for routine childhood polio immunization as of January 1, 2000. All children will need to receive four doses of IPV at 2, 4, 6–18 months and 4–6 years of age."

"OPV is acceptable only for the following special circumstances:

(1) Mass immunization campaigns to control outbreaks due to wild-type poliovirus;

(2) Unimmunized children where travel to polio-endemic areas is imminent (i.e. in less than four weeks) may receive OPV for the first dose;

(3) Children of parents who do not accept the recommended number of vaccine injections may receive OPV only for dose 3 or 4 or both. (OPV should be administered only after discussion of the risks of VAPP.)

"Limited availability of OPV is expected in the near future in the U.S."

The CDC has adopted these recommendations. In addition, CDC accepts use of OPV when the vaccinee has a life-threatening allergy to any component of IPV.

With this notice, CDC proposes revised vaccine information materials to incorporate these revisions. CDC also intends to publish in a separate **Federal Register** notice proposed revised materials for use when OPV is being considered.

* * * * *

Proposed Instructions for Use of Vaccine Information Materials

As noted above, under section 2126 of the Public Health Service Act (42 U.S.C. 300aa–26), all health care providers are required to distribute CDC-developed vaccine information materials to patients/parents prior to administering any covered vaccine. This notice includes proposed instructions for implementing the statutory requirement. The proposed instructions specify the effective date for mandated use of each vaccine's information materials, note when the materials must be provided, delineate the edition dates of the current materials, delineate recordkeeping requirements, and include other related information. Under the proposed instructions, a health care provider would be required to note in the patient's medical record the date the vaccine information materials were provided and the edition date of the materials. The CDC considered various alternatives for documenting compliance with this statute, including requiring a patient/parent signature to acknowledge receipt of the materials. We concluded that a contemporaneous notation in the patient's medical record would be less burdensome than requiring a signature and would provide comparable evidence for purposes of establishing that the statutory mandate had been met, and as such should also meet the medico-legal needs of health care providers.

We invite written comment on the proposed instructions that follow which delineate required use of the vaccine information materials and recordkeeping to verify compliance.

* * * * *

Instructions for Use of Vaccine Information Materials (Vaccine Information Statements)

Required Use

As required under the National Childhood Vaccine Injury Act (42 U.S.C. 300aa–26), all health care providers in the United States who administer any vaccine containing diphtheria, tetanus, pertussis, measles, mumps, rubella, polio, hepatitis B, Haemophilus influenzae type b (Hib), or varicella (chickenpox) vaccine shall, prior to administration of each dose of the vaccine, provide a copy of the relevant current edition vaccine information materials that have been produced by the Centers for Disease Control and Prevention (CDC):

(a) to the parent or legal representative of any child to whom the provider intends to administer such vaccine, and

(b) to any adult to whom the provider intends to administer such vaccine.

The materials shall be supplemented with visual presentations or oral explanations, as appropriate.

"Legal representative" is defined as a parent or other individual who is qualified under State law to consent to the immunization of a minor.

Additional Recommended Use of Materials

Health care providers may also want to give parents copies of all vaccine information materials prior to the first visit for immunization, such as at the first well baby visit.

Use of Revised Polio Vaccine Information Materials

Effective January 1, 2000, health care providers shall distribute copies of the IPV polio vaccine information materials, dated [insert edition date], and/or OPV polio vaccine information materials, dated [insert edition date], in place of the February 1, 1999 and February 6, 1997 versions of the polio materials.

Current Editions of Other Vaccine Information Materials

Diphtheria, Tetanus, Pertussis (DTP/DTaP/DT) Vaccine Information Materials, dated August 15, 1997

Tetanus, Diphtheria (Td) Vaccine Information Materials, dated June 10, 1994

Measles, Mumps, Rubella Vaccine Information Materials, dated December 16, 1998

Hepatitis B Vaccine Information Materials, dated December 16, 1998

Haemophilus influenzae type b (Hib) Vaccine Information Materials, dated December 16, 1998

Varicella (chickenpox) Vaccine Information Materials, dated December 16, 1998

Recordkeeping

Health care providers shall make a notation in each patient's permanent medical record at the time vaccine information materials are provided indicating (1) the edition date of the materials distributed and (2) the date these materials were provided.

This recordkeeping requirement supplements the requirement of 42 U.S.C. 300aa–25 that all health care providers administering these vaccines must record in the patient's permanent medical record (or in a permanent office log) the name, address and title of the individual who administers the vaccine, the date of administration and the vaccine manufacturer and lot number of the vaccine used.

Applicability of State Law

Health care providers should consult their legal counsel to determine additional State requirements pertaining to immunization. The Federal requirement to provide the vaccine information materials supplements any applicable State law.

Availability of Copies

Single camera-ready copies of the vaccine information materials are available from State health departments. Copies are also available on the Centers for Disease Control and Prevention's website at: http://www.cdc.gov/nip/publications/VIS/. Copies are available in English and in other languages. 00/00/00 (Proposed) 42 U.S.C. 300aa–26

* * * * *

Proposed Revised Polio Vaccine Information Materials

We invite written comment on the proposed revised vaccine information materials that follow, entitled "Polio Vaccines: What You Need to Know." During the 60-day comment period, CDC also will consult with the Advisory Commission on Childhood Vaccines, appropriate health care provider and parent organizations, and the Food and Drug Administration. Comments submitted will be considered in finalizing these materials. We anticipate that the final version will be published

this November, with an effective date of January 1, 2000.

Proposed OPV polio vaccine information materials, for use when OPV is being considered, will be published in a separate **Federal Register** notice.

* * * * *

Polio Vaccines: What You Need to Know

1. What is polio?

Polio is a disease caused by a virus. It can get into a child's (or adult's) body, usually through the mouth. Sometimes it does not cause serious problems. But sometimes it causes paralysis (can't move arm or leg), and sometimes it kills its victims.

Polio used to be very common in the United States. It paralyzed and killed thousands of children a year before we had a vaccine for it.

2. Why get vaccinated?

Polio vaccine can prevent polio.

History: A 1916 polio epidemic in the Unites States killed 6,000 people and paralyzed 27,000 more. In the early 1950's there were more than 20,000 cases of polio each year. Polio vaccine was introduced in 1955. By 1960 the number of cases had dropped to about 3,000, and by 1979 there were only about 30. This change would not have been possible without polio vaccine.

Today: No wild polio has been reported in the United States for over 20 years. But the disease is still common in some parts of the world. It would only take one case of polio from another country to bring the disease back if we were not protected by vaccine. Until the disease is gone from the whole world, we should keep getting our children vaccinated.

Inactivated polio vaccine (IPV) is a shot, given in the leg or arm, depending on age.

3. Who should get polio vaccine and when?

Children

Most children should get 4 doses of IPV polio vaccine, at these ages:

- A dose at 2 months
- A dose at 4 months
- A dose at 6–18 months
- A booster dose at 4–6 years

Polio vaccine may be given at the same time as other childhood vaccines.

Adults

Most adults do not need polio vaccine because they are already immune. But some adults should consider polio vaccination. These adults include:

—People traveling to areas of the world where polio is common,

—Laboratory workers who might handle polio virus,

—Health care workers in contact with patients who could have polio.

Adults in these groups who have never been vaccinated against polio should get 3 doses:

√ The first dose at any time,

√ The second dose 1 to 2 months later,

√ The third dose 6 to 12 months after the second.

Adults in these groups who have had 1 or 2 doses of polio vaccine in the past should get the remaining 1 or 2 doses. It doesn't matter how long it has been since the earlier dose(s).

Adults in these groups who have received the complete series of polio vaccinations in the past may get a single dose of polio vaccine to make sure they are protected.

Oral Polio Vaccine: No longer recommended
Until recently a live, oral polio vaccine (OPV) (drops that are swallowed) was recommended for most children in the United States. It was this oral vaccine that helped us rid the country of polio, and it is still used in many parts of the world. The oral vaccine is very good at preventing outbreaks of polio. But sometimes it actually caused polio (about once for every 2.4 million doses). Since the risk of getting polio in the United States is now extremely low, experts decided that using oral vaccine is no longer worth the slight risk, except in very limited circumstances that can be described by your doctor. The polio shot (IPV) we now use can not cause polio. If you or your child will be receiving oral polio vaccine (OPV), you should request a copy of the separate OPV vaccine information statement.

4. Some People Should Not Get Polio Vaccine or Should Wait

People should not get polio shots (IPV) if they have ever had a life-threatening allergic reaction to the drugs neomycin, streptomycin or polymyxin B. Anyone who has a severe allergic reaction to a polio shot should not get another one. These people can get the oral polio vaccine.

People who are moderately or severely ill at the time the shot is scheduled should usually wait until they recover before getting polio vaccine.

Ask your doctor or nurse for more information.

5. What are the risks from IPV polio vaccine?

Some people who get IPV polio vaccine get a sore spot where the shot was given. The type of IPV used today has never been known to cause any serious problems, and most people don't have any problems at all with it.

However, a vaccine, like any medicine could cause serious problems, such as a severe allergic reaction. The risk of a polio shot (IPV) causing serious harm, or death, is extremely small.

6. What if there is a serious reaction?

What should I look for?

Look for any unusual condition, such as a serious allergic reaction, high fever, or behavior changes. If a serious allergic reaction occurred, it would happen within a few minutes to a few hours after the shot. Signs of a serious allergic reaction can include difficulty breathing, hoarseness or wheezing, hives, paleness, weakness, a fast heart beat or dizziness.

What should I do?

- Call a doctor, or get the person to a doctor right away.
- Tell your doctor what happened, the date and time it happened, and when the vaccination was given.
- Ask your doctor, nurse, or health department to file a Vaccine Adverse Event Reporting System (VAERS) form, or call VAERS yourself at 1–800–822–7967.

7. The National Vaccine Injury Compensation Program

In the rare event that you or your child has a serious reaction to a vaccine, there is a federal program that can help pay for the care of those who have been harmed.

For details about the National Vaccine Injury Compensation Program, call 1–800–338–2382 or visit the program's website at http://www.hrsa.gov/bhpr/vicp.

8. How can I learn more?

- Ask your doctor or nurse. They can give you the vaccine package insert or suggest other sources of information.
- Call your local or state health department's immunization program.
- Contact the Centers for Disease Control and Prevention (CDC):

—Call 1–800–232–2522 (English)

—Call 1–800–232–0233 (Español)

—Visit the National Immunization Program's website at http:/www.cdc.gov/nip

U.S. Department of Health & Human Services, Centers for Disease Control and Prevention, National Immunization Program.

Vaccine Information Statement, Polio—IPV (1/1/2000) (Proposed), 42 U.S.C. § 300aa–26.

Dated: August 27, 1999.

Joseph R. Carter,

Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–22869 Filed 9–1–99; 8:45 am]

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H.R. 211/P.L. 106–48
To designate the Federal building and United States courthouse located at 920 West Riverside Avenue in Spokane, Washington, as the "Thomas S. Foley United States Courthouse", and the plaza at the south entrance of such building and courthouse as the "Walter F. Horan Plaza". (Aug. 17, 1999; 113 Stat. 230)

H.R. 1219/P.L. 106–49
Construction Industry Payment Protection Act of 1999 (Aug. 17, 1999; 113 Stat. 231)

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S. 507/P.L. 106–53
Water Resources Development Act of 1999. (Aug. 17, 1999; 113 Stat. 269)

S. 606/P.L. 106–54
For the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical, LLC (successor to Kerr-McGee Chemical Corporation), and for other purposes. (Aug. 17, 1999; 113 Stat. 398)

S. 1546/P.L. 106–55
To amend the International Religious Freedom Act of 1998 to provide additional administrative authorities to the United States Commission on International Religious Freedom, and to make technical corrections to that Act, and for other purposes. (Aug. 17, 1999; 113 Stat. 401)

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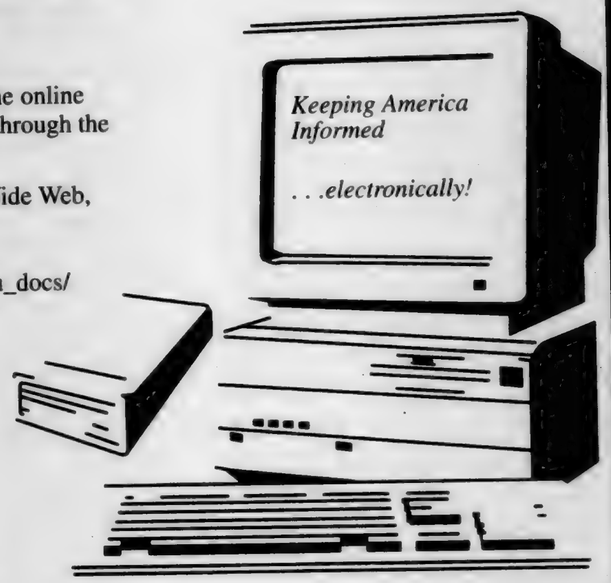

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV99–955–1 IFR]

Vidalia Onions Grown in Georgia; Fiscal Period Change

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule changes the fiscal period under the Vidalia onion marketing order (order) to January 1–December 31 from September 16–September 15. It also extends the current fiscal period which began September 16, 1998, through December 31, 1999. The order is administered locally by the Vidalia Onion Committee (Committee), which recommends its program expenses on a fiscal period basis. An assessment rate, levied on fresh Vidalia onion shipments, is established to pay those expenses. When the current fiscal period was established, it coincided with the Vidalia onion marketing season which ran from April through June. Due largely to the use of Controlled Atmosphere (CA) storage, Vidalia onions are now shipped through the fall. This action will make the fiscal period consistent with the current marketing season.

DATES: Effective September 7, 1999; comments received by November 2, 1999 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, F&V, AMS, USDA, PO Box 2276, Winter Haven, FL 33883–2276; telephone: (941) 299–4770, Fax: (941) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 955 (7 CFR part 955) regulating the handling of Vidalia onions grown in Georgia, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Section 955.40 of the order provides authority for the Committee to incur expenses that are reasonable and necessary to operate the program. The order also provides that these expenses be paid by assessments levied on fresh shipments of Vidalia onions. The Committee prepares an annual budget of expenses on a fiscal year basis. Section 955.13 of the order defines "fiscal period" to mean September 16 through September 15 of the following year, or such other period that may be recommended by the Committee and approved by the Secretary.

This rule changes the fiscal period to January 1 through December 31, making it consistent with the current Vidalia onion marketing season. It also extends the 1998–99 fiscal period, currently September 16, 1998 through September 15, 1999, through December 31, 1999. These changes were unanimously recommended by the Committee at its November 19, 1998, meeting.

When the order was first issued in 1989, the harvesting and marketing season for Vidalia onions ran from April through June. The September 16 through September 15 fiscal period thus covered the entire marketing season and was appropriate for budget planning purposes. Over the past decade, changes in the industry have extended the marketing season. In particular, the adoption of Controlled Atmosphere (CA) storage by three-fourths of the handlers has allowed them to economically store Vidalia onions through December. While there are some added storage costs and losses due to shrinkage, these costs are more than offset by prices received for Vidalia onions during the holiday season (November and December).

The Committee's current annual budget is $373,577, and the assessment rate is set at 7 cents per 50-pound bag. Major expenses include $131,600 for marketing and promotion, $75,000 for research, $135,127 for administrative expenses, and $31,850 for compliance. It is appropriate that the Committee plan and finance its activities consistent with the Vidalia onion marketing season.

The Committee will begin operating under the revised fiscal period on January 1, 2000. Therefore, this rule also extends the current fiscal period

through December 31, 1999. This will provide for continuous operation of the program. The Committee will revise its current budget of expenses to cover the 3½ months being added to the current fiscal period.

The fiscal period change is designed to improve the functioning and operation of the program. The majority of handlers maintain their business records on a calendar year basis. Therefore, this rule will better reflect current industry practices.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 86 handlers of Vidalia onions who are subject to regulation under the order and approximately 133 Vidalia onion producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

During the 1996–97 fiscal year, about 14 percent of the handlers shipped about 2,771,000 50-pound bags of Vidalia onions, for an average of about 197,930 bags. The remaining 86 percent of the handlers shipped about 1,262,940 bags, for an average of about 14,685 bags. Using an average f.o.b. price of $12.80 per bag, the majority of handlers could be considered small businesses under SBA's definition. Likewise, the majority of Vidalia onion growers may be classified as small businesses.

Section 955.40 of the order provides authority for the Committee to incur expenses that are reasonable and necessary to operate the program. The order also provides that these expenses be paid by assessments levied on fresh shipments of Vidalia onions. The Committee prepares an annual budget of expenses on a fiscal year basis. Section 955.13 of the order defines "fiscal period" to mean September 16 through September 15 of the following year, or such other period that may be recommended by the Committee and approved by the Secretary.

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The Committee will begin operating under the revised fiscal period on January 1, 2000. Therefore, this rule also extends the current fiscal period through December 31, 1999. This will provide for continuous operation of the program. The Committee will revise its current budget of expenses to cover the 3½ months being added to the current fiscal period.

This rule is a change to Committee operations which would not impose any new requirements on Vidalia onion handlers. It could, on the other hand, simplify handler operations by putting the program fiscal period on the same basis as handlers' internal reporting and recordkeeping procedures.

The Committee discussed the alternative of leaving the fiscal period as it presently exists, but unanimously concluded that this change would improve program operations.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large Vidalia onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Vidalia onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the November 19, 1998, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of nine members: eight producers and one public member.

Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

Small businesses may request information on compliance with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

This rule invites comments on these changes to the fiscal period currently prescribed under the order. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 1998–99 fiscal period ends on September 15, 1999, and this action is needed to be taken as soon as possible to assure continuity in Committee operations; (2) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting; and (3) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 955 is amended as follows:

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

1. The authority citation for 7 CFR part 955 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new Subpart—Rules and Regulations is added preceding § 955.101 to read as follows:

Subpart—Rules and Regulations

3. A new § 955.113 is added to read as follows:

§ 955.113 Fiscal period.

Pursuant to § 955.13, *fiscal period* shall mean the period beginning January 1 and ending December 31 of each year, except that the fiscal period that began on September 16, 1998, shall end on December 31, 1999.

Dated: August 30, 1999.

Robert C. Keeney

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–23012 Filed 9–2–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 98–083–6]

Mediterranean Fruit Fly; Removal of Quarantined Area

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by removing the quarantined area in Orange County, CA, from the list of quarantined areas. The quarantine was necessary to prevent the spread of the Mediterranean fruit fly to noninfested areas of the United States. We have determined that the Mediterranean fruit fly has been eradicated from this area and that restrictions on the interstate movement of regulated articles from this area are no longer necessary. This action relieves unnecessary restrictions on the interstate movement of regulated articles from this area. As a result of this action, there are no longer any areas in the continental United States quarantined because of the Mediterranean fruit fly.

DATES: This interim rule is effective as of August 27, 1999. We invite you to comment on this docket. We will consider all comments that we receive by November 2, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 98–083–6, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03,4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 98–083–6.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8247.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

The Mediterranean fruit fly regulations (contained in 7 CFR 301.78 through 301.78–10 and referred to below as the regulations) restrict the movement of regulated articles from quarantined areas to prevent the spread of Medfly to noninfested areas of the United States. Since an initial finding of Medfly in a portion of San Diego County, CA, in August 1998, the quarantined areas in California have included portions of Orange, Riverside, and San Diego Counties.

In an interim rule effective August 13, 1998, and published in the **Federal Register** on August 20, 1998 (63 FR 44539–44541, Docket No. 98–083–1), we added a portion of San Diego County, CA, to the list of quarantined areas. In a second interim rule effective August 14, 1998, and published in the **Federal Register** on August 21, 1998 (63 FR 44774–44776, Docket No. 98–083–2), we added a portion of Orange County, CA, to the list of quarantined areas. In a third interim rule effective November 24, 1998, and published in the **Federal Register** on December 1, 1998 (63 FR 65999–66001, Docket No. 98–083–3), we added an area in Riverside and Orange Counties, CA, to the list of quarantined areas. In a fourth interim rule effective June 1, 1999, and published in the **Federal Register** on June 7, 1999 (64 FR 30213–30214, Docket No. 98–083–4), we removed a portion of San Diego County, CA, from the list of quarantined areas. In a fifth interim rule effective August 16, 1999, and published in the **Federal Register** on August 23, 1999 (64 FR 45859–45860, Docket No. 98–083–5), we removed a portion of Riverside and Orange Counties, CA, from the list of quarantined areas.

We have determined, based on trapping surveys conducted by the Animal and Plant Health Inspection Service (APHIS) and California State and county inspectors, that the Medfly has been eradicated from the quarantined area in Orange County, CA. The last finding of Medfly thought to be associated with the infestation in that portion of Orange County, CA, was October 27, 1998. Since that time, no evidence of infestation has been found in this area. We are, therefore, removing that portion of Orange County, CA, from the list of areas in § 301.78–3(c) quarantined because of the Medfly. As a result of this action, there are no longer any areas in the continental United States quarantined because of the Medfly.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. The portion of Orange County, CA,

affected by this document was quarantined to prevent the Medfly from spreading to noninfested areas of the United States. Because the Medfly has been eradicated from this area, and because the continued quarantined status of that portion of Orange County, CA, would impose unnecessary regulatory restrictions on the public, immediate action is warranted to relieve restrictions.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective less than 30 days after publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This interim rule amends the Medfly regulations by removing a portion of Orange County, CA, from quarantine for Medfly. This action affects the interstate movement of regulated articles from this area. We estimate that there are 77 entities in the quarantined area of Orange County, CA, that sell, process, handle, or move regulated articles; this estimate includes 55 fruit sellers, 12 growers, and 10 nurseries. The number of these entities that meet the U.S. Small Business Administration's (SBA) definition of a small entity is unknown, since the information needed to make that determination (i.e., each entity's gross receipts or number of employees) is not currently available. However, it is reasonable to assume that most of the 77 entities are small in size, since the overwhelming majority of businesses in California, as well as the rest of the United States, are small entities by SBA standards.

The effect of this action on small entities should be minimally positive, as they will no longer be required to treat articles to be moved interstate for Medfly.

Therefore, termination of the quarantine of that portion of Orange County, CA, should have a minimal economic effect on the small entities operating in this area. We anticipate that the economic effect of lifting the quarantine, though positive, will be no more significant than was the minimal effect of its imposition.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.78–3, paragraph (c) is revised to read as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) There are no areas in the continental United States quarantined because of the Mediterranean fruit fly.

Done in Washington, DC, this 27th day of August 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–23011 Filed 9–2–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amt. No. 379]

RIN Number: 0584–AC63

Food Stamp Program: Food Stamp Provisions of the Balanced Budget Act of 1997

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This rule will implement two food stamp provisions of the Balanced Budget Act of 1997. The first provision provides State agencies the authority to exempt from the food stamp time-limit at section 6(o)(2) of the Food Stamp Act of 1977 up to 15 percent of the State's caseload that is subject to the requirement. The second provision provides additional funding for administration of Food Stamp Employment and Training programs. These two provisions enhance State flexibility in exempting portions of a State agency's caseload from the food stamp time limit and increase significantly the funding available to create work opportunities for recipients that are subject to the time limit.

DATES: This rule is effective November 2, 1999. Comments must be received by November 2, 1999, in order to be assured of consideration.

ADDRESSES: Comments concerning this interim rule should be submitted to John Knaus, Branch Chief, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302; telephone: (703) 305–2519. Comments may also be datafaxed to the attention of Mr. Knaus at (703) 305–2486 or sent electronically through the internet to: John__Knaus@FNS.USDA.GOV. All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, 22302, Room 720.

FOR FURTHER INFORMATION CONTACT: Questions regarding this interim rulemaking should be addressed to John Knaus, Branch Chief, at the above address or by telephone at (703) 305–2519.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule has been determined to be economically significant under Executive Order 12866 and Major under Public Law 104–121, and was reviewed by the Office of Management and Budget.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR part 3015, subpart V and related Notice (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Shirley Watkins, Under Secretary for Food, Nutrition and Consumer Services has certified that this action will not have a significant economic impact on a substantial number of small entities. State welfare agencies and political subdivisions will be affected to the extent they must implement the provisions described in this action.

Executive Order 12988

This interim rulemaking has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Effective Date" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions all applicable administrative procedures must be exhausted.

Unfunded Mandate Analysis

Title II of the Unfunded Mandate Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, the Department generally must prepare a written statement, including a cost benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires the Department to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) which impose costs on State, local, or tribal governments or to the private sector of $100 million or more in any one year. Thus this rule is not subject to the requirements of section 202 and 205 of the UMRA.

Paperwork Reduction Act

This interim rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3507).

The reporting and recordkeeping burdens associated with the 15 percent exemption and the increased funding for State food stamp employment and training programs authorized by the Balanced Budget Act of 1997 (Balanced Budget Act) and addressed in this rule necessitated a revision to a previously approved information collection activity, the Employment and Training Program Report (FNS–583), approved under OMB No. 0584–0339. Because the Balanced Budget Act mandated implementation of the food stamp provisions addressed in this rule effective October 1, 1997, without regard as to whether regulations were promulgated to implement them, FNS submitted an emergency request to OMB on February 17, 1998, to revise the information collection for the FNS–583 form to reflect the requirements of the statute. FNS estimated the total annual burden hours associated with the revised FNS–583 to be 195,363 hours—182,643 hours for the work registration process, 2,762 hours for the 15 percent ABAWD exemption, and 9,958 hours for the E&T funding requirements. OMB approved the burden estimate for the revised form for six months, with an expiration date of August 31, 1998.

On April 27, 1998, FNS issued a notice in the **Federal Register** (63 FR 20567) describing in detail the revised collection of information and requesting comments. FNS received no comments from the general public or other public agencies about the information collection.

On September 23, 1998, FNS received an extension of OMB's approval of the revised burden estimate for the FNS–583 through September 30, 2001.

Public Participation and Effective Date

The amendments to sections 6(o) and 16(h) of the Food Stamp Act of 1977 (Food Stamp Act) which are reflected in this rule were enacted on August 5, 1997, as sections 1001 and 1002, respectively, of the Balanced Budget Act, Title I, Pub. L. 105–33. The amendments were effective October 1, 1997. Section 1005 of the Balanced Budget Act required that regulations implementing sections 1001 and 1002 of the Act be promulgated no later than one year after the date of enactment of the amendments to the Food Stamp Act. In order to meet the requirement of section 1005 of the Balanced Budget Act, Shirley Watkins, Under Secretary for Food, Nutrition and Consumer Services, has determined, pursuant to 5 U.S.C. 533(b)(3)(B), that public comment on this rule prior to implementation is impracticable and that good cause exists for making this rule effective less than 30 days after its publication. However, because we believe that administration of the rule may be improved by public comment, comments are solicited on this rule for 60 days after publication. All comments received within the comment period will be analyzed, and any appropriate changes will be incorporated in the subsequent publication of a final rule.

Regulatory Impact Analysis

Need for Action

This action is needed to implement section 1005 of the Balanced Budget Act. That section requires the Secretary of Agriculture to promulgate regulations implementing the amendments made to the Act by Title I of the Balanced Budget Act.

Benefits

The provisions of this rule will provide State agencies the ability to exempt from the time limits at section 6(o)(2) of the Food Stamp Act (7 U.S.C. 2015(o)(2)) an additional 15 percent of the State's caseload subject to the requirement. It will also increase significantly the funding available to State agencies to create work opportunities for recipients subject to the time limit. Together the provisions, to the extent that they are fully

implemented by the States, will permit an estimated 84,000 recipients a month who are subject to the time limit at section 6(o)(2) of the Food Stamp Act to continue to receive Food Stamp Program benefits. Of these recipients, 64,000 will be exempted under the 15 percent waiver authority, with an additional 20,000 able to meet the work requirement and thus retain eligibility due to the expanded E&T funding.

Costs

The amendments made by this rule will increase Food Stamp Program expenditures by $1.4 billion over the next five years.

Background

On August 5, 1997, the President signed Public Law 105–33, the Balanced Budget Act of 1997. The Balanced Budget Act includes several provisions that affect the Food Stamp Program. This rule implements two provisions of the Balanced Budget Act. The first provision provides State agencies the authority to exempt from the time limit at section 6(o)(2) of the Food Stamp Act up to 15 percent of the State's caseload subject to the requirement. The second provision provides additional funding for administration of Food Stamp Program Employment and Training (E&T) programs.

15 Percent Exemption

Background

On August 22, 1996 the President signed the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) (Pub. L. 104–193). Section 824 of the PRWORA amended section 6(o) of the Food Stamp Act to provide that able-bodied adults without dependents (ABAWDs) can only receive food stamps for 3 months in 3 years unless they are working, participating in a work program 20 hours per week, or participating in a workfare program. It exempts individuals from the time limit if they are under 18 or over 50, medically certified as physically or mentally unfit for employment, a parent or other household member with responsibility for a dependent child, exempt from work registration under 6(d)(2) of the Act, or pregnant. It provides that individuals can regain eligibility if they work 80 hours in a 30 day period. Individuals maintain eligibility as long as they are satisfying the work requirement. If the individual later loses the job, he/she can receive an additional 3 months of food stamps while not working. The additional 3 months must be consecutive and begins on the date the individual notifies the State that he/she is no longer working. It should be emphasized that PRWORA provides an individual the opportunity to receive a maximum of 6 months of food stamps in a 3-year period without meeting the work requirement, if the two 3-month periods are interrupted by a period of work.

The Food Stamp Act, as amended by PRWORA, allows waivers of the time limit for groups of individuals living in areas with an unemployment rate of more than 10 percent or where there are not a "sufficient number of jobs to provide employment for the individuals." 7 U.S.C. 2015(o)(4)(A)(ii). Subsequent to the enactment of PRWORA, the President signed the Balanced Budget Act. Section 1001 of the Balanced Budget Act amended section 6(o) of the Food Stamp Act to allow State agencies to provide an exemption from the PRWORA-imposed time limits of section 6(o) of the Food Stamp Act for up to 15 percent of covered individuals. "Covered individuals," as defined in section 6(o)(6)(ii), are those ABAWDs who are not: excepted under paragraph 6(o)(3) of the Food Stamp Act, covered by a waiver, complying with the work requirement, or in their first or second three months of eligibility. Section 1001 of the Balanced Budget Act gives the Secretary the authority to estimate for Fiscal Year (FY) 1998 the number of covered individuals in the State based on FY 1996 Quality Control data and other factors the Secretary considers appropriate due to the timing and the limitations of the data. It provides that beginning in FY 1999, the number of exemptions will be adjusted to reflect changes in (1) the State's entire caseload and (2) changes in the proportion of the State's food stamp caseload covered by the ABAWD-related waivers. Section 1001 of the Balanced Budget Act also amended the Food Stamp Act to require that the Food and Nutrition Service (FNS) adjust the number of exemptions assigned for a current fiscal year based on the actual number of exemptions granted by the State agency in the preceding year. Finally, it gives FNS the authority to require whatever State reports it deems necessary to ensure compliance with the 15 percent exemption provisions. FNS has no discretion in implementing this provision.

Because there are many requirements of the PRWORA and the Balanced Budget Act which apply only to ABAWDs and the time limit, FNS is creating a new regulatory section, § 273.24 in this interim rule. This interim rule will incorporate the Balanced Budget Act provisions regarding the 15 percent exemptions into § 273.24. All the PRWORA provisions regarding ABAWDs and the time limit will be incorporated into § 273.24 once the proposed rule implementing those provisions is finalized.

Determining How To Use the Exemptions

The Balanced Budget Act provides that State agencies may allow an exemption from the time limits of section 6(o) of the Food Stamp Act of up to 15 percent of covered individuals. The law does not prescribe how the State agencies shall use the exemption authority. FNS recognizes that there are many ways a State agency may want to use the exemption authority. A State agency can, for example, exempt individuals pursuing their General Equivalency Diploma (GED), individuals residing in the balance of a county when only a partial county received a waiver under section 6(o)(4) of the Food Stamp Act, or individuals in an area that is geographically remote from the State's workfare sites. States could also use the exemptions to extend for a certain time the eligibility of individuals who have exhausted the time limit. Therefore, FNS will not be prescribing categories or geographic areas for which these exemptions must be used. Instead FNS will allow State agencies maximum flexibility regarding the 15 percent exemption authority. State agencies may apply the exemptions as they deem appropriate. At the same time FNS would like to remind State agencies that along with the flexibility they are afforded in terms of determining the exemption criteria comes the responsibility for developing exemption policies that comport with their number of exemptions. A State agency should maximize the number of exemptions without exceeding the number of exemptions allocated for the year.

Covered Individuals

Section 1001 of the Balanced Budget Act amended section 6(o)(6)(ii) of the Food Stamp Act to provide that a State agency may provide an exemption from the time limits of section 6(o) for covered individuals. The Balanced Budget Act defined "covered individuals" as those ABAWDs who are not: excepted under paragraph 6(o)(3) of the Food Stamp Act, covered by a waiver under 6(o)(4) of the Food Stamp Act, complying with the work requirement of 6(o)(2) of the Food Stamp Act, or in their first or second three months of eligibility. FNS would like to clarify that it is up to the State agency to decide whether or not an individual has to exhaust his/her first and second three months in order to qualify for an exemption under this provision. For example, a State agency may exempt every ABAWD who resides in the part of a county that was not already waived under 6(o)(4) regardless of whether or not they have exhausted their first and second three months. However, a State agency may determine that the best way to manage their finite number of 15 percent exemptions is to require individuals to exhaust their first and second three months before receiving an exemption under this provision.

Arriving at the By-State Numbers of Exemptions for FY 1998

The Balanced Budget Act also amended section 6(o) of the Food Stamp Act to provide in paragraph (6)(C) that for FY 1998, a State agency may provide a number of exemptions such that the average monthly number of exemptions in effect during the fiscal year does not exceed 15 percent of the number of covered individuals in the State in FY 1998, as estimated by the Secretary, based on the FY 1996 Quality Control (QC) data and other factors the Secretary considers appropriate due to the timing and limitations of the survey.

In a memorandum dated September 4, 1997, FNS advised the State agencies what their average number of monthly exemptions were for FY 1998. To arrive at the number of covered individuals for each State, FNS began with the entire FY 96 QC data file, and then made adjustments by:

- Excluding recipients exempted from the ABAWD provisions
- Excluding to the extent possible those non-citizens made ineligible for food stamps after August 22, 1997
- Excluding the number of recipients who were complying with the work requirements
- Excluding to the extent possible those people who were at the time in their initial first three months of eligibility
- Adjusting this data to reflect the actual change in each State's caseload between FY 96 and FY 97 and the expected national caseload change between FY 97 and FY 98, and
- Excluding those individuals living in waived areas.

To arrive at 15 percent of the covered individuals, FNS multiplied the number of covered individuals for each State by 15 percent.

Based on this methodology, FNS authorized for FY 1998 approximately 64,000 average monthly exemptions for ABAWDs nationwide and made allocations from this total to the States. It is important to note that the average number of exemptions allocated to each State for FY 1998 was based on the number of covered individuals in FY 1996 (before the ABAWD time limits took effect) and, therefore, was likely greater than 15 percent of the number of covered individuals in areas that have implemented the time limits.

Subsequent Fiscal Years

Determining the Number of Exemptions

The Balanced Budget Act amended section 6(o) of the Food Stamp Act by adding paragraph (6)(D) (7 U.S.C. 2015(o)(6)(D)) to provide that for FY 1999 and subsequent fiscal years, a State agency may exempt up to 15 percent of their unwaived, unemployed, childless able-bodied population from the three-month time limit. The number of exemptions allotted each State will reflect changes in the State's caseload and the proportion of food stamp recipients covered by waivers granted under paragraph 6(o)(4) of the Food Stamp Act. FNS would like to clarify that the amendment to section 6(o) of the Food Stamp Act made by section 1001 of the Balanced Budget Act requires that the adjustments be based on changes in States' entire caseloads and not just ABAWD caseloads as stipulated in the Balanced Budget Act definition of caseload.

Adjusting the Exemptions Based on the Previous Year's Use

The Balanced Budget Act also amended section 6(o) of the Food Stamp Act, again in paragraph (6)(D), to provide that for FY 1999 and each subsequent fiscal year, the Secretary shall increase or decrease the number of individuals who may be granted an exemption by a State agency to the extent that the average monthly number of exemptions in effect in the State for the preceding fiscal year is different than the average monthly number of exemptions estimated for the State agency for the preceding fiscal year. Therefore, if this level of exemptions is not used by the end of the fiscal year, the State may carry over the balance. If more exemptions are used than authorized in a fiscal year, the State's allocation for the next year will be reduced. Final information to make these adjustments will not be available until after the start of each fiscal year. Therefore, based on preliminary information, FNS will provide the State agencies with their average monthly number of exemptions prior to the start of each fiscal year, and will make adjustments based on final information if necessary.

Caseload Adjustments

Section 1001 of the Balanced Budget Act also amended section 6(o) of the Food Stamp Act to provide that the Secretary shall adjust the estimated number of covered individuals allocated for a State during a fiscal year if the number of actual food stamp recipients in the State varies by more than 10 percent, as determined by the Secretary, from the State's average caseload for the 12-month period preceding June 30 (7 U.S.C. 2015(o)(6)(E)). FNS would like to clarify that the adjustment will be based on the entire caseload and not just the ABAWD caseload. FNS will make only one adjustment a year. If an adjustment is necessary, FNS shall advise the State agencies during the third quarter of each fiscal year.

Reporting

Finally, the Balanced Budget Act amended section 6(o) of the Food Stamp Act by adding paragraph (6)(G) to provide that the State agency shall submit such reports to the Secretary as the Secretary determines are necessary to ensure compliance with this provision. In order to monitor State's use of the exemptions and to provide assistance if necessary, FNS has determined that the State agency shall track and report the number of cases exempt under the 15 percent criteria. State agencies shall track the exemptions any way they deem appropriate. State agencies shall report the numbers to the FNS regional offices on a quarterly basis on the employment and training report (Form FNS–583), as provided for in § 273.7(c)(6).

Quality Control Issues

Since State agencies have complete discretion in determining which recipients will receive exemptions, FNS will not be proscribing categories or geographic areas. Therefore, QC will not evaluate States' actual exemption decisions against the exemption criteria they have adopted under the 15 percent criteria. However, in order to distinguish cases that are exempt under the 15 percent criteria from cases that are exempt under section 6(o) of the Food Stamp Act, covered by a waiver, or fulfilling the work requirement (which will be evaluated by QC), State agencies need to clearly identify those cases that are exempt under the 15 percent criteria. For example, a State agency decides to exempt everyone over the age of 45. QC pulls a case where the State agency exempted someone who is 43. Even though the State agency

exempted someone under 45, the case would not be in error because the State agency can use the 15 percent exemption anyway it chooses. To avoid an error, however, the State agency must have documented in the casefile that the person was exempted under the 15 percent criteria.

Additional Funding for Food Stamp Employment and Training Programs

Background

Current Food Stamp Program regulations at section 273.7(d) contain rules governing State agency use of Federal E&T grants. Current regulations require FNS to allocate an annual Federal E&T grant to State agencies based on the number of work registrants in each State compared to the number of work registrants nationwide. The grant is 100 percent Federally funded and requires no State match. Under current regulations, each State agency must receive at least $50,000 in 100 percent Federal funds. State agencies are required to use their E&T grants to fund the administrative costs of planning, implementing and operating E&T programs. FNS pays 50 percent of all other administrative costs above those covered by the 100 percent Federal grant that State agencies incur in operating their E&T programs.

Section 1002 of the Balanced Budget Act provided an additional $599 million over five years in 100 percent Federal funding for the operation of the E&T programs. It also amended section 16(h)(1) of the Food Stamp Act (7 U.S.C. 2025(h)(1)), to require that all 100 percent Federal E&T funding remain available to FNS to allocate to States until expended.

The apparent intent behind the additional E&T funding provided by the Balanced Budget Act is to enable State agencies to provide additional work opportunities for individuals subject to the 3-month Food Stamp Program time limit discussed in the first section of this preamble. By providing State agencies with the resources to create more work opportunities, the supplemental funding will help insure that it is only those individuals who deliberately choose not to satisfy the program's work requirements who lose their eligibility and not those who are willing to work but cannot find opportunities to do so.

Increased Funding Levels

Section 1002 of the Balanced Budget Act significantly increased the amount of 100 percent Federal funding available to State agencies for the operation of Food Stamp E&T programs. Section 817 of PRWORA amended section 16(h)(1) of the Food Stamp Act to provide $405 million in 100 percent Federal E&T funding for FYs 1998 through 2002. The Balanced Budget Act further amended section 16(h)(1) of the Food Stamp Act to increase that amount by $599 million. It also amended section 16(h)(1) of the Food Stamp Act to require that all 100 percent Federal E&T funding remain available to FNS to allocate to States until expended.

Whereas all State agencies are eligible to receive some percentage of the 100 percent Federal E&T funding provided under PRWORA, section 1002 of the Balanced Budget Act further amended section 16(h)(1) to require that for a State agency to receive an allocation of the additional or "supplemental" funding provided under that Act, the State agency must maintain its level of expenditure of State funds on E&T and optional workfare programs at a level that is not less than the level of State agency expenditures on such programs in FY 1996. Therefore, only State agencies that choose to meet this maintenance of effort requirement are eligible to receive a portion of the supplemental Federal E&T funding provided by the Balanced Budget Act. The Balanced Budget Act's maintenance of effort requirement is discussed in greater detail below.

Allocation of E&T Grants

Current regulations at § 273.7(d)(1)(i)(A) require that nonperformanced-based, 100 percent Federal E&T funding be allocated among States based on the number of work registrants in each State relative to the total number of work registrants nationwide. In order to target Federal E&T funding toward serving recipients subject to the time limit at section 6(o)(2) of the Food Stamp Act, the Balanced Budget Act amended section 16(h)(1) of the Food Stamp Act to require that in FY 1998 E&T grants be allocated among States based on (1) changes in each State's caseload (defined as the average monthly number of individuals receiving food stamps during the 12-month period ending the preceding June 30); and (2) each State's portion of food stamp recipients who are not eligible for an exception under section 6(o)(3) of the Food Stamp Act to the work requirement at section 6(o)(2). The Balanced Budget Act further amended section 16(h) to require that in FYs 1999 through 2002, E&T grants be allocated to States based on (1) changes in each State's caseload; and (2) each State's portion of food stamp recipients who are not eligible for an exception under section 6(o)(3) of the Food Stamp Act who (A) do not reside in an area of the State granted a waiver to the work requirement under section 6(o)(4) of the Food Stamp Act, or (B) do reside in an area of the State granted a waiver to the work requirement under section 6(o)(4) of the Food Stamp Act if the State agency provides E&T services in the area to food stamp recipients who are subject to the work requirement. This rulemaking amends food stamp regulations at § 273.2(d)(1)(i)(C) to describe the new procedures for allocating Federal E&T grants.

Section 1002 of the Balanced Budget Act further amended section 16(h) of the Food Stamp Act to require that, for purposes of determining each State's allocation of the Federal E&T grant in a fiscal year, FNS estimate the portion of food stamp recipients residing in each State who are not eligible for an exception under section 6(o)(3) of the Food Stamp Act using the 1996 QC survey data. This rulemaking amends food stamp regulations at § 273.2(d)(1)(i)(D) to incorporate this requirement.

In accordance with the requirements of the Balanced Budget Act, FNS used the following three-step process to determine each State's allocation of Federal E&T funds in FY 1998:

1. Determine Population Not Excepted from Work Requirement. FNS estimated the portion of food stamp recipients residing in each State who are not eligible for an exception under section 6(o)(3) of the Food Stamp Act to the work requirement at section 6(o)(2) of that Act using the 1996 QC survey data.

2. Adjust for Expected Caseload Changes. FNS determined the actual changes in each State's caseload between FY 96 and FY 97 and the expected change in national caseload between FY 97 and FY 98. These adjustments provided a caseload adjustment percentage for each State that FNS used to modify the FY 96 QC data to represent, as closely as possible, the population in each State in FY 98 that is not eligible for an exception under section 6(o)(3) of the Food Stamp Act.

3. Determine the State-By-State Allocation of the 100 percent Federal E&T Grant. FNS established the percentage basis for the E&T allocation by dividing each State's estimated FY 98 population of recipients not eligible for an exception under section 6(o)(3) of the Food Stamp Act by the national estimate of that population in FY 98. FNS then multiplied the resulting percentage by both the base Federal E&T appropriation of $81 million provided under PRWORA and the supplemental appropriation of $131 million provided under the Balanced Budget Act to determine each State's share of base and supplemental E&T funds. All State agencies were eligible for the base allocation. To receive a supplemental allocation, a State agency must meet its maintenance of effort requirement as described below.

To determine each State agency's allocation of 100 percent Federal E&T funds in FYs 1999 through 2002, FNS will follow the same three-step procedure as described above, except that in estimating the number of recipients in each State not eligible for an exception under section 6(o)(3) of the Food Stamp Act, FNS will adjust FY 96 QC data by eliminating recipients eligible for an exception under section 6(o)(3) who reside in an area of the State granted a waiver to the work requirement under section 6(o)(4) of the Food Stamp Act except if the State agency provides E&T services in the area to food stamp recipients who are subject to the work requirement. (FNS estimates that 30 out of the 39 State agencies which had waivers under section 6(o)(4) in April 1998 provided E&T services in at least some of the waived areas). FNS will also adjust QC data to reflect caseload changes for the appropriate fiscal years.

Current regulations at § 273.7(d)(1)(i)(B) require that each State agency receive at a minimum $50,000 in 100 percent Federal E&T funding a year. The Balanced Budget Act left this requirement unchanged. In order to ensure that each State agency receives a minimum allocation of $50,000, FNS shall reduce the grant of each State agency that is allocated to receive more than $50,000, if necessary, proportionate to the number of food stamp recipients not eligible for an exception under section 6(o)(3) of the Food Stamp Act that reside in the State as compared to the total number of such recipients in all the State agencies receiving more than $50,000. The funds from the reduction shall be distributed to State agencies initially allocated to receive less than $50,000 so that they receive the $50,000 minimum. This rulemaking amends Food Stamp Program regulations at § 273.2(d)(1)(i)(E) to incorporate this requirement.

Current regulations at § 273.7(d)(1)(i)(D) provide that FNS may reallocate unexpended 100 percent Federal E&T grants during a fiscal year if a State agency will not expend all of its E&T grant. The Balanced Budget Act contains the same requirement except it provides FNS the authority to reallocate unexpended funds in the fiscal year that those funds are allocated or the next fiscal year. This rulemaking amends Food Stamp Program regulations at § 273.2(d)(1)(i)(F) to incorporate this requirement.

Use of Funds

The Balanced Budget Act amended section 16(h)(1)(E) of the Food Stamp Act to require that at least 80 percent of the 100 percent Federal E&T grant a State agency receives in a fiscal year, including both the base allocation for which each State agency is eligible and the supplemental allocation available only to State agencies that choose to meet their maintenance of effort requirement, be earmarked to serve food stamp recipients who are not eligible for an exception under section 6(o)(3) of the Food Stamp Act and who are placed in and comply with either a workfare program that meets the requirements of section 20 of the Food Stamp Act, 7 U.S.C. 2029, or a comparable program established by a State or political subdivision of a State, or a work program for 20 hours or more per week. The 80 percent use of funds requirement applies to any grant of 100 percent Federal E&T funds a State receives in a fiscal year, including both the initial grant received by a State at the beginning of a fiscal year and any grant composed of reallocated funding which a State receives during a fiscal year. State funds, including State monies expended to satisfy a State agency's maintenance of effort requirement as described in the next section, are not subject to the requirement.

The remaining 20 percent of a State's 100 percent Federal E&T grant may be used to provide work activities for food stamp recipients who are eligible for an exception under section 6(o)(3) of the Food Stamp Act, or on work activities that do not qualify either as work or workfare programs under sections 6(o)(2)(B) and (C) of the Food Stamp Act, such as job search or job search training programs for any food stamp recipient.

Although the language of section 1002 of the Balanced Budget Act which amends section 16(h)(1)(E) of the Food Stamp Act might be interpreted as requiring that a specified dollar amount (not less than 80 percent of the funds actually received by a given State agency) must be expended by the State agency to serve ABAWDs in qualifying activities, such an interpretation would necessitate an accounting of each dollar expended by a State so that no less than 80 cents could be used to serve ABAWDs in qualifying activities and, conversely, not more than 20 cents could be expended for other allowable E&T costs. In addition, if a State agency wished to expend the full 20 percent of its allocation permitted to be used for unrestricted E&T activities, it would be required to expend all of the amount allocated to it in order to meet the 80 percent requirement. However, because nothing in the Balanced Budget Act specifies that 80 percent of the funds which are restricted to serving ABAWDs in qualifying activities must be expended before a State agency may expend any of the 20 percent which may be used for other E&T purposes, the Department is permitting State agencies to spend the 20 percent of their E&T allocations that are available for non-ABAWD activities independent of whether they spend any of the 80 percent of their E&T grants that are earmarked for ABAWDs. This interpretation of Section 1002 of the Balanced Budget Act will significantly increase State flexibility in operating their E&T programs.

State agencies, therefore, are not required to utilize all or any of the 80 percent of their 100 percent E&T grant earmarked to serve participants subject to the work requirement but may operate their E&T programs utilizing only the 20 percent of their grant available to serve non-ABAWDs and to be spent on non-qualifying activities. If a State agency chooses not to spend some or any of the 80 percent of its E&T grant earmarked for ABAWDs and ABAWD qualifying activities, however, FNS may reallocate the unexpended funds to other State agencies as it considers appropriate and equitable in accordance with regulations at § 273.2(d)(1)(i)(F).

If a State agency spends more than 20 percent of the 100 percent E&T grant it receives for a fiscal year to provide work activities for food stamp recipients eligible for an exception under section 6(o)(3) of the Act, or on activities that do not qualify either as work or workfare programs under sections 6(o)(2)(B) and (C) of the Food Stamp Act, the allowable costs incurred that are in excess of the 20 percent threshold will be reimbursed at the normal administrative 50–50 match rate.

One hundred percent E&T funds that a State expends on ABAWDs who reside in an area of a State granted a waiver under section 6(o)(4) of the Food Stamp Act or on ABAWDs who have been granted an exemption under section 6(o)(6) of the Act will count toward the 80 percent expenditure requirement so long as the funds are spent creating activities that meet the requirements of sections 6(o)(2)(B) and (C).

This rulemaking amends food stamp regulations to add a new section that contains the requirements for State agency use of Federal 100 percent E&T

funding established by the Balanced Budget Act. The new section will be designated § 273.7(d)(1)(ii) and titled "Use of funds." Former § 273.7(d)(1)(ii), which contained requirements for reimbursements for E&T program participants, will be redesignated § 273.7(d)(1)(v) and remain unchanged except for changes to several cite references.

Regulations currently contained at § 273.7(d)(1)(i)(E), (F), and (G), list additional requirements for use of Federal 100 percent E&T funds. Current regulations at § 273.7(d)(1)(i)(E) require that Federal 100 percent E&T grants be used only for the purposes of funding the administrative costs of planning, implementing, and operating E&T programs and not for funding other activities, such as work registration or sanctioning activities. Current regulations at § 273.7(d)(1)(i)(F) require that State agencies have an E&T plan approved by FNS prior to receiving any Federal 100 percent E&T funding. Current regulations at § 273.7(d)(1)(i)(G) prohibit State agencies from using Federal 100 percent E&T funding to supplant nonfederal funds for existing educational services and activities that are part of allowable E&T components. This rulemaking makes no changes to the content of any of the three provisions but moves them all to revised § 273.7(d)(1)(ii) in order that all requirements concerning use of Federal 100 percent E&T funds may be in the same location. Current regulations at § 273.7(d)(1)(i)(E), (F), and (G) will be redesignated as § 273.7(d)(1)(ii)(E), (F), and (G), respectively.

As noted above, section 824 of the PRWORA amended section 6(o) of the Food Stamp Act to provide that ABAWDs can only receive food stamps for 3 months in 3 years unless they are working, participating in a workfare program, or participating in a work program for 20 hours or more per week. Section 824 defined a work program as a program operated under the Job Training Partnership Act (JTPA), a program under section 236 of the Trade Act of 1974, *or* an E&T program operated or supervised by the State or a political subdivision that meets standards approved by the Governor of the State, other than a job search or job search training program. On August 7, 1998, President Clinton signed the Workforce Investment Act of 1998 (WIA) (Pub. L. 105–220). Section 199 of the WIA repeals the JTPA effective July 1, 2000. Section 199(A) of that Act requires that all references in any other law to the JTPA be deemed to refer to the corresponding provision in the WIA. To address this change, the new regulations at § 273.7(d)(1)(ii)(A) define a qualifying work program as one operated under the JTPA or, after July 1, 2000, one that was previously operated under the JTPA that is now operated under the WIA, a program under section 236 of the Trade Act of 1974, *or* an E&T program operated or supervised by the State or a political subdivision that meets standards approved by the Governor of the State, other than a job search or job search training program.

Maintenance of Effort

Section 1002 of the Balanced Budget Act also amended section 16(h)(1)(F) of the Food Stamp Act to require that, in order for a State agency to receive its portion of the supplemental E&T funds allocated under the Balanced Budget Act in any fiscal year, that State agency must spend in that fiscal year at least the same amount of State funds it spent in FY 96 to administer E&T and the optional workfare program (if one was available).

State agencies are required to meet the maintenance of effort requirement only if they wish to spend some or all of the supplemental E&T allocation provided under the Balanced Budget Act. State agencies that chose not to utilize any of the supplemental allocation for which they are eligible are not required to satisfy the maintenance of effort requirement. If a State agency chooses not to meet its maintenance of effort requirement, the supplemental allocation for which it was eligible will be reallocated to other States in accordance with regulations at § 273.7(d)(1)(i)(F).

In order to increase State flexibility in operating E&T programs, FNS is not requiring State agencies to expend all of their required maintenance of effort funds before they begin spending their supplemental E&T grants. Instead, FNS is requiring those State agencies which plan to spend the supplemental allocation for which they are eligible in a fiscal year to provide in their annual State E&T plans good faith assurance that they will meet their maintenance of effort requirement. This rulemaking amends E&T State plan requirements at § 273.7(c)(4)(ii) to add this requirement. At the end of each fiscal year, FNS will review State expenditures for operating food stamp E&T programs to ensure that State agencies which noted in their E&T plans that they intended to meet their maintenance of effort (MOE) requirements did in fact do so.

In accordance with the requirements of section 1002 of the Balanced Budget Act, State funds that are expended to meet a State's MOE requirement are not subject to the use of funds requirement that at least 80 percent of a State agency's E&T grant be earmarked to serve individuals subject to the work requirement at section 6(o)(2) of the Food Stamp Act and to operate activities that meet the requirements of sections (6)(o)(2)(B) and (C).

State agencies may not count participant reimbursements as part of their maintenance of effort expenditure, as this is prohibited under section 16(h)(3) of the Food Stamp Act. The only exception is in the case of optional workfare programs in which reimbursements to participants for work-related expenses are counted as part of the State agency's administrative expenses. The only State agencies that operated optional workfare programs in FY 96 were Florida, North Carolina, Wisconsin, Arkansas, and Colorado. They are the only State agencies that may apply this exception.

This rulemaking amends food stamp regulations to add a new section that contains the maintenance of effort requirements established by the Balanced Budget Act. The new section will be designated § 273.7(d)(1)(iii) and titled "Maintenance of Effort." Former § 273.7(d)(1)(iii), which provided for a 50 percent Federal match for administrative costs incurred by State agencies in operating E&T programs, will be redesignated § 273.7(d)(1)(vi).

Component Costs

Section 1002 of the Balanced Budget Act amended section 16(h)(1) of the Food Stamp Act to require FNS to monitor State expenditures of 100 percent Federal E&T funding, including the costs of individual components of State E&T programs. The Balanced Budget Act also provided FNS the discretion to set reimbursable costs for individual components of State E&T programs, making sure that the amount spent or planned to be spent on the components reflect the reasonable cost of efficiently and economically providing components appropriate to recipients' employment and training needs.

FNS has determined that setting reimbursement rates for E&T activities is necessary to promote the intent of the increased E&T funding, which was to create a sufficient number of work opportunities so that as many food stamp recipients as possible who are subject to the work requirement that wish to work can be given the opportunity to do so before losing eligibility for the program. Use of the reimbursement rates will help to ensure that the maximum number of work opportunities can be created with the available funds, thus potentially

keeping as many ABAWDs as possible eligible for the program.

FNS recognizes, however, that use of the reimbursement rates will significantly increase State administrative burdens. Therefore, FNS is operating a one-year demonstration to test an alternative to the reimbursement rates. Under the alternative, a State agency may spend its Federal 100 percent E&T allocation without consideration of per slot costs if the State agency commits to offering a work opportunity to every ABAWD applicant or recipient who has exhausted the food stamp time limit. The alternative to the reimbursement rates is discussed in more detail below.

The reimbursement rates represent FNS' estimate of the reasonable cost of efficiently and economically providing the work opportunities. The rates apply to all 100 percent Federal E&T funds which a State expends to provide work activities that meet the requirements of section 6(o)(2)(B) and (C) of the Food Stamp Act for food stamp recipients who are (1) subject to the work requirement at section 6(o)(2), exempt from the requirement because they reside in an area of a State granted a waiver under section 6(o)(4), or (3) granted an exemption from the requirement under section 6(o)(6) of the Act. The rates do not apply to expenditures of the 20 percent of a State's 100 percent E&T grant that is not earmarked for ABAWDs, unless those funds are used to create qualifying workfare and education and training slots for ABAWDs.

The reimbursement rates went into effect on October 1, 1998. For FY 1998, the reimbursement rates did not apply and State agencies were reimbursed for their actual costs in creating work slots. States were notified of the reimbursement rates by memorandum from FNS regional offices in February 1998. The amount of the reimbursement rates, which is discussed below, may be revised based on cost data submitted by State agencies. If the rates are revised, FNS will inform States of the new rates through a policy memorandum.

In determining the reimbursement rates, FNS utilized available information on the costs of providing E&T components that meet the requirements of section 6(o)(2)(B) and (C). Because State agencies have generally emphasized in their E&T programs activities such as job search and job club that are expressly prohibited as qualifying work programs under sections 6(o)(2)(B) and (C), FNS had little information that is directly applicable in establishing reimbursement rates for qualifying work activities. However, information from job search activities was used as a basis for extrapolating certain costs, such as for intake and monitoring, that are common to workfare and education and training programs. FNS, therefore, has been able to use the information it has available, in combination with information from other sources, including a study of workfare programs conducted by the Manpower Demonstration Research Corporation,[1] to establish what it believes to be a reasonable estimate of the maximum costs State agencies will need to spend to provide workfare and education and training slots for recipients not eligible for an exception under section 6(o)(3).

FNS has established one reimbursement rate for both workfare and 20-hour a week work program components. However, because FNS recognizes the uncertain level of compliance with various work requirements among the childless, able-bodied adult population subject to the work requirement at section 6(o)(2), it has set two levels for the reimbursement rate—one level for filled work slots and the other for unfilled or "offered" work slots. A slot is "filled" when a participant reports to a work or training site to begin his or her work activities. A slot is "offered" when a bona fide workfare or training opportunity is made available to a participant (i.e., the participant is told to report to a work site at a given date and time) but the participant either refuses the assignment or does not report. This two-tiered rate structure insures that a State agency is not denied reimbursement for costs it incurred in creating work opportunities when program participants choose not to comply with program work requirements.

It should be noted that under the reimbursement rate structure State agencies are reimbursed not for simply creating qualifying workfare or 20-hour-a week education/training slots but for placing, or offering to place, participants who are subject to the food stamp work requirement in those slots. A State agency that assigns two ABAWDs to the same work slot (one to work four hours in the morning, the other four hours in the afternoon), would claim reimbursement for two filled slots since two ABAWDs are retaining eligibility for the program. A State agency that assigns one ABAWD to two slots in one month, a workfare slot and a 20-hour-a-week education and training slot, may only claim reimbursement for one filled slot for that month because only one ABAWD is retaining eligibility for the program.

The reimbursement rates currently are as follows:

Offered Work Slot: $30
Filled Work Slot: $175

These rates represent the maximum amount of 100 percent Federal funds that FNS will reimburse State agencies for their expenditures in providing workfare and work program slots that meet the requirements of section 6(o)(2)(B) and (C). The rates represent a monthly average per slot cost, although reconciliation will be conducted on a yearly, not monthly, basis.

To apply the rates, FNS will sum the number of filled and unfilled slots a State agency reports at the end of a fiscal year and multiply each by the appropriate rate. FNS will add the two resulting sums and compare that against the State's actual expenditure of Federal E&T money for that year. If the amount spent is less than the amount allowed under the rates, the actual amount would be paid out of the E&T grant. If the amount spent by the State agency exceeds the amounts allowed under the rates, the State agency will be required to pay that excess amount out of their own funds (which would be eligible for the standard 50 percent administrative cost Federal match). This procedure allows State agencies to average the cost of creating slots—i.e., balance the cost of higher priced slots with lower costing slots—and still fall within the rate structure.

FNS is confident that State agencies will be able to create work opportunities within the fiscal constraints set by the rates. Not only will State agencies be able to average the costs of more expensive and less expensive work slots over a fiscal year, but the two-tiered rate structure enables State agencies to effectively claim reimbursement for more than the fixed rate for a filled slot. Although the reimbursement rate for a filled slot is $175, State agencies can claim an additional $30 reimbursement if the slot is turned down by one participant before being accepted by another. For example, if a work slot is refused by four participants before being accepted by a fifth, the State agency may claim reimbursement for offering the slot four times, or $120, in addition to claiming a $175 reimbursement for filling the slot. In other words, the State agency could claim $295 under this example for the cost of creating one work slot.

A State agency may not claim reimbursement for a filled slot for a participant who is satisfying the work

[1] Unpaid Work Experience for Welfare Recipients: Findings and Lessons from MDRC Research, 1993. Thomas Brock, David Butler, David Long.

requirement by working 20 hours or more a week. In this case, the State agency is incurring no reimbursable E&T cost (costs associated with monitoring the participant's employment would be included as certification costs).

As noted above, FNS may revise the amount of the reimbursement rates based on actual data on the cost of creating work slots compiled by State agencies. This information may be forwarded to FNS at the address noted earlier in this document. FNS would also be interested in obtaining from States examples of the types of E&T components that States would like to operate for ABAWDs which they are not currently operating, either because the components cannot be supported under the existing reimbursement rate structure or for some other reason. States should provide estimates of the costs of these components.

This rulemaking amends food stamp regulations to add a new section that contains requirements regarding E&T components costs. The new section will be designated § 273.7(d)(1)(iv) and titled "Component Costs." Former § 273.7(d)(1)(iii), which provides that enhanced cost-sharing for placement of workfare participants in paid employment be available only for placements that occur through optional workfare programs funded under § 273.22(g), will be redesignated § 273.7(d)(1)(vii).

Reporting Requirements

Current regulations at § 273.7(c)(6) contain requirements for State agency reporting of monthly figures for E&T program participants. Current regulations at § 273.7(d)(3) contain the requirements for State agency reporting of expenditures on food stamp E&T programs.

Because of the new restrictions on the use of Federal 100 percent E&T funding imposed by the Balanced Budget Act and described in this rulemaking, FNS is increasing the reporting burden on State agencies with regard to E&T programs. Although increased reporting requirements impose increased administrative burdens on States, FNS concluded that increasing State reporting requirements for E&T activities was the simplest and most efficient means for monitoring State compliance with the 80–20 use of funds requirement and the component cost reimbursement rates, both described earlier in this memorandum.

In addition to submitting all the information previously required under § 273.7(c)(6) and § 273(d)(3), State agencies must report the number of workfare and 20-hour-a-week education and training slots they created to serve recipients subject to the work requirement at section 6(o) of the Food Stamp Act. This information must be broken out to show the number of slots that were filled and the number that were offered. State agencies must further break out the information to show the number of slots that were created in areas of a State that have received a waiver in accordance with section 6(o)(4) and in non-waived areas (this information will be used by FNS to evaluate the impact on participants subject to the work requirement of allowing State agencies to spend the 80 percent of their 100 percent Federal E&T grant on ABAWDs not in danger of losing eligibility). State agencies must also report the amount of Federal 100 percent E&T funding spent on workfare slots and on qualifying 20-hour-a-week work program slots that were created to serve recipients subject to the work requirement at section 6(o). This information must be included on the Employment and Training Program Report (FNS–583).

In this rulemaking we are amending food stamp regulations at § 273.7(c)(6) and § 273(d)(3) to incorporate the new reporting requirements.

Alternative to the Reimbursement Rates

Although FNS believes that the reimbursement rate structure will be effective in creating a sufficient number of work opportunities to insure that most ABAWDs who want to work will be provided the opportunity to do so before losing eligibility for the Food Stamp Program, we are also interested in exploring alternatives to the rate structure which will provide State agencies greater flexibility while at the same time satisfying the intent behind the increased funding provided under the Balanced Budget Act. To this end, FNS will operate in FY 1999 a one-year demonstration under which a State agency may spend its Federal 100 percent E&T allocation without consideration of per slot costs if the State agency commits to offering a work opportunity to every ABAWD applicant or recipient who has exhausted the time limit and does not reside in an area of a State that has a received a waiver in accordance with section 6(o)(4) or has not already received an exemption from the work requirement in accordance with section 6(o)(6).

FNS will monitor whether State agencies approved for this alternative are meeting their commitment to offer work opportunities to all ABAWDs that have exhausted the time limit. In addition, QC errors will be cited against a State agency operating under this alternative if it terminated an ABAWD from the program, denied his or her application because of the time limit without offering the ABAWD a work slot, or issued benefits to an individual that had exhausted his or her three months of eligibility but was not offered a slot. A State agency that does not appear to be meeting its commitment, or that has a significant number of such QC errors will be required to correct its operation or be denied this alternative if FNS allows it in future years.

The State agencies that operate under this alternative must still meet the requirement that not less than 80 percent of the 100 percent Federal funds the State agency expends in a fiscal year be spent on activities that meet the requirements of sections 6(o)(2)(B) and (C) of the Food Stamp Act.

The criteria FNS shall use to select the State agencies that may participate in the alternative shall include the following factors:

The size of a State agency's ABAWD caseload;

The State agency's ability to offer a work opportunity to every ABAWD applicant and participant that has exhausted the time limit;

The State agency's procedures for monitoring its compliance with the requirements of the demonstration; and

The State agency's plans for taking corrective action if compliance is not being met.

FNS welcomes comments from States on the alternative program. FNS would also be interested in obtaining from States other proposals for alternatives or modifications to the rate structure, such as providing States a temporary exemption from the rates to start new food stamp E&T programs in areas not previously served or to expand the capacity of existing programs so that all ABAWDs reaching the time limit can be provided with qualifying work opportunities.

Because FNS is operating the reimbursement rate alternative as a one year demonstration that began on October 1, 1998, we are not including in this interim rule regulations on the alternative program. However, depending on the comments received on this program and FNS' evaluation of the demonstration, FNS may elect to implement the reimbursement rate alternative as a permanent program available to all States. If a permanent program is implemented, regulations will be issued, possibly in the final version of this interim rule.

Report to Congress

Section 1002(b) of the Balanced Budget Act requires that not later than 30 months after the date of enactment of the Act, The Secretary of Agriculture must submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report regarding whether the increased E&T funds provided under section 1002 of the Balanced Budget Act have been used by State agencies to increase the number of work slots for recipients subject to the food stamp time limit at section 6(o) of the Food Stamp Act (7 U.S.C. 2015(o)) in employment and training programs and workfare in the most efficient and effective manner practicable.

In order to complete the required report, the Department of Agriculture released a Request for Proposals in April 1998 in which it solicited bids from parties interested in conducting the study. In September 1998, the contract to complete the E&T study was awarded to Health Systems Research, an independent research group.

Implementation

State welfare agencies have been instructed through agency directive to implement the provisions of the BBA without waiting for formal regulations. Sections 1001 (15 percent exemption) and 1002 (increased E&T funding) were required to be implemented as of October 1, 1997. The changes in this rule are effective and must be implemented November 2, 1999. Any variances resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 120 days from this required implementation date in accordance with § 275.12(d)(2)(vii).

List of Subjects

7 CFR Part 272

Alaska, Civil rights, food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Food Stamps, Fraud, Grant Programs—social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

Accordingly, 7 CFR parts 272 and 273 are amended as follows:

1. The authority citation for 7 CFR parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, paragraph (g)(156) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(156) *Amendment No. 379.* The provision of *Amendment No.* 379 regarding the 15-percent exemption and additional funding for E&T is effective and must be implemented no later than November 2, 1999. Any variances resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 120 days from this required implementation date in accordance with § 275.12(d)(2)(vii) of this chapter.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.7:

a. A fourth sentence is added to the end of paragraph (c)(4)(ii).

b. New paragraphs (c)(6)(vi) and (c)(6)(vii) are added;

c. Paragraph (d)(1)(i) is revised.

d. Paragraphs (d)(1)(ii), (d)(1)(iii), and (d)(1)(iv) are redesignated as (d)(1)(v), (d)(1)(vi) and (d)(1)(vii), respectively;

e. Newly redesignated paragraph (d)(1)(v) is amended by removing references to "(d)(1)(ii)(A)" and "(d)(1)(ii)(B)" wherever they appear, and by adding in their place references to "(d)(1)(v)(A)" and "(d)(1)(v)(B)".

f. New paragraphs (d)(1)(ii), (d)(1)(iii), and (d)(1)(iv) are added;

g. A fourth sentence is added to paragraph (d)(3).

The revisions and additions read as follows:

§ 273.7 Work requirements.

* * * * *

(c) *State agency responsibilities.*

* * *

(4) * * *

(ii) * * * A State agency which intends to spend the supplemental E&T grant allocation for which it is eligible in a fiscal year in accordance with paragraph (d)(1)(i)(B) of this section must declare its intention to maintain its level of expenditures for E&T and workfare at a level not less than the level of such expenditures in FY 1996.

* * * * *

(6) * * *

(vi) The number of filled and offered slots created under a workfare program as described in § 273.22 or a comparable program that are intended to serve recipients subject to the work requirement at section 6(o) of the Food Stamp Act. This information must be broken out to show the number of slots that were created in areas of the State that have received a waiver in accordance with section 6(o)(4) of the Food Stamp Act and in non-waived areas;

(vii) The number of filled and offered slots created under a 20-hour-a-week work program as described in paragraph (d)(1)(ii)(A) of this section that are intended to serve recipients subject to the work requirement at section 6(o) of the Food Stamp Act. This information must be broken out to show the number of slots that were created in areas of the State that have received a waiver in accordance with section 6(o)(4) of the Food Stamp Act and in non-waived areas;

* * * * *

(d) *Federal financial participation.* (1) *Employment and training grants.*—(i) *Allocation of grants.* Each State agency will receive an E&T program grant for each fiscal year to operate an E&T program. The grant will consist of a base amount that requires no State matching and a supplemental amount which will be available only to those State agencies that elect to meet their maintenance of effort requirements as described in paragraph (d)(1)(iii) of this section.

(A) In determining each State agency's base 100 percent Federal E&T grant amount for FYs 1998 through 2002, FNS will apply the percentage determined in accordance with paragraph (d)(1)(i)(C) of this section to the total amount of 100 percent Federal E&T grant provided under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 for each fiscal year.

(B) In determining each State agency's supplemental 100 percent Federal E&T grant amount for FYs 1998 through 2002, FNS will apply the percentage determined in accordance with paragraph (d)(1)(i)(C) of this section to the total amount of 100 percent Federal E&T grant provided under the Balanced Budget Act of 1997 for each fiscal year.

(C) Except as otherwise provided in paragraph (d)(1)(i)(F) of this section, effective in FY 1998, Federal funding for E&T grants, including both the base and supplemental amounts, shall be allocated on the basis of food stamp recipients in each State who are not eligible for an exception under section 6(o)(3) of the Food Stamp Act as a percentage of such recipients nationwide. Effective in FY 1999, Federal funding for E&T grants shall be allocated on the basis of food stamp recipients in each State who are not eligible for an exception under section 6(o)(3) of the Food Stamp Act and who either do not reside in an area subject

to a waiver granted in accordance with section 6(o)(4) of the Food Stamp Act or do reside in an area subject to a waiver in which the State agency provides employment and training services to food stamp recipients who are not eligible for an exception under section 6(o)(3) of the Food Stamp Act as a percentage of such recipients nationwide.

(D) FNS shall determine each State's percentage of food stamp recipients not eligible for an exception under section 6(o)(3) of the Food Stamp Act using FY 1996 Quality Control survey data adjusted for changes in each State's caseload.

(E) Effective in FY 1998, no State agency shall receive less than $50,000 in Federal E&T funds. To insure that no State agency receives less than $50,000 in FY 1998, each State agency that is allocated to receive more than $50,000 shall have its grant reduced, if necessary, proportionate to the number of food stamp recipients in the State who are not eligible for an exception under section 6(o)(3) of the Food Stamp Act as compared to the total number of such recipients in all the State agencies receiving more than $50,000. The funds from the reduction shall be distributed to State agencies initially allocated to receive less than $50,000. To insure that no State agency receives less than $50,000 in FY 1999 and subsequent years, each State agency that is allocated to receive more than $50,000 shall have its grant reduced, if necessary, proportionate to the number of food stamp recipients in the State who are not eligible for an exception under section 6(o)(3) of the Food Stamp Act, and who do not reside in an area subject to a waiver granted in accordance with section 6(o)(4) of the Food Stamp Act or who do reside in an area subject to a waiver in which the State agency provides employment and training services to food stamp recipients who are not eligible for an exception under section 6(o)(3) of the Food Stamp Act as compared to the total number of such recipients in all the State agencies receiving more than $50,000. The funds from the reduction shall be distributed to State agencies initially allocated to receive less than $50,000 so that they receive the $50,000 minimum.

(F) If a State agency will not expend all of the funds allocated to it for a fiscal year under paragraph (d)(1)(i)(C) of this section, FNS shall reallocate the unexpended funds to other States during the fiscal year or the subsequent fiscal year as it considers appropriate and equitable.

(ii) *Use of funds.* (A) Not less than 80 percent of the funds a State agency receives in a fiscal year under paragraph (d)(1)(i) of this section shall be used to serve food stamp recipients who are not eligible for an exception under section 6(o)(3) of the Food Stamp Act and who are placed in and comply with either a workfare program as described in § 273.22 or a comparable program, or a work program for 20 hours or more per week. A qualifying work program is a program operated under the JTPA or, after July 1, 2000, a program that was previously operated under the JTPA that is now operated under the Workforce Investment Act, a program under section 236 of the Trade Act of 1974, *or* an E&T program operated or supervised by the State or a political subdivision that meets standards approved by the Governor of the State, including programs described in paragraphs (f)(1)(iv), (f)(1)(v), (f)(1)(vi) and (f)(1)(vii) of this section. Job search and job search training programs as described in paragraphs (f)(1)(i) and (f)(1)(ii) of this section do not meet the definition of qualifying work program.

(B) Funds which a State agency receives in a fiscal year under paragraph (d)(1)(i) of this section which are used to serve food stamp recipients who are not eligible for an exception under section 6(o)(3) of the Food Stamp Act but who either reside in an area of a State granted a waiver under section 6(o)(4) of the Food Stamp Act or have been granted an exemption under section 6(o)(6) of that Act and which are expended on qualifying work activities as described in paragraph (d)(1)(ii)(A) of this section shall count toward a State's 80 percent expenditure.

(C) Not more than 20 percent of the funds a State agency receives in a fiscal year under paragraph (d)(1)(i) of this section may be used to serve households eligible for an exception under section 6(o)(3) of the Food Stamp Act or on work activities that do not meet the definition of qualifying work activities as described in paragraph (d)(1)(ii)(A) of this section. E&T funds expended in accordance with this paragraph (d)(1)(ii)(C) may be spent independent of whether or not the State agency expends any Federal funds that meet the requirements of paragraph (d)(1)(ii)(A) of this section. E&T funds expended in accordance with this paragraph (d)(1)(ii)(C) are not subject to the component cost reimbursement rates described in paragraph (d)(1)(iv) of this section.

(D) If at the end of a fiscal year, FNS determines that a State agency has spent more than 20 percent of the Federal E&T funds it receives for that fiscal year under paragraph (d)(1)(i) of this section to serve food stamp recipients who are eligible for an exception under section 6(o)(3) of the Food Stamp Act or on work activities that do not meet the definition of qualifying work activities as described in paragraph (d)(1)(ii)(A) of this section, it shall reimburse States for allowable costs incurred in excess of the 20 percent threshold at the normal administrative 50–50 match rate.

(E) State agencies must use E&T program grants to fund the administrative costs of planning, implementing and operating food stamp E&T programs in accordance with approved State agency E&T plans. E&T grants must not be used for the process of determining whether an individual must be work registered, the work registration process, or any further screening performed during the certification process, nor for sanction activity that takes place after the operator of an E&T component reports noncompliance without good cause. For purposes of this paragraph (d)(1)(ii)(E), the certification process is considered ended when an individual is referred to an E&T component for assessment or participation. E&T grants must also not be used to reimburse participants under paragraph (d)(1)(ii) of this section, since these reimbursements which include dependent care and job-related transportation costs are provided for in a separate 50:50 Federal/State matching grant. Lastly, E&T grants must not be used to subsidize the wages of participants, as reflected in current regulations, and in view of section 16(b) of the Food Stamp Act, added by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, which provides authority for food stamp recipients who also participate in TANF and other public assistance programs to have their food stamp benefits paid directly to employers.

(F) A State agency's receipt of the E&T program grant as allocated under paragraph (d)(1)(i) of this section is contingent on FNS' approval of the State agency's E&T plan. If an adequate plan is not submitted, FNS may reallocate a State agency's grant among other State agencies with approved plans. Non-receipt of an E&T program grant does not release a State agency from its responsibility under paragraph (c)(3) of this section to operate an E&T program or from sanctions for insufficient performance.

(G) Federal funds made available to a State agency to operate a component under paragraph (f)(1)(vi) of this section must not be used to supplant nonfederal funds for existing educational services and activities that promote the purposes of this component. Education expenses are approvable to the extent that E&T component costs exceed the normal cost of services provided to persons not participating in an E&T program.

(iii) *Maintenance of Effort.* (A) To be eligible for a grant derived from the supplemental level of E&T funding described in paragraph (d)(1)(i)(B) of this section, a State agency must maintain State expenditures on E&T programs and workfare at a level not less than the level of such expenditures in FY 1996. A State agency need not expend all of its required maintenance of effort funds before it begins spending its supplemental E&T grant. A State agency which intends to spend the supplemental allocation for which it is eligible in a fiscal year must, in accordance with paragraph (c)(4)(ii) of this section, declare in its State E&T plan for that fiscal year its intention to maintain its level of expenditures for E&T and workfare at a level not less than the level of such expenditures in FY 1996.

(B) State funds which a State agency expends in order to meet its maintenance of effort requirement are not subject to the requirements of paragraph (d)(1)(ii) of this section.

(C) Participant reimbursements paid through State funds shall not count toward a State agency's maintenance of effort requirement, except in the case of optional workfare programs in which reimbursements to participants for work-related expenses are counted as part of the State agency's administrative expenses in accordance with section 20(g)(1) of the Food Stamp Act.

(iv) *Component costs.* FNS shall monitor State agencies' expenditures of 100 percent Federal E&T funds, including the costs of individual components of State agencies' programs.

(A) Federal 100 percent E&T funds that State agencies expend in accordance with paragraph (d)(1)(ii)(A) of this section are subject to component cost reimbursement rates. The rates represent the maximum amount of 100 percent Federal funds that FNS will reimburse States on average each month for their expenditures in providing work opportunities or "slots" that meet the requirements of section (6)(o)(2)(B) and (C) of the Food Stamp Act.

(B) Separate reimbursement rates will apply for filled slots and for offered slots. A slot is "filled" when a participant reports to a work or training site to begin his or her work activities. A slot is "offered" when a bona fide workfare or training opportunity is made available to a participant (i.e., the participant is told to report to a work site at a given date and time) but the participant either refuses the assignment or does not report.

(C) A State agency may claim reimbursement for only one filled slot per participant per month. A State agency that assigns one participant to two slots in the same month, for example a workfare slot and a 20-hour-a-week training slot, may only claim reimbursement for one filled slot in that month.

(D) Reconciliation will be conducted on a yearly basis. When applying the rate, FNS will sum the number of filled and offered slots a State agency reports for a fiscal year and multiply each by the appropriate rate. FNS will add the two resulting sums and compare that against the State agency's actual expenditure of Federal 100 percent E&T money for that fiscal year. If the amount spent is less than the amount allowed under the rates, the actual amount would be paid out of the State agency's 100 percent Federal E&T grant for that fiscal year. If the amount spent by the State agency exceeds the amounts allowed under the rates, the State agency will be required to pay that excess amount. State funds used to cover any shortfalls will be eligible for the standard 50 percent Federal match in accordance with paragraph (d)(1)(vi) of this section and § 273.22(g).

* * * * *

(3) *Fiscal recordkeeping and reporting requirements.* * * * States shall include as footnotes to the FNS–269 the amount of Federal 100 percent E&T funding spent on slots created under a workfare program as described in § 273.22 or a comparable program, and the amount of Federal 100 percent E&T funding spent on slots created under a 20-hour-a-week work program as described in paragraph (d)(1)(ii)(A) of this section.

* * * * *

4. A new § 273.24 is added to read as follows:

§ 273.24 15 Percent exemption authority for able-bodied adults.

(a) *Definitions.* For purposes of the food stamp time limit, the terms below have the following meanings:

(1) *Caseload* means the average monthly number of individuals receiving food stamps during the 12-month period ending the preceding June 30.

(2) *Covered individual* means a food stamp recipient, or an individual denied eligibility for food stamp benefits solely due to paragraph 6(o)(2) of the Food Stamp Act who:

(i) Is not exempt from the work requirements under paragraph 6(o)(3) of the Food Stamp Act,

(ii) Does not reside in an area covered by a waiver granted under paragraph 6(o)(4) of the Food Stamp Act,

(iii) Is not fulfilling the work requirements of 6(o)(2) of the Food Stamp Act by working 20 hours a week averaged monthly, participating and complying with the requirements of a work program for 20 hours or more per week, participating in and complying with the requirements of a program under section 20 or a comparative program established by a State or political subdivision of a State,

(iv) Is not receiving food stamp benefits during the 3 months of eligibility provided under paragraph 6(o)(2) of the Food Stamp Act, and

(v) Is not receiving food stamp benefits under paragraph 6(o)(5) of the Food Stamp Act.

(b) *General rule.* Subject to paragraphs (c) through (e) of this section, a State agency may provide an exemption from the time limits of paragraph 6(o)(2) of the Food Stamp Act for covered individuals. Exemptions do not count towards a State's allocation if they are provided to an individual who is otherwise exempt from the time limit during that month.

(1) *Fiscal year 1998.* A State agency may provide a number of exemptions such that the average monthly number of exemptions in effect during FY 1998 does not exceed 15 percent of the number of covered individuals in the State in FY 1998, as estimated by FNS, based on FY 1996 quality control data, and other factors FNS deems appropriate.

(2) *Subsequent fiscal years.* For FY 1999 and each subsequent fiscal year, a State agency may provide a number of exemptions such that the average monthly number of exemptions in effect during the fiscal year does not exceed 15 percent of the number of covered individuals in the State, as estimated by FNS, and adjusted by FNS to reflect changes in:

(i) The State's caseload, and

(ii) FNS' estimate of changes in the proportion of food stamp recipients covered by waivers granted under paragraph 6(o)(4) of the Food Stamp Act.

(c) *Adjustments* will be made as follows:

(1) *Caseload adjustments.* FNS shall adjust the number of covered individuals estimated for a State under paragraphs (c) and (d) of this section during a fiscal year if the number of food stamp recipients in the State varies from the State's caseload by more than 10 percent, as estimated by FNS.

(2) *Exemption adjustments.* During FY 1999 and each subsequent fiscal year, FNS shall adjust the number of exemptions allocated to a State agency based on the number of exemptions in

effect in the State for the preceding fiscal year.

(i) If the State agency does not use all of its exemptions by the end of the fiscal year, FNS shall increase the estimated number of exemptions allocated to the State agency for the subsequent fiscal year by the remaining balance.

(ii) If the State agency exceeds its exemptions by the end of the fiscal year, FNS shall reduce the estimated number of exemptions allocated to the State agency for the subsequent fiscal year by the corresponding number.

(d) *Reporting requirement.* The State agency shall track the number of exemptions used each month and report this number to the regional office on a quarterly basis as an addendum to the quarterly employment and training report (Form FNS–583) required by § 273.7(c)(6).

(e) *Other Program rules.* Nothing in this section shall make an individual eligible for benefits under the Food Stamp Act if the individual is not otherwise eligible for benefits under the other provisions of the Food Stamp Act.

Dated: August 23, 1999.

Julie Paradis,

Acting Under Secretary, Food, Nutrition and Consumer Services.

[FR Doc. 99–23017 Filed 9–2–99; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 98–055–2]

Horses From Morocco; Change in Disease Status

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the importation of horses to remove Morocco from the list of regions the Animal and Plant Health Inspection Service considers affected with African horse sickness. This action is based on information received from Morocco and is in accordance with standards set by the Office International des Epizooties for recognizing a country as free of African horse sickness. This action will relieve restrictions on the importation of horses into the United States from Morocco.

DATES: Effective September 20, 1999 .

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Senior Staff Veterinarian, Products Program, National Center for Import and Export, VS, APHIS, 4700 River RoadUnit 40, Riverdale, MD 20737–1231; (301) 734–3399.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 (referred to below as the regulations) prescribe the conditions for the importation into the United States of specified animals to prevent the introduction of various animal diseases, including African horse sickness (AHS). AHS is a fatal viral equine disease that is not known to exist in the United States.

The regulations in § 93.308(a)(2) list regions that the Animal and Plant Health Inspection Service (APHIS) considers affected with AHS and sets forth specific quarantine requirements for horses that are imported from those regions. APHIS requires horses intended for importation from any of the regions listed, including horses that have stopped in or transited those regions, to enter the United States only at the port of New York and be quarantined at the New York Animal Import Center in Newburgh, NY, for at least 60 days. This precaution is necessary to help ensure that the horses are not affected with AHS.

On April 6, 1999, we published in the **Federal Register** (64 FR 16655–16656, Docket No. 98–055–1) a proposal to amend the regulations concerning the importation of horses to remove Morocco from the list of regions that APHIS considers affected with AHS. The proposed action was based on information received from Morocco and standards set by the Office International des Epizooties (OIE).

We solicited comments concerning our proposal for 60 days ending June 7, 1999. We received two comments by that date. They were from industry representatives. Neither opposed the rule but said that APHIS should have conducted a site visit to verify information submitted by Morocco.

The United States is a signatory to the North American Free Trade Agreement (NAFTA) and the General Agreement on Tariffs and Trade (GATT). Basic to NAFTA and GATT are the provisions to encourage countries to base their sanitary and phytosanitary measures on international standards whenever such standards exist. Animal health measures should be based on OIE standards. Based on the standards set forth by the OIE, a country may be recognized as free of AHS if the disease is mandatorily reportable. In addition, the country must not have vaccinated domestic horses or other equines against the disease during the past 12 months. The OIE also requires that the country have no clinical, serological (in nonvaccinated animals), or epidemiological evidence of AHS for the past 2 years. Morocco exceeds these requirements. Morocco has not had a case of AHS for over 7 years and has not vaccinated for the disease for 5 years.

In addition to OIE standards, APHIS considers Morocco's horse population, quarantine requirements, disease surveillance system, laboratory capabilities, and geography.

Morocco has approximately 180,000 horses, which are mainly used for transportation, beasts of burden, agricultural work, racing, and breeding. Morocco does not allow the importation of animals from known AHS-positive countries. Animals from AHS-negative countries must be tested twice, once in the country of origin and once during a 10-day quarantine in Morocco. The 10-day quarantine on all imported equines allows monitoring of imported animals for signs of disease. Morocco has 14 border service stations to prevent illegal movement of equines.

Morocco has 6 regional veterinary diagnostic and research laboratories qualified to perform required testing for veterinary certification and disease monitoring. In addition, there is a National Epidemiology and Zoonosis Laboratory, a National Veterinary Drugs Control Laboratory, and BIOPHARMA, a State-owned vaccine production company. Of these nine laboratories, four have facilities for virus isolation and typing. Morocco collaborates with the Community Reference Laboratory for AHS, Algete, Spain; the School of Veterinary Medicine, Maison Alfort, France; and the Institute for Animal Health, Pirbright, United Kingdom, for support and assistance with disease diagnosis. Also, in August 1997, Morocco sent 300 AHS reference sera to APHIS' Foreign Animal Disease Diagnostic Laboratory at Plum Island, NY. Tests of the sera by APHIS confirmed the accuracy of Morocco's laboratory results.

Morocco is surrounded by the Mediterranean Sea to the north, the Atlantic Ocean to the west, Algeria to the east, and Mauritania to the south. Spain, although not immediately adjacent, is separated from Morocco only by the Gibraltar Strait. None of these countries have reported AHS for 3 years or longer.

APHIS also evaluated Morocco's veterinary service infrastructure and its animal health policies and infrastructures for animal disease control. Our review of information submitted by Morocco indicates that these infrastructures and policies are adequate for disease control.

The commenters also said that information supplied by foreign regions should be made available to the public for review.

Currently, when a region requests permission to export animals and animal products to the United States, the supporting documentation supplied by the region is published by APHIS on the Internet at http://www.aphis.usda.gov/vs/reg-request.html. This Internet address can be accessed by the public. To request additional information, the individual listed under **FOR FURTHER INFORMATION CONTACT** may be contacted.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule relieves restrictions that require horses imported from Morocco to enter the United States only at the port of New York and be quarantined at the New York Animal Import Center in Newburgh, NY, for at least 60 days. This rule allows horses from Morocco to be shipped to and quarantined at ports designated in § 93.303, and reduces the quarantine period to an average of 3 days to meet the quarantine and testing requirements specified in § 93.308. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective 15 days after the date of publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This rule will recognize Morocco as free of AHS. This action will allow horses from Morocco to be shipped to and quarantined at ports designated in § 93.303 and will reduce the quarantine and testing period to an average of 3 days to meet quarantine requirements specified in § 93.308.

U.S. importers of competition and breeding horses from Morocco will be affected by this rule. These importers will no longer be required to quarantine horses from Morocco for 60 days at the New York Animal Import Center in Newburgh, NY, at a cost of approximately $5,296 per horse.

In 1998, the United States imported 41,876 horses, valued at $206 million; none of these horses were imported into the United States from Morocco. Removing the requirement for a 60-day quarantine for horses from Morocco will make the importation of horses less expensive and logistically easier. As a result, we anticipate that U.S. importers of competition and breeding horses might begin importing horses from Morocco. Since the value of Morocco's exports of purebred horses in 1997 was approximately $44,000, we do not expect that the number of horses exported to the United States will be significant. Furthermore, most horses imported from Morocco will probably be in the United States on a temporary basis for particular events, such as for races or breeding, and then transported back to Morocco. For these reasons, we anticipate the overall economic effect on U.S. entities will be minimal.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 93 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 93.308, paragraph (a)(2) is revised to read as follows:

§ 93.308 Quarantine requirements.

(a) * * *

(2) Horses intended for importation from regions APHIS considers to be affected with African horse sickness may enter the United States only at the port of New York, and must be quarantined at the New York Animal Import Center in Newburgh, New York, for at least 60 days. This restriction also applies to horses that have stopped in or transited a region considered affected with African horse sickness. APHIS considers the following regions to be affected with African horse sickness: All the regions on the continent of Africa, except Morocco; Oman; Qatar; Saudi Arabia; and the Yemen Arab Republic.

* * * * *

Done in Washington, DC, this 30th day of August 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–23010 Filed 9–2–99; 8:45 am]

BILLING CODE 3410–34–U

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG17

List of Approved Spent Fuel Storage Casks: (HI–STAR 100) Addition

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to add the Holtec International HI–STAR 100 cask system to the list of approved spent fuel storage casks. This amendment allows the holders of power reactor operating licenses to store spent fuel in this approved cask system under a general license.

EFFECTIVE DATE: This final rule is effective on October 4, 1999.

FOR FURTHER INFORMATION CONTACT: Stan Turel, telephone (301) 415–6234, e-mail spt@nrc.gov of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that "[t]he Secretary [of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear reactor power sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPA states, in part, "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license, publishing a final rule in 10 CFR Part 72 entitled "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within 10 CFR Part 72 entitled "Approval of Spent Fuel Storage Casks," containing procedures and criteria for obtaining NRC approval of dry storage cask designs.

Discussion

This rule will add the Holtec International HI–STAR 100 to the list of NRC approved casks for spent fuel storage in 10 CFR 72.214. Following the procedures specified in 10 CFR 72.230 of Subpart L, Holtec International submitted an application for NRC approval together with the Safety Analysis Report (SAR) entitled "HI–STAR 100 Cask System Topical Safety Analysis Report (SAR), Revision 8." The NRC evaluated the Holtec International submittal and issued a preliminary Safety Evaluation Report (SER) and a proposed Certificate of Compliance (CoC) for the Holtec International HI–STAR 100 cask system. The NRC published a proposed rule in the **Federal Register** (64 FR 1542; January 11, 1999) to add the HI–STAR 100 cask system to the listing in 10 CFR 72.214. The comment period ended on March 29, 1999. Nine comment letters were received on the proposed rule.

Based on NRC review and analysis of public comments, the staff has modified, as appropriate, its proposed CoC, including its appendices, the Technical Specifications (TSs), and the Approved Contents and Design Features, for the Holtec International HI–STAR 100 cask system. The staff has also modified its preliminary SER and has revised the title of the SAR in the listing of this cask design in 10 CFR 72.214.

The title of the SAR has been revised to delete the revision number so that in the final rule the title of the SAR is "HI–STAR 100 Cask System Topical Safety Analysis Report." This revision conforms the title to the requirements of new 10 CFR 72.248, recently approved by the Commission.

The proposed CoC has been revised to clarify the requirements for making changes to the CoC by specifying that the CoC holder must submit an application for an amendment to the certificate if a change to the CoC, including its appendices, is desired. This revision conforms the change process to that specified in 10 CFR 72.48, as recently approved by the Commission. The CoC has also been revised to delete the proposed exemption from the requirements of 10 CFR 72.124(b) because a recent amendment of this regulation makes the exemption unnecessary (64 FR 33178; June 22, 1999). In addition, other minor, nontechnical, changes have been made to CoC 1008 to ensure consistency with NRC's new standard format and content for CoCs. Finally, extensive comments were received from Holtec International and other industry organizations suggesting changes to the TSs and the Approved Contents and Design Features. Some of these were editorial in nature, others provided clarification and consistency, and some reflected final refinements in the cask design. Staff agrees with many of these suggested changes and has incorporated them into the final documents, as appropriate.

The NRC finds that the Holtec International HI–STAR 100 cask system, as designed and when fabricated and used in accordance with the conditions specified in its CoC, meets the requirements of 10 CFR Part 72. Thus, use of the Holtec International HI–STAR 100 cask system, as approved by the NRC, will provide adequate protection of public health and safety and the environment. With this final rule, the NRC is approving the use of the Holtec International HI–STAR 100 cask system under the general license in 10 CFR Part 72, Subpart K, by holders of power reactor operating licenses under 10 CFR Part 50. Simultaneously, the NRC is issuing a final SER and CoC that will be effective on October 4, 1999. Single copies of the CoC and SER are available for public inspection and/or copying for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Summary of Public Comments on the Proposed Rule

The NRC received nine comment letters on the proposed rule. The commenters included the applicant, the State of Utah, an individual member of the public, industry representatives, and several utilities. Copies of the public comments are available for review in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20003–1527.

Comments on Direct Final Rule

As part of the proposed rule, the NRC staff requested public comment on the use of a direct final rulemaking process for future amendments to the list of approved spent fuel storage casks in 10 CFR 72.214. The direct final rulemaking process is used by Federal agencies, including the Environmental Protection Agency (EPA) and the NRC, to expedite rulemaking where the agency believes that the rule is noncontroversial and significant adverse comments will not be received. Use of this technique in appropriate circumstances has been endorsed by the Administrative Conference of the United States (60 FR 43110; August 18, 1995). Under the direct final rulemaking procedure, the NRC would publish the proposed amendment to the 10 CFR 72.214 list as both a proposed and a final rule in the **Federal Register** simultaneously. A direct final rule normally becomes effective 75 days after publication in the **Federal Register** unless the NRC receives significant adverse comments on the direct final rule within 30 days after publication. If significant adverse comments are received, the NRC publishes a document that withdraws the direct final rule. The NRC then addresses the comments received as comments on the proposed rule and subsequently issues a final rule.

One commenter supported use of the direct final rule process for future revisions to the listing in 10 CFR 72.214, stating that it was imperative that the regulatory process be streamlined when there is no adverse safety concern. Two commenters were opposed to use of a direct final rule process stating that a direct final rule would diminish the public role in commenting on the approval of spent nuclear fuel casks and thereby the public's ability to affect the outcome of rulemaking procedures. One of these commenters believed that, given past problems with the casks, future approval should be subject to adequate and rigorous public scrutiny.

Those opposed also believed that 30 days (as would be allowed in a direct final rule process) is not sufficient time to prepare comments that may be significantly adverse so as to cause the NRC to withdraw the published final rule. The two commenters did not believe that an addition to or revision of the listing is likely to be either noncontroversial or routine as evidenced by the number of comments they had on the Holtec HI-STAR 100 proposed rule.

A number of significant adverse comments were received on the NRC's proposed listing of the Holtec International HI-STAR 100 cask system which are described in subsequent sections of this notice. Therefore, it does not appear that the direct final rule approach can be implemented at this time for additions to the cask listing. The NRC will reassess this issue in the future after experience with more new listings to 10 CFR 72.214 has been gained. However, with respect to amendments to existing CoCs, the NRC anticipates that, except in unusual cases, the direct final rulemaking process can be used because the cask design and analysis will have gone through the public comment process for the initial CoC listing and the revision will be limited to the subject of the amendment. Unless the NRC has reason to believe that a particular amendment will be controversial, the NRC plans to use a direct final rule for amendments to the cask systems in the 10 CFR 72.214 listing. The NRC disagrees that use of the direct final rulemaking procedure will limit the public's ability to affect the outcome of the rulemaking. Receipt of a significant adverse comment will cause the direct final rule to be withdrawn and the comment to be considered as though received in response to a proposed rule. Further, the NRC believes that 30 days is a sufficient amount of time in which to submit a comment on an amendment to the CoC for a listed cask since most issues related to the cask design will have been resolved in the rulemaking conducted to place the design on the 10 CFR 72.214 list.

Comments on the Holtec International HI–STAR 100 Cask System

The comments and responses have been grouped into five areas: general comments, cladding integrity, health impacts, sabotage events, thermal requirements, and miscellaneous items. Several of the commenters provided specific comments on the draft CoC, the NRC staff's preliminary SER, the TSs, and the applicant's Topical SAR. Some of the editorial comments have been grouped as well as some of the comments on the drawings in the SAR. To the extent possible, all of the comments on a particular subject are grouped together. The listing of the Holtec International HI–STAR 100 cask system within 10 CFR 72.214, "List of approved spent fuel storage casks," has not been changed as a result of the public comments. A review of the comments and the NRC staff's responses follow:

General Comments

Comment No. 1: One commenter asked a number of questions about the process for review and approval of spent fuel storage cask designs, and suggested changes to the process.

Response: The NRC finds these comments to be beyond the scope of the current rulemaking which is focused solely on whether to place a particular cask design, the Holtec International HI–STAR 100 cask system, on the 10 CFR 72.214 list.

Comment No. 2: One commenter stated that the cask should be built and tested before use at reactors, including the loading and unloading procedures. The commenter objected to the use of computer modeling and analysis.

Response: The NRC disagrees with the comment. The HI–STAR 100 Storage Cask System Design has been reviewed by the NRC. The basis of the safety review and findings are clearly identified in the SER and CoC. Testing is normally required when the analytic methods have not been validated or assured to be appropriate and/or conservative. In place of testing, the NRC staff finds acceptable analytic conclusions that are based on sound engineering methods and practices. NRC accepts the use of computer modeling codes to analyze cask performance. The appropriateness of the computer codes and models used by Holtec are addressed in the SER and Topical SAR. The NRC staff has reviewed the analyses performed by HOLTEC and found them acceptable. No changes to the CoC, TSs, SER, or Topical SAR are recommended. These models are based on sound engineering sciences and processes.

Comment No. 3: One commenter requested that a troubleshooting manual be prepared that includes information on how many of what type cask are loaded, where and how long they have been loaded, and on problems that have occurred, and the solutions. The commenter is seeking basic information that is periodically updated.

Response: This comment is beyond the scope of this rulemaking.

Cladding Integrity

Comment No. 4: One commenter noted that Holtec's conclusion that fuel rod integrity will be maintained under all accident conditions is based on the fact that the HI–STAR 100 system is designed to withstand a maximum deceleration of 60 g, while a Lawrence Livermore National Laboratory Report (UCID–21246, *Dynamic Impact Effects on Spent Fuel Assemblies*, Chum, Witt, Schwartz (October 20, 1987)) (LLNL Report) shows that the most vulnerable fuel can withstand a deceleration of 63 g in the most adverse orientation (side drop). The commenter believes that Holtec and the NRC staff have not demonstrated a reasonable assurance that the cladding will maintain its integrity because Holtec's analysis does not take into account the possible increase in rate of oxidation of cladding of high burnup fuel, and oxidation may cause the cladding to become effectively thinner, decreasing its structural integrity and lowering the "g" impact force at which fuel cladding will shatter. With respect to a possible increase in rate of oxidation of cladding, Holtec has not factored the information in Information Notice (IN) 98–29, "Predicted Increase in Fuel Rod Cladding Oxidation" (August 3, 1998) into its calculations. The clear implication of IN 98–29, in the commenter's view, is that the lift height of the HI–STAR 100 cask must be reduced to lower the "g" impact forces on the cladding. Also, the commenter provided a table, "Effects of Changing Variables in Dynamic Impact Effects on Spent Fuel Assemblies," which the commenter believes shows that the maximum "g" impact force, that high burnup fuel with oxidized cladding can withstand, approaches 45 g.

Response: The NRC disagrees with the comment. Information Notice 98–29 states that high burn-up conditions may increase fuel rod cladding oxidation. The increased rate of oxidation is a function of the fuel burn-up and will only affect cladding in high burn-up fuel applications. In general, fuel with a burn-up exceeding 45,000 MWD/MTU is considered to be a high burn-up fuel. However, the Holtec HI–STAR 100 Storage Cask System is not authorized to contain fuel with a burn-up exceeding 45,000 MWD/MTU. Fuel cooling and the average burn-up approved for the HI–STAR 100 Storage Cask System is: (a) for MPC–24 PWR assemblies, the fuel burn-up is limited to 42,100 MWD/MTU; and (b) for MPC–68 BWR assemblies, the fuel burn-up is limited to 37,600 MWD/MTU. Therefore, the potential for significant amounts of

oxidized cladding is not a concern for the HI–STAR 100 Storage Cask System, and the table provided by the commenter regarding the consequences of significantly oxidized fuel cladding is not relevant to the approved contents of this cask design.

Comment No. 5: The same commenter stated that Holtec's SAR for the HI–STAR 100 storage cask relies upon the LLNL report for its estimate of "g" impact force that will damage fuel cladding but that the LLNL report fails to take into account the increased brittleness of irradiated fuel assemblies. Because the irradiated fuel assemblies may have been embrittled, they would also be less resistant to impact. During the course of a fuel assembly's life, subatomic particle bombardment, including neutron flux, significantly decreases the assembly's ductility and increases the assembly's yield stress, thereby embrittling the fuel assembly.

The HI–STAR 100 design cannot rely on LLNL's analysis, in the commenter's view, because the LLNL analysis does not account for irradiation and embrittlement, which lower the impact resistance of the fuel assemblies. These facts are significant when coupled with the increased oxidation rate reported in IN 98–29 because increased oxidation could tangentially cause an increase in cladding embrittlement. Thus, IN 98–29 compounds the LLNL's error in disregarding the brittle characteristics of irradiated fuel cladding.

Response: The NRC disagrees with the comment. The LLNL Report, as referred to, considers the effects of irradiation on cladding. Table 3 of the report delineates irradiated cladding longitudinal tensile tests on coupon specimens. These test specimens were machined from the cladding. The effects of irradiation will increase the Young's modulus and yield stress but decrease the ductility of the cladding. Figure 5 of the report shows that the total elongation values for zircaloy do not change significantly with strain rate and that the ductility appears to be independent of the level of the g-loading. Further, Figure 5 of the report shows that the yield strength is consistently lower than the tensile strength which suggests that significant margin exists between yielding of the cladding and gross rupture. The allowable "g" impact force calculation in the report is based on the yield stress. Thus, the approach that is used in the LLNL Report and reflected in the SAR is conservative and acceptable.

Comment No. 6: The same commenter stated that Holtec's calculations rely upon the LLNL report's erroneous assumption that the fuel within the cladding behaves as a rigid rod. Thus, Holtec merely used a static calculation for impact analysis versus a dynamic calculation. This assumption is incorrect, in the view of the commenter. Instead of a homogenous, rigid rod, the fuel rod consists of fuel pellets stacked like coins within thin tubing. In any impact scenario, the fuel assembly acts as a dynamic system with the fuel impacting the inside of the cladding and creating a greater likelihood of cladding rupture. Holtec has not shown that the assumption of a rigid rod is conservative. The thinner cladding due to the increased oxidation serves to compound this effect because a smaller "g" force would be required to rupture the assembly.

Response: The NRC disagrees with the comment. The assertion that the fuel rod consists of fuel pellets stacked like coins within thin tubing is incorrect for irradiated fuels. The fuel pellets are densely packed inside the fuel tubing, and the effects of irradiation will bond the pellets to each other and to the fuel cladding. Samples of irradiated fuel rods have shown that it is indeed nearly impossible to separate the fuel pellets and the cladding.

It is incorrect to assume the fuel rod acts as a dynamic system with the fuel pellets impacting the inside of the fuel rod cladding during an accident drop event. The fuel pellets are densely packed inside the fuel tube and, for irradiated fuels, the fuel pellets are bonded together and to the cladding. The LLNL Report discussed above has conservatively neglected the contributions of the fuel pellets to fuel rod rigidity. Rather, the report only considers the cladding for calculating the allowable g-load. It is true that the LLNL Report used static calculations to derive the allowable g-load equivalent to the dynamic impact loading. During an accident drop event, the fuel assembly is subjected to dynamic impact loading and the equivalent static g-load is determined by a dynamic analysis. The equivalent static g-load is then shown to be lower than the allowable g-load to ensure the fuel cladding integrity is maintained. The approach is well established and acceptable. Therefore, the NRC staff has found Holtec's accident analysis to be conservative as reflected in SER Chapter 11 and is therefore acceptable.

Comment No. 7: One commenter stated that the calculated health impacts under hypothetical accident conditions discussed in Chapter 7 of Holtec's HI–STAR 100 SAR are not 100 percent conservative. Holtec's original hypothetical design basis accident condition assumed that 100 percent of the fuel rods are nonmechanically ruptured and that the gases and particulates in the fuel rod gap between the cladding and fuel pellet are released to the multi-purpose canister (MPC) cavity and then to the external environment. The accident analysis in the final version increased the amount of radioactivity to the MPC cavity by 5 orders of magnitude in accordance with NUREG–1536, and would have placed doses at 100 m over the EPA's limit of 5 rem. An assumed small leakage rate by the applicant reduced the amount released from the cask cavity to the environment by more than 5 orders of magnitude. This design basis accident no longer represents a loss-of-confinement-barrier accident as originally described.

Response: The NRC disagrees with the comment. The hypothetical accident dose calculation is appropriate. As discussed in Interim Staff Guidance (ISG)–5, Rev. 1, "Normal, Off-Normal, and Hypothetical Accident Dose Estimate Calculations for the Whole Body, Thyroid, and Skin," the hypothetical accident assumes 100 percent fuel rod failure within the MPC cavity and release of radioactivity based on factors from NUREG/CR–6487. The applicant demonstrated that the HI–STAR 100 confinement boundary (MPC) remains intact from all credible accidents. Therefore, there is not a credible loss-of-confinement-barrier accident for the HI–STAR 100. The hypothetical accident leakage is conservatively assumed to be equal to that assumed for normal condition leakage with corrections for accident pressures and temperatures. The normal condition leak rate is specified in TS 2.1.1.

The NRC believes that there is reasonable assurance that the confinement design is adequately rigorous and will remain intact under the normal and accident conditions identified by the applicant. Therefore, the design basis change has been found to be conservative and meets applicable regulations.

Comment No. 8: One commenter requested the criteria for an intact fuel assembly, the number of pinhole leaks, blisters, hairline cracks, and crud. The commenter asked if a visual inspection is required and stated that just performing visual exam was inadequate.

Response: As proof that the fuel to be loaded is undamaged, the NRC will accept, as a minimum, a review of the records to verify that the fuel is undamaged, followed by an external visual examination of the fuel assembly before loading to identify any obvious damage. For fuel assemblies where reactor records are not available, the level of proof will be evaluated on a case-by-case basis. The purpose of this demonstration is to provide reasonable assurance that the fuel is undamaged or that damaged fuel loaded in a storage or transportation cask is confined (canned). The criteria for intact assembly are defined in TS Section 1.1 as being fuel assemblies without known or suspected cladding defects greater than pinhole leaks or hairline cracks and which can be handled by normal means. Partial fuel assemblies (fuel assemblies from which fuel rods are missing) shall not be classified as intact fuel assemblies unless dummy fuel rods are used to displace an amount of water greater than or equal to that displaced by the original fuel rods.

Radiation Protection

Comment No. 9: One commenter stated that Holtec calculated the radiation dose to an adult 100 meters from the accident due solely to inhalation of the passing cloud without considering other relevant pathways, such as direct radiation from cesium and cobalt-60 deposited on the ground, resuspension of deposited radionuclides, ingestion of contaminated food and water, and incidental soil ingestion, and does not reflect 10 CFR 72.24(m).

Response: The NRC agrees that Holtec calculated the radiation dose to an adult 100 meters from the accident due solely to inhalation of the passing cloud and did not consider direct radiation and ingestion. The NRC staff considers inhalation to be the principal pathway for radiation dose to the public, and Holtec has followed NRC staff guidance in making conservative assumptions regarding the source term and duration of the release. In SER Chapter 10, the NRC staff found that the radiation shielding and confinement features of the cask design are sufficient to meet the radiation protection requirements of 10 CFR Part 20, 10 CFR 72.104, and 10 CFR 72.106. Section 72.106 addresses postaccident dose limits.

When a general licensee uses the cask design, it will review its emergency plan for effectiveness in accordance with 10 CFR 72.212. This review will consider interdiction and remedial actions to monitor releases and pathways based on the chosen site conditions and the location. Therefore, the pathways identified by the commenter will be addressed in the general licensee's site specific review.

Comment No. 10: One commenter stated that Holtec has not specifically calculated potential radiation dose to children, and this does not meet NRC regulations. Further, the commenter stated that NRC's methodology for calculating the potential dose to children is deficient.

Response: The NRC disagrees with the comments. While Holtec did not specifically calculate potential radiation dose to children, the international community and the Federal agencies (including EPA and the NRC) agree that the overall annual public dose limit, from all sources, should be 1 mSv (100 mrem) which is protective of all individuals. The purpose of the public dose limit is to limit the lifetime risk from radiation to a member of the general public. Variation of the sensitivity to radiation with age and gender is built into the standards which are based on a lifetime exposure. A lifetime exposure includes all stages of life, from birth to old age. For ease of implementation, the radiation standards, that are developed from the lifetime risk, limit the annual exposure that an individual may receive. Consequently, the unrestricted release limit of 0.25 mSv (25 mrem), a small fraction of the annual public dose limit, is protective of children as well as other age groups because the variation of sensitivity with age and gender was accounted for in the selection of the lifetime risk limit, from which the annual public dose limit was derived.

The NRC continues to believe that the existing regulations and approved methodologies adequately address public health and safety. The issue of dose rates to children was addressed in the May 21, 1991, **Federal Register** notice (56 FR 23387).

Comment No. 11: One commenter asked if the streaming dose rates have been measured and if not, will they be measured on the first cask loading?

Response: There is no NRC regulatory requirement to measure streaming dose rates at the first cask loading. Further, the applicant did not provide measured dose rates from cask streaming in its application because it was not required. The applicant did provide calculated streaming dose rates in the SAR shielding analysis. The HI–STAR 100 system is designed to eliminate significant streaming paths, and each user is required to operate the HI–STAR 100 under a 10 CFR Part 20 radiological program. NRC has reasonable assurance that the general licensee's radiological protection and ALARA program will detect and mitigate exposures from any significant or unexpected radiation fields for each cask loading.

Comment No. 12: One commenter stated that the applicant should have performed a specific analysis for off-normal conditions for confinement analysis and should have included an "^{85}K" (Kr-85) dose calculation to the skin.

Response: The NRC agrees. The applicant should have done an off-normal condition confinement analysis; however, the off-normal case dose is approximately a factor of 10 greater than normal dose. The Holtec normal condition results show acceptable doses when the factor of 10 is applied for off-normal conditions and have been found acceptable as reflected in the SER. No additional action is necessary to meet applicable NRC regulations.

Comment No. 13: One commenter stated that the licensees' report on specific site doses to the public should be included in the PDR.

Response: The dose for a site-specific location is beyond the scope of this rulemaking. Licensees are required to meet the dose restriction in 10 CFR Part 20.

Comment No. 14: One commenter asked for a definition of inflatable annulus seal. The commenter further questioned the checks and criteria for surface contamination.

Response: The inflatable annulus seal, which is discussed in Sections 1.2.2.1, 8.1, and 10.1.4 of the SAR, is designed to prevent radionuclide contamination of the exterior MPC while the cask is submerged in a contaminated spent fuel pool. The space between the MPC and overpack is filled with clean water and is sealed at the top of the MPC with the inflatable annulus seal. After the seal is removed, the upper accessible portion of the MPC is examined for contamination to verify that the seal remained intact during underwater loading. NRC found the seal description and operation to be acceptable. Each general licensee will develop site-specific operating procedures that address the use of the inflatable annulus seal. Each general licensee will also operate the HI–STAR 100 under a 10 CFR Part 20 radiological protection program.

Comment No. 15: One commenter suggested that there should be criteria for the distance of dose measuring mechanism from the cask and personnel during loading and unloading.

Response: NRC disagrees with this suggestion because NRC regulations do not specifically require these criteria for dose measurement. Each general licensee is required to operate the HI–STAR 100 under a 10 CFR Part 20 radiological program and must develop site-specific operating procedures that include radiological protection dose surveys that must be conducted during loading and unloading operations.

Sabotage Events

Comment No. 16: One commenter stated that the current sabotage design basis is not a bounding accident and that the NRC should consider the effect of a sabotage event with an anti-tank missile. There is a lack of a comprehensive assessment of the risks of sabotage and terrorism against nuclear waste facilities and shipments. The NRC staff could impose additional conditions on dry storage casks and Independent Spent Fuel Storage Installations (ISFSIs), e.g., the CoC could require that an ISFSI be designed with an earthen berm to remove the line-of-sight.

The commenter stated that since the early 1980s, the NRC has relied on and poorly interpreted an outdated set of experiments carried out by Sandia National Laboratory and Battelle Columbus Laboratories that measured the release of radioactive materials as a result of cask sabotage. The NRC has never estimated the economic and safety implications of a sabotage event at a fixed storage facility. Following the publication of these Sandia study results, the NRC proposed elimination of a number of safety requirements for shipments of spent fuel. At least 32 parties submitted more than 100 pages of comments in response to the notice, to which the NRC never publicly responded. The NRC suspended action on the rulemaking but inappropriately continues to use the unrevised conclusions in the proposed rule as a basis for its policies on terrorism and sabotage of nuclear shipments.

Response: The NRC disagrees with the comment. The NRC reviewed potential issues related to possible radiological sabotage of storage casks at reactor site ISFSIs in the 1990 rulemaking that added subparts K and L to 10 CFR Part 72 (55 FR 29181; July 18,1990). NRC regulations in 10 CFR Part 72 establish physical protection requirements for an ISFSI located within the owner-controlled area of a licensed power reactor site. Spent fuel in the ISFSI is required to be protected against radiological sabotage using provisions and requirements as specified in 10 CFR 72.212(b)(5). Further, specific performance criteria are specified in 10 CFR Part 73. Each utility licensed to have an ISFSI at its reactor site is required to develop physical protection plans and install systems that provide high assurance against unauthorized activities that could constitute an unreasonable risk to the public health and safety.

The physical protection systems at an ISFSI and its associated reactor are similar in design features to ensure the detection and assessment of unauthorized activities. Alarm annunciations at the general license ISFSI are monitored by the alarm stations at the reactor site. Response to intrusion alarms is required. Each ISFSI is periodically inspected by NRC, and the licensee conducts periodic patrols and surveillances to ensure that the physical protection systems are operating within their design limits. It is the ISFSI licensee who is responsible for protecting spent fuel in the casks from sabotage rather than the certificate holder. Comments on the specific transportation aspects of the cask system and existing regulations specifying what type of sabotage events must be considered are beyond the scope of this rulemaking.

Comment No. 17: One commenter asked whether an evaluation for a truck bomb sabotage event has been conducted.

Response: The staff has evaluated the effects of a truck bomb located adjacent to storage casks. Spent fuel in the ISFSI is required to be protected against radiological sabotage using provisions and requirements as specified in 10 CFR 72.212(b)(5). Each utility licensed to have an ISFSI at its reactor site is required to develop physical protection plans and install a physical protection system that provides high assurance against unauthorized activities that could constitute an unreasonable risk to the public health and safety. The physical protection systems at an ISFSI and its associated reactor are similar in design to ensure the detection and assessment of unauthorized activities. Response to intrusion alarms is required. Each ISFSI is periodically inspected by NRC, and the licensee conducts periodic patrols and surveillances to ensure that security systems are operating within their design limits. The NRC believes that the inherent nature of the spent fuel and the spent fuel storage cask provides adequate protection against a vehicle bomb, and has concluded that there are no safety concerns outside the controlled area.

Thermal Requirements

Comment No. 18: One commenter stated that the CoC temperature limits for the storage cask are deficient because they do not take into account a minimum pitch or center-to-center distance between casks to be stored in the ISFSI. Further, Holtec has not performed rigorous calculations to support the assigned pitch of 12-foot or 4-foot spacing between casks based on the amount of detail in its nonproprietary version of its analyses.

Response: The NRC disagrees with the comment. In Section 4.4.1.1.7 of the SAR, Holtec addressed the heat transfer interaction between the overpacks for a cask array at an ISFSI site. No forced convection was assumed (e.g. stagnant ambient conditions which would maximize the interaction heat effect). The applicant further adjusted the heat transfer in accordance with ANSYS methodology and applied it in the calculations. Further, in SER Section 4.5.2.1, the NRC staff noted that the applicant considered in its temperature calculations that multi-purpose cask baskets were loaded at design basis maximum heat loads, and systems were considered to be arranged in an ISFSI array and subjected to design basis normal ambient conditions with insulation. The NRC staff concluded in the SER that it has reasonable assurance that the spent fuel cladding will be protected against degradation by maintaining the clad temperature below maximum allowable limits.

Miscellaneous Items

Comment No. 19: One commenter asked why a coating without zinc was not required for the VSC–24 cask design. The commenter further questioned why NRC allowed coatings to be applied to casks because it will create problems for future DOE waste disposal.

Response: NRC regulations do not prohibit the use of coatings in a cask design. An applicant must provide information in its safety analysis report to support use of coatings. The applicant should describe the near and long term effects of the coatings on systems important to safety including the benefits and potential impacts of coating use. Based on the applicant's analysis, the NRC reviews and assesses the use and adequacy of the coatings. Specific comments relating directly to VSC–24 are beyond the scope of this rulemaking.

Comment No. 20: One commenter asked why the current HI-STAR 100 is not an ASME stamped component.

Response: NRC regulations do not require an ASME stamp for a cask. The design and fabrication requirements for a certified dry cask storage system are described in 10 CFR Part 72 and the NRC staff's Standard Review Plan, NUREG 1536, "Standard Review Plan for Dry Cask Storage Systems." Applicant submittals are reviewed to the criteria in the Standard Review Plan. Cask fabrication activities are inspected by the licensees and the NRC staff to ensure that components are fabricated as designed.

Comment No. 21: One commenter asked a number of questions related to the Boral and NS–4–FR concerning (1) Whether it has been used "over time" in a cask, (2) the amount of "creep or slump" that has occurred over time, (3) how the testing is conducted, and (4) how the Boral content is tested in the panels. The commenter further asked if fabrication is inspected and why no surveillance or monitoring program is required to check the Boral content.

Response: The questions and comments on the Boral neutron absorber are addressed in Sections 6.4.2 and 9.1.4 of the SER and Sections 1.2.1.3.1, 6.3.2, and 9.1.5.3 of the SAR. The NRC routinely accepts the use of Boral as a neutron absorber for storage cask applications, and it has been used in casks. NRC has approved both storage and transportation cask designs that use Boral. Section 1.2.1.3.1 of the SAR describes the historical applications and service experience of Boral. This information indicates that Boral has been used since the 1950's and used in baskets since the1960's. Several utilities have also used Boral for nuclear applications such as spent fuel storage racks. Based on industry experience, no credible mechanism for "creep or slump" of Boral in the cask has been identified.

Sections 1.2.1.3.1 and 9.1.5.3 of the SAR describe the testing procedures for Boral. Boral will be manufactured and tested under the control and surveillance of a quality assurance and quality control program that conforms to the requirements of 10 CFR Part 72, Subpart G. A statistical sample of each manufactured lot of Boral is tested by the manufacturer using wet chemistry procedures and/or neutron attenuation techniques.

The Boral is designed to remain effective in the HI–STAR 100 system for a storage period greater than 20 years and there are no credible means to lose the Boral. Further, the NRC accepts the use of NS–4–FR as a neutron absorber for storage cask applications, and it has been used in other casks. Therefore, surveillance and monitoring are not needed.

Comment No. 22: One commenter provided a discussion on the VSC–24 design. The issues included materials, the use of coatings, the use of March Metalfab as a fabricator, calculations being performed when problems are being solved, testing of soils and pads, and cask handling temperatures.

Response: These comments are beyond the scope of the current rulemaking.

Comment No. 23: One commenter asked how the prepossession or anodization of aluminum surfaces is checked and what the criteria were for the inspection.

Response: The NRC disagrees that an inspection is necessary. The only aluminum used in the MPC–24 or MPC–68 is for the Boral neutron absorbers. Aluminum forms a very thin, adherent film of aluminum oxide whenever a fresh cut surface is exposed to air or water, becoming thicker with increasing temperatures and in the presence of water (Source: "Corrosion Resistance of Aluminum and Aluminum Alloys," Metals Handbook, Desk Edition, American Society for Metals, 1985). Thus, no inspection or acceptance criteria are necessary.

Comment No. 24: One commenter requested clarification on whether the helium will be pure and not mixed with krypton or xenon that would have an effect on internal pressure or temperature. The commenter also asked whether the helium had to be dry.

Response: Only pure helium will be used to backfill the cask; no krypton or xenon gasses will be added during backfill. Technical Specification Table 2–1, Footnote 1, specifies that helium used for backfill of MPC shall have a purity of ≥99.995%. Acceptable helium purity for dry spent fuel storage was defined by R. W. Knoll et al. at Pacific Northwest Laboratory (PNL) in "Evaluation of Cover Gas Impurities and Their Effects on the Dry Storage of LWR Spent Fuel," PNL–6365, November 1987. Helium purity is addressed in SAR Section 8.1.4, MPC Fuel Loading, Step 28, and SER Section 8.1.3.

Comment No. 25: One commenter asked whether leakage of gases, volatiles, fuel fines, and crud was considered credible and whether the analysis addressed this concern.

Response: The applicant has calculated the postulated annual dose at 100 meters assuming a realistic leakage rate consistent with ANSI N14.5 Standard "Leakage Tests on Packages for Shipment for Radioactive Materials" (1997) and has reflected the results in SAR Chapter 7. The applicant's analysis addresses the commenter's concern, and the calculated dose had been found to be within regulatory guidelines (limits) and acceptable to the NRC staff.

Comment No. 26: One commenter was concerned that the cask could drop or tip over in the loading area of the plant and whether this has been evaluated. The commenter was also concerned about a drop or tip over during transfer from the pad or during transport and that all of the analysis seemed to be for the pad.

Response: The tipover, end drops, and horizontal drop analyses form part of the structural design basis for the HI-STAR 100 cask design. Holtec described drops and tipover analyses in SAR Section 3.4.9. The NRC's evaluation of the vendor's analyses is described in SER Sections 3.2.3.1 and 3.2.3.2. The NRC found the results of these analyses to be satisfactory in that the calculated stresses were within the allowable criteria of the American Society of Mechanical Engineers (ASME) Code. Before using the HI-STAR 100 casks, the general licensee must evaluate the foundation materials to ensure that the site characteristics are encompassed by the design bases of the approved cask. The events listed in the comment are among the site-specific considerations that must be evaluated by the licensee using the cask.

Comment No. 27: One commenter asked whether the design has been evaluated for a seismic event during loading and unloading.

Response: The HI-STAR 100 casks can only be wet loaded and unloaded inside the fuel handling facility. Generally, these activities take place in a segregated under-water cask loading pit which would limit cask movement during a seismic event. The cask will be supported for a seismic event during loading and unloading. General procedure descriptions for these operations are summarized in Sections 8.1 and 8.3 of the SAR. Detailed loading and unloading procedures are developed and evaluated on a site-specific basis by the licensee using the cask.

Comment No. 28: One commenter questioned whether the method for cooling has been tested with a real cask.

Response: The NRC regulations and guidance in the Standard Review Plan require the review and approval of the design criteria. No testing is required for approval of the design under this current rule. The cask user is required to perform preoperational testing to determine the effectiveness of the cooling methods.

Comment No. 29: One commenter questioned whether the manufacturer's literature for the "high emissivity" paint on the overpack had been evaluated and tested, how the testing was done, and what the results were. The commenter also questioned whether/how the painted components were safely stored. The commenter further stated that the paint on the surfaces of the overpack should be a specified paint, not just a requirement of "an emissivity of no less than 0.85."

Response: The manufacture and application of high-emissivity paints is

not a new technology. Several manufacturers provide paints with specified emissivity ratings. Thermal tests are required to confirm the heat transfer capabilities of the inner and intermediate shells and radial channels. Annual cask inspection will check the exterior surface conditions at which time the paint will be examined and touched up in local areas as necessary. The NRC does not believe that identifying a specific brand name of paint is required. There are several suppliers who manufacture paints with the specified emissivity. The NRC has reviewed the applicant's analysis and found that paints with an emissivity greater than 0.85 are acceptable.

Comment No. 30: One commenter questioned the drain down time and asked how frequently the water is checked. The commenter requested information on what happens if the MPC can't be vacuum dried successfully and when the fuel needs to be put back in the spent fuel pool.

Response: The drain down time is not specified in the TSs but is part of the vacuum drying procedure. The TSs state that the vacuum drying must be completed within 7 days. There is not a specific procedure in the application to monitor the water content; however, that will be addressed by the cask user on a site-specific basis and is beyond the scope of this rulemaking. If the drying process is unsuccessful and the TS requirements cannot be met within 30 days, the fuel assemblies must be moved from the cask and be placed in the spent fuel pool.

Comment No. 31: One commenter requested information on the cask storage array on the pad and the radiation affect from other casks in a full cask array. The commenter further requested information on how the applicant/certificate holder/licensee will examine and/or test the HI STAR 100 and who was actually responsible for the test. The commenter questioned whether a domed cask cover would be better for runoff and sky shine concerns.

Response: The applicant performed a shielding analysis that included a three-by-three cask array (square) model to simulate the average dose contribution from the center cask, which is partially shielded by the surrounding periphery casks. This value is applied in an offsite dose formula used to estimate offsite doses from every cask in the array. The center-to-center cask pitch was assumed to be 12 feet in the shielding analyses. Testing of the actual as-installed configuration will be performed by the cask user and will be evaluated at that time. Offsite dose estimates for a typical ISFSI array, including the affects of multiple casks and skyshine, are discussed in Sections 5.4.3 and 10.4.1 of the SAR. NRC found the dose estimates to be acceptable. As required in 10 CFR 72.212, each general licensee will perform a site-specific dose evaluation to demonstrate compliance with Part 72 radiological requirements. The general licensee will identify an ISFSI configuration and may elect to use additional engineered features of its choosing, such as shield walls, a domed cover, or berms, to ensure compliance with radiological requirements. Section 1.4.7 of Appendix B to the CoC requires that any such engineered feature be considered important to safety and evaluated to determine the applicable quality assurance category.

Comment No. 32: One commenter questioned what the criteria were for the polyester resin "poured" into radial channels, how they were tested, handled and inspected, and whether they had been tested in a real cask. The commenter questioned whether a "poured" neutron shield was really safe and whether uncontrolled voids caused a problem with occupational dose requirements. The commenter stated that poured neutron shields should not be used.

Response: The NRC has reviewed Holtec's application that described the neutron shielding to be used to meet the requirements of 10 CFR 72.104 and 72.106. The NRC found the Holtec approach acceptable. The methods for testing, handling, and inspecting installation of the shielding are beyond the scope of this rulemaking. However, poured neutron shielding has been successfully used in other cask designs.

Comment No. 33: One commenter stated that appropriate limits for burnup should be specified in the CoC. The commenter is concerned that the SAR analysis assumed significantly higher burnups than allowed and significantly higher initial uranium loading than specified in the table.

Response: Burnup, cooling time, initial uranium loading, and initial enrichment are parameters that affect the total source term (radioactivity) of spent fuel. The applicant's source term analysis assumed higher uranium loadings and higher burnups than those specified in TSs of the CoC. Therefore, the radiological source term is conservative relative to the allowed burnups and uranium loadings.

As discussed in Section 5.2.1 of the preliminary SER, for the same level of burnup, neutron source terms typically increase as initial enrichment decreases. Therefore, the source term analysis employed lower-than-average enrichment values. Based on the SAR analyses, conditions of the CoC, and other requirements in Parts 20 and 72, the NRC has determined that minimum enrichment is not warranted as an additional operating control for the HI–STAR 100. Specific reasons for this determination include the following: (1) the enrichments bound a significant portion of spent fuel, and the source terms are calculated for burnups significantly higher than those allowed in the CoC; (2) the radiological source terms are adequately controlled in the CoC by limits on maximum burnup, minimum cooling time, maximum initial uranium loading, and maximum decay heat; (3) dose rates are controlled in the CoC by specific dose limits for the top and side of the cask that are based on values calculated in the shielding analysis; (4) each general licensee will perform a site-specific dose evaluation to demonstrate compliance with Part 72 radiological requirements; and (5) each general licensee will operate the ISFSI under a Part 20 radiological protection program.

NRC agrees with the comment that the preliminary SER term of "low probability" may not provide definite criteria for general license cask users regarding limitations on minimum enrichment. Therefore, Chapter 5 of the SER has been revised to clarify that minimum enrichment is not an operating control for the HI–STAR 100.

Comment No. 34: One commenter asked what has been considered as credible ways to lose the fixed neutron poisons.

Response: The NRC staff does not consider the loss of fixed neutron poisons to be credible after they are installed into the cask because the poisons are fixed in place and contained.

Comment No. 35: A commenter questioned how the welds of the MPC lid and closure ring are tested and asked for the acceptance criteria.

Response: Information on the welds is contained in SAR Tables 9.1.1, 9.1.2, and 9.1.3.

Comment No. 36: One commenter asked whether shims are used and stated that shims or gaps were not acceptable.

Response: There are no shims used in the closure weld of the HI–STAR 100 casks. The only shims used are located between the canister and the overpack at basket support locations to provide additional support for the basket supports. The actual thickness of the shim will depend on the gaps between the cask and the inside cavity of the overpack at the basket support locations. Gaps between separate components such as the cask and the overpack are unavoidable and are necessary to ensure that there will be no physical interferences and to allow free thermal expansions.

Comment No. 37: One commenter stated that all welds should be monitored unless they have been tested.

Response: NRC accepts welded closure of casks. The regulations do not require monitoring or testing of welds because there are no expected degradation mechanisms identified during the cask usage life. However, both the fabricator and cask user will examine and inspect all welds as appropriate.

Comment No. 38: One commenter stated that the detailed loading and unloading procedures developed by each cask user should be put in the PDR.

Response: Loading and unloading procedures are site-specific issues not required for design approval and are beyond the scope of this rulemaking.

Comment No. 39: One commenter asked how long before an ultrasonic testing examination is conducted should the equipment be calibrated.

Response: Comments on the site-specific examination techniques and associated calibration are beyond the scope of rulemaking for the HI–STAR 100 system.

Comment No. 40: One commenter was concerned over the possibility that the bolts could rust and crack over time or become brittle and crack because water, ice, and frost could get into the bolt holes over the years.

Response: The NRC disagrees with this concern over the integrity of the bolting material. The 54, 1⅝-inch-diameter, closure plate bolts are made from ASME SB–637–N07718 material per SAR BM–1476. N07718, a nickel-chromium alloy, does not become brittle at colder temperatures. N07718 is a high strength, corrosion resistant material used in applications with a temperature range from −423 °F (−253 °C) to 1300 °F (704 °C) (Source: Inconel Alloy 718, Inco Alloys International, fourth edition, 1985). This material will not rust, unlike carbon steels in corrosive environments. In addition, the material retains significant ductility down to −320 °F (−196 °C) as shown by impact test results (Source: Inconel Alloy 718, Table 27). Therefore, the NRC has no concerns about the bolting material.

Comment No. 41: One commenter asked what type of radiographic exam is applicable and where it would be conducted.

Response: SAR Tables 9.1.1, 9.1.2, and 9.1.3 describe which radiographic exams are to be performed and when they are required to be performed.

Comment No. 42: One commenter disagreed with allowing the use of a penetrant test in lieu of volumetric examination on austenitic stainless steels because flaws in these are "not expected" to exceed the thickness of the weld head. The commenter believes that volumetric welds should be required because if you don't know for sure the real size of the actual weld, how can you accept a certain flaw size? The commenter asked how the permanent record is kept and stated that black and white photographs should be used as a permanent record.

Response: NRC disagrees with this comment. The NRC position on inspection of closure welds is contained in ISG–4, "Cask Closure Weld Inspections." Actual cask welds are examined in accordance with site-specific procedures that are beyond the scope of rulemaking for the HI–STAR 100 system. Nondestructive Examination (NDE) methods are specified in accordance with Section III "Rules for Construction of Nuclear Power Plant Components," and Section V "Nondestructive Examination," of the ASME Code and are already described in SAR Tables 9.1.1, 9.1.2, and 9.1.3. A permanent record of completed welds will be made using video, photographic, or other means that can provide a retrievable record of weld integrity. As per accepted industry practice, the record is typically in color format, in order to capture the red dye typically used for PT examinations.

Comment No. 43: One commenter believed that the marking material for the casks should be designated and that the mark needed to be permanent.

Response: NRC agrees with the comment. The storage marking nameplate is made from a 4-inch by 10-inch, 14-gauge Type 304 stainless steel sheet and welded to the outside of the HI–STAR 100 Overpack. Lettering will be etched or stamped on the plate. Details are shown in SAR Drawing 1397, Sheet 4 of 7, and described in SER Section 9.1.6. The nameplate will provide appropriate cask identification that will last well beyond the design life of the HI–STAR 100 system. No nonpermanent marking will be used.

Comment No. 44: One commenter requested information on "rupture disc replacements," how they are tested for replacement, what the time criteria are, and what is considered a rupture.

Response: The rupture disc is located in the neutron shield tank of the HI–STAR 100 casks. The purpose of the rupture disc is to limit pressure build-ups to a precalculated level within the neutron shield tank during the fire accident condition. When the pressure build-up exceeds the precalculated design pressure, the disc will rupture to relieve the pressure. The rupture disc is tested and certified by the manufacturer. There is no regulatory requirement for the replacement of rupture discs. The SAR has arbitrarily set a replacement schedule for every 5 years to assure functionality.

Comment No. 45: One commenter asked if the casks are checked in winter for ice and snow loads or ice around the base and if the pads will be kept clean.

Response: Casks are designed for the worst ice and snow loads possible. Ice build-ups around the cask base are not allowed, and the pad will be kept clean. Site-specific procedures will address these items.

Comment No. 46: One commenter questioned if there was an evaluation for a plane crash, with a fuel fire, into a cask or full cask array conducted and whether there is a stipulation as to putting a pad in an area where planes regularly fly.

Response: Before using the HI–STAR 100 casks, the general licensee must evaluate the site to determine whether or not the chosen site parameters are enveloped by the design bases of the approved cask as required by 10 CFR 72.212(b)(3). The licensee's site evaluation should consider the effects of nearby transportation and military activities. Generally, a cask's inherent design will withstand tornado missiles and collision forces imposed by light general aviation aircraft (i.e., 1500–2000 pounds) that constitute the majority of aircraft in operation today. The events listed in the comment are among the site-specific considerations that must be evaluated and are beyond the scope of this rulemaking.

Comment No. 47: One commenter questioned why Holtec stated that the HI–STAR 100 could be part of the final geologic disposal system.

Response: The NRC is not reviewing this design for use in a final geologic disposal system, but only for interim storage under Part 72.

Comment No. 48: One commenter asked where the MPC shell weld is located and if the pocket trunnions at the bottom of the overpack have been analyzed specifically for tipovers and falls.

Response: The MPC shell has multiple welds located both longitudinally on the side of the MPC and circumferentially on the top and bottom of the MPC. The pocket trunnions at the bottom overpack have been analyzed by the applicant for tipovers and falls. The NRC reviewed the design for normal, off-normal, and

accident conditions, and found it acceptable.

Comment No. 49: One commenter stated that the lifting and pocket trunnions should be checked over the years for cracking or brittleness and for debris accumulation and should be kept ready for use over the years.

Response: The NRC agrees with this comment. As shown in SAR Table 9.2.1, lifting trunnion and pocket trunnion recesses are visually inspected before the next handling operation after HI–STAR 100 casks are placed on the ISFSI pad. The trunnion material has been evaluated for brittle fracture and found to be satisfactory for the operating temperature range. In addition, the trunnions are load tested in accordance with ANSI N14.6, "American National Standard for Radioactive Materials—Special Lifting Devices for Shipping Containers Weighing 10000 Pounds (4500 kg) or More." Thus, there is no credible reason to suspect undetected cracking or brittleness. The pocket trunnion recess is closed by a pocket trunnion plug during storage. There is no possibility of animal and bird access and nesting in the recess.

Comment No. 50: One commenter requested information on the criteria for the critical flaw size.

Response: The criteria for critical flaw size are included in ISG No. 4, "Cask Closure Weld Inspections." The NRC review determined that Holtec's proposed methodology is consistent with this ISG.

Comment No. 51: One commenter asked how subcontractors are to be audited and inspected.

Response: This comment is beyond the scope of this rulemaking.

Comment No. 52: One commenter believed that the first cask for each utility should be tested at a full heat load and asked what is meant by the "First System In Place" requirement.

Response: The heat transfer characteristics of the cask system will be recorded by temperature measurements for the first HI-STAR 100 systems (MPC–24 and MPC–68) placed into service with a heatload greater than or equal to 10 kW. An analysis shall be performed by the cask user that demonstrates that the temperature measurements validate the analytical methods and the predicted thermal behavior described in Chapter 4 of the SAR.

The cask user will perform validation tests for each subsequent cask system that has a heat load that exceeds a previously validated heat load by more than 2 kW (e.g., if the initial test was conducted at 10 kW, then no additional testing is needed until the heat load exceeds 12 kW). No additional testing is required for a system after it has been tested at a heat load greater than or equal to 16 kW.

The cask user will provide a letter report to the NRC in accordance with 10 CFR 72.4 summarizing the results of each of these validation tests. Cask users may also satisfy these testing and reporting requirements by referencing validation test reports submitted to the NRC by other cask users with identical designs and heat loads.

Comment No. 53: One commenter asked how much water is to be drained under the MPC lid before welding and how the temperature enters into the calculations.

Response: Chapter 8 of the SAR directs the operators to pump approximately 120 gallons of water from the MPC before commencing welding operations. The water level is lowered to keep moisture away from the weld region. Under these conditions, ample water remains inside the MCP to maintain cladding temperatures well below their short term limits. This operating condition has been evaluated by the NRC. The resulting temperature increase is much less than any previously analyzed accident condition might produce.

Comment No. 54: One commenter asked how lifting height should be verified and stated that the height should be recorded.

Response: The maximum lifting height maintains the operating conditions of the Spent Fuel Storage Cask (SFSC) within the design and analysis basis. It is the general licensee's responsibility to limit the SFSC lifting height to allowable values. The lift height requirements are specified in TS LCO 2.1.7 for the vertical and horizontal orientations. Surveillance requirements require verification that SFSC lifting requirements are met after the SFSC is either suspended or secured in the transporter and prior to moving the SFSC within the ISFSI.

Comment No. 55: One commenter questioned how the MPC closure ring, lid, vent, and drain covers are removed during unloading and what precautions are taken.

Response: The specific procedures for removal of the closure ring, lid, vent, and drain covers are to be developed by the cask user. These procedures will be evaluated by the licensee and by the NRC during inspections to address adequacy and implementation and, therefore, are beyond the scope of this rulemaking.

Comment No. 56: One commenter questioned that if the MPC gas temperature is not met, what additional actions are required and have they been evaluated (TS B3.1.8–3)?

Response: The NRC staff has evaluated this condition. The TSs require that if the MPC gas temperature is exceeded during unloading, no additional operational actions may be conducted until the temperature is restored to below the TS limit.

Comment No. 57: One commenter asked if "dry" unloading operations are considered.

Response: A dry unloading operation was not requested or explicitly described in the SAR and thus is not currently allowed for the HI–STAR 100 system and is beyond the scope of this rulemaking.

Comment No. 58: One commenter questioned if crud disposal is a problem and how it can be mitigated.

Response: Dispersal of crud is beyond the scope of this rulemaking and is a site-specific issue. Experience with wet unloading of some fuel types after transportation has involved handling significant amounts of crud. However, the NRC notes that the HI–STAR generic unloading procedures mitigate crud dispersal. As discussed in Section 8.3.1 of the SAR, these procedures include gas sampling of the MPC internal atmosphere and specific cool-down steps. Each cask user will develop additional site-specific unloading procedures based on its radiological protection program to further address and mitigate crud dispersal.

Comment No. 59: The applicant made comments relevant to the helium backfill pressure of the cask. After discussions with the NRC staff, Holtec withdrew this comment during a telephone conversation on 5/7/99.

Response: Not applicable.

Comments on Proposed TSs

Upon review of the public comments received on the proposed TSs for the HI–STAR–100 Storage Cask, particularly comments received from EXCEL Corporation and the Holtec Users Group, the NRC staff has determined that several structural changes to the TSs were in order. These changes result in a clearer set of TSs and move the TSs from the new generation of dual-purpose cask systems toward a standardized format.

Comment No. 60: It was suggested that controlling the bases for the TSs as part of the CoC would result in administrative burdens to all involved. These bases are not controlled as part of power reactor licenses.

Response: The NRC staff agrees. Therefore, the bases have been relocated to an appendix to the SAR.

Comment No. 61: A number of commenters also raised concerns with the inclusion of the extensive fuel specifications (formerly Section 2.0) and a very lengthy design specification section (formerly Section 4.0).

Response: The NRC staff agrees that placement of much of this information in the TSs is unwarranted. Therefore, much of the information regarding fuel specifications and some of the design and codes information were moved from the TSs to a separate appendix to the CoC. However, the NRC staff did maintain some of the information regarding requirements for bases controls by adding it to a revised Section 3.0, "Administrative Controls and Programs," of the TSs.

Upon consideration of public comments and further consideration within the NRC, the NRC staff has determined that the structure of TS Section 2.1, "SFSC INTEGRITY," did not provide appropriately clear guidance. Therefore, the NRC staff has revised this section of the TSs to reflect a more logical and focused approach. The number of limiting conditions for operations (LCOs) in this section has been reduced to four. The NRC staff believes that this will enhance the usefulness of the TSs.

Comment No. 62: One commenter stated that if surface contamination exceeds 2200 dpm/100 cm2 from gamma and beta emitting sources, and smearable contamination limits cannot be reduced to acceptable levels, the TSs require actions up to and including removal of the MPC from the HI–STAR 100 overpack after removing the spent fuel from the MPC. The commenter stated that the proposed Skull Valley ISFSI in Utah does not have facilities for decontaminating casks and, therefore, these TSs could not be met.

Response: The NRC agrees in part. The revised version of the TSs (TS 2.2.2) requires verification that removable contamination is within limits during loading operations and provides up to 7 days to restore the contamination within limits. The specifications no longer list MPC or spent fuel removal actions. Further, comments on the proposed site-specific Skull Valley ISFSI currently under review are beyond the scope of this rulemaking. Decontamination requirements will be reviewed as part of the site-specific licensing provisions under Part 72 Subpart B for the Skull Valley ISFSI.

Comment No. 63: One commenter stated that the definition of "TRANSPORT OPERATIONS" needs to be revised to reflect that the drop analysis is not limited to drops from the transporter, and that lifting of a cask with other devices is not prohibited. The commenter recommended similar changes to the definition of "LOADING OPERATIONS" and "UNLOADING OPERATIONS."

Response: The NRC disagrees. The definitions of the three terms in question do not prohibit lifting of a cask with other devices (the revised note in TS 2.1.3 clarifies this issue), nor do the definitions affect the lifting requirements contained in TS 2.1.3.

Comment No. 64: One commenter stated that it would increase the standardization of the TSs by relocating the explanatory information of the defined terms in TS Section 1.0 to the TS Bases.

Response: The NRC disagrees with the comment. The terms defined in TS Section 1.0 are important in the understanding of the TS requirements. These definitions need to be contained within the TSs. This practice is consistent with the standard TSs developed for the U.S. nuclear power reactors.

Comment No. 65: One commenter stated that in Examples 1.3–2 and 1.3–3, the word "action" should be capitalized.

Response: The NRC agrees. The word "action" has been capitalized.

Comment No. 66: One commenter recommended the removal of portions of Table 2.1–1 and all of Table 2.1–2 and Table 2.1–3 from the TSs.

Response: The NRC agrees, in part, that this information should be moved. This design information is crucial to the conclusions reached by the NRC staff in its SER; therefore, the design information contained in these tables has been relocated (and renumbered) to a separate appendix to the CoC, along with other critical design information.

Comment No. 67: One commenter recommended a change to the format of the Titles of Tables 2.1–1, 2.1–2, 2.1–3, and 2.1–4.

Response: The NRC agrees with the comment. The format has been changed.

Comment No. 68: One commenter recommended a wording change in TS Section 3.0 from "not applicable to an SFSC" to "not applicable."

Response: The NRC agrees with this comment and has made the indicated change.

Comment No. 69: One commenter stated that there is no need to create two specifications for TS 3.1.1, MPC Cavity Vacuum Drying Pressure, and TS 3.1.2, OVERPACK Annulus Vacuum Drying Pressure. In addition, the commenter indicated there is no need to create two specifications for TS 3.1.5, MPC Helium Leak Rate, and TS 3.1.6, OVERPACK Helium Leak Rate.

Response: The NRC agrees with the comment. Section 2.1 of the TSs has been revised based on these and similar comments received to combine these TSs.

Comment No. 70: One commenter stated that the frequency of SR 3.1.7.1 should be revised because, as written, the frequency would apply only when a cask is being moved to or from the ISFSI and would not apply at other times, such as when moving casks within the ISFSI. However, the drop analysis applies any time the cask is suspended. The frequency should be revised similar to "Prior to movement of an SFSC."

Response: The NRC agrees with the comment. The frequency of SR 3.1.7.1 has been revised.

Comment No. 71: One commenter recommended that TS Sections 4.1 and 4.2 be eliminated because they contain no unique information.

Response: NRC agrees with the comment. Sections 4.1 and 4.2 have been eliminated.

Comment No. 72: One commenter recommended relocating the information contained in TS Sections 4.3 and 4.5 to the SAR, and recommended eliminating TS Section 4.4, stating that this section is a duplication of existing regulatory requirements.

Response: The NRC agrees in part. The NRC staff agrees that these sections do not belong in the TSs. This design information has been relocated to Appendix B to the CoC. The NRC staff disagrees with the commenter's proposal to eliminate or relocate these sections to the SAR. The NRC has relocated these sections to Appendix B to the CoC due to the importance of the design information contained in these sections. The NRC staff also disagrees with the comment that TS Section 4.4 is a duplicate of existing regulations, since this section contains the acceptance criteria for the site-specific design parameters.

Comment No. 73: A commenter recommended relocating the information contained in TS Sections 4.6 and 4.8 to an Administrative Controls chapter due to their content and relocating Section 4.7 to the SAR because it is a one-time administrative task.

Response: The NRC agrees in part. The NRC staff agrees that these sections belong in the administrative section of the TSs and has placed this information in a new TS Chapter 3.0, "Administrative Controls and Programs." The NRC staff disagrees with the commenter on the proper location of Section 4.7 (now TS Section 3.2), because it is established NRC staff

practice to place important administrative requirements, even one-time requirements, in the TSs.

Comment No. 74: A commenter stated that TS 3.1.8 contains conflicts because the APPLICABILITY statement, and the COMPLETION TIME when the condition is not met, are the same statement. The commenter further recommended that because of its complexity and rarity of its use, this specification be eliminated and the information specified in the SAR.

Response: The NRC agrees in part. The NRC agrees with the first point. TS 2.1.4 has been rewritten to remove this conflict. The NRC staff disagrees with the second point and considers this information important to the proper operation of the cask system. Further, the changes made to this section resolve concerns regarding its complexity.

Comment No. 75: One commenter recommended relocating the figure attached to TS 3.2.1 to the TS Bases, because the purpose of the figure is to show where dose measurements should be taken.

Response: The NRC disagrees with this comment. This figure, now attached to TS 2.2.1, is an integral part of the proper implementation of this TS and assures that the dose measurements will be taken at the proper locations.

Comment No. 76: The commenter stated that the TSs do not comply with 10 CFR 72.44(d) that requires TSs on radioactive effluents.

Response: The NRC agrees with this comment. TS Section 3.0 has been revised to incorporate the requirements of 10 CFR 72.44(b).

Comment No. 77: One commenter recommended that within TS Section 1.1, the definition for "Intact Fuel Assembly" should be revised to state "* * * an amount of water greater than or equal to * * *," adding the term "greater than or" to allow greater flexibility with respect to dummy rod sizing.

Response: The NRC agrees with the comment and has revised the definition.

Comment No. 78: One commenter recommended that within TS Table 2.1–1, Item II.B should be reworded for clarification because the current wording could be misinterpreted by users that intact fuel assemblies are required to be loaded into damaged fuel containers.

Response: The NRC agrees with the comment. The table, which has been relocated to Appendix B, has been revised.

Comment No. 79: One commenter requested clarification of TS Section 4. As written, the text does not require a written report of the results of the first measurements, only "each cask subsequently loaded with a higher heat load." NRC's intent to require a written report for the first temperature measurements is not clear. The commenter further stated that it is not clear what "calculation" is being referred to in the last two sentences, whether it is the original design calculation or a new calculation generated from the test. The commenter further recommended the addition of "decay heat" after "lesser" and before "loads" in the last line.

Response: The NRC agrees with these comments, except for the recommendation to add the phrase "decay heat," which the NRC considers unnecessary. TS Section 3.3 has been revised to clarify the reporting requirements and the calculational comparison required by this TS condition.

Comment No. 80: One commenter recommended some editorial changes to revise TS Bases 2.2.2 and 2.2.3 to clarify that 10 CFR 72.75 has additional reporting requirements that may need to be met independent of these TS requirements.

Response: The NRC agrees with the comment. A reference to 10 CFR 72.75 has been added to Appendix B to the CoC.

Comment No. 81: One commenter recommended adding a new definition for fuel building to the TSs.

Response: The NRC agrees with the comment. A definition for fuel building has been added to the TSs.

Comment No. 82: One commenter recommended editorially revising TS LCO 3.1.7, "SFSC Lifting Requirements" and the related bases to clarify the applicability. The revision is necessary because the LCO is not intended to be applicable while the transport vehicle is in the fuel building or when the cask is secured on a railcar or heavy haul trailer because the cask is not being lifted.

Response: The NRC agrees with the comment. TS 2.1.3 has been revised accordingly.

Comment No. 83: One commenter recommended a revision to TS Tables 2.1–2 and 2.1–3, Note 1, for the purposes of clarification and to allow for manufacturer tolerances.

Response: The NRC agrees with the comment. The recommended changes to the tables have been made. The table has been relocated to Appendix B of the CoC.

Comment No. 84: One commenter recommended the revision of TS Table 3–1, Item 1.c, to change the lower helium tolerance to 10 percent because the smaller tolerances were associated with convection heat transfer, for which no credit is taken in the application.

Response: The NRC agrees with the comment and has revised renumbered TS Table 2–1.

Comment No. 85: One commenter recommended that TS 4.3.1 be revised to allow for changes to codes and standards because it would provide both the vendor and the NRC the flexibility to add exceptions/alternatives to the code without amending the certificate.

Response: The NRC agrees with the comment. Section 1.3.2 of Appendix B has been revised accordingly.

Comment No. 86: The applicant recommended in TS Section 4.4.6, the revision of the soil effective modulus of elasticity from "≤6,000psi" to "≤28,000 psi." In addition, the commenter recommended an acceptable method for licensees to comply with the soil modulus limit.

Response: The NRC agrees with the comment. The information has been added to Appendix B to the CoC.

Comment No. 87: One commenter recommended the addition of a third option to TS LCO 3.1.7 and Bases B3.1.7 (or elsewhere in the TSs) that allows general licensees to calculate site-specific lifting requirements based on the site-specific pad design and associated drop/tipover analyses.

Response: The NRC agrees with the comment. TS LCO 2.1.3 has been revised to add this option.

Comment No. 88: One commenter believed that the 48-hour time limit within TSs 3.1.1 through 3.1.6 is overly restrictive.

Response: The NRC agrees with this comment in part. Accordingly, the NRC has reviewed the time limit in each applicable TS. Some of the time limits have been extended to provide for a controlled, deliberate response to the LCO condition.

Comment No. 89: One commenter recommended the deletion of the Design Features, Section 4.6, Training Module, and Section 4.7, Pre-Operational Testing and Training Exercise because the review of the training program is required by 10 CFR 72.212(b)(6) and the TS duplicates the requirement in the regulation.

Response: The NRC agrees in part. The NRC agrees that there is duplication in the TSs and the regulatory requirements. Accordingly, TS 3.1 (previously Section 4.6) has been modified to reference the general licensee's systematic approach to training. However, the NRC staff believes that listing the training exercises as a specific requirement for proper cask operation is appropriate to

be included in the TSs, and it has been maintained.

Comment No. 90: One commenter recommended adding "diesel" before "fuel" in TS Section 4.4.5 and in SER Sections 3.1.2.1.8, 4.3.4, and 4.4.3.4 for clarification.

Response: The NRC agrees conceptually with the comment. TS Section 4.4.5 (now 1.4.5 of Appendix B) and SER Sections 3.1.2.1.8, 4.3.4, and 4.4.3.4 have been revised to refer to combustible transporter fuel.

Comments on the Draft CoC

Comment No. 91: Two commenters recommended that CoC Condition 10 be revised to be consistent with 10 CFR 72.48 for the cask design and operating procedures. Another commenter stated that Condition 10 was not clear.

Response: The NRC agrees with the comments. The applicable CoC condition has been revised to delete the prescriptive controls for making changes to the cask design and operating procedures. The condition now reflects 10 CFR 72.48 as recently approved by the Commission.

Comment No. 92: Two commenters recommended that a Bases Control Program be added to the TSs or CoC.

Response: The NRC disagrees with the comment. The proposed TS bases are part of the SAR. Because 10 CFR 72.48 provides a change process for the SAR for control of the bases, there is no need to incorporate this program into the CoC or TSs.

Comment No. 93: One commenter requested information on the status of a petition for rulemaking on the change process in 10 CFR 72.48.

Response: This comment is beyond the scope of this rulemaking.

Comment No. 94: One commenter stated that the description of the attachment to the CoC was in error.

Response: The NRC agrees with this comment. The description has been corrected.

Comments on the NRC Staff's SER

Comment No. 95: One commenter asked a question about what is meant by the statement included in the NRC SER in Section 9.3 related to the examination and/or testing of the HI–STAR 100 by the applicant/certification holder/licensee.

Response: The SER refers to Section 9.1 of the applicant's SAR. This section summarizes the scope and acceptance criteria for the HI–STAR 100 test program. It includes fabrication and nondestructive examinations, weld inspecting, structural and pressure tests, leakage tests, component tests, and shielding and integrity testing and controls. The SAR or SER does not specify which entity must perform each test. This is because some tests are performed during fabrication, while others can only be performed after installation. The quality assurance programs implemented by the fabricator, certificate holder, or applicant with appropriate oversight will ensure that these SAR specified tests are completed and are effective. Further, the NRC inspection program also verifies on a sampling basis that tests and surveillances are conducted as required.

Comment No. 96: One commenter recommended revising the last sentence of the first paragraph of SER Section 3.1.2.1.6 to read: "The design-basis earthquake accelerations are assumed to be applied at the top of the ISFSI concrete pad with the resulting inertia forces applied at the HI–STAR 100 mass center."

Response: The NRC agrees with the comment. The SER has been revised.

Comment No. 97: One commenter recommended in SER Section 3.1.4.4, in the first paragraph, the replacement of "* * * the fabricator is an accredited facility by the ASME for nuclear fabrication work holding "N" and "NPT" stamps, * * *" with "* * * the HI–STAR 100 System is designed in accordance with the ASME Code, as clarified by the exceptions to the Code listed in TS Table 4–1."

Response: The NRC agrees with the comment. The SER has been revised. Note that the table is now in Appendix B.

Comment No. 98: One commenter recommended that in SER Section 6.3, the word "minimum" be replaced with "maximum" in the third sentence of the first full paragraph to match the analysis.

Response: The NRC agrees with the comment. The SER has been revised to correct the error.

Comment No. 99: One commenter stated that SER Section 8.1.4, which discusses the evaluation of welding and sealing procedures, should be revised to recognize the option of performing manual welding of the MPC lid closure weld in accordance with a user's as low as reasonably achievable (ALARA) practices.

Response: The NRC disagrees with the comment. As discussed in Sections 8.1 and 10.1 of the SAR, the use of the Automated Weld System provides justification that the HI–STAR 100 is designed in accordance with Part 72 radiological requirements and ALARA objectives consistent with Part 20. However, the intent of the proposed SER revision is already implied in Section 8.1.2 of the SER that states: "Each cask user will need to develop detailed loading procedures that incorporate the ALARA objectives of their site-specific radiation protection program." Therefore, each user can develop site-specific operating procedures based on ALARA objectives that would include the use of manual welding and make changes to the SAR in accordance with 10 CFR 72.48.

Comment No. 100: One commenter recommended that SER Section 8.3.1, which discusses the evaluation of cooling, venting, and reflooding during cask unloading operations, should be revised to allow the option of a once-through purge in lieu of the closed-loop cooling system.

Response: The NRC disagrees with this comment. An amendment application with a specific design and supporting analysis for a once-through helium cooling system would be required for NRC review and is beyond the scope of this rulemaking.

Comment No. 101: One commenter noted that a more appropriate method to implement the thermal test for the overpack had been accepted by the NRC for the HI–STAR 100 transportation cask and recommended this method be used for this cask design. Appropriate changes were recommended to be made to the SER and SAR.

Response: The NRC agrees that this method should be included in the SAR for the HI–STAR 100 storage cask. Appropriate changes have been made to Section 9.1.6 of the SAR and Chapter 9 of the SER.

Comment No. 102: The applicant submitted numerous editorial comments on the SAR, SER, and CoC. Comments were intended as clarification, restoration of deleted information, grammatical corrections, corrections to text, to maintain consistency between documents, typographical corrections, format changes, and to correct terminology. These editorial changes do not change the design of the cask or supporting analysis.

Response: The NRC agrees with many of the editorial comments suggested by Holtec International. The SAR, SER, and CoC have been revised to address the comments as appropriate.

Comments on the Applicant's Topical SAR

Note: In response to comments received, a number of changes to the SAR were made by Holtec International, as discussed below.

Comment No. 103: One commenter proposed a revision to the language in Section 8.0 of the SAR to clarify that users will have some flexibility to use

procedures and equipment suitable for site-specific needs and capabilities.

Response: The NRC agrees with the suggested editorial changes. The changes to the SAR have been made.

Comment No. 104: One commenter recommended some editorial changes within SAR Section 4.4, because the wording in Subsection 4.1.1.15 may be erroneously interpreted to mean that the chilled helium delivered to the MPC cavity to cool the internals prior to flooding the cavity with water must be at 100 °F. The commenter stated that the text of the SAR requires clarification to permit each cask user's cooldown system to be engineered with the flexibility to cool MPCs containing fuel with varying levels of decay heat production.

Response: The NRC agrees with the comment. The SAR has been revised.

Comment No. 105: In SAR Section 1.5, Drawings 1399, Sheet 3, and BM–1476, and in Drawing Section "N–N," one commenter recommended the addition of four threaded holes spaced 90 degrees apart as a personnel dose reduction enhancement. The new holes would allow the personnel attaching the shield to work in an area of lesser exposure to radiation within the same time frame. The effect of the shield attachment will remain the same.

Response: The NRC agrees with the comment. Drawings 1399 and BM–1476 have been revised to reflect the change.

Comment No. 106: One commenter suggested that in SAR Revision 10, the drawings in Chapter 1 be revised to match those approved by the NRC in the transportation SAR.

Response: The NRC agrees with the comment. Seven drawings in SAR Section 1 have been revised to match those in the transportation SAR. Although four drawings have not been revised to match the transportation SAR, this is acceptable to the NRC staff because they reflect storage design features.

Comment No. 107: In the SAR, one commenter (the applicant) recommended changing Section 6.1 by replacing "(20 °C–100 °)" with "(i.e., water density of 1.000 g/cc)" and delete "(20 °C assumed)" to more accurately describe the assumption made in the analyses.

Response: The NRC agrees. The SAR has been revised as suggested by the commenter.

Comment No. 108: The applicant suggested a number of changes to the drawings for the HI–STAR 100 Storage Cask. These changes did not require a change to the supporting design analyses.

Response: The NRC agrees that the changes to the drawings were appropriate and do not result in any changes to the supporting design analyses. The SAR drawings have been revised in accordance with the suggested changes.

Comment No. 109: The applicant suggested using Magnetic Particle Examination in lieu of Liquid Penetrant Examination for the overpack weld examination and recommended changes to the associated drawing notes.

Response: The NRC agrees with this suggested change. The NRC agrees that resolution of this comment will involve a change to the drawings which will mean that drawings referencing this examination shall be different for the storage and transportation certificates. These differences are not significant because the staff finds Magnetic Particle Examination to be equally acceptable to Liquid Penetrant Examination. Appropriate changes to the drawings have been made.

Comment No. 110: The applicant suggested a clarification for the sequence for the hydrostatic testing and helium leakage testing during fabrication of the overpack.

Response: The NRC agrees with the suggested change. The SAR has been revised accordingly.

Comment No. 111: As it relates to the Radiography and Heat Treatment requirements for the containment boundary of the HI–STAR overpack, the applicant requested that post weld heat treatment (PWHT), after completing nondestructive examination, be used for all overpack containment boundary welds which require an exception from the ASME code.

Response: The NRC agrees. The SAR and Appendix B to the CoC have been modified appropriately.

Comment No. 112: The applicant suggested a revision to the drawings in the SAR to reflect the localized thinning tolerance in the containment shell.

Response: The NRC staff agrees with the suggested revision. However, the applicant did not provide the suggested changes in its final revisions to the SAR. The initial drawings remain acceptable.

Comment No. 113: One commenter (the applicant) recommended that changes to Technical Specification Table 4–1, MPC Enclosure Vessel and Lid, should be made to replace "and sufficient intermediate layers to detect critical wild flaws" with "and at least one intermediate PT after approximately 3/8 inch weld depth." The commenter also recommended the deletion of "Flaws in austenitic stainless are not expected to exceed the bead". The commenter further recommended several changes to the SER as follows: SER Section 8.1.4 should be changed to add "(or optional multi-layer PT examination)," after "ultrasonic examination (UT)"; the SER should recognize that users may choose to perform the MPC void-to-shell weld manually; and SER Section 11.4.1.3.1 should be reworded to read "examined using UT or multi-layer PT techniques," instead of "volumetrically examined using UT."

Response: The NRC agrees and notes that the applicant's comments with respect to TS Table 4–1 have been superseded by its latest revision to the SAR. Changes have been made to Table 1–3 to Appendix B. The SER has been revised as recommended.

Summary of Final Revisions

The NRC staff modified the listing for the Holtec International HI–STAR 100 cask system within 10 CFR 72.214, "List of approved spent fuel storage casks," with respect to the title of the SAR as well as the CoC and its two appendices, the TSs, and the Approved Contents and Design Features. The NRC staff has also modified its SER.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR part 51, the NRC has determined that this rule is not a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required. This final rule adds an additional cask to the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites without additional site-specific approvals from the Commission. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Stan Turel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6234, e-mail spt@nrc.gov.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 USC 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is adding the Holtec International HI–STAR 100 cask system to the list of NRC-approved cask systems for spent fuel storage in 10 CFR 72.214. This action does not constitute the establishment of a standard that establishes generally-applicable requirements.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the Commission issued an amendment to 10 CFR part 72. The amendment provided for the storage of spent nuclear fuel in cask systems with designs approved by the NRC under a general license. Any nuclear power reactor licensee can use cask systems with designs approved by the NRC to store spent nuclear fuel if it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. In that rule, four spent fuel storage casks were approved for use at reactor sites and were listed in 10 CFR 72.214. That rule envisioned that storage casks certified in the future could be routinely added to the listing in 10 CFR 72.214 through the rulemaking process. Procedures and criteria for obtaining NRC approval of new spent fuel storage cask designs were provided in 10 CFR part 72, subpart L.

The alternative to this action is to withhold approval of this new design and issue a site-specific license to each utility that proposes to use the casks. This alternative would cost both the NRC and utilities more time and money for each site-specific license. Conducting site-specific reviews would ignore the procedures and criteria currently in place for the addition of new cask designs that can be used under a general license, and would be in conflict with NWPA direction to the Commission to approve technologies for the use of spent fuel storage at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site reviews. This alternative also would tend to exclude new vendors from the business market without cause and would arbitrarily limit the choice of cask designs available to power reactor licensees. This final rulemaking will eliminate the above problems and is consistent with previous Commission actions. Further, the rule will have no adverse effect on public health and safety.

The benefit of this rule to nuclear power reactor licensees is to make available a greater choice of spent fuel storage cask designs that can be used under a general license. The new cask vendors with casks to be listed in 10 CFR 72.214 benefit by having to obtain NRC certificates only once for a design that can then be used by more than one power reactor licensee. The NRC also benefits because it will need to certify a cask design only once for use by multiple licensees. Casks approved through rulemaking are to be suitable for use under a range of environmental conditions sufficiently broad to encompass multiple nuclear power plants in the United States without the need for further site-specific approval by NRC. Vendors with cask designs already listed may be adversely impacted because power reactor licensees may choose a newly listed design over an existing one. However, the NRC is required by its regulations and NWPA direction to certify and list approved casks. This rule has no significant identifiable impact or benefit on other Government agencies.

Based on the above discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the final rule are commensurate with the Commission's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and Holtec International. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this rule because this amendment does not involve any provisions that would impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required.

List of Subjects in 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is adopting the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d–48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In Section 72.214, Certificate of Compliance 1008 is added to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1008
SAR Submitted by: Holtec International
SAR Title: HI–STAR 100 Cask System Topical Safety Analysis Report
Docket Number: 72–1008
Certification Expiration Date: (20 years after final rule effective date)
Model Number: HI–STAR 100

Dated at Rockville, Maryland, this 23rd day of August, 1999.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 99–23075 Filed 9–2–99; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks; Change in Discount Rate

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended its Regulation A on Extensions of Credit by Federal Reserve Banks to reflect its approval of an increase in the basic discount rate at each Federal Reserve Bank. The Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks.

EFFECTIVE DATE: The amendments to part 201 (Regulation A) were effective August 24, 1999. The rate changes for adjustment credit were effective on the dates specified in 12 CFR 201.51.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Johnson, Secretary of the Board, (202) 452–3259; for users of Telecommunications Device for the Deaf (TDD), contact Diane Jenkins, (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of sections 10(b), 13, 14, 19, et al., of the Federal Reserve Act, the Board has amended its Regulation A (12 CFR part 201) to incorporate changes in discount rates on Federal Reserve Bank extensions of credit. The discount rates are the interest rates charged to depository institutions when they borrow from their district Reserve Banks.

The "basic discount rate" is a fixed rate charged by Reserve Banks for adjustment credit and, at the Reserve Banks' discretion, for extended credit. In increasing the basic discount rate from 4.5 percent to 4.75 percent, the Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks. The new rates were effective on the dates specified below.

With financial markets functioning more normally, and with persistent strength in domestic demand, foreign economies firming, and labor markets remaining very tight, the degree of monetary ease required to address the global financial market turmoil of last fall is no longer consistent with sustained, non-inflationary, economic expansion. The 25-basis-point increase in the discount rate was associated with a similar increase in the federal funds rate announced at the same time.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the change in the basic discount rate will not have a significant adverse economic impact on a substantial number of small entities. The rule does not impose any additional requirements on entities affected by the regulation.

Administrative Procedure Act

The provisions of 5 U.S.C. 553(b) relating to notice and public participation were not followed in connection with the adoption of the amendment because the Board for good cause finds that delaying the change in the basic discount rate in order to allow notice and public comment on the change is impracticable, unnecessary, and contrary to the public interest in fostering sustainable economic growth.

The provisions of 5 U.S.C. 553(d) that prescribe 30 days prior notice of the effective date of a rule have not been followed because section 553(d) provides that such prior notice is not necessary whenever there is good cause for finding that such notice is contrary to the public interest. As previously stated, the Board determined that delaying the changes in the basic discount rate is contrary to the public interest.

List of Subjects in 12 CFR Part 201

Banks, banking, Credit, Federal Reserve System.

For the reasons set out in the preamble, 12 CFR part 201 is amended as set forth below:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

1. The authority citation for 12 CFR part 201 continues to read as follows:

Authority: 12 U.S.C. 343 *et seq.*, 347a, 347b, 347c, 347d, 348 *et seq.*, 357, 374, 374a and 461.

2. Section 201.51 is revised to read as follows:

§ 201.51 Adjustment credit for depository institutions.

The rates for adjustment credit provided to depository institutions under § 201.3(a) are:

Federal Reserve Bank	Rate	Effective
Boston	4.75	August 24, 1999.
New York	4.75	August 24, 1999.
Philadelphia	4.75	August 24, 1999.
Cleveland	4.75	August 24, 1999.
Richmond	4.75	August 24, 1999.
Atlanta	4.75	August 24, 1999.
Chicago	4.75	August 24, 1999.
St. Louis	4.75	August 24, 1999.
Minneapolis	4.75	August 25, 1999.
Kansas City	4.75	August 24, 1999.
Dallas	4.75	August 26, 1999.
San Francisco	4.75	August 24, 1999.

By order of the Board of Governors of the Federal Reserve System, August 30, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–22958 Filed 9–2–99; 8:45 am]

BILLING CODE 6210–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121 and 123

Pre-Disaster Mitigation Loans

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: With this rule, SBA amends its disaster loan program regulations to implement a pilot program authorized by Congress in 1999. The authorization covers five fiscal years (from 2000 to 2004) and will allow SBA to make low interest, fixed rate loans to small businesses to use mitigation measures in support of Project Impact, a formal mitigation program established by the Federal Emergency Management Agency (FEMA).

DATES: This rule is effective October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Bernard Kulik, Associate Administrator, Office of Disaster Assistance, 202–205–6734.

SUPPLEMENTARY INFORMATION: SBA amends part 123 of its regulations regarding disaster loans, based upon a proposed rule which was published on July 7, 1999 (64 FR 36617). Comments were due by August 6, 1999.

The final rule allows small businesses to obtain low interest, fixed rate loans for mitigation measures in support of Project Impact. In response to the problems of increasing costs and personal devastation caused by disasters, Congress authorized a pilot program for 5 fiscal years from 2000 through 2004. The Administration launched an effort to substitute preparedness for the current reliance on response and recovery in emergency management.

SBA supports this effort and wants to offer pre-disaster mitigation loans to assist with disaster preparedness. This final rule will allow SBA to provide such loans to small businesses within Project Impact communities identified by FEMA. Currently, SBA disaster loans may be used only to repair or replace what was destroyed or damaged by disaster and to provide an additional 20 percent for mitigation measures after a disaster. To promote preparedness, this final rule will amend SBA's regulations to provide pre-disaster mitigation loans for small businesses. Such pre-disaster mitigation loans will allow small businesses to install mitigation devices that may prevent future damage.

SBA received several comments on the proposed rule. One comment requested that SBA modify its definition of mitigation in § 123.107 to include "any action taken to reduce or eliminate the long-term risk to human life and property from natural hazards" as defined by the Federal Emergency Management Agency in 44 CFR 206.401. SBA did not adopt this suggestion due to the difference in statutory language which authorizes the assistance provided by SBA and FEMA. However, SBA has included some of the mitigation examples suggested by the commenter in § 123.107. SBA also clarifies in § 123.107 that § 123.400 through § 123.407 address pre-disaster mitigation, while the last two sentences of § 123.107 address the amount of money that can be borrowed for mitigation after a disaster.

Another comment suggested that SBA establish a date for when size status is determined. SBA has adopted the suggestion in § 123.402, requiring that the applicant be a small business as of the date SBA accepts the application for processing. To clarify the conditions for eligibility, SBA moved portions of § 123.403 and § 123.406 in the proposed rule to § 123.402 in the final rule so that eligibility conditions are all in one section.

One of the conditions for eligibility is that a business, together with its affiliates, must be small as defined in part 121 of this Chapter. Section 121.302 sets forth criteria for when size status is determined for each of SBA's loan programs. Since the Pre-disaster Mitigation Loan Program will be a new pilot, § 121.302 does not include it. Although SBA did not propose to amend this section, it is necessary to amend § 121.302(c) to designate a date for determining size status for this pilot program.

One comment proposed that SBA include homeowners. SBA did not adopt this suggestion because the authorizing legislation for this pilot program limits the assistance to small businesses.

Another comment suggested that SBA require that a small business must have been in the Project Impact community for at least one year, under the same ownership, at the location where mitigation was proposed prior to submitting a loan application. SBA has not adopted this suggestion because it would unnecessarily limit assistance under the pilot.

One comment suggested that SBA begin funding all approved loans on December 31, in the order that the applications were initially received. SBA did not adopt this suggestion because SBA is uncertain of the demand and does not want to limit the time period for approving and funding loans. SBA revised the text of § 123.404 to clarify that a business may borrow up to $50,000 per year, and that approved loans will be funded in the order that SBA accepted the applications for processing. SBA also clarifies that it will consider projects that cost more than $50,000 per year if the business can identify sources that will fund the amount above $50,000.

Another commenter asked that SBA clarify in § 123.401 whether residential rental properties were eligible. The section has been changed to make it clear that SBA will accept applications from owners of commercial real estate (property primarily leased to business for commercial use). Owners of property held and leased primarily for residential use will not be eligible.

One commenter was concerned that SBA's verification of a project might subject SBA to potential liability if a mitigation project failed to perform as expected. In response to this suggestion, SBA revised § 123.401 to make it clear that SBA only verifies that the cost estimate is reasonable to accomplish the stated desired mitigation result, and that SBA does not guarantee that the mitigation measure will prevent damages from future disasters.

Also, SBA amended § 123.406 to clarify how and when it will provide notice of the availability of pre-disaster mitigation loans. Finally, SBA simplified language in subparagraph (c) of that section and § 123.407 regarding application processing, loan funding, and the process for reconsideration or appeal.

Compliance With Executive Orders 12612, 12988, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this final rule is not a significant rule within the meaning of

Executive Order 12866, since it is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the U.S. economy.

SBA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612.

SBA certifies that this final rule does not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., chapter 35.

For purposes of Executive Order 12612, SBA certifies that this final rule has no federalism implications warranting preparation of a Federalism Assessment.

For purposes of Executive Order 12988, SBA certifies that this final rule is drafted, to the extent practicable, to accord with the standards set forth in section 3 of that Order.

List of Subjects

13 CFR Part 121

Government procurement, Government property, Grant programs—business, Loan programs—business, Small business.

13 CFR Part 123

Disaster assistance, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

For the reasons stated in the preamble, SBA amends 13 CFR parts 121 and 123 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation for part 121 continues to read as follows:

Authority: Pub. L. 105–135 Sec. 601 *et. seq.*, 111 Stat. 2592; 15 U.S.C. 632(a), 634(b)(6), 637(a), and 644(c); and Pub. L. 102–486, 106 Stat. 2776, 3133.

2. Revise § 121.302 to add a sentence at the end of paragraph (c) to read as follows:

§ 121.302 When does SBA determine the size status of an applicant?

* * * * *

(c) * * * For pre-disaster mitigation loans, size status is determined as of the date SBA accepts the application for processing.

* * * * *

PART 123—DISASTER LOAN PROGRAM

1. The authority citation for part 123 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6), 636(b), 636(c) and 636(f); Pub. L. 102–395, 106 Stat. 1828, 1864; and Pub. L. 103–75, 107 Stat. 739.

2. In § 123.107, revise the second sentence and add a sentence at the end to read as follows:

§ 123.107 What is mitigation?

* * * Examples include elevation of flood prone structures, retaining walls, sea walls, grading and contouring land, relocating utilities, and retrofitting and strengthening structures to protect against high winds, earthquake, flood, wildfire, or other natural hazards. * * * Sections 123.400 through 123.407 address pre-disaster mitigation.

3. Add an undesignated centerheading and §§ 123.400 through 123.407 to read as follows:

Pre-disaster Mitigation Loans

Sec.

123.400 What is a pre-disaster mitigation loan?
123.401 What types of mitigating measures are eligible for a pre-disaster mitigation loan?
123.402 What businesses are eligible to apply for pre-disaster mitigation loans?
123.403 When would my business not be eligible to apply for a pre-disaster mitigation loan?
123.404 How much can my business borrow with a pre-disaster mitigation loan?
123.405 What is the interest rate on a pre-disaster mitigation loan?
123.406 How do I apply for a pre-disaster mitigation loan and which loans will be funded?
123.407 What happens if SBA denies or withdraws my pre-disaster mitigation loan application?

Pre-disaster Mitigation Loans

§ 123.400 What is a pre-disaster mitigation loan?

Congress has authorized a pilot program for 5 fiscal years from 2000 through 2004 for SBA to make low interest, fixed rate loans to small businesses to use mitigation measures in support of Project Impact, a formal mitigation program established by the Federal Emergency Management Agency (FEMA).

§ 123.401 What types of mitigating measures are eligible for a pre-disaster mitigation loan?

Mitigation means specific measures taken by you to protect your real property or leasehold improvements from future disasters in Project Impact communities. If you are a landlord, the measures must be for protection of property leased primarily for commercial rather than residential purposes, to be determined on a comparative square footage basis. Additionally, SBA will consider providing a pre-disaster mitigation loan for relocation if your commercial real property is located in a SFHA (Special Flood Hazard Area) and you relocate outside the SFHA but remain in the same Project Impact community. If the mitigation measures protect against a flood hazard, the applicant small business must be located in an existing structure in a SFHA. The local Project Impact coordinator will confirm that your proposed project is in accordance with specific Project Impact priorities and goals of that community. SBA will verify that the cost estimate is reasonable to accomplish each project to determine if the project is likely to accomplish the stated desired mitigation results. SBA verification and subsequent loan approval are not a guarantee that the project will prevent damages in future disasters.

§ 123.402 What businesses are eligible to apply for pre-disaster mitigation loans?

Each State, the District of Columbia, Puerto Rico, and the Virgin Islands have at least one FEMA Project Impact community. Only those small businesses located in Project Impact communities are eligible to apply for a pre-disaster mitigation loan. Your small business may be a sole proprietorship, partnership, corporation, limited liability company, or other legal entity recognized under State law. Your small business must have been in existence for at least one year prior to submitting an application for this loan. Your business (together with its affiliates) must be small (as defined in part 121 of this chapter) as of the date SBA accepts the application for processing, and SBA must also determine that the business, its affiliates and its owners do not have the financial resources to fund the mitigation measures without undue hardship.

§ 123.403 When would my business not be eligible to apply for a pre-disaster mitigation loan?

Your business is not eligible for a pre-disaster mitigation loan if it, together with its affiliates, fits into any of the categories in §§ 123.101, 123.201, and 123.301.

§ 123.404 How much can my business borrow with a pre-disaster mitigation loan?

Each borrower, together with its affiliates, may borrow up to $50,000 per year. SBA will fund approved loans in the order in which SBA accepted the application for processing. SBA will consider mitigation measures that cost more than $50,000 per year if the business can identify sources that will fund the cost above $50,000.

§ 123.405 What is the interest rate on a pre-disaster mitigation loan?

Your pre-disaster mitigation loan will have an interest rate of 4 percent per annum or less.

§ 123.406 How do I apply for a pre-disaster mitigation loan and which loans will be funded?

(a) At the beginning of each fiscal year commencing October 1st 1999, SBA will publish a declaration in the **Federal Register** announcing the availability of pre-disaster mitigation loans. The declaration will designate at least a 30 day application filing period in the first six months of the fiscal year, the application filing deadline, and the locations for obtaining and filing loan applications. Additional application periods may be announced each year depending on the availability of funds. In addition to the **Federal Register**, SBA will use FEMA and the local media to inform potential loan applicants where to obtain loan applications. SBA will not accept any applications after the announced deadline unless SBA reopens the application filing period.

(b) Complete an SBA pre-disaster mitigation loan application package which includes a written statement from the local Project Impact coordinator that the project is in accordance with the specific priorities and goals of the local community. The application must be filed during the announced filing period.

(c) An SBA Disaster Area Office will notify the Office of Disaster Assistance (ODA) when it has accepted a complete application for processing. The Area Office will approve, decline, or withdraw (stop processing) the application if the applicant does not give SBA required information. The Area Office will notify ODA of its decision. ODA will then direct the Area Office to make the loan based on availability of loan funds and the date SBA accepted the complete application package.

§ 123.407 What happens if SBA denies or withdraws my pre-disaster mitigation loan application?

(a) If SBA denies your loan application, SBA will notify you in writing and give you the specific reasons for the denial. If you disagree with SBA's decision, you may respond under § 123.13. If SBA approves your application after reconsideration or appeal, SBA will use the date the Area Office received the request for reconsideration or appeal to determine the order of funding.

(b) If SBA withdraws your loan application and you later submit the missing information, and SBA approves the loan, SBA will use the date it reaccepts the application to determine the order of funding.

Dated: August 27, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–23051 Filed 9–2–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–41–AD; Amendment 39–11285; AD 99–18–19]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–80A1/A3 and CF6–80C2A Series Turbofan Engines, Installed on Airbus Industrie A300–600 and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to General Electric Company CF6–80A1/A3 and CF6–80C2A series turbofan engines, installed on Airbus Industrie A300–600 and A310 series airplanes. This action requires, prior to further flight, one of the following: performing a DPV pressure check for leakage, and, if necessary, replacing the DPV assembly with a serviceable assembly and performing an operational check of the thrust reverser, or deactivating the thrust reverser; or replacing the directional pilot valve (DPV) assembly with a serviceable assembly and performing an operational check of the thrust reverser. Thereafter, this AD requires one of these actions on a repetitive basis. If a thrust reverser is deactivated, this action requires, prior to further flight, revising the FAA-approved airplane flight manual (AFM) to require performance penalties to be applied for certain takeoff conditions. The AD also requires a revision to the Emergency Procedures Section of the FAA approved AFM to include a flightcrew operational procedure in the event of any indication of an in-flight thrust reverser deployment. This amendment is prompted by review of thrust reverser safety analyses following a report of inadvertent thrust reverser deployment on another make and model engine. The actions specified in this AD are intended to prevent inadvertent thrust reverser deployment, which, if it occurred in-flight, could result in loss of control of the airplane.

DATES: Effective September 24, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 24, 1999.

Comments for inclusion in the Rules Docket must be received on or before November 2, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–41–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Middle River Aircraft Systems, Mail Point 46, 103 Chesapeake Park Plaza, Baltimore, MD 21220–4295, attn: Product Support Engineering; telephone (410) 682–0093, fax (410) 682–0100; and Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone (33) 05.61.93.31.81, fax (33) 05.61.93.45.80. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William S. Ricci, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7742, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) received a report of inadvertent thrust reverser deployment on a Pratt & Whitney powered Airbus Industrie A300–600 series aircraft. Following that event, the FAA reviewed thrust reverser safety analyses on other make and model engines, including General Electric Company (GE) CF6–80A1/A3 and CF6–80C2A series turbofan engines. A review of thrust reverser actuation system (TRAS) shop findings and component failure rate data, test data, and system safety analyses revealed that a hidden failure mode involving the directional pilot valve (DPV) exists. The DPV controls the direction of the

operation of the center drive unit when the TRAS is activated. If high pressure downstream of the pressure regulating and shutoff valve (PRSOV) exists in combination with a leaking DPV, an inadvertent deployment could occur. High pressure downstream of the PRSOV can be caused by auto restow, PRSOV open failures, or significant PRSOV leakage. PRSOV open failures and significant PRSOV leakage are detected by the DPV pressure switch. DPV open failures and significant DPV leakage are detected by the inability to stow the reverser. However, there exists a range of DPV leakage rates from a closed DPV which are not detectable during normal operation. This undetectable failure mode of the DPV, concurrent with high pressure downstream of the PRSOV, can result in an inadvertent thrust reverser deployment. This condition, if not corrected, could result in inadvertent thrust reverser deployment, which, if it occurred in-flight, could result in loss of control of the airplane.

Service Information

The FAA has reviewed and approved the technical contents of Middle River Aircraft Systems Alert Service Bulletin (ASB) No. 78A4022, applicable to GE CF6–80A1/A3 series engines, and ASB No. 78A1081, applicable to GE CF6–80C2A series engines, both dated June 4, 1999, that describe procedures for DPV pressure checks for leakage and operational checks of the thrust reverser, and refer to applicable manuals in the necessity of replacing the DPV assembly or deactivating the reverser.

Required Actions

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, this AD is being issued to prevent inadvertent thrust reverser deployment. This AD requires, prior to further flight, one of the following: (1) performing a DPV pressure check for leakage, and, if necessary, replacing the DPV assembly with a serviceable assembly and performing an operational check of the thrust reverser, or deactivating the thrust reverser; or (2) replacing the DPV assembly with a serviceable assembly and performing an operational check of the thrust reverser. Thereafter, this AD requires one of these actions at intervals not to exceed 700 hours time-in-service. The FAA has determined that whereas deactivation of the thrust reverser(s) addresses the unsafe condition of this AD, the resultant decrease in airplane stopping performance is acceptable only on a time-limited basis. For this reason, deactivation of the thrust reverser(s) is only allowed after a DPV pressure check has been performed and established the need for the DPV to be replaced with a serviceable DPV and none is available. The FAA has determined that the necessary replacement of the DPV shall be accomplished not later than 10 calendar days from the time of deactivation. If a thrust reverser is deactivated, this action requires, prior to further flight, a revision of the FAA-approved airplane flight manual (AFM) for airplanes equipped with these engines to require performance penalties to be applied for certain takeoff conditions. The actions are required to be accomplished in accordance with the service documents described previously.

AFM Changes

The FAA has determined that in the event of an in-flight thrust reverser deployment, airplane controllability may not be adequately maintained with the existing "ENG REV UNLK" procedure of the "Procedures Following Failure" Section of the FAA approved AFM. The AD includes an "Indicated In-flight Thrust Reverser Deployment Procedure," with certain steps recalled from memory by the flightcrew, for inclusion in the AFM Emergency Procedures section of the FAA approved AFM. This new procedure supersedes the existing "ENG REV UNLK" procedure. The FAA finds that this new procedure to be used in the event of any indication of an in-flight thrust reverser deployment provides for more expeditious shutdown of a suspected engine and slowing of the airplane if airplane buffet or bank is experienced. The changes to the AFM required by this AD have been coordinated with the FAA Transport Airplane Directorate.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NE–41–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–18–19 General Electric Company: Amendment 39–11285. Docket 99–NE–41–AD.

Applicability: General Electric Company (GE) CF6–80A1/A3 and CF6–80C2A series turbofan engines, installed on Airbus Industrie A300–600 and A310 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent thrust reverser deployment, which, if it occurred in-flight, could result in loss of control of the airplane, accomplish the following:

GE CF6–80A1/A3 Series Engines

(a) Prior to further flight, for GE CF6–80A1/A3 series engines, perform one of the following, in accordance with Paragraphs 2.B and 2.C. of the Accomplishment Instructions of Middle River Aircraft Systems Alert Service Bulletin (ASB) No. 78A4022, dated June 4, 1999:

(1) Perform a DPV pressure check for leakage, and, if necessary, either

(i) Replace the directional pilot valve (DPV) assembly with a serviceable assembly and then perform an operational check of the thrust reverser, or

(ii) Deactivate the thrust reverser in accordance with paragraph 2(B)(8)(a) of the Accomplishment Instructions of Middle River Aircraft Systems ASB No. 78A4022, dated June 4, 1999, provided, however, that within 10 days after deactivation the DPV is replaced with a serviceable assembly and an operational check of the thrust reverser is then performed.

(2) Replace the DPV assembly with a serviceable assembly and then perform an operational check of the thrust reverser.

(b) Thereafter, at intervals not to exceed 700 hours time-in-service (TIS) since the last check or replacement of the DPV, for GE CF6–80A1/A3 series engines, perform one of the following, in accordance with Paragraphs 2.B and 2.C. of the Accomplishment Instructions of Middle River AircraftSystems ASB No. 78A4022, dated June 4, 1999:

(1) Perform a DPV pressure check for leakage, and, if necessary, either

(i) Replace the DPV assembly with a serviceable assembly and then perform an operational check of the thrust reverser, or

(ii) Deactivate the thrust reverser in accordance with paragraph 2(B)(8)(a) of the Accomplishment Instructions of Middle River Aircraft Systems ASB No. 78A4022, dated June 4, 1999, provided, however, that within 10 days after deactivation the DPV is replaced with a serviceable assembly and an operational check of the thrust reverser is then performed.

(2) Replace the DPV assembly with a serviceable assembly and then perform an operational check of the thrust reverser.

GE CF6–80C2A Series Engines

(c) Prior to further flight, for GE CF6–80C2A series engines, perform one of the following, in accordance with Paragraphs 2.B and 2.C. of the Accomplishment Instructions of Middle River Aircraft Systems ASB No. 78A1081, dated June 4, 1999:

(1) Perform a DPV pressure check for leakage, and, if necessary, either

(i) Replace the DPV assembly with a serviceable assembly and then perform an operational check of the thrust reverser, or

(ii) Deactivate the thrust reverser in accordance with paragraph 2(B)(8)(a) of the Accomplishment Instructions of Middle River Aircraft Systems ASB No. 78A1081, dated June 4, 1999, provided, however, that within 10 days after deactivation the DPV is replaced with a serviceable assembly and an operational check of the thrust reverser is then performed.

(2) Replace the DPV assembly with a serviceable assembly and then perform an operational check of the thrust reverser.

(d) Thereafter, at intervals not to exceed 700 hours TIS since the last check or replacement of the DPV, for GE CF6–80C2A series engines, perform one of the following, in accordance with Paragraphs 2.B and 2.C. of the Accomplishment Instructions of Middle River Aircraft Systems ASB No. 78A1081, dated June 4, 1999:

(1) Perform a DPV pressure check for leakage, and, if necessary, either

(i) Replace the DPV assembly with a serviceable assembly and then perform an operational check of the thrust reverser, or

(ii) Deactivate the thrust reverser in accordance with paragraph 2(B)(8)(a) of the Accomplishment Instructions of Middle River Aircraft Systems ASB No. 78A1081, dated June 4, 1999, provided, however, that within 10 days after deactivation the DPV is replaced with a serviceable assembly and an operational check of the thrust reverser is then performed.

(2) Replace the DPV assembly with a serviceable assembly and then perform an operational check of the thrust reverser.

Serviceable DPV Assembly

(e) For the purpose of this AD, a serviceable DPV assembly is an assembly that has accumulated zero time in service, or an assembly that has accumulated zero time in service after having passed the tests in the Middle River Aircraft Systems Component Maintenance Manual GEK 85007 (78–31–51), Revision No. 6 or later, Directional Pilot Solenoid Valve, Page Block 101, Testing and Troubleshooting, or an assembly that has been successfully leak checked in accordance with Paragraph 2.B. of the Accomplishment Instructions of Middle River Aircraft Systems ASB No. 78A4022 or ASB No. 78A1081, both dated June 4, 1999, as applicable, immediately prior to installation on the airplane.

Airplane Flight Manual (AFM) Changes

(f) If one or both thrust reversers are deactivated, then prior to further flight, revise the Limitations Section of the FAA-approved AFM to include the following:

"The takeoff performance on wet and contaminated runways with a thrust reverser(s) deactivated shall be determined in accordance with Airbus Flight Operations Telex (FOT) 999.0066/99, dated June 9, 1999, as follows:

"For takeoff on wet runways, use performance data in accordance with paragraph 4.1.1 of the FOT.

"For takeoff on contaminated runways, use performance data in accordance with paragraph 4.1.2 of the FOT."

(1) Notwithstanding the provisions of the FAA approved A300–600 and A310 Master Minimum Equipment List (MMEL), dispatch with both thrust reversers deactivated, for the purposes of complying with this AD, is approved.

(2) Notwithstanding the provisions of the FAA Approved A300–600 and A310 MMEL, airplanes which have deactivated one or both thrust reversers in compliance with this AD, may not conduct operation on contaminated runways, as defined in Airbus Flight Crew Operating Manual Section 2.18.50, unless all components of the Main Wheel Brakes, Green and Yellow Brake Systems, Antiskid System, Ground Spoiler System, and all Spoiler and Speed Brake Surfaces, operate normally.

Note 2: The "FCOM" referenced in Airbus FOT 999.0066/99, dated June 9, 1999, is Airbus Industrie Flight Crew Operating Manual (FCOM), Revision 27 for Airbus Model A310 series airplanes and Revision 22 for A300–600 series airplanes. [The revision number is indicated on the List of Effective Pages (LEP) of the FCOM.]

(g) Prior to further flight, revise the Emergency Procedures Section of the FAA-approved AFM for Airbus Model A310 and A300–600 airplanes to include the following statement. This may be accomplished by inserting a copy of this AD into the AFM. In the event of any indication of an in-flight thrust reverser deployment or a "ENG REV UNLK" ECAM caution message triggered in flight, this procedure must be applied.

"Indicated In-flight Thrust Reverser Deployment Procedure:

1. THROTTLE (Affected Engine)—IDLE IF BUFFET OR BANK
2. FUEL LEVER (Affected Engine)—OFF
3. MAX SPEED—240 KIAS

Note: Item 1 of the procedure, and if buffet or bank is detected, items 2 and 3, should be accomplished immediately from memory.

Note: Use recommended single engine landing configuration and 1.3Vs approach speed plus 10kt.

IF NO BUFFET OR BANK

4. THROTTLE (Affected Engine)—KEEP AT IDLE
5. MAX SPEED—300 KIAS

The "Indicated In-flight Thrust Reverser Deployment Procedure" listed above supersedes the "ENG REV UNLK" procedure of the "Procedures Following Failure" Section of the FAA approved AFM, section number 4.02.00, page 1."

Note 3: Notwithstanding procedures in the Procedures Following Failure Section of the FAA approved AFM, displayed on the on-board ECAM computer screen, published in the Airbus FCOM, or QRH, or contained in FAA approved company checklists and/or procedures, flightcrews operating A300–600 or A310 airplanes with one of more thrust reverser activated, must follow the procedure of paragraph (g) in the event of any indication of an in-flight thrust reverser deployment triggered in flight.

Note 4: An in-flight thrust reverser deployment may be indicated by master caution aural and visual warnings, and/or a REV UNLK light, and/or an "ENG REV UNLK" ECAM caution message, and/or airplane buffet or bank.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the ECO.

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(j) The actions required by this AD shall be done in accordance with the following service documents:

Document No.	Pages	Date
Middle River Aircraft Systems CF6–80A1/A3 ASB 78A4022 ..... Total pages: 16.	1–16	June 4, 1999.
Middle River Aircraft Systems CF6–80C2A ASB 78A1081 ..... Total pages: 15.	1–15	June 4, 1999.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Middle River Aircraft Systems, Mail Point 46, 103 Chesapeake Park Plaza, Baltimore, MD, 21220–4295, attn: Product Support Engineering; telephone (410) 682–0093, fax (410) 682–0100; and Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(k) This amendment becomes effective on September 24, 1999.

Issued in Burlington, Massachusetts, on October 26, 1999.

Jorge A. Fernandez,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–22851 Filed 9–2–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–364–AD; Amendment 39–11288; AD 99–18–22]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F27 Series Airplanes Equipped With Rolls-Royce 532–7 "Dart 7" (RDa–7) Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F27 series airplanes, that requires revising the Airplane Flight Manual (AFM) to provide the flightcrew with modified operational procedures to ensure continuous operation with the high pressure cock (HPC) levers in the lockout position. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent burnout of the engines during flight by ensuring that the HPC levers are in a permanent lockout position.

DATES: Effective October 8, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 8, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, The Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Fokker Model F27 series airplanes was published in the **Federal Register** on April 23, 1999 (64 FR 19940). That action proposed to require a revision to the Airplane Flight Manual (AFM) to provide the flightcrew with modified operational procedures to ensure continuous operation with the high pressure cock (HPC) levers in the lockout position.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Mandate Rolls-Royce Modifications

Two commenters request that the FAA reconsider its position not to require accomplishment of the engine modifications described in two Rolls-Royce Service Bulletins DA72–198 (Modification 1232) and DA72–348 (Modification 1550) in this proposed AD. The commenters state that these modifications are necessary for engines installed on the affected airplanes, and should be required prior to inflight operation with the HPC levers in the lockout position (i.e., with permanent cruise pitch lock-out).

Modification 1550 enables the propeller to be feathered automatically in the event of a gearbox disconnect. One commenter states that, with the advent of Fokker Service Bulletin F27/61–40 and the related Dutch airworthiness directive, the safety feature incurred by the cruise pitch lock (in relation to potential gearbox disconnect) is now proposed to be inhibited in order to prevent cruise pitch lock "hang-ups". The commenter considers that, under these circumstances, Modification 1550 in particular is now an extremely important safety feature for engine and propeller integrity. The commenter notes that this view was accepted by the Civil Aviation Authority (CAA) of the United Kingdom (with Modification 1550 now mandatory for all Dart installations), and by the Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands.

The FAA infers that the commenters are requesting that the referenced Rolls-Royce modifications be mandated and be included in this AD; the FAA partially concurs. Although the original intent of the modifications was to auto-feather the propeller in the event of an annulus gear failure and thereby limit secondary damage to the engine, the FAA acknowledges that the Rolls-Royce engine modifications are considered to be an additional safety feature relative to the actions required by this AD.

After further discussions with the RLD, the manufacturer, and the FAA Engine and Propeller Directorate, the FAA will consider rulemaking to require these modifications. However, since these engine modifications are not intended to address the identified unsafe condition of this AD, and to prevent further delay in the issuance of this final rule, any such requirement will be addressed in separate rulemaking action, rather than under the auspices of this AD. No change to the final rule is made in this regard.

Statement of Unsafe Condition

One commenter, the manufacturer, notes that the proposed AD incorrectly states that malfunctions of the automatic and manual cruise lock withdrawal system can cause engine "overspeed and burnout"; the commenter requests that this statement be corrected. The commenter states that such a malfunction will not cause an engine overspeed condition, but will only cause an engine turbine burnout. Additionally, the actions required by the proposed AD (operation with the HPC levers in the lockout position) will only prevent an engine turbine burnout. The FAA acknowledges that the information provided by the commenter is correct and has revised the final rule accordingly.

Correction of Manufacturer's Address

One commenter, the manufacturer, informs the FAA that its address has been changed and requests that the proposed AD be revised to provide the correct address for obtaining service information. The FAA has made this change in the final rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 34 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required AFM revision, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,040, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–18–22 Fokker: Amendment 39–11288. Docket 98–NM–364–AD.

Applicability: Model F27 series airplanes, as listed in Fokker F27 Service Bulletin F27/61–40, Revision 1, dated August 1, 1997; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent turbine burnout of the engines during flight by ensuring that the high pressure cock (HPC) levers are in a permanent lockout position, accomplish the following:

AFM Revision

(a) Within 6 months after the effective date of this AD: Revise the Emergency, Normal, and Abnormal Procedures Sections, as applicable, of the FAA-approved Airplane Flight Manual (AFM) by incorporation of Fokker F27 Service Bulletin F27/61–40,

Revision 1, dated August 1, 1997; including Fokker F27 Manual Change Notification (MCNO) F27–001, dated June 30, 1997. [MCNO F27–001 specifies procedures for placing the HPC levers in a permanent lockout position (with the cruise lock withdrawal system disabled) during operation of the airplane.] This action may be accomplished by inserting a copy of the MCNO into the AFM.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 1: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with Fokker F27 Service Bulletin F27/61–40, Revision 1, dated August 1, 1997; including Fokker F27 Manual Change Notification (MCNO) F27–001, dated June 30, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, The Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 2: The subject of this AD is addressed in Dutch airworthiness directive 1996–130 (A), dated October 31, 1996.

(e) This amendment becomes effective on October 8, 1999.

Issued in Renton, Washington, on August 27, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22920 Filed 9–2–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–112–AD; Amendment 39–11287; AD 99–18–21]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 series airplanes, that requires a one-time inspection of the propeller de-ice system to verify the proper functioning of the engine indication and crew alert system (EICAS) for the de-ice system; and corrective action, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the EICAS to provide a warning to the flightcrew in the event of failure of the propeller de-ice system, which could result in damage to the airplane and consequent loss of controllability of the airplane.

DATES: Effective October 8, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 8, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700; Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Dornier Model 328–100 series airplanes was published in the **Federal Register** on May 28, 1998 (63 FR 29150). That action proposed to require a one-time inspection of the propeller de-ice system to verify the proper functioning of the engine indication and crew alert system (EICAS) for the de-ice system; and corrective action, if necessary.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Revise Applicability of Proposed AD

The manufacturer requests that the applicability statement of the proposed AD be limited only to airplanes on which Dornier Alert Service Bulletin ASB–328–30–013, Revision 1, dated February 21, 1997 has not been accomplished. This service bulletin was referenced in the proposed AD as the appropriate source of service information for accomplishment of the inspection. The manufacturer provides a compliance record of those airplanes on which the alert service bulletin has been accomplished, stating that 46 of 50 affected U.S.-registered airplanes are in full compliance with the referenced alert service bulletin, and that the remaining airplanes are scheduled to comply soon. The manufacturer notes that it continually strives to encourage compliance of manufacturer-recommended service bulletins. However, limiting the applicability as stated would encourage operators to follow its recommendations in the future.

The FAA concurs with the commenter's request. The FAA notes that such a change to the applicability is not strictly necessary, since the Compliance portion of the AD states "Required as indicated, unless accomplished previously". However, if the actions required by this AD have been accomplished on an airplane, that airplane is no longer subject to the unsafe condition that these requirements are intended to prevent, and does not need to be included in the applicability of this AD. The FAA has limited the applicability of the final rule to exclude airplanes on which Dornier Alert Service Bulletin ASB–328–30–013, Revision 1, dated February 21, 1997, has been accomplished.

Request To Include Manufacturer's Approved Repairs

One commenter states that the wording in paragraph (b) of the proposed AD places the FAA into an active role of participating in the inspection task, and requests that the FAA revise the paragraph to specifically reference or incorporate troubleshooting instructions that respond to a finding of a "typical malfunction." Paragraph (b) of the proposed AD requires, "prior to further flight, repair of the EICAS in accordance with a method approved by the FAA". Since operators routinely schedule AD-related tasks on weekends or overnights, it is most likely that an operator who finds a discrepancy or has an unconfirmed discrepancy will incur a sizable delay or cancellation, because the responsible FAA staff cannot be contacted in time. The commenter suggests that the FAA obtain the additional repair instructions by coordinating this request with the airplane manufacturer prior to issuance of the final rule.

The FAA does not concur with the commenter's request. Specific repair instructions were not included in the referenced service bulletin, and were not made available by the manufacturer following issuance of the NPRM, so cannot be included in this AD. However, in light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements with Germany, the FAA has determined that, for this AD, repairs may also be approved by the Luftfahrt-Bundesamt (LBA) (or its delegated agent), which is the airworthiness authority for Germany. Allowing repairs to be approved by the LBA will provide operators with additional means to quickly obtain an approved repair. Paragraph (b) of the final rule has been revised accordingly.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 50 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $3,000, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–18–21 Dornier Luftfahrt GmbH: Amendment 39–11287. Docket 98–NM–112–AD.

Applicability: Model 328–100 series airplanes, except those on which Dornier Alert Service Bulletin ASB–328–30–013, Revision 1, dated February 21, 1997, has been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the engine indication and crew alert system (EICAS) to provide a warning to the flightcrew in the event of failure of the propeller de-ice system, which could result in damage to the airplane and consequent loss of controllability of the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a one-time inspection of the propeller de-ice system to verify the proper functioning of the EICAS for the de-ice system, in accordance with Dornier Alert Service Bulletin ASB–328–30–013, Revision 1, dated February 21, 1997.

(b) If the inspection required by paragraph (a) of this AD indicates that the EICAS is malfunctioning, prior to further flight, repair the EICAS in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Luftfahrt-Bundesamt (or its delegated agent).

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection shall be done in accordance with Dornier Alert Service Bulletin ASB–328–30–013, Revision 1, dated February 21, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fairchild Dornier, Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal

Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in German airworthiness directive 97–066, dated March 13, 1997.

(f) This amendment becomes effective on October 8, 1999.

Issued in Renton, Washington, on August 27, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22923 Filed 9–2–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–69–AD; Amendment 39–11289; AD 99–18–23]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–90–30 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas MD–90–30 series airplanes, that requires revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness [MD–90–30 Airworthiness Limitations Instructions (ALI)] to incorporate certain replacement times for safe-life limited parts. This amendment is prompted by analysis of data that identified reduced replacement times for certain safe-life limited parts. The actions specified by this AD are intended to prevent fatigue cracking of various safe-life limited parts; such fatigue cracking could adversely affect the structural integrity of these airplanes.

DATES: Effective October 8, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 8, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brent Bandley, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5237; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all McDonnell Douglas MD–90–30 series airplanes was published in the **Federal Register** on March 2, 1999 (64 FR 10113). That action proposed to require revising the Airworthiness Limitations Section of the Instructions for Continued Airworthiness [MD–90–30 Airworthiness Limitations Instructions (ALI)] to incorporate certain replacement times for safe-life limited parts.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposed rule.

Request To Withdraw Proposed AD

One commenter states that timely incorporation of revisions to the ALI may be secured by processes other than the issuance of an AD. The commenter contends that the proposed AD places an unnecessary burden on engineering and maintenance personnel and defeats the regulatory mandates that are currently in place by standing Federal Aviation Regulations (FAR). The ALI is currently monitored and revised as new revisions are issued and made available by the manufacturer. This practice is duplicated with other similar maintenance and operational documents, including, but not limited to, aircraft maintenance manuals, flight manuals, pilot's operating handbooks, and aircraft service bulletins. The commenter also states that Model MD–90 series airplanes are operated in accordance with the Type Certificate (TC) of the aircraft. In order to adhere to operation of the aircraft in accordance with the TC, the commenter asserts that it is clear to operators that the ALI and its subsequent revisions must be considered and accomplished concurrent with any other requirement specified within the parameters of the TC.

From this comment, the FAA infers that the commenter is requesting that the proposed AD be withdrawn. The FAA does not concur. In accordance with the airworthiness standards requiring "damage tolerance assessments" (current Section 1529 of 14 CFR parts 23, 25, 27, and 29; Section 4 of 14 CFR parts 33 and 35; Section 82 of 14 CFR part 31; and the Appendices referenced in those sections), all products certificated to comply with those sections must have Instructions for Continued Airworthiness (or, for some products, maintenance manuals), that include an Airworthiness Limitations Section (ALS).

Based on in-service data or post certification testing and evaluation, the manufacturer may revise the ALS to include new or more restrictive life limits and inspections, or it may become necessary for the FAA to impose new or more restrictive life limits and structural inspections, in order to ensure continued structural integrity and continued compliance with damage tolerance requirements. However, in order to require compliance with these new inspection requirements and life limits for previously certificated airplanes, the FAA must engage in rulemaking. Because loss of structural integrity would constitute an unsafe condition, it is appropriate to impose these requirements through the AD process. Although prudent operators may already have incorporated the latest revisions of the ALI, issuance of this AD ensures that all operators take appropriate action to correct the identified unsafe condition. It should be noted that, simultaneously with the issuance of the AD, the responsible Aircraft Certification Office (ACO) will revise the TC data sheet for the product to indicate the change in the airworthiness limitations.

The practice of mandating ALS revisions has been used for several years and is not a novel or unique procedure. The FAA finds that requiring ALS revisions has the advantage of keeping all airworthiness limitations, whether imposed by original certification or by AD, in one place within the operator's maintenance program, thereby reducing the risk of non-compliance because of oversight or confusion. In some cases where there is a large fleet of airplanes with several small operators, it is possible that operators may not receive revisions to the ALS documents. The AD process ensures that these operators are aware of the revisions to the ALS.

Request To Delete Paragraph (b) of the Proposed AD

One commenter states that the restriction imposed by paragraph (b) of the proposed AD does not take into consideration: (1) Any individual part with safe-life limits imposed by special analysis and approved by the manufacturer on an individual basis; or (2) future revision of the safe-life limits section of the ALI. The commenter also states that the proposed AD would ultimately requires that each part be analyzed by the manufacturer (and subsequently approved with a safe-life limit deviation from the ALI) and submitted to the FAA for approval as an alternative method of compliance (AMOC).

From this comment, the FAA infers that the commenter is requesting that paragraph (b) of the proposed AD be deleted. The FAA does not concur. Paragraph (b) is necessary because section 91.403 of the FAR would otherwise permit operation in accordance with alternative inspection intervals set forth in approved operations specifications or inspection programs, which might conflict with the intervals referenced in this AD. However, under the provisions of paragraph (c) of the final rule, the FAA may approve requests for AMOC's or adjustments to the compliance time if data are submitted to substantiate that such a method or adjustment would provide an acceptable level of safety.

In addition, the FAA agrees with the commenter that any reduction or expansion to the safe-life limits has to be coordinated between the operator, manufacturer, and the FAA. However, the FAA finds that this will not impose a significant burden because such changes must already be FAA-approved.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 150 airplanes of the affected design in the worldwide fleet. The FAA estimates that 100 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $6,000, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–18–23 McDonnell Douglas: Amendment 39–11289. Docket 98–NM–69–AD.

Applicability: All Model MD–90–30 airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of various safe-life limited parts, which could adversely affect the structural integrity of these airplanes, accomplish the following:

(a) Within 180 days after the effective date of this AD, revise the Airworthiness Limitations Section of the Instructions for Continued Airworthiness [Airworthiness Limitations Instructions (ALI), McDonnell Douglas Report No. MDC–94K9000, dated November 1994] to incorporate the Part Number, Item, and Mandatory Replacement Time of certain safe-life limited parts by inserting a copy of Revision 3, dated November 1997, into the ALI.

(b) Except as provided by paragraph (c) of this AD: After the actions specified in paragraph (a) of this AD have been accomplished, no alternative replacement times may be approved for the safe-life limited parts specified in McDonnell Douglas ALI Report No. MDC–94K9000, Revision 3, dated November 1997.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The ALI revision shall be done in accordance with McDonnell Douglas Airworthiness Limitations Instructions Report No. MDC–94K9000, Revision 3, dated November 1997, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
List of Effective Pages	Not Shown	November 1997.

(Note: The revision level is indicated only on the Title page; no other page contains this information.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The Boeing Company, Douglas Products Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on October 8, 1999.

Issued in Renton, Washington, on August 27, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–22922 Filed 9–2–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–54–AD; Amendment 39–11286; AD 99–18–20]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–50, –80A1/A3, and –80C2A Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to General Electric Company (GE) CF6–50, –80A1/A3, and –80C2A series turbofan engines installed on Airbus A300 and A310 series airplanes, that requires initial and repetitive thrust reverser inspections and checks, and allows extended repetitive inspection intervals if an optional double p-seal configuration is installed. This amendment is prompted by the report of a higher than anticipated center drive unit (CDU) cone brake failure rate which reduces the overall thrust reverser system protection against inadvertent deployment. The actions specified by this AD are intended to prevent inadvertent in-flight thrust reverser deployment, which can result in loss of control of the airplane.

DATES: Effective November 2, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 2, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Middle River Aircraft Systems, Mail Point 46, 103 Chesapeake Park Plaza, Baltimore, MD, 21220–4295, attn: Warranty Support, telephone: (410) 682–0094, fax: (410) 682–0100. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William S. Ricci, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7742, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6–50, –80A1/A3, and –80C2A series turbofan engines installed on Airbus A300 and A310 series airplanes was published in the **Federal Register** on February 23, 1999 (64 FR 8762). That action proposed to require initial and repetitive thrust reverser inspections and checks, and allow extended repetitive inspection intervals if an optional double p-seal configuration is installed.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter requests an initial inspection interval of at least 860 hours time-in-service (TIS). The commenter states that it performs B-checks at intervals of 430 hours TIS and opens the fan reverser at every other B-check (at intervals of 860 hours TIS) for engine accessibility. The FAA does not concur. The thrust reverser system safety analysis indicates that extending the initial compliance interval would increase the probability of an inadvertent deployment of the thrust reverser in-flight and provide an unacceptable level of safety. The FAA determined the need to establish system integrity in the fleet, and the 600 hour TIS initial compliance interval for CF6–80C2A series engines provides that level of safety. The desire to conform inspections to an operator's scheduled maintenance, by itself, is not sufficient to change the initial inspection interval.

One commenter requests inspections performed in accordance with Revision 1 of Middle River Aircraft Systems CF6–80A1/A3 Service Bulletin (SB) No. 78–1002 be accepted for compliance with the proposed rule. The FAA does not concur. Revision 3 of SB No. 78–1002 includes inspections of electrical cables, the aft frame, and the ball screw housing that are not included in earlier revisions.

One commenter states that airplanes that have not had components removed, replaced, or modified which could alter the actuation system rigging, or that have undergone previous health check inspections, should not be required to have the fan reverser operational check portion of the initial inspection performed. The FAA does not concur. The purpose of a fan reverser operational check is to ensure that the system has been restored to operational status after inspections have been completed.

One commenter requests that the reporting requirement, contained in the Accomplishment Instructions of the SB, should be omitted from the proposed rule. The FAA does not concur. The instruction to report inspection results is to the manufacturer, not the FAA. The FAA did not impose a specific reporting requirement in the proposed rule. However, the FAA recommends reporting inspection results to the manufacturer in accordance with the SB, as reporting inspection results is important to ensure that the failure rate data used in the risk analysis to establish inspection requirements and intervals remain valid.

One commenter believes it is not necessary to start the engine to perform the operational check. The FAA concurs. Connection of an external pneumatic power source to the airplane ground connection, or auxiliary power unit (APU), in accordance with the applicable aircraft maintenance manual, is allowed for fan reverser operational checks.

One commenter requests that specific revision numbers and part numbers be omitted from the proposed rule and that the phrase "current or later revision" be added. The FAA does not concur. It is the FAA's policy not to issue blanket approvals for documents that have not been published yet. Each document is reviewed individually to make sure it fulfills all requirements. Operators may request an alternate method of compliance (AMOC) to utilize later revisions of SBs in accordance with paragraph (b) of this final rule.

One commenter (the manufacturer of the thrust reverser system) requests that the mail stop and telephone number for its technical publications department be changed. The FAA concurs and the information has been changed in this final rule.

One commenter (the engine manufacturer) requests that the engine model designation of the GE CF6–80C2 engine be changed to –80C2A. The FAA concurs and this final rule has been corrected.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 849 engines of the affected design in the worldwide fleet. The FAA estimates that 193 engines installed on aircraft of US registry will be affected by this AD, that it will take approximately 5 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on US operators is estimated to be $57,900.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–18–20 General Electric Company: Amendment 39–11286. Docket 98–ANE–54–AD.

Applicability: General Electric Company (GE) CF6–50, –80A1/A3, and –80C2A series turbofan engines, installed on Airbus A300 and A310 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent in-flight thrust reverser deployment, which can result in loss of control of the airplane, accomplish the following:

(a) Perform initial and repetitive thrust reverser inspections and checks as follows:

(1) For GE CF6–50 series engines, perform inspections and checks in accordance with paragraph 2, Accomplishment Instructions, of Middle River Aircraft Systems CF6–50 Service Bulletin (SB) No. 78–3001, Revision 2, dated December 18, 1997, as follows:

(i) Perform the initial inspections and checks within 1,500 hours time-in-service (TIS) after the effective date of this AD.

(ii) Thereafter, perform inspections and checks at intervals not to exceed 6,000 hours TIS since last check.

(2) For CF6–80A1/A3 series engines, perform inspections and checks in accordance with paragraph 2, Accomplishment Instructions, of Middle River Aircraft Systems CF6–80A1/A3 SB No. 78–1002, Revision 3, dated January 21, 1999, as follows:

(i) Perform the initial inspections and checks within 1,500 hours TIS after the effective date of this AD.

(ii) Thereafter, perform inspections and checks at intervals not to exceed 7,000 hours TIS since last check.

(3) For CF6–80C2A series engines, perform inspections and checks in accordance with paragraph 2, Accomplishment Instructions, of Middle River Aircraft Systems CF6–80C2 Alert Service Bulletin (ASB) No. 78A1015, Revision 5, dated January 21, 1999, as follows:

(i) Perform the initial inspections and checks within 600 hours TIS after the effective date of this AD.

(ii) Thereafter, perform repetitive inspections and checks as follows:

(A) For engines with a double p-seal configuration, having translating cowl part numbers 491B1613000–109 or D52B1000–9, perform repetitive inspections and checks at intervals not to exceed 7,000 hours TIS since last inspection.

(B) For all other engines, perform repetitive inspections and checks at intervals not to exceed 600 hours TIS since last inspection.

(4) Perform corrective actions or deactivate the fan reverser in accordance with paragraph 2, Accomplishment Instructions, of the applicable SB or ASB prior to further flight.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(d) The actions required by this AD shall be done in accordance with the following Middle River Aircraft Systems service documents:

Document No.	Pages	Revision	Date
CF6–50 SB 78–3001 ..... Total Pages: 43.	1–43	2	December 18, 1997.
CF6–80A1/A3 SB 78–1002 ..... Total Pages: 31.	1–31	3	January 21, 1999.
CF6–80C2 ASB 78A1015 ..... Total Pages: 32.	1–32	5	January 21, 1999.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Middle River Aircraft Systems, Mail Point 46, 103 Chesapeake Park Plaza, Baltimore, MD, 21220–4295, attn: Warranty Support, telephone: (410) 682–0094, fax: (410) 682–0100. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(e) This amendment becomes effective on November 2, 1999.

Issued in Burlington, Massachusetts, on August 26, 1999.

Jorge A. Fernandez,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–22967 Filed 9–2–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 92C–0348]

Listing of Color Additives for Coloring Bone Cement; FD&C Blue No. 2–Aluminum Lake on Alumina

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of FD&C Blue No. 2–Aluminum Lake on alumina to color bone cement. This action responds to a petition filed by Biomet, Inc. The agency also is transferring the listing for FD&C Blue No. 2 in sutures to reflect the suture in which this color additive is used are devices not drugs.

DATES: This regulation is effective October 5, 1999; except as to any provisions that may be stayed by the filing of proper objections; written objections and requests for a hearing by October 4, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ellen M. Waldron, Center for Food Safety and Applied Nutrition (HFS–215), 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of November 19, 1992 (57 FR 54598), FDA announced that a color additive petition (CAP 2C0239) had been filed by Biomet, Inc., P.O. Box 587, Warsaw, IN 46581–0587. The petition proposed to amend the color additive regulations to provide for the safe use of FD&C Blue No. 2–Aluminum Lake to color bone cement. The petition was filed under section 706(d)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 376(d)(1)), presently designated as 721(d)(1) of the act (21 U.S.C. 379e(d)(1)).

The agency is changing the name of the color additive used in the filing notice to FD&C Blue No. 2–Aluminum Lake on alumina to make it conform to the nomenclature proposed for the permanent listing of color additive lakes (61 FR 8372, March 4, 1996). To reflect that sutures in which this color additive is used are devices, not drugs, the agency also is transferring the listing for the use of FD&C Blue No. 2 in sutures from § 74.1102 *FD&C Blue No. 2* (21 CFR 74.1102) under subpart B—Drugs to new § 74.3102 *FD&C Blue No. 2* (21 CFR 74.3102) under subpart D—Medical Devices and is making nonsubstantive amendments to § 74.1102. This transfer will provide for all medical device uses of FD&C Blue No. 2 and its lake to be listed uniformly and more correctly under subpart D—Medical Devices. Section 74.1102(c)(1)(iv) is being removed because it is no longer applicable.

The Medical Device Amendments (Public Law 94–295) (the amendments) were enacted into law on May 28, 1976, to provide a comprehensive system of regulation for devices. These amendments (21 U.S.C. 321, *et seq.*) expanded the definition of device, under section 201(h) of the act (21 U.S.C. 321(h)), to include many products that were previously regarded as drugs. These products are known as "transitional" devices and are subject to regulation under section 520(l) of the act (21 U.S. C. 360j(l)). In the **Federal Register** of December 16, 1977 (42 FR 63472), FDA published a notice listing those products that had previously been considered to be drugs that FDA now considered to be devices under the amendments. FDA listed nonabsorbable surgical sutures, and absorbable surgical sutures as transitional devices in the December 1977 notice (42 FR 63472 at 63474). Various types of surgical sutures are classified as devices in 21 CFR 878.4493, 878.4830, 878.5000, 878.5010, 878.5020, and 878.5030. Because all surgical sutures are regulated as devices, FDA is redesignating its listing of FD&C Blue No. 2 in sutures from § 74.1102 under subpart B—Drugs to new § 74.3102 under subpart D—Medical Devices.

II. Regulatory History and Current Listings

In a final rule published in the **Federal Register** on February 13, 1971 (36 FR 2967), FDA added 21 CFR 8.4022 (presently § 74.1102) to list FD&C Blue No. 2 for use to color nylon sutures for general surgery. In this final rule, FDA also added specifications for FD&C Blue No. 2 for use to color sutures.

In the **Federal Register** of February 4, 1983 (48 FR 5252), FDA issued a final rule adding § 74.102 and amending § 74.1102 to permanently list the color additive FD&C Blue No. 2 for use in food and ingested drugs, respectively. In the February 4, 1983, final rule, FDA also added new specifications for FD&C Blue No. 2 for use in food and ingested drugs that identified the color additive more precisely than those specifications that had previously been included in the provisional listing for FD&C Blue No. 2 in 21 CFR part 82. Further, to provide adequate assurance of safety, the agency specified in the February 4, 1983, final rule (48 FR 5252 at 5259–5260), through a general description, the manufacturing process for FD&C Blue No. 2.

III. Applicability of the Act

With the passage of the Medical Device Amendments of 1976 (Public Law 94–295), Congress mandated the listing of color additives for use in medical devices when the color additive in the device comes into direct contact with the body for a significant period of time (section 721(a) of the act). The color additive FD&C Blue No. 2–Aluminum Lake on alumina is added to bone cement in such a way that at least some of the color additive will come into contact with the body for a significant period of time when the bone cement is in place. In addition, the bone cement may be used in permanent joint replacements. Thus, for both of these uses, the color additive FD&C Blue No. 2–Aluminum Lake on alumina will be in direct contact with the body for a significant period of time. Consequently, the petitioned use of the color additive is subject to the statutory listing requirement.

IV. The Color Additive

The color additive that is the subject of this rule, FD&C Blue No. 2–Aluminum Lake on alumina (CAS Reg. No. 16521–38–3), is the aluminum salt of the color additive FD&C Blue No. 2, extended on a substratum of alumina. The aluminum salt is formed when FD&C Blue No. 2 is mixed with aluminum sulfite, sodium carbonate, and water. The color additive FD&C Blue No. 2 is identified in § 74.102(a)(1).

V. Safety Evaluation

FDA estimates that the petitioned use of the additive, FD&C Blue No. 2–Aluminum Lake on alumina, at a level not to exceed 0.1 percent by weight of the bone cement, would result in exposure no greater than 90 micrograms per person over a 70-year lifetime or an "estimated daily intake" of 3 nanograms per person per day. Actual exposure to the subject color additive from the proposed use is expected to be significantly lower, because lakes are deliberately formulated to be insoluble and the petitioner submitted data to demonstrate that FD&C Blue No. 2–Aluminum Lake on alumina does not leach from cured bone cement in detectable quantities under simulated conditions of use.

To establish the safety of FD&C Blue No. 2–Aluminum Lake on alumina, the petitioner has submitted data from muscle implantation tests on the bone cement in rabbits, intraperitoneal toxicity studies of the cement in dogs, intracutaneous testing of cement extracts in rabbits, and cytotoxicity tests. No adverse effects attributable to FD&C Blue No. 2–Aluminum Lake on alumina were reported in these studies. Feeding studies available in agency files with the straight color, FD&C Blue No. 2, also demonstrated no adverse effects. The dietary route of exposure utilized in these studies with FD&C Blue No. 2 is not comparable to the route of exposure from the proposed use of FD&C Blue No. 2–Aluminum Lake on alumina in bone cement, but the absence of adverse effects associated with exposure to FD&C Blue No. 2 helps to mitigate concern for systemic toxicity from the use of FD&C Blue No. 2–Aluminum Lake on alumina in bone cement. Based on review of all available toxicological data on FD&C Blue No. 2 and FD&C Blue No. 2–Aluminum Lake on alumina, the agency concludes that the limited exposure resulting from the proposed use of FD&C Blue No. 2–Aluminum Lake on alumina in bone cement is safe.

VI. Conclusions

FDA has evaluated the data and information in the petition and other relevant material. Based on this information the agency concludes that: (1) The proposed use of FD&C Blue No. 2–Aluminum Lake on alumina, at a level not to exceed 0.1 percent by weight of the bone cement, to color bone cement is safe; and (2) the color additive will achieve its intended coloring effect, and thus, is suitable for this use. Further, the agency concludes that the color additive regulations in part 74 (21 CFR part 74) should be amended as set forth below.

To reflect that sutures in which this color additive is used are devices, not drugs, the agency is redesignating the current listing for the use of the color additive FD&C Blue No. 2 in sutures from § 74.1102, subpart B—Drugs to new § 74.3102, subpart D—Medical Devices and is making nonsubstantive amendments to § 74.1102.

VII. Inspection of Documents

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

VIII. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

IX. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

X. Objections

Any person who will be adversely affected by this regulation may at any time on or before October 4, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register**.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 74 is amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1.The authority citation for 21 CFR part 74 continues to read as follows:

Authority: 21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e.

§ 74.1102 [Amended]

2. Section 74.1102 *FD&C Blue No. 2* is amended by removing paragraphs (b)(1) and (c)(1); and by redesignating paragraphs (b)(2) and (c)(2) as paragraphs (b) and (c) respectively.

3. Section 74.3102 is added to subpart D to read as follows:

§ 74.3102 FD&C Blue No. 2.

(a) *Identity.* The color additive FD&C Blue No. 2 shall conform in identity to the requirements of § 74.102(a)(1).

(b) *Specifications.* (1) The color additive FD&C Blue No. 2 for use in coloring surgical sutures shall conform to the following specifications and shall be free from impurities other than those named to the extent that such impurities may be avoided by current good manufacturing practice:

Sum of volatile matter at 135 °C (275 °F) and chlorides and sulfates (calculated as sodium salts), not more than 15 percent.

Water insoluble matter, not more than 0.4 percent.

Isatin-5-sulfonic acid, not more than 0.4 percent.

Isomeric colors, not more than 18 percent.

Lower sulfonated subsidiary colors, not more than 5 percent.

Lead (as Pb), not more than 10 parts per million.

Arsenic (as As), not more than 3 parts per million.

Total color, not less than 85 percent.

(2) The color additive FD&C Blue No. 2–Aluminum Lake on alumina for use in bone cement shall be prepared in accordance with the requirements of § 82.51 of this chapter.

(c) *Uses and restrictions.* (1) The color additive FD&C Blue No. 2 may be safely used for coloring nylon (the copolymer of adipic acid and hexamethylene diamine) surgical sutures for use in general surgery subject to the following restrictions:

(i) The quantity of color additive does not exceed 1 percent by weight of the suture;

(ii) The dyed suture shall conform in all respects to the requirements of the United States Pharmacopeia XX (1980); and

(iii) When the sutures are used for the purposes specified in their labeling, the color additive does not migrate to the surrounding tissues.

(2) The color additive FD&C Blue No. 2–Aluminum Lake on alumina may be safely used for coloring bone cement at a level not to exceed 0.1 percent by weight of the bone cement.

(3) Authorization and compliance with these uses shall not be construed as waiving any of the requirements of sections 510(k), 515, and 520(g) of the Federal Food, Drug, and Cosmetic Act with respect to the medical device in which the color additive FD&C Blue No. 2 and the color additive FD&C Blue No. 2–Aluminum Lake on alumina are used.

(d) *Labeling.* The labels of the color additive FD&C Blue No. 2 and the color additive FD&C Blue No. 2–Aluminum Lake on alumina shall conform to the requirements of § 70.25 of this chapter.

(e) *Certification.* All batches of FD&C Blue No. 2 and its lake shall be certified in accordance with regulations in part 80 of this chapter.

Dated: August 25, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–22994 Filed 9–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 99F–1420]

Indirect Food Additives: Adhesives and Components of Coatings

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of butylated reaction product of *p*-cresol and dicyclopentadiene as an antioxidant in pressure-sensitive adhesives intended for use in contact with food. This action responds to a petition filed by Goodyear Tire and Rubber Co.

DATES: This regulation is effective September 3, 1999. Submit written objections and requests for a hearing by October 4, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** May 26, 1999 (64 FR 28500), FDA announced that a food additive petition (FAP 9B4663) had been filed by Goodyear Tire and Rubber Co., c/o Keller and Heckman LLP, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend the food additive regulations in § 175.125 *Pressure-sensitive adhesives* (21 CFR 175.125) to provide for the safe use of butylated reaction product of *p*-cresol and dicyclopentadiene as an antioxidant in pressure-sensitive adhesives intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and therefore, (3) the regulations in § 175.125 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this final rule as announced in the Notice of Filing for FAP 9B4663 (64 FR 28500). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before October 4, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 175.125 is amended in paragraph (b)(2) by alphabetically adding an entry to read as follows:

§ 175.125 Pressure-sensitive adhesives.

* * * * *

(b) * * *

(2) * * *

Butylated reaction product of *p*-cresol and dicyclopentadiene produced by reacting *p*-cresol and dicyclopentadiene in an approximate mole ratio of 1.5 to 1.0, respectively, followed by alkylation with isobutylene so that the butyl content of the final product is not less than 18 percent, for use at levels not to exceed 1.0 percent by weight of the adhesive formulation.

* * * * *

Dated: August 26, 1999.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–22996 Filed 9–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 98F–1122]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final Rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of dimethylolpropionic acid as a pigment dispersant for pigments used as components of food-contact articles. This action is in response to a petition filed by Geo Specialty Chemicals.

DATES: This regulation is effective September 3, 1999. Submit written objections and requests for a hearing October 4, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December, 14, 1998 (63 FR 68777), FDA announced that a food additive petition (FAP 9B4637) had been filed by Geo Specialty Chemicals, c/o Keller and Heckman LLP, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend the food additive regulations in § 178.3725 *Pigment dispersants* (21 CFR 178.3725) to provide for the safe use of dimethylolpropionic acid as a dispersant for pigments used as components of food-contact articles.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and therefore, (3) the regulations in § 178.3725 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 9B4637 (63 FR 68778). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before October 4, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.3725 is amended in the table by alphabetically adding an entry under the headings "Substances" and "Limitations" to read as follows:

§ 178.3725 Pigment dispersants.

* * * * *

Substances	Limitations
Dimethylolpropionic acid (CAS Reg. No. 4767–03–7).	For use only at levels not to exceed 0.45 percent by weight of the pigment. The pigmented articles may contact all foods under conditions of use A through H as described in Table 2 of § 176.170(c) of this chapter.
* * * * * * *	

Dated: August 26, 1999.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–23001 Filed 9–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 98F–0893]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of siloxanes and silicones, methyl hydrogen, reaction products with 2,2,6,6-tetramethyl-4-(2-propenyloxy)piperidine as an ultraviolet (UV) stabilizer for polypropylene intended for use in contact with food. This action responds to a petition filed by Great Lakes Chemical Corp.

DATES: This regulation is effective September 3, 1999. Submit written objections and requests for a hearing by October 4, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 21, 1998 (63 FR 56197), FDA announced that a food additive petition (FAP 8B4633) had been filed by Great Lakes Chemical Corp., c/o Keller and Heckman LLP, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of siloxanes and silicones, methyl hydrogen, reaction products with 2,2,6,6-tetramethyl-4-(2-propenyloxy)piperidine as a UV stabilizer for high density polyethylene and polypropylene intended for use in contact with food.

The petition was subsequently amended to request the use of the additive only in polypropylene, at a maximum level of use of 0.33 percent by weight of the polymer. Because the request to amend the petition is for a use that is within the scope of the filing notice of October 21, 1998, the agency determined that an amended filing notice was not required. Accordingly, the regulation in this document provides for the amended clearance sought by the petitioner.

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that: (1) the proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and therefore, (3) the regulations in § 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 8B4633 (63 FR 56197). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before October 4, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS.

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.2010 is amended in the table in paragraph (b) by alphabetically adding an entry under the headings "Substances" and "Limitations" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * *	* * *
Siloxanes and silicones, methyl hydrogen, reaction products with 2,2,6,6-tetramethyl-4-(2-propenyloxy)piperidine (CAS Reg. No. 182635–99–0).	For use as an ultraviolet (UV) stabilizer only at levels not to exceed 0.33 percent by weight of polypropylene complying with § 177.1520(c) of this chapter, items 1.1a, 1.1b, 1.2, and 1.3, under conditions of use D, E, F, and G, as described in Table 2 of § 176.170 of this chapter.
* * *	* * *

Dated: August 26, 1999.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–23000 Filed 9–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 522

Implantation or Injectable Dosage Form New Animal Drugs; Estradiol and Testosterone, Progesterone and Estradiol, Trenbolone, and Trenbolone and Estradiol, With Tylosin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of four supplemental applications filed by Ivy Laboratories, Div. of Ivy Animal Health, Inc., two supplemental new animal drug applications (NADA's) and two supplemental abbreviated new animal drug applications (ANADA's). The supplemental applications provide for addition of tylosin as a local antibacterial to estradiol/testosterone, progesterone/estradiol, trenbolone, and trenbolone/estradiol cattle ear implants. The products are subcutaneous implants for cattle for weight gain and/or feed efficiency.

EFFECTIVE DATE: SEPTEMBER 3, 1999.

FOR FURTHER INFORMATION CONTACT: Jack Caldwell, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0217.

SUPPLEMENTARY INFORMATION: Ivy Laboratories, Div. of Ivy Animal Health, Inc., 8857 Bond St., Overland Park, KS 66214, filed the following applications:

Supplemental NADA 110–315 for Component® E–S with Tylan® implant (200 milligrams (mg) progesterone and 20 mg estradiol benzoate in eight pellets with 29 mg tylosin tartrate in one pellet) for increased rate of weight gain and improved feed efficiency in steers weighing 400 pounds (lb) or more, and Component E–C® with Tylan® implant (100 mg progesterone and 10 mg estradiol benzoate in four pellets with 29 mg tylosin tartrate in one pellet) for increased rate of weight gain in suckling beef calves up to 400 lb of body weight.

Supplemental NADA 135–906 for Component® E–H with Tylan® implant (20 mg estradiol benzoate and 200 mg testosterone propionate in eight pellets with 29 mg tylosin tartrate in one pellet) for growth promotion and improved feed efficiency in heifers weighing 400 lb or more.

Supplemental ANADA 200–221 for Component® TE–S with Tylan® implant (120 mg trenbolone acetate and 24 mg estradiol in six pellets with 29 mg tylosin tartrate in one pellet) for increased rate of weight gain and improved feed efficiency in feedlot steers.

Supplemental ANADA 200–224 for Component® T–S with Tylan® implant and Component® T–H with Tylan® implant. Component® T–S with Tylan® implant contains 140 mg trenbolone acetate in seven pellets and 29 mg tylosin tartrate in one pellet. It is used for improved feed efficiency in growing-finishing feedlot steers. It should be reimplanted once after 63 days. Component® T–H with Tylan® implant contains 200 mg trenbolone acetate in 10 pellets and 29 mg tylosin tartrate in 1 pellet. It is used for increased rate of weight gain and improved feed efficiency in growing-finishing feedlot heifers. It should be used in feedlot heifers only, during approximately the last 63 days prior to slaughter.

The supplements are approved as of July 20, 1999, and the regulations are amended in § 522.842 (21 CFR 522.842) and 21 CFR 522.1940, 522.2476, and 522.2477 to reflect the approvals. The basis of approval is discussed in the freedom of information summaries.

Also, § 522.842 is amended to remove several outdated paragraphs.

In addition, the sponsor has informed FDA of the change of corporate name to Ivy Laboratories, Div. of Ivy Animal Health, Inc. FDA is amending 21 CFR 510.600(c) to reflect the new name.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of each supplement may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), these approvals for food producing animals qualify for 3 years of marketing exclusivity beginning July 20, 1999, because the supplemental applications contain substantial evidence of the effectiveness of the drug involved, any studies of animal safety, or, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for the approvals and conducted or sponsored by the applicant. The 3 years of marketing exclusivity apply only to the addition of tylosin tartrate to the implants as a local antibacterial.

FDA has carefully considered the potential environmental effects of these actions. FDA has concluded that the actions will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 510

Administrative practices and procedures, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) in the entry for "Ivy Laboratories, Inc." and in paragraph (c)(2) in the entry for "021641" by removing the sponsor name and adding in its place "Ivy Laboratories, Div. of Ivy Animal Health, Inc.".

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

4. Section 522.842 is amended by removing and reserving paragraph (a) and removing paragraph (e), by revising paragraph (b) and the introductory text of paragraph (d), by redesignating paragraph (d)(1) as paragraph (d)(1)(i) and by adding paragraph (d)(1)(ii) to read as follows:

§ 522.842 Estradiol benzoate and testosterone propionate in combination.

(a) [Reserved]

(b) *Sponsors.* See 000856 in § 510.600(c) of this chapter for use as in paragraph (d)(1)(i), (d)(2), and (d)(3) of this section. See 021641 in § 510.600(c) of this chapter for use as in paragraph (d) of this section.

* * * * *

(d) *Conditions of use—Heifers.* For implantation as follows:

(1) *Amount.* (i) 20 milligrams estradiol benzoate and 200 milligrams testosterone propionate in eight pellets per implant dose.

(ii) 20 milligrams estradiol benzoate and 200 milligrams testosterone propionate in eight pellets with 29 milligrams tylosin tartrate as a local antibacterial in one pellet, per implant dose.

* * * * *

5. Section 522.1940 is amended by revising paragraph (b); by redesignating paragraphs (d)(1)(i) and (d)(2)(i) as paragraphs (d)(1)(i)(A) and (d)(2)(i)(A); by revising newly redesignated (d)(1)(i)(A) and (d)(2)(i)(A); and by adding paragraphs (d)(1)(i)(B), and (d)(2)(i)(B) to read as follows:

§ 522.1940 Progesterone and estradiol benzoate in combination.

* * * * *

(b) *Sponsors.* See 000856 in § 510.600(c) of this chapter for use as in paragraphs (d)(1)(i)(A), (d)(1)(ii), (d)(1)(iii), (d)(2)(i)(A), (d)(2)(ii), (d)(2)(iii), and (d)(3) of this section. See 021641 in § 510.600(c) of this chapter for use as in paragraphs (d)(1) and (d)(2)(i) through (d)(2)(iii)(A) of this section.

* * * * *

(d) * * *

(1) *Suckling beef calves*—(i) *Amount.* (A) 100 milligrams of progesterone and 10 milligrams of estradiol benzoate in four pellets per implant dose.

(B) 100 milligrams of progesterone and 10 milligrams of estradiol benzoate in four pellets with 29 milligrams of tylosin tartrate as a local antibacterial in one pellet per implant dose.

* * * * *

(2) *Steers*—(i) *Amount*—(A) 200 milligrams of progesterone and 20 milligrams estradiol benzoate in eight pellets per implant dose.

(B) 200 milligrams progesterone and 20 milligrams estradiol benzoate in eight pellets with 29 milligrams tylosin tartrate as a local antibacterial in one pellet per implant dose.

* * * * *

6. Section 522.2476 is amended by revising paragraph (b), by redesignating the text of paragraphs (d)(1) and (d)(2) as paragraphs (d)(1)(i) and (d)(2)(i), and by adding paragraphs (d)(1)(ii) and (d)(2)(ii) to read as follows:

§ 522.2476 Trenbolone acetate.

* * * * *

(b) *Sponsors.* See 012579 in § 510.600(c) of this chapter for use as in paragraphs (d)(1)(i), (d)(2)(i), and (d)(3) of this section. See 021641 in § 510.600(c) of this chapter for use as in paragraphs (d)(1), (d)(2), and (d)(3) of this section.

* * * * *

(d) * * *

(1) * * *

(ii) 200 milligrams trenbolone acetate (10 pellets of 20 milligrams each) with 29 milligrams tylosin tartrate as a local antibacterial (1 pellet) per implant dose, for increased rate of weight gain and improved feed efficiency in growing-finishing feedlot heifers. Use last 63 days prior to slaughter.

(2) * * *

(ii) 140 milligrams trenbolone acetate (seven pellets of 20 milligrams each) with 29 milligrams tylosin tartrate as a local antibacterial (one pellet) per implant dose, for improved feed efficiency in growing-finishing feedlot steers. Use 126 days prior to slaughter. Should be reimplanted once 63 days prior to slaughter.

* * * * *

7. Section 522.2477 is amended by redesignating paragraphs (a), (b), (c), and (c)(1)(i) as paragraphs (b), (c), (d), and (d)(1)(i)(A); by reserving paragraph (a); by revising newly redesignated paragraph (b); and by adding paragraph (d)(1)(i)(B) to read as follows:

§ 522.2477 Trenbolone acetate and estradiol.

(a) [Reserved]

(b) *Sponsors.* See 012579 in § 510.600(c) of this chapter for use as in paragraphs (d)(1)(i)(A), (d)(1)(ii), (d)(1)(iii), (d)(2), and (d)(3) of this section. See 021641 in § 510.600(c) of this chapter for use as in paragraph (d)(1) of this section.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(B) 120 milligrams trenbolone acetate and 24 milligrams estradiol in 6 pellets with 29 milligrams tylosin tartrate as a local antibacterial in 1 pellet per implant dose.

* * * * *

Dated: August 24, 1999.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 99–22995 Filed 9–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Enrofloxacin Tablets

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Bayer Corp., Agriculture Division, Animal Health. The supplemental NADA provides for an additional tablet size for enrofloxacin tablets used in dogs and cats for the management of diseases associated with bacteria susceptible to enrofloxacin and for the removal of a tablet size no longer marketed.

EFFECTIVE DATE: September 3, 1999.

FOR FURTHER INFORMATION CONTACT: Dennis M. Bensley, Center for Veterinary Medicine (HFV–143), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1705.

SUPPLEMENTARY INFORMATION: Bayer Corp., Agriculture Division, Animal Health, P.O. Box 390, Shawnee Mission, KS 66201, filed supplemental NADA 140–441 Baytril® tablets (enrofloxacin) that provides for 136-milligram (mg) tablet size in addition to 22.7- and 68.0-mg tablets. Furthermore, the sponsor stated that the 5.7-mg tablets are no longer marketed and has requested the size be deleted. The supplemental NADA is approved as of August 3, 1999, and the regulations are amended in 21 CFR 520.812(a) to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.812 [Amended]

2. Section 520.812 *Enrofloxacin tablets* is amended in paragraph (a) by removing "5.7, 22.7, or 68.0" and adding in its place "22.7, 68.0, or 136.0"

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Dated: August 24, 1999.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 99–22998 Filed 9–3–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 556 and 558

New Animal Drugs For Use In Animal Feeds; Semduramicin and Virginiamycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Pfizer, Inc. The NADA provides for using approved single ingredient semduramicin and virginiamycin Type A medicated articles to make combination drug Type C medicated broiler chicken feeds. Approval of the NADA also provides for tolerances for semduramicin residues and an acceptable daily intake (ADI) for semduramicin and for virginiamycin.

EFFECTIVE DATE: September 3, 1999.

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1600.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017, filed NADA 141–114 that provides for combining approved Aviax® (22.7 grams per pound (g/lb) semduramicin) and Stafac® (20 or 227 g/lb virginiamycin) Type A medicated articles to make combination drug Type C medicated broiler chicken feeds. The Type C medicated broiler feeds containing 25 parts per million (ppm) (22.7 g/ton (t)) semduramicin and 5 to 15 g/t virginiamycin are used for the prevention of coccidiosis caused by *Eimeria tenella, E. acervulina, E. maxima, E. brunetti, E. necatrix,* and *E. mivati/mitis,* and for increased rate of weight gain. The Type C medicated broiler feeds containing 25 ppm semduramicin and 5 g/t virginiamycin are used for the prevention of coccidiosis caused by *E. tenella, E. acervulina, E. maxima, E. brunetti, E. necatrix,* and *E. mivati/mitis,* and for increased rate of weight gain and improved feed efficiency. The Type C medicated broiler feeds containing 25 ppm semduramicin and 20 g/t virginiamycin are used for the prevention of coccidiosis caused by *E. tenella, E. acervulina, E. maxima, E. brunetti, E. necatrix,* and *E. mivati/mitis,* and for prevention of necrotic enteritis caused by *Clostridium*

perfringens susceptible to virginiamycin.

The NADA is approved as of July 27, 1999. The regulations are amended in 21 CFR 558.555 by redesignating paragraph (b) as paragraph (d), by adding new paragraph (b) and adding and reserving paragraph (c), by revising the heading of newly redesignated paragraph (d), by removing the introductory text of newly redesignated paragraph (d)(1), and by adding paragraphs (d)(5), (d)(6), and (d)(7) to reflect the approval. Also, the regulations are amended in 21 CFR 558.635 by removing paragraphs (a), (c), (e)(3), and (e)(4), by redesignating paragraphs (b), (d), (e), and (f) as paragraphs (a), (b), (c), and (d), by correcting the cross-references in newly redesignated paragraph (a) from paragraph (f) to paragraph (d), by correcting a typographical error in newly redesignated paragraph (d)(2)(i), and by adding paragraph (d)(4)(vii) to also reflect the approval. The basis for approval is discussed in the freedom of information summary.

Furthermore, neither an ADI for semduramicin or for virginiamycin nor a tolerance for semduramicin residues have been previously established. At this time, 21 CFR 556.597 is added to establish an ADI and a tolerance for semduramicin. Also, 21 CFR 556.750 is amended to remove language referring to negligible residues in swine, broiler chicken, and cattle tissues to provide for an ADI for virginiamycin, and to reflect a revised format.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 556

Animal drugs, Foods.

21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 556 and 558 are amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

1. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

2. Section 556.597 is added to read as follows:

§ 556.597 Semduramicin.

(a) *Acceptable daily intake (ADI).* The ADI for total residues of semduramicin is 180 micrograms per kilogram of body weight per day.

(b) *Tolerances*—(1) *Broiler chickens.* Tolerances are established for residues of parent semduramicin in uncooked edible tissues of 400 parts per billion (ppb) in liver and 130 ppb in muscle.

(2) [Reserved]

3. Section 556.750 is revised to read as follows:

§ 556.750 Virginiamycin.

(a) *Acceptable daily intake (ADI).* The ADI for total residues of virginiamycin is 250 micrograms per kilogram of body weight per day.

(b) *Tolerances*—(1) *Swine.* Tolerances are established for residues of virginiamycin in uncooked edible tissues of 0.4 part per million (ppm) in kidney, skin, and fat, 0.3 ppm in liver, and 0.1 ppm in muscle.

(2) *Broiler chickens and cattle.* A tolerance for residues of virginiamycin is not required.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

4. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

5. Section 558.555 is amended by redesignating paragraph (b) as paragraph (d), by adding new paragraph (b) and adding and reserving paragraph (c), by revising the heading of newly redesignated paragraph (d), by removing the introductory text of newly redesignated paragraph (d)(1), and by adding paragraphs (d)(5), (d)(6), and (d)(7) to read as follows:

§ 558.555 Semduramicin.

* * * * *

(b) *Related tolerances.* See § 556.597 of this chapter.

(c) [Reserved]

(d) *Conditions of use in broiler chickens.* * * *

(5) *Amount.* Semduramicin 22.7 grams with virginiamycin 20 grams per ton.

(i) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria tenella, E. acervulina, E. maxima, E. brunetti, E. necatrix,* and *E. mivati/mitis,* and for prevention of necrotic enteritis caused by *Clostridium perfringens* susceptible to virginiamycin.

(ii) *Limitations.* For broiler chickens only. Feed continuously as sole ration. Do not feed to laying hens. Semduramicin and virginiamycin as provided by 000069 in § 510.600(c) of this chapter.

(6) *Amount.* Semduramicin 22.7 grams with virginiamycin 5 to 15 grams per ton.

(i) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria tenella, E. acervulina, E. maxima, E. brunetti, E. necatrix,* and *E. mivati/mitis,* and for increased rate of weight gain.

(ii) *Limitations.* For broiler chickens only. Feed continuously as sole ration. Do not feed to laying hens. Semduramicin and virginiamycin as provided by 000069 in § 510.600(c) of this chapter.

(7) *Amount.* Semduramicin 22.7 grams with virginiamycin 5 grams per ton.

(i) *Indications for use.* For the prevention of coccidiosis caused by *Eimeria tenella, E. acervulina, E. maxima, E. brunetti, E. necatrix,* and *E. mivati/mitis,* and for increased rate of weight gain and improved feed efficiency.

(ii) *Limitations.* For broiler chickens only. Feed continuously as sole ration. Do not feed to laying hens. Semduramicin and virginiamycin as provided by 000069 in § 510.600(c) of this chapter.

6. Section 558.635 is amended by removing paragraphs (a), (c), (e)(3), and (e)(4), by redesignating paragraphs (b), (d), (e), and (f) as paragraphs (a), (b), (c), and (d), respectively, by removing "(f)" and "(f)(3)" in newly redesignated paragraph (a)(1) and adding in their places "(d)" and "(d)(3)", by removing "(f)(1)(iv)" and "(f)(1)(v)" in newly redesignated paragraph (a)(2) and adding in their places "(d)(1)(iv)" and "(d)(1)(v)", by removing "chiickens" in newly redesignated paragraph (d)(2)(i) and adding in its place "chickens", and by adding paragraph (d)(4)(vii) to read as follows:

§ 558.635 Virginiamycin.

* * * * *

(d) * * *

(4) * * *

(vii) Semduramicin as in § 558.555 of this chapter.

Dated: August 24, 1999.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 99–22997 Filed 9–3–99; 8:45 am]

BILLING CODE 4160–01–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA–19–01–5892a; A–1–FRL–6421–8]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Volatile Organic Compound Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes reasonably available control technology (RACT) emission limits for certain industrial categories. The intended effect of this action is to fully approve the majority of the Commonwealth's SIP revision submitted on November 13, 1992 and February 17, 1993. The EPA is granting approval to the generic RACT rule in Title 310 Code of Massachusetts Regulations (CMR) section 7.18(17) only in the Springfield, Massachusetts ozone nonattainment area (Berkshire, Franklin, Hampden and Hampshire counties). EPA will address 310 CMR 7.18(17) as it applies to the Boston, Massachusetts ozone nonattainment area in a future action. This action is being taken under section 110 of the Clean Air Act (Act). 42 U.S.C. 7410.

DATES: This rule will become effective November 2, 1999 without further notice, unless EPA receives relevant adverse comments on the parallel notice of proposed rulemaking by October 4, 1999. If EPA receives such comment, then it will publish a document in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, 1 Congress Street, Boston, MA 02114–2023. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA, and at the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Jeanne Cosgrove, (617) 918–1669.

SUPPLEMENTARY INFORMATION: On November 13, 1992 and February 17, 1993, the Massachusetts Department of Environmental Protection (DEP) submitted a revision to its SIP. The revision consisted of changes and additions made to Massachusetts' volatile organic compound (VOC) rules pursuant to the requirements of section 182(b)(2) of the Act, 42 U.S.C. 7511a(b)(2). Changes were made to the following regulations: 310 CMR 7.00, Definitions; 310 CMR 7.03(13), Paint spray booths; 310 CMR 7.18(2), Compliance with emission limitations; 310 CMR 7.18(7), Automobile surface coating; 310 CMR 7.18(8), Solvent Metal Degreasing; 310 CMR 7.18(11), Surface coating of miscellaneous metal parts and products; 310 CMR 7.18(12), Graphic arts; 310 CMR 7.18(17), Reasonably available control technology; and 310 CMR 7.24(3), Distribution of motor vehicle fuel. Additionally, the following new rules were added to Massachusetts' Code: 310 CMR 7.18(20), Emission control plans for implementation of reasonably available control technology; 310 CMR 7.18(21), Surface coating of plastic parts; 310 CMR 7.18(22), Leather surface coating; 310 CMR 7.18(23), Wood products surface coating; 310 CMR 7.18(24), Flat wood paneling surface coating; 310 CMR 7.18(25), Offset lithographic printing; 310 CMR 7.18(26), Textile finishing; and 310 CMR 7.18(27), Coating mixing tanks.

I. Background

Under the pre-amended Clean Air Act, ozone nonattainment areas were required to adopt RACT rules for sources of VOC emissions. EPA issued three sets of control technique guidelines (CTGs) documents, establishing a "presumptive norm" for RACT for various categories of VOC sources. The three sets of CTGs were (1) Group I—issued before January 1978 (15 CTGs); (2) Group II—issued in 1978 (9 CTGs); and (3) Group III—issued in the early 1980's (5 CTGs). Those sources not covered by a CTG were called non-CTG sources. EPA determined that the area's SIP-approved attainment date established which RACT rules the area needed to adopt and implement. Under section 172(a)(1), ozone nonattainment areas were generally required to attain the ozone standard by December 31, 1982. Those areas that submitted an attainment demonstration projecting attainment by that date were required to adopt RACT for sources covered by the Group I and II CTGs. Those areas that sought an extension of the attainment date under section 172(a)(2) to as late as December 31, 1987 were required to adopt RACT for all CTG sources and for all major (i.e., 100 ton per year or more of VOC emissions) non-CTG sources.

Under the pre-amended Act, Massachusetts was designated as nonattainment for ozone and sought an extension of the attainment date under section 172(a)(2) to December 31, 1987. Therefore, the Commonwealth was required to adopt RACT for all CTG sources and for all major (i.e., 100 ton per year or more of VOC emissions) non-CTG sources. However, the Commonwealth of Massachusetts did not attain the ozone standard by the approved attainment date. On May 25, 1988, EPA notified the Governor of Massachusetts that portions of the SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that pre-enactment ozone nonattainment areas that retained their designation of nonattainment and were classified as marginal or above fix their deficient RACT rules for ozone by May 15, 1991. The entire Commonwealth of Massachusetts retained its designation of nonattainment and was classified as serious nonattainment for ozone. 56 FR 56694 (Nov. 6, 1991). The Commonwealth submitted revisions to meet the RACT fix-up requirement and EPA has approved those revisions to the Massachusetts SIP on October 8, 1992, January 11, 1993 and June 30, 1993 (57 FR 46313, 58 FR 3492 and 58 FR 34908.)

Section 182(b)(2) of the amended Act requires States to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing CTG—i.e., a CTG issued prior to the enactment of the Clean Air Act Amendments of 1990; (2) RACT for

sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG. This RACT requirement applies to nonattainment areas that previously were exempt from certain RACT requirements to "catch up" to those nonattainment areas that became subject to those requirements during an earlier period. In addition, it requires newly designated ozone nonattainment areas to adopt RACT rules consistent with those for previously designated nonattainment areas. Subsequent to the 1990 Clean Air Act, all of Massachusetts was classified as serious nonattainment for ozone. 56 FR 56694 (Nov. 6, 1991).

Since Massachusetts was previously required to adopt RACT for all the CTG and major non-CTG sources, the Commonwealth did not need to adopt any specific additional RACT rules. However, the Commonwealth did submit a rule for the surface coating of flat wood paneling. Massachusetts had previously submitted a negative declaration for this rule, stating that there were no wood paneling sources in Massachusetts. The Commonwealth is now adopting a wood paneling regulation because the state has identified such sources. Additionally, under section 182 of the Act, the major source definition for serious nonattainment areas was lowered to include sources that have a potential to emit greater than 50 tons per year of VOC. Therefore, the Commonwealth needed to lower the applicability cutoff of its non-CTG and/or relevant CTG-based regulations to include newly classified major sources in these categories.

In addition, CAA section 184 (b)(1)(B) requires all states in the Ozone Transport Region (OTR) to impose RACT on all sources covered by a CTG. Under section 184(b)(2), OTR states must regulate all sources with potential VOC emissions of 50 tons per year or more as though they were in a moderate ozone attainment area. All of Massachusetts is part of the OTR. Therefore, RACT remains a requirement statewide in Massachusetts even after EPA's recent revocation of the one-hour ozone standard in Eastern Massachusetts.

VOCs contribute to the production of ground level ozone and smog. These rules were adopted as part of an effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone. The following section is EPA's evaluation and final action for the following Massachusetts regulations: 310 CMR 7.00, Definitions; 310 CMR 7.03(13), Paint spray booths; 310 CMR 7.18(2), Compliance with emission limitations; 310 CMR 7.18(7), Automobile surface coating; 310 CMR 7.18(8), Solvent Metal Degreasing; 310 CMR 7.18(11), Surface coating of miscellaneous metal parts and products; 310 CMR 7.18(12), Graphic arts; 310 CMR 7.18(17), Reasonably available control technology (as it applies to the Springfield ozone nonattainment area only); 310 CMR 7.18(20), Emission control plans for implementation of reasonably available control technology; 310 CMR 7.18(21), Surface coating of plastic parts; 310 CMR 7.18(22), Leather surface coating; 310 CMR 7.18(23), Wood products surface coating; 310 CMR 7.18(24), Flat wood paneling surface coating; 310 CMR 7.18(25), Offset lithographic printing; 310 CMR 7.18(26), Textile finishing; 310 CMR 7.18(27), Coating mixing tanks; and 310 CMR 7.24(3), Distribution of motor vehicle fuel.

II. EPA Evaluation and Final Action

The Commonwealth has submitted negative declarations for the CTG categories listed below. Through the negative declarations, Massachusetts is asserting that it has no sources within its area that would be subject to a rule for that source category.

- Petroleum refinery vacuum producing systems, waste water separators & process unit turnarounds (Petroleum refinery processes).
- Fugitive VOC emissions from petroleum refining (Leaks from petroleum refinery equipment).
- Pharmaceutical manufacture (manufacture of synthesized pharmaceutical products).
- Rubber tire manufacture (Manufacture of pneumatic rubber tires).
- Large petroleum dry cleaners.
- Manufacture of high density polyethylene, polypropylene, and polystyrene resins (Manufacture of high-density polyethylene, polypropylene and polystyrene resins).
- Natural gas/gasoline processing plants (Equipment Leaks from natural gas/gasoline processing plants).
- SOCMI air oxidation processes (Air oxidation processes in synthetic organic chemical manufacturing industry).

EPA is approving these negative declarations as meeting the section 182(b)(2) and section 184(b) RACT requirements for the source categories listed. However, if evidence is submitted during the comment period that there are existing sources within the area that, for purposes of meeting the RACT requirements, would be subject to one or more of these rules, if developed, EPA will withdraw final approval action on the negative declarations.

Massachusetts also submitted revisions to its VOC regulations. In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the Act and EPA regulations, as found in section 110 and part D of the Act and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). EPA's interpretation of these requirements, which forms the basis for today's action, appears in various EPA policy guidance documents. The specific guidance relied on for this action is referenced within the technical support document and this action. For the purpose of assisting State and local agencies in developing RACT rules, EPA prepared a series of CTG documents. The CTGs are based on the underlying requirements of the Act and specify presumptive norms for RACT for specific source categories. EPA has not yet developed CTGs to cover all sources of VOC emissions. Further interpretations of EPA policy are found in, but not limited to, the following: (1) the proposed Post-1987 ozone and carbon monoxide policy, 52 FR 45044 (November 24, 1987); (2) the document entitled, "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to appendix D of November 24, 1987 **Federal Register** document," otherwise known as the "Blue Book" (notice of availability was published in the **Federal Register** on May 25, 1988 and in the existing CTGs); (3) the "Model Volatile Organic Compound Rules for Reasonably Available Technology," (Model VOC RACT Rules) issued as a staff working draft in June 1992; (4) the document entitled, "Draft Control Techniques Guidelines of Control of Volatile Organic Compound Emissions from Offset Lithographic Printing," September 1993; (5) the document entitled, "Alternative Control Techniques Document: Offset Lithographic Printing," (EPA 453/R–94–054) June 1994; (6) the document entitled, "Alternative Control Techniques Document: Surface Coating of Automobile/Transportation and Business Machine Plastic Parts," (EPA 453/R–94–017), February 1994; and (7) the document entitled, "Draft Control Techniques Guidelines of Control of Volatile Organic Compound Emissions from Wood Furniture Coating Operations, October 1991." In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

The changes to Massachusetts's VOC regulations that were included in the November 13, 1992 and February 17, 1993 submittals are summarized below, along with EPA's action with regard to each measure.

310 CMR 7.00, Definitions

Massachusetts has adopted 47 new and revised definitions which clarify some of the VOC regulations which EPA is acting upon in this proposed rulemaking. These definitions are approvable because they clarify existing and new rules in Massachusetts' VOC regulations.

310 CMR 7.03(13), Paint Spray Booths

The Commonwealth revised this regulation to include citations for the new VOC regulations added to 310 CMR 7.18. 310 CMR 7.03(13) currently regulates any new or modified paint spray booths. This revision is approvable.

310 CMR 7.18(2), Compliance with Emission Limitations

Section (f) was added to this regulation to include an exemption for noncompliant coatings used in amounts less than 55 gallons in the aggregate for any consecutive 12 month period. The change is consistent with EPA's August 10, 1990 policy memorandum from G.T. Helms, Chief of the Ozone/Carbon Monoxide Programs Branch of the Office of Air Quality Planning and Standards, entitled, "Exemption of Low-Use Coatings." Section 193 of the Clean Air Act (i.e., the General Savings Clause), requires that any regulation in effect before the date of the enactment of the Clean Air Act Amendments of 1990 in any nonattainment area may only be modified if the modification insures equivalent or greater reductions of the same pollutant. Although the proposed addition of 310 CMR 7.18(2)(f) represents a small relaxation of existing control requirements, the requirements of section 193 are met by the reductions resulting from other changes being approved in this notice.

The Commonwealth has added another section to 310 CMR 7.18(2) to allow daily weighted averaging, provided the source meets conditions outlined in the subsection. This addition is consistent given with the guidance given in section XX.3082 of EPA's Model Rule and is approvable.

310 CMR 7.18(7), Automobile Surface Coating

The Commonwealth corrected a typographical mistake in its automobile surface rule. This change does not affect the rule and is approvable.

310 CMR 7.18(8), Solvent Metal Degreasing

The Commonwealth has revised it's free board ratio from 0.70 to 0.75. This revision is approval and consistent with EPA's Model Rule.

310 CMR 7.18(11), Surface Coating of Miscellaneous Metal Parts and Products

The Commonwealth corrected a typographical error in section 310 CMR 7.18(11)(a). This change does not affect the rule and is approvable.

310 CMR 7.18(12), Graphic Arts

This regulation was amended to define RACT for graphic arts sources with potential emissions from all printing operations of 50 tons or more per year, which were not previously subject to the rule. While this change is consistent with the requirements of section 182 of the Act, the Commonwealth has removed the compliance date for sources previously subject to the rule. The Commonwealth included a section 301 CMR 7.18(12)(e) allowing enforcement action to be taken on a facility that was not previously in compliance. EPA interprets 310 CMR 7.18(12)(e) to require sources who meet a size cutoff of 100 tons per year to meet the compliance dates that were in effect from January 1, 1983 until January 1, 1994. For example, Massachusetts' graphic arts rule that was adopted on August 17, 1990 had a compliance date for 100 ton sources of December 31, 1982, unless granted an approval by the MA DEP to December 31, 1985. Therefore, sources who met the 100 tons per year cutoff had to meet the compliance date of December 31, 1982 unless the MA DEP granted an extension until December 31, 1985. This revision is approvable.

310 CMR 7.18(17), Reasonably Available Control Technology

This regulation was amended to define RACT for any facility that has the potential to emit, before add-on control, equal to or greater than 25 tons per year. Section 182(b)(2) of the CAA requires that a SIP revision be submitted by November 15, 1992 including "provisions to require the implementation of RACT. * * *" In addition, the necessary SIP revision is required to "provide for the implementation of the required measures as expeditiously as practicable but no later then May 31, 1995." This regulation describes a process by which RACT can be defined but does not specifically define RACT for each source applicable to the regulation. To receive full approval, Massachusetts will need to define explicitly, and have approved by EPA, RACT for all of the sources that are subject to 310 CMR 7.18(17). Because there are sources in the eastern Massachusetts ozone nonattainment area for which RACT plans have not yet been approved by EPA, EPA will address 310 CMR 7.18(17) in the Boston Massachusetts ozone nonattainment area in a separate **Federal Register** action, along with the case-specific RACT determinations. Since there are no outstanding RACT determinations in the Springfield ozone nonattainment area, EPA is approving 310 CMR 7.18(17) as it applies to the Springfield Massachusetts nonattainment area (i.e., Berkshire, Franklin, Hampden and Hampshire counties).

310 CMR 7.18(20), Emission Control Plans for Implementation of Reasonably Available Control Technology

This regulation outlines the process by which a facility must comply with the requirements of RACT under 310 CMR 7.18. This section says that a source must submit an emission control plan to the Commonwealth for review and approval. Furthermore, this section lists what the required elements are in the emission control plan.

310 CMR 7.18(21), Surface Coating of Plastic Parts

This section is added to regulate facilities with plastic parts coating line(s) which in total have the potential to emit, before add-on control, equal to or greater than 50 tons per year of VOC and requires compliance by January 1, 1994. A source can apply for a non-renewable one year extension of the compliance deadline. This regulation requires sources who do not have control devices to meet the following as applied emission limits:

Emission Source	Emission limitations (lbs VOC/gal solids);
Business Machines/Miscellaneous Plastic Parts:	
Color Coating	3.4

Emission Source	Emission limitations (lbs VOC/gal solids);
Color/texture Coating	3.4
EMI/RFI	8.8
Automotive Interior Parts Coating:	
Colorcoat	5.7
Primer	6.7
Automotive Exterior Flexible Parts Coating:	
Colorcoat	9.3
Clearcoat	6.7
Primer	11.9
Automotive Exterior Rigid (non-flexible) Parts Coating:	
Colorcoat	9.3
Clearcoat	6.7
Primer	6.7

Additionally, the Commonwealth has included the following as applied emission limits for sources which have add-on control devices:

Emission source	Emission limitations (lbs VOC/gal solids)
Business Machines/Miscellaneous Plastic Parts:	
Color Coating	1.7
Color/texture Coating	1.7
Primer Coating	1.4
EMI/RFI	1.9
Automotive Interior Parts Coating:	
Colorcoat	3.6
Primer	1.7
Automotive Exterior Flexible Parts Coating:	
Colorcoat	2.8
Clearcoat	2.4
Primer	4.8
Automotive Exterior Rigid (non-flexible) Parts Coating	
Colorcoat	2.8
Clearcoat	2.4
Primer	3.6

This regulation is approvable because it is consistent with EPA guidance and it meets the requirements of the Act.

310 CMR 7.18(22), Leather Surface Coating

The Commonwealth has regulated any leather surface coating line(s) which in total have the potential to emit before add-on control, equal to or greater than 50 tons per year of VOC. Compliance is required by January 1, 1994, unless granted an extension. No leather coater may use a coating which has an emission limit greater than 27.4 lbs VOC per gallon solids as applied. This regulation is approvable.

310 CMR 7.18(23), Wood Products Surface Coating

This addition to Massachusetts' rules require facilities with wood products surface coating line(s) with the potential to emit, before add-on control, equal to or greater than 50 tons per year of VOC to meet the following emission limitations:

Emission Source	Emission Limitation (lbs VOC/gal solids)
Semitransparent stain	89.4
Wash coat	35.6
Opaque stain	13.0
Sealer	23.4
Pigmented coat	15.6
Clear topcoat	23.4

A source must comply by January 1, 1994 unless granted a nonrenewable one year extension. This regulation is approvable and meets EPA's guidance that was available at the time the rule was adopted.

310 CMR 7.18(24), Flat Wood Paneling Surface Coating

This regulation requires any flat wood paneling surface coating line(s) which emits, before add-on control equal to or greater than 15 pounds per day of VOC to comply with the following emission limitations by January 1, 1994:

Emission Source	Emission Limitation (lbs of VOC per 1000 square feet coated)
Printed hardwood panels and thin particleboard panels	6.0
Natural finish hardwood plywood panels	12.0
Class II finish on hardboard panels	10.0

This regulation is approvable and meets the requirements in EPA's Model Rule.

310 CMR 7.18(25), Offset Lithographic Printing

The Commonwealth has adopted a regulation which regulates a facility with offset lithographic presses, which in total have the potential to emit, before add-on control, equal to or greater than 50 tons per year of VOC. A source subject to this regulation must comply by January 1, 1994 unless granted a one year extension to January 1, 1995. The requirements for each type of printing press is listed in Massachusetts' rule and the TSD prepared for this action. This regulation is approvable.

310 CMR 7.18(26), Textile Finishing

This new regulation applies to any person who owns, leases, operates or controls a textile finishing facility with potential emissions of 50 tons per year before add-on control. Sources are required to comply with the rule by January 1, 1994 unless given a non-renewable 1 year extension by the Commonwealth. A rotary screen or roller printing press cannot use a print paste formulation with an emission limit equal to or greater than 0.5 pounds of VOC per pound of solids as applied. Additionally, any finishing formulations cannot contain more than 0.5 pounds of VOC per pound of solids, as applied. This regulation is approvable because it is consistent with EPA guidance and it meets the requirements of the Act.

310 CMR 7.18(27), Coating Mixing Tanks

This new section regulates sources who lease, operate or control a coating mixing tank which emits before add-on control, 15 pounds of VOC per day. Most of this regulation requires "good housekeeping" measures for portable and stationary coating mixing tanks. Any source which has emissions from coating mixing tanks in excess of 50 tons per year must submit a plan to the Commonwealth and have it approved. The plans required by the coating mixing tank regulation are not necessary in order to enforce the basic RACT housekeeping that EPA is approving. Those requirements are already specified in the rule. This regulation is approvable.

310 CMR 7.24(3), Distribution of Motor Vehicle Fuel

The Commonwealth had revised this regulation to include a minor wording change in the applicability of the rule. Stationary tanks with the capacity equal to or greater than 2000 gallons are required to have any vapors displaced through submerged fill to be processed through a vapor balance system. The former regulation required stationary tanks greater than 2000 gallons to have their emission processed. The Commonwealth has also amended recordkeeping and testing provisions. This revision is approvable.

Transfer Efficiency Test Methods

In each of the new surface coating regulations EPA is approving today, there is a provision that addresses transfer efficiency. A typical example is found in the plastic parts surface coating regulation, 310 CMR 7.18(21)(g), which reads in part: "Demonstrations of compliance may include considerations of transfer efficiency provided that the baseline transfer efficiency is equal to or greater than 65%, and the transfer efficiency test method is detailed in the emission control plan approved by the Department." See also 310 CMR 7.18 (22)(f) (leather surface coating), (23)(g) (wood products surface coating), (24)(g) (flatwood paneling surface coating). This provision is designed to ensure that any transfer efficiency test method is clearly stated in an emission control plan, but it is not designed to delegate approval of that test method to DEP. Each of these rules includes a provision specifically requiring both DEP and EPA approval of any new test methods, such as 310 CMR 7.18(21)(I), which reads in part: "Testing shall be conducted in accordance with EPA Method 24 and/or Method 25 as described in CFR Title 40 part 60, or by *other methods approved by the Department and EPA*." (Emphasis added; see also 310 CMR 7.18(22)(h), (23)(i), (24)(i).) Any test method used to demonstrate improved transfer efficiency will have to be approved by both DEP and EPA, because there is currently no approved method in 40 CFR part 60. EPA is basing its approval of these provisions on its understanding that it is DEP's intent to submit transfer efficiency test methods to EPA for approval.

III. Final Action:

EPA is fully approving the VOC RACT regulations submitted by the Commonwealth on February 17, 1993 as revisions to the Commonwealth's SIP, with the exception of 310 CMR 7.18(17). For this regulation, EPA is approving it only as it applies to the Springfield, Massachusetts ozone nonattainment area (i.e., Berkshire, Franklin, Hampden and Hampshire counties).

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, the EPA is publishing a separate document that will serve as a proposal to approve the SIP revision should relevant adverse comments be filed. This action will be effective November 2, 1999 without further notice unless, by October 4, 1999, relevant adverse comments are received.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on the proposed rule. Only parties interested in commenting on the proposed rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective November 2, 1999 and no further action will be taken on the proposed rule.

Nothing in this action should be construed as permitting or allowing or

establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This FINAL rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 2, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).) EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Massachusetts was approved by the Director of the Federal Register on July 1, 1982.

Dated: June 24, 1999.

John P. DeVillars,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart W—Massachusetts

2. Section 52.1120 is amended by adding paragraph (c)(117) to read as follows:

§ 52.1120 Identification of plan.

* * * * *

(c) * * *

(117) Revisions to the State Implementation Plan submitted by the Massachusetts Department of Environmental Protection on February 17, 1993.

(i) Incorporation by reference.

(A) Letter from the Massachusetts Department of Environmental Protection dated February 17, 1993 submitting a revision to the Massachusetts State Implementation Plan.

(B) Regulations 310 CMR 7.00, Definitions; 310 CMR 7.03(13), Paint spray booths; 310 CMR 7.18(2), Compliance with emission limitations; 310 CMR 7.18(7), Automobile surface coating; 310 CMR 7.18(8), Solvent Metal Degreasing; 310 CMR 7.18(11), Surface coating of miscellaneous metal parts and products; 310 CMR 7.18(12), Graphic arts; 310 CMR 7.18(17), Reasonable available control technology (as it applies to the Springfield ozone nonattainment area only); 310 CMR 7.18(20), Emission control plans for implementation of reasonably available control technology; 310 CMR 7.18(21), Surface coating of plastic parts; 310 CMR 7.18(22), Leather surface coating; 310 CMR 7.18(23), Wood products surface coating; 310 CMR 7.18(24), Flat wood paneling surface coating; 310 CMR 7.18(25), Offset lithographic printing; 310 CMR 7.18(26), Textile finishing; 310 CMR 7.18(27), Coating mixing tanks; and 310 CMR 7.24(3), Distribution of motor vehicle fuel all effective on February 12, 1993.

3. In § 52.1167 Table 52.1167 is amended by adding new entries in numerical order to existing state citations: "310 CMR 7.00, Definitions; 310 CMR 7.18(2), Compliance with emission limitations; 310 CMR 7.18(7), Automobile surface coating; 310 CMR 7.18(8), Solvent Metal Degreasing; 310 CMR 7.18(11), Surface coating of miscellaneous metal parts and products; 310 CMR 7.18(12), Graphic arts; and 310 CMR 7.18(17), Reasonable available control technology; and by adding the following new state citations: 310 CMR 7.03(13), Paint spray booths; 310 CMR 7.18(20), Emission control plans for implementation of reasonably available control technology; 310 CMR 7.18(21), Surface coating of plastic parts; 310 CMR 7.18(22), Leather surface coating; 310 CMR 7.18(23), Wood products surface coating; 310 CMR 7.18(24), Flat wood paneling surface coating; 310 CMR 7.18(25), Offset lithographic printing; 310 CMR 7.18(26), Textile finishing; 310 CMR 7.18(27), Coating mixing tanks; and 310 CMR 7.24(3), Distribution of motor vehicle fuel.

§ 52.1167 EPA—approved Massachusetts State regulations

* * * * *

TABLE 52.1167—EPA—APPROVED MASSACHUSETTS REGULATIONS

State citation	Title/Subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
310 CMR 7.00	Definitions	February 17, 1993	9/3/1999	[Insert *FR* citation from published date].	c(117)	
310 CMR 7.03(13)	Paint spray booths	February 17, 1993	9/3/1999	[Insert *FR* citation from published date].	c(117)	Adds the following coating operations: plastic parts surface coating, leather surface coating, wood product surface coating, and flat wood paneling surface coating.

TABLE 52.1167—EPA—APPROVED MASSACHUSETTS REGULATIONS—Continued

State citation	Title/Subject	Date submitted by State	Date approved by EPA	Federal Register citation	52.1120(c)	Comments/unapproved sections
310 CMR 7.18(2) ...	Compliance with emission limitations.	February 17, 1993	9/3/1999	[Insert *FR* citation from published date].	c(117)	Adds an exemption for coatings used in small amounts, and a section on daily weighted averaging.
310 CMR 7.18(7) ...	Automobile surface coating.	February 17, 1993	9/3/1999	[Insert *FR* citation from published date].	c(117)	Revises a limit for primer surface coating.
310 CMR 7.18(8) ...	Solvent Metal Degreasing.	February 17, 1993	9/3/1999	[Insert *FR* citation from published date].	c(117)	Adds a typographical correction.
310 CMR 7.18(11)	Surface coating of miscell-aneous metal parts and products.	February 17, 1993	9/3/1999	[Insert *FR* citation from published date].	c(117)	Revises a reference.
310 CMR 7.18(12)	Graphic arts	February 17, 1993	9/3/1999	[Insert *FR* citation from published date].	c(117)	Amends applicability to 50 tons per year VOC.
310 CMR 7.18(17)	Reasonable available control technology.	February 17, 1993	9/3/1999	[Insert *FR* citation from published date].	c(117)	Adds new VOC RACT requirements in the Springfield, Mass. ozone nonattainment area only.
310 CMR 7.18(20)	Emission Control Plans for implementa-tion of reasonably available control technology.	February 17, 1993	9/3/1999	[Insert *FR* citation from published date].	c(117)	Adds new VOC RACT requirements.
310 CMR 7.18(21)	Surface coating of plastic parts.	February 17, 1993	9/3/1999	[Insert *FR* citation from published date].	c(117)	Adds VOC RACT for plastic parts surface coating.
310 CMR 7.18(22)	Leather surface coating.	February 17, 1993	9/3/1999	[Insert *FR* citation from published date].	c(117)	Adds VOC RACT for leather surface coating.
310 CMR 7.18(23)	Wood products surface coating.	February 17, 1993	9/3/1999	[Insert *FR* citation from published date].	c(117)	Adds VOC RACT for wood product surface coating.
310 CMR 7.18(24)	Flat wood paneling surface coating.	February 17, 1993	9/3/1999	[Insert *FR* citation from published date].	c(117)	Adds VOC RACT for flat wood paneling surface coating.
310 CMR 7.18(25)	Offset lithographic printing.	February 17, 1993	9/3/1999	[Insert *FR* citation from published date].	c(117)	Adds VOC RACT for offset lithographic printing.
310 CMR 7.18(26)	Textile finishing	February 17, 1993	9/3/1999	[Insert *FR* citation from published date].	c(117)	Adds VOC RACT for textile finishing.
310 CMR 7.18(27)	Coating mixing tanks.	February 17, 1993	9/3/1999	[Insert *FR* citation from published date].	c(117)	Adds VOC RACT for coating mixing tanks.
310 CMR 7.24(3) ...	Distribution of motor vehicle fuel.	February 17, 1993	9/3/1999	[Insert *FR* citation from published date].	c(117)	Amends distribution of motor fuel requirements, applicability, record-keeping and testing requirements.

[FR Doc. 99–22933 Filed 9–2–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–221–158; FRL–6430–7]

Approval and Promulgation of Implementation Plans; California—Owens Valley Nonattainment Area; PM–10

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a State Implementation Plan (SIP) submitted by the State of California for attaining the particulate matter (PM–10) national ambient air quality standards (NAAQS) in the Owens Valley Planning Area, along with the State's request for an extension to December 31, 2006 to attain the PM–10 NAAQS in the area. EPA is taking these final actions under provisions of the Clean Air Act (CAA) regarding EPA action on SIP submittals, SIPs for national primary and secondary standards, and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on October 4, 1999.

ADDRESSES: The rulemaking docket for this notice, may be inspected and copied at the following location during normal business hours. A reasonable fee may be charged for copying parts of the docket.

U.S. Environmental Protection Agency, Region 9, Air Division, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the SIP materials area also available for inspection at the addresses listed below:

California Air Resources Board, 2020 L Street, P.O. Box 2815, Sacramento, CA 95814; or

Great Basin Unified Air Pollution Control District, 157 Short Street, Suite 6, Bishop, CA 93514.

FOR FURTHER INFORMATION CONTACT: Larry A. Biland, U.S. Environmental Protection Agency, Region 9, Air Division (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744-1227.

SUPPLEMENTARY INFORMATION:

I. Background

The 1998 PM–10 plan (1998 SIP) for the Owens Valley Planning Area[1] was adopted on November 16, 1998, by the Great Basin Unified Air Pollution Control District (GBUAPCD or the District), and submitted as a SIP revision by the California Air Resources Board (CARB) on December 10, 1998. EPA determined this submission to be complete on February 2, 1999.[2]

II. Summary of EPA Action

EPA is finalizing approval of the serious area SIP submitted by the State of California for the Owens Valley PM–10 nonattainment area. Specifically, EPA is approving the 1998 SIP with respect to the CAA requirements for public notice and involvement under section 110(a)(1); emissions inventories under section 172(c)(3); control measures under section 110(k)(3), as meeting the requirements of sections 110(a) and 189(b)(1)(B); Reasonable Further Progress (RFP) and rate-of-progress milestones under section 189(c); contingency measures under section 172(c)(9); and demonstration of attainment under section 189(b)(1)(A). EPA is also finalizing approval of the State's request for an extension of the attainment date from December 31, 2001, to December 31, 2006, under CAA section 188(e).

These actions were proposed on June 25, 1998 (64 FR 34173–34179). The reader is referred to that notice for additional detail on the affected area and the SIP submittal, as well as a summary of relevant CAA provisions and EPA interpretations of those provisions.

III. Response to Public Comments

EPA received only one comment, from Dorothy Alther of California Indian Legal Services, representing the Lone Pine and Timbisha Shoshone Indian Tribes and the Owens Valley Indian Water Commission. The commenter summarized the position of the Tribes as having some concerns regarding the 1998 SIP and its implementation, but being anxious to see work begin on the Dry Lake. The comments did not urge EPA disapproval of the 1998 SIP.

Ms. Alther stated that EPA erred in stating that required controls on 16.5 square miles in the first phase of implementation is discretionary. EPA agrees. The Los Angeles Department of Water and Power is mandated to place controls on 10 square miles of the Owens Lake bed. Implementation of controls on an additional 3.5 square miles in Phase 2 is required "unless the District determines, on or before December 31, 2001, that the Owens Valley Planning Area (OVPA) will attain the PM–10 NAAQS by December 31, 2006 without implementation of further control measures." Implementation of controls on an additional 3 square miles in Phase 3 is required unless the District makes a similar determination by December 31, 2002. Board Order #981116–01, Paragraphs 2 and 3.

The commenter expressed concern regarding the lack of certainty regarding what measures will be implemented in the second increment of the 1998 SIP. EPA believes that the second increment (Phases 4–6) of the SIP control strategy includes an enforceable City obligation to implement controls on additional areas of the Owens Lake bed by particular dates sufficient to meet progress and attainment requirements as determined by the District. In view of the absence of information on large-scale fugitive dust control projects at a dry lake bed, EPA believes that it is reasonable to allow the City and District the discretion to identify more precisely the specific measures that will be most effective in achieving attainment, based on the practical experience gained in implementing the first increment of the control strategy. The commenter and other stakeholders will have an opportunity to review the specific strategies included in a SIP revision to be submitted on December 31, 2003. EPA will work with the District and City to ensure that the selected strategies in the second increment are adequate to achieve progress and attainment by 2006, and that any necessary SIP updates are prepared and adopted in a process that provides full opportunities for public involvement.

The commenter disagreed with EPA's discussion and proposed approval of the 5-year attainment date extension. The commenter did not explain why she believed that the SIP failed to qualify for an extension. EPA continues to believe that the area meets the CAA section 188(e) criteria for the extension. Despite an expeditious schedule for implementing all feasible and effective control measures, the 1998 SIP provides information showing that attainment by 2001 is impracticable. The State has complied with all implementation requirements and commitments pertaining to the area in the implementation plan. Finally, EPA continues to conclude that the 1998 SIP includes the most stringent measures

[1] For a description of the boundaries of the Owens Valley Planning Area, see 40 CFR 81.305.

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

that are included in the implementation plan of any state or are achieved in practice in any state, and can feasibly be implemented in the area.

The commenter questioned the adequacy of the attainment demonstration, since the modeling assessment shows the probable need to control 22,400 acres and the 1998 SIP concentrates on control of 14,400 acres. The District has committed to a program of continuing scientific investigation of emission reductions and air quality progress, and based on this refined information will adjust the strategy as needed to provide for attainment by 2006. If attainment has not been achieved in the first increment of control, the District will revise the SIP's control strategy in 2003 to provide controls over the lake playa sufficient to attain the NAAQS by 2006. EPA will monitor the results of these strategy assessments and work with the District and other plan participants to ensure that the plan is adjusted, as may be necessary, to meet progress and attainment deadlines.

The commenter noted that the plan shows a design day PM–10 concentration of 149.95 $\mu g/m^3$, which is technically below the 150 $\mu g/m^3$ 24-hour PM–10 NAAQS, but provides no "cushion." EPA agrees that the plan predicts that the control strategy will reduce peak concentrations only to levels very slightly below the 24-hour NAAQS. While the attainment provision meets minimal approval criteria, it will be important for the District, State, and EPA to verify that implementation of the plan is having the predicted impact on air quality.

For the reasons stated above, EPA is finalizing the proposed plan approval.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 2, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: August 18, 1999.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 52.220 is amended by adding paragraph (c)(247) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(267) New plan for Owens Valley PM–10 Planning Area for the following agency was submitted on December 10, 1998 by the Governor's designee.

(i) Incorporation by reference.

(A) Great Basin Unified APCD.

(1) Owens Valley PM–10 Planning Area Demonstration of Attainment State Implementation Plan, Section 7–4, Commitment to adopt 2003 SIP Revision and Section 8–2, the Board Order adopted on November 16, 1998 with Exhibit 1.

* * * * *

[FR Doc. 99–22930 Filed 9–2–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[FCC 99–147; MM Docket No. 91–259; RM–7309, RM–7942, RM–7943, RM–7944, RM–7948]

Radio Broadcasting Services; Canovanas, Culebra, Las Piedras, Mayaguez Quebradillas San Juan and Vieques, PR, and Christiansted and Frederiksted, VI

ACTION: Final rule; Application for review.

SUMMARY: This document denies an Application for Review filed by WKJB AM–FM, Inc. directed to the *Memorandum Opinion and Order* in this proceeding. Based upon preferential FM allotment priorities, the Commission finds a proposed channel substitution, its reallotment, and the modification of a station's license to be within the public's interest. With this action, the proceeding published September 16, 1996 (61 FR 48638) is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Memorandum Opinion and Order* in MM Docket No. 91–259, adopted June 17, 1999, and released June 21, 1999. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, NW, Washington, D.C. 20036.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–23071 Filed 9–2–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE22

Endangered and Threatened Wildlife and Plants; Final Endangered Status for 10 Plant Taxa From Maui Nui, HA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: Under the authority of the Endangered Species Act of 1973 (Act); as amended, we (the U.S. Fish and Wildlife Service (Service)) determine endangered status for 10 plant taxa—*Clermontia samuelii* (óha wai), *Cyanea copelandii* ssp. *haleakalaensis* (haha), *Cyanea glabra* (haha), *Cyanea hamatiflora* ssp. *hamatiflora* (haha), *Dubautia plantaginea* ssp. *humilis* (na'ena'e), *Hedyotis schlechtendahliana* var. *remyi* (kopa), *Kanaloa kahoolawensis* (kohe malama malama o Kanaloa), *Labordia tinifolia* var. *lanaiensis* (kamakahala), *Labordia triflora* (kamakahala), and *Melicope munroi* (alani). All 10 taxa are endemic to the Maui Nui group of islands in the Hawaiian Islands. This group includes Maui, Molokai, Lanai, and Kahoolawe. *Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora,* and *Dubautia plantaginea* ssp. *humilis* are endemic to the island of Maui. *Hedyotis schlechtendahliana* var. *remyi* and *Labordia tinifolia* var. *lanaiensis* are

endemic to the island of Lanai. *Kanaloa kahoolawensis* is endemic to the island of Kahoolawe, although pollen studies indicate it may have been a dominant species on Oahu until 800 years ago. *Labordia triflora* is endemic to Molokai, and *Melicope munroi* is found on Lanai but was also known historically from Molokai. The 10 plant taxa and their habitats have been variously affected or are currently threatened by one or more of the following—competition, predation or habitat degradation from alien species, natural disasters, and random environmental events (e.g., landslides, flooding, and hurricanes). This final rule implements the Federal protection provisions provided by the Act for these 10 plant taxa. Listing under the Act also triggers protection for these taxa under State Law.

EFFECTIVE DATE: This rule takes effect October 4, 1999.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Pacific Islands Ecoregion, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Box 50088, Honolulu, Hawaii 96850.

FOR FURTHER INFORMATION CONTACT: Karen Rosa, Assistant Field Supervisor—Endangered Species, Pacific Islands Ecoregion at the above address (telephone 808/541–3441; facsimile 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

Clermontia samuelii, Cyanea copelandii ssp. *haleakalaensis, Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora, Dubautia plantaginea* ssp. *humilis, Hedyotis schlechtendahliana* var. *remyi, Kanaloa kahoolawensis, Labordia tinifolia var. lanaiensis, Labordia triflora,* and *Melicope munroi* are, or were, known from four Hawaiian Islands—Molokai, Lanai, Maui, and Kahoolawe. The current and historical distribution by island for each of the 10 taxa is presented in Table 1.

TABLE 1. SUMMARY OF ISLAND DISTRIBUTION OF THE 10 SPECIES

Species	Island within Maui Nui			
	Maui	Molokai	Lanai	Kahoolawe
Clermontia samuelii	Current.			
Cyanea copelandii ssp. *haleakalaensis*	Current.			
Cyanea glabra	Current.			
Cyanea hamatiflora ssp. *hamatiflora*	Current.			
Dubautia plantaginea ssp. *humilis*	Current.		Current.	
Hedyotis schlechtendahliana ssp. *remyi*	.....	.....	.....	Current.*
Kanaloa kahoolawensis	.....	.....	Current.	
Labordia tinifolia var. *lanaiensis*	.....	.....		
Labordia triflora	.....	Current.	Current.	
Melicope munroi	.....	Historical		

KEY
Current—population last observed within the past 20 years.
Historical—population not seen for more than 20 years.
*Kanaloa kahoolawensis was most likely a dominant species in the lowland areas of Oahu, and possibly Maui, up until 800 years ago, according to pollen records.

The Hawaiian archipelago includes eight large volcanic islands (Niihau, Kauai, Oahu, Molokai, Lanai, Kahoolawe, Maui, and Hawaii), as well as offshore islets, shoals, and atolls set on submerged volcanic remnants at the northwest end of the chain. The archipelago covers a land area of about 16,600 square kilometers (sq km) (6,400 sq miles (sq mi)), extending roughly between latitude 18°50′ to 28°15′ N and longitude 154°40′ to 178°70′ W, and ranging in elevation from sea level to 4,200 meters (m) (13,800 feet (ft)) (Department of Geography 1983). The four main central islands of Maui, Molokai, Lanai, and Kahoolawe are part of a large volcanic mass of six major volcanoes that during times of lower sea level were united as a single island, which was named Maui Nui and covered about 5,200 sq km (2,000 sq mi).

The climate of the Hawaiian Islands reflects the tropical setting buffered by the surrounding ocean (Department of Geography 1983). The prevailing winds are northeast trades with some seasonal fluctuation in strength. There are also winter storm systems and occasional hurricanes. Temperatures vary over the year an average of 5° Celsius (C) (11° Fahrenheit (F)) or less, with daily variation usually exceeding seasonal variation in temperature. Temperature varies with elevation and ranges from a maximum recorded temperature of 37.7 °C (99.9 °F), measured at 265 m (870 ft) elevation, to a minimum of –12.7 °C (9.1 °F) recorded at 4,205 m (13,795 ft) elevation. Annual rainfall varies greatly by location, with marked windward to leeward gradients over short distances. Minimum average annual rainfall is less than 250 millimeters (mm) (10 inches (in.)); the maximum average precipitation is greater than 11,000 mm (450 in.) per year. Precipitation is greatest during the months of October through April. A dry season is apparent in leeward settings, while windward settings generally receive tradewind-driven rainfall throughout the year (Department of Geography 1983).

The native-dominated vegetation of the Hawaiian Islands varies greatly according to elevation, moisture regime, and substrate. The most recent classification of Hawaiian natural communities recognizes nearly 100 native vegetation types. Within these types are numerous island-specific or region-specific associations, comprising an extremely rich array of vegetation types within a very limited geographic area. Major vegetation formations include forests, woodlands, shrublands, grasslands, herblands, and pioneer associations on lava and cinder substrates (Gagné and Cuddihy 1990).

In Hawaii, lowland, montane, and subalpine forest types extend from sea level to above 3,000 m (9,800 ft) in elevation. Coastal and lowland forests are generally dry or mesic and may be open or closed-canopied. The stature of lowland forests is generally under 10 m (30 ft). Three of the taxa in this final rule (*Cyanea copelandii* ssp. *haleakalaensis, Labordia tinifolia* var. *lanaiensis,* and *Labordia triflora*) have been reported from lowland mesic forest habitat. Montane wet forests, occupying elevations between 915 and 1,830 m (3,000 and 6,000 ft), occur on the windward slopes and summits of the islands of Kauai, Oahu, Molokai, Maui, and Hawaii. The forests may be open- to closed-canopied, and may exceed 20 m (65 ft) in stature. Several species of native trees and tree ferns usually dominate montane wet forests. Four of the taxa in this final rule (*Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra,* and *Cyanea hamatiflora* ssp. *hamatiflora*) have been reported from montane wet forest habitat.

Hawaiian shrublands are also found from coastal to alpine elevations. The majority of Hawaiian shrubland types are in dry and mesic settings, or on cliffs and slopes too steep to support trees. One taxon in this final rule, *Kanaloa kahoolawensis,* has been reported from coastal dry shrubland on Kahoolawe. Two taxa in this final rule, *Dubautia plantaginea* ssp. *humilis* and *Melicope munroi,* have been reported from lowland wet shrublands, and *Hedyotis schlechtendahliana* var. *remyi* has been reported from lowland mesic shrublands.

The land that supports these 10 plant taxa is owned by various private parties, the State of Hawaii (including forest reserves and natural area reserves), and the Federal government (Department of the Interior, National Park Service (NPS)).

Discussion of the 10 Plant Taxa

Clermontia samuelii C. Forbes

Clermontia samuelii, was first described by C.N. Forbes from a collection he made in 1919 (Degener and Degener 1958, Forbes 1920). Harold St. John described *C. hanaensis* in 1939, based on a specimen collected by C.N. Forbes in 1920 (Degener and Degener 1960, St. John 1939). Later, St. John formally described *C. gracilis, C. kipahuluensis,* and *C. rosacea* (St. John 1987a). In the most recent treatment of this endemic Hawaiian genus, Lammers considers all four species to be synonymous with *C. samuelii,* and divides the species into two subspecies—ssp. *hanaensis* (including the synonyms *C. hanaensis* and *C. kipahuluensis*) and ssp. *samuelii* (including *C. gracilis* and *C. rosacea*) (Lammers 1988, 1990).

Clermontia samuelii, a member of the bellflower family (Campanulaceae), is a terrestrial shrub 1.2 to 5 m (4 to 16 ft) tall. The leaves are elliptical, sometimes broader at the tip, with blades 5 to 10 centimeters (cm) (2 to 4 in.) long and 1.8 to 4.5 cm (0.7 to 1.8 in.) wide. The upper surfaces of the leaves are dark green, often tinged purplish, and may be sparsely hairy. The lower surfaces of the leaves are pale green, and sparsely to densely hairy. The leaf margins are thickened, with shallow, ascending, rounded teeth. The tips and bases of the leaves are typically sharply pointed. The inflorescences (flowering clusters) bear two to five flowers on a main stem that is 4 to 18 mm (0.2 to 0.7 in.) long. The stalk of each individual flower is 12 to 28 mm (0.5 to 1.1 in.) long. The hypanthium (cup-like structure at the base of the flower) is widest on the top, 8 to 14 mm (0.3 to 0.6 in.) long, and 5 to 10 mm (0.2 to 0.4 in.) wide. The sepals and petals are similar in color (rose or greenish white to white), curved, and tubular. The flowers are 36 to 55 mm (1.4 to 2.2 in.) long and 5 to 10 mm (0.2 to 0.4 in.) wide. The lobes of the sepals and petals are erect, and extend 0.2 to 0.5 times beyond the tube. Berries of this species have not yet been observed. *C. samuelii* ssp. *hanaensis* is differentiated from *C. samuelii* ssp. *samuelii* by the greenish white to white flowers; longer, narrower leaves with the broadest point near the base of the leaves; and fewer hairs on the lower surface of the leaves. The species is separated from other members of this endemic Hawaiian genus by the size of the flowers and the hypanthium (Lammers 1990).

Historically, *Clermontia samuelii* has been reported from eight locations on Haleakala, East Maui, from Keanae Valley on the windward (northeastern) side to Manawainui on the more leeward (southeastern) side of Haleakala (Hawaii Heritage Program (HHP) 1991a1 to 1991a4, 1991b1 to 1991b4; Medeiros and Loope 1989). Currently, *Clermontia samuelii* ssp. *hanaensis* is known from several populations limited to the northeastern side of Haleakala, totaling fewer than 300 individuals. The populations occur on State owned land, within a Natural Area Reserve and a Forest Reserve (FR) (Arthur C. Medeiros, Biological Resources Division, U.S. Geological Survey (BRD), pers. comm. 1995). *Clermontia samuelii* ssp. *samuelii* is known from 5 to 10 populations totaling 50 to 100 individuals. Most of the populations occur on the back walls of Kipahulu Valley, within Haleakala National Park, with two or three of the populations on adjacent State owned land (Robert Hobdy, Hawaii Division of Forestry and Wildlife (DOFAW) and A.C. Medeiros, pers. comms. 1995). *Clermontia samuelii* ssp. *hanaensis* is found at, or below, 915 m (3,000 ft) elevation (A.C. Medeiros, pers. comm. 1995), while *Clermontia samuelii* ssp. *samuelii* is typically found between 1,800 to 2,100 m (6,000 to 6,900 ft) elevation (HHP 1991b1, 1991b2, 1991b4). Both taxa are found in montane wet forest dominated by *Metrosideros polymorpha* ('ohi'a) with an understory of *Cibotium* sp. (hapu u') and various native shrubs. Associated plant taxa include *Dubautia* sp. (na'ena'e), *Clermontia* sp. ('oha wai), *Hedyotis* sp. (pilo), *Vaccinium* sp. (ohelo), *Carex alligata,* Melicope sp. (alani), and *Cheirodendron trigynum* ('olapa) (HHP 1991a1, 1991a2, 1991b4).

Threats to *Clermontia samuelii* ssp. *hanaensis* include habitat degradation and/or destruction by feral pigs (*Sus scrofa*) and competition with alien plant taxa such as *Tibouchina herbacea* (glorybush) and two species of *Hedychium* (ginger) (A.C. Medeiros, pers. comm. 1995; Fredrick R. Warshauer, BRD, pers. comm. 1995). In addition, two extremely invasive alien plant taxa, *Miconia calvescens* (velvet tree) and *Clidemia hirta* (Koster's curse), are found in nearby areas and may invade this habitat if not controlled (A.C. Medeiros, pers. comm. 1995). The habitat of *Clermontia samuelii* ssp. *samuelii* was extensively damaged by pigs in the past, and pigs are still a major threat to the populations on State owned lands. The populations of *Clermontia samuelii* ssp. *samuelii* within the park have been fenced and pigs have been eradicated. Due to the large populations of pigs in adjacent areas, the park populations must constantly be monitored to prevent further ingress (R. Hobdy and A.C. Medeiros, pers. comms. 1995). Rats (mainly the black rat (*Rattus rattus*)) and slugs (mainly *Milax gagetes*) are known to eat leaves, stems, and fruits of other members of this genus, and therefore are a potential threat to both subspecies (Loyal Mehrhoff, Service, *in litt.* 1995).

Cyanea copelandii Rock ssp. *haleakalaensis* (St. John) Lammers

Cyanea haleakalaensis was first described in 1971 by St. John, from a collection made by G.Y. Kikudome in 1951 (St. John 1971). In 1987, St. John (St. John 1987b) merged the two genera *Cyanea* and *Delissea,* formally recognizing only *Delissea,* the genus with priority. This resulted in the combination *D. haleakalaensis.* Lammers retains both genera in the currently accepted treatment of the Hawaiian members of the family, and in 1988 he recognized *C. haleakalaensis* as a subspecies of *C. copelandii,* publishing the new combination *C. copelandii* ssp. *haleakalaensis* (Lammers 1988, 1990). *Cyanea copelandii* ssp. *copelandii* was previously listed as an endangered species (59 FR 10305).

Cyanea copelandii ssp. *haleakalaensis*, a member of the bellflower family, is a vine-like shrub 0.3 to 2 m (1 to 7 ft) tall, with sprawling stems. The sap of this species is a tan latex. Stems are unbranched or sparingly branched from the base. The leaves are elliptical, 10 to 19 cm (4 to 7 in.) long, and 3.5 to 8.5 cm (1.4 to 3.3 in.) wide. The upper surfaces of the leaves have no hairs, while the lower surfaces are hairy. The margins of the leaves are thickened, with small, widely spaced, sharp teeth. The leaf stalks are 2.5 to 10 cm (1 to 4 in.) long. The inflorescences are 5 to 12-flowered and hairy. The main inflorescence stalks are 20 to 45 mm (0.8 to 1.8 in.) long. The hypanthium is oval and widest at the top, 6 to 10 mm (0.2 to 0.4 in.) long, about 5 mm (0.2 in.) wide, and hairy. The corolla (petals collectively) is yellowish but appears pale rose in color due to a covering of dark red hairs. The corolla is 37 to 42 mm (1.4 to 1.6 in.) long and about 5 mm (0.2 in.) wide. The corolla tube is gently curved and the lobes spread about 0.25 times beyond the tube. The berries are dark orange, oval, and 7 to 15 mm (0.3 to 0.6 in.) long. This subspecies is differentiated from the other subspecies by the elliptical leaves, which are also shorter. This species differs from others in this endemic Hawaiian genus by the vine-like stems and the yellowish flowers that appear red due to the covering of hairs (Lammers 1990).

Cyanea copelandii ssp. *haleakalaensis* was historically reported from six locations on the windward (northeastern) side of Haleakala, East Maui, from Waikamoi to Kipahulu Valley (Chock and Kikudome (299) 1950; Forbes (1680.M) 1919, (1708.M) 1919, (2616.M) 1920, (2675.M) 1920; Hobdy (887) 1980; Kikudome (454) 1951; Lamoureux and DeWreede (3917) 1967; Rock (25660b) 1954; St. John (24732) 1950; Warshauer and Kepler (FRW 2698) 1980; Warshauer and McEldowney (FRW 2769) 1980; Wagner *et al.* (5912) 1988). Currently, this taxon is known from two populations—one population of about 200 individuals in Kipahulu Valley within Haleakala National Park, and one population of 35 individuals on lower Waikamoi flume, which is privately owned. Typical habitat is stream banks and wet scree slopes in montane wet or mesic forest dominated by *Acacia koa* (koa) and/or *Metrosideros polymorpha* (Hobdy (887) 1980; Medeiros and Loope 1989; National Tropical Botanical Garden (NTBG) 1994; Wagner *et al.* (5912) 1988; R. Hobdy and A.C. Medeiros, pers. comms. 1995). *Cyanea copelandii* ssp. *haleakalaensis* is found at elevations between 730 and 1,340 m (2,400 and 4,400 ft) (Hobdy (887) 1980; Wagner *et al.* (5912) 1988; Warshauer and Kepler (FRW 2698) 1980; Warshauer and McEldowney (FRW 2769) 1980; A.C. Medeiros, pers. comm. 1995). Associated species include *Perrottetia sandwicensis* (olomea), *Psychotria hawaiiensis* (kopiko ùla), *Broussaisia arguta* (kanawao), and *Hedyotis acuminata* (au) (Wagner *et al.* (5912) 1988).

The major threats to *Cyanea copelandii* ssp. *haleakalaensis* are habitat degradation and/or destruction by feral pigs and competition with several alien plant taxa (Higashino *et al.* 1988; Hobdy (887) 1980; NTBG 1994; R. Hobdy, A.C. Medeiros, and F.R. Warshauer, pers. comms. 1995). Rats (mainly the black rat) and slugs (mainly *Milax gagetes*) are known to eat leaves, stems, and fruits of other members of this genus, and therefore are a potential threat to this species (L. Mehrhoff, *in litt.* 1995). In addition, *C. copelandii* ssp. *haleakalaensis* is threatened by random environmental events since it is known from only two populations.

Cyanea glabra (F. Wimmer) St. John

Cyanea glabra was first collected on West Maui by Willam Hillebrand who named it *Cyanea holophylla* var. *obovata* (Hillebrand 1888). In 1943, F.E. Wimmer named it *C. knudsenii* var. *glabra*, based on a specimen collected by Forbes on East Maui (Wimmer 1943). In 1981, St. John elevated *C. knudsenii* var. *glabra* to full species status as *C. glabra* (St. John 1981). Lammers, in the most recent treatment of the Hawaiian members of the family, upheld the species name, and included *C. holophylla* var. *obovata* as well as the following synonyms in *C. glabra*, including *C. scabra* var. *variabilis*, *Delissea glabra*, *D. holophylla* var. *obovata*, and *D. scabra* var. *variabilis* (Lammers 1990, Rock 1919).

Cyanea glabra, a member of the bellflower family, is a branched shrub. The leaves of juvenile plants are deeply pinnately lobed, while those of the adult plants are more or less entire and elliptical. Adult leaves are 23 to 36 cm (9 to 14 in.) long and 7 to 12 cm (3 to 5 in.) wide. The upper surfaces of the leaves are green and hairless, while the lower surfaces are pale green and hairless to sparsely hairy. The margins of the adult leaves are thickened and shallowly toothed to irregularly lobed. Six to eight flowers are borne in each inflorescence. The main inflorescence stalk is 20 to 55 mm (0.8 to 2.2 in.) long, while the individual flower stalk is 12 to 25 mm (0.5 to 1.0 in.) long. The hypanthium is widest at the top, 7 to 10 mm (0.3 to 0.4 in.) long, and about 5 mm (0.2 in.) wide. The corolla is white, often with a pale lilac tinge, 50 to 60 mm (2 to 2.4 in.) long, and about 8 mm (0.3 in.) wide. The tube of the corolla is curved. The lobes are spreading, 0.25 to 0.33 times as long as the tube, and are covered by small, sharp projections. The berries are yellowish orange, elliptical, and 10 to 15 mm (0.4 to 0.6 in.) long. The calyx (sepals collectively) persist on the berry. This species is differentiated from others in this endemic Hawaiian genus by the size of the flower and the pinnately lobed juvenile leaves (Lammers 1990).

Cyanea glabra has been reported historically from two locations on West Maui (Hillebrand 1888; Steve Perlman, NTBG, pers. comm. 1992) and five locations on Haleakala, East Maui (HHP 1991c1 to 1991c5). This species is currently known from only two populations—one population of 12 individuals in Kauaula Gulch on West Maui on privately owned land (S. Perlman, pers. comm. 1995), and one scattered population of approximately 200 individuals in Kipahulu Valley, within Haleakala National Park (A.C. Medeiros, pers. comm. 1995). Typical habitat is wet forest dominated by *Acacia koa* and/or *Metrosideros polymorpha*, at elevations between 975 to 1,340 m (3,200 to 4,400 ft) (A.C. Medeiros, pers. comm. 1995).

The primary threat to *Cyanea glabra* is slugs (A.C. Medeiros, pers. comm. 1995). Additional threats are habitat degradation and/or destruction by feral pigs, flooding, and competition with several alien plant taxa (R. Hobdy and A.C. Medeiros, pers. comms. 1995). Rats are a potential threat to *C. glabra*, since they are known to eat plant parts of other members of the bellflower family (L. Mehrhoff, *in litt.* 1995; A.C. Medeiros, pers. comm. 1995). Leaf damage in the form of stippling and yellowing by the two spotted leafhopper (*Saphonia rufofascia*) has been observed on other native species within the area of *C. glabra* on West Maui and is a potential threat to this species (Kenneth Wood, NTBG, pers. comm. 1995). Random environmental events are a threat to this species, with only two populations remaining.

Cyanea hamatiflora Rock ssp. *hamatiflora*

Cyanea hamatiflora was first collected by Joseph Rock in 1910 and described in 1913 (Rock 1913). In 1987, St. John (St. John 1987b) merged the two genera *Cyanea* and *Delissea*, formally recognizing only *Delissea*, the genus with priority. This resulted in the combination *D. hamatiflora*. In 1988, Lammers upheld *Cyanea* as a separate genus and combined *C. carlsonii* with this species, resulting in two subspecies: The federally endangered *C. hamatiflora* ssp. *carlsonii* (59 FR 10305) and the nominative *C. hamatiflora* ssp. *hamatiflora* (Lammers 1988, 1990).

Cyanea hamatiflora ssp. *hamatiflora*, a member of the bellflower family, is a palm-like tree 3 to 8 m (10 to 26 ft) tall. The latex is tan in color. The leaves are elliptical with the broadest point at the tip, or they may be narrowly oblong. The leaf blades are 50 to 80 cm (20 to 30 in.) long, 8 to 14 cm (3 to 5.5 in.) wide, and have no stem. The upper surface of the leaf is sparsely hairy to hairless and the lower surface is hairy at least along the midrib and veins. The leaf margins are minutely round-toothed. The inflorescence is 5 to 10 flowered with main stalks 15 to 30 mm (0.6 to 1.2 in.) long. The stalks of individuals flowers are 5 to 12 mm (0.2 to 0.5 in.) long. The hypanthium is widest at the top, 12 to 30 mm (0.5 to 1.2 in.) long, and 6 to 12 mm (0.2 to 0.5 in.) wide. The corolla is magenta in color, 60 to 80 mm (2 to 3 in.) long, 6 to 11 mm (0.2 to 0.4 in.) wide, and hairless. The tube of the corolla is slightly curved, with lobes 0.25 to 0.5 times as long as the tube. The corolla lobes all curve downward, making the flower appear one-lipped. The anthers (pollen-bearing structures) are hairless except for the lower two, which have apical tufts of white hairs. The fruit is a purplish red berry 30 to 45 mm (1.2 to 1.8 in.) long and 20 to 27 mm (0.8 to 1.1 in.) wide. The berry is crowned by persistent calyx lobes. This subspecies is differentiated from the previously listed subspecies (*C. hamatiflora* ssp. *carlsonii*) by its longer calyx lobes and shorter individual flower stalks. This species is separated from others in this endemic Hawaiian genus by fewer flowers per inflorescence and narrower leaves (Lammers 1990).

Cyanea hamatiflora ssp. *hamatiflora* was historically known from eight locations on the windward (northeastern) side of Haleakala, on Maui, stretching from Puu o Kakae to Manawainui (Degener (7977) 1927; Forbes (1294.M) 1919, (1654.M) 1919, (2607.M) 1920; Higashino and Haratani (10037) 1983; Higashino and Holt (9398) 1980; Higashino and Mizuro (2850) 1976; Hobdy (2630) 1986; Rock (8514) 1918; St. John (24730) 1951; Skottsberg (870) 1920; Warshauer and McEldowney (FRW 2614) 1980; Warshauer and McEldowney (FRW 2876) 1980). Currently, this taxon is known from two locations. Five or 6 populations totaling 50 to 100 individuals in Kipahulu Valley occur within Haleakala National Park (A.C. Medeiros, pers. comm. 1995), and 5 or 6 populations totalling 20 to 25 widely scattered individuals occur in the Waikamoi-Koolau Gap area on privately owned land (NTBG 1995; R. Hobdy, pers. comm. 1995). Typical habitat for this taxon is montane wet forest dominated by *Metrosideros polymorpha*, with a *Cibotium* sp. and/or native shrub understory, from 975 to 1,500 m (3,200 to 4,920 ft) elevation (NTBG 1995; Warshauer and McEldowney (FRW 2614) 1980; Warshauer and McEldowney (FRW 2876) 1980). Associated native plant taxa include *Dicranopteris linearis* (uluhe), *Cheirodendron trigynum*, *Broussaisia arguta*, *Cyanea solenocalyx* (haha), *Cyanea kunthiana* (haha), *Vaccinium* sp. ('ohelo), Melicope sp., and *Myrsine* sp. (kolea) (Higashino and Mizuro (2850) 1976; NTBG 1995).

The major threats to *Cyanea hamatiflora* ssp. *hamatiflora* are habitat degradation and/or destruction by feral pigs, landslides, and competition with the alien plant *Ageratina adenophora* (Maui pamakani) (NTBG 1995; R. Hobdy and A.C. Medeiros, pers. comms. 1995). Pig damage in the form of peeled bark has been observed on individuals of *C. hamatiflora* ssp. *hamatiflora* (A.C. Medeiros, pers. comm. 1995). Rats and slugs are potential threats, since other Hawaiian members of this family are known to be eaten by rats and slugs (L. Mehrhoff, *in litt.* 1995). All populations of this taxon are in areas where rats and slugs have been observed (A.C. Medeiros, pers. comm. 1995).

Dubautia plantaginea Gaud. ssp. *humilis* G. Carr

Dubautia plantaginea ssp. *humilis* was first described in 1985, from specimens collected by Gerald Carr, Robert Robichaux, and Rene Sylva in Black Gorge on West Maui (Carr 1985, 1990).

Dubautia plantaginea ssp. *humilis*, a member of the aster family (Asteraceae), is a dwarfed shrub less than 80 cm (30 in.) tall. The stems are hairless or occasionally strigullose (having straight hairs pressed against the stem). The leaves are opposite, narrow, 8 to 15 cm (3 to 6 in.) long, and 0.7 to 4.5 cm (0.3 to 1.8 in.) wide. The leaves usually have five to nine nerves, and are hairless or moderately strigullose. The leaf margins are toothed from the apex to near the middle. Between 20 to 90 flowering heads are found in each inflorescence, which is about 20 cm (8 in.) long and 28 cm (11 in.) wide. Eight to 20 florets (small flower that is part of a dense cluster) are found in each head, borne on a flat receptacle. The bracts on the receptacle are about 5 mm (0.2 in.) long, sharply toothed, and fused together. The corolla is yellow, and may purple with age. The fruit is an achene (a dry, one-celled, indehiscent fruit) 2.5 to 4 mm (0.08 to 0.2 in.) long. The taxon is self-incompatible, meaning flowers must be pollinated by pollen from a different plant. This subspecies differs from the other two subspecies (*D. plantaginea* ssp. *magnifolia* and *D. plantaginea* ssp. *plantaginea*) by having fewer heads per inflorescence but more florets per head. The species differs from other Hawaiian members of the genus by the number of nerves in the leaves and by the close resemblance of the leaves to the genus *Plantago* (Carr 1985, 1990).

Dubautia plantaginea ssp. *humilis* has only been reported from two locations in Iao Valley, on West Maui. Both populations are on privately owned land, and the two populations total fewer than 300 individuals. Typical habitat is wet, barren, wind-blown cliffs, between 350 to 400 m (1,150 to 1,300 ft) elevation. Associated native plant taxa include *Metrosideros polymorpha*, *Pipturus albidus* (mamaki), *Eragrostis variabilis* (kawelu), *Carex* sp., *Hedyotis formosa*, *Lysimachia remyi*, *Bidens* sp. (kookoolau), *Pritchardia* sp. (loulu), and the federally endangered *Plantago princeps* (ale) (Hawaii Plant Conservation Center (HPCC) 1990; HHP 1991d1, 1991d2; R. Hobdy, pers. comm. 1995).

Threats to *Dubautia plantaginea* ssp. *humilis* include landslides and several alien plant taxa (HPCC 1990; HHP 1991d1; R. Hobdy, pers. comm. 1995). Random environmental events are also a threat, with only two known populations less than a half mile apart within the same valley.

Hedyotis schlechtendahliana Steud. var. *remyi* (Hillebr.) Fosb.

Hillebrand described a new species, *Kadua remyi*, based on collections on Lanai and East Maui by Reverend John Lydgate (Hillebrand 1888). F. Raymond Fosberg combined the genus *Kadua* with *Hedyotis* in 1943, and combined *K. remyi* with *Hedyotis schlechtendahliana*. Fosberg considered the Lanai plants different enough from the Maui plants to create a separate variety, *H. schlechtendahliana* var. *remyi*. This variety has been upheld in the most recent revision of the Hawaiian members of this genus (Wagner *et al.* 1990).

Hedyotis schlechtendahliana var. *remyi*, a member of the coffee family (Rubiaceae), is a few branched subshrub from 60 to 600 cm (24 to 240 in.) long, with weakly erect or climbing stems that may be somewhat square, smooth, and

glaucous (with a fine waxy coating that imparts a whitish or bluish hue to the stem). The leaves are opposite, glossy, thin or somewhat thickened, egg-shaped or with a heart-shaped base and a very pointed tip, and 3 to 6 cm (1.2 to 2.4 in.) long. The margins of the leaves curl under. The veins of the leaves are impressed on the upper surface with hairs along the veins and raised on the lower surface. The lower surface of the leaves are usually glaucous, like the stems. The leaf stalks are up to 1 cm (0.4 in.) long, slightly fused to the stem, and bear stipules (appendages on the base of the leaf stalks). The inflorescence stalks are 2 to 15 mm (0.1 to 0.6 in.) long, square, usually glaucous, and borne at the ends of the stems. The flowers have either functional male and female parts or only functional female parts. Leaf-like bracts are found at the base of each flower. The hypanthium is top-shaped and 1.5 to 2.2 mm (0.06 to 0.09 in.) wide. The calyx lobes are usually leaf-like and oblong to broadly egg-shaped, 2 to 8 mm (0.08 to 0.3 in.) long, and 1.5 to 2.5 mm (0.08 to 0.09 in.) wide, enlarging somewhat in fruit. The corolla is cream-colored, fleshy, usually glaucous, trumpet-shaped, with a tube 6 to 17 mm (0.2 to 0.7 in.) long and lobes 1.5 to 10 mm (0.06 to 0.4 in.) long when the anthers are ripe. The stamens reach only to 1 to 3 mm (0.04 to 0.1 in.) below the sinuses of the corolla lobes. The styles are woolly on the lower portions, and two to four lobed. The fruits are top-shaped to sub-globose capsules 2 to 4 mm (0.1 to 0.2 in.) long and 3 to 7 mm (0.1 to 0.3 in.) in diameter. The fruits break open along the walls of the cells within the fruit. Seeds are dark brown, irregularly wedge-shaped and angled, and darkly granular. This variety is distinguished from the other variety by the leaf shape, narrow flowering stalks, and flower color. It is distinguished from others in the genus by the distance between leaves and the length of the sprawling or climbing stems (Wagner *et al.* 1990).

Historically, *Hedyotis schlechtendahliana* var. *remyi* was known from five locations on the northwestern portion of Lanaihale on the island of Lanai (Degener *et al.* (24193) 1957; Forbes (33.L) 1913, (315.L) 1917); Fosberg (12463) 1939; HHP 1991e1 to 1991e3; Hillebrand 1888; Hillebrand and Lydgate (s.n.) n.d.; Munro (s.n.) 1913, (s.n.) 1914, (257, 335) 1928, (506) 1930; Nagata and Ganders (2524) 1982; Rock (8116) 1910; St. John and Eames (18738) 1938; Wagner *et al.* 1990). Currently, this species is known from six individuals in three populations on Kaiholeha-Hulupoe ridge, Kapohaku drainage, and Waiapaa drainage on Lanaihale (HHP 1991e1 to 1991e3; R. Hobdy, pers. comm. 1995). *Hedyotis schlechtendahliana* var. *remyi* typically grows in mesic windswept shrubland with a mixture of dominant plant taxa that may include *Metrosideros polymorpha, Dicranopteris linearis,* and/or *Styphelia tameiameiae* (pukiawe) at elevations between 730 and 900 m (2,400 to 3,000 ft). Associated plant taxa include *Dodonaea viscosa* (àalii), *Sadleria* sp. (àmaù), *Dubautia* sp. (naènaè), *Myrsine sp.*, and several others (HHP 1991e1 to 1991e3; Lau (2866) 1986; Nagata and Ganders (2524) 1982).

The primary threats to *Hedyotis schlechtendahliana* var. *remyi* are habitat degradation and/or destruction by axis deer (*Axis axis*); competition with alien plant taxa such as *Psidium cattleianum, Myrica faya* (firetree), *Leptospermum scoparium* (New Zealand tea), and *Schinus terebinthifolius* (Christmas berry); and random environmental events and/or reduced reproductive vigor due to the small number of remaining individuals and populations (HHP 1994e1 to 1991e3; Joel Lau, The Nature Conservancy of Hawaii, pers. comm. 1995).

Kanaloa kahoolawensis Lorence and K.R. Wood

Kanaloa kahoolawensis was previously unknown to science until its discovery by Steve Perlman and Ken Wood in 1992 on a steep rocky spire on the coast of Kahoolawe. David Lorence and Wood have determined that this plant represents a new genus, and have named the species *Kanaloa kahoolawensis* (Lorence and Wood 1994).

Kanaloa kahoolawensis, a member of the legume family (Fabaceae), is a densely branched shrub 0.75 to 1 m (2.5 to 3.5 ft) tall. The branches are sprawling and 0.75 to 1.5 m (2.5 to 5 ft) long. New growth is densely covered with brown and white hairs. The twigs are brown, ribbed or angled, and become whitish gray with corky fissures. The leaves are clustered near twig tips and have two persistent stipules. The leaf stalk is 6 to 24 mm (0.2 to 0.9 in.) long. The leaves are divided into three pairs of leaflets, with a leaf nectary (nectar-bearing gland) at the joint between each pair of leaflets. The leaflet pairs are 22 to 55 mm (0.8 to 2 in.) long. The main stalk of the leaf terminates in a short, brown appendage. The leaflets are egg-shaped, unequal-sided, 1.4 to 4.2 cm (0.6 to 1.7 in.) long, and 0.9 to 3.2 cm (0.4 to 1.3 in.) wide. One to three inflorescences are found in the leaf axils (joint between leaf and stem), developing with the flush of new leaves. The main stalk of the inflorescence is 8 to 30 mm (0.3 to 1.2 in.) long. The inflorescence is a globose head 6 to 8 mm (0.3 to 0.3 in.) in diameter, with small bracts 1 to 1.5 mm (0.04 to 0.06 in.) long at the base. Each inflorescence has 20 to 54 white flowers. The calyx of the male flowers has limbs that are wider at the tip; densely covered with long, white hairs; and have lobes that overlap when the flower is in bud. The corolla lobes also overlap when the flower is in bud, and the petals are 1.5 to 1.8 mm (0.06 to 0.07 in.) long. The petals are hairy on the outside at the tip, and are not fused at the base. Ten stamens are found in the male flowers, fused at the base. Male flowers have only vestigial female parts. Female flowers have not been observed. The fruit is borne on a stalk about 5 mm (0.2 in.) long. Up to four fruit develop in each flowering head. The fruit is egg-shaped to subcircular, compressed, hairy at the base, and open along two sides. One slender, brown seed, about 2 mm (0.08 in.) long, is found in each fruit. There is no other species of legume in Hawaii that bears any resemblance to this species or genus (Lorence and Wood 1994).

The only known location of *Kanaloa kahoolawensis* is a rocky stack on the southern coast of the island of Kahoolawe, which is owned by the State of Hawaii (Lorence and Wood 1994). While there are no previous records of the plant, pollen core studies on the island of Oahu revealed a legume pollen that could not be identified until this species was discovered. The pollen cores indicate that *K. kahoolawensis* was a codominant with *Dodonaea viscosa* and *Pritchardia* sp. from before 1210 B.C. to 1565 A.D., at which point *K. kahoolawensis* disappeared from the pollen record and *D. viscosa* and *Pritchardia* sp. declined dramatically (Athens *et al.* 1992, Athens and Ward 1993, Lorence and Wood 1994). Only two living individuals and 10 to 12 dead individuals are known (D. Lorence, NTBG, pers. comm. 1995). The only known habitat is mixed coastal shrubland on steep rocky talus slopes at 45 to 60 m (150 to 200 ft) elevation. Associated native plant taxa include *Sida fallax* (ilima), *Senna gaudichaudii* (kolomona), *Bidens mauiensis* (kookoolau), *Lipochaeta lavarum* (nehe), *Portulaca molokinensis* (ihi), and *Capparis sandwichiana* (pua pilo). In addition, the area is also a nesting site for Bulwer's petrel (*Bulweria bulwerii*) and wedge-tailed shearwater (*Puffinus pacificus*) (Lorence and Wood 1994).

The major threats to *Kanaloa kahoolawensis* are landslides and the alien plant taxa *Emelia fosbergii, Chloris barbata* (swollen finger grass), and *Nicotiana glauca* (tobacco tree) (Lorence and Wood 1994). Goats (*Capra hircus*) played a major role in the destruction of vegetation on Kahoolawe before they were removed (Cuddihy and Stone 1990), and *K. kahoolawensis* probably survived only because the rocky stack is almost completely separated from the island and inaccessible to goats (Lorence and Wood 1994). Rats are a potential threat to this species, since it has seeds similar in appearance and presentation to the federally endangered *Caesalpinia kavaiensis,* which is eaten by rats. Rats may have been the cause of the decline of this species 800 years ago (L. Mehrhoff, *in litt.* 1995). Random environmental events and/or reduced reproductive vigor are also a threat to this species, because only two individuals are known.

Labordia tinifolia A. Gray var. *lanaiensis* Sherff

Hillebrand determined, but did not name, a new variety of *Labordia tinifolia* based on specimens he collected on the islands of Kauai, West Maui, Lanai, and Hawaii. E.E. Sherff named the variety *L. tinifolia* var. *lanaiensis* in 1938 (Sherff 1938). In the revision of the Hawaiian members of this family, Wagner *et al.* (1990), retained the nomenclature, but included only those plants from Lanai and Mapulehu on Molokai (previously considered *L. triflora*) as *L. tinifolia* var. *lanaiensis.* This endemic Hawaiian genus has been revised, and only the Lanai populations are included in *L. tinifolia* var. *lanaiensis,* while L. triflora has been resurrected for the Molokai population (see discussion of the next taxon, below) (Motley 1995).

Labordia tinifolia var. *lanaiensis,* a member of the logan family (Loganiaceae), is an erect shrub or small tree 1.2 to 15 m (4 to 49 ft) tall. The stems branch regularly into two forks of nearly equal size. The leaves are medium to dark green, oval to narrowly oval, 3.8 to 21 cm (1.5 to 8.3 in.) long, and 1.4 to 7.3 cm (0.6 to 2.9 in.) wide. The leaf stalks are 2.2 to 4 cm (0.9 to 1.6 in.) long. The stipules are fused together, forming a sheath around the stem that is 1 to 4 mm (0.04 to 0.2 in.) long. Three to 19 flowers are found in each inflorescence, and the entire inflorescence is pendulous and has a stalk 9 to 22 mm (0.4 to 0.8 in.) long. The flowers are borne on stalks 8 to 11 mm (0.3 to 0.4 in.) long. The corolla is pale yellowish green or greenish yellow, narrowly urn-shaped, and 6.5 to 19 mm (0.2 to 0.7 in.) long. The fruit is broadly oval, 8 to 17 mm (0.3 to 0.7 in.) long, 2 to 3 valved, and has a beak 0.5 to 1.5 mm (0.02 to 0.06 in.) long. The seeds are brown and about 1.8 mm (0.06 in.) long. This subspecies differs from the other two subspecies and other species in this endemic Hawaiian genus by having larger capsules and smaller corollas (Motley 1995; Wagner *et al.* 1990).

Labordia tinifolia var. *lanaiensis* was historically known from the entire length of the summit ridge of Lanaihale, on the island of Lanai (HHP 1991f1 to 1991f12; Motley 1995; Sherff 1938). Currently, *L. tinifolia* var. *lanaiensis* is known from only one population at the southeastern end of the summit ridge of Lanaihale. This population is on privately owned land and totals 300 to 1,000 scattered individuals. The typical habitat of *L. tinifolia* var. *lanaiensis* is lowland mesic forest, associated with such native species as *Dicranopteris linearis* and *Scaevola chamissoniana* (naupaka kuahiwi), at elevations between 760 and 915 m (2,500 and 3,000 ft) (HHP 1991f3; Motley 1995; R. Hobdy and J. Lau, pers. comms. 1995).

Labordia tinifolia var. *lanaiensis* is threatened by axis deer and several alien plant taxa (R. Hobdy, pers. comm. 1994; J. Lau, pers. comm. 1995). The single population is also threatened by random environmental factors.

Labordia triflora Hillebr.

Hillebrand named *Labordia triflora* based on a specimen he collected on Molokai in the early 1800s (Hillebrand 1888). Wagner *et al.* considered this species to be synonymous with *L. tinifolia* var. *lanaiensis* (Wagner *et al.* 1990). Timothy Motley of the University of Hawaii (UH) recently revised this endemic Hawaiian genus, and has resurrected *L. triflora* as a valid species (Motley 1995).

Labordia triflora, a member of the logan family, is very similar to *L. tinifolia* var. *lanaiensis,* described above, except in the following characteristics. Stems of *L. triflora* are climbing. The leaf stalks are only 1 to 3 mm (0.04 to 0.1 in.) long. The inflorescence stalks are 40 to 50 mm (1.6 to 2 in.) long. Each flower stalk is 10 to 25 mm (0.4 to 1 in.) long (Motley 1995).

Until 1990, *Labordia triflora* was known only from the type collection at Mapulehu, on the island of Molokai. This collection was made by Hillebrand in 1870 (Motley 1995). In 1990, Joel Lau of The Nature Conservancy of Hawaii, rediscovered the species in Kua Gulch on Molokai (Motley 1995; J. Lau, pers. comm. 1995). Only 10 individuals are known, all occurring on privately owned land (J. Lau, pers. comm. 1995). Of these individuals, only two are male plants (Timothy Motley, University of Hawaii, pers. comm. 1993). This species occurs in mixed lowland mesic forest, at an elevation of 800 m (2,600 ft). Associated species include *Pouteria sandwicensis* (aiaa), the federally endangered *Cyanea mannii* (haha), and *Tetraplasandra* sp. (ohe) (Motley 1995).

The threats to *Labordia triflora* include habitat degradation and/or destruction by pigs and goats, rats that eat seeds, and competition with the alien plant species *Schinus terebinthifolius* (Motley 1995; T. Motley, pers. comm. 1993). Random environmental events and reduced reproductive vigor also threaten this species, as only 10 individuals remain in one population.

Melicope munroi (St. John) B. Stone

In 1944, St. John described *Pelea munroi,* based on a collection by George C. Munro in 1915 (St. John 1944). The genus *Pelea* has since been submerged with *Melicope,* creating the combination *M. munroi* (Hartley and Stone 1989).

Melicope munroi, a member of the citrus family (Rutaceae), is a sprawling shrub up to 3 m (10 ft) tall. The new growth of this species is minutely hairy. The leaves are opposite, broadly elliptical, 6 to 11 cm (2.4 to 4.3 in.) long, and 3.5 to 7.5 cm (1.4 to 3.0 in.) wide. The veins of the leaf are parallel, in [redacted] to 12 pairs, and are connected by arched veins near the margin of the leaf. The margins of the leaves are sometimes rolled under. The leaf stalks are 4 to 12 mm (0.2 to 0.5 in.) long. The inflorescence is found in the axil of the leaf and contains one to three flowers. The inflorescence stalk is 10 to 15 mm (0.4 to 0.5 in.) long, and the individual flower stalk is 15 to 35 mm (0.6 to 1.4 in.) long. Male flowers have not been reported. Female flowers have ovoid sepals about 2.5 mm (0.1 in.) long and deltate petals about 8 mm (0.3 in.) long. The fruit is about 18 mm (0.7 in.) wide, and the 4 carpels (egg-bearing structures) are fused about one-third of their length. This species differs from other Hawaiian members of the genus in the shape of the leaf and the length of the inflorescence stalk (Stone *et al.* 1990).

Historically known from the Lanaihale summit ridge of Lanai and above Kamalo on Molokai, *Melicope munroi* is currently known from only the Lanaihale summit ridge (HHP 1991g1 to 1991g10). The one widely scattered population totals an estimated 300 to 500 individuals (J. Lau, pers. comm. 1995). *Melicope munroi* is typically found in lowland mat fern shrubland, at elevations of 790 to 1020 m (2,600 to 3,350 ft). Associated native

plant taxa include *Diplopterygium pinnatum*, *Dicranopteris linearis*, *Metrosideros polymorpha*, *Cheirodendron trigynum*, *Coprosma* sp. (pilo), *Broussaisia arguta*, *Melicope* sp., and *Machaerina angustifolia* ('uki) (HHP 1991g3 to 1991g10).

The major threats to *Melicope munroi* are axis deer and the alien plant taxa *Leptospermum scoparium* and *Psidium cattleianum* (HHP 1991g3 to 1991g10; J. Lau, pers. comm. 1995). Random environmental events also threaten the one remaining population.

Previous Federal Action

Federal action on some of these plants began as a result of section 12 of the Act (16 U.S.C. 1533), which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered or threatened in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. One of the 10 taxa, *Cyanea glabra* (as *C. scabra* var. *variabilis*), was considered to be endangered in that document. One taxon, *Labordia tinifolia* var. *lanaiensis*, was considered to be threatened and two taxa, *L. triflora* and *Melicope munroi* (as *Pelea munroi*), were considered to be extinct. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) of our acceptance of the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act, and giving notice of our intent to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, we published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to section 4 of the Act for approximately 1,700 vascular plant species. Two of the 10 taxa, *Labordia triflora* and *Melicope munroi*, were proposed for endangered status in this document. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and us in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over two years old be withdrawn. A one-year grace period was given to proposals already over two years old. On December 10, 1979, we published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, including the proposals to list *Labordia triflora* and *Melicope munroi*, along with four other proposals that had expired. We published an updated notice of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), February 21, 1990 (55 FR 6183), and September 30, 1993 (58 FR 51144). Six of the species in this final rule (including synonymous taxa) were at one time or another considered category 1 or category 2 candidates for Federal listing. Category 1 species were those for which we had on file substantial information on biological vulnerability and threats to support preparation of listing proposals but for which listing proposals had not yet been published because they were precluded by other listing activities. Certain species were considered Category 1 but if designated by an asterisk (*), were considered possibly extinct. Category 2 species were those for which listing as endangered or threatened was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not currently available to support proposed rules. Two taxa, *Labordia tinifolia* var. *lanaiensis* and *L. triflora*, were considered category 2 species in the 1980 and 1985 notices of review. *Melicope munroi* (as *Pelea munroi*) was considered a category 1* in the 1980 and 1985 notices.

In the 1990 and 1993 notices, *Dubautia plantaginea* ssp. *humilis*, *Hedyotis schlechtendahliana* var. *remyi*, and *Melicope munroi* were considered category 2 species. *Labordia tinifolia* var. *lanaiensis* was considered more abundant than previously thought and moved to category 3C in the 1990 notice. Category 3C species were those that had proven to be more abundant or widespread than previously believed and/or were not subject to any identifiable threat. *Labordia triflora* was considered a synonym of *L. tinifolia* var. *lanaiensis* in the 1990 notice. As published in the **Federal Register** (61 FR 7596) on February 28, 1996, we discontinued the designation of categories for candidate species.

Since the last notice, new information suggests that the numbers and distribution are sufficiently restricted and the taxa are imminently threatened for the previously designated category 1, category 2, and category 3C candidate species mentioned above, as well as six additional taxa (*Clermontia samuelii*, *Cyanea copelandii* ssp. *haleakalaensis*, *Cyanea glabra*, *Cyanea hamatiflora* ssp. *hamatiflora*, the newly discovered *Kanaloa kahoolawensis*, and the resurrected *Labordia triflora*), to warrant listing. A proposed rule was published on May 15, 1997, (62 FR 26757) to list these 10 plant taxa as endangered and the September 19, 1997 (62 FR 49398), notice of review listed these species as proposed for endangered status.

We now determine 10 taxa from Maui Nui, Hawaii, to be endangered with the publication of this final rule.

Summary of Comments and Recommendations

In the May 15, 1997, proposed rule and associated notifications, we requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. The public comment period ended on July 14, 1997. Appropriate Federal and State agencies, county governments, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice inviting public comment was published in the "Maui News" on May 29, 1997. No comments were received.

In accordance with our peer review policy (59 FR 34270; July 1, 1994), we also solicited the expert opinions of three appropriate and independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population models, and supportive biological and ecological information substantive to the listing determination for these 10 taxa. The independent specialists did not respond to our request.

Summary of Factors Affecting the Species

After a thorough review and consideration of all available information, we have determined that *Clermontia samuelii*, *Cyanea copelandii* ssp. *haleakalaensis*, *Cyanea glabra*, *Cyanea hamatiflora* ssp. *hamatiflora*, *Dubautia plantaginea* ssp. *humilis*, *Hedyotis schlechtendahliana* var. *remyi*, *Kanaloa kahoolawensis*, *Labordia triflora*, *Melicope munroi*, and *Labordia tinifolia* var. *lanaiensis* should be classified as endangered species. We followed the procedures found at section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424). A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Clermontia samuelii* ('oha wai), *Cyanea copelandii* ssp. *haleakalaensis* (haha), *Cyanea glabra* (haha), *Cyanea hamatiflora* ssp. *hamatiflora* (haha), *Dubautia plantaginea* ssp. *humilis* (na'na'e), *Hedyotis schlechtendahliana* var. *remyi* (kopa), *Kanaloa kahoolawensis* (kohe malama malama o Kanaloa), *Labordia tinifolia* var. *lanaiensis* (kamakahala), *Labordia triflora* (kamakahala), and *Melicope munroi* (alani) follow. The primary threats facing the 10 taxa in this final rule are summarized in Table 2.

TABLE 2.—SUMMARY OF PRIMARY THREATS

Species	Alien mammals				Alien plants	Invertebrates	Substrate loss	Overcollecting vandalism	Limited numbers*
	Pigs	Goats	Deer	Rats					
Clermontia samuelii	X			P	X	P		P	
Cyanea copelandii ssp. *haleakalaensis*	X			P	P	P		P	X
Cyanea glabra	X			P	X	X	X	P	X
Cyanea hamatiflora ssp. *hamatiflora*	X			P	X	P	X	P	
Dubautia plantaginea ssp. *humilis*					X		X	P	X
Hedyotis schlechtendahliana var. *remyi*			X		X			P	X1
Kanaloa kahoolawensis				P	X		X	P	X1
Labordia tinifolia var. *lanaiensis*			X		X			P	X
Labordia triflora	X	X		X	X			P	X1
Melicope munroi			X		X			P	X

X = Immediate and significant threat.
P = Potential threat.
* = No more than 5 populations; 1= No more than 10 individuals total.

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Native vegetation on all of the main Hawaiian Islands has undergone extreme alteration because of past and present land management practices including ranching, agricultural development, and deliberate introductions of alien animals and plants (Cuddihy and Stone 1990, Wagner *et al.* 1985). The primary threats facing the 10 plant taxa included in this final rule are ongoing and threatened destruction and adverse modification of habitat by feral animals and competition with alien plants (see Factor E for discussion about alien plants).

Eight of the 10 taxa in this rule are variously threatened by feral animals (see Table 2). Animals such as pigs, goats, axis deer, and cattle were introduced either by the early Hawaiians or more recently by European settlers for food and/or commercial ranching activities. Over the 200 years following their introduction, their numbers increased and the adverse impacts of feral ungulates on native vegetation have become increasingly apparent. Beyond the direct effect of trampling and grazing native plants, feral ungulates have contributed significantly to the heavy erosion still taking place on most of the main Hawaiian islands (Cuddihy and Stone 1990).

Pigs, originally native to Europe, Africa, and Asia, were introduced to Hawaii by the Polynesian ancestors of Hawaiians, and later by western immigrants. The pigs escaped domestication and invaded primarily wet and mesic forests of Kauai, Oahu, Molokai, Maui, and Hawaii. Pigs pose an immediate threat to one or more populations of five of the taxa in wet and mesic habitats. While foraging, pigs root and trample the forest floor, encouraging the establishment of alien plants in the newly disturbed soil. Pigs also disseminate alien plant seeds through their feces and on their bodies, accelerating the spread of alien plants through native forests (Cuddihy and Stone 1990, Stone 1985). Pigs facilitate the spread of *Psidium cattleianum* (strawberry guava) and *Schinus terebinthifolius* (Christmas berry), which threaten several of the taxa (Cuddihy and Stone 1990, Smith 1985, Stone 1985). On Maui, pigs threaten both subspecies of *Clermontia samuelii*, *Cyanea copelandii* ssp. *haleakalaensis*, the only known populations of *Cyanea glabra* and *Cyanea hamatiflora* ssp. *hamatiflora*, and the only known population of *Labordia triflora* (NTBG 1994; A.C. Medeiros, R. Hobdy, and J. Lau, pers. comms. 1995; F.R. Warshauer, pers. comm. 1995).

Goats, native to the Middle East and India, were first successfully introduced to the Hawaiian Islands in 1792. Feral goats now occupy a wide variety of habitats from lowland dry forests to montane grasslands on Kauai, Oahu, Molokai, Maui, and Hawaii, where they consume native vegetation, trample roots and seedlings, accelerate erosion, and promote the invasion of alien plants (Scott *et al.* 1986, Stone 1985, van Riper and van Riper 1982). On Molokai, goats threaten the only known population of *Labordia triflora* (T. Motley, pers. comm. 1993).

In 1920, a group of 12 axis deer was introduced to the island of Lanai and about 60 years later the population was estimated at 2,800 (Tomich 1986). Axis deer degrade habitat by trampling and overgrazing vegetation, which removes ground cover and exposes the soil to erosion. Extensive red erosional scars caused by decades of deer activity are evident on Lanai (Cuddihy and Stone 1990). Activity of axis deer threatens all populations of *Hedyotis schlechtendahliana* var. *remyi*, *Labordia tinifolia* var. *lanaiensis*, and *Melicope munroi* on Lanai (HHP 1991g8 to 1991g10; J. Lau, pers. comm. 1995).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Unrestricted collecting for scientific or horticultural purposes or excessive visits by individuals interested in seeing rare plants is a potential threat to any species identified as an imperiled. This is the case with all of the taxa in this final rule, but would seriously impact the eight taxa whose low numbers and/or few populations make them especially vulnerable to disturbances (*Cyanea copelandii* ssp. *haleakalaensis*, *Cyanea glabra*, *Dubautia plantaginea* ssp. *humilis*, *Hedyotis schlechtendahliana* var. *remyi*, *Kanaloa kahoolawensis*, *Labordia tinifolia* var. *lanaiensis*, *Labordia triflora*, and *Melicope munroi*).

C. Disease and Predation

Disease is not known to be a significant threat to any of the taxa. None of the 10 taxa are known to be unpalatable to pigs, deer, or goats. Feral pigs not only destroy native vegetation through their rooting activities and dispersal of alien plant seeds (see Factor A), but they also feed on plants, preferring the pithy interior of large tree ferns and fleshy-stemmed plants from the bellflower family (Stone 1985, Stone and Loope 1987). There is direct evidence of pigs eating bark off individuals of *Cyanea hamatiflora* ssp.

hamatiflora (A.C. Medeiros, pers. comm. 1995), and predation is a possible threat to other members of the bellflower family (*Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis,* and *Cyanea glabra*). Predation is also a possible threat to the one other taxon, *Labordia triflora*, known from areas where pigs have been reported (A.C. Medeiros and R. Hobdy, pers. comms. 1995; F.R. Warshauer, pers. comm. 1995).

Two rat species, the black rat and the Polynesian rat (*Rattus exulans*), and to a lesser extent other introduced rodents, eat large fleshy fruits and strip the bark of some native plants, particularly fruits of the native plants in the bellflower family (Cuddihy and Stone 1990, Tomich 1986, Wagner *et al.* 1985). It is possible that rats eat the fruits of *Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra,* and *Cyanea hamatiflora* ssp. *hamatiflora*, which produce fleshy fruits and stems, and grow in areas where rats occur (A.C. Medeiros, pers. comm. 1995; L. Mehrhoff, *in litt.* 1995). Rats also eat the seeds of *Labordia triflora* (T. Motley, pers. comm. 1993). Rats are a potential threat to *Kanaloa kahoolawensis*, which has seeds of a type preferred by rats (L. Mehrhoff, *in litt.* 1995).

Slugs are widespread in Hawaii and a serious threat to many native plant taxa, in addition to possibly being an attractant to pigs (Howarth 1985). Slugs feed preferentially on plants with fleshy leaves, stems, and fruits, including all taxa in the family Campanulaceae in Hawaii (L. Mehrhoff, *in litt.* 1995). Slugs are the primary threat to *Cyanea glabra*. All recent observations of this species have shown slug damage on both juveniles and adults (A.C. Medeiros, pers. comm. 1995). Slugs are also a potential threat to the following taxa with fleshy tissues, including *Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis,* and *Cyanea hamatiflora* ssp. *hamatiflora* (A.C. Medeiros, pers. comm. 1995; L. Mehrhoff, *in litt.* 1995).

Two spotted leafhopper is a recently introduced insect that feeds on leaves, causing physical damage. In addition to mechanical feeding damage, this insect may be a vector of a plant virus and is suspected of causing severe dieback of the native fern *Dicranopteris linearis* (uluhe), and economic damage to crops and ornamental plants in Hawaii. The two spotted leafhopper is a potential threat to all native taxa, since it has shown no host preference. It is a particularly grave threat to *Cyanea glabra*, since biologists have observed leafhoppers near the West Maui population (Adam Asquith, Service, pers. comm. 1994; K. Wood, pers. comm. 1995).

D. The Inadequacy of Existing Regulatory Mechanisms

Of the 10 taxa in this final rule, 8 have populations located on private land, 2 on State land, and 4 on Federal land within Haleakala National Park. While four of the taxa occur in more than one of those three ownership categories, five are known only from private land, and *Kanaloa kahoolawensis* is found only on State land.

While four of these taxa are found in Haleakala National Park, which is managed to protect native ecosystems, one or more populations of each taxa are found on State or private land as well. One of the taxa, *Clermontia samuelii*, also occurs in a State Natural Area Reserve, which is managed to perpetuate native resources (HRS, sect. 195–5). Furthermore, although Hawaii has a strong State Endangered Species law (HRS, sect. 195-D), these plants are currently not protected under that law. The other three taxa are found on private lands. However, there are no State laws or existing regulatory mechanisms at the present time to protect or prevent further decline of these plants on private land, except for minimal protection offered to those that occur on land classified as a conservation district.

Sections 2(c) (1) and 7 of the Act direct Federal agencies to seek to conserve listed endangered and threatened species and to avoid jeopardizing listed species, but require no such activities if the plants are not federally listed.

The majority of the populations of the 10 taxa are located on land classified within conservation districts and owned by the State of Hawaii or private companies or individuals. *Clermontia samuelii* occurs within Haleakala National Park, and on State Forest Reserve or State Natural Area Reserve lands—both are within conservation districts. *Kanaloa kahoolawensis* occurs only on the island of Kahoolawe, which is owned by the State of Hawaii. In 1993, Kahoolawe was transferred to native Hawaiian control. The Kahoolawe Island Reserve Commission (KIRC), which is under the Hawaii Department of Land and Natural Resources' Historic Preservation section, was established to oversee the cleanup of the island, including the removal of unexploded military ordnance and the restoration of native ecosystems and traditional cultural uses. Funding for the cleanup was authorized by the U.S. Congress, and the U.S. Navy is responsible for performing the cleanup. Although it does not lease the island, the Navy controls access to the island because of the danger of unexploded ordnance. The island is not a State Forest Reserve, Natural Area Reserve, or within a conservation district.

Regardless of the owner, lands in these districts are regarded as necessary for the protection of endemic biological resources and the maintenance or enhancement of the conservation of natural resources. Activities permitted in conservation districts are chosen by considering how best to make multiple use of the land (HRS, sect. 205–2). Some uses, such as maintaining animals for hunting, are based on policy decisions, while others, such as preservation of endangered species, are mandated by State laws. Requests for amendments to district boundaries or variances within existing classifications can be made by government agencies and any person with a property interest in the land (HRS, sect. 205–4). Before decisions about these requests are made, the impact of the final reclassification on "preservation or maintenance of important natural systems or habitat" (HRS, sects. 205–4, 205–17), as well as the maintenance of natural resources is required to be taken into account (HRS, sects. 205–2, 205–4).

Hawaii Revised Statutes (chapt. 343) require an environmental assessment to determine whether or not the environment will be significantly affected before any final land use—(1) occurs on State land, or (2) is funded in part or whole by county or State funds, or (3) will occur within land classified as conservation district. If it is found that an action will have a significant effect, preparation of a full Environmental Impact Statement is required. Hawaii's Environmental Policy Act, adopted in 1974 to encourage the conservation of natural resources and the enhancement of the quality of life, requires the safeguarding of ". . . the State's unique natural environmental characteristics . . ." (HRS, sect. 344–3(1)) and includes guidelines to protect endangered species of individual plants and animals (HRS, sect. 344–4(3)(A)). However, unless the species are protected under the State endangered species law (i.e., State listed as endangered or threatened), there is no mechanism to ensure that the species will be protected, regardless of what State "guidelines" are in place. Even though all of these species, except *Kanaloa kahoolawensis*, occur on conservation district lands, the designation of a conservation district does not provide adequate protection to these species.

Federal listing of these 10 plant species will automatically invoke State listing under Hawaii's Endangered Species law and supplement the protection available under other State laws. The Federal Endangered Species Act will, therefore, offer additional protection to these species.

State laws relating to the conservation of biological resources, including indigenous aquatic life, wildlife and land plants, and endangered species and their associated ecosystems, allow for the acquisition of land as well as the development and implementation of programs for the conservation, management, and protection of biological resources (HRS, sect. 195D–5(a)). However, according to HRS, sect. 195D–5(d), "in carrying out programs authorized by this section, priority shall be given to the conservation and protection of those endangered . . .", (i.e., Federal and State listed)," . . . aquatic life, wildlife, and land plant species whose extinction within the State would imperil or terminate, respectively, their existence in the world." Therefore, the State will always give priority to protection and conservation efforts to species that are federally and State listed as endangered or threatened. Without Federal listing, these 10 species receive no protection or management by the State.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

All 10 of the taxa in this final rule are threatened or potentially threatened by competition with one or more alien plant taxa (see Table 2). The most significant of these appear to be *Psidium cattleianum* (strawberry guava), *Schinus terebinthifolius* (Christmas berry), *Rubus rosifolius* (thimbleberry), *Clidemia hirta* (Koster's curse), *Miconia calvescens* (velvet tree), *Myrica faya* (firetree), *Paspalum conjugatum* (Hilo grass), *Psidium guajava* (common guava), *Casuarina equisetifolia* (ironwood tree), *Leptospermum scoparium* (New Zealand tea), and *Ageratina adenophora* (Maui pamakani). There are a number of other alien plant taxa that pose a significant threat to populations of these plants.

Psidium cattleianum (strawberry guava), an invasive shrub or small tree native to tropical America, has become widely naturalized on all of the main islands, forming dense stands that exclude other plant species in disturbed areas (Cuddihy and Stone 1990). This alien plant grows primarily in mesic and wet habitats and is dispersed mainly by feral pigs and fruit-eating birds (Smith 1985, Wagner *et al.* 1990). *Psidium cattleianum* is considered to be one of the greatest alien plant threats to Hawaiian rain forests and is a threat on Maui to one of two known populations of *Cyanea copelandii* ssp. *haleakalaensis* and *Cyanea glabra* (Higashino *et al.* 1988; A.C. Medeiros, pers. comm. 1995). On Lanai, this invasive alien plant threatens all populations of *Hedyotis schlechtendahliana* var. *remyi*, the only known population of *Labordia tinifolia* var. *lanaiensis*, and the only known population of *Melicope munroi* (HHP 1991e1 to 1991e3; R. Hobdy, pers. comm. 1994; J. Lau, pers. comm. 1995).

Schinus terebinthifolius (Christmas berry), introduced to Hawaii before 1911, is a fast-growing tree or shrub invading most mesic to wet lowland areas of the major Hawaiian Islands (Wagner *et al.* 1990). *Schinus terebinthifolius* is distributed mainly by feral pigs and fruit-eating birds and forms dense thickets that shade out and displace other plants (Cuddihy and Stone 1990, Smith 1985, Stone 1985). This species is a threat to one population of *Hedyotis schlechtendahliana* var. *remyi*, and the only known populations of *Labordia tinifolia* var. *lanaiensis* and *Labordia triflora* (HHP 1991e2; R. Hobdy, pers. comm. 1994; J. Lau, pers. comm. 1995).

Rubus rosifolius (thimbleberry), native to Asia, is naturalized in disturbed mesic to wet forest on all of the main Hawaiian Islands and is perhaps the most widespread of all species of *Rubus* introduced to Hawaii (Cuddihy and Stone 1990). On Maui, this species threatens one of the two populations of *Cyanea copelandii* ssp. *haleakalaensis* as well as *Cyanea glabra* (NTBG 1994; A.C. Medeiros, pers. comm. 1995).

Clidemia hirta (Koster's curse), a noxious shrub native to tropical America, is found in mesic to wet forests on at least six islands in Hawaii (Almeda 1990, Hawaii Department of Agriculture 1981, Smith 1992). *Clidemia hirta* was first reported on Oahu in 1941 and had spread through much of the Koolau Mountains by the early 1960s. This noxious plant forms a dense understory, shading out other plants and hindering plant regeneration (Cuddihy and Stone 1990). This prolific alien plant has recently spread to five other islands and, on Maui is a potential threat to *Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis* and *Cyanea glabra* (A.C. Medeiros, pers. comm. 1995).

Miconia calvescens (velvet tree) is a recently naturalized species native to tropical America. This species has become invasive in the Hamakua coast and Pahoa areas of the island of Hawaii, the island of Oahu, and has become established on East Maui. This species has the potential to be very disruptive, as it has become an understory dominate where introduced to similar habitat in Tahiti (Almeda 1990, Cuddihy and Stone 1990). This species occurs on Maui near populations of *Clermontia samuelii* and poses a potential threat (A.C. Medeiros, pers. comm. 1995).

Myrica faya (firetree), native to the Azores, Madeira, and the Canary Islands, was introduced to Hawaii before 1900 for wine-making, firewood, or an ornamental. Trees were planted in forest reserves in the 1920s. By the mid-1980s *M. faya* had infested over 34,000 hectares (83,980 acres) throughout the State, with the largest infestations on the island of Hawaii. It is now considered a noxious weed (Cuddihy and Stone 1990, DOA 1981). *Myrica faya* can form a dense stand with no ground cover beneath the canopy. This lack of ground cover may be due to dense shading or to chemicals released by the tree that prevent other species from growing. *Myrica faya* also fixes nitrogen and increases nitrogen levels in Hawaii's typically nitrogen-poor volcanic soils. This may encourage the invasion of alien plants that would not normally be able to grow as well as native species in the low-nitrogen soils of Hawaii (Cuddihy and Stone 1990). On Lanai, this species threatens *Hedyotis schlechtendahliana* var. *remyi* and *Labordia tinifolia* var. *lanaiensis* (HHP 1991e3; R. Hobdy, pers. comm. 1994).

Paspalum conjugatum (Hilo grass) is naturalized in moist to wet disturbed areas on all of the main Hawaiian Islands except Niihau and Kahoolawe, and produces a dense ground cover (Cuddihy and Stone 1990). In Maui's Kipahulu Valley, this grass threatens one of the two populations of *Cyanea copelandii* ssp. *haleakalaensis*, as well as *Cyanea glabra* (NTBG 1994; A.C. Medeiros, pers. comm. 1995). On West Maui, *P. conjugatum* threatens *Dubautia plantaginea* ssp. *humilis* (HPCC 1990).

Psidium guajava (common guava), a shrub or small tree native to the New World tropics, is naturalized on all of the main islands, except, perhaps, Niihau and Kahoolawe (Wagner *et al.* 1990). *Psidium guajava* is a serious weed that invades disturbed sites, forming dense thickets in dry as well as mesic and wet forests (Smith 1985, Wagner *et al.* 1990). On Maui, this species threatens one of the two known populations of *Cyanea copelandii* ssp. *haleakalaensis*, as well as *Cyanea glabra* and *Dubautia plantaginea* ssp. *humilis*

(HPCC 1990; Higashino *et al.* 1988; A.C. Medeiros, pers. comm. 1995).

Casuarina equisetifolia (ironwood) is a large, fast-growing tree that reaches up to 20 m (65 ft) in height (Wagner *et al.* 1990). This large tree shades out other plants, takes up much of the available nutrients, and possibly releases a chemical agent that prevents other plants from growing beneath it (Neal 1965, Smith 1985). *Casuarina equisetifolia* is invading the wet cliffs of Iao Valley and is a threat to *Dubautia plantaginea* ssp. *humilis* (HPCC 1990; HHP 1991d1; R. Hobdy, pers. comm. 1995).

Leptospermum scoparium (New Zealand tea), brought to Hawaii as an ornamental plant and now naturalized in disturbed mesic to wet forest on three islands, threatens *Hedyotis schlechtendahliana* var. *remyi*, and the only known populations of *Labordia tinifolia* var. *lanaiensis* and *Melicope munroi* (Wagner *et al.* 1990; J. Lau, pers. comm. 1995).

Ageratina adenophora (Maui pamakani), native to tropical America, has become naturalized in dry areas to wet forest on Oahu, Molokai, Lanai, Maui, and Hawaii (Wagner *et al.* 1990). This noxious weed forms dense mats with other alien plants and prevents regeneration of native plants (Anderson *et al.* 1992). On Maui, one of the two known populations of *Cyanea copelandii* ssp. *haleakalaensis*, as well as *Cyanea glabra* and *Cyanea hamatiflora* ssp. *hamatiflora* are threatened by this species (NTBG 1995; R. Hobdy, pers. comm. 1995).

Rubus argutus (prickly Florida blackberry) was introduced to the Hawaiian Islands in the late 1800s from the continental U.S. (Haselwood and Motter 1983). The fruits are easily spread by birds to open areas such as disturbed mesic or wet forests, where the species forms dense, impenetrable thickets (Smith 1985). One of two known populations of *Cyanea copelandii* ssp. *haleakalaensis*, as well as *Cyanea glabra* are threatened by this species (A.C. Medeiros, pers. comm. 1995).

Hedychium coronarium (white ginger) was introduced to Hawaii in the late 1800s, probably by Chinese immigrants. It escaped from cultivation and is found in wet and mesic forests on most of the main Hawaiian islands. The large, vigorous herbs mainly reproduce vegetatively, forming very dense stands that exclude all other growth. *Hedychium gardnerianum* (kahili ginger) was introduced to Hawaii before 1940 from the Himalayas, and now has major infestations on the islands of Hawaii, Maui, and Kauai. This species is considered a more serious threat to native forests because it produces abundant fruit (Cuddihy and Stone 1990, Wagner *et al.* 1990). Both species of *Hedychium* threaten *Clermontia samuelii* (A.C. Medeiros, pers. comm. 1995), and *H. gardnerianum* is a threat to *Labordia tinifolia* var. *lanaiensis* (R. Hobdy, pers. comm. 1994).

Tibouchina herbacea (glorybush), a relative of Koster's curse, first became established on the island of Hawaii in the late 1970s and, by 1982, was collected in Lanilili on West Maui (Almeda 1990). Although the disruptive potential of this alien plant is not fully known, *T. herbacea* appears to be invading mesic and wet forests of Hawaii and Maui (Cuddihy and Stone 1990), and is considered a threat to *Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis*, and *Cyanea glabra* (R. Hobdy and A.C. Medeiros, pers. comms. 1995).

Sporobolus africanus (smutgrass) was introduced from Africa and has become naturalized on all the main islands of Hawaii except Niihau and Kahoolawe. It is typically found in disturbed areas such as road sides and pastures (O'Connor 1990), and on Maui is a threat to *Dubautia plantaginea* ssp. *humilis* (HPCC 1990).

Pluchea symphytifolia (sourbush) is native to Mexico, the West Indies, and northern South America. This species is naturalized in dry forests and ranges into mesic and wet forests on all the main Hawaiian islands (Wagner *et al.* 1990). It is a fast growing shrub and can form dense thickets (Smith 1985). *Pluchea symphytifolia* is a threat to *Dubautia plantaginea* ssp. *humilis* on West Maui (HPCC 1990).

Emelia fosbergii is a pantropical weed of unknown origin. In Hawaii it is a common weed in disturbed lowland dry habitats on all the main islands (Wagner *et al.* 1990). *Emelia fosbergii* is a threat to the only known population of *Kanaloa kahoolawensis* (Lorence and Wood 1994).

Nicotiana glauca (tree tobacco) was brought to Oahu as an ornamental from Argentina in the 1860s. It is now naturalized in all warm temperate regions of the world. On Oahu, Lanai, Maui, and Kahoolawe, this species is naturalized in disturbed open, dry habitats (Symon 1990). *Nicotiana glauca* is a threat to the only known population of *Kanaloa kahoolawensis* (Lorence and Wood 1994).

Chloris barbata (swollen finger grass) is native to Central America, the West Indies, and South America. In Hawaii it is naturalized in disturbed dry areas on all the main islands, and is a threat to the only known population of *Kanaloa kahoolawensis* (Lorence and Wood 1994, O'Connor 1990).

Erosion, landslides, rockslides, and flooding due to natural weathering result in the death of individual plants as well as habitat destruction. This especially affects the continued existence of taxa or populations found on cliffs, steep slopes, and stream banks that have limited numbers and/or narrow ranges such as the West Maui population of *Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora, Dubautia plantaginea* ssp. *humilis*, and *Kanaloa kahoolawensis* (Lorence and Wood 1994; R. Hobdy, pers. comm. 1995).

The small number of populations and individuals of many of these taxa increases the potential for extinction from a single human-caused or natural environmental disturbance. In addition, the small gene pool may depress reproductive vigor. Four of the plants, *Kanaloa kahoolawensis, Labordia tinifolia* var. *lanaiensis, Labordia triflora*, and *Melicope munroi*, are each known from a single population. Four additional taxa have five or fewer populations (*Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Dubautia plantaginea* ssp. *humilis*, and *Hedyotis schlechtendahliana* var. *remyi*), and three of the taxa are estimated to number no more than 10 individuals (*Hedyotis schlechtendahliana* var. *remyi, Kanaloa kahoolawensis*, and *Labordia triflora*). All of the taxa in this final rule either number fewer than 15 populations or total fewer than 1,000 individuals (see Table 2).

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these taxa in determining to make this rule final. Based on this evaluation, we find that these 10 species should be listed as endangered—*Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora, Dubautia plantaginea* ssp. *humilis, Hedyotis schlechtendahliana* var. *remyi, Kanaloa kahoolawensis, Labordia tinifolia* var. *lanaiensis, Labordia triflora*, and *Melicope munroi*. All of these taxa are threatened by one or more of the following—habitat degradation and/or predation by pigs, goats, deer, rats, and invertebrates; competition with alien plant taxa for space, light, water, and nutrients; and, substrate loss. Eight of the taxa have five or fewer populations, and three of these taxa are estimated to number no more than 10 individuals. Small population size and limited distribution make eight of these taxa particularly vulnerable to extinction from reduced reproductive vigor or from random environmental events. Because all of the 10 taxa are in danger of extinction throughout all or a significant portion of their ranges, they fit the definition of endangered as defined in the Act. Therefore, the determination of endangered status for these 10 taxa is warranted.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Critical habitat is not prudent when one or both of the following situations exist—(i) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat; (ii) designation of critical habitat would not be beneficial to the species.

In the proposed rule, we indicated that designation of critical habitat was not prudent for the six taxa (*Dubautia plantaginea* ssp. *humilis, Hedyotis schlechtendahliana* var. *remyi, Kanaloa kahoolawensis, Labordia tinifolia* var. *lanaiensis, Labordia triflora*, and *Melicope munroi*) that are located primarily on non-Federal lands with limited Federal activities because of a concern that publication of precise maps and descriptions of critical habitat in the **Federal Register** could increase the vulnerability of these plant species to incidents of collection and general vandalism. In the case of plants, increased visits to the sites where rare species are found could contribute to the decline of existing populations through overcollection or vandalism. We also indicated that designation of critical habitat was not prudent for the other four taxa (*Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra*, and *Cyanea hamatiflora* ssp. *hamatiflora*) located primarily on Federal lands within Haleakala National Park. National Parks are managed for the protection of native ecosystems, which should promote protection, conservation, and recovery of plants that are part of those ecosystems, suggesting no significant benefit from a designation of critical habitat.

In light of recent court decisions (e.g., *Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)) issued since the proposed rule was published we have reconsidered the prudency finding under the Act. In the *Natural Resources Defense Council* case (hereafter *NRDC*), the Ninth Circuit held, first, that a not prudent finding premised on increased threats was justified only if the Service weighs, based on facts in the record, the benefits of designation against the risks of designation. Second, it held that the Service erred in finding no benefit to critical habitat simply because critical habitat would not control the majority of land-use activities within critical habitat, and that to do so was inconsistent with Congressional intent that the not prudent exception to designation should apply "only in rare circumstances." With regard to non-Federal lands, the court found that they would be subject to section 7 requirements in the future if their use involved any form of Federal agency authorization or action. Third, the court found that the existence of another type of protection, even if potentially greater than that provided by designating critical habitat, does not justify a not prudent finding.

The Service continues to be concerned that designation of critical habitat could potentially increase the threats to these species. Due to low numbers of individuals or populations and their inherent immobility, these plants are vulnerable to unrestricted collection, vandalism or other disturbance. We also remain concerned that these threats may be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, we have examined the evidence available for each of these ten taxa and have not, at this time, found specific evidence of taking, vandalism, collection or trade of any of them or of similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)), we do not find that any of these species are currently threatened by taking or other human activity, which threats would be exacerbated by the designation of critical habitat.

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted pursuant to the *NRDC* decision. In the case of these taxa, there may be some benefits to critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. Four of these species (*Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra*, and *Cyanea hamatiflora* ssp. *hamatiflora*) occur in part on Federal land that would be subject to section 7. The fact that this is land administered by the National Park Service does not, in itself, justify a not prudent finding in the Ninth Circuit. However, we will determine at the time of designation whether National Park Service lands meet the statutory definition of critical habitat. While the other taxa (*Dubautia plantaginea* ssp. *humilis, Hedyotis schlechtendahliana* var. *remyi, Kanaloa kahoolawensis, Labordia tinifolia* var. *lanaiensis, Labordia triflora*, and *Melicope munroi*) are located exclusively on non-Federal lands with limited Federal activities, there may be Federal actions affecting these lands in the future. While a critical habitat designation for habitat currently occupied by these species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. There may also be some educational or informational benefits to critical habitat. Therefore, we find that critical habitat is prudent for the 10 Maui Nui plant taxa, *Clermontia samuelii, Cyanea copelandii* ssp. *haleakalaensis, Cyanea glabra, Cyanea hamatiflora* ssp. *hamatiflora, Dubautia plantaginea* ssp. *humilis, Hedyotis schlechtendahliana* var. *remyi, Kanaloa kahoolawensis, Labordia tinifolia* var. *lanaiensis, Labordia triflora*, and *Melicope munroi*.

Proposed Critical Habitat Designations Will Be Consistent With The Service's Listing Priority Guidance

As a Tier 2 activity, the processing of this final rule conforms with our current

listing priority guidance (LPG) for fiscal years 1998 and 1999, published in the **Federal Register** on May 8, 1998 (63 FR 25502). However, at this time, designation of critical habitat is a Tier 3 activity under the current LPG. While we allocated about 17 percent of the total listing budget for critical habitat actions this fiscal year, all of Region 1's allocation will be spent complying with court-ordered designations. Completion of any other Tier 3 activity in Region 1 this fiscal year is precluded by higher priority listing actions. Future work on proposed critical habitat designations for these taxa will be scheduled based on future listing appropriations, the LPG in effect at that time, and their relative priority compared to other pending critical habitat proposals.

The Act imposes more listing duties than we currently are able to meet due to lack of adequate funding. To deal with this difficult situation, we have developed a series of LPGs to prioritize our various listing activities in such a way as to secure the most protection for the greatest number of the most imperiled species in the least time.

The Listing Priority Guidance

The **Federal Register** notices for the LPGs describe the fiscal constraints imposed over the past four years in detail. 63 FR 25502 (May 8, 1998) (FY 1998/1999 LPG); 61 FR 64475 (Dec. 5, 1996) (FY 1997 LPG); 61 FR 24722 (May 16, 1996) (FY 1996 LPG). In brief, Congress originally appropriated $7.999 million for listing in FY 1995. On April 10, 1995, Congress enacted a moratorium on final listing determinations and critical habitat designations, and rescinded $1.5 million (nearly twenty percent) of the listing budget. The severe funding shortages and the listing moratorium continued in FY 1996. From October 1, 1995, until April 26, 1996, the Department of the Interior operated without a regularly enacted full-year appropriations bill. Instead, funding for most of the Department's programs, including the endangered species listing program, was governed by a series of thirteen "continuing resolutions" (CRs) that severely reduced or eliminated funding for the Service's listing program. Their net effect was essentially to shut down the listing program.

After more than six months of continuing resolutions, Congress allowed the President to lift the listing moratorium and appropriated $4.0 million for listing in FY 1996, far short of the funds necessary to process the backlog of 243 final listing determinations that required action. In FY 1997, although the President requested approximately $7.5 million for listing, Congress appropriated only $5.0 million. The President requested and received $5.19 million for listing in FY 1998, and Congress expressly prohibited the expenditure of any additional funds for listing. This reduced listing budget request was based on a realistic assessment of the level of funding that might be obtained and reflected a need to address other endangered species program activities such as conducting section 7 consultations, processing section 10 incidental take permit applications, and developing and implementing recovery plans. Although the Department also requested that Congress include the amount of the budget that could be allocated to listing on the face of the appropriations bill, it did so only to clarify Congress' intent, previously expressed in Congressional committee reports, that we not divert funding to listings from other programs. In FY 1999, the President requested significant increases for all Endangered Species programs, including an increase of $1.5 million for listing. However, Congress appropriated only an additional $566,000, for a total listing budget of $5.756 million, again with an express cap on the listing budget.

To address the backlog that has resulted from the listing moratorium and subsequent funding constraints, and to meet litigation deadlines, we employed the LPGs to prioritize listing actions. The 1996, 1997, and 1998/99 LPGs use categories or "tiers" of Act listing actions to guide the expenditure of limited listing funds. Each year, the content and number of tiers has changed somewhat, reflecting the progress that the Service has made in reducing the listing backlog. In the current guidance, the highest priority (Tier 1) is assigned to emergency listings of species facing an imminent risk of extinction. The second highest priority (Tier 2) includes processing final determinations on proposed additions to the lists of endangered and threatened species, processing new proposals to add species to the lists, and processing petition findings to add species to the lists. Preparing proposed and final rules to designate critical habitat is assigned the lowest priority (Tier 3).

It is essential during periods of limited listing funds to maximize the conservation benefit of listing appropriations. Designation of critical habitat is very resource-intensive, and in most cases provides little additional protection. As explained previously, the primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While in some cases critical habitat may result in some additional section 7 coverage, for example in unoccupied habitat, the prohibition on destroying critical habitat generally overlaps the jeopardy prohibition of section 7. There may also be other benefits of critical habitat, such as increased awareness by the general public and State and government agencies of the importance of certain habitat areas. Nevertheless, compared with the benefits of listing as endangered or threatened, those species that presently have no protection under the Act, designating critical habitat for species already receiving its full protection provides relatively fewer conservation benefits.

Furthermore, designation of critical habitat is expensive and time-consuming. It entails the detailed identification of all areas containing the physical or biological features essential to the conservation of each species (16 U.S.C. 1532(5)(A)). Then, we must determine which of these areas may require special management considerations or protection. Maps and written legal descriptions must be prepared for each area to be proposed for critical habitat (50 CFR 424.12(c)). We must also consider the economic and other impacts of designating areas as critical habitat (16 U.S.C. 1533(b)(2)). This requires the preparation of an economic analysis and consideration of any additional available information concerning other impacts. Then we must determine whether the benefits of excluding any particular area outweigh the benefits of including that area as part of the critical habitat. To insure that the affected public and State and local governments have an adequate opportunity to comment, we must also publish each critical habitat proposal in the **Federal Register** for public comment; provide actual notice of the proposed regulation to appropriate State and local government agencies where the taxon is believed to occur; publish a summary of each proposal in a newspaper of general circulation in each area where the taxon is believed to occur; and hold public hearings if requested (16 U.S.C. 1533(b)(5)).

It is very difficult to estimate precisely the time and cost to develop critical habitat designations for the plants at issue here and we intend to streamline the process to the extent possible consistent with our statutory obligations. For example, for the Mexican spotted owl, the actual designation cost over $341,000. Obviously, the greater the number of species, the greater the cost. Because of the marginal additional protection critical habitat provides, and the cost of designating it, critical habitat designations have been accorded a lower priority under the LPG.

Adherence to the LPG has allowed us to make great strides in eliminating the backlog of pending listing proposals, thus allowing the implementation of a more balanced listing program. When the moratorium was lifted, final decisions for 243 proposed listings were pending. In the four calendar years prior to the moratorium, we made final listing decisions for an average of 88 species per year. In comparison, in the twelve months after the moratorium was lifted on April 26, 1996, we made final listing determinations for 131 species. Since that time, we further reduced the backlog of pending proposals to list domestic species, so that 68 such proposals remain pending (as of June 24, 1999), only 1 of which was published prior to the moratorium.

However, at present we still face the dilemma that we cannot complete all of our statutory listing duties within the time frames mandated by Congress, given the insufficient funds appropriated by Congress for this purpose. The LPG is the most efficient way, consistent with the purposes of the Act, for us to pursue the goal of reestablishing full compliance with the Act.

The progress we have made in reducing the listing backlog by employing the LPG has allowed us to slowly expand the activities we undertake. Resuming work on critical habitat designations, where prudent, is the next step in this process. In fact, we set aside $979,000 from the 1999 listing budget to undertake critical habitat actions. However, current budget levels are clearly insufficient for us to undertake all of our outstanding critical habitat designations in addition to meeting our other mandatory listing duties under the Act. Therefore, we plan to employ a priority system for deciding which ones should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, the magnitude and immediacy of those threats, and the amount of resources necessary to complete the designation. We are also in the process of re-examining procedures and requirements for critical habitat designation, in order to streamline and expedite such actions to the maximum extent permitted under law (64 FR 31871, June 14, 1999) (notice of intent to clarify the role of habitat in endangered species conservation).

Region 1's Workload

Administratively, the Service is divided into seven geographic regions, which report to our headquarters in Washington, DC. Each region has a regional office and a number of field offices that report to the regional office. These ten species are under the jurisdiction of Region 1, which includes California, Oregon, Washington, Idaho, Nevada, Hawaii, and various Pacific Islands. Within Region 1, these species are the responsibility of the Pacific Islands Fish and Wildlife Office in Honolulu, Hawaii.

Region 1 has by far the heaviest endangered species workload of the Service's seven regions. About one-half of all species listed under the Act fall within Region 1's jurisdiction. Since the listing moratorium was lifted in April 1996, Region 1 has expended much of its limited listing resources on the completion of final determinations on proposed rules to list species. From April 1996 through June 24, 1999, we made 210 final determinations for Region 1 species (81 percent of the nationwide total of 260). In that time frame, Region 1 also proposed rules for 49 species (56 percent of the nationwide total of 88), and completed 9 petition findings (20 percent of the nationwide total of 44).

Region 1 likewise has a heavy listing workload for the remainder of FY 1999. Region 1 has the lead on forty-six species proposed for listing for which final determinations must be made. Region 1 must also complete 12-month findings for an additional five species. Moreover, Region 1 has primary responsibility for about 100 candidate species, many of which face imminent, high-magnitude threats to their existence. Finally, Region 1 has 5 listing petitions awaiting 90-day findings. Under the LPG, these are all Tier 2 activities that should be given priority to ensure that species in need of the fundamental protections of the Act are addressed. Currently, there is one draft final delisting package awaiting revision by the Pacific Islands Fish and Wildlife Office listing staff and, seven draft proposed listing packages covering 39 species awaiting revision by either the Regional Office listing staff or the Pacific Islands Fish and Wildlife Office. In addition, preparation of proposed listing rules for 28 Hawaiian plant species and 2 species of butterflies from the Northern Marianas Islands have been put on hold indefinitely due to the increased workload associated with the determination and designation of critical habitat for the listed species under litigation.

Region 1 must also expend its listing resources to comply with existing court orders or settlement agreements. In fact, this fiscal year, all of the Region's allocation for critical habitat actions will be expended to comply with these court orders. For example, we have been ordered to propose critical habitat for the tidewater goby by August 3, 1999, and to complete final critical habitat designation for the western snowy plover by December 1, 1999. In addition, Region 1 had to comply with a court order to reanalyze a previous not prudent finding for critical habitat for the coastal California gnatcatcher. This reanalysis was completed this fiscal year, and we are beginning the analysis on specific sites to identify any areas that may be appropriate for proposed critical habitat designation. Complying with these orders will require a significant commitment of resources.

By far the greatest litigation-driven commitment of listing resources will be required to comply with the order in Conservation Council of Hawaii v. Babbitt. There, the district court remanded to the Service its "not prudent" findings on critical habitat designation for 245 species of Hawaiian plants. The court ordered us not only to reconsider these findings but also to designate critical habitat for any species for which we determine on remand that critical habitat designation is prudent. This order essentially requires a single field office to draft critical habitat determinations for over one-fifth of all the species that have ever been listed in the history of the Act, and encompasses more than one-third of all listed plants. Compliance with this court order, set on a schedule to run through 2003, will require an enormous commitment of listing resources that may delay other Region 1 listing activity for years. Because of this tremendous court ordered workload, the Pacific Islands Fish and Wildlife Office is only working on emergency listing actions (Tier 1) in addition to lawsuit driven listing activities; all remaining Tier 2 activities remaining in the office will not be completed. While we cannot predict the outcome of the Congressional appropriation process for FY 2000 it is very unlikely that it will see a significant increase in its listing budget and it is more reasonable to expect that the budget will be at a slightly lower level than FY 1999. If this is the case, it is likely that the Pacific Islands Fish and Wildlife Office will continue to have the ability to work only on court ordered and emergency listing actions.

Of the $5.756 million appropriated in FY 1999 for listing actions, Region 1 was allocated $2.964 million (over 50 percent). Of the $979,000 allocated to critical habitat, Region 1 received $460,000, or 47 percent. These funds are insufficient to fulfill all of its section 4 listing duties during FY 1999 as well as to comply with existing court orders regarding critical habitat. Therefore, designating critical habitat for these 10 taxa at this time (Tier 3 activities) would come at the expense of providing basic protection under the Act to species not yet listed (Tier 2 activities).

We will develop critical habitat designations for these ten taxa as soon as feasible. At the present time, we expect that the most expeditious way of processing these designations will be to process them with the 245 Hawaiian plant species for which critical habitat determinations have been remanded to us in *Conservation Council of Hawaii v. Babbitt*. As a result, we currently anticipate that the proposed critical habitat designation will be completed by April 20, 2002, and the final rules will be completed by April 20, 2003.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing can encourage and result in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery plans be developed for listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. Populations of four of the endangered taxa occur on National Park Service land. The National Park Service monitors and manages rare and endangered species populations within Haleakala National Park (S. Anderson, pers. comm. 1998).

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. With respect to the 10 species in this final rule, all prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant species to/from the United States; transport such species in interstate or foreign commerce in the course of a commercial activity; sell or offer for sale such a species in interstate or foreign commerce; remove and reduce such a species to possession from areas under Federal jurisdiction; maliciously damage or destroy any such species from areas under Federal jurisdiction; or remove, cut, dig up, or damage or destroy any such species in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62 provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. It is anticipated that few permits would ever be sought or issued because these 10 species are not common in cultivation or in the wild.

It is our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. Four of the species occur on Federal lands under the jurisdiction of the National Park Service. Collection, damage, or destruction of these species on Federal lands is prohibited without a Federal endangered species permit. Such activities on non-Federal lands would constitute a violation of section 9 if conducted in knowing violation of Hawaii State law or regulations or in violation of a State criminal trespass law (see Hawaii State Law section below). We are not aware of any trade in these species.

We believe that, based on the best available information at this time, the following actions will not result in a violation of section 9 on private land provided that they do not violate State trespass or other laws—hunting, bird watching, and hiking. Activities for which a Federal endangered species permit is issued to allow collection for scientific or recovery purposes would also not result in a violation of section 9. We are not aware of any otherwise lawful activities being conducted or proposed by the public that will be affected by this listing and result in a violation of section 9. General prohibitions and exceptions that apply to all endangered plants in section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply as discussed earlier in this section.

Questions regarding whether specific activities will constitute a violation of section 9 of the Act should be directed to the Pacific Islands Ecoregion Manager (see **ADDRESSES** section). Requests for copies of the regulations concerning listed plants and inquiries regarding prohibitions and permits may be addressed to the Fish and Wildlife Service, Ecological Services, Permits Branch, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503–231–2063; facsimile 503–231–6243).

Hawaii State Law

Federal listing will automatically invoke listing under the State's endangered species law. Hawaii's endangered species law states, "Any species of aquatic life, wildlife, or land plant that has been determined to be an endangered species pursuant to the Federal Endangered Species Act shall be deemed to be an endangered species under the provisions of this chapter * * *" (HRS, sect. 195D–4(a)). Therefore, Federal listing will accord the species listed status under Hawaii State law. State law prohibits cutting, collecting, uprooting, destroying, injuring, or possessing any listed species of plant on State or private land, or attempting to engage in any such conduct. The State law encourages conservation of such species by State agencies and triggers other State regulations to protect the species (HRS, sect. 195AD–4 and 5).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. For additional information concerning permit and associated requirements for endangered species, see 50 CFR 17.62.

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Pacific Islands Fish and Wildlife Office (see **ADDRESSES** section).

Author

The authors of this final rule are Karen "Kitti" Jensen and Christa Russell, telephone 808–541–3441 or facsimile 808–541–3470 (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Final Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend section 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
Flowering Plants							
.	.	.	.	.	.	.	.
Clermontia samuelii	Oha wai	U.S.A (HI)	Campanulaceae—Bellflower.	E	666	NA	NA
.	.	.	.	.	.	.	.
Cyanea copelandii ssp. *haleakalaensis.*	Haha	U.S.A. (HI)	Campanulaceae—Bellflower.	E	666	NA	NA
.	.	.	.	.	.	.	.
Cyanea glabra	Haha	U.S.A. (HI)	Campanulaceae—Bellflower.	E	666	NA	NA
.	.	.	.	.	.	.	.
Cyanea hamatiflora ssp. *hamatiflora.*	Haha	U.S.A. (HI)	Campanulaceae—Bellflower.	E	666	NA	NA
.	.	.	.	.	.	.	.
Dubautia plantaginea ssp. *humilis.*	Nàenàe	U.S.A. (HI)	Asteraceae—Sunflower	E	666	NA	NA
.	.	.	.	.	.	.	.
Hedyotis schlechtendahliana var. *remyi.*	Kopa	U.S.A. (HI)	Rubiaceae—Coffee	E	666	NA	NA
.	.	.	.	.	.	.	.
Kanaloa kahoolawensis.	None	U.S.A. (HI)	Fabaceae—Legume	E	666	NA	NA
.	.	.	.	.	.	.	.
Labordia tinifolia var. *lanaiensis.*	Kamakahala	U.S.A. (HI)	Loganiaceae—Logan	E	666	NA	NA
.	.	.	.	.	.	.	.
Labordia triflora	Kamakahala	U.S.A. (HI)	Loganiaceae—Logan	E	666	NA	NA
.	.	.	.	.	.	.	.
Melicope munroi	Alani	U.S.A. (HI)	Rutaceae—Citrus.	E	666	NA	NA
.	.	.	.	.	.	.	.

Dated: August 24, 1999.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 99–22969 Filed 9–2–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 990823235–9235–01; I.D. 061699F]

RIN 0648–AM55

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Closure of the Red Porgy Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; request for comments.

SUMMARY: This emergency interim rule prohibits the harvest and possession of red porgy in or from the exclusive economic zone off the southern Atlantic states. Closure of the fishery is intended to protect the red porgy resource, which is currently overfished.

DATES: This rule is effective September 8, 1999, through March 1, 2000. Comments must be received no later than October 4, 1999.

ADDRESSES: Comments on this emergency interim rule must be mailed to, and copies of documents supporting this action, such as NMFS' economic analysis and environmental assessment, may be obtained from, the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Requests for copies of a minority report submitted by a member of the South Atlantic Fishery Management Council (Council) should be sent to the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699; phone: 843-571-4366; fax: 843-769-4520.

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 727-570-5305, fax: 727-570-5583.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery off the southern Atlantic states is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

Fishing pressure on red porgy increased substantially from the early 1970's to the present. In 1992, an assessment revealed that red porgy were overfished with a spawning potential ratio (SPR) of 13 percent. Also, in 1992 the Council established a rebuilding timeframe of 10 years for red porgy. The Council used SPR as a proxy for maximum sustainable yield (MSY) and as a criterion to judge whether or not a stock was overfished.

Amendment 9 to the FMP, which was submitted to NMFS in February 1998 for review and implementation, recognized that red porgy were overfished and contained management measures to address that issue. Amendment 9 increased the minimum size limit from 12 to 14 inches (30.5 to 35.6 cm) total length, established a recreational bag limit of 5 fish, prohibited harvest and possession in excess of the bag limit during March and April, and prohibited purchase and sale during March and April. Based on the best scientific information available at that time, the Council believed that the proposed red porgy management measures in Amendment 9 would prevent overfishing.

Also, in October 1998, based upon the same information used to develop Amendment 9, the Council selected a 10-year rebuilding timeframe for red porgy in the Comprehensive Amendment Addressing Sustainable Fishery Act Definitions and Other Required Provisions in Fishery Management Plans of the South Atlantic Region. NMFS partially approved the Comprehensive Amendment on May 19, 1999, and specifically approved the rebuilding schedule for red porgy.

In March 1999, a new red porgy assessment revealed the condition of the red porgy resource was substantially worse than previously thought. Specifically, for the first time in the management of this fishery, biomass-based estimates for MSY, minimum stock size threshold (MSST), maximum fishing mortality threshold (MFMT), and estimates of actual recruitment to the fishery for the 1973 through 1997 period were available. This information revealed that the red porgy resource is suffering recruitment failure. Recruitment failure means that the number of recruits is insufficient to maintain the spawning biomass of the population. If such a condition is allowed to persist, the fishery will collapse. In addition, the 1999 assessment noted that the SPR estimate is useful to describe the fishing mortality rate, but the SPR estimate is not a valid proxy for MSY in this fishery because it does not provide information on the actual level of spawning biomass that is providing recruitment.

The 1999 red porgy assessment revealed that recruitment of age–1 red porgy had declined 99.85 percent from 1973 to 1997 (7.6 million to 0.012 million age–1 fish) and that total spawning biomass has declined 97.24 percent from 1978 to 1997 (11,700 metric tons (mt) to 323 mt). The MSST to achieve an SPR of 30 percent (MSY) is 2,845.mt; the comparable figure for optimum yield is 3,805 mt. The MFMT is 0.45; whereas, the current fishing mortality is 0.64, which is 42 percent over the MFMT. In addition, commercial and recreational landings have declined substantially, and the size of red porgy at maturity and size at transition from females to males have occurred at progressively smaller sizes.

The FMP specifies the overfishing threshold for red porgy at an SPR of 30 percent. The 1999 assessment estimated the SPR at 24 percent. Thus, overfishing is occurring.

The 1999 assessment clearly shows that the spawning biomass has been substantially below the MSST since 1992. Concomitant with the depressed level of spawning stock has been a depressed level of recruitment. Given the seriously overfished condition of the red porgy resource, as well as the original intent of the Council to rebuild this resource by the year 2001, the Council concluded that it is prudent and necessary under the Magnuson-Stevens Act to close the fishery to rebuild this species.

The Council will request NMFS to develop potential management options for the red porgy fishery in time for the September Council meeting. The Council intends to develop permanent management measures to replace the emergency interim rule for red porgy at the September Council meeting.

This action will require the discard of red porgy that inevitably will be caught incidentally when fishing for other snapper-grouper species. Some of these discarded fish will not survive. Nevertheless, the overall reduction in mortality of red porgy is necessary to return the biomass to levels that will allow harvests approximating the MSY for the species.

Minority Report

A Council member submitted a minority report that objects to the closure of the red porgy fishery for the reasons summarized as follows.

First, the minority report states that the present situation does not constitute overfishing. The red porgy SPR of 24 percent is characterized in the latest assessment as "slightly underestimated." Further, 24–percent SPR is only slightly below the FMP's established overfishing level of 30 percent, and the red porgy conservation measures in Amendment 9 are projected to raise the SPR level above 30 percent.

Second, the minority report asserts:

(1) That the proposed action does not properly consider efficiency in the utilization of fishery resources, as required in national standard 5. Since red porgy are part of a mixed species fishery, fishermen will incur increased expenses because they will have to move to new areas when red porgy are encountered and will have to make longer, and possibly more distant, trips to make up for the foregone catches of red porgy and other species from their accustomed fishing areas.

(2) That there was a lack of meaningful discussions on economic concerns during the Council's deliberations on the proposed action and, therefore, the action violates national standard 8's requirement to take into account the importance of fishery resources to fishing communities.

(3) That the ban on retention of red porgy will create bycatch, rather than minimize it, as required in national standard 9.

(4) That closing the red porgy fishery will require some fishermen to stay longer at sea on trips, often in inclement weather, and possibly require trips farther off shore, both of which are contrary to national standard 10's requirement to promote the safety of human life at sea.

Finally, the minority report states that inaccurate statements during Council deliberations had a substantial effect on the outcome of the vote.

Copies of the minority report are available (see **ADDRESSES**).

Criteria for Issuing an Emergency Rule

This emergency interim rule meets NMFS policy guidelines for the use of emergency rules (62 FR 44421, August 21, 1997), because the emergency situation: results from recent, unforeseen events, or recently discovered circumstances; presents a serious management problem; and realizes immediate benefits from the emergency rule that outweigh the value of prior notice, opportunity for public comment, and deliberative consideration expected under the normal rulemaking process. Specifically, the Council acted as soon as the results in the 1999 assessment were presented to it. Thus, the emergency results from recently discovered circumstances. As discussed here, the current red porgy stock is in danger of experiencing recruitment failure, i.e., the number of red porgy of a size that are subject to harvest may not be sufficient to sustain continued fishing for them. Continued fishing mortality of red porgy serves to worsen the current status of the stock. Thus, immediate closure of the fishery has immediate benefits that outweigh the value of prior notice, opportunity for public comment, and deliberative consideration under the normal rulemaking process.

Period of Effectiveness

This emergency interim rule is effective for not more than 180 days, as authorized by section 305(c) of the Magnuson-Stevens Act. It may be extended for an additional period of not more than 180 days, provided that the public has had an opportunity to comment on it and the Council is actively preparing an amendment to address the emergency on a permanent basis. Public comments on this rule and the Council's actions will be considered in determining whether to extend this rule.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this emergency interim rule is necessary to minimize significant long-term adverse biological, social, and economic impacts that would occur with continued fishing for red porgy. The AA has also determined that this rule is consistent with the Magnuson-Stevens Act and other applicable laws.

This emergency interim rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared an economic evaluation of the regulatory impacts associated with this emergency interim rule, which is summarized as follows.

During the period 1993 through 1997, annual commercial landings of red porgy averaged 326,800 lb (148,236 kg) with revenues averaging approximately $397,300. Such landings and revenues were approximately 8.2 and 6.3 percent, respectively, of the total landings and revenues of all species landed on trips on which red porgy were landed. An average of 331 vessels per year reported landings of red porgy during this period. The predicted total losses to commercial fishermen would have averaged approximately $365,300 per year between 1993 and 1997 had the red porgy fishery been closed. This prediction is a modeled result based on average vessel harvesting costs per trip. The actual short-term economic effect of a moratorium will depend on individual vessel's trip costs.

As the resource has declined, red porgy have not been an important species for charter vessels, headboats, and other recreational fishing vessels. The headboat sector is the most dominant sector in the fishery yet red porgy still comprise less than 10 percent of total annual headboat harvests for all states combined. Data do not exist to estimate the impact of the moratorium on these vessels, but it appears to be minor.

The long-term economic effects of the moratorium cannot be estimated without additional information about the rate at which the red porgy population would recover. Although the economic analysis does not estimate the long-term economic effects of the moratorium, NMFS data indicate that the MSY of red porgy, which is the ultimate goal of the moratorium and future actions to rebuild the resource, is in excess of 1,500,000 lb (680,400 kg), with potential annual revenues then exceeding $1,800,000 (assuming a price of $1.20 per lb ($2.64 per kg), though it is unlikely that current prices could be maintained while more than tripling the market supply).

Copies of the economic evaluation are available (see **ADDRESSES**).

Recent NMFS stock assessment information clearly indicates that the red porgy resource is severely overfished and that stock recruitment (i.e., addition of fish to the red porgy population) is at a dangerously low level. Red porgy are currently being harvested in the snapper-grouper fishery, and continued harvest during the next several months (late summer - early fall) will worsen the stock condition. Continued fishing during this time period will fail to reverse overfishing of red porgy and increase the probability of recruitment failure and stock collapse, with resultant severe economic impacts on those dependent on the fishery. Thus, immediate closure of the fishery has potential significant benefits that outweigh the value of prior notice, opportunity for public comment, and deliberative consideration under the normal rulemaking process. Accordingly, under authority set forth at 5 U.S.C. 553(b)(B), the AA finds that these reasons constitute good cause to waive the requirement to provide prior notice and the opportunity for prior public comment, as such procedures would be contrary to the public interest.

For these same reasons, under 5 U.S.C. 553(d)(3), the AA finds for good cause that a 30-day delay in the effective date of this rule would be contrary to the public interest. However, to allow time for vessels at sea to be notified of the closure of the red porgy fishery and land red porgy on board, the effective date of this rule is delayed for 5 days after the date this rule is published.

Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: August 27, 1999.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.32, paragraph (b)(4)(vii) is added to read as follows:

§ 622.32 Prohibited and limited-harvest species.

* * * * *

(b) * * *

(4) * * *

(vii) Red porgy may not be harvested or possessed in or from the South Atlantic EEZ. Red porgy caught in the South Atlantic EEZ must be released immediately with a minimum of harm.

* * * * *

3. In § 622.36, paragraph (b)(5) is suspended.

4. In § 622.37, paragraph (e)(3)(iv) is suspended.

5. In § 622.39, paragraph (d)(1)(vi) is suspended.

6. In § 622.45, paragraph (d)(5) is suspended and paragraph (d)(7) is added to read as follows:

§ 622.45 Restrictions on sale/purchase.

* * * * *

(d) * * *

(7) During March and April, no person may sell or purchase a gag or black grouper harvested from the South Atlantic EEZ or, if harvested by a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, harvested from the South Atlantic. The prohibition on sale/purchase during March and April does not apply to gag or black grouper that were harvested, landed ashore, and sold prior to March 1 and were held in cold storage by a dealer or processor. This prohibition also does not apply to a dealer's purchase or sale of gag or black grouper harvested from an area other than the South Atlantic, provided such fish is accompanied by documentation of harvest outside the South Atlantic. Such documentation must contain:

(i) The information specified in 50 CFR part 300 subpart K for marking containers or packages of fish or wildlife that are imported, exported, or transported in interstate commerce;

(ii) The official number, name, and home port of the vessel harvesting the gag or black grouper;

(iii) The port and date of offloading from the vessel harvesting the gag or black grouper; and

(iv) A statement signed by the dealer attesting that the gag or black grouper was harvested from an area other than the South Atlantic.

* * * * *

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 990820230–9230–01; I.D. 080599B]

RIN 0648–AM92

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery Off the Southern Atlantic States; Restricted Reopening of Limited Access Permit Application Process

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; request for comments.

SUMMARY: This emergency interim rule provides an additional opportunity to obtain snapper-grouper limited access permits for those vessel owners who were previously determined by NMFS to be eligible for such permits but did not submit an application by the application deadline, on or before October 14, 1998, provided they have not violated the permit requirement in the interim. This rule is intended to avoid adverse social and economic impacts on the affected individuals.

DATES: This rule is effective September 3, 1999 through March 1, 2000. Comments must be received no later than October 4, 1999.

ADDRESSES: Comments on this emergency interim rule must be mailed to, and copies of documents supporting this action may be obtained from, the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702.

Written comments regarding the collection-of-information requirements contained in this rule may be submitted to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Peter J. Eldridge, 727-570-5305.

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery off the southern Atlantic states is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council (Council), approved by NMFS, and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Background

Amendment 8 to the FMP, approved by NMFS on January 28, 1998, and implemented by final rule (July 16, 1998; 63 FR 38298), limits access to the snapper-grouper fishery. A vessel owner who met certain required landings and permit histories in the snapper-grouper fishery was eligible for an initial limited access permit, provided the vessel owner applied for such a permit by no later than October 14, 1998. NMFS notified each vessel owner of NMFS' initial determination of the individual's eligibility for either a transferable or trip-limited limited access permit. Notifications were sent by regular mail to the owner's address as shown in NMFS' permit records.

For various reasons, including hurricanes Bonnie, Georges, and Mitch, some permit eligibility notifications were not received and/or were not responded to on or before October 14, 1998. Approximately 260 vessel owners who had been determined by NMFS to have met the required landings and permit histories in the snapper-grouper fishery and, thus, were eligible for a limited access permit, did not apply for a permit by the permit application deadline. Because these owners failed to submit applications in a timely manner, their vessels could not fish in the snapper-grouper fishery as of December 14, 1998.

After considerable public input, the Council concluded that there were compelling reasons for a significant number of vessel owners to have missed the permit application deadline. Further, the resultant inability to continue to fish in the snapper-grouper fishery was causing significant economic hardships and adverse community impacts. The Council further concluded that allowing an additional period for applications of owners who were known to have met the initial qualifying criteria would be consistent with the goals of its limited access program. The limited access program had not considered that these owners might not be able to apply in a timely manner for compelling reasons.

At its meeting on June 17, 1999, the Council requested that NMFS implement by emergency rule a limited reopening of the application period for limited access permits in the snapper-grouper fishery.

Limited Reopening of the Application Period

As requested by the Council and implemented in this emergency interim rule, a vessel owner who was determined by NMFS to be eligible for an initial limited access permit, but did not apply in a timely manner, will have an additional 45-day period to apply. However, an owner who has been determined by a final administrative decision to have violated the snapper-grouper permit requirement on or after December 14, 1998, is not eligible to apply. An otherwise qualified owner who has been charged with such a violation, but whose case has not been finally resolved, may apply for a permit, but the issuance will be withheld until the case has been resolved in the applicant's favor.

Each owner who was initially determined by the Southeast Regional Administrator (RA) to be eligible for a transferable permit under Amendment 8 may apply for an unlimited permit. An unlimited permit is similar to the transferable permits initially issued, i.e., it is not subject to a trip limit, but its transferability is significantly restricted as described here. An owner who was initially determined by the RA to be eligible for a trip-limited permit under Amendment 8 may apply for a trip-limited permit. A trip-limited permit issued under this emergency interim rule does not differ from those initially issued under Amendment 8.

Each owner to whom this limited reopening of the permit application process applies will be so advised by the RA by certified mail, which will include an application form, not later than 5 days after the date of publication of this document. The notification will be sent to the address in NMFS' permit files. An owner who receives such notification must submit an application, postmarked or hand-delivered not later than October 18, 1999 to the RA. Failure to apply in a timely manner will preclude permit issuance.

Upon receipt of a complete application submitted in a timely manner, NMFS will issue an initial limited access permit for the snapper-grouper fishery, either unlimited or trip-limited, as specified in the letter of notification, provided the applicant has not been determined by a final administrative decision to have violated the snapper-grouper permit requirement on or after December 14, 1998.

Limitations on Transfers of Unlimited Permits

The limited access program for the snapper-grouper fishery limits the transfers of both transferable and trip-limited permits. Included in those transfer limitations is a provision that allows a new entrant into the non-trip-limited fishery to obtain a permit only upon obtaining and trading in two existing transferable permits. As a result, existing transferable permits have significantly increased in value. An owner who met the catch and permit history criteria for a transferable limited access permit, but who did not apply for such permit because he/she no longer desired to participate in the fishery, may be tempted to obtain an unlimited permit under this emergency rule solely for the purpose of a windfall profit. This rule is intended to benefit qualified owners who are suffering economic losses as a result of their exclusion from the fishery because of not meeting the permit application deadline rather than owners who opted not to participate in the fishery. To preclude such windfall profits, the Council requested that an unlimited permit obtained under this emergency rule be non-transferable for 3 years, except for a transfer to a replacement vessel owned by the same entity. The permit will become transferable for the purposes of the two-for-one provision only if at least 1,000 lb (453.6 kg) of South Atlantic snapper-grouper are landed by the permitted vessel, or its replacement, in each of the 3 years. If landings in one of these 3 years are less than 1,000 lb (453.6 kg), the permit may be renewed only as a trip-limited permit.

The sole basis for determination of meeting this catch criterion will be the fishing records, which are required by 50 CFR 622.5(a)(1)(iv)(A) for all permitted vessels, that are submitted in a timely manner. The initial 1-year period for meeting the catch criterion will end at the end of the month 12 months after the unlimited permit is issued and similarly for each of the 2 succeeding years.

Because of the requirement that an unlimited permit revert to a trip-limited permit when the landings criterion is not met, an initial unlimited permit issued under this emergency interim rule must have an expiration date that is more than 12 months from the initial date of issue. Otherwise, an owner whose vessel reaches the 1,000–lb (453.6–kg) threshold in the 12th month will be without a valid permit before a renewal permit can be issued. Accordingly, an initial unlimited permit issued under this emergency rule will expire at the end of the month 13 months after it is issued. However, the 1,000–lb (453.6–kg) landing requirement must be met during the first full 12-month period under the permit, and in each succeeding 12-month period, for the full 3-year period. After the initial permit an unlimited permit will be renewed for a 12-month period.

For example, if an initial unlimited permit is issued on January 1, 2000, it will be valid through January 31, 2001, but the 1000–lb (453.6–kg) landing requirement must be met January 1, through December 31, 2000. If the landing requirement is met, the permit will be renewed and will be valid January 31, 2001, through January 31, 2002, and the landing criterion must be met January 1, 2001, through December 31, 2001. If the landing requirement is met, the permit will be renewed and will be valid January 31, 2002, through January 31, 2003, and the landing requirement must be met January 1, 2002, through December 31, 2002. If the 1000–lb (453.6–kg) landing requirement is met for all 3 years, the unlimited permit will become a transferable permit when it is renewed in January 2003.

Criteria for Issuing an Emergency Rule

This emergency interim rule meets NMFS policy guidelines for the use of emergency rules (62 FR 44421, August 21, 1997), because the emergency

situation: Results from recent, unforeseen events, or recently discovered circumstances; presents a serious management problem; and realizes immediate benefits from the emergency rule that outweigh the value of prior notice, opportunity for public comment, and deliberative consideration expected under the normal rulemaking process. When the initial 90-day application period was established, the Council did not foresee the extreme circumstances that would cause some qualified vessel owners to miss the application deadline. The full scope of these circumstances became known only after the application period ended. Further, the full scope of the economic hardships and adverse community impacts were not known until the Council's public hearing on June 16, 1999. These economic hardships and adverse community impacts constitute serious management problems in the fishery, as the fishery includes the fishermen as well as the fish stocks themselves. Economic hardship will be alleviated for up to 260 vessel owners as a result of this emergency interim rule. However, the rule will not adversely affect the benefits that were anticipated from the Council's limited access program. Thus, the benefits of immediate restricted reopening of the application period for limited access permits are considered to outweigh the value of prior notice, opportunity for public comment, and deliberative consideration under the normal rulemaking process.

Period of Effectiveness

This emergency interim rule is effective for not more than 180 days, as authorized by section 305(c) of the Magnuson-Stevens Act. It may be extended for an additional period of not more than 180 days, provided that the public has had an opportunity to comment on it and the Council is actively preparing an amendment to address the emergency on a permanent basis. Public comments on this rule and the Council's actions will be considered in determining whether to extend this rule.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this emergency interim rule is necessary to minimize significant adverse social and economic impacts on the affected snapper-grouper vessel owners. The AA has also determined that this rule is consistent with the Magnuson-Stevens Act and other applicable laws.

This emergency interim rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared an economic evaluation of the regulatory impacts associated with this emergency interim rule, which is summarized as follows. The long-term economic consequences of this emergency rule are expected to be very small. The reasoning is that the rule is designed to provide an additional opportunity for fishermen who originally qualified for a permit, but did not apply for reasons beyond their control. This rule applies only to fishermen deemed to qualify originally and will not provide an additional open season for entities not previously in the fishery to enter the fishery. Accordingly, the total number of entities that can engage in the snapper-grouper fishery will not increase beyond the number envisioned by the original action. While the number will not increase, it could actually decrease because some of the eligible entities that did not renew their permits originally may not renew them this time either.

There are 1,167 qualified holders of permits at present. Approximately 260 qualified individuals failed to renew under the original 90-day window. NMFS cannot determine how many of these 260 fishermen will reapply. However, even if all 260 qualified individuals apply and receive permits under the 45-day window established by this emergency interim rule, the resulting number of permitted fishermen would still be less than the number originally contemplated by the Council in Amendment 8. In addition, it is expected that permitted fishing capability would still be smaller than originally envisioned when the decision was made to reissue permits only to those fishermen that were currently active in the fishery. This results from the requirement that the 260 fishermen can only qualify for non-transferable permits, with the limited exception of a transfer to another vessel owned by the same entity. An unlimited permit would become transferable only if the vessel owner recorded 1,000 lb (453.6 kg) of landings of South Atlantic snapper-grouper in each of the next 3 years. If the landings criterion is not met, the permit will revert to a trip-limited permit, i.e., a permit under which a 225–lb (102.1–kg) trip limit applies. Copies of the economic evaluation of this rule are available (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

This rule contains two collection-of-information requirements, permit applications and submission of fishing records, that are subject to the Paperwork Reduction Act (PRA). These collections of information have been approved by OMB under control numbers 0648–0205 and 0648–0016, respectively. The public reporting burdens for these collections of information are estimated to average 20 minutes and 10 minutes per response, respectively, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding these burden estimates, or any other aspect of these data collections, including suggestions for reducing the burdens, to NMFS and OMB (see **ADDRESSES**).

If NMFS does not immediately reopen the snapper-grouper permit application process, approximately 260 vessels, whose owners were determined to be eligible for an initial limited access commercial permit for snapper-grouper, will continue to be denied access to the snapper-grouper fishery because their owners, through no fault of their own, did not submit a permit application by the deadline. It is estimated that the total ex-vessel value of landings for the 260 vessels is about $90,000 per month. Immediate reopening of the application process and consequent immediate permit issuance is critical to minimize the economic loss qualified vessel owners, their crews, and others dependent upon them, have been experiencing since December 14, 1998. If reopening of the application process is delayed to provide prior notice and opportunity for public comment, they will continue to experience economic harm with no apparent benefit. Accordingly, under authority set forth at 5 U.S.C. 553(b)(B), the AA finds good cause to waive the requirement to provide prior notice and the opportunity for public comment, as such procedures would be contrary to the public interest. Because reopening the application and permit issuance process relieves a restriction, under 5 U.S.C. 553(d)(1), a 30-day delay in the effective date is not required. NMFS will advise the eligible vessel owners, by certified mail, of the reopening of the permit application process.

Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: August 27, 1999.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.18, the second sentence in paragraph (a) is suspended and paragraph (g) is added to read as follows:

§ 622.18 South Atlantic snapper-grouper limited access.

* * * * *

(g) *Revised implementation procedures.* A permit issued under this paragraph (g) will be either an unlimited permit (a permit not subject to a trip limit but with significant limitations on transferability) or a trip-limited permit.

(1) *Applicability.* (i) The procedures and limitations in this paragraph (g) apply to an owner of a vessel for whom the RD's initial determination under paragraph (d)(1) of this section was that he/she was eligible for an initial limited access commercial vessel permit for South Atlantic snapper-grouper, but who did not apply for such permit in a timely manner.

(ii) The RD's initial determination of eligibility notwithstanding, the procedures in this paragraph (g) do not apply to an owner against whom a final administrative decision has been taken on a Notice of Violation and Assessment (NOVA) for fishing in the snapper-grouper fishery without a permit on or since December 14, 1998. Such owner may not apply for an initial limited access commercial vessel permit for South Atlantic snapper-grouper. (See 15 CFR 904.2 for the definition of "Final administrative decision" and 15 CFR 904.104, 904.271(d), and 904.273(i) for determinations of when final administrative decisions are effective.)

(2) *Notification.* Not later than September 8, 1999, the RD will renotify, by certified mail, each owner to whom this paragraph (g) applies of NMFS' determination of eligibility for either an unlimited or a trip-limited, limited access commercial permit for South Atlantic snapper-grouper. An owner who was advised under paragraph (b) of this section of eligibility for an initial transferable permit will be advised of eligibility for an unlimited permit under this paragraph (g). All other owners will be advised of eligibility for a trip-limited permit under this paragraph (g). Each notification will include an application for such permit. Addresses for such notifications will be based on NMFS' permit records. A vessel owner who believes he/she qualifies for a limited access commercial permit for South Atlantic snapper-grouper under this paragraph (g) and who does not receive such notification must contact the RD to verify eligibility status for a limited access permit. The RD will either provide such a person notification of eligibility, including an application, or advise him/her of the reasons for ineligibility.

(3) *Applications.* (i) An owner of a vessel who receives the notification specified in paragraph (g)(2) of this section and who desires a limited access commercial permit for South Atlantic snapper-grouper must submit an application for such permit postmarked or hand-delivered not later than October 18, 1999 to the RD. Failure to apply in a timely manner will preclude permit issuance.

(ii) An application for an unlimited permit when the RD's certified mail notification specifies eligibility for a trip-limited permit will not be considered.

(iii) If an application that is postmarked or hand-delivered in a timely manner is incomplete, the RD will notify the vessel owner of the deficiency. If the owner fails to correct the deficiency within 20 days of the date of the RD's notification, the application will be considered abandoned.

(4) *Issuance.* (i) If a complete application is submitted in a timely manner, the RD will issue an initial limited access commercial vessel permit for South Atlantic snapper-grouper. The type of permit issued, unlimited or trip-limited, will be as specified in the RD's certified mail notification specified in paragraph (g)(2) of this section.

(ii) An initial unlimited permit issued under this paragraph (g)(4) will be valid through the end of the month 13 months after its issuance, as specified on the permit. A trip-limited permit issued under this paragraph (g)(4) will be valid through the date specified on the permit.

(iii) The provisions of paragraph (g)(4)(i) of this section notwithstanding, the RD will not issue a permit to an owner who has been issued a NOVA for fishing in the snapper-grouper fishery without a permit on or since December 14, 1998, until such NOVA is dismissed.

(5) *Transfers of unlimited permits.* (i) An unlimited permit issued under this paragraph (g) may not be transferred for 3 years after it is issued, except that an owner may request that the RD transfer the permit to another vessel owned by the same entity.

(ii) After the 3-year period, an unlimited permit issued under this paragraph (g) will become transferable in accordance with the provisions of paragraph (e)(1) of this section provided at least 1,000 lb (453.6 kg) of South Atlantic snapper-grouper were landed by the permitted vessel, or its replacement, in each of the three 12-month periods after it was initially issued.

(iii) When the landings of a vessel with an unlimited permit, or its replacement, are less than 1,000 lb (453.6 kg) of South Atlantic snapper-grouper in one of these three 12-month periods, the permit may be renewed only as a trip-limited permit.

(iv) Fishing records submitted in a timely manner in accordance with § 622.5(a)(1)(iv) and (a)(2) will be the sole basis for determination of landings of South Atlantic snapper-grouper for the purposes of meeting the 1,000–lb (453.6–kg) landing criterion.

[FR Doc. 99–22954 Filed 9–2–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 083099C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS issues an inseason adjustment prohibiting directed fishing for pollock in Statistical Area 620 of the Gulf of Alaska (GOA) and extending the C fishing season for pollock in Statistical Area 620 until further notice. This adjustment is necessary to manage the C seasonal allowance of the pollock

total allowable catch (TAC), given the existence of excessive harvesting capacity.

DATES: Directed fishing for pollock in Statistical Area 620 will be closed at 1200 hrs, A.l.t., September 2, 1999. Comments must be received at the following address no later than 4:30 p.m., A.l.t., September 15, 1999.

ADDRESSES: Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th Street, Room 453, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

As of August 21, 1999, 8,900 metric tons (mt) of pollock remain in the C seasonal allowance of the pollock TAC in Statistical Area 620 of the GOA. That amount will be available for harvest at 1200 hrs, A.l.t., September 1, 1999. The emergency interim rule (EIR) establishing Steller sea lion protection measures for pollock off Alaska (64 FR 3437, January 22, 1999, and extended at 64 FR 39087, July 21, 1999) defines the C fishing season for pollock in Statistical Area 620 of the GOA as starting from 1200 hrs, A.l.t., September 1, 1999, until the directed fishery is closed or 1200 hrs, A.l.t. October 1, 1999, whichever comes first. The D fishing season is to begin 5 days after the closure of the C fishing season in Statistical Area 620.

NMFS also is extending the C fishing season by inseason adjustment to delay the start of the D fishing season until the agency has determined whether sufficient amounts of the C season allowance remains unharvested to allow another opening prior to the harvest of the pollock authorized for the D season.

In accordance with § 679.20(a)(5)(ii)(C), underages from the C fishing season also may be applied to the D fishing season, provided that the revised D fishing seasonal allowance does not exceed 30 percent of the annual TAC.

While the potential catching capacity for vessels delivering pollock for processing by the inshore component is large enough to limit the first opening during the C fishing season to 24 hours, that limitation may reduce interest in participating in the fishery. If the catch during the C fishing season is very limited, the potential exists for a substantial amount of the C seasonal allowance of the pollock TAC not to be caught and to be eligible for harvest during the D fishing season. Therefore, in accordance with § 679.25(a)(1)(i) and (a)(2)(i)(C), NMFS is extending the C fishing season to prevent the underharvest of that seasonal allowance of the pollock TAC until NMFS has determined the C seasonal allowance has been harvested or October 1, 1999, whichever occurs first.

In accordance with § 679.25(a)(2)(iii), NMFS has determined that prohibiting directed fishing at 1200 hrs, A.l.t., September 2, 1999, after a 24-hour opening, and extending the C fishing season is the least restrictive management adjustment to achieve the C seasonal allowance of the pollock TAC and will allow other fisheries to continue in noncritical areas and time periods. Pursuant to § 679.25(b)(2), NMFS has considered data regarding catch per unit of effort and rate of harvest in making this adjustment.

Classification

The Assistant Administrator for Fisheries, NOAA, finds for

good cause that providing prior notice and public comment or

delaying the effective date of this action is impracticable and contrary to the public interest. Without this inseason adjustment, NMFS could not allow this fishery, and the C seasonal allowance of the pollock TAC in Statistical Area 620 of the GOA would not be harvested in accordance with the regulatory schedule, resulting in a seasonal loss of more than $1.0 million. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until September 15, 1999.

This action is required by §§ 679.20 and 679.25 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 30, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–23084 Filed 8–31–99; 5:00 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304063–9063–01; I.D. 083199A]

Fisheries of the Exclusive Economic Zone Off Alaska; Species in the Rock Sole/Flathead Sole/"Other Flatfish" Fishery Category by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for species in the rock sole/flathead sole/"other flatfish" fishery category by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1999 Pacific halibut bycatch allowance specified for the trawl rock sole/flathead sole/"other flatfish" fishery category.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 31, 1999, until 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Final 1999 Harvest Specifications of Groundfish (64 FR 12103, March 11, 1999) established the halibut bycatch mortality allowance for the BSAI trawl rock sole/flathead sole/"other flatfish" fishery category, which is defined at § 679.21(e)(3)(iv)(B)(*2*), as 755 metric tons.

In accordance with § 679.21(e)(*7*)(v), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1999 halibut bycatch allowance specified for the trawl rock sole/flathead sole/"other flatfish" fishery in the BSAI has been caught. Consequently, the Regional Administrator is closing directed fishing for species in the rock sole/flathead sole/"other flatfish" fishery category by vessels using trawl gear in the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent exceeding the 1999 halibut bycatch allowance specified for the trawl rock sole/flathead sole/"other flatfish" fishery category. Providing prior notice and an opportunity for public comment on this action is impracticable and contrary to the public interest. The fleet will soon take the allowance. Further delay would result in the 1999 halibut bycatch allowance being exceeded. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under U.S.C. 553(d), a delay in the effective date is hereby waived.

Classification

This action is required by 50 CFR 679.21 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 31, 1999.

George H. Darcy,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–23088 Filed 8–31–99; 4:36 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 083099B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS issues an inseason adjustment prohibiting directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA) 6 hours after its scheduled opening at 1200 hrs, Alaska local time (A.l.t.), September 1, 1999, and extending the C fishing season for pollock in Statistical Area 610 until further notice. This adjustment is necessary to manage the C seasonal allowance of the pollock total allowable catch (TAC), given the existence of excessive harvesting capacity.

DATES: Directed fishing for pollock in Statistical Area 610 will be closed at 1800 hrs, A.l.t., September 1, 1999. Comments must be received at the following address no later than 4:30 p.m., A.l.t., September 15, 1999.

ADDRESSES: Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th Street, Room 453, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

As of August 21, 1999, 4,700 metric tons (mt) of pollock remained in the C seasonal allowance of the pollock TAC in Statistical Area 610 of the GOA. That amount will be available for harvest at 1200 hrs, A.l.t., September 1, 1999. The emergency interim rule (EIR) establishing Steller sea lion protection measures for pollock off Alaska (64 FR 3437, January 22, 1999, and extended at 64 FR 39087, July 21, 1999) defines the C fishing season for pollock in Statistical Area 610 of the GOA as starting from 1200 hrs, A.l.t., September 1, 1999, until the directed fishery is closed or 1200 hrs, A.l.t. October 1, 1999, whichever comes first. The D fishing season is to begin 5 days after the closure of the C fishing season in Statistical Area 610.

Section 679.23(b) specifies that the time of all openings and closures of fishing seasons other than the beginning and end of the calendar fishing year is 1200 hrs, A.l.t. A fishery opening, therefore, must be a minimum of 24 hours. Current information shows the catching capacity of vessels catching pollock for processing by the inshore component is in excess of 9,600 mt per day. The Administrator, Alaska Region, NMFS, has determined that the C seasonal allowance of the pollock TAC could be exceeded if a 24–hour fishery were allowed to occur. NMFS intends that the seasonal allowance not be exceeded and, therefore, will not allow a 24–hour directed fishery.

NMFS, in accordance with § 679.25(a)(1)(i), is adjusting the C fishing season for pollock in Statistical Area 610 of the GOA by closing the fishery at 1800 hrs, A.l.t., September 1, 1999, at which time directed fishing for pollock will be prohibited. This action has the effect of opening the fishery for 6 hours. NMFS is taking this action to allow a controlled fishery to occur, thereby preventing the overharvest of the C seasonal allowance of the pollock TAC designated in accordance with the EIR establishing Steller sea lion protection measures for pollock off Alaska.

NMFS also is extending the C fishing season by inseason adjustment to delay the start of the D fishing season until the agency has determined whether sufficient amounts of the C season allowance remains unharvested to allow another opening within the C fishing season prior to the harvest of the pollock authorized for the D season. In accordance with § 679.20(a)(5)(ii)(C), underages from the C fishing season also may be applied to the D fishing season, provided that the revised D fishing seasonal allowance does not exceed 30 percent of the annual TAC.

While the potential catching capacity for vessels delivering pollock for processing by the inshore component is large enough to limit the first opening during the C fishing season to 6 hours, that limitation may reduce interest in participating in the fishery. If the catch during the C fishing season is very limited, the potential exists for a substantial amount of the C seasonal allowance of the pollock TAC not to be caught and to be eligible for harvest during the D fishing season. Therefore, in accordance with § 679.25(a)(1)(i) and (a)(2)(i)(C), NMFS is extending the C fishing season to prevent the underharvest of that seasonal allowance of the pollock TAC until NMFS has determined the C seasonal allowance has been harvested, or October 1, 1999, whichever occurs first.

In accordance with § 679.25(a)(2)(iii), NMFS has determined that prohibiting directed fishing at 1800 hrs, A.l.t., September 1, 1999, after a 6-hour opening, and extending the C fishing season, is the least restrictive management adjustment to achieve the C seasonal allowance of the pollock TAC and will allow other fisheries to continue in noncritical areas and time periods. Pursuant to § 679.25(b)(2), NMFS has considered data regarding catch per unit of effort and rate of harvest in making this adjustment.

Classification

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment or delaying the effective date of this action is impracticable and contrary to the public interest. Without this inseason adjustment, NMFS could not allow this fishery, and the C seasonal allowance of the pollock TAC in Statistical Area 610 of the GOA would not be harvested in accordance with the regulatory schedule, resulting in a seasonal loss of more than $1.0 million. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until September 15, 1999.

This action is required by §§ 679.20 and 679.25 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 30, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–23085 Filed 8–31–99; 4:41 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304063–9063–01; I.D. 083099D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS issues an inseason adjustment prohibiting directed fishing for pollock in Statistical Area 630 of the Gulf of Alaska (GOA) and extending the C fishing season for pollock in Statistical Area 630 until further notice. This adjustment is necessary to manage the C seasonal allowance of the pollock total allowable catch (TAC), given the existence of excessive harvesting capacity.

DATES: Directed fishing for pollock in Statistical Area 630 will be closed at 1200 hrs, A.l.t., September 2, 1999. Comments must be received at the following address no later than 4:30 p.m., A.l.t., September 15, 1999.

ADDRESSES: Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th Street, Room 453, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP), prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

As of August 21, 1999, 7,400 metric tons (mt) of pollock remain in the C seasonal allowance of the pollock TAC in Statistical Area 630 of the GOA. That amount will be available for harvest at 1200 hrs, A.l.t., September 1, 1999. The emergency interim rule establishing Steller sea lion protection measures for pollock off Alaska (64 FR 3437, January 22, 1999, and extended at 64 FR 39087, July 21, 1999) defines the C fishing season for pollock in Statistical Area 630 of the GOA as starting from 1200 hrs, A.l.t., September 1, 1999, until the directed fishery is closed or 1200 hrs, A.l.t. October 1, 1999, whichever comes first. The D fishing season is to begin 5 days after the closure of the C fishing season in Statistical Area 630.

NMFS also is extending the C fishing season by inseason adjustment to delay the start of the D fishing season until the agency has determined whether sufficient amounts of the C season allowance remains unharvested to allow another opening prior to the harvest of the pollock authorized for the D season. In accordance with § 679.20(a)(5)(ii)(C), underages from the C fishing season also may be applied to the D fishing season, provided that the revised D fishing seasonal allowance does not exceed 30 percent of the annual TAC.

While the potential catching capacity for vessels delivering pollock for processing by the inshore component is large enough to limit the first opening during the C fishing season to 24 hours, that limitation may reduce interest in participating in the fishery. If the catch during the C fishing season is very limited, the potential exists for a substantial amount of the C seasonal allowance of the pollock TAC not to be caught and to be eligible for harvest during the D fishing season. Therefore, in accordance with § 679.25(a)(1)(i) and (a)(2)(i)(C), NMFS is extending the C fishing season to prevent the underharvest of that seasonal allowance of the pollock TAC until NMFS has determined the C seasonal allowance has been harvested or October 1, 1999, whichever occurs first.

In accordance with § 679.25(a)(2)(iii), NMFS has determined that prohibiting directed fishing at 1200 hrs, A.l.t., September 2, 1999, after a 24-hour opening, and extending the C fishing season is the least restrictive management adjustment to achieve the C seasonal allowance of the pollock TAC and will allow other fisheries to continue in noncritical areas and time periods. Pursuant to § 679.25(b)(2), NMFS has considered data regarding catch per unit of effort and rate of harvest in making this adjustment.

Classification

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment or delaying the effective date of this action is impracticable and contrary to the public interest. Without this inseason adjustment, NMFS could not allow this fishery, and the C seasonal allowance of the pollock TAC in Statistical Area 630 of the GOA would not be harvested in accordance with the regulatory schedule, resulting in a seasonal loss of more than $1.0 million. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until September 15, 1999.

This action is required by §§ 679.20 and 679.25 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 30, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries National Marine Fisheries Service.

[FR Doc. 99–23086 Filed 8–31–99; 4:41 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 171
Friday, September 3, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 31

Public Meeting on Implementation Issues Related to the Proposed Rule on Generally Licensed Devices

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will conduct a public meeting to discuss issues related to the control and accountability of generally licensed devices. This will include discussion of implementation issues related to the proposed rule (64 FR 40295; July 26, 1999), which would establish additional requirements for general licensees under 10 CFR 31.5, and for vendors of devices used by these licensees.

DATES: The meeting will be held on October 1, 1999, from 8:00 a.m. to 5:00 p.m. Written comments on the proposed rule should be submitted by October 12, 1999.

ADDRESSES: The meeting will be held at NRC Headquarters, Two White Flint North Auditorium, 11545 Rockville Pike, Rockville, Maryland 20852. Written comments on the proposed rule may be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington D.C. 20555–0001, Attn: Rulemakings and Adjudications Staff.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron (301) 415–1642, or Susanne Woods (301) 415–7267, U.S. Nuclear Regulatory Commission, Washington D.C. 20555.

SUPPLEMENTARY INFORMATION: NRC is in the process of developing additional requirements for users and distributors of radioactive material in certain generally licensed measuring, gauging, and controlling devices. The planned amendments would establish a registration program, and are intended to provide greater assurance that users of these devices will properly handle and dispose of them, thus reducing the potential for unnecessary radiation exposure to the public, or contamination of property. A copy of the proposed rule is available at http://ruleforum.llnl.gov/cgi-bin/rulemake under the title "Proposed Rulemaking—Requirements for Certain Generally Licensed Industrial Devices Containing Byproduct Material."

The objective of the public meeting on October 1 is to gather information on implementation issues related to the proposed rule on generally licensed devices. In this facilitated meeting, the NRC proposed rule will be described, and a series of implementation issues will be initially addressed by a panel of device vendors. The panel will be comprised of representatives of various vendor categories, reflecting a broad spectrum of interests. After a facilitated discussion by the vendor panel on an agenda item, the facilitator will open the discussion of that issue to the audience. It is expected that the audience will include people with interests which may be affected by the rule; for example: users of devices, other industries, Agreement States, citizen groups, and the public. The panel of vendors will be used to focus the discussion on a particular agenda item as a foundation for further discussion by the audience. The meeting commentary will be transcribed and made available to meeting participants and the public.

Dated at Rockville, Maryland, this 30th day of August 1999.

For the Nuclear Regulatory Commission.

John W. Hickey,

Chief, Materials Safety and Inspection Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Materials Safety and Safeguards.

[FR Doc. 99–23076 Filed 9–2–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–335–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Bombardier Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 series airplanes. This proposal would require repetitive detailed visual inspections and high frequency eddy current inspections to detect cracking of the wing upper skin and ladder plates at over wing access panels between certain stations; and repair, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct fatigue cracking of the wing ladder plates, which, if not corrected, could reduce the structural integrity of the wing.

DATES: Comments must be received by October 4, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–335–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New

York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Franco Pieri, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7526; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–335–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–335–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on all Bombardier Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 series airplanes. The TCCA advises that fatigue cracking of the wing ladder plate has been found on DHC–8 series airplanes. This cracking has been attributed to repeated fatigue load cycles. This condition, if not corrected, could result in reduced structural integrity of the wing.

Explanation of Relevant Service Information

Bombardier has issued de Havilland Temporary Revision TR MTC–15, dated September 18, 1998, of the de Havilland Maintenance Program Manual PSM 1–8–7 (for Model DHC–8–100 series airplanes); de Havilland Temporary Revision TR MTC 2–14, dated September 18, 1998, of the de Havilland Maintenance Program Manual PSM 1–82–7 TC (for Model DHC–8–200 series airplanes); and de Havilland Temporary Revision TR MTC 3–14, dated September 18, 1998, of the de Havilland Maintenance Program Manual PSM 1–83–7 TC (for Model DHC–8–300 series airplanes). These temporary revisions describe procedures for repetitive detailed visual inspections and high frequency eddy current (HFEC) inspections to detect cracking of the wing upper skin and ladder plates at over wing access panels between station YW42.00 and YW171.20.

Bombardier also has issued de Havilland Airworthiness Limitations List Temporary Revision TR AWL–59, dated September 10, 1998, of the de Havilland Maintenance Program Manual PSM 1–8–7 (for Model DHC–8–100 series airplanes); de Havilland Airworthiness Limitations List Temporary Revision TR AWL2–11, dated September 10, 1998, of de Havilland Maintenance Program Manual PSM 1–82–7 (for Model DHC–8–200 series airplanes); and de Havilland Airworthiness Limitations List Temporary Revision TR AWL3–64, dated September 10, 1998, of de Havilland Maintenance Program Manual PSM 1–83–7 (for Model DHC–8–300 series airplanes). These temporary revisions describe the compliance times associated with the repetitive detailed visual inspections and HFEC inspections described previously.

Accomplishment of the actions specified in the temporary revisions is intended to adequately address the identified unsafe condition. The TCCA classified these temporary revisions as mandatory and issued Canadian airworthiness directive CF–98–30, dated August 31, 1998, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of the TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the temporary revisions described previously, except as discussed below.

Differences Between Proposed Rule and Service Information

Operators should note that, although the Canadian airworthiness directive and the temporary revisions specify that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA, or the TCCA (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the TCCA would be acceptable for compliance with this proposed AD.

Operators also should note that, although the Canadian airworthiness directive affects Bombardier Model DHC–8–314 series airplanes, Bombardier Model DHC–8–314 series airplanes are not type certificated in the United States. Therefore, the proposed AD does not affect those airplanes.

Cost Impact

The FAA estimates that 166 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 40 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $398,400, or $2,400 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket 98–NM–335–AD.

Applicability: All Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the wing ladder plates, which if not corrected, could reduce the structural integrity of the wing, accomplish the following:

Inspection for DHC–8–100 and –300 Series Airplanes

(a) At the applicable compliance time listed in paragraph (a)(1), (a)(2), or (a)(3) of this AD, perform a detailed visual inspection to detect cracking of the skin and a high frequency eddy current (HFEC) inspection of the ladder plates at over wing access panels between station YW42.00 and YW171.20, in accordance with de Havilland Temporary Revision TR MTC–15, dated September 18, 1998, of the de Havilland Maintenance Program Manual PSM–1–8–7 TC (for Model DHC–8–100 series airplanes); or de Havilland Temporary Revision TR MTC 3–14, dated September 18, 1998, of the de Havilland Maintenance Program Manual PSM 1–83–7 (for Model DHC–8–300 series airplanes); as applicable. Repeat the inspections thereafter at intervals not to exceed 10,000 flight cycles.

(1) For airplanes that have accumulated 5,000 or fewer total flight cycles as of the effective date of this AD, accomplish the inspection prior to the accumulation of 10,000 total flight cycles.

(2) For airplanes that have accumulated more than 5,000 total flight cycles, but fewer than 38,501 total flight cycles as of the effective date of this AD, accomplish the inspection prior to the accumulation of [5,522 + (0.8955 x N Accumulated)] total cycles. "N Accumulated" is defined as the total number of flight cycles as of the effective date of this AD.

(3) For airplanes that have accumulated 38,501 or more total flight cycles as of the effective date of this AD, accomplish the inspection within 1,500 flight cycles after the effective date of this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Inspection for DHC–8–200 Series Airplanes

(b) At the applicable compliance time listed in paragraph (b)(1) or (b)(2) of this AD, perform a detailed visual inspection of the skin and an HFEC inspection to detect cracking of the ladder plates at over wing access panels between station YW42.00 and YW171.20, in accordance with de Havilland Temporary Revision TR MTC 2–14, dated September 18, 1998, of the de Havilland Maintenance Program Manual PSM 1–82–7. Repeat the inspections thereafter at intervals not to exceed 10,000 flight cycles.

(1) For airplanes that have accumulated 5,000 or fewer total flight cycles as of the effective date of this AD, accomplish the inspection prior to the accumulation of 10,000 total flight cycles.

(2) For airplanes that have accumulated more than 5,000 total flight cycles, but fewer than 38,501 total flight cycles as of the effective date of this AD, accomplish the inspection prior to the accumulation of [5,522 + (0.8955 x N Accumulated)] total cycles, where "N Accumulated" is defined as the total number of flight cycles as of the effective date of this AD.

Repair

(c) If any crack is detected during any inspection required by this AD, prior to further flight, repair in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate; or the Transport Canada Civil Aviation (TCCA) (or its delegated agent). For a repair method to be approved by the Manager, New York ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Canadian airworthiness directive CF–98–30, dated August 31, 1998.

Issued in Renton, Washington, on August 30, 1999.

Vi L. Lipski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–23064 Filed 9–2–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 111

[Docket No. 96N–0417]

Dietary Supplements; Center for Food Safety and Applied Nutrition; Public Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Announcement of public meetings.

SUMMARY: The Food and Drug Administration (FDA) is announcing two public meetings to solicit comments that will assist the Center for Food Safety and Applied Nutrition (CFSAN) to understand the economic impact that any proposal to establish current good manufacturing practices (CGMP) regulations for dietary supplements may have on small businesses in the dietary supplement industry. These meetings are intended to give interested persons, including small businesses, an opportunity to comment on the economic impact that such a proposal may have on small businesses.

DATES: The public meetings will be held on Tuesday, September 28, 1999, from 1 p.m. to 5 p.m. and Thursday, October 21, 1999, from 7 p.m. to 10 p.m. You should register at least 5 days prior to the meeting you will attend. You may submit written comments until November 21, 1999.

ADDRESSES: The public meeting on September 28, 1999, will be held at the Marriott Hotel, 75 South West Temple, Wasatch Room, Salt Lake City, UT 84101. The public meeting on October 21, 1999, will be held at the Holiday Inn–Inner Harbor, 301 West Lombard St., Baltimore, MD 21201. Submit written comments to the Dockets Management Branch (HFA–305), Docket No. 96N–0417, Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Two copies of any comments are to be submitted, except that individuals may submit one copy.

FOR FURTHER INFORMATION CONTACT: Peter J. Vardon, Center for Food Safety and Applied Nutrition (HFS–726), Food and Drug Administration, 330 C St. SW., Washington, DC 20204, 202–205–5329, FAX 202–260–0794, or e-mail pvardon@bangate.fda.gov.

SUPPLEMENTARY INFORMATION: These public meetings will provide an opportunity for an open discussion of the manufacturing practices of small businesses in the dietary supplement industry. These meetings are intended to provide interested parties an opportunity to comment on the economic effects of a possible proposed regulation on CGMP's in the dietary supplement industry. These public meetings are also intended to fulfill part of the outreach requirement of the Small Business Regulatory Enforcement Fairness Act of 1996. The agenda will include topics regarding the small business entities' manufacturing practices and standard operating procedures for: (1) Personnel; (2) buildings and facilities; (3) equipment; (4) laboratory operations; (5) production and process controls; and (6) warehousing, distribution and post-distribution of raw, intermediate and final products. The meeting will also include a discussion about the verification of the identity, purity, and composition of dietary supplements and dietary supplement ingredients.

If you would like to attend a public meeting, you should register at least 5 days prior to the meeting by faxing or e-mailing your name, title, firm name, address, and telephone number to Peter J. Vardon (address above). FDA encourages individuals or firms with relevant data or information to present such information at the meeting or in written comments to the record. If you would like to request to speak at these meetings, you may notify Peter J. Vardon (address above) when you register. There is no registration fee for these public meetings, but early registration is suggested because space may be limited.

You may request a transcript of the public meeting from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting. The transcript of the public meeting and submitted comments will be available for public examination at the Dockets Management Branch (address above) between 9 a.m. and 4 p. m., Monday through Friday.

Dated: August 27, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–23008 Filed 8–31–99; 11:38 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

Federal Prison Industries

28 CFR Part 302

[BOP 1081–P]

RIN 1120–AA84

Federal Prison Industries, Inc. (FPI) Standards and Procedures That Facilitate FPI's Ability To Accomplish Its Mission

AGENCY: Federal Prison Industries, Inc., Justice.

ACTION: Proposed rule; withdrawal.

SUMMARY: Federal Prison Industries, Inc. (FPI) is withdrawing the proposed codification of its "Standards and Procedures that Facilitate FPI's ability to Accomplish its Mission".

DATES: The withdrawal is effective September 3, 1999.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Marianne S. Cantwell, Corporate Counsel, Federal Prison Industries, Inc., phone (202) 305–3501.

SUPPLEMENTARY INFORMATION: Federal Prison Industries, Inc. (FPI) is withdrawing its proposed rule codifying its standards and procedures that facilitate FPI's ability to accomplish its mission. The proposed rule was published in the **Federal Register** on January 7, 1999 (64 FR 1082). The comment period for the rulemaking was reopened on March 10, 1999 (64 FR 11821). FPI subsequently announced that final action for the rulemaking would not occur before September 1, 1999 (64 FR 24547). Legislation to substantially change the statutes governing FPI's operations may be acted upon by Congress this session. Thus, it is not productive to pursue the issuance of rules related to FPI's current statute. Therefore, FPI is hereby withdrawing its proposed rule.

Steve Schwalb,

Chief Operating Officer, Federal Prison Industries, Inc.

[FR Doc. 99–23066 Filed 9–2–99; 8:45 am]

BILLING CODE 4410–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MA–19–01–5892b; A–1–FRL–6421–7]

Approval and Promulgation of Air Quality Implementation Plans; Massachusetts; Volatile Organic Compound Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts. This revision establishes reasonably available control technology (RACT) emission limits for certain industrial categories. In the Final Rules section of this **Federal Register**, EPA is fully approving the majority of the Commonwealth's SIP revision. With regard to Massachusetts Regulation 310 CMR 7.18(17), however, EPA is granting approval to this regulation only as it is applicable to the Springfield Massachusetts ozone nonattainment area (Berkshire, Franklin, Hampden, and Hampshire counties). EPA is approving these regulations as a direct final rule without prior proposal because the Agency anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives relevant adverse comments, the direct final rule will not take effect and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this proposal. Any parties interested in commenting on this proposal should do so at this time.

DATES: Comments must be received on or before October 4, 1999.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection (mail code CAA), U.S. Environmental Protection Agency, Region I, Suite 1100, One Congress Street, Boston, MA 022114–2023. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA and at the Division of Air Quality Control, Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Jeanne Cosgrove, (617) 918–1669.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: June 23, 1999.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 99–22932 Filed 9–2–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 3

[IB Docket No. 98–96, DA 99–1653]

Maritime Radio Accounting Authorities

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends the time to file comments concerning the Commission's Further Notice of Proposed Rulemaking ("Further Notice") adopted on June 21, 1999. Comments on the Further Notice were due on or before August 23, 1999, and Reply Comments were due on or before September 8, 1999. In response to a request for an extension of time, on August 18, 1999, the Commission extended the time to file comments.

DATES: Comments must be submitted on or before October 25, 1999; reply comments must be submitted on or before November 29, 1999.

ADDRESSES: All supplemental comments and supplemental reply comments should be addressed to: Office of the Secretary, Federal Communications Commission, 445 12th St., S.W., Washington, D.C. 20554. All comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Information Center (Room CY–A257) at 445 12th St., S.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: John Copes, Attorney-Advisor, Multilateral and Development Branch, Telecommunications Division, International Bureau, (202) 418–1478.

SUPPLEMENTARY INFORMATION:

1. On August 16, 1999, the National Telecommunications and Information Administration (NTIA) filed a motion to extend the date for filing comments in the captioned proceeding from August 23, 1999, to October 25, 1999; and to extend the date for filing reply comments from September 8, 1999, to November 29, 1999. NTIA asserts that it needs more time to prepare cost information The Further Notice of Proposed Rulemaking required it to submit.

2. Although we do not routinely grant extensions of time, See 47 CFR 1.46(a), we believe that extending the comment date in this case will serve the public interest by allowing NTIA to prepare its cost information. We believe that an extension to October 25, 1999, will provide sufficient time for NTIA to prepare its comments. Interested parties may view the comments filed in this proceeding from the Commission's Reference Information Center (Room CY–A257) at 445 12th St., S.W., Washington, D.C. 20554. 0554. Copies of the comments filed in this proceeding are also available for purchase from the Commission's copy contractor, International Transcription Services, Inc. ("ITS"), 1231 20th Street, NW, Washington, DC 20037.

3. Accordingly, *it is ordered*, pursuant to 47 CFR 0.261, that the date for filing comments in this proceeding is extended until October 25, 1999, and that the date for filing reply comments is extended until November 29, 1999.

Federal Communications Commission.

Roderick Kelvin Porter,

Deputy Chief, International Bureau.

[FR Doc. 99–23070 Filed 9–2–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 648

[I.D. 082099A]

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Applications for Exempted Fishing Permits (EFPs)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of experimental fishing proposal; request for comments.

SUMMARY: NMFS announces that the Administrator, Northeast Region, NMFS (Regional Administrator), is considering approval of two EFPs to conduct experimental fishing activities. EFPs would allow vessels to conduct operations otherwise restricted by

regulations governing the black sea bass fishery, and would exempt vessels from possession and size restrictions. Two EFPS would be required to conduct experimental fishing activities involving the possession and retention of 2,500 sublegal wild stock black sea bass (*Centropristis striata*) in areas of the Raritan and Sandy Hook Bays with industry-standard black sea bass fish pots. The collection of these specimens will augment a cultured black sea bass collection obtained from the University of Rhode Island. This study is being conducted to support the applied portion of a customized aquaculture training program designed to educate fishers on the basics of fish and shellfish culture. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act provisions require publication of this document to provide interested parties the opportunity to comment on the proposed EFPs.

DATES: Comments on this notice must be received by September 20, 1999.

ADDRESSES: Comments should be sent to the Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Proposed Experimental Fisheries."

FOR FURTHER INFORMATION CONTACT: Bonnie VanPelt, Fishery Management Specialist, 978–281–9244.

SUPPLEMENTARY INFORMATION: The Rutgers Cooperative Extension of Ocean County (RCE) has submitted a proposal to enlist two federally permitted vessels to collect 2,500 sublegal (3 to 6 in (7.6 to 15.2 cm)) black sea bass (*Centropristis striata*) using approximately 150 black sea bass pots from the Raritan and Sandy Hook Bays, New Jersey. Specifically, the study will encompass the area bound by the following coordinates: 40° 26'N. latitude on the South to 40° 30'N. latitude on the north, and 73°52'W. longitude on the east to 74°04'W. longitude on the west.

This applied segment of an industry-based aquaculture training program intends to address two main objectives: (1) Broaden the participant's knowledge of the growth and survival rates of cultured and wildstock black sea bass in a recirculating system; and (2) evaluate the economic efficacy of juvenile black sea bass grow out in a recirculating system operating under full capacity, and the associated cost-benefit ratio. The black sea bass will be harvested in industry standard vinyl coated wire pots with mesh sizes of 1 in x 1–1/4 in (2.54 cm x 3.2 cm). The black sea bass pots will not be modified in any way, except that the escape vents will be closed to retain the undersized black sea bass. Once caught, the sublegal black sea bass will be transported to the Port of Belford, New Jersey, and placed in 4, 15–gallon (56.77 liter) recirculating tanks for grow out and eventual sale to the market.

The RCE had previously requested that the New Jersey Department of Environmental Protection (NJDEP) agree to exempt the black sea bass taken under this exempted fishing permit from the state's landing quota. However, the NJDEP decided that once the black sea bass is sold to market at legal size (10 in (25.4 cm)), it would count against the state's landing quota.

The students (commercial vessel operators) participating in the training program will be under the supervision of RCE personnel during all phases of at-sea operations.

The NJDEP has granted the RCE a harvesting permit to collect fish in the marine, fresh, and estuarine waters of the State. The two federally permitted vessels participating in this program will commence collection of sublegal-size black sea bass in Federal waters as soon as the RCE receives the necessary authorizations from NMFS. It is anticipated that the collection of sublegal-size black sea bass will take approximately one month. No other species besides black sea bass will be harvested. Any regulated species caught incidental to black sea bass will be returned immediately to the sea.

EFPs would be issued to participating vessels to exempt them from the possession and size restrictions (see 50 CFR § 648.143) of the Fishery Management Plan for Summer Flounder, Scup and Black Sea Bass.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 30, 1999.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–23087 Filed 9–2–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 171
Friday, September 3, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

South Dakota Petroleum Release Compensation Fund Program; Determination of Primary Purpose of Program Payments for Consideration as Excludable From Income Under Section 126 of the Internal Revenue Code of 1954

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of Determination.

SUMMARY: The Secretary of Agriculture has determined that all grant payments made under the South Dakota Petroleum Release Compensation Fund program are made primarily for the purpose of conserving soil and water resources and protecting or restoring the environment. This determination is made in accordance with Section 126 of the Internal Revenue Code of 1954, as amended. The determination permits recipients of these payments to exclude them from gross income to the extent allowed by the Internal Revenue Service.

FOR FURTHER INFORMATION CONTACT: Dennis D. Rounds, Executive Director, South Dakota Petroleum Release Compensation Fund, 124 E. Dakota, Pierre, South Dakota 57501; or Director, Conservation Operations Division, Natural Resources Conservation Service, USDA, P.O. Box 2890, Washington, D.C. 20013, (202) 720–1845.

SUPPLEMENTARY INFORMATION: Section 126 of the Internal Revenue Code of 1954, as amended, 26 U.S.C. 126, provides that certain payments made to persons under state conservation programs may be excluded from the recipient's gross income for federal income tax purposes if the Secretary of Agriculture determines that the payments are made "primarily for the purpose of conserving soil and water resources, protecting or restoring the environment, improving forests, or providing a habitat for wildlife." The Secretary of Agriculture evaluates these conservation programs on the basis of criteria set forth in 7 CFR part 14, and makes a "primary purpose" determination for payments made under each program. Before there may be an exclusion, the Secretary of the Treasury must determine that payments made under these conservation programs do not substantially increase the annual income derived from the property benefited by the payments.

The South Dakota petroleum Release Compensation Fund (PRCF) was enacted through HB 1253 in the 1988 South Dakota state legislature. From 1988 to 1995, the PRCF was attached to the Department of Commerce and Regulation and was administered by a five-member citizen's board appointed by the Governor. In 1995, through executive reorganization (Executive Order 95–5), the PRCF was attached to the Department of Transportation and the board's role was changed to advisory. Although attached to the Department of Transportation, the PRCF is temporarily administered by the Department of Commerce and Regulation through a joint-powers agreement. The program is funded by a petroleum release compensation and tank inspection fee of $20.00/1,000 gallons on products introduced and sold within the state. The fee is imposed on the first state licensed distributor who transfers title of a petroleum product to another within the state. The PRCF receives 58% of the revenues generated by the fee.

The purpose of the program is to prevent and clean up petroleum spills through the establishment of a fund which financially assists owners or operators of storage tanks with necessary and reasonable expenses incurred in order to clean up pollution caused by the release of petroleum into the environment. The objectives of this program are achieved by reimbursing owners or operators of storage tanks for expenses incurred for the cleanup of petroleum released into the environment, thereby protecting the public from contamination of drinking water.

Only expenses directly related to the cleanup are eligible for reimbursement under the PRCF. The following expenses are reimbursable if the director determines them to qualify under the criteria established in statute:

(1) labor;
(2) testing;
(3) use of machinery;
(4) materials and supplies;
(5)professional services authorized by the director;
(6) costs incurred by order of federal, state or local government; and
(7) any other expenses that the board finds to be reasonable and necessary to remediate a petroleum spill or release

Costs are eligible for reimbursement only if they are for activities that have been described in a site assessment plan or a corrective action plan and have received prior approval from the director.

Procedural Matters

The authorizing legislation, regulations, and operating procedures for the South Dakota PETROLEUM RELEASE COMPENSATION FUND have been examined using criteria set forth in 7 CFR part 14. The U.S. Department of Agriculture has concluded that the grant payments made under this program are made to provide financial assistance to eligible persons primarily for the purpose of conserving soil and water resources and protecting or restoring the environment.

A "Record of Decision, South Dakota PETROLEUM RELEASE COMPENSATION FUND: Primary Purpose Determination for Federal Tax Purposes" has been prepared and is available upon request from the Director, Conservation Operations Division, Natural Resources Conservation Service, P.O. Box 2890, Washington, D.C. 20013, or Director, South Dakota Petroleum Release Compensation Fund, 124 E. Dakota, Pierre, S.D. 57501.

Determination

As required by Section 126(b) of the Internal Revenue Code of 1954, as amended, I have examined the authorizing legislation, regulations, and operating procedures regarding the South Dakota PETROLEUM RELEASE COMPENSATION FUND. In accordance with the criteria set out in 7 CFR Part 14, I have determined that all grant payments for cleanup of petroleum releases associated with petroleum storage tanks made under this program are primarily for the purpose of conserving soil and water resources and

protecting or restoring the environment. Subject to further determination by the Secretary of the Treasury, this determination permits grant payment recipients to exclude from gross income, for Federal income tax purposes, all or part of such payments made under the South Dakota Petroleum Release Compensation Fund.

Signed at Washington, DC, on April 2, 1998.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 99–23063 Filed 9–2–99; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket Number FV–98–305]

United States Standards for Grades of Oranges (California and Arizona), United States Standards for Grades of Grapefruit (California and Arizona), United States Standards for Grades of Tangerines and the United States Standards for Grades of Lemons

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Reopening and extension of the comment period.

SUMMARY: Notice is hereby given that the comment period on proposed changes to the United States Standards for Grades of Oranges (California and Arizona), United States Standards for Grades of Grapefruit (California and Arizona), United States Standards for Grades of Tangerines and the United States Standards for Grades of Lemons is reopened and extended.

DATES: Comments must be received by September 20, 1999.

ADDRESSES: Written comments may be submitted to Kenneth R. Mizelle, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2065, South Building, STOP 0240, P.O. Box 96456, Washington, D.C. 20090–6456; faxed to (202) 720–8871; or e-mailed to fpb.docketclerk@usda.gov.

Comments should reference the date and page number of this issue of the **Federal Register**. All comments received will be made available for public inspection at the above address during regular business hours.

The current grade standards for these citrus crops, along with proposed changes, are available either through the above addresses or by accessing AMS' Home Page on the Internet at www.ams.usda.gov/standards/frutmrkt.htm.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Mizelle at (202) 720–2185.

SUPPLEMENTARY INFORMATION: A notice was published in the **Federal Register** (64 FR 32666; June 17, 1999) requesting comments on changes to the United States Standards for Grades of Oranges (California and Arizona), United States Standards for Grades of Grapefruit (California and Arizona), United States Standards for Grades of Tangerines and the United States Standards for Grades of Lemons. The notice would change the standards to provide a minimum 25-count sample to be applied to tolerances for defects. Additionally, to promote greater uniformity and consistency in the standards, AMS proposed further revisions which will bring the standards into conformity with current cultural and marketing practices. The comment period ended August 16, 1999.

A request from an industry association representing wholesale receivers requested that additional time be provided for interested persons to comment on the proposed changes. The association intended to comment but did not do so prior to the close of the comment period. The association believes that its response, on behalf of wholesale agricultural receivers, is critical to the evaluation of any proposed standards changes.

After reviewing the request, the Department is reopening and extending the comment period in order to allow sufficient time for all interested persons, including the association, to file comments.

Authority: 7 U.S.C. 1621–1627.

Dated: August 30, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–23013 Filed 9–2–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Spar and Lake Forest Health Project Kootenai National Forest, Lincoln County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA-Forest Service will prepare an Environmental Impact Statement (EIS) for the Spar and Lake Forest Health Project to disclose the effects of timber management, prescribed fire, and road management including reconstruction, Best Management Practices (BMP) compliance, and decommissioning. The Spar and Lake project area encompasses the Lake Creek drainage immediately south of Troy, Montana, including Iron, Keeler, Twilight, Stanley, Ross, Camp, Madge, Spring and Noggle drainages as well as several small tributaries to Lake Creek. The purpose and need for action is to: (1) Improve overall forest health by stimulating natural processes that encourage more stable and resilient conditions. This includes salvaging trees with high levels of mortality from insect and disease as well as addressing stand density and species competition concerns; (2) Improve winter range conditions; (3) Improve growing conditions and long term management options for overstocked sapling/pole stands; (4) Improve water quality; and (5) Provide a sustained yield of timber.

The DEIS is expected to be filed with the EPA and available for public review by February, 2000.

DATES: Written comments and suggestions should be received on or before October 4, 1999.

ADDRESSES: Written comments and suggestions concerning the scope of the analysis should be sent to Michael L. Balboni, District Ranger, Three Rivers Ranger District, 1437 Hwy 2, Troy, MT 59935.

FOR FURTHER INFORMATION CONTACT: Contact Michael Donald, Interdisciplinary Team Leader, Three Rivers Ranger District, Phone: (406) 295–4693.

SUPPLEMENTARY INFORMATION: The project area is approximately 135,000 acres and has a favorable climate and good site conditions for forest vegetation. Proposed activities within the decision area include portions of the following areas: T28N, R33W, sec 2, 4–8; T28N, R34W, sec 1–4, 11, 12; T29N, R33W, sec 3, 4, 6, 9, 18, 19; T29N, R34W, sec 1–3, 8, 11, 13, 15–17, 23–25, 27, 34, 35; T30N, R33W, sec 19, 27, 30, 31, 33; T30N, R34W, sec 1, 3, 10–17, 20–28, 30, 32–35; T31N, R33W, sec 20; and T31N, R34W, sec 34. Activities would take place in Management Areas (MA) 2, 8, 10, 10og, 11, 12, 13, 18, 18og, 19, 24 as defined by the Kootenai National Forest Plan. Average annual precipitation ranges from 29 to 100 inches. At the higher elevations, most precipitation falls as snow. The Lake creek valley is a unique combination of open-growth ponderosa pine and Douglas-fir, multistoried western larch/Douglas-fir, and dense stands of western red cedar and western hemlock with pockets of lodgepole pine. The upland areas vary from even-aged Douglas-fir/

grand fir stands to multi-storied forests of mixed conifers and uniform lodgepole pine stands.

Wildfire historically played a role in interrupting forest succession and creating much of the vegetative diversity that is apparent. Since the early 1900s, a policy of wildfire suppression has been in place on National Forest lands, interrupting the natural vegetation cycle. Existing stands in general have a higher stocking level than occurred naturally and are dominated by Douglas-fir which is susceptible to bark beetles and root disease when stressed. In the project area many mature Douglas-fir stands are experiencing bark beetle-caused mortality. Once a dominant feature of this area, western white pine has been severely impacted as a result of the blister rust fungus; western larch is also less prevalent due to its age and lack of fire-induced site preparation that enables natural regeneration.

1. Treatments to improve forest health for salvage and restoration include:

- Stand improvement cutting in the majority of treatment areas to reduce overall stand densities, improve species composition and quality, and reduce the high risk of continued mortality. Restoration of the forest structure would be addressed in part through the salvage of dead and dying trees.
- Prescribed burning would be applied in some areas following harvest to restore the fire dependent ecosystems, reduce fuels, prepare the site for planting, and/or improve vegetative conditions.
- Removal of trees would be accomplished primarily with a helicopter due to the steep slopes. Temporary roads may be needed to access units to be harvested with ground-based systems. These temporary roads would be decommissioned after timber sale activities are accomplished.
- Post treatment reforestation within regeneration units would include planting a mix of conifer species, including blister rust-resistant western white pine, ponderosa pine, western larch, and Engelmann spruce.
- In order to implement this proposal and provide for grizzly bear security during the proposed timber harvest activity, several miles of road currently restricted to public access would be opened to access harvest units and available for public use. One road currently open to public access, the Hiatt Creek road overlooking Spar Lake, would be considered for closing with an earth berm to meet core habitat standards for grizzly bear. Several more roads which are currently restricted to public vehicular access with a gate (in the Twilight, Thicket, NF Keeler and Upper Iron Creek drainages) would be earthbermed to meet grizzly bear core habitat standards. Berming these already gated roads would have no direct effect on public access.
- Prescribed burning without timber harvest would be utilized over approximately 3,300 acres to improve big game habitat, reduce fuels, improve vegetative conditions, and restore important ecological processes.

2. Vegetative treatments, as described in #1 above, are designed to also improve big game habitat conditions through reduction of stand density and underburning.

3. Approximately 400 acres of overstocked sapling size trees would be precommercially thinned. These areas are within managed plantations and natural stands that have regenerated after wildfire. Lynx habitat will not be precommercially thinned.

4. Watershed rehabilitation activities would be implemented to reduce water routing and sediment transport from existing roads. This would be accomplished through application of Best Management Practices and activities such as outsloping, waterbarring, culvert replacement or removal and/or removal of the actual prism to restore a more natural surface flow pattern to the landscape.

5. The timber harvest described under #1 above would also contribute timber products to local and regional markets.

The Kootenai Forest Plan provides guidance for management activities within the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. A portion of the Scotchman Peaks Inventoried Roadless Area is included within the project area, approximately 500 acres of which are proposed for prescribed burning.

The proposed action includes project-specific forest plan amendments to meet the goals of the Kootenai National Forest Plan.

MA–10; Big Game Winter Range/ Unsuitable Timber Lands

The proposed harvest near Stanley Mountain, Pheasant Point and Northeast of Keeler Mountain is largely in Management Area 10. A Forest Plan amendment would be necessary to suspend wildlife and fish standard #3 for MA 10 harvest in order to enhance wildlife habitat by increasing forage. Some salvage opportunity also exists to retard the spread of insect and disease. These areas contain existing standing dead trees. Although the intent is to protect as much of the existing cavity habitat as possible, it cannot be guaranteed that all the cavity habitat would be retained since some of the existing snags may need to be felled for safety reasons to meet OSHA requirements. New snags may be created by girdling live trees after the harvest operations.

MA–12; Big-game Summer Range/ Timber

The proposed harvest in Sec. 23, T29N, R34W could result in an opening of over 40 acres when considered with adjacent past harvest (of 34 acres) which does not yet provide hiding cover for big game species. A Forest Plan Amendment would be needed to suspend wildlife and fish standard #7 and timber standard #2 for this area. These standards state that movement corridors and adjacent hiding cover be retained. In this situation, high levels of bark beetle caused mortality precludes alternative treatment. Snags and down woody material would be left to provide wildlife habitat and maintain soil productivity.

Range of Alternatives

The Forest Service will consider a range of alternatives. One of these will be the "no action" alternative in which none of the proposed activities will be implemented. Additional alternatives will examine varying levels and locations for the proposed activities to achieve the proposal's purposes, as well as to respond to the issues and other resource values.

The EIS will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and projected activities on both private and National Forest lands will be considered. The EIS will disclose the analysis of site-specific mitigation measures, if needed, and their effectiveness.

Preliminary Issues: Tentatively, several preliminary issues of concern have been identified. These issues are briefly described below:

Transportation Systems: The implementation of the proposed action would change access within the Spar and Lake Analysis Area which may affect the public's ability to use traditional routes.

Visual Resources: Implementation of the proposed action may alter the existing scenic resource within the project area. Even though the proposed action is planned to improve the visuals of the past harvest activities, some members of the public may feel that it will have additional scenic impacts.

Watershed: Past management activities and those associated with the implementation of the Proposed Action

may result in increased peak flows and sediment production. Water Quality Limited Segments (WQLS), as defined by the state of Montana, exist within the analysis area.

Fish: While the intent is to improve long term water quality, bull trout may experience short term impacts.

Wildlife: The proposed action could potentially reduce existing cavity habitat in snags and reduce suitable hiding cover for wildlife security.

Decisions To Be Made: The Kootenai Forest Supervisor will decide the following:

- Whether or not to harvest timber and, if so, identify the selection of, and site-specific location of, appropriate timber management practices (silvicultural prescription, logging system, fuels treatment, and reforestation), road construction/reconstruction necessary to provide access and to achieve other resource objectives, and appropriate mitigation measures.
- Whether or not water quality improvement projects (including road decommissioning) should be implemented and, if so, to what extent.
- Whether or not wildlife enhancement projects (including prescribed burning) should be implemented and, if so, to what extent.
- Whether road access restrictions or other actions are necessary to meet big game wildlife security needs.
- Whether or not project specific Forest Plan amendments for MA 10 and 12 are necessary to meet the specific purpose and need of this project, and whether those amendments are significant under NFMA.
- What, if any, specific project monitoring requirements would be needed to assure mitigation measures are implemented and effective.

Public Involvement and Scoping

In September of 1998, preliminary efforts were made to involve the public in looking at management opportunities within the Spar Sub-unit analysis area. Comments received prior to this notice will be included in the documentation for the EIS. The public is encouraged to take part in the process and is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in, or affected by, the proposed action. This input will be used in preparation of the draft and final EIS. The scoping process will include:

- Identifying potential issues.
- Identifying major issues to be analyzed in depth.
- Identify alternatives to the proposed action.
- Explore additional alternatives which will be derived from issues recognized during scoping activities.
- Identify potential environmental effects of this project and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

Estimated Dates for Filing: While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the Draft EIS. The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by February, 2000. At that time EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**. It is very important that those interested in the management of this area participate at that time.

The final EIS is scheduled to be completed by May, 2000. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

Reviewer's Obligations

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F.Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate in the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To be most helpful, comments on the drafts EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official

As the Forest Supervisor of the Kootenai National Forest, 1101 US Highway 2 West, Libby, MT 59923, I am the Responsible Official. As the Responsible Official I will decide if the proposed project will be implemented. I will document the decision and reasons for the decision in the Record of Decision. I have delegated the responsibility to prepare the EIS to Michael L. Balboni, District Ranger, Three Rivers Ranger District.

Dated: August 27, 1999.

Bob Castaneda,

Forest Supervisor Kootenai National Forest.

[FR Doc. 99–22975 Filed 9–2–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Spar and Lake Forest Health Project; Kootenai National Forest, Lincoln County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA-Forest Service will prepare an Environmental Impact Statement (EIS) for the Spar and Lake Forest Health Project to disclose the effects of timber management, prescribed fire, and road management including reconstruction, Best Management Practices (BMP) compliance, and decommissioning. The Spar and Lake project area encompasses the Lake Creek drainage immediately south of Troy, Montana, including Iron, Keeler, Twilight, Stanley, Ross, Camp, Madge, Spring and Noggle drainages as well as several small tributaries to Lake Creek. The purpose and need for action is to: (1) Improve overall forest health by stimulating natural processes that encourage more stable and resilient conditions. This includes salvaging trees with high levels of mortality from insect and disease as well as addressing stand density and species competition concerns; (2) Improve winter range conditions; (3) Improve growing conditions and long term management options for overstocked sapling/pole stands; (4) Improve water quality; and (5) Provide a sustained yield of timber.

The DEIS is expected to be filed with the EPA and available for public review by February, 2000.

DATES: Written comments and suggestions should be received on or before October 4, 1999.

ADDRESSES: Written comments and suggestions concerning the scope of the analysis should be sent to Michael L. Balboni, District Ranger, Three Rivers Ranger District, 1437 Hwy 2, Troy, MT 59935.

FOR FURTHER INFORMATION CONTACT: Michael Donald, Interdisciplinary Team Leader, Three Rivers Ranger District. Phone: (406) 295–4693.

SUPPLEMENTARY INFORMATION:

The project area is approximately 135,000 acres and has a favorable climate and good site conditions for forest vegetation. Proposed activities within the decision area include portions of the following areas: T28N, R33W, sec 2, 4–8; T28N, R34W, sec 1–4, 11, 12; T29N, R33W, sec 3, 4, 6, 9, 18, 19; T29N, R34W, sec 1–3, 8, 11, 13, 15–17, 23–25, 27, 34, 35; T30N, R33W, sec 19, 27, 30, 31, 33; T30N, R34W, sec 1, 3, 10–17, 20–28, 30, 32–35; T31N, R33W, sec 20; and T31N, R34W, sec 34. Activities would take place in Management Areas (MA) 2, 8, 10, 10og, 11, 12, 13, 18, 18og, 19, 24 as defined by the Kootenai National Forest Plan. Average annual precipitation ranges from 29 to 100 inches. At the higher elevations, most precipitation falls as snow. The Lake Creek valley is a unique combination of open-grown ponderosa pine and Douglas-fir, multistoried western larch/Douglas-fir, and dense stands of western red cedar and western hemlock with pockets of lodgepole pine. The upland areas vary from even-aged Douglas-fir/grand fir stands to multi-storied forests of mixed conifers and uniform lodgepole pine stands.

Wildfire historically played a role in interrupting forest succession and creating much of the vegetative diversity that is apparent. Since the early 1900s, a policy of wildfire suppression has been in place on National Forest lands, interrupting the natural vegetation cycle. Existing stands in general have a higher stocking level than occurred naturally and are dominated by Douglas-fir which is susceptible to bark beetles and root disease when stressed. In the project area many mature Douglas-fir stands are experiencing bark beetle-caused mortality. Once a dominant feature of this area, western white pine has been severely impacted as a result of the blister rust fungus; western larch is also less prevalent due to its age and lack of fire-induced site preparation that enables natural regeneration.

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- Prescribed burning would be applied in some areas following harvest to restore the fire dependent ecosystems, reduce fuels, prepare the site for planting, and/or improve vegetative conditions.
- Removal of trees would be accomplished primarily with a helicopter due to the steep slopes. Temporary roads may be needed to access units to be harvested with ground-based systems. These temporary roads would be decommissioned after timber sale activities are accomplished.
- Post treatment reforestation within regeneration units would include planting a mix of conifer species, including blister rust-resistant western white pine, ponderosa pine, western larch, and Engelmann spruce.
- In order to implement this proposal and provide for grizzly bear security during the proposed timber harvest activity, several miles of road currently restricted to public access would be opened to access harvest units and available for public use. One road currently open to public access, the Hiatt Creek road overlooking Spar Lake, would be considered for closing with an earth berm to meet core habitat standards for grizzly bear. Several more roads which are currently restricted to public vehicular access with a gate (in the Twilight, Thicket, NF Keeler and Upper Iron Creek drainages) would be earthbermed to meet grizzly bear core habitat standards. Berming these already gated roads would have no direct effect on public access.
- Prescribed burning without timber harvest would be utilized over approximately 3,300 acres to improve big game habitat, reduce fuels, improve vegetative conditions, and restore important ecological processes.

2. Vegetative treatments, as described in #1 above, are designed to also improve big game habitat conditions through reduction of stand density and underburning.

3. Approximately 400 acres of overstocked sapling size trees would be precommercially thinned. These areas are within managed plantations and natural stands that have regenerated after wildfire. Lynx habitat will not be precommercially thinned.

4. Watershed rehabilitation activities would be implemented to reduce water routing and sediment transport from existing roads. This would be accomplished through application of Best Management Practices and activities such as outsloping, waterbarring, culvert replacement or removal and/or removal of the actual prism to restore a more natural surface flow pattern to the landscape.

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The proposed action includes project-specific forest plan amendments to meet the goals of the Kootenai National Forest Plan.

MA–10; Big Game Winter Range/ Unsuitable Timber Lands

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The proposed harvest in Sec. 23, T29N, R34W could result in an opening of over 40 acres when considered with adjacent past harvest (of 34 acres) which does not yet provide hiding cover for big game species. A Forest Plan Amendment would be needed to

suspend wildlife and fish standard #7 and timber standard #2 for this area. These standards state that movement corridors and adjacent hiding cover be retained. In this situation, high levels of bark beetle caused mortality precludes alternative treatment. Snags and down woody material would be left to provide wildlife habitat and maintain soil productivity.

Range of Alternatives

The Forest Service will consider a range of alternatives. One of these will be the "no action" alternative in which none of the proposed activities will be implemented. Additional alternatives will examine varying levels and locations for the proposed activities to achieve the proposal's purposes, as well as to respond to the issues and other resource values.

The EIS will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and project activities on both private and National Forest lands will be considered. The EIS will disclose the analysis of site-specific mitigation measures, if needed, and their effectiveness.

Preliminary Issues: Tentatively, several preliminary issues of concern have been identified. These issues are briefly described below:

Transportation Systems: The implementation of the proposed action would change access within the Spar and Lake Analysis Area which may affect the public's ability to use traditional routes.

Visual Resources: Implementation of the proposed action may alter the existing scenic resource within the project area. Even though the proposed action is planned to improve the visuals of the past harvest activities, some members of the public may feel that it will have additional scenic impacts.

Watershed: Past management activities and those associated with the implementation of the Proposed Action may result in increased peak flows and sediment production. Water Quality Limited Segments (WQLS), as defined by the state of Montana, exist within the analysis area.

Fish: While the intent is to improve long term water quality, bull trout may experience short term impacts.

Wildlife: The proposed action could potentially reduce existing cavity habitat in snags and reduce suitable hiding cover to wildlife security.

Decisions To Be Made: The Kootenai Forest Supervisor will decide the following:

- Whether or not to harvest timber and, if so, identify the selection of, and site-specific location of, appropriate timber management practices (silvicultural prescription, logging system, fuels treatment, and reforestation), road construction/reconstruction necessary to provide access and to achieve other resource objectives, and appropriate mitigation measures.
- Whether or not water quality improvement projects (including road decommissioning) should be implemented and, if so, to what extent.
- Whether or not wildlife enhancement projects (including prescribed burning) should be implemented and, if so, to what extent.
- Whether road access restrictions or other actions are necessary to meet big game wildlife security needs.
- Whether or not project specific Forest Plan amendments for MA 10 and 12 are necessary to meet the specific purpose and need of this project, and whether those amendments are significant under NFMA.
- What, if any, specific project monitoring requirements would be needed to assure mitigation measures are implemented and effective.

Public Involvement and Scoping: In September of 1998, preliminary efforts were made to involve the public in looking at management opportunities within the Spar Sub-unit analysis area. Comments received prior to this notice will be included in the documentation for the EIS. The public is encouraged to take part in the process and is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in, or affected by, the proposed action. This input will be used in preparation of the draft and final EIS. The scoping process will include:

- Identifying potential issues.
- Identifying major issues to be analyzed in depth.
- Identifying alternatives to the proposed action.
- Explore additional alternatives which will be derived from issues recognized during scoping activities.
- Identify potential environmental effects of this project and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

Estimated Dates for Filing: While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the Draft EIS. The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by February, 2000. At that time EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**. It is very important that those interested in the management of this area participate at that time.

The final EIS is scheduled to be completed by May, 2000. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

Reviewer's Obligations: The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also environmental objections that could be raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To be most meaningful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official: As the Forest Supervisor of the Kootenai National Forest, 1101 US Highway 2 West, Libby, MT 59923, I am the Responsible Official. As the Responsible Official I will decide if the proposed project will be implemented. I will document the decision and reasons for the decision in the Record of Decision. I have delegated the responsibility to prepare the EIS to Michael L. Balboni, District Ranger, Three Rivers Ranger District.

Dated: August 13, 1999.

Bob Castaneda,

Forest Supervisor, Kootenai National Forest.

[FR Doc. 99–22983 Filed 9–2–99; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletion from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a commodity previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 4, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION:

This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Candle, Illuminating
6260–00–161–4296
NPA: Concho Resource Center, San Angelo, Texas

Bookcase, Steel, Contemporary
7110–00–601–9821
7110–00–601–9822
7110–00–135–1997
7110–00–135–1998
(Requirements for GSA Zones 2 and 3 only)
NPA: Knox County ARC, Knoxville, Tennessee

Services

Full Food and Dining Facility Attendant Service, Fort Leonard Wood, Missouri
NPA: MGI Services Corporation, St. Louis, Missouri

Furniture Rehabilitation
GSA National Furniture Center, Arlington, Virginia (50% of the Government requirement)
NPA: J. M. Murray Center, Inc. Cortland, New York

Janitorial/Custodial

VA Outpatient Clinic, Daytona Beach, Florida
NPA: ACT, CORP., Daytona Beach, Florida

Janitorial/Custodial

New River Valley Memorial USARC, Dublin, Virginia
NPA: New River Valley Workshop, Inc., Radford, Virginia

Deletion

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodity to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for deletion from the Procurement List.

The following commodity has been proposed for deletion from the Procurement List: Case, Medical, Instrument and Supply Set 6545–00–912–9890.

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–23068 Filed 9–2–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: October 4, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION:

On April 2, July 9, and 23, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (64 FR 15954, 37098, 39968 and 39969) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below

are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.
2. The action will not have a severe economic impact on current contractors for the commodities and services.
3. The action will result in authorizing small entities to furnish the commodities and services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Stapler
7520–00–281–5895
7520–00–281–5896
7520–00–139–6170
7520–00–243–1780

Services

Acquisition and Distribution of C-Cell Batteries (6135–00–985–7846)
Defense Supply Center—Richmond, Richmond, Virginia
Duplication of Official Use Document (GPO Program C492–S)
Government Printing Office, North Capitol & H Street, NW, Washington, DC

Janitorial/Custodial

Fort Hamilton Proper, Fort Hamilton Manor and Fort Hamilton Tenants, Fort Hamilton, New York

Mailing Services

National Council on Disability, 1331 F Street, NW, Washington, DC
Storage and Distribution of Tape, Webbing and Other Accouterments
Defense Supply Center—Philadelphia, Philadelphia, Pennsylvania
Telephone Switchboard Operations, Barksdale Air Force Base, Louisiana

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action will not have a severe economic impact on future contractors for the commodities.
3. The action may result in authorizing small entities to furnish the commodities to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Cabinet, Tool, Mobile & Tool Box, Portable
5140–01–010–4776
5140–00–030–6617
5140–00–870–4796
5140–00–319–5079
5140–00–494–2015
Tool Box, Portable
5140–01–010–4861
Mirror, Glass
7105–00–496–9866

Beverly L. Milkman,
Executive Director.

[FR Doc. 99–23069 Filed 9–2–99; 8:45 am]
BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Proposed Additions to Procurement List; Correction

In the document appearing on page 45506, F.R. Doc. 99–21669, in the issue of August 20, 1999, in the second column, the service listed as Laundry Service, Naval Air Station, Brunswick, Maine and Portsmouth, New Hampshire should read Laundry Service, Naval Air Station, Brunswick, Maine and Portsmouth Naval Shipyard, Portsmouth, New Hampshire.

Beverly L. Milkman,
Executive Director.

[FR Doc. 99–23067 Filed 9–2–99; 8:45 am]
BILLING CODE 6353–01–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: September 14, 1999; 9:00 a.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., S.W., Washington, D.C. 20547.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b. (c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b. (c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b. (c)(2) and (6))

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact either Brenda Hardnett or John Lindburg at (202) 401–3736.

Dated: September 1, 1999.

John A. Lindburg,
Legal Counsel and Acting Executive Director.

[FR Doc. 99–23162 Filed 9–1–99; 1:03 pm]
BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

February 1999 Sunset Review: Final Results and Revocation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Sunset Review and Revocation of Antidumping Duty Order: Fresh Cut Flowers from Ecuador (A–331–602).

SUMMARY: On February 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on fresh cut flowers from Ecuador. Because the domestic interested parties have withdrawn, in full, their participation in the ongoing sunset review, the Department is revoking this order.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Darla A. Brown or Melissa G. Skinner, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone (202) 482–5050 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department issued an antidumping duty order on fresh cut flowers from Ecuador (52 FR 8494, March 18, 1987). Pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department initiated a sunset review of this order by publishing notice of the initiation in the **Federal Register** (64 FR 4840, February 1, 1999). In addition, as a courtesy to interested parties, the Department sent letters, via certified and registered mail, to each party listed on the Department's most current service list for this proceeding to inform them of the automatic initiation of a sunset review on this order.

In the sunset review of the antidumping duty order on fresh cut flowers from Ecuador, we received a notice of intent to participate from Mr. Timothy Haley, President of Pikes Peak Greenhouses, the Floral Trade Council ("FTC"), the FTC's Committee on Standard Carnations, Committee on Standard Chrysanthemums, and Committee on Pompom Chrysanthemums (collectively, "the FTC and its Committees") by the February 16, 1999, deadline. We also received a complete substantive response from the FTC and its Committees by the March 3, 1999, deadline (*see* section 351.218(d)(1)(i) of *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13520 (March 20, 1998) ("*Sunset Regulations*")).

On August 27, 1999, we received a notice from the FTC and its Committees withdrawing in full their participation in the five-year (sunset) review of the antidumping duty order on fresh cut flowers from Ecuador. The FTC and its Committees further expressed that they no longer have an interest in maintaining the antidumping duty order. As a result, the Department determined that no domestic party intends to participate in the sunset review and, on August 30, 1999, we notified the International Trade Commission that we intended to issue a final determination revoking this antidumping duty order.

Determination To Revoke

Pursuant to section 751(c)(3)(A) of the Act and section 351.218(d)(1)(iii)(B)(3) of the *Sunset Regulations*, if no domestic interested party responds to the notice of initiation, the Department shall issue a final determination, within 90 days after the initiation of the review, revoking the finding or order or terminating the suspended investigation. Because the FTC and its Committees withdrew both their notice of intent to participate and their complete substantive response from the review process, and no other domestic interested party filed a substantive response (*see* sections 351.218(d)(1)(i) and 351.218(d)(3) of the *Sunset Regulations*), we are revoking this antidumping duty order.

Effective Date of Revocation and Termination

Pursuant to section 751(c)(6)(A)(iv) of the Act, the Department will instruct the United States Customs Service to terminate the suspension of liquidation of the merchandise subject to this order entered, or withdrawn from warehouse from warehouse, on or after January 1, 2000. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending administrative reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: August 30, 1999.

Robert S. LaRussa,
Assistant Secretary for Import Administration.

[FR Doc. 99–23036 Filed 9–2–99; 8:45 am]
BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

February 1999 Sunset Reviews: Final Results and Revocations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of sunset reviews and revocations of antidumping duty orders: standard carnations from Chile (A–337–602), fresh cut flowers from Mexico (A201–601) and of countervailing duty orders on standard carnations from Chile (C–337–601) and pompon chrysanthemums from Peru (C–333–601).

SUMMARY: On February 1, 1999, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty order on standard carnations from Chile and fresh cut flowers from Mexico and on the countervailing duty orders on standard carnations from Chile and pompon chrysanthemums from Peru. Because the domestic interested parties have withdrawn, in full, their participation in the ongoing sunset reviews, the Department is revoking these orders.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Darla A. Brown or Melissa G. Skinner, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–5050 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department issued antidumping duty orders on standard carnations from Chile (52 FR 8939, March 20, 1987) and fresh cut flowers from Mexico (52 FR 13491, April 23, 1987). The Department issued countervailing duty orders on standard carnations from Chile (52 FR 3313, March 19, 1987) and pompon chrysanthemums from Peru (52 FR 13491, April 23, 1987). Pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department initiated sunset reviews of these orders by publishing notice of the initiation in the **Federal Register** (64 FR 4840, February 1, 1999). In addition, as a courtesy to interested parties, the Department sent letters, via certified and registered mail, to each party listed on the Department's most current service list for this proceeding to inform them of the automatic initiation of a sunset review on each of these orders.

In the sunset reviews of these orders, we received notices of intent to participate from Mr. Timothy Haley, President of Pikes Peak Greenhouses, the Floral Trade Council ("FTC"), the FTC's Committee on Standard Carnations, Committee on Standard Chrysanthemums, and Committee on Pompom Chrysanthemums (collectively, "the FTC and its Committees") by the February 16, 1999, deadline. We also received complete substantive response from the FTC and its Committees by the

March 3, 1999, deadline (*see* section 351.218(d)(1)(i) of *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13520 (March 20, 1998) ("*Sunset Regulations*")).

On August 30, 1999, we received notice from the FTC and its Committees withdrawing in full their participation in the five-year (sunset) reviews of these antidumping and countervailing duty orders on flowers. The FTC and its Committees further expressed that they no longer have an interest in maintaining the antidumping and countervailing duty orders discussed above. As a result, the Department determined that no domestic party intends to participate in the sunset reviews and, on August 30, 1999, we notified the International Trade Commission that we intended to issue final determinations revoking these antidumping and countervailing duty orders.

Determination To Revoke

Pursuant to section 751(c)(3)(A) of the Act and section 351.218(d)(1)(iii)(B)(3) of the *Sunset Regulations*, if no domestic interested party responds to the notice of initiation, the Department shall issue a final determination, within 90 days after the initiation of the review, revoking the finding or order or terminating the suspended investigation. Because the FTC and its Committees withdrew both their notices of intent to participate and their complete substantive responses from the review process, and no other domestic interested party filed a substantive response in any of these reviews (*see* sections 351.218(d)(1)(i) and 351.218(d)(3) of the *Sunset Regulations*), we are revoking these antidumping and countervailing duty orders.

Effective Date of Revocation and Termination

Pursuant to section 751(c)(6)(A)(iv) of the Act, the Department will instruct the United States Customs Service to terminate the suspension of liquidation of the merchandise subject to these orders entered, or withdrawn from warehouse, on or after January 1, 2000. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping or countervailing duty deposit requirements. The Department will complete any pending administrative reviews of these orders and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

These five-year ("sunset") reviews and this notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 30, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–23037 Filed 9–2–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–601]

Final Results of Expedited Sunset Review: Brass Sheet and Strip From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review: Brass Sheet and Strip from Italy.

SUMMARY: On February 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping order on brass sheet and strip from Italy (64 FR 4840) pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act"). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the "Final Result of Review" section of this notice.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

EFFECTIVE DATE: September 3, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752(c) of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

This order covers shipments of brass sheet and strip, other than leaded and tinned, from Italy. The chemical composition of the covered products is currently defined in the Copper Development Association ("C.D.A.") 200 Series or the Unified Numbering System ("U.N.S.") C2000. This review does not cover products with chemical compositions that are defined by anything other than either the C.D.A. or U.N.S. series. In physical dimensions, the products covered by this review have a solid rectangular cross section over .0006 inches (.15 millimeters) through .1888 inches (4.8 millimeters) in finished thickness or gauge, regardless of width. Coiled, wound-on-reels (traverse wound), and cut-to-length products are included. The merchandise is currently classified under Harmonized Tariff Schedule ("HTS") item numbers 7409.21.00.50, 7409.21.00.75, 7409.21.00.90, 7409.29.00.50, 7409.29.00.75, and 7409.29.0090. The HTS numbers are provided for convenience and U.S. Customs purposes. The written description remains dispositive.

History of the Order

The antidumping duty order on brass sheet and strip from Italy was published in the **Federal Register** on March 6, 1987 (52 FR 6997). In that order, the Department estimated that the weighted-average dumping margins for all entries of brass sheet and strip from Italy was 12.08 percent.[1] While amending the order, on April 8, 1987 (52 FR 11299), the Department lowered the weighted-average margin for La Metalli Industries, SpA ("LMI") and "all-others" to 9.74 percent.[2] In another amendment, on May 21, 1991 (56 FR 23272), the Department further lowered the weighted-average margin to 5.44 percent.[3] Since that time, the Department has completed three administrative reviews.[4] The order remains in effect for all manufacturers and exporters of the subject merchandise.

[1] In the original determination, the only subject of the investigation was La Metalli Industriale SpA ("LMI") because, according to the Department, LMI represented "virtually all exports" of the subject merchandise to the United States, *see Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip From Italy*, 52 FR 816 (January 9, 1987).

[2] *See Amendment to Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip From Italy and Amendment to Antidumping Duty Order*, 52 FR 11299 (April 8, 1987). This downward adjustment was due to ministerial errors.

[3] *See Amendment to Final Determination of Sales at Less Than Fair Value and Amendment of Antidumping Duty Order in Accordance with Decision Upon Remand: Brass Sheet and Strip from Italy*, 56 FR 23272 (May 21, 1991). This amendment reflects a decision by the United States Court of Appeals for the Federal Circuit.

[4] *See, Certain Brass Sheet and Strip From Italy; Final Results of Antidumping Duty Administrative Review*, 57 FR 9325 (March 17, 1992); and *Brass Sheet and Strip From Italy; Final Results of Antidumping Duty Administrative Review*, November 23, 1992 (57 FR 54969).

Background

On February 1, 1999, the Department initiated a sunset review of the antidumping order on brass sheet and strip from Italy (64 FR 4840), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of Heyco Metals, Inc. ("Heyco"), Hussey Copper Ltd. ("Hussey"), Olin Corporation-Brass Group ("Olin"), Outokumpu American Brass ("OAB"), PMX Industries, Inc. ("PMX"), Revere Copper Products, Inc. ("Revere"), the International Association of Machinists and Aerospace Workers, the United Auto Workers (Local 2367), and the United Steelworkers of America (AFL/CIO) (collectively the "domestic interested parties") on February 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. The domestic interested parties claimed interested party status under sections 771(9)(C) and 771(9)(D) of the Act as U.S. brass mills, rerollers, and unions whose workers are engaged in the production of subject brass sheet and strip in the United States.

In their Notice of Intent to Participate, while indicating that Heyco, Hussey, Olin, and Revere are not related to a foreign producer or a foreign exporter under section 771(4)(B) of the Act, the domestic interested parties acknowledge that OAB is related to Outokumpu Copper Strip BV and Outokumpu Copper Rolled Products AB ("OBV"), a Dutch and Swedish producer/exporter of the subject merchandise, respectively; PMX is related to Poongsan Corp., a Korean producer of the domestic like products; and Wieland is related to Wieland Werke Metallwerke AG, a German producer and exporter of the domestic like products. Moreover, American Brass, PMX, and Wieland stipulate that they have had experience of importing the subject merchandise and/or the domestic like products.

We received a complete substantive response from the domestic interested parties on March 3, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). In their substantive response, the domestic interested parties indicate that most of their members were parties to the original investigation with a few exceptions: Heyco did not participate in the original investigation but fully supports the instant review, and PMX was established after the original petitions were filed. The domestic parties also note that OAB was formerly known as American Brass Company.

We did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of this order.[5]

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order—an order which was in effect on January 1, 1995, *see* section 751(c)(6)(C) of the Act. The Department determined that the sunset review of the antidumping duty order on brass sheet and strip from Italy is extraordinarily complicated. Therefore, on June 7, 1999, the Department extended the time limit for completion of the preliminary results of this review until not later than August 30, 1999, in accordance with section 751(c)(5)(B) of the Act.[6]

[5] The domestic interested parties filed comments, pertaining to the Department's decision to conduct an expedited (120-day) sunset review for the present review, in which the domestic parties concurred with the Department's decision, *see* May 12, 1999 the domestic interested parties' comments on the Adequacy of Responses and the Appropriateness of Expedited Sunset Review at 2.

[6] *See Porcelain-on-Steel Cooking Ware From the People's Republic of China, Porcelain-on-Steel Cooking Ware From Taiwan, Top-of-the-Stove Stainless Steel Cooking Ware From Korea (South) (AD & CVD), Top-of-the-Stove Stainless Steel Cooking Ware From Taiwan (AD & CVD), Standard Carnations From Chile (AD & CVD), Fresh Cut Flowers From Mexico, Fresh Cut Flowers From Ecuador, Brass Sheet and Strip From Brazil (AD & CVD), Brass Sheet and Strip From Korea (South), Brass Sheet and Strip From France (AD & CVD), Brass Sheet and Strip From Germany, Brass Sheet and Strip From Italy, Brass Sheet and Strip From Sweden, Brass Sheet and Strip From Japan, Pompon Chrysanthemums From Peru: Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 30305 (June 7, 1999).

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, domestic interested parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead

to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

In their substantive response, the domestic interested parties contend that revocation of the order will likely lead to continuation or recurrence of dumping of brass sheet and strip from Italy (*see* March 3, 1999 Substantive Response of the domestic interested parties at 31). In support of their argument, the domestic interested parties point out, first, that import volumes of the subject merchandise have declined dramatically since the issuance of the order, and that dumping of the subject merchandise has continued and is presently persisting above the *de minimis* level, *id.* 39–40. As a result, the domestic interested parties conclude, dumping will continue were the order revoked.

Next, with respect to import volumes of the subject merchandise, the domestic interested parties compare a three-year (1983–1985) average import volume prior to the issuance of the order with a three-year (1987–1989) average import volume subsequent to the order: 7.6 million pounds verses 1.4 million pounds—an 81.5 percent decline. In addition, the domestic interested parties emphasize that since 1988, imports of the subject merchandise have never exceeded 810,000 pounds annually, *id.*

In conclusion, the domestic interested parties urge that the Department should find dumping would be likely to continue if the order is revoked because dumping margins have existed significantly above the *de minimis* level over the life of the order for all producers/exporters of the subject merchandise, and because imports of the subject merchandise have declined dramatically since the imposition of the order. The aforementioned two circumstances, according to the domestic interested parties, provide a strong indication that the Italian producers/exporters are unable to sell in the United States without dumping; namely, Italian producers/exporters are likely to dump were the order revoked.

As indicated in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and House Report at 63–64, the Department considered whether dumping continued at any level above *de minimis* after the issuance of the order. If companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue were the discipline removed. After examining the published findings with respect to weighted-average dumping margins in previous administrative reviews, the Department agrees with the domestic interested parties that weighted-average dumping margins at a level above *de minimis* have persisted over the life of the order and currently remain in place for all Italian producers and exporters of brass sheet and strip.[7]

With respect to the import volumes of the subject merchandise, the data supplied by the domestic interested parties and those of the United States Census Bureau IM146s and the United Stated International Trade Commission indicate that, since the imposition of the order, the import volumes of the subject merchandise have declined substantially: the import volume in 1987 was just over 3 million pounds, down from over 7 million pounds in 1986. In 1988, the import volume of the subject merchandise fell even further, to slightly over 800,000 pounds. Moreover, for the period (1994–1998), although imports of the subject merchandise fluctuated, the import volumes have never risen in any substantial amount and continue to remain relatively low. Therefore, the Department determines that the import volumes of the subject merchandise decreased significantly after the issuance of the order.

Given that dumping has continued over the life of the order; that the import volumes of the subject merchandise decreased significantly after the issuance of the order; that respondent interested parties have waived their right to participate in this review; and that there are no arguments and/or evidence to the contrary, the Department agrees with the domestic interested parties' contention that Italian producers/exporters are incapable of selling a substantial quantity of the subject merchandise in the United States at fair value. Consequently, the Department determines that dumping is likely to continue if the order is revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The Department, in its final determination of sales at less than fair value, published a weighted-average dumping margin for all entries of brass sheet and strip from Italy: 12.08 percent, 52 FR 816 (January 9, 1987). This rate was amended twice: first to 9.74 percent and then amended once again to 5.44 percent.[8] There have also been three administrative reviews.[9] We note that, to date, the Department has not issued any duty absorption findings in this case.

While citing section II.B.2 of *Sunset Policy Bulletin*, which allows the Department to choose a more recently calculated margin if a particular company increases its dumping in order to maintain or increase market share, the domestic interested parties urge the Department to supply the Commission the margins from the most recent administrative review: 9.49 percent for both LMI and all-others.

The Department disagrees with the domestic interested parties' suggestion that the Department should select a more recently calculated margin from the most recent administrative review. The continuous and rather consistent decline of the import volumes of the subject merchandise, since the issuance of the order, evinces that Italian producers/exporters have not really attempted to enhance their market share in the United States by increasing dumping. Furthermore, the fluctuations that have occurred in import volumes since the imposition of the order simply manifest a downward trend rather than illustrate a concerted attempt by Italian producers/exporters to expand market share by increasing dumping. Therefore, the Department sees no reason to deviate from its normal pattern of selecting the rate from the original investigation and, consequently, determines that the rate from the original investigation, as amended, is the proper one to report to the Commission as the rate that is likely to prevail if the order is revoked. Therefore, the Department will report to the Commission the company-specific and all-others rates contained in the *Final Results of Review* section of this notice.

[7] *See* footnote 4, supra, for the list of final determinations of administrative reviews in which the Department found above *de minimis* weighted-average margins for Italian producers/exporters in all periods of investigation. Also, see domestic interest parties substantive response at 39–40.

[8] *See Amendment to Final Determination of Sales at Less Than Fair Value: Brass Sheet and Strip From Italy and Amendment to Antidumping Duty Order*, 52 FR 11299 (April 8, 1987); and *Amendment to Final Determination of Sales at Less Than Fair Value and Amendment to Antidumping Duty Order in Accordance with Decision Upon Remand: Brass Sheet and Strip From Italy*, 56 FR 23272 (May 21, 1991).

[9] See footnote 4, supra.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping order would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
La Metalli Industriale SpA	5.44
All Others	5.44

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 30, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–23042 Filed 9–2–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–603; A–427–602; A–580–603]

Final Results of Expedited Sunset Reviews: Brass Sheet and Strip From Brazil, France and Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of final results of expedited sunset reviews: brass sheet and strip from Brazil, France and Korea.

SUMMARY: On February 1, 1999, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty orders on brass sheet and strip from Brazil, France and Korea (64 FR 4840) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of the notices of intent to participate and adequate substantive responses filed on behalf of domestic interested parties and inadequate responses (in these cases, no responses) from respondent interested parties, the Department determined to conduct expedited reviews. As a result of these reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–5050 or (202) 482–1560, respectively.

EFFECTIVE DATE: September 3, 1999.

Statute and Regulations

These reviews were conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

These orders cover shipments of coiled, wound-on-reels (traverse wound), and cut-to-length brass sheet and strip (not leaded or tinned) from Brazil, France and Korea. The subject merchandise has, regardless of width, a solid rectangular cross section over 0.0006 inches (0.15 millimeters) through 0.1888 inches (4.8 millimeters) in finished thickness or gauge. The chemical composition of the covered products is defined in the Copper Development Association ("C.D.A.") 200 Series or the Unified Numbering System ("U.N.S.") C2000; these reviews do not cover products with chemical compositions that are defined by anything other than C.D.A. or U.N.S. series. The merchandise is currently classified under Harmonized Tariff Schedule ("HTS") item numbers 7409.21.00 and 7409.29.00. The HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

These reviews cover all producers and exporters of brass sheet and strip from Brazil, France and Korea.

History of the Orders

In the original investigations, covering the period October 1, 1985, through March 31, 1986, the Department determined the average margin for Eluma Corporation, the Brazilian company investigated, to be 40.62 percent *ad valorem* (52 FR 1214; January 12, 1987). On March 6, 1987, the Department determined the weighted-average margin for Trefimetaux S.A., the French company investigated, to be 42.24 percent *ad valorem* (52 FR 6995). There was one scope ruling (59 FR 54888; November 2, 1994) in which the Department determined that brass circles from Brazil that were imported for use in the production of vent valves for air ventilation in boiler systems were outside the scope of the order (*id.*). There have been no administrative reviews of the Brazilian and French orders.

On January 12, 1987, the Department determined the weighted-average margin for Poongsan Metal Corporation ("Poongsan"), the Korean company investigated, to be 7.17 percent *ad valorem* (52 FR 1215). In the only administrative review of this order, covering the period August 22, 1986, through December 31, 1987,[1] the Department determined that a margin of 7.34 percent exists for Poongsan.

The orders cited above remain in effect for all Brazilian, French and Korean producers and exporters, respectively, of the subject merchandise.

Background

On February 1, 1999, the Department initiated sunset reviews of the antidumping duty orders on brass sheet and strip from Brazil, France and Korea (64 FR 4840), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate in each of these reviews on behalf of Heyco Metals, Inc. ("Heyco"), Hussey Copper Ltd. ("Hussey"), Olin Corporation-Brass Group ("Olin"), Outokumpu American Brass ("Outokumpu"), PMX Industries,

[1] *See Brass Sheet and Strip from the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 54 FR 33257 (August 14, 1989).

Inc. ("PMX"), Revere Copper Products, Inc. ("Revere"), the International Association of Machinists and Aerospace Workers, the United Auto Workers (Local 2367), and the United Steelworkers of America (AFL/CIO–CLC) (hereinafter, collectively "domestic interested parties") on February 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*.[2] In their substantive responses, the domestic interested parties claimed interested-party status under sections 771(9)(C) and (D) of the Act as domestic brass mills, rerollers, and unions engaged in the production of brass sheet and strip. Further, with the exception of Heyco and PMX, all of the aforementioned parties were the original petitioners in these cases.

We received complete substantive responses from domestic interested parties for each of these reviews on March 3, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i); we did not receive a substantive response from any government or respondent interested party in these proceedings. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct expedited, 120-day, reviews of these orders.

The Department determined that the sunset reviews of the antidumping duty orders on brass sheet and strip from Brazil, France and Korea are extraordinarily complicated. In accordance with 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). (*See* section 751(c)(6)(C) of the Act.) Therefore, on June 7, 1999, the Department extended the time limit for completion of the final results of these reviews until not later than August 30, 1999, in accordance with section 751(c)(5)(B) of the Act.[3]

[2] PMX Industries, Inc., is a wholly owned subsidiary of Poongsan Metal Corporation, the respondent covered by the Korean antidumping order. PMX indicated that it does not support the continuation of the antidumping duty order against Korea. *See* Substantive Response of the domestic interested parties, March 3, 1999, at 3 (footnote 2) and 6.

[3] *See Porcelain-on-Steel Cooking Ware From the People's Republic of China, Porcelain-on-Steel Cooking Ware From Taiwan, Top-of-the-Stove Stainless Steel Cooking Ware From Korea (South) (AD & CVD), Top-of-the-Stove Stainless Steel Cooking Ware From Taiwan (AD & CVD), Standard Carnations From Chile (AD &CVD), Fresh Cut Flowers From Mexico, Fresh Cut Flowers From Ecuador, Brass Sheet and Strip From Brazil (AD & CVD), Brass Sheet and Strip From Korea (South), Brass Sheet and Strip From France (AD & CVD), Brass Sheet and Strip From Germany, Brass Sheet and Strip From Italy, Brass Sheet and Strip From Sweden, Brass Sheet and Strip From Japan, Pompon Chrysanthemums From Peru: Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 30305 (June 7, 1999).

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted these reviews to determine whether revocation of the antidumping orders would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making these determinations, the Department shall consider the weighted-average dumping margins determined in the investigations and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty orders, and it shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, the domestic interested parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In these instant reviews, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

In their substantive responses, the domestic interested parties argue that revocation of the orders will likely lead to continuation or recurrence of dumping of brass sheet and strip from Brazil, France and Korea (*see* March 3, 1999 Substantive Response of domestic interested parties for Brazil, France and Korea at 34, 37–38 and 41–42, respectively). With respect to whether dumping of subject merchandise continued at any level above *de minimis*, the domestic interested parties do not comment. However, they note that the Department has not conducted any administrative reviews of the orders covering subject merchandise from Brazil and France.

With respect to whether imports of subject merchandise ceased after the issuance of the orders, the domestic interested parties assert that, although imports of Brazilian and French brass sheet and strip dropped significantly, they have not been eliminated since the imposition of dumping duties under their orders in 1988 and 1987, respectively, and continue to remain at a very low levels (*see* March 3, 1999, Substantive Response of domestic interested parties for Brazil, France and Korea at 34, 37–38 and 41–42, respectively). Korean imports have been almost non-existent since the 1986 order, and annual volumes have never risen to a level even close to one percent of their pre-petition average (*id.*).

With respect to whether dumping was eliminated after the issuance of the orders and import volumes declined significantly, the domestic interested parties, citing Commerce IM146 reports, assert that, for each of these countries, the imposition of the order was followed by a significant decrease in the average volume of imports. In the three years following the petitioners' filings, the volume of Brazilian imports was 97 percent lower than that of the pre-petition period (*see* March 3, 1999, Substantive Response of domestic interested parties at 34); for France, the volume fell by 99.4 percent (*id.* at 37–38); and Korean post-order imports decreased by 83 percent of their pre-petition levels (*id.* at 41–42).

In conclusion, the domestic interested parties argue that the Department should determine that there is a likelihood of continuation or recurrence of dumping in each of these cases if the orders were revoked because dumping margins have existed over the lives of the orders and continue to exist at above *de minimis* levels for all producers and exporters of the subject merchandise, and because imports of the subject merchandise have declined dramatically since the imposition of the orders.

As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. Dumping margins presently remain in place for producers and exporters in each of these cases and, therefore, dumping margins above *de minimis* levels continue to exist for shipments of the subject merchandise from all Brazilian, French and Korean producers and exporters of the subject merchandise.

Consistent with section 752(c) of the Act, the Department also considered the import volumes before and after issuance of the orders. The import statistics provided by the domestic industry in each of these cases demonstrate that import volumes of the subject merchandise declined dramatically immediately following the imposition of the orders and continue to remain at very low levels.

Based on this analysis, the Department finds that the existence of dumping margins after the issuance of these orders is highly probative of the likelihood of continuation or recurrence of dumping. Deposit rates above a *de minimis* level continue in effect for exports of the subject merchandise for all producers and exporters. Therefore, given that dumping has continued over the life of the orders, imports declined significantly, respondent interested parties have waived their right to participate in these reviews before the Department, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if these orders were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department states that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation (*see* section II.B.1 of the *Sunset Policy Bulletin*). Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty-absorption determinations (*see* sections II.B.2 and 3 of the *Sunset Policy Bulletin*).

In its November 10, 1986, final determination of sales at less than fair value, the Department published a weighted-average dumping margin for one Brazilian producer/exporter of the subject merchandise, Eluma Corporation, of 40.62 percent (51 FR 40831). The Department also published an "all others" rate of 40.62 percent. Similarly, the Department published a dumping margin for one French producer/exporter of the subject merchandise, Trefimetaux S.A., of 42.24 percent (52 FR 812, January 9, 1987), and an "all others" rate, also 42.24 percent. In its final determination of sales at less than fair value, the Department published a weighted-average dumping margin for one Korean producer/exporter of the subject merchandise, Poongsan Metal Corporation, of 7.17 percent (51 FR 40833, November 10, 1986), and an "all others" rate, also 7.17 percent. In the only administrative review of this case, the margin was revised upward to 7.34 percent for Poongsan (54 FR 33257, August 14, 1989). To date, the Department has not issued any duty-absorption findings in these cases.

With respect to the orders on Brazil and France, the domestic interested parties argue that the Department, consistent with the SAA and the *Sunset Policy Bulletin* should provide to the Commission the weighted-average margin from the original investigations as the magnitude of dumping margin likely to prevail if the order were revoked (*see* March 3, 1999, Substantive Response of domestic interested parties at 46). Moreover, the domestic interested parties, citing the SAA at 890 and the *Sunset Policy Bulletin*, note that the Department normally will provide the Commission with the dumping margins "from the investigation, because that is the only calculated rate that reflects the behavior of exporters * * * without the discipline of the order * * * in place."

The Department agrees with the domestic interested parties' arguments concerning the choice of the margin rates to report to the Commission. Since there have been no administrative reviews of the orders on Brazil and France and considering that dumping has continued over the life of the orders, the rates from the original investigations are the only ones available to the Department.

With respect to Korean exporters and producers, the Department disagrees with the domestic interested parties' argument that, since Poongsan has continued to dump at the slightly higher margin of 7.34 percent, the more recent margin is the appropriate rate to present to the Commission. The *Sunset Policy Bulletin* states that a company may choose to increase dumping in order to maintain or increase market share. As a result, increasing margins may be more representative of a company's behavior in the absence of an order.[4] In this case, Korean imports have been declining since the imposition of the order. Additionally, the domestic interested parties do not argue that Poongsan is attempting to increase its market share or that the company's declining imports indicate its attempt to increase market share.

Therefore, we determine that the margins determined in the original investigations are probative of the behavior of Brazilian, French and Korean producers and exporters of brass sheet and strip if the orders were revoked.

Final Results of Reviews

As a result of these reviews, the Department finds that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
Brazil:	
Eluma Corporation	40.62
All Others	40.62
France:	
Trefimetaux, S.A.	42.24
All Others	42.24
Korea:	
Poongsan Metal Corporation	7.17
All Others	7.17

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial

[4] *See Sunset Policy Bulletin* at section II.B.2

protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing five-year ("sunset") reviews and notices in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 30, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–23046 Filed 9–2–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Final Results of Expedited Sunset Reviews: Color Picture Tubes From Canada, Japan, the Republic of Korea, and Singapore

A–122–605, A–588–609, A–580–605, A–559–601]

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of Final Results of Expedited Sunset Reviews: Color Picture Tubes from Canada, Japan, the Republic of Korea, and Singapore

SUMMARY: On March 1, 1999, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty orders on color picture tubes ("CPTs") from Canada, Japan, the Republic of Korea, and Singapore (64 FR 9970) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of notices of intent to participate and adequate substantive comments filed on behalf of the domestic interested parties and inadequate response (in these cases, no response) from respondent interested parties, the Department determined to conduct expedited reviews. As a result of these reviews, the Department finds that revocation of the antidumping orders would be likely to lead to continuation or recurrence of dumping at the levels indicated in the *Final Results of Review* section of this notice.

FOR FURTHER INFORMATION CONTACT: Darla D. Brown or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

EFFECTIVE DATE: September 3, 1999.

Statute and Regulations

These reviews were conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise subject to these antidumping duty orders is color picture tubes from Canada, Japan, the Republic of Korea ("Korea"), and Singapore. The subject merchandise is defined as cathode ray tubes suitable for use in the manufacture of color television receivers or other color entertainment display devices intended for television viewing. Where a CPT is shipped and imported together with all parts necessary for assembly into a complete television receiver (*i.e.*, as a "kit"), the CPT is excluded from the scope of these orders. In other words, a kit and a fully assembled television are a separate class or kind of merchandise from the CPT. Accordingly, the Department determined that, when CPTs are shipped together with other parts as television receiver kits, they are excluded from the scope of the order. With respect to CPTs which are imported for customs purposes as incomplete televison assemblies, we determined that these entries are included within the scope of these investigations unless both of the following criteria are met: (1) the CPT is "physically integrated" with other television receiver components in such a manner as to constitute one inseparable amalgam and (2) the CPT does not constitute a significant portion of the cost or value of the items being imported.[1] Such merchandise was classifiable under Harmonized Tariff Schedule (HTS) item numbers 8540.11.00.10, 8540.11.00.20, 8540.11.00.30, 8540.11.00.40, 8540.11.00.50 and 8540.11.00.60. However, due to changes in the HTS, the subject merchandise is currently classifiable under HTS items 8540.11.10, 8540.11.24, 8540.11.28, 8540.11.30, 8540.11.44, 8540.11.48, and 8540.11.50. The HTS item numbers are provided for convenience and customs purposes only. The written description remains dispositive.

These reviews cover imports from all manufacturers and exporters of CPTs from Canada, Japan, Korea, and Singapore.

History of the Orders

Canada

The Department published its final affirmative determination of sales at less than fair value ("LTFV") with respect to imports of CPTs from Canada on November 18, 1987 (52 FR 44161). In this determination, the Department published a weighted-average dumping margin for one company as well as an "all others" rate. These margins were subsequently amended when the Department issued its antidumping duty order on CPTs from Canada on January 7, 1998 (53 FR 429).[2] The Department has conducted no administrative reviews of this order since its imposition. The order remains in effect for all manufacturers and exporters of the subject merchandise from Canada.

Japan

On November 18, 1987, the Department issued its affirmative final determination of sales at LTFV regarding CPTs from Japan (52 FR 44171). In this determination, the Department published weighted-average dumping margins for four companies and an "all others" rate. Two of the company-specific margins as well as the "all others" margin were later amended when the antidumping order on CPTs from Japan was published in the **Federal Register** on January 7, 1988 (53 FR 430). Since the order was issued, the Department has conducted two administrative reviews with respect to CPTs from Japan.[3] In both the first and second administrative reviews, the Department calculated one company-specific margin and an "all others" rate. The order remains in effect for all manufacturers and exporters of the subject merchandise from Japan.

Korea

The Department published its affirmative final determination of sales

[1] *See Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value; Color Picture Tubes From Japan*, 53 FR 430 (January 7, 1988).

[2] See *id.*

[3] *See Color Picture Tubes from Japan; Final Results of Antidumping Duty Administrative Review*, 55 FR 37915 (September 14, 1990), and *Color Picture Tubes from Japan; Final Results of Antidumping Duty Administrative Review*, 62 FR 34201 (June 25, 1997).

at LTFV with regard to CPTs from Korea on November 18, 1987 (52 FR 44186). In this determination, the Department published weighted-average dumping margin for one company as well as an "all other" rate. The antidumping duty order was issued on January 7, 1988 (53 FR 431). The Department has since conducted one administrative review of the order with respect to CPTs from Korea.[4] In this review, the Department calculated two company-specific margins, one of which was later amended, as well as an "all others" rate. The order remains in effect for all Korean manufacturers and exporters of the subject merchandise.

Singapore

On November 18, 1987, the Department issued its final affirmative determination of sales at LTFV with respect to imports of CPTs from Singapore (52 FR 44190). In this determination, the Department published a weighted-average dumping margin for one company as well as an "all others" rate. Since the imposition of the order, no administrative reviews of the antidumping order on CPTs Singapore have been conducted. The order remains in effect for all manufacturers and exporters of the subject merchandise from Singapore.

On March 7, 1991, the Department published a negative final determination of circumvention of the antidumping duty orders on CPTs from Canada, Japan, Korea, and Singapore (56 FR 9667).

Background

On March 1, 1999, the Department initiated sunset reviews of the antidumping duty orders on CPTs from Canada, Japan, Korea, and Singapore (64 FR 9970), pursuant to section 751(c) of the Act. The Department received Notices of Intent to Participate, in each of the four sunset reviews, on behalf of Philips Display Components Company, Thomson Americas Tube Operations, the International Brotherhood of Electrical Workers and the International Union of Electronic, Electrical, Salaried, Machine & Furniture Workers (AFL–CIO/CLC) (collectively, "domestic interested parties"), on March 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. Pursuant to sections 771(9)(C) and (D) of the Act, the domestic interested parties claimed interested party status as U.S. manufacturers and unions whose workers are engaged in the production of domestic like products. Moreover, the domestic interested parties stated that both the International Brotherhood of Electrical Workers and the International Union of Electronic, Electrical, Salaried, Machine & Furniture Workers (AFL–CIO/CLC) were petitioners in the original investigation. The Department received complete substantive responses from the domestic interested parties on March 31, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). On March 22, 1999, the Department received an untimely notice of intent to participate on behalf of Sharp Electronics Corporation in the case involving CPTs from Japan. We did not receive a substantive response from any respondent interested party to these proceedings. On March 30, 1999, the Department received a waiver of participation on behalf of the Electronic Industries Association of Korea. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct expedited, 120-day reviews of these orders.

The Department determined that the sunset reviews of the antidumping duty orders on CPTs from Canada, Japan, Korea, and Singapore are extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). (*See* section 751(c)(6)(C) of the Act.) Therefore, on July 6, 1999, the Department extended the time limit for completion of the final results of these reviews until not later than August 30, 1999, in accordance with section 751(c)(5)(B) of the Act.[5]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted these reviews to determine whether revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making these determinations, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margins of dumping likely to prevail if the orders were revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margins are discussed below. In addition, the domestic interested parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margins are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its Sunset Policy Bulletin providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that it normally will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above de minimis after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of the order would be likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In these instant reviews, the Department did not receive a substantive response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of

[4] *See Color Picture Tubes from South Korea; Final Results of Antidumping Duty Administrative Review*, 56 FR 19084 (April 25, 1991), as amended by *Color Picture Tubes from South Korea; Amended Final Results of Antidumping Duty Administrative Review*, 56 FR 29215 (June 26, 1991).

[5] *See Solid Urea From Armenia, Solid Urea From Belarus, Solid Urea From Estonia, Solid Urea From Lithuania, Solid Urea From Romania, Solid Urea From Russia, Solid Urea From Tajikistan, Solid Urea From Turkmenistan, Solid Urea From Ukraine, Solid Urea From Uzbekistan, Color Picture Tubes From Canada, Color Picture Tubes From Japan, Color Picture Tubes From Korea (South), Color Picture Tubes From Singapore: Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 36333 (July 6, 1999).

participation. Further, we received a waiver of participation from the Electronic Industries Association of Korea.

In their substantive responses, the domestic interested parties argue that the substantial decline in the volume of imports of CPTs from the subject countries following the issuance of the orders demonstrates the inability of the producers from subject countries to sell in the U.S. market in any significant volume without dumping. The domestic interested parties argue further that revocation of the antidumping duty orders would likely lead to a continuation or recurrence of dumping by Canadian, Japanese, Korean, and Singaporean producers/manufacturers. They support this argument with evidence in the form of tables showing that, since imposition of the orders, respondents have generally reduced their sales to the United States (*see* March 31, 1999, Substantive Response of the Domestic Interested Parties at Attachment 2). Therefore, they assert, were the antidumping orders revoked, it is likely that Canadian, Japanese, Korean, and Singaporean producers would need to dump in order to sell their subject color pictures tubes in any significant quantities in the United States (*see id.* at 17).

Canada

With respect to subject merchandise from Canada, the domestic interested parties maintain that in the year the order was imposed, 1988, imports from Canada fell from approximately 219,000 units the year before to just over 80,000 units (*see id.* at 19 and Attachment 2). They also argue that, in the three years following the imposition of the order (1988–1990), average import volumes of the subject merchandise were almost 80 percent lower than in the three years preceding the final determination of sales at LTFV (1984–1986) (*see id.* at 18–19).

Moreover, the domestic interested parties point out that dumping margins above de minimis remain in place for one Canadian company.

Japan

According to the domestic interested parties, the imposition of the antidumping duty order had a dramatic effect on subject import volumes from Japan. They indicate that in the years following the imposition of the order, imports of the subject merchandise from Japan declined by almost 70 percent. Moreover, they assert, import volumes of the subject CPTs from Japan have remained low relative to the pre-order levels. The domestic interested parties also argue that dumping margins remain in place for at least one Japanese producer of the subject merchandise. In sum, the domestic interested parties maintain, the dramatic decline in import volumes following the imposition of the order, in conjunction with the fact that only one Japanese respondent has ever requested an administrative review of the original dumping margins, provides clear evidence that the Japanese producers are incapable of selling at fair value in the U.S. market and that revocation of the current order would result in continued dumping and massive increases in Japanese import volumes (*see id.* at 20).

Korea

With respect to imports of the subject merchandise from Korea, the domestic interested parties assert that imports declined significantly after the imposition of the order. In fact, the domestic interested parties argue, post-order imports from Korea averaged just 2.9 percent of their pre-order levels (*see id.* at 21). Furthermore, the domestic interested parties argue, since 1988, imports of CPTs from Korea have been virtually non-existent and annual volumes have never risen to even five percent of their pre-order levels. Therefore, the domestic interested parties assert, the minimal volumes of imports of CPTs in the period since the order was imposed indicate that the Koreans are incapable of selling the subject merchandise in the United States at fair value (*see id.* at 21).

Singapore

The domestic interested parties state that imports of the subject CPTs from Singapore also declined significantly following the imposition of the order. In fact, the domestic interested parties argue, while U.S. imports from Singapore averaged approximately 139,000 units annually in the three years prior to the imposition of the order (1984–1986), in the three years following the imposition of the order (1988–1990) such imports averaged just 810 units annually (*see id.* at 21 and Attachment 2).

As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue to dump with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. As discussed above, dumping margins above de minimis continue to exist for shipments of the subject merchandise from Canada, Japan, Korea, and Singapore.

Consistent with section 752(c) of the Act, the Department also considers the volume of imports before and after issuance of the order. As outlined in each respective section above, the domestic interested parties argue that a significant decline in the volume of imports of the subject merchandise from Canada, Japan, Korea, and Singapore since the imposition of the orders provides further evidence that dumping would continue if the orders were revoked. In their substantive responses, the domestic interested parties provided statistics demonstrating the decline in import volumes of CPTs from Canada, Japan, Korea, and Singapore (*see* March 31, 1999, Substantive Response of the Domestic Interested Parties at Attachment 2). Using the Department's statistics, including IM146 reports, on imports of the subject merchandise from these countries, we agree with the domestic interested parties' assertions that imports of the subject merchandise fell sharply after the orders were imposed and, in most cases, never regained pre-order volumes.

As noted above, in conducting its sunset reviews, the Department considers the weighted-average dumping margins and volume of imports when determining whether revocation of an antidumping duty order would lead to the continuation or recurrence of dumping. Based on this analysis, the Department finds that the existence of dumping margins above de minimis levels and a reduction in export volumes after the issuance of the orders is highly probative of the likelihood of continuation or recurrence of dumping. A deposit rate above a de minimis level continues in effect for exports of the subject merchandise by all known Canadian, Japanese, Korean, and Singaporean manufacturers/exporters. Therefore, given that dumping has continued over the life of the orders, import volumes declined significantly after the imposition of the orders, respondent parties waived participation, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the orders were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it normally will provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.) We note that, to date, the Department has not issued any duty absorption findings in any of these four cases.

In their substantive responses, the domestic interested parties recommended that, consistent with the *Sunset Policy Bulletin*, the Department provide to the Commission the company-specific margins from the original investigations. Moreover, regarding companies not reviewed in the original investigation, the domestic interested parties suggested that the Department report the "all others" rates included in the original investigations.

The Department agrees with the domestic interested parties. The Department finds that the margins calculated in the original investigation are probative of the behavior of Canadian, Japanese, Korean, and Singaporean producers/exporters if the orders were revoked as they are the only margins which reflect their behavior absent the discipline of the order. Therefore, the Department will report to the Commission the company-specific and all others rates from the original investigations as contained in the Final Results of Review section of this notice.

Final Results of Review

As a result of these reviews, the Department finds that revocation of the antidumping orders would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
Canada	
Mitsubishi Electronics Industries Canada, Inc	0.63
All Others	0.63
Japan	
Hitachi, Ltd	22.29
Matsushita Electronics Corporation	27.46
Mitsubishi Electric Corporation	1.05
Toshiba Corporation	33.50
All Others	27.93
Korea	
Samsung Electron Devices Company, Ltd	1.91
All Others	1.91
Singapore	
Hitachi Electronic Devices, Pte., Ltd	5.33
All Others	5.33

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These five-year ("sunset") reviews and notices are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 30, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–23038 Filed 9–2–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–831–801; A–822–801; A–447–801; A–451–801; A–821–801; A–823–801; A–842–801; A–843–801; A–844–801]

Final Results of Expedited Sunset Reviews: Solid Urea from Armenia, Belarus, Estonia, Lithuania, Russia, Ukraine, Tajikistan, Turkmenistan, and Uzbekistan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset reviews: solid urea from Armenia, Belarus, Estonia, Lithuania, Russia, Ukraine, Tajikistan, Turkmenistan, and Uzbekistan.

SUMMARY: On March 1, 1999, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty orders on solid urea from Armenia, Belarus, Estonia, Lithuania, Russia, Ukraine, Tajikistan, Turkmenistan, and Uzbekistan (64 FR 9970) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of the notices of intent to participate and adequate substantive comments filed on behalf of domestic interested parties and inadequate responses from respondent interested parties, the Department determined to conduct expedited reviews. As a result of these reviews, the Department finds that revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–5050 or (202) 482–1560, respectively.

EFFECTIVE DATE: September 3, 1999.

Statute and Regulations

These reviews were conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise subject to these antidumping duty orders is solid urea. This merchandise was previously subject to an antidumping duty order on solid urea from the Union of Soviet Socialist Republics (U.S.S.R.). However, with the dissolution of the U.S.S.R., the order was subsequently transferred to all 15 republics (57 FR 28828, June 29, 1992). This merchandise is currently classifiable under the Harmonized Tariff Schedule ("HTS") of the United States, item number 3201.10.00. The HTS item number is provided for convenience and customs purposes only. The written description remains dispositive.

History of the Order

On May 26, 1987, the Department issued a final determination of sales at less than fair value with respect to

imports of solid urea from the U.S.S.R.[1] In the final determination and subsequent antidumping duty order, the Department applied three weighted-average dumping margins: 68.26 percent for Soyuzpromexport (SPE), 53.23 percent for Philipp Brothers, Inc., and an all others rate of 64.93 percent.[2]

On December 1991, the U.S.S.R. divided into fifteen independent states. On June 29, 1992, the Department transferred the antidumping duty orders on solid urea from the U.S.S.R. to the Commonwealth of Independent States and the Baltic States and announced a change in the names and case numbers of the antidumping duty orders. The Department announced a country-wide rate of 68.26 percent for each new state and stated that the substance of each new order would not change from the original order and its amended administrative review (*see* 54 FR 39219).[3] The Department conducted one administrative review prior to the division of the U.S.S.R.,[4] and one administrative review after the division of the U.S.S.R.[5]

These reviews cover all producers and exporters of solid urea from Armenia, Belarus, Estonia, Lithuania, Russia, the Ukraine, Tajikistan, Turkmenistan, and Uzbekistan (collectively, "the Former Soviet States").

Background

On March 1, 1999, the Department initiated sunset reviews of the antidumping duty orders on solid urea from the former Soviet States ("FSS") (64 FR 9970), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate for each of these reviews on behalf of the Ad Hoc Committee of Domestic Nitrogen Producers (the "Committee") and Agrium U.S. Inc. ("Agrium") (collectively the "domestic parties") on March 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*.

We received complete substantive responses from both the Committee and Agrium on March 30, 1999, and March 31, 1999, respectively, for each of these cases, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). In each of its substantive responses, the Committee claimed interested-party status under section 771(9)(C) of the Act as a coalition of domestic producers of nitrogen fertilizers who produce domestic like product.[6] In each of its responses, Agrium claimed interested-party status under section 771(9)(C) of the Act and as a manufacturer, producer, or wholesaler in the United States of solid urea. Additionally, both the Committee and Agrium were involved in the original investigation and in the sole administrative review that the Department conducted of these orders. We did not receive a complete substantive response from any respondent interested party in any of these proceedings. We received an incomplete and, therefore, inadequate response from the Embassy of Belarus on April 8, 1999. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department is conducting expedited, 120-day, reviews of these orders.

On July 6, 1999, the Department determined that the sunset review of the antidumping duty orders on urea from the FSS are extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). *See* section 751(c)(6)(C) of the Act. Therefore, the Department extended the time limit for completion of the final results of these reviews until not later than August 30, 1999, in accordance with section 751(c)(5)(B) of the Act.[7]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted these reviews to determine whether revocation of the antidumping duty orders would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making these determinations, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order, and it shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping duty order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. As noted above, with the exception of Belarus, in these instant reviews, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes waivers of participation.

In their respective substantive responses, both the Committee and Agrium argue that revocation of the antidumping duty orders on solid urea would be likely to lead to continuation or recurrence of dumping of solid urea from the FSS. (*See* the Substantive Response of the Committee at 6 and the Substantive Response of Agrium at 3.) With respect to whether dumping margins continued in existence after the issuance of the order, the domestic parties argue that dumping margins above *de minimis* continue to exist for all producers from all nine countries. (*See* Substantive Response of the Committee at 10 and the Substantive Response of Agrium at 5.) The Committee also states that a dumping margin of 68.26 percent remains in existence for imports of solid urea from all nine countries and that, as such, dumping is likely to continue if the orders were revoked.

With respect to whether imports of the subject merchandise ceased after the issuance of the original order, the domestic parties argue that, following the imposition of the order, imports of solid urea, first from the U.S.S.R. and, subsequently, from the FSS, have declined and have ceased with the exception of one or two shipments in very small volumes from Russia and Ukraine. The Committee argues that, prior to the imposition of the order in 1987, imports of solid urea from the U.S.S.R. ranged from 418,000 short tons to 843,000 short tons. (*See* Substantive Response of the Committee at 8.) In 1988, the year following the imposition of the order, there were no imports of solid urea from the U.S.S.R. Following the break-up of the U.S.S.R. and subsequent transfer of the order, the Committee argues that there have been no shipments at all from Armenia, Estonia, Tajikistan, Turkmenistan, and Uzbekistan. With respect to Belarus, Lithuania, Russia, and the Ukraine, however, the Committee argues that it "believes that *no* * * * urea has been imported into the United States since 1987." (*See* Substantive Response of the Committee at 8.)

Regarding Russia, the Committee argues that, although U.S. Census data report imports of solid urea from Russia in 1995, 1996, and 1998, it is unlikely that any of these shipments were actually shipments of urea. According to the Committee, shipments of Russian urea in 1998 were analyzed by the Department and found to have been incorrectly classified by the U.S. Census Bureau as imports of solid urea when, in fact, the majority of the shipments were of either ammonium nitrate or urea-ammonium nitrate, neither of which is subject to this order. The result is that, of the 56,638 short tons originally classified as solid urea, only 24 short tons remain classified as solid urea, with the rest of the shipment being classified as a separate product. (*See* the Substantive Response of the Committee at Exhibit 2.)

With regard to Belarusian, Lithuanian, and Ukrainian imports of solid urea, the Committee raises the same issue. The Committee asserts, in its substantive responses, that it believes that the other shipments from Russia in 1995 and 1996, as well as any other shipments from Belarus, Lithuania, and Ukraine, are also incorrectly classified and, therefore, argues that the Department can correctly determine that imports have ceased since the imposition of the orders. (*See* Substantive Response of the Committee at 9.) Barring that decision, however, the Committee argues that imports have declined dramatically or have ceased and that, as such, the Department must find that there is a likelihood of continuation or recurrence of dumping if these orders were revoked.

Agrium also addressed the issue of whether imports of solid urea declined significantly or ceased after the issuance of the order. Agrium argues that in 1986, the year immediately preceding the issuance of the order, imports of Soviet solid urea totaled 843,374 short tons. In the year immediately following imposition of the order, however, Agrium argues that there was a complete cessation of imports and that, from 1988 (the year of the order) until 1994, there were commercially insignificant quantities, if there were any imports of urea, from the FSS. From 1995 to 1998, Agrium argues that, when there were imports from the FSS, the import volumes were quite small, measuring only between 2 and 9 percent of import volumes from the U.S.S.R. prior to the imposition of the order. (*See* Substantive Response of Agrium at 4.) Therefore, Agrium argues that, because import volumes have virtually ceased since the imposition of the order, the Department should find that there is a likelihood of continuation or recurrence of dumping if these orders were revoked.

In conclusion, the domestic parties argue that there is a likelihood of continuation or recurrence of dumping of solid urea from the FSS if these orders were revoked. The domestic parties argue that the continued existence of dumping margins above a *de minimis* level and that the virtual cessation of imports of solid urea after the imposition of the order, first from the U.S.S.R. and later from these individual countries, is highly probative of the likelihood of continuation or recurrence of dumping.

As discussed in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. Dumping margins above a *de minimis* level have existed and continue to exist for imports of solid urea from all producers/exporters from each of the FSS.

Consistent with section 752(c) of the Act, the Department also considered the volume of imports before and after issuance of the order. The import statistics provided by the domestic parties, specifically by the Committee, in each of these cases, and confirmed by the Department using import statistics from U.S. Census Bureau IM146s, indicate that imports of the subject merchandise from the U.S.S.R. ceased following the imposition of the order. Following the break-up of the U.S.S.R., the imports from Armenia, Estonia, Tajikistan, Turkmenistan, and Uzbekistan have remained at zero and imports from the other FSS have been at very low volumes. While the Committee has argued that the Department should find that there has been a complete cessation of imports of subject merchandise, it is clear that, even with the incorrectly classified merchandise, imports have continued from some FSS, albeit at significantly lower levels than the pre-imposition levels.

Based on this analysis, the Department finds that the almost complete cessation of imports after the issuance of the orders coupled with the existence of dumping margins after the issuance of these orders is highly probative of the likelihood of continuation or recurrence of dumping. Deposit rates above a *de minimis* level continue in effect for exports of the subject merchandise for all producers/exporters. Therefore, given the almost complete cessation of imports, that margins above *de minimis* levels have continued over the life of the orders, respondent interested parties have waived their right to participate in these reviews before the Department, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if these orders were revoked.

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[1] *See Urea From the Union of Soviet Socialist Republics; Final Determination of Sales at Less Than Fair Value*, 52 FR 19557 (May 26, 1987).

[2] *See Urea From the Union of Soviet Socialist Republics; Final Determination of Sales at Less Than Fair Value*, 52 FR 19557 (May 26, 1987).

[3] *See Solid Urea From the Union of Soviet Socialist Republics; Transfer of the Antidumping Duty Orders on Solid Urea From the Union of Soviet Socialist Republics to the Commonwealth of Independent States and the Baltic States and Opportunity to Comment*, 57 FR 28828–02 (June 29, 1992).

[4] *See Final Results of Antidumping Duty Administrative Review; Solid Urea From the Union of Soviet Socialist Republics*, 54 FR 33262 (August 14, 1989), and *Amendment to Final Results of Antidumping Duty Administrative Review; Solid Urea From the Union of Soviet Socialist Republics*, 54 FR 39219 (September 25, 1989).

[5] *See Final Results of Antidumping Duty Administrative Review; Solid Urea From Estonia*, 59 FR 25606 (May 17, 1994).

[6] The Ad Hoc Committee of Domestic Nitrogen Producers is comprised of the following members: CF Industries, Inc., Coastal Chem, Inc., Mississippi Chemical Corporation, PCS Nitrogen, Inc., and Terra Industries, Inc. J.R. Simplot Co. is also a member of the Ad Hoc Committee, but is not a producer of solid urea and, therefore, is not participating in these reviews.

[7] *Extension of Time Limit for Final Results of Five-Year Reviews*, 54 FR 36333 (July 6, 1999).

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it normally will provide to the Commission the company-specific margin from the investigation for each company. Further for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determination. (*See* section II.B.2 and 3 of the *Sunset Policy Bulletin*.)

With respect to the magnitude of the margin likely to prevail if the antidumping duty orders were revoked, the domestic parties argue that the Department should report to the Commission the margin from the original investigation of 68.26 percent. This rate is the weighted-average dumping margin found in the investigation for the Soviet exporter, and it subsequently became the uniform cash deposit rate transferred to the fifteen independent states. The domestic parties assert that the 68.26 percent rate continues to reflect the behavior of exporters without the discipline of the antidumping duty orders.

The Department agrees with the domestic parties as to the magnitude of the margin likely to prevail should the antidumping duty orders on solid urea be revoked. While dumping margins from the original investigation were determined by the Department, prior to the U.S.S.R.'s disbanding, the dumping rate was officially transferred. This rate continues to be applied to each of the independent states.

Therefore, consistent with the Department's *Sunset Policy Bulletin*, we determine that the 68.26 percent rate that we calculated in the investigation, and subsequently transferred after the U.S.S.R ceased to exist, best reflects the behavior of urea producers and exporters without the discipline of the order in place with the exception of imports from Phillipp Brothers, Ltd., and Phillipp Brothers, Inc., the Department finds that the dumping margin of 53.23 percent, assigned in the original investigation, is the rate likely to prevail if the order were revoked.

The Department will report to the Commission the rates at the level indicated in the Final Results of Review section of this notice.

Final Results of Review

As a result of these reviews, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/Exporter/Importer	Margin (percent)
Soyuzpromexport (SPE)	68.26
Phillipp Brothers, Ltd. & Phillipp Brothers, Inc.	53.23
Country-wide rate	*68.26

*This rate is the new rate that applies to all former Soviet Union countries subject to these orders.

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this five-year ("sunset") review and notice in accordance with sections 751(c), 752 and 777(i)(1) of the Act.

Dated: August 30, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–23049 Filed 9–2–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–601]

Final Result of Expedited Sunset Review: Solid Urea from Romania

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Final Result of Expedited Sunset Review on Solid Urea from Romania.

SUMMARY: On March 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on solid urea from Romania pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of the domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited sunset review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. & Constitution Ave., NW, Washington, D.C. 20230; telephone (202) 482–5050 or (202) 482–1560, respectively.

EFFECTIVE DATE: September 3, 1999.

Statute and Regulations

This review was conducted pursuant to section 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) (*"Sunset Regulations"*). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) (*"Sunset Policy Bulletin"*).

Scope

The merchandise subject to the antidumping duty order is solid urea from Romania. Solid urea is a high-nitrogen content fertilizer which is produced by reacting ammonia with carbon dioxide. During the original investigation the merchandise was classified under item number 480.3000 of the Tariff Schedule of the United States Annotated ("TSUSA"). This merchandise is currently classifiable under item number 3102.10.00 of the Harmonized Tariff Schedule ("HTS"). The HTS item number is provided for convenience and customs purposes. The written description of the scope remains dispositive.

History of the Order

On May 26, 1987, the Department issued its final determination that solid urea from Romania was being sold in the United States at less-than-fair-value. The weighted-average dumping margin

was 90.71 percent.[1] On July 14, 1987, the Department's antidumping duty order was published.[2]

The Department has conducted one administrative review since the issuance of this order, covering the period January 1987 through June 1988, and found no shipments.[3] The order remains in effect for all Romanian producers and exporters of the subject merchandise. We note that, to date, the Department has not issued any duty absorption findings in this case.

Background

On March 1, 1999, the Department initiated a sunset review of the antidumping order on solid urea from Romania pursuant to section 751(c) of the Act. On March 16, 1999, the Department received a Notice of Intent to Participate on behalf of Agrium US, Inc. ("Agrium") and from the members of the Ad Hoc Committee of Domestic Nitrogen Producers[4] (the "Committee"), collectively the ("domestic parties"), within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. We received complete substantive responses from the domestic parties, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). The domestic parties claimed interested party status under section 771(9)(C) of the Act as United States producers, manufacturers, or wholesalers of the domestic like product. The Department did not receive a response from any respondent interested party. As a result, pursuant to section 751(c)(3)(B) of the Act, and our regulations (19 C.F.R. 351.218(e)(1)(ii)(C)(*2*)), we are conducting an expedited sunset review on this order.

On July 6, 1999, the Department determined that the sunset review of the antidumping duty order on solid urea from Romania is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). *See* section 751(c)(6)(C) of the Act. As a result of this determination, the Department extended the time limit for completion of the final results of this review until not later than August 30, 1999, in accordance with section 751(c)(5)(B) of the Act.[5]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would likely lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping duty order, and it shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and magnitude of the margin are discussed below. In addition, the domestic interested parties' comments with respect to the continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2 of the *Sunset Policy Bulletin*). In addition, the Department normally will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3 of the *Sunset Policy Bulletin*).

In addition to considering the guidance on likelihood cited above, section751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives it participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interest party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

In their substantive responses the domestic parties assert that revocation of the antidumping duty order of solid urea from Romania would likely result in the continuation or resumption of dumping. The domestic parties argue that imports of the subject merchandise ceased after the issuance of the order and provide import statistics to support their claim.

The domestic parties maintain that the Department should conclude that because imports of Romanian urea into the United States ceased after the issuance of the order, Romanian producers and exporters cannot sell solid urea in the U.S. markets without dumping.

In addition, the domestic parties argue that the dumping margin of 90.71 percent has remained unchanged since the investigation. The domestic parties assert that no Romanian urea producer or exporter has ever sought a review to obtain a reduced margin. Therefore, the domestic parties assert, the magnitude and longevity of the original antidumping margin indicates that Romania urea cannot be sold in the U.S. market at non-dumped prices.

For the reasons stated above, the domestic parties conclude that if the order on solid urea from Romania be revoked, there is likelihood of continuation and recurrence of dumping.

As discussed in Section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, existence of dumping margins after the order is highly probative of the likelihood of continuation or recurrence of dumping. Further, if imports ceased after the order is issued, it is reasonable to assume that the exporters could not sell in the United States without

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[1] *See Urea From the Socialist Republic of Romania; Final Determination of Sales at Less-Than-Fair-Value*, 52 FR 19557 (May 26, 1987).

[2] *See Antidumping Duty Order; Urea From the Socialist Republic of Romania*, 52 FR 26367 (July 14, 1987).

[3] *See Final Results of Antidumping Duty Administrative Review; Solid Urea From Romania*, 54 FR 39558 (September 27, 1989).

[4] The Committee maintains that it is comprised of a coalition of U.S. producers of nitrogen fertilizers and identifies its current members : CF Industries, Inc., Costal Chemical, Inc., Mississippi Chemical Corp., PCS Nitrogen, Inc., and Terra Industries, Inc. The Committee notes that J.R. Simplot Co. is a Committee member, but not producer of solid urea. *See* Substantive Response of the Committee, March 30, 1999, at 1 and 2.

[5] *See Extension of Time Limit for Final Results of Five-Year Reviews*, 54 FR 36333 (July 6, 1999).

dumping and that to reenter the U.S. market, they would have to resume dumping. In this case we find that imports ceased after the issuance of the order and dumping margins continued to exist. Therefore, given that imports ceased, dumping margins continue to exist, respondent interested parties waived their right to participate in this review, and absent argument and evidence to the contrary, the Department determines that dumping of solid urea from Romania is likely to continue or recur if the order were revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated, or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the country-wide rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy permit the use of a more recently calculated margin, when appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

With respect to the magnitude of the margin likely to prevail if the antidumping duty orders were revoked, the domestic parties argue that the Department should provide the Commission the dumping margin from the final results of the original investigation, 90.71 percent. The domestic parties assert that this margin is the only rate that has been calculated by the Department and it is the only rate that reflects the behavior of Romanian producers and exporters of urea without the discipline of the order.

The Department agrees with the domestic parties concerning the choice of the dumping margin to report to the Commission. In our final determination of sales at less-than-fair-value, we reported a weighted-average dumping margin of 90.71 percent for I.C.E. Chimica (the only company investigated) and for all others. Therefore, consistent with the Department's *Sunset Policy Bulletin* we determine that the original margin, is probative of the behavior of the Romanian producers and exporters of solid urea if the order were revoked. We will report to the Commission the rate from the original investigation contained in the Final Results of Review section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the margins listed below:

Manufacturers/ Exporters	Margin (percent)
I.C.E. Chimica	90.71
All Others	90.71

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are published in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 30, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–23048 Filed 9–2–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–085]

Final Results of Full Sunset Review: Sugar and Syrups From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Full Sunset Review: Sugar and Syrups from Canada.

SUMMARY: On April 26, 1999, the Department of Commerce ("the Department") published a notice of preliminary results of the full sunset review of the antidumping duty order on sugar and syrups from Canada (64 FR 20253) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). We provided interested parties an opportunity to comment on our preliminary results. We received comments from both domestic and respondent interested parties. As a result of this review, the Department finds that revocation of this order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: September 3, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Scope

The merchandise subject to the antidumping duty order is sugar and syrups from Canada produced from sugar cane and sugar beets. The sugar is refined into granulated or powdered sugar, icing, or liquid sugar.[1] The subject merchandise is currently classified under Harmonized Tariff Schedule of the United States ("HTSUS") item numbers 1701.99.0500, 1701.99.1000, 1701.99.5000, 1702.90.1000, and 1702.90.2000. Although the subheadings are provided for convenience and customs purposes, the written description remains dispositive.

On March 24, 1987, the Department revoked the order, in part, with respect to Redpath Sugar Ltd. ("Redpath") (52 FR 9322). On January 7, 1988, the Department revoked the order, in part, with respect to Lantic Sugar, Ltd. ("Lantic") (53 FR 434). In 1996, the Department determined that Rogers Sugar, Ltd. ("Rogers"), was the successor in interest to British Columbia Sugar Refining Company, Ltd. ("BC Sugar").[2] In its November 2, 1998, substantive response, the United States Beet Sugar Association and its individual members (collectively, the "USBSA") stated that three companies in Canada constitute the Canadian domestic industry: Lantic, Redpath, and Rogers. Because the order was revoked with respect to Lantic and Redpath, only Rogers is currently subject to the order.

[1] This order excludes icing sugar decorations as determined in the U.S. Customs Classification of January 31, 1983 (CLA–2 CO:R:CV:G).

Background

On April 26, 1999, the Department issued the Preliminary Results of Full Sunset Review: Sugar and Syrups from Canada (64 FR 20253). Based on the continued absence of a dumping margin for Rogers, the sole producer/exporter subject to the order, and the continued existence of imports from Rogers in substantial quantities, in our preliminary results we found that revocation of the order is not likely to lead to continuation or recurrence of dumping.

We conducted verification in Taber, Alberta, of Rogers' response on May 12, 1999, and issued our verification report on May 19, 1999. On June 8, 1999, within the deadline specified in 19 CFR 351.309(c)(1)(i), we received comments on behalf of the USBSA and on behalf of Rogers. On June 15, 1999, within the deadline specified in 19 CFR 351.309(d), the Department received rebuttal comments from both the USBSA and Rogers. The Department held a public hearing on June 18, 1999.

As a result of the comments, we have changed our determination. We have addressed the comments received below.

Likelihood of Continuation or Recurrence of Dumping

Comment 1: The USBSA asserts that sugar produced at Rogers' Taber facility will have to be sold below constructed value ("CV") and therefore will be dumped when it enters the U.S. market. The USBSA asserts that, despite repeated requests, the Department did not conduct a CV analysis in which an accurate calculation of CV could be compared to Rogers' selling price on current U.S. sales. Relying on the 1998 cost of production ("COP") contained in the verification report, which the USBSA asserts does not include all costs, the USBSA states that it calculated a CV. The USBSA asserts that this and evidence of Rogers' pricing in 1996, which is on the record, demonstrates that Rogers sold sugar in the United States at prices below CV. Additionally, the USBSA argues, the recent improvements made at Rogers' Taber facility will increase its COP and force Rogers to sell sugar at below cost prices. Asserting that the recent downward spiral in world prices makes dumping by Rogers more pervasive, the USBSA requests that the Department revisit the CV analysis and conclude that dumping is likely to continue or recur if the order is revoked.

In its rebuttal brief Rogers cites to the Department's Policy Bulletin 94–1 regarding COP and asserts that the Department found USBSA's allegations of below-cost sales speculative correctly, thereby falling short of the standard for providing reasonable grounds for suspecting that Rogers made sales at below cost prices. Further, Rogers argues, the Department is not required to do a COP investigation in reviews when there is no earlier determination of below-cost sales and there has been no reasonable evidence submitted which suggests that sales at prices less than COP were made.

Rogers notes that the Department looked correctly at the cost basis for sugar beet production and at the audited financial statements of Rogers during verification. Rogers asserts that the verified information confirmed its submissions showing sales in Canada and the United States at prices significantly above the COP. Additionally, Rogers asserts that the verified information shows that profits were made and distributed by Rogers in every year of the period covered by the Department's sunset review. With respect to the Taber facility expansion, Rogers argues that the consolidation and expansion of its facilities has only increased its cost efficiencies. Rogers provided information from an independent audit of the expansion in support of this assertion. Further, Rogers argues that the wholly speculative CV constructed by USBSA does not reflect actual numbers provided to, and verified by, the Department. In conclusion Rogers asserts that there is no credible evidence on the record that would lead to a decision by the Department to conduct a CV analysis.

Department's Position: The Department's *Sunset Policy Bulletin* notes that the Department will consider other factors (such as prices and costs) in full sunset reviews where an interested party identifies good cause through the provision of information or evidence that would warrant consideration of such factors. In our preliminary results, we determined that the USBSA did not provide evidence of good cause to support our consideration of other factors.

Rogers, in its November 3, 1998, substantive response, provided information to the Department concerning its COP for processed beets to support its argument that prices were above cost. Although we had not requested the information and had determined for the preliminary results that there was no basis to consider such additional information, because Rogers had presented the information in its substantive and rebuttal responses, we conducted an on-site verification of this information on May 12, 1999.(*see* Memorandum to Jeffrey May, Re: Sunset Review: Sugar and Syrups from Canada, dated May 19, 1999). Therefore, we agree with both parties that verified information related to Rogers' 1998 COP is now on the record in this review. In addition, verified information on Rogers' Canadian and U.S. sales prices for the years 1993 through 1997 is on the record.

As noted above, the USBSA's pre-hearing brief contained an allegation of sales below cost, based on verified information already on the record. Rogers did not rebut this allegation; rather, Rogers claimed that its verified submissions show sales in Canada and the United States at prices significantly above COP. For the purpose of our final results we considered this allegation.

We have analyzed the verified information and find that it provides sufficient support for a determination that dumping is likely to continue or recur if the order were revoked. The Department normally will not, and has no reason to, conduct a cost investigation in the context of a sunset review. However, both USBSA and Rogers' arguments concerning likelihood of continuation of dumping revolve around whether or not pricing and cost data indicate that dumping has been taking place. The Department, therefore, has conducted a sort of abbreviated cost test with the limited data on the record.

Specifically, using the verified information, the Department constructed a COP and CV (per metric ton) of processed sugar (*see* Memorandum to File, Re: Cost of Production, dated August 20, 1999). Section 773(b)(1) of the Act provides that the Department will disregard below cost sales made within an extended period of time in substantial quantities and which were not made at prices which permit recovery of all costs within a reasonable period of time. We compared Rogers' verified weighted-average home market price to the COP and found that it was below the COP.

[2] *See* Sugar and Syrups from Canada; Final Results of Changed Circumstances Antidumping Duty Administrative Review, 61 FR 51275 (October 1, 1996).

Specifically, we compared a weighted-average home market price, based on 1997 price data supplied by Rogers, with a COP based on 1998 costs derived from Rogers' data. We found the weighted-average price to be below the COP. Based on this limited data, we determine, therefore, that Rogers made below cost sales within an extended period of time in substantial quantities at prices which did not permit recovery of all costs within a reasonable period of time. Because there are, in essence, no remaining above cost sales, we compared Rogers' verified average U.S. export selling price to the CV. We found that this average price was below CV. Based on this comparison, we conclude that at least some of Rogers sales to the United States are at prices below CV.[3] These calculations, using verified information, therefore, provide a sufficient basis for determining that dumping is likely to continue or recur if the order were revoked.

Comment 2: The USBSA disagrees with the Department's preliminary decision that revocation of the order would not be likely to lead to continuation or recurrence of dumping. The USBSA argues that the Department incorrectly and unlawfully equated the domestic industry's decision not to request an administrative review of this order over the past 16 years as a lack of interest in the order. Furthermore, the USBSA argues that its decision not to request an administrative review does not indicate an absence of dumping by Rogers.

Rogers, in its rebuttal comments, argues that the USBSA admits that it was satisfied with the status quo and the status quo, with respect to this order, was a deposit rate of zero. If the USBSA was satisfied with this zero deposit rate, according to Rogers, it must have believed that no dumping was occurring. Rogers argues further that it has been the Department's practice to revoke orders where there have been several years of zero margins. With respect to this sunset review, Rogers argues that the burden is on the domestic industry to demonstrate why the existence of a zero percent deposit rate for 16 years coupled with exports of the subject merchandise in substantial quantities is not sufficient to determine that revocation of the order would not be likely to lead to continuation or recurrence of dumping.

[3] Absent specific information, we did not make any adjustments to U.S. prices, as we would in an investigation or administrative review conducted for the purpose of measuring dumping. Such adjustments typically would result in a reduction of U.S. price and, therefore, an increase in the magnitude of the dumping margin.

Department's Position: We disagree with the USBSA's assertion that we equated the domestic industry's decision not to request an administrative review with a lack of interest in the order. Nowhere in our preliminary results did we state that the domestic industry's decision not to request an administrative review over the last 16 years was tantamount to having no interest in the continuation of this order. In our preliminary results we attempted to ascertain the likelihood of continuation or recurrence of dumping. In doing so, the Department examined the deposit rates over the life of the order for Rogers, the only producer/exporter of Canadian sugar still subject to the order. The deposit rate for Rogers has been zero percent for the past 16 years. Because there has been no request by the domestic industry for an administrative review of this order for the past 16 years, we had no reason to believe that Rogers had dumped sugar in the United States during any part of this time period.

Furthermore, the preamble to the Department's regulations concerning revocation of orders states that "it is reasonable to presume that if subject merchandise, shipped in commercial quantities, is being dumped or subsidized, domestic interested parties will react by requesting an administrative review to ensure that duties are assessed and that cash deposit rates are revised upward from zero. If domestic interested parties do not request a review, presumably it is because they acknowledge that subject merchandise continues to be fairly traded" (Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27326 (May 19, 1997)).

Therefore, this factor points to a finding of no dumping since the issuance of the zero deposit rate. This would generally be our conclusion, except where, as here, information on the record is sufficient to determine dumping is likely to continue or recur.

Comment 3: The USBSA argues that the Department erred by making its likelihood determination on an order-wide basis. It argues that, although the Statement of Administrative Action ("the SAA")[4] at 879 states expressly that the Department will make its sunset determinations on an order-wide basis, the Department improperly compared recent import data for only one respondent (Rogers) to data following the issuance of the order for one respondent (BC Sugar). If the Department had made the proper comparison of total pre-order imports to total post-order imports, according to the USBSA, the Department would have no alternative but to conclude that import volumes have declined significantly during the life of the order.

Rogers did not address this comment.

Department's Position: The Department disagrees with the USBSA. Prior to the issuance of the order, Rogers was not the only exporter of subject merchandise. Other Canadian producers and exporters were subject to the original investigation and subsequent order. In its November 2, 1998, substantive response, however, the USBSA acknowledges that only Rogers is currently subject to this antidumping duty order (November 2, 1998, Substantive Response from the USBSA at 9). Therefore, comparison of Rogers' pre-and post-order import volumes was approriate.

On October 1, 1996, the Department determined that Rogers was the successor in interest to BC Sugar. In this determination, the Department found that BC Sugar changed its name legally to Rogers Sugar, Ltd. Because the structure and organization of the company did not change and Rogers was, for all intents and purposes, BC Sugar, the Department also determined that the deposit rate assigned to BC Sugar was applicable to Rogers. Therefore, the Department determined that, for the purposes of this antidumping duty order, BC Sugar and Rogers were predecessor and successor companies, respectively, of the same entity.

Because Rogers (formerly BC Sugar) is the only producer/exporter of sugar and syrups from Canada still subject to the order, the Department finds that it would be unreasonable to compare the present import volumes of Rogers with the pre-order import volumes of the four (or more) producers/exporters which were subject to the order in 1980. If it made this comparison, the Department would almost certainly find that total imports had decreased over the life of the order not only because there are fewer producers/exporters which are currently subject to the order but also because the tariff rate quota (TRQ) currently in effect restricts imports. Generally speaking, the purpose of the Department's comparison of current and pre-order import volumes is to determine whether companies (or the company) have been able to consistently and continually sell subject merchandise in the United States without dumping. Here, we compared the volume of BC Sugar's 1979 exports to the volume of Rogers' recent exports. Current imports of subject merchandise from Rogers (formerly BC Sugar) are

[4] H.R. Doc. No. 103–316, vol. 1 (1994).

substantially greater than the pre-order levels of BC Sugar (now Rogers). Therefore, our examination of import levels of BC Sugar/Rogers over the life of the order was appropriate.

Comment 4: The USBSA argues that the Department should have confirmed whether Canadian producers and refiners of subject merchandise have imported at dumped prices since the discipline of the order went into effect. The USBSA asserts that the Department's comparison should have included imports of refined cane and beet sugar from all Canadian exporters, except Lantic and Redpath, for which the order has been revoked. Furthermore, the USBSA argues that the Department never attempted to verify whether new Canadian sugar refiners have entered the market and instead limited its review to those producers previously involved in the initial investigation.

Department's Position: In its November 2, 1998, substantive response, the USBSA itself stated that only Rogers was subject to this antidumping duty order (November 2, 1998, Substantive Response from the USBSA at 9). There is no evidence on the record in this case of any other Canadian producer/exporter of cane or beet sugar which is currently subject to the order. Therefore, because we had no reason to doubt the USBSA's claim that Rogers is the only producer/exporter of subject merchandise still subject to this antidumping duty order, we have not investigated whether other Canadian producers exported subject merchandise to the United States.

Comment 5: The USBSA argues that the Department included non-subject merchandise in its examination of imports of sugar and syrups from Canada. The USBSA states further that increases in the imports of non-subject merchandise are irrelevant to this sunset review and their inclusion in the Department's examination is misrepresentation of the true amount of imports of subject merchandise.

Department's Position: Increases or decreases in non-subject merchandise are irrelevant to our sunset determination. For this reason, the Department has endeavored to determine an accurate amount of import volumes of the subject merchandise.

In the instant case, however, there are limitations to the data which do not make an exact accounting of the import volumes possible. The HTS item numbers used by the U.S. Census Bureau and the U.S. Customs Service with respect to imports of sugar and syrups from Canada include some non-subject merchandise. Furthermore, the age of this information in question and changes in the HTS system over the life of this order make estimation of imports of subject merchandise necessary. As noted above, the Department recognizes that there are data limitations. The Department has, nevertheless, attempted to compile the most accurate calculation of import volumes of subject merchandise over the life of the order.

Comment 6: The USBSA argues that the TRQ is no longer an effective means of preventing surges in dumped sugar from entering the U.S. market. The USBSA argues further that the U.S. Sugar Program is under assault in an attempt to expand access to the U.S. market significantly.

Department's Position: We agree with the USBSA that the TRQ has been effective in the past at limiting all imports of sugar. The TRQ, as part of the U.S. Sugar program, was designed to provide protection from imports of foreign sugar. However, the USBSA misunderstands the intent behind the creation and implementation of an antidumping duty order. The purpose behind this order is not to provide blanket protection from all imports of Canadian sugar; rather, its purpose is to counteract the effects of unfairly traded imports. This is evidenced by the fact that this order has been revoked with respect to Redpath and Lantic because the Department determined that these companies were not selling sugar in the United States at less than fair value. In the same vein, the TRQ was not created to be a substitute for an antidumping duty order, nor should it be viewed as such. The TRQ provides the U.S. industry protection from all imported sugar. It was not intended to act as an antidumping duty order on sugar from all of the world's sugar producers, whether their sugar was being sold at dumped prices or not.

The only issue in this sunset review is whether Canadian sugar and syrups are likely to be dumped in the United States in the foreseeable future. Whether the TRQ is no longer effective in limiting imports, dumped or not, is irrelevant to this sunset review.

Comment 7: The USBSA argues that the sugar market has fallen to unprecedented levels and shows no signs of recovery in the foreseeable future. The USBSA argues further that the Department, in its preliminary results, quickly dismissed the USBSA's argument as speculative when the conduct of sunset reviews is inherently speculative.

Rogers rebuts that an analysis of long-term trends in the history of the international sugar market shows that price peaks and troughs are characteristically short-lived. It states that the most recent severe price trough was in 1985 when the annual average price for raw sugar was $0.04/lb. Furthermore, Rogers argues that the current price trough appears to have bottomed out in April 1999 at about $0.04/lb. for raw sugar.

Rogers continues by reiterating that the USBSA's arguments concerning the declining world price for sugar are speculative and subjective which, Rogers notes the USBSA admits, may change depending on unpredictable events and changes in circumstances in producing and importing countries.

Department's Position: Sunset determinations are inherently speculative and predictive and, in our preliminary results, we stated that the USBSA's arguments concerning the decreases in world sugar prices were speculative. We also believe that, since sunset reviews are inherently predictive, the best predictor of future behavior is past behavior. In examining the world sugar prices over the life of the order, we find that, although prices in early 1999 are at their lowest point in 12 years, generally prices have fluctuated over this time, with prices in fiscal year 1998 being only marginally below fiscal year 1993 prices. We also find that the current prices for refined sugar are not unprecedented, as Rogers' information concerning 1985 raw sugar prices demonstrates.

Comment 8: The USBSA argues that the recent downward spiral of the world refined-sugar price has a direct impact on Canadian prices and incentives to export to the United States. According to the USBSA, with a world price standing near $0.09/lb. and a Canadian price that Rogers argues mimics the world price, it is inescapable that Rogers' home market sales in Canada are today priced at less than cost and will be so priced in the future. As the record in this proceeding shows, the USBSA contends, not even the most efficient sugar producers can produce sugar for around $0.09/lb.

Rogers argues that it has had a zero margin through 16 years of world price fluctuations, including times of prices lower than at present, while maintaining a dumping margin of zero. It states that the Department verified its information and that the verification demonstrated that sales in Canada and the United States are at prices significantly above cost of production.

Furthermore, Rogers states that, since prices in the United States were verified as higher than prices in Canada, there is no credible way Rogers could have been selling below the COP.

Department's Position: The recent decreases in the world refined-sugar price undoubtedly affected the Canadian price of refined sugar because the Canadian price parallels the world price. Although the Canadian price parallels the world price, it is not the same as the world price. Therefore, it is quite reasonable to assume, given Rogers' costs of manufacturing and the transportation costs associated with the location of its sales within Canada, that the selling price of its product could be above its cost of manufacturing and still be competitive with other producers/exporters.

The world price of refined sugar obviously affects the selling price of sugar in Canada and, thus, indirectly, may affect Rogers' selling price. Nevertheless, the salient issue for this sunset review is not the world price of refined sugar but, rather, Rogers' costs and prices. Thus, we have limited our examination to Rogers' costs and prices.

Comment 9: The USBSA states that, as the United States slowly reduces the Canadian tier-2 tariff rate through 2008, the U.S. market will become increasingly vulnerable to imports of Canadian sugar if the world price of sugar falls below certain levels. Specifically, the USBSA argues that, given the world refined price of $0.0913/lb., the ability of Canadian producers to export refined sugar to the United States profitably while paying the tier-2 tariff is already becoming a reality.

Rogers argues that, given the current U.S. selling price of $0.28/lb., with the addition of the tier-2 duty of $0.1621/lb., Rogers would be required to sell in the United States at prices significantly below the lowest price it now receives for the same product in Canada. Furthermore, Rogers asserts, its production is not in excess of market demand in Western Canada. Finally, according to Rogers, the refusal of sugar beet growers to participate and support prices low enough to take account of the tier-2 level (which would be necessary to sell any product in the United States) would make such sales prohibitive.

Department's Position: The Department finds no evidence to suggest that Rogers would sell sugar in the United States above the country-specific quota established for Canada (i.e., paying the tier-2 tariff rate).[5] In order for Rogers to sell sugar in the United States and pay the tier-2 tariff rate, Rogers would have to sell its product (1) at prices substantially less than the lowest price it receives for a similar product sold in Canada, (2) at prices far below its costs of production, and (3) at prices far below the current world price of refined sugar. The Department finds it extremely unlikely that Canadian producers could export refined sugar to the United States *profitably* while paying the tier-2 tariff.

Magnitude of the Margin

Neither party addressed this issue in its case or rebuttal briefs. Therefore, we have relied on the arguments submitted prior to the preliminary results.

Comment 1: In its substantive response, the USBSA argued that the dumping margin likely to prevail is at least as large as the margin that prevailed at the time of the original investigation; the highest dumping margin established in the original investigation was US$0.0237/lb.[6] Further, based on current U.S. and Canadian pricing, the USBSA estimated dumping margins ranging from 9.3 percent to 409.0 percent. As noted above, the USBSA did not comment on the margin likely to prevail in either its case or rebuttal brief.

In its substantive response, Rogers argued that, given the price spread between the U.S. supply-managed sugar market and the Canadian market based on world pricing, the dumping margin likely to prevail if the order were to be revoked is zero. Rogers argued that, because of its limited access to the U.S. market, it is motivated to sell subject merchandise at U.S. refined-sugar prices to maximize returns. Rogers provided a chart depicting sugar prices in the Canadian and U.S. markets and its price into the United States for the past eight years, as well as a calculation for producing processed beet sugar at its facility in Canada. Rogers contended that the chart indicates that Rogers' price into the United States has been above its prices in Western Canada. In its case and rebuttal briefs, Rogers also asserted that there is no likelihood of continuation or recurrence of dumping if the order were to be revoked.

Department's Position: The Department disagrees with Rogers. As discussed in detail above, evidence placed on the record of this sunset review by Rogers, and verified by the Department, indicates that there is a likelihood that dumping would continue or recur if the order were to be revoked.

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the International Trade Commission (the "Commission") the margin that was determined in the final determination in the original investigation because that is the only calculated rate that reflects the behavior of exporters absent the discipline of the order. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (See sections II.B.2 and 3 of the Sunset Policy Bulletin.)

In our preliminary results, we determined that the use of a more recently calculated rate was appropriate and that such rate reflected an absence of dumping. However, as noted above, for our final results, we find that verified information demonstrates the likelihood of dumping. Therefore, we conclude that the more recently calculated rate from an administrative review can no longer be considered the magnitude of the margin likely to prevail if the order were revoked.

We agree with the USBSA that the dumping margin likely to prevail if the order were to be revoked is at least as high as the dumping margin determined in the original investigation for BC Sugar. We recognize that our dumping calculation for purposes of determining likelihood of future dumping is not as accurate as a determination which would reflect the adjustments typically made in an investigation or administrative review. Therefore, the Department finds that the margins calculated in the original investigation (45 FR 24126, April 9, 1980)[7] are probative of the behavior of Canadian producers/exporters of the subject merchandise. As such, the Department will report to the Commission the company-specific and all others rates from the original investigation as the magnitude of the margin likely to prevail if the order were revoked.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin
Rogers (B.C. Sugar)	$0.010105/lb.
All Others	0.023700/lb.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 27, 1999.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–23039 Filed 9–2–99; 8:45 am]

BILLING CODE 3510–DS–P

[5] The Department notes that the USBSA has examined the effects of the Canadian tier-2 tariff rate on the possibility of increased imports from Canada through the year 2008. However, the USBSA has stringently argued that the TRQ will be phased out by the year 2002.

[6] *See Antidumping Duty Order; Sugar and Syrups from Canada*, 45 FR 24128 (April 9, 1980).

[7] As the Department noted in its preliminary results (*see Preliminary Results of Full Sunset Review: Sugar and Syrups from Canada*, 64 FR 20253 (April 26, 1999)) and above, Rogers (formerly BC Sugar) is the only known producer/exporter of the subject merchandise currently subject to the order.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–351–604]

Final Results of Expedited Sunset Review: Brass Sheet and Strip From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: brass sheet and strip from Brazil.

SUMMARY: On February 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the countervailing duty order on brass sheet and strip from Brazil (64 FR 4840) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of the domestic interested parties, as well as inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited (120 day) review. As a result of this review, the Department finds that termination of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

EFFECTIVE DATE: September 3, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

This order covers shipments of coiled, wound-on-reels (traverse wound), and cut-to-length brass sheet and strip (not leaded or tinned) from Brazil. The subject merchandise has, regardless of width, a solid rectangular cross section over 0.0006 inches (0.15 millimeters) through 0.1888 inches (4.8 millimeters) in finished thickness or gauge. The chemical composition of the covered products is defined in the Copper Development Association ("C.D.A.") 200 Series or the Unified Numbering System ("U.N.S.") C2000; this review does not cover products with chemical compositions that are defined by anything other than C.D.A. or U.N.S. series. The merchandise is currently classified under Harmonized Tariff Schedule ("HTS") item numbers 7409.21.00 and 7409.29.00. The HTS item numbers are provided for convenience and U.S. Customs purposes. The written description remains dispositive.

History of the Order

In the original investigation, the Department received information on two Brazilian producers and exporters that accounted for substantially all exports of brass sheet and strip to the United States during the period of investigation. In its final affirmative countervailing duty determination (52 FR 1218, January 12, 1987), the Department concluded that the Government of Brazil was providing countervailable subsidies to exporters of the subject merchandise through four programs: (1) Preferential Working Capital Financing for Exports (CACEX); (2) Income Tax Exemption for Export Earnings; (3) Export Financing Under the CIC–CREGE 14–11 Circular; and (4) Import Duty Exemption Under Decree-Law 1189 of 1979.[1] We estimated the net subsidy to be 6.13 percent *ad valorem*, and, on the basis of a program-wide change in the Preferential Working Capital Financing for exports program which occurred prior to the preliminary determination, we established a cash deposit rate of 3.47 percent *ad valorem* for all manufacturers, producers, or exporters of brass sheet and strip from Brazil.

The Department has since conducted one administrative review (56 FR 56631 (November 6, 1991)) of this countervailing duty order, covering the period January 1, 1990, through December 31, 1990. In the Department's preliminary results of the administrative review, and supported by the Department's final results of the administrative review, the Department determined that each of the four programs found to provide countervailable benefits in the investigation had been terminated. Preferential Working Capital Financing for Exports was terminated, effective August 30, 1990, by Central Bank Resolution 1744. Loans under this program were officially suspended on February 22, 1989, until the program was terminated. The program of Income Tax Exemption for Export Earnings, which eliminated the tax exemption and established a prevailing tax rate of 30 percent for domestic and export earnings for 1991, was effectively terminated by Decree Law 8034, April 12, 1990. Export Financing Under the CIC–CREGE 14–11 Circular (which became CIC–OPCRE 6–2–6) was deemed to be terminated as it had set interest rates equal to those of market rate loans as of September 20, 1988, and there is no evidence of current or future changes. Finally, the Import Duty Exemption Under Decree Law 1189 was officially terminated by the Government of Brazil by Decree Law 7988, Article 7, on December 28, 1989. In its final results of review, the Department noted that substantial documentation, including verification reports, confirmed the termination without replacement of these four

[1] *See Final Affirmative Countervailing Duty Determination: Brass Sheet and Strip From Brazil*, November 10, 1986 (51 FR 40837).

countervailable subsidy programs.[2] As a result of the review, the Department set the duty deposit at zero. No additional reviews have been conducted.

Background

On February 1, 1999, the Department initiated a sunset review of the countervailing duty order on brass sheet and strip from Brazil (64 FR 4840), pursuant to section 751(c) of the Act. On February 16, 1999, the Department received a Notice of Intent to Participate on behalf of Heyco Metals, Inc. ("Heyco"), Hussey Copper Ltd. ("Hussey"), Olin Corporation-Brass Group ("Olin"), Outokumpu American Brass ("Outokumpu") (formerly American Brass Company), PMX Industries, Inc. ("PMX"), Revere Copper Products, Inc. ("Revere"), the International Association of Machinists and Aerospace Workers, the United Auto Workers (Local 2367), and the United Steelworkers of America (AFL/CIO–CLC) (hereinafter, collectively "domestic interested parties"), within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. The domestic interested parties claimed interested party status under sections 771(9)(C) and (D) of the Act as domestic brass mills, rerollers, and unions engaged in the production of brass sheet and strip. With the exception of Heyco, all of the aforementioned parties were original petitioners in this case.

We received a complete substantive response from the domestic interested parties on March 3, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i); we did not receive a substantive response from any government or respondent interested party to this proceeding. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of this order.

The Department determined that the sunset review of the countervailing duty order on brass sheet and strip from Brazil is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). (*See* section 751(c)(6)(C) of the Act.) Therefore, on June 7, 1999, the Department extended the time limit for completion of the final results of this review until not later than August 30, 1999, in accordance with section 751(c)(5)(B) of the Act.[3]

Determination

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether termination of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the program which gave rise to the net countervailable subsidy is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission ("the Commission") the net countervailable subsidy likely to prevail if the order is revoked. In addition, consistent with section 752(a)(6), the Department shall provide to the Commission information concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures ("Subsidies Agreement").

The Department's determinations concerning continuation or recurrence of a countervailable subsidy are discussed below. In addition, the domestic interested parties' comments with respect to these issues are addressed within the respective sections.

Continuation or Recurrence of a Countervailable Subsidy

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically, the Statement of Administrative Action ("SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section III.A.2 of the *Sunset Policy Bulletin*). Additionally, the Department normally will determine that revocation of a countervailing duty order is likely to lead to continuation or recurrence of a countervailable subsidy where (a) a subsidy program continues, (b) a subsidy program has been only temporarily suspended, or (c) a subsidy program has been only partially terminated (*see* section III.A.3.a of the *Sunset Policy Bulletin*). Exceptions to this policy are provided where a company has a long record of not using a program (*see* section III.A.3.b of the *Sunset Policy Bulletin*).

In addition to considering the guidance cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. Moreover, pursuant to the SAA, at 881, in a review of a countervailing duty order, when the foreign government has waived participation, the Department shall conclude that revocation of the order would be likely to lead to a continuation or recurrence of a countervailable subsidy for all respondent interested parties.[4] In the instant review, the Department did not receive a response from the foreign government or from any other respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

In their substantive response, the domestic interested parties assert that, consistent with the Act and SAA, and absent significant evidence to the contrary, continuation, temporary suspension or partial termination of a subsidy program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies (*see* March 3, 1999 Substantive Response of domestic interested parties at 33).

In their March 12, 1999 comments, the domestic interested parties assert that the Department should find that revocation of the countervailing duty order on brass sheet and strip from Brazil will result in the continuation or recurrence of a countervailable subsidy on the basis of the failure of respondent interested parties to file a complete substantive response to the Department's notice of initiation.

The domestic interested parties argue that this is consistent with 19 U.S.C. 1675(c)(4)(B) and the SAA, which provide that, where the government waives participation, the Department will conclude that revocation or termination would be likely to lead to continuation of countervailable subsidies (*see* March 12, 1999 comments of domestic interested parties at 3).

In this sunset review, as argued by the domestic interested parties, the Department is required by section 751(c)(4)(B) of the Act to find likelihood on the basis that the government of Brazil and the respondents waived their right to participate in this review. The participation of the government that has provided subsidies is necessary to determine that the producers/exporters of subject merchandise no longer receive subsidies and, without such participation, we must conclude that the producers/exporters continue to be subsidized. Therefore, consistent with the statute and SAA, the Department determines that revocation of the order is likely to result in continuation or recurrence of a countervailable subsidy.

Net Countervailable Subsidy

In the *Sunset Policy Bulletin*, the Department states that, consistent with the SAA and House Report, the Department normally will select a rate from the investigation because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order or suspension agreement in place. However, the *Sunset Policy Bulletin* also allows for adjustments to be made to the net subsidy rate likely to prevail where programs have either been terminated, with no residual benefits, and where the Department has found new countervailable programs to exist.[5] Additionally, where the Department determined company-specific countervailable subsidy rates in the original investigation, the *Sunset Policy Bulletin* states that the Department will report to the Commission company-specific rates for those companies from the original investigation as well as an "all others" rate (*see Sunset Policy Bulletin* at section III.A.4).

The domestic interested parties cite the SAA statement that the Administration intends that Commerce normally will select the rate from the investigation because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place (see March 3, 1999 Substantive Response of domestic interested parties at 45). Therefore, the domestic interested parties argue that the Department should determine that the net countervailable subsidy likely to prevail should be the country-wide rate of 3.47 percent, the rate set forth in the original investigation.

The Department disagrees with the domestic interested parties' position with respect to the appropriate subsidy rate to be reported to the Commission. As acknowledged by the domestic interested parties, in this case, the Department found that all of the countervailable subsidy programs have been terminated, without likelihood of reinstatement. Absent information on usage of other countervailable subsidy programs, the Department has no basis on which to determine the net countervailable subsidy likely to prevail.

Nature of the Subsidy

In the *Sunset Policy Bulletin*, the Department states that, consistent with section 752(a)(6) of the Act, the Department will provide information to the Commission concerning the nature of the subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement. In their March 3, 1999 substantive response, the domestic interested parties, did not address this issue. However, since all of the known countervailable programs have been terminated, there is no nature of the subsidy to report to the Commission.

Final Results of Review

As a result of this review, the Department finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. However, as a result of termination of all known countervailable programs, the Department is unable to determine the net countervailable subsidy likely to prevail.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 30, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–23045 Filed 9–2–99; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See Brass Sheet and Strip From Brazil; Final Results of Countervailing Duty Administrative Review*, 56 FR 56631 (November 6, 1991).

[3] *See Porcelain-on-Steel Cooking Ware From the People's Republic of China, Porcelain-on-Steel Cooking Ware From Taiwan, Top-of-the-Stove Stainless Steel Cooking Ware From Korea (South) (AD & CVD), Top-of-the-Stove Stainless Steel Cooking Ware From Taiwan (AD & CVD), Standard Carnations From Chile (AD & CVD), Fresh Cut Flowers From Mexico, Fresh Cut Flowers From Ecuador, Brass Sheet and Strip From Brazil (AD & CVD), Brass Sheet and Strip From Korea (South), Brass Sheet and Strip From France (AD & CVD), Brass Sheet and Strip From Germany, Brass Sheet and Strip From Italy, Brass Sheet and Strip From Sweden, Brass Sheet and Strip From Japan, Pompon Chrysanthemums From Peru: Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 30305 (June 7, 1999).

[4] *See* 19 CFR 351.218(d)(2)(iv).

[5] *See* sections III.B.1, III.B.3.A, and III.B.3.C of the *Sunset Policy Bulletin*.

DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–603]

Final Results of Expedited Sunset Review: Brass Sheet and Strip from France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review: Brass Sheet and Strip from France.

SUMMARY: On February 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the countervailing duty order on brass sheet and strip from France (64 FR 4840) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and adequate substantive comments filed on behalf of domestic interested parties, as well as inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited (120 day) review. As a result of this review, the Department finds that termination of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy and the nature of the subsidy are identified in the "Final Results of Review" section of this notice.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, US Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

EFFECTIVE DATE: September 3, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the

conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

This order covers shipments of coiled, wound-on-reels (traverse wound), and cut-to-length brass sheet and strip (not leaded or tinned) from France. The subject merchandise has, regardless of width, a solid rectangular cross section over 0.0006 inches (0.15 millimeters) through 0.1888 inches (4.8 millimeters) in finished thickness or gauge. The chemical composition of the covered products is defined in the Copper Development Association ("C.D.A.") 200 Series or the Unified Numbering System ("U.N.S.") C2000; this review does not cover products with chemical compositions that are defined by anything other than the C.D.A. or U.N.S. series. The merchandise is currently classified under Harmonized Tariff Schedule ("HTS") item numbers 7409.21.00 and 7409.29.00. The HTS item numbers are provided for convenience and U.S. Customs purposes. The written description remains dispositive.

This review covers all producers and exporters of brass sheet and strip from France.

History of the Order

The Government of France, Pechiney S.A. ("Pechiney") and Trefimeteaux S.A ("Trefimeteaux") participated in the original investigation. Two programs were found to confer subsidies: (1) Government Equity Infusion and Other Financial Assistance to Trefimetaux, and (2) Certain Financing from Credit National.

The Department published its final affirmative countervailing duty determination on brass sheet and strip from France in the **Federal Register** on January 12, 1987 (52 FR 1218) and issued the countervailing duty order on March 6, 1987 (52 FR 6996). The Department determined the estimated net subsidy to be 7.24 percent and the order remains in effect for all producers and exporters of brass sheet and strip from France. The Department has not conducted any administrative reviews since the issuance of the order.

Background

On February 1, 1999, the Department initiated a sunset review of the countervailing duty order on brass sheet and strip from France (64 FR 4840), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of Heyco Metals, Inc. ("Heyco"), Hussey Copper Ltd. ("Hussey"), Olin Corporation-Brass Group ("Olin"), Outokumpu American Brass ("Outokumpu") (formerly American Brass Company), PMX Industries, Inc. ("PMX"), Revere Copper Products, Inc. ("Revere"), the International Association of Machinists and Aerospace Workers, the United Auto Workers (Local 2367), and the United Steelworkers of America (AFL/CIO-CLC) (hereinafter, collectively "domestic interested parties") on February 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. We received a complete substantive response from the domestic interested parties on March 3, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i).

The domestic interested parties claimed interested party status under 19 U.S.C. 1677(9)(C) and (D) as well as under sections 771(9)(C) and (D) of the Act, as domestic brass mills, rerollers, and unions engaged in the production of brass sheet and strip. With the exception of Heyco, all of the aforementioned parties were original petitioners in this case.

We did not receive a substantive response from any respondent interested party to this proceeding. Pursuant to section 351.218(d)(2)(iii) of the Sunset Regulation, this constitutes a waiver of participation. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of this order.

The Department determined that the sunset review of the countervailing duty investigation on brass sheet and strip from France is extraordinarily complicated. In accordance with 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (i.e., an order in effect on January 1, 1995). (*See* section 751(c)(6)(C) of the Act.) Therefore, on June 7, 1999, the Department extended the time limit for completion of the final results of this review until not later than August 30, 1999, in accordance with section 751(c)(5)(B) of the Act.[1]

Determination

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether termination of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the program which gave rise to the net countervailable subsidy has occurred and is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission ("the Commission") the net countervailable subsidy likely to prevail if the order is revoked. In addition, consistent with section 752(a)(6), the Department shall provide to the Commission information concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures ("Subsidies Agreement").

The Department's determinations concerning continuation or recurrence of a countervailable subsidy, the net countervailable subsidy likely to prevail if the order is revoked, and nature of the subsidy are discussed below. In addition, the domestic interested parties' comments with respect to each of these issues are addressed within the respective sections.

Continuation or Recurrence of a Countervailable Subsidy

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the SAA, H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103-412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section III.A.2 of the *Sunset Policy Bulletin*). Additionally, the Department normally will determine that revocation of a countervailing duty order *is* likely to lead to continuation or recurrence of a countervailable subsidy where (a) A subsidy program continues, (b) a subsidy program has been only temporarily suspended, or (c) a subsidy program has been only partially terminated (*see* section III.A.3.a of the *Sunset Policy Bulletin*). Exceptions to this policy are provided where a company has a long record of not using a program (*see* section III.A.3.b of the *Sunset Policy Bulletin*).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. Pursuant to the SAA, at 881, in a review of a countervailing duty order, when the foreign government has waived participation, the Department shall conclude that revocation of the order would be likely to lead to a continuation or recurrence of a countervailable subsidy for all respondent interested parties.[2] In the instant review, the Department did not receive a response from the foreign government or from any other respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

The domestic interested parties argue that revocation of the countervailing duty order on brass sheet and strip from France will result in the continuation or recurrence of a countervailable subsidy. Citing the SAA, the domestic interested parties assert that continuation, temporary or partial termination of a subsidy program will be highly probative of the likelihood of continuation or recurrence of countervailable subsidies, absent significant evidence to the contrary (*see* March 3, 1999 Substantive Response of domestic interested parties at 33). The domestic interested parties assert that there is no indication that the French government's subsidy programs have been modified or eliminated (*see* March 3, 1999 Substantive Response of domestic interested parties at 38), and they submit as support the fact that the order has never been subject to an administrative review.

In its final countervailing duty determination (January 12, 1987; 52 FR 1218), the Department concluded that the Government of France was providing countervailable subsidies to exporters of the subject merchandise through two different programs: (1) Government Equity Infusion and Other Financial Assistance and (2) Certain Financing from Credit National. Trefimetaux, the sole producer/exporter reviewed by the Department, was determined to be receiving subsidies through both of these programs.

There have been no administrative reviews of this order, nor has any evidence been submitted to the Department demonstrating the termination of these programs that conferred countervailable subsidies. Therefore, it is reasonable to assume that these programs continue to exist and are utilized. Absent argument and evidence to the contrary, the Department determines that there is a likelihood of continuation or recurrence of a countervailable subsidy if the order were revoked.

Net Countervailable Subsidy

In the *Sunset Policy Bulletin*, the Department stated that, consistent with the SAA and House Report, the Department normally will select a rate from the investigation, because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order or suspension agreement in place. The Department noted that this rate may not be the most appropriate rate if, for example, the rate was derived from subsidy programs which were found in subsequent reviews to be terminated, there has been a program-wide change, or the rate ignores a program found to be countervailable in a subsequent administrative review.[3]

The domestic interested parties, citing the SAA, note that the Administration intends that Commerce normally will select the rate from the investigation, because that is the only calculated rate that reflects the behavior or exporters and foreign governments without the discipline of an order in place (*see* March 3, 1999 Substantive Response of domestic interested parties at 45). Therefore, the domestic interested parties argue that the Department should determine that the net countervailable subsidy likely to prevail is 7.24 percent, the rate set forth in the original investigation.

The rate determined in the original investigation was 7.24 percent for all imports of brass sheet and strip from France, and, as noted above, there have been no administrative reviews of this order. Absent administrative review, the Department has never found that substantive changes have been made to the programs found to be countervailable. Therefore, since no changes have been made to any of the French subsidy programs, and absent any argument and evidence to the contrary, the Department determines that the net countervailable subsidy that would be likely to prevail in the event of revocation of the order would be 7.24 percent. This rate is for all producers and exporters of the subject merchandise from France.

Nature of the Subsidy

In the *Sunset Policy Bulletin*, the Department states that, consistent with section 752(a)(6) of the Act, the Department will provide to the Commission information concerning the nature of the subsidy, and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement. The domestic interested parties did not address this issue in their substantive response of March 3, 1999.

Because the receipt of benefit under one of the two programs is contingent on exports, this program falls within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement. The remaining program, although not falling within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement, could be found to be inconsistent with Article 6 if the net countervailable subsidy exceeds five percent, as measured in accordance with Annex IV of the Subsidies Agreement. The Department, however, has no information with which to make such a calculation, nor do we believe it appropriate to attempt such a calculation in the course of a sunset review. Rather, we are providing the Commission with the following program descriptions.

Certain Financing from Credit National. Trefimetaux received countervailable subsidies under a program of loans provided by Credit National, which has a strong relationship with the Government (the President of France appoints the General Manager). In this case, the Department found that Trefimetaux received special loans from Credit National between 1976 and 1985.

[1] *See Porcelain-on-Steel Cooking Ware From the People's Republic of China, Porcelain-on-Steel Cooking Ware From Taiwan, Top-of-the-Stove Stainless Steel Cooking Ware From Korea (South) (AD & CVD), Top-of-the-Stove Stainless Steel Cooking Ware From Taiwan (AD & CVD), Standard Carnations From Chile (AD &CVD), Fresh Cut Flowers From Mexico, Fresh Cut Flowers From Ecuador, Brass Sheet and Strip From Brazil (AD & CVD), Brass Sheet and Strip From Korea (South), Brass Sheet and Strip From France (AD & CVD), Brass Sheet and Strip From Germany, Brass Sheet and Strip From Italy, Brass Sheet and Strip From Sweden, Brass Sheet and Strip From Japan, Pompon Chrysanthemums From Peru: Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 30305 (June 7, 1999).

[2] *See* 19 CFR 351.218(d)(2)(iv).

[3] *See* section III.B.3 of the *Sunset Policy Bulletin*.

Specifically, Credit National provided to Trefimetaux a loan with an interest reduction contingent upon increasing exports, including the subject merchandise. Therefore, the Department determines that this program constituted an export subsidy.

Government Equity Infusion and Other Financial Assistance to Trefimetaux. This program enabled Trefimetaux to receive equity infusions and other financial assistance from Pechiney, its parent company, from 1982 to 1985. Pechiney received direct equity infusions from the Government of France, and provided them to Trefimetaux through (1) equity infusions, (2) loans on terms inconsistent with commercial considerations, and (3) government grants during a period when Trefimetaux was determined by the Department to be neither equity nor credit-worthy.

Final Results of Review

As a result of this review, the Department finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy has been determined to be:

Manufacturer/Exporter	Margin (percent)
Trefimetaux S.A.	7.24
All Others	7.24

The Government of France's subsidy programs, as determined in the original investigation, have been deemed to be countervailable subsidies within the definitions provided by Article 3 and Article 6.1 of the Subsidies Agreement, and all of these subsidy programs, as determined in the original investigation, remain in place today.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 30, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–23047 Filed 9–2–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Final Results of Expedited Sunset Review: Top-of-the-Stove Stainless Steel Cookware From Taiwan

[C–583–604]

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review: Top-of-the-Stove Stainless Steel Cookware from Taiwan.

SUMMARY: On February 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the countervailing duty order on top-of-the-stove stainless steel cookware from Taiwan (64 FR 4840) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties and an inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy and the nature of the subsidy are identified in the *Final Results of Review* section of to this notice.

FOR FURTHER INFORMATION CONTACT: Darla D. Brown or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Ave., NW., Washington, D.C. 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

EFFECTIVE DATE: September 3, 1999.

Statute and Regulations:

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("Sunset Regulations"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) *("Sunset Policy Bulletin")*.

Scope

The merchandise subject to this countervailing duty order is top-of-the-stove stainless steel cookware ("cookware") from Taiwan. The subject merchandise is all non-electric cooking ware of stainless steel which may have one or more layers of aluminum, copper or carbon steel for more even heat distribution. The subject merchandise includes skillets, frying pans, omelette pans, saucepans, double boilers, stock pots, dutch ovens, casseroles, steamers, and other stainless steel vessels, all for cooking on stove top burners, except tea kettles and fish poachers.

Excluded from the scope of the orders are stainless steel oven ware and stainless steel kitchen ware. "Universal pan lids" are not within the scope of the order (57 FR 57420, December 4, 1992).

Cookware is currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 7323.93.00 and 9604.00.00. The HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

History of the Order

The countervailing duty order on cookware from Taiwan was published in the **Federal Register** on January 20, 1987 (52 FR 2141).

In the original investigation of cookware from Taiwan, the Department determined the following four programs conferred countervailable export subsidies:

(1) Export Loss Reserve—0.001 percent ad valorem;

(2) 25 Percent Income Tax Ceiling for Big Trading Companies—0.010 percent ad valorem;

(3) Over-Rebate of Duty Drawback on Imported Materials Physically Incorporated in Export Merchandise—2.128 percent ad valorem; and

(4) Rebate of Import Duties and Indirect Taxes on Imported Materials Not Physically Incorporated in Export Merchandise—0.002 percent ad valorem.[1]

[1] Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Cooking Ware from Taiwan, 51 FR 42891(November 26, 1986).

The Department determined that these four programs conferred a bounty or grant, the net amount of which was calculated to be 2.14 percent ad valorem for all Taiwanese exporters/producers of cookware.

Since the original investigation, the Department has conducted no administrative reviews of the order. The order, therefore, remains in effect for all known manufacturers and exporters of the subject merchandise from Taiwan.

Background

On February 1, 1999, the Department initiated a sunset review of the countervailing duty order on cookware from Taiwan (64 FR 4840), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of the Stainless Steel Cookware Committee, whose current members are Regal Ware, Inc., All-Clad Metalcrafters, Inc., and Vita Craft Corp. (collectively, the "Committee"), on February 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. Pursuant to section 771(9)(E) of the Act, the Committee claimed interested party status as an association of U.S. manufacturers of a domestic like product. In addition, the Committee's individual members claimed domestic interested party status pursuant to section 771(9)(C) of the Act, as domestic producers of a like product. The Department received a complete substantive response from the Committee on March 3, 1999, within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i). We did not receive a substantive response from any respondent interested party. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of this order.

The Department determined that the sunset review of the countervailing duty order on cookware from Taiwan is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). (*See* section 751(c)(6)(C) of the Act.) Therefore, on June 7, 1999, the Department extended the time limit for completion of the final results of this review until not later than August 30, 1999, in accordance with section 751(c)(5)(B) of the Act.[2]

[2] *See Porcelain-on-Steel Cooking Ware From the People's Republic of China, et al.: Extension of Time Limit for Final Results of Five-Year Reviews, 64 FR 30305* (June 7, 1999).

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the countervailing duty order would be likely to lead to continuation or recurrence of countervailable subsidies. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the program which gave rise to the net countervailable subsidy has occurred that is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission ("the Commission") the net countervailable subsidy likely to prevail if the order is revoked. In addition, consistent with section 752(a)(6), the Department shall provide the Commission information concerning the nature of each subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures ("Subsidies Agreement").

The Department's determinations concerning continuation or recurrence of a countervailable subsidy, the net countervailable subsidy likely to prevail if the order is revoked, and nature of the subsidy are discussed below. In addition, the Committee's comments with respect to each of these issues are addressed within the respective sections below.

Continuation or Recurrence of a Countervailable Subsidy

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section III.A.2 of the *Sunset Policy Bulletin*). Additionally, the Department normally will determine that revocation of a countervailing duty order is likely to lead to continuation or recurrence of a countervailable subsidy where (a) a subsidy program continues, (b) a subsidy program has been only temporarily suspended, or (c) a subsidy program has been only partially terminated (*see* section III.A.3.a of the *Sunset Policy Bulletin*). Exceptions to this policy are provided where a company has a long record of not using a program (*see* section III.A.3.b of the *Sunset Policy Bulletin*).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of the order would be likely to lead to continuation or recurrence of a countervailable subsidy where a respondent interested party waives its participation in the sunset review. Moreover, according to the guidance provided by the SAA, at 881, in a review of a countervailing duty order, when the foreign government has waived participation, the Department shall conclude that revocation of the order would be likely to lead to continuation or recurrence of a countervailable subsidy for all respondent interested parties.[3] In the instant review, the Department did not receive a substantive response from the foreign government or from any other respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

The Committee asserted in its substantive response that Taiwanese producers/exporters of cookware continue to receive countervailable benefits from four programs administered by the GOT and found by the Department in the original investigation to confer countervailable subsidies. Although no administrative reviews have been conducted since the imposition of the original countervailing duty order, the Committee argued that it is not aware of any other Department determinations in which these programs were found not countervailable. Therefore, the Committee maintained that the Department should determine that revocation of the countervailing duty order on cookware from Taiwan would likely result in the continuation of a countervailable subsidy.

We agree with the Committee that the Taiwanese programs remain in place. As noted above, in our final determination, the Department determined that the programs in question conferred subsidies, the net amount of which was calculated to be 2.14 percent ad valorem for Taiwanese exporters/producers of cookware. The Department has

[3] *See* 19 CFR 351.218(d)(2)(iv).

conducted no administrative reviews of this outstanding countervailing duty order.

Given that the programs found to provide countervailable subsidies continue to exist, the foreign government and other respondent parties waived their right to participate in this review before the Department, and absent argument and evidence to the contrary, the Department determines that it is likely that a countervailable subsidy will continue if the order is revoked.

Net Countervailable Subsidy

In the *Sunset Policy Bulletin*, the Department stated that, consistent with the SAA and House Report, the Department normally will select a rate from the investigation as the net countervailable subsidy likely to prevail if the order is revoked because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order or suspension agreement in place. The Department noted that this rate may not be the most appropriate rate if, for example, the rate was derived from subsidy programs which were found in subsequent reviews to be terminated, if there has been a program-wide change, or if the rate ignores a program found to be countervailable in a subsequent administrative review. (*See* section III.B.3 of the *Sunset Policy Bulletin*.) Additionally, where the Department determined company-specific countervailing duty rates in the original investigation, the Department normally will report to the Commission company-specific rates from the original investigation; where no company-specific rate was determined for a company, the Department normally will provide to the Commission the country-wide or "all others" rate. (*See* section III.B.2 of the *Sunset Policy Bulletin*.)

In their substantive response, the Committee argued that the net countervailable subsidy likely to prevail if the order on cookware from Taiwan is revoked is the net subsidy determined in the original investigation. Specifically, the Committee argued that the rate likely to prevail if the order were revoked is 2.14 percent ad valorem. The Committee pointed out that, because the rate determined in the original investigation is the only calculated rate which reflects the behavior of exporters without the discipline of the order in place, the Department's policy provides that it normally will select this rate to provide to the Commission.

As discussed in the *Sunset Policy Bulletin*, the Department normally will report to the Commission an original subsidy rate, as adjusted, to take into account terminated programs, program-wide changes, and programs found to be countervailable in subsequent reviews. We agree with the Committee that the programs found to provide countervailable subsidies continue to exist. Absent evidence or argument that there have been any changes to the programs found to be countervailable in the original investigation that would affect the net countervailable subsidy, consistent with the *Sunset Policy Bulletin*, the Department determines that the net countervailable subsidy likely to prevail if the order were revoked is 2.14 percent.

Nature of the Subsidy

In the *Sunset Policy Bulletin*, the Department stated that, consistent with section 752(a)(6) of the Act, the Department will provide information to the Commission concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement. The Committee did not specifically address this issue in their substantive response.

Because, in the original investigation, we found receipt of benefits under each of the four programs to be contingent upon exports, these programs fall within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement.

Final Results of Review

As a result of this review, the Department finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy likely to prevail if the order were revoked is 2.14 percent *ad valorem*.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 30, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–23034 Filed 9–2–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–580–602]

Final Results of Expedited Sunset Review: Top-of-the-Stove Stainless Steel Cookware From South Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: top-of-the-stove stainless steel cookware from South Korea.

SUMMARY: On February 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the countervailing duty order on top-of-the-stove stainless steel cookware from South Korea (64 FR 4840) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy and the nature of the subsidy are identified in the Final Results of Review section of to this notice.

FOR FURTHER INFORMATION CONTACT: Darla D. Brown or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Ave.. NW., Washington, D.C. 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

EFFECTIVE DATE: September 3, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Scope

The merchandise subject to this countervailing duty order is top-of-the-stove stainless steel cookware ("cookware") from Korea. The subject merchandise is all non-electric cooking ware of stainless steel which may have one or more layers of aluminum, copper or carbon steel for more even heat distribution. The subject merchandise includes skillets, frying pans, omelette pans, saucepans, double boilers, stock pots, dutch ovens, casseroles, steamers, and other stainless steel vessels, all for cooking on stove top burners, except tea kettles and fish poachers.

Excluded from the scope of the order is stainless steel oven ware and stainless steel kitchen ware. Certain stainless steel pasta and steamer inserts and certain stainless steel eight-cup coffee percolators are within the scope (63 FR 41545 (August 4, 1998) and 58 FR 11209 (February 24, 1993), respectively).

Moreover, as a result of a changed circumstances review, the Department revoked the order on Korea with regards to certain stainless steel camping ware that (1) is made of single-ply stainless steel having a thickness no greater than 6.0 millimeters; and (2) consists of 1.0, 1.5, and 2.0 quart saucepans without handles and with lids that also serve as fry pans (62 FR 32767, June 17, 1997).

Cookware is currently classifiable under Harmonized Tariff Schedule ("HTS") item numbers 7323.93.00 and 9604.00.00. The HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

History of the Order

The countervailing duty order on cookware from Korea was published in the **Federal Register** on January 20, 1987 (52 FR 2140). In the original investigation, the Department determined that the following six programs administered by the Government of Korea ("GOK") conferred bounties:

(1) Short-Term Export Financing under the Export Financing Regulations and Foreign Trade Financing Regulations (hereinafter "Short-Term Export Financing")—0.38 percent *ad valorem*;

(2) Export Tax Reserve under Articles of the Act Concerning the Regulation of Tax Reduction and Exemption (hereinafter "Export Tax Reserve")—0.01 percent *ad valorem*;

(3) Unlimited Deduction of Overseas Entertainment Expenses under Article 18–2 of the Corporation Tax Law (hereinafter "Unlimited Entertainment Expense Deductions")—0.01 percent *ad valorem*;

(4) Loans to Promising Small and Medium Enterprises (hereinafter "Small Business Loans")—0.11 percent *ad valorem*;

(5) Exemption from the Acquisition Tax under the Law for the Promotion of Income Sources in Rural Areas (hereinafter "Acquisition Tax Exemption")—0.07 percent *ad valorem*; and

(6) Duty Drawback on Non-Physically Incorporated Items and Excessive Loss Rates under the Duty Drawback System (hereinafter "Duty Drawback Programs")—0.20 percent *ad valorem*.[1]

The Department calculated that these programs conferred a total net subsidy of 0.78 percent *ad valorem* for all Korean manufacturers, producers, or exporters, except Woo Sung Company Ltd. and Dae Sung Industrial Company Ltd. As a result of *de minimis* net subsidies found for Woo Sung Company Ltd. and Dae Sung Industrial Company Ltd., these two Korean producers/exporters were excluded from the order.[2]

Since the original investigation, the Department has conducted no administrative reviews of the order. The order, therefore, remains in effect for all known manufacturers and exporters of the subject merchandise from Korea, except two: Woo Sung Company Ltd. and Dae Sung Industrial Company Ltd.

Background

On February 1, 1999, the Department initiated a sunset review of the countervailing duty order on cookware from Korea (64 FR 4840), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of the Stainless Steel Cookware Committee, whose current members are Regal Ware, Inc., All-Clad Metalcrafters, Inc., and Vita Craft Corp. (collectively, the "Committee"), on February 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the Sunset Regulations. Pursuant to section 771(9)(E) of the Act, the Committee claimed interested party status as an association of U.S. manufacturers of a domestic like product. In addition, the Committee's individual members claimed domestic interested party status pursuant to section 771(9)(C) of the Act, as domestic producers of a like product. The Department received a complete substantive response from the Committee on March 3, 1999, within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i). We did not receive a substantive response from any respondent interested party. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of this order.

The Department determined that the sunset review of the countervailing duty order on cookware from Korea is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (i.e., an order in effect on January 1, 1995). (*See* section 751(c)(6)(C) of the Act.) Therefore, on June 7, 1999, the Department extended the time limit for completion of the final results of this review until not later than August 30, in accordance with section 751(c)(5)(B) of the Act.[3]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the program which gave rise to the net countervailable subsidy has occurred that is likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the International Trade Commission ("the Commission") the net countervailable subsidy likely to prevail if the order is revoked. In addition, consistent with section 752(a)(6), the Department shall

[1] *Final Affirmative Countervailing Duty Determination: Certain Stainless Steel Cooking Ware from the Republic of Korea*, 51 FR 42867 (November 26, 1986).

[2] *Countervailing Duty Order: Certain Stainless Steel Cooking Ware from the Republic of Korea*, 52 FR 2140 (January 20, 1987).

[3] *See Porcelain-on-Steel Cooking Ware From the People's Republic of China, et. al.: Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 30305 (June 7, 1999).

provide the Commission information concerning the nature of each subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and Countervailing Measures ("Subsidies Agreement").

The Department's determinations concerning continuation or recurrence of a countervailable subsidy, the net countervailable subsidy likely to prevail if the order is revoked, and nature of the subsidy are discussed below. In addition, the Committee's comments with respect to each of these issues are addressed within the respective sections below.

Continuation or Recurrence of a Countervailable Subsidy

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its Sunset Policy Bulletin providing guidance on methodological and analytical issues, including the basis for likelihood determinations. The Department clarified that determinations of likelihood will be made on an order-wide basis (*see* section III.A.2 of the Sunset Policy Bulletin). Additionally, the Department normally will determine that revocation of a countervailing duty order is likely to lead to continuation or recurrence of a countervailable subsidy where (a) a subsidy program continues, (b) a subsidy program has been only temporarily suspended, or (c) a subsidy program has been only partially terminated (*see* section III.A.3.a of the Sunset Policy Bulletin). Exceptions to this policy are provided where a company has a long record of not using a program (*see* section III.A.3.b of the Sunset Policy Bulletin).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of the order would be likely to lead to continuation or recurrence of a countervailable subsidy where a respondent interested party waives its participation in the sunset review. Pursuant to the SAA, at 881, in a review of a countervailing duty order, when the foreign government has waived participation, the Department shall conclude that revocation of the order would be likely to lead to continuation or recurrence of a countervailable subsidy for all respondent interested parties.[4] In the instant review, the Department did not receive a substantive response from the foreign government or from any other respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the Sunset Regulations, this constitutes a waiver of participation.

In their substantive response, the Committee argued that the GOK continues to confer countervailable subsidies to Korean producers/exporters of stainless steel cookware. The Committee identified the six programs administered by the GOK and determined in the original investigation to confer bounties or grants. Further, the Committee pointed out that, in its final countervailing duty determination, the Department calculated that these programs conferred a total net subsidy of 0.78 percent *ad valorem* for all Korean manufacturers, producers, or exporters, except Woo Sung Company Ltd. and Dae Sung Industrial Company Ltd.

Of these six programs, the Committee argued that five continue to confer countervailable subsidies to Korean producers/exporters. The Committee cited to the November, 1998, preliminary affirmative countervailing duty determination with respect to stainless steel sheet and strip in coils from Korea and argued that the short-term export financing, export tax reserve, small business loans, acquisition tax exemption, and the duty drawback programs continue to exist and confer countervailable benefits.[5] Additionally, the Committee noted that in that same preliminary determination, the Department determined that the unlimited deduction of overseas entertainment expenses program had been terminated. The Committee argued that if, in the final determination, the Department finds that the program has been terminated and is not likely to be reinstated, the Department should determine that the program will not provide a countervailable subsidy if the order were revoked. The Committee maintained, however, that the Department should determine that revocation of the countervailing duty order on Korea would likely result in the continuation of a countervailable subsidy on the basis of the continued existence of five of the original six programs.

As noted above, in our final determination, the Department determined that the programs in question conferred a bounty or grant, the net amount of which was calculated to be 0.78 percent *ad valorem* for Korean exporters/producers. The Department has conducted no administrative reviews of this outstanding countervailing duty order.

We agree with the Committee that the Korean programs, with the exception of one,[6] remain in place. Based on the continued existence of programs found to provide countervailable subsidies, the fact that the foreign government and other respondent parties waived their right to participate in this review before the Department, and absent argument and evidence to the contrary, the Department determines that it is likely that a countervailable subsidy will continue if the order is revoked.

Net Countervailable Subsidy

In the Sunset Policy Bulletin, the Department stated that, consistent with the SAA and House Report, the Department normally will select a rate from the investigation as the net countervailable subsidy likely to prevail if the order is revoked because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order or suspension agreement in place. The Department noted that this rate may not be the most appropriate rate if, for example, the rate was derived from subsidy programs which were found in subsequent reviews to be terminated, if there has been a program-wide change, or if the rate ignores a program found to be countervailable in a subsequent administrative review. (*See* section III.B.3 of the Sunset Policy Bulletin.) Additionally, where the Department determined company-specific countervailing duty rates in the original investigation, the Department normally will report to the Commission company-specific rates from the original investigation or where no company-specific rate was determined for a company, the Department normally will provide to the Commission the country-wide or "all others" rate. (*See* section III.B.2 of the Sunset Policy Bulletin.)

In their substantive response, the Committee argued that the countervailing duty rate likely to prevail if the order on cookware from Korea is revoked would be at least as large as that existing at the time of the original order. The Committee argued that as the rate determined in the original investigation is the only calculated rate which reflects the behavior of exporters without the discipline of the order in place, the Department's policy provides that it normally will select this rate to provide to the Commission. Noting that five of the six programs found to provide subsidies in the original investigation continue to exist, the Committee maintained that the Department should include the subsidy rates it originally determined when calculating the net countervailable subsidy in this sunset review.

The Committee also argued that the Act requires the Department to consider programs, in addition to those considered in the original investigation, determined in other reviews or investigations to provide countervailable subsidies. The Committee argued that the Department should consider the dual pricing scheme in which the GOK mandates that POSCO, the government-owned steel producer, sell stainless steel to domestic producers at a price below the international market price. This program is referred to as POSCO's Two-Tiered Pricing Structure to Domestic Customers. The Committee argued that Korean manufacturers of stainless steel cookware are potential beneficiaries of this pricing scheme because they may purchase a significant amount of their stainless steel requirements from POSCO—the largest stainless steel producer in Korea. Further, the Committee argued that this pricing scheme was not in existence in January 1987, when the order on cookware was issued. In conclusion, the Committee argued that given the significance of this program,[7] it is imperative that the Department include this program in calculating the net countervailable subsidy likely to prevail if the order is revoked.

As discussed in the Sunset Policy Bulletin, the Department normally will report to the Commission an original subsidy rate as adjusted to take into account terminated programs, program-wide changes, and programs found to be countervailable in subsequent reviews. Although no administrative review has been conducted of the order on cookware from Korea, we agree with the Committee that the program for the unlimited deduction of overseas entertainment expenses has been terminated.[8] Further, we agree with the Committee that all other programs found in the original investigation to provide countervailable subsidies continue to exist.

Referring to section 752(b)(2) of the Act, the Sunset Policy Bulletin provides that if the Department determines that good cause is shown, the Department will consider other factors in sunset reviews. Specifically, the Department will consider programs determined to provide countervailable subsidies in other investigations or reviews, but only to the extent that such programs (a) can potentially be used by the exporters or producers subject to the sunset review and (b) did not exist at the time that the countervailing duty order was issued (*see* section III.C.1). Additionally, the Sunset Policy Bulletin provides that if the Department determines that good cause is shown, the Department will also consider programs newly alleged to provide countervailable subsidies, but only to the extent that the Department makes an affirmative countervailing duty determination with respect to such programs and with respect to the exporters or producers subject to the sunset review (*see* section III.C.2). Both sections specify that the burden is on interested parties to provide information or evidence that would warrant consideration of the subsidy program in question.

In the recent final affirmative countervailing duty determination on stainless steel sheet and strip in coils from Korea, the Department found that POSCO sold hot-rolled stainless steel coil, which was the main input into stainless steel sheet and strip in coils, to the respondents in that investigation. Additionally, the Department found that POSCO charged a lower price to domestic customers that purchase steel for further processing into products that are exported than to domestic customers for products that will be consumed in Korea. As a result, the Department determined that POSCO's two-tiered pricing scheme constitutes an export subsidy under section 771(5A)(B) of the Act and provides a financial contribution to exporters under section 771(5)(D) of the Act. The Department measured the benefit provided to respondents from this program by dividing the price savings[9] of respondents by the value of respondents' exports. On this basis, the Department found company-specific countervailable subsidy rates of 0.87 and 2.36 percent *ad valorem*.

As noted above, the Department will only consider other factors under section 752(b)(2) of the Act where it determines good cause for such consideration has been shown. Additionally, the Sunset Regulations specify that the Department normally will consider such other factors only where it conducts a full sunset review. In this case, although the Committee argues that producers of cookware may benefit from this program because the producers are likely to purchase stainless steel from POSCO, we have no information that cookware producers actually benefit from this program. As stated in the SAA at 889, the more appropriate vehicle for consideration of new subsidies is an administrative review pursuant to section 751(a) of the Act, which the Committee did not request. Therefore, we are not considering this program for the purpose of this review.

As a result of the termination of one program since the imposition of the order, the Department determines that using the net countervailable subsidy rate as determined in the original investigation is no longer appropriate. Further, as noted above, because the Department has not conducted an administrative review of this order, no other programs have been found to provide cookware producers/exporters a countervailable subsidy. Therefore, we have adjusted the net countervailable subsidy from the original investigation by subtracting the subsidy from the unlimited entertainment expense deductions program which the Department found terminated. (*See* calculation memo of August 24, 1999.)

Nature of the Subsidy

In the Sunset Policy Bulletin, the Department stated that, consistent with section 752(a)(6) of the Act, the Department will provide information to the Commission concerning the nature of the subsidy and whether it is a subsidy described in Article 3 or Article 6.1 of the Subsidies Agreement. The Committee did not specifically address this issue in their substantive response.

Because the benefits received under four of the remaining five programs is contingent upon exports, these programs fall within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement. The

[4] *See* 19 CFR 351.218(d)(2)(iv).

[5] *See Preliminary Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from the Republic of Korea*, 63 FR 63884 (November 17, 1998).

[6] As noted by the Committee, the Department determined that the Article 18–2(5) of the Corporate Tax Law, which provided that Korean exporters could deduct overseas entertainment expenses without limit, was repealed by revisions to the law dated December 29, 1995 (*see* Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils From the Republic of Korea, 64 FR 30636, 30650 (June 8, 1999)).

[7] Citing to the Department's preliminary determination in *Stainless Sheet and Strip*, 63 FR at 63897, the Committee asserts that this program was found to provide one respondent a countervailable subsidy of 5.51 percent ad valorem.

[8] *See* footnote 6.

[9] The price savings were calculated by comparing the prices charged by POSCO to respondents for domestic production to the prices charged by POSCO to respondents for export production (*see* Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils From the Republic of Korea, 64 FR 30636, 30647 (June 8, 1999)).

remaining program, although not falling within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement, could be found to be inconsistent with Article 6 if the net countervailable subsidy exceeds 5 percent, as measured in accordance with Annex IV of the Subsidies Agreement. The Department, however, has no information with which to make such a calculation, nor do we believe it appropriate to attempt such a calculation in the course of a sunset review. Rather, we are providing the Commission the following program descriptions.

(1) Because only exporters are eligible to use short-term export financing under the Foreign Trade Regulations, short-term export financing falls within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement.

(2) The program for export tax reserves under Articles 22, 23, and 24 or the Act Concerning the Regulation of Tax Reduction and Exemption was found to confer benefits which constitute export subsidies because they provide a deferral, contingent upon exports, of direct taxes. Therefore, this program falls within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement.

(3) The program providing for small business loans to "promising" companies on the basis that they were exporting companies, was found to be a countervailable export subsidy to the extent that the loans were provided at preferential interest. Because companies qualified for these loans on the basis of export performance, this program falls within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement.

(4) Because the Duty Drawback Program provides for duty drawback on items not physically incorporated into exported articles and because the duty drawback for loss or wastage on physically incorporated items is unreasonable or excessive, we found the program to confer a countervailable export subsidy. As such, this program falls within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement.

(5) Exemption from the acquisition tax under the Law for the Promotion of Income Sources in Rural Areas is limited to companies located in certain regions of the country and therefore, may fall within the definition of an actionable subsidy under Article 6.1 of the Subsidies Agreement.

Final Results of Review

As a result of this review, the Department finds that revocation of the countervailing duty order on cookware from Korea would be likely to lead to continuation or recurrence of countervailable subsidies. The country-wide net countervailable subsidy likely to prevail if the order were revoked is 0.77 percent *ad valorem*. [10]

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 30, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–23035 Filed 9–2–99; 8:45 am]

BILLING CODE 3510–DS–P

[10] As noted above, due to *de minimis* net subsidies found for Woo Sung Company Ltd. and Dae Sung Industrial Company Ltd., these two Korean producers/exporters were excluded from the order. .

DEPARTMENT OF COMMERCE

International Trade Administration

Performance Review Board

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: Announcement of New Member for the Performance Review Board.

FOR FURTHER INFORMATION CONTACT: LaVerne H. Hawkins, Department of Commerce, Office of Human Resources Management, Room 4803, Washington, DC 20230 202–482–2537.

SUPPLEMENTARY INFORMATION: This notice announces the appointment by the Under Secretary for International Trade, David L. Aaron, of the Performance Review Board (PRB). The appointments are for a 2 year period. The purpose of the International Trade Administration's Performance Review Board (PRB) is to review and make recommendations to the appointing authority on performance management issues such as appraisals and bonuses, ES-level Increases and Presidential Rank Awards for members of the Senior Executive Service (SES). The members are:

Eleanor Roberts Lewis—Non-ITA—Career
Chief Counsel for International Trade
Troy H. Cribb—Non-Career
Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods
Henry H. Misisco—Career
Director, Office of Automotive Affairs
Marjory Searing—Career
Deputy Assistant Secretary for Japan
Joseph Spetrini—Career
Deputy Assistant Secretary for Antidumping Countervailing Duty Enforcement III
Franklin J. Vargo—Career
Deputy Assistant Secretary for Agreements Compliance
Elizabeth C. Sears—Non-Career
Deputy Assistant Secretary for Export Promotion Services
LaVerne H. Hawkins—Executive Secretary
Office of Human Resources Management, 202–482–2537

Dated: August 26, 1999.

James T. King, Jr.,

Human Resources Manager.

[FR Doc. 99–23078 Filed 9–2–99; 8:45 am]

BILLING CODE 3510–25–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket Number: 990624170–9170–01]

RIN 0648–ZA66

Announcement of Graduate Research Fellowships in the National Estuarine Research Reserve System for Fiscal Year 2000

AGENCY: Estuarine Reserves Division (ERD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: The Estuarine Reserves Division (ERD) of the Office of Ocean and Coastal Resource Management is soliciting applications for graduate fellowship funding within the National Estuarine Research Reserve System. This notice sets forth funding priorities, selection criteria, and application procedures.

The National Estuarine Research Reserve System of the National Oceanic and Atmospheric Administration (NOAA) announces the availability of Graduate Research Fellowships. ERD anticipates that 34 Graduate Research Fellowships will be competitively awarded to qualified graduate students whose research occurs within the boundaries of at least one Reserve. Minority students are encouraged to apply. Fellowships will start no earlier than June 1, 2000.

DATES: Applications must be postmarked no later than *November 1, 1999*. Notification regarding the awarding of fellowships will be issued on or about March 1, 2000.

ADDRESSES: Erica Hubertz, Program Specialist, NOAA/Estuarine Reserves Division, 1305 East-West Highway, N/ORM5, SSMC4, 11th Floor, Silver Spring, MD 20910, Attn: FY00 NERRS Research. Phone: 301–713–3132, ext. 172, Fax: 301–713–4363, internet: *erica.hubertz@noaa.gov*. Web page: *http://www.nos.noaa.gov/ocrm/nerr/nerrs_research.html*. See Appendix I for National Estuarine Research Reserve addresses.

FOR FURTHER INFORMATION CONTACT: For further information on specific research opportunities at National Estuarine Research Reserve sites, contact the site staff listed in Appendix I or the program specialist listed in the **ADDRESSES** section above. For application information, contact Erica Hubertz of the Estuarine Reserves Division (see **ADDRESSES** above).

SUPPLEMENTARY INFORMATION:

I. Authority and Background

Section 315 of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1461, establishes the National Estuarine Research Reserve System (NERRS). 16 U.S.C. 1461(e)(1)(B) authorizes the Secretary of Commerce to make grants to any coastal state or public or private person for purposes of supporting research and monitoring within a national estuarine reserve that are consistent with the research guidelines developed under subsection (c). This program is listed in the Catalog of Federal Domestic Assistance (CFDA) under "Coastal Zone Management Estuarine Research Reserves," Number 11.420.

II. Information on Established National Estuarine Research Reserves

The NERRS consists of estuarine areas of the United States and its territories which are designated and managed for research and educational purposes. Each National Estuarine Research Reserve (Reserve) within the NERRS is chosen to reflect regional differences and to include a variety of ecosystem types in accordance with the classification scheme of the national program as presented in 15 CFR part 921.

Each Reserve supports a wide range of beneficial uses of ecological, economic, recreational, and aesthetic values which are dependent upon the maintenance of a healthy ecosystem. The sites provide habitats for a wide range of ecologically and commercially important species of fish, shellfish, birds, and other aquatic and terrestrial wildlife. Each Reserve has been designed to ensure its effectiveness as a conservation unit and as a site for long-term research and monitoring. As part of a national system, the Reserves collectively provide an excellent opportunity to address research questions and estuarine management issues of national significance. For a detailed description of the sites, contact the individual site staff or refer to the NERR internet web site provided in the **ADDRESSES** section.

III. Availability of Funds

Funds are expected to be available on a competitive basis to qualified graduate students for research within National Estuarine Research Reserves leading to a graduate degree. No more than two fellowships at any one site will be funded at any one time; based upon fellowships awarded in the 1999 funding cycle, we anticipate 34 openings for Fellowships in FY00. Fellowships are expected to be available at the following sites:

NERR site	Fellowships
Ashepoo Combahee:	
Edisto Basin, SC	1
Apalachicola, FL	1
Chesapeake Bay, MD	1
Chesapeake Bay, VA	1
Delaware	1
Elkhorn Slough, CA	2
Grand Bay, MS	2
Great Bay, NH	1
Guana Tolomato:	
Matanzas, FL	2
Hudson River, NY	2
Jobos Bay, PR	1
Kachemak Bay, AK	2
Narragansett Bay, RI	2
North Inlet-Winyah Bay, SC	2
North Carolina	2
Old Woman Creek, OH	2
Padilla Bay, WA	1
Rookery Bay, FL	1
Sapelo Island, GA	1
Tijuana River, CA	2
Waquoit Bay, MA	2
Weeks Bay, AL	2

Because NOAA is an active partner in NERRS research, funds will be awarded through a cooperative agreement. NOAA may be involved in the award in the following manner:

The Estuarine Reserves Division (ERD), Office of Ocean and Coastal Resource Management, reserves the right to immediately halt activity under this award if it becomes obvious that award activities are not fulfilling the mission of the National Estuarine Research Reserve System. While day-to-day management is the responsibility of the recipient, frequent guidance and direction is provided by the Federal Government for the successful conduct of this award. Non-compliance with a Federally approved project may result in immediate halting of the award.

ERD generally will review and approve each stage of work annually before the next begins to assure that studies will produce viable information on which to form valid coastal management decisions.

All staff at NERRS sites are ineligible to submit an application for a fellowship under this Announcement. Federal funds requested must be matched by the applicant by at least 30% of the *TOTAL cost, not the Federal share, of the project*. It is anticipated that fellowships receiving funding under this announcement will begin no earlier than June 1, 2000.

IV. Purpose and Priorities

NERR Research funds are provided to support management-related research projects that will enhance scientific understanding of the Reserve ecosystem, provide information needed by Reserve management and coastal management decision-makers, and improve public awareness and understanding of estuarine ecosystems and estuarine management issues (15 CFR § 921.50).

The NERR Graduate Research Fellowship program is designed to fund high quality research focused on enhancing coastal zone management while providing students with hands-on training in ecological monitoring.

Research projects proposed in response to this announcement must: (1) Address coastal management issues identified as having local, regional, or national significance, described in the "Scientific Areas of Support" below; and (2) be conducted within one or more designated NERR sites. Funding ($16,500 per year) is intended to provide any combination of research support, salary, tuition, supplies, or other costs as needed, including overhead. Fellows will be expected to participate in an ecological training program that will entail some aspect of ecological monitoring or research for up to a maximum of 15 hours per week. Fellows conducting multi-site projects

may fulfill this requirement at one or a combination of sites but for no more than a total of 15 hours per week. This training program may occur throughout the academic year or may be concentrated during a specific season. Students are encouraged, but not required, to incorporate these training activities into their own research programs.

Scientific Areas of Support

The NERRS program has identified the following as areas of nationally significant research interest. Proposed research projects submitted in response to this announcement must address one of the following topics (see #1 above):

- The effects of non-point source pollution on estuarine ecosystems;
- Evaluative criteria and/or methods for estuarine ecosystem restoration;
- The importance of biodiversity and effects of invasive species on estuarine ecosystems;
- Mechanisms for sustaining resources within estuarine ecosystems; or
- Socioeconomic research applicable to estuarine ecosystem management.

Each NERR has local issues of concern that fall within one of the topics above. Applicants are responsible for contacting the NERR site of interest to determine if their proposed projects would be relevant to the Reserve's site-specific research needs.

Note: It is strongly suggested that applicants contact the host Reserve (see Appendix I) for general information about the Reserve and its research needs and priorities and ecological training opportunities as they relate to this announcement.

V. Guidelines for Application Preparation, Review, and Reporting Requirements

Applicants for ERD research fellowships must follow the guidelines presented in this announcement. Applications not adhering to these guidelines may be returned to the applicant without further review.

Applications for graduate fellowships in the NERRS are solicited annually for award the following fiscal year. Minority students are encouraged to apply. Application due dates and other pertinent information are contained in this announcement of research opportunities. *Applicants must submit an original and two (2) copies of each application and all supporting documents (curricula vitae, literature referenced, unofficial transcripts, etc.), excluding letters of reference which must come directly from their source.*

Applicants may request funding for up to three years; funding for years two and three will be made available based on availability of funds and satisfactory progress of research as determined by the Host NERR Research Staff and the student's faculty advisor, in consultation with ERD. The amount of the award is $15,000/annum plus 10% overhead for a total of $16,500/annum. Requested Federal funds must be matched by at least 30 percent of the *award total* (ie. $7,072 match for $16,500 in Federal funds for a total project cost of $23,572).

Applicants who are selected for funding will be required to: (1) Work with the Research Coordinator or Reserve Manager to develop an ecological training program for up to 15 hours per week; (2) submit semi-annual technical reports to ERD and the host Reserve before the end of each funding cycle on the research accomplishments to date; and (3) acknowledge NERRS support in all relevant scientific presentations and publications. In addition, fellows are strongly encouraged to publish their results in peer-reviewed literature and make presentations at scientific meetings.

A. Applications

Students admitted to or enrolled in a full-time Master's or Doctoral program at U.S. accredited universities are eligible to apply. Students should have completed a majority of their course work at the beginning of their fellowship and have an approved thesis research program.

Applicants are required to submit:

(1) An academic resume or a curriculum vitae that includes all graduate and undergraduate institutions (department or area of study, degree, and year of graduation), all publications (including undergraduate and graduate theses), awards or fellowships, and work/research experience;

(2) a cover letter from the applicant indicating current academic status, research interests, career goals, and how the proposed research fits into their degree program, and the results of any discussion with host NERR staff regarding the ecological monitoring training program;

(3) a titled research proposal (double-spaced in a font no smaller than 12-point courier) that includes an Abstract, Introduction, Methods and Materials, Project Significance, and Bibliography;

(4) a proposed budget (see Section B, Proposal Content, below for specific guidelines);

(5) an unofficial copy of all undergraduate and graduate transcripts;

(6) a signed letter of support from the applicant's graduate advisor indicating the advisor's contribution (financial and otherwise) to the applicant's graduate studies, and an assurance that the student is in good academic standing; and

(7) two letters of recommendations (from other than the applicant's graduate advisor) sent directly from their source.

Note: Electronically transmitted letters of support are not acceptable.

One original and two (2) copies of the information requested above, excluding letters of reference and transcripts, must be submitted to the ERD Program Specialist at the address in the Addresses section, postmarked no later than November 1, 1999. *Applications postmarked November 2, 1999 or later, will be returned without review.* Receipt of all applications will be acknowledged and a copy sent to the appropriate Reserve staff.

B. Proposal Content

The research proposal should contain the sections described below.

1. Title Page

A title page must be provided which lists:

- student name, address, telephone number, fax number & email address
- project title;
- amount of funding requested;
- name of graduate institution;
- name of institution providing matching funds and amount of matching funds;
- name, address, telephone number, fax number & email address of faculty advisor;
- NERR site where research is to be conducted; and
- number of years of requested support.

If it is a multi-site project, the title page must indicate which Reserve will be the primary contact ("host Reserve") for the training program.

2. Abstract

The abstract should state the research objectives, scientific methods to be used, and the significance of the project to a particular Reserve and the NERRS program. The abstract must be limited to *one page.*

3. Project Description

The project description must be limited to *6 double-spaced pages* excluding figures. The main body of the proposal should be a detailed statement of the work to be undertaken, and include the following components:

(a) Introduction. This section should introduce the research setting and environment. It should include a brief review of pertinent literature and describe the research problem in relation to relevant coastal management issues and the research priorities. This section should also present the primary hypothesis upon which the project is focused, as well as any additional or component hypotheses which will be addressed by the research project.

(b) Methods. This section should state the method(s) to be used to accomplish the specific research objectives, including a systematic discussion of what, when, where, and how the data are to be collected, analyzed, and reported. Field and laboratory methods should be scientifically valid and reliable and accompanied by a statistically sound sampling scheme. Methods chosen should be justified and compared with other methods employed for similar work.

Techniques should allow the testing of the hypotheses, but also provide baseline data related to ecological and management questions concerning the Reserve environment. Methods should be described concisely and techniques should be reliable enough to allow comparison with those made at different sites and times by different investigators. The methods must have proven their utility and sensitivity as indicators for natural or human-induced change.

Analytical methods and statistical tests applied to the data should be documented, thus providing a rationale for choosing one set of methods over alternatives. Quality control measures also should be documented (e.g., statistical confidence levels, standards of reference, performance requirements, internal evaluation criteria). The proposal should indicate by way of discussion how data are to be synthesized, interpreted and integrated into final work products.

A map clearly showing the study location and any other features of interest *must* be included; a U.S. Geological Survey topographic map, or an equivalent, is suggested for this purpose. Consultation with Reserve personnel to identify existing maps is strongly recommended.

(c) Project Significance. This section should provide a clear discussion of how the proposed research addresses state and national estuarine and coastal resource management issues and how the proposed research effort will enhance or contribute to improving the state of knowledge of the estuary; i.e., why is the proposed research important and how will the results contribute to coastal resource management? This section must also discuss the relation of the proposed research to the research priorities stated in Section IV. Applicability of research findings to other NERRS and coastal areas should also be mentioned. In addition, if the proposed research is part of a larger research project, the relationship between the two should be described.

4. Milestone Schedule

A milestone schedule is required. This schedule should show, in table form, anticipated dates for completing field work and data collection, data analysis, progress reports, the final technical report and other related activities. Use "Month 1, Month 2," rather than June, July, etc., in preparing these charts.

5. Personnel and Project Management

The proposal must include a description of how the project will be managed, including the name and expertise of faculty advisors and other team members. Evidence of ability to successfully complete the proposed research should be supported by reference to similar efforts performed.

6. Literature Cited

This section should provide complete references for current literature, research, and other appropriate published and unpublished documents cited in the text of the proposal.

7. Budget

The amount of Federal funds requested must be matched by the applicant by at least 30% of the *total* project cost (i.e., $7,072 match for $16,500 in Federal funds for a total project cost of $23,572). Cash or the value of goods and services (except land) directly benefitting the research project may be used to satisfy the matching requirements. Overhead costs for these awards are limited to $1,500 of the Federal share (i.e., $15,000 for project and $1,500 for overhead) and waived overhead costs may also be used as match. *Funds from other Federal agencies and NERRS staff salaries supported by Federal funds may not be used as match.* Requirements for the non-Federal share are contained in OMB Circular A–110. ERD strongly suggests that the applicant work with their institution's research office to develop their budget (see section D, below).

The applicant may request funds under any of the categories listed below as long as the costs are reasonable and necessary to perform research. The budget should contain itemized costs with appropriate narratives justifying proposed expenditures. Budget categories are to be broken down as follows, clearly showing both Federal and non-Federal shares *side by side*:

—Salary. The rate of pay (hourly, monthly, or annually) should be indicated. Salaries requested must be consistent with the institution's regular practices. The submitting organization may request that salary data remain confidential information.

—Fringe Benefits. Fringe benefits (i.e., social security, insurance, retirement) may be treated as direct costs as long as this is consistent with the institution's regular practices.

—Equipment. While not their primary purpose, fellowship funds may be approved for the purchase of equipment only if the following conditions are met: (a) A lease versus purchase analysis has been conducted by the applicant or the applicant's institution for equipment that costs greater than $5000 and the findings determine that purchase is the most economical method of procurement; and (b) the equipment does not exist at the recipient's institution or the Reserve site and is essential for the successful completion of the project.

The justification must discuss each of these points along with the purpose of the equipment and a justification for its use, and include a list of equipment to be purchased, leased, or rented by model number and manufacturer, where known. At the termination of the fellowship, disposition of equipment will be determined by the NOAA Property Administrator.

—Travel. The type, extent, and estimated cost (broken dewn by transportation, lodging and per diem) of travel should be explained and justified in relation to the proposed research; the justification should also identify the person traveling. Travel expenses are limited to round trip travel to field research locations and professional meetings to present the research results and should not exceed 40 percent of total award costs.

—Other Direct Costs. Other anticipated costs should be itemized under the following categories:

- *Materials and Supplies.* The budget should indicate in general terms the types of expendable materials and supplies required and their estimated costs;
- *Research Vessel or Aircraft Rental.* Include purpose, unit cost, duration of use, user, and justification;
- *Laboratory Space Rental.* Funds may be requested for use of laboratory space at research establishments away from the student's institution while conducting studies specifically related to the proposed effort;

• *Telecommunication Services and Reproduction Costs.* Include expenses associated with telephone calls, facsimile, copying, reprint charges, film duplication, etc.;

• *Computer Services.* The cost of unusual or costly computer services may be requested and must be justified.

—Indirect Costs. Requested overhead costs under NERRS fellowship awards are limited to $1,500 of the Federal amount.

8. Requests for Reserve Support Services

On-site Reserve personnel sometimes can provide limited logistical support for research projects in the form of manpower, equipment, supplies, etc. Any request for Reserve support services, including any services provided as match, should be approved by the Reserve Manager or Research Coordinator prior to application submission and be included as part of the application package in the form of written correspondence. Reserve resources which are supported by Federal funds are not eligible to be used as match.

9. Coordination With Other Research in Progress or Proposed

ERD encourages collaboration and cost-sharing with other investigators to enhance scientific capabilities and avoid unnecessary duplication of effort. Applications should include a description of how the research will be coordinated with other research projects that are in progress or proposed, if applicable.

10. Permits

The applicant must apply for any applicable local, state or Federal permits. A copy of the permit application and supporting documentation should be attached to the application as an appendix. ERD must receive notification of the approval of the permit application before funding can be approved.

C. Application Review and Evaluation

All applications will be evaluated for scientific merit by ERD staff, the host Reserve scientific panel of no less than three reviewers from the scientific community, and the appropriate Research Coordinator and/or Reserve Manager. Criteria for evaluation include: (1) The quality of proposed research and its applicability to the NERRS Scientific Areas of Support listed earlier in this announcement (70%); (2) the research's applicability to specific Reserve research and resource management goals as they relate to the Scientific Areas of Support listed in this announcement (20%); and (3) academic excellence based on the applicant's transcripts and two letters of reference (10%). No more than two Fellowships will be awarded at any one time for any one Reserve. Final selection will be made by the Chief of the Estuarine Reserves Division, based upon scientific review and the research's applicability to NERRS research and resource management goals.

D. Fellowship Awards

Awards are normally made to the fellow's graduate institution through the use of a cooperative agreement. Applicants whose projects are recommended for funding will be required to complete all necessary Federal financial assistance forms (SF–424, SF–424A, SF–424B, CD–511, and SF–LLL), which will be provided by ERD with the letter of fellowship notification. ERD recommends that all applicants work with their graduate institution during the development of their budget to ensure concurrence on budgetary issues (e.g. the use of salary and fringe benefits as match).

VI. Other Requirements

Recipients and sub-recipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards.

All non-profit and for-profit applicants are subject to a name-check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either: (1) The delinquent account is paid in full; (2) A negotiated repayment schedule is established and at least one payment is received; or (3) Other arrangements satisfactory to the Department of Commerce (DOC) are made.

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding. In addition, any recipients who are past due for submitting acceptable final reports under any previous ERD-funded research will be ineligible to be considered for new awards until final reports are received, reviewed and deemed acceptable by ERD.

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the DOC. However, funding priority will be given to the additional years of multi-year proposals upon satisfactory completion of the current year of research.

Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matter; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

1. *Nonprocurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR part 26, Section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension," and the related section of the certification form prescribed above applies;

2. *Drug-Free Workplace.* Grantees (as defined at 15 CFR part 26, Section 605) are subject to 15 CFR part 26, Subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. *Anti-Lobbying.* Persons (as defined at 15 CFR part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on the use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form which applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

4. *Anti-Lobbying Disclosures.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

5. *Lower Tier Certifications.* Recipients shall require applicants/bidders for sub-grants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying," and disclosure form SF–LLL, "Disclosure of Lobbying Activities." The original form CD–512 is intended for the use of recipients. SF–LLL submitted by any tier recipient or sub-recipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-Made Equipment or Products: Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program should be American-made to the extent feasible.

Indirect Costs: The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or $1,500, whichever is less.

Pre-award Activities: If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover pre-award costs.

VII. Classification

This notice has been determined to be "not significant" for purposes of E.O. 12866.

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Administrative Order 216–6.

This notice does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

This notice involves a collection of information subject to the requirements of the Paperwork Reduction Act. The requirements have been approved by the Office of Management and Budget under control numbers 0348–0043, 0348–0044, and 0348–0046.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection displays a current valid OMB control number.

(Federal Domestic Assistance Catalog Number 11.420 Coastal Zone Management Estuarine Research Reserves)

Dated: August 30, 1999.

Captain Ted I. Lillestolen,

Deputy Assistant Administrator, National Ocean Service.

Appendix I. NERRS On-Site Staff

Alabama

Mr. L.G. Adams, Manager; Mr. Bob McCormack, Interpretive Coordinator, Weeks Bay National Estuarine Research Reserve, 11300 U.S. Highway 98, Fairhope, AL 36532, (334) 928–9792, ladams@surf.nos.noaa.gov, bmcormack@surf.nos.noaa.gov

Alaska

Mr. Glenn Seaman, Manager, Kachemak Bay National Estuarine Research Reserve, Department of Fish and Game, 333 Raspberry Road, Anchorage, AK 99518–1599, (907) 267–2331, glenns@fishgame.state.ak.us

California

Ms. Becky Christensen, Manager, Elkhorn Slough National Estuarine Research Reserve, 1700 Elkhorn Road, Watsonville, CA 95076, (408) 728–2822, beckychristensen@dfg2.ca.gov

(or)

Mr. Mark Silberstein, Elkhorn Slough Foundation, P.O. Box 267, Moss Landing, CA 95039, (831) 728–5939, silbermud@aol.com and for further info www.elkhornslough.org

Mr. Phil Jenkins, Manager; Mr. Dick Zembal, Research Coordinator, Tijuana River National Estuarine Research Reserve, 301 Caspian Way, Imperial Beach, CA 92032, (619) 575–3615, dick__zembal@mail.fws.gov

Delaware

Ms. Betsy Archer, Manager; Dr. William Meredith, Research Coordinator, Delaware National Estuarine Research Reserve, Department of Natural Resources and Environmental Control, Division of Fish and Wildlife, 89 Kings Highway, Dover, DE 19901, (302) 739–3451 (Archer), bdarcher@dnrec.state.de.us, (302) 739–3493 (Meredith), wmeredith@dnrec.state.de.us

Florida

Mr. Woodward Miley II, Manager; Mr. Lee Edmiston, Research Coordinator, Apalachicola River National Estuarine Research Reserve, Department of Environmental Protection, 350 Carroll Street, Eastpoint, FL 32320, (850) 670–4783, ledmist@digitalexp.com

Mr. Ken Berk, Manager; Mr. Larry Nall, Guana-Tolomato-Matanzas National Estuarine Research Reserve, Department of Environmental Protection, Coastal and Aquatic Managed Areas, 3900 Commonwealth Blvd., Tallahassee, FL 32399, (850) 488–3456, nall__l@epic6.dep.state.fl.us

Mr. Gary Lytton, Manager; Dr. Todd Hopkins, Research Coordinator, Rookery Bay National Estuarine Research Reserve, Department of Environmental Protection, 300 Tower Road, Naples, FL 34113–8059, (941) 417–6310, todd.hopkins@dep.state.fl.us

Georgia

Mr. Buddy Sullivan, Manager; Mr. Dorset Hurley, Research Coordinator, Sapelo Island National Estuarine Research Reserve, Department of Natural Resources, P.O. Box 15, Sapelo Island, GA 31327, (912) 485–2251, dhurley@surf.nos.noaa.gov

Maine

Mr. Kent Kirpatrick, Manager; Dr. Michele Dionne, Research Coordinator, Wells National Estuarine Research Reserve, RR #2, Box 806, Wells, ME 04090, (207) 646–1555 x36, dionne@cybertours.com

Maryland

Mr. Andrew Middleton, Acting Manager; Mr. David Nemazie, Research Coordinator, Chesapeake Bay National Estuarine Research Reserve in Maryland, Dept. of Natural Resources, Tawes State Office Building, E–2, 580 Taylor Avenue, Annapolis, MD 21401, (410) 260–8740 (Middleton), (410) 228–9250 x615 (Nemazie), nemazie@ca.umces.edu

Massachusetts

Ms. Christine Gault, Manager, Waquoit Bay National Estuarine Research Reserve, Dept. of Environmental Management, P. O. Box 3092, Waquoit, MA 02536, (508) 457–0495, wbnerr@capecod.net

Mississippi

Mr. Peter Hoar, Grand Bay National Estuarine Research Reserve, Department of Marine Resources, 1141 Bayview Avenue, Biloxi, MS 39530, (228) 374–5000, phoar@datasync.com

New Hampshire

Mr. Peter Wellenberger, Manager; Great Bay National Estuarine Research Reserve, New Hampshire Fish and Game Department, 37 Concord Road, Durham, NH 03824, (603) 868–1095, peter@greatbay.org

New Jersey

Mr. Michael De Luca, Manager; Dr. Ken Able, Research Coordinator, Mullica River National Estuarine Research Reserve, Institute of Marine and Coastal Sciences, Rutgers University, P.O. Box 231, New Brunswick, NJ 08903, 732–932–9489 x512 (De Luca), 689–296–5260 (Able), able@arctic.rutgers.edu

New York

Ms. Elizabeth Blair, Manager; Mr. Chuck Nieder, Research Coordinator, Hudson River National Estuarine Research Reserve, New York State Department of Environmental Conservation, c/o Bard College Field Station, Annandale-on-Hudson, NY 12504, (914) 758–7013 (Nieder) wcnieder@gw.dec.state.ny.us, (914) 758–7011 (Blair) and (914) 758–7010 (general info)

North Carolina

Dr. John Taggart, Manager; Dr. Steve Ross, Research Coordinator, North Carolina National Estuarine Research Reserve, 7205 Wrightsville Avenue, Wilmington, NC 28403, (910) 256–3721 (Taggart), (910) 395–3905 (Ross), rosss@uncwil.edu

Ohio

Mr. Eugene Wright, Manager; Dr. David Klarer, Research Coordinator, Old Woman Creek National Estuarine Research Reserve, 2514 Cleveland Road, East, Huron, OH 44839, (419) 433–4601 dklarer@ocean.nos.noaa.gov

Oregon
Mr. Michael Graybill, Manager; Dr. Steve Rumrill, Research Coordinator, South Slough National Estuarine Research Reserve, P. O. Box 5417, Charleston, OR 97420, (541) 888–5558, ssnerr@harborside.com
Puerto Rico
Ms. Carmen Gonzalez, Manager; Dr. Pedro Robles, Research Coodinator, Jobos Bay National Estuarine Research Reserve, Dept. of Natural Resources, Call Box B, Aguirre, PR 00704, (809) 853–4617, cgonzalez@ocean.nos.noaa.gov (Gonzalez) problesc@coqui.net (Robles)
Rhode Island
Mr. Allan Beck, Manager, Narragansett Bay National Estuarine Research Reserve, Dept. of Environmental Management, Box 151, Prudence Island, RI 02872, (401) 683–5061, allanbeck@aol.com
South Carolina
Mr. Michael D. McKenzie, Manager; Dr. Elizabeth Wenner, Research Coordinator, Ashepoo-Combahee-Edisto (ACE) Basin, South Carolina Wildlife and Marine Resources Department, P.O. Box 12559, Charleston, SC 294212, (803) 762–5052 (McKenzie) (803) 736–5050 (Wenner), wennere@cofc.edu
Dr. Dennis Allen, Manager; Dr. Evan Chipouras, Research Coordinator, North Inlet-Winyah Bay National Estuarine Research Reserve, Baruch Marine Field Laboratory, P.O. Box 1630, Georgetown, SC 29442, (803) 546–3623, evan@belle.baruch.sc.edu
Virginia
Dr. Maurice P. Lynch, Manager; Dr. William Reay, Research Coordinator, Chesapeake Bay National Estuarine Research Reserve in Virginia, Virginia Institute of Marine Science, College of William and Mary, P.O. Box 1347, Gloucester Point, VA 23062, (804) 684–7135, wreay@vims.edu
Washington
Mr. Terry Stevens, Manager; Dr. Douglas Bulthuis, Research Coordinator, Padilla Bay National Estuarine Research Reserve, 10441 Bay View-Edison Road, Mt. Vernon, WA 98273–9668, (360) 428–1558, bulthuis@padillabay.gov

[FR Doc. 99–22981 Filed 9–2–99; 8:45 am]
BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082399D]

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of its Personnel, Joint Executive & Finance, Calico Scallop, Snapper Grouper, Marine Reserves, Golden Crab, Mackerel, Dolphin & Wahoo and Shrimp Committees; and a Council Session.

DATES: The meetings will be held from September 20–24, 1999. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC 29407; telephone: (843) 571–1000; (800) 334–6660.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407–4699.

FOR FURTHER INFORMATION CONTACT: Kerry O'Malley, telephone: (843) 571–4366; fax: (843) 769–4520; email: kerry.omalley@noaa.gov

SUPPLEMENTARY INFORMATION:

Meeting Dates

September 20, 1999, 1:30 p.m. to 3:00 p.m.—Personnel Committee (Closed Session);

The Personnel Committee will meet to review and approve personnel sections in the Council's draft Administrative Handbook;

September 20, 1999, 3:00 p.m. to 5:00 p.m.—Joint Executive and Finance Committees;

The committees will review and approve the Council's draft Administrative Handbook, the proposed 2000 Council budget and schedule of activities and discuss the status of the Sargassum Fishery Management Plan (FMP);

September 21, 1999, 8:30 a.m. to 10:00 a.m.—Calico Scallop Committee;

The committee will review the Calico Scallop Stock Assessment and Fishery Evaluation (SAFE) Report, the status of the FMP, hear a report on the status of the vessel monitoring systems and discuss bycatch monitoring;

September 21, 1999, 10:00 a.m. to 12:00 a.m.—Snapper Grouper Committee;

The committee will receive an update on the status of the red Porgy Emergency Rule Request, review Snapper Grouper Amendment 12 (red progy closure) and approve for public hearing, and will receive a status report on the amberjack trip limit resubmission;

September 21, 1999, 1:30 p.m. to 5:00 p.m.—Marine Reserves Committee;

The Committee will review the Marine Reserves and Habitat/Coral advisory panels recommendations on the Marine Reserves Discussion Document, review and approve revised Marine Reserves Discussion Document, discuss format of public scoping meetings, set locations and dates for public scoping meetings and receive a status report on other marine reserve related activities in the southeast;

September 22, 1999, 8:30 a.m. to 10:30 a.m.—Golden Crab Committee;

The committee will receive a report on the informal meeting with the golden crab fishermen and review and approve options for Golden Crab Amendment 1;

September 22, 1999, 10:30 a.m. to 12:00 p.m.—Mackerel Committee;

The committee will review public hearing and NMFS comments as well as Gulf Council action on Mackerel Amendment 12, develop recommendations for approval of Mackerel Amendment 12 and discuss the current framework action;

September 22, 1999, 1:30 p.m. to 5:00 p.m.—Dolphin & Wahoo Committee;

The committee will review Gulf and Caribbean actions, review the draft FMP and establish preferred actions, and approve the FMP for public hearing (dependent on status of the Gulf and Caribbean Councils actions);

September 23, 1999, 8:30 a.m. to 10:30 a.m.—Shrimp Committee;

The committee will review the SAFE report, review status of the bycatch reduction device (BRD) protocol and provide direction to staff, discuss bycatch monitoring, and discuss the use of vessel monitoring systems;

September 23, 1998, 10:30 a.m. to 5:00 p.m.—Council Session;

The Council will hold elections for a new chairman and vice chairman and make presentations from 10:45 to 11:15;

Beginning at 11:15 p.m. the Council will hear the Joint Executive & Finance Report and the Council will take public comment on NMFS' Notice of Availability for the South Atlantic Council's Sargassum FMP;

The Council will also discuss their position on the Sargassum FMP, approve the Council's draft handbook, approve the proposed 2000 budget and activities schedule and approve the 1999/2000 Operations Plan;

From 1:30 p.m. to 3:00 p.m. the Council will resume hearing the Joint Executive & Finance Report;

From 3:00 p.m. to 3:15 p.m. the Council will hear the Calico Scallop Committee report.

From 3:15 p.m. to 3:30 p.m. the Council will hear the Snapper Grouper committee Report and approve Snapper Grouper Amendment 12 for Public Hearing;

From 3:30 p.m. to 4:00 p.m. the Council will hear the Marine Reserves Committee report and approve the revised Marine Reserves Discussion Document and establish locations and dates for scoping meetings;

From 4:00 p.m. to 4:15 p.m. the Council will hear the Golden Crab Committee report.

From 4:15 p.m. to 5:15 p.m. the Council will hear the Mackerel Committee report and the Council will take public comment on Mackerel Amendment 12 and approve Amendment 12 for secretarial review.

September 24, 1999, 8:30 a.m. to 12:00 p.m.—Council Session;

From 8:30 a.m. to 9:30 p.m. the Council will hear the Dolphin & Wahoo Committee report and approve the FMP for public hearing;

From 9:00 a.m. to 9:30 a.m. the Council will hear the Shrimp Committee report and review the status of the BRD protocol and take action if necessary;

From 9:30 a.m. to 10:30 a.m. the Coast Guard will the give the Council a report on vessel safety;

From 10:30 a.m. to 11:00 a.m. the Council will receive a status report on marine mammal activities;

From 11:00 a.m. to 11:30 a.m. the council will receive status report from NMFS on last years Mackerel Framework Action, the current Mackerel Framework Action, Mackerel Amendment 9, Red Porgy Emergency Rule, Greater Amberjack trip limit resubmittal, the Calico Scallop FMP, and on landings for: Atlantic king mackerel, Gulf king mackerel (eastern zone), Atlantic Spanish Mackerel, snowy grouper, golden tilefish, wreckfish, greater amberjack and South Atlantic octocorals.

From 11:30 a.m. to 12:00 noon the Council will hear agency and liaison reports and a report on Atlantic Coast Cooperative Statistical Program, and any other business will be discussed at 12:00 noon.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by September 14, 1998.

Dated: August 26, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–22955 Filed 9–2–99; 8:45 am]
BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

[Docket No. 990817224–9224–01]

Subject: Extension of NEXRAD Information Dissemination Service (NIDS) Agreement

AGENCY: National Weather Service (NWS), NOAA, Commerce.

ACTION: Notice.

SUMMARY: The NWS is in the process of replacing the NIDS with a Government operated radar product central collection and distribution system. This system, once implemented, will be accessible by all users. To allow for a successful transition to this system, the current NIDS Agreement with three private vendors for the distribution of WSR–88D products from NWS radars to external users will be extended through September 30, 2000.

EFFECTIVE DATE: September 3, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Carelli, NWS NIDS Administrator, at 301–713–1724 ext. 184, or e-mail: Michael.Carelli@noaa.gov.

SUPPLEMENTARY INFORMATION: The NWS is in the process of replacing the NIDS with a Government-operated radar product central collection and distribution system. This system, once implemented, will be accessible by all users. To allow for a successful transition to this system, the current NIDS Agreement with three private vendors for the distribution of WSR–88D products from NWS radars to external users will be extended through September 30, 2000. The amended NIDS Agreement provides for additional extensions, beyond September 30, 2000, in 90-day increments, only if necessary, until the NWS has successfully completed the transition to the replacement radar product central collection and distribution system. Once the NWS central collection and distribution system is operational, the NIDS Agreement will be terminated, but no sooner than October 1, 2000. Once implemented, the Government-operated system will provide for an open distribution of radar products to all users without data redistribution restrictions.

Dated: August 31, 1999.

John E. Jones, Jr.,

Deputy Assistant Administrator for Weather Services.

[FR Doc. 99–23099 Filed 9–2–99; 8:45 am]
BILLING CODE 3510–KE–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 073099C]

Endangered Species; Permits; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit 1168 and correction.

SUMMARY: Notice is hereby given that NMFS has issued a permit to the Washington Department of Natural Resources at Olympia, WA (WDNR) that authorizes annual incidental takes of Endangered Species Act-listed anadromous fish, subject to certain conditions set forth therein.

ADDRESSES: The application and related documents are available for review in the following office, by appointment:

Washington State Habitat Branch, 510 Desmond Drive SE, Suite 103, Lacey, WA 98503.

FOR FURTHER INFORMATION CONTACT: Steve Landino (360–753–9530).

SUPPLEMENTARY INFORMATION: The permit was issued under the authority of section 10(a)(1)(B) of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 222-227).

Notice was published on August 10, 1998 (63 FR 42615), that an application had been filed by WDNR for an incidental take permit. Permit 1168 was issued to WDNR on June 14, 1999. Permit 1168 authorizes WDNR annual incidental takes of threatened Lower Columbia River (LCR) steelhead (*Oncorhynchus mykiss*); LCR chinook and Puget Sound chinook (*O. tshawytscha*); Hood Canal summer-run chum and Columbia River chum (*O. keta*); and Ozette Lake sockeye (*O. nerka*). WDNR's covered activities include timber and non-timber management and related operations as described in the Habitat Conservation Plan (HCP) and associated Draft (DEIS) and Final Environmental Impact Statements (FEIS). The 30-day waiting period for the FEIS ended on December 2, 1996.

Corrections

Errors that were discovered in the August 10, 1998, notice are corrected in this notice.

In the **Federal Register** of August 10, 1998, in FR Doc. 98–21254, on page 42615, in the third column, in the third paragraph under the "**Background**" heading, in the fourth line, the phrase "50-year permit" is corrected to read "70 to 100-year permit."

In the **Federal Register** of August 10, 1998, in FR Doc. 98–21254, on page 42615, in the second column, in the first paragraph under the "**Summary**" heading, in the eighth line, the phrase "associated with timber management activities in western Washington state" is corrected to read "in western Washington state associated with timber management activities and specific non-timber management activities described in the WDNR Habitat Conservation Plan."

In the **Federal Register** of August 10, 1998, in FR Doc. 98–21254, on page 42616, in the first column, in the second paragraph under the "Implementation Agreement Provisions" heading, in the third line, the phrase "timber management activities" is corrected to read "timber management activities and specific non-timber management activities."

Further, the recent listing for ESA protection of other species of anadromous fish means that those species are listed on the permit in addition to the one species (i.e., LCR steelhead) that was mentioned in the August 10, 1998 notice. The HCP was specifically developed to address all species of anadromous fish and any species that becomes listed in the future will be reviewed at the time of listing to determine whether it can be added to the permit. In this case, that review was documented in an ESA section 7 Biological Opinion approved June 14, 1999.

Permit 1168 expires on January 30, 2067.

Issuance of the permit was based on a finding that WDNR had met the permit issuance criteria of 50 CFR 222.22(c).

Dated: August 28, 1999.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–22953 Filed 9–2–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Intent To Prepare an Environmental Impact Statement (EIS) for Test Range Management Practices at the U.S. Army Aberdeen Proving Ground's (APG) Aberdeen Test Center (ATC), MD

AGENCY: Department of the Army, DoD.

ACTION: Notice of Intent.

SUMMARY: In accordance with Public Law 91–190, the National Policy Act of 1969, an Environmental Impact Statement (EIS) is to be prepared to assess the environmental impacts associated with the adoption of test range management practices at APG's ATC. The ranges at both the Aberdeen Area and Edgewood Area of APG are used to conduct research, development, testing, and evaluation of military ordnance. The ranges are forested and contain grassland and heavily vegetated areas. The new range management practices being proposed for adoption consist of the following techniques: (1) Controlled burns; (2) use of herbicides; (3) disking; (4) firebreaks; and (5) a combination of techniques. A no action alternative (status quo) of maintaining current range management practices will also be considered. The new range management practices are being proposed since there are no current on-going management practices that sufficiently address techniques to minimize range fires, the domination of native plant species by non-native plant species, and impediments to recovery of unexploded ordnance (UXO). The new range management practice techniques being proposed will help minimize the accumulation of fallen vegetative debris that fuel wildfires, regenerate native forests and plant species, improve the ability of APG personnel to recovery UXO, and better manage range assets and facilities. The agency invites written comments and suggestions on issues and management opportunities for the area being analyzed.

DATES: Written public comments and suggestions should be submitted by October 18, 1999, to the address shown below. Comments received after this date will be considered to the extent practicable.

ADDRESSES: Commander, U.S. Army Aberdeen Test Center, ATTN: STEAC–EV (Mr. Joseph P. Ondek), Aberdeen Proving Ground, Maryland 21005–5001.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph P. Ondek at (410) 278–5294.

SUPPLEMENTARY INFORMATION: The Army will conduct several scoping workshops prior to preparing the EIS. The first step will be to determine the appropriate scope of issues, activities, and alternatives to be addressed. Among the anticipated areas to be evaluated are public health risks and public safety, water quality, air quality, hazardous materials, biological resources including threatened and endangered species, socioeconomic effects, and historic and archaeological resources. During the scoping process, the Army will ask the public and agencies that have regulatory interest in Aberdeen Proving Ground to participate in scoping. Comments received as a result of this notice will be used to assist the Army in identifying potential impacts to the quality of the natural and human environment. The public scoping meetings will be held prior to preparing the draft EIS. The exact date, time and location of the scoping meetings will be advertised in the local news media, at least 15 days prior to the meeting.

Dated: August 31, 1999.

Richard E. Newsome,

Acting Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (I&E).

[FR Doc. 99–23062 Filed 9–2–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Proposal To Issue and Modify Nationwide Permits

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice of time extension for receipt of comments.

SUMMARY: In Part III of the July 21, 1999, issue of the **Federal Register** (64 FR 39252), the Corps of Engineers published its proposal to issue 5 new Nationwide Permits (NWPs) and modify 6 existing NWPs to replace NWP 26 when it expires. The Corps is also proposing to modify 9 NWP general conditions and add three new general conditions. A key element of the Corps process for developing NWPs that authorize activities with minimal adverse effects on the aquatic environment is regional conditioning developed by district and division engineers. Corps districts have published public notices to solicit comments on proposed regional conditions for the draft NWPs published in the July 21, 1999, **Federal Register**. The public is invited to provide comments on these proposals.

DATES: The closing date for receipt of comments concerning the draft NWPs is hereby extended from September 7, 1999, to October 7, 1999.

ADDRESSES: HQUSACE, ATTN: CECW–OR, 20 Massachusetts Avenue, NW, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson or Mr. Sam Collinson at (202) 761–0199 or access the Corps of Engineers Regulatory Home Page at: http://www.usace.army.mil/inet/functions/cw/cecwo/reg/.

SUPPLEMENTARY INFORMATION: The Corps has determined that a 30-day extension to the comment period would be appropriate to allow both the development and environmental communities additional time to review the proposed draft NWPs, including proposed general conditions and regional conditions. This time extension will affect the effective date for the new and modified NWPs by no more than 15 days. The new and modified NWPs will become effective no later than January 5, 2000. Corps districts will have the option to extend their comment periods for their regional conditions and will decide if such an extension is necessary.

To ensure that there is an NWP available to authorize activities in headwaters and isolated waters that have minimal adverse effects on the aquatic environment, the Corps has modified the expiration date for NWP 26 to January 5, 2000, or the effective date of the replacement NWPs, whichever comes first. The revised schedule is illustrated in Figure 1.

BILLING CODE 3710–92–P

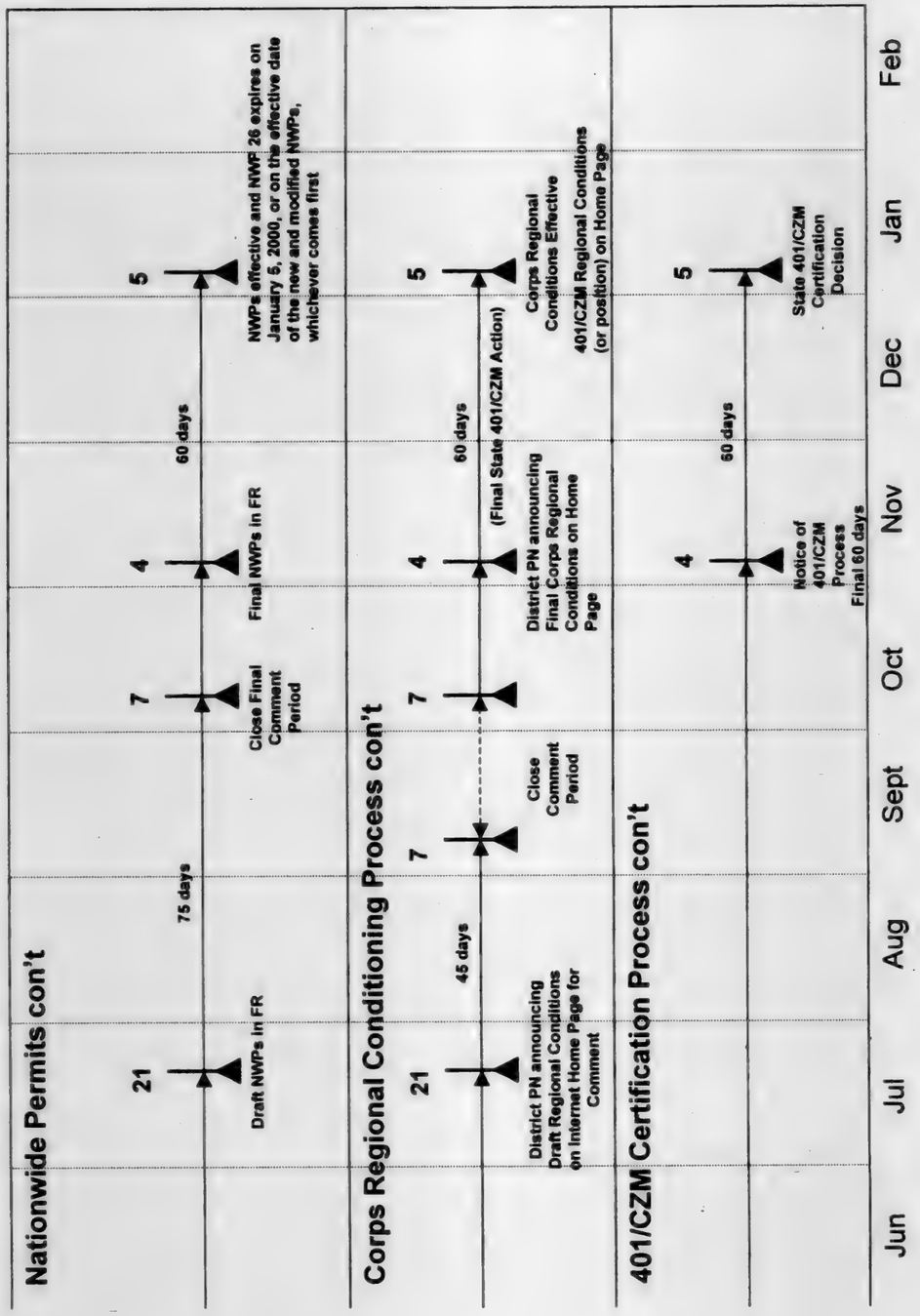

BILLING CODE 3710–92–C

The implementation of the new NWPs is a high priority for the Administration, including the Army. We believe that the current proposal reflects the changes that are necessary to ensure that the Nation's aquatic resources are properly protected in accordance with the goals of the Clean Water Act.

Dated: August 31, 1999.

Charles M. Hess,

Chief, Operations Division, Directorate of Civil Works.

[FR Doc. 99–23081 Filed 9–1–99; 9:42 am]

BILLING CODE 3710–92–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Visitors to the U.S. Naval Academy

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. During this meeting inquiries will relate to the internal personnel rules and practices of the Academy, may involve on-going criminal investigations, and include discussions of personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The executive session of this meeting will be closed to the public.

DATES: The meeting will be held on Monday, September 13, 1999 from 8:30 a.m. to 11:45 p.m. The closed Executive Session will be from 10:50 a.m. to 11:45 a.m.

ADDRESSES: The meeting will be held in the Bo Coppedge Room of Alumni Hall at the U.S. Naval Academy, Annapolis, MD.

FOR FURTHER INFORMATION CONTACT: Commander Gerral K. David, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, (410) 293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. App. 2). The executive session of the meeting will consist of discussions of information which pertain to the conduct of various midshipmen at the Naval Academy and internal Board of Visitors matters. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. In accordance with 5 U.S.C. App. 2, section 10(d), the Secretary of the Navy has determined in writing that the special committee meeting shall be partially closed to the public because they will be concerned with matters as outlined in section 552(b)(2), (5), (6), and (7) of title 5, U.S.C.

Dated: August 26, 1999.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 99–22978 Filed 9–2–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 4, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 30, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Reinstatement.

Title: Annual Supported Employment Caseload Report.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 81

Burden Hours: 162

Abstract: This form collects data required by Sections 626 and 101(a) (10) of the Rehabilitation Act, as amended. The Rehabilitation Services Administration (RSA) Commissioner must collect data separately on persons who receive supported employment services under Title I and Title VI, Part B, of the Act and submit an annual report to the President and Congress as required by Section 13.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *OCIO—IMG—Issues@ed.gov*, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Sheila Carey at 202–708–6287 or electronically mail her at internet address sheila_carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–22974 Filed 9–2–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

President's Advisory Commission on Educational Excellence for Hispanic Americans; Meeting

AGENCY: President's Advisory Commission on Educational Excellence for Hispanic Americans, Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the President's Advisory Commission on Educational Excellence for Hispanic Americans (Commission). Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act in order to notify the public of their opportunity to attend.

DATES AND TIMES: Tuesday, September 14, 1999, 1:00 p.m.–5:00 p.m. (est). Wednesday, September 15, 1999, 10:00 a.m.–12:00 noon (est).

ADDRESSES: Overseas Private Investment Corporation (OPIC) Building, 1100 New York Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Luis Rosero, Special Assistant for Communication, at 202–401–8459 (telephone), 202–401–8377 (FAX), luis__rosero@ed.gov (e-mail) or mail: U.S. Department of Education, 400 Maryland Avenue SW, Room 5E110; Washington, DC 20202–3601.

SUPPLEMENTARY INFORMATION: The Commission was established under Executive Order 12900 (February 22, 1994) to provide the President and the Secretary of Education with advice on (1) the progress of Hispanic Americans toward achievement of the National Goals and other standards of educational accomplishment; (2) the development, monitoring, and coordination of Federal efforts to promote high-quality education for Hispanic Americans; (3) ways to increase, State, county, private sector and community involvement in improving education; and (4) ways to expand and complement Federal education initiatives.

At the September 14th meeting, Commissioners will report on activity within the following Committees: Children, Families and Communities, Higher Education and Assessment. The Departments of Education and Health and Human Services will report to Commissioners on the Implementation of the Hispanic Education Action Plan. The White House Initiative staff will report on the work of the Interdepartmental Council on Hispanic Educational Improvement and the 1999 Annual Performance Report. The Steering Committee of the Massachusetts Education Initiative for Latino students will present an overview of the plans for the October 2, 1999, summit. Massachusetts is the first state in the country to implement Executive Order 12900 at the State level. Congressman Ruben Hinojosa, Chair of the Education Taskforce of the Congressional Hispanic Caucus will also address the commission.

On Wednesday, September 15, 1999, Commission members will release a report on the issue of Assessment during a Press Conference at the National Press Club, 529 14th Street, NW, at 10:00 a.m. and directly following will meet from 11:00 a.m.–12:00 noon to discuss plans for a National meeting on Latino Educational Excellence.

Records of all Commission proceedings are available for public inspection at the White House Initiative, U.S. Department of Education, 400 Maryland Ave., SW, Room 5E110, Washington, DC 20202 from 9:00 a.m. to 5:00 p.m. (est).

Dated: September 1, 1999.

Leo Coco,

Acting Assistant Secretary, Office of Intergovernmental and Interagency Affairs.

[FR Doc. 99–23169 Filed 9–2–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–484–000]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 30, 1999.

Take notice that on August 26, 1999, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of November 1, 1999.

Second Revised Sheet No. 12
Sheet Nos. 13 through 22
First Revised Sheet No. 30
First Revised Sheet No. 36C
First Revised Sheet No. 407
First Revised Sheet No. 478

National Fuel states that its filing is made to implement its agreement with ProGas U.S.A., Inc. (ProGas) regarding the services and rates to be provided by National Fuel following National Fuel's acquisition of the interests of Texas Eastern Transmission Corporation (Texas Eastern) in the Niagara Spur Loop Line (NSLL) and the Ellisburg to Leidy Pipeline (ELL), which acquisition is pending Commission approval in Docket No. CP99–569–000. National Fuel states that, in order to replicate Texas Eastern's existing service for ProGas through the NSLL and the ELL, and to reflect certain contingencies unique to this transaction, its agreement with ProGas departs from its form of service agreement in certain respects, and is filed pursuant to Section 154.112(b) of the Commission's regulations, together with a tariff reference to the agreement.

National Fuel also states it proposes to revise Section 17 of its General Terms and Conditions to provide that National Fuel may seek a discount adjustment in future rate cases relating to services that are converted from discount services to negotiated rate services, and to revise Section 3.5 of its FT and FT–S Rate Schedules to clarify that the maximum rates applicable to a shipper utilizing Zones 1 and 3 of its Niagara import point project capacity is the sum of the maximum rates applicable to Zones 1 and 3.

National Fuel states that its filing also is made to implement an amendment to its agreement with ProGas, which provides for a negotiated rate pursuant to Section 17.2 of the General Terms and Conditions of National Fuel's tariff.

National Fuel states that copies of this filing were served upon its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–22971 Filed 9–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–443–001]

Petal Gas Storage Company, Notice of Proposed Changes in FERC Gas Tariff

August 30, 1999.

Take notice that on August 25, 1999, Petal Gas Storage Company (Petal) tendered for filing, as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets with a proposed effective date of August 16, 1999;

Sub. First Revised Sheet No. 1
Sub. First Revised Sheet No. 2
Sub. Second Revised Sheet No. 101
Sub. Original Revised Sheet No. 75
Sub. Original Revised Sheet No. 211

These tariff sheets are being filed to eliminate any reference in Petal's tariff to an unbundled sales service provided by Petal. Sub. Original Sheet No. 75 also provides notice of the cancellation of Petal's Rate Schedule SS unbundled sales service constituting Original Sheet No. 75 of Petal's FERC Gas Tariff. In addition, Sub. Original Sheet No. 211 provides notice of cancellation of Petal's Form of Sales Service Agreement constituting Original Sheet Nos. 211–214 of Petal's FERC Gas Tariff. Petal request all waivers necessary to make these tariff sheets effective August 16, 1999.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–22972 Filed 9–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG99–19–001]

Pine Needle LNG Company, L.L.C.; Notice of Filing

August 30, 1999.

Take notice that on August 11, 1999, Pine Needle LNG Company, L.L.C. (Pine Needle) filed a standards of conduct report in response to the Commission's July 16, 1999 order.[1]

Any person desiring to be heard or to protest the filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 358.214). All such motions to intervene or protest should be filed on or before September 14, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–22973 Filed 9–2–99; 8:45 am]

BILLING CODE 6717–01–M

[1] 88 FERC ¶61,085 (1999).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 6879–019]

Southeastern Hydro-Power, Inc.; Notice of Availability of Draft Environmental Assessment

August 30, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, the Office of Hydropower Licensing has reviewed the application requesting the Commission's authorization to amend the license for the proposed W. Kerr Scott Hydroelectric Project, to be located on the Yadkin River immediately below the existing W. Kerr Scott Dam, operated by the Wilmington District Corps of Engineers, in Wilkes County, North Carolina, and has prepared a Draft Environmental Assessment (DEA) for the proposed action.

In the DEA, Commission staff concludes that approval of the subject amendment of license with staff's recommended mitigative measures would not produce any significant adverse environmental impacts; consequently, the proposal would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. The DEA also may be viewed on the Web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

Any comments should be filed within 30 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please affix "W. Kerr Scott Hydroelectric Project Amendment of License, Project No. 6879–019" to all comments. For further information, please contact Jim Haimes at (202) 219–2780.

David P. Boergers,

Secretary.

[FR Doc. 99–23007 Filed 9–2–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent To File Application for New License

August 30, 1999.

a. *Type of filing: Notice of Intent to File Application for New License.*

b. *Project No.:* 2726.

c. *Date file:* July 27, 1999.

d. *Submitted By:* Idaho Power Company, current licensee.

e. *Name of Project:* Upper and Lower Malad.

f. *Location:* On the Malad River in Gooding County, Idaho.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. *Effective date of original license:* May 1, 1965.

i. *Expiration date of original license:* July 31, 2004.

j. The project consists of the Upper Malad and the Lower Malad Developments.

The *Upper Malad Development* consists of: (1) The 25-foot high and 150-foot-long concrete Upper Malad Dam, with Tainter gates; (2) an open concrete conduit about 4,600 feet long and 15 feet wide; (3) a 10-foot-diameter and 230-foot-long welded steel plate penstock; (4) a 7,200-kilowatt vertical outdoor type generator; (5) a 0.6-mile-long transmission line connecting the development to the Hagerman Substation; and (6) other appurtenances.

The *Lower Malad Development* consists of : (1) The 8.5 foot-high and 160-foot-long concrete Lower Malad Dam with Tainter gates; (2) an open concrete conduit about 5,450 feet long and 17 feet wide; (3) a 12-foot-diameter and 287-foot-long welded steel plate penstock; (4) a reinforced concrete powerhouse with an installed capacity of 13,500 kilowatts; and (5) other appurtenances.

Pursuant to 18 CFR 16.7, information on the project is available at: Idaho Power Company, 1221 West Idaho Street, Corporate Library, Second Floor, Boise,ID 83707, or calling (208) 338–2491.

1. *FERC contact:* Hector M. Perez (202) 219–2843, hector.perexferc.fed.us.

m. Pursuant to 18 CFR 16.9(b)(1) applications for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of existing license. All applications for license for this project must be filed by July 31, 2002.

David P. Boergers,

Secretary.

[FR Doc. 99–22970 Filed 9–2–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6433–2]

Request for Nominations to the National Advisory Council for Environmental Policy and Technology, New Standing Committee on Compliance Assistance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of request for nominations.

SUMMARY: The Environmental Protection Agency (EPA) is inviting nominations for membership on its National Advisory Council for Environmental Policy and Technology (NACEPT), new Standing Committee on Compliance Assistance. The Agency is seeking qualified senior level decision makers from diverse stakeholder groups throughout the U.S. to be considered for appointments. Nominations will be accepted until close of business September 10, 1999, and must include a resume and short biography describing the educational and professional qualifications of the nominee and the nominee's current business address and daytime telephone number.

DATES: Nominations will be accepted until close of business on September 10, 1999.

ADDRESSES: Submit nominations to Ms. Gina Bushong, Office of Enforcement and Compliance Assurance (OECA), U.S. Environmental Protection Agency, MC 2224A, 401 M Street, SW, Washington, D.C. 20460. You may also E-mail nominations to bushong.gina@epa.gov.

FOR FURTHER INFORMATION CONTACT: Ms. Gina Bushong, Office of Enforcement and Compliance Assurance (OECA), U.S. Environmental Protection Agency, MC 2224A, 401 M Street, SW, Washington, D.C. 20460. You may also E-mail nominations to bushong.gina@epa.gov.

SUPPLEMENTARY INFORMATION: NACEPT is a federal advisory committee under the Federal Advisory Committee Act, Public Law 92463. NACEPT provides advice and recommendations to the Administrator and other EPA officials on a broad range of domestic and international environmental policy issues. NACEPT consists of a representative cross-section of EPA's partners and principal constituents who provide advice and recommendations on policy issues and serve as a sounding board for new strategies that the Agency is developing. Maintaining a balance and diversity of experience, knowledge, and judgment is an important consideration in the selection of members.

The Office of Enforcement and Compliance Assurance (OECA) has recently completed work on an action plan, "Innovative Approaches to Enforcement and Compliance Assurance." The OECA action plan draws on the ideas from an Agency-wide Innovations Task Force, public dialogue such as OECA's "East coast" and "West coast" stakeholder conferences, and stakeholder discussions in regional offices and at Headquarters. The tasks described in the Agency report (available at www.epa.gov/reinvent) and the OECA action plan will change fundamental aspects of our compliance assistance planning and programs.

To ensure that the compliance assistance activities in the action plan are implemented in a way that continues to reflect stakeholder needs, the Administrator has asked NACEPT to create a new Standing Committee on Compliance Assistance. This will provide a continuing Federal Advisory Committee forum from which the Agency can continue to receive valuable multi-stakeholder advice and recommendations on compliance assistance activities.

The Standing Committee on Compliance Assistance will, through NACEPT (the Council): (1) provide guidance on the development of an Agency-wide annual compliance assistance plan which identifies major planned compliance assistance work; (2) provide input to the design and implementation of a clearinghouse of compliance assistance information; and (3) guide the planning of a forum to bring together government and private compliance assistance providers. We are accepting nominations for approximately 15–20 members. Criteria for selection of nominees will include the following:

—Demonstrated experience in compliance assistance activities

—Representation from a broad range of EPA stakeholder groups which have interest and experience in reinvention approaches to environmental problems, including but not limited to business/industry, state/local/tribal governments, national and local environmental, environmental justice, and labor groups.

—Senior level representatives with decision-making authority for their organization.

—Representatives with experience working collaboratively with stakeholder groups in addition to their own.

Nominations for membership must include a resume and short biography describing the educational and professional qualifications of the nominee and the nominee's current business address and daytime telephone number. Nominees invited to participate will receive an invitation from EPA's Deputy Administrator.

Dated: August 30, 1999.

Joe Sierra,

Designated Federal Officer.

[FR Doc. 99–23061 Filed 9–2–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6245–8]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 23, 1999 through July 30, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 09, 1999 (64 FR 17362).

Draft EISs

ERP No. D–AFS–J65303–MT Rating EC2, Bridger Bowl Ski Area, Permit Renewal and Master Development Plan Update, Implementation, Special Use Permit and COE Section 404 Permit, Gallatin National Forest, in the City of Bozeman, MT.

Summary: EPA expressed concerns regarding lack of information to support expansion of the ski area beyond the existing ski area boundaries; inadequate analysis and disclosure of indirect effects of induced development that may be associated with the ski area expansion and doubling of skier capacity; potential increased wastewater pollutant loadings to area ground water; and erosion from ski area vegetation clearing and ski run development. Additional information is needed to fully assess and mitigate all potential environmental impacts of the management actions.

ERP No. D–COE–K36127–CA Rating EO2, Arroyo Pasajero Watershed Feasibility Investigation, Implementation, Flood Damage Reduction Plan, San Joaquin River Basin, City of Huron, Fresno County, CA.

Summary: EPA expressed objections to the Gap Dam alternative due to significant impacts on biological resources, wetlands and endangered species. EPA expressed concerns regarding the Westside Detention Basin alternative. Additional information on nonstructural methods and mitigation of project impacts is required for EPA to fully assess whether significant environmental impacts have been avoided to fully protect the environment.

ERP No. D–COE–K36128–CA Rating EO2, Tule River Basin Investigation Project, Plan to Increase Flood Protection Downstream of Success Dam and Increase Storage Space in Lake Success for Irrigation Water, Tule River, Tulace and King Counties, CA.

Summary: EPA expressed objections regarding the lack of a full alternative analysis. In addition, habitat protection and mitigation success associated with the project are uncertain, and the project lacks planning for long-term sustainability of the water resource and flood protection goals and could result in cumulative impacts.

ERP No. D–FHW–D40298–MD Rating EC2, MD–32 Planning Study, Transportation Improvement from MD 108 to Interstate 70, Funding, NPDES Permit and COE Section 404 Permit, Howard County, MD.

Summary: EPA is primarily concerned with secondary impacts including land use issues and development pressure from the increased access that this project would induce. An enhancement of the existing highway may meet the purpose and needs while considerably reducing wetland impacts.

ERP No. D–FHW–D40300–MD Rating EC1, Middle River Employment Center Access Study, Transportation Improvements, NPDES and COE Section 404 Permit, Baltimore County, MD.

Summary: EPA expressed environmental concerns about the direct, cumulative and secondary impacts that are associated with the development that will occur as a result of this new highway project. EPA urged Baltimore County to implement aggressive conservation practices when reviewing plans and processing permits that will allow development to occur in Middle River Employment Center.

ERP No. D–FHW–E40088–MS Rating EC2, Airport Parking/Mississippi 25 Connectors, Construction at Intersection of High Street/Interstate 55 (I–55) in the City of Jackson, Hinds and Rankin Counties, MS.

Summary: EPA expressed environmental concerns regarding potential long-term wetland impacts associated with building the proposed highway as described in the preferred alternative. EPA suggested incorporating sub-alternatives that address the various bridging and interchange options using the alignments similar to the preferred alternative.

ERP No. D–FHW–K40148–NV Rating EO2, US–95 Improvements, Along Summerlin Parkway to the Local and Arterial Road Network in the Northwest Region of Las Vegas, Construction and Operation, Clark County, NV.

Summary: EPA expressed objections with respect to the project, given the severe nonattainment for CO and PM10; the lack of significant permanent reduction of traffic congestion, VMT, v/c ratios and CO violations; and significant impacts to noises, in established core neighborhoods, and community and 4(f) facilities. EPA proposed an alternative phased approach with aggressive implementation of TDM and mass transit measures.

ERP No. D–FTA–D40289–VA Rating EC2, Norfolk-Virginia Beach Light Rail Transit System East/West Corridor Project, Transportation Improvements, Tidewater Transportation District Commission, COE Section 404 Permit, City of Norfolk and City of Virginia Beach, VA.

Summary: EPA is concerned about potential noise vibration and displacement impacts to existing neighborhood.

Final EISs

ERP No. F–FHW–L40184–WA, WA–167 Corridor Adoption, WA–167 Freeway Extension from WA–167/ Meridian Street North in the City of Puyallup to the proposed WA–509 Freeway/East-West Alignment in the City of Tacoma, Funding and COE Section 404 Permit, Pierce County, WA.

Summary: EPA expressed objections to the Tier I process that eliminated alternatives that should have been fully analyzed and which may have had potential to avoid social, economic and environmental impacts. EPA requested that the Tier II process provide a detailed analyses of environmental, economic and social impact and avoidance and mitigation for those impacts.

ERP No. F–NCP–D61050–MD, National Harbor Project, Construction and Operation along the Potomac River on a 534 acre site adjacent to the Capital Beltway and Oxon Hill Manor, COE Section 10 and 404 Permits, Prince George's County, MD.

Summary: EPA has concerns regarding impacts to aquatic resources, air pollution and environmental justice issues. EPA is trying to resolve some of the outstanding issues with the applicant.

ERP No. FS–AFS–J65283–CO, Upper Elk River Access Analysis, Implementation, Proposal to Remove and/or Treat Blowdown Trees, Routt Divide Blowdown, Medicine Bow-Routt-National Forests, Hahn Peak/ Bears Ears Ranger District, Routt County, CO.

Summary: EPA expressed its view that the preferred alternative, as disclosed in the Final Supplemental Environmental Impact Statement

(FSEIS) and recorded in the Record of Decision (ROD), can be implemented without significant impact to the environment.

Regulations

ERP No. R–BLM–A02241–00, 43 CFR Part 3100 et al.—Onshore Oil and Gas Leasing and Operations; Proposed Rule.

Summary: EPA expressed concerns that the proposed action could lead to or have significant impacts to air and water quality. EPA suggests that BLM analyze and discuss the cumulative impacts of oil and gas leasing to air and water quality before issuing the final rule and include proposed clarifications to the sections on produced water disposal, underground injection control permits, bonding and plugging abandonment.

Dated: August 31, 1999.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–23054 Filed 9–2–99; 8:45 am]

BILLING CODE 6560–60–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6245–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153. Weekly receipt of Environmental Impact Statements Filed August 23, 1999 Through August 27, 1999 Pursuant to 40 CFR 1506.9.

EIS No. 990302, DRAFT EIS, FHW, WV, MD, VA, US 522 Upgrade and Improvements Project, From the Virginia State Line through Morgan County, to the Maryland State Line, Funding, NPDES and COE Section 404 Permit, Morgan County, WV, Due: November 01, 1999, Contact: Thomas J. Smith (304) 347–5928.

EIS No. 990303, FINAL EIS, FHW, HI, Saddle Road (HI–200) Improvements between Mamalahoa Highway (HI–190) to Milepost 6 near Hilo, Funding, NPDES and COE Section 404 Permit, Hawaii County, HI, Due: October 12, 1999, Contact: Bert McCauley (303) 716–2141.

EIS No. 990304, DRAFT EIS, NPS, WA, Whitman National Historic Site, General Management Plan, Development Concept Plan, Implementation, Walla Walla County, WA, Due: November 12, 1999, Contact: Francis T. Darby (509) 522–6360.

EIS No. 990305, FINAL EIS, AFS, AL, Longleaf Restoration Project, Implement a Systematic Five-Year Program for Restoration of the Native Longleaf Pine, Conecuh National Forest, Conecuh Ranger District, Covington and Escambia Counties, AL, Due: October 12, 1999, Contact: Robert Taylor (334) 222–2555.

EIS No. 990306, FINAL EIS, FHW, IL, IL–315 Federal Aid Primary (FAP) (Illinois-336) Transportation Project, Construction from FAP 315, IL 336 (Southeast of Carthage) to US 136 (Just West of Macomb), Funding, COE 404 Permit and NPDES Permit, Hancock and McDonough Counties, IL, Due: October 12, 1999, Contact: Ronald C. Marshall (217) 492–4640.

EIS No. 990307, DRAFT EIS, BLM, CO, North Fork Coal Program, Approval of Two Lease-By-Applications (LBA) and Exploration License for Iron Point and Elk Creek Coal Leases, Delta and Gunnison County, CO, Due: November 03, 1999, Contact: Jerry Jones (970) 240–5338. The US Department of Interior's Bureau of Land Management and the US Department of Agriculture's Forest Service are Joint Lead for this project.

EIS No. 990308, DRAFT EIS, FTA, CA, Orange County CenterLine Project, Transportation Improvements, Advanced Rail Transit in the Heart of Orange County, Funding and COE Section 404 Permit, Orange County, CA, Due: October 25, 1999, Contact: A. Joseph Ossi (202) 366–1613.

EIS No. 990309, FINAL EIS, FHW, NM, US 84/285 Highway Transportation Improvements from Alamo Drive in Santa Fe to Viarrial Street in Pojoaque, Right-of-Way Acquisition, NPDES Permit and COE Section 404 Permit, Santa Fe County, NM, Due: October 12, 1999, Contact: Gregory D. Rawlings (505) 820–2027.

EIS No. 990310, FINAL SUPPLEMENT, NRC, Generic EIS—License Renewal of Nuclear Plants for the Oconee Nuclear Station, Units 1, 2 and 3, Implementation, Oconee County SC, Due: October 12, 1999, Contact: Donald P. Cleary (301) 415–3903.

EIS No. 990311, DRAFT EIS, AFS, OR, Ashland Creek Watershed Protection Project, Proposal to Manage Vegetation, Rogue River National Forest, Ashland Ranger District, City of Ashland, Jackson County, OR, Due: October 25, 1999, Contact: Kristi Mastrafini (541) 482–3333.

Amended Notices

EIS No. 990227, FINAL EIS, USN, CA, HI, WA, Developing Home Port Facilities For Three NIMITZ-Class Aircraft Carriers in Support of the U.S. Pacific Fleet, Construction and Operation, Coronado, CA; Bremerton and Everett, WA, Pearl Harbor, HI, Due: August 09, 1999, Contact: Bob Hexom (888) 428–6440. Published FR 07–09–99—Review Period extended from 08–03–99 to 09–03–99.

EIS No. 990294, FINAL EIS, FHW, AK, C Street Corridor Project, Improvements from O'Malley Road to International Airport Road, NPDES and COE Section 404 Permits, Municipality of Anchorage, AK, Due: September 27, 1999, Contact: Jim Bryson (907) 586–7428. Published FR–08–27–99—Correction to Document Status from Draft to Final that has a 30 day Comment Period.

Dated: August 31, 1999.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–23055 Filed 9–2–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00620; FRL–6381–5]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: There will be a 4-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) to review a set of five scientific issues being considered by the Agency:
Session I—An assessment of residential exposure to pesticides.
Session II—A review of an aggregate exposure assessment tool.
Session III—Identification of carbamate pesticides that have a common mechanism of toxicity.
Session IV—Issues pertaining to cumulating hazard for conducting cumulative risk assessments for pesticides that have a common mechanism of toxicity.
Session V—A review of American Cyanamid's April 22, 1999 probabilistic assessment for chlorfenapyr.

DATES: The meeting will be held on Tuesday, September 21; Wednesday, September 22; Thursday, September 23; and Friday, September 24, 1999, beginning at 8:30 a.m. and ending approximately 5:30 p.m.

ADDRESSES: The meeting will be held at the Sheraton Crystal City Hotel, (703) 486–1111, 1800 Jefferson Davis Highway, Arlington, VA, on September 21, 22, and 23 and at the Days Inn Crystal City (703) 920–8600, 2000 Jefferson Davis Highway, Arlington, VA, on September 24.

Requests to participate at the meeting and/or to provide comments for consideration by the FIFRA Scientific Advisory Panel may be submitted by mail, electronically, or in person. Please follow the detailed instructions as provided in Unit III under **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your request must identify docket control number OPP–00620.

FOR FURTHER INFORMATION CONTACT: Paul Lewis or Laura Morris, Designated Federal Officials, FIFRA Scientific Advisory Panel, (7101C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–5369; e-mail address: Lewis.Paul@epa.gov or Morris.Laura@epa.gov.

Individuals requiring special accommodations at this meeting, including wheelchair access, should contact Laura Morris at the address listed above at least 5 business days prior to the meeting so that appropriate arrangements can be made. Seating will be on a first-come basis.

SUPPLEMENTARY INFORMATION:

I. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to manufacturers of pesticides; farmers applying pesticides to crops; persons living in the general areas where pesticides are being used; researchers in industry, government, and academia studying the effectiveness of pesticides; and individuals and organizations studying the effects of pesticides on the environment. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. Applications of the five sessions are further described below. If you have any questions regarding the details of a particular session, consult the persons listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A meeting agenda is currently available, and copies of EPA background documents for the meeting will be available no later than September 7, 1999. Copies of the Panel's report of their recommendations will be available approximately 30 working days after the meeting. The meeting agenda and EPA primary background documents will be available at http://www.epa.gov/pesticides/SAP/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–00620. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including information claimed as confidential business information (CBI). The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. Sessions Overview

Session I will be the review of issues pertaining to the assessment of residential exposure to pesticides. When estimating aggregate exposure to a pesticide substance, the Agency includes exposures that may occur following use of the pesticide in residential or other non-occupational settings. This session will focus on several key issues that pertain to improving procedures for estimating exposure to pesticides from use in residential or other non-occupational settings and in revising its standard operating procedures for residential exposure assessments. The issues include: (1) Calculating percent dislodgeability of available pesticide residues from lawns, indoor surfaces, and pets; (2) use of choreographed activities as surrogates for estimating a child's dermal exposure; (3) characterizing hand (or object)-to-mouth activities; (4) calculating exposure to pesticides that may result from track-in, drift, bathing or showering; and (5) calculating exposure from use of pesticides in schools, day-care centers, and other public places.

Session II provides a review of an aggregate exposure assessment tool being developed through a cooperative agreement with Hampshire Research Institute (HRI). The Agency is working collaboratively under this cooperative agreement with HRI to create a tool that is publicly available, open software with no hidden logic; uses HRI's micro-exposure event analysis method; incorporates an object-oriented design that allows for continuing refinement and improvement; and includes a design that addresses known future requirements for pesticide analysis, such as cumulative risk assessment. The purpose of this session is for Agency scientists to consult with the SAP regarding the current status and future development options of this tool.

Session III emphasizes the identification of carbamate pesticides that have a common mechanism of toxicity. The identification of pesticides and other substances that cause a common toxic effect by a common mechanism is the first step of the cumulative risk assessment process (as required by the FQPA). The Agency has developed a framework for identifying chemicals that have a common mechanism of toxicity (February 5, 1999, 64 FR 5796) (FRL–6060–7). This session will describe the results of the Agency's effort to determine whether (1) carbamate pesticides cause a common toxic effect by a common mechanism and (2) if any carbamate pesticides share a common mechanism of toxicity with organophosphorus pesticides.

Session IV addresses issues pertaining to cumulating hazard for conducting cumulative risk assessments for pesticides that have a common mechanism of toxicity. The Agency is preparing guidance for assessing cumulative risk in support of the Food Quality Protection Act 1996. This session will focus on key hazard and dose response issues involved with cumulating risk from exposure to two or more chemicals that are toxic by a common mechanism. These issues deal with, for example: (1) End point selection; (2) application of adjustment and group uncertainty factors; (3) interspecies dose adjustments; (4) utilization of dose-response data and selection of a point of departure; and (5) methods for combining toxicity data. In addition, science policy issues such as assumptions concerning dose addition and dose response relationships will be presented. The Agency needs input from the SAP and the public on the hazard and toxicological issues that concern cumulative risk assessment.

Session V concerns the review of the American Cyanamid Company's April 22, 1999 probabilistic assessment (MRID No. 448098–01) for chlorfenapyr. In December 1994, the Agency received a

request for registration for the use of the pyrrole insecticide, chlorfenapyr on cotton. As a part of the registration package, American Cyanamid Company submitted a probabilistic assessment. The Agency is seeking SAP input regarding: (1) American Cyanamid's probabilistic assessment and how it may be improved; (2) the Agency's review of the assessment; and (3) the utility of using this assessment to characterize the risk of chlorfenapyr use on cotton to birds in cotton agroenvironments.

IV. How Can I Request To Participate in this Meeting?

Members of the public wishing to submit comments should contact either Paul Lewis or Laura Morris at the address or the telephone number given under **FOR FURTHER INFORMATION CONTACT** to confirm that the meeting date and the agenda have not been modified or changed. Interested persons are permitted to file written statements before the meeting. To the extent that time permits, and upon advanced written request to either Paul Lewis or Laura Morris, interested persons may be permitted by the Chair of the SAP to present oral statements at the meeting. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, and chalkboard). There is no limit on the length of written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. The Agency also urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral and/or written statements should notify either Paul Lewis or Laura Morris and submit 40 copies of the summary information. The Agency encourages that written statements be submitted before the meeting to provide Panel Members the time necessary to consider and review the comments.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data also will be accepted on disks in WordPerfect in 5.1/6/7/8.0 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number "OPP–00620." Electronic comments may be filed online at many Federal Depository Libraries.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as CBI. Information marked CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. An edited copy of the comment that does not contain the CBI material must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket. All comments and materials received will be made part of the public record and will be considered by the Panel.

List of Subjects

Environmental protection.

Dated: August 31, 1999.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 99–23053 Filed 8–31–99; 2:58 pm]

BILLING CODE 6560–50–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:32 a.m. on Tuesday, August 31, 1999, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate, insurance, and resolution activities.

In calling the meeting, the Board determined, on motion of Director Ellen S. Seidman (Director, Office of Thrift Supervision), seconded by Vice Chairman Andrew C. Hove, Jr., concurred in by Ms. Julie Williams, acting in the place and stead of Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no notice of the meeting earlier than August 26, 1999, was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: August 31, 1999.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 99–23143 Filed 9–1–99; 10:55 am]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 99–22469) published on page 47190 of the issue for Monday, August 30, 1999.

The Federal Reserve Bank of Boston heading in paragraph A. and the entry for Julie Freeman, Bartlesville, Oklahoma, is corrected to read as follows:

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480–0291:

1. Julie Freeman, Bartlesville, Oklahoma; to retain voting shares of Peoples Bankshares, Inc., Mora, Minnesota, and thereby indirectly retain voting shares of Peoples National Bank of Mora, Mora, Minnesota.

Comments on this application must be received by September 24, 1999.

Board of Governors of the Federal Reserve System, August 30, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–22960 Filed 9–2–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 27, 1999.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. First Bancshares, Inc., Kansas City, Kansas; to acquire 100 percent of the voting shares of The Lawrence Bank, Lawrence, Kansas, a de novo bank.

Board of Governors of the Federal Reserve System, August 30, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–22959 Filed 9–2–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 99–22471) published on pages 47191–47192 of the issue for Monday, August 30, 1999.

Under the Federal Reserve Bank of Boston heading, the entry for The Royal bank of Scotland Group plc, The Royal Bank of Scotland plc, and RBSG International Holdings Limited, all of Edinburgh, Scotland, is revised to read as follows:

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106–2204:

1. RBSG International Holdings Limited, Edinburgh, Scotland; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens Financial Group, Providence, Rhode Island, and thereby indirectly acquire Citizens Bank Rhode Island, Providence, Rhode Island, Citizens Bank of Massachusetts, Boston, Massachusetts, Citizens Bank New Hampshire, Manchester, New Hampshire, and Citizens Bank of Connecticut, New London, Connecticut.

In connection with this application, RBSG International Holdings Limited, Edinburgh, Scotland, also has applied to acquire Citizens Capital, Inc., Boston, Massachusetts, and thereby engage in mezzanine financing, pursuant to § 225.28(b)(1) of Regulation Y, and NYCE Corporation, Woodcliff Lake, New Jersey, and thereby engage in data processing and check verification services, pursuant to §§ 225.28(b)(14) and (b)(2) of Regulation Y, respectively. RDSG International Holdings Limited, will be a subsidiary of The Royal Bank of Scotland Group plc, and The Royal Bank of Scotland plc, both of Edinburgh, Scotland.

Comments on this application must be received by September 24, 1999.

Board of Governors of the Federal Reserve System, August 30, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–22961 Filed 9–2–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 17, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. UBS AG, Zurich, Switzerland; to retain 21.56 percent of the voting shares of TP Group Limited, Grand Cayman, Cayman Islands, British West Indies, and Tradepoint Financial Networks plc, London, England, and thereby engage in securities brokerage services and other agency transactional services for customer investments, pursuant to § 225.28(b)(7) of Regulation Y.

Board of Governors of the Federal Reserve System, August 30, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–22962 Filed 9–2–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 99–19948) published on pages 42379–42380 of the issue for Wednesday, August 4, 1999.

Under the Federal Reserve Bank of San Francisco heading, the entry for Umpqua Holdings Corporation, Roseburg, Oregon, is revised to read as follows:

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Umpqua Holdings Corporation, Roseburg, Oregon; to acquire all the voting shares of Strand, Atkinson, Williams and York, Inc., Portland, Oregon, and thereby engage, to a limited extent, in underwriting and dealing in commercial paper, municipal revenue bonds, mortgage-related securities, and consumer-receivable related securities, *see Citicorp, et al.*, 73 Fed. Res. Bull. 473 (1987); managing, servicing, and collecting assets, pursuant to § 225.28(b)(2)(vi) of Regulation Y; performing functions or activities that may be performed by a trust company, pursuant to § 225.28(b)(5) of Regulation Y; acting as investment or financial advisor, pursuant to § 225.28(b)(6) of Regulation Y; providing securities brokerage, "riskless principal," and private placement services, pursuant to § 225.28(b)(7)(i)–(iii); underwriting and dealing in obligations of the United States, general obligations of states and their political subdivisions, and other obligations that state member banks of the Federal Reserve System may underwrite and deal in under 12 U.S.C. 24 and 335, pursuant to § 225.28(b)(8)(i) of Regulation Y; and providing employee benefits consulting services,

pursuant to § 225.28(b)(9)(ii) of Regulation Y.

Comments on this application must be received by September 17, 1999.

Board of Governors of the Federal Reserve System, August 30, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–22963 Filed 9–2–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Planning and Evaluation

Technical Review Panel on the Medicare Trustees Reports; Notice of Establishment

Pursuant to Public Law 92–463, the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) announces the establishment by the Secretary of the Technical Review Panel on the Medicare Trustees Reports.

The Panel shall review the assumptions and methods underlying the Hospital Insurance and Supplementary Medical Insurance Trust Fund annual reports. The panel's review shall include the following four topics:

1. Medicare assumptions (e.g., utilization rates, medical price increases).
2. Projection methodology (how assumptions are used to make cost projections).
3. Long-range growth assumptions for HI and SMI.
4. Use of stochastic forecasting techniques.

The Panel shall terminate on August 12, 2001, unless the Secretary, DHHS, formally determines that continuance is in the public interest.

Dated: August 30, 1999.

Margaret A. Hamburg,

Assistant Secretary for Planning and Evaluation.

[FR Doc 99–23006 Filed 9–2–99; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science; Announcement of Availability of Grant for Family Planning General Training

AGENCY: Office of Family Planning, OPA, OPHS, HHS.

ACTION: Notice.

SUMMARY: The Office of Family Planning (OFP) of the Office of Population Affairs (OPA) requests applications for a grant under the Family Planning Service Training Program authorized under section 1003 of the Public Health Service (PHS) Act. Funds are available to provide training, with a specific focus on male reproductive health, for personnel in OFP-funded family planning services projects. it is anticipated that one grantee will be funded to serve as the training site.

DATES: To receive consideration, applications must be received by the Office of Grants Management, Office of Population Affairs no later than October 4, 1999.

ADDRESSES: Aplication kits may be obtained from and applications must be submitted to the Grants Management Office, Office of Population Affairs, 4350 East-West Highway, Suite 200, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT:

Program Requirements: George Jones, Office of Family Planning, OPA, (301) 594–4014.

Administrative and Budgetary Requirements: Andrea Brandon, Office of Grants Management, OPA, (301) 594–6554.

SUPPLEMENTARY INFORMATION: Title X of the PHS Act, 42 U.S.C. 300, *et seq.*, authorizes the Secretary of Health and Human Services to award grants for projects to provide training for family planning service personnel. (Catalog of Federal Domestic Assistance number 93.260). This notice announces the availability of approximately $450,000–$475,000 in funding and solicits applications for one training project which will provide training for personnel providing family planning/reproductive health-related information and services specifically targeted to males served by family planning agencies throughout the United States.

Statutory and Regulatory Background:

Title X of the PHS Act, enacted by Pub. L. 91–572, authorizes programs related to family planning. The family planning services program authorized by section 1001 of Title X is required by law to provide family planning services, including education and counseling, to all persons desiring such services. Section 1003 of the Act, as amended, authorizes the Secretary to make grants to entities to provide training for personnel to carry out the family planning service programs authorized by section 1001. Implementing regulations for family planning services training appear at 42 CFR part 59, subpart C. Prospective applicants should refer to the regulations in their entirety.

Purpose of the Grant

Within the last several years, Federal and provide sector programs have begun to focus more attention on male involvement in family planning and reproductive health-related issues, as evidenced by the President's Fatherhood Initiative, the Department of Health and Human Services' National Strategy to Reduce Teen Pregnancy, the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996," and the National Campaign to Prevent Teen Pregnancy. Research has shown that males are both interested in and want to play an active role in reproductive health decision-making, and that males will participate in reproductive health programs if they are offered in an appropriate manner. Recognizing the need for increased emphasis on male family planning/reproductive health services, in 1997 the Office of Family Planning began funding a number of community-based-organizations to encourage the investigation and development of approaches that facilitate the provision of family planning/reproductive health-related information and services to males, and approaches that involve males in building community support for the prevention of unintended pregnancy and sexually transmitted diseases (STD). Currently, many of these projects are funded under section 1001 of the Act, as part of existing services projects funded under section 1001.

While it is now recognized that addressing male reproductive health needs is important, there is currently little in the published literature about the standard for providing reproductive health services for males. Most of what is currently known about male reproductive health and reproductive behavior has come from either small studies or from a few national surveys that were conducted on a one-time basis. Our current understanding about what types of communication are most effective in providing training to males and male-oriented organizations around issues of family planning/reproductive health is also severely limited.

There are a number of research efforts that are recent or are currently under way that will help us gain a clearer understanding of male sexual and reproductive behaviors and attitudes. this will aid us in identifying reproductive health care service standards and strategies for effectively providing services to males. An ongoing national survey, the Youth Risk Behavior Surveillance System (YRBSS) collects some data on sexual behavior—among other health risk behaviors—for youth, both male and female. Other national surveys that have collected information about male reproductive behavior include: The National Health and Social Life Survey (1994); the National Survey of Men (1993); the Survey of Adolescent Males (1988, 1995); and the National Longitudinal Study of Adolescent Health (AddHEALTH). Examples of research efforts currently under way include: (1) A male sample in the upcoming (2001) cycle of the National Survey of Family Growth, and (2) a study by the Urban Institute addressing reproductive health needs for young men.

It is clear that training personnel of agencies that provide family planning/reproductive health services to males will require a unique type of organization that will be able to continuously incorporate science-based information as it becomes available in all phases of training design, delivery and evaluation.

This announcement seeks to fund a training program that will use science-based information and approaches in all aspects of training Title X service grantee employees, to facilitate the effective delivery of family planning/reproductive health related information and services to males. In addition, the funded training program will provide training consultation to a variety of Title X providers, including other Title X training grantees, regarding family planning/reproductive health for males. The purpose of this training program is to ensure that programs serving males have the skills, knowledge and abilities necessary for effectively planning, implementing and evaluating their programs.

Role and Operation of the Training Program

Under the regulations set out at 42 CFR part 59, subpart C, "training" is defined as "job-specific skill development, the purpose of which is to promote and improve the delivery of family planning services." The program funded under this announcement will be responsible for providing training to personnel working in family planning service agencies that provide family planning/reproductive health information and services specifically targeted to males.

The successful applicant must have extensive experience working with males and male-oriented organizations, and with delivering training and other services to males. Evidence that substantiates a history of the applicant's provision of services that are both relevant and sensitive to ethnic and cultural diversity must be provided. The ability to incorporate research findings throughout the design, delivery and evaluation of all training efforts must be evident. The successful applicant must have experience in evaluation, with emphasis on areas such as organization, program planning, curriculum development and utilization, and the effectiveness of various types of electronic technology for training.

The training grantee will be required to design, deliver and evaluate training for personnel in OFP-funded family planning services projects that focuses on the reproductive health needs of males. The training grantee will also provide a venue for exchanging information with other Title X General Training grantees on male reproductive health needs and services.

Evidence must be provided to support the applicant's capability for providing training on core organizational infrastructure components that are needed to operate a health-related or public health program within a larger service organization. For the purpose of this announcement, example of core organizational infrastructure components may include program planning, administration, implementation and evaluation. The diversity of training needs will necessitate the use of electronic technologies as an integral part of training and evaluation design.

The training plan should reflect the applicant's ability to incorporate public health initiatives in training plan design, such as Healthy People 2000 health promotion and disease prevention objectives for family planning, and the U.S. Department of Health and Human Services (DHHS) priorities of assuring a healthy start for every child by increasing the proportion of pregnancies that are intended, promoting personal responsibility for healthy lifestyles, and addressing the elimination of racial and ethnic disparities in health as identified by the President's Initiative on Race.

The Title X family planning program priorities complement the DHHS priorities and focus on the fundamental purpose of Title X. The Title X program priorities and other key issues that are impacting family planning should be integrated into the training plan.

The Title X program priorities are listed below:

- Expansion and enhancement of the quality of clinical reproductive health services through partnerships with entities that have related interest and that work with similar priority populations;
- Increased emphasis on services to adolescents, including emphasis on postponement of sexual activity and more accessible provision of contraceptive counseling and services;
- Increased services to hard-to-reach populations by partnering with community-based organizations and others that have a stake in the prevention of unintended pregnancy;
- Expansion of comprehensiveness of reproductive health services, including STD and cancer screening and prevention, HIV prevention, education and counseling, and substance abuse screening and referral;
- Increased services to males, emphasizing shared responsibility for preventing unintended pregnancy and STD/HIV infection.

Other key issues that are impacting the current and future delivery of family planning/reproductive health services include: (1) Medicaid waivers and managed care; (2) implications of welfare reform and other issues that are affecting family planning services, such as Temporary Assistance to Needy Families (TANF) and the Children's Health Insurance Program (CHIP) as well as other Federal and State initiatives; (3) electronic technology; (4) research findings; and (5) legislative mandates, such as counseling teens on involving families and avoiding coercive sexual relationships.

Project Requirements and Management:

The successful applicant will be required to work closely with the OFP Project Officer, the ten PHS regional offices, and with a network of other public and private institutions and entities in its training program. All training must meet the applicable requirements of the Title X statute and training regulations and be consistent with the Title X program priorities listed above. The training plans and all training events must be approved by the OFP Project Officer or designee prior to implementation.

The successful applicant will be responsible for the overall management of training activities for which the grant is made. This responsibility includes:

(1) In collaboration with the OFP Project Officer, designing, implementing, and evaluating a training program which incorporates the use of science-based research and evaluation, client input, and various training methodologies, such as the use of electronic technologies. The training program must be implemented within 120 days after the initial notice of grant award and should budget for the following:

(a) Two one-week on-site training sessions for up to 40 participants each; the training grantee will assume all

costs associated with training, including room and board (but not including travel to and from training site or personal expenses);

(b) A minimum of thirty one-day training sessions on various topics. Sessions may be on-site or off-site, and electronic technology may be used. The training grantee is not responsible for trainee expenses for these one-day sessions;

(2) Maintaining a system for ongoing retrieval and dissemination of public health information and research findings related to male-productive health from a variety of public and private institutions and entities;

(3) Maintaining a system for providing ongoing science-based information to family planning service projects, and other providers serving the target population;

(4) Maintaining formal working relationships with multiple disciplines within public and private institutions for carrying out the objectives of the training program;

(5) Developing a working relationship with current Title X service and training grantees that promotes the inclusion of male reproductive health needs and services;

(6) Developing admissions policies and procedures, and criteria for selection of candidates for training. Criteria should reflect a sensitivity to the unique needs or grantees or trainees for certain types of training. These policies and procedures must be submitted to the OFP Project Officer for review and approval within 120 days after the initial notice of grant award;

(7) Developing and implementing an ongoing evaluation plan for the total training program that allows for evaluation of each training program component;

(8) Providing semi-annual progress reports of OFP covering all aspects of the training program;

(9) Making available at cost all materials developed with Title X funds to other Title X projects upon request; and

(10) Participating in at least two meetings with the Office of Family Planing annually.

Application Requirements: Any public or private nonprofit organization is eligible to apply for a grant. An award will be made only to an organization or agency which has demonstrated the capability of providing the proposed services, and which has met all applicable requirements.

Applications must be submitted on the form PHS–5161–1, Revised 6/99 (http://forms.psc.gov/phsforms.htm) and in the manner prescribed in the application kit in order to be considered complete. Applicants are required to submit an application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. Applicants are required to submit an original application and two copies.

A copy of the Title X legislation and regulations that govern this program will be sent to applicants as part of the application kit package. Copies of the Healthy People 2000 Objectives for Family Planning and the DHHS documents on Racial and Ethnic Disparities in Health will also be sent as part of the application kit package. Applicants should use the legislation, regulations and other information included in the application kit for this announcement to guide them in developing their applications.

Applications should be limited to 50 double-spaced pages, not including appendices providing curriculum vitae, training designs, or statements of organizational capabilities. An award will be made only to an applicant who has met all applicable requirements.

Applications must be received on or before the deadline date to be accepted for review. An application received after the deadline may be acceptable if it carries a legible proof-of-mailing date assigned by the carrier and the proof-of-mailing date is not later than one week prior to the deadline date. Private metered postmarks will not be accepted as proof of timely mailing. Applications which are received by the Office of Grants Management after the deadline will not be accepted for review. Applications which do not conform to the requirements of this program announcement or meet the applicable parts of 42 CFR part 59, subpart C, will not be accepted for review. Applicants will be so notified and applications will be returned.

Accepted applications will be subjected to a competitive review process. The results of this review will assist the Deputy Assistant Secretary for Population Affairs in considering competing applications and in making the final funding decision.

Application Consideration and Assessment: Eligible competing grant applications will be reviewed by a multidisciplinary panel of independent reviewers and will be assessed against the following criteria:

(1) The extent to which the proposed training program will increase the ability of family planning services projects to deliver services primarily to males with a high percentage of unmet need for family planning services. (5 points);

(2) The extent of which the proposed training program promises to fulfill the family planning services delivery needs of the area to be served, as evidenced by the applicant's ability to address: (a) requirements set our under "Role and Operation of the Training Program;" (b) development of a capability within family planning services projects with a male-services component to provide pre- and in-service training to their own staffs; and (c) improvement of the family planning/reproductive health skills of personnel in family planning services project that have a make-services component. (25 points);

(3) The capacity of the applicant to make rapid and effective use of the training grant, as evidence by the applicant's ability to implement the training program within 120 days of receiving the grant. (5 points);

(4) The administrative and management capability and competence of the applicant. (10 points);

(5) The competence of the project staff in relation to the services to be provided, including the applicant's history of male-focused research, training and services to males, and the ability to document relevant previous experience and formal linkages with public and private entities that have a specific focus on males (e.g., universities with an array of relevant disciplines, research institutions, federal and/or state program). (30 points); and

(6) The degree to which the project plan adequately provides for the requirements set forth in 42 CFR 59.205, including the applicant's presentation of the project's objective, the methods for achieving project objectives, the ability to involve providers and the results or benefits expected. (25 points).

In making grant award decisions, the Deputy Assistant Secretary for Population Affairs (DASPA) will fund one project which will, in her judgment, best promote the purposes of section 1003 of the Act, within the limits of funds available for such project.

The grant will be available for a project period of up to three years and will be funded in annual increments (budget periods). Funding for all approved budget periods beyond the first year of the grant is contingent upon satisfactory progress of the project, efficient and effective use of grant funds provided, and the availability of funds.

Review Under Executive Order 12372: Applicants under this announcement are subject to the requirements of Executive Order 12372, "Intergovernmental Review of Federal Programs," as implemented by 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." As soon as possible, the applicant should discuss the project with the State Single Point of Contact (SPOC) for the state in which the applicant is located. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those states not represented on the listing, further inquiries should be made by the applicant regarding the submission to the relevant SPOC. The SPOC's comment(s) should be forwarded to the Office of Grants Management, Office of Population Affairs, 4350 East-West Highway, Suite 200, Bethesda, Maryland 20814. Such comments must be received by the Office of Population Affairs within 60 days of the closing date of this announcement, listed under **DATES** above.

When final funding decisions have been made, each applicant will be notified by letter of the outcome. The official document notifying an applicant that a project application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purposes of the grant, and terms and conditions of the grant award.

Dated: August 30, 1999.

Denese O. Shervington,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 99–22945 Filed 9–2–99; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–99–33]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

1. Interstate shipment of etiologic agents are regulated by 42 CFR part 7. This rule establishes minimal packaging requirements for all viable microorganisms, illustrates the appropriate shipping label, and provides reporting instructions regarding damaged packages and failure to receive a shipment. In recent years the threat of illegitimate use of infectious agents has attracted increasing interest from the perspective of public health. CDC is concerned about the possibility that the interstate transportation of certain infectious agents could have adverse consequences for human health and safety. CDC has already requested that all those entities that ship dangerous human infectious agents exercise increased vigilance prior to shipment to minimize the risk of illicit access to infectious agents. Of special concern are pathogens and toxins causing anthrax, botulism brucellosis, plague, Q fever, tularemia, and all agents classified for work at Biosafety Level 4. This information collection ensures that selected infectious agents are not shipped to parties ill-equipped to handle them appropriately, or who do not have legitimate reasons to use them and to implement a system whereby scientists and researchers involved in legitimate research may continue transferring and receiving these agents without undue burdens. Respondents include laboratory facilities such as those operated by government agencies, universities, research institutions, and commercial entities. This request is for the information collection requirements contained in 42 CFR 71.54, 72.3(e) and 72.4 relating to the importation and shipment of etiologic agents. The complete request for clearance is currently under development at CDC and this request for a 6-month extension will ensure that data collection activities remain in effect through the clearance process. The total maximum cost to respondents is $1,000,000.

CFR section	Number of respondents	Number of responses/respondents	Average burden/responses (in hrs.)	Total burden (in hrs.)
Application for Permit	1,000	1	20/60	333
72.3(3)	50	1	3/60	3
72.4	2	1	3/60	1
72.6 (a)	1,000	1	15/60	250
72.6 (d)	1,000	3	30/60	1,500
72.6 (e)	120	21	10/60	420
72.6 (f)	1,000	3	8/60	400
Total				2,907

Dated: August 30, 1999.

Nancy Cheal,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 99–22986 Filed 9–2–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Draft: Reporting of Pregnancy Success Rates From Assisted Reproductive Technology Programs

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Request for comments.

SUMMARY: This notice is a request for comment and review of the draft document for the Reporting of Pregnancy Success Rates from Assisted Reproductive Technology Programs as required by the Fertility Clinic Success Rate and Certification Act of 1992 (FCSRCA). This Announcement supersedes, Announcement 97–226611 which was published in the **Federal Register**, August 26, 1997 (vol 62, no. 165).

DATES: To ensure consideration, written comments on this document must be received on or before October 4, 1999. Please do not FAX comments.

ADDRESSES: Comments shall be submitted to: Assisted Reproduction Technology Epidemiology Unit, Women's Health and Fertility Branch, Division of Reproductive Health, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), Mailstop K–34, 4770 Buford Hwy, N.E., Atlanta, Georgia 30341–3724.

FOR FURTHER INFORMATION CONTACT: Assisted Reproductive Technology Epidemiology Unit at (770) 488–5250.

SUPPLEMENTARY INFORMATION: Section 2(a) of Pub. L. 102–493 (42 U.S.C. 263a–1(a)) requires that each assisted reproductive technology (ART) program shall annually report to the Secretary through the Centers for Disease Control and Prevention—(1) pregnancy success rates achieved by such ART program, and (2) the identity of each embryo laboratory used by such ART program and whether the laboratory is certified or has applied for such certification under this act.

Pub. L. 102–493, Sec. 8 (42 U.S.C. 263a–7) defines "Assisted reproductive technology" (ART) as "all treatments or procedures which include the handling of human oocytes or embryos, including in vitro fertilization, gamete intrafallopian transfer, zygote intrafallopian transfer, and such other specific technologies as the Secretary may include in this definition, after making public any proposed definition in such manner as to facilitate comment from any person (including any Federal or other public agency).

The Secretary is directed in Section 2b (42 U.S.C. 263a–1(b)) to define pregnancy success rates and "make public any proposed definition in such a manner as to facilitate comment from any person during its development."

Section 2c (42 U.S.C. 263a–1(c)) states, "the Secretary shall consult with appropriate consumer and professional organizations with expertise in using, providing, and evaluating professional services and embryo laboratories associated with assisted reproductive technologies."

Section 6 (42 U.S.C. 263a–5) states that the Secretary, through the CDC, shall annually "publish and distribute to the States and the public—pregnancy success rates reported to the Secretary under section 2(a)(1) and, in the case of an assisted reproductive technology program which failed to report one or more success rates as required under each section, the name of each such program and each pregnancy success rate which the program failed to report."

In developing the definition of pregnancy success rates, CDC has consulted with representatives of the Society for Assisted Reproductive Technology (a national professional association of ART clinical programs), the American Society for Reproductive Medicine (a national society of professional individuals who work with infertility issues), and RESOLVE, the National Infertility Association (a national, nonprofit consumer organization), as well as a variety of individuals with expertise and interest in this field.

This notice provides opportunity for public review and comment (see appendix).

Dated: August 27, 1999.

Joseph R. Carter,

Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

Appendix—Notice for the Reporting of Pregnancy Success Rates From Assisted Reproductive Technology Programs

Introduction

This notice includes four sections:

I. Who Reports . . . describes who shall report to CDC.

II. Description of Reporting Process . . . describes the reporting system and process for reporting by each ART clinic.

III. Data to be Reported . . . describes the data items and definitions to be included in the reporting database.

IV. Content of the Published Report . . . describes terms, and how pregnancy success rates will be defined and reported, and outlines the topics that will be included in the annual published reports, using the data collected in the reporting database.

I. Who Reports

The Fertility Clinic Success Rate and Certification Act of 1992 (FCSRCA) requires that each assisted reproductive technology program shall annually report to the Secretary of the Department of Health and Human Services through the CDC.

The Society for Assisted Reproductive Technology (SART), an affiliate of the American Society for Reproductive Medicine (ASRM), maintains a national database of cycle specific data reported by each of its members. CDC has reviewed the SART reporting database and system and finds that it provides the necessary information to publish an annual report as required by the FCSRCA. Rather than duplicate SART's reporting system, and thereby burden ART clinics and patients, CDC has contracted with SART to annually obtain a copy of their clinic specific database.

An ART program or clinic is defined as a legal entity practicing under State law, recognizable to the consumer, that provides assisted reproductive technology to couples who have experienced infertility or are undergoing ART for other reasons. This can be an individual physician or a group of physicians who practice together and share resources and liability. This definition precludes individual physicians who practice independently from pooling their results for purposes of data reporting.

ART clinics that are participating in the ASRM/SART reporting system as described in this notice, will be considered to be in compliance with federal reporting requirements of FCSRCA. Both SART and non-SART clinics shall contact SART for reporting information, instructions, and fees charged (fees are for the purposes of covering all cost associated with this activity, including data collection, processing, analysis, publication, and administration; additional fees may be charged if SART needs to provide technical assistance to clinics submitting a dataset with errors.) It is the responsibility of the practice director of each clinic performing ART

to provide notification to SART of the clinic's existence and any changes in address, location, or change in key staff including the practice, medical and lab director. Contact SART, telephone: (205) 978–5000, ext. 109

The anticipated deadline for reporting is January 15 of the year 2 years subsequent to the reporting year in question. (For example, the anticipated deadline to report data on cycles initiated in 1998 is January 15, 2000.) The deadline will be published in Fertility and Sterility at least 90 days prior to the deadline. SART in conjunction with CDC may change the deadline if needed.

An ART clinic will be considered to *not* be in compliance with the federal reporting requirements of FCSRCA if the clinic was in operation in the full year reported on, i.e. the clinic was in operation after January 1, and failed to (a) submit a dataset to SART in the required software by the reporting deadline or (b) verify by signature of the medical director of the clinic, the clinic table by the same deadline.

The onus is on the clinic to confirm that SART has received the dataset. It is recommended that the clinic submit their data to SART as early as it is available so that any errors or reporting difficulties can be reconciled and verified before the reporting deadline which will be inflexible. In this respect, it would be prudent to submit data to SART at least 30 days in advance of the reporting deadline because errors or other problems in reporting may take up to 30 days to resolve. If problems cannot be resolved by the inflexible deadline of January 15, the clinic will be considered a non-reporter.

SART in conjunction with CDC will determine error rates for data submitted by clinics and if data quality are deemed unsatisfactory, this finding may be published. Additionally, the program may be required to submit data 30 days prior to the deadline for the next reporting year. This requirement will allow for sufficient time to correct errors prior to the deadline for publication of the annual report. As noted earlier, additional fees may be charged if SART needs to provide technical assistance to clinics submitting a dataset with errors.

II. Description of Reporting Process

A. Reporting activities

SART in conjunction with CDC will determine the required software for data submission. As noted above to be in compliance with the law, a clinic must submit a dataset to SART in the required software by the reporting deadline and verify by signature of the medical director of the clinic, the clinic table by the same deadline.

Each year, SART will issue a unique clinic code, required computer software for their database reporting system, and all necessary reporting instructions at least 90 days in advance of the reporting deadline.

Currently, each patient receiving ART in a clinic is registered in the system with a unique, clinic-assigned code and should be entered into the reporting database when her cycle is initiated. Each cycle of each patient also receives a unique cycle code for that patient. In the reporting system, the patient is identified by the clinic code, the patient code, and the cycle code assigned by the clinic. The patient's name or other specific personal identifiers are not included in the reporting database. However, each clinic must maintain personal identifiers in the clinic database on site in order to be able to link every cycle reported to CDC to a specific patient (see below).

The following patients must be included in the reporting database: (1) All women undergoing ART, (2) all women undergoing ovarian stimulation or monitoring with the intention of undergoing ART; this includes women whose cycles are canceled for any reason (3) all women providing donor oocytes, (4) all women undergoing monitoring and/or an embryo thawing with the intention of transferring cryopreserved embryos.

It is anticipated that the reporting system may evolve such that data may be collected prospectively, i.e. data submission will be required as cycles are initiated. (Currently data submission for all cycles is required at one time only.) Clinics will be provided at least 90 days advance notice of this or other changes in reporting requirements.

The CDC retains a copy of each of SART's annual data files. These will be maintained by CDC to be used for epidemiologic analysis and for the purpose of publishing an annual report as required by the law that includes national summary and clinic specific information.

B. External Validation of Clinic Data

Every clinic will maintain a copy of all information included in the reporting database and must be able to link each patient, cycle and oocyte retrieved from the reporting database to the appropriate medical and laboratory records for external validation activities.

On a periodic basis, all ART clinical programs reporting their data (both SART and non-SART clinics) will be subject to external validation of their reporting activities which will include review by appropriate professionals from outside the clinic staff. This review may include but not be limited to examination of medical and laboratory records and comparison of data in the reporting database with data in the medical record. CDC has contracted with SART to perform the validation site visits.

C. Updating of Reporting Requirements

The field of ART is a rapidly developing medical science. These reporting requirements will be periodically reviewed and updated as new knowledge concerning ART methods and techniques becomes available. Such review will include consultation with professional and consumer groups and individuals. Clinics will be notified in writing at least 90 days in advance of the reporting deadline of all changes to the reporting requirements.

III. Data to be Reported

The 1999 reporting system will include the following:

A. Clinic Information

Clinic name & address
Unique clinic ID number
Name(s) of embryo laboratory(s) used by clinic
Whether the laboratory is certified by a SART and CDC accepted certification entity
Whether the clinic is a member of SART
Whether ART services are available for single women
Whether ART services include gestational carriers
Whether the clinic has a donor egg program and if yes, if eggs from a single donor are shared by multiple recipients
Total number of ART cycles performed during the reporting year

B. Patient Information

1. Patient Demographic Information

Ethnicity
Date of Birth
U.S. Resident
Zip Code
City of Residence
State of Residence
Country of Residence (if not U.S.)

2. Patient History

Gravidity
Prior Full Term Births
Prior Preterm Births
Prior Spontaneous Abortions
Surgical Sterilization—Patient or Partner
Months of Infertility Since Last Live birth (if couple is not surgically sterile)

Prior non-ART Gonadotropin Cycles
Prior Thawed ART Cycles
Prior Fresh ART Cycles
Patient Maximum Follicle Stimulating Hormone (FSH) Level and Lab Upper Normal Limit for that FSH level
Patient Maximum Estradiol Level and Lab Upper Normal Limit for that Estradiol Level

3. ART Cycle Information

Reason(s) for ART
(Male Infertility, Endometriosis, Tubal Factor, Ovulatory Disorder/ Polycystic Ovaries, Diminished Ovarian Reserve, Uterine Factor, Other, Unexplained Infertility)
Cycle Start Date
Suppression with Gonadotropin Releasing Hormone Analog (GnRHa)
Ovarian Stimulation Medications Given to Patient (Clomiphene, FSH, Flare GnRHa) and Dosages
Medications Given to Oocyte Donor and Dosages
Intended ART Cycle Treatment Specifics:
Oocyte Source
(patient [autologous], donor oocyte, donor embryo)
Oocyte/Embryo State
(fresh, thawed)
Intended Transfer Method(s)
(In Vitro Fertilization (transcervical transfer); Gamete Intrafallopian Transfer; Zygote Intrafallopian Transfer/Tubal Embryo Transfer)
Use of Gestational Carrier
Cycle Initiated for Embryo Banking Only
Cycle Meeting SART Criteria for Approved Research
Did the Cycle Occur as Intended?
Was the Cycle Canceled?
Date of Cancellation
Reason for Cancellation
(Low Ovarian Response, High Ovarian Response, Failure to Survive Thaw, Inadequate Endometrial Response, Concurrent Illness, Patient Withdrawal from Treatment)
Complications Related to ART Treatment
(Infection, Hemorrhage, Moderate Ovarian Hyperstimulation Syndrome, Severe Ovarian Hyperstimulation Syndrome, Medication Side Effect, Anaesthetic Complication, Psychological Stress, Death, Other Complication)
Hospitalization for ART Complication
Date of Oocyte Retrieval (from patient and/or from donor)
Number of Oocytes Retrieved (both from patient and/or from donor)
Were Oocytes Derived from the Donor Used by More Than One Recipient?
Number of Embryos Thawed for Transfer in a Frozen Cycle
Semen Source
(Partner, Donor, Mixed)
Semen Collection Method
(Ejaculation, Epididymal Aspiration, Testicular Biopsy, Electroejaculation, Retrograde Ejaculation)
Use of Intracytoplasmic Sperm Injection
Use of Assisted Hatching
Was Oocyte or Embryo Transfer Attempted?
Transfer Date
Number of Fresh Embryos Transferred to Uterus
Number of Fresh Embryos Transferred to Fallopian Tubes
Number of Oocytes Transferred to Fallopian Tubes
Number of Fresh Embryos Cryopreserved
Number of Thawed Embryos Transferred to Uterus
Number of Thawed Embryos Transferred to Fallopian Tubes
Number of Thawed Embryos Re-Frozen

4. Outcome Information

Outcome of Treatment
(Not Pregnant, Biochemical Pregnancy, Ectopic Pregnancy, Clinical Intrauterine Gestation, Heterotopic Pregnancy, Unknown)
Was an Ultrasound Performed?
Ultrasound Date
Maximum Number of Fetal Hearts Observed on Ultrasound
Was a Therapeutic Fetal Reduction Performed?
Therapeutic Reduction Date
Outcome of Pregnancy
(Live birth, Stillbirth, Spontaneous Abortion, Therapeutic Abortion, Maternal Death Prior to Birth, Unknown)
Date of Pregnancy Outcome
Source of Information for Outcome of Pregnancy
(Verbal Confirmation Patient, Written Confirmation Patient, Verbal Confirmation Physician or Hospital, Written Confirmation Physician or Hospital)
Number of Infants Born
Birth weight for Each Live-born and Stillborn Infant
Birth Defects Diagnosed for Each Live-born and Stillborn Infant
(Genetic Defect/Chromosomal Abnormality, Cleft Lip or Palate, Neural Tube Defect, Cardiac Defect, Limb Defect, Other Defect)
Neonatal Death of Live-born Infants

C. Definitions

The following definitions provide clarification for data included in the 1999 (and later) reporting system:

ART—Assisted reproductive technology, defined as all treatments or procedures which include the handling of human oocytes and sperm or embryos for the purpose of establishing a pregnancy. This includes, but is not limited to in vitro fertilization and transcervical embryo transfer, gamete intrafallopian transfer, zygote intrafallopian transfer, tubal embryo transfer, embryo cryopreservation, oocyte or embryo donation, and gestational surrogacy. ART does not include assisted insemination using sperm from either a woman's partner or sperm donor.

ART cycle—ART Cycles can be stimulated (use of ovulation induction) or unstimulated (natural cycle). An ART cycle is considered any cycle in which (1) ART has been used; (2) the woman has undergone ovarian stimulation or monitoring (i.e. performance of sonogram, serum estradiol or LH measurements) with the intent of undergoing ART; (3) in the case of donor oocytes, a woman began medication for endometrial preparation with the intent of undergoing ART; or (4) in the case of cryopreserved embryos, a woman began medication for endometrial preparation with the intent of undergoing ART and/or embryos were thawed with the intent of transfer.

ART program or clinic—A legal entity practicing under state law, recognizable to the consumer, that provides assisted reproductive technology to couples who have experienced infertility or are undergoing ART for other reasons. This can be an individual physician or a group of physicians who practice together, and share resources and liability. This definition precludes individual physicians who practice independently from pooling their results for purposes of data reporting.

ASRM—American Society for Reproductive Medicine.

Autologous cycle—Intent to transfer embryos derived from patient oocytes fertilized with either partner or donor sperm OR in cases of GIFT, patient oocytes transferred with either partner or donor sperm.

Birth defect—Anomalies diagnosed within the first two weeks of life that result in death or cause a serious disability requiring surgical and/or medical therapy. Specific anomalies to be identified include genetic defect/ chromosomal abnormality, cleft lip or palate, neural tube defect, cardiac defect, limb defect, or other defect.

Biochemical pregnancy—A positive pregnancy test (Beta-hCG) without ultrasound confirmation of a gestational sac within the uterus.

Canceled cycle—An ART cycle in which ovarian stimulation or monitoring has been carried out with the intent of undergoing ART but which did not proceed to oocyte retrieval, or in the case of thawed embryo cycles, to the transfer of embryos. Reasons for cancellation include low ovarian response; high ovarian response; failure of embryo to survive thaw; inadequate endometrial response; concurrent illness; patient withdrawal from treatment.

Clinic ID number—An identification number assigned to each ART clinical program by the reporting database operator.

Clinical pregnancy/Clinical intrauterine gestation—An ultrasound-confirmed gestational sac within the uterus or the documented occurrence of a birth, spontaneous abortion, or therapeutic abortion in cases of missing ultrasound data. Clinical pregnancies include all gestational sacs regardless of whether or not a heartbeat is observed or a fetal pole is established. This definition excludes ectopic pregnancy but includes pregnancies which end in live birth, stillbirth, spontaneous abortions, and therapeutic abortions.

Clomiphene citrate—An ovulation induction medication with the trade name of Clomid® or SeroPhene.®

Complication—A medical complication for the woman related to ART procedures. Specific complications to be identified include infection, hemorrhage, moderate ovarian hyperstimulation syndrome, severe ovarian hyperstimulation syndrome, medication side effect, anaesthetic complication, psychological stress requiring intervention, and death.

Cryopreservation—A technique used in ART to preserve sperm and embryos through freezing.

Cycle start date (cycle initiation date)—The cycle start date is (1) the first day that medication to stimulate follicular development is given to a patient in a stimulated fresh, non-donor cycle; or (2) the first day of natural menses or withdrawal bleeding in an unstimulated cycle; or (3) the first day the recipient (patient or gestational carrier) receives exogenous sex steroids to prepare the endometrium in a fresh donor cycle; or (4) the first day the recipient (patient or gestational carrier) receives exogenous sex steroids to prepare the endometrium in a thawed embryo cycle.

Diminished ovarian reserve— A condition of reduced fecundity related to diminished ovarian function; includes high FSH or high estradiol measured in the early follicular phase or during a clomiphene challenge test, reduced ovarian volume related to congenital, medical, surgical or other causes, or advanced maternal age (>40 years).

Donor embryo cycle—Intent to transfer donated embryos, that is embryos derived from oocytes previously fertilized for *another couple's ART therapy* which were subsequently donated.

Donor oocyte cycle—Intent to transfer oocytes, or embryos derived from oocytes, that were retrieved from a woman serving as an oocyte donor (sperm source may be either the patient's partner or a sperm donor selected by the patient).

Ectopic pregnancy—A pregnancy in which the fertilized egg implants outside the uterine cavity.

Embryo—The normally (2 pronuclei) fertilized egg that has undergone one or more divisions.

Embryo banking cycle—A cycle initiated with the intent of cryopreserving *all* fertilized embryos for later use. (This does not apply to cycles initiated with the intent to transfer embryos but for which all embryos were subsequently cryopreserved regardless of the reason.)

Embryo transfer—Attempt to introduce embryos into a woman's uterus after in vitro fertilization or attempt to introduce embryos or gametes (oocytes and sperm) into a woman's fallopian tubes; a transfer procedure is considered to have been carried out, even if no embryos or gametes were successfully transferred.

Endometriosis —The presence of tissue resembling endometrium in locations outside the uterus such as the ovaries, fallopian tubes, and abdominal cavity; a history of all stages of endometriosis (minimal to severe) whether treated or not may be a reason for ART.

Endometrium—the lining of the uterus that is shed each month as the menstrual period. As the monthly cycle progresses, the endometrium thickens and thus provides a nourishing site for the implantation of a fertilized egg.

Estradiol (E2)—the predominant estrogen hormone produced by the ovary that has several activities important for reproduction. An elevated serum Estradiol level in the early follicular phase of a woman's menstrual cycle (day 2, 3, or 4) may indicate diminished ovarian reserve.

Fecundity—the ability to conceive.

Fertilization—The penetration of the egg by the sperm and fusion of genetic materials to result in the development of a fertilized egg (or zygote).

Fetus—the developmental stage during pregnancy from the completion of embryonic development at eight weeks of gestation until delivery.

Flare protocol—Use of a GnRH analog to directly stimulate follicle development.

Follicle—A fluid-filled sac located just beneath the surface of the ovary that contains an oocyte and cells that produce hormones.

Fresh oocyte or embryo cycle—Intent to transfer oocytes, or embryos derived from oocytes, retrieved during the current cycle (either from the patient or donor), i.e. not thawed embryos retrieved during a previous cycle.

FSH—Follicle stimulating hormone. A gonadotropin hormone produced and released from the pituitary that stimulates the ovary to ripen a follicle for ovulation. An elevated serum FSH level in the early follicular phase of a woman's menstrual cycle (day 2, 3, or 4) or during a clomiphene challenge test (day 10 of the cycle) may indicate diminished ovarian reserve. FSH, either alone or with luteinizing hormone (LH), is also included in gonadotropin drug preparations used to stimulate follicular development during an ART cycle.

Full term birth—A birth which reached 37 completed weeks gestation. This includes both live births and stillbirths. For the purpose of reporting prior full term births, births are counted as birth events (e.g., a triplet birth is counted as one).

Gamete intrafallopian transfer (GIFT)—An ART procedure that involves removing oocytes from a woman's ovary, combining them with sperm, and immediately transferring (via a catheter) the eggs and sperm into the fallopian tube. Fertilization takes place inside the fallopian tube.

GnRHa—Gonadotropin-releasing hormone analog (agonist or antagonist); medications used to suppress natural FSH production to allow greater control when using follicle stimulation medications.

Gestational carrier (sometimes referred to as a gestational surrogate)—A woman who gestates an embryo which did not develop from her egg with the expectation of returning the infant to its intended parents.

Gestational sac—A fluid-filled structure surrounding an embryo that develops within the uterus early in pregnancy.

Gonadotropin—hormones having a stimulating effect on the gonads (ovaries and testes). Two such hormones are secreted by the anterior pituitary: follicle stimulating hormone (FSH) and luteinizing hormone (LH). Gonadotropins (FSH, either alone or with LH), are also included in drug preparations used to stimulate follicular development during an ART cycle.

Gravidity—Total number of prior pregnancies a woman has had. This includes ectopic pregnancies, and pregnancies that ended in therapeutic abortion, spontaneous abortion, stillbirth, or live birth.

Hatching (Assisted)—A micromanipulation technique which involves making a small opening in the zona wall of the embryo in an effort to enhance implantation; various methods of assisted hatching have been utilized including chemical, laser, and mechanical methods.

Heterotopic pregnancy—A clinical intrauterine gestation in combination with an ectopic pregnancy.

Hydrosalpinx—Accumulation of watery fluid in a fallopian tube which usually represents damage to the tube.

Hypothalamus—A gland at the base of the brain that controls many functions of the body, regulates the pituitary gland, and releases gonadotropin releasing hormone (GnRH).

Insemination—Injection of sperm into the uterus or cervix for the purpose of producing a pregnancy. Insemination cycles are not considered ART for the purposes of this notice.

Intracytoplasmic sperm injection (ICSI)—The placement of a single sperm into the ooplasm of an oocyte by micro-operative techniques.

In vitro fertilization (IVF)—A method of assisted reproduction that involves removing oocytes from a woman's ovaries, combining them with sperm in the laboratory and, after fertilization is confirmed, replacing the resulting embryo into the woman's uterus.

Live birth—A birth (delivery) in which at least one fetus was live born, i.e. showed signs of life after the complete expulsion or extraction from its mother. Signs of life include breathing, beating of the heart, pulsation of the umbilical cord, or definite movement of the voluntary muscles. Any birth event in which an infant shows signs of life should be counted as a live birth, regardless of gestational age at birth. Live births are counted as birth events (e.g. a triplet live birth is counted as one).

Male infertility—Infertility due to abnormal semen parameters or abnormal sperm function.

Neonatal death—Death of a live-born infant before completion of the 28th day of life.

Oocyte—The female reproductive cell, also called an egg.

Oocyte donor—A woman who undergoes an oocyte retrieval procedure with the intent of donating the oocytes retrieved to a couple(s) undergoing an ART donor oocyte cycle (see donor oocyte cycle). The donor relinquishes all parental rights to any resulting offspring, while the recipient woman retains all parental rights of any resulting offspring.

Oocyte retrieval—A procedure to collect the eggs contained within the ovarian follicles. This definition includes procedures in which oocyte recovery was attempted but not successful.

Oocyte transfer—In GIFT (see definition), transfer of retrieved eggs into a woman's fallopian tubes. Includes attempted transfers, whether or not the transfer was successful.

Ovarian monitoring—Monitoring the development of ovarian follicles by ultrasound and/or blood or urine tests.

Ovarian stimulation—Use of one or more follicle stimulation medications to stimulate the ovary to develop follicles and oocytes.

Ovarian hyperstimulation syndrome—A possible complication related to medically induced ovulation. Moderate ovarian hyperstimulation syndrome is characterized by abdominal distension and discomfort as well as nausea, vomiting and/or diarrhea; ovaries enlarged 5–12 cm; and ultrasound evidence of ascites. Severe ovarian hyperstimulation syndrome is characterized by features of moderate ovarian hyperstimulation PLUS: clinical evidence of ascites (fluid in the abdominal cavity) and/or hydrothorax (fluid in the chest) or breathing difficulties; change in blood volume, increased blood viscosity due to hemoconcentration, coagulation abnormalities, and diminished kidney perfusion and function.

Ovulatory disorder/polycystic ovaries (PCO)—One or more disorders causing reduced fecundity that is associated with structural, anatomic, or functional impairment of one or both ovaries; includes multiple ovarian cysts affecting fertility; oligo-ovulation (<6 cycles per year); anovulation (of hypothalamic or non-hypothalamic causes).

Ovulation induction—See stimulated cycle.

Pituitary—A small gland just beneath the hypothalamus in the brain which controls other hormone producing glands such as the ovaries, thyroid and adrenal glands. Ovarian function is controlled through the secretion of follicle stimulating hormone (FSH) and luteinizing hormone (LH) from the pituitary.

Pregnancy test—A blood test which determines the level of human chorionic gonadotropin (hCG), a hormone produced by the placenta; if it is elevated this confirms a pregnancy which may be biochemical only, ectopic, or clinical intrauterine gestation (normally developing pregnancy).

Preterm birth—Birth at least 20 but less than 37 completed weeks gestation. This includes both live births and stillbirths. For the purposes of reporting prior preterm births, births are counted as birth events (e.g. a triplet birth is counted as one).

Recipient—In an ART cycle, the woman in whom embryos or oocytes are transferred; includes the female patient or a gestational carrier (host uterus) for the patient.

SART—Society for Assisted Reproductive Technology.

Semen—Fluid discharged at ejaculation in the male, consisting of spermatozoa in their nutrient plasma which includes secretions from the prostate, seminal vesicles, and various other glands.

Sperm—The male reproductive cell that has completed the process of meiosis and morphological differentiation.

Sperm donor—A man providing sperm for the fertilization of oocytes of a woman other than his sexual partner.

Spontaneous abortion (miscarriage)—A clinical pregnancy ending in spontaneous loss of the entire pregnancy prior to completion of 20 weeks of gestation (or 18 weeks from the date of transfer if the pregnancy was achieved using ART).

Stillbirth—Birth (delivery) at 20 weeks of gestation or later (or 18 weeks or later from the date of transfer if the pregnancy was achieved using ART) in which no fetus showed signs of life after the complete expulsion or extraction from the mother. Stillbirths are counted as birth events (e.g. a triplet stillbirth is counted as one).

Stimulated cycle—An ART cycle in which a woman receives medication to stimulate follicular development including the use of clomiphene citrate, follicle stimulating hormone (FSH), or follicle stimulating hormone and luteinizing hormone (FSH and LH).

Surgical sterilization—An operative procedure for the purpose of termination of fertility without reversal. Surgical sterilization includes tubal ligation, vasectomy and hysterectomy.

Thawed cycle—Intent to transfer embryos that were cryopreserved during a previous cycle and will be thawed for transfer during the current cycle (pertains to both donor and non-donor embryos).

Therapeutic or induced abortion—Operative procedure to electively terminate the entire pregnancy (no gestational age limit).

Therapeutic reduction—A procedure in which the number of fetal sacs is reduced by direct medical intervention. Termination of an ectopic gestation or a heterotopic pregnancy is not considered a therapeutic reduction. Therapeutic reduction is used in women with multiple gestations, usually three or more, to decrease the number of fetuses a woman carries usually to two.

Tubal embryo transfer (TET)—Transfer of an early stage embryo to the fallopian tube.

Tubal factor—A factor causing reduced fecundity that is associated with structural, anatomic, or functional injury of one or both fallopian tubes; the following are included: (1) tubal ligation, not reversed; (2) hydrosalpinx (in place); (3) any other tubal disease including but not limited to pelvic or peritubal adhesive disease, prior tubal surgery, prior ectopic pregnancy, or tubal occlusion (partial or complete without hydrosalpinx).

Ultrasound—A technique for visualizing the follicles in the ovaries and the gestational sac or fetus in the uterus, allowing the estimation of size.

Unexplained infertility—Infertility in which no etiology (male infertility, endometriosis, tubal factor, ovulatory disorders/PCO, diminished ovarian reserve, uterine factor or other factors such as immunologic, chromosomal, cancer chemotherapy or other systemic disease) has been identified.

Unstimulated cycle—An ART cycle in which the woman does not receive medication to stimulate follicular development such as clomiphene citrate or follicle stimulating hormone. Instead, natural follicular development occurs.

Uterine factor—A factor causing reduced fecundity that is associated with structural, anatomic, or functional injury to the uterus whether repaired or not; includes septum, myoma, Diethylstilbestrol (DES) exposure, intrauterine adhesions, congenital anomalies.

Zygote—A normal (2 pronuclei) fertilized egg before cell division begins.

Zygote intra fallopian transfer (ZIFT)—Eggs are collected and fertilized, and the resulting zygote is then transferred to the fallopian tube.

D. Updating Data To Be Reported

Specific data items and definitions will be provided to clinics each year along with all other reporting requirements at least 90 days in advance of the reporting deadline. Data items and definitions will be periodically reviewed and updated. Such review will include consultation with professional and consumer groups and individuals.

IV. Content of Published Reports

The data reported will be used to provide a picture of the national rates of pregnancy and live birth achieved using ART as well as clinic-specific live birth rates. The annual report will have four components:

(A) A national component which will provide a comprehensive picture of success rates given a variety of factors including age, reason for ART, type of ART procedure, number of embryos transferred etc. This is possible because the large number of cycles at the national level allow accurate statistical reporting of success rates which is not possible with the smaller number of cycles carried out in individual clinics.

(B) A clinic-specific component which will provide success rates for all ART cycles using fresh, non-donor embryos, success rates for ART cycles using thawed embryos, and success rates for ART cycles using donor oocytes or embryos. Success rates will be reported by specific age groups. In addition, the clinic-specific component will provide other information which may be useful to the consumer such as types of services the clinic offers (e.g. gestational surrogacy, single women), the number of cycles carried out, the percent distribution of types of ART, the types of infertility problems the clinic sees, the frequency of cancellations, the average number of embryos transferred per cycle and the percentage of multiple pregnancies and births (twins and triplets or greater).

Pregnancy and live birth success rates will be defined and characterized as described below.

For fresh, non-donor cycles success rates will be defined as—

1. The rate of *pregnancy* after completion of ART according to the number of:

a. All ovarian stimulation or monitoring procedures.

2. The rate of *live birth* after completion of ART according to the number of:

a. All ovarian stimulation or monitoring procedures.

b. Oocyte retrieval procedures.

c. Embryo (or zygote, or oocyte) transfer procedures.

For cycles using thawed embryos and cycles using donor oocytes or embryos success rates will be defined as—

1. The rate of *live birth* after completion of ART according to the number of:

a. Embryo (or zygote, or oocyte) transfer procedures.

(C) An appendix containing a consumer-oriented explanation of all medical and statistical terms used in the report.

(D) An appendix containing a list of all reporting clinics and a list of all clinics that did not report data (See above, WHO REPORTS section, for a full description of clinics that will be considered to not be in compliance with the federal reporting requirements of FCSRCA; such clinics will be listed as non-reporters in the published report.) This appendix will contain the names, addresses and telephone numbers for all reporting and non-reporting clinics.

The entire annual report will be available to the general public. As resources allow, additional information may also be published.

[FR Doc. 99–22868 Filed 9–2–99; 8:45 am]
BILLING CODE 4160–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Energy-Related Epidemiologic Research, Subcommittee for Management Review of the Chernobyl Studies: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee for Energy-Related Epidemiologic Research (ACERER), Subcommittee for Management Review of the Chernobyl Studies.

Times and Dates: 9 a.m.–5 p.m., September 20, 1999; 9 a.m.–12 Noon, September 21, 1999.

Place: Washington Court Hotel, 525 New Jersey Avenue, NW, Washington, DC 20001, telephone 202/628–2100, fax 202/879–7918.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 30 people.

Purpose: This subcommittee is charged with providing guidance to the scientific reviewers and staff, and reporting back to the full ACERER on the charge from the Department and Congress to assess the management, goals, and objectives of the National Cancer Institute (NCI) Chernobyl studies.

Matters To Be Discussed: Agenda items will include: a briefing from the National Cancer Institute's Management Staff on the approach to the site visit; a review of the NCI documentation; a discussion on public input; and a decision on the task list.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Michael J. Sage, Deputy Director, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, CDC, 4770 Buford Highway, NE, (F–28), Atlanta, Georgia 30341–3724, telephone 770/488–7300, fax 770/488–7310.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: August 24, 1999.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–22988 Filed 9–2–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–2875]

Agency Information Collection Activities; Proposed Collection; Comment Request; Blood Establishment Registration and Product Listing, Form FDA 2830

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions relating to the blood establishment registration and product listing requirements in 21 CFR part 607 and relating to Form FDA 2830.

DATES: Submit written comments on the collection of information by November 2, 1999.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

Blood Establishment Registration and Product Listing, Form FDA 2830—21 CFR Part 607 (OMB Control Number 0910–0052)—Extension

Under section 510 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360), any person owning or operating an establishment that manufactures, prepares, propagates, compounds, or processes a drug or device must register with the Secretary of Health and Human Services, on or before December 31 of each year, his or her name, place of business and all such establishments, and submit, among other information, a listing of all drug or device products manufactured, prepared, propagated, compounded, or processed by him or her for commercial distribution. In part 607 (21 CFR part 607), FDA has issued regulations implementing these requirements for manufacturers of human blood and blood products.

Section 607.20(a) requires certain establishments that engage in the manufacture of blood products to register and to submit a list of blood product in commercial distribution. Section 607.21 requires the establishments entering into the manufacturing of blood products to register within 5 days after beginning such operation and to submit a blood product listing at that time. In addition, establishments are required to register annually between November 15 and December 31 and update their blood product listing every June and December. Section 607.22 requires the use of Form FDA 2830 for registration and blood product listing. Section 607.25 indicates the information required for establishment registration and blood product listing. Section 607.26 requires for certain changes an amendment to the establishment registration to be made within 5 days of such changes. Section 607.30 requires establishments to update, as needed, their blood product listing information every June and at the annual registration. Section 607.31 requires that additional blood product listing information be provided upon FDA request.

Among other uses, this information assists FDA in its inspections of facilities, and its collection is essential to the overall regulatory scheme designed to ensure the safety of the nation's blood supply. Form FDA 2830, Blood Establishment Registration and Product Listing, is used to collect this information. The likely respondents are blood banks, blood collection facilities, and blood component manufacturing facilities.

FDA estimates the burden of this collection of information based upon the past experience of the Center for Biologics Evaluation and Research, Division of Blood Applications, in regulatory blood establishment registration and product listing. Most blood banks are familiar with the regulations and registration requirements to fill out this form.

TABLE 1. — ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Part	Form FDA 2830	No. Of Respondents	Annual Frequency per Response	Total Annual Response	Hours per Response	Total Hours
607.20(a), 607.21, 607.22, 607.25	Initial Registration	300	1	300	1	300
607.21,607.22, 607.25, 607.26, 607.31	Re-registration	3,300	1	3,300	0.5	1,650
607.21, 607.25, 607.30, 607.31	Product Listing Update	75	1	75	0.25	19
Total						1,969

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: August 27, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–23002 Filed 9–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–2799]

SteriGenics International, Inc.; Filing of Food Additive Petition (Animal Use); Irradiation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that SteriGenics International, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the approval to irradiate various animal feeds and feed ingredients for microbial control.

DATES: Written comments on the petitioner's environmental assessment by November 2, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: John D. McCurdy, Center for Veterinary Medicine (HFV–222), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0171.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 2243) has been filed by SteriGenics International, Inc., 4020 Clipper Ct., Fremont, CA 94538–6540. The petition proposes to amend the food additive regulations on irradiation in the production, processing, and handling of animal feed and pet food in 21 CFR part 579 to approve irradiation in various animal feeds and feed ingredients for microbial control.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations issued under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment.

Interested persons may, on or before November 2, 1999, submit to the Dockets Management Branch written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, FDA finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 25, 1999.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 99–22999 Filed 9–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2729]

Draft Guidance for Industry on BA and BE Studies for Orally Administered Drug Products—General Considerations; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "BA and BE Studies for Orally Administered Drug Products—General Considerations." This draft guidance provides recommendations to sponsors and applicants intending to submit bioavailability (BA) and/or bioequivalence (BE) information in investigational new drug applications (IND's), new drug applications (NDA's), abbreviated new drug applications (ANDA's), and their amendments and supplements, to the Center for Drug Evaluation and Research (CDER). This draft guidance provides general information on how to comply with the BA and BE requirements for orally administered dosage forms in 21 CFR part 320. It is one of a set of planned core guidances designed to reduce and/or eliminate the need for FDA drug-specific BA/BE guidances.

DATES: Written comments on the draft guidance document may be submitted by November 2, 1999. Interested parties are invited to submit information specifically to support or refute some of the approaches in the draft guidance that are intended to reduce regulatory burden. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance are available on the Internet at "http://www.fda.gov/cder/guidance/index.htm". Submit written requests for

single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vinod P. Shah, Center for Drug Evaluation and Research (HFD–350), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5635.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled "BA and BE Studies for Orally Administered Drug Products—General Considerations." This draft guidance provides recommendations to sponsors and applicants intending to provide BA and BE information in IND's, NDA's, ANDA's, and their amendments and supplements that complies with the BA and BE requirements in 21 CFR part 320 as they apply to dosage forms intended for oral administration.

This draft guidance focuses primarily on product quality BA and BE. Product quality BA encompasses information related to release of the drug substance from the drug product into systemic circulation. BE is a formal comparative test that uses: (1) Specified criteria for comparisons, (2) BE limits (goal posts), and (3) confidence intervals to determine if the observed interval falls within the specified limit.

Many aspects of this draft guidance represent departures from past practices used to document BE. Although some aspects of this draft guidance may result in small increases of regulatory burden, the main intent of many of these changes is to reduce the regulatory burden while maintaining sound scientific principles consistent with public health objectives. Specific examples of reduction of the regulatory burden include: (1) Enable biowaivers for lower strengths of modified release dosage forms, (2) eliminate multiple dose BE studies for modified release dosage forms, (3) enable biowaivers for higher strength of immediate release dosage forms, and (4) reduce emphasis on measuring metabolites in BE studies. Respondents to the **Federal Register** notice are encouraged to provide data that can be used to support or refute proposals in the draft guidance.

In the past, BE studies have been performed as single-dose, crossover studies in healthy volunteers. To compare measures in these studies, data have been analyzed using an average BE criterion. In this draft guidance, FDA recommends the use of new criteria to allow comparison of BE. One, termed an individual BE criterion, means having study designs in which both the test and reference drug products are administered to the same individuals on two separate occasions (replicate study designs). Another, termed a population BE criterion, does not involve replicate study designs. The individual BE is recommended for use in in vivo BE studies submitted in: (1) ANDA's, and (2) NDA's and ANDA's when the need to redocument BE arises after approval. The population BE criterion is recommended for use by sponsors who conduct certain important in vivo BE studies (e.g., studies that compare clinical trial material with the to-be-marketed dose form). The use of the proposed individual BE criterion is based on the assessment of both means and variances of BA measures, to include a subject-by-formulation (S*F) interaction variance and within-subject variance for both test and reference products. Both population and individual criteria allow scaling of the BE limit according to variability of the reference product.

FDA has expended substantial effort in determining whether S*F interaction and increased within-subject variability occur with sufficient frequency to affect a conclusion of switchability between test and reference products. FDA believes that additional information on the frequency and the magnitude of the different variance terms, as well as other information, is needed. For this reason, this draft guidance is recommending that sponsors conduct all in vivo BE studies for: (1) IND's, (2) NDA's, (3) ANDA's, and (4) amendments and supplements to NDA's and ANDA's using replicate designs for a 2-year period following the publication of the final version of this guidance. For example, the current average BE criteria generally require 24 subjects in a two-period study design (total of 24 x 2 = 48 dosage administrations). The proposed replicate study design would require 12 subjects in a four-period study (total of 12 x 2 x 2 dosage administrations). However, there is no increase in total number of dosage administrations to be analyzed. Sponsors can analyze their data using either average or population criteria (IND's and NDA's) or average or individual criteria (ANDA's and supplements to NDA's and ANDA's). Sponsors should specify their choice in the study protocol submitted to the appropriate institutional review board prior to study initiation. At the sponsor's discretion, scaling may be used, under certain circumstances, to judge BE when either an individual or population criterion is specified. Because data from the recommended replicate studies may be powered for an average BE criterion, the burden of performing replicate BE studies is minimized. The agency in turn will perform individual BE analyses on all submitted data to determine subject x formulation interactions. Information from these studies will enable FDA to assess further the usefulness of the proposed individual and population BE criteria.

This draft guidance document is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). It represents the agency's current thinking on bioavailability and bioequivalence studies for orally administered drug products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such an approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may submit written comments on the draft guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 25, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–23009 Filed 9–2–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

AIDS Education and Training Centers Evaluation Center Grant

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of Availability of Funds.

SUMMARY: The Health Resources and Services Administration's (HRSA) HIV/AIDS Bureau (HAB) announces that applications will be accepted for fiscal year (FY) 2000 grants for a discretionary grant to support a National AIDS Education and Training Centers Evaluation Center. The Center will be responsible for assisting HRSA in its capacity to document, evaluate and communicate the outcomes of education, training, and consultation activities provided by the regional AIDS Education and Training Centers (AETC) and by the National Minority AIDS Education and Training Center under section 2692 (a) of the Public Health Service Act as amended by Public Law 104–146, the Ryan White Comprehensive AIDS Resources Emergency Act Amendments of 1996.

AVAILABILITY OF FUNDS: It is anticipated that a single award will be made for the National AIDS Education and Training Centers Evaluation Center and is expected to range from $400,000 to $500,000 for the initial budget period. Funding will be made available for 12 months, with a project period of up to three years. Continuation awards within the approved project period will be made on the basis of satisfactory progress and the availability of funds.

ELIGIBLE APPLICANTS: Eligible applicants are public and nonprofit entities and schools and academic health science centers.

DATES: Applications for this grant must be received in the HRSA Grants Application Center by the close of business October 12, 1999 to be considered for competition. Applications will meet the deadline if they are either (1) received on or before the deadline date or (2) postmarked on or before the deadline date, and received in time for submission to the objective review panel. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted as proof if timely mailing. Applications received after the deadline will be returned to the applicant.

ADDRESSES: All applications should be mailed or delivered to: Grants Management Officer, HRSA Grants Application Center, Parklawn Building, 5600 Fishers Lane, Room 4–91, Rockville, Maryland 20857. Grant applications sent to any address other than that above are subject to being returned. **Federal Register** notices and application guidance for the HIV/AIDS Bureau program are available on the World Wide Web via the Internet. The web site for the HIV/AIDS Bureau is: http://www.hrsa.gov/hab/. Federal grant application forms are available at the following Internet address: http://forms.psc.gov/phsforms.htm. For those applicants who are unable to access application materials electronically, a hard copy of the official grant application kit (PHS Form 6025–1) must be obtained from the HRSA Grants Application Center (GAC). The Center may be contacted by telephone at 1–888–333–4772 until September 12, 1999, or 1–877–HRSA(4772)–123 after September 12, 1999. The e-mail address for the HRSA GAC after September 12, 1999, is hrsagac@hrsa.gov.

FOR FURTHER INFORMATION CONTACT: Additional information may be obtained from Mrs. Juanita Koziol, Deputy Chief, HIV Education Branch, Division of Training and Technical Assistance, HIV/AIDS Bureau, Health Resources and Services Administration, 5600 Fishers Lane, Room 9A–39, Rockville, Maryland 20857; telephone number (301) 443–6364; FAX number (301) 443–9887.

Dated: August 30, 1999.

Claude Earl Fox,

Administrator.

[FR Doc. 99–23003 Filed 9–2–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4398–N–04]

1998 HUD Disaster Recovery Initiative Amendment

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This notice amends a notice published October 22, 1998, governing the allocation and use of Community Development Block Grant (CDBG) funds appropriated in the 1998 Supplemental Appropriations and Rescissions Act (Pub. L. 105–174) and made available through the HUD Disaster Recovery Initiative. It modifies the Department's policy position on the use of annual CDBG appropriations to meet non-Federal public matching funds requirements of that 1998 supplemental appropriations statute.

FOR FURTHER INFORMATION CONTACT: Jan C. Opper, Senior Program Officer, Office of Block Grant Assistance, Department of Housing and Urban Development, Room 7286, 451 Seventh Street, SW, Washington, DC 20410, telephone number (202) 708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. FAX inquiries may be sent to Mr. Opper at (202) 401–2044. (Except for the "800" number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The 1998 Supplemental Appropriations and Rescissions Act (Pub. L. 105–174, 112 Stat. 58, approved May 1, 1998), required the publication of a notice governing the allocation and use of 1998 HUD Disaster Recovery Initiative grant funds. On October 22, 1998, at 63 FR 56764, HUD published a notice to address this requirement. The match requirement in the notice of October 22, 1998 is amended by this notice. Further legal review has clarified that annual appropriations of CDBG funds may be used to meet the "25 percent in non-Federal public matching funds" requirement in the 1998 Supplemental Appropriations and Rescissions Act (Public Law 105–174) (at 112 Stat. 76). Though the Department has the authority to specify alternative requirements, it has decided to adopt this legal position.

Accordingly, FR Doc. 98–28436, the 1998 HUD Disaster Recovery Initiative Notice, published in the **Federal Register** October 22, 1998, 63 FR 56764, is amended by revising paragraph I.F.9.a., on page 56766, in column 2, to read as follows:

a. Contributions made with or derived from Federal resources or funds, regardless of when the Federal resources or funds were received or expended. Use of CDBG funds (defined at § 570.3) under section 105(a)(9) of the Act for payment of the non-Federal share required in connection with a Federal grant-in-aid program is permissible;

Authority

1998 Supplemental Appropriations and Rescissions Act (Pub. L. 105–174, 112 Stat. 58, approved May 1, 1998).

Dated: August 27, 1999.

Cardell Cooper,

Assistant Secretary for Community Planning and Development.

[FR Doc. 99–22989 Filed 9–2–99; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–35]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and

surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: September 3, 1999.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1998, court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes as Notice, on a weekly basis, identifying unutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: August 25, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 99–22487 Filed 9–2–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Arnaudo Brothers, Wathen-Castanos, Kaufman and Broad Development Sites in Merced County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: The partnership of Arnaudo Brothers and the public corporations of Wathen-Castanos and Kaufman and Broad (collectively, the Applicants) have applied to the Fish and Wildlife Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. The Service proposes to issue a 5-year permit to the Applicants that would authorize take of the San Joaquin kit fox (*Vulpes macrotis mutica*) (kit fox) incidental to otherwise lawful activities. Such take would occur during the development of 170 acres of nonnative grassland and dry-farmed fields for residential and other uses. This project would permanently eliminate 170 acres of suitable habitat for the kit fox.

We request comments from the public on the permit application, and an Environmental Assessment, which are available for review. The permit application includes the proposed Habitat Conservation Plan (Plan) and an accompanying Implementing Agreement. The Plan describes the proposed project and the measures that the Applicant would undertake to minimize and mitigate take of the kit fox.

This notice is provided pursuant to section 10(a) of the Endangered Species Act and National Environmental Policy Act regulations (40 CFR 1506.6). All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

DATES: Written comments should be received on or before October 4, 1999.

ADDRESSES: Written comments should be addressed to Mr. Wayne White, Field Supervisor, Fish and Wildlife Service, 2800 Cottage Way, W–2605, Sacramento, California 95825. Comments may be sent by facsimile to (916) 414–6710.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Chrisney, Fish and Wildlife Biologist, at the above address or call (916) 414–6600.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of these documents for review by contacting the above office. Documents also will be available for public inspection, by appointment, during normal business hours at the above address.

Background

Section 9 of the Endangered Species Act and Federal regulation prohibit the "take" of fish or wildlife species listed as endangered or threatened, respectively. Take of listed fish or wildlife is defined under the Act to include kill, harm, or harass. The Service may, under limited circumstances, issue permits to authorize incidental take; i.e., take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22, respectively.

The Applicants have proposed four project sites for development within the Santa Nella Community Specific Plan Area. All of the project sites are located between Interstate 5 and the San Luis Reservoir in western Merced County, California. Typical land uses in the area surrounding the project sites are dryland farming, grazing and some residential development. The California Aqueduct and Delta-Mendota Canals are adjacent to the project sites. The San Luis Reservoir and O'Neill Forebay are west of the project sites. The Applicants propose the following land uses at the project sites: residential development, some commercial development, and open space community parks. The proposed number of home sites per acre range from 3.2 to 5.5.

Biologists surveyed the project sites for special-status plants and wildlife in 1998. Based on these surveys and previous knowledge of the area, the Service concluded that the project may result in the take of one federally listed species, the endangered San Joaquin kit fox.

The Applicants propose to implement the following measures to minimize and mitigate take of the San Joaquin kit fox: (1) conduct surveys and implement avoidance measures before and during construction activities; and (2) mitigate the loss of habitat at a 3:1 ratio (mitigation:impact) by purchasing a conservation easement for, or fee title to, 510 acres of off-site suitable kit fox habitat in the Santa Nella region. The Applicants will finance the off-site mitigation by establishing a Kit Fox Mitigation Account to be held by an appropriate entity.

The Environmental Assessment considers the environmental consequences of two alternatives in addition to the Proposed Project Alternative. The Proposed Project Alternative consists of the issuance of an incidental take permit and implementation of the Plan and its implementing Agreement, which includes measures to minimize and mitigate impacts of the project on the San Joaquin kit fox. Under the No Action Alternative, the Service would issue a permit and the project area would continue to be dry-land farmed, remain as nonnative grassland or be converted to irrigated row crops with the possibility of future adjacent development. This alternative would result in less habitat value for the kit fox than the off-site mitigation proposed under the Proposed Project Alternative. We also considered a Reduced Density Alternative. Compared to the Proposed Project, this alternative did not provide any significantly improved on-site habitat for kit fox.

This notice is provided pursuant to section 10(a) of the Endangered Species Act and the National Environmental Policy Act of 1969 regulations (40 CFR 1506.6). We will evaluate the application, associated documents, and comments submitted thereon to determine whether the application meets the requirements of the National Environmental Policy Act regulations and section 10(a) of the Endangered Species Act. If we determine that those requirements are met, we will issue a permit to the Applicants for the incidental take of the San Joaquin kit fox. Our final permit decision will be made no sooner than 30 days from the date of this notice.

Dated: August 27, 1999.

Elizabeth H. Stevens,

Deputy Manager, California/Nevada Operations Office, Fish and Wildlife Service, Sacramento, California.

[FR Doc. 99–22987 Filed 9–2–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1330–01–24 1A]

OMB Approval Number 1004–0103; Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). On April 7, 1999, BLM published a notice in the **Federal Register** (64 FR 16994) requesting comments on this proposed collection. The comment period ended on June 7, 1999. BLM received no comments from the public in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM clearance officer at the telephone number listed below. OMB is required to respond within 60 days but may respond after 30 days. For maximum consideration, your comments and suggestions on the requirement should be sent directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0103), Office of Information and Regulatory Affairs, Washington, DC 20503, telephone (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630), 1849 C St., NW, Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments

We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Mineral Materials Disposal.

OMB Clearance No.: 1004–0103.

Abstract: BLM proposes to extend the currently approved collection of information for the disposal through sale of mineral materials, such as sand, gravel, and petrified wood, on public lands. BLM uses the information that applicants provide to: (1) determine if the sale of the mineral materials is in the public interest, (2) mitigate any environmental impacts associated with mineral development, (3) get fair market value for the material sold, and (4) prevent the trespass removal of the resource. The collection also includes a sale contract form, BLM 3600–1.

Bureau Form: 3600–1 (combines forms 3600–4, Contract for Cash Sale of Mineral Materials, Appraised at Less Than $2,000; and 3600–5, Contract for the Sale of Units of Materials, Appraised at $2,000 or More)

Frequency: Once or twice per year.

Description of Respondents: Respondents are operators desiring sand, gravel, stone, and other mineral materials from lands under BLM jurisdiction.

Annual Respondents: 2,700.

Annual Responses: 2,800.

Annual Burden Hours: 1,475.

Collection Clearance Officer: Carole Smith, (202) 452–0367.

Dated: August 12, 1999.

Carole J. Smith,

Information Collection Clearance Officer.

[FR Doc. 99–22977 Filed 9–2–99; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–700–99–5440–00–C023]

Notice of Availability

AGENCY: Bureau of Land Management, Interior; Forest Service, Agriculture. Responsible Officials: Ann Morgan, State Director, Colorado State Office, Bureau of Land Management, 2850 Youngfield, Denver, CO 80215 and Robert L. Storch, Forest Supervisor, Grand Mesa, Uncompahgre and Gunnison National Forests, U.S. Forest Service, 2250 US Hwy 50, Delta, CO 81416.

ACTION: Notice of Availability of North Fork Coal Draft Environmental Impact Statement (DEIS) and Notice of Public Hearing and Request for Comments on the DEIS, Maximum Economic Recovery Report, and Fair Market Value; for lease and exploration license applications of Federal coal in Delta and Gunnison Counties, Colorado (COC61209, COC61357, COC61945).

SUMMARY: Pursuant to 40 CFR 1500–1508, the Bureau of Land Management (BLM) and the Forest Service (FS) announce the availability of the North Fork Coal DEIS for the Iron Point and Elk Creek Coal Lease Tracts for competitive leasing and the Iron Point Coal Exploration license for exploration drilling in accordance with 43 CFR 3425 and 3410. The scheduled date and place for a public hearing pursuant to 43 CFR 3425.4 is announced. The purpose of the hearing is to solicit comments on the DEIS and on the fair market value (FMV) and Maximum Economic Recovery (MER) of the proposed lease tract.

DATES: The public hearing will be held at 7:00 p.m. MDT, on October 14, 1999, at the Hotchkiss High School, Hotchkiss, Colorado. To assist the public in formulating their comments, there will also be an informal open house on October 7, 1999, starting at 7:30 p.m. MDT, at the Hotchkiss High School, Hotchkiss, Colorado to answer questions regarding the organization and technical content of the DEIS. Written comments on the DEIS, fair market value and maximum economic recovery will be accepted for 60 days following the date the Environmental Protection Agency (EPA) publishes their Notice of Availability in the **Federal Register**. We expect the EPA notice will be published on September 3, 1999. Written comments on the DEIS, fair market value and maximum economic recovery must be received by November 3, 1999.

ADDRESSES: Please address questions and comments on the DEIS to the Bureau of Land Management, Attn: Jerry Jones, 2465 South Townsend Ave., Montrose, CO 81401, or fax them to 970–240–5368. E-mail can be sent to Jerry_Jones@co.blm.gov.

FOR FURTHER INFORMATION CONTACT: Jerry Jones at the above address, or phone: 970–240–5338.

SUPPLEMENTARY INFORMATION: As a result of two applications for coal leasing and one application for a coal exploration license, the following lands were analyzed in this DEIS.

T. 12 S., R. 90 W., 6th P.M.
Sec. 31, lots 1 to 14, inclusive, and NE¼;
Sec. 32, lots 3 to 6, inclusive, lots 11 to 14, inclusive, and NW¼.
T. 12 S., R. 91 W., 6th P.M.
Sec. 14, lots 7,8, S½S½, NE¼SW¼, NW¼SE¼;
Sec. 22, S½;
Sec. 23, lots 1 to 7, inclusive, W½, and that part of HES No. 133 lying in the S½SE¼;
Sec. 26, lots 1 to 5, inclusive, W½, N½SE¼, that part of HES No. 133 lying in the NE¼ and that part of HES No. 134 lying in the SE¼;
Sec. 27, all;
Sec. 28, S½;
Sec. 29, SE¼;
Sec. 32, lots 1, 2, 7 to 10, inclusive, lots 15, 16, and NE¼;
Sec. 33, lots 1 to 16, inclusive, and N½;
Sec. 34, lots 1 to 16, inclusive, and N½;
Sec. 35, lots 1 to 22, that part of HES No. 134 lying in the NE¼; N½NW¼, and SW¼NW¼.
Sec. 36, lots 1 to 17, inclusive, NE¼, E½NW¼, SW¼NW¼, and that part of HES No.134 lying in lot 1.
T. 13 S., R. 90 W., 6th P.M.
Sec. 5, lots 7 to 10, inclusive;
Sec. 6, lots 8 to 17, inclusive.
T. 13 S., R. 91 W., 6th P.M.
Sec. 1, lots 1 to 4, inclusive, S½NW¼ and SW¼;
Sec. 2, lot 1, and S½NE¼, SW¼NW¼, NW¼SW¼, and E½SW¼;
Sec. 3, lots 1 to 4, inclusive, S½N½, and N½S½;
Sec. 4, lots 1 to 4, inclusive, S½N½, and S½;
Sec. 5, lots 11 and 12, SE¼, E½SW¼, SW¼NE¼, and SE¼NW¼;
Sec. 8, NE¼;
Sec. 9, NW¼, and N½SW¼;
Sec. 11, NE¼NW¼.
Sec. 12, S½NE¼, and NW¼.

The area described contains approximately 11,646 +/ − acres.

Bowie Resources, Ltd. and Oxbow Mining, Inc. applied to the BLM for the Iron Point and Elk Creek coal lease tracts respectfully to extend the production life of their existing underground mines. Similarly, Bowie applied to the BLM for an exploration license to further delineate coal resource in lands adjacent to their ongoing mining. The requested Iron Point Tract and the exploration license area are adjacent to the presently approved permit area for the Bowie No. 2 Mine which is operated by Bowie. Likewise, the requested Elk Creek Tract is adjacent to the presently approved permit area for the Sanborn Creek Mine which is operated by Oxbow. These applications encompass federal coal on BLM and National Forest system lands.

The DEIS analyzes four alternatives. Besides the no-action alternative and the plans as submitted in the applications, two other alternatives were examined in the draft EIS. The other alternatives analyzed the possibility of multiseam mining and the restriction of subsidence due to underground mining activity in key areas to protect surface resources.

The coal resource to be offered is limited to coal recoverable by underground mining methods. The purpose of the hearing is to obtain public comments on the DEIS and on the following items:

(1) The method of mining to be employed to obtain maximum economic recovery of the coal,

(2) The impact that mining or exploration of the coal may have on the area, and

(3) The methods of determining the fair market value of the coal to be offered.

Written requests to testify orally at the October 14, 1999, public hearing should be received at the BLM prior to the close of business on October 14, 1999. Those who indicate they wish to testify when they register at the hearing may have an opportunity if time is available.

In addition, the public is invited to submit written comments concerning the fair market value and maximum economic recovery of the coal resource. Public comments will be utilized in establishing fair market value for the coal resource in the described lands. Proprietary data marked as confidential may be submitted to the Bureau of Land Management in response to this solicitation. This information should be labeled as such and stated in the first page of the submission. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information. Comments on fair market value and maximum economic recovery should be sent to the Bureau of Land Management and should address, but not necessarily be limited to, the following information:

1. The quality and quantity of the coal resource.

2. The price that the mined coal would bring in the market place.

3. The cost of producing the coal.

4. The interest rate at which anticipated income streams would be discounted.

5. Depreciation and other accounting factors.

6. The mining method or methods which would achieve maximum economic recovery of the coal.

7. Documented information on the terms and conditions of recent and similar coal land transactions in the lease area, and

8. Any comparable sales data of similar coal lands.

Substantive comments, whether written or oral, will receive equal consideration prior to any lease offering. Coal quantities and the FMV of the coal developed by BLM may or may not change as a result of comments received from the public and changes in market conditions between now and when final economic evaluations are completed.

The Draft EIS and Maximum Economic Recovery Report are available from the Uncompahgre Field Office upon request. A copy of the DEIS, the Maximum Economic Recovery Report, the case file, and the comments submitted by the public, except those portions identified as proprietary by the commenter and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the BLM Uncompahgre Field Office.

The comment period on the Draft EIS will be sixty (60) days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. It is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions, Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the Draft EIS stage but that are not raised until after completion of the Final EIS may be waived or dismissed by the courts, City of Angoon v. Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986) and Wisconsin Heritages, Inc. v. Harris, 490 F. Supp. 1334, 1338 (e.d. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the agencies at a time when they can meaningfully consider them and respond to them. To assist the agencies in identifying and considering issues and concerns on the proposed action, comments on the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Freedom of Information

Comments, including names and street addresses of respondents, will be available for public review at the addresses listed above during regular business hours (7:45 a.m.–4:30 p.m.), Monday through Friday, except holidays, and may be published as part of the Final EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety. Proprietary data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information.

Dated: August 25, 1999.

Jerald L. Jones,

EIS Project Manager.

[FR Doc. 99–22773 Filed 9–2–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–961–1020–00]

Notice of Meeting

AGENCY: Bureau of Land Management, Lewistown Field Office.

ACTION: Notice of meeting.

SUMMARY: The Central Montana Resource Advisory Council will meet September 22 and 23, 1999, at the Lewis and Clark Interpretive Center, in Great Falls, Montana.

The September 22 portion of the meeting will begin at 8:00 am. The day's business will include an introduction of new council members, field manager updates, BLM presentations about public land features in the Missouri River Breaks (current management, issues, future management, etc.) and a report about the formation of a council sub-group. A primary entry on the day's agenda will be accepting public comments concerning the future management of public lands in the Missouri River Breaks area of north central Montana. The BLM is interested in maintaining the special cultural, historical and scenic values of these lands and is considering a designation of some level as a means of recognizing while maintaining these values as well as benefiting local communities and lifestyles. The council will hear presentations from groups and organizations from 12:45 pm through 5:00 pm. Then from 7:00 pm through 9:00 pm that evening, the council will host a public comment period for individuals.

The September 23 portion of the meeting will begin at 9:00 am. From 9:00 am through 11:00 am, the council will continue the public comment period for individuals concerning the future management of public lands in the Missouri River Breaks. The remainder of the day will consist of a discussion of business topics along with council members' reports on the Lewis and Clark Bicentennial, and administrative arrangements for the council's next meeting.

DATES: September 22 and 23.

LOCATION: Lewis and Clark Interpretive Center, Great Falls, Montana.

FOR FURTHER INFORMATION CONTACT: Phillips Field Manager, 501 S. 2nd St. E., HC 65, Box 5000, Malta, Montana 59538.

SUPPLEMENTARY INFORMATION: The meeting is open to the public and there will be a formal comment period for groups and organizations and two public comment periods as detailed above.

David L. Mari,

Lewistown Field Manager.

[FR Doc. 99–22976 Filed 9–2–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–910–09–0777–30]

Northeastern Great Basin Resource Advisory Council Meeting Location and Time

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Councils' meeting location and time.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), Council meetings will be held as indicated below. The agenda for the September 27, 1999 meeting includes: approval of minutes of the previous meeting, Standards and Guidelines for wild horses, Wilderness Study Areas, Wild Fire and Emergency Fire Rehabilitation Updates, Pinyon-juniper Standards and Guidelines and subject matter for future meetings.

All meetings are open to the public. Citizens may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments.

Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend or need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Curtis Tucker, Special Projects Coordinator, Ely Field Office, 702 North Industrial Way, HC 33 Box 33500, Ely, NV 89301–9408.

DATES, TIMES AND LOCATION: The time and location of the meeting is as follows: Northeastern Great Basin Resource Advisory Council meeting, September 27, 1999, starting at 9 a.m., Elko Field Office, 3900 East Idaho Street, Elko, NV; public comments will be at 11:30 a.m.; tentative adjournment 5 p.m.

FOR FURTHER INFORMATION CONTACT: Curtis Tucker, Special Projects Coordinator, Ely Field Office, 702 North Industrial Way, HC 33 Box 33500, Ely, NV 89301–9408, telephone 775–289–1841.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues, associated with the management of the public lands.

Dated: August 24, 1999.

Helen Hankins,

Field Manager, Elko.

[FR Doc. 99–22980 Filed 9–2–99; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–952–09–1420–00]

Montana: Filing of Amended Protraction Diagram Plats

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice.

SUMMARY: The plats of the amended protraction diagrams accepted August 24, 1999, of the following described lands, are scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication.

Tps. 5, 6, 7, and 8 N., Rs. 21, 22, and 23 W.
The plat, representing Amended Protraction Diagram 16 Index of unsurveyed Townships 5, 6, 7, and 8 North, Ranges 21, 22, and 23 West, Principal Meridian, Montana, was accepted August 24, 1999.

T. 5 N., R. 21 W.
The plat, representing Amended Protraction Diagram 16 of unsurveyed Township 5 North, Range 21 West, Principal Meridian, Montana, was accepted August 24, 1999.

T. 5 N., R. 22 W.
The plat, representing Amended Protraction Diagram 16 of unsurveyed Township 5 North, Range 22 West, Principal Meridian, Montana, was accepted August 24, 1999.

T. 5 N., R. 23 W.
The plat, representing Amended Protraction Diagram 16 of unsurveyed Township 5 North, Range 23 West, Principal Meridian, Montana, was accepted August 24, 1999.

T. 6 N., R. 22 W.
The plat, representing Amended Protraction Diagram 16 of unsurveyed Township 6 North, Range 22 West, Principal Meridian, Montana, was accepted August 24, 1999.

T. 6 N., R. 23 W.
The plat, representing Amended Protraction Diagram 16 of unsurveyed Township 6 North, Range 23 West, Principal Meridian, Montana, was accepted August 24, 1999.

T. 7 N., R. 21 W.
The plat, representing Amended Protraction Diagram 16 of unsurveyed Township 7 North, Range 21 West, Principal Meridian, Montana, was accepted August 24, 1999.

T. 7 N., R. 22 W.
The plat, representing Amended Protraction Diagram 16 of unsurveyed Township 7 North, Range 22 West, Principal Meridian, Montana, was accepted August 24, 1999.

T. 7 N., R. 23 W.
The plat, representing Amended Protraction Diagram 16 of unsurveyed Township 7 North, Range 23 West, Principal Meridian, Montana, was accepted August 24, 1999.

T. 8 N., R. 21 W.
The plat, representing Amended Protraction Diagram 16 of unsurveyed Township 8 North, Range 21 West, Principal Meridian, Montana, was accepted August 24, 1999.

T. 8 N., R. 22 W.
The plat, representing Amended Protraction Diagram 16 of unsurveyed Township 8 North, Range 22 West, Principal Meridian, Montana, was accepted August 24, 1999.

T. 8 N., R. 23 W.
The plat, representing Amended Protraction Diagram 16 of unsurveyed Township 8 North, Range 23 West, Principal Meridian, Montana, was accepted August 24, 1999.

The amended protraction diagrams were prepared at the request of the U.S. Forest Service to accommodate Revision of Primary Base Quadrangle Maps for the Geometronics Service Center.

A copy of the preceding described plats of the amended protraction diagrams, accepted August 24, 1999, will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against these amended protraction diagrams, accepted August 24, 1999, as shown on these plats, is received prior to the date of the official filings, the filings will be stayed pending consideration of the protests.

These particular plats of the amended protraction diagrams will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5001 Southgate Drive (59101), P.O. Box 36800, Billings, Montana 59107–6800.

Dated: August 24, 1999.

Daniel T. Mates,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 99–22982 Filed 9–2–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–01; COC–63081]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

August 27, 1999.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw approximately 12,236 acres of public lands and 1,020 acres of reserved mineral estate for 20 years to protect the Upper Colorado River Special Recreation Management Area. This notice closes the public lands to surface entry and mining and the reserved mineral interests to mineral entry for up to 2 years. The lands have been and remain open to mineral leasing.

DATES: Comments on this proposed withdrawal must be received on or before December 2, 1999.

ADDRESSES: Comments and/or requests to be heard should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–239–3706.

SUPPLEMENTARY INFORMATION: On August 12, 1999, a petition was approved allowing the Bureau of Land Management to file an application to withdraw lands for the Upper Colorado River Special Recreation Management Area.

1. The following described public lands will be withdrawn from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Sixth Principal Meridian

T. 1 N., R. 79 W.,
Sec. 8, S½SW¼;
Sec. 17, NW¼ and N½SW¼;
Sec. 18, lot 3.
T. 1 N., R. 80 W.,
Sec 13, lots 1 thru 4, inclusive;
Sec. 14, SW¼SE¼ and a reconveyed parcel in the S½S½SW¼;
Sec. 15, lots 9 and 11, S½S½, and a reconveyed parcel in the N½SW¼;
Sec. 16, a reconveyed parcel in the S½S½;
Sec. 19, NE¼SE¼, and a reconveyed parcel in the NE¼NE¼ and the NW¼NE¼;
Sec. 20, lots 2 and 3, S½N½, and NE¼SW¼;
Sec. 21, N½NE¼, S½NW¼ and a reconveyed parcel in the N½N½NW¼;
Sec. 22, lots 1 thru 4, inclusive.
T. 1 N., R. 81 W.,
Sec. 13, SW¼SW¼;
Sec. 23, SE¼NW¼, NE¼SW¼, and NE¼SE¼;
Sec. 24, S½N½ and N½SE¼;
Sec. 27, N½, SW¼, and NW¼SE¼;
Sec. 28, SE¼ and SE¼SW¼;
Sec. 32, E½ and SW¼;
Sec. 33, N½NE¼, SW¼NE¼, and W½.
T. 1 S., R. 81 W.,
Sec. 5, lots 8 and 9;
Sec. 6, lots 6, 7, 9 thru 18, inclusive;
Sec. 7, lots 5 thru 19, inclusive;
Sec. 18, lots 1 and 2, and E½NW¼.
T. 1 S., R. 82 W.,
Sec. 12, lots 1 thru 5, inclusive, SW¼NE¼, E½SW¼, SW¼SW¼, and W½SE¼.
Sec. 13, lots 1 thru 9, inclusive, W½SW¼ and that portion of Tract 53 lying westerly of the centerline of the Colorado River;
Sec. 14, SE¼SW¼, E½SE¼, and SW¼SE¼;
Sec. 22, SE¼;
Sec. 23, NE¼, E½NW¼, N½S½, and S½SW¼;
Sec. 24, lots 1, 2, and 3, NW¼NW¼, and S½NW¼;
Sec. 27, W½NW¼, SW¼SW¼, and reconveyed parcels in the W½NE¼ and the E½NW¼;
Sec. 28, lots 4 thru 6, inclusive, NE¼NE¼, S½NE¼, NE¼SW¼, NW¼SE¼, and SE¼SE¼;
Sec. 32, lots 1, 3, 4, 5, and 8, SW¼SE¼, those portions of unpatented Mineral Survey No. 13963 lying within the E½ of Section 32, and that portion of Tract 82 within the E½ of Section 32;
Sec. 33, lots 1, 3, 4, 5, 6, 8 thru 11, inclusive, NE¼, E½NW¼, SW¼NW¼, and the Bona Dea Placer;
Sec. 34, lot 1 and NW¼NW¼.
T. 2 S., R. 82 W.,
Sec. 4, lots 12, 14, 15, 17, 18, 19, 26 thru 30, inclusive, S½NW¼, NW¼SW¼, and the Bona Dea Placer;
Sec. 5, lots 5, 6, 11, 14 thru 23, inclusive, 25 and 26, S½NE¼, and N½SE¼;
Sec. 6, Lots 20, 30, 31, 32, 37, and 38, S½NE¼, E½SW¼, SE¼NW¼ and SE¼;
Sec. 7, lots 5, 6, 7, and 11 thru 21, inclusive, and NE¼NE¼, SE¼SW¼, and SW¼SE¼;
Sec. 18, Lots 5 thru 12, inclusive, 14 thru 17, inclusive.
T. 2 S., R. 83 W.,
Sec. 12, lot 4;
Sec. 13, lots 1 thru 4, inclusive, W½E½, and E½SW¼;
Sec. 23, E½NE¼, S½SW¼, SW¼SE¼, NE¼SE¼, N½SE¼SE¼, and N½S½SE¼SE¼;
Sec. 24, lot 1, W½E½, and W½;
Sec. 25, NW¼;
Sec. 26, NW¼NW¼NE¼, S½NW¼NE¼, S½NE¼, and NW¼.

The areas described aggregate approximately 12,236.73 acres of public lands in Grand and Eagle Counties.

2. The reserved mineral interests in the following identified privately owned lands would be withdrawn from location and entry under the U.S. mining laws:

Sec. 13, SW¼SW¼;
Sec. 23, SE¼NW¼, NE¼SW¼, and NE¼SE¼;
Sec. 24, S½N½ and N½SE¼;
Sec. 27, N½, SW¼, and NW¼SE¼;
Sec. 28, SE¼ and SE¼SW¼;
Sec. 32, E½ and SW¼;
Sec. 33, N½NE¼, SW¼NE¼, and W½.
T. 1 S., R. 81 W.,
Sec. 5, lots 8 and 9;
Sec. 6, lots 6, 7, 9 thru 18, inclusive;
Sec. 7, lots 5 thru 19, inclusive;
Sec. 18, lots 1 and 2, and E½NW¼.
T. 1 S., R. 82 W.,
Sec. 12, lots 1 thru 5, inclusive, SW¼NE¼, E½SW¼, SW¼SW¼, and W½SE¼.
Sec. 13, lots 1 thru 9, inclusive, W½SW¼ and that portion of Tract 53 lying westerly of the centerline of the Colorado River;
Sec. 14, SE¼SW¼, E½SE¼, and SW¼SE¼;
Sec. 22, SE¼;
Sec. 23, NE¼, E½NW¼, N½S½, and S½SW¼;
Sec. 24, lots 1, 2, and 3, NW¼NW¼, and S½NW¼;
Sec. 27, W½NW¼, SW¼SW¼, and reconveyed parcels in the W½NE¼ and the E½NW¼;
Sec. 28, lots 4 thru 6, inclusive, NE¼NE¼, S½NE¼, NE¼SW¼, NW¼SE¼, and SE¼SE¼;
Sec. 32, lots 1, 3, 4, 5, and 8, SW¼SE¼, those portions of unpatented Mineral Survey No. 13963 lying within the E½ of Section 32, and that portion of Tract 82 within the E½ of Section 32;
Sec. 33, lots 1, 3, 4, 5, 6, 8 thru 11, inclusive, NE¼, E½NW¼, SW¼NW¼, and the Bona Dea Placer;
Sec. 34, lot 1 and NW¼NW¼.
T. 2 S., R. 82 W.,
Sec. 4, lots 12, 14, 15, 17, 18, 19, 26 thru 30, inclusive, S½NW¼, NW¼SW¼, and the Bona Dea Placer;
Sec. 5, lots 5, 6, 11, 14 thru 23, inclusive, 25 and 26, S½NE¼, and N½SE¼;
Sec. 6, Lots 20, 30, 31, 32, 37, and 38, S½NE¼, E½SW¼, SE¼NW¼ and SE¼;
Sec. 7, lots 5, 6, 7, and 11 thru 21, inclusive, and NE¼NE¼, SE¼SW¼, and SW¼SE¼;
Sec. 18, Lots 5 thru 12, inclusive, 14 thru 17, inclusive.
T. 2 S., R. 83 W.,
Sec. 12, lot 4;
Sec. 13, lots 1 thru 4, inclusive, W½E½, and E½SW¼;
Sec. 23, E½NE¼, S½SW¼, SW¼SE¼, NE¼SE¼, N½SE¼SE¼, and N½S½SE¼SE¼;
Sec. 24, lot 1, W½E½, and W½;
Sec. 25, NW¼;
Sec. 26, NW¼NW¼NE¼, S½NW¼NE¼, S½NE¼, and NW¼.

The areas described aggregate approximately 1,020 acres of reserved mineral interests.

3. The following described private or State owned lands located within the exterior boundary of the proposed withdrawal would become subject to the withdrawal if they should pass to Federal ownership:

Sixth Principal Meridian

T. 1 N., R. 79 W.,
Sec. 7, lot 4, SE¼SW¼, and S½SE¼;
Sec. 18, lots 1 and 2, and NE¼, E½NW¼, NE¼SW¼, and N½SE¼.
T. 1 N., R. 80 W.,
Sec. 12, S½S½;
Sec. 13, N½ and SW¼;
Sec. 14, N½, N½S½, N½S½SW¼, and SE¼SE¼;
Sec. 15, lots 8 and 10, S½NE¼, N½SE¼, N½NW¼SW¼, and S½NE¼SW¼;
Sec. 16, N½S½ exclusive of horse corral;
Sec. 17, S½;
Sec. 18, lots 2, 3, and 4, SE¼NW¼, E½SW¼, and SE¼;
Sec. 19, lots 1, 2, and 3, W½NE¼, SE¼NE¼, E½NW¼, NE¼SW¼ and NW¼SE¼;
Sec. 20, N½N½, SE¼SW½, and W½SW¼;
Sec. 21, N½NW¼.
T. 1 N., R. 81 W.,
Sec. 13, S½NE¼, N½SW¼, SE¼SW¼, and SE¼;
Sec. 14, SE¼ and E½SW¼;
Sec. 22, NE¼NE¼, S½NE¼, S½SW¼, and SE¼;
Sec. 23, NE¼, N½NW¼, SW¼NW¼, W½SW¼, SE¼SW¼, W½SE¼, and SE¼SE¼;
Sec. 24, N½N½;
Sec. 26, NW¼;
Sec. 28, N½SW¼ and SW¼SW¼;
Sec. 29, SE¼SE¼.
T. 1 S., R. 81 W.,
Sec. 6, lots 4 and 5;
Sec. 7, Lot 1.
T. 1 S., R. 82 W.,
Sec. 12, NW¼SW¼ and that portion of Tract 37 in the NE¼ of Section 12;
Sec. 13, that portion of Tract 53 lying easterly of the centerline of the Colorado River, and all of Tract 54;
Sec. 14, SW¼SW¼ and NW¼SE¼;
Sec. 22, NE¼ and SW¼;
Sec. 23, W½NW¼;
Sec. 24, Tract 76 lying in the E½NE¼ of Section 24;
Sec. 26, NW¼NW¼;
Sec. 27, lots 1 and 2, E½NE¼, N½SW¼, SE¼SW¼, N½SE¼ and those portions of the W½NE¼ and the E½NW¼ exclusive of reconveyed land;
Sec. 28, NE¼SE¼ and Tract 81 lying in the SW¼SE¼;
Sec. 32, Mineral Survey Nos. 13963, 18347A, and 18671;
Sec. 33, Mineral Survey Nos. 18801, 18671, 18347A and B, and that portion of Tract 70 lying within the NW¼NW¼ of Section 33.
T. 2 S., R. 82 W.,
Sec. 4, lot 22;
Sec. 5, that portion of Tract 39 lying within the S½SW¼NW¼, and NW¼SW¼.
Sec. 7, Tracts 38 and that portion of Tract 41 in Section 7.
T. 2 S., R. 83 W.,
Sec. 23, S½S½SE¼SE¼;
Sec. 26, NE¼NE¼ and NE¼NW¼NE¼.

The purpose of this withdrawal is to protect important scenic, resource, and recreation values and recreation improvements in the Upper Colorado River Special Recreation Management Area.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed action should submit their views in writing to the Colorado State Director at the address listed in this order. A public meeting will be scheduled and held on this proposed action and will be conducted in accordance with 43 CFR 2310.3–1(c)(2). A notice of the meeting will be published in the **Federal Register** at least 30 days prior to the scheduled meeting.

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2310.

For a period of two years from the date of publication in the **Federal Register**, these public lands and public minerals will be segregated as specified above, unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Bureau of Land Management will continue to manage these lands.

Jenny L. Saunders,

Realty Officer.

[FR Doc. 99–22979 Filed 9–2–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Submission of Study Package to Office of Management and Budget; Opportunity for Public Comment

AGENCY: Department of the Interior; National Park Service; and Cuyahoga Valley National Recreation Area.

ACTION: Notice and request for comments.

ABSTRACT: The National Park Service is conducting a study to assess the positive and negative social consequences of various potential deer management alternatives in Cuyahoga Valley National Recreation Area (CVNRA). This information will be used to help the staff at CVNRA develop a deer management strategy that considers public desires and concerns relating to management of the CVNRA. The following specific study objectives have been identified:

1. Determine the acceptability, tolerance, and preferences among the local public for: Deer management activities, the perceived positive and negative consequences of deer management activities, and deer population levels;

2. Identify and determine the intensity of the psychological and emotional impacts among the local public served by CVNRA due to various deer management actions;

3. Determine the effect of deer management activities on local public attitudes toward the park, its services, and park staff;

4. Determine the degree to which deer management activities may affect park visitation patterns among the local public.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the NPS invites public comment on the proposed information collection request (ICR). Comments are invited on: (1) The need for the information including whether the information has practical utility; (2) the accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The purpose of the proposed ICR is to assess the positive and negative social consequences of various potential deer management alternatives in Cuyahoga Valley National Recreation Area. This information will be used to help the staff at CVNRA develop a deer management strategy that considers public desires and concerns relating to management of the CVNRA.

There were no public comments received as a result of publishing in the **Federal Register** a 60 day notice of intention to request clearance of information collection for this survey.

DATES: Public comments will be accepted on or before thirty days from date of publication in the **Federal Register**.

SEND COMMENTS TO: Office of Information and Regulatory Affairs of OMB, Attention Desk Officer for the Interior Department, Office of Management and Budget, Washington, DC 20530. Please also send comments to David C. Fulton, Ph.D., Assistant Unit Leader, Minnesota Cooperative Fish and Wildlife Research Unit, Department of Fisheries and Wildlife, University of Minnesota, 200 Hodson Hall 1980 Folwell Ave., St. Paul, MN 55108.

Public comments, including names and addresses of respondents, may be made available for public review. Individual respondents may request that their address be withheld from the public comment record. This will be honored to the extent allowable by law. There also may be circumstances in which a respondent's identity would be withheld from the public comment record, as allowable by law. If you wish to withhold your name and/or address, you must state this prominently at the beginning of your comment. Anonymous comments will not be considered. Comments from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses may be made available for public inspection in their entirety.

Copies of the proposed ICR requirement can be obtained from David C. Fulton, Ph.D., Assistant Unit Leader, Minnesota Cooperative Fish and Wildlife Research Unit, Department of Fisheries and Wildlife, University of Minnesota, 200 Hodson Hall 1980 Folwell Ave., St. Paul, MN 55108.

The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments on or before thirty days from date of publication in the **Federal Register**.

FOR FURTHER INFORMATION OR A COPY OF THE STUDY PACKAGE SUBMITTED FOR OMB REVIEW, CONTACT: David Fulton, phone: 612–625–5256.

SUPPLEMENTARY INFORMATION:

Title: Assessing Public Reactions To Potential Deer Management Program in Cuyahoga Valley National Recreation Area.

Form Number: Not applicable.

OMB Number: To be assigned.

Expiration Date: To be assigned.

Type of Request: Request for new clearance.

Description of Need: The National Park Service needs information concerning public opinion about deer management strategies at Cuyahoga Valley National Recreation Area for planning and management purposes.

The propose information to be collected regarding the local public served by this park is not available from existing records, sources, or observations. Automated Data Collection: At the present time, there is no automated way to gather this information, since it includes asking visitors to evaluate potential deer management activities and the effect of these activities on their views toward CVNRA and its staff.

Description of Respondents: A sample of residents within 9 counties in northeast Ohio near the Cuyahoga Valley National Recreation Area.

Estimated Average Number of Respondents: 600.

Estimated Average Number of Responses: Each respondent will respond only one time, so the number of responses will be the same as the number of respondents.

Estimated Average Burden Hours Per Response: 20 minutes.

Frequency of Response: One time per respondent.

Estimated Annual Reporting Burden: 200 hours.

Leonard E. Stowe,

Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc. 99–22948 Filed 9–2–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of the Finding of No Significant Impact for the Proposed Land Exchange, George Washington Memorial Parkway, City of Alexandria and Arlington County, Virginia

AGENCY: Notice of availability of the Finding of No Significant Impact (FONSI) for the proposed land exchange, George Washington Memorial Parkway, City of Alexandria and Arlington County, Virginia.

SUMMARY: Pursuant to the Council of Environmental Quality regulations and National Park Service (NPS) policy, NPS prepared an environmental assessment (EA) for the proposed land exchange, George Washington Memorial Parkway, City of Alexandria and Arlington County, Virginia. The availability of the EA for a 30-day public comment period was announced in the **Federal Register** on June 8, 1999, 64 FR 30537. After the end of the 30-day public comment period, NPS selected the preferred alternative which is the proposed action, followed by a determination that the proposed land exchange will not cause significant environmental impact. The National Park Service is desirous of acquiring the access rights to the George Washington Memorial Parkway belonging to Commonwealth Atlantic Properties, Inc. (Commonwealth) in the City of Alexandria, Virginia, as well as set-back and height restrictions over 29.1 acres of land in Arlington County, Virginia, currently owned by Commonwealth, and in return is willing to relinquish the United States' interests in restricting the use of that 29.1 acres.

SUPPLEMENTARY INFORMATION: Requests for copies of the FONSI, or for any additional information, should be directed to: Mr. John G. Parsons, Associate Regional Director for Lands, Resources, and Planning, National Capital Region, National Park Service, 1100 Ohio Drive, SW, Room 220, Washington, D.C., 20242, Telephone: (202) 619–7025.

Dated: August 19, 1999.

Joseph M. Lawler,

Acting Regional Director, National Capital Region.

[FR Doc. 99–22949 Filed 9–2–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Draft General Management Plan/ Environmental Impact Statement, Whitman Mission National Historic Site, Washington

AGENCY: National Park Service.

ACTION: Notice of availability of Draft Environmental Impact Statement (DEIS).

SUMMARY: This notice announces the availability of a Draft Environmental Impact Statement (DEIS) for the General Management Plan, Whitman Mission National Historic Site. This notice also announces public meetings for the purpose of information exchange and receiving public comments on the DEIS. All comments received will become part of the public record and copies of comments, including names, addresses and telephone numbers provided by respondents, may be released for public inspection.

DATES: Comments on the DEIS should be received no later than November 12, 1999. Public meetings, for the purpose of receiving comments and information exchange, will be held in Walla Walla, WA, on September 29, 1999, 7–9 p.m. at the Walla Walla Community College Administrative Building Dining Room, and in Mission, OR, on September 30, 1999, 6–8 p.m. at the Confederated Tribes of the Umatilla Indian Reservation Yellowhawk Conference Room.

ADDRESSES: Written comments on the DEIS should be submitted to Superintendent, Whitman Mission National Historic Site, Route 2, Box 247, Walla Walla, WA 99362–9699, (509) 522–6360.

SUPPLEMENTARY INFORMATION: This DEIS for the General Management Plan presents a proposed action and three alternative strategies for guiding future management of the national historic site. Alternative A is a continuation of current management practices, often referred to as a "no action" alternative. Alternative B provides a minimum level of improvements regarding visitor facilities and interpretation in order to make the visitor experience more rewarding and informative.

Alternative C is the "preferred alternative" and proposed action by the National Park Service. This alternative includes provisions for a three-dimensional delineation of the original structures, substitution of native grasses for the existing lawn at the Mission Grounds, a recreational trail along the riparian area of the Walla Walla River, construction of additional exhibit and administrative space in the visitor center, and possible acquisition by a non-profit land trust of conservation easements on visually sensitive properties adjacent to the national historic site. In addition, Alternative C contains a development concept plan to include reconfiguration of the main parking lot, addition of a group shelter to the picnic area, improvements to the visitor center entry, construction of additional administrative space on the administrative wing, and reconfiguration of pedestrian access to the Oregon Trail and the Mission Grounds.

Alternative D goes beyond the preferred alternative, building on the initiatives of Alternative C. It would include establishing historic fence alignments and enlarging the orchard, conducting archeological research regarding the Whitman sawmill site, permitting cattle grazing in the pasture and river oxbow, replicating a Cayuse village on the Walla Walla River floodplain, constructing a new administrative building, and recommending an approximate 450-acre boundary adjustment to protect the foreground viewshed. The DEIS evaluates the potential environmental impacts associated with the strategies comprising the four alternatives.

Copies of the Draft General Management Plan and Environmental Impact Statement can be obtained from Whitman Mission National Historic Site, Route 2, Box 247, Walla Walla, WA 99362–9699. They are also available at public libraries in the Walla Walla area and on the internet at www.NPS.gov.

Dated: August 24, 1999.

Rory D. Westberg,

Acting Regional Director, Pacific West Region.

[FR Doc. 99–22946 Filed 9–2–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Cape Cod National Seashore Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, October 1, 1999.

The Commission was reestablished pursuant to Pub. L. 87–126 as amended by Pub. L. 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting—June 18, 1999
3. Reports of Officers
4. Subcommittee Reports
   - Off-Road Vehicle Subcommittee
   - Personal Watercraft Subcommittee
   - Nickerson Fellowship Committee
5. Superintendent's Report:
   - Introduce Nancy Finley
   - Visitor's Guide
   - Land-transfer ceremony
   - Highlands Center
   - Hatches Harbor
   - Americorps
   - Water EIS

Shuttle buses
News from Washington
6. Old Business:
Head of the Meadow Gas Station—Commercial Certificate
7. New Business—preparation, elections
8. Agenda for next meeting
9. Date for next meeting—November 19, 1999
10. Public comment
11. Adjournment

The Commission members will meet at 1:00 p.m. at headquarters, Marconi Station, Wellfleet, Massachusetts for the regular business meeting to discuss the following:

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: August 26, 1999.

Maria Burks,

Superintendent.

[FR Doc. 99–22947 Filed 9–2–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Capital Memorial Commission Notice of Public Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission (the Commission) will be held at 2 p.m. on Thursday, September 23, 1999, at the National Building Museum, Room 312, 5th and F Streets, NW., Washington, D.C.

The purpose of the meeting will be to discuss currently authorized and proposed memorials in the District of Columbia and environs.

In addition to discussing general matters and routine business, the agenda is expected to include the following:

I. Consultation: Memorial proponents will consult with the Commission on aspects of these authorized memorials:

Site selection alternatives for the Benjamin Banneker Memorial along the L'Enfant Promenade.

The Commission will consider these matters and take action as appropriate in order to advise the Secretary of the Interior (the Secretary).

II. Review of Legislation: The Commission will review the following legislative proposals:

S. 311 and H.R. 1509, bills to authorize the Disabled Veterans LIFE Foundation to establish a memorial in the District of Columbia or its environs to honor veterans who became disabled while serving in the Armed Forces of the United States.

III. The Commission will continue deliberations on a draft report of its review of the Commemorative Works Act of 1986. This report was requested by the Subcommittee on National Parks, Historic Preservation, and Recreation, United States Senate Committee on Energy and Natural Resources. The Commission will review recommendations offered by the National Capital Planning Commission/National Capital Memorial Commission/Commission of Fine Arts Joint Task Force on Memorials which convened, in part, to assist in an evaluation of that Act.

The Commission was established by Public Law 99–652, the Commemorative Works Act, to advise the Secretary and the Administrator, General Services Administration, (the Administrator) on policy and procedures for establishment of (and proposals to establish) commemorative works in the District of Columbia and its environs, as well as such other matters as it may deem appropriate concerning commemorative works.

The Commission examines each memorial proposal for conformance to the Commemorative Works Act, and makes recommendations to the Secretary and the Administrator and to Members and Committees of Congress. The Commission also serves as a source of information for persons seeking to establish memorials in Washington, D.C., and its environs.

The members of the Commission are as follows:

Director, National Park Service
Chairman, National Capital Planning Commission
Architect of the Capitol
Chairman, American Battle Monuments Commission
Chairman, Commission of Fine Arts
Mayor of the District of Columbia
Administrator, General Services Administration
Secretary of Defense

The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact Ms. Nancy Young, Executive Secretary to the Commission, at (202) 619–7097.

Dated: August 30, 1999.

Joseph M. Lawler,

Regional Director, National Capital Region.

[FR Doc. 99–23028 Filed 9–2–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Standard Concession Contract; Revision

ACTION: Proposed revision of the National Park Service Standard Concession Contract.

SUMMARY: The National Park Service (NPS) authorizes business entities to operate concessions in areas of the national park system. The agreements embodying these authorizations consist primarily of standard language that incorporate NPS terms and conditions established by law and prudent contract administration. In 1998, Public Law 105–391 was enacted which in many significant ways affects the content of concession contracts to be entered into after its effective date. Accordingly, NPS proposes to amend its existing standard concession contract to conform to the requirements of Public Law 105–391 and to otherwise make improvements to the standard form. NPS, although not legally required to do so, seeks public comments on the proposed standard concession contract to assist it in the development of a final version as a matter of public policy.

DATES: NPS will accept written comments on the proposed standard contract on or before November 2, 1999.

ADDRESSES: Comments should be addressed to: Concession Program Manager, National Park Service, 1849 "C" Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Wendelin Mann, Concession Program, National Park Service, 1849 "C" Street, NW, Washington, DC 20240 (202/565–1219).

SUPPLEMENTARY INFORMATION: Public Law 105–391, enacted on November 13, 1998, among other matters, amended the statutory policies and procedures under which NPS operated its concession program. The new law requires adoption of new regulations governing the award, content and management of concession contracts. On June 30, 1999, NPS published for public comment proposed regulations implementing the new law. The proposed standard concession contract set forth in this notice reflects the requirements of the new law and the concomitant requirements of the proposed regulations. It also reflects a variety of improvements NPS wishes to make to its standard concession contract, including a new organizational structure for the sake of clarity. NPS is not publishing for public comment the various exhibits that will be attached to the standard contract. The exhibits only encompass legally mandated provisions, ministerial procedures under the terms of the standard concession contract, or documents that will substantially vary from contract to contract. These exhibits will be publicly available after adoption of the standard contract language. NPs plans to adopt both the new regulations and the new standard concession contract contemporaneously after due consideration of all public comments received on both documents.

NPS, after adoption of the new regulations and the new standard contract, also intends to develop and adopt a "short-form" concession contract that will be used for smaller concession operations that do not involve the concessioner obtaining a compensable interest in real property located on park area lands.

United States Department of the Interior

National Park Service

_____
[Name of Area]

_____
[Site]

_____
[Type of Service]

Concession Contract No. _____

_____
[Name of Concessioner]

_____

_____
[Address, including email address and phone number]

Doing Business As

_____

Covering the Period _____
through _____

Concession Contract

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[Corporation]

This Contract is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the _____ Region, hereinafter referred to as the "Director," and, a corporation organized and existing under the laws of the State of _____ doing business as *hereinafter* referred to as the "Concessioner":

[Partnership]

This Contract is made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the _____ Region, hereinafter referred to as the "Director", and *of* _____, _____, and _____ of, partners, doing business as, pursuant to a partnership agreement dated _____, with the principal place of business at _____, hereinafter referred to as the "Concessioner":

[Sole Proprietorship]

This Contract made and entered into by and between the United States of America, acting in this matter by the Director of the National Park Service, through the Regional Director of the _____ Region, hereinafter referred to as the "Director," and, an individual of, doing business as _____, hereinafter referred to as the "Concessioner":

WITNESSETH

That Whereas, [*Name of Park, Recreation Area, etc.*] is administered by the Director as a unit of the national park system to conserve the scenery and the natural and historic objects and the wild life therein, and to provide for the public enjoyment of the same in such manner as will leave such Area unimpaired for the enjoyment of future generations; and

Whereas, to accomplish these purposes, the Director has determined that certain visitor services are necessary and appropriate for the public use and enjoyment of the Area and

should be provided for the public visiting the Area; and

Whereas, the Director desires the Concessioner to establish and operate these visitor services at reasonable rates under the supervision and regulation of the Director;

Now, Therefore, pursuant to the authority contained in the Acts of August 25, 1916 (16 U.S.C. 1, 2–4), and November 13, 1998 (Pub. L. 105–391), and other laws that supplement and amend the Acts, the Director and the Concessioner agree as follows:

Sec. 1 Term of Contract

This Concession Contract No. _____ ("Contract") shall be effective as of _____, and shall be for the term of [approximately] _____ (____) years from _____, 20_____, [if the Concessioner satisfactorily completes the Concession Facilities Improvement program described in Section 9(e) of this Contract. If the Concessioner fails to complete this program to the satisfaction of the Director within the time specified, then this Contract shall be for the term of _____ (_____) years from _____.]

Sec. 2 Definitions

The following terms used in this Contract will have the following meanings, which apply to both the singular and the plural forms of the defined terms:

(a) "Applicable Laws" means the laws of Congress governing the Area, including, but not limited to, the rules, regulations, requirements and policies promulgated under those laws, whether now in force, or amended, enacted or promulgated in the future, including, without limitation, federal, state and local laws, rules, regulations, requirements and policies governing nondiscrimination, protection of the environment and/or protection of public health and safety.

(b) "Area" means the property within the boundaries of [*Name of Park Unit*].

(c) "Capital Improvement" shall have the meaning set forth in 36 CFR Part 51 as of the effective date of this Contract.

(d) "Concession Facilities" shall mean all Area lands assigned to the Concessioner under this Contract and all real property improvements assigned to or constructed by the Concessioner under this Contract. The United States retains title and ownership to all Concession Facilities.

(e) "Director" means the Director of the National Park Service and his duly authorized representatives unless otherwise indicated.

(f) "Exhibit" or "Exhibits" shall mean the various exhibits, which are attached to this Contract, each, of which is hereby made a part of this Contract.

(g) "Gross Receipts" means the total amount received or realized by, or accruing to, the Concessioner from all sales for cash or credit, of services, accommodations, materials, and other merchandise made pursuant to the rights granted by this Contract, including gross receipts of subconcessioners as herein defined, commissions earned on contracts or agreements with other persons or companies operating in the Area, and gross receipts earned from electronic media sales, but excluding:

(i) Intracompany earnings on account of charges to other departments of the operation (such as laundry);

(ii) Charges for employees' meals, lodgings, and transportation;

(iii) Cash discounts on purchases;

(iv) Cash discounts on sales;

(v) Returned sales and allowances;

(vi) Interest on money loaned or in bank accounts;

(vii) Income from investments;

(viii) Income from subsidiary companies outside of the Area;

(ix) Sale of property other than that purchased in the regular course of business for the purpose of resale;

(x) Sales and excise taxes that are added as separate charges to approved sales prices, gasoline taxes, fishing license fees, and postage stamps, provided that the amount excluded shall not exceed the amount actually due or paid government agencies;

(xi) Receipts from the sale of handcrafts that have been approved for sale by the Director as constituting authentic American Indian, Alaskan Native, Native Samoan, or Native Hawaiian handicrafts.

All monies paid into coin operated devices, except telephones, whether provided by; the Concessioner or by others, shall be included in gross receipts. However, only revenues actually received by the Concessioner from coin-operated telephones shall be included in gross receipts. All revenues received from charges for in-room telephone or computer access shall be included in gross receipts.

(h) "Gross receipts of subconcessioners" means the total amount received or realized by, or accruing to, subconcessioners from all sources, as a result of the exercise of the rights conferred by subconcession contracts hereunder without allowances, exclusions or deductions of any kind or nature whatsoever.

(i) "Leasehold Surrender Interest" shall have the meaning set forth in 36 CFR Part 51 as of the effective date of this Contract.

(j) "Leasehold Surrender Interest Value" or the "value" of a Leasehold Surrender Interest shall have the meaning set forth in 36 CFR Part 51 as of the effective date of this Contract.

(k) "Major Rehabilitation" shall have the meaning set forth in 36 CFR Part 51 as of the effective date of this Contract.

(l) "Possessory Interest" shall have the meaning set forth in 36 CFR Part 51.

(m) "Real Property Improvements" means real property other than land, including, but not limited to, capital improvements.

(n) "Superintendent" means the manager of the Area.

(o) "Visitor services" means the accommodations, facilities and services that the Concessioner is required and authorized to provide by section 3(a) of this Contract.

Sec. 3 Services and Operations

(a) Required and Authorized Visitor Services

During the term of this Contract, the Director requires and authorizes the Concessioner to provide the following visitor services for the public within the Area:

(1) *Required Visitor Services.* The Concessioner is required to provide the following visitor services during the term of this Contract:

[Provide detailed description of required services. Broad generalizations such as "any and all facilities and services customary in such operations" or "such additional facilities and services as may be required" are not to be used. A provision stating "The Concessioner may provide services incidental to the operations authorized hereunder at the request and written approval of the Director" is acceptable.]

(2) *Authorized Visitor Services.* The Concessioner is authorized but not required to provide the following visitor services during the term of this Contract:

[Provide detailed description of authorized services.]

(b) Operation and Quality of Operation

The Concessioner shall provide, operate and maintain the required and authorized visitor services and any related support facilities and services in accordance with this Contract to such an extent and in a manner considered satisfactory by the Director. The Concessioner shall provide the plant, personnel, equipment, goods, and commodities necessary for providing, operating and maintaining the required and authorized visitor services in accordance with this Contract. The Concessioner's authority to provide visitor services under the terms of this Contract is non-exclusive.

(c) Operating Plan

The Director, acting through the Superintendent, shall establish and revise, as necessary, specific requirements for the operations of the Concessioner under this Contract in the form of an Operating Plan (including, without limitation, a risk management program, that must be adhered to by the Concessioner). The initial Operating Plan is attached to this Contract as Exhibit "G." The Director in his discretion, after consultation with the Concessioner, may make modifications to the initial Operating Plan provided that these modifications shall not be inconsistent with the terms and conditions of the main body of this Contract.

(d) Merchandise and Services

(1) The Director reserves the right to determine and control the nature, type and quality of the visitor services described in this Contract, including, but not limited to, the nature, type, and quality of merchandise, if any, to be sold or provided by the Concessioner within the Area.

(2) All material, regardless of media format (i.e., printed, electronic, broadcast media), provided to the public by the Concessioner, including promotional material, must be approved in writing by the Director prior to use. All such material will identify the Concessioner as an authorized Concessioner of the National Park Service, Department of the Interior.

(3) The Concessioner, where applicable, will develop and implement a plan satisfactory to the Director that will assure that all gift merchandise, if any, to be sold or provided reflects the purpose and significance of the Area, including, but not limited to, merchandise that reflects the conservation of the Area's resources or the Area's geology, wildlife, plant life, archeology, local Native American culture, local ethnic culture, and historic significance.

(e) Rates

All rates and charges to the public by the Concessioner for visitor services shall be reasonable and appropriate for the type and quality of facilities and/or services required and/or authorized under this Contract. The Concessioner's rates and charges to the public must be approved by the Director in accordance with rate approval procedures and guidelines promulgated by the Director from time to time.

(f) Impartiality as to Rates and Services

(1) In providing visitor services, the Concessioner must require its employees to observe a strict impartiality as to rates and services in all circumstances. The Concessioner shall comply with all Applicable Laws relating to nondiscrimination in providing visitor services to the public including, without limitation, those set forth in Exhibit "A."

(2) The Concessioner may grant complimentary or reduced rates under such circumstances as are customary in businesses of the character conducted under this Contract. However, the Director reserves the right to review and modify Concessioner's complimentary or reduced rate policies and practices.

(3) The Concessioner will provide Federal employees conducting official business reduced rates for lodging, essential transportation and other specified services necessary for conducting official business in accordance with guidelines established by the Director. Complimentary or reduced rates and charges shall otherwise not be provided to Federal employees by the Concessioner except to the extent that they are equally available to the general public.

Sec. 4 Concessioner Personnel

(a) Employees

(1) The Concessioner shall provide all personnel necessary to provide the visitor services required and authorized by this Contract.

(2) The Concessioner shall comply with all Applicable Laws relating to employment and employment conditions, including, without limitation, those identified in Exhibit "A."

(3) The Concessioner shall ensure that its employees are hospitable and exercise courtesy and consideration in their relations with the public. The Concessioner shall have its employees who come in direct contact with the public, so far as practicable, wear a uniform or badge by which they may be identified as the employees of the Concessioner.

(4) The Concessioner shall establish pre-employment screening, hiring, training, employment, termination and other policies and procedures for the purpose of providing visitor services through its employees in an efficient and effective manner and for the purpose of maintaining a healthful, law abiding, and safe working environment for its employees. The Concessioner shall conduct appropriate background reviews of applicants for employment to assure that they conform to the hiring policies established by the Concessioner.

(5) The Concessioner shall hire, to the greatest extent possible, people who are both interested in serving the public in a national park environment and interested in being positive contributors to the park's purpose.

(6) The Concessioner shall ensure that its employees are provided the training needed to provide quality visitor services and to maintain up-to-date job skills.

(7) The Concessioner shall review the conduct of any of its employees whose action or activities are considered by the Concessioner or the Director to be inconsistent with the proper administration of the Area and enjoyment and protection of visitors and shall take such actions as are necessary to fully correct the situation.

(8) The Concessioner shall maintain, to the greatest extent possible, a drug free environment, both in the workplace and in any employee housing within the Area.

(9) The Concessioner shall publish a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the workplace and in the Area, and specifying the actions that will be taken against employees for violating this prohibition. In addition, the Concessioner shall establish a drug-free awareness program to inform employees about the danger of drug abuse in the workplace and the Area, the availability of drug counseling, rehabilitation and employee assistance programs, and the Concessioner's policy of maintaining a drug-free environment both in the workplace and in the Area.

(10) The Concessioner shall take appropriate personnel action, up to and including termination or requiring satisfactory participation in a drug abuse or rehabilitation program which is approved by a Federal, State, or local health, law enforcement or other appropriate agency, for any employee that violates the prohibition on the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance.

(b) Employee Housing, Meals and Recreation

(1) If the Concessioner is required to provide employee housing under this Contract, the housing must be in good condition and must meet employee needs. The Concessioner's charges to its employees for this housing must be reasonable.

(2) If the visitor services required and/or authorized under this Contract are located in a remote or isolated area, the Concessioner shall provide adequate

employee recreational facilities and services.

Sec. 5 Legal, Regulatory, Policy Compliance

(a) Legal, Regulatory and Policy Compliance

This Contract, operations thereunder by the Concessioner and the administration of it by the Director shall be subject to all Applicable Laws. The Concessioner must comply with all Applicable Laws in fulfilling its obligations under this Contract at the Concessioner's sole cost and expense. Certain Applicable Laws governing protection of the environment are further described in this Contract. Certain Applicable Laws relating to nondiscrimination in employment and providing accessible facilities and services to the public are further described in this Contract.

(b) Notice

The Concessioner shall give the Director immediate written notice of any violation of Applicable Laws and, at its sole cost and expense, must promptly rectify any such violation.

(c) How and Where To Send Notice

All notices required by this Contract, shall be in writing and shall be served on the parties at the following addresses. The mailing of a notice by registered or certified mail, return receipt requested, shall be sufficient service. Notices sent to the Director shall be sent to the following address:

Superintendent
Park name
Address
Attention:

Notices sent to the Concessioner shall be sent to the following address:

Concessioner
Address
Attention:

Sec. 6 Environmental and Cultural Protection

(a) Environmental Protection

(1) In addition to complying with all Applicable Laws pertaining to the protection of natural resources within the area, the Concessioner will conduct its operation, construction, maintenance, acquisition, and provision of visitor services in a manner that prevents or reduces environmental degradation and that promotes the use of environmentally beneficial products. The Concessioner will develop, pursuant to guidelines provided by the Director, and carry out, to the satisfaction of the Director, a documented environmental monitoring program or programs to ensure that park resources affected by concessioner activities under this Contract are not unduly impaired. The Concessioner shall be financially responsible for environmental audits that may be required by the Director for each three-year period of this Contract.

(2) The Concessioner shall obtain the Director's approval prior to using any chemicals, pesticides, any hazardous or toxic substance, material, or waste of any kind, including building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.

(3) The Concessioner shall monitor, test, maintain, repair, upgrade, replace, remove, or mitigate, in accordance with Applicable Laws and in accordance with the requirements of the Director:

(i) Any discharge, release or threatened release (whether solid, liquid or gaseous in nature) of any hazardous or toxic substance, material, or waste of any kind, including building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product on or to the Area, including soil, surface water or groundwater;

(ii) Any materials, equipment, and facilities associated with such discharge, release or threatened release; or

(iii) Any materials, equipment and facilities used in the handling, storage, disposal, transport or other use of any such hazardous or toxic substance, material, or waste of any kind, including building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.

(4) The Concessioner shall timely contact, notify and/or otherwise confer with appropriate federal, state and/or local agencies with respect to any reporting obligation arising out of Concessioner's operations under this Contract and the Concessioner shall simultaneously provide notice of such contact to the Director and allow the Director the opportunity to participate in any such proceedings.

(5) The Concessioner shall give the Director immediate notice of any discharge, release or threatened release (whether solid, liquid or gaseous in nature) of any hazardous or toxic substance, material, or waste of any kind, including building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product.

(6) The Concessioner shall give the Director immediate written notice of any threatened or actual notice of violation of any federal, state or local law, rule, regulation, requirement or policy relating to or governing the use, handling, storage, disposal, transport, presence, acceptable concentration, or remediation of any hazardous or toxic substance, material, or waste of any kind, including building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product received by Concessioner.

(7) The Concessioner, at its sole cost and expense, shall promptly rectify any discharge or release as set forth in this section or any threatened or actual violation as set forth in this section, including, but not limited to, payment of any fines or penalties imposed thereon.

(8) The Concessioner shall indemnify the United States in accordance with section 12 of the Contract from losses, damages or judgements (including, without limitation, fines and penalties) and expenses (including, without limitation, attorneys fees and experts fees) arising out of the activities of the Concessioner pursuant to this section. Such indemnification shall survive termination of this Contract.

(9) If the Concessioner does not promptly rectify the discharge or release (whether solid, liquid or gaseous in nature) of any hazardous or toxic substance, material, or waste of any kind, including building materials such as asbestos, or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product, the Director may, in its sole discretion and after notice to Concessioner, take any such action the Director deems necessary to minimize, remediate, or otherwise clean up such release or discharge, and recover any costs associated with such action from the Concessioner upon demand.

(10) Even if not specifically required by Applicable Laws, the Concessioner shall comply with directives of the Director to clean up or remove any materials, product or by-product used, handled, stored, disposed, transported onto or into the Area by the Concessioner to ensure that the Area remains in good condition.

(11) The Concessioner shall be responsible for managing weeds, harmful insects, rats, mice and other pests on all lands and improvements assigned to the Concessioner under this Contract. All such weed and pest management activities shall be in accordance with guidelines established by the Director.

(c) Protection of Cultural and Archeological Resources

The Concessioner shall ensure that any protected sites and archeological resources within the Area are not disturbed or damaged by the Concessioner, including the Concessioner's employees, subcontractors or agents, except in accordance with Applicable Laws, and only with the prior approval of the Director. Discoveries of any archeological resources by Concessioner shall be promptly reported to the Director. The Concessioner shall cease work or other disturbance which may impact any protected site or archeological resource until the Director grants approval, upon such terms and conditions as the Director deems necessary, to continue such work or other disturbance.

Sec. 7 Interpretation of Area Resources

(a) Concessioner Obligations

(1) The Concessioner shall provide all visitor services in a manner that is consistent with and supportive of the interpretive themes, goals and objectives of the Area.

(2) The Concessioner may assist in Area interpretation at the request of the Director to enhance visitor enjoyment of the Area. Any additional visitor services that may result from this assistance must be recognized in writing through written amendment of Section 3 of this Contract.

(b) Director Review of Content

The Concessioner must submit the proposed content of any interpretive programs, exhibits, materials or displays to the Director for review and approval prior to offering such programs, exhibits or displays to Area visitors.

(c) Provision of Interpretation Not Exclusive

Notwithstanding any provision of this Contract to the contrary, the Director retains the right to provide Area interpretation, including without limitation, the conduct of interpretive programs and the sale of interpretive materials, directly or through cooperative or other agreements with third parties, as the Director determines to be necessary or appropriate.

Sec. 8 Concession Facilities Used in Operations by Concessioner

(a) Assignment of Concession Facilities

(1) The Director hereby assigns the following Concession Facilities to the Concessioner for the purposes of this Contract:

(i) Certain parcels of Area land as described in Exhibit B upon which, among other matters, the Concessioner may be authorized to construct real property improvements; and

(ii) Certain real property improvements described in Exhibit B in existence as of the effective date of this Contract, as may be modified from time to time to include additional real property improvements completed in accordance with the terms and conditions of this Contract.

(2) The Director shall from time to time amend Exhibit B to reflect changes in Concession Facilities assigned to Concessioner, including, without limitation, real property improvements completed in accordance with the terms and conditions of this Contract.

(b) Concession Facilities Withdrawals

The Director may withdraw all or portions of these Concession Facilities assignments at any time during the term of this Contract if:

(1) The withdrawal is for the purpose of enhancing or protecting Area resources or visitor enjoyment or safety;

(2) The operations utilizing the assigned Concession Facilities have been terminated or suspended by the Director; or

(3) Land or real property improvements assigned to the Concessioner are no longer necessary for the concession operation.

(c) Effect of Withdrawal

Any permanent withdrawal of assigned Concession Facilities which the Director considers as essential for the Concessioner to provide the visitor services required by this Contract will be treated by the Director as a termination of this Contract pursuant to Section 16. The Concessioner will be compensated pursuant to Section 17 for the value of any Leasehold Surrender Interest it may have, if any, in permanently withdrawn Concession Facilities. No other compensation is due the Concessioner in these circumstances.

(d) Right of Entry

The Director shall have the right at any time to enter upon or into the Concession Facilities assigned to the Concessioner under this Contract for any purpose he may deem necessary for the administration of the Area.

(e) Personal Property

(1) *Personal Property Provided by the Concessioner.* The Concessioner shall provide all personal property, including removable equipment, furniture and goods, necessary for its operations under this Contract.

(2) *Personal Property Provided by the Government.* The Director may provide certain items of government personal property and equipment for the Concessioner's use in the performance of this Contract. The Director hereby assigns government personal property and equipment listed in Exhibit C to the Concessioner as of the effective date of this Contract. This Exhibit C will be modified from time to time by the Director as items may be withdrawn or additional items added. The Concessioner shall be accountable to the Director for the government personal property and equipment assigned to it and shall be responsible for maintaining the property and equipment as necessary to keep it in good and operable condition. If the property ceases to be serviceable, it shall be returned to the Director for disposition.

(f) Condition of Concession Facilities

Concessioner has inspected the Concession Facilities and any assigned government personal property, is thoroughly acquainted with their condition, and accepts the Concession Facilities, and any assigned government personal property, "as is."

(g) Utilities Provided by the Director

The Director may provide utilities to the Concessioner for use in connection with the operations required and/or authorized under this Contract when available at rates to be fixed by the Director under applicable guidelines.

(h) Utilities Not Provided by the Director

If the Director does not provide these utilities, the Concessioner shall, with the written approval of the Director and under any requirements that the Director shall prescribe, secure necessary utilities at its own expense from sources outside the Area or shall install the utilities within the Area with the written permission of the Director, subject to the following conditions:

(1) Any water rights deemed necessary by the Concessioner for use of water on Area or other federal lands must be acquired at the Concessioner's expense in accordance with applicable State procedures and law. Upon expiration or termination of this Contract for any reason, the Concessioner must assign these water rights to the United States without compensation, and these water rights will become the property of the United States;

(2) If requested by the Director, the Concessioner must provide to the

Director any utility service provided by the Concessioner under this section to such extent as will not unreasonably restrict anticipated use by the Concessioner. Unless otherwise agreed by the Concessioner and the Director, the rate per unit charged the Director for such service shall be approximately the average cost per unit of providing such service; and

(3) All appliances and machinery to be used in connection with the privileges granted in this Section, as well as the plans for location and installation of such appliances and machinery, shall first be approved by the Director.

Sec. 9 Construction or Installation of Real Property Improvements

(a) Construction of Real Property Improvements

The Concessioner may construct or install upon lands assigned to the Concessioner under this Contract only those real property improvements that are determined by the Director to be necessary and appropriate for the conduct by the Concessioner of the visitor services required and/or authorized under this Contract. Construction or installation of real property improvements may occur only after the written approval by the Director of their location, plans, and specifications. The form and content of the application and the procedures for such approvals, as may be modified by the Director from time to time, are set forth in Exhibit H. All real property improvements constructed or installed by Concessioner will immediately become the property of the United States and be considered Concession Facilities.

(b) Removal of Real Property Improvements

(1) The Concessioner may not remove, dismantle, or demolish real property improvements without the prior approval of the Director.

(2) Any salvage resulting from the authorized removal, severance or demolition of a Capital Improvement shall be the property of the Concessioner. Any salvage resulting from the authorized removal, severance or demolition of real property improvements other than a Capital Improvement shall be the property of the United States.

(3) In the event that an assigned real property improvement is removed, abandoned, demolished, or substantially destroyed and no other improvement is constructed on the site, the Concessioner, at its expense, shall promptly, upon the request of the Director, restore the site as nearly as practicable to its original condition.

(c) Leasehold Surrender Interest

(1) This Contract hereby provides the Concessioner, subject to all applicable definitions, requirements and limitations of 36 CFR Part 51 as it existed as of the effective date of this Contract, a Leasehold Surrender Interest in Capital Improvements constructed by the Concessioner under the terms of this Contract, including, but not limited to, those Capitol Improvements constructed as part of the Concession Facilities Improvement Program and those Capitol Improvements which result from the major rehabilitation, as defined by 36 CFR Part 51, of an existing real property improvement. Upon completion of a major rehabilitation by the Concessioner, an existing real property improvement assigned to the Concessioner in which the Concessioner had no Leasehold Surrender Interest prior to the major rehabilitation shall be considered as a Capital Improvement for all purposes of this Contract.

(2) This Contract also provides the Concessioner a Leasehold Surrender Interest in real property improvements resulting from possessory interest obtained under the terms of a possessory interest concession contract where required by 36 CFR Part 51 as it existed as of the effective date of this Contract. Exhibit D to this Contract describes the real property improvements in which the Concessioner has such a Leasehold Surrender Interest and states the value of this Leasehold Surrender Interest as of the effective date of this Contract.

(3) The Concessioner shall not obtain Leasehold Surrender Interest under this Contract except as may be provided in 36 CFR Part 51 as it exists as of the effective date of this Contract. Among other matters, no Leasehold Surrender Interest shall be obtained as a result of expenditures from the Maintenance Reserve described in this Contract and this Contract does not provide a Leasehold Surrender Interest as a result of expenditures for repair and maintenance of Concession Facilities of any nature.

(d) Concession Facilities Improvement Program

(1) The Concessioner shall undertake and complete an improvement program (hereinafter "Concession Facilities Improvement Program") costing not less than $_____ as adjusted for each project to reflect par value in the year of actual construction in accordance with the appropriate indexes of the Department of Commerce's "Construction Review."

(2) The Concession Facilities Improvement Program shall include:

[Provide detailed description of the Concession Facilities Improvement Program.]

(3) The Concessioner shall commence construction under the Concession Facilities Improvement Program on or before _____ in a manner that demonstrates to the satisfaction of the Director that the Concessioner is in good faith carrying the Concession Facilities Improvement Program forward reasonably under the circumstances. No construction may begin until the Concessioner receives written approval from the Director of plans and specifications in accordance with Exhibit H. During the period of construction, the Concessioner shall provide the Director with such evidence or documentation, as may be satisfactory to the Director, to demonstrate that the Concession Facilities Improvement Program duly is being carried forward. The Concessioner shall complete and have the improvements and buildings available for public use on or before _____.

Sec. 10 Maintenance

(a) Maintenance Obligation

The Concessioner shall be solely responsible for maintenance, repairs, housekeeping, and groundskeeping for all Concession Facilities to the satisfaction of the Director.

(b) Maintenance Plan

For these purposes, the Director, acting through the Superintendent, shall undertake appropriate inspections, and shall establish and revise, as necessary, a Maintenance Plan consisting of specific maintenance requirements which shall be adhered to by the Concessioner. The initial Maintenance Plan is set forth in Exhibit F. The Director in his discretion may modify the Maintenance Plan from time to time after consultation with the Concessioner. Such modifications shall not be inconsistent with the terms and conditions of the main body of this Contract.

(c) Maintenance Reserve

[No Maintenance Reserve is included in this Contract.] or

(1) The Concessioner shall establish and manage a Maintenance Reserve. The funds in this Reserve shall be used to carry out, on a project basis, repair and maintenance of Concession Facilities that are non-recurring within a seven year time frame. Such projects may include repair or replacement of foundations, building frames, window frames, sheathing, subfloors, drainage, rehabilitation of building systems such as electrical, plumbing, built-in heating and air conditioning, roof replacement and similar projects. Projects will be carried out by the Concessioner as the Director shall direct in writing in advance of any expenditure being made and in accordance with project proposals approved by the Director. No projects may be commenced until the Concessioner receives written approval from the Director.

(2) Projects paid for with funds from the Maintenance Reserve will not include routine, operational maintenance of facilities or housekeeping and groundskeeping activities. Nothing in this section shall lessen the responsibility of the Concessioner to carry out the maintenance and repair of Concession Facilities as required by this Contract from Concessioner funds exclusive of the funds contained in the Maintenance Reserve.

(3) The Concessioner shall establish within its accounting system a Maintenance Reserve. The Concessioner shall debit to this Reserve, within fifteen (15) days after the last day of each month that the Concessioner operates a sum equal to: _____ percent (____%) of the Concessioner's Gross Receipts for the previous month. If the Concessioner fails to make timely debits to the Maintenance Reserve, the Director may terminate this Contract for default or require the Concessioner to post a bond in an amount equal to the estimated annual Maintenance Reserve allocation, based on the preceding year's Gross Receipts.

(4) The balance in the Maintenance Reserve shall be available for projects in accordance with the Reserve's purpose. For all expenditures made for each project from the Maintenance Reserve, the Concessioner shall maintain auditable records including invoices, billings, canceled checks, and other documentation satisfactory to the Director.

(5) Maintenance Reserve funds shall not be used for a major rehabilitation as defined in this Contract. The Concessioner shall obtain no ownership, Leasehold Surrender Interest, or other compensable interest as a consequence of the expenditure of Maintenance Reserve funds.

(6) Any Maintenance Reserve funds not duly expended by the Concessioner as of the termination or expiration of this Contract shall be immediately remitted by the Concessioner to the Director as an additional franchise fee under section 11 of this Contract.

Sec. 11 Fees

(a) Franchise Fee

(1) For the term of this Contract, the Concessioner shall pay to the Director for the privileges granted under this Contract a franchise fee equal to _____ percent (____%) of the Concessioner's Gross Receipts for the preceding year or portion of a year.

(2) Neither the Concessioner nor the Director shall have a right to an adjustment of the fees except as provided below. The Concessioner has no right to waiver of the fees under any circumstances.

(b) Payments Due

(1) The franchise fee shall be due on a monthly basis at the end of each month and shall be paid by the Concessioner in such a manner that the Director shall receive payment within fifteen (15) days after the last day of each month that the Concessioner operates. This monthly payment shall include the franchise fee equal to the specified percentage of gross receipts for the preceding month.

(2) The Concessioner shall pay any additional fee amounts due at the end of the operating year as a result of adjustments at the time of submission of the Concessioner's Annual Financial Report. Overpayments shall be offset against the following year's fees.

(3) All franchise fee payments consisting of $10,000 or more, shall be deposited electronically by the Concessioner using the Treasury Financial Communications System.

(c) Interest

An interest charge will be assessed on overdue amounts for each thirty (30) day period, or portion thereof, that payment is delayed beyond the fifteen (15)-day period provided for above. The percent of interest charged will be based on the current value of funds to the United States Treasury as published quarterly in the Treasury Fiscal Requirements Manual. The Director may also impose penalties for late payment to the extent authorized by Applicable Law.

(d) Reconsideration of Franchise Fee

(1) The Concessioner may request, in the event the Concessioner considers that extraordinary, unanticipated changes have occurred after the effective date of this Contract, a reconsideration and possible subsequent adjustment of the franchise fee established in this section. For the purposes of this section, the phrase "extraordinary, unanticipated changes" shall mean extraordinary, unanticipated changes from the conditions existing or reasonably anticipated before the effective date of this Contract which have or will significantly affect the probable value of the privileges granted to the Concessioner by this Contract. For the purposes of this section, the phrase "probable value" means a reasonable opportunity for net profit in relation to capital invested and the obligations of this Contract.

(2) The Concessioner must make a request for a reconsideration by mailing, within thirty (30) days from the date that the Concessioner becomes aware, or should have become aware, of the possible extraordinary, unanticipated changes, a written notice to the Director that includes a description of the possible extraordinary, unanticipated changes and why Concessioner believes they will significantly effect the probable value of the privileges granted by this Contract. A government official subordinate to the Director may also initiate such a reconsideration by so notifying the Concessioner in accordance with this section.

(3) If a franchise fee reconsideration is timely initiated in this manner, the Director shall make a written determination as to whether extraordinary, unanticipated changes exist. If a subordinate official to the Director initiated the reconsideration, an official appointed by the Director other than the subordinate initiating official shall make the determination. If the Director determines that extraordinary, unanticipated changes have not occurred, the reconsideration process shall terminate without an adjustment to the franchise fee. If the Director determines that extraordinary, unanticipated changes did occur, the Concessioner and the Director will undertake a good faith negotiation as to an appropriate adjustment of the franchise fee.

(4) The negotiation will last for a period of sixty (60) days from the date the Director makes his or her determination that extraordinary unanticipated changes occurred. If the negotiation results in agreement as to an adjustment (up or down) of the franchise fee within this period, the franchise fee will be adjusted accordingly, retroactive to the date for which the notice of reconsideration was given.

(5) If the negotiation does not result in agreement as to the adjustment of the franchise fee within this sixty (60) day period, then either the Concessioner or the Director may request binding arbitration to determine the adjustment to franchise fee in accordance with this section. Such a request for arbitration

must be made by mailing notice to the other party within fifteen (15) days of the expiration of the sixty (60) day period.

(6) Within thirty (30) days of receipt of such a notice, the Concessioner and the Director shall each select an arbiter. These two arbiters, within thirty (30) days of selection, must agree to the selection of a third arbiter to complete the arbitration panel. The third arbiter shall be the chairperson of the panel. The Director and the Concessioner shall share equally the expenses of the third arbiter and other common expenses associated with the arbitration. Within thirty (30) days of the selection of the third arbiter, the arbitration panel must hold an informal meeting with the Concessioner and the Director. At such meeting, the Concessioner and the Director shall be permitted to present their written and oral views and any accompanying documentation as to their position on an adjustment to the franchise fee and the members of the panel may pose questions to the Concessioner and the Director. Non-adjudicative procedures only shall be used in the arbitration proceedings. The arbitration panel shall not have the power to compel the production of documents or witnesses and shall not receive or take into account information or documents developed by the Concessioner or the Director for pre-negotiation or negotiation purposes. All actions related to the arbitration are subject to the applicable requirements of 36 CFR Part 51 as it may be amended from time to time.

(7) The arbitration panel shall consider the written submissions and any oral presentations made by the Concessioner and the Director and provide its decision on an adjusted franchise fee (up, down or unchanged) that is consistent with the probable value of the privileges granted by this Contract within sixty (60) days of the informal meeting.

(8) Any adjustment to the franchise fee resulting from this Section shall be effective retroactive to the date for which the notice of reconsideration was given and for the remaining term of this Contract, subject to the results of any further reconsideration.

(9) If an adjustment to the franchise fee results in higher fees, the Concessioner will pay all back franchise fees due (with accrued interest) at the time of the next regular franchise fee payment. If an adjustment results in lower franchise fees, the Concessioner may withhold the difference from future franchise fee payments until such time as the Concessioner has recouped the overpayment. Any payments made in arrears by the Concessioner shall include interest at a percent based on the current value of funds to the United States Treasury as published quarterly in the Treasury Fiscal Requirements Manual.

(10) Any adjustment to the franchise fee will be embodied in an amendment to this Contract.

(11) During the pendency of the process described in this Section, the Concessioner shall continue to make the established franchise fee payments required by this Contract.

Sec. 12 Indemnification and Insurance

(a) Indemnification

The Concessioner agrees to assume liability for and does hereby agree to save, hold harmless, protect, defend and indemnify the United States of America, its agents and employees from and against any and all liabilities, obligations, losses, damages or judgments (including without limitation penalties and fines), claims, actions, suits, costs and expenses (including without limitation attorneys fees and experts fees) of any kind and nature whatsoever on account of fire or other peril, bodily injury, death or property damage, or claims for bodily injury, death or property damage of any nature whatsoever, and by whomsoever made, in any way relating to or arising out of the activities of the Concessioner, his employees, subcontractors or agents under this Contract. This indemnification shall survive the termination or expiration of this Contract.

(b) Insurance in General

(1) The Concessioner shall obtain and maintain during the entire term of this Contract at its sole cost and expense, the types and amounts of insurance coverage necessary to fulfill the obligations of this Contract. The Director shall approve the types and amounts of insurance coverage purchased by the Concessioner.

(2) The Director will not be responsible for any omissions or inadequacies of insurance coverages and amounts in the event the insurance purchased by the Concessioner proves to be inadequate or otherwise insufficient for any reason whatsoever.

(3) At the request of the Director, the Concessioner shall at the time insurance is first purchased and annually, thereafter, provide the Director with a Certificate of Insurance that accurately details the conditions of the policy as evidence of compliance with this section. The Concessioner shall provide the Director thirty (30) days advance written notice of any material change in the Concessioner's insurance program hereunder.

(c) Commercial Public Liability

(1) The Concessioner shall provide commercial general liability insurance against claims arising out of or resulting from the acts or omissions of the Concessioner or its employees in carrying out the activities and operations required and/or authorized under this Contract.

(2) This insurance shall be in the amount commensurate with the degree of risk and the scope and size of the activities required and/or authorized under this Contract, as more specifically set forth in Exhibit E. Furthermore, the commercial general liability package shall provide the coverages and limits described in Exhibit E.

(3) All liability policies shall specify that the insurance company shall have no right of subrogation against the United States of America and shall provide that the United States of America is named an additional insured.

(4) From time to time, as conditions in the insurance industry warrant, the Director may modify Exhibit E to revise the minimum required limits or to require additional types of insurance.

(d) Property Insurance

(1) In the event of damage or destruction, the Concessioner will repair or replace those Concession Facilities and personal property utilized by the Concessioner in the performance of the Concessioner's obligations under this Contract.

(2) For this purpose, the Concessioner shall provide fire and extended insurance coverage on Concession Facilities in amounts that the Director may require during the term of the Contract. The values currently in effect are set forth in Exhibit E. This Exhibit will be revised at least every three (3) years, or earlier if there is a substantial change in value of Concession Facilities.

(3) Commercial property insurance shall provide for the Concessioner and the United States of America to be named insured as their interests may appear.

(4) In the event of loss, the Concessioner shall use all proceeds of such insurance to repair, rebuild, restore or replace Concession Facilities and or personal property utilized in the Concessioner's operations under this Contract, as directed by the Director. Policies may not contain provisions limiting insurance proceeds to in situ replacement. The lien provision of Section 13 shall apply to such insurance proceeds.

(5) Insurance policies that cover Concession Facilities shall contain a loss payable clause approved by the Director which requires insurance proceeds to be paid directly to the Concessioner without requiring endorsement by the United States. The use of insurance proceeds for repair or replacement of Concession Facilities will not alter their character as properties of the United States and, notwithstanding any provision of this Contract to the contrary, the Concessioner shall gain no ownership, Leasehold Surrender Interest or other compensable interest as a result of the use of these insurance proceeds.

(6) The commercial property package shall include the coverages and amounts described in Exhibit E.

Sec. 13 Bonds and Liens

(a) Bonds

The Director may require the Concessioner to furnish appropriate forms of bonds acceptable to the Director conditioned upon faithful performance of its obligations under this Contract, in such form and in such amount as the Director may deem adequate.

(b) Lien

As additional security for the faithful performance by the Concessioner of its obligations under this Contract, and the payment to the Government of all damages or claims that may result from the Concessioner's failure to observe any such obligations, the Government shall have at all times the first lien on all assets of the Concessioner within the Area, including, but not limited to, all personal property of the Concessioner used in performance of the Contract hereunder and any Leasehold Surrender Interest of the Concessioner.

Sec. 14 Accounting Records and Reports

(a) Accounting System

(1) The Concessioner shall maintain an accounting system under which its accounts can be readily identified with its system of accounts classification. Such accounting system shall be capable of providing the information required by this Contract, including but not limited to the Concessioner's repair and maintenance obligations. The Concessioner's system of accounts classification shall be directly related to the Concessioner Annual Financial Report Form issued by the Director.

(2) If the Concessioner's annual gross receipts are $250,000 or more, the Concessioner must use the accrual accounting method.

(3) In computing net profits for any purposes of this Contract, the Concessioner shall keep its account in such manner that there can be no diversion or concealment of profits or expenses in the operations authorized hereunder by means of arrangements for the procurement of equipment, merchandise, supplies or services from sources controlled by or under common ownership with the Concessioner or by any other device.

(b) Annual Financial Report

(1) The Concessioner shall submit annually as soon as possible but not later than ninety (90) days after the last day of its fiscal year a financial statement for the preceding fiscal year or portion of a year as prescribed by the Director ("Concessioner Annual Financial Report").

(2) If the annual gross receipts of the Concessioner are in excess of $1,000,000, the financial statements shall be audited by an independent Certified Public Accountant in accordance with the Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(3) If annual gross receipts are between $250,000, and $1,000,000, the financial statements shall be reviewed by an independent Certified Public Accountant in accordance with the Generally Accepted Auditing Standards (GAAS) and procedures promulgated by the American Institute of Certified Public Accountants.

(4) If annual gross receipts are less than $250,000, the financial statements may be prepared without involvement by an independent Certified Public Accountant, unless otherwise directed by the Director.

(c) Other Financial Reports

(1) *Balance Sheet.* Within ninety (90) days of the execution of this Contract or its effective date, whichever is later, the Concessioner shall submit to the Director a balance sheet as of the beginning date of the term of this Contract. The balance sheet shall be audited or reviewed, as determined by the gross receipts, by an independent Certified Public Accountant. The balance sheet shall be accompanied by a schedule that identifies and provides details for all capital improvements in which the Concessioner claims a Leasehold Surrender Interest. The schedule must describe these capital improvements in detail showing for each such capital improvement the date acquired, useful life, cost and book value.

(2) *Statements of Reserve Activity* The Concessioner shall submit annually, not later than _____ (____) days after the end of the Concessioner's accounting year, a statement reflecting total activity in the Maintenance Reserve for the preceding accounting year. The statement must reflect monthly inflows and outflows on a project by project basis.

Sec. 15 Other Reporting Requirements

The following describes certain other reports required under this Contract:

(a) Insurance Certification

As specified in Section 12, at the time insurance is first purchased, and annually thereafter, the Concessioner shall provide the Director with a Certificate of Insurance for all insurance coverages related to its operations under this Contract. The Concessioner shall give the Director thirty (30) days advance written notice of any material change in its insurance program.

(b) Environmental Reporting

The Concessioner shall submit a quarterly report on any matters related to the Concessioner's environmental compliance requirements under this Contract.

(c) Miscellaneous Reports and Data

The Director from time to time may require the Concessioner to submit other reports and data regarding its performance under the Contract or otherwise, including, but not limited to, operational information.

Sec. 16 Suspension and Termination

(a) Suspension

The Director may temporarily suspend operations under this Contract in whole or in part when necessary for administrative purposes or to enhance or protect Area resources, visitor enjoyment or safety. No compensation of any nature shall be due the Concessioner in the event of a suspension of operations, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the suspension.

(b) Termination

(1) The Director may terminate this Contract in whole or part at any time when necessary for the purpose of enhancing or protecting Area resources or visitor enjoyment or safety.

(2) The Director may terminate this Contract in whole or part for default if the Director determines that the

Concessioner has breached any requirement of this Contract, including, but not limited to, the requirement to maintain and operate visitor services to the satisfaction of the Director, the requirement to provide only visitor services required or authorized by the Director, the requirement to pay the established franchise fee, and the requirement to comply with Applicable Laws.

(3) In the event of a breach of the Contract, the Director will provide the Concessioner an opportunity to cure by providing written notice to the Concessioner of the breach. In the event of a monetary breach, the Director will give the Concessioner a fifteen (15) day period to cure the breach. If the breach is not cured within that period, then the Director may terminate the Contract for default. In the event of a nonmonetary breach, if the Director considers that the nature of the breach so permits, the Director will give the Concessioner thirty (30) days to cure the breach, or to provide a plan, to the satisfaction of the Director in his sole discretion, to cure the breach over a specified period of time. If the breach is not cured within this specified period of time, the Director may terminate the Contract for default. Notwithstanding this provision, repeated breaches of the same nature shall be grounds for termination for default without a cure period. In the event of a breach of any nature, the Director may suspend the Concessioner's operations as appropriate in accordance with Section 16(a).

(4) The Director may terminate this Contract upon the filing or the execution of a petition in bankruptcy by or against the Concessioner, a petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, an assignment by the Concessioner for the benefit of creditors, a petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this Contract or any part thereof upon execution, attachment or other process of law or equity. The Director may terminate this Contract if the Director determines that the Concessioner is unable to perform the terms of Contract due to bankruptcy or insolvency.

(5) Termination of this Contract for any reason shall be by written notice to the Concessioner.

(c) Notice of Bankruptcy or Insolvency

The Concessioner must give the Director notice fifteen (15) days prior to filing any petition in bankruptcy, filing any petition seeking relief of the same or different kind under any provision of the Bankruptcy Act or its successor, or making any assignment for the benefit of creditors. The Concessioner must also give the Director immediate notice of any petition or other proceeding against the Concessioner for the appointment of a trustee, receiver, or liquidator, or, the taking by any person or entity of the rights granted by this Contract or any part thereof upon execution, attachment or other process of law or equity. For purposes of the bankruptcy statutes, this Contract is not a lease, but is an executory contract exempt from inclusion in assets of Concessioner pursuant to 11 U.S.C. 1135.

(d) Requirements in the Event of Termination

(1) In the event of termination of this Contract by the Director for any reason, the total compensation due the Concessioner for such termination shall be as described in section 17 of this Contract. No other compensation of any nature shall be due the Concessioner in the event of a termination of this Contract, including, but not limited to, compensation for losses based on lost income, profit, or the necessity to make expenditures as a result of the termination.

(2) Upon termination of this Contract for any reason, and except as otherwise provided in this section, the Concessioner shall, at Concessioner's expense, promptly vacate the Area, remove all of Concessioner's personal property, repair any injury occasioned by installation of removal of such property, and ensure that Concession Facilities are in as good condition as they were at the beginning of the term of this Contract, reasonable wear and tear excepted.

(3) To avoid interruption of services to the public upon the termination of this Contract for any reason, the Concessioner, upon the request of the Director, shall continue to conduct all operations hereunder under the terms and conditions of this Contract for a reasonable period of time as determined by the Director, not to exceed the time limitations contained in 36 CFR Part 51 as it existed as of the effective date of this Contract applicable to payment of leasehold surrender interest value.

(4) To avoid interruption of services to the public upon expiration of this Contract or upon its termination for any reason, the Concessioner, upon the request of the Director, shall consent to the use by another operator of the Concessioner's personal property, excluding inventories if any, not including current or intangible assets, for a period of time not to exceed one year from the date of such termination or expiration. The other operator shall pay the Concessioner an annual fee for use of such property, prorated for the period of use, in the amount of the annual depreciation of such property, plus a return on the book value of such property equal to the prime lending rate, effective on the date the operator assumes managerial and operational responsibilities, as published by the Federal Reserve System Board of Governors. In such circumstances, the method of depreciation applied shall be either straight line depreciation or depreciation as shown on the Concessioner's Federal income tax return, whichever is less. To avoid interruption of services to the public upon expiration of this Contract or termination of this Contract for any reason, the Concessioner shall, upon the request of the Director, sell its existing inventory to another operator at the purchase price as shown on applicable invoices.

Sec. 17 Compensation

(a) Just Compensation

The compensation provided by this Section shall constitute full and just compensation to the Concessioner for all losses and claims occasioned by the circumstances described below.

(b) Compensation for Contract Expiration or Termination

If, for any reason, including Contract expiration or termination, the Concessioner shall cease to be authorized by the Director to conduct operations under this Contract, the Concessioner shall convey to a person designated by the Director (including the Director if appropriate) any Leasehold Surrender Interest it has under the terms of this Contract and the Director shall assure, subject to subsection (c) below, that the Concessioner is paid the Leasehold Surrender Interest Value in accordance with the requirements of 36 CFR Part 51 as they existed as of the effective date of this Contract. The Concessioner shall not be required to convey such Leasehold Surrender Interest until the Concessioner is paid in accordance with 36 CFR Part 51 as it existed as of the effective date of this Contract.

(c) Compensation When Contract Terminated for Default

Notwithstanding any other provision of this Contract to the contrary, in the event of termination of this Contract for default, the Concessioner shall be entitled to the payment of any Leasehold Surrender Interest Value it may have under the terms of this Contract, but such payment may be offset by the Director by any damages due the Director from the Concessioner as a result of the breach of Contract which resulted in the termination for default or by other funds due the Director under the terms of this Contract.

(d) Procedures for Establishing the Value of a Leasehold Surrender Interest

(1) In the event that agreement as to the value of a Leasehold Surrender Interest cannot be reached by the Concessioner and the Director such value shall be determined by binding arbitration, subject to applicable limitations of 36 CFR Part 51 as it existed as of the effective date of this Contract. In these circumstances, the Concessioner and the Director shall each select an arbiter. These two arbiters, within thirty (30) days of selection, must agree to the selection of a third arbiter to complete the arbitration panel. The third arbiter shall be the chairperson of the panel. The Director and the Concessioner shall share equally the expenses of the third arbiter and other common expenses associated with the arbitration. Within thirty (30) days of the selection of the third arbiter, the arbitration panel must hold an informal meeting with the Concessioner and the Director. At such meeting, the Concessioner and the Director shall be permitted to present their written and oral views and any accompanying documentation as to their position on the value of the Leasehold Surrender Interest and the members of the panel may pose questions to the Concessioner and the Director. Non-adjudicative procedures only shall be used in the arbitration proceedings. The arbitration panel shall not have the power to compel the production of documents or witnesses and shall not receive or take into account information or documents developed by the Concessioner or the Director for pre-negotiation or negotiation purposes. All aspects of the arbitration are subject to the applicable requirements of 36 CFR Part 51 as it existed as of the effective date of this Contract.

(2) The arbitration panel shall consider the written submissions and any oral presentations made by the Concessioner and the Director and provide its decision on the value of the Leasehold Surrender Interest consistent with the terms of this Contract and 36 CFR Part 51 as it existed as of the effective date of this Contract.

(3) The Concessioner shall, at any time requested by the Director, enter into negotiations with the Director as to the value of the Concessioner's Leasehold Surrender Interest under this Contract. In the event that such negotiations fail to determine an agreed upon value, the Director may initiate arbitration proceedings to determine such value upon written request to the Concessioner. Such arbitration proceedings shall be conducted in accordance with the arbitration procedures set forth in this section. The arbitration panel shall determine the value of the Concessioner's Leasehold Surrender Interest consistent with the terms of this Contract and 36 CFR Part 51 as it existed as of the effective date of this Contract. The arbitration panel shall also provide a means to calculate the change in the value of such Leasehold Surrender Interest as may occur for up to two years from the date of the initial determination. The determination of the arbitration panel shall be binding on the Director and the Concessioner.

(d) Compensation for Personal Property

Except as otherwise provided in this Contract, upon expiration or termination of this Contract for any reason, the Concessioner shall remove its personal property from the Area unless it is sold to the Director or a successor concessioner. No compensation is due the Concessioner from the Director or a successor concessioner for such personal property. The Director or a successor concessioner may purchase such personal property from the Concessioner subject to mutually agreed upon terms. Personal property not removed from the Area by the Concessioner as of the date of expiration or termination of this Contract, unless the Director in writing extends such date of removal, shall be considered abandoned property subject to disposition by the Director, at full cost and expense of the Concessioner, in accordance with Applicable Laws. Any cost or expense incurred by the Director as a result of such disposition may be offset from any amounts owed to Concessioner by the Director.

Sec. 18 Assignment, Sale or Encumbrance of Interests

(a) This Contract is subject to the requirements of 36 CFR Part 51 as it may be amended from time to time with respect to proposed conveyances and encumbrances as those terms are defined in 36 CFR Part 51, including, but not limited to, proposed management and subconcession agreements. Failure by the Concessioner to comply with 36 CFR Part 51 is a material breach of this Contract for which the Director may terminate this Contract for default. The Director shall not be obliged to recognize any right of any person or entity to an interest in this Contract of any nature, including, but not limited to, Leasehold Surrender Interest or operating rights under this Contract, if obtained in violation of 36 CFR Part 51.

(b) The Concessioner shall advise any person(s) or entity proposing to enter into a transaction which may be subject to 36 CFR Part 51 of the requirements of that regulation.

Sec. 19 General Provisions

(a) The Director and Comptroller General of the United States, or any of their duly authorized representatives, shall have access to the records of the Concessioner as provided by 36 CFR Part 51 as it may now exist or be amended from time to time.

(b) All information required to be submitted to the Director by the Concessioner pursuant to this Contract is subject to public release by the Director to the extent required or authorized by Applicable Laws.

(c) Subconcession or other third party agreements, including management agreements, for the provision of principal services required and/or authorized under this Contract are not permitted. However, subconcession or other third party agreements may be allowed for incidental or specialized services which are incidental to the principal services required and/or authorized under this Contract. Any proposal to provide incidental or specialized services through subconcession or other third party agreements must be submitted to the Director in writing, along with a copy of the proposed subconcession or third party agreement, and shall be effective only if approved in writing by the Director. If the Director approves a subconcession or other third party agreement, the Concessioner and the Director will amend the Contract to reflect such approval. Agreements with others to provide vending or other coin-operated machines shall not be considered subconcession agreements.

(d) The Concessioner is not entitled to be awarded or to have negotiating rights to any Federal procurement or service contract by virtue of any provision of this Contract.

(e) Any and all taxes or assessments of any nature that may be lawfully imposed by any State or its political subdivisions upon the property or business of the Concessioner shall be paid promptly by the Concessioner.

(f) No member of, or delegate to, Congress or Resident Commissioner shall be admitted to any share or part of this Contract or to any benefit that may arise from this Contract but this restriction shall not be construed to extend to this Contract if made with a corporation or company for its general benefit.

(g) This Contract is subject to the provisions of 43 CFR, Subtitle A, Subpart D, concerning nonprocurement debarment and suspension. The Director may recommend that the Concessioner be debarred or suspended in accordance with the requirements and procedures described in those regulations, as they are effective now or may be revised in the future.

(h) This Contract contains the sole and entire agreement of the parties. No oral representations of any nature form the basis of or may amend this Contract. This Contract may be extended, renewed or amended only when agreed to in writing by the Director and the Concessioner.

(i) The Concessioner is not granted by this Contract any rights to renewal of this Contract or to award of a new contract of any nature.

(j) This Contract does not grant rights or benefits of any nature to any third party.

(k) The invalidity of a specific provision of this Contract shall not affect the validity of the remaining provisions of this Contract.

In Witness Whereof, the duly authorized representatives of the parties have executed this Contract as of the _____ day of _____, _____.

Concessioner

By _____
(Title)
(Company Name)

United States of America

By _____
Director
National Park Service

[corporations]

Attest:

By _____
Title

[Sole Proprietorship]

Witnesses:

Name
Address
Title

Name
Address
Title

[Partnership]

Witnesses as to each:

Name _____
Address
Name _____
Address

[*Concessioner*]
(Name)
(Name)

Dated: August 20, 1999.

Maureen Finnerty,

Associate Director, Park Operations and Education, National Park Service.

[FR Doc. 99–23029 Filed 9–2–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Justice Management Division

Notice of FIPS Waiver

AGENCY: Department of Justice.

ACTION: Notice.

SUMMARY: The Chief Information Officer for the Department of Justice has granted a waiver to the Agency to use the cryptographical features provided in Entrust/Authority,™ Entrust/Entelligence,™ and Entrust/Client,™ by Entrust Technologies, Inc., in lieu of the Data Encryption Standard (FIPS Pub 46–2).

DATES: This waiver was approved on May 25, 1999.

ADDRESSES: U.S. Department of Justice, Justice Management Division, Information Resources Management, 10th and Constitution Avenue NW, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Richard Bowler, Information Management and Security Staff, U.S. Department of Justice, National Place Building, Suite 1220, 1331 Pennsylvania Avenue, NW, Washington, DC 20530, email: *richard.w.bowler@usdoj.gov*, voice: 202–616–1171, fax: 202–616–5455.

SUPPLEMENTARY INFORMATION: The Federal Information Processing Standards Publication (FIPS Pub) 46–2 entitled "Data Encryption Standard (DES)" requires the use of DES, other FIPS-approved methods of encryption (FIPS 185 Escrowed Encryption Standard) or methods approved for classified information, where encryption of sensitive but unclassified information is deemed necessary. The Department plans to conduct testing of several public key encryption and digital signature prototypes using Entrust/Authority,™ Entrust/Entelligence,™ and Entrust/Client,™ by Entrust Technologies, Inc. The Entrust products are not compliant with FIPS 46–2, other FIPS-approved methods of encryption or for use with classified information. Accordingly, a waiver is required if the Entrust products are utilized.

The domestic versions of Entrust's Entelligence™ and Client™ products use the CAST–128 encryption algorithm for the storage of user profile information at the client's desktop. CAST–128 has not been approved by the National Institute of Standards and Technology. Additionally, in order to provide stronger security than that currently required under FIPS Pub 46–2, the Department will utilize Triple DES provided in Entrust's Authority,™ Entelligence,™ and Client.™

The Department of Justice's Chief Information Officer has determined that compliance with FIPS 46–2 would adversely affect the accomplishment of the mission of the Department. Accordingly, he has granted a waiver of the FIPS to allow the Department to use these Entrust products. The tests will involve approximately 200 users and will be conducted over a period of six months. Actual data as opposed to test data will be transmitted during the six month test.

In accordance with FIPS Pub 46–2, notice of this waiver will be sent to the National Institute of Standards and Technology, the Committee on Government Reform and Oversight of the United States House of Representatives, and the Committee on Governmental Affairs of the United States Senate.

Dated: August 17, 1999.

Stephen R. Colgate,

Assistant Attorney General for Administration.

[FR Doc. 99–22968 Filed 9–2–99; 8:45 am]

BILLING CODE 4410–26–M

DEPARTMENT OF LABOR

Employment and Training Administration

Unemployment Compensation for Ex-Servicemembers (UCX) Handbook; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized,

collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed revision and extension of the Unemployment Compensation for Ex-Servicemembers (UCX) Handbook.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before November 2, 1999.

ADDRESSES: Written comments on this notice may be mailed or delivered to Charles E. Longus, Jr., Unemployment Insurance Service, U.S. Department of Labor, Room S–4522, Frances Perkins Building, 200 Constitution Ave., NW, Washington, DC 20210, telephone (202) 219–7301 ext 189 (this is not a toll-free number), fax number (202) 219–8506.

SUPPLEMENTARY INFORMATION:

I. Background

The UCX law (5 U.S.C. 8521–8523) requires State employment security agencies to administer the UCX program in accordance with the same terms and conditions of the paying State's unemployment insurance law which apply to unemployed claimants who worked in the private sector. Each State agency must be able to obtain certain military service information from each claimant filing claims for UCX benefits to enable them to determine his/her eligibility for benefits. The State agencies record or obtain required UCX information on forms developed by the Department of Labor, ETA 841 and ETA 843. The use of each of these forms is essential to the UCX claims process.

Information pertaining to the UCX claimant can only be obtained from the individual's military discharge papers, the appropriate branch of military service or the Department of Veterans Affairs (formerly the Veterans Administration). If the claimant does not have this information available, the most feasible and effective way to obtain this information is by use of the forms prescribed by the Department of Labor for State agency use. Without this information, we could not adequately determine the eligibility of ex-servicemembers and would not be able to properly administer the program.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

This is a request for OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) of an extension to an existing collection of information previously approved and assigned OMB control No. 1205–0176. A current inventory of 76,647 UCX claims were filed in FY 1998 and a proposed inventory of 66,126 UCX claims will be reported for FY 1999 reflecting a significant decrease of 10,521 from the previous fiscal year resulting in a reduction of –789 hours towards ETA's Information Collection Budget.

Fifty-three (53) SESAs fill out these forms. Form ETA 841 is completed by SESAs whenever an ex-servicemember files: (1) A "first claim" (UCX) for unemployment compensation, whereby an assignment of Federal military service is recorded; or (2) a request for determination of entitlement to UCX benefits, whether or not such request results in a "first claim." ETA 843 is used by SESAs only when it is necessary to obtain additional clarifying information from the military pertaining to the UCX claimant or to obtain a copy of DD Form 214 that was not issued to the claimant when separated from military service. Accordingly, the ETA 843 is used for only 5% of the UCX "first claims." This is then sent to any one of the four branches of military service (Army, Navy, Marines, Air Force), the Coast Guard, or the National Oceanic Atmospheric Administration (they are considered branches of military service for UCX purposes but are not under the jurisdiction of the Department of Defense).

Type of Review: Revision.

Agency: Employment and Training Administration.

Title: Unemployment Compensation for Ex-Servicemembers (UCX) Handbook.

OMB Number: 1205–0176.

Recordkeeping: The Department of Labor (DOL) does not maintain a system of records for the UCX program. UCX records are maintained by the SESAs acting as agents for the Federal Government in the administration of the UCX program. The DOL procedures permit the SESAs, upon request, to dispose of UCX records according to State law provisions, 3 years after final action (including appeals or court action) on the claim, or such records may be transferred in less than the 3-year period if microphotographed in accordance with appropriate microphotography standards.

Affected Public: State governments (State employment security agencies).

Cite/Reference/Form/etc: Forms ETA 841 and ETA 843.

Total Respondents: 66,126.

Frequency: As needed.

Total Responses: 66,126.

Average Time per Response: 1.5 min.

Estimated Total Burden Hours: 1,708 hrs.

Cite/Reference	Total respondents	Frequency	Total responses	Average time per response (min.)	Burden (hrs.)
ETA 841	66,126	As needed ...	66,126	1.5	1,653
ETA 843	3,306	As needed ...	3,306	1.0	55
Totals	.....	.....	69,432	.....	1,708

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/maintaining): $1,526,952.

Comments submitted in response to this comment request will be

summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 30, 1999.

Cheryl Atkinson,

Deputy Director, Unemployment Insurance Service.

[FR Doc. 99–23014 Filed 9–2–99; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determination in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CAR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S–3014, Washington, DC 20210.

Modificaitons to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register**, are in parentheses following the decisions being modified.

Volume I

Connecticut:
CT990001 (MAR. 12, 1999)
CT990004 (MAR. 12, 1999)
Maine:
ME990005 (Mar. 12, 1999)
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NY990003 (Mar. 12, 1999)
NY990004 (Mar. 12, 1999)
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NY990012 (Mar. 12, 1999)
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GA990040 (MAR. 12, 1999)
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GA990065 (MAR. 12, 1999)
GA990066 (MAR. 12, 1999)
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IL990015 (MAR. 12, 1999)
IL990016 (MAR. 12, 1999)
IL990021 (MAR. 12, 1999)
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IL990029 (MAR. 12, 1999)
IL990030 (MAR. 12, 1999)
IL990031 (MAR. 12, 1999)
IL990032 (MAR. 12, 1999)
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IL990036 (MAR. 12, 1999)
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IL990039 (MAR. 12, 1999)
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IL990042 (MAR. 12, 1999)
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IL990045 (MAR. 12, 1999)
IL990046 (MAR. 12, 1999)
IL990048 (MAR. 12, 1999)
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IL990059 (MAR. 12, 1999)
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IL990065 (MAR. 12, 1999)
IL990066 (MAR. 12, 1999)
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IL990068 (MAR. 12, 1999)
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IN990004 (MAR. 12, 1999)
IN990005 (MAR. 12, 1999)
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IN990017 (MAR. 12, 1999)
IN990018 (MAR. 12, 1999)
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Minnesota:
MN990001 (MAR. 12, 1999)
MN990003 (MAR. 12, 1999)
MN990005 (MAR. 12, 1999)
MN990007 (MAR. 12, 1999)
MN990008 (MAR. 12, 1999)
MN990012 (MAR. 12, 1999)
MN990015 (MAR. 12, 1999)
MN990027 (MAR. 12, 1999)
MN990031 (MAR. 12, 1999)
MN990035 (MAR. 12, 1999)
MN990039 (MAR. 12, 1999)
MN990043 (MAR. 12, 1999)
MN990049 (MAR. 12, 1999)
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MO990003 (MAR. 12, 1999)
MO990004 (MAR. 12, 1999)
MO990005 (MAR. 12, 1999)
MO990006 (MAR. 12, 1999)
MO990010 (MAR. 12, 1999)
MO990011 (MAR. 12, 1999)
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MO990064 (MAR. 12, 1999)
MO990066 (MAR. 12, 1999)
MO990068 (MAR. 12, 1999)
MO990069 (MAR. 12, 1999)
MO990070 (MAR. 12, 1999)
MO990071 (MAR. 12, 1999)
Nebraska:
NE990001 (MAR. 12, 1999)
NE990003 (MAR. 12, 1999)
NE990011 (MAR. 12, 1999)
NE990019 (MAR. 12, 1999)
NE990025 (MAR. 12, 1999)
NE990038 (MAR. 12, 1999)
NE990044 (MAR. 12, 1999)
New Mexico:
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Texas:
TX990002 (MAR. 12, 1999)
TX990005 (MAR. 12, 1999)
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Oregon:
OR990001 (MAR. 12, 1999)
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Washington:
WA990001 (MAR. 12, 1999)
WA990002 (MAR. 12, 1999)
WA990003 (MAR. 12, 1999)
WA990005 (MAR. 12, 1999)
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CA990009 (MAR. 12, 1999)
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CA990029 (MAR. 12, 1999)
CA990030 (MAR. 12, 1999)
CA990033 (MAR. 12, 1999)
CA990035 (MAR. 12, 1999)
CA990036 (MAR. 12, 1999)
CA990037 (MAR. 12, 1999)
CA990038 (MAR. 12, 1999)
CA990039 (MAR. 12, 1999)
CA990040 (MAR. 12, 1999)
CA990041 (MAR. 12, 1999)
Hawaii:
HI990001 (MAR. 12, 1999)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC, this 26th day of August, 1999.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–22660 Filed 9–2–99; 8:45 am]

BILLING CODE 4510–27–M

MARINE MAMMAL COMMISSION

Sunshine Act Meeting

TIME AND DATE: The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet in executive session on Tuesday, October 19, 1999, from 8:30 a.m. to 10:00 a.m. The public sessions of the Commission on the Committee meeting will be held on Tuesday, October 19, from 10:00 a.m. to 5:45 p.m., on Wednesday, October 20, from 8:30 a.m. to 6:00 p.m., and on Thursday, October 21, from 8:30 a.m. to 3:45 p.m.

PLACE: The Embassy Suites Hotel, 1441 Canyon Del Rey, Seaside, California, 93955. Phone number 831/393–1115. Fax number 831/393–1113.

STATUS: The executive session will be closed to the public. At it, matters relating to international negotiations in process, personnel, and the budget of the Commission will be discussed. All other portions of the meeting will be open to public observation. Public participation will be allowed as time permits and as determined to be desirable by the Chairman.

MATTERS TO BE CONSIDERED: The Commission and Committee will meet in public session to discuss a broad range of marine mammal matters. The focus of the meeting will be on species that occur in waters along the Pacific Coast of the United States. While subject to change, major issues that the Commission plans to consider at the meeting include: research and management issues related to California sea otters, pinniped-fishery interactions, Steller sea lions, beluga whales, and other species that inhabit Alaskan waters, gray whales, Hawaiian monk seals, and research on the effects of the eastern tropical Pacific tuna fishery on dolphins.

CONTACT PERSON FOR MORE INFORMATION: John R. Twiss, Jr., Executive Director, Marine Mammal Commission, 4340 East-West Highway, Room 905, Bethesda, MD, 20814, 301/504–0087.

Dated: August 30, 1999.

John R. Twiss, Jr.,

Executive Director.

[FR Doc. 99–23144 Filed 9–1–99; 10:56 am]

BILLING CODE 5820–31–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collections described in this notice. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before October 4, 1999 to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Virginia Huth, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–713–6730 or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for these information collections on June 28,1999 (64 FR 34687 and 34688). No comments were received. NARA has submitted the described information collections to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collections:

1. *Title:* Application for Attendance at the Institute for the Editing of Historical Documents.
   OMB number: 3095–0012.
   Agency form number: None.
   Type of review: Regular.
   Affected public: Individuals, often already working on documentary editing projects, who wish to apply to attend the annual one-week Institute for the Editing of Historical Documents, an intensive seminar in all aspects of modern documentary editing techniques taught by visiting editors and specialists.
   Estimated number of respondents: 25.
   Estimated time per response: 1.5 hours.
   Frequency of response: On occasion, no more than annually (when respondent wishes to apply for attendance at the Institute).
   Estimated total annual burden hours: 37.5 hours.
   Abstract: The application is used by the NHPRC staff to establish the applicants' qualifications and to permit selection of those individuals best qualified to attend the Institute jointly sponsored by the NHPRC, the State Historical Society of Wisconsin, and the University of Wisconsin. Selected applicants' forms are forwarded to the resident advisors of the Institute, who use them to determine what areas of instruction would be most useful to the applicants.

2. *Title:* National Historical Publications and Records Commission Grant Program.
   OMB number: 3095–0013.
   Agency form number: None.
   Type of review: Regular.
   Affected public: Nonprofit organizations and institutions, state and local government agencies, Federally acknowledged or state-recognized Native American tribes or groups, and individuals who apply for NHPRC grants for support of historical documentary editions, archival preservation and planning projects, and other records projects.
   Estimated number of respondents: 134 per year submit applications; approximately 100 grantees among the applicant respondents also submit semiannual narrative performance reports.
   Estimated time per response: 54 hours per application; 2 hours per narrative report.
   Frequency of response: On occasion for the application; semiannually for the narrative report. Currently, the NHPRC considers grant applications 2 times per year; respondents usually submit no more than one application per year.
   Estimated total annual burden hours: 7,636 hours.
   Abstract: The application is used by the NHPRC staff, reviewers, and the Commission to determine if the applicant and proposed project are eligible for an NHPRC grant, and whether the proposed project is methodologically sound and suitable for support. The narrative report is used by the NHPRC staff to monitor the performance of grants.

3. *Title:* Applications for Archival Administration and Historical Documentary Editing Fellowships.
   OMB number: 3095–0014.
   Agency form number: None.
   Type of review: Regular.
   Affected public: Individuals who wish to apply for an NHPRC fellowship in archival administration or historical documentary editing. Applicants for the archival administration fellowship must have at least two years' professional archival work experience; applicants for the editing fellowship must hold a Ph.D. or have completed all requirement for the degree except the dissertation.
   Estimated number of respondents: 9.
   Estimated time per response: 8 hours.
   Frequency of response: Generally one-time.
   Estimated total annual burden hours: 72 hours.
   Abstract: The application is used by the NHPRC staff to establish the applicants' qualifications and to permit selection by the host institution of those individuals best qualified for the fellowships. One fellowship in archival administration and one fellowship in historical editing are awarded each year.

4. *Title:* Application for Host Institutions of Archival Administration and Historical Editing Fellowships.
   OMB number: 3095–0015.
   Agency form number: None.
   Type of review: Regular.
   Affected public: Nonprofit institutions or organizations that have active archival or special collections programs, and historical documentary publication projects that have received an NHPRC grant.
   Estimated number of respondents: 9.
   Estimated time per response: 17 hours.
   Frequency of response: Generally, one-time although an institution may apply in subsequent years.
   Estimated total annual burden hours: 153 hours.
   Abstract: The application is used by the NHPRC staff to select applicants to serve as host institutions for the two fellowships supported by the NHPRC each year.

Dated: August 30, 1999

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 99–23018 Filed 9–2–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On May 26, 1999, the National Science Foundation published a notice in the **Federal Register** of Waste Management permit applications received. A Waste Management permit was issued on August 27, 1999 to the following applicant:

Antarctic Support Associates, Permit No.: 2000WM–01 (ASA)

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 99–22966 Filed 9–2–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Meeting Notice

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 64, No. 167/Tuesday, August 31, 1999.

PREVIOUSLY ANNOUNCED TIME AND DATE: 9:30 a.m., Tuesday, September 8, 1999.

CHANGE IN MEETING: A majority of the Board members determined by recorded vote to cancel the September 8, 1999 Board meeting that was to consider the following item:

7047A: Aviation Accident Report: Crash During Landing, Federal Express, Inc., Flight 14, McDonnell Douglas MD–11, N611FE, Newark International Airport, Newark, New Jersey, July 31, 1997.

FOR MORE INFORMATION CONTACT: Rhonda Underwood, (202) 314–6065.

Dated: September 1, 1999.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 99–23227 Filed 9–1–99; 3:20 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 72–1015]

NAC International, Inc.; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding the Proposed Exemption from Requirements of 10 CFR Part 72

By letter dated July 19, 1999, NAC International, Inc., (NAC or applicant) requested an exemption, pursuant to 10 CFR 72.7, from the requirements of 10 CFR 72.234(c). NAC, located in Norcross, Georgia, is seeking Nuclear Regulatory Commission (NRC or the Commission) approval to procure materials for and fabricate 36 transportable storage canisters (TSCs), 36 vertical concrete casks (VCCs), and 1 transfer cask prior to receipt of the Certificate of Compliance (CoC) for the UMS Universal Storage System (UMS). The UMS TSC, VCC, and transfer cask are basic components of the UMS system, a cask system designed for the dry storage and transportation of spent fuel. The UMS system is intended for use under the general license provisions of subpart K of 10 CFR part 72 by Maine Yankee Atomic Power Company (MYAPC) at the Maine Yankee Atomic Power Station (Maine Yankee), located in Wiscasset, Maine. The application for the CoC was submitted by NAC to the Commission on August 29, 1997, as supplemented.

Environmental Assessment (EA)

Identification of Proposed Action: NAC is seeking Commission approval to procure materials for and fabricate 36 TSCs, 36 VCCs, and 1 transfer cask prior to receipt of the CoC. The applicant is requesting an exemption from the requirements of 10 CFR 72.234(c), which states that "Fabrication of casks under the Certificate of Compliance must not start prior to receipt of the Certificate of Compliance for the cask

model." The proposed action before the Commission is whether to grant this exemption under 10 CFR 72.7.

Need for the Proposed Action: NAC requested the exemption from 10 CFR 72.234(c) to ensure the availability of storage casks so that Maine Yankee can decommission as scheduled. As a subcontractor to MYAPC, NAC is to supply a total of 66 UMS systems. Maine Yankee's decommissioning schedule is based on initiating spent fuel loading operations in April 2001 using the UMS system. The UMS CoC application is under consideration by the Commission. It is anticipated that, if approved, the CoC would be issued in late 2000.

MYAPC plans to continue loading the UMS canisters until all spent fuel is in dry storage. The current Maine Yankee loading plan specifies 24 UMS systems to be loaded by October 2001. NAC also requested an exemption to fabricate a 90-day supply of additional UMS systems to support the Maine Yankee decommissioning plan. Specifically, NAC stated that, in addition to the fabrication exemption for the 24-required UMS systems, a fabrication exemption is also needed for an additional 12 TSCs and VCCs to ensure a continuous Maine Yankee loading campaign. Consequently, NAC requested a fabrication exemption for a total of 36 TSCs and VCCs.

To support training and dry run operations, NAC indicated that the first of the UMS TSCs, VCCs, and transfer cask are required by October 2000. To meet this decommissioning schedule, NAC stated that procurement of the TSCs, VCCs, and transfer cask materials must begin by September 1999.

The proposed procurement and fabrication exemption will not authorize use of the UMS system to store spent fuel. That will occur only when, and if, a CoC is issued. NRC approval of the procurement and fabrication exemption request should not be construed as an NRC commitment to favorably consider NAC's application for a CoC. NAC will bear the risk of all activities conducted under the exemption; including the risk that the 36 TSCs. 36 VCCs, and 1 transfer cask that NAC plans to construct may not be usable as a result of not meeting specifications or conditions delineated in a CoC that NRC may ultimately approve.

Environmental Impacts of the Proposed Action: The Environmental Assessment for the final rule, "Storage of Spent Nuclear Fuel in NRC-Approved Storage Casks at Nuclear Power Reactor Sites" (55 FR 29181 (1990)), considered the potential environmental impacts of casks which are used to store spent fuel under a CoC and concluded that there would be no significant environmental impacts. The proposed action now under consideration would not permit use of the UMS system, only procurement and fabrication. There are no radiological environmental impacts from procurement or fabrication since the TSC, VCC, and transfer cask material procurement and fabrications do not involve radioactive materials. The major non-radiological environmental impacts involve use of natural resources due to fabrication. Each TSC weighs approximately 18 tons and consists mainly of steel. Each VCC weighs approximately 119 tons and is comprised primarily of concrete. The transfer cask weighs approximately 60 tons and consists mainly of steel.

The amount of steel required for the TSCs and transfer cask is expected to have insignificant impact on the steel industry. Fabrication of the TSCs and transfer cask would be at a metal fabrication facility and is insignificant compared to the amount of metal fabrication performed annually in the United States. If the TSCs and transfer cask are not usable, they could be disposed of or recycled. The amount of material disposed of would be insignificant compared to the amount of steel that is disposed of annually in the United States. Based upon this information, the procurement of materials and fabrication of the canisters and transfer cask will have no significant impact on the environment since no radioactive materials are involved, and the amount of natural resources used is minimal.

The amount of concrete required for the VCCs is expected to have an insignificant impact on the concrete industry. Fabrication of the VCCs would be in the vicinity of the reactor site and is insignificant compared to the amount of concrete fabrication performed annually in the United States. If the VCCs are not usable, they could be disposed of or recycled. The amount of material disposed of would be insignificant compared to the amount of concrete that is disposed of annually in the United States. Based upon this information, the procurement of materials and fabrication of the VCCs will have no significant impact on the environment since no radioactive materials are involved, and the amount of natural resources used is minimal.

Alternative to the Proposed Action: Since there is no significant environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact are not evaluated. The alternative to the proposed action would be to deny approval of the exemption and, therefore, not allow procurement of materials and fabrication of the TSCs, VCCs, and transfer cask until a CoC is issued. This alternative would have the same environmental impact.

Given that there are no significant differences in environmental impacts between the proposed action and the alternative considered and that the applicant has a legitimate need to procure materials and fabricate prior to certification and is willing to assume the risk that any material procured or any TSC, VCC, or transfer cask fabricated may not be approved or may require modification, the Commission concludes that the preferred alternative is to approve the procurement and fabrication request and grant the exemption from the prohibition on fabrication prior to receipt of a CoC.

Agencies and Persons Consulted: Clough Toppon from the State of Maine Bureau of Health was contacted about the EA for the proposed action and had no comments.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting an exemption from 10 CFR 72.234(c) so that NAC may procure materials for and fabricate 36 TSCs, 36 VCCs, and 1 transfer cask prior to issuance of a CoC for the UMS system will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

The request for the exemption from 10 CFR 72.234(c) was filed by NAC on July 19, 1999. For further details with respect to this action, see the application for a CoC for the UMS system, dated August 29, 1997, as supplemented January 29, February 12, and July 16, 1999. The exemption request and CoC application are docketed under 10 CFR part 72, Docket 72–1015.

The exemption request and the non-proprietary version of the CoC application are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC 20555.

Dated at Rockville, Maryland, this 20th day of August 1999.

For the Nuclear Regulatory Commission.

Susan F. Shankman,

Acting Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–23077 Filed 9–2–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Materials and Metallurgy; Notice of Meeting

The ACRS Subcommittee on Materials and Metallurgy will hold a meeting on September 22, 1999, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, September 22, 1999—1:00 p.m. until the conclusion of business.

The Subcommittee will review the staff's proposed revision to 10 CFR 50.55a, "Codes and standards," that eliminates the requirement to update inservice inspection and inservice testing programs to the latest American Society for Mechanical Engineers (ASME) Code edition every 120 months and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman. Written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, the Nuclear Energy Institute, ASME, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Noel F. Dudley (telephone 301/415–6888) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: August 30, 1999.

Richard P. Savio,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–23072 Filed 9–2–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the Subcommittee on Plant License Renewal; Notice of Meeting

The ACRS Subcommittee on Plant License Renewal will hold a meeting on September 23, 1999, in Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, September 23, 1999—8:30 a.m. until 12:00 Noon.

The Subcommittee will review the status of the staff activities associated with the Generic Aging Lessons Learned (GALL) program and the license renewal issue process, the proposed format of license renewal applications, and other selected license renewal issues. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, the Nuclear Energy Institute, ASME, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Noel F. Dudley (telephone 301/415–6888) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: August 30, 1999.

Richard P. Savio,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–23073 Filed 9–2–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Joint Meeting of the ACRS Subcommittees on Reliability and Probabilistic Risk Assessment and on Regulatory Policies and Practices; Notice of Meeting

The ACRS Subcommittees on Reliability and Probabilistic Risk Assessment and on Regulatory Policies and Practices will hold a joint meeting on September 23–24, 1999, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, September 23, 1999—1:00 p.m. until the conclusion of business

The Subcommittees will review proposed revisions to the NRC PRA Implementation Plan.

Friday, September 24, 1999—8:30 a.m. until the conclusion of business

The Subcommittees will review the proposed rulemaking plan and study for development of risk-informed revisions to 10 CFR Part 50, "Domestic Licensing of Production and Utilization Facilities." The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, their consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m.(EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: August 30, 1999

Richard P. Savio,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–23074 Filed 9–2–99; 8:45 am]

BILLING CODE 7590–01–U

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Notice of Failure To Make Required Contributions

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of the collection of information under Part 4043 of its regulations relating to Notice of Failure to Make Required Contributions (OMB control number 1212–0041; expires November 30, 1999). This notice informs the public of the PBGC's request and solicits public comment on the collection of information.

DATES: Comments should be submitted by October 4, 1999.

ADDRESSES: Comments should be mailed to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503. Copies of the request for extension (including the collection of information) are available from the Communications and Public Affairs Department, suite 240, 1200 K Street, NW., Washington, DC 20005–4026, between 9 a.m. and 4 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or James L. Beller, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call the Federal relay service toll-free at 1–800–877–8339 and request connection to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Section 302(f) of the Employee Retirement Income Security Act of 1974 ("ERISA") and section 412(n) of the Internal Revenue Code of 1986 ("Code") impose a lien in favor of an underfunded single-employer plan that is covered by the termination insurance program if (1) Any person fails to make a required payment when due, and (2) the unpaid balance of that payment (including interest), when added to the aggregate unpaid balance of all preceding payments for which payment was not made when due (including interest), exceeds $1 million. (For this purpose, a plan is underfunded if its funded current liability percentage is less than 100 percent.) The lien is upon all property and rights to property belonging to the person or persons who are liable for required contributions (*i.e.*, a contributing sponsor and each member of the controlled group of which that contributing sponsor is a member).

Only the PBGC (or, at its direction, the plan's contributing sponsor or a member of the same controlled group) may perfect and enforce this lien. Therefore, ERISA and the Code require persons committing payment failures to notify the PBGC within 10 days of the due date whenever there is a failure to make a required payment and the total of the unpaid balances (including interest) exceeds $1 million.

PBGC Form 200, Notice of Failure to Make Required Contributions, and related filing instructions, implement the statutory notification requirement. Submission of Form 200 is required by 29 CFR § 4043.81.

The collection of information under the regulation has been approved through November 30, 1999, by OMB under control number 1212–0041. The PBGC is requesting that OMB extend approval for another three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The PBGC estimates that it will receive Form 200 filings with respect to up to 10 single-employer plans per year under this collection of information. The PBGC further estimates that the average annual burden of this collection of information is 42.5 hours and $6,375.

Issued in Washington, DC, this 31st day of August, 1999.

Stuart Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 99–23079 Filed 9–2–99; 8:45 am]

BILLING CODE 7708–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Reportable Events

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of the collection of information under Part 4043 of its regulations relating to Reportable Events (OMB control number 1212–0013; expires November 30, 1999). This notice informs the public of the PBGC's request and solicits public comment on the collection of information.

DATES: Comments should be submitted by October 4, 1999.

ADDRESSES: Comments should be mailed to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503. Copies of the request for extension (including the collection of information) are available from the Communications and Public Affairs Department, suite 240, 1200 K Street, NW., Washington, DC 20005–4026, between 9 a.m. and 4 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or James L. Beller, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call the Federal relay service toll-free at 1–800–877–8339 and request connection to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Section 4043 of the Employee Retirement Income Security Act of 1974 (ERISA) requires plan administrators and plan sponsors to report certain plan and corporate events to the PBGC. The reporting requirements give the PBGC timely notice of events that indicate plan or employer financial problems. The PBGC uses the information provided in determining what, if any, action it needs to take. For example, the PBGC might need to institute proceedings to terminate the plan (placing it in trusteeship) under section 4042 of ERISA to ensure the continued payment of benefits to plan participants and their beneficiaries or to prevent unreasonable increases in its losses.

The collection of information under the regulation has been approved through November 30, 1999, by OMB under control number 1212–0013. The PBGC is requesting that OMB extend approval for another three years. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The PBGC estimates that it will receive 305 reportable events notices per year under this collection of information. The PBGC further estimates that the average annual burden of this collection of information is 1,249 hours and $187,350.

Issued in Washington, DC, this 31st day of August, 1999.

Stuart Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 99–23080 Filed 9–2–99; 8:45 am]

BILLING CODE 7708–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intention to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before November 2, 1999.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Mr. Leon Bechet, Assistant Administrator Division of Program Certification and Eligibility, Office of Minority Enterprise Development, Small Business Administration, 409 3rd Street SW., Suite 8000, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Leon Bechet, Assistant Administrator Division Program Certification and Eligibility, 202–205–6416 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: Personal Financial Statement 8(a) Business Development/SDB Certification Program.

Type of Request: New Information Collection.

Form No: SBA Form 2099.

Description of Respondents: Small Business Owners.

Annual Responses: (estimate 10,000).

Annual Burden: 15,000–20,000 hours (per application).

Dated: August 26, 1999.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 99–23050 Filed 9–2–99; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Announcement of Public Forum on Regulatory Flexibility Analysis

TIME AND DATE: 1:00 p.m.–4:00 p.m., September 21, 1999.

PLACE: Room 10234, Nassif Building, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

STATUS: Open to public with attendance limited to space available.

PURPOSE: The purpose of the forum is to have an exchange of ideas and to start a dialogue that will better enable the Department to analyze its rules. We do not want comments on specific rules or proposals, although it would be appropriate to use an existing rule to illustrate a point.

SUMMARY: The Department of Transportation will be hosting a public forum on regulatory flexibility analysis in rulemaking. Expert panelists for this forum will include representatives from business, labor and government. The moderator of the forum will present a series of issues to the panel for discussion; the audience will also be encouraged to ask questions or make comments. The forum will address various issues such as improving regulatory flexibility analysis used in rulemaking decisions, helping small entities participate more effectively in rulemaking, and reviewing existing rules to determine whether they should be revised to lessen or eliminate burdens on small entities. The forum on regulatory flexibility analysis is the third in a series of public forums on rulemaking. As with the forum on economic analysis held in May and the forum on risk assessment held in June, the forum on regulatory flexibility analysis will provide an opportunity for the public to join the Department in discussing important rulemaking issues.

REGISTRATION: Participants are requested to register their intent to attend this forum meeting by sending e-mail to gwyneth.radloff@ost.dot.gov. Put the words "Registration for Small Entities Forum" in the subject line and the participant's name, address, phone number, and affiliation in the body of the message. If you do not have internet access, you can register by calling 202–

366–4723 or by writing to the contact person below. Please include your name, address, and phone number in your letter/postcard. Also, remember that space is limited and registration is on a first-come-first-served basis.

FOR FURTHER INFORMATION CONTACT: Gwyneth Radloff, Office of General Counsel (C–50), Department of Transportation, Room 10424, 400 Seventh Street, SW., Washington, DC 20590. Phone: (202) 366–4723 (voice), (202) 755–7687 (TDD); Email: *gwyneth.radloff@ost.dot.gov*.

Issued in Washington, D. C., this 31st day of August, 1999.

Neil Eisner,

Assistant General Counsel for Regulation and Enforcement.

[FR Doc. 99–23056 Filed 9–2–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–4501]

Navigation Safety Advisory Council; North Puget Sound Long-Term Risk Management Panel

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The North Puget Sound Long-term Risk Management Panel will meet for the first time to discuss various issues relating to the maritime safety in the North Puget Sound area. The Coast Guard is creating the Panel under the charter for the Navigation Safety Advisory Council (NAVSAC). The meeting and all subsequent meetings will be open to the public.

DATES: The North Puget Sound Long-Term Risk Management Panel will meet on Thursday and Friday, September 23 and 24, 1999, from 9:00 a.m. to 4 p.m.

ADDRESSES: The Panel will meet at the National Oceanographic and Atmospheric Administration's (NOAA's) Western Regional Center in Building 9, 7600 Sand Point Way NE., Seattle, WA 98115. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Captain Scott Davis, Coast Guard Thirteenth District, 206–220–7210, or Mr. Joe Stohr, State of Washington Department of Ecology, 360–407–7450.

SUPPLEMENTARY INFORMATION:

North Puget Sound Long-Term Risk Management Panel

The Coast Guard is creating the North Puget Sound Long-Term Risk Management Panel under the charter of the Navigation Safety Advisory Council (NAVSAC) (a Federal advisory committee under 5 U.S.C. App. 2). The Panel will develop an integrated plan for managing the marine safety risks in the North Puget Sound area and adjacent waters. The geographic area includes the entrance and approaches to the Strait of Juan de Fuca, the Strait of Juan de Fuca to Admiralty Inlet, Haro Strait and Boundary Pass, Rosario Strait, and the Strait of Georgia. The Panel will consider all relevant information and evaluate all potential measures to improve marine safety in the North Puget Sound area. By June 15, 2000, the Panel will submit a report of its recommendations via NAVSAC to the Commandant of the U.S. Coast Guard and the Governor of the State of Washington. Recommendations may involve international, Federal, State, and voluntary activities and measures. The Panel will be chaired by RADM Paul Blayney, Commander, U.S. Coast Guard Thirteenth District, and Mr. Thomas Fitzsimmons, Director, State of Washington Department of Ecology.

In accordance with NAVSAC's charter, the Commandant of the U.S. Coast Guard will invite the members of the Panel. Each member will represent one of the following groups:

1. Native Americans (1 seat).
2. Puget Sound Steamship Operators Association (1 seat).
3. Western States Petroleum Association (2 seats).
4. County governments (2 seats).
5. North Pacific Fishing Vessel Operators Association (1 seat).
6. Washington Environmental Council (2 seats).
7. Washington Public Ports Association (1 seat).
8. Shellfish Growers Association (1 seat).
9. American Waterways Operators (1 seat).
10. Puget Sound Pilots Association (1 seat).
11. City Government (1 seat).
12. State legislators (4 seats).
13. U.S. Congressional staff (1 seat).
14. Canadian Coast Guard (1 seat).
15. Transport Canada (1 seat).

Agendas of Meetings

The meetings will include evaluations of the components of the existing safety system as well as detailed discussions of various potential improvements to maritime safety in the region. The Panel will use an approach based on recognized risk assessment and risk management practices to develop an integrated plan to manage identified risks. The plan development process will include evaluation of a broad range of information about the safety and marine transportation systems along with relevant risk information on hazards, incident history, oil movements, environmental sensitivity, response capability and other information.

Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Procedural

The meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Co-Chairs' discretion, members of the public may make oral presentations during the meetings. The Co-Chairs and the Panel members will determine the time and place of subsequent meetings of the Panel. For information about subsequent meetings, contact a person listed in **FOR FURTHER INFORMATION CONTACT**.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact Captain Scott Davis at 206–220–7210.

Dated: August 30, 1999.

Josepth J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 99–23025 Filed 9–2–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1998–4765]

Coast Guard "Optimize Training Infrastructure" Initiative: Programmatic Environmental Assessment and Proposed Finding of No Significant Impact

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability, notice of meetings, and request for comments.

SUMMARY: The Coast Guard announces the availability of a Programmatic Environmental Assessment (PEA) and a proposed Finding of No Significant Impact (FONSI) for the "Optimize Training Infrastructure" (OTI) Initiative. The OTI Initiative examined the ability of the Coast Guard's training infrastructure (training methods, personnel, and facilities) to support changing technological and operational conditions in an efficient, cost-effective manner. This notice also announces public meetings and requests comments on the PEA and proposed FONSI.

DATES: The dates of the public meetings are—

1. September 13, 1999, from 6:30 p.m. to 9 p.m., Cape May, NJ; and
2. September 15, 1999, from 6:30 p.m. to 9 p.m., Petaluma, CA.

The meetings may close early if all business is finished. A public open house will be held before each meeting from 4:30 p.m. to 6:30 p.m.

Comments must reach the Coast Guard on or before October 8, 1999.

ADDRESSES: The locations of the public meetings are-

1. Cape May—Grand Hotel, Ocean Front and Philadelphia Streets, Cape May, NJ; and
2. Petaluma—Kenilworth Junior High School, 998 East Washington St., Petaluma, CA.

Electronic copies of the Programmatic Environmental Assessment (PEA) and proposed Finding of No Significant Impact (FONSI) are available through the OTI web site at http://www.ttsfo.com/USCG. The documents may be viewed in text-readable form or downloaded.

Bound copies may be viewed at the following locations:

1. Cape May Public Library, 110 Ocean Street, Cape May, NJ.
2. Newport News Public Library, 2400 Washington Avenue, Newport News, VA.
3. Pasquotank—Camden Library, 205 East Main Street, Elizabeth City, NC.
4. Petaluma Library, 100 Fairgrounds Drive, Petaluma, CA.

Electronic copies may also be viewed in the Department of Transportation's Docket Management System at http://dms.dot.gov (located at docket USCG–1998–4765). The PEA, proposed FONSI, comments submitted during public scoping, and other relevant materials are available for viewing at this site in a "scanned image" format, rather than as text. All comments received during this phase, and other relevant materials, will be placed in the docket. They will be available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington DC 20590–0001, on the Plaza level of the Nassif Building between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may mail, FAX, email, or hand-deliver your comments to Ms. Susan Boyle, U.S. Coast Guard, c/o Tetra Tech, 180 Howard Street, Suite 250, San Francisco, CA 94105, Phone 510–437–3973, FAX 415–974–5914, or email CoastGuard@ttsfo.com.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, the NEPA process, and NEPA documents, contact Ms. Susan Boyle, Commander(se), USCG MLC Pacific, Coast Guard Island #54D, Alameda, CA 94501–5100, 510–437–3973. For questions on the OTI Initiative, contact LCDR Keith Curran, Reserve and Training Directorate (G–WT), Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593, phone 202–267–2429 or email CoastGuard@ttsfo.com. For questions on viewing material in the OTI web site, contact Mr. John Bock, Tetra Tech, 415–974–1221. For questions on viewing material in the Department of Transportation's Docket Management System, contact Ms. Dorothy Walker, Chief, Dockets, Department of Transportation, 202–366–9329.

SUPPLEMENTARY INFORMATION:

The OTI Initiative

Under the "Optimize Training Infrastructure" (OTI) Initiative, the Coast Guard examined the ability of its training infrastructure to support changing technological and operational conditions in a cost-effective and efficient manner. All aspects of the training infrastructure were evaluated, including hard infrastructure (e.g., buildings, utilities, and classroom types) and soft infrastructure (e.g., training staff, class size, curricula, training delivery methods, mid-level management, and financial resources). This process emphasized optimizing training, while maintaining the flexibility to meet future needs.

Preferred Alternative

The Coast Guard announced its preferred alternative in the **Federal Register** on July 16, 1999 (64 FR 38498). The preferred alternative is to retain all four training centers (Training Center Cape May, NJ; Training Center Petaluma, CA; Reserve Training Center Yorktown, VA; and Aviation & Technical Training Center Elizabeth, NC) and, where cost effective, fill any excess training capacity with non-training and training-related functions. No major new construction projects are associated with this alternative.

Programmatic Environmental Assessment

The Programmatic Environmental Assessment (PEA) describes and compares the potential environmental and socioeconomic effects of each of the alternatives under consideration. We have determined that no significant environmental or socioeconomic impacts would result from the implementation of the preferred alternative (Alternative 3) and that the preparation of an environmental impact statement is not necessary. As a result, a proposed Finding of No Significant Impact (FONSI) has been prepared.

The PEA evaluates the full range of resources affected by each alternative. The resources include land, infrastructure, transportation assets, hazardous materials and wastes, biological resources, cultural resources, air, noise, water, geology, soils; and socioeconomic conditions relevant to the programmatic level of analysis and decision-making. Specific socioeconomic conditions include population, demographics, employment, income, housing, schools, and public services.

Public Participation

On November 19, 1998, we published a notice in the **Federal Register** entitled "Intent to Prepare a Programmatic Environmental Assessment for the Coast Guard 'Optimize Training Infrastructure' Initiative" (63 FR 64309). The purpose for the notice was to announce our intent to prepare a PEA and to begin the process of gathering the public's comments to assist us in developing the PEA. It included a description of the recommended alternatives and announced three public meetings to assist in gathering public comments. With the publication of the notice, a period of public outreach and comment (scoping period) began and ran until January 6, 1999. However, comments received after that date were also reviewed and, as appropriate, incorporated in the NEPA process.

In addition to the notice of intent, the public was notified of the scoping process through notices mailed directly to numerous public officials, agencies, and organizations. Scoping notices also were published in the Cape May Star and Wave (Cape May, New Jersey), the Atlantic City Press (Atlantic City, New Jersey), the Daily Press (Yorktown, Virginia), the Argus Courier (Petaluma, California), and the Press Democrat (Santa Rosa, California).

During the public scoping period, the Coast Guard received letters and statements from 481 individuals and form letters from 337 individuals. In addition, 121 people made verbal comments at the public meetings. In total, 897 people participated in the scoping process by providing written or verbal comments. Additionally, local governments submitted resolutions addressing the proposed action and issued petitions, generally voicing opposition to one of the proposed closure alternatives. The issues and concerns expressed in the public

comments during the scoping phase of the planning process are summarized in the scoping report, Appendix A of the PEA. Transcripts from the scoping meetings and all written material received during the scoping period can be viewed at the web site for Department of Transportation's Docket Management System at http://dms.dot.gov (located at docket USCG–1998–4765).

The present notice of availability begins the second phase of public involvement by seeking comments on the PEA. Following the comment period on the PEA and an analysis of comments received, the Commandant of the Coast Guard will weigh appropriate information and make a final decision. That decision will be published in the **Federal Register**.

Public Meetings

Two public meetings will be held on the PEA and proposed FONSI. (See **DATES** and **ADDRESSES.**) Please note that the meetings may close early if all business is finished. For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact Ms. Boyle (See **FOR FURTHER INFORMATION CONTACT**) as soon as possible.

A public meeting has not been scheduled for Yorktown, VA, since there was little public interest in OTI at RTC Yorktown during the scoping phase of the NEPA process. However, if public interest in this next phase increases, a meeting may be scheduled there.

Request for Comments

We encourage you to participate by submitting written comments on the PEA and FONSI or by presenting verbal comments at a public meeting. If you submit written comments, please include your name and address and identify the docket number for this notice (USCG–1998–4765). Please submit written comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing to Ms. Boyle at the address under **ADDRESSES**. If you would like to know we received your comments, please enclose a stamped, self-addressed postcard or envelope.

Dated: August 26, 1999.

J. B. Willis,

Captain, U. S. Coast Guard, Acting Director of Reserve and Training.

[FR Doc. 99–22927 Filed 9–2–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program; Rickenbacker International Airport, Columbus, Ohio

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by Rickenbacker Port Authority, Columbus, Ohio, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On January 22, 1999, the FAA determined that the noise exposure maps submitted by Rickenbacker Port Authority under part 150 were in compliance with applicable requirements. On July 14, 1999, the Assistant Administrator for Airports approved the Rickenbacker International Airport noise compatibility program.

A total of twenty-six (26) measures were included in the Rickenbacker Port Authority Noise Compatibility Plan, which continue or expand the intent of the approved 1989 NCP. Of the twenty-six (26) measures included, four (4) are listed as "Noise Abatement Plan Measures," five (5) are listed as "Program Management Measures," and seventeen (17) are listed as "Land Use Management Plan." The FAA has approved twenty (20) of the twenty-six (26) measures.

EFFECTIVE DATE: The effective date of the FAA's approval of the Rickenbacker International Airport noise compatibility program is July 14, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Jagiello, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111, 734–487–7296. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Rickenbacker International Airport, effective July 14, 1999.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act, and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to the FAA's approval of an airport noise compatibility program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Detroit Airports District Office in Belleville, Michigan.

Rickenbacker Port Authority submitted to the FAA on April 17, 1998, noise exposure maps, descriptions, and other documentation. This documentation was produced during the Airport Noise Compatibility Planning (part 150) Study at Rickenbacker International Airport from 1997 through 1998. Rickenbacker International Airport noise exposure maps were determined by the FAA to be in compliance with applicable requirements on January 22, 1999. Notice of this determination was published in the **Federal Register** on February 24, 1999.

The Rickenbacker Port Authority study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to the year 2002. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on January 22, 1999, and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period would have been deemed to be an approval of such program.

The submitted program proposed by the airport sponsor contained twenty-six (26) measures for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. Twenty (20) of the twenty-six (26) measures were approved by the Assistant Administrator for Airports effective July 14, 1999.

Four (4) of the twenty-six (26) measures submitted are listed as "Noise Abatement Plan Measures." These four (4) measures were approved which deal with departure flight tracks, and acquiring one periodic noise monitor. Five (5) of the twenty-six (26) measures submitted are listed as "Program Management Measures" which were all approved. These five (5) measures include maintaining its Noise Abatement Committee, the analysis of noise contours and update of noise contour maps, establishment of a noise complaint office, preparation of updated noise exposure maps, and development of a format public information program to increase public awareness of the Airport's Noise Compatibility Program. Seventeen (17) of the twenty-six (26) measures submitted are listed as "Land Use Management Plan." Eleven (11) of the seventeen (17) measures were approved. These include the purchase of homes within the 65 DNL noise contour, purchase of undeveloped land within the 70 DNL noise contour, and encouragement of local jurisdictions to adopt compatible land use zoning, noise overlay zoning, subdivision regulations, comprehensive planning, land use policies, guidelines for discretionary project review, land use controls, and amend the purpose paragraphs of the zoning, subdivision, and building codes of the Columbus City Codes to include Rickenbacker International Airport. Five (5) of the seventeen (17) measures do not require FAA action. These five (5) measures include adoption of height and hazard zoning, encouragement of local jurisdictions to adopt floodplain zoning, establishment of a local program to purchase avigation easements over property eligible under the 1989 NCP, purchase of selected homes in the forecasted 1992 70 DNL noise contour completed under the 1989 NCP, and sound insulation of schools completed under the 1989 NCP. One (1) of the twenty-six (26) measures was withdrawn. This measure was to purchase development rights on specific parcels of undeveloped land within the 192 65 DNL noise contours. These twenty-six (26) determinations are set fourth in detail in a Record of Approval endorsed by the Assistant Administrator for Airports on July 14, 1999. The Record of Approval, as well as other evaluation materials and documents which comprised the submittal to the FAA, are available for review at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617, Washington, DC 20591.

Federal Aviation Administration, Great Lakes Region, 2300 East Devon Avenue, Room 261, Des Plaines, Illinois 60018.

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111.

Rickenbacker Port Authority, Rickenbacker International Airport, 7400 Alum Creek Drive, Columbus, Ohio 43217–1248.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Belleville, Michigan, August 6, 1999.

Dean C. Nitz,

Manager, Detroit Airports District Office, Great Lakes Region.

[FR Doc. 99–23021 Filed 9–2–99; 8:45 am]

BILING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice To Prepare an Environmental Impact Statement and Conduct Scoping for Air Traffic Control Procedural Changes in and Near the Baltimore-Washington Metropolitan Area

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement and conduct scoping meetings.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared and considered to assess the potential impacts of changes to air traffic control procedures and aircraft routings. These changes are associated with the consolidation of four stand-alone Terminal Radar Approach Control (TRACON) facilities. The TRACONs are currently located at Baltimore-Washington International Airport, Ronald Reagan Washington National Airport, and Washington Dulles International Airport; and the FAA operated TRACON located at Andrews Air Force Base, Maryland.

All reasonable alternatives will be considered including a no-change option. The airspace EIS will evaluate alternatives to aircraft routes and air traffic control procedures beyond the immediate airport area. Changes to existing take-off and/or landing noise abatement procedures, or other initial departure or final arrival procedures are not being considered. In order to ensure that all significant issues pertaining to the proposed action are identified, public scoping meetings will be held.

This EIS is being tiered from an earlier EIS that examined the impacts associated with consolidation of four TRACONs and construction of a new consolidated facility called the Potomac Consolidated TRACON (PCT). A Record of Decision (ROD) on that first tier was published in the **Federal Register** on

June 9, 1999. The ROD documented FAA's decision to consolidate the TRACONs in a new building to be built at the former Vint Hill Farms Station in Fauquier County, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Champley, Project Support Specialist, Federal Aviation Administration, FAA Air Traffic Control Systems Command Center, Potomac Program Office, 13600 EDS Drive, Suite 100, Herndon, VA 20171–3233 (800) 762–9531. Email: joe.champley@faa.gov.

SUPPLEMENTARY INFORMATION: A TRACON facility provides radar air traffic control (ATC) services to aircraft operating on Instrument Flight Rules (IFR) and Visual Flight Rules (VFR) procedures generally beyond 5 miles and generally within 50 miles of the host airport at altitudes from the surface to approximately 17,000 feet. These distances and altitudes may vary depending on local conditions and infrastructure constraints such as adequate radar and radio frequency coverage. The primary function of the TRACON is to provide a variety of ATC services to arrival, departure, and transient aircraft within its assigned airspace. These services include aircraft separation, in-flight traffic advisories and navigational assistance. The four existing TRACON facilities provide terminal radar ATC services to aircraft approaching/leaving the four major airport areas and a number of small reliever airports located within the study area. They will be consolidated and replaced by a single facility to be built at Vint Hill Farms in Fauquier County, VA. FAA expects to commission the new facility in May 2002. FAA operated control towers will remain at each of the airports after the TRACON consolidation.

FAA will conduct an in depth analysis of aircraft routes and altitudes as well as ATC procedures. The purpose is to determine what, if any, new routes, altitudes or procedures could be implemented that would take advantage of the TRACON consolidation, improved aircraft performance, and new and emerging ATC technologies. The goals of the study are to enhance safety, reduce operating costs and reduce environmental impacts of Potomac TRACON controlled aircraft in the study area. The project study area is generally within a 75 mile radius of the Georgetown Non-Directional Radio Beacon, a radio navigational aid located near the Chain Bridge in Washington, DC.

Additional information on the Potomac TRACON is available on the Internet at *http://www.faa.gov/ats/potomac.*

Public Scoping Meetings: To facilitate the receipt of comments on the EIS, five public scoping meetings will be held. The meetings will be held from 1:30 to 3 p.m. and 7 to 9 p.m. at the following locations:

—October 19, 1999 at the Dulles Airport Hilton, 13869 Park Center Road, Herndon, VA 22071 (Off McLearen Rd, at Route 28)

—October 20, 1999 at the Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877 (On I–270), take Exit 11 to Montgomery Village Ave (Rt. 124 East). Right at second light (Rt. 355). Right at first light to Perry Parkway. Proceed to Hilton beyond circle)

—October 26, 1999 at the Colony South, 7401 Suratts Road, Clinton, MD 20748 (Near Andrews AFB, off Route 5 in Clinton, MD)

—October 27, 1999 at the Maritime Institute of Training and Graduate Studies, 5700 Hammons Ferry Road, Linthicum Heights, MD 21090 (On I–295 (BWI Parkway), take West Nursey Road exit. (If you are heading North towards Baltimore on I–295, at end of exit, bear right onto Nursey Road. If you are heading South towards Washington on I–295, at end of exit, bear left onto Nursey Road). Go to first traffic light and turn left onto International Drive. Go to first street and turn left onto Aero Dr. This will dead end into MITAGS property. Turn right on the driveway and follow signs to Conference Center. Proceed to Building #3 (Academic Building). Meeting is on the Lower Level in Classroom #1)

—October 28, 1999 at the National Rural Electric Cooperative Association, 4301 Wilson Blvd., Arlilngton, VA 22203 (Intersection of Wilson Blvd. and Taylor Street in the Ballston area opposite the Ballston Mall. Parking is available in the garage under the building. Enter off Taylor Street. Ballston Metro stop is approximately two blocks away. Meeting will be in the first floor Conference Center)

A separate meeting will be held from 1:30 to 4 p.m. primarily for Federal, State and local agency staff in accordance with NEPA coordination requirements. However, this meeting is also open to the public:

—October 21, 1999 at the Holiday Inn Capitol, 550 C Street SW, Washington, DC 20024 (Between National Air and Space Museum and Dept. of Transportation (intersection of C and 6th Street) near L'Enfant Plaza Metro Station)

If there is a demand and adequate interest from other areas that could be affected by the airspace redesign, additional meetings may be scheduled. Additionally, for those unable to attend a meeting written comments sent to the address shown below are invited.

The scoping period for this project formally begins with this announcement. Scoping will conclude ninety days after the date of this announcement. To ensure that the full range of issues related to this proposed project are addressed and all significant issues identified, comments and suggestions on the scope are invited from Federal, State, and local agencies, and other interested parties. Comments and suggestions may be sent to: FAA Potomac TRACON Project, c/o Mr. Fred Bankert, PRC, Inc., 12005 Sunrise Valley Drive, Reston, VA 20191–3423. EMAIL: fred.ctr.bankert@faa.gov.

Dated: August 30, 1999.

John Mayhofer,

Director TRACON Development Program.

[FR Doc. 99–23024 Filed 9–2–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 193/Eurocae Working Group 44 Terrain and Airport Databases

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 193/EUROCAE Working Group 44 meeting to be held September 27–October 1, 1999, starting at 9 a.m. The meeting will be held at Marconi Electronic System Avionics Head Office, Airport Works, Rochester, Kent, England.

The agenda will be as follows: Monday, September 27, Opening Plenary Session: (1) Welcome and Introductions; (2) Review/Approval of Meeting Agenda; (3) Review Summary of the Previous Meeting. (4) New Business; (5) Subgroup 2, Terrain and Obstacle Databases: (a) Review of Summary of the Previous Minutes; (b) Review of Actions Taken during the Previous Meeting; (c) Presentations; (d) Review of the Draft Document. Tuesday, September 28: (6) Subgroup 2, Continuation of previous day's discussions. Wednesday, September 29: (7) Subgroup 3, Airport Databases: (a) Review of Summary of the Previous Minutes; (b) Review of Actions Taken During the Previous Meeting; (c) Presentations; (d) Review of the Draft Document. Thursday, September 30: (8) Subgroup 3, continuation of previous day's discussions. Friday, October 1: Closing Plenary Session: (9) Summary of Subgroups 2 and 3 Meetings; (10) Assign Tasks; (11) Other Business; (12) Dates and Locations of Next Meetings; (13) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Washington, DC, 20036; (202) 833–9339 (phone), (202) 833–9434 (fax), or http://www.rtca.org (web site) or Mr. Tony Henley, Point of Conduct on Site at 011–44–1634 84 44 00 (phone), or 011–44–1634 81 67 21 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on August 30, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–23022 Filed 9–2–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (99–03–C–00–ASE) to Impose and Use the Revenue from a Passenger Facility Charge (PFC) at the Aspen/Pitkin County Airport, Submitted by the County of Pitkin, Aspen/Pitkin County Airport, Aspen, Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at the Aspen/Pitkin County Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 4, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Alan E. Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 East 68th Avenue, Suite 224; Denver, Colorado 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. David C. Gordon, Interim Airport Director, at the following address: 0233 East Airport Road, Suite A, Aspen, Colorado 81611.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the Aspen/Pitkin County Airport, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher J. Schaffer, (303) 342–1258 Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 East 68th Avenue, Suite 224; Denver, Colorado 80249–6361. The application maybe reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (99–03–C–00–ASE) to impose and use PFC revenue at the Aspen/Pitkin County Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 27, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the County of Pitkin, Aspen/Pitkin County Airport, Aspen, Colorado, was substantially complete with the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 1, 1999.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Poposed charge effective date: March 1, 2000.

Proposed charge expiration date: October 1, 2002.

Total requested for use approval: $1,424,000.

Brief description of proposed projects: Purchase Airport Sweeper, Overlay Airport Frontage Road, and Land Acquisition.

Class or classes of air carriers, which the public agency has requested not be required to collect PFC's: All air taxi/commercial operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW, Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the applications, notice and other documents germane to the application in person at the Aspen/Pitkin County Airport.

Issued in Renton, Washington, on August 27, 1999.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 99–23023 Filed 9–2–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: SR 104—Kingston Ferry Terminal (Kitsap County) to the SR 104/101 I/C (Jefferson County), Washington; Notice of Intent/Notice of Scoping

AGENCY: Federal Highway Administration (FHWA), USDOT, in cooperation with Washington State Department of Transportation (WSDOT).

ACTION: Notice of intent and notice of scoping.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared to evaluate potential solutions to identified safety problems and traffic congestion along SR 104 in Kitsap and Jefferson Counties, Washington.

FOR FURTHER INFORMATION CONTACT: Gene Fong/Jim Leonard, Federal Highway Administration, 711 South Capitol Way, Suite 501, Olympia, Washington 98501, Telephone: (360) 753–9413/9408; or Gary Demich/Cassandra Brotherton, Washington State Department of Transportation, Olympia Region, PO Box 47440, Tumwater, WA 98504–7440, Telephone (360) 357–2605/2722.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the WSDOT, will prepare an Environmental Impact Statement (EIS) on alternative solutions that can reduce the accident rate and provide additional capacity to meet current and future needs along a 24.5 mile stretch of the State Route 104 corridor on the Olympia Peninsula. The SR 104 project is a National Environmental Policy Act (NEPA) "pilot" project, intended to evaluate and improve the application of the NEPA process. The "pilot" process was developed cooperatively by Washington State and Federal agencies, and is jointly sponsored by Washington State Department of Transportation and FHWA.

The primary need in the SR 104 corridor is to provide multi-modal transportation linkage to the Kitsap and Olympic Peninsulas that enables safe, efficient and economical movement of

people and goods. The purpose is to do so in a manner that respects and provides for the competing needs: preserving scenic and natural beauty, historic and rural character of the area, the current quality of life for both residents and users, and the integrity of the natural environment.

This segment of SR 104 includes five areas along the corridor where the projected 20 year traffic growth will cause level of service 'F', or system breakdown due to high congestion. There are also three areas, generally one mile or longer, that currently have a five-year history of higher than average accident occurrences (HAC).

There are also six locations where existing roadway geometrics, traffic volumes, and other factors indicate a high potential for vehicles to run off the roadway (Risk).

Solutions are needed to reduce the rate and severity of accidents and to provide for the projected traffic demand. While alternatives have not yet been identified, a series of reasonable alternatives that could meet the purpose and need, as generated by the corridor stakeholders and adopted by the study Steering Committee will be considered in the EIS. The list of possible alternative solutions to be addressed in the EIS will be developed after evaluation/consideration of scoping comments.

Scoping

Announcements describing the proposed study/actions and soliciting comments will be sent to appropriate Federal, State, Tribal, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Three meetings will be held to identify the scope of issues to be addressed, the significant issues, and the possible improvement alternatives. The first two meetings will be conducted on *September 22, 1999*, at, *the Kingston Community Center* in Kingston, Washington. The first meeting from 3 p.m. to 4:45 p.m. will be conducted to focus on input from governmental agencies and tribes. The second, from 5 p.m. to 8:30-p.m., will be conducted primarily for the public. The third meeting, also for the public, will be held on *September 23, 1999* at the *Port Ludlow Fire Hall*, from 5 p.m. to 8:30 p.m. Written scoping comments may be submitted to the FHWA or WSDOT at the address provided above.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this action and the EIS should also be directed to the FHWA or WSDOT at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

James A. Leonard, P.E.,

Transportation and Environmental Engineer, Federal Highway Administration—Washington Division.

[FR Doc. 99–22985 Filed 9–2–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Request for Statements of Interest: Availability for Demonstration of a High Speed Non-Electric (Fossil Fuel) Passenger Locomotive

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Request for expressions of interest.

SUMMARY: FRA announces the availability of a prototype high speed non-electric (fossil fuel) passenger locomotive for demonstration on designated intercity high-speed rail passenger corridors. FRA seeks statements of interest from States or consortia of States interested in participating with FRA, the manufacturer of this locomotive, and Amtrak in such demonstrations.

Eligible Participants

All States or consortia of States shall be eligible. States with high-speed rail corridors designated by the Secretary of Transportation pursuant to 23 U.S.C. 104(d) shall receive priority for the demonstration. It is expected that Federal financial assistance, if any, under this announcement will be provided only through a cooperative agreement.

Submission of Expressions of Interest

Five (5) copies of each Expression of Interest should be submitted by November 19, 1999 to the following address: Associate Administrator for Railroad Development, Federal Railroad Administration, Mail Stop 20, 1120 Vermont Avenue NW, Washington, DC 20590.

Points of Contact

Technical questions regarding this request may be directed to: Robert J. McCown, Director, Technology Development Programs, Federal Railroad Administration, Mail Stop 20, 1120 Vermont Avenue, NW, Washington, DC 20590, TEL 202–493–6350, FAX 202–493–6333.

Administrative questions regarding this request may be directed to: Robert L. Carpenter, Office of Acquisition & Grants Services, Federal Railroad Administration, Mail Stop 50, 1120 Vermont Avenue, NW, Washington, DC 20590, TEL 202–493–6153, FAX 202–493–6171.

Background

FRA's Next Generation High-Speed Rail program has been established to facilitate the deployment of technologies where improved performance or reduced cost could enhance the viability of high-speed passenger rail service, based on incremental improvements to existing rail infrastructure. The present focus of the program is in four primary areas: non-electric locomotives, grade crossing risk mitigation, track and structures, and advanced train control systems.

The successful development and demonstration of lightweight, high power, non-electric locomotives is critical to the introduction of passenger service in the United States at speeds above 90 mph. The cost of electrification may not yet be justifiable in some corridors. Further, locomotives based primarily on designs appropriate for freight applications are not practical for speeds above 100 mph, due to poor acceleration capability and weight, particularly unsprung mass, which is incompatible with sustained use on typical track structures, because of the large forces generated at high speeds. For territories where operations are shared with freight, high powered locomotives, with high rates of acceleration, are essential to the introduction of high-speed passenger operations.

FRA, in partnership with Bombardier Transit Corporation, is producing a prototype high-speed non-electric locomotive capable of 125 mph sustained operations, with the goal of ultimately being capable of 150 mph operations, with acceleration characteristics approaching or equal to current high-speed electric locomotives used on the Northeast Corridor. In future phases of the project, the locomotive may also be capable of demonstrating enhanced performance using the energy storage element of the flywheel developed as part of FRA's Advanced Locomotive Propulsion System (ALPS) project.

The development of the locomotive has advanced to the point where FRA and Bombardier Transit Corporation anticipate that the first prototype will enter into testing during the summer of 2000. Initially, the prototype will be tested at the Transportation Technology Center, in Pueblo, Colorado and other locations, to validate its readiness for passenger operations on the general rail system of the U.S. That initial testing will be followed by more extensive demonstrations of the technology over a wide range of operating conditions in which high-speed non-electric locomotives might operate. FRA is seeking statements of interest at this time to provide all potential hosts of the proposed demonstration adequate time to plan and marshal the necessary resources for a successful demonstration.

Purpose and Project Description

The purpose of the subject demonstration is to gain information on the performance of the prototype locomotive operating under a wide range of conditions similar to those in which production versions of high-speed non-electric locomotives might operate in the future. Two distinct types of demonstrations will be conducted:

Concept Demonstration

The concept demonstration will involve demonstration of the prototype locomotive in several of the designated high-speed rail corridors for periods of three to fourteen days to obtain train performance data over a wide range of operating conditions. This type of demonstration will also gauge the reaction of and solicit input from various potential users of the equipment, including operators, host railroads, and the general public on design and performance aspects of the prototype. It is anticipated that the demonstrations will involve static display, as well as a limited number of train movements over segments of designated corridors at speeds up to the maximum allowable speed for the current track class and local conditions for those segments. FRA and Bombardier Transit Corporation anticipate that the concept demonstration will begin in the late summer of 2000.

Service Demonstration

The service demonstration will involve demonstration of the prototype locomotive in revenue service for an extended period of time (three to six months) in one or possibly two designated corridors to obtain longer term performance data concerning durability, reliability, and maintainability. This demonstration will also be used to more fully explore the capabilities of the prototype, including its ability to operate in conjunction with modern passenger rail equipment in use in North America. This part of the demonstration program will involve revenue service operation of the locomotive and appropriate passenger cars on a regular schedule by the National Railroad Passenger Corporation (Amtrak). The service demonstration will begin after completion of the initial concept demonstration and after any necessary servicing to and adjustments of the prototype have been completed. After the completion of the service demonstration, the locomotive may perform additional concept demonstrations in selected corridors before being used to test a high-speed lightweight generator system being developed by the ALPS project team. At the completion of this testing it is possible that the locomotive may again be available for additional revenue service demonstration.

Furnished Equipment

FRA and Bombardier Transit Corporation will make available one prototype high-speed non-electric locomotive for this demonstration that meets all applicable FRA safety standards for operation at speeds of up to 125mph. Depending upon final configuration, the train may be suitable for revenue service operation at speeds up to 150mph. FRA also anticipates furnishing technical guidance and assistance as appropriate throughout the project.

Bombardier Transit Corporation will make available for the concept and service demonstrations, three tilting coaches (one first class and two business class) with a total seating capacity of approximately 175, which are similar to those that will be entering Amtrak's Northeast Corridor Acela Express service in late 1999 and 2000. Two of these coaches will be modified to permit service to low platforms.

Role of the Selected States and Other Parties

The selected State or consortia of States will be responsible for all planning, coordination and management of the concept demonstration while the locomotive is located on the designated corridor. During the concept demonstration, the selected State(s) will be responsible for funding the operating expenses associated with the operation on the corridor, including, but not necessarily limited to: payments for track access, train and engine crew costs, fuel and other servicing requirements, station costs, and security. FRA estimates that costs to be borne by a selected State for a typical concept demonstration would be between $8,000 and $14,000 per day of operation. The Federal financial commitment, if any, to a selected State will be made through a cooperative agreement between that State or consortium of States and FRA.

During the service demonstration, the selected State(s) will make any necessary arrangements with Amtrak (or others, if required) to permit an extended revenue service demonstration of the prototype, including covering net operating costs incurred by Amtrak (or others, if required) during the service demonstration.

Subject to funds availability, FRA and its partners in the locomotive development will arrange for the support of costs associated with operations outside the geographic area of the selected State(s) (e.g. cost to move the locomotive from one demonstration site to another), as well as extraordinary maintenance costs, and may provide additional assistance as needed to the extent that the demonstration entails costs beyond normal train operation. Applicants should indicate whether they are in a position to contribute any funds toward these costs. Bombardier Transit Corporation will provide qualified personnel who will assist in maintenance and servicing of the equipment during the demonstration to the extent that these tasks are specific to this equipment.

After completion of the service demonstration, the State or consortium of States will prepare a report in cooperation with Amtrak, Bombardier Transit Corporation, and FRA detailing the performance, suitability, customer acceptance, and operating economics of the train during the service demonstration.

Amtrak will operate the train during the demonstration and between demonstration locations, interfacing with host railroads, providing necessary train and engine crews, any inspections required by statute or regulation, and will assist Bombardier Transit Corporation in the regular servicing of the equipment.

Statements of Interest

States interested in hosting either a concept or service demonstration must submit statements of interest to the address identified above no later than

November 19, 1999. Statements of interest shall be no more than ten pages in length. Each statement of interest shall, at a minimum, indicate whether the applicant houses a designated high-speed corridor; identify whether the applicant proposes to host a concept demonstration, service demonstration or both; provide a detailed description of the proposed demonstration(s), including the route and schedule of any demonstrations; describe how the demonstration will develop information that supports FRA's overall program goal of facilitating the introduction of high-speed rail service in corridors outside the Northeast Corridor; provide a detailed list of any resources required and outstanding issues that must be resolved before undertaking the demonstration; provide a statement from a responsible official of the host railroad concerning the anticipated availability of the rail line proposed for the demonstration during the demonstration period outlined above; and, identify the intended source(s) and commitment status of the selected State(s)'s proposed funding.

Evaluation and Selection

In cooperation with its partners, FRA will evaluate the statements of interest using the following criteria:

1. The overall scientific and/or technical merits of the proposal.
2. The degree to which the proposed demonstration will advance the feasibility of U.S. high-speed rail operations by providing public exposure of HSR technology and operational information on the performance and public acceptance of the demonstration train.
3. The qualifications and demonstrated experience of the proposing organization to support the proposed demonstration(s).
4. The reasonableness and realism of the proposed costs.
5. The degree to which Federal funds are leveraged by private, non-Federal, and/or Federal funds available from sources other than FRA programs, including the degree to which funds are offered to offset FRA's costs of moving the locomotive between demonstration corridors.
6. The availability of funds.

It is expected that this review process will be completed within 90 days of the closing date of this announcement. At that time FRA may, at its option, request more detailed proposals from some or all of the applicants, or move forward in negotiating appropriate agreements with the selected applicants, based solely upon the statements of interest.

Dated: August 27, 1999.

Jolene M. Molitoris,

Administrator.

[FR Doc. 99–23004 Filed 9–2–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement on the Hartford to New Britain Busway Project, Hartford County, Connecticut

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The Federal Transit Administration (FTA), and the Connecticut Department of Transportation (CTDOT) intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) on the proposed construction of a busway along an existing rail right-of-way corridor, known as the Hartford West Corridor, between Union Station in Hartford, CT and downtown New Britain, CT.

The EIS will evaluate a no-build alternative and a busway alternative, options recommended in a Major Investment Study (MIS) completed by the CTDOT and participating agencies for the Hartford West Corridor. Further scoping will be accomplished through public meetings and hearings, neighborhood meetings, cable news segments, a newsletter, and correspondence with interested persons, organizations, the general public, federal, state and local agencies.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts to be considered should be sent to the FTA or CTDOT by October 18, 1999.

ADDRESSES: *Written comments* on the project scope should be sent to Mr. Edgar T. Hurle, Connecticut Department of Transportation, 2800 Berlin Turnpike, P.O. Box 317546, Newington, CT, 06131–7546, Telephone (860) 594–2920 or Mr. Richard H. Doyle, Federal Transit Administration, 55 Broadway, Cambridge, MA, 02142, Telephone (617) 494–2055.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Beth Mello, Deputy Regional Administrator, Federal Transit Administration Region I, (617) 494–2055.

SUPPLEMENTARY INFORMATION:

I. Description of Study Area and Project Need

The proposed project corridor, known as the Hartford West corridor, extends from Union Station in Hartford, Connecticut along an existing rail-right-of-way to downtown New Britain, Connecticut. The proposed busway would extend nine miles and include twelve station locations.

The heavily urbanized Hartford West corridor is anchored by the City of Hartford and the City of New Britain. The corridor has been broadly defined to include not only I–84 but also the surrounding neighborhoods, parallel arterial roadways, and two rail lines, the Bristol-Hartford line and the New Haven-Hartford line. The corridor encompasses portions of five communities: Hartford, West Hartford, Farmington, Newington and New Britain.

To address the transportation needs in the Hartford West Corridor and evaluate the effectiveness of various transportation system improvement alternatives, the CTDOT, the Capitol Region Council of Governments (CRCOG), and the Central Connecticut Regional Planning Agency (CCRPA) undertook a Major Investment Study (MIS) for the area. During the MIS phase, the three agencies conducted an extensive public outreach effort and evaluated a full range of alternatives including, but not limited to, transit fixed guideway (light rail, commuter rail, and busway), a high occupancy vehicle lane, expressway reconstruction and operational lanes, expressway widening, transportation system management improvements and a no-build option. Based on input from the public, state and local agencies, the CTDOT identified the goals of improved mode choice, congestion reduction, improved public health and safety, community livability and quality of life, and economic expansion to guide the MIS effort.

Early in the process, the addition of travel lanes on I–84 was dropped as an alternative due to significant local opposition and cost. The remaining build alternatives included light rail service in the I–84 median; an exclusive busway in the I–84 median; a high occupancy lane added to I–84; light-rail service on Farmington Avenue (one of the arterial highways); and either light rail service or exclusive bus service in the unused half of the Amtrak inland route main line from Union Station in Hartford to New Britain. The MIS analysis indicated that a busway in the Amtrak corridor was the optimal choice. The flexibility of the busway service is projected to produce the highest level of ridership, increased levels of mode choice, and congestion relief on both local arterials and I–84.

II. Probable Effects

The FTA and the CTDOT will evaluate all significant environmental, social and economic impacts of the alternatives analyzed in the EIS. Primary environmental issues include: station location and community impacts, construction impacts, visual/aesthetic impacts and bicycle/pedestrian access. In addition, the EIS will evaluate issues raised through a continuation of the scoping process begun under the MIS. Measures to mitigate any significant adverse impact will be developed. Throughout the EIS phase, the CTDOT will seek public input through meetings and hearings, newsletters and cable news, to further define the issues and impacts of alternatives.

Issued on: August 31, 1999.

Richard H. Doyle,

Regional Administrator.

[FR Doc. 99–23005 Filed 9–2–99; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption from the Federal Motor Vehicle Motor Theft Prevention Standard; Nissan

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This notice grants in full the petition of Nissan North America, Inc. (Nissan) for an exemption of a high-theft line (whose nameplate is confidential) from the parts-marking requirements of the Federal motor vehicle theft prevention standard. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard. Nissan requested confidential treatment for its information and attachments submitted in support of its petition. In a letter to Nissan dated August 5, 1999, the agency granted the petitioner's request for confidential treatment of most aspects of its petition.

DATES: The exemption granted by this notice is effective beginning with the (confidential) model year.

FOR FURTHER INFORMATION CONTACT: Ms. Henrietta L. Spinner, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington D.C. 20590. Ms. Spinner's phone number is (202) 366–4802. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: In a petition dated July 6, 1999, Nissan North America, Inc. (Nissan), requested exemption from the parts-marking requirements of the theft prevention standard for a motor vehicle line. The nameplate of the line and the model year of introduction are confidential. The petition requested an exemption from parts-marking pursuant to 49 CFR part 543, Exemption from Vehicle Theft Prevention Standard, based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Nissan's submittal is considered a complete petition, as required by 49 CFR 543.7, in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6. Nissan requested confidential treatment for the information submitted in support of its petition. In a letter dated August 5, 1999, the agency granted the petitioner's request for confidential treatment of most aspects of its petition.

In its petition, Nissan provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new line. This antitheft device includes an engine-immobilizer system. The antitheft device is activated by turning the ignition switch to the "OFF" position using the proper ignition key.

In order to ensure the reliability and durability of the device, Nissan conducted tests based on its own specified standards. Nissan provided a detailed list of tests conducted and believes that its device is reliable and durable since the device complied with its specified requirements for each test.

Nissan compared the device proposed for its vehicle line with devices which NHTSA has determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements. Nissan stated that its proposed device, as well as other comparable devices that have received full exemptions from the parts-marking requirements, lacks an audible and visible alarm. Therefore, these devices cannot perform one of the functions listed in 49 CFR 543.6(a)(3), that is, to call attention to unauthorized attempts to enter or move the vehicle. However, theft data have indicated a decline in theft rates for vehicle lines that have been equipped with antitheft devices similar to that which Nissan proposes. In these instances, the agency has concluded that the lack of a visual or audible alarm has not prevented these antitheft devices from being effective protection against theft.

On the basis of this comparison, Nissan has concluded that the antitheft device proposed for its vehicle line is no less effective than those devices in the lines for which NHTSA has already granted full exemption from the parts-marking requirements.

Based on the evidence submitted by Nissan, the agency believes that the antitheft device for the Nissan vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541).

The agency concludes that the device will provide four of the five types of performance listed in § 543.6(a)(3): Promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR Part 543.6(a)(4) and (5), the agency finds that Nissan has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information Nissan provided about its device, much of which is confidential. This confidential information included a description of reliability and functional tests conducted by Nissan for the anti-theft device and its components.

For the foregoing reasons, the agency hereby grants in full Nissan's petition for exemption for the vehicle line from the parts-marking requirements of 49 CFR Part 541. The agency notes that 49 CFR Part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. Advanced listing, including the release of future product nameplates, is necessary in order to notify law enforcement agencies of new models exempted from the parts-marking requirements of the Theft Prevention Standard. Therefore, since Nissan has been granted confidential treatment for its vehicle line, the confidential status of the vehicle line will be protected until the introduction of its vehicle line into the market place. At that time, Appendix A–1 will be

revised to reflect the nameplate of Nissan's exempted vehicle line.

If Nissan decides not to use the exemption for this line, it should formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR Parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Nissan wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: August 30, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–23052 Filed 9–2–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket No. BTS–99–5889]

Motor Carrier Financial and Operating Information; Requests for Exemptions From Public Release of Reports

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Notice.

SUMMARY: Class I and Class II motor carriers of property and household goods are required to file annual and quarterly reports with the Bureau of Transportation Statistics (BTS). As provided by statute, carriers may request that their reports be withheld from public release. BTS has received about 25 requests covering the 1998 annual report, many of which also requested an exemption from public release of the 1999 quarterly reports. BTS invites comments on these requests.

DATES: Comments must be submitted by October 4, 1999.

ADDRESSES: Please direct comments to the Docket Clerk, Docket No. BTS–99–5889, Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590, from 10 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

Comments should identify the docket number and be submitted in duplicate to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on Docket BTS–99–5889. The Docket Clerk will date stamp the postcard and mail it back to the commenter.

If you wish to file comments using the Internet, you may use the U.S. DOT Dockets Management System website at http://dms.dot.gov. Please follow the instructions online for more information.

FOR FURTHER INFORMATION CONTACT: David Mednick, K–1, Bureau of Transportation Statistics, 400 Seventh Street, SW., Washington, DC 20590; (202) 366–8871; fax: (202) 366–3640; e-mail: david.mednick@bts.gov.

SUPPLEMENTAL INFORMATION:

I. Electronic Access

You can download an electronic copy of this document using a modem and suitable communications software from the **Federal Register** Electronic Bulletin Board Service at (202) 512–1661. If you have access to the Internet, you can obtain an electronic copy at http://www.bts.gov/mcs/rulemaking.htm.

II. Background

Under 49 U.S.C. 14123 and its implementing regulations at 49 CFR part 1420, BTS collects financial and operating information from for-hire motor carriers of property and household goods. The data are collected on annual Form M, filed by Class I and Class II carriers, and quarterly Form QFR, filed only by Class I carriers. The data are used by the Department of Transportation, other federal agencies, motor carriers, shippers, industry analysts, labor unions, segments of the insurance industry, investment analysts, and the consultants and data vendors that support these users. Among the uses of the data are: (1) Developing the U.S. national accounts and preparing the quarterly estimates of the Gross Domestic Product, which help us better understand the U.S. economy and the motor carrier industry's role in it; (2) measuring the performance of the for-hire motor carrier industry and segments within it; (3) monitoring carrier safety; (4) benchmarking carrier performance; and (5) analyzing motor carrier safety and productivity.

Generally, all data are made publicly available. A carrier can, however, request that its report be withheld from public release, as provided for by statute, 49 U.S.C. 14123(c)(2), and its implementing regulations, 49 CFR 1420.9. BTS will grant a request upon a proper showing that the carrier is not a publicly held corporation or that the carrier is not subject to financial reporting requirements of the Securities and Exchange Commission, and that the exemption is necessary to avoid competitive harm and to avoid the disclosure of information that qualifies as trade secret or privileged or confidential information under 5 U.S.C. 552(b)(4). The carrier must submit a written request containing supporting information. BTS must receive the request by the report's due date, unless it is postmarked by the due date or there are extenuating circumstances. Requests covering the quarterly reports must be received by the due date of the annual report which relates to the prior year.

In accordance with our regulations, after each due date of each annual report BTS then publishes a notice, such as this one, in the **Federal Register** requesting comments on any requests its receives. After considering the requests and comments, BTS will make a decision to grant or deny each request no later than 90 days after the request's due date. While a decision is pending, BTS will not publicly release the report except as allowed under 49 CFR 1420.10(c).

III. Request for Comments

BTS invites comments on the requests for exemption from public release it has received. These requests cover the 1998 annual report and some also cover the 1999 quarterly reports. The comments should be made within the context of the governing regulations at 49 CFR 1420.9, which are published in the **Federal Register** on March 23, 1999 (64 FR 13916). The carriers that have pending requests that we invite your comments on are:

B. N. M. Fertilizer Transport, Inc. (MC 119019)
Bilbo Transports, Inc. (MC 134547)
Bolus Freight Systems, Inc. (MC 63838)
BT Incorporated (MC 182282)
Clarksville Refrigerated Lines, Inc. (MC 262995)
Contract Freighters, Inc. (MC 119399)
Cumberland Transportation Corp. (MC 144029)
Drug Transport, Inc. (MC 166323)
Dupre Transport, Inc. (MC 158069)
Gainey Transportation Services, Inc. (MC 182313)
Howard's Express, Inc. (MC 97006)
Leprino Transportation Company (MC 150255)
Lester Coggins Trucking, Inc. (MC 140484)
Melton Truck Lines, Inc. (MC 100666)
NSG Transport, Inc. (MC 222180)
Puget Sound Truck Lines, Inc. (MC 85255)
Schneider National Bulk Carriers, Inc. (MC 143594)
Schneider National Carriers, Inc. (MC 133655)
Schneider Specialized Carriers, Inc. (MC 113855)
Schneider Tank Lines, Inc. (MC 110988)
Schneider Transport, Inc. (MC 51146)
Trans American Trucking Service, Inc. (MC 149576)
Truckers Express, Inc. (MC 160919)
Umthun Trucking Co. (MC 124813)

If you wish to read the exemption requests and the comments that were submitted in response to this Notice, use the DOT Dockets Management System. This is located at the Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590, and is open from 10 a.m. to 5 p.m., Monday through Friday, except Federal holidays. Internet users can access the Dockets Management System at http://dms.dot.gov. Please follow the instructions online for more information and help.

You must also use the Dockets Management System if you wish to comment on one or more exemption requests. Please follow the instructions listed above under **ADDRESSES**.

Ashish Sen,

Director.

[FR Doc. 99–22758 Filed 9–2–99; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Office of Thrift Supervision

Federal Reserve System

Federal Deposit Insurance Corporation

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Office of Thrift Supervision (OTS), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the OCC, the OTS, the Board, and the FDIC (collectively, the "agencies"), hereby give notice that they plan to submit to the Office of Management and Budget (OMB) requests for review of the information collection systems described below. The Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number. The Agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), intend to extend without revision the following currently approved information collections: the Annual Report of Trust Assets (FFIEC 001), the Annual Report of International Fiduciary Activities (FFIEC 006), the Country Exposure Report (FFIEC 009), and the Country Exposure Information Report (FFIEC 009a), with minor clarifications to the FFIEC 009 instructions. At the end of the comment period, the comments and recommendations received will be analyzed to determine whether the FFIEC and the agencies should modify the information collections. The agencies will then submit the reports to OMB for review and approval.

DATES: Comments must be submitted on or before November 2, 1999.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments should refer to the OMB control number(s) and will be shared among the agencies.

OCC: Written comments on the FFIEC 001, 006, 009, and 009a should be submitted to the Communications Division, Office of the Comptroller of the Currency, 250 E Street, S.W., Third Floor, Attention: 1557–0127 (FFIEC 001 and 006) or 1557–0100 (FFIEC 009 and 009a). Washington, D.C. 20219. In addition, comments may be sent by facsimile transmission to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov. Comments will be available for inspection and photocopying at the OCC's Public Reference Room, 250 E Street, S.W., Washington, D.C. 20219 between 9:00 a.m. and 5:00 p.m. on business days. Appointments for inspection of comments may be made by calling (202) 874–5043.

OTS: Written comments on the FFIEC 001 should be submitted to the Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, Attention: 1550–0005. Hand deliver comments to Public Reference Room 1700 G Street, N.W., lower level, from 9:00 a.m. to 4:00 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755; or (202) 906–6956 (if comments are over 25 pages). Send e-mail to "public.info@ots.treas.gov", and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room, 1700 G St. N.W., from 9:00 a.m. until 4:00 p.m. on business days.

Board: Written comments on the FFIEC 001, 006, 009, and 009a should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments received may be inspected in room M–P–500 between 9:00 a.m. and 5:00 p.m., except as provided in § 261.12 of the Board's Rules Regarding Availability of Information, 12 CFR 261.12(a).

FDIC: Written comments on the FFIEC 001, 009, and 009a should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between

7:00 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov]. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, N.W., Washington, D.C., between 9:00 a.m. and 4:30 p.m. on business days.

A copy of the comments may also be submitted to the OMB desk officer for the agencies: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Additional information or a copy of the collection may be requested from:

OCC: Jessie Gates, OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C. 20219.

OTS: Mary Rawlings-Milton, OTS Clearance Officer, (202) 906–6028, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552.

Board: Mary M. West, Chief, Financial Reports Section, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins, (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, D.C. 20551.

FDIC: Steven F. Hanft, FDIC Clearance Officer, (202) 898–3907, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

Proposal to extend for three years without revision the following currently approved collections of information:

1. Report Title: Annual Report of Trust Assets and Annual Report of International Fiduciary Activities.

Form Number: FFIEC 001 and FFIEC 006.

Frequency of Response: Annual.

Affected Public: Business or other for profit For OCC:

OMB Number: 1557–0127.

Number of Respondents: 809 (FFIEC 001), 100 (FFIEC 006).

Estimated Average Time per Response: 4.4 burden hours (FFIEC 001), 4.0 burden hours (FFIEC 006).

Estimated Total Annual Burden: 3,960 burden hours.

For OTS:

OMB Number: 1557–0026.

Number of Respondents: 135 (FFIEC 001).

Estimated Average Time per Response: 2.30 burden hours (FFIEC 001).

Estimated Total Annual Burden: 310.5 burden hours.

For Board:

OMB Number: 7100–0031.

Number of Respondents: 511 (FFIEC 001), 116 (FFIEC 006).

Estimated Average Time per Response: 3.82 burden hours (FFIEC 001), 4.0 burden hours (FFIEC 006).

Total Annual Burden: 2416 burden hours.

OMB Number: 3064–0024.

Number of Respondents: 1,602 (FFIEC 001).

Estimated Average Time per Response: 3.55 burden hours (FFIEC 001).

Estimated Total Annual Burden: 5,683 burden hours (FFIEC 001).

General Description of Reports

This information collection (FFIEC 001 and FFIEC 006) is mandatory. 12 U.S.C. 161 and 1817 (for national banks), 12 U.S.C. 1464, 1725, 1730 (for thrift institutions), 12 U.S.C. 248(a)(1) and (2) and 1844(c) (for state member banks and bank holding companies), and 12 U.S.C. 1817 (for insured state nonmember commercial and savings banks). The FFIEC 006, collected by the OCC and the Board, is given confidential treatment [5 U.S.C. 552(b)(8)]. Small business (i.e., small banks) are affected.

Abstract

These interagency reports collect information on fiduciary asset totals and activities. They are used to monitor changes in the volume and character of discretionary trust activity and the volume of nondiscretionary trust activity and to determine resource needs for supervisory purposes. The data are also used for statistical and analytical purposes. No changes are proposed to the FFIEC 001 or the FFIEC 006 reporting forms or instructins.

2. Report Title: Country Exposure Report/Country Exposure Information Report.

Form Number: FFIEC 009 and FFIEC 009a.

Frequency of Response: Quarterly.

Affected Public: Business or other for profit.

For OCC:

OMB Number: 1557–0100.

Estimated Number of Repondents: 60 (FFIEC 009), 60 (FFIEC 009a).

Estimated Average Hours per Response: 30 burden hours (FFIEC 009), 5.25 burden hours (FFIEC 009a).

Estimated Total Annual Burden: 7,200 burden hours (FFIEC 009), 1,260 burden hours (FFIEC 009a).

For Board:

OMB Number: 7100–0035.

Estimated Number of Respondents: 105 (FFIEC 009), 24 (FFIEC 009a).

Estimated Average Hours per Response: 30 burden hours (FFIEC 009), 5.25 burden hours (FFIEC 009a).

Estimated Total Annual Burden: 12,600 burden hours (FFIEC 009), 504 burden hours (FFIEC 009a).

For FDIC:

OMB Number: 3064–0017.

Estimated Number of Respondents: 34 (FFIEC 009), 34 (FFIEC 009a).

Estimated Average Hours per Response: 30 burden hours (FFIEC 009), 5.25 burden hours (FFIEC 009a).

Estimated Total Annual Burden: 4,080 burden hours (FFIEC 009), 714 burden hours (FFIEC 009a).

General Description of Reports

This information collection (FFIEC 009 and FFIEC 009a) is mandatory: 12 U.S.C. 161 (for national banks), 12 U.S.C. 248(a), 1844(c), and 3906 (for state member banks), and 12 U.S.C. 1817 and 1820 (for insured state nonmember commercial and savings banks). The FFIEC 009 information collection is given confidential treatment (5 U.S.C. 552(b)(4) and (b)(8)). The FFIEC 009a information collection is not given confidential treatment. Small businesses (i.e., small banks) are not affected. These reports are not collected by OTS.

Abstract

The Country Exposure Report (FFIEC 009) is filed quarterly with the agencies and provides information on international claims of U.S. banks and bank holding companies that is used for supervisory and analytical purposes. The information is used to monitor country exposure of banks to determine the degree of risk in their portfolios and the possible impact on U.S. banks of adverse developments in particular countries. The Country Exposure Information Report (FFIEC 009a) is a supplement to the FFIEC 009 and provides publicly available information on material foreign country exposures (all exposures to a country in excess of one percent of total assets or 20 percent of capital, whichever is less) of U.S. banks and bank holding companies that file the FFIEC 009 report. Reporting institutions must also furnish a list of countries in which they have lending exposures above 0.75 percent of total assets or 15 percent of total capital, whichever is less. No changes are proposed to the FFIEC 009 reporting forms or the FFIEC 009a reporting forms and instructions. However, minor clarifications are proposed to the FFIEC 009 instructions.

Current Actions

The instructional clarifications to the FFIEC 009 report that are the subject of this notice have been approved by the Agencies for implementation as of the December 31, 1999, report date. The proposed clarifications involve classifying credit derivatives as guarantees. The affected sections are; C. "Guaranteed Claims", E."Contingencies and Commitments", and the specific instructions for column 15.

Request for Comment

Comments are invited on:

a. Whether the information collections are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this notice will be shared among the agencies and will be summarized or included in the agencies' requests for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Dated: August 25, 1999.

Mark J. Tenhundfeld,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Dated. August 8, 1999.

John E. Werner,

Director, Information & Management Services, Office of Thrift Supervision.

Board of Governors of the Federal Reserve System, August 30, 1999.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, D.C., this 19th day of August, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–22984 Filed 9–2–99; 8:45 am]

BILLING CODE OCC: 4810–33–P; OTS: 6720–01–P; Board: 6210–01–P; FDIC: 6714–01–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Customs Modernization Act Recordkeeping Requirements

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Customs Modernization Act Recordkeeping Requirements. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before November 2, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, DC 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to mininize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Customs Modernization Act Recordkeeping Requirements.

OMB Number: 1515–0214.

Form Number: N/A.

Abstract: This information and records keeping requirement is required to allow Customs to verify the accuracy of the claims made on the entry documents regarding the tariff status of imported merchandise, admissibility, classification/nomenclature, value and rate of duty applicable to the entered goods.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, Individuals, Institutions.

Estimated Number of Respondents: 5,750.

Estimated Time Per Respondent: 127 hours.

Estimated Total Annual Burden Hours: 732,600.

Estimated Total Annualized Cost on the Public: N/A.

Dated: August 30, 1999.

J. Edgar Nichols,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 99–23057 Filed 9–2–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; General Declaration (Outward/Inward)

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the General Declaration (Outward/Inward). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before November 2, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, DC 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: General Declaration (Outward/Inward).

OMB Number: 1515–0002.

Form Number: Customs Form 7507.

Abstract: Customs Form 7507 allows the agent or pilot to make entry or exit of the aircraft, as required by statute. The form is used to document clearance by the arriving aircraft at the required inspectional facilities and inspections by appropriate regulatory agency staffs.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 500.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 154,668.

Estimated Total Annualized Cost on the Public: $1,874,250.

Dated: August 30, 1999.

J. Edgar Nichols,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 99–23058 Filed 9–2–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Transportation Manifest (Cargo Declaration)

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Air Cargo Manifest. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before November 2, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, DC 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Transportation Manifest.

OMB Number: 1515–0001.

Form Number: Customs Forms 1302, 1302A, 7509, and 7533C.

Abstract: Transportation Manifest (Cargo Declarations) are essential to Customs for the control of cargo and for pre-arrival targeting of shipments for enforcement examination purposes.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions and individuals.

Estimated Number of Respondents: 26,800.

Estimated Time Per Respondent: 34 minutes.

Estimated Total Annual Burden Hours: 154,668.

Estimated Total Annualized Cost on the Public: $109,920.

Dated: August 30, 1999.

J. Edgar Nichols,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 99–23059 Filed 9–2–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; North American Free Trade Agreement (NAFTA) Regulations and Certificate of Origin

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the NAFTA Regulations and Certificate of Origin. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before November 2, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION: Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: NAFTA Regulations and Certificate of Origin.

OMB Number: 1515–0204.

Form Number: Customs Form 434 and 446.

Abstract: The objectives of NAFTA are to eliminate barriers to trade in goods and services between the United States, Mexico, and Canada; facilitate conditions of fair competition within the free trade area; liberalize significantly conditions for investments within the free trade area; establish effective procedures for the joint administration of the NAFTA; and the resolution of disputes.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 1,155.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 2,694.

Estimated Total Annualized Cost on the Public: $43,100.

Dated: August 30, 1999.

J. Edgar Nichols,

Agency Clearance Officer, Information Services Branch.

[FR Doc. 99–23060 Filed 9–2–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Notice of Open Meeting of Citizen Advocacy Panel, Brooklyn District

SUMMARY: An open meeting of the Brooklyn District Citizen Advocacy Panel will be held in Brooklyn, New York.

DATES: The meeting will be held Wednesday, September 22, 1999.

FOR FURTHER INFORMATION CONTACT: Kevin McKeon at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Wednesday, September 22, 1999, 7:00 p.m. to 9:00 p.m. at the New York City Fire Department Headquarters at 9 MetroTech Center, Ground Floor uditorium, Brooklyn, N.Y. 11201. For more information or to confirm attendance, notification of intent to attend the meeting must be made with Kevin McKeon. Mr. McKeon can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 7:30 p.m. to 9:00 p.m. on Wednesday, September 22, 1999. Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Kevin McKeon, CAP Office, P.O. Box R, Brooklyn, N.Y., 11202. The Agenda will include the following: introductions of the panel and open discussions with the public.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: August 27, 1999.

M. Cathy VanHorn,

CAP Project Manager.

[FR Doc. 99–22950 Filed 9–2–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Notice of Open Meeting of Citizen Advocacy Panel, Midwest District

SUMMARY: An open meeting of the Midwest Citizen Advocacy Panel will be held in Omaha, Nebraska.

DATES: The meeting will be held Thursday, September 16, 1999 and Friday, September 17, 1999.

FOR FURTHER INFORMATION CONTACT: Sandra McQuin at 1–888–912–1227, or 414–297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Citizen Advocacy Panel (CAP) will be held Thursday, September 16, 1999, from 1:00 to 5:00 p.m. at the Ramada Inn Central, 7007 Grover Street, Omaha, NE 68106 and 7:00 p.m. to 9:00 p.m. at the Best Western Central Executive Center, 3650 S 72nd Street, Omaha, NE 68124 and Friday, September 17, 1999, from 9:00 a.m. to 3:00 p.m. at the Ramada Inn Central, 7007 Grover Street, Omaha, NE 68106. The Citizen Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service. The public is invited to make oral comments on Thursday September 16, 1999, 7:00 p.m. to 9:00 p.m.; written comments will be read into the record. Individual comments will be limited to five minutes and an additional five minutes allotted for questions and answers. If you would like to have the CAP consider a written statement or pre-register to make an oral comment, please call the CAP office at 1–888–912–1227 or 414–297–1604, FAX (414) 297–1623, or mail to Citizen Advocacy Panel, Mail Stop 1006–MIL, 310 W. Wisconsin Ave, Milwaukee, Wisconsin 53203–2221. If you would like to pre-

register for the meeting, the only information needed by the CAP office is number of attendees and zip code. The Agenda will include the following: Reports by the CAP sub-groups, presentation of taxpayer issues by individual members, CAP office report, and discussion of issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: August 27, 1999.

M. Cathy VanHorn,

CAP Project Manager.

[FR Doc. 99–22951 Filed 9–2–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Notice of Open Meeting of Citizen Advocacy Panel, Brooklyn District

SUMMARY: An open meeting of the Brooklyn District Citizen Advocacy Panel will be held in Brooklyn, New York.

DATES: The meeting will be held Thursday, September 16, 1999.

FOR FURTHER INFORMATION CONTACT: Kevin McKeon at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Thursday, September 16, 1999, 6:00 p.m. to 9:00 p.m. at 10 MetroTech Center, 6th Floor, 625 Fulton Street, Brooklyn, N.Y. 11201. Due to limited conference space, notification of intent to attend the meeting must be made with Kevin McKeon. Mr. McKeon can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 7:00 p.m. to 8:00 p.m. on Thursday, September 16, 1999. Individual comments will be limited to 5 minutes.

If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Kevin McKeon, CAP Office, P.O. Box R, Brooklyn, N.Y., 11202.

The Agenda will include the following: reports of the sub-committees and various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: August 27, 1999.

M. Cathy VanHorn,

CAP Project Manager.

[FR Doc. 99–22952 Filed 9–2–99; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INSTITUTE OF PEACE

Sunshine Act

Date /time: Thursday, September 16, 1999, 9:00 a.m.–5:30 p.m.

Location: 1200 17th Street, NW, Suite 200, Washington, DC 20036–3011.

Status: Open Session—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

Agenda: September 1999 Board Meeting; Approval of Minutes of the Ninetieth Meeting (June 17–18, 1999) of the Board of Directors; Chairman's Report; President's Report; Committee Reports; Fiscal Years 2000 and 2001 Budget Review; Review of Unsolicited Grant Applications; Other General Issues.

Contact: Dr. Sheryl Brown, Director, Office of Communications, Telephone: (202) 457–1700.

Dated: September 1, 1999.

Charles E. Nelson,

Vice President for Management and Finance, United States Institute of Peace.

[FR Doc. 99–23142 Filed 9–1–99; 8:45 am]

BILLING CODE 6820–AR–M

Corrections

Federal Register

Vol. 64, No. 171

Friday, September 3, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 210, 220, 225, and 226

Modification of the "Vegetable Protein Products" Requirements for the National School Lunch Program, School Breakfast Program, Summer Food Service Program and Child and Adult Care Food Program—Extension of Public Comment Period

Correction

In proposed rule document 99–22088 appearing on page 46319 in the issue of Wednesday, August 25, 1999, make the following corrections:

1. In the first column, in the heading, in the sixth line, "Extention" should read "Extension", as set forth above.

2. In the second column, under the heading **Background**, in the ninth line, "July 30, 1999" should read "July 20, 1999".

[FR Doc. C9–22088 Filed 9–2–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

48 CFR Part 235

[DFARS Case 98–D306]

Defense Federal Acquisition Regulation Supplement; Manufacturing Technology Program

Correction

In rule document 99–9561, beginning on page 18829, in the issue of Friday, April 16, 1999, make the following correction(s):

235.006 [Corrected]

1. On page 18830, in the second column, in section 235.006, in paragraph (b)(ii)(A), in the second line, after the word "of" add "a".

2. On the same page, in the second column, in the same section, in paragraph (b)(ii)(C), in the fourth line, "class" should read "class,".

235.006-70 [Corrected]

3. On page 18830, in the second column, in section 235.006-70, in the heading "Manufacturing Technology Program" should read "Manufacturing Technology Program."

4. On the same page, in the second column, in the same section, in paragraph (b), in the first line, "contract" should read "contracts".

[FR Doc. C9–9561 Filed 9–2–99; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6430–1]

Final NPDES Permit for Aquaculture Facilities and Associated, On-Site Fish Processing Facilities Operating in Idaho (ID–G13–0000)

Correction

In notice document 99–22324, beginning on page 46911, in the issue of Friday, August 27, 1999, make the following correction(s):

On page 46913, in the second column, under the heading **Effective Date**, in the second line, "September 13" should read "September 10"; and in the fifth line, "September 13, 2004" should read "September 10, 2004".

[FR Doc. C9–22324 Filed 9–2–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-AGL-45]

Proposed Modification of Class E Airspace; Maple Lake, MN

Correction

In proposed rule document 99–22061 beginning on page 46869 in the issue of Friday, August 27, 1999, make the following correction:

§71.1 [Corrected]

On page 46870, in the first column, in §71.1, under the heading "**AGL MN E5 Maple Lake, MN [Revised]** ", "Lat. 40°14'10"N., long. 93°59'08"W" should read "Lat. 45°14'10"N., long. 93°59'08"W".

[FR Doc. C9–22061 Filed 9–2–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Friday
September 3, 1999

Part II

Office of Personnel Management

Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions; Notice

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service; Consolidated Listing of Schedules A, B, and C Exceptions

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives a consolidated notice of all positions excepted under Schedules A, B, and C as of June 30, 1999, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

SUPPLEMENTARY INFORMATION: Civil Service Rule VI (5 CFR 6.1) requires the Office of Personnel Management (OPM) to publish notice of all exceptions granted under Schedules A, B, and C. Title 5, Code of Federal Regulations, § 213.103(c), further requires that a consolidated listing, current as of June 30 of each year, be published annually as a notice in the **Federal Register**. That notice follows. OPM maintains continuing information on the status of all Schedule A, B, and C excepted appointing authorities. Interested parties needing information about specific authorities during the year may obtain information by contacting the Staffing Reinvention Office, Room 6500, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, or by calling (202) 606–0830.

The following exceptions were current on June 30, 1999:

Schedule A

Section 213.3102 Entire Executive Civil Service

(a) Positions of Chaplain and Chaplain's Assistant.

(b) (Reserved).

(c) Positions to which appointments are made by the President without confirmation by the Senate.

(d) Attorneys.

(e) Law clerk trainee positions. Appointments under this paragraph shall be confined to graduates of recognized law schools or persons having equivalent experience and shall be for periods not to exceed 14 months pending admission to the bar. No person shall be given more than one appointment under this paragraph. However, an appointment that was initially made for less than 14 months may be extended for not to exceed 14 months in total duration.

(f) Chinese, Japanese, and Hindu interpreters.

(g) Any nontemporary position the duties of which are part-time or intermittent in which the appointee will receive compensation during his or her service year that aggregates not more than 40 percent of the annual salary rate for the first step of grade GS–3. This limited compensation includes any premium pay such as for overtime, night, Sunday, or holiday work. It does not, however, include any mandatory within-grade salary increases to which the employee becomes entitled subsequent to appointment under this authority. Appointments under this authority may not be for temporary project employment.

(h) Positions in Federal mental institutions when filled by persons who have been patients of such institutions and have been discharged and are certified by an appropriate medical authority thereof as recovered sufficiently to be regularly employed but it is believed desirable and in the interest of the persons and the institution that they be employed at the institution.

(i) Temporary and less-than-full time positions for which examining is impracticable. These are:

(1) Positions in remote/isolated locations where examination is impracticable. A remote/isolated location is outside of the local commuting area of a population center from which an employee can reasonably be expected to travel on short notice under adverse weather and/or road conditions which are normal for the area. For this purpose, a population center is a town with housing, schools, health care, stores and other businesses in which the servicing examining office can schedule tests and/or reasonably expect to attract applicants. An individual appointed under this authority may not be employed in the same agency under a combination of this and any other appointment to positions involving related duties and requiring the same qualifications for more than 1,040 working hours in a service year. Temporary appointments under this authority may be extended in 1-year increments, with no limit on the number of such extensions, as an exception to the service limits in § 213.104.

(2) Positions for which a critical hiring needs exists. This includes both short-term positions and continuing positions that an agency must fill on an interim basis pending completion of competitive examining, clearances, or other procedures required for a longer appointment. Appointments under this authority may not exceed 30 days and may be extended up to an additional 30 days if continued employment is essential to the agency's operations. The appointments may not be used to extend the service limit of any other appointing authority. An agency may not employ the same individual under this authority for more than 60 days in any 12-month period.

(3) Other positions for which OPM determines that examining is impracticable.

(j) Positions filled by current or former Federal employees eligible for placement under special statutory provisions. Appointments under this authority are subject to the following conditions:

(1) *Eligible employees.* (i) Persons previously employed as National Guard Technicians under 32 U.S.C. 709(a) who are entitled to placement under § 353.110 of this chapter, or who are applying for or receiving an annuity under the provisions of 5 U.S.C. 8337(h) or 5 U.S.C. 8456 by reason of a disability that disqualifies them from membership in the National Guard or from holding the military grade required as a condition of their National Guard employment;

(ii) Executive branch employees (other than employees of intelligence agencies) who are entitled to placement under § 353.110 but who are not eligible for reinstatement or noncompetitive appointment under the provisions of part 315 of this chapter.

(iii) Legislative and judicial branch employees and employees of the intelligence agencies defined in 5 U.S.C. 2302(a)(2)(C)(ii) who are entitled to placement assistance under § 353.110.

(2) *Employees excluded.* Employees who were last employed in Schedule C or under a statutory authority that specified the employee served at the discretion, will, or pleasure of the agency are not eligible for appointment under this authority.

(3) *Position to which appointed.* Employees who are entitled to placement under § 353.110 will be appointed to a position that OPM determines is equivalent in pay and grade to the one the individual left, unless the individual elects to be placed in a position of lower grade or pay. National Guard Technicians whose eligibility is based upon a disability may be appointed at the same grade, or equivalent, as their National Guard Technician position or at any lower grade for which they are available.

(4) *Conditions of appointment.* (i) Individuals whose placement eligibility is based on an appointment without time limit will receive appointments without time limit under this authority. These appointees may be reassigned, promoted, or demoted to any position within the same agency for which they qualify.

(ii) Individuals who are eligible for placement under § 353.110 based on a time-limited appointment will be given appointments for a time period equal to the unexpired portion of their previous appointment.

(k) Positions without compensation provided appointments thereto meet the requirements of applicable laws relating to compensation.

(l) Positions requiring the temporary or intermittent employment of professional, scientific, and technical experts for consultation purposes.

(m) (Reserved).

(n) Any local physician, surgeon, or dentist employed under contract or on a part-time or fee basis.

(o) Positions of a scientific, professional or analytical nature when filled by bona fide members of the faculty of an accredited college or university who have special qualifications for the positions to which appointed. Employment under this provision shall not exceed 130 working days a year.

(p)–(q) (Reserved).

(r) Positions established in support of fellowship and similar programs that are filled from limited applicant pools and operate under specific criteria developed by the employing agency and/or a non-Federal organization. These programs may include: internship or fellowship programs that provide developmental or professional experiences to individuals who have completed their formal education; training and associateship programs designed to increase the pool of qualified candidates in a particular occupational specialty; professional/industry exchange programs that provide for a cross-fertilization between the agency and the private sector to foster mutual understanding, an exchange of ideas, or to bring experienced practitioners to the agency; residency programs through which participants gain experience in a Federal clinical environment; and programs that require a period of Government service in exchange for educational, financial or other assistance. Appointment under this authority may not exceed 4 years.

(s) Positions with compensation fixed under 5 U.S.C. 5351–5356 when filled by student-employees assigned or attached to Government hospitals, clinics or medical or dental laboratories. Employment under this authority may not exceed 4 years.

(t) Positions when filled by mentally retarded persons in accordance with the guidance in Federal Personnel Manual chapter 306. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by OPM.

(u) Positions when filled by severely physically handicapped persons who: (1) Under a temporary appointment have demonstrated their ability to perform the duties satisfactorily; or (2) have been certified by counselors of State vocational rehabilitation agencies or the Veterans Administration as likely to succeed in the performance of the duties. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 and implementing regulations issued by OPM.

(v)–(w) (Reserved).

(x) Positions for which a local recruiting shortage exists when filled by inmates of Federal, District of Columbia, and State (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands) penal and correctional institutions under work-release programs authorized by the Prisoner Rehabilitation Act of 1965, the District of Columbia Work Release Act, or under work-release programs authorized by the States. Initial appointments under this authority may not exceed 1 year. An initial appointment may be extended for one or more periods not to exceed 1 additional year each upon a finding that the inmate is still in a work-release status and that a local recruiting shortage still exists. No person may serve under this authority longer than 1 year beyond the date of that person's release from custody.

(y) (Reserved).

(z) Not to exceed 30 positions of assistants to top-level Federal officials when filled by persons designated by the President as White House Fellows.

(aa) Scientific and professional research associate positions at GS–11 and above when filled on a temporary basis by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and their agencies. Appointments are limited to persons referred by the National Research Council under its post-doctoral research associate program, may not exceed 2 years, and are subject to satisfactory outcome of evaluation of the associate's research during the first year.

(bb) Positions when filled by aliens in the absence of qualified citizens. Appointments under this authority are subject to prior approval of OPM except when the authority is specifically included in a delegated examining agreement with OPM.

(cc)–(ee) (Reserved).

(ff) Not to exceed 25 positions when filled in accordance with an agreement between OPM and the Department of Justice by persons in programs administered by the Attorney General of the United States under Public Law 91–452 and related statutes. A person appointed under this authority may continue to be employed under it after he/she ceases to be in a qualifying program only as long as he/she remains in the same agency without a break in service.

(gg)–(hh) (Reserved).

(ii) Positions of Presidential Intern, GS–9 and 11, in the Presidential Management Intern Program. Initial appointments must be made at the GS–9 level. No one may serve under this authority for more than 2 years, unless extended with OPM approval for up to 1 additional year. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive appointment under the provisions of Executive order 12364, in accordance with requirements published in the Federal Personnel Manual.

(jj–kk) (Reserved).

(ll) Positions as needed of readers for blind employees, interpreters for deaf employees and personal assistants for handicapped employees, filled on a full time, part-time, or intermittent basis.

Section 213.3103 Executive Office of the President

(a) *Office of Administration.* (1) Not to exceed 75 positions to provide administrative services and support to the White House office.

(b) *Office of Management and Budget.* (1) Not to exceed 10 positions at grades GS–9/15.

(c) *Council on Environmental Quality.* (1) Professional and technical positions in grades GS–9 through 15 on the staff of the Council.

(d)–(f) (Reserved).

(g) *National Security Council.* (1) All positions on the staff of the Council.

(h) *Office of Science and Technology Policy.* (1) Thirty positions of Senior Policy Analyst, GS–15; Policy Analyst, GS–11/14; and Policy Research Assistant, GS–9, for employment of anyone not to exceed 5 years on projects of a high priority nature.

(i) *Office of National Drug Control Policy.* (1) Not to exceed 15 positions, GS–15 and below, of senior policy analysts and other personnel with expertise in drug-related issues and/or

technical knowledge to aid in anti-drug abuse efforts.

Section 213.3104 Department of State

(a) *Office of the Secretary.* (1) All positions, GS–15 and below, on the staff of the Family Liaison Office, Director General of the Foreign Service and the Director of Personnel, Office of the Under Secretary for Management.

(2) One position of Museum Curator (Arts), in the Office of the Under Secretary for Management, whose incumbent will serve as Director, Diplomatic Reception Rooms. No new appointments may be made after February 28, 1997.

(b) *American Embassy, Paris, France.* (1) Chief, Travel and Visitor Unit. No new appointments may be made under this authority after August 10, 1981.

(c)-(f) (Reserved).

(g) *Bureau of Population, Refugees, and Migration.* (1) Not to exceed 10 positions at grades GS–5 through 11 on the staff of the Bureau.

(h) *Bureau of Administration.* (1) One Presidential Travel Officer. No new appointments may be made under this authority after June 11, 1981.

(2) One position of the Director, Art in Embassies Program, GM–1001–15.

Section 213.3105 Department of the Treasury

(a) *Office of the Secretary.* (1) Not to exceed 20 positions at the equivalent of GS–13 through GS–17 to supplement permanent staff in the study of complex problems relating to international financial, economic, trade, and energy policies and programs of the Government, when filled by individuals with special qualifications for the particular study being undertaken. Employment under this authority may not exceed 4 years.

(2) Not to exceed 20 positions, which will supplement permanent staff involved in the study and analysis of complex problems in the area of domestic economic and financial policy. Employment under this authority may not exceed 4 years.

(3) Not to exceed 20 positions in the Office of the Under Secretary (Enforcement). Employment under this authority may not exceed 4 years, and no new appointments may be made after July 31, 2001.

(b) *U.S. Customs Service.* (1) Positions in foreign countries designated as "interpreter-translator" and "special employees," when filled by appointment of persons who are not citizens of the United States; and positions in foreign countries of messenger and janitor.

(2)–(5) (Reserved).

(6) Three hundred positions of Criminal Investigator for special assignments and 10 positions for oversight policy and direction of sensitive law enforcement activities.

(7)–(8) (Reserved).

(9) Not to exceed 25 positions of Customs Patrol Officers in the Papago Indian Agency in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(d) *Office of Thrift Supervision.* (1) All positions in the supervision policy and supervision operations functions of OTS. No new appointments may be made under this authority after December 31, 1993.

(e) *Internal Revenue Service.* (1) Twenty positions of investigator for special assignments.

(f) (Reserved).

(g) *Bureau of Alcohol, Tobacco, and Firearms.* (1) One hundred positions of criminal investigator for special assignments.

Section 213.3106 Department of Defense

(a) *Office of the Secretary.* (1)–(5) (Reserved).

(6) One Executive Secretary, US–USSR Standing Consultative Commission and Staff Analyst (SALT), Office of the Assistant Secretary of Defense (International Security Affairs).

(b) *Entire Department (including the Office of the Secretary of Defense and the Departments of the Army, Navy, and Air Force).* (1) Professional positions in Military Dependent School Systems overseas.

(2) Positions in attache 1 systems overseas, including all professional and scientific positions in the Naval Research Branch Office in London.

(3) Positions of clerk-translator, translator, and interpreter overseas.

(4) Positions of Educational Specialist the incumbents of which will serve as Director of Religious Education on the staffs of the chaplains in the military services.

(5) Positions under the program for utilization of alien scientists, approved under pertinent directives administered by the Director of Defense Research and Engineering of the Department of Defense, when occupied by alien scientists initially employed under the program including those who have acquired United States citizenship during such employment.

(6) Positions in overseas installations of the Department of Defense when filled by dependents of military or civilian employees of the U.S. Government residing in the area. Employment under this authority may not extend longer than 2 months following the transfer from the area or separation of a dependent's sponsor: *Provided*, that (i) a school employee may be permitted to complete the school year; and (ii) an employee other than a school employee may be permitted to serve up to 1 additional year when the military department concerned finds that the additional employment is in the interest of management.

(7) Twenty secretarial and staff support positions at GS–12 or below on the White House Support Group.

(8) Positions in DOD research and development activities occupied by participants in the DOD Science and Engineering Apprenticeship Program for High School Students. Persons employed under this authority shall be bona fide high school students, at least 14 years old, pursuing courses related to the position occupied and limited to 1,040 working hours a year. Children of DOD employees may be appointed to these positions, notwithstanding the sons and daughters restriction, if the positions are in field activities at remote locations. Appointments under this authority may be made only to positions for which qualification standards established under 5 CFR Part 302 are consistent with the education and experience standards established for comparable positions in the competitive service. Appointments under this authority may not be used to extend the service limits contained in any other appointing authority.

(d) *General.* (1) Positions concerned with advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information, including scientific and technical positions in the intelligence function; and positions involved in the planning, programming, and management of intelligence resources when, in the opinion of OPM, it is impracticable to examine. This authority does not apply to positions assigned to cryptologic and communications intelligence activities/functions.

(2) Positions involved in intelligence-related work of the cryptologic intelligence activities of the military departments. This includes all positions of intelligence research specialist, and similar positions in the intelligence classification series; all scientific and technical positions involving the applications of engineering, physical or technical sciences to intelligence work; and professional as well as intelligence technician positions in which a majority of the incumbent's time is spent in advising, administering, supervising, or performing work in the collection, processing, analysis, production, evaluation, interpretation, dissemination, and estimation of intelligence information or in the planning, programming, and management of intelligence resources.

(e) *Uniformed Services University of the Health Sciences.*

(1) Positions of President, Vice Presidents, Assistant Vice Presidents, Deans, Deputy Deans, Associate Deans, Assistant Deans, Assistants to the President, Assistants to the Vice Presidents, Assistants to the Deans, Professors, Associate Professors, Assistant Professors, Instructors, Visiting Scientists, Research Associates, Senior Research Associates, and Postdoctoral Fellows.

(2) Positions established to perform work on projects funded from grants.

(f) *National Defense University.* (1) Not to exceed 16 positions of senior policy analyst, GS–15, at the Strategic Concepts Development Center. Initial appointments to these positions may not exceed 6 years, but may be extended thereafter in 1-, 2-, or 3-year increments, indefinitely.

(g) *Defense Communications Agency.* (1) Not to exceed 10 positions at grades GS–10/15 to staff and support the Crisis Management Center at the White House.

(h) *Defense Systems Management College, Fort Belvoir, Va.* (1) The Provost and professors in grades GS–13 through 15.

(i) *George C. Marshall European Center for Security Studies, Garmisch, Germany.* (1) The Director, Deputy Director, and positions of professor, instructor, and lecturer at the George C. Marshall European Center for Security Studies, Garmisch, Germany, for initial employment not to exceed 3 years, which may be renewed in increments from 1 to 2 years thereafter.

(j) *Asia-Pacific Center for Security Studies, Honolulu, Hawaii.* (1) The Director, Deputy Director, Dean of Academics, Director of College, deputy department chairs, and senior positions of professor, associate professor, and research fellow within the Asia Pacific Center. Appointments may be made not to exceed 3 years and may be extended for periods not to exceed 3 years.

Section 213.3107 Department of the Army

(a)-(c) (Reserved).

(d) *U.S. Military Academy, West Point, New York.* (1) Civilian professors, instructors, teachers (except teachers at the Children's School), Cadet Social Activities Coordinator, Chapel Organist and Choir-Master, Director of Intercollegiate Athletics, Associate Director of Intercollegiate Athletics, coaches, Facility Manager, Building Manager, three Physical Therapists (Athletic Trainers), Associate Director of Admissions for Plans and Programs, Deputy Director of Alumni Affairs; and librarian when filled by an officer of the Regular Army retired from active service, and the military secretary to the Superintendent when filled by a U.S. Military Academy graduate retired as a regular commissioned officer for disability.

(e)-(f) (Reserved).

(g) *Defense Language Institute.* (1) All positions (professors, instructors, lecturers) which require proficiency in a foreign language or a knowledge of foreign language teaching methods.

(h) *Army War College, Carlisle Barracks, PA.* (1) Positions of professor, instructor, or lecturer associated with courses of instruction of at least 10 months duration for employment not to exceed 5 years, which may be renewed in 1-, 2-, 3-, 4-, or 5-year increments indefinitely thereafter.

(i) (Reserved).

(j) *U.S. Military Academy Preparatory School, Fort Monmouth, New Jersey.* (1) Positions of Academic Director, Department Head, and Instructor.

(k) *U.S. Army Command and General Staff College, Fort Leavenworth, Kansas.* (1) Positions of professor, associate professor, assistant professor, and instructor associated with courses of instruction of at least 10 months duration, for employment not to exceed up to 5 years, which may be renewed in 1, 2, 3, 4, or 5-year increments indefinitely thereafter.

Section 213.3108 Department of the Navy

(a) *General.* (1)–(14) (Reserved).

(15) Marine positions assigned to a coastal or seagoing vessel operated by a naval activity for research or training purposes.

(16) All positions necessary for the administration and maintenance of the official residence of the Vice President.

(b) *Naval Academy, Naval Postgraduate School, and Naval War College.* (1) Professors, instructors, and teachers; the Director of Academic Planning, Naval Postgraduate School; and the Librarian, Organist-Choirmaster, Registrar, the Dean of Admissions, and social counselors at the Naval Academy.

(c) *Chief of Naval Operations.* (1) One position at grade GS–12 or above that will provide technical, managerial, or administrative support on highly classified functions to the Deputy Chief of Naval Operations (Plans, Policy, and Operations).

(d) *Military Sealift Command.* (1) All positions on vessels operated by the Military Sealift Command.

(e) *Pacific Missile Range Facility, Barking Sands, Hawaii.* (1) All positions. This authority applies only to positions that must be filled pending final decision on contracting of Facility operations. No new appointments may be made under this authority after July 29, 1988.

(f) (Reserved).

(g) *Office of Naval Research.* (1) Scientific and technical positions, GS/GM–13/15, in the Office of Naval Research Asian Office in Tokyo, Japan, which covers East Asia, New Zealand and Australia. Positions are to be filled by personnel having specialized experience in scientific and/or technical disciplines of current interest to the Department of the Navy.

Section 213.3109 Department of the Air Force

(a) *Office of the Secretary.* (1) One Special Assistant in the Office of the Secretary of the Air Force. This position has advisory rather than operating duties except as operating or administrative responsibilities may be exercised in connection with the pilot studies.

(b) *General.* (1) Professional, technical, managerial and administrative positions supporting space activities, when approved by the Secretary of the Air Force.

(2) Ninety-five positions engaged in interdepartmental defense projects involving scientific and technical evaluations.

(c) Not to exceed 20 professional positions, GS–11 through GS–15, in Detachments 6 and 51, SM–ALC, Norton and McClellan Air Force Bases, California, which will provide logistic support management to specialized research and development projects.

(d) *U.S. Air Force Academy, Colorado.* (1) (Reserved).

(2) Positions of Professor, Associate Professor, Assistant Professor, and Instructor, in the Dean of Faculty, Commandant of Cadets, Director of Athletics, and Preparatory School of the United States Air Force Academy.

(e) (Reserved).

(f) *Air Force Office of Special Investigations.* (1) Not to exceed 350 positions of Criminal Investigators/Intelligence Research Specialists, GS–5 through GS–15.

(g) Not to exceed eight positions, GS–12 through 15, in Headquarters Air Force Logistics Command, DCS Material Management, Office of Special

Activities, Wright-Patterson Air Force Base, Ohio, which will provide logistic support management staff guidance to classified research and development projects.

(h) *Air University, Maxwell Air Force Base, Alabama.* (1) Positions of Professor, Instructor, or Lecturer.

(i) *Air Force Institute of Technology, Wright-Patterson Air Force Base, Ohio.* (1) Civilian deans and professors.

(j) *Air Force Logistics Command.* (1) One Supervisory Logistics Management Specialist, GM–346–14, in Detachment 2, 2762 Logistics Management Squadron (Special), Greenville, Texas.

(k) One position of Supervisory Logistics Management Specialist, GS–346–15, in the 2762nd Logistics Squadron (Special), at Wright-Patterson Air Force Base, Ohio.

(l) One position of Commander, Air National Guard Readiness Center, Andrews Air Force Base, Maryland.

Section 213.3110 Department of Justice

(a) *General.* (1) Deputy U.S. Marshals employed on an hourly basis for intermittent service.

(2)–(5) (Reserved).

(6) Positions of Program Manager and Assistant Program Manager supporting the International Criminal Investigative Training Assistance Program in foreign countries. Initial appointments under this authority may not exceed 2 years, but may be extended for an additional period not to exceed 2 years.

(b) *Immigration and Naturalization Service.* (1) (Reserved).

(2) Not to exceed 500 positions of interpreters and language specialists, GS–1040–5/9.

(3) Not to exceed 25 positions, GS–15 and below, with proficiency in speaking, reading, and writing the Russian language and serving in the Soviet Refugee Processing Program with permanent duty location in Moscow, Russia.

(c) *Drug Enforcement Administration.* (1) (Reserved).

(2) Four hundred positions of Intelligence Research Agent and/or Intelligence Operation Specialist in the GS–132 series, grades GS–9 through GS–15.

(3) Not to exceed 200 positions of Criminal Investigator (Special Agent). New appointments may be made under this authority only at grades GS–7/11.

(d) *National Drug Intelligence Center.* All positions.

Section 213.3112 Department of the Interior

(a) *General.* (1) Technical, maintenance, and clerical positions at or below grades GS–7, WG–10, or equivalent, in the field service of the Department of the Interior, when filled by the appointment of persons who are certified as maintaining a permanent and exclusive residence within, or contiguous to, a field activity or district, and as being dependent for livelihood primarily upon employment available within the field activity of the Department.

(2) All positions on Government-owned ships or vessels operated by the Department of the Interior.

(3) Temporary or seasonal caretakers at temporarily closed camps or improved areas to maintain grounds, buildings, or other structures and prevent damages or theft of Government property. Such appointments shall not extend beyond 130 working days a year without the prior approval of OPM.

(4) Temporary, intermittent, or seasonal field assistants at GS–7, or its equivalent, and below in such areas as forestry, range management, soils, engineering, fishery and wildlife management, and with surveying parties. Employment under this authority may not exceed 180 working days a year.

(5) Temporary positions established in the field service of the Department for emergency forest and range fire prevention or suppression and blister rust control for not to exceed 180 working days a year: *Provided,* that an employee may work as many as 220 working days a year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property.

(6) Persons employed in field positions, the work of which is financed jointly by the Department of the Interior and cooperating persons or organizations outside the Federal service.

(7) All positions in the Bureau of Indian Affairs and other positions in the Department of the Interior directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of the Interior is responsible for defining the term "Indian."

(8) Temporary, intermittent, or seasonal positions at GS–7 or below in Alaska, as follows: Positions in nonprofessional mining activities, such as those of drillers, miners, caterpillar operators, and samplers. Employment under this authority shall not exceed 180 working days a year and shall be appropriate only when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(9) Temporary, part-time, or intermittent employment of mechanics, skilled laborers, equipment operators and tradesmen on construction, repair, or maintenance work not to exceed 180 working days a year in Alaska, when the activity is carried on in a remote or isolated area and there is a shortage of available candidates for the positions.

(10) Seasonal airplane pilots and airplane mechanics in Alaska, not to exceed 180 working days a year.

(11) Temporary staff positions in the Youth Conservation Corps Centers operated by the Department of the Interior. Employment under this authority shall not exceed 11 weeks a year except with prior approval of OPM.

(12) Positions in the Youth Conservation Corps for which pay is fixed at the Federal minimum wage rate. Employment under this authority may not exceed 10 weeks.

(b) (Reserved).

(c) *Indian Arts and Crafts Board.* (1) The Executive Director.

(d) (Reserved).

(e) *Office of the Assistant Secretary, Territorial and International Affairs.* (1) (Reserved).

(2) Not to exceed four positions of Territorial Management Interns, grades GS–5, GS–7, or GS–9, when filled by territorial residents who are U.S. citizens from the Virgin Islands or Guam; U.S. nationals from American Samoa; or in the case of the Northern Marianas, will become U.S. citizens upon termination of the U.S. trusteeship. Employment under this authority may not exceed 6 months.

(3) (Reserved).

(4) Special Assistants to the Governor of American Samoa who perform specialized administrative, professional, technical, and scientific duties as members of his or her immediate staff.

(f) *National Park Service.* (1) (Reserved).

(2) Positions established for the administration of Kalaupapa National Historic Park, Molokai, Hawaii, when filled by appointment of qualified patients and Native Hawaiians, as provided by Public Law 95–565.

(3) Seven full-time permanent and 31 temporary, part-time, or intermittent positions in the Redwood National Park, California, which are needed for rehabilitation of the park, as provided by Public Law 95–250.

(4) One Special Representative of the Director.

(5) All positions in the Grand Portage National Monument, Minnesota, when filled by the appointment of recognized members of the Minnesota Chippewa Tribe.

(g) *Bureau of Reclamation.* (1) Appraisers and examiners employed on a temporary, intermittent, or part-time basis on special valuation or prospective-entrymen-review projects where knowledge of local values on conditions or other specialized qualifications not possessed by regular Bureau employees are required for successful results. Employment under this provision shall not exceed 130 working days a year in any individual case: *Provided,* that such employment may, with prior approval of OPM, be extended for not to exceed an additional 50 working days in any single year.

(h) *Office of the Deputy Assistant Secretary for Territorial Affairs.* (1) Positions of Territorial Management Interns, GS–5, when filled by persons selected by the Government of the Trust Territory of the Pacific Islands. No appointment may extend beyond 1 year.

Section 213.3113 Department of Agriculture

(a) *General.* (1) Agents employed in field positions the work of which is financed jointly by the Department and cooperating persons, organizations, or governmental agencies outside the Federal service. Except for positions for which selection is jointly made by the Department and the cooperating organization, this authority is not applicable to positions in the Agricultural Research Service or the National Agricultural Statistics Service. This authority is not applicable to the following positions in the Agricultural Marketing Service: Agricultural commodity grader (grain) and (meat), (poultry), and (dairy), agricultural commodity aid (grain), and tobacco inspection positions.

(2)–(4) (Reserved).

(5) Temporary, intermittent, or seasonal employment in the field service of the Department in positions at and below GS–7 and WG–10 in the following types of positions: Field assistants for subprofessional services; agricultural helpers, helper-leaders, and workers in the Agricultural Research Service and the Animal and Plant Health Inspection Service; and subject to prior OPM approval granted in the calendar year in which the appointment is to be made, other clerical, trades, crafts, and manual labor positions. Total employment under this subparagraph may not exceed 180 working days in a service year: *Provided,* that an employee may work as many as 220 working days in a service year when employment beyond 180 days is required to cope with extended fire seasons or sudden emergencies such as fire, flood, storm, or other unforeseen situations involving potential loss of life or property. This paragraph does not cover trades, crafts, and manual labor positions covered by paragraph (i) of § 213.3102 or positions within the Forest Service.

(6) (Reserved).

(7) Not to exceed 34 Program Assistants, whose experience acquired in positions excepted from the competitive civil service in the administration of agricultural programs at the State level is needed by the Department for the more efficient administration of its programs. No new appointment may be made under this authority after December 31, 1985.

(b)–(c) (Reserved).

(d) *Farm Service Agency.* (1) (Reserved).

(2) Members of State Committees: *Provided,* that employment under this authority shall be limited to temporary intermittent (WAE) positions whose principal duties involve administering farm programs within the State consistent with legislative and Departmental requirements and reviewing national procedures and policies for adaptation at State and local levels within established parameters. Individual appointments under this authority are for 1 year and may be extended only by the Secretary of Agriculture or his designee. Members of State Committees serve at the pleasure of the Secretary.

(e) *Rural Development.* (1) (Reserved).

(2) County committeemen to consider, recommend, and advise with respect to the Rural Development program.

(3) Temporary positions whose principal duties involve the making and servicing of natural disaster emergency loans pursuant to current statutes authorizing natural disaster emergency loans. Appointments under this provision shall not exceed 1 year unless extended for one additional period not to exceed 1 year, but may, with prior approval of OPM be further extended for additional periods not to exceed 1 year each.

(4)–(5) (Reserved).

(6) Professional and clerical positions in the Trust Territory of the Pacific Islands when occupied by indigenous residents of the Territory to provide financial assistance pursuant to current authorizing statutes.

(f) *Agricultural Marketing Service.* (1) Positions of Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–9 and below in the tobacco, dairy, and poultry commodities; Meat Acceptance Specialists, GS–11 and below; Clerks, Office Automation Clerks, and Computer Clerks at GS–5 and below; Clerk-Typists at grades GS–4 and below; and Laborers under the Wage System. Employment under this authority is limited to either 1,280 hours or 180 days in a service year.

(2) Positions of Agricultural Commodity Graders, Agricultural Commodity Technicians, and Agricultural Commodity Aids at grades GS–11 and below in the cotton, raisin, and processed fruit and vegetable commodities and the following positions in support of these commodities: Clerks, Office Automation Clerks, and Computer Clerks and Operators at GS–5 and below; Clerk-Typists at grades GS–4 and below; and, under the Federal Wage System, High Volume Instrumentation (HVI) Operators and HVI Operator Leaders at WG/WL–2 and below, respectively, Instrument Mechanics/Workers/Helpers at WG–10 and below, and Laborers. Employment under this authority may not exceed 180 days in a service year. In unforeseen situations such as bad weather or crop conditions, unanticipated plant demands, or increased imports, employees may work up to 240 days in a service year. Cotton Agricultural Commodity Graders, GS–5, may be employed as trainees for the first appointment for an initial period of 6 months for training without regard to the service year limitation.

(3) Milk Market Administrators.

(4) All positions on the staffs of the Milk Market Administrators.

(g)–(k) (Reserved).

(l) *Food Safety and Inspection Service.* (1)–(2) (Reserved).

(3) Positions of meat and poultry inspectors (veterinarians at GS–11 and below and nonveterinarians at appropriate grades below GS–11) for employment on a temporary, intermittent, or seasonal basis, not to exceed 1,280 hours a year.

(m) *Grain Inspection, Packers and Stockyards Administration.* (1) One hundred and fifty positions of Agricultural Commodity Aid (Grain), GS–2/4; 100 positions of Agricultural Commodity Technician (Grain), GS–4/7; and 60 positions of Agricultural Commodity Grader (Grain), GS–5/9, for temporary employment on a part-time, intermittent, or seasonal basis not to exceed 1,280 hours in a service year.

(n) *Alternative Agricultural Research and Commercialization Corporation.* (1) Executive Director.

Section 213.3114 Department of Commerce

(a) *General.* (1)–(2) (Reserved).

(3) Not to exceed 50 scientific and technical positions whose duties are performed primarily in the Antarctic. Incumbents of these positions may be stationed in the continental United

States for periods of orientation, training, analysis of data, and report writing.

(b)–(c) (Reserved).

(d) *Bureau of the Census.* (1) Managers, supervisors, technicians, clerks, interviewers, and enumerators in the field service, for time-limited employment to conduct a census.

(2) Current Program Interviewers employed in the field service.

(e)–(h) (Reserved).

(i) *Office of the Under Secretary for International Trade.*

(1) Fifteen positions at GS–12 and above in specialized fields relating to international trade or commerce in units under the jurisdiction of the Under Secretary for International Trade. Incumbents will be assigned to advisory rather than to operating duties, except as operating and administrative responsibility may be required for the conduct of pilot studies or special projects. Employment under this authority will not exceed 2 years for an individual appointee.

(2) (Reserved).

(3) Not to exceed 15 positions in grades GS–12 through GS–15, to be filled by persons qualified as industrial or marketing specialists; who possess specialized knowledge and experience in industrial production, industrial operations and related problems, market structure and trends, retail and wholesale trade practices, distribution channels and costs, or business financing and credit procedures applicable to one or more of the current segments of U.S. industry served by the Under Secretary for International Trade, and the subordinate components of his organization which are involved in Domestic Business matters. Appointments under this authority may be made for a period of not to exceed 2 years and may, with prior approval of OPM, be extended for an additional period of 2 years.

(j) *National Oceanic and Atmospheric Administration.* (1)–(2) (Reserved).

(3) All civilian positions on vessels operated by the National Ocean Service.

(4) Temporary positions required in connection with the surveying operations of the field service of the National Ocean Service. Appointment to such positions shall not exceed 8 months in any 1 calendar year.

(k) (Reserved).

(l) *National Telecommunication and Information Administration.* (1) Seventeen professional positions in grades GS–13 through GS–15.

Section 213.3115 Department of Labor

(a) *Office of the Secretary.* (1) Chairman and five members, Employees' Compensation Appeals Board.

(2) Chairman and eight members, Benefits Review Board.

(b)–(c) (Reserved).

(d) *Employment and Training Administration.* (1) Not to exceed 10 positions of Supervisory Manpower Development Specialist and Manpower Development Specialist, GS–7/15, in the Division of Indian and Native American Programs, when filled by the appointment of persons of one-fourth or more Indian blood. These positions require direct contact with Indian tribes and communities for the development and administration of comprehensive employment and training programs.

Section 213.3116 Department of Health and Human Services

(a) *General.* (1) Intermittent positions, at GS–15 and below and WG–10 and below, on teams under the National Disaster Medical System including Disaster Medical Assistance Teams and specialty teams, to respond to disasters, emergencies, and incidents/events involving medical, mortuary and public health needs.

(b) *Public Health Service.* (1) (Reserved).

(2) Positions at Government sanatoria when filled by patients during treatment or convalescence.

(3) (Reserved).

(4) Positions concerned with problems in preventive medicine financed or participated in by the Department of Health and Human Services and a cooperating State, county, municipality, incorporated organization, or an individual in which at least one-half of the expense is contributed by the participating agency either in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

(5)–(6) (Reserved).

(7) Not to exceed 50 positions associated with health screening programs for refugees.

(8) All positions in the Public Health Service and other positions in the Department of Health and Human Services directly and primarily related to providing services to Indians when filled by the appointment of Indians. The Secretary of Health and Human Services is responsible for defining the term "Indian."

(9) (Reserved).

(10) Health care positions of the National Health Service Corps for employment of any one individual not to exceed 4 years of service in health manpower shortage areas.

(11)–(14) (Reserved).

(15) Not to exceed 200 staff positions, GS–15 and below, in the Immigration Health Service, for an emergency staff to provide health related services to foreign entrants.

(c)-(e) (Reserved).

(f) *The President's Council on Physical Fitness.* (1) Four staff assistants.

Section 213.3117 Department of Education

(a) Positions concerned with problems in education financed and participated in by the Department of Education and a cooperating State educational agency, or university or college, in which there is joint responsibility for selection and supervision of employees, and at least one-half of the expense is contributed by the cooperating agency in salaries, quarters, materials, equipment, or other necessary elements in the carrying on of the work.

Section 213.3121 Corporation for National and Community Service

(a) All positions on the staff of the Corporation for National Community Service. No new appointments may be made under this authority after September 30, 1995.

Section 213.3124 Board of Governors, Federal Reserve System

(a) All positions.

Section 213.3127 Department of Veterans Affairs

(a) *Construction Division.* (1) Temporary construction workers paid from "purchase and hire" funds and appointed for not to exceed the duration of a construction project.

(b) Not to exceed 400 positions of rehabilitation counselors, GS–3 through GS–11, in Alcoholism Treatment Units and Drug Dependence Treatment Centers, when filled by former patients.

(c) *Board of Veterans' Appeals.* (1) Positions, GS–15, when filled by a member of the Board. Except as provided by section 201(d) of Public Law 100–687, appointments under this authority shall be for a term of 9 years, and may be renewed.

(2) Positions, GS–15, when filled by a non-member of the Board who is awaiting Presidential approval for appointment as a Board member.

(d) Not to exceed 600 positions at grades GS–3 through GS–11, involved in the Department's Vietnam Era Veterans Readjustment Counseling Service.

Section 213.3128 U.S. Information Agency

(a) *Office of Congressional and Public Liaison.* (1) Two positions of Liaison Officer (Congressional), GS–14.

(b) Five positions of Supervisory International Exchange Officer (Reception Center Director), GS–13 and GS–14, located in USIA's field offices of New Orleans, New York, Miami, San Francisco, and Honolulu. Initial appointments will not exceed December 31 of the calendar year in which appointment is made with extensions permitted up to a maximum period of 4 years.

Section 213.3132 Small Business Administration

(a) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by time-limited appointment of employees to make and administer disaster loans in the area under the Small Business Act, as amended. Service under this authority may not exceed 4 years, and no more than 2 years may be spent on a single disaster. Exception to this time limit may only be made with prior Office approval. Appointments under this authority may not be used to extend the 2-year service limit contained in paragraph (b) below. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

(b) When the President under 42 U.S.C. 1855–1855g, the Secretary of Agriculture under 7 U.S.C. 1961, or the Small Business Administration under 15 U.S.C. 636(b)(1) declares an area to be a disaster area, positions filled by time-limited appointment of employees to make and administer disaster loans in that area under the Small Business Act, as amended. No one may serve under this authority for more than an aggregate of 2 years without a break in service of at least 6 months. Persons who have had more than 2 years of service under paragraph (a) of this section must have a break in service of at least 8 months following such service before appointment under this authority. No one may be appointed under this authority to positions engaged in long-term maintenance of loan portfolios.

Section 213.3133 Federal Deposit Insurance Corporation

(a)-(b) (Reserved).

(c) Temporary positions located at closed banks or savings and loan institutions that are concerned with liquidating the assets of the institutions, liquidating loans to the institutions, or paying the depositors of closed insured institutions. New appointments may be made under this authority only during the 60 days immediately following the institution's closing date. Such appointments may not exceed 1 year, but may be extended for not to exceed 1 additional year.

Section 213.3136 U.S. Soldiers' and Airmen's Home

(a) (Reserved).

(b) Positions when filled by member-residents of the Home.

Section 213.3138 Federal Communications Commission

(a) Fifteen positions of Telecommunications Policy Analyst, GS–301–13/14/15. Initial appointment to these positions will be for a period of not to exceed 2 years with provision for two 1-year extensions. No new appointments may be made under this authority after May 31, 1998.

Section 213.3142 Export-Import Bank of the United States

(a) One Special Assistant to the Board of Directors, grade GS–14 and above.

Section 213.3146 Selective Service System

(a) State Directors.

Section 213.3148 National Aeronautics and Space Administration

(a) One hundred and fifty alien scientists having special qualifications in the fields of aeronautical and space research where such employment is deemed by the Administrator of the National Aeronautics and Space Administration to be necessary in the public interest.

Section 213.3155 Social Security Administration

(a) Six positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of Arizona when filled by the appointment of persons of one-fourth or more Indian blood.

(b) Seven positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of New Mexico when filled by the appointment of persons of one-fourth or more Indian blood.

(c) Two positions of Social Insurance Representative in the district offices of the Social Security Administration in the State of Alaska when filled by the appointments of persons of one-fourth or more Alaskan Native blood (Eskimos, Indians, or Aleuts).

Section 213.3162 The President's Crime Prevention Council

(a) Up to 7 positions established in the President's Crime Prevention Council office created by the Violent Crime Control and Law Enforcement Act of 1994. No new appointments may be made under this authority after March 31, 1998.

Section 213.3165 Chemical Safety and Hazard Investigation Board

(a) Up to 30 positions established to create the Chemical Safety and Hazard Investigation Board. No new appointments may be made under this authority after December 31, 1999.

Section 213.3174 Smithsonian Institution

(a) (Reserved).

(b) All positions located in Panama which are part of or which support the Smithsonian Tropical Research Institute.

(c) Positions at GS–15 and below in the National Museum of the American Indian requiring knowledge of, and experience in, tribal customs and culture. Such positions comprise approximately 10 percent of the Museum's positions and, generally, do not include secretarial, clerical, administrative, or program support positions.

Section 213.3175 Woodrow Wilson International Center for Scholars

(a) One East Asian Studies Program Administrator, one International Security Studies Program Administrator, one Latin American Program Administrator, one Russian Studies Program Administrator, one West European Program Administrator, and one Social Science Program Administrator.

Section 213.3178 Community Development Financial Institutions Fund

(a) All positions in the Fund and positions created for the purpose of establishing the Fund's operations in accordance with the Community Development Banking and Financial Institutions Act of 1994, except for any positions required by the Act to be filled by competitive appointment. No new appointments may be made under this authority after September 23, 1998.

Section 213.3180 Utah Reclamation and Conservation Commission

(a) Executive Director.

Section 213.3182 National Foundation on the Arts and the Humanities

(a) *National Endowment for the Arts.* (1) Artistic and related positions at grades GS–13 through GS–15 engaged in the review, evaluation and administration of applications and grants supporting the arts, related research and assessment, policy and

program development, arts education, access programs and advocacy or evaluation of critical arts projects and outreach programs. Duties require artistic stature, in-depth knowledge of arts disciplines and/or artistic-related leadership qualities.

Section 213.3191 Office of Personnel Management

(a)-(c) (Reserved).

(d) Part-time and intermittent positions of test examiners at grades GS–8 and below.

Section 213.3194 Department of Transportation

(a) *U.S. Coast Guard.* (1) (Reserved).

(2) Lamplighters.

(3) Professors, Associate Professors, Assistant Professors, Instructors, one Principal Librarian, one Cadet Hostess, and one Psychologist (Counseling) at the Coast Guard Academy, New London, Connecticut.

(b)-(d) (Reserved).

(e) *Maritime Administration.* (1)–(2) (Reserved).

(3) All positions on Government-owned vessels or those bareboats chartered to the Government and operated by or for the Maritime Administration.

(4)–(5) (Reserved).

(6) U.S. Merchant Marine Academy, positions of: Professors, Instructors, and Teachers, including heads of Departments of Physical Education and Athletics, Humanities, Mathematics and Science, Maritime Law and Economics, Nautical Science, and Engineering; Coordinator of Shipboard Training; the Commandant of Midshipmen, the Assistant Commandant of Midshipmen; Director of Music; three Battalion Officers; three Regimental Affairs Officers; and one Training Administrator.

(7) U.S. Merchant Marine Academy positions of: Associate Dean; Registrar; Director of Admissions; Assistant Director of Admissions; Director, Office of External Affairs; Placement Officer; Administrative Librarian; Shipboard Training Assistant; three Academy Training Representatives; and one Education Program Assistant.

Section 213.3195 Federal Emergency Management Agency

(a) Field positions at grades GS–15 and below, or equivalent, which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency. Persons may not be employed under this authority for long-term duties or for work not directly necessitated by the emergency response effort.

(b) Not to exceed 30 positions at grades GS–15 and below in the Offices of Executive Administration, General Counsel, Inspector General, Comptroller, Public Affairs, Personnel, Acquisition Management, and the State and Local Program and Support Directorate which are engaged in work directly related to unique response efforts to environmental emergencies not covered by the Disaster Relief Act of 1974, Public Law 93–288, as amended. Employment under this authority may not exceed 36 months on any single emergency, or for long-term duties or work not directly necessitated by the emergency response effort. No one may be reappointed under this authority for service in connection with a different emergency unless at least 6 months have elapsed since the individual's latest appointment under this authority.

(c) Not to exceed 350 professional and technical positions at grades GS–5 through GS–15, or equivalent, in Mobile Emergency Response Support Detachments (MERS).

Section 213.3199 Temporary Organizations

(a) Positions on the staffs of temporary boards and commissions which are established by law or Executive order for specified periods not to exceed 4 years to perform specific projects. A temporary board or commission originally established for less than 4 years and subsequently extended may continue to fill its staff positions under this authority as long as its total life, including extension(s), does not exceed 4 years. No board or commission may use this authority for more than 4 years to make appointments and position changes unless prior approval of the Office is obtained.

(b) Positions on the staffs of temporary organizations established within continuing agencies when all of the following conditions are met: (1) The temporary organization is established by an authority outside the agency, usually by law or Executive order; (2) the temporary organization is established for an initial period of 4 years or less and, if subsequently extended, its total life including extension(s) will not exceed 4 years; (3) the work to be performed by the temporary organization is outside the agency's continuing responsibilities; and (4) the positions filled under this authority are those for which other staffing resources or authorities are not available within the agency. An agency may use this authority to fill positions in organizations which do not meet all of the above conditions or to make appointments and position changes in a single organization during a period longer than 4 years only with prior approval of the Office.

Schedule B

Section 213.3202 Entire Executive Civil Service

(a) *Student Educational Employment Program—Student Temporary Employment Program.* (1) Students may be appointed to the Student Temporary Employment Program if they are pursuing any of the following educational programs:

(i) High School Diploma or General Equivalency Diploma (GED);

(ii) Vocational/Technical certificate;

(iii) Associate degree;

(iv) Baccalaureate degree;

(v) Graduate degree; or

(vi) Professional degree

* * * * *

[The remaining text of provisions pertaining to the Student Temporary Employment Program can be found in 5 CFR 213.3202(a).]

(b) Student Educational Employment Program—Student Career Experience Program. (1)(i) Students may be appointed to the Student Career Experience Program if they are pursuing any of the following educational programs:

(A) High school diploma or General Equivalency Diploma (GED);

(B) Vocational/Technical certificate;

(C) Associate degree;

(D) Baccalaureate degree;

(E) Graduate degree; or

(F) Professional degree.

(ii) Student participants in the Harry S. Truman Foundation Scholarship Program under the provision of Public Law 93–842 are eligible for appointments under the Student Career Experience Program.

[The remaining text of provisions pertaining to the Student Career Experience Program can be found in 5 CFR 213.3202(b).]

* * * * *

(c)–(i) (Reserved).

(j) Special executive development positions established in connection with Senior Executive Service candidate development programs which have been approved by OPM. A Federal agency may make new appointments under this authority for any period of employment not exceeding 3 years for one individual.

(k) Positions at grades GS–15 and below when filled by individuals who (1) are placed at a severe disadvantage in obtaining employment because of a psychiatric disability evidenced by hospitalization or outpatient treatment and have had a significant period of substantially disrupted employment because of the disability; and (2) are certified to a specific position by a State vocational rehabilitation counselor or a Veterans Administration counseling psychologist (or psychiatrist) who indicates that they meet the severe disadvantage criteria stated above, that they are capable of functioning in the positions to which they will be appointed, and that any residual disability is not job related. Employment of any individual under this authority may not exceed 2 years following each significant period of mental illness.

(l) (Reserved).

(m) Positions when filled under any of the following conditions: (1) Appointment at grades GS–15 and above, or equivalent, in the same or a different agency without a break in service from a career appointment in the Senior Executive Service (SES) of an individual who:

(i) Has completed the SES probationary period;

(ii) Has been removed from the SES because of less than fully successful executive performance or a reduction in force; and

(iii) Is entitled to be placed in another civil service position under 5 U.S.C. 3594(b).

(2) Appointment in a different agency without a break in service of an individual originally appointed under paragraph (m)(1).

(3) Reassignment, promotion, or demotion within the same agency of an individual appointed under this authority.

(n) Positions when filled by preference eligibles or veterans who have been separated from the armed forces under honorable conditions after 3 years or more of continuous active service and who, in accordance with 5 U.S.C. 3304(f) (Pub. L. 105–339), applied for these positions under merit promotion procedures when applications were being accepted by the agency from individuals outside its own workforce. These veterans may be promoted, demoted, or reassigned, as appropriate, to other positions within the agency but would remain employed under this excepted authority as long as there is no break in service.

Section 213.3203 Executive Office of the President

(a) (Reserved).

(b) *Office of the Special Representative for Trade Negotiations.* (1) Seventeen positions of economist at grades GS–12 through GS–15.

Section 213.3204 Department of State

(a)-(c) (Reserved).

(d) Fourteen positions on the household staff of the President's Guest House (Blair and Blair-Lee Houses).

(e) (Reserved).

(f) Scientific, professional, and technical positions at grades GS–12 to GS–15 when filled by persons having special qualifications in foreign policy matters. Total employment under this authority may not exceed 4 years.

Section 213.3205 Department of the Treasury

(a) Positions of Deputy Comptroller of the Currency, Chief National Bank Examiner, Assistant Chief National Bank Examiner, Regional Administrator of National Banks, Deputy Regional Administrator of National Banks, Assistant to the Comptroller of the Currency, National Bank Examiner, Associate National Bank Examiner, and Assistant National Bank Examiner, whose salaries are paid from assessments against national banks and other financial institutions.

(b)-(c) (Reserved).

(d) Positions concerned with the protection of the life and safety of the President and members of his immediate family, or other persons for whom similar protective services are prescribed by law, when filled in accordance with special appointment procedures approved by OPM. Service under this authority may not exceed (1) a total of 4 years; or (2) 120 days following completion of the service required for conversion under Executive Order 11203, whichever comes first.

Section 213.3206 Department of Defense

(a) *Office of the Secretary.* (1) (Reserved).

(2) Professional positions at GS–11 through GS–15 involving systems, costs, and economic analysis functions in the Office of the Assistant Secretary (Program Analysis and Evaluation); and in the Office of the Deputy Assistant Secretary (Systems Policy and Information) in the Office of the Assistant Secretary (Comptroller).

(3)–(4) (Reserved).

(5) Four Net Assessment Analysts.

(b) *Interdepartmental activities.* (1) Five positions to provide general administration, general art and information, photography, and/or visual information support to the White House Photographic Service.

(2) Eight positions, GS–15 or below, in the White House Military Office, providing support for airlift operations, special events, security, and/or administrative services to the Office of the President.

(c) *National Defense University.* (1) Sixty-one positions of Professor, GS–13/15, for employment of any one individual on an initial appointment not to exceed 3 years, which may be renewed in any increment from 1 to 6 years indefinitely thereafter.

(d) *General.* (1) One position of Law Enforcement Liaison Officer (Drugs), GS–301–15, U.S. European Command.

(2) Acquisition positions at grades GS–5 through GS–11, whose incumbents have successfully completed the required course of education as participants in the Department of Defense scholarship program authorized under 10 U.S.C. 1744.

(e) *Office of the Inspector General.* (1) Positions of Criminal Investigator, GS–1811–5/15.

(f) *Department of Defense Polygraph Institute, Fort McClellan, Alabama.* (1) One Director, GM–15.

(g) *Defense Security Assistance Agency.* All faculty members with instructor and research duties at the Defense Institute of Security Assistance Management, Wright Patterson Air Force Base, Dayton, Ohio. Individual appointments under this authority will be for an initial 3-year period, which may be followed by an appointment of indefinite duration.

Section 213.3207 Department of the Army

(a) *U.S. Army Command and General Staff College.* (1) Seven positions of professors, instructors, and education specialists. Total employment of any individual under this authority may not exceed 4 years.

Section 213.3208 Department of the Navy

(a) *Naval Underwater Systems Center, New London, Connecticut.* (1) One position of Oceanographer, grade GS–14, to function as project director and manager for research in the weapons systems applications of ocean eddies.

(b) All civilian faculty positions of professors, instructors, and teachers on the staff of the Armed Forces Staff College, Norfolk, Virginia.

(c) One Director and four Research Psychologists at the professor or GS–15 level in the Defense Personnel Security Research and Education Center.

(d) All civilian professor positions at the Marine Corps Command and Staff College.

(e) One position of Staff Assistant, GS–301–15, whose incumbent will

manage the Navy's Executive Dining facilities at the Pentagon.

(f) One position of Housing Management Specialist, GM–1173–14, involved with the Bachelor Quarters Management Study. No new appointments may be made under this authority after February 29, 1992.

Section 213.3209 Department of the Air Force

(a) Not to exceed four interdisciplinary positions for the Air Research Institute at the Air University, Maxwell Air Force Base, Alabama, for employment to complete studies proposed by candidates and acceptable to the Air Force. Initial appointments are made not to exceed 3 years, with an option to renew or extend the appointments in increments of 1, 2, or 3 years indefinitely thereafter.

(b)—(c) (Reserved).

(d) Positions of Instructor or professional academic staff at the Air University, associated with courses of instruction of varying durations, for employment not to exceed 3 years, which may be renewed for an indefinite period thereafter.

(e) One position of Director of Development and Alumni Programs, GS–301–13, with the U.S. Air Force Academy, Colorado.

Section 213.3210 Department of Justice

(a) Criminal Investigator (Special Agent) positions in the Drug Enforcement Administration. New appointments may be made under this authority only at grades GS–5 through 11. Service under the authority may not exceed 4 years. Appointments made under this authority may be converted to career or career-conditional appointments under the provisions of Executive Order 12230, subject to conditions agreed upon between the Department and OPM.

(b) (Reserved).

(c) Not to exceed 400 positions at grades GS–5 through 15 assigned to regional task forces established to conduct special investigations to combat drug trafficking and organized crime.

(d) (Reserved).

(e) Positions, other than secretarial, GS–6 through GS–15, requiring knowledge of the bankruptcy process, on the staff of the offices of United States Trustees or the Executive Office for U.S. Trustees.

Section 213.3213 Department of Agriculture

(a) *Foreign Agricultural Service.* (1) Positions of a project nature involved in international technical assistance activities. Service under this authority may not exceed 5 years on a single project for any individual unless delayed completion of a project justifies an extension up to but not exceeding 2 years.

(b) *General.* (1) Temporary positions of professional Research Scientists, GS–15 or below, in the Agricultural Research Service and the Forest Service, when such positions are established to support the Research Associateship Program and are filled by persons having a doctoral degree in an appropriate field of study for research activities of mutual interest to appointees and the agency. Appointments are limited to proposals approved by the appropriate Administrator. Appointments may be made for initial periods not to exceed 2 years and may be extended for up to 2 additional years. Extensions beyond 4 years, up to a maximum of 2 additional years, may be granted, but only in very rare and unusual circumstances, as determined by the Personnel Officer, Agricultural Research Service, or the Personnel Officer, Forest Service.

(2) Not to exceed 55 Executive Director positions, GM–301–14/15, with the State Rural Development Councils in support of the Presidential Rural Development Initiative.

Section 213.3214 Department of Commerce

(a) *Bureau of the Census.* (1) (Reserved).

(2) Not to exceed 50 Community Services Specialist positions at the equivalent of GS–5 through GS–12.

(3) Not to exceed 300 Community Awareness Specialist positions at the equivalent of GS–7 through GS–12. Employment under this authority may not exceed December 31, 1992.

(b)—(c) (Reserved).

(d) *National Telecommunications and Information Administration.* (1) Not to exceed 10 positions of Telecommunications Policy Analysts, grades GS–11 through 15. Employment under this authority may not exceed 2 years.

Section 213.3215 Department of Labor

(a) Chairman, two Members, and one Alternate Member, Administrative Review Board.

(b) (Reserved).

(c) *Bureau of International Labor Affairs.* (1) Positions in the Office of Foreign Relations, which are paid by outside funding sources under contracts for specific international labor market technical assistance projects. Appointments under this authority may not be extended beyond the expiration date of the project.

Section 213.3217 Department of Education

(a) Seventy-five positions, not in excess of GS–13, of a professional or analytical nature when filled by persons, other than college faculty members or candidates working toward college degrees, who are participating in midcareer development programs authorized by Federal statute or regulation, or sponsored by private nonprofit organizations, when a period of work experience is a requirement for completion of an organized study program. Employment under this authority shall not exceed 1 year.

(b) Fifty positions, GS–7 through GS–11, concerned with advising on education policies, practices, and procedures under unusual and abnormal conditions. Persons employed under this provision must be bona fide elementary school and high school teachers. Appointments under this authority may be made for a period of not to exceed 1 year, and may, with the prior approval of the Office of Personnel Management, be extended for an additional period of 1 year.

Section 213.3221 Corporation for National and Community Service

(a) Not to exceed 25 positions of Program Specialist at grades GS–9 through GS–15 in the Department of the Executive Director.

(b) Three positions of Program Specialist at grades GS–7 through GS–15 in the Department of the Executive Director.

Section 213.3227 Department of Veterans Affairs

(a) Not to exceed 800 principal investigatory, scientific, professional, and technical positions at grades GS–11 and above in the medical research program.

(b) Not to exceed 25 Criminal Investigator (Undercover) positions, GS–1811, in grades 5 through 12, conducting undercover investigations in the Veterans Health Administration supervised by the VA, Office of Inspector General. Initial appointments shall be greater than 1 year, but not to exceed 4 years and may be extended indefinitely in 1-year increments.

Section 213.3228 U.S. Information Agency

(a) *Voice of America.* (1) Not to exceed 200 positions at grades GS–15 and below in the Cuba Service. Appointments may not be made under this authority to administrative, clerical, and technical support positions.

Section 213.3236 U.S. Soldiers' and Airmen's Home

(a) (Reserved).

(b) Director, Health Care Services; Director, Member Services; Director, Logistics; and Director, Plans and Programs.

Section 213.3240 National Archives and Records Administration

(a) Executive Director, National Historical Publications and Records Commission.

Section 213.3248 National Aeronautics and Space Administration

(a) Not to exceed 40 positions of Command Pilot, Pilot, and Mission Specialist candidates at grades GS–7 through 15 in the Space Shuttle Astronaut program. Employment under this authority may not exceed 3 years.

Section 213.3264 U.S. Arms Control and Disarmament Agency

(a) Twenty-five scientific, professional, and technical positions at grades GS–12 through GS–15 when filled by persons having special qualifications in the fields of foreign policy, foreign affairs, arms control, and related fields. Total employment under this authority may not exceed 4 years.

Section 213.3274 Smithsonian Institution

(a) (Reserved).

(b) *Freer Gallery of Art.* (1) Not to exceed four positions of Oriental Art Restoration Specialist at grades GS–9 through GS–15.

Section 213.3276 Appalachian Regional Commission

(a) Two Program Coordinators.

Section 213.3278 Armed Forces Retirement Home

(a) *Naval Home, Gulfport, Mississippi.* (1) One Resource Management Officer position and one Public Works Officer position, GS/GM–15 and below.

Section 213.3282 National Foundation on the Arts and the Humanities

(a) (Reserved).

(b) *National Endowment for the Humanities.* (1) Professional positions at grades GS–11 through GS–15 engaged in the review, evaluation, and administration of grants supporting scholarship, education, and public programs in the humanities, the duties of which require indepth knowledge of a discipline of the humanities.

Section 213.3285 Pennsylvania Avenue Development Corporation

(a) One position of Civil Engineer (Construction Manager).

Section 213.3291 Office of Personnel Management

(a) Not to exceed eight positions of Associate Director at the Executive Seminar Centers at grades GS–13 and GS–14. Appointments may be made for any period up to 3 years and may be extended without prior approval for any individual. Not more than half of the authorized faculty positions at any one Executive Seminar Center may be filled under this authority.

(b) Twelve positions of faculty members at grades GS–13 through 15, at the Federal Executive Institute. Initial appointments under this authority may be made for any period up to 3 years and may be extended in 1-, 2-, or 3-year increments indefinitely thereafter.

Schedule C (Grades 5 through 15)

Section 213.3303 Executive Office of the President

Council of Economic Advisers

CEA 1 Confidential Assistant to the Chairman
CEA 4 Confidential Assistant to the Chairman
CEA 5 Administrative Operations Assistant to a Member
CEA 6 Administrative Operations Assistant to a Member

Council on Environmental Quality

CEQ 10 Special Assistant to the Chair, Council on Environmental Quality
CEQ 11 Associate Director for Communications to the Chair, Council on Environmental Quality
CEQ 13 Special Assistant to the Chair, Council on Environmental Quality

Office of Management and Budget

OMB 37 Legislative Analyst to the Associate Director for Legislative Affairs
OMB 80 Executive Assistant to the Deputy Director, Office of Management and Budget
OMB 92 Confidential Assistant to the Associate Director for Legislative Reference and Administration
OMB 97 Confidential Assistant to the Administrator, Office of Information and Regulatory Affairs
OMB 102 Special Assistant to the Director, Office of Management and Budget
OMB 107 Senior Public Affairs Specialist to the Director, Office of Management and Budget
OMB 110 Confidential Assistant to the Executive Associate Director
OMB 115 Confidential Assistant to the Associate Director for General Government and Finance
OMB 117 Confidential Assistant to the Associate Director, Health/Personnel
OMB 118 Special Assistant to the Controller
OMB 120 Confidential Assistant to the Associate Director, for Natural Resources, Energy and Science
OMB 122 Senior Public Affairs Officer to the Associate Director for Communications
OMB 123 Legislative Analyst to the Associate Director for Legislative Affairs
OMB 125 Legislative Assistant to the Associate Director, Legislative Affairs
OMB 126 Confidential Assistant to the Associate Director for National Security and International Affairs
OMB 128 Confidential Assistant to the Executive Associate Director
OMB 129 Staff Assistant to the Associate Director, Legislative Affairs
OMB 130 Confidential Assistant to the Associate Director, Education, Income Maintenance, and Labor

Office of National Drug Control Policy

ONDCP 83 Chief, Press Relations to the Director, Office of National Drug Control Policy
ONDCP 86 Confidential Assistant to the Director
ONDCP 87 Confidential Secretary to the Deputy Director, Office of National Drug Control Policy
ONDCP 88 Strategic Analyst (Speech writer) to the Chief of Staff
ONDCP 95 Executive Assistant to the Deputy Director, Office of National Drug Control Policy
ONDCP 96 Deputy Events Manager to the Director, Strategic Affairs
ONDCP 97 Assistant Director, Strategic Planning to the Director, Strategic Planning
ONDCP 98 Staff Assistant to the Chief of Staff
ONDCP 100 Press Relations Assistant (Typing) to the Chief of Press Relations, Office of Public Affairs
ONDCP 102 Staff Assistant to the Chief of Staff
ONDCP 103 Staff Assistant to the Director, Office of the National Drug Control Policy
ONDCP 104 Staff Assistant to the Director, Office of the National Drug Control Policy

Office of Science and Technology Policy

OSTP 18 Special Assistant to the Director, Office of Science and Technology Policy

OSTP 21 Confidential Assistant to the Associate Director Technology Division
OSTP 22 Confidential Assistant to the Associate Director for Environment
OSTP 23 Confidential Assistant to the Associate Director for National Security and International Affairs
OSTP 27 Confidential Assistant to the Associate Director for Science
OSTP 28 Public Affairs Specialist to the Chief of Staff, Office of the Director

Office of the United States Trade Representative

USTR 56 Confidential Assistant to the Deputy U.S. Trade Representative
USTR 66 Congressional Affairs Specialist to the Assistant U.S. Trade Representative for Congressional Affairs
USTR 67 Confidential Assistant to the Chief of Staff
USTR 68 Confidential Assistant to the Deputy U.S. Trade Representative
USTR 69 Special Assistant to the Chief of Staff
USTR 70 Deputy Assistant U.S. Trade Representative for Congressional Relations to the Deputy U.S. Trade Representative

Official Residence of the Vice President

ORVP 1 Special Assistant, Official Residence of the Vice President to the Chief of Staff, Office of Mrs. Gore

President's Commission on White House Fellowships

PCWHF 7 Education Director to the Director, President's Commission on White House Fellowships
PCWHF 10 Special Assistant to the Director, President's Commission on White House Fellowships

Section 213.3304 Department of State

ST 101 Secretary (Steno O/A) to the Deputy Director
ST 102 Secretary (O/A) to the Under Secretary
ST 103 Confidential Assistant to the Assistant Director
ST 104 Special Assistant to the Under Secretary
ST 105 Congressional Affairs Specialist to the Director of Congressional Affairs
ST 220 Special Assistant to the Assistant Secretary, Bureau of Public Affairs
ST 329 Staff Assistant to the Deputy Secretary of State
ST 359 Legislative Officer to the Assistant Secretary, Bureau of Legislative Affairs
ST 399 Confidential Assistant to the Secretary of State
ST 400 Deputy Assistant Secretary to the Assistant Secretary, Economic and Business Affairs
ST 405 Supervisory Protocol Officer (Visits) to the Foreign Affairs Officer (Visits)
ST 406 Secretary (Typing) to the Assistant Secretary, Bureau of Economic And Business Affairs
ST 411 Protocol Officer (Visits) to the Chief, Visits Division
ST 416 Protocol Officer (Visits) to the Supervisory Protocol Officer for Visits
ST 426 Secretary (Steno) to the Assistant Secretary, Bureau of Human Rights and Humanitarian Affairs
ST 429 Special Assistant to the Director, Foreign Service Institute
ST 433 Correspondence Officer to the Assistant Secretary, Bureau of Legislative Affairs
ST 451 Special Assistant to the Ambassador-at-Large
ST 460 Staff Assistant to the Chief of Staff
ST 461 Senior Advisor to the Director, Policy Planning Staff
ST 465 Special Assistant to the Secretary of State
ST 467 Foreign Affairs Officer (Visits) to the Chief of Protocol
ST 468 Protocol Officer (Ceremonials) to the Foreign Affairs Officer (Assistant Chief of Protocol for Ceremonials)
ST 471 Special Assistant to the Legal Advisor, Office of the Legal Advisor
ST 478 Special Coordinator to the Deputy Assistant Secretary, Bureau of Democracy, Human Rights and Labor
ST 483 Foreign Affairs Officer to the Deputy Director, Office of Policy Planning
ST 484 Legislative Management Officer to the Assistant Secretary
ST 485 Member Policy Planning Staff to the Director
ST 491 Policy Advisor to the Assistant Secretary, Bureau of European and Canadian Affairs
ST 492 Senior Advisor to the Assistant Secretary, Bureau of South Asian Affairs
ST 493 Resources, Plans and Policy Advisor to the Director, Office of Resources, Plans and Policy
ST 495 Senior Coordinator for Democracy Coordination to the Assistant Secretary, Bureau of Democracy, Human Rights and Labor
ST 497 Legislative Management Officer to the Deputy Assistant Secretary, Bureau of Legislative Affairs
ST 498 Legislative Management Officer to the Deputy Assistant Secretary, Bureau of Legislative Affairs
ST 500 Staff Assistant to the Special Coordinator for Cyprus
ST 502 Senior Advisor to the Deputy Assistant Secretary, Bureau for International Narcotics and Law Enforcement Affairs
ST 508 Deputy Assistant Secretary to the Assistant Secretary, Bureau of International Organizations Affairs
ST 510 Special Assistant to the Ambassador-at-Large
ST 511 Special Assistant to the Legal Advisor
ST 512 Special Assistant to the Deputy Director
ST 514 Protocol Officer (Visits) to the Foreign Affairs Officer
ST 517 Special Assistant to the Under Secretary for Economics, Business and Agricultural Affairs
ST 519 Special Assistant to the Deputy Assistant Secretary, Bureau of Public Affairs
ST 521 Staff Assistant to the Assistant Secretary, Bureau of Public Affairs
ST 522 Special Assistant to the Assistant Secretary, Bureau of African Affairs
ST 523 Public Affairs Specialist to the Deputy Assistant Secretary, Bureau of Democracy, Human Rights and Labor
ST 524 Special Assistant to the Assistant Secretary, Bureau of African Affairs
ST 525 Staff Assistant to the Deputy Assistant Secretary for Public Affairs
ST 527 Staff Assistant to the Deputy Assistant Secretary, Bureau of Administration
ST 528 Foreign Affairs Officer (Ceremonials) to the Deputy Chief of Protocol
ST 529 Deputy Assistant Secretary to the Assistant Secretary, Bureau of Democracy, Human Rights and Labor
ST 530 Special Assistant to the Assistant Secretary, Bureau of Asian and Pacific Affairs
ST 531 Staff Assistant to the Senior Advisor to the Secretary and White House Liaison
ST 533 Staff Assistant to the Ambassador-at-Large for War Crimes Initiatives
ST 534 Special Advisor to the Under Secretary for Economic, Business and Agricultural Affairs
ST 535 Special Assistant to the Women's Coordinator
ST 536 Coordinator, Office of Business Affairs to the Under Secretary for Economic, Business and Agricultural Affairs
ST 538 Staff Assistant to the Deputy Chief of Staff

ST 539 Foreign Affairs Officer to the Under Secretary for Global Affairs
ST 540 Staff Assistant to the Under Secretary for Management
ST 542 Special Assistant to the Deputy Assistant Secretary, Bureau of Public Affairs
ST 543 Special Assistant to the Assistant Secretary, Bureau of Population, Refugees and Migration
ST 544 Special Assistant to the Deputy Assistant Secretary, Bureau of Public Affairs
ST 545 Deputy Assistant Secretary to the Assistant Secretary, Bureau of Intelligence and Research
ST 546 Special Assistant to the Assistant Secretary, Bureau of International Narcotics and Law Enforcement Affairs
ST 547 Special Assistant to the Deputy Assistant Secretary, Bureau of International Narcotics and Law Enforcement Affairs
ST 548 Member to the Director, Policy and Planning Staff
ST 549 Special Advisor to the Deputy Assistant Secretary
ST 550 Special Assistant to the Chief of Protocol
ST 551 Foreign Affairs Officer to the Deputy Secretary of State
ST 552 Special Assistant to the Senior Advisor
ST 553 Special Assistant to the Assistant Secretary for International Organization Affairs
ST 554 Legislative Management Officer to the Assistant Secretary, Bureau of Legislative Affairs
ST 555 Legislative Management Officer to the Deputy Assistant Secretary, Bureau of Legislative Affairs
ST 556 Legislative Management Officer to the Deputy Assistant Secretary
ST 557 Legislative Management Officer to the Assistant Secretary, Bureau of Legislative Affairs
ST 558 Staff Assistant to the Assistant Secretary, Bureau of Legislative Affairs
ST 559 Staff Assistant to the Deputy Assistant Secretary, Bureau of Legislative Affairs
ST 560 Special Advisor to the Deputy Assistant Secretary, Bureau of International Narcotics and Law Enforcement
ST 561 Foreign Affairs Officer to the Under Secretary for Global Affairs
ST 562 Legislative Management Officer to the Assistant Secretary, Bureau of Legislative Affairs
ST 563 Foreign Affairs Officer to the Deputy Director, Office of Policy Planning
ST 564 Public Affairs Specialist to the Deputy Assistant Secretary
ST 565 Public Affairs Specialist to the Deputy Assistant Secretary
ST 566 Public Affairs Specialist to the Deputy Assistant Secretary, Department Spokesman, Bureau of Public Affairs
ST 567 Public Affairs Specialist to the Deputy Assistant Secretary
ST 568 Public Affairs Specialist to the Deputy Assistant Secretary, Bureau of Public Affairs
ST 569 Public Affairs Specialist to the Deputy Assistant Secretary
ST 570 Senior Policy Advisor to the Assistant Secretary, Bureau of Legislative Affairs

United States Section, International Boundary and Water Commission, United States and Mexico

IBWC 1 Confidential Assistant (OA) to the Commissioner, United States Section, International Boundary and Water Commission, United States and Mexico

Section 213.3305 Department of the Treasury

TREA 139 Director, Strategic Planning, Scheduling and Advance to the Chief of Staff
TREA 213 Special Assistant to the Assistant Secretary for Legislative Affairs and Public Liaison
TREA 230 Public Affairs Specialist to the Director, Office of Public Affairs
TREA 250 Director, Office of Public Affairs to the Deputy Assistant Secretary (Public Affairs)
TREA 254 Deputy Executive Secretary for Policy Analysis to the Executive Secretary
TREA 277 Public Affairs Specialist to the Assistant Secretary for Public Affairs
TREA 316 Public Affairs Specialist and Advisor to the Director, Office of Public Affairs
TREA 317 Public Affairs Specialist to the Director of Public Affairs
TREA 318 Legislative Analyst to the Director, Office of Legislative Affairs
TREA 336 Director, Administrative Operations Division to the Deputy Assistant Secretary (Administration)
TREA 342 Deputy Treasurer of the United States to the Treasurer of the United States
TREA 345 Policy Advisor to the Assistant Secretary (Enforcement)
TREA 351 Public Affairs Specialist to the Director, Office of Public Affairs
TREA 357 Director, Office of Public Correspondence to the Executive Secretary
TREA 368 Special Assistant to the Deputy Secretary of the Treasury
TREA 372 Special Assistant to the Assistant Secretary (Financial Markets)
TREA 373 Senior Advisor for Electronic Commerce to the Under Secretary of International Affairs
TREA 375 Senior Advisor, Public Affairs to the Director of the U.S. Mint
TREA 378 Chief of Staff to the Under Secretary for Enforcement
TREA 379 Senior Advisor to the Chief of Staff
TREA 380 Senior Advisor to the Assistant Secretary (Legislative Affairs and Public Liaison)
TREA 381 Legislative Analyst to the Assistant Secretary for Legislative Affairs
TREA 384 Special Assistant and Associate White House Liaison to the Chief of Staff
TREA 387 Enforcement Policy Advisor to the Director, Office of Policy Development (Senior Advisor to the Assistant Secretary (Enforcement)
TREA 391 Associate Director of Scheduling and Advance to the Director, Strategic Planning, Scheduling and Advance
TREA 392 Senior Advisor to the Assistant Secretary for Public Affairs and Director of Public Affairs Planning
TREA 393 Attorney-Advisor to the General Counsel
TREA 394 Executive Secretary to the Chief of Staff
TREA 395 Deputy Executive Secretary for Policy Coordination to the Executive Secretary
TREA 396 Director, Public and Business Liaison to the Deputy Assistant Secretary for Public Liaison
TREA 397 Senior Deputy to the Assistant Secretary, Legislative Affairs and Public Liaison
TREA 398 Senior Advisor to the Assistant Secretary Financial Markets
TREA 400 Special Assistant to the Assistant Secretary for Management and Chief Financial Officer
TREA 401 Special Assistant for Scheduling to the Director, Scheduling and Advance
TREA 402 Deputy Chief of Staff to the Chief of Staff
TREA 403 Special Assistant to the Assistant Secretary for Economic Policy
TREA 404 Special Assistant to the Assistant Secretary for Financial Institutions
TREA 405 Special Assistant to the Assistant Secretary, Legislative Affairs and Public Liaison
TREA 406 Director, Public and Business Liaison to the Deputy

Assistant Secretary Public Liaison, Office of Legislative Affairs and Public Liaison
TREA 407 Senior Advisor to the Assistant Secretary (Financial Markets)
TREA 408 Senior Policy Advisor to the Deputy Assistant Secretary for Policy Enforcement
TREA 409 Deputy to the Assistant to the Assistant Secretary Legislative Affairs and Public Liaison

Section 213.3306 Department of Defense

DOD 24 Chauffeur to the Secretary of Defense
DOD 33 Personal Secretary to the Deputy Secretary of Defense
DOD 75 Chauffeur to the Deputy Secretary of Defense
DOD 271 Private Secretary to the Assistant Secretary of Defense (Reserve Affairs)
DOD 279 Personal and Confidential Assistant to the Director, Operational Test and Evaluation
DOD 295 Personal and Confidential Assistant to the Under Secretary of Defense for Personnel and Readiness
DOD 300 Confidential Assistant to the Under Secretary (Acquisition and Technology)
DOD 319 Confidential Assistant to the Secretary of Defense
DOD 321 Executive Assistant to the Assistant to the Vice President for National Security Affairs
DOD 332 Personal and Confidential Assistant to the Assistant Secretary of Defense (Regional Security)
DOD 355 Special Assistant for Strategic Modernization to the Assistant Secretary of Defense (Legislative Affairs)
DOD 368 Personal and Confidential Assistant to the Assistant Secretary of Defense for Legislative Affairs
DOD 380 Director of Protocol to the Chief of Staff
DOD 439 Staff Specialist to the Under Secretary (Acquisition and Technology)
DOD 440 Personal and Confidential Assistant to the Deputy Under Secretary of Defense for Acquisition Reform
DOD 449 Staff Specialist to the Assistant to the Secretary of Defense for Public Affairs
DOD 456 Special Assistant for Family Advocacy and External Affairs to the Deputy Assistant Secretary of Defense, (Prisoner of War/Missing in Action Affairs)
DOD 459 Public Affairs Specialist to the Assistant to the Secretary of Defense for Public Affairs
DOD 464 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison
DOD 468 Staff Specialist (International) to the Director, Defense Information Systems Agency
DOD 471 Defense Fellow to the Special Assistant for White House Liaison
DOD 474 Program Analyst to the Deputy Under Secretary (Environmental Security)
DOD 480 Executive Assistant to the Assistant Secretary of Defense (Strategy Requirements and Resources)
DOD 488 Personal and Confidential Assistant to the Under Secretary of Defense (Comptroller)
DOD 500 Staff Specialist to the Special Assistant for White House Liaison
DOD 501 Special Assistant to the Special Assistant to the Secretary of Defense for White House Liaison
DOD 504 Assistant for Antiterrorism Policy and Programs to the Deputy Assistant Secretary of Defense (Policy and Missions)
DOD 508 Defense Fellow to the Special Assistant for White House Liaison
DOD 516 Staff Specialist to the Deputy Under Secretary of Defense for Environmental Security
DOD 519 Private Secretary to the Assistant Secretary of Defense (Regional Security Affairs)
DOD 534 Confidential Assistant to the Special Assistant to the Secretary and Deputy Secretary of Defense
DOD 535 Special Assistant to the Deputy to the Under Secretary of Defense for Policy Support
DOD 545 Public Affairs Specialist to the Assistant to the Secretary of Defense (Public Affairs)
DOD 552 Special Assistant to the Assistant Secretary of Defense for Special Operations/Low Intensity Conflict
DOD 555 Confidential Assistant to the General Counsel, Department of Defense
DOD 559 Confidential Assistant to the Assistant Secretary of Defense, Force Management Policy
DOD 562 Defense Fellow to the Special Assistant Secretary for White House Liaison
DOD 564 Program Analyst to the Deputy Under Secretary (Environmental Secretary)
DOD 566 Personal and Confidential Assistant to the Principal Deputy Under Secretary of Defense for Policy
DOD 571 Secretary (OA) to the Inspector General, Department of Defense
DOD 577 Special Assistant to the Assistant Secretary (Legislative Affairs)
DOD 578 Personal and Confidential Assistant to the Under Secretary of Defense (Policy)
DOD 580 Defense Fellow to the Special Assistant for White House Liaison
DOD 581 Staff Specialist to the Special Assistant for White House Liaison
DOD 582 Defense Fellow to the Special Assistant for White House Liaison
DOD 583 Speech writer to the Assistant Secretary of Defense for Public Affairs
DOD 588 Public Affairs Specialist to the Assistant to the Secretary of Defense for Public Affairs
DOD 595 Confidential Assistant to the Assistant Secretary for Public Affairs
DOD 601 Staff Assistant to the Special Assistant for White House Liaison
DOD 604 Special Assistant for Outreach to the Deputy Under Secretary of Defense (Environmental Security)
DOD 605 Defense Fellow to the Special Assistant for White House Liaison
DOD 606 Defense Fellow to the Special Assistant for White House Liaison
DOD 607 Staff Specialist to the Assistant to the President/Director, White House Office for Women's Initiative and Outreach, Office of the Secretary
DOD 609 Private Secretary to the Deputy Secretary of Defense
DOD 610 Special Assistant to the Assistant Secretary for Health Affairs
DOD 611 Personal and Confidential Assistant to the Secretary of Defense
DOD 613 Staff Assistant to the Secretary of Defense
DOD 614 Staff Specialist to the Chief of Staff to the President
DOD 615 Special Assistant to the Deputy Under Secretary of Defense (Industrial Affairs and Installation)
DOD 617 Staff Specialist to the Director, NATO Policy
DOD 619 Defense Fellow to the Special Assistant for White House Liaison
DOD 620 Defense Fellow to the Special Assistant for White House Liaison
DOD 621 Defense Fellow to the Special Assistant for White House Liaison
DOD 623 Defense Fellow to the Special Assistant for White House Liaison

DOD 624 Defense Fellow to the Special Assistant for White House Liaison
DOD 628 Defense Fellow to the Special Assistant for White House Liaison
DOD 629 Special Assistant to the Assistant Secretary Defense, Strategy and Threat Reduction
DOD 630 Confidential Assistant to the Deputy Secretary of Defense
DOD 631 Staff Specialist to the Director, NATO Policy
DOD 632 Director for Communications Strategy to the Assistant Secretary of Defense for Public Affairs
DOD 634 Special Assistant to the Assistant Secretary of Defense for Legislative Affairs
DOD 635 Director of Public Services to the Assistant Secretary of Defense (Reserve Affairs)
DOD 636 Civilian Executive Assistant to the Chairman, Joint Chiefs of Staff
DOD 638 Speech writer to the Assistant Secretary for Public Affairs
DOD 639 Staff Specialist to the Deputy Assistant Secretary of Defense, (European and NATO Affairs)
DOD 640 Staff Specialist to the Assistant Secretary (Russia/Ukraine/Eurasia)
DOD 641 Foreign Affairs Specialist to the Deputy Assistant Secretary (Asian and Pacific Affairs)
DOD 642 Special Assistant to the Director, National Partnership for Reinventing Government
DOD 643 Staff Specialist to the Under Secretary for Acquisition and Technology
DOD 644 Special Assistant for Health Care Policy to the Assistant Secretary of Defense for Legislative Affairs
DOD 646 Defense Fellow to the Special Assistant for White House Liaison
DOD 647 Special Assistant to the Special Assistant to the Secretary and Deputy Secretary of Defense
DOD 648 Personal and Confidential Assistant to the Principal Deputy Under Secretary of Defense for Acquisition and Technology
DOD 649 Confidential Assistant to the Assistant Secretary of Defense for Health Affairs
DOD 650 Speech writer to the Assistant Secretary for Public Affairs
DOD 651 Defense Fellow to the Special Assistant for White House Liaison
DOD 652 Special Assistant to the Special Assistant to the Secretary and Deputy Secretary of Defense
DOD 654 Staff Specialist to the Director, Legislative Affairs
DOD 655 Staff Specialist to the Special Assistant to the President/Senior Director for Intelligence Programs
DOD 657 Director, Cooperative Threat Reduction to the Assistant Secretary for Strategy and Threat Reduction
DOD 658 Speech writer to the Assistant Secretary, Public Affairs
DOD 659 Assistant for Anti-Terrorism Policy to the Deputy Assistant Secretary (Policy and Missions)
DOD 660 Staff Specialist to the Special Assistant to the Secretary and Deputy Secretary of Defense
DOD 661 Defense Fellow to the Special Assistant for White House Liaison
DOD 662 Protocol Specialist to the Director of Protocol
DOD 663 Public Affairs Specialist to the Deputy Assistant Secretary for Communications
DOD 664 International Counterdrug Specialist to the Deputy Assistant Secretary, Drug Enforcement, Policy and Support

Section 213.3307 Department of the Army (DOD)

ARMY 1 Executive Assistant to the Secretary of the Army
ARMY 2 Personal and Confidential Assistant to the Under Secretary of the Army
ARMY 5 Secretary (Office Automation) to the Assistant Secretary of the Army (Installations, Logistics and Environment)
ARMY 17 Secretary (Office Automation) to the Assistant Secretary of the Army (Civil Works)
ARMY 21 Secretary (Office Automation) to the General Counsel of the Army
ARMY 55 Secretary (Office Automation) to the Assistant Secretary of the Army (Financial Management)
ARMY 73 Special Assistant to the Secretary of the Army
ARMY 75 Special Assistant (Civilian Aide Program) to the Executive Staff Assistant, Office of the Secretary of the Army
ARMY 76 Special Assistant to the Assistant Secretary, Research Development and Acquisition
ARMY 77 Secretary (Office Automation) to the Assistant Secretary of the Army for Research and Development and Acquisition
ARMY 78 Personal and Confidential Assistant to the Under Secretary of the Army

Section 213.3308 Department of the Navy (DOD)

NAV 56 Staff Assistant to the Assistant Secretary of the Navy (Financial Management)
NAV 61 Special Assistant to the Principal Deputy Secretary of the Navy (Manpower and Reserve Affairs)
NAV 62 Attorney Advisor to the Principal Deputy General Counsel
NAV 64 Staff Assistant to the Under Secretary of the Navy
NAV 66 Staff Assistant to the Secretary of the Navy
NAV 67 Staff Assistant to the Assistant Secretary of the Navy (Manpower and Reserve Affairs)
NAV 68 Special Assistant to the Residence Manager/Social Secretary
NAV 70 Staff Assistant to the Assistant Secretary of the Navy for Research, Development and Acquisition

Section 213.3309 Department of the Air Force (DOD)

AF 2 Confidential Assistant to the Under Secretary of the Air Force
AF 5 Secretary (Steno) to the Assistant Secretary Acquisition
AF 6 Secretary (Steno) to the Assistant Secretary (Manpower and Reserve Affairs, Installation and Environment)
AF 8 Secretary (Steno/OA) to the General Counsel of the Air Force
AF 22 Secretary (Stenography/OA) to the Assistant to the Vice President for National Security Affairs
AF 31 Staff Assistant to the Assistant to the Vice President for National Security Affairs
AF 39 Secretary (OA) to the Assistant Secretary of the Air Force (Financial Management and Comptroller)
AF 42 Staff Assistant to the Principal Deputy Assistant Secretary of the Air Force (Manpower, Reserve Affairs, Installations and Environment)
AF 43 Special Advisor for International Affairs to the Assistant to the Vice President for National Security Affairs

Section 213.3310 Department of Justice

JUS 25 Confidential Assistant to the Assistant Attorney General, Criminal Division
JUS 38 Secretary (OA) to the United States Attorney, Northern District of Illinois
JUS 40 Secretary (OA) to the United States Attorney, Eastern District of Michigan
JUS 75 Secretary (OA) to the United States Attorney, Northern District of Texas

JUS 83 Staff Assistant to the Assistant to the Attorney General (Chief Scheduler)
JUS 97 Assistant to the Attorney General
JUS 104 Special Assistant to the Assistant Attorney General
JUS 114 Staff Assistant to the Attorney General
JUS 128 Secretary (OA) to the United States Attorney, District of Arizona
JUS 133 Staff Assistant to the Assistant to the Attorney General
JUS 140 Attorney Advisor to the Assistant Attorney General
JUS 144 Special Assistant to the Solicitor General
JUS 148 Special Assistant to the Chairman, United States Postal Commission
JUS 150 Special Assistant to the Assistant Attorney General, Environment and Natural Resources Division
JUS 166 Counsel to the Attorney General
JUS 169 Secretary (OA) to the United States Attorney, Middle District of Florida
JUS 173 Secretary (OA) to the United States Attorney, Western District of Louisiana
JUS 184 Special Assistant to the Deputy Attorney General
JUS 198 Special Assistant to the Assistant Attorney General, Criminal Division
JUS 207 Staff Assistant to the Director, Office of Public Affairs
JUS 208 Staff Assistant to the Director, Office of Public Affairs
JUS 209 Confidential Assistant to the Assistant Attorney General for Civil Rights Division
JUS 233 Special Assistant to the Assistant Attorney General, Civil Rights Division
JUS 235 Public Affairs Specialist to the Director of Public Affairs
JUS 264 Confidential Assistant to the Assistant Attorney General
JUS 267 Counsel to the Assistant Attorney General
JUS 270 Special Assistant to the Assistant Attorney General, Civil Rights Division
JUS 273 Program Manager, Office of Violence Against Women to the Director, Office of Violence Against Women
JUS 282 Director, Volunteers for Tribal Youth to the Assistant Attorney General, Office of Policy Development
JUS 293 Special Assistant to the Deputy Attorney General
JUS 299 Public Affairs Assistant to the Director, Office of Public Affairs
JUS 312 Senior Counsel to the Assistant Attorney General
JUS 330 Attorney to the Deputy Director, Office of Intergovernmental Affairs
JUS 332 Special Assistant to the Assistant Attorney General for Civil Rights
JUS 344 Counsel to the Attorney General
JUS 357 Confidential Assistant to the Deputy Attorney General
JUS 360 Deputy Assistant Attorney General to the Assistant Attorney General, Office of Policy Development
JUS 361 Special Assistant to the Director Bureau of Justice Statistics
JUS 383 Staff Assistant to the Attorney General
JUS 385 Staff Assistant to the Attorney General
JUS 387 Deputy Director, Office of Public Affairs to the Director, Office of Public Affairs
JUS 404 Assistant to the Attorney General
JUS 412 Deputy Director, Office of Public Affairs to the Director, Office of Public Affairs
JUS 418 Secretary (OA) to the United States Attorney, District of Nebraska
JUS 419 Public Affairs Specialist to the United States Attorney, Northern District of Florida
JUS 420 Confidential Assistant to the United States Attorney, Eastern District of Pennsylvania
JUS 422 Secretary (OA) to the United States Attorney, Eastern District of Wisconsin
JUS 423 Secretary to the United States Attorney, District of New Mexico
JUS 425 Secretary (OA) to the United States Attorney, Middle District of Pennsylvania
JUS 427 Secretary (OA) to the United States Attorney, District of New Hampshire
JUS 431 Secretary (OA) to the United States Attorney, District of Oregon, Portland, OR
JUS 433 Secretary (OA) to the United States Attorney, Middle District of Louisiana
JUS 436 Secretary (OA) to the United States Attorney, Middle District of Alabama
JUS 445 Special Assistant to the Director, Community Relations Service
JUS 446 Senior Advisor to the Director, Community Oriented Policing Services
JUS 447 Special Assistant to the Director, Violence Against Women Program Officer

Section 213.3312 Department of the Interior

INT 171 Special Assistant to the Director of Communication
INT 172 Special Assistant to the Commissioner of Reclamation
INT 375 Special Assistant to the Chief of Staff
INT 442 Special Assistant to the Director, National Parks Service
INT 450 Special Assistant to the Director, United States Fish & Wildlife Service
INT 451 Deputy Director, Office of Insular Affairs to the Director, Office of Insular Affairs
INT 463 Special Assistant to the Director of the National Park Service
INT 467 Special Assistant to the Deputy Chief of Staff
INT 468 Special Assistant to the Chief of Staff
INT 474 Special Assistant for Outreach and Communications to the Commissioner, Bureau of Reclamation
INT 479 Special Assistant to the Associate Director for Policy and Management Improvement
INT 490 Special Assistant (Advance) to the Deputy Chief of Staff
INT 493 Special Assistant to the Deputy Chief of Staff
INT 502 Special Assistant to the Assistant Secretary for Policy, Management and Budget
INT 503 Special Assistant to the Director, Fish and Wildlife Service
INT 505 Special Assistant to the Director, National Park Service
INT 508 Special Assistant to the Deputy Secretary
INT 509 Special Assistant to the Director, National Park Service
INT 511 Special Assistant to the Deputy Chief of Staff
INT 512 Deputy Director, Office of Intergovernmental Affairs to the Deputy Chief of Staff
INT 513 Special Assistant to the Director, Office of Surface Mining, Office of the Director
INT 514 Special Assistant to the Director, Bureau of Land Management
INT 515 Special Assistant to the Chief of Staff
INT 516 Special Assistant to the Chief Biologist
INT 518 Special Assistant to the Deputy Director, Bureau Land Management
INT 519 Special Assistant to the Assistant Director for External Affairs, U.S. Fish and Wildlife Service
INT 520 Director of Scheduling and Advance to the Chief of Staff, Office of the Secretary
INT 521 Special Assistant and Counselor to the Assistant Secretary for Indian Affairs

INT 522 Special Assistant to the Assistant Secretary for Land and Minerals Management
INT 523 Chief of Staff to the Deputy Secretary
INT 524 Special Assistant to the Director, Bureau of Land Management
INT 525 Communications Director to the Assistant Secretary for Indian Affairs
INT 526 Deputy Director to the Director, Office of Communications
INT 527 Special Assistant (Speech Writer) to the Director, Office of Communications
INT 528 Special Assistant for Scheduling to the Deputy Director for External Affairs
INT 529 Special Assistant to the Director, Minerals Management Service
INT 531 Attorney Advisor (General) to the Solicitor
INT 532 Special Assistant to the Deputy Chief of Staff
INT 533 Deputy Scheduler (Outreach) to the Deputy Chief of Staff
INT 534 Special Assistant to the Director, Office of Surface Mining
INT 535 Special Assistant to the Director, Minerals Management Service
INT 536 Special Assistant to the Commissioner, Bureau of Reclamation
INT 537 Special Assistant to the Director, Office of Congressional and Legislative Affairs
INT 538 Special Assistant to the Chief of Staff
INT 539 Special Assistant to the White House Liaison

Section 213.3313 Department of Agriculture

AGR 3 Confidential Assistant to the Executive Assistant to the Secretary
AGR 5 Confidential Assistant to the Administrator, Foreign Agricultural Service
AGR 32 Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service
AGR 33 Confidential Assistant to the Administrator, Consolidated Farm Service Agency
AGR 34 Special Assistant to the Administrator, Agricultural Stabilization and Conservation Service
AGR 35 Staff Assistant to the Administrator, Federal Service Agency
AGR 48 Special Assistant to the Administrator, Food and Consumer Service
AGR 56 Private Secretary to the Assistant Secretary for Congressional Relations
AGR 64 Confidential Assistant to the Director, Office of Communications, Rural Development
AGR 77 Director, Intergovernmental Affairs to the Assistant Secretary for Congressional Relations
AGR 79 Confidential Assistant to the Administrator, Farmers Home Administration
AGR 100 Special Assistant for Nutrition Education to the Administrator, Food and Consumer Service
AGR 114 Confidential Assistant to the Assistant Secretary for Congressional Relations
AGR 118 Confidential Assistant to the Assistant Secretary for Congressional Relations
AGR 131 Private Secretary to the Under Secretary for Natural Resources and Environment
AGR 157 Director, Legislative Affairs Staff to the Administrator, Foreign Agricultural Service
AGR 159 Special Assistant to the Administrator, Foreign Agricultural Service
AGR 160 Confidential Assistant to the Associate Administrator, Foreign Agricultural Service
AGR 161 Special Assistant to the Director, Office of Public Affairs
AGR 162 Confidential Assistant to the Administrator, Agricultural Marketing Service
AGR 187 Special Assistant to the Administrator for Food and Consumer Service
AGR 188 Northeast Area Director to the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service
AGR 192 Area Director, South West Area to the Administrator, Farm Service Agency
AGR 205 Confidential Assistant to the Director, Office of Consumer Affairs
AGR 224 Chief of Staff to the Administrator, Risk Management Agency
AGR 231 Director, Office of Communications to the Deputy Under Secretary for Rural Development
AGR 258 Confidential Assistant to the Administrator, Foreign Agricultural Service
AGR 263 Special Assistant to the Chief, Natural Resources Conservation Service
AGR 267 Special Assistant to the Director, Office of Communications
AGR 268 Confidential Assistant to the Administrator, Rural Utilities Service
AGR 270 Director, Office of the Executive Secretariat to the Secretary of Agriculture
AGR 281 Confidential Assistant to the Administrator, Farm Service Agency
AGR 282 Special Assistant to the Administrator, Foreign Agricultural Service
AGR 285 Confidential Assistant to the Executive Assistant to the Secretary
AGR 286 Confidential Assistant to the Administrator, Foreign Agricultural Service
AGR 293 Special Assistant to the Administrator, Foreign Agricultural Service
AGR 294 Confidential Assistant to the Administrator, Animal and Plant Health Inspection Service
AGR 295 Confidential Assistant to the Assistant Secretary for Congressional Relations
AGR 300 Confidential Assistant to the Administrator, Farm Service Agency
AGR 301 Confidential Assistant to the Administrator, Food, Nutrition and Consumer Service
AGR 303 Staff Assistant to the Chief, Natural Resources Conservation Service
AGR 311 Confidential Assistant to the Administrator, Agricultural Research Service
AGR 313 Special Assistant to the Administrator, Rural Housing Service
AGR 318 Staff Assistant to the Administrator, Foreign Agricultural Service
AGR 324 Confidential Assistant to the Under Secretary for Rural Development
AGR 332 Confidential Assistant to the Administrator, Rural Business Service
AGR 336 Confidential Assistant to the Secretary of Agriculture
AGR 341 Confidential Assistant to the Manager
AGR 346 Confidential Assistant to the Administrator, Farmers Home Administration
AGR 348 Director for Public Outreach to the Director, Office of Communications
AGR 352 Confidential Assistant to the Administrator, Food and Nutrition Service
AGR 355 Speech Writer to the Director, Office of Communications
AGR 366 Deputy Administrator, Food Stamp Program to the Administrator, Food and Nutrition Service
AGR 368 Confidential Assistant to the Manager, Federal Crop Insurance Corporation

AGR 369 Confidential Assistant to the Director, Office of Communications
AGR 371 Confidential Assistant to the Deputy Under Secretary for Policy and Planning
AGR 377 Confidential Assistant to the Deputy Administrator, Rural Business Service
AGR 378 Deputy Press Secretary to the Director, Office of Communications
AGR 384 Confidential Assistant to the Secretary of Agriculture
AGR 386 Special Assistant to the Director, Empowerment Zone/ Enterprise Community
AGR 393 Special Assistant to the Administrator, Rural Business-Cooperative Service
AGR 402 Confidential Assistant to the Director, Office of Communications
AGR 404 Confidential Assistant to the Director of Personnel
AGR 413 Special Assistant to the Chief of Natural Resources Conservation Service
AGR 415 Confidential Assistant to the Administrator, Rural Utilities Service
AGR 417 Confidential Assistant to the Administrator, Agricultural Marketing Service
AGR 418 Confidential Assistant to the Chief, Natural Resources Conservation Service
AGR 422 Special Assistant to the Administrator, Farm Service Agency
AGR 426 Deputy Director, Special Projects to the Director, Office of Communications
AGR 427 Confidential Assistant to the Deputy Secretary
AGR 428 Confidential Assistant to the Administrator, Rural Business and Cooperative Development Service
AGR 435 Confidential Assistant to the Administrator, Grain Inspection, Packers and Stockyards Administration
AGR 436 Confidential Assistant to the Administrator, Rural Utilities Service
AGR 438 Confidential Assistant to the Chief, Natural Resources Conservation Service
AGR 440 Confidential Assistant to the Administrator, Rural Utilities Service
AGR 448 Confidential Assistant to the Deputy Administrator for Community Development, Rural Business Service
AGR 450 Confidential Assistant to the Administrator, Agricultural Research Service
AGR 452 Confidential Assistant to the Director, Office of Communications
AGR 455 Director, Community Outreach Division to the Deputy Administrator, Community Development
AGR 456 Special Assistant to the Administrator, Rural Development/ Rural Housing Service
AGR 458 Confidential Assistant to the Deputy Administrator for Community Development, Rural Business Service
AGR 459 Confidential Assistant to the Administrator, Farm Agency Service
AGR 461 Special Assistant to the Chief, Forest Service
AGR 462 Special Assistant to the Director, Empowerment Zone/ Enterprise Community
AGR 465 Confidential Assistant to the Administrator, Rural Utilities Service
AGR 471 Confidential Assistant to the Administrator, Agricultural Marketing Service
AGR 473 Confidential Assistant to the Administrator, Farm Service Agency
AGR 474 Confidential Assistant to the Deputy Administrator for Special Nutrition Programs, Food Consumer Service
AGR 475 Confidential Assistant to the Administrator, Animal and Plant Inspection Service
AGR 477 Special Assistant to the Associate Administrator, Rural Business Service
AGR 478 Confidential Assistant to the Director, Tobacco and Peanuts Division, Farm Service Agency
AGR 479 Special Assistant to the Administrator, Risk Management Agency
AGR 482 Confidential Assistant to the Administrator, Rural Utilities Service
AGR 483 Confidential Assistant to the Administrator, Rural Business Service
AGR 485 Special Assistant to the Administrator, Food and Inspection Service
AGR 486 Deputy Press Secretary to the Director, Office of Communications
AGR 487 Confidential Assistant to the Administrator, Farm Service Agency
AGR 488 Confidential Assistant to the Administrator, Economic Research Service
AGR 489 Confidential Assistant to the Chief Financial Officer
AGR 490 Confidential Assistant to the Administrator, Foreign Agricultural Service
AGR 491 Special Assistant to the Administrator, Agricultural Marketing Service
AGR 492 Confidential Assistant to the Administrator, Risk Management Agency
AGR 493 Special Assistant to the Administrator, Grain Inspection, Packers and Stockyards Administration
AGR 495 Staff Assistant to the Administrator, Risk Management Agency
AGR 496 Confidential Assistant to the Chief, Natural Resources Conservation Service
AGR 497 Executive Assistant to the Administrator, Rural Housing Service
AGR 498 Confidential Assistant to the Chief Information Officer, Policy Analysis and Coordination Center
AGR 499 Confidential Assistant to the Special Assistant to the Secretary
AGR 500 Confidential Assistant to the Director, Intergovernmental Affairs
AGR 501 Confidential Assistant to the Director, Office of Civil Rights
AGR 502 Deputy Press Secretary to the Director, Office of Communications
AGR 503 Staff Assistant to the Executive Director
AGR 504 Confidential Assistant to the Administrator, Food and Nutrition Service
AGR 506 Confidential Assistant to the Deputy Administrator for Farm Programs
AGR 507 Confidential Assistant to the Administrator, Farm Service Agency
AGR 508 Staff Assistant to the Confidential Assistant, Office of the Secretary
AGR 509 Regional Director, Outreach to the Associate Chief, Natural Resources Conservation Service
AGR 510 Speech Writer to the Director, Office of Communications
AGR 512 Deputy Chief of Staff to the Chief of Staff
AGR 513 Confidential Assistant to the Assistant Secretary for Congressional Relations
AGR 515 Confidential Assistant to the Deputy Administrator, Office of Community Development
AGR 516 Staff Assistant to the Chief, Natural Resources Conservation Service
AGR 517 Confidential Assistant to the Administrator, Risk Management Agency
AGR 518 Regional Director, Davis, California to the Administrator, Farm Service Agency
AGR 519 Staff Assistant to the Administrator, Farm Service Agency
AGR 520 Staff Assistant to the Confidential Assistant to the Secretary of Agriculture
AGR 521 Staff Assistant to the Deputy Chief of Staff
AGR 522 Special Assistant to the Director, Office of Civil Rights

AGR 523 Confidential Assistant to the Administrator, Agricultural Research Center
AGR 524 Confidential Assistant to the Administrator, Rural Utilities Service
AGR 525 Confidential Assistant to the Administrator, Farm Services Agency
AGR 527 Special Assistant to the Administrator, Foreign Agricultural Service
AGR 528 Confidential Assistant to the Administrator, Farm Service Agency

Section 213.3314 Department of Commerce

COM 3 Senior Advisor to the Chief of Staff
COM 12 Special Assistant to the Deputy Secretary
COM 16 Special Assistant to the General Counsel
COM 17 Special Assistant to the General Counsel
COM 70 Director, Office of Communications and Congressional Liaison to the Assistant Secretary for Economic Development, Economic Development Administration
COM 162 Special Assistant to the Assistant Secretary for International Economic Policy, International Trade Administration
COM 163 Confidential Assistant to the Deputy Assistant Secretary
COM 165 Director, Office of Business Liaison to the Secretary of Commerce
COM 190 Director, Office of Congressional Affairs to the Assistant Secretary for Communication and Information
COM 200 Senior Advisor to the Deputy Assistant Secretary for Intergovernmental Affairs
COM 202 Legislative Affairs Specialist to the Deputy Assistant Secretary for Legislative and Intergovernmental Affairs
COM 204 Special Assistant to the Chief Scientist, National Oceanic and Atmospheric Administration
COM 217 Assistant Director, Office of Public Affairs to the Director, Office of Public Affairs and Press Secretary
COM 224 Senior Advisor to the Under Secretary for International Trade
COM 259 Director of Congressional Affairs to the Under Secretary for International Trade, International Trade Administration
COM 275 Confidential Assistant to the Director, Office of Business Liaison
COM 277 Assistant Director for Communications to the Director of Public Affairs and Press Secretary
COM 289 Legislative Affairs Specialist to the Assistant Secretary for Legislative and Intergovernmental Affairs
COM 291 Special Assistant to the Director, Office of Public Affairs
COM 298 Special Assistant to the Assistant Secretary for Communications and Information, National Telecommunications and Information Administration
COM 308 Special Assistant to the Assistant Secretary for Trade Development
COM 312 Special Assistant to the Director General of the U.S. and Foreign Commercial Service
COM 326 Confidential Assistant to the Assistant Secretary and Director General, U.S. and Foreign Commercial Service
COM 327 Special Assistant to the Deputy Secretary of Commerce
COM 335 Senior Advisor to the Assistant Secretary for Legislative and Intergovernmental Affairs
COM 342 Senior Advisor to the Director, White House Liaison
COM 345 Senior Advisor to the Counselor to the Department, International Trade
COM 347 Assistant Director for Public Affairs to the Director of Public Affairs and Press Secretary
COM 350 Deputy Director, Office of Business Liaison to the Director, Office of Business Liaison
COM 361 Congressional Affairs Officer to the Associate Director for Communications
COM 365 Senior Advisor to the Director, Minority Business Development Agency
COM 379 Special Assistant to the General Counsel
COM 390 Special Assistant to the Under Secretary for Economic Affairs/Administrator, Economics and Statistics Administration
COM 393 Legislative Affairs Specialist to the Assistant Secretary for Legislative and Intergovernmental Affairs
COM 394 Deputy Director, Office of Public Affairs to the Director, Office of Public Affairs
COM 412 Senior Advisor to the Assistant Secretary for Trade Development, International Trade Administration
COM 416 Director, Office of Consumer Affairs to the Secretary of Commerce
COM 420 Special Assistant to the Director General of the United States and Foreign Commercial Service, International Trade Administration
COM 425 Director of Public Affairs to the Under Secretary for International Trade Administration
COM 437 Senior Advisor to the Director, Office of Business Liaison
COM 438 Senior Advisor to the Director, Business Liaison
COM 447 Confidential Assistant to the Chief of Staff
COM 462 Director of Congressional Affairs to the Assistant Secretary and Commissioner of Patent and Trademarks
COM 467 Confidential Assistant to the Deputy Chief of Staff for External Affairs
COM 468 Special Assistant to the Under Secretary for Export Administration, Bureau of Export Administration
COM 486 Speech writer to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
COM 502 Deputy Director of Advance to the Director of Advance, Office of External Affairs
COM 527 Executive Assistant to the Secretary of Commerce
COM 530 Senior Advisor to the Under Secretary for Technology, Technology Administration
COM 538 Special Assistant to the Deputy Chief of Staff
COM 543 Confidential Assistant to the Director, Office of Public Affairs, International Trade Administration
COM 549 Special Assistant to the Deputy Under Secretary Economic Affairs
COM 551 Special Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs
COM 560 Senior Policy Advisor to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
COM 561 Special Assistant to the Assistant Secretary and Commissioner, Patent and Trademark Office
COM 563 Deputy Director of Scheduling to the Deputy Director of External Affairs and Director of Scheduling
COM 570 Senior Policy Advisor to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
COM 579 Director of Legislative, Intergovernmental and Public Affairs to the Under Secretary, Bureau of Export Administration
COM 583 Special Assistant to the Chief of Staff
COM 585 Chief, Intergovernmental Affairs to the Director, Office of Sustainable Development and Intergovernmental Affairs

COM 592 Special Assistant to the Assistant Secretary, Trade Administration
COM 601 Director, Office of Public Affairs to the Under Secretary for Oceans and Atmosphere, National Oceanic and Atmospheric Administration
COM 604 Assistant Director for Communications to the Director, Bureau of the Census
COM 607 Intergovernmental Affairs Specialist to the Chief Intergovernmental Affairs, Office of Sustainable Development and Intergovernmental Affairs (NCAA)
COM 613 Executive Assistant to the Deputy Secretary of Commerce
COM 618 Confidential Assistant to the Director, Executive Secretariat Staff
COM 622 Special Assistant to the Assistant Secretary for Economic Development Administration
COM 625 Special Assistant to the Deputy Assistant Secretary for Technology Policy
COM 631 Special Advisor to the Director, Oceanic and Atmospheric Administrator
COM 644 Special Assistant to the Director, Office of Sustainable Development and Intergovernmental Affairs
COM 645 Senior Advisor for Communications to the Under Secretary for Export Administration, Bureau of Export Administration
COM 655 Special Assistant to the Assistant Secretary and Director General of the U.S. and Foreign Commercial Service, International Trade Administration
COM 659 Director, Office of White House Liaison to the Deputy Chief of Staff
COM 664 Special Assistant to the Deputy Assistant Secretary for U.S. and Foreign Commercial Service
COM 666 Confidential Assistant to the Director, Office of Legislative Affairs
COM 668 Deputy Assistant Secretary for Textiles, Apparel and Consumer Goods to the Assistant Secretary for Trade Development
COM 672 Policy Advisor to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
COM 674 Special Assistant to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
COM 680 Deputy Press Secretary-Agency Coordination to the Director for Communications and Press Secretary
COM 681 Senior Advisor to the Assistant Secretary for Market Access and Compliance
COM 682 Associate Under Secretary for Economic Affairs to the Under Secretary for Economic Affairs
COM 685 Deputy Assistant Secretary for Policy and Planning to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
COM 686 Director of Advance to the Deputy Chief of Staff for External Affairs
COM 687 Senior Policy Advisor to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
COM 688 Confidential Assistant to the Deputy Chief of Staff for External Affairs
COM 689 Confidential Assistant to the Director of Planning and Scheduling
COM 691 Director of Planning and Scheduling to the Deputy Chief of Staff for External Affairs
COM 692 Director, Secretariat for Electronic Commerce to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning
COM 693 Senior Advisor to the Director, Office of Sustainable Development and Intergovernmental Affairs
COM 694 Senior Advisor to the Under Secretary for Economic Affairs
COM 695 Senior Advisor and Counsel to the Director, Office of Policy and Strategic Planning
COM 696 Senior Advisor to the Assistant Secretary of Commerce and Director General of United States and Foreign Commercial Service
COM 697 Ombudsman to the Under Secretary for Oceans and Atmosphere

Section 213.3315 Department of Labor

LAB 17 Director of Intergovernmental Affairs to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 35 Special Assistant to the Director, Women's Bureau
LAB 41 Chief of Staff to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 43 Special Assistant to the Assistant Secretary for Occupational Safety and Health
LAB 66 Executive Assistant to the Deputy Assistant Secretary, Office of Federal Contracts Compliance Programs, Employment Standards Administration
LAB 76 Special Assistant to the Assistant Secretary for Office of Congressional and Intergovernmental Affairs
LAB 83 Special Assistant to the Assistant Secretary, Pension and Welfare Benefits Administration
LAB 93 Special Assistant to the Secretary of Labor
LAB 101 Special Assistant to the Administrator, Wage and Hour Division, Employment Standards Administration
LAB 103 Secretary's Representative, Boston, MA to the Office of the Associate Director
LAB 104 Secretary's Representative to the Assistant Secretary, Office of Congressional and Intergovernmental Affairs
LAB 106 Secretary's Representative, Atlanta, GA to the Director, Office of Intergovernmental Affairs
LAB 107 Secretary's Representative, Chicago, Ill to the Associate Director, Congressional and Intergovernmental Affairs
LAB 110 Secretary's Representative to the Associate Director, Congressional and Intergovernmental Affairs
LAB 111 Secretary's Representative to the Associate Director, Office of Congressional and Intergovernmental Affairs
LAB 112 Secretary's Representative, Seattle, WA to the Director, Office of Intergovernmental Affairs
LAB 129 Special Assistant to the Assistant Secretary for Occupational Safety and Health
LAB 130 Special Assistant to the Executive Secretary
LAB 132 Associate Director for Congressional Affairs to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 137 Press Secretary to the Assistant Secretary for Public Affairs
LAB 139 Special Assistant to the Wage Hour Administrator
LAB 143 Special Assistant to the Administrator, Employment and Training Administration
LAB 145 Intergovernmental Officer to the Associate Director Intergovernmental Affairs
LAB 147 Attorney-Advisor (Labor) (Counsel to the Solicitor) to the Solicitor of Labor
LAB 150 Staff Assistant to the Director of Public Liaison
LAB 153 Director of Policy to the Assistant Secretary for Occupational Safety and Health
LAB 159 Special Assistant to the Deputy Under Secretary for International Affairs, Bureau of International Labor Affairs

LAB 160 Director of Scheduling and Advance to the Chief of Staff
LAB 161 Special Assistant to the Secretary (Scheduling) to the Director of Scheduling and Advance
LAB 164 Director of Communications and Public Information to the Assistant Secretary for Employment and Training
LAB 170 Special Assistant to the Deputy Secretary of Labor
LAB 171 Special Assistant to the Secretary of Labor
LAB 175 Special Assistant to the White House Liaison
LAB 177 Special Assistant to the Secretary of Labor
LAB 179 Special Assistant to the Assistant Secretary, Employment Standards Administration
LAB 180 Director, Intergovernmental Affairs to the Assistant Secretary, Congressional and Intergovernmental Affairs
LAB 182 Counselor to the Deputy Secretary of Labor
LAB 191 Special Assistant to the Assistant Secretary for Policy
LAB 192 Special Assistant to the Assistant Secretary, Pension Benefits and Welfare Administration
LAB 196 Executive Assistant to the Assistant Secretary, Veterans Employment and Training
LAB 204 Special Assistant to the Assistant Secretary for Veterans' Employment and Training
LAB 211 Special Assistant to the Director of Scheduling and Advance
LAB 212 Special Assistant to the Assistant Secretary for Policy
LAB 213 Special Assistant to the Assistant Secretary for Labor
LAB 215 Special Assistant to the Director, Women's Bureau
LAB 217 Associate Director to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 220 Special Assistant to the Assistant Secretary for Public Affairs
LAB 225 Special Assistant to the Assistant Secretary for Pension and Welfare Benefits Administration
LAB 230 Special Assistant to the Assistant Secretary for Public Affairs
LAB 235 Associate Director for Congressional Affairs to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 237 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 244 Special Assistant to the Secretary of Labor
LAB 248 Special Assistant to the Chief of Staff
LAB 252 Speech Writer to the Assistant Secretary for Public Affairs
LAB 254 Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs
LAB 260 Special Assistant to the Chief of Staff
LAB 262 Special Assistant to the Deputy Assistant Secretary, Office of Federal Contract Compliance Programs
LAB 263 Special Assistant to the Administrator, Wage and Hour Division
LAB 264 Staff Assistant to the Administrator, Wage and Hour Division
LAB 266 Special Assistant to the Deputy Under Secretary for International Labor Affairs
LAB 267 Special Assistant to the Executive Secretary
LAB 278 Special Assistant to the Assistant Secretary for Administration and Management
LAB 280 Special Assistant to the Assistant Secretary for Occupational Safety and Health
LAB 281 Senior Public Affairs Advisor to the Assistant Secretary for Public Affairs
LAB 283 Advisor to the Assistant Secretary for Mine Safety and Health
LAB 285 Chief of Staff to the Assistant Secretary for Employment and Training
LAB 287 Director of Communications and Public Information to the Assistant Secretary of Labor

Section 213.3316 Department of Health and Human Services

HHS 2 Special Assistant to the Chief of Staff
HHS 14 Special Assistant to the Executive Secretary
HHS 17 Director of Scheduling to the Chief of Staff, Office of the Secretary
HHS 31 Special Assistant to the Secretary of Health and Human Services
HHS 120 Special Assistant to the General Counsel
HHS 293 Special Assistant to the Commissioner, Administration for Children, Youth and Families
HHS 320 Special Assistant to the Assistant Secretary for Planning and Evaluation
HHS 331 Special Assistant to the Administrator, Health Care Financing Administration
HHS 336 Special Assistant to the Deputy Assistant Secretary for Legislation (Human Services)
HHS 340 Executive Assistant to the Assistant Secretary for Legislation
HHS 346 Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison)
HHS 359 Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison)
HHS 361 Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation (Congressional Liaison)
HHS 368 Senior Press Officer to the Health Care Financing Administration
HHS 373 Confidential Assistant to the Executive Secretary
HHS 395 Special Assistant to the Director, Office of Community Services, Administration for Children and Families.
HHS 399 Special Assistant to the Assistant Secretary for Children and Families
HHS 419 Special Assistant to the Secretary of Health and Human Services
HHS 427 Executive Director, President's Committee on Mental Retardation to the Assistant Secretary for Children and Families, Administration for Children and Families
HHS 436 Associate Commissioner for Family and Youth Services to the Commissioner, Administration for Children and Youth Families
HHS 487 Confidential Assistant to the Administrator, Health Care Financing Administration
HHS 489 Special Assistant to the Assistant Secretary for Children and Families
HHS 513 Confidential Assistant to the Administrator, Health Care Financing Administration
HHS 526 Confidential Assistant to the Executive Associate Administrator, Health Care Financing Administration
HHS 527 Confidential Assistant (Scheduling) to the Director of Scheduling
HHS 529 Confidential Assistant (Scheduling) to the Director of Scheduling and Advance
HHS 549 Speech Writer to the Director of Speech Writing, Office of the Deputy Assistant Secretary for Public Affairs (Media)
HHS 553 Director of Communications to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy)

HHS 556 Director of Speech Writing to the Deputy Assistant Secretary for Public Affairs (Media)
HHS 558 Confidential Assistant to the Assistant Secretary for Public Affairs
HHS 585 Special Assistant (Speech Writer) to the Director of Speech writing
HHS 588 Director, Office of Intergovernmental Affairs to the Deputy Assistant Secretary for Policy and External Affairs
HHS 589 Speech Writer to the Director of Speech Writing
HHS 590 Confidential Assistant (Advance) to the Director of Scheduling and Advance
HHS 615 Special Assistant to the Director of Communications
HHS 625 Special Assistant to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy)
HHS 632 Special Outreach Coordinator to the Assistant Secretary for Public Affairs
HHS 634 Special Assistant to the Deputy Director, Office of Child Support Enforcement
HHS 639 Special Assistant to the Deputy Assistant Secretary for Policy and External Affairs
HHS 643 Executive Assistant for Legislative Projects to the Assistant Secretary for Health
HHS 644 White House Liaison to the Chief of Staff
HHS 645 Strategic Planning and Policy Coordinator to the Deputy Assistant Secretary for Public Affairs (Policy and Strategy)
HHS 646 Deputy Chief of Staff to the Chief of Staff
HHS 657 Executive Director, Presidential Advisory Council on HIV/AIDS to the Assistant Secretary for Public Health and Science
HHS 659 Special Assistant to the Deputy Secretary
HHS 660 Confidential Assistant to the Executive Secretary
HHS 661 Special Assistant to the Deputy Secretary of Health and Human Services
HHS 665 Deputy Director for Policy to the Director of Intergovernmental Affairs
HHS 666 Deputy Director for Operations to the Director of Intergovernmental Affairs
HHS 667 Confidential Assistant to the Executive Secretary to the Department of Health and Human Services
HHS 668 Special Assistant Community Outreach and Liaison to the Administrator, Substance Abuse and Mental Health Services Administration
HHS 670 Congressional Liaison Specialist to the Deputy Assistant Secretary for Legislation
HHS 672 Deputy Director of Scheduling to the Director of Scheduling
HHS 673 Senior Advisor to the Assistant Secretary for Health
HHS 674 Special Assistant to the Deputy Director, Office of Child Support Enforcement
HHS 675 Special Assistant to Principal Deputy Assistant for Aging
HHS 676 Special Assistant to the Administrator, Substance Abuse and Mental Health Service Administration
HHS 677 Special Assistant to the Assistant Secretary, Administration for Aging
HHS 678 Confidential Assistant to the Deputy Assistant Secretary for Health
HHS 679 Confidential Assistant to the Strategic Planning and Policy Coordinator

Section 213.3317 Department of Education

EDU 1 Special Assistant to the Secretary's Regional Representative, Region IX
EDU 2 Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education
EDU 3 Confidential Assistant to the Deputy Secretary
EDU 4 Deputy Secretary's Regional Representative, Region IV (Atlanta, GA) to the Secretary's Regional Representative
EDU 5 Confidential Assistant to the Special Advisor to the Secretary
EDU 6 Confidential Assistant to the Director, Office of Public Affairs
EDU 7 Special Assistant to the Assistant Secretary, Special Education and Rehabilitative Services
EDU 8 Special Assistant to the Assistant Secretary for Postsecondary Education
EDU 9 Special Assistant to the Counselor to the Secretary
EDU 10 Confidential Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 11 Confidential Assistant to the Assistant Secretary of Intergovernmental and Interagency Affairs
EDU 12 Press Secretary to the Director, Office of Public Affairs
EDU 13 Special Assistant to the Assistant Secretary, Office of Vocational and Adult Education
EDU 14 Special Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 15 Special Assistant to the Director, White House Initiative on Hispanic Education
EDU 17 Confidential Assistant to the Director, Executive Secretariat
EDU 18 Special Assistant to the Deputy Assistant Secretary for Regional and Community Services
EDU 19 Director, Intergovernmental and Interagency Affairs Coordination to the Deputy Assistant Secretary, Intergovernmental and Interagency Affairs Coordination
EDU 20 Steward to the Chief of Staff
EDU 21 Confidential Assistant to the Chief Financial and Information Officer
EDU 22 Confidential Assistant to the Special Advisor to the Secretary
EDU 23 Special Assistant to the Assistant Secretary, Office of Post Secondary Education
EDU 24 Confidential Assistant to the Deputy Assistant Secretary for Regional and Community Services
EDU 25 Confidential Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 27 Confidential Assistant to the Deputy Assistant Secretary, Regional and Community Services, Office of Intergovernmental and Interagency Affairs
EDU 28 Confidential Assistant to the Director, Office of Bilingual Education and Minority Languages Affairs
EDU 29 Special Assistant to the Assistant Secretary, Special Education and Rehabilitative Services
EDU 30 Director, Scheduling and Briefing Staff to the Chief of Staff, Office of the Secretary
EDU 31 Director, Congressional Affairs to the Assistant Secretary, Office of Legislation and Congressional Affairs
EDU 32 Confidential Assistant to the Chief of Staff
EDU 33 Special Assistant to the Deputy Secretary
EDU 34 Special Assistant to the Commissioner, Rehabilitation Service Administration
EDU 35 Special Assistant to the Deputy Assistant Secretary for Office of Intergovernmental and Interagency Affairs
EDU 37 Special Assistant to the Assistant Secretary, Office for Civil Rights
EDU 39 Special Assistant to the Assistant Secretary,
EDU 40 Confidential Assistant to the Assistant Secretary, Office of Elementary and Secondary Education

EDU 42 Special Assistant to the Assistant Secretary for Elementary and Secondary Education
EDU 43 Confidential Assistant to the Deputy Secretary
EDU 44 Deputy Assistant Secretary for Intergovernmental and Constituent Relations to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs
EDU 46 Special Assistant to the Assistant Secretary, Office of Vocational and Adult Education
EDU 47 Confidential Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 48 Special Assistant/Chief of Staff to the Assistant Secretary, Office of Elementary and Secondary Education
EDU 49 Confidential Assistant to the Director Scheduling and Briefing Staff
EDU 50 Special Assistant to the Director, Office of Public Affairs
EDU 51 Director, White House Initiatives on Tribal Colleges and Universities to the Assistant Secretary, Office of Vocational and Adult Education
EDU 52 Special Assistant to the Chief of Staff
EDU 53 Special Assistant to the Assistant Secretary, Office of Vocational and Adult Education
EDU 54 Confidential Assistant to the Assistant Secretary for Legislation and Congressional Affairs
EDU 55 Special Assistant (Special Advisor, HBCU) to the Director, Historically Black Colleges and Universities Staff
EDU 56 Special Assistant to the Secretary's Regional Representative, Region VII
EDU 58 Confidential Assistant to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs
EDU 59 Special Assistant to the Assistant Secretary for Postsecondary Education
EDU 60 Confidential Assistant to the Chief of Staff, Office of the Deputy Secretary
EDU 65 Special Assistant to the Director, Scheduling and Briefing
EDU 66 Special Assistant to the Assistant Secretary, Office of Special Education and Rehabilitative Services
EDU 67 Special Assistant to the Secretary of Education
EDU 70 Special Assistant to the Deputy Assistant Secretary, Regional and Community Service
EDU 71 Executive Assistant to the Deputy Secretary of Education
EDU 72 Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education
EDU 73 Confidential Assistant to the Director, Intergovernmental and Interagency Coordination
EDU 74 Special Assistant to the Deputy Secretary
EDU 76 Special Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 78 Special Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 81 Special Assistant to the Secretary of Education
EDU 82 Deputy Director to the Director, Office of Bilingual Education and Minority Language Affairs
EDU 84 Special Assistant to the Director Scheduling and Briefing Staff
EDU 85 Special Assistant to the Deputy Secretary
EDU 86 Deputy Assistant Secretary for Regional and Community Services and Secretary's Regional Representative, Region III to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs
EDU 87 Special Assistant to the Director, Office of Special Education Programs
EDU 89 Special Assistant to the Counselor to the Secretary
EDU 90 Special Assistant to the Counselor to the Secretary
EDU 91 Special Assistant to the Director, Public Affairs
EDU 92 Deputy Assistant Secretary for Management and Planning to the Assistant Secretary for Elementary and Secondary Education
EDU 93 Confidential Assistant to the Director, White House Liaison,
EDU 94 Special Assistant to the Assistant Secretary, Office of Vocational and Adult Education
EDU 96 Special Assistant to the Director, Scheduling and Briefing, Office of the Secretary
EDU 97 Special Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 98 Special Assistant to the Special Advisor to the Secretary
EDU 101 Deputy Secretary's Regional Representative to the Secretary's Regional Representative, Region I, Boston, MA
EDU 102 Special Assistant to the Deputy Secretary
EDU 103 Secretary's Regional Representative, Region VIII, Denver, CO, to the Assistant Secretary for Intergovernmental and Interagency Affairs
EDU 104 Special Assistant to the Counselor to the Secretary
EDU 105 Special Assistant to the Assistant Secretary, Office of Vocational and Adult Education
EDU 106 Special Assistant to the Senior Advisor to the Secretary (Director, America Reads Challenge)
EDU 107 Secretary's Regional Representative, Region V, Chicago, IL, to the Director, State, Local and Regional Services Staff
EDU 109 Secretary's Regional Representative, Region VII, Kansas City, MO, to the Director, of the State, Local and Regional Services Staff, Office of Intergovernmental and Interagency Affairs
EDU 110 Secretary's Regional Representative, Region II, New York, NY, to the Deputy Assistant Secretary for Regional Services
EDU 114 Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education
EDU 117 Director, Historically Black Colleges to the Assistant Secretary, Postsecondary Education
EDU 120 Special Assistant to the Deputy Secretary, Office of the Deputy Secretary
EDU 122 Deputy Secretary's Regional Representative Region VI, Dallas, TX, to the Secretary's Regional Representative
EDU 123 Secretary's Regional Representatives Region VI, Dallas, TX, to the Assistant Secretary for Intergovernmental and Interagency Affairs
EDU 127 Secretary's Regional Representative, Region I, Boston, MA, to the Director, Regional Services Team
EDU 128 Confidential Assistant to the Secretary's Regional Representative, San Francisco
EDU 130 Confidential Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 131 Secretary's Regional Representative, Region IX, San Francisco, CA, to the Director, State, Local and Regional Services Staff, Office of Intergovernmental and Interagency Affairs
EDU 132 Special Assistant to the Director, Office of Educational Technology, Office of the Deputy Secretary
EDU 136 Confidential Assistant to the Assistant Secretary, Office of Legislation and Congressional Affairs
EDU 139 Special Assistant to the General Counsel
EDU 140 Liaison for Community and Junior Colleges to the Assistant Secretary for Vocational and Adult Education

EDU 145 Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education
EDU 146 Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education
EDU 149 Director, White house Initiative on Hispanic Education to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs
EDU 150 Special Assistant to the Deputy Assistant Secretary, Intergovernmental and Interagency Affairs
EDU 157 Special Assistant to the Assistant Secretary, Office of Postsecondary Education
EDU 161 Confidential Assistant to the Assistant Secretary, Office of Elementary and Secondary Education
EDU 164 Special Assistant to the Assistant Secretary, Office of Intergovernmental and Interagency Affairs
EDU 166 Special Assistant to the Deputy Assistant Secretary for Regional and Community Services
EDU 170 Special Assistant to the Deputy Assistant Secretary for Regional and Community Services
EDU 173 Special Assistant to the Counselor to the Secretary
EDU 174 Special Assistant to the Director, Office of Educational Technology
EDU 176 Confidential Assistant to the Senior Advisor to Secretary on Education Reform
EDU 177 Special Assistant to the Deputy Assistant Secretary, for Regional and Community Services, Office of Intergovernmental and Interagency Affairs
EDU 190 Special Assistant to the Senior Advisor to the Secretary (Director, America Reads Challenge)
EDU 191 Confidential Assistant to the Director, Scheduling and Briefing Staff
EDU 197 Confidential Assistant to the Deputy Assistant Secretary for Regional and Community Services
EDU 198 Special Assistant to the Assistant Secretary, Office of Post Secondary Education
EDU 203 Special Assistant to the Assistant Secretary, Office of Elementary and Secondary Education
EDU 208 Confidential Assistant to the Assistant Secretary, Office of Legislation and Congressional Affairs
EDU 219 Congressional Assistant to the Special Advisor to the Secretary (Director, America Challenge)
EDU 220 Special Assistant to the Director, Office of Public Affairs
EDU 223 Special Assistant to the Deputy Secretary
EDU 225 Special Assistant to the Special Assistant to the Secretary
EDU 255 Confidential Assistant to the Deputy Secretary
EDU 256 Special Assistant to the Chief of Staff
EDU 299 Special Assistant to the Director, White House Liaison
EDU 332 Confidential Assistant to the Special Assistant to the Secretary
EDU 340 Deputy Secretary's Regional Representative, Region II, New York, NY, to the Secretary's Regional Representative
EDU 347 Secretary's Regional Representative, Region X, Seattle, WA, to the Director of the State, Local and Regional Services Staff
EDU 356 Deputy Director, Office of Public Affairs to the Director Office of Public Affairs
EDU 374 Confidential Assistant to the Director, Scheduling and Briefing Staff
EDU 404 Secretary's Regional Representative, Region IV, Atlanta, GA, to the Director, State, Local and Regional Services Staff, Office of Intergovernmental and Interagency Affairs
EDU 440 Special Assistant to the Assistant Secretary, Office of Special Education and Rehabilitative Services

Section 213.3318 Environmental Protection Agency

EPA 171 Congressional Liaison Specialist to the Director, Congressional Liaison Division
EPA 175 Director, Office of the Executive Secretariat to the Chief of Staff, Office of the Administrator
EPA 182 Legal Advisor to the Assistant Administrator for Prevention, Pesticides and Toxic Substances
EPA 184 Chief, Policy Counsel to the Assistant Administrator, Office of Water
EPA 187 Counsel to the Assistant Administrator for Air and Radiation
EPA 188 Legislative Coordinator to the Assistant Administrator, Office of Solid Waste and Emergency Response
EPA 203 Special Assistant to the Associate Administrator, Office of Regional Operations and State/Locale Relations
EPA 205 Senior Advisor to the Assistant Administrator for the Office of Policy Planning and Evaluation
EPA 212 Staff Assistant to the Deputy Associate Administrator for Communications, Education and Public Affairs
EPA 216 Special Assistant to the Chief of Staff
EPA 218 Special Assistant to the Associate Administrator, Congressional and Intergovernmental Relations
EPA 220 Special Assistant to the Associate Administrator for Communications, Education and Media Relations
EPA 221 Director, Executive Secretariat to the Chief of Staff
EPA 225 White House Liaison to the Chief of Staff
EPA 226 Special Assistant to the Regional Administrator
EPA 228 Senior Policy Advisor to the Regional Administrator
EPA 229 Senior Policy Advisor to the Regional Administrator
EPA 230 Congressional Liaison Specialist to the Assistant Administrator for the Office of Congressional and Intergovernmental Relations
EPA 231 Deputy Chief of Staff (Scheduling) to the Chief of Staff
EPA 232 Press Secretary to the Administrator to the Associate Administrator, Office of Communications, Education and Media Relations
EPA 233 Senior Advisor to the Assistant Administrator, Office of Resources and Management
EPA 234 Special Assistant to the Regional Administrator
EPA 235 Deputy Director, Office of Communications and Governmental Relations to the Deputy Regional Administrator, Region Nine
EPA 236 Special Assistant to the Deputy Administrator
EPA 237 Congressional Liaison Specialist to the Associate Administrator, Office of Congressional and Intergovernmental Affairs

Section 213.3323 Federal Communications Commission

FCC 20 Associate Chief, Office of Public Affairs to the Chief, Office of Public Affairs
FCC 23 Special Assistant for Legislative Affairs to the Chairman
FCC 24 Special Assistant to the Chief, International Bureau, International Bureau
FCC 26 Special Assistant (Public Affairs) to the Chief, Cable Services Bureau
FCC 27 Special Advisor to the Chief, Cable Services Bureau
FCC 28 Special Assistant for Policy and Communication to the Chief, Office of Public Affairs

Section 213.3323 Overseas Private Investment Corporation

OPIC 18 Confidential Assistant to the President and Chief Executive Officer
OPIC 20 Director, Protocol and Special Initiatives to the Vice President, Investment Development Department
OPIC 21 Special Assistant to the President and Chief Executive Officer
OPIC 22 Special Assistant to the Managing Director for Congressional and Intergovernmental Affairs

Section 213.3325 United States Tax Court

TCOUS 41 Secretary and Confidential Assistant to a Judge
TCOUS 42 Secretary and Confidential Assistant to a Judge
TCOUS 43 Secretary and Confidential Assistant to a Judge
TCOUS 44 Secretary and Confidential Assistant to a Judge
TCOUS 45 Secretary and Confidential Assistant to a Judge
TCOUS 46 Secretary and Confidential Assistant to a Judge
TCOUS 47 Secretary and Confidential Assistant to a Judge
TCOUS 48 Secretary and Confidential Assistant to a Judge
TCOUS 49 Secretary and Confidential Assistant to a Judge
TCOUS 50 Secretary and Confidential Assistant to a Judge
TCOUS 51 Secretary and Confidential Assistant to a Judge
TCOUS 52 Secretary and Confidential Assistant to a Judge
TCOUS 53 Secretary and Confidential Assistant to a Judge
TCOUS 56 Secretary and Confidential Assistant to a Judge
TCOUS 57 Secretary and Confidential Assistant to a Judge
TCOUS 58 Secretary and Confidential Assistant to a Judge
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TCOUS 62 Secretary and Confidential Assistant to a Judge
TCOUS 63 Secretary and Confidential Assistant to a Judge
TCOUS 64 Secretary and Confidential Assistant to a Judge
TCOUS 65 Secretary and Confidential Assistant to a Judge
TCOUS 66 Trial Clerk to a Judge
TCOUS 67 Trial Clerk to a Judge
TCOUS 68 Trial Clerk to a Judge
TCOUS 70 Trial Clerk to a Judge
TCOUS 73 Trial Clerk to a Judge
TCOUS 75 Trial Clerk to a Judge
TCOUS 78 Trial Clerk to a Judge
TCOUS 79 Trial Clerk to a Judge
TCOUS 80 Secretary and Confidential Assistant to a Judge
TCOUS 82 Secretary and Confidential Assistant to a Judge

Section 213.3327 Department of Veterans Affairs

VA 72 Special Assistant to the Principal Deputy Assistant Secretary for Congressional Affairs
VA 74 Special Assistant to the Secretary of Veterans Affairs
VA 78 Special Assistant to the Assistant Secretary for Finance and Information Resources Management
VA 79 Special Assistant to the Assistant Secretary for Human Resources and Administration
VA 84 Special Assistant to the Assistant Secretary for Congressional Affairs
VA 87 Special Assistant to the Secretary of Veterans Affairs
VA 90 Executive Assistant to the Deputy Secretary of Veterans Affairs
VA 92 Special Assistant to the Deputy Secretary of Veterans Affairs
VA 94 Executive Assistant/Deputy Chief of Staff to the Secretary of Veterans Affairs
VA 95 Special Assistant to the Secretary of Veterans Affairs
VA 96 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs
VA 97 Special Assistant to the Assistant Secretary for Policy and Planning
VA 98 Executive Assistant to the Secretary of Veterans Affairs
VA 99 Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs

Section 213.3328 United States Information Agency

USIA 12 Special Assistant to the Director, Office of Congressional and Intergovernmental Affairs
USIA 14 Program Officer to the Associate Director, Bureau of Information
USIA 33 Media Relations Advisor to the Director, Office of Public Liaison
USIA 43 Director, Office of Citizen Exchanges to the Associate Director, Bureau of Educational and Cultural Affairs
USIA 54 Special Assistant to the Director, Office of Citizen Exchanges
USIA 67 Chief, Voluntary Visitors Division to the Director, Office of International Visitors, Bureau of Educational and Cultural Affairs
USIA 89 Staff Director, Advisory Board for Cuba Broadcasting to the Chairman of the Advisory Board
USIA 93 Program Officer to the Deputy Director, Office of European and NIS Affairs
USIA 99 White House Liaison to the Chief of Staff, Office of the Director
USIA 101 Senior Program Officer to the Director, New York Foreign Press Center, New York, NY
USIA 124 Special Assistant to the Associate Director for Programs, Bureau of Information
USIA 126 Special Assistant to the Director, Office of Congressional and Intergovernmental Affairs
USIA 127 Writer to the Director, Office of Policy
USIA 135 Special Advisor to the Associate Director, Bureau of Information
USIA 137 Deputy Director to the Director, Office of Arts America
USIA 138 Special Assistant for Public Diplomacy to the Associate Director, Bureau of Information
USIA 141 Director, Office of Support Services to the Associate Director of the Bureau of Information
USIA 145 Confidential Assistant to the Director, Office of Cuba Broadcasting
USIA 149 Special Assistant to the Director, Office of International Visitors
USIA 152 Director, Office of Congressional and External Affairs to the Director, International Broadcasting Bureau
USIA 153 Senior Advisor to the Director, Citizen Exchanges
USIA 154 Confidential Assistant to the Director, Office of Cuba Broadcasting
USIA 156 Public Affairs Officer to the Director, Voice of America
USIA 157 Senior Advisor to the Director, United States Information Agency

Section 213.3330 Securities and Exchange Commission

SEC 2 Confidential Assistant to a Commissioner
SEC 3 Confidential Assistant to a Commissioner
SEC 4 Confidential Assistant to the Chief of Staff
SEC 5 Confidential Assistant to a Commissioner
SEC 6 Confidential Assistant to a Commissioner
SEC 8 Secretary (OA) to the Chief Accountant
SEC 9 Secretary to the General Counsel

SEC 11 Confidential Assistant to the Chairman
SEC 12 Director of Public Affairs to the Chairman
SEC 14 Secretary to the Director
SEC 15 Secretary (OA) to the Director, Market Regulation
SEC 16 Secretary to the Director
SEC 18 Secretary to the Director, Investment Management
SEC 19 Secretary to the Director, Corporate Finance
SEC 24 Secretary to the Chief Economist
SEC 28 Confidential Assistant to the Chairman
SEC 29 Secretary to the Deputy Director of Market Regulation
SEC 31 Special Assistant to the Director, Office of Investor Education and Assistance
SEC 32 Public Affairs Specialist to the Director, Office of Public Affairs, Policy Evaluation and Research
SEC 33 Confidential Assistant to the Director of Public Affairs
SEC 37 Writer-Editor to the Chairman
SEC 39 Director of Legislative Affairs to the Chairman
SEC 40 Special Advisor to the Chairman
SEC 41 Legislative Affairs Specialist to the Director, Legislative Affairs

Section 213.3331 Department of Energy

DOE 439 Special Assistant to the Director, Public Affairs
DOE 587 Staff Assistant to the Assistant Secretary for Environmental Safety and Health
DOE 591 Staff Assistant to the Deputy Assistant Secretary for Building Technologies
DOE 602 Senior Staff Advisor to the Director, Office of Energy Research
DOE 603 Special Assistant to the Director, Office of Strategic Planning and Analysis
DOE 610 Staff Assistant to the Director, Office of Energy Research
DOE 622 Legislative Affairs Specialist to the Deputy Assistant Secretary for Senate Liaison, Office of Congressional and Intergovernmental Affairs
DOE 625 Staff Assistant to the Associate Deputy Secretary for Field Management
DOE 626 Staff Assistant to the Deputy Assistant Secretary for Transportation Technologies
DOE 631 Special Assistant to the Press Secretary, Press Services Division, Office of Public and Consumer Affairs
DOE 644 Staff Assistant to the Assistant Secretary for Efficiency and Renewable Energy
DOE 654 Confidential Staff Assistant to the Deputy Director for Small and Disadvantaged Business Utilization
DOE 655 Special Assistant for Regulatory Compliance to the Deputy Assistant Secretary for Compliance and Program Coordination
DOE 657 Special Assistant to the Director, Office of Economic Impact and Diversity
DOE 658 Director, Office of Natural Gas Policy to the Principal Deputy Assistant Secretary for Policy
DOE 663 Assistant Director for Energy Research (Communications and Development) to the Director, Office of Energy Research
DOE 665 Special Liaison (Federal Power Marketing Administration) to the Assistant Secretary for Energy Efficiency and Renewable Energy
DOE 666 Special Assistant to the Director, Press Services Division
DOE 667 Special Assistant to the Assistant Secretary for Energy and Renewable Energy
DOE 672 Staff Assistant to the Assistant Secretary for Policy and International Affairs
DOE 676 Confidential Assistant to the Assistant Secretary for Environmental Management
DOE 679 Special Assistant to the Assistant Secretary for Policy and International Affairs
DOE 680 Staff Assistant to the Chief Financial Officer
DOE 681 Special Assistant to the Director, Office of Worker and Community Transition
DOE 682 Senior Advisor to the Assistant Secretary for Congressional and Intergovernmental Affairs
DOE 684 Program Specialist to the Director, International Policy and Analysis Division
DOE 686 Associate Director to the Director, Office of Nuclear Energy, Science and Technology
DOE 694 Staff Assistant to the Director, Office of Budget Planning and Customer Service
DOE 695 Legislative Affairs Liaison Officer to the Deputy Assistant Secretary for House Liaison
DOE 699 Special Assistant to the Assistant Secretary for Energy Efficiency and Renewable Energy
DOE 701 Special Assistant to the Assistant Secretary for Defense Programs
DOE 702 Special Assistant to the Director, Office for Worker and Community Transition
DOE 708 Special Projects Liaison Specialist to the Director, Public Affairs
DOE 709 Senior Advisor to the Assistant Secretary for Environment, Safety and Health
DOE 712 Special Assistant to the Assistant Secretary for Energy Efficiency and Renewable Energy
DOE 713 Staff Assistant (Legal) to the Assistant Secretary for Environmental Management
DOE 714 Special Assistant for Energy Security and International Issues to the Assistant Secretary for Fossil Energy
DOE 716 Briefing Book Coordinator to the Director, Scheduling and Logistics
DOE 717 Special Assistant to the Director, Scheduling and Advance
DOE 718 Intergovernmental Specialist to the Deputy Assistant Secretary, Office of Planning, Budget and Policy
DOE 720 Director of Communications to the Assistant Secretary for Energy Efficiency and Renewable Energy
DOE 722 Special Assistant to the Assistant Secretary for Energy Efficiency and Renewable Energy
DOE 723 Special Assistant to the Deputy Assistant Secretary for Building Technology, State and Community Programs
DOE 724 Special Assistant to the Assistant Secretary for Human Resources and Administration
DOE 726 Staff Assistant to the Special Assistant and Acting Assistant Secretary of Policy and International Affairs
DOE 729 Staff Assistant to the Director, Office of Scheduling and Advance
DOE 730 Confidential Assistant to the Director, Office of Economic Impact and Diversity
DOE 733 Special Assistant for Management Reform to the Secretary of Energy
DOE 734 Senior Program Advisor to the Associate Deputy Secretary for Field Management
DOE 735 Confidential Assistant to the Director of Energy Research
DOE 736 Special Assistant to the Director, Office of Energy Research
DOE 738 Special Assistant to the Associate Deputy Secretary for Field Management
DOE 739 Special Assistant to the Assistant Secretary for Human Resources and Administration
DOE 740 Special Assistant to the Director, Office of Civilian Radioactive Management
DOE 741 Special Assistant to the Deputy Assistant Secretary for Natural Gas and Petroleum Technology

DOE 742 Deputy Director, Scheduling and Advance to the Director, Scheduling and Advance
DOE 743 Special Assistant to the Assistant Secretary for Policy and International Affairs
DOE 745 Special Projects Officer to the Director, Office of Public Affairs
DOE 747 Deputy Assistant Secretary for Senate Liaison to the Assistant Secretary for Congressional and Intergovernmental Affairs
DOE 749 Special Assistant to the Director, Office of Nonproliferation and National Security
DOE 751 Director, Office of Scheduling and Advance to the Director Office of Management and Administration
DOE 752 Deputy Director to the Director, Office of Public Affairs
DOE 753 Senior Program Analyst to the Director, Office of Intelligence
DOE 755 Special Assistant to the Director, Office of Human Resources
DOE 756 Senior Policy Advisor to the Secretary of Energy
DOE 757 Special Assistant to the Director, Office of Advance and Special Projects
DOE 758 Special Assistant to the Secretary of Energy
DOE 759 Executive Assistant to the Secretary of Energy
DOE 760 Special Assistant to the Director, Office of Worker and Community Transition
DOE 761 Special Assistant to the Secretary of Energy
DOE 762 Special Assistant to the Secretary of Energy
DOE 763 Special Assistant to the Director, Office of Field Management
DOE 764 Special Executive Advisor to the Assistant Secretary for Fossil Energy
DOE 765 Senior Advisor for Community and Intergovernmental Involvement to the Assistant Secretary for Environmental Management
DOE 766 Special Assistant for Community Outreach to the Assistant Secretary for Environment, Safety and Health
DOE 767 Special Assistant to the Director, Management and Administration
DOE 768 Executive Assistant to the Secretary of Energy
DOE 769 Special Assistant to the Director, Management and Administration
DOE 770 Deputy Assistant Secretary for House Liaison to the Assistant Secretary for Congressional and Intergovernmental Affairs
DOE 771 Special Projects Officer to the Director, Office of Public Affairs
DOE 772 Special Projects Officer to the Director, Office of Public Affairs
DOE 773 Special Assistant to the Principal Deputy Assistant Secretary for Environmental Management
DOE 774 Special Assistant to the Director of Field Management
DOE 778 Special Assistant to the Director of Scheduling and Advance
DOE 779 Special Assistant to the Assistant Secretary for Policy and International Affairs
DOE 780 Associate Chief Financial Officer for Budget, Planning and Financial Management to the Chief Financial Management
DOE 781 Staff Assistant to the Assistant Secretary for Policy and International Affairs

Federal Energy Regulatory Commission

FERC 1 Special Assistant to the Director, External Affairs
FERC 2 Confidential Assistant to a Member
FERC 3 Confidential Assistant to a Member
FERC 13 Technical Advisor to a Member
FERC 14 Ombudsman to the Director, Office of External Affairs
FERC 15 Special Assistant to the Chief Information Officer

Section 213.3332 Small Business Administration

SBA 4 Special Assistant to the Deputy Administrator
SBA 20 Senior Advisor to the Associate Deputy Administrator for Government Contracting and Minority Enterprise Development
SBA 30 National Director for Native American Outreach to the Associate Deputy Administrator for Entrepreneurial Development
SBA 35 Senior Advisor to the Associate Deputy Administrator for Government Contracting and Minority Enterprise Development
SBA 55 Special Assistant to the Associate Deputy Administrator for Management
SBA 100 Special Assistant to the Regional Administrator, Dallas Regional Office
SBA 116 Senior Advisor to the Associate Deputy Administrator for Government Contracting and Minority Enterprise Development.
SBA 128 Assistant Administrator for Women's Business Ownership to the Associate Deputy Administrator
SBA 143 Senior Advisor to the Deputy Administrator
SBA 169 Regional Administrator, Region I, Boston, MA, to the Administrator, Small Business Administration
SBA 170 Regional Administrator to the Associate Administrator for Field Administrations
SBA 172 Regional Administrator, Region VII, Kansas City, MO, to the Administrator, Small Business Administration
SBA 173 Regional Administrator, Region VI, Dallas, TX, to the Project Director for Field Operations
SBA 174 Regional Administrator, Region V, Chicago, IL, to the Administrator, Small Business Administration
SBA 175 Regional Administrator, Region IV, Atlanta, GA, to the Administrator, Small Business Administrator
SBA 176 Regional Administrator, Region II, New York, NY, to the Administrator, Small Business Administration
SBA 178 Regional Administrator, Region III, Philadelphia, PA, to the Administrator, Small Business Administration
SBA 182 Assistant Administrator for Marketing and Outreach to the Associate Administrator for Communications and Public Liaison
SBA 188 Regional Administrator, Region IX, San Francisco, CA, to the Administrator, Small Business Administration
SBA 189 Regional Administrator, Region X, Seattle, WA, to the Administrator, Small Business Administration
SBA 190 Deputy Chief of Staff to the Chief of Staff
SBA 199 Senior Advisor (Director, Welfare to Work Initiative) to the Associate Deputy Administrator, Office of Entrepreneurial Development
SBA 200 Senior Advisor to the Associate Administrator for Communications and Public Liaison
SBA 201 Deputy Director to the Senior Advisor (Director, Welfare to Work Initiative)
SBA 202 Special Assistant to the Chief of Staff
SBA 205 Deputy Scheduler to the Chief of Staff
SBA 206 National Director for Community Outreach to the Administrator, Small Business Administration
SBA 208 Special Assistant to the Senior Advisor to the Associate Deputy Administrator of Entrepreneurial Development

SBA 209 Director of Community Empowerment and One Stop Capital Shops to the Associate Deputy Administrator for Entrepreneurial Development
SBA 210 Special Assistant to the Senior Advisor to the Administrator
SBA 211 Speech Writer to the Associate Administrator for Communications and Public Liaison
SBA 212 Assistant General Counsel to the General Counsel
SBA 213 Senior Advisor to the Associate Deputy Administrator for GS/MED
SBA 214 Assistant Administrator for International Trade to the Associate Deputy Administrator for Capital Access

Section 213.3333 Federal Deposit Insurance Corporation

FDIC 15 Secretary to the Chairman
FDOC 16 Confidential Assistant to the Deputy to the Chairman

Section 213.3334 Federal Trade Commission

FTC 2 Director of Public Affairs (Supervisory Public Affairs Specialist) to the Chairman
FTC 14 Congressional Liaison Specialist to the Director of Congressional Relations
FTC 22 Secretary (Office Automation) to the Director, Bureau of Competition
FTC 23 Special Assistant to the Commissioner
FTC 24 Special Assistant to the Commissioner

Section 213.3337 General Services Administration

GSA 24 Special Assistant to the Commissioner, Public Buildings Service
GSA 51 Special Assistant to the Administrator
GSA 69 Special Assistant to the Associate Administrator for Congressional and Intergovernmental Affairs
GSA 90 Deputy Associate Administrator to the Associate Administrator for Congressional and Intergovernmental Affairs
GSA 94 Senior Policy Advisor to the Associate Administrator, Office of Congressional and Intergovernmental Affairs
GSA 95 Deputy Chief of Staff to the Chief of Staff
GSA 102 Special Assistant to the Regional Administrator, National Capital Region
GSA 113 Special Assistant to the Regional Administrator (Boston, MA)
GSA 114 Special Assistant to the Regional Administrator
GSA 118 Special Assistant to the Regional Administrator, Great Lakes Region
GSA 130 Special Assistant to the Regional Administrator, Region 7
GSA 131 Supervisory External Affairs Specialist to the Commissioner, Public Buildings Service
GSA 132 Deputy Regional Administrator, Rocky Mountain Region (Denver, CO) to the Regional Administrator

Section 213.3339 U.S. International Trade Commission

ITC 3 Staff Assistant (Legal) to the Commissioner
ITC 5 Executive Assistant to the Commissioner
ITC 6 Staff Assistant (Economics) to the Commissioner
ITC 12 Confidential Assistant to the Commissioner
ITC 15 Confidential Assistant to the Commissioner
ITC 17 Attorney-Advisor (General) to the Chairman
ITC 19 Staff Economist to the Commissioner
ITC 25 Staff Assistant (Economist) to the Commissioner
ITC 30 Confidential Assistant to the Commissioner
ITC 31 Executive Assistant to the Commissioner
ITC 33 Special Assistant (Economics) to the Commissioner
ITC 36 Confidential Assistant to the Commissioner

Section 213.3340 National Archives and Records Administration

NARA 3 Presidential Diarist to the Archivist of the United States

Section 213.3341 National Labor Relations Board

NLRB 1 Confidential Assistant to the Chairman

Section 213.3342 Export-Import Bank of the United States

EXIM 3 Administrative Assistant to the President and Chairman
EXIM 30 Administrative Assistant to the Director
EXIM 45 Administrative Assistant to the Director, a Member of the Bank Board of Directors
EXIM 46 Special Assistant to the First Vice President and Vice Chair
EXIM 48 Administrative Assistant to the Director, Member of the Board
EXIM 49 Deputy Chief of Staff to the Chief of Staff and Vice President Congressional and External Affairs
EXIM 50 Personal and Confidential Assistant to the Chairman
EXIM 51 Assistant to the President and Chairman, Export Import Bank of the United States

Section 213.3343 Farm Credit Administration

FCA 1 Special Assistant to the Chairman
FCA 8 Secretary of the Board to the Chairman and Chief Executive Officer
FCA 11 Special Assistant to the Member, Farm Credit Administration Board
FCA 12 Public and Congressional Affairs Specialist to the Director, Office of Congressional and Public Affairs
FCA 13 Special Assistant to the Member
FCA 15 Congressional and Public Affairs Specialist to the Director of Congressional and Public Affairs

Section 213.3344 Occupational Safety and Health Review Commission

OSHRC 3 Confidential Assistant to the Member (Commissioner), Occupational Safety and Health Review Commission
OSHRC 11 Counsel to the Member (Commissioner)

Section 213.3346 Selective Service System

SSS 16 Special Assistant to the Director of Selective Service
SSS 17 Executive Director to the Director of Selective Service

Section 213.3347 Federal Mediation and Conciliation Service

FMCS 8 Public Affairs Director to the Director, Federal Mediation and Conciliation Service

Section 213.3348 National Aeronautics and Space Administration

NASA 31 Special Assistant to the NASA Administrator
NASA 34 Manager, Multimedia Relations to the Associate Administrator for Public Affairs
NASA 38 Writer-Editor to the Associate Administrator for Public Affairs
NASA 39 Public Affairs Specialist to the Associate Administrator for Public Affairs
NASA 41 State Local Intergovernmental Affairs Specialist to the Associate Administrator for Policy and Plans
NASA 43 Radio Production Specialist to the Associate Administrator, Public Affairs

NASA 44 Program Specialist to the Special Assistant to the Administrator
NASA 45 Legislative Affairs Specialist to the Associate Administrator for Legislative Affairs
NASA 47 Program Analyst to the Deputy Associate Administrator for External Relations
NASA 48 Legislative Affairs Specialist to the Associate Administrator for Legislative Affairs
NASA 49 Staff Assistant to the Associate Administrator for Legislative Affairs
NASA 50 White House Liaison Officer to the NASA Administrator

Section 213.3351 Federal Mine Safety and Health Review Commission

FM 8 Attorney Advisor to the Commissioner
FM 17 Confidential Assistant to the Chairman
FM 26 Attorney-Advisor (General) to the Chairman
FM 28 Confidential Assistant to the Commissioner
FM 29 Attorney-Advisor to the Commissioner
FM 30 Confidential Assistant to the Commissioner

Section 213.3352 Government Printing Office

GPO 21 Staff Assistant to the Public Printer

Section 213.3355 Social Security Administration

SSA 4 Special Assistant to the Chief of Staff
SSA 6 Press Officer to the Deputy Commissioner for Communications
SSA 8 Confidential Assistant to the Commissioner of Social Security
SSA 9 Public Affairs Specialist (Speechwriter) to the Deputy Commissioner for Communications

Section 213.3356 Commission on Civil Rights

CCR 1 Special Assistant to the Staff Director
CCR 10 Special Assistant to the Staff Director
CCR 12 Special Assistant to the Commissioner
CCR 14 Deputy General Counsel to the General Counsel,
CCR 23 Special Assistant to the Commissioner
CCR 28 Special Assistant to the Commissioner
CCR 30 Special Assistant to the Commissioner

Section 213.3357 National Credit Union Administration

NCUA 9 Staff Assistant to the Chairman of the Board, National Credit Union Administration
NCUA 12 Executive Assistant to a Board Member
NCUA 20 Executive Assistant to a Board Member
NCUA 21 Communications and Administrative Specialist to a Board Member
NCUA 23 Special Assistant to the Executive Director
NCUA 24 Writer-Editor to the Chairman

Section 213.3360 Consumer Product Safety Commission

CPSC 49 Office of a Commissioner
CPSC 50 Staff Assistant to a Commissioner
CPSC 52 Director, Office of Information and Public Affairs to the Chairman
CPSC 53 Special Assistant to the Chairman
CPSC 55 Executive Assistant to the Chairman
CPSC 56 Director, Office of Congressional Relations to the Chairman
CPSC 60 Special Assistant to the Chairman
CPSC 61 Staff Assistant to a Commissioner
CPSC 62 Special Assistant to a Commissioner
CPSC 63 Special Assistant to a Commissioner
CPSC 64 Special Assistant (Legal) to a Commissioner

Section 213.3367 Federal Maritime Commission

FMC 5 Counsel to a Commissioner
FMC 10 Special Assistant to a Commissioner
FMC 26 Executive Assistant to the Chairman
FMC 30 Special Assistant to a Commissioner
FMC 35 Counsel to a Commissioner
FMC 41 Special Advisor to a Commissioner

Section 213.3368 Agency for International Development

AID 125 Executive Assistant to the Chief of Staff
AID 127 Supervisory Public Affairs Specialist to the Director, Office of External Affairs
AID 149 Public Affairs Specialist to the Chief, Legislative and Public Affairs, Public Liaison Division
AID 151 Congressional Liaison Officer to the Chief of Legislative and Public Affairs, Congressional Liaison Division
AID 152 Special Assistant to the Assistant Administrator, Bureau for Latin America and the Caribbean

Section 213.3371 Office of Government Ethics

OGE 2 Executive Secretary to the Director, Office of Government Ethics

Section 213.3373 United States Trade and Development Agency

TDA 1 Special Assistant for Public Affairs and Marketing to the Director of the U.S. Trade and Development Agency
TDA 2 Congressional Liaison Officer to the Director, U.S. Trade and Development Agency
TDA 3 Special Assistant for Public Affairs and Marketing to the Director, U.S. Trade and Development Agency

Section 213.3376 Appalachian Regional Commission

ARC 12 Senior Policy Advisor to the Federal Co-Chairman
ARC 13 Policy Advisor to the Federal Co-Chairman

Section 213.3377 Equal Employment Opportunity Commission

EEOC 2 Special Assistant to the Chairwoman
EEOC 9 Attorney-Advisor (Civil Rights) to the Chairwoman
EEOC 13 Confidential Assistant to the Director, Legal Counsel
EEOC 15 Media Contact Specialist to the Director, Office of Communications and Legislative Affairs
EEOC 31 Attorney-Advisor (Civil Rights) to the Chairwoman
EEOC 32 Senior Advisor to a Commissioner
EEOC 36 Attorney Advisor to the General Counsel

Section 213.3379 Commodity Futures Trading Commission

CFTC 3 Administrative Assistant to a Commissioner
CFTC 4 Administrative Assistant to a Commissioner
CFTC 5 Administrative Assistant to a Commissioner
CFTC 30 General Attorney (Special Counsel) to the General Counsel
CFTC 31 Special Assistant to a Commissioner
CFTC 32 Special Assistant to a Commissioner

Section 213.3382 National Endowment for the Arts

NEA 72 Director of Policy, Planning and Research to the Chairman

NEA 76 Executive Secretary to the Chairman
NEA 77 Director of Public Affairs to the Chairman
NEA 78 Special Assistant to the Chairman
NEA 79 Staff Assistant to the Chairman

National Endowment for the Humanities

NEH 70 Assistant Director of Government Affairs to the Director of Governmental Affairs
NEH 71 Director of Governmental Affairs to the Chief of Staff
NEH 72 Enterprise/Development Officer to the Chief of Staff
NEH 73 Director, Office of Public Affairs to the Chief of Staff

Section 213.3384 Department of Housing and Urban Development

HUD 143 Special Assistant to the Director, Executive Scheduling
HUD 187 Special Assistant to the Assistant Secretary for Housing, Federal Housing Commission
HUD 188 Special Assistant to the Assistant Secretary for Administration
HUD 193 Deputy General Counsel for Programs and Regulations to the General Counsel
HUD 198 Special Assistant to the Senior Advisor to the Secretary
HUD 211 Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations
HUD 216 Special Assistant to the Assistant Secretary for Administration
HUD 231 Deputy Assistant Secretary for Strategic Planning to the Assistant Secretary for Congressional and Intergovernmental Relations
HUD 272 Deputy Assistant Secretary for Grant Programs to the Assistant Secretary for Community Planning and Development
HUD 281 Special Administrator to Regional Administrator
HUD 292 Special Assistant to the Deputy Assistant Secretary for Economic Development
HUD 339 Special Assistant to the Secretary's Representative
HUD 354 Special Assistant to the Assistant Secretary for Public and Indian Housing
HUD 363 Special Assistant to the Assistant Secretary for Policy Development and Research
HUD 373 Special Assistant to the Deputy Assistant Secretary for Public Affairs
HUD 385 Special Assistant to the Deputy Assistant Secretary for Public Affairs
HUD 390 Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Relations
HUD 412 Executive Assistant to the Secretary
HUD 421 Assistant Director to the Director, Executive Secretariat, Office of Administration
HUD 423 Secretary's Representative, Rocky Mountain to the Deputy Secretary
HUD 431 Secretary's Representative (Great Plains) to the Deputy Secretary
HUD 436 Advance Coordinator to the Director of Scheduling
HUD 446 Senior Intergovernmental Relations Officer to the Deputy Assistant Secretary for Intergovernmental Relations
HUD 469 Special Assistant to the Deputy Assistant Secretary for Community Empowerment
HUD 478 Special Projects Officer to the Senior Advisor to the Secretary
HUD 482 Special Projects Officer to the Director, Special Actions Office
HUD 483 Special Assistant (Advance/Security) to the Director, Executive Scheduling
HUD 485 Special Assistant (Advance) to the Director of Executive Services
HUD 487 Advance/Security Coordinator to the Deputy Chief of Staff for Operations
HUD 492 Special Assistant to the General Deputy Assistant Secretary for Community Planning and Development
HUD 494 Intergovernmental Relations Specialist to the Deputy Assistant Secretary for Intergovernmental Relations
HUD 506 Deputy Assistant Secretary for Community Empowerment to the Assistant Secretary for Community Planning and Development
HUD 508 Deputy Chief of Staff for Operations to the Chief of Staff
HUD 512 Deputy Assistant for Legislation to the Assistant Secretary for Congressional and Intergovernmental Relations
HUD 513 Deputy Assistant Secretary for Long Range Planning to the Assistant Secretary for Public Affairs
HUD 520 Special Assistant to the Chief Financial Officer
HUD 521 Deputy Assistant Secretary for Public Housing Investments to the Assistant Secretary, Public and Indian Housing
HUD 526 Intergovernmental Relations Specialist to the Deputy Assistant Secretary for Intergovernmental Relations
HUD 528 Director, Intergovernmental Relations to the Assistant Secretary for Congressional and Intergovernmental Relations
HUD 529 Intergovernmental Relations Assistant to the Deputy Assistant Secretary for Congressional and Intergovernmental Relations
HUD 534 Special Assistant for Inter-Faith Community Outreach to the Director, Office of Special Actions
HUD 541 Director, Corporate and Constituent Outreach to the Assistant Secretary for Administration
HUD 542 Senior Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations
HUD 546 Special Assistant to the Deputy Assistant Secretary for Community Empowerment
HUD 548 General Deputy Assistant Secretary to the Assistant Secretary for Public and Indian Housing
HUD 551 Scheduling Assistant to the Director of Executive Scheduling
HUD 552 Deputy Assistant Secretary for Research to the Deputy Assistant Secretary for Policy Development
HUD 553 General Deputy Assistant Secretary for Public Affairs to the Deputy Assistant Secretary for Public Affairs
HUD 555 Staff Assistant to the Director, Office of Special Programs
HUD 557 Special Assistant to the Deputy Secretary
HUD 558 Special Assistant to the Director, Intergovernmental Relations
HUD 559 Special Assistant to the Secretary's Representative
HUD 560 Secretary's Representative-Midwest to the Deputy Secretary, Office of the Secretary's Representative
HUD 561 Deputy Assistant Secretary for Public Affairs to the Assistant Secretary for Public Affairs
HUD 563 Special Assistant to the Secretary's Representative, California State Office
HUD 564 Senior Press Officer to the Assistant Secretary for Public Affairs
HUD 565 Special Advisor to the Deputy Assistant Secretary for Policy Development
HUD 568 Briefing Coordinator to the Director of Executive Scheduling
HUD 569 Assistant Deputy Secretary for Field Policy and Management to the Deputy Secretary
HUD 570 Deputy Assistant Secretary for Strategic Planning to the Assistant Secretary for Public Affairs
HUD 571 Deputy Assistant Secretary for International Affairs to the Assistant Secretary for Policy Development and Research
HUD 572 Special Assistant (Advance) to the Director, Executive Services
HUD 573 Special Counsel to the General Counsel
HUD 574 Deputy Assistant Secretary for Policy, Program and Legislative Initiatives to the Assistant Secretary for Public and Indian Housing
HUD 575 Special Assistant to the Secretary's Representative, Southeast/Carribean
HUD 576 Senior Advisor to the Assistant Secretary for Community Planning and Development
HUD 577 Advisor for Management Reform and Operations to the Assistant Secretary for Administration
HUD 578 Special Assistant to the Secretary's Representative, New England
HUD 579 Special Assistant to the Assistant Secretary for Policy Development and Research

Section 213.3389 National Mediation Board

NMB 53 Confidential Assistant to a Board Member
NMB 54 Confidential Assistant to a Board Member

Section 213.3391 Office of Personnel Management

OPM 65 Special Assistant to the Director, Office of Congressional Relations
OPM 80 Deputy Director to the Director of Communications
OPM 83 Special Assistant to the Director, Office of Congressional Relations
OPM 86 Deputy Chief of Staff to the Chief of Staff
OPM 87 Confidential Assistant to the Director of Communications
OPM 88 Special Assistant to the Chief of Staff
OPM 89 Director of Media Relations/Press Secretary to the Director of Communications
OPM 91 Speech Writer to the Director of Communications
OPM 92 Special Assistant to the Deputy Director
OPM 93 Special Assistant to the Director of Congressional Relations
OPM 94 Special Assistant to the Director of Communications

Section 213.3392 Federal Labor Relations Authority

FLRA 19 Staff Assistant to the Chair
FLRA 22 Director of External Affairs/Special Projects to the Chair, Federal Labor Relations Authority

Section 213.3393 Pension Benefit Guaranty Corporation

PBGC 7 Assistant Executive Director for Legislative Affairs to the Executive Director
PBGC 11 Special Assistant to the Deputy Executive Director and Chief Financial Officer
PBGC 14 Special Assistant to the Deputy Executive Director and Chief Financial Officer

Section 213.3394 Department of Transportation

DOT 38 Special Assistant to the Deputy Administrator, National Highway Traffic Safety Administration
DOT 69 Director, Office of Public Affairs to the Federal Railroad Administrator
DOT 70 Special Assistant to the Assistant Secretary for Governmental Affairs
DOT 100 Chief, Consumer Information Division to the Director, Office of Public and Consumer Affairs
DOT 105 Staff Assistant to the Director of External Affairs
DOT 112 Policy Advisor to the Assistant Secretary for Transportation Policy
DOT 117 Special Assistant to the Secretary of Transportation
DOT 121 Deputy Director, Office of Congressional Affairs to the Director, Office of Congressional Affairs
DOT 127 Special Assistant and Chief, Administrative Operations Staff to the Assistant Secretary for Budget and Programs
DOT 129 Special Counsel to the General Counsel
DOT 147 Special Assistant to the Assistant to the Secretary and Director of Public Affairs
DOT 148 Associate Director of Media Relations and Special Projects to the Assistant to the Secretary and Director of Public Affairs
DOT 150 Special Assistant to the Administrator, National Highway Traffic Safety Administration
DOT 151 Special Assistant to the Secretary of Transportation
DOT 159 Special Assistant to the Administrator, Federal Highway Administration
DOT 173 Senior Advisor to the Administrator, Federal Railroad Administration
DOT 226 Director, Office of Congressional and Public Affairs to the Administrator, Maritime Administration
DOT 235 Director for Scheduling and Advance to the Chief of Staff
DOT 242 Deputy Director, Executive Secretariat to the Director, Executive Secretariat
DOT 265 Special Assistant to the Director, Office of External Communications
DOT 274 Special Assistant to the Associate Director for Media Relations and Special Projects
DOT 279 Associate Director for Speechwriting and Research to the Assistant to the Secretary and Director of Public Affairs
DOT 287 Scheduling/Advance Assistant to the Director for Scheduling and Advance, Office of the Secretary
DOT 293 Associate Director, Office of Intergovernmental and Consumer Affairs to the Director, Office of Intergovernmental Affairs
DOT 294 Special Assistant to the Associate Deputy Secretary
DOT 296 Special Assistant to the Deputy Administrator, Maritime Administration
DOT 301 Director, Office of Intergovernmental Affairs to the Assistant Secretary for Governmental Affairs
DOT 315 Director of Intergovernmental and Congressional Affairs to the Administrator, National Highway Traffic Safety Administration
DOT 320 Special Assistant to the Secretary of Transportation
DOT 321 Special Projects Director to the Administrator, Research and Special Programs Administration
DOT 324 Special Assistant for Scheduling and Advance to the Director for Scheduling and Advance
DOT 338 Special Assistant to the Federal Highway Administrator, Federal Highway Administration
DOT 342 Special Assistant for Scheduling and Advance to the Director for Scheduling and Advance
DOT 351 Special Assistant to the Deputy Secretary
DOT 355 Director for Drug Enforcement and Program Compliance to the Chief of Staff
DOT 356 Senior Congressional Liaison Officer to the Director, Office of Congressional Affairs
DOT 357 Special Assistant for Scheduling and Advance to the Director for Scheduling and Advance
DOT 358 Scheduling/Advance Assistant to the Director of Scheduling and Advance
DOT 359 Senior Policy Advisor to the Deputy Secretary
DOT 360 Deputy Assistant Secretary for Budget and Programs to the

Assistant Secretary for Budget and Programs
DOT 361 Senior Congressional Liaison Officer to the Director, Office of Congressional Affairs

Section 213.3395 Federal Emergency Management Agency

FEMA 53 Deputy Chief of Staff to the Director, Federal Emergency Management Agency
FEMA 55 Assistant to the Director for Special Events to the Director, Federal Emergency Management Agency
FEMA 56 Director of Corporate Affairs to the Director, Federal Emergency Management Agency
FEMA 57 Special Assistant for Northridge Transition to the Deputy Chief of Staff, Office of the Director
FEMA 58 Director, Office of Public Affairs to the Director, Federal Emergency Management Agency
FEMA 59 Policy Advisor for Congressional and Legislative Affairs to the Director, Office of Congressional and Legislative Affairs
FEMA 61 Advisor for Intergovernmental Affairs to the Director, Office of Intergovernmental Affairs

Section 213.3396 National Transportation Safety Board

NTSB 1 Special Assistant to the Chairman
NTSB 4 Special Counsel to the Managing Director
NTSB 30 Confidential Assistant to the Chairman
NTSB 31 Family and Government Affairs Specialist to the Director, Office of Government, Public, and Family Affairs
NTSB 92 Special Assistant to the Managing Director
NTSB 102 Special Assistant to a Member
NTSB 105 Confidential Assistant to the Chairman
NTSB 106 Director, Office of Governmental Affairs to the Director, Office of Government, Public and Family Affairs
NTSB 107 Special Assistant to the Director, Office of Government, Public, and Family Affairs

Section 213.3397 Federal Housing Finance Board

FHFB 5 Special Assistant to the Chairman
FHFB 6 Counselor to the Chairman

Senior Level Schedule C Positions (Above GS–15)

Section 213.3397 African Development Foundation

Vice President to the President

Section 213.3342 Export-Import Bank

Senior Advisor to the President and Chairman and Board of Directors
Vice President for Communications to the President and Chairman
General Counsel to the President and Chairman
Special Counsel to the President and Chairman
Vice President and Counselor to the President and Chairman
Vice President for Congressional and External Affairs to the President and Chairman

Section 213.3382 National Endowment for the Arts

Executive Director, President's Commission on the Arts and Humanities

Section 213.3343 Farm Credit Administration

Executive Assistant to a Board Member
Executive Assistant to a Board Member
Director, Congressional and Public Affairs, to the Chairman
Executive Assistant to a Board Member

Section 213.3393 Pension Benefit Guaranty Corporation

Executive Director to the President
Deputy Executive Director and Chief Negotiator to the Executive Director
Deputy Executive Director and Chief Financial Officer to the Executive Director
Senior Advisor to the President

Section 213.3333 Federal Deposit Insurance Corporation

General Counsel to the Chairman
Deputy to the Chairman

Section 213.3305 Department of the Treasury

Special Assistant to the Commissioner, Internal Revenue Service

Office of Thrift Supervision

Executive Director, External Affairs to the Director

Section 213.3357 National Credit Union Administration

Executive Assistant to a Board Member
Executive Assistant to a Board Member
Executive Assistant to the Chairman
Director of Community Development Credit Unions to the Board
Executive Director to the Board

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–22916 Filed 9–2–99; 8:45 am]

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Friday
September 3, 1999

Part III

Nuclear Regulatory Commission

10 CFR Part 51
Changes to Requirements for Environmental Review for Renewal of Nuclear Power Plant Operating Licenses; Final Rules

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

RIN 3150–AG05

Changes to Requirements for Environmental Review for Renewal of Nuclear Power Plant Operating Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations on the environmental information required in applications to renew the operating licenses of nuclear power plants. This amendment expands the generic findings about the environmental impacts due to transportation of fuel and waste to and from a single nuclear power plant. Specifically, this amendment adds to findings concerning the cumulative environmental impacts of convergence of spent fuel shipments on a single destination, rather than multiple destinations, and the environmental impact of transportation of higher enriched and higher burnup spent fuel during the renewal term. The effect of this amendment is to permit the NRC to make a generic finding regarding the impacts so that an analysis of these impacts will not have to be repeated for each individual license renewal application. This action reduces the regulatory burden on applicants for license renewal by replacing individual plant operating license renewal reviews with a generic review of these topics. Also, this amendment incorporates rule language to be consistent with the findings in NUREG–1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" (May 1996), which addresses local traffic impacts attributable to continued operation of the nuclear power plant during the license renewal term.

In analyzing the environmental impact of transporting spent fuel and waste in the vicinity of a single repository, the NRC evaluated the impact in the vicinity of Yucca Mountain and specifically the impacts in the vicinity of Las Vegas, NV. The NRC elected to evaluate the impacts in the vicinity of Yucca Mountain because Yucca Mountain is the only location currently being evaluated for a repository under the Nuclear Waste Policy Act. The NRC's analysis of the impacts in the vicinity of Yucca Mountain in this instance does not prejudge the eventual licensing of Yucca Mountain as a repository. Rather, it reflects NRC's existing license renewal process by reflecting current repository activities and policies. If an application is filed by the Department of Energy (DOE), the licensing process for a repository in the vicinity of Yucca Mountain will constitute an entirely separate regulatory action from the proposed final rule. Furthermore, if, based on technical or national policy considerations, some site other than Yucca Mountain is selected in the future for study as a repository, the NRC will evaluate the applicability of the generic environmental impact statement for the license renewal process to other proposed repository sites.

EFFECTIVE DATE: October 4, 1999.

FOR FURTHER INFORMATION CONTACT: Donald P. Cleary, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–3903; e-mail: DPC@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

On June 5, 1996 (61 FR 28467), the Commission published in the **Federal Register** a final rule amending its environmental protection regulations in 10 CFR part 51 to improve the efficiency of the process of environmental review for applicants seeking to renew a nuclear power plant operating license for up to an additional 20 years. The rulemaking was based on the analyses reported in the final report of NUREG–1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" (GEIS) (May 1996). The rulemaking drew on the considerable experience of operating nuclear power plants in order to generically assess many of the environmental impacts, so that repetitive reviews of issues whose impacts are well understood could be minimized. In the statement of considerations accompanying the final rule, the Commission stated that before the final rule became effective, the Commission was seeking comments on the treatment of low-level waste (LLW) storage and disposal impacts, the cumulative radiological effects from the uranium fuel cycle, and the effects from the disposal of high-level waste (HLW) and spent fuel. In response to the June 5, 1996, final rule, a number of commentors stated that the requirements for the review of transportation of HLW in the rule were unclear with respect to (1) the use and legal status of 10 CFR 51.52, "Table S–4— Environmental Impact of Transportation of Fuel and Waste To and From One Light-Water-Cooled Nuclear Power Reactor," in plant-specific license renewal reviews; (2) the conditions that must be met before an applicant may adopt Table S–4; and (3) the extent to which the generic effects of transporting spent fuel to a HLW repository should be considered in a plant-specific license renewal review.

After considering the comments received on the rule, the Commission republished the rule in the **Federal Register** on December 18, 1996 (61 FR 66537). The rule at 10 CFR 51.53(c)(3)(ii)(M) continued to require, "The environmental effects of transportation of fuel and waste shall be reviewed in accordance with 10 CFR 51.52." However, in response to comments received, the following requirement was added:

> The review of impacts shall also discuss the generic and cumulative impacts associated with transportation operation in the vicinity of a high-level waste repository site. The candidate site at Yucca Mountain should be used as a representative site for the purpose of impact analysis as long as that site is under consideration for licensing.

Also in response to the comments, the Commission stated that:

> As part of its effort to develop regulatory guidance for this rule, the Commission will consider whether further changes to the rule are desirable to generically address: (1) the issue of cumulative transportation impacts and (2) the implications that the use of higher burnup fuel have for the conclusions in Table S–4. After consideration of these issues, the Commission will determine whether the issue of transportation impacts should be changed to Category 1.[1]

In SECY–97–279, titled "Generic and Cumulative Environmental Impacts of Transportation of High-Level Waste (HLW) in the Vicinity of a HLW Repository," dated December 3, 1997, the NRC staff informed the Commission that it was the staff's preliminary view that its supplemental analyses of the generic and cumulative impacts of the transportation of HLW and of the implications of higher burnup fuel for transportation impacts support a reasonable technical and legal determination that transportation of HLW is a Category 1 issue and may be generically adopted in a license renewal application. In a Staff Requirements Memorandum (SRM) dated January 13, 1998, the Commission directed the NRC staff to proceed with rulemaking to amend 10 CFR 51.53(c)(3)(ii)(M) to categorize the impacts of transportation of HLW as a Category 1 issue. In a memorandum dated July 1, 1998, the NRC staff informed the Commission of its plans for amending 10 CFR part 51.

In that memorandum the NRC staff also proposed, as an administrative amendment, to address local traffic impacts attributable to continued operation of the plant during the license renewal term. This issue was identified as a Category 2 issue in NUREG–1437, Section 4.7.3.2 and the overall issue of transportation was designated as Category 2 in the rule (see 10 CFR Part 51, Subpart A, Appendix B, Table B–1, "Public Services, Transportation"). However, the specific issue of local transportation impacts during the renewal term was inadvertently omitted from 10 CFR 51.53(c)(3)(ii)(J) and its inclusion in Table B–1 is not explicitly stated. The basic transportation concern identified in NUREG–1437 is the potential adverse contribution of a larger plant work force to traffic flow in the vicinity of the power plant.

To address the above issues, the Commission issued proposed amendments to 10 CFR part 51 on February 26, 1999 (64 FR 9884), and provided a public comment period of 60 days. The supplemental analysis, which supports this rule, is reported in NUREG–1437, Vol. 1, Addendum 1, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Main Report Section 6.3—'Transportation,' Table 9.1 'Summary of findings on NEPA issues for license renewal of nuclear power plants,' Final Report." The draft for comment was published in February 1999 and the final report is expected to be published in August 1999.

The public comment period closed on April 27, 1999. Extensive public comments were received, including concerns by some commentors about the length of the comment period. Although the NRC did not extend the public comment period, the NRC staff did consider comments dated as late as June 25, 1999, and received as late as early July 1999. The NRC staff's responses to the comments are provided below. As explained in more detail below, the comments have led to both the use of more conservative assumptions in the analysis reported in Addendum 1 and a fuller explanation of the analysis. The regulatory text has been edited for clarification but there is no material change from the proposed rule.

[1] In NUREG–1437 and in the rule, Category 1 issues are those environmental issues for which the analysis and findings have been determined to be applicable to all nuclear power plants or to plants with specific types of cooling systems or other common plant or site characteristics. Absent new information that significantly changes the finding, these generic findings may be adopted in plant license renewal reviews. Category 2 issues are those that analysis has shown that one or more of the criteria of Category 1 cannot be met and, therefore, additional plant-specific review is required.

Discussion

Relationship of This Rulemaking to Repository Licensing

The NRC is promulgating this rule in order to meet its National Environmental Policy Act (NEPA) responsibilities to consider the environmental impact of its license renewal decisions. In 1996 (61 FR 28467 and 61 FR 66537), the NRC published a rule that codified conclusions regarding the environmental impacts of license renewal (see 10 CFR part 51, Appendix B to subpart A). The amendment issued in the present Notice constitutes a relatively small addition to those previously published conclusions. In particular, as discussed above, this amendment ensures among other things that the NRC has considered the likely impacts of transporting spent fuel generated during the license renewal period over a single transportation corridor in the vicinity of a waste repository.

Because the Yucca Mountain site in Nevada currently represents the most likely candidate for a repository, the NRC has used that site as a representative site for its analysis in lieu of considering transportation to an unspecified, hypothetical site. The decision to use Yucca Mountain for the purposes of the current analysis, however, in no way increases or decreases the likelihood that Yucca Mountain will in fact be licensed as a repository for the nation's high level waste. Instead, it simply provides the NRC with the information it needs to gauge the potential impacts from licensing nuclear power plants for an additional 20 year period. If an application is filed by the Department of Energy (DOE), the licensing process for a repository in the vicinity of Yucca Mountain will constitute an entirely separate regulatory action from this final rule. Any NRC decision on a repository license will be accompanied by separate safety and environmental analyses that will include a thorough examination of the environmental impacts stemming from the construction and operation of the repository. If the analyses prepared for the repository licensing decision yield results that are inconsistent with those reached in the present notice, it is likely that the NRC will have to amend the conclusions in Table B–1 of Part 51 to conform with the new findings.

Amendments to the Rule

The current regulations require each applicant for license renewal to review the environmental effects of transportation of fuel and waste in accordance with 10 CFR 51.52, and to discuss the generic and cumulative impacts associated with transportation in the vicinity of the candidate HLW repository site at Yucca Mountain (see 10 CFR 51.53(c)(3)(ii)(M)). The NRC staff has performed a generic assessment of these cumulative impacts, which is reported in NUREG–1437, Vol. 1, Addendum 1. The analysis focused on Clark County, Nevada because it represents the area with the largest population in the vicinity of the potential repository. The final rule codifies the conclusions of this analysis in 10 CFR Part 51. In addition, the NRC staff has generically considered the potential impacts of transporting higher enriched and higher burnup fuel than is currently covered in 10 CFR 51.52 and is codifying these findings with this final rule. That assessment concludes that the impacts of transporting fuel and waste generated during the license renewal period are small and are consistent with the impacts of the values in Table S–4 of the Commission's regulations (§ 51.52). Under the Commission's regulations for the environmental review of license renewal decisions (see 10 CFR part 51, subpart A, appendix B), the Commission may reach a conclusion of "small" impact for a particular issue if the:

> * * * environmental effects are not detectable or are so minor that they will neither destabilize nor noticeably alter any important attribute of the resource. For the purposes of assessing radiological impacts, the Commission has concluded that those impacts that do not exceed permissible levels in the Commission's regulations are considered small as the term is used in this table.

The final rule amends the issue of transportation of fuel and waste from Category 2 to Category 1. In order to reach this Category 1 conclusion on an issue and thus not require site specific analysis of the issue pursuant to § 51.53(c)(3)(i), the Commission has made the following findings in accordance with the definitions set out in 10 CFR Part 51, Subpart A, Appendix B:

(1) The environmental impacts associated with the issue have been determined to apply either to all plants or, for some issues, to plants having a specific type of cooling system or other specified plant or site characteristic;

(2) A single significance level, in this case "small" has been assigned to the impacts (except for collective off site radiological impacts from the fuel cycle

and from high level waste and spent fuel disposal[2]); and

(3) Mitigation of adverse impacts associated with the issue has been considered in the analysis, and it has been determined that additional plant-specific mitigation measures are likely not to be sufficiently beneficial to warrant implementation.

As a result of this Category 1 finding, neither applicants nor the NRC staff will need to prepare a separate analysis of the issue for individual license renewal applications as long as no new and significant information exists. The analysis in NUREG–1437, Vol. 1, Addendum 1 which forms the technical basis for the rulemaking, relies on a series of conservative assumptions. As such, the results of the analysis overestimate the environmental impacts of spent fuel shipments converging on one location, such as Yucca Mountain. Although the NRC staff has assessed these impacts as if Yucca Mountain would be the only HLW repository, the NRC staff believes that the impacts calculated for Yucca Mountain bound the impacts that would be experienced for a site other than Yucca Mountain. It is unlikely that any other repository site would have an exposed population greater than that assumed for Las Vegas and it is unlikely that spent-fuel shipments from all points of origin converge on and are transported through one metropolitan area. If an alternative to a high level waste repository at Yucca Mountain is considered in the future, the NRC may need to determine whether such an alternative includes new and significant information that may change the regulatory outcome.

In addition to considering the cumulative impacts of transportation in the vicinity of a repository, the NRC also considered whether use of higher burnup or higher enriched fuel that is shipped to a repository results in impacts consistent with the NRC regulations (§ 51.52,'Table S–4—Environmental Impact of Transportation of Fuel and Waste To and From One Light-Water-Cooled Nuclear Power Reactor'). The environmental consequences of incremental increases in the burnup of fuel and the associated use of higher enrichment fuel are discussed in Section 6.2.3 of NUREG–1437. Section 6.2.3 addresses the sensitivity of the data presented in Table S–3 and Table S–4 to the growing use of higher enriched fuel and higher fuel burnup. Table S–3 summarizes natural resource use and effluents to the environment for the uranium fuel cycle, from mining to ultimate disposal of spent fuel. The discussion of the implications for the environmental impact data reported in Table S–4 was not repeated or referenced in Section 6.3, which addresses the incremental impacts of license renewal on the transportation of fuel and waste to and from nuclear power plants. Addendum 1 and this final rule clarify the NRC findings on the sensitivity of values in Table S–4 to the use of higher enrichment fuel and higher burnup fuel presently in use. The analysis concludes that shipment of higher enriched or higher burnup fuel results in impacts consistent with the impacts in Table S–4, 10 CFR 51.52. It should be noted that cask designs used to transport or store higher enriched fuel and higher burnup fuel require specific NRC review and approval.

In the course of preparing the final rule, several non-substantive changes to the wording and organization of the regulatory text were made in order to maintain the rule's internal consistency. First, the content of the proposed language in § 51.53(c)(3)(ii)(J) regarding local transportation impacts in the vicinity of the licensed plant was also placed into Table B–1 under "Public Services, Transportation" under the Socioeconomics section of the Table. Similarly, the proposed language in § 51.53(c)(3)(ii)(M) has not been included in the final rule because the matters covered by § 51.53(c)(3)(ii) only apply to Category 2 issues and, as such, the inclusion of matters related to a Category 1 issue in that section would not have been appropriate. Instead, the content of the language that had been proposed for § 51.53(c)(3)(ii)(M) is adequately covered by the amended entry in Table B–1 itself under the issue of "Transportation" in the Uranium Fuel Cycle and Waste Management section.

Response to Comments

Thirty-one comment letters were received on the proposed rule from power reactor licensees, State and local Government agencies, the nuclear power industry and its legal affiliations, a public interest group, and an individual. Most of the comments were from the State of Nevada, Clark and Nye Counties, Nevada, and local government entities in Nevada. These comments focused on the NRC not involving Nevada in scoping and designing the study in Addendum 1 and on perceived deficiencies in the scope and thoroughness of the analysis in the Addendum. The State of Utah also submitted extensive comments that focused on concerns with the scope and thoroughness of the supporting analysis in Addendum 1, including the lack of consideration of the proposed Private Fuel Storage Facility at Skull Valley, Utah. Industry comments focused on clarifications in the rule language.

The written comments have been summarized and grouped into issue categories. As a result of the NRC staff's review of all written comments, some modifications and clarifications have been incorporated into Addendum 1—notably, the use of more conservative assumptions in the analyses and a fuller explanation of those analyses. In addition, the rule language has been edited for clarification. The NRC staff has also prepared responses, given below, to the issues raised by the commentors.

Issue 1—Public Notice

Comment: The titles of the notices published in the **Federal Register** were inaccurate and misleading because they do not clearly indicate the subject matter of the proposed rule and Addendum 1 that addresses transportation of spent nuclear fuel.

Response: The NRC believes that the titles properly reflect the regulatory action being taken. As required by NRC regulations,[3] a notice of the proposed rule and a Notice of Availability of Addendum 1 were published in the **Federal Register** (64 FR 9884 and 64 FR 9889, February 26, 1999). While the notice's title did not include the specific term "transportation," the titles define the subject matter of the regulation to be affected; the title of the proposed rule is "Changes to Requirements for Environmental Review for Renewal of Nuclear Power Plant Operating Licenses." The title of the Notice of Availability is "Changes to Requirements for Environmental Review for Renewal of Nuclear Power Plant Operating Licenses, Availability of Supplemental Environmental Impact Statement." Addendum 1 supplements specific sections of NUREG–1437, Generic Environmental Impact Statement for License Renewal of Nuclear Plants (May 1996). This limited function is indicated by the title of Addendum 1, Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Main Report Section 6.3—"Transportation," Table 9.1 "Summary of findings on NEPA issues for license renewal of nuclear power plants," Draft Report for Comment.

The rule change and the supporting Addendum 1 affect only the plant-specific environmental analysis required to be submitted in the Environmental Report of an applicant for the renewal of a nuclear power plant operating license and the plant-specific supplemental environmental impact statement prepared by the NRC. Even though the analysis in Addendum 1 focuses on spent-fuel shipments converging on the proposed repository at Yucca Mountain, Nevada, that analysis and the resulting rule affect only the review requirements for renewal of an individual nuclear power plant operating license. It is not intended that Addendum 1 or the revised rule support any other regulatory decision by the NRC.

Issue 2—Communications

Comment: NRC failed to consult with Nevada State agencies, Nevada local governments, and with Nevada Indian Tribes.

Response: As discussed above, a variety of organizations and government agencies submitted substantive comments in response to the proposed rule. The NRC has considered these comments and, in many cases, altered its analysis as a result of this input. Prior to issuance of the proposed rule for comment, however, the NRC did not seek any pre-publication input from Nevada state agencies, Nevada local Governments, and Nevada Indian Tribes for the following reasons. First, the rule involves a narrow aspect of the environmental review of individual nuclear power plant license renewal decisions, which is a regulatory decision completely separate from the regulatory requirements that will guide the NRC licensing review of a HLW repository and from the decision process leading to a DOE site recommendation on Yucca Mountain, Nevada, the site DOE currently has under study. This rule amends the December 18, 1996, rule with respect to two questions not adequately answered:

1. Are the current environmental impact values in Table S–4, based on several destinations, still reasonable to incorporate in a license renewal review that assumes a single destination for spent fuel at Yucca Mountain, Nevada?

2. Are the current environmental impact values in Table S–4 (which are based on fuel enriched to no greater than 4 percent, the average level of irradiation of spent fuel not exceeding 33,000 MWd/MTU, and shipment no less than 90 days after discharge from the reactor) still reasonable to incorporate in a license renewal review of plants that may use fuel enriched up to 5 percent and potentially ship spent fuel with a burnup of up to 62,000 MWd/MTU?

The amendment has no direct regulatory impact on any entity within Nevada. The selection of Yucca Mountain for the generic evaluation of transportation impacts was made because that site is currently the only one under consideration for a high-level-waste (HLW) repository. Before HLW is actually transported to Yucca Mountain, Nevada, the State, local Governments, Indian Tribes, and the public have the opportunity to provide input on site-specific transportation impacts by commenting on DOE's draft EIS for the proposed repository at the Yucca Mountain site, which was made available for a 180-day comment period beginning on August 13, 1999 (http://www.ynp.gov).

Also, the need for and scope of the current rule amendment were identified within the context of a preceding rulemaking that specified the plant-specific content of the environmental review of applications for the renewal of individual nuclear power plant operating licenses. The previous final rule was published in the **Federal Register** first on June 5, 1996 (61 FR 28467), and again with minor modifications on December 18, 1996 (61 FR 66537). The Commission stated in the December **Federal Register** notice, "as part of its efforts to develop regulatory guidance for this rule, the Commission will consider whether further changes to the rule are desirable to generically address: (1) The issue of cumulative transportation impacts and (2) the implications that the use of higher burn-up fuel have for the conclusions in Table S–4. After consideration of these issues, the Commission will determine whether the issue of transportation impacts should be changed to Category 1."

Issue 3—Transportation Analysis

Comment: NRC failed to consult relevant Yucca Mountain transportation risk and impact studies.

Response: The publications cited by commentors have been reviewed for information that may be of direct use within the limited focus and purpose of the current rule. Most of the information in these documents was found to be potentially more relevant to a detailed site-specific review of Yucca Mountain than to the generic analysis for this rule. That information has been brought to the attention of those organizational units within the NRC responsible for activities relating to DOE's study on the Yucca Mountain site so they can appropriately consider the information in any future prelicensing activities involving Yucca Mountain. Specific to the current rule, the demographic data used as inputs to the RADTRAN computer code, which was used to generate the impact analysis in Addendum 1 were more current than data used in many of the studies cited by the commentors.

Comment: NRC failed to consult the full spectrum of transportation mode and route scenarios.

Response: The purpose of this rule and associated analysis is to reach conclusions regarding the likely environmental impact of license renewal. As noted above, this amendment is an addition to generic assessments of license renewal environmental impacts already codified in the Commission's regulations at 10 CFR part 51, subpart A, appendix B. It is not an environmental impact statement for a repository at Yucca Mountain for which DOE is responsible and, as such, does not delve into the expansive range of different transportation modes and route scenarios that would be considered in the context of a decision on Yucca Mountain as the possible site for the facility itself. Instead, the NRC has sought to determine a conservative estimate of the likely impacts from transporting fuel and waste generated, during the license renewal term, in the vicinity of a potential repository. In doing so, the NRC considered only those transportation modes and route scenarios that would likely result in the greatest impacts. For the proposed rule, the NRC staff—in consultation with the DOE staff—determined that truck shipments through densely populated areas of Clark County, Nevada, would have the highest potential impacts among the alternative transportation scenarios and modes that would receive serious consideration in decisions relating to the suitability of the site undergoing study for a repository at Yucca Mountain. The NRC continues to believe that using these route scenarios and modes to generate conservative estimates is reasonable for the purpose of this rulemaking.

Comment: There was insufficient consideration of routine transportation radiological risks due to use of an average dose rate lower than the regulatory limit.

Response: The RADTRAN analysis reported in the final Addendum 1 has been modified to use the most conservative assumption that the radiation levels for all shipments are at the regulatory limit of 0.1 mSv/hour [10

[2] This exception only applies to the two entries in Table B–1 labeled "Offsite radiological impacts (collective effects)" and "Offsite radiological impacts (spent fuel and high level waste disposal).

[3] 10 CFR 2.804, "Notice of proposed rulemaking" and 10 CFR 51.117, "Draft environmental impact statement'notice of availability."

mrem/hour] at 2 m [6.6 ft] from the shipment vehicle surface. As noted in Section 2.2.3 of Addendum 1, this assumption is sufficiently conservative to bound the analysis of routine transportation radiological risk and allow a reasonable assessment of that risk. Actual average radiation levels and associated doses would be much lower because shipments must be designed so that the regulatory limits are not exceeded. The use of the regulatory limits in the revised analysis results in higher dose estimates for incident-free transportation. However, these revised estimates are still small as defined in 10 CFR Part 51, Subpart A, Appendix B. Consequently, the conclusion regarding the radiological risks of routine transportation remains valid.

Comment: There was insufficient consideration of routine transportation radiological risks to members of the public residing, working, or institutionally confined at locations near shipping routes.

Response: The analysis encompasses members of the public residing, working, or institutionally confined at locations near shipping routes by assuming that the resident population along the transportation routes is exposed to every shipment. The text of Sect. 2.3 of Addendum 1, has been revised to state this assumption and its effects on the revised analysis more clearly. In addition, more conservative assumptions of truck speed have been used in the revised RADTRAN analysis thus extending the exposure time to individuals along the transportation route. These assumptions further ensure that members of the public cited by the commentors would be encompassed by the dose and risk assessments. As expected, the use of these more conservative assumptions leads to higher estimates of radiation dose to the public. However, these revised dose estimates remain well below regulatory limits for members of the public and small compared to natural background and other sources of radiation exposure.

Several commentors indicated that Addendum 1 should focus on unique and location-specific circumstances of the transportation routes and population centers. However, the analysis in Addendum 1 is generic and was designed to support only the limited scope of the decision regarding this rule change. The NRC believes that the routes chosen represent a conservative analysis due to the higher number of people who live along these routes. Because the purpose of this rule is to provide a generic analysis for the limited purpose of determining the likely impact of transportation during the license renewal term, the large analytical effort required for the identification of specific population locations and traffic circumstances is not warranted within the context of the current rule. Although the comments raise valid issues, those concerns should be resolved within the context of studying, and making decisions concerning, the suitability of the candidate repository site at Yucca Mountain and regulatory requirements governing transportation of spent fuel.

Comment: There was insufficient consideration of radiological risks resulting from traffic gridlock incidents.

Response: Traffic gridlock incidents are not specifically analyzed in NUREG–1437 because of the limited scope and generic nature of the analysis (see response to comment on consideration of risks to members of the public, above). However, the revised RADTRAN analysis conservatively includes approximately two hours of stationary time in Clark County (during a 100 to 140 mile trip depending upon the route) for each truck shipment; and traffic gridlock could be one of the reasons for the truck being stationary.

To a limited extent, the incorporation of more conservative assumptions of truck speed into the revised RADTRAN analysis compensates for an analysis of traffic gridlock by allowing for increased exposure time at any given point during transport. As noted earlier, these revised assumptions lead to higher but still small dose estimates. In addition, the routes used in the analysis in Addendum 1 were deliberately chosen to maximize estimated dose. Actual routes would be less likely to have significant areas where traffic gridlock occurs. The selection of the actual routes, for example, would comply with the U.S. Department of Transportation's Federal Highway Administration regulations (49 CFR Part 397, Subpart D) that require minimizing the time in transit (i.e., avoiding periods of great traffic congestion) for routing radioactive shipments.

Comment: There was insufficient consideration of routine transportation radiological risks to vehicle inspectors and escorts.

Response: The RADTRAN analysis in the revised Addendum 1 uses the regulatory dose rate limit of .02 mSv/hour (2 mrem/hour) for the vehicle crew. In addition, a discussion of potential doses to escorts has been included in Addendum 1, Section 2.2.3. In the analysis, both the escorts and drivers are assumed to be exposed to the regulatory limit, although the dose to the escorts would realistically be less than that to the drivers. Even with these more conservative assumptions, the estimated dose and risk to the crew are small and below regulatory limits.

The risk to vehicle inspectors would be encompassed by the addition of stationary time for the transport truck in Clark County (see response to comment about traffic gridlock, above). Again, the estimated dose and risk are increased by the use of more conservative assumptions; but they remain small and below regulatory limits.

Comment: There was insufficient consideration of severe transportation accident risks.

Response: The Commission has evaluated the potential radiological hazards of severe transportation accidents involving truck and rail spent nuclear fuel (SNF) shipments (NUREG/CR–4829, "Shipping Container Response to Severe Highway and Railway Accident Conditions" February 1987, commonly referred to as the modal study). The modal study evaluated SNF shipping casks certified to NRC standards against thermal and mechanical forces generated in actual truck and rail accidents. This evaluation included an assessment of cask performance for a number of severe transportation accidents, including the Caldecott Tunnel fire. The modal study concluded that there would be no release in 994 of 1,000 real accidents, and that a substantially lower fraction of accidents could result in any significant release. These results when combined with the probability of a severe accident involving a shipment of SNF, demonstrate that the overall risk associated with severe accidents of SNF shipping casks is very low. The results of the modal study were factored into the analysis for this rulemaking, as an input to the RADTRAN computer code. Additional analyses were performed to address the possible impacts of accidents involving higher burnup fuel.

The consequences associated with an individual SNF shipment have an upper bound, based on the amount of material in the package, the availability of mechanisms to disperse the radioactive contents, the locations and number of receptors, and post-event intervention than would occur. Further, this upper bound in transit might reasonably be expected to be less than that at the origin or destination points (where more SNF would be stored), and some events themselves might be expected to have greater consequences than the damage they cause to the SNF cask. The NRC recognizes that there are some conceivable events (not necessarily traditional 'transportation accidents'), that might be hypothesized to occur to a SNF cask while in transport. Even though these events have an extremely low probability of occurring, they might result in high consequences if they were to occur. The NRC considers these events to be remote and speculative and thus, does not call for detailed consideration. Because the NRC traditionally considers risk to be the product of the probability of an event and its resultant consequences, events with such low probability of occurring have a negligible contribution to the overall risk. In addition, as the probabilities of the events become very low, the value of insights to be gained, for use in regulatory decisions, is not apparent.

Comment: The study underestimates Clark County's residential population and growth rate. In addition, the study does not account for the large nonresident population, resulting in underestimates of risk and impacts.

Response: In keeping with the generic nature and limited intent of the analysis, the original analysis used best available data and best estimates of existing population and population growth rates. In response to commentors' concerns and to reflect the potentially large population growth rate of Clark County, the NRC staff has incorporated higher population estimates into the analysis to provide conservative (higher than best estimate) assessments of potential impacts. However, as indicated by the comment, the task of estimating the impacts on the area population is more complex than assuming a population growth rate. Both the rate of growth of the population and changes in location of the population within the county are important. As stated in Addendum 1, populations within a half mile of the transportation route are the most affected by the transportation activities. Therefore, in order to ensure that the size of the affected population is conservative, the NRC staff's analysis not only increases over time the existing population densities along the assumed transportation routes, but also forecasts increased residential, business, and transient/tourist populations in the areas of likely development.

Issue 4—Cumulative Impacts

Comment: NRC failed to consider cumulative impacts of all spent fuel, HLW, and low-level-waste shipments.

Response: Table S–4 shows the environmental impacts of transportation of fuel and waste directly attributable to one nuclear power plant. The current rulemaking was narrowly focused on the question of whether the impact values given in Table S–4 would be different with spent fuel shipments converging on one destination, Yucca Mountain—the candidate site under study by DOE for a repository, rather than several destinations. Table S–4 does not consider non-commercial power reactor shipments of fuel and waste. Nevertheless, a discussion of the cumulative impacts of transporting spent fuel, HLW, and low-level waste through southern Nevada has been added to Addendum 1 (Section 2.4). To estimate the potential cumulative effects of DOE shipments of LLW to the Nevada Test Site as well as shipments of HLW to a possible repository, the NRC staff used information published in DOE's Waste Management Programmatic EIS (DOE/EIS–0200—F) May 1997. To ensure that cumulative impacts are not underestimated, the NRC staff selected alternatives in the EIS that led to the highest numbers of shipments to the Nevada Test Site and Yucca Mountain. The results of the analysis indicate that the cumulative doses and expected cancer fatalities resulting from the civilian SNF and the DOE shipments are small compared to the risk of cancer from other causes.

Comment: Commentors stated that cumulative impacts along the Wasatch Front must be considered.

Response: The State of Utah maintains that a study similar to the one conducted for Las Vegas and Clark County must be conducted for the cumulative impacts along the Wasatch Front that would originate from the proposed Private Fuel Storage Facility to be located at Skull Valley, Utah. Such an analysis is beyond the scope of this generic rulemaking because the Commission directed that cumulative impacts attributed to transportation be analyzed only in the vicinity of Yucca Mountain. However, the NRC is currently reviewing a site-specific application for construction and operation of the proposed Private Fuel Storage Facility at Skull Valley in a separate regulatory action. A site-specific study of the cumulative impacts of transportation is part of that review. The study will be reported in a draft Environmental Impact Statement to be published for public comment. Its availability will be noticed in the **Federal Register**.

Issue 5—Legal Requirements

Comment: NRC failed to conduct a legally sufficient risk assessment. Use of a model such as RADTRAN is not in and of itself sufficient to meet the requirements of the National Environmental Policy Act. The NRC must consider consequences of low-probability, high-consequence accidents not included in RADTRAN, including unique local conditions, unforeseen events, sabotage, and human error in cask design. The NRC should adopt the comprehensive risk assessment approach for SNF and HLW transportation described in Golding and White, Guidelines on the Scope, Content, and Use of Comprehensive Risk Assessment in the Management of High-Level Nuclear Waste Transportation (1990).

Response: See the response above regarding consideration of severe accident risk (low probability, high consequence accidents) during transportation.

The NRC's regulatory program will continue to ensure that the risk of severe transportation accidents are minimized. Physical security for spent fuel transportation is regulated under 10 CFR 73.37. The regulatory philosophy is designed to reduce the threat potential to shipments and to facilitate response to incidents and recovery of packages that might be diverted in transit. Although the analysis supporting the current rule does not account for the potential for human error, activities related to the design, fabrication, maintenance, and use of transportation packages are conducted under an NRC-approved Quality Assurance Program. This helps to provide consistency in performance and helps reduce the incidence of human error. While a location-specific transportation risk assessment is included in the DOE EIS for the decisions relating to a possible Yucca Mountain repository, the NRC staff believes that the analysis conducted for this rulemaking provides an adequate consideration of the impacts from license renewal. Further, through its regulatory, licensing, and certification functions, the NRC has tried to ensure that transportation of SNF is performed safely with minimum risk to the public, and that vehicle crashes while transporting SNF do not result in severe accidents. Similarly, DOE is expected to ensure that the routes and procedures chosen for SNF transport to the repository provide ample protection of the public health and safety and the NRC reviews and approves the selected routes.

The analysis in Addendum 1 shows that even with conservative assumptions, the cumulative radiological and non-radiological accident risks of SNF transport in Clark County are small. However, there are a number of opportunities to further reduce human health impacts. These include transporting SNF by rail rather than by truck. This would reduce human health effects by reducing the number of shipments and the likelihood

of accidents. In addition, shipping SNF via the proposed beltway would reduce health impacts compared to shipping via the current interstate highway system. The implementation of such mitigative measures must await future decisions that fall well outside of the scope of this rulemaking. In addition, for the purposes of individual license renewal rule decisions, no plant specific mitigation measures were found appropriate for addressing the impacts identified in the Addendum. The NRC staff notes that DOE addresses transportation impacts, mitigation measures, and alternative transportation modes in its EIS for the proposed repository at Yucca Mountain.

Issue 6—Socioeconomics

Comment: NRC failed to consider socioeconomic impacts.

Response: Several commentors raised an issue of public perception of risk of waste shipments and its effect on tourism and property values. Under the National Environmental Policy Act (NEPA), the NRC is obligated to consider the effects on the physical environment that could result from the proposed action. Effects that are not directly related to the physical environment must have a reasonably close causal relationship to a change in the physical environment. The Supreme Court ruling in *Metropolitan Edison Co.* v. *People Against Nuclear Energy*, 460 U.S. 766 (1983) has narrowly circumscribed, if not entirely eliminated, an agency's NEPA obligation to consider impacts arising solely from the public's perception that an agency's action has created risks of accidents. Accordingly, it is not necessary to consider the impacts on tourism and property values from the public's perception of risk.

The socioeconomic impacts of plant refurbishment and continued operation during the renewal period are discussed in the plant-specific supplement to the GEIS for each individual license renewal applicant. The NRC recognizes that there will likely be increased costs in the unlikely event of an accident. However, for the majority of transportation accidents that may occur, the associated costs are small. For the most severe accidents analyzed by the RADTRAN computer code, the costs could be substantial. Given the low probability of such accidents, the socioeconomic impacts of transportation of SNF do not alter the Commission's conclusions regarding the impacts of this issue.

Issue 7—Higher Burnup Fuel

Comment: There was insufficient consideration of extended fuel burnup issues.

Response: Section 3 of Addendum 1 addresses the issues associated with extended fuel burnup in detail. The NRC staff's analysis of higher burnup fuel examined the issues of radiation doses due to higher dose rates during shipment, higher radiation doses in the event of transportation accidents, and the potential for a criticality in the very unlikely event that high burnup fuel geometry is altered during a transportation accident.

The analysis done by the NRC staff concluded that higher burnup fuel would likely cause higher dose rates during transportation and that dose rates following transportation accidents with radiological releases would also increase, all other things being equal. However, despite the increased dose rates the potential impacts on the transport crews and the affected members of the public would still be acceptably small. The analysis of the potential for criticality following a change in fuel geometry as the result of a transportation accident determined that such an event was not a concern.

Issue 8—Environmental Justice

Comment: NRC failed to consider Environmental Justice.

Response: The analysis suggests that the routes through downtown Las Vegas, Nevada may run through areas containing a higher proportion of low-income and minority groups than the beltway routes. However, as discussed in Sections 2.3 and 2.4 Addendum, the radiological and nonradiological impacts of transportation of SNF are small. In addition, these small impacts are dispersed throughout the entire routes and do not appear to fall disproportionately in any one area. Based on the analysis performed the NRC staff concludes the overall impacts of transportation of SNF will not likely be disproportionately high or adverse for any minority or low-income population.

Issue 9—Regulatory Text

Comment: Several suggestions for clarifying the regulatory text were offered.

Response: The rule has been revised to make it clear that the environmental impact values in Table S–4 (10 CFR 51.52) may be used to account for the environmental effects of transportation of fuel and waste to and from a nuclear power plant at a repository such as Yucca Mountain, Nevada, which is under consideration as a HLW repository. If, in the future, Yucca Mountain is removed from consideration as a HLW repository, the Commission will evaluate whether the generic analysis performed for the current rule is applicable to other sites that are considered. If fuel enrichment greater than 5 percent Uranium-235 and fuel burnup of greater than 62,000 MWd/MTU are approved by the Commission, the Commission will consider a rulemaking to assess the continuing generic applicability of Table S–4 to environmental reviews for license renewal.

Comment: The addition to the rule of local transportation impacts associated with continued operation of a plant during the license renewal period needs further clarification in the rule language and in the Supplementary Information.

Response: The rule was revised to clarify that the issue of "Public services, Transportation" in Table B–1 of Appendix B to Subpart A of 10 CFR Part 51 involves the contribution of highway traffic directly attributable to refurbishment and continued operation of a plant during the license renewal period to changes in the service levels of highways in the vicinity of the plant. The majority of traffic directly attributable to a plant is commuting plant workers.

Comment: Paragraph (M) of 10 CFR 51.53(c)(3)(ii) should be deleted.

Response: The rule language has been amended and Paragraph (M) has been deleted. This change from the proposed rule was necessary in order to provide consistency with 51.53(c)(3)(ii), as this section only deals with Category 2 issues. Since the cumulative impacts of transportation of SNF in the vicinity of Yucca Mountain is no longer a Category 2 issue, inclusion in 51.53(c)(3)(ii) is no longer necessary.

Other Comments

This section addresses the comments that are not encompassed by the issue summaries and responses given above. In addition, some comments were received after the close of the comment period. These comments were reviewed, and most were found to be similar to comments already addressed by the issue summaries and responses. However, the comments that raised new ideas relevant to Addendum 1 are also presented in this section. For these late comments, revisions to Addendum 1 were necessarily minimal.

Comment: Addendum 1 assumes that truck transport would have the highest doses. This assumption is not necessarily valid. Also, a different route that avoids Las Vegas should be addressed. (A route through Nellis Air Force Base and down US–95 is being considered by DOE and it has been shown to have higher risks of accident fatalities and to increase the radiological risk.) Routes chosen in Addendum 1 do not bound the analysis properly.

Response: The transportation and route scenarios and their underlying assumptions were designed to reflect situations that most likely would result in highest doses in order to bound the analysis properly as the routes chosen for this analysis were the most populated routes in the State of Nevada. Also, as noted in an earlier response, the NRC staff consulted DOE in determining that truck shipments through densely populated areas of Clark County, Nevada, would have the highest potential impacts among the alternative transportation scenarios that would be given serious consideration in decisions relating to the suitability of the site undergoing study for a repository at Yucca Mountain.

The comment that a route from Nellis Air Force Base down US–95 is higher risk than those selected by the NRC staff provided no specific details concerning that assertion. In the NRC staff's view, any route that bypasses major centers of population will have significantly lower radiological impacts. With regard to traffic accident rates, while it may be true that certain routes will have accident rates that are higher than average, the average rates are low enough that modest increases from the average will not significantly change the staff's conclusions.

Comment: SNF from California would go through Las Vegas twice (in route to Skull Valley and subsequently to Yucca Mountain), resulting in increased risk.

Response: If the proposed SNF storage facility is licensed and built, some SNF may go through Clark County on the way to Skull Valley, Utah. The NRC staff has not analyzed this possible impact because it is not clear at this time that the proposed Skull Valley facility will be licensed or that the SNF would go through Las Vegas if the facility were built. In addition, SNF from California makes up only a small fraction of the SNF that would be shipped. The NRC staff concludes that the conservative assumptions used in the analysis more than compensate for minor changes in transportation plans that may develop for that fraction of the total SNF.

Comment: The NRC should provide affected parties with some statement of the regulatory effect of the interrelationships between the numerous other similar analyses.

Response: As a general matter, the National Environmental Policy Act (NEPA) requires all Federal agencies to perform an environmental review for certain actions they propose to conduct. In the context of nuclear waste management, several agencies have regulatory and operational responsibilities which may involve various proposed actions that, in turn, require the preparation of environmental impact statements (EISs). Inevitably, there may be a degree of overlap in the types of impacts discussed in these various EISs. However, the analysis developed by the NRC for the purposes of license renewal is not binding on future actions and associated environmental impact analyses.

The NRC proposed action that has triggered the preparation of this rulemaking and the associated analysis of environmental impact is the agency's responsibility to review applications for the renewal of nuclear power plant licenses. In light of the discrete purpose of this rulemaking, the NRC has sought to gauge the impacts of license renewal given the information currently available on those impacts including the transportation of spent fuel. Even though these impacts do not occur at the plant site during license renewal, the NRC has considered them here pursuant to its NEPA responsibilities.

Future EISs prepared by other agencies on proposed actions in the waste management arena (e.g., any recommendation by DOE on approval of the Yucca Mountain site for development of a repository) will undoubtedly address some of the same impacts covered by the analysis described in this notice. Some of these other impact statements are anticipated to be more detailed given their purpose and the availability of additional information in the future. This, however, does not diminish the adequacy of the NRC's action. This analysis is sufficient for the purpose it serves and it provides the Commission with the information needed to weigh the likely environmental impacts of SNF transportation for individual license renewals applications and reach informed decisions regarding the acceptability of these applications. The rule does not, however, dictate any particular result for future actions taken with regard to a waste repository or other waste management matters. Specifically, any generic conclusions by the Commission concerning the cumulative environmental impacts of transportation associated with nuclear power plants would in no way affect any DOE decision concerning the suitability of Yucca Mountain or any consideration that DOE may give to transportation impacts in making that decision.

Comment: Addendum 1 is not meaningful to the public. For example, it is impossible to determine if the spent fuel isotope inventory shown in the sample pages of the RADTRAN printout matches the fuel considered in the Addendum.

Response: In preparing Addendum 1, the NRC staff has attempted to write to a broad and diverse audience as much as possible. The NRC staff acknowledges that this rulemaking involves complicated, technical issues. However, the NRC staff has attempted to present these matters in the most clear manner possible. Addendum 1 has been revised and Table 2 provides the fuel isotope inventory that can be compared to the sample pages of the RADTRAN computer code printout.

Comment: The study area is inaccurately defined and the location of some cities is incorrectly stated.

Response: During the preparation of Addendum 1, the initial study area selected for analysis emphasized the urban areas in and near Las Vegas. Route selections were based in part on their proximity to those areas, not to county borders. However, in response to public comments, the study area was expanded to include the entire county. Consequently, the "entry" point for SNF shipments shifted to cities such as Mesquite.

Comment: Addendum 1 should discuss potential mitigation measures, not rely on the DOE Yucca Mountain EIS for that discussion.

Response: The analysis in Addendum 1 shows that, even with conservative assumptions, the cumulative radiological and non-radiological accident risks of SNF transport in Clark County are small. However, there are a number of opportunities to further reduce human health impacts. These include transporting SNF by rail rather than by truck. This would reduce human health effects by reducing the number of shipments and the likelihood of accidents. In addition, shipping SNF via the proposed beltway would reduce health impacts compared to shipping via the current interstate highway system. The implementation of such mitigative measures must await future decisions that fall well outside of the scope of this rulemaking. In addition, for the purposes of individual license renewal rule decisions, no plant specific mitigation measures were found appropriate for addressing the impacts identified in the Addendum. The NRC notes that DOE addresses transportation

impacts, mitigation measures, and alternative transportation modes in its EIS for the proposed action to develop a repository at Yucca Mountain.

Comment: Addendum 1 does not mention that the proposed repository which is the destination for shipments of spent nuclear fuel is in Nye County.

Response: A statement noting that the proposed Yucca Mountain repository is in Nye County has been added to Addendum 1.

Comment: No statements of baseline conditions are given in Addendum 1.

Response: Addendum 1 uses background and natural radiation levels as the baseline conditions against which dose estimates can be compared. Both are presented in Addendum 1 and are based in large part on information published by the National Council on Radiation Protection and Measurements.

Comment: The analysis in Addendum 1 is limited to human health effects. Other potential impacts should be considered.

Response: Addendum 1 was prepared to provide information regarding a proposed rule to determine whether the transportation of higher enriched, higher burnup fuel to a single destination is consistent with the values of Table S–4. Because the pertinent section of Table S–4 concerns impact values for human health effects, Addendum 1 concentrates on potential cumulative impacts to human health. However, Section 2.3 of Addendum 1 has been revised to look at the potentially most significant non-human health effect which is the potential increase in traffic volume in Clark County as the result of the transportation of SNF. The NRC staff conclusion is that the impacts are small.

Comment: The analysis assumes the use of the large-capacity GA–4/9 truck cask, which has not been certified and must be used in combination with specially designed trucks that have not been tested. It also assumes that these cask and truck systems will be available in sufficient quantity for the shipments. The commentor seeks assurance that the assumed truck cask system is feasible and that DOE's proposed regional service contractor approach would feasibly result in the use of such a system for all shipments in the potential truck shipment campaign.

Response: The analysis done by the NRC staff assumes that an adequate number of certified casks would be available. Addendum 1 used extremely conservative assumptions regarding SNF shipments and casks to ensure that the analysis would lead to maximum dose estimates. For example, the analysis of incident-free transportation impacts assumes the use of legal-weight trucks for shipment of the SNF, which results in more and smaller shipments. For the accident analysis, the use of the largest-capacity casks was assumed in order to maximize the amount of SNF that would be involved in the accident. These parameters were intended to bound the parts of the analysis, not to describe parts of the actual SNF shipment protocol such as the specific casks that will be used.

Comment: The analysis appears to assume that oldest spent nuclear fuel would be shipped first to the repository. If so, how will institutional measures achieve this sequencing? If they do not, how will the maximum potential radioactive risk in shipment and storage or disposal be addressed?

Response: The spent fuel will be shipped in casks certified by the NRC. In fact, the current practice of NRC issuing certificates of compliance for casks used for shipment of power reactor fuel is to specify 5 years as the minimum cooling period in a certificate.

Comment: Addendum 1 uses national accident rate statistics. State and/or local rates would be more appropriate.

Response: For the analysis of radiological accidents, data specific to Nevada were used in the RADTRAN computer code runs. However, for the analysis of non-radiological accidents, the NRC staff required data regarding not only accident rates but also injury and fatality statistics. Those data were not available except from the U.S. Department of Transportation.

Comment: Water resource supplies within boundaries of the State of Nevada belong to the public. All waters are subject to appropriation for the beneficial use only under state law.

Response: The water resources of the state will be unaffected by the transport of SNF through Clark County.

Comment: Report failed to provide conditions for informed consent which requires disclosure to those affected, their understanding , and voluntary acceptance.

Response: NRC regulations already contain values that the NRC considers to be acceptable environmental impacts from the shipment of SNF and other radioactive waste. In Addendum 1 the NRC staff is, in part, ensuring that the overall impacts of the transportation of the additional SNF that will be generated as the result of nuclear power plant license renewal are bounded, given the best information the NRC staff has at this time, by those values previously found acceptable. The values specified in the regulations are supported by analysis and were adopted into the regulations only after providing opportunity for public comment as part of the NRC's rulemaking process. As such, the NRC has followed all applicable legal requirements and appropriately carried out its responsibility to consider the environmental impacts of its license renewal decision.

Comment: The NRC staff uses "flawed" science as evidenced by factors including a questionable definition of risk which fails to account for severe accidents, use of misleading if not false average radiation dose rates, manipulation of dose rate data to obtain acceptable results and lack of empirical data especially that applicable to transportation of SNF.

Response: The decision before the Commission is whether the impacts of license renewal are so severe that they should preclude the option of license renewal. As such, the Commission has considered a reasonable estimate of impacts and not included remote and speculative scenarios that do not add to our regulatory decision (see also response to comment on severe accidents, above).

In the analyses described in Addendum 1 the NRC staff uses dose rates that reflect the applicable regulatory limit rather than average dose rates. Even with these very conservative assumptions for dose rates, transportation modes, transportation routes, and a number of other factors, radiation impacts on the transport crews and the general public were not only found to be within all regulatory limits but small as well and there was no need to adjust the assumptions.

Throughout Addendum 1 the NRC staff discusses the assumptions that were made and where applicable the empirical data used to support those assumptions is referenced. With respect to making judgements about the shipment of spent fuel the NRC staff has the benefit of data from over 40 years of experience in shipping SNF in this country as well as overseas.

Comment: High level waste management and transportation should not be a generic issue and Yucca Mountain should not be used for the study as DOE is behind schedule and it is not an approved site for SNF.

Response: Given that the potential environmental impacts of the transportation of SNF resulting from license renewal are similar for all nuclear power plants who seek to renew their operating licenses, and that the NRC staff's analysis contained in Addendum 1 concludes that the impacts are likely to be small, the Commission feels it is appropriate to reclassify the issue as a Category 1 issue. Use of Yucca Mountain, Nevada for purposes of the staff's analysis, as the destination of the SNF is appropriate as it is the only site presently under study. It must be emphasized that this generic environmental impact statement is required to make use of the best information available and at this time the assumption that Yucca Mountain is the destination is reasonable for purposes of the staff's analysis. If in the future, conditions change, the assumption made for this analysis may need to be reevaluated.

Comment: Need to consider the intermodal option being considered by Congress for Caliente, Nevada.

Response: The shipment of SNF by rail to Caliente and then transferring it to truck for shipment to Yucca Mountain is one of many options under consideration by DOE. Rather than speculate on which transportation option or options will ultimately be selected, the NRC staff has chosen a mode and routes to Yucca Mountain which in its judgement will have the greatest potential environmental impacts in order to do a bounding analysis for the purpose of this rulemaking.

Comment: The analysis needs to address the impacts of above ground nuclear weapons testing being done at the Nevada Test Site.

Response: For the purposes of considering the environmental impacts of license renewal, there does not appear to be a relevant connection between transportation impacts from civilian SNF and defense related weapons testing at the Nevada test site.

Comment: The analysis relies on assumptions that are 25–30 years old and that have a number of problems including omission of important radionuclides (Iodine-129, Chlorine-36 and Cobalt-60), unrealistic RADTRAN assumptions including inadequate consideration of severe accidents, outdated assumptions from NUREG–0170 and WASH–1238 including the failure to consider the degradation of cladding during extended dry storage, and failure to consider the rail-heavy haul truck option.

Response: With regard to the radionuclides, as indicated in Table 2 of Addendum 1, Cobalt-60 is considered. While both Iodine-129 and Chlorine-36 are long lived, neither is a significant contributor to overall dose. Iodine-129 has a very low specific activity and Chlorine-36 is a beta emitter.

The issue of the severity of accidents considered in the NRC staff's analysis was addressed in an earlier response to comment. The assumptions that are used in the NRC staff's analysis have been periodically reviewed and found adequate. The hypothetical accident conditions of 10 CFR 71.73 have been evaluated against actual conditions encountered in highway and railway accidents and were found to be bounding as documented in NUREG/CR–4829, February 1987, "Shipping Container Response to Severe Highway and Railway Accident Conditions." As noted in Table 3 of Addendum 1, the version of RADTRAN used is updated to March 1999.

Section 3 of Addendum 1 does consider the possible effect of cladding degradation on criticality in the context of increased burnup. That analysis would be equally applicable to any cladding degradation that might occur during prolonged dry storage of the SNF.

With regard to what is asserted to be inadequate consideration of the potential radiological impacts of the rail-heavy haul truck option, the NRC staff has analyzed the radiological impacts of the truck mode along various routes through and around Las Vegas and concludes that they are the limiting scenarios. The largest doses in the incident-free conditions are now to the public. If the rail-heavy haul transport scenario was adopted, a substantial portion of the public exposure would be avoided, since in this scenario, the slow moving heavy haul truck transport would not move through a major population center.

Comment: NRC must consider potential Indian Tribe claims of authority to regulate shipments across reservation lands.

Response: This analysis is a generic study that assumes certain routes for the purpose of evaluating environmental impacts. Because the purpose of this study is neither to propose nor approve routes, the NRC does not need to consider tribal claims of authority to regulate shipments in the context of this analysis.

Comment: The beltway is a county road, not part of the Federal highway system; it is not clear it can be used for shipments.

Response: The DOT regulations do not require that SNF shipments only use federal highways. Therefore, the NRC assumed that the beltway is a possible route around Las Vegas.

Comment: The NRC should address the implications of higher enrichment, higher burnup fuel for consequences of radiological sabotage, as NRC has done so far for the increase in burnup from 33,000 MWd/MTU to 40,000 MWd/MTU (see 49 FR 23867, Proposed Revisions to 10 CFR 73, Modification of Protection Requirements for Spent Fuel Shipments, 6/8/84).

Response: The NRC has not quantified the likelihood of the occurrence of sabotage in this analysis because the likelihood of an individual attack cannot be determined with any degree of certainty. Nonetheless, the NRC has considered, for the purposes of this environmental impact statement and rulemaking, the environmental consequences of such an event. In the determination of the consequences of such an event, higher burnup is only one factor. Based on the staff's study of higher burnup fuel (NUREG–1437, Vol.1, Addendum 1, Table 2), the consequences of a sabotage event involving such fuel could be larger than those in the studies referenced by the commentor. However, given that the consequences of the studies referenced by the commentor were small, even modest increases due to the effects of higher burnup fuel would not result in unacceptably large consequences. Because burnup is not the only factor that could affect the consequences of a sabotage event, the staff continues to study this area. Should new and significant information result from the further study, actions addressing such information will be considered.

Nevertheless, the extensive security measures required by NRC regulations make sabotage events extremely unlikely. Moreover, the casks required to be used to transport spent fuel are designed to withstand very substantial impacts during transport without loss of containment integrity. The cask designs should serve to further reduce the likelihood of release of radioactive material in the extremely unlikely event of sabotage. In view of the fact that NRC safeguards regulations make sabotage events extremely unlikely, and the fact that the cask designs themselves should make a release of radioactive material unlikely even were sabotage to occur, and based on our judgement that, in the extremely unlikely event that sabotage and releases did occur, the consequences from higher burnup fuel would not be unacceptably large, we have concluded that a more extensive study of higher burnup fuel consequences is not warranted for this environmental impact statement and rulemaking.

On June 22, 1999, the Nevada Attorney General filed a petition with the Commission which requested the NRC to amend regulations governing safeguards for shipments of spent nuclear fuel against sabotage and terrorism and to initiate a comprehensive assessment. In particular, the petition indicated that

NRC should factor into its regulations the changing nature of threats posed by domestic terrorists, the increased availability of advanced weaponry and the greater vulnerability of larger shipping casks traveling across the country. If, as a result of reviewing this petition, the NRC reaches conclusions that are inconsistent with the results or assumptions in the present rulemaking, the Commission will need to revisit the analysis presented here.

Finding of No Significant Environmental Impact: Availability

The NRC has determined that this final rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(3). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this regulation. This action is procedural in nature and pertains only to the type of environmental information to be reviewed.

Paperwork Reduction Act Statement

This final rule decreases unnecessary regulatory burden on licensees by eliminating the requirement that license renewal applicants address the generic and cumulative environmental impacts associated with transportation operation in the vicinity of a HLW repository site (−400 hours, −2 responses), and adds a new requirement to address local traffic impacts attributable to continued operation of the plant during the license renewal term (+20 hours, +2 responses). The public burden for these information collections is estimated to average a reduction of 200 hours for each of 2 responses for the elimination of the above mentioned requirement, and an increase of 10 hours for each of 2 responses for the new requirement, for a net burden reduction of 380 hours. Because the burden for this information collection is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the OMB, approval number 3150–0021.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

The regulatory analysis prepared for the final rule published on June 5, 1996 (61 FR 28467), and amended on December 18, 1996 (61 FR 66537), to make minor clarifying and conforming changes and add language unintentionally omitted from the June 5, 1996 final rule. The rule is unchanged except for an increase in benefits derived from a reduction in the applicant burden of 190 hours of effort in preparing an application for renewal of a nuclear power plant operating license.

This change increases the substantial cost saving of the final rule estimated in NUREG–1440, "Regulatory Analysis for Amendments to Regulations for the Environmental Review for Renewal of Nuclear Power Plant Operating Licences." NUREG–1440 is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. In addition, copies of NRC final documents cited here may be purchased from the Superintendent of Documents, U.S. Government Printing Office, PO Box 37082, Washington, DC 20013–7082. Copies are also available for purchase from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this final rule will not have a significant impact on a substantial number of small entities. The final rule will reduce the amount of information to be submitted by nuclear power plant licensees to facilitate NRC's obligations under the National Environmental Policy Act. Nuclear power plant licensees do not fall within the definition of small businesses as defined in Section 3 of the Small Business Act (15 U.S.C. 632) or the Commission's Size Standards, April 11, 1995 (60 FR 18344).

Backfit Analysis

The Commission has determined that these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1); therefore, a backfit analysis need not be prepared.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995, Pub. L 104–113, requires that Federal agencies use technical standards developed by or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. There are no consensus standards that apply to the analysis and findings process, nor to the requirements imposed by this rule. Thus the provisions of the Act do not apply to this rule.

List of Subjects in 10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons set out in the preamble to this notice and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; the National Environmental Policy Act of 1969, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 51.

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

1. The authority citation for part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, Sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–854, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L. 95–604, Title II, 92 Stat. 3033–3041; and sec.193, Pub. L. 101–575, 104 Stat. 2835, (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.61, 51.80, and 51.97 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100–203, 101 Stat. 1330–223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec. 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act of 1982, sec. 114(f), 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

2. In § 51.53, paragraph (c)(3)(ii)(M) is removed and reserved and paragraph (c)(3)(ii)(J) is revised to read as follows:

§ 51.53 Post-construction environmental reports.

* * * * *

(c) * * *

(3) * * *

(ii) * * *

(J) All applicants shall assess the impact of highway traffic generated by the proposed project on the level of service of local highways during periods of license renewal refurbishment activities and during the term of the renewed license.

* * * * *

(M) [Reserved].

* * * * *

3. The "Public services, Transportation" issue under the Socioeconomics Section and the "Transportation" issue under the Uranium Fuel Cycle and Waste Management Section of Table B–1, Appendix B to Subpart A to 10 CFR Part 51 are revised to read as follows:

Appendix B to Subpart A—Environmental Effect of Renewing the Operating License of a Nuclear Power Plant

* * * * *

TABLE B–1.—SUMMARY OF FINDINGS ON NEPA ISSUES FOR LICENSE RENEWAL OF NUCLEAR POWER PLANTS [1]

Issue	Category	Findings
Socioeconomics		
Public services, Transportation	2	SMALL, MODERATE, OR LARGE. Transportation impacts (level of service) of highway traffic generated during plant refurbishment and during the term of the renewed license are generally expected to be of small significance. However, the increase in traffic associated with additional workers and the local road and traffic control conditions may lead to impacts of moderate or large significance at some sites. See § 51.53(c)(3)(ii)(J).
Uranium Fuel Cycle and Waste Management		
Transportation	1	SMALL. The impacts of transporting spent fuel enriched up to 5 percent uranium-235 with average burnup for the peak rod to current levels approved by NRC up to 62,000 MWd/MTU and the cumulative impacts of transporting high-level waste to a single repository, such as Yucca Mountain, Nevada are found to be consistent with the impact values contained in 10 CFR 51.52(c), Summary Table S–4—Environmental Impact of Transportation of Fuel and Waste to and from One Light-Water-Cooled Nuclear Power Reactor. If fuel enrichment or burnup conditions are not met, the applicant must submit an assessment of the implications for the environmental impact values reported in § 51.52.

[1] Data supporting this table are contained in NUREG–1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants" (May 1996) and NUREG–1437, Vol. 1, Addendum 1, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Main Report Section 6.3—'Transportation,' Table 9.1 'Summary of findings on NEPA issues for license renewal of nuclear power plants,' Final Report" (August 1999).

Dated at Rockville, Maryland, this 26th day of August, 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–22764 Filed 9–2–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

RIN 3150–AG05

Changes to Requirements for Environmental Review for Renewal of Nuclear Power Plant Operating Licenses To Include Consideration of Certain Transportation Impacts, Availability of Supplemental Environmental Impact Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; Notice of availability of supplemental document.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the completion and availability of NUREG–1437, Vol. 1, Addendum 1, "Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Main Report Section 6.3—'Transportation,' Table 9.1 'Summary of findings on NEPA issues for license renewal of nuclear power plants,' Final Report" (August 1999).

ADDRESSES: Copies of NUREG–1437, Vol. 1, Addendum 1 may be obtained by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy of the document is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120

L Street, NW (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Donald P. Cleary, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–3903; e-mail: dpc@nrc.gov.

SUPPLEMENTARY INFORMATION: The report provides the technical basis for the final rule "Changes to Requirements for Environmental Review for Renewal of Nuclear Power Plant Operating Licenses" that amends requirements to the Commission's rule in 10 CFR Part 51—Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.

The NRC staff has completed the analyses of transportation issues as reported in NUREG–1437, Vol. 1, Addendum 1, which provides the bases for designating the transportation of high level waste as a Category 1 issue. Addendum 1 would supplement the analysis and amend the findings and the Category 2 designation for the issue of Transportation in Section 6.3 and Table 9.1 of NUREG–1437. This report expands the generic findings about the environmental impacts due to transportation of fuel and waste to and from a single nuclear power plant. Specifically, the report adds to findings concerning the cumulative environmental impacts of convergence of spent fuel shipments on a single destination, rather than multiple destinations, and the environmental impact of transportation of higher enriched and higher burnup spent fuel during the renewal term. The report conclusions would permit those findings to be used by incorporation by reference in the environmental review of an application for renewal of an individual nuclear plant operating license. The results are being codified in 10 CFR Part 51.

Electronic Access

NUREG–1437, Vol. 1, Addendum 1, is also available electronically by visiting NRC's Home Page (*http://www.nrc.gov*) and choosing "Nuclear Materials," then "Business Process Redesign Project," then "Library," and then "NUREG–1437, Volume 1, Addendum 1."

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

Dated at Rockville, Maryland, this 26th day of August, 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–22765 Filed 9–2–99; 8:45 am]

BILLING CODE 7590–01–P

federal register

Friday
September 3, 1999

Part IV

Department of Transportation

Federal Highway Administration

49 CFR Part 390

Federal Motor Carrier Safety Regulations; Definition of Commercial Motor Vehicle; Interim Final Rule

Federal Motor Carrier Safety Regulations; Requirements for Operators of Small Passenger-Carrying Commercial Motor Vehicles; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 390

[FHWA Docket No. FHWA–97–2858]

RIN 2125–AE22

Federal Motor Carrier Safety Regulations; Definition of Commercial Motor Vehicle

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: The FHWA is amending the Federal Motor Carrier Safety Regulations (FMCSRs) to adopt the statutory definition of a commercial motor vehicle (CMV) found at 49 U.S.C. 31132. This action is in response to the Transportation Equity Act for the 21st Century (TEA–21). Section 4008(a) of TEA–21 amended the definition of the term "commercial motor vehicle" to cover vehicles "designed or used to transport more than 8 passengers (including the driver) for compensation." The FHWA is revising its regulatory definition of CMV to be consistent with the statute, but is exempting the operation of these small passenger-carrying vehicles from all of the FMCSRs for six months to allow time for the completion of a separate rulemaking action published elsewhere in today's **Federal Register**. As a result of this action, the applicability of the FMCSRs will be the same as before the enactment of TEA–21 until March 3, 2000. Therefore, entities that were not subject to the FMCSRs prior to the enactment of TEA–21 are not required to make any changes in their operations until that date.

DATES: This rule is effective on September 3, 1999. Comments must be received on or before November 2, 1999.

ADDRESSES: Submit written, signed comments to FHWA Docket No. FHWA–97–2858, the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, HMCS–10, (202) 366–4009; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments that were submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–001, in response to previous rulemaking notices concerning the docket referenced at the beginning of this notice by using the universal resource locator (URL): http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

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Background

Section 204 of the Motor Carrier Safety Act of 1984 (MCSA) (Pub. L. 98–554, Title II, 98 Stat. 2832, at 2833) defined a "commercial motor vehicle" as one having a gross vehicle weight rating (GVWR) of 10,001 pounds or more; designed to transport more than 15 passengers, including the driver; or transporting hazardous materials in quantities requiring the vehicle to be placarded. This definition, codified at 49 U.S.C. 31132(1), was the basis for the regulatory definition of a CMV in 49 CFR 390.5, which determines the jurisdictional limits and applicability of most of the FMCSRs. The Senate Committee on Commerce, Science and Transportation, in a report which accompanied the MCSA stated: "The 10,000-pound limit, which is in the current BMCS (Bureau of Motor Carrier Safety, now the FHWA's Office of Motor Carrier and Highway Safety) regulations, is proposed to focus enforcement efforts and because small vans and pickup trucks are more analogous to automobiles than to medium and heavy commercial vehicles, and can best be regulated under State automobile licensing, inspection, and traffic surveillance procedures." S. Rep. No. 98–424, at 6–7 (1984), reprinted in 1984 U.S.C.C.A.N. 4785, 4790–91.

Although the MCSA demonstrated congressional intent to focus the applicability of the FMCSRs on larger vehicles, Congress did not repeal section 204 of the Motor Carrier Act of 1935 (Chapter 498, 49 Stat. 543, 546). This statute, now codified at 49 U.S.C. 31502, authorizes the FHWA to regulate the safety of all for-hire motor carriers of passengers and property, and private carriers of property without respect to the weight or passenger capacity of the vehicles they operate.

When the Congress enacted the Commercial Motor Vehicle Safety Act of 1986 (CMVSA) (Pub. L. 99–570, Title XII, 100 Stat. 3207–170) to require implementation of a single, classified commercial driver's license program, it also limited the motor vehicles subject to the program to those designed to transport more than 15 passengers, including the driver (now codified at 49 U.S.C. 31301(4)(B) with slightly different wording). This, too, revealed the congressional policy of applying available Federal motor carrier safety resources to larger vehicles.

The ICC Termination Act of 1995 (ICCTA) (Pub. L. 104–88, 109 Stat. 803, 919) changed the MCSA's definition of a commercial motor vehicle. As amended, section 31132(1) defined a commercial motor vehicle, in part, as a vehicle that is "designed or used to transport passengers for compensation, but exclud(es) vehicles providing taxicab service and having a capacity of not more than 6 passengers and not operated on a regular route or between specified places; (or) is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation." The ICCTA authorized, but did not require, the FHWA to change the FMCSRs accordingly; the agency did not incorporate the amended language into the CMV definition in § 390.5. The agency notes that the ICCTA included the phrase "designed or used" in specifying the passenger-carrying threshold for the FMCSRs. This change will make the FMCSRs applicable based upon the number of passengers in the vehicle or the number of designated seating positions, whichever is greater. In other words, a bus designed to carry 13 people but actually carrying 18 would be subject to the FMCSRs.

Section 4008(a)(2) of TEA–21 (Pub. L. 105–178, 112 Stat. 107, June 9, 1998) again amended the passenger-vehicle component of the CMV definition in 49 U.S.C. 31132(1). Section 4008 also changed the weight threshold in the CMV definition by adding "gross vehicle weight" (GVW) to the previous "gross vehicle weight rating" (GVWR).

The agency may now exercise jurisdiction based on the GVW or GVWR, whichever is greater. A vehicle with a GVWR of 9,500 pounds that was loaded to 10,500 pounds GVW would therefore be subject to the FMCSRs if it was operating in interstate commerce. Commercial motor vehicle is now defined (in 49 U.S.C 31132) to mean a self-propelled or towed vehicle used on the highways in interstate commerce to transport passengers or property, if the vehicle—

(A) Has a gross vehicle weight rating or gross vehicle weight of at least 10,001 pounds, whichever is greater;

(B) Is designed or used to transport more than 8 passengers (including the driver) for compensation;

(C) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or

(D) Is used in transporting material found by the Secretary of Transportation to be hazardous under section 5103 of this title and transported in a quantity requiring placarding under regulations prescribed by the Secretary under section 5103.

Under section 4008(b), operators of the CMVs defined by section 31132(1)(B) will automatically become subject to the FMCSRs one year after the date of enactment of TEA–21, if they are not already covered, "except to the extent that the Secretary [of Transportation] determines, through a rulemaking proceeding, that it is appropriate to exempt such operators of commercial motor vehicles from the application of those regulations."

The FHWA views section 4008 of TEA–21 as a mandate either to impose the FMCSRs on previously unregulated smaller capacity vehicles, or to exempt through a rulemaking proceeding some or all of the operators of such vehicles. Although the House Conference Report (H.R. Conf. Rep. No. 104–422 (1995)) on the ICCTA definitional change directed the agency not to impose on the States (as grant conditions under the Motor Carrier Safety Assistance Program (MCSAP)) the burden of regulating a new population of carriers covered by the definition, no such restriction is included in TEA–21 or its legislative history. The mandate of TEA–21 is thus stricter than that of the ICCTA. Still, the FHWA is authorized to undertake rulemaking to exempt some of these passenger vehicles from the FMCSRs.

FHWA's Advance Notice of Proposed Rulemaking

On August 5, 1998 (63 FR 41766), the FHWA published an advance notice of proposed rulemaking (ANPRM) to announce that the agency was considering amending the FMCSRs in response to section 4008(a) of the TEA–21, to seek information about the potential impact of the TEA–21 definition, and to request public comment on the question whether any class of vehicles should be exempted. The agency also requested comment on whether the term "for compensation" may be interpreted to distinguish among the types of van services currently in existence.

Discussion of Comments to the ANPRM

The FHWA received 733 comments in response to the ANPRM. The commenters included State and local government agencies, transit authorities, vanpool organizations, vanpool members, universities, trade associations, and members of Congress, as well as private citizens. Most (more than 720) of the commenters were opposed to making the FMCSRs applicable to the operation of small passenger-carrying CMVs. However, several commenters believed it is necessary to regulate these vehicles and, in certain cases, identified what they believe are the specific safety issues section 4008(a) was intended to resolve.

Comments Opposed to Making the FMCSRs Applicable to Small CMVs

The majority of the commenters opposed to the rulemaking were organizers and members of vanpools, and State and local agencies and vanpool associations that believe implementing section 4008(a) of TEA–21 would adversely impact vanpool participation by imposing more stringent standards on drivers of these vehicles. Some of the commenters argued there was no data to support imposing the FMCSRs on the operators of small CMVs while others emphasized the adverse impacts the rulemaking could have on transportation providers for elderly and disabled citizens.

Commenting on the issue of commuter transportation, the Southern California Association of Governments stated:

> The proposed expanded regulation would reduce the current number of commuters willing to volunteer to serve as vanpool drivers and back-up drivers. Members of a vanpool agree to the obligation on a volunteer basis within the commuting group. Currently, a free or partially subsidized commute and personal use of the vanpool vehicles on evenings and weekends is still not enough of an attraction for a large number of commuters. The proposed additional requirements, which include minimum driver training, written testing, behind-the-wheel testing, medical qualifications, drug and alcohol testing, imposed by the FHWA will result in volunteer vanpool driving to become extremely burdensome.

The Florida Department of Transportation, commenting about the impacts the rulemaking would have on transportation providers for the elderly and disabled, stated:

> The proposed amendment to the Federal Motor Carrier Safety Regulations (FMCSR) would have a significant impact to certain Florida rural transportation providers. These primarily include those operators that are located along or near the state border. These operators provide transportation services for disadvantaged persons needing transportation to and from certain medical and rehabilitation facilities. These transportation entities are either public or private-non-profit senior citizen or mental health facilities and designated as community transportation coordinators by Florida Statutes. [Their] operational areas are primarily rural and it is often necessary for these operators to transport passengers needing special care or treatment across state lines to facilities located in bordering states. These transportation operators receive funding and compensation for their services from local, state and federal funds and have been considered as "eligible transit operators" by the FHWA pursuant to the ICC Termination Act of 1995. Vehicles operated by these providers mainly consist of 15 passenger vans. These operators are currently exempted from the FMCSR since the 15 passenger vehicles operated do not meet the definition of a "commercial motor vehicle" in 49 U.S.C. Section 31132 . These operators are also exempted from the FHWA insurance requirements for interstate motor vehicles by [49 U.S.C. 31138(e)(4)].

The Iowa Department of Transportation expressed concerns that regulating small passenger-carrying CMVs would adversely impact motor carrier safety programs by using limited enforcement resources to regulate the entities operating these vehicles. The agency stated:

> State and local enforcement agencies have numerous enforcement demands on the regulation of straight trucks, truck tractors, tractors with semi-trailers, double bottoms, buses, and vehicles transporting hazardous materials. Expanding the motor carriers safety requirements to passenger carrying vehicles will be costly and a strain on inspector availability for what appears to be little public benefit.
>
> In a period when zero-based regulations are/have been developed and implemented, is it logical to expand the definition of a commercial motor vehicle to include 8-passenger vehicles? If 8-passenger vehicles are included, why not 6-passenger vehicles? Are we beginning to over-regulate? Safety is a major issue in conducting inspections. En-route inspections are kept to a minimum for buses. To protect passengers during an inspection requires special considerations and planning. Adding 8-passenger vehicles will continue to complicate inspection procedures with risks to passengers.

The Oregon Department of Transportation, Motor Carrier Transportation Branch, also expressed opposition to adopting the new definition of CMV. The Motor Carrier Transportation Branch (MCTB) stated:

The MCTB does not understand why the definition of commercial motor vehicle was amended in the [TEA–21] to include vehicles designed or used to transport more than eight passengers (including the driver) for compensation. Further, the MCTB questions whether including these smaller vehicles will improve highway safety.

[I]t is not apparent that these smaller vehicles represent a significant danger. In fact, this move to regulate smaller vehicles contradicts the current Motor Carrier Regulatory Relief and Safety Demonstration Project. Little, if any, safety benefit may result in including these smaller vehicles under the jurisdiction of the motor carrier safety regulations. As stated in the advanced notice of proposed rulemaking: request for comment, "vans and pickup trucks are more analogous to automobiles than to medium and heavy commercial vehicles, and can be best regulated under State licensing, inspection, and traffic surveillance procedures.

The International Taxicab and Livery Association (ITLA) opposed adopting the new definition of CMV and provided estimates of the number of businesses that would be affected by the rulemaking, as well as the number of vehicles and drivers that would be subject to Federal safety requirements if the FHWA implemented section 4008 of the TEA–21. The ITLA stated:

According to information available to ITLA, there are approximately 50,000 limousines in use that would be affected by the definitional change. It should be noted that there are over 9000 limousine operators nationwide (also operating premium sedan services), and that the median fleet size is less than 5. In addition, the average annual miles operated by limousines is approximately 23,000 miles.

ITLA estimates that there are approximately 74,000 vans nationwide " the breakdown between "mini-vans" and those affected by the proposed definition is not available. Van fleets average less than 10 vans, with an approximate annual mileage of 40,000 per vehicle, and an average trip length of less than 8 miles lasting significantly less than 1 hour.

In September of 1998, the American Business Information (a mailing list sales company) released a sales catalog that reports the following information:

SIC code	Type of service	Number of U.S. companies
4111–01	Airport Transportation	4,752
4119–01	Handicapped Transportation	1,302
4119–03	Limousine Transportation	9,482
4121–01	Taxicab Transportation	7,348
	Total	22,884

The ITLA indicated that if the FHWA decides to make the FMCSRs applicable to the operation of small passenger-carrying vehicles, approximately 14,000 companies, 125,000 vehicles, and 165,000 drivers would be covered.

Comments in Support of Making the FMCSRs Applicable to Small CMVs

Of the 733 comments submitted in response to the agency's ANPRM, only a few (less than 13) expressed support for implementing section 4008(a). The reasons for supporting the adoption of the revised definition of a CMV varied from the belief that highway safety would be improved if the commercial driver's license and controlled substances and alcohol testing rules were applicable to drivers of small passenger-carrying vehicles, to the belief that applying the safety regulations to these vehicles would improve school bus transportation. None of the commenters in support of regulating small passenger-carrying vehicles believed implementing section 4008(a) of the TEA–21 would result in adverse impacts to those businesses.

The United Motor Coach Association (UMA) stated:

UMA's reason for pursuing a legislative change stemmed from the rising tide of uninsured and/or unsafe carriers operating from or through commercial zones (as defined in 49 CFR Part 372), particularly in Texas and the southwestern states. In fact, the problem was so severe in Texas that McAllen City officials petitioned the ICC to severely restrict the motor carrier commercial zone surrounding that city.

Subsequent research by UMA and its operator member companies indicate that the problem is not simply a southern border issue. It is a growing problem that is National in scope. Exempted passenger carriers recognize that municipal commercial zones provide a safe haven from federal safety regulations. These protected and unregulated interstate bus operators perform identical service to that of the regulated companies that provide bus service using larger vehicles. The unregulated carriers are very aware of their current exempt status. They have generally used large vans or mini-buses with a seating capacity of fewer than 15 passengers to escape compliance to Federal Motor Carrier Safety Regulations (FMCSRs). (Manufacturers of these small buses routinely market the vehicles by highlighting their regulation exempt status in their promotions.) In the majority of instances, unregulated service providers operate out of urban locations that fall within the commercial zone classification. UMA does not consider this exemption to be fair or equitable and believes that passenger safety is compromised.

Consolidated Safety Services stated:

During ten years of reviewing the level of compliance with applicable regulations by companies offering passenger travel, we have seen regulatory standards for non-CMV vehicle operations that range from comprehensive to non-existent. We routinely see companies who restrict equipment inventory for the sole purpose of avoiding the costs and efforts associated with compliance with the FMCSRs. Attitudes displayed towards safety in these instances are generally very casual in nature and cause considerable concern. It should be noted that we also see non-CMV carriers whose efforts to provide safe transportation should be commended since they apply the standards published in the FMCSRs even though not required.

Greyhound stated:

Commercial van interstate service has grown dramatically in recent years. It is difficult to document the precise size of the population of commercial vans or their growth because the federal government historically has not regulated them and thus has not kept statistics on them. However, reports of Greyhound managers throughout the country have made it clear that commercial van interstate service has grown significantly.

In 1995, Greyhound documented that growth with a report focusing on one city, Houston. That report, which was shared with DOT and Congress, showed that there were literally dozens of operators performing van and bus service from points in Mexico to destinations throughout the United States. Some of the bus service was licensed as "charter and tour" service and thus was regulated, but none of the van service was, or is, subject to any federal safety regulation.

With regard to the impacts section 4008(a) of TEA–21 would have on student transportation, the National School Transportation Association (NSTA) stated:

NSTA supports the proposal to revise the definition of "commercial motor vehicle" to include vehicles designed to transport more than 8 passengers. NSTA has long held the position that all school-age children deserve the highest standard of safety, regardless of who owns the vehicle, who operates the vehicle, or how many passengers the vehicle will seat. This proposal will bring all vehicles operating in similar capacity under the same regulations.

Among the State agencies that support the TEA–21 provision, the Colorado Highway Patrol indicated there are safety benefits to regulating smaller vehicles. The Colorado Highway Patrol stated:

The Colorado State Patrol supports the revision which would require a "Commercial vehicle designed or used to transport more than 8 passengers (including the driver) for compensation" to be subject to the FMCSR's with qualifications identified below. Most of these vehicles were subject to regulation under the ICC prior to its termination in 1995. Why should passenger carriers, subject to prior regulation by the ICC, be released from regulatory requirements under FHWA? In Colorado the Public Utilities Commission (COPUC) already regulates for-hire passenger carriers (including taxi cabs). This rule should not apply to private motor carrier of passengers (PMCP), business and non-business, (as defined in 390.5).

FHWA Response to Comments

The FHWA has considered all of the comments received in response to the ANPRM and determined there is insufficient data concerning the safety performance of motor carriers operating CMVs designed or used to transport 9 to 15 passengers (including the driver) for compensation, to justify making the FMCSRs applicable to them at this time. Commenters to the docket have expressed opinions for and against regulating operators of passenger-carrying vehicles designed to transport 9 to 15 passengers (including the driver) but none of the commenters have presented safety data that could be useful in deciding whether to regulate such motor carriers. While the FHWA acknowledges that there may be safety benefits to extending the applicability of the FMCSRs to the operation of small passenger-carrying CMVs for compensation, a mere assumption does not satisfy the agency's obligation to quantify the benefits of rulemaking and to prove that the benefits exceed the costs to the relevant segment of the industry and U.S. consumers.

Safety Performance Data

The FHWA is not aware of any accident databases that would enable the agency to estimate the annual accident involvement of small passenger-carrying vehicles, operated for compensation in interstate commerce. The absence of such data makes it difficult to determine whether the accident involvement of these vehicles warrants Federal regulation. For example, the agency is unable to determine whether the number of accidents for this population of CMVs suggests these vehicles are over represented in crashes involving fatalities, injuries, or disabling damage to one or more vehicles (i.e., whether the number of accidents is greater than one would expect given the population of vehicles), which in turn may be an indicator of problems with the safety management controls for the motor carriers operating the vehicles. Also, the FHWA does not have information that would enable the agency to examine the causes of or contributing factors to accidents these motor carriers are typically involved in to determine which, if any, of the FMCSRs could have made a difference in the outcome.

The FHWA has reviewed information from the National Highway Traffic Safety Administration's (NHTSA) Fatality Analysis Reporting System (FARS) and General Estimates System (GES) and determined that there is information concerning the accident involvement of the class of vehicles covered by section 4008 of the TEA–21, but no practical means to distinguish between accidents involving interstate motor carriers of passengers (either private or for-hire) and those involving intrastate motor carriers, or those involving commuter vanpools operated by individuals and not in the furtherance of a commercial enterprise.

The FHWA also searched for information from the National Transportation Safety Board (NTSB) and the Customs Service—because some commenters made reference to the operational safety of motor carriers transporting passengers to and from Mexico—to better understand safety issues concerning the operation of small passenger-carrying vehicles. The NTSB has no published studies indicating a safety problem with this population of motor carriers. The Customs Service, while maintaining records on the number of vehicles crossing the border, does not have information on either the actual number of Mexican-owned CMVs that enter the U.S., or on how many of each type of CMV enter the country. The Customs Service does not record information on each vehicle, or whether the vehicle is operated by a U.S. or foreign motor carrier. To further complicate matters, many vehicles used in cross-border operations may go through customs more than once a day. Also, the Customs Service does not collect CMV accident statistics.

The FHWA believes it is inappropriate to make the FMCSRs applicable to the operation of small passenger-carrying vehicles unless there is data to suggest operational safety problems.

Estimating the Population of Motor Carriers, Drivers, and Vehicles

In addition to difficulties in evaluating the safety performance of motor carriers operating small passenger-carrying vehicles, the FHWA has limited information on the number of vehicles and drivers that would be covered by the FMCSRs. The FHWA has reviewed its database of for-hire motor carriers of passengers who have interstate operating authority.

Although TEA–21 did not define the term "for compensation" as used in the amended definition of CMV, the FHWA has, for the purpose of this rulemaking and analysis, focused on for-hire motor carriers of passengers operating vehicles designed to transport less than 16 passengers, including the driver. These carriers are currently required to obtain operating authority from the FHWA (49 CFR 365).

As of April 1999, there are 1,636 for-hire motor carriers of passengers with active authority. Each of these carriers has on file with the FHWA proof of financial responsibility at the minimum level required for the operation of vehicles designed to transport less than 16 passengers. This number does not include pending applications for operating authority, passenger carriers shown as inactive because their authority was revoked for failure to maintain evidence of the required minimum levels of financial responsibility, or private motor carriers of passengers. There is no indication that Congress intended the FHWA to consider regulating private motor carriers of passengers (as defined in 49 CFR 390.5) operating vehicles designed to transport less than 16 passengers so the agency has not made an effort to estimate the number of such carriers.

The FHWA has information on the number of for-hire motor carriers of passengers who have complied with the operating authority requirements, but the agency does not have data on the number of drivers employed by these motor carriers. The FHWA cannot determine what percentage of these drivers would meet the applicable requirements of part 391 on driver qualifications or how their typical work schedules would be disrupted by having to comply with part 395 concerning hours of service for drivers. Therefore,

the FHWA can estimate neither the costs nor the benefits of applying the driver-related requirements of the FMCSRs to the vehicle operators based on the information currently in its databases.

In short, the FHWA believes the ITLA's estimates of the number of small passenger-carrying vehicles (or their drivers) operating in interstate commerce for compensation should be considered, but cannot confirm the accuracy of those estimates. The FHWA cannot estimate with certainty the regulatory burden associated with making parts 391, 395, or 393 applicable to these drivers and CMVs. However, in a separate rulemaking action published elsewhere in today's **Federal Register**, the agency is proposing certain requirements to improve its ability to gather data about the operators of small passenger-carrying vehicles.

Commercial Driver's License and Controlled Substances and Alcohol Testing

Many of the commenters, both for and against extending the applicability of the FMCSRs to small passenger-carrying CMVs, misconstrued section 4008 as mandating application of the CDL and controlled substances and alcohol testing rules (parts 383 and 382, respectively) to the drivers of such vehicles. Section 4008 does not amend the CMV definition used for those programs (49 U.S.C. 31301). Therefore, the potential benefits that some commenters argued would be associated with imposing the CDL and controlled substances and alcohol regulations can not be achieved. Conversely, commenters who argued against adopting the amended CMV definition on the assumption that it would make parts 382 and 383 applicable, thereby making it more difficult to find vanpool drivers, were also mistaken. Furthermore, since section 4008 is targeted at the operation of passenger-carrying vehicles for compensation, vanpools would generally remain unregulated, as explained below.

Applicability of Section 4008 to Vanpools

The FHWA agrees with commenters that the agency should not make the FMCSRs applicable to vanpools. The agency recognizes the importance of vanpools in reducing traffic congestion and air pollution caused by automobile emissions and agrees that having to comply with the FMCSRs would increase the costs of operating vanpools and could make it more difficult to get people to volunteer to drive vans. The FHWA does not believe Congress intended the agency to regulate commuter vanpools. The use of the phrase "for compensation" in section 4008 of TEA–21 suggests that the implementing regulations be limited to vans operated in the furtherance of a commercial enterprise, which is generally not the case for commuter vanpools. Certain vanpool services may, depending on whether the FHWA regulates the operation of small passenger-carrying vehicles and how the agency interprets or defines "for compensation," be subject to the safety regulations. However, the agency does not intend to regulate commuter vanpools that are not operated in the furtherance of a commercial enterprise.

The FHWA considers the phrase "for compensation" to be synonymous with "for hire." On April 4, 1997 (62 FR 16370), the FHWA published Regulatory Guidance for the Federal Motor Carrier Safety Regulations. Page 16407 of that notice includes an interpretation of "for-hire motor carrier." The guidance states:

> The FHWA has determined that any *business* (emphasis added) entity that assesses a fee, monetary or otherwise, directly or indirectly for the transportation of passengers is operating as a for-hire carrier. Thus, the transportation for compensation in interstate commerce of passengers by motor vehicles (except in six-passenger taxicabs operating on fixed routes) in the following operations would typically be subject to all parts of the FMCSRs, including part 387: whitewater river rafters; hotel/motel shuttle transporters; rental car shuttle services, etc. These are examples of for-hire carriage because some fee is charged, usually indirectly in a total package charge or other assessment for transportation performed.

The reference to six-passenger taxicabs operating on fixed routes was included in the guidance because of the ICC Termination Act of 1995 (ICCTA) (Pub. L. 104–88, 109 Stat. 803, 919). The ICCTA amended the statutory definition of a CMV prior to TEA–21, adding "designed or used to transport passengers for compensation, but exclud(es) vehicles providing taxicab service and having a capacity of not more than 6 passengers and not operated on a regular route or between specified places." The TEA–21 resulted in the removal of this clause from the definition of CMV.

The FHWA understands that passengers in many vanpools pay a monthly fee to an individual, who either owns or leases the van. The FHWA does not believe this is a business. The individual uses this money not as a source of income or in the furtherance of a commercial enterprise, but to pay for the van, insurance premiums, and maintenance. There may be surplus funds each month that are put in reserve to cover unexpected costs or losses of revenue during periods in which vanpool membership decreases. The FHWA, however, does not believe that this type of arrangement should be considered "for compensation" and does not intend to regulate such operations. The agency requests comments on the nature of these operations.

Minimum Levels of Driver Training and Testing

Although numerous commenters argued against adopting the TEA–21 definition of CMV because they believe the FMCSRs require a minimum of 8 hours of driver training, a written test, and a road test, these arguments are based upon a misunderstanding of the current safety regulations, and an assumption that all driver-related FMCSRs would be applicable to drivers of small passenger-carrying CMVs.

If the FHWA made the FMCSRs applicable to drivers of small passenger-carrying CMVs, the drivers of such vehicles would, unless an exception were provided, be required to comply with all of the provisions of part 391, Qualifications of Drivers. However, part 391 does not require that drivers of CMVs have 8 hours of training. Section 391.11 requires that drivers be capable of operating safely the CMV they are assigned, and have a valid operator's license issued by only one State or jurisdiction. The determination of the driver's ability may be based upon experience, training, or both. The regulations do not specify a minimum amount of training or experience.

Section 391.11(b)(8) requires drivers to successfully complete a road test, or present an operator's license (or a certificate of road test) to the motor carrier for acceptance as equivalent to a road test. Section 391.33, Equivalent of road test, allows motor carriers to accept a CDL in lieu of administering a road test if the driver was required to successfully complete a road test to obtain the license. If the FHWA required drivers of small passenger-carrying vehicles to comply with all the requirements of part 391, the agency could consider allowing motor carriers to accept a license other than a CDL if that license required a road test. Even if the agency required drivers to take road tests, the regulatory burden would be minimal. The operating characteristics of vehicles designed or used to transport 9 to 15 passengers, including the driver, are similar to vehicles most drivers are capable of driving (i.e., vans, full-sized sport utility vehicles, commuter vans), and the amount of time and effort needed to conduct the road test (as specified in § 391.31) would not be unreasonable.

With regard to a written test, the FHWA does not require that non-CDL drivers be subjected to a written test. The FHWA rescinded the written examination requirements of part 391 on November 23, 1994 (59 FR 60319).

Transportation of Children

In response to commenters that believe the adoption of section 4008 would either enhance or reduce the transportation safety of school children, the FHWA notes that the FMCSRs include exceptions for all school bus operations (as defined in § 390.5), and transportation performed by the Federal government, a State, or any political subdivision of a State (§ 390.3(f)(2)). School bus operation means the use of a school bus to transport school children and/or school personnel from home to school and from school to home. School bus is defined (§ 390.5) as a passenger motor vehicle designed to carry more than 10 passengers in addition to the driver, and used primarily for school bus operations. School bus operations are not regulated by the FHWA, even when such operations are conducted by a for-hire motor carrier of passengers. Irrespective of the decision the FHWA ultimately makes concerning the applicability of the TEA–21 definition to small passenger CMVs, vans used to transport children to and from school would not be regulated as a result of that rulemaking.

Applicability of Financial Responsibility and Operating Authority Regulations

In response to commenters who believe the FHWA should make the financial responsibility (49 CFR 387) and operating authority (49 CFR 365) requirements applicable to the operators of small passenger-carrying vehicles, it should be noted that these requirements are already applicable to for-hire motor carriers of passengers operating vehicles designed to transport less than 16 passengers, with certain exceptions. The financial responsibility exceptions, however, cover many of the operations of interest to commenters, e.g., school bus operations and most vanpools (see § 387.27(b)(1), (3) and (4)). Since these exceptions are statutory (see 49 U.S.C. 31138(e)(1) and (3)), the FHWA has no discretion to rescind them. Subpart B of part 387 requires a minimum of $1.5 million in public liability for the operation of vehicles with a seating capacity of 15 passengers or less, unless the vehicles fall into one of the exempt categories. Part 365 requires for-hire motor carriers to obtain operating authority and subpart C of part 387 requires them to file proof of financial responsibility.

FHWA Decision

Given the statutory deadline of June 9, 1999, for deciding whether to exempt the operation of small passenger-carrying CMVs from the FMCSRs, the FHWA has decided that it is in the public interest temporarily to limit the applicability of the FMCSRs to the motor carrier operations covered prior to the enactment of TEA–21. The FHWA has no useful data on the relative safety of small passenger CMVs. In the absence of such data, the agency has no rational basis for extending the FMCSRs to this class of vehicles.

However, the FHWA believes that action must be taken to learn more about the operational safety of motor carriers operating small passenger vehicles for compensation. In a notice of proposed rulemaking published elsewhere in today's **Federal Register**, the agency is proposing that these motor carriers be required to complete a motor carrier identification report (49 CFR 385.21), and comply with the FHWA's CMV marking requirement (49 CFR 390.21) which would include displaying a USDOT motor carrier identification number on all vehicles designed to transport 9 to 15 passengers for compensation in interstate commerce. The agency would also require that these motor carriers be required to maintain an accident register (49 CFR 390.15).

Discussion of the Interim Final Rule

The FHWA is amending the FMCSRs to adopt the revised statutory definition of CMV provided by section 4008 of TEA–21. The FHWA is revising its definition of CMV found at § 390.5 and adding a new paragraph (f)(6) to § 390.3 giving operators of CMVs designed or used to transport 9 to 15 passengers a six-month exemption from all of the FMCSRs. The FHWA is exempting until March 6, 2000 the operation of small passenger-carrying vehicles from all of the FMCSRs to allow time for the completion of a separate rulemaking action published elsewhere in today's **Federal Register**. As a result of this action, the applicability of the FMCSRs will be the same as before the enactment of TEA–21 until that date. Therefore, entities that were not subject to the FMCSRs prior to the enactment of TEA–21 are not required to make changes in their operations to comply with the safety regulations.

The FHWA, however, is adopting the statutory changes to the definition of CMV concerning the use of "gross vehicle weight" in addition to "gross vehicle weight rating," and "designed or used" to transport passengers instead of "designed" to transport passengers.

Rulemaking Analysis and Notices

Under the Administrative Procedure Act (APA) (5 U.S.C. 553(b)), an agency may waive the normal notice and comment requirements if it finds, for good cause, that they are impracticable, unnecessary, or contrary to the public interest.

In this case, notice and comment are unnecessary. The rule adopts the statutory definition of a "commercial motor vehicle" and an exemption for passenger vehicles with a capacity of 9 to 15, including the driver, that are operated for compensation in interstate commerce. Because this rule makes the applicability of the FMCSRs the same as before the enactment of TEA–21, and codifies two minor TEA–21 amendments that eliminate jurisdictional loopholes from the CMV definition, the FHWA finds good cause to waive prior notice and comment. The current regulations were adopted through notice and comment rulemaking and do not require further procedural review. Nonetheless, the agency's August 5, 1998 ANPRM (63 FR 41766) sought information from operators of small passenger vehicles and other interested parties; the FHWA received more than 700 responses. As explained in the preamble, the commenters were overwhelmingly opposed to the application of the FMCSRs to these vehicles. The most significant conclusion drawn from those comments, and from every other source the agency consulted, is that accident data which would allow the FHWA to determine the relative safety of small passenger CMVs, and thus to perform an analysis of the costs and benefits of subjecting them to the FMCSRs, is not currently available. The FHWA has therefore decided that it could not, consistent with the requirements of the APA and other laws, impose on small passenger CMVs the burdens of complying with the FMCSRs. Because this final rule establishes an exception to make the applicability of the FMCSRs the same as before the enactment of TEA–21, and will remain in effect only for 6 months while the agency solicits and evaluates comments on the companion NPRM published elsewhere in today's issue of the **Federal Register**, the FHWA finds that there is no need to publish this temporary measure for notice and comment.

As explained above, however, the FHWA also believes that operators of these vehicles should be required to

keep accident registers and display a USDOT number. Since these changes are substantive, the agency is publishing an NPRM on that subject elsewhere in this issue of the **Federal Register**. Those proposals, if adopted, would enable the agency to collect safety information specific to small passenger CMVs. If the data demonstrate that a serious safety problem exists, the FHWA could then propose to apply some or all of the FMCSRs to passenger vehicles with a capacity of 9 to 15.

Accordingly, the FHWA finds that there is good cause to waive prior notice and comment for the limited reasons described above. For the same reasons, the FHWA finds, pursuant to 5 U.S.C. 553(d)(3), that there is good cause for making the interim final rule effective upon publication. Comments received will be considered in evaluating whether any changes to this interim final rule are required. All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866 and significant within the meaning of Department of Transportation regulatory policies and procedures because of the substantial public interest concerning the possible extension of the applicability of the FMCSRs to a larger population of motor carrier operations. This interim final rule exempts temporarily from the FMCSRs the operation of vehicles designed or used to carry between 9 and 15 passengers (including the driver), for compensation in interstate commerce. As a result of this action, the applicability of the FMCSRs is changed to be the same as before the enactment of section 4008. The FHWA is simply establishing an exception until the agency has better information upon which to make a determination of the costs and benefits. The agency is not making any estimate of either the costs or benefits of either using the statutory definition or exempting all, or some, of these operations.

Regulatory Flexibility Act

The FHWA has considered the effects of this regulatory action on small entities and determined that this rule will not affect a substantial number of small entities. The FHWA is revising its regulatory definition of CMV, at 49 CFR 390.5, to be consistent with the statute, but exempting temporarily the operation of small passenger-carrying vehicles from all of the FMCSRs for six months to allow the agency to complete a separate rulemaking action published elsewhere in today's **Federal Register**. As a result of this action, the applicability of the FMCSRs will be the same as before the enactment of TEA–21. Entities that were not subject to the FMCSRs prior to the enactment of TEA–21 are not required to make changes in their operations to comply with the safety regulations. The FHWA, in compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), has considered the economic impacts of this rulemaking on small entities and certifies that this rule will not have a significant economic impact on a substantial number of small entities. The FHWA will reexamine this certification after reviewing the comments to this rule and the companion NPRM.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. Nothing in this document preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action does not have any effect on the quality of the environment.

Unfunded Mandates Reform Act

This rule does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Regulation Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 390

Highway safety, Motor carriers, Motor vehicle identification and marking, Reporting and record keeping requirements.

Issued on: August 30, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends title 49, Code of Federal Regulations, chapter III, as follows:

PART 390—[AMENDED]

1. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. 13301, 13902, 31132, 31133, 31136, 31502, and 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); and 49 CFR 1.48.

2. Amend § 390.3 to revise paragraph (f)(5) by replacing the period with a semicolon, and add paragraph (f)(6) to read as follows:

§ 390.3 General applicability.

* * * * *

(f) *Exceptions.*

* * * * *

(6) The operation of commercial motor vehicles designed to transport less than 16 passengers (including the driver) until March 6, 2000.

2. Amend § 390.5 to revise the definition of "commercial motor vehicle" to read as follows:

§ 390.5 Definitions.

* * * * *

Commercial motor vehicle means any self-propelled or towed motor vehicle

used on a highway in interstate commerce to transport passengers or property when the vehicle—

(1) Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or

(2) Is designed or used to transport more than 8 passengers (including the driver) for compensation; or

(3) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or

(4) Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, subtitle B, chapter I, subchapter C.

[FR Doc. 99–23026 Filed 9–2–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 390

[FHWA Docket No. FHWA–99–5710]

RIN 2125–AE60

Federal Motor Carrier Safety Regulations; Requirements for Operators of Small Passenger-Carrying Commercial Motor Vehicles

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The FHWA is proposing to amend the Federal Motor Carrier Safety Regulations (FMCSRs) to require that motor carriers operating commercial motor vehicles (CMVs) designed or used to transport between 9 and 15 passengers (including the driver) for compensation file a motor carrier identification report, mark their CMVs with a USDOT identification number and certain other information (i.e., name or trade name and address of the principal place of business), and maintain an accident register. This action is in response to the Transportation Equity Act for the 21st Century (TEA–21). Section 4008(a) of TEA–21 amended the definition of the term "commercial motor vehicle" to cover these vehicles. In a separate document published elsewhere in today's **Federal Register** the FHWA is adopting the statutory definition of a CMV found at 49 U.S.C. 31132 to be consistent with the statute, but is exempting for six months the operation of these small passenger-carrying vehicles from all of the FMCSRs, to allow time for the completion of this rulemaking.

DATES: Comments must be received on or before November 2, 1999.

ADDRESSES: Submit written, signed comments to FHWA Docket No. FHWA–99–5710, the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, Office of Motor Carrier Research and Standards, HMCS–10, (202) 366–4009; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments that were submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–001, in response to previous rulemaking notices concerning the docket referenced at the beginning of this notice by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

Background

Section 4008(a)(2) of TEA–21 (Pub. L. 105–178, 112 Stat. 107, June 9, 1998) amended the passenger-vehicle component of the CMV definition in 49 U.S.C. 31132(1). Section 4008 also changed the weight threshold in the CMV definition by adding "gross vehicle weight" (GVW) to the previous "gross vehicle weight rating" (GVWR). The agency may now exercise jurisdiction based on the GVW or GVWR, whichever is greater. For example, a vehicle with a GVWR of 9,500 pounds that was loaded to 10,500 pounds GVW would be subject to the FMCSRs if it was operating in interstate commerce. Commercial motor vehicle is now defined (in 49 U.S.C 31132) to mean a self-propelled or towed vehicle used on the highways in interstate commerce to transport passengers or property, if the vehicle—

(A) Has a gross vehicle weight rating or gross vehicle weight of at least 10,001 pounds, whichever is greater;

(B) Is designed or used to transport more than 8 passengers (including the driver) for compensation;

(C) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or

(D) Is used in transporting material found by the Secretary of Transportation to be hazardous under section 5103 of this title and transported in a quantity requiring placarding under regulations prescribed by the Secretary under section 5103.

Under section 4008(b) of TEA–21, operators of the CMVs defined by 49 U.S.C. 31132(1)(B) will automatically become subject to the FMCSRs one year after the date of enactment of TEA–21, if they are not already covered, "except to the extent that the Secretary [of Transportation] determines, through a rulemaking proceeding, that it is appropriate to exempt such operators of commercial motor vehicles from the application of those regulations."

The FHWA views section 4008 of TEA–21 as a mandate either to impose the FMCSRs on previously unregulated smaller capacity vehicles, or to exempt through a rulemaking proceeding some, or all, of the operators of such vehicles.

FHWA's Advance Notice of Proposed Rulemaking

On August 5, 1998 (63 FR 41766), the FHWA published an advance notice of proposed rulemaking (ANPRM) to announce that the agency was considering amending the FMCSRs in response to section 4008(a) of the TEA–21, to seek information about the potential impact of the TEA–21 definition, and to request public comment on whether any class of vehicles should be exempted. The agency also requested comment on whether the term "for compensation" may be interpreted to distinguish among the types of van services currently in existence.

Summary of the Comments to the ANPRM

The FHWA received 733 comments in response to the ANPRM. The commenters included State and local government agencies, transit authorities, vanpool organizations, vanpool members, universities, trade associations, and members of Congress, as well as private citizens. Most (more than 720) of the commenters were opposed to making the FMCSRs applicable to the operation of small passenger-carrying CMVs. However, several commenters believed it is necessary to regulate these vehicles and, in certain cases, identified what they believe are the specific safety issues section 4008(a) was intended to resolve. A detailed discussion of the comments is provided in an interim final rule, published elsewhere in today's **Federal Register**, exempting these motor carriers from the FMCSRs for a period of six months.

Summary of the FHWA's Response to Comments

As indicated in the interim final rule, the FHWA has considered all of the comments received in response to the ANPRM and determined there is insufficient data concerning the safety performance of motor carriers operating CMVs designed or used to transport 9 to 15 passenger (including the driver) for compensation, to justify making the FMCSRs applicable to them. Commenters to the docket have expressed opinions for and against regulating operators of passenger-carrying vehicles designed to transport 9 to 15 passengers (including the driver), but none of the commenters have presented safety data that could be useful in deciding whether to regulate such motor carriers. While the FHWA acknowledges that there may be safety benefits to extending the applicability of the FMCSRs to the operation of small passenger-carrying CMVs for compensation, a mere assumption does not satisfy the agency's obligation to quantify the benefits of rulemaking.

Given the statutory deadline of June 9, 1999, for deciding whether to exempt the operation of small passenger-carrying CMVs from the FMCSRs, the FHWA has decided that it is in the public interest to limit the applicability of the FMCSRs to the motor carrier operations covered prior to the enactment of TEA–21 for the time being. The FHWA currently has no useful data on the relative safety of small passenger CMVs. In the absence of such data, the agency has no rational basis for extending the FMCSRs to this class of vehicles. Accordingly, in a separate rulemaking document published elsewhere in today's **Federal Register**, the FHWA is exempting for a period of six months, all of the operators of small passenger-carrying CMVs from the FMCSRs to allow time for the completion of this rulemaking.

Discussion of the Proposal

The FHWA believes that action must be taken to learn more about the operational safety of motor carriers operating small passenger vehicles for compensation. The agency is proposing that these motor carriers be required to complete a motor carrier identification report (49 CFR 385.21), and comply with the FHWA's CMV marking regulation (49 CFR 390.21) which would include displaying a USDOT motor carrier identification number on all vehicles designed or used to transport 9 to 15 passengers for compensation in interstate commerce. The agency would also require that these motor carriers maintain an accident register (49 CFR 390.15).

Motor Carrier Identification Report

Section 385.21 of the FMCSRs requires motor carriers to file Form MCS–150, Motor Carrier Identification Report, within 90 days after beginning operations in interstate commerce. The information from the Form MCS–150 is used to create a file in the Motor Carrier Management Information System (MCMIS), a database containing safety information (e.g., compliance review results, roadside inspection results, CMV accidents, etc.) about interstate motor carriers.

The FHWA is proposing that operators of small passenger-carrying CMVs be required to file Form MCS–150 to enable the agency to determine how many motor carriers are affected by the TEA–21 revision to the CMV definition, the number of drivers employed and vehicles operated by these carriers, and the principal place of business for each of these entities. Each motor carrier would be assigned a USDOT census or identification number which, when marked on each CMV operated by the motor carrier, could help enforcement officials and the general public identify these businesses.

Vehicle Marking

Section 390.21 requires that motor carriers mark their CMVs with the name or trade name of the business, the city or community and State in which the motor carrier maintains its principal place of business, and its motor carrier identification number. The FHWA requests comments on the practical utility of applying these marking requirements to the operators of small passenger-carrying CMVs. The FHWA would require the operators of small passenger-carrying vehicles to comply with all the provisions of § 390.21 to ensure that enforcement officials and the public can identify their vehicles and that accidents (as defined in 49 CFR 390.5) can be recorded by the States and entered into the FHWA's SAFETYNET database. The FHWA would use the information to study the number and locations of accidents, and the motor carriers involved, to determine if there are patterns or trends concerning the safety performance of these carriers.

Accident Register

Section 390.15 requires that motor carriers make all records and information pertaining to an accident available to the FHWA upon request. Motor carriers must give the FHWA all reasonable assistance in the investigation of any accident. Motor carriers also must maintain at the principal place of business, for a period of one year after an accident occurs, an accident register with the following information:

(1) Date of the accident;

(2) City or town in which or most near where the accident occurred, and the State in which the accident occurred;

(3) Driver's name;

(4) Number of injuries;

(5) Number of fatalities; and

(6) Whether hazardous materials, other than fuel spilled from the fuel tanks of the motor vehicles involved in the accident, were released.

Copies of all accident reports required by State or other government entities or insurers also must be maintained by the motor carriers.

The FHWA is proposing that operators of CMVs designed or used to transport 9 to 15 passengers be required to comply with § 390.15 to assist the agency in conducting investigations and, if necessary, special studies about the safety performance of particular motor carriers or segments of the industry. For example, if one of a motor carrier's vehicles is involved in a major accident or a series of accidents, the FHWA could review the records required by § 390.15 as part of the process of determining whether there are deficiencies with the carrier's safety management controls.

Explanation of the Term "For Compensation"

The TEA–21 definition of a passenger CMV includes the phrase "for compensation" in 49 U.S.C. 31132(1)(B). However, TEA–21 did not include a definition of the phrase. The FHWA considers the term to be synonymous with "for hire." The FHWA intends that this rulemaking be applicable to all interstate for-hire motor carriers of passengers operating CMVs designed or used to transport 9 to 15 people. Although some commenters to the FHWA's ANPRM suggested that a distinction be made between motor carriers that are "directly compensated" and those that are "indirectly compensated," the agency does not believe it is appropriate to exempt a for-hire motor carrier from the requirements being proposed on the basis of how the motor carrier is paid for its services. The FHWA requests comments on this issue.

On April 4, 1997 (62 FR 16370), the FHWA published Regulatory Guidance for the Federal Motor Carrier Safety Regulations. Page 16407 of that notice includes an interpretation of "for-hire motor carrier." The guidance states:

> The FHWA has determined that any *business* (emphasis added) entity that

assesses a fee, monetary or otherwise, directly or indirectly for the transportation of passengers is operating as a for-hire carrier. Thus, the transportation for compensation in interstate commerce of passengers by motor vehicles (except in six-passenger taxicabs operating on fixed routes) in the following operations would typically be subject to all parts of the FMCSRs, including part 387: whitewater river rafters; hotel/motel shuttle transporters; rental car shuttle services, etc. These are examples of for-hire carriage because some fee is charged, usually indirectly in a total package charge or other assessment for transportation performed.

The reference to six-passenger taxicabs operating on fixed routes was included in the guidance because of the ICC Termination Act of 1995 (ICCTA) (Pub. L. 104–88, 109 Stat. 803, 919). The ICCTA amended the statutory definition of a CMV prior to TEA–21, adding "designed or used to transport passengers for compensation, but exclud(es) vehicles providing taxicab service and having a capacity of not more than 6 passengers and not operated on a regular route or between specified places." The TEA–21 resulted in the removal of this clause from the definition of CMV.

An example of transportation that would not be covered by this rulemaking is commuter vanpools. The FHWA understands that passengers in many vanpools pay a monthly fee to an individual, who either owns or leases the van. The FHWA does not believe this is a business. The individual uses this money not as a source of income or in the furtherance of a commercial enterprise, but to pay for the van, insurance premiums, fuel, and maintenance. There may be surplus funds each month that are put in reserve to cover unexpected costs, or losses of revenue during periods in which vanpool membership decreases. The FHWA, however, does not believe that this type of arrangement should be considered "for compensation" and does not intend to regulate such operations. The agency requests comments on the nature of these operations.

Rulemaking Analysis and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866 and significant within the meaning of Department of Transportation regulatory policies and procedures because of the substantial public interest concerning the possible extension of the applicability of the FMCSRs to a larger population of motor carrier operations. This rulemaking proposal would require that operators of vehicles designed or used to carry between 9 and 15 passengers (including the driver), for compensation in interstate commerce file a motor carrier identification report, mark their CMVs with a USDOT identification number, and maintain an accident register.

The FHWA believes the costs of complying with the requirements to submit a motor carrier identification report and to maintain an accident register are negligible. These requirements impose only information collection burdens (i.e., completion of forms, recordkeeping, etc.) and are discussed in greater detail below in the "Paperwork Reduction Act" section of this notice.

The FHWA estimates that the cost of marking CMVs will be between $11 and $26 per vehicle depending on the number of vehicles the motor carrier operates. The cost estimates are based upon the FHWA's preliminary regulatory evaluation and regulatory flexibility analysis prepared for the June 16, 1998 (63 FR 32801), notice of proposed rulemaking about CMV marking requirements. The complete regulatory evaluation and regulatory flexibility analysis are included in FHWA Docket No. FHWA–98–3547.

Since motor carriers operating CMVs designed or used to transport 9 to 15 passengers currently are not required to complete Form MCS–150, the FHWA does not have sufficient data to estimate the total number of CMVs that would need to be marked in accordance with § 390.21. However, one of the commenters responding to the FHWA's August 5, 1998, ANPRM (63 FR 41766) provided information that may be useful in estimating the population of vehicles that would need to be marked. The International Taxicab and Livery Association (ITLA) stated:

> According to information available to ITLA, there are approximately 50,000 limousines in use that would be affected by the definitional change. It should be noted that there are over 9000 limousine operators nationwide (also operating premium sedan services), and that the median fleet size is less than 5. In addition, the average annual miles operated by limousines is approximately 23,000 miles.
>
> ITLA estimates that there are approximately 74,000 vans nationwide—"the breakdown between "mini-vans" and those affected by the proposed definition is not available. Van fleets average less than 10 vans, with an approximate annual mileage of 40,000 per vehicle, and an average trip length of less than 8 miles lasting significantly less than 1 hour.

In September of 1998, the American Business Information (a mailing list sales company) released a sales catalog that reports the following information:

SIC code	Type of service	Number of U.S. companies
4111–01	Airport Transportation	4,752
4119–01	Handicapped Transportation	1,302
4119–03	Limousine Transportation	9,482
4121–01	Taxicab Transportation	7,348
	Total	22,884

The ITLA indicated that, if the FHWA decides to make the FMCSRs applicable to the operation of small passenger-carrying vehicles, approximately 14,000 companies, 125,000 vehicles, and 165,000 drivers would be covered. If there are 125,000 vehicles designed or used to transport 9 to 15 passengers for compensation in interstate commerce, the costs to the industry for marking CMVs could be between $1,375,000 and $3,250,000. The costs are one-time expenses and would not be recurring. Generally, the marking would last the normal life of the vehicle.

At this time, the FHWA is not able to specifically quantify the safety benefits resulting from requiring CMVs to be marked. The requirement is necessary because it would be used to monitor the safety performance of these motor carriers. The safety performance data ultimately would be used to determine whether there are safety problems with operators of small passenger-carrying CMVs, and whether other FMCSRs should be made applicable to them. The FHWA specifically requests comments on the potential costs and benefits of the proposed requirements.

The FHWA has considered other rulemaking options such as, not imposing any regulatory burdens on these motor carriers, excluding the marking requirements from this rulemaking proposal, or imposing more stringent requirements. The agency believes the option chosen would be most effective at helping to achieve its objective to monitor the safety performance of these passenger carriers. Based upon the information above, the agency anticipates that the economic impact associated with this rulemaking action is minimal and a full regulatory evaluation is not necessary.

Regulatory Flexibility Act

The FHWA has considered the effects of this regulatory action on small entities and determined that this proposal could affect a substantial number of small entities, but would not have a significant impact on these entities. If the ITLA's estimate of 14,000 interstate motor carriers operating CMVs designed or used to transport 9 to 15 passengers is accurate, and most or all of these businesses are classified as small businesses by the Small Business Administration (SBA), the rulemaking would affect up to 14,000 small entities.

Generally, the costs per vehicle for small companies to mark their CMVs would be greater than those for large companies. If a motor carrier has between 1 to 6 vehicles, the total cost per vehicle for marking is estimated at $26. The motor carrier's total cost would therefore be between $26 and $156. For a motor carrier operating 7 to 20 CMVs, the total cost per vehicle marking would be $21. The total cost for the motor carrier's fleet would be between $147 and $420. For a fleet of 21–99 vehicles, the total cost per vehicle marking would decrease to $16. The total cost for the motor carrier's fleet would be between $336 and $1,584. And, for a fleet of 100 to 999 vehicles the cost per vehicle marking would decrease to $11. The total fleet cost would be between $1,100 and $10,989.

For the purpose of this rulemaking analysis, the FHWA will use the ITLA estimate for the number of business, vehicles, and drivers. The FHWA's data concerning carriers that have operating authority can only be used to identify 1,636 interstate motor carriers operating vehicles designed or used to transport 9 to 15 passengers. The agency believes there are many more carriers and that the ITLA's estimate appears to be a reasonable number. The FHWA requests comments on the number of motor carriers that would be subject to the proposed requirements, and the number of such carriers that are classified as small businesses.

Based on its analysis summarized above, the FHWA believes that this rulemaking could affect a substantial number of small entities, but would not have a significant impact on these entities. For example, if a small entity operated between 7 and 20 CMVs, the total cost per vehicle marking would be $21. The total cost for the motor carrier's fleet would be between $147 and $420. The FHWA does not consider this total fleet cost to be a significant impact on a business operating 20 vehicles. The FHWA, in compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), has considered the economic impacts of the proposed requirements on small entities and certifies that this rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. Nothing in this document directly preempts any State law or regulation.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FHWA has determined that this proposal contains new collection of information requirements for the purposes of the PRA. The FHWA is proposing that motor carriers operating CMVs designed or used to transport 9 to 15 passengers meet the vehicle marking requirements at 49 CFR 390.21. The FHWA believes it is important that CMVs be properly marked so that the public has an effective means to identify motor carriers operating in an unsafe manner. Such markings will also assist Federal and State officials in accident investigations.

The information collection requirements contained on Form MCS–150 have been approved by the OMB under the provisions of the PRA and assigned the control number of 2125–0544 which expires on January 31, 2000. The FHWA estimates it takes approximately 20 minutes for interstate motor carriers to complete a Form MCS–150. The agency estimates that as a result of this rulemaking, 14,000 interstate motor carriers, currently not subject to the FHWA's safety regulations, would have to complete the Form MCS–150. Motor carriers are required to complete the form within 90 days after beginning operations. Motor carriers may have the information updated but are not required to periodically submit a new Form MCS–150. Therefore, the FHWA estimates an additional burden of 4,667 hours [(20 minutes per motor carrier × 14,000 motor carriers)/60 minutes per hour] to OMB 2125–0544. Because this action contains a proposal to require businesses currently not subject to 49 CFR 385.21 to file the Form MCS–150, the FHWA is required to resubmit this proposed collection of information, as revised, to OMB for review and approval. Accordingly, the FHWA seeks public comment on this proposed information collection requirement.

The information collection requirements for the accident register have been approved by the OMB under the provisions of the PRA and assigned the control number of 2125–0526 which expires on August 31, 2002. The FHWA estimates it takes approximately 18 minutes for interstate motor carriers to collect and record the seven elements of information on the accident register. However, since the FHWA does not have sufficient information to estimate the number of accidents operators of small passenger-carrying CMVs have each year, the agency is unable to

estimate the total time burden. If each of the estimated 14,000 interstate motor carriers operating small passenger-carrying vehicles has one accident per year, an additional burden of 4,200 hours per year [(18 minutes per motor carrier × 14,000 motor carriers)/60 minutes per hour] would be added to OMB No. 2125–0526. Because this action contains a proposal to require businesses currently not subject to 49 CFR 390.15 to maintain an accident register, the FHWA is required to resubmit this proposed collection of information, as revised, to OMB for review and approval. Accordingly, the FHWA seeks public comment on this proposed information collection requirement.

Interested parties are invited to send comments regarding any aspect of these information collection requirements, including, but not limited to: (1) Whether the collection of information is necessary for the performance of the functions of the FHWA, including whether the information has practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collection information; and (4) ways to minimize the collection burden without reducing the quality of the information collected.

National Environmental Policy Act

The agency has analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action does not have any effect on the quality of the environment.

Unfunded Mandates Reform Act

This rule does not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

Regulation Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects 49 CFR Part 390

Highway safety, Motor carriers, Motor vehicle identification and marking, Reporting and recordkeeping requirements.

Issued on: August 30, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 49, Code of Federal Regulations, chapter III, as follows:

PART 390—[AMENDED]

1. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. 13301, 13902, 31132, 31133, 31136, 31502, and 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); and 49 CFR 1.48.

2. Amend § 390.3 to revise paragraph (f)(6) to read as follows:

§ 390.3 General Applicability.

* * * * *

(f) *Exceptions.*

* * * * *

(6) The operation of commercial motor vehicles designed to transport less than 16 passengers (including the driver). However, motor carriers operating these vehicles for compensation are required to comply with 49 CFR 385.21, Motor carrier identification report, 49 CFR 390.15, Assistance in investigations and special studies, and 49 CFR 390.21, Marking of commercial motor vehicles.

[FR Doc. 99–23027 Filed 9–2–99; 8:45 am]

BILLING CODE 4910–22–P

federal register

Friday
September 3, 1999

Part V

Department of Labor

Wage and Hour Division

29 CFR Part 697

Industries in American Samoa; Wage Order; Final Rule

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 697

Industries in American Samoa; Wage Order

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: Under the Fair Labor Standards Act, minimum wage rates in American Samoa are set by a special industry committee appointed by the Secretary of Labor. This document puts into effect the minimum wage rates recommended for various industry categories by Industry Committee No. 23 which met in Pago Pago, American Samoa, during the week of June 7, 1999.

DATES: This rule shall become effective on September 20, 1999.

Applicability date: The new minimum wage rates are effective on September 20, 1999, unless otherwise noted.

FOR FURTHER INFORMATION CONTACT: Arthur M. Kerschner, Jr., Office of Enforcement Policy, Child Labor and Special Employment Team, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3510, 200 Constitution Avenue, NW., Washington, DC 20210: telephone (202) 693–0072. This is not a toll free number. Copies of the Final Rule in alternative formats may be obtained by calling (202) 693–0072 or (202) 693–1461 (TTY). The alternative formats available are large print, electronic file on computer disk (Word Perfect, ASCII, Mates with Duxbury Braille System) and audio-tape.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This rule contains no reporting or recordkeeping requirements which are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

II. Background

Pursuant to sections 5, 6, and 8 of the Fair Labor Standards Act of 1938 (52 Stat. 1062, 1064), as amended (29 U.S.C. 205, 206, 208) and Reorganization Plan No. 6 of 1950 (3 CFR 1949–53 Comp., p. 1004), and by means of Administrative Order No. 664 (64 FR 13822), the Secretary of Labor appointed and convened Industry Committee No. 23 for Industries in American Samoa, referred to the Committee the question of the minimum rates of wages to be paid under section 8 of the FLSA to employees within the industries, and gave notice of a hearing to be held by the Committee.

Subsequent to an investigation and a hearing conducted in Pago Pago pursuant to the notice, the Committee filed with the Administrator of the Wage and Hour Division a report containing its findings of fact and recommendations with respect to minimum wage rates for various industry classifications. The Committee also corrected a typographical error that previously appeared in the definition of shipping and transportation. The FLSA requires that the Secretary publish this report in the **Federal Register** and further requires that the recommendations in the report be effective 15 days after publication.

Accordingly, as authorized and required by section 8 of the Fair Labor Standards Act of 1938, Reorganization Plan No. 6 of 1950 and 29 CFR 511.18, this rule hereby revises § 697.1 and 697.3 of 29 CFR part 697 to implement the recommendations of Industry Committee No. 23.

Executive Order 12866/Section 202 of the Unfunded Mandates Reform Act of 1995 and Small Business Regulatory Enforcement Fairness Act

This rule is not a "significant regulatory action" within the meaning of Executive Order 12866, and no regulatory impact analysis is required. This document puts into effect the wage rates recommended by Industry Committee No. 23 which met in Pago Pago, American Samoa during the week of June 7, 1999. The Committee recommended increases over two years in various industry categories; ranging from 3 cents per hour for the bottling, brewing, and dairy products industry; to 12 cents per hour over two years for the government employees industry.

When these increases are fully implemented, wage rates will range from $2.50 an hour (miscellaneous activities) to $3.97 an hour (shipping and transportation, classification A, stevedoring, lighterage, and maritime shipping activities).

There are approximately 16,000 employees in the various industry classifications. Based on the number of workers whose wages must be increased to the new minimum wage levels in 1999 and/or 2000, and assuming that employees currently paid at or in excess of the new minimum wages will also receive commensurate wage increases to maintain relative pay comparability, increases in the overall annual wage bill are expected to be very modest—approximately $618,000 in 1999 and $1.4 million (cumulative) in 2000. Thus this rule is not expected to result in a rule that may (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

For reasons similar to those noted above, the rule does not require a section 202 statement under the Unfunded Mandates Reform Act of 1995. Because the Secretary has no authority to change a recommendation of the Industry Committee, compliance with Executive Order 12875 is neither feasible nor permitted by law, and in any event, the rule is not a significant rule.

Furthermore, a resident of American Samoa is nominated by the Governor of American Samoa as a public member of the Industry Committee. Its representatives also provided testimony and made recommendations at the hearing.

Finally, the rule is not a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996. Although the rule will impact solely on American Samoa, its impact is not expected to be significant, for the reasons discussed above.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for the rule under 5 U.S.C. 553(b), the requirements of the Regulatory Flexibility Act, Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* pertaining to regulatory flexibility analysis, do not apply to this rule. See 5 U.S.C. 601(2).

Administrative Procedure Act

Good cause exists for issuance of this rule without publication 30 days in advance of its effective date, as normally required by section 553(d) of the Administrative Procedure Act. As discussed above, section 8 of the FLSA requires that the rule be effective 15 days after publication.

Document Preparation

This document was prepared under the direction and control of John R. Fraser, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 697

American Samoa, Minimum wages.

Signed at Washington, DC this 30th day of August, 1999.

Bernard E. Anderson,

Assistant Secretary, Employment Standards Administration.

Accordingly, part 697 of Chapter V of Title 29, Code of Federal Regulations is amended as follows:

PART 697—INDUSTRIES IN AMERICAN SAMOA

The authority citation for part 697 continues to read as follows:

Authority: Secs. 5, 6, 8, 52 Stat. 1062, 1064; 29 U.S.C. 205, 206, 208.

2. Section 697.1 is amended by revising paragraphs (a)(1), (b)(1) and (2), (c)(1), (d)(1), (e)(1), (f)(1), (g)(1), (h)(1), (i)(1), (j)(1), (k)(1), (l)(1), (m)(1), (n)(1); (o)(1) and (p)(1) to read as follows:

§ 697.1 Wage rates and industry definitions.

* * * * *

(a) *Fish canning and processing and can manufacturing industry.* (1) The minimum wage for this industry is $3.17 an hour effective October 27, 1998, and $3.20 an hour effective September 20, 2000.

* * * * *

(b) *Shipping and transportation industry.* (1) The minimum wage for classification A, stevedoring, lighterage and maritime shipping agency activities, is $3.92 an hour effective September 20, 1999 and $3.97 an hour effective September 20, 2000. The minimum wage for classification B, unloading of fish, is $3.76 an hour effective October 27,,1998, and $3.81 an hour effective September 20, 2000. The minimum wage for classification C, all other activities, is $3.72 an hour effective October 27, 1998, and $3.77 an hour effective September 20, 2000.

(2) This industry shall include the transportation of passengers and cargo by water or by air and all activities in connection therewith, including storage and lighterage operations: *Provided, however,* that this industry shall not include the operation of tourist bureaus and of travel and ticket agencies: *Provided, further;* that this industry shall not include bunkering of petroleum products or activities engaged in by seamen in American vessels which are documented or numbered under the Laws of the United States which operate exclusively between points in the Samoan Islands, and which are not in excess of 350 tons net capacity. Within this industry there shall be three classifications:

(i) *Classification A: Stevedoring, lighterage and maritime shipping agency activities.* This classification shall include all employees of employers who engage in each of the following three services: Stevedoring, lighterage and maritime shipping agency activities.

(ii) *Classification B: Unloading of fish.* This classification shall include the unloading of raw and/or frozen fish from vessels.

(iii) *Classification C: All other activities.* This classification shall include all other activities in the shipping and transportation industry.

(c) *Tour and travel service industry.* (1) The minimum wage for this industry is $3.22 an hour effective October 27, 1998.

* * * * *

(d) *Petroleum marketing industry.* (1) The minimum wage for this industry is $3.73 an hour effective October 27, 1998, and $3.78 an hour effective September 20, 2000.

* * * * *

(e) *Construction industry.* (l) The minimum wage for this industry is $3.45 an hour effective on September 20, 1999, and $3.50 an hour effective September 20, 2000.

* * * * *

(f) *Hotel industry.* (1) The minimum wage for this industry is $2.78 an hour effective October 27, 1998.

* * * * *

(g) *Retailing, wholesaling and warehousing industry.* (1) The minimum wage for this industry is $2.97 an hour effective September 20, 1999, and $3.01 an hour effective September 20, 2000.

* * * * *

(h) *Ship maintenance industry.* (1) The minimum wage for this industry is $3.20 an hour effective October 27, 1998, and $3.25 an hour effective September 20, 2000.

* * * * *

(i) *Bottling, brewing and dairy products industry* (1) The minimum wage for this industry is $3.07 an hour effective October 27, 1998, and $3.10 an hour effective September 20, 2000.

* * * * *

(j) *Printing industry.* (1) The minimum wage for the printing industry is $3.37 an hour effective September 20, 1999, and $3.40 an hour effective September 20, 2000.

* * * * *

(k) *Finance and insurance industry.* (1) The minimum wage for this industry is $3.83 an hour effective September 20, 1999, and $3.88 an hour effective September 20, 2000.

* * * * *

(l) *Private hospitals and educational institutions.* (1) The minimum wage for this industry is $3.24 an hour effective October 27, 1998.

* * * * *

(m) *Government employees industry.* (1) The minimum wage for this industry is $2.63 an hour effective September 20, 1999, and $2.69 an hour effective September 20, 2000.

* * * * *

(n) *Miscellaneous activities industry.* (1) The minimum wage for this industry is $2.45 an hour effective July 1, 1996, and $2.50 an hour effective September 20, 2000.

* * * * *

(o) *Garment manufacturing industry.* (1) The minimum wage for this industry is $2.55 an hour effective October 27, 1998, and $2.60 an hour effective September 20, 2000.

* * * * *

(p) *Publishing industry.* (1) The minimum wage for the publishing industry is $3.48 an hour effective September 20, 1999, and $3.53 an hour effective September 20, 2000.

3. Section 697.3 is revised to read as follows:

§ 697.3 Effective dates.

The wage rates specified in § 697.1 shall be effective on September 20, 1999, except as otherwise specified.

[FR Doc. 99–23015 Filed 9–2–99; 8:45 am]

BILLING CODE 4510–27–P

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.R. 211/P.L. 106–48
To designate the Federal building and United States courthouse located at 920 West Riverside Avenue in Spokane, Washington, as the "Thomas S. Foley United States Courthouse", and the plaza at the south entrance of such building and courthouse as the "Walter F. Horan Plaza". (Aug. 17, 1999; 113 Stat. 230)

H.R. 1219/P.L. 106–49
Construction Industry Payment Protection Act of 1999 (Aug. 17, 1999; 113 Stat. 231)

H.R. 1568/P.L. 106–50
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Military Construction Appropriations Act, 2000 (Aug. 17, 1999; 113 Stat. 259)

S. 507/P.L. 106–53
Water Resources Development Act of 1999. (Aug. 17, 1999; 113 Stat. 269)

S. 606/P.L. 106–54
For the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical, LLC (successor to Kerr-McGee Chemical Corporation), and for other purposes. (Aug. 17, 1999; 113 Stat. 398)

S. 1546/P.L. 106–55
To amend the International Religious Freedom Act of 1998 to provide additional administrative authorities to the United States Commission on International Religious Freedom, and to make technical corrections to that Act, and for other purposes. (Aug. 17, 1999; 113 Stat. 401)

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Of significant historical interest is Appendix B, which lists the agencies and functions of the Federal Government abolished, transferred, or renamed subsequent to March 4, 1933.

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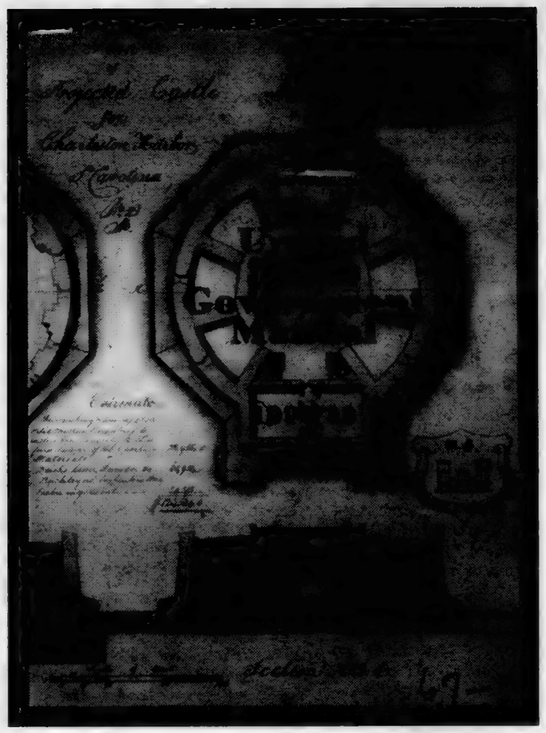

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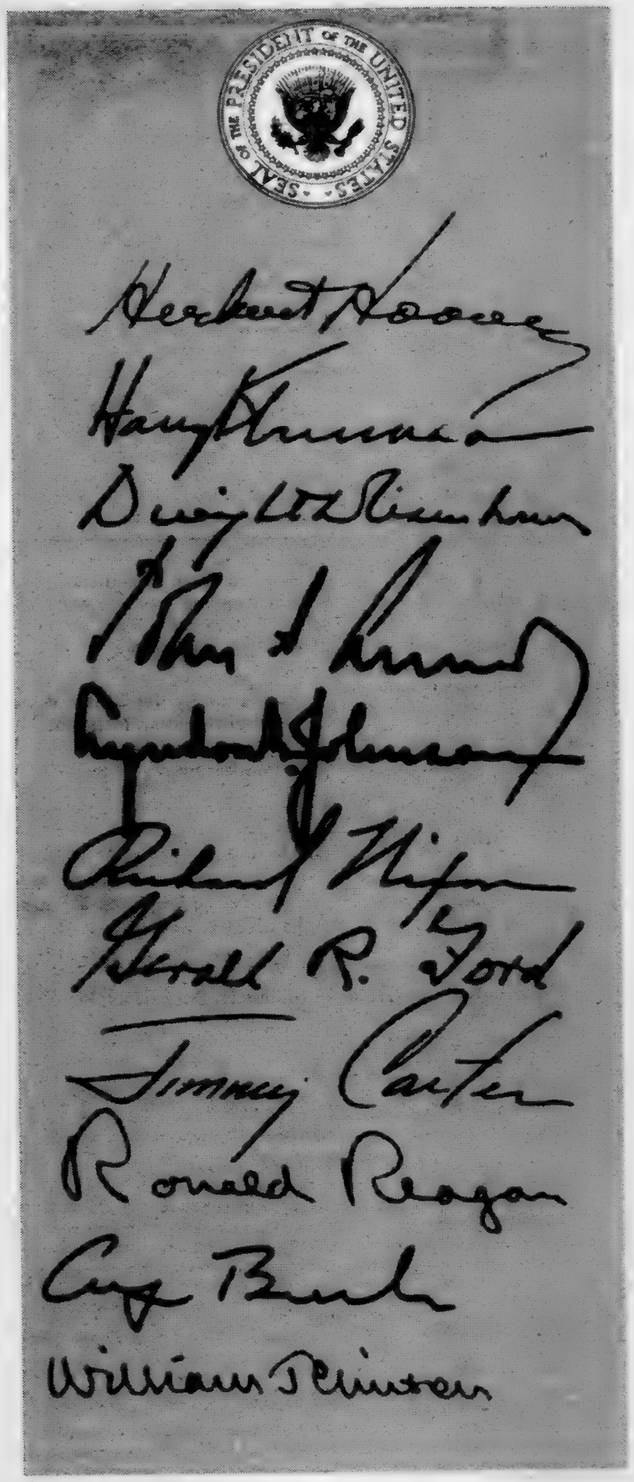

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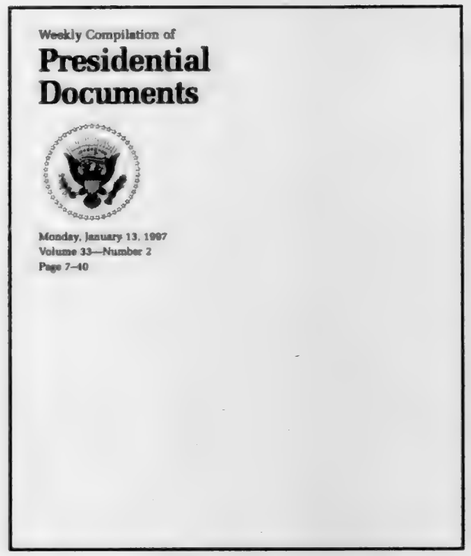

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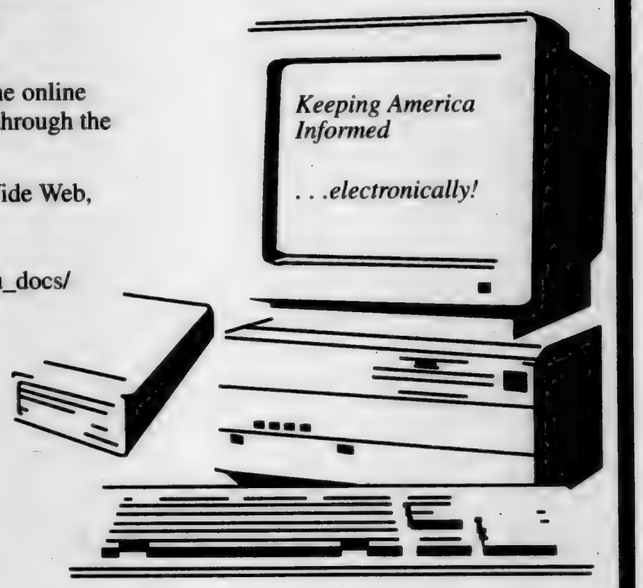

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Federal Register
Vol. 64, No. 172
Tuesday, September 7, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–371]

Realignment of Federal Airway; Rochester, MN

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This action realigns Federal Airway 411 (V–411) in the vicinity of Rochester, MN. The FAA is taking this action to support the revision of several standard terminal arrival routes (STAR). This action will enhance the management of air traffic operations, and allow for better utilization of navigable airspace in the Rochester, MN, area.

EFFECTIVE DATE: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Sheri Edgett Baron, Airspace and Rules Division, ATA–400 Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

As a result of an airspace review, on January 25, 1999, the FAA proposed to amend 14 CFR part 71 to realign V–411 in the vicinity of Rochester, MN (64 FR 3665). The proposal was in support of a realignment of several STAR, which in turn required the modification of V–411 in the vicinity of Rochester, MN.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. Except for editorial changes, this amendment is the same as that proposed in the notice.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) realign V–411 in the vicinity of Rochester, MN. The FAA is taking this action due to the realignment of several STAR, which necessitates the modification of V–411 by 4 degrees. This action will enhance the management of air traffic operations, and allow for better utilization of navigable airspace in the vicinity of the Rochester, MN, area.

Domestic VOR Federal airways are published in Section 6010(a) of FAA order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Federal airway listed in this document will be published subsequently in the order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep operationally current. It, therefore—(1) is not a significant regulatory action'' under Executive Order 12866; (2) is not a significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E, AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6010—VOR Federal Airways

* * * * *

V–411 [Revised]

From Lone Rock, WI; via Waukon, IA; Rochester, MN; INT Rochester 315° and Farmington, MN, 184° radials; Farmington.

* * * * *

Issued in Washington, DC, on August 25, 1999.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 99–23155 Filed 9–3–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Fedeal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–49]

Realignment of Federal Airway; Columbus, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action realigns Federal Airway 220 (V–220) in the vicinity of Columbus, NE. The FAA is taking this action to enhance the management of air traffic operations, and allow for better utilization of navigable airspace in the Columbus, NE, area.

EFFECTIVE DATE: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Sheri Edgett Baron, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

As a result of an airspace review, the FAA determined that a segment of V–

220, south of Columbus, NE, was not required for aircraft operations and should be deleted from the National Airspace System. On January 25, 1999, the FAA proposed to amend 14 CFR part 71 to realign V–220 in the vicinity of Columbus, NE (64 FR 3664).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. Except for editorial changes, this amendment is the same as that proposed in the notice.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) realigns V–220 in the vicinity of Columbus, NE. the FAA is taking this action to enhance the management of air traffic operations, and allow for better utilization of navigable airspace in the vicinity of the Columbus, NE, area.

Domestic VOR Federal airways are published in section 6010(a) of the FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Federal airway listed in this document will be published subsequently in the order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a significant regulatory action" under Executive order 12866; (2) is not a significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E, AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * * *

V–220 [Revised]

From Grand Junction, CO: INT Grand Junction 075° and Rifle, CO, 163° radials; Rifle; Meeker, CO: Hayden, CO: Kremmling, CO; INT Kremmling 081° and Gill, CO, 234° radials; Gill; Akron, CO: INT Akron 094° and McCook, NE, 264° radials; McCook; INT McCook 072° and Grand Island, NE, 241° radials; Kearney, NE; Hastings, NE; Columbus, NE.

* * * * * *

Issued in Washington, DC, on August 25, 1999.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 99–23156 Filed 9–3–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 113, 151, and 178

[T.D. 99–67]

RIN 1515–AB60

Accreditation of Commercial Testing Laboratories; Approval of Commercial Gaugers

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations relating to the commercial testing and gauging of imported merchandise, pursuant to Customs modernization provisions of the North American Free Trade Agreement Implementation Act. The regulations revise the general procedures for the accreditation/reaccreditation of commercial laboratories, the approval/reapproval of commercial gaugers, and the suspension and revocation of such accreditations/approvals. Further, the regulations provide that Customs will charge such laboratories/gaugers to accredit/approve and periodically reaccredit/reapprove their commercial services pursuant to a reimbursable fee schedule, and make provision for the imposition of monetary penalties for failure to adhere to any of the provisions applicable to the examination, sampling, and testing, or gauging of imported merchandise.

EFFECTIVE DATE: October 7, 1999.

FOR FURTHER INFORMATION CONTACT: Ira Reese, Laboratories and Scientific Services, (202) 927–1060; or Marcelino Borges, Laboratories and Scientific Services, (202) 927–1137.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, the United States enacted the North American Free Trade Agreement Implementation Act (the Act), Pub.L. 103–182, 107 Stat. 2057. Title VI of the Act contains provisions pertaining to Customs Modernization (107 Stat. 2170); section 613 of Subtitle A to Title VI amends section 499 of the Tariff Act of 1930 (19 U.S.C. 1499), which provides Customs with the authority to conduct examinations and detain imported merchandise.

The Commercial Laboratory/Gauger Testing Provisions of Section 613

The provisions of section 613, among other things, codified Customs regulations and administrative guidelines concerning the use of commercial laboratories and gaugers by adding a new paragraph (b) to section 499 (19 U.S.C. 1499(b)). Regarding the accreditation/approval aspects of commercial laboratories/gaugers, the provisions of new paragraph (b) authorize Customs to:

(1) set procedures for the accreditation of commercial laboratories in the United States, which may be used to perform tests relating to the admissibility, quantity, composition, or characteristics of imported merchandise, and the approval of commercial gaugers in the United States, which may be used to perform tests to establish the quantities of imported merchandise;

(2) impose reasonable charges for such accreditations/approvals and periodic reaccreditations/reapprovals; and

(3) establish the conditions regarding the suspension and revocation of such accreditations and approvals, which may include the imposition of monetary penalties not to exceed $100,000, in addition to penalties for any loss of revenue, in appropriate cases.

Regarding the testing/gauging aspects of commercial laboratories/gaugers, new paragraph (b) further provides that:

(1) in the absence of Customs testing, Customs will accept analysis and quantity results from Customs-accredited laboratories and Customs-approved gaugers; however, this circumstance does not limit or otherwise preclude Customs or any other Federal agency from independently testing, analyzing, or quantifying any sample or merchandise;

(2) testing procedures and methodologies will be made available upon request to any person, except when they are proprietary to the holder of a copyright or patent or developed by Customs for enforcement purposes; information resulting from any Customs testing will be made available to the importer of record and any agents thereof, except when the information meets the above specified exclusions from disclosure; and

(3) laboratories/gaugers may seek judicial review of any final Customs decision that adversely affects their accreditation/approval, *i.e.*, denial, suspension. or revocation, or that imposes a monetary penalty, by commencing an action within 60 days of such decision in the Court of International Trade.

New paragraph (b) (set forth as a note to 19 U.S.C. 1499) also provides that commercial laboratories/gaugers that had already been accredited/approved by Customs may continue the accredited/approved activities without having to seek accreditation/approval under the new statute but that such facilities are subject to the new statutory and regulatory requirements for reaccreditation/reapproval.

On June 9, 1998, Customs published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (63 FR 31385) that proposed to amend the Customs Regulations relating to the commercial testing and gauging of imported merchandise, pursuant to Customs modernization provisions of the North American Free Trade Agreement Implementation Act (19 U.S.C. 1499(b)), and solicited comments in these matters. The comment period closed August 10, 1998; seven comments were received. The comments and Customs responses are set forth below.

Analysis of Comments

Expansion of Program

Comment: Three commenters recommended against the expansion of the current program.

Customs Response: Prior to enactment of the Act, Customs regulations and administrative guidelines concerning the use of commercial laboratories and gaugers only allowed for the accreditation of commercial laboratories and the approval of commercial gaugers to perform selected tests on certain imported merchandise. The provisions of the Act authorizing the establishment of regulations pertaining to testing laboratories (19 U.S.C. 1499(b)) provide that accredited private laboratories may be used to perform tests "that would otherwise be performed by Customs laboratories." Clearly, by this language Congress intended that the Customs laboratory accreditation program be extended to include the testing of many more products.

Accordingly, no change to the scope of the regulatory amendments will be made based on these comments.

Lack of Third-Party Accreditation/Approval Entities

Comment: Two commenters, both independent accreditation bodies acknowledging Congress' intention in the Act to expand the existing commercial laboratory accreditation program, suggested that Customs could benefit from making use of existing accreditation programs and urged Customs to reconsider expansion of its program to rely on such programs. The commenters suggested that Customs shift from an "administration" role to an "oversight" role.

Customs Response: Customs is not against third-party accreditation. However, Customs believes it is best positioned to do the accrediting of laboratories in the expanded program. Although Customs may consider third-party accreditation in the future, we note that our current decision not to use a third-body accreditation organization is predicated on several factors including the following:

A. As a public organization, Customs can keep the program costs to a minimum while meeting all of our technical and law enforcement needs;

B. Customs has 20+ years experience in successfully running these types of programs; and

C. Customs interests and determinations go beyond those of other accrediting bodies, to include:

1. The financial independence of the laboratory/gauger;

2. Background investigations of the applicant;

3. Ability to do the extremely broad range of testing required by Customs; and

4. Ability to assist gaugers and laboratories using the Informed Compliance process.

To transfer these interests and concerns to a third body would require time and coordination with a third body organization that could be better used by Customs in the actual accreditation/approval process.

Accordingly, no change to the regulatory amendments will be made based on these comments.

Methodology

Comment: One commenter expressed concern about Customs specifying which testing methods a laboratory can use and recommends industry input prior to the establishment of such testing requirements.

Customs Response: Although Customs has already approved certain testing methods and designated them for use in Commodity Group Brochures and the U.S. Customs Laboratory Methods Manual, if a laboratory seeking accreditation/reaccreditation believes that other testing methods are more appropriate than those testing methods designated by Customs, then, under the provisions of § 151.12(e), the laboratory can submit to the Executive Director with its application the testing method(s) it believes is more appropriate. Such alternative methods will be considered and approved on a case-by-case basis. (Note that this same latitude in designating approved measurement procedures is afforded gaugers in § 151.13(c).)

Since, as proposed, the regulations provide that commercial laboratories may seek approval of testing methods that they believe are appropriate, no change to the regulatory amendments will be made based on this comment. However, because the proposed laboratory regulations (the gauger regulations are not affected, see discussion below) did not reference the U.S. Customs Laboratory Methods Manual as a source containing testing methods approved by Customs, proposed § 151.12(a) is revised to include this reference as a source of appropriate testing methods and to note its availability on the Internet at Customs' Web Site, discussed below.

Burden of Five (5)-Day Notification in General; Notification of Equipment, etc. Changes in Particular

Comment: One commenter felt that the five (5)-day notification requirement

pertaining to changes in legal name, address, etc., was burdensome, especially for such items as staffing, equipment, and instruments, and suggested that Customs institute a semi-annual notification requirement.

Customs Response: Customs agrees that there is no need to require the reporting of "managerial or professional or executive staff" and "facilities, instruments, or equipment, etc." and is removing that requirement by revising the provisions of proposed § 151.12(c)(6) (and the parallel provision for gaugers at § 151.13(b)(6)). However, Customs will retain the five (5)-day notification requirement pertaining to changes in legal name, address, etc., as these items are substantive changes that affect the accreditation/approval of the facility and Customs must be able to maintain accurate records.

Proficiency Training

Comment: One commenter, while supporting the need for proficiency testing, questioned the need for Customs to develop its own program. This commenter opined that industrial programs, such as the American Society for Testing and Materials (ASTM) Laboratory Cross Check Program, are already available, of proven effect and efficiency, and should be allowed to suffice.

Customs Response: Customs agrees with this observation and has revised the provisions of proposed § 151.12(f)(3)(ii) and (iii) (and the applicable provision for gaugers at § 151.13(d)(3)(i)) to modify the requirement that proficiency testing through check samples "will" be required to read "may" be required. This change will permit accredited/approved laboratories/gaugers to participate in proficiency test programs developed by recognized industrial organizations. A facility's level of proficiency, as determined by such programs, can then be considered by Customs when Customs evaluates the facility for purposes of reaccreditation/reapproval. However, this change will not preclude Customs from developing its own check program if Customs determines that such a program is necessary.

Excessive Fee Structure; Organizations With Multiple Locations

Comment: Three commenters expressed concern about the fees associated with the accreditation process for laboratories. Two of these commenters stated that variable costs appeared to be high, especially for background investigations, and one of these commenters inquired how large commercial laboratory organizations with multiple locations would be handled.

Customs Response: Regarding the fee structure, the provisions of the Act were promulgated at the request of industry with the understanding that Customs would be given the authority to recover non-personnel costs. The costs contained in these regulations are consistent with that authority and are Customs best estimates of expenses. These program costs will be reevaluated periodically to see if the assumptions upon which they are based are correct.

Customs has reviewed the fee structure of third-party accreditation bodies, as well as those of other federal and state agencies that have the authority to charge fees, and found that the fees proposed are significantly lower than third-party accreditations and lower than most public-sector run programs. Customs identified certain indeterminate costs as variable costs in an effort to keep these costs as low as possible to the laboratory/gauger.

Regarding organizations with multiple locations, each site within an organization can separately apply for accreditation/approval or all sites within an organization can be designated in a single application. The choice will be with the applicant; however, all applicable variable (for technical inspections) and fixed (for administration) costs associated with processing the application submitted will be assessed for each site designated for accreditation/approval. As stated in the *Background* portion of the NPRM concerning "variable costs," Customs will endeavor to bundle these costs, which include background investigations, so that where these costs apply to more than one site, the costs will be fairly apportioned between applicants.

Accordingly, no change to the fee structure in the regulations will be made based on these comments.

Fee Structure Unfair to Small Entities

Comment: Three commenters objected to the fairness of the proposed fee structure as it will impact on very small laboratories and gaugers. These commenters argue that such gauger/laboratory facilities currently in the program should be exempt from any reapproval/reaccreditation fees because they will not see any benefit from the expansion. Further, these commenters argue that in order for an existing facility to "expand" its services, it will have to acquire expertise and equipment, both of which are expensive. These commenters conclude by stating that if Customs wants to recapture the expenses of an expanded program it should do so by charging those facilities that will benefit, and not those already in the program.

Customs Response: Customs is concerned about being fair to all parties in interest. However, paragraph (b) of section 613 of the Act mandates that while those laboratories/gaugers that were accredited/approved prior to December 8, 1993, need not reapply for initial accreditation/approval, such facilities will be subject to reaccreditation/reapproval under the applicable statute and implementing regulations. Accordingly, these grandfathered laboratory and gauger facilities are required to pay the fees that are associated with reaccreditation/reapproval.

Customs believes that the expansion of this program provides an opportunity for any laboratory to participate in the laboratory program on a level playing field. Any company will have the opportunity to look at their position and make a decision as to the degree to which it will participate in the laboratory program. Accordingly, Customs has structured the cost system to be commensurate with the level of laboratory participation in the program. The costs are being fairly leveled against all parties and will be reviewed annually to ensure that all costs are reasonable to the success of the program.

Accordingly, no change to the fee structure in the regulations will be made based on these comments.

Sample Retention Policy

Comment: One commenter stated that the one year sample retention period was too restrictive, and pointed out that special consideration should be made where the sample is perishable or hazardous. This commenter noted that typical storage retention periods in the inspection industry are from 45–90 days.

Customs Response: Regarding the one-year sample-retention period for non-perishable samples and remnants, Customs agrees that in the main this requirement may work a hardship on laboratories. Accordingly, Customs is lessening the retention period for non-perishable items to four months, unless the samples are the subject of litigation. Recently, Customs has authorized its own laboratories to shorten their sample-retention period from one year to four months, and believes that this same retention period could be allowed for commercial laboratories performing Customs testing services.

Regarding the subject of perishable samples, both in the *Background* portion and the proposed *Amendments to the Regulations* portion of the NPRM (at § 151.12(j)(1)) it was stated that perishable samples and sample remnants could be disposed of more expeditiously, if done in accordance with acceptable laboratory procedures. With regard to hazardous materials, such samples are not considered comparable to perishable samples, and laboratories accredited to test such materials should know how to safely handle and store or dispose of these materials.

Accordingly, to make more clear that there is both a perishable goods and a non-perishable goods retention period, the provisions of proposed § 151.12(j)(1) are revised to separate the early disposal of perishable samples provision from the non-perishable samples provision. Further, the retention period for non-perishable goods is lessened from one year to four months, unless the merchandise sampled is the subject of litigation, in which case the laboratory will retain that sample merchandise until instructed by Customs that it can dispose of it.

Status of an Analysis Report Where Customs also Analyzes the Sample

Comment: One commenter questioned why an importer would use a commercial laboratory if Customs could also analyze shipments and simply ignore an accredited laboratory's report.

Customs Response: The Act provides that the establishment of a program for the accrediting/approving of commercial facilities to perform any of the functions currently performed by Customs facilities does not limit in any way or preclude Customs from independently testing or analyzing any sample or merchandise and basing administrative action upon Customs findings. For this reason, no change will be made to the regulations on this subject. However, Customs would like to make all concerned aware that Customs does not simply ignore the report of an accredited lab or an approved gauger in any situation. Where there is a contradiction between reports, Customs will review the situation in detail and if the report from the accredited lab or an approved gauger is found to be more accurate or controlling in the situation at hand, the Executive Director or his designee will authorize the use of the accredited lab or approved gauger report in lieu of Customs report.

Disclosure of Testing Procedures and Methods

Comment: One commenter stated that Customs should make the following two points clear concerning the disclosure/availability of testing procedures and methods:

(1) that the amount of laboratory analysis methods that cannot be released because of copyright/patent or law enforcement reasons is a very tiny fraction of Customs methods, and that all other methods, including methods to ascertain compliance with other agency requirements, etc., are available to the public at no charge; and

(2) that copies of U.S. Customs lab reports and worksheets are not subject to the Freedom of Information Act (FOIA), and that such lab reports are available free of charge and the associated worksheets are available for a flat fee of $ 10.

Customs Response: Regarding the commenter's first contention concerning the disclosure/availability of laboratory analysis methods, Customs generally agrees. Customs reiterates, however, that there are some laboratory analysis methods that are confidential because of enforcement concerns or because the methods are patented or copyrighted. Regarding the public availability of laboratory analysis methods at no charge, the commenter is correct. As indicated in the NPRM and previously in this document, a listing of the methods in the U.S. Customs Laboratory Methods Manual is available at the Customs Web Site on the Internet (www.customs.gov) and a description of those methods, i.e., those prepared by public sources such as Customs Laboratory personnel, will also be available at the Customs Web Site. But Customs points out that other methods that have been developed by private commercial organizations are not available from Customs. These other methods should be obtained directly from these commercial organizations.

Regarding the commenter's second contention concerning the free availability of U.S. Customs lab reports without resort to FOIA and the availability of associated worksheets for a flat fee without resort to the FOIA, Customs does release, free of charge, to the importer of record and their agents, including the customs broker, laboratory reports that do not include proprietary information or are not related to an investigation. While a FOIA request is not necessary, Customs still requires a written request from the importer of record or agent. When the requested Customs laboratory report is released, it does not include the report's associated worksheets or other supporting data.

Customs laboratory worksheets, including associated spectra, chromatograms, etc., if not containing proprietary or investigation-related information are also released by Customs upon written request by the importer of record and their agents, including the customs broker. However, Customs does assess a charge for this information based on the FOIA guidelines for the costs associated with searching and photocopying the requested materials. This material will not be released prior to the payment of all applicable fees.

No regulatory changes will be made based on these comments.

Subcontracting to another Customs-Accredited/Approved Site

Comment: Two commenters could not see the reason why one Customs-approved laboratory should not be able to subcontract to another Customs-approved laboratory. In this regard, one of these commenters inquired as what constituted subcontracting between companies owned or managed by the same parent organization (an issue visited briefly above under organizations with multiple locations).

Customs Response: Reconsidering this issue and reviewing the position contained in ASTM E548: Standard Guide for General Criteria Used for Evaluating Laboratory Competence (and Guide 25 of the International Organization for Standardization entitled General Requirements for the Competence of Calibration and Test Laboratories, a parallel publication; see discussion below), Customs agrees that subcontracting between Customs accredited/approved facilities should be allowed. Accordingly, the provisions of § 151.12(j)(5) (and the applicable gauger provisions at § 151.13(h)(4)) are revised to allow for subcontracting between Customs-accredited/approved facilities.

Limiting Gaugers Activities to Petroleum Products

Comment: One commenter inquired if the provisions of § 151.13(a) which state that commercial gaugers deal mainly with petroleum was meant to limit commercial gauger activities to just petroleum products.

Customs Response: No, this is not the case. Because gauging activities in general do include the measurement of animal and vegetable oils, as well as petroleum and petroleum products and bulk chemicals, proposed § 151.13(a) is revised to include these endeavors as well. Customs would like to clarify that through the application process, a gauger can list any area of gauging where a commercial activity may be feasible. Further, already approved gaugers can request expanded gauging opportunities at no additional cost to their reapproval.

Gauging Procedures

Comment: One commenter inquired when the Customs Commodity Group brochure dealing with gauging and measurement procedures would be published, so that he could review it.

Customs Response: The proposed regulatory text of § 151.13(c) providing for this was an error, as the definition of Commodity Group Brochure (provided at § 151.12(a)) clearly limits these booklets to laboratory testing procedures; Customs does not intend to prepare such a brochure for gauging activities. Accordingly, the regulatory text of proposed § 151.13(c) is revised to provide that approved gaugers must comply with appropriate procedures published by such organizations as the ASTM and the American Petroleum Institute (API), and other procedures approved in writing by the Executive Director.

Gauger Equipment Requirements in Closed-System Measurements

Comment: One commenter expressed industry concern about the equipment requirements contained at proposed § 151.13(d)(3)(ii)(A), which require that gaugers have all of the equipment and instruments needed to conduct approved services, as it relates to closed system measurement equipment. The commenter states that, unlike other aspects of the industry, there is no standardization of this equipment, even among different models made by the same manufacturer. The concern stems from the fact that many closed petroleum systems have unique piping and fittings that preclude a gauger from having all of the needed connectors to hook up a measurement system. The commenter feels that Customs should specify either minimum required equipment or fittings.

Customs Response: It is noted that the proposed regulations in this area are not different from the existing regulations under which the industry is currently operating, and no radical change is anticipated. Enumeration of minimum required equipment or fittings is not necessary because Customs allows this industry to establish its own requirements (this is another reason why there is no Commodity Group Brochure for gauging). Further, it should be noted that Customs works very positively with this industry, on a case-by-case basis, to permit the use of refinery or facility connectors when they are unique and unavailable to the general gauger industry. But where the situation becomes a routine responsibility of a gauger, Customs expects the gauger to own and calibrate all of the connectors and equipment that are added to a system in order to make the appropriate measurements.

Accordingly, no change to the regulations will be made based on this comment.

Notice of Proposed Assessment of Penalties

Comment: One commenter expressed concern that there was no notice or due process protection before the imposition of penalties, and argued that specific guidelines should be established so that variations in interpretation of these regulatory provisions at different ports could be avoided.

Customs Response: Regarding the due process rights of accredited laboratories/approved gaugers where penalties may be assessed, Customs agrees that advance notice (30 calendar days) of impending penalties should be clearly provided for in the regulations. Accordingly, the provisions of proposed §§ 151.12(k) (1) and (2) and 151.13(i) (1) and (2) are revised to clarify when notices of proposed penalties are issued and when final notices of penalties are issued.

Regarding the uniformity of the program, the fact that all decisions or orders imposing monetary penalties will be made by the Executive Director, Laboratories and Scientific Services, should ensure that the program will be administered in a uniform manner throughout the country. Further, Customs believes the appeal procedure provided for in the regulations enables affected laboratories/gaugers to challenge any decision of the Executive Director the facility believes to be unfair. The expanded program is designed to provide optimum uniformity with checks and balances at all decision points in order to protect the interests of the laboratory/gauger.

Penalties, Loss of Revenue, and Liquidated Damages

Comment: One commenter argued that Customs-accredited laboratories should not be subject to penalties, the recovery of "lost" revenue, and liquidated damages under the lab's bond, as the bond is a performance bond, not a revenue bond.

Customs Response: This comment concerns the provisions of § 151.12(k)(1)(iii), entitled "Assessment of monetary penalties." Customs believes that, perhaps, it did not clearly communicate that there is a distinction between the basis for monetary penalties and the basis for liquidated damages. There is a statutory basis for liability for monetary penalties and any loss of revenue in cases of intentional falsification of data in collusion with the importer (19 U.S.C. 1499(b)(1)(B)(i)) and there is a contractual basis for liability under the provisions of the Customs bond for liquidated damages. Customs is revising the third sentences of proposed § 151.12(k)(1)(iii) for laboratories and § 151.13(i)(1)(iii) for gaugers to distinguish between penalties/loss of revenue and liquidated damages.

The Terms "Current Approval" and "Future Regulation"

Comment: One commenter requested clarification of the difference between "current approval" and "future regulation" regarding reimbursable fees for accreditation/approval and periodic reaccreditation/reapproval.

Customs Response: The thrust of this comment is not clear; however, Customs will attempt to respond, based on the assumption that the comment pertains to already accredited/approved laboratories/gaugers. Both in the *Background* portion and the proposed *Amendments to the Regulations* portion of the Notice of Proposed Rulemaking at § 151.12(j)(1) it was stated that laboratories accredited and gaugers approved under Customs regulations prior to December 8, 1993 (the effective date of the Act) will not be required to pay applicable reaccreditation/reapproval fees until after the third year following the date these regulations become final. Thus, the new fees provided for in these regulations are not applicable to grandfathered laboratories/gaugers until their next scheduled inspection, based on their existing triennial inspection date.

To make this point as clear as possible, the provisions of proposed § 151.12(i) (and the parallel provision for gaugers at § 151.13(g)) are revised to state that accredited/approved facilities will have their status reevaluated on their next triennial inspection date which is no earlier than three years after the effective date of this regulation.

Small Business Administration

Comment: One commenter stated that there are many small businesses that will be impacted by the regulations and inquired if the Small Business Administration was notified of the proposed regulations.

Customs Response: Because Customs expects the number of accredited laboratories and approved gaugers to be small, Customs has certified that, if adopted, these regulations will not have a significant adverse economic impact on a substantial number of small entities. A statement to this effect was published in the NPRM. Customs has not received any information during the comment period that would indicate any significant economic impact.

Movement of Goods in International Commerce

Comment: One commenter stated that the proposal failed to address that international business is done these days by the importers receiving "confirmation" and/or "production" samples of products before the shipments of the product are sent so that the importer is assured that what is being made and shipped is what was ordered per specifications. The apparent thrust of the comment goes to whether Customs labs will examine these "confirmation" or "production" samples rather than samples taken from part of the merchandise actually being imported.

Customs Response: As was stated in the *Background* portion of the NPRM, importers that choose to have merchandise tested by commercial facilities accredited/approved by Customs, must certify that the sample tested was taken from the merchandise in the entry, *i.e.*, from the importer's actual importations. Customs cannot allow for the testing of "confirmation" or "production" samples that are not in fact samples taken from part of the merchandise actually being imported. The Act clearly provides that the tests/measurements to be allowed by accredited/approved commercial facilities are those that will establish the admissibility, quantity, composition, or characteristics of imported merchandise, not merchandise that someday may be imported.

Accordingly, no change to the regulations will be made based on this comment.

Statement of Fee Schedule and a Clarification

The fee schedule set forth in the proposal is being adopted. The initial fixed fee schedules for accrediting/reaccrediting laboratories and approving/ reapproving gaugers are:

For Laboratories
- General Accreditation Fee: $750
- Additional Commodities Fee: $200
- Laboratory Reaccreditation Fee: $375
- Commodity Reaccreditation Fee: $150

For Gaugers
- General Approval Fee: $400
- Reapproval Fee: $200

The initial variable fee schedules for accrediting/reaccrediting laboratories and approving/reapproving gaugers are approximately $1,000 for travel per visit and $1,700 per background investigation.

Also, Customs wishes to note that laboratories/gaugers may be accredited/approved in Puerto Rico, as the United States is defined to include Puerto Rico, *see*, 19 CFR 101.1, "Customs territory of the United States."

Other Changes to the Regulations

In addition to the changes to the proposed regulatory text identified and discussed above in connection with the public comments, Customs has made numerous editorial, nonsubstantive changes to the proposed text (in most cases involving wording, parallel construction, punctuation, or structure) in order to enhance the clarity, readability, and application of the regulatory texts. An example of an editorial change involves the grounds for nonselection/suspension, revocation, or assessment of a monetary penalty in §§ 151.12(g)(2)(ii) and 151.13(e)(2)(ii), and §§ 151.12(k)(1)(ii)(B) and 151.13(i)(1)(ii)(B). Because of the common elements in these four provisions, the language in all these provisions is aligned for purposes of consistency. Several other changes are being made as well; they are summarized below.

Section 151.12(d)

Proposed § 151.12(d)(2) listed sixteen (16) commodity groups for which accreditation could be sought without special permission from the Executive Director. However, for ease of reference it has been decided to merge the commodity group of Wood and Articles of Wood with the commodity group of botanical identification. Accordingly, the final text of this section is revised to list only fifteen (15) commodity groups.

Section 151.12(f)

Proposed § 151.12(f)(3) provided that Customs evaluation of an applicant's professional abilities will be in accordance with the general criteria contained in the ASTM E548: Standard Guide for General Criteria Used for Evaluating Laboratory Competence. Because many Laboratories follow the ISO/IEC Guide 25—General Requirements for the Competence of Calibration and Testing Laboratories, the final text of § 151.12(f) is revised to include this publication as well.

Sections 151.12(j) and 151.13(h)

Proposed § 151.12(j)(3)(F) (and the parallel provision applicable to gaugers at proposed § 151.13(h)(2)(v)(F)) provided that reports must include the signature of the person accepting technical responsibility for the report. Because signatures are frequently illegible, Customs has decided to require the typed name of the person signing the report. Accordingly, these two provisions are revised to add the additional requirement of the typed name of the person signing the report.

Sections 151.13(c)

The proposed heading for § 151.13(c) denominated both gauging and measurement as procedures, which might cause some applicants to believe that there are two separate procedures. Accordingly, the reference to gauging is removed from the heading for this section.

Conclusion

After careful consideration of all the comments received and further review of the matter, Customs has decided to adopt the amendments to part 151 of the Customs Regulations as a final rule with the modifications and changes discussed above and as set forth below.

To reflect the paperwork requirements contained at §§ 151.12(f) and 151.13(d), part 178 of the Customs Regulations is revised to account for the separate application data required for laboratory accreditation and gauger approval.

The Regulatory Flexibility Act, and Executive Order 12866

Because the number of accredited laboratories and approved gaugers is expected to be small, pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant adverse economic impact on a substantial number of small entities. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. This amendment does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1515–0155. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

The collections of information in this final rule are in §§ 151.12(e) and 151.13(c). The information is required so that Customs can make a determination as to which applicants

are competent to receive or maintain accreditation/approval credentials to test/measure imported merchandise. The information will be used to process those applications submitted for Customs accreditation/approval. The likely respondents are individuals and commercial organizations who either analyze merchandise or measure, gauge, or sample merchandise.

The estimated average burden associated with the collection of information in this final rule is five hours per respondent or recordkeeper. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the U.S. Customs Service, Information Services Group, Office of Finance, 1300 Pennsylvania Ave., N.W., Washington, D.C. 20229; and to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Regulations Branch, Office of Regulations and Rulings. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 113

Bonds, Customs duties and inspection, Exports, Freight, Imports, Reporting and recordkeeping requirements.

19 CFR Part 151

Administrative practice and procedure, Courts, Customs duties and inspection, Examination, Fees assessment, Gaugers, Imports, Laboratories, Licensing, Penalties, Reporting and recordkeeping requirements, Sampling and testing.

19 CFR Part 178

Administrative practice and procedure, Collections of information, Exports, Imports, Paperwork requirements, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons stated above, parts 113, 151, and 178 of the Customs Regulations (19 CFR parts 113, 151, and 178) are amended as set forth below:

PART 113—CUSTOMS BONDS

1. The general authority citation for part 113 continues to read as follows:

Authority: 19 U.S.C. 66, 1623, 1624.

* * * * *

§ 113.67 [Amended]

2. Section 113.67 is amended as follows:

a. Paragraph (a)(1)(ii) is amended by removing the words "terms of the Commercial Gauger Agreement [see § 151.13(b)(9)] and by the"; and by removing the citations "§§ 151.13 and 151.14" and adding, in their place, the citation "§ 151.13(b)".

b. Paragraph (b)(1)(ii) is amended by removing the words "terms of the Commercial Laboratory Agreement [see § 151.13(b)(9)] and by the"; and by removing the citation "§ 151.13" and adding, in its place, the citation "§ 151.12(c)".

PART 151—EXAMINATION, SAMPLING, AND TESTING OF MERCHANDISE

1. The general authority citation for part 151 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Notes 20 and 21, Harmonized Tariff Schedule of the United States (HTSUS)), 1624. Subpart A also issued under 19 U.S.C. 1499.

* * * * *

2. In subpart A, § 151.12 is added to read as follows:

§ 151.12 Accreditation of commercial laboratories.

This section sets forth the requirements for commercial laboratories to obtain accreditation by Customs for the testing of certain commodities, and explains the operation of such accredited laboratories. This section also provides for the imposition of accreditation and reaccreditation fees, sets forth grounds for the suspension and revocation of accreditation, and provides for the imposition of a monetary penalty for an accredited commercial laboratory that fails to adhere to the provisions of this section.

(a) *Definitions.* For purposes of this section, the following words and phrases have the meanings indicated:

Analysis record. An "analysis record" is a compilation of all documents which have been generated during the course of analysis of a particular sample which, under normal circumstances, may include, both in paper and electronic-form, such documents as work sheets, notes, associated spectra (both spectra of the actual product and any standard spectra used for comparison), photographs and microphotographs, and the laboratory report.

Assistant Commissioner. In §§ 151.12 and 151.13, references to the "Assistant Commissioner" mean the Assistant Commissioner, Office of Field Operations, located in Washington, D.C.

Check samples. "Check samples" are samples which have been distributed by Customs to accredited laboratories to test their proficiency in a certain area of accreditation.

Commodity Group Brochure. A "Commodity Group Brochure" is a booklet which contains a listing of laboratory methods which commercial laboratories are required to have the capability to perform to qualify for Customs-accreditation in a particular commodity group. The brochures and the U.S. Customs Laboratory Methods Manual will specify the particular laboratory testing methods required for particular commodity groups, unless written permission from the Executive Director is given to use an alternate method. Procedures required by the Executive Director may reference applicable general industry testing standards, published by such organizations as the American Society for Testing and Materials (ASTM) and the American Petroleum Institute (API). Commodity Group Brochures and a listing of the methods found in the U.S. Customs Laboratory Methods Manual are available from the U.S. Customs Service, Attention: Executive Director, Laboratories and Scientific Services, Washington, D.C. 20229 and can also be found on the Customs Internet Web Site: www.customs.gov.

Executive Director. In §§ 151.12 and 151.13, references to the "Executive Director" mean the Executive Director, Laboratories and Scientific Services, located in Washington, D.C.

(b) *What is a "Customs-accredited laboratory"?* "Commercial laboratories" are individuals and commercial organizations that analyze merchandise, *i.e.*, determine its composition and/or characteristics, through laboratory analysis. A "Customs-accredited laboratory" is a commercial laboratory, within the United States, that has demonstrated, to the satisfaction of the Executive Director, pursuant to this section, the capability to perform analysis of certain commodities to determine elements relating to the admissibility, quantity, composition, or characteristics of imported merchandise. Customs accreditation extends only to the performance of such functions as are vested in, or delegated to, Customs.

(c) *What are the obligations of a Customs-accredited laboratory?* A commercial laboratory accredited by Customs agrees to the following conditions and requirements:

(1) To comply with the requirements of part 151, Customs Regulations (19 CFR part 151), and to conduct professional services in conformance with approved standards and procedures, including procedures which may be required by the Commissioner of Customs or the Executive Director;

(2) To have no interest in or other connection with any business or other activity which might affect the unbiased performance of duties as a Customs-accredited laboratory. It is understood that this does not prohibit acceptance of the usual fees for professional services;

(3) To maintain the ability, *i.e.*, the instrumentation, equipment, qualified staff, facilities, etc., to perform the services for which the laboratory is accredited, and allow the Executive Director to evaluate that ability on a periodic basis by such means as on-site inspections, demonstrations of analysis procedures, reviews of submitted records, and proficiency testing through check samples;

(4) To retain those laboratory records beyond the five-year record-retention period and samples (see paragraph (j)(1) of this section) specified by Customs as necessary to address matters concerned in pending litigation, and, if laboratory operations or accreditation cease, to contact Customs immediately regarding the disposition of records/samples retained;

(5) To promptly investigate any circumstance which might affect the accuracy of work performed as an accredited laboratory, to correct the situation immediately, and to notify both the port director and the Executive Director of such matters, their consequences, and any corrective action taken or that needs to be taken; and

(6) To immediately notify both the port director and the Executive Director of any attempt to impede, influence, or coerce laboratory personnel in the performance of their duties, or of any decision to terminate laboratory operations or accredited status. Further, within 5 days of any changes involving legal name, address, ownership, parent-subsidiary relationships, bond, other offices or sites, or approved signatories to notify the Executive Director by certified mail.

(d) *What are the commodity groups for which accreditation may be sought?* (1) Commercial laboratories may apply for accreditation to perform tests for any of the commodity groups listed in paragraph (d)(2) of this section. Applicable test procedures are listed in Commodity Group Brochures and the U.S. Customs Laboratory Methods Manual. Application may be made for accreditation in more than one commodity group. At the discretion of the Executive Director accreditation may be granted for subgroups of tests within a commodity group or for commodity groups not specifically enumerated. Once accredited, a Customs-accredited laboratory may apply at any time to expand its accreditation, to add new testing sites, or increase the number of commodity groups or subgroups accredited.

(2) The commodity groups for which accreditation may be sought without special permission from the Executive Director are:

(i) Dairy and Chocolate Products entered under Chapters 4, 18, and 21 of the Harmonized Tariff Schedule of the United States (HTSUS);

(ii) Food and Food Products entered under Chapters 7–12, 15, 16, and 19–21, HTSUS;

(iii) Botanical Identification—materials and products entered under Chapters 14 and 44–46, HTSUS;

(iv) Sugar, Sugar Syrups, and Confectionery products entered under Chapter 17, HTSUS;

(v) Spirituous Beverages entered under Chapter 22, HTSUS;

(vi) Building Stone, Ceramics, Glassware, and Other Mineral Substances entered under Chapters 25 and 68–70, HTSUS;

(vii) Inorganic Materials, including Inorganic Compounds and Ores, entered under Chapters 26, 28, 31, and 36–38, HTSUS;

(viii) Petroleum and Petroleum Products entered under Chapters 27 and 29, HTSUS;

(ix) Organic Materials, including Intermediates and Pharmaceuticals, entered under Chapters 29, 30, 34, 35, and 38, HTSUS;

(x) Rubber, Plastics, Polymers, Pigments and Paints entered under Chapters 32, 39, and 40, HTSUS;

(xi) Essential Oils and Perfumes entered under Chapter 33, HTSUS;

(xii) Leather and Articles of Leather entered under Chapters 41 and 42, HTSUS;

(xiii) Paper and Paper Products entered under Chapters 47–49, HTSUS;

(xiv) Textiles and Related Products, including footwear and hats, entered under Chapters 50–67, HTSUS; and,

(xv) Metals and Alloys entered under Chapters 72–83, HTSUS.

(e) *What are the approved methods of analysis?* Customs-accredited laboratories must follow the general or specific testing methods set forth in Commodity Group Brochures and the U.S. Customs Laboratory Methods Manual in the testing of designated commodities, unless the Executive Director gives written permission to use an alternate method. Alternative methods will be considered and approved on a case-by-case basis.

(f) *How would a commercial laboratory become a Customs-accredited laboratory?* (1) *What should an application contain?* An application for Customs accreditation must contain the following information:

(i) The applicant's legal name and the address of its principal place of business and any other facility out of which it will work;

(ii) Detailed statements of ownership and any partnerships, parent-subsidiary relationships, or affiliations with any other domestic or foreign organizations, including, but not limited to, importers, other commercial laboratories,. producers, refiners, Customs brokers, or carriers;

(iii) A statement of financial condition;

(iv) If a corporation, a copy of the articles of incorporation and the names of all officers and directors;

(v) The names, titles, and qualifications of each person who will be authorized to sign or approve analysis reports on behalf of the commercial laboratory;

(vi) A complete description of the applicant's facilities, instruments, and equipment;

(vii) An express agreement that if notified by Customs of pending accreditation to execute a bond in accordance with part 113, Customs Regulations (19 CFR part 113), and submit it to the Customs port nearest to the applicant's main office. (The limits of liability on the bond will be established by the Customs port in consultation with the Executive Director. In order to retain Customs accreditation, the laboratory must maintain an adequate bond, as determined by the port director);

(viii) A listing of each commodity group for which accreditation is being sought and, if methods are being submitted for approval which are not specifically provided for in a Commodity Group Brochure and the U.S. Customs Laboratory Methods Manual, a listing of such methods;

(ix) A listing by commodity group of each method according to its Customs Laboratory Method Number for which the laboratory is seeking accreditation;

(x) An express agreement to be bound by the obligations contained in paragraph (c) of this section; and,

(xi) A nonrefundable pre-payment equal to 50 percent of the fixed accreditation fee, as published in the **Federal Register** and Customs Bulletin, to cover preliminary processing costs. Further, the applicant agrees to pay Customs within 30 days of notification of preliminary accreditation the associated charges assessed for accreditation, i.e., those charges for actual travel and background

investigation costs, and the balance of the fixed accreditation fee.

(2) *Where should an application be sent?* A commercial laboratory seeking accreditation or an extension of an existing accreditation must send a letter of application to the U.S. Customs Service, Attention: Executive Director, Laboratories & Scientific Services, 1300 Pennsylvania Ave., NW, Washington, D.C. 20229.

(3) *How will an application be reviewed?*

(i) *Physical plant and management system.* The facility of the applicant will be inspected to ensure that it is properly equipped to perform the necessary tests and that staff personnel are capable of performing required tests. Customs evaluation of an applicant's professional abilities will be in accordance with the general criteria contained in either the American Society for Testing and Materials (ASTM) E548 (Standard Guide for General Criteria Used for Evaluating Laboratory Competence) or the ISO/IEC Guide 25 (General Requirements for the Competence of Calibration and Testing Laboratories). This review will ascertain the laboratory's ability to manage and control the acquisition of technical data. The review will be performed at the time of initial application and upon reaccreditation at three-year intervals.

(ii) *Ability to perform tests on specified commodity groups.* For each commodity group applied for, the applicant will undergo a separate review of testing capabilities. The specific accreditation will be based on the laboratory's ability to perform the tests required for that commodity group. This will include the qualifications of the technical personnel in this field and the instrument availability required by the test methods. Maintenance of accreditation will be ongoing and may require the submission of test results on periodic check samples. The criteria for acceptance will be based on the laboratory's ability to produce a work product that assists in the proper classification and entry of imported merchandise.

(iii) *Determination of competence.* The Executive Director will determine the applicant's overall competence, independence, and character by conducting on-site inspections, which may include demonstrations by the applicant of analysis procedures and a review of analysis records submitted, and background investigations. The Executive Director may also conduct proficiency testing through check samples.

(iv) *Evaluation of technical and operational requirements.* Customs will determine whether the following technical and operational requirements are met:

(A) *Equipment.* The laboratory must be equipped with all of the instruments and equipment needed to conduct the tests for which it is accredited. The laboratory must ensure that all instruments and equipment are properly calibrated, checked, and maintained.

(B) *Facilities.* The laboratory must have, at a minimum, adequate space, lighting, and environmental controls to ensure compliance with the conditions prescribed for appropriate test procedures.

(C) *Personnel.* The laboratory must be staffed with persons having the necessary education, training, knowledge, and experience for their assigned functions (e.g., maintaining equipment, calibrating instruments, performing laboratory analyses, evaluating analytical results, and signing analysis reports on behalf of the laboratory). In general, each technical staff member should hold, at a minimum, a bachelor's degree in science or have two years related experience in an analytical laboratory.

(g) *How will an applicant be notified concerning accreditation?*

(1) *Notice of approval or nonselection.* When Customs evaluation of a laboratory's credentials is completed, the Executive Director will notify the laboratory in writing of its preliminary approval or nonselection. (Final approval determinations will not be made until the applicant has satisfied all bond requirements and made payment on all assessed charges and the balance of the applicable accreditation fee). Notices of nonselection will state the specific grounds for the determination. All final notices of accreditation, reaccreditation, or extension of existing Customs accreditation will be published in the **Federal Register** and Customs Bulletin.

(2) *Grounds for nonselection.* The Executive Director may deny a laboratory's application for any of the following reasons:

(i) The application contains false or misleading information concerning a material fact;

(ii) The laboratory, a principal of the laboratory, or a person the Executive Director determines is exercising substantial ownership or control over the laboratory operation is indicted for, convicted of, or has committed acts which would:

(A) Under United States federal or state law, constitute a felony or misdemeanor involving misstatements, fraud, or a theft-related offense; or

(B) Reflect adversely on the business integrity of the applicant;

(iii) A determination is made that the laboratory-applicant does not possess the technical capability, have adequate facilities, or management to perform the approved methods of analysis for Customs purposes;

(iv) A determination is made that the laboratory has submitted false reports or statements concerning the sampling of merchandise, or that the applicant was subject to sanctions by state, local, or professional administrative bodies for such conduct;

(v) Nonpayment of assessed charges and the balance of the fixed accreditation fee; or

(vi) Failure to execute a bond in accordance with part 113 of this chapter.

(3) *Adverse accreditation decisions; appeal procedures.*

(i) *Preliminary notice.* A laboratory which is not selected for accreditation will be sent a preliminary notice of action which states the specific grounds for nonselection and advises that the laboratory may file a response with the Executive Director within 30 calendar days of receipt of the preliminary notice addressing the grounds for nonselection.

(ii) *Final notice.* If the laboratory does not respond to the preliminary notice, a final notice of nonselection will be issued by the Executive Director after 30 calendar days of receipt of the preliminary notice which states the specific grounds for the nonselection and advises that the laboratory may administratively appeal the final notice of nonselection to the Assistant Commissioner within 30 calendar days of receipt of the final notice. If the laboratory files a timely response, then the Executive Director, within 30 calendar days of receipt of the response, will issue a final determination regarding the laboratory's accreditation. If this final determination is adverse to the laboratory, then the final notice of nonselection will state the specific grounds for nonselection and advise the laboratory that it may administratively appeal the final notice of nonselection to the Assistant Commissioner within 30 calendar days of receipt of the final notice.

(iii) *Appeal decision.* The Assistant Commissioner will issue a decision on the appeal within 30 calendar days of receipt of the appeal. If the appeal decision is adverse to the laboratory, then the laboratory may choose to pursue one of the following two options:

(A) Submit a new application for accreditation to the Executive Director after waiting 90 days from the date of the Executive Director's last decision; or

(B) File an action with the Court of International Trade, pursuant to chapter 169 of title 28, United States Code, within 60 days after the issuance of the Executive Director's final decision.

(h) *What are the accreditation/reaccreditation fee requirements?*

(1) *In general.* A fixed fee, representing Customs administrative overhead expense, will be assessed for each application for accreditation or reaccreditation. In addition, associated assessments, representing the actual costs associated with travel and per diem of Customs employees related to verification of application criteria and background investigations will be charged. The combination of the fixed fee and associated assessments represent reimbursement to Customs for costs related to accreditation and reaccreditation. The fixed fee will be published in the Customs Bulletin and the **Federal Register**. Based on a review of the actual costs associated with the program, the fixed fee may be adjusted periodically; any changes will be published in the Customs Bulletin and the **Federal Register**.

(i) *Accreditation fees.* A nonrefundable pre-payment equal to 50 percent of the fixed accreditation fee to cover preliminary processing costs must accompany each application for accreditation. Before a laboratory will be accredited, it must remit to Customs, at the address specified in the billing, within the 30 day billing period, the associated charges assessed for the accreditation and the balance of the fixed accreditation fee.

(ii) *Reaccreditation fees.* Before a laboratory will be reaccredited, it must submit to Customs, at the billing address specified, within the 30 day billing period the fixed reaccreditation fee.

(2) *Disputes.* In the event a laboratory disputes the charges assessed for travel and per diem costs associated with scheduled inspection visits, it may file an appeal within 30 calendar days of the date of the assessment with the Executive Director. The appeal letter must specify which charges are in dispute and provide such supporting documentation as may be available for each allegation. The Executive Director will make findings of fact concerning the merits of an appeal and communicate the agency decision to the laboratory in writing within 30 calendar days of the date of the appeal.

(i) *Can existing Customs-accredited laboratories continue to operate?* Commercial laboratories accredited by the Executive Director prior to December 8, 1993, will retain that accreditation under these regulations provided they conduct their business in a manner consistent with the administrative portions of this section. This paragraph does not pertain to any laboratory which has had its accreditation suspended or revoked. Laboratories which have had their accreditations continued under this section will have their status reevaluated on their next triennial inspection date which is no earlier than three years after the effective date of this regulation. At the time of reaccreditation, these laboratories must meet the requirements of this section and remit to Customs, at the address specified in the billing, within the 30 day billing period, the fixed reaccreditation fee. Failure to meet these requirements will result in revocation or suspension of the accreditation.

(j) *How will Customs-accredited laboratories operate?*

(1) *Samples for testing.* Upon request by the importer of record of merchandise, the port director will release a representative sample of the merchandise for testing by a Customs-accredited laboratory at the expense of the importer. Under Customs supervision, the sample will be split into two essentially equal parts and given to the Customs-accredited laboratory. One portion of the sample may be used by the Customs-accredited laboratory for its testing. The other portion must be retained by the laboratory, under appropriate storage conditions, for Customs use, as necessary, unless Customs requires other specific procedures. Upon request, the sample portion reserved for Customs purposes must be surrendered to Customs.

(i) *Retention of non-perishable samples.* Non-perishable samples reserved for Customs and sample remnants from any testing must be retained by the accredited laboratory for a period of four months from the date of the laboratory's final analysis report, unless other instructions are issued in writing by Customs. At the end of this retention time period, the accredited laboratory may dispose of the retained samples and sample remnants in a manner consistent with federal, state, and local statutes.

(ii) *Retention of perishable samples.* Perishable samples reserved for Customs and sample remnants from any testing can be disposed of more expeditiously than provided for at paragraph (j)(1)(i) of this section, if done in accordance with acceptable laboratory procedures, unless other instructions are issued in writing by Customs.

(2) *Reports.* (i) *Contents of reports.* Testing data must be obtained using methods approved by the Executive Director. The testing results from a Customs-accredited laboratory that are submitted by an importer of record with respect to merchandise in an entry, in the absence of testing conducted by Customs laboratories, will be accepted by Customs, provided that the importer of record certifies that the sample tested was taken from the merchandise in the entry and the report establishes elements relating to the admissibility, quantity, composition, or characteristics of the merchandise entered, as required by law.

(ii) *Status of commercial reports where Customs also tests merchandise.* Nothing in these regulations will preclude Customs from sampling and testing merchandise from a shipment which has been sampled and tested by a Customs-accredited laboratory at the request of an importer. In cases where a shipment has been analyzed by both Customs and a Customs-accredited laboratory, all Customs actions will be based upon the analysis provided by the Customs laboratory, unless the Executive Director advises otherwise. If Customs tests merchandise, it will release the results of its test to the importer of record or its agent upon request unless the testing information is proprietary to the holder of a copyright or patent, or developed by Customs for enforcement purposes.

(3) *Recordkeeping requirements.* Customs-accredited laboratories must maintain records of the type normally kept in the ordinary course of business in accordance with the provisions of this chapter and any other applicable provision of law, and make them available during normal business hours for Customs inspection. In addition, these laboratories must maintain all records necessary to permit the evaluation and verification of all Customs-related work, including, as appropriate, those described below. All records must be maintained for five years, unless the laboratory is notified in writing by Customs that a longer retention time is necessary for particular records. Electronic data storage and transmission may be approved by Customs.

(i) *Sample records.* Records for each sample tested for Customs purposes must be readily accessible and contain the following information:

(A) A unique identifying number;

(B) The date when the sample was received or taken;

(C) The identity of the commodity (*e.g.* crude oil);

(D) The name of the client;

(E) The source of the sample (*e.g.*, name of vessel, flight number of airline,

name of individual taking the sample); and

(F) If available, the Customs entry date, entry number, and port of entry and the names of the importer, exporter, manufacturer, and country-of-origin.

(ii) *Major equipment records.* Records for each major piece of equipment or instrument (including analytical balances) used in Customs-related work must identify the name and type of instrument, the manufacturer's name, the instrument's model and any serial numbers, and the occurrence of all servicing performed on the equipment or instrument, to include recalibration and any repair work, identifying who performed the service and when.

(iii) *Records of analytical procedures.* The Customs-accredited laboratory must maintain complete and up-to-date copies of all approved analytical procedures, calibration methods, etc., and must document the procedures each staff member is authorized to perform. These procedures must be readily available to appropriate staff.

(iv) *Laboratory analysis records.* The Customs-accredited laboratory must identify each analysis by sample record number (see paragraph (j)(3)(i) of this section) and must maintain all information or data (such as sample weights, temperatures, references to filed spectra, etc.) associated with each Customs-related laboratory analysis. Each analysis record must be dated and initialed or signed by the staff member(s) who did the work.

(v) *Laboratory analysis reports.* Each laboratory analysis report submitted to Customs must include:

(A) The name and address of the Customs-accredited laboratory;

(B) A description and identification of the sample, including its unique identifying number;

(C) The designations of each analysis procedure used;

(D) The analysis report itself (*i.e.*, the pertinent characteristics of the sample);

(E) The date of the report; and

(F) The typed name and signature of the person accepting technical responsibility for the analysis report (*i.e.*, an approved signatory).

(4) *Representation of Customs-accredited status.* Commercial laboratories accredited by Customs must limit statements or wording regarding their accreditation to an accurate description of the tests for the commodity group(s) for which accreditation has been obtained. Use of terms other than those appearing in the notice of accreditation (see paragraph (g) of this section) is prohibited.

(5) *Subcontracting prohibited.* Customs-accredited laboratories must not subcontract Customs-related analysis work to non Customs-accredited laboratories or non Customs-approved gaugers, but may subcontract to other facilities that are Customs-accredited/approved and in good standing.

(k) *How can a laboratory have its accreditation suspended or revoked or be required to pay a monetary penalty?*

(1) *Grounds for suspension, revocation, or assessment of a monetary penalty.* (i) *In general:* The Executive Director may immediately suspend or revoke a laboratory's accreditation only in cases where the laboratory's actions are intentional violations of any Customs law or when required by public health or safety. In other situations where the Executive Director has cause, the Executive Director will propose the suspension or revocation of a laboratory's accreditation or propose a monetary penalty and provide the laboratory with the opportunity to respond to the notice of proposed action.

(ii) *Specific grounds.* A laboratory's accreditation may be suspended or revoked, or a monetary penalty may be assessed because:

(A) The selection was obtained through fraud or the misstatement of a material fact by the laboratory;

(B) The laboratory, a principal of the laboratory, or a person the port director determines is exercising substantial ownership or control over the laboratory operation is indicted for, convicted of, or has committed acts which would: under United States federal or state law, constitute a felony or misdemeanor involving misstatements, fraud, or a theft-related offense; or reflect adversely on the business integrity of the applicant. In the absence of an indictment, conviction, or other legal process, the port director must have probable cause to believe the proscribed acts occurred;

(C) Staff laboratory personnel refuse or otherwise fail to follow any proper order of a Customs officer or any Customs order, rule, or regulation;

(D) The laboratory fails to operate in accordance with the obligations of paragraph (c) of this section;

(E) A determination is made that the laboratory is no longer technically or operationally proficient at performing the approved methods of analysis for Customs purposes;

(F) The laboratory fails to remit to Customs, at the billing address specified, within the 30 day billing period the associated charges assessed for the accreditation and the balance of the fixed accreditation fee;

(G) The laboratory fails to maintain its bond;

(H) The laboratory fails to remit to Customs, at the billing address specified, within the 30 day billing period, the fixed reaccreditation fee; or

(I) The laboratory fails to remit any monetary penalty assessed under this section.

(iii) *Assessment of monetary penalties.* The assessment of a monetary penalty under this section, may be in lieu of, or in addition to, a suspension or revocation of accreditation under this section. The monetary penalty may not exceed $100,000 per violation and will be assessed and administered pursuant to published guidelines. Any monetary penalty under this section can be in addition to the recovery of:

(A) Any loss of revenue, in cases where the laboratory intentionally falsified the analysis report in collusion with the importer, pursuant to 19 U.S.C. 1499(b)(1)(B)(i); or

(B) Liquidated damages assessed under the laboratory's Customs bond.

(2) *Notice.* When a decision to suspend or revoke accreditation, and/or assess a monetary penalty is made, the Executive Director will immediately notify the laboratory in writing of the decision, indicating whether the action is effective immediately or is proposed.

(i) *Immediate suspension or revocation.* Where the suspension or revocation of accreditation is immediate, the Executive Director will issue a notice of determination which will state the specific grounds for the immediate suspension or revocation and advise the laboratory that, in accordance with paragraph (k)(3) of this section, it may administratively appeal the determination to the Assistant Commissioner within 30 calendar days of the notice of determination. The laboratory may not perform any Customs-accredited functions during the appeal period.

(ii) *Proposed suspension, revocation, or assessment of monetary penalty.*

(A) *Preliminary notice.* Where the suspension or revocation of accreditation, and/or the assessment of a monetary penalty is proposed, the Executive Director will issue a preliminary notice of action which will state the specific grounds for the proposed action and advise the laboratory that it has 30 calendar days to respond. The laboratory may respond by accepting responsibility, explaining extenuating circumstances, and/or providing rebuttal evidence. The laboratory also may ask for a meeting with the Executive Director or his designee to discuss the proposed action. The laboratory may continue to perform functions requiring Customs-accreditation during this 30-day period. If the laboratory does not respond to the preliminary notice, a notice of adverse determination, in accordance with paragraph (k)(2)(ii)(B) of this section, will be issued by the Executive Director after 30 calendar days of receipt of the preliminary notice. If the laboratory files a timely response, then the Executive Director, within 30 calendar days of receipt of the response, will issue a notice of determination. If this determination is adverse to the laboratory, a notice of adverse determination, in accordance with paragraph (k)(2)(ii)(B) of this section, will be issued by the Executive Director after 30 calendar days of receipt of the response.

(B) *Notice of adverse determination.* A notice of adverse determination will state the action being taken, specific grounds for the determination, and advise the laboratory that it may administratively appeal the adverse determination to the Assistant Commissioner, in accordance with paragraph (k)(3) of this section. The laboratory may not continue to perform any Customs-accredited functions upon receiving a notice of adverse determination that its accreditation has been suspended or revoked.

(3) *Appeal.* A Customs-accredited laboratory receiving an adverse determination from the Executive Director that its accreditation has been suspended or revoked, and/or that it has been assessed a monetary penalty may file an administrative appeal to the Assistant Commissioner within 30 calendar days of the notice of determination. If the laboratory does not file an administrative appeal, the determination made by the Executive Director in paragraph (k)(2) of this section will become a final agency decision which will be communicated to the laboratory by a notice of final action issued 30 days after the notice of determination. If the laboratory does file a timely appeal, then the Assistant Commissioner, within 30 calendar days of receipt of the appeal, will make a final agency decision regarding the laboratory's suspension or revocation of accreditation, and/or assessment of a monetary penalty. If the final agency decision is adverse to the laboratory, the decision will be communicated to the laboratory by a notice of final action. Any adverse final agency decision will be communicated to the public by a publication in the **Federal Register** and Customs Bulletin, giving the effective date, duration, and scope of the decision. Any notice of adverse final action communicated to a laboratory will state the action taken, the specific grounds for the action, and advise the laboratory that it may choose to :

(i) If suspended or revoked, submit a new application to the Executive Director after waiting 90 days from the date of the Executive Director's notice of final action; or

(ii) File an action with the Court of International Trade, pursuant to chapter 169 of title 28, United States Code, within 60 days after the issuance of the Executive Director's notice of final action.

3. Section 151.13 is revised to read as follows:

§ 151.13 Approval of commercial gaugers.

This section sets forth the requirements for commercial gaugers to obtain approval by Customs for the measuring of certain merchandise, and explains the operation of such approved gaugers. This section also provides for the imposition of approval and reapproval fees, sets forth grounds for the suspension or revocation of approval, and provides for the imposition of a monetary penalty for an approved commercial gauger that fails to adhere to the provisions of this section.

(a) *What is a "Customs-approved gauger"?* "Commercial gaugers" are individuals and commercial organizations that measure, gauge, or sample merchandise (usually merchandise in bulk form) and who deal mainly with animal and vegetable oils, petroleum, petroleum products, and bulk chemicals. A "Customs-approved gauger" is a commercial concern, within the United States, that has demonstrated, to the satisfaction of the Executive Director (defined at § 151.12(a)), pursuant to this section, the capability to perform certain gauging and measurement procedures for certain commodities. Customs approval extends only to the performance of such functions as are vested in, or delegated to, Customs.

(b) *What are the obligations of a Customs-approved gauger?* A commercial gauger approved by Customs agrees to the following conditions and requirements:

(1) To comply with the requirements of part 151, Customs Regulations (19 CFR part 151), and to conduct professional services in conformance with approved standards and procedures, including procedures which may be required by the Commissioner of Customs or the Executive Director;

(2) To have no interest in or other connection with any business or other activity which might affect the unbiased performance of duties as a Customs-approved gauger. It is understood that this does not prohibit acceptance of the usual fees for professional services;

(3) To maintain the ability, *i.e.*, the instrumentation, equipment, qualified staff, facilities, etc., to perform the services for which the gauger is approved, and allow the Executive Director to evaluate that ability on a periodic basis by such means as on-site inspections, demonstrations of gauging procedures, and reviews of submitted records;

(4) To retain those gauger records beyond the five-year record-retention period specified by Customs as necessary to address matters concerned in pending litigation, and, if gauger operations or approval cease, to contact Customs immediately regarding the disposition of records retained;

(5) To promptly investigate any circumstance which might affect the accuracy of work performed as an approved gauger, to correct the situation immediately, and to notify both the port director and the Executive Director of such matters, their consequences, and any corrective action taken or that needs to be taken; and

(6) To immediately notify both the port director and the Executive Director of any attempt to impede, influence, or coerce gauger personnel in the performance of their duties, or of any decision to terminate gauger operations or approval status. Further, within 5 days of any changes involving legal name, address, ownership, parent-subsidiary relationships, bond, other offices or sites, or approved signatories to notify the Executive Director by certified mail.

(c) *What are the approved measurement procedures?* Customs-approved gaugers must comply with appropriate procedures published by such professional organizations as the American Society for Testing and Materials (ASTM) and the American Petroleum Institute (API), unless the Executive Director gives written permission to use an alternate method. Alternative methods will be considered and approved on a case-by-case basis.

(d) *How would a commercial gauger become a Customs-approved gauger?* (1) *What should an application contain?* An application for Customs approval must contain the following information:

(i) The applicant's legal name and the address of its principal place of business and any other facility out of which it will work;

(ii) Detailed statements of ownership and any partnerships, parent-subsidiary relationships, or affiliations with any other domestic or foreign organizations, including, but not limited to, importers,

producers, refiners, Customs brokers, or carriers;

(iii) A statement of financial condition;

(iv) If a corporation, a copy of the articles of incorporation and the names of all officers and directors;

(v) The names, titles, and qualifications of each person who will be authorized to sign or approve gauging reports on behalf of the commercial gauger;

(vi) A complete description of the applicant's facilities, instruments, and equipment;

(vii) An express agreement that if notified by Customs of pending approval to execute a bond in accordance with part 113, Customs Regulations (19 CFR part 113), and submit it to the Customs port nearest to the applicant's main office. (The limits of liability on the bond will be established by the Customs port in consultation with the Executive Director. In order to retain Customs approval, the gauger must maintain an adequate bond, as determined by the port director);

(viii) An express agreement to be bound by the obligations contained in paragraph (b) of this section; and,

(ix) A nonrefundable pre-payment equal to 50 percent of the fixed approval fee, as published in the **Federal Register** and Customs Bulletin, to cover preliminary processing costs. Further, the applicant agrees to pay Customs within 30 days of notification of preliminary approval the associated charges assessed for approval, *i.e.*, those charges for actual travel and background investigation costs, and the balance of the fixed approval fee.

(2) *Where should an application be sent?* A commercial gauger seeking approval or an extension of an existing approval must send a letter of application to the U.S. Customs Service, Attention: Executive Director, Laboratories & Scientific Services, 1300 Pennsylvania Ave., NW, Washington, D.C. 20229.

(3) *How will an application be reviewed?*

(i) *Determination of competence.* The Executive Director will determine the applicant's overall competence, independence, and character by conducting on-site inspections, which may include demonstrations by the applicant of gauging procedures and a review of records submitted, and background investigations. The Executive Director may also conduct proficiency testing through check samples.

(ii) *Evaluation of technical and operational requirements.* Customs will determine whether the following technical and operational requirements are met:

(A) *Equipment.* The facility must be equipped with all of the instruments and equipment needed to conduct approved services. The gauger must ensure that all instruments and equipment are properly calibrated, checked, and maintained.

(B) *Facilities.* The facility must have, at a minimum, adequate space, lighting, and environmental controls to ensure compliance with the conditions prescribed for appropriate measurements.

(C) *Personnel.* The facility must be staffed with persons having the necessary education, training, knowledge, and experience for their assigned functions (*e.g.*, maintaining equipment, calibrating instruments, performing gauging services, evaluating gauging results, and signing gauging reports on behalf of the commercial gauger). In general, each technical staff member should have, at a minimum, six months training and experience in gauging.

(e) *How will an applicant be notified concerning approval?*

(1) *Notice of approval or nonselection.* When Customs evaluation of a gauger's credentials is completed, the Executive Director will notify the gauger in writing of its preliminary approval or nonselection. (Final approval determinations will not be made until the applicant has satisfied all bond requirements and made payment on all assessed charges and the balance of the applicable accreditation fee). Notices of nonselection will state the specific grounds for the determination. All final notices of approval, reapproval, or extension of existing Customs approval will be published in the **Federal Register** and Customs Bulletin.

(2) *Grounds for nonselection.* The Executive Director may deny a gauger's application for any of the following reasons:

(i) The application contains false or misleading information concerning a material fact;

(ii) The gauger, a principal of the gauging facility, or a person the Executive Director determines is exercising substantial ownership or control over the gauger operation is indicted for, convicted of, or has committed acts which would:

(A) Under United States federal or state law, constitute a felony or misdemeanor involving misstatements, fraud, or a theft-related offense; or

(B) Reflect adversely on the business integrity of the applicant;

(iii) A determination is made that the gauger-applicant does not possess the technical capability, have adequate facilities, or management to perform the approved methods of measurement for Customs purposes;

(iv) A determination is made that the gauger has submitted false reports or statements concerning the measurement of merchandise, or that the applicant was subject to sanctions by state, local, or professional administrative bodies for such conduct;

(v) Nonpayment of assessed charges and the balance of the fixed approval fee; or

(vi) Failure to execute a bond in accordance with part 113 of this chapter.

(3) *Adverse approval decisions; appeal procedures.*—(i) *Preliminary notice.* A gauger which is not selected for approval will be sent a preliminary notice of action which states the specific grounds for nonselection and advises that the gauger may file a response with the Executive Director within 30 calendar days of receipt of the preliminary notice addressing the grounds for nonselection.

(ii) *Final notice.* If the gauger does not respond to the preliminary notice, a final notice of nonselection will be issued by the Executive Director after 30 calendar days of receipt of the preliminary notice which states the specific grounds for the nonselection and advises that the gauger may administratively appeal the final notice of nonselection to the Assistant Commissioner within 30 calendar days of receipt of the final notice. If the gauger files a timely response, then the Executive Director, within 30 calendar days of receipt of the response, will issue a final determination regarding the gauger's approval. If this final determination is adverse to the gauger, then the final notice of nonselection will state the specific grounds for nonselection and advise the gauger that it may administratively appeal the final notice of nonselection to the Assistant Commissioner within 30 calendar days of receipt of the final notice.

(iii) *Appeal decision.* The Assistant Commissioner will issue a decision on the appeal within 30 calendar days of receipt of the appeal. If the appeal decision is adverse to the gauger, then the gauger may choose to pursue one of the following two options:

(A) Submit a new application for approval to the Executive Director after waiting 90 days from the date of the Executive Director's last decision; or

(B) File an action with the Court of International Trade, pursuant to chapter 169 of title 28, United States Code, within 60 days after the issuance of the Executive Director's final decision.

(f) *What are the approval/reapproval fee requirements?*

(1) *In general.* A fixed fee, representing Customs administrative overhead expense, will be assessed for each application for approval or reapproval. In addition, associated assessments, representing the actual costs associated with travel and per diem of Customs employees related to verification of application criteria and background investigations will be charged. The combination of the fixed fee and associated assessments represent reimbursement to Customs for costs related to approval and reapproval. The fixed fee will be published in the Customs Bulletin and the **Federal Register**. Based on a review of the actual costs associated with the program, the fixed fee may be adjusted periodically; any changes will be published in the Customs Bulletin and the **Federal Register**.

(i) *Approval fees.* A nonrefundable pre-payment equal to 50 percent of the fixed approval fee to cover preliminary processing costs must accompany each application for approval. Before a gauger will be approved, it must submit to Customs, at the address specified in the billing, within the 30 day billing period the associated charges assessed for the approval and the balance of the fixed approval fee.

(ii) *Reapproval fees.* Before a gauger will be reapproved, it must submit to Customs, at the billing address specified, within the 30 day billing period, the fixed reapproval fee.

(2) *Disputes.* In the event a gauger disputes the charges assessed for travel and per diem costs associated with scheduled inspection visits, it may file an appeal within 30 calendar days of the date of the assessment with the Executive Director. The appeal letter must specify which charges are in dispute and provide such supporting documentation as may be available for each allegation. The Executive Director will make findings of fact concerning the merits of an appeal and communicate the agency decision to the gauger in writing within 30 calendar days of the date of the appeal.

(g) *Can existing Customs-approved gaugers continue to operate?* Commercial gaugers approved by the Executive Director prior to December 8, 1993, will retain approval under these regulations provided that they conduct their business in a manner consistent with the administrative portions of this section. This paragraph does not pertain to any gauger which has had its approval suspended or revoked. Gaugers which have had their approvals continued under this section will have their status reevaluated on their next triennial inspection date which is no earlier than three years after the effective date of this regulation. At the time of reapproval, these gaugers must meet the requirements of this section and remit to Customs, at the address specified in the billing, within the 30 day billing period the fixed reapproval fee. Failure to meet these requirements will result in revocation or suspension of the approval.

(h) *How will Customs-approved gaugers operate?*

(1) *Reports.* (i) *Contents of reports.* The measurement results from a Customs-approved gauger that are submitted by an importer of record with respect to merchandise in an entry, in the absence of measurements conducted by Customs, will be accepted by Customs, provided that the importer of record certifies that the measurement was of the merchandise in the entry. All reports must measure net landed quantity, except in the case of crude petroleum of Heading 2709, Harmonized Tariff Schedule of the United States (HTSUS), which may be measured by gross quantity. Reports must use the appropriate HTSUS units of quantity, *e.g.*, liters, barrels, or kilograms.

HTSUS	Product	Unit of quantity
Headings 1501–1515	Animal and vegetable oils	Kilogram.
Subheadings 2707.10–2707.30 and 2902.20–2902.44.	Benzene, toluene and xylene	Liter.
Heading 2709	Crude Petroleum	Barrel.
Heading 2710 (various subheadings)	Fuel oils, motor oils, kerosene, naphtha, lubricating oils.	Barrel.
Chapter 29 (various subheadings)	Organic compounds in bulk and liquid form	Kilogram, liter, etc.

(ii) *Status of commercial reports where Customs also gauges merchandise.* Nothing in these regulations will preclude Customs from gauging a shipment which has been gauged by a Customs-approved gauger at the request of an importer. In cases where a shipment has been gauged by both Customs and a Customs-approved gauger, all Customs actions will be based upon the gauging reports issued by Customs, unless the Executive Director advises other actions. If Customs gauges merchandise, it will release the report of its measurements to the importer of record or its agent upon request unless the gauging information is proprietary to the holder of a copyright or patent, or developed by Customs for enforcement purposes.

(2) *Recordkeeping requirements.* Customs-approved gaugers must maintain records of the type normally kept in the ordinary course of business in accordance with the provisions of this chapter and any other applicable provisions of law, and make them available during normal business hours for Customs inspection. In addition, these gaugers must maintain all records necessary to permit the evaluation and verification of all Customs-related work, including, as appropriate, those described below. All records must be maintained for five years, unless the gauger is notified in writing by Customs that a longer retention time is necessary for particular records. Electronic data storage and transmission may be approved by Customs.

(i) *Transaction records.* Records for each Customs-related transaction must be readily accessible and have the following:

(A) A unique identifying number;

(B) The date and location where the transaction occurred;

(C) The identity of the product (*e.g.* crude oil);

(D) The name of the client;

(E) The source of the product (*e.g.*, name of vessel, flight number of airline); and

(F) If available, the Customs entry date, entry number, and port of entry and the names of the importer, exporter, manufacturer, and country-of-origin.

(ii) *Major equipment records.* Records for each major piece of equipment used in Customs-related work must identify the name and type of instrument, the manufacturer's name, the instrument's model and any serial numbers, and the occurrence of all servicing performed on the equipment or instrument, to include recalibration and any repair work.

identifying who performed the service and when.

(iii) *Records of gauging procedures.* The Customs-approved gauger must maintain complete and up-to-date copies of all approved gauging procedures, calibration methods, etc., and must document the procedures that each staff member is authorized to perform. These procedures must be readily available to appropriate staff.

(iv) *Gauging records.* The Customs-approved gauger must identify each transaction by transaction record number (see paragraph (h)(2)(i) of this section) and must maintain all information or data (such as temperatures, etc.) associated with each Customs-related gauging transaction. Each gauging record (*i.e.*, the complete file of all data for each separate transaction) must be dated and initialed or signed by the staff member(s) who did the work.

(v) *Gauging reports.* Each gauging report submitted to Customs must include:

(A) The name and address of the Customs-approved gauger;

(B) A description and identification of the transaction, including its unique identifying number;

(C) The designations of each gauging procedure used;

(D) The gauging report itself (*i.e.*, the quantity of the merchandise);

(E) The date of the report; and

(F) The typed name and signature of the person accepting technical responsibility for the gauging report (*i.e.*, an approved signatory).

(3) *Representation of Customs-approved status.* Commercial gaugers approved by Customs must limit statements or wording regarding their approval to an accurate description of the commodities for which approval has been obtained. Use of terms other than those appearing in the notice of approval (see paragraph (e) of this section) is prohibited.

(4) *Subcontracting prohibited.* Customs-approved gaugers must not subcontract Customs-related work to non Customs-approved gaugers or non Customs-accredited laboratories, but may subcontract to other facilities that are Customs-approved/accredited and in good standing.

(i) *How can a gauger have its approval suspended or revoked or be required to pay a monetary penalty?*

(1) *Grounds for suspension, revocation, or assessment of a monetary penalty.* (i) *In general.* The Executive Director may immediately suspend or revoke a gauger's approval only in cases where the gauger's actions are intentional violations of any Customs law or when required by public health or safety. In other situations where the Executive Director has cause, the Executive Director will propose the suspension or revocation of a gauger's approval or propose a monetary penalty and provide the gauger with the opportunity to respond to the notice of proposed action.

(ii) *Specific grounds.* A gauger's approval may be suspended or revoked, or a monetary penalty may be assessed because:

(A) The selection was obtained through fraud or the misstatement of a material fact by the gauger;

(B) The gauger, a principal of the gauging facility, or a person the port director determines is exercising substantial ownership or control over the gauger operation is indicted for, convicted of, or has committed acts which would: under United States federal or state law, constitute a felony or misdemeanor involving misstatements, fraud, or a theft-related offense; or reflect adversely on the business integrity of the applicant. In the absence of an indictment, conviction, or other legal process, the port director must have probable cause to believe the proscribed acts occurred;

(C) Staff gauger personnel refuse or otherwise fail to follow any proper order of a Customs officer or any Customs order, rule, or regulation;

(D) The gauger fails to operate in accordance with the obligations of paragraph (b) of this section;

(E) A determination is made that the gauger is no longer technically or operationally proficient at performing the approved methods of measurement for Customs purposes;

(F) The gauger fails to remit to Customs, at the billing address specified, within the 30 day billing period the associated charges assessed for the approval and the balance of the fixed approval fee;

(G) The gauger fails to maintain its bond;

(H) The gauger fails to remit to Customs, at the billing address specified, within the 30 day billing period the fixed reapproval fee; or

(I) The gauger fails to remit any monetary penalty assessed under this section.

(iii) *Assessment of monetary penalties.* The assessment of a monetary penalty under this section, may be in lieu of, or in addition to, a suspension or revocation of approval under this section. The monetary penalty may not exceed $100,000 per violation and will be assessed and administered pursuant to published guidelines. Any monetary penalty under this section can be in addition to the recovery of:

(A) Any loss of revenue, in cases where the gauger intentionally falsified the gauging report in collusion with the importer, pursuant to 19 U.S.C. 1499(b)(1)(B)(i); or

(B) Liquidated damages assessed under the gauger's Customs bond.

(2) *Notice.* When a decision to suspend or revoke approval, and/or assess a monetary penalty is made, the Executive Director will immediately notify the gauger in writing of the decision, indicating whether the action is effective immediately or is proposed.

(i) *Immediate suspension or revocation.* Where the suspension or revocation of approval is immediate, the Executive Director will issue a notice of determination which will state the specific grounds for the immediate suspension or revocation and advise the gauger that, in accordance with paragraph (i)(3) of this section, it may administratively appeal the determination to the Assistant Commissioner with 30 calendar days of the notice of determination. The gauger may not perform any Customs-approved functions during the appeal period.

(ii) *Proposed suspension, revocation, or assessment of monetary penalty.—(A) Preliminary notice.* Where the suspension or revocation of approval, and/or the assessment of a monetary penalty is proposed, the Executive Director will issue a preliminary notice of action which will state the specific grounds for the proposed action and advise the gauger that it has 30 calendar days to respond. The gauger may respond by accepting responsibility, explaining extenuating circumstances, and/or providing rebuttal evidence. The gauger also may ask for a meeting with the Executive Director or his designee to discuss the proposed action. The gauger may continue to perform functions requiring Customs-approval during this 30-day period. If the gauger does not respond to the preliminary notice, a notice of adverse determination, in accordance with paragraph (i)(2)(ii)(B) of this section, will be issued by the Executive Director after 30 calendar days of receipt of the preliminary notice. If the gauger files a timely response, then the Executive Director, within 30 calendar days of receipt of the response, will issue a notice of determination. If this determination is adverse to the gauger, a notice of adverse determination, in accordance with paragraph (i)(2)(ii)(B) of this section, will be issued by the Executive Director after 30 calendar days of receipt of the response.

(B) *Notice of adverse determination.* A notice of adverse determination will state the action being taken, specific grounds for the determination, and advise the gauger that it may administratively appeal the adverse determination to the Assistant Commissioner, in accordance with paragraph (i)(3) of this section. The gauger may not continue to perform any Customs-approved functions upon receiving a notice of adverse determination that its approval has been suspended or revoked.

(3) *Appeal.* A Customs-approved gauger receiving an adverse determination from the Executive Director that its approval has been suspended or revoked, and/or that it has been assessed a monetary penalty may file an administrative appeal to the Assistant Commissioner within 30 calendar days of the notice of determination. If the gauger does not file an administrative appeal, the determination made by the Executive Director in paragraph (i)(2) of this section will become a final agency decision which will be communicated to the gauger by a notice of final action issued 30 days after the notice of determination. If the gauger does file a timely appeal, then the Assistant Commissioner, within 30 calendar days of receipt of the appeal, will make a final agency decision regarding the gauger's suspension or revocation of approval, and/or assessment of a monetary penalty. If the final agency decision is adverse to the gauger, the decision will be communicated to the gauger by a notice of final action. Any adverse final agency decision will be communicated to the public by a publication in the **Federal Register** and Customs Bulletin, giving the effective date, duration, and scope of the decision. Any notice of adverse final action communicated to a gauger will state the action taken, the specific grounds for the action, and advise the gauger that it may choose to:

(i) If suspended or revoked, submit a new application to the Executive Director after waiting 90 days from the date of the Executive Director's notice of final action; or

(ii) File an action with the Court of International Trade, pursuant to chapter 169 of title 28, United States Code, within 60 days after issuance of the Executive Director's notice of final action.

§ 151.14 [Amended]

4. In § 151.14, the first sentence is amended by removing the words "'sediment and water' characteristic as set out in § 151.13(a)(2)" and adding, in its place, the words "analysis method for crude petroleum contained in ASTM D96 or other approved analysis method".

§ 178.2 Listing of OMB control numbers.

19 CFR section	Description	OMB control no.
. . .	. . .	. . .
§ 151.12(f)	Application and other documents pertaining to accreditation of commercial laboratories.	1515–0155
§ 151.13(d)	Application and other documents pertaining to approval of commercial gaugers	1515–0155

Raymond W. Kelly,
Commissioner of Customs.
Approved: July 30, 1999
John P. Simpson,
Deputy Assistant Secretary of the Treasury.
[FR Doc. 99–23033 Filed 9–3–99; 8:45 am]
BILLING CODE 4820–02–P

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for part 178 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1624; 44 U.S.C. 3501 *et seq.*

2. Section 178.2 is amended by removing the entry for § 151.13(i), and adding, in its place, separate listings for §§ 151.12(f) and 151.13(d) to read as follows:

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Oxytetracycline Hydrochloride Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Phoenix Scientific, Inc. The supplemental ANADA provides for an additional package size of oxytetracycline hydrochloride soluble powder to be used to make a medicated drinking water for chickens, turkeys, cattle, swine, and sheep for control and/or treatment of various bacterial diseases.

EFFECTIVE DATE: September 7, 1999.

FOR FURTHER INFORMATION CONTACT: William G. Marnane, Center for Veterinary Medicine (HFV–140), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6966.

SUPPLEMENTARY INFORMATION: Phoenix Scientific, Inc., 3915 South 48th St. Terrace, P.O. Box 6457, St. Joseph, MO 64506–0457, filed supplemental ANADA 200–146 that provides for use of 6.4 ounce (181.5 gram (g)) packet of oxytetracycline hydrochloride soluble powder (10 g oxytetracycline hydrochloride per packet) for use in making medicated drinking water for chickens, turkeys, cattle, swine, and sheep for treatment and/or control of various bacterial diseases. The supplemental ANADA is approved as of July 26, 1999, and the regulations are amended in 21 CFR 520.1660d(a)(7) to reflect the approval.

This supplemental ANADA concerns an additional packet size of product to be used as currently approved. The safety and effectiveness of the product does not change. A freedom of information summary as described in 21 CFR part 20 and 514.11(e)(2)(ii) is not required.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 520.1660d [Amended]

2. Section 520.1660d *Oxytetracycline hydrochloride soluble powder* is amended in paragraphs (a)(1) and (a)(2) by removing the semicolons at the end of the paragraphs and by adding periods in their places, and in paragraph (a)(7) by adding at the beginning of the first parenthetical phrase the words "packet: 6.4 oz.;".

Dated: August 24, 1999.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 99–23131 Filed 9–3–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 522 and 556

Implantation or Injectable Dosage Form New Animal Drugs; Chorionic Gonadotropin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Intervet, Inc. The supplemental NADA provides for intramuscular use of chorionic gonadotropin, a freeze-dried powder reconstituted for intramuscular injection in male and female brood finfish as an aid in improving spawning function. The regulations are also amended to establish an acceptable daily intake (ADI) for total gonadotropins.

EFFECTIVE DATE: September 7, 1999.

FOR FURTHER INFORMATION CONTACT: Joan C. Gotthardt, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7571.

SUPPLEMENTARY INFORMATION: Intervet, Inc., 405 State St., P.O. Box 318, Millsboro, DE 19966–0318, filed supplemental NADA 140–927 that provides for use of Chorulon® (chorionic gonadotropin) freeze-dried powder, reconstituted for intramuscular injection in male and female brood finfish as an aid in improving spawning function. The supplemental NADA is approved as of August 6, 1999, and § 522.1081 (21 CFR 522.1081) is amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In addition, data in the supplemental NADA were evaluated to establish an ADI for total gonadotropins. The regulations are amended in part 556 (21 CFR part 556) by adding § 556.304 to provide an ADI for total gonadotropins and to provide that a tolerance for residues of gonadotropins in edible tissues of treated animals is not required. Also, § 522.1081 is amended to add paragraphs referencing related tolerances.

In addition, FDA is removing the footnote in § 522.1081(a)(3). This regulation was footnoted to reflect those conditions of use that were subject to review under the National Academy of Sciences/National Research Council (NAS/NRC) Drug Efficacy Study Implementation (DESI) program and FDA's conclusions based on that review. With the enactment of the Generic Animal Drug and Patent Term Restoration Act of 1986, use of NAS/NRC DESI reviews to support approval of new animal drugs became obsolete.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(c) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning August 6, 1999, because the supplement contains substantial evidence of the effectiveness of the drug involved, any studies of animal safety or, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval of the supplement and conducted or sponsored by the applicant. The 3 years of marketing exclusivity applies to use of chorionic gonadotropin freeze-dried powder, reconstituted for intramuscular injection in male and female brood finfish as an aid in improving spawning function.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 522

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 522.1081 is amended by adding after the word "intrafollicularly" the phrase "in cattle" in paragraphs (a)(2)(i) and (a)(2)(ii), by adding after the word "intramuscularly" the phrase "in cattle and finfish" in paragraph (a)(2)(iii), by redesignating paragraph (a)(3) as paragraph (a)(4), by adding new paragraph (a)(3), by revising the heading and by removing the footnote of newly redesignated paragraph (a)(4), by revising newly redesignated paragraph (a)(4)(i), by adding paragraph (a)(5), by redesignating paragraph (b)(3) as paragraph (b)(4), by adding new paragraph (b)(3), by revising the heading of newly redesignated paragraph (b)(4), by removing "ovualtions" and adding in its place "ovulations" in newly redesignated paragraph (b)(4)(iii) to read as follows:

§ 522.1081 Chorionic gonadotropin for injection; chorionic gonadotropin suspension.

(a) * * *

(3) *Related tolerances.* See § 556.304 of this chapter.

(4) *Conditions of use in cattle*—(i) *Amount.* 10,000 USP units as a single, deep intramuscular injection; 500 to 2,500 USP units for intrafollicular injection; 2,500 to 5,000 USP units intravenously.

* * * * *

(5) *Conditions of use in finfish*—(i) *Amount.* 50 to 510 I.U. per pound of body weight for males, 67 to 1816 I.U. per pound of body weight for females, by intramuscular injection.

(ii) *Indications for use.* An aid in improving spawning function in male and female brood finfish.

(iii) *Limitations.* May administer up to three doses. The total dose administered per fish (all injections combined) should not exceed 25,000 I.U. chorionic gonadotropin (25 milliliters) in fish intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(b) * * *

(3) *Related tolerances.* See § 556.304 of this chapter.

(4) *Conditions of use in heifers* * * *

* * * * *

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

4. Section 556.304 is added to subpart B to read as follows:

§ 556.304 Gonadotropin.

(a) *Acceptable daily intake (ADI).* The ADI for residues of total gonadotropins (human chorionic gonadotropin and pregnant mare serum gonadotropin) is 42.25 I.U. per kilogram of body weight per day.

(b) *Tolerances.* A tolerance for residues of gonadotropin in uncooked edible tissues of cattle or of fish is not required.

Dated: August 24, 1999.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 99–23132 Filed 9–3–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8838]

RIN 1545–AU45

Inflation-Indexed Debt Instruments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the federal income tax treatment of inflation-indexed debt instruments, including Treasury Inflation-Indexed Securities. The regulations in this document provide needed guidance to holders and issuers of inflation-indexed debt instruments.

EFFECTIVE DATE: The regulations are effective September 7, 1999.

FOR FURTHER INFORMATION CONTACT: Helen Vanek-Bigelow or William E. Blanchard, (202) 622–3950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On January 6, 1997, temporary regulations (TD 8709 [1997–1 C.B. 167]) relating to the federal income tax treatment of inflation-indexed debt instruments under sections 1275 and 1286 of the Internal Revenue Code (Code) were published in the **Federal Register** (62 FR 615). A notice of proposed rulemaking (REG–242996–96 [1997–1 C.B. 784]) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (62 FR 694). A public hearing was held on April 30, 1997. However, no one requested to speak at the hearing.

No written comments responding to the notice were received. Therefore, the proposed regulations under sections 1275 and 1286 are adopted by this Treasury decision with no changes, and the corresponding temporary regulations are redesignated as final regulations.

Explanation of Provisions

The following is a general explanation of the provisions in the final regulations, which are the same as the provisions in the temporary regulations.

A. In General

The final regulations provide rules for the treatment of certain debt instruments that are indexed for inflation and deflation, including Treasury Inflation-Indexed Securities. The final regulations generally require holders and issuers of inflation-indexed debt instruments to account for interest and original issue discount (OID) using constant yield principles. In addition, the final regulations generally require holders and issuers of inflation-indexed debt instruments to account for inflation and deflation by making current adjustments to their OID accruals.

B. Applicability

The final regulations apply to inflation-indexed debt instruments. In general, an inflation-indexed debt instrument is a debt instrument that (1) is issued for cash, (2) is indexed for inflation and deflation (as described below), and (3) is not otherwise a contingent payment debt instrument. The final regulations do not apply, however, to certain debt instruments, such as debt instruments issued by qualified state tuition programs.

C. Indexing Methodology

A debt instrument is considered indexed for inflation and deflation if the payments on the instrument are indexed by reference to the changes in the values of a general price or wage index over the term of the instrument. Specifically, the amount of each payment on an inflation-indexed debt instrument must equal the product of (1) the amount of the payment that would be payable on the instrument (determined as if there were no inflation or deflation over the term of the instrument) and (2) the ratio of the value of the reference index for the payment date to the value of the reference index for the issue date.

The reference index for a debt instrument is the mechanism for measuring inflation and deflation over the term of the instrument. This mechanism associates the value of a single qualified inflation index for a particular month with a specified day of a succeeding month. For example, under the terms of the Treasury Inflation-Indexed Securities, the reference index for the first day of a month is the value of a qualified inflation index for the third preceding month. The reference index must be reset once a month to the current value of a qualified inflation index. Between reset dates, the value of the reference index is determined through straight-line interpolation.

A qualified inflation index is a general price or wage index that is updated and published at least monthly by an agency of the United States Government. A general price or wage index is an index that measures price or wage changes in the economy as a whole. An index is not general if it only

measures price or wage changes in a particular segment of the economy. For example, the non-seasonally adjusted U.S. City Average All Items Consumer Price Index for All Urban Consumers (CPI–U), which is published by the Bureau of Labor Statistics of the Department of Labor, is a qualified inflation index because it measures general price changes in the economy. By contrast, the gasoline price component of the CPI–U is not a qualified inflation index because it only measures price changes in a particular segment of the economy.

D. Coupon Bond Method

The final regulations provide a simplified method of accounting for qualified stated interest and inflation adjustments on certain inflation-indexed debt instruments (the coupon bond method). To qualify for the coupon bond method, an inflation-indexed debt instrument must satisfy two conditions. First, there must be no more than a de minimis difference between the debt instrument's issue price and its principal amount for the issue date. Second, all stated interest on the debt instrument must be qualified stated interest. Because Treasury Inflation-Indexed Securities that are not stripped into principal and interest components satisfy both of these conditions, the coupon bond method applies to these securities.

If an inflation-indexed debt instrument qualifies for the coupon bond method, the stated interest payable on the debt instrument is taken into account under the taxpayer's regular method of accounting. Any increase in the inflation-adjusted principal amount is treated as OID for the period in which the increase occurs. Any decrease in the inflation-adjusted principal amount is taken into account under the rules for deflation adjustments described below.

For example, if a taxpayer holds a Treasury Inflation-Indexed Security for an entire calendar year and the taxpayer uses the cash receipts and disbursements method of accounting (cash method), the taxpayer generally includes in income the interest payments received on the security during the year. In addition, the taxpayer includes in income an amount of OID measured by subtracting the inflation-adjusted principal amount of the security at the beginning of the year from the inflation-adjusted principal amount of the security at the end of the year. If the taxpayer uses an accrual method of accounting rather than the cash method, the taxpayer includes in income the qualified stated interest that accrued on the debt instrument during the year and an amount of OID measured by subtracting the inflation-adjusted principal amount of the security at the beginning of the year from the inflation-adjusted principal amount of the security at the end of the year.

E. Discount Bond Method

If an inflation-indexed debt instrument does not qualify for the coupon bond method (for example, because it is issued at a discount), the instrument is subject to the discount bond method. In general, the discount bond method requires holders and issuers to make current adjustments to their OID accruals to account for inflation and deflation.

Under the discount bond method, a taxpayer determines the amount of OID allocable to an accrual period by using steps similar to those provided in § 1.1272–1(b)(1). First, the taxpayer determines the yield to maturity of the debt instrument as if there were no inflation or deflation over the term of the instrument. Second, the taxpayer determines the length of the accrual periods to be used to allocate OID over the term of the debt instrument, provided no accrual period is longer than one month. Third, the taxpayer determines the percentage change in the value of the reference index during the accrual period by comparing the value at the beginning of the period to the value at the end of the period. Fourth, the taxpayer determines the OID allocable to the accrual period by using a formula that takes into account both the yield of the debt instrument and the percentage change in the value of the reference index during the period. Fifth, the taxpayer allocates to each day in the accrual period a ratable portion of the OID for the accrual period (the daily portions). If the daily portions for an accrual period are positive amounts, these amounts are taken into account under section 163(e) by an issuer and under section 1272 by a holder. If the daily portions for an accrual period are negative amounts, these amounts are taken into account under the rules for deflation adjustments described below.

F. Deflation Adjustments

The final regulations treat deflation adjustments in a manner consistent with the treatment of net negative adjustments on contingent payment debt instruments under § 1.1275–4(b)(6)(iii). If a holder has a deflation adjustment for a taxable year, the deflation adjustment first reduces the amount of interest otherwise includible in income with respect to the debt instrument for the taxable year. If the amount of the deflation adjustment exceeds the interest otherwise includible in income for the taxable year, the holder treats the excess as an ordinary loss in the taxable year. However, the amount treated as an ordinary loss is limited to the amount by which the holder's total interest inclusions on the debt instrument in prior taxable years exceed the total amount treated by the holder as an ordinary loss on the debt instrument in prior taxable years. If the deflation adjustment exceeds the interest otherwise includible in income by the holder with respect to the debt instrument for the taxable year and the amount treated as an ordinary loss for the taxable year, the excess is carried forward to offset interest income on the debt instrument in subsequent taxable years. Similar rules apply to determine an issuer's interest deductions and income for the debt instrument.

G. Miscellaneous Rules

The final regulations provide special rules for reopenings, strips, subsequent holders, and minimum guarantees.

H. Effective Date

The final regulations apply to an inflation-indexed debt instrument issued on or after January 6, 1997.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting information. The principal author of the regulations is Helen Vanek-Bigelow, Office of Assistant Chief Counsel (Financial Institutions and Products). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entries for §§ 1.1275–7T and 1.1286–2T and adding two entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.1275–7 also issued under 26 U.S.C. 1275(d). * * *

Section 1.1286–2 also issued under 26 U.S.C. 1286(f). * * *

§ 1.148–4 [Amended]

Par. 2. Section 1.148–4 is amended by:

1. Removing the "T" from the reference "§ 1.1275–7T" in paragraph (h)(2)(v)(A).

2. Removing the "T" from the reference "§ 1.1275–7T" in paragraph (h)(2)(v)(B).

§ 1.163–13 [Amended]

Par. 3. Section 1.163–13 is amended by:

1. Removing the "T" from the reference "§ 1.1275–7T(f)(1)(ii)" in the next to the last sentence in paragraph (e)(2).

2. Removing the "T" from the reference "§ 1.1275–7T" in the last sentence in paragraph (e)(2).

§ 1.171–3 [Amended]

Par. 4. Section 1.171–3 is amended by:

1. Removing the "T" from the reference "§ 1.1275–7T(f)(1)(i)" in the next to last sentence in paragraph (b).

2. Removing the "T" from the reference "§ 1.1275–7T" in the last sentence in paragraph (b).

Par. 5. In § 1.1271–0, paragraph (b) is amended by revising the entry for § 1.1275–7T to read as follows:

§ 1.1271–0 Original issue discount; effective date; table of contents.

* * * * *

(b) * * *

* * * * * *

§ 1.1275–7 Inflation-indexed debt instruments.

* * * * *

§ 1.1275–4 [Amended]

Par. 6. Section 1.1275–4 is amended by removing the "T" from the reference "§ 1.1275–7T" in paragraph (a)(2)(vii).

§ 1.1275–7T [Redesignated as § 1.1275–7]

Par. 7. Section 1.1275–7T is redesignated as § 1.1275–7 and the language "(temporary)" is removed from the section heading.

§ 1.1286–2T [Redesignated as § 1.1286–2]

Par. 8. Section 1.1286–2T is redesignated as § 1.1286–2 and the language "(temporary)" is removed from the section heading.

Par. 9. Newly designated § 1.1286–2 is amended by removing the "T" from the reference "§ 1.1275–7T(e)".

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: August 25, 1999.

Jonathan Talisman,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 99–23082 Filed 9–3–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8837]

RIN 1545–AV50

Revision of the Tax Refund Offset Program

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the administration of the Tax Refund Offset Program (TROP). This action is necessary because effective January 1, 1999, TROP, which had been administered by the IRS, was fully merged into the centralized administrative offset program known as the Treasury Offset Program (TOP), which is administered by the Financial Management Service (FMS). These regulations will affect State and Federal agencies that participate in TROP.

DATES: Effective Dates: These regulations are effective September 7, 1999.

Dates of Applicability: For dates of applicability of these regulations, see §§ 301.6402–5(h) and 301.6402–6(n).

FOR FURTHER INFORMATION CONTACT: Beverly A. Baughman, (202) 622–4940 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains final regulations on Procedure and Administration (26 CFR part 301) that revise the effective dates for regulations under section 6402(c) and (d). Those subsections provide rules relating to the offset of past-due support payments and debts owed to Federal agencies against Federal tax refunds, respectively.

On August 31, 1998, a notice of proposed rulemaking (REG–104565–97) under section 6402(c) and (d) was published in the **Federal Register** (63 FR 46205). Although written or electronic comments and requests for a public hearing were solicited, no comments were received and no public hearing was requested or held. The proposed regulations under section 6402(c) and (d) are adopted by this Treasury decision without revision.

Explanation of Provisions

Section 6402(c) provides, in general, that the amount of any overpayment to be refunded to the person making the overpayment must be reduced by the amount of any past-due support (as defined in section 464(c) of the Social Security Act) owed by that person of which the Secretary has been notified by a State in accordance with section 464 of the Social Security Act.

Section 6402(d) provides, in general, that upon receiving notice from any Federal agency that a named person owes a past-due, legally enforceable debt to that agency, the Secretary must reduce the amount of any overpayment payable to that person by the amount of the debt, pay the amount by which the overpayment is reduced to the agency, and notify the person making the overpayment that the overpayment has been reduced.

Prior to January 1, 1998, the IRS made offsets pursuant to section 6402(d) according to regulations prescribed under § 301.6402–6. Prior to January 1, 1999, the IRS made offsets pursuant to section 6402(c) according to regulations prescribed under § 301.6402–5.

Section 31001(v)(2) and (w) of the Debt Collection Improvement Act of 1996 (110 Stat. 1321–375), amended 42 U.S.C. 664(a)(2)(A) and 31 U.S.C. 3720A(h), respectively, to clarify that the disbursing agency of the Treasury Department may conduct tax refund offsets. The disbursing agency of the Treasury Department is the Financial Management Service (FMS).

The IRS and FMS agreed to merge the Tax Refund Offset Program (TROP), which had been administered by the IRS, into the centralized administrative offset program known as the Treasury Offset Program (TOP), which is administered by the FMS. The merger of the two programs is intended to maximize and improve the Treasury Department's government-wide collection of nontax debts, including those subject to offset against the debtor's federal tax refund. The full merger of TROP with TOP occurred on January 1, 1999.

Final rules concerning the manner in which the FMS will administer the collection of nontax Federal debts after the merger of TROP with TOP were published by the FMS in the **Federal Register** on August 28, 1998 (63 FR 46140) (codified at 31 CFR Part 285.2) effective for refunds payable after January 1, 1998. The regulations in this document provide an ending effective date for § 301.6402–6 to accommodate the beginning effective date of the FMS regulations. Accordingly, § 301.6402–6 does not apply to refunds payable after January 1, 1998.

Final rules concerning the manner in which the FMS will administer the collection of past-due support payments were published by the FMS in the **Federal Register** on December 30, 1998 (63 FR 72092) (codified at 31 CFR Part 285.3), effective for refunds payable after January 1, 1999. The regulations in this document provide an ending effective date for § 301.6402–5 to accommodate the beginning date for the full merger of TROP with TOP. Accordingly, § 301.6402–5 does not apply to refunds payable after January 1, 1999.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking that preceded these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Beverly A. Baughman of the Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and the Treasury Department participated in the development of the regulations.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6402–5 is amended by adding paragraph (h) to read as follows:

§ 301.6402–5 Offset of past-due support against overpayments.

* * * * *

(h) Effective dates. This section applies to refunds payable on or before January 1, 1999. For the rules applicable after January 1, 1999, see 31 CFR part 285.

Par. 3. Section 301.6402–6 is amended by revising paragraph (n) to read as follows:

§ 301.6402–6 Offset of past-due, legally enforceable debt against overpayment.

* * * * *

(n) *Effective dates.* This section applies to refunds payable under section 6402 after April 15, 1992, and on or before January 1, 1998. For the rules applicable after January 1, 1998, see 31 CFR part 285.

Bob Wenzel,

Deputy Commissioner of Internal Revenue

Approved: August 25, 1999.

Jonathan Talisman,

Deputy Assistant Secretary of Treasury.

[FR Doc. 99–23083 Filed 9–3–99; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300916; FRL–6380–7]

RIN 2070–AB78

Avermectin B_1 and its delta-8,9-isomer; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for combined residues of the insecticide avermectin B_1 (a mixture of avermectins containing greater than or equal to 80% avermectin B_{1a} (5-*O*-demethyl avermectin A_1) and less than or equal to 20% avermectin B_{1b} (5-*O*-demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectin A_1)) and its delta-8,9-isomer in or on grapes at 0.02 parts per million (ppm), peppers at 0.02 ppm, and cotton gin byproducts at 0.15 ppm; makes permanent tolerances for citrus, hops, potatoes, meat and meat by-products, milk, and cotton seed which were previously time limited (expiring September 1, 1999); and clarifies that permanent tolerances have previously been established for almond hulls at 0.10 ppm and wet apple pomace at 0.10 ppm. Novartis Crop Protection, Inc. requested these tolerance actions under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective September 7, 1999. Objections and requests for hearings, identified by docket control number OPP–300916, must be received by EPA on or before November 8, 1999.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the "SUPPLEMENTARY INFORMATION" section. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300916 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Thomas C. Harris, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–9423; and e-mail address: harris.thomas@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of Potentially Affected Entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300916. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

This regulation addresses three tolerance actions concerning avermectin B_1 and its delta-8,9-isomer.

A. New Tolerances

In the **Federal Register** of August 11, 1997 (62 FR 42980) (FRL–5736–1), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP 7F4844) for tolerance by Merck Research Laboratories, PO Box 450, Hillsborough Rd, Three Bridges, NJ. The petition was later transferred to Novartis Crop Protection, Inc., PO Box 18300, Greensboro, NC 27419. There were no comments received in response to the notice of filing.

The initial petition requested that 40 CFR 180.449 be amended by establishing a tolerance for combined residues of the insecticide avermectin B_1 (a mixture of avermectins containing greater than or equal to 80% avermectin B_{1a} (5-*O*-demethyl avermectin A_1) and less than or equal to 20% avermectin B_{1b} (5-*O*-demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectin A_1)) and its delta-8,9-isomer, in or on grapes, raisins, and other grape-derived food items at 0.02 ppm and chili peppers at 0.01 ppm. The petition was subsequently revised to express the tolerance as simply peppers (combining the proposed chili peppers with the existing 0.01 ppm bell pepper tolerance) and raising the level to 0.02 ppm to harmonize the tolerance with international residue limits. In addition, the petition was also revised to express the proposed tolerance as simply grapes at 0.02 ppm since residue data showed that separate, higher tolerance levels were not needed for raisins and other grape-derived food items as expressed in the original petition.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

B. Conversion of Certain Tolerances from Time-limited to Permanent

In the **Federal Register** of July 29, 1999 (64 FR 41112) (FRL–6095–6), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a as amended by the FQPA (Public Law 104–170) announcing the filing of a pesticide petition (PP) by Novartis Crop Protection, Inc., PO Box 18300, Greensboro, NC 27419 to convert certain time limited tolerances due to expire September 1, 1999 to permanent tolerances and to add a new tolerance for a feed commodity. There were no comments received in response to the notice of filing.

The petition referenced pesticide petitions PP 8F3592, 7F3500, 4E4419 and 5F4508. It requested that 40 CFR 180.449 be amended by establishing permanent tolerances for combined residues of the insecticide avermectin B_1 (a mixture of avermectins containing greater than or equal to 80% avermectin B_{1a} (5-*O*-demethyl avermectin A_1) and less than or equal to 20% avermectin B_{1b} (5-*O*-demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectin A_1)) and its delta-8,9-isomer, in or on the agricultural commodities cattle, fat at 0.015 ppm; cattle, meat byproducts at 0.02 ppm; cattle, meat at 0.02 ppm; citrus, dried pulp at 0.10 ppm; citrus, oil at 0.10 ppm; citrus, whole fruit at 0.02 ppm; cotton seed at 0.005 ppm; cotton gin by-products at 0.15 ppm; hops, dried at 0.20 ppm; milk at 0.005 ppm; and potatoes at 0.005 ppm.

With the exception of cotton gin by-products, these tolerances were previously established as time-limited tolerances with an expiration date of September 1, 1999 (see **Federal Register** of March 24, 1997 (62 FR 13833) (FRL–5597–7) to allow for resolution of the following three issues:

1. The petitioner had to submit field residue trial data for cotton gin byproducts and the EPA had to reevaluate dietary risk with respect to secondary residues in meat and milk. These data were submitted; the review is discussed later in this rule. As a result of this review, the July 29, 1999 notice proposed the new tolerance for cotton gin byproducts at 0.15 ppm.

2. The EPA needed to fully review the Monte Carlo analysis for acute dietary risk submitted by the petitioner (especially the anticipated residues and percent of crop treated data used). This review was conducted as part of the tolerance assessment for grapes and peppers.

3. The EPA needed to fully review the indoor residential risk assessment submitted by the petitioner. This review was conducted as part of the tolerance assessment for grapes and peppers. Since all three issues have been satisfactorily addressed, the petitioner is seeking to make the tolerances permanent.

C. Clarification: Certain Feed Tolerances Previously Established

In the **Federal Register** of April 10, 1996 (61 FR 15900) (FRL–5361–9), EPA issued a final rule pursuant to section 409(e) of the FFDCA, 21 U.S.C. 348(b) announcing permanent tolerances under 40 CFR 186.300 for combined residues of the insecticide avermectin B_1 (a mixture of avermectins containing greater than or equal to 80% avermectin B_{1a} (5-*O*-demethyl avermectin A_1) and less than or equal to 20% avermectin B_{1b} (5-*O*-demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectin A_1)) and its delta-8,9-isomer, in or on the processed feed commodities apples, wet pomace at 0.10 ppm and almonds, hulls at 0.10 ppm. This regulation also established permanent tolerances under 40 CFR 180.449 on the raw agricultural commodities almonds at 0.005 ppm; apples at 0.020 ppm; and walnuts at 0.005 ppm.

Although that final rule listed tolerances for both raw agricultural commodities and feed commodities, the 1996 edition of 40 CFR parts 150–189 (revised as of July 1, 1998), and subsequent editions, listed only the tolerances for the raw agricultural commodities and did not list the feed commodities established by this regulation. With this current regulation the Agency is clarifying that tolerances have been legally in effect since April 10, 1996 for the processed feed commodities apples, wet pomace at 0.10 ppm and almonds, hulls at 0.10 ppm. Due to amendments to the FFDCA by the FQPA, all (i.e. raw, processed, and feed commodity) tolerances for avermectin B_1 and its delta-8,9-isomer are now listed in the same section of 40 CFR (180.449).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of avermectin B_1 and its delta-8,9-isomer and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for combined residues of the insecticide avermectin B_1 (a mixture of avermectins containing greater than or equal to 80% avermectin B_{1a} (5-*O*-demethyl avermectin A_1) and less than or equal to 20% avermectin B_{1b} (5-*O*-demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectin A_1)) and its delta-8,9-isomer on grapes at 0.02 ppm and peppers at 0.02 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by avermectin B_1 and its delta-8,9-isomer are discussed in this unit.

1. *Acute toxicity/skin sensitization.* The following summarizes the acute toxicity of technical grade avermectin B_1: the acute oral LD_{50} is 13.6 milligrams/kilogram (mg/kg) (toxicity category I); the acute dermal LD_{50} is 2,000 mg/kg (toxicity category III); acute inhalation requirements were waived; primary eye irritation results show the chemical to be very irritating exhibiting corneal opacity, conjunctivitis, and iritis (toxicity category II); primary skin irritation results show slight irritation (toxicity category III); dermal sensitization results are negative.

2. *Subchronic toxicity.* In a 14-Week Oral Toxicity Study in Rats, groups of 15 male and 15 female Charles River CD rats were gavaged with 0, 0.1, 0.2, or 0.4 mg/kg/day of C–076 (avermectin B_1). The rats had previously been exposed *in utero* to avermectin B_1 at doses of 0, 0.01, 0.2, or 0.4 mg/kg/day. No toxic signs or deaths were noted in any of the treatment groups. Body weight gain was increased in the rats dosed at 0.4 mg/kg/day. There were no treatment-related ophthalmologic changes, clinical pathology anomalies, gross or histopathologic lesions, or changes in organ weights. The No Observable Adverse Effect Level (NOAEL) is > 0.4 mg/kg/day, the highest dose tested.

An 18–Week Oral Toxicity Study in Dogs resulted in a NOAEL of 0.25 mg/kg/day with the Lowest Observed Adverse Effect Level (LOAEL) being 0.5 mg/kg/day based on body tremors, one death, liver pathology, and decreased body weight.

3. *Chronic toxicity/ongogenicity/carcinogenicity.* In a Combined Chronic Toxicity/Oncogenicity Study in Rats, the oncogenic potential was negative up to 2.0 mg/kg/day, the highest dose tested (HDT). The high dose was increased to 2.5 mg/kg/day between weeks 10 and 13. The high-dose is considered the Maximum Tolerated Dose (MTD). The systemic NOAEL is 1.5 mg/kg/day (mid-dose). The LOAEL is 2.0 mg/kg/day based on tremors in both sexes. A mid-dose female that had tremors was found to have received a dose of about 2.5 mg/kg/day (based on actual food consumption and body weight data). No pathological lesions could be found to explain the tremors.

In a Carcinogenicity Study in Mice, oncogenic potential was negative up to 8 mg/kg/day, the HDT. The high-dose (8 mg/kg/day) is considered the MTD. The systemic NOAEL is 4 mg/kg/day. The LOAEL is 8 mg/kg/day based on increased incidence of dermatitis in males, an increased incidence of extramedullary splenic hematopoiesis in males, increased mortality in males, and tremors and body weight decrease in females.

In a 53–Week Oral Toxicity Study in Dogs, the NOAEL is 0.25 mg/kg/day, and the LOAEL is 0.50 mg/kg/day based on a high incidence of mydriasis (dilatation of the pupil of the eye) in males and females.

4. *Developmental and reproductive toxicity.* In a Developmental Toxicity Study in Rats, groups of 25 female CRCD rats were mated, then dosed by gavage with technical MK-0936 (avermectin B_1) at 0 (vehicle control), 0.4, 0.8, or 1.6 mg/kg/day on gestation days 6 through 19. The lack of any maternal or developmental toxicity demonstrates that the doses selected for this study were too low to establish a LOAEL. The maternal and developmental NOAELs are > 1.6 mg/kg/day (the HDT).

In a Developmental Toxicity Study in Rabbits, the maternal NOAEL is 1.0 mg/kg/day, and the maternal LOAEL is 2.0 mg/kg/day based on decreased body weights, food consumption, and water consumption. The developmental NOAEL is 1.0 mg/kg/day, and the Developmental LOAEL is 2.0 mg/kg/day based on cleft palate, clubbed foot, and delayed ossification of sternebrae, metacarpals, and phalanges.

In a 2–generation Reproduction Study in Rats, the systemic and reproductive NOAELs are ≥ 0.40 mg/kg/day. The developmental NOAEL is 0.12 mg/kg/day, and the developmental LOAEL is 0.40 mg/kg/day based on decreased pup body weight and viability during lactation, and increased incidence of retinal rosettes in F2b weanlings.

In a Special Developmental Toxicity Study in CF-1 Mice, a genotypic susceptibility to cleft palate was seen following *in utero* exposure of avermectin B_1 delta 8-9 isomer (an isomeric photodegradation product found in plants). P-glycoproteins are large proteins (150–180 kDa) found in the cell membranes of animals ranging from sponges to humans. Groups of 12 P-glycoprotein molecules span the lipid bilayer to form pores that protect the cell by secreting toxic chemicals (such as the avermectins) at the expense of ATP.

The CF-1 mouse strain is unique in that it contains a spontaneous mutation in the P-glycoprotein gene resulting in heterogeneity in the expression of the protein, a component of the blood-brain and blood-placental barrier. Mice with a ± or -/- genotype have decreased expression of this protein. A decrease in expression of the P-glycoprotein in both the gastrointestinal tract and brain increased the sensitivity of CF-1 mice to avermectin toxicity by increasing its absorption. Because the protein is also a component of the placental-blood barrier, it was hypothesized that a deficiency of this protein in the placenta may increase the sensitivity of the fetus to the avermectins. In this exploratory developmental toxicity study, the role of fetal P-glycoprotein genotype in the development of cleft palate in CF-1 mice was investigated.

Heterozygous (±) male and female mice for P-glycoprotein expression were mated. The dams were dosed by gavage with 1.5 mg/kg/day of the test article on gestation days 6–15, inclusive. The pups had the typical 1:2:1 Mendelian expression of P-glycoprotein deficiency (+/+, ±, and -/-, respectively).

There was a clear correlation between fetal P-glycoprotein genotype and cleft palate incidence. Cleft palate was observed in 97% of fetuses with the -/- genotype, 41% of fetuses with the ± genotype, and none of the fetuses with the +/+ genotype. It was postulated that placental P-glycoprotein limited the potential of the test article to induce cleft palate in the fetuses, presumably by regulating the amount of test material allowed to cross the placental barrier into the developing fetus.

The literature contains no mention of P-glycoprotein deficiency in humans, and several scientists who are researching P-glycoprotein confirmed this. Since there is no known human correlate for P-glycoprotein deficiency, the CF-1 mouse should not be used for assessing the risk of human exposure to avermectins. Although several developmental toxicity studies were performed using CF-1 mice, they are inappropriate for regulatory purposes.

5. *Mutagenicity.* The available studies clearly indicate that avermectin B_1, delta-8,9-isomer (a plant metabolite), and the polar photolysis degradates are not mutagenic in microbial systems. While avermectin B_1 has the potential to damage DNA, the lack of an *in vitro* mutagenic or clastogenic effect correlates well with the lack of an oncogenic effect in rat or mouse long-term feeding studies and also with the absence of significant reproductive or developmental toxicity attributable to a mutagenic mode of action (i.e., decreased total implants or increased resorptions).

6. *Metabolism.* In a metabolism study in rats, two metabolites were identified, 2,4-OH-ME-B_{1a}, and 3″desmethyl avermectin B_{1a} (3″DM-B_{1a}). No bioaccumulation was seen in rat tissues.

7. *Neurotoxicity.* There are no neurotoxicity or developmental neurotoxicity studies of avermectin B_1. However, neurotoxicity was observed in other oral toxicity studies. A chronic study in dogs resulted in mydriasis at 0.50 mg/kg/day. A chronic/oncogenicity study in rats resulted in tremors in both sexes at the LOAEL of 2.0 mg/kg/day. A chronic/carcinogenicity study in mice resulted in tremors in females at the LOAEL of 8 mg/kg/day. In an 18–week study in dogs signs, seen at 0.50 mg/kg/day included mydriasis, whole body tremors, ataxia (lack of coordination), muscular tremors, and ptyalism (excessive flow of saliva). In a 10–day developmental toxicity study in CF-1 mice, hunched back and marked tremors were observed after 6–7 days dosing at 0.3 mg/kg/day in the diet. In a reproduction study in rats, spastic movements of the limbs and muscular tremors of the entire body were seen in lactating pups, but not in the dams, at 0.4 mg/kg/day. In a reproduction study in rats, whole body tremors, ataxia, ptyalism, and ocular and/or nasal discharges were seen in dams dosed at 2.0 mg/kg/day (no mention of neurotoxicity in the pups). In two developmental toxicity studies in CF-1 mice, death was preceded by tremors, then coma.

B. Toxicological Endpoints

1. *Acute toxicity.* An acute dietary Reference Dose (RfD) of 0.0025 mg/kg was based on data from a 1–year dog study. The NOAEL is 0.25 mg/kg/day, and the LOAEL is 0.50 mg/kg/day based on mydriasis which was observed after 1 week of dosing. An uncertainty factor of 100 was used to account for interspecies extrapolation (10x) and intraspecies variability (10x).

2. *Short- and intermediate-term toxicity.* Short- and intermediate-term dermal and inhalation NOAELs are derived by route-to-route extrapolation of the oral NOAEL of 0.25 mg/kg/day based on mydriasis after 1 week of dosing in a 1–year dog study. Dermal absorption is considered to be 1% based on a monkey study that found dermal absorption to be less than 1% (rounded up to 1% for analysis purposes). Oral and inhalation absorption are both assumed to be 100%.

3. *Chronic toxicity.* EPA has established the RfD for avermectin B_1 and its delta-8,9-isomer at 0.0012 mg/kg/day. This Reference Dose (RfD) is based on a 2–generation reproduction study in rats. The developmental NOAEL is 0.12 mg/kg/day, and the developmental LOAEL is 0.40 mg/kg/day based on decreased pup body weight and viability during lactation, and increased incidence of retinal rosettes in F2b weanlings. An uncertainty factor of 100 was used to account for interspecies extrapolation (10x) and intraspecies variability(10x).

The long-term dermal NOAEL is a route-to-route extrapolation of the oral NOAEL of 0.12 mg/kg/day based on decreased pup body weight and viability during lactation, and increased incidence of retinal rosettes in F2b weanlings in a 2–generation reproduction study in rats. Dermal absorption is considered to be 1% based on a monkey study that found dermal absorption to be less than 1% (rounded up to 1% for analysis purposes).

The long-term inhalation NOAEL is a route-to-route extrapolation from the oral NOAEL of 0.12 mg/kg/day based on decreased pup body weight and viability during lactation, and increased incidence of retinal rosettes in F2b weanlings in a 2–generation reproduction study in rats. Oral and inhalation absorption are both assumed to be 100%.

4. *Carcinogenicity.* The Agency has classified avermectin B_1 as a Cancer Group E chemical based on the absence of significant tumor increases in two adequate rodent carcinogenicity studies.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.449) for the combined residues of the insecticide avermectin B_1 (a mixture of avermectins containing greater than or equal to 80% avermectin B_{1a} (5-*O*-demethyl avermectin A_1) and less than or equal to 20% avermectin B_{1b} (5-*O*-demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectin A_1)) and its delta-8,9-isomer, in or on a variety of raw agricultural commodities. Permanent tolerances include almonds (0.005 ppm); almonds, hulls (0.10 ppm); apples (0.020 ppm); apples, wet pomace (0.10 ppm); celery

(0.05 ppm); cucurbits (0.005 ppm); head lettuce (0.05 ppm); pears (0.02 ppm) bell peppers (0.01 ppm) strawberry (0.02 ppm); fresh tomatoes (0.01 ppm); walnuts (0.005 ppm). The following time limited tolerances are due to expire September 1, 1999: cattle, fat (0.015 ppm); cattle, meat (0.02 ppm); cattle, meat by products (0.02 ppm); citrus, dried pulp (0.10 ppm); citrus, oil (0.10 ppm); citrus, whole fruit (0.02 ppm) cotton seed (0.005 ppm); dried hops (0.2 ppm); milk (0.005 ppm); potatoes (0.005 ppm). The following Section 18 time limited tolerances will expire January 31, 2,000: basil (0.05 ppm); celeriac (0.05 ppm) spinach (0.05 ppm). Finally, a section 18 time limited tolerance for avocado (0.02 ppm) will expire September 20, 2,000. All of these tolerances (i.e. both permanent and time-limited) were included in the dietary risk analysis. Risk assessments were conducted by EPA to assess dietary exposures from avermectin B_1 and its delta-8,9-isomer as follows:

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of crop treated (PCT) for assessing chronic dietary risk only if the Agency can make the following three findings: (1) That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; (2) that the exposure estimate does not underestimate exposure for any significant subpopulation group; and (3) if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent of crop treated as required by the section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used the following information to conduct a dietary exposure analysis. The maximum PCT is used for acute dietary exposure estimates and represents the highest levels to which an individual could be exposed. It is unlikely to underestimate an individual's acute dietary exposure. The weighted average percent crop treated is used for chronic dietary exposure and reasonably represents a person's dietary exposure over a lifetime. It is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, so that an individual is unlikely to be exposed to more than the average percent crop treated over a lifetime. For each crop in the dietary (food only) model the following percent crop treated values were used for the acute and chronic analyses (respectively): almond 100%, 100%; apple 6.1%, 1.9%; avocado 100%, 100%; basil 100%, 100%; cantaloupe 5%, 1.3%; celeriac 100%, 100%; celery 60%, 49%; citrus, other 43%, 32%; cotton 4.8%, 3.2%; cucumber 100%, 31%; grapefruit, juice and peel 60.9%, 46%; grapefruit, peeled fruit 43%, 46%; grape 14%, 14%; hops 100%, 84%; lemon, juice and peel 34.4%, 17%; lemon, peeled fruit 43%, 17%, head lettuce 28%, 22%; lime, juice and peel 63.2%, 32%; lime, peeled fruit 43%, 32%; melons 5%, 1.3%; orange, juice and peel 36.3%, 28%; orange, peeled fruit 43%, 28%; pear 75%, 56%; peppers 15%, 6.3%; potato 5%, 0.3%; spinach 18%, 8.9%; squash 100%, 31%; strawberry 47%, 42%; tangelo 43%, 57%; tangerine, juice 74.3%, 53%; tangerine, fresh 43%, 53%; tomato 8%, 3.7%; walnut 100%, 100%; watermelon 5%, 1.3%. For fresh, peeled citrus a weighted average (43%) was calculated pooling all types of citrus; this value was used in the analysis of chronic dietary exposure from citrus.

The Agency believes that the three conditions, discussed in section 408 (b)(2)(F) in this unit concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. With respect to condition 1, EPA finds that the PCT information is reliable and has a valid basis. The Agency has utilized statistical data from a number of public and proprietary sources including USDA/National Agricultural Statistics Service, Doane, Maritz, Kline, and National Center for Food and Agricultural Policy. However, since the risk assessment includes forecast estimates of usage of avermectin B_1 on the new crops being added, the petitioner must seek permission from the Agency to expand usage beyond these estimates (specifically, 14% crop treated for grapes, 15% crop treated for peppers). Before the petitioner can increase production of product for treatment of greater than 115,500 acres for grapes (14% of 825,000 total U.S. acres grown) or 17,850 acres for peppers (15% of 119,000 total U.S. acres grown), permission from the Agency must be obtained. With respect to conditions 2 and 3, the regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the consumption of food bearing avermectin B_1 and its delta-8,9-isomer in a particular area.

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. The registrant has submitted an acute dietary exposure assessment using probabilistic "Monte Carlo" modeling incorporating anticipated residue and percent of crop treated refinements to calculate the Anticipated Residue Contribution (ARC). EPA has examined the assumptions made in conducting the analysis for the following crops: celery, strawberry, citrus, tomato, and pear, apple, grape, and pepper. EPA found the analysis adequate with the exception of the acute RfD; the analysis was not conducted with the current acute population adjusted dose (PAD) of 0.00025 mg/kg/day. Residue Data Files (RDF) and percent crop treated were used on all but a few low consumption food items. Reduction factors for fractionation and processing were utilized for citrus and pome fruit. Monitoring data were not used for mixed/blended commodities.

EPA was able to further refine the acute dietary estimate from food by using updated PCT data, resetting the processing factor for dried potatoes to 1 which reflects the non-concentration of avermectin B_1 in potato processed commodities, correcting the residue files above to use one half the level of detection or one half the level of quantification, where appropriate, and using the average field trial residue level and previously established processing factors for blended commodities. In addition, the analysis included residues in pear juice for which no data has been previously required. Since all other juices show reductions in avermectin B_1 residues from the raw agricultural commodity, EPA will use the reduction factor for apples in the analysis. Some of the resulting high-end exposure estimates are listed below.

The resulting calculations are presented below as a percent of the acute population adjusted dose (%PAD). The PAD is the reference dose (acute or chronic) adjusted for (divided by) the FQPA safety factor. EPA is generally concerned with acute exposures that exceed 100% of the acute RfD/PAD. The risk estimate should be viewed as highly refined. Additional refinement of the almond, basil, cotton seed, hops and walnut residue estimates using RDF's and PCT would be unlikely to reduce risk estimates significantly. In making a safety determination for this tolerance, EPA is taking into account this refined acute exposure assessment.

TABLE 1.— ACUTE DIETARY (FOOD ONLY) RISK FOR SELECTED POPULATION GROUPS

Subgroup	ARC (mg/kg)	PAD (%)
U.S. Population	0.000088	4
All infants (< 1 yr.)	0.000111	44
Nursing infants (< 1 yr.)	0.000112	45
Non-nursing infants (< 1 yr.)	0.000117	47
Children (1–6 yrs.)	0.000176	70
Children (7–12 yrs.)	0.000085	34
Females (13+ yrs. pregnant, non-nursing)	0.000054	22
Females (13+ yrs. nursing)	0.000093	37
Females (13–19 yrs. non-pregnant, non-nursing)	0.000061	24
Females (13–50 yrs.)	0.000070	28
Males (13–19 yrs.)	0.000051	2

ii. *Chronic exposure and risk.* In conducting this chronic dietary (food only) risk assessment, EPA used anticipated residues and percent crop-treated data for many crops. This chronic dietary (food only) exposure should be viewed as a highly refined risk estimate; further refinement using additional percent crop-treated values would not result in a significantly lower dietary exposure estimate. Thus, in making a safety determination for this tolerance, EPA is taking into account this refined chronic exposure assessment. EPA is generally concerned with exposures that exceed 100% of the chronic RfD/PAD. The existing avermectin B_1 tolerances result in an ARC that is equivalent to the following percentages of the RfD or PAD depending on the subpopulation:

TABLE 2.—CHRONIC DIETARY (FOOD ONLY) RISK FOR SELECTED POPULATION GROUPS

Subgroup	ARCFOOD (mg/kg)	PAD (%)
U.S. Population	0.000008	< 1
U.S. Population - autumn season	0.000008	7
Northeast region	0.000008	7
Western region	0.000009	7
Pacific region	0.000009	7
Non-hispanic other	0.000008	7
All infants (< 1 yr.)	0.000016	14
Nursing infants (< 1 yr.)	0.000009	7
Non-nursing infants (< 1 yr.)	0.000020	17
Children (1-6 yrs.)	0.000016	13
Children (7–12 yrs.)	0.000010	8
Females (13+ yrs. nursing	0.000008	6
Males (20+ years)	0.000007	<1

The subgroups listed above are: (1) the U.S. population (48 states); (2) those for infants, children, females 13+, nursing; (3) the other subgroups for which the percentage of the RfD/PAD occupied is greater than that occupied by the subgroup U.S. population; and (4) other subgroups of regulatory interest.

2. *From drinking water.* Avermectin B_1 is moderately persistent and non-mobile. It is not expected to reach surface or ground water in significant quantities. It is stable to hydrolysis at pH 5, 7, and 9. It is also moderately persistent in aerobic soil (topsoil) with half-lives of 37–131 days. The major pathways of avermectin B_1 dissipation are binding to soil and sediment, degradation in aerobic soil, and photolysis in water. In shallow, well-mixed surface water with no suspended sediments, avermectin B_1 degraded rapidly with a photodegradation half-life of 3 days. However, in most surface waters, suspended sediments and lack of mixing would decrease the rate of photodegradation significantly. In water, avermectin B_1 residues would be tightly bound to sediment, reducing aqueous concentrations. There are no Maximum Contaminant Levels (MCL) or Health Advisories (HA) established for avermectin B_1 residues in drinking water.

To calculate exposure and risk from avermectin B_1 in drinking water, the EPA analysis first used screening models to calculate Estimated Environmental Concentrations (EECs) for groundwater (screening concentration in ground water (SCI-GROW2)) and surface water (generic expected environmental concentration (GENEEC)). A refined model (Pesticide Root Zone Model-EXAMS (PRZM-EXAMS)) was then run on surface water (refined models do not exist for ground water but given the screening results it is unlikely that the EECs for ground water would change significantly). The resulting EECs were then compared to the Drinking Water Level of Concern (DWLOC) for various population groups to determine acute and chronic risk.

The screening model SCI-GROW2 was used to calculate EECs for avermectin B_1 in ground water from use in grapes, peppers, and strawberries. Strawberries were analyzed since they represent the highest avermectin B_1 use rate for any crop. These EECs were 0.0015, 0.0015, and .002 µg/L for grapes, peppers, and strawberries, respectively.

PRZM-EXAMS was used to perform a refined assessment of EECs for avermectin B_1 in surface drinking water. Use sites modeled were grapes grown with grassed middles in New York and strawberries grown on black plastic mulch in Florida. Peppers were not modeled because the application rate is lower than that for strawberries. Crop specific consecutive PRZM-EXAMS simulations were conducted to evaluate the cumulative probability distribution for peak, 4–day, 21–day, 60–day, and 90–day EECs. PRZM-EXAMS EECs for avermectin B_1 were 0.18 and 0.88 µg/L for peak values and 0.16 and 0.57 µg/L for 90–day for grape and strawberries, respectively.

EPA decided to rely on the strawberry model to assess aggregate risk since strawberries were considered a higher exposure scenario (four applications per season allowed for strawberries vs. three applications for peppers or two applications for grapes). However, EPA noted that the certainty of the concentrations estimated for strawberries is low, due to uncertainty on the amount of runoff from plant beds covered in plastic mulch and uncertainty on the amount of degradation of avermectin B_1 on black plastic compared to soil. In order to refine the model in the future, the Agency will require the registrant, as a condition of product registration, to conduct additional tests on the effects of plastic mulch on surface water pesticide concentrations.

A Drinking Water Level of Comparison (DWLOC) is a theoretical upper limit of a pesticide's concentration in drinking water in light of total aggregate exposure to that pesticide in food and through residential uses. A DWLOC will vary depending on the toxic endpoint, consumption, and body weight. Different populations will have different DWLOCs. EPA uses DWLOCs internally in the risk assessment process as a surrogate measure of potential exposure associated with pesticide exposure through drinking water. In the absence of monitoring data for pesticides, the DWLOC is used as a point of comparison against conservative model estimates of potential pesticide concentration in water. DWLOC values are not regulatory standards for drinking water.

Acute and chronic exposure and risk. No monitoring data of ground water and surface water are available for avermectin B_1. The SCI-GROW2 modeling data for the grape and chili pepper uses resulted in maximum concentrations in ground water of 0.0015 µg/L for both acute and chronic exposure. Refinements using PRZM–EXAMS indicate a peak EEC in surface water at 0.88 µg/L and a 90–day EEC at 0.57 µg/L. The modeling data were compared to the results of the following equations used to calculate acute and chronic DWLOC for avermectin B_1 in ground and surface water. Additionally, as a result of the retention of the FQPA Safety Factor, EPA considered the PAD for females 13+, infants, and children to be 0.00025 and 0.00012 mg/kg/day for acute and chronic exposure, respectively. For all other populations (e.g. U.S. population, Hispanics, adult males), exposures will be compared to the acute and chronic PADs, 0.0025 and 0.0012 mg/kg/day, respectively.

DWLOC's are calculated as follows: Acute = (acuteRfD/10) - (acute food (mg/kg/day)) × (bodyweight) / consumption (L) × 10^{-3} mg/µg. Chronic = (RfD/10) - (chronic food (mg/kg/day)) × (bodyweight)/consumption (L) × 10^{-3} mg/µg. The 2 liters (L) of drinking water consumed/day by adults and the 1 L per day consumed by children are default assumptions used by the EPA. The Agency's default body weights for the U.S. population and males is 70 kg and for females, 60 kg. EPA's default body weight for children is 10 kg. There are no chronic residential exposures to avermectin B_1.

The results indicate that the exposure to avermectin B_1 in drinking water derived from ground water using SCI-GROW modeling data are below the calculated DWLOC for all population subgroups of concern from use of avermectin B_1 in grapes, peppers and strawberries. Exposure to avermectin B_1 in drinking water derived from surface water using the refined estimates from PRZM-EXAMS and using the results for the crop with the highest use rate (strawberries) the modeled exposure data are below the calculated DWLOC for all population subgroups of concern except for the acute exposure for children 1–6 yrs where the modeled exposure concentration slightly exceeds the DWLOC (0.88 vs. 0.74 µg/L).

Despite this slight exceedance, EPA believes that acute exposure to avermectin from drinking water will not pose an unacceptable risk to human health. Neither surface nor ground water models used by EPA were designed specifically for estimating concentrations in drinking water. There are significant uncertainties in both the toxicology used to derive the DWLOC and the exposure estimate from the PRZM–EXAMS model. EPA has compensated for these uncertainties by using reasonable high-end assumptions. Given this approach, the Agency does not attach great significance to such a small difference. However, EPA may do additional analyses and, as a condition of product registration, the Agency will require the registrant to submit (1) data on the effects of plastic mulch on surface water pesticide concentrations and (2) data characterizing the effectiveness of various types of drinking water treatment on removing avermectin. These data are expected to confirm that the actual concentration of avermectin in drinking water is less than the level of concern for all sub-populations.

3. *From non-dietary exposure.* Avermectin B_1 and its delta-8,9-isomer is currently registered for use on the following residential non-food sites: residential lawns for fire ant control, and residential indoor crack & crevice for cockroaches. Registered residential uses may result in short-term to intermediate exposures. However, based on current use patterns, chronic exposure (6 or more months of continuous exposure) to avermectin B_1 is not expected.

i. *Short and intermediate exposure and risk--residential lawn applications.* For exposure of residential applicators, three scenarios used were: (a) granular bait dispersed by hand, (b) belly grinder-granular open pour-mixer/loader/applicator (MLAP) and (c) push type granular MLAP. Short- and Intermediate-term total MOEs (dermal + inhalation) are greater than 1,000 and therefore do not exceed EPA's level of concern.

For postapplication exposure from treated lawns, EPA default assumptions such as dermal transfer coefficient (Tc), exposure time (ET), hand surface area (SA), ingestion frequency (FQ), residue dissipation, and ingestion rates were used. These defaults were used to estimate postapplication exposure to children and adults from treated lawns. The application rate (AR) used for this assessment is based on the label for Affirm Fire Ant Insecticide (0.011% avermectin B_1). The label recommends a broadcast application rate on lawns of 1 lb of product/acre (1.1E–4 lb ai/acre). This is maximum rate for all registered lawn uses. A margin of exposure (MOE) of 1,000 or greater is required for the most sensitive subgroups. All lawn postapplication MOEs exceeded this value and are therefore not of concern. The dermal short- and intermediate-term MOEs for adults and children are 83,000 and 86,000, respectively. The oral hand-to-mouth short- and intermediate-term MOEs for children are 14,000 and 6,500, respectively. The oral incidental ingestion short- and intermediate-term MOEs for children are 610,000 and 290,000, respectively.

ii. *Short and intermediate exposure and risk--residential indoor crack and crevice uses.* For residential applicators, exposure and risk estimates for homeowners applying crack and crevice baits were estimated using the EPA DRAFT Standard Operating Procedure (SOP) for Residential Exposure Assessments (12/18/97).

The amount of active ingredient (ai) handled was based on the assumption that one 30 gram package of Whitmire Avert Prescription Bait Prescription Treatment 310 (0.05% ai) would be applied in a day. The unit exposure from the EPA default wettable powder, open mixing and loading scenarios was used as a surrogate for estimating dermal and inhalation exposure to residential applicators. The short- and intermediate-term MOEs for dermal and inhalation exposure are each 12 million, which does not exceed EPA's level of concern.

For estimating postapplication exposure and risk from indoor treatment, two postapplication exposure studies were conducted with crack and crevice products containing avermectin B_1: (1) Evaluation of Avert Prescription Treatment 310 Residual Study in Air, Food and on Surfaces, dated November 8, 1990 and (2) Evaluation of Indoor Exposure to a Crack and Crevice Application of Whitmire Avert Crack and Crevice Prescription Treatment 310 and Prescription TC 93A Bait, dated October 27, 1995. The 1990 study reported measured avermectin B_1 concentrations in wipe and air samples up to 7 days following the application. The 1995 study reported non-detect values for all air and surface residue (cotton cloth dosimeters) samples taken.

The EPA noted that neither study met 100% of the Pesticide Assessment Guideline criteria. Among other shortcomings, the 1990 study did not report the amount of avermectin B_1 applied. However, subsequent documentation provided by the study director stated that the application rate in the 1990 study was at least three times greater than the normal label rate.

To be conservative, EPA decided that the values from the 1990 study would be used for this risk assessment. EPA default assumptions for dermal Tc, ET, SA, FQ, inhalation rates, and ingestion rates were used. These defaults were used to estimate children's postapplication exposure to the product Avert Prescription Treatment 310 (dry flowable cockroach bait). According to Table A–1 of the SOP's for Residential Exposure Assessments, the method used for estimating children's postapplication exposure is believed to produce a central to high-end estimate of exposure.

Based on the information available on the study, the air and surface residue values taken from the 1990 study were divided by a factor of 3 to account for the exaggerated application rate used in the study. The avermectin B_1 residue value reported for horizontal residues immediately after the application (4.2E–07 mg/cm^2) was divided by a factor of 3 (1.4E–6 mg/cm 2) and then used to estimate children's dermal and hand-to-mouth exposure. A linear regression analysis was performed on the reported air concentrations at 0 (immediately after), 1, 3 and 7 days after the application to determine the average concentration for the first 21 hours following the application. The analysis indicated an average concentration of avermectin B_1 at 6.4E–04 mg/m^3 (4% dissipation, adjusted R2 = 0.986 for log-transformed data). This value was divided by a factor of 3 (2.1E–4 mg/m^3) and then used to estimate children's inhalation exposure.

The Short- and intermediate-term dermal MOE for children's postapplication dermal is 78,000. The short- and intermediate-term oral MOE for children's postapplication oral hand-to-mouth is 12,000. The short- and intermediate-term inhalation MOE for children's postapplication inhalation is 2,400.

The risk from children's post application exposure to crack and crevice products containing avermectin B_1 does not exceed EPA's level of concern. Avert Prescription Treatment 310 is a dust formulation that is intended for the application to crack and crevices only. Other formulations for similar crack and crevice products (i.e., gels, granulars, pressurized liquids, etc.) will have less migration from the treated area and are expected to result in lower risk from dermal, oral, and inhalation postapplication exposure.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether avermectin B_1 and its delta-8,9-isomer has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, avermectin B_1 and its delta-8,9-isomer does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that avermectin B_1 and its delta-8,9-isomer has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population including Infants and Children

In examining aggregate exposures, FQPA directs EPA to consider available information concerning exposures from the residue in food and all other non-occupational exposures. The primary non-food sources of exposure the Agency looks at include drinking water (whether from ground or surface water), and exposure through pesticide use in gardens, lawns or buildings (residential and other indoor and/or outdoor uses). In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children.

1. *Acute risk.* Acute aggregate exposure takes into account acute dietary food and water exposure. The registrant submitted an acute dietary exposure analysis using probabilistic "Monte Carlo" modeling. EPA has examined the assumptions made in conducting the analysis and has recalculated the assessment using the submitted acute file, the correct acute RfD, updated PCT data, correcting the residue files above to use one half the Level of Detection (LOD) or one half the Level of Quantitation (LOQ) where appropriate, and using the average field trial residue level and previously established processing factors for blended commodities. In addition, EPA's analysis included residues in pear juice for which no data has been previously required. Since all other juices show reductions in avermectin B_1 residues from the raw agricultural commodity, EPA used the reduction factor for apples in the analysis. The dietary (food only) acute %PAD range from 45% for nursing infants < 1 year old to 70% for children 1–6 yrs. This risk estimate should be viewed as highly refined since it used anticipated residue values and percent crop-treated data in conjunction with Monte Carlo analysis. The acute dietary exposure does not exceed EPA's level of concern.

Avermectin B_1 is a moderately persistent but non-mobile compound in soil and water environments. The SCI-GROW modeling data for avermectin B_1 for drinking water derived from ground water sources resulting from use on grapes and peppers indicate levels less than OPP's DWLOC for acute exposure. Using the refined PRZM-EXAMS modeling data for drinking water derived from surface water sources resulting from use on strawberries (the crop with the maximum use rate) also indicates levels less than OPP's DWLOC for acute exposure in all populations with the exception of children 1–6 years old where the peak EEC of 0.88 µg/L slightly exceed this subgroup's acute DWLOC (0.74 µg/L).

Despite this slight exceedance, EPA believes that acute exposure to avermectin from drinking water will not pose an unacceptable risk to human health. Neither surface nor ground water models used by EPA were designed specifically for estimating concentrations in drinking water. There are significant uncertainties in both the toxicology used to derive the DWLOC and the exposure estimate from the PRZM-EXAMS model. EPA has compensated for these uncertainties by using reasonable high-end assumptions. Given this approach, the Agency does not attach great significance to such a small difference. However, EPA may do additional analyses and, as a condition of product registration, the Agency will require the registrant to submit (1) data

on the effects of plastic mulch on surface water pesticide concentrations and (2) data characterizing the effectiveness of various types of drinking water treatment on removing avermectin. These data are expected to confirm that the actual concentration of avermectin in drinking water is less than the level of concern for all subpopulations.

2. *Chronic risk.* Chronic aggregate exposure takes into account chronic exposure via food, water, and residential uses. Since there is no chronic residential exposure to avermectin B_1 only food and water contributed to chronic risk.

Using the exposure assumptions described in this notice, EPA has concluded that aggregate exposure to avermectin B_1 and its delta-8,9-isomer from food will utilize < 1% of the PAD for the U.S. population and will utilize from 6% to 17% of the PAD for infants and children (depending on specific subgroup). The major identifiable subgroup with the highest aggregate exposure is non-nursing infants with 17% of the chronic PAD. EPA generally has no concern for exposures below 100% of the RfD/PAD because the RfD/PAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

Avermectin B_1 is a moderately persistent, but non-mobile compound in soil and water environments. The modeling data for avermectin B_1 indicate chronic water residue levels less than OPP's DWLOC's. EPA does not expect aggregate chronic exposure to avermectin B_1 will pose an unacceptable risk to human health.

3. *Short- and intermediate-term risk.* Short-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus short-term residential uses which include dermal, inhalation, and oral exposures. For children's post-application exposure from crack and crevice uses, the worst case exposure scenario, risks do not exceed EPA's level of concern. The residential uses that were aggregated with chronic dietary food and water are from lawn and crack and crevice uses and include: (1) Adult dermal exposure from the highest adult residential applicator scenario (3.4E–7 mg/kg/day from belly grinder granular open pour) and crack and crevice applicator scenario (2.1E–8 mg/kg/day) with exposure from post-application activities (3.0E–6 mg/kg/day), and inhalation from turf and crack and crevice (3.9E–7 mg/kg/day). (2) Children's oral exposure from turf and crack and crevice hand-to-mouth, with turf incidental ingestion (3.8E–5 mg/kg/day), dermal exposure from turf and crack and crevice (6.1E–6 mg/kg/day), and inhalation exposure from crack and crevice (1.1E–4 mg/kg/day).

Using the exposures above, EPA calculated the short-term DWLOCs. The DWLOC of 8.2 µg/L for the U.S. population is greater than the water EEC's. The DWLOC for infants/children (0.77 µg/L) is greater than the PRZM-EXAMS chronic value of 0.57 µg/L. EPA does not expect aggregate short-term exposure to avermectin B_1 will pose an unacceptable risk to human health.

The worst case intermediate-term exposures to avermectin B_1 for adults are the same as those described above for short-term exposures. Using the exposures above, EPA calculated the adult intermediate-term DWLOC of 8.2 µg/L, which is greater than the water EEC's. EPA does not expect aggregate intermediate-term exposure to avermectin B_1 will pose an unacceptable risk to adult human health.

The worst case intermediate-term exposures to avermectin B_1 for infants and children are the same as those described above. Since the short- and intermediate-term NOAELs are the same, the DWLOC is also equal to the 0.77 µg/L short-term value. Again, given the 0.57 µg/L PRZM-EXAMS value, EPA is not concerned with the residues in drinking water. EPA does not expect aggregate intermediate-term exposure to avermectin B_1 will pose an unacceptable risk to human health.

4. *Aggregate cancer risk for U.S. population.* EPA classified avermectin B_1 as a Cancer Group E chemical based on the absence of significant tumor increases in two adequate rodent carcinogenicity studies.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, infants, or children from aggregate exposure to avermectin B_1 and its delta-8,9-isomer residues.

E. Determination of Safety for Infants and Children

1. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of avermectin B_1 and its delta-8,9-isomer, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and postnatal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

2. *Developmental toxicity studies.* Studies are discussed in Unit III.A.4 of this preamble.

3. *Reproductive toxicity study.* Studies are discussed in Unit III.A.4 of this preamble.

4. *Pre- and postnatal sensitivity.* There was evidence of increased susceptibility to the offspring following pre- and postnatal exposure to avermectin B_1 in the 2–generation reproduction study in rats.

5. *Conclusion.* There is a complete toxicity database for avermectin B_1 and its delta-8,9-isomer and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures. The Agency is retaining the 10–fold safety factor for increased susceptibility of infants and children for this pesticide and is applying it to females 13+, infants, and children population subgroups for acute, chronic, and residential exposure.

The 10x Safety Factor is being retained because:

(1) There was evidence of increased susceptibility to the offspring following pre- and postnatal exposure to avermectin B_1 in the two-generation reproduction study in rats.

(2) There is evidence of neurotoxicity manifested as clinical signs of neurotoxicity in mice, rats, and dogs in developmental, reproduction, chronic and/or carcinogenicity studies in mice, rats and/or dogs.

(3) There is concern for Structure Activity Relationship: ivermectin induced cleft palate in fetal rats, and cleft palate and clubbed forefoot in fetal rabbits.

(4) EPA determined that a developmental neurotoxicity study in rats is required for avermectin B_1. This study could provide additional information on potential increased susceptibility, effects on the development of the fetal nervous system, as well as the functional development of the young.

(5) There is concern for post-application exposure to infants and children in treated areas, including incidental hand-to-mouth ingestion of the pesticide.

IV. Other Considerations

A. Metabolism In Plants and Animals

Plant metabolism data have been previously submitted on cotton seed, citrus, and celery. In addition, a report titled "Comparative Degradation of Avermectin B_{1a} in Cotton Leaf, Citrus Fruit, Celery, and *In Vitro*" was submitted. The proposed use in this petition on grapes and chili peppers specifies multiple applications up to a maximum application rate on grapes of 32 fl oz/A/season (0.038 lb ai/A/season) and on peppers of 48 oz/A/season (0.057 lb ai/A/season). Previously, the metabolism components have been examined from radio-labeled avermectin B_1 on celery (10 applications at 7 day intervals for a total equivalent of 1.0 lb ai/A/season), radio-labeled avermectin B_1 on cotton (3 applications at 50 to 89 day intervals for a total equivalent of 0.60 lb/A/season), and exaggerated application rates to citrus (30X, 2.25 lb ai/A). The available metabolism data on cotton, celery, and citrus represent a wide enough range of crop matrices, growth modes, and use rates. It is unlikely that application of avermectin B_1 to grapes and chili peppers will result in new degradation compounds that have not previously been produced and subjected to toxicity testing. EPA concludes that the metabolism data are sufficient (a) to support the proposed use on grapes and chili peppers and (b) to support the recommended tolerance on cotton gin byproducts. The residues of concern in/on grapes, chili pepper, and cotton gin byproduct commodities are the parent compound (avermectin B_{1a} and B_{1b}) and its delta-8,9-isomer.

Since there are no grape or chili pepper animal feed items of regulatory concern, a discussion of animal metabolism is not germane to petition PP 7F4844.

Animal metabolism data were not submitted in conjunction with cotton petition (PP 7F3500). However, the metabolism of avermectin in goat and rat has been reviewed. From these studies, it was determined that the residues of concern in ruminants are avermectin B_{1a} and B_{1b} and their delta-8,9-isomers. This conclusion was based upon a feeding level of 1.0 mg/goat/day of ^{3}H-avermectin. An additional metabolite (24-hydroxymethyl avermectin B_{1a}) was identified and is potentially of toxicological significance, but was not included in the tolerance expression because of its presence at low levels. However, EPA notes that if the livestock dietary burden is increased and the tolerances for residues in meat and milk need to be raised, then the 24-hydroxymethyl metabolite may need to be included in the tolerance expression and appropriate enforcement methods would need to be developed. Furthermore, an additional animal metabolism study using ^{14}C-avermectin would be needed if the expected ruminant dietary burden exceeded the dose level in the previously submitted goat metabolism study. EPA concludes the available ruminant metabolism study is adequate to support the proposed tolerances for avermectin on cotton gin byproducts.

Cotton gin byproducts are not a poultry feed item. Therefore a discussion of metabolism and secondary residues in poultry commodities is not pertinent to petition PP 7F3500.

B. Analytical Enforcement Methodology

The registrant has used the analytical procedure designated Method 91–1 for data gathering purposes in these grape and chili pepper field trials for avermectin B_1 and its delta-8,9-isomer. Acceptable independent method validations (ILV) were submitted for both commodities. The samples are extracted with acetonitrile/water/hexane, cleaned up with an aminopropyl column, and derivatized with trifluoroacetic anhydride. Quantitation of the residues of interest is accomplished by high performance liquid chromatography (HPLC) with fluorescence detector. The LOQ varies from .001 ppm for grapes to .004 ppm for chili peppers. Method 91–1 is adequate for data collection purposes. Method 91–1 is somewhat similar to the registrant's method for hops, Method M–036.2, which has been submitted for inclusion in FDA's PAM II. Since they are similar, Method M–036.2 is adequate for tolerance enforcement.

Residues of avermectin B_1 and 8,9-Z avermectin B_1 in cotton gin byproducts were determined using a modification of Method M–078. Samples are extracted with a methanol-water mixture. The avermectins are partitioned into hexane and the hexane extract is purified/concentrated on an NH2 SPE column. The purified extract is derivatized with trifluoroacetic anhydride. The derivatized avermectins are analyzed by reversed phase HPLC with fluorescence detection. The avermectin B_{1a} standard is used to calculate the concentration of avermectin B_{1a} + 8,9-Z avermectin B_{1a} and avermectin B_{1b} + 8,9-Z avermectin B_{1b} in/on the sample. The modifications made to Method M–078 included using a higher HPLC flow rate, preparing the standard solutions at different concentrations, centrifuging the samples with emulsions after shaking, and using equipment, apparatus, and chemical manufacturers which were different from those specified in the method. The limit of detection (LOD) is 0.001 ppm; the LOQ is 0.002 ppm. The method was validated by fortifying control gin trash samples and analyzing them concurrently with the treated and control samples. Method M–078 is very similar to the registrant's method for hops, Method M–036.2, which has been submitted for inclusion in FDA's PAM II. Since they are very similar and method recovery is good, Method M–078 is adequate for enforcement purposes.

Merck Method 32A is available for enforcing avermectin tolerances in bovine tissues and milk. This method has been published in PAM II (Method II).

Avermectin B_1 is not recovered using FDA multi-residue protocol A described in PAM I.

C. Magnitude of Residues

The residue field trial data on grapes submitted with this petition are adequate to support the proposed use. The highest residue found on grapes at the 28–day pre-harvest interval (PHI) was 6.7 ppb (0.007 ppm). This supports the tolerance of 0.02 ppm proposed by the registrant.

The residue field trial data on chili peppers submitted with this petition are adequate to support the proposed use. The highest residue found on chili peppers at the 7– day PHI was < 5 parts per billion (ppb) (< 0.005 ppm). This supports the tolerance of 0.01 ppm on peppers proposed by the registrant. However, the originally submitted Section F lists chili peppers not peppers. In order to harmonize with international residue limits discussed below, the Section F was revised to express the tolerance as 0.02 ppm on peppers.

The grape processing study and existing storage stability database are adequate to support the proposed tolerance on juice. The highest residues found on commodities of regulatory concern were < 2 ppb (< 0.002 ppm) in juice. This supports the requested tolerance of 0.02 ppm on grape juice. However, since the processing study shows that avermectin B_1 does not concentrate in juice, a tolerance on grape juice is not required.

Starting with raw grapes bearing residues of 10 ppb, the highest avermectin B_1 residues found on raisins were 10.2 ppb (0.01 ppm). The results of the raisin storage stability study indicate that the residues in raisins could have been as high as 20 ppb (2x concentration factor, based on < 50% recoveries). Using this concentration factor and the highest grape field trial value of 0.007 ppm, residues in raisins would be 0.014 ppm versus the grape tolerance of 0.02 ppm. Therefore, even taking into account the poor recoveries from the raisin storage stability study, a tolerance for raisins is not necessary. Since tolerances are not needed for processed grape food items, the Section F was revised to express the tolerance as grapes.

There are no chili pepper processed food items; therefore a discussion of processed food items is not germane to this action.

Since there are no grape or pepper animal feed items of regulatory interest, secondary avermectin B_1 residues in meat, milk, poultry, and eggs will not be increased by the proposed tolerances for these crops.

To support the tolerance on cotton gin byproducts, the petitioner has submitted the results of eight field trials on cotton using the maximum labeled rate. The existing storage stability database is adequate to support the cotton gin byproduct analyses. The highest residue level obtained was 0.101 ppm. The PHI was slightly longer than that specified on the label, however. The label specifies a PHI of 20 days; the PHI used in the field trails was 25 days. EPA has concluded that the data support the establishment of a tolerance of 0.15 ppm for the residues of avermectin in/on cotton gin byproducts.

Since cotton gin byproducts are a feed item for some livestock an analysis was performed to calculate the dietary burden in these animals. Cotton gin byproducts are not a feed item for poultry or swine; these commodities were not included in the analysis. Cotton gin byproducts can comprise up to 20% of the diets of both beef and dairy cattle. The following animal feed items are associated with commodities with avermectin registrations: almond hulls, wet apple pomace, dried citrus pulp, cotton seed, potato culls, and potato waste. Of these commodities, cotton seed meal is the only highly nutritive one. The others mainly provide fiber to the diet. Cotton seed meal will be distributed to all parts of the country, but the others will not. Therefore, it is reasonable to construct a dietary burden with cotton seed meal and only one of the other "esoteric" feed items. Wet apple pomace would contribute the highest residues to the diet, therefore a dietary burden was constructed using cotton seed meal and apple pomace. The feeding study was done at 3 different feeding levels: 0.010 ppm, 0.030 ppm, and 0.10 ppm. The dietary burden constructed with cotton seed and apple pomace is essentially the same as the highest feeding level: 0.10 ppm. The established tolerances are adequate to cover this dietary burden. As the tolerances will not change, it is not necessary to perform a dietary exposure analysis. EPA concludes that residues present in animal commodities will not increase over current levels. Therefore, it is not necessary to increase the established tolerances for animal commodities. Furthermore, the establishment of a tolerance for cotton gin byproducts does not affect risk to human health as animal commodity tolerances will not be affected by the establishment of this tolerance.

D. International Residue Limits

There are no Codex, Canadian, or Mexican Maximum Residue Limits (MRL) for avermectin B_1 on grapes, grape processed commodities. Therefore, international harmonization is not an issue for the action on grapes.

There are no Canadian or Mexican MRLs for avermectin B_1 on peppers. There is a Codex MRL for avermectin B_{1a}, B_{1b}, (*Z*)-8,9-avermectin B_{1a}, and (*Z*)-8,9-avermectin B_{1b} on sweet peppers at 0.02 ppm. The regulable residues for the U.S. and Codex are identical. In order to harmonize with this MRL, the Section F was revised to express the tolerance for avermectin B_1 and its delta-8.9-isomer as 0.02 ppm on peppers.

There are no Codex, Canadian, or Mexican MRLs for avermectin B_1 on cotton gin by-products. Therefore, international harmonization is not an issue for cotton gin by-products. A Codex MRL has been established for cotton seed: 0.01 ppm. This MRL differs from the proposed permanent tolerance for cotton seed: 0.005 ppm.

E. Rotational Crop Restrictions

Review of the results of the confined rotational crop study indicated that avermectin B_1 residues accumulated in some rotational crops at levels up to 10 – 12 ppb. However, the radioactivity was due to polar degradates that were of little toxicological concern as compared to the parent compound avermectin B_1 and/or the delta-8,9-isomer. Therefore, the requirements for field rotational crop studies have been waived.

V. Conclusion

Therefore, the tolerance is established for combined residues of the insecticide avermectin B_1 (a mixture of avermectins containing greater than or equal to 80% avermectin B_{1a} (5-*O*-demethyl avermectin A_1) and less than or equal to 20% avermectin B_{1b} (5-*O*-demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectin A_1)) and its delta-8,9-isomer in grapes at 0.02 ppm, peppers at 0.02 ppm, and cotton gin byproducts at 0.15 ppm. Furthermore, the following tolerances which were previously time-limited (expiring September 1, 1999) are now made permanent: cattle, fat at 0.015 ppm; cattle, meat byproducts at 0.02 ppm; cattle, meat at 0.02 ppm; citrus, dried pulp at 0.10 ppm; citrus, oil at 0.10 ppm; citrus, whole fruit at 0.02 ppm; cotton seed at 0.005 ppm; hops, dried at 0.20 ppm; milk at 0.005 ppm; and potatoes at 0.005 ppm.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP-300916 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 8, 1999.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 401 M St. SW. Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Room M3708, Waterside Mall, 401 M St. SW. Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m. Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission be labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." (cite). For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW. Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A. of this preamble, you should also send a copy of your request to the PIRB for its inclusion in the official record that is described in Unit I.B.2. of this preamble. Mail your copies, identified by docket number OPP–300916, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW. Washington, DC 20460. In person or by courier, bring a copy to the location of the PRIB described in Unit I.B.2. of this preamble. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes tolerances under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act-(PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). The Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612, entitled *Federalism* (52 FR 41685, October 30, 1987). This action directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. section 346a(b)(4). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a

copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 31, 1999.

Richard P. Keigwin, Jr.,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a), and 371.

2. Section 180.449 is amended by revising paragraph (a) to read as follows:

§ 180.449 Avermectin B_1 and its delta-8,9-isomer; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the insecticide avermectin B_1 (a mixture of avermectins containing greater than or equal to 80% avermectin B_{1a} (5-*O*-demethyl avermectin A_1) and less than or equal to 20% avermectin B_{1b} (5-*O*-demethyl-25-de(1-methylpropyl)-25-(1-methylethyl) avermectin A_1)) and its delta-8,9-isomer in or on the following commodities:

Commodity	Parts per million
Almonds	0.005
Almond, hulls	0.10
Apples	0.020
Apples, pomace (wet)	0.10
Cattle, fat	0.015
Cattle, mbyp	0.02
Cattle, meat	0.02
Celery	0.05
Citrus, dried pulp	0.10
Citrus, oil	0.10
Citrus whole fruit	0.02
Cotton gin by-products	0.15
Cotton seed	0.005
Cucurbits (cucumbers, mellons, and squashes)	0.005
Grapes	0.02
Hops, dried	0.20
Lettuce, head	0.05
Milk	0.005
Pears	0.02
Peppers	0.02
Potatoes	0.005
Strawberry	0.02
Tomatoes, fresh	0.01
Walnuts	0.005

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[FR Doc. 99–23194 Filed 9–3–99; 8:45 am]

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1806, 1813, 1815, 1835, 1852, and 1872

Implementing Foreign Proposals to NASA Research Announcements on a No-Exchange-of-Funds Basis

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: This is an interim rule to revise the NASA FAR Supplement (NFS) to conform the handling of foreign proposals under NASA Research Announcements (NRAs) with that under Announcements of Opportunity (AOs).

DATES: *Effective Date:* This rule is effective September 7, 1999.

Applicability Date: This rule applies to NRAs and AOs issued on or after September 7, 1999.

Comment Date: Comments should be submitted to NASA at the address shown below on or before November 8, 1999.

ADDRESSES: Interested parties should submit written comments to: Celeste Dalton, NASA Headquarters Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546. Comments may also be submitted by email to celeste.dalton@hq.nasa.gov.

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, (202) 358–1645, email: *celeste.dalton@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

NASA uses NRAs and AOs to solicit research proposals from both U.S. and non-U.S. sources. Because of NASA's policy to conduct research with foreign entities on a cooperative, no-exchange-of-funds basis, NASA does not normally fund foreign research proposals or foreign research efforts that are part of U.S. research proposals. Rather, cooperative research efforts are normally implemented via international agreements between NASA and the foreign entity involved. Thus, foreign proposers, whether as primary proposers or as participants in U.S. research efforts, are expected to arrange for financing for their portion of the research. This rule will implement NASA's policy for NRAs and make it consistent with the existing policy for AOs contained in NASA FAR Supplement (NFS) Part 1872, which requires foreign research to be implemented on a no-exchange-of-funds basis. Additional changes are made to NFS Part 1872 for consistency in the treatment of foreign proposals under NRAs and AOs. Treatment of late proposals under NRAs and AOs is clarified and subcontracting plans (when applicable) are added to the items required of selectees under NRAs. Other editorial changes are made to revise several references to the NASA Office of External Relations.

B. Regulatory Flexibility Act

NASA certifies that this interim rule will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), because it only affects small business entities in the rare circumstance when such entities team with a foreign entity in response to an NRA.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Interim Rule

In accordance with 41 U.S.C. 418(d), NASA has determined that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to ensure that NRAs reflect NASA's policy that foreign research be implemented on a no-exchange-of-funds basis, and that foreign proposals received in response to NRAs are handled in accordance with the existing policy for AOs contained in NFS Part 1872. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 1806, 1813, 1815, 1835, 1852, and 1872

Government procurement.

Tom Luedtke,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1806, 1813, 1815, 1835, 1852, and 1872 are amended as follows:

1. The authority citation for 48 CFR Parts 1806, 1813, 1815, 1835, 1852, and 1872 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1806—COMPETITION REQUIREMENTS

2. In paragraph (d) to section 1806.303–1, "International Relations Division (Code IR)" is revised to read "Office of External Relations (Code I)".

PART 1813—SIMPLIFIED ACQUISITION PROCEDURES

3. Section 1813.000 is revised to read as follows:

1813.000 Scope of part.

FAR Part 13 and 1813 do not apply to NASA Research Announcements and Announcements of Opportunity. These acquisitions shall be conducted in accordance with the procedures in 1835.016–71 and 1872, respectively. If awards are to be made as procurement instruments, they shall be made as bilateral contracts rather than purchase orders.

PART 1815—CONTRACTING BY NEGOTIATIONS

4. In paragraph (b)(3) to section 1815.300–70, the reference "(see 1835.016–70)" is revised to read "(see 1835.016–71)".

5. In the introductory text to section 1815.606–70, the reference "(see 1835.016–70)" is revised to read "(see 1835.016–71)".

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

6. In paragraph (a)(i)(B) to section 1835.016, the reference "(see 1835.016–70)" is revised to read "(see 1835.016–71)".

7. Section 1835.016–70 is redesignated as section 1835.016–71 and a new section 1835.016–70 is added to read as follows:

1835.016–70 Foreign participation under broad agency announcements (BAAs).

(a) Policy.

(1) NASA seeks the broadest participation in response to broad agency announcements, including foreign proposals or proposals including foreign participation. NASA's policy is to conduct research with foreign entities on a cooperative, no-exchange-of-funds basis (see NPD 1360.2, Initiation and Development of International Cooperation in Space and Aeronautics Programs). NASA does not normally fund foreign research proposals or foreign research efforts that are part of U.S. research proposals. Rather, cooperative research efforts are implemented via international agreements between NASA and the sponsoring foreign agency or funding/sponsoring institution under which the parties agree to each bear the cost of discharging their respective responsibilities.

(2) In accordance with the National Space Transportation Policy, use of a non-U.S. manufactured launch vehicle is permitted only on a no-exchange-of-funds basis.

(3) NASA funding may not be used for subcontracted foreign research efforts. The direct purchase of supplies and/or services, which do not constitute research, from non-U.S. sources by U.S. award recipients is permitted.

(b) Procedure. When a foreign proposal or a U.S. proposal with foreign participation is received in response to a BAA, the NASA sponsoring office shall determine whether the proposal conforms to the no-exchange-of-funds policy in 1835.016–70(a).

(1) If the proposal conforms to the policy in 1835.016-70(a), the NASA sponsoring office shall evaluate the proposal and make selection in accordance with 1835.016–71(d). In conjunction with the notification of successful foreign proposers, the NASA sponsoring office shall notify the Headquarters Office of External Relations, Code I. Code I will negotiate the agreement with the sponsoring foreign agency or funding institution for the proposed participation.

(2) If the proposal does not conform to the policy in 1835.016–70(a), the NASA sponsoring office shall:

(i) Determine whether the proposal merits further consideration;

(ii) If further consideration is warranted, refer the proposal to Code I; and

(iii) Complete the evaluation of the proposal. However, no notification of selection, whether tentative or final, shall be made without Code I approval.

(3) Notification to Code I required by paragraphs (b)(1) and (b)(2)(ii) of this section, shall address the items contained in 1872.504(c), and shall be coordinated through the Office of Procurement, Code HS.

8. In the newly redesignated section 1836.016–71, paragraph (e)(3) is revised to read as follows:

1835.016–71 NASA Research Announcements.

* * * * *

(e) * * *

(3) Request the offeror to complete and return certifications and representations and Standard Form 33, Solicitation, Offer, and Award, or other appropriate forms. If FAR 52.219–9, Small Business Subcontracting Plan, is required for the resultant contract, request the offeror to provide a subcontracting plan.

* * * * *

9. Section 1835.016–72 is added to read as follows:

1835.016–72 Foreign participation in NRA proposals.

Foreign proposals or U.S. proposals with foreign participation shall be treated in accordance with 1835.016–70. Additional guidelines applicable to foreign proposers are contained in the provision at 1852.235–72, Instructions for responding to NASA Research Announcements.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. In Section 1852.235–72, the date of the provision is revised, paragraph (c)(8) heading is revised, paragraph (c)(8)(iv) is added, paragraph (g) is revised, paragraph (l) is redesignated as paragraph (m) and a new paragraph (l) is added to read as follows:

1852.235–72 Instructions for responding to NASA Research Announcements.

* * * * *

Instructions for Responding to NASA Research Announcements (Aug. 1999)

* * * * *

(c) * * *

(8) Proposed Costs (U.S. Proposals Only).

* * * * *

(iv) Use of NASA funds—NASA funding may not be used for foreign research efforts at any level, whether as a collaborator or a subcontract. The direct purchase of supplies and/or services, which do not constitute research, from non-U.S. sources by U.S award recipients is permitted. Additionally, in accordance with the National Space Transportation Policy, use of a non-U.S. manufactured launch vehicle is permitted only on a no-exchange-of-funds basis.

* * * * *

(g) Late Proposals. Proposals or proposal modifications received after the latest date specified for receipt may be considered if a significant reduction in cost to the Government is probable or if there are

significant technical advantages, as compared with proposals previously received.

* * * * *

(l) Additional Guidelines Applicable to Foreign Proposals and Proposals Including Foreign Participation.

(1) NASA welcomes proposals from outside the U.S. However, foreign entities are generally not eligible for funding from NASA. Therefore, proposals from foreign entities should not include a cost plan unless the proposal involves collaboration with a U.S. institution, in which case a cost plan for only the participation of the U.S. entity must be included (unless otherwise noted in the NRA). Proposals from foreign entities and proposals from U.S. entities that include foreign participation must be endorsed by the respective government agency or funding/sponsoring institution in the country from which the non-U.S. participant is proposing. Such endorsement should indicate that the proposal merits careful consideration by NASA, and if the proposal is selected, sufficient funds will be made available to undertake the activity as proposed.

(2) When a "Notice of Intent" to propose is required, prospective foreign proposers should write directly to the NASA official designated in the NRA and send a copy of this letter to NASA's Office of External Relations at the address in paragraph (l)(3) of this provision.

(3) In addition to sending the requested number of copies of the proposal to the designated address, one copy of the proposal, along with the Letter of Endorsement from the sponsoring non-U.S. government agency or funding/sponsoring institution must be forwarded to: National Aeronautics and Space Administration, Code I, Office of External Relations, (NRA Number), Washington, DC 20546–0001, USA.

(4) All foreign proposals must be typewritten in English and comply with all other submission requirements stated in the NRA. All foreign proposals will undergo the same evaluation and selection process as those originating in the U.S. All proposals must be received before the established closing date. Those received after the closing date will be treated in accordance with paragraph (g) of this provision. Sponsoring foreign government agencies or funding institutions may, in exceptional situations, forward a proposal without endorsement to the above address if endorsement is not possible before the announced closing date. In such cases, NASA's Office of External Relations should be advised when a decision on endorsement can be expected.

(5) Successful and unsuccessful non-U.S. proposers will be contacted directly by the NASA sponsoring office. Copies of these letters will be sent to the sponsoring government agency or funding institution. Should a foreign proposal or a U.S. proposal with foreign participation be selected, NASA's Office of External Relations will arrange with the foreign sponsoring agency or funding institution for the proposed participation on a no-exchange-of-funds basis, in which NASA and the non-U.S. sponsoring agency or funding institution will each bear the cost of discharging their respective responsibilities.

(6) Depending on the nature and extent of the proposed cooperation, this arrangement may entail:

(i) A letter of notification by NASA;

(ii) An exchange of letters between NASA and the sponsoring foreign governmental agency; or

(iii) A formal Agency-to-Agency Memorandum of Understanding (MOU).

* * * * *

PART 1872—ACQUISITION OF INVESTIGATIONS

11. Section 1872.306 is revised to read as follows:

1872.306 Announcement of opportunity soliciting foreign participation.

Foreign proposals or U.S. proposals with foreign participation shall be treated in accordance with 1835.016–70. Additional guidelines applicable to foreign proposers are contained in the Management Plan Section of Appendix B and must be included in any Guidelines for Proposal Preparation or otherwise furnished to foreign proposers.

12. In paragraphs (b)(6), (c) introductory text, and (d) to section 1872.504, the phrase "International Affairs Division," is removed.

13. In section 1872.705–1, paragraph VII is revised to read as follows:

1872.705–1 Appendix A: General Instructions and Provisions.

* * * * *

VII. Late Proposals

Proposals or proposal modifications received after the latest date specified for receipt may be considered if a significant reduction in cost to the Government is probable or if there are significant technical advantages, as compared with proposals previously received.

14. In section1872.705–2, paragraphs (*a*)(*3*)(i), (ii), (iv), (vi) and the introductory text of paragraph (*a*)(*3*)(viii) of the Management Plan and Cost Plan are revised, paragraph (*b*)(e) is redesignated as (*b*)(3) and paragraph (*b*)(4) is added to read as follows.

1872.705–2, Appendix B: Guidelines for Proposal Preparation

* * * * *

Management Plan and Cost Plan

(*a*) * * *

(*3*) * * *

(i) Where a "Notice of Intent" to propose is requested, prospective foreign proposers should write directly to the NASA official designated in the AO and send a copy of this letter to NASA, Code I, Office of External Relations, Washington, DC 20546, U.S.A.

(ii) Unless otherwise indicated in the AO, proposals will be submitted in accordance with this Appendix. Proposals should be typewritten and written in English. Foreign entities are generally not eligible for funding from NASA. Therefore, proposals from foreign entities should not include a cost plan unless the proposal involves collaboration with a U.S. institution, in which case a cost plan for only the participation of the U.S. entity must be included (unless otherwise noted in the AO).

* * * * *

(iv) Proposals including the requested number of copies and letters of endorsement from the foreign governmental agency must be forwarded to NASA in time to arrive before the deadline established for each AO. These documents should be sent to: National Aeronautics and Space Administration, Code I, Office of External Relations, Washington, DC 20546, U.S.A.

* * * * *

(vi) Shortly after the deadline for each AO, NASA's Office of External Relations will advise the appropriate sponsoring agency which proposals have been received and when the selection process should be completed. A copy of this acknowledgment will be provided to each proposer.

* * * * *

(viii) NASA's Office of External Relations will then begin making the arrangements to provide for the selectee's participation in the appropriate NASA program. Depending on the nature and extent of the proposed cooperation, these arrangements may entail:

* * * * *

(*b*) * * *

(4) Use of NASA funds. NASA funding may not be used for foreign research efforts at any level, whether as a collaborator or a subcontract. The direct purchase of supplies and/or services, which do not constitute research, from non-U.S. sources by U.S award recipients is permitted. Additionally, in accordance with the National Space Transportation Policy, use of a non-U.S. manufactured launch vehicle is permitted only on a no-exchange-of-funds basis.

[FR Doc. 99–23065 Filed 9–3–99; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–99–6185]

RIN 2127–AH70

Federal Motor Vehicle Safety Standards; Stopping Distance Table

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; technical amendment.

SUMMARY: On March 10, 1995, we published in the **Federal Register** (60 FR 13297) a final rule establishing stopping distance requirements for hydraulically-braked vehicles with gross vehicle weight ratings (GVWR) greater than 10,000 pounds. The requirements specified the distances in which different types of medium and heavy vehicles must come to a stop from 60 mph. There was an error in that rule with regard to Table II—*Stopping Distances*, which contains the applicable stopping distance requirements. The superscripts in the table identifying specifications for school buses were misplaced. This rule amends the hydraulic brake standard to correct the location of the superscripts in Table II.

DATES: The correcting amendments to Table II are effective October 7, 1999.

FOR FURTHER INFORMATION CONTACT:

For non-legal issues: Mr. Samuel Daniel, Jr., Office of Crash Avoidance Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, D.C. 20590 (202) 366–4921.

For legal issues: Mr. Edward Glancy, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington D.C. 20590 (202) 366–2992.

SUPPLEMENTARY INFORMATION:

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I. Background
- A. March 10, 1995, Final Rule, Stopping Distance Requirements for Vehicles Equipped With Hydraulic Brake Systems
- B. Petition for Reconsideration of the March 10, 1995, Final Rule

II. December 13, 1995, Final Rule, Petitions for Reconsideration

III. Discussion
- A. School bus Stopping Distance for 30-mph Test
- B. Correction of Table II
- C. Good Cause

IV. Rulemaking Analyses and Notices

I. Background

A. March 10, 1995, Final Rule, Stopping Distance Requirements for Vehicles Equipped With Hydraulic Brake Systems

On March 10, 1995, we published a final rule, Docket No. 93–07, Notice 3, which, among other things, established stopping distance requirements in Federal Motor Vehicle Safety Standard No. 105, *Hydraulic Brake Systems*,[1] for hydraulically-braked vehicles with GVWRs of over 10,000 pounds (60 FR 13297). The rule specified the distances in which different types of medium and heavy vehicles must come to a stop from a speed of 60 miles per hour (mph) on a high coefficient of friction surface. The rule also established a stopping distance requirement of 70 feet (ft.) for a 30-mph second effectiveness test applicable to school buses.

[1] Standard No. 105 has since been renamed *Hydraulic and Electric Brake Systems.*

B. Petition for Reconsideration of the March 10, 1995, Final Rule

Navistar International Transportation Corporation (Navistar) filed a Petition for Reconsideration on April 5, 1995, requesting that we increase the stopping distance requirement for the 30-mph second effectiveness test for school buses from 70 ft to 78 ft or in the alternative, to delete the requirement altogether. Navistar indicated in its petition that "significant development work would be required" to bring school buses into compliance with the 70-ft. stopping requirement. Single unit vehicles other than school buses are allowed a distance of 78 ft. for the 30 mph second effectiveness test, although at this time the standard does not require a 30 mph second effectiveness test for non-school bus vehicles with GVWRs greater than 10,000 pounds.

II. December 13, 1995, Final Rule, Petitions for Reconsideration

NHTSA published a Final Rule, Petitions for Reconsideration, on December 13, 1995 (60 FR 63965), responding to the petitions received in response to the Final Rule of March 10, 1995. We stated in Section X D. of the preamble that Table II, which contains the stopping distance requirements for Standard No. 105, would be corrected in that notice. However, a correction to Table II was inadvertently omitted from the December 1995 final rule.

III. Discussion

A. School Bus Stopping Distance for 30-mph Test

Navistar again petitioned us on September 18, 1998, to correct the errors in Table II of Standard No. 105. Specifically, that company stated that the 30-mph stopping distance in the second effectiveness test for school buses should be changed from 70 feet to 78 feet. Additionally, Navistar cited the errors in the location of the superscripts that designate the test applicability and vehicle type for the 30-mph second effectiveness test stopping distances.

We believe that Navistar did not provide sufficient justification for the economic hardship cited and also continue to believe that the 70-ft. stopping distance requirement for school buses can be achieved without significant economic burden for manufacturers. No other school bus manufacturer has reported any hardship in meeting the 70-ft. stopping distance requirement. When we contacted Navistar to ask for some additional information about the hardship, that company indicated it was withdrawing its request that the stopping distance be increased. Therefore, no change is being made to the existing school bus stopping distance requirements.

B. Correction of Table II

This document corrects Table II of Standard No. 105 to move the superscripts 1 and 2 from column d to column e in the second effectiveness test for school buses. As previously stated, the agency inadvertently omitted this change to the standard in the December 13, 1995, final rule.

C. Good Cause

We find for good cause that notice and the opportunity to comment on this correction are unnecessary and contrary to the public interest. This document corrects an obvious error that was not corrected three years ago. The erroneous superscripts that currently appear in Table II can only confuse and mislead the public about the requirements for school bus braking performance.

IV. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This notice has not been reviewed under Executive Order 12866. NHTSA has considered the impacts of this rulemaking action and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. In connection with the March 1995 final rules, the agency prepared a Final Regulatory Evaluation (FRE) describing the economic and other effects of this rulemaking action. For persons wishing to examine the full analysis, a copy is in the agency's public docket.

B. Regulatory Flexibility Act

NHTSA has also considered the effects of this correction notice under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. Accordingly, the agency has not prepared a final regulatory flexibility analysis.

NHTSA concluded that the March 1995 final rule had no significant impact on a substantial number of small entities. Today's correction notice also will not have a significant economic impact on a substantial number of small entities.

C. National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

D. Executive Order 12612 (Federalism)

NHTSA has analyzed this action under the principles and criteria in Executive Order 12612. The agency has determined that this notice does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. No State laws will be affected.

E. Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, the agency amends 49 CFR, Part 571, as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166, delegation of authority at 49 CFR 1.50.

§ 571.105 [Amended]

2. Section 571.105 is amended by revising Table II to read as follows:

* * * * *

BILLING CODE 4910–59–P

TABLE II - STOPPING DISTANCES

Vehicle Test Speed (miles per hour)	Stopping Distance in feet for tests indicated															
	I-1st (preburnished) & 4th effectiveness; spike effectiveness check				II-2d effectiveness				III-3d (lightly loaded vehicles) effectiveness					IV-Inoperative brake power and power assist unit; partial failure		
	(a)	(b)	(c)	(d)	(a)	(b) & (c)	(d)	(e)	(a)	(b)	(c)	(d)	(e)	(a)	(b) & (c)	(d) & (e)
30	[1]57	[1,2]65	[1,2]69 (1st) [1,2]65 (4th and spike) [1]72	88	[1]54	[1]57	78	[1,2]70	51	57	65	84	70	114	130	170
35	74	83	91	132	70	74	106	96	67	74	83	114	96	155	175	225
40	96	108	119	173	91	96	138	124	87	96	108	149	124	202	229	288
45	121	137	150	218	115	121	175	155	110	121	137	189	158	257	291	358
50	150	169	185	264	142	150	216	195	135	150	169	233	195	317	359	435
55	181	204	224	326	172	181	261	236	163	181	204	281	236	383	433	530
60	[1]216	[1]242	[1]267	388	[1]204	[1]216	[1]310	[1]280	[1]194	[1]216	[1]242	[1]335	[1]280	[1]458	[1]517	[1]613
80	[1]405	[1]459	[1]510	NA	[1]383	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
95	[1]607	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
100	[1]673	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

[1] Distance for specified tests. [2] Applicable to school buses only. NA = Not applicable
Note: (a) Passenger cars; (b) vehicles other than passenger cars with GVWR of less than 8,000 lbs; (c) Vehicles with GVWR of not less than 8,000 lbs and not more than 10,000 lbs; (d) vehicles, other than buses, with GVWR greater than 10,000 lbs; (e) buses, including school buses, with GVWR greater than 10,000 lbs.

* * * * *

Issued on: August 30, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–23226 Filed 9–3–99; 8:45 am]

BILLING CODE 4910–59–C

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 575

Consumer Information Regulations

CFR Correction

In Title 49 of the Code of Federal Regulations, parts 400 to 999, revised as of Oct. 1, 1998, page 798, § 575.104 is corrected by reinstating the equation following the introductory text of paragraph (e)(2)(ix)(E)(*2*) to read as follows:

§ 575.104 Uniform tire quality grading standards.

* * * * *

(e) * * *

(2) * * *

(ix) * * *

(E) * * *

(*2*) * * *

$$\text{Projected mileage} = \frac{-1000(\text{Yo} - 62)}{\text{mc}} + 800$$

* * * * *

[FR Doc. 99–55528 Filed 9–3–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

RIN 1018–AE65

Migratory Bird Permits; Amended Certification of Compliance and Determination that the States of Vermont and West Virginia Meet Federal Falconry Standards

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We are adding the States of Vermont and West Virginia to the list of States whose falconry laws meet or exceed Federal falconry standards. These States will now be participants in the cooperative Federal/State permit application program, and falconry can now be practiced in those States. The list of States that meet Federal falconry standards, including Vermont and West Virginia, is included in this final rule. This rule also amends the regulations on State compliance to clarify the administrative procedure that States need to follow to comply with Federal falconry standards.

DATES: This rule is effective September 7, 1999.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Jonathon Andrew, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, telephone 703/358–1834.

SUPPLEMENTARY INFORMATION:

Regulations in 50 CFR part 21 provide that we review and approve State falconry laws before falconry can be practiced in those States. A list of the States whose falconry laws have been approved is found in 50 CFR 21.29(k). In accordance with the requirements of 50 CFR 21.29(a) and (c), we reviewed certified copies of the falconry regulations adopted by the States of Vermont and West Virginia and determined that they meet or exceed our Federal falconry standards. Our standards, contained in 50 CFR 21.29(d) through (i), include permit requirements, classes of permits, examination procedures, facilities and equipment standards, raptor marking, and raptor taking restrictions. Both Vermont and West Virginia regulations also meet or exceed all the restrictions or conditions found in 50 CFR 21.29(j), which include requirements on the number, species, acquisition, possession of feathers, and marking of raptors. Therefore, we have included them in the section 21.29(k) list of States that meet the Federal falconry standards. The listing eliminates the current restriction that prohibits falconry in Vermont and West Virginia.

We also are amending the regulatory language in 50 CFR 21.29(a) and (c) to clarify our procedures for approving State regulations for compliance with our falconry standards. This approval is contingent upon the respective State submitting its laws and regulations to us for review and us finding that the laws and regulations meet or exceed our falconry standards.

We are including in this rule the entire list of States that have met the Federal falconry standards, including Vermont and West Virginia. This should eliminate any confusion about which States have approval for falconry and which of those participate in a joint Federal/State permit system.

We also are making minor text revisions in 50 CFR 21.29 (j)(2) to comply with plain language mandates and to be gender neutral.

We are making this rulemaking effective immediately. This is allowed by the Administrative Procedure Act (5 U.S.C. 553(d)(1)) because this final rule relieves a restriction that prohibited the States of Vermont and West Virginia from allowing the practice of falconry.

Why Is This Rulemaking Needed?

The States of Vermont and West Virginia wanted to institute falconry programs so that citizens who wanted to practice the sport of falconry in their State could do so. Accordingly, they promulgated regulations that meet or exceed our Federal requirements protecting migratory birds. We needed to amend 50 CFR 21.29 to add them to the list of States that have Federal approval to practice falconry.

Were There Any Public Comments on the Proposal?

We received one comment. The proposal was published in the **Federal Register** on August 18, 1998 (63 FR 44229) and invited comments from any interested parties. The comment period closed on September 17, 1998. The comment was from the General Counsel, North American Falconers Association. NAFA supported adding Vermont and West Virginia to the list of States that meet our falconry standards. They asked that we provide guidance and expeditious review of the falconry programs being instituted in Delaware and Connecticut so that they could be added to the list of States meeting our standards.

Service Response: Our non-game migratory bird coordinator from the Hadley, Massachusetts, Regional Office has provided Delaware and Connecticut with guidance documents to assist them in developing their falconry standards. We stand ready to provide any additional support these States may need in developing programs that meet our standards.

Is This Rule in Compliance With NEPA?

Yes. In accordance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulations for implementing NEPA (40 CFR parts 1500–1508), we prepared an Environmental Assessment (EA) in July 1988 to support establishment of simpler, less restrictive regulations governing the use of most raptors. You can obtain a copy of this EA by contacting us at the address in the **ADDRESSES** section. Adding Vermont and West Virginia to the list of States whose falconry laws meet or exceed Federal falconry standards, although covered by the general conditions addressed in the 1988 EA, is considered categorically excluded from further NEPA documentation by the Department of the Interior's NEPA procedures. The action is an "* * * amendment to an approved action when such changes have no or minor potential environmental impact" (516 DM 6, Appendix 1.4(1)).

Is This Rule in Compliance With Endangered Species Act Requirements?

Yes. Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531, *et seq.*), requires that, "The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act." It further states that the Secretary must "insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *." Our review pursuant to section 7 concluded that the addition of Vermont and West Virginia to the list of States approved to practice falconry is not likely to adversely affect any listed species. A copy of this determination is available by contacting

us at the address in the **ADDRESSES** section of this rule.

What About Other Required Determinations?

This rule was not subject to the Office of Management and Budget (OMB) review under Executive Order 12866. The Department of the Interior has determined that it will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices, and will not adversely affect competition, employment, investment, productivity, or innovation. We estimate that 25 individuals will obtain falconry permits as a result of this rule and many of the expenditures of those permittees will accrue to small businesses. The maximum number of birds allowed by a falconer is three, so the maximum number of birds likely to be possessed is 75. Some birds will be taken from the wild, but others may be purchased. Using one of the more expensive birds, the northern goshawk, as an estimate, the cost to procure a single bird is less than $5,000, which, with an upper limit of 75 birds, translates into $375,000. Expenditures for building facilities would be less than $40,000 for 75 birds and care and feeding less than $75,000. These expenditures, totaling less than $500,000, represent an upper limit of potential economic impact from the addition of Vermont and West Virginia to the list of approved States.

This rule has no potential takings implications for private property as defined in Executive Order 12630. The only effect of this rule on the constituent community will be to allow falconers in the States of Vermont and West Virginia to apply for falconry permits. It is estimated that no more than 25 people would apply for falconry permits in both Vermont and West Virginia combined. This rule does contain information collection requirements that are approved by OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The information collection is covered by an existing OMB approval for licenses/permit applications, number 1018–0022. For further details concerning the information collection approval see 50 CFR part 21.4.

We have determined and certify pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The rule does not have significant Federalism effects pursuant to Executive Order 12612. We also have determined that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988 for civil justice reform, and that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Regarding Government-to-Government relationships with Tribes, this rulemaking will have no effect on federally recognized Tribes. There are no federally recognized Indian tribes in the States of Vermont or West Virginia. Furthermore, the revisions to the existing regulations are of a purely administrative nature affecting no Tribal trust resources.

Author: The primary author of this rulemaking is Cyndi Perry, U.S. Fish and Wildlife Service, Office of Migratory Bird Management, 1849 C Street, NW., MS 634 ARLSQ, Washington, DC 20240.

List of Subjects in 50 CFR Part 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

Accordingly, we amend Part 21, subchapter B of chapter 29, title 50 of the Code of Federal Regulations as follows:

PART 21—MIGRATORY BIRD PERMITS

1. The authority citation for part 21 continues to read as follows:

Authority: Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)).

2. Amend section 21.29 by revising paragraphs (a), (c), (j)(2) and (k) to read as follows:

§ 21.29 Federal falconry standards.

(a) *Before you can practice falconry in any State.* You cannot take, possess, transport, sell, purchase, barter, or offer to sell, purchase, or barter any raptor for falconry purposes, in any State unless the State allows the practice of falconry, and the State has submitted copies of its laws and regulations governing the practice of falconry to us (Director), and we have determined that they meet or exceed the Federal falconry standards established in this section. If you are a Federal falconry permittee, you can possess and transport for falconry purposes a lawfully possessed raptor through States that do not allow falconry or meet Federal falconry standards so long as the raptors remain in transit in interstate commerce. The States that are in compliance with Federal falconry standards are listed in paragraph (k) of this section.

* * * * *

(c) *What is the process for Federal approval of a State program?* Any State that wishes to allow the practice of falconry must submit to the Director of the Service a copy of the laws and regulations that govern the practice of falconry in the State. If we determine that they meet or exceed the Federal standards, which are established by this section, we will publish a notice in the **Federal Register** adding the State to the list of approved States in paragraph (k) of this section. Any State that was listed in paragraph (k) prior to September 14, 1989, is considered to be in compliance with our standards.

* * * * *

(j) *What other restrictions must a State have?*

* * * * *

(2) If you possessed raptors before January 15, 1976, the date these regulations were enacted, and you had more than the number allowed under your permit, you may retain the extra raptors. However, each of those birds must be identified with markers we supplied, and you cannot replace any birds, nor can you obtain any additional raptors, until the number in your possession is at least one fewer than the total number authorized by the class of permit you hold.

* * * * *

(k) *List of States meeting Federal falconry standards.* We have determined that the following States meet or exceed the minimum Federal standards established in this section for regulating the taking, possession, and transportation of raptors for the purpose of falconry. The States that are participants in a joint Federal/State permit system are designated by an asterisk (*).

*Alabama
*Alaska
Arizona
*Arkansas
*California
*Colorado
*Florida
*Georgia
*Idaho
*Illinois
*Indiana
*Iowa
*Kansas
*Kentucky
*Louisiana
Maine
Maryland

Massachusetts
*Michigan
*Minnesota
*Mississippi
Missouri
*Montana
*Nebraska
*Nevada
*New Hampshire
*New Jersey
*North Dakota
New York
New Mexico
*North Carolina
*Ohio
Oklahoma
*Oregon
Pennsylvania
Rhode Island
*South Carolina
*South Dakota
*Tennessee
Texas
Utah
Vermont
*Virginia
*Washington
West Virginia
*Wisconsin
*Wyoming

Dated: August 6, 1999.

Donald Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–23168 Filed 9–3–99; 8:45 am]

BILLING CODE 4310–55–P

Proposed Rules

Federal Register
Vol. 64, No. 172
Tuesday, September 7, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 3

[Docket No. 98–121–2]

Animal Welfare; Draft Policy on Environment Enhancement for Nonhuman Primates

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of extension of comment period.

SUMMARY: We are extending the comment period for a document requesting comments on a draft policy regarding environment enhancement for nonhuman primates. This action will allow interested persons additional time to prepare and submit comments.

DATES: We invite you to comment on Docket No. 98–121–1. We will consider all comments that we receive by October 13, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 98–121–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 98–121–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Natalie Roberts, Ph.D., Program Evaluation and Monitoring, PPD, APHIS, 4700 River Road Unit 120, Riverdale, MD 20737–1234; (301)734–8937; or e-mail: Natalie.A.Roberts@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

On July 15, 1999, we published in the **Federal Register** (64 FR 38145–38150, Docket No. 98–121–1) a draft policy statement to clarify what we believe must be considered and included in an environment enhancement plan for nonhuman primates in order for dealers, exhibitors, and research facilities to adequately promote the psychological well-being of the nonhuman primates. We also requested public comment on the draft policy.

Comments on the draft policy were required to be received on or before September 13, 1999. We are extending the comment period on Docket No. 98–121–1 for an additional 30 days. This action will allow interested persons additional time to prepare and submit comments.

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 1st day of September 1999 .

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–23187 Filed 9–3–9; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 99810212–9212–01]

RIN 0691–AA36

Direct Investment Surveys: BE–10, Benchmark Survey of U.S. Direct Investment Abroad—1999

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document sets forth proposed rules to revise regulations, to present the reporting requirements for the BE–10, Benchmark Survey of U.S. Direct Investment Abroad.

The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The BE–10 survey is a mandatory survey and is conducted once every 5 years by the Bureau of Economic Analysis (BEA), US Department of Commerce, under the International Investment and Trade in Services Survey Act. The proposed benchmark survey will be conducted for 1999. BEA will send the survey to potential respondents in March of the year 2000; responses will be due by May 31, 2000 for respondents required to file fewer than 50 forms and by June 30, 2000 for those required to file 50 or more forms. The last benchmark survey was conducted for 1994. The benchmark survey covers virtually the entire universe of US direct investment abroad in terms of value, and is BEA's most comprehensive survey of such investment in terms of subject matter.

Changes proposed by BEA in the reporting requirements to be implemented in these proposed rules are: Increasing the exemption level for reporting on the BE–10B(SF) short form and the BE–10B BANK form from $3 million to $7 million; directing that minority-owned nonbank foreign affiliates, regardless of size, be reported on the BE–10B(SF) short form; increasing the exemption level for reporting on the BE–10B(LF) long form from $50 million to $100 million; and requiring U.S. reporters with total assets, sales or gross operating revenues, and net income less than or equal to $100 million (positive or negative) to report only selected items. These changes will reduce respondent burden, particularly for small companies. BEA is also proposing several changes in the format and content of the survey that, on balance, also reduce respondent burden.

DATES: Comments on these proposed rules will receive consideration if submitted in writing on or before November 8, 1999.

ADDRESSES: Mail comments to the Office of the Chief, International Investment Division (BE–50), Bureau of Economic Analysis, US Department of Commerce, Washington, DC 20230, or hand deliver comments to room M–100, 1441 L Street, NW, Washington, DC 20005. Comments will be available for public inspection in room 7005, 1441 L Street, NW, between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: R. David Belli, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, US Department of Commerce, Washington, DC 20230; phone (202) 606–9800.

SUPPLEMENTARY INFORMATION: These proposed rules propose to amend 15 CFR part 806.16 to set forth the reporting requirements for the BE–10, Benchmark Survey of US Direct Investment Abroad—1999. The Bureau of Economic Analysis (BEA), US Department of Commerce, will conduct the survey under the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108), hereinafter, "the Act." Section 4(b) of the Act requries that with respect to United States direct investment abroad, the President shall conduct a benchmark survey covering year 1982, a benchmark survey covering year 1989, and benchmark surveys covering every fifth year thereafter. In conducting surveys pursuant to this subsection, the President shall, among other things and to the extent he determines necessary and feasible—

(1) Identify the location, nature, and magnitude of, and changes in total investment by any parent in each of its affiliates and the financial transactions between any parent and each of its affiliates;

(2) Obtain (A) Information on the balance sheet of parents and affiliates and related financial data, (B) income statements, including the gross sales by primary line of business (with as much product line detail as is necessary and feasible) of parents and affiliates in each country in which they have significant operations, and (C) related information regarding trade, including trade in both goods and services, between a parent and each of its affiliates and between each parent or affiliate and any other person;

(3) Collect employment data showing both the number of United States and foreign employees of each parent and affiliate and the levels of compensation, by country, industry, and skill level;

(4) Obtain information on tax payments by parents and affiliates by country; and

(5) Determine, by industry and country, the total dollar amount of research and development expenditures by each parent and affiliate, payments or other compensation for the transfer of technology between parents and their affiliates, and payments or other compensation received by parents or affiliates from the transfer of technology to other persons.

In Section 3 of Executive Order 11961, the President delegated authority granted under the Act as concerns direct investment to the Secretary of Commerce, who has redelegated it to BEA.

The benchmark surveys are BEA's censuses, intended to cover the universe of US direct investment abroad in terms of value. US direct investment abroad is defined as the ownership or control, directly or indirectly, by one US person of 10 percent or more of the voting securities of an incorporated foreign business enterprise or an equivalent interest in an unincorporated foreign business enterprise, including a branch.

The purpose of the benchmark survey is to obtain universe data on the financial and operating characteristics of, and on positions and transactions between, US parent companies and their foreign affiliates. The data are needed to measure the size and economic significance of US direct investment abroad, measure changes in such investment, and assess its impact on the US and foreign economies. The data will provide benchmarks for deriving current universe estimates of direct investment form sample data collected in other BEA surveys in nonbenchmark years. In particular, they will serve as benchmarks for the quarterly direct investment estimates included in the US international transactions and national income and product accounts, and for annual estimates of the US direct investment position abroad and of the operations of US parent companies and their foreign affiliates.

As proposed, the survey will consist of an instruction booklet, a claim for not filing the BE–10, and the following report forms:

1. Form BE–10A—Report for US Reporters that are not banks;
2. Form BE–10A BANK—Report for US Reporters that are banks;
3. Form BE–10B(LF) (Long Form)—Report for majority-owned nonbank foreign affiliates of nonbank US parents with assets, sales, or net income greater than $100 million (positive or negative);
4. Form BE–10B(SF) (Short Term)—Report for majority-owned nonbank foreign affiliates with assets, sales, or net income greater than $7 million, but not greater than $100 million (positive or negative), minority-owned nonbank foreign affiliates of nonbank parents with assets, sales, or net income greater than $7 million (positive or negative); and all nonbank affiliates of bank parents; and
5. Form BE–10B BANK—Report for foreign affiliates that are banks.

Although the proposed survey is intended to cover the universe of US direct investment abroad, in order to minimize the reporting burden, foreign affiliates with assets, sales, and net income each equal to or less than $7 million (positive or negative) are exempt from being reported on Form BE–10B(SF) or BE–10B BANK (but must be listed, along with selected identification information and data, on Form BE–10A SUPPLEMENT or BE–10A BANK SUPPLEMENT).

BEA maintains a continuing dialogue with respondents and with data users, including its own internal users through the Bureau's Source Data Improvement and Evaluation Program, to ensure that, as far as possible, the required data serve their intended purposes and are available from existing records, that instructions are clear, and that unreasonable burdens are not imposed. In designing the survey, BEA contacted data users outside the Bureau and survey respondents to obtain their views on the proposed benchmark survey. The proposed draft reflects users' and respondents' comments. In reaching decisions on what questions to include in the survey, BEA considered the Government's need for the data, the burden imposed on respondents, the quality of the likely response (e.g. whether the data are readily available on respondents' books), and BEA's experience in previous benchmark and related annual surveys.

Changes proposed by BEA from the previous benchmark survey include reduction of respondent burden, particularly for small companies, by (1) Increasing the exemption level for reporting on the BE–10B(SF) short form and the BE–10B BANK form from $3 million to $7 million; (2) directing that minority-owned nonbank foreign affiliates, regardless of size, be reported on the BE–10B(SF) short form; (3) increasing the exemption level for reporting on the BE–10B(LF) long form from $50 million to $100 million; and (4) requiring US Reporters with total assets, sales or gross operating revenues, and net income less than or equal to $100 million (positive or negative) to report only selected items. In addition, BEA proposes to adopt the North American Industry Classification System (NAICS) to replace the current industry classification system, which is based on the US Standard Industrial Classification system; consolidate 12 product categories previously used to collect trade in goods on the BEA–10A and the BE–10B(LF) forms into 10 product categories; and reduce the

detail collected on the composition of selected asset and liability positions and on the balance sheet of the US Reporter.

BEA is also proposing improvements in the layout of the survey forms, and the placement and clarity of instructions. Items have been reordered to conform more closely to the order in which they appear in company financial statements. Specific line item instructions that have broad application continue to appear as part of the item on the face of the form, but instructions that provide an extended explanation or address unique situations have been moved to the back of each form, along with relevant instructions that previously appeared only in the separate Instruction Booklet.

A copy of the proposed survey forms may be obtained from: Office of the Chief, Direct Investment Abroad Branch, International Investment Division (BE–69(A)), Bureau of Economic Analysis, US Department of Commerce, Washington, DC 20230; phone (202) 606–5566.

Executive Order 12612

These proposed rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Executive Order 12866

These proposed rules have been determined to be not significant for purposes of E.O. 12866.

Paperwork Reduction Act

These proposed rules contain a collection of information requirement subject to the Paperwork Reduction Act (PRA) and have been submitted to the Office of Management and Budget for review under the PRA.

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act unless that collection displays a currently valid Office of Management and Budget control Number.

The survey, as proposed, is expected to result in the filing of reports from about 3,500 respondents. The respondent burden for this collection of information is estimated to vary from 14 to 8,500 hours per response, with an average of 130 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus the total respondent burden of the survey is estimated at 458,000 hours (3,500 respondents times 130 hours average burden).

Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Comments should be addressed to: Director, Bureau of Economic Analysis (BE–1), US Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, O.I.R.A., Paperwork Reduction Project 0608–0049, Washington, DC 20503 (Attention PRA Desk Officer for BEA).

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rule making, if adopted, will not have a significant economic impact on a substantial number of small entities. A BE–10 report is required of any US company that had a foreign affiliate—that is, that had direct or indirect ownership or control of at least 10 percent of the voting stock of an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise—at any time during the US company's 1999 fiscal year. Companies that have direct investments abroad tend to be quite large. To minimize the reporting burden on smaller US companies, US Reporters with total assets, sales or gross operating revenues, and net income less than or equal to $100 million (positive or negative) are required to report only selected items on the BE–10A form for US Reporters in addition to forms they may be required to file for their foreign affiliates.

List of Subjects in 15 CFR Part 806

Balance of payments, Economic statistics, U.S. investment abroad, Penalties, Reporting and recordkeeping requirements.

Dated: August 6, 1999.

Rosemary D. Marcuss,

Acting Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA proposes to amend 15 CFR Part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR Part 806 continues to read as follows:

Authority: 5 U.S.C. 301; 22 U.S.C. 3101–3108; and E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

2. Section 806.16 is revised to read as follows:

§ 806.16 Rules and regulations for BE–10, Benchmark Survey of U.S. Direct Investment Abroad—1999.

A BE–10, Benchmark Survey of US Direct Investment Abroad will be conducted covering 1999. All legal authorities, provisions, definitions, and requirements contained in 806.1 through 806.13 and 806.14(a) through (d) are applicable to this survey. Specific additional rules and regulations for the BE–10 survey are given in paragraphs (a) through (e) of this section. More detailed instructions are given on the report forms and instructions.

(a) Response required. A response is required from persons subject to the reporting requirements of the BE–10, Benchmark Survey of US Direct Investment Abroad—1999, contained in this section, whether or not they are contacted by BEA. Also, a person, or their agent, who is contacted by BEA about reporting in this survey, either by sending them a report form or by written inquiry, must respond in writing pursuant to 806.4. They may respond by:

(1) Certifying in writing, within 30 days of being contacted by BEA, to the fact that the person had no direct investment within the purview of the reporting requirements of the BE–10 survey;

(2) Completing and returning the "BE–10 Claim for Not Filing" within 30 days of receipt of the BE–10 survey report forms; or

(3) Filing the properly completed BE–10 report (comprising form BE–10A or BE–10A BANK and Forms BE–10B(LF), BE–10B(SF), and/or BE–10B BANK) by May 31, 2000, or June 30, 2000, as required.

(b) Who must report. (1) A BE–10 report is required of any US person that had a foreign affiliate—that is, that had direct or indirect ownership or control of at least 10 percent of the voting stock of an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise—at any time during the US person's 1999 fiscal year.

(2) If the US person had no foreign affiliates during its 1999 fiscal year, a "BE–10 Claim for Not Filing" must be filed within 30 days of receipt of the BE–10 survey package; no other forms in the survey are required. If the US person had any foreign affiliates during its 1999 fiscal year, a BE–10 report is required and the US person is a US Reporter in this survey.

(3) Reports are required even though the foreign business enterprise was established, acquired, seized, liquidated, sold, expropriated, or inactivated during the US person's 1999 fiscal year.

(c) Forms for nonbank US Reporters and foreign affiliates—(1) Form BE–10A (Report for the US Reporter). A BE–10A report must be completed by a US Reporter that is not a bank. If the US Reporter is a corporation, Form BE–10A is required to cover the fully consolidated US domestic business enterprise.

(i) If for a nonbank US Reporter any one of the following three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for U.S. income taxes—was greater than $100 million (positive or negative) at any time during the Reporter's 1999 fiscal year, the US Reporter must file a complete Form BE–10A and, as applicable, a BE–10A SUPPLEMENT listing each, if any, foreign affiliate that is exempt from being reported on Form BE–10B(LF), BE–10B(SF), or BE–10B BANK. It must also file a Form BE–10B(LF), BE–10B(SF), or BE–10B BANK, as appropriate, for each nonexempt foreign affiliate,

(ii) If for a nonbank US Reporter no one of the three items listed in paragraph (c)(1)(i) of this section was greater than $100 million (positive or negative) at any time during the Reporter's 1999 fiscal year, the US Reporter is required to file on Form BE–10A only items 1 through 27 and items 30 through 35 and, as applicable, a BE–10A SUPPLEMENT listing each, if any, foreign affiliate that is exempt from being reported on Form BE–10B(LF), BE–10B(SF), or BE–10B BANK. It must also file a Form BE–10B(LF), BE–10B (SF), or BE–10B BANK, as appropriate, for each nonexempt foreign affiliate.

(2) Form BE–10B(LF) or (SF) (Report for nonbank foreign affiliate). (i) A BE–10B(LF) (Long Form) must be filed for each majority-owned nonbank foreign affiliate of a nonbank US Reporter, whether held directly or indirectly, for which any one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than $100 million (positive or negative) at any time during the affiliate's 1999 fiscal year.

(ii) A BE–10B(SF)(Short Form) must be filed:

(A) For each majority-owned nonbank foreign affiliate of a nonbank US Reporter, whether held directly or indirectly, for which any one of the three items listed in paragraph (c)(2)(i) of this section was greater than $7 million but for which no one of these items was greater than $100 million (positive or negative), at any time during the affiliate's 1999 fiscal year, and

(B) For each minority-owned nonbank foreign affiliate of a nonbank US Reporter, whether held directly or indirectly, for which any one of the three items listed in paragraph (c)(2)(i) of this section was greater than $7 million (positive or negative), at any time during the affiliate's 1999 fiscal year, and

(C) For each nonbank foreign affiliate of a US bank Reporter, whether held directly or indirectly, for which any one of the three items listed in paragraph (c)(2)(i) of this section was greater than $7 million (positive or negative), at any time during the affiliate's 1999 fiscal year.

(iii) Notwithstanding paragraphs (c)(2)(i) and (c)(2)(ii) of this section, a Form BE–10B(LF) or (SF) must be filed for a foreign affiliate of the US Reporter that owns another nonexempt foreign affiliate of that US Reporter, even if the foreign affiliate parent is otherwise exempt, *i.e.*, a Form BE–10B(LF), (SF), or BANK must be filed for all affiliates upward in a chain of ownership.

(d) Forms for US Reporters and foreign affiliates that are banks or bank holding companies. (1) For purposes of the BE–10 survey, "banking" covers a business entity engaged in deposit banking or closely related functions, including commercial banks, Edge Act corporations engaged in international or foreign banking, foreign branches and agencies of US banks whether or not they accept deposits abroad, savings and loans, savings banks, and bank holding companies, *i.e.*, holding companies for which over 50 percent of their total income is from banks that they hold. If the bank or bank holding company is part of a consolidated business enterprise and the gross operating revenues from nonbanking activities of this consolidated entity are more than 50 percent of its total revenues, then the consolidated entity is deemed not to be a bank even if banking revenues make up the largest single source of all revenues. (Activities of subsidiaries of a bank or bank holding company that may not be banks but that provide support to the bank parent company, such as real estate subsidiaries set up to hold the office buildings occupied by the bank parent company, are considered bank activities.)

(2) Form BE–10A BANK (Report for a US Reporter that is a bank). A BE–10A BANK report must be completed by a US Reporter that is a bank. For purposes filing Form BE–10A BANK, the US Reporter is deemed to be the fully consolidated US domestic business enterprise and all required data on the form shall be for the fully consolidated domestic entity.

(i) If a US bank had any foreign affiliates at any time during its 1999 fiscal year, whether a bank or nonbank and whether held directly or indirectly, for which any one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than $7 million (positive or negative) at any time during the affiliate's 1999 fiscal year, the US Reporter must file a Form BE–10A BANK and, as applicable, a BE–10A BANK SUPPLEMENT listing each, if any, foreign affiliate, whether bank or nonbank, that is exempt from being reported on Form BE–10B (SF) or BE–10A BANK. It must also file a Form BE–10B(SF) for each nonexempt nonbank foreign affiliate and a Form BE–10B BANK for each nonexempt bank foreign affiliate.

(ii) If the U.S. bank Reporter had no foreign affiliates for which any one of the three items listed in paragraph (d)(2)(i) of this section was greater than $7 million (positive or negative) at any time during the affiliate's 1999 fiscal year, the US Reporter must file a Form BE–10A BANK and a BE–10A BANK SUPPLEMENT, listing all foreign affiliate exempt from being reported on Form BE–10B(SF) or BE–10 BANK.

(3) Form BE–10B BANK (Report for a foreign affiliate that is a bank). (i) A BE–10B BANK report must be filed for each foreign bank affiliate of a bank or nonbank US Reporter, whether directly or indirectly held, for which any one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than $7 million (positive or negative) at any time during the affiliate's 1999 fiscal year.

(ii) Notwithstanding paragraph (d)(3)(i) of this section, a Form BE–10B BANK must be filed for a foreign bank affiliate of the US Reporter that owns another nonexempt foreign affiliate of that US Reporter, even if the foreign affiliate parent is otherwise exempt, i.e., a Form BE–10B(LF), (SF), or BANK must be filed for all affiliates upward in a chain of ownership. However, a Form BE–10B BANK is not required to be filed for a foreign bank affiliate in which the US Reporter holds only an indirect ownership interest of 50 percent or less and that does not own a reportable nonbank foreign affiliate, but the indirectly owned bank affiliate must be listed on the BE–10A BANK SUPPLEMENT.

(e) Due date. A fully completed and certified BE–10 report comprising Form BE–10A or 10A BANK, BE–10A SUPPLEMENT (as required), and Form(s) BE–10B(LF), (SF), or BANK (as required) is due to be filed with BEA not later than May 31, 2000 for those US Reporters filing fewer than 50, and June 30, 2000 for those US Reporters filing 50 or more, Forms BE–10B(LF), (SF), or BANK.

[FR Doc. 99–23148 Filed 9–3–99; 8:45 am]

BILLING CODE 3510–06–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 990

[Docket No. FR–4425–N–06]

Negotiated Rulemaking Committee on Operating Fund Allocation; Notice of Advisory Committee Renewal

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Negotiated Rulemaking Committee Renewal.

SUMMARY: This document announces the renewal of the Negotiated Rulemaking Committee on Operating Fund Allocation. The purpose of the committee is to discuss and negotiate a proposed rule that would change the current method of determining the payment of operating subsidies to public housing agencies (PHAs).

FOR FURTHER INFORMATION CONTACT: Joan DeWitt, Director, Funding and Financial Management Division, Public and Indian Housing, Room 4216, Department of Housing and Urban Development, 431 Seventh Street, SW, Washington, DC 20410–0500; telephone (202) 708–1872 ext. 4035 (this telephone number is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On March 16, 1999 (64 FR 12920), HUD published a notice in the **Federal Register** that announced the establishment of HUD's Negotiated Rulemaking Committee on Operating Fund Allocation (the "Committee"). The purpose of the Committee is to negotiate and develop a proposed rule that would change the current method of determining the payment of operating subsidies to PHAs. The establishment of the Committee is required by the Quality Housing and Work Responsibility Act of 1998 (Public Law 105–276, approved October 21, 1998; 112 Stat. 2461) (the "Public Housing Reform Act").

The Public Housing Reform Act makes extensive changes to HUD's public and assisted housing programs. These changes include the establishment of an Operating Fund for the purpose of making assistance available to PHAs for the operation and management of public housing. The Public Housing Reform Act requires that the assistance to be made available from the new Operating Fund be determined using a formula developed through negotiated rulemaking procedures.

The original Committee charter will expire on September 30, 1999. Additional time is required for completion of the Committee's work. Therefore, the Secretary of HUD has renewed the Committee charter, in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App.) and the implementing General Services Administration regulations at 41 CFR part 101–6. The Committee will terminate upon completion of the proposed rule, unless the Designated Federal Officer and the Committee members agree to extend the duration of the Committee. In no case will the Committee be extended beyond the publication of the final rule.

Dated: August 25, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–23267 Filed 9–3–99; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–100905–97]

RIN 1545–AU96

Real Estate Mortgage Investment Conduits; Reporting Requirements and Other Administrative Matters; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to the elimination of the regulatory requirement that certain information be set forth on the face of a collateralized debt obligation (CDO) or regular interest in a Real Estate Mortgage Investment.

DATES: The public hearing originally scheduled for Monday, September 13, 1999, at 10 a.m., is canceled.

FOR FURTHER INFORMATION CONTACT: Guy Traynor of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and/or notice of public hearing that appeared in the **Federal Register** on May 19, 1999, (64 FR 27221), announced that a public hearing was scheduled for September 13, 1999, at 10 a.m., room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC 20224. The subject of the public hearing is proposed regulations under section 6049 of the Internal Revenue Code. The public comment period for these proposed regulations expired on July 19, 1999.

The notice of proposed rulemaking and/or notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of August 26, 1999, no one has requested to speak. Therefore, the public hearing scheduled for September 13, 1999, is canceled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99–23120 Filed 9–3–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 901

[SPATS No. AL–070–FOR]

Alabama Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of an amendment to the Alabama regulatory program (Alabama program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Alabama proposes revisions to statutes concerning the repair or compensation for material damage caused by subsidence, resulting from underground coal mining operations, to any occupied residential dwelling and related structures or any noncommercial building. Alabama proposed to revise its program at its own initiative.

This document gives the times and locations that the Alabama program and the amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that will be followed for the public hearing, if one is requested.

DATES: We will accept written comments until 4:00 p.m., c.d.t., October 7, 1999. If requested, we will hold a public hearing on the amendment on October 4, 1999. We will accept requests to speak at the hearing until 4:00 p.m., c.d.t. on September 22, 1999.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Arthur W. Abbs, Director, Birmingham Field Office, at the address listed below.

You may review copies of the Alabama program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Birmingham Field Office.

Arthur W. Abbs, Director, Birmingham Field Office, Office of Surface Mining, 135 Gemini Circle, Suite 215, Homewood, Alabama 35209, Telephone: (205) 290–7282.

Alabama Surface Mining Commission, 1811 Second Avenue, P.O. Box 2390, Jasper, Alabama 35502–2390, Telephone (205) 221–4130.

FOR FURTHER INFORMATION CONTACT: Arthur W. Abbs, Director, Birmingham Field Office. Telephone: (205) 290–7282. Internet: aabbs@balgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Alabama Program

On May 20, 1982, the Secretary of the Interior conditionally approved the Alabama program. You can find background information on the Alabama program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the May 20, 1982, **Federal Register** (47 FR 22062). You can find later actions on the Alabama program at 30 CFR 901.15 and 901.16.

II. Description of the Proposed Amendment

By letter dated August 17, 1999 (Administrative Record No. AL–0589), Alabama sent us an amendment to its program under SMCRA. Alabama sent the amendment at its own initiative. Alabama proposes to amend the Alabama Surface Mining Control and Reclamation Act. Below is a summary of the changes proposed by Alabama. The full text of the program amendment is available for your inspection at the locations listed above under **ADDRESSES**.

A. Alabama proposes to revise section 9–16–91(e)(1) to read as follows:

(1) Promptly repair or compensate for material damage to any occupied residential dwelling and related structures or any noncommercial building caused by surface subsidence resulting from underground coal mining operations. Repair of damage shall include rehabilitation, restoration, or replacement of the damaged occupied residential dwelling and related structures or noncommercial building. Compensation shall be provided to the owner of the damaged occupied residential dwelling and related structures or noncommercial building which shall be in the full amount of the diminution in value resulting from subsidence caused damage. Compensation may be accomplished by the purchase, prior to mining, of a non-cancelable premium-prepaid insurance policy.

B. Alabama proposes to revise section 9–16–91(e)(3) to read as follows:

(3) Promptly correct any material damage resulting from subsidence caused to surface lands, to the extent technologically and economically feasible, by restoring the land to a condition capable of maintaining the value and reasonably foreseeable uses that it was capable of supporting before subsidence.

C. Alabama proposes to revise section 9–16–91(e)(4) to read as follows:

(4) The regulatory authority shall issue such notices or orders and take such actions as necessary to compel compliance with these requirements.

D. Alabama proposes to revise section 9–16–91(f) to read as follows:

(f) Notwithstanding any other provision in this chapter to the contrary, the remedies prescribed in this section or any rule promulgated under authority of this chapter pertaining to repair or compensation for subsidence damage and replacement of water shall be the sole and exclusive remedies available to the owner for such damage and its effects. Neither punitive damages nor, except as specifically prescribed in this section or any rule promulgated under authority of this chapter pertaining to repair or compensation for subsidence damage and replacement of water, compensatory damages shall be awarded for subsidence damage caused by longwall mining or other mining process employing a planned subsidence method and conducted in substantial compliance with a permit issued under authority of this chapter. Nothing in this chapter shall prohibit agreements between the surface owner and the mineral owner or lessee that establish the manner and means by which repair or compensation for subsidence damage is to be provided. However, the remedies prescribed for subsidence damage shall not be diminished or waived by contrary provisions in deeds, leases, or documents (other than such subsidence damage agreements) which leave the owner without such prescribed remedies. Provided, however, the provisions of this subsection do not apply to any actions brought for, and in which the trier of the fact finds, intentional, willful, or wanton conduct; provided further, that conduct in substantial compliance with applicable mining permits may not be deemed to be intentional, willful, or wanton.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are requesting comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Alabama program.

Written Comments

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this

prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. You should explain the reason for any recommended change. In the final rulemaking, we will not necessarily consider or include in the Administrative Record any comments received after the time indicated under **DATES** or at locations other than the Birmingham Field Office.

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS No. AL–070–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Birmingham Field Office at (205) 290–7282.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.d.t. on September 22, 1999. We will arrange the location and time of the hearing with those persons requesting the hearing. If you are disabled and need special accommodations to attend a public hearing, contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The hearing will not be held if no one requests an opportunity to speak at the public hearing.

You should file a written statement at the time you request the hearing. This will allow us to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the amendment, request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We also make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 901

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 30, 1999.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 99–23218 Filed 9–3–99; 8:45 am]

BILLING CODE 4310–05–P

Notices

Federal Register

Vol. 64, No. 172

Tuesday, September 7, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 99–072–1]

User Fees; Agricultural Quarantine and Inspection Services

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice pertains to user fees charged for agricultural quarantine and inspection services we provide in connection with commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers arriving at ports in the Customs territory of the United States. The purpose of this notice is to remind the public of the user fees for fiscal year 2000 (October 1, 1999, through September 30, 2000).

FOR FURTHER INFORMATION CONTACT: For information concerning program operations, contact Mr. Jim Smith, Operations Officer, Program Support, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236; (301) 734–8295.

For information concerning rate development, contact Ms. Donna Ford, User Fees Section Head, FSSB, BASEU, MRP–BS, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232; (301) 734–8351.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR 354.3 (referred to below as the regulations) contain provisions for the collection of user fees for agricultural quarantine and inspection (AQI) services provided by the Animal and Plant Health Inspection Service (APHIS). These services include, among other things, inspecting commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers arriving at ports in the Customs territory of the United States from points outside the United States. (The Customs territory of the United States is defined in the regulations as the 50 States, the District of Columbia, and Puerto Rico.)

These user fees are authorized by § 2509(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136a). This statute, known as the Farm Bill, was amended by § 504 of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. 104–127) on April 4, 1996.

On July 24, 1997, we published in the **Federal Register** (62 FR 39747–39755, Docket No. 96–038–3) a final rule to amend the regulations by adjusting our user fees for servicing commercial vessels, commercial trucks, commercial railroad cars, commercial aircraft, and international airline passengers arriving at ports in the Customs territory of the United States from points outside the United States and by setting user fees for these services for fiscal years 1997 through 2002. When we established the user fees for fiscal years 1997 through 2002, we stated that, prior to the beginning of the fiscal year, we would publish a notice to remind the public of the user fees for that fiscal year. This document provides notice to the public of the user fees for fiscal year 2000.

We inspect commercial vessels of 100 net tons or more.[1] As specified in § 354.3(b)(1), our user fee for inspecting commercial vessels will be $461.75 during fiscal year 2000 (October 1, 1999, through September 30, 2000).

We inspect commercial trucks[2] entering the Customs territory of the United States. Commercial trucks may pay the APHIS user fee each time they enter the Customs territory of the United States from Mexico[3] or purchase a prepaid APHIS permit for a calendar year. Since commercial trucks are also subject to Customs user fees, our regulations provide that commercial trucks must prepay the APHIS user fee if they are prepaying the Customs user fee. In that case, the required APHIS user fee is 20 times the user fee for each arrival and is valid for an unlimited number of entries during the calendar year (see § 354.3(c)(3)(i) of the regulations). The truck owner or operator, upon payment of the APHIS and the Customs user fees, receives a decal to place on the truck windshield. This is a joint decal, indicating that both the Customs and APHIS user fees for the truck have been paid for that calendar year. As specified in § 354.3(c)(1), our user fee for inspecting commercial trucks will be $4 for individual arrivals and, as specified in § 354.3(c)(3)(i), $80 for a calendar year 2000 decal.

We inspect commercial railroad cars[4] entering the Customs territory of the United States. These user fees may be paid per inspection or prepaid. Prepaid user fees cover 1 calendar year's worth of AQI inspections. As specified in § 354.3(d)(1), the user fee for this service will be $6.75 per loaded commercial railroad car for each arrival or, if user fees are prepaid, $135 (20 times the individual arrival fee) for each loaded railcar during fiscal year 2000 (October 1, 1999, through September 30, 2000).

We inspect international commercial aircraft[5] arriving at ports in the Customs territory of the United States. As specified in § 354.3(e)(1), the user fee will be $60.25 during fiscal year 2000 (October 1, 1999, through September 30, 2000).

We also inspect international airline passengers[6] arriving at ports in the Customs territory of the United States. As specified in § 354.3(f)(1), the international airline passenger user fee will be $2.05 during fiscal year 2000

[1] Those commercial vessels subject to inspections are specified in 7 CFR, chapter III, part 330 or in 9 CFR, chapter I, subchapter D of the regulations. Exemptions to these user fees are specified in § 354.3(b)(2).

[2] Those commercial trucks subject to inspections are specified in 7 CFR, chapter III, part 330 or in 9 CFR, chapter I, subchapter D of the regulations. Exemptions to these user fees are specified in § 354.3(c)(2).

[3] Section 354.3(c)(2)(i) of the regulations states that commercial trucks entering the Customs territory of the United States from Canada are exempt from paying an APHIS user fee.

[4] Those commercial railroad cars subject to inspections are specified in 7 CFR, chapter III, part 330 or in 9 CFR, chapter I, subchapter D of the regulations. Exemptions to these user fees are specified in § 354.3(d)(2).

[5] Those commercial aircraft subject to inspections are specified in 7 CFR, chapter III, part 330 or in 9 CFR, chapter I, subchapter D of the regulations. Exemptions to these user fees are specified in § 354.3(e)(2).

[6] Those international airline passengers subject to inspections are specified in 7 CFR, chapter III, part 330 or in 9 CFR, chapter I, subchapter D of the regulations. Exemptions to these user fees are specified in § 354.3(f)(2).

(October 1, 1999, through September 30, 2000).

Done in Washington, DC, this 30th day of August, 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–23188 Filed 9–3–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

National Drought Policy Commission

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of Commission meeting and public hearing and request for comments.

SUMMARY: The National Drought Policy Act of 1998 established the National Drought Policy Commission (Commission). The Farm Service Agency (FSA) was identified to provide support to the Commission. The Commission shall conduct a thorough study and submit a report to the President and Congress on national drought policy. The first meeting of the Commission was held on July 22, 1999, and the first public hearing on July 23, 1999. Minutes of the first meeting and a list of Commission members can be found on the Commission's web site at www.fsa.usda.gov/drought. This notice announces the second meeting and public hearing and seeks comments on issues that the Commission should address and recommendations that the Commission should consider as part of its report. The second public hearing and meeting of the Commission will be held September 22. All meetings are open to the public; however, seating is limited and available on a first-come basis.

DATES: The Commission will conduct a public hearing on September 22, 1999, from 8:00 a.m. to 12:00 noon in the Williamsburg Room, Jamie L. Whitten Building, 12th and Jefferson Drive, SW, Washington, DC.

The Commission will meet on September 22, 1999, from 1:00 p.m. to 5:00 p.m. in the same location. All times noted are Eastern Daylight Time. The Commission will discuss the current drought in the Northeast as it applies to national policy. They will also discuss the status of Commission activities, the operational definition of drought for the Commission, and other committee business.

Anyone wishing to make an oral presentation to the Commission at the public hearing, must contact the Executive Director, Leona Dittus, in writing (by letter, fax or internet) no later than 12 noon, September 21, 1999, in order to be included on the agenda. Presenters will be approved on a first-come, first-served basis. The request should identify the name and affiliation of the individual who will make the presentation and an outline of the issues to be addressed. Thirty-five copies of any written presentation material shall be given to the Executive Director by all presenters no later than the time of the presentation for distribution to the Commission and the interested public. Those wishing to testify, but who are unable to notify the Commission office by September 21, 1999, will be able to sign up as a presenter the day of the hearing (September 22) between 8:00 a.m. and 10:00 p.m. These presenters will testify on a first-come, first-served basis and comments will be limited based on the time available and the number of presenters. Written statements will be accepted at the meeting, or may be mailed or faxed to the Commission office.

ADDRESSES: Comments and statements should be sent to Leona Dittus, Executive Director, National Drought Policy Commission, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Room 6701–S, STOP 0501, Washington, DC 20250–0501.

FOR FURTHER INFORMATION CONTACT: Leona Dittus (202) 720–3168; FAX (202) 720–4293; internet Leona_Dittus@WDC.FSA.USDA.GOV.

SUPPLEMENTARY INFORMATION: The purpose of the Commission is to provide advice and recommendations to the President and Congress on the creation of an integrated, coordinated Federal policy, designed to prepare for and respond to serious drought emergencies. Tasks for the Commission include developing recommendations that will (a) better integrate Federal laws and programs with ongoing State, local, and tribal programs (b) improve public awareness of the need for drought mitigation, prevention, and response and (c) determine whether all Federal drought preparation and response programs should be consolidated under one existing Federal agency, and, if so, identify the agency. The Commission will be chaired by the Secretary of Agriculture or his designee, and a Vice Chair shall be selected from among the members who are not Federal officers or employees. In the absence of the Chair, the Vice Chair will act in his stead. Administrative staff support essential to the execution of the Commission's responsibilities shall be provided by USDA, FSA.

Commission members specifically cited in Public Law 105–199, include the Secretaries of Agriculture, Interior, Army, and Commerce, the Director of the Federal Emergency Management Agency, and the Administrator of the Small Business Administration; two persons nominated by the National Governors' Association, a person nominated by the National Association of Counties, and a person nominated by the Conference of Mayors. Those four members are to be appointed by the President. Six additional Commission members have been appointed by the Secretary of Agriculture, in coordination with the Secretary of the Interior and the Secretary of the Army. The six at-large members represent groups acutely affected by drought emergencies, such as the agricultural production community, the credit community, rural and urban water associations, Native Americans, and fishing and environmental interests.

If special accommodations are required, please contact Leona Dittus, at the address specified above, by COB September 15, 1999.

Signed at Washington, DC, on September 1, 1999.

Parks Shackelford,

Acting Administrator, Farm Service Agency.

[FR Doc. 99–23184 Filed 9–1–99; 2:01 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Western Washington Cascades Provincial Interagency Executive Committee (PIEC) Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Western Washington Cascades Provincial Interagency Executive Committee Advisory Committee (Provincial Advisory Committee) will meet on Friday, September 24, 1999, at the Mt. Baker-Snoqualmie National Forest Headquarters, 21905 64th Avenue West, in Mountlake Terrace, WA. The meeting will begin at 9 a.m. and continue until about 3 p.m. Agenda items to be covered include: (1) formal introduction of members and a review and discussion of Advisory-Committee operating procedures and groundrules; (2) brief orientation including Advisory Committee purpose and history and the role of Committee members; and (3) a futuring session including a briefing on the current status and complexity of forest programs and resources and a discussion leading to the identification of a strategic focus for the Committee.

In addition to the Advisory Committee meeting, a field trip for Advisory Committee members will take place the previous day, Thursday, September 23, 1999. Members will tour portions of the Baker Lake basin on the Mt. Baker Ranger District, commencing at 9 a.m. at the Mt. Baker District Office, 2105 State Route 20, in Sedro Woolley, Washington, and ending back at the same Office about 4:30 p.m. The purpose of the trip is to: (1) Explore the complexity of National Forest natural resource management; (2) emphasize the integration of forest management activities among federal and non-federal entities; (3) introduce the nature of an "Urban Forest" and its ties to Puget Sound growth; and (4) introduce the idea of a more strategic view of resource management and advice to the Forest. All Western Washington Cascades Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. Interested citizens are also welcome to join the September 23 field trip; however, they must provide their own transportation.

The Provincial Advisory Committee provides advice regarding ecosystem management for federal lands within the Western Washington Cascades Province, as well as advice and recommendations to promote better integration of forest management activities among federal and non-federal entities. The Advisory Committee is a key element of implementation of the Northwest Forest Plan.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Penny Sundblad, Province Liaison, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, Mt. Baker Ranger District, 2105 State Route 20, Sedro Woolley, Washington 98284 (360–856–5700, Extension 321).

Dated: August 30, 1999.

John Phipps,

Forest Supervisor.

[FR Doc. 99–23150 Filed 9–3–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by November 8, 1999.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Program Development & Regulatory Analysis, Rural Utilities Service, USDA, 1400 Independence Ave., SW., STOP 1522, Room 4034 South Building, Washington, DC 20250–1522. Telephone: (202) 720–0736. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION:

Title: Seismic Safety of New Building Construction.

OMB Control Number: 0572–0099.

Type of Request: Reinstatement with change of previously approved information collection.

Abstract: The Earthquake Hazards Reduction Act of 1977 (42 U.S.C. 7701 *et seq.*) was enacted to reduce risks to life and property through the National Earthquake Hazards Reduction Program (NEHRP). The Federal Emergency Management Agency (FEMA) is designated as the agency with the primary responsibility to plan and coordinate the NEHRP. This program includes the development and implementation of feasible design and construction methods to make structures earthquake resistant. Executive Order 12699 of January 5, 1990, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction, requires that measures to assure seismic safety be imposed on federally assisted new building construction.

Title 7 Part 1792, Subpart C, Seismic Safety of Federally assisted New Building Construction, identifies acceptable seismic standards which must be employed in new building construction funded by loans, grants, or guarantees made by RUS or the Rural Telephone Bank (RTB) or through lien accommodations or subordinations approved by RUS or RTB. This subpart implements and explains the provisions of the loan contract utilized by the RUS for both electric and telecommunications borrowers and by the RTB for its telecommunications borrowers requiring construction certifications affirming compliance with the standards.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.5 hours per response.

Respondents: Small business or organizations.

Estimated Number of Respondents: 1,000.

Estimated Number of Responses per Respondent: 1.2.

Estimated Total Annual Burden on Respondents: 800.

Copies of this information collection can be obtained from Bob Turner, Program Development and Regulatory Analysis, at (202) 720–0696.

Comments are invited on (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms of information technology. Comments may be sent to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Stop 1522, Room 4034 South Building, Washington, D.C. 20250–1522.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: August 31, 1999.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 99–23186 Filed 9–3–99; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Tri-State Generation and Transmission Association, Inc. and Plains Electric Generation and Transmission Cooperative, Inc.; Notice of Availability of an Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of availability of an environmental assessment.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) is issuing an Environmental Assessment (EA) with respect to the potential environmental impacts related to the

construction and operation of a 230 kV transmission line and associated facilities proposed by Tri-State Generation and Transmission Association, Inc. (Tri-State), of Westminster, Colorado. The project will extend from Walsenburg, Colorado, to an area near Gladstone, New Mexico. RUS may provide financing assistance for the project.

FOR FURTHER INFORMATION CONTACT: Dennis E. Rankin, Environmental Protection Specialist, RUS, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone: (202) 720–1953 or e-mail: drankin@rus.usda.gov.; Karl Myers, Tri-State, P.O. Box 33695, Denver, Colorado 80233, telephone: (303) 452–6111 or e-mail: kmyers@tristategt.org; or Richard Precek, Plains Electric Generation and Transmission Cooperative, Inc., P.O. Box 6551, Albuquerque, New Mexico 87197, telephone: (505) 889–7207 or e-mail: rwprecek@plainsgt.org.

SUPPLEMENTARY INFORMATION: The project will extend from Tri-State's existing Walsenburg Substation located at Walsenburg, Colorado, to a proposed substation to be located near Gladstone, New Mexico. The proposed project will be located in Huerfano and Las Animas Counties, Colorado, and Colfax and Union Counties, New Mexico. The project will interconnect with an existing transmission line which is presently owned by Plains Electric Generation and Transmission Cooperative, Inc. (Plains). Tri-State and Plains are pursuing a merger. Alternatives to the proposed project include local generation, transmission system alternatives, alternative routes and no action.

Greystone, an environmental consultant, prepared an environmental assessment (EA) which describes the project further and discusses the environmental impacts of the proposed project for RUS. RUS has conducted an independent evaluation of the EA and believes that it accurately assesses the impacts of the proposed project. No adverse impacts are expected with the construction of the project. RUS has accepted the document as its Environmental Assessment and is making it available for public review.

Copies of the EA have been sent to Federal, State and local agencies and the public who have previously requested a copy. The EA also can be reviewed at libraries located in communities within the project area and at offices of electric cooperatives that provide service to the project area.

Questions and comments should be sent to RUS at the address provided. RUS should receive comments on the Environmental Assessment in writing by October 6, 1999, to ensure that the comments are taken into consideration prior to RUS making its environmental determination.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental review procedures as prescribed by the Council on Environmental Quality Regulations and RUS environmental policies and procedures.

Dated: August 31, 1999.

Glendon D. Deal,

Acting Director, Engineering and Environmental Staff.

[FR Doc. 99–23161 Filed 9–3–99; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1051]

Approval for Expanded Manufacturing Authority (Pharmaceutical Products) Within Foreign-Trade Subzone 22F, Abbott Laboratories, Inc., Chicago, Illinois, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Illinois International Port District, grantee of FTZ 22, has requested authority on behalf of Abbott Laboratories, Inc., operator of FTZ Subzone 22F, located in the Chicago, Illinois, area, to expand the scope of manufacturing activity conducted under FTZ procedures at the Abbott plant (FTZ Doc. 58–98, filed 12–17–98); and,

Whereas, notice inviting public comment was given in the **Federal Register** (63 FR 71617, 12/28/98); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby approves the request subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 30th day of August, 1999.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–23211 Filed 9–3–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 42–99]

Foreign-Trade Zone 49—Newark/Elizabeth, New Jersey; Application for Subzone, Clariant Corp., Somerville, New Jersey

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port Authority of New York & New Jersey, grantee of FTZ 49, requesting special-purpose subzone status for the manufacturing and warehousing facilities of Clariant Corporation (Clariant), located in Somerville, New Jersey. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on August 25, 1999.

The Clariant Corporation has two sites with 150 employees in Somerset County, New Jersey. Site 1 (64.06 acres) is located at 70 Meister Avenue in Somerville, New Jersey. Site 2 (2 acres) is located at 55 Veronica Avenue in Somerset, New Jersey. The Clariant facilities are used for the manufacturing, testing, packaging and warehousing of specialized electronic chemicals used in the production of microelectronic devices. Initially, zone savings are expected to come from the manufacture of photoresists, strippers, anti-reflective coatings, and edge bead removers/thinners (HTS 3707 and 3814, duty rate ranges from 6.0% to 6.5%). Components and materials sourced from abroad (representing about 70% of all parts consumed in manufacturing) include: sulfonic esters, resins, dyes, organic surface active agents, and chemical preparations for photographic uses (HTS 2927, 3402, 3707, and 3909, duty rate ranges from 4.0% to 9.5%). The application also indicates that the company may in the future import under FTZ procedures a wide variety of other chemical materials, as well as other products used in the production of electronic chemicals.

FTZ procedures would exempt Clariant from Customs duty payments on the foreign components used in export production. Some 10 percent of the plant's shipments are exported. On its domestic sales, Clariant would be able to choose the duty rates during Customs entry procedures that apply to finished electronic chemicals (6.0–6.5%) for the foreign inputs noted above. In addition, Clariant products shipped to semiconductor manufacturers with subzone status could be subject to the semiconductor duty rate (duty-free). The request indicates that the savings from FTZ procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 8, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period November 22, 1999.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Customs Port of Entry -Perth Amboy, 205 Jefferson St., Room 203, Perth Amboy, NJ 08861.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th and Pennsylvania Avenue, NW, Washington, DC 20230

Dated: August 27, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–23210 Filed 9–3–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Extension of Time Limit for Final Results of Five-Year Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit for Preliminary Results of Five-Year ("Sunset") Reviews.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the final results of 23 expedited sunset reviews initiated on May 3, 1999 (64 FR 23596) covering various antidumping and countervailing duty orders. Based on adequate responses from domestic interested parties and inadequate responses from respondent interested parties, the Department is conducting expedited sunset reviews to determine whether revocation of the antidumping and countervailing duty orders would be likely to lead to continuation or recurrence of dumping or a countervailable. As a result of these extensions, the Department intends to issue its final results not later than November 29, 1999.

EFFECTIVE DATE: September 7, 1999.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–6397, or (202) 482–1560 respectively.

Extension of Final Results

In accordance with section 751(c)(5)(C)(v) of the Tariff Act of 1930, as amended ("the Act"), the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995; *see* section 751(c)(6)(C) of the Act). The Department has determined that the sunset reviews of the following antidumping and countervailing duty orders are extraordinarily complicated:

A–583–008 Small Diameter Carbon Steel Pipe and Tube from Taiwan
A–549–502 Welded Carbon Steel Pipes and Tubes from Thailand
A–533–502 Welded Carbon Steel Pipes and Tubes from India
A–489–501 Welded Carbon Steel Pipes and Tubes from Turkey
A–122–506 Oil Country Tubular Goods from Canada
A–583–505 Oil Country Tubular Goods from Taiwan
A–559–502 Small Diameter Standard & Rectangular Pipe & Tube from Singapore
A–583–803 Light Walled Rectangular Tubing from Taiwan
A–357–802 Light Walled Rectangular Tubing from Argentina
A–351–809 Circular-Welded Non-Alloy Steel Pipe from Brazil
A–580–809 Circular-Welded Non-Alloy Steel Pipe from Korea
A–201–805 Circular-Welded Non-Alloy Steel Pipe from Mexico
A–583–814 Circular-Welded Non-Alloy Steel Pipe from Taiwan
A–307–805 Circular-Welded Non-Alloy Steel Pipe from Venezuela
A–588–707 Granular Polytetrafluoroetheylene Resin from Japan
A–475–703 Granular Polytetraflouroetheylene Resin from Italy
A–351–602 Carbon Steel Butt-Weld Pipe Fittings from Brazil
A–583–605 Carbon Steel Butt-Weld Pipe Fittings from Taiwan
A–588–602 Carbon Steel Butt-Weld Pipe Fittings from Japan
A–570–814 Carbon Steel Butt-Weld Pipe Fittings from China
A–549–807 Carbon Steel Butt-Weld Pipe Fittings from Thailand
A–484–801 Electrolytic Manganese Dioxide from Greece
A–588–806 Electrolytic Manganese Dioxide from Japan

Therefore, the Department is extending the time limit for completion of the final results of these reviews until not later than November 29, 1999, in accordance with section 751(c)(5)(B) of the Act.

Dated: August 31, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–23207 Filed 9–3–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–824]

Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Notice of Initiation and Preliminary Results of Changed Circumstances Review and Intent to Revoke Antidumping Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed circumstances review, and intent to revoke antidumping order in part.

SUMMARY: In accordance with 19 CFR 351.216(b), Taiho Corporation of America (Taiho America) requested a changed circumstances review of the antidumping order on Certain Corrosion-Resistant Carbon Steel Flat Products from Japan. In response to Taiho's request, the Department of Commerce (the Department) is initiating a changed circumstances review and issuing a notice of intent to revoke in part the antidumping duty order on

certain corrosion-resistant carbon steel flat products from Japan. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: September 7, 1999.

FOR FURTHER INFORMATION CONTACT: Sarah Ellerman or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4106, (202) 482–3020, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR Part 351 (1998).

SUPPLEMENTARY INFORMATION:

Background

On August 27, 1999, Taiho America requested that the Department revoke in part the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan. Specifically, Taiho America requested that the Department revoke the order with respect to imports of the following merchandise: (1) Carbon steel flat products measuring 0.97 mm in thickness and 20 mm in width consisting of carbon steel coil (SAE 1008) with a two-layer lining, the first layer consisting of a copper-lead-tin alloy powder that is balance copper, 9%–11% tin, 9%–11% lead, less than 1% zinc, less than 1% other materials and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consists of 45%–55% lead, 38%–50% polytetrafluorethylene (PTFE) and 3%–5% molybdenum disulfide and less than 2% other materials; and (2) carbon steel flat products measuring 1.84 mm in thickness and 43.6 mm or 16.1 mm in width consisting of carbon steel coil (SAE 1008) clad with an aluminum alloy that is balance aluminum, 20% tin, 1% copper, 0.3% silicon, 0.15% nickel less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys. Taiho America, a domestic manufacturer of plain sleeve bushings, is an importer of the products in question.

Scope of Antidumping Order

This antidumping duty order on certain corrosion-resistant steel flat products covers flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel-or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive of the scope of this review.

Also excluded are certain corrosion-resistant carbon steel flat products meeting the following specifications: (1) widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum, followed by a layer consisting of chromate, or three evenly applied layers, the first layer consisting of 99% zinc, 0.5% cobalt, and 0.5% molybdenum followed by a layer consisting of chromate, and finally a layer consisting of silicate.

Initiation and Preliminary Results of Changed Circumstances Review, and Intent To Revoke Order in Part

Pursuant to sections 751(d)(1) and 782(h)(2) of the Act, the Department may revoke an antidumping or countervailing duty order, in whole or in part, based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed circumstances review to be conducted upon receipt of a request which shows changed circumstances sufficient to warrant a review. Section 351.222(g) of the Department's regulations provides that the Department will conduct a changed circumstances review under 19 CFR 351.216, and may revoke an order (in whole or in part), if it determines that producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the relief provided by the order, in whole or in part, or if other changed circumstances sufficient to warrant revocation exist. In addition, in the event that the Department concludes that expedited action is warranted, 19 CFR 351.221(c)(3)(ii) permits the Department to combine the notices of initiation and preliminary results.

In accordance with sections 751(d)(1) and 782(h)(2) of the Act, and 19 CFR 351.216 and 351.222(g), based on affirmative statements by domestic producers of the like product, Bethlehem Steel Corporation, Ispat Inland Steel Industries, Inc, LTV Steel Co., Inc., National Steel Corporation, and U.S. Steel Group, a unit of USX Corporation, of no further interest in continuing the order with respect to corrosion-resistant carbon steel flat products measuring 0.97 mm in thickness and 20 mm in width consisting of carbon steel coil, SAE 1010 or 1012, with a two-layer lining, the first layer consisting of a copper-lead-tin alloy powder that is 76%–80% copper, 9%–11% tin, 9%–11% lead, and under 1% zinc and meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, the second layer consisting of 45%–55% lead, 38%–50% PTFE, and 3%–5% molybdenum disulfide, we are initiating this changed circumstances review. We are also initiating a changed circumstances review, based on affirmative statements, by the domestic producers listed above, of no further interest in continuing the order with respect to corrosion-resistant carbon steel flat products measuring 1.84 mm in thickness and 43.6 mm or 16.1 mm in width consisting of carbon steel coil (SAE 1008) clad with an aluminum alloy that is balance aluminum, 20% tin, 1% copper, 0.3% silicon, 0.15% nickel less than 1% other materials and meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys. Furthermore, we determine that expedited action is warranted, and we preliminarily determine that continued application of the order with respect to corrosion-resistant carbon steel flat products falling within the descriptions above is no longer of interest to domestic interested parties. Because we have concluded that expedited action is warranted, we are combining these notices of initiation and preliminary results. Therefore, we are hereby notifying the public of our intent to revoke in part the antidumping duty order on certain corrosion-resistant carbon steel flat products from Japan with respect to imports of the above-specified products.

If the final revocation, in part, occurs, we intend to instruct the U.S. Customs Service (Customs) to liquidate without regard to antidumping duties, as applicable, and to refund any estimated antidumping duties collected for all unliquidated entries of corrosion-resistant carbon steel flat products, with the dimensions and chemical composition of coatings indicated above, not subject to final results of administrative review as of the date of publication in the **Federal Register** of the final results of this changed circumstances review in accordance with 19 CFR 351.222. We will also instruct Customs to pay interest on such refunds in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping duties on corrosion-resistant carbon steel flat products, with the dimensions and coatings indicated above, will continue unless and until we publish a final determination to revoke in part.

Public Comment

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Parties to the proceedings may request a hearing within 14 days of publication. Any hearing, if requested, will be held no later than 2 days after the deadline for the submission of rebuttal briefs, or the first workday thereafter. Case briefs may be submitted by interested parties not later than 14 days after the date of publication of this notice. Rebuttal briefs, limited to the issues raised in the case briefs, may be filed not later than 5 days after the deadline for submission of case briefs. All written comments shall be submitted in accordance with 19 CFR 351.303 and shall be served on all interested parties on the Department's service list in accordance with 19 CFR 351.303. Persons interested in attending the hearing should contact the Department for the date and time of the hearing. The Department will publish the final results of this changed circumstances review, including the results of its analysis of issues raised in any written comments.

This notice is published in accordance with section 751(b)(1) of the Act and 19 CFR 351.216 and 351.222.

Dated: August 30, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–23209 Filed 9–3–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–803]

Certain Cut-to-Length Carbon Steel Plate From Romania: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request from one respondent and the petitioners, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain cut-to-length carbon steel plate from Romania. This review covers one manufacturer/exporter of the subject merchandise. The period of review (POR) is August 1, 1997 through July 31, 1998.

We preliminarily determine that sales have been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties equal to the difference between export price (EP) and NV.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: September 7, 1999.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Robert James, Enforcement Group III—Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2924 (Baker), (202) 482–5222 (James).

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all references to the Department's regulations are to Part 351 of 19 CFR (1998).

Background

The Department published an antidumping duty order on certain cut-to-length carbon steel plate from Romania on August 19, 1993 (58 FR 44167). The Department published a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order for the 1997/98 review period on August 11, 1998 (63 FR 42821). On August 31, 1998, respondents Windmill International

PTE Ltd. of Singapore, Windmill International Romania Branch, and Windmill International Ltd. (USA), (collectively "Windmill") requested that the Department conduct an administrative review. On August 31, 1998, we also received a request for an administrative review from Bethlehem Steel Corporation and U.S. Steel Group, a Unit of USX Corporation (petitioners). We published a notice of initiation of the review on September 29, 1998 (63 FR 51893).

Under the Act, the Department may extend the deadline for completion of administrative reviews if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. On March 26, 1999, the Department extended the time limit for the preliminary results in this case. *See Cut-to-Length Carbon Steel Plate from Romania; Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review*, 64 FR 14689.

The Department is conducting this administrative review in accordance with section 751(a) of the Act.

Scope of the Review

The products covered in this review include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coil and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from this review is grade X–70 plate.

These HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

The POR is August 1, 1997 through July 31, 1998. This review covers sales of certain cut-to-length carbon steel plate by Windmill International PTE Ltd. of Singapore (Windmill Singapore.) Windmill's supplier during the POR was the unaffiliated producer C.S. Sidex S.A (Sidex).

Verification

As provided in section 782(i) of the Act, we verified information provided by the respondent using standard verification procedures, including on-site inspection of the manufacturer's facilities, the examination of relevant sales and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public version of the Department's *Verification of the Information Submitted by Windmill International PTE Ltd., Windmill International Romania Branch, and Windmill USA in the 1997–98 Administrative Review of the Antidumping Duty Order on Cut-to Length Carbon Steel Plate from Romania Report (Verification Report)* dated August 31, 1999, on file in room B–099 of the Department of Commerce Building.

Separate Rates Determination

Windmill International Romania Branch (Windmill Romania) is a liaison office wholly-owned by Windmill Singapore. It is registered by the Romanian government as a branch office of Windmill Singapore, not authorized to trade for its own account, but only to support Windmill Singapore's foreign trade activities. It does not keep its own financial records, and has no financial statements or chart of accounts. All of its costs are included in Windmill Singapore's accounting records. Furthermore, it makes its sales through Windmill Singapore. Moreover, there is no Romanian ownership of Windmill Romania. Therefore, we determine that no separate rates analysis is required for this third-country reseller because we consider the Singapore-based parent to be the respondent exporter in the proceeding and because it is beyond the jurisdiction of the Romanian government. *See, e.g., Final Results of Antidumping Duty Administrative Review: Porcelain on Steel Cookware from the People's Republic of China; 63 FR 27262, 27263* (May 18, 1998) and *Final Determination of Sales at Less Than Fair Value: Disposable Pocket Lighters from the People's Republic of China;* 60 FR 22359, 22361 (May 5, 1995) and *Final Determination of Sales at Less Than Fair Value: Melamine Institutional Dinnerware Products from the People's Republic of China;* 62 FR 1708, 1709 (January 13, 1997).

Export Price

We calculated the price of United States sales based on EP, in accordance with section 772(a) of the Act. We based EP on the price from Windmill to its unaffiliated U.S. customer, because Sidex sold the merchandise to Windmill without knowing that the ultimate destination of the merchandise was the United States.

We calculated EP based on packed prices to unaffiliated customers in the United States. Where appropriate, we made deductions from the starting price for foreign inland freight, international freight, marine insurance, shipment inspection fee, other U.S. transportation expenses, and U.S. Customs Service duty. The foregoing expenses were all reported by Windmill in its questionnaire response. We also made an adjustment for four additional expenses not reported by Windmill that we found at the verification. These four expenses were: (1) A bank fee and "miscellaneous expense" associated with the foreign inland freight; (2) payment of a bank fee associated with the shipment inspection; (3) an expense recorded in a miscellaneous account; and (4) the purchase of a Customs bond for exporting the merchandise to the United States. For a description of these four expenses, see the *Verification Report*, at pages 22, 26, 28, and 29, respectively.

Windmill reported the invoice date (as kept in the ordinary course of business) as the date of sale. However, that invoice date was after the date of shipment and the contract date, and we found no evidence suggesting that the terms of sale were altered between the contract date and the invoice date. Therefore, we used the contract date as the date of sale because the terms of sale did not change after that date.

Normal Value

For merchandise exported from an NME country, section 773(c)(1) of the Act provides that the Department shall determine normal value (NV) using a factors of production method if (1) the merchandise is exported from an NME and (2) available information does not permit the calculation of NV using home market or third-country prices under section 773(a) of the Act. The Department has treated Romania as an NME country in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Moreover, parties to this proceeding have not argued that the Romanian steel industry is a market-oriented industry. Consequently, we have no basis to determine that the available information would permit the calculation of NV using Romanian prices or costs. Therefore, we calculated NV based on factors of production in accordance with sections 773(c)(3) and (4) of the Act and section 351.408(c) of our regulations.

Under the factors of production method, we are required to value the NME producer's inputs in a comparable market economy country that is a significant producer of comparable merchandise. We determined that Indonesia is at a level of economic development comparable to that of Romania. We also found that Indonesia is a significant producer of cut-to-length carbon steel plate. Therefore, for this review, we have used Indonesian prices to value the factors of production except where the factor was purchased from a market economy supplier and paid for in a market economy currency. For a further discussion of the Department's selection of a surrogate country, see the memorandum from Jeff May to Richard O. Weible: "Cut-to-Length Carbon Steel Plate ("CLCSP") from Romania: Nonmarket Economy Status and Surrogate Country Selection," dated March 1, 1999 and the memorandum from Jeff May to Richard O. Weible: "Your Request for Additional Surrogate Countries in the Administrative Review of Cut-to-Length Carbon Steel Plate ("CLCSP") from Romania" dated April 27, 1999.

We selected, where possible, publicly available values from Indonesia which were: (1) average non-export values; (2) representative of a range of prices within the POR or most contemporaneous with the POR; (3) product specific; and (4) tax-exclusive. We valued the factors of production as follows:

- *Raw Materials.* We valued low volatile coking coal, medium volatile coking coal, high volatile coking coal, lime, limestone, iron ore fines, iron ore lumps, iron ore pellets, iron ore concentrate, dolomite, and coke fines using U.N. Commodity Trade Statistics. We did not use the barter transactions provided by Windmill to value medium volatile coking coal, high volatile coking coal, iron ore fines, and iron ore lumps because Windmill could not specifically quantify the value of the items that it bartered for those production inputs. (See *Verification Report* at pages 18–20.)
- *Labor.* Section 351.408(c)(3) of our regulations requires the use of a regression-based wage rate. We have used the regression-based wage rate listed for Romania on Import Administration's internet website at www.ita.doc.gov/import_admin/records/wages. The source for the wage rate data used in the regression analysis is "Expected Wages of Selected NME Countries—1997 Income Data," *1998 Year Book of Income Data*, International Labor Office, (Geneva: 1998) Chapter 5B: Wages in Manufacturing.
- *Energy.* We valued electricity and natural gas using the International Energy Agency's *Asia Electric Study* (1997).
- *Selling, General and Administrative Expenses (SG&A), Overhead, and Profit.* We calculated SG&A, overhead, and profit based on information obtained from the 1997 annual report of PT Krakatau Steel, the largest integrated steel producer in Indonesia. From this statement we were able to calculate factory overhead as a percentage of the total cost of manufacturing, SG&A as a percentage of the total cost of manufacturing, and the profit rate as a percentage of the cost of manufacturing plus SG&A.

For a complete description of the factor values used, see the preliminary results analysis memorandum dated August 31, 1999, a public version of which is available in the public file.

We also made an offset, where appropriate, for byproducts sold. However, we denied Windmill's claimed offset adjustments for sinterized dolomite, recovered lime, lime powder, carbon dioxide, raw water, and industrial water because we found at the verification that these products were not byproducts of the production process of subject merchandise, but were products held in inventory for use in the production process. Thus, the sales of such products constituted sales of excess inventory, and not sales of byproducts.

Currency Conversion

We made currency conversions in accordance with Section 773A(a) of the Act. For currency conversions involving the Indonesian rupiah, we used exchange rates published in the International Monetary Fund in *International Financial Statistics*. For all other conversions, we used daily exchange rates published by the Federal Reserve.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that a weighted-average dumping margin of 20.62 percent exists for Windmill for the period August 1, 1997 through July 31, 1998.

Within five days of the date of publication of this notice, in accordance with 19 CFR 351.224, the Department will disclose its calculations. Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit written comments (case briefs) no later than 30 days after the date of publication. Rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, may be filed no later than 37 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument, not to exceed five pages in length. The Department will publish a notice of the final results of the administrative review, which will include the results of its analysis of issues raised by the parties, within 120 days of publication of these preliminary results.

Assessment and Cash Deposit

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to the U.S. Customs Service. The final results of this review shall be the basis for the assessment of antidumping duties on entries covered by this review and for future deposits of estimated duties. We will instruct the Customs Service to assess antidumping duties on all appropriate entries covered by this review if any assessment rate calculated in the final results of this review is above *de minimis* (i.e., at or above 0.5 percent) (see 19 CFR 351.106(c)(2)). For assessment purposes, if applicable, we intend to calculate an importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales and dividing by the total quantity sold.

Furthermore, the following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise

entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for Windmill will be the rate established in the final results of this administrative review; (2) for all other Romanian exporters, the cash deposit rate will be the Romania-wide rate made effective by the final determination in the less-than-fair-value investigation (*see Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from Romania*, 58 FR 37209 (July 9, 1993)); (3) for non-Romanian exporters of subject merchandise from Romania, the cash deposit rate will be the rate applicable to the Romanian supplier of that exporter.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dataed: August 31, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–23215 Filed 9–3–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–809]

Certain Cut-to-Length Carbon Steel Plate From Mexico: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests from a respondent and the petitioners, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain cut-to-length (CTL) carbon steel plate from Mexico. This review covers one manufacturer/exporter of the subject merchandise. The period of review (POR) is August 1, 1997 through July 31, 1998. We preliminarily determine that sales have been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties on entries of subject merchandise from the manufacturer/exporter reviewed.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: September 7, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam, Michael Heaney, or Robert James, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3019 (Killiam), (202) 482–4475 (Heaney), (202) 482–5222 (James).

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provision effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (1998).

Background

The Department published an antidumping duty order on certain CTL carbon steel plate from Mexico on August 19, 1993 (58 FR 44165). The Department published a notice of opportunity to request an administrative review of the antidumping duty order for the 1997–1998 review period on August 11, 1998 (63 FR 42821). On August 31, 1998, respondent Altos Hornos de Mexico (AHMSA) requested that the Department conduct an administrative review of the antidumping duty order on certain CTL carbon steel plate from Mexico. On August 31, 1998, the petitioners (Bethlehem Steel Corporation, Geneva Steel, Gulf Lakes Steel, Inc., of Alabama, Inland Steel Industries Inc., Lukens Steel Company, Sharon Steel Corporation, and U.S. Steel Group (a unit of USX Corporation)) requested a review of AHMSA. We published a notice of initiation of the review on September 29, 1998 (63 FR 51893).

Under the Act, the Department may extend the deadline for completion of administrative reviews if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. On March 17, 1999, the Department extended the time limit for the preliminary results in this case. *See Certain Cut-to-Length (CTL) Carbon Steel Plate from Mexico; Antidumping Duty Administrative Review; Extension of Time Limits*, 64 FR 14690 (March 26, 1999).

The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of the Review

The products covered in this review include hot-rolled carbon steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coil and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in this review are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling"); for example, products which have been beveled or rounded at the edges. Excluded from this review is grade X–70 plate.

These HTS item numbers are provided for convenience and U.S. Customs purposes. The written descriptions remain dispositive.

The POR is August 1, 1997, through July 31, 1998. This review covers sales of certain cut-to-length carbon steel plate by AHMSA.

Verification

The Department will consider the results of its verification of AHMSA's cost of production (COP) and constructed value (CV) submission prior to issuing the final results of review.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent covered by the description in the "Scope of the Review" section of this notice (*supra*), and sold in the home market during the period of review (POR), to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. In making product comparisons, we matched foreign like products based on the physical characteristics reported by the respondent.

Normal Value Comparisons

To determine whether AHMSA made sales of subject merchandise in the United States at less than normal value, we compared export price (EP) to normal value (NV), as described below. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Export Price

The Department treated all of AHMSA's sales as EP sales, because the merchandise was sold directly to unaffiliated U.S. purchasers prior to the date of importation and constructed export price (CEP) methodology was not otherwise indicated.

We based EP on the price to unaffiliated purchasers in the United States. We made deductions for movement expenses, brokerage charges, bank charges, and inspection fees.

Normal Value

In order to determine whether there were sufficient sales of subject merchandise in the home market to serve as a viable basis for calculating NV, we compared AHMSA's volume of home market sales of the foreign like product to its volume of sales of subject merchandise in the United States, in accordance with section 773(a)(1)(C) of the Act. AHMSA's aggregate volume of HM sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise. Therefore, we based NV on HM sales.

Cost Investigation

In the prior review, we initiated and conducted a sales-below-cost investigation of AHMSA. Although AHMSA submitted COP data in that review, we ultimately determined that AHMSA failed to act to the best of its ability and we therefore based AHMSA's margin on total adverse facts available. *See Certain Cut-to-Length Carbon Steel Plate From Mexico: Final Results of Antidumping Duty Administrative Review*, 64 FR 76 (January 4, 1999). The adverse inference made in the prior review provides the Department with a basis to infer that AHMSA's comparison market sales would have failed the cost test such that we would have disregarded them in our determination of NV in that review. Therefore, pursuant to section 773(b)(2)(A)(ii) of the Act, we also have reasonable grounds to believe or suspect that sales by AHMSA of the foreign like product under consideration for the determination of NV in this review may have been made at prices below the COP. *See* January 19, 1999 recommendation memorandum from Richard Weible to Joseph Spetrini, *Automatic Self-Initiation of COP Investigation in 1997–1998 Administrative Review of Cut-to-Length (CTL) Carbon Steel Plate from Mexico.*

We compared sales of the foreign like product in the home market with the model-specific COP for the POR. In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product plus selling, general and administrative expenses and all costs and expenses incidental to placing the foreign like product in condition packed and ready for shipment. In our COP analysis we used home market sales and COP information provided by the respondent in its questionnaire responses, revised as follows:

Pursuant to sections 773(f)(2) and (3) of the Act and section 351.407(b) of the Department's regulations, we adjusted the reported iron ore, limestone and scrap costs, to reflect market prices rather than the prices AHMSA paid to affiliates for these major inputs. We revised the general and administrative expense ratio to include income and expense items which AHMSA omitted. We recalculated net interest expenses to exclude monetary corrections and foreign exchange gains. These three adjustments to cost and expense ratios are addressed in *Memorandum to: Neal Halper, Acting Director, Office of Accounting, from Peter Scholl, Senior Accountant, Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination*, August 31, 1999.

After calculating COP, we tested whether home market sales of subject merchandise were made at prices below COP and, if so, whether the below-cost sales were made within an extended period of time in substantial quantities and at prices which did not permit recovery of all costs within a reasonable period of time. We then compared model-specific COPs to the reported home market prices less any applicable movement charges, discounts and selling expenses.

The results of our cost test for AHMSA indicated that for certain home market models less than twenty percent of the sales of the model were at prices below COP. Pursuant to section 773(b)(2)(C) of the Act, we therefore determined that the below-cost sales of these models were not made in substantial quantities and we retained all sales of these models in our analysis and used them as the basis for determining NV. Our cost test for AHMSA also indicated that for certain other home market models twenty percent or more of the home market sales were at prices below COP. In accordance with section 773(b)(2)(B) and (C) of the Act, we disregarded the below-cost sales of these models from our analysis because we determined that they were made over an extended period of time in substantial quantities. In addition, because each individual price was compared against the POR-average COP, any sales that were below cost were also not at prices which permitted cost recovery within a reasonable period of time, as defined in section 773(b)(2)(D).

To calculate NV we deducted billing adjustments, movement expenses, cutting fees, early payment discounts, foreign exchange adjustments, freight cost calculation variance adjustments, and inspection fees. We made an addition for interest revenue. In accordance with section 773(a)(6) of the Act, we adjusted NV, where appropriate, by deducting home market packing expenses and adding U.S. packing expenses. We also adjusted NV for differences in credit expenses and differences in physical characteristics between the U.S. and home market merchandise.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses and profit. For EP, the U.S. LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). (*See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).)

In implementing these principles in this review, we asked AHMSA to identify the specific differences and similarities in selling functions and/or support services between all phases of marketing in the home market and the United States. AHMSA identified three channels of distribution in the home market: (1) Direct sales to end-users or distributors, (2) sales requiring cutting services prior to delivery, and (3) consignment sales. AHMSA performs similar selling functions for all three channels. Because the selling functions performed for each customer class are sufficiently similar, we determined that there exists one LOT for AHMSA's home market sales.

For the U.S. market AHMSA reported one LOT: EP sales made directly to its U.S. customers. When we compared EP sales to home market sales, we determined that sales in both markets were made at the same LOT. For both EP and home market transactions AHMSA sold directly to the customer and provided similar levels of order processing, delivery arrangement, and customer liaison. Based upon the foregoing, we determined that AHMSA sold at the same LOT in the U.S. market as it did in the home market, and consequently no LOT adjustment is warranted.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average margin exists for AHMSA for the period September 1, 1997, through August 31, 1998:

Manufacturer/exporter	Margin (percent)
AHMSA	1.77

The Department will issue disclosure documents within five days of the date of publication of this notice. Interested parties may also request a hearing within 30 days of publication. If requested, a hearing will be held as early as convenient for the parties but normally not later than 37 days after the date of publication or the first work day thereafter. Interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 5 days after the filing of case briefs. The Department will issue a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such briefs or at a hearing, within 120 days from the publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties. We will instruct the Customs Service to assess antidumping duties on all appropriate entries covered by this review if any assessment rate calculated in the final results of this review is above *de minimis* (i.e., at or above 0.5 percent) (see 19 CFR 351.106(c)(2)). For assessment purposes, if applicable, we intend to calculate an importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales and dividing this amount by the total quantity sold.

Furthermore, the following deposit rates will be effective upon publication of the final results of this administrative review for all shipments of certain CTL carbon steel plate from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original investigation of sales at less than fair value (LTFV) or a previous review, the cash deposit will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this or a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be 49.25 percent, the "all others" rate established in the LTFV investigation.

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.401(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 31, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–23216 Filed 9–3–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–047]

Elemental Sulphur From Canada; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review of Elemental Sulphur from Canada.

SUMMARY: This administrative review covers Husky Oil, Ltd. ("Husky") and Petrosul International ("Petrosul"). The period of review ("POR") is December 1, 1997, through November 30, 1998.

For the reasons provided in the "Facts Available" section of this notice, we have preliminarily determined Husky's antidumping rate based on total adverse facts available, and have applied the highest rate calculated for Husky in prior reviews. If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties based on this margin.

On March 10, 1999, Petrosul informed the Department of Commerce ("the Department") that it did not have any shipments of subject merchandise to the United States during the POR. We have confirmed this with information from the U.S. Customs Service. Therefore, in accordance with section 351.213(d)(3) of the Department's regulations and consistent with the Department's practice, we are rescinding our review for Petrosul. For further information, see the "Partial Rescission of Review" section of this notice, below.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) a statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: September 7, 1999.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0182 or (202) 482–3818, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Rounds Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (1998).

Background

On December 8, 1998, the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" of the antidumping duty order on elemental sulphur from Canada (63 FR 67646). In accordance with 19 CFR 351.213(b)(1), on December 31, 1998, the petitioner, Freeport-McMoRan Sulphur, Inc. ("Freeport"), requested an administrative review of the antidumping order covering the period December 1, 1997, through November 30, 1998, for Husky and Petrosul. On January 25, 1999, the Department published in the **Federal Register** a notice of initiation of administrative review of this order (64 FR 3682). On February 5, 1999, Husky requested that the Department rescind the review and revoke, in whole or in part, the above antidumping order based on changed circumstances. On March 22, 1999, the Department denied Husky's request for a changed circumstances review. *See Decision Memorandum: Request of Husky Oil, Ltd. to Initiate A Changed Circumstances Review of the Antidumping Duty Order on Elemental Sulphur from Canada*, March 22, 1999. On April 19, 1999, Husky submitted a letter to the Department stating that it would not further respond to the Department's questionnaire (a partial response to the Department's questionnaire had been submitted on March 16, 1999), because "it (could not) justify the time and considerable costs necessitated by full participation in this review."

Scope of the Review

Imports covered by this review are shipments of elemental sulphur from Canada. This merchandise is classifiable under Harmonized Tariff Schedule ("HTS") subheadings 2503.10.00, 2503.90.00, and 2802.00.00. Although the HTS subheadings are provided for convenience and for U.S. Customs purposes, the written description of the scope of this finding remains dispositive.

Partial Rescission of Review

As noted above, on March 10, 1999, Petrosul informed the Department that it had no shipments of subject merchandise to the United States during the POR. We have confirmed this with information received from the U.S. Customs Service. Therefore, in accordance with 19 CFR 351.213(d)(3) and consistent with the Department's practice, we are rescinding our review with respect to Petrosul (*see e.g., Certain Welded Carbon Steel Pipe and Tube from Turkey; Final Results and Partial Rescission of Antidumping Administrative Review*, 63 FR 35190, 35191 (June 29, 1998)).

Facts Available

In accordance with section 776(a)(2)(A) of the Act, we preliminarily determine that the use of facts available is appropriate as the basis for Husky's dumping margin. Section 776(a)(2) of the Act provides that if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to subsections 782 (c)(1) and (e) of the Act; (C) significantly impedes a determination under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination. In this case, section 776(a)(2)(A) of the Act applies because Husky failed to respond to sections B, C, and D of the Department's February 16, 1999 questionnaire.

Because Husky failed to respond to significant sections of the Department's questionnaire (*i.e.*, including submissions relating to home market sales, U.S. sales, and cost of production information), and indicated that it would not continue to participate fully in this administrative review, we preliminarily determine that, in accordance with sections 776(a) and 782(e) of the Act, the use of total facts available is appropriate. *See, e.g.*, Certain Grain-Oriented Electrical Steel from Italy: Final Results of Antidumping Duty Administrative Review, 62 FR 2655 (January 17, 1997).

Section 776(b) of the Act provides that adverse inferences may be used with respect to a party that has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See* Statement of Administrative Action ("SAA") accompanying the URAA, H.R. Rep. No. 103–316, at 870. Husky's failure to participate in this review demonstrates that it has failed to act to the best of its ability and, therefore, an adverse inference is warranted. *See, e.g., Extruded Rubber Thread from Malaysia; Final Results of Antidumping Duty*

Administrative Review, 63 FR 12752 (March 16, 1998).

Section 776(b) of the Act authorizes the Department to use as adverse facts available secondary information, that is, information derived from the petition, the final determination, a previous administrative review, or any other information placed on the record. The SAA further provides that "{i}n employing adverse inferences, one factor the {Department} will consider is the extent to which a party may benefit from its own lack of cooperation." SAA at 870. It is the Department's normal practice, in situations involving non-cooperating respondents such as Husky, to select as adverse facts available the highest margin from the current or any prior segment of the same proceeding. Therefore, as total adverse facts available, we have applied the rate of 40.38 percent, which was Husky's calculated final margin in the 1992/93 administrative review. *See Final Elemental Sulphur from Canada; Final Results of Antidumping Duty Administrative Reviews* 62 FR 37970, 37990 (July 15, 1997). The Department previously applied this rate as a total adverse facts available rate for Mobil Oil Canada, Ltd. in the 1994/95 administrative review. *See Elemental Sulphur from Canada: Final Results of Antidumping Duty Administrative Review*, 62 FR 37958, 37969 (July 15, 1997).

Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information by reviewing independent sources reasonably at its disposal. The SAA provides that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value, that is, that it is both reliable and relevant. *See* SAA at 870. The 40.38 percent rate we selected meets these corroboration criteria.

Regarding the reliability of the selected rate, because there are no independent sources for calculated dumping margins, unlike other types of information, such as input costs or selling expenses, the only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of that earlier calculated margin. *See, e.g., Elemental Sulphur from Canada: Preliminary Results of Antidumping Duty Administrative Review*, 62 FR 971 (January 7, 1997); *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et al.: Final Results of Administrative Review*, 62 FR 2081, 2088 (January 15, 1997); and *Final Results of Antidumping Duty Administrative Review: Brass Sheet and Strip from Germany*, 64 FR 43342, 43343 (August 10, 1999). Thus, because we have selected Husky's own calculated margin from a prior administrative review, we do not need to question its reliability.

With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin for use as adverse facts available because the margin was based on another company's uncharacteristic business expense, resulting in an unusually high margin). In this review, the rate selected stems from Husky itself, and we are not aware of any circumstances that would render this rate inappropriate.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following margin exists for the period December 1, 1997, through November 30, 1998:

Manufacturer/Exporter	Margin (percent)
Husky Oil, Ltd	40.38

Any interested party may request a hearing within 30 days of publication of this notice in the **Federal Register**. Case briefs from interested parties may be submitted not later than 30 days after the date of publication of this notice in the **Federal Register**; rebuttal briefs may be submitted not later than five days thereafter. Any hearing, if requested, will be held 2 days after the scheduled date for submission of rebuttal briefs. Issues raised in the hearing will be limited to those raised in the case briefs. The Department will publish the final results of this administrative review, including its analysis of issues raised in any written comments or at a hearing, not later than 120 days after the date of publication of this notice.

Assessment Rate

In the event these preliminary results are made final, we intend to assess antidumping duties on Husky's entries at the same rate as the dumping margin (*i.e.*, 40.38 percent) since the margin is not a current calculated rate for the respondent, but a rate based upon total facts available pursuant to section 776(a) of the Act.

Cash Deposit

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for Husky will be the rate established in the final results of this administrative review (no deposit will be required for a zero or de minimis margin, *i.e.*, a margin lower than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recent segment; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers will be the "all others" rate as indicated in the final results of the 1993/94 administrative review of these orders (*see Elemental Sulphur from Canada; Final Results of Antidumping Duty Administrative Reviews* 62 FR 37970, 37990 (July 15, 1997)). These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 31, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–23214 Filed 9–3–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–840]

Manganese Metal From the People's Republic of China; Notice of Extension of Time Limit for Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the third review of the antidumping duty order on manganese metal from the People's Republic of China. The period of review is February 1, 1998 through January 31, 1999. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: September 7, 1999.

FOR FURTHER INFORMATION CONTACT: Greg Campbell or Craig Matney, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–2239 or 482–1778, respectively.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the time limit mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act") (*i.e.*, November 1, 1998), the Department of Commerce ("the Department") is extending the time limit for completion of the preliminary results to not later than December 2, 1999. *See* August 26, 1999, Memorandum from Deputy Assistant Secretary for AD/CVD Enforcement Richard W. Moreland to Assistant Secretary for Import Administration Robert S. LaRussa on file in the public file of the Central Records Unit, B–099 of the Department.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675 (a)(1)) and 19 CFR 351.213(h)(2).

Dated: August 31, 1999.

Richard W. Moreland,

Deputy Assistant Secretary for AD/CVD Enforcement.

[FR Doc. 99–23213 Filed 9–3–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–835]

Oil Country Tubular Goods From Japan: Preliminary Results and Recission in Part of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results and recission in part of the antidumping duty administrative review: Oil Country Tubular Goods From Japan.

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on Oil Country Tubular Goods From Japan (OCTG). This review covers the period August 1, 1997 through July 31, 1998.

We have preliminarily determined that sales have not been made below normal value (NV). If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to liquidate appropriate entries without regard to antidumping duties. Interested parties are invited to comment on these preliminary results. Parties who submit comments are requested to submit with each comment a statement of the issue and a brief summary of the comment.

EFFECTIVE DATE: September 7, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0648 and (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (April 1998).

Background

On June 28, 1995, the Department published in the **Federal Register** (60 FR 33560) the antidumping duty order on OCTG from Japan. On August 31, 1998, U.S. Steel Group, a unit of USX Corporation (the petitioner) requested that the Department conduct a review of Sumitomo Metal Industries, Ltd. (SMI). On August 31, 1998, Okura and Company (Okura) requested that the Department conduct a review of its exports of OCTG. The Department initiated this antidumping administrative review for SMI on September 23, 1998 (63 FR 51893, September 29, 1998) and for Okura on October 26, 1998 (63 FR 58009, October 29, 1998).

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. On March 10, 1999, the Department published a notice of extension of the time limit for the preliminary results of review to August 15, 1999. *See Oil Country Tubular Goods From Japan: Notice of Extension of Preliminary Results of Antidumping Duty Administrative Review*, 64 FR 11837. On July 27, 1999, the Department published a second notice of extension of the time limit for the preliminary results of review to August 31, 1999. *See Oil Country Tubular Goods From Japan: Notice of Extension of Preliminary Results of Antidumping Duty Administrative Review*, 64 FR 40554. The Department is conducting this review in accordance with section 751(a) of the Act.

Scope of Review

The products covered by this order are oil country tubular goods (OCTG), hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The products subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.21.30.00, 7304.21.60.30, 7304.21.60.45,

7304.21.60.60, 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Okura

Okura & Company (America) Inc. (Okura America) imported subject merchandise from its affiliate, Okura & Co. Ltd. (Okura Japan). The OCTG entered the United States under temporary import bond (TIB) for further processing (threading and coupling) by Okura America. There were no sales of subject merchandise in any form (i.e., as imported or as further processed) to unaffiliated parties in the United States during the period of review (POR). All of the subject merchandise Okura America entered under TIB was re-exported to Okura & Company (Canada) Ltd. (Okura Canada) for sale to Canadian customers. Upon re-export, pursuant to the North American Free Trade Agreement (NAFTA) rules and section 181.53(a)(1) (A)–(C) of U.S. Customs regulations, U.S. Customs treated the merchandise as if it had entered the United States for consumption and compelled Okura (America) to pay antidumping duty cash deposits at the rate of 44.2 percent.

Okura maintains that "because the merchandise at issue was exported without sale to an unaffiliated U.S. customer, the statute, and fairness, prohibit the imposition of antidumping duties on these entries," and cites 19 U.S.C. 1677a (a) and (b) (section 772 (a) and (b) of the Act); *Torrington Company* v. *United States*, 82 F.3d 1039, 1044–47 (Fed. Cir. 1996); *Extruded Rubber Thread From Malaysia, Final Results of Antidumping Duty Administrative Review*, 62 FR 33588 (June 20, 1997). Okura asserts that it only requested this review in order to confirm that "(1) no antidumping duties should be assessed on Okura's consumption entries during the POR because all the merchandise in question was re-exported, and (2) that Okura is entitled to a refund of the cash deposits that were collected on those entries."

The petitioner asserts that the imposition of antidumping duties on Okura's TIB entries is required pursuant to Article 303 of the NAFTA, Section 203 of the NAFTA Implementation Act (19 U.S.C. 3333), and U.S. Customs regulations implementing NAFTA duty deferral/drawback provisions (19 CFR 181.53). The petitioner asserts that "under Article 303(3) of the NAFTA, if a non-NAFTA origin good is imported into the territory of a NAFTA Party pursuant to a TIB or other duty deferral program, and is subsequently exported to the territory of another NAFTA Party, the Party from whose territory the good is exported must treat the entry as an entry for domestic consumption and assess customs duties on such merchandise." The petitioner maintains that "while such duties may be waived or reduced to the extent permitted under Article 303(1), Article 303(2) specifically prohibits NAFTA parties from refunding, waiving or reducing certain specified duties, including antidumping and countervailing duties, on such exported goods."

Dumping is defined as the sale of merchandise in the United States at less than its NV. Thus, when the Department finds dumping, section 731 of the Act directs the agency to impose upon imports of the subject merchandise an antidumping duty in the amount by which the NV exceeds the export price (EP) or constructed export price (CEP). Section 772 of the Act defines EP and CEP as a price to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for export to the United States.

Once an antidumping order is in place, section 751(a) of the Act directs the Department to conduct an administrative review, upon request, to determine the NV, EP and/or CEP and dumping margin for each entry of the subject merchandise under review. Thus, the Department's ability to conduct an administrative review of an antidumping duty order depends on the existence of entries and sales to unaffiliated U.S. purchasers or unaffiliated purchasers for export to the United States.

Without consumption entries, there is nothing upon which the Department may assess duties that could be determined during the course of a review. *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.*, 62 FR 54043, 54049 (Oct. 17, 1997). Therefore, merchandise that does not enter the United States for consumption is not subject to antidumping duties. Subject merchandise imported under TIB is not entered for consumption in the United States. Accordingly, the Department has determined that merchandise entered under TIB, even when purchased by an unaffiliated party, is not subject to antidumping duties. *See* Remand Determination: *Titanium Metals Corp.* v. *United States*, 94–04–00236 (April 17, 1995)(*Titanium Sponge Remand*) ("because TIB entries are not consumption entries, we determine that TIB entries are not subject to antidumping duties and the estimated duty deposit requirement of the antidumping law"). The Department's decision was affirmed by the United States Court of International Trade (CIT) in *Titanium Metals Corp.* v. *United States*, 901 F. Supp. 362 (CIT 1995).

Moreover, subject merchandise that is entered for consumption but is not sold in any form (either in the form as entered or as further manufactured) to an unaffiliated customer in the United States is not subject to antidumping duties because there is no U.S. sale and, therefore, no margin could be calculated. *See Torrington Co.* v. *United States*, 82 F.3d 1039 (Fed. Cir. 1996). Therefore, when an affiliate of the exporter enters subject merchandise for consumption, but re-exports the merchandise (in the form as entered or as further manufactured), i.e., the merchandise is never sold in any form to an unaffiliated U.S. customer, the Department does not include those entries in its dumping analysis. *See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review*, 56 FR 31692, 31743 (July 11, 1991). The Department's practice in this context was affirmed by the Federal Circuit in *Torrington Co.* v. *United States*, 82 F.3d 1039 (Fed. Cir. 1996).

In this review, we considered whether NAFTA rules require the Department to deviate from the principles described above. Article 1901.3 of the NAFTA states that "no provision of any other Chapter of this Agreement shall be construed as imposing obligations on a Party with respect to the Party's antidumping law or countervailing duty law." Thus, the parties made clear that NAFTA did not require any changes in antidumping duty law or practice. Therefore, if it is possible to read the NAFTA rules in a manner consistent with the law and practice discussed above, the entries in question should not be subject to antidumping duties.

Article 303 of NAFTA addresses duty drawback and duty deferral programs, including TIB. Specifically, Article 303(3) provides that merchandise entered under TIB in the United States and subsequently reexported to another NAFTA party shall be considered to be entered for consumption and shall be subject to all relevant customs duties. Thus, the TIB status of such entries does not necessarily insulate these entries from the assessment of antidumping duties. Paragraph 2 of Article 303 further provides that "no party may, on condition of export, refund, waive or reduce an antidumping or countervailing duty that is applied pursuant to a Party's domestic law and that is not applied inconsistently with Chapter Nineteen." Nevertheless, Article 303.3(a) does not compel the assessment of antidumping or countervailing duties that would not otherwise be applied under a party's domestic law.

With respect to Okura, as there are no sales to unaffiliated customers in the United States nor sales to unaffiliated customers for exportation to the United States, antidumping duties would not be applied under current law and practice. Therefore, liquidating these entries without regard to antidumping duties would not constitute a waiver, refund or reduction of antidumping duties under NAFTA. The NAFTA rules do not change the requirement that there be a U.S. sale to calculate a dumping margin. Since there is no U.S. sale, we are rescinding this review with regard to Okura, and will order Customs to liquidate the entries at issue without regard to antidumping duties.

SMI/Sumitomo Corporation (SC)

Verification

As provided in section 782(i) of the Act, we verified information provided by SMI (sales and difference in merchandise (DIFFMER)) from July 9, 1999 through July 17, 1999, using standard verification procedures, including on-site inspection of SMI's manufacturing facilities and the examination of relevant sales and financial records. We also verified information provided by SC (sales) from July 19, 1999 through July 21, 1999, using standard verification procedures including examination of relevant sales and financial records. Our verification results are outlined in public versions of the verification reports on file with the Central Records Unit, in Room B–099 of the Herbert C. Hoover Building.

Affiliation

SMI is a diversified manufacturer of high quality steel products, including OCTG, and a supplier of construction, plant, and system engineering services. SC is a major trading company with interests in business sectors ranging from metals and motor vehicles to fertilizer and fashion.

The petitioner contends that SMI and SC should be considered "affiliated parties" as defined by the Department's regulations. In its May 20, 1999 submission, the petitioner specifically cites SC's and SMI's joint ownership interests, corporate interrelationships, and close customer/supplier relationship as "overwhelming evidence" of the two parties' affiliation.

In its original response to our antidumping duty questionnaire, SMI stated that "none of the products under review were sold to affiliates," a position that it has argued consistently throughout this review. Although SMI has acknowledged substantive, long-standing commercial and corporate links with SC, including but not limited to those mentioned in the petitioner's May 20, 1999 submission, SMI asserts that these links do not constitute "affiliation" as defined by the statute and the Department's regulations.

Section 771(33) of the Act describes affiliated persons, in part, as "two or more persons directly or indirectly controlling, controlled by, or under common control with, any person." Moreover, the statute provides that "a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person." *Id.*

The legislative history makes clear that the statute does not require majority ownership for a finding of control.[1] Rather, the statutory definition of control encompasses both legal and operational control. A minority ownership interest, examined within the context of the totality of the evidence, is a factor that the Department considers in determining whether one party is legally or operationally in a position to control another. *See Certain Cut-To-Length Carbon Steel Plate From Brazil*, 62 FR 18486, 18490 (April 15, 1997); *see also* 19 CFR 351.102(b).

Additionally, evidence of actual control is not required for a finding of affiliation within the meaning of section 771(33) of the Act; it is the ability to control that is at issue. *See also Proposed Rules*, 61 FR 7308, 7310 (February 27, 1996). The Department has stated that merely identifying "the presence of one or more of the other indicia of control (as per Section 771(33) of the Act) does not end our {the Department's} task."[2] The Department is compelled to examine all indicia, in light of business and economic reality, to determine whether they are evidence of control. In determining whether control over another person exists, within the meaning of section 771(33) of the Act, the Department will consider the following factors, among others: corporate or family groupings; franchise or joint venture agreements; debt financing; and close supplier relationships. However, the Department will not find affiliation on the basis of these factors unless the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product. *See* 19 CFR 351.102(b).

SMI and SC have significant equity interests in multiple joint ventures. We considered whether these joint ownership interests establish that SMI and SC control these third parties, as contemplated by section 771(33)(F) of the Act. In doing so, we took note of the decision of the CIT in *Mitsubishi Heavy Industries, Ltd.* v. *United States*, 15 F. Supp. 2d 807 (1998) (*Mitsubishi*). In *Mitsubishi*, the CIT held that "the statutory definition of affiliated parties at 19 U.S.C. 1677(33)(F) does not require two companies exercise control over each other. The statute requires only that two or more persons control a third person."

Because of the nature of SMI's and SC's holdings in these joint ventures, the Department has found SMI and SC are "legally or operationally in a position to exercise restraint" over those third parties. Thus, we conclude that SMI and SC have a joint control relationship within the meaning of section 771(33)(F) of the Act. Because most of the information on which we relied to perform our analysis is proprietary, it cannot be discussed in this notice. However, a memorandum

[1] The Statement of Administrative Action states that: "[t]he traditional focus on control through stock ownership fails to address adequately modern business arrangements, which often find one firm 'operationally in a position to exercise restraint or direction' over another even in the absence of an equity relationship." *See* SAA at 838.

[2] See 61 FR 7310 (February 27, 1996) Antidumping Duties; Countervailing Duties. Notice of proposed rulemaking and Request for Public Comments.

detailing our analysis has been prepared. (*See* the proprietary version of the Memo from Barbara E. Tillman to Robert S. LaRussa regarding "Affiliation of Sumitomo Metal Industries Ltd. and Sumitomo Corporation," dated August 31, 1999 (Decision Memo).

While SMI and SC control these joint ventures, we recognize the regulatory guidance indicating that a control relationship will not establish affiliation for the purposes of our antidumping duty analysis unless that relationship "has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product." *See* 19 CFR 351.102(b). In reaching a determination in this regard, we considered the totality of the record evidence relevant to the relationship between SMI and SC. As discussed below, numerous other factors reflect a relationship between these two parties such that there is potential to impact the transactions between SMI and SC involving the subject merchandise.

In addition to the joint ventures which we examined in finding a control relationship under section 771(33)(F) of the Act, SMI and SC are jointly invested in other companies. SMI's and SC's history of extensive joint investments in numerous companies reflects a significant commonality of interests between SMI and SC. This commonality of interests between SMI and SC gives rise to a potential to impact decisions concerning the pricing of OCTG sold by SMI to SC. *See* Decision Memo.

The potential to impact pricing decisions in transactions between SMI and SC is further reflected in SMI's and SC's long standing customer and supplier relationship. SMI started dealing with SC with regard to OCTG around 1952 and has maintained the business relationship since that time. On a worldwide basis, SMI sells a significant portion of its OCTG to SC. Likewise, SC derives a significant percentage of its OCTG purchases from SMI. *See* Decision Memo.

Finally, we viewed SMI's and SC's relationship in the context of the Sumitomo Group (SG) as a whole. SG holds itself out as a corporate group which consists of twenty "core" companies that operate in thirteen different business sectors. SMI and SC are core members of the group. The 20 core companies have a variety of close corporate and commercial links. SMI's and SC's membership in the SG is further evidence that SMI's and SC's relationship has the potential to impact decisions concerning the transactions between SMI and SC involving the subject merchandise. *See* Decision Memo.

In sum, SMI and SC, through their substantial joint interests in several joint ventures, have the potential to control or restrain those joint ventures within the meaning of paragraph (F) of section 771(33). In addition, SMI's and SC's significant commonality of interests, demonstrated by multiple joint investments, a long-standing customer/supplier relationship, and their membership in the SG, establishes that the relationship has the potential to impact pricing in transactions involving the subject merchandise. Therefore, we determine that SMI and SC are affiliated parties under paragraph (F) of section 771 (33) of the Act.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents that are covered by the description in the "Scope of Review" section above and sold in the home market during the POR to be foreign like products for purposes of determining appropriate product comparisons for merchandise sold to the United States. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar home market like product on the basis of the characteristics listed in Appendix III of the Department's October 16, 1998 antidumping questionnaire.

Comparisons to Normal Value

To determine whether sales of subject merchandise to the United States were made at less than NV, we compared the CEP to NV, as described in the "United States Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average home market prices for NV and compared these to individual U.S. transaction prices.

United States Price

For sales in the United States, the Department uses EP when the subject merchandise was sold to the first unaffiliated purchaser in the United States by the producer or exporter outside the United States prior to importation, and CEP is not otherwise warranted by facts on the record. Because the Department has found SMI and SC to be affiliated, and the subject merchandise was not sold to an unaffiliated purchaser until after its importation into the United States, the starting price for CEP is the price from SC's U.S. affiliate to unaffiliated customers in the United States.

The Department calculated CEP (there were no EP sales) for SMI based on packed, prepaid or delivered prices to SC's customer in the United States. In accordance with section 772(c) of the Act, we reduced CEP by movement expenses (international freight, marine insurance, inland freight, and duties. In accordance with section 772(d)(1) of the Act, we deducted direct selling expenses (credit, advertising, and warranty expenses) and indirect selling expenses, including inventory carrying costs. Finally, we made an adjustment for an amount of profit allocated to selling expenses incurred in the United States, in accordance with section 772(c) of the Act.

It is the Department's current practice normally to use the invoice date as the date of sale; we may, however, use a date other than the invoice date if we are satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. *See* 19 CFR § 351.401(i); *Preamble to the Antidumping Duty Regs.*, 62 FR at 27411. Our questionnaire instructed SMI/SC to report the date of invoice as the date of sale; it also stated, however, that, for CEP sales, "(t)he date of sale cannot occur after the date of shipment." In this review, SC's date of shipment always preceded the date of invoice, and therefore we cannot use the date of invoice. Instead, in accordance with 19 CFR 351.401(i), the home market sales dates are the dates on which the goods were shipped to the unaffiliated customer. In addition, the U.S. sales dates are the dates on which SC shipped the goods from the U.S. port of unloading to its unaffiliated customer.

Normal Value

The Department determines the viability of the home market as the comparison market by comparing the aggregate quantity of home market and U.S. sales. We found that SMI's quantity of sales in its home market exceeded five percent of its sales to the United States. We therefore have determined that SMI's home market sales are viable for purposes of comparison with sales of the subject merchandise to the United States, pursuant to section 773(a)(1)(C) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price, net of discounts, at which the foreign like product was first sold for consumption in the home market, in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the CEP sales. *See* the "Level of Trade section" below. We determined what home market merchandise was most similar to the merchandise sold in the United States on the basis of product characteristics set forth in sections B and C of the Department's questionnaire.

For comparisons to CEP, we made COS adjustments by deducting home market direct selling expenses (credit expenses, advertising, and royalties) pursuant to section 773(a)(6)(C)(iii) of the Act. We also made adjustments, where applicable, for movement expenses, in accordance with sections 773(a)(6)(A) and (a)(6)(B) of the Act. We also made adjustments for differences in the costs of manufacture for subject merchandise and matching foreign like products, attributable to their differing physical characteristics, pursuant to section 773(a)(6)(C)(ii) of the Act, and for home market indirect selling expenses, up to the amount of U.S. indirect selling expenses, in accordance with section 773(a)(7)(B) of the Act.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the home market at the same LOT as U.S. sales. The NV LOT is the level of the starting-price sale in the home market or, when NV is based on constructed value, the level of the sales from which we derive selling, general, and administrative expenses (SG&A) and profit. For export price, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer. To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

For merchandise sold in the home market during this POR, SMI claimed one distribution channel and one LOT and SC claimed two distribution channels and one LOT. Regardless of the distribution channel, the selling functions performed by SMI, or by SMI and SC combined where the sale was made through SC, were substantially the same. Therefore, we concluded all sales in the home market were made at one LOT.

We then compared the selling functions in the U.S. and home markets. At the level of CEP sales to the United States, i.e., after eliminating from consideration the selling functions associated with deductions made under section 772 of the Act, we found that the CEP sales were made at a different and less advanced level of trade than home market sales.

Because there are no sales in the home market made at the same LOT as sales in the United States, we were not able to determine whether the difference in LOT affects price comparability. Therefore, we made a CEP offset adjustment. In accordance with 19 CFR 351.408(f)(2), we deducted indirect selling expenses from NV to the extent of U.S. indirect selling expenses. For a further discussion of the Department's LOT analysis with respect to SC, see *Memorandum to the File: Analysis Memorandum for the Preliminary Results of Review for SMI*, August 31, 1999.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted-average dumping margin for the period August 1, 1997 through July 31, 1998 to be as follows:

Manufacturer/exporter	Margin percentage
SMI	0.00

The Department will disclose to the parties to the proceeding calculations performed in connection with these preliminary results of review within five days after the date of publication of these preliminary results of review.

Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 2 days after the date of filing of rebuttal briefs or the first business day thereafter. Case briefs from interested parties may be submitted not later than 30 days after publication. Rebuttal briefs, limited to issues raised in case briefs, may be filed not later than five days after the date of filing of case briefs. The Department will publish the final results of this administrative review, including its analysis of issues raised in the case and rebuttal briefs, not later than 120 days after the date of publication of this notice.

Upon issuance of the final results of review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we calculated importer-specific ad valorem duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a) of the Act: (1) The cash deposit rate for each reviewed company will be that established in the final results of review (except that no deposit will be required for firms with *de minimis* margins, i.e., margins less than 0.5 percent); (2) for exporters not covered in this review, but covered in the less than fair value (LTFV) investigation or a previous review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "all others" rate established in the LTFV investigation, which was 44.20 percent. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant

entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C 1677f(i)(1)).

Dated: August 31, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–23212 Filed 9–3–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 990520139–9221–02; I.D. 050799B]

RIN 0648–AM68

Disaster Assistance for Northeast Multispecies Fishery Failure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of final program.

SUMMARY: NMFS publishes a final program for disbursing funds to assist persons who have incurred losses from a commercial fishery failure due to the declining stocks of groundfish which has caused harm to the Northeast multispecies fishery. This document provides information concerning criteria for eligibility, limitations and conditions for receiving disaster assistance.

DATES: Effective September 7, 1999.

ADDRESSES: Questions or requests for information about financial assistance may be sent to: Leo Erwin, Chief, Division of Financial Services, NMFS, 1 Blackburn Drive, Gloucester, MA 01930. All other inquiries should be sent to: Kevin Chu, NMFS, 166 Water St., Woods Hole, MA. 02543.

FOR FURTHER INFORMATION CONTACT: Kevin Chu, Northeast Region (508) 495–2367).

SUPPLEMENTARY INFORMATION:

Background

In the Emergency Supplemental Appropriations section of the FY 1999 Appropriations Act (Public Law No. 105–277), Congress appropriated $5 million to NOAA to provide emergency disaster assistance to persons or entities in the Northeast multispecies fishery who have incurred losses from a commercial fishery failure under a fishery resource disaster declaration made in 1994 pursuant to section 308(b) of the Interjurisdictional Fisheries Act (IFA) of 1986. Although the funds are available until used, NMFS is not obligated to compensate every individual affected by the Northeast multispecies collapse or to expend all the funding on assistance.

Pursuant to his authority under this section of the IFA, former Secretary of Commerce Ron Brown declared a fishery resource disaster on March 18, 1994, for the Northeast multispecies fishery. This disaster has extended through this year and is expected to continue, causing a number of additional fishery closures in New England and economic hardship in the fishery.

The Gulf of Maine stocks of groundfish have declined drastically over the past three decades. Since the first declaration of a fishery disaster in 1994, recovery measures for Northeastern groundfish have improved the prospects for commercially important cod, haddock, and yellowtail flounder stocks on Georges Bank, but measures intended to protect Gulf of Maine cod have not been as successful. Gulf of Maine stocks of cod, white hake, American plaice, and yellowtail flounder remain overfished. The spawning biomass continues to decline, reducing the probability that sizable groups of new fish will be produced. As a result of the continued crisis in the Northeast multispecies fishery, a number of areas in the Gulf of Maine have been closed to many types of fishing gear for up to 3 months during the period of February through June 1999, resulting in lost fishing opportunities.

On June 11, 1999, NMFS published a document in the **Federal Register** (64 FR 31542) seeking comments on the proposed program for disbursing the disaster assistance funds. This document presents the final program for disbursing the funds and responds to the comments received.

The final program has two components. First, NMFS will provide direct assistance by compensating Federal permit holders and crew for economic harm based on reductions in used Days-at-Sea (DAS) under the authority of section 308(d) of the IFA. In exchange for this compensation, permit holders must commit to operating their vessels for research on fishery-related subjects, participating in another activity approved by the NMFS Northeast Regional Administrator (RA), or providing personal economic and social data important for evaluating the effects of fishery management decisions. Second, NMFS will set aside $100,000 of the funds for the training and deployment of at-sea data collectors aboard scallop fishing vessels to monitor groundfish bycatch, particularly of yellowtail flounder. This document explains the direct assistance program, but does not discuss the training and deployment part of the program, which is already underway.

The direct assistance program has two goals: (1) To provide a mechanism to get financial assistance to fishermen most affected by the groundfish collapse; and (2) to involve the industry in fisheries and gear research, thereby providing additional data for the long-term management of the fishery. This program uses a formula for calculating lost fishing opportunities as an indicator of the economic harm caused by the declining groundfish stocks.

Comments and Responses

NMFS received comments from the States of Maine and Massachusetts, representatives of three commercial fishing organizations, two academic institutions, seven commercial fishermen, and one recreational fisherman. We have grouped similar comments here.

Comment 1: Because the program relies on a calculation of DAS not used, the program rewards persons who did not try to fish during the spring closures but penalizes the persons who used DAS to try to make a living by fishing, even if they lost money while doing so.

Response: NMFS recognizes that some persons may receive reduced benefits under this program because they made the effort to continue fishing by moving their fishing location in response to the 1999 rolling closures. These people will have expended extra money to try to keep fishing, and they may not have made enough to justify their costs. Since persons who did not fish will be compensated under this program, those who did fish are likely to feel that they are being unfairly penalized for making the effort to continue fishing, especially if they lost money doing so. NMFS notes, however, that such fishermen were able to move their operations to avoid the closures. NMFS continues to believe that the assistance program should target persons who could not move their operations to another port or farther offshore, and, therefore, were more vulnerable to the closures.

NMFS and fishermen agree that $5 million is not enough to compensate all persons and entities affected by the declining groundfish stocks. In developing this disaster assistance program, NMFS has had to make difficult decisions about how to spread a limited amount of money among a relatively large number of persons. This program is intended to assist those who have had the fewest options for making a living from fishing during the winter/spring 1999 rolling closures.

In developing this program, NMFS also considered the time it will take for eligible persons to receive compensation. The program is designed to use information already held by NMFS to calculate eligibility and compensation levels, hence, avoiding a lengthy review of the records of individual fishermen. While a program that somehow balances a person's financial need and his or her efforts to continue fishing could be developed, implementing such a program (reviewing individual case histories) would be extremely time-consuming. This would further delay the release of disaster assistance funds and extend the financial crisis for those who will be compensated, so that the overall benefit of the program would be substantially diminished.

Comment 2: The disaster assistance program excludes from compensation many people who were affected by the decline in the stocks of groundfish, including other fishermen and shore-based infrastructure. These people should also be eligible for compensation.

Response: NMFS agrees that many persons affected by the groundfish declines will not be eligible for compensation under this program. As noted in the response to Comment 1, the current level of funding for this program in not sufficient to compensate all persons who have been affected by the commercial fishery failure. NMFS believes it is appropriate to target the limited funds to that portion of the commercial harvesting sector that has been most heavily affected by groundfish declines, i.e., those persons who have been unable to move their operations to avoid the impacts of the rolling closures. This assistance may keep some vessels active that might otherwise have left the fishery, thus providing an indirect benefit for persons or industries that support the activities of such vessels.

Comment 3: Other fisheries such as the scup fishery in the Northeast are also in decline and deserve compensation. Also, since all federally permitted DAS vessels were prohibited from fishing in the rolling closure areas, scallop fishermen and groundfish fishermen should all be allowed to receive compensation.

Response: NMFS agrees that other fisheries are also in decline and that other persons are also suffering economic hardship as a result of those declines. However, Congress specifically appropriated funds to assist persons or entities affected by the disaster declared in the Northeast multispecies fishery. Therefore, notwithstanding the economic need of persons in other fisheries, NMFS has targeted persons in the Northeast multispecies fishery for this assistance program. Furthermore, beginning in May 1999, scallop vessels were no longer prohibited from the inshore Gulf of Maine closed areas.

Comment 4: These disaster relief funds should be limited to the multispecies fishery. To the extent that these funds are to be utilized for observers, they should be observing groundfish vessels.

Response: NMFS agrees that these funds should be limited to the multispecies fishery (see Comment 3). However, we do not agree that this would require that only groundfish vessels be observed using these funds. Some of these funds are being used to train and deploy observers on scallop vessels. The purpose of these observers is to monitor the bycatch of groundfish species, especially yellowtail flounder, to ensure that it does not exceed levels set to conserve the species.

Comment 5: Persons who had set aside DAS to be used for groundfish fishing during the rolling closures of 1999 should be eligible for compensation. These people have been affected twofold by the closures, first by not fishing during other times because they were saving DAS for the winter months, and second by the closures themselves. Reserving 30 to 40 DAS should be considered evidence that the person intended to fish for groundfish during this time.

Response: NMFS understands that persons who were saving DAS to fish during the winter months and who were subsequently prevented from fishing were severely affected by the closures. However, NMFS does not have a mechanism to distinguish persons who saved DAS to be used during the rolling closures from persons who would not have used their full DAS anyway. Demonstrating the intent to fish during the closures would be difficult and time-consuming, because it would require reviewing each individual's case history. Therefore, because compensation cannot be released until the total number of DAS requested for compensation is known, NMFS will not establish a mechanism to compensate persons based solely on the intent to fish.

Comment 6: Anyone who can document a major reduction in Gulf of Maine cod landings without attendant discard problems should be eligible to receive compensation.

Response: In concept, declines in cod landings could be a basis to allocate the disaster assistance. However, in practice, this would be difficult and time-consuming, as it would require a review of each permit holder's records.

Comment 7: The program should compare a vessel's DAS use from FY 1998 to FY 1999 for the entire year rather than on a month-to-month basis from February through June. By so doing, NMFS would then compensate for a net reduction in multispecies effort for the year.

Response: The concept of using days fished over the entire fishing year has merit. However, the current fishing year will not end until April 30, 2000. The impacts of the May and June 1999 closures would not be measurable until that time. NMFS believes that delaying the release of these funds until then is not acceptable.

Comment 8: Using DAS as a proxy measure for economic harm makes it appear as if NMFS is paying for unused DAS. NMFS should not set the precedent that DAS are a compensable right.

Response: NMFS agrees that DAS are not a compensable right. The use of DAS is only intended as a proxy measurement of the economic harm caused by the declining groundfish stocks. NMFS is not buying DAS, nor can DAS be traded between vessels or exchanged for any compensation.

Comment 9: The fishermen who would be compensated do not deserve financial assistance because they have been the impetus behind ineffective management measures and because the declining groundfish stocks are due to commercial overfishing.

Response: Overfishing is only one factor in the declines of groundfish stocks in the Northeast. Even if overfishing (of which commercial fishing is a substantial but not exclusive contributor) is the major factor in the groundfish decline, this does not change the fact that individuals are now in dire economic straits because of the reduction in fishing opportunities. Congress recognized the economic hardship caused by the continuing disaster in the multispecies groundfish fishery and appropriated funds to help alleviate the economic impact of the stock decline.

Comment 10: Fishermen should not have to offer their vessels for research, because the funds are to compensate for money already lost, and because the added cost of doing the research would diminish the economic value of the program to participants.

Response: Most fishermen who provided advice during the development of this program expressed the view that they do not want a handout from the government. Rather, they would like to find a creative way to give something back in exchange for the much-needed financial assistance this program will provide. Consistent with Congressional advice for this funding, this program is designed to compensate fishermen for their economic loss in exchange for information and research support for the long-term management of the fishery.

Comment 11: There is opposition to the provision that a permit holder would have to provide income tax information if their vessels were not used for research. The chief concerns are that the tax records might be used for enforcement purposes and that NMFS would not adequately protect privileged information.

Response: The purpose of collecting tax information is to obtain information needed to evaluate the economic impacts of future fishery management measures. NMFS is required by law to take account of the economic impacts as well as the biological consequences of regulations, but we have limited economic information on the operating costs of vessels upon which to base our analyses. The income tax information will improve our knowledge of the economic situation of groundfish fishermen.

NMFS has no intention of using the income tax information for enforcement purposes. NMFS assumes that the information provided to the Internal Revenue Service (IRS) is correct and complete. The Privacy Act of 1974 provides protection of privacy to individuals on whom records are maintained. We will keep tax information of individuals confidential in compliance with the Privacy Act, and will only release data to the public in aggregate form. Files will only be released to agency personnel who can demonstrate a need to know the financial information enclosed.

NMFS has modified the program such that it is not necessary to submit a 1998 income tax return to verify that a recipient's net income from commercial fishing does not exceed $75,000 ($150,000 if filing jointly). Instead, recipients must certify that their income does not exceed that threshold. Certifications are subject to possible punishment under 18 U.S.C. 1001, including fine or imprisonment, for false statements. Suspected false submissions will be turned over to the Commerce Office of Inspector General (OIG) for investigation.

Comment 12: This program will set the precedent that the government should pay fishermen to provide economic and social data, which is a concern for programs that rely on such data to be provided on a voluntary basis.

Response: NMFS does not believe that persons should be paid to provide economic or social data necessary for fishery management decisions, nor do we believe that this program will set such a precedent. Persons are not being compensated for providing economic information, but rather because they have suffered economic harm from the declines in groundfish stocks. Because fishermen generally have wanted to give something back in return for financial assistance, compensation through this program carries with it a commitment by the recipient to help the government get better information upon which to base fishery management decisions. The commitment to provide economic information applies only if a permit holder is not asked to provide a vessel for research or does not perform an alternate approved activity.

Comment 13: The provision that logbooks would be used to determine historical activity only if they contain sufficient information to tell whether a vessel historically fished in the closed areas would exclude some fishermen from compensation based on a technicality. NMFS should have insisted earlier that this information be provided and should have returned incomplete logbooks for revision. NMFS should presume that a vessel's fishing activity was in a given block if the vessel sailed and landed from a port adjacent to a closed block within a 24-hour period. The number of permit holders that are affected by this provision is probably small, and it would not be administratively burdensome for NMFS to make some accommodation for these persons. Alternatively, the permit holder's statement that he or she fished in a closed area should be sufficient.

Response: NMFS will base its calculations of compensation on all logbooks that have been submitted as of July 15, 1999, that contain all the needed information, including information on the latitude/longitude (or Loran lines) of where gear was fished. Any other method of calculating historical activity would also be controversial, given the comments received (see Comment 14), and would have an unfair impact on persons whose logbooks were correctly filled out and who complied with the regulations that have been in place since 1994. NMFS acknowledges the advice that the number of persons affected by this situation is probably small.

Comment 14: NMFS should limit its consideration to logbooks that were filed on a timely basis and from which reliable data can be obtained. Failure to require complete vessel logbooks to calculate historical activity as confirmation of eligibility would condone either willful disregard for management regulations or intentional deception.

Response: See response to Comment 13.

Comment 15: The income limit of $75,000 is too low. People with higher incomes may also feel the hardship of not being able to work. Such persons may have greater financial commitments and, hence, have just as great a need for assistance. NMFS should justify this particular limit.

Response: NMFS will retain the limit on net incomes from commercial fishing of $75,000 (or $150,000 if filing jointly) as proposed. The limit of $75,000 is approximately twice the median income of $37,005 for U.S. households in 1997 (Census Bureau, September 1998). Joint tax filers will be allowed an income from commercial fishing of up to four times the U.S. median household income. NMFS agrees that persons or entities with incomes above this level also have financial commitments and that the declining groundfish stocks may have had a serious impact on their financial status. However, NMFS believes that the limited funds should not be used to provide assistance to persons or entities with incomes more than twice the median level.

Comment 16: Party/charter boats have had to readjust their operations or went bankrupt because of the declining groundfish stocks and, therefore, they also deserve compensation.

Response: NMFS agrees that party/charter vessels have also been affected by the groundfish declines. However, the impact has not been as drastic, because these vessels have not been excluded from fishing in the inshore rolling closure areas. Since disaster assistance funds are limited, NMFS does not believe it is appropriate to include party/charter vessels in this program.

Comment 17: Explain in detail how the disaster assistance funds will be spent.

Response: Congress appropriated $5 million for the disaster assistance program. Of this amount, $4.65 million will be used to compensate fishermen through the program detailed in this document. If all these funds are not claimed by fishermen, the remaining funding will be used to subsidize the additional costs to vessels of carrying out the cooperative research program.

Of the remaining $350,000, $100,000 will be used to train and deploy observers aboard scallop vessels to monitor the bycatch of groundfish, especially yellowtail flounder. Finally, $250,000 will be used to cover administrative costs of the disaster assistance program.

Comment 18: NMFS should reserve any unclaimed funds for other disaster assistance programs rather than using the money for research.

Response: While the disaster assistance provided directly to fishermen through this program helps them cope with short-term problems, NMFS believes that helping to finance research will help the long-term recovery of the fishery, and, therefore, is a valid and useful part of the overall disaster assistance program. Both the fishing industry and the general public will benefit if NMFS uses unclaimed disaster assistance funds to help cover costs of research undertaken through this program. The research projects have the potential of providing important information about fish stocks and ways to reduce the catch of non-target species. The cooperative research program also has the potential to encourage greater understanding between fishermen and scientists.

Comment 19: The requirement that researchers pay for fuel and other operating costs could be an insurmountable obstacle for research projects. Some of the disaster assistance funds should be set aside to cover these costs or the fishermen should be required to pay them. NMFS should provide additional funds to the permit holder to cover costs associated with a research day at sea, including lost wages if the captain or crew have another job.

Response: NMFS believes that the researchers, not fishermen, should pay for research costs, since fishermen will be contributing their vessel, crew, and time to the research effort. If not all the disaster assistance funds are claimed by fishermen under this program, NMFS intends to use the remaining funding to cover the operating costs of the vessel. NMFS cannot promise, however, to cover any additional costs to the permit holders of executing this research, since there are no additional funds set aside for this purpose.

Comment 20: Clarify the process by which NMFS will decide which research projects qualify for using the fishing vessel DAS committed under this program.

Response: NMFS will announce that we are seeking projects to use the available fishing vessels, and list the vessels available. NMFS may also publish information about the program in appropriate scientific journals so that persons are aware of the opportunity. NMFS will establish a committee or use an existing organization comprised of scientists, fishermen, and government officials to review each scientific proposal for its technical merit and feasibility and to decide which proposals should have priority. NMFS will either appoint an individual to coordinate the execution of the research projects and to keep track of DAS used, or contract this task out.

Comment 21: The research obligation of fishermen compensated through this program should be extended to May 31, 2001, because it will take time to find funding for and organize the research projects.

Response: NMFS agrees that it may take considerable time to organize and prepare for using fishing vessels for research, but we believe that permit holders should know as soon as possible whether they will be asked to provide their vessels for research. Therefore, NMFS will stipulate that if a permit holder is not asked to provide his or her vessel for research by September 30, 2000, the research obligation lapses. However, NMFS will modify the program to allow the obligation to complete research assigned by that date to extend beyond the April 30 deadline, if approved by the RA. This provision will allow permit holders more flexibility in scheduling research, and will allow researchers more time to find funding and prepare for the research project. If a permit holder is asked to do research but the researcher is not able to find funding or complete the project, the permit holder is not obligated to participate and will not lose DAS if that project is not completed.

Comment 22: NMFS should specify in advance whether research in closed areas will be allowed under this program.

Response: Each project will be reviewed on a case-by-case basis. NMFS will not authorize any research activity that compromises the conservation measures designed to rebuild the stocks of groundfish.

Comment 23: Clarify the policy on when and where research under the Massachusetts Fishery Recovery Commission Plan will occur.

Response: The Massachusetts Fishery Recovery Commission (MFRC) Plan is a separate activity from this program. The MFRC prepared a draft strategic plan for fisheries research, which may be finalized prior to the publication of this document. NMFS has not been asked to approve the MFRC plan, nor is our approval needed. However, MFRC is welcome to submit its strategic plan to the committee that will review and prioritize research projects using the fishing vessels available through this disaster assistance program.

Comment 24: Fishermen might be forced to lose additional fishing time when fulfilling their commitment to perform research.

Response: NMFS does not intend for this program to diminish fishing opportunities for fishermen. The research commitment is expected to be fulfilled at a mutually convenient date for fishermen and researchers. For this reason and because it may take time to organize the research projects, NMFS is adding a provision whereby the date by which the research must be completed can be extended on a case-by-case basis by the RA (see Comment 21).

Comment 25: Justify the compensation level of $1500.

Response: NMFS decided to compensate every applicant at the same rate in order to speed the release of the disaster assistance funds. The alternative, compensating persons based on an amount linked to the daily income of each vessel, has merit but would have required that large amounts of economic income data from each vessel be supplied and reviewed, a step that would have delayed the release of the compensation for months. Therefore, NMFS has decided to compensate persons based on a figure that is about average for the fleet. The specific figure of $1500 per DAS is in line with the NMFS estimate of the net income per vessel affected by the Framework 26 closures of $1596 per day.

Comment 26: Other ways to use fishing vessel DAS could include removing abandoned fishing gear from right whale critical habitat and providing vessel support to assist in whale disentanglements. Also, NMFS should consider allowing fishermen to spend a day teaching children about fishing instead of providing income tax information if their vessels are not used for research. Fishermen's participation in scientist/fishermen workshops and in long-term data collection programs should also qualify as alternatives.

Response: NMFS agrees that there may be other ways besides research to use the fishermen's time or their vessels that could benefit fishery management or the community. Therefore, NMFS will modify the program to allow other

conservation-oriented activities in addition to cooperative research in exchange for compensation, at the discretion of the RA. Because fishermen will be agreeing to undertake research, if asked, in exchange for disaster assistance, NMFS does not believe we should require a permit holder to engage in another type of activity, even if approved by the RA. Therefore, permit holders will have the right to refuse to participate in any alternative activity. If a permit holder chooses not to undertake an alternative activity and is not asked to provide his or her vessel for research by September 30, 2000, however, the permit holder would be obligated to provide economic and social information.

Comment 27: A cessation of fishing activity in 1998 (which would trigger NMFS' use of activity from 1997 to determine historical activity) might be because a vessel's DAS were used up.

Response: NMFS will check to see if a cessation in fishing activity occurred because a permit holder's DAS were used up. The combination of DAS actually fished and DAS used as a proxy for economic harm cannot total more than a permit holder's allotted annual DAS.

Comment 28: Calculating DAS not used on a month-to-month basis could result in a person receiving disaster assistance even if the person did not fish fewer days overall. For example, if a person has 5 days of historical activity in February 1998 and fished 10 days in February 1999, had zero days of historical activity in March 1998 and fished 5 days in March 1999, and had 20 days of historical activity in April 1998 but only fished 10 days in April 1999, the person would be eligible for 10 days of disaster assistance compensation, even though the person fished the same number of days in February through April 1999 as in 1998.

Response: We agree that the proposed plan of calculating DAS on a month-to-month basis could have allowed some persons to receive compensation without a decrease in fishing effort. This was not the intent of the program. Therefore, we will modify the program so that if a person fished more days per month in 1999 than in 1998, the excess 1999 fishing days of one month will be subtracted from the number of days for which a person is eligible to receive compensation in another month. NMFS believes this situation will be rare.

Comment 29: The program would allow some persons who do not use up all their DAS in a year to receive compensation for days not fished, then fish harder later in the year and have a normal fishing year. NMFS should base compensation on the difference between the total number of DAS used in 1998 versus 1999.

Response: NMFS agrees that persons who routinely do not use up all their DAS could receive compensation for days not fished in May and June 1999 and could also fish later in the year as many DAS as they are accustomed to fish. However, this scenario is not likely to be common. Persons who do not use up their DAS are part-time participants in the multispecies fishery. NMFS assumes that they engage in other ways of making a living at other times of the year, either in another fishery or in another field of work entirely. Such a part-time participant is likely to have an annual schedule that permits him or her to fish for multispecies only at certain times of the year. If that time has been denied because of closures, the economic consequences are likely to be just as great as those for a full-time fisherman, and the ability to recoup those losses may be just as difficult.

Comment 30: If a person does not want to receive compensation for all his or her DAS not used, NMFS should provide compensation based on 1998 DAS first, so that a fisherman does not lose 1999 fishing opportunities as well as having lost 1998 DAS for which he or she does not receive compensation.

Response: NMFS agrees. If a person wishes to be compensated for only some of the DAS for which he or she is eligible, or if NMFS is only able to provide compensation for some but not all of the DAS requested, we will provide assistance based first on economic harm calculated from 1998/1999 DAS not used and will only compensate for 1999/2000 DAS not used if all eligible 1998/1999 DAS have been compensated for.

Comment 31: NMFS should allow fishing in the Western Gulf of Maine (WGOM) closure area to count toward historical activity. Otherwise, it would be arbitrary and capricious to treat a small vessel, forced out of the WGOM closure area with no place left to fish due to inshore closures, in the same fashion as a more mobile vessel that was able to relocate after the WGOM closure. Also, there is concern that the historical activity in the WGOM area might be lost forever.

Response: The disaster assistance program is targeted to persons affected by the short-term coastal closures that were instituted in 1999. The WGOM closure area is a 3-year, year-round closure that was instituted in 1998. Because of the different nature of the WGOM closure, NMFS does not believe it is appropriate to base historical activity upon fishing in this area, irrespective of whether the boat could relocate to another area. NMFS agrees, however, that the decision to exclude fishing in the WGOM closure area for the purposes of this program does not imply that historical fishing activity in this area will be lost forever.

Comment 32: Assistance should be provided for persons affected by the Cashes Ledge closures of 1999.

Response: Any vessel fishing in this off-shore area would be sea-worthy enough to move its base of operations to open areas, and would have more flexibility than smaller vessels that have to stay near shore. NMFS believes that the focus of this program should be on those fishermen with the fewest choices that were most affected by the coastal rolling closures of February through June 1999. Therefore, NMFS will not include fishing on Cashes Ledge.

Comment 33: It is not appropriate for NMFS to ask permit holders to provide the names of crew members; a good captain would compensate his or her crew members in any case. This requirement indicates a lack of trust on the part of NMFS.

Response: NMFS believes that it is important to have a formal structure through which to compensate crew members. Crew members are less likely to have savings to withstand slow periods from fishing and may be particularly vulnerable to layoffs during closures. Asking permit holders to identify crew members that should receive compensation and to specify the percentage of the vessel's compensation that should go to the crew members would not seem to interfere with the permit holder's arrangements to compensate crew. Further, because NMFS will compensate the crew members directly, this approach would seem to reduce the paperwork and accounting burden on the permit holder. This arrangement was endorsed by the industry representatives who provided comment during the development of this proposal.

Comment 34: Permit holders should not have any discretion in the criteria used to determine which crew members would be eligible for compensation.

Response: NMFS does not believe that there is a single set of criteria for determining which crew members should be compensated that would apply to all crew situations. We do not have the information needed to make this decision, and it would be time-consuming to obtain the information. Therefore, we will leave this up to the permit holders to determine.

Comment 35: NMFS should consider requiring some form of proof that a crew member worked for the permit holder for at least 6 out of the last 10 months.

Response: Since this is not a program requirement, but a guideline, no such proof is needed.

Comment 36: The loss of 2001/2002 DAS if a vessel did not comply with the requirement to engage in research by April 30, 2001, is a concern.

Response: NMFS believes that there should be some consequence if a person receives Federal funds but does not honor the commitment to engage in research. No fisherman commented that this provision was inappropriate. Further, DAS will only be deducted if a vessel owner fails to provide his or her vessel for research or to provide economic data as required.

Comment 37: NMFS should delete the provision that the research obligation may be kept by the original permit holder in the case of the sale of a vessel.

Response: NMFS did not intend that the research obligation remain with the original permit holder when the permit is sold to another person. Rather, the research obligation becomes a condition of the permit in all cases. Permits are assumed to transfer with sale of the vessel unless there is a purchase and sale agreement stating otherwise. If a vessel owner sells his or her boat but retains the permit, the research obligation remains with the original permit holder, who must then find a way to fulfill the research obligation or to provide economic data. We have clarified the language explaining this provision of the program.

Comment 38: In exchange for compensation, permit holders should be required to either operate their vessels for research or provide economic and social data. They should not be required to do both, as implied.

Response: NMFS intended the requirement to be to provide either vessels for research or economic and social data. In addition, NMFS will now allow other activities, if approved by the RA. The language in this document reflects that any of these alternatives is allowed.

Comment 39: When using the call-in/call-out system, day boat gillnet vessels are charged 15 hours at sea for any trip exceeding 3 hours. They should be allowed 15 hours of historical activity for these days.

Response: NMFS agrees and has clarified this point in this document.

Comment 40: Clarify whether NMFS will only use logbooks submitted within 15 days of the month following the fishing activity reflected in the logbook.

Response: NMFS will base its calculations of historical activity and economic harm on all logbooks submitted by July 15, 1999, provided that they contain sufficient information to be used for these calculations.

Comment 41: Fishermen should not be required to fill out so many forms and be subjected to so many prerequisites for receiving funds. This shows a lack of trust on the part of NMFS. NMFS is trying to stifle all the attempts of the fishermen to receive any aid.

Response: NMFS acknowledges that there are many requirements for receiving compensation under this program. Besides the programmatic requirements themselves, NMFS must also apply the disaster assistance provisions of section 308(d) of the IFA and the legal and regulatory requirements for receiving financial assistance from the Federal Government. NMFS is not trying to stifle attempts to receive aid, but these are standard procedures for disbursing Federal funds to ensure accountability for taxpayers' dollars.

Comment 42: The funds would be better spent on preserving wetlands and essential fish habitat and providing marine access for recreational anglers or the boating public. Or, some portion should be invested in an experimental gear program and on incentives for industry to develop and use technologies that minimize codfish bycatch.

Response: Congress specifically appropriated the funds for disaster assistance for persons or entities in the Northeast multispecies fishery who have incurred losses from a commercial fishery failure. However, some of the research projects that will use vessels provided by fishermen under this program may focus on these areas.

Comment 43: Explain the selection of 10,000 lb (4535 kg) as the landings threshold for eligibility.

Response: The disaster assistance funds were appropriated to assist persons who have incurred losses from a commercial fishery failure in the multispecies fishery. There are many persons holding multispecies fishing permits who are not active in the fishery and, therefore, did not experience a commercial fishery failure. The threshold of 10,000 lb (4535 kg) is intended to ensure that the program targets active commercial multispecies fishermen for assistance.

Comment 44: If the permit holder decides to withdraw from the program, he or she should be required to send a certified letter to NMFS stating the intent to withdraw from the program. Any compensation should be repaid within 60 days of the date of this letter.

Response: NMFS agrees. Permit holders wishing to withdraw from the program will have to inform NMFS in writing by January 1, 2000, and will have 60 days from the date of receipt by NMFS of that letter to return all compensation received.

Comment 45: Clarify whether fishermen who fished in fisheries like monkfish in North Carolina during the appropriate months in 1999 would qualify.

Response: The calculation of economic harm subtracts only the multispecies DAS fished on a month-to-month basis from February through June 1999 (wherever that effort might have been) from the historical activity of the permit holder in the areas of the Gulf of Maine rolling closures during the appropriate months. If a permit holder has historical activity in the specified closed areas and moved to North Carolina in 1999 in order to continue fishing, that fishing effort would not be subtracted from historical activity unless multispecies DAS were used. Likewise, if a person fished in the same areas in 1999 as in 1998 but changed to another fishery that did not require the use of multispecies DAS, those days would not be subtracted from historical activity.

Comment 46: It is unclear how NMFS will certify that a fisherman normally fishes alone.

Response: NMFS does not intend to certify that a fisherman normally fishes alone. The application form asks fishermen to provide information on eligible crew members or to certify that the permit holder fishes alone. If evidence comes to light that a certification is false, NMFS will provide such evidence to the OIG. A false statement on the form could be grounds for possible punishment, including fine or imprisonment, under 18 U.S.C. 1001.

Changes From the Proposed Program

The following changes and clarifications have been made from the proposed program:

1. NMFS will allow the time period for completing the research obligation to be extended beyond the April 30, 2001, deadline by requesting an extension from the RA. This change has been made to allow more flexibility to the fishermen and researchers in scheduling research voyages at a mutually agreeable time and to allow more time, if necessary, for approved researchers to find funding and organize the project. NMFS retains the provision that permit holders must be informed that they are expected to provide their vessels for research by September 30, 2000. If a permit holder is asked to provide a

vessel for research, but the researchers cannot complete the project by April 30, 2001, and do not get the deadline extended, the permit holder's obligation to conduct the research ceases. Note that a request to extend the deadline for conducting research constitutes a collection of information as defined by the Paperwork Reduction Act (PRA). NMFS cannot grant extensions unless and until this collection of information is approved by the Office of Management and Budget (OMB). NMFS will seek approval of this aspect of the program in a timely manner.

2. Historical participation and economic harm for gillnetters will be based on the number of hours at sea assessed (a minimum of 15 hours per day for trips of greater than 3 hours), not on the number of hours the vessel was actually on the water.

3. If a permit holder chooses to withdraw from the program, he or she must inform NMFS of this decision in writing by January 1, 2000. The permit holder must then return the compensation received within 60 days of the receipt by NMFS of the decision to withdraw.

4. Income tax returns from 1998 are not required to be submitted to verify income level. However, NMFS has retained the requirement that assistance is limited to persons or entities that did not receive more than $75,000 from commercial fishing in 1998. Persons applying for this compensation must certify that they meet the income limit and other eligibility requirements.

5. "Research" DAS may be fulfilled in ways other than providing one's vessel for research. Projects proposing alternative activities in lieu of the research commitment may be submitted to NMFS for approval on a case-by-case basis by the RA.

6. If a permit holder is eligible for compensation based on DAS in both the 1998/1999 and the 1999/2000 fishing years and that person does not wish to be compensated for the full number of days for which he or she is eligible, the 1998/1999 DAS will be compensated first. Likewise, if NMFS reduces the number of DAS for which a person receives compensation (because the requested compensation exceeds the available funding) and a person qualifies for compensation based on unused DAS from both years, NMFS will compensate for DAS not used in 1998/1999 first and will only compensate for unused DAS in 1999/2000 if a person has no more 1998/1999 DAS eligible for compensation.

7. Permit holders receiving disaster assistance who are not asked to provide their vessel for research (or to engage in any other approved alternative activity) by September 30, 2000, will be required to submit only the last 3 years of income tax returns rather than 5 years of returns as proposed.

Definitions

Charter or party boat means any vessel that carries passengers for hire to engage in recreational fishing.

Commercial fishing or *fishing commercially* means fishing that is intended to result in, or results in, the barter, trade, transfer, or sale of fish.

Day(s)-at-Sea or *DAS* means the 24-hour periods of time during which a fishing vessel is absent from port in which the vessel intends to fish for, possess or land, or fishes for, possesses, or lands regulated species.

Dealer means any person who receives, for a commercial purpose (other than solely for transport on land), from the owner or operator of a vessel issued a valid multispecies permit, any species of fish whose harvest is managed by 50 CFR part 648.

Fishing year means, for the Northeast multispecies fishery, the period of time from May 1 through April 30 of the following year.

Historical activity means fishing activity during 1998 (or, in some cases, 1997) in the areas listed in this document that were closed in 1999, excluding the Western Gulf of Maine closed area.

Northeast multispecies, or *multispecies finfish*, or *multispecies* means the following species:

American plaice—*Hippoglossoides platessoides.*
Atlantic cod—*Gadus morhua.*
Haddock—*Melanogrammus aeglefinus.*
Ocean Pout—*Macrozoarces americanus.*
Pollock—*Pollachius virens.*
Redfish—*Sebastes fasciatus.*
Red hake—*Urophycis chuss.*
Silver hake (whiting)—*Merluccius bilinearis.*
White hake—*Urophycis tenuis.*
Windowpane flounder—*Scophthalmus aquosus.*
Winter flounder—*Pleuronectes americanus.*
Witch flounder—*Glyptocephalus cynoglossus.*
Yellowtail flounder—*Pleuronectes ferrugineus.*

Multispecies permit means a permit issued by NMFS to fish for, possess, or land multispecies finfish in or from the Exclusive Economic Zone.

Regulated species means the subset of NE multispecies that includes Atlantic cod, witch flounder, American plaice, yellowtail flounder, haddock, pollock, winter flounder, windowpane flounder, redfish, and white hake.

Eligibility

Permit holders are eligible to participate in this program if they hold a currently valid Federal multispecies permit and landed and sold at least 10,000 lb (4535 kg) of multispecies finfish to federally permitted dealers between May 1, 1997, and April 30, 1998. Verification of the sale will be based only on dealer weigh-out reports submitted to NMFS prior to April 1, 1999.

Party/Charter vessels are not eligible for this program, because they were not excluded from fishing in the closed areas.

Persons or entities with net annual revenues from commercial fishing in 1998 exceeding $75,000 (or $150,000 if filing a joint tax return) are not eligible for compensation. Persons or entities applying for disaster assistance will need to certify that their income does not exceed this threshold. The applicant's assertion of fishing income will be subject to audit, and if audited, the applicant may be required to provide documentation including, but not limited to, tax returns.

Any permit holder whose permit was sanctioned during the February through June 1999 closures cannot qualify for compensation from the period of the sanction.

Permit holders otherwise eligible for compensation who sold their vessels on or after February 1, 1999, will not be eligible to participate in this program. Likewise, persons purchasing a vessel on or after February 1, 1999, would not be considered to have historical activity and therefore are not eligible for compensation under this program, except that persons who owned a vessel that held a valid multispecies permit during the 1998–99 fishing year and who purchased a new vessel after February 1, 1999, will be eligible, based on the history of the vessel used during 1998.

Calculation of Historical Activity

A. NMFS will calculate the historical activity of each eligible vessel based on the number of DAS fished during 1998 in the following months and areas:

February—blocks 124–125
March—blocks 124–125
April—blocks 123–125, 130–133
May—blocks 129–133, 136–140
June—blocks 139–147, 152

Figure 1 shows the areas of these blocks.

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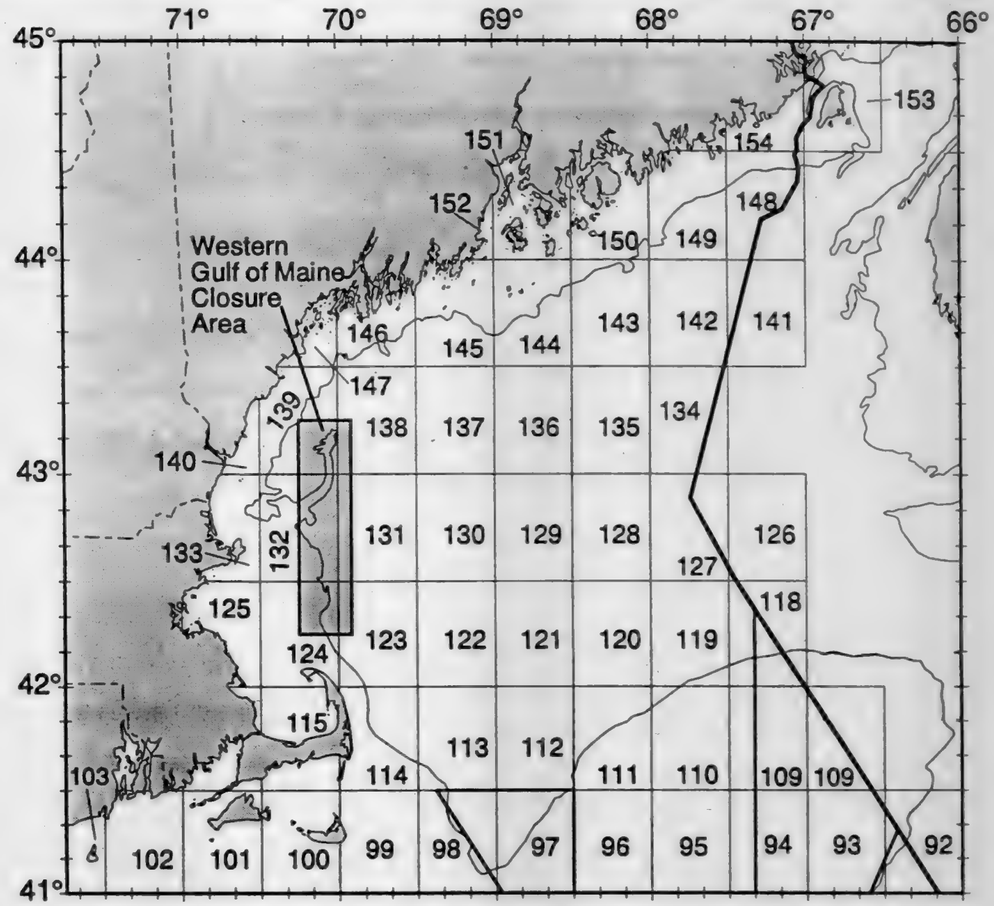

Figure 1. Gulf of Maine area closure reference blocks

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Note that, for the purposes of this program, fishing activity in the Western Gulf of Maine Closed Area will not be considered as historical activity since that area is closed for 3 years on a year-round basis.

B. There were some closures in March, May, and June of 1998. Therefore, if a vessel used no DAS in May or June 1998, NMFS will calculate the number of DAS fished by that vessel in the appropriate areas during the same months of 1997. Some areas were closed from March 1 through March 30, 1998, but not closed on March 31 of that year. Therefore, if a vessel used no DAS during March 1998 or fished only on March 31 of that year, NMFS will calculate the number of DAS fished by that vessel in the appropriate areas during the same months of 1997. NMFS will not use 1997 DAS if a permit holder used all his or her DAS in 1998.

C. Some persons may have been prevented from fishing in 1998 because of illness or problems with their vessels. NMFS assumes that vessel owners have chosen fishing as their primary activity by virtue of their investment in their boats. Therefore, if there are two consecutive calendar months from February through June 1998 for which a vessel had no record of any fishing activity (e.g., negative vessel trip reports were submitted for March and April 1998 and/or no landings were recorded by dealers), NMFS will assume that the vessel was prevented from fishing by circumstances beyond the control of the vessel owner. In this circumstance, NMFS will calculate the number of multispecies DAS during those same months in 1997. However, if the 2-month gap in 1998 fishing activity was due to a permit sanction, NMFS will not consider 1997 fishing activity. NMFS will not use 1997 DAS if a permit holder used all his or her DAS in 1998.

D. Calculation of multispecies DAS fished will be made to the nearest hour of fishing time and will then be rounded down to the nearest half day. A permit holder can receive no more compensation for economic harm than the level represented by the number of days of historical activity as calculated using this method.

E. For gillnetters, historical activity will be based on the number of DAS hours they were charged (minimum 15 hours for trips greater than 3 hours) rather than on the number of hours they were gone from the dock.

F. The number of multispecies DAS fished during a fishing year plus the number of unused multispecies DAS for which a vessel receives compensation in that year cannot exceed the total number of multispecies DAS allocated to that vessel for that year.

Documentation Used To Determine Historical Activity

A. For vessels greater than 30 ft (9.14 m), NMFS will use vessel call-in system reports and vessel trip reports received by NMFS prior to April 1, 1999, to determine whether a vessel fished in a 1999 closure area. If a trip was called in but no log report was submitted, or vice versa, the trip will not be included.

Some vessel trip reports have been submitted with insufficient information to determine whether the vessel fished in the closed areas, although this information is required. The permit holder will not get credit for historical activity on any trips for which the logbooks do not indicate where the gear was deployed.

B. For vessels 30 ft (9.14 m) or less, NMFS will base historical activity on vessel trip reports received by NMFS prior to April 1, 1999. (These vessels do not participate in the call-in system.) As with the larger vessels, the permit holder will not get credit for historical activity on any trips for which the logbooks do not indicate where the gear was deployed.

Documentation Used To Determine 1999 Activity

A. For vessels greater than 30 ft (9.14 m), NMFS will base activity on vessel call-in system reports.

B. For vessels 30 ft (9.14 m) or less, NMFS will base activity on vessel trip reports submitted by July 15, 1999. NMFS may compare dealer weigh-out reports and logbooks for May and June to confirm claims that no landings were made when no trip is reported.

Calculation of Economic Harm

A. For each month in which a vessel has historical activity, NMFS will tally the number of multispecies DAS fished in 1999. Economic harm will be calculated on a monthly basis as the historical DAS used that month minus the multispecies DAS used that month in 1999. For example, if a vessel has 10 DAS of historical activity in April 1998 and fished 5 DAS in April 1999, the permit holder and crew will be eligible for compensation for the equivalent of up to 5 DAS. If a vessel has 10 DAS of historical activity in April 1998 and fished 15 DAS outside the closed area in April 1999, the permit holder and crew will not be eligible for compensation for economic harm for that month.

If a vessel fished more days in a month during 1999 than it has historical activity in a closed area, the excess 1999 days will be subtracted from DAS for which the permit holder could receive compensation in another month. For example, if a permit holder has 10 days of historical activity from February 1998 and fished 15 days during February 1999, that person would have 5 days of excess 1999 fishing that would be subtracted from another month's compensation. If the same person had 10 days of historical activity from March 1998 and fished only 5 days during March 1999, the 5 days for which the person would otherwise have been eligible to receive compensation would be offset by the 5 days fished in excess of historical activity in February, and the person would not be eligible for compensation in March.

B. Compensation for economic harm will be at a rate of $1500 for each 24-hour DAS and $750 for each half DAS. This amount will be decreased to $900 per DAS if the permit holder does not designate crew to receive compensation. However, persons fishing alone may designate themselves as crew and receive the full compensation. (See Compensation for Crew.)

C. A DAS for which a permit holder receives compensation will be considered a DAS used. For compensation received based on economic harm during the 1998–1999 fishing year (i.e., during the February, March, and April 1999 closures), DAS for which a permit holder receives compensation cannot be carried over to the 1999–2000 fishing year. For compensation received based on economic harm during the 1999–2000 fishing year (i.e., during the May and June 1999 closures), DAS for which a permit holder receives compensation will be subtracted from the total allowable DAS for the year. For example, if a permit holder in the fleet DAS category is compensated for 10 DAS not used in June 1999, the total 1999–2000 DAS for the vessel he or she currently owns would be reduced from 88 to 78.

If a person is eligible to receive compensation for DAS not fished during both the 1998/1999 fishing year and the 1999/2000 fishing year, but elects to receive compensation for only some of those days, NMFS will compensate the 1998/1999 DAS first. For example, if a person is eligible to receive 10 days of compensation for lost fishing opportunities in 1998/1999 and 10 days of compensation for lost opportunities in 1999/2000, but chooses to commit his or her vessel for only 15 days of research, 10 days would be subtracted from the 1998/1999 DAS and only 5 would be subtracted from the 1999/2000 DAS allocation.

D. The number of DAS for which persons will receive compensation will be based on the total number of requests received by NMFS. No compensation will be paid until all requests are received. However, no applicant will be paid unless they satisfactorily complete a name check process required by the OIG. Because compensation cannot be released until the universe of applicants is known and because eligibility and unused DAS are calculated from official records held by NMFS and based on information required to be submitted to NMFS, there will be no appeals of NMFS determinations of eligibility or unused DAS.

E. If the total requests for compensation for economic harm exceed the funds available, the number of DAS for which each person is compensated will be reduced by the same proportion. If reduced, the proportional DAS for which each person is compensated will be rounded down to the nearest half day.

F. If the total requests for compensation for economic harm total less than the funds available, the excess funds will be used to defray costs in the following cooperative research program.

G. The agreement to participate in research in exchange for compensation through this program is binding. If a permit holder decides to withdraw from the program, he or she must inform NMFS of the decision to do so by January 1, 2000. Any compensation received through this program must be returned to NMFS within 60 days of receipt by NMFS of the letter informing of the decision to withdraw from the program. Returned funds may be used to defray costs in the cooperative research program.

Compensation for Crew Members

NMFS will ask permit holders to identify crew members who have also been harmed by the groundfish collapse and to specify in the application the vessel's share system. Crew members will be compensated a portion of the vessel's total compensation, based on the vessel's share system. An eligible crew member is expected to have worked for the permit holder for at least 6 out of the last 10 months. Each crew member identified by eligible permit holders will be required to certify that his or her income from commercial fishing does not exceed $75,000 ($150,000 if filing a joint tax return). Crew members will need to provide NMFS with bank information to allow direct deposit of disaster funds or to complete the requisite forms to receive a check. NMFS will pay each identified crew member based on the percentage share specified by the permit holder and will pay the remainder of the vessel's compensation to the permit holder. Permit holders who do not specify any crew members for compensation will be compensated at a reduced rate of $900 per DAS. However, a permit holder fishing alone may designate himself or herself as the captain of the vessel, thereby receiving the full $1500 per DAS discussed above.

Research Requirement

Permit holders that receive compensation under this program will be required to participate in research projects (if asked) for the number of days they were compensated. A permit holder will only be obligated to provide his or her vessel for research for the number of DAS for which compensation is received. Permit holders will not be required to use their allotted fishing DAS for this research. However, if a permit holder intends to land multispecies fish caught during a research day, the permit holder would have to use a DAS, which would also count as a research day. Use of the vessel includes the use of fixed vessel equipment such as navigation devices and hauling equipment.

The cost of personnel (captain and crew) required to operate the vessel during this research is to be borne by the permit holder. This is a condition of receiving compensation. All other direct operation costs are to be borne by the researcher. Direct costs include fuel, ice, food, and scientific equipment. Fishermen are not required to provide fishing gear for scientific research, although they may choose to do so. If eligible fishermen do not claim all the available disaster assistance funds, NMFS may provide some of the operation costs of research conducted under this program.

If a permit holder is not asked to provide his or her vessel for research by September 30, 2000, this obligation will cease. Instead, the permit holder will be required to submit economic information in the form of 1997, 1998, and 1999 tax returns and to complete an economic and social survey, provided that this collection of information is approved by OMB. If this information is not received by May 1, 2001, the permit holder's DAS for the 2001–2002 fishing year will be reduced by the number of DAS for which he/she was compensated under this program.

The research must be undertaken at a mutually agreed date before May 1, 2001. However, the RA may grant an extension of the time allowed to complete the research, upon request from the researcher and after consultation with the permit holder. NMFS cannot grant extensions of the completion date unless the collection of information required to assess a request is approved by OMB in compliance with the PRA. We will seek OMB approval in a timely manner.

If a vessel is requested for research by September 30, 2000, and the research is not conducted before May 1, 2001, because the fishing vessel is not available, then the vessel's allowed DAS for fishing year 2001–2002 will be reduced by the number of DAS for which it was committed for research, unless an extension is approved by the RA. If a vessel is requested for research but the researcher is unable to proceed with the project before May 1, 2001, and the deadline for completing the project is not extended, the permit holder's obligation to participate in this research ceases. In this case, the permit holder will receive credit for the DAS committed to this research project, even if the DAS are not used for research.

NMFS may authorize other uses for vessels and permit holders' time that can be substituted for the research commitment. A permit holder is not obligated to engage in any approved alternative projects, but may chose to do so (if asked) in lieu of the research requirement. The same deadlines and consequences apply to the alternative projects as to the research commitment. If the permit holder agrees to undertake an alternative project, the activity must be completed by May 1, 2001, unless extended by the RA, or the permit holder's DAS for the 2001–2002 fishing year will be reduced by the number of DAS for which he or she was compensated under this program. If the permit holder chooses not to engage in an alternative project and is not asked to engage in research by September 30, 2000, the permit holder will be obligated to provide 3 years of tax returns (subject to OMB approval of this collection of information).

If the vessel is sold while still under a research obligation, the commitment will transfer with the permit. Permits automatically transfer with the vessel upon sale, unless there is a written agreement stating otherwise. The research requirement will not be voided by the sale of a vessel, unless the permit holder permanently retires the vessel's multispecies permit.

If crew members are compensated as part of this program and are still with the vessel, they are expected to serve during the requested research period.

Permit holders will be expected to keep a record of the number of days they engaged in cooperative research.

Application Process

A. NMFS will determine who is eligible to participate in the program based on dealer weigh-out reports and will calculate the maximum level of direct assistance for which the permit holder is eligible.

B. NMFS will notify all multispecies permit holders, explaining the program and informing them whether they qualify to participate and, if so, the maximum amount of economic harm they can claim based on unused DAS. The letter to qualified permit holders will contain an application form that asks the permit holder to identify the number of eligible DAS for which the permit holder will seek compensation in exchange for a commitment to make his or her vessel available for research in the future, if requested. The permit holder will be asked to identify crew members that should share in the compensation and to inform NMFS of the percentage of available compensation each crew member should get, which is expected to be based on the usual share system of the vessel. Qualified permit holders will have 30 days from the date of mailing to respond to the invitation to participate. A date by which all responses must be postmarked will be included in the invitation to participate.

When applying for disaster assistance, permit holders will have to certify that their net income from commercial fishing in 1998 did not exceed the threshold of $75,000 (or $150,000 if filing a joint tax return). They will do so by signing the application form certifying the information they provide, including income information. Crew members will also have to certify that their net income from fishing in 1998 did not exceed the same limits. Certification is subject to possible punishment for false statements, under 18 U.S.C. 1001. The assertion of fishing income will be subject to audit and may require documentation including, but not limited to, tax returns.

C. NMFS will tally the amount of eligible compensation requested in all applications received by the deadline, and will conduct a name check of eligible persons. If the total eligible compensation requested is less than the funds available, NMFS will approve payment of the requested amounts (provided that the recipients pass the required name check) and will set aside the remainder to help defray vessel costs for conducting research. If the eligible compensation requested exceeds the funds available, NMFS will approve payment for each permit holder based on a prorated reduction in the number of DAS. The value of a DAS will remain the same, but fewer unused DAS will be compensated in this case. Partial DAS will be rounded downward to the nearest half DAS.

D. NMFS will report payments disbursed under this program to the IRS and will issue IRS Form 1099-G to each recipient of compensation for economic harm.

E. NMFS will accept only complete, signed applications postmarked by the deadline date for consideration under this program. NMFS is not required to screen applications for completeness before the deadline nor to allow applicants to correct any deficiencies on their application form after initial submission.

Classification

National Environmental Policy Act

NMFS requested comments on the potential impacts of this program on the human environment when it published the proposed program on June 11 in the **Federal Register**. No comments were received directed specifically to this point, although one person was of the opinion that the disaster assistance funds would be better spent in preserving wetland and habitat and in providing marine access for recreational anglers or the boating public. NMFS has conducted an Environmental Assessment of this program and has concluded that there are no significant impacts of this program on the human environment. A copy of the Environmental Assessment may be obtained from NMFS (see **ADDRESSES**).

Regulatory Flexibility Act

NMFS conducted an initial regulatory flexibility analysis (IRFA) for this action, which was included in the June 11 **Federal Register** notice. We received no comments concerning the IRFA. Therefore, the following constitutes the final regulatory flexibility analysis for this program.

This action is being taken as a result of concern about the economic impact of the declining groundfish stocks in the Gulf of Maine. The objective of the program is to compensate persons in the Northeast multispecies fishery who have incurred losses from a commercial fishery failure.

This program is open to permit holders of a currently valid Northeast multispecies permit who landed 10,000 lb (4535 kg) of multispecies fish between May 1, 1997, and April 30, 1998, as recorded by dealer weigh-out reports. NMFS estimates that fewer than 500 permit holders qualify for compensation by having landed 10,000 lb (4535 kg) of multispecies fish and having documented historical activity in the areas closed in 1999. Assuming that, on average, each permit holder employed one other crew member, there might be 1000 persons able to participate in this program.

The reporting or record-keeping requirements for this program include an initial form for permit holders to indicate willingness to participate in the program. The form will also allow permit holders to identify crew members that should share in the compensation. The program also requires permit holders to provide the services of their vessels, if asked, for future research at a mutually agreed date and time, not to exceed May 1, 2001, unless an extension is requested and granted by NMFS. The permit holders will be expected to cover the costs of captain and crew needed to operate the vessel during this research, which is estimated to be $700 on average. The other costs of operating the vessel will be covered by the researcher or (in the event that not all disaster assistance funds are claimed by fishermen) may be covered by NMFS. Participation in the compensation program is voluntary, and persons are not expected to participate unless it is deemed economically beneficial to do so. Permit holders may also wish to keep a record of the number of days they have engaged in cooperative research. In addition, if a permit holder is not asked to engage in research or to perform an alternative, approved activity by September 30, 2000, the program calls for permit holders to submit 3 years of Federal income tax forms and to complete a survey of economic and social concerns instead, provided OMB approves this collection of information. Fishermen who have not kept copies of their tax returns will need to request copies from the IRS at a cost of $23.00 per return.

There are no Federal rules that duplicate, overlap, or conflict with the proposed action. Persons engaging in research aboard any vessel available through this program will have to comply with all relevant Federal regulations.

In providing assistance to alleviate the economic harm caused by the fishery decline, any significant economic impacts of this program are expected to be positive and are intentional. NMFS has, however, made modifications to the program that reduce the cost of compliance for the permit holders. We have: (a) Added a provision that the date by which research must be completed may be extended, thereby lowering the risk that a permit holder may lose DAS during the 2001/2002 fishing year; (b) added the possibility of permit holders participating in approved alternatives to research, some of which may be less costly for the permit holder than providing a vessel for research; and (c) clarified that if a person wishes to receive compensation for only some of the DAS for which he or she is eligible, then NMFS will compensate unused 1998/1999 DAS first, and will subtract 1999/2000 DAS only if all the eligible DAS from last fishing year are used up. This provision allows a fisherman to receive compensation for DAS which have expired, but to choose to fish with this year's DAS instead of receiving $1500 per DAS compensation.

E.O. 12866

This program has been determined to be significant for the purposes of E.O. 12866.

PRA

This program contains a collection-of-information requirement subject to the PRA. The public reporting burden for this collection of information is estimated at 1.5 hours per response, to submit a form indicating willingness to participate in the program. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments were requested on this estimate when the proposed program was published in the **Federal Register**. NMFS received no comments on this estimate.

The collection of this information has been approved by OMB under control number 0648–0386.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Federal Policies and Procedures

Recipients of Federal assistance (permit holders and crew members who receive compensation through this program) are subject to all Federal laws and Federal and Department of Commerce (Commerce) policies, regulations, and procedures applicable to Federal financial assistance awards and must comply with general provisions that apply to all recipients under Commerce Federal assistance programs.

False Statements

A false statement on the application or any document submitted for consideration of financial assistance is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment (18 U.S.C. 1001).

Delinquent Federal Debts

No award of Federal funds shall be made if the would-be recipient has an outstanding delinquent Federal debt or fine until: (a) The delinquent account is paid in full; (b) a negotiated repayment schedule is established and at least one payment is received; or (c) other arrangements satisfactory to Commerce are made.

IRS Information

An applicant classified for tax purposes as an individual, partnership, proprietorship, corporation, or medical corporation is required to submit a taxpayer identification number (TIN) (a social security number, or an employer identification number as applicable, or a registered foreign organization number) on IRS Form W–9, "Payer's Request for Taxpayer Identification Number." Tax-exempt organizations and corporations (with the exception of medical corporations) are excluded from this requirement. Form W–9 shall be submitted to NOAA upon application for assistance. The TIN will be provided to the IRS by Commerce on Form 1099-G, "Statement for Recipients of Certain Government Payments."

Disclosure of a recipient's TIN is mandatory for Federal income tax reporting purposes under the authority of 26 U.S.C., sections 6011 and 6109(d), and 26 CFR, 301.6109–1. This is to ensure the accuracy of income computation by the IRS. This information will be used to identify an individual who is compensated with Commerce funds or paid interest under the Prompt Payment Act.

Name Check

Recipients will be subject to a name check review process. Name checks are intended to reveal if they or any key individuals associated with an application for award have been convicted of, or are presently facing, criminal charges, such as fraud, theft, perjury, or other matters that significantly reflect on their management, honesty, or financial integrity. In the name check process, Commerce performs a credit check on businesses and individuals. A criminal background check on an individual's name is performed by the Federal Bureau of Investigation. There is no charge to recipients for the name check.

Audits

Under the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, section 1 *et seq.*, an audit of the award of assistance may be conducted at any time. The Inspector General of Commerce, or any of his or her duly authorized representatives, shall have access to any pertinent books, documents, papers and records of the recipient, whether written, printed, recorded, produced or reproduced by any mechanical, magnetic or other process or medium, in order to make audits, inspections, excerpts, transcripts or other examinations as authorized by law. When the OIG requires an audit on a Commerce award, the OIG will usually make the arrangements to audit the award, whether the audit is performed by OIG personnel, an independent accountant under contract with Commerce, or any other Federal, state, or local audit entity.

Government-Wide Debarment and Suspension

Applicants must submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying." Prospective participants (as defined at 15 CFR 26.105) are subject to 15 CFR part 26, "Government-wide debarment and suspension (non-procurement) and government-wide requirements for drug-free workplace (grants)" and the related section of the certification form prescribed here applies.

Dated: August 26, 1999.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–23221 Filed 9–3–99; 8:45 am]

BILLING CODE 3510–22–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082699D]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will

convene a public meeting of the Reef Fish Stock Assessment Panel (RFSAP).

DATES: This meeting will begin at 9:00 a.m. on Monday, September 20, and conclude by 3:00 p.m. on Friday, September 24, 1999.

ADDRESSES: The meeting will be held at NMFS Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Steven Atran, Population Dynamics Statistician; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The RFSAP will convene to review stock assessments on the status of the red snapper stock and the red grouper stock in the Gulf of Mexico prepared by NMFS. The RFSAP will also evaluate new information on gag biology that had been presented to the Council during its development of the revised Regulatory Amendment to Set 1999 Gag/Black Grouper Management Measures. This new information includes reports prepared by Dr. Chris Koenig (Florida State University, Dr. Robert Chapman (South Carolina Department of Natural Resources) and other academic and state scientists, plus an evaluation and response to the analyses prepared for Southeastern Fisheries Association by Dr. Trevor Kenchington (Gadus Associates) and other independent scientists retained by Dr. Kenchington.

Based on its review of the red snapper and red grouper stock assessments, the RFSAP may recommend a range of allowable biological catch (ABC) for 2000, and may recommend management measures to achieve the ABC. In addition, the RFSAP will review the adequacy of recent biological information presented to the Council on gag that was used by the Council in its recent management decisions.

The RFSAP is composed of biologists who are trained in the specialized field of population dynamics. They advise the Council on the status of stocks and, when necessary, recommend a level of ABC needed to prevent overfishing or to effect a recovery of an overfished stock. They may also recommend catch restrictions needed to attain management goals.

The conclusions of the RFSAP will be reviewed by the Council's Standing and Special Reef Fish Scientific and Statistical Committee (SSC), Red Snapper Advisory Panel (RSAP), and Reef Fish Advisory Panel (RFAP) at meetings to be held in late October, 1999. Red grouper is a component of the shallow-water grouper complex (which consists of red grouper, gag, yellowfin grouper, black grouper, scamp, yellowmouth grouper, rock hind, and red hind). The Council may set a year 2000 total allowable catch (TAC) for the red grouper component of the shallow-water grouper complex and red snapper. The Council may also consider other management measures at its meeting in Lake Buena Vista, FL on November 8–11, 1999.

Although other issues not on the agenda may come before the Panel for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed as available by this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by September 13, 1999.

Dated: August 31, 1999.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–23223 Filed 9–3–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 083199C]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Herring Advisory Panel in September, 1999. Recommendations from the advisors will be brought to the Herring Oversight Committee and full Council for formal consideration and action, if appropriate. This will be a joint meeting with the Herring Industry Advisory Panel of the Atlantic States Marine Fisheries Commission.

DATES: The meeting will held on Friday, September 17, 1999 at 9:30 a.m.

ADDRESSES: The meeting will be held at the Sheraton South Portland Hotel, 363 Maine Mall Road, South Portland, ME 04106, telephone: (207) 775–6161.

Council address: New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231–0422.

SUPPLEMENTARY INFORMATION: The advisors will elect a chair and vice-chair. They will also discuss various options for developing a controlled access program for the Atlantic herring fishery. The advisors may discuss other herring management issues, including spawning area closures and gear interactions.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: August 31, 1999.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–23224 Filed 9–3–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082599D]

Western Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Western Pacific Fishery Council (Council) will hold a meeting of its Coral Reef Ecosystem Plan Team (Plan Team) and its Ecosystem and Habitat Advisory Panel (Advisory Panel) in Honolulu, HI. The meeting will also include a public hearing on the management alternatives being considered for implementation in the Coral Reef Ecosystem Fishery Management Plan (FMP), and being analyzed in an associated Environmental Impact Statement (EIS).

DATES: Both meetings will be held on September 15–17, 1999, from 8:30 a.m. to 5:00 p.m. each day. Written comments, on the range of alternatives to be analyzed in the EIS, will be accepted on or before September 10, 1999, which marks the end of the public scoping period under the National Environmental Policy Act (as per previous notice). The public hearing on the management alternatives will be held on September 17, 1999, from 2:00 to 5:00 p.m.

ADDRESSES: The meetings will be held at the Council office conference rooms, 1164 Bishop St., Suite 1400, Honolulu, HI; telephone: (808–522–8220).

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI, 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The Plan Team and Advisory Panel will discuss and make recommendations to the Council on the agenda items below. The order in which agenda items will be addressed can change.

8:30 a.m. Wednesday, September 15, 1999

(Contractors and staff will present the following topics from the latest draft of the Coral Reef Ecosystem FMP to both the Plan Team and Advisory Panel, meeting jointly on this day:)

1. Introduction to the FMP
   - A. Ecosystem management
   - B. Geographic context
   - C. Scope of management
2. Description of the fisheries
   - A. History of exploitation
   - B. Fishing methods and current use patterns
3. Description of threats/management issues
   - A. Inadequate resource base
   - B. Lack of effective enforcement
   - C. Lack of coordinated, comprehensive management
4. Management objectives and programs
   - A. Proposed (and rejected) management alternatives (and ecological/biological, social/economic, and cultural impacts)
     - (1) Fishing permit
     - (2) Marine protected areas
     - (3) Restrictions of gear and methods
     - (4) Framework provisions
   - B. Proposed non-regulatory measures
5. Description of the resource ecosystem
   - A. Fishery management unit (FMU)
   - B. Biology
   - C. Present condition of components of the FMU
   - D. Probable condition of FMU components in the future
6. Proposed designations for Essential Fish Habitat (EFH)
   - A. Description of EFH and EFH designations for management unit species/taxa
   - B. Habitat areas of particular concern
   - C. Fishing and non-fishing impacts to EFH
   - D. Cumulative impacts and research needs
7. Sustainable Fisheries Act determinations
   - A. Description of commercial, recreational and charter fishing sectors
   - B. Impacts on fishing communities
   - C. Overfishing definitions and criteria
   - D. Bycatch
8. Relationship to existing laws and policies
   - A. Other fishery management plans
   - B. Treaties or international agreements
   - C. Federal laws and policies
   - D. State, local and other applicable laws and policies
9. Future needs
   - A. Research, monitoring and assessment
   - B. Development of fishery resources

8:30 a.m. Thursday, September 16, 1999

10. Plan Team and Advisory Panel meet separately to discuss and make recommendations on the topics presented on the first day

8:30 a.m. Friday, September 17, 1999

11. Plan Team and Advisory Panel continue to discuss and develop independent recommendations on the above topics
    - A. Summary of Plan Team recommendations to Council on draft FMP
    - B. Summary of Advisory Panel recommendations to Council on draft FMP
12. Other business
    - A. Scheduling of next Plan Team meeting
    - B. Scheduling of next Advisory Panel meeting

2:00 p.m.

13. Public hearing on management alternatives (Plan Team and Advisory Panel meeting jointly).

Although other issues not listed in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal discussion during these meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: August 31, 1999.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–23225 Filed 9–3–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082699F]

Marine Mammals; Photography Permit (File No. 867–1525)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Moana Productions, Inc., 311 Portlock Road, Honolulu, HI 96825, has applied in due form for a permit to take several species of non-threatened, non-endangered small cetaceans for purposes of commercial photography.

DATES: Written comments must be received on or before October 7, 1999.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (310/980–4001); and

Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Bin C15700, Building 1, Seattle, WA 98115–0070 (206/526–6150).

Written data or views, or requests for a public hearing on this request, should be submitted to the Director, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

FOR FURTHER INFORMATION CONTACT: Trevor Spradlin or Jeannie Drevenak at (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of § 104(c)(6) of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216). Section 104(c)(6) provides for photography for educational or commercial purposes involving non-endangered and non-threatened marine mammals in the wild. NMFS is currently working on proposed regulations to implement this provision. However, in the meantime, NMFS has received and is processing this request as a "pilot" application for Level B Harassment of non-listed and non-depleted marine mammals for photographic purposes.

The applicant seeks authorization to photograph the following marine mammals in Pacific waters off the coasts of California, Oregon and Washington: California sea lions (*Zalophus californianus*); harbor seals (*Phoca vitulina*); Northern elephant seals (*Mirounga angustirostris*); harbor porpoises (*Phocoena phocoena*); Dall's porpoises (*Phocoenides dalli*); Pacific white-sided dolphins (*Lagenorhychus obliquidens*); Risso's dolphins (*Grampus griseus*); bottlenose dolphins (*Tursiops truncatus*), striped dolphins (*Stenella coeruleoalba*); common dolphins (*Delphinus sp.*); short-finned pilot whales (*Globicephala macrorhynchus*); northern right whale dolhins (*Lissodelphis borealis*); Baird's beaked whales (*Berardius bairdii*); Mesoplodon beaked whales (*Mesoplodon sp.*); Cuvier's beaked whales (*Ziphius cavirostris*); Bryde's whales (*Balaenoptera edeni*); minke whales (*Balaenoptera acutorostrata*); gray whales (*Eschrichtius robustus*); and killer whales (*Orcinus orca*). The applicant proposes to initiate this work upon receipt of the permit.

Dated: August 30, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–23222 Filed 9–3–99; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 3 p.m., Wednesday, September 15, 1999.

PLACE: 1155 21st St., NW, Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–23268 Filed 9–2–99; 10:14 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 2 p.m., Tuesday, September 28, 1999.

PLACE: 1155 21st St., NW, Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–23269 Filed 9–2–99; 10:14 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 2 p.m., Wednesday, September 29, 1999.

PLACE: 1155 21st St., NW, Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–23270 Filed 9–2–99; 10:14 am]

BILLING CODE 6351–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 8, 1999.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: August 31, 1999.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: Extension.
Title: Guaranty Agency Quarterly/Annual Report.
Frequency: Monthly.
Affected Public: Not-for-profit institutions; State; local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Burden: Responses: 36 Burden Hours: 9,000.
Abstract: The Guaranty Agency Quarterly/Annual Report is submitted by 36 agencies operating a student loan insurance program under agreement with the Department of Education. These reports are used to evaluate agency operations, make payments to agencies as authorized by law, and to make reports to Congress. Form 1130 has been significantly altered due to the results of Congressional Reauthorization.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Joseph Schubart at 202–708–9266 or by e-mail at joe__schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Student Financial Assistance Programs

Type of Review: New.
Title: Guaranty Agency Financial Report.
Frequency: Monthly.
Affected Public: Businesses or other for-profit; State; local or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Burden: Responses: 36; Burden Hours: 33,660.
Abstract: The Guaranty Agency Financial Report will be used to request payments from and make payments to the Department of Education under the Federal Family Education Loan (FFEL) program authorized by Title IV, Part B of the Higher Education Act (HEA) of 1965, as amended. The report will also be used to monitor the agency's financial activities, including activities concerning its federal fund, operating fund and the agency's restricted account. Recent negotiated rulemaking sessions had a major impact on the development of this form because of significant changes to guaranty agency reporting requirements, and reporting on two new funds, the Federal Fund and Operating Fund. Guaranty agency representatives spent three full days in Washington, DC working with ED on the development of this form 2000.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Joseph Schubart at 202–708–9266 or by e-mail at joe__schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Vocational and Adult Education

Type of Review: Reinstatement.
Title: Adult Education Annual Performance and Financial Reports.
Frequency: Annually.
Affected Public: State, local or Tribal Gov't, SEAs and LEAs.
Reporting and Recordkeeping Hour Burden: Responses: 59; Burden Hours: 6,490.
Abstract: The information contained in the Annual Performance Reports for Adult Education is needed to monitor the performance of the activities and services funded under the Adult Education and Family Literacy Act of 1998, Report to Congress on the Levels of Performance Achieved on the core indicators of performance, provide necessary outcome information to meet the Office of Vocational and Adult Education's (OVAE's) Government Performance and Results Act (GPRA) goals for adult education, and provide documentation for incentive awards under Title V of the Workforce Investment Act. The respondents include eligible agencies in 59 states and insular areas.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *OCIO__IMG__Issues@ed.gov* or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Sheila Carey at 202–708–6287or electronically at her internet address Sheila__Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–23103 Filed 9–3–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 7, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed

information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: August 31, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.

Title: Evaluation of the Magnet Schools Assistance Program.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 2,387; Burden Hours: 1,517.

Abstract: This package is to request clearance for an evaluation of the Magnet Schools Assistance Program (MSAP). The purpose of the evaluation is to provide information to ED and Congress about the success of the MSAP in meeting its statutory goals. The evaluation is using information reported in MSAP applications and performance indicators and gathering new data from all 57 MSAP projects funded in 1998. A particular emphasis of the evaluation is the projects' progress in improving student achievement and achieving desegregation.

Written comments and requests for copies of this proposed information collection request should be addressed to Vivian Reese, U.S. Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the Internet address *OCIO IMG Issues@ed.gov* or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Jacqueline Montague at 202–708–5359 or electronically at her internet address Jackie___Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–23104 Filed 9–3–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3507(d)(1)(A) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) Collection number and title; (2) summary of the collection of information (includes sponsor (the DOE component)), current OMB document number (if applicable), type of request (new, revision, extension, or reinstatement); response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) description of the likely respondents; and (5) estimate of total annual reporting burden (average hours per response x proposed frequency of response per year x estimated number of likely respondents.)

DATES: Comments must be filed on or before October 7, 1999. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW, Washington, D.C. 20503. (Comments should also be addressed to the Statistics and Methods Group at the address below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Grace Sutherland, Statistics and Methods Group, (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mrs. Sutherland may be telephoned at (202) 426–1068, FAX (202) 426–1083, or e-mail at Grace.Sutherland@eia.doe.gov.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. EIA–871A/F, "Commercial Buildings Energy Consumption Survey" (CBECS).

2. Energy Information Administration; OMB No. 1905–0145; Reinstatement, with change, of a previously approved collection for which approval has expired; Voluntary for commercial buildings and mandatory for energy suppliers.

3. EIA–871A/F will be used to collect data on energy consumption by commercial buildings and the characteristics of these buildings. The surveys fulfill planning, analyses and decision-making needs of DOE, other Federal agencies, State governments, and the private sector. Respondents are owners/managers of selected commercial buildings and their energy suppliers.

4. Business or other for-profit.

5. 2,666 hours (1.3 hours per response X .33 responses per year X 6,200 respondents) (The 2,666 hour burden is being prorated over a three-year requested approval period.).

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, D.C., August 30, 1999.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 99–23166 Filed 9–3–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. 99–3435–000]

Arizona Public Service Company; Notice of Convening Session

August 31, 1999.

On June 30, 1999, Arizona Public Service Company (Arizona Public Service) filed an unexecuted network service transmission agreement and an unexecuted network operating agreement under Arizona Public Service's open access transmission tariff. On August 20, 1999, the Commission accepted and suspended the agreements under the proposed tariff with an effective date of June 1, 1999, subject to refund. The Commission set the agreements for hearing but suspended the commencement of the hearing for 90 days to allow for settlement discussion. The Commission also directed the Dispute Resolution Service to convene a meeting of the Parties within 30 days of issuance of the Commission order, to arrange a process that will foster negotiation and agreement between Arizona Public Service and the Navajo Tribal Utility Authority.

The Commission's Dispute Resolution Service will conduct a convening session on September 7, 1999, commencing at 2:30 p.m., in Conference Room 19A, at the Arizona Public Service's office, 400 North Fifth Street, Two Arizona Center, Phoenix, Arizona. The convening session will cover what processes can be taken to reach a consensual agreement, including whether to use an alternative dispute resolution process and/or an appropriate third party neutral.

All parties are invited to attend. If a party has any questions, please call Richard Miles, the Director of the Office of the Dispute Resolution Service. His telephone number is 202–208–0702 or 1–877–FERC ADR. His E-mail address is richard.miles@ferc.fed.us.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23098 Filed 9–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4272–000]

Central Hudson Gas and Electric Corporation; Notice of Filing

August 31, 1999.

Take notice that on August 23, 1999, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and Wabash Valley Power Association, Inc. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–890–000.

CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 10, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23171 Filed 9–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4271–000]

Central Hudson Gas and Electric Corporation; Notice of Filing

August 31, 1999.

Take notice that on August 23, 1999, Central Hudson Gas and Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission) Regulations in 18 CFR a Service Agreement between CHG&E and American Electric Power Service Corporation. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Electric Rate Schedule, Original Volume No. 1 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–890–000.

CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 10, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion in intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23173 Filed 9–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT99–17–000]

KN Interstate Gas Transmission Co.; Notice of Tariff Filing

August 31, 1999.

Take notice that on August 24, 1999, KN Interstate Gas Transmission Co. (KNI) tendered for filing the Tariff Sheets listed below with a proposed effective date of September 23, 1999.

Third Revised Volume No. 1–B

Fourth Revised Sheet No. 55

First Revised Volume No. 1–D

Fourth Revised Sheet No. 48

This filing is made in order to update the tariff sheets that reflect Order Nos. 497, et seq. compliance information. KNI states that copies of this filing have been served upon all affected firm customers of KNI and applicable state agencies.

Any person desiring to be heard or to protest said failing said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission's and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for instance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23096 Filed 9–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT99–18–000]

KN Wattenberg Transmission LLC; Notice of Tariff Filing

August 31, 1999.

Take notice that on August 24, 1999, KN Wattenberg Transmission LLC (KNW) tendered for filing the Tariff Sheet listed below with a proposed effective date of September 23, 1999.

First Revised Volume No. 1

First Revised Sheet No. 63

This filing is made in order to update the tariff sheets that reflect Orders Nos. 497, et seq. compliance information. KNW states that copies of this filing have been served upon all affected firm customers of KNW and applicable state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23095 Filed 9–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4166–000]

Mid-Continent Area Power Pool; Notice of Filing

August 31, 1999.

Take notice that on August 20, 1999, the Mid-Continent Area Power Pool (MAPP), on behalf of its members that are subject to Commission jurisdiction as public utilities under Section 201(e) of the Federal Power Act, filed amendments to various sections of the MAPP Restated Agreement.

MAPP requests an effective date of that is 60 days from date of this filing.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 10, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23172 Filed 9–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–482–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

August 31, 1999.

Take notice that on August 25, 1999, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the revised tariff sheets listed on Appendix A attached to the filing as part of its FERC Gas Tariff, First Revised Volume No. 1 to be effective October 18, 1999.

Panhandle states that the purpose of this filing, made in accordance with the provisions of section 154.204 of the Commission's Regulations, is to reflect a change in the name of Panhandle's electronic bulletin board to Messenger and a new Web Site address to access Messenger. As necessitated by the sale of Panhandle by Duke Energy Corporation to CMS Energy Corporation earlier this year, Panhandle is converting the current LINK System, which is shared by the Duke Energy pipelines, to a new proprietary electronic bulletin board system, Messenger, on October 18, 1999.

Panhandle states that a copy of this filing is available for public inspection during regular business hours at Panhandle's office at 5444 Westheimer Road, Houston, Texas 77056–5306. In addition, copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23091 Filed 9–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–441–007]

Reliant Energy Etiwanda, LLC; Notice of Filing

August 31, 1999.

Take notice that on August 19,1999, Reliant Energy Etiwanda, LLC (Reliant Etiwanda), tendered for filing a refund report as required by the Stipulation and Agreement filed in the above-captioned proceedings on April 2, 1999 and approved by the Commission in an Order issued May 28, 1999.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 10, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23170 Filed 9–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–044]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes in Ferc Gas Tariff

August 31, 1999.

Take notice that on August 25, 1999, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheet to be effective August 26, 1999:

First Revised Sheet No. 8G

REGT states that the purpose of this filing is to reflect the expiration of a negotiated rate contract.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed as provided in section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23092 Filed 9–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–569–001]

Texas Eastern Transmission Corporation, National Fuel Gas Supply Corporation; Notice of Amendment

August 31, 1999.

Take notice that on August 26, 1999, Texas Eastern Transmission Corporation (Texas Eastern), 5400 Westheimer Court, Houston, Texas 77251–1642, filed in Docket No. CP99–569–001 to amend the pending Joint Abbreviated Application of Texas Eastern and National Fuel Gas Supply Corporation (National Fuel), filed on July 25, 1999 in Docket No. CP99–569–000. The amendment is on file with the Commission and open to public inspection and may be viewed on the web at http://www.ferc.us/online/rims.htm (call 202–208–2222 for assistance).

Texas Eastern states that the purpose of the amendment is to reflect an agreement reached between Texas Eastern and ProGas USA, Inc. (ProGas) pursuant to which Texas Eastern would provide ProGas with interruptible transportation service under Texas Eastern's Rate Schedule IT–1 with scheduling priority, in Texas Eastern's Market Zone M–3 only, equal to secondary firm service in order to replicate the secondary service rights ProGas currently enjoys under ProGas' current Rate Schedule FT–1 Service Agreement with Texas Eastern.

Any questions regarding this amendment should be directed to S.E. Tillman, Director of Regulatory Affairs, Texas Eastern Transmission Corporation, P.O. Box 1642, Houston, Texas 77251–1642 at (713) 627–5113 (Voice), or (713) 627–5947 (FAX).

Any person desiring to be heard or making any protest with reference to said amendment should on or before September 21, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person who filed to intervene in Docket No. CP99–569–000 need not file again.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Eastern or National Fuel to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23097 Filed 9–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–483–000]

Trunkline Gas Company

Notice of Proposed Changes in FERC Gas Tariff

August 31, 1999.

Take notice that on August 25, 1999, Trunkline Gas Company (Trunkline) tendered for filing the revised tariff sheets listed on Appendix A attached to the filing as part of its FERC Gas Tariff, First Revised Volume No. 1 to be effective October 18, 1999.

Trunkline states that the purpose of this filing, made in accordance with the provisions of Section 154.204 of the Commission's Regulations, is to reflect a change in the name of Trunkline's electronic bulletin board to Messenger and a new Web Site address to access Messenger. As necessitated by the sale of Trunkline by Duke Energy Corporation to CMS Energy Corporation earlier this year, Trunkline is converting the current LINK System, which is shared by the Duke Energy pipelines, to a new proprietary electronic bulletin board system, Messenger, on October 18, 1999.

Trunkline states that a copy of this filing is available for public inspection during regular business hours at Trunkline's office at 5444 Westheimer Road, Houston, Texas 77056–5306. In addition, copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23090 Filed 9–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory. Commission

Notice of Temporary Variance Request and Soliciting Comments, Motions To Intervene, and Protests

August 31, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request for Continued Temporary Variance.

b. *Project No.:* 2210–032.

c. *Date filed:* August 23, 1999.

d. *Applicant:* Appalachian Power Company.

e. *Name of Project:* Smith Mountain Project.

f. *Location:* On the Roanoke River, Bedford, Franklin, Campbell, Pittsylvania, and Roanoke Counties, Virginia. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* Frank M. Simms, American Electric Power, 1 Riverside Plaza, Columbus, OH 43215–2373, (614) 223–2918.

i. *FERC Contact:* Robert Fletcher, robert.fletcher@ferc.fed.us, 202–219–1206.

j. *Deadline for filing comments, motions to intervene and protest:* 14 days from the issuance date of this notice. Please include the project number (2210–032) on any comments or motions filed. All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

k. *Description of Applicant:* On June 17, 1999, the Commission approved an emergency 45-day variance to reduce the minimum flow requirements of article 29 from 650 cubic feet per second (cfs) to 400 cfs during the drought conditions occurring at the Smith Mountain Project. On July 22, 1999, another variance request was granted through September 30, 1999. The licensee continues to consult with the various resource agencies and stakeholders upstream and downstream of the project. In anticipation of no immediate relief to the low inflow situation at the Smith Mountain Project and the distinct possibility that relief will not be forthcoming, the licensee is requesting to continue the temporary variance to license article 29 through March 30, 2000.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23093 Filed 9–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

August 31, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No:* 1218–015.

c. *Date Filed:* August 17, 1999.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Flint River Hydroelectric Project.

f. *Location:* The project is located on the Flint River in Lee and Dougherty Counties, Georgia. The project does not utilize any federal lands or facilities.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Mr. Mike Phillips, Georgia Power Company, Bin 10151, 241 Ralph McGill Boulevard, NE, Atlanta, GA 30308–3374, (404) 506–2392.

i. *FERC Contact:* Any questions on this notice should be addressed to James Hunter at (202) 219–2839, or e-mail address: james.hunter@ferc.fed.us.

j. *Deadline for filing comments and or motions:* September 23, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (P–1218–015) on any comments or motions filed.

k. *Description of Project:* The Applicant requests amendment of the existing license for the Flint River Project, to accelerate the termination date by two years, to coincide with the issuance date of the new license for the project.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at http//www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23094 Filed 9–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL99–4–000]

Public Access to Information; Notice of Y2K Docket Number Format

August 31, 1999.

Take notice that the Federal Energy Regulatory Commission (Commission) is clarifying its docketing procedures for new dockets created in Fiscal Year 2000, which begins October 1, 1999.

The Commission will issue documents with the year component of the docket number expressed as a 2-digit number. The year 2000 will appear as "00" in all FY2000 docket numbers that contain a fiscal year component. For example, the first docket number assigned to a pipeline certificate application on October 1, 1999, will be CP00–1–000. Similarly, for an electric rate filing, the first docket number will be ER00–1–000. Some filings (including those in TM dockets) submitted before October 1, 1999, in order to become effective on or after the date have already received the "00" docket number. The docketing format for hydropower licensing project ("P" docket prefix) is not affected since it does not contain a year component.

Retaining the current display format for docket numbers will minimize the impact of Y2K transition issues for the Commission, regulated entities, and others by reducing or eliminating the need for change to existing systems.

David P. Boergers,

Secretary.

[FR Doc. 99–23089 Filed 9–3–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6433–5]

Agency Information Collection Activities: Proposed Collection; Comment Request; Safe Drinking Water Act State Revolving Fund Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB):

Safe Drinking Water Act State Revolving Fund Program; EPA ICR No. 1803.02; OMB No. 2040–0185; expiration date June 30, 2000. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before November 8, 1999.

ADDRESSES: A copy of the ICR may be requested from and comments may be mailed to Vinh Nguyen, Office of Ground Water and Drinking Water (4606), U.S. EPA, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Vinh Nguyen (202) 260–0715; fax (202) 401–2345; E-mail at nguyen.vinh@epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are the fifty states, Puerto Rico, and the recipients of assistance in each of these jurisdictions.

Title: Safe Drinking Water Act State Revolving Fund Program; OMB No. 2040–0185; EPA ICR No. 1803.02; expiration date June 30, 1999.

Abstract: The Safe Drinking Water Act (SDWA) Amendments of 1996 (Pub. L. 104–182) authorize the creation of Drinking Water State Revolving Fund (DWSRF) programs in each state and Puerto Rico to assist public water systems to finance the costs of infrastructure needed to achieve or maintain compliance with SDWA requirements and to protect public health. Section 1452 authorizes the Administrator of the U.S. Environmental Protection Agency (EPA) to award capitalization grants to the states and Puerto Rico which, in turn, provide low-cost loans and other types of assistance to eligible drinking water systems. States can also reserve a portion of their grants to conduct various set-aside activities.

The information collection activities will occur primarily at the program level through the: (1) Capitalization Grant Application and Agreement/State Intended Use Plan; (2) Biennial Report; (3) Annual Audit; and (4) Assistance Application Review.

(1) Capitalization Grant Application and Agreement / State Intended Use Plan: The State must prepare a Capitalization Grant Application that includes an Intended Use Plan (IUP) outlining in detail how it will use all the funds covered by the capitalization grant. States may, as an alternative, develop the IUP in a two part process with one part identifying the distribution and uses of the funds among the various set-asides in the DWSRF program and the other part dealing with project assistance from the Fund.

(2) Biennial Report: The State must agree to complete and submit a Biennial Report on the uses of the capitalization grant. The scope of the report must cover assistance provided by the DWSRF Fund and all other set-aside activities included under the Capitalization Grant Agreement. States which jointly administer DWSRF and Clean Water State Revolving Fund (CWSRF) programs, in accordance with section 1452(g)(1), may submit reports (according to the schedule specified for each program) which cover both programs.

(3) Annual Audit: A State must, at minimum, comply with the provisions of the Single Audit Act Amendments of 1996. Best management practices suggest, and EPA recommends, that a state conduct an annual independent audit of its DWSRF program. The scope of the report must cover the DWSRF Fund and all other set-aside activities included in the Capitalization Grant Agreement. States which jointly administer DWSRF and CWSRF programs, in accordance with section 1452(g)(1), may submit audits which cover both programs but which report financial information for each program separately.

(4) Assistance Application Review: Local applicants seeking financial assistance must prepare DWSRF loan applications. States then review completed loan applications and verify that proposed projects will comply with applicable federal and state requirements.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement

(1) Capitalization Grant Application and Agreement/State Intended Use Plan

2000:
51 States × 400 Hours = 20,400 Burden Hours
2001:
51 States × 400 Hours = 20,400 Burden Hours
2002:
51 States × 400 Hours = 20,400 Burden Hours

(2) Biennial Report

2000:
51 States × 275 Hours = 14,025 Burden Hours
2002:
51 States × 275 Hours = 14,025 Burden Hours

(3) Annual Audit

2000:
51 States × 80 Hours = 4,080 Burden Hours
2001:
51 States × 80 Hours = 4,080 Burden Hours
2002:
51 States × 80 Hours = 4,080 Burden Hours

(4) Loan Application Review

2000:
51 States × 20 Applications × 40 Hours = 40,800 Burden Hours
2001:
51 States × 21 Applications × 40 Hours = 42,840 Burden Hours
2002:
51 States × 22 Applications × 40 Hours = 44,880 Burden Hours

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: August 30, 1999.

Cynthia C. Dougherty,

Director, Office of Ground Water & Drinking Water.

[FR Doc. 99–23193 Filed 9–3–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00610A; FRL–6099–7]

Pesticides: Science Policy Issues Related to the Food Quality Protection Act; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: On July 8, 1999, EPA issued a notice of availability for four draft science policy papers entitled "Toxicology Data Requirements for Assessing Risks of Pesticide Exposure to Children's Health," "Exposure Data Requirement for Assessing Risks of Pesticide Exposure to Children," "The Office of Pesticide Programs' Policy on Determination of the Appropriate FQPA Safety Factor(s) for Use in the Tolerance-Setting Process," and "Standard Operating Procedures (SOP) for Determining the Appropriate FQPA Safety Factor(s) for Use in Tolerance Assessment." The comment period would have ended September 7, 1999. Due to the length and complexity of these papers, and the importance of this issue to the protection of the health of children, EPA has decided to extend the comment period by 30 days.

DATES: Comments, identified by docket control number OPP–00610, must be received on or before October 7, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00610 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Penelope A. Fenner-Crisp, Environmental Protection Agency (7505C), 401 M St., SW., Washington, DC 20460; telephone number: (703) 605–0654; fax: (703) 305–4776; e-mail: fenner-crisp.penelope@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture or formulate pesticides. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affectedentities
PesticideProducers	32532	Pesticide manufacturers Pesticide formulators

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action affects certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the " **Federal Register** —Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

You may also obtain electronic copies of this document and the four draft science policy papers from the Office of Pesticide Programs Home Page at http://www.epa.gov/pesticides/. On the Office of Pesticide Programs Home Page select "TRAC" and then look up the entry for this document.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–00610. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

As described in Unit I.C. of the June 8, 1999, **Federal Register** notice (64 FR 37001) (FRL–6088–7), you may submit comments through the mail, in person, or electronically. Please follow the instructions that are provided in the June 8, 1999, notice. Do not submit any information electronically that you consider to be CBI. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00610 in the subject line on the first page of your response.

II. What Action is the Agency Taking?

The Agency has issued the four documents listed in the "SUMMARY" and solicited comments on them. The background on these documents can be found in the previous **Federal Register** notice published on July 8, 1999 (64 FR 37001). A time extension of 30 days is being provided such that the comment period will now end on October 7, 1999.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, pesticides and pests.

Dated: August 30, 1999.

Susan H. Wayland,

Deputy Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–23197 Filed 9–3–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PB–402404–CO/A; FRL–6099–1]

Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of Colorado Interim Approval of Lead-Based Paint Activities Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; interim approval of the Colorado TSCA Section 402/404 Lead-Based Paint Accreditation and Certification Program.

SUMMARY: On December 21, 1998, the State of Colorado submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). Colorado provided a self-certification letter stating that its program is at least as protective of human health and the environment as the Federal program and it has the legal authority and ability to implement the appropriate elements necessary to receive interim enforcement approval. On April 13, 1999, EPA published in the **Federal Register** (64 FR 18017) (FRL–6060–6) a notice announcing receipt of the State's application and requesting public comment and/or opportunity for a public hearing on the State's application. The Agency did not receive any comments regarding any aspect of Colorado's program and/or application. Today's notice announces the approval of Colorado's application, and the authorization of the Colorado Department of Public Health and Environment, Air Pollution Control Division's Lead-Based Paint Activities Program to apply in the State of Colorado effective December 21, 1998, in lieu of the corresponding Federal program under section 402 of TSCA. This authorization provides interim approval for the compliance and enforcement program portion of Colorado's lead-based paint program. All elements for final compliance and enforcement program approval must be fully implemented no later than December 21, 2001.

DATES: Based upon the State's self-certification, Lead-Based Paint Activities Program authorization was granted to the State of Colorado effective on December 21, 1998. Interim approval for the compliance and enforcement portion of the program will expire on December 21, 2001.

FOR FURTHER INFORMATION CONTACT: Dave Combs, Regional Toxics Team Leader, Environmental Protection Agency, Region VIII, 999 18th St., Suite 500, 8P-P3-T, Denver, CO 80202-2466. Telephone: 303-312-6021; e-mail address:combs.dave@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On October 28, 1992, the Housing and Community Development Act of 1992, Public Law 102-550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 *et seq.*) by adding Title IV (15 U.S.C. 2681-92), entitled *Lead Exposure Reduction.*

Section 402 of TSCA (15 U.S.C. 2682) authorizes and directs EPA to promulgate final regulations governing lead-based paint activities in target housing, public and commercial buildings, bridges and other structures. Under section 404 (15 U.S.C. 2684), a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996 (61 FR 45777) (FRL-5389-9), EPA promulgated final TSCA section 402/404 regulations (40 CFR part 745) governing lead-based paint activities in target housing and child-occupied facilities. States and Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA Office for review. To receive EPA approval, a State or Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides for adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, Subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

Under these regulations with regard to interim compliance and enforcement approval (40 CFR 745.327(a)(1)), a State must demonstrate that it has the legal authority and ability to immediately implement certain elements, including legal authority for accrediting training providers, certification of individuals, work practice standards and pre-renovation notification, authority to enter, and flexible remedies. In order to receive final approval, the state must be able to demonstrate that it is able to immediately implement the remaining performance elements, including training, compliance assistance, sampling techniques, tracking tips and complaints, targeting inspections, follow up to inspection reports and compliance monitoring and enforcement.

The State of Colorado's environmental audit privilege and penalty immunity statute, sometimes known as S.B. 94-139 (codified at sections 13-25-126.5, 13-90-107(1)(j), and 25-1-114-5, C.R.S.) may impair the State's ability to fully administer and enforce the lead-based paint program. Interim compliance and enforcement approval will provide the State the opportunity to address problems and issues associated with the State's environmental audit privilege and penalty immunity law as well as the development and implementation of required performance elements under 40 CFR part 745.327(c). EPA will work with the State during this interim approval period to remedy any deficiencies in its laws or implementation of the required performance elements. Interim approval of the compliance and enforcement program portion of the State's program may be granted only once. EPA's interim approval of the compliance and enforcement program portion of the State's program expires on December 21, 2001.

If the State does not meet the requirements for final approval of its compliance and enforcement program by December 21, 2001, EPA may be compelled to initiate the process to withdraw Colorado's interim authorization pursuant to 40 CFR part 745.324(i). If Colorado has made modifications to it's Audit Law necessary to meet the minimum requirements of its Federally authorized environmental programs, this law will no longer present a barrier to final approval of its lead-based paint activities program.

In order to maintain authorization, all program and enforcement elements, including all reporting requirements, must be met pursuant to the terms identified in Colorado's application. This approval does not authorize the State of Colorado to implement and/or enforce a lead-based paint activities program in Indian Country.

II. Federal Overfiling

TSCA section 404(b), makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved State or Tribal program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized State or Tribal program.

III. Withdrawal of Authorization

Pursuant to TSCA section 404(c), the Administrator may withdraw a State or Tribal lead-based paint activities program authorization, after notice and opportunity for corrective action, if the program is not being administered or enforced in compliance with standards, regulations, and other requirements established under the authorization. The procedures EPA will follow for the withdrawal of an authorization are found at 40 CFR 745.324(i).

IV. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

EPA's actions on State or Tribal lead-based paint activities program applications are informal adjudications, not rules. Therefore, the requirements of the Regulatory Flexibility Act (RFA, 5 U.S.C. 601 *et seq.*), the Congressional Review Act (5 U.S.C. 801 *et seq.*), Executive Order 12866 ("Regulatory Planning and Review," 58 FR 51735, October 4, 1993), and Executive Order 13045 ("Protection of Children from Environmental Health Risks and Safety Risks," 62 FR 1985, April 23, 1997), do not apply to this action. This action does not contain any Federal mandates, and therefore is not subject to the requirements of the Unfunded Mandates Reform Act (2 U.S.C. 1531-1538). In addition, this action does not contain any information collection requirements and therefore does not require review or approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

B. Executive Order 12875

Under Executive Order 12875, entitled "Enhancing Intergovernmental Partnerships" (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or Tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and Tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and Tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's action does not create an unfunded Federal mandate on State, local, or Tribal governments. This action does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

C. Executive Order 13084

Under Executive Order 13084, entitled "Consultation and Coordination with Indian Tribal Governments" (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's action does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

List of Subjects

Environmental protection, Hazardous substances, Lead, Reporting and recordkeeping requirements.

Dated: August 26, 1999.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 99–23195 Filed 9–3–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[GEN Docket No. 90–314, FCC 99–200]

QUALCOMM Inc. Pioneer's Preference Granted

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On August 9, 1999, the Commission released a document granting QUALCOMM Incorporated (QUALCOMM) a pioneer's preference. The United States Court of Appeals for the District of Columbia Circuit ordered the Commission to grant QUALCOMM a pioneer's preference. The Commission in Compliance with the Court's decision, hereby grants QUALCOMM a pioneer's preference in the broadband Personal Communications Service.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 418–2452.

SUPPLEMENTARY INFORMATION:

1. On July 23, 1999, the United States Court of Appeals for the District of Columbia Circuit ordered the Commission to grant QUALCOMM Incorporated (QUALCOMM) a pioneer's preference "forthwith," See, *QUALCOMM Incorporated* v. *Federal Communications Commission*, D.C. Cir. No. 98–1246. The Commission had previously dismissed QUALCOMM's request for a pioneer's preference in the 2 GHz broadband Personal Communications Services; See *Review of the Pioneer's Preference Rules, ET Docket No. 93–266, Order*, 62 FR 48951, September 18, 1997, *recon. denied, Memorandum Opinion and Order*, 63 FR 24126, May 1, 1998. QUALCOMM appealed that dismissal, and the Court granted QUALCOMM's petition for review. The Commission, in compliance with the Court's decision, hereby grants QUALCOMM a pioneer's preference. In accordance with the Court's instructions, the Commission plans to act promptly to identify suitable frequency spectrum for an award of a license to QUALCOMM.

2. Accordingly, *it is ordered* that a pioneer's preference is hereby *Granted* to QUALCOMM Incorporated in accordance with the Court's decision. This action is taken pursuant to Sections 4(i) and 303(r) of the

Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 99–23163 Filed 9–3–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–1571]

QUALCOMM's Pioneers Preference

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Commission released a document on August 10, 1999, that dismisses Sprint Spectrum L.P. (Sprint) and PrimeCo Personal Communications, L.P., (PrimeCo) as parties to QUALCOMM, Incorporated pioneer preference proceeding. Since there is no longer any possibility that QUALCOMM's pioneer's preference will lead to the rescission of any license held by Sprint or PrimeCo, we are hereby dismissing Sprint and PrimeCo as parties to QUALCOMM's pioneer's preference proceeding.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, (202) 418–2452.

SUPPLEMENTARY INFORMATION: This is a summary of the text of the Commission's *Public Notice*, GEN Docket 90–314, DA 99–1571 released August 10, 1999. The document is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, S.W., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, N.W. Washington, D.C. 20036.

1. On February 25, 1997, Sprint and PrimeCo became parties to the QUALCOMM, Incorporated's (QUALCOMM's) pioneer's preference proceeding. We explained that because the Court of Appeals for the D.C. Circuit (Court) had recently vacated the Commission's decision to deny QUALCOMM's application for a 2 GHz broadband Personal Communications Services (PCS) pioneer's preference in the Southern Florida area, there was the possibility of a conflict between QUALCOMM's application and the fact that the only two broadband PCS licenses in the Miami-Ft. Lauderdale, Florida, Major Trading Area (MTA) had already been awarded to Sprint and PrimeCo.

2. Subsequently, the Commission dismissed QUALCOMM's application for a pioneer's preference; however, QUALCOMM appealed that dismissal, and the Court granted QUALCOMM's petition for review. In its decision, the Court stated:

> The FCC's sole discretion on remand * * * was to fashion an appropriate remedy for QUALCOMM in view of the fact that the Miami-Fort Lauderdale MTA sought by QUALCOMM had been awarded as a result of an auction to Sprint. QUALCOMM and the intervenors [Sprint and PrimeCo] argued on remand, and the FCC did not claim to the contrary, that the FCC had authority to grant QUALCOMM alternative relief.

3. On August 9, 1999, in compliance with the Court's decision, the Commission released an *Order* granting QUALCOMM a pioneer's preference. In the *Order*, the Commission stated that it planned to act promptly to identify suitable frequency spectrum for an award of a license to QUALCOMM.

4. We agree with Sprint, PrimeCo, and QUALCOMM that the Commission has the authority to grant QUALCOMM relief without rescinding, or otherwise adversely affecting, the broadband PCS licenses held by Sprint and PrimeCo in the Miami-Fort Lauderdale MTA. Moreover, in its decision, the Court strongly suggested that it expects the Commission to grant QUALCOMM relief without rescinding either of the Miami MTA licenses currently held by Sprint and PrimeCo. We also believe that the Commission at this point has no intention of taking a license from either Sprint or PrimeCo in order to award a license to QUALCOMM. Since there is no longer any possibility that QUALCOMM's pioneer's preference will lead to the rescission of any license held by Sprint or PrimeCo, we are hereby dismissing Sprint and PrimeCo as parties to QUALCOMM's pioneer's preference proceeding.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 99–23164 Filed 9–3–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–1640]

Accreditation Requirements for Telecommunication Certification Bodies

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document streamlines the Commission's equipment authorization requirements by allowing Telecommunications Certification Bodies (TCBs) to certify equipment under the Commission's Rules. The Commission released a public notice on August 17, 1999, listing those regulations and requirements.

FOR FURTHER INFORMATION CONTACT: Art Wall, Office of Engineering and Technology, (202) 418–2442, for *Part 2 Information*; and Bill Howden, Common Carrier Bureau, (202) 418–2343, for *Part 68 Information*.

SUPPLEMENTARY INFORMATION: This is the text of the Commission's Public Notice, DA 99–1640, released August 17, 1999. This document is available for inspection and copying during regular business hours in the FCC Reference Information Center, Room CY-A257, 445 12th Street, SW, Washington, DC, and is available on the FCC's Internet site at www.fcc.gov/Bureaus/Engineering_Technology/Public_Notices/1999/. This document may also be purchased from the Commission's duplication contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Summary of Public Notice

1. In December 1998, the Commission adopted new rules to streamline its equipment authorization requirements by allowing Telecommunications Certification Bodies (TCBs) to certify equipment under parts 2 and 68 of the Commission's Rules. This notice provides further information on the accreditation requirements for TCBs.

2. The requirements for TCBs were specified in the Commission's Report and Order (R&O) in GEN Docket 98–68 (FCC 98–338), adopted on December 17, 1998, 64 FR 4984, February 2, 1999, http://www.fcc.gov/Engineering_Technology/Orders/1998/fcc98338.pdf/. TCBs are required to be accredited by the National Institute of Standards and Technology (NIST), or NIST may allow, in accordance with its procedures, other appropriate qualified accrediting bodies to accredit TCBs.

3. TCBs are to be accredited in accordance with ISO/IEC Guide 65 (1996), General Requirements for Bodies Operating Product Certification Systems and the appropriate FCCf Rules. The staff of the FCC's Office of Engineering and Technology (OET) and Common Carrier Bureau (CCB) have worked closely with NIST, equipment manufacturers and test laboratories to develop an accreditation process that is consistent with the requirements of ISO/IEC Guide 65 and the FCC Rules.

4. Accreditation will be available for several different scopes of equipment subject to certification. TCBs can choose to obtain accreditation for any or all of the available scopes, depending on their needs. The scopes are defined in the attachment to this notice. The attachment also specifies the capabilities that must be demonstrated to obtain accreditation within each scope. Finally, the attachment clarifies certain aspects of the TCB requirements in the Rules.

5. NIST will announce the administrative details for applying for TCB accreditation in the near future. The Commission will continue working with NIST to assist in the accreditation of TCBs.

6. TCBs located outside the United States may certify equipment in accordance with the terms of an effective bilateral or multilateral mutual recognition agreement. Accreditation of TCBs outside the United States shall be consistent with this public notice and the attachment to this notice.

Procedures for Accrediting a Telecommunication Certification Body

I. TCB Designation Process and Requirements

The process for designation of TCBs and requirements that must be met are contained in the FCC rules. See, in particular, 47 CFR 2.960, 2.962, 68.160 and 68.162.

Accreditation Requirements

TCBs shall be capable of testing equipment to a core set of equipment tests for each scope of accreditation, as stated below. TCBs must be accredited in accordance with the general guidelines in ISO/IEC Guide 65 (1996), *General requirements for bodies operating certification systems*. To ensure that it is capable of performing the tests within the scope of accreditation, the TCB must also be accredited to ISO/IEC Guide 25, *General requirements for the competence of calibration and testing laboratories*. Both ISO/IEC Guides are available through the American National Standards Institute, Customer Service, 11 West 42nd Street, New York, NY—10036, telephone 212–642–4900, facsimile 212–302–1286, or e-mail to jrichard@ansi.org.

III. Accreditation Scopes

TCBs will be accredited to certify one or more of the following scopes of equipment:

A. Unlicensed Radio Frequency Devices

1. Low power transmitters operating on frequencies below 1 GHz (with the exception of spread spectrum devices), emergency alert systems, unintentional radiators (e.g., personal computers and associated peripherals and TV Interface Devices) and consumer ISM devices subject to certification (e.g., microwave ovens, RF lighting and other consumer ISM devices).

2. Low power transmitters operating on frequencies above 1 GHz, with the exception of spread spectrum devices.

3. Unlicensed Personal Communication System (PCS) devices.

4. Unlicensed National Information Infrastructure (UNII) devices and low power transmitters using spread spectrum techniques.

B. Licensed Radio Service Equipment

1. Personal Mobile Radio Services in 47 CFR parts 22 (cellular), 24, 25, 26, and 27.

2. General Mobile Radio Services in the following 47 CFR parts 22 (non-cellular), 74, 90, 95 and 97.

3. Maritime and Aviation Radio Services in 47 CFR parts 80 and 87.

4. Microwave Radio Services in 47 CFR parts 21, 74 and 101.

C. Telephone Terminal Equipment (47 CFR part 68)

1. Telephone terminal equipment in 47 CFR part 68.

Notes for Accreditation Scopes A, B and C: (1) The TCB is not required to have the capability to perform each required test, but must have the minimum testing capabilities specified below for each type of equipment.

(2) The measurement procedures for licensed PCS devices and UNII devices and the procedures for determining RF exposure for hand-held transmitters have not been published. Accreditation and designation of a TCB to certify such equipment will be withheld until the appropriate procedures have been published.

IV. Specific Capabilities: Unlicensed Radio Frequency Devices

The TCB must:

A. Possess a thorough knowledge of FCC Rules contained in 47 CFR parts 2, 11, 15 & 18, including latest interpretations thereof;

B. Possess a thorough knowledge of all appropriate procedures (e.g., ANSI C63.4–1992, FCC MP–5, etc.) for testing and evaluating radio frequency devices;

C. Possess a thorough understanding of the FCC equipment authorization program and specifically, 47 CFR part 2, Subparts I, J and K;

D. Have copies of all applicable FCC Rules and test procedures and be able to demonstrate an ability to obtain recent rules and interpretations;

E. Be capable of evaluating the application and results of each of the following types of tests that are appropriate for the scope of accreditation:

1. Radiated emission tests from 9 kHz to 1 GHz;

2. Radiated emission tests from 1 GHz to 231 GHz *(for devices having emissions on frequencies above 1 GHz)*;

3. Line conducted emission tests from 9 kHz to 30 MHz;

4. Power density measurements;

5. RF bandwidth measurements;

6. Frequency stability measurements;

7. RF exposure measurements and computations, as specified in FCC OET Bulletin 65—Supplement C and 47 CFR 2.1091 and 2.1093;

8. Site attenuation measurements per ANSI C63.4–1992;

9. RF output power measurements, per 47 CFR 15.247 and 47 CFR part 15, Subparts D and E;

10. RF antenna conducted measurements;

11. Processing gain for direct sequence spread spectrum systems (47 CFR 15.247);

12. UPCS monitoring tests (47 CFR part 15, subpart D).

F. Be capable of evaluating test reports and associated documentation to determine the compliance of devices operating under the general provisions of part 15, as well as the following specific devices that are appropriate for the scope of accreditation:

1. Swept-frequency anti-pilferage systems (47 CFR 15.223);

2. Low power transmitters, e.g. R/C toys and baby monitors (47 CFR 15.227 and 15.235);

3. Remote control and security systems (47 CFR 15.231);

4. Cordless telephones (47 CFR 15.233);

5. Frequency-hopping & direct-sequence spread spectrum systems (47 CFR 15.247);

6. Cordless telephones (47 CFR 15.249)

7. Field disturbance sensors, intrusion detectors (47 CFR 15.245);

8. Biomedical telemetry devices (47 CFR 15.241 and 15.242);

9. Auditory assistance devices (47 CFR 15.237);

10. Automatic vehicle identification systems (47 CFR 15.251);

11. Vehicle radar systems (47 CFR 15.253);

12. Unlicensed Personal Communication Systems (47 CFR part 15, subpart D);

13. Unlicensed NII devices (47 CFR part 15, subpart E);

G. Be capable of performing the following core set of tests that are within the scope of accreditation:

1. Radiated emission tests (9 kHz to 1 GHz);
2. Radiated emission tests above 1 GHz that are appropriate for the scope of accreditation;
3. Line conducted emission tests (9 kHz to 30 MHz);
4. Power density measurements;
5. RF bandwidth measurements;
6. Frequency stability measurements (-20°C to +50°C);
7. Site attenuation measurements per ANSI C63.4–1992 (30 MHz to 1000 MHz);
8. RF output power measurements, per 47 CFR 15.247 and Subparts D & E of part 15;
9. RF antenna conducted measurements;

H. Have detailed knowledge and equipment for electronic filing and access to the FCC Internet database. The grants of certification issued by the TCB must include the same information (e.g., grantee codes, note codes, FCC ID, equipment classifications, rules parts, etc.) as the grants issued by the FCC. The information for each grant can be obtained from the FCC database.

V. Specific Capabilities: Licensed Radio Service Equipment

The TCB must:

A. Possess a knowledge of the Commission's Rules contained in 47 CFR parts 2, 22, 24, 25, 26, 27, 74, 80, 87, 90, 95, 97 and 101, including latest interpretations thereof;

B. Possess a knowledge of all appropriate standards and procedures (e.g., 47 CFR part 2, EIA/TIA Standard 603, etc.) for testing and evaluating licensed radio equipment;

C. Possess a thorough understanding of the FCC equipment authorization program covered in 47 CFR part 2, subparts I, J and K, including the required government coordination with other U.S. government agencies (e.g., FAA and USCG);

D. Have copies of all applicable FCC rules and test procedures and be able to obtain recent rules and interpretations;

E. Be capable of evaluating each of the following types of tests within the scope of accreditation:

1. RF power output measurements (47 CFR 2.1046);
2. Modulation characteristics measurements (47 CFR 2.1047);
3. Occupied bandwidth measurements (47 CFR 2.1049);
4. Spurious emissions at antenna terminals (47 CFR 2.1051);
5. Field strength of spurious radiation measurements (47 CFR 2.1053);
6. Frequency stability measurements (47 CFR 2.1055);
7. RF exposure measurements and computations, as specified in FCC OET Bulletin 65—Supplement C and 47 CFR 2.1091 and 2.1093;

F. Be capable of evaluating test reports and associated documentation to determine the compliance of the following specific devices within the scope of accreditation:

1. Cellular services (47 CFR part 22);
2. Licensed personal communication service (47 CFR part 24);
3. Satellite communication services—GMPCS (47 CFR part 25);
4. Wireless communication services—WCS (47 CFR parts 26 & 27);
5. Radio & auxiliary broadcast services (47 CFR part 74);
6. Aviation radio services (47 CFR part 87);
7. Maritime radio services (47 CFR part 80);
8. Private land mobile radio services (47 CFR part 90);
9. Fixed microwave radio services (47 CFR part 101);
10. Personal radio services (47 CFR part 95);
11. Amateur amplifiers under 47 CFR part 97);

G. Be capable of performing the following core set of tests that are within the scope of accreditation:

1. RF conducted and radiated power output measurements;
2. Modulation characteristics measurements;
3. Occupied bandwidth measurements;
4. Spurious emissions at antenna terminals;
5. Field strength measurements (9 kHz to 40 GHz) that are appropriate for the scope of accreditation;
6. Frequency stability measurements (−30°C to +50°C);

H. Have detailed knowledge and equipment for electronic filing and access to the FCC Internet database. (The grants of certification must include the same information (e.g., grantee codes, note codes, FCC ID, equipment classifications, rules parts, etc.) as the grants issued by the FCC. The information for each grant can be obtained from the FCC database.)

VI. Specific Capabilities: Telephone Terminal Equipment

The TCB must:

A. Possess a knowledge of 47 CFR part 68, including latest interpretations thereof.

B. Possess a thorough understanding of all appropriate procedures (e.g., TIA/TSB 31B) for testing and evaluating telephone terminal equipment.

C. Possess a thorough understanding of the FCC equipment authorization program and specifically FCC Form 730 Application Guide.

D. Have copies of all applicable FCC Rules and test procedures and be able to obtain recent rules and interpretations;

E. Possess an ability to evaluate each of the following types of tests:

1. Environmental simulation measurements. Specifically, demonstrate ability to perform Type A and Type B surge tests. (47 CFR 68.302)
2. Leakage current measurements. (47 CFR 68.304)
3. Hazardous voltage measurements. (47 CFR 68.306)
4. Analog signal power measurements. (47 CFR 68.308)
5. Digital signal power measurements. (47 CFR 68.308)
6. Transverse balance measurements. (47 CFR 68.310)
7. On-hook impedance measurements. (47 CFR 68.312)
8. Billing protection measurements. (47 CFR 68.314)
9. Hearing aid compatibility measurements. Specifically demonstrate an understanding of magnetic field strength measurements (ANSI/EIA/TIA–RS–504) and acoustics measurements (ANSI/EIA/TIA–579–1991 and ANSI/EIA/TIA–470–A–1987)) (47 CFR 68.316 and 68.317)
10. Additional Limitations. (47 CFR 68.318)

F. Be capable of evaluating test reports and associated documentation to determine the compliance of devices operating under the general provisions of part 68, as well as the following specific devices:

1. Data Modem with a loop-start interfaces.
2. Single line telephone set with a loop-start interface.
3. PBX with loop-start, ground-start, reverse battery, E&M tie trunk, and OPS interfaces.
4. PBX with digital trunks that require decoding encoded analog signals. (T–1, ISDN Basic Rate, and ISDN Primary Rate Interfaces)
5. CSU with a T–1 (1.544 Mbps) interface.
6. Digital data modem with sub-rate digital interfaces.

G. Be capable of performing the following core set of tests that are within the scope of accreditation:

1. Environmental simulation measurements. Specifically demonstrate ability to perform Type A and Type B surge tests.
2. Leakage current measurements.
3. Hazardous voltage measurements.
4. Analog signal power measurements.
5. Digital signal power measurements.
6. Transverse balance measurements.
7. On-hook impedance measurements.
8. Billing protection measurements.
9. Hearing aid compatibility measurements. Specifically demonstrate an understanding of magnetic field strength measurements (ANSI/EIA/TIA–RS–504) and acoustics measurements (ANSI/EIA/TIA–579–1991 and ANSI/EIA/TIA–470–A–1987))
10. Automatic redialing.

H. Have detailed knowledge for conveying information to FCC required by FCC procedures for telephone terminal equipment.

VII. Clarification of TCB Requirements

TCB Acceptance of Test Data and Sub-Contracting.

A TCB may accept test data from a manufacturer or independent laboratory for purposes of equipment certification. The TCB shall review the test data and must be confident that the product meets the relevant requirements before it approves product. Alternatively, the TCB may perform the required tests itself on a contract basis with the applicant for certification of the product. In such situations, the TCB may subcontract a portion of, or all, the required testing to an independent laboratory. In such cases, the TCB is responsible for all tests performed by the subcontractor and must maintain appropriate oversight of the subcontractor to ensure reliability of the test results. A subcontractor that is accredited to ISO/IEC Guide 25 should not normally require any additional accreditation by the TCB.

TCB Auditing Requirements

In the Report and Order, the Commission noted that ISO/IEC Guide 65 requires a certification body to perform surveillance activities. The Commission did not specify a number or percentage of products that a TCB should test to satisfy this guideline, since our experience has shown that different levels of scrutiny are required for different products to ensure compliance. We will rely on TCBs to use judgment in complying with this guideline. In general, a TCB is expected to test at least several samples each year for the various types of products it certified. The TCB may perform other types of surveillance, provided such activities are no more burdensome than type testing on the grantee of certification. This will provide TCBs some flexibility in determining continuing compliance of products that they certify. If a product fails to comply with the FCC Rules during the auditing process, the TCB shall immediately notify the grantee and the FCC. A follow-up report shall also be provided to the FCC within 30 days of the action taken by the grantee to correct the situation. The TCB shall also submit to the FCC within 30 days of such a request, reports of surveillance activities carried out by the TCB. A TCB may also be required to test a product certified by the TCB and report its findings to the FCC within 30 days to support compliance investigations.

Records Retention

The TCB shall retain for five years all documentation associated with the approval of a product subject to certification by the Commission.

Multiple Sites

A TCB may be accredited for multiple test sites in accordance with guidelines established by NIST.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

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BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–1591]

Auction of 929 and 931 MHz Paging Service Spectrum; Report No. AUC–99–26–B (Auction No. 26)

AGENCY: Federal Communications Commission.

ACTION: Public Notice.

SUMMARY: This Public Notice announces the procedures and minimum opening bids for the upcoming Paging 929 and 931 MHz Upper Bands Auction ("Upper Bands Auction"). This document gives auction notice and filing requirements for 2,499 paging upper band licenses scheduled for February 24, 2000 and announces minimum opening bids and other procedural issues. On June 7, 1999, the Wireless Telecommunications Bureau ("Bureau") released a Public Notice seeking comment on the establishment of reserve prices or minimum opening bids for the Upper Bands auction. In addition, the Bureau sought comment on a number of procedures to be used in the Upper Bands auction. The Bureau received four comments and no replies in response to the Paging Upper Bands Public Notice.

DATES: This auction is scheduled for February 24, 2000.

FOR FURTHER INFORMATION CONTACT:

Auctions and Industry Analysis Division: Lisa Hartigan, Operations or Arthur Lechtman, Legal Branch at (202) 418–0660; Bob Reagle, Auctions Analysis at (717) 338–2807.

Commercial Wireless Division: Cynthia Thomas, Policy and Rules Branch (202) 418–7240; Charlene Lagerwerff, Licensing and Technical Analysis Branch (202) 418–1385.

Media Contact: Meribeth McCarrick at (202) 418–0654.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released August 12, 1999. The text of the public notice, including all attachments, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.), 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800. It is also available on the Commission's website at http://www.fcc.gov.

1. *The Upper Band Licenses to Be Auctioned:* The licenses available in this auction consist of 12 channels in the 929 MHz band and 37 channels in the 931 MHz band. The following tables contain the Block/Frequency Cross-Reference List for the 929 MHz and 931 MHz bands:

929 MHz PAGING CHANNELS

Block	Frequency
License Suffix:	
A	929.0125
B	929.1125
C	929.2375
D	929.3125
E	929.3875
F	929.4375
G	929.4625
H	929.6375
I	929.6875
J	929.7875
K	929.9125
L	929.9625

931 MHz PAGING CHANNELS

Block	Frequency
License Suffix:	
AA	931.0125
AB	931.0375
AC	931.0625
AD	931.0875
AE	931.1125
AF	931.1375
AG	931.1625
AH	931.1875
AI	931.2125
AJ	931.2375
AK	931.2625

931 MHz PAGING CHANNELS—Continued

Block	Frequency
AL	931.2875
AM	931.3125
AN	931.3375
AO	931.3625
AP	931.3875
AQ	931.4125
AR	931.4375
AS	931.4625
AT	931.4875
AU	931.5125
AV	931.5375
AW	931.5625
AX	931.5875
AY	931.6125
AZ	931.6375
BA	931.6625
BB	931.6875
BC	931.7125
BD	931.7375
BE	931.7625
BF	931.7875
BG	931.8125
BH	931.8375
BI	931.8625
BJ	931.9625
BK	931.9875

One license will be awarded for each of these spectrum blocks in each of the 51 geographic areas known as Major Economic Areas ("MEAs"), resulting in a total of 2,499 Upper Bands paging licenses. These licenses are listed in Attachment A to this Public Notice. The licenses designated for the Upper Band auction comprise various portions of the following areas: (a) the continental United States, (b) the Northern Mariana Islands, (c) Guam, (d) American Samoa, (e) the United States Virgin Islands, and (f) Puerto Rico.

Auction Date: The auction will begin on Thursday, February 24, 2000. The initial schedule for bidding will be announced by public notice at least one week before the start of the auction. Unless otherwise announced, bidding on all licenses will be conducted on each business day until bidding has stopped on all licenses.

Auction Title: The 929 and 931 MHz Upper Bands Paging Auction—Auction No. 26.

Bidding Methodology: Simultaneous multiple round bidding. Bidding will be permitted only from remote locations, either electronically (by computer) or telephonically.

Pre-Auction Deadlines:

Auction Seminar—January 7, 2000
Short Form Application (FCC Form 175)—January 20, 2000; 5:30 p.m. ET
Upfront Payments (via wire transfer)—February 7, 2000; 6:00 p.m. ET
Orders for Remote Bidding Software—February 11, 2000; 5:30 p.m. ET
Mock Auction—February 22, 2000

Telephone Contacts:

Auctions Hotline—(888) CALL–FCC (888) 225–5322, press Option #2 or (717) 338–2888 (direct dial)
(For Bidder Information Packages, General Auction Information, and Seminar Registration. Hours of service: 8 a.m.–5:30 p.m. ET.)
FCC Technical Support Hotline (202) 414–1250 (voice), (202) 414–1255 (TTY)
(For technical assistance with installing or using FCC software. Hours of service: 8 a.m.–6 p.m. ET, Monday–Friday)

List of Attachments available at the FCC:

Attachment A—Summary of Paging 929 and 931 MHz Licenses to be Auctioned, Upfront Payments, Minimum Opening Bids
Attachment B—Existing 929 MHz Licensees and 931 MHz Licensees
Attachment C—Guidelines for Completion of FCC Forms 175 and 159, and Exhibits
Attachment D—Electronic Filing and Review of FCC Form 175
Attachment E—How to Monitor FCC Auctions Online
Attachment F—Accessing the FCC Network Using Windows 95/98
Attachment G—FCC Remote Bidding Software Order Form
Attachment H—Summary Listing of Documents from the Commission and the Wireless Telecommunications Bureau Addressing Application of the Anti-Collusion Rules
Attachment I—Auction Seminar Registration Form
Attachment J—Exponential Smoothing Formula and Example

1. Synopsis

2. *Background:* In 1997 and 1998, the Commission adopted rules governing geographic licensing of Common Carrier Paging ("CCP") and exclusive 929 MHz Private Carrier Paging ("PCP"), and established procedures for auctioning mutually exclusive applications for these licenses. *See, Second Report and Order and Further Notice of Proposed Rulemaking,* (*"Paging Second Report and Order"*) 62 FR 11616 (March 12, 1997) and 62 FR 11638 (March 12, 1997); *Memorandum Opinion and Order on Reconsideration and Third Report and Order,* (*"Paging Reconsideration Order"* and *"Third Report and Order"*) 64 FR 33762 (June 24, 1999). In order to facilitate the geographic licensing program, the Commission dismissed pending mutually exclusive applications and applications filed after July 31, 1996. The Commission provided for a transition to geographic area licensing for exclusive, non-nationwide channels in the bands allocated for paging and developing a standard methodology for providing protection to incumbent licensees from co-channel interference for the 929–930 MHz and 931–932 MHz paging bands. The Commission proposed the first in a series of auctions of Paging service licenses to commence December 7, 1999, *First Paging Service Spectrum Auction Scheduled for December 7, 1999; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures, Public Notice,* DA 99–1103 (released June 7, 1999), (*"Upper Bands Public Notice"*) 64 FR 36009 (July 2, 1999).

Scheduling: Due to concerns raised about the timing of the Auction No. 26, the Wireless Telecommunications Bureau ("Bureau") has rescheduled the auction to commence on February 24, 2000. Parties responding to the *Upper Bands Public Notice* raised several reasons for delaying the auction, including anticipated computer software problems associated with the roll-over into the Year 2000 ("Y2K"). The Bureau recognizes that preparing their existing businesses for the Y2K roll-over while preparing for an auction could present formidable problems for potential bidders. Accordingly, the Bureau is providing information now about the auction, and allowing for the submission of Short-Form Applications (FCC Form 175) twenty days after the onset of Y2K. The Bureau believes that this new schedule provides sufficient time for potential bidders to prepare their computer systems for the auction and correct any problems that might have been caused by Y2K.

Incumbent Licensees: Incumbent (nongeographic) paging licensees operating under their existing authorizations are entitled to full protection from co-channel interference. *See Paging Second Report and Order* and *Paging Reconsideration Order.* Geographic area licensees are likewise afforded co-channel interference protection from incumbent licensees. *See Paging Reconsideration Order.* Adjacent geographic area licensees are obligated to resolve possible interference concerns of adjacent geographic area licensees by negotiating a mutually acceptable agreement with the neighboring geographic licensee. Incumbency issues are further discussed.

Due Diligence: Potential bidders are reminded that there are a number of incumbent licensees already licensed and operating on frequencies that will be subject to the upcoming auction.

Geographic area licensees in accordance with the Commission's Rules must protect such incumbents from harmful interference. *See* 47 CFR 22.503(i). These limitations may restrict the ability of such geographic area licensees to use certain portions of the electromagnetic spectrum or provide service to certain areas in their geographic license areas.

3. In addition, potential bidders seeking licenses for geographic areas adjacent to the Canadian and Mexican border should be aware that the use of some or all of the channels they acquire in the auction could be restricted as a result of agreements with Canada or Mexico on the use of 929 and 931 MHz spectrum in the border area.

4. Potential bidders should also be aware that certain applications (including those for modification), waiver requests, petitions to deny, petitions for reconsideration, and applications for review are pending before the Commission that relate to particular applicants or incumbent licensees. In addition, certain decisions reached in the paging proceeding are subject to judicial appeal and may be the subject of additional reconsideration or appeal. The Bureau notes that resolution of these matters could have an impact on the availability of spectrum for MEA licensees in the 929 and 931 MHz bands. In addition, while the Commission will continue to act on pending applications, requests and petitions, some of these matters may not be resolved by the time of the auction.

5. Potential bidders are solely responsible for investigating and evaluating the degree to which such pending matters may affect spectrum availability in areas where they seek MEA licenses.

6. To aid potential bidders, Attachment B to this Public Notice lists matters pending before the Commission that relate to licenses or applications for the 929 MHz and 931 MHz service. The Commission makes no representations or guarantees that the listed matters are the only pending matters that could affect spectrum availability in the 929 or 931 MHz bands.

7. Parties may submit additions or corrections to the list, provided such additions or corrections are filed with the Commission within ten (10) business days from release of this Public Notice. Such submissions should be limited to identifying pleadings or papers previously filed with the Commission. No new pleadings or arguments on the merits will be accepted as explicitly provided by Commission Rules. *See* 47 CFR 1.45(c).

8. Corrections and additions must be filed with the Office of the Secretary, Federal Communications Commission, 445 Twelfth St., SW, Washington, DC 20554. One copy of each submission should also be delivered to the Commission's duplicating contractor, International Transcription Service, Inc., ("ITS"), 445 Twelfth Street, SW, CY–B402, Washington, DC 20554, while an additional courtesy copy should be sent to Cyndi Thomas, Policy and Rules Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 Twelfth St., SW, Room 4–A164, Washington, DC 20554. Parties filing additions or corrections should include the internal reference number of this Public Notice (DA 99–1591) on their submissions. Parties are also reminded that some of the proceedings are restricted and governed by the Commission's ex parte rules. Accordingly, any submission filed pursuant to this Public Notice that is directed to the merits or outcome of any restricted proceeding must be served on all parties to that restricted proceeding. *See* generally 47 CFR 1.1200–1.1216.

9. Copies of the pleadings relating to the 931 MHz band identified in Attachment B are available for public inspection and copying during normal reference room hours at: Office of Public Affairs (OPA), Reference Operations Division, 445 Twelfth Street, SW, Room CY–C314, Washington, DC 20554. Copies of the pleadings relating to the 929 MHz band identified in Attachment B are available for public inspection and copying during normal reference room hours at: Wireless Telecommunications Bureau (Gettysburg), Public Reference Room, 1270 Fairfield Road, Gettysburg, PA 17325.

10. In addition, potential bidders may research the Bureau's licensing databases on the World Wide Web in order to determine which frequencies are already licensed to incumbent licensees. Because some of the incumbent paging licensing records have not yet been converted to the Bureau's new Universal Licensing System (ULS), potential bidders may have to select other databases to perform research for the frequency(s) of interest. The research options will allow potential bidders to download licensing data, as well as to perform queries online.

11. *929 MHz band Incumbent Licenses:* Licensing records for the 929 MHz band are contained in the Bureau's Land Mobile database (not ULS) and may be researched on the internet at *http://www.fcc.gov/wtb* by selecting the "Databases" link at the top of the page. Potential bidders may download a copy of the licensing database by selecting "Download the Wireless Databases" and choosing the appropriate files under "Land Mobile Database Files—47 CFR parts 74, 90, and 95." Alternatively, potential bidders may query the Bureau's licensing records online by selecting "Search the Wireless Database Online."

12. *931 MHz band Incumbent Licenses:* Licensing records for the 931 MHz band are contained in the Bureau's ULS and may be researched on the internet at *http://www.fcc.gov/wtb/uls* by selecting the "License Search" button in the left frame. Potential bidders may query the database online and download a copy of their search results if desired. The Bureau recommends that potential bidders select the "Frequency" option under License Search, specify the desired frequency, and use the "GeoSearch" button at the bottom of the screen to limit their searches to a particular geographic area. Detailed instructions on using License Search (including frequency searches and the GeoSearch capability) and downloading query results are available online by selecting the "?" button at the bottom right-hand corner of the License Search screen.

13. Potential bidders should direct questions regarding the search capabilities to the FCC Technical Support Hotline at (202) 414–1250 (voice) or (202) 414–1255 (TTY), or via email at ulscomm@fcc.gov. The hotline is available Monday through Friday, from 8:00 AM to 6:00 PM Eastern Time. In order to provide better service to the public, all calls to the hotline are recorded.

14. The Commission makes no representations or guarantees regarding the accuracy or completeness of information that has been provided by incumbent licensees and incorporated into the database. Potential bidders are strongly encouraged to physically inspect any sites located in or near the geographic area for which they plan to bid.

Participation: Those wishing to participate in the auction must: Submit a short form application (FCC Form 175) electronically by January 20, 2000. Submit a sufficient upfront payment and a FCC Remittance Advice Form (FCC Form 159) by February 7, 2000.

Comply with all provisions outlined in this Public Notice.

Prohibition of Collusion: To ensure the competitiveness of the auction process, the Commission's Rules prohibit applicants for the same geographic license area from communicating with each other during the auction about bids, bidding strategies, or settlements. *See Paging*

Reconsideration Order, 47 CFR 1.2105(c). This prohibition begins with the filing of short-form applications, and ends on the down payment due date. Bidders competing for the same license(s) are encouraged not to use the same individual as an authorized bidder. A violation of the anti-collusion rule could occur if an individual acts as the authorized bidder for two or more competing applicants, and conveys information concerning the substance of bids or bidding strategies between the bidders he/she is authorized to represent in the auction. Also, if the authorized bidders are different individuals employed by the same organization (*e.g.*, law firm or consulting firm), a violation could similarly occur. At a minimum, in such a case, applicants should certify on their applications that precautionary steps have been taken to prevent communication between authorized bidders and that applicants and their bidding agents will comply with the anti-collusion rule.

15. The Bureau, however, cautions that merely filing a certifying statement as part of an application will not outweigh specific evidence that collusive behavior has occurred nor will it preclude the initiation of an investigation when warranted. In the Upper Band auction, for example, the rule would apply to any applicants bidding for the same MEA. Therefore, applicants that apply to bid for "all markets" would be precluded from communicating with all other applicants after filing the FCC Form 175. However, applicants may enter into bidding agreements before filing their FCC Form 175 short-form applications, as long as they disclose the existence of the agreement(s) in their Form 175 short-form applications. *See* 47 CFR 1.2105(c). By signing their FCC 175 short form applications, applicants are certifying their compliance with § 1.2105(c). In addition, § 1.65 of the Commission's Rules requires an applicant to maintain the accuracy and completeness of information furnished in its pending application and to notify the Commission within 30 days of any substantial change that may be of decisional significance to that application. *See* 47 CFR 1.65. Thus, § 1.65 requires an auction applicant to notify the Commission of any violation of the anti-collusion rules upon learning of such violation. Bidders are therefore required to make such notification to the Commission immediately upon discovery.

Relevant Authority: Prospective bidders must familiarize themselves thoroughly with the Commission's Rules relating to Upper Band, contained in title 47, part 22 and part 90 of the Code of Federal Regulations, and those relating to application and auction procedures, contained in title 47, part 1 of the Code of Federal Regulations.

16. Prospective bidders must also be thoroughly familiar with the procedures, terms and conditions (collectively, "Terms") contained in the *Second Report and Order* in PP Docket No. 93–253, 59 FR 22980 (April 1994); the *Second Memorandum Opinion and Order* in PP Docket No. 93–253, 59 FR 44272 (August 1994); the *Erratum to the Second Memorandum Opinion and Order* in PP Docket No. 93–253 (released October 19, 1994); Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96–18 *Notice of Proposed Rulemaking*, 61 FR 6199 (February 16, 1996) ("*Paging Notice*"); Revision of part 22 and part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96–18, *First Report and Order*, 61 FR 21380 (May 10, 1996) ("*Paging First Report and Order*"); Revision of part 22 and part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, WT Docket No. 96–18, *Order on Reconsideration of First Report and Order*, 61 FR 34375 (July 2, 1996) ("*First Paging Reconsideration*"); Revision of part 22 and part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, *Second Report and Order and Further Notice of Proposed Rulemaking*, ("*Paging Second Report and Order*"); Revision of part 22 and part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, *Memorandum Opinion and Order on Reconsideration and Third Report and Order*, FCC 99–98 (released May 24, 1999) ("*Paging Reconsideration Order*" and "*Paging Third Report and Order*").

17. The terms contained in the Commission's Rules, relevant orders, public notices and bidder information package are not negotiable. The Commission may amend or supplement the information contained in its public notices or the bidder information package at any time, and will issue public notices to convey any new or supplemental information to bidders. It is the responsibility of all prospective bidders to remain current with all Commission Rules and with all public notices pertaining to this auction. Copies of most Commission documents, including public notices, can be retrieved from the FCC Internet node via anonymous ftp@ftp.fcc.gov or the FCC World Wide Web site at http://www.fcc.gov/wtb/auctions. Additionally, documents may be obtained for a fee by calling the Commission's copy contractor, International Transcription Service, Inc. (ITS), at (202) 314–3070. When ordering documents from ITS, please provide the appropriate FCC number (*e.g.*, FCC 99–98 for the *Paging Third Report and Order*).

Bidder Alerts: All applicants must certify on their FCC Form 175 applications under penalty of perjury that they are legally, technically, financially and otherwise qualified to hold a license, and not in default on any payment for Commission licenses (including down payments) or delinquent on any non-tax debt owed to any Federal agency. Prospective bidders are reminded that submission of a false certification to the Commission is a serious matter that may result in severe penalties, including monetary forfeitures, license revocations, exclusion from participation in future auctions, and/or criminal prosecution.

18. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC licensee in this service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular services, technologies or products, nor does an FCC license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture.

19. As is the case with many business investment opportunities, some unscrupulous entrepreneurs may attempt to use the Upper Bands Auction to deceive and defraud unsuspecting investors. Common warning signals of fraud include the following:

- The first contact is a "cold call" from a telemarketer, or is made in response to an inquiry prompted by a radio or television infomercial.
- The offering materials used to invest in the venture appear to be targeted at IRA funds, for example by including all documents and papers needed for the transfer of funds maintained in IRA accounts.
- The amount of the minimum investment is less than $25,000.
- The sales representative makes verbal representations that: (a) the Internal Revenue Service ("IRS"), Federal Trade Commission ("FTC"), Securities and Exchange Commission ("SEC"), FCC, or other government agency has approved the investment; (b) the investment is not subject to state or federal securities laws: or (c) the investment will yield unrealistically high short-term profits. In addition, the offering materials often include copies of actual FCC releases, or quotes from FCC personnel, giving the appearance of FCC knowledge or approval of the solicitation.

20. Information about deceptive telemarketing investment schemes is available from the FTC at (202) 362–2222 and from the SEC at (202) 942–7040. Complaints about specific deceptive telemarketing investment schemes should be directed to the FTC, the SEC, or the National Fraud Information Center at (800) 876–7060. Consumers who have concerns about specific Upper Band proposals may also call the FCC National Call Center at (888) CALL–FCC (888) 225–5322).

2. Bidder Eligibility and Small Business Provisions

A. General Eligibility Criteria

21. This auction offers 2,499 licensees in the 929 and 931 MHz bands. In the *Paging Second Report and Order* and *Paging Reconsideration Order*, the Commission adopted small business provisions to promote and facilitate the participation of small business in the Upper Bands Auction and in the provision of this and other commercial mobile radio services. General eligibility to provide Upper Bands service, subject to any restrictions outlined in the Commission's rules, is afforded to entities that are not precluded under 47 CFR 22.217 and 22.223.

(i) Determination of Revenues

22. For purposes of determining which entities qualify as very small businesses or small businesses, the Commission will consider the gross revenues of the applicant, its controlling interests, and the affiliates of the applicant and its controlling interests. Therefore, the gross revenues of all of the entities must be disclosed *separately and in the aggregate* as Exhibit C to an applicant's FCC Form 175. The Commission does not impose specific equity requirements on controlling interests. Once principals or entities with a controlling interest are determined, only the revenues of those principals or entities will be counted in determining small business eligibility. The term "control" includes both *de facto* and *de jure* control of the applicant. Typically, *ownership of at least 50.1 percent of an entity's voting stock evidences de jure control. De facto* control is determined on a case-by-case basis. *See* 47 CFR 1.211(b)(4). The following are some common indicia of control:

- The entity constitutes or appoints more than 50 percent of the board of directors or management committee;
- The entity has authority to appoint, promote, demote, and fire senior executive that control the day-to-day activities of the licensee; or
- The entity plays an integral role in management decisions.

(ii) Small or Very Small Business Consortia

23. A consortium of small businesses, or very small businesses is a conglomerate organization formed as a joint venture between or among mutually independent business firms, each of which *individually* satisfies the definition of small or very small business in § 22.223. Thus, each consortium member must disclose its gross revenues along with those of its affiliates, controlling interests, and controlling interests' affiliates. The Bureau notes that although the gross revenues of the consortium members will not be aggregated for purposes of determining eligibility for small or very small business credits, this information must be provided to ensure that each individual consortium member qualifies for any bidding credit awarded to the consortium.

(iii) Application Showing

24. Applicants should note that they will be required to file supporting documentation as Exhibit C to their FCC Form 175 short form applications to establish that they satisfy the eligibility requirements to qualify as a small business or very small business (or consortiums of small or very small businesses) for this auction. *See* 47 CFR 22.217 and 1.2105. Specifically, for the Upper Bands Auction, applicants applying to bid as small or very small businesses (or consortiums of very small businesses) will be required to file as Exhibit C to their FCC Form, 175 short form applications, all information required under §§ 1.2105(a) and 1.2112(a). In addition, these applicants must disclose, *separately and in the aggregate*, the gross revenues for the preceding three years of each of the following: (a) the applicant; (b) the applicant's affiliates; (c) the applicant's controlling interests; and (d) the affiliates of the applicant's controlling interests. Certification that the average gross revenues for the preceding three years do not exceed the applicable limit is not sufficient. A statement of the total gross revenues for the preceding three years is also insufficient. The applicant must provide separately for itself, its affiliates, and its controlling interests, a schedule of gross revenues for *each* of the preceding three years, as well as a statement of total average gross revenues for the three-year period. If the applicant is applying as a consortium of very small or small businesses, this information must be provided for each consortium member.

B. Bidding Credits

25. Applicants that qualify under the definitions of small business, and very small business (or consortia of very small, or small businesses as are set forth in 47 CFR 22.223, are eligible for a bidding credit that represents the amount by which a bidder's winning bids are discounted. The size of an Upper Bands bidding credit depends on the average gross revenues for the preceding three years of the bidder and its controlling interests and affiliates:

- A bidder with average gross revenues of not more than $15 million for the preceding three years receives a 25 percent discount on its winning bids for Upper Bands licenses ("small business"); *See* 47 CFR 22.223(b)(1)(ii).
- A bidder with average gross revenues of not more than $3 million for the preceding three years receives a 35 percent discount on its winning bids for Upper Bands licenses ("very small business") *See* 47 CFR 22.223(b)(1)(i).

26. Bidding credits are not cumulative: qualifying applicants receive either the 25 percent or the 35 percent bidding credit, but not both.

27. Upper Bands bidders should note that unjust enrichment provisions apply to winning bidders that use bidding credits and subsequently assign or transfer control of their licenses to an entity not qualifying for the same level of bidding credit. Finally, bidders should also note that there are no installment payment plans in the Upper Bands Auction.

3. Pre-Auction Procedures

A. Short-Form Application (FCC Form 175)—Due January 20, 2000

28. In order to be eligible to bid in this auction, applicants must first submit an FCC Form 175 application. This application must be submitted electronically and received at the Commission by 5:30 p.m. ET on January 20, 2000. Late applications will not be accepted.

29. There is no application fee required when filing an FCC Form 175. However, to be eligible to bid, an applicant must submit an upfront payment. *See* II.C, *infra*.

(i) Electronic Filing

30. Applicants must file their FCC Form 175 applications electronically. *See* 47 CFR 1.2105(a). Applications may generally be filed at any time from January 7, 2000 until 5:30 p.m. ET on January 20, 2000. Applicants are strongly encouraged to file early, and applicants are responsible for allowing adequate time for filing their applications. Applicants may update or amend their electronic applications multiple times until the filing deadline on January 20, 2000.

31. Applicants must press the "Submit Form 175" button on the "Submit" page of the electronic form to successfully submit their FCC Forms 175. Information about accessing the FCC Form 175 is included in Attachment D. Technical support is available at (202) 414–1250 (voice) or (202) 414–1255 (text telephone (TTY)); the hours of service are 8 a.m.–6 p.m. ET, Monday–Friday.

(ii) Completion of the FCC Form 175

32. Applicants should carefully review 47 CFR 1.105, and must complete all items on the FCC Form 175. Instructions for completing the FCC Form 175 are in Attachment C. Applicants are encouraged to begin preparing the required attachments for FCC Form 175 prior to submitting the form. Attachments C and D provide information on the required attachments and appropriate formats.

(iii) Electronic Review of FCC Form 175

33. The FCC Form 175 review software may be used to review and print applicants' FCC Form 175 information. Applicants may also view other applicants' completed FCC Form 175s after the filing deadline has passed and the FCC has issued a public notice explaining the status of the applications. for this reason, it is important that applicants do not include their Taxpayer Identification Numbers (TINs) on any Exhibits to their FCC Form 175 applications. There is no fee for accessing this system. *See* Attachment D for details.

B. Application Processing and Minor Corrections

34. After the deadline for filing the FCC Form 175 applications has passed, the FCC will process all timely submitted applications to determine which are acceptable for filing, and subsequently will issue a public notice identifying: (a) those applications accepted for filing (including FCC account numbers and the licenses for which they applied); (b) those applications rejected; and (c) those applications which have minor defects that may be corrected, and the deadline for filing such corrected applications.

35. As described more fully in the Commission's Rules, after the January 20, 2000, short form filing deadline, applicants may make only minor corrections to their FCC Form 175 applications. Applicants will not be permitted to make major modifications to their applications (*e.g.* change their license selections, change the certifying official, change control of the applicant, or change bidding credit eligibility).

C. Upfront Payments—Due February 7, 2000

36. In order to be eligible to bid in the auction, applicants must submit an upfront payment accompanied by an FCC Remittance Advice Form (FCC Form 159). After completing the FCC Form 175, filers will have access to an electronic version of the FCC Form 159. All upfront payments must be received at Mellon Bank in Pittsburgh, PA, by 6:00 p.m: ET on February 7, 2000.

Please note that:

All payments must be made in U.S. dollars.

All payments must be made by wire transfer.

Upfront payments for Auction No. 26 go to a lockbox number different from the ones used in previous FCC auctions, and different from the lockbox number to be used for post-auction payments.

Failure to deliver the upfront payment by the February 7, 2000 deadline will result in dismissal of the application and disqualification from participation on the auction.

(i) Making Auction Payments by Wire Transfer

37. Wire transfer payments must be received by 6:00 p.m. ET on February 7, 2000. To avoid untimely payments, applicants should discuss arrangements (including bank closing schedules) with their banker several days before they plan to make the wire transfer, and allow sufficient time for the transfer to be initiated and completed before the deadline. Applicants will need the following information:

ABA Routing Number: 043000261
Receiving Bank: Mellon Pittsburgh
BNF: FCC/AC 911–6878
OBI Field: (Skip one space between each information item)
"AUCTIONPAY"
TAXPAYER IDENTIFICATION NO. (Same as FCC Form 159, block 26)
PAYMENT TYPE CODE (enter "A26U")
FCC CODE 1 (same as FCC Form 159, block 23A: "26")
PAYER NAME (same as FCC Form 159, block 2)
LOCKBOX NO. #358400

Note: The BNF and Lockbox number are specific to the upfront payments for this auction; do not use BNF or Lockbox numbers from previous auctions.

38. Applicants must fax a completed FCC Form 159 to Mellon Bank at (412) 236–5702 at least one hour before placing the order for the wire transfer (but on the same business day). On the cover sheet of the fax, write "Wire Transfer—Auction Payment for Auction Event No. 26." bidders may confirm receipt of their upfront payment at Mellon Bank by contacting their sending financial institution.

(ii) FCC Form 159

39. A completed FCC Remittance Advice Form (FCC Form 159) must accompany each upfront payment. Proper completion of FCC Form 159 is critical to ensuring correct credit of upfront payments. Detailed instructions for completion of FCC Form 159 are included in Attachment C.

(iii) Amount of Upfront Payment

40. In the *Part 1 Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making*, the Commission delegated to the Bureau the authority and discretion to determine an appropriate upfront payment for each license being auctioned. In the Upper Bands Public Notice, the Bureau proposed upfront payments for the Upper Bands Auction. Specifically, the Bureau proposed calculating the upfront payment on a license-by-license basis, using the following formula:

$.0008 * Pops (the result rounded to the nearest hundred for levels below $10,000 and to the nearest thousand for levels above $10,000) with a minimum of no less than $2,500 per license.

41. Commenters request the adoption of a different upfront payment formula. They claim that upfront payments failing to adequately account for levels of incumbency are not a rational method of ensuring the bona fides of bidders, but rather, a penalty against prospective bidders. Commenters conclude that upfront payments for each license should reflect incumbency levels. Accordingly the commenters ask that the Commission adopt a formula similar to the 900 MHz SMR Auction, whereby incumbency levels are subtracted from the pops prior to formulating the payment.

42. Although the Commission rejects the commenters' request to include incumbency levels on a license-by-license basis in the upfront payment formula, it recognizes that the proposed formula should be adjusted to reflect generally high levels of incumbency in the service. Upon re-examination of the proposed formula, the Commission will modify it as follows:

$.0004 * Pops (the result rounded to the nearest hundred for levels below $10,000 and to the nearest thousand for levels about $10,000) with a minimum of no less than $2,500 per license.

43. The revised formula cuts in half the initial proposal for upfront payments but retains the $2,500 minimum level. The upfront payment is a refundable deposit meant to help ensure sincere bidding and to establish initial eligibility levels for use with the activity rules discussed in section 4.A.ii. Incorporating incumbency calculations for each of the 2,499 licenses in the auction would be an overly complex and burdensome process that would not further the purpose of an upfront payment, and as such, a general reduction in the formula is a more appropriate action.

44. Please note that upfront payments are not attributed to specific licenses, but instead will be translated to bidding units to define a bidder's maximum bidding eligibility. For Auction No. 26, the amount of the upfront payment will be translated into bidding units on a one-to-one basis, *e.g.*, a $25,000 upfront payment provides the bidder with 25,000 bidding units. The total upfront payment defines the maximum amount of bidding units on which the applicant will be permitted to bid (including standing high bids) in any single round of bidding. Thus, an applicant does not have to make an upfront payment to cover all licenses for which the applicant has selected on FCC form 175, but rather to cover the maximum number of bidding units that are associated with licenses on which the bidder wishes to place bids and hold high bids at any given time.

45. In order to be able to place a bid on a license, in addition to having specified that license on the FCC Form 175, a bidder must have an eligibility level that meets or exceeds the number of bidding units assigned to that license. At a minimum, an applicant's total upfront payment must be enough to establish eligibility to bid on at least one of the licenses applied for on the FCC Form 175, or else the applicant will not be eligible to participate in the auction.

46. In calculating its upfront payment amount, an applicant should determine the *maximum* number of bidding units it may wish to bid on in any single round, and submit an upfront payment covering that number of bidding units. In order to make this calculation, an applicant should add together the upfront payments for all licenses on which it seeks to bid in any given round. Bidders should check their calculations carefully as there is no provision for increasing a bidder's maximum eligibility after the upfront payment deadline.

Note: An applicant may, on its FCC Form 175, apply for every license being offered, but its actual bidding in any round will be limited by the bidding units reflected in its upfront payment.

(iv) Applicant's Wire Transfer Information for Purposes of Refunds

47. To ensure that refunds are processed in an expeditious manner, the Commission is requesting that all pertinent information be supplied to the FCC no later than February 7, 2000. Should the payer fail to submit the requested information, the refund will be returned to the original payer. The Commission will use wire transfers for all Auction No. 26 refunds. Please fax Wire Transfer Instructions to the FCC, Financial Operations Center, Auctions Accounting Group. ATTN: Michelle Bennett or Gail Glasser, at (202) 418–2843. For additional information please call (202) 418–1995.

Name of Bank
ABA Number
Contact and Phone Number
Account Number to Credit
Name of Account Holder
Correspondent Bank (if applicable)
ABA Number
Account Number

(Applicants should also note that implementation of the Debt Collection Improvement Act of 1996 requires the FCC to obtain a Taxpayer Identification Number (TIN) before it can disburse refunds.) Eligibility for refunds is discussed in 5.D., *infra*.

D. Auction Registration

48. Approximately ten days before the auction, the FCC will issue a public notice announcing all qualified bidders for the auction. Qualified bidders are those applicants whose FCC Form 175 applications have been accepted for filing and that have timely submitted upfront payments sufficient to make them eligible to did on at least one of the licenses for which they applied.

49. All qualified bidders are automatically registered for the auction. Registration materials will be distributed prior to the auction by two separate overnight mailings, each containing part of the confidential identification codes required to place bids. These mailings will be sent only to the contact person at the applicant address listed in the FCC Form 175.

50. Applicants that do not receive both registration mailings will not be able to submit bids. Therefore, any qualified applicant that has not received both mailings by noon on Friday, February 18, 2000 should contact the Auctions Hotline at 1–(888) 225–5322 (option #2) or (717) 338–2888. Receipt of both registration mailings is critical to participating in the auction and each applicant is responsible for ensuring it has received all of the registration material.

51. Qualified bidders should note that lost login codes, passwords or bidder identification numbers can be replaced only by appearing *in person* at the FCC Auction Headquarters located at 445 12th St., Washington, D.C. 20554. Only an authorized representative or certifying official, as designated on an applicant's FCC Form 175, may appear in person with two forms of identification (one of which must be a photo identification) in order to receive replacement codes. Qualified bidders requiring replacement codes must call technical support prior to arriving at the FCC to arrange preparation of new codes.

E. Remote Electronic Bidding Software

52. Qualified bidders are allowed to bid electronically or telephonically. Those choosing to bid electronically must purchase remote electronic bidding software for $175.00 by February 11, 2000. (Auction software is tailored to a specific auction, so software from prior auctions will not work for Auction No. 26.) A software order form is included in this public notice. If bidding telephonically, the appropriate phone number will be supplied in the second Federal Express mailing of confidential login codes.

F. Auction Seminar

53. On January 7, 2000, the FCC will sponsor a free seminar for the Upper Bands Auction at the Federal Communications Commission, located at 445 12th Street, S.W., Washington, D.C. The seminar will provide attendees with information about pre-auction procedures, conduct of the auction, FCC remote bidding software, and the Paging Upper Band service and auction rules. The seminar will also provide a unique opportunity for prospective bidders to ask questions of FCC staff.

54. To register, complete the registration form included with this Public Notice and submit it by Wednesday, January 5, 2000. Registrations are accepted on a first-come, first-served basis.

G. Mock Auction

55. All applicants whose FCC form 175 and 175–S have been accepted for filing will be eligible to participate in a mock auction on February 22, 2000. The mock auction will enable applicants to become familiar with the electronic software prior to the auction. Free demonstration software will be available for use in the mock auction. Participation by all bidders is strongly recommended. Details will be announced by public notice.

4. Auction Event

56. The first round of the auction will begin on February 24, 2000. The initial round schedule will be announced in a Public Notice listing the qualified bidders, to be released approximately 10 days before the start of the auction.

A. Auction Structure

(i) Simultaneous Multiple Round Auction

57. In the *Upper Bands Public Notice*, the Commission proposed to award the 2,499 licenses in the Upper Bands in a single, simultaneous multiple round auction. One commenter requests that the Commission conduct auctions for the lower band frequencies before it conducts auctions for the 929 MHz and 931 MHz frequencies. This commenter argues that this sequence of auctions would reduce the economic hardship on small carriers on the lower bands that have been subject to the application freeze pending the start of any auctions. The Commission notes that the commenter made similar requests in WT Docket No. 96–18 and PR Docket No. 93–253.

58. In the *Paging Reconsideration Order*, the Commission directed the Bureau to resolve this issue after receiving comments pursuant to the release of the *Upper Bands Public Notice*. The commenter claim of general economic hardship for some licensees fails to reach the level of a compelling reason for altering its auction sequence at this juncture. Moreover, although the Commission has corrected the paging information database for the upper bands, the process of correcting the lower bands database remains. Auctioning the lower bands first under these circumstances would seriously delay the paging auctions. By auctioning the upper bands first, the Commission satisfies its statutory obligation to provide fast and efficient communications service to the public.

59. Commenters further request that if the Upper Bands Auction occurs first, the Bureau should break the licenses up into smaller regional areas prior to auction and provide for five auctions instead of one. The Commission concludes that it is operationally feasible and appropriate to auction all 2,499 Upper Bands licenses through a single, simultaneous multiple round auction. Enhancements to the Commission's Automated Auction System software will allow bidders to easily view and access the licenses in Auction 26, including license group viewing options and search and sort capabilities. The commenter has failed to persuade us that the current structure would be burdensome or harmful to potential bidders. An auction of this nature provides for an economy of scale, whereas having five separate auctions could cause significant administrative burdens, to participants in multiple auctions and unnecessarily protract the auction process. Unless otherwise announced, bids will be accepted on all licenses in each round of the auction. This approach, the Commission believes, allows bidders to take advantage of any synergies that exist among licenses and is most administratively efficient.

(ii) Maximum Eligibility and Activity Rules

60. In the *Upper Bands Public Notice*, the Commission proposed that the amount of the upfront payment submitted by a bidder would determine the initial maximum eligibility (as measured in bidding units) for each bidder. The Commission received no comments on this issue.

61. For the Upper Bands Auction the Bureau will adopt this proposal. The amount of the upfront payment submitted by a bidder determines the initial maximum eligibility (in bidding units) for each bidder. Note again that upfront payments are not attributed to specific licenses, but instead will be translated into bidding units to define a bidder's initial maximum eligibility. The total upfront payment defines the maximum number of bidding units on which the applicant will initially be permitted to bid. As there is no provision for increasing a bidder's maximum eligibility during the course of an auction (as described under "Auction Stages" as set forth in part 4.A.(iv)), prospective bidders are cautioned to calculate their upfront payments carefully.

62. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until the end before participating. Bidders are required to be active on a specific percentage of their maximum eligibility during each round of the auction.

63. A bidder is considered active on a license in the current round if it is either the high bidder at the end of the previous bidding round and does not withdraw the high bid in the current round, or if it submits an acceptable bid in the current fund (*see* "Minimum Accepted Bids" in Part 4.B.(iii), *infra*). A bidder's activity level in a round is the sum of the bidding units associated with licenses on which the bidder is active. The minimum required activity level is expressed as a percentage of the bidder's maximum bidding eligibility, and increases as the auction progresses. Because these procedures have proven successful in maintaining the pace of previous auctions as set forth under "Auction Stages" in Part 4.A.(iv) and "Stage Transitions" in Part 4.A.(v), *infra*, the Commission adopts them for the Upper Bands Auction.

(iii) Activity Rule Waivers and Reducing Eligibility

64. In the *Upper Bands Public Notice*, the Commission proposed that each bidder in the auction would be provided five activity rule waivers that may be used in any round during the course of the auction. The commenter objects to this proposal and instead requests that the Commission allocate activity rule waivers for each stage of the auction (*e.g.*, two or three per stage), with the caveat that any unused waivers could not be carried over to a subsequent stage. The commenter claims that this approach would give applicants sufficient flexibility consistent with the Commission's goals but would eliminate the use of waivers to keep the auction open for an inordinate period of time.

65. Based upon its experience in previous auctions, the Commission adopts its proposal that each bidder be provide five activity rule waivers that may be used in any round during the course of the auction. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. The Commission is satisfied that its practice of providing five waivers over the course of the auction provides a sufficient number of waivers and maximum flexibility to the bidders, while safeguarding the integrity of the auction system. The Commission sees no evidence to support commenter's claim that the use of waivers under the guidelines could delay the closing of the auction rather than stimulate participation.

66. The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any round where a bidder's activity level is below the minimum required unless: (a) there are no activity rule waivers available; or (b) bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

67. A bidder with insufficient activity that wants to reduce its bidding eligibility rather than use an activity rule waiver must affirmatively override the automatic waiver mechanism during the round by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described in "Auction Stages" (*see* Part 4.A.(iv)). Once eligibility had been reduced, a bidder will not be presented to regain its lost bidding eligibility.

68. Finally, a bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids or withdrawals will not keep the auction open.

(iv) Auction Stages

69. The Commission concludes that the auction will be composed of three States, which are each defined by an increasing activity rule. The Commission will adopt its proposals for the activity rules. Paragraphs 70 through 73 provide activity levels for each stage of the auction. The Commission reserves the discretion to further alter the activity percentages before and/or during the auction.

70. *Stage One*: During the first stage of the auction, a bidder desiring to maintain its current eligibility will be required to be active on licenses that represent at least 80 percent of its current bidding eligibility in each bidding round. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the sum of bidding units of the bidder's standing high bids and valid bids during the current round by five-fourths (5/4).

71. *Stage Two*: During the second stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, reduced eligibility for the next round will be calculated by multiplying the sum of bidding units of the bidder's standing high bids and valid bids during the current round by ten-ninths (10/9).

72. *Stage Three*: During the third stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). In this stage, reduced eligibility for the next round will be calculated by multiplying the sum of bidding units of the bidder's standing high bids and valid bids during the current round by fifty-fortyninths (50/49).

CAUTION: Since activity requirements increase in each auction stage, bidders must carefully check their current activity during the bidding period of the first round following a stage transition. This is especially critical for bidders that have standing high bids and do not plan to submit new bids. In past auctions, some bidders have inadvertently lost bidding eligibility or used an activity rule waiver because they did not re-verify their activity status at stage transitions. Bidders may check their activity against the required minimum activity level by using the bidding software's bidding module.

73. Because the foregoing procedures have proven successful in maintaining proper pace in previous auctions, the Commission adopts them for the Upper Bands Auction.

(v) Stage Transitions

74. In the *Upper Bands Public Notice*, the Commission proposed that the auction would advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is below 10 percent for three consecutive rounds of bidding in each Stage. However, the Commission further proposed that the Bureau would retain the discretion to change stages unilaterally by announcement during the auction. This determination, would be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Commission received no comments on this subject.

75. The Commission adopts its proposal. Thus, the auction will start in Stage One. Under the Commission's general guidelines it will advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when, in each of three consecutive founds of bidding, the high bid has increased on 10 percent or less of the licenses being auctioned (as measured in bidding units). However, the Bureau will retain the discretion to regulate the pace of the auction by announcement. This determination will be based on a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. The Commission believes that these stage transition rules, having proven successful in prior auctions, are appropriate for use in the Paging Upper Bands Auction.

(vi) Auction Stopping Rules

76. In the *Paging Reconsideration Order*, the Commission upheld the hybrid simultaneous/license-by-license stopping rule that had been adopted for the paging auctions in the *Paging Second Report and Order*, but retained discretion for the Bureau to use another stopping rule after seeking further comment on this issue in the pre-auction process. For the Upper Bands Auction, the Bureau proposed to employ a simultaneous stopping rule. The Bureau concluded that its proposal to conduct a series of auctions for the upper and lower bands would eliminate the risk of unnecessarily protracted auctions, and likewise, the need for a hybrid-stopping rule. The Commission also sought comment on a modified version of the simultaneous stopping rule. The modified version of the stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping. The Bureau further

sought comment on whether this modified stopping rule should be used unilaterally or only in stage three of the auction.

77. The Bureau also proposed retaining the discretion to keep an auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. In addition, the Commission proposed that the Bureau reserve the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. The Commission proposed to exercise this option only in circumstances such as where the auction is proceeding very slowly, where there is minimal overall bidding activity or where it appears likely that the auction will not close within a reasonable period of time.

78. All four commenters support the use of the hybrid license by license stopping rule. Commenters state that the sheer volume of the auction, coupled with the number of encumbered areas requires the modified approach. They claim that there will be numerous MEAs in which the bidding will be light, and even some instances where no bids at all are placed in the first round. Other geographic areas are likely to inspire intense bidding wars. They also urge the use of the hybrid rule because the simultaneous stopping rule would encourage speculators.

79. The Commission adopts its proposals concerning the stopping rule. Adoption of these rules, the Commission believes, is most appropriate for the Upper Bands Auction because its experience in prior auctions demonstrates that the simultaneous stopping rule balanced the interests of administrative efficiency and maximum bidder participation. The substitutability between and among licenses in different geographic areas and the importance of preserving the ability of bidders to pursue backup strategies support the use of a simultaneous stopping rule. Further, the Commission also can regulate the pace of the auction by conducting more bidding rounds per day, employing bid increments that reflect activity levels as specific markets and accelerating stage changes.

80. Thus, bidding will remain open on all licenses until bidding stops on every license. The auction will close for all licenses when one round passes during which no bidder submits a new acceptable bid on any license, applies a proactive waiver, or withdraws a previous high bid. After the first such round, bidding closes simultaneously on all licenses. In addition, the Bureau retains the discretion to close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this stopping rule procedure. The Commission will notify bidders in advance of implementing any change to its simultaneous stopping rule.

81. The Bureau also retains the discretion to keep the auction open even if no new acceptable bids or proactive waivers are submitted, and no previous high bids are withdrawn in a round. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. Thus, the activity rule will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use an activity rule waiver (if it has any left).

82. Further, in its discretion, the Bureau reserves the right to invoke the "special stopping rule." If the Commission invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. Before exercising this option, the Commission is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders would be required to maintain a higher level of bidding activity), increasing the number of bidding rounds per day, and/or adjusting the amount of the minimum bid increments for the licenses.

(vii) Auction Delay, Suspension, or Cancellation

83. In the *Paging Upper Bands Public Notice*, the Commission proposed that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding.

84. Because this approach has proven effective in resolving exigent circumstances in previous auctions, the Commission will adopt its proposed auction cancellation rules. By public notice or by announcement during the auction, the Bureau may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to: resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Commission emphasizes that exercise of this authority is solely within the discretion of the bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers.

B. Bidding Procedures

(I) Round Structure

85. The initial bidding schedule will be announced by public notice at least one week before the start of the auction, and will be included in the registration mailings. The round structure for each bidding round contains a single bidding round followed by the release of the round results. Details regarding round results formats and locations will be included in the bidder information package.

86. The Commission has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Commission may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors.

(II) Reserve Price or Minimum Opening Bid

a. Background

87. The Balanced Budget Act of 1997 calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when Commission licenses are subject to auction (*i.e.*, because they are mutually exclusive), unless the Commission determines that a reserve price or minimum opening bid is not in the public interest. Consistent with this mandate, the Commission directed the Wireless Telecommunications Bureau ("Bureau") to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction. Among other factors, the Bureau must consider the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, the extent of interference with other spectrum bands, and any other relevant factors that could have an impact on valuation of the spectrum being auctioned. The Commission concluded that the Bureau should have the discretion to employ either or both of these mechanisms for future auctions.

88. In the *Upper Bands Public Notice*, the Bureau proposed to establish minimum opening bids for the Upper Bands Auction and to retain discretion to lower the minimum opening bids. Specifically, for Auction No. 26, the Commission proposed the following license-by-license formulas for calculating minimum opening bids, based on the population ("pops") of the BTA:

> $.001* Pops (the result to the nearest hundred for levels below $10,000 and to the nearest thousand for levels above $10,000) with a minimum of no less than $2,500 per license.

In the alternative, the Bureau sought comment on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

b. Discussion

89. All of the commenters support minimum bids instead of reserve pricing, but request the Commission to take into account incumbency levels in its calculation formula. The commenters argue that the current formula inflates the market prices of the licenses by ignoring the level of incumbency. Moreover, they claim that this minimum bid could actually be the only bid issued in many markets.

90. The Commission will adopt minimum opening bids for the licenses in the Upper Bands Auction, which are reducible at the discretion of the Bureau. Congress has enacted a presumption that unless the Commission determines otherwise, minimum opening bids or reserve prices are in the public interest. Based on its experience in using minimum opening bids in other auctions, the Commission believes that minimum opening bids speed the course of the auction and ensure that valuable assets are not sold for nominal prices, without unduly interfering with the efficient assignment of licenses.

91. The commenters' arguments regarding the encumbrance of many of the paging licenses have convinced the Commission that some proposed minimum bid values could be too high, and thus the Commission will establish minimum opening bids that are in many cases lower than its first proposed. Accordingly, the Commission will use the following formula for calculating minimum opening bids:

> $.0005* Pops (the result rounded to the nearest hundred for levels below $10,000 and to the nearest thousand for levels above $10,000) with a minimum of no less than $2,500 per license.

92. The Commission does not accept the commenters' suggestion formula setting minimum opening bids using a license-by-license encumbrance adjustment. The Commission finds that such an approach would be unnecessarily complex and inappropriate. Because the Commission's minimum opening bids serve primarily as a starting point for bidding, and do not play the role of traditional reserve prices of maximizing revenue raised in the auction, there is no need to base them upon complicated formulas involving considerable license-specific information. Moreover, simple formulas do not disadvantage any prospective bidders, because the Commission does not expect generally that winning bids will be equal to the minimum opening values, but rather well above those opening values.

93. In addition, the Commission has not previously established minimum opening bid formulas on license-specific information such as encumbrance. While the Commission has differentiated among broad groups of licenses in setting minimum bid formulas in some past auctions (*e.g.*, in the first LMDS auction, where the Commission established three "tiers," for the A and B Block licenses), here it finds there is no need to establish groups with differing formulas. In particular, the Commission is aware of no significant difference in the average encumbrance of the 929 and 931 licenses, or other factors that would suggest treating the 929 and 931 licenses differently. Finally, the Commission notes that license-by-license encumbrance cannot be determined with certainty, but must be estimated using assumptions about relevant factors such as the height of towers and power levels being used by incumbents. Thus, it is not clear that a more complex, license-by-license encumbrance would necessarily produce superior information upon which to base minimum opening bids.

94. The Commission concludes that the adopted formula presented here best meets the objectives of its authority in establishing reasonable minimum opening bids. The Commission has noted in the past that the reserve price and minimum opening bid provision is not a requirement to minimize auction revenue but rather a protection against assigning licenses at unacceptably low prices and that it must balance the revenue raising objective against its other public interest objectives in setting the minimum bid level. For the sake of auction integrity and fairness, minimum opening bids must be set in a manner that is consistent across licenses.

95. As a final safeguard against unduly high pricing, minimum opening bids are reducible at the discretion of the Bureau. This will allow the Bureau flexibility to adjust the minimum opening bids if circumstances warrant. The Commission emphasizes, however, that such discretion will be exercised, if at all, sparingly and early in the auction, *i.e.*, before bidders lose all waivers and begin to lose substantial eligibility. During the course of the auction, the Bureau will not entertain any bidder requests to reduce the minimum opening bid on specific licenses.

(III) Minimum Accepted Bids

96. In the *Upper Bands Public Notice*, the Commission proposed to use a smoothing methodology to calculate minimum bid increments. The Commission further proposed to retain the discretion to change the minimum bid increment if circumstances so dictate. One commenter commented on this particular issue. The commenter claims that the Bureau's approach will create unnecessarily large minimum bid increments because the increase would be based primarily on the number of bids. The result, the commenter says, would be that licensees would pay significantly more for authorizations without due justification.

97. The Commission disagrees with the commenter's theory and declines to accept it for the Upper Bands Auction. Instead, the Commission will adopt its proposal for a smoothing formula. The smoothing methodology is designed to vary the increment for a given license between a maximum and minimum value based on the bidding activity on that license. This methodology allows the increments to be tailored to the activity level of a license, decreasing the time it takes for active licenses to reach their final value. The formula used to calculate this increment is included as Attachment J.

98. The Commission adopts its proposal of initial values for the maximum of 0.2 or 20% of the license value, and a minimum of 0.1 or 10% of the license value. The Bureau retains the discretion to change the minimum bid increment if it determines that circumstances so dictate, such as raising the minimum increment toward the end of the auction to enable bids to reach their final values more quickly. The Bureau will do so by announcement in the Automated Auction System. Under its discretion the Bureau may also implement an absolute dollar floor for the bid increment to further facilitate a timely close of the auction. The Bureau may also use its discretion to adjust the minimum bid increment without prior notice of circumstances warrant. As an alternative approach, the Bureau may, in its discretion, adjust the minimum bid increment gradually over a number of rounds as opposed to single large changes in the minimum bid increment (*e.g.*, by raising the increment floor by one percent every round over the course of ten rounds). The Bureau also retains the discretion to use alternate methodologies for the Upper Band Auction if circumstances warrant.

(IV) High Bids

99. Each bid will be date- and time-stamped when it is entered into the FCC computer system. In the event of tie bids, the Commission will identify the high bidder on the basis of the order in which the Commission receives bids. The bidding software allows bidders to make multiple submissions in a round. As each bid is individually date- and time-stamped according to when it was submitted, bids submitted by a bidder earlier in a round will have an earlier date and time stamp than bids submitted later in a round.

(V) Bidding

100. During a bidding round, a bidder may submit bids for as many licenses as it wishes, subject to its eligibility, as well as withdraw high bids from previous bidding rounds, remove bids placed in the same bidding round, or permanently reduce eligibility. Bidders also have the option of making multiple submissions and withdrawals in each bidding round. If a bidder submits multiple bids for a single license in the same round, the system takes the last bid entered as that bidder's bid for the round, and the date- and time-stamp of that bid reflects the latest time the bid was submitted.

101. Please note that all bidding will take place remotely either through the automated bidding software or by telephonic bidding. (Telephonic bid assistants are required to use a script when handling bids placed by telephone. Telephonic bidders are therefore reminded to allow sufficient time to bid, by placing their calls well in advance of the close of a round, because four to five minutes are necessary to complete a bid submission.) There will be no on-site bidding during Auction No. 26.

102. A bidder's ability to bid on specific licenses in the first round of the auction is determined by two factors: (1) The licenses applied for on FCC Form 175; and (2) the upfront payment amount deposited. The bid submission screens will be tailored for each bidder to include only those licenses for which the bidder applied on its FCC Form 175. A bidder also has the option to further tailor its bid submission screens to call up specified groups of licenses.

103. The bidding software requires each bidder to login to the FCC auction system during the bidding round using the FCC account number, bidder identification number, and the confidential security codes provided in the registration materials. Bidders are strongly encouraged to download and print bid confirmations *after* they submit their bids.

104. The bid entry screen of the Automated Auction System software for the Upper Band auction allows bidders to place multiple increment bids which will let bidders increase high bids from one to nine bid increments. A single bid increment is defined as the difference between the standing high bid and the minimum acceptable bid for a license.

105. To place a bid on a license, the bidder must enter a whole number between 1 and 9 in the bid increment multiplier (Bid Mult) field. This value will determine the amount of the bid (Amount Bid) by multiplying the bid increment multiplier by the bid increment and adding the result to the high bid amount according to the following formula:

Amount Bid = High Bid + (Bid Mult * Bid Increment)

Thus, bidders may place a bid that exceeds the standing high bid by between one and nine times the bid increment. For example, to bid the minimum acceptable bid, which is equal to one bid increment, a bidder will enter "1" in the bid increment multiplier column and press submit.

106. For any license on which the FCC is designated as the high bidder (*i.e.*, a license that has not yet received a bid in the auction or where the high bid was withdrawn and a new bid has not yet been placed), bidders will be limited to bidding only the minimum acceptable bid. In both of these cases no increment exists for the licenses, and bidders should enter "1" in the Bid Mult field. Note that in this case, any whole number between 1 and 9 entered in the multiplier column will result in a bid value at the minimum acceptable bid amount. Finally, bidders are cautioned in entering numbers in the Bid Mult field because, as explained in the following section, a high bidder that withdraws its standing high bid from a previous round, even if mistakenly or erroneously made, is subject to bid withdrawal payments.

(VI) Bid Removal and Bid Withdrawal

107. In the *Upper Bands Public Notice*, the Commission proposed bid removal and bid withdrawal rules. With respect to bid withdrawals, the Commission proposed limiting each bidder to withdrawals in no more than two rounds during the course of the auction. The two rounds in which withdrawals are utilized, the Commission proposed, would be at the bidder's discretion. The commenter objects to this proposal because the volume of licenses being auctioned might require bidders to utilize more withdrawals. The Commission rejects the commenter's request.

108. In previous auctions, the Commission has detected bidder conduct that, arguably, may have constituted strategic bidding through the use of bid withdrawals. While the Commission continues to recognize the important role that bid withdrawals play in an auction, *i.e.*, reducing risk associated with efforts to secure various geographic area licenses in combination, the Commission concludes that, for the Upper Bands Auction, adoption of a limit on their use to two rounds is the most appropriate outcome. By doing so the Commission believes it strikes a reasonable compromise that will allow bidders to use withdrawals. The Commission's decision on this issue is based upon its experience in prior auctions, particularly the PCS D, E and F block auction, 800 MHz SMR auction, and is in no way a reflection of its view regarding the likelihood of any speculation or "gaming" in this Upper Bands Auction.

109. The Bureau will therefore limit the number of rounds in which bidders may place withdrawals to two rounds. These rounds will be at the bidder's discretion and there will be no limit on the number of bids that may be withdrawn in either of these rounds. Withdrawals will still be subject to the bid withdrawal payments specified in 47 CFR 1.2104(g), and 1.2109. Bidders should note that abuse of the Commission's bid withdrawal procedures could result in the denial of the ability to bid on a market. If a high bid is withdrawn, the license will be offered in the next round at the second highest bid price, which may be less than, or equal to, in the case of tie bids, the amount of the withdrawn bid, without any bid increment. The Commission will serve as a "place holder" on the license until a new acceptable bid is submitted on that license.

a. Procedures

110. Before the close of a bidding round, a bidder has the option of removing any bids placed in that round. By using the "remove bid" function in the software, a bidder may effectively "unsubmit" any bid placed with that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments. Removing a bid will affect a bidder's activity for the round in which it is removed. This procedure, about which the Commission received no comments, will enhance bidder flexibility during the auction. Therefore, the Commission adopts these procedures for the Upper Bands Auction.

111. Once a round closes, a bidder may no longer remove a bid. However, in the next round, a bidder may withdraw standing high bids from previous rounds using the "withdraw bid" function (assuming that the bidder has not exhausted its withdrawal allowance). A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payments specified in 47 CFR 1.2104(g) and 1.2109. The procedure for withdrawing a bid and receiving a withdrawal confirmation is essentially the same as the bidding procedure described in "High Bids," Part 4.B.(iv)

b. Calculation

112. Generally, the Commission imposes payments on bidders that withdraw high bids during the course of an auction. Specifically, a bidder ("Bidder X") that withdraws a high bid during the course of an auction is subject to bid withdrawal payment equal to the difference between the amount withdrawn and the amount of the subsequent winning bid. If a high bid is withdrawn on a license that remains unsold at the close of the auction, Bidder X will be required to make an interim payment equal to three (3) percent of the net amount of the withdrawn bid. This payment amount is deducted from any upfront payments or down payments that Bidder X has deposited with the Commission. If, in a subsequent auction, that license receives a valid bid in an amount equal to or greater than the withdrawn bid amount, then no final bid withdrawal payment will be assessed, and Bidder X may request a refund of the interim three (3) percent payment. If, in a subsequent auction, the selling price for that license is less than Bidder X's withdrawn bid amount, then Bidder X will be required to make a final bid withdrawal payment equal to either the difference between Bidder X's net withdrawn bid and the subsequent net winning bid, or the difference between Bidder X's gross withdrawn bid and the subsequent gross winning bid, whichever is less.

(VII) Round Results

113. All of the commenters addressing the issue of disclosure support the Commission's proposal to disclose bidder identity, bid amounts, and withdrawal information during the course of the auction. The bids placed during a round will not be published until the conclusion of that bidding period. After a round closes, the FCC will compile reports of all bids placed, bids withdrawn, current high bids, new minimum accepted bids, and bidder eligibility status (bidding eligibility and activity rule waivers), and post the reports for public access. Reports reflecting bidders' identities and bidder identification numbers for Auction No. 26 will be available before and during the auction. Thus, bidders will know in advance of this auction the identities of the bidders against which they are bidding.

(VIII) Auction Announcements

114. The FCC will use auction announcements to announce items such as schedule changes and stage transitions. All FCC auction announcements will be available on the FCC remote electronic bidding system, as well as the Internet and the FCC Bulletin Board System.

(IX) Other Matters

115. As noted in 3.B., after the short-form filing deadline, applicants may make only minor changes to their FCC Form 175 applications. For example, permissible minor changes include deletion and addition of authorized bidders (to a maximum of three) and revision of exhibits. Filers must make these changes on-line, and submit a letter to Amy Zoslov, Chief, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554 (and mail a separate copy to Arthur Lechtman, Auctions and Industry Analysis Division), briefly summarizing the changes. Questions about other changes should be directed to Arthur Lechtman of the FCC Auctions and Industry Analysis Division at (202) 418–0660.

5. Post-Auction Procedures

A. Down Payments and Withdrawn Bid Payments

116. After bidding has ended, the Commission will issue a public notice declaring the auction closed, identifying the winning bids and bidders for each license, and listing withdrawn bid payments due.

117. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Government to 20 percent of its net winning bids (actual bids less any applicable bidding credits). *See* 47 CFR 1.2107(b). In addition, by the same deadline all bidders must pay any withdrawn bid amounts due under 47 CFR 1.2104(g), as discussed in "Bid Removal and Bid Withdrawal," part 4.B.(VI). (Upfront payments are applied first to satisfy any withdrawn bid liability, before being applied toward down payments.)

B. Long-Form Application

118. Within ten business days after release of the auction closing notice, winning bidders must electronically submit a properly completed long-form application and required exhibits for each Upper Band license won through the auction. Winning bidders that are small businesses or very small businesses must include an exhibit demonstrating their eligibility for bidding credits. *See* 47 CFR 1.2112(b). Further filing instructions will be provided to auction winners at the close of the auction.

C. Default and Disqualification

119. Any high bidder that defaults or is disqualified after the close of the auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) will be subject to the payments described in 47 CFR 1.2104(g)(2). In such event the Commission may re-auction the license or offer it to the next highest bidders (in descending order) at their final bids. *See* 47 CFR 1.2109(b) and (c). In addition, if a default or

disqualification involves gross misconduct, misrepresentation, or bad faith by an applicant, the Commission may declare the applicant and its principals ineligible to bid in future auctions, and may take any other action that it deems necessary, including institution of proceedings to revoke any existing licenses held by the applicant. *See* 47 CFR 1.2109(d).

D. Refund of Remaining Upfront Payment Balance

120. All applicants that submitted upfront payments but were not winning bidders for an Upper Bands license may be entitled to a refund of their remaining upfront payment balance after the conclusion of the auction. No refund will be made unless there are excess funds on deposit from that applicant after any applicable bid withdrawal payments have been paid.

121. Bidders that drop out of the auction completely may be eligible for a refund of their upfront payments before the close of the auction. However, bidders that reduce their eligibility and remain in the auction are not eligible for partial refunds of upfront payments until the close of the auction. Qualified bidders that have exhausted all of their activity rule waivers, have no remaining bidding eligibility, and have not withdrawn a high bid during the auction must submit a written refund request which includes wire transfer instructions, a Taxpayer Identification Number ("TIN"), and a copy of their bidding eligibility screen print to: Federal Communications Commission, Financial Operations Center, Auctions Accounting Group, Shirley Hanberry, 445 12th Street, S.W., Room 1–A824, Washington, D.C. 20554.

122. Bidders can also fax their request to the Auctions Accounting Group at (202) 418–2843. Once the request has been approved, a refund will be sent to the address provided on the FCC Form 159.

Note: Refund processing generally takes up to two weeks to complete. Bidders with questions about refunds should contact Michelle Bennett or Gail Glasser at (202) 418–1995.

Federal Communications Commission.

Thomas Sugrue,

Chief, Wireless Telecommunications Bureau.

[FR Doc. 99–23123 Filed 9–3–99; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed revised information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the collection requirements for participation in the National Flood Insurance Program (NFIP) Community Rating System (CRS).

SUPPLEMENTARY INFORMATION: The NFIP began in 1968. A central element in the NFIP is the promotion and implementation of a sound local floodplain management program. Communities must adopt minimum floodplain management standards in order to participate in the NFIP and receive the benefits of flood insurance. The Community Rating System (CRS) was designed by FEMA to encourage, through the use of flood insurance premium discounts, communities and states to undertake activities that will mitigate flooding and flood damage, beyond the minimum standards for NFIP participation. The National Flood Insurance Reform Act of 1994 codified the CRS.

The NFIP/CRS Coordinator's Manual includes a schedule and commentary. The Application Worksheets and CRS Application are published separately. Communities will use the manuals to apply for activity points leading up to a CRS rating and commensurate flood insurance premium discounts. The schedule describes the floodplain management and insurance activities available to qualifying communities that undertake the selected additional activities that will reduce flood losses. To apply, communities submit to FEMA the attached application worksheets and requisite documentation. Once approved, the applications are reviewed and field verified by Insurance Service Organization (ISO), Commercial Risk Services, Inc., an insurance industry service organization with varied experience, especially with community fire rating.

Collection of Information

Title: Community Rating System (CRS) Program—Application Worksheets and Commentary.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0195.

Form Numbers: FEMA Form 81–83, FIA 15.

Abstract: The CRS Program establishes a system for FEMA to grade communities' floodplain management activities to determine flood insurance rates for communities. Communities exercising floodplain management activities that exceed Federal minimum standards qualify for lower insurance rates.

The January 1999 edition of the NFIP CRS Coordinator's Manual contains instructions for preparing the application worksheets that will be used to apply to the CRS Program for the 1999 through 2001 calendar years. The Application Worksheets and CRS Application are published separately. Communities will use the manuals to apply for activity points leading up to a CRS rating and commensurate flood insurance premium discounts. The schedule describes the floodplain management and insurance activities available to qualifying communities that undertake the selected additional activities that will reduce flood losses. Annually, all CRS participating communities must certify they are maintaining the activities for which they receive credit.

Affected Public: State, Local, or Tribal Government.

Estimated Total Annual Burden Hours: 9,260.

FEMA forms	Number of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A B C)
81–83 (New, Modified and Cycle Applications)	220	1	29	6,380
81–83 (Recertification Applications)	720	1	4	2,880
Total	940			9,260

Estimated Cost: There is no cost to communities for this collection other than staff time, which, is part of their normal floodplain management duties.

Comments

Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or e:mail muriel.anderson@fema.gov.

FOR FURTHER INFORMATION CONTACT: Contact Bret Gates, CRS Coordinator, Mitigation Directorate, Federal Emergency Management Agency, at (202) 646–4133, or by e:mail at bret.gates@fema.gov for additional information. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Dated: August 25, 1999.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–23180 Filed 9–3–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed revised information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the proposed revision of existing information from applicants seeking grant funding through the Hazard Mitigation Grant Program (HMGP). The information collection described in this notice is the State Administrative Plan for the Hazard Mitigation Grant Program.

SUPPLEMENTARY INFORMATION: The Program was created with the passing of the Stafford Act in November of 1988. The Program, authorized by Section 404 of the Act, provides States and local governments financial assistance to implement measures that will permanently reduce or eliminate future damages and losses from natural hazards.

In December 1993 the President signed the Hazard Mitigation and Relocation Assistance Act that amended Section 404. This amendment increased the cost share of the HMGP to a maximum of 75 percent Federal and increased the amount of funding available for the Program to 15 percent of all other disaster grants. The amendment also imposed new implementing requirements on acquisition and relocation projects funded under the Program. FEMA published an interim rule in the **Federal Register** on May 11, 1994, amending the original program regulations published in May 1989, to implement the changes.

The statutory changes combined with the Administration's National Performance Review initiative provided an opportunity for FEMA to evaluate the overall program and make improvements. The 1993 increase in program funding significantly heightened public interest in the Program and has served to underscore the need to clarify HGMP eligibility, simplify program administration, and expedite grant award and implementation.

The changes represented here are only a first step in the ongoing process to enhance the program. FEMA is working with its customers to develop and improve training and guidance to accompany the new regulations. Successful implementation of the changes will require clear guidance for both FEMA staff and State grantees.

Collection of Information

Title: State Administrative Plan for the Hazard Mitigation Grant Program.

Type of Information Collection: Reinstatement of a previously approved collection.

OMB Number: 3067–0208.

Abstract: The State must have an approved State Hazard Mitigation Grant Program (HMGP) Administrative Plan to be eligible to receive funds under HMGP. This plan outlines the procedures for administration of the program and management of program funds. The plan is revised after each major disaster declaration to take into account changes in the administration of the program or in current program policy. The plan should be incorporated as either a separate chapter or annex to the state's emergency response or operations plan. The Administrative Plan must include: (1) Designation of the state agency that will act as grantee; (2) identification of the State Hazard Mitigation Officer responsible for all matters related to the program; (3) determination of staffing requirements and sources of staff necessary for administration of the program, and (4) establish procedures to: (i) comply with administrative requirements of 44 CFR parts 13 and 206; (ii) identify and notify potential applicants of the availability of the program; (iii) ensure that potential applicants are provided information on the application process, program eligibility, and key deadlines; (iv) provide technical assistance as required to applicants and subgrantees; (v) gather environmental data and/or conduct environmental reviews; (vi) process requests for advances of funds and reimbursement; (vii) monitor and evaluate the progress and completion of the funded projects; (viii) provide quarterly performance and financial reports to the Regional Director; (ix) process appeals; and (x) comply with audit requirements of 44 CFR 14.

FEMA forms	No. of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A×B×C)
Affected Public: State, Local or Tribal government, and not for profit institutions.				
Estimated Total Annual Burden Hours: 4,600.				
State Admin. Plan	25	[1] 46	4	4,600
Total	25	46	4	4,600

[1] Average number of declared disasters per year.

Estimated Cost. Cost to Federal government for collecting information is $10,000.

Comments

Written comments are solicited to:

(a) Evaluate whether the proposed data collections and reporting requirements are necessary for the proper performance of FEMA's functions and program activities, including whether the data have practical utility;

(b) Evaluate the accuracy of the agency's estimate of the burden of the proposed data collections and reporting requirements;

(c) Determine the estimated cost of the proposed data collections and reporting requirements to the respondents;

(d) Enhance the quality, utility, and clarity of the information to be collected; and,

(e) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625, FAX number (202) 646–3524, or email address: muriel.anderson@fema.gov.

FOR FURTHER INFORMATION CONTACT: Contact Catherine Young, Mitigation Directorate at (202) 646–4541 for additional information. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Dated: August 25, 1999.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–23182 Filed 9–3–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed revised information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the proposed revision of existing information from applicants seeking grant funding through the Hazard Mitigation Grant Program (HMGP). The type of information to be collected is the Hazard Mitigation Grant Program 409 Plans.

SUPPLEMENTARY INFORMATION: The Hazard Mitigation Grant Program (HGMP) was created with the passage of the Stafford Act in November of 1988. The Program, authorized by Section 404 of the Act, provides States and local governments financial assistance to implement measures that will permanently reduce or eliminate future damages and losses from natural hazards.

In December 1993 the President signed the Hazard Mitigation and Relocation Assistance Act that amended Section 404. This amendment increased the cost share of the HMGP to a maximum of 75 percent Federal and increased the amount of funding available for the Program to 15 percent of all other disaster grants. The amendment also imposed new implementing requirements on acquisition and relocation projects funded under the Program. FEMA published an interim rule in the **Federal Register** on May 11, 1994, amending the original program regulations published in May 1989, to implement the changes.

The statutory changes combined with the Administration's National Performance Review initiative provided an opportunity for FEMA to evaluate the overall program and make improvements. The 1993 increase in program funding significantly heightened public interest in the Program and has served to underscore the need to clarify Program eligibility, simplify program administration, and expedite grant award and implementation.

The changes are only a first step in the ongoing process to enhance the program. FEMA is working with its customers to improve training and guidance. Successful implementation of the changes requires clear guidance for both FEMA staff and State grantees.

Collection of Information

Title: Hazard Mitigation Grant Program 409 Plan.

Type of Information Collection: Reinstatement of a previously approved collection.

OMB Number: 3067–0212.

Abstract: Hazard Mitigation Grant Program 409 Plans. The State must have an approved State Hazard Mitigation Grant Program (HMGP) 409 Plan to be eligible to receive funds under HMGP.

Section 409 of the Stafford Act requires that State and local governments that are recipients of Federal disaster assistance must take steps to evaluate hazards within the disaster area and take appropriate action to mitigate these hazards. FEMA has interpreted this requirement through regulation to mean that State and local governments shall prepare and implement hazard mitigation plans following a declaration for Federal disaster assistance. Regulations have been implemented to streamline, clarify, and simplify this planning requirement. Hazard mitigation plans are updated or expanded at the time a new disaster declaration occurs.

Affected Public: State, Local or Tribal government, and not for profit institutions.

Estimated Total Annual Burden Hours: 4,600.

FEMA forms	No. of respondents (A)	Frequency of response (B)	Hours per response (C)	Annual burden hours (A×B×C)
HMGP 409 Plan	25	[1] 46	4	4,600
Total	25	46	4	4,600

[1] Average number of declared disasters per year.

Comments

Written comments are solicited to:

(a) Evaluate whether the proposed data collections and reporting requirements are necessary for the proper performance of FEMA's functions and program activities, including whether the data have practical utility;

(b) Evaluate the accuracy of the agency's estimate of the burden of the proposed data collections and reporting requirements;

(c) Determine the estimated cost of the proposed data collections and reporting requirements to the respondents;

(d) Enhance the quality, utility, and clarity of the information to be collected; and,

(e) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625, FAX number (202) 646–3524, or email address: muriel.anderson@fema.gov.

FOR FURTHER INFORMATION CONTACT: Contact Catherine Young, Mitigation Directorate at (202) 646–4541 for additional information. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Dated: August 25, 1999.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–23183 Filed 9–3–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: National Defense Executive Reserve Personal Qualifications Statement.

Type of Information Collection: Revision of a currently approved collection.

OMB Number: 3067–0001.

Abstract: The NDER is a Federal government program coordinated by FEMA to become a member of the NDER, individuals with the requisite qualifications must complete an FEMA Form 85–3, National Defense Executive Reserve Personal Qualification Statement. FEMA Form 85–3 is an application form that is used by Federal departments and agencies to fill NDER vacancies and to ensure that individuals are qualified to perform in the assigned emergency positions. FEMA reviews the application form to ensure that the candidates meets all basic membership qualifications for the Executive Reservist; ensures that applicants are not already serving in a Federal department or agency sponsored unit; and in some cases, determines the Federal department or agency best suited for the applicant.

Affected Public: Individual or Households.

Number of Respondents: 50.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 25.

Frequency of Response: On Occasions.

Comments

Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or email muriel.anderson@fema.gov.

Dated: August 25, 1999.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–23176 Filed 9–3–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: National Flood Insurance Policy Forms.

Type of Information Collection: Revisions of a currently approved collection.

OMB Number: 3067–0022.

Abstract: In order to provide for the availability of policies for flood insurance, policies are marketed through the facilities of licensed insurance agents or brokers in the various States. Applications from agents or brokers are forwarded to a servicing company designated as fiscal agent by FIA. Upon receipt and examination of

the application and required premium, the servicing company issues the appropriate Federal flood insurance policy.

Affected Public: Individual or Households.

Number of Respondents: 317,610.

Estimated Time per Respondent: FEMA Form 81–16, Flood Insurance Application—12 min.; FEMA Form 81–17, Flood Insurance Cancellation/ Nullification Request—7.5 min.; FEMA Form 81–18, Flood Insurance General Change Endorsement—9 min.; FEMA Form 81–25, V–Zone Risk Factor Form–15 min.; FEMA Form 81–67, Flood Insurance Preferred Risk Policy Application—15 min.; Renewal Premium Notice—3 min..

Estimated Total Annual Burden Hours: 31,718 hours.

Frequency of Response: On Occasions.

Comments

Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or email muriel.anderson@fema.gov.

Dated: August 25, 1999.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–23177 Filed 9–3–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: The Declaration Process: Request for Damage Assessment, Federal Disaster Assistance, Cost Share Adjustments, and Loans of the Non-Federal Share.

Type of Information Collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

OMB Number: 3067–0113.

Abstract: Requests for supplemental Federal disaster assistance are submitted to the President through FEMA. Requests for major disaster or emergency declarations, loans of the non-federal share, and cost share adjustments must be made by the Governor or Acting Governor.

Affected Public: Individuals or Households, Non-profit institutions, and State, Local or Tribal Government.

Number of Respondents: 58.

Estimated Time per Respondent: 3 hours.

Estimated Total Annual Burden Hours: 13,224 hours.

Frequency of Response: For each State disaster or emergency declaration request.

Comments

Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or email address at muriel.anderson@fema.gov.

Dated: August 23, 1999.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–23178 Filed 9–3–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Title: National Fire Incident Reporting System (NFIRS)

Type of Information Collection: Reinstatement, with change, of a currently approved collection for which approval has expired.

OMB Number: 3067–0161

Abstract: The NFIRS program provides a mechanism using standardized reporting methods to collect and analyze fire incident data at the Federal, State, and Local levels. Data analysis help local fire departments and States to focus on current problems, predict future problems in their communities, and measure whether their programs are working. It also enables the U.S. Fire Administration (USFA) to identify common trends in collected data that may be applicable to fire problems on a national scale. NFIRS data is used: at the Local level, for setting priorities, targeting resources, and designing fire prevention and education programs specifically suited to the real fire problems of a community or State; at the State level, to justify State budgets and has helped in the passage of important fire and arson related bills; at the National level, to provide feedback reports to States and local fire departments that enable them to better manage and plan for fire protection and prevention programs, to produce the USFA's annual report "Fire in the United States", and other as required reports, to share useful consumer protection information with private concerns and other government agencies, and to perform special studies.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 14,000.

Estimated Time per Respondent: NFIRS–1, Incident Report—1 hour; NFIRS–2, Civilian Casualty Report—55 minutes; NFIRS–3, Fire Service Casualty Report—50 minutes; NFIRS–4, Fire Department Identification—30 minutes; NFIRS–5, Report of Submitted Incidents, 30 minutes; NFIRS-HMI, Hazardous Material Incident Report—45 minutes.

Estimated Total Annual Burden Hours: 983,000.

Frequency of Response: Quarterly and On Occasion.

Comments

Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or email muriel.anderson@fema.gov.

Dated: August 25, 1999.

Reginald Trujillo,

Director, Program Services Division, Operations Support Directorate.

[FR Doc. 99–23179 Filed 9–3–99; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Technical Mapping Advisory Council

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of meeting.

SUMMARY: In accordance with § 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, the Federal Emergency Management Agency gives notice that the following meeting will be held:

Name: Technical Mapping Advisory Council.

Date of Meeting: September 13–14, 1999.

Place: Metropolitan Sewer District, 700 West Liberty Street, Louisville, KY.

Times: 8:30 a.m. to 5:00 p.m., both days.

Proposed Agenda:

1. Call to Order and Announcements.
2. Action on Minutes of Previous Meeting.
3. FEMA/MSD Signing of CTC Agreement.
4. Future Conditions Hydrology Discussion.
5. 1999 Annual Report Discussion.
6. A Zone Recommendations.
7. Unique Hazards Recommendations.
8. DFIRM Graphics Review.
9. Update of Map Modernization Funding.
10. New Business.
11. Adjournment.

Status: This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Federal Emergency Management Agency, 500 C Street SW., room 421, Washington, DC 20472, telephone (202) 646–2756 or by facsimile at (202) 646–4596.

SUPPLEMENTARY INFORMATION: This meeting is open to the public with limited seating available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact Sally Magee, Federal Emergency Management Agency, 500 C Street SW., room 442, Washington, DC 20472, telephone (202) 646–8242 or by facsimile at (202) 646–4596 on or before September 6, 1999.

Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved by the next Technical Mapping Advisory Council meeting.

Dated: August 26, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–23175 Filed 9–3–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY:

Background.

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received may be inspected in room M–P–500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Mary M. West, Chief, Financial Reports Section (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins (202–452–3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Request for comment on information collection proposals.

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. ways to enhance the quality, utility, and clarity of the information to be collected; and

d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before November 8, 1999.

Discontinuation of the following report:

1. Report title: Commercial Bank Report of Consumer Credit.
Agency form number: FR 2571.
OMB control number: 7100–0080.
Effective Date: Mid-year 2000.
Frequency: Monthly.
Reporters: Commercial Banks.
Annual reporting hours: 2,475 hours.
Estimated average hours per response: 33 minutes.
Number of respondents: 375 commercial banks.
Small businesses are affected.
General description of report: This information collection is voluntary (12 U.S.C. 248(a)(2)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The FR 2571 collects information on outstanding consumer credit, by type, as of the last business day of the month, from a sample of commercial banks. This survey, however, has become less reliable in recent years. Sales of loan portfolios between banks inside and outside of the FR 2571 sample cause the estimated amount of consumer credit held or securitized by commercial banks to fluctuate sharply relative to that held or securitized by the commercial bank universe. Extensive ad hoc adjustments are often needed to keep the consumer credit data in what is believed to be a reasonable range. The accuracy of these adjustments is unknown until staff benchmark total commercial bank consumer credit to the quarterly Consolidated Reports of Condition and Income (Call Report; FFIEC 031–034).

Current Actions: The Federal Reserve proposes to discontinue the FR 2571, subject to approval of the proposal to extend, with revision, the bank credit reports: the Weekly Report of Assets and Liabilities for Large Banks (FR 2416), the Weekly Report of Selected Assets (FR 2644), and the Weekly Report of Assets and Liabilities for Large U.S. Branches and Agencies of Foreign Banks (FR 2069). In particular, this proposal is dependent on the addition of questions on revolving consumer loans and securitized total and revolving consumer loans to the bank credit reports.

Proposals to approve under OMB delegated authority the extension for three years, with revision the following reports:

1. Report title: Weekly Report of Assets and Liabilities for Large Banks.
Agency form number: FR 2416.
OMB control number: 7100–0075.
Effective Date: Mid-June 2000.
Frequency: Weekly.
Reporters: U.S.-chartered commercial banks.
Annual reporting hours: 18,850.
Estimated average hours per response: 7.25 hours.
Number of respondents: 50.
Small businesses are not affected.
General description of report: This information collection is voluntary (12 U.S.C. 225(a) and 248(a)(2)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

2. Report title: Weekly Report of Selected Assets.
Agency form number: FR 2644.
OMB control number: 7100–0075.
Effective Date: Mid-June 2000.
Frequency: Weekly.
Reporters: U.S.-chartered commercial banks.
Annual reporting hours: 66,924.
Estimated average hours per response: 1.17 hours.
Number of respondents: 1,100.
Small businesses are affected.
General description of report: This information collection is voluntary (12 U.S.C. 225(a) and 248(a)(2)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

3. Report title: Weekly Report of Assets and Liabilities for Large U.S. Branches and Agencies of Foreign Banks.
Agency form number: FR 2069.
OMB control number: 7100–0030.
Effective Date: Mid-June 2000.
Frequency: Weekly.
Reporters: U.S. branches and agencies of foreign (non-U.S.) banks.
Annual reporting hours: 27,891.
Estimated average hours per response: 5.83.
Number of respondents: 92.
Small businesses are not affected.
General description of report: This information collection is voluntary (12 U.S.C. 3105(b)(2)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The FR 2416 is a detailed, 43-item balance sheet that covers domestic offices of large U.S.-chartered commercial banks. The FR 2644 collects 11 items covering investments and loans plus total assets and three memorandum items, two that disaggregate total borrowings between bank and nonbank sources and one for mortgage-backed securities. The FR 2069 is a detailed, 28-item balance sheet that covers large U.S. branches and agencies of foreign banks. These reports are collected as of each Wednesday.

These three voluntary reports are mainstays of the Federal Reserve's reporting system from which data for analysis of current banking developments are derived. The FR 2416 is used on a stand-alone basis as the "large domestic bank series." The other two reports are samples for estimating outstandings for the universe, using data for benchmarks from the quarterly commercial bank Consolidated Reports of Condition and Income (FFIEC 031–034; OMB No. 7100–0036) and the Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (FFIEC 002; OMB No.7100–0032) (Call Reports). All three reports, together with data from other sources, are used for constructing weekly estimates of bank credit, of sources and uses of bank funds, and of a balance sheet for the banking system as a whole. These estimates are used in constructing the bank credit component of the domestic nonfinancial debt aggregate.

The Federal Reserve publishes the data in aggregate form in a statistical release that is followed closely by other government agencies, the banking industry, the financial press, and other users. This weekly H.8 statistical release, "Assets and Liabilities of Commercial Banks in the United States," provides a balance sheet for the banking industry as a whole and disaggregated by its large domestic, small domestic, and foreign related components.

Current Actions: Owing to substantial consolidation in the domestic banking industry since the last report renewal, a considerable shift from FR 2416 to FR 2644 panels would be required to maintain traditional large bank coverage. The Federal Reserve proposes reducing the authorized size of the FR 2416 panel. Several reporters currently on the branch and agency (FR 2069) panel would be dropped because most of their assets have been shifted to other reporters.

The Federal Reserve proposes a net addition of three items to the FR 2416 and the FR 2644; these three items are currently reported on the monthly Commercial Bank Survey of Consumer Credit (FR 2571; OMB No. 7100–0080). The Federal Reserve proposes to discontinue the FR 2571, contingent upon the addition of these items to the weekly condition/bank credit reports. The Federal Reserve also proposes to add a memorandum item to the FR 2416 and the FR 2069 and to clarify the FR 2416 and the FR 2644 instructions for reporting derivatives.

Proposal to approve under OMB delegated authority the extension for three years, without revision, the following report:

1. Report title: The Recordkeeping and Disclosure Requirements Associated with Loans Secured by Real Estate Located in Flood Hazard Areas Pursuant to Section 208.25 of Regulation H.
Agency form number: unnum Reg H–2.
OMB control number: 7100–0280.
Frequency: Event-generated.
Reporters: State Member Banks.
Annual reporting hours: 58,885.
Estimated average hours per response: Notice of special flood hazards to borrowers and servicers, Notice to FEMA of servicer, and Notice to FEMA of change of servicer: 5 minutes each; Retention of standard FEMA form: 2.5 minutes.
Number of respondents: 988.
Small businesses are affected.
General description of report: This information collection is mandatory (12 CFR 208.25). Since the Federal Reserve does not collect any information, no issue of confidentiality would normally arise. Should any of these records come into the possession of the Federal Reserve System, such information would be given confidential treatment (5 U.S.C. 552(b)(4) and (b)(6)).

Abstract: The regulation requires the state member banks (SMBs) to notify a borrower and servicer when loans secured by real estate are determined to be in a special flood hazard area. The SMB must then notify the borrower and servicer whether flood insurance is available. If a loan secured by real estate is in a special flood hazard area, the SMB must notify the Federal Emergency Management Agency (FEMA) of the identity of, and any change of, the servicer of the loan. Lastly, the SMB must retain a copy of the Standard Flood Hazard Determination Form used to determine whether the property securing a loan is in a special flood hazard area.

Board of Governors of the Federal Reserve System, August 31, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–23119 Filed 9–3–99; 8:45 am]

Billing Code 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 21, 1999.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Harriet Dolores Jones, Walker, Minnesota; to acquire voting shares of CNB, Inc., Walker, Minnesota, and thereby indirectly acquire voting shares of Centennial National Bank, Walker, Minnesota.

Board of Governors of the Federal Reserve System, August 31, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–23116 Filed 9–3–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 1, 1999.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. TCNB Financial Corp., Dayton, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens National Bank of Southwestern Ohio, Dayton, Ohio, a *de novo* bank.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1413:

1. Holland Financial Corporation, Holland, Michigan; to acquire 100 percent of the voting shares of The Bank of Northern Michigan, Petoskey, Michigan, in organization.

Board of Governors of the Federal Reserve System, August 31, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–23115 Filed 9–3–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice To Engage in Certain Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 99-22282) published on page 46916 of the issue for Friday, August 27, 1999.

Under the Federal Reserve Bank of New York heading, the entry for J.P. Morgan & Co., Incorporated, New York, New York, is revised to read as follows:

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. J.P. Morgan & Co. Incorporated, New York, New York, and UBS AG, Zurich, Switzerland (collectively, Notificants) have sought the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and section

225.24 of the Board's Regulation Y (12 CFR 225.24), to acquire or retain more than 20 percent of the voting shares of TP Group Limited, Grand Cayman, Cayman Islands, and thereby acquire shares of its subsidiary, Tradepoint Financial Networks plc, London, England (Tradepoint). Tradepoint operates the Tradepoint Stock Exchange, an electronic stock exchange for the trading of certain securities listed on the London Stock Exchange. The Tradepoint Stock Exchange allows members to electronically enter bids or offers on securities, automatically matches bids and offers for execution, and engages in other related activities. The Tradepoint Stock Exchange does not settle the trades executed on the exchange; trades generally are settled through the London Clearing House. The Tradepoint Stock Exchange is a recognized investment exchange under Section 37(3) of the United Kingdom Financial Services Act of 1986. Pursuant to an exemptive order issued by the Securities and Exchange Commission, the Tradepoint Stock Exchange is not registered as an exchange under the Securities Exchange Act of 1934. The proposed activities would be conducted worldwide.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues presented by the application, including whether the proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto" for purposes of section 4(c)(8) of the BHC Act. Notificants assert that the proposed activities are permissible under section 225.28(b)(7) of the Board's Regulation Y. Additional information concerning the proposals is contained in the notices, which are available at the Federal Reserve Bank of New York. The notice also will be available for inspection at the Board of Governors. Any comments or requests for hearing should be submitted in writing and received by Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than September 17, 1999.

Board of Governors of the Federal Reserve System, August 31, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–23117 Filed 9–3–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 21, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. National Bank of Canada, Montreal, Quebec, Canada; to acquire through its wholly owned subsidiary, First Marathon Inc., Toronto, Canada, in excess of 4.9 percent but less than 25 percent of the voting shares of GlobalNet Financial.com, Inc., Boca Raton, Florida, and thereby engage in financial and investment advisory services, pursuant to § 225.28(b)(6) of Regulation Y; in securities brokerage services, pursuant to § 225.28(b)(7)(i) of Regulation Y; and in data processing services, pursuant to § 225.28(b)(14) of Regulation Y. These acitivities will be conducted worldwide.

B. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. Commerce Bancorp, Inc., Cherry Hill, New Jersey; to acquire 9.9 percent of Chester Valley Bancorp, Inc., Downingtown, Pennsylvania, and thereby indirectly acquire First Financial Savings Bank, Downingtown, Pennsylvania, and thereby engage in operating a savings association, pursuant to § 225.28(b)(14) of Regulation Y. Comments on this notice must be received by October 1, 1999.

Board of Governors of the Federal Reserve System, August 31, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–23118 Filed 9–3–99; 8:45 am]

BILLING CODE 6210–01–F

GOVERNMENT PRINTING OFFICE

Depository Library Council to the Public Printer; Meeting

The Depository Library Council to the Public Printer (DLC) will meet on Monday, October 18, 1999, through Thursday, October 21, 1999, in Kansas City, Missouri. The sessions will take place from 8:30 a.m. until 5 p.m. on Monday, Tuesday, and Wednesday, and from 8:30 a.m. until 10 a.m. on Thursday. The meeting will be held at the Hotel Phillips, 106 West 12th Street, Kansas City, Missouri. The purpose of this meeting is to discuss the Federal Depository Library Program. All sessions are open to the public.

A limited number of hotel rooms have been reserved at the Hotel Phillips for anyone needing hotel accommodations. Telephone: (800) 433–1426 or the hotel directly at (816) 221–7000. Please specify the U.S. Government Printing Office when you contact the hotel. Room cost per night is $88 single, $98 double through September 17, 1999.

Michael F. DiMario,

Public Printer.

[FR Doc. 99–23149 Filed 9–3–99; 8:45 am]

BILLING CODE 1520–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Privacy Act of 1974: Altered System of Records

AGENCY: Office of the Assistant Secretary for Management and Budget, Office of the Secretary, HHS.

ACTION: Notice of an altered system of records.

SUMMARY: In accordance with the requirements of the Privacy Act, the U.S. Department of Health and Human Services (HHS) is publishing a notice of a proposed altered system of records, 09–90–0024, "Financial Transactions of HHS Accounting and Finance Offices." The purpose of the alteration is to add a new routine use in order to implement the administrative wage garnishment provision in section 31001(o) of the Debt Collection Improvement Act of 1996 (Pub. L. 104–134), codified at 31 U.S.C. 3720D.

DATES: HHS submitted a report of an altered system to the Office of Management and Budget and to the Congress on July 26, 1999. The new routine use will take effect without further notice 40 days after the date of publication, unless HHS receives comments which would result in a contrary determination.

ADDRESSES: Please address comments to: Deputy Assistant Secretary, Finance, Room 555–D, Hubert H. Humphrey Building, 200 Independence Ave.. SW., Washington, DC 20201.

Comments received will be available for inspection at this same address from 9 a.m. to 3 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ms. Sue Mundstuk, Privacy Act Coordinator, Office of Financial Policy, DASF/ASMB, Room 522–D, Hubert H. Humphrey Building, 200 Independence Ave, SW., Washington, DC 20201, Telephone: (202) 690–6228.

SUPPLEMENTARY INFORMATION: The system notice was last published in full at 62 FR 758 (1997).

On April 26, 1996, the Congress passed Pub. L. 104–134, Sec. 31001 known as the "Debt Collection Improvement Act of 1996" (DCIA). The purposes of this Act are to: (1) Maximize collections of delinquent debts owed to the Government, (2) minimize the costs of debt collection, (3) reduce losses arising from debt management activities, (4) ensure that the public is fully informed of the Federal Government's debt collection policies, (5) ensure debtors are cognizant of their financial obligations to repay amounts owed to the Government, (6) ensure that debtors have all appropriate due process rights, including the ability to verify, challenge, and compromise claims, and access to administrative appeals procedures, and (7) encourage agencies, when appropriate to sell delinquent debts, particularly debts with underlying collateral, and rely on the experience and expertise of private sector professionals to provide debt collection services to Federal agencies.

The DCIA authorizes Federal agencies to administratively garnish the disposable pay of an individual to collect delinquent nontax debts owed to the United States in accordance with regulations issued by the Secretary of the Treasury. The Financial Management Service (FMS), a bureau of the Department of the Treasury, is responsible for promulgating the regulations implementing this and other debt collection tools established by the DCIA. FMS published the final rule in 63 FR 25136, which was effective June 5, 1998. The complete administrative wage garnishment provisions can be found at 31 CFR part 285. We have added routine use 22 to provide for the issuing of wage garnishment orders to the employers of delinquent debtors, pursuant to 31 CFR part 285.

The complete system notice is republished below.

Dated: July 26, 1999.

John J. Callahan,

Assistant Secretary for Management and Budget.

09–90–0024

SYSTEM NAME:

Financial Transactions of HHS Accounting and Finance Offices, HHS/OS/ASMB.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

See Appendix 1.

Memoranda copies of claims submitted for reimbursement of travel and other expenditures while on official business may also be maintained at the administrative and/or program office of the HHS employee. Records concerning outstanding debts may also be maintained at the program office or by the designated claims officer apart from the finance office.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who receive a payment from the Operating Divisions (OPDIV) Headquarters, Area and District offices and all persons owing monies to these HHS components. Persons receiving payments include, but are not limited to, travelers on official business, grantees, contractors, consultants, and recipients of loans and scholarships. Persons owing monies include, but are not limited to, persons who have been overpaid and who owe HHS a refund and persons who have received from HHS goods or services for which there is a charge or fee (e.g., Freedom of Information Act requesters).

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, identification number, address, purpose of payment, accounting classification and amount paid. Also, in the event of an overpayment and for outstanding loans, grants or scholarships, the amount of the indebtedness, the repayment status and the amount to be collected. In the event of an administrative wage garnishment, information about the debtor's employment status and disposable pay available for withholding will be maintained.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Budget and Accounting Act of 1950 (Pub. L. 81–784); Debt Collection Act of 1982 (Pub. L. 97–365); Debt Collection Improvement Act of 1996 (Pub. L. 104–134, sec. 31001).

PURPOSE(S):

These records are an integral part of the accounting systems at OPDIVs Headquarters and specific Area and District locations. The records are used to keep track of all payments to individuals, exclusive of salaries and wages, based upon prior entry into the systems of the official commitment and obligation of government funds. When a person is to repay funds advanced as a loan or scholarship, etc., the records will be used to establish a receivable record and to track repayment status. In the event of an overpayment to a person, the record is used to establish a receivable record for recovery of the amount claimed. The records are also used internally to develop reports to the Internal Revenue Service (IRS) and applicable State and local taxing officials of taxable income. This is a Department-wide notice of payment and collection activities at all locations listed in Appendix 1.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Records will be routinely disclosed to the Treasury Department in order to effect payment.

2. Records may be disclosed to members of Congress concerning a Federal financial assistance program in order for members to make informed opinions on programs and/or activities impacting on legislative decisions. Also, disclosure may be made to a congressional office from an individual's record in response to an inquiry from the congressional office made at the request of the individual in order to be responsive to the constituency.

3. In the event HHS deems it desirable or necessary, in determining whether particular records are required to be disclosed under the Freedom of Information Act, disclosure may be made to the Department of Justice for the purpose of obtaining its advice.

4. A record from this system may be disclosed as a "routine use" to a Federal, State or local agency maintaining civil, criminal or other

relevant enforcement records or other pertinent records, such as current licenses, if necessary to obtain a record relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant or other benefit.

5. A record from this system may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the record is relevant and necessary to its decision on the matter.

6. Where Federal agencies having the power to subpoena other Federal agencies' records, such as the Internal Revenue Service (IRS) or the Civil Rights Commission, issue a subpoena to HHS for records in this system of records, HHS will make such records available, provided however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

7. Where a contract between a component of HHS and a labor organization recognized under E.O. 11491 provides that the agency will disclose personal records relevant to the organization's mission, records in the system of records may be disclosed to such organization.

8. A record may be disclosed to the Department of Justice, to a court, or other tribunal, or to another party before such tribunal, when: (1) HHS, or any component thereof; (2) Any HHS employee in his/her official capacity; (3) Any HHS employee in his/her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (4) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

9. A record about a loan applicant or potential contractor or grantee may be disclosed from the system of records to credit reporting agencies to obtain a credit report in order to determine the person's credit worthiness.

10. When a person applies for a loan under a loan program as to which the OMB has made a determination under I.R.C. 6103(a)(3), a record about his/her application may be disclosed to the Treasury Department to find out whether he/she has a delinquent tax account, for the sole purpose of determining the person's creditworthiness.

11. A record from this system may be disclosed to the following entities in order to help collect a debt owed the United States:

a. To another Federal agency so that agency can effect a salary offset;

b. To the Treasury Department or another Federal agency in order to effect an administrative offset under common law or under 31 U.S.C. 3716 (withholding from money payable to, or held on behalf of, the individual);

c. To the Treasury Department to request the person's mailing address under I.R.C. 6103(m)(2) in order to help locate the person or to have a credit report prepared;

d. To agents of HHS and to other third parties, including credit reporting agencies, to help locate the person or to obtain a credit report on him/her, in order to help collect or compromise a debt;

e. To debt collection agents or contractors under 31 U.S.C. 3718 or under common law to help collect a past due amount or locate or recover debtors' assets;

f. To the Justice Department for litigation or for further administrative action; and

g. To the public, as provided by 31 U.S.C. 3720E, in order to publish or otherwise publicly disseminate information regarding the identity of the person and the existence of a nontax debt.

Disclosure under part (d) and (g) of this routine use is limited to the individual's name, address, social security number, and other information necessary to identify the person. Disclosure under parts (a)–(c) and (e) is limited to those items; the amount, status, and history of the claim; and the agency or program under which the claim arose. An address obtained from IRS may be disclosed to a credit reporting agency under part (d) only for purposes of preparing a credit report on the individual.

12. A record from this system may be disclosed to another Federal agency that has asked HHS to effect an administrative offset under common law or under 31 U.S.C. 3716 to help collect a debt owed the United States. Disclosure under this routine use is limited to: Name and address, Social Security number, and other information necessary to identify the individual; information about the money payable to or held for the individual; and other information concerning the administrative offset.

13. Disclosure with regard to claims or debts arising under or payable under the Social Security Act may be made from this system to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1986 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed the Federal Government. Disclosure of records is limited to the individual's name, address, Social Security number, and other information necessary to establish the individual's identity; the amount, status and history of the claim; and the agency or program under which the claim arose.

14. Information in this system of records is used to prepare W–2s and 1099 Forms to submit to the Internal Revenue Service and applicable State and local governments items considered to be included as income to a person: Certain travel related payments to employees, all payments made to persons not treated as employees (e.g., fees to consultants and experts), and amounts written-off as legally or administratively uncollectible, in whole or in part.

15. A record may be disclosed to banks enrolled in the Treasury Credit Card Network to collect a payment or debt when the person has given his/her credit card number for this purpose.

16. Records may be disclosed to a contractor (and/or to its subcontractor) who has been engaged to perform services on an automated data processing (ADP) system used in processing financial transactions. The contractor may have been engaged to develop, modify and test a new ADP system, including both software and hardware upgrades or enhancements to such a system; perform periodic or major maintenance on an existing ADP system; audit or otherwise evaluate the performance of such an ADP system; and/or operate such a system.

17. Records may be disclosed to student volunteers, individuals working under a personal services contract, and other individuals performing functions for the Department but technically not having the status of agency employees, if they need access to the records in order to perform their assigned agency functions.

18. A record from this system may be disclosed to any Federal agency or its agents in order to participate in a computer matching of a list of debtors against a list of Federal employees. Disclosure of records is limited to debtors' names, names of employers, taxpayers identifying numbers, addresses (including addresses of employers), and dates of birth, and other information necessary to establish the person's identity.

19. A record may be disclosed to a commercial reporting agency that a person is responsible for a current claim, in order to aid in the collection of claims, typically by providing an incentive to the person to repay the claim or a debt timely. Disclosure of records is limited to information about a person as is relevant and necessary to meet the principal purpose(s) for which it is intended to be used under the law.

20. A record from this system may be disclosed to the Treasury Department or to an agency operating a Debt Collection Center designated by the Treasury in order to effect a collection of past due amounts.

21. If HHS decides to sell a debt pursuant to 31 U.S.C. 3711(I), a record from the system may be disclosed to purchasers, potential purchasers, and contractors engaged to assist in the sale or to obtain information necessary for potential purchasers to formulate bids and information necessary for purchasers to pursue collection remedies.

22. If HHS decides to administratively garnish wages of a delinquent debtor under the wage garnishment provision in 31 U.S.C. 3720D, a record from the system may be disclosed to the debtor's employer. This disclosure will take the form of a wage garnishment order directing that the employer pay a portion of the employee/debtor's wages to the Federal Government. Disclosure of records is limited to debtor's name, address, and social security number.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure pursuant to 5 U.S.C. 552a(b)(12): Disclosure may be made from this system to "consumer reporting agencies," as defined in 31 U.S.C. 3701(a)(3). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal Government, typically, to provide an incentive for debtors to repay their debts timely, by making these debts part of their credit records.

Disclosure of records is limited to the individual's name, address, social security number, and other information necessary to establish the individual's identity; the amount, status and history of the claim; and the agency or program under which the claim arose. The disclosure will be made only after the procedural requirements of 31 U.S.C. 3711(e) have been followed.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Hard copy documents are maintained in file folders at agency headquarters and area/district office sites; and on computer disc pack and magnetic tape at central computer sites.

RETRIEVABILITY:

This varies according to the particular accounting system within the HHS Operating Divisions, Area and District Offices. Usually the hard copy document is filed by name within accounting classification. Computer records may be indexed by social security number and voucher number. Intra-departmental uses and transfers concern the validation and certification for payment, and for HHS internal audits.

SAFEGUARDS:

1. *Authorized Users:* Employees and officials directly responsible for programmatic or fiscal activity, including administrative and staff personnel, financial management personnel, computer personnel, and managers who have responsibilities for implementing HHS funded programs.

2. *Physical Safeguards:* File folders, reports and other forms of personnel data, and electronic diskettes are stored in areas where fire and life safety codes are strictly enforced. All documents and diskettes are protected during lunch hours and nonworking hours in locked file cabinets or locked storage areas. Magnetic tapes and computer matching tapes are locked in a computer room and tape vault.

3. *Procedural Safeguards:* Password protection of automated records is provided. All authorized users protect information from public view and from unauthorized personnel entering an office. The safeguards described above were established in accordance with HHS Chapter 45–13 of the General Administration Manual; and the HHS ADP System Manual Part 6, "ADP Systems Security."

RETENTION AND DISPOSAL:

Records are purged from automated files once the accounting purpose has been served; printed copy and manual documents are retained and disposed of in accordance with General Accounting Office principles and standards as authorized by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Department of Health and Human Services, DHHS, Assistant Secretary for Management and Budget, Office of the Secretary, Room 510A, Hubert H. Humphrey Building, Washington, DC 20201.

NOTIFICATION PROCEDURE:

Inquiries should be made, either in writing or in person, to the organizations listed under "Location" in Appendix 1, with the exception of Food and Drug Administration records. For those records, contact: FDA Privacy Act Coordinator (HFW–30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

The individual making the inquiry must show proof of identity before information is released. Give name and social security number, purpose of payment or collection (travel, grant, etc.) and, if possible, the agency accounting classification.

RECORD ACCESS PROCEDURE:

Same as notification procedures. Requesters should also clearly specify the record contents being sought, and may include a request for an accounting of disclosures that have been made of their records, if any. (These access procedures are in accordance with HHS regulations (45 CFR 5b.5(a)(2)).)

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified under notification procedure above, and reasonably identify the record and specify the information being contested, the corrective action sought, and the reasons for requesting the correction, along with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Travel vouchers submitted by the individual; grant, contract and loan award document; delinquent loan, grant and scholarship record; consultant invoice of services rendered; and application for travel advance.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

Appendix 1—Location

Indian Health Service Area Offices (IHS)

Aberdeen Area Indian Health Service, Federal Building, 115 Fourth Avenue, Southeast, Aberdeen, SD 57401
Alaska Area Indian Health Service, 4141 Ambassador Drive, Anchorage, AK 99508–5928
Albuquerque Area Indian Health Service, 5338 Montgomery Blvd., NE, Albuquerque, NM 87109–1311
Bemidji Area Indian Health Service, 522 Minnesota Ave., NW, Bemidji, MN 56601
Billings Area Indian Health Service, 2900 4th Avenue North, Billings, MT 59101
California Area Indian Health Service, 1825 Bell Street, Sacramento, CA 95825–1097
Nashville Area Indian Health Service, 711 Stewarts Ferry Pike, Nashville, TN 37214–2634
Navajo Area Indian Health Service, P.O. Box 9020, Window Rock, AZ 86515–9020
Oklahoma City Area Indian Health Service, Five Corporate Plaza, 3625 NW 56th Street, Oklahoma City, OK 73112
Phoenix Area Indian Health Service, Two Renaissance Square, 40 North Central Avenue, Phoenix, AZ 85004
Portland Area Indian Health Service, 1220 S.W. Third Avenue—Room 476, Portland, OR 97204–2892
Tucson Area Indian Health Service, 7900 South "J" Stock Road, Tucson, AZ 97204–2892

Food and Drug Administration District Offices (FDA)

Food and Drug Administration, FDA, 60 Eighth Street, NE, Atlanta, GA 30309
Food and Drug Administration, FDA, Boston District Office, One Montvale Avenue, Stoneham, MA 62180
Food and Drug Administration, FDA, 599 Delaware Avenue, Buffalo, NY 14202
Food and Drug Administration, FDA, Room 700, Federal Office Building, 850 3rd Avenue (at 30th Street), Brooklyn, NY 11232
Food and Drug Administration, FDA, 61 Main Street, West Orange, NJ 07052
Food and Drug Administration, FDA, Room 1204, US Customhouse, 2nd and Chestnut Streets, Philadelphia, PA 19106
Food and Drug Administration, FDA, 900 Madison Avenue, Baltimore, MD 21201
Food and Drug Administration, FDA, San Juan District Office, PO Box 5719 PTA, De Tierra Station, San Juan, PR 00906–5719
Food and Drug Administration, FDA, Room 1222, Main Post Office Building, 433 West Van Buren Street, Chicago, IL 60607
Food and Drug Administration, FDA, 1560 East Jefferson Avenue, Detroit, MI 48207
Food and Drug Administration, FDA, 1141 Central Parkway, Cincinnati, OH 45202
Food and Drug Administration, FDA, 240 Hennepin Avenue, Minneapolis, MN 55401
Food and Drug Administration, FDA, 3032 Bryan Street, Dallas, TX 75204
Food and Drug Administration, FDA, 4298 Elysian Fields, New Orleans, LA 70122
Food and Drug Administration, FDA, National Center for Toxicological Research, Jefferson, AR 72079
Food and Drug Administration, FDA, 1009 Cherry Street, Kansas City, MO 64106
Food and Drug Administration, FDA, US Courthouse and Courthouse Building, 1114 Market Street, Room 1002, St. Louis, MO 63101
Food and Drug Administration, FDA, Building 20, Denver Federal Center, PO Box 25087, Denver, CO 80255–0087
Food and Drug Administration, FDA, Federal Office Building, Room 506, 50 United National Plaza, San Francisco, CA 94102
Food and Drug Administration, FDA, 1521 West Pico Boulevard, Los Angeles, CA 90015
Food and Drug Administration, FDA, 22201 23rd Avenue, SE, Bothell, WA 98021–4421
Food and Drug Administration, FDA, Headquarters Office, 5600 Fishers Lane, Room 11–83, Parklawn Building, Rockville, MD 20857

Centers for Disease Control and Prevention (CDC)

Centers for Disease Control and Prevention, CDC, Accounting Section (CO–5), Robert A. Taft Laboratories, 4676 Columbia Parkway, Cincinnati, OH 45226
Centers for Disease Control and Prevention, CDC
—and—
Agency for Toxic Substances and Disease Registry (ATSDR)
Financial Management Office, 1600 Clifton Road NE, (M/S D–04), Atlanta, GA 30333

Health Care Financing Administration (HCFA)

Health Care Financing Administration, HCFA, Room C3–0927, 7500 Security Boulevard, Baltimore, MD 21244

National Institutes of Health (NIH)

National Institutes of Health, NIH, Building 1, Room 222, Rocky Mountain Laboratory, Hilton, MT 59840
National Institutes of Health, NIH, National Institute of Mental Health, WAW Building, Room 562, St. Elizabeth's Hospital, Washington, DC 20032
National Institutes of Health, NIH, Frederick Cancer Research Facility, Fort Detrick Building, Room 427, Frederick, MD 21702–1201
National Institutes of Health, NIH, National Institutes of Environmental Health Sciences, Room B2–03, Building 101, Research Triangle Park, NC 27709
National Institutes for Health, NIH, National Institute on Drug Abuse, Addiction Research Center, Building C, Room 248, 4940 Eastern Avenue, Baltimore, MD 21224
National Institutes for Health, NIH, Headquarters Office, Operations Accounting Branch, Building 31, Room B1–B63, 9000 Rockville Pike, Bethesda, MD 20892–0134

Program Support Center (PSC)

Program Support Center, PSC, Division of Fiscal Services, 5600 Fishers Lane, Room 16–05, Rockville, MD 20857

Individual records of the following HHS Operating Divisions may be obtained from the Program Support Center (PSC):

1. Administration for Children and Families (ACF)
2. Administration on Aging (AoA)
3. Agency for Health Care Policy and Research (AHCPR)
4. Health Resources and Services Administration (HRSA)
5. Indian Health Service (IHS)
6. Substance Abuse and Mental Health Services Administration (SAMHSA)
7. Office of the Secretary (OS)

Substance Abuse and Mental Health Services Administration (SAMHSA)

In addition to the individual records maintained by the PSC, travel-related records for SAMHSA employees may also be obtained from the following SAMHSA program offices:

Office of the Administrator, Substance Abuse and Mental Health Services Administration, Room 12–107, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857
Office of Applied Studies, Substance Abuse and Mental Health Services Administration, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857
Office of Program Services, Division of Administrative Services, Substance Abuse and Mental Health Services Administration, Room 6–101, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857
Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, Room 9D10, Rockwall II Building, 5600 Fishers Lane, Rockville, Maryland 20857
Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, Room 10–75, Rockwall II Building, 5600 Fishers Lane, Rockville, Maryland 20857
Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, Room 15–105, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857

[FR Doc. 99–23122 Filed 9–3–99; 8:45 am]
BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Capacity-Building Assistance (CBA) To Improve the Delivery and Effectiveness of Human Immunodeficiency Virus (HIV) Prevention Services for Racial and Ethnic Minority Populations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Request for comments.

SUMMARY: In Fiscal Year 2000, CDC will provide approximately 8.4 million dollars to support racial and ethnic minority non-governmental organizations (NGOs) to carry out capacity-building activities that will strengthen the delivery and effectiveness of HIV prevention programs and services for racial and ethnic minority populations.

On June 30, 1999, CDC published in the **Federal Register** [64 FR 35170] a summary of this proposed program and requested public comments. Upon receipt of these comments, the CDC revised the proposed program and is again requesting additional comments. After consideration of additional comments submitted, the CDC will publish a program announcement to solicit applications. A more complete description of the goals of this program, the target applicants, availability of funds, program requirements, and evaluation criteria follows.

DATES: The public is invited to submit comments by September 21, 1999. The National Center for HIV, STD, and TB Prevention, Division of HIV/AIDS Prevention will host a Consultation on September 9–10, 1999, in Atlanta, Georgia to solicit additional comments on the Summary Statement for Capacity-Building Assistance (CBA) to Improve the Delivery and Effectiveness of Human Immunodeficiency Virus (HIV) Prevention Services for Racial and Ethnic Minority Populations.

ADDRESSES: Submit comments to: Technical Information and Communications Branch, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE, Mail Stop E49, Atlanta, GA 30333.

FOR FURTHER INFORMATION CONTACT: Technical Information and Communications Branch, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE, Mail Stop E49, Atlanta, GA 30333, Fax (404) 639–2007, E-mail address: HIVMAIL@CDC.GOV, Telephone (404) 639–2072.

SUPPLEMENTARY INFORMATION

A. Program Purpose

The primary purpose of this program is to provide financial and programmatic assistance to national, regional, and local non-governmental minority organizations to develop and implement regionally structured and integrated capacity-building assistance systems that will sustain, improve, and expand local HIV prevention services for racial and ethnic minority individuals whose behaviors place them at risk for acquiring or transmitting HIV and other sexually transmitted diseases (STDs). For this program, capacity-building assistance is defined as the provision of information, new HIV prevention technologies, consultation, technical services, and training for individuals and organizations to improve the delivery and effectiveness of HIV prevention services.

Capacity-building assistance developed under this program will be provided in 4 priority areas as follows: (1) Strengthening Organizational Infrastructure for HIV Prevention, (2) Enhancing HIV Prevention Interventions, (3) Mobilizing Communities for HIV Prevention, and (4) Strengthening HIV Prevention Community Planning.

Capacity-building assistance in Priority Areas (1), (2), and (4) will be regionally structured and delivered to the intended audience within four regional groups as follows:

Northeast Region: CT, MA, ME, NH, NJ, NY, PA, PR, RI, VT, U.S. Virgin Islands

Midwest Region: IL, IN, IA, KS, MI, MN, MO, NE, ND, OH, SD, WI

South Region: AL, AR, D.C., DE, FL, GA, KY, LA, MD, MS, NC, OK, SC, TN, TX, VA, WV

West Region: AK, AZ, CA, CO, HI, ID, NV, NM, OR, MT, UT, WA, WY, American Samoa, Commonwealth of Northern Mariana Islands, Federated States of Micronesia, Guam, Republic of Marshall Islands, Palau

Capacity-building assistance in Priority Area (3) can be structured and delivered within any of the four regional groups identified above, but can also be targeted according to identifiable patterns of minority subcultures and affinity groups (e.g., migrant streams, faith leaders, injection drug using networks).

B. Goals

The goals for this program are as follows:

1. Priority Area (1): Strengthening Organizational Infrastructure

Improve the capacity of community-based organizations (CBOs) to develop and sustain organizational infrastructures that support the delivery of HIV prevention program services and interventions.

The emphasis for providing capacity-building assistance in Priority Area (1) is for CBOs funded directly by CDC. Other CBOs can be provided assistance, if funding is sufficient for expanded services.

2. Priority Area (2): Enhancing Interventions

Improve the capacity of CBOs to design, develop, implement, and evaluate effective HIV prevention interventions for racial/ethnic minority populations at risk for acquiring or transmitting HIV and other STDs.

The emphasis for providing capacity-building assistance in Priority Area (2) is for CBOs funded directly by CDC, and CBOs funded by State or local health departments. Other organizations can be provided assistance in Priority Area (2), if funding is sufficient for expanded services.

3. Priority Area (3): Mobilizing Communities for HIV Prevention

Improve the capacity of CBOs and other community stakeholders to engage and develop their communities for the purpose of increasing their awareness, leadership, participation in, and support for HIV prevention.

The emphasis for providing capacity-building assistance in Priority Area (3) is for CBOs and other community stakeholders relating to racial and ethnic minority communities heavily affected by the HIV/AIDS epidemic.

4. Priority Area (4): Strengthening HIV Prevention Community Planning

a. Enhance the capacity of CBOs, health departments, and other community stakeholders to effectively participate in and support the HIV prevention community planning process.

b. Enhance the capacity of community planning groups (CPGs) to support and involve racial and ethnic minority participants in the community planning process and to increase Parity, Inclusion, and Representation (PIR) .

The emphasis for providing capacity-building assistance in Priority Area (4) is for community planning groups, CBOs and other community stakeholders, and health departments. For the purpose of this program announcement, community stakeholders are individuals, groups, or organizations in the target community that have an interest or stake in preventing HIV and are potential or actual agents of change.

C. Priority Areas

In the following sections, information will be described on eligible applicants, availability of funds, funding priorities, program requirements, and evaluation criteria for each of the priority areas. Organizations may apply for more than one priority area. However, a separate application must be submitted for each priority area.

1. Priority Area (1): Strengthening Organizational Infrastructure

a. Eligibility

Eligible applicants are national minority organizations, or for-profit small minority businesses. Applicants must meet the following criteria:

(1) Small minority businesses

(a) Have obtained 8A status from the Small Business Administration (SBA).

(b) Have minority ownership of the business.

(c) Have a 3-year track record providing organizational capacity-building assistance to CBOs serving racial and ethnic minority population(s).

(d) Have racial and ethnic minority persons serve in greater than 50 percent of key positions in the organization, including management, supervisory, administrative, and service provision positions (for example, company executive officer, program director, fiscal director, or capacity-building assistance providers).

(2) National non-governmental minority organizations

(a) Have a currently-valid IRS Tax Determination 501(C)3 status.

(b) Have a documented and established 3-year record of service providing organizational capacity-building assistance to CBOs serving racial and ethnic minority population(s).

(c) Have a governing body composed of greater than 50 percent racial and ethnic minority members.

(d) Have racial and ethnic minority persons serve in greater than 50 percent of key positions in the organization, including management, supervisory, administrative, and service provision positions (for example, executive director, program director, fiscal director, technical assistance provider, trainer, curricula development specialist, or group facilitator).

Applicants applying for Priority Area (1) must serve CBOs in all 4 regions specified above and provide assistance to CBOs providing services to all 4 major racial/ethnic groups which are as follows: Black or African-American, Hispanic or Latino, American Indian or Alaskan Native, and Asian/Native Hawaiian or Other Pacific Islander.

b. Availability of Funds

Up to $2.0 million is expected to be available in FY 2000 to fund 1–4 programs. It is expected that the awards will begin in March, 2000, and will be made for a 12-month budget period within a project period of up to five years.

c. Funding Priorities

In making funding decisions, efforts will be made to ensure capacity-building assistance for all CDC-funded CBOs.

d. Program Requirements

The program requirements are as follows:

(1) Conduct an assessment of the governance, management, administrative, and fiscal systems of all CDC funded CBOs.

(2) Develop and implement a plan for targeting, engaging, and maintaining long-term capacity-building relationships with CDC-funded CBOs. The plan should include strategies for conducting ongoing needs assessments and developing tailored multi-component capacity-building packages to be delivered over the long-term and as appropriate to the identified needs.

(3) Ensure the effective and efficient provision of capacity-building assistance to strengthen organizational infrastructure. Examples include, but are not limited to, organizational evaluation and assessment, board development, human resource management, fiscal management, strategic planning, HIV prevention policy development, and implementation of quality assurance measures (a more complete list will be provided in the program announcement). These services are to be provided through the use of the following delivery mechanisms: Information Transfer, Skills Building, Technical Consultation, Technical Services, and Technology Transfer.

(4) Develop and implement a system that responds to capacity-building assistance requests. This system must include mechanisms for assessing and prioritizing requests; linking requests to other capacity-building resources; and to services provided in Priority Areas (2), (3) and (4); delivering capacity-building services; and conducting quality assurance.

(5) Create, utilize, and support a regionally structured resource network that includes consultants and other subject matter experts with expertise in strengthening organizational infrastructure. Emphasize the use of locally-based consultants. Supportive services for the resource networks include, but are not limited to, developing training materials (technical service) and conducting orientation (information transfer) for consultants to assist them with delivering effective and efficient services that follow national standards of practice and compliment CDC's standards and expectations for conducting business and programmatic activities.

(6) Identify, collaborate with, and complement the capacity-building efforts available locally to avoid duplication of effort and to ensure that capacity-building assistance is allocated according to gaps in services and the priority "Organizational Infrastructure Development and Assessment" needs of CDC-funded CBOs.

(7) Coordinate program activities with appropriate national, regional, State, and local HIV prevention programs; national, State and local capacity-building providers; and State or local community planning groups.

Site visits by CDC staff may be conducted before final funding decisions are made. A fiscal Recipient Capability Assessment (RCA) may be required of some applicants before funds are awarded.

2. Priority Area (2): Enhancing HIV Prevention Interventions

a. Eligibility

Eligible applicants are national minority organizations as lead organizations within a coalition serving a specific racial/ethnic minority group within all four regions, or a regional minority organization as the lead organization within a coalition serving a specific racial/ethnic minority group within all four regions. Applicants must meet the following criteria:

(1) Have a currently-valid IRS Tax Determination 501(C)3 status.

(2) Have a documented and established 3-year record of service providing capacity-building assistance in "Enhancing HIV Prevention Interventions".

(3) Have a governing body composed of greater than 50 percent of the racial and ethnic minority population to be served.

(4) Have greater than 50 percent of key positions in the organization, including management, supervisory, administrative, and service provision positions filled by members of the racial and ethnic population to be served (for example, executive director, program director, fiscal director, technical assistance provider, trainer, curricula development specialist, or group facilitator).

Members of the coalition must include, at a minimum, an organization located within each of the four regions. The lead applicant can represent one of the four regions. Applicants must apply to serve no more than one of the four major racial/ethnic groups.

b. Availability of Funds

Up to 3.5 million is expected to be available in FY 2000 to fund 4 programs. It is expected that the awards will begin in March, 2000, and will be made for a 12-month budget period within a project period of up to five years.

c. Funding Priorities

In making funding decisions, efforts will be made to ensure that (1) capacity-building assistance is available for all four regions and all four major ethnic/racial groups, and (2) funding for capacity-building assistance is distributed in proportion to the HIV/AIDS disease burden for the four major racial and ethnic minority populations.

d. Program Requirements

The program requirements are as follows:

(1) Ensure the effective and efficient provision of capacity-building assistance to enhance HIV prevention interventions. Examples include, but are not limited to, curricula development, improving cultural competence, service integration, incorporating behavioral science, improving health communication messages, evaluation for intervention effectiveness, and improving risk reduction strategies (a more complete list will be provided in the program announcement). These services are to be provided through the use of the following delivery mechanisms: Information Transfer, Skills Building, Technical Consultation, Technical Services, and Technology Transfer. These services should be culturally appropriate and based in science.

(2) Establish and support a coalition to implement proposed program. The coalition should represent all four regions. Supportive services for the coalition include, but are not limited to, establishing ongoing communication mechanisms, establishing reporting standards, conducting process evaluation, establishing standards of practice, and conducting quality assurance.

(3) Create, utilize, and support regionally-based resource networks that includes the applicant and coalition members' current and proposed staff, researchers, academicians, consultants, and other subject matter experts, and may include collaborative relationships. Emphasize the use of locally-based consultants and experts. Supportive services for the resource networks include, but are not limited to, developing training materials (technical service), diffusion of best program practices and intervention models (technology transfer), and conducting orientation (information transfer) for consultants to assist them with delivering effective and efficient services that follow national standards of practice and compliment CDC's standards and expectations for conducting HIV educational programs and interventions.

(4) Develop and implement a plan for targeting, engaging, and maintaining long-term capacity-building relationships with CBOs. The plan should include strategies for conducting ongoing assessments and evaluations of HIV interventions and the support structures to deliver these interventions, and developing tailored capacity-building packages to be delivered over the long-term and as appropriate to the identified needs.

(5) Develop and implement a system that responds to capacity-building assistance requests. This system must include mechanisms for assessing and prioritizing requests; linking requests to other capacity-building resources and to services provided in Priority Areas (1), (3) and (4); delivering services; and conducting quality assurance.

(6) Identify, collaborate with, and complement the capacity-building efforts available locally to avoid duplication of effort and to ensure that capacity-building assistance is allocated according to gaps in services and the priority "Enhancing HIV Prevention Interventions " needs of CBOs serving minority populations at high risk for acquiring and transmitting HIV and other STDs.

(7) Coordinate program activities with appropriate national, regional, State, and local HIV prevention programs, capacity-building providers, and community planning groups.

(8) Evaluate the accomplishment of program objectives and the process and outcomes of capacity-building assistance.

3. Priority Area (3): Mobilizing Communities for HIV Prevention

a. Eligibility

Eligible applicants are national, regional, or local minority organizations serving a community or communities defined by locality, risk behaviors, HIV/AIDS impact, HIV prevention health problems and needs, patterned social interaction, or a collective identity. At a minimum, Priority Area (3) activities must be conducted in two or more States. Applicants must meet the following criteria:

(1) Have a currently-valid IRS Tax Determination 501(C)3 status.

(2) Have a documented and established 3-year record of service providing capacity-building assistance in "Community Engagement and Development'.

(3) Have a governing body composed of greater than 50 percent of the racial and ethnic population to be served.

(4) Have racial and ethnic minority persons serve in greater than 50 percent of key positions in the organization, including management, supervisory, administrative, and service provision positions (for example, executive director, program director, fiscal director, technical assistance provider, trainer, curricula development specialist, or group facilitator).

b. Availability of Funds

Up to 1.4 million is expected to be available in FY 2000 to fund up to 10 programs. It is expected that the awards will begin in March, 2000, and will be made for a 12-month budget period within a project period of up to five years.

c. Funding Priorities

In making funding decisions, efforts will be made to ensure that funding for capacity-building assistance is distributed in proportion to the HIV/AIDS disease burden for the communities to be served.

d. Program Requirements

The program requirements are as follows:

(1) Select a defined community or cluster of communities that are defined by locality, risk behaviors, HIV/AIDS impact, HIV prevention health problems and needs, patterned social interaction, or a collective identity.

(2) Identify major opinion leaders across a diverse spectrum of individuals within the community(ties) who can identify high risk groups within the community, involve them in undertaking a community assessment and build consensus on actions that are necessary to strengthen networks for change within the community.

(3) Establish a community board comprised of diverse stakeholders such as (community leaders in areas of health, education, public health, parent groups, civic organizations, religion and political) who can identify and adopt a vision of their community and develop a practical, acceptable and feasible HIV prevention agenda.

(4) Develop a plan of action to provide capacity-building assistance to CBO staff and other community stakeholders that enables them to engage and develop their community or communities. This plan of action may include, but not be

limited to, training in leadership development, communication and resource network development, coalition building, community mobilization strategy development, community resources and needs assessments, community infrastructure development, policy development and analyses, and services integration and linkage development (a more complete list will be provided in the program announcement). These services are to be provided through the use of the following delivery mechanisms: Information Transfer, Skills Building, Technical Consultation, Technical Services, and Technology Transfer.

(5) Develop, implement, and market a system that responds to requests for assistance in mobilizing communities for HIV prevention. This system must include mechanisms for assessing and prioritizing requests; linking requests to other capacity-building resources and to services provided in Priority Areas (1), (2) and (4); delivering services; and conducting quality assurance.

(6) Develop and implement a plan for targeting, engaging, and maintaining long-term capacity-building relationships with CBOs. The plan should include strategies for conducting ongoing needs assessments and developing tailored capacity-building packages to be delivered over the long-term and as appropriate to the identified needs.

(7) Coordinate program activities with appropriate national, regional, State, and local HIV prevention programs, capacity-building providers, and community planning groups.

(8) Disseminate community engagement and development activities around HIV education and prevention at CDC grantee meetings, site visits, HIV prevention conferences and in publications and manuals.

4. Priority Area (4): Strengthening HIV Prevention Community Planning

a. Eligibility

Eligible applicants are national minority organizations as lead organizations within a coalition serving a specific racial/ethnic minority group within all four regions, or a regional minority organization as the lead organization within a coalition serving a specific racial/ethnic minority group within all four regions. Applicants must meet the following criteria:

(1) Have a currently-valid IRS Tax Determination 501(C)3 status.

(2) Have a documented and established 3-year record of service providing capacity-building assistance in strengthening HIV Prevention Community Planning.

(3) Have a governing body composed of greater than 50 percent of the racial and ethnic minority population to be served.

(4) Have greater than 50 percent of key positions in the organization, including management, supervisory, administrative, and service provision positions filled by persons of the racial and ethnic minority group to be served (for example, executive director, program director, fiscal director, technical assistance provider, trainer, curricula development specialist, or group facilitator).

Members of the coalition must include, at a minimum, an organization located within each of the four regions. The lead applicant can represent one of the four regions. Applicants must apply to serve no more than one of the four major racial/ethnic groups.

b. Availability of Funds

Up to 1.5 million is expected to be available to fund up to 4 programs. It is expected that the awards will begin in March, 2000, and will be made for a 12-month budget period within a project period of up to five years.

c. Funding Priorities

In making funding decisions, efforts will be made to ensure that (1) capacity-building assistance is available for all four regions and all four major ethnic/racial groups, and (2) funding for capacity-building assistance is distributed in proportion to the HIV/AIDS disease burden for the four major racial and ethnic minority populations.

d. Program Requirements

The program requirements are as follows:

(1) Develop regional action plans to provide capacity-building assistance to community planning groups (CPGs) to improve the "Parity, Inclusion and Representation" of racial and ethnic minority populations in State and local HIV prevention community planning groups.

(2) Develop regional action plans to provide capacity-building assistance to CBOs and other community stakeholders that will increase their knowledge, skill and involvement in HIV prevention community planning.

(3) Provide capacity-building assistance to CPGs, CBOs, and community stakeholders to strengthen the participation of racial and ethnic minority individuals in HIV Prevention Community Planning and the effectiveness of HIV Prevention Community Planning. Examples include, but are not limited to, conflict management, understanding community planning, prioritization strategies, leadership development, group and meeting facilitation, cultural competence, and public health policy analyses (a more complete list will be provided in the program announcement). These services are to be provided through the use of the following mechanisms: Information Transfer, Skills Building, Technical Consultation, Technical Services, and Technology Transfer.

(4) Create, utilize, and support regionally-based resource networks that include the applicant and coalition members' current and proposed staff, researchers, academicians, consultants, and other subject matter experts, and may include collaborative relationships. Emphasize the use of locally-based consultants and experts. Supportive services for the resource networks include, but are not limited to, developing training materials (information transfer), diffusion of best program practices and intervention models (technology transfer), and conducting training (skills building) for consultants to help them deliver effective and efficient services that follow national standards of practice and compliment CDC's standards and expectations for conducting effective community planning and HIV prevention services.

(5) Develop and implement a plan for targeting, engaging, and maintaining long-term capacity-building relationships with CPGs, CBOs, and community stakeholders. The plan should include strategies for conducting ongoing needs assessments and developing tailored capacity-building packages to be delivered over the long-term and as appropriate to the identified needs. This plan must be shared with the appropriate health departments and CPGs.

(6) Identify, collaborate with, and complement the capacity-building resources currently available in the region to avoid duplication of effort.

(7) Develop and implement a system that responds to requests for assistance in strengthening HIV Prevention Community Planning. This system must include mechanisms for assessing and prioritizing requests; linking requests to other capacity-building resources and to services provided in Priority Areas (1), (2) and (3); delivering services; and conducting quality assurance.

(8) Ensure that capacity-building assistance is allocated according to priority needs for "Community Planning Participation and Effectiveness" in CPGs needing increased Parity, Inclusion and Representation among racial and ethnic minority members and community stakeholders.

(9) Design a marketing plan that promotes and educates CBOs and community stakeholders about the HIV prevention community planning process.

(10) Coordinate program activities with appropriate national, regional, State, and local HIV prevention programs, capacity-building providers, and community planning groups.

D. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC:

1. Applicant Organization's Experience and Capacity
2. Justification of Need [Priority Area (3) only]
3. Program Plan
4. Program Evaluation Plan
5. Communication and Dissemination Plan
6. Plan for Acquiring Additional Resources
7. Budget and Staffing Breakdown and Justification (not scored)
8. Training and Technical Assistance Plan (not scored)

Site visits by CDC staff may be conducted before final funding decisions are made. A fiscal Recipient Capability Assessment (RCA) may be required of some applicants before funds are awarded.

Dated: August 31, 1999.

Joseph R. Carter,

Associate Director for Management and Operations, Centers for Disease Control and Prevention.

[FR Doc. 99–23152 Filed 9–3–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health

Draft Document "Building Safer Highway Work Zones: Measures To Prevent Worker Injuries From Vehicles and Equipment."

AGENCY: Centers for Disease Control and Prevention (CDC), National Institute for Occupational Safety and Health (NIOSH), Department of Health and Human Services (DHHS).

ACTION: Request for comments.

SUMMARY: NIOSH is seeking public comments on the draft document, "Building Safer Highway Work Zones: Measures to Prevent Worker Injuries From Vehicles and Equipment." The draft document synthesizes current work zone safety research and practice with information obtained at a workshop sponsored by NIOSH December 2–4, 1998, and attended by 50 representatives from labor, industry, government, and academia. The four broad workshop discussion topics were: Safety of workers on foot around traffic vehicles, safe operation of vehicles and equipment within the work zone, internal work zone traffic control, and special issues associated with night operations. Individuals will provide NIOSH with comments regarding the technical and scientific aspects of the document. Persons wishing to obtain a copy of the draft document should respond to the contact person listed below.

DATES: Comments concerning this document should be submitted by November 8, 1999. Persons wishing to obtain a copy of the draft document should contact Diane Miller, Docket Office Manager, Education and Information Division, NIOSH, CDC, 4676 Columbia Parkway, Mailstop C–34, Cincinnati, Ohio, 45226, telephone 513/533–8450, e-mail address: dmm2@cdc.gov. Comments may be submitted in writing to the NIOSH Docket Office.

FOR FURTHER INFORMATION CONTACT: Stephanie Pratt, Division of Safety Research, NIOSH, CDC, 1095 Willowdale Road, Mailstop P–180, Morgantown, West Virginia, 26505, telephone 304/285–5992, e-mail address: sgp2@cdc.gov.

Linda Rosenstock, M.D.,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 99–23217 Filed 9–3–99; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Refugee Unaccompanied Minor Placement Report; Refugee Unaccompanied Minor Progress Report.

OMB No.: 0970–0034.

Description: These two reports collect information necessary to administer the refugee unaccompanied minor program. The ORR–3 (Placement Report) is submitted to ORR by the service provider agency at initial placement and whenever there is a change in the child's status, including termination from the program. The ORR–4 (Progress Report) is submitted annually and records the child's progress towards the goals listed in the child's case plan.

Respondents: Not-for-profit institutions.

Annual Burden Estimates

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Placement Report	10	15	.417	63
Progress Report	10	25	.250	63

Estimated Total Annual Burden Hours: 126.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW; Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW, Washington, DC 20503, Attn: ACF Desk Officer.

Dated: August 25, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–23167 Filed 9–3–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–2695]

Agency Information Collection Activities; Announcement of OMB Approval; Survey of Biomedical Equipment Manufacturers for Year 2000 Compliance

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Survey of Biomedical Equipment Manufacturers for Year 2000 Compliance" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Thomas B. Shope, Office of Science and Technology (HFZ–140), Center for Devices and Radiological Health, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–3314, ext. 132, or FAX 301–443–9101.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 16, 1999 (64 FR 44529), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0417. The approval expires on February 29, 2000. A copy of the supporting statement for this information collection is available on the Internet at "http://www.fda.gov/ohrms/dockets".

Dated: August 30, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–23128 Filed 9–3–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–2998]

Asahi Denka Kogyo K.K.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Asahi Denka Kogyo K.K. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of tridecanol phosphite condensation product with butylidenebis[2-(1,1-dimethylethyl)-5-methyl-4,1-phenylene] as an antioxidant and/or stabilizer in styrene-isoprene-styrene copolymer to be used as a component of pressure-sensitive adhesives intended for use in contact with food.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9B4694) has been filed by Asahi Denka Kogyo K.K., 5–2–13, Shirahata, Urawa City, Saitama 336, Japan. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of tridecanol phosphite condensation product with butylidenebis[2-(1,1-dimethylethyl)-5-methyl-4,1-phenylene] as an antioxidant and/or stabilizer in styrene-isoprene-styrene copolymer to be used as a component of pressure-sensitive adhesives intended for use in contact with food.

The agency has determined under 21 CFR 25.32(i) that this action is of the type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: August 25, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–23130 Filed 9–3–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–2999]

Ciba Specialty Chemicals; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba Specialty Chemicals has filed a petition proposing that the food additive regulations be amended to provide for the safe use of benzenepropanoic acid, 3,5-bis(1,1-dimethylethyl)-4-hydroxy-, C7-C9-branched alkyl esters as an antioxidant and/or stabilizer for adhesives.

FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9B4686) has been filed by Ciba Specialty Chemicals, 540 White Plains Rd., P.O. Box 2005, Tarrytown, NY 10591–9005. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of benzenepropanoic acid, 3,5-bis(1,1-dimethylethyl)-4-hydroxy-, C7-C9-branched alkyl esters as an antioxidant and/or stabilizer for adhesives.

The agency has determined under 21 CFR 25.32(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: August 25, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–23129 Filed 9–3–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 94F–0334]

Morton International, Inc.; Filing of Food Additive Petition; Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the filing notice for a food additive petition filed by Morton International, Inc., to indicate that the petitioner has proposed that the food additive regulations be amended to provide for the safe use of methyltin-2-mercaptoethyloleate sulfide used alone or in combination with several other optional substances as a heat stabilizer for use in rigid poly(vinyl chloride) and rigid vinyl chloride copolymers intended for use in the manufacture of pipes and pipe fittings that will contact water in food processing plants.

FOR FURTHER INFORMATION CONTACT: Vivian M. Gilliam, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3094.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 21, 1994 (59 FR 53193), FDA announced that a food additive petition (FAP 4B4430) had been filed by Morton International, Inc., 2000 West St., Cincinnati, OH 45215. The petition proposed that the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of methyltin-2-mercaptoethyloleate sulfide mixtures as heat stabilizers for use in polyvinyl chloride pipes intended for transporting water for food contact.

Subsequent to the publication of the filing notice, FDA has determined that methyltin-2-mercaptoethyloleate sulfide is a complex mixture of one or more of the following:

1. 9-octadecenoic acid (Z)-, 2-mercaptoethyl ester, reaction products with dichlorodimethylstannane, sodium sulfide, and trichloromethylstannane (CAS Reg. No. 68442–12–6); or

2. Fatty acids, tall oil, 2-mercaptoethyl esters, reaction products with dichlorodimethylstannane, 2-mercaptoethyl decanoate, 2-mercaptoethyl octanoate, sodium sulfide, and trichloromethylstannane (CAS Reg. No. 151436–98–5); or

3. Fatty acids, tall oil, 2-mercaptoethyl esters, reaction products with dichlorodimethylstannane, sodium sulfide, and trichloromethylstannane (CAS Reg. No. 201687–57–2).

In addition, FDA has determined that the petition also proposes that the methyltin-2-mercaptoethyloleate sulfide may be used in combination with the following optional substances:

1. 2-mercaptoethyl oleate (CAS Reg. No. 59118–78–4), or 2-mercaptoethyl tallate (CAS Reg. No. 68440–24–4), or 2-mercaptoethyl octanoate (CAS Reg. No. 57813–59–9), or 2-mercaptoethyl decanoate (CAS Reg. No. 68928–33–6), alone or in combination;

2. 2-mercaptoethanol (CAS Reg. No. 60–24–2);

3. Mineral oil (CAS Reg. No. 8012–95–1); or

4. Butylated hydroxytoluene (CAS Reg. No. 128–37–0).

Finally, FDA has determined that the petition requests the use of methyltin-2-mercaptoethyloleate sulfide and the above optional substances as a heat stabilizer in rigid poly(vinyl chloride) and rigid vinyl chloride copolymers, complying with §§ 177.1950 and 177.1980, respectively. The rigid poly(vinyl chloride) and rigid vinyl chloride copolymers are intended for use in the manufacture of pipes and pipe fittings that will contact water in food processing plants.

Therefore, FDA is amending the filing notice of October 21, 1994, to indicate that the petitioner requests that the food additive regulations be amended to provide for the safe use of methyltin-2-mercaptoethyloleate sulfide that is defined as one or more of the following:

1. 9-octadecenoic acid (Z)-, 2-mercaptoethyl ester, reaction products with dichlorodimethylstannane, sodium sulfide, and trichloromethylstannane (CAS Reg. No. 68442–12–6); or

2. Fatty acids, tall oil, 2-mercaptoethyl esters, reaction products with dichlorodimethylstannane, 2-mercaptoethyl decanoate, 2-mercaptoethyl octanoate, sodium sulfide, and trichloromethylstannane (CAS Reg. No. 151436–98–5); or

3. Fatty acids, tall oil, 2-mercaptoethyl esters, reaction products with dichlorodimethylstannane, sodium sulfide, and trichloromethylstannane (CAS Reg. No. 201687–57–2); as a heat stabilizer for use in rigid poly(vinyl chloride) and rigid vinyl chloride copolymers, complying with §§ 177.1950 and 177.1980, respectively, intended for use in the manufacture of pipes and pipe fittings that will contact water in food processing plants.

In addition, FDA is amending the filing notice of October 21, 1994, to indicate that the petitioner requests that the food additive regulations be amended to provide for the safe use of methyltin-2-mercaptoethyloleate sulfide in combination with the following optional substances:

1. 2-mercaptoethyl oleate (CAS Reg. No. 59118–78–4), or 2-mercaptoethyl tallate (CAS Reg. No. 68440–24–4), or 2-mercaptoethyl octanoate (CAS Reg. No. 57813–59–9), or 2-mercaptoethyl decanoate (CAS Reg. No. 68928–33–6), alone or in combination;

2. 2-mercaptoethanol (CAS Reg. No. 60–24–2);

3. Mineral oil (CAS Reg. No. 8012–95–1); or

4. Butylated hydroxytoluene (CAS Reg. No. 128–37–0); as a heat stabilizer for use in rigid poly(vinyl chloride) and rigid vinyl chloride copolymers, complying with §§ 177.1950 and 177.1980, respectively, intended for use in the manufacture of pipes and pipe fittings that will contact water in food processing plants.

When the petition was first filed on October 21, 1994, it contained an environmental assessment (EA). In that notice of filing, the agency announced that it was placing the EA on display at the Dockets Management Branch for public review and comment. No comments were received. In the **Federal Register** of July 29, 1997 (62 FR 40570), FDA published revised regulations under part 25 (21 CFR part 25), which became effective on August 28, 1997. On June 4, 1999, the petitioner submitted a claim of categorical exclusion under the new § 25.32(j), in accordance with the procedures in § 25.15(a) and (d). The agency has reviewed the claim of categorical exclusion under § 25.32(j).

The agency has determined under § 25.32(j) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: August 18, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–23127 Filed 9–3–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–98–4002]

Exchange of Letters Between the Food and Drug Administration and the Canadian Food Inspection Agency

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of an exchange of letters (EOL's) between FDA and the Canadian Food Inspection Agency. The purpose of the EOL's is to enhance the exchange of information in emergency situations.

DATES: The agreement became effective March 2, 1998.

FOR FURTHER INFORMATION CONTACT: Ellen F. Morrison, Office of Regulatory Affairs (HFC–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1240.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this EOL.

Dated: August 27, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH & HUMAN SERVICES Public Health Service

Food and Drug Administration
Office of Regulatory Affairs
Rockville MD 20857

JAN - 5 1998

Mr. Andre' Gravel
Vice President for Programs
Canadian Food Inspection Agency
59 Camelot Drive
Nepean, Ontario, Canada K1A0Y9

Dear Mr. Gravel:

The U.S. Food and Drug Administration (FDA) is pleased to cooperate with your government and the government of Mexico to enhance our collective activities in the interest of public health protection through the exchange of timely information in emergency situations where such information is believed to be a value to the other participating party in protecting the health of consumers against unsafe marketed products. Additionally, we strongly agree with the value of, and need for assisting each other, upon request and within our authority, in investigating emergency situations involving human food and animal food products manufactured in or distributed from the other country.

FDA considers any situation which involves a serious health risk for consumers or caregivers who are exposed to an unsafe product as an "emergency situation." Such situations usually, but not always, involve significant media attention and the need to coordinate a timely or extraordinary operational response.

When FDA learns of emergency situations presenting a real or potentially serious health risk and it is known or suspected that the product has been sold or distributed in Canada or Mexico, FDA will attempt to promptly provide information to the appropriate authority on matters concerning manufacture, quality control and distribution. Such information may include, where available and if pertinent, records, reports, and other information on inspections, investigations, and analysis of marketed products.

At the request of either the Canadian or Mexican government, FDA will attempt to carry out investigations of specific situations where the findings of such investigations are deemed necessary to the adequate resolution or control of an emergency situation. Information so obtained will be forwarded in a timely manner to assist cooperating authorities in resolving the emergency and implementing appropriate measures to protect consumers.

Information provided to and received from the government of Canada or the government of Mexico will be handled as provided under "Title 21, Code of Federal Regulations,

Section 20.89." This regulation governs FDA's communications with foreign governments under the Freedom of Information Act. A copy is enclosed for your information along with a copy of the Regulatory Procedures Manual Chapter that establishes procedures for implementing this regulation.

To help ensure that this information exchange continues to work well and meets respective needs, we feel it is important that meetings be arranged, at appropriate intervals, and by mutual concurrence, for the purpose of reviewing the effectiveness of this cooperation.

The FDA's contact for these activities are as follows:

Primary: Ellen Morrison
Deputy Director
Pager# 1-888-581-6480 E-mail Address-emorriso@ora.fda.gov

Secondary: Gary Pierce
Director
Pager # 1-888-471-3576 E-mail Address-gpierce@ora.fda.gov
Division of Emergency and Investigational Operations (HFC-130)
Office of Regional Operations
U.S. Food and Drug Administration
5600 Fishers Lane
Rockville, Maryland 20857
U.S.A.
Telephone (301) 443-1240
* 24 emergency contacts with FDA/DEIO duty officer/alternate duty officer
Fax (301) 443-3757

We look forward to continuing and enhancing the excellent cooperation that we have successfully enjoyed to this date.

Sincerely yours,

Ronald G. Chesemore

Ronald G. Chesemore
Associate Commissioner
for Regulatory Affairs
U.S. Food and Drug Administration

Enclosure:

Canadian Food Inspection Agency
Agence canadienne d'inspection des aliments
Nepean, Ontario
K1A 0Y9

225-98-4002

MAR 0 2 1998

Your file Votre référence

Our file Notre référence

Mr. Ronald Chesemore
Associate Commissioner for Regulatory Affairs
United States Food and Drug Administration
Office of Regulatory Affairs
HFC-131
5600 Fishers Lane
Rockville, Maryland 20857
U.S.A.

Dear Mr. Chesemore:

Thank you for your letter of January 5, 1998 regarding information exchange in emergency situations. We also strongly agree with the need for assisting each other in investigating emergency situations involving human and animal food products.

As such, the Canadian Food Inspection Agency (CFIA) will continue the spirit of cooperation which we have had in the past. Dr. Anne MacKenzie, of our national office, has been in contact with Ellen Morrison on a number of issues relating to food emergency concerns. It is our expectation this contact will continue, and will be strengthened by our mutual agreement to meet at appropriate intervals to review the effectiveness of this cooperative effort.

The CFIA contacts for these activities are as follows:

Primary:

Dr. Anne MacKenzie
Director General, Food Inspection Directorate
59 Camelot Drive
Nepean, Ontario
K1A 0Y9
Telephone: (613) 225-2342 ext. 4188
Facsimile: (613) 228-6638
Internet: "amackenzie@em.agr.ca"
Cell: (613) 794-8521

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Canada

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Secondary:

Helen Spencer
A/Manager, National Inspection Initiatives
Food Inspection Directorate
59 Camelot Drive
Nepean, Ontario
K1A 0Y9
Telephone: (613) 225-2342 ext. 3785
Facsimile: (613) 228-6617
Internet: "hspencer@em.agr.ca"

With your support and assistance we can help to ensure that North America remains the world leader in food safety initiatives.

Yours sincerely,

André Gravel
A/Vice-President
Programs

c.c. A. MacKenzie
H. Spencer

[FR Doc. 99–23126 Filed 9–3–99; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1078–N]

Medicare Program; September 27 and 28, 1999, Meeting of the Practicing Physicians Advisory Council

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council. This meeting is open to the public.

DATES: The meeting is scheduled for September 27, 1999, from 8:30 a.m. until 5 p.m., and September 28, 1999, from 8:30 a.m. until 1:00 p.m., e.d.t.

ADDRESSES: The meeting will be held in the Multipurpose Room/Auditorium, 1st Floor, Health Care Financing Administration Building, 7500 Security Boulevard, Baltimore, Maryland 21244 on the 27th and in the 1st Floor Media Room on the 28th.

FOR FURTHER INFORMATION CONTACT: Aron Primack, MD, MA, FACP, Executive Director, Practicing Physicians Advisory Council, Room 435–H, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, (202) 690–7874. News media representatives should contact the HCFA Press Office, (202) 690–6145.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Health and Human Services (the Secretary) is mandated by section 1868 of the Social Security Act to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Health Care Financing Administration no later than December 31 of each year.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under Medicare or Medicaid in the previous year. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members must be doctors of medicine or osteopathy authorized to practice medicine and surgery by the States in which they practice. Members have been invited to serve for overlapping 4-year terms. In accordance with section 14 of the Federal Advisory Committee Act, terms of more than 2 years are contingent upon the renewal of the Council by appropriate action before the end of the 2-year term. The Council held its first meeting on May 11, 1992.

The current members are: Jerold M. Aronson, M.D.; Richard Bronfman, D.P.M.; Wayne R. Carlsen, D.O.; Mary T. Herald, M.D.; Sandral Hullett, M.D.; Stephen A. Imbeau, M.D.; Jerilynn S. Kaibel, DC; Marie G. Kuffner, M.D.; Derrick K. Latos, M.D.; Dale Lervick, O.D.; Sandra B. Reed, M.D.; Susan Schooley, M.D.; Maisie Tam, M.D.; Victor Vela, M.D.; and Kenneth M. Viste, Jr., M.D. The Council chairperson is Marie G. Kuffner, M.D.

Council members will be updated on Managed Care Provider Protections under Medicare+Choice, Documentation Guidelines, Program Fraud and Abuse, Physicians Regulatory Issues Team (PRIT), and Medicare Reform Packet Summary Information.

The agenda will provide for discussion and comment on the following topics:

- Practice Expense and Medicare Fee Schedule Changes for 2,000
- Rural Health Clinic Issues
- Carrier Advisory Committees and Provider Input
- Nursing Home Quality of Care Initiatives
- Insurance Plan Conflicts Regarding Co-payments

For additional information and clarification on the aforementioned topics call the contact person listed above.

Individual physicians or medical organizations that represent physicians that wish to make 5-minute oral presentations on agenda issues should contact the Executive Director by 12 noon, September 8, 1999, to be scheduled. Testimony is limited to listed agenda issues only. The number of oral presentations may be limited by the time available. A written copy of the presenters oral remarks should be submitted to the Executive Director no later than 12 noon, September 15, 1999 for distribution to Council members for review prior to the meeting. Physicians and organizations not scheduled to speak may also submit written comments to the Executive Director and Council members. The meeting is open to the public, but attendance is limited to the space available.

(Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, section 10(a)); 45 CFR Part 11)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 30, 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration.

[FR Doc. 99–23121 Filed 9–3–99; 8:45 am]
BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Proposed Collection; Comment Request; Women's Health Initiative Observational Study

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, Office of the Director, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed collection

Title: Women's Health Initiative (WHI) Observational Study. *Type of Information Collection Request:* Revision OMB #0925–0414 exp: 06/00. *Need for Use of Information Collection:* This study will be used by the NIH to evaluate risk factors for chronic disease among older women by developing and following a large cohort of postmenopausal women and relating subsequent disease development to baseline assessments of historical, physical, psychosocial, and physiologic characteristics. In addition, the observational study will complement the clinical trial (which has received clinical exemption) and provide additional information on the common causes of frailty, disability and death for postmenopausal women, namely, coronary heart disease, breast and colorectal cancer, and osteoporotic fractures. *Frequency of Response:* On occasion. *Affected Public:* Individuals and physicians. *Type of Respondents:* Women, next-of-kin, and physician's

office staff. The annual reporting burden is as follows:

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
OS Participants	82,044	.96876	.4557	36,219
Next-of-kin	2,741	1	.0835	229
Physician's Office Staff	226	1	.0835	19
Total				36,467

The annualized cost burden is $365,428.

There are no annual Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Linda Pottern, Project Officer, Women's Health Initiative Program Office, 6705 Rockledge Drive, 1 Rockledge Centre, Suite 300, MSC 7966, Bethesda, MD 20892–7966, or call (301) 402–2900 or E-mail you request, including your address to: Linda_Pottern@nih.gov.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before November 8, 1999.

Dated: August 27, 1999.

Donald P. Christoferson,

Executive Officer, National Heart, Lung, and Blood Institute.

[FR Doc. 99–23220 Filed 9–3–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institute of Environmental Health Sciences, National Toxicology Program, Request for Data and Suggested Expert Panelists for Evaluation of the Current Status of the Frog Embryo Teratogenesis Assay—Xenopus (FETAX)

Background

The Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM), with participation by 14 Federal regulatory and research agencies and programs, was established in 1997 to facilitate cross-agency communication and coordination on issues relating to validation, acceptance, and national/international harmonization of toxicological test methods. The Committee seeks to promote the scientific validation and regulatory acceptance of toxicological test methods that will enhance agencies' ability to assess risks and make decisions, and that will refine, reduce, and replace animal use whenever possible. The National Toxicology Program Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM), provides administrative and technical support for ICCVAM, and serves as a communication and information resource. NICEATM and ICCVAM collaborate to carry out related activities needed to develop, validate, and achieve regulatory acceptance of new and improved test methods applicable to Federal agencies. These activities may include:

Test Method Workshops, which are convened as needed to evaluate the adequacy of current methods for assessing specific toxicities, to identify areas in need of improved or new testing methods, and to identify research efforts that may be needed to develop a new test method.

Expert Panel Meetings, which are typically convened to evaluate the validation status of a method following the completion of initial development and pre-validation studies. An Expert Panel is asked to recommend additional validation studies that might be helpful in further characterizing the usefulness of a method, and to identify any additional research and development efforts that might enhance the effectiveness of a method.

Independent Peer Review Panel Meetings, which are typically convened following the completion of comprehensive validation studies on a test method. Peer review panels are asked to develop scientific consensus on the usefulness and limitations of test methods to generate information for specific human health and/or ecological risk assessment purposes. Following the independent peer review of a test method, ICCVAM forwards recommendations on their usefulness to agencies for their consideration. Federal agencies then determine the regulatory acceptability of a method according to their mandates.

Evaluation of FETAX

ICCVAM and NICEATM are currently planning an Expert Panel Meeting to assess the current validation status of the Frog Embryo Teratogenesis Assay—*Xenopus* (FETAX), a method proposed for evaluating the developmental toxicity potential of chemicals (Bantle JA, 1995, FETAX—A Developmental Toxicity Assay Using Frog Embryos, *Fundamentals of Aquatic Toxicology*, 2nd ed., G.M. Rand, ed, Taylor and Francis, USA. pp. 207–230). Possible applications of FETAX to human health and environmental assessments may include screening and prioritizing compounds for further testing, evaluating complex mixtures and environmental samples, and as supplemental information in a weight-of-evidence evaluation of toxicity hazards. NICEATM is preparing a background document summarizing the initial studies and the performance characteristics of FETAX. The Expert Panel will evaluate the conclusions presented in the background document and address the potential uses of FETAX. The Expert Panel will address additional test method development and validation efforts that should be considered that might further enhance and characterize the usefulness of FETAX for various applications and other relevant aspects of the Xenopus model.

Request for Data and Expert Names

The Center would welcome receiving data and information from completed, ongoing, or planned studies using or evaluating FETAX. Information should address the criteria for validation and regulatory acceptance provided in NIH publication 97–3981, "Validation and Regulatory Acceptance of Toxicological Test Methods: A Report of the ad hoc Interagency Coordinating Committee on the Validation of Alternative Methods" (http://ntp-server.niehs.nih.gov/htdocs/ICCVAM/iccvam.html). Where possible, data and information should adhere to the guidance provided in the document, "Evaluation of the Validation Status of Toxicological Methods: General Guidelines for Submissions to ICCVAM" (http://iccvam.niehs.nih.gov/doc1.htm), which is available on request from the NTP Center at the address provided below. Information submitted in response to this request will be incorporated into the background material provided to the Expert Panel. Meeting information, including date, location, and availability of the background document, will be announced in a future notice.

The ICCVAM also welcomes suggestions of scientists with relevant knowledge and experience who might be considered for the Expert Panel. For each person suggested, their name, address, and a brief summary of relevant experience and qualifications should be provided. Where possible, telephone, fax number, and/or e-mail addresses should also be provided. Information should be sent by mail, fax, or e-mail to the NTP Interagency Center for the Evaluation of Alternative Toxicological Methods by October 7, 1999. Correspondence should be directed to: Dr. William S. Stokes, NTP Interagency Center for the Evaluation of Alternative Toxicological Methods, Environmental Toxicology Program, NIEHS/NTP, MD EC–17, PO Box 12233, Research Triangle Park, NC 27709; 919–541–3398 (phone); 919–541–0947 (fax); iccvam@niehs.nih.gov (e-mail).

Dated: August 27, 1999.

Kenneth Olden,

Director, National Institute of Environmental Health Sciences.

[FR Doc. 99–23219 Filed 9–3–99; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: http://www.health.org/workpl.htm.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014.

Special Note: Please use the above address for all surface mail and correspondence. For all overnight mail service use the following address: Division of Workplace Programs, 5515 Security Lane, Room 815, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION:

Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016 (Formerly: Bayshore Clinical Laboratory)

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/334–263–5745

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000 (Formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (Formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093 (Formerly: Cox Medical Centers)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, P.O. Box

88–6819, Great Lakes, IL 60088–6819, 847–688–2045/847–688–4171
Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200/800–735–5416
Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468
DrugProof, Division of Dynacare/ Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672/800–898–0180 (Formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)
DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310
Dynacare Kasper Medical Laboratories,* 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 780–451–3702/800–661–9876
ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609
Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ON, Canada N6A 1P4, 519–679–1630
General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267
Hartford Hospital Toxicology Laboratory, 80 Seymour St., Hartford, CT 06102–5037, 860–545–6023
Info-Meth, 112 Crescent Ave., Peoria, IL 61636, 309–671–5199/800–752–1835 (Formerly: Methodist Medical Center Toxicology Laboratory)
Integrated Regional Laboratories, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5784 (Formerly: Cedars Medical Center, Department of Pathology)
Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823 (Formerly: Laboratory Specialists, Inc.)
LabCorp Occupational Testing Services, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984 (Formerly: CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)
LabCorp Occupational Testing Services, Inc., 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/800–223–6339 (Formerly: MedExpress/National Laboratory Center)
LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–728–4064 (Formerly: Center for Laboratory Services, a Division of LabOne, Inc.)
Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)
Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734
MAXXAM Analytics Inc.,* 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555 (Formerly: NOVAMANN (Ontario) Inc.)
Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419–383–5213
MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244
Methodist Hospital Toxicology Services of Clarian Health Partners, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587,
MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–4512/800–950–5295
Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088
National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250
NWT Drug Testing, 1141 E. 3900 South, Salt Lake City, UT 84124, 801–268–2431/800–322–3361 (Formerly: NorthWest Toxicology, Inc.)
One Source Toxicology Laboratory, Inc., University of Texas Medical Branch, Clinical Chemistry Division, 301 University Boulevard, Room 5.158, Old John Sealy, Galveston, Texas 77555–0551, 409–772–3197 (Formerly: UTMB Pathology-Toxicology Laboratory)
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–341–8092
Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110 (Formerly: Centinela Hospital Airport Toxicology Laboratory)
Pathology Associates Medical Laboratories, 11604 E. Indiana, Spokane, WA 99206, 509–926–2400/800–541–7891
PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 650–328–6200/800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Dr., Fort Worth, TX 76118, 817–215–8800 (Formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627
Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600/800–882–7272
Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810–373–9120/800–444–0106 (Formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (Formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)
Quest Diagnostics Incorporated, 8000 Sovereign Row, Dallas, TX 75247, 214–637–7236 (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 972–916–3376/800–526–0947 (Formerly: Damon Clinical Laboratories, Damon/ MetPath, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006 (Formerly: SmithKline Beecham Clinical Laboratories, Doctors & Physicians Laboratory)
Quest Diagnostics Incorporated, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/800–877–7484 (Formerly: SmithKline Beecham Clinical Laboratories, SmithKline Bio-Science Laboratories)
Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 412–920–7733/800–574–2474 (Formerly: Med-Chek Laboratories, Inc., Med-Chek/ Damon, MetPath Laboratories, CORNING Clinical Laboratories)
Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173, 800–669–6995/847–885–2010 (Formerly: SmithKline Beecham Clinical Laboratories, International Toxicology Laboratories)
Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 619–686–3200/800–446–4728 (Formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)
Quest Diagnostics of Missouri LLC, 2320 Schuetz Rd., St. Louis, MO 63146, 314–991–1311/800–288–7293 (Formerly: Quest Diagnostics Incorporated, Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)
Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590 (Formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)
Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520 (Formerly: SmithKline Beecham Clinical Laboratories)
Quest Diagnostics, LLC (IL), 1355 Mittel Blvd. Wood Dale, IL 60191 630–595–3888 (Formerly: Quest Diagnostics Incorporated, MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc.)
San Diego Reference Laboratory, 6122 Nancy Ridge Dr., San Diego, CA 92121, 800–677–7995
Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130
Scott & White Drug Testing Laboratory, 600 S. 31st St., Temple, TX 76504, 254–771–8379/800–749–3788
S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227
South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507
Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520 (Formerly: St. Lawrence Hospital & Healthcare System)
St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273
Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260
UNILAB, 18408 Oxnard St., Tarzana, CA 91356, 818–996–7300/800–492–0800 (Formerly: MetWest-BPL Toxicology Laboratory)
Universal Toxicology Laboratories, LLC, 10210 W. Highway 80, Midland, Texas 79706, 915–561–8851/888–953–8851

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the "Mandatory Guidelines for Workplace Drug Testing" (59 **Federal Register**, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–23133 Filed 9–3–99; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Intent To Prepare Comprehensive Conservation Plans for Lower Suwannee National Wildlife Refuge, Florida and Cedar Keys National Wildlife Refuge, Florida

ACTION: Notice of intent to prepare Comprehensive Conservation Plans for Lower Suwannee National Wildlife Refuge in Dixie and Levy Counties, Florida, and Cedar Keys National Wildlife Refuge in Levy County, Florida, and notice of meeting seek public participation.

SUMMARY: This notice advises the public that Fish and Wildlife Service, Southeast Region, intends to gather information necessary to prepare a comprehensive conservation plan and an environmental document (environmental assessment) for both Lower Suwannee National Wildlife Refuge in Dixie and Levy Counties, Florida, and Cedar Keys National Wildlife Refuge in Levy County, Florida. The Service is furnishing this notice in compliance with Service comprehensive conservation plan policy and the National Environmental Policy Act and implementing regulations to achieve the following:

(1) Advise other agencies and the public of our intentions, and

(2) Obtain suggestions and information on the scope of issues, opportunities, and concerns for inclusion in the environmental documents.

DATES: The Service will hold a public scoping meeting on Tuesday, September 21, 1999, from 7 p.m.–9 p.m. at the Tommy Usher Center in Chiefland, Florida. A second public meeting will be held to review the draft comprehensive conservation plans. It is anticipated that the drafts will be available for public review by June 2000. An announcement of the meeting will appear in the **Federal Register**.

ADDRESSES: Address comments and requests for more information to: Refuge Manager, Lower Suwannee National Wildlife Refuge, 16450 NW 31st Place, Chiefland, Florida 32626–4874.

SUPPLEMENTARY INFORMATION: It is the policy of the Fish and Wildlife Service to have all lands within the National Wildlife Refuge System managed in accordance with an approved comprehensive conservation plan. The plan guides management decisions and identifies refuge goals, objectives, and strategies for achieving refuge purposes. Public input into this planning process is encouraged. The plan will provide other agencies and the public with a clear understanding of the desired conditions of the refuge and how the Service will implement management strategies. Some of the issues to be addressed in the plan include the following:

(a) Public use management;

(b) Habitat management;

(c) Wildlife population management; and

(d) Cultural resource identification and protection.

Alternatives that address the issues and management strategies associated

with these topics will be included in the environmental documents. A separate plan will be prepared for each refuge.

The Lower Suwannee National Wildlife Refuge was established on April 10, 1979, under the authority of the Fish and Wildlife Act to protect the lower Suwannee River ecosystem. The 52,935-acre refuge, which is predominantly wetlands, is bisected by 20 miles of Stephen Foster's famous Suwannee River and includes 26 miles of the Gulf Coast.

The Cedar Keys National Wildlife Refuge was established by Executive Order 5158 on July 16, 1929, as a breeding ground for migratory birds. The refuge supports one of the largest nesting colonies of pelicans, herons, egrets and ibis in north Florida, and consists of 12 islands ranging in size from 1 to 120 acres.

Dated: August 20, 1999.

H. Dale Hall,

Acting Regional Director.

[FR Doc. 99–23199 Filed 9–3–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Draft Environmental Impact Statement for the White River Amphitheatre, Muckleshoot Indian Reservation, King County, Washington

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the date for the public/Environmental Impact Statement (EIS) design hearing on the Draft Environmental Impact Statement for the White River Amphitheatre, Muckleshoot Indian Reservation, King County, Washington, which was announced in the **Federal Register** on Friday, August 27, 1999, has been changed from September 29, 1999, to September 22, 1999. This change is being made to coincide with a meeting date previously announced through a variety of other media.

DATES: The public EIS/design hearing will be held on September 22, 1999, from 6 p.m. to 9 p.m.

ADDRESSES: The public EIS/design hearing will be held at the Auburn Performing Arts Center, Auburn, Washington.

FOR FURTHER INFORMATION CONTACT: June Boynton, (503) 231–6749.

SUPPLEMENTARY INFORMATION: The site of the public EIS/design hearing is accessible to people with disabilities. Anyone requiring written materials in alternative formats, sign language interpreters, physical accessibility accommodations or some other reasonable accommodation may request these by contacting (206) 440–4528, by no later than September 8, 1999.

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality Regulations (40 CFR parts 1500 through 1508), implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of the Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Assistant Secretary—Indian Affairs by 209 DM 8.

Dated: August 31, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–23174 Filed 9–3–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

[OR–010–1430–00; GP9–0295]

Meeting Notice for the Southeast Oregon Resource Advisory Council

AGENCY: Lakeview District, Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Southeast Oregon Resource Advisory Council will meet at the Bureau of Land Management, Lakeview District, Hwy 395 South, Lakeview, Oregon, from 8:00 a.m. to 5:30 p.m. (PST) on October 14–15, 1999. Topics to be discussed by the Council include the Sage Grouse Conservation Strategy, a special designation of the Steens Mountain and other such matters as may reasonably come before the Council. The meeting is open to the public. Public comment is scheduled for 11:00 a.m. to 12:00 noon on October 14th.

DATED: August 25, 1999.

FOR FURTHER INFORMATION, CONTACT: Julie Bolton, Bureau of Land Management, Lakeview District Office, HC 10, Box 337, Lakeview, OR 97630, (Telephone: 541/947–2177).

Steve Ellis,

Designated Federal Official.

[FR Doc. 99–23146 Filed 9–3–99; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA920–1310–03: CACA 39392]

California: Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease CACA 39392 for lands in Kern County, California, was timely filed and was accompanied by all the required rentals and royalties accruing from June 1, 1999, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to amend lease terms for rentals and royalties at the rate of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice.

The lessee has met all the requirements for reinstatement of the lease as set out in Sections 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease CACA 39392 effective June 1, 1999, subject to the original terms and conditions of the lease and the increased rental and royalty rates cites above.

For further information contact: Bonnie Edgerly, Land Law Examiner, California State Office (916) 978–4370.

Dated: August 23, 1999.

Leroy M. Mohorich,

Chief, Branch of Energy, Mineral Science, and Adjudication.

[FR Doc. 99–23147 Filed 9–3–99; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf, Alaska OCS Region, Beaufort Sea, Oil and Gas Lease Sale 176

AGENCY: Minerals Management Service, Interior.

ACTION: Call for Information and Nominations.

In accordance with the Final Outer Continental Shelf (OCS) Oil and Gas Leasing Program 1997 to 2002, the Minerals Management Service (MMS), Alaska OCS Region, is proceeding with the Call for Information and Nominations (Call) for Beaufort Sea Sale 176.

Purpose of Call

The purpose of the Call is to gather information for proposed OCS Oil and Gas Lease Sale 176. This proposed sale, located in the Beaufort Sea Planning Area, is tentatively scheduled for early 2002. The Call marks the beginning of the decision process for this sale. Sale 176, if held, will be the eighth oil and gas lease sale in the Beaufort Sea Planning Area. The terms of the stipulations and Information to Lessees clauses used for the most recent sale, Sale 170 (August 5, 1998), will be used as a starting point in the planning process for Sale 176.

Comments, information and nominations are sought from all interested parties. This early planning and consultation step is important for ensuring that all interests and concerns are communicated to the Department of the Interior for future decisions in the formulation of this proposal and the leasing process in general. We are seeking information from you on how we should design the area to offer. The MMS is directing its focus on resolving issues early in the planning process by working with stakeholders individually and collectively, beginning with publication of the Call.

As a part of that effort, MMS intends to carry forward the cooperative relationship established for Sale 170 through the Alaska Offshore Advisory Committee. Committee membership for Sale 170 consisted of representatives of the State of Alaska, North Slope Borough, Alaska Eskimo Whaling Commission, North Slope Villages, the oil and gas industry, and the environmental community. It is expected that each of these stakeholders will again be represented on the Committee for Sale 176.

Description of Area

The area of this Call, located offshore the State of Alaska in the Beaufort Sea Planning Area as identified on the attached map, extends offshore from about 3 to approximately 60 nautical miles, in water depths from approximately 25 feet to 200 feet. A small portion of the outer limits of the sale area north of Harrison Bay drops to approximately 3,000 feet. The area available for nominations and comments consists of approximately 1,898 whole and partial blocks (about 9.9 million acres). A large scale map of the Beaufort Sea Planning Area (hereinafter referred to as the Call map) showing boundaries of the area on a block-by-block basis is available by written request to the Attention of the Records Manager at the address given below, or by telephone request at (907) 271–6621. Copies of Official Protraction Diagrams (OPDs) are also available for $2 each.

Alaska OSC Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska, 99508–4302, http://www.mms.gov/alaska

Environmental Information

The MMS has acquired a substantial amount of information, including that gained through the use of traditional knowledge, on the issues and concerns related to oil and gas leasing in the Beaufort Sea.

An extensive environmental, social, and economic studies program has been underway in this area since 1975. The emphasis has been on geologic mapping, environmental characterization of biologically sensitive habitats, endangered whales and marine mammals, physical oceanography, ocean-circulation modeling, and ecological and sociocultural effects of oil and gas activities.

Information on the studies program, completed studies, and a program status report for continuing studies in this area may be obtained from the Chief, Environmental Studies Section, Alaska OCS Region, by telephone request at (907) 271–6577, or by written request at the address stated under Description of Area. A request may also be made via the Alaska Region website at www.mms.gov/alaska/ref/pubindex/pubsindex.htm.

Instructions on Call

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska 99508–4302. You may also comment via the Internet to http://www.mms.gov/alaska. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: [RIN number (if applicable)] and your name and return address in you Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (907) 271–6621. Finally, you may hand-deliver comments to Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska 99508–4302. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business, hours. Individual respondents may request that we withholding their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The MMS is requesting comments from all interested parties on all aspects of the Sale 176 proposal including comments on:

Geology
Environment
Biological resources
Archaeological resources
Social and economic conditions
Potential conflicts

or other information that might bear upon potential leasing and development in the Call area.

1. Oil and Gas Interest Areas

Specific nominations are being sought regarding the oil and gas industry area(s) of interest. The MMS is soliciting nominations of blocks that are of significant industry interest for exploration and development. Nominations should focus only on those blocks of significant interest, thereby eliminating early in the process those blocks of low interest where there may be high environmental, subsistence or other resource values.

Nominations must be depicted on the Call map by outlining the area(s) of interest along block lines. Nominators are asked to submit a list of whole and partial blocks nominated (by OPD and block number) to facilitate correct interpretation of their nominations on the Call map. Although the identities of those submitting nominations become a matter of public record, the individual nominations are proprietary information.

Nominators also are requested to rank blocks nominated according to priority of interest (e.g., priority 1 (high), or 2 (medium). Blocks nominated that do not indicate priorities will be considered priority 3 (low). Nominators must be specific in indicating blocks by priority and be prepared to discuss their range of interest and activity regarding the nominated area(s). The telephone

number and name of a person to contact in the nominator's organization for additional information should be included in the response. This person will be contacted to set up a mutually agreeable time and place for a meeting with the Alaska OCS Regional Office to present their views regarding the company's nominations.

The MMS is particularly interested in industry views on tailoring the area being offered to include only those blocks close to existing of foreseeable infrastructure. A discussion of the merits or demerits of this approach will assist MMS in developing a proposal that would promote the development of smaller fields in the area of existing infrastructure while preserving opportunities for industry to explore for reasonably developable prospects. Areas not near existing infrastructure, but within the Call area, should be included in nominations if there is compelling evidence that a field of sufficient size to warrant a stand-along operation may exist.

2. Timing of the Sale Process

The following is a tentative schedule, allowing for a sale date of early 2002. Approximate dates for actions, decisions and consultation points are:

Milestones	Dates
Comments Due on the Call	Oct. 1999.
Area Identification and Notice of Intent to Prepare an EIS.	Dec. 1999.
Scoping Meetings	Jan. 2000.
Draft EIS filed with EPA	Oct. 2000.
Hearings on Draft EIS Held	Nov. 2000.
Comments Due on Draft EIS	Jan. 2001.
Consistency Determination	July 2001.
Final EIS Filed with EPA and Proposed Notice of Sale available.	July 2001.
Governor's Comments Due on Proposed Notice of Sale.	Sept. 2001.
Final Notice of Sale Published	Nov. 2001.
Sale	Jan. 2002.

3. Relation to Coastal Management Plans

Comments also are sought on potential conflicts with approved local coastal management plans (CMP) that may result from the proposed sale and future OCS oil and gas activities. These comments should identify specific CMP policies of concern, the nature of the conflicts foreseen, and steps that MMS could take to avoid or mitigate the potential conflicts. Comments may be in terms of broad areas or restricted to particular blocks of concern. Commenters are requested to list block numbers or outline the subject area on the large-scale Call map.

4. The General Process

Suggestions on ways that may improve the planning and decision process for oil and gas lease sales in general are encouraged. These comments need not be restricted to the individual sale process. Comments on the entire process, including formulation of the 5-year program, the environmental analysis, and the conduct of the sales, will be useful to MMS in our ongoing effort to improve the process.

Response Date

Nominations and comments must be received no later than 45 days following publication of this document in the **Federal Register** in envelopes labeled "Nominations for Proposed Beaufort Sea Lease Sale 176," or "Comments on the Call for Information and Nominations for Proposed Beaufort Sea Lease Sale 176," as appropriate. The original Call map with indications of interest and/or comments must be submitted to the Regional Supervisor, Leasing and Environment, Alaska OCS Region, Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, Alaska, 99508–4302.

Use of Information From Call

Information submitted in response to this Call will be used for several purposes. Responses will be used to:

Help identify areas of potential oil and gas development
Identify environmental effects and potential gas conflicts
Assist in the scoping process for the EIS
Develop possible alternatives to the proposed action
Develop lease terms and conditions/ mitigating measures
Identity potential conflicts between oil and gas activities and the Alaska CMP

This Call does indicate a decision to lease. If a decision is made to go forward with an oil and gas lease sale, the final delineation of the area for possible leasing and the terms and conditions of the sale will be made at a later date. Decisions will be made in compliance with all applicable laws including requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), as amended, and with established departmental procedures.

Dated: August 30, 1999.

W.C. Rosenbusch,

Director, Minerals Management Service.

BILLING CODE 4310–MR–M

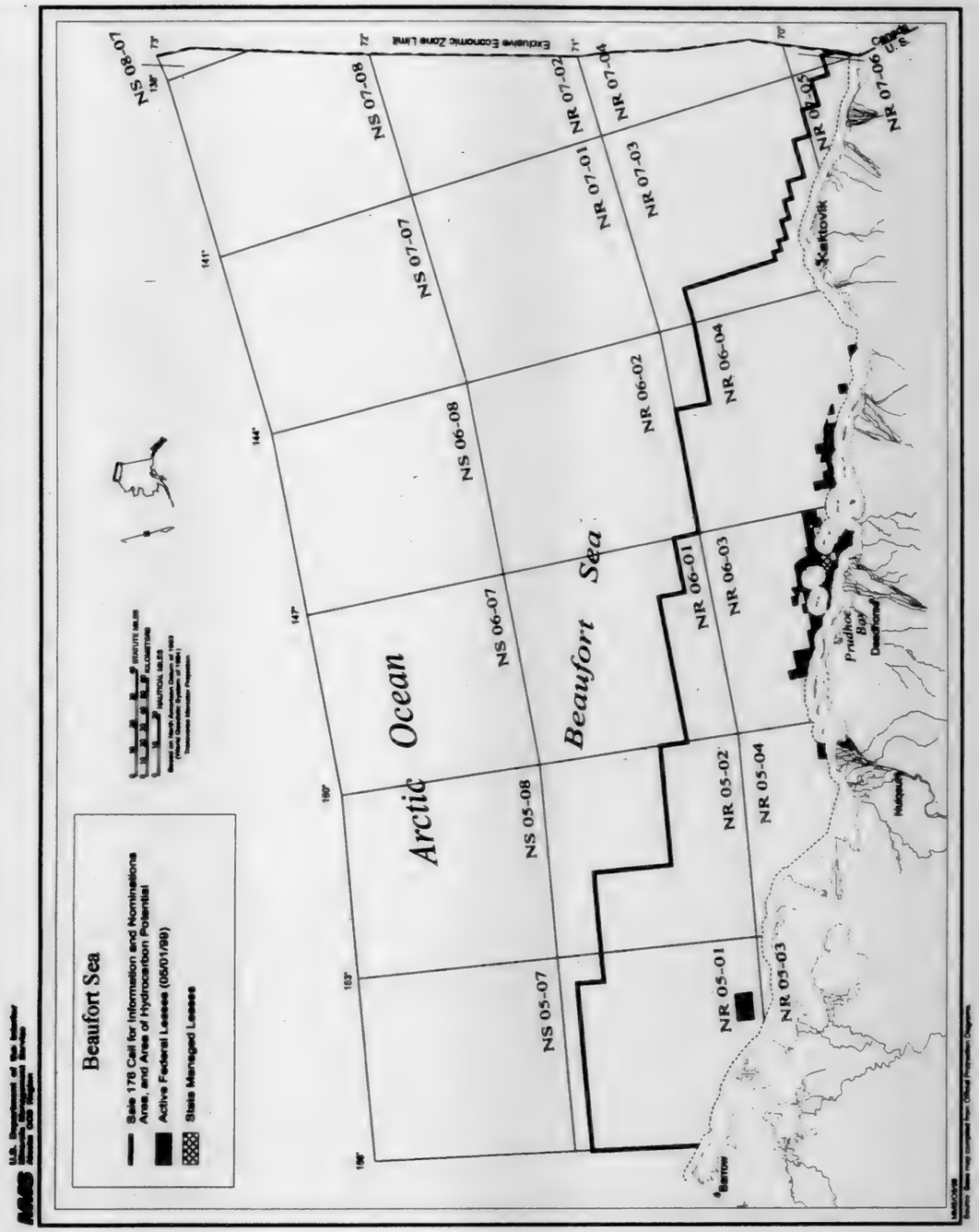

BILLING CODE 4310–MR–C

[FR Doc. 99–23124 Filed 9–3–99; 8:45 am]
BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan Amendment/Environmental Impact Statement Being Prepared for Hampton National Historic Site

AGENCY: National Park Service; Interior.

ACTION: Notice of public meeting.

SUMMARY: This notice announces the upcoming public meeting to solicit input on general management plan for Hampton National Historic Site. This is a preliminary step in the preparation of a General Management Plan (GMP) for this site. The draft GMP will be published in Fall of 1999.

Public Meetings

Date and Time: Thursday, September 16, 1999 at 7:00 PM; Again, Thursday, September 16, 1999 at 7:00 PM.

Address: United Methodist Church, 501 Hampton Lane, Townson, MD 21286, (410) 823–1309, Ext. 223.

FOR FURTHER INFORMATION CONTACT: Superintendent, Hampton National Historic Site, 535 Hampton Lane, Townson, Maryland 21286, Tel: (410) 962–0688.

Dated: August 25, 1999.

Deirdre Gibson,

Program Manager, PP&NR, Philadelphia Support Office.

[FR Doc. 99–23154 Filed 9–3–99; 8:45 am]
BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places;Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 28, 1999. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by September 22, 1999.

Carol D. Shull,

Keeper of the National Register.

Alabama

Chambers County

Fairfax Historic District (Valley, Alabama, and the West Point Manufacturing Company MPS), Roughly bounded by River Rd., Spring St., Lamer St., Derson St., Combs St., and Cussetta Rd., Valley, 99001177

Shawmut Historic District (Valley, Alabama, and the West Point Manufacturing Company MPS), Roughly bounded by 25th Blvd., 29th Blvd., 20th Ave., 35th St., and 38th Blvd., Valley, 99001176

California

Inyo County

Coso Rock Art District, Address Restricted, China Lake vicinity, 99001178

Sacramento County

Sacramento Hall of Justice, 813 6th St., Sacramento, 99001179

San Diego County

Sunnyslope Lodge, 3733 Robinson Mews, San Diego, 99001180

San Mateo County

Seven Oaks, 20 El Cerrito Dr., San Mateo, 99001181

Colorado

Jefferson County

Reno Park Addition Historic District, Roughly bounded by Allison St., Ralston Rd., Yukon St., and Reno Dr., Arvada, 99001183

Stocke—Walter Addition Historic District, Roughly along Saulsbury St., Ralston Rd., Grandview Ave., and Reed St., Arvada, 99001182

Guam

Guam County

Gilan, Address Restricted, Harmon Village vicinity, 99001185

Sumay Cemetery, Marine Dr., Comnavmarians, Agat/Santa Rita, 99001184

Maine

Androscoggin County

Poland Spring Beach House, (Former), ME 26, 0.1 me. E of jct. with Skellinger Rd., South Poland vicinity, 99001191

Cumberland County

Dunning, Deacon Andrew, House, Mountain Rd., 0.6 mi. SE of jct. with ME 123, North Harpswell, 99001188

Ryefield Bridge, Bow St. over Crooked River, Stuarts Corner vicinity, 99001193

Franklin County

New Sharon Bridge, S of ME 2 over Sandy River, New Sharon, 99001189

Hancock County

Cleftstone, 92 Eden St., Bar Harbor, 99001192

Knox County

High Street Historic District (Boundary Increase), Jct. of Main St. and Atlantic Ave., Camden, 99001186

Pleasant River Grange No. 492, Round Island Rd., 0.15 mi. E of jct. with N. Haven Rd., Vinalhaven vicinity, 99001190

Penobscot County

Battleship Maine Monument, Jct. of Main and Cedar Sts., Bangor, 99001187

Ohio

Tuscarawas County

Fisher, E.D., House, 432 S. Park Ave., Bolivar, 99001194

Pennsylvania

Lackawanna County

North Scranton Junior High School, 1539 N. Main Ave., Scranton, 99001197

York County

Consumers Cigar Box Company, 121 First Ave., Red Lion, 99001196

Virginia

Charles City County

Dogham, Doggams, 1601 Dogham Ln., Charles City vicinity, 99001200

Mecklenburg County

Wood, Judge Henry, Jr. House, 105 Sixth St., Clarksville, 99001201

New Kent County

Crump's Mill and Millpond, 9065 Crump's Mill Rd., Quinton vicinity, 99001199

Norfolk Independent City

Riverview, Roughly bounded by LaVallette Ave., Beach Ave. on the Lafayette River, and Columbus Ave., Norfolk, 99001198

Wisconsin

Vernon County

Upper Kickapoo Valley Prehistoric Archeological District, Address Restricted, La Farge vicinity, 99001202

[FR Doc. 99–23185 Filed 9–3–99; 8:45 am]
BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: September 9, 1999 at 11:00 a.m.

PLACE: Room 101, 500 E Street, S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none
2. Minutes
3. Ratification List
4. Inv. No. 731–TA–25 (Review) (Anhydrous Sodium Metasilicate from France)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on September 20, 1999.)
5. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: September 1, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–23301 Filed 9–2–99; 1:16 pm]
BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of Information Collection under Review: Notice of Naturalization Oath Ceremony.

The Department of Justice, Immigration and Naturalization Service (INS has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on June 23, 1999 at 64 FR 33520, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until October 7, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: Extension of currently approved collection.

(2) Title of the Form/Collection: Notice of Naturalization Oath Ceremony.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form N–445. Adjudications Division, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals and Households. The information furnished on this form refers to events that may have occurred since the applicant's initial interview and prior to the administration of the oath of allegiance. Several months may elapse between these dates and the information that is provided assists the officer to make and render an appropriate decision on the application.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 650,000 responses at approximately 5 minutes (.083) hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 53,950 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, US Department of Justice, Room 5307, 425 I Street, NW, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center 1001 G Street, NW, Washington, DC 20530.

Dated: August 31, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–23100 Filed 9–3–99; 8:45 am]
BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information collection Activities: Proposed Collection; Comment request.

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of Information Collection Under Review: Application To Replace Alien Registration Card.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on June 23, 1999 at 64 FR 33519, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until October 7, 1999. this process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro,

Department of Justice Desk office, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application to Replace Alien Registration Card.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–90. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Not-for-profit institutions. The information collected will be used by the INS to determine eligibility for an initial Alien Registration Card, or to replace a previously issued card.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 410,799 responses at 55 minutes (.916) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 376,292 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, US Department of Justice, room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–23101 Filed 9–3–99; 8:45 am]

BILLING CODE 4410–10–M

NATIONAL COMMUNICATIONS SYSTEM

Telecommunications Service Priority System Oversight Committee

AGENCY: National Communications System (NCS).

ACTION: Notice of meeting.

A meeting of the Telecommunications Service Priority (TSP) System Oversight Committee will convene Tuesday, September 14, 1999 from 9 a.m. to 12 p.m. The meeting will be held at 701 South Court House Road, Arlington, VA in the NCS conference room on the 2nd floor.

—Opening/Administration Remarks

—Status of the TSP Program

—TSP Web page and electronic forms demonstration

Anyone interested in attending or presenting additional information to the Committee, please contact CDR Lynne Hicks, Manager, Office of Priority Telecommunications, (703) 607–4930.

Mr. Frank McClelland,

Federal Register Liaison Officer, National Communications System.

[FR Doc. 99–23200 Filed 9–3–99; 8:45 am]

BILLING CODE 5001–08–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Northeast Nuclear Energy Company, et al.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission or NRC) is considering issuance of an amendment to Facility Operating License No. NPF–49 issued to Northeast Nuclear Energy Company (NNECO or the licensee) for operation of Millstone Nuclear Power Station, Unit No. 3 (MP3), located in New London County, Connecticut.

The proposed amendment would change Technical Specification (TS) 1.40, "Spent Fuel Pool Storage Pattern"; 1.1, "3–OUT–OF–4 AND 4–OUT–OF–4"; 3/4.9.1.2, "Boron Concentration"; 3/4.9.7, "Crane Travel—Spent Fuel Storage Areas"; 3/4.9.13, "Spent Fuel Pool—Reactivity"; 3.9.14, "Spent Fuel Pool—Storage Pattern"; 5.6.1.1, "Design Features—Criticality"; and 5.6.3, "Design Features—Capacity." In addition, the proposed amendment would replace figures 3.9–1 and 3.9–2 with 4 new figures and make changes to the TS Bases consistent with changes to their respective TS sections. These changes are being made to support the proposed increase in the capacity of the spent fuel pool at MP3 from 756 assemblies to 1,860 assemblies (an increase of 1,104).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with 10CFR50.92, NNECO has reviewed the proposed changes and has concluded that they do not involve a Significant Hazards Consideration (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not compromised. The proposed changes do not involve a significant hazard because they would not;

2.1 Involve a significant increase in the probability or consequences of an accident previously evaluated.

In the analysis of safety issues concerning the expanded pool storage capacity, NNECO has considered the following potential accident scenarios;

a. A spent fuel assembly drop with control rod and handling tool

b. A fuel pool gate drop

c. Potential damage due to a seismic event

d. Fuel assembly misloading/drop or pool temperature exceeding 160°F

e. An accidental drop of a rack module during installation activity in the pool

The probability that any of the first four accidents in the above list can occur is not significantly increased by the modification itself. All work in the pool area will be controlled and performed in strict accordance with specific written procedures. As for an installation accident, safe load paths will be established that will prevent heavy loads from being transported over the spent fuel. Proper functioning of the cranes will be checked and verified before rack installation, and appropriate administrative controls imposed. All lift rigging and the crane/hoist system will be verified to comply with applicable plant and site procedures. All heavy lifts will be performed in accordance with established station procedures, which will comply with NUREG–0612, "Control of Heavy Loads at Nuclear Power Plants." These actions will minimize the possibility of a heavy load drop accident. Fuel assembly handling procedures and techniques are not affected by adding spent fuel racks, and the probability of a fuel handling accident or misloading is not increased.

Accordingly, the proposed modification does not involve a significant increase in the probability of an accident previously evaluated.

NNECO has evaluated the consequences of an accidental drop of a fuel assembly in the spent fuel pool. The results show that such an accident will not distort the racks sufficiently to impair their functionality. The minimum subcriticality margin, k_{eff} less than or equal to 0.95, will be maintained. The radiological consequences of a fuel assembly drop are not increased from the existing postulated fuel drop accident in Millstone Unit No. 3 FSAR [Final Safety Analysis Report] Section 15.7.4. Thus, the consequences of such an accident remain acceptable, and are not different from any previously evaluated accidents that the NRC has reviewed and accepted.

The consequences of an accidental drop of a fuel pool gate onto racks has been evaluated. The results show that such an accident will not distort the racks sufficiently to impair their functionality. The minimum subcriticality margin, k_{eff} less than or equal to 0.95, will be maintained. In addition, the Technical Specifications do not allow fuel to be under a fuel pool gate when one is moved. The analysis indicates no radiological consequences from this postulated accident. Thus, the consequences of such an accident remain acceptable, and are not different from any previously evaluated accidents that he NRC has reviewed and accepted.

The consequences of a design basis seismic event have been evaluated and found acceptable. The proposed additional racks and existing racks have been analyzed in their new configuration and found safe and impact-free during seismic motion, save for the baseplate-to-baseplate impacts of the proposed additional racks which are shown to cause no damage to the racks[,] cells[,] or Boral. The structural capability of the pool walls and basemat will not be exceeded under the loads. Thus, the consequences of a seismic event are not significantly increased.

The consequences of a misloading/drop of a fuel assembly during fuel movement have been evaluated. The minimum subcriticality margin, k_{eff} less than or equal to 0.95, will continue to be maintained because of the proposed pool water soluble boron related requirements. Thus, the consequences of such an accident remain acceptable, and are not different from any previously evaluated accidents that the NRC has reviewed and accepted.

The consequences of an accidental drop of a rack module into the pool during placement have been evaluated. The analysis confirmed that very limited damage to the liner could occur, which is repairable. Any small seepage occurring is well within makeup capability, and is mitigated by emergency operating procedures. All movements of racks over the pool will comply with the applicable guidelines. Therefore, the consequences of an installation accident are not increased from any previously evaluated accident.

The consequences of a spent fuel cask drop into the pool have not been considered in this submittal since NNECO is not currently licensed to move a fuel cask into the Millstone Unit No. 3 cask pit area.

Therefore, it is concluded that the proposed changes to the Technical Specifications and licensing basis for Millstone Unit No. 3 do not significantly increase the probability or consequences of any accident previously evaluated.

2.2 Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change does not alter the operating requirements of the plant or of the equipment credited in the mitigation of the design basis accidents. Therefore, the potential for an unanalyzed accident is not created. The postulated failure modes associated with the change do not significantly decrease the coolability, criticality margin, or structural integrity of the spent fuel in the pool. The resulting structural, thermal, and seismic loads are acceptable.

Therefore, the change does not create the possibility of a new or different kind of accident from any previously analyzed.

2.3 Involve a significant reduction in the margin of safety.

The function of the spent fuel pool is to store the fuel assemblies in a subcritical and coolable configuration through all environmental and abnormal loadings, such as an earthquake, fuel assembly drop, fuel pool gate drop, or drop of another heavy object. The new rack design must meet all applicable requirements for safe storage and be functionally compatible with the other rack design in the spent fuel pool.

NNECO has addressed the safety issues related to the expanded pool storage capacity in the following areas:

1. Material, mechanical, and structural considerations
2. Nuclear criticality
3. Thermal-hydraulic and pool cooling

The mechanical, material, and structural designs of the new racks have been reviewed in accordance with the applicable provisions of NRC "OT Position for the Review and Acceptance of Spent Fuel Storage and Handling Applications", April 14, 1978, as amended January 18, 1979. The rack materials used are compatible with the spent fuel assemblies and the spent fuel pool environment. The design of the new racks preserves the proper margin of safety during abnormal loads such as a dropped fuel assembly, a postulated seismic event, a dropped fuel pool gate, and tensile loads from a stuck fuel assembly. It has been shown that such loads will not invalidate the mechanical design and material selection to safely store fuel in a coolable and subcritical configuration. Also, it has been shown that the pool structure will maintain its integrity and function during normal operation, all postulated accident sequences, and postulated seismic events.

The methodology used in the criticality analysis of the expanded spent fuel pool storage capacity meets the appropriate NRC guidelines and the ANSI [American National Standards Institute] standards. The margin of safety for subcriticality is determined by a neutron multiplication factor less than or equal to 0.95 under all accident conditions, including uncertainties. This criterion has been preserved in all analyzed accidents and seismic events.

The special circumstances regarding transitioning to the revised [T]echnical [S]pecifications was discussed. At present, NNECO estimates that there will be approximately 120 fuel assemblies stored in existing racks that will not meet the burnup/enrichment requirements for storage in these racks under the proposed Technical Specifications. During the actual reracking effort, including transfer of these assemblies from existing racks to Region 1 and 2 racks, existing soluble boron and Boraflex related requirements and surveillances will continue to be enforced. Also, when transferring these assemblies to Region 1 and 2 racks, the burnup/enrichment requirements of these racks will be enforced. After fuel transfer is complete, the revised Technical Specifications will be fully implemented. These requirements ensure that the neutron multiplication factor will remain less than or equal to 0.95 during the whole period of the rerack.

The rerack thermal hydraulic analysis is based on NNECO's January 18, 1999, submittal analysis which bound the heat load of this licensing amendment request. The rerack thermal hydraulic analysis found that, in the blocked hottest stored assembly, the local peak water temperature will remain below boiling, and the fuel clad will not experience high temperatures.

Regarding Technical Specification Surveillance 4.9.7, since the proposed change continues to meet the requirements of Technical Specification 3.9.7, that is it prohibits a crane from carrying a load greater that 2,200 lbs [pounds] over fuel in the spent fuel pool to preclude fuel damage, the margin of safety is maintained.

Thus, it is concluded that the proposed changes to the Technical Specifications and licensing basis of Millstone Unit No. 3 do not involve a significant reduction in the margin of safety at Millstone Unit No. 3.

The NRC staff has reviewed the licensee's analysis and, based upon this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 7, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in such proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 that is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut. If a request for a hearing and petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition to leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a for a hearing and a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Ms. Lillian M. Cuoco, Esquire, Senior Nuclear Counsel, Northeast Utilities Service Company, P. O. Box 270, Hartford, CT 06141–0270, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Pursuant to the Commission's regulations, 10 CFR 2.1107, the Commission hereby provides notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties."

The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules and the designation, following argument of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662 dated October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. The presiding officer must grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR part 2, subpart G apply.

For further details with respect to this action, see the application for amendment dated March 19, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 27th day of August, 1999.

James W. Clifford,

Chief, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–23157 Filed 9–3–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–423]

Northeast Nuclear Energy Company (NNECO), et al., Millstone Nuclear Power Station, Unit No. 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–49, issued to Northeast Nuclear Energy Company, et al. (the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 3 (MP3) located in New London County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed action is in response to the licensee's application dated March 19, 1999, requesting an amendment to the operating license for MP3 to support the rerack of its spent fuel pool to maintain the capability to fully offload the core from the reactor as the unit approaches the end of its operating license. To achieve this goal, the licensee plans to install two types of additional higher density spent fuel racks into the spent fuel pool. Existing spent fuel racks will remain in the pool in their current configuration, but are reanalyzed to only accept fuel lower in reactivity than they are presently licensed to accept. The proposed additional racks will have a closer assembly to assembly spacing to increase fuel storage capacity. The number of fuel assemblies that can be stored in the spent fuel pool would be increased from 756 assemblies to 1,860 assemblies (an increase of 1,104).

The Need for the Proposed Action

An increase in spent fuel storage capacity is needed to maintain the capability for a full core off-load. Loss of full core off-load capability will occur as a result of refueling outage 6 (RFO 6), that started on May 1, 1999. The licensee plans to install an additional 15 high density storage racks (with the capacity to store 1,104 fuel assemblies) following RFO 6 (14 will be installed between RFO 6 and RFO 7, with the last one to be installed later if it is necessary), while keeping the existing racks in place. The additional capacity will ensure the capability for a full core off-load as the unit approaches the end of its operating license (November 25, 2025).

Environmental Impacts of the Proposed Action

Radioactive Waste Treatment

MP3 uses waste treatment systems designed to collect and process gaseous, liquid, and solid waste that might contain radioactive material. These radioactive waste treatment systems were evaluated in the Final Environmental Statement (FES) dated December 1984. The proposed spent fuel pool expansion will not involve any change in the radioactive waste treatment systems described in the FES.

Gaseous Radioactive Wastes

Gaseous releases from the fuel storage area are combined with other plant exhausts. Normally, the contribution from the fuel storage area is negligible compared to the other releases and no significant increases are expected as a result of the expanded storage capacity.

Solid Radioactive Wastes

No significant increase in the volume of solid radioactive waste is expected from operating with the expanded storage capacity. The necessity for pool filtration resin replacement is determined primarily by the requirements for water clarity, and the resin is normally changed about once a year. During reracking operations, a small amount of additional resins may be generated by the pool cleanup system on a one-time basis.

Personnel Doses

During normal operations, personnel working in the fuel storage area are exposed to radiation from the spent fuel pool. Radiological conditions are dominated by the most recent batch of discharged spent fuel. The radioactive inventory of the older fuel is insignificant compared to that from the recent offload. Analysis shows that the rerack will not significantly change radiological conditions. Therefore, the rack expansion project falls within the existing design basis of MP3's Spent Fuel Pool.

All of the operations involved in reracking will utilize detailed procedures prepared with full consideration of ALARA [as low as is reasonably achievable] principles. Similar operations have been performed in a number of facilities in the past, and there is every reason to believe that reracking can be safely and efficiently accomplished at MP3, with low radiation exposure to personnel. Total dose for the reracking operation is estimated to be between 2 and 5 person-rem. While individual task efforts and doses may differ from those estimated, the total is believed to be a reasonable estimate for planning purposes. Divers will be used where necessary, and the estimated person-rem burden includes an estimate for their possible dose. The existing radiation protection program at MP3 is adequate for the reracking operations. Where there is a potential for significant airborne activity, continuous air monitors will be in operation. Personnel will wear protective clothing as required and, if necessary, respiratory protective equipment. Activities will be governed by a Radiation Work Permit, and personnel monitoring equipment will be issued to each individual. As a minimum, this will include thermoluminescent dosimeters (TLDs) and self-reading dosimeters. Additional personnel monitoring equipment (i.e., extremity TLDs or multiple TLDs) may be utilized as required. Work, personnel traffic, and the movement of equipment will be monitored and controlled to minimize contamination and to assure that dose is maintained ALARA.

On the basis of its review of the licensee's proposal, the NRC staff concludes that the MP3 spent fuel pool reracking operation can be performed in a manner that will ensure that doses to workers will be maintained ALARA. The estimated dose of 2 to 5 person-rem to perform the proposed spent fuel pool reracking operation is a small fraction of the annual collective dose accrued at MP3.

Accident Considerations

The licensee has evaluated the consequences of an accidental drop of a fuel assembly in the spent fuel pool and the consequences of an accidental drop of a fuel pool gate onto racks. The results show that such accidents will not distort the racks sufficiently to impair their functionality. The analysis indicates no radiological consequences from these postulated accidents. The consequences of a design basis seismic event have been evaluated and found acceptable. The proposed additional racks and existing racks have been analyzed in their new configuration and found safe and impact-free during seismic motion, save for the baseplate-to-baseplate impacts of the proposed additional racks that are shown to cause no damage to the racks' cells or Boral (used for criticality control). The structural capability of the pool walls and basemat will not be exceeded under the loads. Thus, the consequences of a seismic event are not significantly increased. The criticality consequences of a misloading/drop of a fuel assembly during fuel movement have been evaluated. The minimum subcriticality margin, k_{eff} less than or equal to 0.95, will continue to be maintained because of the proposed pool water soluble boron related requirements. The consequences of an accidental drop of a rack module into the pool during placement have been evaluated. The analysis confirmed that very limited damage to the liner could occur. Expected damage from this accident is repairable. Any small seepage occurring is well within makeup capability, and is mitigated by emergency operating procedures. The consequences of a spent fuel cask drop into the pool have not been considered in this submittal since the licensee is not currently licensed to move a fuel cask into the MP3 cask pit area.

Radiological concerns due to fuel damage are not an issue, since the fuel handling design basis accident considers the worst case condition of a falling assembly (a fuel assembly falling onto another fuel assembly). This design basis accident remains unchanged. Fuel assembly damage subsequent to a fuel assembly drop is primarily influenced by the weight and design of the fuel assembly, the drop height (determines the kinetic energy upon impact), and the orientation of the falling assembly. Since none of these parameters are changed under the proposed modification, the results of the previously analyzed and NRC-accepted design basis accident bound the radiological consequences of accidents analyzed for the spent fuel pool rerack.

In summary, the proposed action will not increase the probability or consequences of accidents, no changes are being made to radioactive waste treatment systems or in the types of any radioactive effluents that may be released offsite, and the proposed action will not result in a significant increase in occupational or offsite radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. The proposed action does not affect nonradiological plant effluents and has no other nonradiological environmental impacts. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with this action.

Alternatives to the Proposed Action

Shipping Fuel to a Permanent Federal Fuel Storage/Disposal Facility

Shipment of spent fuel to a high-level radioactive storage facility is an alternative to increasing the onsite spent fuel storage capacity. However, the U.S. Department of Energy's (DOE's) high-level radioactive waste repository is not expected to begin receiving spent fuel until approximately 2010, at the earliest. In October 1996, the Administration did commit DOE to begin storing waste at a centralized location by January 31, 1998. However, no location has been identified and an interim federal storage facility has yet to be identified in advance of a decision on a permanent repository. Therefore, shipping spent fuel to the DOE repository is not considered an alternative to increased onsite spent fuel storage capacity at this time.

Shipping Fuel to a Reprocessing Facility

Reprocessing of spent fuel from the MP3 is not a viable alternative since there are no operating commercial reprocessing facilities in the United States. Therefore, spent fuel would have to be shipped to an overseas facility for reprocessing. However, this approach has never been used and it would require approval by the Department of State as well as other entities. Additionally, the cost of spent fuel reprocessing is not offset by the salvage value of the residual uranium; reprocessing represents an added cost.

Shipping Fuel to Another Utility, Site, or the Millstone Units 1 or 2 Spent Fuel Pool for Storage

The shipment of fuel to another utility or transferring MP3 spent fuel to the Millstone Units 1 or 2 spent fuel pool for storage could provide short-term relief from the storage problem at MP3. The Nuclear Waste Policy Act of 1982 and 10 CFR part 53, however, clearly place the responsibility for the interim storage of spent fuel with each owner or operator of a nuclear plant. The Millstone Units 1 and 2 spent fuel pools have been designed with the capacity to accommodate each of those units and, therefore, transferring spent fuel from MP3 to either of these pools would create fuel storage capacity problems with those units. The shipment of fuel to another site or transferring it to Millstone Units 1 or 2 is not an acceptable alternative because of increased fuel handling risks and additional occupational radiation exposure, as well as the fact that no additional storage capacity would be created.

Alternative Creation of Additional Storage Capacity

Alternative technologies that would create additional storage capacity include rod consolidation, dry cask storage, modular vault dry storage, and constructing a new pool. Rod consolidation involves disassembling the spent fuel assemblies and storing the fuel rods from two or more assemblies in a stainless steel canister that can be stored in the spent fuel racks. Industry experience with rod consolidation is currently limited, primarily due to concerns for potential gap activity release due to rod breakage, the potential for increased fuel cladding corrosion due to some of the protective oxide layer being scraped off, and because the prolonged consolidation activity could interfere with ongoing plant operations. Dry cask storage is a method of transferring spent fuel, after storage in the pool for several years, to high capacity casks with passive heat dissipation features. After loading, the casks are stored outdoors on a seismically qualified concrete pad. Concerns for dry cask storage include the potential for fuel or cask handling accidents, potential fuel clad rupture due to high temperatures, the need for special security provisions, and high costs. Vault storage consists of storing spent fuel in shielded stainless steel cylinders in a horizontal configuration in a reinforced concrete vault. The concrete vault provides missile and earthquake protection and radiation shielding. Due to large space requirements, a vault secured area for MP3 would likely have to be located outside the secured perimeter of the plant site. Concerns for vault dry storage include security, land consumption, eventual decommissioning of the new vault, the potential for fuel or clad rupture due to high temperatures, and high cost. The alternative of constructing and licensing a new fuel pool is not practical for MP3 because such an effort would require many years (i.e., 10 years) to complete and would be the most expensive alternative.

The alternative technologies that could create additional storage capacity involve additional fuel handling with attendant opportunity for a fuel handling accident, involve higher cumulative dose to workers effecting the fuel transfers, require additional security measures, are significantly more expensive, and would not result in a significant improvement in environmental impacts compared to the proposed reracking modifications.

Reduction of Spent Fuel Generation

Generally, improved usage of the fuel and/or operation at a reduced power level would be an alternative that would decrease the amount of fuel being stored in the pool and thus increase the amount of time before full core off-load capacity is lost. With extended burnup of fuel assemblies, the fuel cycle would be extended and fewer offloads would be necessary. This is not an alternative for resolving the loss of full-core offload capability that occurred as a result of MP3 refueling outage that began on May 1, 1999, because the spent fuel transferred to the pool for storage during this outage eliminated the licensee's ability to conduct a full core offload. Operating the plant at a reduced power level would not make effective use of available resources, and would cause unnecessary economic hardship on the licensee and its customers. Therefore, reducing the amount of spent fuel generated by increasing burnup further or reducing power is not considered a practical alternative.

The No-Action Alternative

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the exemption would result in no change in current environmental impacts. The environmental impacts of the proposed exemption and this alternative are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement Related to the Operation of Millstone Nuclear Power Station, Unit No. 3," dated December 1984 (NUREG–1064).

Agencies and Persons Contacted

In accordance with its stated policy, on June 21, 1999, the staff consulted with the Connecticut State official, Mr. Gary McCahill of the Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 19, 1999, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 27th day of August, 1999.

James W. Clifford,

Chief, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–23158 Filed 9–3–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Budget Analysis Branch; Sequestration Update Report

AGENCY: Office of Management and Budget—Budget Analysis Branch.

ACTION: Notice of Transmittal of Sequestration Update Report to the President and Congress.

SUMMARY: Pursuant to Section 254(b) of the Balanced Budget and Emergency Control Act of 1985, as amended, the Office of Management and Budget hereby reports that it has submitted its Sequestration Update Report to the President, the Speaker of the House of Representatives, and the President of the Senate.

FOR FURTHER INFORMATION CONTACT: Jason Orlando, Budget Analysis Branch—202/395–7436.

Dated: August 27, 1999.

Stephen A. Weigler,

Associate Director for Administration.

[FR Doc. 99–22857 Filed 9–3–99; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request;

[Extension Rule 15c2–7; SEC File No. 270–420; OMB Control No. 3235–0479]

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

• Rule 15c2–7 Identification of Quotations

Rule 15c2–7 enumerates the requirements with which all brokers and dealers must comply when submitting a quotation for a security (other than a municipal security) to an inter-dealer quotation system. The purpose of Rule 15c2–7 is to ensure that an inter-dealer quotation system clearly reveals where two or more quotations in different names for a particular security represent a single quotation or where one broker-dealer appears as a correspondent of another. This is accomplished by requiring broker-dealers and inter-dealers and inter-dealer quotation systems to disclose with each published quotation the information required pursuant to the rule. The rule permits users of an inter-dealer quotation system to determine the identity of dealers making an inter-dealer market for a security—a fact which may be extremely pertinent in evaluating its marketability.

It is estimated that there are 8,500 brokers and dealers. Industry personnel estimate that approximately 900 notices are filed pursuant to Rule 15c3–7 annually. Based on industry estimates that respondents complying with Rule 15c2–7 spend 30 seconds to add notice of an arrangement and 1 minute to delete notice of an arrangement, and assuming that one-half of the notices given are to add an arrangement and the other half are to delete an arrangement, the staff estimates that, on an annual basis, respondents spend a total of 11.25 hours to comply with Rule 15c2–7 (900×45 seconds=40,500 seconds/60=675 minutes/60=11.23 hours). The Commission staff estimates that the average labor cost associated with this activity is $35 per hour. Therefore, the total labor cost of compliance for all brokers-dealer respondents is approximately $394 (11.25 multiplied by $35).

Written comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information, (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, DC 20549.

Dated: August 25, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23113 Filed 9–3–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23983; File No. 812–11610]

Allmerica Financial Life Insurance and Annuity Company, et al.

August 30, 1999.

AGENCY: Securities and Exchange Commission (the "Commission" or "SEC").

ACTION: Notice of Application for an order under Section 6(c) of the Investment Company Act of 1940 (the "1940 Act") granting exemptions from the provisions of Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder to permit the recapture of credits applied to contributions made under certain deferred variable annuity contracts.

Summary of Application: Applicants seek an order under Section 6(c) of the 1940 Act to the extent necessary to permit, under specified circumstances, the recapture of credits of up to 5% of contributions made under deferred variable annuity contracts and certificates (the "Contracts"), that Allmerica will issue through the Separate accounts, as well as other contracts that Allmerica may issue in the future through the Separate Accounts or any other future Separate Account of Allmerica ("Other Separate Account") to support variable annuity contracts and certificates that are substantially similar in all material respects to the Contracts (the "Future Contracts"). Applicants also request that the order being sought extend to any other National Association of Securities Dealers, Inc. ("NASD") member broker-dealer controlling or controlled by, or under common control with, Allmerica, whether existing or created in the future, that serves as a distributor or principal underwriter for the Contracts or Future Contracts offered through the Separate Accounts or any Other Separate Account ("Allmerica Broker-Dealer(s)").

Applicants: Almerica Financial Life Insurance and Annuity Company ("Allmerica"), Separate Account VA–K of Allmerica, Separate Account VA–P of Allmerica, Separate Account KG of Allmerica, and Allmerica Select Separate Account of Allmerica (together with the other Applicant separate accounts, the "Separate Accounts"), and Allmerica Investment, Inc. (collectively, "Applicants").

Filing Date: The application was filed on May 14, 1999, and amended and restated on August 4, 1999, and on August 27, 1999.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, in person or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 24, 1999, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, c/o Allmerica Financial Life Insurance and Annuity Company, 440 Lincoln Street, Worcester, Massachusetts 01653, Attn: Shelia B. St. Hilaire, Esq.

FOR FURTHER INFORMATION CONTACT: Kevin P. McEnery, Senior Counsel, or Susan M. Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth St., N.W., Washington, D.C. 20549–0102 (tel. (202) 942/8090).

Applicants' Representations

1. Allmerica is a stock life insurance company organized under the laws of the State of Delaware. Allmerica is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 ("1934 Act") and is a member of the NASD. Separate Account VA–K, Allmerica Select Separate Account, Separate Account VA–P, and Separate Account KG were established by resolutions of the Board of Directors of Allmerica on November 1, 1990, March 5, 1992, October 27, 1994, and June 13, 1996, respectively. Allmerica serves as depositor of each of the Separate Accounts. Allmerica may in the future establish one or more Other Separate Accounts for which it will serve as depositor.

2. Each of the Separate Accounts is a segregated asset account of Allmerica. Each of the Separate Accounts is registered with the Commission as a unit investment trust under the 1940 Act. Separate Account VA–K filed Form N–8A Notification of Registration under the 1940 Act on April 1, 1991. Allmerica Select Separate Account filed a Form N–8A on April 15, 1992. Separate Account VA–P filed a Form N–8A on November 3, 1994. Separate Account KG filed a Form N–8A on August 9, 1996.

3. Units of interest in the Separate Accounts will be registered under the Securities Act of 1933 (the "1933 Act"). In that regard, Allmerica Select Separate Account filed a Form N–4 registration statement on May 11, 1999, under the 1933 Act relating to the Contracts. Separate Account VA–K, Separate Account VA–P, and Separate Account KG each filed a Form N–4 registration statement on June 22, 1999, June 18, 1999, and June 18, 1999, respectively. Allmerica may issue Future Contracts through the Separate Accounts and through Other Separate Accounts. The assets of the Separate Accounts are not chargeable with liabilities arising out of any other business of Allmerica. Any income, gains or losses, realized or unrealized, from assets allocated to the Separate Accounts are, in accordance with the respective Contracts, credited to or charged against the Separate Accounts, without regard to other income, gains or losses of Allmerica.

4. Allmerica Investments, Inc. ("Allmerica Investments") is a wholly-owned subsidiary of Allmerica and will be the principal underwriter of the Separate Accounts and distributor of the Contracts funded through Allmerica Select Separate Account ("Select Contracts"), Separate Account VA–K ("VA–K Contracts"), Separate Account VA–P ("VA–P Contracts"), and Separate Account KG ("KG Contracts") (collectively, the "Contracts"). Allmerica Investments is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 (the "1934 Act") and is a member of the NASD. The Contracts will be offered through registered representatives of Allmerica Investments, or through unaffiliated broker-dealers, which are registered under the 1934 Act and members of the NASD, that have selling agreements with Allmerica Investments. Allmerica Investments, or any successor entity, may act as principal underwriter for any Other Separate Account and distributor for any Future Contracts issued by Allmerica. A successor entity also may act as principal underwriter for the Separate Accounts.

5. The Select Contracts, VA–K Contracts, VA–P Contracts, and KG Contracts are substantially similar in all material respects. They differ principally in the mix of mutual funds underlying each of the Separate Accounts, in the distribution channels used in the offering of the Contracts, and in the amount of the Credit (currently 5% for the Select Contracts and 4% for the VA–K Contracts, KG Contracts, and VA–P Contracts). There are minor differences in some contract features. Contracts may be issued as individual retirement annuities ("IRAs," either "Traditional IRAs" or "Roth IRAs"), in connection with certain types of qualified or non-qualified plans, or as non-qualified annuities for after-tax contributions only. In some states, the Contracts may be issued on a group basis, rather than as an individual contract. Each of the group contracts consists of (i) a basic form of group annuity contract (the "Group Contract") issued to an employer or to a bank, trust company or other institution whose sole responsibility will be to serve as party to the Group contract, (ii) a basic form of certificate issued under and reflecting the terms of the Group Contract, and (iii) forms of certificate endorsements to be used for specific forms of benefits under the certificates.

6. Payments may be made to the Contract at any time prior to the Annuity Date, subject to certain minimums. Currently, the initial payment must be at least $1,000 ($2000 for KG Contracts and $600 for VA–K Contracts), with lower minimum payments under salary deduction or monthly automatic payment plans, and for certain employer-sponsored retirement plans. The minimum subsequent payment is $50 ($167 for KG Contracts).

7. The Contracts permit the owner to allocate contributions to a fixed interest account ("Fixed Account") of Allmerica's general account, to accumulate interest at a fixed, guaranteed rate. Contributions may also be allocated to certain guarantee period accounts ("Guarantee Period Accounts"). Each Guarantee Period Account will provide a guarantee of each contribution plus interest at a guaranteed interest rate. Allmerica's general account assets support the guarantee of principal and interests. An upward or downward adjustment, or "market value adjustment," will be made to the annuity account value in Guarantee Period Account upon a

withdrawal, surrender or transfer from the Guarantee Period Account prior to the expiration of its guarantee period. The Market Value Adjustment will never be applied against the owner's principal investment, and even after application of the Market Value Adjustment, earnings in a Guarantee Period Account will not be less than an effective rate of 3% annually.

8. Each Separate Account consists of Sub-Accounts, which invest in the portfolios of certain underlying investment companies ("Funds"), each of which is registered with the Commission as an open-end, management investment company. Other Funds may be made available to the Separate Accounts or to the Other Separate Accounts of Allmerica. Separate Account VA–K of Allmerica will initially offer seventeen Sub-Accounts under the VA–K Contracts, each of which invests in a corresponding investment portfolio of Delaware Group Premium Fund, Inc., managed by Delaware Management Company, Inc. and Delaware International Advisers Ltd., or of Allmerica Investment Trust ("AIT"), managed by Allmerica Financial Investment Management Services, Inc. ("AFIMS"). Allmerica Select Separate Account is currently comprised of fourteen Sub-Accounts, each of which invests in a corresponding investment series of AIT, Variable Insurance Products Fund, managed by Fidelity Management & Research Company, or T. Rowe Price International Series, Inc. ("T. Rowe Price"), managed by Rowe Price-Fleming International, Inc. Separate Account KG is currently comprised of twenty-six Sub-Accounts, each of which invests in a corresponding investment series of Kemper Variable Series ("KVS") or Scudder Variable Life Investment Fund ("Scudder VLIF"), both managed by Scudder Kemper Investments, Inc. Separate Account VA–P currently consists of thirteen Sub-Accounts, each of which invests in a corresponding investment portfolio of the Pioneer Variable Contracts Trust, managed by Pioneer Investment Management, Inc.

9. Allmerica in the future may determine to create additional Sub-Accounts of the Separate Accounts to invest in additional portfolios, other underlying portfolios or other investments in the future. In addition, Sub-Accounts may be combined or eliminated from time to time.

10. The Contracts provide for various withdrawal options, annuity payout options, as well as transfer privileges among Sub-Accounts, dollar cost averaging, death benefits, optional annuitization riders, and other features. The Contracts have charges consisting of: (i) a withdrawal charge as a percentage of contributions declining from 8.5% in years one through four to 0% after year nine, with a 15% "free withdrawal" amount in certain situations; (ii) asset-based charges at the annual rates of 1.25% for mortality and expense risks and 0.15% for administration expenses assessed against the net assets of each Sub-Account; and (iii) an annual contract fee of $35 for Contracts with an Accumulated Value of less than $75,000. The underlying Funds each impose investment management fees and charges for other expenses.

11. Each time Allmerica receives a contribution from an owner, it will allocate the owner's contract value a credit ("Credit") of up to 5% of the amount of the contribution (currently 5% for the Select Contracts and 4% for the VA–K Contracts, VA–P Contracts, and KG Contracts). Allmerica will allocate Credits among the investment options in the same proportion as the corresponding contributions are allocated by the owner. Allmerica will fund the Credits from its general account assets. Allmerica will recapture Credits from an owner only if the owner returns the Contract to Allmerica for a refund during the "free look" period, which varies by state.

12. Applicants seek exemption pursuant to Section 6(c) of the 1940 Act from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c-1 thereunder to the extent deemed necessary to permit Allmerica to recapture Credits when an owner returns a Contract for a refund during the "free look" period, in which case Allmerica will recover the amount of any Credit applicable to such contribution.

Applicants' Legal Analysis

1. Section 6(c) of the 1940 Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the 1940 Act and the rules promulgated thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants request that the Commission, pursuant to Section 6(c) of the 1940 Act, grant the exemptions summarized above with respect to the Contracts and any Future Contracts funded by the Separate Accounts or Other Separate Accounts, that are issued by Allmerica and underwritten or distributed by Allmerica Investments or Allmerica Broker-Dealers. Applicants undertake that Future Contracts funded by the Separate Accounts or any Other Separate Account will be substantially similar in all material respects to the Contracts. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants represent that it is not administratively feasible to track the Credit amount in any of the Separate Accounts after the Credit is applied. Accordingly, the asset-based charges applicable to the Separate Accounts will be assessed against the entire amounts held in the respective Separate Accounts, including the Credit amount, during the "free look" period. As a result, during such period, the aggregate asset-based charges assessed against an owner's annuity account value will be higher than those that would be charged if the owner's annuity account value did not include the Credit.

3. Subsection (i) of Section 27 provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for any registered separate account funding variable insurance contracts or a sponsoring insurance company of such account to sell a contract funded by the registered separate account unless, among other things, such contract is a redeemable security. Section 2(a)(32) defines "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

4. Applicants submit that the recapture of the Credit if an owner returns the Contract during the free look period would not deprive an owner of his or her proportionate share of the issuer's current net assets. Applicants state that an owner's interest in the amount of the Credit allocated to his or her annuity account value upon receipt of an initial contribution is not vested until the applicable free-look period has expired without return of the Contract. Until or unless the amount of any Credit is vested, Applicants submit that America retains the right and interest in the Credit amount, although not in the earnings attributable to that amount. Applicants argue that when Allmerica recaptures any Credit it is simply retrieving its own assets, and because an owner's interest in the Credit is not vested, the owner has not been deprived of a proportionate share of the applicable Separate Account's assets, *i.e.*, a share of the applicable Separate Account's assets proportionate to the owner's annuity account value (including the Credit).

5. In addition, Applicants state that it would be patently unfair to allow an owner exercising the free-look privilege to retain a Credit amount under a Contract that has been returned for a refund after a period of only a few days. Applicants state that if Allmerica could not recapture the Credit, individuals could purchase a Contract with no intention of retaining it, and simply return the Contract for a quick profit.

6. Applicants represent that the Credit will be attractive to and in the interest of investors because it will permit owners to put up to 105% of their contributions to work for them in the selected Sub-Accounts. In addition, the owner will retain any earnings attributable to the Credit, and the principal amount of the Credit will be retained under the conditions set forth in the application.

7. Applicants submit that the provisions for recapture of any Credit if an owner returns a Contract or any Future Contract during the free look period under the Contracts will not violate Sections 2(a)(32) and 27(i)(2)(A) of the 1940 Act. Nevertheless, to avoid any uncertainties, Applicants request an exemption from those Sections, to the extent deemed necessary, to permit the recapture of any Credit if an owner returns a Contract or any Future Contract during the free look period, without the loss of the relief from Section 27 provided by Section 27(i).

8. Section 22(c) of the 1940 Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company, whether or not members of any securities association, to the same extent, covering the same subject matter, and for the accomplishment of the same ends as are prescribed in Section 22(a) in respect of the rules which may be made by a registered securities association governing its members. Rule 22c-1 thereunder prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security, which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

9. Arguably, Allmerica's recapture of the Credit may be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the Separate Accounts. Applicants contend, however, that recapture of the Credit is not violative of Section 22(c) and Rule 22c–1. Applicants argue that the recapture does not involve either of the evils that Rule 22c–1 was intended to eliminate or reduce, namely: (i) the dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption or repurchase at a price above it, and (ii) other unfair results including speculative trading practices. *See*, Adoption of Rule 22c–1 under the 1940 Act, Investment Company Release No. 519 (Oct. 16, 1968). To effect a recapture of a Credit, Allmerica will redeem interests in an owner's Contract at a price determined on the basis of current net asset value of the respective Sub-Accounts. The amount recaptured will equal the amount of the Credit that Allmerica paid out of its general account assets. Although owners will be entitled to retain any investment gain attributable to the Credit, the amount of such gain will be determined on the basis of the current net asset value of the respective Sub-Accounts. Thus, no dilution will occur upon the recapture of the Credit. Applicants also submit that the second harm that Rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Credit. However, to avoid any uncertainty as to full compliance with the 1940 Act, Applicants request an exemption from the provisions of Section 22(c) and Rule 22c–1 to the extent deemed necessary to permit them to recapture the Credit, as described herein, under the Contracts and Future Contacts.

Conclusion

Applicants submit that their request for an order is appropriate in the public interest. Applicants state that such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Applicants argue that investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the 1940 Act that has not already been addressed in their application described herein. Applicants submit that having them file additional applications would impair their ability effectively to take advantage of business opportunities as they arise. Further, Applicants state that if they were required repeatedly to seek exemptive relief with respect to the same issues addressed in the application described herein, investors would not receive any benefit or additional protection thereby.

Applicants submit, based on the grounds summarized above, that their exemptive request meets the standards set out in Section 6(c) of the 1940 Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act, and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23114 Filed 9–3–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of September 6, 1999.

A closed meeting will be held on Thursday, September 9, 1999 at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters will be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10)

and 17 CFR 200.402(a)(4), (8), (9)(i), and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Unger, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, September 9, 1999, at 10:00 a.m., will be:

Institution of injunctive actions.
A litigation matter.
Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: September 1, 1999.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–23286 Filed 9–2–99; 11:48 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release 34–41805; File No. 600–23]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice and Order Extending Temporary Registration as a Clearing Agency

August 27, 1999.

Notice is hereby given that the securities and Exchange Commission ("Commission") pursuant to Section 19(a) of the Securities Exchange Act of 1934 ("Act")[1] is extending the Government Securities Clearing Corporation's ("GSCC") temporary registration as a clearing agency through January 14, 2000.

FOR FURTHER INFORMATION CONTACT: Jerry W. Carpenter, Assistant Director, or Jeffrey S. Mooney, Special Counsel, at 202/942–4187, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001.

Background

On May 24, 1988, pursuant to Sections 17A(b) and 19(a) of the Act[2] and Rule 17Ab2–1 promulgated thereunder,[3] the Commission granted GSCC registration as a clearing agency on a temporary basis for a period of three years.[4] The Commission subsequently has extended GSCC's registration through August 31, 1999.[5]

In the most recent extension of GSCC's temporary registration, the Commission stated that it planned in the near future to seek comment on granting GSCC permanent registration as a clearing agency. The extension of GSCC's temporary registration will enable the Commission to do so within the next few months.

It is therefore ordered that GSCC's temporary registration as a clearing agency (File No. 600–23) be and hereby is extended through January 14, 2000, subject to the terms set forth above.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23105 Filed 9–3–99; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(a).
[2] 15 U.S.C. 78q-1(b) and 78s(a).
[3] 17 CFR 240.17Ab2–1.
[4] Securities Exchange Act Release No. 25740 (May 24, 1988), 53 FR 19639.
[5] Securities Exchange Act Release Nos. 29067 (April 11, 1991), 56 FR 15652; 32385 (June 3, 1993), 58 FR 32405; 35787 (May 31, 1995), 60 FR 30324; 36508 (November 27, 1995), 60 FR 61719; 37983 (November 25, 1996), 61 FR 64183; 38698 (May 30, 1997), 62 FR 30911; 39696 (February 24, 1998), 63 FR 10253; and 41104 (February 24, 1999), 64 FR 10510.
[6] 17 CFR 200.30–3(a)(16).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41791; File No SR–CBOE–99–43]

Self-Regulatory Organizations; Notice of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Amend Its Commission Pertaining to Corporate Governance

August 25, 1999

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 6, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1)
[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend certain provisions of the Constitution pertaining to the governance of the Exchange.

The text of the proposed rule change follows. Additions are in *italics;* deletions are bracketed.

Article I; Definitions

Section 1.1 When used in this Constitution, *except as expressly otherwise provided or* unless the context otherwise requires:

(a) The term "Exchange" means the Chicago Board Options Exchange, Incorporated or its exchange market.

(b) The term "member" means an individual member or a member organization of the Exchange (or a registered nominee of such a member organization) that is a regular member in good standing described in section 2.1(b) of Article II of the Constitution[, or that is a special member in good standing described in section 2.1(d) of Article II of the Constitution to the extent that such special members are entitled to the rights and are subject to the obligations of members under the Certificate of Incorporation, the Constitution or the Rules].

(c) The term "member organization" means a partnership or corporation which owns a membership, or a partnership or corporation for which a membership is registered in accordance with Section 2.4 of Article II of the Constitution.

(d) The term "Board" means the Board of Directors of the Exchange.

(c) The term "Rules" means the rules of the Exchange as adopted or amended from time to time.

Article II; Membership

Section 2.1 Number of Memberships

(a) Membership in the Exchange shall be made available by the Exchange at such times, under such terms and in such number as shall be proposed by the Board and approved by the affirmative vote of the majority of the members present in person or represented by proxy at a regular or special meeting of the membership. Such an affirmative vote by the members shall be required for the issuance of all new memberships, whether regular or special, whether having expanded or limited rights, whether designated memberships or permits or as a classification using any other description, which grant the holders thereof the right to enter into securities transactions at the Exchange.

(b) The regular membership of the Exchange shall consist of persons who acquire *regular* memberships made available by the Exchange in accordance with the Rules, and shall also consist of those members of the Board of Trade of the City of Chicago who, pursuant to paragraph (b) of Article FIFTH of the Certificate of Incorporation, elect to apply for membership and are approved for membership in accordance with the rules. Except as otherwise expressly provided in the Certificate of Incorporation, the Constitution or the rules, every regular member of the Exchange shall be entitled to the same rights and privileges, and shall be subject to the same obligations, as every other regular member.

(c) *Reserved for special memberships.* [All prior offers by the Exchange of memberships unsold as of August 29, 1977, are withdrawn and all available memberships unsold by the Exchange as of said date are terminated.]

[(d) The special membership of the Exchange shall consist of persons who were options members in good standing of the Midwest Stock Exchange, Incorporated ("Midwest") as of May 30, 1980 and, subject to the conditions of approval for membership as stated in the Constitution and Rules, transferees of such persons. Special members in good standing, or lessees of such special members under these arrangements that have been in effect continuously from July 18, 1978, shall be entitled to act as Market-Makers or Floor Brokers in accordance with Chapters VI and VIII of the Rules in and only in those classes of MSE Options which continue to be open for trading on the Exchange; provided that all special memberships shall expire and all rights of special members shall cease, ten years after the date stated in the first sentence of this paragraph (d), and provided further, that a special membership may be canceled by the Exchange at an earlier date under the circumstances, and with the effect, as provided in the Rules. Special members shall as a condition of their membership be subject to all of the obligations of regular members under the Constitution and the Rules, except as may be otherwise expressly provided that Constitution or the Rules. For purposes of this paragraph (d), the term "MSE Options" shall mean (i) those classes of call options which were open for trading on Midwest at the close of business on the last business day prior to the date defined in the first sentence of this paragraph (d) other than classes or call options which, on the day Midwest commenced trading in such classes, also were open for trading on the Exchange, and (ii) all classes of put options on the securities underlying the classes of call options covered by (i).]

(d)[(e)](1) Seventy-five "Options Trading Permits" ("Permits") shall be issued or made available for leasing in accordance with the Rules. All Permits shall expire, and all rights of their holders shall cease, on the seventh anniversary of the date determined pursuant to agreement between the Exchange and the New York Stock Exchange ("NYSE") on which trading begins on the floor of the Exchange in options that were listed on the NYSE.

(2) Permit holders shall have no right to petition or to vote at Exchange membership meetings or elections or to be counted as part of a quorum, shall have no interest in the assets or property of the Exchange and no right to share in any distribution by the Exchange, and shall have none of the other rights or privileges accorded members under any provision of the Constitution and Rules other than those specified in the Rules.

Section 2.2 Eligibility for Membership; Good Standing

Membership shall be limited to individuals, partnerships[,] and corporations, subject to their meeting the conditions of approval as stated in the Constitution and Rules. Members must have as the principal purpose of their membership the conduct of a public securities business as defined in the Rules.

The good standing of a member may be suspended, terminated or otherwise withdrawn, as provided in the rules, if any of said conditions for approval cease to be maintained or the member violates any of its agreements with the Exchange or any of the provisions of the Constitution or the rules. Unless a member is in good standing, the member shall have no rights or privileges of membership except as otherwise provided by statute, the Certificate of Incorporation, the Constitution or the Rules, shall not hold himself or itself out for any purpose as a member, and shall not deal with the Exchange on any basis except as a non-member.

Section 2.3 Nominees of Member Organizations

No Change.

Section 2.4 Registration of Individual Memberships for Member Organizations

No Change.

Section 2.5 Acquisition and Transfer of Memberships

No Change.

Section 2.6 Voting and Other Rights and Powers

[(a)] Each regular member shall have the voting rights and power provided by law and by the Certificate of Incorporation *and the Constitution.*

[(b) Except as otherwise provided by law and by section 12.1, each special member shall be entitled at every meeting of members to one-sixth of one vote in person or by proxy, voting together with regular members and not as a separate class, and shall count as one sixth of a member in all other instances when reference is made in the Constitution to a majority or other proportion or number of members (including, without limiting the generality of the foregoing, reference to calling meetings or members, nominating by petition of members, determining a quorum of members or voting by members).]

[(c) Special members shall have the same eligibility as a regular members to serve as directors of the Exchange and to serve on any committee of the Exchange.]

[(d) Special members shall have no interest in or right to share in any distribution of the property and assets of the Exchange in the event of any liquidation or dissolution of the Exchange.]

Article III; Meetings of Members

Section 3.1 Place of Meetings

No Change.

Section 3.2 Annual Election Meeting

An annual election meeting of members shall be held on the [2nd Monday]*3rd Friday* in [December]*November* of each year unless such day is a legal holiday, in which case on the next succeeding business day which is not a legal holiday, at such time as may be designated by the Board prior to the giving of notice of the meeting, for the purpose of electing directors to fill expiring terms and any vacancies in unexpired terms and electing members of the Nominating Committee to fill expiring terms and any vacancies in unexpired terms.

Section 3.3 Annual Report Meeting

An annual report meeting of members shall be held within [90]*120* days following the end of the Exchange's fiscal year, at a time as determined by the Board, for the purpose of transacting such business as may properly be brought before the meeting.

Section 3.4 Special Meetings

Special meetings of members, for any purpose or purposes, unless otherwise prescribed by statute or by the Certificate of Incorporation, may be called by the Chairman of the Board, the Chairman of the Executive Committee[,] or the Board of Directors, and shall be called by the Secretary at the request in writing of 150 voting members, provided that such request shall state the purpose or purposes of the proposed meeting and the day and hour at which such meeting shall be held.

Section 3.5 Notice of Members' Meetings

No Change.

Section 3.6 Quorum and Adjournments

Except as otherwise provided by statute, the Certificate of Incorporation or the Constitution, a majority of the members entitled to vote, when present in person or represented by proxy, shall constitute a quorum at all meetings of members for the transaction of business, provided that in respect to uncontested elections, one-third of the members entitled to vote, when present in person or represented by proxy, shall constitute a quorum. If such quorum shall not be present or represented *by proxy* at any meeting of members, a majority of the members present in person or represented by proxy at [any such] *the* meeting shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting unless otherwise required by statute, until a quorum shall be present or represented. At *any* such adjourned meeting at which a quorum [shall be] *is* present [or represented], any business may be transacted which might have been transacted at the meeting as originally notified. Nothing in the Constitution shall [effect] *affect* the right to adjourn a meeting from time to time where a quorum is present.

Section 3.7 Voting by Members

With respect to any question brought before a meeting, when a quorum is present, a majority of *voting* members present in person or represented by proxy shall decide the question, unless the question is one upon which by express provision of statute, the Certificate of Incorporation or the Constitution, a different vote is required, in which case such express provision shall govern and control. Voting on any question brought before any meeting of members shall be, so far as applicable, in accordance with the procedure provided by Article V of the Constitution for the conduct of the annual election.

Article IV; Nominations

Section 4.1 Nominating Committee

(a) There shall be a Nominating Committee composed of [seven members, and except for the members of the initial] *four members who are primarily engaged in business on the floor of the Exchange in the capacity of a member (floor members) (except that, as provided in paragraph (b) of this section 4.1, the* Nominating Committee [each of the members shall be a member of the Exchange. The initial Nominating Committee, which shall select the nominees to be voted upon at the initial] *shall have six floor members until the 1999* annual election meeting, [shall be appointed by the Board. Thereafter, there shall be six elected] *and shall have five floor members until the 2000 annual election meeting); two members who are officers of member organizations that primarily conduct a non-member public customer business (firm members); two members each of whom directly or indirectly owns and controls (as defined in section 6.1(a)) one or more memberships in respect of which he acts solely as lessor (lessor members), at least one of whom is not actively engaged in business as a "broker-dealer" or as a "person associated with a broker-dealer" as those terms are defined in the Securities Exchange Act of 1934; and two representatives of the public (public members).*

(b) All of the members of the Nominating Committee [chosen] *shall be elected* by the [membership] *voting members* of the Exchange, [and one member]. *Members* of the Nominating Committee *elected prior to the 1999 annual election meeting shall continue to serve until the expiration of the terms for which they were elected. The Nominating Committee to serve in respect of the 1999 annual election meeting shall also include two firm members, two lessor members and two public members, all of whom shall be* appointed by the Chairman of the Executive Committee with the approval of the Board *of Directors*. [At] *In* the [first] *1999* annual election meeting, [the six elected members of the Nominating Committee] *one floor member shall be elected for a three year term, and two firm members, two lessor members and two public members* shall be elected, [two for a term expiring at the annual election meeting following the initial annual election meeting, two for a term] *one firm member, one lessor member and one public member for terms* expiring at the second annual election meeting following the [initial] *1999* annual election meeting, and [two] *one firm member, one lessor member and one public member* for [a term] *terms* expiring at the third annual election meeting following the [initial] *1999* annual election meeting. *In the 2000 annual election meeting, one floor member shall be elected for a three year term.* At each subsequent annual election meeting, [two] *members of the Nominating* Committee [members] shall be elected to succeed those whose terms expire, *each* to serve for a term expiring at the third succeeding annual election meeting[. One Committee member shall be appointed each year, for a term of one year, at the regular Board meeting immediately following the annual election meeting. A member] *and until their successors are duly elected and qualified. Elected members* of the Nominating Committee shall be ineligible for [election or appointment to the Committee] *reelection* for a period of three years after [his term expires] *their terms expire.*

Section 4.2 Nominating Committee Vacancies

Any vacancy occurring among the members of the Nominating Committee may be filled by a *qualified person appointed by* the Chairman of the Executive Committee with the approval of the Board *to hold office* until the next annual election meeting, at which time a *qualified* successor shall be elected to serve the unexpired term, if any, of his [elected] predecessor in office.

Section 4.3 Nominating Procedure

During October of each year the Nominating Committee shall hold at least three meetings, at least two of which shall be open to the membership, for the purpose of selecting not less than one nominee for each of the following offices to be voted [on] *upon* at the following annual election meeting:

(a) Directors to fill expiring terms and vacancies.

(b) Nominating Committee members to fill expiring terms and vacancies.

The Nominating Committee shall select nominees to fulfill the requirements of sections 6.1 and 4.1 of the Constitution with an obligation to have the various interests of the membership represented on the Board and the Nominating Committee, respectively. Notice of each of [these] *the* meetings *of the Nominating Committee* shall be posted on the bulletin board on the floor of the Exchange.

Section 4.4 Replacement Nominees

In the event any nominee named by the Nominating Committee withdraws or becomes ineligible, the Nominating Committee may select an additional *qualified* nominee to replace the withdrawn or ineligible nominee, and it shall select an additional *qualified* nominee if, as a result of the withdrawal or ineligibility, there is not at least one nominee for each of the offices to be elected.

Section 4.5 Nomination by Petition

Nominations *of candidates for election to the Board or the Nominating Committee* may be made by petition, signed by not less than 100 *voting* members of the Exchange and filed with the Secretary no later than 5:00 p.m. (Chicago time) on *the Monday preceding the 1st Friday in* November [15], or the first business day thereafter in the event *that Monday* [November 15] occurs on a holiday [or a weekend].

Section 4.6 Posting of Names of Nominees

No Change.

Section 4.7 Qualifications of Nominees

Candidates for election to the Board or the Nominating Committee, whether nominated by the Nominating Committee or by petition, shall be eligible for election in any of the categories for which they qualify both at the time of their nomination and at the time of their election. The sole judge of whether a candidate satisfies the applicable qualifications for election to the Board or the Nominating Committee in a designated category shall be the Nominating Committee in the case of candidates nominated by that Committee, and shall be the Executive Committee in the case of candidates nominated by petition, and the decision of the respective committee shall be final.

Article V: Conduct of Annual Election

Section 5.1 Election Committee

No. Change.

Section 5.2 Voting Procedure

Immediately following the expiration of the time within which nominations may be made by petition, the Secretary shall prepare a ballot listing all candidates nominated for offices to be voted upon at the annual election, the order of the listing to be determined by lot. A ballot, a form of proxy, an envelope marked "For Ballot Only" and a return envelope shall be mailed by the Secretary to each member *eligible to vote*, together with the notice of the annual election. Members may vote, either in person or by proxy, by marking the ballot which shall remain unsigned and sealing the same in the unmarked ballot envelope. Members desiring to vote by proxy shall mail the sealed ballot, accompanied by a signed proxy card, to the Secretary so that it is received by [him] *the Secretary* prior to the election. At the election, members voting in person shall deliver their sealed ballot envelopes to at least two members of the Election Committee, who shall keep a list of the members voting and shall place the sealed ballot envelopes in the ballot box. Following the completion of voting in person, the Secretary shall deliver to the Election Committee all of the proxies, each with its accompanying sealed ballot envelope. At least two members of the Election Committee shall check the names of the members voting by proxy on the voting list, file the proxies, and place the sealed ballot envelopes in the ballot box.

Section 5.3 Counting of Ballots

When all of the ballots properly submitted at the election have been placed in the ballot box, *members of* the Election Committee shall open the ballot box and the sealed ballot [envelope]*envelopes*, and shall count the ballots. A plurality of *the* votes shall elect the directors; provided, however, that where a plurality of votes cast [do] *would* not elect [at least 2 directors who shall be off-floor directors, as defined in section 6.1, of which at least 1 shall be a nonresident and at least 2 directors who shall be floor directors, as defined] *the number of directors from each of the categories specified* in section 6.1, then the [appropriate] *specified* number of candidates from each of [the above] *such* categories who receive the highest votes among all those candidates in each such category shall be elected in lieu of those candidates [with] *who receive what would otherwise be* the lowest winning pluralities. A plurality of *the* votes shall elect *the* members of the Nominating Committee; provided, however, that in the same manner as described above for the election of directors, in any case where a plurality of votes cast would not elect the number of members of the Nominating Committee from each of the categories specified in section 4.1, then the specified number of candidates in each such category who receive the highest votes among all candidates in that category shall be elected. The Election Committee shall cause election results to be posted on the bulletin board on the floor of the Exchange.

Article VI: Board of Directors

Section 6.1 Number, Election and Term of Office of Directors

(a) The Board of Directors shall *consist* [be composed] of *22* [21] directors, [15 of whom shall be members of executive officers of member organizations of the Exchange and shall be] by the membership of the Exchange, [4 of whom shall not be members of the Exchange and shall be appointed by the Chairman of the Board and approved by the Board to represent the public (public directors),] *as described below* and the Chairman of the Board [and the President], who by virtue of *his* [their] office[s] shall be *a* member[s] of the Board. *Commencing with the 1999 annual election meeting, the Directors elected by the membership shall be divided into three classes, composed as follows:*

Class I shall consist of one member who directly or indirectly owns and controls a membership and is primarily engaged in business on the floor of the Exchange in the capacity of a member (floor director), one member who functions as a member in any recognized capacity either individually or on behalf of a member organization (at-large director), one member who directly or indirectly owns and controls a membership with respect to which he acts solely as lessor and who is not actively engaged in business as a "broker-dealer" or as a "person associated with a broker-dealer" as those terms are defined in the Securities Exchange Act of 1934, (lessor director), two members who are executive officers of member organizations that primarily conduct a non-member public customer business and are not individually engaged in business on the Exchange floor (off-floor directors, and two non-members who are not broker-dealers or persons affiliated with broker-dealers (public directors).

Class II shall consist of one floor director, one at-large director, two off-floor directors and three public directors.

Class III shall consist of two floor directors, one at-large director, two off-floor directors and three public directors.

The ordinary place of business of at least one of the two off-floor directors in each Class shall be a location more than 80 miles from the Exchange's trading floor. For purposes of this section 6.1, a member shall be considered to directly own and control a membership only if the member individually and directly owns of record and beneficially all right, title and interest in the membership, and a member shall be considered to

indirectly own and control a membership only if the member (A) has the sole and exclusive right to vote the membership and control its sale, and (B) is in possession of and subject to all of the risks and rewards of a direct owner of at least a fifty percent (50%) interest in a membership, either through ownership of an equity interest in a member organization or of a beneficial interest in a trust, which in either case is the owner of one or more memberships as permitted under the rules.

(b) The initial terms of Class I, Class II and Class III directors shall terminate following the annual election meetings to be held in 1999, 2000 and 2001, respectively, and members of the Board prior to the annual election meeting to be held in 1999 shall be assigned to one of these three Classes on the basis of the year in which their current term of office expires.[3] *At the 1999 annual election meeting, all of the Class I directors shall be elected for three year terms, and directors shall be elected to fill vacancies in Classes II and III. At subsequent annual election meetings, the directors of each class shall be elected for three year terms to succeed those whose terms are then about to expire, and they* [At least 6 of 15 elected Directors shall be members who individually either own or directly control their memberships on the Exchange and are primarily engaged in business on the Exchange floor (floor directors) and at least 6 of the 15 elected Directors shall be executive officers of member organizations which primarily conduct a non-member public customer business and shall individually not be primarily engaged in business activities on the Exchange floor (off-floor directors). Of the off-floor directors, at least 3 shall have as their ordinary place of business a location more than 80 miles from the Exchange's trading floor. The remaining 3 of the 15 elected Directors shall be members who function in any recognized capacity either individually or on behalf of a member organization. At each annual election meeting, 5 Directors shall be elected, at least 2 shall be off-floor directors, of which at least 1 shall be a non-resident; at leat 2 shall be floor directors. All of such elected Directors shall succeed those elected Directors whose terms expire and shall serve for a term of 3 years. After the annual election meeting next occurring subsequent to the effective date of the Constitutional amendment increasing the number of public directors, 2 public directors shall be appointed, 1 for a term of 2 years and 1 for a term of 1 year; and after each subsequent annual election meeting, 2 public directors shall be appointed, each to serve for a two-year term, succeeding the public directors whose terms then require. Each Director] shall hold office for the terms *for* [to] which [he is] elected [or appointed] *and until their successors shall have been duly elected and qualified,* or until *their* [his] earlier death, resignation or removal[;]. *Terms* of office *of directors* shall expire at the first regular meeting of the Board of Directors *held on or after Janaury 1* following *the* annual election meeting[s] *at which their successors are elected.*

Section 6.2 Powers of the Board

No Change.

Section 6.3 Resignation, Disqualification and Removal of Directors

(a) A Director may resign at any time by giving written notice of his resignation to the Chairman of the Boad or the Secretary, and such resignation, unless specifically contingent upon its acceptance, will be effective as of its date or of the date specified therein.

(b) [From and after the initial annual election meeting, any elected Director who] *In the event (i) any Director other than a public director* ceases to be a member or executive officer of a member organization *or (ii) the number of Directors in any designated category within a Class falls below the number for that category and Class as specified in section 6.1 because of the failure of a Director to maintain the qualifications for the designated category, of which failure the Board of Directors shall be the sole judge, the Director* shall thereupon cease to be a Director [and], his office shall become vacant *and the vacancy may be filled at the next scheduled meeting of the Baord of Directors with a person who qualifies for the category in which the vacancy exists,* provided that [an elected Director] *a Director other than a public director* whose membership is suspended may remain a Director *during the period of suspension* unless he is removed pursuant to paragraph (c) of this Section.

(c) In the event of the refusal, failure, neglect or inability of any Director to discharge his duties, or for any cause affecting the best interests of the Exchange the sufficiency of which the Board of Directors shall be the sole judge, the Board shall have the power, by the affirmative vote of at least two-thirds of the Directors then in office, to remove such Director and declare his office vacant.

[(d) In the event the number of Directors who qualify as floor directors falls below six because of the failure of a floor director to maintain the qualifications for election to that office specified in section 6.1 of the Constitution, of which the Board of Directors shall be the sole judge, the Director shall thereupon cease to be a Director, his office shall become vacant and the vacancy shall be filled at the next scheduled meeting of the Board of Directors with a member who qualifies as a floor director. Firm and public directors also shall maintain the qualifications for election to those offices, with the Board of Directors again being the sole judge as to whether qualifications have been maintained.]

Section 6.4 Filling of Vacancies

Any vacancy in the Board of Directors resulting from a Director ceasing to hold office [Prior to the initial annual election meeting any vacancy occurring in the Board, and from and after the initial annual election meeting any vacancy of an elected Director] prior to the expiration of his term [of office,] may be filled *by a person who is qualified to serve in the category of the Board in which the vacancy exists and who is appointed* by the affirmative vote of a majority of the Directors then in office, and any Director so chosen shall serve until the next annual election meeting and until his successor is duly elected and qualified. The remaining portion of the unexpired term of [an elected] *a* Director, if any, shall be served by a Director elected at such next annual election meeting. [A vacancy of an appointed Director prior to the expiration of his term of office may be filled by the Chairman of the Board with the approval of the Board, and any Director so chosen shall serve the unexpired term of his predecessor in office.]

Section 6.5 Quorum

No Change.

Section 6.6 Regular Meetings

No Change.

Section 6.7 Special Meetings

Special meetings of the Board may be called by the Chairman of the Board or the Chairman of the Executive Committee and shall be called by the Secretary upon the written request of any 4 Directors. The Secretary shall give at least one hour's notice of such meeting to each Director, either by

[3] *Any member serving as a floor director prior to the 1999 annual election meeting shall be permitted to serve out the remainder of his current term of office without regard to whether his business on the floor is conducted "in the capacity of a member."*

announcement on the Exchange floor during trading hours on business days, or personally, or by mail, telegram or cablegram. Every such notice shall state the time and place of the meeting[,] which shall be fixed by the person calling the meeting, but need not state the purpose thereof except as otherwise required by statute, the Constitutiion or the Rules.

Section 6.8 Participation in Meeting

No Change.

Section 6.9 Informal Action

No Change.

Section 6.10 Interested Directors

No Change.

Section 6.11 Annual Report to Members

No Change.

Article VII; Committees

Section 7.1 Designation of Committees

The Committees of the Exchange shall consist of an Executive Committee and such other standing and special committees as may be provided in the Constitution or Rules or as may be from time to time appointed by the Chairman of the Executive Committee with the approval of the Board. [The] *Except as may be otherwise provided in the Constitution of the Rules, the* Chairman of the Executive Committee with the approval of the Board [may] *shall* appoint the members of all committees[, and may designate a Chairman and a Vice-Chairman thereof other than the Chairman of the Executive Committee, who shall be [elected] *selected* as provided in section 8.1(a) of the Constitution.

Section 7.2 The Executive Committee

The Executive Committee shall consist of the Chairman of the Board, the Chairman of the Executive Committee, [the President] and at least 4 other persons, each of whom must be a Director. Each member of this Committee shall be a voting member. The members of the Executive Committee shall serve for a term of one year expiring at the first regular meeting of Directors following the annual election meeting in each year. The Executive Committee shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Exchange, except it shall not have the power or authority of the Board in reference to amending the Certificate of Incorporation, adopting an agreement of merger or consolidation, recommending to the members of sale, lease or exchange of all or substantially all of the Exchange's property and assets, recommending to the members the dissolution of the Exchange or a revocation of a dissolution, or amending the Constitution or Rules of the Exchange.

Section 7.3 Other

No Change.

Section 7.4 Conduct of Proceedings

No change.

Section 8.1 Designation; Number; Election

(a) The officers of the Exchange shall be a Chairman of the Board, a Chairman of the Executive Committee, a President, one or more [Vice Presidents] *Vice-Presidents* (the number thereof to be determined by the Board of Directors), a Secretary, a Treasurer, and such other officers as the Board may determine. The Chairman of the Board shall be elected by the affirmative vote of at least two-thirds of the Directors then in office exclusive of the Chairman [and the President[, who shall not vote. Such affirmative vote may also prescribe his duties not inconsistent with the Constitution or Rules and may prescribe a tenure of office.

The Chairman of the Executive Committee shall be a director who owns or directly controls his own membership and *is primarily engaged in business on the floor of the Exchange in the capacity of a member. He* shall be elected by a plurality of members voting at a meeting of the membership held *on the 3rd Friday in December of* each year [on the third] (or if that day is not a business day [in January], *on the next succeeding business day) and shall serve unil his successor is duly chosen and qualified or until his earlier death of his registration or removal. Once a director has held the office of the Chairman of the Executive Committee for six months or more of a one-year term and for the next two succeeding one-year terms, the director shall thereafter be ineligible to again hold the office until a period of not less than six months has elapsed during which the director has not held that office. Candidates for the office of Chairman of the Executive Committee* must notify the Secretary of the Exchange in writing no later than the [third Monday of December.]*close of business on November 23rd (or if that day is not a business day, on the next succeeding business day).* In the event there is only one candidate, no election need be held, and the Board of Directors shall declare the office filled by the sole announced candidate.

The remaining officers of the Exchange shall be appointed by the Chairman of the Board, subject to the approval of the Board, at the first regular meeting of the *Board of* Directors *held on or* after *January 1 following* each annual election meeting, [and shall] *each to serve until [his] a* successor [is]*has been* duly chosen and qualified or until [his] *the officer's earlier death or [his] resignation or removal.*

(b) No Change.

Section 8.2 Chairman of the Board of Directors.

(b) No Change.

Section 8.3 Chairman of the Executive Committee/*Vice-Chairman of the Board*

The Chairman of the Executive Committee *(who is also Vice-Chairman of the Board)* shall preside at meetings of the Executive Committee and at meetigns of the members. Subject to the approval of the Board, [he]*the Chairman of the Executive Committee* may appoint standing and special committees unless the method of appointment is otherwise provided for in the Constitution or Rules *or in the resolution of the Board establishing the committee.* [He] *The Chairman of the Executive Committee* shall be responsible for the coordination of the activities of all committees. He shall be an ex-officio member, without a right to vote, of all committees, without prejudice to [his] being specifically appointed as a voting member of any committee. [He is the Vice Chairman of the Board.] In the case of the absence or inability to act of the Chairman of the Board, or in case of a vacancy in the office of the Chairman of the Board, [he]*the Chairman of the Executive Committee* shall exercise the powers and discharge the duties of the Chairman of the Board.

Section 8.4 Acting Chairman

In the absence or inability to act of both the Chairman of the Board and the Chairman of the Executive Committee, the Board may designate an Acting Chairman of the Board. In the absence of such a designation by the Board, the President, or in his absence or inability to act, the senior available Vice-President, shall assume all the functions and discharge all the duties of the Chairman of the Board.

Section 8.5 Vacancy in Office of Chairman of the Executive Committee

(a) If the Chairman of the Executive Committee shall cease to *satisfy the requirements for election to* [be a member] *that office,* he shall thereupon cease to hold his office and such office shall become vacant, provided that if his

membership is suspended he may continue to hold office unless he is removed pursuant to paragraph (a) of section 8.7.

(b) If a vacancy occurs in the office of Chairman of the Executive Committee[,] pursuant to paragraph (a) of this section[,] or[,] if for any other reason the office becomes vacant, the Board, by the affirmative vote of a majority of the Directors then in office, shall fill such vacancy by the election to such office of a Director then in office who [owns or directly controls his own membership] *satisfies the requirements for election to such office.*

Section 8.6 President

The President shall be the chief operating officer of the Exchange. The President shall, by virtue of his office, be [a member of the Board of Directors and] an ex-officio member, without a right to vote, of all committees *other than committees whose membership is limited to directors of the Exchange,* without prejudice to his being specifically appointed as a voting member of any committee *other than a committee limited to directors.* Except as is otherwise provided in the Certificate of Incorporation, the Constitution or the Rules, the President shall have the power to employ and dismiss employees of the Exchange, and to establish their qualifications, duties, and salaries; he shall execute all authorized contracts on behalf of the Exchange and shall perform such other duties as may be prescribed by the Board from time to time. The President shall not engage in any other business during his incumbency as President, and by his acceptance of the office of President, he shall be deemed to have agreed and he shall have agreed to uphold the Constitution and Rules. In case of his temporary absence or inability to act he may designate any other officer to assume all the functions and discharge all the duties of the President. Upon his failure to do so, or if the office of President be vacant, the chairman of the Board or any officer designated by him shall perform the functions and duties of the President. When the President returns or is again able to act, he shall resume his duties.

Section 8.7 Removals

(a) No Change.

(b) Any officer, other than the Chairman of the Executive Committee, chosen by the Board may be removed at any time by the Board whenever in its judgment the best interests of the Exchange would be served thereby; provided, that the Chairman of the Board or the President may be removed only by the affirmative vote of at least [two thirds] *two-thirds* of the Directors then in office exclusive of the Chairman of the Board [and the President], who shall not vote. Any such removal shall be without prejudice to the contract rights, if any, of the person so removed.

(c) No Change.

Section 8.8 Vice Presidents

No Change.

Section 8.9 Secretary

No Change.

Section 8.10 Treasurer

No Change.

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Article XI; General Provisions

Section 11.1 Fiscal Year

No Change.

Section 11.2 Checks, Drafts and Other Instruments

No Change.

Section 11.3. Departments

No Change.

Section 11.4 Officers and Employees Restricted

(a) Every Salaried officer or employee of the Exchange, except the Chairman of the Executive Committee, and every salaried officer or employee of any corporation in which the Exchange owns the majority of the stock, shall report promptly to the Exchange every purchase or sale for his *or her* own account or the account of others of any security which is the underlying security of any option contract admitted to dealing on the Exchange.

(b) With the exception of the Chairman of the Executive Committee, no salaried officer or employee of the Exchange or salaried officer or employee of any corporation in which the Exchange owns the majority of the corporate stock may purchase or sell for his *or her* own account or for the account of others any option contract which entitles the purchaser to purchase or sell any security described in paragraph (a) of this Section

No Change.

Article XII; Amendment

Section 12.1 Constitution

The Constitution may be amended at any regular or special meeting of members by the affirmative vote of a majority of the members present in person or represented by proxy at the meeting[; provided, however, that any amendment to Section 2.1(d), Section 2.6(b) and (c), or to this Section 12.1 having an adverse effect on special members must be approved by the affirmative vote of a majority of both the special members eligible to vote and the regular members present in person or represented by proxy at the meeting, voting as separate classes].

Section 12.2 Rules

The Rules may be amended by the affirmative vote of a majority of the Directors present at a meeting at which such amendment is proposed, provided, however, that promptly upon *the* adoption of an amendment of the Rules, notice there shall be sent to each member, and within 15 days after such notice has been given, 150 or more *voting* members may request in writing that a special meeting of members be held to vote upon whether the amendment to the Rules shall be approved. The notice of the meeting shall state that the approval of such a proposed amendment will be considered.

Section 12.3 Effectiveness of Amendments

Subject to applicable federal or state regulatory requirements, amendments to the Constitution shall be effective upon their adoption by the members, and amendments to the Rules shall be effective at the expiration of the 15-day notice period, or, if a special meeting of members has been requested to vote upon the amendment *or if the amendment otherwise requires membership approval,* at the time the amendment is approved by the *requisite vote of the members; provided, however, that, except in the case of a Rule that expressly requires amendments to be approved by the membership or by a class of members,* the Board may declare an amendment to the rules effective immediately upon its adoption by the Board whenever the Board determines that, under the circumstances, such accelerated effectiveness is appropriate. Any amendment to the rules which is declared effective by the Board upon its adoption nevertheless remains subject to being voted upon at a special meeting of members in accordance with section 12.2, and any such amendment which is so voted upon but not approved shall be rescinded and shall cease to be effective from and after the time of its failure to be approved by the members. The rights and obligations of persons who rely in good faith on an amendment to the rules declared immediately effective by the Board shall not be affected in the event such amendment is subsequently disapproved by the members.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

A. Purpose

The CBOE proposes to make certain revisions to provisions of its Constitution pertaining to the governance of the Exchange. In particular, the CBOE proposes to increase the public representation on the Exchange's Board of Directors from four to eight public directors. The CBOE also proposes to require that at least one seat on the Board be held by an owner/lessor of a CBOE membership who is not actively engaged in business as a broker-dealer, reflecting the increasing number of CBOE memberships that are held by such "passive" lessors. To accommodate the greater number of public directors and the lessor director, the CBOE proposes to increase the total size of the Board from 21 to 23 directors, and to reduce the number of floor directors from six to four. The CBOE also proposes that the President of the Exchange will no longer be an *ex-officio (i.e.,* by virtue of the position) director. The number of off-floor member firm directors and at-large directors will remain unchanged at six directors and three directors, respectively, and the Chairman will continue to serve as an *ex-officio* director. Directors will continue to be elected for three-year terms, with all categories of directors to be elected by the membership. For transitional purposes, each director currently serving on the Board will be assigned to one of the three classes to permit those directors to complete their current terms of office.

The Exchange also proposes to clarify certain requirements applicable to the specific categories of directors as follows: in addition to the current requirement that floor directors must be primarily engaged in business on the floor of the Exchange, the CBOE proposes to specify that they must be "on a seat" (*i.e.,* acting in the capacity of a member) in connection with their floor activity. The CBOE also proposes to clarify the current requirement that a floor director own or control a membership by specifying that a floor director may own a membership indirectly through an interest in a corporation, partnership, limited liability company, trust or other entity that owns one or more memberships directly, so long as the director has the sole and exclusive right to vote a membership and control its sale, and is in possession of all of the risks and rewards of a direct owner of at least 50% interest in a membership. Finally, the CBOE proposes to specify that the Vice-Chairman of the Exchange (the Chairman of Executive Committee) must not only own a membership (as required under the current Constitution), but also must be primarily engaged in business on the floor of the Exchange.

The Exchange also proposes to expand the size of the Nominating Committee from seven to ten members to add representatives of retail firms, lessors and the public to that Committee. The Nominating Committee will judge the qualifications of all candidates for election to the Board or the Nominating Committee who are nominated by that Committee, and the Executive Committee will judge the qualifications of candidates who are nominated by petition. As proposed, the Nominating Committee would consist of four floor members (except during the first two transition years, when the number of floor members would first be six, and then five), two members who represent firms that primarily conduct a public customer business, two members who are lessors of their memberships (at least one whom must be a "passive" lessor, as described above), and two public members. All of the members of the Nominating Committee will be elected by the membership for three-year terms, except during a transition period, some members will be elected for shorter terms. The new retail firm, lessor, and public members of the Nominating Committee to serve with respect to the 1999 annual election will be appointed by the Chairman of the Executive Committee, with the approval of the Board.

Finally, the CBOE proposes to modify the timetable for various election matters that are provided for in the Constitution to advance the time when the Chairman of the Executive Committee (the Vice-Chairman of the Exchange) is selected by a few weeks. This proposed change is intended to enable the Vice-Chairman to complete the process of selecting chairpersons of the various Exchange committees by the end of the year.

The Exchange also proposes to make a few "housekeeping" changes to the Constitution to delete obsolete provisions. For example, the CBOE proposes to delete all references to "special" members of the Exchange, because there are no longer any members in this category.

2. Basis

The CBOE believes that the proposed amendments to the Constitution further the objectives of Section 6(b)(3) of the Act [4] to assure fair representation of the members of the Exchange in the selection of its directors and in the administration of its affairs, and to provide that one or more members of the Board of Directors must be representatives of investors (*i.e.,* public directors).

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the

[4] 15 U.S.C. 78f(b)(3).

Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–43 and should be submitted by September 28, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23108 Filed 9–3–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41799; File No. SR–DTC–99–20]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Implementing a Freeze on New Participant Accounts and a Contingency Plan for Withdrawal by Transfer Transactions

August 27, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (Act),[1] notice is hereby given that on August 19, 1999, The Depository Trust Company (DTC) filed with the Securities and Exchange Commission (Commission) the proposed rule change as described in Items I and II below, which items have been prepared primarily by DTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change provides that generally, DTC will not activate any new participant accounts after September 15, 1999, and until reasonably practicable in January 2000.[2] In addition, DTC will temporarily implement a contingency plan for the processing of withdrawal by transfer (WT) transactions in the unlikely event that participant's customers seek to withdraw security positions from participants due to concerns regarding systems problems related to the century date change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

September 15th New Participant Account Freeze

The proposed rule change provides that generally DTC will not activate any new participant accounts after September 15, 1999 (the end of the participant validation testing period),[4] and until reasonably practicable in January, 2000. DTC announced in its June 3, 1999, Important Notice that "[a]ny organization currently seeking admission as a direct Participant should plan to complete the admission process by [September 15], or defer activation of its account until after the century date change. Similarly, Participants wishing to switch to computer-to-computer input of settlement-related transactions or switch to another mode of computer-to-computer input for transactions must have completed implementation of the changes (and complete the necessary validation testing) by September 15."

DTC's Rule 2 provides in part that:

> The Corporation may decline to accept the application of any applicant upon a determination by the Corporation that the Corporation does not have adequate personnel, space, data processing capacity or other operational capability at that time to perform its services for additional Participants without impairing the ability of the Corporation to provide services for its existing Participants, to assure the prompt, accurate and orderly processing and settlement of Securities transactions, to safeguard the funds and Securities held by or for the Corporation for Participants or Pledgees or otherwise to carry out its functions; provided, however, that applicants whose applications are denied pursuant to this paragraph shall be approved as promptly as the capabilities of the Corporation permit in the order in which their applications were filed with the Corporation.

DTC believes that continuing to activate numerous new participant accounts or allowing participants to change their mode of settlement-related computer input after September 15th could potentially be disruptive to the rest of its Year 2000 efforts. Specifically, DTC will be devoting a great deal of resources to its second internal certification test in October and November of 1999. The internal certification test involves the testing of DTC's mainframe applications and systems in order to confirm their Year 2000 readiness. Additionally, DTC would like to ensure that it has enough time to deal with any unanticipated issues that arise before the end of the calendar year.

Withdrawal By Transfer Contingency Plan

In response to concerns expressed by some participants and in consultation with the Securities Industry Association and the Securities Transfer Association, DTC will temporarily implement a contingency plan to deal with the processing of an increased number of WT transactions (WT contingency plan). The concerns stem from the possibilitly that customers will seek to withdraw security positions from participants due to fears relating to the century date change in spite of customer education campaigns by participants and industry groups. Should a potential substantial increase in volume materialize, the WT contingency plan will enable DTC to process as many as 30,000 WT transactions daily, over triple the current volume of 9,000 WTs daily. Because WT processing and the related direct mail service[5] are highly labor intensive operations for DTC and transfer agents alike, the WT contingency plan also provides a mechanism for curbing volume in the unlikely event it exceeds 30,000 WT requests on any given day. As described in more detail below, this aspect of the contingency plan will potentially affect only participants whose volumes grow substantially higher than their present day volumes.

The WT contingency plan will be implemented and remain in effect during the fourth quarter of 1999.[6] The WT contingency plan is primarily comprised of (1) an internal task force of employees available to process increased volumes and (2) system changes to DTC's automated WT (AWT) system, which commences the WT processing stream. The AWT system changes described below are designed to prevent daily WT volume from exceeding 30,000 items in a manner that is fair and equitable to all participants and requires no programming changes by participants.

DTC has established a database showing the maximum allowable amount of WTs for each participant. The maximum allowable amount is based on participants' daily average WT volume for the three month period of February through April 1999. The maximum allowable amounts will be triggered only if the aggregate number of WTs submitted by participants exceeds the threshold of 30,000 on any day in the fourth quarter. A participant exceeding its maximum allowable amount will not be limited in its WT volume as long as fewer than 30,000 WTs are requested in total.

During the fourth quarter, the AWT system will initially process WT requests as normal, collecting WT requests transmitted by participants and sending them to the account transaction processor (ATP) to perform account updating. The WTs are processed in the same sequence as transmitted by participants. This process is usually finished each day by 9:30 a.m. Eastern Time (ET).

Under the proposed rule change a new procedure will be introduced in which AWT will count the aggregate number of items successfully processed by ATP to determine whether the overall cap of 30,000 items was exceeded, and the excess amount (total reversal amount). If the cap is exceeded, procedures will begin to automatically identify and reverse the required number of WTs to lower the day's total to 30,000 items. To accomplish this, AWT will identify the participants that surpassed their maximum allowable amounts and will record the excess items that were processed after their maximum allowable amounts were reached. The excess items will be stored on a temporary file, sorted in last in first out order by participant. The system will then select one excess item per participant from the temporary file and will continuously repeat this process until enough excess items have been selected to meet the total reversal amount. WT reversal transactions will then be created and processed to reverse the chosen excess WTs. This WT reversal process will be finished by approximately 9:45 a.m. (ET). Normal processing for WTs not reversed will then resume with DTC preparing certificates and transfer registration instructions for delivery to transfer agents.

Under the proposed rule change DTC will not automatically pend WTs that were reversed by the above procedure. Participants will therefore be required to submit new WT requests the following business day.

DTC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. In particular, the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[7] which requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No comments were solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F) of the Act[8] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission finds that the proposed rule change is consistent with this obligation because the proposed modifications to DTC's Year 2000 policies will permit DTC sufficient time before year end to complete its Year 2000 preparations. In addition, the implementation of the proposed WT contingency plan will enable DTC to deal with any substantial increase in the processing of WT transactions. As a result, DTC should be able to continue to provide prompt and accurate clearance and settlement of securities transactions before, on, and after Year 2000 without interruption.

DTC requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing because such approval will allow DTC to better prepare for a smooth Year 2000 transition.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the File No. SR–DTC–99–20 and should be submitted by September 28, 1999.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR–DTC–99–20) be and hereby is approved.

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[5] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The proposed rule change is also applicable to DTC's Mortgage Backed Securities Division.

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] Securities Exchange Act Release No. 40696 (November 20, 1998), 63 FR 65829 (Commission order approving DTC's validation testing requirement).

[5] DTC's direct mail service is comprised of two components, direct mail by the agent (DMA) and direct mail by DTC (DMD). Participants may elect to use either DMA or DMD to have their newly issued WT securities mailed directly to customers by transfer agents or DTC, respectively.

[6] In the unlikely event that DTC experiences sustained volumes of 30,000 WTs daily into the first quarter of the Year 2000, DTC will keep the WT contingency plan in effect until such time as volumes return to normal levels.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 15 U.S.C. 78s(b)(2).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23107 Filed 9–3–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41803; File No. SR–MBSCC–99–05)]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Acceptance of Letters of Credit

August 27, 1999.

On June 25, 1999, the MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–MBSCC–99–05) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] to permit MBSCC to replace its current letter of credit form with a letter of credit form developed by the Uniform Clearing Group ("UCG").[2] Notice of the proposal was published in the **Federal Register** on August 13, 1999.[3] No comment letters were received. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Description

Article IV, Rule 2, Section 9 of MBSCC's rules governs deposits of letters of credit by participants to the participants' fund for margin purposes. Currently, the rule requires participants to amend letters of credit expiring on September 1 by extending the expiration date to March 1 of the following year and to deposit new letters of credit on March 1 of the following year. The proposed rule change will reserve these dates and require participants to annually provide new letters of credit by September 1 and to amend letters of credit by March 1. The proposed rule change will also require that letters of credit delivered to MBSCC on or after September 1, 1999, be in the form of the uniform letter of credit ("ULC") developed by the UCG.

The ULC consists of a cover page with variable terms plus preprinted uniform terms. Variable terms include the name of the participant, the beneficiary clearing organization, the issuing bank, the amount of the credit, and the expiration date. To assist letter of credit issues and participants in completing the ULC, the UCG has drafted general instructions. In addition, MBSCC has provided supplemental instructions relating specifically to letters of credit furnished to MBSCC.

MBSCC expects that in the future modifications may be made to the ULC. If and when that occurs, MBSCC will require its members to use the revised form.[4]

II. Discussion

Section 17A(b)(3)(F)[5] of the Act requires that the rules of a clearing agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. MBSCC and the other members of the UCG developed the ULC to foster uniformity among the various U.S. securities and futures clearing organizations with respect to letters of credit that are deposited as collateral. This uniformity will help reduce operational burdens for securities and futures industry participants and their letter of credit issuers. It should also enhance the legal certainty that the letters of credit received by MBSCC and other UCG members as collateral will be enforceable. Accordingly, the Commission finds that the rule change is consistent with MBSCC's obligations under the Act.

MBSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change because accelerated approval will permit MBSCC to implement the ULC by September 1, 1999, at which time its previous letters of credit expire. Since September 1, 1999, is the scheduled implementation date of the ULC by certain UCG members, accelerated approval will also provide for a more coordinated implementation of the ULC. Furthermore, the Commission has not received any comment letters and does not expect to receive any comment letters on the proposal.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–MBSCC–99–05) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23110 Filed 9–3–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIEIS AND EXCHANGE COMMISSION

[Release No. 34–41802; File No. SR–GSCC–99–03]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Acceptance of letters of Credit as Clearing Fund Collateral

August 27, 1999.

On May 3, 1999, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–GSCC–99–03) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] to permit GSCC to replace its current letter of credit form with a letter of credit form developed by the Uniform Clearing Group ("USG").[2] Notice of the proposal was published in the **Federal Register** on August 13, 1999.[3] No comment letters were received. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Description

GSCC's Rule 4, Section 4 permits GSCC to accept letters of credit (in addition to cash and eligible netting securities) as clearing fund collateral. GSCC's rules define "eligible letter of credit" as a letter of credit that is, among other things, "in a form, and contains such other terms and conditions, as may be required by the Corporation." GSCC has determined that as of September 1, 1999, a letter of credit delivered to GSCC as clearing fund collateral must be in the form of the uniform letter of credit ("ULC") developed by the UCG. To accommodate the ULC, the rule change will amend GSCC's definition of "eligible letter of credit" to conform it with the uniform letter of credit.

The ULC consists of a (i) a cover page with variable terms and (ii) uniform terms. Variable terms include the name of the clearing member, the beneficiary clearing organization, the issuing bank, the amount of the credit, and the expiration date. General instructions drafted by the UCG assist clearing organization members in completing the ULC. In addition, GSCC has provided supplemental instructions to assist members specifically with letters of credit furnished to GSCC.

According to GSCC, the ULC provides that the presentment of a demand for payment can be accomplished at the discretion of the clearing corporation by hand delivery, facsimile transmission, or SWIFT message. If the demand is made before GSCC's pre-set cutoff time, the bank issuing the letter of credit must effect payment within sixty minutes.

It is expected that from time to time modifications will be made to the ULC by the UCG. If and when that occurs, GSCC will require its members to use the revised form.[4]

II. Discussion

Section 17A(b)(3)(F)[5] of the Act requires that the rules of a clearing agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. GSCC and the other members of the UCG developed the ULC to foster uniformity among the various U.S. securities and futures clearing organizations with respect to letters of credit that are deposited as collateral. This uniformity will help reduce operational burdens for industry participants and their letter of credit issuers. It should also enhance the legal certainty that the letters of credit received by GSCC and other UCG members as collateral will be enforceable.[6] Accordingly, the Commission finds that the rule change is consistent with GSCC's obligations under the Act.

GSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change because accelerated approval will permit GSCC to implement the ULC by September 1, 1999, at which time its previous letters of credit expire. Since September 1, 1999, is the scheduled implementation date of the ULC by certain UCG members, accelerated approval will also provide for a more coordinated implementation of the ULC. Furthermore, the Commission has not received any comment letters and does not expect to receive any comment letters on the proposal.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–99–03) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23109 Filed 9–3–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41801; File No. SR–NSCC–99–05]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change Relating to the Acceptance of Letters of Credit

August 27, 1999.

On April 20, 1999, the National Securities Clearing Corporation ("NSGC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–NSCC–99–05) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] to permit NSCC to replace its current letter of credit form with a letter of credit form developed by the Uniform Clearing Group ("UCG").[2] Notice of the proposal was published in the **Federal Register** on August 13, 1999.[3] No comment letters were received. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

I. Description

Rule 4, Section 1 of NSCC's Rules and Procedures permits NSCC to accept letters of credit in addition to cash and government securities as collateral for its clearing fund.[4] The proposed rule change will require that letters of credit delivered to NSCC on or after September 1, 1999, be in the form of the uniform letter of credit ("ULC") developed by the UCG.

The ULC consists of a cover page plus the uniform terms. All variable terms of the ULC, such as the name of the clearing member, the beneficiary clearing corporation, the issuing bank, the amount of the credit, and the expiration date, are set forth on the cover page. To assist members in completing the ULC, the UCG drafted general instructions. In addition, NSCC has provided supplemental instructions

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[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The UCG is an organization comprised of all of the major securities and futures clearing organizations and depositories in the U.S. The members of the UCG include the Boston Stock Exchange Clearing Corporation, The Depository Trust Company, Government Securities Clearing Corporation, MBSCC, National Securities Clearing Corporation, Options Clearing Corporation, Board of Trade Clearing Corporation, Chicago Mercantile Exchange, Clearing Corporation of New York, Kansas City Board of Trade, Minneapolis Grain Exchange, New York Mercantile Exchange, Emerging Markets Clearing Corporation, and Clearing Corporation for Options and Securities.

[3] Securities Exchange Act Release No. 41717 (August 6, 1999), 64 FR 44250.

[4] MBSCC will file a proposed rule change with the Commission prior to requiring members to comply with any substantive change made to the ULC by the UCG.

[5] U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The UCG is an organization comprised of all major securities and futures clearing corporations and depositories in the United States. The members of the UCG include the Boston Stock Exchange Clearing Corporation, The Depository Trust Company, GSCC, MBS Clearing Corporation, National Securities Clearing Corporation, The Options Clearing Corporation, Board of Trade Clearing Corporation, Chicago Mercantile Exchange, Clearing Corporation of New York, Kansas City Board of Trade, Minneapolis Grain Exchange, New York Mercantile Exchange, Emerging Markets Clearing Corporation, and Clearing Corporation for Options and Securities

[3] Securities Exchange Act Release No. 41715 (August 6, 1999), 64 FR 44249.

[4] GSCC will file a proposed rule change with the Commission prior to requiring members to comply with any substantive change made to the ULC by the UCG.

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] For example, the ULC recites certain understandings regarding the issuing bank's obligation to honor a demand. GSCC states that these understandings restate the existing principles governing letters of credit and were added to reduce the likelihood of dispute.

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The members of the UCG include the Boston Stock Exchange Clearing Corporation, The Depository Trust Company, Government Securities Clearing Corporation, MBS Clearing Corporation, NSCC, The Options Clearing Corporation, Board of Trade Clearing Corporation, Chicago Mercantile Exchange, Clearing Corporation of New York, Kansas City Board of Trade, Minneapolis Grain Exchange, New York Mercantile Exchange, Emerging Markets Clearing Corporation, and Clearing Corporation for Options and Securities.

[3] Securities Exchange Act Release No. 41716 (August 6, 1999), 64 FR 44252.

[4] Securities Exchange Act Release No. 18052 (August 21, 1981), 46 FR 43341.

relating specifically to letters of credit furnished to NSCC.

NSCC expects that modifications may be made to the ULC in the future. If and when that occurs, NSCC will require its members to use the revised form.[5]

II. Discussion

Section 17A(b)(3)(F)[6] of the Act requires that the rules of a clearing agency be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. NSCC and the other members of the UCG developed the ULC to foster uniformity among the various U.S. securities and futures clearing organizations with respect to letters of credit that are deposited as collateral. This uniformity will help reduce operational burdens for securities and futures industry participants and their letter of credit issuers. It should also enhance the legal certainty that the letters of credit received by NSCC and other UCG members as collateral will be enforceable. Accordingly, the Commission finds that the rule change is consistent with NSCC's obligations under the Act.

NSCC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for so approving the proposed rule change because accelerated approval will permit NSCC to implement the ULC by September 1, 1999, at which time its previous letters of credit expire. Since September 1, 1999, is the scheduled implementation date of the ULC by certain UCG members, accelerated approval will also provide for a more coordinated implementation of the ULC. Furthermore, the Commission has not received any comment letters and does not expect to receive any comment letters on the proposal.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular section 17A of the Act and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–99–05) be and hereby is approved.

[5] NSCC will file a proposed rule change with the Commission prior to requiring members to comply with any substantive changes made to the ULC.

[6] 15 U.S.C. 78q–1(b)(3)(F).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23111 Filed 9–3–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41800; File No. SR–NSCC–99–10]

Self-Regulatory Organizations; The National Securities Clearing Corporation; Order Granting Accelerated Approval of a Proposed Rule Change Relating to Arrangements to Integrate the National Securities Clearing Corporation and The Depository Trust Company

August 27, 1999.

On August 5, 1999, the National Securities Clearing Corporation filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–NSCC–99–10) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on August 16, 1999.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change on an accelerated basis.

I. Description

The rule change involves arrangements to integrate NSCC and The Depository Trust Company ("DTC"). Under the rule change, NSCC and DTC will form a New York corporation ("Holding Company") that will own directly all of the outstanding stock of NSCC and will own indirectly through a Delaware subsidiary of the Holding Company all of the outstanding stock of DTC.

The Holding Company will issue two classes of stock: common and preferred. The Holding Company will conduct two exchange offers in which (1) current DTC stockholders will have the opportunity to exchange their DTC shares for Holding Company common stock on a one-for-one basis and (2) the New York Stock Exchange ("NYSE") and the National Association of Securities Dealers, Inc. ("NASD"), the two current stockholders of NSCC, will be offered shares of Holding Company preferred stock on a one-for-one basis in exchange for their NSCC shares.

In connection with the exchange for shares of DTC stock, the current DTC Stockholders Agreement has been amended to provide that if a specified super majority of DTC stockholders tender their shares of DTC stock for shares of Holding Company common stock: (1) any DTC stockholders that fail to tender their shares DTC stock will cease to be qualified holders of DTC stock; (2) their shares of DTC stock will automatically be transferred to NSCC; (3) NSCC will tender such shares of DTC stock to the Holding Company in exchange for an equivalent number of shares of Holding Company common stock; and (4) the non-tendering DTC stockholders will be paid DTC book value for their shares of DTC stock as and when NSCC, in accordance with procedures set forth in the Holding Company Shareholders Agreement, sells or transfers its shares of Holding Company common stock to other participant or members of DTC and NSCC.[3]

The Holding Company's Articles of Incorporation, By-Laws, and Shareholders Agreement ("Basic Documents")[4] contain provisions designed to preserve the rights that the stockholders of NSCC and DTC currently have in particular to satisfy the fair representation requirement of Section 17A(b)(3)(C) of the Act.[5] Specifically, the Basic Documents provide for the following:

- As owners of Holding Company preferred stock, the NYSE and the NASD each will have the right to put one person on the Board of Directors of the Holding Company. All other directors will be elected annually by the owners of Holding Company common stock. The Holding Company will elect as the directors of NSCC and DTC the persons that the stockholders of the Holding Company elect as the directors of the Holding Company.
- The rights to purchase Holding Company common stock will be reallocated to the users of NSCC and DTC based upon the users' usage of the clearing agencies' services and facilities. Under the Basic Documents, these rights will be reallocated initially in 2000 and again in 2001. Thereafter, depending upon whether there are significant changes in entitlements and stock purchases, the Board of the Holding Company will be permitted to schedule reallocations every other year or every third year rather than annually.
- The owners of Holding Company common stock will be able to exercise cumulative voting in the election of Holding Company directors.

Each year the Holding Company's Board of Directors will appoint a nominating committee that may include both members and non-members of the Board. After soliciting suggestions from all users of the clearing agencies of possible nominees to fill vacancies on the Board, the nominating committee will recommend a slate of nominees to the full Board. The Board may make changes in that slate before submitting nominations to the holders of Holding Company common stock for election. The election ballot included in the proxy materials will provide an opportunity for stockholders to vote for a person not listed as a nominee. Because the Basic Documents provide for cumulative voting, it will be possible for one or more owners of Holding Company common stock to arrange to elect a person not on the slate nominated for election by the Board.

NSCC and DTC will continue to operate as they do currently, and each will offer its own services to its own participants and members pursuant to separate legal arrangements and separate risk management procedures. NSCC has informed the Commission that the Holding Company will not engage in any clearing agency activities but that it will provide certain support functions, including human resources, finance, audit, general administration, corporate communications, and legal, which support functions will be centralized in the Holding Company, to NSCC and DTC pursuant to service contracts.

II. Discussion

Section 17A(b)(3)(C) of the Act[6] requires that the rules of a clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. The Commission believes that the proposed rule change is consistent with NSCC's obligations under Section 17A(b)(3)(C) because it should provide NSCC's members with a reasonable opportunity to acquire common stock in the Holding Company in proportion to their use of NSCC and DTC and should provide NSCC's members through their holding of Holding Company stock with adequate and fair representation in the selection of NSCC's directors and in the administration of NSCC's affairs.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the publication of notice of the filing. Approving prior to the thirtieth day after publication of notice will allow NSCC to proceed with the exchange offer to its shareholders in which the shareholders may exchange their shares in NSCC for preferred stock in the Holding Company.

III. Conclusion

On the basis of the foregoing, the Commission finds that NSCC's proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–99–10) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23112 Filed 9–3–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41788; File No. SR–Phlx–99–29]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Mandatory Trading Floor Training Requirements

August 25, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 5, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 625, Options Trading Floor Training, to include equity floor members.[3] The proposal will require all equity floor members and their respective personnel to complete mandatory training related to that employee's function on the trading floor. The Exchange proposes to adopt new Equity Floor Procedure Advice, F–30, Equity Trading Floor Training, and an accompanying fine schedule, such that a minor rule violation enforcement and reporting plan ("minor rule plan") citation could be issued.[4] The text of amended Rule 625 and new Equity Floor Procedure Advice is presented below. Deleted text is brackets, and new text in italics.

F–30 *EQUITY TRADING FLOOR TRAINING*

All new equity floor members, whether specialists or floor brokers, and their respective personnel, shall successfully complete mandatory training related to that employee's function on the trading floor. All current members and their respective personnel shall be subject to continuing mandatory training requirements in order to instruct these individuals on changes in existing automated systems or any new technology that is utilized by the Exchange.

Failure to attend the scheduled mandatory training described above may result in the issuance of a fine in accordance with the fine schedule below.

Fine Schedule (Implemented on a three year running calendar basis)

F–30

1st Occurence	$250.00
2nd Occurence	$350.00
3rd Occurence	$500.00

[3] On March 22, 1999, the Commission approved a similar proposal with respect to equity option and index option floor members. *See* Securities Exchange Act Release No. 41201 (March 22, 1999) 64 FR 15391 (March 31, 1999) (SR–Phlx–99–06).

[4] The Phlx's minor rule plan, codified in Phlx Rule 970, contains floor procedure advices with accompanying fine schedules. Rule 19d–1(c)(2) authorizes national securities exchanges to adopt minor rule violation plans for summary discipline and abbreviated reporting; Rule 19d–1(c)(1) requires prompt filing with the Commission of any final disciplinary actions. However, minor rule violations not exceeding $2,500 are deemed not final, thereby permitting periodic, as opposed to immediate, reporting.

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 41719 (August 9, 1999), 64 FR 44569.

[3] NSCC has informed the Commission that the procedures to be used by NSCC to sell or transfer Holding Company common stock are in all material respects the same as the procedures set forth in DTC's Stockholders Agreement applicable to the sale by a stockholder of DTC shares.

[4] NSCC included the Basic Documents as exhibits to its filing, which is available for inspection and copying in the Commission's public reference room and through NSCC.

[5] 15 U.S.C. 78q–1(b)(3)(C).

[6] 15 U.S.C. 78q–1(b)(3)(C).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

4th Occurence Sanction is discretionary with Business Conduct Committee

Rule 625 [Options] Trading Floor Training

All new *equity*, equity option and index option floor members, whether specialists, floor brokers or Registered Options Traders, and their respective personnel, shall successfully complete mandatory training related to that employee's function on the trading floor. All current members and their respective personnel shall be subject to continuing mandatory training requirements in order to instruct these individuals on changes in existing automated systems or any new technology that is utilized by the Exchange.

II. Self-Regulatory Organization's Statement Regarding the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposal is to require all new equity floor members, whether specialists or floor brokers, and their respective personnel, to attend mandatory training related to that employee's function on the trading floor. In addition, all current equity floor members and their respective personnel shall be subject to continuing training requirements. The Exchange believes that continued training requirements are necessary in order to instruct these individuals on changes in existing automated systems or new technology that is utilized by the Exchange. The Exchange intends to schedule and give notice of such training sessions, as it deems appropriate. In this way, the proposal should help to ensure that all members are familiar with new technology or changes in existing technology.

Technology advances are ever-changing. To benefit users and remain competitive, the Exchange believes it is imperative to implement technology improvements and system enhancements. Moreover, these improvements and enhancements often provide for more efficient and quicker dissemination of information to the markets, thereby allowing investors to receive information on a more timely basis. Furthermore, technology improvements and system enhancements generally reduce the risk of clerical error. Therefore, the Exchange believes that mandated training will help to ensure that Exchange members and their respective personnel are proficient in using new technology, which should help to promote a more efficient trading environment.

Additionally, the mandated training requirement would be incorporated as an Equity Floor Procedure Advice, such that a minor rule plan citation could be issued.[5] The minor rule plan will enable the Exchange to quickly sanction members for non-compliance.[6] Under Phlx Rule 625, if an Exchange member has not participated in mandatory or continuing training requirements, a fine can be issued immediately. The Phlx believes the issuance of a fine will help to alleviate situations where failure to partcipate in mandatory training is a recurring problem, because violations by a member organization will result in escalating fines, and, eventually, possible disciplinary action by the Exchange's Business Conduct Committee ("BCC"). For failure to attend an Exchange mandated training class, the Exchange proposes a fine of (i) $250 for a first offense; (ii) $350 for a second offense; and (iii) $500 for a third offense. The sanction is discretionary with the BCC for a fourth offense. The Exchange believes that this type of violation is appropriate for the minor rule plan because it is objective and, thus violations are readily subject to verification.

For these reasons, the Exchange believes that the proposal is consistent with Section 6 of the Act,[7] in general, and with Section 6(b)(5),[8] in particular, in that it is designed to facilitate transactions in securities and to promote just and equitable principles of trade. Specifically, the Exchange believes that the proposal will promote a more efficient trading environment by (i) educating personnel regarding the use of improved technology and system enhancements; (ii) providing for quicker dissemination of information because the Exchange can train personnel as soon as changes are made; and (iii) lessening the risk of clerical errors. Moreover, mandatory training for equity floor-members and their respective personnel is consistent with the provisions of Section 6(c)(3)(B) of the Act,[9] which makes it the responsibility of an exchange to prescribe standards of training, experience, and competence for persons associated with self-regulatory organization members. In addition, the Exchange believes the proposal is consistent with the Securities Industry Continuing Education Program, which seeks to promote the protection of investors through periodic training of securities professionals.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date on which it was filed and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)[11] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[5] The Phlx also proposes to amend its minor rule plan to include the new advice.

[6] The Fine Schedule allows for a fine to be implemented on a three-year running calendar basis. The term "three-year running calendar basis" means that the Exchange will impose sanctions on a three-year running cycle, by which a violation of the training requirements which occurs within three years of the first violation of the training requiremenets, will be treated as a second occurrence, and any subsequent violation within three years of the previous violation of the training requirements will be subject to the next hgighest sanction specified in the Fine Schedule.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(c)(3)(B).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the pubic in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–99–29 and should be submitted by September 28, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23106 Filed 9–3–99; 8:45 am]

BILLING CODE 8010–01–M

[12] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The IRC describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 1, 1999 (64 FR 29401–29405).

DATES: Comments must be submitted on or before October 7, 1999. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Antidrug Program for Personnel Engaged in Specified Aviation Activities.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0535.

Form(s): FAA Form 9000–2.

Affected Public: An estimated 6,700 specified aviation employers.

Abstract: 14 CFR part 121, appendix I and J, requires specified aviation employers to implement and conduct FAA-approved antidrug programs. The FAA receives drug test reports from the aviation industry to monitor program compliance, institute program improvements, and anticipate program problem areas.

Estimated Burden Hours: 38,679 burden hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW, Washington, DC 20503, Attention: FAA Desk Officer.

Comments Are Invited On:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 31, 1999.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 99–23202 Filed 9–3–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) asbstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 1, 1999, 64 FR 29404–29405).

DATES: Comments must be submitted on or before October 7, 1999. A comment to OMB is most effecitve if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Operating Procedures for Airport Traffic Control Towers (ATCT) that are not operated by or under contract with the United States (non-Federal) AC90–93.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0572.

Forms(s): FAA Forms 7210–2; 7210–3; 7230–4; 7230–7.2; 7230–8; 7230–10; 8020–9; 8020–11; 8020–17; 8020–19; 8020–21.

Affected Public: An estimated 44 Non Federal Airport Traffic Control Towers (ATCT)

Abstract: The intent of the Advisory Circular (AC) and this collection of information is to maintain a high level of air safety without regulating certain entities that previously were not regulated. With this rationale in mind, the FAA is requesting operators for non-Federal ATCT to voluntarily comply with the regulations as stated in this AC, as well as to voluntarily submit information by using the listed forms, in the same manner as is currently prescribed for FAA air traffic personnel.

Estimated Annual Burden Hours: 1606 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory

Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention: FAA Desk Officer.

Comments Are Invited On

Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality; utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 23, 1999.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 99–23203 Filed 9–3–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 1, 1999, (64 FR 29404–29405).

DATES: Comments must be submitted on or before October 7, 1999. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Airport Master Record.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0015.

Form(s): N/A.

Affected Public: Civil airports.

Abstract: 49 USC 329(b) directs the Secretary of Transportation to collect information about civil aeronautics. The information is required to carry out FAA missions related to aviation safety, flight planning, and airport engineering. The data base is the basic source of data for private, state and Federal government aeronautical charts and publications.

Estimated Annual Burden Hours: 4,355 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 — 17th Street, NW., Washington, DC 20503, Attention: FAA Desk Officer.

Comments Are Invited On

Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on August 23, 1999.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 99–23204 Filed 9–3–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Associate Administrator for Commercial Space Transportation; Notice of Availability of Draft Programmatic Environmental Impact Statement for Commercial Launch Vehicles

AGENCY: Federal Aviation Administration (FAA), Associate Administrator for Commercial Space Transportation (AST).

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) the FAA is initiating a 45-day public review and comment period of a Programmatic Environmental Impact Statement (PEIS) for licensing commercial launch vehicles. The PEIS was prepared to (1) update a 1986 Programmatic Environmental Assessment for Commercial Launch Vehicles; (2) work in conjunction with other environmental documentation to support licensing of commercial launch vehicles (LVs); and (3) document compliance with NEPA requirements. In October 1998, AST's regulatory role in commercial space launch activities was enlarged to include licensing reentries and reentry sites; therefore, these are included in the PEIS. Copies of the document will be available through AST's Website (*http://ast.faa.gov/*) or by contacting Mr. Nikos Himaras at the address listed below.

DATES: The official comment period will begin with an Environmental Protection Agency Notice of Availability in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and the PEIS; or any relevant data and/or comments regarding the potential environmental impacts associated with licensing commercial launch vehicles, reentries and/or reentry sites may be addressed to Mr. Nikos Himaras, Office of the Associate Administrator for Commercial Space Transportation, Space System Development Division, Suite 331/AST–100, 800 Independence Avenue SW, Washington, DC 20591; email *nick.himaras@faa.gov;* or phone (202) 267–7926. Written comments regarding the PEIS should be sent to the same mailing address.

Additional Information

The PEIS considers the environmental impacts of the proposed action of licensing commercial LVs. Two alternatives are also considered in detail. First, the more environmentally-friendly propellant combination alternative, whereby AST would emphasize licensing LVs that produce fewer air emissions of concern. In addition, the No Action alternative is also examined, where AST would not issue licenses for commercial LV launches.

In analyzing the potential environmental impacts of the proposed action and two alternatives, the PEIS identifies six different types of ecosystems representing various potential commercial LV launch locations throughout the U.S. The environmental characteristics of the different ecosystems were used to describe the range of potential impacts of licensing commercial space launches.

Potential impacts of the proposed action were analyzed in three major categories, atmospheric impacts, noise impacts, and other environmental impacts. Potential environmental impacts to the atmosphere analyzed include ozone depletion and acid rain formation. Potential noise impacts considered include acoustic energy from launches and sonic booms during flights. Other potential environmental impacts discussed in the PEIS include impacts to the climate and atmosphere of the launch site, land resources, water resources, and biological resources. Potential accident scenarios and marine mammal strike probability were also considered.

Potential environmental impacts associated with the more environmentally-friendly propellant combinations alternative were analyzed in three major categories: atmospheric impacts, noise impacts, and other environmental impacts. The environmentally-friendly propellant alternative is defined as preferentially licensing rockets that are not solely propelled by solid rocket motors. This would reduce the total number of U.S. commercial launches projected from 1998 through 2009 from 436 to 134. The number of launches using liquid, liquid/solid, or hybrid propellant systems is assumed to remain unchanged under this alternative. Thus, the total number of commercial, AST-licensed launches in the U.S. (i.e., programmatic launches) would decrease substantially under this alternative. It is assumed that the decrease in U.S. commercial launches using only solid propellants would be compensated for by an increase in these launches elsewhere in the world.

Under the No Action alternative, the same number of worldwide commercial LV launches would take place. Chapter 701 requires AST to license a launch if the applicant complies and will continue to comply with chapter 701 and implementing regulations. 49 U.S.C. 70105. One of the purposes of chapter 701 is to provide that the Secretary of Transportation, and therefore AST, pursuant to delegations, oversees and coordinates the conduct of commercial launch and reentry, and issues and transfers licenses authorizing these activities. 40 U.S.C. 70104(b)(3). The agency may prevent a launch if it decides that the launch would jeopardize public health and safety, safety of property, or national security, or a foreign policy interest of the United States. 49 U.S.C. 70104(c). Not licensing any U.S. commercial launches would not be consistent with the purposes of chapter 701 in this context. In any event, the no action alternative suffers from other drawbacks as well. The U.S. space launch industry would be unable to continue LV launch operations regardless of their location because AST would not license U.S. launches. The no action alternative could negatively impact the national security and foreign policy interests of the U.S. Some U.S. government payloads have been launched by the U.S. commercial space launch industry. Therefore, if access to commercial LVs were not available, this overall limit in available capacity could, in a worst case scenario, impact the U.S. government's ability to launch needed payloads and negatively affect programs that rely on access to space. Additionally, under this alternative, parties that plan to launch from U.S. launch sites would be forced to find alternative launch sites outside the U.S., thereby potentially exposing sensitive technologies to countries with competing economic and security interests.

Potential cumulative impacts, including those to the atmosphere and noise, are also addressed in the PEIS. Irreversible and irretrievable commitment of resources, such as consumption of mineral resources, are addressed in the document.

Finally, the PEIS recommends a variety of mitigation measures to prevent or reduce environmental effects associated with the proposed action. Individual launch sites will monitor water quality, complete archaeological surveys, and survey biological species in the vicinity of the launch area. It is also assumed that all launch sites will comply with permit conditions. Other examples of suggested mitigation measures include: noise control actions, promoting the use of environmentally-friendly propellants, engaging in voluntary waste pollution prevention programs, developing a comprehensive environmental management system, working with interested parties to select the most culturally-friendly site, and implementing effective lighting policies to protect wildlife. Lastly, it should be noted that this PEIS is not site-specific. Any required site-specific environmental documentation would be developed as needed.

Date Issued: August 31, 1999.

Place Issued: Washington, DC.

Patricia G. Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. 99–23201 Filed 9–3–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Cyril E. King Airport, St. Thomas, Virgin Islands, U.S.A.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application impose and use the revenue from a PFC at Cyril E. King Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990. (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before October 7, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Gordon A. Finch, Executive Director of Virgin Islands Port Authority at the following address: Virgin Islands Port Authority, Cyril E. King Airport, PO Box 301707, St. Thomas, Virgin Islands, U.S.A. 00803–1707.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Virgin Islands Port Authority under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Pablo G. Auffant, P.E., Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822, 407–812–6331 x30. The application may be reviewed in person at this time location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Cyril E. King Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 27, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by to Virgin Islands Port

Authority was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 24, 1999.

The following is a brief overview of the application.

PFC Application No.: 99–06–C–00–STT.

Level of the proposed PFC: $3.00.

Proposed charge effective date: December 1, 1999.

Proposed charge expiration date: December 1, 2001.

Total estimated PFC revenue: $3,000,000.

Brief description of proposed project(s): Design and Construct a New Air Traffic Control Tower at the Henry E. Rohlsen Airport, St. Croix, Virgin Islands, U.S.A.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Virgin Islands Port Authority.

Issued in Orlando, Florida, on August 27, 1999.

John W. Reynolds,

Acting Manager, Orlando Airports District Office Southern Region.

[FR Doc. 99–23205 Filed 9–3–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Naples Municipal Airport, Naples, Florida

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Naples Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before October 7, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5950 Hazeltine National Drive, Suite 400, Orlando, Florida 32822.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Theodore D. Soliday, Executive Director of City of Naples Airport Authority at the following address: City of Naples Airport Authority, 160 Aviation Drive North, Naples, Florida 34104.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Naples Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Miguel A. Martinez, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Drive, Citadel International, Suite 400, Orlando, Florida 32822, (407) 812–6331, extension 23. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Naples Municipal Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On August 25, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Naples Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 27, 1999.

The following is a brief overview of the application.

PFC Application No.: 99–02–C–00–APF.

Level of the proposed PFC: $3.00.

Proposed charge effective date: October 1, 1999.

Proposed charge expiration date: June 1, 2003.

Total estimated PFC revenue: $475,000.

Brief description of proposed project(s): Acquire three Commute-A-Walks; Commercial Airline Terminal Renovations

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Non-scheduled Air Carriers Filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Naples Airport Authority.

Issued in Orlando, Florida, on August 25, 1999.

John W. Reynolds, Jr.,

Acting Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 99–23206 Filed 9–3–99; 8:45 am]

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H.R. 211/P.L. 106–48
To designate the Federal building and United States courthouse located at 920 West Riverside Avenue in Spokane, Washington, as the "Thomas S. Foley United States Courthouse", and the plaza at the south entrance of such building and courthouse as the "Walter F. Horan Plaza". (Aug. 17, 1999; 113 Stat. 230)

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For the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical, LLC (successor to Kerr-McGee Chemical Corporation), and for other purposes. (Aug. 17, 1999; 113 Stat. 398)

S. 1546/P.L. 106–55
To amend the International Religious Freedom Act of 1998 to provide additional administrative authorities to the United States Commission on International Religious Freedom, and to make technical corrections to that Act, and for other purposes. (Aug. 17, 1999; 113 Stat. 401)

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[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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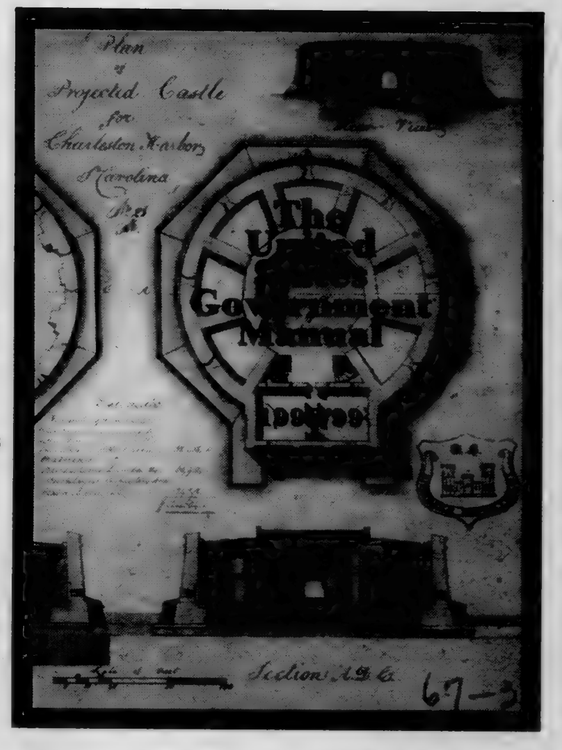

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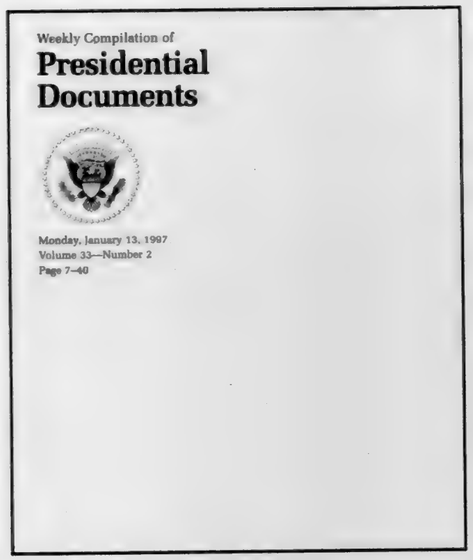

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Title 3—

The President

Proclamation 7219 of August 2, 1999

Contiguous Zone of the United States

By the President of the United States of America

A Proclamation

International law recognizes that coastal nations may establish zones contiguous to their territorial seas, known as contiguous zones.

The contiguous zone of the United States is a zone contiguous to the territorial sea of the United States, in which the United States may exercise the control necessary to prevent infringement of its customs, fiscal, immigration, or sanitary laws and regulations within its territory or territorial sea, and to punish infringement of the above laws and regulations committed within its territory or territorial sea.

Extension of the contiguous zone of the United States to the limits permitted by international law will advance the law enforcement and public health interests of the United States. Moreover, this extension is an important step in preventing the removal of cultural heritage found within 24 nautical miles of the baseline.

NOW, THEREFORE, I, WILLIAM J. CLINTON, by the authority vested in me as President by the Constitution of the United States, and in accordance with international law, do hereby proclaim the extension of the contiguous zone of the United States of America, including the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and any other territory or possession over which the United States exercises sovereignty, as follows:

The contiguous zone of the United States extends to 24 nautical miles from the baselines of the United States determined in accordance with international law, but in no case within the territorial sea of another nation.

In accordance with international law, reflected in the applicable provisions of the 1982 Convention on the Law of the Sea, within the contiguous zone of the United States the ships and aircraft of all countries enjoy the high seas freedoms of navigation and overflight and the laying of submarine cables and pipelines, and other internationally lawful uses of the sea related to those freedoms, such as those associated with the operation of ships, aircraft, and submarine cables and pipelines, and compatible with the other provisions of international law reflected in the 1982 Convention on the Law of the Sea.

Nothing in this proclamation:

(a) amends existing Federal or State law;

(b) amends or otherwise alters the rights and duties of the United States or other nations in the Exclusive Economic Zone of the United States established by Proclamation 5030 of March 10, 1983; or

(c) impairs the determination, in accordance with international law, of any maritime boundary of the United States with a foreign jurisdiction.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of September, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 99-23460
Filed 9-7-99; 8:45 am]
Billing code 3195-01-P

Rules and Regulations

Federal Register
Vol. 64, No. 173
Wednesday, September 8, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-AGL-37]

Modification of Class E Airspace; Delaware, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice modifies Class E airspace at Delaware, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 10, a GPS SIAP to Rwy 28, and a VHF Omnidirectional Range (VOR) SIAP to Rwy 28, have been developed for Delaware Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action increases the radius of the existing controlled airspace for this airport.

EFFECTIVE DATE: 0901 UTC, December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Annette Davis, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, June 22, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Delaware, OH (64 FR 33234). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Delaware, OH, to accommodate aircraft executing the proposed GPS Rwy 10 SIAP, GPS Rwy 28 SIAP, and VOR Rwy 28 SIAP, at Delaware Municipal Airport by modifying the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoptiion of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Delaware, OH [Revised]

Delaware Municipal Airport, OH
(lat. 40° 16′ 47″N., long. 83° 06′ 53″W)
Delaware NDB
(lat. 40° 16′ 41″N., long. 83° 06′ 33″W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Delaware Municipal Airport and within 2.6 miles either side of 286° bearing from the Delaware NDB extending from the NDB to 8.3 miles northwest of the NDB.

* * * * *

Issued in Des Plaines, Illinois on August 23, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99-23293 Filed 9-7-99; 8:45 am]
BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1051

Procedure for Petitioning for Rulemaking; Correction

AGENCY: Consumer Product Safety Commission.

ACTION: Correcting amendments.

SUMMARY: The Commission is amending its procedures for filing petitions to correct two references to sections that no longer exist.

DATES: The corrections become effective on September 8, 1999.

FOR FURTHER INFORMATION CONTACT: Patricia M. Pollitzer, Office of General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504–0980, extension 2219.

SUPPLEMENTARY INFORMATION: This document corrects two references in the Commission's petition procedures. Section 1051.1 explains the scope of the petition procedures. Subsection 1051.1(c), discussing petitions under the Federal Hazardous Substances Act, refers to 16 CFR 1500.201 and 21 CFR 2.65. Neither of these references apply now. 16 CFR 1500.201 merely restated certain statutory provisions and was withdrawn on March 6, 1991 (56 FR 9276). 21 CFR 2.65 was replaced in 1979 with rules that apply only to the Food and Drug Administration (44 FR 22323). Therefore, the Commission is eliminating these references. Because these are technical corrections that do not make a substantive change, notice and comment is unnecessary. 5 U.S.C. 553(b). Nor is there any need to delay the effective date. 5 U.S.C. 553(d).

List of Subjects in 16 CFR Part 1051

Administrative practice and procedure, Consumer protection.

Accordingly, 16 CFR part 1051 is corrected by making the following correcting amendments:

PART 1051—PROCEDURE FOR PETITIONING FOR RULEMAKING

1. The authority citation for Part 1051 continues to read as follows:

Authority: 5 U.S.C. 553(e), 5 U.S.C. 555(e).

2. In § 1051.1(c), first sentence, remove the comma and the words "16 CFR 1500.201, and 21 CFR 2.65".

Dated: September 1, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 99–23230 Filed 9–7–99; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1615 and 1616

Standard for the Flammability of Children's Sleepwear: Sizes 0 Through 6X; Standard for the Flammability of Children's Sleepwear: Sizes 7 Through 14; Correction

AGENCY: Consumer Product Safety Commission.

ACTION: Correcting amendments.

SUMMARY: The Commission recently issued labeling requirements for tight-fitting children's sleepwear. Examples of the labels printed with the requirements did not conform completely to the requirements. This document provides correct illustrations of the labels. Also, the requirements specified Arial font for hangtags and package labels. To conform to ANSI guidelines referenced in the labeling rule and to allow greater flexibility, the Commission will allow either Arial or Helvetica font.

DATES: The corrections become effective on June 28, 2000.

FOR FURTHER INFORMATION CONTACT: Marilyn Borsari, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0400, extension 1370.

SUPPLEMENTARY INFORMATION: On June 28, 1999, the Commission issued labeling requirements amending the flammability standards for children's sleepwear. 64 FR 34533. The Commission required that tight-fitting sleepwear bear a label and hangtag informing consumers why the garments should fit snugly. Sleepwear sold in packages must have a label similar to the hangtag. Illustrations printed in the **Federal Register** with the requirements did not show the correct scale and font of these labels. This document shows accurate illustrations.

The requirements called for the hangtag and package labels to be in Arial font. To allow more flexibility and to conform to the ANSI Standard Z535.4–1998 for Product Safety Signs and Labels, the corrected requirements will allow either Arial or Helvetica font. These two fonts are nearly identical in appearance, but some computers or printing systems may have only one type.

These corrections will become effective on the same date as the original labeling requirements, June 28, 2000.

List of Subjects in 16 CFR Parts 1615 and 1616

Clothing, Consumer protection, Flammable materials, Infants and children, Labeling, Reporting and recordkeeping requirements, Sleepwear, Textiles, Warranties.

Accordingly, 16 CFR parts 1615 and 1616 are corrected by making the following correcting amendments:

PART 1615—STANDARD FOR THE FLAMMABILITY OF CHILDREN'S SLEEPWEAR: SIZES 0 THROUGH 6X

1. The authority citation for part 1615 continues to read as follows:

Authority: Sec. 4, 67 Stat. 112, as amended, 81 Stat. 569–570; 15 U.S.C. 1193.

2. In § 1615.1(o)(10)(i) and (ii) after the word "Arial" add "/Helvetica".

3. In § 1615.1(o)(10)(i) remove the illustration at the end of the text and add the following illustration in its place:

For child's safety, garment should fit snugly.
This garment is not flame resistant.
Loose-fitting garment is more likely to catch fire.

4. In § 1615.1(o)(10)(ii) remove the illustration at the end of the text and add the following illustration in its place:

For child's safety, garment should fit snugly.
This garment is not flame resistant.
Loose-fitting garment is more likely to catch fire.

5. In § 1615.1(o)(11) remove the illustration at the end of the text and add the following illustration in its place, including the caption:

WEAR SNUG-FITTING
NOT FLAME RESISTANT

Example in 10 pt Arial font

PART 1616—STANDARD FOR THE FLAMMABILITY OF CHILDREN'S SLEEPWEAR: SIZES 7 THROUGH 14

1. The authority citation for part 1616 continues to read as follows:

Authority: Sec. 4, 67 Stat. 112, as amended, 81 Stat. 569–570; 15 U.S.C. 1193.

2. In § 1616.2(m)(10)(i) and (ii) after the word "Arial" add "/Helvetica".

3. In § 1616.2(m)(10)(i) remove the illustration at the end of the text and add the following illustration in its place:

For child's safety, garment should fit snugly.
This garment is not flame resistant.
Loose-fitting garment is more likely to catch fire.

4. In § 1616.2(m)(10)(ii) remove the illustration at the end of the text and add the following illustration in its place:

For child's safety, garment should fit snugly.
This garment is not flame resistant.
Loose-fitting garment is more likely to catch fire.

5. In § 1616.2(m)(11) remove the illustration at the end of the text and add the following illustration in its place, including the caption:

WEAR SNUG-FITTING
NOT FLAME RESISTANT

Example in 10 pt Arial font

Dated: September 1, 1999.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 99–23231 Filed 9–7–99; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

[Docket No. 990812822B–9228–01]

RIN 0625–AA56

Regulation Concerning Preliminary Critical Circumstances Findings

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce (the "Department") is amending 19 CFR 351.206(c), which concerns preliminary findings of critical circumstances in antidumping and countervailing duty investigations. The critical circumstances provisions of the antidumping and countervailing duty laws and regulations ensure that the statutory remedies are not undermined by massive imports of dumped or subsidized merchandise following the filing of a petition. Normally, if an antidumping or countervailing duty order is issued, duties are assessed only on imports that enter the United States after the Department makes a preliminary determination of dumping or subsidization. However, where critical circumstances exist, duties are assessed retroactively on imports that enter up to 90 days prior to the preliminary determination. The amended regulation will ensure that the injurious effects of dumped or subsidized imports are remedied to the fullest extent provided by the law.

DATES: This rule is effective August 8, 1999.

FOR FURTHER INFORMATION CONTACT: Kathleen Hatfield, Office of Policy, Import Administration, U.S. Department of Commerce, at (202) 482–1930, or Marguerite Trossevin, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, at (202) 482–5593.

SUPPLEMENTARY INFORMATION:

Background

The U.S. antidumping and countervailing duty laws, as well as the relevant agreements of the World Trade Organization (WTO), contain "critical circumstances" provisions to ensure that the statutory remedies for unfair trade practices are not undermined by massive imports of dumped or subsidized merchandise following the filing of a petition. Normally, if an antidumping or countervailing duty order is issued, duties are assessed only on imports that enter the United States after the Department makes its preliminary determination of dumping or subsidization, which normally takes place about four months after the filing of the petition. However, where critical circumstances exist, duties may be assessed retroactively on imports that enter up to 90 days prior to the preliminary determination.

Sections 703(e) (countervailing duties) and 733(e) (antidumping duties) of the Tariff Act of 1930, as amended (the Act), provide that, if a petitioner alleges critical circumstances, the Department of Commerce (the Department) "shall promptly (at any time after the initiation of the investigation under this subtitle)" determine whether there is reasonable cause to believe or suspect that critical circumstances exist. Recent experience highlights the importance of making preliminary critical circumstances findings as early as possible to ensure that import surges do not undermine the statutory remedies. Therefore, on October 15, 1998, the Department published Policy Bulletin 98/4, stating that the Department will issue preliminary findings on critical circumstances as soon as possible after initiation. The Department is codifying that policy to ensure that the injurious effects of dumped or subsidized imports are remedied to the fullest extent provided by the law.

Explanation of the Regulation

The antidumping and countervailing duty laws state that critical circumstances exist where there are massive imports over a relatively short period and, as appropriate, either (1) there is a history of dumping and material injury, or the importer knew or should have known that the merchandise was dumped and injury was likely as a result, or (2) there is a countervailable subsidy inconsistent with the WTO Subsidies Agreement. Pursuant to 19 CFR 351.206(i), for the purpose of determining the existence of an import surge, the Department normally will consider a "relatively short period" as the period beginning on the date the petition is filed and extending for at least the following three months. Imports during the post-petition period are compared to a period of comparable duration immediately preceding the petition. If imports increased by at least 15 percent in the post-petition period, the Department deems such a surge to constitute "massive imports over a relatively short period."

Because necessary shipment data is often not immediately available when the normal comparison periods are used, it is virtually impossible to make a preliminary critical circumstances finding before Commerce's preliminary determination on the existence of dumping or subsidies. However, 19 CFR 351.206(i) further provides that, if the Department finds that, at some time prior to the filing of a petition, importers, exporters or producers had reason to believe that a proceeding was likely, the Department may consider a period of at least three months from that earlier time. In cases where earlier base periods are deemed appropriate, an earlier preliminary finding on critical circumstances may be possible because the necessary data may be available. However, because the International Trade Commission's (ITC) preliminary determination of injury may be important to the critical circumstances analysis, normally the earliest point at which a preliminary critical circumstances finding would be made is after the ITC preliminary determination, which is normally 45 days after the filing of the petition.

Accordingly, the Department is amending 19 CFR 351.206(c)(2) to provide that, where earlier base periods are used, the Department will issue preliminary critical circumstances findings as soon as possible after initiation of an investigation, but normally not less than 45 days after the filing of the petition.

Classification

Administrative Procedure Act

Pursuant to authority at 5 U.S.C. 553(b)(A), this rule of agency procedure is not subject to the requirement to provide prior notice and an opportunity for public comment. Further, because this rule of agency procedure is not substantive, it is not subject to the requirement in 5 U.S.C. 553(d) that its effective date be delayed 30 days.

E.O. 12866

This rule has been determined to be significant for purposes of Executive Order 12866.

Paperwork Reduction Act

This rule contains no new collection of information subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

E.O. 12612

This rule does not contain federalism implications warranting the preparation of a Federalism Assessment.

Regulatory Flexibility Act

As this rule is not subject to the requirement to provide prior notice and an opportunity for public comment pursuant to 5 U.S.C. section 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

List of Subjects in 19 CFR Part 351

Administrative practice and procedure, Antidumping duties, Business and industry, Cheese, Confidential business information, Countervailing duties, Investigations, Reporting and record keeping requirements.

Dated: August 30, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

For the reasons stated, 19 CFR part 351 is amended to read as follows:

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

Subpart A—Scope and Definitions

1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.*; and 19 U.S.C. 3538.

Subpart B—Antidumping and Countervailing Duty Procedures

2. Section 351.206(c)(2) is revised to read as follows:

§ 351.206 Critical circumstances.

* * * * *

(c) * * *

(2) The Secretary will issue the preliminary finding:

(i) Not later than the preliminary determination, if the allegation is submitted 20 days or more before the scheduled date of the preliminary determination; or

(ii) Within 30 days after the petitioner submits the allegation, if the allegation is submitted later than 20 days before the scheduled date of the preliminary determination; or

(iii) If, pursuant to paragraph (i) of this section, the period examined for purposes of determining whether critical circumstances exists is earlier than normal, the Secretary will issue the preliminary finding as early as possible after initiation of the investigation, but normally not less than 45 days after the petition was filed. The Secretary will notify the Commission and publish in the **Federal Register** notice of the preliminary finding.

* * * * *

[FR Doc. 99–23208 Filed 9–7–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Selamectin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer, Inc. The supplemental NADA provides for an additional indication for control of tick (*Dermacentor variabilis*) infestations in dogs.

EFFECTIVE DATE: September 8, 1999.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017–5755, filed supplemental NADA 141–152 that provides for topical veterinary prescription use of Revolution™ (selamectin) solution in dogs for the additional indication for control of tick (*D. variabilis*) infestations. The supplemental NADA is approved as of August 5, 1999, and the regulations are amended in 21 CFR 524.2098 in paragraphs (d)(1) and (d)(2) to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(i)), this approval for nonfood-producing animals qualifies for 3 years of marketing exclusivity beginning August 5, 1999, because the supplemental application contains substantial evidence of the effectiveness of the drug involved, or any studies of animal safety, required for approval of the application and conducted or sponsored by the applicant.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 524.2098 [Amended]

2. Section 524.2098 *Selamectin* is amended in paragraph (d)(1) by removing the words "once a month" and in paragraph (d)(2) by revising the second sentence to read "Treatment and control of sarcoptic mange (*Sarcoptes scabiei*) and control of tick (*Dermacentor variabilis*) infestations in dogs."

Dated: August 27, 1999.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 99–23336 Filed 9–7–99; 8:45 am]

BILLING CODE 4160–01–F

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2700

Procedural Rules

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Final rule.

SUMMARY: This rule makes final various revisions to the procedural rules of the Federal Mine Safety and Health Review Commission (the "Commission"). In these final rules, the Commission has addressed various problems that were unforeseen when the procedural rules were last revised in 1993 (see 58 FR 12158 (March 3, 1993)), in a continued effort to ensure "the just, speedy, and inexpensive determination of all proceedings" before the Commission (29 CFR 2700.1(c)).

DATES: These revised rules will take effect on November 8, 1999.

The final rules will apply to cases initiated after the rules take effect. The final rules also will apply to further proceedings in cases then pending, except to the extent that such application would be infeasible or unfair, in which event the present procedural rules would apply.

ADDRESSES: Questions may be mailed to Norman Gleichman, General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, 1730 K Street, NW, 6th Floor, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Norman Gleichman, General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, 1730 K Street, NW, 6th Floor, Washington, DC 20006, telephone 202–653–5610 (202–566–2673 for TDD Relay). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission is an independent adjudicative agency that provides administrative trial and appellate review of cases arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 *et seq.* (1994) ("Mine Act"). The Commission's rules of procedure govern practice and procedure in proceedings at both the trial and appellate levels.

The Commission initially adopted its procedural rules in June 1979. *See* 44 FR 38226 (June 29, 1979). In March 1993, the Commission published significant revisions to its procedural rules, reflecting more than 10 years' experience with the rules and evolving Commission case law. *See* 58 FR 12158 (March 3, 1993). In May 1998, the Commission published proposed revisions to various rules in an attempt to address problems that were unforeseen in 1993. *See* 63 FR 25183 (May 7, 1998). Those proposed rules included revisions relating to motion practice before the Commission, expansions of the requirements for certain pleadings, and revisions and clarifications for filing pleadings in temporary reinstatement proceedings. *See* 63 FR 25183–87. For instance, the Commission proposed requiring moving parties to state in motions whether there is opposition to the motion (*see* proposed § 2700.10(c) (63 FR 25186)); instituting a page limit for petitions for discretionary review (*see* proposed § 2700.70(d) (63 FR 25187)); changing requirements for filing and serving requests for extensions of time and extensions of page limits (*see* proposed §§ 2700.9, 2700.70(d), 2700.75(f)) (63 FR 25186, 25187)); revising procedures for filing pleadings in temporary reinstatement proceedings (*see* proposed § 2700.45 (63 FR 25186–87)); and expanding the opportunities for filing and serving by facsimile transmission (*see* proposed §§ 2700.9, 2700.45(f) (63 FR 25186–87)).

Although notice-and-comment rulemaking under the Administrative Procedure Act does not apply to rules of agency procedure (*see* 5 U.S.C. 553(b)(3)(A)), the Commission permitted written comments on the proposed rules to be submitted on or before August 5, 1998. The only written comments received by the Commission were submitted by the Department of Labor's Office of the Solicitor on behalf of the Mine Safety and Health Administration ("MSHA"). MSHA commented on the following proposed revisions: (1) the proposed requirement that when filing is by facsimile transmission, service must be by facsimile or an equally expeditious means (proposed § 2700.7 (63 FR 25186)); (2) the proposed insertion that would permit the Commission to rule upon a motion prior to the expiration of the time for response (proposed § 2700.10(d) (63 FR 25186)); and (3) the proposed deadline for filing a motion requesting an extension of page limit (proposed §§ 2700.70, 2700.75 (63 FR 25187)). In addition, MSHA proposed that the procedural rules be revised in three ways not proposed in the **Federal Register** notice: (1) that subpart H be revised to include a requirement that all documents filed in review proceedings before the Commission in which MSHA is a party, be served on the Counsel for Appellate Litigation in the Mine Safety and Health Division of the Office of Solicitor; (2) that 29 CFR 2700.75(e) be revised to permit both opening briefs and response briefs to be up to 35 pages in length; and (3) that § 2700.75(e) be revised to specify that all briefs be typed double-spaced and using a typeface designated by the Commission. MSHA did not state any objections to the remainder of the proposed revisions.

Based upon those comments and other developments in Commission proceedings, the Commission published supplemental proposed rules, which clarified when service on an attorney or other authorized attorney is required (*see* proposed §§ 2700.3(c), 2700.7(d) (64 FR 24549)), added requirements for the format of pleadings (*see* proposed § 2700.5(f) (64 FR 24549)), and increased the page limit for response briefs (*see* proposed § 2700.75(c) (64 FR 24549–50)). *See* 64 FR 24547–50 (May 7, 1999).

The Commission permitted written comments on those supplemental proposed rules to be submitted on or before May 28, 1999. The Commission received comments from MSHA and from the Peabody Group. The majority of comments expressed support for the supplemental proposed revisions. The Commission received an objection to only the proposed requirements for the format of pleadings (*see* proposed § 2700.5(f) (64 FR 24549)).

The final rules retain much of the same text set forth in the proposed rules and in the supplemental proposed rules. As discussed in the section-by-section analysis, some changes have been made in response to the comments received, such as the service requirements when documents are filed by facsimile transmission (*see* §§ 2700.7(c), 2700.9(a), 2700.45(f), 2700.70(f), 2700.75(f)); and the deadline for filing requests for extension of page limit (*see* §§ 2700.70(f), 2700.75(f)). In addition, although not included in the proposed rules or supplemental proposed rules, the Commission made a revision clarifying when a motion for participation as amicus curiae and an amicus curiae brief must be filed (*see* § 2700.74). The Commission was unable to invite comments on the revisions to § 2700.74 because the proceedings that brought to light the need for such clarification arose after the supplemental proposed rules had been published in the **Federal Register**. Finally, certain rules have been changed to accord with related changes in others.

II. Section-by-Section Analysis

Set forth below is an analysis of the comments received on the Commission's proposed and supplemental proposed rules and the final actions taken. Minor editorial modifications to present or proposed rules are not discussed.

Subpart A—General Provisions

Section 2700.3 Who May Practice

Paragraph (c) retains the proposed language clarifying the manner of and

time that an attorney or other authorized representative may enter an appearance in Commission proceedings. The Commission received no objections to the proposed rule and adopts the proposed rule without change.

Currently, § 2700.3(c) provides that an entry of appearance by a representative of a party is made by, among other things, "signing the first document filed on behalf of the party." See 29 CFR 2700.3(c). The rule is somewhat ambiguous regarding the agency with whom the document must be filed, and whether the document refers only to pleadings.

In an effort to dispel this ambiguity, the Commission has revised § 2700.3(c) to provide that an entry of appearance shall be made when the first document filed on behalf of a party is filed with the Commission or Commission judge. Revised § 2700.3(c) also clarifies that the documents that may serve as an entry of appearance shall be only those filed with the Commission or Commission judge in a proceeding under the Mine Act or the Commission's procedural rules, rather than documents filed with MSHA.

The revisions to § 2700.3(c) are intended to be consistent with the definition of "party" set forth in § 2700.4(a). Section 2700.4(a) currently provides in part that "[a] person, including the Secretary or an operator, who is named as a party or who is permitted to intervene, is a party." 29 CFR 2700.4(a). Section 2700.3(c) refers to actions that may be taken by a representative of a "party" in order to enter an appearance. Thus, reading current § 2700.4(a) with revised § 2700.3(c), an entry of appearance by an attorney or other authorized representative cannot be made before the represented operator or individual achieves party status as defined in § 2700.4(a). In some circumstances, however, an entry of appearance may be made at the same time that an operator or individual achieves party status. For instance, upon the filing of a notice of contest of a citation or order with the Commission by an authorized representative on behalf of an operator (*see* 29 CFR 2700.20), the operator is named as a party, thereby achieving party status under current § 2700.4(a), and the attorney filing the contest enters an appearance under revised § 2700.3(c) by filing the document with the Commission.

Section 2700.5 General Requirements for Pleadings and Other Documents; Status or Informational Requests.

Paragraph (c) of the proposed rule added the requirement that all documents include page numbers. The Commission received no comments concerning that revision and adopts it as proposed.

In addition, consistent with proposed revisions to §§ 2700.9(a) and 2700.45(f), paragraph (d) of proposed § 2700.5 added the provision that the filing of a motion for an extension of time and a petition for temporary reinstatement order is effective upon receipt, rather than upon mailing. The Commission received no comments concerning that revision.

The Commission adopts § 2700.5(d) as proposed with minor changes. For consistency and clarity in motion practice, the Commission has conformed the requirements for filing requests for extensions of page limit with the requirements for filing requests for extensions of time. Therefore, the Commission has added the provision that the filing of a motion to exceed page limit is effective upon receipt. In addition, the Commission has revised § 2700.5(d) to specify that express mail includes delivery by third-party commercial carrier. Therefore, when a document is filed by third party commercial carrier, filing is effective upon delivery to the third party carrier, except for documents specified in paragraph (d) for which filing is effective upon receipt.

The Commission received a comment requesting that § 2700.75(e) be revised to require that all briefs shall be double-spaced using a typeface designated by the Commission in order to ensure adherence with page limitations. Because the Commission believed that formatting requirements should apply to all pleadings filed with the Commission and its judges, the Commission proposed a supplemental rule setting forth formatting requirements in proposed § 2700.5(f), which applies to all pleadings, rather than in § 2700.75, which applies only to briefs before the Commission. The proposed formatting requirements included standards for margins, font size and spacing, and a general prohibition against excessive footnotes. In addition, the Commission proposed adding a provision permitting the Commission to reject a brief based on the failure to comply with the requirements of the subsection or on the use of compacted or otherwise compressed printing features. To avoid affecting basic appeal rights, the Commission limited the provision by allowing only the rejection of briefs, rather than petitions for discretionary review.

The Commission received a comment regarding proposed § 2700.5(f), in which the commenter stated that the requirement that footnotes appear in the same type size as text may prove difficult for drafters because most word processing systems automatically size footnote print smaller that the print of a document's body. The commenter suggested that the rule should be further revised to institute a word limit for parties who have word processing systems with automatic word counting capabilities, retaining page limitations for only those parties who do not have such systems. In addition, the commenter expressed the hope that the Commission would provide ample warning before striking briefs for excessive footnotes.

The Commission declines further modification of the formatting requirements which were proposed in § 2700.5(f). Although a word processing system may automatically size footnote print smaller than the text of the body, most systems may be adjusted to conform the footnote size with the text of the body. If a party's word processing system is incapable of using the same size type for footnotes and the body of a document, that information may be provided to the Commission if the Commission were to reject a brief on that basis. The Commission believes that the proposed rule is clearer and more easily enforced than a rule which sets forth two standards of formatting requirements. Finally, the Commission anticipates that it will provide ample notice before rejecting a brief for noncompliance with formatting requirements.

Section 2700.7 Service

Proposed revisions to § 2700.7(c) referred to the circumstances in which requests for extensions of time (§ 2700.9) and pleadings in temporary reinstatement proceedings (§ 2700.45(f)) may be served by facsimile transmission. In addition, proposed paragraph (c) clarified that service by mail is effective upon mailing for all types of mail, including first class, express, registered or certified mail, return receipt requested. Proposed paragraph (c) also added the requirement that when filing is by facsimile transmission, the filing party must also serve by facsimile transmission or by a means as expeditious as facsimile.

The Commission received no comments to the proposed rule's reference to the circumstances under which requests for extensions of time and petitions for review of temporary reinstatement orders may be served by facsimile transmission, or to the clarification that service by mail is effective upon mailing for all types of

mail service. Consistent with revisions to § 2700.5(d), the Commission has conformed the requirements for serving requests for extensions of page limit with the requirements for serving requests for extensions of time. Therefore, the Commission has referred to the circumstances in which requests for extensions of page limits may be served by facsimile transmission. In addition, the Commission has revised § 2700.7(c) to specify that express mail includes delivery by third-party commercial carrier. Therefore, when a document is served by third-party commercial carrier, service is effective upon delivery to the third-party carrier.

The Commission received opposition to the requirement that when a document is filed by facsimile transmission, service must be by facsimile or an equally expeditious means. The commenter submitted that a significant percentage of parties participating in Commission proceedings do not have fax machines, and that the only means of providing equally expeditious service would be by hand delivery, which can only be accomplished in a small number of cases.

After further consideration, the Commission has revised proposed § 2700.7(c) to provide that when filing is by facsimile transmission, the filing party must also serve by facsimile transmission or, if serving by facsimile transmission is impossible, the filing party must serve by third-party commercial overnight delivery service or by personal delivery. Although a party receiving service by overnight delivery will receive a document after the document has been filed by facsimile, the Commission believes that such a delay is not prejudicial. Under current § 2700.8, which has not been revised, when service of a document is by mail, 5 days are added to the time allowed for filing a response. *See* 29 CFR 2700.8. Because delivery by third-party commercial carrier is a form of express mail, the party who is served a document by third-party commercial carrier receives an additional 5 days to respond. Moreover, the time for filing a response to documents that may be filed by facsimile begins to run upon service, rather than upon filing. *See* proposed §§ 2700.10(d), 2700.45(f).

Proposed paragraph (d) provided that service is required on an attorney or other authorized representative only after that attorney or representative has formally entered an appearance on behalf of the party in the manner prescribed in proposed § 2700.3(c). The Commission received no objections to the revision and adopts paragraph (d) as proposed.

The Commission published proposed paragraph (d) in the supplemental notice of proposed rulemaking based on proceedings before the Commission which revealed that its current procedural rules should be revised to clarify when service on an attorney or other authorized representative is required, particularly in circumstances in which a person or operator has retained counsel prior to issuance of the initial document in a proceeding. *See Roger Richardson*, 20 FMSHRC 1259 (Nov. 1998) (involving proceeding under 30 U.S.C. 820(c), in which proposed penalty assessment was mailed to individual's former residence rather than to counsel who was retained prior to issuance of proposed penalty assessment).

Currently, § 2700.7(d) provides that "[w]henever a party is represented by an attorney or other authorized representative, subsequent service shall be made upon the attorney or other authorized representative." 29 CFR 2700.7(d). The current rule is somewhat ambiguous regarding whether service is required after a representative has entered an appearance on behalf of the party, or whether service is required after a party has retained that representative. Under revised § 2700.7(d), it is clear that, even if an operator or individual retains counsel prior to the initiation of a proceeding under the Mine Act, that counsel need not be served until after he or she makes a formal entry of appearance pursuant to § 2700.3(c).

Section 2700.9 Extensions of Time

Paragraph (a) of the proposed rule instituted the requirements that a motion for extension of time shall be filed no later than 3 days prior to the expiration of the time allowed for the filing or serving of the document, and that the motion for an extension of time must conform with proposed § 2700.10. Proposed § 2700.9(a) also provided that the motion and any opposition to the motion may be filed and served by facsimile transmission, and that service must be by an equally expeditious means as filing. Paragraph (b) of proposed § 2700.9 added a provision allowing the Commission to grant a motion for an extension of time in exigent circumstances, even though the request was filed late. The proposed rule was designed to alleviate the situation that arises under current § 2700.9, in which the Commission receives a request for an extension of time on or shortly before the expiration of the due date for filing or serving of the document, requiring disposal of the motion prior to the expiration of the time for a response. *See* 29 CFR 2700.9 ("A request for an extension of time shall be filed before the expiration of the time allowed for the filing or serving of the document.").

The Commission received no comments to proposed § 2700.9(a) and adopts it as proposed with a minor modification. Consistent with revisions to proposed § 2700.7(c), the Commission inserted the qualification in paragraph (a) that, if service by facsimile transmission is impossible, the filing party shall serve by a third-party commercial overnight delivery service or by personal delivery.

Section 2700.10 Motions

The proposed rule added the requirement that, prior to filing a procedural motion, a moving party must confer or make reasonable efforts to confer with the other parties and to state in the motion if any party opposes or does not oppose the motion. In addition, proposed § 2700.10 added the provision that, where circumstances warrant, a motion may be ruled upon prior to the expiration of the time for response, and that a party adversely affected by the ruling may seek reconsideration.

Under current practice, before the Commission disposes of a procedural motion, it must wait for the expiration for the period of the time for filing a statement in opposition. *See* 29 CFR 2700.10(c). For some motions requiring prompt or immediate disposition, the Commission must contact other parties or, if such parties are unavailable, dispose of the motion without a response. The proposed revisions were designed to more efficiently and fairly dispose of such motions.

The Commission received opposition to the revision which would permit a motion to be ruled upon prior to the expiration of the time for response. The commenter suggested that if it is necessary to rule on a motion before the response time has expired, the Commission or judge should give adequate warning of the shortened time so that any opposition may be filed prior to disposition of the motion.

The Commission has determined that no further modification is warranted and adopts the proposed rule. In motion practice before the Commission, there is usually insufficient time to give advance warning that the Commission must rule upon a motion prior to the expiration of the time for a response, particularly with requests for extensions of time or extensions of page limits. Even if the Commission were to dispose of a motion before expiration of the time for a response, under revised § 2700.10(c), in most circumstances, the Commission will be informed by the motion whether opposition exists. Moreover, under these final rules, an opposing party has more opportunities for filing an opposition by facsimile transmission. *See* §§ 2700.9(a) (statements in opposition to requests for extension of time); 2700.45(f) (responses to petitions for review of temporary reinstatement orders); 2700.70(f) and 2700.75(f) (statements in opposition to motions for extension of page limit). In any event, the Commission has provided an avenue of relief to a party deprived of the opportunity to file an opposition by providing in paragraph (d) that any party adversely affected by the ruling may seek reconsideration.

Subpart E—Complaints of Discharge, Discrimination, or Interference

Section 2700.45 Temporary Reinstatement Proceedings

Paragraph (f) retains the proposed language to: (1) allow any pleadings in a temporary reinstatement proceeding to be filed and served by facsimile transmission (*see also* paragraph (a)); (2) provide that the filing of a petition for review of a temporary reinstatement order is effective upon receipt; (3) require that any response to a petition must be filed within 5 days following service of the petition, rather than 5 days following receipt of the petition, as the rule currently provides (*see* 29 CFR 2700.45(f)); and (4) clarify that the Commission's ruling on a petition shall be based on the petition and any response, and that any further briefing will be entertained only at the express direction of the Commission. The Commission also adopts the language proposed in paragraph (f), which codifies the holding in *Secretary of Labor on behalf of Bowling* v. *Perry Transport, Inc.*, 15 FMSHRC 196 (Feb. 1993), by explicitly providing that the Commission will grant a motion to stay the effect of a temporary reinstatement order only under extraordinary circumstances.

Although the Commission received no comments to the proposed rule, the comment received regarding facsimile transmission in proposed § 2700.7(c) is indirectly applicable to proposed § 2700.45(f), and prompted the Commission to revise the final rule. As with proposed § 2700.9(a), the Commission qualified the requirement that a pleading under the rule must include proof of service on all parties by a means of delivery no less expeditious than that used for filing with the proviso that if service by facsimile transmission is impossible, the filing party shall serve by a third-party commercial overnight delivery service or by personal delivery. In addition, consistent with this revision, the Commission specified in paragraph (a) that a document filed with the Commission in a temporary reinstatement proceeding may be served by express mail, as well as by personal delivery, including courier service, by certified or registered mail, return receipt requested, or, as specified in paragraph (f), by facsimile transmission.

Subpart H—Review by the Commission

Section 2700.70 Petitions for Discretionary Review

Proposed § 2700.70(a) added the clarification that procedures governing petitions for review of temporary reinstatement orders may be found in § 2700.45(f). The Commission received no comments to the proposed revision and adopts it as proposed.

Proposed § 2700.70(d) added a 35-page limit for petitions for discretionary review to promote concision. In addition, consistent with proposed changes to § 2700.75, proposed § 2700.70(d) instituted a 10-day deadline for filing a motion requesting an extension of page limit.

The Commission received no objection to the 35-page limit and adopts it as proposed. However, the Commission received an objection to the proposed requirement that a motion for an extension of page limit for a petition for discretionary review be filed no less than 10 days prior to the date the petition is due to be filed. The commenter stated that in many cases, a party does not know 10 days before its petition is due whether the petition will exceed the page limit. The commenter suggested that the proposed revision may result in an increase in the filing of protective motions.

The Commission reconsidered the proposed paragraph, deleted the reference to the 10-day deadline in paragraph (d) and added a new paragraph (f), setting forth the requirements for motions to exceed page limit. In new paragraph (f), the Commission revised the deadline for filing requests for extensions of page limits to not less than 3 days prior to the date the petition is due to be filed. In order to permit the Commission to dispose of the motion within sufficient time to afford the petitioner time to submit a conforming petition, the Commission has added a receipt requirement, so that the motion must be received by the Commission by the deadline. Therefore, as with requests for extensions of time (*see* proposed § 2700.9(a)), the filing of requests for extensions of page limit are effective upon receipt, and the filing and serving of the motion and any opposition to the motion may be accomplished by facsimile transmission. Although a 3-day time limit may not allow sufficient time for the filing of an opposition, the Commission likely will be informed in the request for extension of page limit, in accordance with § 2700.10(c), whether the opposing party opposes or does not oppose the request. In addition, under § 2700.10(d), the Commission may rule upon the motion prior to the expiration of the time for a response, and any party adversely affected by the Commission's ruling may seek reconsideration. Consistent with revisions to other procedural rules (*see* §§ 2700.7(c), 2700.9(a), 2700.45(f), 2700.75(f)), the Commission added the provision that the motion to exceed page limit and any statement in opposition shall include proof of service on all parties by a means of delivery no less expeditious than that used for filing the motion, except that if service by facsimile transmission is impossible, the filing party must serve by third-party commercial overnight delivery, or by personal delivery.

Section 2700.74 Procedure for Participation as Amicus Curiae

Under current § 2700.74, a motion to participate as amicus curiae may be filed after the Commission has directed a case for review (*see* 29 CFR 2700.74(a)), and the brief of an amicus curiae "should normally be filed within the briefing period allotted to the party whose position the amicus curiae supports." 29 CFR 2700.74(b). In recent proceedings before the Commission, the Commission received a motion to participate as amicus curiae in support of the petitioner's position during the period allotted to the petitioner for filing a reply brief. It is somewhat unclear under the present rule whether a motion for participation as amicus curiae may be filed during the period allotted for the filing of a reply brief.

The Commission revised paragraph (b) of existing § 2700.74 to clarify that the brief of an amicus curiae must be filed during the initial briefing period allotted to the party whose position the amicus curiae supports. In addition, the Commission set off a portion of paragraph (b) as a new paragraph (c) and clarified in new paragraph (c) that the Commission may permit the filing of an amicus curiae brief within 20 days after the close of the briefing period set forth in § 2700.75(a)(1), as long as the amicus curiae's motion for participation is filed within the initial briefing period

allotted to the party whose position the amicus curiae supports. The Commission has retained the provisions of paragraph (a) so that a motion for participation as amicus curiae may be filed after the Commission has directed a case for review. Reading all paragraphs of revised § 2700.74 together, therefore, a motion to participate as an amicus curiae must be filed after the Commission has directed a case for review and before expiration of the initial briefing period allotted to the party whose position the amicus curiae supports. The Commission was unable to invite comments on the revisions to § 2700.74 because the proceedings that brought to light the need for such clarification arose after the supplemental proposed rules had been published in the **Federal Register**. *See also* 5 U.S.C. 553(b)(3)(A) (providing that notice-and-comment publication is not required under the Administrative Procedure Act for rules of agency procedure).

Section 2700.75 Briefs

Proposed paragraph (c) was revised in response to a comment that the page limit for response briefs should be increased from 25 to 35 pages. The Commission agrees that revising the page limit for response briefs to correspond with the page limit for opening briefs is appropriate given the similar substantive requirements for opening and response briefs. In addition, it agrees that such a revision is particularly appropriate in view of the opportunity for a petitioner to file an additional 15 pages in the form of a reply brief. Therefore, the Commission adopts paragraph (c) as proposed.

Proposed § 2700.75(d) added the requirement that a motion for extension of time must comply with the requirements of proposed § 2700.9. The Commission received no comments to paragraph (d) and adopts it as proposed.

Proposed § 2700.75(f) added requirements for filing a motion to exceed page limit that conformed to the requirements for filing a motion to exceed page limit for a petition for discretionary review (*see* proposed § 2700.70(d) (63 FR 25187)). Consistent with comments received to proposed § 2700.70, the Commission received an objection to the 10-day deadline. The Commission deleted the reference to a 10-day deadline in proposed § 2700.75(f), and added the same requirements for a motion to exceed page limits as that set forth in § 2700.70(f).

Section 2700.76 Interlocutory Review

Proposed § 2700.76(a) added the clarification that procedures governing petitions for review of temporary reinstatement orders may be found in proposed § 2700.45(f). The Commission received no comments to the addition and adopts the rule as proposed.

Miscellaneous

The Commission declines to adopt the suggestion that subpart H be revised to include a requirement that all documents filed in review proceedings before the Commission in which MSHA is a party, be served on Counsel for Appellate Litigation in the Mine Safety and Health Division of the Office of the Solicitor. The Commission believes that less formal means exist to address any misdirection of pleadings to MSHA's counsel, and intends to explore such means.

III. Matters of Regulatory Procedure

The Commission has determined that these rules are not subject to Office of Management and Budget review under Executive Order 12866.

The Commission has determined under the Regulatory Flexibility Act (5 U.S.C. 601–612) that these rules, if adopted, would not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Statement and Analysis has not been prepared.

The Commission has determined that the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) does not apply because these rules do not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 29 CFR Part 2700

Administrative practice and procedure, Ex parte communications, Lawyers, Penalties.

For the reasons stated in the preamble, the Commission amends 29 CFR Part 2700 as follows:

PART 2700—PROCEDURAL RULES

1. The authority citation for Part 2700 continues to read as follows:

Authority: 30 U.S.C. 815, 820 and 823.

2. Section 2700.3 is amended by revising paragraph (c) to read as follows:

§ 2700.3 Who may practice

* * * * *

(c) *Entry of appearance.* A representative of a party shall enter an appearance in a proceeding under the Act or these procedural rules by signing the first document filed on behalf of the party with the Commission or Judge; filing a written entry of appearance with the Commission or Judge; or, if the Commission or Judge permits, by orally entering an appearance in open hearing.

* * * * *

3. Section 2700.5 is amended by revising paragraphs (c), (d) and (f) to read as follows:

§ 2700.5 General requirements for pleadings and other documents; status or informational requests.

* * * * *

(c) *Necessary information.* All documents shall be legible and shall clearly identify on the cover page the filing party by name. All documents shall be dated and shall include the assigned docket number, page numbers, and the filing person's address and telephone number. Written notice of any change in address or telephone number shall be given promptly to the Commission or the Judge and all other parties.

(d) *Manner and date of filing.* A notice of contest of a citation or order, a petition for assessment of penalty, a complaint for compensation, a complaint of discharge, discrimination or interference, an application for temporary reinstatement, and an application for temporary relief shall be filed by personal delivery, including courier service, or by registered or certified mail, return receipt requested. All subsequent documents that are filed with a Judge or the Commission may be filed by first class mail, express mail, or personal delivery. Express mail includes delivery by a third-party commercial carrier. When filing is by personal delivery, filing is effective upon receipt. When filing is by mail, filing is effective upon mailing, except that the filing of a petition for discretionary review, a petition for review of a temporary reinstatement order, a motion for extension of time, and a motion to exceed page limit is effective upon receipt. See §§ 2700.9, 2700.45(f), 2700.70(a), (f), and 2700.75(f). Filing by facsimile transmission is permissible only when specifically permitted by these rules (*see* §§ 2700.9, 2700.45(f), 2700.52, 2700.70(a), (f), and 2700.75(f)), or when otherwise allowed by a Judge or the Commission. Filing by facsimile transmission is effective upon receipt.

* * * * *

(f) *Form of pleadings.* All printed material shall appear in at least 12 point type on paper 8½ by 11 inches in size, with margins of at least one inch on all four sides. Text and footnotes shall appear in the same size type. Text shall be double spaced. Headings and footnotes may be single spaced. Quotations of 50 words or more may be single spaced and indented left and right. Excessive footnotes are prohibited. The failure to comply with the requirements of this paragraph or the use of compacted or otherwise compressed printing features will be grounds for rejection of a brief.

* * * * *

4. Section 2700.7 is amended by revising paragraphs (c) and (d) to read as follows:

§ 2700.7 Service.

* * * * *

(c) *Methods of service.* A notice of contest of a citation or order, a proposed penalty assessment, a petition for assessment of penalty, a complaint for compensation, a complaint of discharge, discrimination or interference, an application for temporary reinstatement, and an application for temporary relief shall be served by personal delivery, including courier service, or by registered or certified mail, return receipt requested. All subsequent papers may be served by first class mail, express mail, or personal delivery, except as specified in §§ 2700.9, 2700.45, 2700.70(f), and 2700.75(f) (extensions of time, temporary reinstatement proceedings, and extensions of page limit). Express mail includes delivery by a third-party commercial carrier. Service by mail, including first class, express, or registered or certified mail, return receipt requested, is effective upon mailing. Service by personal delivery is effective upon receipt. When filing by facsimile transmission (*see* § 2700.5(d)), the filing party must also serve by facsimile transmission or, if serving by facsimile transmission is impossible, the filing party must serve by a third-party commercial overnight delivery service or by personal delivery. Service by facsimile transmission is effective upon receipt.

(d) *Service upon representative.* Whenever a party is represented by an attorney or other authorized representative who has entered an appearance on behalf of such party pursuant to § 2700.3(c), service thereafter shall be made upon the attorney or other authorized representative.

* * * * *

5. Section 2700.9 is revised to read as follows:

§ 2700.9 Extensions of time.

(a) The time for filing or serving any document may be extended for good cause shown. Filing of a motion requesting an extension of time, including a facsimile transmission, is effective upon receipt. A motion requesting an extension of time shall be received no later than 3 days prior to the expiration of the time allowed for the filing or serving of the document, and shall comply with § 2700.10. A motion requesting an extension of time and a statement in opposition to such a motion may be filed and served by facsimile. The motion and any statement in opposition shall include proof of service on all parties by a means of delivery no less expeditious than that used for filing the motion, except that if service by facsimile transmission is impossible, the filing party shall serve by a third-party commercial overnight delivery service or by personal delivery.

(b) In exigent circumstances, an extension of time may be granted even though the request was filed after the designated time for filing has expired. In such circumstances, the party requesting the extension must show, in writing, the reasons for the party's failure to make the request before the time prescribed for the filing had expired.

6. Section 2700.10 is amended by redesignating paragraph (c) as (d), revising newly redesignated paragraph (d) and by adding a new paragraph (c) to read as follows:

§ 2700.10 Motions.

* * * * *

(c) Prior to filing a procedural motion, the moving party shall confer or make reasonable efforts to confer with the other parties and shall state in the motion if any other party opposes or does not oppose the motion.

(d) A statement in opposition to a written motion may be filed by any party within 10 days after service upon the party. Unless otherwise ordered, oral argument on motions will not be heard. Where circumstances warrant, a motion may be ruled upon prior to the expiration of the time for response; a party adversely affected by the ruling may seek reconsideration.

7. Section 2700.45 is amended by revising paragraphs (a) and (f) to read as follows:

§ 2700.45 Temporary reinstatement proceedings.

(a) *Service of pleadings.* A copy of each document filed with the Commission in a temporary reinstatement proceeding shall be served on all parties by personal delivery, including courier service, by certified or registered mail, return receipt requested, express mail or, as specified in paragraph (f) of this section, by facsimile transmission.

* * * * *

(f) *Review of order.* Review by the Commission of a Judge's written order granting or denying an application for temporary reinstatement may be sought by filing with the Commission a petition, which shall be captioned "Petition for Review of Temporary Reinstatement Order," with supporting arguments, within 5 days following receipt of the Judge's written order. The filing of any such petition is effective upon receipt. The filing and service of any pleadings under this rule may be made by facsimile transmission. The filing of a petition shall not stay the effect of the Judge's order unless the Commission so directs; a motion for such a stay will be granted only under extraordinary circumstances. Any response shall be filed within 5 days following service of a petition. Pleadings under this rule shall include proof of service on all parties by a means of delivery no less expeditious than that used for filing, except that if service by facsimile transmission is impossible, the filing party shall serve by a third-party commercial overnight delivery service or by personal delivery. The Commission's ruling on a petition shall be made on the basis of the petition and any response (any further briefs will be entertained only at the express direction of the Commission), and shall be rendered within 10 days following receipt of any response or the expiration of the period for filing such response. In extraordinary circumstances, the Commission's time for decision may be extended.

* * * * *

8. Section 2700.70 is amended by revising paragraphs (a), (d) and (e), by redesignating paragraphs (f) as (g) and (g) as (h), and by adding a new paragraph (f) to read as follows:

§ 2700.70 Petitions for discretionary review.

(a) *Procedure.* Any person adversely affected or aggrieved by a Judge's decision or order may file with the Commission a petition for discretionary review within 30 days after issuance of the decision or order. Filing of a petition for discretionary review, including a facsimile transmission, is effective upon receipt. Two or more parties may join in the same petition; the Commission may consolidate related petitions. Procedures governing petitions for review of temporary reinstatement orders are found at § 2700.45(f).

* * * * *

(d) *Requirements.* Each issue shall be separately numbered and plainly and concisely stated, and shall be supported by detailed citations to the record, when assignments of error are based on the record, and by statutes, regulations, or other principal authorities relied upon. Except by permission of the Commission and for good cause shown, petitions for discretionary review shall not exceed 35 pages. Except for good cause shown, no assignment of error by any party shall rely on any question of fact or law upon which the Judge had not been afforded an opportunity to pass.

(e) *Statement in opposition to petition.* A statement in opposition to a petition for discretionary review may be filed, but the opportunity for such filing shall not require the Commission to delay its action on the petition.

(f) *Motion for leave to exceed page limit.* A motion requesting leave to exceed the page limit shall be received not less than 3 days prior to the date the petition for discretionary review is due to be filed, shall state the total number of pages proposed, and shall comply with § 2700.10. A motion requesting an extension of page limit and a statement in opposition to such a motion may be filed and served by facsimile. Filing of a motion requesting an extension of page limit, including a facsimile transmission, is effective upon receipt. The motion and any statement in opposition shall include proof of service on all parties by a means of delivery no less expeditious than that used for filing the motion, except that if service by facsimile transmission is impossible, the filing party shall serve by a third-party commercial overnight delivery service or by personal delivery.

* * * * *

9. Section 2700.74 is amended by revising paragraph (b), and by adding a new paragraph (c) to read as follows:

§ 2700.74 Procedure for participation as amicus curiae.

* * * * *

(b) The brief of an amicus curiae shall be filed within the initial briefing period (*see* § 2700.75(a)(1)) allotted to the party whose position the amicus curiae supports.

(c) In the interest of avoiding duplication of argument, however, the Commission may permit the filing of an amicus curiae brief within 20 days after the close of the briefing period set forth in § 2700.75(a)(1), provided that the amicus curiae's motion for participation as an amicus curiae is filed within the initial briefing period (*see* § 2700.75(a)(1)) allotted to the party whose position the amicus curiae supports. If the Commission grants any such motion, the Commission's order shall specify the time within which a response or reply may be made to the amicus curiae brief.

10. Section 2700.75 is amended by revising paragraphs (c) and (d), by redesignating paragraph (f) as (g), and by adding a new paragraph (f) to read as follows:

§ 2700.75 Briefs.

* * * * *

(c) *Length of brief.* Except by permission of the Commission and for good cause shown, opening and response briefs shall not exceed 35 pages, and reply briefs shall not exceed 15 pages. A brief of an amicus curiae shall not exceed 25 pages. A brief of an intervenor shall not exceed the page limitation applicable to the party whose position it supports in affirming or reversing the Judge, or if a different position is taken, such brief shall not exceed 25 pages. Tables of contents or authorities shall not be counted against the length of a brief.

(d) *Motion for extension of time.* A motion for an extension of time to file a brief shall comply with § 2700.9. The Commission may decline to accept a brief that is not timely filed.

* * * * *

(f) *Motion for leave to exceed page limit.* A motion requesting leave to exceed the page limit for a brief shall be received not less than 3 days prior to the date the brief is due to be filed, shall state the total number of pages proposed, and shall comply with § 2700.10. A motion requesting an extension of page limit and a statement in opposition to such a motion may be filed and served by facsimile. Filing of a motion requesting an extension of page limit, including a facsimile transmission, is effective upon receipt. The motion and any statement in opposition shall include proof of service on all parties by a means of delivery no less expeditious than that used for filing the motion, except that if service by facsimile transmission is impossible, the filing party shall serve by a third-party commercial overnight delivery service or by personal delivery.

* * * * *

11. Section 2700.76 is amended by revising paragraph (a) to read as follows:

§ 2700.76 Interlocutory review.

(a) *Procedure.* Interlocutory review by the Commission shall not be a matter of right but of the sound discretion of the Commission. Procedures governing petitions for review of temporary reinstatement orders are found at § 2700.45(f).

* * * * *

Mary Lu Jordan,

Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. 99–23244 Filed 9–7–99; 8:45 am]

BILLING CODE 6735–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[MD–091–3041a; FRL–6433–7]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Maryland; Control of Emissions from Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: This action approves the municipal solid waste (MSW) landfill 111(d) plan submitted by the Air and Radiation Management Administration, Maryland Department of the Environment (MDE), on March 23, 1999. The plan was submitted to fulfill requirements of the Clean Air Act (CAA). The Maryland plan establishes emission limits for existing MSW landfills, and provides for the implementation and enforcement of those limits.

DATES: This final rule is effective November 8, 1999 unless within October 8, 1999 adverse or critical comments are received. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Walter Wilkie, Acting Chief, Technical Assessment Branch, Mailcode 3AP22, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations: Air Protection Division, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania; and the Air Radiation Management Administration, Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland 21224.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at topsale.jim@epa.gov.

SUPPLEMENTARY INFORMATION: This document is divided into Sections I—V, and answers the questions posed below.

I. General provisions

What action is EPA approving?
What is a State 111(d) plan?
What pollutant(s) will this action control?
What are the expected environmental and public health benefits from controlling landfill gas (LFG) emissions?

II. Federal Requirements the Maryland Department of the Environment (MDE) 111(d) Plan Must Meet for Approval

What general EPA requirements must the MDE meet to receive approval of its landfill 111(d) plan?
What does the Maryland plan contain?
Does the Maryland plan meet all EPA requirements for approval?

III. Requirements for Affected MSW Landfill Owners/Operators

How do I determine if my MSW landfill is subject to the Maryland 111(d) plan?
What general requirements must I meet as an affected landfill owner/operator who is subject to the EPA approved plan?
If my landfill is subject to the plan's requirement for installation of a LFG collection and control system, what emissions limits must I meet, and in what timeframe?
Are there any operational requirements for my installed LFG collection and control system?
What are the testing, monitoring, recordkeeping, and reporting requirements for my landfill? If I modify or expand the capacity of my landfill, what additional requirements must I meet?

IV. Final EPA Action

V. Administrative Requirements

I. General Provisions

Question (Q): What action is EPA approving?

Answer (A): We are approving the Maryland landfill 111(d) plan, as submitted by the Maryland Department of the Environment (MDE) to EPA on March 23, 1999, for the control of non-methane organic compound (NMOC) emissions from municipal solid waste (MSW) landfills. We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments.

Q: What is a State 111(d) plan?

A: Section 111(d) of the Clean Air Act (CAA) requires that "designated" pollutants, controlled under section 111(b) standards of performance for new stationary sources, must also be controlled at existing sources (i.e., designated facilities) in the same source category. Furthermore, section 111(d) requires EPA to establish procedures for state submittal and EPA approval of state plans that implement state adopted emissions guidelines (EG) for the control of designated pollutants and facilities. State 111(d) plans, approved by EPA, implement and provide for federal enforceability of the EG requirements.

Q: What pollutant(s) will this action control?

A: The promulgated March 12, 1996 EPA EG (61 FR 9919) are applicable to existing municipal solid waste (MSW) landfills (i.e., the designated facilities) that emit landfill gas (LFG). LFG consists primarily of carbon dioxide, methane, and nonmethane organic compounds (NMOC). MSW landfills are the largest manmade source of methane emissions in the United States. The designated pollutant, NMOC, is a mixture of more than 100 different compounds, including volatile organic compounds (VOC), and hazardous pollutants (HAP), such as vinyl chloride, toluene, and benzene. A collateral benefit in the control of landfill NMOC is the control of methane.

Q: What are the expected environmental and public health benefits from controlling landfill gas (LFG) emissions?

A: Studies indicate that MSW landfill gas (LFG) emissions at certain levels can have adverse effects on both public health and welfare. EPA presented its concerns with the health and welfare effects of landfill gases in the preamble to the proposed MSW landfill regulations (56 FR 24468). As noted above, MSW landfills emit NMOC that contains HAP, and VOC, which include odorous compounds. Exposure to HAP can lead to cancer, respiratory irritation, and damage to the nervous system. VOC emissions contribute to the formation of ozone which can result in adverse affects on human health and vegetation. Methane contributes to global climate change and can also result in fires or explosions, if the gas accumulates in structures, on or off the landfill site. The Maryland 111(d) plan will serve to significantly reduce these potential problems associated with LFG emissions.

II. Federal Requirements the Maryland Department of the Environment (MDE) 111(d) Plan Must Meet for Approval

Q. What general requirements must the MDE meet to receive approval of its landfill 111(d) plan?

A. EPA promulgated detailed procedures for submitting and approving State plans in 40 CFR part 60, subpart B. Also, EPA promulgated the MSW landfill EG (subpart Cc) and related NSPS (subpart WWW) on March 12, 1996, and amended them on June 16, 1998 and February 24, 1999. More specifically, the Maryland plan must meet the requirements of (1) 40 CFR part 60, subpart Cc, sections 60.30c through 60.36c, and the related subpart WWW; and (2) 40 CFR part 60, subpart B, sections 60.23 through 26.

States were required to submit their MSW landfill 111(d) plans to EPA on December 12, 1996, pursuant to the provisions of section 111(d) of the CAA and 40 CFR part 60, subpart B, and the March 16, 1997 promulgated MSW landfill EG, subpart Cc. As a result of litigation over the landfill rule, on November 13, 1997, EPA issued a notice of proposed settlement in *National Solid Wastes Management Association* v. *Browner, et al.*, No. 96–1152 (D.C. Cir.), in accordance with section 113(g) of the Act. *See* 62 FR 60898. Pursuant to the proposed settlement agreement, EPA published, in the **Federal Register**, a direct final rulemaking on June 16, 1998, in which EPA amended 40 CFR part 60, subparts Cc and WWW, to add clarifying language, make editorial amendments, and to correct typographical errors. The proposed settlement did not vacate or void the March 12, 1996 MSW landfill EG or NSPS. Furthermore, as stated in the June 16, 1998, preamble, the amendments to 40 CFR part 60, subparts Cc and WWW, do not significantly modify the requirements of those subparts. *See* 63 FR 32743–32753, 32783–32784. In part, these amendments clarified the EG regulatory text with respect to landfill mass and volume applicability and Title V permit requirements. On February 24, 1999 (64 FR 9258), EPA again amended the MSW landfill rule to further clarify the regulatory text and correct errors with respect to the due date for the submittal of the initial landfill design capacity and emissions rate reports, and the definition of landfill "modification."

Q. What does the Maryland plan contain?

A. Consistent with the requirements of 40 CFR part 60, subparts B and Cc, as amended, the Maryland plan contains the following:

1. A demonstration of the State's legal authority to implement the section 111(d) State Plan;
2. COMAR 26.11.19.20 as the enforceable mechanism;
3. A source inventory of known designated facilities, including NMOC emissions rate estimates;
4. Emission collection and control requirements that are no less stringent than those in Subpart Cc;
5. A description of the Maryland process for the review and approval of site-specific gas collection and control design plans;

6. A source compliance schedule, including increments of progress, that requires final compliance no later than 30 months from the date the NMOC emissions rate was first calculated to be 55 tons (50 megagrams) or more per year;

7. Source testing, monitoring, recordkeeping, and reporting requirements;

8. Records of the public hearings on the State Plan; and

9. A provision for State submittal to EPA of annual reports on progress in plan enforcement.

On February 5, 1998, the MDE adopted a regulation, Code of Maryland Regulation (COMAR) 26.11.19.20, Control of Landfill Emissions from Municipal Solid Waste Landfills. The regulation applies to existing MSW landfills and incorporates by reference (IBR) related and applicable subpart WWW requirements. On March 2, 1999, Maryland adopted COMAR 26.11.19.20 amendments to ensure that the MDE reporting, calculation methods, and all other requirements were consistent with EPA guidance.

Q: Does the Maryland plan meet all EPA requirements for approval?

A: Yes. The MDE has submitted a 111(d) plan that conforms to all EPA subpart B and Cc requirements cited above. Each of the above listed plan elements is approvable. Details regarding the approvability of plan elements are included in the technical support document (TSD) associated with this action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

The plan includes an amended MDE landfill regulation that incorporates a substantive provision of the EPA June 1998 EG amendments. Specifically, the MDE landfill rule establishes a landfill applicability requirement, consistent with the amendments, based on landfill mass "and" volume. Furthermore, the MDE has submitted a letter to EPA confirming that its Title V permitting requirements are also consistent with those of the June 1998 EG amendments, and its July 1996 EPA approved Title V Program (61 FR 34739).

Other substantive EPA EG amendments relate to the definition of landfill "modification" and the due date for submittal of the initial design capacity and emission rate reports. These two amendments were further clarified by EPA's February 24, 1999 EG technical amendments. The MDE has not submitted a 111(d) plan revision that incorporates the provisions of the February 24, 1999 EG amendments. With respect to the definition of landfill "modification," the amendments have significance only when the landfill NSPS applicability requirements are triggered. Therefore, the State need not incorporate this definition into its MSW regulation 111(d) plan definitions. NSPS requirements are self-implementing. However, when considering the due date for submittal of the initial design capacity and emissions rate reports, it is important to note that subpart B, 60.24(g)(2) allows states to impose compliance schedules requiring final compliance at earlier times than those specified in the EG. Although, the Annotated Code of Maryland section 2–302 contains language restricting the stringency of the air quality standards and emission standards, there is no reference to compliance schedules. Accordingly, the MDE has the authority to impose earlier reporting and compliance requirements than those stipulated in the EG.

III. Requirements for Affected MSW Landfill Owners/Operators

Q: How do I determine if my MSW landfill is subject to the Maryland 111(d) plan?

A: If your MSW landfill was constructed, reconstructed or modified before May 30, 1991, and received MSW on or after November 8, 1987, then it is subject to the 111(d) plan.

Q: What general requirements must I meet as an affected landfill owner/operator who is subject to the EPA approved plan?

A: The plan requires you to submit an initial design capacity report, and possibly a NMOC emissions rate report. If the design capacity of your landfill is equal to or greater than 2,750,000 tons (2.5 million megagrams) and 3,260,000 cubic yards (2.5 million cubic meters) of MSW, the plan requires you to also submit, concurrently with the design capacity report, an initial NMOC emissions rate report. The NMOC emissions rate must be calculated according to methods specified in the regulation. If your calculated landfill NMOC emissions rate is 55 tons (50 megagrams) or more per year, you are required to install a MSW landfill gas collection and control system that meets design and operational requirements specified in COMAR 26.11.19.20.G, which IBR all related and applicable NSPS requirements.

Q: If my landfill is subject to the plan's requirement for installation of a LFG collection and control system, what emissions limits must I meet, and in what timeframe?

A: You must install a landfill gas collection and control system to reduce the collected NMOC emissions by 98 weight-percent, or reduce the emissions from the control device to a concentration of 20 parts per million by volume, or less, for an enclosed combustor. The installation of the required collection and control system must be completed within 30 months from the date the NMOC emission rate was first calculated to be 55 tons (50 megagrams) or more per year. Details regarding compliance schedules are stipulated in COMAR 26.11.19.20.E and H(1).

Q: Are there any operational requirements for my installed LFG collection and control system?

A: Yes, there are operational requirements. These requirements are summarized below:

1. Operate the collection system wellheads at negative pressure;

2. Operate the interior collection wellheads with a landfill gas temperature less than 55°C and with either a nitrogen level less than 20 percent or an oxygen level less than 5 percent;

3. Operate the collection system so that the methane gas concentration is less than 500 parts per million above background at the surface of the landfill;

4. Operate the collection system so that the colleted gases are vented to the control system; and

5. Operate the collection and control system at all times.

Details regarding all operational requirements are stipulated at COMAR 26.11.19.20.G(3), which IBR the related and applicable NSPS requirements.

Q: What are the testing, monitoring, recordkeeping, and reporting requirements for my landfill?

A: Your testing, monitoring, recordkeeping, and reporting requirements are summarized below:

1. Performance testing, to determine compliance with 98 weight-percent efficiency, or the 20 ppmv outlet concentration level, must be completed within 180 days after construction completion on the collection and control system. Performance and source test methods must be consistent with EPA test methods, as referenced in the MDE landfill regulation.

2. Monitoring of control devise temperature on a continuous basis is required for enclosed combustion control devices, and flares. Measurement of the gas flow rate from the collection system to an enclosed combustion device, or flare, is required at least once every 15 minutes, unless the bypass line valves are secured in a closed position. Monthly monitoring requirements are specified in the regulation for the gas collection system. Gas wellhead monitored parameters include gauge pressure, nitrogen or oxygen concentration, and temperature. Quarterly monitoring is required of methane gas surface concentrations.

3. Reporting requirements are stipulated for landfill design capacity and NMOC emissions rates; submittal of a collection and control system design plan; system start-up; performance testing; system operations; closure notification; and equipment removal.

4. On-site recordkeeping is required with respect to maximum design capacity, current amount of solid waste in-place, year-by-year waste acceptance rate; life of the control equipment, as measured during the initial performance test or compliance determination; and control device specifications until removal.

Details regarding testing, monitoring, recordkeeping, and reporting requirements are stipulated in COMAR 26.11.19.20.D, F, G, and H, which IBR all related and applicable NSPS requirements.

Q: If I modify or expand the capacity of my landfill, what additional requirements must I meet?

A: Any MSW landfill that commences construction, modification, or reconstruction on or after May 30, 1991 is subject to the EPA NSPS for landfills, 40 CFR part 60, subpart WWW.

IV. Final EPA Action

Based upon the rationale discussed above and in further detail in the TSD associated with this action, EPA is approving the Maryland MSW landfill 111(d) plan for the control of landfill gas emissions from affected facilities. As provided by 40 CFR 60.28(c), any revisions to the Maryland section 111(d) plan or associated regulations will not be considered part of the applicable plan until submitted by the MDE in accordance with 40 CFR 60.28 (a) or (b), as applicable, and until approved by EPA in accordance with 40 CFR part 60, subpart B, requirements.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the 111(d) plan should relevant adverse or critical comments be filed. This rule will be effective November 8, 1999 without further notice unless the Agency receives relevant adverse comments by October 8, 1999. If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Only parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 8, 1999 and no further action will be taken on the proposed rule.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review." Because today's rule does not create a mandate on state, local or tribal governments, it does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule. This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children. Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule. Under the Regulatory Flexibility Act (RFA), because the Federal 111(d) approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector.

B. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 1999. Filing a petition for reconsideration by the Administrator of this final rule pertaining to the Maryland MSW landfill 111(d) plan does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Non-methane organic compounds, Methane, Municipal solid waste landfills, Reporting and recordkeeping requirements.

Dated: August 30, 1999.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

40 CFR Part 62, Subpart I, is amended as follows:

PART 62—[AMENDED]

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart V—Maryland

2. Subpart V is amended by adding an undesignated center heading and sections 62.5150, 62.5151, and 62.5152 to read as follows:

Landfill Gas Emissions from Existing Municipal Solid Waste Landfills (Section 111(d)) Plan)

§ 62.5150 Identification of plan.

On March 23, 1999, the Maryland Department of the Environment submitted to the Environmental Protection Agency a 111(d) Plan to implement and enforce the requirements of 40 CFR part 60, subpart Cc, Emissions Guidelines for Municipal Solid Waste Landfills.

§ 62.5151 Identification of sources.

The plan applies to all Maryland existing municipal solid waste landfills for which construction, reconstruction, or modification was commenced before May 30, 1991 and that accepted waste at any time since November 8, 1987, or that have additional capacity available for future waste deposition, as described in 40 CFR part 60, subpart Cc.

§ 62.5152 Effective date.

The effective date of the plan for municipal solid waste landfills is November 8, 1999.

[FR Doc. 99–23189 Filed 9–7–99; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 552, 553, and 570

RIN 3090–AE90

General Services Administration Acquisition Regulation

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Correction to Interim rule.

SUMMARY: This document corrects the interim final rule, which published July 9, 1999 (64 FR 37200), by adding an authority citation in 3 places.

DATES: Effective September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Gloria Sochon, GSA Acquisition Policy Division (202) 208–6726.

SUPPLEMENTARY INFORMATION: GSA published a document in the **Federal Register** of July 9, 1999 (64 FR 37200) which was missing an authority citation in 3 separate places. This document corrects the error.

In rule document 99–15961 published in the **Federal Register** July 9, 1999, beginning on page 37200, insert the authority citation at the end of the Table of Contents for Parts 552 and page 37230 and 570 on page 37266, and at the end of the paragraph for part 553 page 37265 to read as follows:

Authority: 40 U.S.C. 486(c).

Dated: September 1, 1999.

J. Les Davison,

Acting Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 99–23255 Filed 9–7–99; 8:45 am]

BILLING CODE 6820–61–M

Proposed Rules

Federal Register

Vol. 64, No. 173

Wednesday, September 8, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AC31

Assessments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Directors of the FDIC (Board) is proposing several changes to the FDIC's regulation governing assessments. The Board is proposing to change the reporting date used to determine the capital component of the assessment risk classifications assigned to FDIC-insured depository institutions. The proposal is to move that date closer by one calendar quarter to the assessment period for which the capital component is assigned. This change would permit the FDIC to use more up-to-date information in determining institutions' assessment risk classifications. The proposed date would coincide with the date currently used to determine the supervisory component of the assessment risk classification.

To permit the use of more up-to-date capital information, the Board is further proposing to shorten from 30 days to 15 days the prior notice that the FDIC sends to institutions advising them of their assessment risk classifications for the following semiannual assessment period. The same reduction is proposed for the invoice sent by the FDIC each quarter showing the amount of the assessment payment due for the next quarterly collection. At the other end of the process, the Board is proposing to increase from 30 days to 90 days the time within which an institution may request review of its assessment risk classification.

Additionally, to reflect a shift of certain assessment functions within the FDIC, the Board is proposing to revise two of the references in the regulation to FDIC offices or officials. Finally, the proposal would correct a typographical error in the form of a misstated cross-reference to another FDIC regulation.

DATES: Written comments must be received by the FDIC on or before October 25, 1999.

ADDRESSES: All written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429. Comments may be hand-delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) between 7:00 a.m. and 5:00 p.m. on business days. Comments may also be faxed to (202) 898–3838, or sent via the Internet to comments@fdic.gov. Comments will be available for inspection and photocopying at the FDIC Public Information Center, Room 100, 801 17th Street, NW, between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: James W. Thornton, Senior Banking Analyst, Division of Insurance, (202) 898–6707; or Claude A. Rollin, Senior Counsel, Legal Division, (202) 898–8741, Federal Deposit Insurance Corporation, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Capital Group Determination Date

At present, the FDIC's risk-based assessments regulation specifies that the capital component of the assessment risk classification assigned to each FDIC-insured institution for each semiannual assessment period will be determined on the basis of data reported by an institution in its Consolidated Reports of Condition and Income, Thrift Financial Report, or Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks (collectively, call reports) for the quarter ending six months earlier (12 CFR 327.4(a)(1)). As a result, an institution's capital group is assigned on the basis of information that is approximately six months old when the assessment period begins. While the FDIC has long preferred to use more current information, it has been constrained from doing so because of the time needed to process the capital data submitted by institutions in their call reports.[1] However, recent developments, such as improvements in the FDIC's internal processing procedures and an increase in the number of institutions filing reports electronically, now permit more rapid processing of the data. Accordingly, the Board is proposing to base capital group determinations on data reported by institutions in their call reports for the quarter ending three months before the beginning of the assessment period to which the determination will apply.

For ease of reference, the dates for capital group determinations would be stated in terms of actual dates—that is, March 31 for the semiannual period beginning the following July 1, and September 30 for the semiannual period beginning the following January 1. At present, the capital date is described by reference to other dates rather than specifically stated.

It is anticipated that this change would be effective beginning with the semiannual assessment period that commences July 1, 2000. For that period, the capital component of an institution's assessment risk classification would be determined based on data reported as of March 31, 2000, rather than as of December 31, 1999.

Change in Notice Dates for Assessment Risk Classifications and Quarterly Payment Invoices

The Board also is proposing to shorten—from 30 days to 15 days—the time between the date institutions are notified of their assessment risk classifications for the upcoming semiannual assessment period and the date the assessment is collected for the first quarter of that upcoming period. The same reduction is proposed, for both the first and second quarters of each semiannual assessment period, in the time between the date of the quarterly assessment invoice and the date the invoiced amount is collected.

Currently, the FDIC's assessments regulation specifies that notice of the assessment risk classification applicable to a particular semiannual period is to

[1] Institutions have 30 days (or 45 days for institutions with foreign branches) from quarter-end to file their call reports. Once the FDIC receives the reports, they are checked for obvious errors (such as omitted information) and then input into the FDIC's automated system. Only after this has been done can the calculations be performed to determine the appropriate capital group assignment for each of the more than 10,000 insured institutions. These functions must be performed in time to prepare and mail notices to eachinstitution before the beginning of the next semiannual assessment period.

be provided to the institution at the same time as the invoice showing the amount of the assessment payment due from the institution for the first quarter of that semiannual period (12 CFR 327.4(a)). This invoice and notice are to be provided no later than 30 days before the first-quarter payment date (12 CFR 327.3(c)). The regulation further requires that an invoice showing the amount of the assessment payment due for the second quarter of the semiannual period is to be provided no later than 30 days before the second-quarter payment date (12 CFR 327.3(d)).

The Board is proposing to reduce to 15 days each of these 30-day periods. For the first-quarter notice and invoice, the reduction is necessary to permit the use of more current capital data in determining an institution's capital group and, based on that determination, to calculate the institution's first-quarter assessment payment.

For example, if the date of the data used as a basis for capital group assignments for the assessment period beginning July 1 is changed from December 31 to March 31, and the prior-notice date remains May 30 (which is 30 days before the June 30 payment date), the FDIC would have as little as 15 to 30 days to receive the data, scan the reports, input the information into the FDIC's system, perform capital group calculations for more than 10,000 institutions, and prepare and mail the assessment notices. Although the call report filing deadline for most institutions is 30 days after the end of the quarter (April 30 in this example), the deadline for institutions with foreign offices is 15 days later (here, May 15). Although internal processing improvements and increased electronic filing allow the FDIC to perform these functions more quickly, the FDIC cannot perform them in 30 days.

For consistency, the same reduction in the invoicing period is proposed for both the first-and second-quarter assessment payments.

It is not anticipated that reduction of the notice and invoice periods would have a significantly adverse impact on insured institutions. The risk-based assessment system has been in place since 1993 and the industry is quite familiar with it. Institutions typically know (or can anticipate with substantial certainty) the assessment risk classification and corresponding assessment rate [2] they will be assigned for the next assessment period. For the second quarter of a semiannual period, institutions will have known their capital category for three months. An institution also knows the amount of its assessment base for each quarter, since that amount is calculated from data reported by the institution. By multiplying its rate by its assessment base, an institution can very closely estimate its payment well before it receives a FDIC assessment notice.

The proposed change should have little effect on the small number of institutions that believe they have received an incorrect assessment classification. Even with the existing notice and invoice dates, requests for review of assessment ratings that result in favorable changes for requesting institutions can only rarely be decided before the date on which the institution is required to pay the invoiced amount.

Institutions are also able to anticipate their Financing Corporation (FICO) assessment, which the FDIC bills and collects on FICO's behalf. Although the FICO assessment rate varies from one quarter to the next, the variation is typically small. Thus, under normal circumstances, institutions can estimate with reasonable accuracy the amount of their assessment payments well in advance of the payment date. However, the Board recognizes that there might be some instances in which significant developments could reduce that accuracy, such as significant changes in the assessment base for one or both of the deposit insurance funds that might cause material changes in the FICO assessment rates. In these cases, the FDIC intends to provide notice as early as possible through such means as mailings to insured institutions.

An example of a development expected to cause significant changes in FICO assessments is the statutory equalization of the FICO assessment rate applicable to deposits insured by the Bank Insurance Fund (BIF) with the rate for deposits insured by the Savings Association Insurance Fund (SAIF). However, under existing law, that change is to become effective on January 1, 2000, six months before the anticipated implementation of the changes proposed here. Thus, there would be sufficient time to adjust to the newer, equalized FICO rates before the shorter notice period is implemented.

[2] In the event the Board makes a limited adjustment to the assessment rate schedule pursuant to the FDIC's assessments regulation at 12 CFR 327.9(c), the adjustment is to be announced no later than 15 days before the assessment notice date (which under the existing regulations is, in turn, 30 days before the assessment payment date). Under the proposal to move the assessment notice date closer to the payment date, an adjustment announcement would come at least 30 days before the assessment payment date.

Extension of Period for Requesting Reclassification

Another change proposed by the Board is to lengthen the period during which an institution may seek a change in its assessment risk classification. At present, the FDIC's assessments regulation requires that a request that the FDIC review an institution's classification be submitted within 30 days of the date of the notice by which the FDIC informs the institution of its classification (12 CFR 327.4(d)). Based on the FDIC's experience with the review process and the proposed reduction of the existing prior-notice period, the FDIC has concluded that a longer period would be beneficial. Thus, the Board is proposing to expand the time for requesting review to 90 days.

Redesignations Resulting From Internal FDIC Reorganization

In order to reflect reorganizations within the FDIC, the Board is further proposing to amend the assessments regulation to provide that requests for review of assessment risk classifications be submitted to the Director of the Division of Insurance, instead of the Director of the Division of Supervision. Similarly, the Board proposes to move from the Director of the Division of Supervision to the Director of the Division of Insurance the existing delegation of authority in 12 CFR 327.4(d) to act on most such requests. However, the authority to act on requests for changes in the supervisory subgroup assignment would remain with the Director of the Division of Supervision if the request is based on the appropriateness of that assignment as of the date set for determining supervisory subgroup assignments. This delineation of the delegated authority is represented by the phrase "as appropriate" in the proposed revision, which reads as follows: "Upon completion of a review, the Director of the Division of Insurance (or designee) or the Director of the Division of Supervision (or designee), as appropriate, shall promptly notify the institution in writing of his or her determination of whether reclassification is warranted."

Correction of Cross Reference

Section 327.5(f) of the FDIC's assessments regulation imposes disclosure restrictions regarding the supervisory subgroup assigned by the FDIC. At present, this section gives an erroneous cross-reference to another, nonexistent, section of the FDIC's regulations to identify the category of exempt information into which the supervisory subgroup information fits. The proposal corrects this erroneous cross-reference.

Request for Comment

The Board requests comment on the proposed regulatory amendments described above. In particular, comment is requested regarding any adverse impact the shorter notice periods might have. If it is believed that a 15-day notice period would be insufficient, comment is requested as to what period would be minimally sufficient to prove reasonable notice.

Comment is further requested on any alternative means of permitting the use of more up-to-date capital data without shortening the notice periods. Possible alternatives might include, for example, moving the assessment payment date to a later date. It is requested that suggestions for alternative means to those proposed by the Board include a discussion of any benefits and disadvantages associated with the alternatives suggested.

The comment period has been set at 45 days to allow the proposal, if adopted, to be implemented beginning with the second semiannual assessment period of 2000 and to give insured institutions as much time as possible before implementation to adjust to the changes. The Board wishes to address the proposal expeditiously because of its belief that the use of more current capital data would be of significant benefit for both the industry and the risk-based assessment system.

Regulatory Flexibility Act

The Board hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). No new or increased reporting, recordkeeping, or other compliance requirements would be imposed by the proposed rule. Of the changes proposed, only one—lengthening the time for filing requests for review of assessment risk classifications—addresses actions to be initiated by insured institutions. The remaining proposals address actions to be undertaken by the FDIC. The proposal addressing actions to be initiated by institutions would relax an existing time restriction, and it is expected that any impact on insured institutions, of whatever size, would be positive rather than adverse.

Assessment of Impact of Federal Regulation on Families

The FDIC has determined that this proposed amendment would not affect family well-being within the meaning of section 654 of the Treasury Department Appropriations Act, 1999, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105–277, 112 Stat. 2681).

List of Subjects in 12 CFR Part 327

Assessments, Bank deposit insurance, Banks, banking, Reporting and recordkeeping requirements, Savings associations.

For the reasons stated in the preamble, the Board proposes to amend 12 CFR part 327 as follows:

PART 327—ASSESSMENTS

1. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1441b, 1813, 1815, 1817–1819; Pub. L. 104–208, 110 Stat. 3009–479 (12 U.S.C. 1821).

2. Section 327.3 is amended by removing the phrase "30 days" and adding in its place the phrase "15 days" in paragraphs (c)(1) and (d)(1), respectively.

3. Section 327.4 is amended by removing the citation to "309.5(c)(8)" in paragraph (e) and adding in its place the citation "309.5(g)(8)", and by revising paragraphs (a)(1) introductory text and (d) to read as follows:

§ 327.4 Annual assessment rate.

(a) * * *

(1) Capital factors. Institutions will be assigned to one of the following three capital groups on the basis of data reported in the institution's Consolidated Reports of Condition and Income, Report of Assets and Liabilities of U.S. Branches and Agencies of Foreign Banks, or Thrift Financial Report dated as of March 31 for the assessment period beginning the following July and as of September 30 for the assessment period beginning the following January 1.

* * * * *

(d) Requests for review. An institution may submit a written request for review of its assessment risk classification. Any such request must be submitted within 90 days of the date of the assessment risk classification notice provided by the Corporation pursuant to paragraph (a) of this section. The request shall be submitted to the Corporation's Director of the Division of Insurance in Washington, DC, and shall include documentation sufficient to support the reclassification sought by the institution. If additional information is requested by the Corporation, such information shall be provided by the institution within 21 days of the date of the request for additional information. Any institution submitting a timely request for review will receive written notice from the Corporation regarding the outcome of its request. Upon completion of a review, the Director of the Division of Insurance (or designee) or the Director of the Division of Supervision (or designee), as appropriate, shall promptly notify the institution in writing of his or her determination of whether reclassification is warranted. Notice of the procedures applicable to reviews will be included with the assessment risk classification notice to be provided pursuant to paragraph (a) of this section.

* * * * *

By order of the Board of Directors.

Dated at Washington, DC, this 31st day of August, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–23266 Filed 9–7–99; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–24–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CF6–80C2 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6–80C2 series turbofan engines. This proposal would require replacement of the fuel tube connecting the flowmeter to the Integrated Drive Generator (IDG) and the fuel tube(s) connecting the Main Engine Control (MEC) or Hydromechanical (HMU) to the flowmeter with improved fuel tubes. This proposal is prompted by reports of fuel leaking in the core cowl cavity under high pressure that can be ignited by the hot engine case temperatures. The actions specified by the proposed AD are intended to prevent high-pressure fuel leaks caused by improper seating of fuel tube flanges, which could result in an engine fire and damage to the airplane.

DATES: Comments must be received by November 8, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–24–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from General Electric Aircraft Engines, c/o Commercial Technical Publications, 1 Neumann Way, Room 230, Cincinnati, OH 45215–1988; telephone (513) 552–2005, fax (513) 552–2816. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7178, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NE–24–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–24–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) received reports of 21 incidents of fuel leaks on General Electric Company (GE) CF6–80C2 series engines at the fuel tube flanges at either the tube connecting the Main Engine Control (MEC) or Hydromechanical Unit (HMU) to the fuel flowmeter or the tube connecting the fuel flowmeter to the Integrated Drive Generator (IDG) cooler. Five of the incidents resulted in in-flight engine shutdowns, with the majority directly attributable to incorrect flange seating of one of the fuel tube flanges. One of these events resulted in an engine fire on a Boeing 747–400 aircraft. This engine fire was caused by fuel leaking due to improper fuel tube flange seating at the inlet mating flange end of the tube connecting with the IDG cooler. The improper fuel tube flange seating condition, if not corrected, could result in high-pressure fuel leaks, which could result in an engine fire and damage to the airplane.

The FAA has reviewed and approved the technical contents of GE Alert Service Bulletin (ASB) No. 73–A224, Revision 2, July 9, 1997, that describes procedures for replacing the fuel flowmeter to IDG cooler fuel tube with an improved tube; and ASB No. 73–A0231, Revision 1, May 3, 1999, that describes procedures for replacing the MEC or HMU to fuel flowmeter fuel tubes with improved tubes.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design, the proposed AD would require replacement of the fuel flowmeter to IDG cooler fuel tubes and MEC or HMU to fuel flowmeter fuel tubes with improved tubes. The improved design fuel tube prevents hang-up of the flange on the tube, thus allowing proper flange seating. The replacement would be required at the next time the tubes are disconnected, or the next shop visit after the effective date of this AD, whichever occurs first. The actions are required to be accomplished in accordance with the ASBs described previously.

There are approximately 2,693 engines of the affected design in the worldwide fleet. The FAA estimates that 581 engines installed on airplanes of US registry would be affected by this proposed AD, that it would take approximately 0.5 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Of the 581 engines, some have already complied with the ASBs. Required parts for complying with ASB 73–A224 would cost approximately $659 per engine for the remaining 35 domestic engines. To comply with ASB 73–A0231, required parts would cost $2,858 per engine for the remaining 204 domestic Full Authority Digital Engine Control (FADEC) engines, and $1,229 per engine for the remaining 204 domestic Power Management Control (PMC) engines. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $856,813.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

General Electric Company: Docket No. 99–NE–24–AD.

Applicability: General Electric Company (GE) CF6–80C2 A1/ A2/ A3/ A5/ A8/ A5F/ B1/ B2/ B4/ B6/ B1F/ B2F/ B4F/ B6F/ B7F/ D1F turbofan engines, installed on but not limited to Airbus Industrie A300–600/ 600R series and A310–200Adv/ 300 series, and Boeing 747–200/ 300/ 400 series and 767–200ER/ 300/ 300ER/ 400ER and McDonnell Douglas MD–11 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent improper fuel tube flange seating, resulting in high pressure fuel leaks, which could result in an engine fire and damage to the airplane, accomplish the following:

(a) At the next time the tubes are disconnected for on-wing maintenance, or the next shop visit after the effective date of this AD, whichever occurs first, replace the old configuration fuel tubes with the improved tubes, as follows:

(1) Replace the fuel flowmeter to Integrated Drive Generator (IDG) cooler fuel tube, part number (P/N) 1321M42G01, with a serviceable part in accordance with paragraph 2 of GE Alert Service Bulletin (ASB) No. 73–A224, Revision 2, July 9, 1997 and perform a leak check after accomplishing the replacement.

(2) Replace Main Engine Control (MEC) to fuel flowmeter fuel tube, P/N 1334M88G01, and bolts, P/N MS9557–12, with serviceable parts, in accordance with paragraph 3A for engines with Power Management Controls, or Hydromechanical Unit (HMU) to fuel flowmeter fuel tubes, P/Ns 1383M12G01 and 1374M30G01 with serviceable parts, in accordance with paragraph 3B for engines with Full Authority Digital Electronic Controls, in accordance with GE ASB No. 73–A0231, Revision 1, May 3, 1999; and perform a leak check after accomplishing the replacement.

Note 2: Information on performing the leak check can be found in the Aircraft Maintenance Manual, 71–00–00.

(b) For the purpose of this AD, a shop visit is defined as any time an engine is removed from service and returned to the shop for any maintenance.

(c) For the purpose of this AD, a serviceable part is defined as any part other than tube, P/N 1321M42G01, for the fuel flowmeter to IDG cooler; tube; P/N 1334M88G01, and bolt, P/N MS9557–12, for the MEC to fuel flowmeter tube; and tubes, P/Ns 1383M12G01 and 1374M30G01, for the HMU to fuel flowmeter fuel tubes.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on August 30, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–23254 Filed 9–7–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–34–AD]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. 36–300(A), 36–280(B), and 36–280(D) Series Auxiliary Power Units

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to AlliedSignal Inc. 36–300(A), 36–280(B), and 36–280(D) series Auxiliary Power Units (APUs). This proposal would require installation of an external load compressor containment shield, or installation of a load compressor impeller with lower stress concentrations. This proposal is prompted by reports of load compressor impeller failures. The actions specified by the proposed AD are intended to prevent an uncontained APU failure and damage to the airplane.

DATES: Comments must be received by November 8, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–34–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from AlliedSignal Aerospace Services Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Roger Pesuit, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone (562) 627–5251, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report

summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NE–34–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–34–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has received reports of load compressor impeller cracks on AlliedSignal Inc. 36–300(A), 36–280(B), and 36–280(D) series Auxiliary Power Units (APUs). In three incidents, the load compressor impellers separated, resulting in uncontained APU failures and debris entering the APU compartment. Uncontained APU failures potentially could damage wiring, control and fluid lines, and airplane structure. Investigation revealed that the outboard rim of the load compressor impeller can crack at the damper ring groove location. Cracks propagate circumferentially, leading to loss of sections of the rim from the impeller. The load compressor impeller was designed with a damper ring. The damper ring retention groove was machined into the impeller with a tight radius at the corners. The resulting high stress concentrations caused cracking which progresses circumferentially allowing pieces of the rim to fail radially outward. The condition is most acute on impellers that were originally manufactured with a 0.005 inch radius. Some of these parts were subsequently modified to 0.035 inch radius and carry a 3822270–4 part number (P/N) designation. All of the parts that have failed in service accumulated a portion of their operating time with the 0.005 inch radius condition. The P/N 3822270–5 configuration was originally manufactured with the 0.035 inch radius. Although none of the −5 parts have failed in service, the stress concentration at the 0.035 inch radius is sufficiently high to initiate low cycle fatigue cracking at higher service times. Four −5 configuration parts have been tested to failure by the manufacturer confirming the identical failure modes with the −4 parts, the difference being initiation time taking longer on the −5 part. This condition, if not corrected, could result in an uncontained APU failure and damage to the airplane.

The FAA has reviewed and approved the technical contents of AlliedSignal Inc. Service Bulletins (SBs) No. GTCP36–49–7471, dated April 20, 1999, GTCP36–49–7472, dated March 31, 1999, and GTCP36–49–7473, dated March 31, 1999, that describe procedures for installation of an external load compressor containment shield.

Since an unsafe condition has been identified that is likely to exist or develop on other products of the same design, the proposed AD would require installation of an external load compressor containment shield at the next shop visit, or 6 months after the effective date of this AD, whichever occurs first. The 6 month time frame is based upon engineering assessment of the risk of operating without containment. An additional compliance option would be installation of a load compressor impeller, P/N 3822270–5, to extend cyclic service life to 26,000 cycles-since-new (CSN) before mandatory installation of the containment shield. Operators cannot operate with a load compressor installed, P/N 3822270–5, past 26,000 CSN unless they have installed an external containment shield. The actions would be required to be accomplished in accordance with the SBs described previously.

There are approximately 1,044 APUs of the affected design in the worldwide fleet. The FAA estimates that 465 APUs installed on airplanes of US registry would be affected by this proposed AD, that it would take approximately 6 work hours per Model 36–300(A) APU (85 units) to accomplish the proposed actions, and 8 work hours per Model 36–280(D) APU (380 units), and that the average labor rate is $60 per work hour. Required parts would cost approximately $3,103 per APU. Fifteen installations on domestic Boeing 737 aircraft (Model 36–280(B)) would require a tube assembly kit, which would cost approximately $1,042. The manufacturer has informed the FAA that it may offset some of these costs thereby lowering the total cost to operators. Based on these figures, the total cost impact of the proposed AD on US operators is estimated to be $1,725,270.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

AlliedSignal Inc.: Docket No. 99–NE–34–AD.

Applicability: AlliedSignal Inc. 36–300(A), 36–280(B), and 36–280(D) series Auxiliary Power Units (APUs), installed on but not limited to Airbus Industrie A319, A320, and A321 series; Boeing 737–300, –400, –500 series; and McDonnell Douglas MD–80 series airplanes.

Note 1: This airworthiness directive (AD) applies to each APU identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For APUs that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained APU failure and damage to the airplane, accomplish the following:

(a) For APUs with load compressor impellers, part number (P/N) 3822270–4, at the next shop visit, or within 6 months after the effective date of this AD, whichever occurs first, accomplish either of the following:

(1) Install an external load compressor containment shield in accordance with AlliedSignal Inc. Service Bulletins (SBs) No. GTCP36–49–7471, dated April 20, 1999, GTCP36–49–7472, dated March 31, 1999, and GTCP36–49–7473, dated March 31, 1999, as applicable; or

(2) Install load compressor impeller, P/N 3822270–5.

(b) For APUs with load compressor impellers, P/N 3822270–5, install an external load compressor containment shield within 6 months after the effective date of this AD, or prior to exceeding 26,000 cycles-since-new (CSN), whichever occurs later, in accordance with AlliedSignal Inc. SBs No. GTCP36–49–7471, dated April 20, 1999, GTCP36–49–7472, dated March 31, 1999, and GTCP36–49–7473, dated March 31, 1999, as applicable.

(c) Operators cannot operate with a load compressor, P/N 3822270–5, installed, past 26,000 cycles unless they have installed an improved external containment shield.

(d) For the purpose of this AD, a shop visit is defined as when the APU is inducted into a shop for any reason.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on September 1, 1999.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–23284 Filed 9–7–99; 8:45 am]

BILLING CODE 4910–13–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 49 and 52

[FRL–6432–8]

Source Specific Federal Implementation Plan for Navajo Generating Station; Navajo Nation

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to promulgate a source-specific Federal Implementation Plan (FIP) to regulate emissions from the Navajo Generating Station (NGS), a coal-fired power plant located on the Navajo Indian Reservation near Page, Arizona.

DATES: Comments must be received on or before October 8, 1999.

ADDRESSES: Written comments should be addressed to: Douglas K. McDaniel, Air Division (AIR–8), U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

FOR FURTHER INFORMATION CONTACT: Douglas K. McDaniel, Air Division (AIR–8), U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1246.

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I. Background

A. Action

In today's action, EPA proposes to federalize standards from the Arizona state implementation plan (SIP) and permits issued pursuant to the SIP, applicable to the Navajo Generating Station. Where necessary, EPA's proposed emission standards and associated requirements modify those extracted from Arizona's regulatory programs to ensure comprehensive emission control and federal consistency.

B. Facility

NGS is a privately owned and operated coal-fired power plant located on the Navajo Indian Reservation. Through lease agreements, the facility utilizes real property held in trust by the federal government for the Navajo Nation. The facility operates three units, each with a capacity of 750 megawatts (MW).

NGS is located just east of Page, Arizona, approximately 135 miles north of Flagstaff. Operations at the facility produce emissions of sulfur dioxide (SO_2), nitrogen dioxide (NO_X) and particulate matter (PM).

C. Attainment

NGS is located in the Northern Arizona Intrastate air quality control region (AQCR), which is designated attainment for all criteria pollutants under the Clean Air Act (CAA or "the Act"). 40 CFR 81.303. As the NGS proposed FIP merely federalizes the regulatory scheme with which the plant has been complying, EPA believes that air quality, and hence the attainment status, in this area will not be negatively impacted by this action.[1]

D. Visibility

Sections 169A and 110(c) of the Act require EPA to take appropriate measures to remedy certified visibility impairments in mandatory Class I areas where the visibility impairment is reasonably attributed to a specific source. On September 5, 1989, EPA preliminarily attributed a significant portion of wintertime visibility impairment in the Grand Canyon National Park to NGS (54 FR 36948). On October 3, 1991, EPA revised the visibility FIP for the state of Arizona to include an SO_2 emission limit for NGS to remedy visibility impairment in the

[1] A different conclusion may be reached by EPA, however, if, for example, there were evidence that the source to be regulated by the FIP is causing or contributing to violations of the applicable NAAQS, or was located in an area that is designated nonattainment for such NAAQS.

Grand Canyon National Park. 56 FR 50172, 40 CFR 52.145. Under the visibility FIP, NGS is required to phase-in compliance with the SO_2 emission limit, by unit, in 1997, 1998, and 1999.

The visibility FIP is not being amended or changed by today's action. The visibility FIP remains in full force and effect and this rulemaking does not provide an opportunity for public comment or judicial review of EPA's earlier actions promulgating the visibility FIP.

E. Jurisdictional Issue

Historically, emissions of air pollutants from the NGS facility have been regulated under provisions of the Arizona air pollution control program, in accordance with the Arizona SIP. However, States are generally precluded from enforcing their civil regulatory programs on Tribal lands, absent an explicit Congressional authorization or State-Tribal agreement. *See California* v. *Cabazon Band of Mission Indians*, 480 U.S. 202 (1987).

Both the Navajo Nation and members of the regulated community have queried EPA concerning the jurisdictional issue of who has authority under the Act to regulate air emissions from NGS. Upon review of the circumstances surrounding the location and operation of NGS on the Navajo Indian Reservation, EPA concluded that jurisdiction under the Act over this facility lies with EPA and the Navajo Nation. EPA met with representatives of the State of Arizona, the Navajo Nation and NGS to discuss this jurisdictional issue. All parties have expressed agreement with this conclusion.

II. Basis for Proposed Action

A. EPA's Authority To Promulgate a FIP in Indian Country

EPA's conclusion that CAA jurisdiction over NGS lies with EPA and the Navajo Nation necessarily leads to the conclusion that a regulatory gap exists with regard to this facility. EPA is thus proposing to remedy this gap with a source-specific FIP. This FIP will in essence federalize the Arizona SIP and permit requirements with which the facility has been complying.

The Clean Air Act Amendments of 1990 greatly expanded the role of Indian tribes in implementing the provisions of the Clean Air Act in Indian country. Section 301(d) of the Act authorizes EPA to issue regulations specifying the provisions of the Clean Air Act for which Indian tribes may be treated in the same manner as states. *See* CAA sections 301(d)(1) and (2). EPA promulgated the final rule under section 301(d) of the Act, entitled "Indian Tribes: Air Quality Planning and Management," on February 12, 1998. 63 FR 7254. The rule is generally referred to as the "Tribal Authority Rule" or "TAR".

In the preamble to the proposed [2] and final rule, EPA discusses generally the legal basis under the CAA by which EPA and tribes are authorized to regulate sources of air pollution in Indian country. EPA concluded that the CAA constitutes a statutory grant of jurisdictional authority to Indian tribes that allows them to develop air programs for EPA approval in the same manner as states. 63 FR at 7254–7259; 59 FR 43958–43960.

EPA also concluded that the CAA authorizes EPA to protect air quality throughout Indian country, including on fee lands. *See* 63 FR 7262; 59 FR 43960–43961 (citing to CAA sections 101(b)(1), 301(a), and 301(d)). In fact, in promulgating the TAR, EPA specifically provided that, pursuant to the discretionary authority explicitly granted to EPA under sections 301(a) and 301(d)(4) of the Act, EPA

> "shall promulgate without unreasonable delay such federal implementation plan provisions as are necessary or appropriate to protect air quality, consistent with the provisions of sections 304(a) and 301(d)(4), if a tribe does not submit a tribal implementation plan meeting the completeness criteria of 40 CFR part 51, Appendix V, or does not receive EPA approval of a submitted tribal implementation plan." 63 FR at 7273 (codified at 40 CFR 49.11(a)).[3]

It is EPA's policy to aid tribes in developing comprehensive and effective air quality management programs by providing technical and other assistance to them. EPA recognizes, however, that just as it required many years to develop state and federal programs to cover lands subject to state jurisdiction, it will also require time to develop tribal and federal programs to cover reservations and other lands subject to tribal jurisdiction. 59 FR 43961.

The Navajo Nation has expressed a strong interest in seeking authority under the TAR to regulate sources of air pollution located on the Reservation under the Clean Air Act. Based on discussions with the Tribe, however, EPA believes that it will be at least several months before the Tribe will be ready to seek authority under the TAR to assume Clean Air Act planning responsibilities and that, when they do so, the Tribe intends to build its capacity and seek authority for the various Clean Air Act programs over time, rather than all at once. The Tribe has advised EPA that it continues to support EPA's efforts to impose such controls on NGS as are necessary to ensure continued compliance with the substantive requirements of the Arizona SIP and permits, notwithstanding the recent promulgation of the TAR.

Therefore, in this proposed FIP, EPA is exercising its discretionary authority under sections 301(a) and 301(d)(4) of the CAA and 40 CFR 49.11(a) to promulgate a federal implementation plan in order to remedy an existing regulatory gap under the Act with respect to NGS. Although the facility has been historically regulated by Arizona for the most part since its construction, the state lacks jurisdiction over the facility or its owners or operators for CAA compliance or enforcement purposes. The Tribe has not submitted a tribal implementation plan to address emissions from NGS and has indicated to EPA that it prefers to have EPA address the emissions from NGS at this time. Since the Navajo Nation does not presently have a federally approved TIP, in the absence of a comprehensive FIP the applicable regulatory requirements arising under state law would not be enforceable. EPA's FIP will federalize requirements contained in the Arizona SIP that were applicable to NGS and permits issued pursuant to the SIP. Given the magnitude of the emissions from the plant, EPA believes that the proposed FIP provisions are both necessary and appropriate to protect air quality on the Reservation.

B. Relation to Tribal Authority Rule

As discussed above, under section 301(d) of the Act, a tribe may develop and implement one or more of its own air quality programs under the Act through a Tribal Air Program. On February 12, 1998, EPA promulgated regulations under Section 301(d) of the Act which provide the framework for tribes to obtain authority to administer federally-approved and federally-enforceable programs under the Act, including tribal implementation plans. *See* 59 FR 43956, August 25, 1994 (proposed rule) and 63 FR 7254, February 12, 1998 (final rule).

The Navajo Nation now has the option of assuming responsibility for the development and implementation of federally enforceable air quality programs under the Clean Air Act. Until a federally approved Navajo Nation TIP is in place with regulations which cover NGS, however, EPA has exclusive jurisdiction to regulate the source under the Act. Once final, the regulations proposed today will remain in effect until a TIP governing NGS is in place and the FIP is withdrawn.

III. Navajo Generating Station—Facility Description

The NGS is a 2250 MW coal-fired power plant located on the Navajo Indian Reservation near Page, Arizona. The NGS is a baseload generating station consisting of three 750 MW units which became operational between 1974 and 1976. The Salt River Project (SRP) is the operating agent for NGS which is jointly owned by SRP, the Los Angeles Department of Water and Power, the Arizona Public Service, the Nevada Power Company, and the Tucson Electric Power Company. Existing pollution control equipment at NGS includes electrostatic precipitators for PM removal and specific burners designed for NO_X control. Furthermore, the visibility FIP for the State of Arizona includes an SO_2 emission limit for the NGS. NGS installed limestone wet scrubbers on each unit to reduce SO_2 emissions by 90%. These scrubbers are now fully operational. Compliance with the SO_2 emission limit in the visibility FIP will be determined on a plant-wide annual rolling average basis (see 40 CFR 52.145).

IV. Summary of FIP Provisions

A. State Standards

The standards in this FIP proposal are generally based on the state standards under which the facility has been operating (NGS must also continue to comply with all other applicable federal requirements). These standards, derived from the Arizona SIP and operating permit, are summarized as follows:

1. Particulate matter emissions were limited to 17.0 times $Q^{0.4320}$ pounds per hour where Q is million BTU per hour of heat input to the boilers.
2. Opacity was limited to 40 percent.
3. Sulfur oxides emissions were limited to one pound per million BTU, per unit, three-hour average.

B. Visibility FIP

Under the visibility FIP, SO_2 emissions are limited to 0.1 pounds per million BTU on a plant-wide rolling annual basis, and scrubbers must be installed and operable on all three units by August 19, 1999. The scrubbers were installed and operating on the last of the three units in February, 1999.

The SO_2 scrubbers will substantially lower the SO_2 emissions from Navajo Generating Station. When the scrubbers are operating, SO_2 emissions will be less than .1 pounds per million BTU. The visibility FIP standards are an annual average, as this was determined to be protective of visibility resources in the Grand Canyon.

The visibility FIP is not being amended or changed by today's action. The visibility FIP remains in full force and effect and this rulemaking does not provide an opportunity for public comment or judicial review of EPA's earlier actions promulgating the visibility FIP.

C. Acid Rain Requirements

NGS is subject to Acid Rain requirements. They elected to comply early as a Phase I NO_X facility; this means they have a NO_X limit of .45 pounds per million BTU, per unit, on an annual basis. This limit applies until 2008, when it will be lowered to .40 pounds per million BTU. NGS also has specific SO_2 allowances per unit.

D. Proposed FIP Standards

1. Particulate matter is limited to 0.060 pounds per million BTU averaged over a six hour period, on a plant-wide basis.
2. Opacity is limited to 40 percent averaged over a six minute period, excluding water vapor.
3. SO_2 emissions are limited to 1 pound per million BTU averaged over a three hour period, on a plant-wide basis.

E. Summary of Changes From State Standards

1. The particulate emissions standard was changed from 17.0 $Q^{0.4320}$ pounds per hour (where Q is million BTU per hour) to 0.060 pounds per million BTU because this standard is a generally recognized form for the particulate standard and it is more reliably measured. The stringency of the new standard approximates the old standard: Using EPA policy of conducting emissions tests at 90 percent to 100 percent of the facility's full load, the original Arizona equation yields estimated allowable emissions of between .057 and 0.061 pounds per million BTU. Thus, a limit of.060 lb/MMbtu is appropriate.

The FIP we are proposing specifically states that the particulate standard will be measured on a plant-wide basis. Although the Arizona permit did not state this explicitly, this was the way that Arizona determined compliance at the NGS historically.

2. The proposed opacity standard specifically excludes water vapor. NGS has opacity monitors on each of its stacks; water vapor, which will be present in all stacks because of the SO_2 scrubbers, causes inaccurate excess emission readings on the opacity monitors.

3. The standard for SO_2 is slightly changed. The method of compliance determination has been changed from one based on the sulfur content of coal to one based on continuous emission monitoring (CEM). The facility has experienced difficulty with the analysis of the sulfur content of coal, and the federal acid rain regulations require CEM monitoring. CEM monitoring is generally recognized as being more accurate and precise than monitoring the sulfur content of coal.

Compliance with the Arizona permit limits was determined on a per-unit basis. NGS complied with these limits by using very low sulfur coal. Now, because of the presence of the scrubbers, NGS will be able to comply with its short-term limits by removing sulfur from the exhaust stream. This will allow them to purchase slightly higher sulfur coal; additionally, the plant-wide average allows one scrubber to be down for periodic maintenance (lasting usually 30 to 40 days) without requiring the purchase of specific low sulfur coal for use during the maintenance. Nevertheless, the actual emissions will remain 90% lower on an annual basis than they were before the scrubbers were installed.

4. A number of other changes were made relative to the Arizona SIP making the FIP specific to NGS and to conform to EPA excess emissions and other reporting and quality assurance procedures.

F. Compliance Schedule

The EPA proposes that the requirements contained in this proposal become effective upon promulgation of these regulations, since the emission limits established by the proposed FIP are presently being achieved at the facility.

V. Solicitation of Comments

The EPA solicits comments on all aspects of today's proposal to promulgate a FIP to regulate air emissions from NGS. Interested parties should submit comments to the address cited in the front of this proposed rule. Public comments postmarked by

[2] *See* 59 FR 43956 (August 25, 1994).

[3] In the preamble to the final TAR, EPA explained that it believed it was inappropriate to treat tribes in the same manner as States with respect to section 110(c) of the Act, which directs EPA to promulgate a FIP within two years after EPA finds a state has failed to submit a complete state plan or within two years after EPA disapproval of a state plan. Although EPA is not required to promulgate a FIP within the two year period for tribes, EPA promulgated 40 CFR 49.11(a) to clarify that EPA will continue to be subject to the basic requirement to issue any necessary or appropriate FIP provisions for affected tribal areas within some reasonable time. *See* 63 FR 7264–7265.

October 8, 1999 will be considered in the final action taken by EPA.

VI. Administrative Requirements

A. Executive Order (E.O.) 12866

Under Executive Order (E.O.) 12866, 58 FR 51735 (October 4, 1993), all "regulatory actions" that are "significant" are subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. A "regulatory action" is defined as "any substantive action by an agency (normally published in the **Federal Register**) that promulgates or is expected to result in the promulgation of a final rule or regulation, including * * * notices of proposed rulemaking." A "regulation or rule" is defined as "an agency statement of general applicability and future effect, * * *."

The proposed FIP is not subject to OMB review under E.O. 12866 because it applies to only a single, specifically named facility and is therefore not a rule of general applicability. Thus, it is not a "regulatory action" under E.O. 12866.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. section 601 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. The federal implementation plan for the Navajo Generating Station proposed today does not impose any new requirements on small entities. See *Mid-Tex Electric Cooperative, Inc. v. FERC*, 773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the requirements of the rule). Therefore, pursuant to 5 U.S.C. 605(b), EPA certifies that today's action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995, Pub.L. 04–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed rules and for final rules for which EPA published a notice of proposed rulemaking, if those rules contain "federal mandates" that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If section 202 requires a written statement, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives. Under section 205, EPA must adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Administrator publishes with the final rule an explanation why EPA did not adopt that alternative. The provisions of section 205 do not apply when they are inconsistent with applicable law. Section 204 of UMRA requires EPA to develop a process to allow elected officers of state, local, and tribal governments (or their designated, authorized employees), to provide meaningful and timely input in the development of EPA regulatory proposals containing significant Federal intergovernmental mandates.

EPA has determined that the proposed FIP contains no federal mandates on state, local or tribal governments, because it will not impose any enforceable duties on any of these entities. EPA further has determined that the proposed FIP is not likely to result in the expenditure of $100 million or more by the private sector in any one year. Although the proposed FIP would impose enforceable duties on an entity in the private sector, the costs are expected to be minimal. Consequently, sections 202, 204, and 205 of UMRA do not apply to the proposed FIP.

Before EPA establishes any regulatory requirements that might significantly or uniquely affect small governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the proposed FIP will not significantly or uniquely affect small governments, because it imposes no requirements on small governments. Therefore, the requirements of section 203 do not apply to the proposed FIP. Nonetheless, EPA worked closely with representatives of the Tribe in the development of today's proposed action.

D. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all "collections of information" by EPA. The Act defines "collection of information" as a requirement for "answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * *." 44 U.S.C. 3502(3)(A). Because the proposed FIP only applies to one company, the Paperwork Reduction Act does not apply.

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This executive order applies to any rule that: (1) Is determined to be "economically significant" as that term is defined in E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. The NGS FIP is not subject to E.O. 13045 because it implements previously promulgated health or safety-based federal standards.

F. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and EPA's position supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

As stated above, the proposed FIP will not create a mandate on state, local or tribal governments because it will not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule. Nonetheless, EPA worked closely with representatives of the Tribe during the development of today's proposed action.

G. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

The proposed FIP does not impose substantial direct compliance costs on the communities of Indian tribal governments. The proposed FIP imposes obligations only on the owner or operator of NGS. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

As discussed above, EPA worked closely with representatives of the Tribe during the development of today's proposed action.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (VCS) are technical standards (e.g. materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by the voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when the Agency decides not to use available and applicable voluntary consensus standards.

A consensus standard, ASTM D6216–98, appears to be practical for use in lieu of EPA Performance Specification 1 (see 40 CFR part 60, appendix B) for the opacity monitoring to be required for this facility. On September 23, 1998, EPA proposed incorporating by reference ASTM D6216–98 into Performance Specification 1 under a separate rulemaking (63 FR 50824) that would allow broader use and application of this consensus standard. EPA plans to complete this action in the near future. As it would be impractical for EPA to act independently from rulemaking activity already undergoing notice and comment, EPA defers taking action in the current rulemaking that would immediately adopt D6216–98, and we will therefore require use of EPA Performance Specification 1 in the interim.

In regard to the remaining measurement needs as listed below, there are a number of voluntary consensus standards that appear to have possible use in lieu of the EPA test methods and performance specifications (40 CFR part 60 appendices A and B) noted next to the measurement requirements. It would not be practical to specify these standards in the current rulemaking due to a lack of sufficient data on equivalency and validation and because some are still under development. However, EPA's Office of Air Quality Planning and Standards is in the process of reviewing all available VCS for incorporation by reference into the test methods and performance specifications of 40 CFR Part 60, Appendices A and B. Any VCS so incorporated in a specified test method or performance specification would then be available for use in determining the emissions from this facility. This will be an ongoing process designed to incorporate suitable VCS as they become available.

Particulate Matter Emissions—EPA Methods 1 though 5

Opacity—EPA Method 9 and Performance Specification Test 1 for Opacity Monitoring

SO_2—EPA Method 6C and Performance Specification 2 for Continuous SO_2 Monitoring

List of Subjects

40 CFR Part 49

Environmental protection, Air pollution control, Indians, Intergovernmental relations, Reporting and recordkeeping.

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 27, 1999.

Carol M. Browner,

Administrator.

Title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 49—TRIBAL CLEAN AIR ACT AUTHORITY

1. The authority citation for part 49 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Part 49 is proposed to be amended by adding § 49.20 to read as follows:

§ 49.20 Federal Implementation Plan Provisions for Navajo Generating Station, Navajo Nation.

(a) *Applicability.* The provisions of this section shall apply to each owner or operator of the fossil fuel-fired, steam-generating equipment designated as Units 1, 2, and 3, and the two auxiliary steam boilers at the Navajo Generating Station (NGS) in the Navajo Indian Reservation located in the Northern Arizona Intrastate Air Quality Control Region (see 40 CFR 81.270).

(b) *Compliance Dates.* Compliance with the requirements of this section is required upon promulgation unless otherwise indicated by compliance dates contained in specific provisions.

(c) *Definitions.* For the purposes of this section:

(1) *Administrator* means the Administrator of the Environmental Protection Agency or his/her authorized representative.

(2) *Affirmative defense* means, in the context of an enforcement proceeding, a response or defense put forward by a

defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

(3) *Malfunction* means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

(4) *Owner or Operator* means any person who owns, leases, operates, controls or supervises NGS, any of the fossil fuel-fired, steam-generating equipment at NGS, or the auxiliary steam boilers at NGS.

(5) *Startup* shall mean the period from start of fires in the boiler with fuel oil, to the time when the electrostatic precipitator is sufficiently heated such that the temperature of the air preheater inlet reaches 400 degrees Fahrenheit. Proper startup procedures shall include energizing the electrostatic precipitator prior to the combustion of coal in the boiler.

(6) *Shutdown* shall be the period from cessation of coal fires in the boiler until the electrostatic precipitator is de-energized. The precipitator shall be maintained in service until boiler fans are disengaged.

(d) *Emissions Standards*—(1) *Sulfur Oxides*—No owner or operator shall discharge or cause the discharge of sulfur oxides into the atmosphere from Units 1, 2 or 3 in excess of 1.0 pound per million British thermal units (lb/MMBtu) averaged over any three (3) hour period, on a plant-wide basis.

(2) *Particulate Matter*—No owner or operator shall discharge or cause the discharge of particulate matter into the atmosphere in excess of 0.060 lb/MMBtu averaged over a six (6) hour period, on a plant-wide basis.

(3) *Fugitive Dust*—Each owner or operator shall operate and maintain the existing dust suppression methods for controlling fugitive dust from the coal handling and storage facilities. Within ninety (90) days after promulgation of these regulations the owner or operator shall submit to the Administrator a description of the dust suppression methods for controlling fugitive dust from the coal handling and storage facilities, fly ash handling and storage, and road sweeping activities.

(4) *Opacity*—No owner or operator shall discharge or cause the discharge of emissions into the atmosphere exhibiting greater than 40% opacity, excluding water vapor, averaged over any six (6) minute period.

(e) *Testing and Monitoring.* (1) Effective sixty (60) days after promulgation of this section, the owner or operator shall maintain and operate CEMS and COMS in accordance with 40 CFR 60.8 and 60.13(e), (f), and (h), and appendix B of 40 CFR part 60. The owner or operator shall comply with the quality assurance procedures for CEMS and COMS found in 40 CFR part 75.

(2) The owner or operator shall conduct annual mass emissions tests for particulate matter on Units 1, 2, and 3, operating at rated capacity, using coal that is representative of that normally used. The tests shall be conducted using the appropriate test methods in 40 CFR part 60, appendix A.

(3) The owner or operator shall conduct an initial mass emissions tests for sulfur dioxide, nitrogen oxides and particulate matter on the two auxiliary steam boilers, operating at rated capacity, using oil that is representative of that normally used. The test shall then be conducted annually or after 720 hours of operation, whichever is later. The tests shall be conducted using the appropriate test methods in 40 CFR part 60, appendix A.

(4) The owner or operator shall maintain two sets of opacity filters for each type of COMS, one set to be used as calibration standards and one set to be used as audit standards. At least one set of filters shall be on site at all times.

(5) All emissions testing and monitor evaluation required pursuant to this section shall be conducted in accordance with the appropriate method found in 40 CFR part 60, appendices A and B.

(6) The owner or operator shall install, maintain and operate ambient monitors at Glen Canyon Dam for particulate matter ($PM_{2.5}$ and PM_{10}), nitrogen dioxide, sulfur dioxide, and ozone. Operation, calibration and maintenance of the monitors shall be performed in accordance with 40 CFR part 58, manufacturer's specification, and "Quality Assurance Handbook for Air Pollution Measurements Systems", Volume II, U.S. EPA as applicable to single station monitors. Data obtained from the monitors shall be made available to the Administrator upon request. All particulate matter samplers shall operate at least every third day, coinciding with the national particulate sampling schedule.

(7) Nothing herein shall limit EPA's ability to ask for a test at any time under section 114 of the Clean Air Act, 42 U.S.C. 7413, and enforce against any violation of the Clean Air Act or this section.

(f) *Reporting and recordkeeping requirements.* Unless otherwise stated all requests, reports, submittals, notifications and other communications to the Administrator required by this section shall be submitted to the Director, Air Division, U.S. Environmental Protection Agency, Region IX, to the attention of Mail Code: AIR–5, at 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1138, (415) 744–1076 (facsimile). For each unit subject to the emissions limitations in this section the owner or operator shall:

(1) Comply with the notification and recordkeeping requirements for testing found in 40 CFR 60.7. All data/reports of testing results shall be submitted to the Administrator and postmarked within 60 days of testing.

(2) For excess emissions or a malfunction, notify the Administrator by telephone or in writing within one business day. A complete written report of the incident shall be submitted to the Administrator within fifteen (15) working days after the event. This notification shall include the following information:

(i) The identity of the stack and/or other emissions points where excess emissions occurred;

(ii) The magnitude of the excess emissions expressed in the units of the applicable emissions limitation and the operating data and calculations used in determining the magnitude of the excess emissions;

(iii) The time and duration or expected duration of the excess emissions;

(iv) The identity of the equipment causing the excess emissions;

(v) The nature and cause of such excess emissions;

(vi) If the excess emissions were the result of a malfunction, the steps taken to remedy the malfunction and the steps taken or planned to prevent the recurrence of such malfunction; and

(vii) The steps than were taken or are being taken to limit excess emissions.

(3) Notify the Administrator verbally within one business day whenever an exceedance of the NAAQS has been measured by a monitor operated in accordance with this section. The notification to the Administrator shall include the time, date, and location of the exceedance, and the pollutant and concentration of the exceedance. The verbal notification shall be followed within fifteen (15) days by a letter containing the following information:

(i) The time, date, and location of the exceedance;

(ii) The pollutant and concentration of the exceedance;

(iii) The meteorological conditions existing 24 hours prior to and during the exceedance;

(iv) For a particulate matter exceedance, the 6-minute average opacity monitoring data greater than 40% for the 24 hours prior to and during the exceedance; and

(v) Proposed plant changes such as operation or maintenance, if any, to prevent future exceedances. Compliance with this paragraph (f)(3)(v) shall not excuse or otherwise constitute a defense to any violations of this section or of any law or regulation which such excess emissions or malfunction may cause.

(4) Submit quarterly excess emissions reports for sulfur dioxide and opacity as recorded by CEMS and COMS together with a CEMS data assessment report to the Administrator no later than 30 days after each calendar quarter. The owner or operator shall complete the excess emissions reports according to the procedures in 40 CFR 60.7 (c) and (d) and appendix F of 40 CFR part 60. Excess opacity due to uncondensed water vapor in the stack does not constitute a reportable exceedence.

(g) *Compliance Certifications.* Notwithstanding any other provision in this implementation plan, the owner or operator may use any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, for the purpose of submitting compliance certifications.

(h) *Equipment operations.* The owner or operator shall operate all equipment or systems needed to comply with this section in accordance with 40 CFR 60.11(d) and consistent with good engineering practices to keep emissions at or below the emissions limitations in this section, and following outages of any control equipment or systems the control equipment or system will be returned to full operation as expeditiously as practicable.

(i) *Enforcement.* (1) Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant to whether a source would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not a person has violated or is in violation of any standard in the plan.

(2) During periods of start-up and shutdown the otherwise applicable emission limits or requirements for opacity and particulate matter shall not apply provided that:

(i) At all times the facility is operated in a manner consistent with good practice for minimizing emissions, and the owner or operator uses best efforts regarding planning, design, and operating procedures to meet the otherwise applicable emission limit;

(ii) The frequency and duration of operation in start-up or shutdown mode are minimized to the maximum extent practicable; and

(iii) The owner or operator's actions during start-up and shutdown periods are documented by properly signed, contemporaneous operating logs, or other relevant evidence.

(3) Emissions in excess of the level of the applicable emission limit or requirement that occur due to a malfunction shall constitute a violation of the applicable emission limit. However, it shall be an affirmative defense in an enforcement action seeking penalties if the owner or operator has met with all of the following conditions:

(i) The malfunction was the result of a sudden and unavoidable failure of process or air pollution control equipment and did not result from inadequate design or construction of the process or air pollution control equipment;

(ii) The malfunction did not result from operator error or neglect, or from improper operation or maintenance procedures;

(iii) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(iv) Steps were immediately taken to correct conditions leading to the malfunction, and the amount and duration of the excess emissions caused by the malfunction were minimized to the maximum extent practicable;

(v) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality;

(vi) All emissions monitoring systems were kept in operation if at all possible; and

(vii) The owner or operator's actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671, *et seq.*

Subpart D—Arizona

2. Subpart D is proposed to be amended by adding § 52.141 to read as follows:

§ 52.141 Federal Implementation Plan for Navajo Generating Station, Navajo Nation.

The Federal Implementation Plan regulating emissions from the Navajo Generating Station near Page, Arizona is codified at 40 CFR 49.20.

[FR Doc. 99–23276 Filed 9–7–99; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 49 and 52

[FRL–6432–6]

RIN 2060–AF42

Source Specific Federal Implementation Plan for Four Corners Power Plant; Navajo Nation

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to promulgate a source-specific Federal Implementation Plan (FIP) to regulate emissions from the Four Corners Power Plant (FCPP), a coal-fired power plant located on the Navajo Indian Reservation near Farmington, New Mexico.

DATES: Comments must be received on or before October 8, 1999.

ADDRESSES: Written comments should be addressed to: Douglas K. McDaniel, Air Division (AIR–8), U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

FOR FURTHER INFORMATION CONTACT: Douglas K. McDaniel, Air Division (AIR–8), U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1246.

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I. Background

A. Action

In today's action, EPA proposes to federalize standards from the New Mexico state implementation plan (SIP) applicable to the FCPP. Where necessary, EPA's proposed emission standards and associated requirements modify those extracted from New Mexico's regulatory programs to ensure comprehensive emission control and federal consistency.

B. Facility

FCPP is a privately owned and operated coal-fired power plant located on the Navajo Indian Reservation near Farmington, New Mexico. Through lease agreements, the facility utilizes real property held in trust by the federal government for the Navajo Nation. The facility operates five units with a total capacity in excess of 2000 megawatts (MW). Operations at the facility produce emissions of sulfur dioxide (SO_2), nitrogen dioxide (NO_X) and particulate matter (PM).

C. Attainment

FCPP is located in the Four Corners Interstate air quality control region (AQCR), which is designated attainment for all criteria pollutants under the Clean Air Act (CAA or "the Act"). 40 CFR 81.332. As the proposed FCPP FIP merely federalizes the regulatory scheme with which the plant has been complying, EPA believes that air quality, and hence the attainment status, in this area will not be negatively impacted by this action.[1]

D. Jurisdictional Issue

Historically, emissions of air pollutants from the FCPP facility have been regulated under provisions of the New Mexico air pollution control program, in accordance with the New Mexico SIP. However, States are generally precluded from enforcing their civil regulatory programs on Tribal lands, absent an explicit Congressional authorization or State-Tribal agreement. *See California* v. *Cabazon Band of Mission Indians*, 480 U.S. 202 (1987).

Both the Navajo Nation and members of the regulated community have queried EPA concerning the jurisdictional issue of who has authority under the Act to regulate air emissions from FCPP. Upon review of the circumstances surrounding the location and operation of FCPP on the Navajo Indian Reservation, EPA concluded that jurisdiction under the Act over this facility lies with EPA and the Navajo Nation. EPA met with representatives of the State of New Mexico, the Navajo Nation and FCPP to discuss this jurisdictional issue. All parties have expressed agreement with this conclusion.

II. Basis for Proposed Action

A. EPA's Authority to Promulgate a FIP in Indian Country

EPA's conclusion that CAA jurisdiction over FCPP lies with EPA and the Navajo Nation necessarily leads to the conclusion that a regulatory gap exists with regard to this facility. EPA is thus proposing to remedy this gap with a source-specific FIP. This FIP will in essence federalize the New Mexico SIP requirements with which the facility has been complying.

The Clean Air Act Amendments of 1990 greatly expanded the role of Indian tribes in implementing the provisions of the Clean Air Act in Indian country. Section 301(d) of the Act authorizes EPA to issue regulations specifying the provisions of the Clean Air Act for which Indian tribes may be treated in the same manner as states. See CAA sections 301(d)(1) and (2). EPA promulgated the final rule under section 301(d) of the Act, entitled "Indian Tribes: Air Quality Planning and Management," on February 12, 1998. 63 FR 7254. The rule is generally referred to as the "Tribal Authority Rule" or "TAR".

In the preamble to the proposed [2] and final rule, EPA discusses generally the legal basis under the CAA by which EPA and tribes are authorized to regulate sources of air pollution in Indian country. EPA concluded that the CAA constitutes a statutory grant of jurisdictional authority to Indian tribes that allows them to develop air programs for EPA approval in the same manner as states. 63 FR at 7254–7259; 59 FR 43958–43960.

EPA also concluded that the CAA authorizes EPA to protect air quality throughout Indian country, including on fee lands. *See* 63 FR 7262; 59 FR 43960–43961 (citing to CAA sections 101(b)(1), 301(a), and 301(d)). In fact, in promulgating the TAR, EPA specifically provided that, pursuant to the discretionary authority explicitly granted to EPA under sections 301(a) and 301(d)(4) of the Act, EPA 63 FR at 7273 (codified at 40 CFR 49.11(a)).[3] "shall promulgate without unreasonable delay such federal implementation plan provisions as are necessary or appropriate to protect air quality, consistent with the provisions of sections 304(a) and 301(d)(4), if a tribe does not submit a tribal implementation plan meeting the completeness criteria of 40 CFR part 51, Appendix V, or does not receive EPA approval of a submitted tribal implementation plan."

It is EPA's policy to aid tribes in developing comprehensive and effective air quality management programs by providing technical and other assistance to them. EPA recognizes, however, that just as it required many years to develop state and federal programs to cover lands subject to state jurisdiction, it will also require time to develop tribal and federal programs to cover reservations and other lands subject to tribal jurisdiction. 59 FR at 43961.

The Navajo Nation has expressed a strong interest in seeking authority under the TAR to regulate sources of air pollution located on the Reservation under the Clean Air Act. Based on discussions with the Tribe, however, EPA believes that it will be at least several months before the Tribe will be ready to seek authority under the TAR to assume Clean Air Act planning responsibilities and that, when they do so, the Tribe intends to build its capacity and seek authority for the various Clean Air Act programs over time, rather than all at once. The Tribe has advised EPA that it continues to support EPA's efforts to impose such controls on FCPP as are necessary to ensure continued compliance with the substantive requirements of the New Mexico SIP, notwithstanding the recent promulgation of the TAR.

Therefore, in this proposed FIP, EPA is exercising its discretionary authority under sections 301(a) and 301(d)(4) of the CAA and 40 CFR 49.11(a) to promulgate a federal implementation plan in order to remedy an existing regulatory gap under the Act with respect to FCPP. Although the facility has been historically regulated by New Mexico since its construction, the state lacks jurisdiction over the facility or its owners or operators for CAA compliance or enforcement purposes. The Tribe has not submitted a tribal implementation plan to address emissions from FCPP and has indicated to EPA that it prefers to have EPA address the emissions from FCPP at this time. Since the Navajo Nation does not presently have a federally approved TIP, in the absence of a comprehensive FIP the applicable regulatory requirements arising under state law would not be enforceable. EPA's FIP will federalize requirements applicable to FCPP contained in the New Mexico SIP. Given the magnitude of the emissions from the plant, EPA believes that the proposed FIP provisions are both necessary and appropriate to protect air quality on the Reservation.

B. Relation to Tribal Authority Rule

As discussed above, under Section 301(d) of the Act, a tribe may develop and implement one or more of its own air quality programs under the Act through a Tribal Air Program. On February 12, 1998, EPA promulgated regulations under Section 301(d) of the Act which provide the framework for tribes to obtain authority to administer federally-approved and federally-enforceable programs under the Act, including tribal implementation plans. *See* 59 FR 43956, August 25, 1994 (proposed rule) and 63 FR 7254, February 12, 1998 (final rule).

The Navajo Nation now has the option of assuming responsibility for the development and implementation of federally enforceable air quality programs under the Clean Air Act. Until a federally approved Navajo Nation TIP is in place with regulations which cover FCPP, however, EPA has exclusive jurisdiction to regulate the source under the Act. Once final, the regulations proposed today will remain in effect until a TIP governing FCPP is in place and the FIP is withdrawn.

III. Four Corners Power Plant—Facility Description

The FCPP is a 2040 MW coal-fired power plant located on the Navajo Indian Reservation near Farmington, New Mexico. The FCPP consists of three 190 to 253 MW units and two 818 MW units all of which became operational between 1962 and 1970. The Arizona Public Service Company (APS) is the operating agent for FCPP which is jointly owned by the APS, the Southern California Edison Company, the Salt River Project Agricultural Improvement and Power District (SRP), the Public Service Company of New Mexico, the El Paso Electric Company and the Tucson Electric Power Company. Existing pollution control equipment at FCPP units 4 and 5 includes baghouses and lime spray towers for SO_2 control and specific burners designed for NO_X control. Units 1, 2 and 3 each have a venturi scrubber for particulate and SO_2 control.

IV. Summary of FIP Provisions

A. State Standards

The standards in this FIP proposal are generally based on the state standards under which the facility has been operating (FCPP must also continue to comply with all applicable federal requirements). These standards, derived from the New Mexico SIP, are summarized as follows:

1. SO_2 emissions are limited to 28 percent of the SO_2 produced in coal burning or 17,900 pounds per hour based on an averaged three hour period (AQCR 602).
2. Particulate emissions are limited to 0.05 pounds per million BTU (AQCR 504).
3. Excess emissions notification requirements are specified (AQCR 801).

B. Acid Rain Program Requirements

The Federal Acid Rain Program requires that low-NO_X burners be installed on all five units. By the year 2000, Units 1, 2 and 3 (wall-fired boilers) must comply with a .46 lb/MMbtu annual average of NO_X. Units 4 and 5 (cell-fired boilers) must meet a limit of .68 lb/MMbtu.

Emissions of SO_2 are regulated through an allowance system. FCPP has sufficient allowances to cover current emissions.

C. Proposed FIP Standards

1. SO_2 emissions are not to exceed 28 percent of the SO_2 produced in the burning of sulfur-bearing coal (averaged over successive thirty boiler operating day periods station-wide) and not to exceed 17,900 pounds of total SO_2 per hour averaged over any consecutive three hour period station-wide.
2. Particulate emissions are not to exceed 0.050 pounds per million BTU of heat input.
3. Opacity is limited to 20 percent averaged over a six minute period, for Units 4 and 5.
4. APS will develop a plan to monitor, record and report operating parameters indicative of good operation of the scrubbers for control of particulate matter on Units 1, 2, and 3.
5. Nitrogen oxides are not to exceed 0.85 pounds per million BTU of input for Units 1 and 2, and 0.65 pounds per million BTU of input for Units 3, 4, and 5, averaged over any successive 30 boiler operating day period; nor shall they exceed 335,000 lb per 24-hour period on a station-wide basis. When any one unit is not operating, the limits are reduced by 1542 pounds per hour for units 1, 2, and 3, and by 4667 pounds per hour for units 4 and 5.

D. Summary of Changes From State Standards

1. The NO_X requirements are more stringent than those contained in the New Mexico SIP. These requirements were submitted to EPA, Region 6, on November 4, 1991 as a New Mexico SIP revision, and were not acted on as the SIP has no effect over FCPP.
2. The SIP particulate emissions sampling methods, which were based in part on an analysis of fine particulates, have been changed to EPA methods referenced in federal code (40 CFR part 60, appendix A, Methods 1–5). The fine particulate analysis was not being routinely performed and the EPA methods were in use at the facility. Further, EPA believes that the particulate matter limit is the more stringent of the two emission limits.
3. The standard for opacity has been added in order to confirm Units 4 and 5 are in continuous compliance and are properly operated and maintained. These units operate with baghouses for particulate control and therefore are able to meet this limit.
4. The opacity limit is not being applied to Units 1, 2 and 3. The scrubbers currently in operation on Units 1, 2 and 3 were designed for control of particulate, and were later redesigned to also control sulfur dioxide. However, FCPP cannot currently meet a continuous opacity limit of 20 percent at Units 1, 2 and 3. EPA is proposing that FCPP design and enact a plan to monitor operating parameters such as pressure drop and scrubber liquid flow for the scrubbers. This will yield information about continuous proper operation of the

[1] A different conclusion may be reached by EPA, however, if, for example, there were evidence that the source to be regulated by the FIP is causing or contributing to violations of the applicable NAAQS, or was located in an area that is designated nonattainment for such NAAQS.

[2] *See* 59 FR 43956 (August 25, 1994).

[3] In the preamble to the final TAR, EPA explained that it believed it was inappropriate to treat tribes in the same manner as States with respect to section 110(c) of the Act, which directs EPA to promulgate a FIP within two years after EPA finds a state has failed to submit a complete state plan or within two years after EPA disapproval of a state plan. Although EPA is not required to promulgate a FIP within the two year period for tribes, EPA promulgated 40 CFR 49.11(a) to clarify that EPA will continue to be subject to the basic requirement to issue any necessary or appropriate FIP provisions for affected tribal areas within some reasonable time. *See* 63 FR 7264–7265.

scrubbers for particulate control. This information could then be used to determine appropriate parameters, which could be included in FCPP's Title V permit as indicators for good particulate matter control practice.

5. The standard for SO_2 is unchanged but the method of compliance determination has been changed to a method based on CEM rather than on stack sampling.

6. A number of other changes were made relative to the New Mexico SIP making the FIP specific to FCPP, and to conform to EPA excess emissions and other reporting and quality assurance procedures.

E. Compliance Schedule

The EPA proposes that the requirements contained in this proposal become effective upon promulgation of these regulations, since the emission limits established by the proposed FIP are presently being achieved at the facility.

V. Solicitation of Comments

The EPA solicits comments on all aspects of today's proposal to promulgate a FIP to regulate air emissions from FCPP. Interested parties should submit comments to the address listed in the front of this proposed rule. Public comments postmarked by October 8, 1999 will be considered in the final action taken by EPA.

VI. Administrative Requirements

A. Executive Order 12866

Under Executive Order (E.O.) 12866, 58 FR 51735 (October 4, 1993), all "regulatory actions" that are "significant" are subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. A "regulatory action" is defined as "any substantive action by an agency (normally published in the **Federal Register**) that promulgates or is expected to result in the promulgation of a final rule or regulation, including * * * notices of proposed rulemaking." A "regulation or rule" is defined as "an agency statement of general applicability and future effect, * * *."

The proposed FIP is not subject to OMB review under E.O. 12866 because it applies to only a single, specifically named facility and is therefore not a rule of general applicability. Thus, it is not a "regulatory action" under E.O. 12866.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. The federal implementation plan for the Four Corners Power Plant proposed today does not impose any new requirements on small entities. See Mid-Tex Electric Cooperative, Inc. v. FERC, 773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the requirements of the rule). Therefore, pursuant to 5 U.S.C. 605(b), EPA certifies that today's action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995, Public Law 04–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed rules and for final rules for which EPA published a notice of proposed rulemaking, if those rules contain "federal mandates" that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If section 202 requires a written statement, section 205 of UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives. Under section 205, EPA must adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless the Administrator publishes with the final rule an explanation why EPA did not adopt that alternative. The provisions of section 205 do not apply when they are inconsistent with applicable law. Section 204 of UMRA requires EPA to develop a process to allow elected officers of state, local, and tribal governments (or their designated, authorized employees), to provide meaningful and timely input in the development of EPA regulatory proposals containing significant Federal intergovernmental mandates.

EPA has determined that the proposed FIP contains no federal mandates on state, local or tribal governments, because it will not impose any enforceable duties on any of these entities. EPA further has determined that the proposed FIP is not likely to result in the expenditure of $100 million or more by the private sector in any one year. Although the proposed FIP would impose enforceable duties on an entity in the private sector, the costs are expected to be minimal. Consequently, sections 202, 204, and 205 of UMRA do not apply to the proposed FIP.

Before EPA establishes any regulatory requirements that might significantly or uniquely affect small governments, it must have developed under section 203 of UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the proposed FIP will not significantly or uniquely affect small governments, because it imposes no requirements on small governments. Therefore, the requirements of section 203 do not apply to the proposed FIP. Nonetheless, EPA worked closely with representatives of the Tribe in the development of today's proposed action.

D. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, OMB must approve all "collections of information" by EPA. The Act defines "collection of information" as a requirement for "answers to * * * identical reporting or recordkeeping requirements imposed on ten or more persons * * * ." 44 U.S.C. 3502(3)(A). Because the proposed FIP only applies to one company, the Paperwork Reduction Act does not apply.

E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This executive order applies to any rule that: (1) Is determined to be "economically significant" as that term is defined in E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. The FCPP FIP is not subject to E.O. 13045 because it implements previously promulgated health or safety-based federal standards.

F. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and EPA's position supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

As stated above, the proposed FIP will not create a mandate on state, local or tribal governments because it will not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule. Nonetheless, EPA worked closely with representatives of the Tribe during the development of today's proposed action.

G. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

The proposed FIP does not impose substantial direct compliance costs on the communities of Indian tribal governments. The proposed FIP imposes obligations only on the owner or operator of FCPP. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, 12 (10 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g. materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by the voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Consistent with the NTTAA, the Agency conducted a search to identify potentially applicable voluntary consensus standards (VCS). For the measurement of the sulfur in the coal for calculating the efficiency of the SO_2 scrubbers for FCCP, EPA proposes to require use of ASTM standards. FCCP would have the ability to choose an applicable ASTM standard for both the coal sample collection and the sulfur in coal analysis.

Another consensus standard, ASTM D6216–98, appears to be practical for use in lieu of EPA Performance Specification 1 (see 40 CFR part 60, appendix B) for the opacity monitoring to be required for this facility. On September 23, 1998, EPA proposed incorporating by reference ASTM D6216–98 into Performance Specification 1 under a separate rulemaking (63 FR 50824) that would allow broader use and application of this consensus standard. EPA plans to complete this action in the near future. As it would be impractical for EPA to act independently from rulemaking activity already undergoing notice and comment, EPA defers taking action in the current rulemaking that would immediately adopt D6216–98, and we will therefore require use of EPA Performance Specification 1 in the interim.

In regard to the remaining measurement needs as listed below, there are a number of voluntary consensus standards that appear to have possible use in lieu of the EPA test methods and performance specifications (40 CFR part 60 appendices A and B) noted next to the measurement requirements. It would not be practical to specify these standards in the current rulemaking due to a lack of sufficient data on equivalency and validation and because some are still under development. However, EPA's Office of Air Quality Planning and Standards is in the process of reviewing all available VCS for incorporation by reference into the test methods and performance specifications of 40 CFR part 60, appendices A and B. Any VCS so incorporated in a specified test method or performance specification would then be available for use in determining the emissions from this facility. This will be an ongoing process designed to incorporate suitable VCS as they become available.

Particulate Matter Emissions—EPA Methods 1 through 5.

Opacity—EPA Method 9 and Performance Specification Test 1 for Opacity Monitoring.

SO_2—EPA Method 6C and Performance Specification 2 for Continuous SO_2 Monitoring.

NO_x—EPA Method 7E and Performance Specification 2 for Continuous NO_x Monitoring and Performance Specification 6 for Flow Monitoring.

List of Subjects

40 CFR Part 49

Environmental protection, Air pollution control, Indians, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting

and recordkeeping requirements, Sulfur oxides.

Dated: August 27, 1999.

Carol M. Browner,

Administrator.

Title 40 chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 49—TRIBAL CLEAN AIR ACT AUTHORITY

1. The authority citation for part 49 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Part 49 is proposed to be amended by adding § 49.21 to read as follows:

§ 49.21 Federal Implementation Plan Provisions for Four Corners Power Plant, Navajo Nation.

(a) *Applicability.* The provisions of this section shall apply to each owner or operator of the coal burning equipment designated as Units 1, 2, 3, 4, and 5 at the Four Corners Power Plant ("the Plant") in the Navajo Indian Reservation located in the Four Corners Interstate Air Quality Control Region (see 40 CFR 81.121).

(b) *Compliance Dates.* Compliance with the requirements of this section is required upon promulgation unless otherwise indicated by compliance dates contained in specific provisions.

(c) *Definitions.* For the purposes of this section:

(1) *Administrator* means the Administrator of the Environmental Protection Agency (EPA) or his/her authorized representative.

(2) *Affirmative defense* means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding.

(3) *Air pollution control equipment* includes baghouses, particulate or gaseous scrubbers, and any other apparatus utilized to control emissions of regulated air contaminants which would be emitted to the atmosphere.

(4) *Boiler operating day* means a 24-hour period during which coal is combusted in a Unit for the entire 24 hours.

(5) *Daily average* means the arithmetic average of the hourly values measured in a 24-hour period.

(6) *Excess emissions* means the emissions of air contaminants in excess of an applicable emissions limitation or requirement.

(7) *Heat input* means heat derived from combustion of fuel in a Unit and does not include the heat input from preheated combustion air, recirculated flue gases, or exhaust gases from other sources.

(8) *Malfunction* means any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions.

(9) *Owner or Operator* means any person who owns, leases, operates, controls, or supervises the Plant or any of the coal burning equipment designated as Units 1, 2, 3, 4, or 5 at the Plant.

(10) *Oxides of nitrogen (NO_X)* means the sum of nitric oxide (NO) and nitrogen dioxide (NO_2) in the flue gas, expressed as nitrogen dioxide.

(11) *Shutdown* means the cessation of operation of any air pollution control equipment, process equipment, or process for any purpose. Specifically, for Units 1, 2, or 3, shutdown begins when the unit drops below 40 MW net load with the intent to remove the unit from service. For Units 4 or 5, shutdown begins when the unit drops below 300 MW net load with the intent to remove the unit from service.

(12) *Startup* means the setting into operation of any air pollution control equipment, process equipment, or process for any purpose. Specifically, for Units 1, 2,or 3, startup ends when the unit reaches 40 MW net load. For Units 4 or 5, startup ends when the unit reaches 400 MW net load.

(13) *Station-wide basis* means total stack emissions of any particular pollutant from all coal burning equipment at the Plant.

(14) *24-hour period* means the period of time between 12:01 a.m. and 12:00 midnight.

(d) *Emissions Standards.*—(1) *Sulfur Dioxide.* No owner or operator shall discharge or cause the discharge of sulfur dioxide (SO_2) into the atmosphere in excess of:

(i) 28% of that which is produced by the Plant's coal burning equipment, averaged over any successive thirty (30) boiler operating day period, determined on a station-wide basis; and

(ii) 17,900 pounds of total sulfur dioxide emissions per hour averaged over any consecutive three (3) hour period, determined on a station-wide basis.

(2) *Particulate Matter.* No owner or operator shall discharge or cause the discharge of particulate matter from any coal burning equipment into the atmosphere in excess of 0.050 pound per million British thermal unit (lb/MMBtu) of heat input (higher heating value), as averaged over six (6) hours of sampling.

(3) *Opacity.* No owner or operator shall discharge or cause the discharge of emissions from the stacks of Units 4 and 5 into the atmosphere exhibiting greater than 20% opacity, excluding water vapor, averaged over any six (6) minute period (except for one six (6) minute period per hour of not more than 27% opacity, excluding water vapor).

(4) *Oxides of nitrogen.* No owner or operator shall discharge or cause the discharge of NO_X into the atmosphere:

(i) From either Unit 1 or 2 in excess of 0.85 lb/MMBtu of heat input per unit and from either Units 3, 4, or 5 in excess of 0.65 lb/MMBtu of heat input per unit averaged over any successive thirty (30) boiler operating day period;

(ii) In excess of 335,000 lb per 24-hour period when coal burning equipment is operating, on a station-wide basis; for each hour when coal burning equipment is not operating, this limitation shall be reduced. If the unit which is not operating is Unit 1, 2, or 3, the limitation shall be reduced by 1,542 lb per hour for each unit which is not operating. If the unit which is not operating is Unit 4 or 5, the limitation shall be reduced by 4,667 lb per hour for each unit which is not operating.

(e) *Testing and monitoring.* Upon completion of the installation of continuous emissions monitoring systems (CEMS) software as required in this section, compliance with the emissions limits set for SO_2 and NO_X shall be determined by using data from a CEMS unless otherwise specified in paragraphs (e)(2) and (e)(4) of this section. Compliance with the emissions limit set for particulate matter shall be determined annually, or at such other time as requested by the Administrator, based on data from testing conducted in accordance with 40 CFR part 60, appendix A, Methods 1 through 5, or any other method receiving prior approval from the Administrator. Upon completion of the installation of continuous opacity monitoring systems (COMS) software as required in this regulation, compliance with the emissions limits set for opacity shall be determined by using data from a COMS except during saturated stack conditions (condensed water vapor). If the baghouse is operating within its normal operating parameters and a high opacity reading occurs it will be presumed that the occurrence was caused by saturated stack conditions and shall not be considered an excess emission.

(1) The owner or operator shall maintain and operate CEMS for SO_2, NO or NO_X, a diluent and, for Units 4 and 5 only, COMS, in accordance with 40 CFR 60.8 and 60.13, and appendix B of 40 CFR part 60. Within six (6) months of promulgation of this regulation, the owner or operator shall install CEMS and COMS software which complies with the requirements of this regulation. The owner or operator of the Plant may petition the Administrator for extension of the six (6) month period for good cause shown. Completion of 40 CFR part 75 monitor certification requirements shall be deemed to satisfy the requirements under 40 CFR 60.8 and 60.13 and appendix B of part 60. The owner or operator shall comply with the quality assurance procedures for CEMS found in 40 CFR part 75, and all reports required thereunder shall be submitted to the Administrator. The owner or operator shall provide the Administrator notice in accordance with 40 CFR 75.61.

(2) *Sulfur Dioxide.* (i) For the purpose of determining compliance with this section, the sulfur dioxide inlet rate (in lb/MMBtu) shall be calculated using the daily average percent sulfur and Btu content of the coal combusted. The inlet sulfur concentration and Btu content shall be determined in accordance with American Society for Testing and Materials (ASTM) methods or any other method receiving prior approval from the Administrator. The analyses shall be done on as fired daily fuel samples collected before the coal pulverizers using ASTM methods or any other method receiving prior approval from the Administrator. The inlet sulfur dioxide concentration shall be calculated using the following formula:

$I_s = 2(\%S_f)/GCV \times 10^4$ English units

Where:

I_s = sulfur dioxide inlet concentrations in pounds per million Btu;

$\%S_f$ = weight percent sulfur content of the fuel; and

GCV = Gross calorific value for the fuel in Btu per pound.

(ii) The outlet SO_2 emissions shall be determined from CEMS data gathered in accordance with this section.

(3) *Particulate Matter.* Particulate matter testing shall be conducted annually and at least six (6) months apart, with the equipment within 90% of maximum operation in accordance with 40 CFR 60.8 and appendix A to 40 CFR part 60. The owner or operator may test Units 1 and 2 together when both units are operating or may test them separately when one unit is out of service since Units 1 and 2 share a common stack. The owner or operator shall submit written notice of the date of testing no later than 21 days prior to testing. Testing may be performed on a date other than that already provided in a notice as long as notice of the new date is provided either in writing or by telephone or other means acceptable to the Administrator, and the notice is provided as soon as practicable after the new testing date is known, but no later than 7 days (or a shorter period as approved by the Administrator) in advance of the new date of testing.

(4) *Oxides of nitrogen.* The total daily station-wide oxides of nitrogen emissions in pounds of NO_2 per day shall be calculated using the following formula:

$$TE = \sum_{i=1}^{n}\sum_{j=1}^{m}\left(E_{ij} \times H_{ij}\right)$$

Where:

TE = total station-wide nitrogen dioxide emissions (lb NO_2/day);

E_{ij} = hourly average emissions rate of each unit (lb NO_2/MMBtu);

H_{ij} = hourly total heat input for each unit (MMBtu);

n = the number of units of coal burning equipment operating during the hour;

m = the number of operating hours in a day, from midnight to midnight.

(5) Continuous emissions monitoring shall apply during all periods of operation of the coal burning equipment, including periods of startup, shutdown, and malfunction, except for CEMS breakdowns, repairs, calibration checks, and zero and span adjustments. Continuous monitoring systems for measuring sulfur dioxide, NO_X, and diluent gas shall complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period. The one-hour averages shall be calculated using these data points. At least two data points must be used to calculate the one-hour averages. When emission data are not obtained because of continuous monitoring system breakdowns, repairs, calibration checks, or zero and span adjustments, emission data must be obtained by using other monitoring systems approved by the EPA to provide emission data for a minimum of 18 hours in at least 22 out of 30 successive boiler operating days. NO_X emissions rates and quantities shall be reported as NO_2 concentrations. When CEMS data is not available because of malfunctions, the unavailable NO_X data will be replaced with a calculated value based on the average of the last valid data point and the next valid data point for purposes of calculating total station-wide nitrogen dioxide emissions.

(6) The owner or operator shall maintain two sets of opacity filters for each type of COMS, one set to be used as calibration standards and one set to be used as audit standards. At least one set of filters shall be on site at all times.

(7) Nothing herein shall limit EPA's ability to ask for a test at any time under section 114 of the Clean Air Act, 42 U.S.C. 7414, and enforce against any violation.

(8) In order to provide reasonable assurance that the scrubbers for control of particulate matter from Units 1, 2, and 3 are being maintained and operated in a manner consistent with good air pollution control practice for minimizing emissions, the owner or operator shall comply with the following provisions:

(i) The owner or operator shall develop a plan to monitor, record, and report parameter(s) indicative of the proper operation of the scrubbers to provide a reasonable assurance of compliance with the particulate matter limits in paragraph (d)(2) of this section. The owner or operator shall submit this plan to the Administrator no later than December 31, 1999. The owner or operator shall implement this plan within 30 days of approval by the Administrator and shall commence reporting the data generated pursuant to the monitoring plan in accordance with the schedule in paragraph (e)(8)(v) of this section.

(ii) In the event that the owner or operator is unable to develop the plan required in paragraph (e)(8)(i) of this section due to technical difficulties, fails to submit the plan by December 31, 1999, or the Administrator disapproves the plan, the owner or operator shall install and operate devices to measure the pressure drop across each scrubber module and the total flow of scrubbing liquid to the venturi section of each scrubber module. The data from these instruments shall be monitored and recorded electronically. A minimum of one reading every 15 minutes shall be used to calculate an hourly average which shall be recorded and stored for at least a five-year period. The owner or operator shall report in an electronic format either all hourly data, or one-hour averages deviating by more than 30% from the levels measured during the last particulate matter stack test that demonstrated compliance with the limit in this regulation. The owner or operator shall implement this requirement no later than February 28, 2000 if it fails to submit the plan by December 31, 1999; or no later than 60 days after the Administrator's disapproval of the plan.

(iii) The monitoring required under paragraphs (e)(8)(i) and (e)(8)(ii) of this section shall apply to each Unit at all times that the Unit is operating, except for monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration checks and required zero and span adjustments). A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions.

(iv) The owner or operator may petition the Administrator for an extension of the December 31, 1999 deadline. Such extension shall be granted only if the owner or operator demonstrates to the satisfaction of the Administrator that:

(A) The delay is due to technical infeasibility beyond the control of the owner or operator; and

(B) The requested extension, if granted, will allow the owner or operator to successfully complete the plan.

(v) The owner or operator shall submit to the Administrator reports of the monitoring data required by this regulation quarterly. The reports shall be postmarked within 30 days of the end of each calendar quarter.

(vi) The owner or operator shall develop and document a quality assurance program for the monitoring and recording instrumentation. This program shall be updated or improved as requested by the Administrator.

(vii) In the event that a program for parameter monitoring on Units 1, 2, and 3 is approved pursuant to the Compliance Assurance Monitoring rule, 40 CFR part 64, such program will supersede the provisions contained in paragraph (e)(8) of this section.

(f) *Reporting and recordkeeping requirements.* Unless otherwise stated all requests, reports, submittals, notifications, and other communications to the Administrator required by this section shall be submitted to the Director, Air Division, U.S. Environmental Protection Agency, Region IX, to the attention of Mail Code: AIR–5, at 75 Hawthorne Street, San Francisco, California, 94105, (415) 744–1138, (415) 744–1076 (facsimile). For each unit subject to the emissions limitation in this regulation and upon completion of the installation of CEMS and COMS as required in this regulation, the owner or operator shall comply with the following requirements:

(1) For each emissions limit in this regulation, comply with the notification and recordkeeping requirements for CEMS compliance monitoring in 40 CFR 60.7(c) and (d), and the CEMS data assessment report requirements of 40 CFR part 75.

(2) Furnish the Administrator with reports describing the results of the annual particulate matter emissions tests postmarked within sixty (60) days of completing the tests. Each report shall include the following information:

(i) The test date;

(ii) The test method;

(iii) Identification of the coal burning equipment tested;

(iv) Values for stack pressure, temperature, moisture, and distribution of velocity heads;

(v) Average heat input;

(vi) Emissions data, identified by sample number, and expressed in pounds per MMBtu;

(vii) Arithmetic average of sample data expressed in pounds per MMBtu; and

(viii) A description of any variances from the test method.

(3) *Excess emissions report.* (i) For excess emissions, the owner or operator shall notify the Administrator by telephone or in writing within one business day ("initial notification"). A complete written report of the incident shall be submitted to the Administrator within ten (10) business days of the initial notification. The complete written report shall include:

(A) The name and title of the person reporting;

(B) The identity and location of the Plant and Unit(s) involved, and the emissions point(s), including bypass, from which the excess emissions occurred or are occurring;

(C) The time and duration or expected duration of the excess emissions;

(D) The magnitude of the excess emissions expressed in the units of the applicable emissions limitation and the operating data and calculations used in determining the magnitude of the excess emissions;

(E) The nature of the condition causing the excess emissions and the reasons why excess emissions occurred or are occurring;

(F) If the excess emissions were the result of a malfunction, the steps taken to remedy the malfunction and the steps taken or planned to prevent the recurrence of such malfunction;

(G) For an opacity exceedance, the 6-minute average opacity monitoring data greater than 20% for the 24 hours prior to and during the exceedance for Units 4 and 5; and

(H) The efforts taken or being taken to minimize the excess emissions and to repair or otherwise bring the Plant into compliance with the applicable emissions limit(s) or other requirements.

(ii) If the period of excess emissions extends beyond the submittal of the written report, the owner or operator shall also notify the Administrator in writing of the exact time and date when the excess emissions stopped. Compliance with the excess emissions notification provisions of this secton shall not excuse or otherwise constitute a defense to any violations of this section or of any law or regulation which such excess emissions or malfunction may cause.

(g) *Equipment Operations.* At all times, including periods of startup, shutdown, and malfunction, the owner or operator shall, to the extent practicable, maintain and operate the Plant including associated air pollution control equipment in a manner consistent with good air pollution control practices for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the Administrator which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the Plant. With regard to the operation of the baghouses on Units 4 and 5, placing the baghouses in service before coal fires are initiated will constitute compliance with this paragraph. (If the baghouse inlet temperature cannot achieve 185 degrees Fahrenheit using only gas fires, the owner or operator will not be expected to place baghouses in service before coal fires are initiated; however, the owner or operator will remain subject to the requirements of this paragraph.)

(h) *Enforcement.* (1) Notwithstanding any other provision in this implementation plan, any credible evidence or information relevant to whether the Plant would have been in compliance with applicable requirements if the appropriate performance or compliance test had been performed, can be used to establish whether or not the owner or operator has violated or is in violation of any standard in the plan.

(2) During periods of start-up and shutdown the otherwise applicable emission limits or requirements for opacity and particulate matter shall not apply provided that:

(i) At all times the facility is operated in a manner consistent with good practice for minimizing emissions, and the owner or operator uses best efforts regarding planning, design, and operating procedures to meet the otherwise applicable emission limit;

(ii) The frequency and duration of operation in start-up or shutdown mode are minimized to the maximum extent practicable; and

(iii) The owner or operator's actions during start-up and shutdown periods are documented by properly signed, contemporaneous operating logs, or other relevant evidence.

(3) Emissions in excess of the level of the applicable emission limit or requirement that occur due to a malfunction shall constitute a violation of the applicable emission limit. However, it shall be an affirmative defense in an enforcement action seeking penalties if the owner or operator has met with all of the following conditions:

(i) The malfunction was the result of a sudden and unavoidable failure of process or air pollution control equipment and did not result from inadequate design or construction of the process or air pollution control equipment;

(ii) The malfunction did not result from operator error or neglect, or from improper operation or maintenance procedures;

(iii) The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

(iv) Steps were immediately taken to correct conditions leading to the malfunction, and the amount and duration of the excess emissions caused by the malfunction were minimized to the maximum extent practicable;

(v) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality;

(vi) All emissions monitoring systems were kept in operation if at all possible; and

(vii) The owner or operator's actions in response to the excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence.

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

Subpart GG—New Mexico

2. Subpart GG is proposed to be amended by adding § 52.1641 to read as follows:

§ 52.1641 Federal Implementation Plan for Four Corners Power Plant, Navajo Nation.

The Federal Implementation Plan regulating emissions from the Four Corners Power Plant near Farmington, New Mexico is codified at 40 CFR 49.21.

[FR Doc. 99–23277 Filed 9–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 229–0177; FRL–6433–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Ventura County Air Pollution Control District, Project XL Site-specific Rulemaking for Imation Corp. Camarillo Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions, and are applicable only to the Imation Corp. facility in Camarillo, CA (Imation) as part of the EPA's Imation XL Project. See 64 FR 37785, July 13, 1999. By this document, EPA solicits comment on the proposed rule.

The intended effect of proposing approval of this rule is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act) and to facilitate implementation of the XL Project at Imation. Such implementation will result in superior environmental performance and, at the same time, provide Imation with greater operational flexibility.

EPA's final action on this proposed rule will incorporate the rule into the federally approved SIP. EPA has evaluated this rule and is proposing to approve it under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

DATES: Comments must be received on or before October 8, 1999.

ADDRESSES: *Comments.* Written comments should be submitted in duplicate to: David Albright, Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Docket. A docket containing supporting information used in developing this rulemaking, including copies of the State submittal, the rule, and EPA's evaluation report of the rule are available for public inspection and copying at U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA during normal business hours. Copies of the rule and related documents are also available for inspection at the following location: Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA.

FOR FURTHER INFORMATION CONTACT: David Albright, Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1627 or Daniel Reich, Office of Regional Counsel (RC–2–2), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1343. In addition, the proposed rule and supporting documents are also available on the world wide web at the following location: *http://www.epa.gov/ProjectXL.*

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being proposed for approval into the California SIP is Ventura County Air Pollution Control District, VCAPCD, Rule 37 "Project XL." This rule was submitted by the California Air Resources Board to EPA on July 30, 1999.

II. Background

The proposed California SIP revision is designed to implement a pilot project developed under Project XL, an important EPA initiative to allow regulated entities to achieve better environmental results at less cost. Project XL—for "eXcellence and Leadership"—was announced on March 16, 1995, as a central part of the National Performance Review's and EPA's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995). In addition, on April 22, 1997, EPA modified its guidance on Project XL, solicited new XL proposals, clarified EPA definitions, and described changes intended to bring greater efficiency to the process of developing XL projects. See 62 FR 19872 (April 22, 1997). The Imation XL Project was the subject of a recent **Federal Register** notice announcing the proposed implementation of the project, making available the proposed Final Project Agreement (FPA), and soliciting public comment on the FPA and the project overall. See 64 FR 37785, July 13, 1999.

EPA is proposing SIP approval of Rule 37 under a procedure called parallel processing, whereby EPA proposes rulemaking action concurrently with the State's procedures for amending its

regulations. See 40 CFR part 51, appendix V. If the proposed revision is substantially changed in areas other than those identified in the proposed rulemaking, EPA will evaluate those changes and may publish another proposed rule. If no substantial changes are made other than those areas cited in the proposal, EPA will publish a final rulemaking on the revisions. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by California and submitted formally to EPA for incorporation into the SIP. On August 23, 1999, EPA reviewed Rule 37 for completeness and found that the rule conforms to the completeness criteria in 40 CFR part 51, appendix V (criteria for plans submitted explicitly for parallel processing).

The submitted rule authorizes Imation to implement a plantwide applicability limit (PAL) for reactive organic compounds (ROCs).[1] The rule establishes conditions for setting, evaluating, renewing, and complying with the VOC PAL. The rule also establishes requirements for emission reduction credit (ERC) banking and offsetting under the PAL, applying control technology, conducting health risk assessments, and implementing any facility changes that are pre-approved in Imation's part 70 permit. Finally, the rule exempts Imation from District Rules 10 (Permits Required) and 26–26.10 (New Source Review) for facility changes implemented in accordance with Rule 37.

III. EPA Evaluation and Proposed Action

The proposed SIP revision would establish an alternative approach that would replace the VCAPCD New Source Review (NSR) program for new and modified emission sources at Imation. The SIP revision, which is only applicable to the operations at Imation, is a critical element of the Imation XL Project as it will ensure that operations at the Imation facility that are implemented in accordance with the XL project are not in conflict with federally enforceable SIP requirements.

The proposed SIP revision is comprised of several of the most critical terms and conditions from the proposed Imation Final Project Agreement (FPA), a document that represents the intentions of all parties to the XL Project agreement but that is not legally enforceable. By incorporating these terms and conditions into a VCAPCD rule that the VCAPCD Board adopts and which is approved into the SIP, the main tenets of the FPA will be made enforceable by EPA, the State, and citizens. A key element of the proposed SIP revision, and the Imation XL project, is the authorization of a PAL for volatile organic compounds (VOCs). The VOC PAL, a voluntary VOC emissions cap accepted by Imation, is based on actual emissions and provides Imation with the flexibility to add and modify emissions units below the PAL level without triggering traditional new source review requirements. The proposed revision also institutes several unique requirements and procedures for operations at the facility, and exempts specified Imation activities from two existing VCAPCD rules—Rule 10 (Permits Required) and Rule 26 (New Source Review).

Section 110(a)(2)(C) of the Act requires state programs to institute a preconstruction review program, generally referred to as "minor NSR." VCAPCD's NSR program (See Rule 26) requires new source review permitting for "any new, replacement, modified, or relocated emissions unit which would have a potential to emit any * * * Reactive Organic Compounds." Such permitting under Rule 26 would typically require BACT for any ROC emissions (no threshold) and offsets for ROC emissions above 5 tpy. In order to provide Imation flexibility with regard to Rule 26, EPA is today proposing approval of this source-specific SIP revision that will apply only to the operations at Imation. The source-specific SIP revision would exempt Imation from the requirements of Rules 10 and 26, but require the source to keep their emissions below the VOC PAL, apply California BACT[2] for facility modifications, and follow specified procedures for adding new equipment or modifying existing equipment. The requirements contained in the source-specific SIP revision, in conjunction with Imation's transfer of VOC emission reduction credits (ERCs) to the District, assure that any new construction or equipment modification allowed under the source's title V permit will be carried out in a manner that is at least as environmentally protective as what would have been required under Rules 10 and 26. EPA has prepared a Technical Support Document (TSD) for this proposed rulemaking which further describes the requirements of Rule 37 and EPA's evaluation of the rule. The TSD is available as described in the **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** sections of this document.

EPA is proposing to approve the site-specific California SIP revision for Imation, which was submitted on July 30, 1999. This proposed plan revision is not intended to address any outstanding issues with the Ventura County APCD NSR program that will be the subject of a future EPA rulemaking on District Rule 26. EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this action. Copies of the proposed site-specific SIP revision and EPA's evaluation of the revision are available in the docket for today's action and are also available on the world wide web at http://www.epa.gov/ProjectXL.

The Agency has reviewed this request for revision of the Federally-approved State implementation plan for conformance with the provisions of the 1990 amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA and EPA regulations. Therefore, Ventura County APCD Rule 37—Project XL—is being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to the relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Paperwork Reduction Act

This action applies only to one company, and therefore requires no information collection activities subject to the Paperwork Reduction Act, and therefore no information collection request (ICR) will be submitted to the Office of Management and Budget (OMB) for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 24, 1999.

David P. Howekamp,

Acting Regional Administrator, Region IX.

[FR Doc. 99–23280 Filed 9–7–99; 8:45 am]

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[1] The VCAPCD term reactive organic compound "ROC" is functionally equivalent to EPA's term volatile organic compound "VOC." In this document, the terms "volatile organic compound" and "VOC" are used.

[2] CA BACT, as defined in VCAPCD rules, is equivalent to federally defined lowest achievable emissions rate (LAER).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[MD–091–3041b; FRL–6433–6]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Maryland; Control of Emissions from Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the municipal solid waste landfill 111(d) plan submitted by the Air and Radiation Management Administration, Maryland Department of the Environment (MDE) on March 23, 1999 for the purpose of controlling landfill gas emissions from existing municipal solid waste (MSW) landfills. In the final rules section of the **Federal Register**, EPA is approving the plan. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated in relation to this rule. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments must be received in writing by October 8, 1999.

ADDRESSES: Comments may be mailed to Walter Wilkie, Chief, Technical Assessment Branch, Mailcode 3AP22, Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: James B. Topsale at (215) 814–2190, or by e-mail at topsale.jim@epa.gov. While additional information may be obtained via e-mail, comments must be submitted in writing to the address provided above.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule of the same title which is located in the rules section of the **Federal Register**.

Dated: August 30, 1999.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 99–23190 Filed 9–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 261, 268, 271, and 302

[SWH–FRL–6434–3]

Extension of Comment Period for the Proposed Identification and Listing of Hazardous Waste/Dye and Pigment Wastes

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) is extending the comment period for the proposed listing determination for dyes and pigments, which appeared in the **Federal Register** on July 23, 1999 (64 FR 40192). The public comment period for this proposed rule was to end on September 21, 1999. The purpose of this notice is to extend the comment period to end on October 21, 1999.

DATES: EPA will accept public comments on this proposed listing determination until October 21, 1999; comments postmarked after this date will be marked "late" and may not be considered.

ADDRESSES: The public must send an original and two copies of their comments to EPA RCRA Docket Number F–1999–DPIP–FFFFF, RCRA Information Center (5305W), U.S. EPA, 401 M Street, SW., Washington, DC. To hand-deliver comments, the address is U.S. EPA, Crystal Gateway, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. You may also submit comments electronically by sending electronic mail through the Internet to: rcradocket@epamail.epa.gov. See the beginning of Supplementary Information for instructions on electronic submission.

You should not submit electronically any confidential business information (CBI). You must submit an original and two copies of CBI under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 401 M Street, SW, Washington, D.C. 20460. See the Supplementary Information for information of viewing public comments and supporting materials.

FOR FURTHER INFORMATION CONTACT: For technical information concerning this notice, please contact Mr. Narendra Chaudhari, Office of Solid Waste (5304W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 308–0454 (chaudhari.narendra@epamail.epa.gov).

SUPPLEMENTARY INFORMATION: This proposed rule was issued under section 3001(b) of RCRA. EPA proposed to list as hazardous certain wastes generated from the production of certain dyes and pigments because these wastes present a substantial present or potential risk to human health or the environment. See 64 FR 40192 (July 23, 1999) for a more detailed explanation of the proposed rule.

The comment period for this proposed rule was scheduled to end on September 21, 1999. However, several commenters have requested that EPA extend the comment period by 30 days. EPA is extending the comment period until October 21, 1999.

As noted in the proposed rule, you should identify any comments in electronic format with the docket number F–1999–DPIP–FFFFF. You must submit all electronic comments as an ASCII (text) file, avoiding the use of special characters and any form of encryption. If you do not submit comments electronically, EPA is asking prospective commenters to voluntarily submit one additional copy of their comments on labeled personal computer diskettes in ASCII (text) format or a word processing format that can be converted to ASCII (text). It is essential to specify on the disk label the word processing software and version/edition as well as the commenter's name. This will allow EPA to convert the comments into one of the word processing formats utilized by the Agency. Please use mailing envelopes designed to physically protect the submitted diskettes. EPA emphasizes that submission of comments on diskettes is not mandatory, nor will it result in any advantage or disadvantage to any commenter. Supporting documents in the docket for this Notice are also available in electronic format on the Internet. Follow these instructions to access these documents.

WWW: http://www.epa.gov/epaoswer/hazwaste/id/dyes/index.htm
FTP: ftp.epa/gov
Login: anonymous
Password: your Internet address
Files are located in /pub/gopher/OSWRCRA.

EPA will keep the official record for this action in paper form. Accordingly, we will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this document.

EPA responses to comments, whether the comments are written or electronic, will be in a document in the **Federal Register** or in a response to comments document placed in the official record for this rulemaking. We will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

You may view public comments and supporting materials in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, we recommend that you make an appointment by calling (703) 603–9230. You may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page.

Dated: August 31, 1999.

Elizabeth A. Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 99–23278 Filed 9–7–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE04

Endangered and Threatened Wildlife and Plants; Proposed Reclassification of Certain Vicuña Populations From Endangered to Threatened and a Proposed Special Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to reclassify vicuña (*Vicugna vicugna*) populations of Argentina, Bolivia, Chile and Peru from endangered to threatened under the U.S. Endangered Species Act (Act or ESA). The recently re-introduced population of Ecuador, treated as a distinct population segment under the Act in accordance with the Service's Policy on Distinct Vertebrate Population Segments (61 FR 4722), will remain listed as endangered. The Service also proposes to establish a special rule (under Section 4(d) of the Act) allowing the importation into the United States of wool and legal vicuña products produced with wool from vicuña populations listed both as threatened under the Act and in Appendix II of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), except that the Appendix II semi-captive populations of Catamarca, Jujuy, La Rioja, Salta, and San Juan Provinces in Argentina are specifically excluded from the special rule until such time as their conservation benefit for wild vicuña populations has been demonstrated adequately. It is proposed that importation into the United States of wool and legal vicuña products made from wool that originated from threatened and approved Appendix II populations will require valid CITES export permits from the country of origin and also the country of re-export, when applicable. Should the conservation or management status of threatened vicuña populations change in one or more range countries, the potential would remain to repeal the special rule or reclassify the population as endangered, should that become necessary for the conservation of the vicuña. The Service invites information and comments on this proposed rule. The analysis of the information and comments received could lead to a final decision that would differ substantially from this proposal.

DATES: Comments must be received by December 7, 1999. Public hearing requests must be received by October 25, 1999.

ADDRESSES: Comments and relevant information concerning this proposal should be sent to the Chief, Office of Scientific Authority; mail stop: Arlington Square, room 750, U.S. Fish and Wildlife Service; Washington, DC 20240, or via E-mail to: r9osa@fws.gov. Comments and materials received will be available for public inspection by appointment, from 8 a.m. to 4 p.m., Monday through Friday, in Room 750, 4401 North Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Dr. Susan S. Lieberman, Chief, Office of Scientific Authority, at the above address, or by phone (703–358–1708), fax (703–358–2276), or E-mail (r9osa@fws.gov).

SUPPLEMENTARY INFORMATION:

Background

The vicuña (*Vicugna vicugna*) was listed as endangered under the U.S. Endangered Species Act on June 2, 1970. Among other things, the effect of that listing was the prohibition of U.S. interstate or international commerce in vicuña products. All populations of the vicuña were included in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) on July 1, 1975 (the date of entry into force of the CITES Convention), which thereby prohibited all primarily commercial, international trade in vicuña products. Certain populations of vicuña in Chile and Peru were subsequently transferred to CITES Appendix II at the sixth meeting of the CITES Conference of the Parties (COP6) in 1987. The remaining vicuña populations in Peru were transferred to Appendix II in 1994 at CITES COP9, and certain populations in Argentina and Bolivia were transferred to Appendix II in 1997 at CITES COP10. These transfers to Appendix II, reflecting improved conservation status for specified vicuña populations, allow the international trade under carefully controlled conditions, of products manufactured from vicuña wool. This international trade, however, is still excluded from the United States, because of the species' listing under the Endangered Species Act. The United States supported the CITES transfers of the populations to Appendix II, based on the information received at the aforementioned meetings of the Conference of the Parties, where the CITES Parties voted to adopt the proposed transfers to Appendix II. The information in the relevant CITES listing proposals is available on request from the Office of Scientific Authority (see **ADDRESSES** Section).

We received a petition on October 5, 1995, from the President of the International Vicuña Consortium, requesting that the vicuña be removed from the U.S. list of endangered and threatened wildlife, or reclassified with a special rule that would allow for a commercial trade that would benefit the conservation of the species. The petitioners cited the following as reasons for the requested ACTION: (1) Improved management of vicuña populations, (2) improved enforcement and trade controls, and (3) recognition that regulated commerce could be beneficial to both rural communities that share landscapes with vicuñas and the vicuñas themselves. The petitioners provided limited supportive documentation.

Our 90-day finding on whether the petition presents substantial scientific data is subsumed within this proposed rule, which finds that: (1) Reclassification of the vicuña from endangered to threatened is warranted for all range countries except Ecuador; and (2) that a special rule (also referred to as a 4(d) rule) is warranted for all Appendix II populations, with the exception of the Appendix II semi-captive populations of Catamarca, Jujuy, La Rioja, Salta, and San Juan Provinces

in Argentina, which are specifically excluded until such time as their conservation benefit for wild vicuña has been demonstrated adequately.

We base this finding and the proposed rule on information provided in the submissions of the petitioner, other documents including those submitted in support of the aforementioned CITES listing proposals, and the Service's status review for the vicuña, which included interviews with knowledgeable personnel from the vicuña range states, responses to questions asked of each range country, and a 1997 on-site assessment of vicuña populations and management in Argentina, Bolivia, Chile and Peru by a contractor working for the National Fish and Wildlife Foundation (Dr. Henry L. Short, Amherst, Massachusetts). All personal communications and responses to questions asked of range countries cited in the text were received by Dr. Short, unless otherwise noted (see References Cited Section). The Service contracted with the National Fish and Wildlife Foundation in 1997 to evaluate the conservation and management status of vicuña populations, and to make recommendations about the species' status, through a fact-finding mission to vicuña range countries.

The vicuña produces a wool that is of very fine texture (about 12 microns in diameter) that can be woven into luxury garments. Raw wool from vicuña has been legally auctioned at $500 per kg ($200 per lb) and an average vicuña fleece provides about 0.2 kg (0.5 lbs) of fiber. Individual vicuña in the high Andean plateaus of South America thus have a fleece that is worth many times that of a sheep and several times that of other species in the family Camelidae, such as alpacas and llamas. This high value, in a resource-poor area, can represent both a threat to the species and an opportunity if the species is managed sustainably. The threat comes from illegal hunting if protection and incentives for management are poor; the opportunity exists if proceeds from the sale of vicuña wool from live-shorn animals are substantially used to enhance the status of native people in the Andean uplands and to encourage them to conserve and protect vicuña.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424) set forth the procedures for adding species to, changing the status of any listed species, or deleting species from the list of endangered and threatened wildlife. A species shall be listed or reclassified if the Secretary determines, on the basis of the best scientific and commercial data available after conducting a review of the species' status, that the species is endangered or threatened because of any one or a combination of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or human-made factors affecting its continued existence.

We base this proposed rule on an assessment of the five listing factors within the Act. The assessment considers the present biological status of the vicuña within the range countries of Argentina, Bolivia, Chile and Peru. No assessment of the status of the species is made for the small population that has recently been reintroduced into Ecuador. That is a protected population, that will not be exploited in the foreseeable future. We do not propose to change that population's endangered classification under the Act.

Some scientists recognize two subspecies of vicuña—*V. v. mensalis* in the northern portion of the range and *V. v. vicugna* to the south. These are putative subspecies in that they have been described on the basis of slight differences in size and color, and the lack of a prominent chest fringe in *V. v. vicugna* (Canedi and Pasini 1996), rather than on distinct, measured genetic differences between the two. Because the distribution of the vicuña is more or less continuous from north to south within its range, it is possible that these two subspecies simply represent the endpoints of a continuum of physical and genetic variation within the species from north to south. As a consequence, it would be very difficult to draw a definite boundary between the two subspecies for purposes of management or listing under the Act. Therefore, the subspecies are not differentiated in this rule and the term vicuña, used herein, refers to populations of both putative subspecies throughout their total range.

(A) The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Approximately 190,000 vicuña are estimated to occur at varying densities on approximately 20,500,000 ha of Andean highlands extending in a rather narrow strip from central Peru through Bolivia, and into northwest Argentina (between 8–30 degrees South latitude). The historical range of the vicuña may have been twice the present distributional area. A small, disjunct, recently-reintroduced population also occurs in Ecuador.

Vicuña habitats occur in both the Altoandina and Puna Ecoregions. The Altoandina Ecoregion comprises high Andean foothills, escarpments and outcroppings and the Puna Ecoregion represents areas of high plains or tablelands between mountain ranges. The habitats vary climatically on both attitudinal and latitudinal scales but are generally arid and cold, resulting in limited vegetation cover. The habitat of the vicuña in the high Andean plateau region varies from 3,200 to 4,800 m above sea level. This highland habitat has been somewhat degraded by humans and their domesticated livestock, but still represents an extensive habitat for vicuña. The low average density of 1 vicuña per 103 ha reflects the limited carrying capacity of the high Andean habitats as well as the fact that many vicuña habitats are understocked. National Reserves, National Parks, Protected Areas, or Provincial Reserves where vicuña are protected are scattered throughout vicuña habitat in each of the four countries considered in this proposed rule.

Argentina

Vicuña distribution in Argentina includes portions of the northwestern provinces of Jujuy, Salta, Catamarca, La Rioja, and San Juan. Vicuña habitats in the Puna and Altoandina Ecoregions of Argentina cover a surface area of about 10,000,000 ha (Canedi 1997, pers. comm.). The area of available habitat has been reduced since the arrival of Europeans in South America, because the species is no longer present in the Patagonian regions of Argentina.

Vicuña habitat in Argentina is bounded to the west by the volcanic chain of the Andean Cordillera in Chile, in the east by the eastern Cordillera and the Sierra Pampeanas mountains, in the north by contiguous vicuña habitat in Bolivia, and in the south, vicuña habitat extends into the Province of San Juan. The general area is characterized by blocks of uplifted mountains surrounding extensive valleys featuring alkaline or saline flats and a rolling topography. Aridity is a common and constant feature of the Puna. Many water courses are temporary but there are occasional areas of damp ground where surface water and green vegetation in the form of rushes, grasses and a variety of succulent plants occur. Much of the thin vegetation cover over most of the Puna consists of grasses and xerophilous half-shrubs (Comisíon Regional de la Vicuña, 1994).

Temperatures are cold and frost can occur each day of the year. The carrying capacity of the humid Puna may be as much as two vicuña per ha but in the drier Puna habitats the carrying capacity may only be one vicuña per 30 ha.

The Provinces of Jujuy, Salta, Catamarca, La Rioja, and San Juan have created reserves and other protected areas for vicuña. In Jujuy Province, Los Pozuelos Reserve was created in 1980 and consists of 308,000 ha. About 15,000 ha of this Reserve have been incorporated into the UNESCO Man and Biosphere program as a natural area of international significance. The vicuña population in the Reserve in 1997 was estimated to be 2,750 (CITES 1997a). The Olaróz-Cauchari Flora and Wildlife Reserve was created in 1981 to enhance vicuña populations and consists of 543,300 ha. The vicuña population in the Reserve in 1994 was estimated to be 6,500 and growing (CITES 1997a). Other areas where vicuña are protected in Jujuy Province include Vilama (97,000 ha), Santa Victoria (54,600 ha), Palca de Aparzo (55,800 ha), Caballo Muerte (18,500 ha), Casa Colorado (31,000 ha), Abra de Zenta (69,000 ha) and Serranias del Chani (158,900 ha) (CITES 1997a: V. Lichtschein, Management Authority of Argentina, pers. comm. with K. Johnson, Office of Scientific Authority (OSA). 1999). These areas are not listed in the WCMC Protected Areas Database, so we are unclear as to their actual protective status (i.e., whether they are national, provincial, local or private protected areas). The high altitude experimental station (Campo Experimental de Altura or CEA) is located at Abra Pampa in Jujuy Province. This experimental station of 3,000 ha is dedicated to the development of appropriate management procedures to enhance fiber production of vicuña, assure the survival of the species, and to enhance the economic well-being of certain Puna ranchers. The human population is very low throughout the Reserves and protected areas of the Province.

In Salta Province, the Los Andes Wildlife Reserve of 1,440,000 ha was created in 1980. The rigorous climate restricts the human population to very low densities. Agriculture does not exist in this area and the ranching of cattle, sheep, goats and llamas is rudimentary. Although the carrying capacity for vicuña in the Reserve is estimated to be one individual per 30 ha, a partial census in 1993 counted only 2,000 vicuña (CITES 1997a). In Catamarca Province, the Laguna Blanca Wildlife Reserve was created in 1979 and enlarged in 1982 to 973,270 ha at which time it became recognized by the UNESCO Man and Biosphere program as a natural area of international significance. The human population is very sparse and scattered in the general area of the Reserve. The 1993 vicuña population in Laguna Blanca Reserve was estimated to be 3,505 (CITES 1997a). In La Rioja Province, the Laguna Brava Reserve for Vicuñas and the Protection of Ecosystems was created in 1980 and consists of 405,000 ha. Human habitations do not exist in the Reserve, which is contiguous with the San Guillermo Faunal Reserve in San Juan Province. The 1996 vicuña population in the Reserve was estimated to be 2,187 (CITES 1997a). San Guillermo Faunal Reserve was created in 1972 and consists of 880,260 ha. In 1982 it became part of the UNESCO Man and Biosphere program as a natural area of international significance. This was the first Provincial Reserve dedicated primarily to the protection of the vicuña. This area is devoid of human and domestic animal populations. Although the area has a carrying capacity estimated to be one vicuña per 7 ha of habitat, the 1992 vicuña population in the Reserve was estimated to be only 7,100 (CITES 1997a).

We have virtually no quantitative information on the extent or condition of vicuña habitats outside protected areas in Argentina. Anecdotal information suggests that overgrazing by domestic livestock (leading to soil compaction and desertification) and direct competition for forage with domestic livestock may be important factors limiting the growth of vicuña populations outside protected areas (CITES 1997a). Other information indicates that some competition with domestic herbivores occurs in the arid Puna where precipitation is <300 mm per year but that competition is not as much of a problem in the humid Puna where precipitation may exceed 500 mm per year. A program to combat desertification has apparently been initiated in Jujuy Province (CITES 1997a).

The limited quantitative information presently available to us indicates that vicuña populations throughout Argentina are not endangered by the present or threatened destruction, modification, or curtailment of habitat or range. However, they remain threatened by this factor (especially overgrazing and direct competition with domestic livestock) throughout Argentina. Through this proposed rule, we seek additional, quantitative information on the status of vicuña habitats throughout Argentina. We especially seek detailed information on land use restrictions (for example, prohibitions on the grazing of domestic livestock) and protective measures (for example, antipoaching efforts) within protected areas, and on efforts to manage habitat outside protected areas (including programs to combat desertification and to reduce competition with domestic livestock).

Bolivia

Vicuña occur in western and southwestern Bolivia in the Departments of La Paz, Oruro, Potosi, and Cochabamba (CITES 1997b). They have also been reported from the Department of Tarija, but the reports have not been confirmed (CITES 1997b). It has been suggested (DNCB 1997, pers. comm.) that vicuña may once have ranged over 13,000,000 to 16,700,000 ha in the Puna and high plateau region of the Bolivian Andes, before colonization by the Spaniards.

The Bolivian government has established Vicuña Conservation Units (VCU) for administrative and management purposes (CNVB 1996). Eight VCUs were originally established by the Instituto Nacional de Fomento Lanero (INFOL 1985); a ninth unit was subsequently added as a result of the National Vicuña Census of 1996 (CNVB 1996). These nine VCUs encompass all of the vicuña's geographic range within Bolivia. The National Vicuña Census of 1996 recorded vicuña populations in 76 "registered census areas" totaling 3,428,356 ha within the nine VCUs. These registered census areas are distributed throughout the Bolivian highlands at an elevation range between 3,600 and 4,800 m. Thirty of these registered census areas did not have any vicuña in the previous national census (1986), indicating a significant increase in the vicuña's distribution within Bolivia over a 10-year period. Sixty-nine percent of the vicuña counted in 1996 (23,393 of 33,844) occurred in the Conservation Units of Lipez-Chichas, Mauri-Desaguadero and Ulla Ulla.

Vicuña are found in a number of protected areas in Bolivia. Within the National System of Protected Areas (Sistema Nacional de Areas Protegidas, or SNAP), vicuña occur in the Ulla Ulla National Fauna Reserve (150,000), the Eduardo Avaroa National Andean Fauna Reserve (714,000 ha), and Cerro Sajama National Park (100,230 ha) (information from WCMC Protected Areas Database 1999). Other protected areas with vicuña are the Huancaroma Vicuña Reserve (140,429 ha), Huancaroma Wildlife Refuge (11,000 ha), Llica National Park (97,500 ha), Yura National Fauna Reserve (96,853 ha), Altamachi Vicuña Reserve (100,000 ha), and the Incakasani-Altamachi Andean Fauna Reserve (23,000 ha)

(information from WCMC Protected Areas Database 1999).

The area where vicuña are presently found in Bolivia is expanding, but will likely never equal the former distribution range because of habitat changes caused by overgrazing by sheep and other domestic livestock, and human-caused developments such as roads and cities. Vicuña generally occur on communal property lands in Bolivia. In the northern highlands vicuña share habitats mainly with alpacas, in the central highlands with cattle, sheep, llamas, alpacas and agriculture, and in the southern highlands with llamas (CITES 1997b). Overgrazing, especially by sheep, has reduced range carrying capacity in many areas.

The limited quantitative information presently available to us indicates that vicuña populations throughout Bolivia are not endangered by the present or threatened destruction, modification, or curtailment of habitat or range. However, overgrazing by domestic livestock and direct competition for forage with domestic livestock are still considered to threaten vicuña populations throughout Bolivia. Through this proposed rule, we are seeking additional, quantitative information on the status of vicuña habitats throughout Bolivia. We especially seek detailed information on land use restrictions (for example, prohibitions on the grazing of domestic livestock) and actual protective measures (for example, antipoaching efforts) within protected areas, on the status of development of Vicuña Management Plans and Soil Use Plans in the three pilot areas of the National Vicuña Conservation Program (Lipéz-Chichas, Mauri Desauadero, and Ulla Ulla), and on current efforts to manage habitat on lands which are not within either the three aforementioned conservation units or officially-designated protected areas. We also seek more information on the National Program for the Fight Against Desertification and Drought.

Chile

The vicuña occurs in extreme northeastern Chile in the Regions of Tarapaca, Antofagasta, and Atacama. Over 96 percent of the vicuña (19,169 of 19,848) in Chile are found within the Caquena Management Zone, Lauca National Park, and the Vicuña National Reserve within this Province (Galaz 1997, pers. comm.). These areas have typical vicuña habitats and limited human populations.

Most vicuña in Chile are found within protected areas. These include the aforementioned Caquena Management Zone (90,146 ha), Lauca National Park (137,883 ha) and the Vicuña National Reserve (209,131 ha) within Parinacota Province. A few vicuña also occur in Salar de Surire Natural Monument in Parinacota Province (11,298 ha), and Isluga Volcano National Park in Iquique Province, Tarapaca Region (174,744 ha).

Information presently available to the Service indicates that vicuña populations in Chile are probably not endangered by the present or threatened destruction, modification, or curtailment of habitat or range. This is because the overwhelming majority of vicuña in Chile occur in protected areas where there is some measure of control over domestic livestock grazing. However, overgrazing by domestic livestock and direct competition for forage with domestic livestock may still threaten vicuña populations in Chile. Through this proposed rule, we seek additional, quantitative information on the status of vicuña habitats throughout Chile. We especially seek detailed information on land use restrictions (for example, prohibitions on the grazing of domestic livestock) and protective measures (for example, antipoaching efforts) within protected areas, and on effort to manage habitat outside protected areas (including programs to combat desertification and to reduce competition with domestic livestock).

Peru

Vicuña in Peru in 1997 were estimated to occur on about 6,361,000 ha throughout the 15,000,000 to 17,000,000 ha of suitable habitat in the Peruvian high plains. Factors that could impact future areas of vicuña habitat include increased urbanization, successful reintroductions of vicuña into present areas of suitable but unoccupied habitat, and the replacement of domestic livestock by vicuña. Vicuña are better adapted to the rigorous climate and ecological conditions of the Puna, than are many species of domestic livestock. Overgrazing by domestic livestock remains the greatest threat to habitat conditions in the Puna.

Vicuña occur in 782,186 ha of Peruvian protected areas, including Huascaran National Park (340,000 ha), Pampa Galeras National Reserve (75,250 ha) and the Salinas and Aguada Blanca National Reserve (366,936 ha) (Hoces R. 1997, pers. comm.).

Information presently available to the Service indicates that vicuña populations in Peru are not endangered by the present or threatened destruction, modification, or curtailment of habitat or range. This assessment is based on the overall size of Peru's vicuña population, plus the large number of community-based management programs there. Overgrazing by domestic livestock and direct competition for forage with domestic livestock may still threaten certain vicuña populations in Peru. Through this proposed rule, we are seeking additional, quantitative information on the status of vicuña habitats throughout Peru. We especially seek detailed information on land use restrictions (for example, prohibitions on the grazing of domestic livestock) and protective measures (for example, antipoaching efforts) within protected areas, and on efforts to manage habitat outside protected areas (including programs to combat desertification and to reduce competition with domestic livestock).

(B) Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Vicuña wool was valued by the Incas and estimates suggest there may have been 1,000,000 to 1,500,000 vicuñas in the region during the Incan period. Although utilized by the Incas, there is no evidence that the species was exploited at unsustainable levels. After destruction of the Inca Empire by Europeans, vicuñas were slaughtered in large numbers for both their meat and wool. In the 1950's populations may still have totaled 400,000, but hunting pressures and livestock competition may have reduced the total population to about 6,000 individuals by 1965 (Nowak 1991). Other authors suggest somewhat different numbers but similar trends.

Vicuña numbers in individual range countries have apparently fluctuated as political and economic stability has fluctuated. For example, vicuña numbers in Peru were low in 1965, gradually built to high levels in 1990, were significantly reduced by illegal hunting during the 1992–94 period of civil unrest, and have since recovered to 1990 levels. The major breakthroughs in the potential management of vicuña in Peru were new laws transferring the custodianship of vicuña to campesinos (peasants) and campesino communities, giving the campesinos the responsibility to protect vicuñas, the implementation of protective measures, the determination that it was not necessary to kill vicuña in order to obtain wool from their hides, and the development of management techniques to herd, capture and shear living vicuña (Wheeler and Hoces R. 1997). The key factor has been allowing the benefits of vicuña management and utilization to accrue collectively to campesino communities (rather than to middlemen or other individuals) (Wheeler and Hoces R. 1997).

The vicuña remains a potentially easily exploited resource. It has great economic value and is a highly visible, diurnal occupant of open landscape. Some poaching for skins or subsistence hunting for meat probably still occurs, as does killing of vicuñas because of perceived competition with domestic livestock. This appears to be a source of mortality that could potentially seriously impact vicuña numbers, as it has done in the past.

Vicuña Population Status: Argentina

The vicuña population of Argentina is currently estimated to be approximately 32,000 individuals and increasing, based on censuses completed in various protected areas between 1992 and 1996 (CITES 1997a). Data appear to be most complete for Jujuy Province, where the Olaróz-Cauchari Reserve has been surveyed regularly since 1973–74, and estimates are available for a number of other areas where vicuña are protected (CITES 1997a). The population of Jujuy Province was estimated to be approximately 18,000 individuals in 1997 (CITES 1997a). A population survey was recently completed in Salta Province (V. Lichtschein, pers. comm. with K. Johnson, OSA, 1999), but the results are not yet available to us. Data from other provinces are somewhat dated and incomplete (CITES 1997a).

As previously mentioned, the vicuña population of Argentina is believed to be increasing. Data from the Olaróz-Cauchari Reserve (where numbers increased from about 330 individuals in 1973 to 6,500 in 1995) Laguna Brava Reserve, and Laguna Blanca Reserve all show substantial population increases over the past 10 to 20 years (CITES 1997a). Possible causes for the population increases are the newly developed support for vicuña by the campesino communities of the Puna, the creation of protected areas and the control of illegal hunting activities (Canedi 1997, pers. comm.). It is anticipated that some transplanting will occur from certain areas if populations grow to exceed carrying capacity.

Vicuña Utilization: Argentina

Poaching does not appear to be a major problem at present (V. Lichtschein, pers. comm. with K. Johnson, OSA, 1999; E. Hoffman, journalist, pers comm. with K. Johnson, OSA, 1999). Sport hunting of vicuña is not permitted in Argentina and no permits have been issued for the capture of wild vicuña for scientific or educational purposes.

The vicuña utilization scheme in Argentina consists of a developing effort to sustainably use wild populations in Jujuy Province, and an effort to develop semi-captive populations in the provinces of Catamarca, Jujuy, La Rioja, Salta, and San Juan. This model has been developed to be relevant to the conditions of the Argentine Puna where lands are owned by individual ranchers, human populations are very sparse and vast areas of potential habitat with limited vicuña populations exist (CITES 1997a).

Experimental efforts to develop management programs under semi-captive conditions are conducted at the National Institute of Agriculture and Cattle Technology (INTA) at their High Altitude Experiment Station (CEA) at Abra Pampa. Studies have emphasized efficient fences to contain vicuña, the determination of the carrying capacity of different range types, and the capturing and shearing of vicuña and wool processing procedures.

The experimental results have direct applications because a limited number of vicuña ranching operations have been established in Jujuy and Salta Provinces. These ranch operations have used vicuña donated from the Abra Pampa semi-captive herd and donated fencing materials. Vicuña family units are placed into a fenced area. Individual ranchers who have been trained in vicuña management have the responsibility to protect and provide for the vicuña. Young vicuña, produced under these semi-captive conditions, are either used as replacement stock or are returned to CEA as compensation for the initial vicuña donation. The semi-captive herds are sheared at two year intervals using the techniques developed at CEA. At the time of shearing, representatives of INTA, the Department of Renewable Natural Resources, the Gendarmes (military police), a Doctor of Veterinary Medicine, and the wool buyer are present to observe and/or supervise the operation. The wool buyer in 1997 was an Argentine wool processing company that donated the fencing materials. The wool purchase is used to retire the debt on the fencing materials and to provide immediate payment to the individual rancher. The wool, at the time of shearing, is weighed, bagged, marked, sealed, recorded and stored in a sealed warehouse until all commercial authorizations have been completed.

The production of vicuña wool under semi-captive conditions benefits the individual campesino rancher and is a program growing in popularity. It is claimed that this program enhances the status of vicuña because the ranchers support the program and support the presence of non-captive vicuña in the provinces, and it has enhanced the gendarme-rancher relationship which has improved protective measures for vicuña. However, we continue to have concerns over the appropriateness and effectiveness of this approach as a conservation tool for wild populations of vicuña. The captive population at Abra Pampa has been developed from a limited number of founder animals (16 females and 6 males). As such, there is concern over the genetic fitness of animals in this population. There is also concern about possible genetic and disease consequences if vicuña from the Abra Pampa population are translocated to different provinces and subsequently escape to mingle with the wild population. We are concerned that semi-captive populations may be established in the most favorable vicuña habitat areas, thus potentially depriving wild vicuña populations of important resources such as water or forage. Finally, we have no information showing a demonstrable link between establishment of semi-captive vicuña populations and improved conservation status of wild populations (for example, a demonstrable reduction in poaching of wild vicuña in areas with semi-captive populations, or a demonstrable improvement in habitat conditions as a result of decreased domestic livestock numbers in areas with semi-captive populations). The Appendix II semi-captive populations of Catamarca, Jujuy, La Rioja, Salta, and San Juan Provinces are specifically excluded from the proposed special rule until their conservation benefit for wild vicuña is demonstrated adequately. With this proposed rule, we seek substantive information demonstrating the conservation value (for wild vicuña) of semi-captive vicuña populations.

The vicuña is not considered to be endangered by previous or current overutilization in Argentina. It is, however, considered to be threatened by overutilization throughout Argentina, and will continue to be threatened until appropriate conservation mechanisms are fully implemented and the populations fully recover, based on successful conservation and management. Through this proposed rule, we seek additional information on the status of wild vicuña populations throughout Argentina.

Vicuña Population Status: Bolivia

Vicuña populations in Bolivia were recorded as 33,844 in the country-wide census of 1996 and current populations are estimated at about 35,500 (DNCB 1997, pers. comm.). The population is

generally thought to be increasing, and perhaps has reached carrying capacity in a few areas. Population data determined by direct and total counts of individuals on selected habitat areas are best for the three experimental pilot areas—Ulla Ulla, Mauri-Desaguadero and Lipez Chichas whose populations were transferred to CITES Appendix II in 1997. Periodic censuses have occurred over a 30-year period for Ulla Ulla, and over a 15-year period for the other two pilot areas. The growth in the total vicuña population has been both in density within well-known habitat areas and in the number of habitat areas with vicuña. It is believed that the principal reason for the growth in the general vicuña population is the protection provided by the campesino communities, especially those that have government supported game wardens.

Vicuña Utilization: Bolivia

Some campesino communities are hostile to vicuñas because of crop depredation or perceived competition with domestic livestock and the fact that no economic benefits are presently realized from vicuña. This may result in the killing of vicuña, although we have no substantive information which directly supports this conclusion. The granting of custodianship to the local communities and the delegation of monitoring to the provincial governments is expected to provide the mechanism to address this issue.

Poaching of vicuña is known to occur in Bolivia (CITES 1997b), and may be at a level that is of concern. One individual was recently arrested outside La Paz with 324 vicuña skins in his possession (E. Hoffman, pers. comm. with K. Johnson, OSA, 1999). Vicuña products, including rugs made from many skins, can be seen for sale in the San Francisco Plaza in La Paz (E. Hoffman, pers. comm. with K. Johnson, OSA, 1999). Local traditional authorities use vicuña ponchos, scarves and blankets, especially at traditional celebrations (CITES 1997b). The wool used in these products comes from animals killed illegally (CITES 1997b). Tour operators in remote areas claim to encounter skinned vicuña carcasses on a regular basis (E. Hoffman, pers. comm. with K. Johnson, OSA, 1999).

Vicuña are not captured in Bolivia for educational or scientific purposes. There is no intent to have commercial meat operations as the only authorized commerce will be in wool and wool products from live-shorn vicuñas from wild populations. At present, there is no trade in wool as Bolivia has a zero quota under CITES.

Bolivia, as well as the other signatory countries to the Conveño para la Conservación y Manejo de la Vicuña (Convention for the Conservation and Management of the Vicuña, or the Vicuña Convention), has agreed not to export fertile specimens of vicuña. The sole exception has been a 1993 export of 100 vicuñas to the Republic of Ecuador to aid in their vicuña recovery efforts. This was accomplished within the multilateral frameworks of both the Vicuña Convention and the CITES Convention.

Bolivia's National Program for the Conservation of Vicuña is in very early stages of implementation. Bolivia is developing pilot programs for harvesting and marketing wool from live-shorn vicuña that borrow significantly on the successful management program in Peru. The initial step of the National Vicuña Conservation Program was to transfer three substantial vicuña populations in areas where campesino interest and commitments were high (Ulla Ulla, Mauri-Desaguadero, Lipez Chichas) from CITES Appendix I to II, so that pilot management and shearing programs could be perfected prior to expanding the management programs to other vicuña habitats. The second step has been the development of an agreement between the Programma Quinua Potosi (PROQUIPO) and the DNCB to operate the Pilot Center of Sud Lipez to actually develop and demonstrate those management and shearing programs to enable the sustainable use of the vicuña through live shearing to be realized eventually.

Vicuña population trends throughout Bolivia are encouraging, and populations appear to have recovered to the extent that they are no longer endangered by previous and current overutilization. We consider that the vicuña is threatened by overutilization throughout Bolivia, and will continue to be threatened until appropriate conservation mechanisms are fully implemented and the populations fully recover, based on successful conservation and management. Through this proposed rule, we seek additional information on the status of wild vicuña populations throughout Bolivia. We especially seek information on the magnitude of poaching.

Vicuña Population Status: Chile

Over 96 percent of the vicuña (19,200 of 19,850) in Chile occur in Parinacota Province in the extreme northeastern portion of the country. The populations in the Caquena Management Zone (3,700 vicuña on 101,380 ha) and in the National Vicuña Reserve (8,050 vicuña on 288,970 ha) in this Province were transferred to CITES Appendix II in 1987, and would be the only populations utilized commercially should a program to capture and shear live vicuña be instigated (Galaz 1997, pers. comm.). The adjacent population in Lauca National Park (7,410 vicuña on 153,380 ha) was retained on Appendix I to provide further control over vicuña in this protected natural area. The vicuña population in Parinacota Province is believed to be at or near carrying capacity in typical vicuña habitat. The remaining four percent of Chile's vicuñas occur elsewhere in the upper Andean tablelands in northeastern Chile. About 650 vicuña are believed to occur in small scattered groups over about 215,000 ha elsewhere in the Tarapaca Region and in the neighboring Antofagasta and Atacama Regions.

Vicuña Utilization: Chile

The hunting, capture and sale of vicuña and vicuña products is unlawful in Chile and, at present, there is no national or international trade in vicuña fiber, no exports of living vicuña and no known illegal trade in vicuña products. Poaching is not considered to be a problem in Chile (E. Hoffman, pers. comm. with K. Johnson, OSA, 1999). In summary, protected areas have been established in locations with a high density of vicuñas, a conservation and management plan has been developed for vicuña, legal provisions have been developed to protect the species and adequate protection is being provided for the species, especially in Lauca National Park and the National Vicuña Reserve.

The vicuña is not considered to be endangered by previous or current overutilization in Chile. However, as a vicuña wool industry could potentially be approved in Chile, overutilization is still considered to threaten the Chilean population until such time as control mechanisms for harvest and commercialization are demonstrated to be adequate.

Vicuña Population Status: Peru

The 1997 census in Peru estimated a population of 103,650 vicuña on 6,361,000 ha of habitat (Hoces R. 1997, pers. comm.) in the high Andean tablelands of the departments of Ancash, Apurimac, Arequipa, Ayacucho, Cajamarca, Cusco, Huancavelica, Huanuco, Junin, La Libertad, Lima, Moquegua, Pasco, Puno and Tacna. Vicuña populations have been increasing since 1994. This is believed to be due to the increased efforts to control vicuña poaching and

the development of a vicuña wool utilization program. Several campesino communities now participate in the protection, management and utilization of vicuña in cooperation with the National Council of South American Camelids (CONACS) and the National Institute of Natural Resources (INRENA), which is the designated CITES Management Authority for Peru.

Vicuña Utilization: Peru

As mentioned previously, vicuña numbers in Peru have fluctuated greatly in recent years as a result of political and economic instability. Vicuña numbers were low in 1965, gradually built to high levels in 1990, were significantly reduced by illegal hunting during the 1992–94 period of civil unrest, and have since recovered to 1990 levels.

At present, legislation in Peru permits the taking of vicuña if properly authorized and technically supported. Some culling of vicuñas (about 1,000 per year) did occur from 1977 to 1983 but no quotas have been declared and little if any legal take has occurred since that date. Any take for scientific studies is rare and, when authorized, is tightly controlled. There is no legal utilization of vicuña for meat or parts.

Commercialization of vicuña wool products will likely not result in overutilization of vicuña because of the system of controls that exist in monitoring wool collections, governmental supervision by CONACS and INRENA, and the involvement of local campesino communities. CONACS and INRENA have the responsibility to protect and monitor vicuñas within protected areas such as Huascaran National Park, Pampa Galeras National Reserve and the Salinas and Aguada Blanca National Reserve. The protection and monitoring of vicuñas in the rural communities is a major responsibility of participating campesino communities in coordination with CONACS and INRENA.

CONACS has developed techniques, at Pampa Galeras, for capturing and harvesting wool from living wild vicuña. Capture methods are based on the traditional "chaku, a surround technique used by the Incas to capture and shear vicuñas (Wheeler and Hoces R. 1997). CONACS has taught and supervised campesino communities in this technique and other aspects of vicuña management. At Pampa Galeras and in other areas of the Peruvian Puna, vicuñas occur on communal lands and campesinos represent an abundant and important work force.

The process used to capture and shear vicuñas was observed in August 1997 by Dr. Short (on behalf of the National Fish and Wildlife Foundation). Vicuñas to be shorn were slowly herded across a wide habitat area and "pushed" into a V-shaped funnel trap. The vicuña were eventually crowded into a corral where they were sorted by hand to identify adults with adequate fleeces; this is a consideration because it takes about 18 months to grow a fleece that will yield shorn fibers that are 2 cm (0.78 in) long. All animals were ear-tagged, identified, weighed and cursorily examined for general condition. Each animal to be clipped was restrained and the fleece along the back and flanks was removed in a single mass, using electric clippers. That portion of the fleece was placed in a plastic bag. The shoulder, rump and leg wool was then clipped and placed in a separate bag. Both bags of wool from an individual animal were tagged, sealed, weighed and recorded at the field location immediately after clipping was completed. Belly and chest hair were left intact on the animal in the belief that it would subsequently insulate the animal when it was resting on cold ground. The capture, handling, clipping and the securing of the vicuña fleece was accomplished by campesinos under the supervision of personnel from CONACS and the Sociedad Nacional de la Vicuña (SNV). Upon the completion of the clipping effort the shorn animal was released. Clipping took about two minutes per animal. No significant injuries were observed from the capture, handling or clipping of the live wild vicuñas under these observed conditions.

Cleaning of guard hairs and dirt from vicuña fleeces is usually accomplished by women from the campesino communities. Such cleaning takes about 2–3 woman-days per 250-gram (9 ounce) fleece. Up to 100 women from the Lucanas campesino community near Pampa Galeras may be employed during the time period required to process an annual harvest of up to 2,000 fleeces. Careful weights are kept as fleeces are unsealed, cleaned, re-bagged and resealed prior to auction. A single auction supervised by CONACS serves all campesino communities producing vicuña wool.

Vicuña management essentially provides full-time employment for many members of the Lucanas community—building fences, obtaining and cleaning fleeces, providing protection to vicuña and providing instruction to other communities wishing to establish a vicuña industry. It was reported that as part of the arrangement between the Lucanas community and the government, 500 vicuñas are used to restock vicuña habitats in neighboring communities, in exchange for both a hydro-electric project and other economic assistance.

The Pampa Galeras experience is the model for other campesino communities in Peru and will likely be the model for similar efforts in Bolivia. Campesino communities in both countries benefit by having some initial funds to develop a vicuña management infrastructure—either from the national government, as in Peru, or the European Community in aid to Bolivia.

Efforts are apparently underway in Peru to develop ranching of vicuña (i.e., fencing of natural areas to produce semi-captive populations) (Wheeler and Hoces R. 1997). Although translocation of animals does not appear to be involved in this case, we still have many of the same concerns as previously expressed for the semi-captive populations in Argentina. We reiterate our desire to receive substantive information demonstrating the conservation value (for wild vicuña) of semi-captive vicuña populations.

The vicuña is not considered to be endangered by previous or current overutilization in Peru. It is, however, considered to be threatened by overutilization, and will continue to be threatened until appropriate conservation mechanisms are fully implemented and the populations fully recover, based on successful conservation and management.

(C) Disease or Predation

Vicuñas, like most mammals, suffer from a variety of endo-and ecto-parasites. Mange caused by parasitic mites can result in skin lesions and loss of hair, especially in those populations that coexist with domestic livestock, especially during drought conditions. Drought conditions or extremely degraded ranges adversely impact vicuña by causing movements to new habitats with the possible dissolution of some family groups and reductions in reproductive rates and successes, and perhaps increased mortalities. Major predators on vicuña include the puma (*Felis concolor*), the Andean fox or zorro (*Dusicyon culpaeus*) and perhaps the Andean condor (*Vultur gryphus*), which may kill newborn and very sick animals.

Vicuña populations in the four range countries are not believed to be endangered from the impacts of disease or predation, in part because the numbers of individuals within each population are considered to be increasing. Likewise the vicuña populations are not likely to be threatened by these factors if the benefits from the commercialization of vicuña wool products are used to

enhance the standard of living in campesino communities, with concomitant effective protection and enforcement. We remain concerned about the potential for disease transmission from animals that are translocated for the development of semi-captive populations or for release to the wild to supplement wild populations, and seek additional information on this issue.

(D) The Inadequacy of Existing Regulatory Mechanisms

The regulatory mechanisms in place vary significantly among the four range countries. Those in Peru are very substantive and involve the establishment of new governmental agencies, new mechanisms to enhance inter-community coordination, enhanced vicuña management procedures and a regulated and active vicuña wool industry that currently returns economic benefits to campesino communities. Argentina has also developed regulatory mechanisms to allow the development of a vicuña wool industry that currently benefits a small number of local ranchers. Bolivia is currently developing mechanisms to develop a wool industry and is building on many of the procedures that are apparently successful in Peru. Chile has no current plans for developing a wool industry but has conceptualized how such an industry might be successfully managed.

Regulatory Mechanisms: Argentina

In Argentina, the First Interprovincial Technical Conference on the Conservation of the Vicuña met in 1972 and agreed to develop methods to capture, transport and recolonize vicuña habitats and develop a plan for the management, shearing and the manufacture of handicrafts from vicuña fiber. Additional meetings integrated the provincial vicuña programs, established a national program, and established the "Vicuña Regional Commission" as a mechanism to attain national coordination on the vicuña management program (Comisiòn Regional de la Vicuña, 1994). Argentina ratified the CITES Convention in 1981. In 1988 Argentina signed the Vicuña Convention and has since carried out its programs within the context of this agreement. Argentine National Law for the Conservation of Wildlife 22.421 and its Regulatory Decree No. 691, provides for vicuña protection. The Constitution of Argentina, reformed in 1994, assures the rights of the provinces over their respective natural resources, assures the rights of indigenous people to use these natural resources in traditional ways, and embraces the conservation of biological diversity and the sustainable development of natural resources.

Several laws and decrees within the various Provinces list the vicuña as a protected species, establish protected areas for the species, prohibit hunting, and prohibit commercialization, transportation, or manufacturing of parts or products from hunted animals, regardless of origin. Laws and decrees also allow the installation of captive breeding operations and the commercialization and industrialization of products from captive-bred animals (Canedi 1997, pers. comm.).

The Departments of Renewable Natural Resources for Jujuy, Salta, Catamarca and La Rioja Provinces have signed agreements with the Secretariat of Natural Resources and Human Environment and the National Gendarmes, a Federal Law Enforcement group, to enforce provisions of Provincial and National laws that prohibit illegal hunting and smuggling. The Gendarmes conduct extensive patrols in rural areas and on the borders, and have officers at the ports, airports and borders. They are capable of conducting inspections and investigations involving the illegal trafficking of vicuña wool. They also have an environmental division which meets with campesinos and tries to promote the vicuña program. Although both the Department of Renewable Natural Resources and the Gendarmes may not have adequate resources at their disposal, they are thought to be working effectively with the campesino communities of the Puna as evinced in the increase of vicuña populations of the Puna (Canedi 1997, pers. comm).

The only legal wool at the present time is that obtained from the shearing of live vicuña at the officially authorized semi-captive population facilities. We understand that a registry of authorized semi-captive populations is maintained by the national Direccion de Fauna y Flora Silvestres (V. Lichtschein, pers. comm. with K. Johnson, OSA, 1999). Wool from shorn fleeces is bagged, tagged, weighed, sealed, recorded, and the government agency that supervised the shearing is identified on the bag. Wool from officially authorized breeders (ranchers) can be directly auctioned for direct export, or the ranchers (if artisans) can retain the wool, and make and sell cloth. Either the wool buyer or the rancher-artisan would need a transport permit and that transport permit would need to be presented when the CITES export permit is requested. Fabric or products manufactured by rancher-artisans will need to be marked with the official seals or stamps. Such fabrics or products, expected to be limited in numbers, can only be sold to licensed outlets recognized and approved by the government. The check on whether fabrics or products are made from legal vicuña wool is determined by comparing weights of fleeces harvested under supervised shearing operations, the weight of raw wool that is retained by the authorized rancher-artisan and the weights of woolen products produced by that artisan. At present it is not clear to us which government agency supervises shearing, which approves licensed outlets for vicuña products, and which conducts checks of producers to ensure that only legal wool is used in artesanal products. There is apparently no national legislation that covers all aspects relating to the trade in vicuña or the administrative aspects relating to this trade (CITES 1997a).

Wild populations of vicuña in the Province of Jujuy and semi-captive populations of vicuña in the Provinces of Jujuy, Salta, Catamarca, La Rioja and San Juan were transferred from CITES Appendix I to Appendix II at CITES COP10, effective September 18, 1997. Exports are limited to wool shorn from live animals, cloth and articles made from that cloth, luxury handicrafts and knitted articles. The reverse side of cloth and cloth products must bear the logo adopted by countries signatory to the Vicuña Convention and the words "VICUÑA-ARGENTINA-ARTESANIA." All specimens not meeting the above conditions are subject to the prohibition against primarily commercial trade. Articles bought by a foreign tourist at a government authorized store will be exportable as personal accompanying baggage only after a CITES export permit has been obtained. The only apparent control of artisan goods sold to residents of Argentina and later resold to foreign tourists is the requirement that the tourist have a CITES export permit upon his/her return to his/her country of origin. This is a requirement for importation of any personal effects or personal accompanying baggage by U.S. residents, under the conditions of the special rule accompanying this petition finding. If the wool from an authorized captive breeder is sold at auction, the buyer, presumably a wool processing company, would get a permit from the Provincial Natural Resources Department which the buyer would present to the National Secretary for Natural Resources and Human Environment to obtain the required CITES permit for export.

The National Police (Gendarmes) are expected to aid provincial authorities in the control of poaching, illegal trade and transport of unauthorized products within the country and the routine inspection of products of legal origin to certify their origin. Collaboration will also be provided by the National Aeronautical Police at the country's airports to intensify inspections of commercial products and passengers.

The vicuña does not appear to be endangered by inadequate regulatory mechanisms in Argentina. The species, however, is considered to be threatened by this factor because many of the regulatory mechanisms are in early stages of implementation, and we are still unclear about several aspects related to the control of trade in raw vicuña wool and artesanal products. The vicuña will remain threatened by this factor until appropriate conservation mechanisms are fully implemented and the populations fully recover. Through this proposed rule, we seek detailed information on the control of trade in vicuña wool and wool products in Argentina, and on the status of national legislation to control trade.

Regulatory Mechanisms: Bolivia

Bolivia's National Program for the Conservation of Vicuña is in very early stages of implementation. Bolivia is developing pilot programs for harvesting and marketing wool from live-shorn vicuña that borrow significantly on the successful management program in Peru. The Ministry of Sustainable Development and the Environment is the organization responsible for planning and coordinating the conservation of natural resources with the major plans for national development. The DNCB (Dirección Nacional de Conservación de la Biodiversidad Unidad de Vida Silvestre) is located within this Ministry and is the technical body whose objective is the conservation and sustainable use of biological resources. The wildlife unit with responsibilities for executing the National Vicuña Conservation Program is located within the DNCB.

Several laws and decrees are relevant to vicuña management in Bolivia. Bolivia and Peru signed the Treaty of La Paz in 1969 to provide a measure of international protection for vicuña and this treaty was a precursor to what is presently known as the Vicuña Convention. Bolivia has also been a signatory to CITES since 1979. The Agrarian Reform Act of 1953 enabled some rural communities to have private lands and other rural communities to have unfenced communal lands which are advantageous to free-roaming vicuñas. Law 1654 decentralized executive power to regional departments. Law 1715, passed in 1996, created the National Institute for Agrarian Reform and promoted the sustainable use of land, the promotion of practices favoring conservation and the protection of biodiversity, and the concept that lands where conservation is practiced would not be subject to expropriation. Other laws legalized traditional social organizations, authorized rights for using renewable natural resources and authorized the establishment of the Secretariat for Sustainable Development in each Bolivian Department to enhance vicuña management at regional levels.

Supreme Decree 24529 passed in March 1997, authorized regulations for the protection and management of vicuñas in Bolivia. The Decree grants custodianship of vicuña populations to the rural communities and gives the rural communities the exclusive rights to use vicuña fibers, subject to the listed regulations (DNCB 1997, pers. comm.). Regulations promulgated under this Decree will affect all activities dealing with the management, protection, capture, shearing and the commercialization of vicuña products (as described in subsequent paragraphs). The regulations are similar to existing legislation in the other countries that also signed the Vicuña Convention. At present, we are unclear if these regulations have been approved and fully implemented, although we were previously told that the DNCB had begun implementation of regulations by holding workshops in campesino communities to explain the regulations, by publishing print media guides describing the regulations and by helping campesino communities begin their compliance with the regulations (DNCB 1997, pers. comm.). We were also told that the DNCB had begun coordinating with the National Police and military to help curb illegal activities dealing with vicuña and their products. The National Program for Vicuña Conservation emphasizes the management of wild free-ranging populations of vicuña and emphasizes a desire to improve habitat quality.

Any vicuña wool presently in commerce in Bolivia is considered illegal wool. Under the regulations, all existing vicuña wool products including those in the domestic market are to be inventoried and registered and all new products or wool fibers will also be registered. Any non-registered vicuña products will in the future be considered illegal. The only wool that will be allowed for commercial purposes will be that obtained from live-shorn vicuña that have been captured according to regulations. Only raw wool for the manufacture of cloth will be exported. Bolivia does not have a textile industry with the capability to manufacture vicuña wool cloth (DNCB 1997, pers. comm.).

Under the regulations, the harvesting of vicuña wool will only be allowed in organized campesino communities which (1) have the rights to capture and shear vicuña and utilize vicuña wool and (2) have delegated authority to work with government authorities in the management and conservation of the vicuña. These campesino communities are the only legal benefactors of the sale of vicuña wool. The National Vicuña Conservation Program will be carried out in these communities and will contain habitat and vicuña management plans and vicuña census and distribution data. This information will be basic to decisions to conduct vicuña drives, and in the conduct of capture and shearing operations. Monitoring information will be provided by game guards and recommendations for management actions will be produced in the campesino communities. Government authorities will be present when vicuña capturing and shearing occurs. The authorities will register the number of vicuña captured, the number shorn, the weights of fleeces, etc., and supervise the bagging, weighing, marking and sealing of vicuña wool. This information is provided to the CITES authorities for reference purposes and information later provided in support of export permit applications must correspond to the on-site records. The Netherlands government has provided financial support to underwrite initial efforts to implement the National Vicuña Conservation Program.

The initial effort of the National Vicuña Conservation Program will be at the Pilot Center of Sud Lipez and its objective will be to demonstrate the potential worth of the vicuña. The pilot project will include the capture and shearing of live vicuñas and the manufacture of fabric and eventually the sale of vicuña fiber for the manufacture of textiles to demonstrate the potential economic benefit to campesino communities. The vicuña populations of the Conservation Units of Mauri-Desaguadero, Ulla Ulla and Lipez Chichas were transferred from CITES Appendix I to Appendix II at COP10, effective September 18, 1997. A zero annual export quota presently exists. Future exports will be limited to wool shorn from live animals and to cloth and articles made from such cloth, including luxury handicrafts and knitted articles. The reverse side of cloth and cloth products must bear the

logo adopted by countries signatory to the Vicuña Convention and the words "VICUÑA-BOLIVIA-ARTESANIA." All specimens not meeting any of the above conditions will be deemed to be subject to the prohibition against primarily-commercial trade.

The regulations also establish the System for the Protection of the Vicuña (SVV) which provides for the development of an inter-community network for the management and protection of the species. These persons will have direct control over activities such as wool sales, and will also have responsibilities for determining status and trends in vicuña populations. The SVV will be composed of game guards who will be responsible for the protection and control of vicuña in each conservation unit, made up of local vicuña protection officers and Park Rangers who are the enforcement officers within protected areas such as National Parks. Protection and control efforts will also be supported by special units of the National Police. The military will also assist in patrols, inspections and the seizures of illegal products. Customs will assist in the control of the export and import of wool at the ports of entry, border posts and airports to assure that CITES requirements are fulfilled. The Secretariat for Natural Resources and the Environment (SNRNMA) will regulate and coordinate the activities and participants within the SVV.

The vicuña does not appear to be endangered by inadequate regulatory mechanisms in Bolivia. The species, however, should be considered threatened by this factor because many of the regulatory mechanisms are in early stages of implementation, and we are still unclear about the status of proposed regulations dealing with the management, protection, capture and shearing of vicuña, and the commercialization of vicuña products. The vicuña will remain threatened by this factor until appropriate conservation mechanisms are fully implemented and the populations fully recover. Through this proposed rule, the Service seeks information on the status of proposed regulations and the implementation of other regulatory mechanisms, such as SVV, within Bolivia.

Regulatory Mechanisms: Chile

The existing regulatory mechanisms in Chile are presently dedicated to the protection of vicuña. Chile has not yet authorized the capture of vicuñas to develop a vicuña wool industry and the only exports of raw wool have been to obtain analyses of the wool's physical properties. It is illegal to possess vicuña parts and products so no mechanisms have been developed for registering or identifying raw wool, or for establishing warehouses for storing wool (SAG 1997, pers. comm.).

Law No. 4.601 passed in 1929, modified by law No. 19.473 passed in 1996, indefinitely closed the hunting season for vicuña throughout the Republic of Chile. The hunting, capturing and selling of vicuña (and vicuña parts) is outlawed. Persons possessing, transporting or involved in commercial operations with vicuña products need to prove their actions are authorized by these laws. The Servicio Agricola y Ganadero (SAG) of the Ministry of Agriculture is the CITES Management Authority, and has a Department for the Protection of Renewable Natural Resources and a Wildlife Division. Authorized customs officers (uniformed police), accredited officials from SAG, and representatives of the National Forest Corporation provide protection to vicuñas within the National System of Protected Wild Areas.

Preliminary plans, should a vicuña wool industry become authorized, indicate that the responsible party would need to provide an application to SAG indicating, among other things, the likely number of animals to be captured and sheared, the expected yield of the wool harvest, the logistics of the capture and shearing operation, where and how the wool would be stored and its eventual destination. SAG, should they approve the application, would oversee the capture process, register the quantity of harvested wool, and seal the warehouse where the wool is stored. SAG would also provide the necessary export permits, after determining that the quantities for export correspond to quantities authorized and actually harvested. Preliminary plans also suggest that a mechanism would be established to deal with the production and sale of luxury handicrafts and knitted articles. That organization would be responsible for receiving the wool, registering and offering the wool products for sale, for recording the sale of registered craft items and providing an accounting of the sale of registered craft items (SAG 1997, pers. comm.).

Chile has succeeded in having certain vicuña populations in the Paranicota Province, Region of Tarapaca (specifically, the populations in the Caquena Management Zone and the Vicuña National Reserve) transferred from CITES Appendix I to Appendix II in 1987 (at COP6). Any future export of vicuña products would be limited to wool sheared from live animals in Appendix II populations and to cloth and items made from that cloth including luxury handicrafts, and knitted articles. The reverse side of cloth and cloth products would need to bear the logo adopted by countries signatory to the Vicuña Convention and the words "VICUÑA-CHILE-ARTESANIA." All specimens not meeting any of the above conditions would be deemed to be subject to the prohibition against primarily-commercial trade.

The vicuña is not considered to be endangered by inadequate regulatory mechanisms in Chile. However, as a vicuña wool industry could potentially be approved in Chile, the vicuña remains threatened by this factor until such time as regulatory mechanisms for harvest and commercialization are demonstrated to be adequate.

Regulatory Mechanisms: Peru

A complex regulatory mechanism exists for Peru and it controls commerce in vicuña wool products. The infrastructure promoting vicuña management includes the National Council of South American Camelids (CONACS) which is a public decentralized organization of the Ministry of Agriculture in charge of the promotion, standardization, and control of activities with the South American camelids. CONACS has offices in Lima and throughout the vicuña range, and is the proprietor of the trademarks "VICUÑA-PERU" and "VICUÑA-PERU-ARTESANIA." The Institute of Natural Resources (INRENA) is also a public decentralized organization of the Ministry of Agriculture, and is in control of all renewable natural resources in Peru, and is the CITES Management Authority for Peru. The National Society of the Vicuña (SNV) is a private organization which represents the 660 campesino communities and coordinates vicuña management within and between campesino communities ("Communal Committees of the Vicuña") and with CONACS at both regional and national levels (Hoces R. 1997, pers comm.).

Several national laws protect vicuña and regulate its management. Law 26496 is especially important as it promotes protection and provides penalties for the illegal hunting of vicuña, gives the custodianship of vicuña herds that occupy campesino community lands to those campesino communities and allows the campesinos to be responsible for the conservation, management and the utilization of the species. The law also establishes the Official Registry of the Vicuña which provides a record keeping process that controls and tracks volumes of wool from the time of vicuña shearing in the field to the time that fiber is sold as cloth or merchandise on the international market. Other laws recognize the Vicuña Convention and the CITES Convention.

Pertinent laws are implemented through the 660 "Communal Committees of the Vicuña" which form the basis for the National System of Conservation. There is a system of park rangers shared by groups of communities and these park rangers can access the National Ecological Police and Peruvian Army units to help control the illegal killing of vicuña. CONACS and INRENA authorize and control management activities, including vicuña capture; since 1996 they manage a limited captive breeding program where enclosures of approximately 1,000 ha ("Modules of Sustainable Use"), each with about 250 vicuña, are developed or are to be developed within individual campesino communities.

The shearing, collecting, processing and commercialization of vicuña wool from wild vicuñas or from groups contained within the permanent enclosures, is controlled by CONACS and INRENA. The processing and commercialization of the wool is done by a single company that obtained that right through a competitive bidding process at a supervised auction. A cooperative agreement exists between the SNV and the company winning the competitive bid, apparently to ensure that campesino communities will be correctly represented in the distribution of monies from the sale of vicuña wool and wool products. There is an authorized season for shearing and the act of shearing is supervised by personnel representing CONACS, SNV and INRENA. Pertinent information is gathered at the time of shearing and a report describing the shearing operation (numbers of animals, wool weights per animal, etc.) signed by representative of the Communal Committee and CONACS, becomes part of the record at the Official Registry of the Vicuña. A second source of legal wool is from vicuña that die from natural causes or are found or obtained by campesinos or park rangers, or from skins that are seized in successful anti-poaching operations. Such specimens, to become legal, must be declared to SNV and CONACS and entered into the vicuña registry. Legal wool is gathered and stored in private warehouses belonging to the campesino communities, registered in the vicuña registry, and is under the control of CONACS. Illegal wool is prevented from entering commerce because it is not registered with the vicuña registry, and consequently not included in the wool stores represented in the single legal auction. The vicuña registry records weights of wool sheared or collected, carded or cleaned, and these weights are used by CONACS and SNV throughout the processing and commercialization process to indicate whether final products likely only contain legal wool. The CITES Management Authority controls commerce by requiring records of wool weights and opinions from CONACS before any products (fiber, cloth or articles) can be legally either imported or exported from Peru.

The processing of vicuña fiber and the commercialization of vicuña products involves a joint venture "Association in Participation" between SNV and the consortium that won the auction for vicuña wool. The SNV provides the wool to the consortium which includes a Peruvian company that fabricates cloth from the vicuña fibers, which is then sent to an Italian manufacturing plant where luxury clothing items are produced. A second Italian firm then handles the promotion and marketing of the finished vicuña products (Hoces R. 1997, pers. comm.). CONACS supervises production to guarantee that all articles will contain 100 percent vicuña wool. This process is designed to maximize the financial returns from the vicuña fibers; the profits from the final sales are distributed, under the supervision of CONACS and INRENA, to the campesino participants. Raw vicuña wool currently sells for $500/kg of fiber and additionally a percentage of the final sale price on the completed product goes to the campesino communities.

The vicuña populations of Pampa Galeras National Reserve and Nuclear Zone, Pedregal, Oscconta and Sawacocha (Province of Lucanas), Sais Picotani (Province of Azangaro), Sais Tupac Amaru (Province of Junin), and Salinas Aguada Blanca National Reserve (Provinces of Arequipa and Cailloma) were transferred from CITES Appendix I to Appendix II in 1987 (at COP6). All remaining Peruvian vicuña populations were transferred to Appendix II in 1994 (COP9), effective February 16, 1995. All exports are limited to cloth fabricated from the 3,294 kg (7,260 lbs) of stored wool present in November 1994 or from the wool stores obtained from the recent authorized shearing of live animals or from dead animals listed in the vicuña registry, and items made from that cloth and to certain luxury handicrafts and knitted articles produced in Peru. The reverse side of cloth and cloth products must bear the logo adopted by countries signatory to the Vicuña Convention and the words "VICUÑA-PERU-ARTESANIA." This trademark will also occur on all luxury artisan products and knitted articles of vicuña wool. Peru also plans to add to the produced articles, a seal or identification tag with codes indicating the origin of the product, the assigned trademark or label and the CITES permit number. All specimens not meeting any of the above conditions will be subject to the prohibition against primarily commercial trade.

The vicuña is not considered to be endangered by inadequate regulatory mechanisms in Peru. The species is, however, considered to be threatened by this factor, and will continue to be threatened until appropriate conservation mechanisms are fully implemented and the populations fully recover.

E. Other Natural or Human-Made Factors Affecting Its Continued Existence

The great potential threat to the vicuña is that pelts can be easily obtained from poached animals and that the wool industry may actually prefer the longer fibers that can be obtained by soaking and pulling hairs from pelts, rather than the clipped hairs from legal fleeces (Canedi 1997, pers. comm). The vulnerability of the vicuña to political instability is well documented. For example, vicuña populations in Peru were estimated at about 60,000 in 1980 and 1981 but were overexploited and in 1982 populations were reduced to about 25,000. A slow recovery was observed until 1988 when populations were again estimated at about 60,000. Vicuña populations were again reduced to low levels from 1989 to 1993 when vicuña wool from poached animals was used to help finance guerilla activities in some countries.

The vicuña represents one of the most significant economic resources available in many Andean highlands that have limited human populations with limited economic resources at their disposal. Indigenous people fully realize that a poached vicuña can be used once but that the managed, live-sheared vicuña can be used repeatedly (Wheeler and Hoces R. 1997). Assigning the responsibility of vicuña management to campesino ranchers and/or campesino communities and granting those people the opportunity to legally realize economic gains from their management and protection efforts represents a significant bio-political decision. It is also significant that governments in four range countries have cooperated in the development of a vicuña wool industry and that scarce resources have been

devoted to the management of this species. Vicuña management, as described herein, is one of the better examples of the economic gains to be realized from the sustainable use of a biological resource.

Distinct Vertebrate Population Segment

The definition of "species" in section 3(16) of the Act includes "any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." Distinct vertebrate population segments for purposes of listing under the Act are defined in the Service's February 7, 1996, Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722). For a population to be listed under the Act as a distinct vertebrate population segment, three elements are considered: (1) The discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing (i.e., is the population segment, when treated as if it were a species, endangered or threatened?). International borders may be used to delineate discrete population segments where there are significant differences in: (1) The control of exploitation; (2) management of habitat; (3) conservation status; or (4) regulatory mechanisms on each side of the border (61 FR 4722). Discrete population segments can also be defined by marked physical, physiological, ecological, or behavioral separation from other populations of the same taxon.

We recognize the vicuña population of Ecuador as a distinct vertebrate population segment for purposes of listing under the ESA. The vicuña population of Ecuador is geographically isolated and separate from other vicuña in Argentina, Bolivia, Chile, and Peru. Historically, the vicuña was eliminated from Ecuador. A small, disjunct population has been recently reintroduced to Ecuador. The population was established from 100 animals exported from Bolivia in 1993. This was accomplished within the multilateral frameworks of both the Conveño para la Conservación y Manejo de la Vicuña (Convention for the Conservation and Management of the Vicuña, or the Vicuña Convention) and the CITES Convention. It should be noted that Ecuador is also a Party to the Vicuña Convention. Ecuador's population remains listed in CITES Appendix I, and there is no plan to commercially utilize the species in the near future. Furthermore, the Parties to the Vicuña Convention view this as a separate population, worthy of special recovery efforts. Although the countries of the region that are Parties to the Vicuña Convention view this as an "experimental" population, that should not be seen in the domestic U.S. context of experimental populations under the Act, where criteria and definitions differ. For these reasons, the Ecuadoran population of vicuña satisfies the discreteness and significance criteria of the DVPS Policy, and, therefore, merits treatment as a distinct population segment under the ESA.

In contrast to the rather strict requirements for listing entities (species, subspecies, or distinct vertebrate population segments) under the ESA, CITES has retained a degree of flexibility in the listing process through the use of annotations. There is no specific requirement that populations be delimited by national borders or marked biological differences. CITES Article I defines a species as "any species, subspecies, or geographically separate population thereof", and different populations of a species can be listed in different CITES Appendices. Thus, it has been possible to transfer sub-national populations of vicuña in Argentina, Bolivia, and Chile from Appendix I to Appendix II. This accounts for the lack of perfect symmetry between populations proposed for threatened status and those currently listed in Appendix II of CITES.

Summary of Findings

The Service finds that the vicuña is a highly vulnerable species whose populations are generally increasing over a large area of very specific habitat—the high Andean tablelands of Argentina, Bolivia, Chile and Peru. The current status of the vicuña and its future potential seems directly attributable to recent bio-political decisions made in the range countries to turn over the custodianship of the species to the native people sharing these landscapes. Laws, decrees and infrastructures have been or are being developed to help the campesinos manage and protect the species. In return the campesinos are or are likely to receive critical financial benefits from that management that will benefit both individuals and their communities. The management and protection accorded to the vicuñas, by campesinos in cooperation with governmental entities, provides the best opportunity for the vicuña to survive as a species and as a very important part of the Puna and Altoandina ecosystems.

Specifically, we find that the vicuña is threatened by the (1) present or threatened destruction, modification, or curtailment of its habitat or range, (2) previous or current overutilization, and (3) the possibility of inadequately controlled illegal harvest pressures including poaching, in Argentina, Bolivia, Chile, and Peru. A reclassification of the vicuña from endangered to threatened under the Act will, with the attendant special rule, allow carefully regulated commerce of vicuña products into the United States. Funds generated by opening the United States market will help provide the resources necessary to further manage the species.

In response to the petition submitted by the International Vicuña Consortium, we find that: (1) Reclassification of the vicuña from endangered to threatened is warranted for all range countries except Ecuador; and (2) that a special rule is warranted for all Appendix II populations, with the exception of the Appendix II semi-captive populations of Catamarca, Jujuy, La Rioja, Salta, and San Juan Provinces in Argentina, which are specifically excluded until such time as their conservation benefit for wild vicuña is demonstrated adequately. The present publication provides a 12-month finding on that petition and includes a proposed special rule.

Description of the Proposed Special Rule

The intent of the proposed special rule is to enhance the conservation of the vicuña through support for properly designed and implemented programs for vicuña conservation throughout their native range. The proposed special rule is intended to support the conservation efforts of the four range states of Argentina, Bolivia, Chile, and Peru, by acknowledging and deferring to certain of their management programs that allow utilization of vicuña wool from wild, live-sheared animals, with benefits accruing to indigenous communities.

The proposed special rule clarifies that only properly identified vicuña products can be imported into the United States. The vicuña products that can be imported are only those items of either raw (unprocessed) vicuña wool or cloth, or items made from that wool, including luxury handicrafts and knitted articles, that are properly identified, and have accompanying valid, legal CITES Appendix II export permits or re-export certificates. Under the proposed special rule, an endangered or threatened species permit for individual shipments would not be required under 50 CFR part 17. To be imported, vicuña products must originate in populations that are listed both as threatened under the Act and in Appendix II of CITES, with the exception that Appendix II semi-captive populations in Catamarca, Jujuy, La Rioja, Salta, and San Juan Provinces in Argentina are excluded from the proposed special rule until such time as their conservation benefit for wild vicuña populations is demonstrated adequately. If adequate information is presented during the public comment period, these populations may be included under the final special rule.

We are aware that there have been poaching and illegal trade problems with this highly valuable species in the past, and any loss of control would seriously undermine the conservation programs of these countries, thereby potentially jeopardizing vicuña populations. Therefore, we propose not to allow the import of vicuña products from threatened and approved Appendix II populations if the countries of origin or the countries of manufacture or re-export have been determined by the CITES Conference of the Parties or the CITES Standing Committee to be not effectively implementing the Convention. Specifically, the proposed special rule would prohibit importation from countries of export or re-export that have either failed to designate a Management Authority or Scientific Authority, or have been identified by the Conference of the Parties to the Convention, the Convention's Standing Committee or in a Notification from the Secretariat as a country from which Parties should not accept CITES permits.

Commerce with the United States in vicuña products, if the proposed special rule is adopted as final at the conclusion of the regulatory process, will only be allowed with countries that have both designated CITES Management and Scientific Authorities, and that are not subject to a Schedule III Notice of Information for all wildlife or all CITES-listed species. In the case where vicuña products are exported to a second country, for manufacturing purposes, and the finished products are re-exported to the United States, then neither the country of origin nor the country of re-export can be subject to Schedule III Notice of Information based on the criteria described in the special rule if imports are to be allowed. The U.S. Management Authority will provide on request the list of those countries subject to a Schedule III Notice of Information to those manufacturers in the country of re-export and to importers so that they may be advised of restrictions on vicuña products. At present, no countries are subject to a Schedule III Notice of Information for all wildlife or all CITES-listed species.

For vicuña and vicuña products, there is no personal effects exemption in the proposed special rule. That is, items purchased by travelers overseas or personal items owned by people moving to the United States will require appropriate CITES export documents (permits or re-export certificates) to be imported legally into the United States. This is based on analysis of the annotation for the vicuña in the official CITES Secretariat list of the CITES Appendices, and dialogue with the CITES Secretariat in Geneva. The vicuña annotations in the CITES Appendices are unique, and require that only certain products be exported from the range countries, under very strict conditions. For Peru, for example, the only products that can be exported (even non-commercially) are those manufactured from the stockpile held at the time of the ninth meeting of the Conference of the Parties, in November 1994, and they all require CITES Appendix II export permits. In Argentina, for example, articles bought by a foreign tourist at a government authorized store can be exported as personal accompanying baggage only after a CITES export permit has been obtained. In countries of re-export as well, very strict controls are required. The items manufactured from vicuña wool are very expensive luxury articles, and illegal trade poses a serious risk to the species and the conservation programs of the range states. Furthermore, all range countries require CITES permits for export of vicuña products, and do not recognize any personal effects exemption. It would be inappropriate and unfair to require export documents from range countries but not from countries of manufacture (re-export). Therefore, in this proposal, tourist souvenirs or other personal items require a CITES export document from the country of export or re-export in order to be legally imported into the United States.

All products must comply with all product annotations as described in the CITES Secretariat's official annotated list of the CITES Appendices. If those product annotations change at a future meeting of the Conference of the Parties (COP) to CITES, the Service will have to re-evaluate its 4(d) finding. The criteria for determining if a vicuña product is properly identified are drawn from the CITES Appendices, and the product annotations for vicuña contained therein. For cloth and cloth products, the only products that can be imported are those where the reverse side of cloth and cloth products bear the logo adopted by countries signatory to the Conveño para la Conservación y Manejo de la Vicuña (Vicuña Convention), and the words "VICUÑA—(Country of Origin)—ARTESANIA" (country of origin is the name of the original exporting country where the vicuña wool in the products originated, either Argentina, Bolivia, Chile, or Peru). For finished vicuña products (including luxury handicrafts and knitted articles) and any bulk shipments of raw wool, the product or shipment must have a seal or identification tag with codes describing the origin of the vicuña product, the trademark or label ("VICUÑA—(Country of Origin)—ARTESANIA") and the CITES export permit number. This proposed special rule, and these criteria for properly identified vicuña products, are derived from the CITES Appendices themselves. The product annotations were proposed by the range countries and adopted by the CITES Conference of the Parties. Therefore, we are proposing to align U.S. importation practices with those approved by the CITES Parties, in order to facilitate effective conservation of the vicuña in range countries. In our judgment the protective regulations set out in the proposed rule contain all of the measures that are necessary and advisable to provide for the conservation of the vicuña in Argentina, Bolivia, Chile, and Peru.

Public Comments Solicited

We intend that any action resulting from this proposal be as effective as possible. Therefore, we are soliciting any comments or suggestions from the public, other concerned governmental agencies, the scientific community, the trade industry, or any other interested party concerning any aspect of this proposal. We are particularly seeking comments concerning biological or commercial trade impacts on any vicuña population, or other relevant data concerning any threat (or lack thereof) to the wild populations of vicuña in South America.

Final action on the proposed reclassification of the vicuña, and the promulgation of the special rule will take into consideration the comments and any additional information we receive. Such communications may lead to adoption of final regulations that differ from those in the proposed rule.

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of

1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act of 1995

This rule does not contain any new information collection requirements under the Paperwork Reduction Act of 1995. The existing OMB information collection control number is 1018–0012. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. This rule does not alter that information collection requirement.

Required Determinations

We invite comments on the anticipated direct and indirect costs and benefits or cost savings associated with this proposed special rule, for vicuña. In particular, we are interested in obtaining information on any significant economic impact of the proposed special rule on small public and private entities. Once we have reviewed the available information, we will determine whether we need to prepare an initial regulatory flexibility analysis for the special rule. We will make any such analysis or determination available for public review. Then, we will revise, as appropriate, and incorporate the information in the final rule preamble and in the record of compliance (ROC) certifying that the special rule complies with the various applicable statutory, Executive Order, and Departmental Manual requirements. Under the criteria in Executive Order 12866, the proposed special rule is not a significant regulatory action subject to review by the Office of Management and Budget.

References Cited

All personal communications mentioned below were received by Dr. Henry L. Short, Amherst, Massachusetts, a contractor working for the National Fish and Wildlife Foundation.

Canedi, A. A. 1997. pers. comm. Argentina responses to questions. August 25, 1997.

Canedi, A. A. and P. S. Pasini. 1996. Repoblamiento y bioecologia de la vicuña silvestre en la Provincia de Jujuy, Argentina. pp. 7–24 *in* Animal Genetic Resources Information. United Nations Environment Programme. Food and Agriculture Organization of the United Nations. Rome.

CITES. 1997a. Proposal: Transfer of the vicuña (*Vicugna vicugna*) population in the province of Jujuy (21 47′S–24 38′S; 64 80′W–67 19′W) from Appendix I to Appendix II and of the populations in semi-captivity in the provinces of Jujuy, Salta, Catamarca, La Rioja, and San Juan, with the sole purpose of permitting international trade in wool fibre from live vicuña, in cloth and manufactured products, under the trademark "VICUNA–ARGENTINA." Republic of Argentina.

CITES. 1997b. Proposal: Transfer of the populations (*Vicugna vicugna*) of the Conservation Units: Mauri-Desaguadero (17 30′S–18 30′S and 68 30′W–69 30′W), Ulla Ulla (14 45′S–15 25″S and 69 00′W–69 20′W) and Lipez-Chichas (21 30′S–23 00′S and 66 20′W–68 10″W) from CITES Appendix I to Appendix II for the sole purpose of allowing international trade of fabrics made with fiber from the shearing of live animals under the trademark "VICUNA–BOLIVIA." Republic of Bolivia.

CNVB. 1996. Censo Nacional de la Vicuña en Bolivia: Gestion 1996. Dirección Nacional de Conservación de la Biodiversidad.

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Nowak, R. N. 1991. Vicuña. pp. 1353–1357 *in* Walker's Mammals of the World. Fifth edition. Volume II. The Johns Hopkins University Press. Baltimore and London.

SAG (Servicio Agricola y Ganadero). 1997. pers. comm. Chile responses to questions. August 22, 1997.

Wheeler, J.C., and D. Hoces R. 1997. Community participation, sustainable use, and vicuña conservation in Peru. Mountain Research and Development 17(3): 283–287.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulations Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by revising the entry for the vicuña, under "Mammals", on the list of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	*
Vicuña	Vicugna vicugna	Argentina, Bolivia, Chile, Ecuador, Peru.	Entire, except Ecuador.	T	3, ___	NA	17.40 (k)
Do	.....do	.....do	Ecuador	E	3, ___	NA	NA
*	*	*	*	*	*	*	*

3. Paragraph (k) is added to § 17.40 and reads as follows:

§ 17.40 Special rules—mammals.

* * * * *

(k) *Vicuña (Vicugna vicugna)*—(1) *Prohibitions.* All provisions of § 17.31 (a) and (b) and § 17.32 of this part shall apply to vicuña and vicuña products from both populations listed in Appendix I of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and the Appendix II semi-captive populations of Catamarca, Jujuy, La Rioja, Salta, and San Juan Provinces in Argentina. Except as provided in paragraph (k)(2) of this section, it is unlawful for any person to commit, attempt to commit, solicit to commit, or cause to be committed any acts described in paragraphs (k)(1)(i)–(ii) of this section with vicuña from all other populations listed in Appendix II of CITES:

(i) Import, export, and re-export.

(ii) Sell or offer for sale, deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of a commercial activity.

(2) *Exceptions.* The import, export, or re-export of, or interstate or foreign commerce in vicuña products, consisting of either raw wool or items and cloth made, or partially made, from vicuña wool, may be allowed without a threatened species permit issued pursuant to 50 CFR 17.32 when the provisions in parts 13, 14, and 23 and the applicable paragraphs set out below have been met:

(i) The vicuña product must comply with all CITES product annotations as given in the CITES Secretariat's official list of the CITES Appendices and found at 50 CFR 23.23, and be identified as follows:

(A) *Cloth and cloth products:* The reverse side of cloth and cloth products must bear the logo adopted by countries signatory to the "Conveño para la Conservación y Manejo de la Vicuña", and the words "VICUÑA-(Country of Origin)-ARTESANIA", where country of origin is the name of the original exporting country where the vicuña wool in the products originated.

(B) *Finished vicuña products (including luxury handicrafts and knitted articles) and any bulk shipments of raw wool:* The product or shipment must have a seal or identification tag with codes describing the origin of the vicuña product, the trademark or label ("VICUÑA-(Country of Origin)-ARTESANIA") and the CITES export permit number, where country of origin is the name of the original exporting country where the vicuña wool in the products originated.

(ii) The accompanying CITES permit or certificate must contain the following information:

(A) The country of origin, its export permit number, and date of issuance.

(B) If re-export, the country of re-export, its certificate number, and date of issuance.

(C) If applicable, the country of last re-export, its certificate number, and date of issuance.

(iii) At the time of import, for each shipment covered by this exception, the country of origin and each country of re-export involved in the trade of a particular shipment must not be subject to a Schedule III Notice of Information pertaining to all wildlife or to all CITES-listed wildlife that may prohibit or restrict imports. A listing of all countries that are subject to such a Schedule III Notice of Information will be available by writing: The Office of Management Authority, ARLSQ Room 700, 4401 N. Fairfax Drive, U.S. Fish and Wildlife Service, Arlington, Virginia, 22203.

(3) *Notice of Information.* Except in rare cases involving extenuating circumstances that do not adversely affect the conservation of the species, the Service will issue a Schedule III Notice of Information that identifies a restriction on trade in specimens of vicuña addressed in this paragraph (k) if any of the following criteria are met:

(i) The country is listed in a Notification to the Parties by the CITES Secretariat as lacking both designated Management and Scientific Authorities that issue CITES documents or their equivalent.

(ii) The country is identified in any action adopted by the Conference of the Parties to the Convention, the Convention's Standing Committee, or in a Notification issued by the CITES Secretariat, whereby Parties are asked to not accept shipments of specimens of any CITES-listed species from the country in question.

Dated: August 23, 1999.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 99–23333 Filed 9–7–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 083099A]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 3-day public meeting on September 21, 22, and 23, 1999, to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, September 21, 1999, at 9:30 a.m., and Wednesday and Thursday, September 22 and 23, at 8:30 a.m.

ADDRESSES: The meeting will be held at the Seaport Inn Conference Center, 110 Middle Street, Fairhaven, MA 02719; telephone (508) 997–1281. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036; telephone: (781) 231–0422.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council, (781) 231–0422.

SUPPLEMENTARY INFORMATION:

Tuesday, September 21, 1999

After introductions, the meeting will begin with reports on recent activities from the Council Chairman, Executive Director, the Administrator, Northeast Region, NMFS, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, and representatives of the Coast Guard and the Atlantic States Marine Fisheries Commission. Following reports, the Chairman of the Groundfish Committee will recommend approval of final action on Framework Adjustment 31 to the Northeast Multispecies Fishery Management Plan (FMP). The framework includes mid-season adjustments to the Gulf of Maine (GOM) cod fishery that also could carry forward to the 2000–2001 fishing year and modification of the Georges Bank cod trip limit adjustment mechanism. After a noon break, the Groundfish Committee and Council will continue their discussions until the meeting is adjourned for the day.

Wednesday, September 22, 1999

The Scallop Plan Development Team Chairman will make a presentation on the Sea Scallop Stock Assessment and Fishery Evaluation (SAFE) Report. The report will include an update of the 1998 stock assessment with 1999 fishing year data and projections, as well as recommended management options. The Council's Scientific and Statistical Committee will then provide its review of the assessment and analyses contained in the SAFE Report. After a noon break, the Sea Scallop Committee will recommend management alternatives and approval of initial action on Framework Adjustment 12 to the Atlantic Sea Scallop FMP (the annual framework adjustment), based on the information in the SAFE report and recommendations from industry advisors. Framework Adjustment 12 will specify scallop management measures for the 2000 fishing year (March 2000 through February 2001). The day will conclude with a review and approval of a scallop research proposal to be funded through the 1–percent scallop total allowable catch set-aside established for the Georges Bank Sea Scallop Exemption Program.

Thursday, September 23, 1999

The Whiting Committee will approve initial action on a framework adjustment to the Northeast Multispecies FMP to address unresolved small mesh multispecies management issues. Measures may include options for a mesh size/possession limit call-in enrollment system and options for the use of a net strengthener with 2.5–inch (6.4–cm) mesh size. The committee also will review its discussions about limited entry in the whiting fishery. There will be general discussion of issues to be addressed in an upcoming amendment to the Northeast Multispecies FMP, which will remove whiting, red hake, offshore hake, and ocean pout from the Multispecies FMP and establish a separate Small Mesh Species FMP. The Capacity Committee will ask the Council for preliminary identification of issues and options for future consideration. Following a noon break, the Habitat Committee will report on ongoing issues. The meeting will conclude after the Council addresses any other outstanding business.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice.

Documents pertaining to framework adjustment actions are available for public review 7 days prior to a final vote by the Council. Copies of the documents may be obtained from the Council (see **ADDRESSES**).

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: September 1, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–23302 Filed 9–2–99; 3:25 pm]

BILLING CODE 3510–22–F

Notices

Federal Register

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Commission on 21st Century Production Agriculture

ACTION: Notice of public listening sessions.

SUMMARY: The U.S. Department of Agriculture (USDA) has established the Commission on 21st Century Production Agriculture. In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (FACA), notice is hereby given of three public listening sessions in September of the Commission on 21st Century Production Agriculture. The purpose of these sessions is to gather public input on the future role of the Federal Government in support of production agriculture. These sessions will be open to the public.

Place, Date, and Time of Meetings

These sessions will be held on September 21, 1999, at the Wyndham Hotel Northwest Chicago, 400 Park Boulevard, Itasca, Illinois 60143 from 9:00 CDT–5:00 CDT; September 23, 1999, at the Montgomery Civic Center, 300 Bibb Street, Montgomery, Alabama 36104, from 9:00 CDT–5:00 CDT; and September 25, 1999, at the Lackawanna Junior College Auditorium, 501 Vine Street, Scranton, Pennsylvania 18509, from 9:00 EDT–5:00 EDT.

FOR FURTHER INFORMATION CONTACT:

Timothy M. Peters (202–720–4860), Assistant Director, Commission on 21st Century Production Agriculture, Room 3702 South Building, 1400 Independence Avenue, SW, Washington, DC 20250–0524.

Dated: September 1, 1999.

Keith J. Collins,

Chief Economist.

[FR Doc. 99–23308 Filed 9–7–99; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Oregon Province Interagency Executive Committee (PIEC) Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Oregon PIEC Advisory Committee will meet on September 22, 1999 at Prospect Ranger Station on Highway 62 at Prospect, Oregon. The meeting will begin at 9:00 a.m. and continue until 4:30 p.m. Agenda items to be covered include: (1) Update on current litigation affecting Bureau of Land Management and Forest Service; (2) Port Orford Cedar root rot management; (3) Management proposal for Highway 62 corridor; (4) Coyote Creek Experimental Forest; (5) Riparian Reserve width adjustment; and (6) Public comment.

FOR FURTHER INFORMATION CONTACT:

Direct questions regarding this meeting to Chuck Anderson, Province Advisory Committee Coordinator, USDA, Forest Service, Rogue River National Forest, 333 W. 8th Street, Medford, Oregon 97501, phone (541) 858–2322.

Dated: August 31, 1999.

Charles J. Anderson,

Acting Designated Federal Official.

[FR Doc. 99–23235 Filed 9–6–99; 8:45 am]

BILLING CODE 3410–11–M

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

In connection with its investigation into the cause of the explosion and fire at the TOSCO Refining Company's Avon Refinery in Contra Costa County, California, on February 23, 1999, the United States Chemical Safety and Hazard Investigation Board announces that it will convene a Board of Inquiry beginning at 9:00 a.m. local time on September 15, 1999, at the Contra Costa County Board of Supervisors Chambers, County Administration Building, 651 Pine Street, Martinez, California. This meeting will be open to the public. For more information, please contact the Chemical Safety and Hazard Investigation Board's Office of External Relations, (202) 261–7600, or visit our web site at *www.csb.gov.*

Phillip Cogan,

Special Assistant for External Relations.

[FR Doc. 99–23365 Filed 9–2–99; 4:48 pm]

BILLING CODE 6350–01–P

UNITED STATES COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, September 17, 1999, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of July 9, 1999 Meeting
III. Announcements
IV. Staff Director's Report
V. Executive Session—Security Procedures
VI. Schools and Religion Project
VII. State Advisory Committee Report
- Civil Rights Enforcement Efforts in North Dakota (North Dakota)

VIII. State Advisory Committee Appointments for Louisiana
IX. Future Agenda Items

FOR FURTHER INFORMATION CONTACT:

David Aronson, Press and Communications (202) 376–8312.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 99–23424 Filed 9–3–99; 2:32 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Census Bureau.

Title: 2000–2002 American Community Survey.

Form Number(s): ACS–1, ACS–1(GQ), ACS–3(GQ), ACS–290.

Agency Approval Number: 0607–0810.

Type of Request: Revision of a currently approved collection.

Burden: 603,550 hours.

Number of Respondents: 2,945,400.

Avg Hours Per Response: 37 minutes.

Needs and Uses: The Census Bureau is developing a methodology to collect and update every year demographic, social, economic, and housing data that is essentially the same as the "long-form" data that the Census Bureau traditionally has collected once a decade as part of the decennial census. This methodology is called continuous measurement (CM). Since the Census Bureau collects the long-form data only once every ten years, the data become out of date over the course of the decade. Also, there is an increasing need for data describing lower geographic detail. CM will provide current data throughout the decade for small areas and small subpopulations.

The American Community Survey (ACS) is the data collection vehicle for CM. The Census Bureau began a test and demonstration of the capabilities of the survey collection and processing system in 1995. Presently, the ACS is conducted in 36 counties. In November of 1999, as part of the decennial program to make a transition from the Census 2000 long form to collecting long-form data throughout the decade, we will begin ACS data collection in 1,203 counties. This data collection will allow for comparison of estimates from Census 2000 with estimates from the ACS for all states, large cities, and population subgroups, and will help data users and the Census Bureau understand the differences between estimates from the ACS and the Census 2000 long form. Current plans are to put the ACS fully in place in 2003.

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 USC, Section 182.

OMB Desk Officer: Linda Hutton, (202) 395–7858.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Linda Hutton, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: September 1, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–23295 Filed 9–7–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–701]

Notice of Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke Order: Brass Sheet and Strip From the Netherlands

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on brass sheet and strip from the Netherlands. This review covers imports of brass sheet and strip from one producer/exporter during the period of review (POR), August 1, 1997 through July 31, 1998.

We preliminarily determine that sales of the subject merchandise have not been made below normal value. If these preliminary results are adopted in the final results, we will instruct the Customs Service not to assess antidumping duties on the subject merchandise exported by this company. If these preliminary results are adopted in our final results of this administrative review, we will revoke the antidumping duty order, based on three consecutive review periods of sales at not less than normal value by Outokumpu Copper Strip B.V., the sole producer and exporter of subject merchandise from the Netherlands (*see* 19 CFR 351.222(b)(i)). *See Intent to Revoke* section of this notice.

EFFECTIVE DATE: September 8, 1999.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Jarrod Goldfeder, Office of AD/CVD Enforcement, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4126r (202) 482–2305, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act), by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to the regulations codified at 19 CFR Part 351 (1999).

Background

On August 12, 1988, the Department published in the **Federal Register** the antidumping duty order on brass sheet and strip from the Netherlands (53 FR 30455). On August 11, 1998, we published in the **Federal Register** the notice of "Opportunity to Request an Administrative Review" of this order, for the period August 1, 1997 through July 31, 1998 (63 FR 42821). On August 31, 1998, in accordance with 19 CFR 351.213(b), Outokumpu Copper Strip B.V. (OBV), the sole producer/exporter requested an administrative review of its exports of the subject merchandise to the United States for the POR August 1, 1997 through July 31, 1998. In addition, OBV requested that the Department revoke the antidumping duty order against brass sheet and strip from the Netherlands, pursuant to 19 CFR 351.222(b), based on the absence of dumping and the fact that OBV is not likely to sell the subject merchandise at less than normal value in the future. On September 23, 1998, in accordance with 19 CFR 351.221, the Department initiated this administrative review (*see Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 63 FR 51893 (September 29, 1998)).

On October 2, 1998, the Department issued an antidumping questionnaire [1] to OBV. After several extensions, OBV submitted its response to sections A, B, and C in October and November 1998. The Section D questionnaire response was received in December 1998. The Department issued and received responses to Sections A, B, and C supplemental questionnaires in January 1999. On February 5, 1999, the Department extended the time limit for completion of the preliminary results of this administrative review by 120 days, or until August 31, 1999. See Brass Sheet and Strip from the Netherlands: Notice of Extension of Time Limits for the Sixth Antidumping Duty Administrative Review, 64 FR 5766. In April 1999, the Department issued a Section D supplemental questionnaire. The response to the supplemental cost questionnaire was received by the Department in May 1999.

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under review that it sells, and the sales of the merchandise in all of its markets. Sections B and C of the questionnaire request comparison market sales listings and U.S. sales listings, respectively. Section D requests additional information about the cost of production of the foreign like product and constructed value of the merchandise under review.

Scope of Review

Imports covered by this review are brass sheet and strip, other than leaded and tin brass sheet and strip, from the Netherlands. The chemical composition of the products under review is currently defined in the Copper Development Association (CDA) 200 Series or the Unified Numbering System (UNS) C2000 series. This review does not cover products the chemical compositions of which are defined by other CDA or UNS series. The physical dimensions of the products covered by this review are brass sheet and strip of solid rectangular cross section over 0.006 inch (0.15 millimeter) through 0.188 inch (4.8 millimeters) in gauge, regardless of width. Included in the scope are coiled, wound-on-reels (traverse wound), and cut-to-length products. The merchandise under investigation is currently classifiable under item 7409.21.00 and 7409.29.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

Verification

As provided in section 782(i) of the Act, the Department verified sales and cost information provided by OBV. The cost verification was conducted from May 31 to June 6, 1999 and the sales verification was conducted from July 12 to July 16, 1999. The Department used standard verification procedures, including on-site inspection of the manufacturer's facilities and examination of relevant sales and financial records. Verification results are outlined in the verification reports placed in the case file.

Product Comparisons

In accordance with section 771(16) of the Act, the Department first attempted to match contemporaneous sales of products sold in the U.S. and home markets that were identical with respect to the following characteristics: (1) type (alloy); (2) gauge (thickness); (3) width; (4) temper; (5) coating; and (6) packed form. Where there were no sales of identical merchandise in the home market to compare with U.S. sales, we compared U.S. sales with the most similar product based on the characteristics listed above, in descending order of priority.

For purposes of the preliminary results, we have used differences in merchandise adjustments based on the difference in the variable cost of manufacturing between each U.S. model and its most similar home market model.

Date of Sale

During the POR, OBV reported making sales in the home market pursuant to frame agreements, which are non-binding arrangements with customers containing estimates of the types and quantities of merchandise the customer expects to order over a certain period of time. *See* Response to Section A of the Department's Questionnaire, dated October 23, 1998, at A–16. In addition, although the frame agreements contain a fabrication price, which is the price charged by companies such as OBV to transform raw materials into finished brass sheet and strip, such agreements do not contain the price OBV charges for the necessary raw materials (*i.e.*, the "metal price"). As such, the quantity to be purchased and the total price to be paid by the customer are not established in the frame agreements.

In the immediately preceding review, the Department used the invoice date as the date of sale rather than the frame agreement date because we found in that review that the invoice date was the first date on which all material terms of sale (*i.e.*, quantity, metal price, and fabrication price) were established. *See Brass Sheet and Strip from the Netherlands: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 63 FR 25821, 25822 (May 11, 1998); *see also Brass Sheet and Strip from the Netherlands: Final Results of Antidumping Duty Administrative Review*, 63 FR 49544 (September 16, 1998) (*Final Results 96/97*). The record in this review, including our findings at the sales verification of OBV's submitted data, supports the same conclusion. Therefore, in accordance with 19 CFR 351.401(i) and Department practice, we have preliminarily determined that the invoice date is the appropriate date of sale for OBV.

Comparisons to Normal Value

To determine whether OBV's sales of brass sheet and strip were made to the United States at less than normal value, the Department compared the export price (EP) to the normal value (NV), as described in the "Export Price" and "Normal Value" sections of this notice. In accordance with section 771A(d)(2) of the Act, the Department calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Export Price

For the price to the United States, we used EP in accordance with section 772(a) of the Act, because the subject merchandise was sold to an unaffiliated U.S. purchaser prior to the date of importation and CEP methodology was not otherwise warranted.

We calculated EP based on the packed, delivered prices to unaffiliated purchasers in the United States. In accordance with section 772(c)(2) of the Act, where appropriate, we deducted from the starting price international freight expense, marine insurance, U.S. brokerage and handling expenses, and U.S. Customs duties.

We made corrections to the U.S. packing costs and recalculated U.S. credit expenses based on our verification findings. *See* Sales Verification Report, dated August 31, 1999 (Sales Verification Report). In addition, per the Department's instructions, OBV reported a transaction to the United States which the company characterized as a sample sale to a non-U.S. customer. Based on the evidence on the record of this review, including our findings at verification, we preliminarily determine that this transaction constitutes a sample sale to a non-U.S. customer and, therefore, have removed this sale from our calculations. *See* Sales Verification Report.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared OBV's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Pursuant to sections 773(a)(1)(B) and (C) of the Act, since OBV's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable pursuant to section 773(a) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price at which the foreign like products were first sold in the home market, in the usual commercial quantities and in the ordinary course of trade.

Where appropriate, the Department deducted early-payment discounts and

rebates. We also deducted inland freight expense (plant-to-customer), inland insurance, and packing expense from the home market price in accordance with section 773(a)(6)(B) of the Act. We used the revised packing expenses provided to us at verification. We made adjustments, where appropriate, for differences in credit expenses between the U.S. and home market sales in accordance with section 773(a)(6)(C)(iii) of the Act.

We increased normal value by U.S. packing expenses in accordance with section 773(a)(6)(A) of the Act. To the extent there were comparisons of U.S. merchandise to home market merchandise that was not identical but similar, the Department made adjustments to NV for differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act.

Cost of Production Analysis

Because we disregarded sales that failed the cost test in the most recently completed review, we had reasonable grounds to believe or suspect that sales of the foreign like product under consideration for determining NV in this review may have been made at prices below the cost of production (COP), as provided in section 773(b)(2)(A)(ii) of the Act. *See Final Results 96/97*. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by OBV.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the respondent's cost of materials and fabrication employed in producing the foreign like product, plus the costs for selling, general, and administrative expenses (SG&A), including interest expense, and packing costs.

We relied on the home market sales and COP information that OBV provided in its questionnaire responses, except as follows:

1. Use of Quarterly Cost Data

OBV calculated and reported quarterly per-unit manufacturing costs because of the significant and consistent decline in metal prices (*i.e.*, copper and zinc) throughout the POR. On August 11, 1999, however, OBV requested that the Department calculate weighted-average costs on a monthly basis for use in the sales-below-cost test. According to OBV, in this case the Department should deviate from its preferred method of calculating a single weighted-average POR cost in order to prevent distortions in the margin calculations that would result from the metal price fluctuations, since these metal inputs account for approximately 70 percent of the cost of manufacturing brass sheet and strip.

Our normal practice for a respondent in a country that is not experiencing high inflation is to calculate a single weighted-average cost for the entire period of review except in unusual cases where this preferred method would not yield an appropriate comparison in the margin calculation. *See, e.g., Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils from the Republic of Korea;* 64 FR 30664, 30676 (June 8, 1999) (concluding that weighted-average costs for two periods were permissible where major declines in currency valuations distorted the margin calculations); *Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan,* 63 FR 8909, 8925 (February 23, 1998) (calculating quarterly weighted-average costs due to a significant and consistent price and cost decline in the market); *Final Determination of Sales at Less than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea;* 58 FR 15467, 15476 (March 23, 1993) (determining that the Department may use quarterly weighted-average costs where there exists a consistent downward trend in both U.S. and home market prices during the period); *Final Determination of Sales at Less than Fair Value: Erasable Programable Read Only Memories from Japan;* 51 FR 39680, 39682 (October 30, 1986) (finding that significant changes in the COP during a short period of time due to technological advancements and changes in production process justified the use of quarterly weighted-average costs).

We have reviewed the information on the record of this case and note that both OBV's sales prices for the subject merchandise and the cost of metal used in the manufacture of this merchandise correspondingly and consistently declined on a quarterly basis throughout the POR. Since the metal costs represent a significant percentage of the total cost of producing brass sheet and strip and the cost of the metal dropped consistently throughout the POR, computing a single POR weighted average cost would distort the results of the cost test. In order to avoid this distortion, we have preliminarily relied upon the submitted quarterly weighted-average costs rather than calculating single weighted-average POR costs. We did not recalculate OBV's submitted COP and constructed value (CV) data on a monthly weighted-average basis because the monthly changes in selling prices and input metal costs do not appear significant enough to require such a short averaging period. As such, we compared weighted-average quarterly COP figures for OBV, adjusted where appropriate (*see* below), to home market sales of the foreign like product in the same quarter, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP.

2. Startup Adjustment

OBV claimed a startup adjustment to costs pursuant to section 773(f)(1)(C)(ii) of the Act, covering a nine-month startup period from January 1998 through September 1998 for its new continuous strip casting line, which replaced OBV's ring casting mill. We preliminarily determine that OBV's new continuous strip casting mill constitutes a new facility and that the new production facility required substantial additional investment, within the meaning of section 773(f)(1)(C)(ii)(I) of the Act. The new vertical continuous strip casting mill represents an investment in a new technology for the production of brass sheet and strip. Consequently, the continuous strip casting mill, which entirely replaced the former ring casting mill, required the construction of an addition to OBV's plant containing mostly new equipment that was custom made for OBV for installation in this new mill, thereby also requiring considerable investment. Secondly, we preliminarily determine that OBV's production levels at the new facility have been limited due to technical factors associated with the initial phase of commercial production, as required under section 773(f)(1)(C)(ii)(II) of the Act. OBV specifically identified these limiting technical factors in a proprietary memorandum to the Department in support of its startup cost adjustment dated February 2, 1999. We examined these factors at the verification of OBV's submitted cost data (*see* Cost Verification Report, dated August 2, 1999) and have preliminarily determined that OBV has satisfied the criteria for receiving a startup adjustment.

Regarding the startup period, we have accepted for the preliminary results the submitted startup period that ends on September 30, 1998. We based this preliminary finding, in large part, on a review of the quantity of material input (*i.e.*, production starts) at the new facility during the POR. Specifically, the production starts represent the best measure of the facility's ability to produce at commercial production levels. Based upon our analysis of OBV's production starts, we preliminarily find that OBV attained commercial production levels in October 1998. Accordingly, we have accepted OBV's submitted startup cost adjustment.

3. General and Financial Expenses

We used the revised general and administrative (G&A) and financial expense rates that OBV provided on the first day of the cost verification, which the company revised to correct for clerical errors made in originally calculating these items. In addition, we included in G&A expenses the loss OBV recognized in the ordinary course of business from holding metals in inventory.

B. Test of Home Market Prices

After calculating COP, we tested to see whether home market sales of subject brass sheet and strip were made at prices below COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. We compared model-specific COP to the reported home market prices less any applicable movement charges, discounts and rebates, where appropriate.

C. Results of COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of OBV's home market sales for a model were at prices less than the COP, we did not disregard below-cost sales of that model because the Department determined that the below cost sales were not made within an extended period of time in "substantial quantities." Where 20 percent or more of OBV's home market sales of a given product were at prices less than the COP, we determined that such sales were made within an extended period of time in substantial quantities in accordance with section 773(b)(2)(C) of the Act. To determine whether such sales were at prices which would not permit the full recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act, we compared home market prices to the weighted-average COP for the POR. When we found that below-cost sales had been made in "substantial quantities" and were not at prices which would permit recovery of all costs within a reasonable period of time, we disregarded the below-cost sales in accordance with section 773(b)(1) of the Act.

Since there were sufficient sales that passed the cost test, it was unnecessary to calculate CV in this case.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, the Department determines NV based on sales in the comparison market at the same level of trade (LOT) as the EP or, if applicable, CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses (SG&A) and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from the exporter to the importer.

To determine whether comparison market sales are at different LOT's than EP, the Department examines stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's length) customers. If the comparison-market sales are at a different LOT, and the differences affect price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, the Department makes a LOT adjustment under section 773(a)(7)(A) of the Act.

OBV claims that the Department can match U.S. sales to identical sales at the same LOT in the home market and that a LOT adjustment is therefore not necessary. OBV manufactures to order and ships directly to original equipment manufacturers (OEMs) in the United States and home market, and also ships directly to a home market trading company. In order to determine whether U.S. sales were made at the same LOT as sales in the home market, we examined OBV's questionnaire responses with regard to its distribution system, including selling functions, class of customer and selling expenses. We examined the chain of distribution and the selling activities associated with sales reported by OBV to its two home market customer categories (*i.e.*, OEMs and trading company). We found that the two home market customer categories did not differ significantly from each other with respect to selling activities, although there were slight differences between them for sales process/marketing support and freight and delivery. Based on our overall analysis, we found that the two home market categories constituted one LOT.

OBV reported EP sales to its unaffiliated customers in one customer category, OEM's, and therefore only had one level of trade for U.S. sales. We examined the channel of distribution and the selling activities associated with sales reported by OBV to the single LOT in the Netherlands and in the United States and found that the LOT in these two markets were similar. Therefore, all price comparisons are at the same LOT and a LOT adjustment pursuant to section 773(a)(7)(A) of the Act is unwarranted.

Currency Conversion

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine that a fluctuation exists, we substitute the benchmark for the daily rate.

Intent To Revoke

On August 31, 1998, OBV submitted a letter stating that OBV was the sole producer of brass sheet and strip from the Netherlands, and requested that pursuant to 19 CFR 351.222(b), the Department revoke the antidumping duty order currently in place against certain brass sheet and strip from the Netherlands. OBV submitted, along with its revocation request, a certification stating that: (1) the company sold subject merchandise at not less than NV during the POR, and that in the future it would not sell such merchandise at less than NV (*see* 19 CFR 351.222(e)(1)(i)); and (2) the company has sold the subject merchandise to the United States in commercial quantities during each of the past three years. *See* 19 CFR 351.222(e)(1)(ii).[2]

The Department "may revoke, in whole or in part" an antidumping duty

[2] On September 1, 1999, OBV amended its request for revocation to include a certification that, if the Department finds that OBV is not the sole producer and exporter from the Netherlands, the company agrees to immediate reinstatement in the order if, subsequent to revocation, the Department concludes that the company sold the subject merchandise at less than normal value (*see* 19 CFR 351.222(b)(iii)). Since the Department has concluded that OBV is the sole producer and exporter from the Netherlands, the revocation decision is whether to revoke the order on brass sheet and strip from the Netherlands in whole.

order upon completion of a review under section 751 of the Act. While Congress has not specified the procedures that the Department must follow in revoking an order, the Department has developed a procedure for revocation that is described in 19 CFR 351.222. This regulation requires, *inter alia*, that each exporter and producer covered by the order submit the following: (1) a certification that the company has sold the subject merchandise at not less than NV in the current review period and that the company will not sell at less than NV in the future; and (2) a certification that the company sold the subject merchandise in each of the three years forming the basis of the request in commercial quantities (*see* 19 CFR 351.222(e)(1).) Upon receipt of such a request, the Department may revoke an order, if it concludes that each exporter and producer covered at the time of revocation: (1) sold subject merchandise at not less than NV for a period of at least three consecutive years; and (2) is not likely in the future to sell the subject merchandise at less than NV; *see* 19 CFR 351.222(b)(1)).

On February 2, 1999, the Department established a time frame for parties to submit factual information relating to the Department's consideration of OBV's request for the revocation of the antidumping duty order on brass sheet and strip from the Netherlands. *See Brass Sheet and Strip From The Netherlands; Notice of Extension of Time Limits for Sixth Antidumping Duty Administrative Review*, 64 FR 5766 (Feb. 5, 1999). OBV and the petitioners submitted comments on April 1, 1999 and rebuttal comments on May 6, 1999.

Petitioners' Comments: The petitioners argue that the Department should not revoke the order from the Netherlands because the factual information presented by OBV does not support its position that (1) it has sold subject merchandise in the United States in commercial quantities during the last three annual review periods; and (2) it has demonstrated that it is not likely to resume dumping in the future if the antidumping order is revoked. The petitioners state that recent determinations issued by the Department indicate that the "commercial quantities" requirement applies with respect to both the volume of sales as well as the number of sales made by a party requesting revocation. *See Pure Magnesium From Canada; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke Order in Part*, 64 FR 12977, 12978 (Mar. 16, 1999) (*Magnesium from Canada*). *See also Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada; Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part*, 64 FR 2173, 2175 (Jan. 13, 1999) (*Certain Plate from Canada*). The petitioners argue that the number and quantity of sales of subject merchandise (radiator strip brass) reported by OBV in the last three administrative reviews is a small fraction of the volume and number of U.S. sales made prior to the original investigation. They suggest that the only reasonable inference that can be drawn from such a substantial decrease in sales is that OBV withdrew from the U.S. market for the products that it was selling during the original investigation (both radiator strip and electrical connector strip) because it could not sell these products without dumping. According to the petitioners, the fact that OBV has chosen to source a large part of its radiator strip sales in the United States from production by its American affiliate, Outokumpu American Brass (American Brass), despite the fact that such merchandise currently would be subject to a 0% *ad valorem* cash deposit rate, according to the petitioner is further proof of OBV's inability to sell subject merchandise in the United States without dumping. The petitioners argue that in a similar situation, the Department denied revocation to a German company who had shifted sourcing to its United States subsidiary (*see Brass Sheet and Strip From Germany; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, 61 FR 49727, 49730 (Sept. 23, 1996) (*Brass from Germany*).

Finally, in order for the Department to make an objective determination of the likelihood of future dumping if the order were revoked, the petitioners requested that the Department undertake an analysis of OBV's past practices as well as future competitive conditions that would affect OBV's prices and costs in the United States and the home market. Specifically, for both OBV and American Brass, they requested that the Department obtain, for each product category of subject merchandise, historical shipment data in both the United States and the home market, production capacities, and fabrication prices. The petitioners claim that this necessary information was noticeably absent from OBV's otherwise voluminous submission supporting revocation and that it is otherwise not available to the petitioners.

Respondent Comments: OBV claims that it is a well-established past practice of the Department to make revocation determinations on a case-by-case basis, taking into consideration the industry in question, relevant market conditions, and the record evidence. *See Dynamic Random Access Memory Semiconductors of One Megabyte or Above From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke Order In Part*, 62 FR 39809, 39812 (July 24, 1997) (*DRAMS from Korea*). In addition to three years of no dumping, when evidence is placed on the record relating to the likelihood of future dumping, the Department is required to consider the evidence. *See Steel Wire Rope From the Republic of Korea: Final Results of Antidumping Duty Administrative Review and Revocation in Part of Antidumping Duty Order*, 63 FR 17986, 17988 (April 13, 1998) (*Wire Rope from Korea*). In *Wire Rope from Korea*, the Department considered information placed on the record which included conditions and trends in the domestic and home market industries, currency movements, and the ability of the respondent to compete in the U.S. market without dumping. OBV argues that the information it has placed on the record, as supported by an economic report that it commissioned from LECG, Inc. (LECG Report), demonstrates that its sales have in fact been made in commercial quantities,[3] and that it is not likely to sell at below normal value in the future if the order were revoked.

OBV notes that in *Certain Plate from Canada* the Department stated that "the Department must be able to determine that the company has continued to participate meaningfully in the U.S. market during each of the three years at issue." OBV claims that in fact the company shipped at historical levels over the period covered by the first three administrative reviews, *i.e.*, February 8, 1988 through July 31, 1991, discontinued shipments from 1992 until 1995, but resumed shipments when it to began servicing certain niche markets in the United States. Upon review and consideration of the "unusual occurrences which might affect the potential for production and exportation" in deciding commercial quantities (*see Notice of Proposed Rulemaking and Request for Public Comment*, 61 FR 7308, 7320 (February 27, 1996) (*Proposed Regulations*)), OBV contends that the Department will find that the shipments made during this and the previous two administrative reviews were made in commercial quantities.

In evaluating the question of "commercial quantities" and "likelihood," OBV argues that it is essential to understand that OBV's decision to discontinue shipments of subject merchandise to the United States in 1991 was not because OBV was unable to sell in the United States at above normal value prices. Rather, it was due to the acquisition of American Brass, a major United States producer of brass sheet and strip products (and supporter of the revocation of this order), by OBV's parent company, Outokumpu Oyj (Outokumpu). OBV claims that this event caused a significant and permanent structural change in the U.S. industry, vis-a-vis OBV, which makes it unlikely that OBV would resume dumping in the United States.

OBV states that following the acquisition of American Brass, production of subject merchandise was shifted from the Netherlands to American Brass for a variety of management reasons unrelated to pricing. Due to its obvious proximity to OBV's customers in the United States, and the need to address the uncertainty brought about by the on-going antidumping order, American Brass was required by Outokumpu to produce in-scope brass radiator strip, while OBV continued to supply thinner gauge radiator strip not covered by the scope of the order. OBV resumed shipments of in-scope radiator strip in 1995 to service a niche market for certain United States customers who prefer brass strip with more exacting tolerances, which for a variety of reasons cannot be produced efficiently by American Brass. OBV claims that as a result of a significant investment made in innovating radiator strip production at its facilities, which has strengthened OBV's position as the world cost leader in the production of radiator strip, Outokumpu intends to shift production of in-scope radiator strip for its United States customers back to the Netherlands This shift in production would also allow American Brass, in which Outokumpu has also made significant new investment in equipment, to focus on non-radiator strip production, where it has its best efficiency, and away from radiator strip which is not suited to its production process.

OBV claims that the LECG economic report clearly shows that it is unlikely that OBV will resume pricing in-scope radiator strip, or any other subject brass, in the United States market at less than normal value even as it increases its shipments of radiator strip from the Netherlands, for the following reasons: (1) The recent investment in the vertical strip caster at OBV has made OBV the world cost leader in radiator strip; (2) there is no direct competition to drive-down prices from any integrated United States mill for in-scope radiator strip; (3) the parent company to both OBV and American Brass would never allow OBV to compete with American Brass in non-radiator strip where American Brass has a comparative advantage. Thus, OBV will not export any product to the United States except radiator strip; (4) OBV is already operating at full capacity servicing its worldwide customer base. Further, OBV could not significantly increase its production of non-radiator strip brass, or shift production to other types of subject merchandise, without significant additional investment; (5) many United States customers of radiator strip are multinational producers who would not tolerate price discrimination among their worldwide affiliated entities; (6) the Dutch guilder has been weaker against the U.S. dollar and is more likely to continue to fall rather than to appreciate; (7) any increase in radiator strip exports beyond servicing the current OBV/American Brass customer base would be moderated by the limited market for radiator brass, given the ongoing advance of aluminum as the preferred substitute for brass. OBV's conclusion based on the LECG report is that selling at prices below normal value in the future would be irrational and self-injurious.

Department Position: In determining whether to revoke an antidumping order, we must conclude, pursuant to 19 CFR 351.222(b)(1), that: (1) all producers and exporters have sold the subject merchandise at not less than normal value to the United States in commercial quantities for three consecutive reviews; and (2) it is not likely that those persons will in the future sell the subject merchandise at less than NV.

In the present case, the Department preliminarily finds that OBV is the only exporter or producer of subject merchandise shipped to the United States. This determination was based on an examination of 1997 and 1998 United States import statistics for the HTSUS item numbers (7409.21 and 7409.29) which cover the subject merchandise as well as information obtained during verification. *See* "memorandum of "Shipments of Brass Sheet & Strip from the Netherlands," dated August 31, 1999, from John Brinkmann to the file (*OBV Shipment Memorandum*); *see also* Verification Report, dated August 31, 1999. The Department also preliminarily finds that OBV had zero or *de minimis* dumping margins for three consecutive reviews. Further, in determining whether three years of no dumping establish a sufficient basis to make a revocation determination, the Department must be able to determine that the company continued to participate meaningfully in the U.S. market during each of the three years at issue. *See Certain Plate from Canada*, 64 FR at 2175; *see also Magnesium from Canada*, 64 FR at 12979. This practice has been codified in section 351.222(d)(1) of the Department's regulations, which states that, "before revoking an order or terminating a suspended investigation, the Secretary must be satisfied that, during each of the three (or five) years, there were exports to the United States in *commercial quantities* of the subject merchandise to which a revocation or termination will apply." 19 CFR 351.222(d)(1) (emphasis added); *see also* 19 CFR 351.222(e)(1)(ii). For purposes of revocation, the Department must be able to determine that past margins are reflective of a company's normal commercial activity. Sales during the POR which, in the aggregate, are an abnormally small quantity do not provide a reasonable basis for determining that the discipline of the order is no longer necessary to offset dumping.

With respect to the threshold matter of whether OBV made sales of subject merchandise to the United States in commercial quantities, we find that OBV's aggregate sales to the United States were made in commercial quantities during all segments of this proceeding. Although both the quantity and number of OBV's shipments to the United States of subject merchandise have decreased since the imposition of the antidumping duty order, we find that the Outokumpu acquisition of American Brass and the subsequent transfer of in-scope radiator strip production to the United States is reflective of the type of "unusual occurrence" contemplated by the Department, in promulgating its regulations, as an acceptable explanation of why exports of subject merchandise have declined. *See Proposed Regulations*, 61 FR 7307, 7320 (Feb. 27, 1996). Prior to this acquisition, in 1989 and 1990, OBV continued to ship in similar quantities to the pre-order period and the subsequent

[3] OBV further argued that the "commercial quantities" factor cited in 19 C.F.R. 351.222 (d)(1) applies only to antidumping reviews in which the "middle" year does not involve a review. In that regard, it contends that the Department's reliance upon "commercial quantities" in *Magnesium From Canada* notwithstanding, it is OBV's position that the quantity of imports is only one of many factors the Department may consider in making a "likelihood" determination.

cessation of shipments until 1995 was an immediate result of the 1991 acquisition. Based upon these circumstances, it is reasonable to conclude that the company's commercial practices were permanently changed in 1991, and that 1991, rather than the pre-order period, should be the benchmark for measuring whether the company's sales during the three years without dumping were made in commercial quantities. Examination of shipments of subject merchandise from OBV from 1991 to the present shows that shipments began again in 1995 and increased in quantity and number of sales each year through 1998 (*see OBV Shipment Memorandum*). Thus, we can reasonably conclude that the "zero" margins calculated for OBV in each of the last three administrative reviews are reflective of the company's normal commercial experience.

With respect to 19 CFR 351.222(b)(1)(ii), the likelihood issue, "when additional evidence is on the record concerning the likelihood of future dumping, the Department is, of course obligated to consider the evidence by the parties which relates to the likelihood of future dumping." In doing so, the Department may consider such "factors as conditions and trends in the domestic and home market industries, currency movements, and the ability of the foreign entity to compete in the U.S. marketplace without [sales at less than normal value]." *Wire Rope from Korea*, 63 FR at 17988 (citing *Brass from Germany*, 61 FR at 49730); *see also Proposed Regulation Concerning the Revocation of Antidumping Duty Orders*, 64 FR 29818, 29820 (June 3, 1999) (explaining that when additional evidence as to whether the continued application of an antidumping duty order is necessary to offset dumping is placed on the record, "the Department may consider trends in prices and costs, investment, currency movements, production capacity, as well as all other market and economic factors relevant to a particular case."); and *Brass Sheet and Strip from Canada: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Revoke Order in Part*, 63 FR 6519, 6523 (Feb. 9, 1998). Thus, based upon three consecutive reviews of zero or *de minimis* margins, the Department presumes that dumping is not likely to resume unless the Department has been presented with evidence to demonstrate that dumping is likely to resume if the order were revoked.

In this proceeding, the petitioners have not presented evidence that would demonstrate that dumping is likely to resume if the order were revoked. However, since the respondent placed information on the record that addresses the types of factors considered by the Department, we have considered this information in our determination of whether dumping is likely to occur if the order on brass sheet and strip from the Netherlands is revoked.

Based upon the evidence presented in this proceeding, we have considered various factors in considering whether OBV is likely to sell merchandise in the future at less than NV. We have reviewed the LECG economic report and briefs presented by OBV and find no evidence that indicates the likelihood of future dumping. Although OBV has indicated that it intends to shift production of subject radiator strip from American Brass back to the Netherlands, we find that there is no evidence that this will lead to the reoccurrence of dumping in the future. Further, the record shows that with the recent investment in the new vertical strip caster, OBV has a considerable cost advantage over American Brass in the production of radiator strip. Also, we confirmed at verification that OBV is already producing to near capacity and has limited capabilities to shift production from radiator strip to other subject products, such as electrical connector strip, where American Brass has a considerable cost advantage. Based on this and other evidence presented by OBV as to the current structure of the American market for brass radiator strip, and the relative weakness of the Dutch guilder to the U.S. dollar, we find that it is not likely that OBV will sell at less than normal value in the future.

Because both requirements under the regulation have been satisfied, and the record establishes that OBV is the only known producer and exporter of the subject merchandise from the Netherlands, we intend to revoke the antidumping duty order on brass sheet and strip from the Netherlands. If these preliminary findings are affirmed in our final results, we will revoke the order with respect to brass sheet and strip from the Netherlands. In accordance with 19 CFR 351.222(f)(3), we will terminate the suspension of liquidation for any such merchandise entered, or withdrawn from warehouse, for consumption on or after the first day after the period under review, and will instruct Customs to refund any cash deposit.

Preliminary Results of Review

As a result of our review, we preliminarily determine that the following percentage weighted-average margin exists for the period August 1, 1997 through July 31, 1998:

Manufacturer/exporter	Margin (percent)
OBV	Zero.

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the date of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Parties who submit case briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 7 days after the date of filing of case briefs. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments, within 120 days from the publication of these preliminary results.

Assessment Rate

Pursuant to 19 CFR 351.212(b), the Department calculated an assessment rate for the importer of the subject merchandise. Upon completion of this review, the Department will issue appraisement instructions to the U.S. Customs Service. If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to liquidate all entries subject to this review without regard to antidumping duties.

If these preliminary results are not adopted in the final results, we will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rates calculated in the final results of this review are above *de minimis* (*i.e.*, at or above 0.5 percent). For assessment purposes, we intend to calculate importer-specific assessment rates for the subject merchandise by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer.

Cash Deposit Requirements

If the final results remain unchanged from these preliminary results, no future cash deposits will be required for the subject merchandise.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 31, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–23327 Filed 9–7–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–815 & A–580–816]

Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative reviews.

SUMMARY: In response to requests from three respondents and from the petitioners in the original investigation, the Department of Commerce ("the Department") is conducting (the fifth) administrative reviews of the antidumping duty orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea. These reviews cover three manufacturers and exporters of the subject merchandise. The period of review ("POR") is August 1, 1997, through July 31, 1998.

We preliminarily determine that sales have been made below normal value ("NV"). If these preliminary results are adopted in our final results of administrative reviews, we will instruct U.S. Customs to assess antidumping duties equal to the difference between export price ("EP") or constructed export price ("CEP") and NV.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: September 8, 1999.

FOR FURTHER INFORMATION CONTACT: Juanita Chen (Dongbu), Becky Hagen (the POSCO Group), Marlene Hewitt (Union), or James Doyle, Enforcement Group III—Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 7866, Washington, D.C. 20230; telephone (202) 482–0409 (Chen), –0961 (Hagen), –1385 (Hewitt), or –0159 (Doyle).

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR Part 351 (April 1998).

Background

The Department published antidumping duty orders on certain cold-rolled and corrosion-resistant carbon steel flat products from Korea on August 19, 1993 (58 FR 44159). The Department published a notice of "Opportunity to Request an Administrative Review" of the antidumping duty orders for the 1997/98 review period on August 19, 1998 (63 FR 42821). On August 31, 1998, respondent Union Steel Manufacturing Co., Ltd. ("Union") requested that the Department conduct an administrative review of the antidumping duty order on corrosion-resistant carbon steel flat products from Korea, and Dongbu Steel Co., Ltd. ("Dongbu") and Pohang Iron and Steel Co., Ltd. ("POSCO") requested that the Department conduct administrative reviews of the antidumping duty orders on cold-rolled and corrosion-resistant carbon steel flat products from Korea. On August 31, 1998, petitioners in the original less-than-fair-value ("LTFV") investigations (AK Steel Corporation; Bethlehem Steel Corporation; Inland Steel Industries, Inc.; LTV Steel Company; National Steel Corporation; and U.S. Steel Group A Unit of USX Corporation) requested that the Department conduct administrative reviews of the antidumping duty orders on cold-rolled and corrosion-resistant carbon steel flat products from Korea with respect to all three of the aforementioned respondents. We initiated these reviews on September 23, 1998 (63 FR 51893—September 29, 1998).

Under the Act, the Department may extend the deadline for completion of administrative reviews if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. The Department extended the time limits for the preliminary results in these cases. See Certain Cold-Rolled Carbon Steel Flat Products and Certain Corrosion-Resistant Carbon Steel Flat Products from Korea: Antidumping Duty Administrative Reviews: Extension of Time Limit, 64 FR 10982 (March 8, 1999).

The Department is conducting these administrative reviews in accordance with section 751 of the Act.

Scope of the Reviews

The review of "certain cold-rolled carbon steel flat products" covers cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7215.50.0015, 7215.50.0060, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000,

7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this review is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface.

The review of "certain corrosion-resistant carbon steel flat products" covers flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, 7217.90.5090. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this review are: flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating; clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness; and certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%–60%–20% ratio.

These HTS item numbers are provided for convenience and customs purposes. The written descriptions remain dispositive.

The POR is August 1, 1997 through July 31, 1998. These reviews cover entries associated with sales of certain cold-rolled and corrosion-resistant carbon steel flat products by Dongbu, Union, and the POSCO Group (see "Affiliated Parties" section below).

Verification

We verified information provided by the POSCO Group with respect to costs, sales, and service center sales, including on-site inspection of facilities of the manufacturer, the examination of relevant accounting and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the cost, sales, and service center verification reports. See the August 5, 1999 Cost Verification Report from Steve Bezirganian, Becky Hagen, and Marlene Hewitt through James C. Doyle to Edward Yang, the August 10, 1999 Sales Verification Report from Steve Bezirganian, Becky Hagen, and Marlene Hewitt through James C. Doyle to the File, and the August 2, 1999 Service Center Verification Report from Steve Bezirganian, Becky Hagen, and Marlene Hewitt through James C. Doyle to Edward Yang, respectively.

Transactions Reviewed

Consistent with prior reviews, we excluded reported overrun sales in the home market from our sales comparisons because such sales were outside the ordinary course of trade.

The POSCO Group

According to section 351.403(d) of the Department's regulations, downstream sales to home market affiliates accounting for less than 5 percent of total sales are normally excluded from the normal value calculation. Since the POSCO Group's sales to affiliated resellers did not meet the Department's 5 percent threshold, the Department has required the POSCO Group to report the home market downstream sales of the five affiliated service centers with the largest volume of sales of subject merchandise in each case. If the sales to the affiliated service centers did not pass the arm's length test, we used the resales made by these affiliated service centers. To test whether these sales were made at arm's length, we compared the prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts and packing. Where prices to the affiliated parties were on average 99.5 percent or more of the price to the unaffiliated party, we determined that sales made to the related party were at arm's length. Where no affiliated customer ratio could be calculated because identical merchandise was not sold to unaffiliated customers, we were unable to determine that these sales were made at arm's length and, therefore, excluded them from our analysis. See Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, 58 FR 37062, 37077 (July 9, 1993). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made comparisons to the next most similar model.

Dongbu

In determining NV, based on our review of the submissions by Dongbu, the Department determined that Dongbu need not report "downstream" sales by affiliated resellers in the home market because of their small quantity.

We excluded from our margin calculation certain Dongbu home market sales of painted corrosion-resistant carbon steel flat products which we have determined to be outside of the ordinary course of trade. Specifically, we found that, based on Dongbu's description, the sales in question met such criteria for exclusion that were laid out in prior administrative reviews for products outside the ordinary course of trade. See, *e.g.*, Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Final Results of Antidumping Duty Administrative Reviews, 64 FR 12927, 12941–42 (March 16, 1999); Certain Corrosion-Resistant Carbon Steel Flat Products From Australia; Final Results of Antidumping Duty Administrative Reviews, 61 FR 14049, 14050–51 (March 29, 1996); and Certain Welded Carbon Steel Standard Pipes and Tubes From India, Final

Results of Antidumping Duty Administrative Reviews, 56 FR 64753, 64755 (December 12, 1991). The sales in question were: limited in quantity; at extremely low prices relative to costs; and involved coils of unusual sizes which would not be considered desirable by customers (see pages 18–19 of Dongbu's July 6, 1999 supplemental questionnaire response; note that the cover page to that response incorrectly indicates that the submission is dated July 6, 1998). For additional analysis, see the August 31, 1999 Preliminary Results Analysis Memorandum from Juanita Chen through James Doyle to the File.

Union

Union did not have any "downstream" sales by affiliated resellers in the home market to report.

Affiliated Parties

For purposes of these reviews, we are treating POSCO, Pohang Coated Steel Co., Ltd. ("POCOS"), and Pohang Steel Industries Co., Ltd. ("PSI") as affiliated parties and have "collapsed" them, *i.e.*, treated them as a single producer of certain cold-rolled carbon steel flat products (POSCO and PSI) and certain corrosion-resistant carbon steel flat products (POSCO, POCOS, and PSI). We refer to the collapsed respondent as the POSCO Group. POSCO, POCOS, and PSI were treated as collapsed in all previous segments of these proceedings. The POSCO Group has submitted no new information which would cause us to reconsider that determination. See the August 31, 1999 Analysis Memorandum from Becky Hagen through James Doyle to Edward Yang.

As we have determined in past administrative reviews, we are treating Union and Dongkuk Industries Co., Ltd. ("DKI") as a single producer of certain cold-rolled carbon steel flat products. See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea: Preliminary Results of Antidumping Duty Administrative Reviews, 60 FR 65284 (December 19, 1995).

Additionally, we are treating DKI as a single producer of certain corrosion-resistant carbon steel flat products. See the August 31, 1999 Collapsing Memorandum from Marlene Hewitt through James Doyle to Edward Yang.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all cold-rolled carbon steel flat products produced by the respondents, covered by the descriptions in the "Scope of the Reviews" section of this notice, *supra*, and sold in the home market during the POR, to be foreign like products for the purpose of determining appropriate product comparisons to U.S. sales of cold-rolled carbon steel flat products. Likewise, we considered all corrosion-resistant carbon steel flat products produced by the respondents and sold in the home market during the POR to be foreign like products for the purpose of determining appropriate product comparisons to corrosion-resistant carbon steel flat products sold in the United States.

For certain product characteristics (*i.e.*, quality and surface finish) Dongbu reported additional sub-codes. The Department has included the additional codes that Dongbu reported in the aforementioned categories in the Department's product matching methodology. See the August 31, 1999 Preliminary Results Analysis Memorandum from Juanita Chen through James Doyle to the File.

Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in Appendix V of the Department's antidumping questionnaire. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondent. Where sales were made in the home market on a different weight basis from the U.S. market (theoretical versus actual weight), we converted all quantities to the same weight basis, using the conversion factors supplied by the respondents, before making our fair-value comparisons.

Fair-Value Comparisons

To determine whether sales of certain cold-rolled and corrosion-resistant carbon steel flat products by the respondents to the United States were made at less than fair value, we compared the export price ("EP") or constructed export price ("CEP") to the normal value ("NV"), as described in the "Export Price/Constructed Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

Particular Market Situation in the Home Market

On November 9, and December 1, 1998, the petitioners alleged that the Korean home market should not be used to determine NV because there were economic distortions constituting a "particular market situation" in Korea during the period of review. Petitioners allege that two economic distortions make it impossible to obtain reliable measures of normal value in Korea, or to make proper comparisons of normal value with U.S. sales. These economic distortions, according to petitioners, are: (1) the precipitous depreciation of the Korean won during the POR, which was not accompanied by a corresponding increase in domestic prices, and resulted from a profound financial and banking crisis linked to global market activity rather than from underlying domestic economic fundamentals; and (2) the Government of Korea ("GOK") controls home market prices of cold-rolled and corrosion-resistant steel. Petitioners propose that the Department instead rely upon third country sales as the basis for normal value. We note that the precipitous drop in the value of the won at the end of 1997 warrants the use of daily exchange rates and modified benchmarks, as discussed in the "Currency Conversion" section below.

We preliminarily determine that the information submitted by petitioners and the questionnaire responses by the respondents do not show that there is a particular market situation in Korea that warrants disregarding the home market in this case. This is consistent with previous reviews in which petitioners also alleged a particular market situation in Korea's home market based on alleged government control of pricing. In those cases, we determined that the Korean home market was viable and appropriate as a basis for NV. See *e.g.* Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews, 62 FR 18404 (April 15, 1997), and Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Preliminary Results of Antidumping Duty Administrative Reviews, 62 FR 47422, 47425 (September 9, 1997).

Duty Absorption

On October 20, 1998, the petitioners requested that the Department determine whether antidumping duties have been absorbed by an exporter or producer subject to these administrative reviews, in the event that the subject merchandise was sold during this period of review in the United States through an importer affiliated with the POSCO Group, Dongbu, or Union. Section 751(a)(4) of the Act provides that, if requested, the Department will determine whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order

if the subject merchandise is sold in the United States through an affiliated importer. Section 751(a)(4) of the Act authorizes this inquiry during an administrative review initiated two years or four years after publication of an order. For transition orders as defined in section 751(c)(6)(C) of the Act (*i.e.*, antidumping orders in effect as of January 1, 1995), section 351.213(j)(2) of the Department's regulations provides that the Department will make such a determination for any administrative review initiated in 1996 or 1998. The orders in these cases are transition orders, which went into effect in 1993. See Notice of Antidumping Duty Orders: Certain Cold-Rolled Carbon Steel Flat Products and Certain Corrosion-Resistant Carbon Steel Flat Products from Korea, 58 FR 44159 (August 19, 1993). Because this review was initiated in 1998, and the petitioners made a timely request for a duty absorption determination (*i.e.*, within 30 days of the date of publication of the notice of initiation of this review), we find that the regulatory requirements for a duty absorption determination have been met. See 19 CFR 351.213(j).

We have determined that duty absorption has occurred with respect to the percentages of sales shown below which were made through the respondents' U.S. affiliates and which had positive dumping margins:

Producer/Manufacturer/ Exporter	Percentage of U.S. affiliate's sales with dumping margins
Certain Cold-Rolled Carbon Steel Flat Products	
The POSCO Group	1.07
Certain Corrosion-Resistant Carbon Steel Flat Products	
Dongbu	20.81
The POSCO Group	2.92
Union	5.26

With respect to the above companies, we rebuttably presume that the duties will be absorbed for those sales which were dumped. This presumption can be rebutted with evidence that the unaffiliated purchasers in the United States will pay the ultimately assessed duty, they must do so no later than 15 days after publication of these preliminary results.

Request for Revocation

The POSCO Group

On August 31, 1998, the POSCO Group submitted a request, in accordance with 19 CFR 351.222(e), that the Department revoke the orders covering certain cold-rolled carbon steel flat products and certain corrosion-resistant carbon steel flat products from Korea with respect to its sales of this merchandise.

In accordance with 19 CFR 351.222(e), these requests were accompanied by a certification from POSCO that it had not sold the subject merchandise at less than NV for a three-year period, including this review period, and would not do so in the future. POSCO also agreed to its immediate reinstatement of the relevant antidumping order, as long as any firm is subject to the order, if the Department concludes under 19 CFR 351.216 that, subsequent to revocation, POSCO sold the subject merchandise at less than NV.

In the third administrative reviews, we determined that the POSCO Group sold both cold-rolled and corrosion-resistant carbon steel flat products at less than normal value. See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews, 63 FR 13170 (March 18, 1998), as amended at 63 FR 20572 (April 27, 1998). Although the final results of the third reviews are subject to litigation, that litigation is not yet complete. In the fourth administrative reviews, the POSCO Group had *de minimis* margins for both products. See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews, 64 FR 10982 (March 8, 1999). Consequently, we preliminarily determine that because the POSCO Group does not have three consecutive years of zero or *de minimis* margins on cold-rolled carbon steel flat products and corrosion-resistant carbon steel flat products, it is not eligible for revocation of these orders under 19 CFR 351.222(e).

Dongbu

On August 31, 1998, Dongbu submitted a request, in accordance with 19 CFR 351.222(e), that the Department revoke the orders covering certain corrosion-resistant carbon steel flat products from Korea with respect to its sales of this merchandise.

In accordance with 19 CFR § 351.222(e), the request was accompanied by a certification from Dongbu that it had not sold the subject merchandise at less than NV for a three-year period, including this review period, and would not do so in the future. Dongbu also agreed to its immediate reinstatement in the relevant antidumping order, as long as any firm is subject to the order, if the Department concludes under 19 CFR 351.216 that, subsequent to revocation, it sold the subject merchandise at less than NV.

In the third administrative review, we determined that Dongbu sold corrosion-resistant carbon steel flat products at less than normal value. See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews, 63 FR 13170 (March 18, 1998), as amended at 63 FR 20572 (April 27, 1998). In the fourth administrative review, we determined that Dongbu was selling corrosion-resistant carbon steel products at less than normal value. See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews, 64 FR 10982 (March 8, 1999). Consequently, we preliminarily determine that because Dongbu does not have three consecutive years of zero or de minimis margins on corrosion-resistant steel, it is not eligible for revocation of the order on corrosion-resistant steel under 19 CFR § 351.222(e).

Union

Union did not request revocation.

Date of Sale

It is the Department's current practice normally to use the invoice date as the date of sale, although we may use a date other than the invoice date if we are satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. See 19 CFR 351.401(i). We have preliminarily determined that there is no reason to depart from the Department's treatment of date of sale for these respondents. Consistent with prior reviews, for home market sales, we used the reported date of the invoice from the Korean manufacturer; for U.S. sales we have followed the Department's methodology from the prior reviews, and have based date of sale on invoice date from the U.S. affiliate, unless that date was subsequent to the date of shipment from Korea, in which case that shipment date is the date of sale. See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews, 64 FR 12927 at 12935 (March 16, 1999).

Export Price/Constructed Export Price

We calculated the price of United States sales based on CEP, in accordance with section 772(b) of the Act, except for U.S. sales made by PSI, which we have classified as "export price" sales. The Act defines the term "constructed export price" as "the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d)." In contrast, "export price" is defined as "the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States." Sections 772(a)-(b) of the Act (emphasis added). In the instant case, the record establishes that Dongbu, the POSCO Group, and Union's affiliates in the United States were in most instances the parties first contacted by unaffiliated U.S. customers desiring to purchase the subject merchandise and also that the sales affiliates in question signed the sales contracts and performed other selling functions. Respondents have submitted no new evidence warranting a change in our finding in the third and fourth reviews—based in part on exhaustive sales verifications—that sales by Dongbu, Union and the POSCO Group sales by POSCO and POCOS are CEP transactions. See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews, 64 FR 12927, 12937 (March 16, 1999).

We preliminarily determine that the POSCO Group's U.S. sales made by PSI are EP sales. The U.S. affiliate, Pohang Steel America Corp. ("POSAM"), was not involved in the negotiations, and in fact, had no communication with the U.S. customer until the purchase order was finalized. Given the information from the record indicating PSI's substantial involvement in those sales and POSAM's absence of any involvement until the very end of the sales process (see, e.g., Section IVA of the Sales Verification report), we have classified PSI's sales as EP sales. For Dongbu, Union, and POSCO Group sales by POSCO and POCOS, we calculated CEP based on packed prices to unaffiliated customers in the United States. Where appropriate, we made deductions from the starting price for foreign inland freight, foreign inland insurance, foreign brokerage and handling, international freight, marine insurance, U.S. inland freight, U.S. brokerage and handling, U.S. Customs duties, commissions, credit expenses, warranty expenses, inventory carrying costs incurred in the United States, and other indirect selling expenses. Our calculation of indirect selling expenses does not include interest expenses of the U.S. sales affiliates because we have preliminarily determined that virtually all of those interest expenses relate to the financing of receivables or to borrowings involving non-subject merchandise. Pursuant to section 772(d)(3) we made an adjustment for CEP profit. Where appropriate, we added interest revenue to the gross unit price. Consistent with the Department's normal practice, we added duty drawback to the gross unit price. We did so in accordance with the Department's long-standing test, which requires: (1) that the import duty and rebate be directly linked to, and dependent upon, one another; and (2) that the company claiming the adjustment demonstrate that there were sufficient imports of imported raw materials to account for the duty drawback received on the exports of the manufactured product.

Additionally, for Dongbu, we revised the calculation of U.S. indirect selling expenses to reflect our determination that a certain category of expenses should not be allocated across both subject and non-subject merchandise but, rather, should be considered to only apply to the former. Our original questionnaire requested that Dongbu provide a list of the overhead expenses incurred, and Dongbu's initial response included a category called "Others" (see pages C–47, C–48, and Exhibit C–19 of Dongbu's November 24, 1998 Section C response). Our first supplemental questionnaire asked Dongbu to indicate for all categories the basis for assigning costs to subject and non-subject merchandise, and Dongbu's response does not appear to clarify the types of expenses, and their applicability to subject vs. non-subject merchandise, included under the category "Others" (see page 31 and Exhibit C–31 of Dongbu's April 22, 1999 supplemental questionnaire response). Finally, in our most recent supplemental questionnaire we asked Dongbu to provide an explanation for each type of common expense including the category "other" common expenses, and to provide a list indicating each type of expense included in the "other" expense category, but Dongbu did not provide such information (see pages 28–29 of Dongbu's July 6, 1999 supplemental questionnaire response). For additional analysis, see the August 31, 1999 Preliminary Results Analysis Memorandum from Juanita Chen through James Doyle to the File.

For PSI's U.S. sales, we calculated EP based on the packed prices to unaffiliated purchasers in the United States. We made deductions for foreign inland freight, brokerage and handling; ocean freight, marine insurance, U.S. inland freight (where applicable), U.S. brokerage and wharfage charges (where applicable) and U.S. Customs duties in accordance with section 772(c)(2)(A) of the Act. Additionally, we added to the U.S. price an amount for duty drawback pursuant to section 772(c)(1)(B) of the Act. This is not a change from the fourth reviews, as PSI did not sell subject merchandise to the United States during that period of review.

Normal Value

Based on a comparison of the aggregate quantity of home-market and U.S. sales, we determined that the quantity of the foreign like product sold in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States, pursuant to section 773(a) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in the home market, in the usual commercial quantities and in the ordinary course of trade.

Where appropriate, we deducted rebates, discounts, inland freight (offset, where applicable, by freight revenue), inland insurance, and packing. We made adjustments to NV, where appropriate, for differences in credit expenses (offset, where applicable, by interest income), warranty expenses, post-sale warehousing, and differences in weight basis. We also made adjustments, where appropriate, for home-market indirect selling expenses to offset U.S. commissions in CEP comparisons.

We also increased NV by U.S. packing costs in accordance with section 773(a)(6)(A) of the Act. We made adjustments to NV for differences in cost attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act. In accordance with the Department's practice, where all contemporaneous matches to a U.S sale observation resulted in difference-in-merchandise adjustments exceeding

20 percent of the cost of manufacturing ("COM") of the U.S. product, we based NV on constructed value ("CV").

Differences in Levels of Trade

In accordance with section 773(a)(1)(B)(i) of the Act and the Statement of Administrative Action ("SAA") at 829–831, to the extent practicable, the Department will calculate NV based on sales at the same level of trade as the U.S. sales (either EP or CEP). When the Department is unable to find sales in the comparison market at the same level of trade as the U.S. sale(s), the Department may compare sales in the U.S. and foreign markets at different levels of trade, and adjust NV if appropriate. The NV level of trade is that of the starting-price sales in the home market. As the Department explained in Gray Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review, 62 FR 17148, 17156 (April 9, 1997), for both EP and CEP, the relevant transaction for the level-of-trade analysis is the sale from the exporter to the importer.

To determine whether comparison market NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and unaffiliated customer. If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(&)(A) of the Act. Finally, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa, 62 FR 61731, 61732 (November 17, 1997), and Granular Polytetrafluoroethylene Resin From Italy; Preliminary Results of Antidumping Duty Administrative Review, 63 FR 25826 (May 11, 1998).

A. Dongbu

In its questionnaire responses, Dongbu states that there were no significant differences in its selling activities by customer categories within or between each market. Therefore, Dongbu states that it is not distinguishing between levels of trade for these reviews and that it is not claiming a level of trade adjustment nor claiming a CEP offset. Our analysis of the questionnaire responses detailing the selling functions provided by Dongbu in the U.S. and home market leads us to conclude that sales within or between each market are not made at different levels of trade. We also note that the selling functions described by Dongbu in these reviews are consistent with the selling functions described for the previous reviews of these orders, in which we determined no distinct levels of trade. See Notice of Preliminary Results: Certain Cold-Rolled Carbon Steel Flat Products and Certain Corrosion-Resistant Carbon Steel Flat Products from Korea, 63 FR 48173, 48178 (September 9, 1998). Accordingly, we preliminarily find that all sales in the home market and the U.S. market were made at the same level of trade. Therefore, all price comparisons are at the same level of trade and any adjustment pursuant to section 773(a)(7) of the Act is unwarranted.

B. Union

Union argues that, with the Department's classification of Union's U.S. sales as CEP sales, and its view of Dongkuk International Inc."s ("DKA's") role in the sales process as more than ancillary for the U.S. sales, it is incumbent on the Department to recognize that U.S sales and home market sales are at different levels of trade. Furthermore, Union notes that because the difference in the level of trade cannot be quantified, Union is eligible for a CEP offset. Union states that home market sales are at a different level of trade from CEP sales, a level representing a more advanced stage of distribution. Union asserts that the Department's practice in a CEP situation is to compare the level of trade of the U.S. sale after the deduction of the selling expenses with the level of trade of the home market product with no deduction; therefore, the indirect selling expenses incurred for the selling functions associated with the U.S. sale, *i.e.*, the contact, and other ancillary functions (in particular the arranging of credit terms) have been deducted from the U.S. sales price, but remain in the home market price.

In identifying the level of trade for home market sales, we consider the selling functions reflected in the starting price of home market sales before any adjustments, pursuant to section 773(a)(1)(B)(i) of the Act. Union's description of selling functions in the home market makes no distinction with regard to customer categories or channels of trade, and there is no evidence on the record indicating that such functions vary within the home market. In identifying the level of trade for CEP sales, we considered only the selling activities reflected in the U.S. price after deduction of expenses and profit under section 772(d) of the Act.

We find that Union performed similar functions for its U.S. sales to DKA as it did for its sales to home market customers. Although the expenses related to DKA's activities have been deducted from CEP, the expenses incurred by Union are still reflected in CEP. Because we find there are no substantive differences in selling functions provided by Union for its home market customers as compared to DKA, there is no difference in level of trade and, therefore, no basis for granting a level of trade adjustment or a CEP offset. This is consistent with our treatment of level of trade for Union in prior administrative reviews. See Notice of Preliminary Results: Certain Cold-Rolled Carbon Steel Flat Products and Certain Corrosion-Resistant Carbon Steel Flat Products from Korea, 63 FR 48173, 48178 (September 9, 1998).

C. The POSCO Group

In its questionnaire responses, the POSCO Group stated that its home-market sales by affiliated service centers were at a different level of trade than its other home-market sales and its U.S. sales (regardless of the customer category). The respondent indicated that the service centers provide certain selling functions to all of their customers, while POSCO, POCOS and PSI provide a different set of selling functions to all of their customers (including the service centers).

In order to confirm the presence of separate levels of trade within or between the U.S. and home markets, we examined the respondent's questionnaire responses for indications of substantive differences in selling and marketing functions, and reviewed this issue during the sales verification in Korea. See the preamble to section 351.412 of the Department's new regulations (62 FR at 27371).

In its October 30, 1998 Section A response, the POSCO Group claimed that there are two channels of distribution in the home market: one channel of distribution consists of sales made by POSCO, POCOS, and PSI, while they claim that a second channel of distribution consists of the sales made by the affiliated service centers. Our analysis of the questionnaire responses and review of the sales functions at the service center and sales verifications of the POSCO Group leads us to conclude that the cumulative functions of the POSCO Group and the service centers for sales made by the service centers are essentially the same as the cumulative functions of the POSCO Group for sales made by the POSCO Group. The only substantive additional function that the affiliated service centers perform is the slitting and shearing of coils, which is not a sales function, but rather a manufacturing operation. See, *e.g.*, the September 9, 1997 Preliminary Results Analysis Memorandum from Steve Bezirganian to Richard Weible, the August 10, 1999 Sales Verification Report from Steve Bezirganian, Becky Hagen, and Marlene Hewitt through James C. Doyle to the File, and the August 2, 1999 Service Center Verification Report from Steve Bezirganian, Becky Hagen, and Marlene Hewitt through James C. Doyle to Edward Yang. Furthermore, the Department finds that POSCO, POCOS, and PSI all provide comparable services to their customers in each market. Thus, our analysis of the questionnaire responses and the review of sales functions at the service center and sales verifications leads us to conclude that sales within or between each market are not made at different levels of trade. Accordingly, we find that all sales in the home market and the U.S. market were made at the same level of trade. Therefore, all price comparisons are at the same level of trade and an adjustment pursuant to section 773(a)(7) is unwarranted.

Cost-of-Production/Constructed Value

At the time the questionnaires were issued in these reviews, the third annual administrative reviews were the most recently completed segments of these proceedings in which each of the three respondents had participated. In accordance with section 773(b)(2)(A)(ii) of the Act, because we disregarded certain below-cost sales by each of the three respondents in those reviews, we found reasonable grounds in these reviews to believe or suspect that those respondents made sales in the home market at prices below the cost of producing the merchandise. We therefore initiated cost investigations with regard to Dongbu, Union, and the POSCO Group, in order to determine whether the respondents made home-market sales during the POR at prices below their COP within the meaning of section 773(b) of the Act.

Before making concordance matches, we conducted the COP analysis described below.

A. Calculation of COP

We calculated the COP for Dongbu, Union, and the POSCO Group based on the sum of each respondent's cost of materials and fabrication for the foreign like product, plus amounts for home-market selling expenses, general, and administrative expenses ("SG&A"), and packing costs in accordance with section 773(b)(3) of the Act.

Dongbu

We adjusted Dongbu's cost of materials and fabrication so that net currency and translation losses are allocated based on their relationship to Dongbu Steel costs rather than consolidated costs of goods sold (see Exhibits D–27 and C–31 of Dongbu's April 22, 1999 supplemental questionnaire response). For additional analysis, see the August 31, 1999 Preliminary Results analysis memo from Juanita Chen through James Doyle to the File.

Union

We made adjustments to Union's fixed overhead ("FOH") due to our recalculation of depreciation, consistent with the Department's treatment of depreciation for the previous review period. See 64 FR 12927, 12944 (March 16, 1999). See also the August 31, 1999 Analysis Memorandum from Marlene Hewitt through James Doyle to the File.

The POSCO Group

We adjusted the reported costs to reflect differences in production costs associated with quality and coating weight. Also, in order to correct a clerical coding error in reported minimum thickness, we calculated the correct minimum thickness by taking the reported nominal thickness, then reassigning this minimum thickness value to the proper minimum thickness band as required by the Department's questionnaire. We reassigned the observations with corrected minimum thicknesses to the appropriate CONNUM. We increased all reported costs to account for missing cost centers in the POSCO Group's cost buildups. See the August 31, 1999 Preliminary Results Analysis Memorandum from Becky Hagen through James Doyle to the File. Finally, the Department notes that it appears that a small portion of the POSCO Group's home market database was miscoded for yield strength. We will examine the accuracy and extent of this problem for the final determination.

We have conducted an analysis of the POSCO Group's startup adjustment claim for the preliminary results. The POSCO Group has claimed that the installation of a new production line at one of its two works constitutes a new facility, and claimed startup adjustment should be applied to products manufactured on this new line. See the December 4, 1998 Section D Questionnaire Response at page 32. We preliminarily find that this new line does not constitute a "new production facility," as required by the startup adjustment provision. See section 773(f)(1)(C)(ii)(I) of the Act. The SAA sets a high standard for startup adjustment claims when it states that, "'New production facilities' includes the substantially complete retooling of an existing plant. Substantially complete retooling involves the replacement of nearly all production machinery or the equivalent rebuilding of existing machinery." SAA at 836 (emphasis added). Therefore, the startup adjustment should only be applied when substantial modifications have been made to an entire production plant.

When determining whether substantial modifications have been made the Department must consider, along with other factors, the extent to which the improvements relate to the total production process. In the instant case, the new line is but one of many processing steps necessary to produce corrosion-resistant products performed by the POSCO Group. We also note that, although the equipment in question is large and expensive, its relative size to the other production equipment involved in the production of cold-rolled products at the POSCO Group is small. Moreover, the line produces merchandise similar to that manufactured on numerous other lines by the POSCO Group. Therefore, we do not believe that the installation of this equipment constitutes the substantial retooling of one of the POSCO Group's facilities and, therefore, does not meet the standard established in the statute.

Because section 773(f)(1)(C) of the Act establishes that both prongs of the test must be met before a startup adjustment is warranted, this finding is sufficient to deny the POSCO Group's claim. Therefore, we need not address the POSCO Group's arguments concerning technical factors that limit commercial production levels (see Notice of Final Determination of Sales at Not Less Than Fair Value: Collated Roofing Nails from Korea, 62 FR 51420, 51426 (October 1, 1997).

B. Test of Home-Market Prices

We used the respondents' weighted-average COP, as adjusted (see above), for the period July 1997 to June 1998. We compared the weighted-average COP figures to home-market sales of the

foreign like product as required under section 773(b) of the Act. In determining whether to disregard home-market sales made at prices below the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home-market prices (not including VAT), less any applicable movement charges, discounts, and rebates.

C. Results of COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POR were at prices less than the COP, we found that sales of that model were made in "substantial quantities" within a reasonable period of time, in accordance with sections 773(b)(2)(B) and (C) of the Act, and were not at prices which would permit recovery of all costs within an extended period of time, in accordance with section 773(b)(2)(D) of the Act. In such cases, we disregarded the below-cost sales in accordance with section 773(b)(1) of the Act.

D. Calculation of CV

In accordance with section 773(e) of the Act, we calculated CV for Dongbu, Union, and the POSCO Group based on the sum of respondents' cost of materials, fabrication, SG&A, including interest expenses, U.S. packing costs, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the weighted-average home-market selling expenses. As noted in the "Calculation of COP" section of this notice, we made adjustments to the reported COMs of the POSCO Group and Union. We also made adjustments, where appropriate, for home-market indirect selling expenses to offset U.S. commissions in CEP comparisons.

Currency Conversion

Our preliminary analysis of Federal Reserve dollar-won exchange rate data shows that the won declined rapidly at the end of 1997, losing over 40% of its value between the beginning of November and the end of December. The decline was, in both speed and magnitude, many times more severe than any change in the dollar-won exchange rate during the previous eight years. Had the won rebounded quickly enough to recover all or almost all of the initial loss, the Department might have been inclined to view the won's decline at the end of 1997 as nothing more than a sudden, but only momentary, drop, despite the magnitude of that drop. As it was, however, there was no significant rebound. Therefore, we have preliminarily determined that the decline in the won at the end of 1997 was so precipitous and large that the dollar-won exchange rate cannot reasonably be viewed as having simply fluctuated during this time, *i.e.*, as having experienced only a momentary drop in value. Therefore, in making this preliminary determination, the Department used daily rates exclusively for currency conversion purposes for comparison market sales matched to U.S. sales occurring between November 1 and December 31, 1997. For sales occurring after December 31, but before March 1, 1998, the Department continued to rely on the standard exchange rate model, but used as the benchmark rate a (stationary) average of the daily rates over this period. In this manner, we used an "up-to-date" (post-precipitous drop) benchmark, but at the same time avoided undue day-to-day fluctuations in the exchange rates used. See Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber from the Republic of Korea, 64 FR 14865, 14868 (March 29, 1999) and Notice of Preliminary Results and Partial Recission of Antidumping Duty Administrative Review: Steel Wire Rope from Korea, 63 FR 67662, 67665 (December 8, 1998), unchanged at Steel Wire Rope from Korea; Final Results of Antidumping Duty Administrative Review and Partial Recission of Antidumping Administrative Review, 64 FR 17995 (April 13, 1999).

Preliminary Results of the Reviews

As a result of these reviews, we preliminarily determine that the following weighted-average dumping margins exist:

Producer/Manufacturer/Exporter	Weighted-average margin
Certain Cold-Rolled Carbon Steel Flat Products	
Dongbu	0.00
The POSCO Group	0.10
Union	0.00
Certain Corrosion-Resistant Carbon Steel Flat Products	
Dongbu	1.29
The POSCO Group	0.45
Union	0.17

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, that is, thirty-seven days after the date of publication of these preliminary results. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing not later than 120 days after the date of publication of these preliminary results.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. We divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct the U.S. Customs Service to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period.

Cash Deposit

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) the cash deposit rate for each respondent will be the rate established in the final results of these administrative reviews (except that no deposit will be required for firms with zero or *de minimis* margins, *i.e.*, margins lower than 0.5 percent); (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in these reviews, a prior review, or the original LTFV investigations, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any prior reviews; the cash deposit rate will be 14.44 percent (for certain cold-rolled carbon steel flat products) and 17.70 percent (for certain corrosion-resistant carbon steel flat products), the "all others" rate established in the LTFV investigations. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 31, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–23325 Filed 9–7–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–804]

Cold-Rolled Carbon Steel Flat Products From the Netherlands: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to requests from the petitioners and respondent, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on cold-rolled carbon steel flat products from the Netherlands. The review covers one manufacturer/exporter of the subject merchandise to the United States during the period August 1, 1997 through July 31, 1998.

We preliminarily determine that a *de minimis* dumping margin exists for this period of review. If these preliminary results are adopted in our final results of review, we will instruct the U.S. Customs Service to assess antidumping duties on entries of Hoogovens merchandise during the period of review, in accordance with the Department's regulations (19 CFR 353.6).

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument (no longer than five pages, including footnotes).

EFFECTIVE DATE: September 8, 1999.

FOR FURTHER INFORMATION CONTACT: Ilissa A. Kabak or Robert M. James, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1395 or 482–5222, respectively.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act of 1994 (URAA). In addition, unless otherwise indicated, all references to the Department's regulations are to 19 CFR Part 351 (1998).

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce published an antidumping duty order on cold-rolled carbon steel flat products from the Netherlands on August 19, 1993 (58 FR 44172). The Department published a notice of "Opportunity To Request Administrative Review" of the antidumping duty order for the 1997/1998 review period on August 11, 1998 (63 FR 42821). On August 31, 1998, both the respondent, Hoogovens Staal BV (Hoogovens), and petitioners (Bethlehem Steel Corporation, U.S. Steel Company (a Unit of USX Corporation), Ispat/Inland Steel, Inc., LTV Steel Company, and National Steel Corporation) filed requests for review. We published a notice of initiation of the review on September 29, 1998 (63 FR 51893).

Due to the complexity of the issues involved in this case, the Department extended the time limit for completion of the preliminary results until August 31, 1999, in accordance with section 751(a)(3)(A) of the Tariff Act. The deadline for the final results of this review will continue to be 120 days after the date of publication of this notice. The Department is conducting this review in accordance with section 751 of the Tariff Act.

Scope of the Review

The products covered by this review include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000,

7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7215.50.0015, 7215.50.0060, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this review is certain shadow mask steel, i.e., aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface. These HTS item numbers are provided for convenience and Customs purposes. The written description of the scope of this order remains dispositive.

Verification

As provided in section 782(i)(3) of the Tariff Act, we verified information provided by Hoogovens at its headquarters in Beverwijk and IJmuiden, the Netherlands, using standard verification procedures, including inspection of the manufacturing facilities, examination of relevant sales and financial records, and selection of original documentation containing relevant information. We also verified information provided by Hoogovens Steel USA, Inc. at its office in Scarsdale, New York.

Export Price (EP)

Sales made by Hoogoven's selling office in the Netherlands directly to unaffiliated customers in the United States were treated as EP sales. We calculated EP based on the delivered, duty-paid price to unaffiliated customers in the United States. We made adjustments for discounts and post-sale price adjustments. We also made deductions, where applicable, for foreign inland freight, ocean freight and marine insurance, brokerage and handling, U.S. inland freight, and U.S. customs duties in accordance with section 772(c) of the Tariff Act. *See* Preliminary Analysis Memorandum (Analysis Memo), August 31, 1999, at 8.

Constructed Export Price (CEP)

Sales made by Hoogoven's selling office in the Netherlands through the affiliated Rafferty-Brown companies, located in the United States, to unaffiliated U.S. customers were treated as CEP sales. We based CEP on the delivered price to unaffiliated customers in the United States. We made deductions for foreign inland freight, ocean freight and marine insurance, brokerage and handling, U.S. inland freight, and U.S. customs duties, in accordance with section 772(c) of the Tariff Act. Furthermore, in accordance with section 772(d)(1) of the Tariff Act, we deducted selling expenses associated with economic activities occurring in the United States, including credit expenses, indirect selling expenses, and inventory carrying costs. In accordance with section 772(d)(2) of the Tariff Act, for sales made through the affiliated Rafferty-Brown companies, we also deducted the cost of further manufacturing, including repacking expenses. Finally, we made an adjustment for an amount of profit allocated to these expenses in accordance with section 772(d)(3) of the Tariff Act. *See* Analysis Memo at 10.

In the absence of cost of production (COP) data for home market sales,[1] we estimated COP for calculation of the CEP profit allocation as follows:

1. We estimated the home market fixed costs by calculating the weighted average ratio of fixed costs to variable costs for U.S. sales (using the reported VCOMU and TCOMU variables) and multiplying the reported home market variable costs (VCOMH) by this ratio;
2. We obtained the total cost of manufacturing (COM) by adding the reported total variable costs and the estimated fixed costs;
3. We obtained general and administrative expenses and interest expenses from the constructed value (CV) data base and added them to the total COM to obtain COP.

Normal Value (NV)

In order to determine whether sales of the foreign like product in the home market are a viable basis for calculating NV, we compared the volume of home market sales of the foreign like product to the volume of subject merchandise sold in the United States, in accordance with section 773(a)(1)(C) of the Tariff Act. Hoogovens's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise. Therefore, we have based NV on home market sales.

Hoogovens made sales to both affiliated and unaffiliated customers in the home market during the period of review. We included sales to affiliated customers when we determined those sales to be at arm's length (*i.e.*, at weighted-average prices that were 99.5 percent or more of weighted average prices for identical products sold to unaffiliated customers in the home market). When the weighted-average price to an affiliated customer was less than 99.5 percent of the weighted-average price to unaffiliated customers, or there were no sales of identical merchandise to unaffiliated customers for purposes of the arm's-length test, we excluded sales to that affiliated customer from our calculation of NV. *See Antidumping Duties; Countervailing Duties, Final Rule* 62 FR 27296, 27355 (May 19, 1997).

Home market prices were based on the packed, ex-factory or delivered prices to customers, net of early payment discounts and rebates. We made deductions from NV for inland freight, pursuant to section 773(a)(6)(B) of the Tariff Act. In accordance with section 773(a)(6)(C)(iii) of the Tariff Act and 19 CFR 351.410(c), we made circumstance-of-sale (COS) adjustments for credit and, where appropriate, warranty expenses.

We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Tariff Act. Where appropriate, we made adjustments to NV to account for differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Tariff Act and 19 CFR 351.411.

Level of Trade

In accordance with section 773(a)(1)(B) of the Tariff Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is normally the sale from exporter to importer. In this case the exporter sells directly to unaffiliated customers. For CEP, the U.S. LOT is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Tariff Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Tariff Act (the CEP-offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

To examine LOT in this review, we requested information concerning the selling functions associated with sales to service centers and to several categories of end-users in each of Hoogovens's markets and interviewed sales and technical service managers. In both the home and U.S. markets larger customers received more frequent visits from sales personnel. In the home market a higher level of technical service was provided to automotive customers than to other end-users. However, Hoogovens stated that "it cannot differentiate among the selling functions performed and services offered to different classes of home market or export price customers." Hoogovens's October 21, 1998 section A questionnaire response (Section A response) at 14. Hoogovens further noted that the higher level of service provided to large end-users, such as auto makers, was related to the higher volumes of merchandise purchased by these customers, and not any specific features of this market sector. Id. at 26. Therefore, based upon the information on the record we preliminarily determine that there are no significant differences between the selling functions performed and services offered to service centers and end-user customers in the home market. We also preliminarily determine that there are no differences between the selling functions performed and services offered to service centers and end-user customers in the U.S. market. Lastly, evidence on the record indicates that Hoogovens has not changed its selling functions since the fourth (1996–1997) administrative review (*see* "Home Market Sales Verification Report," at 8 (July 8, 1999); *see also Certain Cold-rolled Carbon Steel Flat Products from the Netherlands: Final Results of Antidumping Duty Administrative Review*, 64 FR 11825, (March 10, 1999)).

As for CEP sales, Hoogovens claims it has no home market sales at a LOT equivalent to the CEP LOT, alleging, "while the CEP sales have been adjusted to create, in effect, an ex-factory level of trade, the starting price of the home market sales reflects many selling activities not reflected in the adjusted CEP price. These include indirect selling activities, indirect warranty and technical service expenses, and inventory carrying costs incurred on home market sales." *See* Section A response (October 21, 1998), at 45 and 46.

We disagree with Hoogovens's claim that the prices used to determine NV reflect many selling activities not reflected in CEP. In accordance with section 772(d)(1) the Department calculated CEP by deducting the imputed credit expenses incurred by the Rafferty-Brown companies as direct selling expenses. The Department also deducted indirect selling expenses (ISE), including imputed inventory carrying costs (ICC) incurred in the United States by the Rafferty-Brown companies for sales to the first unaffiliated buyers. The Department did not deduct from CEP those ISE incurred in the Netherlands pertaining to U.S. sales (reported in computer data fields DINDIRSU and DINVCARU), nor certain expenses of the U.S. sales office, on the grounds that these expenses were associated with the sale to Hoogovens's U.S. affiliates rather than with the sales by the affiliates to the first unaffiliated buyers. Thus, the CEP includes Hoogovens's warranty and technical service expenses for U.S. sales, as well as ISE, including the expenses of the sales offices in IJmuiden and New York, incurred in connection with the sales to the affiliated service centers.

For the purposes of the LOT analysis, we found no distinguishable difference between the selling functions included in the home market starting price and the selling functions included in the CEP; Hoogovens's starting price for home market sales includes the provision of services reflected in the direct warranty and technical service expenses, ICC, the expenses of the sales office in IJmuiden, and other indirect selling expenses incurred for home market sales. On the basis of this analysis, the Department has preliminarily determined that the record does not support Hoogovens's claim that home market sales are at a different, more advanced LOT than the adjusted CEP sales.

Sales Comparisons

To determine whether sales of cold-rolled carbon steel flat products in the United States were made at prices below normal value, we compared EP or CEP to NV, as described in the "Export Price," "Constructed Export Price" and "Normal Value" sections of this notice. In accordance with section 777(A) of the Tariff Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions. For comparisons to EP, we made COS adjustments by deducting direct selling expenses incurred on home market sales and adding U.S. direct selling expenses. For comparisons to CEP, we made deductions for direct selling expenses incurred on home market sales. There were no comparisons to CV for these preliminary results.

Reimbursement

Section 351.402(f) of the antidumping regulations requires the Department to deduct from EP or CEP the amount of any antidumping duty that is reimbursed to the importer. Based on verified evidence on the record in this review, including the revised agency agreement between Hoogovens and Hoogovens Steel USA, Inc. (HSUSA) and the refund to Hoogovens by HSUSA of a portion of the cash deposits advanced to HSUSA for merchandise entered during the second and fourth administrative reviews, the Department has preliminarily determined that HSUSA is solely responsible for the payment of antidumping duties. Further, evidence on the record in this review shows that HSUSA has sufficient assets to establish its ability to pay the antidumping duties to be assessed (*see* "United States Verification Report," at 3 (July 8, 1999)). Therefore, for this period of review we have determined that Hoogovens has not reimbursed HSUSA for antidumping duties to be assessed.

Preliminary Results of Review

We preliminarily determine that the following margin exists for the period August 1, 1997 through July 31, 1998:

Company	Margin (percent)
Hoogovens Staal BV	0.25

Parties to this proceeding may request disclosure within five days of publication of this notice and any interested party may request a hearing within 30 days of publication. Any

[1] Hoogovens reported CV data, which provide the cost of manufacturing the products sold in the United States. As the product mix is very different in the home market, the CV data are not representative of total costs.

hearing, if requested, will be held 44 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 37 days after the date of publication. The Department will publish the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at a hearing, within 120 days after the publication of this notice.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and NV may vary from the percentage given above. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review and for future deposits of estimated duties. For assessment purposes we intend to calculate importer-specific assessment rates for cut-to-length carbon steel plate. For both EP and CEP sales we will divide the total dumping duties for each importer (calculated as the difference between NV and EP or CEP) by the entered value of the merchandise. Upon completion of this review we will direct Customs to assess the resulting *ad valorem* rates against the entered value of each entry of subject merchandise by each importer during the POR.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of cold-rolled carbon steel flat products from the Netherlands entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for the reviewed firm will be the rate established in the final results of administrative review, except if the rate is less than 0.5 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c), in which case the cash deposit rate will be zero; (2) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review; and (3) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the original fair value investigation, the cash deposit rate will be 19.32 percent.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: August 31, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99-23321 Filed 9-7-99; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-201-802]

Gray Portland Cement and Clinker From Mexico; Preliminary Results of Antidumping Duty Administrative Review and Extension of Final Results of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and extension of final results of administrative review.

SUMMARY: In response to requests from interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on gray portland cement and clinker from Mexico. The review covers exports of subject merchandise to the United States during the period August 1, 1997, through July 31, 1998, and one firm, CEMEX, S.A. de C.V., and its affiliate, Cementos de Chihuahua, S.A. de C.V. The results of this review indicate the existence of dumping margins for the period.

We invite interested parties to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the argument (1) a statement of the issues, and (2) a brief summary of the argument.

In addition, we are extending the period for issuing the final results of this review. Our final results will be issued no later than 180 days after the date of publication of these preliminary results of review.

EFFECTIVE DATE: September 8, 1999.

FOR FURTHER INFORMATION CONTACT: Davina Hashmi, Anne Copper, or George Callen, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482-5760, (202) 482-0090, (202) 482-0180, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations codified at 19 CFR Part 351 (April 1998).

Background

On August 11, 1998, the Department published in the **Federal Register** a Notice of Opportunity to Request Administrative Review concerning the antidumping duty order on gray portland cement and clinker from Mexico (63 FR 42821). In accordance with 19 CFR 351.213, the petitioner, the Southern Tier Cement Committee (STCC), requested a review of CEMEX, CEMEX's affiliate, Cementos de Chihuahua, S.A. de C.V. (CDC), and Apasco, S.A. de C.V. (Apasco). In addition, CEMEX and CDC requested review of their own entries. Apasco subsequently reported, and the Department confirmed with U.S. Customs, that Apasco did not have any U.S. sales or shipments during the period of review. On September 29, 1998, the Department published a Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews (63 FR 51894) initiating this review. The period of review is August 1, 1997, through July 31, 1998. The Department is now conducting a review of CEMEX and CDC pursuant to section 751 of the Act.

Scope of Review

The products covered by this review include gray portland cement and clinker. Gray portland cement is a hydraulic cement and the primary component of concrete. Clinker, an intermediate material product produced when manufacturing cement, has no use other than of being ground into finished cement. Gray portland cement is currently classifiable under the Harmonized Tariff Schedule (HTS) item number 2523.29 and cement clinker is currently classifiable under HTS item number 2523.10. Gray portland cement has also been entered under HTS item number 2523.90 as "other hydraulic cements." The HTS subheadings are provided for convenience and customs purposes only. Our written description of the scope of the proceeding is dispositive.

Verification

As provided in section 782(i) of the Act, we verified sales information provided by CEMEX and CDC using standard verification procedures, including an examination of relevant sales and financial records, selection of original documentation containing relevant information, and an on-site tour of one of CDC's manufacturing facilities. Our verification results are outlined in public versions of the verification reports.

Extension of Final Results

We have determined that it is not practical to complete our final results within 120 days of the date of publication of this notice of preliminary results. To allow time to obtain, analyze, and verify new cost information which we requested late in this review, we are extending the deadline for our final results of review, pursuant to 19 CFR 351.213(h)(2), from 120 to 180 days after publication of this notice. Memorandum from Richard W. Moreland to Robert S. LaRussa, *1997-1998 Administrative Review of the Anti-Dumping Order on Gray Portland Cement and Clinker from Mexico-Extension of Final Results,* August 31, 1999. (Public versions of all referenced memoranda are on file in Room B-099 of the Department's main building.)

Collapsing

Section 771(33) of the Act defines when two or more parties will be considered affiliated for purposes of an antidumping analysis. Moreover, section 351.401(f) of the regulations describes when we will treat two or more affiliated producers as a single entity (*i.e.*, "collapse" the firms) for purposes of calculating a dumping margin. In the three previous administrative reviews of this order, we analyzed whether we should collapse CEMEX and CDC in accordance with our regulations. *Gray Portland Cement and Clinker from Mexico; Final Results of Antidumping Duty Administrative Review*, 64 FR 13148 (March 17, 1999).

The regulations state that the Department will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Department concludes that there is a significant potential for the manipulation of price or production. In identifying a significant potential for the manipulation of price or production, the factors the Department may consider include the following: (i) the level of common ownership; (ii) the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and (iii) whether operations are intertwined, such as through the sharing of sales information, involvement in production and pricing decisions, the sharing of facilities or employees, or significant transactions between the affiliated producers.

A North American Free Trade Agreement Binational Panel upheld our decision in the 1994/95 administrative review to collapse CEMEX and CDC. *Article 1904 Binational Panel Review Pursuant To The North American Free Trade Agreement* opinion of the Panel, Secretariat File No. USA-97-1904-01 (June 18, 1999). We found that, in each of the subsequent administrative reviews, the factual information underlying our original decision to collapse these two entities did not change and, accordingly, we continued to treat these two entities as a single entity.

Having reviewed the current record, we find, once again, that the factual information underlying our original decision to collapse these two entities has not changed during the instant administrative review period. CEMEX's indirect ownership of CDC exceeds five percent, such that these two companies are affiliated pursuant to section 771(33)(E) of the Act. In addition to their affiliation, we find that CEMEX and CDC have similar production processes. Finally, interlocking boards of directors and significant transactions between the companies give rise to a significant potential for the manipulation of price or production. Accordingly, we preliminarily conclude that these affiliated producers should be treated as a singly entity and that we should calculate a single, weighted-average margin for these companies. Therefore, throughout this notice, references to "respondent" should be read to mean the collapsed entity. Memorandum from Analyst to Joseph A. Spetrini, *1996/1997 Administrative Review of Gray Portland Cement and Clinker from Mexico* (August 31, 1998), and Memorandum from Analyst to File, *Collapsing CEMEX, S.A. and Cementos de Chihuahua for the Current Administrative Review* (April 6, 1999).

Export Price and Constructed Export Price

We used export price (EP), in accordance with section 772(a) of the Act, where the subject merchandise was sold to the first unaffiliated purchaser in the United States prior to importation and constructed export price (CEP) was not otherwise warranted based on the facts in the record. We used CEP in accordance with section 772(b) of the Act for those sales to the first unaffiliated purchaser that took place after importation into the United States. CEMEX made CEP sales during the period of review, while CDC made both CEP and EP sales during the period of review.

We calculated EP based on delivered prices to unaffiliated customers in the United States. Where appropriate, we made adjustments from the starting price for early payment discounts, foreign inland freight, U.S. inland freight, U.S. brokerage and handling, and U.S. duties. We also adjusted the starting price for billing adjustments to the invoice price.

We calculated CEP based on delivered prices to unaffiliated customers. Where appropriate, we made adjustments to the starting price for discounts and billing adjustments to the invoice price. In accordance with section 772(d) of the Act, we deducted those selling expenses, including inventory carrying costs, that were related to economic activity in the United States. We also made deductions for foreign brokerage and handling, foreign inland freight, U.S. inland freight and insurance, U.S. brokerage and handling, U.S. duties, and direct selling expenses. Finally, we made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act.

With respect to subject merchandise to which value was added in the United States prior to sale to unaffiliated U.S. customers (*e.g.*, cement that was imported and further-processed into finished concrete by U.S. affiliates of foreign exporters), we preliminarily determine that the special rule under section 772(e) of the Act for merchandise with value added after importation is applicable.

Section 772(e) of the Act provides that, where the subject merchandise is

imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we shall determine the CEP for such merchandise using the price of identical or other subject merchandise if there is a sufficient quantity of sales to provide a reasonable basis for comparison and we determine that the use of such sales is appropriate. Section 351.402(c)(2) of the regulations provides that the Department normally will determine that the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise if the Department estimates the value added to be at least 65 percent of the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States. We normally will estimate the value added based on the difference between the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the price paid for the subject merchandise by the affiliated person. The Department normally will base this determination on averages of the prices and the value added to the subject merchandise. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine the CEP.

During the course of this administrative review, the respondent submitted, and we verified, information which allowed us to determine whether, in accordance with section 772(e) of the Act, the value added in the United States by its U.S. affiliates is likely to exceed substantially the value of the subject merchandise. To determine whether the value added is likely to exceed substantially the value of the subject merchandise, we estimated the value added based on the difference between the averages of the prices charged to the first unaffiliated purchaser for the merchandise as sold in the United States and the averages of the prices paid for subject merchandise by the affiliated person. Based on this analysis, we estimate that the value added was at least 65 percent of the price the respondent charged to the first unaffiliated purchaser for the merchandise as sold in the United States. Therefore, we preliminarily determine that the value added is likely to exceed substantially the value of the subject merchandise. Also, the record indicates that there is a sufficient quantity of subject merchandise to prove a reasonable and appropriate basis for comparison. Accordingly, for purposes of determining dumping margins for these sales, we have used the weighted-average margin of 45.39 percent calculated on sales of identical or other subject merchandise sold to unaffiliated purchasers.

No other adjustments to EP or CEP were claimed or allowed.

Normal Value

A. Comparisons

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating normal value (NV), we compared the respondent's volume of home-market sales of the foreign like product to the volume of U.S. sales of the subject merchandise in accordance with section 773(a)(1)(C) of the Act. Since the respondent's aggregate volume of home-market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable. Therefore, we have based NV on home-market sales.

During the period of review, CEMEX and CDC sold two types of cement in the United States—Type V LA and Type II, respectively. The statute expresses a preference for matching U.S. sales to identical merchandise in the home market. However, in situations where identical product types cannot be matched, the statute expresses a preference for basing NV on sales of similar merchandise (sections 773(a)(1)(B) and 771(16) of the Act). Because we have preliminarily determined that Type V and Type V LA sold in the home market by CEMEX are outside the ordinary course of trade (see the "Ordinary Course of Trade" section of this notice) and CDC had no sales to unaffiliated customers of either Type II LA or Type V LA in the home market, we did not find identical matches in the home market to which we could match sales of the subject merchandise. Accordingly, we based NV on sales of similar merchandise.

During the period of review, CEMEX sold four basic types of gray portland cement in Mexico—Type I, Type V, Type V LA, and pozzolanic. During the same period, CDC sold two types of gray portland cement in Mexico—Type I and Type II. The history of this order demonstrates that, of the various types of cement which may reasonably be compared to imports of cement from Mexico, Type I cement is most similar to the Type V LA cement sold in the United States. On June 2, 1999, we determined that, while pozzolanic cement is covered by the scope of this order, it is not comparable to Types II and V under sections 771(16)(B) or (C) of the Act and, thus, we did not require CEMEX to report its home-market sales of pozzolanic cement for this review. See Memorandum from Laurie Parkhill to Richard W. Moreland, *Gray Portland Cement and Clinker from Mexico-Sales of Pozzolanic Cement* (June 2, 1999).

On June 18, 1999, the North American Free Trade Agreement Binational Panel reviewing the final results of the 1994/1995 administrative review found that CEMEX's and CDC's Type I bagged cement should not have been combined with sales of Type I cement sold in bulk to the United States in the calculation of normal value. In other words, the Panel found that sales of Type I cement in bags should not be included in the universe of home-market sales available for comparison to bulk sales to the United States. Rather, the Panel concluded, only sales of Type I cement in bulk should serve as the basis for determining NV for Type II and Type V cement sold in the United States, and it remanded the results of the 1994/1995 review to the Department for a recalculation of the margin. Those proceedings have not yet been completed. In this review, the record supports the continued practice of finding CEMEX's and CDC's sales of Type I cement in bags in the home market as sales comparable, within the meaning of section 771(16)(B) of the Act, to U.S. sales. Specifically, in accordance with section 771(16)(B) of the Act, we find that both bulk and bagged Type I cement are produced in the same country and by the same producer as Type V LA or Type II, both bulk and bagged Type I cement are like Type V LA in component materials and in the purposes for which used, and both bulk and bagged Type I cement are approximately equal in commercial value to Type II or Type V LA cement. Questionnaire responses from both CEMEX and CDC indicate that, with the exception of packaging, Type I cement sold in bulk and Type I cement sold in bags are physically identical and both are used in the production of concrete. Also, since there is no difference in cost between cement sold in bulk or in bag (again with the exception of packaging), both are approximately equal in commercial value. See CEMEX response to Section A of the Department's Questionnaire, Volume 1, November 12, 1998, pgs. A–28–30, Section B, December 4, 1998, pg. B–51, and CDC response to Section A, A–44–47, November. 12, 1998, and Section B, December 2, 1998, pg. B–31.

B. Ordinary Course of Trade

Section 773(a)(1)(B) of the Act requires the Department to base NV on "the price at which the foreign like product is first sold (or in the absence of sales, offered for sale) for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade." Ordinary course of trade is defined as "the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind."

Apart from identifying certain sales that are below cost (section 773(b)(1) of the Act) or between affiliated persons (section 773(f)(2) of the Act), Congress has not specified any criteria that the Department should use in determining the appropriate "conditions and practices" which are "normal in the trade under consideration." Therefore, "Commerce, in its discretion, chooses how best to analyze the many factors involved in a determination of whether sales are made within the ordinary course of trade." *Thai Pineapple Public Co.* v. *United States*, 946 F. Supp. 11, 14–17 (CIT 1996).

The Department's ordinary-course-of-trade inquiry is far-reaching. It evaluates not just "one factor taken in isolation but rather all the circumstances particular to the sales in question." *Murata Mfg. Co.* v. *United States*, 820 F. Supp. 603, 607 (CIT 1993). In short, we examine the totality of the facts in each case to determine if sales are being made for "unusual reasons" or under "unusual circumstances." *Electrolytic Manganese Dioxide from Japan; Final Results of Antidumping Duty Administrative Review*, 58 FR 28551, 28552 (May 14, 1993).

In the 1991/1992 administrative review of this order, the Department determined that CEMEX's home-market sales of Type II and Type V cement were outside the ordinary course of trade and, therefore, could not be used in the calculation of NV (then referred to as "foreign market value"). *Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review*, 58 FR 47253, 27254 (Sept. 8, 1993). In making this determination, the Department considered, *inter alia*, shipping distances and costs, sales volume, profit levels, sales history, home-market demand and the promotional aspect of sales. See Decision Memorandum to Joseph A. Spetrini, August 31, 1994, and Memorandum from Holly A. Kuga to Joseph A. Spetrini, August 31, 1993. Based upon similar facts and using a similar analysis, the Department reached the same conclusion in the final results of the 1994/1995, 1995/1996, and 1996/1997 administrative reviews for certain sales of Type II and Type V cement by CEMEX in Mexico. *Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review*, 62 FR 17148, 17151 (April 9, 1997), *Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 12764, 12768 (March 16, 1998); *Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review*, 64 FR 13148 (March 17, 1999).

In the instant review, CEMEX claims that its sales of Type V LA cement in the home market are within the ordinary course of trade. Pursuant to section 773(a)(1)(B) of the Act, the Department has examined the totality of the circumstances surrounding CEMEX's sales of cement in Mexico that are produced as Type V and Type V LA cement and marketed as Type I, Type II LA, Type V, and Type V LA (Type V LA is identical in physical characteristics to the cement that CEMEX sells in the United States). Based on the current record, which reflects similar findings in prior reviews (see, for example, Decision Memorandum to Joseph A. Spetrini, August 31, 1998), the Department has preliminarily determined that CEMEX's home-market sales of Type V and Type V LA cement during the review period were outside the ordinary course of trade.

CEMEX sells, in Mexico, Type V and Type V LA cement produced at its Campana and Yaqui plants. The facts established in the record of this review with respect to sales from these plants are very similar to the facts which led the Department to determine in the 1991/1992, 1994/1995, 1995/1996, and 1996/1997 reviews that home-market sales of Type V, including Type V LA, cement were outside the ordinary course of trade. The determination involving the 1991/1992 review, as noted above, was affirmed by the Court of International Trade (CIT) in *CEMEX* v. *United States*, Slip Op. 95–72 at 14. Specifically, as in previous reviews, we examined shipping distances and costs, sales volume, profit levels, sales history, home-market demand and the promotional aspect of sales. We found that, while there has been some change from findings in previous reviews, changes have been relatively minor and do not affect the overall conclusion that sales of Type V and Type V LA cement from the Campana and Yaqui plants are outside of the ordinary course of trade.

With respect to sales of Type V LA cement from CEMEX's Hidalgo plant, we have determined that these sales are also outside the ordinary course of trade. CEMEX notes that only the Campana and Yaqui plants produce Type V LA on a consistent basis, but it has produced Type V LA on "occasion" at its Hidalgo plant. In addition, CEMEX has stated that production of cement meeting the ASTM specifications of Type V LA at the Hidalgo plant was unintentional. In fact, CEMEX itself, in prior submissions, has indicated that production and sales of cement meeting ASTM standards for Type V LA at the Hidalgo plant were unusual in that they attempted to produce another type of cement. Moreover, none of the Type V LA production from the Hidalgo plant was sold as Type V LA and the profit-level pattern was similar to the pattern at Campana and Yaqui for sales of cement produced as Type V LA and sold as Type I. A complete discussion of our preliminary conclusions on sales of cement from the Campana, Yaqui, and Hidalgo plants, requiring reference to proprietary information, is contained in a memorandum in the official file for this case. Memorandum from Analyst to Laurie Parkhill, *Gray Portland Cement and Clinker from Mexico—Ordinary Course of Trade* (August 31, 1999).

In conclusion, the decision to exclude sales of Type V and Type V LA cement from the calculation of NV centers around the unusual nature and characteristics of these sales compared to the vast majority of CEMEX's other home-market sales. Based upon these differences, the Department has preliminarily determined that they are not representative of CEMEX's home-market sales, *i.e.*, these sales were not within the ordinary course of trade.

C. Arm's-Length Sales

Consistent with 19 CFR 351.403, we excluded sales to affiliated customers in the home market which were not made at arm's-length prices from our analysis. Because we could not test whether sales of Type II cement by CDC were made at arm's-length prices, we excluded such sales from our analysis. To test whether other sales to affiliated customers were made at arm's length for which we could test the prices, we compared the prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Where the price to the affiliated party was on average 99.5 percent or more of the price to the unaffiliated parties, we

determined that the sales made to the affiliated party were at arm's length.

D. Cost of Production

The petitioner alleged, on May 11, 1999, that CEMEX and its affiliate, CDC, sold gray portland cement and clinker in the home market at prices below their cost of production (COP). Based on these allegations, the Department determined, on July 15, 1999, that it had reasonable grounds to believe or suspect that CEMEX and CDC had sold the subject merchandise in the home market at prices below the COP. Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation in order to determine whether CEMEX and CDC made home-market sales during the period of review at below-cost prices. See Memorandum from Laurie Parkhill to Richard W. Moreland, *Gray Portland Cement and Clinker from Mexico: Amended Request to Initiate Cost Investigation* (July 15, 1999). Because of time constraints, we could not incorporate the collapsed respondent's cost and constructed value data into the margin calculation for the preliminary results of review. However, we will incorporate such data into the margin calculation for the final results of review. Accordingly, to calculate NV for these preliminary results, we used all comparison-market sales to unaffiliated and affiliated customers that passed the arm's-length test and that were made within the ordinary course of trade.

E. Adjustments to Normal Value

Where appropriate, we adjusted home-market sales of Type I cement for discounts, rebates, packing, handling and interest revenue, and billing adjustments to the invoice price. In addition, we adjusted the starting price for inland freight, inland insurance, and pre-sale warehousing expenses. For comparisons to EP transactions, we made adjustments to the home-market starting price for differences in direct selling expenses in the two markets. For comparisons to CEP sales, we deducted home-market direct selling expenses from the home-market price. We also deducted home-market indirect selling expenses as a CEP-offset adjustment (see *F. Level of Trade/CEP Offset* section below). In addition, in accordance with section 773(a)(6) of the Act, we deducted home-market packing costs and added U.S. packing costs.

Section 773(a)(6)(C)(ii) of the Act directs us to make an adjustment to NV to account for differences in the physical characteristics of merchandise where similar products are compared. Section 351.411(b) of the regulations directs us to consider differences in variable costs associated with the physical differences in the merchandise. For CDC's sales, we calculated a difference-in-merchandise adjustment using appropriate plant-specific variable cost data CDC reported.

For CEMEX, although the company provided information pertaining to the cost of production for Type I and Type V LA cement, it was unable to segregate specific costs attributable to differences in physical characteristics other than costs attributable to the addition of kaolin. However, the Department has determined that the existing data and product information from previous reviews, on the record of the instant review, indicate that there are differences in the physical characteristics of Type I cement and Type V LA cement. Thus, we conclude that a difference-in-merchandise adjustment is appropriate. Section 776(a) of the Act authorizes the Department to use facts otherwise available when necessary information is not on the record. Therefore, for sales made by CEMEX, we preliminarily determine, in accordance with section 776 of the Act, that the use of partial facts available for calculating the difference-in-merchandise adjustment is appropriate. We have preliminarily determined that the most appropriate basis for calculating the difference-in-merchandise adjustment is the actual variable cost differences in producing Type I cement and Type V LA cement at CEMEX's Hidalgo plant, which is CEMEX's only plant that produced both types of cement during the period of review. Although we have not yet verified CEMEX's variable cost information, we intend to verify the cost information for the Hidalgo plant and will make any necessary changes based on verification prior to the issuance of the final results of review. A discussion of our preliminary conclusions on differences in merchandise is contained in a memorandum in the official file for this case. Memorandum from Analyst to Laurie Parkhill, *Gray Portland Cement and Clinker from Mexico—Difference in Merchandise* (August 31, 1999).

F. Level of Trade/CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the home market at the same level of trade as the EP or CEP. The NV level of trade is that of the starting-price sales in the home market or, when NV is based on constructed value (CV), that of sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP, the U.S. level of trade is also the level of the starting-price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61971 (November 19, 1997).

Based on our analysis, we conclude that the respondent's home-market sales to various classes of customers which purchase both bulk and bagged cement constituted one level of trade. We based our conclusion on our analysis of its selling functions and their sales channels. We found that, with some minor exceptions, CEMEX and CDC performed the same selling functions to varying degrees in similar channels of distribution. We also concluded that the variations in selling functions were not substantial when all selling expenses were considered as a whole. Memorandum to Laurie Parkhill, *Level of Trade* (Level of Trade Memorandum), August 30, 1999.

With respect to U.S. sales, we found that CEMEX's and CDC's home-market sales occur at a different and more advanced stage of distribution than their sales to their respective U.S. affiliates. We also determined that the data available does not permit us to calculate a level-of-trade adjustment. See the Level of Trade Memorandum. Therefore, in accordance with section 773(a)(7)(B) of the Act, we granted a CEP offset for the CEP sales made by CEMEX and CDC. CDC also reported that it sold cement to EP customers (end-users) and listed the selling functions performed for EP customers. We determined that CDC's EP sales are at a different level of trade as compared to CEMEX's and CDC's home-market sales. However, because there is only one level of trade in the home market, available data did not permit a level-of-trade adjustment.

Inflation

In the previous administrative review of this proceeding, we found that Mexico experienced significant inflation and we adjusted our dumping margin analysis to account for the effects of high inflation on prices in order to avoid the distortions caused by such inflation. In this review period, we found that Mexico experienced less than 5 percent inflation during each month of the period of review with an annual inflation rate of less than 16 percent. Because we did not find these inflation rates to be so significant that they cause distortions in our analysis, we have not adjusted our antidumping margin analysis to account for inflation during the instant period.

Currency Conversion

We made currency conversions in accordance with section 773A of the Act based on rates certified by the Federal Reserve Bank in effect on the dates of U.S. sales.

Preliminary Results of Review

As a result of our review, we preliminarily determine the dumping margin for CEMEX and CDC for the period August 1, 1997, through July 31, 1998, to be 45.39 percent.

The Department will disclose calculations performed in connection with these preliminary results to parties within five days of the date of publication of this notice. Interested parties may request a hearing by November 1, 1999. The Department will notify interested parties of the date of any requested hearing and the briefing schedule.

Upon completion of this review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. We will base the assessment of antidumping duties on the per-unit assessment amount for subject merchandise.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate determined in the final results of review; (2) for previously reviewed or investigated companies not mentioned above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or in the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacture of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 61.85 percent, the all-others rate from the LTFV investigation. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double dumping duties.

We are issuing and publishing this notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 31, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–23326 Filed 9–7–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–825]

Oil Country Tubular Goods From Korea: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Preliminary Results of the Antidumping Duty Administrative Review of Oil Country Tubular Goods From Korea.

SUMMARY: In response to a request from SeAH Steel Corporation ("SeAH"), the Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on oil country tubular goods from Korea. This review covers one manufacturer/exporter of the subject merchandise to the United States, SeAH, and the period August 1, 1997 through July 31, 1998, which is the third period of review ("POR").

We have preliminarily determined that SeAH made sales below normal value ("NV"). If these preliminary results are adopted in our final results of these administrative reviews, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the constructed export price ("CEP") and the NV. The preliminary results are listed below in the section entitled "Preliminary Results of Review."

EFFECTIVE DATE: September 8, 1999.

FOR FURTHER INFORMATION CONTACT: Jonathan Lyons or Steve Bezirganian, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0374, or (202) 482–0162, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (62 FR 27379, May 19, 1997).

Background

On August 11, 1995, the Department published in the **Federal Register** (60 FR 41058) the antidumping duty order on oil country tubular goods from Korea. On August 11, 1998, the Department published in the **Federal Register** (63 FR 42821) a notice indicating an opportunity to request an administrative review of this order for the period August 1, 1997 through July 31, 1998. On August 31, 1998, both SeAH and petitioners (Maverick Tube Corporation, Lone Star Steel Company, and IPSCO Tubulars Inc.) requested an administrative review for SeAH entries during that period. On September 29, 1998, in accordance with Section 751 of the Act, we published in the **Federal Register** a notice of initiation of an administrative review of this order for the period August 1, 1997 through July 31, 1998 (63 FR 51893).

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. On February 17, 1999, the Department published a notice of extension of the time limit for the preliminary results in the review to August 13, 1999. *See Notice of Extension of Time Limit for Antidumping Duty Administrative Review of Oil Country Tubular Goods from Korea*, 64 FR 7855. On July 20, 1999, the Department published a notice of extension of the time limit for the preliminary results in the review to August 31, 1999. *See Notice of Extension of Time Limit for Antidumping Duty Administrative Review of Oil Country Tubular Goods from Korea*, 64 FR 38890.

The Department is conducting this review in accordance with section 751(a) of the Act.

Scope of Review

The products covered by this order are oil country tubular goods ("OCTG"), hollow steel products of circular cross-section, including only oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute ("API") or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing or tubing pipe containing 10.5 percent or more of chromium, or drill pipe. The products subject to this order are currently classified in the Harmonized Tariff Schedule of the United States ("HTSUS") under item numbers: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50. The HTSUS item numbers are provided for convenience and Customs purposes. The written description remains dispositive of the scope of this review.

Transactions Reviewed

SeAH produced OCTG in Korea and shipped it to the United States. Pusan Pipe America, Inc. ("PPA"), an affiliate of SeAH, was the importer of record for all U.S. sales. All of SeAH's U.S. sales are classified as CEP sales (*see* "United States Price" section below). The Department's questionnaire instructed the respondent to report CEP sales made after importation if the dates of sale fell in the period of review (*see* page C–1 of the Department's September 29, 1998 Questionnaire). Therefore, as it did in the 1996–1997 POR, the Department again reviewed U.S. sales in the POR if those sales involved subject merchandise that had entered the United States and been placed in the physical inventory of SeAH's U.S. affiliates. The questionnaire also instructed the respondent to report CEP sales made prior to importation if the entry dates fell in the period of review. Consequently, we have limited our U.S. database to these transactions. For the few CEP sales made through PPA but shipped directly from Korea to the unaffiliated U.S. customers, we reviewed U.S. entries in the POR.

Comparison Market

The Department determines the viability of a comparison market by comparing the aggregate quantity of comparison market sales to U.S. sales. An exporting country is not considered a viable comparison market if the aggregate quantity of sales of subject merchandise within it amounts to less than five percent of the quantity of sales of subject merchandise into the United States during the POR. Section 773(a)(1)(B) of the Act; 19 CFR 351.404. We found Korea was not a viable comparison market because the aggregate quantity of SeAH's sales of subject merchandise within Korea during the POR amounted to less than five percent of the quantity of sales of subject merchandise to the United States during the POR.

According to section 773(a)(1)(B)(ii) of the Act, the price of sales to a third country can be used as the basis for normal value only if such price is representative, if the aggregate quantity (or, where appropriate, value) of sales to that country is at least 5 percent of the quantity (or value) of total sales to the United States, and if the Department does not determine that the particular market situation in that country prevents proper comparison with the export price or constructed export price. The two potential third country markets are Myanmar and Japan. Sales to Myanmar, on both a value and a volume basis, were several times greater than sales to Japan. *See, e.g.*, Exhibit A–30 of SeAH's March 19, 1999, supplemental questionnaire response. In the previous administrative review the Department found the Myanmar sales to be representative, and found no reason to determine that the market situation in Myanmar would somehow prevent proper comparison between normal value and export price or constructed export price. *See Oil Country Tubular Goods From Korea: Preliminary Results of Antidumping Duty Administrative Review*, 63 FR 47469, 47470 (September 8, 1998), unchanged at *Oil Country Tubular Goods from Korea: Final Results of Antidumping Duty Administrative Review*, 64 FR 13169 (March 17, 1999). Likewise, in this administrative review we found Myanmar to be an appropriate comparison market. We utilized Myanmar sales in our analysis of petitioners' allegation regarding sales below cost (*see* "Normal Value" section below), and have used SeAH's sales to that market as the basis for normal value.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent, covered by the description in the Scope of the Review section, above, and sold in the comparison market during the period of review (POR), to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no contemporaneous sales of identical merchandise in the comparison market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics listed in Appendix V of the Department's September 29, 1998 antidumping questionnaire.

Normal Value Comparisons

To determine whether sales of subject merchandise to the United States were made at less than normal value, we compared the Constructed Export Price (CEP) to the NV, as described in the "United States Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and

compared these to individual U.S. transaction prices.

United States Price

Typical sales proceeded as follows: after importation of the subject merchandise, PPA maintained the merchandise in inventory. PPA sold OCTG to the Panther division of State, a firm that is jointly owned by SeAH and PPA. State, in turn, sold OCTG to unaffiliated U.S. customers, typically after further manufacturing was performed by unaffiliated processors. Finally, State invoiced the unaffiliated customers and received payment. For a few sales, involving back-to-back sales by SeAH through PPA, SeAH produced subject merchandise to order and shipped the merchandise to the U.S. customer, with PPA fulfilling a number intermediary functions as discussed below.

In accordance with section 772(b) of the Act, we used CEP for calculation of price to the United States because either the first sales to unaffiliated customers in the United States were made after importation of the subject merchandise or, in the remaining instances, the U.S. affiliate, PPA, performed functions beyond what would be considered ancillary. For back-to-back sales, respondent confirmed that PPA performed a number of functions, including occasional negotiations with unaffiliated customers, forwarding orders and order changes (at times) from unaffiliated U.S. customers to SeAH for acceptance, acting as the importer of record, provision of marine insurance, clearing subject merchandise through U.S. customs, occasional handling of freight from the U.S. point of entry, preparing and issuing invoices to unaffiliated customers, receipt of payments from unaffiliated customers, and providing customer service when necessary. Finally, respondent reported that SeAH has no direct contact with unaffiliated U.S. customers. As noted on page 2 of SeAH's supplemental questionnaire response dated March 19, 1999, the respondent agreed to characterize these "back-to-back" sales as CEP sales, in part because such characterization was consistent with the Department's recent decision involving respondents with similar sales processes (*see Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 64 FR 12927, 12937–38 (March 16, 1999)).

The starting point for the calculation of CEP was the delivered price to unaffiliated customers in the United States. We made adjustments for early payment discounts and other discounts. In accordance with section 772(c)(2) of the Act, we made deductions for movement expenses, including foreign inland freight, ocean freight, marine insurance, foreign and U.S. brokerage and handling, U.S. inland freight, and U.S. customs duties. In accordance with section 772(d)(1) of the Act, we also deducted credit expenses, warranty expenses, warehousing expenses, other direct selling expenses (inspection expenses), and indirect selling expenses, including inventory carrying costs. In accordance with section 772(c)(1)(B) of the Act, we added duty drawback to the starting price. In accordance with section 772(d)(2) of the Act, we deducted the cost of further manufacturing where such deduction was appropriate. This deduction for further manufacturing was based on the fees charged by the unaffiliated U.S. processors; SeAH indicated that the reported further processors' charges included processing and repacking, and that it did not include separate G&A or interest expense information related to this further processing because all of the expenses incurred by State and PPA, including the minimal G&A and interest expense associated with their dealings with further processors, were reported as selling expenses. Finally, we deducted an amount of profit allocated to these expenses, when incurred in connection with economic activity in the United States, in accordance with section 772(d)(3) of the Act.

Normal Value

A. Model Match

In accordance with recent practice, we matched a given U.S. sale to comparison market sales of the next most similar model if all contemporaneous sales of the most comparable model were below cost and discarded from our analysis. *See Oil Country Tubular Goods From Korea: Preliminary Results of Antidumping Duty Administrative Review*, 63 FR 47469, 47471 (September 8, 1998), unchanged at *Oil Country Tubular Goods from Korea: Final Results of Antidumping Duty Administrative Review*, 64 FR 13169 (March 17, 1999). The Department uses CV as the basis for NV only when there are no sales that are suitable for comparison. Therefore, in this proceeding, in making comparisons in accordance with section 771(16) of the Act, we considered all products described in the "Scope of Review" section of this notice, above, sold in the comparison market in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Sections B and C of our antidumping questionnaire. This methodology is pursuant to the ruling of the Court of Appeals for the Federal Circuit in *CEMEX* vs. *United States*, 133 F.3d 897 (Fed Cir. 1998).

B. Cost of Production and Constructed Value

1. Cost of Production

On December 21, 1998, petitioners alleged that SeAH made comparison market sales of OCTG at prices below the cost of production ("COP") during the POR. After analyzing petitioners' allegation, on February 4, 1999, the Department initiated a COP investigation of SeAH (*see Analysis of Petitioners' Allegation of Sales Below the Cost of Production Memorandum* (February 4, 1999); a public version of this report is on file in the Central Record Unit, Room B–099, Department of Commerce). Using sales and COP information provided by the respondent, we compared sales of the foreign like product in the comparison market with the model-specific COP figure for the POR. In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus selling, general and administrative (SG&A) expenses, including all costs and expenses incidental to placing the foreign like product in condition packed and ready for shipment.

The API Specification 5CT, to which SeAH states it makes its OCTG, requires that a carload lot (considered to be a minimum of 40,000 pounds, or 18.14 metric tons) meet a negative weight tolerance of 1.75% (*i.e.*, the actual weight of the carload lot can be no less than 100% minus 1.75%, or 98.25%, of the theoretical weight of the carload, the latter being the weight basis for SeAH's sales). The weight tolerance for single lengths of pipe are plus 6.5% and minus 3.5% (*i.e.*, the actual weight of any given pipe must be between 96.5% and 106.5% of the theoretical weight). SeAH has reported weight conversion factors that indicate actual weight was less than 96.5% of theoretical weight, outside of its own interpretation of the specification's weight tolerance. Weight conversion factors are needed to convert

SeAH's production costs, which for most OCTG products are maintained on an actual weight basis, to a theoretical weight basis, so that the cost and sales data are on a comparable weight basis. *See Circular Welded Non-Alloy Steel Pipe From the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 63 FR 32833, 32836–37 (June 16, 1998).

In the prior review, we found that the minus 1.75% weight tolerance for carload lots applies for all OCTG produced to that specification, not simply to OCTG with an outside diameter of less than 1.660 inches. *See Oil Country Tubular Goods From Korea: Preliminary Results of Antidumping Duty Administrative Review*, 63 FR 47469, 47470 (September 8, 1998), unchanged in final. *See Notice of Final Results of Antidumping Duty Administrative Review of Oil Country Tubular Goods From Korea*, 64 FR 13169 (March 17, 1999). The specification states that "{a}ll dimensions shown herein without tolerances are related to the basis for design and are not subject to measurement to determine acceptance or rejection of the product," and that "{e}xceptions are Grades C90, T95, and Q125, which may be furnished in other sizes, weights, and wall thicknesses as agreed between the purchaser and the manufacturer" (*see* API Specification 5CT at section 7.1, in Exhibit A–14 of SeAH's November 2, 1998, submission). The carload lot weight is a dimension (weight) with a tolerance (minus 1.75%), and none of SeAH's Myanmar or U.S. sales were of Grades C90, T95, or Q125.

Nevertheless, it does not appear that the API carload lot weight tolerance of 1.75% would apply to merchandise being transported by ship, which is the case for SeAH's Myanmar sales and for its sales to PPA. Rather, the 3.5% weight tolerance indicated by the specification would apply. Therefore, as we have determined in the prior review, there is no clear reason why the actual weight should be less than 96.5% of the theoretical weight if all of SeAH's OCTG is produced to the specification. Consequently, for our preliminary results we have used a conversion factor based on this assumption to calculate costs (except for products for which costs were maintained on a theoretical weight basis, which require no weight conversion), consistent with the last administrative review. *See Oil Country Tubular Goods From Korea: Preliminary Results of Antidumping Duty Administrative Review*, 63 FR 47469, 47472 (September 8, 1998), unchanged at *Oil Country Tubular Goods from Korea: Final Results of Antidumping Duty Administrative Review*, 64 FR 13169 (March 17, 1999).

After calculating COP, we tested whether comparison market sales of the foreign like product were made at prices below COP and, if so, whether the below-cost sales were made within an extended period of time in substantial quantities and at prices that did not permit recovery of all costs within a reasonable period of time. Because each individual price was compared to the POR average COP, any sales that were below cost were also determined not to be at prices which permitted cost recovery within a reasonable period of time. We compared model-specific COPs to the reported comparison market prices less any applicable movement charges, discounts, and rebates.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that model because the below-cost sales were not made in substantial quantities within an extended period of time. Where 20 percent or more of a respondent's sales of a given model during the POR were at prices less than the weighted-average COPs for the POR, we disregarded the below-cost sales because they were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2) (B) and (C) of the Act, and were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act.

2. Constructed Value

In accordance with section 773(a)(4) of the Act, we used constructed value ("CV") as the basis for NV when there were no usable contemporaneous sales of such or similar merchandise in the comparison market. We calculated CV in accordance with section 773(e) of the Act. We included SeAH's cost of materials and fabrication (including packing), SG&A expenses, and profit. *See* section 773(e)(2)(A) of the Act. We applied the same conversion factor methodology as noted in the COP section above. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the comparison market.

C. Price-to-Price Comparison

Where appropriate, for comparison to CEP, we made adjustments to NV by deducting Korean inland freight, brokerage and handling, and packing, in accordance with section 773(a)(6)(B) of the Act and direct selling expenses (credit expenses), in accordance with section 773(a)(6)(C)(iii) of the Act. We also made adjustments for differences in costs attributable to differences in physical characteristics of merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act.

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") of the U.S. sales. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For both EP and CEP, the relevant transaction for the level of trade analysis is the sale (or constructed sale) from the exporter to the importer.

To determine whether comparison market NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and unaffiliated customer. If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 17, 1997).

The record does not indicate more than a minimal involvement by SeAH in either the marketing process or the selling functions associated with its Myanmar and U.S. sales. There does not appear to be any substantive difference between the functions performed by SeAH with respect to the sales to the Korean trading company which are destined for Myanmar and the functions performed by SeAH with respect to its sales made to PPA, the affiliated U.S. importer of record. In both instances, SeAH made sales to resellers that in turn sold to end-users, and the record does not indicate any more than the most minimal interaction of SeAH with those resellers (the unaffiliated Korean trading company for Myanmar sales and PPA for U.S. sales) with respect to the sales process. Additionally, SeAH did not claim a LOT adjustment or a CEP offset in this POR. Consequently, we have preliminarily determined that the sales in both markets are at the same LOT. Therefore, neither a CEP offset nor a LOT adjustment is warranted.

Currency Conversion

Our preliminary analysis of Federal Reserve dollar-won exchange rate data shows that the won declined rapidly at the end of 1997, losing over 40% of its value between the beginning of November and the end of December. The decline was, in both speed and magnitude, many times more severe than any change in the dollar-won exchange rate during the previous eight years.

Had the won rebounded quickly enough to recover all or almost all of the initial loss, the Department might have been inclined to view the won's decline at the end of 1997 as nothing more than a sudden, but only momentary, drop, despite the magnitude of that drop. As it was, however, there was no significant rebound. Therefore, we have preliminarily determined that the decline in the won at the end of 1997 was so precipitous and large that the dollar-won exchange rate cannot reasonably be viewed as having simply fluctuated during this time, i.e., as having experienced only a momentary drop in value. Therefore, in making this preliminary determination, the Department used daily rates exclusively for currency conversion purposes for comparisons to U.S. sales occurring between November 1 and December 31, 1997. For sales occurring after December 31, but before March 1, 1998, the Department continued to rely on the standard exchange rate model, but used as the benchmark rate a (stationary) average of the daily rates over this period. In this manner, we used an "up-to-date" (post-precipitous drop) benchmark, but at the same time avoided undue day-to-day fluctuations in the exchange rates used. *See: Notice of Final Determination of Sales at Less Than Fair Value: Emulsion Styrene-Butadiene Rubber from the Republic of Korea*, 64 FR 14865, 14868 (March 29, 1999) and *Notice of Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review: Steel Wire Rope from Korea*, 63 FR 67662, 67665 (December 8, 1998), unchanged at *Steel Wire Rope from Korea; Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Administrative Review* 64 FR 17995 (April 13, 1999).

Preliminary Results of Reviews

As a result of our review, we preliminarily determine the weighted-average dumping margin for the period August 1, 1997 through July 31, 1998 to be as follows:

Manufacturer/Exporter	Time period	Margin (percent)
SeAH	09/01/97–08/31/98	15.03

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the deadline for submission of rebuttal briefs, that is, 37 days after the date of publication of these preliminary results.

The Department will issue the final results of this administrative review, including its analysis of issues raised in any case or rebuttal brief or at a hearing, not later than 120 days after the date of publication of this notice.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. We divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct the U.S. Customs Service to assess the resulting percentage margin against the entered customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a) of the Act: (1) The cash deposit rate for each reviewed company will be that established in the final results of review (except that no deposit will be required for firms with *de minimis* margins, i.e., margins less than 0.5 percent); (2) for exporters not covered in this review, but covered in the LTFV investigation or previous review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be the "all others" rate established in the LTFV investigation, which was 12.17 percent. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the

subsequent assessment of double antidumping duties.

This administrative review and notice are issued in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–23322 Filed 9–7–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–815]

Sulfanilic Acid From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on sulfanilic acid from the People's Republic of China. The review covers exports of this merchandise to the United States for the period August 1, 1997, through July 31, 1998, and thirteen firms: China National Chemical Import and Export Corporation, Hebei Branch (Sinochem Hebei); China National Chemical Construction Corporation, Beijing Branch; China National Chemical Construction Corporation, Qingdao Branch; Sinochem Qingdao; Sinochem Shandong; Baoding No. 3 Chemical Factory; Jinxing Chemical Factory; Zhenxing Chemical Factory; Mancheng Zinyu Chemical Factory, Shijiazhuang; Mancheng Xinyu Chemical Factory, Bejing; Hainan Garden Trading Company; Yude Chemical Company; and Shunping Lile. The preliminary results of this review indicate that there were dumping margins for the two responding parties: Yude Chemical Company/Xinyu Chemical Factory ("Yude/Xinyu") and Zhenxing Chemical Factory/Mancheng Zhenxing Chemical Factory ("Zhenxing/Mancheng") as well as for the "PRC enterprise." The rates assigned to each company are listed below in the "Preliminary Results of the Review" section of this notice.

EFFECTIVE DATE: September 8, 1999.

FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan, Linda Smiroldo Checchia or Sean Carey, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, DC 20230 at (202) 482–4243, (202) 482–6412, or (202) 482–3964, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (1998).

Background

On August 11, 1998, the Department published in the **Federal Register** (63 FR 42821) a notice of "Opportunity to Request Administrative Review" for the August 1, 1997, through July 31, 1998, period of review (POR) of the antidumping duty order on Sulfanilic Acid from the People's Republic of China, 57 FR 37524 (August 19, 1992). In accordance with 19 CFR 351.213, Zhenxing, Yude, PHT International, Inc. ("PHT"), and the petitioners, Nation Ford Chemical Company, requested a review for the aforementioned period. On September 29, 1998, we published a notice of "Initiation of Antidumping Review." *See* 63 FR 51893. The Department is now conducting this administrative review pursuant to section 751(a) of the Act. On October 29, 1998, Zhenxing and Yude, two companies which are described as joint ventures between Chinese companies—namely, Mancheng and Xinyu, respectively—and a U.S.-based company named PHT, reported that they each had made sales of subject merchandise to the United States during the POR in their responses to Section A (Organization, Accounting Practices, Markets and Merchandise) of the Department's questionnaire. Zhenxing and Yude submitted responses to Sections C and D (Sales to the United States and Factors of Production, respectively) on November 25, 1998. Responses to two supplemental questionnaires by Zhenxing and Yude were received on January 25, 1999, and July 23, 1999.

Scope of Review

Imports covered by this review are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid.

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid, classifiable under the subheading 2921.42.24 of the Harmonized Tariff Schedule (HTS), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also classifiable under the subheading 2921.42.24 of the HTS, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials.

Sodium salt (sodium sulfanilate), classifiable under the HTS subheading 2921.42.79, is a powder, granular or crystalline material which contains 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline based on the equivalent sulfanilic acid content, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Review

The review period is August 1, 1997 through July 31, 1998.

Verification

Due to administrative constraints, verification prior to the issuance of this notice of preliminary results was not conducted. Section 351.307 of the Department's regulations stipulate that the Department must verify prior to issuing final results in an administrative review if (1) a domestic interested party, not later than 100 days after the date of publication of the notice of initiation of review, submits a written request for verification; and (2) no verification during either of the two immediately preceding administrative reviews was conducted. In this review, no such written request from a domestic interested party was received and verification was conducted during the immediately preceding 1996–1997 administrative review. However, for reasons stated below, the Department intends to conduct verification prior to the issuance of the final results in this administrative review.

Determination of Producers

Based on the respondents' supplemental questionnaire responses of July 23, 1999, the Department preliminarily determines that the Yude and Xinyu firms constitute a single entity, and that the Zhenxing and Mancheng firms constitute a single entity. Record evidence shows that each producer pair did not maintain separate facilities for manufacturing subject merchandise, that each producer pair shares common majority ownership and that each producer pair shares common officers. *See* Collapsing Decision Memorandum for Joseph A. Spetrini, Deputy Assistant Secretary for AD/CVD Enforcement Group III from Barbara Tillman, Director, Office of AD/CVD Enforcement VII, dated August 31, 1999. A public version of this memorandum is on file in the Central Records Unit (room B–099 of the Main Commerce Building) (CRU).

Collapsing

We have determined, after examining the relevant criteria, that Yude/Xinyu and Zhenxing/Mancheng are affiliated parties within the meaning of section 771(33)(F). We have further determined that PHT (the U.S. reseller of sulfanilic acid) is also affiliated with these producers/exporters and that these companies should be treated as a single entity (*i.e.*, "collapsed") for purposes of calculating and assigning an antidumping margin in this review. Section 351.401(f) of the Department's antidumping regulations provides that the Department "will treat two or more affiliated producers as a single entity where those producers have production facilities for similar or identical products that would not require substantial retooling of either facility in order to restructure manufacturing priorities and the Secretary concludes that there is a significant potential for the manipulation of price or production." *See* 19 CFR 351.401(f). In identifying the potential for manipulation of price or production, section 351.401(f)(2) provides, *inter alia*, that the Department may consider the following factors: level of common ownership; the extent to which managerial employees or board members of one firm sit on the board of directors of an affiliated firm; and whether operations are intertwined, such as through the sharing of facilities or employees, or significant transactions between the affiliated parties. A full discussion of our conclusions, requiring reference to proprietary information, is contained in the Department's memorandum in the official file for this case (a public version of this memorandum is on file in the CRU). Generally, however, we have found that: Yude/Xinyu and Zhenxing/Mancheng are affiliated parties; Yude/Xinyu and PHT are affiliated parties; Zhenxing/Mancheng and PHT are affiliated parties; substantial retooling would not be necessary to restructure manufacturing priorities; and, there is significant potential for manipulating price and production between the producers and the exporter. As a result we are collapsing Yude/Xinyu; Zhenxing/Mancheng; and PHT for purposes of conducting the 1997/1998 administrative review.

Separate Rates

It is the Department's standard policy to assign all exporters of the merchandise subject to review in non-market economy countries a single rate, unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. *See Mitsubishi Heavy Industries, Ltd.*, v. *U.S.*, __ CIT __, Slip Op. 99–46 (May 26, 1999). To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in a non-market economy ("NME") country under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Evidence supporting, though not requiring, a finding of *de jure* absence of government control includes: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control with respect to exports is based on four criteria: (1) Whether the export prices are set by or subject to the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits and financing of losses; (3) whether each exporter has autonomy in making decisions regarding the selection of management; and (4) whether each exporter has the authority to sign contracts and other agreements.

The Department did not require the respondents to answer certain questions concerning separate rates. This is due to the fact that specific issues pertaining to Xinyu and Mancheng did not surface until the review of the Yude and Zhenxing supplemental questionnaire responses of July 23, 1999. Accordingly, the record evidence on which to conduct a separate rates analysis for purposes of these preliminary results may be incomplete. We have found that the evidence on the record affirmatively demonstrates an absence of direct government control, both in law and in fact, with respect to Yude's and Zhenxing's exports according to the criteria identified in *Sparklers* and *Silicon Carbide* for this period of review, and have assigned to these companies a rate separate from the China-wide rate ("PRC rate"). Even though Yude failed to affirmatively demonstrate, in fact, that it exercised independent decision-making authority regarding disposition of profits and financing of losses during the POR, the overall balance of evidence affirmatively demonstrates an absence of government control. Together with Zhenxing, it will be granted a rate separate from all the others, "PRC rate."

As discussed above, because issues pertaining to Xinyu and Mancheng did not arise until late in the review process, we intend to examine further the issue of separate rates. We will request additional information prior to verification. Accordingly, even though for these preliminary results we are assigning a separate rate to Mancheng/Zhenxing and Xinyu/Yude, this preliminary separate rates determination is subject to the receipt and verification of further information. Before the issuance of the final results in this administrative review, we will be re-assessing whether separate rates are justified.

For further discussion of the Department's preliminary determination regarding the issuance of separate rates, *see* Separate Rates Decision Memorandum for Barbara Tillman, Director, Office of AD/CVD Enforcement VII, dated August 31, 1999. A public version memorandum is on file in the Central Records Unit (room B–099 of the Main Commerce Building) (CRU); *see also* "Collapsing" section of this notice.

Use of Facts Otherwise Available

All firms that have not affirmatively demonstrated that they qualify for a separate rate are presumed to be part of a single enterprise under the common control of the government (the "PRC

enterprise"). *See Sigma Corp.* v. *U.S.*, 117 F.3d 1401 (Fed. Cir. 1997). Therefore, all such entities receive a single margin, the "PRC rate." We preliminarily determine, in accordance with section 776(a) of the Act, that resorting to the facts otherwise available is appropriate in arriving at the PRC rate because companies, presumed to be part of the PRC enterprise, did not respond to the Department's antidumping questionnaire.

Where the Department must resort to the facts otherwise available because a respondent fails to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to use an inference adverse to the interests of that respondent in choosing from the facts available. Section 776(b) also authorizes the Department to use, as adverse facts available, information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. The Statement of Administrative Action ("SAA") accompanying the URAA clarifies that information from the petition and prior segments of the proceeding is "secondary information." *See* H.Doc. 3216, 103rd Cong. 2d Sess. 870 (1996). If the Department relies on secondary information as facts available, section 776(c) provides that the Department shall, to the extent practicable, corroborate such information using independent sources reasonably at its disposal. The SAA further provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value. *See id.* The SAA also states that independent sources used for corroboration may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *See id.* However, where corroboration is not practicable, that fact will not prevent the Department from applying an adverse inference and using the secondary information in question. *See* 19 CFR 351.308(d).

The Department issued its standard non-market economy (NME) questionnaires to thirteen firms on September 29, 1998. These thirteen firms are: Sinochem Hebei; China National Chemical Construction Corporation, Beijing Branch; China National Chemical Construction Corporation, Qingdao Branch; Sinochem Qingdao; Sinochem Shandong; Baoding No. 3 Chemical Factory; Jinxing Chemical Factory; Zhenxing Chemical Industry Company; Mancheng Zinyu Chemical Factory, Shijiazhuang; Mancheng Xinyu Chemical Factory, Beijing; Hainan Garden Trading Company; Yude Chemical Industry Company; and Shunping Lile. The Department received responses from only two companies: Yude and Zhenxing. Yude and Zhenxing responded to Section A (Organization, Accounting Practices, Markets and Merchandise) of the Department's questionnaire on October 29, 1998. Yude and Zhenxing submitted responses to Sections C and D (Sales to the United States and Factors of Production, respectively) of the Department's questionnaire on November 25, 1998. Responses to two supplemental questionnaires by Yude and Zhenxing were received on January 25, 1999, and July 23, 1999. The Department did not receive any responses from any other firms. Such non-response supports the Department's preliminary determination to apply adverse facts available.

As noted above, some of the companies which were issued questionnaires in this review did not respond. Therefore, we find that the PRC-wide entity failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. Consequently, we have preliminarily decided to use adverse facts available with respect to the PRC-wide entity in accordance with section 776(b) of the Act.

When making adverse inferences, the Statement of Administrative Action (SAA) authorizes the Department to consider the extent to which a party may benefit from its own lack of cooperation (SAA at 870). Because the "all others" PRC rate that was applicable during the POR and that is applicable to current imports is 85.2 percent, the Department believes that assigning a 85.2 percent rate will prevent non-responding firms from benefitting from their failure to respond to the Department's requests for information. Anything less than the current cash deposit rate would effectively reward non-responding firms for not cooperating to the best of their ability.

The 85.2 percent rate is based on the less than fair value (LTFV) final determination, which in turn was based on information in the petition. Section 776(b) of the Act authorizes the Department to use as adverse facts available information derived from, among other places, the petition or the final determination from the LTFV investigation. This type of information is considered secondary information. *See* SAA at 870; 19 CFR 351.308(c)(1).

In accordance with the law, the Department, to the extent practicable, will examine the reliability and relevance of the information used. However, in an administrative review the Department will not engage in updating the petition to reflect the prices and costs that are found during the current review. Rather, corroboration consists of determining that the significant elements used to derive a margin in a petition are reliable for the conditions upon which the petition is based. With respect to the relevance aspect of corroboration, the Department will consider the information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant.

To corroborate the LTFV rate of 85.2 percent, we examined the basis of the rates contained in the petition of October 8, 1991. The U.S. price in the petition was based on actual prices from customer purchase orders, invoices and price quotations for refined sulfanilic acid from the PRC. This U.S. price covers delivery to the customer's point of usage. We were able to corroborate the average unit values listed in the petition by comparing those values to publicly available information compiled by the U.S. Census Bureau and made available by the International Trade Commission (ITC). The ITC reports quantity and value by HTS numbers. Using the same HTS numbers as listed in the petition (HTS 2921.42.24, 2921.42.79, and 2921.42.79), we divided the total quantity by the total value for the period referenced in the petition and noted the average unit values were very similar to those reported in the original petition.

The petition also states that due to the non-market economy status of the PRC, the foreign market value was calculated using a factors of production methodology. Based on the production experience of the petitioners, the petition identified actual factors of production for subject merchandise. Such factors include: labor, raw material, energy, overhead, and general selling and administrative expenses. To value these factors of production, the petition used published costs in India for the above-mentioned factors as surrogate values for those in the PRC. *See* Antidumping Petition on Sulfanilic Acid from the People's Republic of China dated October 2, 1991, and found in CRU. Because petitioners used published, publicly available data for valuing the major inputs, we consider this data to be probative and relevant.

The SAA at 870 specifically states that where "corroboration may not be practicable in a given circumstance," the Department may nevertheless apply an adverse inference. The SAA at 869 emphasizes that the Department need not prove that the facts available are the best alternative information. Therefore, based on our efforts, described above, to corroborate information contained in the petition, and mindful of the legislative history discussing facts available and corroboration, we consider the petition margin we are assigning to non-responding firms in this review as adverse facts available to be corroborated to the extent practicable.

Finally, we note that where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin. *See Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 60 FR 49567 (September 26, 1995). We have determined that there is no evidence on the record that would indicate that the margin from the petition is not appropriate. Nothing on the record of this administrative review supports a determination that the highest margin rate from the petition in the underlying investigation does not represent reliable and relevant information for purposes of adverse facts available. This rate has been used as the PRC-wide, all others rate since the Department's *Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the People's Republic of China*, 57 FR 29705 (July 6, 1992).

United States Price

Respondents reported U.S. sales as constructed export price ("CEP") sales made by PHT on behalf of Yude/Xinyu and Zhenxing/Mancheng. We calculated CEP based on FOB prices to unaffiliated purchasers in the United States. We made deductions for foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. customs duties, U.S. transportation, credit, warehousing, repacking in the United States, indirect selling expenses, including inventory carrying costs, and constructed export price profit, as appropriate, in accordance with sections 772(c) and (d) of the Act.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value ("NV") using a factors of production methodology if (1) the merchandise is exported from a non-market economy (NME) country, and (2) the available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i), any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Accordingly, we treated the PRC as an NME country for purposes of this review and calculated NV by valuing the factors of production as set forth in section 773(c)(3) of the Act in a comparable market economy country which is a significant producer of comparable merchandise. Pursuant to section 773(c)(4) of the Act, we determined that India is comparable to the PRC in terms of per capita gross national product ("GNP"), the growth rate in per capita GNP, and the national distribution of labor; and that India is a significant producer of comparable merchandise. For further discussion of the Department's selection of India as the primary surrogate country, *see* Memorandum from Jeffrey May, Director, Office of Policy, to Barbara Tillman, Director, Office of AD/CVD Enforcement VII, dated June 30, 1999, entitled "Sulfanilic Acid from the People's Republic of China ("PRC"): Nonmarket Economy Status and Surrogate Country Selection"; "Selection of Significant Producer Memo" dated August 31, 1999; "Surrogate Values Memorandum" dated August 31, 1999; and Preliminary Analysis Memorandum dated August 31, 1999, which are on file in the CRU.

For purposes of calculating NV, we valued PRC factors of production in accordance with section 773(c)(1) of the Act. In examining surrogate values, we selected, where possible, the publicly available value which was: (1) An average non-export value; (2) representative of a range of prices within the POR or most contemporaneous with the POR; (3) product-specific; and (4) tax-exclusive. For those surrogate values not contemporaneous with the POR, we adjusted for inflation using the wholesale price indices published in the IMF's International Financial Statistics. When necessary, we adjusted the values for certain inputs reported in *Chemical Weekly* to exclude sales and excise taxes. In accordance with our practice, we added to CIF import values from India a surrogate inland freight cost using a simple average of the reported distances from either the closest PRC port to the factory, or from the domestic supplier to the factory. *See Final Determination of Sales at Less that Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 61977 (Nov. 20, 1997). In accordance with this methodology, we valued the factors of production as follows:

To value aniline used in the production of sulfanilic acid, we used the rupee per kilogram value of imports into India during April 1997–March 1998, obtained from the March 1998, *Monthly Statistics of the Foreign Trade of India*, Volume II—Imports (*Indian Import Statistics*.) Using the Indian rupee wholesale price indices ("WPI") obtained from the International Financial Statistics, published by the International Monetary Fund (IMF), we adjusted this value for inflation in India during the POR. We made adjustments to include costs incurred for freight between the Chinese aniline suppliers and Zhenxing/Mancheng's and Yude/Xinyu's factories using the average of (1) the distance from the factory to the supplier or (2) the distance from the factory to the port. The surrogate freight rates were based on truck freight rates from *The Times of India*, April 20, 1994, consistent with the Department's practice. *See Certain Helical Spring Lock Washers from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 64 FR 13401 (Mar. 18, 1999) (*Lock Washers*). Rail freight rates were from the December 22, 1989, embassy cable for the *Final Results of Antidumping Duty Administrative Review: Shop Towels of Cotton from the People's Republic of China*, 56 FR 4040 (Feb. 1, 1991). These rates were adjusted for inflation to be concurrent with the period of review and have been placed on the record of this review.

To value sulfuric acid used in the production of sulfanilic acid, we used the rupee per kilogram value for sales in India during December 1996–July 1997 as reported in *Chemical Weekly*. We have adjusted this value for inflation in India during the POR, and have excluded the Central Excise Tariff of India and the Bombay Sales Tax. We made additional adjustments to include costs incurred for freight between the Chinese sulfuric acid supplier and Zhenxing/Mancheng's and Yude/Xinyu's factories in the PRC.

To value sodium bicarbonate used in the production of sodium sulfanilate, we used the rupee per kilogram value for sales in India during December

1996–July 1997 as reported in *Chemical Weekly*. We have adjusted this value for inflation in India during the POR, and have excluded the Central Excise Tariff of India and the Bombay Sales Tax. We made additional adjustments to include costs incurred for freight between the Chinese sodium bicarbonate supplier and Zhenxing/Mancheng factory in the PRC.

Consistent with our final determination in the 1996–1997 administrative review, we have used the public price quotes, in this case those submitted by the respondents on July 14, 1999, which are specific to the type and grade of activated carbon used in the production of sulfanilic acid, as reported in the Chinese sulfanilic acid producers' factors of production. We made adjustments to account for inflation in India during the POR, and to include costs incurred for inland freight between the Chinese activated carbon supplier and Zhenxing/Mancheng's and Yude/Xinyu's factories in the PRC.

The Department's regulations, at 19 CFR 351.408(c)(3), state that "[f]or labor, the Secretary will use regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries. The Secretary will calculate the wage rate to be applied in nonmarket economy proceedings each year. The calculation will be based on current data, and will be made available to the public." To value the factor inputs for labor, we used the wage rates calculated for the PRC in the Department's "Expected Wages of Selected Non-Market Economy Countries—1997 Income Data" as updated in May 1999, and published by the Department in the world-wide web site for Import Administration.

Following our practice from prior administrative reviews of sulfanilic acid from the PRC, for factory overhead, we used information reported in the January 1997 *Reserve Bank of India Bulletin* ("*Bulletin*"). From this information, we were able to determine factory overhead as a percentage of total cost of manufacturing.

Similarly, for selling, general and administrative (SG&A) expenses, we used information obtained from the January 1997 *Bulletin*. We calculated an SG&A rate by dividing SG&A expenses as reported in the *Bulletin* by the cost of manufacturing.

Finally, to calculate a profit rate, we used information obtained from the January 1997 *Bulletin*. We calculated a profit rate by dividing the before-tax profit by the sum of those components pertaining to the cost of manufacturing plus SG&A as reported in the *Bulletin*.

To value the inner and outer bags used as packing materials, we used import information from *Indian Import Statistics* for the period April 1997–March 1998. Using the Indian rupee WPI data obtained from *International Financial Statistics*, we adjusted these values to account for inflation in India during the POR. We adjusted these values to include freight costs incurred between the Chinese plastic bag suppliers and Zhenxing/Mancheng's and Yude/Xinyu's factories in the PRC.

To value coal, we used the price of steam coal in 1996 for industries in India as reported in *Energy, Prices and Taxes, First Quarter 1999* published by the International Energy Agency. This price was adjusted for inflation to be concurrent with the POR and has been placed on the record of this review.

To value electricity, we used the price of industrial electricity in India in 1997 reported in *Energy, Prices, and Taxes, First Quarter 1999* published by the International Energy Agency. This price was adjusted for inflation to be concurrent with the POR and has been placed on the record of this review.

To value truck freight for input materials, we used the rate reported in *The Times of India*, April 20, 1994. We adjusted the truck freight rates for inflation during the POR using Indian rupee WPI data published by the IMF. *See Lock Washers*.

To value rail freight for input materials, we used the price reported in a December 1989 cable from the U.S. Embassy in India submitted for the *Final Results of Antidumping Duty Administrative Review: Shop Towels of Cotton from the People's Republic of China*, 56 FR 4040 (Feb. 1, 1991) and added to the record of this review. We adjusted the rail freight rates for inflation during the POR using Indian rupee WPI data published by the IMF.

To value brokerage and handling, we used the brokerage and handling rate used in the *Determination of Sales at Less Than Fair Value: Stainless Steel Bar from India*, 59 FR 66915 (1994). *See* April 1997 Memorandum to All Reviewers from Richard W. Moreland, Acting Deputy Assistant Secretary "Index of Factor Values for Use in Antidumping Duty Investigations Involving Products from the People's Republic of China," found on Import Administration's web site. We adjusted the value for brokerage and handling for inflation during the POR using Indian rupee WPI data published by the IMF.

To value marine insurance, we used information from a publicly summarized version of a questionnaire response in *Investigation of Sales at Less than Fair Value: Sulphur Vat Dyes from India* (62 FR 42758). *See* "Index of Factor Values for Use in Antidumping Duty Investigations Involving Products from the People's Republic of China," found on Import Administration's web site. We adjusted the value for marine insurance for inflation during the POR using Indian rupee WPI data published by the IMF.

To value ocean freight, we used a value for ocean freight provided by the Federal Maritime Commission used in the *Final Determination of the Antidumping Administrative Review of Sebacic Acid from the PRC*, 62 FR 65674 (1997). We adjusted the value for ocean freight for inflation during the POR using Indian rupee WPI data published by the IMF.

Preliminary Results of the Review

We preliminarily determine the weighted average dumping margin for Yude/Xinyu and Zhenxing/Mancheng for the period August 1, 1997 through July 31, 1998 to be 1.62 percent. The rate for all other firms which have not demonstrated that they are entitled to separate rates is 85.20 percent. This rate will be applied to all firms other than Yude/Xinyu and Zhenxing/Mancheng.

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five (5) days after the date of publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Case briefs are currently scheduled for submission within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five (5) days after the time limit for filing case briefs. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the deadline for submission of rebuttal briefs. The Department will issue the final results of this administrative review, including its analysis of issues raised in any case or rebuttal brief or at a hearing, not later than 120 days after the date of publication of this notice.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective with respect to all shipments of sulfanilic acid from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this review, as provided for by section 751(a)(2)(c) of the Act: (1) The cash deposit rate for reviewed companies listed above will be the rates for those firms established in the final results of this review; (2) for companies previously found to be entitled to a separate rate and for which no review was requested, the cash deposit rate will be the rate established in the most recent review of that company; (3) for all other PRC exporters of subject merchandise, the cash deposit rate will be the China-wide rate of 85.20 percent; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under section 351.402 of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 771 (i)(1) of the Act.

Dated: August 31, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–23324 Filed 9–7–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–834–803]

Titanium Sponge From the Republic of Kazakhstan; Notice of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request from Titanium Metals Corporation, the Department of Commerce (the Department) is conducting an administrative review of the antidumping finding on titanium sponge from the Republic of Kazakhstan (Kazakhstan). This notice of preliminary results covers the period August 1, 1997 through July 31, 1998. This review covers one manufacturer/exporter and one trading company.

We preliminarily determine that no sales were made below normal value during this review period. If this preliminary result is adopted in our final results of administrative review, we will instruct the U.S. Customs Service to liquidate entries during the period of review (POR) without regard to dumping duties. Interested parties are invited to comment on this preliminary result. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) a statement of the issue; and (2) a brief summary of the argument.

EFFECTIVE DATE: September 8, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Manning, Office of AD/CVD Enforcement, Office 4, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–3936.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1998).

Background

The Department published an antidumping finding on titanium sponge from the Union of Soviet Socialist Republics (U.S.S.R.) on August 28, 1968 (33 FR 12138). In December 1991, the U.S.S.R. divided into fifteen independent states. To conform to these changes, the Department changed the original antidumping finding into fifteen findings applicable to each of the former republics of the U.S.S.R. (57 FR 36070, August 12, 1992).

On August 28, 1998, Titanium Metals Company (Timet) requested that the Department conduct an administrative review of the antidumping finding on titanium sponge from Kazakhstan for one manufacturer/exporter, Ust-Kamenorgorsk Titanium and Magnesium Plant (UKTMP), and one trading company, Specialty Metals Corporation (SMC), covering the period August 1, 1997 through July 31, 1998. The Department published a notice of initiation of the review on September 29, 1998 (63 FR 51893). Due to the complexity of the legal and methodological issues presented by this review, the Department postponed the date of the preliminary results of review on May 10, 1999 (64 FR 25024). The Department is conducting this administrative review in accordance with section 751 of the Act.

On August 13, 1998, the International Trade Commission (ITC) published in the **Federal Register** its determination that revocation of the findings covering titanium sponge imports from Kazakhstan, the Russian Federation (Russia), and Ukraine and the antidumping duty order covering imports of titanium sponge from Japan is not likely to lead to continuation or recurrence of material injury to an industry in the United States. Due to this determination the Department has revoked the finding covering titanium sponge imports from Kazakhstan. This revocation is effective as of August 13, 1998, the date of publication in the **Federal Register** of the ITC's determinations. *See Notice of Revocation of Antidumping Findings and Antidumping Duty Order and Termination of Five-Year ("Sunset") Reviews: Titanium Sponge from Kazakhstan, Russia, Ukraine, and Japan*, 63 FR 46215 (August 31, 1998).

Scope of Review

The product covered by this administrative review is titanium sponge from Kazakhstan. Titanium sponge is chiefly used for aerospace vehicles, specifically, in construction of compressor blades and wheels, stator blades, rotors, and other parts in aircraft gas turbine engines. Imports of titanium sponge are currently classifiable under the harmonized tariff schedule (HTS)

subheading 8108.10.50.10. The HTS subheading is provided for convenience and U.S. Customs purposes. Our written description of the scope of this proceeding is dispositive.

Separate Rates Determination

To establish whether a company operating in a nonmarket economy (NME) is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) (*Sparklers*), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) (*Silicon Carbide*). Under this policy, exporters in NMEs are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of *de jure* absence of government control over export activities includes: (1) An absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and, (3) any other formai measures by the government decentralizing control of companies. *De facto* absence of government control over exports is based on four factors: (1) Whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) whether each exporter has the authority to negotiate and sign contracts and other agreements; and, (4) whether each exporter has autonomy from the government regarding the selection of management. *See Silicon Carbide*, 59 FR at 22587 and *Sparklers*, 56 FR at 20589.

In the final results of the 1996–1997 review of titanium sponge from Kazakhstan, the Department granted a separate rate to UKTMP and SMC. *See Titanium Sponge From the Republic of Kazakhstan: Final Results of Antidumping Duty Administrative Review* (64 FR 1598, January 11, 1999). While UKTMP and SMC received a separate rate in the previous segment of this proceeding, it is the Department's policy that separate rates questionnaire responses must be evaluated each time a respondent makes a separate rate claim, regardless of any separate rate the respondent received in the past. *See Manganese Metal from the People's Republic of China, Final Results and Partial Recission of Antidumping Duty Administrative Review*, 63 Fed. Reg. 12441 (March 13, 1998). In the instant review, UKTMP and SMC submitted a complete response to the separate rates section of the Department's questionnaire. The evidence submitted in this review by UKTMP and SMC, which is consistent with the Department's findings in the previous review, is sufficient to demonstrate independence from the government entity. We therefore preliminarily determine that UKTMP and SMC continue to be entitled to a separate rate.

Export Price

In accordance with section 772(a) of the Act, the Department calculated an export price (EP) on sales to the United States, because use of constructed export price was not warranted. For date of sale, we used the sales invoice date because this is the date when the price and quantity are set. We excluded those sales made to the United States which the respondents identified as having entered the United States under temporary importation bond (TIB). At this time, because merchandise entered under a TIB is not entered for consumption, such merchandise is not subject to the antidumping finding. *See Titanium Metals Corp.* v. *United States*, 901 F. Supp 362 (CIT 1995).

We calculated export price based on the price to unaffiliated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, insurance, ocean freight, and brokerage and handling. SMC did not claim any other adjustments to EP, nor were any other adjustments allowed.

Surrogate Country Selection

For companies located in NME countries, section 773(c)(1) of the Act provides that the Department shall determine normal value (NV) using a factors of production methodology if (1) the subject merchandise is exported from an NME country, and (2) available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value, in accordance with Section 773(a) of the Act. Section 351.408 of the Department's regulations sets forth the Department's methodology for calculating the NV of merchandise from NME countries.

The Department has treated Kazakhstan as an NME country in every past case involving this country. Since none of the parties to these proceedings contested such treatment in this review, we calculated NV for the instant review in accordance with section 773(c) of the Act and section 351.408 of the Department's regulations.

In accordance with section 773(c)(3) of the Act, the factors of production (FOP) utilized in producing titanium sponge include, but are not limited to—(A) hours of labor required, (B) quantities of raw materials employed, (C) amounts of energy and other utilities consumed, and (D) representative capital cost, including depreciation. In accordance with section 773(c)(4) of the Act, the Department valued the FOP, to the extent possible, using the cost of the FOP in a market economy that is—(A) at a level of economic development comparable to Kazakhstan, and (B) a significant producer of comparable merchandise. We determined that Egypt is comparable to Kazakhstan in terms of per capita gross national product, the growth rate in per capita income, and the national distribution of labor. Furthermore, Egypt is a significant producer of aluminum, a product comparable to titanium sponge. For a further discussion of the Department's selection of Egypt as the surrogate country, *see Memorandum to the File, "1997–1998 Administrative Review of the Antidumping Finding on Titanium Sponge from Kazakhstan; Selection of a Surrogate Country,"* dated June 24, 1999, which is on file in the Central Records Unit, Room B099 of the Main Commerce building (CRU—Public File).

Normal Value

In accordance with section 773(c)(1) of the Act, for purposes of calculating normal value (NV), we valued Kazakhstan's FOP based on data for the POR. Surrogate values that were in effect during periods other than the POR were inflated or deflated, as appropriate, to account for price changes between the effective period and the POR. We calculated the inflation or deflation adjustments for all factor values, except labor, using the wholesale price indices for Egypt and Indonesia, where appropriate, that were reported in the IMF's publication, *International Financial Statistics*. We valued Kazakhstan's FOP as follows (for further discussion of our preliminary analysis, *see Analysis Memorandum for the Preliminary Results of Administrative Review*, dated August 31, 1999, which is on file in the CRU—Public File.):

• Except as noted below, we valued raw materials using Egyptian import data from the Commodity Trade Statistics Section, United Nations Statistics Division, (UN import statistics) for the calendar year 1997. We adjusted certain factor values to reflect the actual purity used in the production of the subject merchandise. Since UKTMP purchased titanium slag from both market and non-market economy suppliers, consistent with the Department's practice, we valued this input using the market economy price, regardless of the supplier. The most recent Egyptian import statistics that we were able to find for pitch coke and chlorine were Egypt's 1994 and 1996 UN import statistics, respectively. Since the UN statistics are reported in U.S. dollars, we did not adjust these values for the effects of inflation. We were unable to find information from Egypt in order to value carnallite and spent electrolyte. For carnallite, we used the 1995 Egyptian UN import statistics for dolomite, a commodity similar to carnallite, as the surrogate value. In order to value spent electrolyte, we used the surrogate value for potassium chloride because spent electrolyte is 75 percent potassium chloride. The surrogate value for potassium chloride was obtained from Egypt's 1997 UN import statistics.

• Pursuant to section 351.408(c)(3) of the Department's regulations, we valued labor by using the regression-based wage rate for Kazakhstan as posted on the Import Administration Internet web site.

• Although the respondents placed on the record an Egyptian electricity rate for large industrial consumers, they did not provide any source documentation to substantiate this rate. Therefore, we valued electricity in the instant review with the Indonesian surrogate value for electricity used in the 1996–1997 administrative review of this finding. In that review, we used the "extra large industry user" rate from Indonesia's electricity tariff schedule that UKTMP would have received had it been an electricity consumer in Indonesia during the POR. Since this rate is from 1994, and is expressed in Indonesian rupiahs, we adjusted this rate in order to account for the effects of inflation.

• We were unable to obtain a surrogate value from Egypt for steam. Since steam was not valued as a factor of production in the 1996–1997 administrative review of this finding, we have used the surrogate for electricity, as discussed above, to value this energy input.

• UKTMP states that it incurred handling and reloading charges for merchandise transited through the port in St. Petersburg, Russia. We were unable to find a surrogate value from Egypt for handling and reloading charges. Since these expenses were incurred in Russia, we valued them, consistent with the 1996–1997 review of titanium sponge from Kazakhstan, with the surrogate value used in the 1996–1997 administrative review of the antidumping finding on titanium sponge from the Russian Federation (titanium sponge from Russia). In that review, we determined that Venezuela was an appropriate surrogate country for Russia. However, since we were unable to locate a Venezuelan surrogate value for handling charges, we valued these charges with the surrogate value from the 1995–1996 administrative review of titanium sponge from Russia. In the 1995–1996 review, we valued these charges using the brokerage and handling charges reported in the public record of the antidumping administrative review of silicon metal from Brazil. Therefore, in the instant review, we valued the handling and reloading charges incurred by UKTMP in Russia with the weighted-average brokerage and handling expenses reported in the public record of the 1997–1998 administrative review of the antidumping duty order on silicon metal from Brazil.

• We valued truck and rail transportation in Kazakhstan using Egyptian truck and rail surrogate values obtained by the respondents. With respect to truck transportation, the respondents provided a schedule of trucking fees covering transport of cargo between various cities throughout Egypt. We used the price per kilometer per metric ton rate from the Ramadan City-to-Cairo fee because the distance between these two cities most closely matches the distance cargo traveled by truck in Kazakhstan. In regard to rail transportation, the respondents provided a schedule of rail fees covering transport of cargo between various cities throughout Egypt. We used the price per kilometer per metric ton rate from the city-to-city fees that most closely matched the distances cargo traveled by rail in Kazakhstan.

• UKTMP shipped its sales of titanium sponge to the United States via rail through Russia. We valued this transportation with the surrogate value for rail transportation used in the 1996–1997 administrative review of titanium sponge from Russia, which is the most recently completed review of that finding. In that review, we valued transportation via the Russian rail lines using the Venezuelan Bolivares price per metric ton per kilometer quoted by the national Venezuelan railroad system administrator. Since the correspondence containing the price quote was issued during the instant review's POR, we did not adjust this rate to account for the effects of price changes.

• In regard to packing materials, we used the 1997 UN import statistics from Egypt that were provided by the respondent for polyethylene film, argon, and sheet steel. Since the UN data is reported in U.S. dollars, we did not adjust for the effects of inflation. We valued labor used in packing with the above-referenced regression-based labor rate for Kazakhstan.

• The respondents placed on the record the financial statements from three Egyptian aluminum companies. One of the three companies is a primary aluminum producer while the other two are aluminum products producers. Since primary aluminum producers use a production process that is closer to the process used to produce titanium sponge than producers of aluminum products, we normally prefer to use the financial statements from primary aluminum producers in our calculation of factory overhead, selling, general and administrative (SG&A) expense, and profit. However, the financial statements from the Egyptian primary aluminum producer did not contain enough detail to be used in our calculations. Similarly, the financial statements from one of the two aluminum products producers lacked sufficient detail to be used in our calculations. Therefore, we calculated the ratios used in our valuation of overhead, SG&A, and profit with the 1998 financial statements from Arab Aluminum Co., an Egyptian producer of aluminum products.

Currency Conversion

We made currency conversions in accordance with section 773A(a) of the Act, based on exchange rates certified by the Federal Reserve Bank and Dow Jones Business Information Services.

Preliminary Results of the Review

SMC owns 65 percent of UKTMP and manages the operations of UKTMP under a long-term management contract. Due to SMC's equity ownership in UKTMP, we considered SMC and UKTMP to be affiliated for the purpose of the antidumping statute and regulations. During the POR, UKTMP sold titanium sponge to SMC who then resold the merchandise to unaffiliated purchasers in the United States. Because this was the only channel of distribution for sales to the United States, we calculated one rate that will apply to both SMC and UKTMP. As a result of our review, we preliminarily determine that the following margin exists for the period August 1, 1997 through July 31, 1998:

Manufacturer/Exporter	Period	Margin (percent)
Specialty Metals Company/Ust-Kamenogorsk Titanium and Magnesium Plant	8/1/97–7/31/98	00.00

Within 5 days of the date of publication of this notice, in accordance with 19 CFR 351.224, the Department will disclose its calculations. Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the publication of this notice, or the first workday thereafter. Interested parties may submit written comments (case briefs) within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(c)(2). Rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised by the parties, within 120 days of publication of this preliminary result.

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review.

Duty Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we have calculated an importer-specific *ad valorem* duty assessment rate based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. In order to estimate the entered value, we subtracted international movement expenses from the gross sales value. This rate will be assessed uniformly on all entries of that specific importer made during the POR. In accordance with 19 CFR 351.106 (c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis*, i.e., less than 0.5 percent. The Department will issue appraisement instructions directly to the Customs Service.

Cash Deposit Requirements

Pursuant to the ITC's determination that revocation of the finding covering titanium sponge imports from Kazakhstan is not likely to lead to continuation or recurrence of material injury to an industry in the United States, the Department revoked this finding on August 31, 1998, with an effective date of August 13, 1998. Since the revocation is currently in effect, current and future imports of titanium sponge from Kazakhstan shall be entered into the United States without regard to antidumping duties. Therefore, we will instruct Customs not to suspend future entries and to liquidate all future entries of this product, from Kazakhstan, without regard to antidumping duties.

Notification of Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice is in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 1677f(i)(1)).

Dated: August 31, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–23328 Filed 9–7–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–201–810]

Certain Cut-to-Length Carbon Steel Plate from Mexico: Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on certain cut-to-length carbon steel plate from Mexico for the period January 1, 1997 through December 31, 1997. For information on the net subsidy for the reviewed company as well as for non-reviewed companies, please see the *Preliminary Results of Review* section of this notice. If the final results remain the same as these preliminary results of administrative review, we will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Preliminary Results of Review* section of this notice. Interested parties are invited to comment on these preliminary results. (*See* the *Public Comment* section of this notice.)

EFFECTIVE DATE: September 8, 1999.

FOR FURTHER INFORMATION CONTACT: Norbert Gannon or Eric B. Greynolds, Office of AD/CVD Enforcement VI, Import Administration, U.S. Department of Commerce, Room 4012, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On August 17, 1993, the Department published in the **Federal Register** (58 FR 43755) the countervailing duty order on certain cut-to-length carbon steel plate from Mexico. On August 11, 1998, the Department published a notice of "Opportunity to Request an Administrative Review" (63 FR 42821) of this countervailing duty order. We received a timely request for review from Altos Hornos de Mexico, S.A. (AHMSA), the respondent company to this proceeding. On September 29, 1998, we initiated the review, covering the period January 1, 1997 through December 31, 1997 (63 FR 51893). On November 13, 1998, petitioners submitted new subsidy allegations. Based on the information submitted by petitioners, we initiated an investigation of nine of the ten new subsidy allegations made by petitioners. On May 6, 1999, we extended the period for completion of the preliminary results pursuant to section 751(a)(3) of the Tariff Act of 1930, as amended. *See Certain Cut-to-Length Carbon Steel Plate from Mexico: Postponement of Preliminary Results of Countervailing Duty Administrative Review* (64 FR 24370). On June 8 through June 17, 1999, we conducted a verification of the questionnaire responses that the Government of Mexico (GOM) and AHMSA submitted during this administrative review. The results of our verification are contained in the July 8, 1999, memorandum "Verification of Government of Mexico's (GOM) Questionnaire Responses in the Administrative Review of the Countervailing Duty Order on Cut-to-length Carbon Steel Plate from Mexico" to David Mueller, Director of Office of AD/CVD Enforcement VI (GOM Verification Report), and the July 15, 1999, memorandum "Verification of AHMSA's Questionnaire Responses in the Administrative Review of the Countervailing Duty Order on Certain Carbon Steel Plate from Mexico" to David Mueller, Director of Office of AD/CVD Enforcement VI, the public versions of which are on file in the Central Records Unit, Room B–099 of the Main Commerce Building (AHMSA Verification Report).

In accordance with 19 C.F.R. 351.213(b), this review covers only those producers or exporters for which a review was specifically requested. Accordingly, this review covers AHMSA. This review also covers twenty-one programs. The deadline for the final results of this review is no later than 120 days from the date on which these preliminary results are published in the **Federal Register**.

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department is conducting this administrative review in accordance with section 751(a) of the Act. All citations to the Department's regulations reference 19 C.F.R. Part 351 (April 1998), unless otherwise indicated. Because the request for this administrative review was filed before January 1, 1999, the Department's substantive countervailing duty regulations, which were published in the **Federal Register** on November 25, 1998 (63 FR 65348), do not govern this review.

Scope of the Review

The products covered by this administrative review are certain cut-to-length carbon steel plates. These products include hot-rolled carbon steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedules of the United States (HTSUS) under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included in this administrative review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges. Excluded from this administrative review is grade X–70 plate. HTSUS subheadings are provided for convenience and Customs purposes. The written description of the scope of this proceeding is dispositive.

Subsidies Valuation Information

Allocation Period

In *British Steel plc.* v. *United States*, 879 F. Supp. 1254 (CIT 1995) (*British Steel I*), the U.S. Court of International Trade (the Court) ruled against the allocation period methodology for non-recurring subsidies that the Department had employed for the past decade, a methodology that was articulated in the *General Issues Appendix* appended to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37217 (July 9, 1993) (*GIA*). In accordance with the Court's decision on remand, the Department determined that the most reasonable method of deriving the allocation period for non-recurring subsidies is a company-specific average useful life (AUL) of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *British Steel plc.* v. *United States*, 929 F.Supp 426, 439 (CIT 1996) (*British Steel II*).

However, in administrative reviews where the Department examines non-recurring subsidies received prior to the period of review (POR) which have been countervailed based on an allocation period established in an earlier segment of the proceeding, it is not practicable to reallocate those subsidies over a different period of time. Where a countervailing duty rate in earlier segments of a proceeding was calculated based on a certain allocation period and resulted in a certain benefit stream, redefining the allocation period in later segments of the proceeding would entail taking the original grant amount and creating an entirely new benefit stream for that grant. Redefining an allocation period could lead to an increase or decrease in the total amount countervailed and, thus, could result in over-or under-countervailing the actual benefit.

In this administrative review, the Department is considering both non-recurring subsidies previously allocated in the initial investigation and non-recurring subsidies received since the original period of investigation (POI). Therefore, for purposes of these preliminary results, the Department is using the original allocation period of 15 years assigned to each non-recurring subsidy received prior to or during the POI. For non-recurring subsidies received since the POI, AHMSA submitted an AUL calculation based on depreciation and asset values of productive assets reported in its financial statements. In accordance with the Department's practice, we derived AHMSA's company-specific AUL by dividing the aggregate of the annual average gross book values of the firm's depreciable productive fixed assets by the firm's aggregated annual charge to depreciation for a 10-year period. We found this calculation produced a result that is aberrational possibly due to the effect of intermittent periods of high inflation. Further, AHMSA's financial statements indicate that the company revised the useful life of property, plant and equipment using differing annual depreciation rates rather than a straight line depreciation methodology. Therefore, for purposes of allocating benefits received after 1991 over time, we used a 15-year AUL, which is the same AUL that was used in the underlying investigation. *See, e.g., Final Affirmative Countervailing Duty Determination: Certain Steel Products from Mexico*, 58 FR 37352, 37356 (July 9, 1993) (*Certain Steel 1993*). Use of the 15-year AUL in this instance accords with our practice, which is to rely on IRS depreciation tables where company-

specific AUL data are distortive or otherwise unusable. *See, e.g., Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Brazil*, 64 FR 38742, 38746 (July 19, 1999); *Final Negative Countervailing Duty Determination: Stainless Steel Plate in Coils From the Republic of Korea*, 64 FR 15530, 15546 (March 31, 1999).

Discount Rates

In *Certain Steel 1993*, for those years in which there were non-recurring grants and equity infusions, we used as our long-term benchmark discount rate the Costo Porcentual Promedio (CPP), which is the average percentage cost of funds for banks. We note we have converted the CPP rate into a discount rate using the formula that has been used in past Mexican cases. *See e.g. Final Results of Countervailing Duty Administrative Review: Porcelain-on-Steel Cookingware from Mexico*, 57 FR 562, January 7, 1992, (*POS Cookware 1992*). We further note that for those years in which there were grants and equity infusions and for which the Department had previously calculated a benchmark interest rate in a prior case, we used the rates calculated in those cases (*see, e.g., Final Results of Countervailing Duty Administrative Review: Porcelain-on-Steel Cookingware from Mexico*, 56 FR 26064 June 6, 1991, *Final Results of Countervailing Duty Administrative Review: Ceramic Tile from Mexico*, 57 FR 24247, June 8, 1992 (*Ceramic Tile 1992*), *Final Results of Countervailing Duty Administrative Review: Certain Textile Mill Products from Mexico*, 56 FR 12175, March 22, 1991 (*Ceramic Tile 1991*). In addition, we determined AHMSA to be uncreditworthy during the years 1983 through 1986. No new information or evidence of changed circumstances was presented in this review to warrant any reconsideration of these findings.

In this administrative review, we have preliminarily determined that AHMSA received additional non-recurring grants, countervailable loans, and debt forgiveness since the POI. These programs are discussed below in the "Analysis of Programs" section of this notice. With respect to the non-recurring, peso-denominated grants, we have preliminarily determined to continue using the CPP as our benchmark discount rate. Regarding loans with interest payments outstanding during the POR and U.S. dollar-denominated non-recurring grants received since the POI, AHMSA submitted company-specific interest rate information. During verification, we reviewed AHMSA's short-term and long-term commercial loans and have preliminarily determined to use the weighted-average of each of these types of loans as our benchmark interest and discount rates.

Change in Ownership

(I) Background

In November 1991, the GOM sold all of its ownership interest in AHMSA. Prior to privatization, AHMSA was almost entirely owned by the GOM. Since November 1991, the GOM has held no stock in AHMSA. Thus, in this administrative review, we are analyzing the privatization of AHMSA in 1991 and, for purposes of this preliminary determination, have applied the Department's change in ownership methodology described below.

(II) Change in Ownership Calculation Methodology

Under the *Change in Ownership* methodology described in the *GIA* concerning the treatment of subsidies received prior to the sale of a company or the spinning-off of a productive unit, we estimate the portion of the purchase price attributable to prior subsidies. In the investigation, we computed this by first dividing the privatized company's subsidies by the company's net worth for each year during the period beginning with the earliest point at which non-recurring subsidies would be attributable to the POI and ending one year prior to the change in ownership.

We then took the simple average of the ratios of subsidies to net worth. This simple average of the ratios serves as a reasonable surrogate for the portion that subsidies constitute of the overall value of the company. Next, we multiplied the average ratio by the purchase price to derive the portion of the purchase price attributable to repayment of prior subsidies. Finally, we reduced the benefit streams of the prior subsidies by the ratio of the repayment amount to the net present value of all remaining benefits at the time of privatization.

Inflation Methodology

In the original investigation of this case, we determined, based on information from the GOM, that Mexico experienced significant inflation during 1983 through 1988. *See Certain Steel 1993*, 58 FR at 37355. In accordance with past practice, because we found significant inflation in Mexico and because AHMSA adjusted for inflation in its financial statements, we made adjustments, where necessary, to account for inflation in the benefit calculations.

Because Mexico experienced significant inflation during only a portion of the 15-year allocation period, indexing for the entire period or converting the non-recurring benefits into U.S. dollars at the time of receipt (i.e. dollarization) for use in our calculations would have inflated the benefit from these infusions by adjusting for inflationary as well as non-inflationary periods. Thus, in *Certain Steel 1993*, 58 FR at 37355, we used a loan-based methodology to reflect the effects of intermittent high inflation. The methodology we used in *Certain Steel 1993* assumed that, in lieu of a government equity infusion/grant, a company would have had to take out a 15-year loan that was rolled over each year at the prevailing nominal interest rates, which for purposes of our calculations were the CPP-based interest rates discussed in the "Discount Rate" section of this notice. The benefit in each year of the 15-year period equaled the principal plus interest payments associated with the loan at the nominal interest rate prevailing in that year.

Since we assumed that an infusion/grant given was equivalent to a 15-year loan at the current rate in the first year, a 14-year loan at current rates in the second year and so on, the benefit after the 15-year period would be zero, just as with the Department's grant amortization methodology. Because nominal interest rates were used, the effects of inflation were already incorporated into the benefit.

The methodology recognized that, absent dollarization of the subsidy, there was no way given the significant inflation in 1983 through 1988 to (1) preserve a declining balance in the benefit stream, and (2) reflect accurately the effects of significant inflation. The methodology used in *Certain Steel 1993* recognized that in an environment with significant inflation, asset appreciation due to inflation can often outweigh normal asset depreciation and cause benefits in some years to be higher than in previous years. This methodology was upheld in *British Steel plc* v. *United States*, 127 F.3d 1471 (Fed. Cir. 1997) (*British Steel III*).

For purposes of the preliminary results of this administrative review, we have analyzed information provided by the GOM and have found that Mexico, again, experienced significant, intermittent inflation during the period 1991 through 1997. *See* the August 31, 1999, memorandum to the file, "Presence of Significant Intermittent Inflation During the POR," a public document on file in the Central Records Unit, Room B–099 of the Main Commerce Building. In addition, we learned at verification that AHMSA continued its practice of accounting for inflation in its financial statements. *See* page 4 of the AHMSA Verification Report. Thus, we preliminarily determine to use the benefit calculation methodology from *Certain Steel 1993*, described above, for all non-recurring, peso-denominated grants received since the POI.

Analysis of Programs

I. Programs Conferring Subsidies

A. GOM Equity Infusions

In *Certain Steel 1993*, 58 FR at 37356, we determined that the GOM made equity infusions in AHMSA in 1977, each year from 1979 through 1987, 1990 and 1991. Shares of common stock were issued for all of these infusions and were made annually as part of the GOM's budgetary process as per the Federal Law on State Companies. At the time of these infusions, AHMSA was almost entirely a government-owned company.

In *Certain Steel 1993*, 58 FR at 37356, we found AHMSA to be unequityworthy in each year from 1979 through 1987, and in 1990 and 1991. Accordingly, we determined that the equity infusions by the GOM into AHMSA in these years were inconsistent with commercial considerations. In addition, because the infusions were made to a single enterprise, we determined that they were specific within the meaning of the section 771(5A)(D) of the Act. Thus, because these equity infusions were specific and inconsistent with commercial considerations, we found them to be countervailable. No new information or evidence of changed circumstances was presented in this review to warrant any reconsideration of these findings.

To calculate the countervailable benefit in the POR, we used the methodology for intermittent, significant inflation described above. We then divided the benefit attributable to the POR, adjusted to reflect the change in ownership described above, by the total sales of AHMSA during the same period. On this basis, we preliminarily determine the net subsidy for this program to be 1.54 percent *ad valorem* for AHMSA.

B. 1986 Assumption of AHMSA's Debt

In 1986, the GOM negotiated an agreement with AHMSA through which the GOM assumed a portion of AHMSA's debt. One part of this debt assumption was recorded as a reduction in the company's accumulated past losses. For a second part, shares of stock were issued; a third part was held for future capital increases for which new stock was issued to the GOM in 1987. In *Certain Steel* 1993, 58 FR at 37356, we treated the full amount of debt assumed by the GOM in 1986 as a countervailable, non-recurring grant. No new information or evidence of changed circumstances was presented in this review to warrant any reconsideration of these findings.

To calculate the countervailable benefit in the POR, we used the methodology for intermittent, significant inflation described above. We then divided the benefit attributable to the POR, adjusted to reflect the change in ownership described above, by the total sales of AHMSA during the same period. On this basis, we preliminarily determine the net subsidy for this program to be 1.84 percent *ad valorem* for AHMSA.

C. 1988 and 1990 Debt Restructuring of AHMSA Debt and the Resulting Discounted Prepayment in 1996 of AHMSA's Restructured Debt Owed to the GOM

In 1987, the GOM negotiated an agreement with foreign creditors to restructure the debt of AHMSA and several other Mexican parastatal companies. Under the agreement, the parastatal companies remained indebted to the foreign banks. The GOM again negotiated on behalf of AHMSA debt restructuring agreements in 1988 and 1990. Under these agreements, the GOM purchased AHMSA's debts, which were denominated in several foreign currencies, from AHMSA's foreign creditors in exchange for GOM debt. The GOM thereby became the creditor for loans included in these agreements.

During the proceeding of *Certain Steel 1993*, the GOM claimed that AHMSA's principal repayment obligations remained the same after the debt restructuring. However, in *Certain Steel 1993*, we could not verify that none of AHMSA's principal obligations on its debt was forgiven in the 1988 and 1990 debt restructuring agreements. Thus, based upon the facts available to the Department at the time of the investigation, we assumed that the principal had been forgiven in the amount of the discount the GOM had received when purchasing the debt from AHMSA's foreign creditors. Thus, we treated the forgiven principal as a non-recurring grant. During this administrative review, AHMSA claimed that, in June 1996, it repaid its restructured debt in the form of a discounted prepayment to the GOM, thereby extinguishing its financial obligations to the GOM.

In their November 13, 1998, submission, petitioners allege that AHMSA's discounted prepayment of the outstanding principal in 1996 constituted a partial debt forgiveness on behalf of the GOM. As a result of the prepayment, petitioners allege that AHMSA realized an extraordinary income gain approximately equal to the difference between the principal and the amount of the prepayment. Petitioners allege that this extraordinary income provided a countervailable benefit to AHMSA because the company repaid the debt at a 26.4 percent discount, which is not consistent with commercial terms.

During the verification of the questionnaire responses submitted during this review, we learned that, in order to determine the amount of the discounted prepayment that AHMSA was to make in June of 1996, the company and the GOM created amortization tables for each of the foreign currency loans. Next, they converted these payment streams into U.S. dollars and calculated the net present value for each of them. Then, they summed the U.S. dollar denominated net present values to derive the amount of the discounted prepayment to be made in U.S. dollars.

In this review, we have preliminarily determined that AHMSA's discounted prepayment of its 1988 and 1990 restructured debts constitutes a countervailable benefit. At verification, we confirmed that the amount of AHMSA's discounted prepayment resulted in a reduction of the principal owed by AHMSA on this debt. On this basis, we preliminarily determine that the difference between the principal outstanding on AHMSA's restructured debt and the amount of its discounted prepayment constitutes debt forgiveness on the part of the GOM. In addition, we preliminarily determine that the benefit was conferred in 1996, the year in which the debt forgiveness took place. Because the debt forgiveness was made to a single enterprise, we also preliminarily determine that it is specific within the meaning of the section 771(5A)(D) of the Act.

Because the principal forgiveness was denominated in U.S. dollars, we used the Department's standard non-recurring grant methodology to allocate the benefit to the POR. We used as our discount rate, the weighted-average of AHMSA's fixed-rate, U.S. dollar loans that were received during the year of receipt. We then divided the benefit attributable to the POR by AHMSA's total sales in U.S. dollars during the same period. On this basis, we preliminarily determine the net subsidy

for this program to be 0.53 percent *ad valorem* for AHMSA.

D. IMIS Research and Development Grants

The Instituto Mexicano de Investigaciones Siderurgicas (IMIS), or the Mexican Institute of Steel Research, was a government-owned research and development organization that performed independent and joint venture research with the iron and steel industry.

In *Certain Steel 1993*, 58 FR at 37359, the Department found that IMIS's activities with AHMSA fell into two categories: joint venture activities and non-joint venture activities. We determined that IMIS's non-joint venture activities with AHMSA were not countervailable. However, the Department determined that joint venture activities were countervailable, and we treated IMIS's contributions to joint venture activities as non-recurring grants and allocated the benefits over AHMSA's AUL.

During verification in *Certain Steel 1993*, AHMSA submitted new information indicating that the company utilized services and generated purchase orders related to its activities with IMIS. In *Certain Steel 1993*, we found that AHMSA's use of IMIS services was related to its joint venture activities and, therefore, was countervailable. In addition, because the Department was unable to determine whether the purchase orders were related to AHMSA's joint venture activities, we determined, as best information available, that funds linked to these purchase orders provided countervailable benefits. No new information or evidence of changed circumstances was presented in this review to warrant any reconsideration of these findings.

We note that during this administrative review, the GOM reported that IMIS was terminated by Government decree on November 4, 1991. However, because the allocated benefits of the non-recurring benefits that AHMSA received under this program extend into the POR, this program continues to confer a countervailable benefit.

To calculate the countervailable benefit in the POR, we used the methodology for intermittent, significant inflation described above. We then divided the benefit attributable to the POR, adjusted to reflect the change in ownership described above, by the total sales of AHMSA during the same period. On this basis, we preliminarily determine the net subsidy for this program to be 0.53 percent *ad valorem* for AHMSA.

E. Pre-privatization Lay-off Financing from the GOM and the 1991 Equity Infusion in Connection with the Debt to Equity Swap of PROCARSA

During the verification of *Certain Steel 1993*, the Department discovered that the GOM loaned AHMSA money to cover the cost of personnel lay-offs which the GOM felt were necessary to make AHMSA more attractive to potential purchasers. The Department learned that this loan did not accrue interest after September 30, 1991. Further, the Department learned that the GOM was allowing the privatized AHMSA to repay this loan with the transfer of AHMSA assets back to the GOM. The assets which AHMSA was using to repay the loan were assets which Grupo Acerero del Norte, S.A. de C.V. (GAN), the purchaser of AHMSA, had not wished to purchase but which the GOM included in the sale package. *See Certain Steel 1993*, 58 FR at 37360. These assets were characterized as "unnecessary assets" or assets not necessary to the production of steel.

Since the information about this financing and its repayment came to light only at verification of the questionnaire responses submitted during the investigation, we were unable to determine whether this loan relieved AHMSA of an obligation it would otherwise have borne with respect to the laid-off workers. Thus, in *Certain Steel 1993*, 58 FR at 37361, we calculated the benefit by treating the financing as an interest-free loan.

In the current review, AHMSA has claimed that it extinguished its pre-privatization lay-off financing debt with the transfer of these "unnecessary assets." The record of the investigation indicates that these assets were included by the GOM in the sale of AHMSA despite the fact that GAN, the purchaser of AHMSA, indicated that it did not wish to purchase those assets, and GAN's bid for AHMSA did not include any funds for those assets. The record from the investigation further indicates that the value of those assets was frozen in November 1991, and that, as of that date, the assets were neither depreciated nor revalued for inflation, both of which are standard accounting practices in Mexico.

Although a loan that provides countervailable benefits normally ceases to do so once it has been fully repaid, we preliminarily determine that the manner in which AHMSA has repaid this loan conferred a countervailable benefit. AHMSA is repaying the loan with the transfer of assets which AHMSA's purchasers did not wish to purchase and which they did not pay for. As *Certain Steel 1993* indicates, GAN's purchase bid specifically detailed the assets which GAN wished to purchase. We note that the "unnecessary assets" were not included in GAN's purchase price offer. The GOM included these assets when GAN's purchase of AHMSA took place. Thus, we preliminarily determine that AHMSA's use of these "unnecessary assets," assets which were effectively given to AHMSA free of charge, to repay this loan, constitutes debt forgiveness of this loan. Accordingly, we preliminarily determine that the entire amount of the pre-privatization lay-off financing was a non-recurring grant received in 1994, the time the loan was forgiven.

In their November 13, 1998 submission, petitioners allege that, with the transfer of the "unnecessary assets," AHMSA received an equity infusion in connection with a debt-to-equity swap involving the majority government-owned company, Procesadora de Aceros Rasini, S.A. de C.V. (PROCARSA). Specifically, petitioners allege that AHMSA received the PROCARSA shares and subsequently liquidated them, thereby constituting an equity infusion in AHMSA by the GOM.

During the verification of the questionnaire responses submitted in this review, we learned that, in 1991, AHMSA received shares in PROCARSA in lieu of an accounts receivable payment that PROCARSA owed in approximately the same amount. Furthermore, we learned that AHMSA did not liquidate its shareholdings in PROCARSA as petitioners allege. Rather, the PROCARSA shareholdings were included as part of the "unnecessary assets" that the company transferred to the GOM as payment for the pre-privatization lay-off financing.

Thus, AHMSA's shares in PROCARSA are among the "unnecessary assets" that GAN received when it purchased AHMSA in 1991. As with the rest of the "unnecessary assets," we preliminarily determine that the countervailable benefit arises from AHMSA's use of the shares to repay the pre-privatization lay-off financing and not, as petitioners allege, from AHMSA's acquisition of the shares.

To calculate the countervailable benefit in the POR, we used the methodology for intermittent, significant inflation described above. We then divided the benefit from the pre-privatization lay-off financing, including the 1991 equity infusion in connection with the debt to equity swap of PROCARSA, attributable to the POR, by the total sales of AHMSA during the same period. On this basis, we preliminarily determine the net subsidy for this program to be 0.74 percent ad valorem for AHMSA.

F. Bancomext Export Loans

Banco Nacional de Comercio Exterior, S.N.C. (Bancomext) offers a government program through which short-term financing is provided to producers or trading companies engaged in export activities. These U.S. dollar-denominated loans provide financing for working capital (pre-export loans), and export sales (export loans). AHMSA used this program during the POR.

In *Certain Steel 1993*, 58 FR at 37357, we determined that, since these loans are available only to exporters, Bancomext loans are countervailable to the extent that they are provided at preferential rates. No new information or evidence of changed circumstances was presented in this review to warrant any reconsideration of these findings.

To determine the benefit conferred under the Bancomext export loan program, we compared the interest rate charged on these loans to a benchmark interest rate. As discussed in the "Subsidies Valuation" section of this notice, AHMSA submitted company-specific interest rate information on short and long-term loans that it received from commercial banks. Thus, we used the short-term loans to calculate a company-specific, weighted-average, U.S. dollar-denominated benchmark interest rate. We compared this company-specific benchmark rate to the interest rates charged on AHMSA's Bancomext loans and found that the interest rates charged were lower than the benchmark rates. Therefore, in accordance with section 771(5)(E)(ii) of the Act, we preliminarily determine that this program conferred a countervailable benefit during the POR because the interest rates charged on these loans were less than what a company otherwise would have had to pay on a comparable short-term commercial loan.

Because eligibility under this program is contingent upon exports, we divided the benefit by AHMSA's total export sales in U.S. dollars during the POR. On this basis, we preliminarily determine the net subsidy for this program to be 0.10 percent *ad valorem* for AHMSA.

G. PITEX Duty-Free Imports for Companies That Export

The Programa de Importacion Temporal Para Producir Productos Para Exportar, or Program for Temporary Import for Producing Products for Export (PITEX), was established by a decree published in the Diario Oficial on September 19, 1985, and amended in the Diario Oficial on September 19, 1986, and May 3, 1990. The program is jointly administered by the Ministry of Commerce and Industrial Development and the Customs Administration. Manufacturers who meet certain export requirements are eligible for the PITEX program. Those who qualify are exempt from paying import duties and the value added tax (VAT) on temporarily imported goods that will be used in the production of exports. Categories of merchandise eligible for PITEX import duty and VAT exemptions are raw materials, packing materials, fuels and lubricants, perishable materials, machinery, and spare parts.

Machinery imported under the PITEX program may only be imported on a temporary basis. When the items' temporary status has run out, companies must either send the machines back or pay the import duties and VAT taxes that were originally exempted. In Certain Steel 1993, 58 FR at 37359, we found that machinery imported under the PITEX program could stay in Mexico for five years initially and, after five years, a manufacturer could renew the temporary stay each year. At the verification of this review, we learned that the PITEX program was amended such that companies that imported machinery under the program after 1998 cannot apply for an extension of their import duty exempt status. Rather, the period of temporary status is determined as the time that the machinery and spare parts take to depreciate. After the items are fully depreciated, companies must send them back or pay the import duties and VAT that were originally exempted. However, regarding machinery imported prior to 1998, we learned at the verification of this review that it can remain in Mexico without liability for import duties and VAT, provided that the company maintains its PITEX status.

In accordance with past practice, we determined in *Certain Steel 1993*, 58 FR at 37359, that PITEX benefits are countervailable to the extent that they provide duty exemptions on imports of merchandise not consumed in the production of the exported product. *See POS Cookware 1992*, 57 FR at 564, *Ceramic Tile 1991*, 56 FR at 12178, and *Ceramic Tile 1992*, 57 FR at 24248. No new information or evidence of changed circumstances was presented in this review to warrant any reconsideration of these findings.

At the verification of this review, we learned that AHMSA used the PITEX program to import raw materials, containers and packing materials, fuels, perishable items and lubricants, and various machinery and equipment. Thus, pursuant to the Department's practice, we preliminarily determine that AHMSA's import duty exemptions on spare parts, machinery and other items not consumed in the production of the exported products are countervailable.

To calculate the countervailable benefit in the POR, we determined the amount of import duty that AHMSA would have paid absent the program for each duty exemption that the company received on products not consumed in the production of the exported product. Because eligibility for this program is contingent upon exports, we divided the benefit over AHMSA's total export sales. On this basis, we preliminarily determine the net subsidy to be 5.03 percent *ad valorem* for AHMSA.

As mentioned above, AHMSA also received VAT exemptions on the products imported under the PITEX program. At the verification of this review, we learned that PITEX companies receive an exemption on VAT because it is understood that they are going to re-export the items at a later date. Non-PITEX companies, on the other hand, must pay the VAT upon importing the items and receive a reimbursement at a later date. The Department has previously determined that when the time-lag for the VAT credits that all other companies eventually receive is short, VAT exemptions do not confer a measurable time-value-of-money benefit upon participating companies that received the VAT exemption. *See, e.g., Ball Bearings and Parts Thereof From Thailand; Final Results of Countervailing Duty Administrative Review*, 60 FR 52379, 52373 (October 6, 1995) (*Ball Bearings Final*) and *Ball Bearings and Parts Thereof From Thailand; Preliminary Results of Countervailing Duty Administrative Review*, 61 FR 34794, 34796 (July 3, 1996) (*Ball Bearings Preliminary*). At the verification of this review, we learned that the amount of time that non-PITEX companies had to wait for their VAT credits was not so much longer than the amount of time PITEX companies had to wait for their credits such that a measurable time-value-of-money benefit was conferred on the PITEX companies. Thus, we preliminarily determine that the VAT exemptions that AHMSA received under the PITEX program are not countervailable.

H. Immediate Deduction

The immediate deduction program was established in 1987 and was subject to ongoing reforms until it was repealed in 1998. It originated from Article 163 of Mexico's Income Tax Law enacted in

1981 and repealed in 1987. The immediate deduction mechanism was available only for certain fixed assets that had not been previously used in Mexico. The immediate deduction was not available for pre-operation expenses or for deferred expenses and costs. The GOM's stated purpose of the immediate deduction program was to promote investment by allowing the future deduction of the investments, at their present value, at the time of the investment. The immediate deduction option only applied to property used permanently within Mexico but outside the metropolitan areas of Mexico City, Guadalajara, and Monterrey. With respect to small firms (*i.e.*, firms with a gross income of 7 million pesos or less), the location restriction does not apply. We note that the small firm classification does not apply to AHMSA. Immediate deduction could be taken, at the election of the tax-payer, in the tax year in which the investments in qualifying fixed assets were made, in the year in which these assets were first used, or in the following year. No prior approval by the GOM was required to use the immediate deduction option.

We preliminarily determine that the immediate deduction program is specific to a region pursuant to section 771(5A)(D)(iv) of the Act. In this case, the "designated geographical region" comprises all of Mexico except Mexico City, Guadalajara, and Monterrey. The Department has previously found other GOM programs to be regionally specific based on a comparable designated region. For example, in *Portland Hydraulic Cement and Cement Clinker From Mexico; Final Results of Administrative Review of Countervailing Duty Order*, 50 FR 51732 (December 19, 1985), the Department explained that so-called Certificates of Fiscal Promotion, or CEPROFIs, were regionally specific because they were not available in Mexico City and certain other cities in two states near Mexico City. *See also Final Affirmative Countervailing Duty Determination: Ceramic Tile from Mexico*, 47 FR 20012 (May 10, 1982). Pursuant to section 771(5)(D)(ii) of the Act, we preliminarily determine that to extent that the GOM is not collecting tax revenue that is otherwise due from AHMSA, it is providing a financial contribution. Pursuant to section 771(5)(E) of the Act, because the immediate deduction program relieves certain companies of a tax burden that they would have otherwise incurred this program confers a benefit equal to the tax savings.

At verification, we learned that the immediate deduction program does not change the taxable income declared by the company. Rather, the program changes the amount of deductions that a company can take on taxable income. The immediate deduction program is not an accelerated depreciation program, which Mexico does not have. Mexican companies eligible to use immediate deduction basically have two choices. Companies can either depreciate according to the normal depreciation schedule in Mexico, or they can take a one-time immediate deduction on the future depreciation of the item discounted back to its present value. If companies take the immediate deduction, they will not be able to claim all of the deductions that they would otherwise be able to take if they had utilized the standard straight line depreciation method. In other words, only a certain percentage of the value of the assets (as prescribed by law) are used in the immediate deduction calculation. Regarding the net present value calculation used to derive the immediate deduction, it is made at market rates as specified in the program legislation.

At verification, we learned that losses (for tax purposes) can be carried forward for 10 years and that the immediate deduction figure is part of that loss carried forward. Therefore, the amount of the immediate deduction can be carried forward for up to 10 years.

In order to calculate the benefit from the immediate deduction program, we examined AHMSA's tax returns from 1991, the year AHMSA began using the program, to 1996, the year of the tax return filed during the POR. Since the amount a company elects to take as an immediate deduction, as well as all losses, can be carried forward for 10 years, we summed the immediate deduction amounts from all the years prior to the first year in which AHMSA had a taxable profit, which was 1995. We subtracted the 1995 taxable profit from the total amount of available immediate deductions and then compared the result to the taxable profit for 1996 to determine the amount of the tax reduction based on the use of the immediate deduction program. To arrive at the actual benefit we multiplied the amount of the reduction in taxable income by Mexico's corporate income tax rate. We then divided the benefit over AHMSA's total sales. On this basis, we preliminarily determine the net subsidy to be 6.48 percent *ad valorem* for AHMSA. We invite comments on this methodology particularly with respect to whether and how we should account for normal depreciation in the quantification of the benefit under this program.

II. Programs Preliminarily Determined To Be Not Countervailable

A. Committed Investment

In the 1991 privatization, GAN purchased AHMSA from the GOM. In addition to paying a certain amount in cash, and assuming a portion of AHMSA's debt, GAN committed to investing another large sum of money in AHMSA. In their November 13, 1998, submission, petitioners allege that the committed investment provides a countervailable subsidy because it is revenue "otherwise due to the GOM from GAN's purchase of AHMSA, revenue which the GOM forewent" in exchange for requiring GAN to make additional investments in AHMSA. Petitioners allege that these investments would not have otherwise occurred, as AHMSA was unequityworthy at the time (*see Certain Steel 1993*, 58 FR at 37354). Therefore, petitioners contend that the investment commitment constitutes a "funding mechanism" within the meaning of the statute, to which the GOM made payment by foregoing revenue otherwise due and which the GOM required GAN to use for the purposes of additional investments in AHMSA. As equity investments into an unequityworthy company, petitioners allege that the committed investment constitutes a financial contribution which confers a benefit. In addition, petitioners allege that this benefit is specific to AHMSA because this component of the privatization bid formula was limited to AHMSA.

After carefully analyzing the committed investment, we disagree with petitioners' contention that it conferred a benefit upon AHMSA. The record evidence does not support petitioner's claim that GAN would not have made these investments into AHMSA absent its express commitment to the GOM to do so. In fact, the record establishes that GAN invested more than was agreed to under the terms of its arrangement with the GOM. Therefore, we preliminarily determine that the committed investment did not confer a countervailable benefit upon AHMSA. Because there is no benefit, we need not reach the decision whether the committed investment agreement constituted a financial contribution.

B. Corporacion Mexicana de Investigacion en Materiales, S.A. de C.V. (COMIMSA)

Although IMIS was terminated in 1991, its equity was used to establish the Corporacion Mexicana de Investigacion en Materiales, S.A. de C.V. (COMIMSA), an organization charged with continuing certain activities of IMIS. The GOM has reported that COMIMSA's activities are comprised of manufacturing parts and providing services such as: environmental engineering; structural integrity; lubricants; computers and software; project engineering; and, laboratory analysis and testing.

During verification we learned that COMIMSA acts as a supplier to AHMSA for laboratory analysis services and specifically engineered products for which COMIMSA holds the exclusive production rights. The products sold to AHMSA are mostly items for which COMIMSA's predecessor, IMIS, developed and obtained the design patents. These are usually key parts for important equipment. We learned at verification that since AHMSA has to purchase these items only from COMIMSA the prices are very high compared to similar items purchased from other suppliers. AHMSA has attempted to purchase the design patents, but COMIMSA has refused to sell them. We found no evidence that COMIMSA provided AHMSA with any research and development assistance. At verification we found that in situations where COMIMSA was a sole supplier of a particular item AHMSA, consistent with its policy of attempting to minimize sole supplier situations, sought out and found alternative suppliers that could perform some of the maintenance and installation services associated with these items.

Because COMIMSA's dealings with AHMSA consist primarily of selling goods and services, the only relevant analysis in determining whether or not a countervailable benefit has been provided by COMIMSA would be under the "Adequate Remuneration" standard codified at section 771(5)(E)(iv) of the Act. Given the fact that AHMSA has (1) paid very high prices on items for which COMIMSA has exclusive design rights, (2) attempted to purchase the design rights for items COMIMSA produces for AHMSA, (3) consistently attempted to find alternative suppliers to COMIMSA, and (4) has gone to outside suppliers for installation and maintenance of items purchased from COMIMSA, we preliminarily determine that COMIMSA is not providing its goods and services to AHMSA at less than "adequate remuneration." COMIMSA's behavior is more consistent with that of a monopoly supplier for certain items, *i.e.*, it is selling above adequate remuneration. Therefore, we find that COMIMSA's provision of goods and services to AHMSA does not provide a countervailable benefit.

C. Waiver of Taxes on AHMSA Purchase of Fundadora de Monterrey, S.A. de C.V. (FMSA)

In *Certain Steel 1993*, 58 FR at 37365, the Department found that in 1991, a portion of the assets of Fundadora de Monterrey, S.A. de C.V. (FMSA) was sold together with AHMSA. Petitioners argued then that the Department should have countervailed the GOM's waiver of sales and title taxes on the FMSA assets. In *Certain Steel 1993*, 58 FR at 37365, we determined that, although the FMSA assets purchased along with AHMSA should have been subject to sales and title taxes, we would not consider the issue in reaching our final determination because the FMSA assets did not produce subject merchandise at the time of the investigations. However, in their November 13, 1998, submission, petitioners allege that the FMSA assets began producing subject merchandise in 1994, thus making the waiver of taxes a countervailable event that conferred a benefit to AHMSA's production.

In accordance with the Department's practice, benefits in the form of tax waivers are expensed in the year of receipt. Thus, given that the event in question occurred outside of the POR, the issue of whether FMSA produced subject merchandise at the time of the alleged tax waiver is moot. Therefore, we preliminarily determine this program to be not countervailable.

D. Discounted Freight Rates

In their November 13, 1998, submission petitioners provided AHMSA's 1993 annual report, which shows that negotiations between AHMSA and Ferrocarriles Nacionales de Mexico (FNM), the national railroad, led to a 9.2% reduction in freight tariffs for the company in 1993. Petitioners allege that these rail rates are preferential and therefore the GOM, through its state-owned railroad, provided rail services to AHMSA for less than adequate remuneration. Based on the information that was reasonably available to them at the time, petitioners alleged that AHMSA may have received similar benefits during the years 1994 through 1997.

Section 771(5)(E)(iv) of the Act states that a benefit shall normally be treated as conferred when "goods and services are provided for less than adequate remuneration." To the extent that AHMSA's negotiated freight tariffs are less than what other companies could receive for the same services, a countervailable benefit may be conferred. However, we must first determine if this program, *i.e.*, discounts on freight rates by the government-owned railroad, is specific according to section 771 (5A)(D) of the Act and is therefore countervailable.

We found at verification that during the POR FNM was still government-owned. FNM, the government entity running the railroads, had an established policy of providing discounts according to the volume of material transported on its rails. We also found that a very large number of companies across a wide range of industries, including AHMSA, constituted "big accounts" that were eligible for the largest volume-based discounts. Industries represented in the "big accounts" categories include the cement, auto parts, agriculture, beer, steel, and mining industries. The deepest discount was only available to customers, including AHMSA, that provided their own rolling stock. We verified that the discounts were made public and that they applied equally to every customer eligible for volume discounts. We verified that benefits under this program are widely and evenly distributed throughout the sectors with no sector receiving a disproportionate amount. Because the discounts provided by FNM are not limited to a specific enterprise or industry, or group of enterprises or industries, we preliminarily determine that they are not countervailable.

E. ALTEX

In their November 13, 1998, submission petitioners claim that the ALTEX program is designed to provide registered exporters with administrative and financial assistance for product promotion. Under the ALTEX program, assistance is limited to companies with export sales of at least U.S.$2 million annually or companies with export sales of at least 40 percent of gross sales. Companies must maintain a positive trade balance. In addition to administrative and financial assistance for promotion, petitioners allege that ALTEX entities are provided with PITEX program benefits (companies that export a certain percentage of their goods do not pay duties on imports used in the production of exported goods). Petitioners further allege that immediate VAT refunds and increased financial support from the GOM in the form of debt supplied at preferred interest rates through Bancomext, are additional benefits available to exporters that qualify under the ALTEX program.

At verification we learned that the ALTEX program provides administrative facilities to exporters in the form of immediate VAT reimbursements. We asked government officials to describe the benefits of being

designated as an ALTEX company. GOM officials explained that it usually takes about 60 days for the GOM to reimburse non-ALTEX companies while only taking 15 days to reimburse ALTEX companies. Regarding eligibility requirements, GOM officials said that exports must constitute 40 percent of participating companies' sales or a minimum of 2 million U.S. dollars of their total sales.

In addition to receiving VAT redemptions on an expedited basis, GOM officials explained that ALTEX companies are eligible to receive detailed import and export information on a product-specific basis for free while non-ALTEX companies must pay a nominal amount for access to the information. We learned, however, that the fee paid by non-ALTEX companies is very nominal such that the differential between ALTEX and non-ALTEX companies is not significant.

We also learned at verification that loans, such as the type of loans offered under the Bancomext program, are not offered under the ALTEX program. We verified that enrollment under the ALTEX program does not have any bearing on the bestowal of loans under the Bancomext program. In addition, benefits under the ALTEX program that are described in the program legislation are listed under a section that is separate from the section in which the Bancomext program is discussed, thereby indicating that the two programs are not related.

Regarding VAT refunds, we verified that the ALTEX program was intended to reduce the amount of time exporters had to wait for VAT refunds. We found that, according to the law, ALTEX companies are supposed to receive their refunds in 7 days as opposed to non-ALTEX companies that usually must wait approximately 50 days. Companies have the option of reimbursement in the following month or they can apply the credit to any VAT payments due the following month.

The Department has previously determined that when the time-lag for VAT credits that all other companies eventually receive is short, VAT exemptions do not confer a measurable time-value-of-money benefit upon participating companies that received the VAT exemption. *See, e.g., Ball Bearings Final*, 60 FR at 52373 and *Ball Bearings Preliminary*, 61 FR at 37796. As in these cited cases, the time difference between ALTEX company refunds and non-ALTEX company refunds was not long enough to confer a time-value-of-money benefit. Thus, we preliminarily determine that the accelerated VAT refunds under the ALTEX program are not countervailable.

III. Other Program Examined

A. NAFINSA

Nafinsa provides long-term financing to Mexican enterprises in various geographical areas of Mexico. Until December 31, 1988, Nafinsa acted as a first-tier bank, *i.e.*, a commercial bank, providing funds directly to Mexican firms. In 1989, Nafinsa began acting as a second-tier bank—a bank which acts as an intermediary between various international lending organizations and Mexican commercial banks. During the POR, Nafinsa acted only as a second-tier bank for new loans. We found during verification that Nafinsa still administers loans granted prior to 1989 for which it acted as the first-tier bank and long-term loans previously taken out under the FONEI program. AHMSA had a Nafinsa long-term loan outstanding during the POR, for which Nafinsa acted as a second tier bank.

We learned at verification that in its capacity as a second-tier bank Nafinsa establishes a rate to be charged to the commercial banks after which the banks and the companies independently negotiate the final interest rate. The GOM has no involvement in the negotiating process between the commercial banks and companies. The core rate that Nafinsa charges to commercial banks is the same regardless of the size of the ultimate recipient. We verified that the commercial banks were free to determine the interest rate charged to the companies. We found that, while the government does not know which company will ultimately receive the loan at the time the money is lent to the commercial bank, the banks must eventually inform Nafinsa of the ultimate recipient via an annual report that participating banks must submit to the GOM. AHMSA had one outstanding NAFINSA loan with principal and interest during the POR. The company received this loan from a commercial bank which acted as the first tier bank for the financing. This was a long-term variable rate loan.

To determine the benefit we compared the interest rate charged on this loan to a benchmark interest rate. As discussed in the "Subsidies Valuation" section of this notice, AHMSA submitted company-specific interest rate information on short and long-term loans that it received from commercial banks. Thus, we used the long-term variable rate loans to calculate a company-specific, weighted-average, U.S. dollar-denominated benchmark interest rate. We compared this company-specific benchmark rate to the interest rates charged on AHMSA's Nafinsa loan and found that the interest rates charged were higher than the benchmark rate. Therefore, we preliminarily determine that this program did not confer a countervailable benefit during the POR because the interest rates charged on this loan was higher than what a company otherwise would have had to pay on a comparable long-term commercial loan.

IV. Programs Not Used

A. Bancomext Short-Term Import Financing
B. FONEI Long-Term Financing
C. Export Financial Restructuring
D. Bancomext Trade Promotion Services and Technical Support
E. ECEX
F. Article 15 & 94 Loans

Preliminary Results of Review

In accordance with 19 C.F.R. 351.221(b)(4)(i), we have calculated an individual subsidy rate for AHMSA, the producer/exporter subject to this administrative review. For the period January 1, 1997 through December 31, 1997, we preliminarily determine the net subsidy for AHMSA to be 16.31 percent *ad valorem*. If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service to assess countervailing duties for AHMSA at 16.31 percent *ad valorem* of the f.o.b. invoice price on all shipments of the subject merchandise from AHMSA, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 C.F.R. 355.22(b). Pursuant to 19 C.F.R. 355.22(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (CIT 1993) (interpreting 19 C.F.R. 353.22(e)), the antidumping regulation on automatic assessment, which is identical to 19 C.F.R. 355.22(g)). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the most recently completed administrative proceeding conducted under the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See Certain Steel 1993*. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1997 through December 31, 1997, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

Public Comment

Pursuant to 19 C.F.R. 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 C.F.R. 351.309, interested parties may submit written comments in response to these preliminary results. Case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issue, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 C.F.R. 351.303(f). Also, pursuant to 19 C.F.R. 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, that is, thirty-seven days after the date of publication of these preliminary results.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C. 1677f(i)(1)).

Dated: August 31, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–23323 Filed 9–7–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–815]

Pure Magnesium and Alloy Magnesium From Canada: Final Results of Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative reviews.

SUMMARY: On May 7, 1999, the Department of Commerce published in the **Federal Register** its preliminary results of the administrative reviews of the countervailing duty orders on pure magnesium and alloy magnesium from Canada for the period January 1, 1997, through December 31, 1997. The Department has now completed these reviews in accordance with section 751(a) of the Act. For information on the net subsidy rate for the reviewed company, as well as for all non-reviewed companies, *see* the Final Results of Reviews section of this notice. We will instruct the U.S. Customs Service to assess countervailing duties accordingly.

EFFECTIVE DATE: September 8, 1999.

FOR FURTHER INFORMATION CONTACT: Annika O'Hara or Blanche Ziv, AD/CVD Enforcement, Group I, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3798 or (202) 482–4207, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("URAA"), effective January 1, 1995 ("the Act"). The Department of Commerce ("the Department") is conducting these administrative reviews in accordance with section 751(a) of the Act. In addition, unless otherwise indicated, all citation to the Department's regulations are to the regulations codified at 19 CFR Part 351 (1998).

Background

On August 31, 1992, the Department published in the **Federal Register** the countervailing duty orders on pure magnesium and alloy magnesium from Canada (57 FR 39392).

In accordance with 19 CFR 351.213(b), the reviews of these orders cover those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, these reviews cover only Norsk Hydro Canada, Inc. ("NHCI"), the sole producer or exporter of the subject merchandise for which a review was requested. The petitioner in these reviews is the Magnesium Corporation of America. These reviews cover 17 programs.

In the preliminary results of these reviews, the Department invited interested parties to comment on the results (*See Pure Magnesium and Alloy Magnesium From Canada: Preliminary Results of the Sixth Countervailing Duty Administrative Reviews*, 64 FR 24585 (May 7, 1999) ("*Preliminary Results*")). However, no case briefs or rebuttal briefs were filed by interested parties. The Department did not conduct a hearing for these reviews because none was requested.

Scope of the Reviews

The products covered by these reviews are shipments of pure magnesium and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes.

The merchandise under review is currently classifiable under items 8104.11.0000 and 8104.19.0000 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the HTSUS subheadings are provided for

convenience and customs purposes, our written description of the scope of these reviews is dispositive.

Secondary and granular magnesium are not included in the scope of these orders. Our reasons for excluding granular magnesium are summarized in the *Preliminary Determination of Sales at Less Than Fair Value: Pure and Alloy Magnesium From Canada*, 57 FR 6094 (February 20, 1992).

Period of Review

The period of review ("POR") for which we are measuring subsidies is from January 1, 1997 through December 31, 1997.

Analysis of Programs

I. Programs Conferring Subsidies

I. Programs Conferring Subsidies

A. Exemption from Payment of Water Bills

In the *Preliminary Results*, we found that this program conferred a countervailable benefit on the subject merchandise. We also preliminarily determined that the program was terminated during the POR, that no residual benefits were being provided or received, and that no substitute program had been implemented. We have not received any new information or comments which would lead us to change our preliminary findings. On this basis, we determine that the net subsidy rate for this program during the POR is 0.18 percent for NHCI. Moreover, because this program was terminated during the POR, we do not intend to examine it in the future and the cash deposit rate will be zero for this program.

B. Article 7 Grants from the Québec Industrial Development Corporation

In the *Preliminary Results*, we found that this program conferred a countervailable benefit on the subject merchandise. We have not received any new information or comments which would lead us to change our preliminary findings. On this basis, we determine that the net subsidy rate for this program during the POR is 1.84 percent for NHCI.

II. Programs Found Not to be Used

In the *Preliminary Results*, we found that NHCI did not apply for or receive benefits under the following programs during the POR:

- St. Lawrence River Environment Technology Development Program
- Program for Export Market Development
- Export Development Corporation
- Canada-Québec Subsidiary Agreement on the Economic Development of the Regions of Québec
- Opportunities to Stimulate Technology Programs
- Development Assistance Program
- Industrial Feasibility Study Assistance Program
- Export Promotion Assistance Program
- Creation of Scientific Jobs in Industries
- Business Investment Assistance Program
- Business Financing Program
- Research and Innovation Activities Program
- Export Assistance Program
- Energy Technologies Development Program
- Transportation Research and Development Assistance Program.

We have not received any new information or comments on these programs which would lead us to change our findings from the *Preliminary Results*.

Final Results of Reviews

In accordance with 19 CFR 351.221(b)(5), we calculated an individual subsidy rate for each producer or exporter subject to these administrative reviews. For the period January 1, 1997, through December 31, 1997, we determine the net subsidy rate for NHCI, the only producer or exporter subject to these reviews, to be 2.02 percent *ad valorem*. We will instruct the U.S. Customs Service ("Customs") to assess countervailing duties in this amount for all entries of the subject merchandise produced and/or exported by NHCI during this period. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties (exclusive of the net subsidy rate calculated for the water program; *see* section I.A. above) at the rate of 1.84 percent of the f.o.b. invoice prices on all shipments of the subject merchandise from NHCI, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these administrative reviews.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. Consequently, the requested review will normally cover only those companies specifically named (*see* 19 CFR 351.213(b)). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which parallels 19 CFR 355.22(g), the predecessor to 19 CFR 351.212(c)). Therefore, the cash deposit rates for all companies except NHCI are unchanged by the results of these reviews.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies (except for Timminco Limited, which was excluded from the order in the original investigations) at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by these orders are those established in the most recently completed administrative proceeding. *See Final Results of the Second Countervailing Duty Administrative Reviews: Pure Magnesium and Alloy Magnesium from Canada*, 62 FR 48607 (September 16, 1997). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is completed. In addition, for the period January 1, 1997, through December 31, 1997, the assessment rates applicable to all non-reviewed companies covered by these orders are the cash deposit rates in effect at the time of entry, except for Timminco Limited (which was excluded from the order in the original investigations).

This notice serves as a reminder to parties subject to an administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.301. Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 31, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–23329 Filed 9–7–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082699C]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Texas Habitat Protection Advisory Panel (AP).

DATES: The meeting will begin at 9:00 a.m. on Tuesday, September 21, 1999 and conclude by 3:00 p.m.

ADDRESSES: The meeting will be held at the Hilton Houston Hobby Airport 8181 Airport Boulevard, Houston, TX 77061; telephone: 713–645–3000.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Jeff Rester, Gulf States Marine Fisheries Commission; telephone: 228–875–5912.

SUPPLEMENTARY INFORMATION: The Texas group is part of a three unit Habitat Protection Advisory Panel of the Gulf of Mexico Fishery Management Council. The principal role of the advisory panels is to assist the Council in attempting to maintain optimum conditions within the habitat and ecosystems supporting the marine resources of the Gulf of Mexico. Advisory panels serve as a first alert system to call to the Council's attention proposed projects being developed and other activities which may adversely impact the Gulf marine fisheries and their supporting ecosystems. The panels may also provide advice to the Council on its policies and procedures for addressing environmental affairs.

At this meeting, the AP will discuss revision of the Council's Habitat Policy to include Essential Fish Habitat (EFH) provisions, an update on EFH assessments in Council fishery management plan amendments, an update on the status of the EFH lawsuit, expansion of the Houston Ship Channel in Galveston Bay, an informational presentation on artificial reefs, and a new wetland restoration technique.

Although other issues not listed in this agenda may come before the AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. The AP's actions will be restricted to those issues specifically identified in the agenda listed as available by this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by September 14, 1999.

Dated: September 1, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–23318 Filed 9–7–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 083199D]

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of committee meeting.

SUMMARY: The Pacific Northwest Crab Industry Advisory Committee has scheduled a meeting.

DATES: The meeting will be held on Wednesday, September 29, 1999, 9:00 a.m.

ADDRESSES: The meeting will be held at the Leif Erickson Lodge, 2245 NW 57th Street, Seattle, WA.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Arni Thomson, Alaska Crab Coalition; telephone: 206–547–7560.

SUPPLEMENTARY INFORMATION: The Pacific Northwest Crab Industry Advisory Committee will meet with representatives of the Alaska Department of Fish and Game to receive reports and information on the following subjects:

1. Status of crab stocks and resulting guideline harvest levels.

2. Report on recent Alaska Board of Fisheries activities, including update on recent appeals on stand-down and season change action.

3. Report on Tanner crab rebuilding analysis.

4. Status of the Crab Observer Program.

After presentations by the Alaska Department of Fish and Game staff, the committee will discuss and may make recommendations on any of the listed subjects.

Although other issues not contained in this agenda may come before this committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 5 working days prior to the meeting date.

Dated: September 1, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–23320 Filed 9–7–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082599C]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council's (Council) Recreational Fisheries Data Task Force (RFDTF) will hold a meeting.

DATES: The meeting will be held on September 21, 1999, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Council office, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: This will be the first meeting of the RFDTF which will discuss the following topics: the need and importance of recreational

fisheries data, recreational fisheries studies in Hawaii over the past 20 years, management of recreational fisheries in the Atlantic and Gulf of Mexico, the impact of international management of pelagic fisheries in the Central-West Pacific on recreational fisheries, logistics of recreational data collection, and other business as required.

Although other issues not contained in this agenda may come before this task force for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: September 1, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–23319 Filed 9–7–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Pakistan

September 1, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: September 8, 1999.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased for carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 59946, published on November 6, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 1, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on September 8, 1999, you are directed to increase the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Specific Limits	
219	7,758,895 square meters.
226/313	130,660,750 square meters.
239pt. [2]	887,016 kilograms.
314	6,944,831 square meters.
315	87,320,778 square meters.
317/617	37,389,899 square meters.
334/634	305,922 dozen.
335/635	444,410 dozen.
336/636	549,992 dozen.
340/640	783,910 dozen of which not more than 292,326 dozen shall be in Categories 340–D/640–D [3].
359–C/659–C [4]	1,091,626 kilograms.
369–R [5]	12,353,542 kilograms.
638/639	575,093 dozen.
647/648	1,090,032 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[3] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030; Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[4] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[5] Category 369–R: only HTS number 6307.10.1020

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–23307 Filed 9–7–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

September 1, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 67050, published on December 4, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 1, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 30, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man–made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on September 9, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
338/339	2,961,226 dozen.
347/348	2,960,856 dozen.
350	112,475 dozen.
351/651	866,330 dozen.
638/639	2,352,448 dozen.
647/648	1,433,192 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.99–23306 Filed 9–7–99; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Notice to the Public Announcing Process for Reconsideration of Determinations Regarding Denial of Entry to Textiles and Textile Products Allegedly Produced or Manufactured by Certain Companies.

September 1, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive announcing process for reconsideration of CITA determinations regarding denial of entry.

EFFECTIVE DATE: September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Martin Walsh, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 12475 of May 9, 1984, as amended.

A notice and letter to the Commissioner of Customs, dated July 27, 1999, and published in the **Federal Register** on July 30, 1999 (64 FR 41395) directed the Commissioner of Customs to issue regulations permitting U.S. Customs to deny entry to textiles and textile products where the declared manufacturer was named in a CITA directive as a company found to be illegally transshipping, closed or unable to produce records to verify production. Immediately following that notice, another notice and letter to the Commissioner of Customs, also dated July 27, 1999, and published in the **Federal Register** on July 30, 1999 (64 FR 41395) directed the U.S. Customs Service, effective for goods exported on and after September 1, 1999, to deny entry to textiles and textile products allegedly manufactured by certain listed companies in Macau; Customs had informed CITA that these companies were found to have been illegally transshipping, closed, or unable to produce records to verify production.

The purpose of this notice is to advise the public that CITA has established a process for interested parties to request reconsideration of CITA determinations regarding the companies listed. Effective immediately, CITA will accept petitions from any interested party who believes that CITA should reconsider its determination regarding a specific listed company. Petitions should include the full name, in English, of the company, the full address, and the reasons why CITA should reconsider its determination. In reconsidering its determination, CITA will consider all relevant facts, including the following: information provided by Customs regarding the company; information from the petitioner indicating that the company was not illegally transshipping, was not closed, and maintained records to verify production; and information from authorities in the country of exportation regarding that company.

CITA will review all such petitions and will seek to make a reconsideration determination as soon as possible. It may be necessary for CITA to request the U.S. Customs Service to revisit the company. Moreover, it may be necessary for CITA to request additional information from the petitioner.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–23305 Filed 9–2–99; 3:25 pm]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Science and Technology Panel on Human Effectiveness will meet at Wright-Patterson AFB, Ohio and Rome, New York on November 15–19, 1999 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to review the quality of the Air Force Science and Technology Program.

The meeting will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–23250 Filed 9–7–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Science and Technology Panel on Materials and Manufacturing will meet at Wright-Patterson Air Force Base, Ohio on December 13–17, 1999 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to review the quality of the Air Force Science and Technology Program.

The meeting will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–23251 Filed 9–7–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Science and Technology Panel on Air Vehicles will meet at Wright-Patterson AFB, Ohio on November 29 to December 3, 1999 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to review the quality of the Air Force Science and Technology Program.

The meeting will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–23252 Filed 9–7–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Science and Technology Panel on Information will meet in Rome, New York on December 6–10, 1999 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to review the quality of the Air Force Science and Technology Program.

The meeting will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–23253 Filed 9–7–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Army

Environmental Assessment (EA) and Finding of No Significant Impact (FNSI) for Disposal and Reuse of the BRAC Property at Fort Greely, AK

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In accordance with Public Law 101–510, the Defense Base Realignment and Closure (BRAC) Commission recommended the realignment of the Northern Warfare Training Center (NWTC) and the Cold Regions Test Center (CRTC) from Fort Greely, Alaska, to Fort Wainwright, Alaska. The realignment of Fort Greely could begin no earlier than July 1997 and can end no earlier than July 2001.

The EA analyzes the environmental and socioeconomic effects relating to the disposal and reuse of surplus property at Fort Greely. The day Fort Greely was selected for realignment (February 28, 1995), approximately 747 active duty and civilian personnel were employed on the installation. By July 2001, this number will be reduced to 55 civilians and 11 military. Much of the base infrastructure, including most of the housing units, is surplus to the needs of the Federal Government and is available for transfer to the Local Redevelopment Authority (LRA). The total surplus area is 1,785 acres.

DATES: Public comments should be submitted on or before October 8, 1999.

ADDRESSES: A copy of EA and FNSI may be obtained by writing to the U.S. Army Corps of Engineers, Alaska District, ATTN: CEPOA–EN–CW–ER (My. Guy McConnell), P.O. Box 898, Anchorage, Alaska 99506–0898.

FOR FURTHER INFORMATION CONTACT: Mr. Guy McConnell at (907) 753–2625, or by facsimile at (907) 753–2526.

SUPPLEMENTARY INFORMATION: The EA analyzes the alternatives of no action, unencumbered disposal, and encumbered disposal. The Army's preferred alternative is encumbered disposal, which places constraints on future use of some parcels. Reuse of the surplus property is also discussed, based on reasonably foreseeable scenarios envisioned in the LRA Final Reuse Plan, Fort Greely, Alaska. Additionally, the EA evaluates the envionmental consequences of privatizing certain utilities, a non-BRAC action the Army may or may not exercise in the future. Privatization would facilitate the reuse of the property.

The Army concludes that the disposal and reuse of the BRAC property at Fort Greely does not constitute a major federal action significantly affecting the quality of the natural or human environment. Because no significant impacts would result from implementing the proposed action, an environmental impact statement is not required and will not be prepared.

The EA is also available for review at the Library, Building 652, Fort Greely, Alaska; Delta Public Library, 2288 Deborah Street, Delta Junction, Alaska; and, Noel Wien Public Library, 1215 Cowles Street, Fairbanks, Alaska.

Dated: September 1, 1999.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I&E).

[FR Doc 99–23291 Filed 9–7–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Finding of No Significant Impact in the Environmental Assessment for the Parallex Project Fuel Manufacture and Shipment

AGENCY: U.S. Department of Energy.

ACTION: Notice of Availability.

SUMMARY: An environmental assessment (EA) has been prepared to assess potential environmental impacts associated with a U.S. Department of Energy (DOE) proposed action to conduct limited mixed oxide (MOX) fuel manufacture and shipment for the purpose of confirming the viability of using MOX fuel in Canadian Deuterium Uranium (CANDU) reactors. The Proposed Action would involve preparation and analysis activities in TA–55 (building PF–4) at Los Alamos National Laboratory (LANL), and shipping of the MOX fuel to the U.S.-Canada border. This EA covers only those activities necessary to manufacture and ship up to 59.2 lb (26.8 kg) of MOX fuel. Based on the analysis in this EA, and after considering comments received, DOE has determined that the proposed action is not a major federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq). Therefore the preparation of an environmental impact statement is not required.

ADDRESSES: Single copies of the EA and further information concerning the proposed action are available from: Bert Stevenson, NEPA Compliance Officer, Office of Fissile Materials Disposition (MD–4), U.S. Department of Energy, P.O. Box 23786, Washington, DC 20026–3786, telephone (202) 586–5368.

FOR FURTHER INFORMATION CONTACT: For further information regarding the DOE NEPA Process, contact: Carol Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC, 20585, telephone (202) 586–4600, or (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Purpose and Need

DOE needs to test and demonstrate the feasibility of using MOX fuel in CANDU reactors, as a potential disposition option [1] for surplus weapons-usable plutonium. The proposed action discussed in this EA is a limited scale test that would provide DOE with information needed to assess that option.

Background

The end of the Cold War has created a legacy of surplus weapons-usable fissile materials both in the United States and the former Soviet Union. The global stockpiles of weapons-usable fissile materials pose a danger to national and international security in the form of potential proliferation of nuclear weapons and the potential for environmental, safety, and health consequences if the materials are not properly safeguarded and managed. In September 1993, President Clinton issued a "Nonproliferation and Export Control Policy" in response to the growing threat of nuclear proliferation. Further, in January 1994, President Clinton and Russia's President Yeltsin issued a "Joint Statement Between the United States and Russia on Nonproliferation of Weapons of Mass Destruction and the Means for Their Delivery." To demonstrate the United States' commitment to these policies, President Clinton announced on March 1, 1995 that about 224 tons (203 metric tons) of U.S.-origin weapons-usable fissile materials, of which 182 tons (165 metric tons) are highly enriched uranium and 42 tons (38 metric tons) are weapons-usable plutonium, had been declared surplus to the United States' defense needs.

To safeguard and manage this material, DOE has decided to implement a program to provide for safe and secure storage of weapons-usable fissile materials and a strategy for the disposition of surplus weapons-usable plutonium, as specified in the ROD for the S&D PEIS. The fundamental purpose of the program is to maintain a high standard of security and accounting for these fissile materials while in storage, and to ensure the plutonium produced for nuclear weapons and declared surplus to national security needs is never again used for nuclear weapons.

The Final S&D PEIS ROD, issued January 14, 1997, established a hybrid strategy to irreversibly dispose of the Nation's surplus plutonium and to reduce from seven to three the number of sites that store nuclear weapons materials. The strategy would immobilize some (and potentially all) of the surplus plutonium in glass or ceramic formulations and allow the use of some of the surplus plutonium as MOX fuel. The option of dispositioning some of the weapons-usable surplus plutonium as MOX fuel in heavy-water-moderated reactors, such as CANDU reactors, was retained as an option in the event of future multilateral agreement among Russia, Canada, and the United States. As explained in the ROD for the S&D PEIS, DOE proposes to engage in a test and demonstration program for CANDU MOX fuel consistent with ongoing and potential future cooperative efforts with Russia and Canada, and based on appropriate NEPA review. The test and demonstration activities would occur at LANL, New Mexico, and at Chalk River Laboratories (CRL), Ontario, Canada.

[1] As described in the Record of Decision (ROD) for the Storage and Disposition of Weapons-Usable Fissile Materials Final Programmatic Environmental Impact Statement (S&D PEIS), DOE's strategy for disposition of surplus plutonium is to pursue an approach that allows immobilization of surplus plutonium in glass or ceramic materials for disposal in a geologic repository pursuant to the Nuclear Waste Policy Act, and burning of some of the surplus plutonium as MOX fuel in existing, domestic, commercial reactors, with subsequent disposal of spent fuel in a geologic repository pursuant to the Nuclear Waste Policy Act. The ROD stated that DOE would retain the option of dispositioning some of the weapons-usable plutonium as MOX fuel in heavy-water-moderated reactors, such as CANDU reactors, in the event of a future multilateral agreement among Russia, Canada, and the United States.

Proposed Action

To meet the purpose and need for Agency action, DOE proposes to fabricate and transport up to 59.2 lb (26.8 kg) of MOX fuel as part of the Parallex Project. DOE has already fabricated a portion of this MOX fuel at LANL, and DOE proposes to fabricate additional MOX fuel at LANL if needed. MOX fuel would be fabricated in building PF–4 in TA–55 at LANL. This test and demonstration project has been named Parallex (parallel experiment) because of the roles of the United States and Russia in supplying test material. The Parallex Project would be a joint agreement between Russia, Canada, and the U.S. to demonstrate the irradiation of U.S. and Russian MOX fuel in parallel in the Atomic Energy of Canada, Limited (AECL)-owned National Research Universal (NRU) reactor. This international project would use MOX fuel made in the U.S. (specifically LANL) and Russia (specifically from Bochvar) from surplus weapons-usable plutonium out of both countries' nuclear stockpiles.

Research and development of MOX fuels has already been conducted at LANL as part of its ongoing mission relating to the development of energy sources for experiments and research reactors. However, these various MOX fuel forms were not made with weapons-grade plutonium. In contrast, the MOX fuel fabrication process involved in the Parallex Project would use weapons-grade plutonium (in an unclassified form) obtained from decommissioned nuclear weapons.

The MOX fuel fabricated at LANL would be transported to the Canadian border. At the border the AECL, per prior agreement, would take possession of the fuel. The fuel would remain on the same truck and the AECL would complete the shipment to the reactor site. At Chalk River, Ontario, the MOX fuel would be delivered to CRL for testing in the NRU reactor. The AECL would be responsible for conducting all subsequent tests of the fuel's performance and the function of the reactor.

Fueling the NRU reactor with MOX fuel would be part of a feasibility test to determine MOX fuel performance in converted CANDU reactors. The NRU test reactor is the only available reactor specifically designed to test MOX fuel performance for CANDU reactors. Positive test results could support subsequent decisions on the dispositioning of surplus weapons-usable plutonium in CANDU reactors. All spent fuel resulting from the tests

would be managed under the Canadian spent fuel program.

Alternatives Considered

The EA describes several alternatives to the proposed action as well as the No Action Alternative.

No Action: The No Action alternative provides an environmental baseline to compare to the potential effects of the Proposed Action. Under this alternative, LANL would continue to store the existing MOX fuel at TA–55. No additional fuel pellets or additional fuel rods would be made for the Parallex Project. The AECL would have no source of U.S. MOX fuel rods and, therefore, would have to cancel its testing program at the NRU reactor in parallel with Russian MOX fuel, or if Russian fuel were made available, operate the testing program in the absence of U.S. supplied MOX fuel.

Other Transportation Routes: Seven routes were analyzed for the shipment of MOX fuel from LANL to the Canadian border. Each route involves a separate point of entry into Canada. In accordance with standard transportation planning practices, all routes use available interstate highways and city bypasses, where available, to go around high-population areas, and meet Department of Transportation routing requirements. For very specific reasons, DOE has decided not to use two of these routes. The Port Huron, MI route would not be used because of construction on the Blue Water Bridge, and the Detroit, MI route would not be used because the Ambassador Bridge currently does not allow placarded (i.e., carrying hazardous material) vehicles. Other possible interstate highway routes, such as via Sweetgrass, Montana and Champlain, New York were not evaluated because of excessive travel distances.

MOX Fabrication at Other DOE Facilities: Under this alternative, MOX fuel would be fabricated at other DOE facilities and then shipped to CRL. No DOE site other than LANL presently has the ability to fabricate MOX fuel. Furthermore much of the raw materials that would be used in the demonstration are already located at LANL. The time required to upgrade other sites to produce MOX fuel would delay the further fabrication and shipment of MOX fuel such that the Parallex Project schedule would not be met. Therefore, this alternative was dismissed from further analysis.

Other Technologies for MOX Evaluation: This alternative would use other methods such as computer simulation or surrogate fuels to evaluate the MOX fuel fabrication process. The use of computer simulation is not developed to the point where it can be applied to MOX fuel fabrication. The use of surrogate fuels in the Parallex Project would not produce the irradiation data required for verifying reactor performance. Therefore, this alternative was dismissed from farther analysis.

Transport of MOX Fuel by Air: Federal regulations under 10 CFR 71.88 (Air Transport of Plutonium) explicitly prohibit the transport of plutonium by air or the delivery to a carrier for air transport unless the plutonium is in a form with a specific activity no greater than 0.002 μCi/g, and shipped in a single package with no more than a specified quantity. The restrictions imposed for transportation of plutonium by air prohibit this alternative for shipment of the MOX fuel quantities needed for the Parallex Project. Therefore, this alternative was dismissed from further analysis.

Transport of MOX Fuel by Rail: Rail shipment is an allowable mode for the transport of radioactive materials and is regulated by the U.S. Department of Transportation (DOT) under 49 CFR 174.700. However, there is no direct rail service from Los Alamos, New Mexico. Moreover, this mode of transport would not be feasible because of the lack of dedicated rail routes, and long layovers for railcar transfers. Cumulatively, all these factors negate use of this transport mode.

Shipment of MOX Fuel by Safe Secure Transport (SST): The SST fleet is a DOE owned and operated transportation system that consists of armored tractor-trailers and special escort vehicles. The added security and expense of the SST system is not needed because the MOX fuel would be in small quantities, would have a negligible radiation dose to the public, and could not easily be converted into weapons-usable form.

Environmental Impacts

The results of evaluations in key impact areas are summarized in the following section; other types of consequences were determined to be negligible and are not discussed in detail.

Human Health: The potential threat to workers from MOX fuel fabrication would come from penetrating radiation. No excess fatal cancers would be expected in the involved workers from penetrating radiation exposures. Noninvolved workers, those performing other jobs as well as the usual PF–4 building personnel, would not be expected to receive a dose from the proposed operation. MOX fuel fabrication is not expected to measurably increase the airborne radioactive material emissions from PF–4 associated with routine operations; therefore, no effects to the public are expected.

Facility Accidents: Abnormal events or accidents are hypothetical incidents that are not a planned part of routine operations. A fire in the MOX fuel fabrication line was chosen for the accident analysis. The likelihood of this accident occurring was categorized as "unlikely." The small amount of material that would be released within PF–4 and the reduction of that release by the two-stage high-efficiency particulate air (HEPA) filtration system would result in a negligible dose to the offsite maximum exposed individual (MEI) and no latent cancer fatalities (LCFs) within the offsite population. The radiological dose to involved workers from such an accident was estimated at 1.8 rem, with calculated LCFs of less than one.

Transportation: No changes to the existing highway infrastructure would be required to allow passage of the MOX fuel shipment(s), nor would roads need to be closed. The normal traffic flow along the MOX fuel transportation routes would not be expected to change with the added presence of one to three commercial truck(s). The shipment(s) of MOX fuel by commercial truck from LANL to the Canadian border would not be expected to adversely affect the health of the truck crew or the public along any of the analyzed routes.

Transportation Accidents: Two transportation accident scenarios were analyzed for the shipment of MOX fuel to the Canadian border. One accident would involve the release of radioactive materials and the other would not involve the release of radioactive materials.

The first accident relates to an event that leads to the MOX fuel package container breaking open, igniting, and releasing plutonium dioxide particles into the air. The probability of such a severe accident occurring and adversely affecting the public is extremely unlikely. The accident scenario could occur anywhere along the transportation corridors, and could have transboundary effects on Canadian populations. The population and individual doses would be very small. Therefore, no LCFs would be expected from an accident during the shipment(s) of MOX fuel to Canada.

Under the second accident scenario for MOX fuel transportation to the Canadian border, no radioactive material would be released by the vehicular collision. This scenario analyzed potential fatalities from the force of a collision. Results of the accident analysis indicated that no driver or public fatalities would be expected.

Air Quality: Air emission from the fabrication of MOX fuel pellets and rods for the Parallex Project would be a very small percentage of the overall LANL annual air emissions. The MOX fuel pellets and rods would be made inside sealed gloveboxes that have negative air pressure and a primary air system fitted with HEPA filtration. PF–4 laboratories also have negative air pressure and a separate HEPA filtered air system. The filters would prevent any measurable release of particles into the atmosphere. Therefore, no MOX fuel powder particles would be expected to be released from PF–4 into the environment.

No change to the air quality along the route(s) to Canada would be expected since the MOX fuel would be sealed in rods and package container(s) during transportation. A commercial truck carrying MOX fuel would be one out of thousands of trucks on the road at any one time. The overall contribution of nonradiological air pollutants from a single vehicle to the air quality within a given airshed would be immeasurable.

Waste Management: The small quantities of low-level radioactive waste (LLW) and transuranic (TRU) waste produced from MOX fuel fabrication would not appreciably increase waste generation rates at LANL. No mixed waste, hazardous waste, or additional nonhazardous solid waste would be generated from MOX fuel fabrication. MOX fuel fabrication would not measurably increase the volume of sanitary wastewater generated. No radioactive or hazardous waste would be generated during the shipment of MOX fuel to the Canadian border.

Environmental Justice: Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, requires that Federal agencies identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of their programs and activities on minority and low-income populations. Because no adverse effects are anticipated as a result of the proposed actions during both normal operations and accident conditions, there would be no opportunity for disproportionately high and adverse consequences on minority, or low-income populations.

Other Environmental Impacts: The consequences of the proposed action are expected to be negligible for other types of impacts, including those on land use, socioeconomics, cultural resources, aesthetic or scenic resources, geologic resources, water resources, ecological resources, noise, or site services.

Cumulative Impacts: Because the contributions from the Proposed Action would be extremely small, the proposed action is not expected to contribute substantially to the overall cumulative impacts from past or anticipated operations at LANL and along the transportation corridors.

Determination

Based on the analysis in this EA, and after considering the preapproval review comments, I have concluded that the proposed action does not constitute a major federal action significantly affecting the quality of the human environment within the meaning of NEPA. Therefore, an EIS for the proposed action is not required.

Issued at Washington, DC, this 13th day of August 1999.

Laura Holgate,

Director, Office of Fissile Materials Disposition.

[FR Doc. 99–23331 Filed 9–7–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 99–48–NG]

Office of Fossil Energy; Milford Power Company, LLC; Order Granting Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued an order granting Milford Power Company, LLC (Milford) long-term authorization to import up to 75,000 Mcf per day of natural gas from Canada, in accordance with the "Fuel Purchase Agreement" between Milford and El Paso Gas Marketing Company. The authorization is for a 20-year term beginning on the date of first delivery pursuant to this Order. This gas may be imported from Canada at Niagara Falls or Waddington, New York.

This Order may be found on the FE web site at http://www.fe.doe.gov., or on our electronic bulletin board at (202) 586–7853. It is also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities Docket Room, 3E–033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., September 1, 1999.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

[FR Doc. 99–23332 Filed 9–7–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–607–000]

Central New York Oil and Gas Company, LLC; Notice of Petition

September 1, 1999.

Take notice that on August 26, 1999, Central New York Oil and Gas Company, LLC (CNYOG), One Leadership Square, 211 North Robinson, Oklahoma City, Oklahoma 73102, filed in Docket No. CP99–607–000, a petition, pursuant to Rule 207(a)(5) of the Commission's Rules of Practice and Procedure (18 CFR 387.207(a)(5)), and section 7(c)(1)(B) of the Natural Gas Act, seeking approval of a temporary exemption from certificate requirements, all as more fully set forth in the petition which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.us/online/rims.htm (call 202–208–2222 for assistance).

Specifically, CNYOG seeks authorization to drill up to eight stratigraphic test wells in a producing natural gas field (Stagecoach Field) located in Tioga County, New York. CNYOG states that the test wells and related experimental well tail placement and data collection efforts are necessary to enable CNYOG to conduct additional research and development to verify the suitability of the Stagecoach Field reservoirs to storage development using Salternatives™ Technology being developed by eCORP, LLC, an affiliate of CNYOG.

Any questions regarding this petition should be directed to Jay C. Jimerson, eCORP, LLC, c/o Central New York Oil and Gas Company, LLC, One Leadership Square, 211 North Robinson, Oklahoma City, Oklahoma 73102 at (405) 235–0993 (Voice) or (405) 235–0992 (FAX).

Any person desiring to be heard or making any protest with reference to said petition should on or before September 13, 1999, file with the Federal Energy Regulatory Commission,

888 First Street, NE, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to take but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this petition if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the requested exemption is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CNYOG to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23262 Filed 9–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPAARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–485–000]

Kansas Pipeline Company; Notice of Tariff Filing

(September 1, 1999).

Take notice that on August 27, 1999, Kansas Pipeline Company (KPC) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed below, with an effective date of October 1, 1999:

Fourth Revised Sheet No. 15
Fourth Revised Sheet No. 21
Third Revised Sheet No. 26
Third Revised Sheet No. 28
Third Revised Sheet No. 30

KPC requests an effective date of October 1, 1999, and accordingly, requests that the Commission suspend this filing for the minimal statutory period to allow the tariff sheets to go into effect on October 1, 1999.

KPC states that the purpose of this filing is to revise KPC's rates for jurisdictional services to reflect current and projected costs and changes in demand on KPC's system.

KPC states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http.//www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23265 Filed 9–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–606–000]

The Union Light, Heat and Power Company; Notice of Application

September 1, 1999.

Take notice that on August 26, 1999, The Union Light, Heat and Power Company (Union Light), 139 East Fourth Street, Cincinnati, Ohio 45202, filed in Docket No. CP99–606–000 an application pursuant to Section 7(b) of the Natural Gas Act, for permission and approval to abandon the services rendered under Rate Schedules X–4 and X–5, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance).

Union Light requests permission to abandon a natural gas transportation and exchange service with Columbia Gas Transmission Corporation (Columbia). Union Light states that the service was performed under Union Light's Rate Schedule X–4 and, together with Columbia's Rate Schedule X–33, facilitated the transportation of natural gas on behalf of The Cincinnati Gas & Electric Company (Cincinnati). Union Light states that on December 1, 1998, Union Light was issued a blanket certificate of public convenience and necessity under Order No. 63 and Section 284.224 of the Commission's Regulations. Union Light further states that service rendered under the Order No. 63 blanket certificate supplants the service previously rendered under Rate Schedule X–4. In addition, Union Light requests permission to abandon Rate Schedule X–5, a fuel reimbursement agreement with Cincinnati which was specifically related to the service rendered under Rate Schedule X–4.

Any questions regarding the application should be directed to James L. Turner, at (513) 287–3232, The Union Light, Heat and Power Company, 139 East Fourth Street, Cincinnati, Ohio 45202.

Any person desiring to be heard or make any protest with reference to said application should on or before September 22, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to take but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this

application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Union Light to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23261 Filed 9–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94–1554–022, et al.]

CNG Power Services Corporation, et al.; Electric Rate and Corporate Regulation Filings

August 26, 1999.

Take notice that the following filings have been made with the Commission:

1. CNG Power Services Corporation

[Docket No. ER94–1554–022]

Take notice that on August 20, 1999, CNG Power Services Corporation (CNG Power), tendered for filing a statement of policy and code of conduct with respect to the relationship between CNG Power Services Corporations and Virginia Electric and Power Company (Virginia Power). On June 7, 1999, Consolidated Natural Gas Company, the parent of CNG Power Services and Dominion Resource, Inc., the parent of Virginia Power, filed for approval of merger in Docket No. EC99–81–000. This filing is a result of the Commission's policy that merging companies treat each other as affiliates.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. New York Independent System Operator, Inc.

[Docket Nos. ER97–1523–010, OA97–470–009 and ER97–4234–007 (not consolidated)]

Take notice that on August 23, 1999, the New York Independent System Operator, Inc. (NYISO), pursuant to ordering paragraph (N) of the Commission's Order in *Central Hudson Gas & Electric Corp., et. al.*, 86 FERC ¶ 61,062 (1999), tendered for filing Addenda A and B to its Market Monitoring Plan.

The NYISO requests an effective date of October 12, 1999 and waiver of the Commission's notice requirements and of any applicable filing requirements not otherwise satisfied.

A copy of this filing has been served upon all persons on the Commission's official service lists in Docket Nos. ER97–1523–000, OA97–470–000 and ER97–4234–000 (not consolidated), and the respective electric utility regulatory agencies in New York, New Jersey and Pennsylvania.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. New England Power Pool

[Docket No. ER99–2175–000]

Take notice that on August 12, 1999, the New England Power Pool (NEPOOL), tendered for filing with the Commission information regarding Market Rule 15 actions for May 1999 in the above-referenced proceeding for informational purposes only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

4. South Eastern Electric Development Corporation

[Docket No. ER99–3654–000]

Take notice that on August 23, 1999, South Eastern Electric Development Corporation tendered for filing a long-term service agreement with Morgan Stanley Capital Group Inc., in compliance with the Commission's August 19, 1999, letter order in the above-captioned proceeding.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Kincaid Generation L.L.C.

[Docket No. ER99–4146–000]

Take notice that on August 20, 1999, Kincaid Generation L.L.C. (KGL), tendered for filing short term agreements for the sale of electric energy and capacity by KGL to Commonwealth Edison Company, dated, July 22, July 23, July 28, July 29 and July 30, 1999, respectively.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Consumers Energy Company

[Docket No. ER99–4147–000]

Take notice that on August 20, 1999, Consumers Energy Company (Consumers), tendered for filing executed service agreements for unbundled wholesale power service with The Energy Authority, Inc., and Wabash Valley Power Association, Inc., pursuant to Consumers' Market Based Power Sales Tariff accepted for filing in Docket No. ER98–4421–000.

The service agreements have an effective date of July 23, 1999.

Copies of the filing have been served on the Michigan Public Service Commission, The Energy Authority, Inc. and Wabash Valley Power Association, Inc.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Atlantic City Electric Company

[Docket No. ER99–4149–000]

Take notice that on August 20, 1999, Atlantic City Electric Company (Atlantic), tendered for filing an executed umbrella service agreement with Avista Energy, Inc. (Avista) under Atlantic's market rate sales tariff.

Atlantic requests an effective date of August 20, 1999.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. UtiliCorp United Inc.

[Docket No. ER99–4151–000]

Take notice that on August 20, 1999, UtiliCorp United Inc., tendered for filing a Service Agreement under its Market-Based Power Sales Tariff, FERC Electric Tariff Original Volume No. 28, with Kansas Municipal Energy Agency. The Service Agreement provides for the sale of capacity and energy by UtiliCorp United Inc., to Kansas Municipal Energy Agency pursuant to the tariff.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. UtiliCorp United Inc.

[Docket No. ER99–4153–000]

Take notice that on August 20, 1999, UtiliCorp United Inc., tendered for filing on behalf of its operating division, WestPlains Energy-Kansas, a Service Agreement under its Market-Based Power Sales Tariff, FERC Electric Tariff Original Volume No. 28, with Kansas Municipal Energy Agency. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Kansas to Kansas Municipal Energy Agency pursuant to the tariff.

UtiliCorp requests waiver of the Commission's regulations to permit the

Service Agreement to become effective in accordance with its terms.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–4168–000]

Take notice that on August 23, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 35 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of July 23, 1999 to Public Service Electric and Gas Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–4169–000]

Take notice that on August 23, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 34 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of July 22, 1999 to Enron Power Marketing, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23258 Filed 9–7–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3282–001, et al.]

CU Power Limited, et al.; Electric Rate and Corporate Regulation Filings

August 25, 1999.

Take notice that the following filings have been made with the Commission:

1. CU Power Limited

[Docket No. ER99–3282–001]

Take notice that on August 20, 1999, CU Power Limited filed their quarterly report for the quarter ending June 30, 1999.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Millennium Energy Corporation, Horizon Energy Company, Merchant Energy Group of Americas, Inc.

[Docket No. ER98–174–006, ER98–380–009, ER98–1055–007]

Take notice that on August 19, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

3. CNG Retail Services Corporation

[Docket No. ER97–1845–009]

Take notice that on August 20, 1999, CNG Retail Services Corporation (CNG Retail), tendered for filing a statement of policy and code of conduct with respect to the relationship between CNG Retail Services Corporations and Virginia Electric and Power Company (Virginia Power). On June 7, 1999, Consolidated Natural Gas Company, the parent of CNG Retail Services, and Dominion Resource, Inc., the parent of Virginia Power, filed for approval of merger in Docket No. EC99–81–000. This filing is a result of the Commission's policy that merging companies treat each other as affiliates.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. PEI Power Corporation

[Docket No. ER98–2270–001]

Take notice that on August 18, 1999, PEI Power Corporation (PEI Power), advises the Commission of a proposed change in operating control of Pennsylvania Enterprises, Inc., the corporate parent.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. American Electric Power Service Corporation

[Docket No. ER99–3416–000]

Take notice that on August 20, 1999, the American Electric Power Service Corporation (AEPSC), tendered for filing an amendment to the subject docket to include the Specifications for Long-Term Firm Point-to-Point Transmission Service Reservations to be attached as addenda to the previously filed Firm Point-to-Point Transmission Service Agreements with Commonwealth Edison Company, Michigan Companies by Detroit Edison, Virginia Power Company, and AEPSC Power Marketing & Trading Division. All of these agreements are pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT). The OATT has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after June 1, 1999.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Cinergy Services, Inc.

[Docket No. ER99–4129–000]

Take notice that on August 18, 1999, Cinergy Services, Inc. (Cinergy) and Phibro Power LLC (Power) tendered for filing a notice of assignment that Power will replace Phibro Inc., of Cinergy's Market-Based Power Sales Tariff Original Volume No. 7-MB, Service Agreement No. 123, dated October 29, 1997.

Cinergy and Power are requesting an effective date of one day after the date of filing.

Comment date: May 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. American Electric Power Service Corporation

[Docket No. ER99–4148–000]

Take notice that on August 20, 1999, the American Electric Power Service Corporation (AEPSC), on behalf of Appalachian Power Company (APCo), tendered for filing with the Commission a Facilities, Operations, Maintenance and Repair Agreement dated July 1, 1999, between APCo and the City of Radford, Virginia (Radford).

AEPSC requests an effective date of August 20, 1999, for the tendered agreement.

A copy of the filing was served upon the City of Radford and the Virginia State Corporation Commission.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. American Electric Power Service Corporation

[Docket No. ER99–4150–000]

Take notice that on August 20, 1999, the American Electric Power Service Corporation (AEPSC), on behalf of Ohio Power Company (OPCo), tendered for filing with the Commission a Facilities, Operations, Maintenance and Repair Agreement dated March 18, 1999, between OPCo and the City of St. Marys, Ohio (CSM).

AEPSC requests an effective date of August 20, 1999, for the tendered agreement.

A copy of the filing was served upon the City of St. Marys, Ohio and the Public Utilities Commission of Ohio.

9. UtiliCorp United Inc.

[Docket No. ER99–4152–000]

Take notice that on August 20, 1999, UtiliCorp United Inc., tendered for filing on behalf of its operating division, Missouri Public Service, a Service Agreement under its Market-Based Power Sales Tariff, FERC Electric Tariff Original Volume No. 28, with Kansas Municipal Energy Agency. The Service Agreement provides for the sale of capacity and energy by Missouri Public Service to Kansas Municipal Energy Agency pursuant to the tariff.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Virginia Electric and Power Company

[Docket No. ER99–4154–000]

Take notice that on August 20, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing an unexecuted Service Agreement for Firm Point-to-Point Transmission Service with Coral Power L.L.C., under the Company's Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide Firm Point-to-Point Transmission Service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of July 23, 1999, the date service was first provided.

Copies of the filing were served upon Coral Power L.L.C., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Electric Power Company

[Docket No. ER99–4156–000]

Take notice that on August 20, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Market Rate Sales Tariff (FERC Electric Tariff, Original Volume No. 8) with Northwestern Wisconsin Electric Company.

Wisconsin Electric respectfully requests an effective date of July 29, 1999 to allow for economic transactions.

Copies of the filing have been served on Northwestern Wisconsin Electric Company, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Electric Power Company

[Docket No. ER99–4157–000]

Take notice that on August 20, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing an electric service agreement under its Coordination Sales Tariff (FERC Electric Tariff, First Revised Volume No. 2). Wisconsin Electric respectfully requests an effective date August 19, 1999.

Copies of the filing have been served on El Paso Power Services Company, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Central Maine Power Company

[Docket No. ER99–4158–000]

Take notice that on August 20, 1999, Central Maine Power Company (CMP), tendered for filing an executed service agreement for sale of capacity and/or energy entered into with Reliant Energy Services. Service will be provided pursuant to CMP's Wholesale Market Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 4.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Commonwealth Edison Company

[Docket No. ER99–4159–000]

Take notice that on August 20, 1999, Commonwealth Edison Company (ComEd) tendered for filing service agreements establishing TransAlta Energy Marketing (U.S.) Inc. (TAEM), Alliant Energy Industrial Services, Inc. (AEIS), and an unexecuted Service Agreement establishing American Municipal Power-Ohio, Inc. (AMP), as customers under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests an effective date of July 22, 1999 for the Service Agreements, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing were served on TAEM, AEIS, and AMP.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Dynegy Power Marketing, Inc.

[Docket No. ER99–4160–000]

Take notice that on August 20, 1999, Dynegy Power Marketing, Inc. 1000

Louisiana, Suite 5800, Houston, Texas 77002–5050, tendered for filing with the Federal Energy Regulatory Commission a Notice of Succession to reflect a name change from Electric Clearinghouse, Inc., to Dynegy Power Marketing, Inc.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Mantua Creek Generating Company, L.P.

[Docket No. ER99–4162–000]

Take notice that on August 20, 1999, Mantua Creek Generating Company, L.P. (Mantua Creek), tendered for filing pursuant to Section 205 of the Federal Power Act and Part 35 of the Commission's Regulations, a petition for authorization to make sales of capacity, energy, and certain ancillary services, at market-based rates, and to reassign transmission capacity. Mantua Creek plans to construct and own a nominally rate 800 MW natural gas-fired, combined cycle power plant located in the Township of West Deptford, New Jersey.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Florida Power Corporation

[Docket No. ER99–4163–000]

Take notice that on August 20, 1999, Florida Power Corporation (FPC), tendered for filing an amendment to Florida Power Corporation FERC Rate Schedule No. 92. The filing amends the interchange contract between FPC and City of Lakeland. Specifically, the filing modifies the interchange contract to provide for sales by City of Lakeland under Service Schedule OS, Opportunity Sales.

FPC requests Commission waiver of the 60-day notice requirement in order to allow the amendment to become effective on October 1, 1999.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Wisconsin Public Service Corporation

[Docket No. ER99–4155–000]

Take notice that on August 20, 1999, Wisconsin Public Service Corporation (WPSC), tendered for filing an unexecuted service agreement with Aquila Energy Marketing Corp., under its Market-Based Rate Tariff, FERC Electric Tariff, First Revised Volume No. 10.

WPSC requests an effective date of July 21, 1999.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. PG Energy Power Plus

[Docket No. ER98–1953–004

Take notice that on August 18, 1999, PG Energy Power Plus advises the Commission of a proposed change in operating control of Pennsylvania Enterprises, Inc. the corporate parent of PG Plus.

Comment date: September 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23259 Filed 9–7–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4170–000, et al.]

Northern States Power Company, et al.; Electric Rate and Corporate Regulation Filings

August 27, 1999.

Take notice that the following filings have been made with the Commission:

1. Northern States Power Company (Minnesota Company) Northern States Power Company (Wisconsin Company)

[Docket No. ER99–4170–000]

Take notice that on August 23, 1999, Northern States Power Company—Minnesota (NSP–M) and Northern States Power Company—Wisconsin (NSP–W) (collectively known as NSP) tendered for filing a Short-Term Market-Based Electric Service Agreement between NSP and Northern Indiana Public Service Company (Customer).

NSP requests that this Short-Term Market-Based Electric Service Agreement be made effective on July 26, 1999.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4171–000]

Take notice that on August 23, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm point-to-point transmission service pursuant to its Open Access Transmission Tariff to PG&E Energy Trading—Power, L.P. (PG&E).

Con Edison states that a copy of this filing has been served by mail upon PG&E.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4172–000]

Take notice that on August 23, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Constellation Power Source, Inc. (CPS).

Con Edison states that a copy of this filing has been served by mail upon CPS.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4173–000]

Take notice that on August 23, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Morgan Stanley Capital Group, Inc. (MS).

Con Edison states that a copy of this filing has been served by mail upon MS.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4174–000]

Take notice that on August 23, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Morgan Stanley Capital Group, Inc. (MS).

Con Edison states that a copy of this filing has been served by mail upon MS.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4175–000]

Take notice that on August 23, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Morgan Stanley Capital Group, Inc. (MS).

Con Edison states that a copy of this filing has been served by mail upon MS.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4176–000]

Take notice that on August 23, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Aquila Power Corporation (Aquila).

Con Edison states that a copy of this filing has been served by mail upon Aquila.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4177–000]

Take notice that on August 23, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Aquila Power Corporation (APC).

Con Edison states that a copy of this filing has been served by mail upon APC.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4178–000]

Take notice that on August 23, 1999 Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Select Energy, Inc. (SE).

Con Edison states that a copy of this filing has been served by mail upon SE.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4179–000]

Take notice that on August 23, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Select Energy, Inc. (SE).

Con Edison states that a copy of this filing has been served by mail upon SE.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4180–000]

Take notice that on August 23, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Public Service Electric & Gas Company (PSE&G).

Con Edison states that a copy of this filing has been served by mail upon PSE&G.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4181–000]

Take notice that on August 23, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Public Service Electric & Gas Company (PSE&G).

Con Edison states that a copy of this filing has been served by mail upon PSE&G.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. UtiliCorp United Inc.

[Docket No. ER99–4182–000]

Take notice that on August 23, 1999, UtiliCorp United Inc. tendered for filing on behalf of its operating division, WestPlains Energy-Colorado, a Service Agreement under its Market-Based Power Sales Tariff, FERC Electric Tariff Original Volume No. 28, with Kansas Municipal Energy Agency. The Service Agreement provides for the sale of capacity and energy by WestPlains Energy-Kansas to Kansas Municipal Energy Agency pursuant to the tariff.

UtiliCorp United Inc. requests that the service agreement become effective on August 23, 1999.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Mid-Continent Area Power Pool

[Docket Nos. OA97–163–004, ER97–1162–003 and OA97–658–004]

Take notice that on August 20, 1999, the Mid-Continent Area Power Pool (MAPP) tendered for filing a compliance filing pursuant to the Commission's order issued on April 15, 1999 (87 FERC ¶ 61,075 (1999) in the above-referenced dockets, addressing voting and administrative procedures under MAPP's Restated Agreement.

Comment date: September 9, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23288 Filed 9–7–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4183–000, et al.]

Puget Sound Energy, Inc., et al.; Electric Rate and Corporate Regulation Filings

August 30, 1999.

Take notice that the following filings have been made with the Commission:

1. Puget Sound Energy, Inc.

[Docket No. ER99–4183–000]

Take notice that on August 23, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing an unexecuted Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Northern California Power Agency (NCPA). A copy of the filing was served upon NCPA.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Puget Sound Energy, Inc.

[Docket No. ER99–4184–000]

Take notice that on August 23, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with NorAm Energy Services, Inc. (NorAm). A copy of the filing was served upon NorAm.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Puget Sound Energy, Inc.

[Docket No. ER99–4185–000]

Take notice that on August 23, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with New Energy Ventures, L.L.C. (NEV).

A copy of the filing was served upon NEV.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Puget Sound Energy, Inc.

[Docket No. ER99–4186–000]

Take notice that on August 23, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Pacific Gas & Electric Company (PG&E).

A copy of the filing was served upon PG&E.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. The Detroit Edison Company

[Docket No. ER99–4187–000]

Take notice that on August 23, 1999, The Detroit Edison Company (Detroit Edison) tendered for filing Service Agreements (the Service Agreement) for Network Integration Transmission Service under the Joint Open Access Transmission Tariff of Consumers Energy and Detroit Edison, FERC Electric Tariff No. 1, between Detroit Edison and Wolverine Power Supply Cooperative and MPPA, dated as of July 2, 1999. The parties have not engaged in any transactions under the Service Agreements prior to thirty days to this filing.

Detroit Edison requests that the Service Agreements be made effective as rate schedules as of September 17, 1999.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Central Vermont Public Service Corporation

[Docket No. ER99–4188–000]

Take notice that on August 23, 1999, Central Vermont Public Service Corporation (Central Vermont) tendered for filing a Service Agreement with New Energy Ventures, L.L.C. under its FERC Second Revised Electric Tariff Volume No. 8.

Central Vermont requests waiver of the Commission's regulations to permit the service agreement to become effective on August 23, 1999.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Central Vermont Public Service Corporation

[Docket No. ER99–4189–000]

Take notice that on August 24, 1999, Central Vermont Public Service Corporation (Central Vermont) tendered for filing a Service Agreement with Entergy Power Marketing Corp. under its FERC Second Revised Electric Tariff Volume No. 8.

Central Vermont requests waiver of the Commission's regulations to permit the service agreement to become effective on August 24, 1999.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Central Vermont Public Service Corporation

[Docket No. ER99–4190–000]

Take notice that on August 24, 1999, Central Vermont Public Service Corporation (Central Vermont) tendered for filing a Service Agreement with Northeast Utilities Service Company under its FERC Second Revised Electric Tariff Volume No. 8.

Central Vermont requests waiver of the Commission's regulations to permit the service agreement to become effective on August 24, 1999.

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Company of New Mexico

[Docket No. ER99–4191–000]

Take notice that on August 23, 1999, in the above-referenced docket, Public Service Company of New Mexico (PNM) proposes to cancel the following tariff revisions submitted in Docket No. ER98–2862–000:

Second Revised Sheet No. 1
Second Revised Sheet No. 2
Second Revised Sheet No. 8
Second Revised Sheet No. 9
Second Revised Sheet No. 17
Second Revised Sheet No. 30
Second Revised Sheet No. 41
Second Revised Sheet No. 88
Second Revised Sheet No. 89
Second Revised Sheet No. 96
Second Revised Sheet No. 97
Second Revised Sheet No. 101
Original Sheet No. 103A
Original Sheet No. 103B
Second Revised Sheet No. 104
Second Revised Sheet No. 105
Original Sheet Nos. 105A through 105U
Original Sheet Nos. 115 through 120

PNM proposes to cancel these tariff revisions effective on the day the Federal Energy Regulatory Commission approves a Settlement Agreement submitted in Docket Nos. ER98–2862–000 and ER98–3376–000 without condition or modification.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company

[Docket No. ER99–4192–000]

Take notice that on August 23, 1999, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company and West Texas Utilities Company (collectively, the CSW Operating Companies) tendered for filing service agreements establishing Cargill-Alliant, LLC (Cargill), Koch Energy (Koch), and Avista Energy, Inc. (Avista) as customers under the CSW Operating Companies' market-based rate power sales tariff.

The CSW Operating Companies request an effective date of August 23, 1999 for the agreements and, accordingly, seek waiver of the Commission's notice requirements.

The CSW Operating Companies state that a copy of the filing was served on Cargill, Koch and Avista.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. New England Power Pool

[Docket No. ER99–4193–000]

Take notice that on August 23, 1999, the New England Power Pool (NEPOOL) Participants Committee submitted revisions to Appendix 5–B of Market Rule and Procedure number 5.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Central Vermont Public Service Corporation

[Docket No. ER99–4194–000]

Take notice that on August 23, 1999, Central Vermont Public Service Corporation (Central Vermont) tendered for filing unexecuted umbrella service agreements with Tractebel Energy Marketing, Inc., United Illuminating Company, Great Bay Power Corporation, Constellation Power Source, Inc., Enron Power Marketing, Inc. and Green Mountain Power Corporation under Central Vermont's market-based rates tariff, FERC Electric Tariff, Second Revised Volume No. 8.

Central Vermont requests that the service agreement with United Illuminating become effective on August 1, 1999 and that the other service agreements become effective on August 23, 1999.

Comment date: September 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Midwest Energy, Inc.

[Docket No. ER99–4195–000]

Take notice that on August 24, 1999, Midwest Energy, Inc. filed Quarterly Market Sales Reports for the second and third quarter of 1999.

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Public Service Company of Colorado

[Docket No. ER99–4196–000]

Take notice that on August 24, 1999, Public Service Company of Colorado submitted for filing a power purchase agreement and an agreement adding a new delivery point with Yampa Valley Electric Association, Inc.

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–4197–000]

Take notice that on August 24, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 38 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of July 31, 1999, to The Dayton Power and Light Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4198–000]

Take notice that on August 24, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to PP&L Energy Marketing Center (PP&L).

Con Edison states that a copy of this filing has been served by mail upon PP&L.

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4199–000]

Take notice that on August 24, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Statoil Energy Trading, Inc. (SET).

Con Edison states that a copy of this filing has been served by mail upon SET.

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER99–4202–000]

Take notice that on August 24, 1999, Louisville Gas and Electric Company/Kentucky Utilities (LG&E/KU) tendered for filing an executed Service Agreement between LG&E/KU and The Energy Authority, Inc. under LG&E/KU's MBSS Rate Schedule.

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Pennsylvania Electric Company

[Docket No. ER99–4203–000]

Take notice that on August 24, 1999, Pennsylvania Electric Company (doing business as and referred to as GPU Energy) submitted for filing a Generation Facility Transmission Interconnection Agreement between GPU Energy and Willamette Industries, Inc.

GPU Energy requests an effective date of August 25, 1999 for the agreement.

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Wisvest-Connecticut, LLC

[Docket No. ER99–4204–000]

Take notice that on August 24, 1999, Wisvest-Connecticut, LLC (Wisvest) submitted for filing an Option Agreement dated September 17, 1997 between the United Illuminating Company (UI) and Duke Energy Trading and Marketing, L.L.C. ("DETM"), together with two supplements to that agreement, namely, a December 21, 1998 Agreement for Marketing Services between UI and DETM and a July 18, 1999 Addendum to Agreement for Marketing Services between Wisvest and DETM.

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Louisville Gas and Electric Company/Kentucky Utilities Company

[Docket No. ER99–4205–000]

Take notice that on August 24, 1999, Louisville Gas and Electric Company/Kentucky Utilities (LG&E/KU) tendered

for filing the cancellation of the Unilateral Market-Based Sales Service Agreement with South Carolina Public Service Authority (Santee Cooper).

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Central Vermont Public Service Corporation

[Docket No. ER99–4206–000]

Take notice that on August 24, 1999, Central Vermont Public Service Corporation (Central Vermont) tendered for filing an unexecuted umbrella service agreement with Engage Energy US, L.P. under Central Vermont's market-based rates tariff, FERC Electric Tariff, Second Revised Volume No. 8.

Central Vermont requests that the service agreement become effective on August 24, 1999.

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Sierra Pacific Power Company

[Docket No. ER99–4207–000]

Take notice that on August 24, 1999, Sierra Pacific Power Company (Sierra) tendered for filing Service Agreements (Service Agreements) with Entergy Power Marketing Corp. for both Short-Term Firm and Non-Firm Point-to-Point Transmission Service under Sierra Pacific Resources Operating Companies FERC Electric Tariff Original Volume No. 1, Open Access Transmission Tariff (Tariff).

Sierra filed the executed Service Agreements with the Commission in compliance with Sections 13.4 and 14.4 of the Tariff and applicable Commission regulations. Sierra also submitted revised Sheet No. 173 (Attachment E) to the Tariff, which is an updated list of all current subscribers.

Sierra requests waiver of the Commission's notice requirements to permit an effective date of August 25, 1999 for Attachment E, and to allow the Service Agreements to become effective according to their terms.

Copies of this filing were served upon the Public Utilities Commission of Nevada, the Public Utilities Commission of California and all interested parties.

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Ameren Services Company

[Docket No. ER99–4208–000]

Take notice that on August 24, 1999, Ameren Services Company (ASC) tendered for filing a Service Agreement for Market Based Rate Power Sales between ASC and NRG Power Marketing Inc. (NRG). ASC asserts that the purpose of the Agreement is to permit ASC to make sales of capacity and energy at market based rates to NRG pursuant to ASC's Market Based Rate Power Sales Tariff filed in Docket No. ER98–3285–000.

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–4209–000]

Take notice that on August 24, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 37 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of July 26, 1999, to Niagara Mohawk Energy Marketing, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–4210–000]

Take notice that on August 24, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 39 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of July 22, 1999, or on a date as determined by the Commission to Southern Company Energy Marketing L.P.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Tampa Electric Company

[Docket No. ER99–4211–000]

Take notice that on August 24, 1999, Tampa Electric Company (Tampa Electric) tendered for filing an unexecuted service agreement with the Orlando Utilities Commission (OUC) under Tampa Electric's market-based sales tariff.

Tampa Electric proposes that the service agreement be made effective on July 25, 1999.

Copies of the filing have been served on OUC and the Florida Public Service Commission.

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Hardee Power Partners Limited

[Docket No. ER99–4212–000]

Take notice that on August 24, 1999, Hardee Power Partners Limited (HPP) tendered for filing an unexecuted service agreement with the Orlando Utilities Commission (OUC) under HPP's market-based sales tariff.

HPP proposes that the service agreement be made effective on July 25, 1999.

Copies of the filing have been served on OUC and the Florida Public Service Commission.

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–4213–000]

Take notice that on August 24, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) filed Supplement No. 36 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of July 29, 1999, to PECO Energy Company (d/b/a PECO Energy Company—Power Team).

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4200–000]

Take notice that on August 24, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission to Southern Company Energy Marketing L.P. (Southern).

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23287 Filed 9–7–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4737–005]

Morgan J. Langan; Notice of Availability of Draft Environmental Assessment

September 1, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, the Office of Hydropower Licensing has reviewed the application requesting the Commission's authorization to surrender the exemption from licensing for the existing Trinity Alps Hydroelectric Project, located on Trinity Alps Creek in Trinity County, California, and has prepared a Draft Environmental Assessment (DEA) for the proposed action.

In the DEA, Commission staff concludes that approval of the subject surrender of exemption from licensing would not produce any significant adverse environmental impacts; consequently, the proposal would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, N.E., Washington, DC 20426, or by calling (202) 208–1371. The DEA also may be viewed on the Web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

Any comments on the DEA should be filed within 45 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please affix "Trinity Alps Project Surrender of Exemption from Licensing, Project No. 4737–005" to all comments. For further information, please contract Jim Haimes at (202) 219–2780.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23264 Filed 9–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2169 NC/TN]

Tapoco, Inc.; Notice of Scoping Meetings Pursuant to the National Environmental Policy Act of 1969 for an Applicant Prepared Environmental Assessment

September 1, 1999.

Pursuant to the Energy Policy Act of 1992, and as part of the license application, Tapoco, Inc. (Tapoco) intends to prepare an Applicant Prepared Environmental Assessment (APEA) to file along with the license application, with the Federal Energy Regulatory Commission (Commission) for the Tapoco Project, FERC No. 2169. The license for the project expires on February 28, 2005.

In June, 1998, Tapoco initiated the cooperative consultation process with federal and state resource agencies, local interests, Indian tribes and nongovernmental organizations (NGOs) for the relicensing of the Tapoco Project. Tapoco obtained support from the parties involved in the cooperative process to pursue the Alternative Licensing Process (ALP) for the relicensing of the Tapoco Project. On September 30, 1998, Tapoco, Inc. requested, and on February 9, 1999, the Commission approved the use of the ALP. The process has involved identification of environmental issues associated with the relicensing of the Tapoco Project, including a project site visit for agencies/stakeholders and a public meeting to solicit comments on the Initial Consultation Document (ICD) and initiate issue identification on April 13 and 14, 1999 and additional public meetings on June 15 and 16, 1999 to continue issue identification.

As part of the ALP, Tapoco, with the Commission has prepared a Scoping Document I (SDI), which provides information on the scoping process, an APEA preparation schedule, background information, environmental issues, and proposed project alternatives.

The purpose of this notice is to: (1) Advise all parties as to the proposed scope of the environmental analysis, including cumulative effects, and to seek additional information pertinent to this analysis; and (2) advise all parties of their opportunity for comment.

Scoping Process

The purpose of the scoping process is to identify significant issues related to the proposed action and to determine

what issues should be addressed in the document to be prepared pursuant to the National Environmental Policy Act of 1969 (NEPA). The SDI will be circulated to enable appropriate federal, state, and local resource agencies, Indian tribes, NGOs, and other interested parties to participate in the scoping process. SDI provides a brief description of the proposed action, project alternatives, the geographic and temporal scope of a cumulative effects analysis, and a list of issues.

Scoping Meetings

Tapoco and FERC staff will conduct two scoping meetings. All interested individuals, organizations, and agencies are invited to attend and assist in identifying the scope of environmental issues that should be analyzed in the APEA.

The first scoping meeting will be held on October 5, 1999, from 8:30 am to 3:30 pm at the Tapoco Lodge in Tapoco, NC, and the second scoping meeting will be held on October 5, 1999, from 6:30 pm to 9:30 pm at the Blount County Chamber of Commerce Board Room, 201 South Washington Street, Maryville, TN. Each meeting will commence with a presentation by Tapoco representatives followed by the opportunity for participants to provide information on resources at issue or which should be analyzed in the APEA. For more details, interested parties should contact Sue Fugate at Tapoco at (423) 977–3321, prior to the meeting date.

Objectives

At the scoping meetings, Tapoco and FERC staff will: (1) Summarize the environmental issues identified for analysis in the APEA; (2) identify reasonable alternatives to be addressed in the APEA, (3) solicit from the meeting participants all available information, especially quantified data, on the resources at issue, and (4) encourage statements from experts and the public on issues that should be analyzed in the APEA. Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist in defining and clarifying the issues to be addressed.

Meeting Procedures

The meetings will be conducted according to the procedures used at Commission scoping meetings. Because these meetings will be NEPA scoping meetings, the Commission will not conduct another scoping meeting after the application and APEA are filed with the Commission.

The meetings will be recorded by a stenographer and become a part of the formal record of the Commission proceeding on the relicensing of the Tapoco Project. Individuals presenting statements at the meetings will be asked to identify themselves for the record. Speaking time allowed for individuals will be determined before each meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session. Persons choosing not to speak but wishing to express an opinion, as well as speakers unable to summarize their positions within their allotted time, may submit written statements for inclusion in the public record no later than December 4, 1999.

All filings should contain an original and 8 copies. Failure to file an original and 8 copies may result in appropriate staff not receiving the benefit of your comments in a timely manner. All comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, and should clearly show the following captions on the first page: Tapoco Project, FERC No. 2169. A copy of each filing should also be sent to Norm Pierson, Tapoco, Inc., 300 North Hall Road, Alcoa, TN 37701 and to Paul Shiers, Stone & Webster Engineering Corporation, 245 Summer Street, Boston, MA 02210.

Based on all comments, a Scoping Document II (SDII) may be issued. SDII will include a revised list of issues, based on the scoping sessions and written statements received.

For further information regarding the scoping process, please contact Ronald McKitrick, Federal Energy Regulatory Commission, Atlanta Regional Office, Parkridge 85 North, Suite 300, 3125 Presidential Parkway, Atlanta, GA 30340 at (770) 452–3778, E-mail ronald.mckitrick@ferc.fed.us, or Norm Pierson at Tapoco at (423) 977–3326.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23263 Filed 9–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent to Eliminate the Remote Public Access System (RPA) and the Records Information Management System-Remote Public Access System (RIMS–RPA)

September 1, 1999.

The Federal Energy Regulatory Commission (the Commission), hereby gives notice that it intends to eliminate the Commission's dial up systems effective on or about September 30, 1999. These systems include the Remote Public Access System (RPA) and the Records Information Management System-Remote Public Access System (RIMS–RPA). The majority of the data and information currently available on these dial up systems is available through the Commission's Internet website.[1]

Government agencies are required to be "Y2K" compliant. However, the dial up systems are not year 2000 compliant. In addition, OMB Circular A–130, Section 8(a)(5)(d)(i) directs agencies, when disseminating information, to achieve "the best balance between the goals of maximizing the usefulness of the information and minimizing the cost to the government and the public." Eliminating the two dial up systems, RIMS–RPA and RPA, is consistent with these goals and will eliminate costly duplication.

These systems rely on technology that is being used less and less popular with the advent of the Internet. Moreover, accessing the systems available through the Internet is much simpler than accessing the same systems by dialing in.[2] Since the Commission has limited resources, we must eliminate the cost of supporting duplicative systems that rely on older technology. Moreover, given the Commission's fiscal year ends on September 30, the greatest cost savings to the taxpayer will accrue if these systems are eliminated but the end of the fiscal year. Therefore, the Commission intends to discontinue RPA and RIMS–RPA in the next fiscal year.

The Commission invites interested persons to submit written comments on the matters and issues in this notice. The original and 14 copies of such comments must be received by the Commission before 5:00 p.m. on September 15, 1999. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference room at 888 First Street, NE, Washington, DC 20426, during regular business hours. Additionally, comments may be viewed and printed remotely via the Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. RIMS user assistance is available at 202–208–2222, or by E-Mail to rimsmaster@ferc.fed.us.

Linwood A. Watson, Jr.,

Acting Secretary.

APPENDIX A

System or Document Available on dial-up system	Location on the internet[1]
RIMS	htt://rimsweb1.ferc.fed.us/rims/
Docket Sheets and Service Lists	http://fercdocket.ferc.fed.us/pa/pa.htm
Sunshine Notice	http://www.ferc.fed.us/sec/sec1.htm
RATIS (to be renamed ANS)	Available approximately October 1, 1999.[2]

[1] Helplines (202–208–2222 or 202–208–1371) for technical assistance or questions about using the systems available on the Commission's website are staffed during the Commission's official business hours (8:30 a.m. to 5:00 p.m. Eastern Time). Users may also send an e-mail message at any time to *rimsmaster@ferc.fed.us* for inquiries about RIMS and *webmaster@ferc.fed.us* for other types of inquiries.

[2] Monitor What's New on the Commission's website for the future location of RATIS (to be renamed ANS) on the web.

[1] The one system not yet available on the Commission's website is the Rates and Tariff Indexing System (RATIS). The Commission is currently revising RATIS to make it compatible with the web. The successor to RATIS will be known as the Automated Numbering System (ANS). Every effort is being made to make it available by the Commission's deadline for discontinuing the dial up systems. *See* Appendix A for the location on the Internet of the information currently on the dial up systems.

[2] The dial-up technology requires users to obtain a password and user ID to access the systems. Anyone with access to the Internet may use RIMS and the Docket Sheet and Service List System without obtaining a user ID and password.

[FR Doc. 99–23260 Filed 9–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Western Area Power Administration

Power Allocation Procedures and Call for Applications, Post-2004 Resource Pool—Salt Lake City Area Integrated Projects

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of allocation procedures and call for applications.

SUMMARY: The Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy (DOE), is seeking applicants for long-term firm capacity and energy resources (power resources) available from the Salt Lake City Area Integrated Projects (SLCA/IP) on October 1, 2004.

DATES: Western will hold public information meetings on its procedures at the following locations and times:

1. September 8, 1999, 9 a.m., Albuquerque, New Mexico
2. September 9, 1999, 9 a.m., Farmington, New Mexico
3. September 14, 1999, 9 a.m. Kingman, Arizona
4. September 15, 1999, 9 a.m., Phoenix, Arizona
5. September 16, 1999, 9 a.m., Salt Lake City, Utah

ADDRESSES:

1. Albuquerque, Pueblo Cultural Center; 2401 12th Street NW
2. Farmington, Holiday Inn, 600 E. Broadway
3. Kingman, Holiday Inn, 3100 Andy Devine
4. Phoenix, YWCA, 9440 N. 25th Avenue
5. Salt Lake City, Western Area Power Administration, 150 Social Hall Avenue, Suite 300

All correspondence regarding these procedures should be directed to the following address; Mr. Burt Hawkes, Power Marketing and Contracts Team Lead, CRSP Customer Service Center, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606.

FOR FURTHER INFORMATION CONTACT: Burt Hawkes, Power Marketing and Contracts Team Lead, (801) 524–3344; Clayton Palmer, Resources and Environment Team Lead, (801) 524–3522; or Lyle Johnson, Public Utilities Specialist, (801) 524–5585. Written requests for information should be sent to CRSP Customer Service Center, Western Area Power Administration, P.O. Box 11606, Salt Lake City, UT 84147–0606.

SUPPLEMENTARY INFORMATION:

Authorities: Power resources are marketed pursuant to the DOE Organization Act (42 U.S.C. 7101–7352); and the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485 h(c)); and other acts specifically applicable to the projects involved.

Background

Existing power resource contracts were due to expire on September 30, 2004. In a Notice of Decision published on June 25, 1999 (64 FR 34413), Western determined that it will extend 93 percent of most of the existing customers' proportional shares of the power resources available on October 1, 2004, through September 30, 2024. In addition, a further 7-megawatt reduction to Tri-State Generation and Transmission Association, Inc.'s (Tri-State) allocation will be made. The amount not extended to existing customers will be allocated in accordance with these procedures. Western expects the amount will be sufficient to supply up to 12. 5 percent of the current load of eligible new preference applicants and 65 percent of the current load of eligible Native American applicants.

In an exception to the general rule, the four existing SLCA/IP power resource customers that are Native American entities—the Navajo Tribal Utility Authority (NTUA), the Ak Chin Indian Community, the Bureau of Indian Affairs' Colorado River Agency, and the San Carlos Irrigation Project—will be extended 100 percent of their pro rata shares of the SLCA/IP resource available on October 1, 2004. Moreover, Western intends, if necessary, to allocate additional power resources to these existing Native American customers so that 65 percent of the 1998–1999 nonindustrial load of NTUA and 65 percent of the 1998–1999 total load of each of the other Native American organizations is served.

For Native American tribes currently receiving power from utilities that have allocations of Federal power resources, Western will take into account the benefit received through the existing supplier when determining their allocations.

During the process of allocating the resource pool, further information about

actual loads will be collected and used to determine the final allocations from the resource pool. Western, to the extent it is able, will provide technical assistance to Native American applicants requesting assistance in preparation of their applications and load data. If a Native American applicant received an allocation and executes a purchase contract within the request time period but is unable to receive power on October 1, 2004, the power resources allocated will be provided to other customers until such time as the Native American applicant is able to accept the power.

The Post-2004 Resource Pool Allocation Procedures

These procedures for the SLCA/IP address (1) eligibility criteria, (2) Western's plans to allocate the pool resources to eligible applicants, and (3) the terms and conditions under which Western will sell the power resources allocated.

I. Amount of Power Resources

Western will allocate the SLCA/IP power resource available as of October 1, 2004.

II. General Eligibility Criteria

Western will apply the following general eligibility criteria to applicants seeking an allocation of power resources under the proposed Post-2004 Resource Pool Allocation Procedures.

A. Applicants, including Native American applicants, must be entities that Western determines to be entitled to preference in the allocation of power resources in accordance with section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), as amended.

B. Non-Native American applicants' loads must be located within the portion of the SLCA/IP marketing area which includes New Mexico and Utah; the portion of Colorado west of the Continental Divide; the southwest area of Wyoming within the Colorado River Basin; White Pine County and those portions of Elko and Eureka Counties currently served by Mt. Wheeler Power in Nevada; and the areas in Arizona currently served by the Dixie Escalante Electric Cooperative, the Garkane Power Association, the Navajo Tribal Utility Authority, the Navopache Electric Cooperative, and the Continental Divide Electric Cooperative. Qualified Native American applicants' loads must be located within the previously established SLCA/IP marketing area which consists of Arizona; Colorado; New Mexico; Utah; Wyoming; and Clark, Lincoln, Nye Counties, and those portions of Elko and Eureka Counties currently served by Mt. Wheeler Power in Nevada.

C. Applicants must not be currently receiving benefits, directly or indirectly, from a current power resource allocation. Native American applicants and Navopache Electric Cooperative are not subject to this requirement.

D. Applicants must be able to use the power resource directly or be able to sell it directly to their retail customers.

E. Applicants must have "utility status" by September 30, 2003. "Utility status" means that the entity has responsibility to meet load growth, has a distribution system, and is ready, willing, and able to purchase Federal power from Western on a wholesale basis. Native American tribes are not subject to this requirement.

F. Any Native American applicant must be an Indian tribe as defined in the Indian Self Determination Act of 1975 (25 U.S.C. 450b), as amended, or an organization of an Indian Tribe.

G. Applicants must submit letters of intent and applicant profile data to Western on or before the dates specified in this notice.

III. General Allocation Criteria

Western will apply the following general allocation criteria to applicants seeking an allocation of power resources under the Post-2004 Resource Pool Allocation Procedures.

A. Allocations of power resources will be made in amounts as determined solely by Western.

B. An allottee will have the right to purchase such power resources only upon the execution of an electric service contract between Western and the allottee and the continued satisfaction of all conditions in that contract.

C. Allocations made to Native American applicants will be based upon actual loads experienced by the Native American applicants on their respective reservations in the 1998 summer season and the 1998–99 winter season. If actual load data are not available, quality estimates will be accepted. Inconsistent and suspect estimates may be adjusted by Western during the allocation process. Western is willing to consult with the Native American applicants to develop load data collection and estimating methods assuring consistency among eligible Native American applicants' loads across the marketing area.

D. Allocations made to non-Native American applicants will be based upon their energy use experienced in the 1998 summer season and the 1998–99 winter season.

E. Allocations of power resources will be determined by Western and be based upon Western's system load factor.

F. Any electric service contract offered to an applicant shall be executed by the applicant within 6 months of a contract offer by Western, unless otherwise agreed to in writing by Western, or the offer will be withdrawn.

G. Power resources available from the resource pool will first be allocated to eligible Native American applicants with the goal of serving 65 percent of their 1998–1999 loads. Remaining power resources will be allocated to other eligible applicants.

H. If unanticipated obstacles to the delivery of power resource benefits to Native American applicant(s) arise, Western retains the right to provide the economic benefits of its resources directly to the Native American applicant(s) in some other manner.

IV. General Contract Principles

Western will apply the following general contract principles to all applicants receiving an allocation of power resources under the proposed Post-2004 Resource Pool Allocation Procedures.

A. The electric service contracts offered to new and existing customers as a result of these allocations will have the same general terms and conditions as the contracts extended to existing customers and effective on October 1, 2004.

B. Western shall assist the allottee in obtaining third-party transmission arrangements for delivery of power resources allocated under these proposed procedures to new customers; nonetheless, each allottee is ultimately responsible for obtaining its own delivery arrangements.

V. Applications for Power Resources

Western requests all applications for an allocation of power resources under these procedures be submitted in writing to the CRSP Power Marketing and Contracts Team Lead, CRSP Customer Service Center. The applications, which consist of a letter of interest and Applicant Profile Data (APD), must be received in Western's CRSP Customer Service Center at P.O. Box 11606, Salt Lake City, UT 84147–0606, in accordance with the deadlines set forth below.

A. Letter of Interest

Each applicant must submit to the Power Marketing and Contracts Team Lead, CRSP Customer Service Center, a Letter of Interest in receiving power resources and the appropriate APD as outlined below. A Letter of Interest must be received by Western by [insert date 45 days after publication].

B. Applicant Profile Data

APD must be received by Western by [insert date 6 months from date of publication]. The information should be submitted in the sequence listed below. The applicant must provide all requested information or a reasonable estimate. The applicant should note any requested information that is not applicable. The APD must be typed and two copies submitted to Western's CRSP Customer Service Center by the date specified above. Western is not responsible for errors in data or missing pages. All items of information in the APD should be answered as if prepared by the organization seeking the allocation.

1. The APD shall consist of the following:

a. Applicant's name and address.

b. Person(s) representing applicant. Please provide the name, address, title, and telephone number of such person(s).

c. Type of organization; i.e., municipality, rural electric cooperative, Native American tribe, State agency, Federal agency. Please provide a brief description of the organization that will interact with Western on contract and billing matters and whether the organization owns and operates its own electric utility system.

d. Applicable law under which organization was established.

e. Loads.

2. Non-Native American Applicants.

a. Number and type of customers served; i.e., residential, commercial, industry, military base, agricultural.

b. The actual monthly maximum demand in kilowatts and energy use in kilowatt-hours experienced in the 1998 summer season (April 1998 through September 1998) and the 1998–99 winter season (October 1998 through March 1999).

3. Native American Applicants.

a. Number and type of customers served; i.e., residential, commercial, industrial, military base, agricultural.

b. The actual demand in kilowatts and energy use in kilowatthours for the 1998 summer season and the 1998–99 winter season. If actual loads are not available, an estimate of these loads with a description of the method and basis for this estimate will be accepted.

4. Resources.

a. A list of current power supplies, including the applicant's own generation and purchases from others. For each, provide capacity and location.

b. Status of power supply contracts, including a contract termination date. Indicate whether power supply is on a firm basis or some other type of arrangement.

5. Transmission.

a. Points of delivery. Provide the preferred point(s) of delivery on Western's system or a third-party's system and the required service voltage.

b. Transmission arrangements. Describe the transmission arrangements necessary to deliver power resources to the requested points of delivery.

c. Other Information. The applicant may provide any other information pertinent to receiving an allocation.

d. Signature. The signature and title of an appropriate official who is able to attest to the validity of the APD and who is authorized to submit the request for allocation.

C. Western's Consideration of Applications

When the APD is received by Western, Western will determine whether the General Eligibility Criteria set forth in section II have been met and whether all items requested in the APD have been provided. Western will request in writing additional information from any applicant whose APD is determined to be deficient. The applicant shall have 30 days from the date on Western's letter of request to provide the information. If Western determines that the applicant does not meet the general eligibility criteria, Western will send a letter explaining why the applicant did not qualify. If the applicant has met the eligibility criteria, Western will determine the amount of power resources to be allocated pursuant to the General Allocation Criteria set forth in section III. Western will send a draft contract to the applicant for review which identifies the terms and conditions of the offer and the amount of power resources allocated to the applicant. All power resources shall be allocated according to the procedures in the General Allocation Criteria set forth in section III. Western reserves the right to determine the amount of power resources to allocate to an applicant, as justified by the applicant in its APD.

VI. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

VII. Review Under the Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), Western has received approval from the Office of Management and Budget (OMB) for the collection of customer information in this rule under control number 1910–1200.

VIII. Review Under the National Environmental Policy Act

Western will conduct an environmental evaluation to develop the appropriate level of environmental documentation pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4231 *et seq.*), the Council on Environmental Quality Regulations (40 CFR parts 1500 through1508), and the DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021).

IX. Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Dated: September 1, 1999.

Timothy J. Meeks,

Assistant Administrator.

[FR Doc. 99–23330 Filed 9–7–99; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6434–9]

Industrial Non-Hazardous Waste Policy Dialogue Committee; Notice of Charter Renewal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of charter renewal.

The Charter for the Environmental Protection Agency's Industrial Non-Hazardous Waste Policy Dialogue Committee (INWPDC) will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. Appl Section 9(c). The purpose of INWPDC is to provide advice and recommendations to the Administrator of EPA on issues associated with the development of

voluntary guidelines for safe management of industrial non-hazardous wastes.

It is determined that INWPDC is in the public interest in connection with the performance of duties imposed on the Agency by law.

Inquiries may be directed to Deborah Dalton, Designated Federal Officer, INWPDC, U.S. EPA, (mail code 2136), 401 M Street, SW, Washington, DC 20460.

Dated: July 29, 1999.

Thomas E. Kelly,

Acting Associate Administrator, Office of Policy and Reinvention.

[FR Doc. 99–23272 Filed 9–7–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6435–2]

Microbial and Disinfectants/ Disinfection Byproducts Advisory Committee; Notice of Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: Under Section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the Microbial and Disinfectants/ Disinfection Byproducts Advisory Committee established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held on September 8–9, 1999, from 9:00 a.m. to 5:00 p.m. eastern time at RESOLVE, Inc., 1255 23rd Street, NW, Suite 275 Washington DC 20037. The meeting is open to the public, but due to past experience, seating will be limited.

The purpose of this meeting will be to discuss a framework to evaluate data on microbial risk in a regulatory context, introduce data on microbial occurrence, review current studies on dose-response and epidemiology of microbial disease from drinking water, and describe risk of microbial disease from drinking water.

Statements from the public will be taken if time permits.

For more information, please contact Martha M. Kucera, Designated Federal Officer, Microbial Disinfectants/ Disinfection Byproducts Advisory Committee, U.S. EPA, Office of Ground Water and Drinking Water, Mailcode 4607, 401 M Street, SW, Washington, DC 20460. The telephone number is 202–260–7773 or E-mail kucera.martha@epamail.epa.gov.

Dated: September 3, 1999.

Elizabeth J. Fellows,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 99–23403 Filed 9–3–99; 12:38 pm]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6433–8]

Public Meetings of the Urban Wet Weather Flows Advisory Committee, the Storm Water Phase II Advisory Subcommittee, and the Sanitary Sewer Overflow Advisory Subcommittee

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is given that the Environmental Protection Agency (EPA) is convening a public meeting of only the Sanitary Sewer Overflow (SSO) Advisory Subcommittee to discuss the draft National Pollutant Discharge Elimination System (NPDES) regulation and policy for municipal sanitary sewer collection systems. This meeting is open to the public. Advance registration is required by September 17 since public seating is limited. Attendees should register by faxing their name, address, daytime telephone, fax number, and days of attendance to Sharie Centilla at 202–260–1460.

A limited number of government-rate hotel rooms ($98.55 single) are available. Hotel reservations should be made by calling the Ramada Inn & Conference Center at 1–800–666–8888 by September 17, 1999. The block is listed as "USEPA SSO FAC."

DATES: September 27–30, 1999.

ADDRESSES: Ramada Inn & Conference Center, 500 Merrimac Trail, Williamsburg, VA 23185.

TIME: On September 27, the meeting will start at approximately 1:00 p.m. EDT and end at approximately 5:30 p.m. On September 28, 29, and 30, the meeting will start at 9:00 a.m. and end at approximately 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Sharie Centilla, Office of Wastewater Management, at (202) 260–6052 daytime; 202–260–1460 fax, or Internet: centilla.sharie@epa.gov.

Background information is available on the EPA website: *http://www.epa.gov/owm/wet.htm.*

Dated: September 1, 1999.

Michael B. Cook,

Director, Office of Wastewater Management, Designated Federal Official.

[FR Doc. 99–23271 Filed 9–7–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30419A; FRL–6099–3]

Pesticide Products; Registration Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications to register the pesticide products Sulfotine and Raid TVK containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Ann Sibold, Insecticide Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number:(703) 305–6502; and e- mail address: sibold.ann@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to pesticide manufacturing, (NAICS code 32532).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**— Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access a fact sheet which provides more detail on these registrations, go to the Office of Pesticide Programs home page at http://www.epa.gov/pesticides/, and select "factsheet."

2. *In person.* The Agency has established an official record for this action under docket control number OPP–30419A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are also available for public inspection. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, DC 20460. The request should: Identify the product name and registration number and specify the data or information desired.

A fact sheet which provides more detail on these registrations may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

II. Did EPA Approve the Application?

The Agency approved the applications after considering all required data on risks associated with the proposed use of lithium perfluorooctane sulfonate (LPOS), and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of LPOS when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

III. Approved Applications

EPA issued a notice, published in the **Federal Register** of September 4, 1996 (61 FR 46643) (FRL–5392–1), which announced that S.C. Johnson & Sons, 1525 Howe St., Racine, WI 53403. had submitted applications to register the pesticide products, Sulfotine and Raid TVK, both insecticides (EPA files symbol 4822-ULT and 4822-ULI, respectively), containing the new active ingredient lithium perfluorooctane sulfonate at 26% and 0.03% resepectively, an active ingredient not included in any previously registered product.

The applications were approved on August 3, 1999, as Sulfotine (EPA Registration Number 4822–457) for manufacturing purpose only, and Raid TVK (EPA Registration Number 4822–458) for use as a hornet, yellow jacket and wasp bait station.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: August 26, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 99–23196 Filed 9–7–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–888; FRL–6097–6]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–888, must be received on or before October 8, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION" section. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–888 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Linda Deluise, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–5428; and e-mail address: deluise.linda@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American

Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**–Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–888. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–888 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by E-mail to: *"opp-docket@epa.gov,"* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by docket control number PF–888. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the "FOR FURTHER INFORMATION CONTACT" section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petitions. Additional data may be needed before EPA rules on the petitions.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 23, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. FMC Corporation

PP 9F6037, 4F4399, and 4F3012

EPA has received pesticide petitions (PP 9F6037, 4F4399, and 4F3012) from FMC Corporation, 1735 Market Street, Philadelphia, PA 19103 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of zeta-cypermethrin (±-α-cyano(3-phenoxyphenyl)methyl (±) *cis, trans* 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate) in or on the raw agricultural commodity sugar beets, roots at 0.05 parts per million (ppm), sugar beets, tops at 0.20 ppm; sugarcane at 0.60 ppm; corn, grain (field, seed and pop) at 0.05 ppm; green onions at 6.0 ppm; alfalfa seed at 0.5 ppm; alfalfa forage at 10.0 ppm; and alfalfa hay at 30.0 ppm; and corn, sweet (K+CWHR) at 0.1 ppm; corn, forage and corn, fodder at 30.0 ppm; poultry, meat at 0.05 ppm; poultry, meat byproducts at 0.05 ppm; poultry, fat at 0.05 ppm; eggs at 0.05 ppm; meat of cattle, goats, hogs, horses, and sheep at 0.3 ppm; fat of cattle, goats, hogs, horses, and sheep at 2.0 ppm; and milk, fat at 1.0 ppm (reflecting 0.2 ppm in whole milk). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of cypermethrin in plants is adequately understood. Studies have been conducted to delineate the metabolism of radiolabelled cypermethrin in various crops all showing similar results. The residue of concern is the parent compound only.

2. *Analytical method.* There is a practical analytical method for detecting and measuring levels of cypermethrin in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances (Gas Chromatography with Electron Capture Detection (GC/ECD).

3. *Magnitude of residues.* Crop field trial residue data from studies conducted at the maximum label rates for sugar beets, sugarcane, corn (field, seed, pop and sweet), green and bulb onions, and alfalfa, show that the proposed zeta-cypermethrin tolerances on sugar beets, roots at 0.05 ppm; sugar beets, tops at 0.20 ppm; sugarcane at 0.60 ppm; corn, grain (field, seed and pop) at 0.05 ppm; green onions at 6.0 ppm; alfalfa seed at 0.5 ppm, alfalfa forage at 10.0 ppm, and alfalfa hay at 30.0 ppm; corn, sweet (K+CWHR) at 0.1 ppm, and corn, forage and corn, fodder at 30.0 ppm will not be exceeded when the zeta-cypermethrin products labeled for these uses are used as directed.

B. Toxicological Profile

1. *Acute toxicity.* For the purposes of assessing acute dietary risk, FMC has used the no observed adverse effect level (NOAEL) of 3.8 milligrams/kilograms/day (mg/kg/day) based on the NOAEL of 7.5 mg/kg/day from the cypermethrin chronic feeding/oncogenicity study in rats and a correction factor of two to account for the differences in the percentage of the biologically active isomer. The lowest observed adverse effect level (LOAEL) of 50.0 mg/kg/day was based on neurological signs which were displayed during week one of the study. This acute dietary endpoint is used to determine acute dietary risks to all population subgroups.

2. *Genotoxicity.* The following genotoxicity tests were all negative: *in vivo* chromosomal aberration in rat bone marrow cells; *in vitro* cytogenic chromosome aberration; unscheduled DNA synthesis; CHO/HGPTT mutagen assay; weakly mutagenic: gene mutation (Ames).

3. *Reproductive and developmental toxicity.* No evidence of additional sensitivity to young rats was observed following prenatal or postnatal exposure to zeta-cypermethrin.

i. A 2-generation reproductive toxicity study with zeta-cypermethrin in rats demonstrated a NOAEL of 7.0 mg/kg/day and a LOAEL of 27.0 mg/kg/day for parental/systemic toxicity based on body weight, organ weight, and clinical signs. There were no adverse effects in reproductive performance. The NOAEL for reproductive toxicity was considered to be > 45.0 mg/kg/day, the highest dose tested.

ii. A developmental study with zeta-cypermethrin in rats demonstrated a maternal NOAEL of 12.5 mg/kg/day and a LOAEL of 25 mg/kg/day based on decreased maternal body weight gain, food consumption and clinical signs. There were no signs of developmental toxicity at 35.0 mg/kg/day, the highest dose level tested.

iii. A developmental study with cypermethrin in rabbits demonstrated a maternal NOAEL of 100 mg/kg/day and a LOAEL of 450 mg/kg/day based on decreased body weight gain. There were no signs of developmental toxicity at 700 mg/kg/day, the highest dose level tested.

4. *Subchronic toxicity.* Short- and intermediate-term toxicity. The NOAEL of 3.8 mg/kg/day based on the NOAEL 7.5 mg/kg/day from the cypermethrin chronic feeding/oncogenicity study in rats and a correction factor of two to account for the biologically active isomer would also be used for short- and intermediate-term MOE calculations (as well as acute, discussed in (1) above). The LOAEL of 50.0 mg/kg/day was based on neurological signs which were displayed during week one of the study.

5. *Chronic toxicity*— i. The reference dose (RfD) of 0.0125 mg/kg/day for zeta-cypermethrin is based on a NOAEL of 2.5 mg/kg/day from a cypermethrin rat reproduction study and an uncertainty factor of 200 (used to account for the differences in the percentage of the biologically active isomer). The endpoint effect of concern was based on consistent decreased body weight gain in both sexes at the LOAEL of 7.5 mg/kg/day.

ii. Cypermethrin is classified as a Group C Chemical (possible human carcinogen with limited evidence of carcinogenicity in animals) based upon limited evidence for carcinogenicity in female mice; assignment of a Q^* has not been recommended.

6. *Animal metabolism.* The metabolism of cypermethrin in animals is adequately understood. Cypermethrin has been shown to be rapidly absorbed, distributed, and excreted in rats when administered orally. Cypermethrin is metabolized by hydrolysis and oxidation.

7. *Metabolite toxicology.* The Agency has previously determined that the metabolites of cypermethrin are not of toxicological concern and need not be included in the tolerance expression.

8. *Endocrine disruption.* No special studies investigating potential estrogenic or other endocrine effects of cypermethrin have been conducted. However, no evidence of such effects were reported in the standard battery of required toxicology studies which have been completed and found acceptable. Based on these studies, there is no evidence to suggest that cypermethrin has an adverse effect on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure*— i. *Food.* Permanent tolerances, in support of registrations, currently exist for residues of zeta-cypermethrin on cottonseed; pecans; lettuce, head; onions, bulb; and cabbage and livestock commodities of cattle, goats, hogs, horses, and sheep (along with the associated meat and milk tolerances). For the purposes of

assessing the potential dietary exposure for these existing and the subject proposed tolerances, FMC has utilized available information on anticipated residues, monitoring data and percent crop treated (PCT) as follows:

ii. *Acute exposure and risk.* Acute dietary exposure risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. For the purposes of assessing acute dietary risk for zeta-cypermethrin, FMC has used the NOAEL of 3.8 mg/kg/day based on the NOAEL of 7.5 mg/kg/day from the cypermethrin chronic feeding/oncogenicity study in rats and a correction factor of two to account for the differences in the percentage of the biologically active isomer. The LOAEL of 50.0 mg/kg/day was based on neurological signs which were displayed during week one of this study. This acute dietary endpoint is used to determine acute dietary risks to all population subgroups. Available information on anticipated residues, monitoring data and PCT was incorporated into a Tier 3 analysis, using Monte Carlo modeling for commodities that may be consumed in a single serving. These assessments show that the margins of exposure (MOE) are significantly greater than the EPA standard of 100 for all subpopulations. The 95th percentile of exposure for the overall U. S. population was estimated to be 0.001934 mg/kg/day (MOE of 1964); 99th percentile 0.003844 mg/kg/day (MOE of 988); and 99.9th percentile 0.012574 mg/kg/day (MOE of 302). The 95th percentile of exposure for all infants < 1 year old was estimated to be 0.002195 mg/kg/day (MOE of 1730); 99th percentile 0.004976 mg/kg/day (MOE of 763); and 99.9th percentile 0.016942 mg/kg/day (MOE of 224). The 95th percentile of exposure for nursing infants < 1 year old was estimated to be 0.001090 mg/kg/day (MOE of 3484); 99th percentile 0.002516 mg/kg/day (MOE of 1510); and 99.9th percentile 0.004140 mg/kg/day (MOE of 917). The 95th percentile of exposure for non-nursing infants < 1 year old was estimated to be 0.002288 mg/kg/day (MOE of 1660); 99th percentile 0.006164 mg/kg/day (MOE of 616); and 99.9th percentile 0.018741 mg/kg/day (MOE of 202). The 95th percentile of exposure for children 1 to 6 years old (the most highly exposed population subgroup) and children 7 to 12 years old was estimated to be, respectively, 0.002993 mg/kg/day (MOE of 1269) and 0.002286 mg/kg/day (MOE of 1662); 99th percentile 0.005234 mg/kg/day (MOE of 725) and 0.004178 (MOE of 909); and 99.9th percentile 0.034965 mg/kg/day (MOE of 108) and 0.014545 (MOE of 261). The 95th percentile of exposure for females (13+/nursing) was estimated to be 0.001448 mg/kg/day (MOE of 2623); 99th percentile 0.003594 mg/kg/day (MOE of 1057); and 99.9th percentile 0.011663 mg/kg/day (MOE of 325). Therefore, FMC concludes that the acute dietary risk of zeta-cypermethrin, as estimated by the dietary risk assessment, does not appear to be of concern.

iii. *Chronic exposure and risk.* The RfD of 0.0125 mg/kg/day for zeta-cypermethrin is based on a NOAEL of 2.5 mg/kg/day from a cypermethrin rat reproduction study and an uncertainty factor of 200 (used to account for the differences in the percentage of the biologically active isomer). The endpoint effect of concern was based on consistent decreased body weight gain in both sexes at the LOAEL of 7.5 mg/kg/day. A chronic dietary exposure/risk assessment has been performed for zeta-cypermethrin using the above RfD. Available information on anticipated residues, monitoring data and PCT was incorporated into the analysis to estimate the anticipated residue contribution (ARC). The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues. The ARC is estimated to be 0.000379 mg/kg body weight (bwt)/day and utilizes 3.0% of the RfD for the overall U. S. population. The ARC for nursing infants (<1 year) and non-nursing infants (< 1 year) is estimated to be 0.000104 mg/kg bwt/day and 0.000509 mg/kg bwt/day and utilizes 0.8% and 4.1% of the RfD, respectively. The ARC for children 1-6 years old (subgroup most highly exposed) and children 7-12 years old is estimated to be 0.000904 mg/kg bwt/day and 0.000544 mg/kg bwt/day and utilizes 7.2% and 4.4% of the RfD, respectively. The ARC for females (13+/nursing) is estimated to be 0.000365 mg/kg bwt/day and utilizes 2.9% of the RfD. Generally speaking, the EPA has no cause for concern if the total dietary exposure from residues for uses for which there are published and proposed tolerances is less than 100% of the RfD. Therefore, FMC concludes that the chronic dietary risk of zeta-cypermethrin, as estimated by the dietary risk assessment, does not appear to be of concern.

iv. *Drinking water.* Laboratory and field data have demonstrated that cypermethrin is immobile in soil and will not leach into ground water. Other data show that cypermethrin is virtually insoluble in water and extremely lipophilic. As a result, FMC concludes that residues reaching surface waters from field runoff will quickly adsorb to sediment particles and be partitioned from the water column. Further, a screening evaluation of leaching potential of a typical pyrethroid was conducted using EPA's Pesticide Root Zone Model (PRZM3). Based on this screening assessment, the potential concentrations of a pyrethroid in ground water at depths of 1 and 2 meters are essentially zero (<0.001 parts per billion). Surface water concentrations for pyrethroids were estimated using PRZM3 and Exposure Analysis Modeling System (EXAMS) using standard EPA cotton runoff and Mississippi pond scenarios. The maximum concentration predicted in the simulated pond was 0.052 parts per billion. Concentrations in actual drinking water would be much lower than the levels predicted in the hypothetical, small, stagnant farm pond model since drinking water derived from surface water would normally be treated before consumption. Based on these analyses, the contribution of water to the dietary risk estimate is negligible. Therefore, FMC concludes that together these data indicate that residues are not expected to occur in drinking water.

2. *Non-dietary exposure.* Zeta-cypermethrin is registered for agricultural crop applications only, therefore non-dietary exposure assessments are not warranted.

D. Cumulative Effects

In consideration of potential cumulative effects of cypermethrin and other substances that may have a common mechanism of toxicity, to our knowledge there are currently no available data or other reliable information indicating that any toxic effects produced by cypermethrin would be cumulative with those of other chemical compounds; thus only the potential risks of cypermethrin have been considered in this assessment of its aggregate exposure. FMC intends to submit information for the EPA to consider concerning potential cumulative effects of cypermethrin consistent with the schedule established by EPA in the **Federal Register** of August 4, 1997 (62 FR 42020) (FRL–5734–6) and other EPA publications pursuant to the Food Quality Protection Act.

E. Safety Determination

1. *U.S. population.* Based on a complete and reliable toxicology data base, the RfD for zeta-cypermethrin is 0.0125 mg/kg/day, based on a NOAEL of 2.5 mg/kg/day and a LOAEL of 7.5 mg/kg/day from the cypermethrin rat reproduction study and an uncertainty factor of 200. Available information on anticipated residues, monitoring data and PCT was incorporated into an analysis to estimate the ARC for 26 population subgroups. The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues. The ARC is estimated to be 0.000379 mg/kg body weight (bwt)/day and utilizes 3.0% of the RfD for the overall U. S. population. The ARC for nursing infants (<1 year) and non-nursing infants (<1 year) is estimated to be 0.000104 mg/kg bwt/day and 0.000509 mg/kg bwt/day and utilizes 0.8% and 4.1% of the RfD, respectively. The ARC for children 1-6 years old (subgroup most highly exposed) and children 7-12 years old are estimated to be 0.000904 mg/kg bwt/day and 0.000544 mg/kg bwt/day and utilizes 7.2% and 4.4% of the RfD, respectively. The ARC for females (13+/nursing) is estimated to be 0.000365 mg/kg bwt/day and utilizes 2.9% of the RfD. Generally speaking, the EPA has no cause for concern if the total dietary exposure from residues for uses for which there are published and proposed tolerances is less than 100% of the RfD. Therefore, FMC concludes that the chronic dietary risk of zeta-cypermethrin, as estimated by the aggregate risk assessment, does not appear to be of concern.

The 95th percentile of exposure for the overall U. S. population was estimated to be 0.001934 mg/kg/day (MOE of 1964); 99th percentile 0.003844 mg/kg/day (MOE of 988); and 99.9th percentile 0.012574 mg/kg/day (MOE of 302). The 95th percentile of exposure for all infants < 1 year old was estimated to be 0.002195 mg/kg/day (MOE of 1730); 99th percentile 0.004976 mg/kg/day (MOE of 763); and 99.9th percentile 0.016942 mg/kg/day (MOE of 224). The 95th percentile of exposure for nursing infants < 1 year old was estimated to be 0.001090 mg/kg/day (MOE of 3484); 99th percentile 0.002516 mg/kg/day (MOE of 1510); and 99.9th percentile 0.004140 mg/kg/day (MOE of 917). The 95th percentile of exposure for non-nursing infants < 1 year old was estimated to be 0.002288 mg/kg/day (MOE of 1660); 99th percentile 0.006164 mg/kg/day (MOE of 616); and 99.9th percentile 0.018741 mg/kg/day (MOE of 202). The 95th percentile of exposure for children 1 to 6 years old (the most highly exposed population subgroup) and children 7 to 12 years old was estimated to be, respectively, 0.002993 mg/kg/day (MOE of 1269) and 0.002286 mg/kg/day (MOE of 1662); 99th percentile 0.005234 mg/kg/day (MOE of 725) and 0.004178 (MOE of 909); and 99.9th percentile 0.034965 mg/kg/day (MOE of 108) and 0.014545 (MOE of 261). The 95th percentile of exposure for females (13+/nursing) was estimated to be 0.001448 mg/kg/day (MOE of 2623); 99th percentile 0.003594 mg/kg/day (MOE of 1057); and 99.9th percentile 0.011663 mg/kg/day (MOE of 325). Therefore, FMC concludes that there is reasonable certainty that no harm will result from acute exposure to zeta-cypermethrin.

2. *Infants and children*— i. *General.* In assessing the potential for additional sensitivity of infants and children to residues of zeta-cypermethrin, FMC considered data from developmental toxicity studies in the rat and rabbit, and a 2-generation reproductive study in the rat. The data demonstrated no indication of increased sensitivity of rats to zeta-cypermethrin or rabbits to cypermethrin *in utero* and/or postnatal exposure to zeta-cypermethrin or cypermethrin. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity. FFDCA section 408 provides that EPA may apply an additional margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base.

ii. *Developmental toxicity studies.* In the prenatal developmental toxicity studies in rats and rabbits, there was no evidence of developmental toxicity at the highest doses tested (35.0 mg/kg/day in rats and 700 mg/kg/day in rabbits). Decreased body weight gain was observed at the maternal LOAEL in each study; the maternal NOAEL was established at 12.5 mg/kg/day in rats and 100 mg/kg/day in rabbits.

iii. *Reproductive toxicity study.* In the 2-generation reproduction study in rats, offspring toxicity (body weight) and parental toxicity (body weight, organ weight, and clinical signs) was observed at 27.0 mg/kg/day and greater. The parental systemic NOAEL was 7.0 mg/kg/day and the parental systemic LOAEL was 27.0 mg/kg/day. There were no developmental (pup) or reproductive effects up to 45.0 mg/kg/day, highest dose tested.

iv. *Prenatal and postnatal sensitivity.* There was no evidence of developmental toxicity in the studies at the highest doses tested in the rat (35.0 mg/kg/day) or in the rabbit (700 mg/kg/day). Therefore, there is no evidence of a special dietary risk (either acute or chronic) for infants and children which would require an additional safety factor.

v. *Postnatal.* Based on the absence of pup toxicity up to dose levels which produced toxicity in the parental animals, there is no evidence of special postnatal sensitivity to infants and children in the rat reproduction study.

vi. *Conclusion.* Based on the above, FMC concludes that reliable data support use of the standard 100-fold uncertainty factor, and that an additional uncertainty factor is not needed to protect the safety of infants and children. As stated above, aggregate exposure assessments utilized significantly less than 1% of the RfD for either the entire U. S. population or any of the 26 population subgroups including infants and children. Therefore, it may be concluded that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to cypermethrin residues.

F. International Tolerances

There are no Codex, Canadian, or Mexican residue limits for residues of zeta-cypermethrin in or on sugar beets, sugarcane, corn (field, seed, pop and sweet), green and bulb onions, and alfalfa.

2. FMC Corporation

PP 9F6040

EPA has received a pesticide petition (PP 9F6040) from FMC Corporation, 1735 Market Street, Philadelphia, PA 19103 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of zeta-cypermethrin (±-α-cyano(3-phenoxyphenyl)methyl (±) *cis, trans* 3-(2,2-dichloroethenyl)-2,2-dimethylcyclopropanecarboxylate) in or on the raw agricultural commodity rice, grain at 1.2 ppm; rice, straw at 2.0 ppm; and rice, hulls at 16.0 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of cypermethrin in plants is adequately understood. Studies have been conducted to delineate the metabolism of radiolabelled cypermethrin in various crops all showing similar results. The residue of concern is the parent compound only.

2. *Analytical method*. There is a practical analytical method for detecting and measuring levels of cypermethrin in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in these tolerances (Gas Chromatography with Electron Capture Detection (GC/ECD).

3. *Magnitude of residues*. Crop field trial residue data from studies conducted at the maximum label rates for rice grain show that the proposed zeta-cypermethrin tolerances on rice, grain at 1.2 ppm, rice, straw at 2.0 ppm and rice, hulls at 16.0 ppm will not be exceeded when the zeta-cypermethrin products labeled for these uses are used as directed.

B. Toxicological Profile

1. *Acute toxicity*. For the purposes of assessing acute dietary risk, FMC has used the NOAEL of 3.8 mg/kg/day based on the NOAEL of 7.5 mg/kg/day from the cypermethrin chronic feeding/oncogenicity study in rats and a correction factor of two to account for the differences in the percentage of the biologically active isomer. The LOAEL) of 50.0 mg/kg/day was based on neurological signs which were displayed during week one of the study. This acute dietary endpoint is used to determine acute dietary risks to all population subgroups.

2. *Genotoxicity*. The following genotoxicity tests were all negative: *in vivo* chromosomal aberration in rat bone marrow cells; *in vitro* cytogenic chromosome aberration; unscheduled DNA synthesis; CHO/HGPTT mutagen assay; weakly mutagenic: gene mutation (Ames).

3. *Reproductive and developmental toxicity*. No evidence of additional sensitivity to young rats was observed following prenatal or postnatal exposure to zeta-cypermethrin.

i. A 2-generation reproductive toxicity study with zeta-cypermethrin in rats demonstrated a NOAEL of 7.0 mg/kg/day and a LOAEL of 27.0 mg/kg/day for parental/systemic toxicity based on body weight, organ weight, and clinical signs. There were no adverse effects in reproductive performance. The NOAEL for reproductive toxicity was considered to be > 45.0 mg/kg/day, the highest dose tested.

ii. A developmental study with zeta-cypermethrin in rats demonstrated a maternal NOAEL of 12.5 mg/kg/day and a LOAEL of 25 mg/kg/day based on decreased maternal body weight gain, food consumption and clinical signs. There were no signs of developmental toxicity at 35.0 mg/kg/day, the highest dose level tested.

iii. A developmental study with cypermethrin in rabbits demonstrated a maternal NOAEL of 100 mg/kg/day and a LOAEL of 450 mg/kg/day based on decreased body weight gain. There were no signs of developmental toxicity at 700 mg/kg/day, the highest dose level tested.

4. *Subchronic toxicity*. Short- and intermediate-term toxicity. The NOAEL of 3.8 mg/kg/day based on the NOAEL 7.5 mg/kg/day from the cypermethrin chronic feeding/oncogenicity study in rats and a correction factor of two to account for the biologically active isomer would also be used for short- and intermediate-term MOE calculations (as well as acute, discussed in (1) above). The LOAEL of 50.0 mg/kg/day was based on neurological signs which were displayed during week one of the study.

5. *Chronic toxicity*— i. The RfD of 0.0125 mg/kg/day for zeta-cypermethrin is based on a NOAEL of 2.5 mg/kg/day from a cypermethrin rat reproduction study and an uncertainty factor of 200 (used to account for the differences in the percentage of the biologically active isomer). The endpoint effect of concern was based on consistent decreased body weight gain in both sexes at the LOAEL of 7.5 mg/kg/day.

ii. Cypermethrin is classified as a Group C Chemical (possible human carcinogen with limited evidence of carcinogenicity in animals) based upon limited evidence for carcinogenicity in female mice; assignment of a Q* has not been recommended.

6. *Animal metabolism*. The metabolism of cypermethrin in animals is adequately understood. Cypermethrin has been shown to be rapidly absorbed, distributed, and excreted in rats when administered orally. Cypermethrin is metabolized by hydrolysis and oxidation.

7. *Metabolite toxicology*. The Agency has previously determined that the metabolites of cypermethrin are not of toxicological concern and need not be included in the tolerance expression.

8. *Endocrine disruption*. No special studies investigating potential estrogenic or other endocrine effects of cypermethrin have been conducted. However, no evidence of such effects were reported in the standard battery of required toxicology studies which have been completed and found acceptable. Based on these studies, there is no evidence to suggest that cypermethrin has an adverse effect on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure*— i. *Food*. Permanent tolerances, in support of registrations, currently exist for residues of zeta-cypermethrin on cottonseed; pecans; lettuce, head; onions, bulb; and cabbage and livestock commodities of cattle, goats, hogs, horses, and sheep (and their associated meat and milk tolerances). For the purposes of assessing the potential dietary exposure for these existing and the subject proposed tolerances, FMC has utilized available information on anticipated residues, monitoring data and PCT as follows:

ii. *Acute exposure and risk*. Acute dietary exposure risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. For the purposes of assessing acute dietary risk for zeta-cypermethrin, FMC has used the NOAEL of 3.8 mg/kg/day based on the NOAEL of 7.5 mg/kg/day from the cypermethrin chronic feeding/oncogenicity study in rats and a correction factor of two to account for the differences in the percentage of the biologically active isomer. The LOAEL of 50.0 mg/kg/day was based on neurological signs which were displayed during week one of this study. This acute dietary endpoint is used to determine acute dietary risks to all population subgroups. Available information on anticipated residues, monitoring data and PCT was incorporated into a Tier 3 analysis, using Monte Carlo modeling for commodities that may be consumed in a single serving. These assessments show that the margins of exposure (MOE) are significantly greater than the EPA standard of 100 for all subpopulations. The 95th percentile of exposure for the overall U. S. population was estimated to be 0.001049 mg/kg/day (MOE of 3622); 99th percentile 0.003166 mg/kg/day (MOE of 1200); and 99.9th percentile 0.012313 mg/kg/day (MOE of 308). The 95th percentile of exposure for all infants < 1 year old was estimated to be 0.000610 mg/kg/day (MOE of 6229); 99th percentile 0.001955 mg/kg/day (MOE of 1943); and 99.9th percentile 0.019362 mg/kg/day (MOE of 196). The 95th percentile of exposure for nursing infants < 1 year old was estimated to be 0.000283 mg/kg/day (MOE of 13418); 99th percentile 0.001141 mg/kg/day (MOE of 3330); and 99.9th percentile 0.002424 mg/kg/day (MOE of 1567). The 95th percentile of exposure for non-nursing infants < 1 year old was estimated to be 0.000657 mg/kg/day (MOE of 5784); 99th percentile 0.007700 mg/kg/day (MOE of 493); and 99.9th percentile 0.019395 mg/kg/day (MOE of 195). The 95th percentile of exposure for children 1 to 6 years old (the most highly exposed population subgroup) and children 7 to 12 years old was estimated to be, respectively, 0.001184 mg/kg/day (MOE of 3208) and 0.001177 mg/kg/day (MOE of 3227); 99th percentile 0.003894 mg/kg/day (MOE of 975) and 0.003337 (MOE of 1138); and 99.9th percentile 0.034204 mg/kg/day (MOE of 111) and 0.013940 (MOE of 272). The 95th percentile of exposure for females (13+/nursing) was estimated to be 0.001070 mg/kg/day (MOE of 3549); 99th percentile 0.003318 mg/kg/day (MOE of 1145); and 99.9th percentile 0.011127 mg/kg/day (MOE of 341). Therefore, FMC concludes that the acute dietary risk of zeta-cypermethrin, as estimated by the dietary risk assessment, does not appear to be of concern.

iii. *Chronic exposure and risk*. The RfD of 0.0125 mg/kg/day for zeta-cypermethrin is based on a NOAEL of 2.5 mg/kg/day from a cypermethrin rat reproduction study and an uncertainty factor of 200 (used to account for the differences in the percentage of the biologically active isomer). The endpoint effect of concern was based on consistent decreased body weight gain in both sexes at the LOAEL of 7.5 mg/kg/day. A chronic dietary exposure/risk assessment has been performed for zeta-cypermethrin using the above RfD. Available information on anticipated residues, monitoring data and PCT was incorporated into the analysis to estimate the ARC. The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues. The ARC is estimated to be 0.000158 mg/kg body weight (bwt)/day and utilizes 1.3% of the RfD for the overall U. S. population. The ARC for non-nursing infants (<1 year) and nursing infants (<1 year) is estimated to be 0.000212 mg/kg/day and 0.000032 mg/kg/day and utilizes 1.7% and 0.3% of the RfD, respectively. The ARC for children 1-6 years old (subgroup most highly exposed) and children 7-12 years old is estimated to be 0.000268 mg/kg bwt/day and 0.000168 mg/kg bwt/day and utilizes 2.1% and 1.3% of the RfD, respectively. The ARC for females (13+/nursing) is estimated to be 0.000170 mg/kg bwt/day and utilizes 1.4% of the RfD. Generally speaking, the EPA has no cause for concern if the total dietary exposure from residues for uses for which there are published and proposed tolerances is less than 100% of the RfD. Therefore, FMC concludes that the chronic dietary risk of zeta-cypermethrin, as estimated by the dietary risk assessment, does not appear to be of concern.

vi. *Drinking water*. Laboratory and field data have demonstrated that cypermethrin is immobile in soil and will not leach into ground water. Other data show that cypermethrin is virtually insoluble in water and extremely lipophilic. As a result, FMC concludes that residues reaching surface waters from field runoff will quickly adsorb to sediment particles and be partitioned from the water column. Further, a screening evaluation of leaching potential of a typical pyrethroid was conducted using EPA's Pesticide Root Zone Model (PRZM3). Based on this screening assessment, the potential concentrations of a pyrethroid in ground water at depths of 1 and 2 meters are essentially zero (<0.001 parts per billion). Surface water concentrations for pyrethroids were estimated using PRZM3 and Exposure Analysis Modeling System (EXAMS) using standard EPA cotton runoff and Mississippi pond scenarios. The maximum concentration predicted in the simulated pond was 0.052 ppb. Concentrations in actual drinking water would be much lower than the levels predicted in the hypothetical, small, stagnant farm pond model since drinking water derived from surface water would normally be treated before consumption. Based on these analyses, the contribution of water to the dietary risk estimate is negligible. Therefore, FMC concludes that together these data indicate that residues are not expected to occur in drinking water.

2. *Non-dietary exposure*. Zeta-cypermethrin is registered for agricultural crop applications only, therefore non-dietary exposure assessments are not warranted.

D. Cumulative Effects

In consideration of potential cumulative effects of cypermethrin and other substances that may have a common mechanism of toxicity, to our knowledge there are currently no available data or other reliable information indicating that any toxic effects produced by cypermethrin would be cumulative with those of other chemical compounds; thus only the potential risks of cypermethrin have been considered in this assessment of its aggregate exposure. FMC intends to submit information for the EPA to consider concerning potential cumulative effects of cypermethrin consistent with the schedule established by EPA in **Federal Register** August 4, 1997 (62 FR 42020) and other EPA publications pursuant to the Food Quality Protection Act.

E. Safety Determination

1. *U.S. population*. Based on a complete and reliable toxicology data base, the RfD for zeta-cypermethrin is 0.0125 mg/kg/day, based on a NOAEL of 2.5 mg/kg/day and a LOAEL of 7.5 mg/kg/day from the cypermethrin rat reproduction study and an uncertainty factor of 200. Available information on anticipated residues, monitoring data and PCT was incorporated into an analysis to estimate the ARC for 26 population subgroups. The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues. The ARC is estimated to be 0.000158 mg/kg body weight (bwt)/day and utilizes 1.3% of the RfD for the overall U. S. population. The ARC for non-nursing infants (<1 year) and nursing infants (<1 year) is estimated to be 0.000212 mg/kg/day and 0.000032 mg/kg/day and utilizes 1.7% and 0.3% of the RfD, respectively. The ARC for children 1-6 years old (subgroup most highly exposed) and children 7-12 years old is estimated to be 0.000268 mg/kg bwt/day and 0.000168 mg/kg bwt/day and utilizes 2.1% and 1.3% of the RfD, respectively. The ARC for females (13+/nursing) is estimated to be 0.000170 mg/kg bwt/day and utilizes 1.4% of the RfD. Generally speaking, the EPA has no cause for concern if the total dietary exposure from residues for uses for which there are published and proposed tolerances is less than 100% of the RfD. Therefore, FMC concludes that the chronic dietary risk of zeta-cypermethrin, as estimated by the aggregate risk assessment, does not appear to be of concern.

The 95th percentile of exposure for the overall U. S. population was estimated to be 0.001049 mg/kg/day (MOE of 3622); 99th percentile 0.003166 mg/kg/day (MOE of 1200); and 99.9th percentile 0.012313 mg/kg/day (MOE of 308). The 95th percentile of exposure for all infants < 1 year old was estimated to be 0.000610 mg/kg/day (MOE of 6229); 99th percentile 0.001955 mg/kg/day (MOE of 1943); and 99.9th percentile 0.019362 mg/kg/day (MOE of 196). The 95th percentile of exposure for nursing infants < 1 year old was estimated to be 0.000283 mg/kg/day (MOE of 13418); 99th percentile 0.001141 mg/kg/day (MOE of 3330); and 99.9th percentile 0.002424 mg/kg/day (MOE of 1567). The 95th percentile of

exposure for non-nursing infants < 1 year old was estimated to be 0.000657 mg/kg/day (MOE of 5784); 99th percentile 0.007700 mg/kg/day (MOE of 493); and 99.9th percentile 0.019395 mg/kg/day (MOE of 195). The 95th percentile of exposure for children 1 to 6 years old (the most highly exposed population subgroup) and children 7 to 12 years old was estimated to be, respectively, 0.001184 mg/kg/day (MOE of 3208) and 0.001177 mg/kg/day (MOE of 3227); 99th percentile 0.003894 mg/kg/day (MOE of 975) and 0.003337 (MOE of 1138); and 99.9th percentile 0.034204 mg/kg/day (MOE of 111) and 0.013940 (MOE of 272). The 95th percentile of exposure for females (13+/nursing) was estimated to be 0.001070 mg/kg/day (MOE of 3549); 99th percentile 0.003318 mg/kg/day (MOE of 1145); and 99.9th percentile 0.011127 mg/kg/day (MOE of 341). Therefore, FMC concludes that there is reasonable certainty that no harm will result from acute exposure to zeta-cypermethrin.

2. *Infants and children*— i. *General.* In assessing the potential for additional sensitivity of infants and children to residues of zeta-cypermethrin, FMC considered data from developmental toxicity studies in the rat and rabbit, and a 2-generation reproductive study in the rat. The data demonstrated no indication of increased sensitivity of rats to zeta-cypermethrin or rabbits to cypermethrin *in utero* and/or postnatal exposure to zeta-cypermethrin or cypermethrin. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity. FFDCA section 408 provides that EPA may apply an additional margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base.

ii. *Developmental toxicity studies.* In the prenatal developmental toxicity studies in rats and rabbits, there was no evidence of developmental toxicity at the highest doses tested (35.0 mg/kg/day in rats and 700 mg/kg/day in rabbits). Decreased body weight gain was observed at the maternal LOAEL in each study; the maternal NOAEL was established at 12.5 mg/kg/day in rats and 100 mg/kg/day in rabbits.

iii. *Reproductive toxicity study.* In the 2-generation reproduction study in rats, offspring toxicity (body weight) and parental toxicity (body weight, organ weight, and clinical signs) was observed at 27.0 mg/kg/day and greater. The parental systemic NOAEL was 7.0 mg/kg/day and the parental systemic LOAEL was 27.0 mg/kg/day. There were no developmental (pup) or reproductive effects up to 45.0 mg/kg/day, highest dose tested.

iv. *Prenatal and postnatal sensitivity.* There was no evidence of developmental toxicity in the studies at the highest doses tested in the rat (35.0 mg/kg/day) or in the rabbit (700 mg/kg/day). Therefore, there is no evidence of a special dietary risk (either acute or chronic) for infants and children which would require an additional safety factor.

v. *Postnatal.* Based on the absence of pup toxicity up to dose levels which produced toxicity in the parental animals, there is no evidence of special postnatal sensitivity to infants and children in the rat reproduction study.

vi. *Conclusion.* Based on the above, FMC concludes that reliable data support use of the standard 100-fold uncertainty factor, and that an additional uncertainty factor is not needed to protect the safety of infants and children. As stated above, aggregate exposure assessments utilized significantly less than 1% of the RfD for either the entire U. S. population or any of the 26 population subgroups including infants and children. Therefore, it may be concluded that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to cypermethrin residues.

F. International Tolerances

There are no Codex, Canadian, or Mexican residue limits for residues of zeta-cypermethrin in or on rice grain, straw or hulls.

[FR Doc. 99–23198 Filed 9–7–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6434–5]

University of Florida Pentaborane Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past response costs concerning the University of Florida Pentaborane Site in Gainesville, Alachua County, Florida with the following Settling Party: the University of Florida. The settlement requires the Settling Party to pay $10,000 to the Hazardous Substance Superfund. The settlement includes a covenant not to sue the settling party pursuant to 42 U.S.C. 9607(a). EPA may withdraw from or modify the proposed settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Paula V. Batchelor, U.S. Environmental Protection Agency, Region IV, Waste Management Division, 61 Forsyth Street, SW, Atlanta, Goergia 30303, 404/562–8887.

Written comments may be submitted to Ms. Batchelor at the above address within 30 days of the date of publication.

Dated: August 23, 1999.

Franklin E. Hill,

Chief, Program Services Branch, Waste Management Division.

[FR Doc. 99–23273 Filed 9–7–99; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

August 30, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 8, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW, Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0212.

Title: Section 73.2080 Equal Employment Opportunity Program.

Form Number: None.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit, non-profit institutions.

Number of Respondents: 16,251 broadcast licensees.

Estimated Time per Response: 52 hours per year.

Frequency of Response: Recordkeeping.

Annual Burden: 845,052.

Annual Costs: $0.

Needs and Uses: Section 73.2080 provides that equal opportunity in employment shall be afforded by all broadcast stations to all qualified persons and no person shall be discriminated against in employment by such stations because of race, color, religion, national origin or sex. Section 73.2080 requires that each broadcast station shall establish, maintain and carry out a program to assure equal opportunity in every aspect of a broadcast station's policy and practice. This section incorporates specific EEO program requirements and general guidelines for meeting those requirements. These guidelines are not intended to be either exclusive or inclusive but simply to provide guidance. This program will provide an appropriate and effective means of informing broadcasters, individuals employed or seeking employment by broadcast stations of its EEO requirements. The Commission has suspended the enforcement of Section 73.2080 (b) and (c) due to the decision in *Lutheran Church—Missouri Synod* v. *FCC*, wherein the Court of Appeals held that the EEO program requirements of this section are unconstitutional. The enforcement of these requirements is suspended until the Commission revises the EEO rules to be consistent with the Court of Appeals Lutheran Church decision. The Commission will make such adjustments to the rule as necessary to conform to the Lutheran Church decision consistent with the record in the rulemaking. Until such time as the Commission reaches a decision in the outstanding Notice of Proposed Rulemaking (NPRM) concerning the Court of Appeals Lutheran Church decision, Section 73.2080 needs to retain a current OMB control number. We note that Section 73.2080(a) remains in effect. The data is used by a broadcast licensee in the preparation of the station's Broadcast Annual Employment Report (FCC Form 395–B) that is submitted annually and the station's EEO Program (FCC Form 396) submitted with the license renewal application. If this information were not maintained there could be no assurance that licensees are complying with the EEO rule. The Commission has suspended the filing of these forms until such time as the Commission reaches a decision in the outstanding NPRM.EEO requirements.

OMB Control Number: 3060–0390.

Title: Broadcast Station Annual Employment Report.

Form Number: FCC 395–B.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 14,000.

Estimated Time per Response: 0.88 hours.

Frequency of Response: Reporting, annually.

Annual Burden: 12,320 hours.

Annual Costs: $0.

Needs and Uses: The Annual Employment Report (FCC 395–B) was required to be filed by all licensees and permittees of AM, FM, TV, international and low power TV broadcast stations. It is a data collection device used to assess industry employment trends. The report identifies each staff member by gender, race, color and/or national origin in each of the nine major job categories. The data are used to assess industry employment trends.

On September 30, 1998, the Commission suspended the requirement that television and radio broadcast licensees and permittees submit the FCC 395–B. This suspension is to remain in effect at least until the Commission revises the EEO rules to be consistent with the Court of Appeals Lutheran Church decision. If the Commission chooses to reinstate the FCC 395–B, the Commission will make such adjustments to the form as necessary to conform to the Lutheran Church decision consistent with the record in the rulemaking. Until such time as the Commission reaches a decision in the outstanding Notice of Proposed Rulemaking concerning the Court of Appeals Lutheran Church decision, the FCC 395–B needs to retain a current OMB control number.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

[FR Doc. 99–23233 Filed 9–7–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval.

August 30, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before October 8, 1999. If you anticipate that you will be submitting comments, but find it

difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0572.
Title: Filing Manual for Annual International Circuit Status Reports.
Form Number: N/A.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for-profit entities.
Number of Respondents: 120.
Estimate Time Per Response: 12.17 hrs. (avg.).
Frequency of Response: Annual reporting requirements.
Total Annual Burden: 1,460 hours.
Total Annual Costs: None.
Needs and Uses: The information will enable the Commission to discharge its obligations to authorize the construction and use of international common carrier transmission facilities. The information will be used by the Commission and the industry to determine whether an international common carrier is providing direct or indirect service to countries and to assess industry trends in the use of international transmission facilities. The information is extremely valuable because it is not available from any other source.

OMB Control Number: 3060–0309.
Title: Section 74.1281, Station Records.
Form Number: None.
Type of Review: Extension of a currently approved collection.
Respondents: Business or other for-profit entities; Not-for-profit institutions; State, local, or tribal governments.
Number of Respondents: 3,150.
Estimate Time Per Response: 1 hour.
Frequency of Response: Recordkeeping.
Total Annual Burden: 3,150 hours.
Total Annual Costs: None.
Needs and Uses: Section 74.1281 requires that licensees of FM translator/booster stations maintain adequate records. These records include the current instrument of authorization, official correspondence with the FCC, maintenance records, contracts, permission for rebroadcasts, and other pertinent documents. They also include entries concerning any extinguishing or improper operation of tower lights. The data are used by FCC staff in investigations to assure that the licensee is operating in accordance with the technical requirements as specified in the FCC Rules and with the station authorization, and is taking reasonable measures to preclude interference to other stations.

OMB Control Number: 3060–0550.
Title: Local Franchising Authority Certification.
Form Number: FCC 328.
Type of Review: Extension of a currently approved collection.
Respondents: State, local, or tribal governments.
Number of Respondents: 40.
Estimate Time Per Response: 30 mins.
Frequency of Response: Single reporting requirement.
Total Annual Burden: 20 hours.
Total Annual Costs: None.
Needs and Uses: On May 3, 1993, the Commission released a Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92–266, FCC 93–177. In the Matter of Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992; Rate Regulation. Among other things, the Report and Order implemented Section 3(a) of the Cable Television Consumer Protection and Competition Act of 1992 wherein a local franchise authority (LFA) must file with the Commission, a written certification when it seeks to regulate basic service cable rates. Subsequently, the Commission developed FCC Form 328 to provide a standardized, simple form for LFAs to use when requesting certification. The data derived from Form 328 filings are used by Commission staff to ensure that an LFA has met the criteria specified in Section 3(a) of the Cable Television Consumer Protection and Competition Act of 1992 for regulating basic service rates.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–23234 Filed 9–7–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1288–DR]

Minnesota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Minnesota (FEMA–1288–DR), dated August 26, 1999, and related determinations.

EFFECTIVE DATE: August 26, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 26, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Minnesota, resulting from severe ice storms, flooding, and heavy rains beginning on March 1, 1999 and continuing through May 30, 1999, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Minnesota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint William Powers of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Minnesota to have been affected adversely by this declared major disaster:

Kittson, Marshall, Pennington, Polk, Red Lake, and Roseau Counties for Public Assistance.

All counties within the State of Minnesota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers(CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 99–23314 Filed 9–7–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change In Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 21, 1999.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Kevin P. Gates, Salt Lake City, Utah; to acquire additional voting shares of Centennial Bancshares, Inc., Ogden, Utah, and thereby indirectly acquire additional voting shares of Centennial Bank, Ogden, Utah.

Board of Governors of the Federal Reserve System, September 1, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–23289 Filed 9–7–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 4, 1999.

A. Federal Reserve Bank of Atlanta (Cynthia Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Marine Bancorp, Inc., Marathon, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Marine Bank of the Florida Keys, Marathon, Florida.

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. WCB Holding Company of Illinois, Inc., Geneva, Illinois (in formation); to become a bank holding company by acquiring 100 percent of the voting shares of Winfield Community Bank, Winfield, Illinois (in organization).

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Kennett Merger Corporation, Kennett, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Kennett Bancshares, Inc., Kennett, Missouri, and thereby indirectly acquire Kennett National Bank, Kennett, Missouri.

D. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Pinnacle Bancorp, Inc., Central City, Nebraska; to acquire 100 percent of the voting shares of Park National Bank, Estes Park, Colorado.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Grant Bancshares, Inc., Montgomery, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of Montgomery, Montgomery, Louisiana.

F. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. First Security Corporation, Salt Lake City, Utah; to acquire 100 percent of the voting shares of Zions Bancorporation, Salt Lake City, Utah, and thereby indirectly acquire Zions First National Bank, Salt Lake City, Utah; National Bank of Arizona, Phoenix, Arizona; California Bank & Trust, San Diego, California; Nevada State Bank, Las Vegas, Nevada; The Commerce Bank of Washington, N.A., Seattle, Washington; Val Cor Bancorporation, Inc., Denver, Colorado; and Vectra Bank Colorado, National Association, Denver, Colorado.

In connection with this application, Applicant also has applied to acquire Cash Access, Inc., Salt Lake City, Utah; Zions Insurance Agency, Inc., Salt Lake City, Utah; Zions Life Insurance Company, Salt Lake City, Utah; Regency Investment Advisors, Fresno, California, and thereby engage in data processing services by leasing automated teller machines to a third party, pursuant to § 225.28(b)(14) of Regulation Y; in providing insurance brokerage services by administering credit-related insurance programs in subsidiaries of Zions Bancorporation, pursuant to § 225.28(b)(11) of Regulation Y; in underwriting, as reinsurer, credit-related life and disability insurance, pursuant to § 225.28(b)(11) of Regulation Y; and in providing financial and investment advisory services and agency transactional services for customer investments, pursuant to § 225.28(b)(6) of Regulation Y.

Board of Governors of the Federal Reserve System, September 1, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–23290 Filed 9–7–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Government in the Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Monday, September 13, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: September 3, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–23469 Filed 9–3–99; 3:35 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Office of Communications

Standard and Optional Forms Management Office Cancellation of a Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The Office of Personnel Management cancelled the need for Standard Form 66B, Caution Personnel Record—Restricted Usage because of low usage.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams (202) 501–0581.

DATES: Effective September 8, 1999.

Dated: August 30, 1999.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 99–23256 Filed 9–7–99; 8:45 am]

BILLING CODE 6820–34–M

GENERAL SERVICES ADMINISTRATION

Office of Communications

Stocking change of a Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Because of low usage, the Department of the Treasury is not stocking the following Standard Form: SF 1198, Request by Employee for Allotment of Pay for Credit to Savings Account with a Financial Organization.

You can get this form from: Department of the Treasury—FMS, Ardmore Industrial Center, 3361–L 75th Avenue, Landover, MD 10785.

The form is also available on the internet. Address: http://www.gsa.gov/forms/forms.htm.

FOR FURTHER INFORMATION CONTACT: Mr. Irv. Wilson (202) 622–1575. This contact is for information about completing the form only.

DATES: Effective on September 8, 1999.

Dated: August 23, 1999.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 99–23257 Filed 9–7–99; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–99–35]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Vibrio Illness Investigation Report Form—(0920–0322)—Reinstatement—The National Center for Infectious Disease (NCID)—The purpose of the Cholera and other Vibrio Illness Investigation Report Form is to collect information on illnesses occurring as a result of infection with Vibrio species. Vibrios are important pathogens in the United States, primary septicemia, gastroenteritis, and wound infections have been associated with various species. Gastroenteritis and primary septicemia have been associated with the consumption of undercooked shellfish, particularly with raw, Gulf Coast oysters. Associations have also been linked to wound infections with exposure of broken skin to seawater. Most importantly, Vibrio cholerae 01 is the organism responsible for cholera, a severe, dehydrating diarrheal illness. Although infections with Vibrio cholerae 01 are notifiable in all states, an official report form for this illness did not previously exist. The Vibrio Illness Investigation Report Form is used to record information on all Vibrio-related illnesses, as well as more detailed information on cholera illness, which is currently a reportable disease in all states. The form has a separate, optional Seafood Investigation section to be completed when applicable. The form provides a consolidated, systematic method by which health departments can report such information, and is then used to gain a better understanding of the incidence, etiology, and epidemiology of all Vibrio-related illnesses occurring in the United States.

There is no change in the frequency of reporting or projected reporting. Most respondents are epidemiologists or nurses in the local health department, but in some instances, infection control nurses or physicians might complete the form. The total cost per respondent is estimated at $11.00. This is primarily salary but also includes postage and telephone calls.

Respondents	No. of respondents	No. of responses/ respondent	Avg. burden of response (in hrs.)	Total burden (in hrs.)
Local health department staff	90	1	.33	30
Health care facility staff	45	1	.33	15
Physicians	15	1	.33	5
Total				50

Dated: September 1, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–23282 Filed 9–7–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee (CLIAC) Meeting: Correction

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announced the following committee meeting in the **Federal Register** on August 23, 1999, Volume 64, Number 162, Page 45971.

Name: Clinical Laboratory Improvement Advisory Committee (CLIAC).

Times and Dates: 8:30 a.m.–5 p.m., September 22, 1999. 8:30 a.m.–3:30 p.m., September 23, 1999.

Correction: Please note, "potential rulemaking for genetic testing" should be added to the previously published agenda.

Contact Person for Additional Information: John C. Ridderhof, Dr.P.H., Division of Laboratory Systems, Public Health Practice Program Office, CDC, 4770 Buford Highway, NE, M/S G–25, Atlanta, Georgia 30341–3724, telephone 770/488–8076, FAX 770/488–8282.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for the both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–23382 Filed 9–3–99; 10:00 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 91N–0101, 91N–0098, 91N–0103, and 91N–100H]

Food Labeling; Health Claims and Label Statements; Request for Scientific Data and Information

AGENCY: Food and Drug Administration, HHS

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting scientific data, research study results, and other related information on four substance-disease relationships in order to reevaluate the scientific evidence for these relationships. The agency is taking this action to comply with a recent court decision in which FDA was instructed to reconsider whether to authorize health claims for these relationships in dietary supplement labeling. The four health claims to be reconsidered are: "Consumption of antioxidant vitamins may reduce the risk of certain kinds of cancer," "Consumption of fiber may reduce the risk of colorectal cancer," "Consumption of omega-3 fatty acids may reduce the risk of coronary heart disease," and "0.8 mg of folic acid in a dietary supplement is more effective in reducing the risk of neural tube defects than a lower amount in foods in common form." The agency will use the data and information to determine, for each substance-disease relationship, if an appropriate scientific basis exists to support the issuance of a proposed rule to authorize a health claim for the relationship.

DATES: Written comments by November 22, 1999.

ADDRESSES: Written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Christine J. Lewis, Center for Food Safety and Applied Nutrition (HFS–451), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4168.

SUPPLEMENTARY INFORMATION: The Nutrition Labeling and Education Act of 1990 (the 1990 amendments), which amended the Federal Food, Drug, and Cosmetic Act (the act), directed the Secretary of Health and Human Services, among other things, to evaluate the scientific evidence on 10 substance-disease relationships to determine their scientific validity as the basis for health claims in food labeling. For conventional foods, the 1990 amendments state that a health claim is permitted only if FDA determines that there is significant scientific agreement among qualified experts that the claim is supported by the totality of publicly available scientific evidence, including evidence from well-designed studies conducted in a manner that is consistent with generally recognized scientific procedures and principles (section 403(r)(3)(B)(i) of the act (21 U.S.C. 343(r)(3)(B))). While the 1990 amendments allowed FDA to consider a different scientific standard for health claims for dietary supplements (section 403(r)(5)(D) of the act (21 U.S.C. 343(r)(5)(D))), FDA issued regulations in 21 CFR 101.14(c) in 1994 that applied the same standard as that used for health claims for conventional foods (59 FR 395, January 4, 1994).

FDA conducted rulemakings in which it reviewed the scientific evidence for all 10 substance-disease relationships. Although the agency issued regulations authorizing health claims for most of these relationships, it concluded that there was insufficient scientific agreement regarding the scientific validity of the four health claims listed in the **Summary** section of this document. Therefore, the agency issued regulations providing that these claims were not authorized. (See § 101.71(a), (c), (e) (21 CFR 101.79(c)(2)(i)(G)).

Several dietary supplement marketers and nonprofit organizations that had submitted comments during the health claims rulemakings filed suit in Federal district court on constitutional and statutory grounds seeking, among other things, authorization to make the following health claims for use in the labeling of dietary supplements: (1) "Consumption of antioxidant vitamins may reduce the risk of certain kinds of cancer," (2) "Consumption of fiber may reduce the risk of colorectal cancer," (3) "Consumption of omega-3 fatty acids may reduce the risk of coronary heart disease," and (4) "0.8 mg of folic acid in a dietary supplement is more effective in reducing the risk of neural tube defects than a lower amount in foods in common form." Their constitutional and statutory challenges were rejected in the district court; however, on appeal the district court decision was reversed, and FDA was instructed to reconsider the four health claims (*Pearson* v. *Shalala*, 164 F.3d 650 (D.C. Cir. 1999)).

As a first step in complying with the court's decision, FDA intends to reevaluate the scientific evidence for the four substance-disease claims listed above. The agency is now in the process of preparing scientific summaries on each of these four topics. To ensure that all relevant scientific evidence is considered in the rulemaking process and to allow timely development of these summaries, FDA is requesting that anyone who has or is aware of relevant scientific data, research study results, or information related to these four substance-disease relationships submit the materials to Dockets Management Branch (address above). Such information, if submitted to FDA, must be considered publicly available. If used in the agency's scientific review, information submitted to FDA will become part of the public record for the evaluation of these relationships.

The agency has established four dockets to compile information relating to each of the four topic areas; docket numbers are as specified in Table 1 below. FDA advises that the **Federal Register** documents listed in the footnotes to the table have been incorporated into each of the referenced dockets (Docket Nos. 91N–0101, 91N–0098, 91N–0103, and 91N–100H). FDA is requesting data and information other than the information contained or referred to in these **Federal Register** documents. As a guideline, therefore, the agency is requesting data and information from 1992 to the present for the four topic areas.

FDA is allowing 75 days for the submission of data. Individuals and organizations submitting information or data relating to a specific topic should submit two copies of the information to the Dockets Management Branch (address above) by November 22, 1999. Separate submissions should be made for each topic area, and each submission should be identified with the appropriate docket number given below. Submissions received may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

TABLE 1

Topic	Docket No.
Antioxidant vitamins and cancer[1] and[2]	91N–0101
Fiber and colorectal cancer[3] and[4]	91N–0098
Omega-3 fatty acids and coronary heart disease[5] and[6]	91N–0103
Folic acid (dietary supplement vs. food form) and neural tube defects[7] and[8]	91N–100H

[1] "Food Labeling: Health Claims and Label Statements; Antioxidant Vitamins and Cancer," Department of Health and Human Services, Food and Drug Administration, proposed rule, FEDERAL REGISTER (56 FR 60624 to 60651, November 27, 1991).

[2] "Food Labeling: Health Claims and Label Statements; Antioxidant Vitamins and Cancer," Department of Health and Human Services, Food and Drug Administration, final rule, FEDERAL REGISTER (58 FR 2622 to 2660, January 6, 1993).

[3] "Food Labeling: Health Claims; Dietary Fiber and Cancer," Department of Health and Human Services, Food and Drug Administration, proposed rule, FEDERAL REGISTER (56 FR 60566 to 60582, November 27, 1991).

[4] "Food Labeling: Health Claims and Label Statements; Dietary Fiber and Cancer," Department of Health and Human Services, Food and Drug Administration, final rule, FEDERAL REGISTER (58 FR 2537 to 2551, January 6, 1993).

[5] "Food Labeling: Health Claims and Label Statements; Omega-3 Fatty Acids and Coronary Heart Disease," Department of Health and Human Services, Food and Drug Administration, proposed rule, FEDERAL REGISTER (56 FR 60663 to 60689, November 27, 1991).

[6] "Food Labeling: Health Claims and Label Statements; Omega-3 Fatty Acids and Coronary Heart Disease," Department of Health and Human Services, Food and Drug Administration, final rule, FEDERAL REGISTER (58 FR 2682 to 2738, January 6, 1993).

[7] "Food Labeling: Health Claims and Label Statements; Folate and Neural Tube Defects," Department of Health and Human Services, Food and Drug Administration, proposed rule, FEDERAL REGISTER (58 FR 53254 to 53295, October 14, 1993).

[8] "Food Labeling: Health Claims and Label Statements; Folate and Neural Tube Defects," Department of Health and Human Services, Food and Drug Administration, final rule, FEDERAL REGISTER (61 FR 8752 to 8781, March 5, 1996).

Dated: September 1, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–23337 Filed 9–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0433]

Draft Guidance for Industry on Average, Population, and Individual Approaches to Establishing Bioequivalence; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Average, Population, and Individual Approaches to Establishing Bioequivalence." This draft guidance provides recommendations to sponsors and/or applicants intending to perform in vivo and in vitro bioequivalence (BE) studies based on comparisons of in vivo and in vitro bioavailability (BA) measures in investigational new drug applications, new drug applications, abbreviated new drug applications, and their amendments and supplements. This draft guidance is a modification of a preliminary draft guidance entitled "In Vivo Bioequivalence Studies Based on Population and Individual Bioequivalence Approaches" published in December 1997, and this draft guidance updates a July 1992 FDA guidance entitled "Statistical Procedures for Bioequivalence Studies Using a Standard Two-Treatment Crossover Design". When finalized, this draft guidance will replace both the 1992 and 1997 guidances.

DATES: Written comments may be submitted on the draft guidance document by November 8, 1999. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance for industry are available on the Internet at "http://www.fda.gov/cder/guidance/index.htm". Submit written requests for single copies of "Average, Population, and Individual Approaches to Establishing Bioequivalence" to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mei-Ling Chen, Center for Drug Evaluation and Research (HFD–870), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5919.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a draft guidance for industry entitled "Average, Population, and Individual Approaches to Establishing Bioequivalence." The draft guidance provides recommendations to sponsors and/or applicants intending to perform in vivo and in vitro BE studies based on comparisons of in vivo and in vitro BA measurements. In an earlier guidance entitled "Statistical Procedures for Bioequivalence Studies Using a Standard Two-Treatment Crossover Design," FDA recommended that an average BE approach be used to establish BE between test and reference drug products. Because of the limitations in the average BE approach, and after extensive intramural and extramural discussions, the Center for Drug Evaluation and Research (CDER) now recommends that the average BE approach be supplemented by two new approaches, population and individual BE. This draft guidance focuses on how to use each approach once a specific criterion has been chosen.

This draft guidance is one of a set of seven core guidances being developed to provide recommendations on how to meet provisions of part 320 (21 CFR part 320) for orally administered drug products and drug products for local action. Taken together, the seven guidances are designed to clarify the studies needed to document product quality BA/BE for all drug products regulated by CDER in accordance with the provisions in part 320. A further intent is to reduce regulatory burden where feasible.

This level 1 draft guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 2, 1997). It represents the agency's current thinking on average, population, and individual approaches to establishing BE. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such an approach satisfies the requirements of the applicable statutes, regulations, or both.

Interested persons may, at any time, submit written comments on the draft guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 26, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–23228 Filed 9–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99D–2726]

Medical Devices; Draft Guidance on Labeling for Laboratory Tests; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled " Draft Guidance on Labeling for Laboratory Tests." This draft guidance is not final nor is it in effect at this time. The draft guidance is intended to identify the information that should be provided to FDA for labeling the diagnostic performance of laboratory tests. FDA intends to recognize two major categories of endpoints for assessing diagnostic performance of new "in vitro diagnostic" assays.

DATES: Written comments concerning this draft guidance must be received by December 7, 1999.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the draft guidance. Submit written requests for single copies on a 3.5" diskette of the draft guidance entitled "Draft Guidance on Labeling for Laboratory Tests" to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818.

Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Joseph L. Hackett, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–3084.

SUPPLEMENTARY INFORMATION:

I. Background

The labeling and evaluation of laboratory test performance should compare a new product's test results to some appropriate and relevant diagnostic benchmark that can be used to correlate results from a new test with the clinical status or condition of individuals or patients for whom the test is intended to be used. Determination of the clinical status of patients whose specimens are used in an evaluation may be based on laboratory and/or clinical endpoints. FDA recognizes two major categories of endpoints for assessing performance of new laboratory assays: (1) "True" diagnostic state (patient clinical status or condition) or operational "truth," and (2) laboratory equivalence where the test is characterized in terms of a

comparison to a legally marketed predicate.

This draft guidance represents the agency's current thinking on labeling of diagnostic performance for new laboratory tests. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This draft guidance is issued as a Level 1 guidance consistent with GGP's.

II. Electronic Access

In order to receive the "Draft Guidance on Labeling for Laboratory Tests" via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (1352) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the WWW. Updated on a regular basis, the CDRH home page includes the "Draft Guidance on Labeling for Laboratory Tests," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at "http://www.fda.gov/cdrh".

III. Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments regarding this draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 24, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–23229 Filed 9–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–R–285]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

ACTION: Comment request.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Request for Retirement Benefit Information;

Form No.: HCFA-R–285 (OMBt 0938–0769);

Use: This form will be used to obtain information regarding whether a beneficiary is receiving retirement payments based on State or local government employment, how long the claimant worked for the State or local government employer, and whether the former employer or pension plan subsidizes the beneficiary's Part A premium. The purpose in collecting this information is to determine and provide those eligible beneficiaries, with free Part A Medicare coverage.;

Frequency: On Occasion;

Affected Public: State, Local or Tribal Government, and Individuals or Households;

Number of Respondents: 1,500;

Total Annual Responses: 1,500;

Total Annual Hours: 375.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: August 26, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–23312 Filed 9–7–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Health Professions and Nurse Education Special Emphasis Panel (SEP) Meetings.

Name: Residency Training in Primary Care Peer Review Group I.
Date and Time: December 6–9, 1999, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: December 6, 1999, 8:00 a.m. to 10:00 a.m.
Closed on: December 6, 1999, 10:00 a.m. to 6:00 p.m.; December 7–9, 1999, 8:00 a.m. to 6:00 p.m.

Name: Residency Training in Primary Care Peer Review Group II.
Date and Time: December 13–16, 1999, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: December 13, 1999, 8:00 a.m. to 10:00 a.m.
Closed on: December 13, 1999, 10:00 a.m. to 6:00 p.m.; December 14–16, 1999, 8:00 a.m. to 6:00 p.m.

Name: Faculty Development in Primary Care Peer Review Group.
Date and Time: January 18–21, 2000, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: January 18, 2000, 8:00 a.m. to 10:00 a.m.
Closed on: January 18, 2000, 10:00 a.m. to 6:00 p.m.; January 19–21, 8:00 a.m. to 6:00 p.m.

Name: Quentin N. Burdick Rural Health Interdisciplinary Program Peer Review Group.
Date and Time: January 24–27, 2000, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: January 24, 2000, 8:00 a.m. to 10:00 a.m.
Closed on: January 24, 2000, 10:00 a.m. to 6:00 p.m.; January 25–27, 8:00 a.m. to 6:00 p.m.

Name: Public Health Nursing/Clinical Practice Peer Review Group.
Date and Time: January 24–27, 2000, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: January 24, 2000, 8:00 a.m. to 10:00 a.m.
Closed on: January 24, 2000, 10:00 a.m. to 6:00 p.m.; January 25–27, 2000, 8:00 a.m. to 6:00 p.m.

Name: Podiatric Residency in Primary Care Peer Review Group.
Date and Time: January 31–February 3, 2000, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: January 31, 2000, 8:00 a.m. to 10:00 a.m.
Closed on: January 31, 2000, 10:00 a.m. to 6:00 p.m.; February 1–3, 2000, 8:00 a.m. to 6:00 p.m.

Name: Dentistry Public Health Peer Review Group.
Date and Time: January 31–February 3, 2000, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: January 31, 2000, 8:00 a.m. to 10:00 a.m.
Closed on: January 31, 2000, 10:00 a.m. to 6:00 p.m.; February 1–3, 2000, 8:00 a.m. to 6:00 p.m.

Name: Health Administration Traineeships and Special Projects Peer Review Group.
Date and Time: February 7–10, 2000, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: February 7, 2000, 8:00 a.m. to 10:00 a.m.
Closed on: February 7, 2000, 10:00 a.m. to 6:00 p.m.; February 8–10, 2000, 8:00 a.m. to 6:00 p.m.

Name: Predoctoral Training in Primary Care Peer Review Group.
Date and Time: February 14–17, 2000, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: February 14, 2000, 8:00 a.m. to 10:00 a.m.
Closed on: February 14, 2000, 10:00 a.m. to 6:00 p.m.; February 15–17, 2000, 8:00 a.m. to 6:00 p.m.

Name: Physicians Assistant Training Peer Review Group.
Date and Time: February 22–25, 2000, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: February 22, 2000, 8:00 a.m. to 10:00 a.m.
Closed on: February 22, 2000, 10:00 a.m. to 6:00 p.m.; February 23–25, 2000, 8:00 a.m. to 6:00 p.m.

Name: Residencies and Advanced Education in the Practice of General Dentistry Peer Review Group.
Date and Time: February 28–March 2, 2000, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: February 28, 2000, 8:00 a.m. to 10:00 a.m.
Closed on: February 28, 2000, 10:00 a.m. to 6:00 p.m.; February 29–March 2, 2000, 8:00 a.m. to 6:00 p.m.

Name: Pediatric Dentistry Peer Review Group.
Date and Time: February 28–March 2, 2000, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: February 28, 2000, 8:00 a.m. to 10:00 a.m.
Closed on: February 28, 2000, 10:00 a.m. to 6:00 p.m.; February 29–March 2, 2000, 8:00 a.m. to 6:00 p.m.

Name: Public Health Training Centers Review Group.
Date and Time: March 6–9, 2000, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: March 6, 2000, 8:00 a.m. to 10:00 a.m.
Closed on: March 6, 2000, 10:00 a.m. to 6:00 p.m.; March 7–9, 2000, 8:00 a.m. to 6:00 p.m.

Name: Public Health Special Projects Review Group.
Date and Time: March 6–9, 2000, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: March 6, 2000, 8:00 a.m. to 10:00 a.m.
Closed on: March 6, 2000, 10:00 a.m. to 6:00 p.m.; March 7–9, 2000, 8:00 a.m. to 6:00 p.m.

Name: Nursing Workforce Diversity Peer Review Group.
Date and Time: March 13–16, 2000, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: March 13, 2000, 8:00 a.m. to 10:00 a.m.
Closed on: March 13, 2000, 10:00 a.m. to 6:00 p.m.; March 14–16, 2000, 8:00 a.m. to 6:00 p.m.

Name: Centers of Excellence Review Group.
Date and Time: March 20–23, 2000, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: March 20, 2000, 8:00 a.m. to 10:00 a.m.
Closed on: March 20, 2000, 10:00 a.m. to 6:00 p.m.; March 21–23, 2000, 8:00 a.m. to 6:00 p.m.

Name: Geriatric Training Regarding Physicians and Dentists Review Group.
Date and Time: March 27–30, 2000, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: March 27, 2000, 8:00 a.m. to 10:00 a.m.
Closed on: March 27, 2000, 10:00 a.m. to 6:00 p.m.; March 28–30, 2000, 8:00 a.m. to 6:00 p.m.

Name: Geriatric Education Centers Review Group.
Date and Time: March 27–30, 2000, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: March 27, 2000, 8:00 a.m. to 10:00 a.m.
Closed on: March 27, 2000, 10:00 a.m. to 6:00 p.m.; March 28–30, 2000, 8:00 a.m. to 6:00 p.m.

Name: Health Careers Opportunity Program Review Group.
Date and Time: April 3–7, 2000, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: April 3, 2000, 8:00 a.m. to 10:00 a.m.
Closed on: April 3, 2000, 10:00 a.m. to 6:00 p.m.; April 4–7, 8:00 a.m. to 6:00 p.m.

Name: Academic Administrative Units (Departments of Family Medicine) Peer Review Group.
Date and Time: April 10–13, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: April 10, 2000, 8:00 a.m. to 10:00 a.m.
Closed on: April 10, 2000, 10:00 a.m. to 6:00 p.m.; April 11–13, 2000, 8:00 a.m. to 6:00 p.m.

Name: Advanced Nursing Education Review Group (Optional Group).
Date and Time: April 25–28, 2000, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: April 25, 2000, 8:00 a.m. to 10:00 a.m.
Closed on: April 25, 2000, 10:00 a.m. to 6:00 p.m.; April 26–28, 2000, 8:00 a.m. to 6:00 p.m.
Name: Model AHEC Review Group.
Date and Time: April 25–26, 2000, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: April 25, 2000, 8:00 a.m. to 10:00 a.m.
Closed on: April 25, 2000, 10:00 a.m. to 6:00 p.m.; April 26, 2000, 8:00 a.m. to 6:00 p.m.
Name: Basic AHEC Review Group.
Date and Time: April 27–28, 2000, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: April 27, 2000, 8:00 a.m. to 10:00 a.m.
Closed on: April 27, 2000, 10:00 a.m. to 6:00 p.m.; April 28, 2000, 8:00 a.m. to 6:00 p.m.
Name: Advanced Nursing Education Review Group I.
Date and Time: May 1–4, 2000, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: May 1, 2000, 8:00 a.m. to 10:00 a.m.
Closed on: May 1, 2000, 10:00 a.m. to 6:00 p.m.; May 2–4, 2000, 8:00 a.m. to 6:00 p.m.
Name: Advanced Nursing Education Review Group II.
Date and Time: May 8–11, 2000, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: May 8, 2000, 8:00 a.m. to 10:00 a.m.
Closed on: May 8, 2000, 10:00 a.m. to 6:00 p.m.; May 9–11, 2000, 8:00 a.m. to 6:00 p.m.
Name: Basic Nurse Education and Practice Review Group.
Date and Time: May 16–19, 2000, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: May 16, 2000, 8:00 a.m. to 10:00 a.m.
Closed on: May 16, 2000, 10:00 a.m. to 6:00 p.m.; May 17–19, 2000, 8:00 a.m. to 6:00 p.m.
Name: Allied Health Project Grants Review Group.
Date and Time: May 22–25, 2000, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: May 22, 2000, 8:00 a.m. to 10:00 a.m.
Closed on: May 22, 2000, 10:00 a.m. to 6:00 p.m.; May 23–25, 2000, 8:00 a.m. to 6:00 p.m.
Name: Chiropractic/Demonstration Review Group.
Date and Time: May 22–25, 2000, 8:00 a.m. to 6:00 p.m.
Place: Holiday Inn Silver Spring, 8777 Georgia Avenue, Silver Spring, Maryland 20910.
Open on: May 22, 2000, 8:00 a.m. to 10:00 a.m.
Closed on: May 22, 2000, 10:00 a.m. to 6:00 p.m.; May 23–25, 2000, 8:00 a.m. to 6:00 p.m.
Purpose: The Health Professions and Nurse Education Special Emphasis Panel shall advise the Director of the Bureau of Health Professions on the technical merit of grants to improve the training, distribution, utilization, and quality of personnel required to staff the Nation's health care delivery system.
Agenda: The open portion of each meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meetings will be closed at approximately 10:00 a.m. on the first day of each meeting until adjournment for the review of grant applications. The closing is in accordance with the provision set forth in section 552b(c)(6), Title 5 U.S. Code, and the Determination by the Associate Administrator for Management and Program Support, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone wishing to obtain a roster of members or other relevant information should write or contact Mrs. Sherry Whipple, Program Analyst, Peer Review Branch, Parklawn Building, Room 8C–23, 5600 Fishers Lane, Rockville, Maryland 20857, telephone 301–443–5926.

Dated: September 2, 1999.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–23335 Filed 9–7–99; 8:45 am]

BILLING CODE 4160–15 P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Solicitation of Information and Recommendations for Developing OIG Compliance Program Guidance for Individual Physicians and Small Group Practices

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice.

SUMMARY: This **Federal Register** notice seeks the input and recommendations of interested parties as the OIG considers developing a compliance program guidance for individual and small group physician practices, especially those serving Medicare and other Federal health care program beneficiaries. Many physicians have expressed an interest in better protecting their practices from the potential for fraud and abuse. While the OIG believes that the great majority of physicians are honest and share our goal of protecting the integrity of Medicare and other Federal health care programs, all health care providers have a duty to reasonably ensure that the claims submitted to Medicare and other Federal health care programs are true and accurate. The development of a comprehensive, effective compliance program by individual physicians and small group practices will go a long way toward achieving this goal. Over the past two years, the OIG has developed guidances for hospitals, clinical laboratories, home health agencies, third-party medical billing companies and durable medical equipment companies. While the OIG has previously referred physicians and physician groups to the OIG's compliance guidance for third-party medical billing companies for guidance regarding the risk areas that are most directly relevant to physicians, we have received continued interest from physicians for a specific guidance directed at their individual practices. In order to provide such meaningful guidance to individual and small group physician practices, the OIG is soliciting comments, recommendations and other suggestions from concerned parties and organizations on how best to develop a compliance program guidance to reduce the potential for fraud and abuse in the individual or small group physician practice, as well as feedback as to whether such a guidance would be beneficial to physician practices.

DATES: To assure consideration, comments must be delivered to the address provided below by no later than 5 p.m. on November 8, 1999.

ADDRESSES: Please mail or deliver your written comments, recommendations and suggestions to the following address: Department of Health and Human Services, Office of Inspector General, Attention: OIG–7–CPG, Room 5246, Cohen Building, 330 Independence Avenue, S.W., Washington, D.C. 20201.

We do not accept comments by facsimile (FAX) transmission. In commenting, please refer to the file code OIG–7–CPG. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 5541 of the Office of Inspector General at 330 Independence Avenue, S.W., Washington, D.C. 20201 on Monday through Friday of each week from 8:00 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Kimberly Brandt, Office of Counsel to the Inspector General, (202) 619–2078.

SUPPLEMENTARY INFORMATION: The development of compliance program guidances has become a major initiative of the OIG in its effort to engage the private health care community in addressing and combating fraud and abuse. Recently, the OIG has developed and issued compliance program guidance directed at various segments of the health care industry.[1] New OIG guidance under consideration will be designed to provide clear direction and assistance to physicians providing services to Medicare and other Federal health care program beneficiaries who are interested in reducing and eliminating the potential for fraud and abuse within their practice.

The guidances represent the culmination of the OIG's suggestions on how providers can most effectively establish internal controls and implement monitoring procedures to identify, correct and prevent fraudulent and wasteful activities. As stated in previous guidances, these guidelines are not mandatory for providers, nor do they represent an exclusive document of advisable elements of a compliance program.

In an effort to formalize the process by which the OIG receives public comments in connection with compliance program guidances, the OIG is seeking, through this **Federal Register** notice, formal input from interested parties as the OIG considers developing a compliance program guidance directed at individual and small group physician practices. The OIG will give consideration to all comments, recommendations and suggestions submitted and received by the time frame indicated above.

We anticipate that the physician guidance will contain seven elements that the OIG considers necessary for a comprehensive compliance program. These seven elements have been discussed in our previous guidances and include:

- The development of written policies and procedures.
- The designation of a compliance officer and other appropriate bodies.
- The development and implementation of effective training and education programs.
- The development and maintenance of effective lines of communication.
- The enforcement of standards through well-publicized disciplinary guidelines.
- The use of audits and other evaluation techniques to monitor compliance.
- The development of procedures to respond to detected offenses and to initiate corrective action.

The OIG would appreciate specific comments, recommendations and suggestions on (1) risk areas for the individual or small group physician practice, and (2) aspects of the seven elements contained in previous guidances that may need to be modified to reflect the unique characteristics of the individual or small group physician practice. Detailed justifications and empirical data supporting suggestions would be appreciated.

We also request that any comments, recommendations and input be submitted in a format that addresses the above topics in a concise manner, rather than in the form of a comprehensive draft guidance that mirrors previous guidances.

Dated: August 31, 1999.

June Gibbs Brown,

Inspector General.

[FR Doc. 99–23294 Filed 9–7–99; 8:45 am]

BILLING CODE 4150–04–P

[1] See 62 FR 9435 (March 3, 1997) for clinical laboratories, as amended in 63 FR 45076 (August 24, 1998); 63 FR 8987 (February 23, 1998) for hospitals; 63 FR 42410 (August 7, 1998) for home health agencies, and 63 FR 70138 (December 18, 1998) for third party medical billing companies. The guidances can also be found on the OIG web site at http://www.hhs.gov/oig.

DEPARTMENT OF THE INTERIOR

Geological Survey

Application Notice Describing an Opportunity of Federal Funding of Proposals Submitted Under the State Partnership Program (SPP) for Fiscal Year 2000

AGENCY: Department of the Interior, U.S. Geological Survey.

ACTION: Notice.

SUMMARY: Pre-proposal Applications are invited for projects under the FY2000 State Partnership Program (SPP).

The purpose of the SPP is to provide support through grants and cooperative agreements to states and tribal agencies whose primary focus is on gathering, analyzing, and distributing biological science information needed for natural resource management decision-making. This program requires complementary study participation and interaction between State/Tribal institutions and Science Centers or Cooperative Research Units of the USGS, Eastern Region. For contact information relating to potential study cooperation and participation by scientists from the USGS Biological Resources Division, Eastern Region, Science Centers (6 Centers) and Cooperative Research Units (16 Units) access the following web sites:

For Centers, http://biology.usgs.gov/nbs/nbshp2__2.htm http

and

For Units, http://biology.usgs.gov/coop/list.html

Proposals involving the support and cooperation of multiple State parties as well as multiple Federal, private, or other entities are strongly favored. Respondents are encouraged to show linkages to other resource agencies, in addition to USGS, that have jurisdiction over public lands or public trust biotic resources and to the science information needs for other Department of the Interior bureaus and other Federal agencies. Proposals must demonstrate a commitment to information exchange and technology transfer.

Eligibility Requirements

Applicant Eligibility: State, Tribal, and/or U.S. Territories and Possessions that conduct natural resources studies and associated information management. No Federal or private agencies may apply.

Application and Award Process

Pre-proposal Submission: Eligible institutions may request a Pre-proposal Solicitation Package, including instructions on the SPP and how to submit an application, from the USGS, Eastern Regional Office (see address below). *Pre-proposals must be submitted to USGS by State/Tribe institutions only, but must include information on participating USGS Science Center or Cooperative Research Unit.*

Full-proposal Evaluation and Award: *Full proposals will be requested in writing by the USGS from institutions that have submitted pre-proposals of high merit and who have met all of the pre-proposal requirements as detailed in the Pre-proposal Solicitation Package.* Detailed specifications will be provided when the written request for full proposals is made. After meeting all submission requirements, full proposals will be reviewed and evaluated by a technical review team. Projects will be individually scored and prioritized, and award recommendations forwarded to the USGS contracting office for award.

Dates: Completed pre-proposals must be submitted to the USGS, Eastern Regional Office and be postmarked no later than October 6, 1999. Full

proposals will be required by 30 November, 1999. Notification of awards will be made by 30 December 1999.

Application Information: A Pre-Proposal Solicitation Package, including a SPP Factsheet that gives examples of projects that have received funding in the past, may be requested from the USGS, Eastern Regional Office at the following address: Dr. Gary D. Brewer, State Partnership Program Coordinator, USGS Biological Resources Division, Eastern Regional Office, 1700 Leetown Road, Kearneysville, WV 25430, Telephone: 304–724–4507, Fax: 304–724–4505, E-mail: gary_brewer@usgs.gov

Authorization

Fish and Wildlife Act of 1956, 70 Stat. 1119, as amended, 16 U.S.C. 742a–742j; Fish and Wildlife Coordination Act of 1958, 16 U.S.C. 661–667e. The Office of Management and Budget Catalog of Federal Domestic Assistance Number is 15.808.

Dated: August 24, 1999.

David P. Bornholdt,

Deputy Regional Chief Biologist.

[FR Doc. 99–23245 Filed 9–7–99; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(WO–310–02–24 1A); OMB Approval Number 1004–0162]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of Paperwork Reduction Act (44 U.S.C. Chapter 35). On June 30, 1999, the Bureau of Land Management (BLM) published a notice in the **Federal Register** (64 FR 35177) requesting comments on the collection. The comment period ended August 30, 1999. No comments were received. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's Clearance Officer at the telephone number listed below.

OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration, your comments and suggestions on the requirement should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0160), Office of Information and Regulatory Affairs, Washington, DC 20503, telephone (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Officer (WO–630) 1849 C St., NW, Room 401 LS Bldg., Washington, DC 20240.

Nature of Comments: We specifically request your comment on the following:

1. Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Title: Oil and Gas Geophysical Exploration Operations (43 CFR 3151).

OMB Approval Number: 1004–0162.

Abstract: Respondents supply information that will be used to determine procedures for conducting oil and gas geophysical exploration operations on public lands. The information supplied allows the Bureau of Land Management to determine that geophysical exploration operation activities are conducted in a manner consistent with the regulations, local use plans, and environmental assessments in compliance with the provisions of the National Environmental Policy Act of 1969 as amended.

Form Numbers: 3150–4, 3150–5.

Frequency: On occasion.

Description of Respondents: Oil and gas exploration and drilling companies.

Estimated Completion Time: Form 3150–4, 1 hour; Form 3150–5, ⅓ hour.

Annual Responses: 1200.

Annual Burden Hours: 800.

Bureau Clearance Officer: Carole J. Smith (202) 452–0367.

Dated: August 31, 1999.

Carole J. Smith,

Bureau Clearance Officer.

[FR Doc. 99–23247 Filed 9–7–99; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

[NV–055–99–7122–00–8824]

Nevada Temporary Closure of Certain Public Lands Managed by the Bureau of Land Management, Las Vegas Field Office.

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Temporary closure of selected public lands in Clark County, Nevada, during the operation of the 1999 SNORE OHV in NELLIS DUNES Race.

SUMMARY: The District Manager of the Las Vegas District announces the temporary closure of selected public lands under its administration.

This action is being taken to help ensure public safety, prevent unnecessary environmental degradation during the official permitted running of the 1999 SNORE OHV in NELLIS DUNES Race and to comply with provisions of the US Fish and Wildlife Service's Biological Opinion for Speed Based Off-Highway Vehicle Events (1–5–F–237).

DATES: From 6:00 am Sept 24, 1999 through 6:00 am Sept 26, 1999 Pacific Standard Time.

CLOSURE AREA: Public lands within as described below, an area within T.17S, R64E & 65E east of I–15 and south of S.R. 40 (Valley of Fire Road); T18S, R63E, R64E, R65E east of I–15; T19S, R63E, R64E, R65E east of I–15.

1. The closure is bound by MOAPA RIVER INDIAN RESERVATION to the NORTH, NELLIS AFB on the SOUTH, I–15, to the WEST, LAKE MEAD NRA to the EAST.

Exceptions to the closure are: Las Vegas Blvd.

2. The entire area encompassed by the designated course and all areas outside the designated course as listed in the legal description above are closed to all vehicles except Law Enforcement, Emergency Vehicles, and Official Race Vehicles. Access routes leading to the course are closed to vehicles.

3. No vehicle stopping or parking.

4. Spectators are required to remain within designated spectator area only.

5. The following regulations will be in effect for the duration of the closure:

Unless otherwise authorized no person shall:

a. Camp in any area outside of the designated spectator areas.

b. Enter any portion of the race course or any wash located within the race course.

c. Spectate or otherwise be located outside of the designated spectator area.

d. Cut or collect firewood of any kind, including dead and down wood or other vegetative material.

e. Possess and or consume any alcoholic beverage unless the person has reached the age of 21 years.

f. Discharge, or use firearms, other weapons or fireworks.

g. Park, stop, or stand any vehicle outside of the designated spectator area.

h. Operate any vehicle including an off-highway vehicle (OHV), which is not legally registered for street and highway operation, including operation of such a vehicle in spectator viewing areas, along the race course, and in designated pit area.

i. Park any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property or feature. Vehicles so parked are subject to citation, removal and impoundment at owners expense.

j. Take a vehicle through, around or beyond a restrictive sign, recognizable barricade, fence or traffic control barrier or device.

k. Fail to keep their site free of trash and litter during the period of occupancy, or fail to remove all personal equipment, trash, and litter upon departure.

l. Violate quiet hours by causing an unreasonable noise as determined by the authorized officer between the hours of 10:00 p.m. and 6:00 a.m. Pacific Standard Time.

m. Allow any pet or other animal in their care to be unrestrained at any time.

n. Fail to follow orders of directions of an authorized officer.

o. Obstruct, resist, or attempt to elude a Law Enforcement Officer or fail to follow their orders or direction.

Signs and maps directing the public to designated spectator areas will be provided by the Bureau of Land Management and the event sponsor. Maps are available at the Las Vegas Field Office.

The above restrictions do not apply to emergency vehicles and vehicles owned by the United States, the State of Nevada or Clark County. Vehicles under permit for operation by event participants must follow the race permit stipulations.

Operators of permitted vehicles shall maintain a maximum speed limit of 25 mph on all BLM roads and ways. Authority for closure of public lands is found in 43 CFR 8340 subpart 8341; 43 CFR part 8360, subpart 8364.1 and 43 CFR 8372. Persons who violate this closure order are subject to fines and or arrest as prescribed by law.

FOR FURTHER INFORMATION CONTACT: Dave Wolf, Recreation Manager or Ron Crayton or Ken Burger, BLM Rangers, BLM Las Vegas Field Office, 4765 Vegas Dr., Las Vegas, Nevada 89108, (702) 647–5000.

Dated: August 25, 1999.

Dave Wolf,

Acting Field Office Manager.

[FR Doc. 99–23145 Filed 9–7–99; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU–72110]

Utah; Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97–451), a petition for reinstatement of oil and gas lease UTU–72110 for lands in Uintah County, Utah, was timely filed and required rentals accruing from December 1, 1998, the date of termination, have been paid.

The lessees have agreed to new lease terms for rentals and royalties at rates of $10 per acre and 16⅔ percent, respectively. The $500 administrative fee has been paid and the lessees have reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate lease UTU–72110, effective December 1, 1998, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Dated: August 31, 1999.

Robert Lopez,

Branch Chief, Minerals Adjudication.

[FR Doc. 99–23153 Filed 9–7–99; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–1430–01; AA–6497]

Public Land Order No. 7410; Partial Revocation of Executive Order dated April 1, 1915; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive order insofar as it affects approximately 29,709 acres of lands withdrawn for Bureau of Land Management Power Site Reserve No. 485 at Iliamna Lake region. The lands are no longer needed for the purpose for which they were withdrawn. This action allows the conveyance of approximately 11,211 acres of the lands to the State of Alaska, if such lands are otherwise available. Any of the lands described herein that are selected by but not conveyed to the State will be subject to the terms and conditions of Public Land Order No. 5184, as amended, Public Land Order No. 5174, as amended, and any other withdrawal or segregation of record. Approximately 18,498 acres of the lands have been conveyed out of Federal ownership or lie within the Lake Clark National Preserve pursuant to the Alaska National Interest Lands Conservation Act.

EFFECTIVE DATE: September 8, 1999.

FOR FURTHER INFORMATION CONTACT: Robbie J. Havens, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5049.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), and by Section 17(d)(1) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(d)(1) (1994), it is ordered as follows:

1. Executive Order dated April 1, 1915, as modified, which withdrew lands for Bureau of Land Management Power Site Reserve No. 485 in the Iliamna Lake area, is hereby revoked insofar as it affects the following described lands:

Seward Meridian, Alaska

All lands within ¼ mile of the Lower Tazimina Lake, the Tazimina River between Lower Tazimina Lake and Sixmile Lake, the Kakhonak Lake, and the Kakhonak River between Kakhonak Lake and Kakhonak Bay, an arm of Iliamna Lake, located within:

(a) Those portions of Tps. 7 and 8 S., Rs. 28 and 29 W., (unsurveyed), and T. 8 S., R. 30 W., (surveyed) which have not been conveyed out of Federal ownership. The area described contains approximately 11,211 acres.

(b) Those portions of Tps. 8 S., Rs. 30 and 31 W., T. 9 S., R. 31 W., T. 2 S., R. 30 W., and Tps. 2 and 3 S., Rs. 31 and 32 W., (all surveyed) which lie within the Lake Clark National Preserve or have been conveyed out of Federal ownership.

The area described contains approximately 18,498 acres.

The areas described in (a) and (b) above aggregate approximately 29,709 acres.

2. The State of Alaska applications for selection made under Section 6(b) of the

Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1994), and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1994), for the lands described in paragraph 1(a), become effective without further action by the State upon publication of this public land order in the **Federal Register**, if such lands are otherwise available. Lands selected by, but not conveyed to the State, will be subject to the terms and conditions of Public Land Order No. 5184, as amended, Public Land Order No. 5174, as amended, and any other withdrawal or segregation of record.

3. The public lands described in paragraph 1(b) will remain withdrawn as part of the Lake Clark National Preserve pursuant to Sections 201(7)(a) and Section 206 of Alaska National Interest Lands Conservation Act, 16 U.S.C. 410hh–5 (1994). This action is for record clearing purposes only as to those lands that have been conveyed out of Federal ownership.

Dated: August 13, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–23246 Filed 9–7–99; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–120–99–1640–00; COC–63206]

Realty Action: Sale of Public Land in Grand County, Colorado

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice of realty action.

SUMMARY: The following public land in Grand County, Colorado has been examined and found suitable for direct sale under section 203 and 209(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 1719), at not less than the appraised fair market value. The mineral interest will be included in the sale.

Affected Public Land

Sixth Principal Meridian

T. 4N., R. 76W.,
sec. 24, lot 8

The lands described above contain 3.20 acres, more or less.

FOR FURTHER INFORMATION CONTACT: The environmental assessment and other information concerning this sale is available for review in the Kremmling Field Office at 1116 Park Avenue, Kremmling, Colorado 80459, (97024–3437).

SUPPLEMENTARY INFORMATION: Publication of this notice in the **Federal Register** segregates the public land from operation of the public land laws, including the mining laws, for a period of 270 days from the date above unless the sale is cancelled or completed prior to this date. The following reservations will be made in a patent issued for the public land:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1990 (43 U.S.C. 945).

For a period of 45 days from the date of this notice, interested parties may submit comments to the Field Manager, Kremmling Field Office, Bureau of Land Management, P.O. Box 68, Kremmling, Colorado 80459. Any adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any advance comments, this realty action will become the final determination of the Department of Interior.

Dated: August 25, 1999.

Linda M. Gross,

Field Manager.

[FR Doc. 99–23248 Filed 9–7–99; 8:45 am]

BILLING CODE 4310–JB–M

International Trade Commission

[Investigation No. 337–TA–416]

Certain Compact Multipurpose Tools; Notice of Issuance of General Exclusion Order and Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that, having found violations of section 337 of the Tariff Act of 1930 as amended (19 U.S.C. 1337), the U.S. International Trade Commission has issued a general exclusion order under section 337(d) (19 U.S.C. 1337(d)) and has terminated the investigation.

FOR FURTHER INFORMATION CONTACT: P.N. Smithey, Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3061. General information concerning the Commission also may be obtained by accessing its Internet server (http://www.usitc.gov). Hearing-impaired individuals can obtain information concerning this matter by contacting the Commission's TDD terminal at 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission conducted the subject investigation to determine whether there is a violation of section 337 of the Tariff Act of 1930 as amended (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain compact multipurpose tools that allegedly infringe claims of four U.S. design patents. The complainant was the patent owner, Leatherman Tool Group, Inc. Six firms were named as respondents: Suncoast of America, Inc.; Quan Da Industries; Kumasama Products Co., Ltd.; Jiangsu Hongbao Group, Corp.; SCIKO Chinalight, Ltd.; and Charles Amash Imports, Inc., d/b/a Grip On Tools. Grip On and Suncoast were terminated from the investigation on the basis of consent orders. The Commission found Jiangsu, Kumasama, Quan Da, and SCIKO to be in default in light of their failure to answer the complaint and notice of investigation in the manner prescribed by the Commission's rules and their failure to respond to orders directing them to show cause why they should not be found in default. By granting the complainant's motions for summary determination on various issues, the Commission determined that the latter four respondents violated section 337.[1]

The remaining issues for the Commission to decide were (1) the appropriate remedy for the aforesaid violations, (2) whether the statutory public interest factors precluded such relief, and (3) the amount of the bond during the Presidential review period under section 337(j).[2] In making those determinations, the Commission was required to take into account the presiding administrative law judge's recommended determination (RD) on permanent relief and bonding under 19 CFR 210.42(a)(2), as well as any written submissions from parties, the public, or other Federal agencies.[3] The Commission solicited but did not receive submissions from other agencies or members of the public.[4] Complainant Leatherman and the Commission investigative attorney each filed a written submission on remedy, the public interest, bonding, and the RD.

After considering the RD and the parties' submissions, the Commission determined that a general exclusion order is the appropriate remedy for the violations found in the subject investigation, that the statutory public interest factors do not preclude such relief, and that the bond during the Presidential review period should be 100 percent of the imported articles' entered value.

The Commission accordingly has terminated the investigation and issued a general exclusion order prohibiting the entry of imported tools covered by one or more of the following design patents: U.S. Letters Patent Des. 385,168, entitled "Scissors," issued on October 21, 1997; U.S. Letters Patent Des. 385,169, entitled "Folding Scissors," issued on October 21, 1997; U.S. Letters Patent Des. 385,170, entitled "Folding Scissors," issued on October 21, 1997; and U.S. Letters Patent Des. 380,362, entitled "Scissors," issued on July 1, 1997.

Nonconfidential copies of the Commission's Order and its Opinion on Remedy, the Public Interest, and Bonding, all other documents cited in this notice, and all other nonconfidential documents filed in the investigation are or will be made available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Commission's Office of the Secretary, Dockets Branch, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–1802.

Issued: August 30, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–23316 Filed 9–7–99; 8:45 am]

BILLING CODE 7020–02–P

[1] *See* 63 FR 52287 (Sept. 30, 1998); 63 FR 70215 (Dec. 18, 1998); and 64 FR 35679 (July 1, 1999).

[2] *See* 19 CFR 210.50(a) and 19 U.S.C. 1337(d), (f), (g), and (j)(3).

[3] *See* 19 CFR 210.42(a)(2) and 210.50(a)(4). *See also* 19 U.S.C. 1337(b)(2) and S. Rept. No. 1298, 93d Cong. 2d Sess. at 195 (1974).

[4] *Id.* and 64 FR 35679 (July 1, 1999).

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–282 (Review)]

Petroleum Wax Candles From China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty order on petroleum wax candles from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission instituted this review on January 4, 1999 (64 FR 365, January 4, 1999) and determined on April 8, 1999 that it would conduct an expedited review (64 FR 19197, April 19, 1999).

The Commission transmitted its determination in this investigation to the Secretary of Commerce on September 1, 1999. The views of the Commission are contained in USITC Publication 3226 (August 1999), entitled Petroleum Wax Candles from China: Investigation No. 731–TA–282 (Review).

Issued: September 1, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–23315 Filed 9–7–99; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioners Crawford and Askey dissenting.

INTERNATIONAL TRADE COMMISSION

Investigation No. 332–345

Shifts in U.S. Merchandise Trade in 1999

AGENCY: United States International Trade Commission.

ACTION: Opportunity to submit written statements in connection with the 1999 report.

EFFECTIVE DATE: July 29, 1999.

SUMMARY: The Commission has prepared and published annual reports on U.S. trade shifts in selected industries/commodity areas under investigation No. 332–345 since 1993. The Commission plans to publish the next report in July 2000, which will cover shifts in U.S. trade in 1999 compared with trade in 1998. The report structure and content is anticipated to be similar to the report issued in August 1999. Comments and suggestions regarding the July 2000 report are welcome in written submissions as specified below. The latest version of the report covering 1998 data (USITC Publication 3220, August 1999) may be obtained from the USITC's Internet server (http://www.usitc.gov). A printed report may be requested by contacting the Office of the Secretary at 202–205–2000 or by fax at 202–205–2104.

FOR FURTHER INFORMATION CONTACT: Questions about the trade shifts report may be directed to the project leader, Karl Tsuji, Office of Industries (202–205–3434) or the assistant project leader, Tracy Quilter, Office of Industries (202–205–3437). For information on the legal aspects, please contact Mr. William Gearhart, Office of General Counsel (202–205–3091). The media should contact Ms. Margaret O'Laughlin, Public Affairs Officer (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810).

Background

The initial notice of institution of this investigation was published in the **Federal Register** of September 8, 1993 (58 FR 47287). The Commission expanded the scope of this investigation to cover service trade in a separate report, which it announced in a notice published in the **Federal Register** of December 28, 1994 (59 FR 66974). The merchandise trade report has been published in the current series under investigation No. 332–345 annually since September 1993.

As in past years, each report will summarize and provide analyses of the major trade developments that occurred in the preceding year, and is expected to be published in July of each year. The reports will also provide summary trade information and basic statistical profiles of about 300 industry/commodity groups.

Written Submissions

No public hearing is planned. However, interested persons are invited to submit written comments or suggestions concerning the July 2000 report. Commercial or financial information which a submitter desires the Commission to treat as confidential must be provided on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested persons. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission in accordance with section 201.8 at the earliest practical date and should be received no later than the close of business on December 30, 1999. All submissions should be addressed to the Secretary, United States International

Trade Commission, 500 E Street, SW, Washington, DC 20436. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

Issued August 31, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–23317 Filed 9–7–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of Information Collection Under Review; (Reinstatement, with change, of a previously approved collection for which approval has expired); Local Law Enforcement Block Grants Program.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, has submitted the following information collection request for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by September 10, 1999. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Department of Justice Desk Officer, (202) 395–7860, Washington, DC 20530.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Lluana McCann, 202–305–1772, Bureau of Justice Assistance, Office of Justice Programs, US Department of Justice, 810 7th Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) Type of information collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) The title of the form/collection: Local Law Enforcement Block Grants Program.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: None.

(4) Affected public who will be asked or required to respond, as well as a brief abstract:

Primary: State, Local or Tribal Government.

Other: None.

The Local Law Enforcement Block Grants Act of 1996 authorizes the Director of the Bureau of Justice Assistance to make funds available to local units of government in order to reduce crime and improve public safety.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that 3,500 respondents will apply for funding and complete a one-hour on-line application.

(6) An estimate of the total public burden (in hours) associated with the collection: The total hours burden to complete the application is 3,500.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, NW, Washington, DC 20530, or via facsimile at (202) 514–1534.

Dated: September 1, 1999.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 99–23285 Filed 9–7–99; 8:45 am]

BILLING CODE 4410–18–M

MEDICARE PAYMENT ADVISORY COMMISSION

Commission Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of Meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, September 16, 1999 and Friday, September 17, 1999 at the Embassy Suites Hotel, 1250 22nd Street, NW, Washington, DC. The meeting is tentatively scheduled to begin at 11:00 a.m. on September 16, and 9:00 a.m. on September 17.

The Commission will discuss Medicare + Choice, payments to teaching hospitals, payments for evaluation and management services, the physician fee schedule, payment update issues for inpatient, outpatient, and post-acute care settings, ESRD payment reform, access to care, the expanded hospital transfer policy, and hospital capital payments.

Agendas, will be mailed on September 7, 1999. The final agenda will be available on the Commission's website (www.MedPAC.gov).

ADDRESSES: MedPAC's address is: 1730 K Street, NW, Suite 800, Washington, DC 20006. The telephone number is (202) 653–7220.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 653–7220.

SUPPLEMENTARY INFORMATION: If you are not on the Commission mailing list and wish to receive an agenda, please call (202) 653–7220.

Murray N. Ross,

Executive Director.

[FR Doc. 99–23378 Filed 9–7–99; 8:45 am]

BILLING CODE 6820–BW–M

NATIONAL CAPITAL PLANNING COMMISSION

Public Meeting on Proposed New Policies for Memorial in the Nation's Capital.

AGENCY: National Capital Planning Commission.

ACTION: Notice of public meetings on proposed new policies for memorials in the Nation's Capital.

Background

The National Capital Planning Commission, the Commission of Fine Arts, and the National Capital Memorial Commission (Joint Task Force on Memorials) will hold public hearings on Wednesday, September 29, 1999 in Washington, DC at the Martin Luther King Memorial Library, 901 G Street, NW in Room A–5 (lower level). The meeting will be held in afternoon and evening sessions. The afternoon session will run from 2:00 PM to 4:30 PM and the evening session will run from 6:00 PM to 8:30 PM. The purpose of the hearings is to receive public testimony on proposed new policies for monuments, memorials, and museums in the Nation's Capital. The 60-day public comment period on the proposed policies ends on November 8, 1999.

The Joint Task Force, whose parent agencies are responsible for reviewing and approving the placement and design of commemorative works in the National Capital, have been meeting since fall 1997 to forge a consensus on new policies for commemorative works in the Mall area. The three commissions have agreed to seek public comments on a draft policy statement and map, which establish a protected area in the central cross-axis of the Mall (the Reserve) in which no new commemorative sites would be approved. The proposed policy also calls for the creation of a zone adjacent to the Reserve where new monuments, memorials, and museums, meeting certain predetermined criteria, would be permitted to locate (Area A). Finally, the proposal creates an area outside Area A where new commemorative works would be encouraged to locate (Area B) (See Illustration 1).

SUMMARY: The Proposed Policy Statement reads as follows:

The Reserve

The great cross-axis of the Mall forms one of the world's premier examples of civic art, which itself is a monument to democracy. Here the nation commemorates its history, and citizens can join in celebration, congregation, contemplation, and the exercise of their rights of free speech and assembly.

The Reserve is a unique national space, an embodiment of our democratic ideals and achievements, and must be preserved as an indispensable, nationally significant cultural resource. This setting has matured as the nation has matured. The cross-axis, framed by monuments and museums, constitutes the historic urban design framework of the capital established by the L'Enfant and McMillan Plans-open spaces, long axes, and dramatic vistas. It must be rigorously protected. No new memorial sites will be approved in this area.*

The Mall is a historic, monumental open space and a substantially completed work of public urban design. The east-west axis extends from the U.S. Capitol to the Lincoln Memorial. The north-south axis stretches from the White House to the Jefferson Memorial. The L'Enfant Plan established the central greensward that was extended to the west a century later by the McMillan Plan. This latter plan created the great cross-axis that dominates the Mall Complex well known to American and world visitors alike. The area is defined primarily by monuments, memorials, and museums contained by a carefully designed landscape that is extended by water and the monumental skyline. This vast open space enhances public and individual gatherings and recreation. The Mall's sweeping vistas and reciprocal views contribute greatly to the power and beauty of the Nation's Capital.

Area A

Area A, immediately adjacent to the Reserve, comprises the rest of the Monumental Core of the Nation's Capital. The importance of Area A accrues from its proximity to the Reserve and from its own significance as an area of commemoration and historic and scenic vistas. This area also serves as an important recreation area under the jurisdiction of the National Park Service. Memorials may be approved for this area subject to restrictive criteria and design guidelines that ensure that memorials will not intrude on the significance of the setting.*

The Commemorative Works Act of 1986 recognizes the importance of protecting much of this area by limiting future memorials to those of preeminent historical significance. The Task Force's current proposal would slightly enlarge the boundary of this zone to extend this protection, primarily to federal lands on the Virginia shore of the Potomac River.

Area B

Area B is the rest of the city of Washington with emphasis on the important North, South, and East Capitol Street axes, as well as circles and squares on major avenues, waterfronts, urban gateways and scenic overlooks. The idea of encouraging the placement of memorials in strategic locations beyond the traditional Monumental Core is a key premise of the National Capital Planning Commission's framework plan, *Extending the Legacy: Planning America's Capital for the 21st Century.*

The Joint Task Force on Memorials strongly encourages the siting of commemorative works in the National Capital in Area B. Monuments and memorials have the power to encourage civic beauty and pride. Memorial sponsors should consider appropriate sites throughout the Nation's Capital and its environs, especially in association with federal facilities on Special Streets and Gateways, on circles, squares, and other parkland, and along the waterfront where the presence of memorials will reinforce the L'Enfant and McMillan Plans.

In some cases, commemorative works can impart extra meaning to or be enhanced by museums. The Task Force encourages the siting of such works in Area B, which provides many appropriate areas for locating memorials and their associated museums in proximity to each other. This commemorative and planning activity would encourage tourism, educational opportunities, and good urban design, as well as civic, cultural, and economic development throughout the Washington area.

The development of memorials in urban areas may entail unusual cost and complexity for land acquisition and infrastructure. Federal assistance should be used to encourage the establishment of memorials in Area B, in recognition of the valuable federal land otherwise contributed to memorial sites in Area A.

Public Comment Period

Public testimony will be taken at the public meetings on September 29, 1999. Individuals interested in testifying at the meetings should call the National Capital Planning Commission at (202) 482–7200 no later than 12:00 noon, Eastern Time, the day before the public meeting to register in advance. Members of the public who wish to testify and have not signed up in advance may sign up at the meeting before the start of the session. Public testimony will be limited to five minutes each, and will generally be scheduled on a first-come basis.

Written comments may be submitted before, during, or after the meetings. Comments should be mailed to the attention of the Joint Task Force on Memorials, c/o Ronald Wilson, National Capital Planning Commission, 801 Pennsylvania Avenue, NW, Suite 301, Washington, DC 20576. Comments may also be sent by e-mail to info@ncpc.gov. All written and oral comments will become part of the public record. Comments should be received no later than COB, November 8, 1999, the end of the 60-day public comment period.

FOR FURTHER INFORMATION CONTACT: Joint Task Force on Memorials, c/o Ronald Wilson, National Capital Planning Commission, at (202) 482–7242.

* Within both the Reserve and Area A, the proposed restrictions are not applicable to commemorative works that received site approval prior to September 8, 1999 from the Commission of Fine Arts, the National Capital Planning Commission, and the Secretary of the Interior or the Administrator of the General Services Administration, as appropriate. These memorials are the World War II Memorial in the Reserve, and the following in Area A: the Black Revolutionary War Patriots Memorial, the George Mason Memorial, and the U.S. Air Force Memorial. In addition, the Martin Luther King, Jr. Memorial has been approved for a location within the proposed Area A, but a *specific* site has not yet been approved.

SUPPLEMENTARY INFORMATION:
Availability of Copies and Electronic Access. Single copies of the draft memorials policy statement and map may be obtained at no cost from the Joint Task Force on Memorials by writing the National Capital Planning Commission, 801 Pennsylvania Avenue, NW, Suite 301, Washington, DC 20576 or by calling NCPC at (202) 482–7200. The documents are also available on NCPC's Internet site http://www.ncpc.gov.

Dated: September 1, 1999.

Lise L. Wineland,

Attorney Advisor

BILLING CODE 7520–01–p

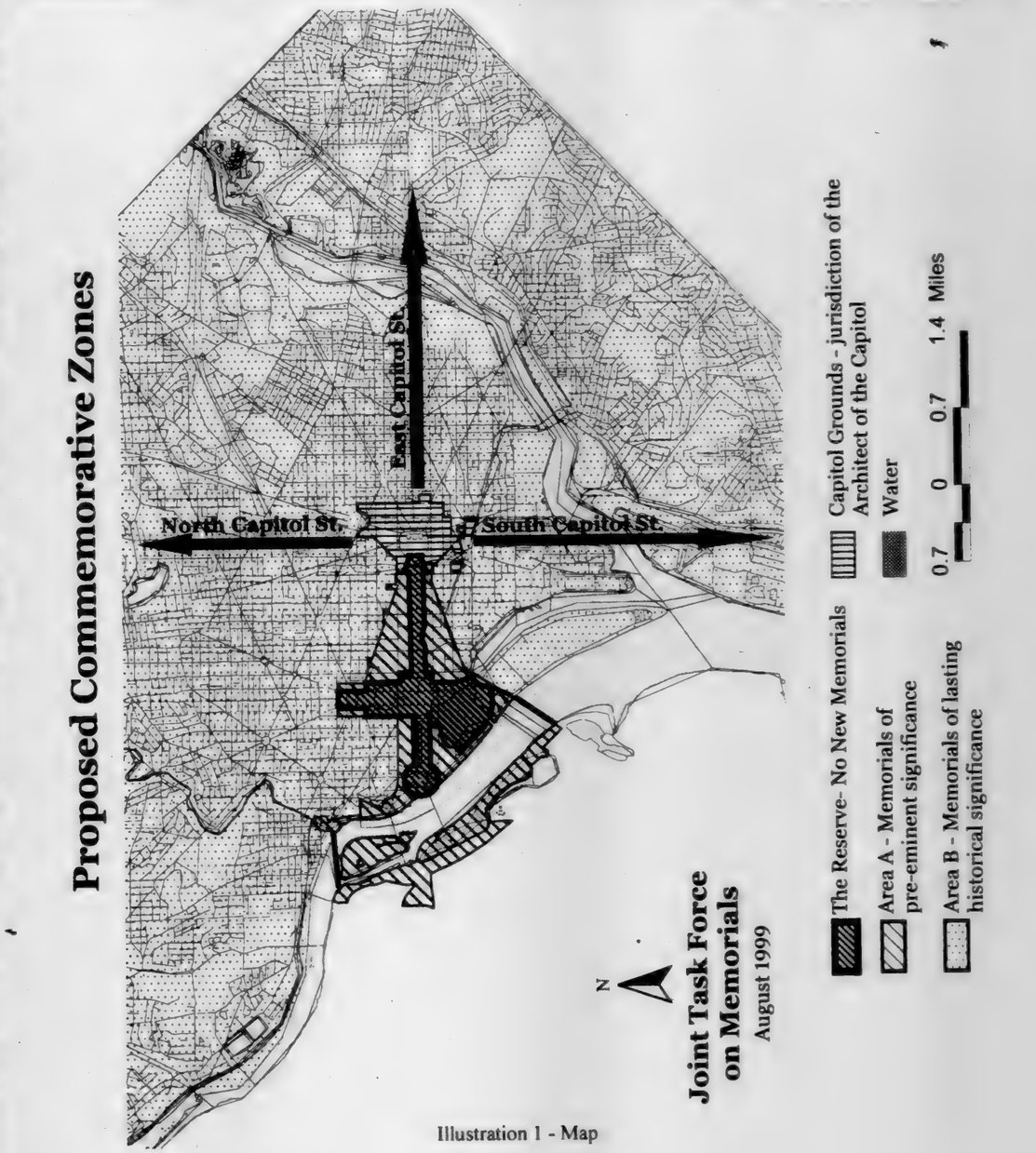

Illustration 1 - Map

[FR Doc. 99–23313 Filed 9–8–99; 8:45 am]

BILLING CODE 7520–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing

The National Transportation Safety Board will convene a public hearing beginning at 9 a.m., local time on Monday, September 13, 1999, at the Ambassador West, Wyndham Grand Heritage Hotel, 1300 North State Parkway, Chicago, Illinois concerning the *Investigation of the Collision and Derailment of Amtrak Train No. 59, the City of New Orleans, with an East Bound Tractor Semi-trailer Truck at Railroad/Highway Grade Crossing, near Bourbonnais, Illinois, on March 15, 1999.* For more information, contact James S. Dunn, NTSB Office of Highway Safety at (202) 314–6436 or Terry N. Williams, NTSB Office of Public Affairs at (202) 314–6100.

Dated: September 1, 1999.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 99–23232 Filed 9–7–99; 8:45 am]

BILLING CODE 7533–01–M

NATIONAL WOMEN'S BUSINESS COUNCIL

Sunshine Act Notice

AGENCY: National Women's Business Council.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Women's Business Ownership Act, Public Law 105–135 as amended, the National Women's Business Council (NWBC) announces a forthcoming Council meeting and joint meeting of the NWBC and Interagency Committee on Women's Business Enterprise. The meetings will cover action items worked on by the National Women's Business Council and the Interagency Committee on Women's Business Enterprise included by not limited to procurement, acces to capital and training.

DATES: September 23, 1999.

ADDRESSES: Council Meeting & Joint Meeting. The White House/Old Executive Office Building/(17th & Penn. Entrance), Washington, DC. Council Meeting, S–476, 9 a.m. to 10 a.m., Joint Meeting, Indian Treaty Room, 10 a.m. to 12 p.m.

Note: No admittance without prior official clearance. Please have a photo ID.

STATUS: Open to the public.

CONTACT: National Women's Business Council, 409 Third Street, SW., 8th Floor, Washington, DC 20024, (202) 205–3850.

Note: Please call by September 13, 1999.

Gilda Presley,

Administrative Officer,

National Women's Business Council.

[FR Doc. 99–23481 Filed 9–3–99; 3:57 pm]

BILLING CODE 6820–AR–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–295 and 50–304]

Commonwealth Edison Company; (Zion Nuclear Power Station, Units 1 and 2); Exemption

I.

Commonwealth Edison Company (ComEd or the licensee) is the holder of Facility Operating License Nos. DPR–39 and DPR–48, which authorize the licensee to possess the Zion Nuclear Power Station (ZNPS). The license states, among other things, that the facility is subject to all the rules, regulations, and orders of the US Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The facility consists of two pressurized-water reactors located at the ComEd site on the west shore of Lake Michigan about 40 miles north of Chicago, Illinois, in the extreme eastern portion of the city of Zion, Illinois (Lake County). The facility is permanently shut down and defueled, and the licensee is no longer authorized to operate or place fuel in the reactor.

II.

Section 50.12(a) of 10 CFR, "Specific exemption," states that.* * * The Commission may, upon application by any interested person, or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are: (1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. (2) The Commission will not consider granting an exemption unless special circumstances are present.

Section 50.12(a)(2)(ii) of 10 CFR states that special circumstances are present when "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.* * *" The underlying purpose of sections 50.47(b) and 50.47(c)(2) is to ensure that there is reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, to establish plume exposure and ingestion pathway emergency planning zones for nuclear power plants, and to ensure that licensees maintain effective offsite and onsite emergency plans.

By letter dated April 13, 1999, ComEd requested an exemption from certain provisions of 10 CFR 50.47(b) and 10 CFR 50.47(c)(2) on the basis that the permanently shutdown and defueled condition of the ZNPS had substantially reduced the risk to public health and safety. In addition, the licensee submitted a proposed Defueled Station Emergency Plan (DSEP) for NRC's approval. The DSEP proposed to discontinue offsite emergency planning activities and to reduce the scope of onsite emergency planning. Thus, exemptions from certain provisions of 10 CFR 50.47(b) and 50.47(c)(2) are required to implement the proposed DSEP to maintain compliance with the regulation.

By letter dated April 13, 1999, and supplemental letters dated July 8, July 19, and August 30, 1999, the licensee also submitted an analysis of the radiological consequences of a postulated event, an analysis to determine the maximum Zircaloy cladding temperature in the spent fuel pool (SFP) with the fuel exposed to an air environment, and an analysis to determine the potential upper limit radiation fields at the exclusion area boundary.

III.

The licensee stated that special circumstances exist at ZNPS because of the station's permanently shutdown and defueled condition. The standards in 10 CFR 50.47(b) and the requirements in 10 CFR 50.47(c)(2) were developed taking into consideration the risks associated with operation of a nuclear power reactor at its licensed full-power level. The risks include the potential for an accident with offsite radiological dose consequences. There are no design basis accidents or other credible events for ZNPS that would result in a radiological dose beyond the exclusion area boundary that would exceed the Environmental Protection Agency's (EPA) Protective Action Guidelines (PAGs). Therefore, the application of all of the standards in 10 CFR 50.47(b) and the requirements of 10 CFR 50.47(c)(2) are not necessary to achieve the underlying purpose of those rules.

The licensee analyzed the heatup characteristics of the spent fuel from a beyond design basis event that results in the complete loss of spent fuel pool (SFP) water, when cooling depends on the natural circulation of air through the spent fuel racks. The licensee presented the results of an analysis showing that as of June 30, 1999, decay heat could not heat the spent fuel cladding above 482 °C in the event all water was drained from the SFP. The staff reviewed the licensee's analysis and found the licensee's value for peak fuel cladding temperature acceptable. On the basis of a staff determination that fuel cladding will remain intact at this temperature, the staff concluded that a complete loss of water from the ZNPS SFP would not result in a release off site that exceeds the early-phase EPA PAGs.

Although a significant release of radioactive material from the spent fuel is no longer possible in the absence of water cooling, a potential exists for radiation exposure to an offsite individual in the event that shielding of the fuel is lost (a beyond-design-basis event). Water and the concrete pool structure serve as radiation shielding on the sides of the pool. However, water alone provides most of the shielding above the spent fuel. A loss of shielding above the fuel could increase the radiation levels off site because of the gamma rays streaming up out of the pool being scattered back to a receptor at the site boundary. The licensee calculated the offsite radiological impact of a postulated complete loss of SFP water and determined that the gamma radiation dose rate at the exclusion area boundary would be 0.00294 rad per hour at an outside air temperature of 21 °C. At this rate, it would take 14 days for the event to exceed the EPA early-phase PAG of 1 rem. The EPA early-phase PAG is defined as the period beginning at the projected or actual initiation of a release and extending a few days later. The PAGs were developed to respond to a mobile airborne plume that could transport and deposit radioactive material over a large area. In contrast, the radiation field formed by scatter from a drained SFP would be stationary rather than moving and would not cause transport or deposition of radioactive materials. The 14 days available for action allow sufficient time to develop and implement mitigative actions and provide confidence that additional offsite measures could be taken without planning if efforts to reestablish shielding over the fuel are delayed.

The standards and requirements that remain in effect are listed in Attachment 1 to the licensee's letter of April 13, 1999, and Attachment 2 to the licensee's letter of July 8, 1999. On the basis of this review, the staff finds that the radiological consequences of accidents possible at ZNPS are substantially lower than those at an operating plant. The upper bound of offsite dose consequences limits the highest attainable emergency class to the alert level. In addition, because of the reduced consequences of radiological events still possible at the site, the scope of the onsite emergency preparedness organization may be reduced. Thus, the underlying purpose of the regulations will not be adversely affected by eliminating offsite emergency planning activities or reducing the scope of onsite emergency planning. Accordingly, the Commission has determined that special circumstances as defined in 10 CFR 50.12(a)(2)(ii) exist.

IV.

The Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety and is consistent with the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants Commonwealth Edison Company an exemption from certain requirements of 10 CFR 50.47(b) and 10 CFR 50.47(c)(2).

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will have no significant impact on the environment (64 FR 45981).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 31st day of August 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–23297 Filed 9–7–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Tennessee Valley Authority

[Docket No. 50–390]

Notice of Partial Withdrawal of Application for Amendment to Facility Operating License

The Nuclear Regulatory Commission (the Commission) has granted a request by the Tennessee Valley Authority (the Licensee) to withdraw the remainder of its October 23, 1996, application for proposed amendment to Facility Operating License No. NPF–90 for the Watts Bar Nuclear Plant, located in Rhea County, Tennessee.

The remaining portion of the application that was not approved by license amendment number 6, issued on July 28, 1997, proposed the installation of spent fuel racks in the cask pit area of the spent fuel pool for an additional 225 storage spaces and the use of an impact shield over the fuel in the cask pit when heavy loads are moved near or across the cask pit area.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on April 2, 1997 (62 FR 15733). However, by letter dated July 22, 1999, the licensee withdrew that portion of the proposed amendment related to storage in the cask pit.

For further details with respect to this action, see the application for amendment dated October 23, 1996, Amendment to Facility Operating License Number 6 issued on July 28, 1997, and the licensee's letter dated July 22, 1999. The above documents are available for public inspection at the Commission's Public Document room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room located at the Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, TN 37402.

Dated at Rockville, Maryland, this 1st day of September 1999.

For the Nuclear Regulatory Commission.

Robert E. Martin,

Senior Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–23299 Filed 9–7–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Postponement of Public Workshop To Develop a Standard Review Plan for Decommissioning

AGENCY: Nuclear Regulatory Commission.

ACTION: Postponement of public workshop.

SUMMARY: This notice announces the postponement of one of the public workshops the Nuclear Regulatory Commission (NRC) is sponsoring to solicit input from stakeholders during the development of a Standard Review Plan (SRP) and other guidance for decommissioning nuclear facilities.

SUPPLEMENTARY INFORMATION: On October 21, 1998, NRC announced that it was sponsoring a series of public workshops to support the staff's development of an SRP and other guidance for the decommissioning of nuclear facilities. On November 18,

1998, NRC published the schedule for these workshops and indicated that a workshop would be held on October 20–21, 1999, at NRC Headquarters at Two White Flint North, 11545 Rockville Pike, Rockville, MD. At the conclusion of the August workshop, the participants agreed to postpone the October workshop until February 2000. The rescheduling will allow more time for public review of the SRP prior to the final workshop. The workshop will be held at NRC Headquarters at Two White Flint North, 11545 Rockville Pike, Rockville, MD. NRC staff will announce the date for this workshop in a future **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Dominick A. Orlando, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, at (301) 415–6749.

Dated at Rockville, Maryland, this 30th day of August 1999.

For the US Nuclear Regulatory Commission.

Larry W. Camper,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–23298 Filed 9–7–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of September 6, 13, 20, 27 *and* October 18, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of September 6

Tuesday, September 7

9:15 a.m.—Briefing on PRA Implementation Plan (Public Meeting) (Contact: Tom King, 301–415–5790).

Friday, September 10

11:30 a.m.—Affirmation Session (Public Meeting)

a. Final Rule: "Respiratory Protection and Controls to Restrict Internal Exposures, 10 CFR Part 20"

b. Yankee Atomic Electric Company (Yankee Nuclear Power Station), Docket No. 50–029–LA, Yankee Atomic's Motion for Leave to Withdraw Appeal of LBP–99–14

Week of September

There are no meetings scheduled for the Week of September 13.

Week of September 20—Tentative

Tuesday, September 21

9:25 a.m.—Affirmation Session (Public Meeting), (if needed).

9:30 a.m.—Briefing by DOE on Draft Environmental Impact Statement (DEIS) for a Proposed HLW Geologic Repository (Public Meeting).

Wednesday, September 22

9:00 a.m.—Meeting on Center for Strategic and International Studies Report, "The Regulatory Process for Nuclear Power Reactors—a Review" (Public Meeting).

Week of September 27—Tentative

There are no meetings scheduled for the Week of September 27.

And

Week of October 18—Tentative

Thursday, October 21

9:30 a.m.—Briefing on Part 35—Rule on Medical Use of Byproduct Material (Contact: Cathy Haney, 301–415–6825) (SECY–99–201, *Draft Final Rule—10 CFR Part 35, Medical Use of Byproduct Material,* is available in the NRC Public Document Room or on NRC web site at "www.nrc.gov/NRC/COMMISSION/SECYS/index.html". Download the *zipped version* to obtain all attachments.)

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: September 3, 1999.

William M. Hill, Jr.,

Secy, Tracking Officer, Office of the Secretary.

[FR Doc. 99–23425 Filed 9–3–99; 2:36 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from August 14, 1999, through August 27, 1999. The last biweekly notice was published on August 25, 1999 (64 FR 46424).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period.

However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By October 8, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of amendment request: August 3, 1999.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 2.1.B to increase the minimum critical power ratio for higher cycle exposures for Unit 2. The proposed amendments would also revise TS 6.9.A.6.b for Units 2 and 3 to add an NRC-approved topical report to the list of analytical methodologies that are used to determine operating limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of an evaluated accident is derived from the probabilities of the individual precursors to that accident. The consequences of an evaluated accident are determined by the operability of plant systems designed to mitigate those consequences. Limits have been established consistent with NRC-approved methods to ensure that fuel performance during normal, transient, and accident conditions is acceptable. These changes do not affect the operability of plant systems, nor do they compromise any fuel performance limits.

Changing the Minimum Critical Power Ratio (MCPR) Safety Limit (SL) at Dresden Nuclear Power Station Unit 2 will not increase the probability or the consequences of an accident previously evaluated. This change implements the MCPR SL resulting from the Siemens Power Corporation (SPC) ANFB critical power correlation methodology using the approved ATRIUM–9B additive constant uncertainty. For each cycle, specific MCPR SL calculations will be performed, consistent with SPC's approved methodology, to confirm the appropriateness of the MCPR SL. Additionally, operational MCPR limits will be applied that will ensure the MCPR SL is not violated during all modes of operation and anticipated operational occurrences. The MCPR SL ensures that less than 0.1% of the rods in the core are expected to experience boiling transition. Therefore, the probability or consequences of an accident will not increase.

Adding EMF–85–74, Revision 0, Supplements 1 and 2 (P)(A) to Section 6 for Dresden Nuclear Power Station Units 2 and 3, does not increase the probability or consequences of an accident previously evaluated. The NRC-approved burnup extension for RODEX2A applications has been demonstrated to meet all applicable design criteria. Therefore, adding this methodology to Technical Specification Section 6 does not increase to the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated:

Creation of the possibility of a new or different kind of accident would require the creation of one or more new precursors of that accident. New accident precursors may be created by modifications to the plant configuration, including changes in allowable modes of operation. This Technical Specification submittal does not involve any modifications to the plant configuration or allowable modes of operation. No new precursors of an accident are created and no new or different kinds of accidents are created. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Changing the MCPR SL does not create the possibility of a new accident from any accident previously evaluated. This change does not alter or add any new equipment or change modes of operation. The MCPR SL is established to ensure that 99.9% of the rods avoid boiling transition.

The MCPR SL is changing for Dresden Nuclear Power Station Unit 2 to support Cycle 17 operation. This change does not introduce any physical changes to the plant, the processes used to operate the plant, or allowable modes of operation. Therefore, no new accidents are created that are different from any accident previously evaluated.

The addition of RODEX2A (EMF–85–74, Revision 0, Supplements 1 and 2 (P)(A)) to Section 6 does not create the possibility of a new accident from an accident previously evaluated. This change does not alter or add any new equipment or change modes of operation. This change does not introduce any physical changes to the plant, the processes used to operate the plant, or allowable modes of operation. Therefore, no new accidents are created that are different from any accident previously evaluated.

3. Involve a significant reduction in the margin of safety for the following reasons:

Changing the MCPR SL for Dresden Nuclear Power Station Unit 2 will not involve any reduction in margin of safety. The MCPR SL provides a margin of safety by ensuring that less than 0.1% of the rods are calculated to be in boiling transition. The proposed Technical Specification amendment request reflects the MCPR SL results from evaluations by SPC using NRC-approved methodology.

Because the methodology used to determine the MCPR SL is conservative and has received NRC approval, a decrease in the margin to safety will not occur due to changing the MCPR SL. The revised MCPR SL will ensure the appropriate level of fuel protection. Additionally, operational limits will be established based on the proposed MCPR SL to ensure that the MCPR SL is not violated during all applicable modes of operation including anticipated operation occurrences. This will ensure that the fuel design safety criterion of more than 99.9% of the fuel rods avoiding transition boiling during normal operation as well as during an anticipated operational occurrence is met.

The addition of EMF–85–74, Revision 0, Supplements 1 and 2 (P)(A) to Section 6 does not decrease the margin of safety. The burnup limit extension for RODEX2A applications has been reviewed and approved by the NRC. The data supporting the burnup extension demonstrates that all applicable design criteria are met. Therefore, since the burnup extension is acceptable and within the design criteria, using the approved burnup extension will not affect the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Morris Area Public Library District, 604 Liberty Street, Morris, Illinois 60450.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: August 13, 1999, as supplemented on August 27, 1999.

Description of amendment request: The proposed amendments would revise Technical Specification Section 1.0, "Definitions," Item 1.7, "Core Alteration," to specify that movement of instrumentation and control rod movements are not considered core alterations if there are no fuel assemblies in the associated cell. The licensee also proposed corresponding changes to TS Sections 3/4.1, 3/4.3, and 3/4.9 to reflect the change in definition.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes incorporate a definition contained in NUREG–1433, Revision 1, "Standard Technical Specifications, General Electric Plants, BWR/4." There are no modifications to plant equipment or systems and there is no direct effect on plant operation. The proposed changes do not affect any accident initiators or precursors and do not change or alter the design assumptions for systems or components used to mitigate the consequences of an accident. The proposed changes do not affect the design or operation of any system, structure, or component in the plant. The proposed changes do not impact the requirements for refueling evolutions associated with shutdown margin, core monitoring, and reactor protection system operability. There are no changes to parameters governing plant operation, and no new or different types of equipment will be installed. These changes do not impact any accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR). Therefore, no increases in the probability of an accident or consequences will result due to this change.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not affect the design or operation of any plant system, structure, or component. There are no changes to parameters governing plant operation, and no new or different type of equipment will be installed. There is no change in any method by which a safety related system performs its function. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There are no setpoints affected by this proposed action. This proposed action will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. As such, no new failure modes are being introduced. There are no changes to assumptions in accident analysis. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

The proposed changes are consistent with NUREG–1433, Revision 1, "Standard Technical Specifications, General Electric Plants, BWR/4." The proposed changes do not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. The initial conditions and methodologies used in the accident analyses remain unchanged. Therefore, accident analyses results are not impacted. There are no resulting effects on plant safety parameters or setpoints. The proposal does not involve a significant relaxation of the criteria used to establish safety limits, a significant relaxation of the bases for the limiting safety system settings, or a significant relaxation of the bases for the limiting conditions for operations. Therefore, these proposed changes do not cause a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Jacobs Memorial Library, 815 North Orlando Smith Avenue, Illinois Valley Community College, Oglesby, Illinois 61348–9692.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: May 5, 1999.

Description of amendment request: The proposed amendment would permit a one-time extension of the allowed outage time (AOT) for the reactor protection and engineered safety feature actuation instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The reactor protection and engineered safety features functions are not initiators of any design basis accident or event and therefore do not increase the probability of any accident previously evaluated. The proposed changes to the AOTs, bypass times, and allowing on-line testing and maintenance have an insignificant impact on plant safety based on the calculated CDF [core damage frequency] increase being less than LOE–06. Therefore, the proposed changes do not result in a significant increase in the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not result in a change in the manner in which the RPS [reactor protection system] and ESFAS [engineered safety features actuation system] provide plant protection. No change is being made which alters the functioning of the RPS and ESFAS. Rather, the likelihood or probability of the RPS or ESF functioning properly is affected as described above. Therefore, the proposed changes do not create the possibility of a new or different kind of accident nor involve a reduction in the margin of safety as defined in the Safety Analysis Report.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes do not alter the manner in which safety limits, limiting safety system setpoints or limiting conditions for operations are determined. The impact of increased AOTs, testing times, and allowing on-line testing and maintenance are expected to result in an overall improvement in safety because:

The longer AOTs for the master relays, logic cabinets, and analog channels will promote improved maintenance practices that will provide improved component performance, improved availability of the protection system, and a reduced number of spurious reactor trips and spurious actuation of safety equipment.

The longer AOTs and bypass times for the analog channels will provide additional time before being required to place the channel in trip. With the channel in trip, the logic required to cause a reactor trip or a safety system actuation is reduced to 1 of 2 (for 2 of 3 logic) and to 1 of 3 (for 2 of 4 logic). With the reduced logic requirement, the potential for a spurious actuation is increased. Leaving the channel in the bypass state for additional time does reduce the availability of signals to initiate component actuation for event mitigation when required, but as shown in this analysis, the impact on plant safety is small due to the availability of other signals or operator action to trip the reactor or cause component actuation.

The longer allowed outage times will provide plant operators additional flexibility in operating the plant. There will be additional time available before an action needs to be taken to shut down the plant or place a channel in the tripped state. This additional flexibility will facilitate prioritizing component repairs.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610. Biweekly Notice Coordinator Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Section Chief: S. Singh Bajwa.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: August 4, 1999.

Description of amendment request: The amendments would revise the joint Technical Specifications as follows:

(1) A current action in Section 3.2.2 requires that when one Nuclear Service Water System (NSWS) suction transfer low pit level channel is inoperable, the channel be placed in its trip position. The licensee proposed an additional alternative such that the NSWS suction can simply be aligned from Lake Wylie to the Standby Nuclear Service Water Pond (SNSWP). Suction from Lake Wylie is the normal configuration, while suction from the SNSWP is the safety configuration. This proposed alternative

action provides operational flexibility; there is no associated design change to the units.

(2) The licensee proposed to delete from Table 3.3.2–1, "Engineered Safety Feature Actuation System Instrumentation," the entry regarding Auxiliary Feedwater Loss of Offsite Power (Function 6d) on the basis that a comparable and adequate requirement will exist in Section 3.3.5. To such end, a new Surveillance Requirement (SR) 3.3.5.3 will be added, incorporating the Function 6d requirement from Table 3.3.2–1. These proposed changes remove inconsistencies that currently exist in the Technical Specifications for Function 6d. There is no associated design change to the units.

(3) In the process of converting the Technical Specification to the improved format (Amendment Nos.173 and 165), errors were inadvertently introduced regarding the conditions under which the Reactor Coolant System Subcooling Margin Monitor must be operable. The licensee proposed to correct these errors by revising the entry regarding the Subcooling Margin Monitor in Table 3.3.3–1, "Post Accident Monitoring Instrumentation". There is no associated design change to the units.

(4) Section 3.4.17 is concerned with reactor coolant system loops test exceptions. Currently Surveillance Requirement 3.4.17.2 incorrectly specifies that a COT [channel operational test] be performed "for each power range neutron flux-flow and intermediate range neutron flux channel and P–7 [Low Power Reactor Trips Block Function]". The licensee proposed to correct this statement by deleting "P–7" and adding "P–10 [Power Range Neutron Flux] and P–13 [Turbine Impulse Pressure]". This correction does not involve any design change to the units.

(5) The licensee proposed to delete from Section 5.3.1 the specific qualification requirements for Reactor Operators (ROs) and Senior Reactor Operators (SROs). Such requirements are specified by 10 CFR 50.55, "Operators" Licenses", and the licensee is required to follow this regulation. There will be no change in the qualification of ROs and SROs, and no design change to the units.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

First Standard

Implementation of this amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated. Approval of this amendment will have no effect on accident probabilities or consequences. For proposed changes #1–4, the systems and equipment referenced in the revised TS are not accident initiating systems; therefore, there will be no impact on any accident probabilities by the approval of this amendment. The design of the systems is not being modified by these proposed changes. Therefore, there will be no impact on any accident consequences. For proposed change #5, the change is purely administrative; it will therefore have no effect on any accident probabilities or consequences.

Second Standard

Implementation of this amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. No new accident causal mechanisms are created as a result of NRC approval of this amendment request. No changes are being made to the plant which will introduce any new accident causal mechanisms. This amendment request does not impact any plant systems that are accident initiators; neither does it adversely impact any accident mitigating systems.

Third Standard

Implementation of this amendment would not involve a significant reduction in a margin of safety. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of these fission product barriers will not be impacted by implementation of this proposed amendment. The systems and equipment referenced in the revised TS for proposed changes #1–4 are already capable of performing as designed. No safety margins will be impacted. Since proposed change #5 is purely administrative, it will have no effect on any safety margins.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina.

NRC Section Chief: Richard L. Emch, Jr.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: July 26, 1999.

Description of amendment request: The proposed amendment would change Technical Specification (TS) Section 3/4.3.2.1, "Safety Features Actuation System Instrumentation," to remove the "Trip Setpoint" values and revise the "Allowable Values" entries for Sequence Logic Channels a, "Essential Bus Feeder Breaker Trip (90%)," and b, "Diesel Generator Start, Load Shed on Essential Bus (59%)."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The Davis-Besse Nuclear Power Station (DBNPS) has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit No. 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because the proposed changes do not change any accident initiator, initiating condition, or assumption.

The proposed changes would revise Technical Specification (TS) Table 3.3–4, Safety Features Actuation System Instrumentation Trip Setpoints, to remove the "Trip Setpoint" values for Functional Unit Sequence Logic Channel "a", "Essential Bus Feeder Breaker Trip (90%)", and Functional Unit Sequence Logic Channel "b", "Diesel Generator Start, Load Shed on Essential Bus (59%)", and also modify the "Allowable Values" entry for Functional Unit Sequence Logic Channel "a", consistent with updated calculations and current setpoint methodology. The proposed changes would also clarify an inconsistency between Table 3.3–4 and Table 4.3–2, Safety Features Actuation System Instrumentation Surveillance Requirements. The proposed changes to Limiting Condition for Operation (LCO) 3.3.2.1 and Bases 3/4.3.1 and 3/4.3.2 are associated with these changes.

The accident previously evaluated in Section 15.2.9, "Loss of All AC Power to the Station Auxiliaries (Station Blackout)," of the DBNPS Updated Safety Analysis Report (USAR) is not affected by the proposed changes because its bounding conditions are not affected. The existing TS action statements will continue to maintain the USAR requirement to start and load one Emergency Diesel Generator (EDG) to meet minimum ESF requirements, should all AC power be lost. Furthermore, the proposed changes are based on the existing performance characteristics of plant equipment; therefore, the proposed changes will not involve a significant change to the plant design or operation.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because the proposed changes do not invalidate assumptions used in evaluating the radiological consequences of an accident, do not alter the source term or containment isolation, and do not provide a new radiation release path or alter radiological consequences.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes do not introduce a new or different accident initiator or introduce a new or different equipment failure mode or mechanism.

3. Not involve a significant reduction in a margin of safety because the proposed changes do not significantly reduce the ability of the plant to respond to a loss of AC power to the essential 4160 Volt buses in a timely manner. The revised Allowable Value for the Sequence Logic Channel "Essential Bus Feeder Breaker Trip (90%)" takes into account the need not only to be able to actuate Engineered Safety Features equipment coincident with a degraded grid condition, but to provide voltage at the required value to properly operate the equipment.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Anthony J. Mendiola.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: July 27, 1999.

Description of amendment request: The proposed amendment would remove Technical Specification (TS) Section 6.4, "Training," relocate TS Sections 6.5.2.8, "Audits," and 6.10 "Record Retention," to the Updated Safety Analysis Report, and make related changes to TS Sections 6.14, "Process Control Program," and 6.15, "Offsite Dose Calculation Manual." In addition, an editorial correction is proposed to TS 6.8, "Procedures and Programs."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The Davis-Besse Nuclear Power Station has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, Unit Number 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident initiators, conditions or assumptions are affected by the proposed changes to Section 6.0, Administrative Controls, of the Technical Specifications (TS).

The proposed changes to remove Section 6.4, Training, from the TS and relocate the detailed listings of TS Section 6.5.2.8, Audits, and TS Section 6.10, Record Retention, to the DBNPS [Davis-Besse Nuclear Power Station] Quality Assurance Program in Chapter 17 of the Updated Safety Analysis Report are consistent with NUREG–1430, "Standard Technical Specifications—Babcock and Wilcox Plants," Revision 1 or NRC Administrative Letter 95–06 "Relocation of Technical Specification Administrative Controls Related to Quality Assurance," dated December 12, 1995. The proposed changes to TS Section 6.14, Process Control Program (PCP); TS Section 6.15, Offsite Dose Calculation Manual (ODCM); and TS Section 6.8, Procedures and Programs, are either associated administratively with the above proposed changes or are editorial corrections. These TS being removed or relocated will remain subject to the controls of regulations (e.g., 10 CFR 50.59, 10 CFR 55.59, or 10 CFR 50.54(a)).

1b. Not involve a significant increase in the consequences of an accident previously evaluated because no accident conditions or assumptions are affected by the proposed changes. As described above, these changes are consistent with the improved "Standard Technical Specifications—Babcock and Wilcox Plants" (NUREG–1430) or Administrative Letter 95–06 and are administrative changes. The proposed changes do not alter the source term, containment isolation, or allowable releases. The proposed changes, therefore, will not increase the radiological consequences of a previously evaluated accident.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because no new accident initiators or assumptions are introduced by the proposed changes, which involve only administrative controls. The proposed changes do not alter any accident scenarios.

3. Not involve a significant reduction in a margin of safety because the proposed changes are administrative and do not reduce or adversely affect the capabilities of any plant structures, systems or components to perform their nuclear safety function.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Anthony J. Mendiola.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: August 5, 1999.

Description of amendment request: The requested changes correct editorial errors in Technical Specification (TS) Sections 3.8.3.2, 4.6.2.1, 4.6.2.2, 4.8.1.1, and 4.9.12. Also, the requested changes correct minor editorial and reference errors in Technical Specification Bases Sections B 3/4.3.2, B 3/4.4.11, B 3/4.6.1.2, and B 3/4.8.4.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO [Northeast Nuclear Energy Company] has reviewed the proposed revision in accordance with 10CFR50.92 and has concluded that the revision does not involve any Significant Hazards Considerations (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not satisfied. The proposed Technical Specification revision does not involve an SHC because the revision would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes are editorial in nature and do not alter or effect the design, operation, maintenance[,] or surveillance associated with MP–3 [Millstone Nuclear Power Station, Unit No. 3] [s]tructures, [s]ystems, and [c]omponents (SSC) during normal or accident operations. Since the SS[Cs] are not altered[,] the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes are editorial in nature and do not alter or effect the design,

operation, maintenance[,] or surveillance associated with MP–3 [s]tructures, [s]ystems, and [c]omponents (SSC) during normal or accident operations. Since the Units SS[Cs] have not been modified physically, or operationally[,] due to procedure changes prompted by this TSCR [Technical Specification Change Request], the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in the margin of safety.

These proposed TS changes are editorial and do not impact any MP–3 design or operational requirements. MP–3 system performance and operating limits are not affected; therefore[,] the proposed change does not involve a significant reduction in the margin of safety.

In conclusion, based on the information provided, it is determined [by NNECO] that the proposed revision does not involve a[n] SHC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Section Chief: James W. Clifford.

PECO Energy Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: June 22, 1999.

Description of amendment request: The Limerick Generating Station (LGS), Units 1 and 2, Technical Specifications (TS) contained in Appendix A to the Operating Licenses would be amended to eliminate a surveillance requirement for the Reactor Recirculation System. This proposed TS change request involves revising the TS to delete Surveillance Requirement 4.4.1.1.2, and associated TS Administrative Controls Section 6.9.1.9.h, which requires that each Reactor Recirculation System pump motor generator (MG) set scoop tube mechanical and electrical stop be demonstrated OPERABLE with the overspeed setpoints less than or equal to the setpoints as noted in the Core Operating Limits Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed TS changes do not make any physical changes to the fuel, or the way the fuel responds to a transient or accident. The radiological barriers are not compromised. The fuel will continue to be operated to analyzed operating limits. No new failure mode is introduced.

Prior to the removal of the Recirculation System Master Flow Controller at LGS, the bounding postulated event involving an increase in reactor coolant system flow rate was the dual pump slow flow runout event not terminated by SCRAM. The requirements surrounding the MG set stops were established to mitigate consequences during a dual pump slow flow runout by providing a limit on the maximum core flow. The MG set stop requirements were not established to prevent an accident. The potential common mode failure required for a dual pump slow flow runout event was eliminated with the removal of the Master Flow Controller. The elimination of the Master Flow Controller does not increase the probability of other core flow increase events, or of any other events previously analyzed.

Revised generic flow biased ARTS [APRM (average power range monitor)/RBM (rod block monitor) Technical Specifications Improvement] thermal limits that do not take credit for MG set stops have been developed for LGS, Units 1 and 2. Adherence to approved flow biased ARTS thermal limits identified in the LGS, Units 1 and 2, Core Operating Limits Reports (COLRs) ensure that fuel design limits are not exceeded. Maintaining fuel design limits results in no change in the consequences of accidents previously evaluated.

The single pump slow flow runout does not terminate by Main Steam Isolation Valve (MSIV) closure or generator load reject. As a result, the single pump runout event does not result in any significant pressurization and does not represent a challenge to the reactor coolant pressure boundary. MSIV closure with associated SCRAM on high neutron flux, as confirmed in the cycle specific Supplemental Reload Licensing Report (SRLR), remains the bounding reactor pressure vessel overpressurization event for LGS, Units 1 and 2. In addition, there are no other associated impacts to the plant resulting from a single pump runout. Therefore, the integrity of radiological barriers will not be compromised.

Although there is no longer a safety need to demonstrate operability of the MG set stops, there still is an operational need to have the MG set stops for the Reactor Recirculation System (RS). Damage to the jet pump sensing lines could occur if the resonance frequency of the sensing lines is reached. Jet pump sensing line tests established a conservative pump speed limit (1650 rpm for Unit 1, no limit for Unit 2) to preclude sensing line resonance. The MG set stop setpoint bounded the operationally required setpoint. The operationally required MG set stop setpoint to preclude jet pump sensing line resonance will continue to be controlled administratively via approved plant procedures. The proposed TS changes do not adversely impact the RS, or introduce new or unanalyzed operating conditions for the RS. The MG sets will not exceed their previously analyzed maximum 57.5 Hz with the stops removed.

Therefore, the proposed TS changes do not significantly increase the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed TS changes do not make any physical changes to the fuel, or the way the fuel responds to a transient or accident. The radiological barriers are not compromised. The fuel will continue to be operated to analyzed operating limits. No new failure mode is introduced.

The proposed TS changes do not create new operating conditions that have not been evaluated. Removal of the Recirculation Master Flow Controller eliminates the possibility of a single failure initiated common mode event. Since the possibility of a common failure has been eliminated, the most limiting recirculation runout event is a one pump slow flow runout. This is the same kind of postulated accident as that previously evaluated, only it involves one pump instead of both pumps. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed TS changes do not make any physical changes to the fuel, or the way the fuel responds to a transient or accident. The radiological barriers are not compromised. The fuel will continue to be operated to analyzed operating limits. No new failure mode is introduced.

Single pump runout based, generic flow biased ARTS thermal limits that do not take credit for MG set stops have been developed for LGS, Units 1 and 2. Adherence to approved ARTS-based flow biased thermal limits identified in the LGS, Units 1 and 2, COLRs and implemented in the plant process computer are sufficient to maintain the margin of safety as delineated in TS Sections 3/4.2.1, 3/4.2.3, and 3/4.2.4.

Therefore, these proposed TS changes do not involve a significant reduction in a margin of safety.

Based on the above review, the NRC staff concludes that it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: James W. Clifford.

Portland General Electric Company, et al., Docket No. 50–344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: January 29, 1998.

Description of amendment request: The amendment would delete the requirements for a security plan from the 10 CFR Part 50 license and technical specifications after the spent nuclear fuel is transferred to a Part 72 licensed independent spent fuel storage installation (ISFSI). Security requirements for the ISFSI would be in accordance with 10 CFR Part 72, Subpart H.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The physical structures, systems and components of the Trojan Nuclear Plant and the operating procedures for their use are unaffected by the proposed change. The proposed elimination of the security requirements for the 10 CFR Part 50 license, is predicated on approval of the Trojan ISFSI Security Plan (PGE 1073) which will be coincident with issuance of a 10 CFR Part 72 license and upon completion of the transfer of all nuclear fuel from the spent fuel pool to the ISFSI. The planned 10 CFR 72 licensing controls for the ISFSI will provide adequate confidence that personnel and equipment can perform satisfactorily for normal operations of the ISFSI and respond adequately to abnormal events/accidents. The proposed Trojan ISFSI Security Plan (PGE 1073) will also provide confidence that security personnel and safeguards systems will perform satisfactorily to ensure adequate protection for the storage of spent nuclear fuel. Therefore, the proposed 10 CFR Part 50 amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change is security related, and as such, has no direct impact on plant equipment or the procedures for operating plant equipment and, therefore, does not create the possibility of a new or different kind of accident from any accident previously evaluated. Because the proposed ISFSI area will be segregated from the 10 CFR Part 50 licensed area, licensed security activities under the 10 CFR Part 50 license will no longer be necessary after all the nuclear fuel has been moved. The planned 10 CFR 72 licensing controls for the ISFSI area will provide adequate confidence that personnel and equipment can perform satisfactorily for normal operations of the ISFSI and respond adequately to normal events/accidents. Moreover, the ISFSI will be physically separate from the Trojan Nuclear Plant structures and equipment. Therefore, the proposed 10 CFR Part 50 license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The assumptions for a fuel handling and other accidents are not affected by the proposed license amendment. Because the proposed ISFSI area (that will contain the nuclear fuel) will be segregated from the 10 CFR Part 50 licensed area, licensed security activities under the 10 CFR Part 50 license will no longer be necessary. The planned 10 CFR 72 licensing controls for the ISFSI area will provide adequate confidence that personnel and equipment can perform satisfactorily for normal operations of the ISFSI and respond adequately to abnormal events/accidents. Also, the ISFSI will be physically separate from the Trojan Nuclear Plant structures and equipment. Therefore, the proposed 10 CFR Part 50 license amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207.

Attorney for licensee: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204.

NRC Section Chief: Michael T. Masnik.

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of amendment request: August 19, 1999. The August 19, 1999, submittal supersedes the February 18, 1999, submittal in its entirety (64 FR 14284).

Description of amendment request: The proposed amendment would revise the Virgil C. Summer Nuclear Station (VCSNS) Technical Specifications (TS) to incorporate the new Pressure/Temperature (P–T) Limits Curves consistent with the analysis results of reactor vessel specimen W. These figures are contained in Section 3/4.4.9 and are presented as Figures 3.4–2 and 3.4–3. These figures were developed using the methodology included in WCAP 14040–NP–A, "Methodology Used to Develop Cold Overpressure Mitigating System Setpoints and RCS Heatup and Cooldown Limit Curves," as well as Code Case N–640, "Alternative Reference Fracture Toughness for Development of P–T Limit Curves for Section XI, Division I." A reduced flange temperature requirement was included in the development of the curves, with justification provided in WCAP 15102, Revision 1, "V. C. Summer Unit I Heatup and Cooldown Limit Curves for Normal Operation." Additionally, the Bases section for the Pressure/Temperature Limits would be revised to accurately reflect current industry standards and regulations. A significant portion of this Bases section would be deleted due to the information also being located in WCAP 15102, Revision 1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes revise the Pressure/Temperature Limits Curves to provide curves that reflect the results of the analysis performed on reactor vessel surveillance specimen W. This analysis was performed using NRC approved methodology as documented in WCAP 14040–NP–A, utilizing the 1996 ASME Boiler and Pressure Vessel Code, Section XI, Appendix G requirements, along with ASME Code Case N–640. These curves provide the limits for operation of the Reactor Coolant System during heat up, cool down, criticality, and hydrotesting. These curves are provided without instrument uncertainties included, however, the uncertainties are included in the curves provided in the operating procedures. The limits protect the reactor vessel from brittle fracture by separating the region of acceptable operation from the region where brittle fracture is postulated to occur. Failure of the reactor vessel is not a VCSNS design basis accident, and, in general, reactor vessel failure has a low probability of occurrence and is not considered in the safety analysis. Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes revise the Pressure/Temperature Limits Curves, Section 3/4.4.9, to incorporate the results of the analysis performed on reactor vessel specimen W. There are no plant design changes or significant changes in any operating procedures. This change adjusts the heatup and cooldown curves to reflect the shift in nil-ductility reference temperature of the reactor vessel as a result of neutron embrittlement, and alternate methodology utilized to generate the curves. Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in margin of safety?

The proposed changes revise the Pressure/Temperature Limits Curves, Section 3/4.4.9, to incorporate the results of the analysis performed on reactor vessel specimen W. The new PT curves ensure that the 10 CFR 50 Appendix G, requirements are not exceeded during normal operation including Reactor Coolant System transients during heat up, cool down, criticality, and hydrotesting. The new PT curves were prepared, using accepted industry methodology, for a projected reactor vessel neutron exposure of 32 EFPY [Effective Full Power Years].

The new curves will serve as the basis for operating limitations, to provide margin against non-ductile fractures. The uncertainties introduced by instrumentation, forced flow and elevation differences are not reflected in the TS curves. These uncertainties will be factored into the curves presented in the operating procedures. Since administrative limits remain in place to ensure that 10 CFR 50 Appendix G limits are not challenged, the margin of safety described in the TS Bases is not reduced by the proposed change. Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180.

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218.

NRC Section Chief: Richard L. Emch, Jr.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment requests: August 11, 1999 (PCN–488).

Description of amendment requests: **The proposed amendments would modify the Technical Specifications for the San Onofre Nuclear Generating Station (SONGS) Units 2 and 3 to revise Surveillance Requirement (SR) 3.3.7.3 by providing allowable values in place of analytical limits for certain degraded voltage parameters, and by deleting unnecessary parameter limits in cases where plant safety is not affected. The proposed change would also delete redundant SR 3.3.7.4.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No.

Proposed Change Number (PCN)–488 revises the Technical Specification (TS) Surveillance Requirement (SR) acceptance criteria of the Loss of Voltage Signal (LOVS), Degraded Grid Voltage with Safety Injection Actuation Signal (DGVSS), and Sustained Degraded Voltage Signal (SDVS) relay circuits. These circuits are not accident initiators.

PCN–488 revises the TS SR acceptance requirements to make them more limiting than the present requirements. Because the revised acceptance criteria are more limiting than the present requirements, the consequences of accidents analyzed in the Updated Final Safety Analysis Report (UFSAR) are not increased. PCN–488 also revises the TS SR acceptance requirements to delete upper and lower bounds in cases where the deleted bound provides no safety benefit. Deleting bounds having no safety significance does not involve a significant increase in the probability or consequences of an accident previously evaluated.

PCN–488 deletes redundant SR 3.3.7.4, which is not in NUREG–1432, Standard Technical Specifications, Combustion Engineering Plants. Deleting a redundant requirement does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Consequently, the proposed amendment does not result in an increase in the probability of accidents evaluated in the UFSAR.

2. Does this amendment request create the possibility of a new or different kind of accident from any accident previously evaluated?

No.

PCN–488 revises the TS SR acceptance criteria of the LOVS, DGVSS, and SDVS relay circuits, which are not accident initiators, and deletes a redundant SR. PCN–488 does not introduce any revision in the hardware configuration of the protective circuitry for LOVS, DGVSS or SDVS. The measurement required by the deleted, redundant surveillance is required elsewhere in the TS. For these reasons, PCN–488 does not create the possibility of any new or different kind of accident from any previously evaluated.

3. Does this amendment request involve a significant reduction in a margin of safety?

No.

PCN–488 provides allowable values for the acceptance criteria for the TS SR for LOVS, DGVSS and SDVS. As such, the revised values are more limiting than the current values, which represent design limits. Therefore, PCN–488 does not involve a significant reduction in a margin of safety.

PCN–488 also revises the TS SR acceptance requirements to delete upper and lower bounds in cases where the deleted bound provides no safety benefit. Deleting bounds having no safety significance does not involve a significant reduction in a margin of safety.

PCN–488 additionally deletes a redundant SR. Because the deleted surveillance is required elsewhere in the TS, this action does not involve a significant reduction in a margin of safety.

For these reasons, PCN–488 does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, Irvine, California 92713.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Stephen Dembek.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 31, 1998, as supplemented by letters dated April 19 and August 18, 1999. The August 31, 1998, application was originally noticed in the **Federal Register** on October 21, 1998 (63 FR 56260).

Description of amendment request: **The proposed amendments would revise Technical Specification 3/4.4.9.3 by revising the cold overpressure mitigation curve to accommodate the replacement steam generators and by adding two surveillances (for the centrifugal charging pumps and the emergency core cooling system accumulators) to ensure the operability of the cold overpressure mitigation system.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Reanalysis of STP [South Texas Project, Units 1 and 2] COMS [cold overpressure mitigation system] transients to consider design characteristics of Delta-94 RSGs [replacement steam generators] has shown that maximum allowable PORV [power-operated relief valve] setpoints decrease slightly, and continue to provide design basis low temperature overpressure protection with Delta-94 steam generators. This change request incorporates the new COMS curves into Technical Specification 3.4.9.3 (Figure 3.4–4). Maximum allowable PORV setpoints decrease with Delta-94 steam generators, and are conservative compared to Model E steam generator curves. Use of the new curves with either Model E or Delta-94 steam generators conforms to the STP design basis.

These changes are based on a reanalysis that accounts for Model Delta-94 design, a decision to make calculation[s] of COMS maximum allowable PORV setpoint consistent with current industry standards as represented by WCAP–14040, and addition of two surveillances to the Technical Specification to ensure operability of COMS. Moving maximum allowable PORV setpoints in the conservative direction and adding surveillances to reinforce standard operating practice have no adverse effect on the probability or consequences of an accident previously evaluated. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed PORV maximum allowable setpoint changes do not create any new operating conditions or modes, and the added surveillances have no effect except to ensure operation of COMS as designed. The slight change to the maximum allowable PORV setpoint curves for the Cold Overpressure Mitigation System accommodates Delta-94 steam generator design characteristics, and COMS continues to perform in accordance with existing requirements, which are sufficient to ensure plant safety is preserved.

The proposed change is the result of a reanalysis of a previously evaluated accident. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change reflects design characteristics of the new Delta-94 steam generators. The change to the COMS curves is in the conservative direction and does not affect any design failure point or system limitation. Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges, Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: August 18, 1999.

Description of amendment request: **The licensee proposed changing the Vermont Yankee Nuclear Power Station (VY) Technical Specifications by revising the reactor core spiral reloading pattern such that it begins around a source range monitor rather than from the center of the core. The offloading pattern would be the reverse sequence.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:**

1. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

VY has determined that the proposed change to reload the reactor core in a spiral pattern beginning around a Source Range Monitor (SRM) does not involve a significant increase in the probability or consequences of an accident previously evaluated. The design basis accident associated with refueling is the Refueling Accident; i.e., the accidental dropping of a fuel bundle onto the top of the core. There is no assumption as to the core loading pattern in the analysis of this accident. The analyzed abnormal operational transients associated with refueling are: (1) the Control Rod Removal Error During Refueling, and (2) the Fuel Assembly Insertion Error During Refueling. There is no assumption as to the core loading pattern in the analyses of these transients. The Fuel Assembly Insertion Error During Refueling transient involves mislocated and rotated fuel assembly loading errors. However, a change in the approved core loading pattern has no impact on the probability of mislocating or rotating a bundle while following that pattern. Furthermore, the proposed change implements a core loading pattern that provides improved flux monitoring as compared to the pattern prescribed by the current Technical Specifications. When loading the core in accordance with the proposed change, the SRM indication will be indicative of the true flux of the loaded fuel, as the creation of flux traps (moderator filled cavities surrounded on all sides by fuel) is precluded.

The SRMs and the core loading pattern are not initiators of any accident previously evaluated. As such, the subject changes cannot affect the probability of an accident previously evaluated. The core loading pattern is not assumed in the mitigation of any accident. Since the proposed change provides improved flux monitoring by the SRMs, operators will have more accurate indication and SRM automatic trip functions will actuate based on a more accurate indication of flux. As such, any event mitigation function provided by the SRMs is enhanced by this change. Therefore, the associated changes do not involve a significant increase in the consequences of an accident previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

VY has determined that the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. VY proposes to change the core reloading and offloading patterns to start and stop, respectively, at an

SRM versus the geometric center of the core as prescribed by current Technical Specifications. This ensures that flux monitoring instrumentation is always OPERABLE in the fueled region of the vessel. There is no separation of the monitoring device from the fuel by cavities of water as is the case with the pattern prescribed by the current Technical Specifications. As such, flux monitoring is enhanced during core reloading and offloading. This change is conservative relative to the current requirements. Therefore, no new or different kinds of accidents are created.

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

VY has determined that the proposed change does not involve a significant reduction in a margin of safety. Loading around the geometric center of the core as prescribed by the current Technical Specifications results in cells of moderator separating the fuel from the instrumentation monitoring its flux. This change requires the flux monitoring instrumentation to be in the fueled region, and, in so doing, provides for more accurate monitoring of core flux during core reloading and offloading. As such, the operators will have more accurate indication and SRM automatic trip functions will actuate when the actual flux reaches the trip setpoints. Therefore, this change will not result in a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: August 18, 1999.

Description of amendment request: The licensee proposed changing the Vermont Yankee Nuclear Power Station (VY) technical specifications (TSs) by revising the definition of the "Surveillance Frequency" to incorporate provisions that apply upon the discovery of a missed TS surveillance. The provisions would allow 24 hours to perform the surveillance before the applicable limiting condition for operation is entered.

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:**

1. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change does not result in any physical alteration of plant systems, structures or components; nor does the change modify the manner in which plant equipment will be operated or maintained. As a result, the proposed change does not affect any of the parameters or conditions that contribute to the initiation or mitigation of any accidents previously evaluated.

Surveillance frequencies are not assumed in the initiation of any analyzed event. Thus, conditions assumed in the plant accident analyses are unchanged. Furthermore, there is no relaxation of required setpoints or operating parameters.

Therefore, the probability or consequences of an accident previously evaluated are not significantly increased since the most likely outcome of performing a surveillance is that it does, in fact, demonstrate the system or component is operable. VY has, therefore, determined that the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change will not modify the physical plant or the modes of plant operation. The changes do not involve the addition or modification of equipment nor do they alter the design or operation of plant systems. These changes to Technical Specifications do not create any new or different kind of accident since they do not involve any change to the plant or the manner in which it is operated.

Therefore, VY has determined that the proposed change does not create the possibility of a new or different kind of accident from any accident previously [evaluated].

3. The operation of Vermont Yankee Nuclear Power Station in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The proposed change does not affect design margins or assumptions used in accident analyses. The capability of safety systems to function and limiting safety system settings are similarly unaffected as a result of this change.

The increased time allowed (up to 24 hours) for the performance of a surveillance discovered to have not been performed, is acceptable based on the small probability of an event requiring the associated component. The requested allowance will provide sufficient time to perform the missed surveillance in an orderly manner. Without the 24 hour delay, it is possible that the missed surveillance would force a plant shutdown; thus, the plant could be shutting down while the missed surveillance is being performed. As a result of this delay, the potential for human error will be reduced. Consequently, there is no significant reduction in a margin of safety as overall plant safety is enhanced due to the avoidance of unnecessary plant shutdowns.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Unit Nos. 1 and 2, Louisa County, Virginia

Date of amendment request: August 4, 1999.

Description of amendment request: The proposed changes to North Anna Power Station (NAPS) Units 1 and 2 Technical Specification (TS) 4.4.1.6.1 and associated Bases will extend the drained reactor coolant loop verification time (verified as drained) from two hours to four hours prior to backfilling when returning the drained loop to service.

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated.

Administrative procedures ensure that the initiation of seal injection in order to establish a partial vacuum in an isolated and drained loop will not create the potential for an inadvertent and undetected introduction of under-borated water into an isolated loop prior to returning the isolated loop to service. Additionally, extension of the drained loop verification time from two hours to four hours prior to backfill operations will not significantly diminish confidence that the isolated and drained loop will, in fact, be drained at the time the back-fill evolution is initiated. Therefore, there is no measurable increase in the probability or consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no modifications to the plant as a result of the changes. No new accident or event initiators are created by the initiation of seal injection in order to establish a partial vacuum in an isolated and drained loop, and by the extension of the drained loop verification time requirement from two hours to four hours prior to backfill operations. Therefore, the proposed changes do not create the possibility of any accident or malfunction of a different type previously evaluated.

3. Does the change involve a significant reduction in the margin of safety.

The proposed changes have no effect on the safety analyses assumptions. Changes acknowledge the establishment of seal injection for the Reactor Coolant Pump in the isolated and drained loop as a prerequisite for the vacuum-assisted back-fill technique and extends the drained-loop verification time from two hours to four hours prior to backfill operations. The two hour interval was established to ensure that the drained loop is verified to be drained at a point in time sufficiently close to the initiation of the back-fill evolution such that no intervening event could occur that would render the loop no longer drained. Relaxation of the drained loop verification time from two hours to four hours will not significantly diminish confidence that the isolated and drained loop will be drained at the time the back-fill evolution is initiated. Therefore, the proposed changes do not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Attorney for licensee: Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Section Chief: Richard L. Emch, Jr.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: April 28, 1999.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) Section 3.4.A.4 and Table 4.1–2B for Units 1 and 2. The proposed changes would reduce the minimum volume requirement for the refueling water chemical addition tank (CAT) to provide additional operating margin, and also correct administrative format errors in Table 4.1–2B.

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

Criterion 1—*Does not involve a significant increase in the probability or consequences of an accident previously evaluated.*

The probability or the consequences of an accident previously evaluated are not increased. When the revised Safety Analysis Limit minimum CAT volume of 3800 gallons was implemented, consideration was given to the effects of the proposed reduced CAT volume on containment integrity analyses, containment spray and post-LOCA sump pH analyses, and the post-LOCA recirculation switchover time interval specified in Emergency Operating Procedures. The change was determined to be acceptable as accident analyses assumptions would continue to be met. The proposed TS minimum CAT volume (3930 gallons) includes an allowance for the CAT level Channel Statistical Allowance (CSA), so that the safety analysis limit CAT volume (3800 gallons) will not be violated when the measured CAT volume (i.e., tank level) is at or above the TS minimum CAT volume limit. The proposed reduction in the TS minimum CAT volume has no bearing on the probability of occurrence of any accident previously evaluated, since neither the volume nor the sodium hydroxide inventory of the CAT have any bearing on postulated accident initiators. Furthermore, because the affected accident analyses have been evaluated and found to meet their acceptance criteria with the reduced safety analysis limit CAT volume, the consequences of an accident previously evaluated is not increased.

Criterion 2—*Does not create the possibility of a new or different kind of accident from any accident previously evaluated.*

The possibility of a new or different kind of accident than any accident previously evaluated is not created. The proposed reduction in the TS minimum CAT volume does not involve any alterations to the physical plant that would introduce any new or unique operational modes or accident precursors. Only the TS minimum CAT volume is being changed to establish an operationally feasible alarm setpoint to provide the operators additional flexibility in maintaining the required CAT volume.

Criterion 3—*Does not involve a significant reduction in a margin of safety.*

The margin of safety is not reduced. It was determined that the affected safety analyses continue to meet their respective acceptance criteria with the revised minimum CAT volume. By implementing the proposed change in the TS minimum CAT volume, a CAT level alarm setpoint may be established which includes a conservative allowance for level measurement uncertainty such that neither the proposed TS minimum CAT volume nor the Safety Analysis Limit CAT volume will be violated at the time a CAT level alarm is received. Therefore, it is concluded that the proposed change will not reduce the margin of safety.

This analysis demonstrates that the proposed amendment to the Surry Units 1 and 2 Technical Specifications does not involve a significant increase in the probability or consequences of a previously evaluated accident, does not create the possibility of a new or different kind of accident and does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Section Chief: Richard L. Emch, Jr.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: December 29, 1998, as supplemented by letter dated July 29, 1999. The December 29, 1998, amendment application was previously noticed in the **Federal Register** on February 24, 1999 (64 FR 9023).

Description of amendment request: The amendment would revise Section 5.6.6, "Reactor Coolant System (RCS) Pressure and Temperature Limits Report (PTLR)," of the improved Technical Specifications (TSs), that were issued in Amendment 123 on March 31, 1999. The amendment would (1) add the phrase "and Cold Overpressure Mitigation System" to the first sentence of item 5.6.6.b that identifies the limits that can be determined by the licensee in the PTLR, and (2) replace the current list of documents listed in item 5.6.6.b by the NRC letter that will approve this amendment and the Westinghouse report, WCAP-14040-NP-A, "Methodology Used to Develop Cold Overpressure Mitigation System Setpoints and RCS Heatup and Cooldown Limit Curves," dated January 1996. WCAP-14040-NP-A is the NRC-approved topical report that provides a methodology for developing the cold overpressure mitigation system (COMS) setpoints and RCS heatup and cooldown limit curves for Westinghouse plants,

such as Wolf Creek Generating Station (WCGS).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Incorporating the revised heatup and cooldown pressure/temperature limit curves and the COMS PORV setpoint limit curve into the WCGS Technical Specifications does not affect the probability or consequences of an accident previously evaluated.

The revised limit curves are calculated using the most limiting RT_{NDT} for the reactor vessel components and include a radiation-induced shift corresponding to the end of the period for which the curves are generated. The COMS PORV Setpoint Limit Curve is calculated using the most limiting mass injection transient, taking into account operation of the NCP [normal charging pump] during shutdown modes. The changes do not affect the basis, initiating events, chronology, or availability/operability of safety related equipment required to mitigate transients and accidents analyzed for WCGS.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Adopting the revised limit curves redefines the range of acceptable operation for the Reactor Coolant System. This redefinition is a result of the analysis of reactor vessel surveillance specimens removed from the reactor in a continuing surveillance program which monitors the effects of neutron irradiation on the WCGS reactor vessel materials under actual operating conditions. Included in the revised limit curves is consideration for NCP operation during shutdown modes. Incorporating these revised curves does not create the possibility of an accident of a different type from any previously evaluated for WCGS.

3. The proposed change does not involve a significant reduction in a margin of safety.

The revision of these limit curves continues to maintain the margin of safety required for prevention of non-ductile failure of the WCGS reactor vessel during low temperature operation as required by 10 CFR 50, Appendices G and H. The revised curves primarily affect RCS operation below 350°F by limiting the available pressure/temperature window for heatup and cooldown. The revised limit curves compensate for the in-service radiation induced embrittlement of the reactor vessel and accounts for the requirement that the closure flange region temperature must exceed the nil-ductility temperature by at least 120°F when pressure exceeds 20% of the preservice hydrostatic test pressure.

The revised COMS PORV Setpoint Limit Curve, which includes consideration of NCP operation during shutdown modes, ensures overpressure protection of the RCS and reactor vessel.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Section Chief: Stephen Dembek.

Previously Published Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notice was previously published as a separate individual notice. The notice content was the same as above. It was published as an individual notice either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. It is repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50–278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of amendment request: August 6, 1999.

Brief description of amendment request: The proposed amendments would revise the Technical Specifications (TSs) contained in Appendix A to the Operating Licenses to incorporate a note into the TSs which will permit a one-time exemption, until September 30, 1999, from the 90°F limit stated in Surveillance Requirement (SR) 3.7.2.2. This SR currently requires that the average water temperature of the normal heat sink be less than or equal to 90°F as demonstrated on a 24-hour frequency. As stated in the proposed TS note, during the time period between approval and September 30, 1999, the average water temperature of the normal heat sink will be limited to less than or equal to 92°F.

Date of publication of individual notice in **Federal Register**: August 13, 1999 (64 FR 44243).

Expiration date of individual notice: 14 days for comments, August 27, 1999; 30 days for hearing, September 13, 1999.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: July 30, 1999.

Brief description of amendment: The amendment revises Technical Specification (TS) 3.7.8, "Ultimate Heat Sink (UHS)," to permit a 72-hour delay in the UHS temperature restoration period prior to entering the plant shutdown required actions. This TS amendment is given as a temporary amendment change effective until September 30, 1999, after which the TS will revert back to the original TS provisions.

Date of issuance: August 24, 1999.

Effective date: August 24, 1999.

Amendment No.: 184.

Facility Operating License No. DPR–23: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes (64 FR 43406 dated August 10, 1999). The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided for an opportunity to request a hearing by September 8, 1999, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of NSHC are contained in a Safety Evaluation dated August 24, 1999.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Sheri R. Peterson.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: March 25, 1999.

Brief description of amendments: The amendments revise various parts of the Technical Specifications (Appendix A of the Catawba operating licenses) to identify that the Trip Setpoints for the reactor trip system and engineered safety feature actuation system instrumentation are in reality Nominal Trip Setpoints.

Date of issuance: August 13, 1999.

Effective date: As of the date of issuance and shall be implemented within 45 days from the date of issuance.

Amendment Nos.: 179—Unit 1; 171—Unit 2.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: May 5, 1999 (64 FR 24195).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 13, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room Location: York County Library, 138 East Black Street, Rock Hill, South Carolina.

Duquesne Light Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit 2, Shippingport, Pennsylvania

Date of application for amendment: June 18, 1996, as supplemented December 12, 1997, February 23, June 15, and July 15, 1999; and by separate application dated October 22, 1997, as supplemented February 23, June 28, and July 15, 1999.

Brief description of amendment: This amendment implements: (1) voltage-based repair criteria for BVPS–2 steam generator tubes similar to the changes approved for BVPS–1 in License Amendment No. 198. The changes revise BVPS–2 technical specifications (TSs) 4.4.5 and 3.4.6.2 and associated Bases to reflect the guidance provided in the Nuclear Regulatory Commission's (NRC) Generic Letter 95–05, "Voltage-Based Repair Criteria for Westinghouse Steam Generator Tubes Affected by Outside Diameter Stress Corrosion Cracking," (GL 95–05). Additionally, BVPS–2 TS Table 4.4–2 is revised to reference TS 6.6 for reporting requirements. (2) reduced reactor coolant system (RCS) specific activity limits in accordance with the NRC's guidance provided in GL 95–05. The definition of Dose Equivalent I–131 is replaced with the Improved Standard TS definition in the first sentence, and an equation is added based on dose conversion derived from the International Commission on Radiation Protection (ICRP) ICRP–30. TS 3.4.8, Specific Activity, is revised by reducing the Dose Equivalent I–131 limit from 1.0 [micro] Ci [curies]/gram to 0.35 [micro] Ci [curies]/gram for the 48-hour limit and from 60 [micro] Ci [curies]/gram to 21 [micro] Ci [curies]/gram for the maximum instantaneous limit. Item 4.a in TS Table 4.4–12, Primary Coolant Specific Activity Sample and Analysis Program; TS Figure 3.4–1, and the Bases for TS 3/4.4.8 are also modified to reflect the reduced Dose Equivalent I–131 limit.

The February 23, 1999, letter provided a revised control room dose calculation in support of both the June 18, 1996, and October 22, 1997, amendment requests. Importantly, this calculation assumed the lower allowable primary-to-secondary leak rate limit associated with the June 18, 1996, submittal, and the reduced RCS specific activity limits associated with the October 22, 1997, submittal. Because of this interdependence, the changes of the first amendment request must be implemented concurrently with those of the second in order for the supporting analysis to remain valid. Hence, both of these license amendment requests have been combined into this single amendment.

Date of issuance: August 18, 1999.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No: 101.

Facility Operating License No. NPF–73. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 18, 1998 (63 FR 64109) and March 25, 1998 (63 FR 14485). The December 12, 1997, February 23, June 15, June 28, and July 15, 1999, letters provided additional information but did not change the initial proposed no significant hazards consideration determinations or expand the amendment requests beyond the scope of the **Federal Register** notices.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 18, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Entergy Operations, Inc., Docket Nos. 50–313 and 50–368, Arkansas Nuclear One, Units 1 and 2, Pope County, Arkansas

Date of amendment request: November 24, 1998, as supplemented by letters dated February 25 and July 14, 1999.

Brief description of amendments: The amendments revise the administrative sections of the Technical Specifications to reflect the approved consolidated quality assurance program, clarify the responsibilities of the shift technical advisor position on shift, simplify the contents of the monthly operating report description, complete the relocation of the fire protection requirements from

the Technical Specifications, and replace selected position titles with descriptions of functional responsibility.

Date of issuance: August 26, 1999.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 198 and 209.

Facility Operating License Nos. DPR–51 and NPF–6: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 27, 1999 (64 FR 4156).

The February 25 and July 14, 1999, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 26, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Florida Power and Light Company, Docket No. 50–335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of application for amendment: November 22, 1998.

Brief description of amendment: This amendment revises the reactor thermal margin safety limit lines and flow rates stated in the St. Lucie, Unit 1, technical specifications (TS). The amendment also updates the reference for dose conversion factors used in Dose Equivalent Iodine-131 calculations, makes administrative changes to the criticality analysis uncertainty described in TS 5.6.1.a.1, updates the analytical methods used in determining core operating limits listed in TS 6.9.1.11, and revises the TS Bases for the steam generator pressure-low trip setpoint.

Date of Issuance: August 18, 1999.

Effective Date: August 18, 1999.

Amendment No.: 163.

Facility Operating License No. NPF–16: Amendment revised the TS.

Date of initial notice in **Federal Register**: February 10, 1999 (64 FR 6696).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 18, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit 3, Citrus County, Florida

Date of application for amendment: October 30, 1998, as supplemented December 31, 1998, and May 12, 1999.

Brief description of amendment: The amendment approves changes to the Improved Technical Specifications to reflect the use of Topical Report BAW–2421 for fluence determination and changes to the low temperature over-pressure protection limits. Changes to the CR–3 Pressure/Temperature Limits Report to reflect plant operation to 32 Effective Full Power Years were included in the submittal.

Date of issuance: August 12, 1999.

Effective date: As of date of issuance, to be implemented prior to commencing Cycle 12 operation.

Amendment No.: 183.

Facility Operating License No. DPR–72: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 30, 1998 (63 FR 71965). The supplemental letters dated December 31, 1998, and May 12, 1999, did not change the original proposed no significant hazards consideration determination, or expand the scope of the amendment request as originally noticed.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 12, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: November 30, 1998.

Brief description of amendment: The Amendment revises Technical Specifications (TS) to allow both doors of the containment personnel air lock to be open during fuel movement and adds a provision for an outage equipment hatch.

Date of issuance: August 16, 1999.

Effective date: August 16, 1999.

Amendment No.: 184.

Facility Operating License No. DPR–31: Amendment revised the TS.

Date of initial notice in **Federal Register**: January 27, 1999 (64 FR 4157).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 16, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal River, Florida 34428.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: July 30, 1998, as supplemented April 8 and July 8, 1999.

Brief description of amendment: Revises Technical Specifications for the Control Room Emergency Ventilation System and the Ventilation Filter Test Program.

Date of issuance: August 23, 1999.

Effective date: August 23, 1999.

Amendment No.: 185.

Facility Operating License No. DPR–31: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 18, 1998 (63 FR 64115). The April 8 and July 8, 1999, supplements did not change the original proposed no significant hazards determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 23, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal River, Florida 34428.

GPU Nuclear, Inc., et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: December 3, 1998, as supplemented by letters dated March 26, April 16, May 7, May 21, June 4, June 15, and June 29, 1999.

Brief description of amendment: The amendment revises the Technical Specification Figure 2.1–1 "Core Protection Safety Limit," and Figure 2.1–3 "Core Protection Safety Bases" to reflect a decrease in reactor coolant system flow resulting from a revised analysis to allow operation of the TMI–1 facility with an average of 20 percent of the steam generator tubes plugged, and no more than 25 percent plugged in either generator.

Date of issuance: August 19, 1999.

Effective date: As of the date of demonstration of a satisfactory emergency feedwater pump flow test, as described in the license amendment and documented by the licensee, to be performed during the 13R refueling outage scheduled to begin September 10, 1999, and shall be implemented within 30 days of that date.

Amendment No.: 214.

Facility Operating License No. DPR–50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 30, 1998 (63 FR 71967). The supplements dated March 26, April 16, May 7, May 21, June 4, June 15, and June 29, 1999, are within the scope of the original notice and do not change the proposed no significant hazards consideration finding.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 19, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (Regional Depository) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

GPU Nuclear, Inc., et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of application for amendment: February 2, 1999 as supplemented July 29, 1999.

Brief description of amendment: The amendment expands the scope of systems and test requirements for post-accident reactor building sump recirculation engineered safeguards features systems and increases the maximum allowable leakage of TS 4.5.4 from 0.6 gallons per hour (gph) to 15.0 gph.

Date of issuance: August 24, 1999.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment No.: 215.

Facility Operating License No. DPR–50. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 24, 1999 (64 FR 14283).

The supplemental letter did not change the initial no significant hazards consideration determination or the **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 24, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (Regional Depository) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Northeast Nuclear Energy Company, et al., Docket Nos. 50–336 and 50–423, Millstone Nuclear Power Station, Unit Nos. 2 and 3, New London County, Connecticut

Date of application for amendment: March 5, 1999.

Brief description of amendment: The amendments relocate certain Technical Specifications (TSs) Section 6.0 administrative controls to the NRC-approved Northeast Utilities Quality Assurance Program (NUQAP) Topical Report. Specifically, Sections 6.2.3 (Unit 3 only), 6.5, 6.6 (partial), 6.7 (partial), and 6.10. The amendments also delete parts of Section 6.6 and 6.7 because their requirements are duplicated in existing regulations or elsewhere in the TSs. In addition, the amendments modify the table of contents and other TS sections to incorporate the aforementioned changes (e.g., correct references).

Date of issuance: August 13, 1999.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 239 and 173.

Facility Operating License Nos. DPR–65 and NPF–49: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 7, 1999 (64 FR 17027).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 13, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

PECO Energy Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: February 12, 1999, as supplemented July 8, 1999. The July 8, 1999, letter provided clarifying information and did not change the original no significant hazards consideration determination.

Brief description of amendments: Administrative changes to correct typographical and editorial errors in Technical Specifications introduced in previous amendments.

Date of issuance: August 23, 1999.

Effective date: This license amendment is effective as of its date of issuance. The amendment will be implemented within 30 days.

Amendments Nos.: 228 and 231.

Date of initial notice in **Federal Register**: May 5, 1999 (64 FR 24200).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 23, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (Regional Depository) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

PP&L, Inc., Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: November 20, 1998, as supplemented by letter dated June 25, 1998.

Brief description of amendments: These amendments modified technical specification surveillance requirement, 3.8.1.4, to allow increases in the minimum fuel oil required to be stored in the day tanks for emergency diesel generators.

Date of issuance: August 23, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 185 and 159.

Facility Operating License Nos. NPF–14 and NPF–22. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 27, 1999 (64 FR 4159).

The supplemental letter provided clarifying information and did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 23, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, PA 18701.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: December 19, 1997, as supplemented June 1, 1998, and May 13, 1999.

Brief description of amendments: The amendments revise TS 3.4.9, Pressurizer, to reduce the allowable pressurizer water volume for pressurizer operability. The allowable water volume is also revised to a percent pressurizer level of 57 percent.

Date of issuance: August 19, 1999.

Effective date: August 19, 1999, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 2—155; Unit 3—146.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: March 25, 1998 (63 FR 14488).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 19, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: September 4, 1998, as supplemented December 8, 1998, and February 16, 1999 (PCN 493).

Brief description of amendments: The amendments revise Technical Specification 3.4.10, Pressurizer Safety Valves, to increase the as-found pressurizer safety valve setpoint tolerances.

Date of issuance: August 19, 1999.

Effective date: August 19, 1999, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 2—156; Unit 3—147.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: February 10, 1999 (64 FR 6711). The licensee's letters dated December 8, 1998, and February 16, 1999, provided clarifications and additional information that were within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 19, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713.

Southern Nuclear Operating Company, Inc., Docket No. 50–348, Joseph M. Farley Nuclear Plant, Unit 1, Houston County, Alabama.

Date of amendment request: April 23, 1999, as supplemented by letters dated July 22, July 30 and August 12, 1999.

Brief Description of amendment: The amendment adds an additional condition to the license which allows Southern Nuclear Operating Company to operate Unit 1 for Cycle 16 based on a risk-informed approach to evaluate steam generator tube structural integrity.

Date of issuance: August 17, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 143.

Facility Operating License No. NPF–2: Amendment revises the Facility Operating License to add a license condition.

Date of initial notice in **Federal Register**: June 16, 1999 (64 FR 32291).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 17, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas.

Date of amendment request: March 22, 1999, as supplemented July 15, 1999.

Brief description of amendments: The amendments revised Technical Specification 3/4.7.1.6, "Atmospheric Steam Relief Valves," and added a new Technical Specification for atmospheric steam relief valve instrumentation, to ensure that the automatic feature of the steam generator power-operated relief valves (i.e., the atmospheric steam relief valves) remains operable during Modes 1 and 2.

Date of issuance: August 19, 1999.

Effective date: August 19, 1999, to be implemented within 30 days.

Amendment Nos.: Unit 1—114; Unit 2—102.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 21, 1999 (64 FR 19565).

The July 15, 1999, supplement provided revised Technical Specification pages and clarifying information that was within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 19, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Tennessee Valley Authority, Docket Nos. 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 2 and 3, Limestone County, Alabama

Date of application for amendment: June 3, 1999 (TS 397).

Brief description of amendment: The Amendments change the Technical Specifications (TS) by reducing the Allowable Value used for Reactor Vessel Water Level—Low, Level 3 for several instrument functions.

Date of issuance: August 16, 1999.

Effective date: August 16, 1999.

Amendment Nos.: 260 and 219.

Facility Operating License Nos. DPR–52 and DPR–68: Amendments revise the TS.

Date of initial notice in **Federal Register:** July 14, 1999 (64 FR 38037).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 16, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, 405 E. South Street, Athens, Alabama 35611.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: April 16, 1999, as supplemented June 9, 1999.

Brief description of amendment: The amendment clarifies the inservice inspection requirements regarding the granting of relief from the American Society of Mechanical Engineers (ASME) Code requirements by the NRC. The amendment also made changes to reflect previous NRC approval of the use of ASME Code Case N–560.

Date of Issuance: August 13, 1999.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 172.

Facility Operating License No. DPR–28. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 14, 1999 (64 FR 38037).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated August 13, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: June 24, 1999.

Brief description of amendment: The amendment clarifies the basis for the reactor protection system bypass of the turbine stop valve closure and turbine control valve fast closure scram signals at low power. The amendment clarifies that the analytical basis for this bypass corresponds to a fraction of reactor rated thermal power and not other measures of power, for instance, turbine power.

Date of Issuance: August 13, 1999.

Effective date: As of the date of issuance, and shall be implemented within 30 days.

Amendment No.: 173.

Facility Operating License No. DPR–28.: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 14, 1999 (64 FR 38038).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated August 13, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Dated at Rockville, Maryland, this 1st day of September 1999.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Deputy Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–23300 Filed 9–7–99; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

Privacy Act of 1974; System of Records

AGENCY: Postal Rate Commission.

ACTION: Notice of alterations to Privacy Act system of records.

SUMMARY: The Commission proposes to amend its system of records.

The proposed changes will update the system and ensure consistency with the Privacy Act of 1974, as amended.

DATES: See **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: Send comments to the attention of Margaret P. Crenshaw, Secretary, Postal Rate Commission, 1333 H Street NW., Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, at 202–789–6820.

SUPPLEMENTARY INFORMATION: The Postal Rate Commission gives notice, in accordance with the Privacy Act of 1974, 5 U.S.C. 552a(e)(4), of its systems of records and their routine uses, which have changed since the Commission's last publication of a notice. The Commission is also proposing revisions in its rules implementing the Privacy Act, contained in 39 CFR part 3003, to clarify their application and to shorten and simplify their language. These changes will also be published in the **Federal Register**.

PRC–1. To date, the Commission's sole system of records for Privacy Act purposes has been PRC–1, named *Official Personnel Files.* This system consists of information pertaining to Commission personnel generally. However, it does not explicitly include all related records maintained by the Commission, such as information regarding travel by Commission personnel on official business. In order to indicate clearly that all such information is included in the system, the Commission is replacing the previously-described PRC–1 with a more comprehensive system extending to all personnel, pay, leave and travel records. This new system, to be named *Personnel, Pay, Leave,* and Travel, will continue to be designated PRC–1. This system is described in the first section of Appendix A to Order No. 1256.

The Commission is also revising its statement of the routine uses of records contained in PRC–1. Two previously published routine uses are being abolished because they have not occurred in actual practice, and thus are apparently unnecessary. Other routine uses have been reworded, either to accommodate expansions in the use of records made by the Commission or the Postal Service, or to conform with language recommended by the Office of Management and Budget (OMB). The two pre-existing routine uses that encompass litigation-related disclosures have been combined into a single category.

The system notice also contains new routine uses either required by law or which the Commission anticipates may be necessary in the performance of agency business. These include disclosure of information to the National Archives and Records Administration, to agency contractors, and to the OMB for potential private relief legislation. One of these new routine uses reflects the requirement that federal agencies report wage information quarterly to the Parent Locator Service, as prescribed by Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act.

The system notice does not contain a routine use for any computer matching activities that might be performed on records contained in PRC–1, as the Commission has not performed such matching activities in the past, and does not intend to do so in the future. However, the Commission provides payroll records to the Postal Service for routine processing, and it is possible that the Postal Service might use information about Commission personnel in a computer matching activity. In order to fulfill its statutory obligations regarding potential matching activities, particularly under the Computer Matching and Privacy Protection Amendments of 1998 (Pub.L. 100–508), the Commission is transmitting a notice informing the Postal Service of its policy that use of employee records for computer matching may be conducted only with express Commission approval, and requesting the Postal Service to exclude Commission employees from any matching activities it otherwise conducts.

PRC–2. As noted above, the revised PRC–1 will incorporate all Commission records pertaining to its employees. Virtually all other information in the Commission's possession concerning individuals occurs in the pleadings and other filings submitted by participants in the Commission's postal rate, mail classification, and other official public proceedings. Note: The Commission maintains a short press list containing the names, affiliations, addresses, and telephone numbers of reporters in their professional capacity. In the Commission's view, this list does not qualify as a system of records for Privacy Act purposes. Various Commission offices also maintain correspondence files that may contain some information about individuals in

some instances. However, correspondence in these files is not routinely filed or retrieved by personal identifier, and consequently none of them constitutes a system of records in the Commission's view. In order to provide public notice of the existence of information about individuals in this principal substantive record-keeping system, the Commission proposes to establish another system of records, to be designated PRC–2.

As the notice (which also appears as Appendix A to Order No. 1256) states, this system contains names, addresses, and contact information for anyone who intervenes in a Commission proceeding, together with all filings, answers, exhibits and other submissions provided to the Commission. Because all these materials are public records under the terms of 39 CFR 3001.42(b), the system notice states under the "Routine Uses" heading that all records in this system are public and will be disclosed to any person upon request.

Order 1256. The information contained in this notice was distributed to the Docket No. R97–1 service list as part of Order No. 1256 (issued July 7, 1999). Paragraph No. 1 of Order No. 1256 invited interested persons to submit comments on the proposed revisions the system of records no later than August 23, 1999. Ordering paragraph No. 2 directed the Secretary of the Commission to arrange for publication of a Notice and Order in the **Federal Register** in a manner consistent with applicable requirements. Given the delay in publication, persons who did not comment by the date set out in Order No. 1256, but who nevertheless wish to comment, should contact the Secretary at 202–789–6840 for further information. The Commission anticipates providing further information regarding an effective date in a subsequent notice.

Dated: September 1, 1999.

Margaret P. Crenshaw,

Secretary.

PRC–1

SYSTEM NAME:

Personnel, Pay, Leave, and Travel.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

1333 H Street NW., Suite 300, Washington, DC 20268–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records relating to personnel, pay, leave, and travel. This includes: Name; date of birth; social security number; home address; grade; salary; time and attendance; alternate work schedules; biographical information; leave accrual rate, usage, and balances; training; Civil Service Retirement and Federal Employees' Retirement System contributions; FICA withholdings; Federal, State, and local tax withholdings; Federal Employees' Group Life Insurance withholdings; Federal Employees' Health Benefits withholdings; charitable deductions; allotments to financial organizations; garnishment documents; savings bonds allotments; travel expenses; parking permits; carpools; building security records; employee locator; and information on the fare subsidy program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 3603, 44 U.S.C. 3101, 5 U.S.C. ch. 57 (relating to travel, transportation, and subsistence), together with any amendments.

PURPOSE(S):

These records are used to administer pay, leave, travel, parking, fare subsidies, and other administrative functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

A. Disclosure to the U.S. Postal Service

The U.S. Postal Service handles payroll and other disbursements on behalf of the Postal Rate Commission. As a result, records related to payroll functions, travel, and other disbursements are disclosed as a routine use to the U.S. Postal Service. The records from the Commission are incorporated into Privacy Act systems of records maintained by the U.S. Postal Service and are routinely disclosed for purposes defined in those systems of records. The main systems of records at the U.S. Postal Service are Finance Records—Payroll System (USPS 050.020), and Finance Records—Employee Travel Records (USPS 050.010).

B. Disclosure for Law Enforcement Purposes

Information may be disclosed to the appropriate Federal, State, local, or foreign agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, if the information indicates a violation or potential violation of civil or criminal law or regulation within the jurisdiction of the receiving entity.

C. Disclosure Incident to Requesting Information

Information may be disclosed to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and to identify the type of information requested), when necessary to obtain information relevant to a decision concerning retention of an employee or other personnel action (other than hiring), retention of a security clearance, the letting of a contract, or the issuance or retention of a grant, or other benefit.

D. Disclosure to Requesting Agency

Disclosure may be made to a Federal, State, local, foreign, or tribal or other public authority of the fact that this system of records contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other authority may then make a request supported by the written consent of the individual for the record if it chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to the authority or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action.

E. Disclosure to Office of Management and Budget

Information may be disclosed to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

F. Disclosure to Congressional Offices

Information may be disclosed to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of the individual.

G. Disclosure During Litigation

Information may be disclosed to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the Postal Rate Commission is authorized to appear, when:

1. The Commission, or any component thereof; or

2. Any employee of the Commission in his or her official capacity; or

3. Any employee of the Commission in his or her individual capacity where the Department of Justice or the Commission has agreed to represent the employee; or

4. The United States, when the Commission determines that litigation is likely to affect the Commission or any of its components is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the Commission is deemed by the Commission to be relevant and necessary to the litigation provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

H. Disclosure to the National Archives

Information may be disclosed to the National Archives and Records Administration in records management inspections.

I. Disclosure to Contractors, Grantees, and Others

Information may be disclosed to contractors, grantees, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, job, or other activity for the Postal Rate Commission and who need the information in the performance of their duties or activities for the Commission. If appropriate, recipients will be required to comply with the requirements of the Privacy Act of 1974 as provided in 5 U.S.C. 552a(m).

J. Disclosures for Administrative Claims, Complaints and Appeals

Information from this system of records may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee, but only to the extent that the information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

K. Disclosure to the Office of Personnel Management

Information from this system of records may be disclosed to the Office of Personnel Management pursuant to that agency's responsibility for evaluation and oversight of Federal personnel management.

L. Disclosure in Connection with Litigation

Information from this system of records may be disclosed in connection with litigation or settlement discussions regarding claims by or against the Postal Rate Commission, including public filing with a court, to the extent that disclosure of the information is relevant and necessary to the litigation or discussions and except where court orders are otherwise required under section (b)(11) of the Privacy Act of 1974, 5 U.S.C. 552a(b)(11).

M. Disclosure for Child Support Enforcement

The name, Social Security Number, home address, date of birth, date of hire, quarterly earnings, employer identifying information, and State of hire for each employee may be disclosed to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services for the purpose of locating individuals to establish paternity, establishing and modifying orders of child support, identifying sources of income, and for other child support enforcement actions as required by the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform Law, Pub. L. 104–193).

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Information from this system of records may be disclosed to a consumer reporting agency as provided in 31 U.S.C. 3711.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper, in folders, in file cabinets, and on the Postal Rate Commission's computer network.

RETRIEVABILITY:

Records may be retrieved by name, Social Security Number, or other identification number.

SAFEGUARDS:

Records are maintained in locked file cabinets or combination safes and on computers and computer networks that use password protections and other system controls to prevent unauthorized access by Postal Rate Commission staff. Firewalls prevent access to internal Commission documents by outsiders. All records and computer facilities are maintained in Commission offices, and public access to Commission offices is controlled.

RETENTION AND DISPOSAL:

Records are maintained for varying periods of time, in accordance with NARA General Records Schedules 2 (pay and leave) and 9 (travel).

SYSTEM MANAGER(S) AND ADDRESS:

Chief Administrative Officer, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001.

NOTIFICATION PROCEDURE:

RECORD ACCESS PROCEDURES:

All requests should be directed to the System Manager. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document, and dates of employment.

CONTESTING RECORD PROCEDURES:

All requests should be directed to the System Manager. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document, and dates of employment.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from: the subject of the record; employment applications, references, and other employment-related sources; the official personnel file from the Office of Personnel Management; and internal Postal Rate Commission documents, including time and attendance records, leave slips, travel requests, performance evaluations, training records, and similar internal documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

PRC–2

SYSTEM NAME:

Docket Room Records (PRC–2).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

1333 H Street NW, Suite 300, Washington, DC 20268–0001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who intervene in Postal Rate Commission proceedings and individuals whose name and other identifying information appears in records filed in connection with Postal Rate Commission proceedings.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains names, addresses, and contact information for anyone who intervenes in a proceeding before the Postal Rate Commission; submissions, filings, answers, exhibits, and any other record provided to the Commission and made public under Commission rule 3001.42(b).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 3603.

PURPOSE:

These records are used under the Postal Rate Commission's rules and procedures in Commission proceedings, decisions, opinions, and other activities authorized by law.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

All records in this system are public and will be disclosed to any person upon request.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper, in folders, in file cabinets, and on the Postal Rate Commission's computer network.

RETRIEVABILITY:

Records may be retrieved by name or docket number.

SAFEGUARDS:

Records are maintained in the Postal Rate Commission's Docket Room, on computer networks, and on the Commission website. All records and computer facilities are maintained in Commission offices, and public access to Commission offices is controlled.

RETENTION AND DISPOSAL:

Records are disposed of in accordance with approved record schedules. Most records pertaining to Commission decisions are retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Administrative Officer, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001.

NOTIFICATION PROCEDURE:

RECORD ACCESS PROCEDURES:

All requests should be directed to the System Manager. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document, and dates of employment.

CONTESTING RECORD PROCEDURE:

All requests should be directed to the System Manager. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document, and dates of employment.

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from intervenors in Postal Rate Commission proceedings and from Commission staff.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–23303 Filed 9–7–99; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form 40–F, SEC File No. 270–335; OMB Control No. 3235–0381

Schedule 13E–4, SEC File No. 270–190; OMB Control No. 3235–0203

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Form 40–F is used by certain Canadian issuers to register securities pursuant to Section 12 of the Securities Exchange Act of 1934 ("Exchange Act") or as an annual report pursuant to Section 13(a) or 15(d) of the Exchange Act. The information required under cover of Form 40–F can be used by security holders, investors, broker-dealers, investment banking firms, professional securities analysts and others in evaluating securities and making investment decisions with respect to securities of certain Canadian companies. Form 40–F takes approximately 2 hours to prepare and is filed by an estimated 100 respondents for a total annual response of 200 burden hours. It is estimated that 25% (50 hours) of the 200 hours would be prepared by the company.

Schedule 13E–4 is filed pursuant to Section 13(e)(1) of the Exchange Act by issuers conducting a tender offer. This information is needed to provide full and fair disclosure to the investing public. Schedule 13E–4 takes approximately 232 hours to prepare and is filed by an estimated 121 respondents annual for a total of 28,072 burden hours.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549.

Dated: August 26, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc 99–23236 Filed 9–7–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27071]

Filings Under the Public Utility Holding Company Act of 1935, as amended ("Act")

August 31, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 27, 1999, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues or facts of law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After September 27, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

SCANA Corporation (70–9521)

SCANA Corporation ("SCANA"), 1426 Main Street, Columbia, South Carolina 29201, a South Carolina public utility holding company exempt from registration under section 3(a)(1) of the Act, has filed an application under sections 5, 9(a)(2), 10, and 11 of the Act.

SCANA proposes to acquire, by means of the transactions described below, Public Service Company of North Carolina, Incorporated ("PSNC"), a North Carolina corporation and gas public-utility company. PSNC would become a wholly owned subsidiary company of SCANA and the third public utility company, within the meaning of the Act, owned by SCANA. Following its acquisition of PSNC, SCANA would register under section 5 of the Act.

SCANA, PSNC, and their respective subsidiaries have also filed in File No. 70–9533 an application-declaration related to financing SCANA's proposed registered holding company system and the establishment of a service company for that system. A notice of that filing is being issued simultaneously with this notice.

SCANA is engaged primarily in providing electric and gas service to customers in South Carolina. SCANA's two current public utility company subsidiaries are South Carolina Electric and Gas Company ("SCE&G") and South Carolina Generating Company, Inc. ("GENCO"). SCE&G generates and sells electricity to wholesale and retail customers, and purchases, sells, and transports natural gas at retail. SCE&G also provides public transit service in Columbia, South Carolina. GENCO owns and operates the Williams Station generating facility and sells electricity solely to SCE&G. As of December 31, 1998, SCANA provided electric utility service to 517,447 customers and gas utility service to 256,842 customers. As of February 26, 1999, 103,572,623 shares of SCANA common stock, no par value, were issued and outstanding. SCANA's principal executive office is located in Columbia, South Carolina.

SCANA has thirteen direct, wholly owned, nonutility subsidiary companies that engage in a wide range of energy and telecommunications-related services. For the year ended December 31, 1998, SCANA had total assets of $5.281 billion, net utility assets of $3,787 billion, total operating revenues of $1,632 billion, and net income of $115 million. SCANA neither owns nor operates any physical properties. As of December 31, 1998 SCANA employed, in conjunction with its subsidiaries, a total of 4,697 full-time employees.

PSNC is a public utility company franchised to serve a 31-county area in North Carolina. It transports, distributes, and sells natural gas to approximately 340,000 residential, commercial, and industrial customers in 95 cities in North Carolina. In connection with its natural gas distribution business, PSNC promotes, sells, and installs both new and replacement natural gas appliances and equipment. PSNC has seven partially or wholly owned nonutility subsidiaries that engage primarily in energy-related activities.

For the fiscal year ended September 30, 1998, 20,274,332 shares of PSNC common stock, $1 par value, were outstanding, and PSNC had total assets of $618,753,000, operating revenues of $330,672,000, and net income of $24,837,000. As of May 11, 1999 it had approximately 1,000 employees. PSNC owns 750 miles of transmission pipelines, 6,727 miles of distribution mains, and ownership and leasehold interests in various buildings used in connection with its operations.

Under an Amended and Restated Agreement and Plan of Merger ("Merger Agreement"), dated as of February 16, 1999 and amended and restated as of May 10, 1999 by and among PSNC, SCANA, New Sub I, Inc. ("New Sub I")[1] and New Sub II, Inc. ("New Sub II"),[2] New Sub I will be merged with and into SCANA, with SCANA as the surviving corporation ("First Merger"). PSNC will be merged with and into New Sub II, with New Sub II as the surviving corporation ("Preferred Second Merger" and, together with the First Merger, "Mergers").[3] As a result of the Preferred Second Merger, PSNC will become a wholly owned subsidiary company of SCANA.

The terms of the First Merger provide holders of SCANA common stock with an opportunity to exchange their shares for a specified cash payment. In the First Merger, each share of SCANA common stock outstanding immediately prior to that merger's effective time will be converted into the right to receive either (i) $30 in cash or (ii) one share of SCANA common stock. This provision is subject to a requirement that SCANA pay $700 million in total cash as consideration in the Mergers. If the First Merger occurs, it will be consummated prior to the consummation of the Preferred Second Merger. The First Merger will not involve the acquisition of any securities of a public utility company, and SCANA does not seek any Commission approvals in connection with the First Merger.

The terms of the Preferred Second Merger provide holders of PSNC common stock with an opportunity to exchange their shares for a specified sum of cash, shares of SCANA common stock, or a combination of each. Immediately prior to the effective time of the Preferred Second Merger, each share of PSNC common stock then outstanding will be converted into the right to receive (1) $33.00 in cash, subject to the limitation that no more than 50% of the aggregate consideration to be paid to PSNC shareholders be in cash, (2) a number of shares of SCANA common stock determined according to a formula described below, or (3) a combination of cash and shares of SCANA common stock. The ratio by which PSNC shares will be exchanged for SCANA shares will be established immediately prior to the Preferred Second Merger and will be based upon the average market price of SCANA common stock over the preceding 20 trading day period. This ratio is subject to the limitation that PSNC shareholders will receive no more than 1.45 and no less than 1.02 shares of SCANA

[1] New Sub I will be incorporated under the laws of South Carolina prior to the consummation of the First Merger and will be a wholly owned subsidiary of SCANA. SCANA states that at no time will New Sub I have any operations other than the activities contemplated by the Merger Agreement as necessary to merge New Sub I with and into SCANA.

[2] New Sub II will be incorporated under the laws of South Carolina prior to the consummation of the Preferred Second Merger and will be a wholly owned subsidiary of SCANA. SCANA states that at no time will New Sub II have any operations other than the activities contemplated by the Merger Agreement as necessary to merge PSNC with and into New Sub II.

[3] The Merger Agreement also provides that, in the event it is not possible to consummate the Preferred Second Merger, the parties would, subject to certain conditions, carry out an "alternative merger" transaction in which PSNC would be merged directly into SCANA's existing public utility subsidiary, SCE&G. The request for approval made in SCANA's application concerns only the Preferred Second Merger.

common stock for each share of PSNC common stock.

The Preferred Second Merger will be accounted for under the purchase method of accounting, in accordance with Generally Accepted Accounting Principles. As a regulated utility, the assets and liabilities of the acquired company, PSNC, will not be revalued to estimates of fair value, but will be maintained at their recorded amounts. If the Mergers are consummated, SCANA's financial statements will reflect effects of transaction adjustments only from the time Preferred Second Merger is effective. The First Merger will be treated as a reorganization with no change in the recorded amount of SCANA's assets and liabilities. The financial statements of SCANA will become the financial statements of the surviving corporation in the First Merger, and the results of the surviving corporation's operations will include the results of PSNC's operations commencing at the time the Preferred Second Merger becomes effective.

Following the Preferred Second Merger, PSNC will become a wholly owned public utility company subsidiary of SCANA. The Merger Agreement provides that SCANA's principal corporate office will remain in Columbia, South Carolina and that PSNC's principal corporate office will remain in Gastonia, North Carolina.

SCANA Corporation (70–9533)

SCANA Corporation ("SCANA"), a South Carolina public utility holding company exempt from registration under section 3(a)(1) of the Act, and its subsidiaries South Carolina Electric and Gas Company ("SCE&G"); South Carolina Generating Company, Inc. ("GENCO"); South Carolina Fuel Company, Inc.; South Carolina Pipeline Corporation; SCANA Energy Marketing Inc.; SCANA Propane Gas, Inc.; SCANA Propane Storage, Inc.; SCANA Communications, Inc.; Servicecare Inc.; Primesouth, Inc.; SCANA Resources Development Corporation; SCANA Petroleum Resources, Inc.; and SCANA Service Company ("SCANA Service"), all located at 1426 Main Street, Columbia, South Carolina 29201; Public Service Company of North Carolina, Incorporated ("PSNC"), a North Carolina public utility company, and its subsidiaries Sonat Public Service Company LLC; Clean Energy Enterprises; Cardinal Pipeline Company, LLC; Pine Needle LNG Company, LLC; PSNC Blue Ridge Corporation; PSNC Cardinal Pipeline Company; and PSNC Production Corporation, all located at 400 Cox Road, Gastonia, North Carolina 28054 (collectively "Applicants"), have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12, and 13(b) of the Act and rules 42, 43, 45, 54, 87, 88, 90, and 91 under the Act.

SCANA has also filed a related application-declaration in File No.70–9521 seeking approvals required to complete its proposed acquisition of PSNC ("Merger"). a notice of that filing is being issued simultaneously with this notice.

The Applicants propose to enter into numerous types of financing transactions to meet SCANA's capital requirements immediately following the Merger and to plan future financing. They request authorization to engage in these financing transactions for five years commencing on the date of an order issued responding to their application-declaration ("Authorization Period").

1. General Terms and Conditions of Financing

Financings by each Applicant would be subject to the following limitations: (i) the effective cost of money on long-term debt securities will not exceed 300 basis points over comparable term U.S. Treasury securities, and the effective cost of money on short-term securities will not exceed 300 basis points over the comparable term London Interbank Offered Rate; (ii) maturity of indebtedness will not exceed 50 years; (iii) the underwriting fees, commissions, or similar remuneration paid in connection with the issue, sale, or distribution of a security will not exceed 5% of the principal amount of the financing; and (iv) at all times during the Authorization Period SCANA's common equity will be at least 30% of its consolidated capitalization.

The proceeds from the sale of securities in external financing transactions would be used for general corporate purposes including: (i) the financing, in part, of the capital expenditures of the SCANA system; (ii) the financing of working capital requirements of the SCANA system; (iii) the acquisition, retirement, or redemption of existing securities; and (iv) direct or indirect investment in companies whose activities the Commission authorizes in connection with the Merger, as well as energy-related and gas-related companies, as defined in rule 58(b), and exempt telecommunications companies, as defined in section 34(a) of the Act.

2. External Financing

SCANA requests authorizations for four types of external financing. First it seeks authorization to issue common stock, no par value (subject to adjustment to reflect any stock split), up to an aggregate amount of 13.6 million shares, including issuances under its benefit and dividend reinvestment plans. SCANA also proposes to issue common-stock options.

Second, SCANA requests authorization to issue long-term debt securities in an amount, when combined with its issuances of common stock (other than for benefit or dividend reinvestment plans), not to exceed $1.435 billion. the long-term debt securities would consist of medium-term notes issued under an indenture.

Third, SCANA requests authorization to have outstanding at any one time up to $950 million of short-term debt, consisting of bank borrowings, commercial paper, or bid notes. The short-term debt would be used to refund pre-Merger short-term debt, to provide for the reissuance of pre-Merger letters of credit, and to provide financing for general corporation purposes, working capital requirements, and capital expenditures for the Applicants other than SCANA until long-term financing can be obtained.

Fourth, SCANA requests authorization to engage in hedging transactions intended to manage the volatility of interest rates, including interest rate swaps, caps, floors, collars, and forward agreements or any other similar agreements. SCANA would employ interest rate swaps to manage the risk associated with any of its outstanding debt authorized by the Commission.

3. Utility Subsidiary Financing

The Applicants request authorization for SCE&G, GENCO, and PSNC ("Utility Subsidiaries") to issue up to $300 million in short-term debt consisting of commercial paper, unsecured bank loans, and borrowings under a SCANA holding company system money pool. These issuances of securities would comply with the general terms and conditions for financing transactions described above. Any short-term borrowings by the Utility Subsidiaries, when combined with short-term borrowings by SCANA, would not exceed $1.2 billion at any time during the Authorization Period. In addition, the Applicants request authorization for the Utility Subsidiaries to enter into hedging transactions of the same type under the same conditions as those applicable to SCANA.

4. Nonutility Subsidiary Financing

The Applicants believe that in most cases rule 52(b) under the Act would exempt borrowings by any Applicant other than SCANA and the Utility Subsidiaries (excluding SCANA, the "Nonutility Subsidiaries") from Commission authorization requirements. However, the Nonutility Subsidiaries request that the Commission reserve jurisdiction over the issuance to nonassociates of securities that are not exempt under rule 52(b). The Nonutility Subsidiaries state that when a proposed issuance of a security is not exempt under rule 52(b) they will file a post-effective. amendment requesting the necessary authorization.

5. Other Securities

SCANA may find it necessary or desirable to issue and sell other types of securities during the Authorization Period in addition to those specifically enumerated in the application-declaration. SCANA requests that the Commission reserve jurisdiction over the issuance of additional types of securities.

6. Guarantees

SCANA requests authorization to enter into guarantees, obtain letters of credit, enter into expense agreements, or otherwise provide support that its direct or indirect subsidiaries existing at the time the Merger is consummated or that are subsequently formed ("System Subsidiaries") need in the ordinary course of their respective businesses. The aggregate principal amount of this credit support would not exceed $305 million. The debt would comply with the general terms and conditions for financing transactions described above.

7. Money Pool

SCANA and the Utility Subsidiaries request authorization to establish a utility money pool, and the Nonutility Subsidiaries request authorization to establish a Nonutility money pool. The Utility Subsidiaries, to the extent that a transaction is not exempt under rule 52, request authorization to make unsecured short-term borrowings from the utility money pool, contribute surplus funds to the utility money pool, and lend and extend credit to (and acquire promissory notes from) one another through the utility money pool.

The Nonutility Subsidiaries may participate in a Nonutility money pool. The application-declaration states that rule 52 exempts the Nonutility money pool activities of the Nonutility Subsidiaries from the Act's prior-approval requirements. SCANA is requesting authorization to contribute surplus funds and to lend and extend credit to (a) the Utility Subsidiaries through the utility money pool and (b) the Nonutility Subsidiaries through the Nonutility money pool.

SCANA Service will administer the utility and Nonutility money pools on an "at cost" basis and will maintain separate records for each money pool. Surplus funds of the two money pools may be combined in common short-term investments, but SCANA Service will maintain separate records of these funds. The Applicants request the Commission to reserve jurisdiction over participation in a money pool by future companies formed by SCANA until a post-effective amendment is filed naming the new participant.

8. Changes in Capital Stock

The Applicants request authority to change the terms of the authorized capital stock of any wholly owned System Subsidiary by an amount SCANA or an immediate parent company deems appropriate. the application-declaration states that a System Subsidiary would be able to change the par value, or change between par and no-par stock, without additional Commission approval. Any action of this type by a Utility Subsidiary would be subject to, and would be taken only upon receipt of, necessary approvals by the state commission in the state or states where the Utility Subsidiary is incorporated and doing business.

9. Payment of Dividends

The Applicants request authorization to pay dividends out of the additional paid-in-capital account of PSNC up to the amount of PSNC's aggregate retained earnings just prior to the Merger and out of earnings before the amortization of the goodwill thereafter.

10. Financing Entities

The Applicants seek authorization for any Applicant other than SCANA to organize new corporations, trusts, partnerships, or other entities created for the purpose of facilitating financings through issuance of securities to third parties. The Applicants also request authority for (1) the issuance of debt instruments by an Applicant other than SCANA to a financing entity in return for the financing proceeds, (2) the acquisition by an Applicant other than SCANA of voting interests or equity securities issued by a financing entity, and (3) the guarantee by the Applicant of the financing entity's obligations. Each of the Applicants other than SCANA requests authorization to enter into expense agreements with its respective financing entity, under which it would agree to pay all expenses of that entity. Any amounts issued by financing entity to a third party would be included in the overall external financing limitation authorized for the financing entity's immediate parent.

11. Service Company

SCANA Service will be incorporated in South Carolina and will act as the SCANA holding company system's service company following the Merger. It will provide a variety of administrative, management, and support services. The Applicants anticipate that SCANA Service will be staffed through a transfer of personnel from SCANA, SCE&G, and PSNC. The Applicants state that SCANA Service's accounting and cost allocation methods will comply with Commission standards for service companies in registered holding-company systems, and that its billing system will follow the Commission's Uniform System of Accounts for Mutual Service Companies and Subsidiary Service Companies. Except as permitted by the Act or the Commission, all services that SCANA Service provides to affiliated companies will be performed on an "at cost" basis in accordance with rules 90 and 91.

To ensure adequate oversight and realize economies of scale, some administrative and service functions for the SCANA holding company system will be consolidated and provided through SCANA Service. As a general rule, the individual system companies will perform those services that can best be done at the company level, with SCANA Service offering system-wide coordination, strategy, oversight, and other services when that proves to be more efficient.

12. Other Services

SCE&G, PSNC and other associate companies of SCANA request authorization to enter into leases of office or other space with associate companies. The Utility Subsidiaries may also provide services to each other that are incidental to their utility businesses, such as maintenance and emergency repairs and the services of personnel with special expertise. The Utility Subsidiaries will enter into software license agreements with other companies in the SCANA holding company system. The Applicants state that all of these agreements and services will comply with the requirements of rules 87, 90, and 91.

SCANA Fuel Company, Inc. ("SCANA Fuel") enters into contracts with SCE&G to provide environmental and fuel-related services. SCANA Fuel provides these services "at cost," as determined under rules 90 and 91.

13. Tax Allocation Agreement

The Applicants have requested approval of an agreement to allocate consolidated taxes among SCANA and the other Applicants ("Tax Allocation Agreement"). The Applicants require this approval because the Tax allocation Agreement allows SCANA to retain certain payments for tax losses it has incurred, rather than allocate them to the other Applicants without payment, as rule 45(c)(5) would otherwise require. SCANA will create tax credits through the Merger that are nonrecourse to the other Applicants. The Applicants state that SCANA should retain the benefits of those tax credits.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23237 Filed 9–7–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41808; File No. SR–Amex–99–27]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC To Revise the Exchange's Margin Requirements

August 30, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 23, 1999, the American Stock Exchange LLC ("Exchange" or "Amex") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise Exchange Rule 462, "Minimum Margins." Principally, the revisions would permit the extension of credit on certain long term options and warrants (*i.e.*, more than 9 months from expiration); revise the margin requirements for butterfly spreads and box spreads; and modify the maintenance margin requirements for hedging strategies that pair stock positions with options (*e.g.*, conversions, collar).

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to revise Exchange Rule 462, "Minimum Margins," to: (i) permit the extension of credit on certain long term options and warrants, and certain long box spreads comprised entirely of European-style options; (ii) recognize butterfly and box spread strategies for purposes of margin treatment and establish appropriate margin requirements; (iii) recognize various strategies involving stock (or other underlying instruments) paired with a long option, and provide for lower maintenance margin requirements on such hedged stock positions; (iv) expand the types of short positions that would be considered "covered" in a cash account; specifically, certain short positions that are components of limited risk spread strategies (*e.g.*, butterfly and box spreads); (v) allow a bank issued escrow agreement to serve as cover for certain spread positions held in a cash account; and (vi) update and improve, as necessary, current margin rules.

Previously, the margin requirements governing options were set forth in Regulation T, "Credit by Brokers and Dealers."[3] However, amendments to Regulation T that became effective June 1, 1997, modified or deleted certain margin requirements regarding options transactions in favor of rules to be adopted by the options self-regulatory organizations ("OSROs"), subject to approval by the Commission.[4] In a rule filing approved by the Commission in 1997, the Exchange adopted various margin requirements pertaining to options that were to be deleted from Regulation T.[5] That previous margin filing also contained several necessary changes that clarified certain provisions and established better consistency with the margin rules of the New York Stock Exchange.

In accordance with Regulation T, the OSROs have the ability, subject to SEC approval, to adopt rules governing the margin treatment of options.[6] The Exchange therefore proposes to revise its margin rules to implement enhancements long desired by Exchange members and member firms, public investors, and Exchange staff. The Exchange believes that certain multiple options position strategies and other strategies that combine stock with option positions warrant recognition for purposes of establishing more equitable margin requirements. Currently, the components of such strategies must be margined separately. The Exchange believes the risk limitation that results in the component positions are viewed collectively is not reflected in current margin requirements. The Exchange further believes that market participants should have the ability to utilize these strategies for the least amount of margin necessary. The other significant change sought by the Exchange would permit the extension of credit on certain long term options and warrants.

In developing this proposal, the Exchange reviewed all of its margin rules with a view toward updating or improving margin provisions as necessary. The Exchange also found it necessary to propose minor changes to certain rules because they are closely related to, and will be impacted by, the more substantive proposals.

a. *Definitions Section.* Presently, the Exchange's definition of "current market value" is equivalent to the definition found in Regulation T. Instead of repeating the Regulation T definition, the proposal would revise the definition found in the Exchange's rules to note that the meaning of the term "current market value" is as defined in Regulation T. Because the Exchange and other OSROs intend to seek a change in the Regulation T definition, a linkage to the Regulation T definition will keep the Exchange's definition equivalent without requiring a future rule filing.

The Exchange also seeks to adopt definitions for the "butterfly spread" and "box spread" options strategies. The definitions are an important part of the Exchange's proposal to recognize and specify cash and margin account requirements for butterfly and box spreads. These proposals are outlined below in Sections II(A)(1) (c) and (d). The Exchange believes that the definitions are necessary to establish in specific terms what multiple options positions, if held together, qualify for classification as butterfly or box spreads, and consequently are eligible for proposed cash and margin treatment.

Finally, the Exchange seeks to define the term "listed." Because the term "listed" is frequently used in the Exchange's margin rules, the Exchange believes it would be more efficient to define the term once rather than specifying the meaning of the term each time it is used.

b. *Extension of Credit on Long Term Options, Stock Index Warrants, Foreign Currency Warrants, and Currency Index Warrants.* The Exchange proposes to permit the extension of credit on certain listed, long term options and warrant products (including currency and index warrants, but excluding traditional stock warrants issued by a corporation on its own stock).[7] Only those long term options or warrants that are more than 9 months from expiration will be eligible for credit extension. The proposal requires initial and maintenance margin of not less than 75% of the current market value of a listed, long term option or warrant. Therefore, a broker-dealer would be able to loan up to 25% of the current market value of a listed, long term option or warrant.

The proposal also will permit the extension of credit on long term options and warrants not listed or traded on a registered national securities exchange or a registered securities association ("OTC options"). However, in addition to being more than 9 months from expiration, an OTC option or warrant must be in-the-money and guaranteed by the carrying broker-dealer. The proposal requires initial and maintenance margin of not less than 75% of the OTC's option's (warrant's) in-the-money amount (*i.e.*, intrinsic value), plus 100% of the amount, if any, by which the current market value of the OTC option or warrant exceeds the in-the-money amount.

When the time remaining until expiration for an option or warrant (listed and OTC) on which credit has been extended reached 9 months, the maintenance margin requirement will become 100% of the current market value.

c. *Extension of Credit on Long Box Spread Comprised Entirely of European-style Options.* The Exchange also proposes to allow the extension of credit on a long box spread comprised entirely of European-style options. A long box is a strategy comprised of four option positions that essentially lock-in the ability to buy and sell the underlying component or index for a profit, even after netting the cost of establishing the long box. The two exercise prices embedded in the strategy determine the buy and the sell price. The Exchange believes that because the cost of establishing the long box spread is covered by the profit realizable at expiration, there is no risk in carrying the debit incurred to establish the long box spread. Although the Exchange believes that 100% of the debit could be loaned, the Exchange proposes a margin requirement that approximates 50% of the debit. The Exchange's proposal will require 50% of the aggregate difference in the two exercise prices (buy and sell), which results in a margin requirement slightly higher than 50% of the debit typically incurred. This is both an initial and maintenance margin requirement. The proposal will afford a long box spread position a market value for margin equity purposes of not more than 100% of the aggregate exercise price differential.

d. *Cash Account Treatment of Butterfly and Box Spreads.* The proposal will make butterfly and box spreads in cash-settled, European-style options eligible for the cash account. To qualify for carrying in the cash account, the butterfly and box spreads must meet the specifications contained in the proposed definition section. The proposal will require full cash payment of the debit that is incurred when a long butterfly or long box spread strategy is established. The Exchange believes that if the debit is fully paid, there is no market risk to the carrying broker-dealer.

Short butterfly spreads generate a credit balance when established. However, in the worst case scenario, where all options are exercised, a debit (loss) greater than the initial credit balance received would accrue to the account. This debit or loss, however, is limited. To pose no market risk to the carrying broker-dealer, the proposal will require that the initial credit balance, plus an amount equal to the difference between the initial credit and the total risk, must be held in the account in the form of cash or cash equivalents. The total risk potential in a short butterfly spread comprised of call options is the aggregate difference between the two lowest exercise prices. With respect to short butterfly spreads comprised of put options, the total risk potential is the aggregate difference between the two highest exercise prices. Therefore, to carry short butterfly spreads in the cash account, the proposal will require that cash or cash equivalents equal to the maximum risk must be held or deposited.

Short box spreads also generate a credit balance when established. The net credit received from selling a box spread will cover nearly all, but not 100%, of the debit (loss) that would accrue to the account if held to expiration. The Exchange believes that the credit should be retained in the account. Therefore, the proposal will require that cash or cash equivalents covering the maximum risk, which is equal to the aggregate difference in the two exercise prices involved, must be held or deposited.

In addition, the proposal will allow an escrow agreement to be used in lieu of the cash or cash equivalents required to carry short butterfly and box spreads in the cash account.

e. *Margin Account Treatment of Butterfly and Box Spreads.* Currently, the Exchange's margin rules do not recognize butterfly and box spreads for margin purposes. Therefore, margin requirements tailored to the risks of these respective strategies, which the Exchange believes have limited risk, are not currently provided. A butterfly spread is a paring of two standard spreads, one bullish and one bearish. The two spreads (bullish and bearish) must be margined separately under the Exchange's current margin rules. The Exchange believes that this practice requires more margin than necessary because the two spreads serve to offset each other with respect to risk. The Exchange believes that the two individual spreads should be viewed in combination to form a butterfly spread, and that commensurate with the lower combined risk, investors should receive the benefit of lower margin requirements.

The Exchange's proposal would recognize as a distinct strategy butterfly spreads held in margin accounts, and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 12 CFR 220 *et seq.* The Board of Governors of the Federal Reserve System adopted Regulation T pursuant to Section 7(a) of the Act.

[4] *See* Board of Governors of the Federal Reserve System Docket No. R–0772 (Apr. 26, 1996), 61 FR 20386 (May 6, 1996).

[5] *See* Securities Exchange Act Release No. 38710 (June 2, 1997), 62 FR 31638 (June 10, 1997).

[6] The Chicago Board Options Exchange ("CBOE"), New York Stock Exchange ("NYSE"), and Pacific Exchange ("PCX") have filed similar margin proposals with the Commission. The CBOE proposal was approved on July 27, 1999. *See* Securities Exchange Act Release No. 41658 (July 27, 1999), 64 FR 47736 (Aug. 5, 1999). The NYSE and PCX margin proposals are still pending with the Commission. *See* File Nos. SR–NYSE–99–03 and SR–PCX–98–59.

[7] Throughout the entirety of this notice, the term "warrant(s)" means this type of warrant.

specify requirements that are the same as the cash account requirements for butterfly spreads.[8] Specifically, in the case of a long butterfly spread, the net debit must be paid in full. For short butterfly spreads comprised of call options, the initial and maintenance margin must equal at least the aggregate difference between the two lowest exercise prices. For short butterfly spreads comprised of put options, the initial and maintenance margin must equal at least the aggregate difference between the two highest exercise prices. The net credit received from the sale of the short option components may be applied towards the margin requirement for short butterfly spreads.

The proposed requirements for box spreads held in a margin account, where all option positions making up the box spread are listed or guaranteed by the carrying broker-dealer, also are the same as those applied to the cash account. With respect to long box spreads, where the component options are not European-style, the proposal would require full payment of the net debit that is incurred when the spread strategy is established. For short box spreads held in the margin account, the proposal would require that cash or cash equivalents covering the maximum risk, which is equal to the aggregate difference in the two exercise prices involved, be deposited and maintained. The net credit received from the sale of the short option components may be applied towards the requirement.

Generally, long and short box spreads will not be recognized for margin equity purposes; however, the proposal will allow loan value for one type of long box spread where all component options have a European-style exercise provision and are listed or guaranteed by the carrying broker-dealer. As noted above in Section II(A)(1)(c), the margin required for a long box spread comprised entirely of European-style options is 50% of the aggregate difference in the two exercise prices framing the strategy. This is both an initial and maintenance margin requirement. For margin equity purposes, a long box spread made up of European-style options could not be valued at more than 100% of the aggregate exercise price differential.

f. *Margin Account Treatment of Stock Positions Held with Options Positions.* In addition to butterfly and box spreads, the Exchange proposes to recognize five options strategies that are designed to limit the risk of a position in the underlying component. The five strategies are: (i) Long Put/Long Stock; (ii) Long Call/Short Stock; (iii) Conversion; (iv) Reverse Conversion; and (v) Collar. Proposed Exchange Rule 462(d)(10)(B)(iv), "Exceptions," will identify and set forth the margin requirements for these hedging strategies.

the five strategies are summarized below in terms of a stock position held in conjunction with an overlying option (or options). However, the proposal is structured to also apply to components that underlie index options and warrants.

The Exchange's proposal only addresses maintenance margin relief for the stock component (or other underlying instrument) of the five proposed strategies. The Exchange believes that a reduction in the initial margin requirement for the stock component of these strategies is not currently possible because the 50% initial margin requirement in Regulation T continues to apply, and the Exchange has no independent authority to lower the initial margin requirement for stock. However, the Exchange notes that the Federal Reserve Board is considering recognizing the reduced risk afforded stock by these options strategies for the purpose of lowering initial stock margin requirements, and is also considering other changes that would facilitate risk-based margins.

The "Long Put/Long Stock" and the "Long Call/Short Stock" hedging strategies are very similar to the "Collar" and "Reverse Conversion" strategies, respectively, and are addressed below in reference to the Collar and Reverse Conversion descriptions.

A "Conversion" is a long stock position held in conjunction with a long put and a short call. The put and call must have the same expiration and exercise price. The long put/short call is essentially a synthetic short stock position that offsets the long stock, and the exercise price of the options acts like a predetermined sale price. The short call is covered by the long stock and the long put is a right to sell the stock at a predetermined price—the put exercise price. Regardless of any decline in market value, the stock is, in effect, worth no less than the put exercise price.

A "Reverse Conversion" is a short stock, short put, and long call trio. Again, the put and call must have the same expiration and exercise price. The long call/short put is essentially a synthetic long stock position that offsets the short stock, and the exercise price of the options acts like a predetermined purchase (buy-in) price. The short put is covered by the short stock and the long call is a right to buy the stock (in this case closing the short position) at a predetermined price—the call exercise price. Regardless of any rise in market value, the stock can be acquired for the call exercise price; in effect, the short position is valued at no more than the call exercise price. The Long Call/Short Stock hedge described above is a Reverse Conversion without the short put, or simply short stock offset by a long call.

A "Collar" is a long stock position held in conjunction with a long put and a short call. A Collar differs from a Conversion in that the exercise price of the put is lower than the exercise price of the call in the Collar strategy; therefore, the options do not constitute a pure synthetic short stock position. The Long Put/Long Stock hedge mentioned above is similar to a Collar without the short call, or simply long stock hedged by a long put.

The proposal would establish reduced maintenance margin requirements for the stock component of these five strategies as follows:

1. Long Put/Long Stock

The lesser of:
- 10% of the put exercise price, plus 100% of any amount by which the put is out-of-the money; or
- 25% of the long stock market value.

2. Long Call/Short Stock

The lesser of:
- 10% of the call exercise price, plus 100% of any amount by which the call is out-of-the money; or
- the maintenance margin requirement on the short stock

3. Conversion

- 10% of the exercise price.

The stock may not be valued at more than the exercise price.[9]

4. Reverse Conversion

- 10% of the exercise price, plus any in-the-money amount.[10]

5. Collar

The lesser of:
- 10% of the put exercise price, plus 100% of any amount by which the put is out-of-the money; or
- 25% of the call exercise price.

The stock may not be valued at more than the call service price.

These same maintenance margin requirements will apply, for example, when these strategies are used with a mutual fund or a stock basket underlying index option or warrants.

g. *Effect of Mergers and Acquisitions on the Margin Required for Short Equity Options.* The Exchange proposes to adopt Commentary .10 to Exchange Rule 462 to provide an exception to the margin requirement for short equity options in the event trading in the underlying security ceases due to a merger or acquisition. Under this exception, if an underlying security ceases to trade due to a merger or acquisition, and a cash settlement price has been announced by the issuer of the option, margin would be required only for in-the-money options and would be set at 100% of the in-the-money amount.

h. *Determination of Value for Margin Purposes.* The proposal will revise Exchange Rule 462(d)(1) to make it consistent with the other portion of the Exchange's proposal that allows the extension of credit on certain long term options. Currently, Exchange Rule 462(d)(1) does not allow the market value of long term options to be considered for margin equity purposes. The revision will allow options and warrants eligible for loan value pursuant to proposed Exchange Rules 462(c) and (d) to be valued at current market prices for margin purposes. The Exchange believes this change is necessary to ensure that the value of the option or warrant (the collateral) is sufficient to cover the debit carried in conjunction with the purchase.

i. *OTC Options.* The proposal makes some minor corrections to the table in Exchange Rule 462 that displays the margin requirements for short OTC options.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act.[11] in general, and furthers the objectives of Section 6(b)(5),[12] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and does not permit unfair discrimination between customers, issuers, brokers, and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change From Members, Participants or Others

The Exchange did not solicit or receive comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if its finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–99–27 and should be submitted by September 29, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

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[8] The margin requirements would apply to butterfly spreads where all option positions are listed or guaranteed by the carrying broker-dealer.

[9] The writer of a call option has an obligation to sell the underlying component at the call exercise price. The writer cannot receive the benefit of a market value that is above the call exercise price because, if assigned an exercise. The underlying component would be sold at the exercise price, not the market price.

[10] The writer of a put option has an obligation to buy the underlying component at the put exercise price. If assigned an exercise, the underlying component would be purchased (the short position effectively closed) at the exercise price, even in the event the market price is lower. To offset the benefit to the account of a lower market value, the put in-the-money amount is added to the requirement.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41814; File No. SR–BSE–99–11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Boston Stock Exchange, Inc., Implementing a Post Primary Session

August 31, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 13, 1999, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the close of trading on the BSE from 4:00 p.m.[3] to 4:15 p.m., creating a new Post Primary Session ("PPS") . The text of the proposed rule is available at the BSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] All references to time are Eastern Time.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to extend the close of trading on the BSE from 4:00 p.m. to 4:15 p.m., creating a new PPS. Pursuant to Chapter I–B Section 1 (Primary Session), the current trading hours at the Exchange are from 9:30 a.m. until 4:00 p.m. The PPS will extend these house for an additional fifteen minutes until 4:15 p.m. Under the proposal, all Exchange rules applicable to floor trading during the Exchange's Primary Session will continue to apply during the PPS, with the following exceptions: (1) only orders that are designated "PPS" will be eligible for execution; (2) limit orders on the book from the Primary Session will not be eligible for execution, but will carry over to the next day; (3) there will be no automated executions; (4) there will be no application of the Execution Guarantee Rule;[4] and (5) GTX[5] orders will be executable after the close of the PPS (*i.e.*, GTX orders are executable after 415 p.m. instead of 4:00 p.m.). Accordingly, the Exchange proposed to amend the following rules: (1) Chapter I–B, Sections 2 and 3, and (2) Chapter IIB, Sections 1 and 3.

PPS Eligible Securities. Pursuant to the proposed amendment of Chapter IIB, Section 3, only orders designated "PPS" will be eligible for execution during the PPS. Since the PPS is merely an extension of the Exchange's auction market, wherein bids and offers are continuously updated for trading under normal auction market principles, Exchange rules will continue to apply. Thus, to be designated PPS eligible, a market, limit, or contingent order must be acceptable under current Exchange rules.

The Exchange notes that, under the proposal, limit orders on the book from the Primary Session are not eligible for the PPS, and must be carried over to the next day. Also, those limit orders re received during the PPS (and thus PPS eligible) remain subject to the Limit Order Display Rule.[6]

GTX Orders. GTX Order is an agency limit order that is good until canceled, and is eligible for primary market protection based on the volume that prints on the after hours trading session of the New York Stock Exchange or the American Stock Exchange. Thus, a GTX Order may be executed during regular trading hours or after the PPS, at 5:00 p.m., but no GTX Order may be executed during the PPS.

BEACON as a Routing System. "BEACON" is the acronym for the Boston Exchange Automated Communication Order-routing Network. It provides a system for the automated execution of orders on the Exchange under predetermined conditions. Orders accepted under the system may be executed on a fully automated or manual basis. The Exchange proposes to amend Chapter IIB, Section 3(b), to indicate that BEACON will continue to operate as a routing system for PPS eligible orders, but will not provide an automatic execution mechanism.

Operation of the ITS System During the PPS. In the amendment to Chapter IIB, Section 3(a), the BSE represents that ITS will be available for both inbound and outbound commitments during the PPS to the extent that other market centers (*i.e.*, the Pacific Exchange, Inc. ("PCX"),[7] the Philadelphia Stock Exchange, Inc. ("PHLX")[8] and the Chicago Stock Exchange, Inc. ("CHX"))[9] are open for trading. The BSE also represents that it will perform surveillance during the PPS in the same manner and using the same techniques as those used during the Primary Session. To facilitate the surveillance of the PPS, BSE's surveillance staff will remain on-site during the PPS and for any necessary additional time period after the close of the PPS.

Execution Guarantee Does Not Apply. The Execution Guarantee provides that Specialists must guarantee execution on all agency market and marketable limit orders from 100 up to and including 1,299 shares. According to the proposed amendment to Chapter IIB, Section 3(d), the Execution Guarantee will not be available in any form during the PPS.

2. Statutory Basis

The BSE believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[10] in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to file number SR–BSE–99–11 and should be submitted by September 29, 1999.

[4] *See* BSE Rules, Paragraph 2039A, Section 33.

[5] For a description of GTX Orders, *See "GTX Orders" infra.*

[6] *See* Chapter IIB, Section 3(c)(i)–(ii)).

[7] PCX's regular equity session closes at 4:30 p.m. During the crossing session, PCX does not utilize ITS. *See* PCX Rule 4.2, Commentary .02.

[8] PHLX operates a Post Primary Session from 4:00 p.m. until 4:15 p.m. which is an extension of its regular auction market. During the Post Primary Session, PHLX utilizes ITS to the same extent it does during regular trading hours. *See* PHLX Rule 101.

[9] CHX's primary session closes at 4:00 p.m. CHX conducts an Extended Session from 4:00 p.m. until 4:30 p.m. Both sessions utilize ITS. *See generally* Article 20, CHX Rules 20, 37, 39, 40 and 41.

[10] 15 U.S.C. 78f(b)(5).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23240 Filed 9–7–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41809; File No. SR–BSE–99–12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Amending Its Revenue Sharing Program

August 30, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 30, 1999, the Boston Stock Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the BSE. The Commission is publishing this notice of solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to revise its Revenue Sharing Program to exclude non-BSE automated transaction fees.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the BSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The BSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19n–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the Revenue Sharing Program highlighted on the BSE's Transaction Fee Schedule. Currently, the Exchange shares 50% of any excess monthly transaction related revenue above $1,300,000 with those firms that generate $50,000 in both BSE and non-BSE automated transaction fees. The Exchange proposes to exclude non-BSE automated transaction fees from this computation.[3] Thus, under the proposed rule change, only firms that generate $50,000 in BSE transaction fees will receive a share of excess revenue.[4]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(4)[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other changes among its members.[7]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited or received comments on the proposed rule change.

[3] Non-BSE automated transactions refer to trades executed through the New York Stock Exchange's Designated Order Turnaround (DOT) system. The Exchange wishes to tailor its Revenue Sharing Program to apply only to Base executed transactions. Telephone conversation between Kathy Marshall, Assistant Vice President, Finance, BSE, Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, and Sonia Patton, Attorney, Division, Commission, on August 26, 1999.

[4] Eligible firms will receive excess revenue in the form of a credit that will be applied toward each firm's total monthly transaction fees. *See* Securities Exchange Act Release No. 40591 (Oct. 22, 1998), 63 FR 58078 (Oct. 29, 1998).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] The Commission notes that the filing may raise questions concerning payment for order flow. To the extent that it does raise such issues, exchange members should consider any associated disclosure obligations, namely pursuant to Rules 10b–10 and 11 Ac1–3 under the Act, 17 CFR 240.10b–10 and 17 CFR 240.11Ac1–3, respectively.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change establishes or changes a due, fee, or other charge imposed by the BSE and, therefore, has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and Rule 19b–4(f)(2)[9] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to the File No. SR–BSE–99–12 and should be submitted by September 29, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23241 Filed 9–7–99; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78s(b)(3)(A)(ii)

[9] 17 CFR 240.19b–4(f)(2).

[10] In reviewing this rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41811; File No. SR–CBOE–99–46]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Market-Maker Surcharges

August 30, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 23, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On August 23, 1999, the CBOE filed with the Commission Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is proposing to make changes to its fee schedule pursuant to CBOE Rule 2.40, *Market-Maker Surcharge for Brokerage.*[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to CBOE Rule 2.40, on August 20, 1999, the Equity Floor Procedure Committee approved the following fees for the following option classes:

Option class	Market-maker surcharge (per contract)	Order book official brokerage rate (per contract)[5]
Coca-Cola (KO)	$0.03	$0.00
Johnson and Johnson (JNJ)	0.07	0.00

These fees will be assessed on Monday, August 23, 1999. Exchange Rules provide that an option be listed for trading on another exchange before a surcharge fee can be assessed. Thus, since these classes have been certified by the Options Clearing Corporation to be listed on the Philadelphia Stock Exchange, and are proposed to be listed for trading on Monday August 23, 1999, the CBOE will assess these three surcharges on that date. The Exchange interprets its rules to allow the Equity Floor Procedure Committee to vote on market-maker surcharges before the class has been listed for trading on another exchange. However, the Rule provides that the surcharge may not actually be assessed until the class has been listed for trading on another exchange. These fees will remain in effect until such time as the Equity Floor Procedure Committee or the Board determines to change these fees and files the appropriate rule change with the Commission.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(4)[6] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from members, Participants, or Others

Not written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A)(ii)[7] of the Act and subparagraph (f)(2) of Rule 18b–4 thereunder.[8] At any time within 60 days of the date of filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange eliminated a proposed surcharge in an options class that is no longer eligible for the surcharge program. *See* letter from Stephanie C. Mullins, Attorney, CBO, to Kenneth Rosen, Attorney, Division of market Regulation, Commission, dated August 23, 1999 ("Amendment No. 1").

[4] *See* Securities Exchange Act Release No. 41121 (February 26, 1999), 64 FR 11523 (March 9, 1999) (order approving CBOE Rule 2.40).

[5] The surcharge will be used to reimburse the Exchange for the reduction in the Order Book Official brokerage rate from $0.20 in the relevant option classes. Any remaining funds will be paid to Stationary Floor Brokers as provided in Exchange Rule 2.40.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–46 and should be submitted by September 29, 1999.

For the Commission, by the Division of market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23238 Filed 9–7–99; 8:45 am]

BILLING CODE 8010–01–M

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice No. 3083]

Shipping Coordinating Committee; Subcommittee on Ocean Dumping; Notice of Meeting

The Subcommittee on Ocean Dumping of the Shipping Coordinating Committee will hold an open meeting on September 17, 1999 from 1:30 pm to 3:30 pm to obtain public comment on the issues to be addressed at the October 4–8, 1999 Twenty-first Consultative Meeting of the Contracting Parties to the London Convention, which is the global international treaty regulating ocean dumping. The meeting will also review the results of the Twenty-second Scientific Group Meeting of the London Convention held in May 1999.

The meeting will be held at Environmental Protection Agency offices located at the Fairchild Building, 499 South Capitol Street SW, Washington, DC 20003, Room 809. Interested members of the public are invited to attend, up to the capacity of the room.

For further information, please contact Mr. David Redford, Acting Chief, Marine Pollution Control Branch, telephone (202) 260–1952.

Dated: September 2, 1999.

Susan K. Bennett,

Director, Office of Transportation Policy.

[FR Doc. 99–23423 Filed 9–3–99; 2:49 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular (AC) 23–XX–29, Systems and Equipment Guide for Certification of Part 23 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed Advisory Circular (AC) AC 23–XX–29 and request for comments.

SUMMARY: This notice announces the availability of and request for comments on proposed AC 23–XX–29, Systems and Equipment Guide for Certification of Part 23 Airplanes. This proposed AC provides information and guidance concerning an acceptable means, but not the only means, of showing compliance with Title 14 Code of Federal Regulations (14 CFR) part 23, subpart D from § 23.671 and subpart F, which is applicable to the certification of systems and equipment in normal, utility, acrobatic, and commuter category airplanes. This proposed AC consolidates existing policy documents, and certain AC's that cover specific paragraphs of the regulations, into a single document. This material is neither mandatory nor regulatory in nature and does not constitute a regulation.

DATES: Comments must be received on or before November 8, 1999.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Small Airplane Directorate, Regulations & Policy Branch (ACE–111), 601 East 12th Street, Kansas City, Missouri 64106. You may also submit comments on the internet to: pat.nininger@faa.gov.

FOR FURTHER INFORMATION CONTACT: Les Taylor, Standards Office, (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration; telephone number (816) 426–6941.

SUPPLEMENTARY INFORMATION:

Comments Invited

Any person may obtain a copy of this proposed AC by contacting the person named above under the **FOR FURTHER INFORMATION CONTACT** section or on the internet at: http://www.faa.gov/avr/air/airhome.htm. We invite interested parties to submit comments on the proposed AC by electronic mail to the **ADDRESSES** section specified above. Commenters must identify the AC title and number when submitting any comments. The FAA will consider all communications received on or before the closing date for comments before issuing the final AC. The proposed AC and comments received may be inspected at the Standards Office (ACE–110), Suite 900, 1201 Walnut, Kansas City, Missouri, between the hours of 7:30 a.m. and 4:00 p.m. weekdays, except on Federal holidays.

Background

In 1968, the Federal Aviation Administration (FAA) instituted an extensive review of the airworthiness standards of part 23. Since then, the regulations have been amended through Amendment 23–52. These amendments have changed most of the sections of part 23. This document is intended to provide guidance for the original issue of part 23 and the various amendments. This version of the advisory circular covers policy available through June 30, 1994. Policy that became available after June 30, 1994, will be covered in future amendments to the advisory circular.

Issued in Kansas City, Missouri, on August 27, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–23292 Filed 9–7–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: SR 20 (Sharpes Corner to SR 536) Skagit County, WA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent and notice of scoping.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared to evaluate potential solutions to identify safety problems and traffic congestions along SR 20 in Skagit County, Washington.

FOR FURTHER INFORMATION CONTACT: Gene Fong, Federal Highway Administration, 711 South Capital Way, Suite 501, Olympia, Washington 98501, Telephone: (360) 753–9480; or John Okamoto, Washington State Department of Transportation, Northwest Region,

PO Box 330310, Seattle, WA 98133–9710.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Washington State Department of Transportation (WSDOT), will prepare an Environmental Impact Statement (EIS) on alternative solutions that can reduce the accident rate and provide capacity to meet current and future needs along a 7-mile stretch of the State Route 20 corridor near Anacortes. The SR EIS is a National Environmental Policy Act (NEPA) "pilot" project, intended to evaluate and improve the application of the NEPA process. The "pilot" process was developed cooperatively by Washington State and Federal agencies, and is jointly sponsored by FHWA and WSDOT.

This segment of SR 20 includes two designated "high accident corridors," due to the number and severity of accidents that have occurred at intersections. The predominant accident types are rear-end collisions and entering-at-angle accidents.

The accident rate is made worse by increasing traffic volumes. Travel demand forecasts indicate continued traffic growth over the next 20 years. Forecasts indicate that traffic growth may increase travel time along portions of this segment of SR 20.

Solutions are needed to reduce the rate of fatal accidents and to provide for the projected traffic demand. While alternative have not been identified, preliminary alternatives that could meet the need and may be considered in the EIS include: taking no action; traffic calming; transportation demand management; transportation system management; eliminating left turns; transit improvements and/or improved transit access; improvement of alternative modes of travel; improved freight movement by truck and/or rail; additional traffic signals; modified signage; grade separation at intersections; and/or added lanes or frontage roads. Combinations of these solutions are possible. The list of alternatives to be addressed in the EIS will be finalized after taking scoping comments into account.

Scoping

Letters soliciting comments on the scope of the EIS and describing the purpose, need, and potential alternatives will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Two meetings will be held to identify the scope of issues to be addressed, the significant issues, and the alternatives. The meeting will be conducted on *October 6, 1999*, at, *Anacortes City Hall Chambers* in Anacortes, Washington. The first meeting from 9 a.m. to noon will be conducted to focus on input from governmental agencies and tribes. The second, from 4 p.m. to 8 p.m., will be conducted primarily for the public. Written scoping comments may be submitted to the FHWA or WSDOT at the address provided above.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this action and the EIS should be directed to FHWA or WSDOT at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: August 27, 1999.

Donald A. Petersen,

Transportation and Environmental Engineer, Olympia, Washington.

[FR Doc. 99–23249 Filed 9–7–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement on the proposed Atlantic/Central Bus Base Expansion Project in Seattle, Washington

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration (FTA) and the King County Metro Transit Division intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA). King County will ensure that the EIS also satisfies the requirements of the Washington State Environmental Policy Act (SEPA). The FTA will be the NEPA lead agency. King County will be the SEPA lead agency.

King County Metro Transit, a division of the King County Department of Transportation, may expand the operating capacity of the existing Atlantic/Central bus base complex located in Seattle's North Duwamish Industrial District. The existing complex consists of the existing Atlantic Base, which supports electric trolley service within the City of Seattle, and the Central Base, which supports a fleet of diesel buses that provide service within the City of Seattle and between the City and neighboring jurisdictions. In addition, all night owl service is dispatched from Central Base.

Metro Transit uses the existing 22-acre complex for maintenance and storage of approximately 340 buses. The agency's Operating Facilities Strategic Plan identified a need for central Seattle maintenance capacity for up to 185 additional buses within the next 10 years and an additional 200 buses within the next 25 years (for a total of 385 additional buses). Increased capacity will allow maintenance service for planned increases in transit service within the City of Seattle as well as some increases in service for routes between Seattle and other jurisdictions. Among other things, King County's system is slated to accommodate up to 85 of Sound Transit's Express Service buses.

The EIS will evaluate a no action alternative as well as feasible and prudent alternatives to expand the maintenance base. Study to date suggests that reasonable alternatives are limited to an upward structured expansion of employee parking combined with an expansion of the footprint of the base either westward or to the south. Expansion to the west might impact a group of buildings that could have historical significance. Expansion to the south might have an effect on a privately owned industrial business that handles approximately 10% of the Port of Seattle's export business. Expansion to non-contiguous property would not be prudent or meet project objectives because of the significantly higher operating costs, which would occur. This would reduce funds available for revenue (passenger carrying) service. Expansion to non-contiguous properties would also require acquisition of a larger amount of industrial property, which would be contrary to City policy directed toward maximum preservation of industrial property.

The existing base complex occupies land that is industrially zoned. Applicable zoning regulations allow expansion of the base facilities within the industrial zone subject to a showing that impacts on industrial property and activities have been minimized.

King County Transit and FTA will determine the scope of environmental review after receiving input from interested parties and organizations and from federal, state, regional, and local agencies. A similar scoping process was recently completed in accordance with the State Environmental Policy Act (SEPA). A SEPA scoping meeting took place on August 12, 1999 in the Atlantic/Central base neighborhood, and comments were solicited from project stakeholders, interested parties, government agencies and property owners and tenants within the project area and vicinity.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts to be considered should be sent to King County Metro Transit by Thursday, October 7, 1999. See **ADDRESSES** below.

ADDRESSES: *Written comments on the project scope should be sent to:* Paul Leland, Senior Transit Environmental Planner, King County Metro Transit, Design and Construction Section, MS KSC–TR–0431, 201 S. Jackson St., Seattle, WA 98104–3856; phone (206) 684–1168; fax (206) 684–1900.

FOR FURTHER INFORMATION CONTACT: Linda Gehrke, Federal Transit Administration, Region X, 915 Second Avenue, Room 3142, Seattle, WA 98174; phone (206) 220–7954.

SUPPLEMENTARY INFORMATION:

I. Scoping

The FTA and King County Transit invite interested individuals and organizations, and federal, state, regional, and local agencies to participate in defining the alternatives for expanding the capacity of the Atlantic/Central Base complex, and in identifying any significant social, economic, or environmental issues related to the alternatives. Scoping comments may be made be submitted in writing by letter or fax: See the **ADDRESSES** section above for the appropriate address and fax number. Scoping comments may also be submitted by E-mail using the electronic scoping form, which is available at http://www6.metrokc.gov/kcdot/transit/sepacomm.cfm. Scoping comments should focus on identifying specific social, economic, or environmental impacts to be evaluated and suggesting alternatives that are more cost-effective or have fewer environmental impacts while achieving similar transit objectives.

A project scoping document providing more detail on project alternatives, alternatives considered but deemed inappropriate for further refinement or consideration, potential project impacts, and required permits and approvals is being forwarded to all potentially interested parties and agencies and is also available on the internet at: http://www.metrokc.gov/kcdot/basepgm/sepa/enviro.htm. Copies of the project scoping document can be requested by calling King County Metro Transit at (206) 684–6776. If you wish to be placed on the mailing list to receive further information as the project proceeds, please contact Barbara de Michele at Metro Transit; (206) 263–3792.

II. Description of Study Area and Project Need

The existing Atlantic Central base complex and the adjacent areas within which expansion might occur are within the North Duwamish industrial neighborhood situated a short way south of the Seattle central business district, south of the International District and east of the area occupied by Seattle's new Safeco baseball field and King County Transit's Ryerson transit base. King County's other existing transit bases include North Base north of Seattle in the City of Shoreline, Bellevue and East Bases east of Lake Washington in the City of Bellevue, and South Base south of Seattle in Tukwila. Bases are located throughout the metropolitan area to achieve operating efficiencies related to the maintenance, dispatch and storage of transit buses.

The Atlantic/Central Base Expansion project is expected to include the following improvements: increased bus parking space; additional repair and inspection bay capacity; expanded body repair, paint, upholstery and tire shop capacity; and other additional specialty bay capacity; expanded electronics shop; expanded driver and support area including (including transit police); additional employee parking to support expanded base (including consideration of structured parking to reduce use of industrial land); and possible provision of additional layover capacity adjacent to the base and within the base during peak hours to accommodate existing layover space that will be lost due to Sound Transit's conversion of the downtown bus tunnel and associated stations to light rail use, and other local transportation infrastructure projects; possible additional bus fueling and washing capacity; and possible joint use industrial space if it is determined to be economically feasible. If an on-site alternative is selected, functions that can operate efficiently from other locations (such as the information distribution warehouse, and work center for transit facilities maintenance) may be moved to another location to minimize the amount of additional land needed.

Expansion of base capacity using non-contiguous property will not meet King County Transit's project objectives and needs. Expanding on a non-contiguous site would increase operating expenses by requiring significant duplication of overhead costs (staffing & equipment) totaling over one million dollars per year. Expansion on a non-contiguous industrial site would preclude potential operating and spatial efficiencies which could be achieved with a consolidated complex and would therefore utilize more industrial property than a consolidated facility. Expanding to a non-contiguous site outside of the Duwamish area would not meet King County Transit's objectives due to the increased non-revenue deadhead time which would be required for buses traveling between the maintenance base and transit service routes. The Transit Operating Facilities Strategic Plan provides more detail concerning project needs and is available through King County Transit at (206) 684–1846.

Contiguous expansion of the Atlantic/Central Bus Base complex to accommodate up to 385 additional buses is expected to require acquisition of approximately 13.3 to 13.6 acres of abutting industrial property. The location of the existing Atlantic/Central Bus Base complex limits potential contiguous expansion options to either westward or southward expansion. The complex is bounded on the north by Interstate 90/SR 519 ramps, and to the east by Airport Way South and Interstate 5.

Immediately contiguous to the west is an assemblage of buildings to either side of Sixth Avenue South, all of which were built in the late 1920's to early 1930's and have a similar appearance and functional relationship to now removed railroad spurs and 6th Avenue South. A previously completed historic resource assessment of Sixth Avenue South concluded that the buildings constitute a district that is eligible for listing on the National Register of Historic Places under the National Historic Preservation Act. However, the integrity of the district has been seriously compromised as a result of its having been bisected by a recent major elevated freeway ramp project, and the cumulative impact of extensive building upgrading and modernization projects undertaken by tenants over the years. Also, there are unresolved questions about the uniqueness of the district within the metropolitan Seattle area.

The size and configurations of the parcels and buildings in the historic district, as well as their structural condition relative to earthquake hazards and building seismic standards, tends to render them functionally obsolete for many modern industrial uses, including possible transit maintenance base operations. Therefore, westward

expansion of the base would have to eliminate a significant portion of the buildings within the southern half of the historic district.

Expansion of the base complex southward across Massachusetts Avenue would require the use of industrial property with existing rail spur access, and would displace one or more existing industrial businesses that supply a significant portion of the Port of Seattle's export business. The City of Seattle's land use code allows transit base facilities and expansion within industrially zoned property, subject to a demonstration that all reasonable measures have been taken to minimize impacts related to significant displacement of other viable industrial businesses, and that the use of land with access to industrial shorelines or major rail facilities has been minimized.

III. Alternatives

Project alternatives include a No-Build Alternative and two build alternatives. Under Alternative A, the No-Build Alternative, expansion of the existing base complex would not occur. Without expanded base capacity within the City, King County Metro Transit could not operate new or expanded services. Implementation of the new Six-Year Transit Plan would be in jeopardy. And Metro could not implement the contract with Sound Transit for provision of regional express bus services.

Under Alternative B, the Atlantic Central Base complex would be expanded in 3 phases over the next 15 to 25 years to accommodate 385 additional buses, including the above mentioned project elements. The expansion of the complex would be westward, encompassing currently privately owned business properties on both sides of 6th Avenue South between Royal Brougham Way and South Massachusetts Street, and properties on the west side of 6th Avenue South between South Massachusetts Street and South Holgate Street. It is possible that this would affect historic properties.

Alternative C is premised on Sound Transit electing to proceed with a light-rail maintenance base south of the Atlantic/Central base between South Massachusetts Street and South Holgate Street. Alternative C would include all of the improvements proposed under Alternative B except that the proposed layover capacity on Sixth Avenue South would be entirely on site. Sound Transit's light rail maintenance facility would require vacation of Sixth Avenue South between South Massachusetts Street and South Holgate Street. Since Metro could not expand south of South Massachusetts, accommodating Metro's base expansion needs would require vacating Sixth Avenue South from South Massachusetts Street north to South Royal Brougham Way. The Sound Transit light rail facility is a separate project being planned and analyzed in a separate NEPA/SEPA document by Sound Transit and the Federal Transit Administration. Alternative C could include some shared facilities on the Sound Transit site, such as employee parking, control center and fueling for general service vehicles.

The EIS will also document a range of project alternatives considered that might lessen or avoid taking out portions of the adjacent historic district. It is anticipated based on preliminary analysis of these alternatives that none of them are prudent or feasible.

IV. Probable Effects/Potential Impacts for Analysis

King County plans to use a single EIS document to satisfy both SEPA and NEPA for the proposed project. Presently, the issue of principal concern related to NEPA is potential impacts on historic resources, which may be National Register eligible. Other NEPA concerns include environmental justice. King County may be preparing a Section 4(f) and Section 106 analysis of historic resources as a part of the NEPA EIS documentation. Issues principally of concern under SEPA include impacts on industrial land uses and business within the project area, including potential impacts on industrial traffic. Other impacts, which will be evaluated, include water quality; archaeological resources; hazardous materials; air quality (including air quality conformity); noise; consistency with local land-use and transportation plans and policies; business displacements and relocations; and economics. These impacts will be evaluated both for the construction phase and in relation to ongoing operations as appropriate. Reasonable measures to mitigate adverse impacts will be identified.

V. FTA Procedures

The NEPA EIS process will address the social, economic, and environmental impacts of the Atlantic Central Base expansion alternatives. A draft EIS will be published and made available for public and agency review and comment, and a public comment meeting will be held to receive review comments pertaining to the draft EIS. On the basis of the draft EIS and the comments received, King County Metro Transit will complete the final EIS.

Issued on: September 1, 1999.

Linda Gehrke,

Acting Regional Administrator.

[FR Doc. 99–23334 Filed 9–7–99; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6161; Notice 1]

Mercedes-Benz U.S.A., Inc., Receipt of Application for Decision of Inconsequential Noncompliance

Mercedes-Benz U.S.A., Inc. (MBUSA) has determined that 1,482 of its 1999 model year vehicles were equipped with convex passenger-side mirrors that did not meet certain labeling requirements contained in Federal Motor Vehicle Safety Standard (FMVSS) No. 111, "Rearview Mirrors," and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." MBUSA has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

We are publishing this notice of receipt of an application as required by 49 U.S.C. 30118 and 30120. This action does not represent any agency decision or other exercise of judgment concerning the merits of the application.

If a vehicle has a convex passenger-side mirror, paragraph S5.4.2 of FMVSS No. 111 requires that it have the words "Objects in Mirror Are Closer Than They Appear" permanently and indelibly marked at the lower edge of the mirror's reflective surface.

From April 5 through April 9, 1999, MBUSA sold and/or distributed 1,482 C-Class, E-Class, and E-Class Wagons that contain a typographical error in the text of the warning label required in paragraph S5.4.2. The text on the subject vehicles' mirrors reads "Objects in Mirror Closer Than They Appear." The word "Are" is not clearly printed or visible.

MBUSA supports its application for inconsequential noncompliance with the following statements:

MBUSA does not believe that the foregoing noncompliance will impact motor vehicle safety for the following reasons. FMVSS 111 sets forth requirements for the performance and location of rearview mirrors to reduce the number of deaths and injuries that occur when the driver of a motor vehicle does not have a clear and reasonably unobstructed view to the rear. Provisions regarding the use of a convex side view mirror were added by the National Highway Traffic Safety Administration (NHTSA or the Agency) in an 1982 rulemaking. 47 FR 38698 (1982). The final rule specifically allowed the use of convex passenger side outside mirrors. "Convex mirrors" are defined as "a mirror having a curved reflective surface whose shape is the same as that of the exterior surface of a section of a sphere." See Id. at 38700, codified at 49 CFR 571.111 S4. NHTSA determined that allowing the installation of a convex mirror on the passenger side of vehicles could confer a substantial safety benefit in that such mirrors tend to provide a wider field of vision than ordinary flat or plane mirrors. Such a view could be highly desirable in maneuvers such as moving to the right into an adjacent lane. Id. at 38699.

NHTSA also recognized, however, that there were inherent drawbacks to the use of convex mirrors as well. One of the more significant drawbacks was that images of an object viewed in a convex mirror tend to be smaller than those of the same object viewed in a plane mirror. Consequently, drivers used to plane mirrors may erroneously assume that vehicles situated immediately behind the driver and to the right may be further away than anticipated. Such an erroneous perception may cause the drive to move to the right and change lanes before it is actually safe to do so. In order to address this concern, and at the suggestion of several automobile manufacturers, NHTSA required that a warning be permanently etched into all convex passenger side view mirrors. This suggestion was favored over NHTSA's original proposal which would have provided for an orange border around the convex mirror to alert the driver of a potential difference in mirror characteristics. The written warning was chosen because, based on studies performed at the request of NHTSA, the Agency found that (1) The fact that a convex mirror image appears different from that of a plane mirror does not, in the Agency's view, provide an adequate warning that objects viewed in the convex mirror are closer than they appear; (2) the etched warning would serve as a reminder to the driver with each use and would assist drivers who may not read such a warning alternatively placed in the owner's manual; and (3) the etched warning conveys a much clearer warning than the rather ambiguous orange border. Id. at 38700.

In the case of MBUSA's affected vehicles, the etched warning provides that "Objects in Mirror Closer Than They Appear." The missing word "Are" is contrary to the exact wording of the warning required by FMVSS 111. The cause of this error was traced to a defective stencil used in the laser printer which etches the warnings onto mirrors. MBUSA believes that the stencil defect, which caused the laser printer to inadvertently leave the word "Are" from the warning, was caused by dirt or some other cosmetic flaw in the stencil. This situation apparently was not immediately noticed by MBUSA's supplier's quality control department. MBUSA does not believe, however, that the foregoing error in the warning statement etched onto the affected mirrors, affects their safety in any discernible way. Specifically, as provided in the preamble to the final rule amending FMVSS 111 to allow the use of convex mirrors, one of the potential drawbacks associated with convex mirrors is that images in such mirrors tend to appear further away than their actual position. NHTSA recognized the need to provide an adequate warning to vehicle operators at all times regarding this distortion. The Agency rejected an earlier proposal for a symbolic warning because such a warning did not adequately convey the message regarding the distortion caused by convex mirrors. Instead, NHTSA required a specifically worded warning that would serve to inform drivers about the distortion caused by convex mirrors. Although not technically in compliance with the exact requirements of FMVSS 111, MBUSA believes that the etched warning on the noncompliant Mercedes-Benz vehicles still conveys the necessary warning consistent with the purpose set forth in the preamble to the final rule. The change caused by the missing word "Are" does not alter the meaning of the warning statement or the spatial relationship between two objects. Thus, when used in the phrase "Objects in Mirror Closer Than They Appear," the warning, although grammatically incorrect in the foregoing context, still conveys the same meaning.

In addition, convex mirrors have been in use since the final rule amending FMVSS 111 became effective in 1982. In the ensuing 17 years, the driving public has become accustomed to seeing the etched warning on convex passenger side view mirrors. In fact, almost all passenger vehicles currently manufactured have convex, rather than plane, passenger side view mirrors. Because of this, drivers know that convex side view mirrors contain a slight distortion and are able to react accordingly. The importance of the warning, while still viable, is not as critical as when convex mirrors first came into use. Instead of a message of first impression, the warning now serves as a reminder to drivers that a convex mirror is in use. Consequently, the driving public is likely to note that the warning on affected Mercedes-Benz vehicles is present, thus notifying them of the existence of a convex mirror, but unlikely to notice a minor grammatical error that does not effect the meaning of the warning.

Although NHTSA has not previously addressed this exact issue in prior petitions for inconsequential noncompliance, MBUSA believes that there are examples of prior petitions which are sufficiently analogous to support the Company's current petition. Specifically, NHTSA has previously granted numerous petitions for inconsequential noncompliance regarding errors contained in various labels or markings. One of the more frequent areas where inconsequential mislabeling occurs is in the area of tire labeling. See e.g., General Motors Corporation, 64 FR 7944 (1999) (tire information label on glove compartment containing erroneous information regarding the maximum number of occupants allowed in vehicle deemed inconsequential since seat capacity is evident from number of seating positions and seatbelts); Mercedes-Benz of North America Inc., 63 FR 59623 (1998) (tire information label with incorrect sized lettering and incorrect mounting position deemed inconsequential since information was accurate and legible and location of label was in a position likely to be found by vehicle operator); Red River Manufacturing, Inc., 63 FR 59624 (1998) (tire information on trailer certification labels with English only units of measure deemed inconsequential since correct English unit information sans metric is present and label is in compliance with regulations in all other respects); Cooper Tire and Rubber Company, 62 FR 45474 (1997) (tires with incorrect load and inflation label on the serial side were deemed inconsequential since incorrect information was within tire tolerances and accurate information was provided in two other locations); Bridgestone/Firestone Inc., 57 FR 45865 (1992) (tire serial code with missing number determined inconsequential since missing number was contained in the code identifying the manufacturer of the tire and such information was otherwise discernible from other markings on affected tires); Cooper Tire & Rubber Co., 56 FR 11300 (1991) (tires maximum inflation pressure marked "65 p.s.i. max. press." instead of "65 p.s.i. cold" deemed inconsequential since both phrases have the same meaning and all other information is otherwise correct and in compliance).

In each of the foregoing cases, NHTSA determined that although a noncompliance of the relevant safety standard had occurred, the noncompliances were inconsequential with regards to motor vehicle safety since the erroneous information was corrected elsewhere or did not otherwise alter the meaning of the information conveyed. The last two examples cited above are particularly analogous to MBUSA's current situation. In the Bridgestone/Firestone case, the tire manufacturer had failed to include the number "2" in the tire serial code. The number 2 was part of the serial marker that identified Bridgestone/Firestone as the tire manufacturer. Despite the missing number, NHTSA determined that the violation was inconsequential since the tires bore the brand name "Firestone" and were labeled with the old serial code for Firestone. The tires also bore the date code, size, model and "Made in U.S.A." markings which allowed sufficient identification of the tires in the event a notification and remedy campaign was required. Thus, the noncompliance was deemed inconsequential. Like Bridgestone/Firestone, the missing word "Are" does not alter the information conveyed to the consumer. The warning "Objects in Mirror (Blank) Closer Than They Appear" still provides enough information to the vehicle operator so that the operator is aware a convex passenger side view mirror is in use and that some distortion will result.

Likewise, the second Cooper Tire & Rubber Company case is also analogous to MBUSA's current petition. Specifically, in that case the tire manufacturer had incorrectly stamped a lot of tires with the label "MAX. LOAD 2540 LBS. AT 65 P.S.I. MAX. PRESS" instead of the appropriate "MAX. LOAD 2540 LBS. AT 65 P.S.I. COLD." NHTSA determined, however, that since "MAX PRESS" was

understood to mean the maximum cold inflation pressure to which the tire may be inflated and that the term "COLD" carried the same meaning, that the noncompliance was inconsequential with regards to motor vehicle safety. Like Cooper Tire & Rubber Company's mislabeled tires, MBUSA's convex passenger side view mirror warnings the word "Are" is not clearly printed or visible. The two warning statements, however, have the same meaning. Consequently, if the word "Are" is not clearly printed or visible, it has no impact to the meaning of the warning and should be deemed an inconsequential noncompliance.

As provided above, MBUSA has identified the cause of the original error in the etched warning on convex passenger side view mirrors to a defective stencil used in the laser printer which etched the affected mirrors. MBUSA has since addressed this issue by ensuring that the complete and visible warning statement on all vehicles meets the requirements of FMVSS 111 S5.4.3 and is properly etched onto the mirror. MBUSA does not believe that the noncompliance described above has any appreciable impact on motor vehicle safety. The warning provided in noncompliant vehicles, although grammatically incorrect, still conveys the exact same meaning as the warning required by FMVSS 111. In fact, only one word was not clearly printed or visible in the required warning. This omission of the word did not change the meaning of the warning itself. MBUSA requests this application be granted so that an unnecessary and costly consumer recall action may be avoided. MBUSA expects a particularly low owner response to such a recall, if it were undertaken, because the basic message of the warning is adequately conveyed despite the error in format. In addition, since convex passenger side view mirrors with warnings have been in widespread use since 1982, MBUSA does not believe that the driving public will even note the error since the warning, if even noticed, will only serve as a reminder to what drivers have long become accustomed to.

We invite you to comment in writing on MBUSA's application. Comments should refer to the docket number and be submitted in two copies to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC, 20590.

We will consider comments received before the close of business on the closing date indicated below. We will file the application and supporting materials. We will consider, to the extent possible, all comments received after the closing date. When we grant or deny the application, we will publish the notice in the **Federal Register**.

Comment closing date: October 8, 1999.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: September 2, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–23311 Filed 9–7–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPPA) of 1996. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary received information during the quarter ending March 31, 1998.

Last name	First name	Middle name
BAEK	CHOON	HO
BAIG	MIRZA	M. F.
BARNES	MARY	ANN
BELKNAP	PATRICIA	LOUISE D'ARCY NEE
BELL	JOY	NETTIE
BERNARD	MARY	CLAUDE
BLACKADDER	ARIEL	FIONA-MARGARET
BORZELLO	ROBERT	ANDREW
BOWEN	DOROTHY	ELIZABET
BOWSER	MANUELA	GERTRUDE
BOYD	MYONG	HUI
BUTLER	WILFRED	LERYO
BYUN	DONG	RYU
CHA	DAL	JOONG
CHA	DON	JIN
CHO	CHIN	BOK
CHO	MI-KUN	
CHOI	MYENG	CHOL
CHOI	SARAH	YOON
CHONG	SUN	HEE
CHUNG	WOO-SUN	
CHUNGNAM-DO	TAEJON	
CUTTER	ALBERT	WILSON
DAUM	BRIAN	ALAN
DEBONO	DENNIS	
DEL PINO	SERGIO	ALBERTO-FERNANDEZ
DI STEFANO	LYNNE	DELEHANTY
DITLEVSEN	LARS	
DONG	YOUNG	JAE
DUNDON	REBECCA	ANNE
ERLER	GABRIELE	
FELDMAN	YVONNE	TOBA
FOERSTER	KARL	F.
GARDNER-GILMORE	LINDA	
GEORGE	CARL	HERMAR

Last name	First name	Middle name
GETTY	EUGENE	PAUL
GHIMSTAD	LISA	
GIBBONS 3RD	EDMUND	GRAHAM
GODOSAR	URSULA	MARIA
GRENNESS	MORTEN	
HAAS	BENJAMIN	MICHAEL
HALL	NANCY	THERESIA
HAN	FRED	SANG-CHON
HAN-KIM	LISA	INSUN
HARBUR	MEREDITH	TEICH
HARBUR	MILES	MURRAY
HARPER	MARY	MAXWELL
HILL	LOUISE	ANNE
HURD	STEPHEN	CHARLES
JAKOBSEN	BENNING	W.
JANG	BOK	YO
JELINEK	KURT	RUDOLF
JENKINS	ARTHUR	LLEWELLYN
JOHNSON	GLADYS	SOULIER NEE
JORGENSEN,NEE GARHARDT	KIRA	GERHARDT
KANG	JAMES	R.
KIM	EUISUNG	
KIM	HYO-GUN	
KIM	JESSICA	
KIM	JUNG	SOO
KIM	MYUNG-SHYNN	
KIM	SHAM	
KIM	YEONG	JAE
KITSON	SCOTT	GORHAM
KLONARIS	MIKE	ANTHONY
KLONARIS	PAMELA	KPUCE
KORNFELD	ROBIN	BETH
KURIHARA	YOSHIKO	
KWAN	SUK	YIN LAM
LARSSON	ROBERT	BENGT-ANDERS
LAW	JAPHET	SEBASTIAN
LEE	BERNARD	
LEE	WAN	CHEOL
LEVELEGIAN 2ND	JACK	H.
LIMB	BEN	QUINCY
LOGAN	YOUNG	SUK
MAC PHERSON	THOMAS	ARTHUR
MADRIZ	TATIANA	MARIA-LESKO
MASON	MORGAN	
MC VEIGH III	CHARLES	SENFF
MCDOWELL	JOHN	ESTABROOK
MERCIER	BERNARD	JEAN
MIN-MONTGOMERY	OK	KI
MOORE	SEDANNA	
MOREHOUSE	ELEANOR	ESMONDE
MOSES	MALKA	GOLUB
MOSKO	NICOLAS	EMANUEL-PETER
MULIATI	TAN	RIA
NG	NGAM	HING
OESTERLE	BRIGITTE	MARIE
OKUBO	TAKEO	
OSMENA	EMILLIO	MARIO-RENNER
PAGE	ROBERT	SAMUEL
PARK	MIN	KYU
PARK	THOMAS	PEARSON
PAULSON	JAN	
PAYNE	MARK	RANDALL
PEMBROKE	PAUL	WILLIAM
PEMBROKE	WESLEY	ALAN
PENISTON	ELMINA	H.
PINEDA	ELIZABETH	RAMOS
POWDERLY	ANNEMARIE	
POWELL	MAJORIE	MARY
RANDOLPH	AUGUSTUS	GRIFFITH
RESCHENTHALER	GILBERT	BROWN
RESTEINER	ELISABETH	
RESTEINER	ERIC	EDWARD
RIGGS	WILLIAN	BEGG
RIM	HELGA	SUNCHO

Last name	First name	Middle name
ROBERTS	NIKOLE	
ROSE	ELINOR	CAROL
ROTHMOSER	GABRIELLE	
SANDERS	J.	D.
SAWAMURA	THOMAS	SHOGO
SCHABAS	MICHAEL	HUNTLY
SCHLIMPERT	FRANK	WERNER
SHARMA	GHANSHYAM	DATT
SIEBERT	EDWIN	OTTO
SKINNER	JODY	DANIEL
STAPP	RHONDA	JEAN
SULTAN	SAMIRY	IBRAIM
SWANSON	OK	SUN]
TAN	ANDREQ	CHUA
TANKERSLEY	NECOL	IRMA
THORSTEINSON	DEBORAH	ANN
TRAN	KIM	CHUNG
VANCE	GREGORY	EDWARD
VUKO	BOSKO	
WATANABE	YOSHIMI	
WEFELNBERG	BRIGID	ANNE
WEIGEN	JOANNE	SANDRA
WENDEL	MELANIE	ALEXANDRA
WILKINSON	JULIE	ISABELLA
WOOLEY	ALWYN	MARGUERITE
ZIEGLER	LIEBGARD	ERNA
ZINK	DOLPH	WARREN

Approved: April 14, 1998.

Doug Rogers,

Chief, Special Projects & Support Branch, International District.

[FR Doc. 99–23242 Filed 9–7–99; 8:45 am]

BILLING CODE 4830–01–U

Corrections

Federal Register

Vol. 64, No. 173

Wednesday, September 8, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part

Correction

In notice document 99–22463 beginning on page 47167 in the issue of Monday, August 30, 1999, make the following correction(s):

1. On page 47168, in the table, at "Italy: Certain Pasta, A–475–818", under the fourth entry, add "N. Puglisi & F. Industria Paste Alimentari S.p.A.".

2. On the same page, in the table, at "Italy: Certain Pasta, C–475–819", "1/1/98–12/31/99" should read "1/1/98–12/31/98".

[FR Doc. C9–22463 Filed 9–7–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

Correction

In notice document 99–22568 appearing on page 47489 in the issue of Tuesday, August 31, 1999, in the first column, in the **DATES:** section, "September 1999 (800 a.m. to 1600 p.m.)" should read "21 September 1999 (800 a.m. to 1600 p.m.)".

[FR Doc. C9–22568 Filed 9–7–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF EDUCATION

National Commission on Mathematics and Science Teaching for the 21st Century; Meeting

Correction

In notice document 99–22647 beginning on page 47490 in the issue of Tuesday, August 31, 1999, make the following corrections:

1. On page 47490, in the second column, in the **ADDRESSES** section, in the second line, "SW" should read "NW".

2. On the same page, in the third column, in the second full paragraph, in the fourth line, "*AmericaCounts@ed.gov*" should read "*America_Counts@ed.gov*".

3. On the same page, in the same column, in the same paragraph, in the fifth line, "*Jamila Rattler@ed.gov*" should read "*Jamila_Rattler@ed.gov*".

[FR Doc. C9–22647 Filed 9–7–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3830

[WO-620-1430-00-24 1A]

RIN 1004-AD31

Locating, Recording, and Maintaining Mining Claims or Sites; and Extension of Currently Approved Information Collection, OMB Approval Number 1004-0114

Correction

In proposed rule document 99–21911 beginning on page 47023, in the issue of Friday, August 27, 1999, make the following correction:

§ 3830.91 [Corrected]

On page 47034, in the second column, in § 3830.91(a), in the last line, "3830.960" should read "3830.96".

[FR Doc. C9–21911 Filed 9–7–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–40]

Amendment to Class E Airspace; Nevada, MO

Correction

In rule document 99–22220 beginning on page 47386, in the issue of Tuesday, August 31, 1999, make the following correction:

§ 71.1 [Corrected]

On page 47387, in the third column, under **ACE MO E5 Nevada, MO [Revised]**, in the tenth line, "6l6-mile" should read "6.6-mile".

[FR Doc. C9–22220 Filed 9–7–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Wednesday
September 8, 1999

Part II

Department of Commerce

Patent and Trademark Office

37 CFR Part 1 et al.

Trademark Law Treaty Implementation Act Changes; Final Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1, 2, 3 and 6

[Docket No. 980826226–9185–02]

RIN 0651–AB00

Trademark Law Treaty Implementation Act Changes

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (Office) is amending its rules to implement the Trademark Law Treaty Implementation Act of 1998 (TLTIA), Pub. L. 105–330, 112 Stat. 3064 (15 U.S.C. 1051), and to otherwise simplify and clarify procedures for registering trademarks, and for maintaining and renewing trademark registrations. TLTIA implements the Trademark Law Treaty (TLT). TLT is to make the procedural requirements of the different national trademark offices more consistent.

DATES:

Effective Date: October 30, 1999.

Applicability Dates: See **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Mary Hannon, Office of Assistant Commissioner for Trademarks, by telephone at (703) 308–8910, extension 137; by facsimile transmission addressed to her at (703) 308–9395; or by mail marked to her attention and addressed to Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202–3513.

SUPPLEMENTARY INFORMATION:

Applicability Dates

Pending Applications for Registration: The TLTIA amendments to the Act, and these rule changes, shall apply to any application for registration of a trademark pending on, or filed on or after, October 30, 1999.

Informal Applications: Application papers filed before October 30, 1999, but not reviewed by the Office for compliance with minimum filing requirements until after October 30, 1999, will be required to meet the minimum filing requirements (§ 2.21) in effect as of the date of filing. If the application fails to meet the minimum filing requirements in effect on the date of filing, but meets the minimum filing requirements in effect on the date the papers are reviewed, the application will be assigned a filing date of October 30, 1999.

Petitions to Revive: Petitions to revive pending on October 30, 1999, will be reviewed under the unintentional delay standard. See the discussion below of the changes to § 2.66.

Post Registration: The revised provisions of sections 8 and 9 of the Act, and these amendments to the rules, apply only to affidavits and renewal applications filed on or after October 30, 1999. The old law applies to affidavits and renewal applications filed before October 30, 1999, even if the sixth or tenth anniversary, or the expiration date of the registration is on or after October 30, 1999. This is true even for affidavits and renewal applications that are filed before, but examined after, October 30, 1999.

The revised provisions of section 9 of the Act do not apply to applications for renewal of registrations that expire before October 30, 1999, even if the applications are examined after October 30, 1999. For example, if a registration expires on October 29, 1999, the registrant may file a renewal application within the three-month grace period provided under the old law. The new six-month grace period does not apply to registrations with expiration dates prior to October 30, 1999.

Likewise, the new law does not apply to a section 8 affidavit due before October 30, 1999, even if the affidavit is not examined until after October 30, 1999. For example, if a registration issued on October 29, 1993, the registrant must meet the statutory requirements of section 8 of the Act on or before October 29, 1999. The registrant cannot take advantage of the six-month grace period, or the deficiency period, provided under the new law.

The revised provisions of section 8 of the Trademark Act, 15 U.S.C. 1058, and these rule changes, apply to the filing of an affidavit of continued use or excusable nonuse under section 8 of the Act if: (1) The sixth or tenth anniversary of registration, or the sixth anniversary of publication under section 12(c) of the Act, is on or after October 30, 1999; and (2) the affidavit is filed on or after October 30, 1999. However, the provisions of section 8(a)(3) of the Act, requiring the filing of a section 8 affidavit at the end of each successive ten year period after registration, do not apply to a registration issued or renewed for a twenty year term (*i.e.*, a registration issued or renewed before November 16, 1989) until a renewal application is due.

A Notice of Proposed Rulemaking was published in the **Federal Register** (64 FR 25223) on May 11, 1999, and in the *Official Gazette* of the Patent and Trademark Office (1223 TMOG 41) on June 8, 1999. A public hearing was held on June 10, 1999.

Written comments were submitted by two organizations, two law firms, and five trademark attorneys. Three organizations and one attorney testified at the oral hearing.

References below to "the Act," "the Trademark Act" or "the statute" refer to the Trademark Act of 1946, as amended, 15 U.S.C. 1051 *et seq.* "TMEP" is the *Trademark Manual of Examining Procedure* (2nd ed., Rev. 1.1, August 1997).

Application Filing Dates

TLTIA section 103 adds sections 1(a)(4) and 1(b)(4) of the Act to give the Office authority to establish and change filing date requirements. The Office is amending § 2.21 to require the following elements for receipt of a filing date: (1) The name of the applicant; (2) a name and address for correspondence; (3) a clear drawing of the mark; (4) a list of the goods or services; and (5) the filing fee for at least one class of goods or services.

Comment: One comment stated that the proposed requirement in § 2.21(a)(3) for a "clear drawing of the mark" was confusing, and that it could impose a hardship on some applicants, *e.g.*, where the attorney's only copy of the drawing is a fax received from a foreign client.

Response: The requirement for a "clear drawing of the mark" is intended to be more lenient than the current requirement for a drawing "substantially meeting all the requirements of § 2.52." A clear drawing of the mark is essential, so that the application can be properly examined, and so that the public will have adequate notice of the mark.

The following elements will no longer be required for receipt of a filing date: a certified copy of the foreign registration in a section 44(e) application; an allegation of the applicant's use or bona fide intention to use the mark in commerce; a specimen and date of first use in commerce in a section 1(a) application; a stated filing basis; and a signature. These elements will instead be required during examination.

Comment: One comment stated that while a filing date should not be denied if the application does not include a filing basis, the basis should be made of record as soon as possible.

Response: The Office expects that most applicants will state the filing basis in the original application. If the application does not include the filing basis, this information will be required in the first Office action.

Bulky Specimens

Amended § 2.56(d)(1) requires that specimens be flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long. This is consistent with current § 2.56. Section 2.56(d)(2) is added, stating that if an applicant submits a specimen that exceeds the size requirement (a "bulky specimen"), the Office will create a facsimile of the specimen that meets the requirements of the rule (*i.e.*, is flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long), insert it in the application file wrapper, and destroy the original bulky specimen.

Currently, when an applicant submits a specimen that does not meet the requirements of § 2.56 (*i.e.*, is not flat, exceeds the size limitation, etc.), the Office retains the specimen even though it is impossible to attach it to the application file wrapper. This requires substantial special handling because the Office must store and track the specimens separately from the application file wrappers. Because the number of newly filed applications has increased from approximately 83,000 to over 233,000 per year over the past ten years, and the number of pending applications has increased from less than 100,000 to over 350,000 in the same period, it has become increasingly difficult to ensure that the bulky specimens follow the application files. As the number of applications has increased, bulky materials submitted as specimens have also increased, requiring an increased use of limited resources to handle the bulky materials. Further, because specimens of this nature are often misplaced or lost during examination processing, the Office must then require new specimens, slowing examination and inconveniencing applicants.

Because the requirement for flat specimens can be easily satisfied through the use of photographs, photocopies, or other means of reproduction, the Office will no longer retain bulky materials submitted as specimens. In very limited circumstances, the Office will continue to accept specimens consisting of videotapes, audiotapes, CDs, computer diskettes, and similar materials where there are no non-bulky alternatives, and the submission is the only means available for showing use of the mark.

Comment: One comment supported the proposed procedure for creating facsimiles of bulky specimens. Another comment supported the proposed procedure, provided that the Office makes copies of the front, back, and all portions of the specimens.

Response: The Office will attempt to capture the mark as used on the specimen, but may not copy all portions of the bulky specimens. If an additional specimen is needed, the examining attorney will require a substitute specimen that meets the size requirements of the rules.

Number of Specimens Required

The Office is amending §§ 2.56(a), 2.76(b)(2), 2.86(b), and 2.88(b)(2) to require one rather than three specimens with an application under section 1 of the Act, or an amendment to allege use or statement of use of a mark in an application under section 1(b) of the Act. The Office previously required three specimens so that an interested party, such as a potential opposer, could permanently remove a specimen from an application file, yet not leave the file without specimens. TMEP § 905.01. However, multiple copies of specimens are no longer necessary because the public may make photocopies of a single specimen.

Comment: Three comments opposed the proposed requirement for only one specimen, stating that if only one specimen is required, and that specimen is lost, the file will be left with no specimen; that multiple specimens enable interested third parties to obtain an original without having to contact the applicant directly; and that current photocopying technology does not adequately reproduce color, small details, tones, low-contrast images, or highly ornate/intricate or densely worded specimens.

Response: The Office does not permit the removal of other documents from application files and will no longer permit specimens to be removed from files. Prohibiting the removal of specimens will ensure that there is a complete record of the submissions made by the applicant. Where removal is permitted, a third party could mistakenly remove a unique specimen, thinking it is merely a duplicate. This would leave the application file incomplete.

Currently, 10% of new applications for registration are filed electronically, and the Office expects this number to increase dramatically in the near future. Only one specimen is required with an electronically filed application, and it is submitted as a digitized image (§ 2.56(d)(4)). Considering the increasing number of electronic filings and the move in the future to a paperless Office, the Office believes that three specimens are unnecessary.

Comment: One comment stated that it generally supports the proposed requirement for only one specimen, but noted that there will be a greater urgency for the Office to ensure that the single specimen is always available for public inspection.

Response: As noted above, the Office will no longer permit specimens to be removed from files. The Office now microfilms all incoming applications, so that a record of the specimen is available to the public if it is lost. In the near future, the Office will be scanning all incoming applications and allegations of use and will have an electronic image of any specimen that is lost.

Comment: One comment asked whether more than one specimen may be submitted.

Response: Yes, while only one specimen will be required, a party may choose to file more than one specimen. Multiple specimens will be retained in the file as long as they do not exceed the size limitations of § 2.56(d)(1).

Persons Who May Sign

Currently, sections 1(a)(1)(A) and 1(b)(1)(A) of the Act require that an application by a juristic applicant be signed "by a member of the firm or an officer of the corporation or association applying." TLTIA section 103 amends sections 1(a) and 1(b) of the Act to eliminate the specification of the appropriate person to sign on behalf of an applicant.

The applicant or registrant, and the applicant's or registrant's attorney, are best able to determine who should sign documents filed in the Office. Therefore, the Office will no longer question the authority of the person who signs a verification, or a renewal application, unless there is an inconsistency in the record as to the signatory's authority to sign.

Proposed § 2.33(a) stated that a person properly authorized to sign on behalf of the applicant "includes a person with legal authority to bind the applicant and/or a person with firsthand knowledge and actual or implied authority to act on behalf of the applicant."

Comment: One comment suggested that § 2.33(a) be amended to state that a person who is properly authorized to sign on behalf of the applicant includes: (1) A person with legal authority to bind the applicant, (2) a person with firsthand knowledge of the facts asserted, and actual or implied authority to act on behalf of the applicant, and (3) an attorney as defined in § 10.1(c) of this chapter who has an actual or implied, written or verbal power of attorney from the applicant, provided that the Office may require written confirmation of

such power of attorney subsequent to the filing of the verified statement.

Response: The suggestion has been adopted, but modified slightly. The Office will not require written confirmation of a power of attorney, but will accept the attorney's word that he or she is authorized to sign on behalf of the applicant.

Comment: One comment suggested that "and/or" be changed to "or."

Response: The suggestion has been adopted.

Comment: One comment suggested that "implied authority" be changed to "apparent authority."

Response: The suggestion has not been adopted. The Office believes that the "implied authority" standard is broad enough to cover most circumstances and to allow applicants flexibility in determining who can sign verifications.

Comment: Four comments requested clarification as to whether attorneys can sign on behalf of clients, and whether any special power of attorney is needed.

Response: Sections 2.33(a) and 2.161(b) have been amended to provide for signature of verifications by attorneys. No special power of attorney will be required.

Renewal applications may also be signed by attorneys. Verification of renewal applications is no longer required. Section 2.183(a) requires that the renewal application be executed by "the registrant or the registrant's representative."

Filing by Owner

Although TLTIA amends the statute to eliminate the specification of the proper party to sign on behalf of an applicant or registrant, the statute still requires that the owner of the mark file an application for registration, amendment to allege use, statement of use, request for extension of time to file a statement of use, and section 8 affidavit. See sections 1(a)(1), 1(b)(1), 1(d)(1), 1(d)(2), and 8(b) of the Act.

TLTIA section 105 amends section 8 of the Act to require that the owner of the mark file an affidavit of continued use or excusable nonuse within the time period set forth in section 8(a) of the Act. The legislative history states:

> Throughout the revised section 8, the term "registrant" has been replaced by the term "owner." The practice at the Patent and Trademark Office has been to require that the current owner of the registration file all the post-registration affidavits needed to maintain a registration. The current owner of the registration must aver to actual knowledge of the use of the mark in the subject registration. However, the definition of "registrant" in section 45 of the Act states that the "terms 'applicant' and 'registrant' embrace the legal representatives, predecessors, successors and assigns of each applicant and registrant." Therefore, use of the term "registrant" in section 8 of the Act would imply that any legal representative, predecessor, successor or assign of the registrant could successfully file the affidavits required by sections 8 and 9. To correct this situation, and to keep with the general principal (sic), as set out in section 1, that the owner is the proper person to prosecute an application, section 8 has been amended to state that the owner must file the affidavits required by the section.
>
> H.R. Rep. No. 194, 105th Cong., 1st Sess. 18–19 (1997).

Therefore, the Office is amending §§ 2.163(a) and 2.164(b) to make it clear that filing by the owner is a minimum requirement that cannot be cured after expiration of the filing period set forth in section 8 of the Act.

Under sections 1(a) and 1(b) of the Act, an application for registration of a mark must also be filed by the owner. Therefore, new § 2.71(d) states that although a mistake in setting out the applicant's name can be corrected, the application cannot be amended to set forth a different entity as the applicant; and that an application is void if it is filed in the name of an entity that did not own the mark as of the filing date of the application. This codifies current practice. TMEP § 802.07. *Huang* v. *Tzu Wei Chen Food Co. Ltd.*, 7 USPQ2d 1335 (Fed. Cir. 1988) (application filed in name of individual two days after mark was acquired by newly formed corporation held void); *Accu Personnel Inc.* v. *Accustaff Inc.*, 38 USPQ2d 1443 (TTAB 1996) (application filed in name of entity that did not yet exist not void); *In re Tong Yang Cement Corp.*, 19 USPQ2d 1689 (TTAB 1991) (application filed by joint venturer void where mark owned by joint venture); *U.S. Pioneer Electronics Corp.* v. *Evans Marketing, Inc.*, 183 USPQ 613 (Comm'r Pats. 1974) (misidentification of applicant's name may be corrected).

The Office is also amending §§ 2.88(e)(3), 2.89(a)(3), and 2.89(b)(3) to state that if a statement of use or request for an extension of time to file a statement of use is unsigned or signed by the wrong party, a substitute verification must be submitted before the expiration of the statutory period for filing the statement of use. This is consistent with current practice. See TMEP §§ 1105.05(f)(i)(A) and 1105.05(d). Sections 1(d)(1) and (2) of the Act require verification by the owner within the statutory period for filing the statement of use. Therefore, the Office cannot extend or waive the deadline for filing the verification. *In re Kinsman*, 33 USPQ2d 1057 (Comm'r Pats. 1993).

Material Alteration

The Federal Circuit held in *In re ECCS*, 94 F.3d 1578, 39 USPQ2d 2001 (Fed. Cir. 1996) that an applicant may amend an application based on use to correct an "internal inconsistency" in the original application. *Id.* at 1581, 39 USPQ2d at 2004. An application is "internally inconsistent" if the mark on the drawing does not agree with the mark on the specimens filed with the application. *Id.* As a result, the Office has been accepting all amendments to drawings in use-based applications if there is an inconsistency in the initial application.

However, the Office does not believe that it is in the public interest to accept amendments that materially alter the mark on the original drawing. When the Office receives a new application, the mark on the drawing is promptly filed in the Trademark Search Library and entered into the Office's electronic and administrative systems. Because the granting of a filing date to an application potentially establishes a date of constructive use of the mark under section 7(c) of the Act, timely and accurate public notification of the filing of applications is important. Accepting an amendment that materially alters the mark on the original drawing is unfair to third parties who search Office records between the application filing date and the date of the amendment, because they do not have accurate information about earlier-filed applications. Relying on the search of Office records, a third party may innocently begin using a mark that conflicts with the amended mark, but not with the original mark. Also, an examining attorney may approve a later-filed application for registration of a mark that conflicts with the amended mark, but not with the original mark. Therefore, the Office is amending § 2.72 to prohibit amendments that materially alter the mark on the original drawing.

Comments: One law firm opposed any amendment of § 2.72, stating that the decisions in *ECCS* and *In re Dekra*, 44 USPQ2d 1693 (TTAB 1997) established a fair compromise between the rights of the applicant and the rights of third parties. One organization stated that minor changes like the change permitted in *ECCS* should be allowed, but that it "does not endorse the type of substantial change to a drawing permitted in *Dekra*," and expressed concern that the amendment to § 2.72 could lead to a more stringent standard for determining material alteration than the standard set forth in *ECCS*. The comment further noted that the standard for determining whether the mark in the drawing agrees with the mark in the foreign registration in a section 44 application is stricter than the standard used to determine whether specimens support use of a mark in an application under section 1 of the Trademark Act, and suggested that if a uniform standard for determining material alteration is adopted, the more liberal standard applied to section 1(a) or section 1(b) applications should be used.

Response: ECCS held that under current § 2.72(b), the specimens filed with the original application in a use-based application must be considered in determining what mark the applicant seeks to register. However, the court specifically noted that seven decisions cited in the *ECCS* decision were not affected: "We have carefully examined all * * * (seven) cases and find that none has any bearing on the situation before us in which an original application is *internally inconsistent* as to what the mark is, the specimen displaying one mark and the drawing a *slightly different mark* .* * *" *Id.* at 1581, 39 USPQ2d at 2004 (emphasis added). *ECCS* specifically cited *In re Abolio y Rubio S.A.C.I. y G.*, 24 USPQ2d 1152 (TTAB 1992) and *In re Meditech Int'l Corp.*, 25 USPQ2d 1159 (TTAB 1990). *ECCS* at 1581, 39 USPQ2d at 2004. *Abolio y Rubio* involved an application based on a foreign registration (15 U.S.C. 1026(e)) in which the drawing omitted the design shown in the foreign registration submitted with the application. *Meditech* concerned a use-based application in which the drawing contained the typed words "DESIGN OF A BLUE STAR" while the specimens showed a design of twenty blue stars without the words shown in the drawing. In both of these cases, the applicants were not permitted to amend their drawings. Subsequently, the Federal Circuit in *In re Hacot-Colombier*, affirmed the Board's refusal to permit an applicant to amend its drawing in an application based on a foreign-filed application, 15 U.S.C. 1126(d). 105 F.3d 616, 41 USPQ2d 1523 (Fed. Cir. 1997). Citing *Abolio y Rubio* with approval, the Court gave deference to the agency's interpretation that § 2.72 includes both a prohibition against material alterations and a requirement that any alteration conform to the mark in the foreign registration. *Id.* at 619, 41 USPQ2d at 1526. The present amendment to § 2.72 is not intended to change the standard for determining what constitutes a material alteration as discussed in the Board cases cited in *ECCS*, or in *Hacot-Colombier*.

Color Drawings

Section 2.52 is amended to delete the color lining chart currently in § 2.52(e).

Comment: One comment asked whether the Office would accept drawings in actual color.

Response: The Office will no longer deny an application a filing date if the mark is depicted in color. However, the Office does not yet have the technology to scan marks in color, and the marks will be uploaded into the Office's automated systems in black and white.

Comment: One comment asked whether marks would be published in the *Official Gazette* and issued in color.

Response: The Office will not publish and issue marks in color on October 30, 1999. However, the Office anticipates publishing and issuing marks in color in the future.

Comment: Two comments requested that color photocopiers be made available to the public.

Response: Color photocopiers are very expensive and will not be available to the public on October 30, 1999. The Office is looking into purchasing a color copier for use by the public, for a fee, and will make it available as soon as possible.

Comment: One comment suggested that the Office should permit the use of lining or stippling to indicate color on a drawing, at least until an alternative method of indicating color gains wide acceptance.

Response: There will be a transition period in which the Office will continue to publish and register marks that contain the color linings currently in § 2.52(e). An *Official Gazette* notice will advise when color lining is no longer acceptable.

Comment: One comment noted that proposed § 2.52(a)(2)(i) referred to color lining, while the color lining chart was deleted from § 2.52(e).

Response: The reference to color lining has been deleted from § 2.52(a)(2)(i).

Comment: One comment suggested that the Office clarify what is a sufficient description and location of color applied to a mark.

Response: The application must include a clear and specific description of the mark, identifying the mark as consisting of the particular color as applied to the goods or services. If the color is applied only to a portion of the goods, the description must indicate the specific portion. Similarly, if the mark includes gradations of color, the description should so indicate. The Office will issue an examination guide giving further guidance as to how it will process color drawings.

Comment: One comment suggested that the Office accept color photographs to describe the color claimed in a mark.

Response: In addition to a written description of a mark, the Office will accept color photographs for the record to describe the color claimed in a mark.

Comment: Two comments suggested that applicants should have the option to identify color using a generally accepted color identification system.

Response: The Office does not endorse any one commercial color identification system. However, in addition to a written description of the color contained in a mark, an applicant may refer to a commercial color identification system to describe color.

Revival of Abandoned Applications

Effective October 30, 1999, sections 1(d)(4) and 12(b) of the Act, and section 2.66 permit the revival of an abandoned application where the delay in responding to an Office action or notice of allowance is "unintentional." A showing of "unavoidable" delay is no longer required. All petitions to revive pending on or filed on or after October 30, 1999, will be reviewed under the unintentional delay standard.

Under § 2.66(a), the applicant must file a petition to revive (1) within two months of the mailing date of the notice of abandonment; or (2) within two months of actual knowledge of the abandonment, if the applicant did not receive the notice of abandonment, and the applicant was diligent in checking the status of the application. These deadlines will be strictly enforced.

The written statement that the delay was unintentional must be signed by someone with firsthand knowledge of the facts, but it need not be verified or supported by a declaration under § 2.20.

It is not necessary to explain the circumstances that caused the unintentional delay. The Office will generally not question the applicant's assertion that the delay in responding to an Office action or notice of allowance was unintentional, and will grant the petition, unless there is information in the record indicating that the delay was in fact intentional.

See the discussion below of the amendments to § 2.66 for further information on the requirements for filing a petition to revive.

Comment: One comment suggested that § 2.66(a) (1) and (2) be amended to provide for filing a petition to revive within two months of "the mailing date of an adverse decision on a Request For Reinstatement," so as to avoid a disincentive for filing requests for reinstatement.

Response: The suggestion has not been adopted because it is unnecessary. When the Office denies a request for reinstatement, the Office routinely gives the applicant an opportunity to pay the petition fee and convert the request for reinstatement into a petition to revive.

Comment: One comment suggested that § 2.66(a) be amended to provide for the filing of a petition to revive where the applicant did not timely respond to "a decision on the petition (other than a petition to revive under this rule)," because "(t)here may be instances where a decision on petition is misdirected by the U.S. Postal Service and results in the abandonment of the application. For example, consider a petition for an extension of time to commence judicial review under 37 CFR 2.145(e)."

Response: The suggestion has not been adopted. Sections 1(d)(1) and 12(b) of the Act, 15 U.S.C. 1051(d)(1) and 1062(b), provide for revival of an abandoned application based on a showing of unintentional delay only where there is a delay in responding to an Office action or filing a statement of use or request for an extension of time to file a statement of use. In the example provided, the remedy is found in § 2.145(e)(2), which provides that the Commissioner may extend the time for filing an appeal or commencing a civil action "upon written request after the expiration of the period for filing an appeal or commencing a civil action upon a showing that the failure to act was the result of excusable neglect." In other situations, the remedy is to file a petition to the Commissioner under § 2.146(a)(5), under which the Commissioner may waive any provision of the rules that is not a provision of the statute, where an extraordinary situation exists, justice requires, and no other party is injured thereby.

Due Diligence

Sections 2.66(a)(2) and 2.146(i) are amended to indicate that where a petitioner seeks to reactivate an application or registration that was abandoned or cancelled due to the alleged loss or mishandling of papers mailed to or from the Office, the petition will be denied if the petitioner was not diligent in checking the status of the application or registration. This codifies the long-standing past practice of the Office. TMEP sections 413, 1112.05(b)(ii), and 1704. To be considered diligent, the petitioner must check the status of the application or registration that is the subject of the petition within one year of the last filing or receipt of a notice from the Office for which further action by the Office is expected.

The Office now denies petitions when the petitioner waits too long before checking the status of an application or registration. The rationale is that granting the petition would be unfair to third parties who may have searched Office records and relied to their detriment on information that an application was abandoned or that a registration had expired or been cancelled. A third party may have diligently searched Office records and begun using a mark because the search showed no earlier-filed conflicting marks, or an examining attorney may have searched Office records and approved a later-filed application for a conflicting mark.

A party can check the status through the Trademark Status Line ((703) 305–8747) or through the Trademark Applications and Registrations Retrieval (TARR) database on the Office's World Wide Web site at *http://www.uspto.gov/go/tarr/*. Written status inquiries are discouraged.

Comment: One comment suggested that the one-year due diligence standard be expressly incorporated into §§ 2.66(a)(2) and 2.146(i).

Response: The suggestion has been adopted.

Comment: One comment requested guidance as to how one proves that he or she has been diligent in monitoring the status of a pending matter.

Response: A party may call the Status Line, or access status information through the World Wide Web, and make a notation in the party's own file noting the date of the status inquiry, and the substance of the information learned. If it is ever necessary to petition for corrective action, the dates and substance of the status inquiries should be summarized in the petition. No further documentation is necessary.

Comment: One comment objected to the requirement that petitioners be diligent in monitoring the status of pending matters, noting that docketing a one-year status check every time a paper is filed or received results in a maze of confusing entries in docketing systems that makes it difficult to tell which dates have been superseded.

Response: To protect the interests of third parties and to maintain the integrity of the register, the Office believes that requests to reactivate abandoned applications or cancelled registrations must be made within a reasonable time; the Office does not believe that requiring a status check once per year is unreasonable. Therefore, the Office will continue its long-standing practice of denying petitions to revive under § 2.66 and petitions to the Commissioner under § 2.146 if the petitioner has waited too long before investigating the problem.

Amendment of Basis After Publication

Proposed § 2.35(b) prohibited an amendment to add or substitute a basis after publication.

Comments: Four comments opposed the proposed prohibition against amending the basis after publication, and one comment supported the proposal.

Response: Because of the arguments submitted by the opponents of the proposed rule prohibiting amendment of the basis after publication, the Office is withdrawing the proposal. Section 2.35(b) is instead amended to incorporate current practice, *i.e.*, to state that an application that is not the subject of an *inter partes* proceeding before the Trademark Trial and Appeal Board may be amended to add or substitute a basis after publication, if the applicant files a petition to the Commissioner; and that republication will always be required. TMEP § 1006.04. An application that is the subject of an *inter partes* proceeding before the Trademark Trial and Appeal Board is governed by § 2.133(a).

Specification of Type of Commerce No Longer Required

The Office will no longer require a specification of the type of commerce in which a mark is used in an application for registration based on use in commerce under section 1(a) of the Act, allegation of use in an application based on section 1(b) of the Act, affidavit of continued use under section 8 of the Act (section 8 affidavit), or affidavit of incontestability under section 15 of the Act (section 15 affidavit).

The Office proposed to eliminate the requirements that sections 8 and 15 affidavits specify the type of commerce in which the mark is used, currently required by §§ 2.162(e) and 2.167(c). Sections 8 and 15 of the Act do not require that the affidavits list the type of commerce. Because the definition of "commerce" in section 45 of the Act is "all commerce which may lawfully be regulated by Congress," the Office will presume that a registrant who states that the mark is in use in commerce is stating that the mark is in use in a type of commerce that Congress can regulate.

Comment: No comments opposed the proposed deletion of the requirement that section 8 and section 15 affidavits specify the type of commerce. One comment suggested that §§ 2.33(b)(1), 2.34(a)(1)(iii), 2.76(b)(1)(ii), and 2.88(b)(1)(ii) be amended to require an allegation that the mark is in "use in commerce that can be regulated by the Congress of the United States of America," rather than a specification of the type of commerce in which the mark is used, in an application for registration or allegation of use.

Response: The suggestion has been adopted, but modified slightly. Sections 1(a), 1(c), and 1(d) of the Act do not require that an applicant specify the type of commerce in which the mark is used in an application or allegation of use. Sections 2.33(b)(1), 2.34(a)(1)(iii), 2.76(b)(1)(ii), and 2.88(b)(1)(ii) are amended to delete the requirement that the applicant specify the type of commerce in which the mark is used. The Office will not require that the applicant specifically state that the mark is in use in commerce that the United States Congress can regulate. Instead, the Office will presume that an applicant who states that the mark is in use in commerce is stating that the mark is in use in a type of commerce that Congress can regulate.

Statement of Method of Use or Intended Use of Marks No Longer Required

The rules no longer require a statement of the applicant's method or intended method of use of a mark, because sections 1(a), 1(b), and 1(d) of the Act have been amended to omit these requirements.

Post Registration

TLTIA sections 105 and 106 amend: (1) section 8 of the Act, 15 U.S.C. 1058, to add a requirement for filing an affidavit or declaration of continued use or excusable nonuse in the year before the end of every ten-year period after the date of registration; and (2) section 9 of the Act, 15 U.S.C. 1059, to delete the requirement for a declaration of continued use or excusable nonuse in a renewal application. Thus, every tenth year, the owner of a registration must file both a section 8 affidavit and a renewal application.

The statutory filing periods for the ten year section 8 affidavits are the same as the statutory filing periods for renewal applications. The Office will create a combined "Sections 8 and 9" form to make it easy to make both filings in a single document. In substance, the requirements of the combined filing under amended sections 8 and 9 of the Act will be the same as the requirements for renewal under current law.

A section 8 affidavit between the fifth and sixth year after the date of registration is also required. This is consistent with current law. No renewal application is required during the sixth year.

TLTIA sections 105 and 106 amend sections 8 and 9 of the Act to permit filing within a six-month grace period after the deadline set forth in the statute, with an additional surcharge. The surcharge for filing a section 8 affidavit or section 9 renewal application during the grace period is $100 per class. If a combined filing under sections 8 and 9 of the Act is filed during the grace period, two grace period surcharges must be included for each class, one for the section 8 affidavit and another for the section 9 renewal application.

TLTIA sections 105 and 106 also amend sections 8(c)(2) and 9(a) of the Act to allow for the correction of most deficiencies after the deadline set forth in the statute, with payment of an additional surcharge. The surcharge for correcting a deficiency in a section 8 affidavit or a section 9 renewal application is $100. Only a single deficiency surcharge will be required for correcting deficiencies in a combined sections 8 and 9 filing, even if both the section 8 affidavit and the renewal application are deficient.

Comment: One comment requested clarification as to how the deficiency and grace period fees would be applied to section 8 affidavits and renewal applications pending before or around the date of implementation.

Response: The new fees do not apply to section 8 affidavits and renewal applications filed before October 30, 1999. The revised provisions of sections 8 and 9 of the Act, and these amendments to the rules, apply only to affidavits and renewal applications filed on or after October 30, 1999. The old law, and the old fees, apply to affidavits and renewal applications filed before October 30, 1999, even if the sixth or tenth anniversary, or the expiration date, of the registration is on or after October 30, 1999. This is true even for affidavits and renewal applications that are filed before, but examined after, October 30, 1999. See the discussion under the heading "Dates/Applicability Dates," supra, for further information about the effective date of TLTIA and this final rule.

Comment: One comment suggested that it would be unfair to charge the deficiency surcharge if large backlogs prevent examination in a timely manner.

Response: Ultimately, it is the registrant who is responsible for filing documents that meet the requirements of the Act and the rules. The surcharges required by sections 8(c)(2) and 9(a) of the Act will be charged regardless of whether there are backlogs in examination. Under current law, statutory requirements must be met before the end of the filing period set forth in the Act, or the registration will be cancelled. The new law provides a benefit to registrants because it permits correction of most statutory deficiencies after the expiration of the statutory filing period, albeit for an additional fee. To avoid deficiency fees, registrants are encouraged to file section 8 affidavits and renewal applications early in the statutory period. Under both sections 8 and 9 of the Act, there is a one-year period in which a section 8 affidavit or renewal application can be filed, plus an additional six-month grace period. Section 8 affidavits are now examined within six months of filing, and renewal applications are examined less than two months after filing.

Comment: One comment stated that it would be unfair to charge a deficiency surcharge if the information needed to cure defects is within the control of the PTO, *e.g.*, an assignment or change of name waiting to be recorded.

Response: If the party who filed was the owner of the registration at the time of filing, there will be no deficiency surcharge for recording documents or submitting other evidence of ownership, before or after the expiration of the filing periods set forth in the Act.

Comment: One comment asked why there was a surcharge for correcting deficiencies in a section 8 affidavit, but not for a section 15 affidavit.

Response: Section 8(c)(2) of the Act requires a surcharge for correcting deficiencies after expiration of the deadline set forth in section 8 of the Act, while section 15 of the Act does not require a deficiency surcharge. There is no statutory cutoff date for filing a section 15 affidavit. Amendments or corrections to section 15 affidavits are not accepted, but substitute affidavits may be filed. TMEP § 1604.03.

Comment: The Office had proposed decreasing the renewal fee from $300 to $200 per class, and increasing the filing fees for sections 8 and 15 affidavits from $100 to $200 per class. Two comments objected to the proposed increase in filing fees for sections 8 and 15 affidavits.

Response: The Office is withdrawing these proposals at this time.

Comment: One comment suggested that the automated records of the Office should specify which affidavits had been filed under section 8 of the Act, *e.g.*, "first section 8 affidavit," "second section 8 affidavit," etc.

Response: The Office's automated records will identify a section 8 affidavit as "Section 8 (6 year)" or "Section 8 (10 year). Further information may be obtained from the Status Line at (703) 305–8747, or from the Trademark

Applications and Registrations Retrieval (TARR) database on the Office's World Wide Web site at *http://www.uspto.gov/go/tarr/*. The prosecution history will show the number of section 8 affidavits that have been filed.

Recording Assignments and Changes of Name

Currently, the Office will record only an original document or a true copy of an original. TLTIA section 107 amends section 10 of the Act to allow recordation of a document that is not an original or a true copy.

Comment: One comment suggested that § 3.25(a)(4) should be amended to delete the requirement for signature by the assignee when an assignment is supported by a statement explaining how the conveyance affects title. The comment noted that assignments signed only by the assignor have been routinely recorded for many years; that the rule as written would be a major change in policy; that the assignment of trademarks and the associated goodwill is regarded as a matter of state law, and signature by the assignee is not required by the law of a number of states; and that the proposed rule would seek to impose by Federal law an additional requirement in a transaction that is clearly covered by state law, and raises a question as to whether there is Federal authority for doing so.

Response: The suggestion has not been adopted. Section 3.25(a) sets forth a number of types of underlying documents one can submit to the Office to support a request to record an assignment. Section 3.25(a)(4) is not a requirement, but only one alternative available to a party seeking to record an assignment. Traditionally, the only document that the Office accepted to support a request to record an assignment was the original assignment document or a true copy of the original document. Amended § 3.25(a) provides a wider range of supporting documents. The Office will continue to accept an original assignment document, or a true copy of an original, that is signed only by the assignor.

Comment: One comment suggested that § 3.25(b) should be amended to continue the current requirement for an original or a true copy of an original with a request to record a change of name. The comment noted that it is generally easy to obtain a document reflecting a name change, and would therefore not be a significant burden to parties seeking to record assignments; and that the proposed rule requiring only a legible cover sheet would result in a burden to members of the public seeking to confirm the change in ownership.

Response: The suggestion has not been adopted. The deletion of the requirement for an underlying document supporting a request to record a change of name was made because section 10 of the Act no longer requires an underlying document in a request to record a name change.

Assignment of Section 1(b) Applications

TLTIA section 107 amends section 10 of the Act to permit an assignment after the applicant files an amendment to allege use under section 1(c) of the Act. Currently, a section 1(b) application cannot be assigned until after the filing of a statement of use under section 1(d) of the Act, except to a successor to the applicant's business, or the portion of the business to which the mark pertains. This amendment corrects an oversight in the Trademark Law Revision Act of 1988 (Title 1 of Pub. L. 100–667, 102 Stat. 3935 (15 U.S.C. 1051)), which amended section 10 of the Act to permit an assignment of a section 1(b) application to someone other than a successor to the applicant's business only after the filing of a statement of use under section 1(d) of the Act. The substance of statements of use and amendments to allege use are the same, and the only difference is the time of filing, so there is no reason to treat them differently.

Discussion of Specific Rules Changed or Added

The Office is amending rules 1.1, 1.4, 1.5, 1.6, 1.23, 2.1, 2.6, 2.17, 2.20, 2.21, 2.31, 2.32, 2.33, 2.34, 2.35, 2.37, 2.38, 2.39, 2.45, 2.51, 2.52, 2.56, 2.57, 2.58, 2.59, 2.66, 2.71, 2.72, 2.76, 2.86, 2.88, 2.89, 2.101, 2.111, 2.146, 2.151, 2.155, 2.156, 2.160, 2.161, 2.162, 2.163, 2.164, 2.165, 2.166, 2.167, 2.168, 2.173, 2.181, 2.182, 2.183, 2.184, 2.185, 2.186, 3.16, 3.24, 3.25, 3.28, 3.31, and 6.1.

Section 1.1(a)(2) is amended to set forth all the addresses for filing trademark correspondence in one rule.

Section 1.1(a)(2)(i) is amended to exempt papers filed electronically from the requirement that correspondence be mailed to the street address of the Office.

Section 1.1(a)(2)(v) is amended to state that an applicant may transmit an application for trademark registration electronically, but only if the applicant uses the Office's electronic form.

Section 1.4(a)(2) is amended to correct a cross-reference.

Section 1.4(d)(1)(iii) is added to provide for signature of electronically transmitted trademark filings, where permitted.

Section 1.5(c) is amended to clarify the requirements for identifying trademark applications and registrations.

Section 1.6(a) is amended to provide that the Office will consider trademark-related correspondence transmitted electronically to have been filed on the date of transmission, regardless of whether that date is a Saturday, Sunday, or Federal holiday within the District of Columbia. This is consistent with the treatment of correspondence filed as Express Mail with the United States Postal Service (USPS) under § 1.10.

Comment: One comment suggested that § 1.6(a)(1) be amended to state that Express Mail deposited on a Saturday, Sunday, or Federal holiday will receive a filing date as of the date of deposit with the USPS.

Response: The suggestion has not been adopted. Sections 1.6(a)(2) and 1.10(a) already state that correspondence filed by Express Mail will be considered filed as of the date of deposit with USPS, and these sections do not limit the date of deposit as Express Mail to a day that is not a weekend or Federal holiday. Therefore, it is not necessary to repeat this information in § 1.6(a)(1). The Office now stamps correspondence filed by Express Mail under § 1.10 with the USPS "date in," regardless of whether that date is a Saturday, Sunday, or Federal holiday within the District of Columbia. TMEP § 702.02(f); MPEP § 513.

The current text of § 1.23 is designated as paragraph (a), and amended to clarify that payment must be made in U.S. dollars, and in the form of a cashier's or certified check, Treasury note, or USPS money order to be considered unconditional payment of a fee. As with current practice, payment of a fee by other forms (*e.g.*, by personal or corporate check, or authorization to charge a credit card) is subject to actual collection of the fee.

Section 1.23 is also amended to add a paragraph (b), providing that payments of money for fees in electronically filed trademark applications, or electronic submissions in trademark applications, may also be made by credit card. The Office previously limited fee payment by credit card to the fees required for information products, and will continue to accept payment of information product fees by credit card.

Section 1.23(b) will also provide that payment of a fee by credit card must specify the amount to be charged and such other information as is necessary to process the charge, and is subject to collection of the fee.

Section 1.23(b) will further provide that the Office will not accept a general authorization to charge fees to a credit card. The Office cannot accept an authorization to charge "all required fees" or "the filing fee" to a credit card, because the Office cannot determine with certainty the amount of an unspecified fee (the amount of the "required fee" or the applicable "filing fee") within the time frame for reporting a charge to the credit card company. Also, the Office cannot accept charges to credit cards that require the use of a personal identification number (PIN) (*e.g.*, certain debit cards or check cards).

Section 1.23(b) also contains a warning that if credit card information is provided on a form or document other than a form provided by the Office for the payment of fees by credit card, the Office will not be liable if the credit card number is made public. The Office currently provides an electronic form for use when paying a fee in an electronically filed trademark application or electronic submission in a trademark application. This form will not be included in the records open to public inspection in the file of a trademark matter. However, the inclusion of credit card information on forms or documents other than the electronic form provided by the Office may result in the release of credit card information.

Section 2.1 is amended to update a cross-reference.

Section 2.6(a)(6) is amended to delete reference to the three-month renewal grace period. TLTIA changes the grace period to six months.

Section 2.6(a)(14) is removed because it is unnecessary. The cost of a combined affidavit or declaration under sections 8 and 15 of the Act is the sum of the cost of the individual filings.

Section 2.6(a)(14) is added, requiring a $100 surcharge per class for filing a section 8 affidavit during the grace period.

Section 2.6(a)(20) is added, requiring a $100 surcharge for correcting a deficiency in a section 8 affidavit.

Section 2.6(a)(21) is added, requiring a $100 surcharge for correcting a deficiency in a renewal application.

Section 2.17(c) is added, stating that to be recognized as a representative in a trademark case, an attorney as defined in § 10.1(c) may file a power of attorney, appear in person, or sign a paper that is filed with the Office on behalf of an applicant or registrant. This codifies current practice.

Section 2.17(d) is added, stating that someone may file a power of attorney that relates to more than one trademark application or registration, or to all existing and future applications and registrations; and that someone relying on such a power of attorney must: (1) Include a copy of the previously filed power of attorney; or (2) refer to the previously filed power of attorney, specifying: The filing date; the application serial number, registration number, or *inter partes* proceeding number for which the original power of attorney was filed; and the name of the party who signed the power of attorney; or, if the application serial number is not known, submit a copy of the application or a copy of the mark, and specify the filing date.

Comment: One comment requested clarification as to whether a "global" power of attorney will be effective for all registrations, including those that have no immediate deadline.

Response: Yes, the power of attorney will be effective for registrations that have no immediate deadline. When the attorney later takes an action, such as filing an affidavit of continued use or a renewal application, he or she must comply with the requirements of § 2.17(d) in order to rely on the power of attorney.

Comment: One comment asked whether a global power of attorney will remain valid if the application for which the power was filed is abandoned.

Response: Yes. The Office will maintain a record of the power of attorney, and the power will remain valid even if the original power was filed with an application that is later abandoned, or with a registration that is later cancelled.

Comment: One comment suggested that the Office should require attorneys to set forth the jurisdiction in which they are admitted and their bar number in a power of attorney.

Response: The suggestion has not been adopted, because the Office does not need this information to process applications and other documents. The purpose of TLT is to minimize the number of formal requirements for applications, powers of attorney and other documents, and to make the procedural requirements of the different national trademark offices more consistent. Instituting a new requirement that an attorney include the jurisdiction in which he or she is admitted and a bar number would not serve this purpose.

Section 2.20 is revised to delete the requirement for a declaration by a "member of the firm or an officer of the corporation or association," because this requirement has been deleted from sections 1(a) and 1(b) of the Act.

Comment: One comment suggested that § 2.20 be amended to permit the use of the language of 28 U.S.C. 1746 in a declaration.

Response: The suggestion has been adopted. Section 2.20 is amended to permit the filing of a verification under 28 U.S.C. 1746 in lieu of either an affidavit or a declaration under § 2.20. This reflects current practice. TMEP § 803.02.

Section 2.21 is revised to require the following minimum requirements for receipt of an application filing date: (1) The name of the applicant; (2) a name and address for correspondence; (3) a clear drawing of the mark; (4) an identification of goods or services; and (5) the filing fee for at least one class of goods or services. See the discussion under the heading "Supplementary Information/Application Filing Dates," *supra*.

The following minimum requirements for receiving a filing date have been deleted: A stated basis for filing; a verification or declaration signed by the applicant; an allegation of use in commerce, specimen, and date of first use in commerce in an application under section 1(a) of the Act; an allegation of the applicant's bona fide intention to use the mark in commerce in an application under section 1(b) or section 44 of the Act; a claim of priority in an application under section 44(d) of the Act; and a certified copy of a foreign registration in an application under section 44(e) of the Act. A claim of priority under section 44(d) must be filed before the end of the priority period. All other elements must be provided during examination.

Section 2.21(a)(3) is amended to require a "clear drawing of the mark" rather than the drawing "substantially meeting all the requirements of § 2.52" that is now required.

Section 2.21(b) is amended to state that the Office "may" rather than "will" return the papers and fees to the applicant when an application does not meet the minimum filing requirements. A new procedure is being considered under which the Office would retain applications that do not meet the minimum filing requirements. Applicants would have an opportunity to supply the missing element and receive a filing date as of the date the Office receives the missing element. Until a new policy is announced, the Office will continue to return the papers and fees to the applicant.

Comment: One comment stated that it reserves judgment on the possible future change in procedures for handling informal applications.

Response: If the Office does decide to change procedures for handling informal applications, it will seek input from the public before instituting the changes.

The center heading "THE WRITTEN APPLICATION" before § 2.31 is deleted because it is unnecessary. The heading "APPLICATION FOR REGISTRATION," immediately before § 2.21, encompasses the rules that now fall under the heading "THE WRITTEN APPLICATION."

Section 2.31 is removed and reserved. The substance of the requirement that the application be in English has been moved to revised § 2.32(a).

The heading of § 2.32 is changed to "Requirements for a complete application." Revised § 2.32(a) lists the requirements for the written application, now listed in § 2.33(a)(1).

Proposed § 2.32(a)(3)(ii) required that a juristic applicant set forth the state or nation under the laws of which the applicant is organized. This is consistent with current § 2.33(a)(1)(ii).

Comment: One comment suggested that "state or nation" in § 2.32(a)(3)(ii) be changed to "jurisdiction (usually state or nation)," because juristic persons such as corporations may be incorporated under the law of a jurisdiction that is not a state or nation.

Response: The suggestion has been adopted.

Section 2.32(a)(6) requires a list of the goods or services on or in connection with which the applicant uses or intends to use the mark, and states that in an application filed under section 44 of the Act, the scope of the goods or services covered by the section 44 basis may not exceed the scope of the goods or services in the foreign application or registration.

Comment: One comment suggested that § 2.32(a)(6) be amended to state than an application may be filed under multiple bases, with some of the goods/services supported by only one of the bases.

Response: The suggestion has not been adopted because it is unnecessary. Section 2.34(b)(1) clearly states that an applicant may claim more than one basis in a single application, and § 2.34(b)(2) indicates that the goods/services in such an application may be covered by different bases.

The heading of § 2.33 is changed to "Verified statement."

Section 2.33(a) is amended to state that the application must include a statement that is signed and verified by a person properly authorized to sign on behalf of the applicant. Section 2.33(a) further states that a person who is properly authorized to sign on behalf of the applicant is: (1) A person with legal authority to bind the applicant; or (2) a person with firsthand knowledge of the facts and actual or implied authority to act on behalf of the applicant; or (3) an attorney as defined in § 10.1(c) of this chapter who has an actual or implied written or verbal power of attorney from the applicant. See the discussion under the heading "Supplementary Information/Persons Who May Sign," *supra*.

The substance of current § 2.32(b) is moved to § 2.33(c). Revised § 2.33 states that the Office may require a substitute verification of the applicant's continued use or bona fide intention to use the mark when the applicant does not file the verified statement within a reasonable time after the date it is signed. This codifies present practice. Section 2.32(b) now states only that a verification of the applicant's continued *use* of the mark is required where the application is not filed within a reasonable time after it is signed. However, the Office also requires verification of the applicant's continued *bona fide intention to use* the mark in commerce when a verification under section 1(b) or section 44 of the Act is not filed within a reasonable time after it is signed. TMEP § 803.04.

Section 2.33(b)(1) is amended to delete the requirement that the applicant specify the type of commerce in which the mark is used. See the discussion under the heading "Supplementary Information/Specification of Type of Commerce No Longer Required," *supra*.

Section 2.33(d) is added, stating that where an electronically transmitted filing is permitted, the person who signs the verified statement must either: (1) Place a symbol comprised of numbers and/or letters between two forward slash marks in the signature block on the electronic document; and print, sign and date in permanent ink, and maintain a paper copy of the electronic submission; or (2) use some other form of electronic signature that the Commissioner may designate.

Section 2.34 is added, setting forth the requirements for the four bases for filing. New § 2.34(a)(1) lists the requirements for an application under section 1(a) of the Act, now listed in section §§ 2.21(a)(5)(i), 2.33(a)(1)(iv), 2.33(a)(1)(vii), 2.33(a)(2), and § 2.33(b)(1). Section 2.34(a)(2) lists the requirements for an application under section 1(b) of the Act, now listed in §§ 2.21(a)(5)(iv) and 2.33(a)(1)(iv).

Section 2.34(a)(iii) is amended to delete the requirement that the applicant specify the type of commerce in which the mark is used. See the discussion under the heading "Supplementary Information/Specification of Type of Commerce No Longer Required," *supra*.

Comment: One comment suggested that § 2.34(a)(1)(i), which pertains to applications based on use in commerce under section 1(a) of the Act, be amended to change "application filing date" to "application filing date (in the case of an application claiming priority under section 44(d), such use in commerce shall be required as of the U.S. filing date not the filing date of the priority application)," to avoid any confusion, because in a section 44(d) application that claims priority, the effective filing date is the filing date of the foreign application.

Response: The suggestion has not been adopted, because it is unnecessary, and could be confusing to domestic applicants who base their applications solely on use in commerce and are unfamiliar with the requirements of section 44(d). Under § 1.6, correspondence is stamped with the date of receipt in the Office, unless the correspondence is filed under § 1.10, which provides for the filing of papers and fees by Express Mail. The term "application filing date" is now commonly used to refer to the date the application is received in the Patent and Trademark Office, and the priority date in a section 44(d) application is referred to as the "effective filing date." TMEP § 708.02. The Office knows of no instances in which a party whose application was based on both sections 44(d) and 1(a) mistakenly believed that the requirements for the section 1(a) basis must be met as of the priority date.

Section 2.34(a)(3) lists the requirements for an application under section 44(e) of the Act, now listed in §§ 2.21(a)(5)(ii) and 2.33(a)(1)(viii). Section 2.34(a)(3)(ii) requires a certified copy of a foreign registration. Currently, a section 44(e) applicant must submit a foreign certificate to receive a filing date. However, TLTIA section 108 amends section 44(e) of the Act to delete the requirement that the application be "accompanied by" the foreign certificate. The Office will require that the applicant submit the certificate during examination.

New § 2.34(a)(3)(iii) is added, stating that if it appears that the foreign registration will expire before the mark in the United States application will register, the applicant must submit a certification from the foreign country's trademark office, showing that the registration has been renewed and will be in force at the time the United States registration will issue. This codifies current practice. TMEP § 1004.03.

Comment: One comment suggested that the phrase "before the United States registration will issue," be changed to "before the United States registration is expected to issue assuming no unusual delays," because at the time of examination the exact date of issue is subject to wide variance.

Response: The suggestion has not been adopted. Even if there is a delay in issuance of a registration in an application under section 44(e) of the Act, due to an opposition or for other reasons, the United States registration will not issue unless the foreign registration has been renewed and is in force.

New § 2.34(a)(4) lists the requirements for an application under section 44(d) of the Act, now listed in §§ 2.21(a)(5)(iii), 2.33(a)(1)(ix), and 2.39. Section 2.34(a)(4)(i) requires that a priority claim be filed within six months of the filing date of the foreign application. This is consistent with Articles 4(C)(1) and 4(D)(1) of the Paris Convention for the Protection of Industrial Property, as revised at Stockholm on July 14, 1967 (Paris Convention).

New § 2.34(b)(1) states that an applicant may claim more than one basis, provided that the applicant meets the requirements for all bases claimed. This codifies current practice. Section 2.34(b)(1) also states that the applicant may not claim both sections 1(a) and 1(b) for the identical goods or services in one application.

Revised § 2.34(b)(2) requires that the applicant specify which basis covers which goods or services when an applicant claims more than one basis.

New § 2.34(c) sets forth the definition of "commerce," currently found in § 2.33(a)(3).

Section 2.37 is removed.

Section 2.35 is redesignated as § 2.37.

Section 2.35 is added: "Adding, deleting, or substituting bases."

New § 2.35(a) states that the applicant may add or substitute a basis for registration before publication, and that the applicant may delete a basis at any time.

Section 2.35(b) is amended to state that an application may be amended to add or substitute a basis after publication, if the applicant files a petition to the Commissioner; and that republication will always be required. This codifies current practice. TMEP § 1006.04. See the discussion under "Supplementary Information/Amendment of Basis After Publication," *supra*.

New § 2.35(c) changes current practice to allow a section 44(d) applicant to retain the priority filing date when the applicant substitutes a new basis after the expiration of the six-month priority period. Currently, if an application is filed solely under section 44(d), and the applicant amends to substitute a different basis after the expiration of the six-month priority period, the effective filing date of the application becomes the date the applicant perfects the amendment claiming the new basis. TMEP § 1006.03.

Comment: Proposed § 2.35(c) stated that when the applicant substitutes a basis, the Office will presume that the original basis was valid, unless there is contradictory evidence in the record. One comment questioned whether an application that was amended from section 1(a) to section 1(b) would be subject to attack on the ground that the original basis was invalid because there was no use as a mark.

Response: A party who filed an application based on use in commerce, but later discovered that what he or she thought was appropriate trademark use was not in fact technical trademark use, clearly had a bona fide intention to use the mark in commerce as of the filing date. If the use basis is invalid, the applicant is entitled to retain the original filing date because the applicant had a bona fide intention to use the mark in commerce at all times. Section 2.35(c) is therefore amended to delete the statement that the Office will presume that the original basis was valid and substitute a statement that the Office will presume that there was a continuing valid basis, unless there is contradictory evidence in the record.

New § 2.35(d) states that if an applicant properly claims a section 44(d) basis in addition to another basis, the applicant will retain the priority filing date under section 44(d) no matter which basis the applicant perfects. This codifies current practice. TMEP § 1006.01.

New § 2.35(e) states that the applicant may add or substitute a section 44(d) basis only within the six-month priority period following the filing date of the foreign application. This is consistent with current practice (TMEP § 1006.05), and with Articles 4(C)(1) and 4(D)(1) of the Paris Convention.

New § 2.35(f) states that an applicant who adds a basis must state which basis covers which goods or services.

New § 2.35(g) states that if an applicant deletes a basis, the applicant must also delete any goods or services covered solsly by the deleted basis. This codifies current practice.

New § 2.35(h) states that once an applicant claims a section 1(b) basis as to any or all of the goods or services, the applicant may not amend the application to seek registration under section 1(a) of the Act for those goods or services unless the applicant files an allegation of use under section 1(c) or section 1(d) of the Act.

Section 2.38(a) is amended to update a cross-reference.

Section 2.39 is removed and reserved. The requirements for filing a priority claim under section 44(d) of the Act are moved to § 2.34(a)(4), discussed above.

Sections 2.45 (a) and (b) are revised to: (1) Delete the requirement for a statement of the method or intended method of use in a certification mark application; and (2) require a copy of the standards that determine whether others may use the certification mark on their goods and/or in connection with their services. Sections 1(a) and 1(b) of the Act, as amended, no longer require a statement of the method or intended method of use of a mark. The requirement for a copy of the certification standards codifies current practice. TMEP § 1306.06(g)(ii).

Sections 2.51 (c) through (e) are removed. The substance of those rules is moved to new § 2.52.

Section 2.52(a) is revised to define the term "drawing," to indicate that a drawing may only depict a single mark, and to define the terms "typed drawing" and "special form drawing."

Section 2.52(a) is revised to add guidelines for drawings of various types of unusual marks, such as marks that include color, three-dimensional objects, motion, sound or scent; and to add guidelines for showing placement of the mark on goods, packaging for goods, or in advertising of services.

Section 2.52(b) is revised to indicate the recommended format for the drawing of a mark.

Section 2.52(c) is revised to state that for an electronically filed application, if the mark cannot be shown as a "typed drawing," the applicant must attach a digitized image of the mark to the application.

Sections 2.56, 2.57, and 2.58 are consolidated into § 2.56.

Sections 2.57 and 2.58 are removed and reserved.

Section 2.56(a) is revised to require one rather than three specimens with an application under section 1(a) of the Act, or an allegation of use under section 1(c) or section 1(d) of the Act in an application under section 1(b) of the Act. See the discussion under "Supplementary Information/Number of Specimens Required," *supra*.

Section 2.56(b)(1) is added, stating that a trademark specimen is a label, tag, or container for the goods, or a display associated with the goods; and that the Office may accept another document

related to the goods or the sale of the goods when it is not possible to place the mark on the goods or packaging for the goods. This is consistent with the current § 2.56.

Comment: One comment suggested that the second sentence of § 2.56(b)(1) should be amended to substitute "will" for "may," and that the following sentence be added at the end of the paragraph: "The Office may accept a display associated with the goods when this is the customary method of use of a trademark in the relevant trade or industry."

Response: The suggestion has not been adopted. The first sentence of § 2.56(b)(1) already states that a specimen may be a display associated with the goods, so the suggested third sentence is unnecessary. The word "may" is used in the second sentence of § 2.56(b)(1) because it is within the discretion of the examining attorney to determine whether specimens are acceptable.

Section 2.56(b)(2) is added, stating that a service mark specimen must show the mark as actually used in the sale or advertising of the services. This is consistent with the current § 2.58(a).

Section 2.56(b)(3) is added, stating that a collective trademark or collective service mark specimen must show how a member uses the mark on the member's goods or in the sale or advertising of the member's services. This codifies current practice. TMEP § 1303.02(b).

Section 2.56(b)(4) is added, stating that a collective membership mark specimen must show use by members to indicate membership in the collective organization. This codifies current practice. TMEP § 1304.09(c).

Section 2.56(b)(5) is added, stating that a certification mark specimen must show how a person other than the owner uses the mark to certify regional or other origin, material, mode of manufacture, quality, accuracy, or other characteristics of the person's goods or services; or that members of a union or other organization performed the work or labor on the goods or services. This codifies current practice. TMEP § 1306.06(c).

Section 2.56(c) is added, stating that a photocopy or other reproduction of a specimen is acceptable, but that a photocopy or facsimile that merely reproduces the drawing is not a proper specimen. This is consistent with the current § 2.57.

New § 2.56(d)(1) states that a specimen must be flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long. This is consistent with the current § 2.56.

Section 2.56(d)(2) is added, stating that if the applicant files a specimen that is too large (a "bulky specimen"), the Office will create a facsimile of the specimen that meets the requirements of the rule (*i.e.*, is flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long) and put it in the file wrapper. See the discussion under "Supplementary Information/Bulky Specimens," *supra*.

Section 2.56(d)(4) is added, stating that if the application is filed electronically, the specimen must be submitted as a digitized image.

Section 2.59, which governs the filing of substitute specimens, is revised to clarify and simplify the language. Section 2.59(b)(1) provides that when an applicant submits substitute specimens after filing an amendment to allege use under § 2.76, the applicant must verify the substitute specimens were in use in commerce prior to filing the amendment to allege use.

Comment: One comment suggested that § 2.59(b)(1) be amended to provide for the filing of substitute specimens that were in use "prior to filing the substitute specimen(s)," even if the specimens were not in use as of the filing date of the amendment to allege use. The comment noted that under the current rule, if the substitute specimens are not in use as of the filing date of the amendment to allege use, then the applicant must cancel the first amendment to allege use and substitute a new one, and stated that this serves no useful purpose.

Response: The suggestion has not been adopted. Section 1(c) of the Act provides for the filing of an amendment to allege use only after the applicant "has made use of the mark in commerce." Under § 2.76(e)(2), a minimum filing requirement for an amendment to allege use is a specimen showing that the mark is in use in commerce on or in connection with the goods or services. If the applicant cannot show use in commerce as of the filing date of the amendment to allege use, then the amendment cannot be considered "filed" as of that date. The Office believes that its records should accurately show the date when an intent-to-use applicant files an acceptable amendment to allege use under section 1(c) of the Act, because this date can be significant. For example, under § 2.75(b), if an intent-to-use applicant amends to the Supplemental Register, the effective filing date of the application becomes the date the amendment to allege use was perfected. It would be unfair to grant the intent-to-use applicant an effective filing date on the Supplemental Register before the mark was actually in use in commerce.

Section 2.66 is revised to set forth the requirements for filing a petition to revive an abandoned application when the delay in responding to an Office action or notice of allowance is "unintentional." See the discussion under "Supplementary Information/Revival of Abandoned Applications," *supra*.

Sections 2.66(a) (1) and (2) are added, requiring that the applicant file a petition to revive within (1) two months of the mailing date of the notice of abandonment; or (2) two months of actual knowledge of abandonment. Currently, the deadline for filing a petition to revive is sixty days from the mailing date of the notice of abandonment or the date of actual knowledge of abandonment. TMEP § 1112.05(a). The two-month deadline will make it easier to calculate the due date for a petition because it will not be necessary to count days.

Section 2.66(a)(2) states that an applicant must be diligent in checking the status of an application, and that to be diligent, the applicant must check the status of the application within one year of the last filing or receipt of a notice from the Office for which further action by the Office is expected. This codifies current practice. TMEP sections 413 and 1112.05(b)(ii). See the discussion under the heading "Supplementary Information/Due Diligence," *supra*.

Sections 2.66 (b)(2) and (c)(2) are amended to require "a statement, signed by someone with firsthand knowledge of the facts, that the delay * * * was unintentional." This statement need not be verified.

Section 2.66(b)(3) is amended to state that if the applicant did not receive the Office action, the applicant need not include a proposed response to an Office action with a petition to revive. This codifies current practice.

Sections 2.66(c) (3) and (4) are amended to state that if the applicant did not receive the notice of allowance and requests cancellation of the notice of allowance, the petition to revive need not include a statement of use or request for an extension of time to file a statement of use, or the fees for the extension requests that would have been due if the application had never been abandoned. This codifies current practice.

Section 2.66(c)(5) is added, stating that the applicant must file any further requests for extensions of time to file a statement of use under § 2.89 that become due while the petition is pending, or file a statement of use

unless: (1) A statement of use is filed with or before the petition to revive, or (2) the petition states that the applicant did not receive the notice of allowance and requests cancellation of the notice of allowance. This codifies current practice.

Section 2.66(f)(3) is added, stating that if the Commissioner denies the petition to revive, the applicant may request reconsideration by: (1) Filing the request within two months of the mailing date of the decision denying the petition; and (2) paying a second petition fee under § 2.6. Currently, the rules do not specifically provide for requests for reconsideration of petition decisions, but the Commissioner has the discretion to consider these requests under § 2.146(a)(3). The Office believes that an additional fee should be required to pay for the work done in processing the request for reconsideration. This is consistent with new § 2.146(j).

Section 2.71(a) is revised to state that the applicant may amend the identification to clarify or limit, but not broaden, the identification of goods and/or services. This simplifies the language of the current § 2.71(b).

New § 2.71(b)(1) states that if the declaration or verification of an application under § 2.33 is unsigned or signed by the wrong person, the applicant may submit a substitute verification or declaration under § 2.20. This changes current practice. Currently, the applicant must submit a signed verification to receive an application filing date, and if the verification is signed by the wrong party, the applicant cannot file a substitute verification unless the party who originally signed had "color of authority" (*i.e.*, firsthand knowledge of the facts and actual or implied authority to act on behalf of the applicant). TMEP Section 803. As discussed above, the Office is deleting the requirement that the applicant submit a signed verification in order to receive a filing date. If the verification is unsigned or signed by the wrong party, the applicant must replace the declaration during examination.

The requirement for a verification "by the applicant, a member of the applicant firm, or an officer of the applicant corporation or association" has been removed from § 2.71(c). This is consistent with the amendments to sections 1(a) and 1(b) of the Act. See the discussion under "Supplementary Information/Persons Who May Sign," *supra*.

The "color of authority" provisions have been deleted from § 2.71(c). Because the statute no longer specifies who has "statutory" authority to sign, the "color of authority" provisions are unnecessary.

New § 2.71(b)(2) states that if the declaration or verification of a statement of use under § 2.88 or a request for extension of time to file a statement of use under § 2.89 is unsigned or signed by the wrong party, the applicant must submit a substitute verification before the expiration of the statutory deadline for filing the statement of use.

Section 2.71(d) is added, stating that a mistake in setting out the applicant's name can be corrected, but the application cannot be amended to set forth a different entity as the applicant; and that an application filed in the name of an entity that did not own the mark on the filing date of the application is void. This codifies current practice. TMEP § 802.07. See the discussion under "Supplementary Information/Filing by Owner," *supra*.

Section 2.72 is revised to remove paragraph (a), and redesignate paragraphs (b) through (d) as (a) through (c).

New paragraphs (a) through (c) will each state that an applicant may not amend the description or drawing of the mark if the amendment materially alters the mark; and that the Office will determine whether a proposed amendment materially alters a mark by comparing the proposed amendment with the description or drawing of the mark in the original application. See the discussion under the heading "Supplementary Information/Material Alteration," *supra*.

Comment: One comment suggested that § 2.72(b) should be amended to provide that in an application based on section 1(b) of the Act, the applicant "may amend the heading on the drawing to reflect a change in applicant's name, jurisdiction of citizenship or organization, and/or address at any time," to encourage the prompt amendment of applications to reflect changes in the applicant's name, address and/or jurisdiction.

Response: The suggestion has not been adopted because it is unnecessary. Section 2.72(b) pertains only to amendment of the "description or drawing of the mark," not to amendment of the heading on a drawing. An applicant who submits a substitute drawing is free to amend the heading in the substitute drawing.

Comment: One comment suggested that § 2.72(c)(1) be amended to provide that in an application based on § 44(d) of the Act, the applicant may amend the drawing of the mark if the amendment is supported by the foreign application, "because there may never be a 'foreign registration certificate' if the foreign priority application lapses."

Response: The suggestion has not been adopted. Section 44(d) is a basis for filing an application, not a basis for registration. If the applicant perfects the section 44(e) basis, the mark in the United States application must be a substantially exact representation of the mark in the home country registration. If the applicant elects not to perfect the section 44(e) basis, the mark in the United States application must be a substantially exact representation of the mark on the specimens filed with a section 1(a) application or with an allegation of use in a section 1(b) application. A mark would not be registrable if it were a substantially exact representation of the mark in the foreign application, but not a substantially exact representation of the mark in the foreign registration in a section 44(e) application, or the specimens in a use-based application.

Section 2.76(b)(1) is revised to state that a complete amendment to allege use must include a statement that is verified or supported by a declaration under section 2.20 by a person properly authorized to sign on behalf of the applicant.

Section 2.76(b)(1) is further revised to delete the requirement for a statement of the method or manner of use of the mark in an amendment to allege use, because this requirement has been removed from section 1(a) of the Act.

Section 2.76(b)(1)(ii) is amended to delete the requirement that the applicant specify the type of commerce in which the mark is used. See the discussion under the heading "Supplementary Information/Specification of Type of Commerce No Longer Required," *supra*.

Section 2.76(b)(2) is revised to require one rather than three specimens with an amendment to allege use.

Section 2.76(i) is added, stating that if an amendment to allege use is not filed within a reasonable time after it is signed, the Office may require a substitute verification or declaration under § 2.20 that the mark is still in use in commerce. This codifies current practice. TMEP § 803.04.

Section 2.76(j) is added, noting that the requirements for multi-class applications are stated in § 2.86.

The heading of § 2.86 is changed to "Application may include multiple classes." The current § 2.86(a), which states that an applicant may recite more than one item of goods, or more than one service, in a single class, if the applicant either has used or has a bona fide intention to use the mark on all the goods or services, is removed. The

substance of this provision is moved to §§ 2.34(a)(1)(v), 2.34(a)(2)(ii), 2.34(a)(3)(iv), and 2.34(a)(4)(iv).

Section 2.86(a) is revised to include sections now found in § 2.86(b), stating that the applicant may apply to register the same mark for goods and/or services in multiple classes in a single application, provided that the applicant specifically identifies the goods and services in each class; submits a fee for each class; and either includes dates of use and one specimen, or a statement of a bona fide intention to use the mark in commerce, for each class.

Section 2.86(a)(3) is amended to add a provision that the applicant may not claim both use in commerce and a bona fide intention to use the mark in commerce for the identical goods or services in one application.

Section 2.86(b) is amended to state that a statement of use or amendment to allege use must include the required fee, dates of use, and one specimen for each class.

Section 2.86(b) is amended to add a provision that the applicant may not file the statement of use or amendment to allege use until the applicant has used the mark on all the goods or services, unless the applicant files a request to divide. This is consistent with the current §§ 2.76(c) and 2.88(c).

Section 2.86(c), which prohibits an applicant from claiming both use in commerce and intent-to-use in a single multi-class application, is deleted. However, new § 2.86(a)(3) will state that the applicant may not claim both use in commerce and intent-to-use for the identical goods or services in one application.

The substance of the last sentence of the current § 2.86(b) is moved to new § 2.86(c).

Section 2.88(b)(1) is revised to state that a complete statement of use must include a statement that is verified or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant.

Section 2.88(b)(1) is revised to delete the requirement for a statement of the method or manner of use in a statement of use. This requirement has been removed from section 1(d)(1) of the Act.

Section 2.88(b)(1)(ii) is amended to delete the requirement that the applicant specify the type of commerce in which the mark is used. See the discussion under the heading "Supplementary Information/ Specification of Type of Commerce No Longer Required," *supra*.

Section 2.88(b)(2) is revised to require one specimen with a statement of use, rather than the three specimens now required.

Section 2.88(e)(3) is revised to state that if the verification or declaration is unsigned or signed by the wrong party, the applicant must submit a substitute verification or declaration on or before the statutory deadline for filing the statement of use. This is consistent with current practice. TMEP § 1105.05(f)(i)(A). Section 1(d)(1) of the Act specifically requires verification by the applicant within the statutory period for filing the statement of use.

Section 2.88(k) is added, stating that if the statement of use is not filed within a reasonable time after it is signed, the Office may require a substitute verification or declaration under § 2.20 stating that the mark is still in use in commerce. This codifies current practice. TMEP § 803.04.

Section 2.88(l) is added, noting that the requirements for multi-class applications are stated in § 2.86.

Sections 2.89(a)(3) and (b)(3) are revised to require that the statement that the applicant has a bona fide intention to use the mark in commerce in a request for an extension of time to file a statement of use be verified or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant; and that if the extension request is unsigned or signed by the wrong party, the applicant must submit a substitute verification or declaration on or before the statutory deadline for filing the statement of use. This is consistent with current practice. TMEP § 1105.05(d). Sections 1(d)(1) and (2) of the Act specifically require verification by the applicant within the statutory filing period.

Section 2.89(d) is revised to remove paragraph (1), which requires a statement that the applicant has not yet made use of the mark in commerce on all the goods and services. The Commissioner has held that an extension request that omits this allegation is substantially in compliance with § 2.89(d) if the request contains a statement that the applicant has a continued bona fide intention to use the mark in commerce. *In re Schering-Plough Healthcare Products Inc.*, 24 USPQ2d 1709 (Comm'r Pats. 1992). Therefore, the requirement is unnecessary.

Section 2.89(g) is amended to change the time limit for filing a petition to the Commissioner from the denial of a request for an extension of time to file a statement of use from one month to two months. The two-month deadline is consistent with the deadline for filing a petition to revive an unintentionally abandoned application under § 2.66, and with the amendment of the deadline for filing petitions under § 2.146(d).

Section 2.89(h) is added, stating that if the extension request is not filed within a reasonable time after it is signed, the Office may require a substitute verification or declaration under § 2.20 that the applicant still has a bona fide intention to use the mark in commerce. This codifies current practice. TMEP § 803.04.

Section 2.101(d)(1) is revised to update a cross-reference.

Section 2.111(c)(1) is revised to update a cross-reference.

Section 2.146(d) is revised to delete "sixty days" and substitute "two months" as the deadline for filing certain petitions. This will make it easier to calculate the due date for a petition, because it will not be necessary to count days.

Section 2.146(i) is added, stating that where a petitioner seeks to reactivate an application or registration that was abandoned or cancelled due to the loss or mishandling of papers mailed to or from the Office, the petition will be denied if the petitioner was not diligent in checking the status of the application or registration; and that to be considered diligent, the applicant must check the status of the application or registration within one year of the last filing or receipt of a notice from the Office for which further action by the Office is expected. This codifies current practice. TMEP sections 413 and 1704. See the discussion under the heading "Supplementary Information/Due Diligence," *supra*.

Section 2.146(j) is added, stating that if the Commissioner denies the petition, the petitioner may request reconsideration by: (1) Filing the request within two months of the mailing date of the decision denying the petition; and (2) paying a second petition fee under § 2.6. Currently, the rules do not specifically provide for requests for reconsideration of petition decisions, but the Commissioner has the discretion to consider these requests under § 2.146(a)(3). The Office believes that an additional fee should be required to pay for the work done in processing the request for reconsideration. This is consistent with new § 2.66(f)(3), discussed above.

Section 2.151 is revised to update a cross-reference and simplify the language.

Section 2.155 is revised to update a cross-reference and simplify the language.

Section 2.156 is revised to update a cross-reference and simplify the language.

Section 2.160 is added, "Affidavit or declaration of continued use or excusable nonuse required to avoid cancellation." New §§ 2.160(a) (1) and (2) list the deadlines for filing the affidavit or declaration, and new § 2.160(a)(3) states that the owner may file the affidavit or declaration within six months after expiration of these deadlines, with an additional grace period surcharge. Currently, there is no grace period for filing a section 8 affidavit.

Comment: Since many registrations are still in twenty-year registration terms, one comment suggested that § 2.160(a)(2) be amended to require filing of an affidavit or declaration of continued use or excusable nonuse "within the year before the end of every ten-year period after the date of registration or renewal."

Response: The suggestion has not been adopted. The language of new § 2.160(a)(2) tracks the language of § 8(a)(3) of the Act. However, the provisions of section (a)(3) of the Act, requiring the filing of a section 8 affidavit at the end of each successive ten year period after registration, do not apply to a twenty-year registration until a renewal application is due. See the discussion under the heading "Dates/ Applicability Dates," *supra*.

Comment: One comment suggested that § 2.160(a)(1)(i) should be amended to require filing "after the fifth anniversary of the date of registration and no later than the sixth anniversary of the date of registration," rather than "between the fifth and sixth year after the date of registration," because the phrase "between the fifth and the sixth year" could be interpreted to be a single day.

Response: The suggestion has been adopted, but modified slightly.

Section 2.160(a)(1)(i) is amended to state that an affidavit of continued use or excusable nonuse must be filed "on or after the fifth anniversary and no later than the sixth anniversary after the date of registration." This makes it clear that the affidavit may be filed on the fifth anniversary of the registration. A similar amendment is made to § 2.160(a)(1)(ii).

Comment: One comment suggested that § 2.160(a)(2) be amended to require filing "after the ninth anniversary of either the date of registration or the most recent renewal, and no later than the tenth anniversary of the date of registration or the date of the most recent renewal, respectively," rather than "within the year before the end of every ten-year period after the date of registration," because the "rule as proposed appears to allow the filing of a renewal application (sic) on the ninth anniversary of the date of registration, which may not be allowed by the statute."

Response: The suggestion has not been adopted. The Office will accept section 8 affidavits filed on either the ninth or the tenth anniversary after the date of registration. This is consistent with current practice, which permits the filing of a section 8 affidavit on either the fifth or the sixth anniversary after the date of registration. TMEP § 1603.03.

New § 2.160(b) advises that § 2.161 lists the requirements for the affidavit or declaration.

The heading of § 2.161 is changed to "Requirements for a complete affidavit or declaration of continued use or excusable nonuse." Section 2.161 is revised to list the requirements for the affidavit or declaration.

Section 2.161(a) is revised to state that the owner must file the affidavit or declaration within the period set forth in section 8 of the Act.

Comment: One comment suggested that § 2.161(a) be amended to require that the affidavit "be filed within the time period set forth in § 2.160 by the owner, provided that if the owner is an assignee or other transferee, then such assignment or transfer shall be recorded with the Office on or before the filing of a section 8 (affidavit), or within six months after an official action requiring such recordal."

Response: The suggestion has not been adopted. An assignee is not required to record the assignment in order to file a section 8 affidavit. Under § 3.73(b), the assignee also has the option of submitting other proof of the change of ownership (*i.e.*, material showing the transfer of title). TMEP section 502 and § 1603.05(a).

Section 2.161(b) is revised to state that the affidavit or declaration must include a verified statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the owner, attesting to the continued use or excusable nonuse of the mark within the period set forth in section 8 of the Act. Section 2.161(b) further states that a person properly authorized to sign on behalf of the owner is: (1) A person with legal authority to bind the owner; or (2) a person with firsthand knowledge of the facts and actual or implied authority to act on behalf of the owner; or (3) an attorney as defined in § 10.1(c) of this chapter who has an actual or implied written or verbal power of attorney from the owner. See the discussion under the heading "Supplementary Information/ Persons Who May Sign," *supra*.

Section 2.161(b) also states that the verified statement must be executed on or after the beginning of the filing period specified in § 2.160(a).

Section 2.161(d)(2) is added, requiring a surcharge for filing an affidavit or declaration of continued use or excusable nonuse during the grace period.

Section 2.161(d)(3) is added, stating that if the fee submitted is enough to pay for at least one class, but not enough to pay for all the classes, and the particular class(es) covered by the affidavit or declaration are not specified, the Office will issue a notice requiring either the submission of additional fee(s) or an indication of the class(es) to which the original fee(s) should be applied; that additional fee(s) may be submitted if the requirements of § 2.164 are met; and that if additional fees are not submitted and the class(es) to which the original fee(s) should be applied are not specified, the Office will presume that the fee(s) cover the classes in ascending order, beginning with the lowest numbered class.

New § 2.161(e) requires that the affidavit or declaration list both the goods or services on which the mark is in use in commerce and the goods or services for which excusable nonuse is claimed. Currently, a list of the goods or services is not required when excusable nonuse is claimed. *In re Conusa Corp.*, 32 USPQ2d 1857 (Comm'r Pats. 1993). However, TLTIA section 105 amends section 8(b)(2) of the Act to specifically require "an affidavit setting forth those goods on or in connection with which the mark is not in use."

Comment: One comment stated that if the goods for which excusable nonuse is claimed are not listed in a section 8 affidavit, registrants should be given the opportunity to correct the oversight.

Response: If the goods or services for which excusable nonuse is claimed are not listed in an affidavit, the registrant will be given an opportunity to correct the deficiency. However, because section 8(b)(2) of the Act specifically requires that the affidavit set forth the goods or services on or in connection with which the mark is not in use in commerce, a deficiency surcharge will be required if the deficiency is corrected after the deadline specified in section 8 of the Act.

The requirement that the affidavit or declaration specify the type of commerce in which the mark is used, currently required by § 2.162(e), is removed. See the discussion under the heading "Supplementary Information/ Specification of Type of Commerce No Longer Required," *supra*.

The substance of § 2.162(f) is moved to § 2.161(f)(2). New § 2.161(f)(2) is revised to add a requirement that the affidavit state the date when use of the mark stopped and the approximate date when use will resume. This codifies current practice. Office actions are often issued requiring a statement as to when use of the mark stopped and when use will resume, because this information is needed to determine whether the nonuse is excusable, within the meaning of section 8 of the Act.

The substance of § 2.162(e) is moved to § 2.161(g). New § 2.161(g) is revised to state that the affidavit must include a specimen for each class of goods or services; that the specimen should be no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long; and that if the applicant files a specimen that exceeds these size requirements (a "bulky specimen"), the Office will create a facsimile of the specimen that meets the requirements of the rule (*i.e.*, is flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long) and put it in the file wrapper. See the discussion under "Supplementary Information/Bulky Specimens," *supra*.

Section 2.161(h) is added, requiring a designation of a domestic representative if the registrant is not domiciled in the United States. This reflects section 8(f) of the Act, as amended, and is consistent with current practice.

The substance of § 2.163 is moved to § 2.162. New § 2.162 is revised to state that the only notice of the requirement for filing the section 8 affidavit or declaration of continued use or excusable nonuse is sent with the certificate of registration when it is originally issued. This merely clarifies, and does not change, current practice.

The substance of current § 2.164 is moved to the introductory text of new § 2.163.

New § 2.163(a) states that if the owner of the registration files the affidavit or declaration within the time periods set forth in section 8 of the Act, deficiencies may be corrected if the requirements of § 2.164 are met.

Section 2.163(b) is added, stating that a response to an examiner's Office action must be filed within six months of the mailing date, or before the end of the filing period set forth in section 8(a) or section 8(b) of the Act, whichever is later, or the registration will be cancelled.

Section 2.164 is added, "Correcting deficiencies in affidavit or declaration." This section changes current practice. There are now some deficiencies that can be corrected after the statutory deadline for filing the affidavit or declaration, while other requirements must be satisfied before the expiration of the statutory deadline to avoid cancellation of the registration.

TLTIA section 105 adds section 8(c)(2) of the Act to allow correction of deficiencies, with payment of a deficiency surcharge. The Act does not define "deficiency," but instead gives the Office broad discretion to set procedures and fees for correcting deficiencies.

New § 2.164(a)(1) states that if the owner files the affidavit or declaration within the period set forth in section 8(a) or section 8(b) of the Act, deficiencies can be corrected before the end of this period without paying a deficiency surcharge; and deficiencies can be corrected after the expiration of this period with payment of the deficiency surcharge.

New § 2.164(a)(2) states that if the owner files the affidavit or declaration during the grace period, deficiencies can be corrected before the expiration of the grace period without paying a deficiency surcharge, and after the expiration of the grace period with a deficiency surcharge.

New § 2.164(b) states that if the affidavit or declaration is not filed within the time periods set forth in section 8 of the Act, or if it is filed within that period by someone other than the owner, the registration will be cancelled. These deficiencies cannot be cured.

See the discussion under the heading "Supplementary Information/Post Registration," *supra*, for additional information about curing deficiencies in section 8 affidavits.

The heading of § 2.165 is changed to "Petition to Commissioner to review refusal." The last two sentences of the current § 2.165(a)(1) are removed.

Old § 2.166 is removed because it is unnecessary. New §§ 2.163(b) and 2.165(b) set forth the times when a registration will be cancelled.

New § 2.166 is added, "Affidavit of continued use or excusable nonuse combined with renewal application," stating that an affidavit or declaration under section 8 of the Act and a renewal application under section 9 of the Act may be combined in a single document.

Section 2.167(c) is revised to delete the requirement that an affidavit or declaration under section 15 of the Act specify the type of commerce in which the mark is used.

The heading of § 2.168 is changed to "Affidavit or declaration under section 15 combined with affidavit or declaration under section 8, or with renewal application." Section 2.168(a) is revised to state that a section 15 affidavit may be combined with a section 8 affidavit, if the combined affidavit meets the requirements of both sections 8 and 15 of the Act. Section 2.168(b) is revised to state that a section 15 affidavit can be combined with a renewal application under section 9 of the Act, if the requirements of both sections 9 and 15 of the Act are met.

Section 2.173(a) is revised to simplify the language.

Sections 2.181(a)(1) and (2) are revised to indicate that renewal of a registration is subject to the provisions of section 8 of the Act. This is consistent with the amendment to section 9(a) of the Act.

Comment: One comment suggested that § 2.181(a)(1) should be amended to provide that registrations remain in force "from their date of issue or the date of expiration of their preceding term," rather than "from their date of issue or expiration," because an expired registration cannot be renewed.

Response: The suggestion has been adopted and modified slightly to simplify the language. Section 2.181(a)(1) is amended to state that registrations issued prior to November 16, 1989, remain in force for twenty years "from their date of issue or the date of renewal." A similar amendment is made to § 2.181(a)(2).

The heading of § 2.182 is changed to "Time for filing renewal application." The section is revised to state that the renewal application must be filed within one year before the expiration date of the registration, or within the six-month grace period after the expiration date with an additional fee.

The heading of § 2.183 is changed to "Requirements for a complete renewal application." This section is revised to delete the present renewal requirements and substitute new ones based on amended section 9 of the Act. The requirements for a specimen and declaration of use or excusable nonuse on or in connection with the goods or services listed in the registration are removed, because these requirements have been removed from section 9 of the Act. The new requirements for renewal are: (1) A request for renewal, signed by the registrant or the registrant's representative; (2) a renewal fee for each class; (3) a grace period surcharge for each class if the renewal application is filed during the grace period; (4) if the registrant is not domiciled in the United States, a designation of a domestic representative; and (5) if the renewal application covers less than all the goods or services, a list of the particular goods or services to be renewed.

New § 2.183(f) states that if the fee submitted is enough to pay for at least one class, but not enough to pay for all the classes, and the class(es) covered by the renewal application are not specified, the Office will issue a notice requiring either the submission of additional fee(s) or an indication of the class(es) to which the original fee(s) should be applied; that additional fee(s) may be submitted if the requirements of § 2.185 are met; and that if the required fee(s) are not submitted and the class(es) to which the original fee(s) should be applied are not specified, the Office will presume that the fee(s) cover the classes in ascending order, beginning with the lowest numbered class.

Section 2.184 is revised to simplify the language and to transfer some of its provisions to new § 2.186. Section 2.184 states that the Office will issue a notice if the renewal application is not acceptable; that a response to the refusal of renewal must be filed within six months of the mailing date of the Office action, or before the expiration date of the registration, whichever is later; and that the registration will expire if the renewal application is not filed within the time periods set forth in section 9(a) of the Act.

Section 2.185 is added, "Correcting deficiencies in renewal application."

Under amended section 9, the renewal application must be filed within the renewal period or grace period specified in section 9(a) of the Act, or the registration will expire. However, if the renewal application is timely filed, any deficiencies may be corrected after expiration of the statutory filing period, with payment of a deficiency surcharge.

New § 2.185(a)(1) states that if the renewal application is filed within one year before the registration expires, deficiencies may be corrected before the registration expires without paying a deficiency surcharge, or after the registration expires with payment of the deficiency surcharge required by section 9(a) of the Act.

New § 2.185(a)(2) states that if the renewal application is filed during the grace period, deficiencies may be corrected before the expiration of the grace period without paying a deficiency surcharge, and after the expiration of the grace period with payment of the deficiency surcharge required by section 9(a) of the Act.

New § 2.185(b) states that if the renewal application is not filed within the time periods set forth in section 9(a) of the Act, the registration will expire. This deficiency cannot be cured.

Comment: One comment noted that § 2.184(c) appears to be a duplicate of § 2.185(b) and suggested that one be deleted.

Response: The suggestion has not been adopted. Sections 2.184 and 2.185 are not duplicates, and both are necessary for the following reason. Section 2.184(c) states the general rule that a registration will expire if the renewal application is not filed during the proper time period. Section 2.185(b) specifically addresses whether the failure to file a renewal application in the proper time period will be considered a deficiency that can be cured during a six-month deficiency period. The rule states that "[t]his *deficiency* cannot be cured" (emphasis added).

Section 2.186 is added, "Petition to Commissioner to review refusal of renewal."

New § 2.186(a) states that a response to the examiner's initial refusal is required before filing a petition to the Commissioner, unless the examiner directs otherwise. This is consistent with the current § 2.184(a).

New § 2.186(b) states that if the examiner maintains the refusal of the renewal application, a petition to the Commissioner to review the action may be filed within six months of the mailing date of the Office action maintaining the refusal; and that if no petition is filed within six months of the mailing date of the Office action, the registration will expire. This is consistent with the current § 2.184(b).

New § 2.186(c) states that a decision by the Commissioner is necessary before filing an appeal or commencing a civil action in any court. This is consistent with the current § 2.184(d).

Section 3.16 is amended to state that an applicant may assign an application based on section 1(b) of the Act once the applicant files an amendment to allege use under section 1(c) of the Act.

The heading of § 3.24 is changed to "Requirements for documents and cover sheets relating to patents and patent applications." The recording requirements for patents are listed in § 3.24. New § 3.25 is added to list the recording requirements for trademark applications and registrations.

Section 3.25 identifies the types of documents one can submit when recording documents that affect some interest in trademark applications or registrations. The section also sets forth the Office's preferred format for cover sheets and other documents.

Section 3.28 is revised to state that separate cover sheets should be used for patents and trademarks.

Section 3.31(a)(4) is revised to set forth the requirements for identifying a trademark application when the application serial number is not known.

Section 3.31(a)(7) requires that a cover sheet state that the assignee of a trademark application or registration who is not domiciled in the United States has designated a domestic representative. This is consistent with current § 3.31(a)(8).

Comment: One comment suggested that § 3.31(a)(7) be amended to require that the domestic representative "either sign the cover sheet or countersign the indication," in order to prevent a foreign assignee from designating a domestic representative who is unaware of the designation.

Response: The suggestion has not been adopted. The Office has never required a domestic representative to countersign a designation or a cover sheet, and knows of no instances where an assignee or applicant designated a domestic representative who is not aware of the fact that he or she has been designated. Instituting a new requirement that a domestic representative sign each cover sheet could be burdensome to assignees and is contrary to the goal of minimizing formal requirements and making the procedural requirements of the different national trademark offices more consistent.

The requirement currently in § 3.31(a)(9) that a cover sheet contain a statement that the information on the cover sheet is correct and that any copy of the document submitted is a true copy is deleted.

Section 3.31(b) is amended to state that a cover sheet should not refer to both patents and trademarks; and to put the public on notice that if a cover sheet contains both patent and trademark information, all information will become public after recordation.

Section 3.31(d) is added, stating that a trademark cover sheet should include the serial number or registration number of the trademark affected by the conveyance or transaction, an identification of the mark, and a description of the mark.

Section 3.31(e) is added, stating that the cover sheet should include the total number of applications, registrations, or patents identified on the cover sheet and the total fee.

Section 6.1 is revised to incorporate classification changes that became effective January 1, 1997, as listed in the International Classification of Goods and Services for the Purposes of the Registration of Marks (7th ed. 1996), published by the World Intellectual Property Organization (WIPO).

Rulemaking Requirements

The Office has determined that the rule changes have no federalism

implications affecting the relationship between the National Government and the State as outlined in Executive Order 12612.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration, that the rule changes will not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). This rule implements the Trademark Law Treaty Implementation Act and simplifies and clarifies procedures for registering trademarks and maintaining and renewing trademark registrations. The rule will not significantly impact any businesses. The principal effect of the rule is to make it easier for applicants to obtain a filing date. No additional requirements are added to maintain registrations.

Furthermore, this rule simplifies the procedures for registering trademarks in new §§ 2.21, 2.32, 2.34, 2.45, 2.76, 2.88, 2.161, 2.167 and 2.183 of the Trademark rules. As a result, an initial regulatory flexibility analysis was not prepared.

The rule changes are in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), Executive Order 12612, and the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). No comments were received regarding the certification under the Regulatory Flexibility Act. The changes have been determined to be not significant for purposes of Executive Order 12866.

Notwithstanding any other provision of law, no person is required to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

This final rule contains collections of information requirements subject to the PRA. This rule discusses changes in the information required from the public to obtain registrations for trademarks and service marks, to submit affidavits or declarations of continued use or excusable nonuse, statements of use, requests for extensions of time to file statements of use, and to renew registrations. This rule deletes requirements to identify the method of use of a mark and the type of commerce in which a mark is used. Additionally, the rule removes the requirement that requests for recordation of documents be accompanied by originals or true copies of these documents. The rule allows the filing of powers of attorney that pertain to multiple registrations or applications for registration, and sets forth certain requirements for filing such powers of attorney. Additionally, the rule sets forth requirements for submitting section 8 affidavits of continued use or excusable nonuse combined with section 9 renewal applications, or section 15 affidavits or declarations of incontestability combined with either section 8 affidavits or declarations or with section 9 renewal applications.

An information collection package supporting the changes to the above information requirements, as discussed in this final rule, was submitted to OMB for review and approval. This information collection has been approved by OMB under OMB Control Number 0651–0009. The public reporting burden for this collection of information is estimated to average as follows: Seventeen minutes for applications to obtain registrations based on an intent to use the mark under section 1(b) of the Act, if completed using paper forms; fifteen minutes for applications to obtain registrations based on an intent to use the mark under section 1(b) of the Act, if completed using an electronic form; twenty-three minutes for applications to obtain registrations based on use of the mark under section 1(a) of the Act, if completed using paper forms; twenty-one minutes for applications to obtain registrations based on use of the mark under section 1(a) of the Act, if completed using an electronic form; twenty minutes for applications to obtain registrations based on an earlier-filed foreign application under section 44(d) of the Act, if completed using paper forms; nineteen minutes for applications to obtain registrations based on an earlier-filed foreign application under section 44(d) of the Act, if completed using an electronic form; twenty minutes for applications to obtain registrations based on registration of a mark in a foreign applicant's country of origin under section 44(e) of the Act; thirteen minutes for allegations of use of the mark under sections 2.76 and 2.88; ten minutes for requests for extension of time to file statements of use under section 2.89; fourteen minutes for renewal applications under section 9 of the Act combined with affidavits or declarations of continued use or excusable nonuse under section 8 of the Act; fourteen minutes for combined affidavits/declarations of use and incontestability under sections 8 and 15 of the Act; eleven minutes for an affidavit or declaration of continued use or excusable nonuse under section 8 of the Act; eleven minutes for a renewal application under section 9 of the Act; eleven minutes for a declaration of incontestability under section 15 of the Act; three minutes for powers of attorney and designations of domestic representatives; and thirty minutes for a trademark recordation form cover sheet. These time estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

This final rule also involves information requirements associated with amendments, oppositions, and petitions to cancel. The amendments and the oppositions have been previously approved by OMB under control number 0651–0009. The petitions to cancel have been previously approved by OMB under control number 0651–0040. These requirements are not being resubmitted for review at this time. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202–3513 (Attn: Ari Leifman), and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20230 (Attn: PTO Desk Officer).

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Patents.

37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

37 CFR Part 3

Administrative practice and procedure, Patents, Trademarks.

37 CFR Part 6

Trademarks.

For the reasons given in the preamble and under the authority contained in 35 U.S.C. 6 and 15 U.S.C. 41, as amended, the Patent and Trademark Office is amending parts 1, 2, 3, and 6 of title 37 as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for part 1 continues to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

2. Amend § 1.1 by revising paragraph (a)(2) to read as follows:

§ 1.1 Addresses for correspondence with the Patent and Trademark Office.

(a) * * *

(2) *Trademark correspondence.* (i) Send all trademark filings and correspondence, except as specified below or unless submitting electronically, to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202–3513.

(ii) Send trademark-related documents for the Assignment Division to record to: Commissioner of Patents and Trademarks, Box Assignment, Washington, DC 20231.

(iii) Send requests for certified or uncertified copies of trademark applications and registrations, other than coupon orders for uncertified copies of registrations, to: Commissioner of Patents and Trademarks, Box 10, Washington, DC 20231.

(iv) Send requests for coupon orders for uncertified copies of registrations to: Commissioner of Patents and Trademarks, Box 9, Washington, DC 20231.

(v) An applicant may transmit an application for trademark registration electronically, but only if the applicant uses the Patent and Trademark Office's electronic form.

* * * * *

3. Amend § 1.4 by revising the last sentence of paragraph (a)(2), revising paragraphs (d)(1), introductory text, and (d)(1)(ii), and adding a new paragraph (d)(1)(iii) to read as follows:

§ 1.4 Nature of correspondence and signature requirements.

(a) * * *

(2) * * * See particularly the rules relating to the filing, processing, or other proceedings of national applications in subpart B, §§ 1.31 to 1.378; of international applications in subpart C, §§ 1.401 to 1.499; of reexamination of patents in subpart D, §§ 1.501 to 1.570; of interferences in subpart E, §§ 1.601 to 1.690; of extension of patent term in subpart F, §§ 1.710 to 1.785; and of trademark applications and registrations, §§ 2.11 to 2.186.

* * * * *

(d)(1) Each piece of correspondence, except as provided in paragraphs (e) and (f) of this section, filed in an application, patent file, trademark registration file, or other proceeding in the Office which requires a person's signature, must:

(i) * * *

(ii) Be a direct or indirect copy, such as a photocopy or facsimile transmission(§ 1.6(d)), of an original. In the event that a copy of the original is filed, the original should be retained as evidence of authenticity. If a question of authenticity arises, the Office may require submission of the original; or

(iii) Where an electronically transmitted trademark filing is permitted, the person who signs the filing must either:

(A) Place a symbol comprised of numbers and/or letters between two forward slash marks in the signature block on the electronic submission; and print, sign and date in permanent ink, and maintain a paper copy of the electronic submission; or

(B) Sign the verified statement using some other form of electronic signature specified by the Commissioner.

* * * * *

4. Amend § 1.5 by revising paragraph (c) to read as follows:

§ 1.5 Identification of application, patent or registration.

* * * * *

(c)(1) A letter about a trademark application should identify the serial number, the name of the applicant, and the mark.

(2) A letter about a registered trademark should identify the registration number, the name of the registrant, and the mark.

* * * * *

5. Amend § 1.6 by revising paragraph (a)(1), and adding new paragraph (a)(4), to read as follows:

§ 1.6 Receipt of correspondence.

(a) * * *

(1) The Patent and Trademark Office is not open for the filing of correspondence on any day that is a Saturday, Sunday, or Federal holiday within the District of Columbia. Except for correspondence transmitted by facsimile under paragraph (a)(3) of this section, or filed electronically under paragraph (a)(4) of this section, no correspondence is received in the Office on Saturdays, Sundays, or Federal holidays within the District of Columbia.

* * * * *

(4) Trademark-related correspondence transmitted electronically will be stamped with the date on which the Office receives the transmission.

* * * * *

6. Revise § 1.23 to read as follows:

§ 1.23 Method of payment.

(a) All payments of money required for Patent and Trademark Office fees, including fees for the processing of international applications (§ 1.445), shall be made in U.S. dollars and in the form of a cashier's or certified check, Treasury note, or United States Postal Service money order. If sent in any other form, the Office may delay or cancel the credit until collection is made. Checks and money orders must be made payable to the Commissioner of Patents and Trademarks. Payments from foreign countries must be payable and immediately negotiable in the United States for the full amount of the fee required. Money sent by mail to the Office will be at the risk of the sender, and letters containing money should be registered with the United States Postal Service.

(b) Payments of money required for Patent and Trademark Office fees in an electronically filed trademark application or electronic submission in a trademark application may also be made by credit card. Payment of a fee by credit card must specify the amount to be charged to the credit card and such other information as is necessary to process the charge, and is subject to collection of the fee. The Office will not accept a general authorization to charge fees to a credit card. If credit card information is provided on a form or document other than a form provided by the Office for the payment of fees by credit card, the Office will not be liable if the credit card number becomes public knowledge.

PART 2—RULES APPLICABLE TO TRADEMARK CASES

7. The authority citation for part 2 continues to read as follow:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

8. Revise § 2.1 to read as follows:

§ 2.1 Sections of part 1 applicable.

Sections 1.1 to 1.26 of this chapter apply to trademark cases, except those parts that specifically refer to patents, and except § 1.22 to the extent that it is inconsistent with §§ 2.85(e), 2.101(d), 2.111(c), 2.164, or 2.185. Other sections of part 1 incorporated by reference in part 2 also apply to trademark cases.

9. Section 2.6 is amended by revising the introductory text, paragraphs (a)(6) and (a)(14) and by adding paragraphs (a)(20) and (a)(21) to read as follows:

§ 2.6 Trademark fees.

The Patent and Trademark Office requires the following fees and charges:

(a) * * *

(6)	Additional fee for filing a renewal application during the grace period, per class	$100.00
	* * * * * * *	
(14)	Additional fee for filing a section 8 affidavit during the grace period, per class	$100.00
	* * * * * * *	
(20)	For correcting a deficiency in a section 8 affidavit	$100.00
(21)	For correcting a deficiency in a renewal application	$100.00

* * * * *

10. Amend § 2.17 by adding paragraphs (c) and (d) to read as follows:

§ 2.17 Recognition for representation.

* * * * *

(c) To be recognized as a representative, an attorney as defined in § 10.1(c) of this chapter may file a power of attorney, appear in person, or sign a paper on behalf of an applicant or registrant that is filed with the Office in a trademark case.

(d) A party may file a power of attorney that relates to more than one trademark application or registration, or to all existing and future applications and registrations of that party. A party relying on such a power of attorney must:

(1) Include a copy of the previously filed power of attorney; or

(2) Refer to the power of attorney, specifying the filing date of the previously filed power of attorney; the application serial number (if known), registration number, or *inter partes* proceeding number for which the original power of attorney was filed; and the name of the party who signed the power of attorney; or, if the application serial number is not known, submit a copy of the application or a copy of the mark, and specify the filing date.

11. Revise § 2.20 to read as follows:

§ 2.20 Declarations in lieu of oaths.

Instead of an oath, affidavit, verification, or sworn statement, the language of 28 U.S.C. 1746, or the following language, may be used:

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

12. Revise § 2.21 to read as follows:

§ 2.21 Requirements for receiving a filing date.

(a) The Office will grant a filing date to an application that contains all of the following:

(1) The name of the applicant;

(2) A name and address for correspondence;

(3) A clear drawing of the mark;

(4) A listing of the goods or services; and

(5) The filing fee for at least one class of goods or services, required by § 2.6.

(b) If the applicant does not submit all the elements required in paragraph (a) of this section, the Office may return the papers with an explanation of why the filing date was denied.

(c) The applicant may correct and resubmit the application papers. If the resubmitted papers and fee meet all the requirements of paragraph (a) of this section, the Office will grant a filing date as of the date the Office receives the corrected papers.

§ 2.31 [Removed and reserved]

13. Remove and reserve § 2.31.

14. Revise § 2.32 to read as follows:

§ 2.32 Requirements for a complete application.

(a) The application must be in English and include the following:

(1) A request for registration;

(2) The name of the applicant(s);

(3)(i) The citizenship of the applicant(s); or

(ii) If the applicant is a corporation, association, partnership or other juristic person, the jurisdiction (usually state or nation) under the laws of which the applicant is organized; and

(iii) If the applicant is a partnership, the names and citizenship of the general partners;

(4) The address of the applicant;

(5) One or more bases, as required by § 2.34(a);

(6) A list of the particular goods or services on or in connection with which the applicant uses or intends to use the mark. In a United States application filed under section 44 of the Act, the scope of the goods or services covered by the section 44 basis may not exceed the scope of the goods or services in the foreign application or registration; and

(7) The international class of goods or services, if known. See § 6.1 of this chapter for a list of the international classes of goods and services.

(b) The application must include a verified statement that meets the requirements of § 2.33.

(c) The application must include a drawing that meets the requirements of §§ 2.51 and 2.52.

(d) The application must include fee required by § 2.6 for each class of goods or services.

(e) For the requirements for a multiple class application, see § 2.86.

15. Revise § 2.33 to read as follows:

§ 2.33 Verified statement.

(a) The application must include a statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant. A person who is properly authorized to sign on behalf of the applicant is:

(1) A person with legal authority to bind the applicant; or

(2) A person with firsthand knowledge of the facts and actual or implied authority to act on behalf of the applicant; or

(3) An attorney as defined in § 10.1(c) of this chapter who has an actual or implied written or verbal power of attorney from the applicant.

(b)(1) In an application under section 1(a) of the Act, the verified statement must allege:

That the applicant has adopted and is using the mark shown in the accompanying drawing; that the applicant believes it is the owner of the mark; that the mark is in use in commerce; that to the best of the declarant's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when applied to the goods or services of the other person, to cause confusion or mistake, or to deceive; that the specimen shows the mark as used on or in connection with the goods or services; and that the facts set forth in the application are true.

(2) In an application under section 1(b) or section 44 of the Act, the verified statement must allege:

That the applicant has a bona fide intention to use the mark shown in the accompanying drawing in commerce on or in connection with the specified goods or services; that the applicant believes it is entitled to use the mark; that to the best of the declarant's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when applied to the goods or services of the other person, to cause confusion or mistake, or to deceive; and that the facts set forth in the application are true.

(c) If the verified statement is not filed within a reasonable time after it is signed, the Office may require the applicant to submit a substitute verification or declaration under § 2.20 of the applicant's continued use or bona fide intention to use the mark in commerce.

(d) Where an electronically transmitted filing is permitted, the person who signs the verified statement must either:

(1) Place a symbol comprised of numbers and/or letters between two forward slash marks in the signature block on the electronic submission; and print, sign and date in permanent ink, and maintain a paper copy of the electronic submission; or

(2) Sign the verified statement using some other form of electronic signature specified by the Commissioner.

16. Add § 2.34 to read as follows:

§ 2.34 Bases for filing.

(a) The application must include one or more of the following four filing bases:

(1) *Use in commerce under section 1(a) of the Act.* The requirements for an application based on section 1(a) of the Act are:

(i) The trademark owner's verified statement that the mark is in use in commerce on or in connection with the goods or services listed in the application. If the verification is not filed with the initial application, the verified statement must allege that the mark was in use in commerce on or in connection with the goods or services listed in the application as of the application filing date;

(ii) The date of the applicant's first use of the mark anywhere on or in connection with the goods or services;

(iii) The date of the applicant's first use of the mark in commerce as a trademark or service mark; and

(iv) One specimen showing how the applicant actually uses the mark in commerce.

(v) An application may list more than one item of goods, or more than one service, provided the applicant has used the mark on or in connection with all the specified goods or services. The dates of use required by paragraphs (a)(1) (ii) and (iii) of this section may be for only one of the items specified.

(2) *Intent-to-use under section 1(b) of the Act.* (i) In an application under section 1(b) of the Act, the trademark owner must verify that it has a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application. If the verification is not filed with the initial application, the verified statement must allege that the applicant had a bona fide intention to use the mark in commerce as of the filing date of the application.

(ii) The application may list more than one item of goods, or more than one service, provided the applicant has a bona fide intention to use the mark in commerce on or in connection with all the specified goods or services.

(3) *Registration of a mark in a foreign applicant's country of origin under section 44(e) of the Act.* The requirements for an application under section 44(e) of the Act are:

(i) The trademark owner's verified statement that it has a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application. If the verification is not filed with the initial application, the verified statement must allege that the applicant had a bona fide intention to use the mark in commerce as of the filing date of the application.

(ii) A certification or certified copy of a registration in the applicant's country of origin showing that the mark has been registered in that country, and that the registration is in full force and effect. The certification or certified copy must show the name of the owner, the mark, and the goods or services for which the mark is registered. If the certification or certified copy is not in the English language, the applicant must submit a translation.

(iii) If the record indicates that the foreign registration will expire before the United States registration will issue, the applicant must submit a certification or certified copy from the country of origin to establish that the registration has been renewed and will be in force at the time the United States registration will issue. If the certification or certified copy is not in the English language, the applicant must submit a translation.

(iv) The application may list more than one item of goods, or more than one service, provided the applicant has a bona fide intention to use the mark in commerce on or in connection with all the specified goods or services.

(4) *Claim of priority, based upon an earlier-filed foreign application, under section 44(d) of the Act.* The requirements for an application under section 44(d) of the Act are:

(i) A claim of priority, filed within six months of the filing date of the foreign application. Before publication or registration on the Supplemental Register, the applicant must either:

(A) Specify the filing date and country of the first regularly filed foreign application; or

(B) State that the application is based upon a subsequent regularly filed application in the same foreign country, and that any prior-filed application has been withdrawn, abandoned or otherwise disposed of, without having been laid open to public inspection and without having any rights outstanding, and has not served as a basis for claiming a right of priority.

(ii) Include the trademark owner's verified statement that it has a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application. If the verification is not filed with the initial application, the verified statement must allege that the applicant had a bona fide intention to use the mark in commerce as of the filing date of the application.

(iii) Before the application can be approved for publication, or for registration on the Supplemental Register, the applicant must establish a basis under section 1(a), section 1(b) or section 44(e) of the Act.

(iv) The application may list more than one item of goods, or more than one service, provided the applicant has a bona fide intention to use the mark in commerce on or in connection with all the specified goods or services.

(b)(1) The applicant may claim more than one basis, provided that the applicant satisfies all requirements for the bases claimed. However, the applicant may not claim both sections 1(a) and 1(b) for the identical goods or services in the same application.

(2) If the applicant claims more than one basis, the applicant must list each basis, followed by the goods or services to which that basis applies. If some or all of the goods or services are covered by more than one basis, this must be stated.

(c) The word "commerce" means commerce that Congress may lawfully regulate, as specified in section 45 of the Act.

§ 2.37 [Removed]

17. Remove § 2.37.

§ 2.35 [Redesignated as § 2.37]

18. Redesignate § 2.35 as § 2.37.

19. Add new § 2.35, to read as follows:

§ 2.35 Adding, deleting, or substituting bases.

(a) Before publication, the applicant may add or substitute a basis, if the applicant meets all requirements for the new basis, as stated in § 2.34. The applicant may delete a basis at any time.

(b) An applicant may amend an application that is not the subject of an *inter partes* proceeding before the Trademark Trial and Appeal Board to add or substitute a basis after the mark has been published for opposition, but only with the express permission of the Commissioner, after consideration on petition. Republication will be required. The amendment of an application that is the subject of an *inter partes* proceeding before the Board is governed by § 2.133(a).

(c) When the applicant substitutes one basis for another, the Office will presume that there was a continuing valid basis, unless there is contradictory evidence in the record, and the application will retain the original filing date, including a priority filing date under section 44(d), if appropriate.

(d) If an applicant properly claims a section 44(d) basis in addition to another basis, the applicant will retain the priority filing date under section 44(d) no matter which basis the applicant perfects.

(e) The applicant may add or substitute a section 44(d) basis only within the six-month priority period following the filing date of the foreign application.

(f) When the applicant adds or substitutes a basis, the applicant must list each basis, followed by the goods or services to which that basis applies.

(g) When the applicant deletes a basis, the applicant must also delete any goods or services covered solely by the deleted basis.

(h) Once an applicant claims a section 1(b) basis as to any or all of the goods or services, the applicant may not amend the application to seek registration under section 1(a) of the Act for those goods or services unless the applicant files an allegation of use under section 1(c) or section 1(d) of the Act.

20. Amend § 2.38 by revising paragraph (a) to read as follows:

§ 2.38 Use by predecessor or by related companies.

(a) If the first use of the mark was by a predecessor in title or by a related company (sections 5 and 45 of the Act), and the use inures to the benefit of the applicant, the dates of first use (§§ 2.34(a)(1) (ii) and (iii)) may be asserted with a statement that first use was by the predecessor in title or by the related company, as appropriate.

* * * * *

§ 2.39 [Removed and reserved]

21. Remove and reserve § 2.39.

22. Revise § 2.45 to read as follows:

§ 2.45 Certification mark.

(a) In an application to register a certification mark under section 1(a) of the Act, the application shall include all applicable elements required by the preceding sections for trademarks. In addition, the application must: Specify the conditions under which the certification mark is used; allege that the applicant exercises legitimate control over the use of the mark; allege that the applicant is not engaged in the production or marketing of the goods or services to which the mark is applied; and include a copy of the standards that determine whether others may use the certification mark on their goods and/or in connection with their services.

(b) In an application to register a certification mark under section 1(b) or section 44 of the Act, the application shall include all applicable elements required by the preceding sections for trademarks. In addition, the application must: specify the conditions under which the certification mark is intended to be used; allege that the applicant intends to exercise legitimate control over the use of the mark; and allege that the applicant will not engage in the production or marketing of the goods or services to which the mark is applied. When the applicant files an amendment to allege use under section 1(c) of the Act, or a statement of use under section 1(d) of the Act, the applicant must submit a copy of the standards that determine whether others may use the certification mark on their goods and/or in connection with their services.

§ 2.51 [Amended]

23. In § 2.51, remove paragraphs (c), (d) and (e).

24. Revise § 2.52 to read as follows:

§ 2.52 Types of drawings and format for drawings.

(a) A drawing depicts the mark sought to be registered. The drawing must show only one mark. The applicant must include a clear drawing of the mark when the application is filed. There are two types of drawings:

(1) *Typed drawing.* The drawing may be typed if the mark consists only of words, letters, numbers, common forms of punctuation, or any combination of these elements. In a typed drawing, every word or letter must be typed in uppercase type. If the applicant submits a typed drawing, the application is not limited to the mark depicted in any special form or lettering.

(2) *Special form drawing.* A special form drawing is required if the mark has a two or three-dimensional design; or color; or words, letters, or numbers in a particular style of lettering; or unusual forms of punctuation.

(i) Special form drawings must be made with a pen or by a process that will provide high definition when copied. A photolithographic, printer's proof copy, or other high quality reproduction of the mark may be used. Every line and letter, including lines used for shading, must be black. All lines must be clean, sharp, and solid, and must not be fine or crowded. Gray tones or tints may not be used for surface shading or any other purpose.

(ii) If necessary to adequately depict the commercial impression of the mark, the applicant may be required to submit a drawing that shows the placement of the mark by surrounding the mark with a proportionately accurate broken-line representation of the particular goods, packaging, or advertising on which the mark appears. The applicant must also use broken lines to show any other matter not claimed as part of the mark. For any drawing using broken lines to indicate placement of the mark, or matter not claimed as part of the mark, the applicant must include in the body of the application a written description of the mark and explain the purpose of the broken lines.

(iii) If the mark has three-dimensional features, the applicant must submit a drawing that depicts a single rendition of the mark, and the applicant must include a description of the mark indicating that the mark is three-dimensional.

(iv) If the mark has motion, the applicant may submit a drawing that depicts a single point in the movement, or the applicant may submit a square drawing that contains up to five freeze frames showing various points in the movement, whichever best depicts the commercial impression of the mark. The applicant must also submit a written description of the mark.

(v) If the mark has color, the applicant may claim that all or part of the mark consists of one or more colors. To claim color, the applicant must submit a statement explaining where the color or colors appear in the mark and the nature of the color(s).

(vi) If a drawing cannot adequately depict all significant features of the mark, the applicant must also submit a written description of the mark.

(3) *Sound, scent, and non-visual marks.* The applicant is not required to submit a drawing if the applicant's mark consists only of a sound, a scent, or other completely non-visual matter. For these types of marks, the applicant must submit a detailed written description of the mark.

(b) *Recommended format for special form drawings*—(1) *Type of paper and ink.* The drawing should be on a piece of non-shiny, white paper that is separate from the application. Black ink should be used to depict the mark.

(2) *Size of paper and size of mark.* The drawing should be on paper that is 8 to 8½ inches (20.3 to 21.6 cm.) wide and 11 to 11.69 inches (27.9 to 29.7 cm.) long. One of the shorter sides of the sheet should be regarded as its top edge. The drawing should be between 2.5 inches (6.1 cm.) and 4 inches (10.3 cm.) high and/or wide. There should be at least a 1 inch (2.5 cm.) margin between the drawing and the edges of the paper, and at least a 1 inch (2.5 cm.) margin between the drawing and the heading.

(3) *Heading.* Across the top of the drawing, beginning one inch (2.5 cm.) from the top edge, the applicant should type the following: Applicant's name; applicant's address; the goods or services recited in the application, or a typical item of the goods or services if numerous items are recited in the application; the date of first use of the mark and first use of the mark in commerce in an application under section 1(a) of the Act; the priority filing date of the relevant foreign application in an application claiming the benefit of a prior foreign application under section 44(d) of the Act. If the information in the heading is lengthy, the heading may continue onto a second page, but the mark should be depicted on the first page.

(c) *Drawings in electronically transmitted applications.* For an electronically transmitted application, if the drawing is in special form, the applicant must attach a digitized image of the mark to the electronic submission.

25. Revise § 2.56 to read as follows:

§ 2.56 Specimens.

(a) An application under section 1(a) of the Act, an amendment to allege use under § 2.76, and a statement of use under § 2.88 must each include one specimen showing the mark as used on or in connection with the goods, or in the sale or advertising of the services in commerce.

(b)(1) A trademark specimen is a label, tag, or container for the goods, or a display associated with the goods. The Office may accept another document related to the goods or the sale of the goods when it is not possible to place the mark on the goods or packaging for the goods.

(2) A service mark specimen must show the mark as actually used in the sale or advertising of the services.

(3) A collective trademark or collective service mark specimen must show how a member uses the mark on the member's goods or in the sale or advertising of the member's services.

(4) A collective membership mark specimen must show use by members to indicate membership in the collective organization.

(5) A certification mark specimen must show how a person other than the owner uses the mark to certify regional or other origin, material, mode of manufacture, quality, accuracy, or other characteristics of that person's goods or services; or that members of a union or other organization performed the work or labor on the goods or services.

(c) A photocopy or other reproduction of a specimen of the mark as actually used on or in connection with the goods, or in the sale or advertising of the services, is acceptable. However, a photocopy of the drawing required by § 2.51 is not a proper specimen.

(d)(1) The specimen should be flat, and not larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long. If a specimen of this size is not available, the applicant may substitute a suitable photograph or other facsimile.

(2) If the applicant files a specimen exceeding these size requirements (a "bulky specimen"), the Office will create a facsimile of the specimen that meets the requirements of the rule (*i.e.*, is flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long) and put it in the file wrapper.

(3) In the absence of non-bulky alternatives, the Office may accept an audio or video cassette tape recording, CD–ROM, or other appropriate medium.

(4) For an electronically transmitted application, or other electronic submission, the specimen must be submitted as a digitized image.

§ 2.57 [Removed and reserved]

26. Remove and reserve § 2.57.

§ 2.58 [Removed and reserved]

27. Remove and reserve § 2.58.

28. Revise § 2.59 to read as follows:

§ 2.59 Filing substitute specimen(s).

(a) In an application under section 1(a) of the Act, the applicant may submit substitute specimens of the mark as used on or in connection with the goods, or in the sale or advertising of the services. The applicant must verify by an affidavit or declaration under § 2.20 that the substitute specimens were in use in commerce at least as early as the filing date of the application. Verification is not required if the specimen is a duplicate or facsimile of a specimen already of record in the application.

(b) In an application under section 1(b) of the Act, after filing either an amendment to allege use under § 2.76 or a statement of use under § 2.88, the applicant may submit substitute specimens of the mark as used on or in connection with the goods, or in the sale or advertising of the services. If the applicant submits substitute specimen(s), the applicant must:

(1) For an amendment to allege use under § 2.76, verify by affidavit or declaration under § 2.20 that the applicant used the substitute specimen(s) in commerce prior to filing the amendment to allege use.

(2) For a statement of use under § 2.88, verify by affidavit or declaration under § 2.20 that the applicant used the substitute specimen(s) in commerce either prior to filing the statement of use or prior to the expiration of the deadline for filing the statement of use.

29. Revise § 2.66 to read as follows:

§ 2.66 Revival of abandoned applications.

(a) The applicant may file a petition to revive an application abandoned because the applicant did not timely respond to an Office action or notice of allowance, if the delay was unintentional. The applicant must file the petition:

(1) Within two months of the mailing date of the notice of abandonment; or

(2) Within two months of actual knowledge of the abandonment, if the applicant did not receive the notice of abandonment, and the applicant was diligent in checking the status of the application. To be diligent, the applicant must check the status of the application within one year of the last filing or receipt of a notice from the Office for which further action by the Office is expected.

(b) The requirements for filing a petition to revive an application abandoned because the applicant did not timely respond to an Office action are:

(1) The petition fee required by § 2.6;

(2) A statement, signed by someone with firsthand knowledge of the facts,

that the delay in filing the response on or before the due date was unintentional; and

(3) Unless the applicant alleges that it did not receive the Office action, the proposed response.

(c) The requirements for filing a petition to revive an application abandoned because the applicant did not timely respond to a notice of allowance are:

(1) The petition fee required by § 2.6;

(2) A statement, signed by someone with firsthand knowledge of the facts, that the delay in filing the statement of use (or request for extension of time to file a statement of use) on or before the due date was unintentional;

(3) Unless the applicant alleges that it did not receive the notice of allowance and requests cancellation of the notice of allowance, the required fees for the number of requests for extensions of time to file a statement of use that the applicant should have filed under § 2.89 if the application had never been abandoned;

(4) Unless the applicant alleges that it did not receive the notice of allowance and requests cancellation of the notice of allowance, either a statement of use under § 2.88 or a request for an extension of time to file a statement of use under § 2.89; and

(5) Unless a statement of use is filed with or before the petition, or the applicant alleges that it did not receive the notice of allowance and requests cancellation of the notice of allowance, the applicant must file any further requests for extensions of time to file a statement of use under § 2.89 that become due while the petition is pending, or file a statement of use under § 2.88.

(d) In an application under section 1(b) of the Act, the Commissioner will not grant the petition if this would permit the filing of a statement of use more than 36 months after the mailing date of the notice of allowance under section 13(b)(2) of the Act.

(e) The Commissioner will grant the petition to revive if the applicant complies with the requirements listed above and establishes that the delay in responding was unintentional.

(f) If the Commissioner denies a petition, the applicant may request reconsideration, if the applicant:

(1) Files the request within two months of the mailing date of the decision denying the petition; and

(2) Pays a second petition fee under § 2.6.

30. Revise § 2.71 to read as follows:

§ 2.71 Amendments to correct informalities.

The applicant may amend the application during the course of examination, when required by the Office or for other reasons.

(a) The applicant may amend the application to clarify or limit, but not to broaden, the identification of goods and/or services.

(b)(1) If the declaration or verification of an application under § 2.33 is unsigned or signed by the wrong party, the applicant may submit a substitute verification or declaration under § 2.20.

(2) If the declaration or verification of a statement of use under § 2.88, or a request for extension of time to file a statement of use under § 2.89, is unsigned or signed by the wrong party, the applicant must submit a substitute verification before the expiration of the statutory deadline for filing the statement of use.

(c) The applicant may amend the dates of use, provided that the applicant supports the amendment with an affidavit or declaration under § 2.20, except that the following amendments are not permitted:

(1) In an application under section 1(a) of the Act, the applicant may not amend the application to specify a date of use that is subsequent to the filing date of the application;

(2) In an application under section 1(b) of the Act, after filing a statement of use under § 2.88, the applicant may not amend the statement of use to specify a date of use that is subsequent to the expiration of the deadline for filing the statement of use.

(d) The applicant may amend the application to correct the name of the applicant, if there is a mistake in the manner in which the name of the applicant is set out in the application. The amendment must be supported by an affidavit or declaration under § 2.20, signed by the applicant. However, the application cannot be amended to set forth a different entity as the applicant. An application filed in the name of an entity that did not own the mark as of the filing date of the application is void.

31. Revise § 2.72 to read as follows:

§ 2.72 Amendments to description or drawing of the mark.

(a) In an application based on use in commerce under section 1(a) of the Act, the applicant may amend the description or drawing of the mark only if:

(1) The specimens originally filed, or substitute specimens filed under § 2.59(a), support the proposed amendment; and

(2) The proposed amendment does not materially alter the mark. The Office will determine whether a proposed amendment materially alters a mark by comparing the proposed amendment with the description or drawing of the mark filed with the original application.

(b) In an application based on a bona fide intention to use a mark in commerce under section 1(b) of the Act, the applicant may amend the description or drawing of the mark only if:

(1) The specimens filed with an amendment to allege use or statement of use, or substitute specimens filed under § 2.59(b), support the proposed amendment; and

(2) The proposed amendment does not materially alter the mark. The Office will determine whether a proposed amendment materially alters a mark by comparing the proposed amendment with the description or drawing of the mark filed with the original application.

(c) In an application based on a claim of priority under section 44(d) of the Act, or on a mark duly registered in the country of origin of the foreign applicant under section 44(e) of the Act, the applicant may amend the description or drawing of the mark only if:

(1) The description or drawing of the mark in the foreign registration certificate supports the amendment; and

(2) The proposed amendment does not materially alter the mark. The Office will determine whether a proposed amendment materially alters a mark by comparing the proposed amendment with the description or drawing of the mark filed with the original application.

32. Amend § 2.76 by revising paragraphs (b), (e)(2), and (e)(3), and adding paragraphs (i) and (j) to read as follows:

§ 2.76 Amendment to allege use.

* * * * *

(b) A complete amendment to allege use must include:

(1) A statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant (see § 2.33(a)(2)) that:

(i) The applicant believes it is the owner of the mark; and

(ii) The mark is in use in commerce, specifying the date of the applicant's first use of the mark and first use of the mark in commerce, and those goods or services specified in the application on or in connection with which the applicant uses the mark in commerce.

(2) One specimen of the mark as actually used in commerce. See § 2.56 for the requirements for specimens; and

(3) The fee per class required by § 2.6.

* * * * *

(e) * * *

(2) One specimen or facsimile of the mark as used in commerce; and

(3) A statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant that the mark is in use in commerce.

* * * * *

(i) If the applicant does not file the amendment to allege use within a reasonable time after it is signed, the Office may require a substitute verification or declaration under § 2.20 stating that the mark is still in use in commerce.

(j) For the requirements for a multiple class application, see § 2.86.

33. Revise § 2.86 to read as follows:

§ 2.86 Application may include multiple classes.

(a) In a single application, an applicant may apply to register the same mark for goods and/or services in multiple classes. The applicant must:

(1) Specifically identify the goods or services in each class;

(2) Submit an application filing fee for each class; and

(3) Include either dates of use (see §§ 2.34(a)(1)(ii) and (iii)) and one specimen for each class, or a statement of a bona fide intention to use the mark in commerce on or in connection with all the goods or services specified in each class. The applicant may not claim both use in commerce and a bona fide intention to use the mark in commerce for the identical goods or services in one application.

(b) An amendment to allege use under § 2.76 or a statement of use under § 2.88 must include, for each class, the required fee, dates of use, and one specimen. The applicant may not file the amendment to allege use or statement of use until the applicant has used the mark on all the goods or services, unless the applicant files a request to divide. See § 2.87 for information regarding requests to divide.

(c) The Office will issue a single certificate of registration for the mark, unless the applicant files a request to divide. See § 2.87 for information regarding requests to divide.

34. Amend § 2.88 by revising paragraphs (b) and (e) and by adding paragraphs (k) and (l) to read as follows:

§ 2.88 Filing statement of use after notice of allowance.

* * * * *

(b) A complete statement of use must include:

(1) A statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant (see § 2.33(a)(2)) that:

(i) The applicant believes it is the owner of the mark; and

(ii) The mark is in use in commerce, specifying the date of the applicant's first use of the mark and first use of the mark in commerce, and those goods or services specified in the notice of allowance on or in connection with which the applicant uses the mark in commerce;

(2) One specimen of the mark as actually used in commerce. See § 2.56 for the requirements for specimens; and

(3) The fee per class required by § 2.6.

* * * * *

(e) The Office will review a timely filed statement of use to determine whether it meets the following minimum requirements:

(1) The fee for at least a single class, required by § 2.6;

(2) One specimen of the mark as used in commerce;

(3) A statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant that the mark is in use in commerce. If the verification or declaration is unsigned or signed by the wrong party, the applicant must submit a substitute verification on or before the statutory deadline for filing the statement of use.

* * * * *

(k) If the statement of use is not filed within a reasonable time after the date it is signed, the Office may require a substitute verification or declaration under § 2.20 stating that the mark is still in use in commerce.

(l) For the requirements for a multiple class application, see § 2.86.

35. Amend § 2.89 by revising paragraphs (a), (b), and (d), amending the fifth sentence of paragraph (g), and by adding paragraph (h) to read as follows:

§ 2.89 Extensions of time for filing a statement of use.

(a) The applicant may request a six-month extension of time to file the statement of use required by § 2.88. The extension request must be filed within six months of the mailing date of the notice of allowance under section 13(b)(2) of the Act and must include the following:

(1) A written request for an extension of time to file the statement of use;

(2) The fee per class required by § 2.6; and

(3) A statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant (see § 2.33(a)(2)) that the applicant still has a bona fide intention to use the mark in commerce, specifying the relevant goods or services. If the verification is unsigned or signed by the wrong party, the applicant must submit a substitute verification within six months of the mailing date of the notice of allowance.

(b) Before the expiration of the previously granted extension of time, the applicant may request further six month extensions of time to file the statement of use by submitting the following:

(1) A written request for an extension of time to file the statement of use;

(2) The fee per class required by § 2.6;

(3) A statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant (see § 2.33(a)(2)) that the applicant still has a bona fide intention to use the mark in commerce, specifying the relevant goods or services. If the verification is unsigned or signed by the wrong party, the applicant must submit a substitute verification before the expiration of the previously granted extension; and

(4) A showing of good cause, as specified in paragraph (d) of this section.

* * * * *

(d) The showing of good cause must include a statement of the applicant's ongoing efforts to make use of the mark in commerce on or in connection with each of the relevant goods or services. Those efforts may include product or service research or development, market research, manufacturing activities, promotional activities, steps to acquire distributors, steps to obtain governmental approval, or other similar activities. In the alternative, the applicant must submit a satisfactory explanation for the failure to make efforts to use the mark in commerce.

* * * * *

(g) * * *A petition from the denial of a request for an extension of time to file a statement of use shall be filed within two months of the mailing date of the denial of the request. If the petition is granted, the term of the requested six month extension that was the subject of the petition will run from the date of the expiration of the previously existing six month period for filing a statement of use.

(h) If the extension request is not filed within a reasonable time after it is signed, the Office may require a substitute verification or declaration under § 2.20 stating that the applicant

still has a bona fide intention to use the mark in commerce.

36. Amend § 2.101 by revising paragraph (d)(1) to read as follows:

§ 2.101 Filing an opposition.

* * * * *

(d)(1) The opposition must be accompanied by the required fee for each party joined as opposer for each class in the application for which registration is opposed (see § 2.6). If no fee, or a fee insufficient to pay for one person to oppose the registration of a mark in at least one class, is submitted within thirty days after publication of the mark to be opposed or within an extension of time for filing an opposition, the opposition will not be refused if the required fee(s) is submitted to the Patent and Trademark Office within the time limit set in the notification of this defect by the Office.

* * * * *

37. Amend § 2.111 by revising paragraph (c)(1) to read as follows:

§ 2.111 Filing petition for cancellation.

* * * * *

(c)(1) The petition must be accompanied by the required fee for each class in the registration for which cancellation is sought (see § 2.6). If the fee submitted is insufficient for a cancellation against all of the classes in the registration, and the particular class or classes against which the cancellation is filed are not specified, the Office will issue a written notice allowing petitioner a set time in which to submit the required fees(s) (provided that the five-year period, if applicable, has not expired) or to specify the class or classes sought to be cancelled. If the required fee(s) is not submitted, or the specification made, within the time set in the notice, the cancellation will be presumed to be against the class or classes in ascending order, beginning with the lowest numbered class, and including the number of classes in the registration for which the fees submitted are sufficient to pay the fee due for each class.

* * * * *

38. Amend § 2.146 by revising paragraph (d) and by adding paragraphs (i) and (j) to read as follows:

§ 2.146 Petitions to the Commissioner.

* * * * *

(d) A petition must be filed within two months of the mailing date of the action from which relief is requested, unless a different deadline is specified elsewhere in this chapter.

* * * * *

(i) Where a petitioner seeks to reactivate an application or registration that was abandoned or cancelled because papers were lost or mishandled, the Commissioner may deny the petition if the petitioner was not diligent in checking the status of the application or registration. To be considered diligent, the applicant must check the status of the application or registration within one year of the last filing or receipt of a notice from the Office for which further action by the Office is expected.

(j) If the Commissioner denies a petition, the petitioner may request reconsideration, if the petitioner:

(1) Files the request within two months of the mailing date of the decision denying the petition; and

(2) Pays a second petition fee under § 2.6.

39. Revise § 2.151 to read as follows:

§ 2.151 Certificate.

When the Office determines that a mark is registrable, a certificate will be issued stating that the applicant is entitled to registration on the Principal Register or on the Supplemental Register. The certificate will state the date on which the application for registration was filed in the Office, the act under which the mark is registered, the date of issue, and the number of the registration. A reproduction of the mark and pertinent data from the application will be sent with the certificate. A notice of the requirements of section 8 of the Act will accompany the certificate.

40. Revise § 2.155 to read as follows:

§ 2.155 Notice of publication.

The Office will send the registrant a notice of publication of the mark and of the requirement for filing the affidavit or declaration required by section 8 of the Act.

41. Revise § 2.156 to read as follows:

§ 2.156 Not subject to opposition; subject to cancellation.

The published mark is not subject to opposition, but is subject to petitions to cancel as specified in § 2.111 and to cancellation for failure to file the affidavit or declaration required by section 8 of the Act.

42. Add § 2.160 to read as follows:

§ 2.160 Affidavit or declaration of continued use or excusable nonuse required to avoid cancellation of registration.

(a) During the following time periods, the owner of the registration must file an affidavit or declaration of continued use or excusable nonuse, or the registration will be cancelled:

(1)(i) For registrations issued under the Trademark Act of 1946, on or after the fifth anniversary and no later than the sixth anniversary after the date of registration; or

(ii) For registrations issued under prior Acts, on or after the fifth anniversary and no later than the sixth anniversary after the date of publication under section 12(c) of the Act; and

(2) For all registrations, within the year before the end of every ten-year period after the date of registration.

(3) The affidavit or declaration may be filed within a grace period of six months after the end of the deadline set forth in paragraphs (a)(1) and (a)(2) of this section, with payment of the grace period surcharge required by section 8(c)(1) of the Act and § 2.6.

(b) For the requirements for the affidavit or declaration, see § 2.161.

43. Revise § 2.161 to read as follows:

§ 2.161 Requirements for a complete affidavit or declaration of continued use or excusable nonuse.

A complete affidavit or declaration under section 8 of the Act must:

(a) Be filed by the owner within the period set forth in § 2.160(a);

(b) Include a statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the owner, attesting to the continued use or excusable nonuse of the mark within the period set forth in section 8 of the Act. The verified statement must be executed on or after the beginning of the filing period specified in § 2.160(a). A person who is properly authorized to sign on behalf of the owner is:

(1) A person with legal authority to bind the owner; or

(2) A person with firsthand knowledge of the facts and actual or implied authority to act on behalf of the owner; or

(3) An attorney as defined in § 10.1(c) of this chapter who has an actual or implied written or verbal power of attorney from the owner.

(c) Include the registration number;

(d)(1) Include the fee required by § 2.6 for each class of goods or services that the affidavit or declaration covers;

(2) If the affidavit or declaration is filed during the grace period under section 8(c)(1) of the Act, include the late fee per class required by § 2.6;

(3) If at least one fee is submitted for a multi-class registration, but the class(es) to which the fee(s) should be applied are not specified, the Office will issue a notice requiring either the submission of additional fee(s) or an indication of the class(es) to which the original fee(s) should be applied. Additional fee(s) may be submitted if the requirements of § 2.164 are met. If the required fee(s) are not submitted and the class(es) to which the original fee(s) should be applied are not specified, the Office will presume that the fee(s) cover the classes in ascending order, beginning with the lowest numbered class;

(e)(1) Specify the goods or services for which the mark is in use in commerce, and/or the goods or services for which excusable nonuse is claimed under § 2.161(f)(2);

(2) If the affidavit or declaration covers less than all the goods or services, or less than all the classes in the registration, specify the goods or services being deleted from the registration;

(f)(1) State that the registered mark is in use in commerce on or in connection with the goods or services in the registration; or

(2) If the registered mark is not in use in commerce on or in connection with all the goods or services in the registration, set forth the date when use of the mark in commerce stopped and the approximate date when use is expected to resume; and recite facts to show that nonuse as to those goods or services is due to special circumstances that excuse the nonuse and is not due to an intention to abandon the mark;

(g) Include a specimen showing current use of the mark for each class of goods or services, unless excusable nonuse is claimed under § 2.161(f)(2). The specimen must:

(1) Show the mark as actually used on or in connection with the goods or in the sale or advertising of the services. A photocopy or other reproduction of the specimen showing the mark as actually used is acceptable. However, a photocopy that merely reproduces the registration certificate is not a proper specimen;

(2) Be flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long. If a specimen exceeds these size requirements (a "bulky specimen"), the Office will create a facsimile of the specimen that meets the requirements of the rule (*i.e.*, is flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long) and put it in the file wrapper;

(h) If the registrant is not domiciled in the United States, the registrant must list the name and address of a United States resident upon whom notices or process in proceedings affecting the registration may be served.

44. Revise § 2.162 to read as follows:

§ 2.162 Notice to registrant.

When a certificate of registration is originally issued, the Office includes a notice of the requirement for filing the affidavit or declaration of use or excusable nonuse under section 8 of the Act. However the affidavit or declaration must be filed within the time period required by section 8 of the Act even if this notice is not received.

45. Revise § 2.163 to read as follows:

§ 2.163 Acknowledgment of receipt of affidavit or declaration.

The Office will issue a notice as to whether an affidavit or declaration is acceptable, or the reasons for refusal.

(a) If the owner of the registration filed the affidavit or declaration within the time periods set forth in section 8 of the Act, deficiencies may be corrected if the requirements of § 2.164 are met.

(b) A response to the refusal must be filed within six months of the mailing date of the Office action, or before the end of the filing period set forth in section 8(a) or section 8(b) of the Act, whichever is later. If no response is filed within this time period, the registration will be cancelled.

46. Revise § 2.164 to read as follows:

§ 2.164 Correcting deficiencies in affidavit or declaration.

(a) If the owner of the registration files an affidavit or declaration within the time periods set forth in section 8 of the Act, deficiencies may be corrected, as follows:

(1) *Correcting deficiencies in affidavits or declarations timely filed within the periods set forth in sections 8(a) and 8(b) of the Act.* If the owner timely files the affidavit or declaration within the relevant filing period set forth in section 8(a) or section 8(b) of the Act, deficiencies may be corrected before the end of this filing period without paying a deficiency surcharge. Deficiencies may be corrected after the end of this filing period with payment of the deficiency surcharge required by section 8(c)(2) of the Act and § 2.6.

(2) *Correcting deficiencies in affidavits or declarations filed during the grace period.* If the affidavit or declaration is filed during the six-month grace period provided by section 8(c)(1) of the Act, deficiencies may be corrected before the expiration of the grace period without paying a deficiency surcharge. Deficiencies may be corrected after the expiration of the grace period with payment of the deficiency surcharge required by section 8(c)(2) of the Act and § 2.6.

(b) If the affidavit or declaration is not filed within the time periods set forth in section 8 of the Act, or if it is filed within that period by someone other than the owner, the registration will be cancelled. These deficiencies cannot be cured.

47. Revise § 2.165 to read as follows:

§ 2.165 Petition to Commissioner to review refusal.

(a) A response to the examiner's initial refusal to accept an affidavit or declaration is required before filing a petition to the Commissioner, unless the examiner directs otherwise. See § 2.163(b) for the deadline for responding to an examiner's Office action.

(b) If the examiner maintains the refusal of the affidavit or declaration, a petition to the Commissioner to review the action may be filed. The petition must be filed within six months of the mailing date of the action maintaining the refusal, or the Office will cancel the registration and issue a notice of the cancellation.

(c) A decision by the Commissioner is necessary before filing an appeal or commencing a civil action in any court.

48. Revise § 2.166 to read as follows:

§ 2.166 Affidavit of continued use or excusable nonuse combined with renewal application.

An affidavit or declaration under section 8 of the Act and a renewal application under section 9 of the Act may be combined into a single document, provided that the document meets the requirements of both sections 8 and 9 of the Act.

49. Amend § 2.167 by revising paragraph (c) to read as follows:

§ 2.167 Affidavit or declaration under section 15.

* * * * *

(c) Recite the goods or services stated in the registration on or in connection with which the mark has been in continuous use in commerce for a period of five years after the date of registration or date of publication under section 12(c) of the Act, and is still in use in commerce;

* * * * *

50. Revise § 2.168 to read as follows:

§ 2.168 Affidavit or declaration under section 15 combined with affidavit or declaration under section 8, or with renewal application.

(a) The affidavit or declaration filed under section 15 of the Act may also be used as the affidavit or declaration required by section 8, if the affidavit or declaration meets the requirements of both sections 8 and 15.

(b) The affidavit or declaration filed under section 15 of the Act may be combined with an application for renewal of a registration under section 9 of the Act, if the requirements of both sections 9 and 15 are met.

51. Amend § 2.173 by revising the heading and paragraph (a) to read as follows:

§ 2.173 Amendment of registration.

(a) The registrant may apply to amend the registration or to disclaim part of the mark in the registration. A written request specifying the amendment or disclaimer must be submitted. The request must be signed by the registrant and verified or supported by a declaration under § 2.20, and accompanied by the required fee. If the amendment involves a change in the mark, a new specimen showing the mark as used on or in connection with the goods or services, and a new drawing of the amended mark, must be submitted. The certificate of registration or, if the certificate is lost or destroyed, a certified copy of the certificate, must also be submitted. The registration as amended must still contain registrable matter, and the mark as amended must be registrable as a whole. An amendment or disclaimer must not materially alter the character of the mark.

* * * * *

52. Amend § 2.181 by revising paragraph (a) to read as follows:

§ 2.181 Term of original registrations and renewals.

(a)(1) Subject to the provisions of section 8 of the Act requiring an affidavit or declaration of continued use or excusable nonuse, registrations issued or renewed prior to November 16, 1989, whether on the Principal Register or on the Supplemental Register, remain in force for twenty years from their date of issue or the date of renewal, and may be further renewed for periods of ten years, unless previously cancelled or surrendered.

(2) Subject to the provisions of section 8 of the Act requiring an affidavit or declaration of continued use or excusable nonuse, registrations issued or renewed on or after November 16, 1989, whether on the Principal Register or on the Supplemental Register, remain in force for ten years from their date of issue or the date of renewal, and may be further renewed for periods of ten years, unless previously cancelled or surrendered.

* * * * *

53. Revise § 2.182 to read as follows:

§ 2.182 Time for filing renewal application.

An application for renewal must be filed within one year before the expiration date of the registration, or within the six-month grace period after the expiration date of the registration. If no renewal application is filed within this period, the registration will expire.

54. Revise § 2.183 to read as follows:

§ 2.183 Requirements for a complete renewal application.

A complete renewal application must include:

(a) A request for renewal of the registration, signed by the registrant or the registrant's representative;

(b) The fee required by § 2.6 for each class;

(c) The additional fee required by § 2.6 for each class if the renewal application is filed during the six-month grace period set forth in section 9(a) of the Act;

(d) If the registrant is not domiciled in the United States, the name and address of a United States resident on whom notices or process in proceedings affecting the registration may be served; and

(e) If the renewal application covers less than all the goods or services in the registration, a list of the particular goods or services to be renewed.

(f) If at least one fee is submitted for a multi-class registration, but the class(es) to which the fee(s) should be applied are not specified, the Office will issue a notice requiring either the submission of additional fee(s) or an indication of the class(es) to which the original fee(s) should be applied. Additional fee(s) may be submitted if the requirements of § 2.185 are met. If the required fee(s) are not submitted and the class(es) to which the original fee(s) should be applied are not specified, the Office will presume that the fee(s) cover the classes in ascending order, beginning with the lowest numbered class.

55. Revise § 2.184 to read as follows:

§ 2.184 Refusal of renewal.

(a) If the renewal application is not acceptable, the Office will issue a notice stating the reason(s) for refusal.

(b) A response to the refusal of renewal must be filed within six months of the mailing date of the Office action, or before the expiration date of the registration, whichever is later, or the registration will expire.

(c) If the renewal application is not filed within the time periods set forth in section 9(a) of the Act, the registration will expire.

56. Add § 2.185 to read as follows:

§ 2.185 Correcting deficiencies in renewal application.

(a) If the renewal application is filed within the time periods set forth in section 9(a) of the Act, deficiencies may be corrected, as follows:

(1) *Correcting deficiencies in renewal applications filed within one year before the expiration date of the registration.* If the renewal application is filed within one year before the expiration date of the registration, deficiencies may be corrected before the expiration date of the registration without paying a deficiency surcharge. Deficiencies may be corrected after the expiration date of the registration with payment of the deficiency surcharge required by section 9(a) of the Act and § 2.6.

(2) *Correcting deficiencies in renewal applications filed during the grace period.* If the renewal application is filed during the six-month grace period, deficiencies may be corrected before the expiration of the grace period without paying a deficiency surcharge. Deficiencies may be corrected after the expiration of the grace period with payment of the deficiency surcharge required by section 9(a) of the Act and § 2.6.

(b) If the renewal application is not filed within the time periods set forth in section 9(a) of the Act, the registration will expire. This deficiency cannot be cured.

57. Add § 2.186 to read as follows:

§ 2.186 Petition to Commissioner to review refusal of renewal.

(a) A response to the examiner's initial refusal of the renewal application is required before filing a petition to the Commissioner, unless the examiner directs otherwise. See § 2.184(b) for the deadline for responding to an examiner's Office action.

(b) If the examiner maintains the refusal of the renewal application, a petition to the Commissioner to review the refusal may be filed. The petition must be filed within six months of the mailing date of the Office action maintaining the refusal, or the renewal application will be abandoned and the registration will expire.

(c) A decision by the Commissioner is necessary before filing an appeal or commencing a civil action in any court.

PART 3—ASSIGNMENT, RECORDING AND RIGHTS OF ASSIGNEE

58. The authority citation for part 3 continues to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

59. Revise § 3.16 to read as follows:

§ 3.16 Assignability of trademarks prior to filing of an allegation of use.

Before an allegation of use under either 15 U.S.C. 1051(c) or 15 U.S.C. 1051(d) is filed, an applicant may only assign an application to register a mark under 15 U.S.C. 1051(b) to a successor to the applicant's business, or portion of the business to which the mark pertains, if that business is ongoing and existing.

60. Amend § 3.24 by revising the heading to read as follows:

§ 3.24 Requirements for documents and cover sheets relating to patents and patent applications.

* * * * *

61. Add § 3.25 to read as follows:

§ 3.25 Recording requirements for trademark applications and registrations.

(a) *Documents affecting title.* To record documents affecting title to a trademark application or registration, a legible cover sheet (see § 3.31) and one of the following must be submitted:

(1) The original document;

(2) A copy of the document;

(3) A copy of an extract from the document evidencing the effect on title; or

(4) A statement signed by both the party conveying the interest and the party receiving the interest explaining how the conveyance affects title.

(b) *Name changes.* Only a legible cover sheet is required (See § 3.31).

(c) *All documents.* All documents submitted to the Office should be on white and non-shiny paper that is no larger than 8½ × 14 inches (21.6 × 33.1 cm.) with a one-inch (2.5 cm) margin on all sides. Only one side of each page should be used.

62. Revise § 3.28 to read as follows:

§ 3.28 Requests for recording.

Each document submitted to the Office for recording must include at least one cover sheet as specified in § 3.31 referring either to those patent applications and patents, or to those trademark applications and registrations, against which the document is to be recorded. If a document to be recorded includes interests in, or transactions involving, both patents and trademarks, separate patent and trademark cover sheets should be submitted. Only one set of documents and cover sheets to be recorded should be filed. If a document to be recorded is not accompanied by a completed cover sheet, the document and the incomplete cover sheet will be returned pursuant to § 3.51 for proper completion. The document and a completed cover sheet should be resubmitted.

63. Amend § 3.31 by revising paragraphs (a) and (b) and by adding paragraphs (d) and (e) to read as follows:

§ 3.31 Cover sheet content.

(a) Each patent or trademark cover sheet required by § 3.28 must contain:

(1) The name of the party conveying the interest;

(2) The name and address of the party receiving the interest;

(3) A description of the interest conveyed or transaction to be recorded;

(4) Identification of the interests involved:

(i) *For trademark assignments and trademark name changes:* Each trademark registration number and each trademark application number, if known, against which the Office is to record the document. If the trademark application number is not known, a copy of the application or a reproduction of the trademark must be submitted, along with an estimate of the date that the Office received the application; or

(ii) *For any other document affecting title to a trademark or patent application, registration or patent:* Each trademark or patent application number or each trademark registration number or patent against which the document is to be recorded, or an indication that the document is filed together with a patent application;

(5) The name and address of the party to whom correspondence concerning the request to record the document should be mailed;

(6) The date the document was executed;

(7) An indication that the assignee of a trademark application or registration who is not domiciled in the United States has designated a domestic representative (see § 3.61); and

(8) The signature of the party submitting the document.

(b) A cover sheet should not refer to both patents and trademarks, since any information, including information about pending patent applications, submitted with a request for recordation of a document against a trademark application or trademark registration will become public record upon recordation.

* * * * *

(d) Each trademark cover sheet required by § 3.28 seeking to record a document against a trademark application or registration should include, in addition to the serial number or registration number of the trademark, identification of the trademark or a description of the trademark, against which the Office is to record the document.

(e) Each patent or trademark cover sheet required by § 3.28 should contain the number of applications, patents or registrations identified in the cover sheet and the total fee.

PART 6—CLASSIFICATION OF GOODS AND SERVICES UNDER THE TRADEMARK ACT

64. The authority citation for part 6 continues to read as follows:

Authority: 15 U.S.C. 1112, 1123; 35 U.S.C. 6, unless otherwise noted.

65. Revise § 6.1 to read as follows:

§ 6.1 International schedule of classes of goods and services.

Goods

1. Chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins; unprocessed plastics; manures; fire extinguishing compositions; tempering and soldering preparations; chemical substances for preserving foodstuffs; tanning substances; adhesives used in industry.

2. Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colorants; mordants; raw natural resins; metals in foil and powder form for painters, decorators, printers and artists.

3. Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices.

4. Industrial oils and greases; lubricants; dust absorbing, wetting and binding compositions; fuels (including motor spirit) and illuminants; candles, wicks.

5. Pharmaceutical, veterinary, and sanitary preparations; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides.

6. Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; nonelectric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes; ores.

7. Machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles); agricultural implements other than hand-operated; incubators for eggs.

8. Hand tools and implements (hand-operated); cutlery; side arms; razors.

9. Scientific, nautical, surveying, electric, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire extinguishing apparatus.

10. Surgical, medical, dental, and veterinary apparatus and instruments, artificial limbs, eyes, and teeth; orthopedic articles; suture materials.

11. Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply, and sanitary purposes.

12. Vehicles; apparatus for locomotion by land, air, or water.

13. Firearms; ammunition and projectiles; explosives; fireworks.

14. Precious metals and their alloys and goods in precious metals or coated therewith, not included in other classes; jewelry, precious stones; horological and chronometric instruments.

15. Musical instruments.

16. Paper, cardboard and goods made from these materials, not included in other classes; printed matter; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included in other classes); playing cards; printers' type; printing blocks.

17. Rubber, gutta-percha, gum, asbestos, mica and goods made from these materials and not included in other classes; plastics in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, not of metal.

18. Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery.

19. Building materials (non-metallic); nonmetallic rigid pipes for building; asphalt, pitch and bitumen; nonmetallic transportable buildings; monuments, not of metal.

20. Furniture, mirrors, picture frames; goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics.

21. Household or kitchen utensils and containers (not of precious metal or coated therewith); combs and sponges; brushes (except paint brushes); brush making materials; articles for cleaning purposes; steel wool; unworked or semi worked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes.

22. Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes); padding and stuffing materials (except of rubber or plastics); raw fibrous textile materials.

23. Yarns and threads, for textile use.

24. Textiles and textile goods, not included in other classes; beds and table covers.

25. Clothing, footwear, headgear.

26. Lace and embroidery, ribbons and braid; buttons, hooks and eyes, pins and needles; artificial flowers.

27. Carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings (non textile).

28. Games and playthings; gymnastic and sporting articles not included in other classes; decorations for Christmas trees.

29. Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, fruit sauces; eggs, milk and milk products; edible oils and fats.

30. Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking powder; salt, mustard; vinegar, sauces (condiments); spices; ice.

31. Agricultural, horticultural and forestry products and grains not included in other classes; live animals; fresh fruits and vegetables; seeds, natural plants and flowers; foodstuffs for animals; malt.

32. Beers; mineral and aerated waters and other nonalcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages.

33. Alcoholic beverages (except beers).

34. Tobacco; smokers' articles; matches.

Services

35. Advertising; business management; business administration; office functions.

36. Insurance; financial affairs; monetary affairs; real estate affairs.

37. Building construction; repair; installation services.

38. Telecommunications.

39. Transport; packaging and storage of goods; travel arrangement.

40. Treatment of materials.

41. Education; providing of training; entertainment; sporting and cultural activities.

42. Providing of food and drink; temporary accommodation; medical, hygienic and beauty care; veterinary and agricultural services; legal services; scientific and industrial research; computer programming; services that cannot be classified in other classes.

Dated: August 30, 1999.

Q. Todd Dickinson,

Acting Assistant Secretary of Commerce and Acting Commissioner of Patents and Trademarks.

[FR Doc. 99–22957 Filed 9–7–99; 8:45 am]

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federal register

Wednesday
September 8, 1999

Part III

The President

Executive Order 13136—Amendment to Executive Order 13090, President's Commission on the Celebration of Women in American History

Federal Register
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Wednesday, September 8, 1999

Presidential Documents

Title 3—

The President

Executive Order 13136 of September 3, 1999

Amendment to Executive Order 13090, President's Commission on the Celebration of Women in American History

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), in order to extend the life of the President's Commission on the Celebration of Women in American History ("Commission") to provide additional time to develop support systems and test the viability of the recommendations included in the Commission's report to the President, it is hereby ordered that section 2(c) of Executive Order 13090 is amended by deleting "March 1, 1999." and inserting "December 31, 2000." in lieu thereof.

William J. Clinton

THE WHITE HOUSE,
September 3, 1999.

[FR Doc. 99–23508
Filed 9–7–99; 10:37 am]
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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 211/P.L. 106–48
To designate the Federal building and United States courthouse located at 920 West Riverside Avenue in Spokane, Washington, as the "Thomas S. Foley United States Courthouse", and the plaza at the south entrance of such building and courthouse as the "Walter F. Horan Plaza". (Aug. 17, 1999; 113 Stat. 230)

H.R. 1219/P.L. 106–49
Construction Industry Payment Protection Act of 1999 (Aug. 17, 1999; 113 Stat. 231)

H.R. 1568/P.L. 106–50
Veterans Entrepreneurship and Small Business Development Act of 1999 (Aug. 17, 1999; 113 Stat. 233)

H.R. 1664/P.L. 106–51
Emergency Steel Loan Guarantee and Emergency Oil and Gas Guaranteed Loan Act of 1999 (Aug. 17, 1999; 113 Stat. 252)

H.R. 2465/P.L. 106–52
Military Construction Appropriations Act, 2000 (Aug. 17, 1999; 113 Stat. 259)

S. 507/P.L. 106–53
Water Resources Development Act of 1999. (Aug. 17, 1999; 113 Stat. 269)

S. 606/P.L. 106–54
For the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical, LLC (successor to Kerr-McGee Chemical Corporation), and for other purposes. (Aug. 17, 1999; 113 Stat. 398)

S. 1546/P.L. 106–55
To amend the International Religious Freedom Act of 1998 to provide additional administrative authorities to the United States Commission on International Religious Freedom, and to make technical corrections to that Act, and for other purposes. (Aug. 17, 1999; 113 Stat. 401)

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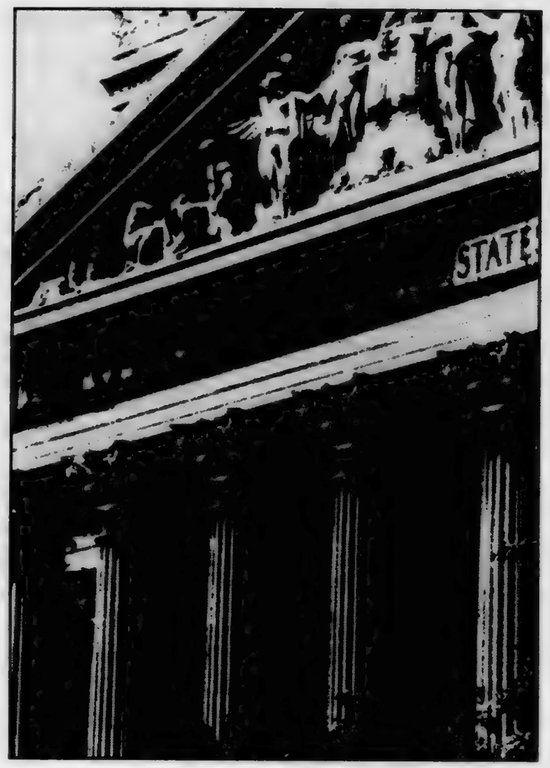

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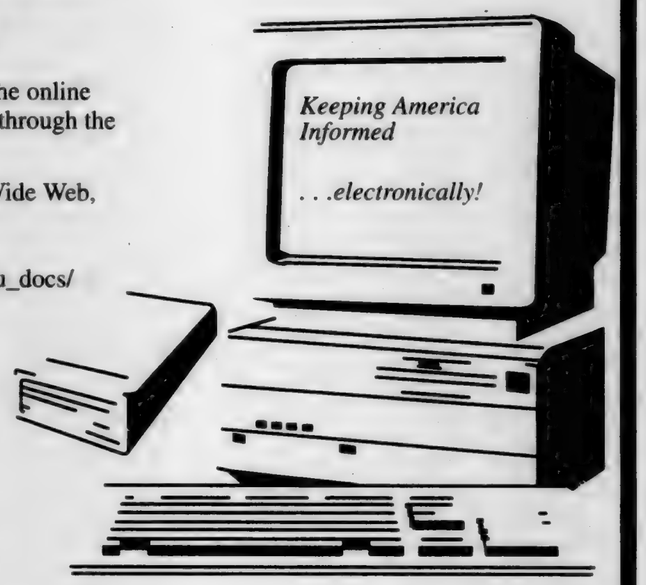

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Rules and Regulations

Federal Register
Vol. 64, No. 174
Thursday, September 9, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272, 273 and 274

[Amdt. No. 378]

RIN 0584–AC61

Food Stamp Program: Electronic Benefit Transfer Benefit Adjustments

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This action provides interim rulemaking for a proposed rule published on May 19, 1998. It revises Food Stamp Program regulations pertaining to the State agency's ability to make an adjustment to a household's account in an Electronic Benefit Transfer (EBT) system. The changes enable State agencies to make an adjustment to correct system errors without sending an advance notice as currently required. This rule also revises the formula for recovering funds under the re-presentation rule.

The Department received a large number of comments to the proposed rule, many of which suggested substantive changes. At least two significant changes to the proposed rule have been incorporated as a result of the comments received. Therefore, the Department has decided to allow further comment by publishing an interim final rule. All comments received will be analyzed, and any appropriate changes in the rule will be incorporated into the subsequent publication of a final rule.

DATES: This interim rule is effective October 12, 1999. State agencies must implement the rule no later than March 7, 2000. Comments must be received on or before November 8, 1999.

ADDRESSES: Comments should be submitted to Jeffrey N. Cohen, Chief, Electronic Benefit Transfer Branch, Benefit Redemption Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302. Comments may also be faxed to the attention of Mr. Cohen at (703) 605–0232, or by e-mail to jeff.cohen@fns.usda.gov. Written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m., Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 718.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Mr. Cohen at the above addresses or by telephone at (703) 305–2517.

SUPPLEMENTARY INFORMATION:

Interim Rule

Because this rule has significant changes from the proposed rule, the Department is soliciting further public comment for 60 days. All comments received will be analyzed, and any appropriate changes in the rule will be incorporated in the subsequent publication of a final rule.

Executive Order 12866

This interim final rule has been determined to be non-significant for purposes of Executive Order 12866 and therefore was not reviewed by the Office of Management and Budget.

Public Law 104–4

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the Food and Nutrition Service generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires the Food and Nutrition Service to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This interim final rule contains no Federal mandates (under the regulatory provisions of Title II of UMRA) for State, local and tribal governments or the private sector of $100 million or more in any one year. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule in 7 CFR 3015, Subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612). Samuel Chambers, Jr., Administrator, Food and Nutrition Service, has certified that this final rule will not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program.

Paperwork Reduction Act

This rule does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "Dates" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program, the administrative procedures are as follows: (1) for Program benefit recipients—State

administrative procedures issued pursuant to 7 U.S.C. 2020(e)(1) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 for rules related to non-quality control (QC) liabilities or 7 CFR Part 283 for rules related to QC liabilities; (3) for Program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Background

Proposed regulations were published in the **Federal Register** on May 19, 1998 at 63 FR 27511 to change the way in which certain EBT error conditions are handled. The change was proposed following concerns from the EBT community that current regulations do not allow State agencies, or their processors, to make an adjustment to correct certain system errors in a manner consistent with the commercial environment. During normal EBT transaction processing, settlement is completed when the transaction acquirer has been properly credited for an amount equal to the amount debited from the household's benefit allotment. System malfunctions, however, can cause an interruption to this process, resulting in a settlement condition that does not reflect the original transaction. The regulations proposed to allow State agencies to make adjustments for these errors when concurrent notice was sent to the household as opposed to the advance notice required by current regulations. Changes were also proposed for handling re-presentations. Readers are referred to the proposed regulation for a more complete understanding of this final action.

Comments on the proposal were solicited through July 20, 1998. This final action takes those comments received into account. Twenty-eight comment letters were received in response to the proposed rule. Individual comments were received from eighteen State agencies. (An additional 10 State agencies commented as part of joint consortia letters.) Of the remaining letters, 4 were from retailers and/or their associations, 2 from EBT processors, 3 were from Public Interest Groups, and 1 was from an alliance of States, networks, financial institutions and retailers. Although four of the letters were received late, their comments were considered. None of these four, however, raised comments resulting in changes to the proposed rule that were not raised by other commenters.

In general, the commenters supported the Department's efforts to streamline the adjustment process for certain types of system errors. The overwhelming majority of the commenters, however, believed that the Department did not go far enough in doing so and that the EBT adjustment policy should mirror commercial practice. The major comments deemed by the Department to be significant are discussed below.

General

There is a significant difference between how EBT adjustments would be handled under the proposed rules and how they are handled in the commercial environment. While commercial adjustments are handled by processors as routine corrections not requiring special notification to customers, in the Food Stamp Program, when adjustments are a debit against the household's account, they are viewed as a type of adverse action. A majority of commenters believed that the food stamp adjustment policy should strictly follow commercial or Electronic Funds Transfer (EFT) standards, arguing that Congress expressly recognized the importance of conforming EBT programs to commercial standards by directing that "an electronic benefit transfer system should take into account generally accepted standard operating rules based on commercial electronic technology" (7 U.S.C. 2016 (i)(1)(D)).

The Department is aware that Congress wanted programs to "take into account" commercial practices; however, by not mandating that EBT follow commercial practices, Congress recognized that EBT differs from EFT and, in some circumstances, must adhere to different standards. Certainly, in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193, (PRWORA), a precedent for such a divergence was set when EBT was explicitly exempted from Regulation E, a requirement for commercial EFT.

The Department believes that, while the overall procedural framework for handling adjustments in the commercial environment is acceptable, there are certain areas—i.e., notifications and the rights to appeal—that must adhere to the requirements set forth in the Food Stamp Act of 1977, as amended, 7 U.S.C. § 2011–2036, (FSA), and food stamp regulations. This is especially important in light of the fact that the commercial environment is silent in some of these areas, or the commercial standards in place are not appropriate for those who depend upon food stamp benefits for basic subsistence.

Several commenters wanted the rule to clarify that State agencies have final authority and reversal authority on all adjustments. They also wanted the rule to require EBT processors to give State agencies adjustment information upon request. The Department believes that Food Stamp regulations already require processors to provide such information by mandating at 7 CFR § 274.12(j)(1)(vi) that systems maintain an audit trail documenting the full cycle of issuance "through settlement of retailer credits" and by requiring at 7 CFR § 274.12(j)(2) that the system provide appropriate management reports. As for final authority over adjustments, the Department believes that EBT regulations, and contracts between State agencies and their processors, give States final authority over all matters pertaining to household accounts.

One commenter believed that the proposed rule implied that all adjustments take place at the State level, when, in fact, they are usually handled by the processors. The proposed rule was not meant to imply that the State agencies handle adjustments. All EBT regulations are addressed to the States, as they have authority over the administration of the Food Stamp Program. As with other operational components of EBT, any of the requirements of this rule can be handled by processors, as agents of the State agencies, if appropriate. State agencies remain ultimately responsible, however, for the actions of their contractors.

One commenter suggested that adjustments should be handled as any other administrative claim. The Department believes that adjustments are different from claims in that the errors do not result in money owed to FNS. All of the processing and reporting of claims are based on a collection against an incorrect benefit issuance being passed back to the government. Collection for adjustments, on the other hand, do not result in savings to the government and, therefore, cannot be handled in the same manner as claims.

One commenter stated that the proposed rule implied that adjustments are allowed, but not required. The intent of the proposed rule was to clarify, through regulations, how EBT system errors would be corrected under EBT. It was, therefore, the Department's intent to require all State agencies to follow these rules. The interim rule includes clarifying language that makes the adjustment rule mandatory.

Definitions

The proposed rule limited the type of adjustments that could be processed without advance notice, to system errors resulting in an out-of-balance settlement condition. Several commenters supported this restriction, echoing the Department's belief that adjustments resulting from human error should not be included in this rule. Other commenters sought to expand the definition of adjustments to include monthly issuance-posting errors and other State agency, non-settling errors. A number of commenters asked for clarifications regarding the definition of a system error.

The Department agrees that adjustments should be allowed only in those situations in which a transaction was not completed because of a system error. A system error is one which occurs due to malfunction at the EBT host, the third party processor, the retailer host system, the Point-of-Sale (POS), or as a result of telecommunications malfunctions. By definition, the amount of an adjustment cannot differ from the value of the original transaction. (The Department recognizes that the original transaction amount may no longer be available in a recipient's account at the time of the adjustment and will allow an adjustment against remaining benefits, even if it differs from the original transaction amount). This definition is in keeping with commercial operating rules and the QUEST EBT operating rules.

Human errors, such as those that may result in incorrect postings, incorrect entries at the POS by the clerk, operating in training mode, etc., are not covered by this rule. The Department believes the household should have the right to advance notice on these more questionable "adjustments" to their allotments. Human errors do not leave the same audit trail that system errors do, i.e., documentation of an out-of-balance condition, such as system logs that are generated from any of the reconciliation points.

Monthly-issuance posting errors are pre-issuance errors and, as such, are not within the rule's definition of an adjustment; however, the Department recognizes the need for State agencies to expeditiously correct these errors. The Department will take this comment under consideration for future proposed rulemaking.

Future Month's Benefits

The proposed rule did not allow a debit adjustment from a recipient's account to be made from a future month's benefit, i.e., benefits that were not in the account at the time of the error. Commenters overwhelmingly disagreed with this restriction, arguing that the restriction in the proposed rule increases the probability that the funds will not be available to do a debit adjustment to the household's account. These commenters also argued that restricting adjustments against a future month also puts an unfair burden on retailers who may suffer a loss of revenue if recipients spend benefits prior to an adjustment being made. Finally, many commenters raised concerns about the administrative burdens inherent in using the re-presentation process when collecting from future month's benefits.

The Department has been persuaded by the commenters that adjusting from future months' benefits prevents retailers from having to bear an unfair financial burden due to system errors. Further, since this rule only applies to situations in which the need for an adjustment can be clearly documented, we are confident that there is a minimal risk that recipients will have their accounts adjusted erroneously. The Department understands that the average debit adjustment to a household is relatively small. This is consistent with overall transaction data that shows the average EBT transaction amount is $20. This would lead us to project that, on average, most transactions requiring adjustments would not be large enough to cause a hardship to a food stamp household, where the average benefit amount is $173. This average transaction amount is also well below the $50 currently allowed in the first month of a re-presentation against the household. The interim final rule is, therefore, changed to allow an adjustment against a future month's benefit. This includes future months in which there has been a break in receipt of benefits.

In implementing this change to the proposed rule, the Department will require State agencies to amend training materials to disclose information to households about adjustments including the possibility that an adjustment can be made against a future month's benefit. Training material must also inform the households of their right to a fair hearing if they do not feel that the adjustment is warranted, and their right to receive a credit for the adjustment amount, pending a fair hearing decision. States that have already implemented EBT will have one year from the date of this notice to grandfather disclosure information on adjustments into their training materials.

Notice and Fair Hearing Requirement

The proposed rule required State agencies to send a concurrent notice when an adjustment was done that would adversely affect the household. The notice would give households the right to a fair hearing and the right to be credited for the adjustment amount pending the outcome of the fair hearing. The majority of comments received on this subject did not agree with the notice and fair hearing requirements for EBT adjustments. Most commented that it was inappropriate to apply these requirements to adjustments because they believe notice requirements in the program rules should be limited to circumstances in which benefits are being reduced to collect a previous overissuance of benefits. There were also a number of concerns about the cost of mailing notices, as well as the coordination required between the State agency and the processor, since the processor usually does not have current household addresses. Several commenters, however, supported the application of the notice and hearing requirements, including one which suggested that the Department prescribe the level of detail that should be in the notice. Three commenters supported the adequate notice as opposed to a 10-day advance notice. Another commenter suggested that a notice not be sent as long as the adjustment was done within 5 days as required by the proposed rule.

The Department is not convinced that adjustments should be exempt from the notice requirement. The Food Stamp Act gives recipients certain rights which cannot be abrogated because of the logistical problems inherent in providing the notice. Nor does the fact that these are transactional errors as opposed to benefit overissuances nullify this right. Section 11(e)(10) of the FSA requires State agencies to provide "for the granting of a fair hearing and a prompt determination thereafter to any household aggrieved by the action of the State agency under *any* provision of its plan of operation as it affects the participation of such household in the food stamp program or by a claim against the household for an overissuance." (emphasis added) Further, in *Goldberg* v. *Kelly*, 397 U.S. 254 (1970), the Court ruled that, where "basic subsistence is at stake," due process requires that households receive notice and an opportunity for a fair hearing *prior* to the denial of such government benefits. Absent a guarantee that there is absolutely no chance of erroneous adjustments, the Department concludes that households shall retain their notice and fair hearing rights. The level of detail required in the notice is described in 7 CFR 273.13, i.e., State agencies are required to include information about the circumstances which resulted in the adverse action. States are encouraged to include as much detail about the transaction—date, time and location—as possible, since

such information could reduce calls to the Help Desk.

States have requested clarification on the timeframes for the fair hearing. The interim rule has been clarified to state that the household has 90 days from the date of the notice to request a fair hearing. Further, the household has 10 days from the date of the notice to request a re-credit or provisional credit pending the fair hearing decision. Two commenters suggested that a notice (with attendant fair hearing rights) only be required when there has been an incorrect adjustment. For the reasons cited above, the Department believes that all actions taken to reduce the household's allotment are subject to notice.

Two commenters questioned the cost effectiveness of sending a notice when the adjustment is a credit to the client. The notice and fair hearing requirements found in 7 CFR 273.13 and 273.15 only apply to adverse action; therefore, an adjustment which resulted in a credit to a household would not require a notice.

One commenter suggested that the State be required to send the notice, not the contractor. The Department does not want to prescribe how the notice requirement is handled but, instead, prefers to give each State agency and their processor an opportunity to develop a process that works in their unique environment.

Finally, two commenters objected to the State agencies paying a share of administrative costs associated with mailing out notices, handling appeals, and handling re-credits or provisional credits. The Department has no authority in Federal law to pay more than the federal financial participation for food stamp administrative costs, and therefore, cannot pay the States' share.

Re-Credits (Provisional Credits)

A number of other comments related to re-crediting or provisional credits pending a determination of the fair hearings. Some commenters objected to re-crediting pending a fair hearing, while an equal number of those commenting in this area supported it. A few commenters requested clarification on how to handle re-credits, specifically who is liable when an adjustment is due, how re-credits should be funded, and how they should be reported. Some commenters thought the State agency or the processors should be liable, not the retailers.

The Department is clarifying that provisional credits should be handled as any other adjustment. If a household requests a provisional credit pending a fair hearing, the State agency must notify the processor to initiate another adjustment to credit the recipient's account. If the original adjustment was already completed, and payment made to the party suffering the loss, then that account must be debited in order to give a provisional credit to the household.

Two commenters opposed language that allowed State agencies to discontinue collection activity when households and/or retailers were no longer on the program. The Department believes that by allowing an adjustment against future month's benefits, it is simplifying the management controls necessary to collect from households if they return to the program after a break in assistance. Therefore, language stating that households that have left the program are not subject to further collection activity has been removed. Similarly, the proposed rule did not require processors or others such as third party processors to collect against a household when the retailer is no longer with the Food Stamp Program. The Department is not persuaded to change its position regarding retailers. FNS recognizes that once retailers leave the system they are not easily tracked and wishes to reduce the administrative burden on State agencies by not requiring them to further track retailers. However, collections made from clients that are not credited to retailers must be returned to FNS.

The Department is also clarifying the interim rule by changing the term "re-credits" to "provisional credits" to keep the language in line with commercial nomenclature.

Timeframes

Most of the commenters believed that the proposed 5-day timeframes to complete an adjustment were too short given the actions that must take place and the number of participants inherent in the adjustment process. The processes described by the commenters include compilation of documentation, research, notification to other participants and making the adjustment—more business partners in the chain add to the processing time. Some commenters estimated that the process in the commercial environment typically takes from 10–45 days, influenced by uncontrollable factors, such as retailers who don't settle daily. The Department has taken these comments into consideration and has modified the interim rule. The interim rule distinguishes between adjustments generated by retailers and recipients.

We believe that most recipient generated adjustments will result in funds owed to the household. In these scenarios, recipients have suffered a loss through no fault of their own, ostensibly through a verifiable system error. By allowing an adjustment against a future month's benefit, the Department is giving the processor the opportunity to do an adjustment prior to a full investigation, if required, without risk of liability if a household is erroneously credited. The Department wishes to emphasize that the provisions of this interim rule also apply to "correcting adjustments", i.e., those adjustments generated to reverse an erroneous credit to a recipient's account. Therefore, for client initiated adjustments, the 5-day timeframe remains as proposed.

Commenters identified several scenarios where either the retailer, the client, or the processor would be unaware of an error until well after it has occurred. After reviewing the comments, the Department determined that the timeframes for client initiated adjustments should be counted from the date the household notifies the State agency of the error. This distinction is critical since EBT recipients do not receive monthly statements and, therefore, may not be aware of an error until the next time they attempt to do a transaction. The problem is exacerbated by the fact that a system error often results in an incorrect receipt. For these reasons, the rule has been changed. Client initiated adjustments shall be made within 5 business days of the date the household notifies the State agency or the Help Desk of the error. The household has 180 days from the date the error occurred to make the notification. This requirement does not absolve the State agency/processor from making the adjustment if the 5-day deadline is missed.

The Department acknowledges that retailer and client initiated adjustments are handled differently. The retailer has access to settlement information from the processor or third party. Several commenters stated that not all retailers, particularly small ones, settle on a daily basis and would not know of an error until after the 5-day timeframe had passed. The Department has been persuaded by these arguments and has modified the rule. Retailer initiated adjustments must be completed within 10 days from the date the error occurred. Retailer initiated adjustments that result in a debit to the household's account are not allowed after 10 days.

One commenter requested that correction of benefits should be done in 24 hours, whenever possible. The Department wishes to emphasize the importance to both State agencies and processors of making adjustments as quickly as possible. However, 24 hours is not a reasonable expectation given the number of parties that are typically involved in the process.

One commenter thought the Department should put specific deadlines on each business partner in the process, i.e. prescribe timeframes to the third parties, processors, retailers, contractors, etc. for handling their own segment of the process. The Department believes that such an approach would be administratively burdensome. We realize, however, that each of these partners has a responsibility to the others to handle their portion expeditiously if timeframes are to be met. We would recommend that this level of detail be addressed in retailer and third party agreements.

The rule has been re-written to clarify that these provisions apply to both credit and debit adjustments. The rule is also being clarified to state that business days means Automated Clearing House (ACH) days.

One commenter wanted clarification on the ramifications of not meeting timeframes. This rule will not impose penalties for not meeting timeframes. As with other regulatory requirements, States are required to ensure the processor's compliance.

Investigations

One commenter thought the rule should be more prescriptive in the area of dispute resolutions: such as, requiring control numbers on complaints taken at customer service, providing detailed instructions for investigating claims, etc. The commenter went on to suggest that the burden of proof be on the retailer in investigating disputes.

The Department is not convinced that this rule should provide more details in investigating system error adjustment claims. The rule covers a very limited type of error, not unlike those handled routinely in the commercial environment. Since there is nothing unique to a food stamp adjustment that would require the Department to justify deviation from existing practices, the interim final rule will remain silent on details for investigating these types of errors. Processors, third parties, retailers and customer service representatives should follow industry practice in ensuring that investigations are handled correctly in a timely manner.

Re-Presentations

As stated in the preamble to the proposed rule, the Department has heard from States and processors that the current re-presentation regulations present costly programming challenges. In an effort to provide some relief, the proposed rules allowed a second collection option for States: a flat $10 or 10% of the allotment from the first month. This eliminated the need to program up to $50 for the first month and a different retention for the remaining months. Most of the commenters believed that, even with the proposed changes, re-presentation remains an unworkable and inefficient way of handling collections. Some commenters stated that the programming involved would still be expensive, and the monthly accounting would take up too much in resources. FNS believes that the change to allow adjustments to future month's benefits for system errors will obviate the need for re-presentations in most circumstances covered by this rule. However, the need for re-presentations remains for those cases in which there has been system downtime. Therefore, the Department is finalizing the rule to allow the State agency to collect at the current rate of $50 in the first month and 10% thereafter, or to go to the flat monthly rate of $10 or 10%, as proposed.

Several commenters asked for clarification on whether or not re-presentation becomes mandatory under this rule. Another commenter suggested that re-presentation should be mandatory. The Department is clarifying that re-presentation remains voluntary under this rule since most States have not been willing to incur the associated costs.

One commenter requested clarification on who holds the funds during re-presentation and who holds the outstanding account. In a re-presentation scenario, the money is collected by the State agency on behalf of the party to whom the debt is owed. The State agency would pass the payments to the parties owed through the processor.

Finally, one commenter asked for clarification on re-presentation since the term is not used in the same way as the QUEST Operating Rules. The Department recognizes that re-presentation, as used in this rule, is unique to the Food Stamp Program. Any references to re-presentation are used in the context of 7 CFR 274.12(e). Food Stamp Program regulations and QUEST Operating Rules, are mutually exclusive, since all States have not adopted the QUEST rules and the Food Stamp Program regulations take precedence over the QUEST rules.

Implementation

This interim rule is effective October 12, 1999. State agencies must implement the rule no later than March 9, 2000.

List of Subjects

7 CFR Part 272

Alaska, Civil Rights, Food Stamps, Grant Programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Food stamps, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 274

Administrative procedures and practices, Food Stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

Accordingly, for the reasons set forth in the preamble, 7 CFR Parts 272, 273 and 274 are amended as follows:

1. The authority citation for 7 CFR Parts 272, 273 and 274 continues to read as follows:

Authority: 7 U.S.C. 2011–2036.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, paragraph (g)(154) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(154) *Amendment No. 378.* The provisions of Amendment No.378 are effective October 12, 1999. State agencies must implement the rule no later than March 7, 2000. Any variances resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 120 days from this required implementation date in accordance with § 275.12(d)(2)(vii) of this chapter.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.13, a new paragraph (a)(3)(vii) is added to read as follows:

§ 273.13 Notice of adverse action.

(a) * * *

(3) * * *

(vii) An EBT system-error has occurred during the redemption process, resulting in an out-of-balance settlement condition. The State agency shall adjust the benefit in accordance with § 274.12 of this chapter.

* * * * *

4. In § 273.15, the fourth sentence of paragraph (k)(1) is revised and two new

sentences are added after the fourth sentence to read as follows:

§ 273.15 Fair hearings.

* * * * *

(k) *Continuation of benefits.*

(1) * * * If the State agency action is upheld by the hearing decision, a claim against the household shall be established for all overissuances, with one exception. In the case of an EBT adjustment, the State agency shall debit the household's account immediately for the total amount erroneously credited when the fair hearing was requested. If there are no benefits remaining in the household's account at the time the State agency action is upheld, the State agency shall make the adjustment from the next month's benefits, subject to the limitations of this section and, if necessary, continue each month until the debt is re-paid.

* * *

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PART 274—ISSUANCE AND USE OF COUPONS

5. In § 274.12:

a. Paragraph (f)(4) is revised;

b. Paragraph (f)(7)(iii) is amended by removing the second sentence;

c. A new paragraph (f)(10)(viii) is added;

d. Paragraph (l)(1)(iii) is revised;

The revisions and addition read as follows:

§ 274.12 Electronic Benefit Transfer issuance system approval standards.

* * * * *

(f) *Household participation* * * *

(4) *Issuance of Benefits.* State agencies shall establish an availability date for household access to their benefits and inform households of this date.

(i) The State agency may make adjustments to benefits posted to household accounts after the posting process is complete but prior to the availability date for household access in the event benefits are erroneously posted.

(ii) A State agency shall make adjustments to an account after the availability date to correct an auditable, out-of-balance settlement condition that occurs during the redemption process as a result of a system error. A system error is defined as an error resulting from a malfunction at any point in the redemption process: from the system host computer, to the switch, to the third party processors, store host computer or POS device. By definition, an adjustment must be equal to the amount of the original error transaction and may result in either a debit or credit to the household.

(A) Client initiated adjustments shall be made no later than 5 business days from the date the household notifies the State agency of the error. Business days are defined as Automated Clearing House (ACH) days.

(B) The household has 180 days from the date of the error to notify the State agency of the need for an adjustment.

(C) Retailer initiated adjustments shall be made no later than 10 business days from the date the error occurred.

(D) If there are insufficient benefits remaining to cover the entire adjustment, the adjustment shall be made using the remaining balance, with the difference being subject to collection in a future month, subject to the limitations found in § 273.15 of this chapter and in this section.

(E) The household shall be given, at a minimum, adequate notice in accordance with § 273.13 of this chapter.

(F) The household shall have 90 days from the date of the notice to request a fair hearing.

(G) Should the household dispute the adjustment and a request is made within 10 days of the notice, a provisional credit must be made to the household's account pending resolution.

(iii) The appropriate management controls and procedures for accessing benefit accounts after the posting shall be instituted to ensure that no unauthorized adjustments are made in accordance with paragraph (f)(7)(iii) of this section.

* * * * *

(10) * * *

(viii) Disclosure information regarding adjustments and the households rights to notice, fair hearings and provisional credits. The disclosure should also state where to call to dispute an adjustment and request a fair hearing. State agencies that have already implemented EBT shall have one year in which to grandfather adjustment disclosure into their training materials.

* * * * *

(l) *Re-presentation.* * * *

(1) * * *

(iii) The State agency may debit the benefit allotment of a household following the insufficient funds transaction in either of two ways:

(A) Any amount which equals at least $10 or up to 10% of the transaction. This amount will be deducted monthly until the total balance owed is paid-in-full. State agencies may opt to re-present at a level that is less than the 10% maximum, however, this lesser amount must be applied to all households.

(B) $50 in the first month and the greater of $10 or 10% of the allotment in subsequent months until the total balance owed is paid-in-full. If the monthly allotment is less than $50, the State shall debit the account for $10.

* * * * *

Dated: August 23, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99–23410 Filed 9–8–99; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 729

Commodity Credit Corporation

7 CFR Part 1446

RIN 0560–AF 81

1998-Crop Peanuts, National Poundage Quota, National Average Price Support Level for Quota and Additional Peanuts, and Minimum Commodity Credit Corporation Export Edible Sales Price for Additional Peanuts

AGENCIES: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to codify determinations made by the Secretary of Agriculture (Secretary) with respect to the 1998 peanut crop: the national poundage quota for quota peanuts is established at 1,167,000 short tons (st); the national average support level for quota peanuts is $610 per st; the national average support level for additional peanuts is set at $175 per st; and the minimum Commodity Credit Corporation (CCC) export edible sales price for price support loan inventory additional peanuts is $400 per st. The poundage quota is established pursuant to statutory requirements contained in the Agricultural Adjustment Act of 1938, as amended (the 1938 Act). The determination of the national average support levels for quota and additional peanuts was made pursuant to the statutory requirements of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act). The determination and announcement of the minimum export edible sale price for additional peanuts is a discretionary action made to facilitate the negotiation of private contracts for export edible peanuts.

EFFECTIVE DATE: September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Robison, USDA, Farm Service Agency, STOP 0514, 1400 Independence Avenue, SW, Washington, DC 20250–0514, telephone 202–720–9255. Copies of the cost-benefit assessment prepared for this rule can be obtained from Mr. Robison.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by OMB.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this final rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Paperwork Reduction Act

These proposed amendments do not contain information collections that require clearance by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule because the Farm Service Agency (FSA) nor Commodity Credit Corporation (CCC) are required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of these determinations.

Unfunded Federal Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandate Reform Act (UMRA), for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Background

A. Announcement of the Quota

Peanut producers voting in a mail referendum December 1 through 4, 1997, approved poundage quotas for the 1998 through 2002 marketing years (MY) by 94.8 percent. Therefore, the Secretary must offer a 1998-crop peanut program.

Section 358–1(a)(1) of the 1938 Act, as amended by the 1996 Act, requires that the national poundage quota for peanuts for each of the 1996 through 2002 MYs be established by the Secretary at a level that is equal to the quantity of peanuts (in tons) that the Secretary estimates will be devoted in each MY to domestic edible (excluding seed) and related uses. As to seed, section 358–1(b)(2)(B) of the 1938 Act, as amended, provides that a temporary allocation of quota pounds for the MY only shall be made to producers for each of the 1996 through 2002 MY and that the temporary seed quota allocation shall be equal to the pounds of seed peanuts planted on the farm as may be adjusted and determined under regulations prescribed by the Secretary. The MY for 1998-crop peanuts runs from August 1, 1998, through July 31, 1999.

The national poundage quota for the 1998 MY was established at 1,167,000 st, based on the following data:

Estimated Domestic Edible and Related Uses for 1998-Crop Peanuts

Item	Farmer stock equivalent (short tons)
Domestic edible:	
Domestic production:	
For domestic food use	950,500
On-farm and local sales	9,500
Related uses:	
Crushing residual	125,000
Shrinkage and other losses	38,000
Segregation 2 and 3 loan:	
Transfers to quota loan	5,000
Under production	39,000
Total	1,167,000

The estimate of MY 1998 domestic food use of peanuts was developed in two steps. First, the farmer stock equivalent of 1,105,500 st was estimated by the USDA Interagency Commodity Estimates Committee (ICEC). Second, this estimate was reduced by 155,000 st to exclude peanut imports, peanut butter imports, and peanut butter exports. Although estimates of domestic edible utilization typically include product exports, peanut butter exports are generally either made from, or may otherwise be credited under section 358(e) of the 1938 Act as being made from additional peanuts. MY 1998 farm use and local sales were estimated at 1 percent of ICEC's MY 1998 production estimate. This percentage reflects the average difference between USDA production data and Federal-State Inspection Service inspection data. About one-half of farm use and local sales is allocated to food use and the remainder to seed, and seed is excluded from quota determinations under amendments to the 1938 Act by the 1996 Act.

The crushing residual represents the farmer stock equivalent weight of crushing grade kernels shelled from quota peanuts. In any given lot of farmer stock peanuts, a portion of such peanuts is only suitable for the crushing market. The quota consists of the edible and crushing content of the farmer stock weight of quota peanuts. The crushing residual identified above reflects the assumption that crushing grade peanuts will be about 12 percent, on a farmer stock basis, of the total of MY 1998 domestic production.

The allowance for shrinkage and other losses is an estimate of reduced kernel weight available for milling as well as for kernel losses due to damage, fire, and spillage. These losses were estimated by multiplying a factor of 0.04 times domestic food use. The utilized factor is a FSA estimate equal to the minimum allowable shrinkage used in calculating a handler's obligation to export or crush additional peanuts as set forth in Section 359e(d)(2)(iv) of the 1938 Act. Excessive moisture and weight loss due to foreign material in delivered farmer stock peanuts were not considered since such factors are accounted for as inspection factors at buying points and do not impact quota marketing tonnage.

The adjustment for Segregation 2 and 3 loan transfers represents transfer of Segregation 2 and 3 peanuts from additional price support loan pools to quota loan pools. Such transfers occur when quota peanut producers have insufficient Segregation 1 peanuts to fill their quotas yet have Segregation 2 and 3 peanuts in additional loan pools which would have been eligible to be pledged as collateral for price support at the quota loan rate, if it were not for quality problems. In such cases, for price support purposes only, these peanuts may be pledged as collateral for price support loans at a discounted quota loan rate. Subject to a national limit of 5,000 st, individual producers can transfer up to 25 percent of their effective farm poundage quota from the additional loan pool and receive 70 percent of the quota loan rate. Regarding the disposition of such peanuts, the CCC will ensure that they are crushed for oil.

In addition, an allowance has been made for underproduction. Historically, only 92 percent of the quota has been marketed. Since the 1996 Act eliminated the carryover of unmarketed quota pounds, any quota pounds not marketed will be a loss of potential income for producers. It is expected that somewhat more than 92 percent will be marketed. It was assumed, based on a

consideration of all factors, that 96.7 percent of the 1998 quota will be marketed. This assumption, together with expected growth in domestic consumption of peanut products through new uses and a small increase in demand because of lower peanut support prices resulted in the setting of a national peanut poundage quota of 1,167,000 st for the 1998 MY.

Discussion of Comments

This determination followed the publication of a proposed rule on December 2, 1997, in the **Federal Register** (62 FR 63678), which proposed a MY 1998 national poundage quota level between 1,133,000 and 1,175,000 st, an additional price support level between $132 per st to $175 per st, and a minimum CCC sales price for export edible peanuts for sales of price support loan peanuts for the 1998 crop between $350 and $400 per st. There were 13 letters received comprising 19 separate comments in response to the notice during the comment period that ended on December 9, 1997. Comments were submitted by two consumer groups, five manufacturers' groups, two sheller and handler groups, two sheller and handler firms, and two producer organizations. Comments were received relative to quota levels, the additional price support level and the minimum CCC sales price for additional peanuts. In reference to quota levels, the consumer and manufacturer groups were concerned with adequate supplies, stock levels, and all suggested that the quota be set above the recommended range. The sheller association and the buying point association recommended the quota be set at the upper end or above the proposed range. The sheller and the handler recommended no change. The producer groups recommended no change to not more than 2.5 percent increase.

A larger quota requested by consumer and manufacturer groups would have minimal benefit for consumers of peanut products or the peanut industry. At this time, Bureau of Labor Statistics data for peanut butter does not make the case that lower quota support prices since the 1996 Act have been passed on to consumers. Also, industry sources point out that infrastructure is unevenly distributed across the production belt and that competition among handlers and shellers for grower loyalty keeps prices bid for farmer stock peanuts above the quota support level. Since increases in demand for greater supplies of peanuts is normally small, a quota of 1,250,000 st, as suggested by some commentators, would likely result in a surplus and a loss on loan placements for more than 80,000 st of peanuts. These peanut losses would be around $400 per st. Losses of up to $20 million could occur and result in producer assessments ranging from $15 to $20 per st the following year. For the above stated reasons a quota of 1,250,000 st would not be expected to impact consumer prices and would be expected to adversely affect producer income. In any event, the quota formula is set by statute and the determined quota was calculated using that formula.

B. Additional Peanut Support Level

Section 155(b)(2) of the 1996 Act provides that price support shall be made available for additional peanuts at such level as the Secretary determines will ensure no losses to CCC from the sale or disposal of such peanuts, taking into consideration the demand for peanut oil and peanut meal, expected prices of other vegetable oils and protein meals, and the demand for peanuts in foreign markets.

The MY 1998 price support level for additional peanuts was announced at $175 per st on February 13, 1998. The national average price support rate for quota peanuts, for each of the 1996 through 2002 crops, is set at $610 per st by the 1996 Act and is codified at 7 CFR 1446.103.

The MY 1998 price support level for additional peanuts was established at $175 per st to ensure no losses to CCC from the sale or disposal of additional peanuts. Peanuts are pledged as collateral for price support loans. The peanuts are then sold in order to recoup the loan principal, interest and related costs. The statutory factors have been analyzed as set out below. Based on those factors, it is anticipated that while the current oil market is strong, there is enough uncertainty in the market to suggest caution.

In making this determination, the following market information was considered:

1. The domestic use of peanut oil during MY 1998 is forecast to be 105,000 st, up 2 percent from MY 1997 projected domestic use. MY 1998 peanut oil beginning stocks are expected to be 27,500 st, down 36 percent from MY 1997. The MY 1998 average peanut oil price is expected to be $0.413 per pound, down $0.017 per pound from MY 1997.

2. The domestic use of peanut meal during MY 1998 is forecast to be 150,000 st, up 20,000 st from MY 1997 projected domestic use. MY 1998 peanut meal beginning stocks are expected to be 4,000 st, unchanged from MY 1997. The MY 1998 average peanut meal price is expected to be $147.50 per st, down $22.50 per st from MY 1997.

3. The domestic disappearance of soybean oil during MY 1998 is forecast to be 7,300,000 st, up 1.7 percent from projected MY 1997 domestic disappearance. MY 1998 soybean oil beginning stocks are expected to be 777,500 st, up about 2.3 percent from MY 1997. The MY 1998 average soybean oil price is expected to be $0.248 per pound, down $0.002 per pound from MY 1997.

4. The domestic disappearance of cottonseed oil during MY 1998 is forecast to be 515,500 st, up 0.5 percent from projected MY 1997 domestic disappearance. MY 1998 cottonseed oil beginning stocks are expected to be 40,500 st, up 22.7 percent from MY 1997. The MY 1998 average cottonseed oil price is expected to be $0.270 per pound, down $0.0075 per pound from MY 1997.

5. The domestic disappearance of soybean meal during MY 1998 is forecast to be 29,250,000 st, up 3.5 percent from projected MY 1997 domestic disappearance. MY 1998 soybean meal beginning stocks are expected to be 225,000 st, up about 8.7 percent from MY 1997. The MY 1997 average soybean meal price is expected to be $182.50 per st, down $30.00 per st from MY 1997.

6. The domestic disappearance of cottonseed meal during MY 1998 is forecast to be 1,640,000 st, down 0.3 percent from projected MY 1997 domestic disappearance. MY 1998 cottonseed meal beginning stocks are expected to be 41,000 st, unchanged from MY 1997. The MY 1998 average cottonseed meal price is expected to be $135.00 per st, down $25 per st from MY 1997.

7. The world use of peanuts for MY 1997 is expected to be 24.07 million metric tons, down 8.0 percent from MY 1996. World peanut production for MY 1997 is forecast to be 24.58 million metric tons, down 7.8 percent from MY 1996. Ending stocks for MY 1997 are forecast at 0.51 million metric tons, up 4.5 percent from 1996.

MY 1997 begins with record oil stocks and record imports of oil during MY 1996. Yet MY 1998 peanut oil prices are projected to be 41.3 cents per pound. Based on the supply and use situation at the beginning of MY 1997 and projections for MY 1998, there are conflicting signals in the supply price relationship in the peanut oil market that suggest caution in setting the additional peanut support level. Also, producers are expected to place about 10,000 st of quota peanuts and 140,000 st of additional peanuts under price support loan. The accompanying table shows loan outlays under three additional price support levels and receipts under three bid price (price offer) levels.

ESTIMATED PEANUT PROGRAM OUTLAYS AND RECEIPTS FOR MY 1998

[FSA/TPD 12/97]

Loans Made: [1]			
Quota			10,000 st
Additional			140,000 st
Loan Rate: [2]			
Quota	$610/st	$610/st	$610/st
Additional	$132/st	$150/st	$175/st
Outlays	Million Dollars		
MY 98	28	31	34
	Average Bid Price		
Item [3]	$150/st	$250/st	$325/st
Receipts	Million Dollars		
MY 98	23	38	49
Net Cost [1]	0	0	0

[1] Assumed levels based on 1996/1997 and 1997/98 experiences.
[2] Plus $25/st administrative expense.
[3] Assumes quota and additional loan inventory sold as oil stock to show maximum monetary exposure of assumed loan receipts.
[4] Program must operate at no-net-cost to treasury. Shortfalls are made up through grower assessments and pool dividends.

Discussion of Comments

During the comment period that ended December 9, 1997, there were three comments received concerning the 1998 additional peanut price support level. One sheller association and one handler association made specific recommendations on the additional price support level. They recommended a range of $175 to $250 per st. The volume of additional peanuts being bought back and strong prices in the oil seed complex were cited as the reason to increase the additional price support level. The producer group recommended setting the additional support level within the proposed range. The final determination was made for the reasons given above. An analysis of the data for that year is available from the contact person listed above.

C. Announcement of CCC Sales Price for Additional Peanuts Sold for Export Edible Use

The establishment of a minimum price at which 1998 crop additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets is a discretionary action. The announcement of that price provides producers and handlers with information to facilitate the negotiation of private contracts for the sale of additional peanuts for export.

An overly high price may discourage private sales. If too low, the minimum price could have an unnecessary, adverse effect on prices paid to producers for additional peanuts. The minimum price at which 1998 crop additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets was established at $400 per st on April 30, 1998. This price should encourage exports while providing price stability for additional peanuts sold under contract. It will also assure handlers that CCC will not undercut their export contracting efforts with offerings of additional peanuts for export edible sales below the announced minimum sales price.

Advance Notice of Proposed Rule Making

An Advance Notice of Proposed Rulemaking was published in the **Federal Register** on August 18, 1997 (62 FR 43955) requesting comments on the method for determining the minimum CCC export edible sales price for additional peanuts. Ten letters containing 10 comments were received during the comment period ending September 30, 1997. Seven comments were from producer groups, two from sheller groups and one from an individual sheller. The seven producer groups recommended no change from the $400 per st level. One sheller group recommended setting an absolute dollar figure each year and ranging between $350 to $375 per st for 1998. One sheller group and one sheller submitted a formula based on the peanut oil market.

Proposed Rule

Three letters containing three separate comments concerning the minimum CCC sales price for additional peanuts sold for export edible use were received during the comment period for the Proposed Rule ending December 9, 1997. One sheller group, one handler group, and one grower group made specific comments concerning the sales policy.

One sheller group resubmitted its proposed formula tied to the peanut oil market to set the minimum CCC export edible sales price for additional peanuts. The handler group and a producer group recommended setting the price at an fixed level. The handler group suggested a range of $350 to $400 per st. The producer group wanted the price to remain at $400 per st. The final price was set based on the factors set forth above.

List of Subjects

7 CFR Part 729

Peanuts, Penalties, Poundage quotas, Reporting and record keeping requirements.

7 CFR Part 1446

Loan program—Agriculture, Peanuts, Price support programs, Reporting and recordkeeping requirements, Warehouses.

Accordingly, this final rule amends 7 CFR parts 729 and 1446 as follows:

PART 729—PEANUTS

1. The authority citation for 7 CFR part 729 continues to read as follows:

Authority: 7 U.S.C. 1301, 1357 *et seq.*, 1372, 1373, 1375, and 7271.

2. Section 729.216 paragraph (c) is revised to read as follows:

§ 729.216 National poundage quota.

* * * * *

(c) Quota determination for individual marketing years (excluding seed):

(1) The national poundage quota for quota peanuts for marketing year 1996 is 1,100,000 short tons.

(2) The national poundage quota for quota peanuts for marketing year 1997 is 1,133,000 short tons.

(3) The national poundage quota for quota peanuts for marketing year 1998 is 1,167,000 short tons.

PART 1446—PEANUTS

3. The authority citation for 7 CFR part 1446 continues to read as follows:

Authority: 7 U.S.C. 7271, 15 U.S.C. 714b and 714c.

4. Section 1446.310 is amended by adding new paragraph (c) to read as follows:

§ 1446.310 Additional peanut support levels.

* * * * *

(c) The national support rate for additional peanuts for the 1998 crop is $175 per short ton.

5. Section 1446.311 is amended by adding new paragraph (c) to read as follows:

§ 1446.311 Minimum CCC sales price for certain peanuts.

(c) The minimum CCC sales price for additional peanuts to be sold from the price support loan inventory for export edible use from the 1998 and subsequent crops is $400 per short ton.

Signed at Washington, DC, on August 31, 1999.

Keith Kelly,

Administrator, Farm Service Agency and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 99–23377 Filed 9–8–99; 8:45 am]

BILLING CODE 3410–05–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 2, 7, 9, 50, 51, 52, 60, 62, 72, 75, 76, 100, and 110

RIN 3150–AG07

Electronic Availability of NRC Public Records and Ending of NRC Local Public Document Room Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to reflect a change in the way its records are made available to the public. The amendments reflect the NRC's decision to implement a new document management system that will permit the electronic storage, retrieval, and on-line ordering of publicly available NRC official records through the NRC Web site.

EFFECTIVE DATE: October 12, 1999.

FOR FURTHER INFORMATION CONTACT: Russell A. Powell, Chief, Information Services Branch, Information Management Division, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6527, email: RAP1@nrc.gov.

SUPPLEMENTARY INFORMATION:

The Nuclear Regulatory Commission (NRC) is amending its regulations to reflect the use of a new electronic record keeping system for NRC records. The NRC is establishing the Agencywide Documents Access and Management System (ADAMS) to provide for the electronic submission, storage, and retrieval of NRC official records. When ADAMS becomes operational, any NRC official records that are normally publicly available under the Commission's regulations will be available electronically through ADAMS. The regulations governing which records are publicly available are unaffected by this final rule. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Electronic Reading Room).

When ADAMS becomes operational, NRC will discontinue furnishing paper and microfiche copies of its publicly available records to the NRC Public Document Room (PDR), located in Washington, DC, and the Local Public Document Rooms (LPDRs), located near nuclear power plants and other nuclear facilities. Under ADAMS, NRC will initially begin making available electronically through the Electronic Reading Room on the NRC Internet Web site, imaged copies of its newly received and created publicly available official records that are in paper form. However, ultimately, NRC's newly created official records will all be stored in ADAMS only in electronic form, and NRC will maintain only its pre-ADAMS records as paper copies. Because of budget constraints and the improved access to newly received and created records via the NRC Web site under ADAMS, the Commission decided to discontinue funding of the LPDR program beyond Fiscal Year 1999.

The NRC currently maintains 86 LPDRs in the vicinity of nuclear reactor and materials licensees: 72 support power reactors; 2 support gaseous diffusion plants; 3 support high-level waste repositories; and the remaining 9 support fuel-cycle, low-level waste, and other facilities. A survey of the facilities where LPDRs are currently located revealed that all but six now provide, or will provide Internet access to its patrons by the end of 1999. Additionally, although NRC plans to discontinue the LPDR program, it has offered each of the current LPDR libraries the opportunity to keep their current LPDR document collections so the pre-ADAMS LPDR collections can continue to be available in the local communities. Of the 86 current LPDRs, 64 have expressed an interest in maintaining their current LPDR document collections after the LPDR program is discontinued. The decision to accept this offer to transfer ownership of these collections and the length of time they will be maintained will be at the sole discretion of each library.

In addition, the Government Printing Office (GPO) has agreed to accept the LPDR microfiche collections that were not kept by the current LPDR libraries. GPO will place these collections in their Federal Depository Library Program (FDLP). This assures the continuation of at least one LPDR microfiche collection in each of the states which now has one.

ADAMS will provide the following added benefits that should preclude or minimize any public concerns regarding the impact from discontinuing the LPDR program:

1. ADAMS Internet access will provide access to new records in full text and image.

2. ADAMS will provide an improved electronic search capability. Under the existing system, only the bibliographic indexes and abstracts for most records are available from the online BRS and NUDOCS.

3. Some new records will be available to the public within days instead of the two weeks or longer it now takes for LPDRs to receive microfiche or paper copies of new accessions.

4. Internet public access to the NRC Web site will provide direct access to a much broader range of the public than just to those who, because of their close proximity, have access to the PDR and LPDRs.

The NRC PDR will still have pre-ADAMS paper and microfiche records on site and available to the public for viewing and copying. The PDR will also have computer terminals available for the public to access new documents on the NRC Web site. The public will still be able to obtain paper copies of new electronic records by printing them from the NRC Internet Web site, by ordering them for a fee from the PDR directly from the NRC Web site, or by using current ordering methods. The current methods are: in-person at the PDR, mail, e-mail, fax or by calling the PDR Reference Services on the toll-free 800 telephone number. Bibliographic descriptions of documents currently identified in the PDR's Bibliographic Retrieval System (BRS) and in NUDOCS will be posted on the NRC Web site. This will also allow the public to order copies of pre-ADAMS paper and microfiche records. The public will also have access to the NRC Web site from any computer with Internet access, and will be able to download the records to the computer they are using for printing or other supported functions.

Public Comment Summary

The NRC published a proposed rule on May 7, 1999, (64 FR 24531). In response, the NRC received ten comments from the public. The comments are addressed individually below:

1. Martha Dibblee, Received via Email May 14, 1999

Comment: If you eliminate the public document room and put it on the Internet (which I believe is a wonderful idea since I use the Internet) the rule or an appendix should include a list of public libraries in the U.S.

Response: The Public Document Room (PDR), in Washington, DC, is not being eliminated. The Local Public Document Room (LPDR) program, supporting document collections set up in libraries near nuclear facilities, is being discontinued. However, most of those libraries are retaining their collections. A list of public libraries in the U.S. should be available at any public library as well as on the Internet.

2. Connecticut Yankee Atomic Power Company (CYAPCO), Dated May 20, 1999

Comment: CYAPCO fully supports the NRC's initiative to implement a new document management system that would permit the electronic storage, retrieval, and on-line ordering of publicly available NRC official records through the NRC Web site.

Response: NRC considers this comment supportive of the rule and it requires no further response.

Comment: CYAPCO also supports expanded use of ADAMS for electronic licensee submittals and agency documents for docketed correspondence.

Response: NRC considers this comment supportive of the rule and it requires no further response.

3. State of Illinois, Department of Nuclear Safety (IDNS), Dated May 27, 1999

Comment: IDNS supports the expanded availability of NRC records through the NRC Web site. This should facilitate greater public access to the records and cost savings to NRC.

Response: NRC considers this comment supportive of the rule and it requires no further response.

Comment: Will documents relating to Part 30 and Part 40 licenses be available on the NRC's Web site?

Response: Yes, publicly available documents received or created after the implementation of ADAMS, relating to part 30 and part 40 licenses will be available on the NRC's Web site. Documents prior to the implementation of ADAMS, will not routinely be placed into the ADAMS system, but they can be identified from the legacy systems indexes available online in the ADAMS Electronic Reading Room and ordered from the PDR; or, if convenient, can be accessed on the microfiche at one of the libraries that has retained the LPDR record collection. Those libraries and their locations will be identified on the NRC Web site.

Comment: NRC, not licensees, will be responsible for imaging paper copies into electronic form. Is this correct? How will NRC handle oversize documents?

Response: Yes, NRC will be responsible for imaging paper copies if licensees do not submit documents in electronic form, including oversized documents.

Comment: Is there a legal requirement that facilities, where LPDRs are currently located, provide Internet access?

Response: No, NRC has no authority to do so and has never established any requirement that facilities where LPDRs are currently located provide Internet access.

Comment: Whose responsibility is it to provide and maintain such access?

Response: The decision as to whether or not an LPDR or any other public or educational library provides and/or maintains Internet access is not within NRC's jurisdiction. However, under the Telecommunications Act of 1996, the Federal government is supporting Internet access from public libraries and schools through fees collected under regulations issued by the Federal Communications Commission. Likewise, many States have programs supporting Internet access from public libraries.

Comment: Has it been determined that such Internet access is Y2K compliant? If not, when will Y2K compliance be determined?

Response: NRC has no jurisdiction over Internet access at any of its current LPDR library facilities, including whether or not such access is Y2K compliant.

4. Lynn Connor, Portland, Oregon, Dated June 15, 1999

Comment: I believe it is impossible to provide any meaningful comment on a system that is not yet operational and for which there is very little public information available on how it will work.

Response: NRC acknowledges this comment and believes that sufficient information has been provided regarding the planned operation of the new system.

5. Sarah M. Fields, Moab, Utah, Dated June 21, 1999

Comment: The NRC should maintain at least one LPDR in each state that currently has an LPDR.

Response: Of the 73 LPDRs that have microfiche, 54 have agreed to keep their collections and the remaining 19 will be transferred to the GPO Federal Depository Library Program, assuring the continuation of at least one LPDR collection in each of the states which now has one. The libraries that currently house the collections to be relocated will receive the final shipments of microfiche from the current document management system, making the collections complete before any transfers. The LPDRs that have opted to keep their collections have been asked to contact the GPO first before making any disposition decisions if they change their mind and no longer wish to maintain their collections.

Comment: The NRC should facilitate the transfer of the LPDR collection from

any LPDR which does not wish to keep its collection to an appropriate library near the site of uranium mills which have operated under license to the AEC and/or the NRC.

Response: See response to previous comment.

Comment: The NRC should establish a priority list for the transfer of LPDR collections to mill site areas. First on the list should be the Grants and Gallup areas of New Mexico, Wyoming, and southeastern Utah.

Response: The first priority that NRC established was to allow current LPDR libraries to keep the collections they now have. The next priority was to transfer any microfiche collections that LPDR libraries did not elect to keep to the GPO for placement in their Federal Depository Library Program (FDLP) in, at minimum, each of the states which now has an LPDR microfiche collection. The NRC currently maintains an LPDR in the Grants and Gallup areas of New Mexico, located at the Dine College, Crownepoint, New Mexico. An LPDR also exits in the state of Utah at the Marriott Library, University of Utah, Salt Lake City. Both of those libraries have elected to keep their collections. There is not currently an LPDR in the state of Wyoming.

The change will not lessen the public's accessibility to NRC information, except to those few who, because of their close proximity, have had convenient access to the PDR and LPDRs prior to relocation of an LPDR. Overall, public access to the NRC Web site via the Internet will provide direct access to a much broader range of the public than just those few for whom they were conveniently located before the move. The public can now use any access to the Internet to access NRC publicly available documents, whether it be from a public, college, or university library, their place of business, or their home using their own personal computer.

6. Nuclear Energy Institute (NEI), Dated June 21, 1999

Comment: NEI commends the NRC on its initiative to make its records available electronically. The availability of NRC records via an electronic format will provide broader, more timely access of this information to all of the NRC's stakeholders. Furthermore, the cost savings that will be realized through the elimination of the Local Public Document Room (LPDRs) will be beneficial to all stakeholders.

Response: NRC considers this comment supportive of the rule and it requires no further response.

7. Licensing Support Services, Dated June 18, 1999

Comment: It is prudent to try out a new system first, to debut it and verify that it can accomplish what is intended, before abandoning the tried-and-true method it is to replace.

Response: The NRC's current document management system, NUDOCS, was not Y2K compliant. A decision had to be made whether to expend funds to keep that system operating after ADAMS. The NRC determined that it was not economically feasible to keep NUDOCS operational.

Comment: The likelihood of a delay in implementing ADAMS, combined with the end of support for LPDRs at the beginning of FY00, makes it very likely that public access to information will be interrupted for a time.

Response: ADAMS should begin providing public access to documents effective October 1999. Public access to information is not expected to be interrupted. As previously described, most of the current LPDRs that have microfiche have agreed to keep their collections and the remaining ones will be transferred to the GPO Federal Depository Library Program. Should ADAMS implementation be delayed, NRC would continue with the current process until the new system is in place.

Comment: LSS is concerned that the volume of material, and the practical needs of preparing it for web availability, will make it difficult or impossible to fulfill the promise made in the proposed rule.

Response: Currently, documents to be posted to the Web site have to first be coded in hypertext markup language. This process can take several days. However, ADAMS is not currently being used for the posting of documents to the web. ADAMS does not require coding to post to the Web and, when it becomes operational, the only delays in release will be those which the NRC staff purposely establishes to preclude premature releases to the public.

8. Unsigned and Undated, Received June 24, 1999

Comment: The commenter provides various comments regarding concerns or dissatisfaction with the current status of public accessibility to records and interest in expansion of the current LPDR system.

Response: The proposed rule announced the change in the way the NRC will provide publicly available information. The change will not lessen the accessibility to NRC information, except perhaps in a few instances where LPDRs relocate, thereby making access to those records less accessible to those for whom they were conveniently located before the move. Overall, public access to the NRC Web site via the Internet will provide direct access to a much broader range of the public than just to those few who, because of their close proximity, have had convenient access to the PDR and LPDRs. The public can now use any access to the Internet to access NRC publicly available documents, whether it be from a public, college, or university library, their place of business, or their home using their own personal computer. These changes to NRC regulations only affect the way records are made available to the public by formally discontinuing the LPDR program and making the Web the main avenue for public access. No other changes have been made or addressed.

Comment: Has NRC done an assessment of the use of the LPDRs and how do members of the public feel about NRC's plans?

Response: Over the years, NRC has received quarterly reports of public usage of the LPDRs and found use at many of them to be minimal. Based on the limited number of comments in response to the proposed rule and other miscellaneous responses in direct conversations with LPDR librarians, the current PDR and LPDR users welcome the new system which promises to provide much broader and easier access than currently available.

Comment: Should users be forced to pay a fee to access NRC documents?

Response: Libraries do not charge their patrons to view on the Internet, but as with paper copies, charges may be made for printing. Users now pay fees for copies of documents whether they obtain them from the PDR or the LPDR. Under ADAMS, many users will be able to obtain documents at no cost via their home computers by downloading to a disk or printing a document. However, just as they do now, the public can still order documents from the PDR for a fee.

Comment: The NRC needs a customer feedback process to ensure that public's comments are obtained and acted upon during the transition period.

Response: NRC is very much aware of the need for public feedback to resolve problems that are certain to be encountered in this major transition. The PDR will continue to serve as the public interface to assist the public in obtaining timely and full access to NRC's publicly available information and the ADAMS Web site will provide information and a means for the public to ask questions and provide comments.

Comment: Will NRC fund and maintain and upgrade the computer terminals, software, and printers in LPDRs?

Response: No. The NRC is discontinuing its LPDR program and will no longer be funding libraries that keep those collections.

Comment: If NRC is replacing the LPDR with the Internet why can't those records made available through NTIS also be made available through the Internet?

Response: Records made available through NTIS will be available through the Internet in ADAMS.

Comment: Shouldn't NRC build a relational information system such that a member of the public can locate all NRC and licensee information, including upcoming meetings about a specific licensee?

Response: The PDR staff has been assigned primary responsibility for the design of the organizational scheme for ADAMS to ensure that the transition from the current systems (BRS and NUDOCS) for locating documents to ADAMS will be as easy as possible for the public.

9. Winston & Strawn, Dated June 23, 1999

Comment: Given the magnitude and volume of official record material created and received by the Agency, we urge that a similar organizational scheme be adopted for the ADAMS to help facilitate the public access to documents by docket number, reference group, or subject area.

Response: See the previous response.

Comment: We recommend that the ADAMS or the PDR accommodate the public availability of records that are not suitable for electronic dissemination (e.g. video tapes, audio tapes, etc.).

Response: The NRC will accommodate the public availability of records that are not suitable for electronic dissemination.

Comment: Will imaged records in the ADAMS include the official NRC watermark and signature?

Response: The electronic copy of documents in ADAMS will show a signature (and watermark if it is present and visible enough to be imaged) just as is currently available in the microfiche and photocopies of paper records.

Comment: We believe that all NUREGs should be available on ADAMS.

Response: All publicly available NUREGs published after the implementation of ADAMS will be available in ADAMS. NUREGs published before the implementation of ADAMS may be placed in ADAMS on a selective basis.

Comment: The NRC should implement controls to ensure that the document processing contractor is properly qualified to classify "externally generated" documents.

Response: The NRC document processing contractor is the same contractor that processed documents under the NUDOCS system and will be qualified to classify those documents it processes under ADAMS. The document processing contractor determines the public availability of documents only for certain documents using pre-determined criteria. All others are made publicly available by staff review of the documents and instructions to the document processing contractor or by the staff processing them directly into ADAMS.

Comment: The NRC should include an advance copy public library in the ADAMS architecture.

Response: There will not be a need for an advance copy public library, since once a document is marked to be released to the public, the release is made. There will not be any backlog of unprocessed documents in this document management system.

10. Gerry C. Slagis, Pleasant Hill, CA, Dated June 23, 1999

Comment: I applaud the use of ADAMS to make NRC official records available to the public. However, I am against the shutting down of the LPDR program beyond Fiscal Year 1999. The problem is public access to the NRC official records prior to ADAMS. A person needs to be able to view the documents before copying certain pages or ordering the entire document.

Response: Although the NRC is going to discontinue the LPDR program at the end of September 1999, documents issued prior to ADAMS implementation will still be accessible to the public. Documents published or issued before the implementation of ADAMS, will not routinely be placed into the ADAMS system. However, these documents can be identified from the legacy systems (BRS and NUDOCS) indexes available online in the ADAMS Electronic Reading Room and ordered from the PDR; or, if convenient, can be accessed on the microfiche at one of the libraries that has retained the LPDR record collection. Most of the LPDRs are keeping their microfiche collections. Therefore, most of the public who have access to an LPDR now will continue to have access after ADAMS is operational. Those libraries and their locations will be identified on the NRC Web site.

Because records will be released electronically to the public rather than in paper or microfiche, this rule amends the regulations in 10 CFR Parts 1, 2, 7, 9, 50, 51, 52, 60, 62, 72, 75, 76, 100, and 110 to reflect the manner in which these records would be made publicly available.

To reflect the discontinuance of NRC support of libraries serving as LPDRs, references to NRC LPDRs will be deleted in 10 CFR 2.1231(a)(1)(ii), and (b); 9.35 (b) and (e); 50.30(a)(5); part 50 Appendix Q, section 4; 51.120; part 52, Appendix O, section 5; part 52, Appendix Q, section 4, and 76.37(a).

In addition, several other minor conforming changes will be made. The definition of the PDR in 10 CFR 2.4, 60.2, and 110.2 is now in a new paragraph and will be revised to reflect that records newly created or received since the implementation of ADAMS that are publicly available are now available in the PDR in electronic form for inspection and copying, and that copies can be ordered from the PDR. A new paragraph will define the NRC Web site as the Internet location where NRC records are made available for public inspection and copying and that the public can also order copies of documents from the PDR through the NRC Web site.

Section 9.2(a) will be revised to delete the reference to the availability of records on 48x microfiche through the National Technical Information Service (NTIS). When NRC begins making its records available from the NRC Web site, microfiche copies will no longer be produced. The address for the NTIS and a statement that certain listed documents can be ordered from the NTIS will be added to 9.21(a). Section 9.21(d) will be deleted because the publication Title List of Documents Made Publicly Available, NUREG–0540, will no longer be published. Section 9.21(e) will be revised to show that only the published versions of final opinions and orders, referred to in 9.2(c)(1), are available from the NTIS in the publication, Nuclear Regulatory Issuances (NUREG–0750). The reference to interpretations in 9.21(c)(2) will be deleted because they are not available from NTIS.

Section 9.23(a)(2) will be deleted because it repeats information included in the revised 9.21(a). Section 51.123(a) and (b) will be revised to reflect the correct address where requests for draft environmental impact statements and draft findings of no significant hazard can be submitted.

Changes are made in several sections to reflect the correct name of the NRC

PDR. In addition, several misspelling corrections are made.

National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or is otherwise impractical. There are no industry consensus standards that apply to the electronic availability of public records. Thus, the provisions of the Act do not apply to this rulemaking.

Environmental Impact—Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1) and (2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0043, 3150–0011, 3150–0021, 3150–0151, 3150–0127, 3150–0143, 3150–0132, 3150–0055, 3150–0093, and 3150–0036.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

This final rule implements a new NRC procedure for making records available for public inspection and copying. This rule does not have any adverse economic impact on any class of licensee or the NRC. To the contrary, the final rule with its new provisions allowing Internet access from homes, offices, schools, and public libraries to NRC publicly released records provides some new and additional benefits to those seeking access to NRC records. A survey of the facilities where LPDRs are currently located revealed that all but six now provide, or will provide, Internet access to its patrons by the end of 1999. Additionally, although NRC plans to discontinue the LPDR program, it has offered each of the current LPDR libraries the opportunity to keep their current LPDR document collections so the pre-ADAMS LPDR collections can continue to be available in the local communities. Of the 86 current LPDRs, 64 have expressed an interest in maintaining their current LPDR document collections after the LPDR program is discontinued. This constitutes the regulatory analysis for this rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact upon a substantial number of small entities. The final rule implements a new procedure for making records available to the public. The NRC believes that the changes will not have an adverse economic impact on any class of licensee, including small entities, or the general public. On the contrary, the NRC believes that the final rule provides wider opportunities and make it easier for interested persons to obtain or review publicly available NRC records.

Backfit Analysis

The NRC has determined that the backfit rule does not apply to this final rule; and therefore, a backfit analysis is not required for this final rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR chapter I.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects in 10 CFR

10 CFR Part 1

Organization and functions (Government agencies).

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 7

Advisory committees, Sunshine Act.

10 CFR Part 9

Criminal penalties, Freedom of Information, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and records.

10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site review, Emergency planning, Fees, Inspection, Limited work authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

10 CFR Part 60

Criminal penalties, High-level waste, Nuclear power plants and reactors, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 62

Administrative practice and procedure, Denial of access, Emergency access to low-level waste disposal, Low-level radioactive waste, Low-level radioactive treatment and disposal, Low-level waste policy amendments act of 1985, Nuclear materials, Reporting and recordkeeping requirements.

10 CFR Part 72

Manpower training programs, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 75

Criminal penalties, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 76

Certification, Criminal penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Special nuclear material, Uranium enrichment by gaseous diffusion.

10 CFR Part 100

Nuclear power plants and reactors, Reactor siting criteria.

10 CFR Part 110

Administrative practice and procedure, Classified Information, Criminal penalties, Export, Import, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Parts 1, 2, 7, 9, 50, 51, 52, 60, 62, 72, 75, 76, 100 and 110.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION:

1. The authority citation for Part 1 continues to read as follows:

Authority: Secs. 23, 161, 68 Stat. 925, 948, as amended (42 U.S.C. 2033, 2201); sec. 29, Pub. L. 85–256, 71 Stat. 579, Pub. L. 95–209,91 Stat. 1483 (42 U.S.C. 2039); sec. 191, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); secs. 201, 203, 204, 205, 209, 88 Stat. 1242, 1244, 1245, 1246, 1248, as amended (42 U.S.C. 5841, 5843, 5844, 5845, 5849); 5 U.S.C. 552, 553; Reorganization Plan No. 1 of 1980, 45 FR 40561, June 16, 1980.

2. In § 1.3, paragraph (a) is revised to read as follows:

§ 1.3 Sources of additional information.

(a) A statement of the NRC's organization, policies, procedures, assignments of responsibility, and delegations of authority is in the Nuclear Regulatory Commission Management Directives System and other NRC issuances, including local directives issued by Regional Offices. Letters and memoranda containing directives, delegations of authority and the like are also issued from time to time and may not yet be incorporated into the Management Directives System, parts of which are revised as necessary. Copies of the Management Directives System and other delegations of authority are available for public inspection and copying for a fee at the NRC Public Document Room, 2120 L Street, NW., Washington, D.C., and at each of NRC's Regional Offices. Information may also be obtained from the Office of Public Affairs or from Public Affairs Officers at the Regional Offices. In addition, NRC Functional Organization Charts, NUREG–0325, contains detailed descriptions of the functional responsibilities of NRC's offices. It is revised annually and is available for public inspection at the NRC Web site, http://www.nrc.gov, and/or at the NRC Public Document Room, or for purchase from the Superintendent of Documents, US Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082; and from the National Technical Information Service, Springfield, VA 22161.

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PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

3. The authority citation for Part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10143(f)). sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C.2201(b), (i), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155,10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

4. Section 2.4 is amended by adding the definition of *NRC Public Document Room and NRC Web site* to read as follows:

§ 2.4 Definitions.

* * * * *

NRC Public Document Room means the facility at 2120 L Street, NW, Washington, DC where certain public records of the NRC that were made available for public inspection in paper or microfiche prior to the implementation of the NRC Agencywide Documents Access and Management System, commonly referred to as ADAMS, will remain available for public inspection. It is also the place where NRC makes computer terminals available to access the Electronic Reading Room component of ADAMS on the NRC Web site, http://www.nrc.gov, and where copies can be made or ordered as set forth in § 9.35 of this chapter. The facility is staffed with reference librarians to assist the public in identifying and locating documents and in using the NRC Web site and ADAMS. The NRC Public Document Room is open from 7:45 am to 4:15 pm, Monday through Friday, except on Federal holidays. Reference service and access to documents may also be requested by telephone (202–634–3273 or 800–397–4209) between 8:30 am and 4:15 pm, or by e-mail (*PDR@nrc.gov*), fax (202–634–3343), or letter (NRC Public Document Room, LL–6, Washington, D.C. 20555–0001).

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NRC Web site, http://www.nrc.gov, is the Internet uniform resource locator name for the Internet address of the Web site where NRC will ordinarily make available its public records for inspection.

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5. In § 2.101, paragraph (a)(2) is revised to read as follows:

§ 2.101 Filing of application

(a) * * *

(2) Each application for a license for a facility or for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee will be assigned a docket number. However, to allow a determination as to whether an application for a construction permit or operating license for a production or utilization facility is complete and acceptable for docketing, it will be initially treated as a tendered

application. A copy of the tendered application will be available for public inspection at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room. Generally, the determination on acceptability for docketing will be made within a period of thirty (30) days. However, in selected construction permit applications, the Commission may decide to determine acceptability on the basis of the technical adequacy of the application as well as its completeness. In these cases, the Commission, pursuant to § 2.104(a), will direct that the notice of hearing be issued as soon as practicable after the application has been tendered, and the determination of acceptability will be made generally within a period of sixty (60) days. For docketing and other requirements for applications pursuant to part 61 of this chapter, see paragraph (g) of this section.

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6. In § 2.110, paragraph (c) is revised to read as follows:

§ 2.110 Filing and administrative action on submittals for design review or early review of sitesuitability issues.

* * * * *

(c) Upon completion of review by the NRC staff and the ACRS of a submittal of the type described in paragraph (a)(1) of this section, the Director of the Office of Nuclear Reactor Regulation shall publish in the **Federal Register** a determination as to whether or not the design is acceptable, subject to conditions as may be appropriate, and shall make available at the NRC Web site, *http://www.nrc.gov*, a report that analyzes the design.

7. In § 2.206, paragraph (a) is revised to read as follows:

§ 2.206 Requests for action under this subpart.

(a) Any person may file a request to institute a proceeding pursuant to § 2.202 to modify, suspend, or revoke a license, or for any other action as may be proper. Requests must be addressed to the Executive Director for Operations and must be filed either by delivery to the NRC Public Document Room at 2120 L Street, NW, Washington, DC, or by mail or telegram addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The request must specify the action requested and set forth the facts that constitute the basis for the request. The Executive Director for Operations will refer the request to the Director of the NRC office with responsibility for the subject matter of the request for appropriate action in accordance with paragraph (b) of this section.

* * * * *

8. In § 2.701, paragraph (a)(1) is revised to read as follows:

§ 2.701 Filing of documents.

(a) * * *

(1) By delivery to the NRC Public Document Room at 2120 L Street, NW., Washington, DC, or

* * * * *

9. In § 2.740, paragraph (b) (1) is revised to read as follows:

§ 2.740 General provisions governing discovery.

* * * * *

(b) * * *

(1) *In general.* Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. When any book, document or other tangible thing sought is reasonably available from another source, such as at the NRC Web site, *http://www.nrc.gov*, and/or the NRC Public Document Room, sufficient response to an interrogatory involving such materials would be the location, the title and a page reference to the relevant book, document or tangible thing. In a proceeding on an application for a construction permit or an operating license for a production or utilization facility, discovery begins only after the prehearing conference provided for in § 2.751a and relates only to those matters in controversy which have been identified by the Commission or the presiding officer in the prehearing order entered at the conclusion of that prehearing conference. In such a proceeding, no discovery may take place after the beginning of the prehearing conference held pursuant to § 2.752 except upon leave of the presiding officer upon good cause shown. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

* * * * *

10. In § 2.750, paragraph (a) is revised to read as follows:

§ 2.750 Official reporter; transcript.

(a) A hearing will be reported under the supervision of the presiding officer, stenographically or by other means, by an official reporter who may be designated by the Commission or may be a regular employee of the Commission. The transcript prepared by the reporter is the sole official transcript of the proceeding. Except as limited pursuant to Sec. 181 of the Act or order of the Commission, the transcript will be available for inspection at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room. Copies of transcripts are available to parties and to the public from the official reporter on payment of the specified charges.

* * * * *

11. In § 2.790, the introductory text of paragraph (a) and paragraph (c) are revised to read as follows:

§ 2.790 Public inspections, exemptions, requests for withholding.

(a) Subject to the provisions of paragraphs (b), (d), and (e) of this section, final NRC records and documents, including but not limited to correspondence to and from the NRC regarding the issuance, denial, amendment, transfer, renewal, modification, suspension, revocation, or violation of a license, permit, or order, or regarding a rulemaking proceeding subject to this part shall not, in the absence of a compelling reason for nondisclosure after a balancing of the interests of the person or agency urging nondisclosure and the public interest in disclosure, be exempt from disclosure and will be made available for inspection and copying at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room, except for matters that are:

* * * * *

(c) If a request for withholding pursuant to paragraph (b) of this section is denied, the Commission will notify an applicant for withholding of the denial with a statement of reasons. The notice of denial will specify a time, not less than thirty (30) days after the date of the notice, when the document will be available at the NRC Web site, *http://www.nrc.gov*. If, within the time specified in the notice, the applicant requests withdrawal of the document, the document will not be available at the NRC Web site, *http://www.nrc.gov*, and will be returned to the applicant: Provided, that information submitted in a rule making proceeding which subsequently forms the basis for the final rule will not be withheld from public disclosure by the Commission and will not be returned to the applicant after denial of any application for withholding submitted in connection with that information. If a request for withholding pursuant to paragraph (b) of this section is granted, the Commission will notify the applicant of its determination to withhold the information from public disclosure.

* * * * *

12. In § 2.802, paragraphs (e) and (g) are revised to read as follows:

§ 2.802 Petition for rulemaking.

* * * * *

(e) If it is determined that the petition includes the information required by paragraph (c) of this section and is complete, the Director, Division of Administrative Services, Office of Administration, or designee, will assign a docket number to the petition, will cause the petition to be formally docketed, and will make a copy of the docketed petition available at the NRC Web site, *http://www.nrc.gov*. Public comment may be requested by publication of a notice of the docketing of the petition in the **Federal Register**, or, in appropriate cases, may be invited for the first time upon publication in the **Federal Register** of a proposed rule developed in response to the petition. Publication will be limited by the requirements of Section 181 of the Atomic Energy Act of 1954, as amended, and may be limited by order of the Commission.

* * * * *

(g) The Director, Division of Administrative Services, Office of Administration, will prepare on a semiannual basis a summary of petitions for rulemaking before the Commission, including the status of each petition. A copy of the report will be available for public inspection and copying at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room.

13. In § 2.804, paragraph (b)(2) is revised to read as follows:

§ 2.804 Notice of proposed rulemaking.

* * * * *

(b) * * *

(2) The manner and time within which interested members of the public may comment, and a statement that copies of comments may be examined will be made available at the NRC Web site, http://www.nrc.gov;

* * * * *

14. In § 2.809, paragraph (a) is revised to read as follows:

§ 2.809 Participation by the Advisory Committee on Reactor Safeguards.

(a) In its advisory capacity to the Commission, the ACRS may recommend that the Commission initiate rulemaking in a particular area. The Commission will respond to such rulemaking recommendation in writing within 90 days, noting its intent to implement, study, or defer action on the recommendation. In the event the Commission decides not to accept or decides to defer action on the recommendation, it will give its reasons for doing so. Both the ACRS recommendation and the Commission's response will be made available at the NRC Web site, *http://www.nrc.gov*, following transmittal of the Commission's response to the ACRS.

* * * * *

15. In § 2.1007, paragraph (a)(3) is removed and reserved and paragraph (a)(2) is revised to read as follows:

§ 2.1007 Access.

(a) * * *

(2) A system to provide electronic access to the Licensing Support Network shall be provided at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room beginning in the pre-license application phase.

* * * * *

16. In § 2.1231, paragraphs (a)(1)(ii), (a)(2), and (b) are revised to read as follows:

§ 2.1231 Hearing file; prohibition on discovery.

(a) * * *

(1) * * *

(ii) Making the file available at the NRC Web site, *http://www.nrc.gov*.

(2) The hearing file also must be made available for public inspection and copying at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room.

(b) The hearing file will consist of the application and any amendment thereto, any NRC environmental impact statement or assessment relating to the application, and any NRC report and any correspondence between the applicant and the NRC that is relevant to the application. Hearing file documents already available at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room when the hearing request is granted may be incorporated into the hearing file at those locations by a reference indicating where at those locations the documents can be found. The presiding officer shall rule upon any issue regarding the appropriate materials for the hearing file.

* * * * *

17. In § 2.1301, paragraphs (a) and (c) are revised to read as follows:

§ 2.1301 Public notice of receipt of a license transfer application.

(a) The Commission will notice the receipt of each application for direct or indirect transfer of a specific NRC license by placing a copy of the application at the NRC Web site, *http://www.nrc.gov*.

* * * * *

(c) Periodic lists of applications received may be obtained upon request addressed to the NRC Public Document Room, US Nuclear Regulatory Commission, Washington, DC 20555–0001.

18. In § 2.1303, the section heading and the introductory text are revised to read as follows:

§ 2.1303 Availability of documents.

Unless exempt from disclosure under part 9 of this chapter, the following documents pertaining to each application for a license transfer requiring Commission approval will be placed at the NRC Web site, *http://www.nrc.gov*, when available:

* * * * *

19. In § 2.1306, paragraph (c)(2) is revised to read as follows:

§ 2.1306 Hearing request or intervention petition.

* * * * *

(c) * * *

(2) 45 days after notice of receipt is placed at the NRC Web site, *http://www.nrc.gov*, for all other applications; or

* * * * *

20. In § 2.1330, paragraph (b) is revised to read as follows:

§ 2.1330 Reporter and transcript for an oral hearing.

* * * * *

(b) Except for any portions that must be protected from disclosure in accordance with law and policy as reflected in 10 CFR 2.790, transcripts will be placed at the NRC Web site, *http://www.nrc.gov*, and copies may be purchased from the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

* * * * *

PART 7—ADVISORY COMMITTEES

21. The authority citation for Part 7 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 92–463, 86 Stat. 770 (5 U.S.C. App.).

22. In § 7.10, paragraph (b)(6) is revised to read as follows:

§ 7.10 The NRC Advisory Committee Management Officer.

* * * * *

(b) * * *

(6) Ensure that, subject to the Freedom of Information Act and NRC's

Freedom of Information Act regulations at 10 CFR part 9, subpart A, copies of the records, reports, transcript minutes, appendices, working papers, drafts, studies, agenda, or other documents that were made available to or prepared for or by each NRC advisory committee are available for public inspection and copying at the NRC Web site *http://www.nrc.gov*, and/or at the NRC Public Document Room, until the advisory committee ceases to exist.

* * * * *

23. In § 7.11, paragraph (d)(5) is revised to read as follows:

§ 7.11 The Designated Federal Officer.

* * * * *

(d) * * *

(5) Make copies of committee documents required to be maintained for public inspection and copying pursuant to § 7.14(b) available at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room.

24. Section 7.14 is revised to read as follows:

§ 7.14 Public information on advisory committees.

(a) The Nuclear Regulatory Commission shall maintain systematic information on the nature, functions, and operations of each NRC advisory committee. A complete set of the charters of NRC advisory committees and copies of the annual reports required by § 7.17(a) will be maintained for public inspection at either the NRC Web site, *http://www.nrc.gov;* and/or at the NRC Public Document Room.

(b) Subject to the provisions of the Freedom of Information Act (5 U.S.C. 552) and NRC's Freedom of Information Act regulations at 10 CFR part 9, subpart A, copies of NRC advisory committees' records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda, and other documents shall be maintained for public inspection and copying at the NRC Web site, *http://www.nrc.gov;* and/or at the NRC Public Document Room.

25. In § 7.17, paragraphs (a) and (b) are revised to read as follows:

§ 7.17 Reports required for advisory committees.

(a) The Commission shall furnish a report on the activities of NRC advisory committees annually to the Administrator and the GSA Secretariat on a fiscal year basis. The report must contain information regarding NRC advisory committees required by Section 6(c) of the Act for the President's annual report to the Congress and be consistent with instructions provided by the GSA Secretariat. A copy of the report is made available at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room.

(b) Any NRC advisory committee holding closed meetings shall issue a report, at least annually, setting forth a summary of its activities consistent with the policy of the Government in the Sunshine Act (5 U.S.C. 552b), as implemented by 10 CFR 9.104. A copy of the report is made available at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room.

* * * * *

PART 9—PUBLIC RECORDS

26. The authority citation for Part 9 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); Sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Subpart A is also issued under 5 U.S.C. 552; 31 U.S.C. 9701; Pub. L. 99–570. Subpart B is also issued under 5 U.S.C. 552a. Subpart C is also issued under 5 U.S.C. 552b.

27. Section 9.21 is revised to read as follows:

§ 9.21 Publicly available records.

(a) Single copies of NRC publications in the NUREG series, NRC Regulatory Guides, and Standard Review Plans can be ordered from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia, 22161.

(b) For the convenience of persons who may wish to inspect without charge, or purchase copies of a record or a limited category of records for a fee, publicly available records of the NRC's activities described in paragraph (c) of this section are also made available at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room located at 2120 L Street, NW., Washington, DC, open between 7:45 am and 4:15 pm on Monday through Friday, except Federal holidays.

(c) The following records of NRC activities are available for public inspection and copying:

(1) Final opinions including concurring and dissenting opinions as well as orders of the NRC issued as a result of adjudication of cases;

(2) Statements of policy and interpretations that have been adopted by the NRC and have not been published in the **Federal Register**;

(3) Nuclear Regulatory Commission rules and regulations;

(4) Nuclear Regulatory Commission Manuals and instructions to NRC personnel that affect any member of the public;

(5) Copies of records that have been released to a person under the Freedom of Information Act that, because of the nature of their subject matter, the NRC determines have become or are likely to become the subject of subsequent requests for substantially the same records.

(6) A general index of the records released under the FOIA.

(d) The published versions of the records made publicly available under paragraph (c)(1) of this section are available under the title, Nuclear Regulatory Issuances, NUREG–0750, for purchase through the National Technical Information Service.

28. In § 9.23, paragraph (a)(2) is removed and reserved and paragraphs (a)(1), (c), (d)(2), and (e) are revised to read as follows:

§ 9.23 Requests for records.

(a)(1) A person may request access to records routinely made available by the NRC under § 9.21 in person or by telephone, e-mail, fax, or US mail from the NRC Public Document Room, 2120 L Street, NW, Washington, DC 20555–0001.

(i) Each record requested must be described in sufficient detail to enable the NRC Public Document Room staff to locate the record.

(ii) In order to obtain copies of records expeditiously, a person may open an account at the NRC Public Document Room with the private contracting firm that is responsible for duplicating NRC records.

* * * * *

(c) If a requested agency record that has been reasonably described is located at a place other than at the NRC Web site, *http://www.nrc.gov*, the NRC Public Document Room, or the NRC headquarters, the NRC may, at its discretion, make the record available for inspection and copying at either of the locations.

(d) * * *

(2) If the requested record has been placed on the NRC Internet Web site, under § 9.21, the NRC may inform the requester that the record is available at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room, and that the record may be obtained in accordance with the procedures set forth in paragraph (a) of this section.

(e) The Freedom of Information Act and Privacy Act Officer will promptly forward a Freedom of Information Act request made under paragraph (b) of this section for an agency record to the head of the office(s) primarily concerned with the records requested, as appropriate. The responsible office will conduct a search for the agency records responsive to the request and compile those agency records to be reviewed for initial disclosure determination and/or identify those that have already been made publicly available at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room.

29. In 9.35, paragraph (e) is removed, paragraphs (a)(2), (a)(5) and the introductory text of paragraph (b) are revised to read as follows:

§ 9.35 Duplication fees.

(a) * * *

(2) Self-service duplicating machines are available at the NRC Public Document Room for the use of the public. Paper to paper copy is $0.08 per page. Microfiche to paper is $0.10 per page on the reader printers.

* * * * *

(5) Any change in the costs specified in this section will become effective immediately pending completion of the final rulemaking that amends this section to reflect the new charges. The Commission will post the charges that will be in effect for the interim period at the NRC Public Document Room. The Commission will publish a final rule in the **Federal Register** that includes the new charges within 15 working days from the beginning of the interim period.

(b) The NRC will assess the following charges for copies of records to be duplicated by the NRC at locations other than the NRC Public Document Room located in Washington, DC:

* * * * *

30. In § 9.45 paragraph (b) is revised to read as follows:

§ 9.45 Annual reports to the Attorney General of the United States.

* * * * *

(b) The NRC will make a copy of the most recent report available to the public at the NRC Web site, *http://www.nrc.gov*.

31. In § 9.105, paragraph (b) is revised to read as follows:

§ 9.105 Commission procedures.

* * * * *

(b) Within one day of any vote taken pursuant to paragraph (a) of this section, § 9.106(a), or § 9.108(c), the Secretary shall make publicly available at the NRC Web site, *http://www.nrc.gov*, a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the Secretary shall, within one day of the vote taken pursuant to paragraph (a) of this section or § 9.106(a), make publicly available at the NRC Web site, *http://www.nrc.gov*, a full written explanation of its action closing the portion together with a list of all persons expected to attend the meeting and their affiliation.

* * * * *

32. In § 9.107, paragraph (d)(1) is revised to read as follows:

§ 9.107 Public announcement of Commission meetings.

* * * * *

(d) * * *

(1) Publicly posting a copy of the document at the NRC Web site, http://www.nrc.gov,; and, to the extent appropriate under the circumstances;

* * * * *

33. In § 9.108, paragraph (b) is revised to read as follows:

§ 9.108 Certification, transcripts, recordings and minutes.

* * * * *

(b) The Commission shall make promptly available to the public at the NRC Web site, *http://www.nrc.gov*, the transcript, electronic recording, or minutes (as required by paragraph (a) of this section) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the Commission determines pursuant to paragraph (c) of this section to contain information which may be withheld under § 9.104 or § 9.105(c). Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person upon payment of the actual cost of duplication or transcription as provided in § 9.14. The Secretary shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any Commission proceeding with respect to which the meeting or portion was held, whichever occurs later.

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

34. The authority citation for Part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd) and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55 and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Section 50.33am 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Section 50.37 also issued under E.O. 12829, 3 CFR 1993 Comp., p. 570, E.O. 12958, as amended, 3 CFR 1995 Comp., p. 333, E.O. 12968, 3 CFR 1995 Comp., p. 391). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

35. In § 50.30, paragraph (a)(5) is revised to read as follows:

§ 50.30 Filing of application for licenses; oath or affirmation.

(a) * * *

(5) At the time of filing an application, the Commission will make available at the NRC Web site, *http://www.nrc.gov*, a copy of the application, subsequent amendments, and other records pertinent to the facility for public inspection and copying.

* * * * *

36. In § 50.44, paragraph (c)(3)(iv)(C) is revised to read as follows:

§ 50.44 Standards for combustible gas control system in light-water-cooled power reactors.

* * * * *

(c) * * *

(3) * * *

(iv) * * *

(C) Subsubarticle NE–3220, Division 1, and Subsubarticle CC–3720, Division 2, of Section III of the ASME Boiler and Pressure Vessel Code, referenced in paragraphs (c)(3)(iv)(B)(*1*) and (c)(3)(iv)(B)(*2*) of this section, have been approved for incorporation by reference by the Director of the Office of the **Federal Register**. A notice of any changes made to the material incorporated by reference will be published in the **Federal Register**. Copies of the ASME Boiler and Pressure Vessel Code may be purchased from the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, NY. 10017. It is also available for inspection at the NRC Technical Reference Library,

Two White Flint North, Room 2B9, 11545 Rockville Pike, Rockville, MD.

* * * * *

37. In § 50.66, the introductory text of paragraph (a), paragraph (a)(2), the introductory text of paragraph (f)(2), and paragraph (f)(3) are revised to read as follows:

§ 50.66 Requirements for thermal annealing of the reactor pressure vessel.

(a) For those light water nuclear power reactors where neutron radiation has reduced the fracture toughness of the reactor vessel materials, a thermal annealing may be applied to the reactor vessel to recover the fracture toughness of the material. The use of a thermal annealing treatment is subject to the requirements in this section. A report describing the licensee's plan for conducting the thermal annealing must be submitted in accordance with § 50.4 at least three years prior to the date at which the limiting fracture toughness criteria in § 50.61 or appendix G to part 50 would be exceeded. Within three years of the submittal of the Thermal Annealing Report and at least thirty days prior to the start of the thermal annealing, the NRC will review the Thermal Annealing Report and make available the results of its evaluation at the NRC Web site, *http://www.nrc.gov*. The licensee may begin the thermal anneal after:

* * * * *

(2) The NRC makes available the results of its evaluation of the Thermal Annealing Report at the NRC Web site, *http://www.nrc.gov;* and

* * * * *

(f) * * *

(2) Within 15 days after the NRC's receipt of the licensee submissions required by paragraphs (c)(1), (c)(2) and (c)(3)(i) through (iii) of this section, the NRC staff shall make available at the NRC Web site, *http://www.nrc.gov*, a summary of its inspection of the licensee's thermal annealing, and the Commission shall hold a public meeting:

* * * * *

(3) Within 45 days of NRC's receipt of the licensee submissions required by paragraphs (c)(1), (c)(2) and (c)(3)(i) through (iii) of this section, the NRC staff shall complete full documentation of its inspection of the licensee's annealing process and make available this documentation at the NRC Web site, *http://www.nrc.gov*.

38. In Appendix O to Part 50, paragraph 5 is revised to read as follows:

Appendix O to Part 50—Standardization of Design; Staff Review of Standard Designs

* * * * *

5. Upon completion of their review of a submittal under this appendix, the NRC regulatory staff shall publish in the **Federal Register** a determination as to whether or not the preliminary or final design is acceptable, subject to such conditions as may be appropriate, and make available at the NRC Web site, *http://www.nrc.gov*, an analysis of the design in the form of a report. An approved design shall be utilized by and relied upon by the regulatory staff and the ACRS in their review of any individual facility license application which incorporates by reference a design approved in accordance with this paragraph unless there exists significant new information which substantially affects the earlier determination or other good cause.

* * * * *

39. In Appendix Q to Part 50, paragraph 4 is revised to read as follows:

Appendix Q to Part 50—Pre-application Early Review of Site Suitability Issues

* * * * *

4. Upon completion of review by the NRC staff and, if appropriate by the ACRS, of a submittal under this appendix, the NRC staff shall prepare a Staff Site Report which shall identify the location of the site, state the site suitability issues reviewed, explain the nature and scope of the review, state the conclusions of the staff regarding the issues reviewed and state the reasons for those conclusions. Upon issuance of an NRC Staff Site Report, the NRC staff shall publish a notice of the availability of the report in the **Federal Register** and shall make the report available at the NRC Web site, *http://www.nrc.gov*. The NRC staff shall also send a copy of the report to the Governor or other appropriate official of the State in which the site is located, and to the chief executive of the municipality in which the site is located or, if the site is not located in a municipality, to the chief executive of the county.

* * * * *

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

40. The authority citation for Part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953, (42 U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended 1244 (42 U.S.C. 5841, 5842). Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–954, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L.95–604, Title II, 92 Stat. 3033–3041; and sec. 193, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80, and 51.97 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100-203, 101 Stat. 1330–223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec. 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act of 1982, sec. 114(f) 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

41. In § 51.62, paragraph (a) is revised to read as follows:

§ 51.62 Environmental report—land disposal of radioactive waste licensed under 10 CFR part 61.

(a) Each applicant for issuance of a license for land disposal of radioactive waste pursuant to part 61 of this chapter shall submit with its application to the Director of Nuclear Material Safety and Safeguards the number of copies, as specified in § 51.66 of a separate document, entitled "Applicant's Environmental Report—License for Land Disposal of Radioactive Waste." The environmental report and any supplement to the environmental report may incorporate by reference information contained in the application or in any previous application, statement or report filed with the Commission provided that such references are clear and specific and that copies of the information so incorporated are available at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room.

* * * * *

42. Section 51.120 is revised to read as follows:

§ 51.120 Availability of environmental documents for public inspection.

Copies of environmental reports, draft and final environmental impact statements, environmental assessments, and findings of no significant impact, together with any related comments and environmental documents, will be made available at the NRC Web site, http://www.nrc.gov, and/or at the NRC Public Document Room.

43. In § 51.123, paragraph (a) and (b) are revised to read as follows:

§ 51.123 Charges for environmental documents; distribution to public; distribution to governmental agencies.

(a) *Distribution to public.* Upon written request to the Reproduction and Distribution Services Section, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the extent available, single copies of draft environmental impact statements and draft findings of no significant impact will be made available to interested persons without charge. Single copies of final environmental impact statements and final findings of no significant impact will also be provided without charge to the persons listed in §§ 51.93(a) and 51.119(c), respectively. When more than one copy of an environmental impact statement or a finding of no significant impact is requested or when available NRC copies have been exhausted, the requestor will be advised that the NRC will provide copies at the charges specified in § 9.35 of this chapter.

(b) *Distribution to governmental agencies.* Upon written request to the Reproduction and Distribution Services Section, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the extent available, copies of draft and final environmental impact statements and draft final findings of no significant impact will be made available in the number requested to Federal, State and local agencies, Indian tribes, and State, regional and metropolitan clearinghouses. When available NRC copies have been exhausted, the requester will be advised that the NRC will provide copies at the charges specified in § 9.35 of this chapter.

* * * * *

PART 52—EARLY SITE PERMITS; STANDARDS DESIGN CERTIFICATIONS; AND COMBINED LICENSES FOR NUCLEAR POWER PLANTS

44. The authority citation for Part 52 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

45. In Appendix A to Part 52, Section VI, paragraph E.1.b. is revised to read as follows:

Appendix A to Part 52—Design Certification Rule For the U.S. Advanced Boiling Reactor.

* * * * *

VI. Issue Resolution.

* * * * *

E. * * *

1. * * *

b. The reason why the information currently available to the public at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room, is insufficient;

* * * * *

46. In Appendix B to Part 52, Section VI, paragraph E.1.b. is revised to read as follows:

Appendix B to Part 52—Design Certification Rule for the System 80+ Design

* * * * *

VI. Issue Resolution

* * * * *

E. * * *

1. * * *

b. The reason why the information currently available to the public at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room, is insufficient.

* * * * *

47. In Appendix O to Part 52, paragraph 5 is revised to read as follows:

Appendix O to Part 52—Standardization of Design; Staff Review of Standard Designs

* * * * *

5. Upon completion of their review of a submittal under this appendix, the NRC regulatory staff shall publish in the **Federal Register** a determination as to whether or not the preliminary or final design is acceptable, subject to such conditions as may be appropriate, and make available at the NRC Web site, *http://www.nrc.gov*, an analysis of the design in the form of a report. An approved design shall be utilized by and relied upon by the regulatory staff and the ACRS in their review of any individual facility license application which incorporates by reference a design approved in accordance with this paragraph unless there exists significant new information which substantially affects the earlier determination or other good cause.

* * * * *

48. In Appendix Q to Part 52, paragraph 4 is revised to read as follows:

Appendix Q to Part 52—Pre-Application Early Review of Site Suitability Issues.

* * * * *

4. Upon completion of review by the NRC staff and, if appropriate by the ACRS, of a submittal under this appendix, the NRC staff shall prepare a Staff Site Report which shall identify the location of the site, state the site suitability issues reviewed, explain the nature and scope of the review, state the conclusions of the staff regarding the issues reviewed and state the reasons for those conclusions. Upon issuance of an NRC Staff Site Report, the NRC staff shall publish a notice of the availability of the report in the **Federal Register** and shall make available a copy of the report at the NRC Web site, *http://www.nrc.gov*. The NRC staff shall also send a copy of the report to the Governor or other appropriate official of the State in which the site is located, and to the chief executive of the municipality in which the site is located or, if the site is not located in a municipality, to the chief executive of the county.

* * * * *

PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE IN GEOLOGIC REPOSITORIES

49. The authority citation for Part 60 continues to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97–425, 96 Stat. 2213g, 2228, as amended (42 U.S.C. 10134, 10141), and Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851).

50. In § 60.2, the definition of *Public Document Room* is removed and the new definitions of *NRC Public Document Room* and *NRC Web site* are added to read as follows:

§ 60.2 Definitions.

* * * * *

NRC Public Document Room means the facility at 2120 L Street, NW., Washington, DC where certain public records of the NRC that were made available for public inspection in paper or microfiche prior to the implementation of the NRC Agencywide Documents Access and Management System, commonly referred to as ADAMS, will remain available for public inspection. It is also the place where computer terminals are available to access the Electronic Reading Room component of ADAMS on the NRC Web site, *http://www.nrc.gov*, where copies can be made or ordered as set forth in § 9.35 of this chapter. The facility is staffed with reference librarians to assist the public in identifying and locating documents and in using the NRC Web site and ADAMS. The NRC Public Document Room is open from 7:45 am to 4:15 pm, Monday through Friday, except on Federal holidays. Reference service and access to documents may also be requested by telephone (202–634–3273 or 800–397–4209) between 8:30 am and 4:15 pm, or by e-mail (*PDR@nrc.gov*), fax (202–634–3343), or letter (NRC Public Document Room, LL–6, Washington, DC 20555–0001).

NRC Web site, *http://www.nrc.gov* is the Internet uniform resource locator name for the Internet address of the Web site where NRC will ordinarily make available its public records for inspection.

* * * * *

51. In § 60.18, paragraph (f) is revised to read as follows:

§ 60.18 Review of site characterization activities.

* * * * *

(f) The Director shall publish in the **Federal Register** a notice of availability of the site characterization analysis and a request for public comment within a reasonable period, as specified (not less than 90 days). The notice along with copies of the site characterization analysis shall be available at the *NRC Web site, http://www.nrc.gov*, and copies of any comments received will also be made available there.

* * * * *

52. In § 60.61, paragraph (d) is revised to read as follows:

§ 60.61 Provision of information.

* * * * *

(d) Copies of all communications by the Director under this section are available at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room, and copies are furnished to DOE.

53. In § 60.63, paragraphs (b) and (f) are revised to read as follows:

§ 60.63 Participation in license reviews.

* * * * *

(b) In addition, whenever an area has been approved by the President for site characterization, a State or an affected Indian Tribe may submit to the Director a proposal to facilitate its participation in the review of a site characterization plan and/or license application. The proposal may be submitted at any time and must contain a description and schedule of how the State or affected Indian Tribe wishes to participate in the review, or what services or activities the State or affected Indian Tribe wishes NRC to carry out, and how the services or activities proposed to be carried out by NRC would contribute to such participation. The proposal may include educational or information services (seminars, public meetings) or other actions on the part of NRC, such as employment or exchange of State personnel under the Intergovernmental Personnel Act.

* * * * *

(f) Proposals submitted under this section, and responses thereto, shall be made available at the *NRC Web site, http://www.nrc.gov*, and/or at the NRC Public Document Room.

PART 62—CRITERIA AND PROCEDURES FOR EMERGENCY ACCESS TO NON-FEDERAL AND REGIONAL LOW-LEVEL WASTE DISPOSAL FACILITIES

54. The authority citation for Part 62 continues to read as follows:

Authority: Secs. 81, 161, as amended, 68 Stat. 935, 948, 949, 950, 951, as amended (42 U.S.C. 2111, 2201); secs. 201, 209, as amended, 88 Stat. 1242, 1248, as amended (42 U.S.C. 5841, 5849); secs. 3, 4, 5, 6, 99 Stat. 1843, 1844, 1845, 1846, 1847, 1848, 1849, 1850, 1851, 1852, 1853, 1854, 1855, 1856, 1857, (42 U.S.C. 2021c, 2021d, 2021e, 2021f).

55. In § 62.11, paragraph (b) is revised to read as follows:

§ 62.11 Filing and distribution of a determination request.

* * * * *

(b) Upon receipt of a request for a determination, the Secretary of the Commission shall publish a notice acknowledging receipt of the request in the **Federal Register**. The notice must require that public comment on the request be submitted within 10 days of the publication date of the notice. A copy of the request will be made available for inspection or copying at the NRC Web site, http://www.nrc.gov, and/or at the NRC Public Document Room. The Secretary of the Commission shall also transmit a copy of the request to the U.S. Department of Energy, to the Governors of the States of the Compact region where the waste is generated, to the Governors of the States with operating non-Federal low-level radioactive waste disposal facilities, to the Compact Commissions with operating regional low-level radioactive waste disposal facilities, and to the Governors of the States in the Compact Commissions with operating disposal facilities.

* * * * *

56. In § 62.22, paragraph (c) is revised to read as follows:

§ 62.22 Notice of issuance of a determination

* * * * *

(c) The Secretary of the Commission shall make a copy of the final determination available for inspection at the NRC Web site, *http://www.nrc.gov*.

PART 72 —LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

57. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846), Pub. L. 95–601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Secs. 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1220–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 97–100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

58. In § 72.200, paragraph (c) is revised to read as follows:

§ 72.200 Provision of MRS information.

* * * * *

(c) Copies of all communications by the Director or the Director's designee under this section must be made available at the NRC Web site, http://www.nrc.gov, and/or at the NRC Public Document Room, and must be furnished to DOE.

PART 75—SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF US/IAEA AGREEMENT

59. The authority citation for Part 75 continues to read as follows:

Authority: Secs. 53, 63, 103, 104, 122, 161, 68 Stat. 930, 932, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2093, 2133, 2134, 2152, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 75.4 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

60. In § 75.2, paragraph (b) is revised to read as follows:

§ 75.2 Scope.

* * * * *

(b) The United States eligible list is a list of installations eligible for IAEA safeguards under the US/IAEA Safeguards Agreement which the Secretary of State or his designee files with the Commission. A copy of this list is available for inspection at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room. In accordance with the provisions of the Agreement, the following activities are excluded from the United States eligible list:

(1) Activities having direct national security significance.

(2) Activities involving mining and ore processing.

PART 76—CERTIFICATION OF GASEOUS DIFFUSION PLANTS

61. The authority citation for Part 76 continues to read as follows:

Authority: Secs. 161, 68 Stat. 948, as amended, secs. 1312, 1701, as amended, 106 Stat. 2932, 2951, 2952, 2953, 110 Stat. 1321–349 (42 U.S.C. 2201, 2297b–11, 2297f); secs. 201, as amended, 204, 206, 88 Stat. 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec. 234(a), 83 Stat. 444, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243(a)).

Sec. 76.7 also issued under Pub. L. 95–601. Sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sec. 76.22 is also issued under sec. 193(f), as amended, 104 Stat. 2835, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243(f)). Sec. 76.35(j) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152).

62. In § 76.37, paragraph (a) is revised to read as follows:

§ 76.37 Federal Register notice.

* * * * *

(a) A notice of the filing of an application specifying that copies of the application, except for Restricted Data, Unclassified Controlled Nuclear Information, Classified National Security Information, Safeguards Information, Proprietary Data, or other withholdable information will be made available for the public inspection at the NRC Web site, *http://www.nrc.gov*;

* * * * *

PART 100—REACTOR SITE CRITERIA

63. The authority citation for Part 100 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 68 Stat. 936, 937, 948, 953, as amended (42 U.S.C. 2133, 2134, 2201, 2232); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

64. In § 100.11 the undesignated paragraph after the note is removed and a new paragraph (c) is added above the note to read as follows:

§ 100.11 Determination of exclusion area, low population zone, and population center distance.

* * * * *

(c) Copies of Technical Information Document 14844 may be obtained at the NRC Web site, *http://www.nrc.gov*, at the NRC Public Document Room, 2120 L Street, NW., Washington, D.C., or by writing the Director of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

65. The authority citation for Part 110 continues to read as follows:

Authority: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2201, 2231–2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841), sec. 5, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243).

Sections 110.1(b)(2) and 110.1(b)(3) also issued under Pub. L. 96–92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d., 88 Stat. 473, 475 (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99–440. Section 110.50(b)(3) also issued under sec. 123. 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80–110.113 also issued under (5 U.S.C. 552, 554). Sections 110.130–110.135 also issued under (5 U.S.C. 553). Sections 110.2 and 110.42(a)(9) also issued under sec. 903, Pub. L. 102–496 (42 U.S.C. 2151 et. seq).

66. In § 110.2 the definition of *Public Document Room* is removed and new definitions of *NRC Public Document Room* and *NRC Web site* are added to read as follows:

§ 110.2 Definitions.

* * * * *

NRC Public Document Room means the facility at 2120 L Street, NW., Washington, DC where certain public records of the NRC that were made available for public inspection in paper or microfiche prior to the implementation of the NRC Agencywide Documents Access and Management System, commonly referred to as ADAMS, will remain available for public inspection. It is also the place where computer terminals are available to access the Electronic Reading Room component of ADAMS on the NRC Web site, *http://www.nrc.gov*, where copies can be made or ordered as set forth in § 9.35 of this chapter. The facility is staffed with reference librarians to assist the public in identifying and locating documents and in using the NRC Web site and ADAMS. The NRC Public Document Room is open from 7:45 am to 4:15 pm, Monday through Friday, except on Federal holidays. Reference service and access to documents may also be requested by telephone (202–634–3273 or 800–397–4209) between 8:30 am and 4:15 pm, or by e-mail (*PDR@nrc.gov*), fax (202–634–3343), or letter (NRC Public Document Room, LL–6, Washington, D.C. 20555–0001).

* * * * *

NRC Web site, http://www.nrc.gov, is the Internet uniform resource locator name for the Internet address of the Web site where NRC will ordinarily make available its public records for inspection.

* * * * *

67. In § 110.70, paragraph (d) is removed and paragraph (a) is revised to read as follows:

§ 110.70 Public notice of receipt of application.

(a) The Commission will notice the receipt of each license application for an export or import for which a specific license is required by making a copy available at the NRC Web site, *http://www.nrc.gov*.

* * * * *

68. Section 110.71 is revised to read as follows:

§ 110.71 Notice of withdrawal of an application.

The Commission will notice the withdrawal of an application by making a copy available at the NRC Web site, *http://www.nrc.gov*.

69. In § 110.72, the section heading and introductory text are revised to read as follows:

§ 110.72 Public availability of documents.

Unless exempt from disclosure under part 9 of this chapter, the following documents pertaining to each license and license application for an import or export requiring a specific license under this part will be made available at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room:

* * * * *

70. In § 110.112, paragraph (b) is revised to read as follows:

§ 110.112 Reporter and transcript for an oral hearing.

* * * * *

(b) Except for any classified portions, transcripts will be made available at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room.

* * * * *

71. In § 110.113, paragraph (c) is revised to read as follows:

§ 110.113 Commission action.

* * * * *

(c) If the Commission considers information not in the hearing record in reaching its licensing decision, the hearing participants will be informed and, if not classified or otherwise privileged, the information will be made available at the NRC Web site, *http://www.nrc.gov*, and furnished to the participants.

* * * * *

Dated at Rockville, Maryland, this 24th day of August, 1999.

For the Nuclear Regulatory Commission.
Stuart Reiter,
Acting Chief Information Officer.
[FR Doc. 99–23160 Filed 9–8–99; 8:45 am]
BILLING CODE 7590–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 774

[Docket No. 990811216–9216–01]

RIN 0694–AB81

Correction to Editorial Clarifications and Revisions to the Export Administration Regulations

AGENCY: Bureau of Export Administration, Commerce.
ACTION: Final rule; technical amendment.

SUMMARY: On August 30, 1999 (64 FR 47104), the Bureau of Export Administration published an interim rule revising the Export Administration Regulations (EAR) by making certain editorial revisions and clarifications. Instruction No. 16 of that regulation inadvertently removed Firearms controls from ECCN 0A984.

This regulation amends the Commerce Control List (CCL) by revising ECCN 0A984 to include Firearms controls for the entire entry.

DATES: This rule is effective August 30, 1999.

FOR FURTHER INFORMATION CONTACT: Frank J. Ruggiero, Office of Exporter Services, Bureau of Export Administration, Telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION: Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and to the extent permitted by law, the provisions of the EAA, as amended, in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527) August 13, 1997 (62 FR 43629), August 13, 1998 (63 FR 44121), and August 10, 1999 (64 FR 44101).

Rulemaking Requirements

1. This final rule has been determined to be not significant for the purposes of Executive Order 12866.

2. Not withstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collection has been approved by the Office of Management and Budget under control numbers 0694–0088, 0694–0023, and 0694–0106. There are neither additions nor subtractions to these collections due to this rule.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act requiring notice of proposed Rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed Rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed Rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Frank J. Ruggiero, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 774

Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, part 774 of the Export Administration Regulations (15 CFR Parts 730–774) is amended as follows:

PART 774—[AMENDED]

1. The authority citation for 15 CFR Part 774 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420, 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 3201. *et seq.*, 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a, 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

2. In Supplement No. 1 to part 774, Category 0—Nuclear Materials, Facilities, and Equipment [And Miscellaneous Items] is amended by revising ECCN 0A984 to read as follows:

Supplement No. 1 to part 774—The Commerce Control List

* * * * *

0A984 Shotguns, barrel length 18 inches (45.72 cm) inches or over; buckshot shotgun shells; except equipment used exclusively to treat or tranquilize animals, and except arms designed solely for signal, flare, or saluting use; and parts, n.e.s.

License Requirements

Reason for Control: CC, FC, UN

Control(s)	Country chart
FC applies to entire entry	FC Column 1.
CC applies to shotguns with a barrel length greater than or equal to 18 in. (45.72 cm), but less than 24 in. (60.96 cm) or buckshot shotgun shells controlled by this entry, regardless of end-user.	CC Column 1.
CC applies to shotguns with a barrel length greater than or equal to 24 in. (60.96 cm), regardless of end-user.	CC Column 2.
CC applies to shotguns with a barrel length greater than or equal to 24 in. (60.96 cm) if for sale or resale to police or law enforcement	CC Column 3.
UN applies to entire entry.	Rwanda; Federal Republic of Yugoslavia (Serbia and Montenegro).

License Exceptions

LVS: N/A
GBS: N/A
CIV: N/A

List of Items Controlled

Unit: $ value.
Related Controls: This entry does not control shotguns with a barrel length of less than 18 inches (45.72 cm). (See 22 CFR part 121.) These items are subject to the export licensing authority of the Department of State, Office of Defense Trade Controls.
Related Definitions: N/A
Items: The list of items controlled is contained in the ECCN heading.

Dated: September 2, 1999.
Eileen Albanese,
Director, Office of Exporter Services.
[FR Doc. 99–23386 Filed 9–8–99; 8:45 am]
BILLING CODE 3510–33–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

[FHWA Docket No. FHWA–98–4326]

RIN 2125–AE43

Truck Size and Weight; Definitions; Nondivisible

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Final rule.

SUMMARY: This document amends the definition of nondivisible load or vehicle to include marked military equipment or materiel. This will allow, but not require, States to issue overweight permits for such vehicles or supplies to move on the Interstate System.

EFFECTIVE DATE: October 12, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Klimek, Office of Freight Management and Operations (202) 366–2212, or Mr. Charles Medalen, Office of the Chief Counsel (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: http://www.nara.gov/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/nara.

Background

States must adopt and enforce Federal weight standards for the Interstate System or risk the loss of certain Federal-aid highway funds. These standards are 20,000 pounds on a single axle, 34,000 pounds on a tandem axle, and the weights specified by the bridge formula, up to a maximum gross vehicle weight of 80,000 pounds. The bridge formula is designed to ensure that a vehicle is sufficiently long and has enough axles to protect bridges by spreading the weight over a large area of bridge decking and supports. Some States also have grandfathered weight limits for divisible loads or vehicles (those that can be easily dismantled or divided) that exceed Interstate System standards. These usually represent limits that were in effect in a State before the Interstate limits were adopted. In addition, all States may issue permits allowing nondivisible loads or vehicles, (those that cannot be easily dismantled or divided) to use Interstate highways at weights above the normal Interstate limits. Prior to this final rule, the FHWA defined nondivisible load or vehicle in 23 CFR 658.5 as follows:

(1) As used in this part, *nondivisible* means any load or vehicle exceeding applicable length or weight limits which, if separated into smaller loads or vehicles, would:

(i) Compromise the intended use of the vehicle, i.e., make it unable to perform the function for which it was intended;

(ii) Destroy the value of the load or vehicle, i.e., make it unusable for its intended purpose; or

(iii) Require more than 8 workhours to dismantle using appropriate equipment.

The applicant for a nondivisible load permit has the burden of proof as to the number of workhours required to dismantle the load.

(2) A State may treat emergency response vehicles and casks designed for the transport of spent nuclear materials as nondivisible vehicles or loads.

The Department of Defense's Military Traffic Management Command (MTMC) petitioned the FHWA for rulemaking to amend this definition to include marked military vehicles. The MTMC pointed out that since the end of the Cold War, the number of military units deployed overseas has declined, with the result that the bulk of our military forces are based in the continental United States. Current mobility strategy requires the capability to deploy military forces from the United States to any point where they may be needed. The nation's highways, particularly the Interstate System, play a significant role in such actions. Training exercises are essential to the performance of this mission since troops in actual deployments must be familiar with highway operations in order to assure safe and efficient transportation. The FHWA granted the MTMC petition for rulemaking on May 20, 1998, and a notice of proposed rulemaking (NPRM) was published November 20, 1998 (63 FR 64434).

Only three sets of comments, all from State agencies, were received in the docket.

The Illinois State Police (ISP) indicated that the proposal "appears logical," and mirrors the current policy of the Illinois Department of Transportation. In closing, however, the ISP stated that it would "remain neutral" on this proposal. No further explanation was provided.

The Wisconsin Department of Transportation (WISDOT) objected to the proposal for several reasons. Summarized, these include the following: (1) the permissive language of the proposal, ("A State *may* treat * * * marked military equipment. * * *."), does not address the desire for national uniformity posed by MTMC in its petition, because a State could refuse to issue the permit; (2) even if States are willing to issue nondivisible load permits for State highways, local jurisdictions may refuse to issue similar permits if highways under their jurisdiction are required to complete point to point travel; (3) the phrase "marked military equipment or materiel" is too broad; (4) because this issue is too complex to be resolved by regulation, the Congress must correct any problem by national legislation; (5) the statement in the preamble to the NPRM, that "the vehicle or load must be directly related to the military's combat or defense mission," is too vague; and (6) the FHWA should postpone action until the agency's Comprehensive Truck Size and Weight Study (see 64 FR 2699, January 15, 1999) is complete.

The Idaho Transportation Department (ITD) indicated "no concerns" with treating marked military vehicles as nondivisible, and suggested that the definition be expanded to include military vehicles of other nations acting as training partners. However, the ITD is concerned that the term military materiel needs to be much more narrowly defined if it is to be included in the regulation.

As the preamble to the NPRM stated, the intent of this rulemaking is to accommodate the mobilization needs of the military. The original petition filed by the MTMC asked that marked military vehicles be included in the regulatory definition of nondivisible. The term materiel was included in the NPRM to make it clear that the items carried on the vehicles, as well as the vehicles themselves, are to be considered nondivisible. The reference in the NPRM to combat or defense missions, was included to help distinguish between movements intended to be covered by this rule and other transportation not uniquely

military in purpose. The term "marked military equipment or materiel" has two components: (1) markings which openly identify the equipment or materiel as belonging to the U.S. military forces; and (2) equipment or materiel which is directly related to a combat or defense mission. The key term is "directly related." The intent here is to cover military vehicles moving ammunition, medical supplies, food, water, or any other consumable or expendable commodity directly used in carrying out a combat or defense operation, including training exercises. Items that would not normally be directly related to a military or combat mission would be, for example, household furnishings or office equipment moving on military vehicles. To clarify the status of materiel, only items carried on marked military vehicles are covered. Materiel carried on vehicles not directly owned and operated by the military, even though the carriers may be operating under lease or contract to the military, does not qualify under this regulatory action.

The WISDOT expressed concern about the permissive language of the NPRM. The only permit problems MTMC has reported were caused by State concerns that issuing divisible load permits for travel on the Interstate System, for loads or vehicles that do not meet the definition of *Nondivisible vehicle or load* set forth in 23 CFR 658.5, would cause the FHWA to find the State in violation of 23 U.S.C. 127, and withhold its National Highway System (NHS) apportionments. Allowing States to consider these vehicles and loads nondivisible, will resolve this problem. If State law allows local jurisdictions to issue permits, we believe they will nearly always follow the lead of the State in matters of nondivisibility. To date, the MTMC has not reported local permitting problems.

The WISDOT also commented that regulatory action on this issue is inappropriate and that Congress should resolve any problems via national legislation, which would preempt State laws. The problems encountered by MTMC on this issue have been limited to a small number of States. There is every reason to believe that rulemaking will resolve the problem without resort to congressional action. At the same time, the permits issued by States will enable them to track and direct movements in order to protect the infrastructure.

The WISDOT's last comment suggested that the FHWA "may wish to postpone action" until the agency's Comprehensive Truck Size and Weight Study is complete. The Study is essentially creating a national modeling mechanism that allows the agency objectively to analyze proposed changes to the current size and weight laws. This final rule is designed to alleviate a specific administrative problem affecting only a few States. This regulatory action is not likely to cause significant nationwide changes in permit movements, though it will alleviate the special problems faced by U.S. military forces.

A regulation that makes it difficult for States to allow the use of the Interstate System for military purposes is indefensible. Amending the definition of a nondivisible load or vehicle in 23 CFR. 658.5 will enable the States to make nondivisible load permits available to military equipment and materiel without risking the loss of Federal-aid highway funds. While the movement of both commercial and military traffic is essential to the national welfare, they serve fundamentally different purposes. Allowing States to issue nondivisible overweight permits for military traffic to use the Interstate System will not compromise the ability of the FHWA to maintain reasonable limits on the use of such permits by commercial traffic. This final rule does not establish a precedent applicable to civilian vehicles.

By this action the FHWA is amending paragraph (2) of the definition of a "nondivisible load or vehicle" by adding "military vehicles transporting marked military equipment or materiel" to the vehicles and equipment already listed there. This will enable, but not require, States to issue nondivisible load permits to vehicles qualifying as, or transporting, marked military equipment or materiel as discussed earlier. This is not to say that States should issue permits without consideration of the structural limits of their pavements or bridges. But withholding the discretion to accommodate the needs of U.S. military forces would be a disservice to the nation.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action does not constitute a significant regulatory action within the meaning of E.O. 12866, nor is it considered significant under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal. This final rule allows States to issue overweight permits for marked military equipment or materiel to travel on the Interstate System. The effect on that System will be negligible and under full control by the States. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this final rule on small entities. This rulemaking affects only States and the Department of Defense.

Based on its evaluation of this rule, the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities do not apply to this program.

Paperwork Reduction Act

The proposal in this document does not contain information collection requirements for the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Unfunded Mandates Reform Act of 1995

This rule would not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1532).

Executive Order 12630 (Taking of Private Property)

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Regulation Identification Number

A regulation identification Number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 23 CFR Part 658

Grants programs—transportation, Highway and roads, Motor carrier—size and weight.

Issued on: September 2, 1999.

Kenneth R. Wykle,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends title 23, Code of Federal Regulations, part 658, as set forth below:

PART 658—TRUCK SIZE AND WEIGHT, ROUTE DESIGNATIONS—LENGTH, WIDTH AND WEIGHT LIMITATIONS

1. The authority citation for 23 CFR part 658 is revised to read as follows:

Authority: 23 U.S.C. 127 and 315; 49 U.S.C. 31111—31114 ; 49 CFR 1.48.

2. In § 658.5, revise the definition of "nondivisible load or vehicle" to read as follows:

§ 658.5 Definitions.

* * * * *

Nondivisible load or vehicle.

(1) As used in this part, *nondivisible* means any load or vehicle exceeding applicable length or weight limits which, if separated into smaller loads or vehicles, would:

(i) Compromise the intended use of the vehicle, i.e., make it unable to perform the function for which it was intended;

(ii) Destroy the value of the load or vehicle, i.e., make it unusable for its intended purpose; or

(iii) Require more than 8 workhours to dismantle using appropriate equipment. The applicant for a nondivisible load permit has the burden of proof as to the number of workhours required to dismantle the load.

(2) A State may treat emergency response vehicles, casks designed for the transport of spent nuclear materials, and military vehicles transporting marked military equipment or materiel as nondivisible vehicles or loads.

* * * * *

[FR Doc. 99–23346 Filed 9–8–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 251

Land Uses; Noncommercial Group Use Permit Approval

AGENCY: Forest Service, USDA.

ACTION: Interpretive rule.

SUMMARY: The Department is adopting this interpretive rule to make explicit the intended interpretation and application of the term "public interest" in 36 CFR § 251.56 as it relates to noncommercial group uses of National Forest System Lands.

EFFECTIVE DATE: This interpretive rule is effective September 9, 1999.

ADDRESSES: Written queries about this interpretive rule may be addressed to Director Recreation, Heritage, and Wilderness Resources Staff, 2720, 4th Floor-Central, Sidney R. Yates Federal Building, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090, or via e-mail to dbschor/wo@fs.fed.us.

FOR FURTHER INFORMATION CONTACT: Alice Carlton, Recreation, Heritage, and Wilderness Resources Staff, 202–205–1399.

SUPPLEMENTARY INFORMATION:

In August 1995, the Secretary of Agriculture adopted a final rule at 36 CFR part 251, subpart B, governing issuance and administration of permits for groups of 75 or more people who wish to use National Forest System lands for noncommercial activities (60 FR 45258; August 30, 1995). The intent in promulgating the rule was to ensure that authorization procedures for these activities comply with First Amendment requirements of freedom of speech, assembly, and religion, while simultaneously providing a reasonable administrative system for allocating space among scheduled and existing uses of National Forests and Grasslands, for addressing concerns for public health and safety, and for controlling or preventing adverse impacts on forest resources.

The regulation as written is constitutional. It is a content-neutral, narrowly tailored time, place, and manner restriction. In particular, the rule sufficiently limits the discretion of authorized officers to place terms and conditions in noncommercial group use permits. The imposition of term and conditions in noncommercial group use permits is limited to those designed to further the three public interests identified by the Forest Service in promulgating the noncommercial group use rule, i.e., the need to address concerns of public health and safety, to minimize damage to National Forest System resources, and to allocate space among actual or potential uses and activities.

Despite the clarity of the existing regulation, some confusion has persisted with respect to the amount of discretion allowed an authorized officer by 36 CFR 251.56(a)(1)(ii)(G) with regard to placing terms and conditions on noncommercial group uses. Under paragraph (a)(1)(ii) of § 254.56, the authorized officer may place into a special use authorization such terms and conditions as the officer deems necessary for seven purposes. Paragraph (a)(1)(ii)(G) authorizes terms and conditions deemed necessary by the authorized officer that "otherwise protect the public interest." Out of an abundance of caution, the Department is issuing this interpretive rule to make explicit preexisting law and the agency's intent regarding § 251.56(a)(1)(ii)(G) as applied to noncommercial group uses. Therefore, in the context of noncommercial group uses, the reference to "public interest" in § 251.56(a)(1)(ii)(G) will be interpreted and applied as allowing only those terms and conditions furthering the three public interests served by the noncommercial group use rule.

This rule qualifies as an interpretive rule under the Administrative Procedure Act because it is a rule or statement issued by an agency to advise the pubic of the agency's preexisting construction of one of the rules it administers, i.e., 36 CFR 251.56(a)(1)(ii)(G) in the context of noncommercial group uses. *See, e.g., Shalala, Secretary of Health and Human Service* v. *Guernsey Memorial Hosp.*, 514 U.S. 87, 99 (1995). Under 5 U.S.C.

553(b)(A), this interpretive rule is exempt from the notice and comment requirements in the Administrative Procedure Act. Under 5 U.S.C. 553(d)(2), this interpretive rule is effective immediately upon publication in the **Federal Register**.

Environmental Impact

This interpretive rule has no direct or indirect effect on the environment, as it merely makes explicit preexisting law regarding a provision related to terms and conditions of special use permits as applied to noncommercial group uses. Section 31.1b of Forest Service Handbook 1909.15 (57 FR 43180; September 18, 1992) excludes from documentation in an environmental assessment or impact statement rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions. Based on the nature and scope of this rulemaking, the agency has determined that this interpretive rule falls within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

Regulatory Impact

It has been determined that this is not a significant rule. This interpretive rule will not have an annual effect of $100 million or more on the economy, nor will it adversely affect productivity, competition, jobs, the environment, public health, or safety, or State or local governments. This interpretive rule will not interfere with an action taken or planned by another agency, nor will it raise new legal or policy issues. Finally, this interpretive rule will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this interpretive rule is not subject to Office of Management and Budget (OMB) review under Executive Order 12866.

Moreover, this interpretive rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It has been determined that this interpretive rule will not have a significant economic impact on a substantial number of small entities as defined by the Act. This interpretive rule will not impose record keeping requirements; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity, or ability to remain in the market.

No Takings Implications

This interpretive rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630, and it has been determined that the interpretive rule will not pose the risk of a taking of private property, as the rule is limited to approval and administration of noncommercial group uses on Federal lands.

Civil Justice Reform

This interpretive rule has been reviewed under Executive Order 12988, Civil Justice Reform. After adoption of this interpretive rule, (1) All State and local laws and regulations that conflict with this interpretive rule or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this interpretive rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), which the President signed into law on March 22, 1995, the agency has assessed the effects of this interpretive rule on State, local, and tribal governments and the private sector. This interpretive rule will not compel the expenditure of $100 million or more by any State, local, or tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Controlling Paperwork Burdens on the Public

This interpretive rule does not contain any record keeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in Part 251

Electric power, Mineral resources, National forests, Rights-of-way, Water resources.

Therefore, for the reasons set forth in the preamble, part 251, of Title 36 of the Code of Federal Regulations is amended as follows:

PART 251—LAND USES

Subpart B—Special Uses

1. The authority citation for subpart B continues to read as follows:

Authority: 16 U.S.C. 472, 497b, 551, 1134, 3210; 30 U.S.C. 185; 43 U.S.C. 1740, 1761–1771.

2. In § 251.56, add a note following paragraph (a)(1)(ii)(G) to read as follows:

§ 251.56 Terms and conditions

(a) * * *
(1) * * *
(ii) * * *
(G) * * *

Note to paragraph (a)(1)(ii)(G): The Department is making explicit its preexisting understanding of § 251.56(a)(1)(ii)(G) of this subpart in the context of authorizing noncommercial group uses of National Forest System lands. Section 251.56(a)(1)(ii)(G) provides that each special use authorization shall contain such terms and conditions as the authorized officer deems necessary to otherwise protect the public interest. In the context of noncommercial group uses, the Forest Service interprets the term "public interest" found in § 251.56(a)(1)(ii)(G) to refer to the three public interests identified by the Forest Service on August 30, 1995. These public interests include the protection of resources and improvements on National Forest System lands, the allocation of space among potential or existing uses and activities, and public health and safety concerns. Under this construction, § 251.56(a)(1)(ii)(G) allows the Forest Service to impose terms and conditions that are not specifically addressed in § 251.56(a)(1)(ii)(A)–(F) but only those that further these public interests. The Forest Service shall implement and enforce § 251.56(a)(1)(ii)(G) in accordance with this interpretation.

Dated: September 2, 1999.

Dennis E. Bschor,

Acting Deputy Under Secretary, Natural Resources and the Environment.

[FR Doc. 99–23339 Filed 9–8–99; 8:45 am]

BILLING CODE 3410–11–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1254

RIN 3095–AA69

Researcher Registration and Research Room Procedures

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: This rule confirms without change an interim rule clarifying existing NARA procedures relating to revoking and reinstating research privileges. This rule will affect individuals who wish to use NARA research rooms in the National Archives Building and College Park facility in the Washington, DC, area, regional records services facilities, and Presidential libraries.

EFFECTIVE DATE: The effective date for this final rule is May 24, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy Allard at telephone number 301–713–7360, ext. 226, or fax number 301–713–7270.

SUPPLEMENTARY INFORMATION: In the final rule document published April 23, 1999, changes to 36 CFR 1254.20 were issued as an interim final rule to allow a 60-day public comment period. No comments were received.

PART 1254—AVAILABILITY OF RECORDS AND DONATED HISTORICAL MATERIALS

Accordingly, the interim rule amending 36 CFR 1254.20 which was published at 64 FR 19899 on April 23, 1999, is adopted as a final rule without change.

Dated: September 2, 1999.

John W. Carlin,

Archivist of the United States.

[FR Doc. 99–23395 Filed 9–8–99; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE101–1025a; FRL–6434–6]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Approval of Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the Delaware State Implementation Plan (SIP). In this action, EPA is approving revisions to various Delaware rules and definitions which have historically been State-enforceable, and which Delaware had formally submitted as SIP revisions, but which EPA had not yet taken formal action. Provisions include control of particulate matter from petroleum refining operations, control of sulfur dioxide emissions from sulfuric acid manufacturing operations, and definitions and provisions associated with source monitoring, recordkeeping and reporting. The intended effect of this approval action is to ensure that the federally-approved versions of these Delaware provisions conform with the state-enforceable provisions. EPA is approving these revisions to the Delaware SIP in accordance with the requirements of the Clean Air Act

DATES: This rule is effective on November 8, 1999 without further notice, unless EPA receives adverse written comment by October 12, 1999. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to Marcia L. Spink, Associate Director, Air Programs, Mail code 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108, or by e-mail at frankford.harold@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, wherever "we," "us," or "our" is used, we mean EPA.

What Action is EPA Taking?

We are approving amendments to Delaware Regulations 1,5, 9, and 17 which the State had previously submitted as part of formal SIP revision requests.

What is the Intended Effect?

We are taking this action on Delaware regulations which the State had formally submitted as SIP revisions in past years. Under section 110(h) of the Act, we are required to assemble and publish a comprehensive SIP document at specified intervals for each state and territory listed in 40 CFR part 52. We completed our last review of the Delaware SIP in November 1998. During this review, we discovered that we had not taken final action on portions of three formal Delaware SIP revision requests submitted between 1977 and 1993 which contained multiple revisions to various Delaware air pollution control regulations. In each case, we had approved most of the submitted changes as revisions of the Delaware SIP, but overlooked taking final action on other revised provisions which Delaware had submitted at the same time.

Which Delaware Regulations Are Affected by EPA's Action?

A. Revisions Submitted September 7, 1977

Affected Regulations:

—Regulation 1 (Definitions and Administrative Principles), Section 2 (Definitions)—Definitions for the following new terms: Capacity factor, Continuous monitoring system, Emission standard, Equipment shutdown, Excess Emissions, Sulfuric Acid Plant; Revised definitions of the following terms: Existing Installation, Equipment, Source, or Operation; New Installation, Equipment, Source, or Operation.

—Regulation No. 5, Section 5.1 (Control of Particulate Emissions from Petroleum Refining Operations)—the Chart Unit title in Table 4 (allowable mass emission rate from fluid coking operations) is revised from "Barrels per Day" to "Barrels per Day of Fresh Feed."

Public Hearings Held: September 27, 1976.

B. Revisions Submitted October 5, 1978

Affected Regulation: Regulation No. 9 (Emissions of Sulfur compounds from Industrial Operations), Section 2 (Restrictions on Sulfuric Acid Manufacturing Operations), revised Section 2.1 and new Sections 2.3 and 2.4.

Public Hearings Held: July 6, 1978.

C. Revisions Submitted January 11, 1993

Affected Regulation: Regulation 17 (Source Monitoring Recordkeeping and Reporting), Section 4 (Performance Specifications) and Section 6 (Data Reduction).

Public Hearings Held: September 29, 1992.

Delaware has submitted documentation showing that the above revisions have no adverse air quality impacts. Both the new and revised terms listed above define words which already exist in the federally-enforceable Delaware regulations. Also, we agree with the State's assertion that the use of the unit "barrels per day of fresh feed" in the revised title in Table 4 in Regulation 5, section 5 better defines the process weight rate for fluid coking operations than the unit of "barrels per day." Furthermore, we

agree with Delaware's assertion that the exemption for acid plants used as sulfur dioxide control systems is consistent with requirements set forth in 40 CFR part 60 (New source Performance Standards).

The revisions to sections 4 and 6 of Regulation 17 are administrative in nature, and serve to (1) clarify that any source which is regulated under State Regulation 24 shall be exempt from the provisions of Regulation 17, except for the emissions statement provisions in section 7; (2) clarify the effective date of other federal requirements which are referenced in Delaware's performance specification and data reduction provisions.

II. Final Action

We are approving the revisions to Delaware Regulations 1, 5, 9, and 17 described above.

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to approve this SIP revision if adverse comments are filed. This rule will be effective on November 8, 1999 without further notice unless we receive adverse comment by October 12, 1999. If we receive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is "economically significant," as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 8, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action to approve revisions to Delaware Regulations 1, 5, 9, and 17 may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 20, 1999

W. Michael McCabe,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart I—Delaware

2. In Section 52.420, the entries for Delaware Regulation 1, Section 2; Regulation 5, Section 5; Regulation 9, Section 2; and Regulation 17, Sections 4 and 6 in the "EPA-Approved Regulations in the Delaware SIP" table in paragraph (c) are revised to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State citation	Title/Subject	State effective date	EPA approval date	Additional explanation
REGULATION 1—DEFINITIONS AND ADMINISTRATIVE PRINCIPLES				
. .	. .	.	.	. .
Section 2	Definitions	2/8/95	9/9/99	New Definitions: (Effective date: 1/7/77) —Capacity factor —Continuous monitoring system —Emission standard —Equipment shutdown —Excess Emissions (Effective Date: 9/26/78) —Sulfuric Acid Plant Revised Definitions: (Effective date: 1/7/77) —Existing Installation, Equipment, Source, or Operation —New Installation, Equipment, Source, or Operation
. .	. .	.	.	. .
REGULATION 5—PARTICULATE EMISSIONS FROM INDUSTRIAL PROCESS OPERATIONS				
. .	. .	.	.	. .
Section 5	Restrictions on Petroleum Refining Operations.	9/26/78	9/9/99	Process weight rate unit (Table 4) is revised to read "Barrels Per Day of Fresh Feed

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP—Continued

State citation	Title/Subject	State effective date	EPA approval date	Additional explanation
• • •	• •	•	•	•
REGULATION 9—EMISSIONS OF SULFUR COMPOUNDS FROM INDUSTRIAL OPERATIONS				
• • •	• •	•	•	•
Section 2	Restrictions on Sulfuric Acid Manufacturing Operations.	9/26/78	9/9/99	Revised Sections 2.3 and 2.4 Section 2.2 (State effective date: 9/26/80) is federally enforceable as a Section 111(d) plan and codified at 40 CFR 62.1875
• • •	• •	•	•	•
REGULATION 17—SOURCE MONITORING, RECORD-KEEPING AND REPORTING				
• • •	• •	•	•	•
Section 4	Performance Specifications	1/11/93	9/9/99	Former SIP Sections 1 through 5 respectively; citation revised 2/28/96, 62 FR 7453.
• • •	• •	•	•	•
Section 6	Data Reduction	1/11/93	9/9/99	

[FR Doc. 99–23274 Filed 9–8–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6434–8]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Mason County Landfill Superfund Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Mason County Landfill Superfund Site in Michign from the National Priorities List (NPL). The NPL is appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. This action is being taken by EPA and the State of Michigan, because it has been determined that Responsible Parties have implemented all appropriate response actions required. Moreover, EPA and the State of Michigan have determined that remedial actions conducted at the site to date remain protective of public health, welfare, and the environment.

EFFECTIVE DATE: September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Jeff Gore at (312) 886–6552 (SR–6J), Remedial Project Manager or Gladys Beard at (312) 886–7253, Associate Remedial Project Manager, Superfund Division, U.S. EPA—Region V, 77 West Jackson Blvd., Chicago, IL 60604. Information on the site is available at the local information repository located at: Ludington Public Library, 217 E. Ludington, MI 49431. Requests for comprehensive copies of documents should be directed formally to the Regional Docket Office. The contact for the Regional Docket Office is Jan Pfundheller (H–7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Mason County Landfill located in Ludington, Michigan. A Notice of Intent to Delete for this site was published July 26, 1999 (64 FR 142). The closing date for comments on the Notice of Intent to Delete was August 24, 1999. EPA received no comments and therefore no Responsiveness Summary was prepared.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: August 30, 1999.

Robert Springer,

Acting Regional Administrator, Region V.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the Site "Mason County Landfill, Pere Marquette Twp, Michigan."

[FR Doc. 99–23281 Filed 9–8–99; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 990422103–9209–02; I.D. 031099B]

RIN 0648–AL75

Fisheries of the Northeastern United States; Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries; Recreational Measures for the 1999 Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: SUMMARY: NMFS issues this final rule to implement annual Federal recreational measures for the 1999 summer flounder, scup, and black sea bass fisheries. The purpose of these measures is to prevent overfishing of the summer flounder, scup, and black sea bass resources. In addition, NMFS issues interim measures to allow states to implement a conservation equivalency provision. This provision allows states to implement measures for the summer flounder recreational fishery that are alternatives to the annual Federal measures, yet achieve a reduction in fishing mortality equivalent to that achieved by the annual Federal measures.

DATES: Effective September 9, 1999, except for § 648.107 which is effective October 12, 1999.

ADDRESSES: Copies of the Environmental Assessment (EA), Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA), are available from: Jon C. Rittgers, Acting Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, (978) 281–9273.

SUPPLEMENTARY INFORMATION:

Background

The Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries (FMP) outlines the process for specifying annual recreational measures. The FMP has established Monitoring Committees (Committees) for each of the three fisheries comprised of representatives from the Atlantic States Marine Fisheries Commission (Commission), the Mid-Atlantic Fishery Management Council (Council), the New England and South Atlantic Fishery Management Councils, and NMFS. The Committees are required to review annually scientific and other relevant information and to recommend measures necessary to achieve the recreational harvest limits for the summer flounder, scup, and black sea bass fisheries. These recommended measures are limited to minimum fish sizes, possession limits, and closed seasons. The Council's Demersal Species Committee and the Commission's Summer Flounder, Scup, and Black Sea Bass Board (Board) then consider the Monitoring Committees' recommendations and any public comment in making their recommendations. The Council reviews the Demersal Committee recommendations, makes its own decision, in turn, and submits its recommendation to NMFS.

Final specifications for the 1999 summer flounder, scup, and black sea bass fisheries were published on December 31, 1998 (63 FR 72203), and included a recreational harvest limit of 7.41 million lb (3.361 million kg) for summer flounder; 1.24 million lb (0.562 million kg) for scup; and 3.14 million lb (1.42 million kg) for black sea bass. A proposed rule to implement annual Federal recreational measures for the 1999 summer flounder, scup, and black sea bass recreational fisheries was published on April 30, 1999 (64 FR 23256), and contained various combinations of one or more management measures, such as minimum fish size, possession limit, and a closed season. The recreational measures contained in this final rule are unchanged from those that were published in the proposed rule, and are listed below. A complete discussion of the recreational measures appears in the proposed rule and is not repeated here.

1999 Recreational Measures

	Minimum Size (length)	Possession Limit	Closed Season
Summer Flounder	15 inches (38 cm)	8–fish	September 12 of each year, through May 28 of each following year
Scup	7 inches (18 cm)	None	None
Black Sea Bass	10 inches (25 cm)	None	None

Interim Measure on Summer Flounder Conservation Equivalency

The proposed rule for the annual recreational measures included an interim measure that would allow the states to implement recreational measures as alternatives to the annual Federal summer flounder measures that would result in the 40–percent reduction in the summer flounder catch in 1999 compared to 1998. A 40–percent reduction is necessary because the recreational harvest limit for 1999 is the same as it was in 1998, and there was about a 40–percent overage of that harvest limit in 1998. The states may select a combination of minimum fish sizes, possession limits, and closed seasons. States that wish to implement equivalent measures are required to submit proposed management options to the Commission for approval. In anticipation of implementation of the conservation equivalency provision, states have already selected alternative measures designed to achieve the

required 40–percent reduction in the recreational summer flounder harvest. The Commission has reviewed the states' proposed alternative measures and has found through the procedure described in § 648.107(b) that they will achieve the summer flounder harvest reduction. Once the Commission approves a state equivalency proposal, the Commission is required to recommend to NMFS that a notice be published to waive the application of the annual Federal summer flounder measures specified in this rule within a given state, and notify the public of the state's equivalent measures. That recommendation is now being prepared by the Commission, and NMFS will publish a notice shortly after this final rule.

The conservation equivalency provision relies on annual Federal summer flounder measures that are subject to public comment. The conservation equivalency of alternative state measures will be determined in comparison to the annual Federal summer flounder measures. There is no change to the annual Federal summer flounder measures identified in the proposed rule, so no further Commission action is required. No comments were received during the comment period on implementation of the conservation equivalency provision.

The issuance of interim measures is authorized by section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act. The conservation equivalency provision addresses concerns for some states about the inappropriateness of annual Federal summer flounder measures to achieve the 40–percent summer flounder harvest reduction. It addresses overfishing by allowing states to implement conservation equivalent measures for the recreational summer flounder fishery that would result in the 40–percent reduction in catch required to achieve the 1999 harvest limit while not exceeding it. NMFS reminded the Council at its June 1999 meeting that the Council must include the conservation equivalent provision in an FMP amendment or framework action in order to establish it permanently.

Comments and Responses

One comment was received from the Council concerning the summer flounder closed season.

Comment: Council staff stated their belief that the summer flounder closed season proposed by NMFS differed from that adopted by the Council and the Commission; specifically, Council staff stated that the Council and Commission adopted a closed season only for the 1999 calendar year from January 1 through May 28, 1999, and September 12 through December 31, 1999.

Response: NMFS finds that the Council staff mistakenly thought the Council intended to close the recreational summer flounder fishery for only the 1999 calendar year. A review of the administrative record concerning the actions discussed by the Council and Commission during their joint December 1998 meeting shows the following language in the final motion: "a closure of September 12 through May 28." NMFS finds the dates published in the proposed rule reflect the intent of the Council/Commission. Further, if at a later date the Council and Commission decide to recommend only a 1999 closed season, then they may adjust the dates pursuant to the procedures in § 648.100. Therefore, the dates associated with the closed season for the summer flounder recreational fishery will be from September 12 of each year, through May 28 of each following year.

Changes in the Final Rule From the Proposed Rule

In § 648.107, paragraph (b) is revised to improve clarity and by inserting the words "or greater" in the second sentence to clarify when conservation equivalent measures may be implemented without Summer Flounder Technical Committee review.

Classification

This final rule is required by 50 CFR part 648.

A review of the administrative record indicates the Council intended that the recreational fishery for summer flounder be closed September 12 through May 28. Continued harvest of summer flounder in the recreational fishery during a 30-day delay in the effective date would reduce the likelihood of attaining the objective of this rule (i.e., a 40–percent reduction in landings in 1999 compared to 1998). Meeting this objective is necessary to comply with the FMP's maximum fishing mortality rate for 1999, and to meet the rebuilding schedule. For these reasons, under 5 U.S.C. 553(d)(3), the AA finds for good cause that a 30-day delay in the effective date of this rule would be contrary to the public interest. Fishermen will be notified of the September 12 recreational fishery closure via NOAA weather radio, Coast Guard announcements, and other available means of notification.

Because prior notice and an opportunity for public comment are not required for the interim measure (i.e., the conservation equivalency provision) by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are inapplicable.

NMFS has completed a FRFA for the other provision of this rule (i.e., the September 12 through May 28 closed season for summer flounder), pursuant to 5 U.S.C. 604 of the Regulatory Flexibility Act. The FRFA describes the impact this final rule will have on small entities. A copy of the FRFA can be obtained from the Northeast Regional Office of NMFS (see **ADDRESSES**). A summary of the FRFA follows.

The FRFA discusses (1) the need for, and objectives, of the rule; (2) public comments on the IRFA; (3) the number of small entities to which the rule will apply; (4) reporting and recordkeeping requirements; (5) reasons for selecting the alternatives adopted in the final rule and rejecting the alternatives; and (6) the measures that minimize the economic impact of this action.

The need for, and objectives of, the final measures in the rule are to prevent overfishing of the summer flounder, scup, and black sea bass resources.

There were no public comments on the IRFA.

Data from the Northeast Region's permit application database indicate that 710 vessels were permitted in 1997 to take part in the summer flounder, scup, and/or black sea bass fisheries in the EEZ. Analysis of NMFS Vessel Trip Report data indicates that 348 party/charter vessels participated in the summer flounder, scup, or black sea bass fisheries in 1997. The final recreational measures apply to these entities.

This rule does not propose new reporting or recordkeeping measures. There are no changes to existing reporting or recordkeeping requirements.

Current summer flounder recreational measures are a 15–inch (38–cm) minimum fish size and an 8–fish possession limit. This rule does not change the current 15–inch (38–cm) minimum size and 8–fish possession limit, but implements a closed season from September 12 through May 28. As such, the difference between the summer flounder recreational measures and the status quo is the implementation of a closed season starting September 12, 1999. The three annual Federal measures are intended to reduce landings in 1999 by over 40 percent compared to 1998. States are required to implement the annual Federal recreational management measures or other measures that will achieve a 40–percent reduction in landings. This would allow states to deal with burden issues associated with the implementation of any component (e.g., seasonal closures) of this measure.

For summer flounder, two alternatives other than the selected alternative were considered. These alternatives were: a) a 15–inch (38–cm) minimum fish size, a 6–fish possession limit, and a closed season from August 1 to August 31; and b) a 15–inch (38–cm) minimum fish size, a 4–fish possession limit, and a closed season from January to June of each year. These alternatives could potentially reduce landings by 45 percent. These restrictive limits (i.e., lower possession limits, greater minimum size limits, and/or shorter seasons) would prevent anglers from exceeding the recreational harvest limit in 1999. However, given the popularity of summer flounder among anglers as the most frequently sought after species in the Mid-Atlantic in 1997, the more limiting time frame proposed in the non-selected alternatives may affect angler satisfaction and/or demand for party/charter trips; therefore, they were rejected.

This rule maintains the status quo for scup for 1999. Therefore, the current recreational management measure remains in effect (7–inch (18–cm) minimum size, no possession limit, and no closed season). The minimum size currently in effect could potentially reduce recreational landings by less than two percent.

For scup, two alternatives other than the selected alternative were considered. These alternatives were: a) an 8–inch (20–cm) minimum fish size, a 25–fish possession limit, and no closed season; and b) an 8–inch (20–cm) minimum fish size, a 35–fish possession limit, and no closed season. Both of these alternatives could potentially decrease landings by 5 percent over the selected alternative. Those alternatives were rejected based on concerns that cancellation of party/charter trips would result and cause adverse economic impacts.

For black sea bass, this rule maintains the current management measures (10–inch (25–cm) minimum size, no possession limit, and no closed season for 1999). This no-change alternative was selected to potentially reduce recreational landings by approximately 14 percent. Two alternatives other than the selected alternative were considered. These alternatives were: a) a 10–inch (25–cm) minimum fish size, no possession limit, and a closed season from August 1 to August 15; and b) a 10–inch (25–cm) minimum fish size, a 20–fish possession limit, and no closed season. These alternatives could decrease landings by 15 percent and 18 percent, respectively. These alternatives could result in a greater reduction in landings of approximately 1 percent and 4 percent, respectively, than the selected alternative. Those alternatives were rejected because of concerns that the additional catch restrictions would result in cancellation of party/charter trips, and cause adverse economic impacts.

This final rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 2, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648–FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 648.102 is revised to read as follows:

§ 648.102 Time restrictions.

Vessels that are not eligible for a moratorium permit under § 648.4(a)(3) and any person subject to the possession limit may fish for summer flounder only from May 29 through September 11. This time period may be adjusted pursuant to the procedures in § 648.100.

3. Section 648.107 is added to subpart G to read as follows:

§ 648.107 Conservation equivalent measures for the recreational summer flounder fishery.

(a) Through March 9, 2000, states may implement on an annual basis conservation equivalent measures that reduce the recreational catch to the same extent as the annual Federal summer flounder measures specified under § 648.100(c) to achieve the recreational harvest limit in any year. These measures would be a different combination of minimum fish sizes, possession limits, and closed seasons that are the conservation equivalent of those Federal summer flounder measures specified on an annual basis.

(b) A determination of equivalency would be made annually for any state proposing alternative recreational measures by the Summer Flounder Technical Committee of the Commission. Conservation equivalent measures may be implemented by any state without a determination of equivalency by the Summer Flounder Technical Committee review, but only if states use the state-specific tables provided by the Commission and maintain a 15–inch (38–cm) or greater minimum fish size.

(1) Once a state receives a determination of equivalency from the Summer Flounder Technical Committee or a state implements conservation equivalent measures contained in the state-specific table provided by the Commission, the Commission will recommend to the Regional Administrator that a notification be published in the **Federal Register** to waive the annual Federal summer flounder measures specified under § 648.100(c) and to notify vessel permit holders of the equivalent measures approved by the Summer Flounder Technical Committee for landing summer flounder in that state.

(2) States electing not to implement conservation equivalent measures or states that did not receive a determination of equivalency from the Summer Flounder Technical Committee and not implementing conservation equivalent measures contained in the state-specific table provided by the Commission would be required to implement the annual Federal summer flounder measures specified under § 648.100(c) in accordance with the provisions of the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries.

[FR Doc. 99–23444 Filed 9–3–99: 3:44 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 174
Thursday, September 9, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 360

RIN 3064–AC28

Treatment by the Federal Deposit Insurance Corporation as Conservator or Receiver of Financial Assets Transferred by an Insured Depository Institution in Connection With a Securitization or Participation

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Deposit Insurance Corporation (the FDIC) is publishing for notice and comment a proposed rule regarding the treatment by the FDIC, as receiver or conservator, of financial assets transferred by an insured depository institution in connection with a securitization or in the form of a participation. The purpose of the rule is to resolve issues raised by Statement of Financial Accounting Standards No. 125 (SFAS 125), as promulgated by the Financial Accounting Standards Board (FASB), as to whether the FDIC's statutory authority to repudiate contracts pursuant to section 11(e) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)) would prevent a transfer of financial assets by an insured depository institution in connection with a securitization or in the form of a participation from satisfying the "legal isolation" condition of SFAS 125. Failure to satisfy this condition would prevent such a transfer from being accounted for as a sale in financial statements and reports prepared in accordance with generally accepted accounting principles (GAAP).

The proposed rule provides that the FDIC shall not, by exercise of its statutory power to repudiate contracts, recover, reclaim, or recharacterize as property of the institution or the receivership financial assets that were transferred by an insured depository institution in connection with a securitization or in the form of a participation, provided that the transfer meets all conditions for sale accounting treatment under GAAP, other than the "legal isolation" condition as it applies to an institution for which the FDIC may be appointed as conservator or receiver, which the proposed rule is intended to address. The proposed rule defines both "securitization" and "participation," with "participation" specifically limited to participations that are "without recourse" to the selling or "lead" institution. The proposed rule does not apply unless the insured depository institution received adequate consideration for the transfer of financial assets at the time of the transfer, and the documentation effecting the transfer of financial assets reflects the intent of the parties to treat the transaction as a sale, and not as a secured borrowing, for accounting purposes. The proposed rule shall not be construed as waiving or limiting any other rights or powers of the FDIC as conservator or receiver of an insured depository institution to take any action or exercise any power not specifically addressed in the rule, including but not limited to any rights or powers of the FDIC regarding any transfer taken in contemplation of the institution's insolvency or with the intent to hinder, delay, or defraud the institution or the creditors of such institution. The proposed rule also provides that the FDIC shall not seek to avoid an otherwise legally enforceable securitization agreement or participation agreement executed by an insured depository institution solely because such agreement does not meet the "contemporaneous" requirement of sections 11(d)(9), 11(n)(4)(I), and 13(e) of the Federal Deposit Insurance Act.

The proposed rule may be repealed by the FDIC upon 30 days notice and opportunity for comment provided in the **Federal Register**, but in the event of such repeal, the rule shall continue to be effective with respect to any transfers made before the date of the repeal.

DATES: Written comments must be received by the FDIC on or before November 8, 1999.

ADDRESSES: Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand delivered to the guard station located at the rear of the 17th Street building on F Street on business days between 7:00 a.m. and 5:00 p.m. [FAX number (202) 898–3838, Internet address: *comments@FDIC.gov*]. Comments may also be inspected and photocopied at the FDIC Public Information Center, room 100, 801 17th Street, N.W., Washington, D.C. between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Michael Krimminger, Division of Resolutions and Receiverships, (202) 898–8950; Robert Storch, Division of Supervision, (202) 898–8906; or Thomas Bolt, Legal Division, (202) 736–0168, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Under generally accepted accounting principles, a transfer of financial assets is accounted for as a sale if the transferor surrenders control over the assets. One of the conditions for determining whether the transferor has surrendered control is that the assets have been isolated from the transferor, i.e., put presumptively beyond the reach of the transferor, its creditors, and a trustee in bankruptcy or a receiver. This is known as the "legal isolation" condition. Where the transferor is an insured depository institution for which the FDIC may be appointed as conservator or receiver, the issue arises whether financial assets transferred by such institution in connection with a securitization or in the form of a participation would be put beyond the reach of the FDIC as conservator or receiver for such institution in light of (i) the statutory authority of the FDIC to repudiate contracts to which such institution is a party and (ii) the provisions of sections 11(d)(9), 11(n)(4)(I), and 13(e) of the Federal Deposit Insurance Act regarding the enforceability of agreements against the FDIC. The specific issues are whether the FDIC might, in the exercise of its authority to repudiate contracts, avoid a transfer of financial assets in connection with a securitization or in the form of a participation, and recover such assets; and whether the FDIC might, with respect to an agreement executed in relation to a transfer of financial assets in connection with a securitization or

with respect to a participation, assert the requirement of sections 11(d)(9), 11(n)(4)(I), and 13(e) of the Federal Deposit Insurance Act that to be enforceable against the FDIC, any agreement that tends to diminish or defeat the FDIC's interest in an asset must be executed contemporaneously with the acquisition of the asset by the institution (the "contemporaneous" requirement).

Pursuant to 12 U.S.C. 1821(e)(1), the FDIC, when acting as conservator or receiver of any insured depository institution, has the power to disaffirm or repudiate any contract or lease (i) to which the institution is a party; (ii) the performance of which the conservator or receiver, in the conservator's or receiver's discretion, determines to be burdensome; and (iii) the disaffirmance or repudiation of which the conservator or receiver determines, in the conservator's or receiver's discretion, will promote the orderly administration of the institution's affairs. Repudiation of a contract relieves the FDIC from performing any unperformed obligations remaining under the contract. Repudiation also entitles the other party to the contract to a claim for damages, which are limited by statute to actual direct compensatory damages determined as of the date of the appointment of the receiver or conservator. *See* 12 U.S.C. 1821(e)(3).

Pursuant to sections 11(d)(9), 11(n)(4)(I), and 13(e) of the Federal Deposit Insurance Act, no agreement that tends to diminish or defeat the FDIC's interest in an asset acquired from an insured depository institution is enforceable against the FDIC unless such agreement meets certain requirements. One of those requirements is that the agreement be executed by the depository institution and any person claiming an adverse interest thereunder contemporaneously with the acquisition of the asset by the institution.

In order for a transfer of financial assets by an insured depository institution in connection with a securitization or in the form of a participation to be accounted for as a sale, the proposed rule provides that the FDIC shall not, by exercise of its authority to disaffirm or repudiate contracts under 12 U.S.C. 1821(e), reclaim, recover, or recharacterize as property of the institution or the receivership any financial assets transferred by an insured depository institution in connection with a securitization or in the form of a participation. Although the repudiation of a securitization or participation will not affect transferred financial assets, repudiation will excuse the FDIC from performing any continuing obligations imposed by the securitization or participation. If the FDIC, in order to terminate such continuing obligations or duties, seeks to disaffirm or repudiate an agreement or contract under which an insured depository institution has transferred financial assets in connection with a securitization or in the form of a participation, the FDIC will not seek to reclaim, recover, or recharacterize as property of the institution or the receivership such financial assets.

The proposed rule applies only to those securitizations or participations in which the transfer of financial assets meets all conditions for sale accounting treatment under generally accepted accounting principles, other than the "legal isolation" condition as it applies to institutions for which the FDIC may be appointed as conservator or receiver, which the proposed rule is intended to address.

As part of the definition of "participation," the proposed rule provides that a participation must be "without recourse," that is, the participation must not be subject to any agreement that requires the lead to repurchase the participant's interest or to otherwise compensate the participant upon the borrower's default on the underlying obligation. The term "without recourse" does not, however, preclude the lead institution from retaining a subordinated interest in the participated obligation, against which losses are initially allocated.

The proposed rule does not apply unless the insured depository institution received adequate consideration for the transfer of financial assets at the time of the transfer, and the documentation effecting the transfer of financial assets reflects the intent of the parties to treat the transaction as a sale, and not as a secured borrowing, for accounting purposes.

The proposed rule shall not be construed as waiving, limiting or otherwise affecting the rights or powers of the FDIC to take any action or to exercise any power not specifically limited by this section, including, but not limited to any rights, powers or remedies of the FDIC regarding transfers taken in contemplation of the institution's insolvency or with the intent to hinder, delay, or defraud the institution or the creditors of such institution, or that is a fraudulent transfer under applicable law.

The proposed rule further provides that the FDIC shall not seek to avoid an otherwise legally enforceable securitization agreement or participation agreement executed by an insured depository institution solely because such agreement does not meet the "contemporaneous" requirement of sections 11(d)(9), 11(n)(4)(I), and 13(e) of the Federal Deposit Insurance Act.

The proposed rule is intended to apply to securitizations and participations that are engaged in by insured depository institutions while the rule is in effect, even if the rule is later repealed. Consequently, paragraph (g) provides that the rule will be effective unless repealed by the FDIC upon 30 days notice and opportunity for comment provided in the **Federal Register**, but in the event of such repeal, the rule shall continue to be effective with respect to any transfers made before the date of the repeal.

II. Paperwork Reduction Act

No collection of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is contained in the proposed rule. Consequently, no information was submitted to the Office of Management and Budget for review.

III. Regulatory Flexibility Act

The proposed rule is consistent with the FDIC's current practice and does not represent a change in the law with respect to securitizations and participations. Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the proposed rule will not have a significant economic impact on a substantial number of small business entities.

IV. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that this proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

List of Subjects in 12 CFR Part 360

Banks, banking, Savings associations.

For the reasons set out in the preamble, the FDIC Board of Directors proposes to amend 12 CFR part 360 as follows:

PART 360—RESOLUTION AND RECEIVERSHIP RULES

1. The authority citation for part 360 is revised to read as follows:

Authority: 12 U.S.C. 1821(d)(1), 1821(d)(11), 1821(e)(1), 1821(e)(8)(D)(i),

1823(c)(4), 1823(e)(2); Sec. 401(h), Pub.L. 101–73, 103 Stat. 357.

2. Section 360.6 is added to part 360 to read as follows:

§ 360.6 Treatment by the Federal Deposit Insurance Corporation as conservator or receiver of financial assets transferred in connection with a securitization or participation.

(a) *Definitions.* (1) *Beneficial interest* means debt or equity (or mixed) interests or obligations of any type issued by a special purpose entity that entitle their holders to receive payments that depend primarily on the cash flow from financial assets owned by the special purpose entity.

(2) *Financial asset* means cash or a contract or instrument that conveys to one entity a contractual right to receive cash or another financial instrument from another entity.

(3) *Participation* means the transfer or assignment of an undivided interest in all or part of a loan or a lease from a seller, known as the "lead", to a buyer, known as the "participant", without recourse to the lead, pursuant to an agreement between the lead and the participant. *Without recourse* means that the participation is not subject to any agreement that requires the lead to repurchase the participant's interest or to otherwise compensate the participant upon the borrower's default on the underlying obligation.

(4) *Securitization* means the issuance by a special purpose entity of beneficial interests:

(i) The most senior class of which at time of issuance is rated in one of the four highest categories assigned to long-term debt or in an equivalent short-term category (within either of which there may be sub-categories or gradations indicating relative standing) by one or more nationally recognized statistical rating organizations; or

(ii) Which are sold in transactions by an issuer not involving any public offering for purposes of section 4 of the Securities Act of 1933, as amended, or in transactions exempt from registration under such Act pursuant to Regulation S thereunder (or any successor regulation).

(5) *Special purpose entity* means a trust, corporation, or other entity with a distinct standing at law separate from the insured depository institution that is primarily engaged in acquiring and holding (or transferring to another special purpose entity) financial assets, and in activities related or incidental thereto, in connection with the issuance by such special purpose entity (or by another special purpose entity that acquires financial assets directly or indirectly from such special purpose entity) of beneficial interests.

(b) The FDIC shall not, by exercise of its authority to disaffirm or repudiate contracts under 12 U.S.C. 1821(e), reclaim, recover, or recharacterize as property of the institution or the receivership any financial assets transferred by an insured depository institution in connection with a securitization or participation, provided that such transfer meets all conditions for sale accounting treatment under generally accepted accounting principles, other than the "legal isolation" condition as it applies to institutions for which the FDIC may be appointed as conservator or receiver, which is addressed by this section.

(c) Paragraph (b) of this section shall not apply unless the insured depository institution received adequate consideration for the transfer of financial assets at the time of the transfer, and the documentation effecting the transfer of financial assets reflects the intent of the parties to treat the transaction as a sale, and not as a secured borrowing, for accounting purposes.

(d) Paragraph (b) of this section shall not be construed as waiving, limiting, or otherwise affecting the power of the FDIC, as conservator or receiver, to disaffirm or repudiate any agreement imposing continuing obligations or duties upon the insured depository institution in conservatorship or receivership.

(e) Paragraph (b) of this section shall not be construed as waiving, limiting or otherwise affecting the rights or powers of the FDIC to take any action or to exercise any power not specifically limited by this section, including, but not limited to, any rights, powers or remedies of the FDIC regarding transfers taken in contemplation of the institution's insolvency or with the intent to hinder, delay, or defraud the institution or the creditors of such institution, or that is a fraudulent transfer under applicable law.

(f) The FDIC shall not seek to avoid an otherwise legally enforceable securitization agreement or participation agreement executed by an insured depository institution solely because such agreement does not meet the "contemporaneous" requirement of sections 11(d)(9), 11(n)(4)(I), and 13(e) of the Federal Deposit Insurance Act.

(g) This section may be repealed by the FDIC upon 30 days notice and opportunity for comment provided in the **Federal Register**, but in the event of such repeal, the section shall continue to be effective with respect to any transfers made before the date of the repeal.

By order of the Board of Directors.

Dated at Washington, DC this 31st day of August, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–23384 Filed 9–8–99; 8:45 am]

BILLING CODE 6714–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region 2 Docket No. NJ35–2–196; FRL–6434–1]

Approval and Promulgation of Air Quality Implementation Plans; New Jersey; Approval of Carbon Monoxide State Implementation Plan Revision; Determination of Carbon Monoxide Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In today's action, the EPA is determining that the New York-Northern New Jersey-Long Island carbon monoxide nonattainment area has attained the carbon monoxide National Ambient Air Quality Standards. As a consequence of this determination, EPA is proposing to approve a State Implementation Plan revision submitted by the State of New Jersey on August 7, 1998. That revision removes New Jersey's oxygenated gasoline program as a carbon monoxide control measure from the State's SIP.

DATES: Comments must be received on or before October 12, 1999.

ADDRESSES: All comments should be addressed to: Raymond Werner, Acting Chief, Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, 25th Floor, New York, NY 10007–1866.

Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment, at the following addresses:

Environmental Protection Agency, Region 2, Air Programs Branch, 290 Broadway, 25th Floor, New York, NY 10007–1866.

New Jersey Department of Environmental Protection, Bureau of Air Quality Planning, 401 East State Street, CN027, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Michael P. Moltzen, Air Programs Branch, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–3710.

SUPPLEMENTARY INFORMATION:

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1. What Action is EPA Taking Today?

EPA is determining that the New York-Northern New Jersey-Long Island carbon monoxide (CO) nonattainment area [1] ("the New York City CO nonattainment area", "the New York City area," or "the area") has attained the CO National Ambient Air Quality Standards (NAAQS). EPA is also determining that New Jersey's oxygenated gasoline (oxyfuel) program is no longer needed to maintain the CO NAAQS. As a consequence of these determinations, EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of New Jersey on August 7, 1998. That revision removes New Jersey's oxyfuel program as a CO control measure from the State's CO SIP. In today's action, EPA is proposing to approve removal of the oxyfuel program because it has been determined that the program is no longer necessary to keep ambient CO concentrations below the CO NAAQS.

Under Clean Air Act (CAA) section 211(m), states with certain CO nonattainment areas are required to implement oxyfuel programs. Under section 211(m)(6), once such an area subsequently attains the CO NAAQS, oxyfuel requirements may be removed if it is demonstrated that the program is not needed for maintaining attainment in that area. Air quality trends show that CO concentrations throughout the New York City area have been below the CO NAAQS for more than four years. Complete monitoring data for the area demonstrating this trend can be found in the technical support document for this notice.

EPA has determined, through use of EPA's MOBILE computer model and air quality dispersion modeling, that the oxyfuel program is no longer necessary for New Jersey because it has been demonstrated through technical analyses that the CO NAAQS will not be violated anywhere in the area if the program is removed as a control strategy. By using these modeling tools, EPA and New Jersey have determined that improved CO levels are attributable primarily to three sources of emission reductions: (1) turnover of vehicle fleets in the area to more sophisticated cleaner technology vehicles; (2) implementation of reformulated gasoline year round; and (3) the recent implementation of the enhanced vehicle inspection and maintenance (I/M) program in New York (enhanced I/M in New Jersey is anticipated to begin this winter). This modeling, which is discussed in section 5. C of this notice and detailed in the technical support document, supports the conclusion that levels of CO meeting the NAAQS are able to be maintained without the wintertime oxyfuel program in place.

2. What is the Oxygenated Gasoline Program and How Does it Apply to New Jersey?

The oxygenated gasoline (oxyfuel) program is designed to reduce CO pollution from gasoline powered vehicles including passenger cars, sport utility vehicles and light trucks, which, combined, are significant contributors of CO emissions. EPA established a NAAQS for CO for the protection of human health. *See* 40 CFR 50.8; 50 FR 37501 (Sept. 13, 1985). Inhalation of CO results in inhibition of the blood's capacity to carry oxygen to organs and tissues. Persons with heart disease, infants, elderly persons, and individuals with respiratory diseases are particularly sensitive to CO. Effects of CO on healthy adults include impaired exercise capacity, visual perception, manual dexterity, learning functions, and ability to perform complex tasks.

The Clean Air Act (CAA) sets forth a number of SIP requirements for states with areas designated as nonattainment for the CO NAAQS. Section 211(m) of the CAA requires states with CO nonattainment areas, having design values of 9.5 parts per million (ppm) CO or above for any two-year period after 1989, to implement oxyfuel programs. The requirement for an oxyfuel program is to apply during the high CO season, which is generally during the colder winter months when cars tend to have higher tailpipe CO emissions. Oxyfuel programs require that, during the high CO season, gasoline contain at least 2.7% oxygen by weight. This requirement was intended to assure more complete gasoline combustion, thus achieving a reduction in tailpipe emissions.

The requirement for an oxyfuel program applies to certain areas in New Jersey because portions of the State are included in the New York City CO nonattainment area which had a design value for CO above 9.5 ppm. The New Jersey nonattainment area includes the counties of Bergen, Essex, Hudson, Union, and parts of Passaic. Specifically in Passaic County it includes the cities of Clifton, Paterson, and Passaic. Because the CAA section 211(m) requirement applies to the larger of the Consolidated Metropolitan Statistical Areas (CMSA) or the metropolitan statistical area in which the nonattainment area is located, the oxyfuel requirement for the area applies throughout the larger CMSA. New Jersey's portion of the larger CMSA, within which the sale of oxyfuel is required, consists of the following counties: Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic (the entire county), Somerset, Sussex, Union and Warren.

On November 15, 1992, New Jersey submitted to EPA its oxyfuel program contained in New Jersey Administrative Code Title 7, chapter 27, subchapter 25, "Control and Prohibition of Air Pollution by Vehicular Fuels" (adopted September 1, 1992, and operative November 1, 1992). EPA proposed to approve this submission, along with a number of other revisions to New Jersey's CO SIP, on November 10, 1994 (59 FR 56019). On February 7, 1995, New Jersey modified its oxyfuel regulations to shorten the length of the control period to four months each year—from November 1 through the last day of February. 27 N.J.R. 787(a), February 21, 1995. On February 12, 1996, EPA approved New Jersey's oxyfuel program into the SIP for the control period November 1 through the last day of February. 61 FR 5299. On July 25, 1996, EPA approved oxyfuel programs for Connecticut and New York at 61 FR 38574 and 61 FR 38594, respectively. EPA approved those oxyfuel programs for the New York City area for the same four-month period. At the same time, EPA made a final determination that November 1 through the end of February is the control period when the New York City area is prone to high ambient CO concentrations. 61 FR 38594.

3. What is the Purpose and Content of New Jersey's SIP Revision?

New Jersey submitted a proposed CO SIP revision to EPA on August 7, 1998. That submittal proposed to revise the SIP to remove New Jersey's oxyfuel program as a CO control measure. The

[1] This area is comprised of counties in Northern New Jersey, downstate New York and Southwestern Connecticut. The Connecticut portion of the area was redesignated to attainment on March 10, 1999 at 64 FR 12005. The remainder of the area is still designated nonattainment.

SIP revision documents that the New Jersey Department of Environmental Protection (NJDEP) held a public hearing on August 11, 1997 to take comment on the State's proposed rulemaking to remove the State requirements for its oxyfuel program in Northern New Jersey. On July 17, 1998, the NJDEP filed the adoption of its rulemaking proposal with the State's Office of Administrative Law. The adopted rulemaking was published in the New Jersey Register on August 17, 1998. 30 N.J.R. 3025.

The August 7, 1998 CO SIP revision contains the following elements, on which EPA is proposing action today:

(1) Air quality and "hot spot" modeling data demonstrating that the New Jersey portion of the New York City nonattainment area attains the NAAQS for carbon monoxide;

(2) The removal of the requirements for the oxyfuel program in Northern New Jersey.

That submittal also contained an update to the State's carbon monoxide attainment demonstration and an update to the carbon monoxide emission inventory. EPA is not taking action on these updates at this time because they are not directly related to, or required for, the action EPA is proposing today. Rather, these updates will be more appropriately included in an eventual SIP change to redesignate Northern New Jersey for attainment of the CO NAAQS. New Jersey's August 7, 1998 SIP submittal does not request redesignation, although the State has expressed an interest in redesignating the nonattainment area to attainment in the future. EPA will act on these updates after New Jersey formally requests redesignation.

New Jersey's SIP revision and today's action primarily concern the removal of requirements for the oxyfuel program in Northern New Jersey. Removal of the oxyfuel program is supported by the State's demonstration, using monitored air quality data and vehicle emission and air dispersion modeling data, that the area is attaining the CO NAAQS, and will continue to attain even without implementation of the oxyfuel program in Northern New Jersey. In addition New Jersey's submittal provides analysis of multi-state air quality and impacts of oxyfuel removal in New Jersey on the New York portion of the New York City area. This includes an analysis by New Jersey of certain congested intersections in New York City. EPA has supplemented this analysis, specifically with respect to the New York intersection analysis, to confirm that the area will continue to attain the CO NAAQS with the removal of oxyfuel. Based on the analyses, the area has been demonstrated to attain the CO NAAQS without oxyfuel in New Jersey. For further detail regarding analysis of the technical demonstration, the reader is referred to section 5 below and also to the technical support document for this proposal.

Based on EPA's determination that the New York City area is attaining the CO NAAQS, and the demonstration of maintenance for the area, EPA is proposing to approve New Jersey's SIP revision, submitted on August 7, 1998, which removes the State's oxyfuel program from its CO SIP.

4. What is EPA's Authority for Approving Oxyfuel Removal?

Section 211(m) of the Clean Air Act (CAA) generally requires states to adopt oxygenated gasoline programs for certain areas that, as of 1990, failed to meet the National Ambient Air Quality Standard (NAAQS) for carbon monoxide (CO). Section 211(m)(6) adds, however, that, "Nothing in this subsection shall be interpreted as requiring an oxygenated gasoline program in an area which is *in attainment* for carbon monoxide. * * *" (emphasis added).

In EPA's redesignation of the Camden County, New Jersey CO nonattainment area, EPA elaborated on its interpretation of section 211(m)(6). 60 FR 62741 (Dec. 7, 1995). In that rulemaking, EPA explained, "Whether an area is 'in attainment' depends solely on a determination of whether an area is attaining the NAAQS (a determination based on the air quality of the area) * * *." 60 FR 62744. EPA concluded that once it determines that a CO nonattainment area is actually attaining the CO NAAQS, and the area demonstrates that it does not need oxyfuel to maintain the NAAQS, section 211(m) no longer requires a state to adopt an oxyfuel program into its state implementation plan (SIP) so long as the area continues to maintain the CO standard. Thus, New Jersey was not required in the first instance to adopt an oxyfuel program for Camden County because the area was attaining the CO NAAQS, and the State demonstrated that the area could maintain the standard without additional emissions reductions.

In the Camden rulemaking, EPA also briefly addressed the applicability of section 211(m)(6) to those areas attaining the CO NAAQS that had already adopted an oxyfuel program:

> Where a state that is in fact attaining the CO NAAQS has an oxygenated gasoline program as part of an approved SIP, the program would remain in the SIP; section 211(m)(6) only would allow the state to submit a SIP revision to remove the program, and then only if it is not needed for maintenance and its removal complied with section 110(l). Also the entire nonattainment area must be actually achieving the CO NAAQS before oxygenated gasoline would not be required in any portion of the MSA or CMSA in which an area is located. Furthermore, unless the area is redesignated to attainment, the oxygenated gasoline program requirement would again become effective upon a subsequent violation of the standard.
>
> 60 FR 62745.

New Jersey has already adopted an oxyfuel program for the Northern New Jersey nonattainment area. In order to remove the program, the above criteria must be met. The following section evaluates New Jersey's request to drop the oxyfuel program for the Northern New Jersey nonattainment area against these criteria.

5. How Have the Criteria for Oxyfuel Removal Been Met?

To determine if a state can remove its oxyfuel program prior to redesignation for attainment, certain criteria must be met. These criteria, which are derived directly from our policy for section 211(m)(6) (discussed above in section 4.), are stated below. Following each is a brief discussion of how New Jersey has met these criteria. A more detailed technical discussion can be found in the technical support document for this **Federal Register** document.

A. Is the entire designated nonattainment area actually attaining the CO NAAQS?

The entire New York City CO nonattainment area has attained the CO NAAQS since 1995. The applicable CO NAAQS is 9.0 ppm averaged over an eight-hour period. The last CO NAAQS violation occurred in 1994.[2] A summary and short discussion of the air quality monitoring data which shows that the entire three-state area attained the CO NAAQS follows for each state. Complete data and a detailed discussion of it can be found in the technical support document for this notice.

1. Monitored Air Quality in New Jersey

Six carbon monoxide (CO) monitors meeting EPA siting criteria are maintained in the Northern New Jersey portion of the New York City CO nonattainment area. Locations for these monitors were selected to assure good representation of both CO exposure to people and the maximum CO concentrations which would occur. Monitoring stations (one each) are located in the following cities and towns: Fort Lee, Hackensack, Newark, Jersey City, North Bergen and Elizabeth.

Monitoring data from these locations is collected and quality-assured in accordance with 40 CFR part 58. In 1994 New Jersey experienced two violations of the CO NAAQS. These violations were recorded at monitoring stations in North Bergen and Elizabeth in Northern New Jersey (see table 5.1). Since 1995, no subsequent violations were recorded in Northern New Jersey. In accordance with EPA's protocol for determining CO violations, the following table lists the second highest recorded CO concentrations, in parts per million (ppm), at each monitoring station for the calendar years 1994 through 1998:

[2] A violation occurs when two non-overlapping exceedances are recorded at the same monitoring site during the same calendar year. An exceedance occurs when an average CO concentration greater than or equal to 9.5 ppm is recorded over an eight-hour period.

TABLE 5.1—NEW JERSEY CO AIR QUALITY DATA SUMMARY (SECOND MAXIMA)

[Parts per million CO]

	Fort Lee	Hackensack	Newark	Jersey City	North Bergen	Elizabeth
1994	5.3	7.0	6.0	5.9	*10.7	*11.3
1995	5.0	4.8	5.3	6.2	8.1	7.7
1996	3.5	4.0	3.8	4.9	6.7	6.0
1997	3.4	6.1	3.8	4.3	6.7	5.1
1998	3.7	3.7	2.6	4.1	5.6	5.1

*Indicates the second highest concentration exceeded the CO NAAQS, triggering a violation.

2. Monitored Air Quality in New York

Eight CO monitors meeting EPA siting criteria have been maintained over the period 1994 to 1998 in the New York portion of the New York City CO nonattainment area. Locations for these monitors were selected to assure good representation of both CO exposure to people and the maximum CO concentrations which would occur. Monitoring stations are located at the following areas: Manhattan (4), Bronx (1), Brooklyn (2) and Nassau County (1).

Monitoring data from these locations is collected and quality-assured in accordance with 40 CFR 58. Since 1994, no violations of the CO NAAQS were recorded in the New York portion of the area. In accordance with EPA's protocol for determining CO exceedances, the following table lists the second highest recorded CO concentrations, in ppm, at each monitoring station for the calendar years 1994 through 1998:

TABLE 5.2—NEW YORK CO AIR QUALITY DATA SUMMARY (SECOND MAXIMA)

[Parts per million CO]

	Bot. Gardens Bronx	Downtown Brooklyn	Park Slope Brooklyn	Nassau County	E 57th St. Manhattan	Canal St., Manhattan	E 59th St. Manhattan	E 34th St. Manhattan
1994	(‡)	6.4	4.5	5.4	4.9	7.2	7.3	6.7
1995	3.6	7.9	5.8	5.0	5.4	7.0	7.9	6.5
1996	3.3	6.1	3.4	4.9	3.9	4.4	6.3	5.0
1997	3.5	4.3	2.7	4.7	3.2	4.2	6.1	3.8
1998	3.2	4.1	2.4	4.0	4.0	4.2	5.8	3.9

‡ No data was available at this site for this year.

3. Monitored Air Quality in Connecticut

Two CO monitors meeting EPA siting criteria are maintained in the Southwest Connecticut portion of the New York City CO nonattainment area. Locations for these monitors were selected to assure good representation of both CO exposure to people and the maximum CO concentrations which would occur. Monitoring stations are located in the following cities: Bridgeport and Stamford.

Monitoring data from these locations are collected and quality-assured in accordance with 40 CFR part 58. Since 1994, no violations of the CO NAAQS were recorded in the Southwest Connecticut portion of the area. In accordance with EPA's protocol for determining CO exceedances, the following table lists the second highest recorded CO concentrations, in ppm, at each monitoring station for the calendar years 1994 through 1998:

TABLE 5.3—CONNECTICUT CO AIR QUALITY DATA SUMMARY (SECOND MAXIMA)

[Parts per million CO]

	Bridgeport	Stamford
1994	5.8	6.2
1995	4.9	5.4
1996	3.0	4.1
1997	4.0	5.1
1998	2.8	3.8

B. Is the program to be removed already approved into the SIP? If so, has the state submitted a SIP revision request, which complies with CAA section 110(l), to remove the oxyfuel program from the SIP?

The oxyfuel program was approved into the New Jersey SIP on February 12, 1996. Subsequently, New Jersey submitted a SIP revision on August 7, 1998 to remove New Jersey's oxyfuel program as a CO control measure from the SIP. CAA section 110(l) requires that a state's SIP revision cannot interfere with a state's attainment or rate of progress toward attainment. EPA has determined that New Jersey's August 7, 1998 SIP revision meets the requirements of section 110(l) because it demonstrates that removal of the oxyfuel program from the SIP will not interfere with any state's CO attainment (see discussion in the following

subsection). This action will also not interfere with any state's attainment of any other criteria pollutants.

C. Is maintenance of the CO NAAQS, without implementation of oxyfuel, demonstrated for the entire area?

Attainment has been demonstrated in the entire area without the use of oxygenated fuels. New Jersey submitted an attainment demonstration which shows that each of their previously modeled SIP intersections attains the CO standard even if oxyfuel is removed. In addition, New Jersey performed an analysis for certain congested intersections in New York City demonstrating attainment of the CO standard at those intersections without the oxyfuel program in Northern New Jersey. A summary and discussion of the modeled air quality findings for the New Jersey, New York and Connecticut portions of the area follows. Additional details regarding these analyses can be found in the technical support document for this notice.

1. Modeled Air Quality in New Jersey

New Jersey's 1998 CO SIP submittal included an updated attainment demonstration showing how the State can attain the CO standard without the oxyfuel program in New Jersey. This demonstration included all of the locations which were originally modeled in New Jersey's 1992 CO SIP, submitted on November 15, 1992. All modeling procedures employed by New Jersey in its current analysis are the same as those followed in the State's 1992 CO SIP. The modeling protocol employed by the State includes use of a vehicle emissions model and an ambient air dispersion model.

In-use automobile emissions were determined through the use of the most recent EPA-approved mobile emissions computer model, "MOBILE5b." This model takes into account local area parameters such as elevation and temperature, and vehicle information including registration distribution, mileage accumulation fractions, fuel type, vehicle operation modes, and type of inspection program, if any. Data results from this modeling analysis are then used as input to an ambient air dispersion model. CAL3QHC, which is the most current EPA-approved plume dispersion model, uses this information as well as street intersections, traffic signal timing, road type, and monitored background information as data inputs. Based on these inputs, CAL3QHC predicts maximum CO concentrations, in parts per million, for "worst case" meteorological conditions at the locations of concern. Additional details regarding this and additional modeling demonstrations considered in EPA's proposed approval can be found in the technical support document for this notice.

Twenty-five locations in five counties in the Northern New Jersey portion of the New York City area were modeled. The results of modeling done for Northern New Jersey demonstrate no violations of the CO NAAQS at any of the modeled locations when oxyfuel is removed. Results show only 3 intersections had modeled CO concentrations above 7.2 ppm. The maximum predicted concentration was 8.0 ppm. Additional details regarding these results can be found in the technical support document.

2. Modeled Air Quality in New York

In order to demonstrate that removal of oxyfuel in Northern New Jersey would not cause or contribute to exceedances of the CO NAAQS in the New York portion of the New York City area, New Jersey analyzed certain locations in New York. These locations were chosen by EPA, and agreed upon by both New York, New Jersey, Connecticut and EPA Regions 1 and 2 during several meetings, to be traffic intersections which have historically demonstrated the highest modeled CO concentrations (see New York's November 15, 1992 CO SIP submittal), and which are representative of CO exposure in New York's portion of the area. Confirmation of agreement to this protocol was detailed in a letter dated August 22, 1997, from EPA Regional Administrator Jeanne M. Fox to NJDEP Commissioner Robert C. Shinn. The agencies ultimately agreed upon a total of 11 intersections located over six counties. Additional detail on these analysis locations can be found in the technical support document.

New Jersey's 1998 CO SIP revision could not fully demonstrate attainment at all 11 New York locations under then-current conditions. Since that analysis was performed, New York's enhanced I/M program began being implemented. As mentioned previously, this program can contribute significantly to reductions of CO. Consequently, EPA chose to reconsider New Jersey's 1998 submittal to take into account the effects of New York's enhanced I/M program on predicted CO concentrations at the New York locations originally predicted to exceed the CO NAAQS. The results of this re-analysis show that all 11 New York locations will now continue to attain the CO NAAQS once oxyfuel is removed. Details regarding the analyses for New York can be found in the technical support document.

3. Modeled Air Quality in Connecticut

Prior to today's action, EPA approved the redesignation of the Southwest Connecticut portion of the New York City CO nonattainment area. As part of its action to approve Connecticut's redesignation, EPA reviewed a maintenance demonstration for Southwest Connecticut. EPA determined that CO maintenance is demonstrated in Southwest Connecticut without reliance on oxyfuel implementation anywhere in the New York City CMSA. Additional detail on the CO maintenance demonstration analysis for Connecticut can be found at 63 FR 58637 (November 2, 1998) and 64 FR 12005 (March 10, 1999).

6. Conclusion

EPA is determining that the New York-Northern New Jersey-Long Island carbon monoxide nonattainment area has attained the carbon monoxide National Ambient Air Quality Standards. As a consequence of this determination, and our determination that the criteria listed in section 5 of this notice have been adequately met, EPA is proposing to approve New Jersey's August 7, 1998 SIP revision to remove the State's oxygenated gasoline program from the federally approved State Implementation Plan. EPA's authority to approve removal of a state's oxyfuel program is set forth at Clean Air Act section 211(m)(6). EPA has determined that the criteria of section 211(m)(6) have been satisfied and removal of the oxyfuel program at this time is appropriate.

EPA can only approve removal of the oxyfuel program in New Jersey, pursuant to CAA section 211(m)(6), because of EPA's determination that the area is actually attaining the CO NAAQS. In the unlikely event that the New York City CO nonattainment area subsequently records a violation of the CO NAAQS, EPA's basis for approval of oxyfuel removal would no longer exist and the requirements of section 211(m) would again become effective for New Jersey. This means that the State would need to implement an oxyfuel program in accordance with the requirements of CAA section 211(m).

7. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Orders on Federalism

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

On August 4, 1999, President Clinton issued a new executive order on federalism, Executive Order 13132, (64 FR 43255 (August 10, 1999)), which will take effect on November 2, 1999. In the interim, the current Executive Order 12612, (52 FR 41685 (October 30, 1987)), on federalism still applies. This rule will not have a substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612.

The rule affects only two states, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed SIP revision is not subject to E.O. 13045 because it proposes approval of a state program revision, and it is not economically significant under E.O. 12866.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated annual costs to state, local, or tribal governments, in the aggregate, or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed approval action does not include a federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action proposes to approve amendments to state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations.

Dated: August 31, 1999.
William J. Muszynski,
Acting Regional Administrator, Region 2.
[FR Doc. 99–23279 Filed 9–8–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE101–1025b; FRL–6434–7]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Proposed Approval of Miscellaneous Revisions

AGENCY: Environmental Protection Agency (EPA).
ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the State of Delaware to various State rules and definitions which have historically been State-enforceable, and which Delaware had formally submitted as SIP revisions, but which EPA had not yet taken formal action. Provisions include control of particulate matter from petroleum refining operations, control of sulfur dioxide emissions from sulfuric acid manufacturing operations, and definitions and provisions associated with source monitoring, recordkeeping and reporting. In the "Rules and Regulations" section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by October 12, 1999.

ADDRESSES: Written comments should be addressed to Marcia L. Spink, Associate Director, Office of Air Programs, Mailcode 3AP20, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford, (215) 814–2108, at the EPA Region III address above, or by e-mail at frankford.harold@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: August 20, 1999.
W. Michael McCabe,
Regional Administrator, Region III.
[FR Doc. 99–23275 Filed 9–8–99; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR 151

[USCG–1999–5117]

RIN 2115–AF77

Barges Carrying Bulk Liquid Hazardous Material Cargoes

AGENCY: Coast Guard, DOT.
ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Coast Guard requests comments on the type and scope of any necessary revisions to the barges carrying bulk liquid hazardous material cargoes regulations. The regulations are almost 30 years old and do not include current safety issues, technology standards, and industry practices. At this early stage of the rulemaking process we need information to help us identify potential regulatory revisions.

DATES: Comments and related material must reach the Docket Management Facility on or before March 7, 2000.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–1999–5117), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza Level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

A copy of the Chemical Transportation Advisory Committee's (CTAC) recommended changes to the Coast Guard carriage regulations for barges carrying bulk liquid hazardous material cargoes is available in the public docket at the above address, on the Internet at http://dms.dot.gov, or you may obtain a copy by contacting the project manager at the number in **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: For questions on this advance notice of proposed rulemaking, call Mr. Thomas Felleisen, Hazardous Materials Standards Division, Coast Guard, telephone 202–267–0085. For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this advance notice (USCG–1999–5117), indicate the specific section or question in this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period when developing our proposed changes to the regulations.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Purpose

We need your comments and information on the issues contained in this advance notice to help us define the scope of any necessary revisions to the barges carrying bulk liquid hazardous material cargoes regulations in 46 CFR part 151. The regulations are almost 30 years old and do not include current safety issues, technology standards, and industry practices. At this early stage of the rulemaking process we need information to help us identify potential regulatory revisions.

Background

The existing barges carrying bulk liquid hazardous material cargoes regulations were published in 1970 and only minor changes have been made to them since then. In 1993, the Chemical Transportation Advisory Committee (CTAC) submitted recommended regulatory changes to the Coast Guard and requested that we revise our regulations accordingly. A complete copy of their 1993 recommendations is available in the public docket. These recommendations included changes to the regulations to—

- Reduce chemical spills;
- Formalize policy;
- Reflect changes to industry practices; and
- Clarify regulatory text.

Since these recommendations are over five years old the Coast Guard will request CTAC to review them. The Coast Guard will consider these recommendations when developing its proposed revisions to the barges carrying bulk liquid hazardous material cargoes regulations, but would like to receive your comments on CTAC's recommendations. A copy of CTAC's recommendations is also available by contacting the Coast Guard project manager under **FOR FURTHER INFORMATION CONTACT** or on the Internet at http://dms.dot.gov.

The Louisiana Governor's Maritime Task Force has identified a need for revised cargo identification signs on barges carrying hazardous liquid cargoes in bulk. Louisiana emergency responders have indicated a preference for the placarding system used by trucking and rail transportation. The current warning sign system used on barges might not be satisfactory for emergency responders who have been trained to recognize the trucking and rail placarding system. Also, the current signs might not assist responders to rapidly identify contents and compatibility of barge cargoes from remote locations. The Coast Guard would like to receive your comments about whether we should require placarding used by trucking and rail transportation on barges carrying bulk liquid hazardous material.

Preliminary Regulatory Assessment

This rulemaking is not likely to be classified as a significant regulatory action under section 3(f) of Executive Order 12866 and is not likely to be significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). A draft regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of the Department of Transportation would be prepared to support any future Notice of Proposed Rulemaking (NPRM).

The Coast Guard will not prepare a benefit-cost analysis until we have identified the regulatory changes we wish to propose. We do not have any cost figures on CTAC's recommendations, however, if you have cost data concerning CTAC's recommendations, as well as other relevant cost data, please forward it to the Docket Management Facility listed under **ADDRESSES**.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard must consider whether a potential rulemaking would have significant economic impacts on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Some barge companies subject to our regulations may be small entities. Because we have not yet proposed specific revisions and because the number of affected small entities has not been identified, we cannot accurately estimate the potential impact on small entities at this time. As part of the required 5 U.S.C. 610 review of regulations affecting small entities, we are requesting information at this early stage about the aspects of this rulemaking which may affect small entities, so we can evaluate and minimize the impact of proposed changes on them.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–21), we want to assist small entities in understanding this advance notice so they can better evaluate the potential effects of any future rulemaking on them and participate in the rulemaking process. If you believe this rulemaking may affect your small business, organization, or agency, please explain how you could be affected, and tell us what flexibility or compliance alternatives the Coast Guard should consider to minimize the burden on you while promoting safety measures for barges carrying bulk liquid hazardous material cargoes. If you have questions concerning this advance notice, you may call the Coast Guard project manager designated in **FOR FURTHER INFORMATION CONTACT**. We also maintain a small business regulatory assistance Web Page at http://www.uscg.mil/hq/g-m/regs/reghome.html that has current information on small entity issues and proposed Coast Guard regulations. To help small entities become more involved in this rulemaking, we will mail copies of this advance notice to Small Business Development Center (SBDC) State Directors nationwide for distribution to local SBDC offices and interested small businesses.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501–3520), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection of information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, record-keeping, monitoring, posting, labeling, and other, similar actions. Current collection of information requirements, approved under OMB Control Number 2115–0541, are shown in the following table.

Rule cite	Type of document submitted	Frequency
151.01–10(c)	For tank barges. Application for inspection	Every 2 years.
151.01–10(c)(1)	For new vessels > 300'. Loading information	Prior to first voyage.
151.10–15	For new or modified barges. Stability calculations	As needed.
151.15–3(b)(8)	For new pressure vessel tank barges. Calculations showing stress level in tanks under dynamic loading condition or grounding conditions.	As needed.
151.15–3(d)(4)	For barges. Heat transmission tests and studies	As needed.
151.45–2(e)	For barges. Warning signs and cargo info cards	When brought into service and replaced when needed.
151.45–3	For personnel who will man barges. Letter	As needed.
151.45–4(a)(2)	For qualified personnel. Letter that person on duty qualified to handle cargo	As needed.
151.45–7	For all vessels. Shipping papers for all cargoes	Per trip.
151.50–6(d)	For barges. Notification of internally inspecting tanks used for Motor fuel antiknock compounds (MKAFC).	As needed.
151.50–12(b)	For barges. Chemical composition of all steel used in construction of tanks that will carry ethylene oxide.	As needed.
151.50–20(i)	For barges. Notification tanks approved for acid cargoes to be used for other cargoes.	As needed.
151.50–22 and 23	For responsible personnel. Request to ship spent hydrochloric acid, phosphoric acid adulterates by other chemicals, inhibitors, etc.	As needed.
151.50–30(e)	For responsible personnel. Request to deviate from filling density limits in requirements for compressed gasses.	As needed.
151.50–31(d)	For company. Request to use welded or other unions for chlorine transfer lines	As needed.
151.50–50(n)	For owner/operator. Request to transport cargo other than phosphorous in phosphorous cart tanks or another cargo when transporting phosphorous in another tank.	As needed.

We will review these collection requirements to validate, reduce, or eliminate existing burdens that are no longer necessary. We request comments on how we may reduce or eliminate any of the current information collection requirements.

Questions

We request your comments and any data or information that would answer the following questions, as well as comments on any other part of the current regulations that should be revised. In responding to a question, please explain your reasons for each answer so that we can carefully weigh the consequences and impacts of any future requirements we may propose. In addition, please provide relevant data (data on operational incidents resulting in personal injury, property damage, or pollution would be particularly useful), if possible, that will support the need for a revision to the barges carrying bulk liquid hazardous material cargoes regulations.

1. The Coast Guard is considering a major update of the regulations in 46 CFR part 151, which are almost 30 years old. Do you think those regulations are adequate to protect against hazards to life and property, to ensure navigation and vessel safety, or to protect the marine environment? If not, why are they not adequate and which sections in 46 CFR part 151 need to be changed? How should these sections be changed? How can the sections in 46 CFR part 151 be clarified?

2. The recommendations from the Chemical Transportation Advisory Committee (CTAC) mentioned in the Background section of the preamble, if adopted, would change the organization of the regulations for tank barges carrying hazardous cargoes. Should 46 CFR part 151 be organized differently than it is now? If so, how should it be organized? Should 46 CFR parts 151 and 153 (Ships Carrying Bulk Liquid, Liquefied Gas, or Compressed Gas Hazardous Materials) be organized similarly? What benefit(s) would there be if these parts were organized similarly?

3. The United States is attempting to convert regulations to the metric system. What measurement system should be used in the regulations? Standard? Metric? Or both? What benefits are there to using one measurement system instead of the other or both?

4. The following incorporation by reference standards are cited in 46 CFR 151.01–2:

a. ASNT Recommended Practice No. SNT–TC–1A (1998), Personnel Qualification and Certification in Nondestructive Testing (§ 151.04–7(c)(2)).

b. ASME Boiler and Pressure Vessel Code section V, Nondestructive Examination (1986) (§ 151.04–7(a)(1)).

Are these standards still useful? Should either be updated? Are there any new standards that should be incorporated into these regulations? If so, what are they? Why should they be used?

5. The current regulations may include terms that are unclear or define terms that are no longer used. Which definitions in 46 CFR 151.03 should be updated or deleted? Please explain. Are there other terms that the Coast Guard should define in that section? Please explain.

6. Barges transferring hazardous cargoes have traditionally been required to display the red flag under 46 CFR 151.45–9. Should the Coast Guard continue to require the red flag to indicate cargo transfer operations?

7. The Louisiana Governor's Maritime Task Force has identified a need for cargo identification signs on barges carrying hazardous liquid cargoes in bulk. We would like your comments about whether we should require placarding used by trucking and rail transportation on barges carrying bulk liquid hazardous material. What other considerations apply to placarding on barges carrying bulk liquid hazardous material for purposes of identifying cargoes?

8. Certain waterways may have special needs. Are there any geographic or seasonal concerns that are not currently addressed in 46 CFR part 151? If so, please explain.

9. The current rules in 46 CFR part 151 have requirements for cargo-specific materials of construction. Do the following sections still represent engineering practices adequate to protect against hazards to life and property, to ensure navigation and vessel safety, or to protect the marine environment:

a. 46 CFR 151.55—Special Requirements for Materials of Construction?

b. 46 CFR 151.56—Prohibited Materials of Construction?

c. 46 CFR 151.58—Required Materials of Construction?

If not, how should they be changed to meet adequate engineering practices?

10. Currently, the Commandant of the Coast Guard approves carriage of new types of cargoes. Should the Coast Guard improve its procedures for assigning requirements for chemical cargoes in 46 CFR 151.01–5? Please explain.

11. Should the Coast Guard exempt existing barges carrying bulk liquid hazardous material from possible revisions to these regulations? Please explain. Should retrofitting any equipment to existing barges carrying liquid hazardous material be required? If so, what equipment should be retrofitted? Why? Should the regulations include a phase-in period for any new requirements? If so, how long should the period be?

12. The Coast Guard expresses no opinion regarding the merit of CTAC's recommendations discussed in the preamble. However, based on your review of CTAC's submission to the Coast Guard, which recommendations should the Coast Guard include in a proposed rule? Which CTAC recommendations should the Coast Guard not include in a proposed rule? Which CTAC recommendations should the Coast Guard revise and include in a proposed rule? Why?

13. The Coast Guard seeks information about the following subjects to assist in evaluating CTAC's recommendations and developing the most appropriate revisions to 46 CFR part 151:

a. Accident data detailing deaths.

b. Injuries.

c. Property damage.

d. Environmental damage.

e. Cost estimates of new barge construction.

14. What are the costs of the following CTAC recommended equipment modifications:

a. Changes in construction standards.

b. Addition of high level alarms.

c. Installation of tanks with high velocity vents.

d. Perforation of ullaging tubes.

15. The Coast Guard seeks cost data associated with recent technological improvements in the barge industry for carriage of liquid hazardous material. Those recent technological improvements may be proposed by this rulemaking. Please identify the improvements and their associated costs.

16. For almost three decades current rules in 46 CFR part 151 have had no change in their recordkeeping burden. These recordkeeping requirements are discussed in the Collection of Information section of the preamble. Should the current collection of information requirements be reduced or revised? If so, how should the requirements be changed? Should the Coast Guard allow for electronic submissions and/or recordkeeping?

17. If you believe a small entity will be affected by potential changes to the barges carrying bulk liquid hazardous material cargoes regulations, then please explain what flexibility or compliance options the Coast Guard should consider and how these options would minimize the burden on small entities.

Dated: September 1, 1999.

Joseph J. Angelo,

Acting Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–23421 Filed 9–8–99; 8:45 am]

BILLING CODE 4910–15–P

Notices

Federal Register
Vol. 64, No. 174
Thursday, September 9, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with § 351.213 of the Department of Commerce (the Department) Regulations (19 CFR 351.213 (1997)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity To Request a Review

Not later than the last day of September 1999, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in September for the following periods:

	Period
Antidumping Duty Proceedings	
Argentina: Silicon Metal, A–357–804	9/1/98–8/31/99
Canada:	
Steel Jacks, A–122–006	9/1/98–8/31/99
New Steel Rail, Except Light Rail, A–122–804	9/1/98–8/31/99
Germany: Newspaper Printing Presses, A–428–821	9/1/98–8/31/99
Italy: Stainless Steel Wire Rod, A–475–820	3/5/98–8/31/99
Japan:	
Flat Panel Displays, A–588–817	9/1/98–8/31/99
Newspaper Printing Presses, A–588–837	9/1/98–8/31/99
Stainless Steel Wire Rod, A–588–843	9/1/98–8/31/99
South Korea: Stainless Steel Wire Rod, A–580–829	3/5/98–8/31/99
Spain: Stainless Steel Wire Rod, A–469–807	3/5/98–8/31/99
Sweden: Stainless Steel Wire Rod, A–401–806	3/5/98–8/31/99
Taiwan:	
Chrome-Plated Lug Nuts, A–583–810	9/1/98–8/31/99
Stainless Steel Wire Rod, A–583–828	3/5/98–8/31/99
The People's Republic of China:	
CDIW Fittings & Glands, A–570–820	9/1/98–8/31/99
Freshwater Crawfish Tail Meat, A–570–848	9/1/98–8/31/99
Greige Polyester/Cotton Printcloth, A–570–101	9/1/98–8/31/99
Chrome-Plated Lug Nuts, A–570–808	9/1/98–8/31/99
Countervailing Duty Proceedings	
Canada: New Steel Rail, Except Light Rail, C–122–805	1/1/98–12/31/98
Italy: Stainless Steel Wire Rod, C–475–821	1/1/98–12/31/98
Suspension Agreements	
Argentina: Carbon Steel Wire Rod, C–357–004	9/1/98–8/31/99
Peru: Cotton Shop Towels, C–333–401	9/1/98–8/31/99

In accordance with section 351.213 of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. The Department changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 771(9) of the Act, an interested party must specify the individual producers or exporters covered by the order or suspension agreement for which they are requesting a review (Department of Commerce Regulations, 62 FR 27295, 27494 (May 19, 1997)). Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with § 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of September 1999. If the Department does not receive, by the last day of September 1999, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: September 2, 1999.

Bernard T. Carreau,

Deputy Assistant Secretary for Group II, AD/CVD Enforcement.

[FR Doc. 99–23437 Filed 9–8–99; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–812]

Dynamic Random Access Memory Semiconductors of One Megabit or Above (DRAMs) From the Republic of Korea: Postponement of Final Results of Antidumping Duty Administrative Review.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of time limit for final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results of the administrative review of the antidumping duty order on DRAMs from the Republic of Korea, covering the period May 1, 1997, through April 30, 1998, since it is not practicable to complete the review within the time limit mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: September 9, 1999.

FOR FURTHER INFORMATION: John Conniff, Antidumping Duty and Countervailing Duty Enforcement, Office Four, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue , NW, Washington DC 20230, telephone 202/482–1009.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act.

In addition, unless stated otherwise, all citations to the Department's regulations are to the current regulations codified at 19 CFR Part 351 (1998).

Background

On June 29, 1998 (63 FR 35188), the Department initiated an administrative review of the antidumping order on DRAMs from the Republic of Korea, covering the period May 1, 1997 through April 30, 1998. On June 8, 1999, the Department published the preliminary determination in this review (64 FR 30481).

Postponement of Final Results of Review

Section 751(a)(3)(A) of the Act requires the Department to make a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) allows the Department to extend this time period to 180 days after the date on which the preliminary determination is published.

We determine that it is not practicable to complete the final results of this review within the original time frame because of the complexity of the legal and methodological issues involved in this review (*see* Memorandum from Bernard T. Carreau, Deputy Assistant Secretary to Richard Moreland, Acting Assistant Secretary, September 1, 1999). Accordingly, the deadline for issuing the final results of this review will be no later than 180 days (December 5, 1999) from the publication of the preliminary determination.

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675 (a)(3)(A)).

Dated: September 1, 1999.

Holly A. Kuga,

Acting Deputy Assistant Secretary, AD/CVD Enforcement Group.

[FR Doc. 99–23434 Filed 9–8–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–331–602]

Certain Fresh Cut Flowers From Ecuador: Initiation and Preliminary Results of Changed-Circumstances Antidumping Duty Administrative Review and Intent To Revoke Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation and preliminary results of changed-circumstances antidumping duty administrative review and intent to revoke order.

SUMMARY: In response to a request from Timothy Haley, the Floral Trade Council, and the Floral Trade Council's Committees on Standard Carnations, Standard Chrysanthemums, and Pompom Chrysanthemums, the Department of Commerce is initiating a changed-circumstances antidumping duty review and is issuing this notice of intent to revoke the antidumping duty order on certain fresh cut flowers from Ecuador with respect to all unliquidated entries of subject merchandise entered, or withdrawn from warehouse, for consumption on or after March 1, 1997.

Interested parties are invited to comment on these preliminary results and intent to revoke.

EFFECTIVE DATE: September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Suzanne Flood or Edythe Artman, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0665 or (202) 482–3931, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (1998).

Background

On August 27, 1999, Timothy Haley, the Floral Trade Council (FTC), and the FTC's Committees on standard carnations, standard chrysanthemums, and pompom chrysanthemums (the FTC and its Committees) requested that the Department of Commerce (the Department) conduct a changed-circumstances administrative review to revoke the antidumping duty order on certain fresh cut flowers from Ecuador retroactive to March 1, 1997. The FTC was the petitioner in the less-than-fair-value investigation and its Committees are composed of domestic producers of the like product. The FTC and its Committees stated that circumstances have changed such that they no longer have an interest in maintaining the antidumping duty order, and it is their expectation that all interested parties will agree to revocation.

The FTC and its Committees also requested that, due to the pendency of the ongoing administrative reviews of the order, the Department initiate and complete the changed-circumstances review on an expedited basis.

Scope of Review

The products covered by this changed-circumstances review are certain fresh cut flowers from Ecuador including standard carnations, standard chrysanthemums, and pompon chrysanthemums. These products are currently classifiable under item numbers 0603.10.70.10, 0603.10.70.20, and 0603.10.70.30, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS item numbers are provided for convenience and for customs purposes, the Department's written description of the scope remains dispositive.

Initiation and Preliminary Results of Changed-Circumstances Antidumping Duty Administrative Review and Intent To Revoke Order

Pursuant to section 751(d)(1) of the Act, the Department may revoke, in whole or in part, an antidumping duty order based on a review under section 751(b) of the Act (*i.e.*, a changed circumstances review). Section 751(b)(1) of the Act requires a changed-circumstances administrative review to be conducted upon receipt of a request containing sufficient information concerning changed circumstances.

The Department's regulations at 19 CFR 351.216(d) provide that the Department will conduct a changed-circumstances administrative review in accordance with 19 CFR 351.221, if it decides that changed circumstances exist that are sufficient to warrant a review. Section 782(h) of the Act and section 351.222(g)(1)(i) of the Department's regulations provide further that the Department may revoke an order, in whole or in part, if it concludes that the order is no longer of interest to domestic interested parties. Therefore, an expression of no interest by domestic producers constitutes sufficient evidence of changed circumstances to warrant review. In addition, in the event that the Department concludes that expedited action is warranted, section 351.221(c)(3)(ii) of the regulations permits the Department to combine the notices of initiation and of preliminary results.

The FTC and its Committees are domestic interested parties as defined by section 771(9)(E) of the Act and 19 CFR 351.102(b). Therefore, based on the affirmative statement by the FTC and its Committees of no interest in the continued application of the antidumping duty order on certain fresh cut flowers from Ecuador, we are initiating this changed-circumstances review. Further, based on the affirmative statement of no interest by the FTC and its Committees, we have determined that expedited action is warranted, and we are therefore combining the notices of initiation and of preliminary results.

Based on the affirmative statement of no interest by the FTC and its Committees, we preliminarily determine that there are changed circumstances sufficient to warrant revocation of the entire order. We are hereby notifying the public of our intent to revoke the antidumping duty order on certain fresh cut flowers from Ecuador absent objections by domestic producers sufficient to establish that the criteria of section 782(h) of the Act have not been met.

In the event that we make a final determination to revoke, the Department will terminate the administrative reviews covering the following periods: March 1, 1997, through February 28, 1998 (initiated on April 24, 1998 (63 FR 20378)); March 1, 1998, through February 28, 1999 (initiated on April 30, 1999 (64 FR 23269)).

If final revocation of the order occurs, we intend to instruct the Customs Service to end the suspension of liquidation and to refund any estimated antidumping duties collected for all unliquidated entries of certain fresh cut flowers from Ecuador entered, or withdrawn from warehouse, for consumption on or after March 1, 1997. We will also instruct the Customs Service to pay interest on such refunds in accordance with section 778 of the Act. The current requirement for a cash deposit of estimated antidumping duties will continue until further notice.

Public Comment

Any interested party may request a hearing within 10 days of publication of this notice. Any hearing, if requested, will be held no later than 24 days after the date of publication of this notice. Written comments from interested parties may be submitted not later than 14 days after the date of publication of this notice. Rebuttal comments to written comments, which are limited to issues raised in those comments, may not be filed later than 20 days after the date of publication of this notice. All written comments shall be submitted in accordance with 19 CFR 351.303. Persons interested in attending the hearing should contact the Department for the date and time of the hearing. The Department will publish the final results of this changed-circumstances review, including the results of its analysis of issues that are raised in any written comments.

We are issuing and publishing this notice in accordance with sections 751(b)(1) and 777(i)(1) of the Act and sections 351.216 and 351.222 of the Department's regulations.

Dated: September 3, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–23629 Filed 9–8–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–817]

Oil Country Tubular Goods From Mexico: Preliminary Results of Antidumping Duty Administrative Review and Partial Recission of Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and partial rescission of administrative review.

SUMMARY: In response to a request from respondents, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on oil country tubular goods ("OCTG") from Mexico. The review covers one manufacturer/exporter of the subject merchandise to the United States and the period August 1, 1997 through July 31, 1998. We preliminarily determine that sales of subject merchandise have not been made below normal value. ("NV"). If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to assess antidumping duties based on the difference between export price ("EP") or constructed export price ("CEP") and NV.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument (no longer than five pages, including footnotes).

EFFECTIVE DATE: September 9, 1999.

FOR FURTHER INFORMATION CONTACT: John Drury, Nancy Decker or Linda Ludwig, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0195 (Drury), (202) 482–0196 (Decker), (202) 482–3833 (Ludwig).

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 351 (April 1998).

Background

The Department published a final determination of sales at less than fair value for OCTG from Mexico on June 28, 1995 (60 FR 33567), and subsequently published the antidumping duty order on August 11, 1995 (60 FR 41056). The Department published a notice of "Opportunity To Request Administrative Review" of the antidumping order for the 1997/1998 review period on August 11, 1998 (63 FR 42821). Upon receiving requests for administrative review from two respondents, Hylsa S.A. de C.V. ("Hylsa") and Tubos de Acero de Mexico, S.A. ("TAMSA"), we initiated a review on September 23, 1998 (63 FR 51893, September 29, 1998).

On November 2, 1998, Hylsa timely withdrew its request for review. Therefore, this review has now been terminated as to Hylsa as a result of the withdrawal of Hylsa's request for review.

Under Section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. On April 14, 1999, the Department extended the time limits for these preliminary results to August 31, 1999. *See Oil Country Tubular Goods from Mexico; Extension of Time Limits for Antidumping Duty Administrative Review* (64 FR 24370, May 6, 1999).

Scope of the Review

Imports covered by this review are oil country tubular goods, hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The OCTG subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers:

7304.20.10.10, 7304.20.10.20, 7304.20.10.30, 7304.20.10.40, 7304.20.10.50, 7304.20.10.60, 7304.20.10.80, 7304.20.20.10, 7304.20.20.20, 7304.20.20.30, 7304.20.20.40, 7304.20.20.50, 7304.20.20.60, 7304.20.20.80, 7304.20.30.10, 7304.20.30.20, 7304.20.30.30, 7304.20.30.40, 7304.20.30.50, 7304.20.30.60, 7304.20.30.80, 7304.20.40.10, 7304.20.40.20, 7304.20.40.30, 7304.20.40.40, 7304.20.40.50, 7304.20.40.60, 7304.20.40.80, 7304.20.50.15, 7304.20.50.30, 7304.20.50.45, 7304.20.50.60, 7304.20.50.75, 7304.20.60.15, 7304.20.60.30, 7304.20.60.45, 7304.20.60.60, 7304.20.60.75, 7304.20.70.00, 7304.20.80.30, 7304.20.80.45, 7304.20.80.60, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50.

Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Review

The review covers the period August 1, 1997 through July 31, 1998. The Department is conducting this review in accordance with section 751 of the Act, as amended.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondents, covered by the description in the Scope of the Review section, above, and sold in the home market during the period of review (POR), to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics listed in the Department's October 16, 1998 questionnaire, or to constructed value ("CV").

Normal Value Comparisons

To determine whether sales of the subject merchandise by TAMSA were made at less than NV, we compared the CEP to the NV, as described in the CEP and NV sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared CEPs to weight-averaged NVs.

United States Price

In its response to the Department, TAMSA claimed that its sales to the United States were EP sales. After careful examination of the record, and

based upon our analysis using the three-pronged test defined below, the Department has preliminarily determined to treat TAMSA's U.S. sales as CEP sales, as defined in section 772(b) of the Act. *See* Analysis Memorandum for TAMSA for a further discussion.

Pursuant to section 772(a) and (b) of the Act, an EP sale is a sale of merchandise for export to the United States made by a foreign producer or exporter outside the United States prior to importation. A CEP sale is a sale made in the United States before or after importation by or for the account of the exporter/producer or by a party affiliated with the exporter or producer. In determining whether the sales activity of a U.S. affiliate rises to such a level that CEP methodology is warranted, the Department has examined the following criteria: (1) whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer (rather than being introduced into the inventory of the U.S. affiliate), (2) whether this was a customary commercial channel between the parties involved, and (3) whether the function of the U.S. affiliate is limited to that of a "processor of sales-related documentation" and a "communication link" with the unaffiliated U.S. buyer. *See, e.g., Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Review ("Canadian Steel")*, 63 Fed. Reg. 12725, 12738 (March 16, 1998).

In the *Canadian Steel* case, the Department clarified its interpretation of the third prong of this test, as follows. "Where the factors indicate that the activities of the U.S. affiliate are ancillary to the sale (*e.g.*, arranging transportation or customs clearance, invoicing), we treat the transactions as EP sales. Where the U.S. affiliate has more than an incidental involvement in making sales (*e.g.*, solicits sales, negotiates contracts or prices) or providing customer support, we treat the transactions as CEP sales." *Id.*

Our examination of the record with respect to this administrative review indicates that the fact pattern for sales to the United States is substantially identical to the pattern for sales in the previous administrative review. In *Oil Country Tubular Goods From Mexico: Final Results of Antidumping Duty Administrative Review*, 64 FR 13962 (March 23, 1999), the Department stated in part:

> As an initial matter, the selling agreement between TAMSA and Siderca Corp. is quite clear with respect to the services that Siderca Corp. performs. Siderca Corp. is the exclusive selling agent for TAMSA products in the United States and other parts of the world, and has certain rights affecting the price for any sales under the agreement. In exchange for providing marketing and selling functions, and for providing other services, such as paying for brokerage and importer duties, Siderca Corp. is entitled to receive compensation under the agreement. The record indicates that Siderca Corp. did receive, in connection with this sale, the compensation provided for under the agreement.
>
> In addition, Siderca Corp. played the primary role in generating this sale by bringing the customer to TAMSA. The record shows that Siderca Corp. has a longstanding working relationship with the United States customer, is in frequent contact with that customer, and that sales of other TAMSA products to this and other customers occur because of these contacts. Conversely, TAMSA itself appears to have little, if any, contact outside of Mexico with regard to the sale of its products in the United States. Indeed, under the terms of the agreement, TAMSA is precluded from soliciting or negotiating sales directly in the United States. The agreement places the rights and responsibilities of selling and marketing TAMSA products in the United States squarely on Siderca Corp.
>
> Based on this fact pattern, it appears that, * * * the sale to the United States of subject merchandise was within the framework of the agreement between TAMSA and Siderca Corp. Evidence on the record indicates that, consistent with its rights and responsibilities under the selling agreement, Siderca Corp. maintained contacts with the United States customer and, through these contacts, was able to match that customer's requirements with subject merchandise available from TAMSA. The fact that Siderca Corp. may not have fully exercised its rights with regards to price negotiation, deferring to TAMSA with respect to the final approval, neither negates the substance and importance of the agreement nor diminishes the importance of Siderca Corp.'s role in arranging this sale. Simply put, under the current agreement, it appears that TAMSA would be precluded from seeking sales in the United States directly. Sales of TAMSA products in the United States must, as a condition of the agreement, begin with Siderca Corp. The fact that Siderca Corp. performed other functions as specified in the agreement, even if these were ancillary services, and received compensation according to the terms of the agreement, reinforces the conclusion that Siderca Corp.'s activities under the agreement were the primary factors in creating the sale to the United States.
>
> Based on our examination of the record, the selling agreement between TAMSA and its U.S. affiliate (Siderca Corp.) has not changed. Furthermore, Siderca Corp. has longstanding ties to the United States customer and is in frequent contact with that customer concerning sales of TAMSA products worldwide. Conversely, TAMSA does not communicate directly with the customer and, under the agreement, appears to be precluded from contacting United States customers. Based on these facts, it is clear that the U.S. affiliate has more than an incidental involvement in making these sales. Since the sales in question do not meet the third prong of the test for indirect EP sales described above, we need not consider the other two prongs. Based on our analysis, we are treating TAMSA's U.S. transactions as CEP sales.

We based CEP on the delivered price to unaffiliated customers in the United States. We made adjustments, where applicable, for movement expenses (U.S. inland freight, U.S. brokerage and handling expenses, and U.S. customs duties), credit expenses, and other selling expenses that were associated with economic activity in the United States, in accordance with section 772(d) of the Act. Finally, we made an adjustment for CEP profit in accordance with section 772(d)(3) of the Act.

Normal Value

In order to determine whether there were sufficient sales of OCTG in the home market ("HM") to serve as a viable basis for calculating NV, we compared the volume of home market sales of subject merchandise to the volume of subject merchandise sold in the United States, in accordance with section 773(a)(1)(C) of the Act.

TAMSA's aggregate volume of HM sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise. Therefore, for TAMSA, we have based NV on HM sales. We made adjustments to NV for HM inland freight, discounts, credit expenses, warehousing expenses, packing, and warranty expenses.

Cost of Production Analysis

Because the Department disregarded sales below cost for TAMSA in the comparison market during the last completed segment of the proceeding, we initiated a cost of production ("COP") analysis in accordance with section 773(b) of the Act. We conducted the COP analysis as described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP, by model, based on the sum of the cost of materials, fabrication and general expenses, and packing costs. We relied on the submitted COPs.

B. Test of Home Market Prices

We used respondent's weighted-average COP for the period August 1, 1997 to July 31, 1998. We compared the weighted-average COP figures to home market sales of the foreign like product as required under section 773(b) of the Act. In determining whether to disregard home-market sales made at prices below the COP, we examined whether (1) within an extended period of time, such sales were made in substantial quantities, and (2) such sales were made at prices which permitted the recovery of all costs within a reasonable period of time. On a product-specific basis, we compared the COP to the home market prices, less any applicable movement charges, rebates, and discounts.

C. Results of COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of TAMSA's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of respondent's sales of a given product during the POR were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time in accordance with section 773(b)(2)(B) of the Act. Because we compared prices to POR-average costs, we also determined that such sales were also not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act; therefore, we disregarded the below-cost sales.

D. Calculation of CV

In accordance with section 773(e) of the Act, we calculated CV based on the sum of TAMSA's cost of materials, fabrication, SG&A, including interest expenses, and U.S. packing costs, as reported and a calculated profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses and profit. For EP, the U.S. LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). (*See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).)

As the Department explained in *Gray Portland Cement and Clinker from Mexico: Final Results of Antidumping Duty Administrative Review ("Cement from Mexico")*, 62 FR 17156 (April 9, 1997), for both EP and CEP the relevant transaction for the LOT analysis is the sale from the exporter to the importer. While the starting price for CEP is that of a subsequent resale to an unaffiliated buyer, the construction of the CEP results in a price that would have been charged by the exporter to the importer if the importer had not been affiliated. We calculate the CEP by removing from the first resale to an unaffiliated U.S. customer the expenses referenced in section 772(d) of the Act and the profit associated with these expenses. These expenses represent activities undertaken by the affiliated importer in making the sale to the unaffiliated customers. Because the expenses deducted under section 772(d) of the Act are incurred for selling activities in the United States, the deduction of these expenses may yield a different LOT for the CEP than for the later resale (which we use for the starting price). Movement charges, duties, and taxes deducted under section 772(c) of the Act do not represent activities of the affiliated importer, and we do not remove them to obtain the price on which the CEP LOT is based.

To determine whether some or all home market sales are at a different LOT than U.S. sales, we examined both the chain of distribution and the selling functions in both markets. An analysis of the chain of distribution and of the selling functions substantiates or invalidates the claimed LOTs. Our analysis revealed that while all sales in the home market were in the same chain of distribution, there were substantial differences in selling functions between certain types of customers.

Some of the home market sales were made on a Just In Time ("JIT") basis. As in the prior review, the Department preliminarily determines that the infrastructure required to support the selling functions involving JIT sales results in these sales being made at a different LOT than non-JIT sales. Some sales in the home market, which would match to the U.S. sale, were not made on a JIT basis. The Department examined the selling functions provided by TAMSA to these customers to determine if these sales were at the same LOT as sales to the United States.

In *Stainless Steel Sheet and Strip in Coils from the United Kingdom, Preliminary Determination of Sales at Less than Fair Value and Postponement of Final Determination*, 64 FR 85 (January 4, 1999), the Department determined that some of the items listed by respondent were not selling functions relevant to the Department's LOT analysis because they did not characterize significant services provided to customers. Based on this analysis, we conclude that customer solicitation is not a selling function. Therefore, we are disregarding this item in our LOT analysis.

Of the remaining 13 selling functions listed by TAMSA, all but one were provided in both the home market and the United States to non-JIT customers. Only customer visits are listed by TAMSA as a selling function provided in the home market, but not in the United States. However, TAMSA does not quantify or otherwise describe the nature of these visits. Given the absence of evidence, we preliminarily determine that the actual differences in selling functions in connection with sales to non-JIT customers in the home market, and sales to the United States, are relatively minor.

Based on this determination, we preliminarily determine that sales to home market customers which do not receive JIT services are at the same level of trade as CEP sales. As a result, we have based our margin analysis on the

comparison of CEP sales to these non-JIT home market sales.

Because we have preliminarily determined that there are sales in the home market at the same level of trade as the sale to the United States, and because we have used only these same LOT sales as matching in calculating the margin, we are not making an LOT adjustment or a CEP offset.

Preliminary Results of Review

We preliminarily determine that the following margins exist for the period August 1, 1997 through July 31, 1998:

TAMSA—0.00%

Parties to this proceeding may request disclosure within five days of publication of this notice and any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 37 days after the date of publication, or the first working day thereafter. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 35 days after the date of publication. The Department will publish the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at a hearing, within 120 days after the publication of this notice.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. For duty assessment purposes, we calculated an importer-specific assessment rate by taking the dumping margin calculated for the U.S. sale to the importer and dividing this amount by the total entered value of the sale. This specific rate calculated will be used for the assessment of antidumping duties on the entry of the subject merchandise during the POR.

Furthermore, the following deposit requirements will be effective upon completion of the final results of these administrative reviews for all shipments of OCTG from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for reviewed firms will be the rate established in the final results of administrative review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(d)(1), in which case the cash deposit rate will be zero; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of these reviews, or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review or the original fair value investigation, the cash deposit rate will be 23.79%, the "all other" rate from the original investigation.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1)of the Act.

Dated: August 31, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–23433 Filed 9–8–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–808]

Certain Stainless Steel Wire Rod From India: Extension of Time Limits for Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for preliminary results of antidumping administrative review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the preliminary results of the antidumping administrative review on certain stainless steel wire rod from India.

EFFECTIVE DATE: September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Stephen Bailey or Rick Johnson, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–0413 or (202) 482–3818, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, codified at 19 CFR part 351 (1998).

Background

On October 20, 1993, the Department published in the **Federal Register** (58 FR 54110) the antidumping duty order on certain stainless steel wire rod from India. On December 8, 1998, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of this antidumping duty order (63 FR 67646).

On December 29, 1998, Viraj, an Indian producer, requested an administrative review of the antidumping duty order on certain stainless steel wire rod from India. In accordance with 19 CFR 351.221(b), we initiated the review of Viraj on January 25, 1999 (64 FR 3682), covering the period of December 1, 1997 through November 30, 1998.

Extension of Time Limits for Preliminary Results

Because it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act, the Department is extending the time limits for the preliminary results 120 days to January 3, 2000 (for a further discussion, *see Memorandum from Joseph A. Spetrini to Robert S. LaRussa, Extension of Time Limit for the Preliminary Results of Antidumping Administrative Reviews: Certain Stainless Steel Wire Rod from India,* dated August 25, 1999).

The final results continue to be due 120 days after the publication of the preliminary results.

Dated: August 31, 1999.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–23432 Filed 9–8–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of California at Santa Barbara, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 99–018. *Applicant:* University of California at Santa Barbara, Santa Barbara, CA 93106. *Instrument:* Electron Microscope, Model JEM–1230. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 64 FR 39972, July 23, 1999. *Order Date:* June 17, 1999.

Docket Number: 99–019. *Applicant:* National Institutes of Health, Hamilton, MT 59840. *Instrument:* Electron Microscope, Model H–7500. *Manufacturer:* Nissei Sangyo Ltd., Japan. *Intended Use:* See notice at 64 FR 42091. *Order Date:* May 19, 1999.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–23436 Filed 9–8–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Purdue University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 99–016. *Applicant:* Purdue University, W. Lafayette, IN 47907–1393. *Instrument:* ICP Mass Spectrometer, Model PlasmaQuad 3. *Manufacturer:* VG Elemental, United Kingdom. *Intended Use:* See notice at 64 FR 36338, July 6, 1999.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. *Reasons:* The foreign instrument provides: (1) Determination of six radionuclides (^{10}Be, ^{14}C, ^{26}Al, ^{36}Cl, ^{41}Ca, ^{129}I) for NSF Accelerator Mass Spectrometry Facility, (2) a high sensitivity quadrupole and (3) measurement of more elements than other ICP-mass spectrometers as determined by testing of standard specimen samples. The Department of Energy advised on August 18, 1999 that (1) these capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–23435 Filed 9–8–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082799B]

National Plan of Action for the Reduction of Incidental Catch of Seabirds in Longline Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public notice.

SUMMARY: The United States, through a collaborative effort of NMFS and the U.S. Fish & Wildlife Service (FWS), is developing a National Plan of Action (NPOA) pursuant to the endorsement of the International Plan of Action (IPOA) for the Reduction of Incidental Catch of Seabirds in Longline Fisheries by the United Nations Food and Agriculture Organization (UN FAO) Committee on Fisheries (COFI) Ministerial Meeting in March 1999. Noting the increased numbers of incidental seabird catch in longline fisheries, this IPOA calls on COFI member states to voluntarily develop national plans on reducing this incidental seabird catch. The United States has committed itself to developing this national plan, and reporting on its implementation to COFI, no later than 2001. This notice provides a time frame for the completion of this project and an outline of the contents of this NPOA. The public is invited to provide written comments and suggestions for items to be incorporated or addressed within the NPOA.

DATES: Comments will be accepted on the Seabird NPOA from September 9, 1999 until September 30, 1999.

ADDRESSES: Written comments should be sent to David Kerstetter, NOAA-Fisheries/SF, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: David Kerstetter, 301–713–2337, ext. 107, or FAX 301–713–2313.

SUPPLEMENTARY INFORMATION: The "International Plan of Action (IPOA) for Reducing Incidental Catch of Seabirds in Longline Fisheries" was endorsed in principle at the 23rd FAO COFI session in February 1999 and approved at the Fisheries Ministerial in March 1999. As with the two other IPOAs on sharks and capacity reduction, the Seabird IPOA calls on members to voluntarily develop an NPOA on this issue.

The FAO Fisheries Department has a draft budget for the 1999–2001 biennium of US$ 304,000 to assist with implementation of the seabird Plan by its Members. These funds have been allocated primarily to staff time, consultants, and publication costs. FAO anticipates the following three major actions from this budget toward its members: (1) Providing technical assistance while preparing NPOAs, (2) providing assistance in coordinating research and training, and (3) assisting in the reporting process to COFI.

The U.S. Government agencies did not wait for the passage of the IPOA to begin the work of seabird protection and management. Many measures have already been taken to reduce the incidental catch of these seabird species under such statutes as the Magnuson-Stevens Fishery Conservation and Management Act, the Endangered Species Act (ESA), and the Migratory Bird Treaty Act (MBTA). The U.S. NPOA is currently under development as a collaborative effort between NMFS and the Fish and Wildlife Service (FWS), with a draft Seabirds NPOA tentatively due for **Federal Register** notice in November 1999 and full completion of the Plan by January 2000.

Written comments on the Seabirds NPOA are encouraged (See **ADDRESSES**).

PROPOSED SCHEDULE

Date	Item
September 1999	Release approved schedule and outline to public via a FEDERAL REGISTER notice.
October 1999	Collect and incorporate review comments.
November 1999	Release Draft NPOA for public comment.
January 2000	Respond to public comments and release final version of Seabirds NPOA.

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Longline Fisheries of the United States: Descriptions, Regulations, and Current Mitigation Efforts, by Fishery Management Councils and/or International Agreements
a. Domestic Fisheries by Fishery Management Council:
1. New England FMC: NE Multispecies (FMP); Atlantic Halibut (non-FMP); Monkfish (non-FMP),
2. Mid-Atlantic FMC: Summer Flounder, Scup, Black Sea Bass (FMP); Atlantic Bluefish (FMP); Atlantic Mackerel, Squid and Butterfish (FMP); Monkfish (non-FMP); Tilefish (non-FMP),
3. South Atlantic (SA) FMC: SA Snapper-Grouper (FMP); SA Coastal Migratory Pelagics (CMP) (FMP),
4. Caribbean FMC: Caribbean Shallow Water Reef Fish (FMP); Caribbean Pelagics (non-FMP),
5. Gulf of Mexico (GOM) FMC: GOM Reef Fish (FMP); GOM Snapper/Grouper (FMP); GOM CMP (FMP),
6. Pacific FMC: West Coast Groundfish (FMP); Pacific Halibut (non-FMP); Shark/Bonito Longline/Setline (non-FMP),
7. North Pacific FMC: Bering Sea and Aleutian Islands (BS-AI) Groundfish (FMP); Gulf of Alaska (GOA) Groundfish (FMP); Octopus/Squid Longline (non-FMP),
8. Western Pacific (WP) FMC: WP Bottomfish/Seamount Groundfish (FMP and non-FMP); WP Pelagics (non-FMP), and
9. Secretary of Commerce Control: Atlantic Swordfish (FMP); Atlantic Sharks (FMP); Atlantic Tunas (non-FMP).
b. U.S. State and State Cooperative Fisheries Management Agreements.
c. International Fisheries Agreements:
1. International Convention for the Conservation of Atlantic Tunas (ICCAT),
2. Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR), and
3. International Pacific Halibut Commission (IPHC).
d. U.S. Flagged Vessels.
References
Appendices
I. International Plan of Action for the Reduction of Incidental Catch of Seabirds in Longline Fisheries
II. Seabird Interaction Minimization Methods for Longline Fisheries
III. NMFS National Bycatch Plan, Executive Summary
IV. Summaries of Relevant Statutes: Magnuson-Stevens Fishery Conservation and Management Act (FCMA), Migratory Bird Treaty Act, Endangered Species Act
V. Future Conferences and Events Related to Seabird-Fishery Interactions
VI. NMFS Regional Science Center and Management Council Contact Information

Dated: September 1, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–23359 Filed 9–8–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 990902244–9244–01; I.D. 042699A]

Vessel Monitoring Systems; List of Approved Mobile Transmitting Units and Communications Service Providers

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of vessel monitoring systems; approval.

SUMMARY: This document provides notice of the vessel monitoring systems (VMS) approved by NOAA for use by pelagic longline vessels in the Atlantic Highly Migratory Species (HMS) Fisheries and sets forth relevant features of each VMS.

ADDRESSES: To obtain copies of the list of NOAA approved VMS mobile transmitting units and NOAA approved VMS communications service providers, write to NOAA Office for Law Enforcement (OLE), 8484 Georgia Avenue, Suite 415, Silver Spring, MD 20910.

To obtain information regarding the status of VMSs being evaluated by NOAA for approval, write to NOAA Office for Law Enforcement, 8484 Georgia Avenue, Suite 415, Silver Spring, MD 20910.

For more addresses regarding approved VMSs, see the SUPPLEMENTARY INFORMATION section, under the heading VMS Provider Addresses.

FOR FURTHER INFORMATION CONTACT:

Current listing information: Linda Taylor, Outreach Specialist, phone 301–427–2010, fax 301–427–2055.

Installation and activation checklists: For a copy of the checklist, contact Sandra Yin, VMS Specialist, phone 301–427–2300. For questions regarding the checklist, contact Fred Kyle, Special Agent, NOAA Enforcement, Southeast Division, phone 727– 570–5344. To submit a completed and signed checklist, mail or fax it to NOAA Enforcement, 9721 Executive Center Drive North, Koger Building, St. Petersburg, FL 33702, fax 727–570–5355.

Status of evaluations: Sandra Yin, VMS Specialist, phone 301–427–2300, fax 301–427–2055.

SUPPLEMENTARY INFORMATION:

I. The VMS Requirement

The NMFS has issued a regulation, codified at 50 CFR part 635, requiring the use of VMS by pelagic longline vessels in the HMS Fisheries. This requirement becomes effective January 1, 2000. The placement of VMS units on the fishing vessels in this fishery will enable NMFS to determine vessel locations and will complement the Agency's efforts to monitor and enforce compliance with applicable regulations.

This document provides notice of the VMS mobile transceiver units and the mobile communications service providers that have been approved by NOAA for use in the HMS Fisheries. The VMS consists of both the mobile transceiver unit placed on the vessel and the communications service provider that supplies the wireless link between the unit on the vessel and the shoreside data user. In the HMS Fisheries, the vessel owner is required to procure both VMS components. The two VMS components may, or may not, be provided by a single vendor, depending on the mobile transceiver unit selected. Thus, the vessel owner may be required to procure the mobile transceiver unit and the mobile communications service separately.

To the extent that the use of VMS is required by applicable regulations, NMFS is considered to be the operator and user of the VMS mobile transceiver unit and the user of any required data, regardless of who is required to pay for the mobile transceiver unit onboard a vessel and for the associated communications services. Accordingly, NMFS will specify how the VMS mobile transceiver units must be configured, installed, and activated. This does not, however, preclude the vessel owner from procuring a VMS that provides additional services and capabilities used exclusively by the vessel owner and operator.

On September 23, 1993, NMFS published proposed VMS standards at 58 FR 49285. On March 31, 1994, NMFS published final VMS standards at 59 FR 15180. These notices stated that NMFS endorses the use of VMS and defined specifications and criteria for VMS use.

On September 8, 1998, NOAA published a request for information (RFI) in the Commerce Business Daily in which it stated the minimum VMS specifications necessary for NOAA's approval. The RFI requested that responses from interested VMS providers include supporting information which would demonstrate that the VMS could meet the minimum specifications established by OLE. The submitted supporting information was used as the basis for approving the mobile transceiver units and communications service providers specified in this document.

This notice lists each currently approved VMS and sets forth the features of each VMS. The list of VMS mobile transceiver units and communications service providers approved by NOAA will be updated and revised as others are approved. The list will be published in the *Federal Register* upon each revision.

Implementation of required VMS usage in the HMS fisheries has been delayed until January 1, 2000; however, fishing vessel owners and operators should not delay their purchase and installation of a VMS mobile transceiver unit. Vendors may require extended periods of time to deliver a mobile transceiver unit and to complete its installation.

II. VMS Mobile Transceiver Units

A. ArgoNet Mar GE Approval

Argos is approved for the HMS fisheries based on its cost effectiveness and on its ability to meet other specified VMS elements. Fishing vessel owners and operators should be aware that Argos approval for the HMS fisheries is limited to 3 years from July 23, 1999, and this approval may or may not be extended at the end of the 3-year period.

The approved Argos mobile transceiver unit for the HMS Fisheries is the ArgoNet Mar GE for which North American Collection and Location by Satellite, Inc. (NACLS) is the sole service provider. The NACLS provides (a) the ArgoNet MAR GE mobile transceiver unit installed on the vessel, (b) the ArgoNet satellite service, (c) delivery of position reports to the NOAA Office for Law Enforcement and to the vessel owner, and (d) optional software to display vessel positions. The NACLS address is listed under the heading for VMS Provider Addresses.

The ArgoNet MAR GE uses NOAA polar-orbiting satellites, and, as such, it is considered a NOAA Data Collection and Location System (DCS). The use of any NOAA DCS is governed by 15 CFR part 911. Pursuant to those regulations, use of a NOAA DCS can be authorized only if it is determined that there are no commercial space-based services available that meet the user's requirements. At this time, Argos is the only space-based DCS that meets NMFS' important requirement of cost effectiveness to the Government. Therefore, the use of Argos has been authorized, pursuant to the DCS regulations, for a 3-year period. The regulations provide that, at the end of the 3-year period, approval of Argos must be reconsidered using the regulatory criteria at which time it may be renewed for a subsequent 3-year period, if appropriate.

ArgoNet MAR GE Features: The ArgoNet MAR GE utilizes a single mobile transmitting unit mounted atop the vessel. The unit contains an Argos transmitter, an integrated global positioning system (GPS) receiver, a battery, and an antenna. The mobile transceiver unit is connected to a power junction box in the wheelhouse, which can be installed in less than 1 hour.

The GPS position reporting starts automatically when the power is connected. The unit is configured for automatic reduced position transmissions when the vessel is stationary (i.e., in port). When the vessel is in port, position transmissions are automatically reduced to one per week. This allows for port stays without significant power drain or power shut-down. The unit restarts normal position transmissions automatically when the vessel goes to sea.

The unit requires 18 to 32 volts direct current (VDC) at 375 milliamp during normal operations at sea, and 18 to 32 VDC at 350 milliamp while the vessel is in reduced position transmission mode (i.e., in port). Operation continues for 48 hours on the internal battery if external power is lost. Operation resumes automatically when external power is restored.

The unit contains a protected push button to request assistance from United States search and rescue authorities. However, search and rescue authorities can not use the MAR GE transmitter to communicate with the vessel because ArgoNet communications are one way, i.e., from the vessel to the control center.

Optional reports can be transmitted with the purchase of a low-cost, handheld keypad.

A vessel owner wishing to purchase this system may contact the provider listed for ArgoNet Mar GE under the VMS Provider Addresses heading. The owner should identify himself or herself as a vessel owner in the "United States HMS Fishery."

The vessel owner purchasing the system will need to complete an ArgoNet contract with NACLS and establish credit with ArgoNet. The MAR GE transceiver the vessel owner purchases will be pre-configured to meet the HMS Fisheries' VMS requirement. The NACLS will notify the NOAA Office for Law Enforcement that the vessel is VMS registered.

Pursuant to 50 CFR 635.69(d), the Agency will provide an installation and

activation checklist, which the vessel owner must follow and then return to NMFS having signed a statement certifying compliance with the installation procedures on the checklist. Installation may be performed by experienced crew or by an electronics specialist. The owner pays installation costs.

The owner may confirm that position reports are being received by calling the NOAA Office for Law Enforcement in St. Petersburg, FL, at 727–570–5344, approximately 8 hours after installation.

B. INMARSAT-C Transceivers

While Argos has been type-approved based on its cost effectiveness and its ability to meet other specified VMS elements, there are other VMS mobile transceiver units and communications service providers that NMFS has determined meet the minimum technical requirements necessary pursuant to regulations implementing the fishery management plan, but which do not meet the user's (i.e., NMFS) cost-effectiveness requirements. These VMSs may be used at the discretion of the vessel owners.

The Inmarsat-C satellite communications VMS transmitting units that meet the minimum technical requirements for the HMS Fisheries are as follows: Thrane & Thrane Fishery "Capsat" (part number TT–3022D-NMFS); Trimble Galaxy TNL7005 (part number 17760–45) with software v5.1; and Trimble Galaxy Courier TNL8005 (part number 30090–45) with software v5.1. Both Trimble units use antenna part number 25132–01 and must run software version 5.1, or later. Those vessels using earlier versions of Trimble software (5.0, and earlier) must contact their Trimble-Authorized Support Dealer to perform an upgrade to firmware version 5.10 or 5.10a, and set the parameters equivalent to software version 5.1, or later. The addresses for the Thrane & Thrane distributor (LandSea Systems) and the Trimble dealer contact are provided under the heading VMS Provider Addresses.

Thrane & Thrane TT–3022D-NMFS Features: The transceiver consists of an integrated GPS/Inmarsat-C unit in the wheelhouse and an antenna mounted atop the vessel. The unit is factory pre-configured for NMFS VMS operations (non-Global Maritime Distress & Safety System (non-GMDSS)). Satellite commissioning services are provided by LandSea Systems personnel.

Automatic GPS position reporting starts after transceiver installation and power activation onboard the vessel. The unit is a car-radio-sized transceiver using a floating 10 to 32 VDC power supply. The unit is configured for automatic reduced position transmissions when the vessel is stationary (i.e., in port). It allows for port stays without power drain or power shut down. The unit restarts normal position transmission automatically when the vessel goes to sea.

The outside antenna, model TT–3005M, is a compact omni-directional Inmarsat-C/GPS antenna, providing operation down to +/-15° angles. Although the unit contains push buttons to request emergency assistance from United States search and rescue authorities, search and rescue authorities can use the transceiver to communicate with the vessel only when additional equipment not required by NMFS is purchased (i.e., a message terminal display).

A configuration option is available to automatically send position reports to a private address, such as a fleet management company. Another available option is the ability to send and receive private e-mail and other messages with the purchase and installation of an input device such as a laptop or personal computer.

A vessel owner wishing to purchase this system may contact the entity identified under the heading VMS Provider Addresses for Thrane & Thrane TT–3022D-NMFS. The owner should identify himself or herself as a vessel owner in the "United States HMS Fishery." The Thrane & Thrane transceiver and antenna the vessel owner purchases will be configured for the HMS Fisheries.

To use this transceiver, the vessel owner will need to establish an Inmarsat-C system use contract with an approved Inmarsat-C communications service provider. The owner will be required to complete the Inmarsat-C "Registration for Service Activation for Maritime Mobile Earth Station." The owner should consult with LandSea when completing this form.

LandSea Systems personnel will perform the following before shipment: (a) Configure the TT–3022D-NMFS according to NOAA OLE specifications for the HMS Fisheries; (b) download the predetermined NMFS position reporting and broadcast command identification numbers into the transceiver; (c) test the transceiver to ensure operation when installation has been completed on the vessel; and (d) forward the Inmarsat service provider and transceiver identifying information to the NOAA Office for Law Enforcement.

Pursuant to 50 CFR 635.69(d), the Agency will provide an installation and activation checklist which the vessel owner must follow. The vessel owner must sign a statement on the checklist certifying compliance with the installation procedures and return the checklist to NMFS. Installation can be performed by experienced crew or by an electronics specialist, and the installation cost is paid by the owner.

The owner may confirm that automated position reports are being received by calling the NOAA Office for Law Enforcement in St. Petersburg, FL, at 727–570–5344.

Trimble Galaxy TNL7005 part number 17760–45, Software v5.1, Features: The transceiver consists of an integrated GPS/Inmarsat-C unit in the wheelhouse and an antenna mounted atop the vessel. The unit is factory pre-configured for NMFS VMS operations (non-GMDSS). The installation will be performed by Trimble-authorized support dealers and must be paid for by the owner.

Automatic GPS position reporting starts after coordination with the communications service provider. Although the unit contains push buttons to request emergency assistance from United States search and rescue authorities, search and rescue authorities can use the transceiver to communicate with the vessel only when additional equipment not required by NMFS is purchased (i.e., a message terminal display).

A configuration option is available to automatically send position reports to a private address, such as a fleet management company. Another available option is the ability to send/receive private e-mail and other messages with the purchase and installation of an input device, such as a laptop or personal computer.

Trimble Galaxy Courier TNL8005 part number 30090–45, Software v5.1 Features: The Trimble Galaxy Courier TNL8005 transceiver has the same features as the Trimble Galaxy TNL7005, except that it also includes an integrated computer for messaging, including Internet e-mail. The unit is factory pre-configured for NMFS VMS operations, and it is GMDSS.

Trimble Galaxy—General Features: A vessel owner wishing to purchase this system should contact the entity identified under VMS Provider Addresses for Trimble Galaxy Information. The owner should identify himself or herself as a vessel owner in the "United States HMS Fishery."

In addition to purchasing an approved Trimble transceiver (TNL7005 or TNL8005) and an antenna for the HMS fishery, the vessel owner will need to establish an Inmarsat-C system use contract with an approved Inmarsat-C communications service provider. The transceiver will need to be commissioned with the service provider.

The installation of the transceiver and antenna must be performed by Trimble-trained and Trimble-authorized support dealers and must be paid for by the owner. To set up the transceiver for NMFS VMS operations, the owner will (a) turn on the power of the vessel transceiver; (b) contact the Inmarsat-C system communications service provider; (c) have the service provider's Customer Service download the pre-determined NMFS position reporting and broadcast commands from the provider's control center to the vessel transceiver via satellite; and (d) confirm with Customer Service that periodic position reports are now automatically being sent to NOAA. Customer Service will confirm service activation by forwarding to the Office for Law Enforcement the following identifying information: (a) Trimble transceiver serial number; (b) Inmarsat Identification number; (c) Data Network Identification (DNID) and member numbers; (d) Enhanced Network Identification (ENID) numbers; (e) owner name; (f) vessel name; and (g) Vessel documentation or registration number.

Pursuant to 50 CFR 635.69(d), the Agency will provide an installation and activation checklist which the vessel owner must follow. The vessel owner must sign a statement on the checklist certifying compliance with the installation procedures and return the checklist to NMFS. The installation cost is paid by the owner.

The owner may confirm that automated position reports are being received by calling the NOAA Office for Law Enforcement in St. Petersburg, FL, at 727–570–5344.

III. Communications Service Providers

A. NACLS

NACLS is the sole provider of Argos satellite services. Selecting to use the approved Argonet MAR GE transceiver unit also requires using NACLS as the service provider. For more information, refer to Section II.A Argonet MAR GE Approval.

B. COMSAT-C

COMSAT-C is a store-and-forward data messaging service. COMSAT C allows users to send and receive information virtually anywhere in the world - on land, at sea, and in the air. COMSAT-C supports a wide variety of applications including Internet e-mail, position and weather reporting, a free daily news service, and remote equipment monitoring and control. Mariners can use COMSAT-C free of charge to send critical safety at sea messages as part of the U.S. Coast Guard's Automated Mutual-Assistance Vessel Rescue system and of the NOAA Shipboard Environmental Acquisition System programs. For the COMSAT address, look under the heading VMS Provider Addresses.

COMSAT-C Features: Vessel owners wishing to use COMSAT-C will need to purchase an Inmarsat-C transceiver and antenna approved for the fishery. The owner will need to complete an Inmarsat-C system use contract with COMSAT, including a provision for a mobile earth station license (FCC requirement). The transceiver will need to be commissioned with Inmarsat according to COMSAT instructions. The owner should refer to and follow the configuration, installation, and service activation procedures for the specific transceiver purchased.

It is recommended that the vessel owner keep for his or her records and that COMSAT have on record the following identifying information: (a) Signed and dated receipts and contracts; (b) transceiver serial number; (c) COMSAT customer number, user name and password; (d) E-mail address of transceiver; (e) Inmarsat identification number; (f) Data Network Identification numbers (DNID and ENID), including the member number; (g) owner name; (h) vessel name; (i) vessel documentation or registration number; and (j) mobile earth station license (FCC license).

The owner may confirm transceiver operation and communications service to ensure that position reports are automatically sent to and received by the Office for Law Enforcement before leaving on a fishing trip under VMS. The NOAA Office for Law Enforcement does not regard the fishing vessel as participating in VMS until position reports are automatically received. For confirmation purposes, contact the NOAA Office for Law Enforcement in St. Petersburg, FL, at 727–570–5344.

C. Station 12

Station 12 is a provider of Inmarsat satellite communications services. Station 12 offers seamless, global Inmarsat-C coverage. Station 12 is approved for VMS use with Inmarsat-C services. For the Station 12 address, look under the heading VMS Provider Addresses.

Station 12 Features: Customer Service supports the security and privacy of vessel accounts and messages with the following: (a) Password authentication for vessel owners or agents and for the NOAA Office for Law Enforcement to prevent unauthorized changes or inquiries; and (b) separation of private messages from Office for Law Enforcement messages. (The Office for Law Enforcement receives VMS-related position reports, only.)

Billing is separated between accounts for the vessel owner and the NOAA Office for Law Enforcement. VMS position reports and vessel-initiated messaging are paid for by the vessel owner. Messaging initiated from the Office for Law Enforcement operations center is paid for by NOAA.

Customer Service supports and establishes a two-way transmission of transceiver unit configuration commands between the transceiver and land-based control centers. This supports the Office for Law Enforcement's message needs and, optionally, fishermen's private message needs.

When the transceiver transmits a message requesting emergency assistance (GMDSS alert), Station 12 (through Inmarsat) forwards the information to the United States Coast Guard. However, unless non-NMFS required equipment is purchased (i.e., an addition of a message terminal display), the United States Coast Guard can not use the transceiver to communicate with the vessel.

The vessel owner can configure automatic position reports to be sent to a private address, such as to a fleet management company. The vessel can send and receive private e-mail and other messages when the transceiver has such an input device as a laptop or personal computer attached.

Vessel owners wishing to use Station 12 will need to purchase an Inmarsat-C transceiver and antenna approved for the fishery. The owner will need to complete an Inmarsat-C system use contract with Station 12, including a mobile earth station license (FCC requirement). The transceiver will need to be commissioned with Inmarsat according to Station 12's instructions. The owner should refer to and follow the configuration, installation, and service activation procedures for the specific transceiver purchased.

It is recommended that the vessel owner keep for his or her records and that Station 12 have on record the following: identifying information: (a) Signed and dated receipts and contracts; (b) transceiver serial number; (c) Station 12 customer number, user name, and password; (d) E-mail address of transceiver; (e) Inmarsat identification number; (f) Data Network Identification numbers (DNID and ENID), including the member number; (g) owner name;

(h) vessel name; (i) vessel documentation or registration number; and (j) mobile earth station license (FCC license).

The owner may confirm transceiver operation and communications service to ensure that position reports are automatically sent to and received by the Office for Law Enforcement before leaving on a fishing trip under VMS. The NOAA Office for Law Enforcement does not regard the fishing vessel as participating in VMS until position reports are automatically received. For confirmation purposes contact the NOAA Office for Law Enforcement in St. Petersburg, FL, at 727–570–5344.

VMS Provider Addresses

For ArgoNet Mar GE information, contact North American CLS, Inc., 9200 Basil Court, Suite 306, Largo, MD 20774; voice: 301–341–1814; fax: 301–341–2130; e-mail: info@nacls.com.; website: http://www.nacls.com.

For Thrane & Thrane TT–3022D-NMFS information, contact Doug Price, Marine Products, LandSea Systems, Inc., 849 Seahawk Circle, Suite 103, Virginia Beach, VA 23452–7809; voice: 757–468–0448; fax: 757–468–0625, e-mail: DSP@LandSeaSystems.com.; website: http://www.landseasystems.com.

For regional dealer information about the Trimble Galaxy transceiver units, contact Dayna Woodward at 1–800–477–1207, or a Trimble-Authorized Support Dealer, based at local marine electronics outlets.

For COMSAT information, contact COMSAT Mobile Communications, 6560 Rock Spring Drive, Bethesda, MD 20817; COMSAT Customer Care, phone: 301–214–3100; fax: 301–214–7284; e-mail: cmc.customercare@comsat.com.; website: www.comsat.com. Alternate Contact: Al Labbe, Manager Business Development, COMSAT-C, 6560 Rock Spring Drive, Room 4502, Bethesda, MD 20817; phone: 301–214–3214; fax: 301–214–7113; pager: 800–5COMSAT (800–526–6728); e-mail: al.labbe@comsat.com.

For Station 12 information, contact Station 12, KPN-Netherlands, Andre Cortese, 2000 L Street, NW., Suite 200, Washington, DC 20036; U.S. telephone number: 202–416–1828; e-mail: Acortese@kpnus.com.; Customer Service, Netherlands, toll free: 1–888–440–8988; e-mail: station12@wxs.nl.; website: www.station12.com.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: September 2, 1999.

Andrew A. Rosenberg,

Deputy Assistant Adminstrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–23353 Filed 9–2–99; 5:00 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

Notice of Meeting, Spectrum Planning and Policy Advisory Committee (SPAC)

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. Appendix, notice is hereby given that the Spectrum Planning and Policy Advisory Committee (SPAC) will meet on September 17, 1999 from 9:00 a.m. to 5:00 p.m. in Room 1605 at the United States Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC.

The Committee was established on July 19, 1965 as the Frequency Management Advisory Council (FMAC). The name was changed in April, 1991, and in July, 1993, to reflect the increased scope of its mission. The objective of the Committee is to advise the Secretary of Commerce on radio frequency spectrum planning matters and means by which the effectiveness of Federal Government frequency management maybe enhanced. The Committee consists of nineteen members, fifteen from the private sector, and four from the Federal Government, whose knowledge of telecommunications is balanced in the functional areas of manufacturing, analysis and planning, operations, research, academia and international negotiations.

The principal agenda items for the meeting will be:

(1) Ultra-Wideband (UWB) Systems;

(2) Critical Infrastructure Protection (CIP) Private Sector Participation;

(3) Recent Spectrum Legislation; and

(4) Public Safety Program update.

The meeting will be open to public observations. Public entrance to the building through the main entrance is on 14th Street midway between Pennsylvania Avenue and Constitution Avenue. A period will be set aside for oral comments or questions by the public which do not exceed 10 minutes each per member of the public. More extensive questions or comments should be submitted in writing before 10 September, 1999. Other public statements regarding Committee affairs may be submitted at any time before or after the meeting. Approximately 20 seats will be available for the public on a first-come, first-served basis.

This meeting is physically accessible to people with disabilities. Request for sign language interpretation or other auxiliary aids should be directed to the Federal Information Relay Service (FIPS) on 1–800–877–8339.

Copies of the minutes will be available upon request 30 days after the meeting.

FOR FURTHER INFORMATION, CONTACT: Inquiries may be addressed to the Executive Secretary, SPAC, Mr. Richard A. Lancaster, National Telecommunications and Information Administration, Room 4082, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, telephone 202–482–4487.

Dated: September 1, 1999.

Richard A. Lancaster,

Executive Secretary, Spectrum Planning and Policy Advisory Committee, National Telecommunications and Information Administration.

[FR Doc. 99–23360 Filed 9–8–99; 8:45 am]

BILLING CODE 3510–60–M

DEPARTMENT OF COMMERCE

Technology Administration Performance Review Board Membership

September 1999.

The Technology Administration Performance Review Board reviews performance appraisals, agreements, and recommended actions pertaining to employees in the Senior Executive Service and reviews performance-related pay increases for ST–3104 employees. The Board makes recommendations to the appropriate appointing authority concerning such matters so as to ensure the fair and equitable treatment of these individuals.

The following is the full membership of the Board:

Kelly H. Carnes (NC), Deputy Assistant Secretary for Technology Policy, Technology Administration, Washington, DC 20230, Appointment Expires: 12/31/01

B. Stephen Carpenter (C), Director, Office of International & Academic Affairs, Office of International and Academic Affairs, National Institute of Standards & Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/00

Gordon W. Day (C), Chief, Optoelectronics Division, Optoelectronics Division (815), National Institute of Standards & Technology, Boulder, CO 80303, Appointment Expires: 12/31/01

Stephen W. Freiman (C), Chief, Ceramics Division, Materials Science and Engineering Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/99

Dale E. Hall (C), Deputy Director, Materials Science and Engineering Laboratory, Materials Science and Engineering Laboratory, National Institute of Standards & Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/01

Marilia A. Matos (C), Deputy Director for Management Services, Director of Administration and Chief Financial Officer, National Institute of Standards and Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/01

Alan Neuschatz (C), Associate Director for Finance and Administrative, National Technical Information Service, Springfield, VA 22161, Appointment Expires: 12/31/01

Gregory Rosasco (C), Chief, Process Measurement Division, Chemical Science & Technology Laboratory, Gaithersburg, MD 20988, Appointment Expires: 12/31/01

Rosalie T. Ruegg (C), Director, Economic Assessment Office, Advanced Technology Program, National Institute of Standards and Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/99

Barry N. Taylor (C), Manager, Fundamental Constants Data Center, Physics Laboratory Office, National Institute of Standards & Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/00

Cynthia Clark (C), Associate Director for Methodology & Standards, Census Bureau, Washington, DC 20233, Appointment Expires: 12/31/01

Lois Gajdys (C), Director, Office of Operations Management & Information, National Marine Fisheries Service, Silver Spring, MD 20910, Appointment Expires: 12/31/01

Dated: September 2, 1999.

Gary R. Bachula,

Acting Under Secretary for Technology, Technology Administration, Department of Commerce.

[FR Doc. 99–23401 Filed 9–8–99; 8:45 am]

BILLING CODE 3510–18–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Thursday, September 16, 1999, 2:00 p.m..

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye B. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207, (301) 504–0800.

Dated: September 7, 1999.

Todd A. Stevenson,

Deputy Secretary.

[FR Doc. 99–23632 Filed 9–7–99; 3:46 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Deputy Chief of Staff for Personnel (DAPE–ZXI–RM), U.S. Army, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 8, 1999.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the United Sates, Total Army Personnel Command, 200 Stoval Street ATTN: TAPC–OPD–C, (Annette Bush) Alexandria, Virginia 22332–0413. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 614–0454.

Title, Associated Form, and OMB Number: Application and Contract for Establishment of a National Defense Cadet Corps Unit.

Needs and Uses: Educational institutions desiring to host a National Defense Cadet Corps Unit (NDCC) may apply by using a DA Form 3126–1. The DA Form 3126–1 documents the agreement and becomes a contract signed by both the institution and the U.S. Government. The DA Form 3126–1 provides information on the school's facilities and states specific conditions if a NDCC unit is placed at the institution.

Affected Public: Not for profit institutions; State, Local or Tribal Government.

Annual Burden Hours: 35.

Number of Respondents: 35.

Responses Per Respondent: 1.

Average Burden per Response: 1 hour.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: The DA Form 3126–1 will be initiated by the school desiring to host a unit and countersigned by a representative of the Secretary of the Army. The contract (DA Form 3126–1) is necessary to establish a mutual agreement between the secondary institution and the U.S. Government while keeping within the parameters of the law. The data provided on the applications is used to determine which school will be selected.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–23357 Filed 9–8–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee Meeting Notice (Historical Advisory Committee)

AGENCY: U.S. Army Center of Military History, DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10 (a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of Committee: Department of Defense Historical Advisory Committee.

Date: 28 October 1999.

Place: U.S. Army Center of Military History, Building 35, 103 Third Avenue, Fort McNair, DC 20319–5058.

Time: 0900–1600.

Proposed Agenda: Review and discussion of the status of historical activities in the United States Army.

Purpose of the Meeting: The committee will review the Army's historical activities for FY 1999 and those projected for FY 2000 based upon reports and manuscripts received throughout the period and formulate recommendations through the Chief of Military History to the Chief of Staff, Army, and the Secretary of the Army for advancing the use of history in the U.S. Army.

For further information contact: All communications regarding this advisory committee should be addressed to Dr. Jeffrey J. Clarke, U.S. Army Center of Military History, ATTN: DAMH–ZC, 103 Third Avenue, Fort McNair, DC 20319–5058; telephone number (202) 685–2709.

Supplementary information: Meeting of the advisory committee is open to the public. Because of restricted meeting space, attendance may be limited to those persons who have notified the Advisory Committee Management Office in writing at least five days prior to the meeting of their intention to attend the 28 October 1999 meeting.

Any members of the public may file a written statement with the committee before, during, or after the meeting. To the extent that time permits, the committee chairman may allow public presentations of oral statements at the meeting.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–23355 Filed 9–8–99; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare Draft Environmental Impact Statement (DEIS), Centralia-Chehalis Flood Damage Reduction Study, Lewis County Washington

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: Seattle District, U.S. Army Corps of Engineers is proposing to prepare an Environmental Impact Statement (EIS) for the Centralia-Chehalis Flood Damage Reduction Study. The government of Lewis County (Washington) requested this study because of significant flooding on the Chehalis River and its tributaries. An EIS is being prepared because of the potential for impacts on environmental resources, including the human environment. Potential impacts include those to wetlands, fish and wildlife habitat, cultural and historical resources, downstream flooding, and water quality. There is also intense public interest in addressing the flooding problems.

DATES: Persons or organizations wishing to submit scoping comments should do so by September 30, 1999. Public comment may also be made at the scoping meetings (dates and locations to be determined later). Notification of scoping meetings times and locations will be sent to all agencies, organizations and individuals on the project mailing list.

ADDRESSES: Requests for documents and all comments should be sent to: Kathleen Kunz, NEPA Coordinator, Seattle District, U.S. Army Corps of Engineers, P.O. Box 3755 Seattle, Washington 98124–2255. ATTN: CENWS–PM–PL–ER, telephone (206) 764–3708.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and the Draft EIS can be directed to: Kathleen Kunz, NEPA Coorinator or Forest Brooks, Project Manager, Seattle District, U.S. Army Corps of Engineers, P.O. Box 3755, Seattle, Washington 98124–2255, ATTN: CENWS–PM–PL–ER, telephone (206) 764–3708.

SUPPLEMENTARY INFORMATION:

Background

The Chehalis River basin is located in west central Washington, south of Olympia. The focus of the flood damage reduction study encompasses the cities of Centralia and Chehalis and the urbanizing areas immediately adjacent to the cities.

The cities of Centralia and Chehalis have been subject to repeated flooding for many years. This flooding has caused extensive damage to private and public property and periodic closure of critical transportation routes resulting in significant economic losses. Flood closures of the transportation routes have also significantly disrupted emergency response actions by local governments. Stream habitat functions of the Chehalis River and its tributaries have been affected from long-term development throughout the Chehalis Basin. This has resulted in the diminishment of the remaining habitat resources to adequately support sustainable fish and wildlife resources. The losses of wetlands, riparian areas, and back channels have also contributed to increased flooding in the area. The purpose of the Centralia-Chehalis Flood Damage Reduction study is to reduce flood hazards in the project area, the cities of Centralia and Chehalis and the urbanizing area immediately adjacent, and to incorporate appropriate fish and wildlife habitat improvements. Flood hazards are defined as significant damage to existing structures, high risk to life, and extended closures of transportation corridors.

Authority for this study is contained in Section 401(a) of the 1986 Flood Control Act (PL–99–662). This section provided authorization for the construction of "works of improvement" substantially in accordance with the Report of the Chief of Engineers dated 20 June 1984.

Alternatives

The Corps has currently identified 6 alternative courses of action for analysis. This is a preliminary assessment of alternatives. We believe the scoping process and the study process will also identify additional alternatives:

1. *No Action.* Allow current conditions and programs to remain as currently planned.

2. *Authorized Project.* The project identified in the 1984 Chief of Engineers Report only included modifications at Skookumchuck Dam to provide flood storage. These included a 12-foot diameter, 1,200-foot-long low-level discharge tunnel and a steel gate on top of the spillway.

3. *Lewis County Alternative.* Lewis County has developed a plan that consists of three major elements: modifications at Skookumchuck Dam to provide flood storage (sluices through the spillway and a rubber weir-type gate on top of the spillway), overbank excavation near Centralia, and flood bypass measures near Chehalis.

4. *Check Dam Alternative.* This alternative that would consist of a series of flow restriction structures, strategically located on the mainstream and/or tributaries of the Chehalis River. These would temporarily store flood water on selected areas of the existing rural/agricultural floodplain and reduce flood peaks downstream. This alternative would not interfere with fish passage during non-flood flows. Some possible sites include Chehalis River near Mellen Street, Salzer Creek, Chehalis River downstream of the South Fork, the lower South Fork, and Chehalis River upstream of the South Fork.

5. *Levee Alternative.* This alternative consists of a levee system to protect Bucoda, Centralia, Chehalis, and the immediate urbanized area.

6. *Non-Structural Alternative Measures.* This alternative would include such measures as such as flood warning system improvements, structure relocation, structure floodproofing, structure raising, bridge/road/railroad modifications, etc.

Scoping

Public involvement will be sought during scoping and preparation of the EIS in accordance with NEPA procedures. A public scoping process has been started to clarify issues of major concern, identify any information sources that might be available to analyze and evaluate impacts, and obtain public input on the range and acceptability of alternatives. This Notice of Intent formally commences the scoping process under NEPA. As part of the scoping process, all affected Federal, State and local agencies, Native American Nations, and other interested private organizations, including environmental groups, are invited to comment on the scope of the EIS. Comments are requested concerning project alternatives, probable significant environmental impacts, and permits or other approvals that may be required.

The Corps has identified the following key areas so far to be analyzed in depth in the draft EIS:

(1) Flooding Characteristics
(2) Impacts to Fish and Wildlife Habitat
(3) Impacts to Wetlands
(4) Impacts to Riparian Areas
(5) Impacts to Cultural and Historical Resources
(6) Social and Economic Concerns
(7) Transportation
(8) Hazardous Materials

Scoping Meeting

Opportunity to comment will also be available at the project scoping meeting that has yet to be scheduled. Details of the meeting time and location will be announced in the local media. Notices will be sent to all agencies, organizations and individuals on the EIS mailing list.

Availability of the Draft EIS

The Corps expects to complete preparation of the draft EIS and have review copies of it available by December 2000.

James M. Rigsby,

Colonel, Corps of Engineers, District Engineer.

[FR Doc. 99–23354 Filed 9–8–99; 8:45 am]

BILLING CODE 3701–ER–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent to Prepare a Supplemental Environmental Impact Statement (SEIS) for the Kennedy-Bechara Segment of the Authorized Río Puerto Nuevo (Puerto Rico) Flood Control Project

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers, is finalizing the design for the Kennedy-Bechara segment of the existing Federal flood control project at Río Puerto Neuvo, located in San Juan and Guaynabo, Puerto Rico, and is considering several alternatives to provide the authorized 100 year level of protection in this area. New alternatives have been developed that may eliminate the need for pumps or other mechanical drainage. A Draft Supplemental Environmental Impact Statement (D–SEIS) will be prepared for the project.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft EIS can be answered by Ms. Barbara Cintron, U.S. Army Corps of Engineers, Jacksonville District, Planning Division, P.O. Box 4970, Jacksonville, Florida 32232–0019; Telephone 904–232–1692.

SUPPLEMENTARY INFORMATION:

1. The proposed action consists of design changes to one segment of the Congressionally authorized Rio Puerto Nuevo Federal flood control project, located in San Juan, Puerto Rico. This large project was documented in a Final Environmental Impact Statement in 1984, and has been under construction since 1995. Detailed construction design is completed in stages, following the guidance of the General Design memorandum (GDM) published in 1991, and an Environmental Assessment and Finding of No Significant Impact (EA/FONSI) published in 1993. At this time alternative detailed designs are being considered for the Kennedy-Bechara area. New data and a re-evaluation of previous designs for the area led to development of new alternatives for this segment. Alternatives so far developed include the "base plan" as discussed in the GDM, and three additional options, two involving gravity drainage and one involving pumped drainage.

2. Alternatives under consideration involve spatial and structural variations in project features that would convey storm runoff to the receiving body (San Juan Bay). Associated with each alternative, there may be tradeoffs in the project cost, operation and maintenance requirements, and adverse effects on natural and manmade features of the environment, including effects on wetlands and other natural and cultural resources.

3. A scoping letter will be used to invite comments on alternatives and issues from Federal, Commonwealth and local agencies, and other interested private organizations and individuals. A public scoping meeting has not been scheduled at this time but may be requested and will be scheduled if the degree of public interest appears to warrant it.

4. The D–SEIS will analyze issues related to flood reduction potential, water quality, wetlands impacts, excavated material disposal alternatives, infrastructure effects, cultural resources impacts, socio-economic impacts and effects on the San Juan Bay Estuary System.

5. The alternative flood control features will be reviewed under the provisions of appropriate laws and regulations, including the Endangered Species Act, the Fish and Wildlife Coordination Act, the National Historic Preservation Act, the Clean Water Act, Clean Air Act, and the Magnuson-Stevens Fishery Management and Conservation Act.

6. The D–SEIS is expected to be available for public review in the last quarter of Calendar Year 1999.

James C. Duck,

Chief, Planning Division.

[FR Doc. 99–23356 Filed 9–8–99; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF ENERGY

Determination to Establish the Advanced Scientific Computing Advisory Committee

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, and Title 41, Code of Federal Regulations, Subpart 101–6, Final Rule on Federal Advisory Committee Management), I hereby certify the Advanced Scientific Computing Advisory Committee is necessary and in the public interest in connection with the performance of duties imposed on the Department of

Energy by law. This determination follows consultation with the Committee Management Secretariat of the General Services Administration, pursuant to 41 CFR subpart 101–6.10.

The purpose of the Committee is to provide the Secretary of Energy and the Director of the Office of Science with advice, information, and recommendations on national research needs and priorities. The Committee will provide an organized forum for the scientific community to conduct an in-depth assessment of the Advanced Scientific Computing Research programs.

Committee members will be chosen to ensure an appropriately balanced membership to bring into account a diversity of viewpoints, including representatives from universities, industry, Department of Energy programs, Department of Energy operating contractors, affected Federal agencies, and others who may significantly contribute to the deliberations of the committee. All meetings of this Committee will be noticed ahead of time in the **Federal Register**.

Further information regarding this Advisory Committee may be obtained from Dr. Patricia Dehmer, Acting Associate Director of Science for Advanced Scientific Computing Research, SC–30, 19901 Germantown Road, Germantown, MD 20874, phone (301) 903–7486.

Issued in Washington, D.C., on September 3, 1999.

James N. Solit,

Advisory Committee Management Officer.

[FR Doc. 99–23418 Filed 9–8–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Draft Environmental Impact Statement for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada

AGENCY: Office of Civilian Radioactive Waste Management, Department of Energy.

ACTION: Notice of Public Hearings.

SUMMARY: On August 13, 1999, the U.S. Department of Energy (DOE) published a Notice of Availability (64 FR 44200) of its Draft Environmental Impact Statement (EIS) for a Geologic Repository for the Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste at Yucca Mountain, Nye County, Nevada (DOE/EIS–0250–D) and announced a 180-day public comment period ending February 9, 2000. The Draft EIS provides information on potential environmental impacts that could result from a proposed action to construct, operate and monitor, and eventually close a repository for the disposal of spent nuclear fuel and high-level radioactive waste at Yucca Mountain in Nye County, Nevada.

The public is invited to submit written and oral comments at the 16 public hearings listed at the end of this notice.

DATES: DOE will consider all comments transmitted or postmarked by February 9, 2000. Comments submitted after this date will be considered to the extent practicable.

ADDRESSES: Written comments should be directed to: Ms. Wendy R. Dixon, EIS Project Manager, M/S 010, U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, P.O. Box 30307, North Las Vegas, NV 89036–0307.

Written comments may be transmitted by facsimile to 1–800–967–0739 and should include the following identifier: "Yucca Mountain Draft EIS."

Written comments may be submitted over the Internet via the Yucca Mountain Project website at *http://www.ymp.gov*, under the listing "Environmental Impact Statement."

FOR FURTHER INFORMATION CONTACT: Ms. Wendy R. Dixon, EIS Project Manager, M/S 010, U.S. Department of Energy, Office of Civilian Radioactive Waste Management, Yucca Mountain Site Characterization Office, P.O. Box 30307, North Las Vegas, NV 89036–0307, Telephone 1–800–967–3477, Facsimile 1–800–967–0739.

SUPPLEMENTARY INFORMATION: Copies of the Draft EIS have been provided to federal, state, tribal, and local government agencies and interested parties. In addition, the Draft EIS is available on the internet via the DOE National Environmental Policy Act (NEPA) website at *http://www.tis.eh.doe.gov/nepa* under the listing DOE NEPA Analyses, the Yucca Mountain Project website at *http://www.ymp.gov* under the listing Environmental Impact Statement, and at 38 public reading rooms across the country. Copies of the Draft EIS may be requested by calling 1–800–967–3477.

A complete set of all hard copy references used in the preparation of the Draft EIS are available for review at four public reading rooms: University of Nevada—Las Vegas, Nevada; University of Nevada—Reno, Nevada; Yucca Mountain Science Center—Pahrump, Nevada; and the DOE Headquarters Office in Washington, DC. Noncopyrighted references are available in the Yucca Mountain Science Center in Beatty, Nevada, as well as on CD-ROMs in an additional 33 public reading rooms across the nation. Noncopyrighted references are also available on the Yucca Mountain Project website at *http://www.ymp.gov*.

The public is invited to submit written and oral comments at the 16 public hearings listed at the end of this notice. The first hour of each hearing will include a brief overview presentation on the Draft EIS and a question and answer session. The remainder of the hearing will be an opportunity to provide comments for the record. To schedule a time to provide oral comments during the hearings, please call 1–800–967–3477. Persons wishing to provide oral comments who have not registered in advance may register at each hearing.

Public hearings will be held on the following dates at the following locations:

1. September 27, 1999, 11:00 am–2:00 pm, 6:00 pm–10:00 pm, Amargosa Valley Community Center, 821 East Farm Road, Amargosa Valley, Nevada 89020.
2. September 30, 1999, 11:00 am–2:00 pm, 6:00 pm–10:00 pm, Bob Ruud Community Center, 150 North Highway 160, Pahrump, Nevada 89048.
3. October 4, 1999, 10:00 am–1:00 pm, 6:00 pm–10:00 pm, Goldfield Community Center, 403 Crook Street, Goldfield, Nevada 89013.
4. October 5, 1999, 10:00 am–1:00 pm, 6:00 pm–10:00 pm, Boise Centre on the Grove, 850 West Front Street, Boise, Idaho 83702.
5. October 19, 1999, 10:00 am–1:00 pm, 4:00 pm–8:00 pm, Bristlecone Convention Center, 150 Sixth Street, Ely, Nevada 89301.
6. October 21, 1999, 12:00 pm–3:00 pm, 6:00 pm–10:00 pm, Georgia International Convention Center, 1902 Sullivan Road, College Park, Georgia 30337.
7. October 26, 1999, 11:00 am–2:00 pm, 6:00 pm–10:00 pm, Hall of States, 444 North Capitol Street, N.W., Washington, DC 20001.
8. November 4, 1999, 12:00 pm–3:00 pm, 7:00 pm–10:00 pm, Statham Hall, 138 North Jackson Street, Lone Pine, California 93545.
9. November 9, 1999, 12:00 pm–3:00 pm, 6:00 pm–10:00 pm, Caliente Youth Center, U.S. Highway 93 North, Caliente, Nevada 89008.
10. November 16, 1999, 11:00 am–2:00 pm, 6:00 pm–10:00 pm, Denver Convention Complex, 700 14th Street, Denver, Colorado 80202.
11. December 1, 1999, 12:00 pm–3:00 pm, 6:00 pm–10:00 pm, Lawlor Events Center, 1664 North Virginia Street, Reno, Nevada 89557.
12. December 7, 1999, 11:00 am–2:00 pm, 5:30 pm–9:30 pm, Austin Town Hall, 137 Court Street, Austin, Nevada 89310.
13. December 9, 1999, 10:00 am–1:00 pm, 6:00 pm–10:00 pm, Crescent Valley Town Hall, 5045 Tenabo Avenue, Crescent Valley, Nevada 89821.
14. January 11, 2000, 11:00 am–2:00 pm, 6:00 pm–10:00 pm, Grant Sawyer State Building, 555 East Washington, Las Vegas, Nevada 89101.
15. January 13, 2000, 10:00 am–1:00 pm, 6:00 pm–10:00 pm, Salt Lake City Hilton Inn, 150 West 500 South, Salt Lake City, Utah 84101.
16. January 20, 2000, 11:00 am–2:00 pm, 6:00 pm–10:00 pm, America's Center, 701 Convention Plaza, St. Louis, Missouri 63101.

Issued in Washington, DC, Sept. 2, 1999.

Ronald A. Milner,

Acting Deputy Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 99–23420 Filed 9–8–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science

High Energy Physics Advisory Panel

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the High Energy Physics Advisory Panel (HEPAP). Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Tuesday, October 12, 1999; 9:00 a.m. to 6:00 p.m.; Wednesday, October 13, 1999; 9:00 a.m. to 6:00 p.m; and Thursday, October 14, 1999; 8:30 a.m. to 12:00 p.m.

ADDRESS: Holiday Inn, 2 Montgomery Village Avenue, Gaithersburg, Maryland 20879.

FOR FURTHER INFORMATION CONTACT: John E. Metzler, Executive Secretary; High Energy Physics Advisory Panel; U.S. Department of Energy; 19901 Germantown Road; Germantown, Maryland 20874–1290; Telephone: 301–903–2979.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda:

Tuesday, October 12, 1999, Wednesday, October 13, 1999, and Thursday, October 14, 1999.

- Discussion of Department of Energy High Energy Physics Programs.
- Discussion of National Science Foundation Elementary Particle Physics Program.
- Discussion of High Energy Physics University Programs.
- Reports on and Discussion of the Use of Networks and Computing in High Energy Physics.
- Reports on and Discussion of U.S. Large Hadron Collider Activities.
- Reports on and Discussions of Topics of General Interest in High Energy Physics.
- Public Comment (10-minute rule).

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Panel, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact John E. Metzler at 301–903–5079 (fax) or john.e.metzler@science.doe.gov (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Panel will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, S.W.; Washington, D.C., between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on September 3, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–23419 Filed 9–8–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[FERC–800 IC99–800–000]

Proposed Information Collection and Request for Comments

September 3, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Request for Office of Management and Budget Emergency Processing of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3507(j)(1) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), and 5 CFR 1320.13 of the Office of Management and Budget (OMB) regulations, the Federal Energy Regulatory Commission (Commission) is providing notice of its request to OMB for emergency processing of a proposed collection of information request on the specific aspects of the information collection described below. OMB approval has been requested by September 8, 1999. A copy of this information collection request (ICR), with applicable supporting documentation, may be obtained by calling the Commission's Information Clearance Officer, Michael Miller at (202)208–1415. Comments and questions about the ICR listed below should be directed to the Office of Information and Regulatory Affairs, Attn: FERC Desk Officer, Office of Management and Budget, Room 10202 NEOB, Washington, D.C. 20503.

Agency: Federal Energy Regulatory Commission.

Title: Pilot Project for Electronic Filing of Documents.

OMB Number: 1902-new.

Frequency: Monthly.

Affected Public: Business or other for profit; State, Local or Tribal Governments.

Number of Respondents: 100.

Estimated Time Per Respondent: 20 minutes.

Total Burden Hours: 150.

Description: The challenges facing the Commission over the next few years are substantial, particularly in light of the changing and more competitive electric and gas industries. To ensure that the Commission's decisions are based on accurate, complete and timely information, an information technology initiative was developed to create a comprehensive information management system to minimize filing burdens, generate better information for use by industries and reduce the

processing times for Commission workload. The goal of this comprehensive information management system will be the development of a common, multipurpose, standards-based infrastructure that accepts electronic filings and maintains all Commission data in a data repository accessible electronically by Commission staff and eventually the public. Electronic filing pilots through the Commission's Web Site will assist in the development of standards, minimize the number of filing types and streamline filing requirements. When completed, electronic filing will substantially reduce the cost of paper, copying, postage, and messenger services for those who file at the Commission.

The initial pilot will allow the following categories of documents to be submitted electronically with the Commission in accordance with its regulations in 18 CFR Part 385:

- Motions to Intervene and Notices to Intervene § 385.214;
- Protests filed pursuant to §§ 385.208 and 385.211;
- Comments filed in rulemaking proceedings and in connection with Environmental Impact Statements;
- Comments on pleadings other than those set for hearing under Subpart E of the regulations and settlement comments;
- Answers to pleadings and rulemaking comments filed in accordance with § 385.213, other than those in proceedings set for hearing under Subpart E of the regulations;
- Withdrawals of comments in pleadings and rulemakings in accordance with § 385.206, other than those in proceedings set for hearing under Subpart E of the regulations;
- Amendments to such pleadings and rulemaking comments pursuant to § 385.215, other than those in proceedings set for hearing under Subpart E of the regulations;

These documents were selected for this pilot because of the lack of complexity in the information that is submitted to the Commission. During the pilot phase, participants will still be required to file paper copies in accordance with the Commission's current regulations in addition to filing the electronic submission.

Further impetus for expanding the use of electronic filing at the Commission is to ensure its compliance with the Paperwork Reduction Act of 1995 (PRA) (Pub. L. 104–13) and its commitment to the provisions of OMB's regulations at 5 CFR 1320 and corresponding guidance in OMB Circular A–130. The PRA calls upon agencies to "promote the use of information technology by the Federal Government to improve productivity, efficiency, and effectiveness of Federal Programs, including through dissemination of public information and the reduction of information collection burdens on the public." (44 U.S.C. 3504(h)(5)). The goal is to have regulated entities file with the Commission fewer, and ultimately no, paper documents, as appropriate. The electronic submission also creates a transaction where documents can be accessed and retrieved faster and, as a result, the Commission response will be measurably faster.

The Commission is seeking emergency clearance for this pilot because the normal clearance procedures would disrupt the Commission's planned implementation of an electronic filing program and the Commission's strategic goal of reducing the regulatory burden on industries through the generation of better and more timely information for use by industries, minimizing the filing burden and reducing workload processing times for both industries and Commission staff.

David P. Boergers,

Secretary.

[FR Doc. 99–23468 Filed 9–8–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM00–1–148–000]

Garden Banks Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

September 2, 1999.

Take notice that on August 27, 1999, Garden Banks Gas Pipeline, LLC (GBGP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 6, to become effective October 1, 1999.

GBGP states that the purpose of this filing is to implement the tracking of the ACA Unit Surcharge authorized by the Commission to be applied to rates in 1999 for recovery of 1999 current year annual charges. The ACA Unit Surcharge authorized by the Commission for fiscal year 1999 is $0.0022 per Dth.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23374 Filed 9–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. RP99–486–000]

Granite State Gas Transmission, Inc.; Notice of Tariff Filing

September 2, 1999.

Take notice that on August 27, 1999, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 the following tariff sheets, with an effective date of August 1, 1999:

Third Revised Sheet No. 202
Second Revised Sheet No. 210
First Revised Sheet No. 276A
Second Revised Sheet No. 278
Tenth Revised Sheet No. 289
First Revised Sheet No. 330

Granite State states that the purpose of this filing is to comply with Order No. 587–K issued on April 2, 1999. The revised tariff sheets reflect certain Version 1.3 standards promulgated by the Gas Industry Standards Board which were adopted by the Commission and incorporated by reference in Commission's Regulations. Granite State also proposes to reflect in its FERC Gas Tariff several GISB standards that were erroneously omitted from previous GISB compliance filings.

Granite State requests waiver of the Commission's regulations to permit the proposed tariff sheets to become effective on August 1, 1999.

According to Granite State, copies of the filing have been mailed to all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NW., Washington DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23371 Filed 9–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM00–1–4–000]

Granite State Gas Transmission, Inc; Notice of Proposed Changes in FERC Gas Tariff

September 2, 1999.

Take notice that on August 30, 1999, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed below for effectiveness on October 1, 1999.

Twenty-First Revised Sheet No. 21
Twenty-Second Revised Sheet No. 22

According to Granite State, the foregoing tariff sheets propose a revised Power Cost Adjustment (PCA) surcharge applicable to its firm transportation services during the third quarter of 1999 to reimburse Granite State for certain electric power costs that it is obligated to pay Portland Pipe Line Corporation pursuant to the terms of a lease of a pipeline from Portland Pipe Line.

Granite State further states that the total surcharge of $0.5238 consists of the sum of two components: the Quarterly Forecast PCA factor of $0.0000 which is based on projected incremental electric power costs to be billed to Granite State during the third quarter of 1999 and the Reconcilable PCA factor of $0.5238 which reconciles the accumulated over/under past surcharge collections in the Deferred Account on a quarterly basis. The method for developing the surcharge in the foregoing manner was approved by the Commission in orders issued in Docket Nos. RP98–155–003, *et al.* and TM98–4–4–000, *et al.*, according to Granite State.

Granite State further states that copies of its filing have been served on its firm and interruptible customers and on the regulatory agencies of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23373 Filed 9–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM00–1–159–000]

Nautilus Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

September 2, 1999.

Take notice that on August 27, 1999, Nautilus Pipeline Company, L.L.C. (Nautilus) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 9, with an effective date of October 1, 1999.

Nautilus states that the purpose of this filing is to implement the tracking of the ACA Unit Surcharge authorized by the Commission to be applied to rates in 1999 for recovery of 1999 current year annual charges. The ACA Unit Surcharge authorized by the Commission for fiscal year 1999 is $0.0022 per Dth.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23375 Filed 9–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–191–001]

Northern Natural Gas Company; Notice of Amendment

September 2, 1999.

Take notice that on August 26, 1999, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP99–191–001 a request pursuant to Section 7(c) of the Natural Gas Act for the issuance of an expedited certificate of public convenience and necessity for phased in construction of the Elk River Loop 1999 Project, all as more fully set forth in the request on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.us/online/rims.htm (call 202–208–2222 for assistance).

Communications concerning this filing should be addressed to: Mary Kay Miller, Vice President of Rates & Certificates, Northern Natural Gas Company, Post Office Box 3330, Omaha, Nebraska 68103–0330, Telephone: 402–398–7060, Fax: 402–398–7006, or Keith L. Peterson, Director of Certificates and Reporting, Northern Natural Gas Company, Post Office Box 3330, Omaha, Nebraska 68103–0330, Telephone: 402–398–7421, Fax: 402–398–7592.

On February 2, 1999, Northern filed a prior notice request to install and

operate approximately 15 miles of 16-inch pipeline, with appurtenances, to loop the Elk River branchline located in Anoka and Sherburne Counties, Minnesota. Northern stated that the loop line is necessary to meet third through fifth year Peak Day 2000 firm obligations for Minnegasco, and (NSP–NM). A number of protests were filed, including one filed by Commission staff that offered an alternative route, all of which resulted in the request being converted to a Section 7(c) application.

In this filing, Northern specifically states that unless it is given authority to construct a six mile section of the Elk River Loop, by September 20, 1999, that it will not be able to serve the third year Peak Day 2000 firm entitlement during the upcoming heating season. Phase I of the Elk River Loop 1999 is needed to serve Northern's local distribution company (LDC) customer's incremental markets by November 1, 1999. Northern, therefore, requests approval to construct and operate, in Phase I, approximately six miles of 16-inch pipeline between milepost 8.48 and milepost 14.7, along its proposed route in order to serve the Peak Day 2000 firm entitlement for the third year for—Reliant Energy Minnegasco, a Division of Reliant Energy Resources Corp. (Minnegasco) and Northern States Power Company-Minnesota (NSP).

Northern states that it would follow the construction procedures and mitigation measures described in its original application, supplements, and responses to staff data requests during the construction of the subject facilities.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before September 17, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons who have heretofore filed need not file again.

David P. Boergers,

Secretary.

[FR Doc. 99–23368 Filed 9–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–608–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

September 2, 1999.

Take notice that on August 31, 1999, Southern Natural Gas Company (Southern), filed a request with the Commission in Docket No. CP99–608–000, pursuant to §§ 157.205, 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a new delivery point for service to Interconn Resources, Inc. (Interconn) authorized in blanket certificate issued in Docket No. CP82–406–000, all as more fully set forth in the request on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Southern proposes to construct and operate certain measurement and other appurtenant facilities in order to provide transportation service to Interconn at the Marglen Industries Plant in Floyd County, Georgia (Plant). Such service will be provided at a new delivery point to be located at approximately Mile Post 54.481 on Southern's 12″ Chattanooga Branch Loop Line in Floyd County, Georgia. The estimated cost of the construction and installation of the facilities is approximately $189,900. Interconn. has complied with all of the requirements under Section 36 of the General Terms and Conditions of Southern's FERC Gas Tariff for the installation of the direct delivery connection by Southern and will reimburse Southern for the cost of constructing and installing the proposed facilities.

Southern states that it will transport gas on behalf of Interconn under its Rate Schedule IT. Southern states that the installation of the proposed facilities will have no adverse effect on its ability to provide its firm deliveries.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

David P. Boergers,

Secretary.

[FR Doc. 99–23367 Filed 9–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–487–000]

Southern Natural Gas Company; Notice of Tariff Filing

September 2, 1999.

Take notice that on August 30, 1999, Southern Natural Gas Company (Southern) tendered for filing, pursuant to Section 4 of the Natural Gas Act, a notice of termination of gathering service that will apply to gathering service provided by J. R. Pounds, Inc. (Pounds) upon the transfer by Southern to Pounds of certain gathering facilities located in Dexter Field, Marion and Walthall Counties, Mississippi. Southern proposes the effective date of such termination of gathering services to be September 30, 1999.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with § 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be file in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23372 Filed 9–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP88–391–024 and RP93–162–009]

Transcontinental Gas Pipe Line Corporation; Notice of Annual Cash-Out Report

September 2, 1999.

Take notice that on August 17, 1999, Transcontinental Gas Pipe Line Company (Transco) filed its annual report of cash-out purchases for the period August 1, 1998, through July 31, 1999. The report was filed to comply with the cash-out provisions in Section 15 of the General Terms and Conditions of Transco's FERC Gas Tariff.

Pursuant to the requirements of the Commission's order issued December 3, 1993, in Docket No. RP–93–162–002, Transco also submitted a summary of activity showing the volumes and amounts paid under each Pipeline Interconnect Balancing Agreement during the aforementioned period.

Transco states that the report shows that for the cash-out period ending July 31, 1999, Transco had a net underrecovery of $2,243,115. Transco has carried forward a net underrecovery of $11,103,133 from the previous twelve-month period. This results in a net underrecovery cash-out balance of $13,346,248 as of July 31, 1999. Transco states that in accordance with Section 15 of its tariff it will carry forward such net underrecovery to offset any net overrecovery that may occur in future cash-out periods.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or filed before September 9, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23366 Filed 9–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–107–000, et al.]

Connecticut Light and Power Company, et al.; Electric Rate and Corporate Regulation Filings

September 1, 1999.

Take notice that the following filings have been made with the Commission:

1. The Connecticut Light and Power Company and Western Massachusetts Electric Company

[Docket Nos. EC99–107–000 and ER99–4114–000]

Take notice that on August 27, 1999, The Connecticut Light and Power Company (CL&P), Western Massachusetts Electric Company (WMECO) and Northeast Generation Company (collectively, Applicants) tendered for filing technical amendments to the Interconnection Agreements included in their August 17, 1999 application under sections 203 and 205 of the Federal Power Act relating to the transfer of certain jurisdictional facilities associated with the sale of generating facilities by CL&P and WMECO.

The Applicants state that copies of this filing have been sent to persons designated for service in the above-captioned proceeding and to the Connecticut Department of Public Utility Control, the Massachusetts Department of Telecommunications and Energy and the New Hampshire Public Utilities Commission.

Comment date: September 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Pennsylvania Enterprises, Inc. and Southern Union Company

[Docket No. EC99–109–000]

Take notice that on August 27, 1999, pursuant to section 203 of the Federal Power Act and part 33 of the Commission's regulations, Pennsylvania Enterprises, Inc., PEI Power Corporation (PEI Power), PG Energy Power Plus (incorporated under the name PG Energy Services Inc.) (PG Plus) and Southern Union Company, filed a joint application for approval of the disposition of Pennsylvania Enterprises, Inc.'s interest in PEI Power and PG Plus, as a result of a proposed merger. PEI Power and PG Plus have been granted market-based rate authority by this Commission and PEI Power holds exempt wholesale generator status.

This Application has been served upon the Florida Public Service Commission, the Missouri Public Service Commission and the Pennsylvania Public Utility Commission.

Comment date: October 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. EML Power, L.L.C., EO Power, L.L.C., EP Power, L.L.C., and El Paso Power Services Company

[Docket No. EC99–110–000]

Take notice that on August 27, 1999, pursuant to section 203 of the Federal Power Act (FPA), 16 U.S.C. 824 (1998), and part 33 of the regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR part 33, et seq., EML Power, L.L.C., EO Power, L.L.C., EP Power, L.L.C., and El Paso Power Services Company, (collectively, Applicants), filed an Application for Commission approval for the disposition (and acquisition, if necessary) of a certain Master Agreement to Amend and Restate Contracts for the Purchase of Firm Capacity and Energy, dated May 19, 1999, between Florida Power Corporation and El Paso Power Services Company (Master Agreement). Applicants have requested that such authorization be granted on an expedited basis.

The principal place of business of the Applicants will be in the state of Florida with their current business offices in care of El Paso Power Services Company, 350 Indiana Street, Suite 300, Golden, CO 80401. The Applicants seek Commission authorization for the assignment of the Master Agreement in conjunction with the proposed restructuring of the ownership, commercial arrangements and financing of two power generation projects, the Orange Facility and the Mulberry Facility located in the state of Florida. The Applicants state that EML, Power, L.L.C. will be the seller of power at wholesale to Florida Power Corporation under the Master Agreement.

Comment date: September 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation, Power Authority of the State of New York and New York Power Pool

[Docket Nos. ER97–1523–013, OA97–470–012, and ER97–4234–010] (not consolidated)

Take notice that on August 26, 1999, the Member Systems of the New York Power Pool (Member Systems), tendered for filing certain revised tariff sheets to their ISO Open Access Transmission and ISO Services Tariffs. The Member Systems state that these tariff sheets are in compliance with the Commission's July 29 Order in these dockets. *Central Hudson Gas & Electric Corp., et al.*, 88 FERC ¶ 61,138 (1999).

The Member Systems request that the above-referenced tariff sheets become effective October 12, 1999.

A copy of this filing was served upon all persons on the Commission's official service list(s) in the captioned proceeding(s), and the respective electric utility regulatory agencies in New York, New Jersey and Pennsylvania.

Comment date: September 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. California Power Exchange Corporation

[Docket No. ER99–3148–000]

Take notice that on August 20, 1999, California Power Exchange Corporation tendered for filing revised tariff sheets in compliance with the Commission's July 28, 1999, order in this proceeding.

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Cinergy Services, Inc.

[Docket No. ER99–4089–000]

Take notice that on August 16, 1999, Cinergy Services, Inc. (Cinergy) and Phibro Power LLC (Power), tendered for filing a Notice of Assignment that Power will replace Phibro Inc. of Cinergy's Cost-Based Power Sales Tariff Original Volume No. 6–CB, Service Agreement No. 123, dated October 29, 1997.

Cinergy and Power are requesting an effective date of one day after this filing.

Comment date: September 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Commonwealth Edison Company

[Docket No. ER99–4214–000]

Take notice that Commonwealth Edison Company (ComEd) on August 25, 1999, tendered for filing pursuant to § 35.15 of the Federal Energy Regulatory Commission's regulations, 18 CFR 35.15, a Notice of Cancellation of Service Agreement No. 117 between ComEd and Duke Energy Trading and Marketing L.L.C. (formally NP Energy, Inc.) (DETM) under ComEd's Power Sales and Reassignment of Transmission Rights PSRT–1 Tariff (FERC Electric Tariff, First Revised Volume No. 2) and a Notice of Cancellation of Service Agreement No. 16 between ComEd and DETM under ComEd's Market-Based Rate Schedule (FERC Electric Tariff, Original Volume No. 6).

ComEd requests an effective date of August 26, 1999, for the cancellations and accordingly requests waiver of the Commission's notice requirements.

ComEd served copies of the filing upon DETM.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Tampa Electric Company

[Docket No. ER99–4215–000]

Take notice that on August 25, 1999, Tampa Electric Company (Tampa Electric) tendered for filing a service agreement with Aquila Energy Marketing Corporation (Aquila) under Tampa Electric's market-based sales tariff.

Tampa Electric proposes that the service agreement be made effective on July 26, 1999, and gives notice of its termination as of August 1, 1999.

Copies of the filing have been served on Aquila and the Florida Public Service Commission.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4217–000]

Take notice that on August 25, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Public Service Electric & Gas Company (PSE&G).

Con Edison states that a copy of this filing has been served by mail upon PSE&G.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4218–000]

Take notice that on August 25, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Public Service Electric & Gas Company (PSE&G).

Con Edison states that a copy of this filing has been served by mail upon PSE&G.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4219–000]

Take notice that on August 25, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Public Service Electric & Gas Company (PSE&G).

Con Edison states that a copy of this filing has been served by mail upon PSE&G.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4220–000]

Take notice that on August 25, 1999 Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Public Service Electric & Gas Company (PSE&G).

Con Edison states that a copy of this filing has been served by mail upon PSE&G.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4221–000]

Take notice that on August 25, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Constellation Power Source, Inc. (CPS).

Con Edison states that a copy of this filing has been served by mail upon CPS.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4222–000]

Take notice that on August 25, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to PG&E Energy Trading—Power, L.P. (PG&E).

Con Edison states that a copy of this filing has been served by mail upon PG&E.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. PJM Interconnection, L.L.C.

[Docket No. ER99–4227–000]

Take notice that on August 25, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing amendments to certain emergency service schedules of interconnection agreements between PJM and the APS Group, Virginia Electric and Power Company, Cleveland Electric Illuminating Company (CEI) and the NYPP Group and two additional schedules to be included in the CEI and NYPP Group agreements in order to apply locational marginal pricing to PJM's provision of emergency service consistent with the PJM Open Access Transmission Tariff and to set forth the rate for the sale of energy in the event of a minimum generation emergency in the PJM control area.

PJM requests a waiver of the Commission's notice requirements and an effective date of August 26, 1999 for the amendments to the interconnection agreements.

Copies of this filing were served upon all parties to the interconnection agreements and the electric regulatory commissions in the PJM Control Area.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. CP Power Sales Nineteen, L.L.C.

[Docket No. ER99–4228–000]

Take notice that, on August 25,1999, CP Power Sales Nineteen, L.L.C. tendered for filing initial FERC electric service tariff, Rate Schedule No. 1, and a petition for blanket approvals and waivers of various Commission regulations under the Federal Power Act.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. CP Power Sales Seventeen, L.L.C.

[Docket No. ER99–4229–000]

Take notice that, on August 25,1999, CP Power Sales Seventeen, L.L.C. tendered for filing initial FERC electric service tariff, Rate Schedule No. 1, and a petition for blanket approvals and waivers of various Commission regulations under the Federal Power Act.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. CP Power Sales Eighteen, L.L.C.

[Docket No. ER99–4230–000]

Take notice that, on August 25,1999, CP Power Sales Eighteen, L.L.C. tendered for filing initial FERC electric service tariff, Rate Schedule No. 1, and a petition for blanket approvals and waivers of various Commission regulations under the Federal Power Act.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. CP Power Sales Twenty, L.L.C.

[Docket No. ER99–4231–000]

Take notice that, on August 25,1999, CP Power Sales Twenty, L.L.C., tendered for filing initial FERC electric service tariff, Rate Schedule No. 1, and a petition for blanket approvals and waivers of various Commission regulations under the Federal Power Act.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. FirstEnergy System

[Docket No. ER99–4232–000]

Take notice that on August 25, 1999, FirstEnergy System filed a Service Agreement to provide Firm Point-to-Point Transmission Service for Consumers Energy Company, the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is August 23, 1999 for the above mentioned Service Agreement in this filing.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. FirstEnergy System

[Docket No. ER99–4233–000]

Take notice that on August 25, 1999, FirstEnergy System filed a Service Agreement to provide Non-Firm Point-to-Point Transmission Service for Consumers Energy Company, the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is August 23, 1999.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Avista Corporation

[Docket No. ER99–4234–000]

Take notice that on August 25, 1999, Avista Corporation (AVA), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, an amended Mutual Netting with Sovereign Power, Inc. to replace the Mutual Netting Agreement filed under FERC Docket No ER99–802–000 on December 2, 1998.

AVA requests that the amended agreement replace the previously filed agreement with the same effective date of October 1, 1998.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange & Rockland Utilities, Inc., Rochester Gas & Electric Corp., Power Authority of the State of New York, and New York Power Pool

[Docket No. ER99–4235–000]

Take notice that on August 25, 1999, the New York Independent System Operator, Inc. (NYISO) and the Member Systems of the New York Power Pool (NYPP), tendered for filing a request for the recovery of costs associated with the start-up and formation of the NYISO. The NYISO requests as an effective date the first day of the first month that begins after the later of: (i) Sixty (60) days after the date this filing is made or (ii) the date following completion of an initial operating period, on which the NYPP assets and employees are formally transferred to the NYISO, the ISO Related Agreements are executed and the NYISO accepts the software systems, operating procedures and communications systems.

A copy of this filing was served upon all persons on the Commission's official service lists in Docket Nos. ER97–1523–

000, OA97–470–000 and ER97–4234–000 (not consolidated), and the respective electric utility regulatory agencies in New York, New Jersey and Pennsylvania.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Public Service Company of Colorado

[Docket No. ER99–4243–000]

Take notice that on August 26, 1999, New Century Services, Inc., on behalf of Public Service of Colorado (PSCo), tendered for filing an executed Master Power Purchase and Sales Agreement under PSCo's market-based sales tariff with and PG&E Energy Trading—Power, L.P., (PG&E Energy Trading). This service agreement provides for PSCo's sale and purchase of capacity and energy with PG&E Energy Trading at market-based rates pursuant to PSCo's market-based sales tariff.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company

[Docket No. ER99–4244–000]

Take notice that on August 26, 1999, Central Power and Light Company, Public Service Company of Oklahoma, Southwestern Electric Power Company and West Texas Utilities Company (collectively, the CSW Operating Companies), tendered for filing service agreements establishing Austin Energy, Brazos Electric Power Cooperative, Inc., Calpine Power Services Co., Citizen Power Sales, City of Bryan, Texas, City Public Service (San Antonio) Control Area, Columbia Power Marketing Corporation, Constellation Power Source, Inc., The Cities of Denton, Garland and Greenville, Texas, Enron Power Marketing, LG&E Power Marketing, Lower Colorado River Authority, Morgan Stanley Capital Group, Inc., ONEOK Power Marketing, PanCanadian Energy Services, Inc., PECO Energy Company—Power Team, PG&E Energy Trading-Power, L.P., Reliant Energy Services, Inc., Southern Company Energy Marketing, L.P., Texas Utilities Generation, Vitol Gas & Electric, Tractebel Energy Marketing, Inc., and Williams Energy Services Company (collectively, Customers) as customers under the CSW Operating Companies' market-based rate power sales tariff.

The CSW Operating Companies request an effective date of July 26, 1999 for the agreements and, accordingly, seek waiver of the Commission's notice requirements.

The CSW Operating Companies state that a copy of the filing was served on each of the Customers.

Comment date: September 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Sithe Pennsylvania Holdings, LLC, Sithe New Jersey Holdings, LLC, Sithe Maryland Holdings, LLC, and York Haven Power Company

[Docket No. ER99–4245–000]

Take notice that on August 26, 1999, Sithe Pennsylvania Holdings, LLC (SPH), Sithe New Jersey Holdings, LLC (SNJH), Sithe Maryland Holdings (SMH), and York Haven Power Company (York Haven) (collectively, the Applicants), petitions the Commission for acceptance of the Applicants proposed FERC Rate Schedule(s) No. 2. Applicants request certain authority to make sales of specified ancillary services at market based rates, requests certain blanket authorizations, and waiver of certain of the Commission's regulations.

Comment date: September 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Central Illinois Light Company

[Docket No. ER99–4246–000]

Take notice that on August 26, 1999, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and service agreements with one new customer, West Penn Power Company d/b/a Allegheny Energy, a revised Service Agreement with Corn Belt Energy Corporation, and termination of service agreement with NP Energy, Inc.

CILCO requested an effective date of August 1, 1999.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: September 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Northern States Power Company (Minnesota Company), and Northern States Power Company (Wisconsin Company)

[Docket No. ER99–4247–000]

Take notice that on August 26, 1999, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively known as NSP), tendered for filing a Short-Term Market-Based Electric Service Agreement between NSP and Dayton Power and Light Company (Customer).

NSP requests that this Short-Term Market-Based Electric Service Agreement be made effective on July 28, 1999.

Comment date: September 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Monroe Power Company

[Docket No. ER99–4266–000]

Take notice that on August 27, 1999, Monroe Power Company tendered for filing a quarterly report for the quarter ending June 30, 1999.

Comment date: September 16, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23400 Filed 9–8–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4216–000, et al.]

Hardee Power Partners Limited, et al.; Electric Rate and Corporate Regulation Filings

August 31, 1999.

Take notice that the following filings have been made with the Commission:

1. Hardee Power Partners Limited

[Docket No. ER99–4216–000]

Take notice that on August 25, 1999, Hardee Power Partners Limited (HPP), tendered for filing a service agreement with Aquila Energy Marketing Corporation (Aquila) under HPP's market-based sales tariff.

HPP proposes that the service agreement be made effective on July 26, 1999, and gives notice of its termination as of August 1, 1999.

Copies of the filing have been served on Aquila and the Florida Public Service Commission.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. PEC Energy Marketing, Inc. and Depere Energy Marketing, Inc.

[Docket Nos. ER97–1431–009 and ER97–1432–009]

Take notice that on August 26, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

3. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4223–000]

Take notice that on August 25, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Public Service Electric & Gas Company (PSE&G).

Con Edison states that a copy of this filing has been served by mail upon PSE&G.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Mid-Continent Area Power Pool

[Docket No. ER99–4224–000]

Take notice that on August 25, 1999, the Mid-Continent Area Power Pool (MAPP), on behalf of its public utility members, filed short-term firm and non-firm service agreements under MAPP Schedule F with British Columbia Power Exchange Corporation; Cargill-Alliant, LLC; Cedar Falls Municipal Utilities; The Cincinnati Gas & Electric Company, an Ohio corporation, PSI Energy, Inc., an Indiana corporation, (collectively Cinergy Operating Companies) and Cinergy Services, Inc., a Delaware corporation, as agent for and on behalf of the Cinergy Operating Companies; Corn Belt Power Cooperative; Dairyland Power Cooperative; ENRON Power Marketing, Inc.; Entergy Power Marketing Corp.; Heartland Consumers Power District; Iowa Association of Municipal Utilities; Kansas City Power and Light; Manitoba Hydro; MidAmerican Energy Company; Minnesota Municipal Power Agency; Montana-Dakota Utilities Co.; Municipal Energy Agency of Nebraska; Muscatine Power and Water; Nebraska Public Power District; Northern States Power Company; Northwestern Public Service Company; Omaha Public Power District; OTP Wholesale Marketing; Otter Tail Power Company; PECO Energy Company; PG&E Energy Trading-Power, L.P.; Public Service Company of Colorado; Southwestern Public Service Company; Western Area Power Administration; Wisconsin Public Power, Inc. System; Wood County Municipals; and WPS Energy Services Incorporated.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Northern Maine Independent System Administrator, Inc.

[Docket No. ER99–4225–000]

Take notice that on August 25, 1999, Northern Maine Independent System Administrator, Inc. (NMISA), tendered for filing a comprehensive document including: Northern Maine Independent System Administrator Tariff, including a Form of Service Agreement, certain Northern Maine Market Rules, letter of the Maine Public Utilities Commission (MPUC) in support of the filing, Articles of Incorporation and By-Laws of the NMISA, and a list of NMISA stakeholder meetings and participants.

NMISA requests an effective date for implementation of the NMISA Tariff of March 1, 2000, to coincide with the institution of retail electric competition in the State of Maine.

A copy of this filing has been served on the MPUC and all other parties included on the Service List included in the filing, which comprises the list of stakeholders that have participated in the NMISA process.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Ameren Operating Companies

[Docket No. ER99–4226–000]

Take notice that on August 25, 1999, Ameren Services Company, on behalf of the Ameren Operating Companies, Union Electric Company and Central Illinois Public Service Company (together the Ameren Operating Companies), tendered for filing proposed rate and non-rate changes to the Ameren System's Open Access Transmission Tariff applicable to the provision of both wholesale and resale transmission services.

Ameren Services requests that the proposed changes become effective on October 1, 1999.

Ameren Services states that copies of the amendment were served on the Illinois Commerce Commission and the Missouri Public Service Commission.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Central Vermont Public Service Corporation

[Docket No. ER99–4236–000]

Take notice that on August 25, 1999, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Niagara Mohawk Energy Marketing, Inc., under its FERC Electric Tariff No. 8.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on August 25, 1999.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Central Vermont Public Service Corporation

[Docket No. ER99–4237–000]

Take notice that on August 25, 1999, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Aquila Energy Marketing Corporation under its FERC Electric Tariff No. 8.

Central Vermont requests waiver of the Commission's Regulations to permit the service agreement to become effective on August 25, 1999.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Niagara Mohawk Power Corporation

[Docket No. ER99–4238–000]

Take notice that on August 25, 1999, Niagara Mohawk Power Corporation, tendered for filing an Interconnection Agreement, as amended, with Indeck-Olean Limited Partnership, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. Section 824d, and Part 35 of the Commission's Regulations, 18 CFR Part 35.

A copy of this filing has been served upon the State of New York Public Service Commission and upon the

official service list in the above-captioned dockets.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Southern California Edison Company

[Docket No. ER99–4239–000]

Take notice that on August 25, 1999, Southern California Edison Company tendered for filing notice that effective January 1, 1999, FERC Rate Schedule Nos. 383.2 and 383.3, effective April 1, 1998 and October 1, 1998, are to be canceled.

Notice of the proposed cancellation has been served upon the Public Utilities Commission of the State of California and the City of Banning, California.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Southern California Edison Company

[Docket No. ER99–4240–000]

Take notice that on August 25, 1999, Southern California Edison Company tendered filing notice that effective January 1, 1999, FERC Rate Schedule Nos. 377.2 and 377.3, effective April 1, 1998 and October 1, 1998, are to be canceled.

Notice of the proposed cancellation has been served upon the Public Utilities Commission of the State of California and the City of Azusa, California.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Southern California Edison Company

[Docket No. ER99–4241–000]

Take notice that on August 25, 1999, Southern California Edison Company tendered for filing notice that effective January 1, 1999, FERC Rate Schedule Nos. 367.1 and 367.2, effective April 1, 1998 and October 1, 1998, are to be canceled.

Notice of the proposed cancellation has been served upon the Public Utilities Commission of the State of California and the City of Anaheim, California.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Commonwealth Edison Company

[Docket No. ER99–4242–000]

Take notice that on August 25, 1999, Commonwealth Edison Company (ComEd) tendered for filing a service agreement establishing Southern Company Services, Inc., as agent for Alabama Power Company, Georgia Power Company, Gulf Power, Mississippi Power company, and Savannah Electric and Power Company (SCSI), as a customer under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests an effective date of July 29, 1999, for the Service Agreement, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing were served on SCSI.

Comment date: September 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23370 Filed 9–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application To Amend Exemption, and Soliciting Comments, Motions To Intervene, and Protests

September 2, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Application To Amend Exemption for the Wappingers Falls Project.

b. *Project No.:* 3065–009.

c. *Date Filed:* July 2, 1999.

d. *Applicant:* Electro Ecology, Inc.

e. *Name of Project:* Wappingers Falls Project.

f. *Location:* The Wappingers Falls Project is on Wappingers Creek in Dutchess County, New York. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Harry Terbush, 16 Orbit Lane, Hopewell Junction, NY 12533, (914) 897–4178.

i. *FERC Contact:* Any questions on this notice should be addressed to Paul Shannon at (202) 219–2866 or by e-mail at paul.shannon@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* October 12, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (3065–009) on any comments or motions filed.

k. *Description of Filing:* Electro Ecology, Inc. proposes to install a new 100-foot-long penstock bifurcating from the existing penstock immediately upstream of the project's powerhouse and a new 261-kW generating unit within the powerhouse. The new unit would have a maximum hydraulic capacity of 46 cubic feet per second (cfs) and minimum hydraulic capacity of 7 cfs. The new unit would be operated during low flow periods when there is not enough flow for the larger units to operate. The exemptee states the new unit will provide more control and minimize or eliminate lake level fluctuations during low flow periods.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm [call (202) 208–2222 for assistance]. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTESTS", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–23369 Filed 9–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10867–014]

Holliday Historic Restoration Associates; Notice of Availability of Final Environmental Assessment

September 2, 1999.

A final environmental assessment (FEA) is available for public review. The FEA is for an application for the Holliday Project (FERC No. 10867) to amend the license to modify Article 405 pertaining to trashrack spacing and to operate the project in accordance with a "Revised Plan of Operation" dated April 30, 1998. The project is located on the West Fork of the White River in Noblesville, Hamilton County, Indiana. The FEA finds that approval of the application would not constitute a major federal action significantly affecting the quality of the human environment.

The FEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the FEA are available for review in the Commission's Public Reference Branch, Room 2A, 888 First Street, NE, Washington, DC 20426 or by calling (202) 208–1371. The FEA may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm.* Please call (202) 208–2222 for assistance. For further information, please contact John K. Novak at (202) 219–2828.

David P. Boergers,

Secretary.

[FR Doc. 99–23376 Filed 9–8–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

City of Unalaska; Notice of Declaration of Intention and Soliciting Comments, Motions to Intervene, and Protests

September 2, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. Application Type: Declaration of Intention

b. Docket No: DI99–10–000

c. Date Filed: August 25, 1999

d. Applicant: The City of Unalaska

e. Name of Project: Pyramid Creek Hydroelectric Project

f. Location: On Pyramid Creek, 2½ miles from Unalaska, Alaska, on Unalaska Island, Alaska, in Sections 16 and 21 of T73S R118W. The project does not utilize federal or tribal lands.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Ms Karen Blue, Utilities Analyst, City of Unalaska, PO Box 610, Unalaska, Alaska 99685–0610. Telephone: (907) 581–1260

i. FERC Contact: Any questions on this notice should be addressed to Henry Ecton at (202) 219–2678, or e-mail address: Henry.ecton@ferc.fed.us.

j. Deadline for filing comments and or motions: October 12, 1999

All documents (original and eight copies) should be filed with David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the docket number (DI99–10–000) on any comments or motions filed.

k. Description of Project: The proposed project will tap into an existing water supply pipeline, which draws water from Icy Creek and Icy Creek Dam, and will include a 2,450-foot-long, 24-inch diameter penstock; a 22-foot-wide, 44-foot long, and 22-foot-high metal powerhouse containing a 600-kW generator; and 85-foot-long, 8-foot-wide tailrace, with a 10-foot vertical drop into Pyramid Creek; and appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. Locations of the Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS

AND CONDITIONS", "PROTESTS", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–23397 Filed 9–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

City of Broken Bow, Oklahoma; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

September 2, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11803–000.

c. *Date Filed:* August 16, 1999.

d. *Applicant:* City of Broken Bow, Oklahoma.

e. *Name of Project:* Broken Bow Reregulating Dam.

f. *Location:* On Mountain Fork River, near the town of Broken Bow, McCurtain County, Oklahoma, utilizing federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gerald B. Davenport, Hall, Estill, Hardwick, Gable, Golden and Nelson, P.C., 320 S. Boston Avenue, Suite 400, Tulsa, OK 74103, (918) 592–0400.

i. *FERC Contact:* William H.S. Diehl, E-mail address, William.Diehl@ferc.fed.us, or telephone (202) 219–2813.

j. *Deadline Date:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's rule of practice and procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The proposed project would utilize the existing U.S. Army Corps of Engineers' Broken Bow Reregulating Dam and would consist of: (1) A new 50-foot-long, 50-foot-wide, 20-foot-high powerhouse containing one or two generating units having a total installed capacity of 5,000-kW; (2) a short transmission line; and (3) appurtenant facilities.

Applicant estimates that the average annual generation would be 20,000 MWh and that the cost of the studies to be performed under the terms of the permit would be $100,000. Project energy would be utilized to supply a portion of Applicant's energy requirements.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protests, or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filing must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, if will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–23398 Filed 9–8–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM00–1–134–000]

Mississippi Canyon Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

September 2, 1999.

Take notice that on August 27, 1999, Mississippi Canyon Gas Pipeline, LLC (MCGP) tendered for filing tariff as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 6, to become effective October 1, 1999.

MCGP states that the purpose of this filing is to reflect the change in the ACA Unit Surcharge authorized by the Commission. The annual charges unit to be applied to rates in 1999 for recovery of 1998 debit/credit and 1999 current year annual charges is $0.0022 Dth.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23399 Filed 9–8–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–100149; FRL–6380–3]

Versar, Incor. and Syracuse Research Corp.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), Federal Quality Protection Act (FQPA), and the Federal Food, Drug, and Cosmetic Act (FFDCA). Versar, Incorporated (Versar) and its subcontractor, Syracuse Research Corporation (SRC), have been awarded a contract to perform work for the EPA Office of Pollution Prevention and Toxics, and will be provided access to certain information submitted to EPA under FIFRA, FQPA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Versar and SRC consistent with the requirements of 40 CFR 2.307(h)(3) and 2.308(i)(2), and will enable Versar and SRC to fulfill the obligations of the contract.

DATES: Versar and SRC will be given access to this information no sooner than September 14, 1999.

FOR FURTHER INFORMATION CONTACT: By mail: Richard Schmitt, Information Resources Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 707, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5484; e-mail: schmitt.richard@epa.gov.

SUPPLEMENTARY INFORMATION: Under Contract Number 68–W–99–041, Versar and SRC will review and evaluate data from studies pertaining to the environmental fate and human exposure assessments of microbiocides. The Antimicrobials Division/Office of Pesticide Programs will use the results of these contractor reviews and evaluations to support environmental and human exposure assessments used in making regulatory decisions, specifically those related to the registration, reregistration and special review of microbiocides.

The Office of Pollution Prevention and Toxics and the Office of Pesticide Programs have jointly determined that the contract herein described involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA and FQPA.

I. Important Information

A. Does this apply to me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How can I get additional information or copies of support documents?

1. *Electronically.* You may obtain electronic copies of this document and various support documents are available from the EPA Home Page at the Federal Register-Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr).

2. *In person.* The official record for this notice, as well as the public version, has been established under docket control number [OPP–100149], (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as CBI, is available for inspection in Room 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays.

II. Introduction

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of the FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Versar and SRC, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Versar and SRC are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor and it's subcontractor until the above requirements have been fully satisfied. Records of information provided to this contractor and subcontractor will be maintained by the Project Officers for this contract in the EPA Office of Pesticide Programs.

All information supplied to Versar and SRC by EPA for use in connection with this contract will be returned to EPA when Versar and SRC have completed their work.

List of Subjects

Environmental protection, Transfer of data.

Dated: August 26, 1999.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 99–23413 Filed 9–8–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–892; FRL–6095–9]

Notice of Filing Pesticide Petitions To Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: NOTICE.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–892, must be received on or before October 12, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION" section. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–892 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: The Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460 listed in the table below:

Regulatory Action Leader	Office location/telephone number	Address	Petition number
Denise Greenway	9th Floor, CM #2, 703–308–8263, e-mail: greenway.denise@epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA	PP 8E4926
Diana Home	9th Floor, CM #2, 703–308–8367, e-mail: home.diana@epa.gov.	Do.	PP 9F6027

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–892. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–892 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by E-mail to: "*opp-docket@epa.gov* ," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by docket control number PF–892. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want To Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the "FOR FURTHER INFORMATION CONTACT" section.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action Is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 30, 1999.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. AVA Chemical Ventures, L.L.C.

PP 8E4926

EPA has received a pesticide petition (PP 8E4926) from AVA Chemical Ventures, L.L.C., 65 Aviation Avenue, Portsmouth, New Hampshire, 03801 proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a, to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of sucrose fatty acid esters in or on all food commodities. Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, AVA Chemical Ventures, L.L.C. has submitted the following summary of information, data, and arguments in support of their pesticide petition.

A. Proposed Use Practices

Sucrose octanoate fatty acid esters made with caprylic acid derived from 21 CFR-approved edible fats and oils are contact insecticides that are effective against whiteflies, aphids, mites, thrips and other soft-bodied insects. The mode of action is physical, whereby the surfactant effect of sucrose octanoate fatty acid esters de-waxes the cuticle of the target insect, causing it to dessicate.

Sucrose octanoate fatty acid esters are sprayed in a water solution at the rate of 0.2–0.5% volume/volume throughout the growing season at intervals of 3–10 days, as needed, to control soft-bodied insects. Treatments are applied up to 2 days before harvest.

B. Product Identity/Chemistry

Sucrose octanoate fatty acid esters are manufactured by the transesterification of sucrose and a caprylic fatty acid ester derived from an edible oil or fat in the presence of a polar solvent, such as dimethylsulfoxide (DMSO). Mono-, di-, and tri-esters of sucrose are formed (i.e., sucrose octanoate, sucrose dioctanoate and sucrose trioctanoate). The crude transesterification product is purified in a series of unit operations that may include vacuum distillation, filtration and liquid-liquid extraction. The resulting material is a high quality non-ionic surfactant.

C. Toxicological Profile

Sucrose fatty acid esters derived from edible vegetable oils, edible tallow or hydrogenated edible tallow were approved in 1983 by the Food and Drug Administration (FDA) for use as emulsifiers in certain foods and as post-harvest protective coatings for certain fruits (21 CFR 172.859). The range of foods in which use of sucrose fatty acid esters is permitted was expanded by the FDA in 1995. Since the initial approval for food use of sucrose fatty acid esters was granted in Japan in 1959, other major regulatory bodies, including the World Health Organization (WHO), have granted similar approvals.

Toxicological studies were conducted in connection with the above-referenced approvals of sucrose fatty acid esters for use as food emulsifiers. AVA Chemical Ventures, L.L.C. has reviewed these toxicological studies and summaries are presented below.

1. *Acute toxicity.* Sucroše fatty acid esters and sucroglycerides were evaluated by the WHO for acceptable daily intake (ADI) for man in 1969, 1973, 1976, and 1980.

WHO Food Additive Series No. 15 (1980), titled, "Toxicological Evaluation of Certain Food Additives," reports on the results of sucrose fatty acid esters administered in short-term feeding studies of dogs and a long-term feeding study of rats. No effects attributable to the ingestion of sucrose fatty acid esters were found in any of the studies. The WHO concluded the ingestion level causing no toxicological effect in rat to be 10,000 parts per million (ppm) (1.0%) in the diet, equivalent to 500 milligrams/kilograms (mg/kg) of body weight (bwt). The estimate of ADI for man was 0–10 mg/kg of bwt.

Primary skin irritation and primary eye irritation studies performed on rabbits by AVA Chemical Ventures, L.L.C. with Manufacturing Use Product (MUP) and End Use Product (EUP) sucrose octanoate fatty acid esters have been submitted to EPA. The MUP was found to be slightly irritating to the skin and severely irritating to the eye. The EUP was found to be slightly irritating to the skin and to cause substantial but temporary eye injury.

2. *Genotoxicity.* The components of sucrose octanoate fatty acid esters (sucrose and caprylic acid) already have regulatory approval and are commonly consumed as foods or food components. Caprylic acid (octanoic acid) is obtained from coconut oil or palm oil where it is present in concentrations of 7.5% and 3.3%, respectively. Caprylic acid (octanoic acid) is approved by the FDA as a generally recognized as safe (GRAS) substance and direct food additive (21 CFR 184.1025 and 21 CFR 172.860)

3. *Reproductive and developmental toxicity.* In 1976, in WHO Food Additive Series No. 10, the WHO reported on the results of a reproduction study over three generations of rats using sucrose fatty acid esters at 0 and 1% of the diet for control and test groups, respectively. Mean litter size, physical appearance and growth of litter were comparable among test and control groups.

4. *Subchronic toxicity.* WHO Food Additive Series No. 15 (1980) reports the findings of a study in which sucrose fatty acid esters made from beef tallow were fed to beagle dogs at concentrations of 3,000, 10,000 or 30,000 ppm for 26–weeks. A control group was fed an identical diet with the exception of the sucrose fatty acid esters. Body weight changes, food intake and water consumption were not affected by the administration of the esters. The opthalmic and haemotologic examinations, urinalysis, organ weights and macroscopic examinations revealed no adverse effects which could be attributed to the intake of the sucrose fatty acid esters. The blood chemistry studies showed that the majority of parameters measured were within acceptable limits.

5. *Chronic toxicity.* An unpublished paper titled, "Study of Chronic Toxicity of a Sucrose Ester of Fatty Acids" (undated) was submitted to the FDA in connection with the registration of sucrose fatty acid esters for use as food additives. For up to 76 weeks mice and rats were fed standard feed to which had been added up to 3.0% sucrose fatty acid esters. Animals were examined for body weight, feed consumption, hematological findings, organ weights and histopathology of organs. No particular changes resulting from administration of sucrose fatty acid esters were found.

6. *Animal metabolism.* Sucrose fatty acid esters are derived from fatty acids produced from 21 CFR-approved edible fats and oils. Ethyl alcohol and butanol, two of the solvents used to produce sucrose octanoate fatty acid esters, are exempted from the requirement of a tolerance under 40 CFR 180.1001(c). DMSO, the other solvent used to produce sucrose octanoate fatty acid esters, is approved for use in the manufacture of food-grade sucrose fatty acid esters under 21 CFR 172.859.

7. *Metabolite toxicology.* The components of sucrose octanoate fatty acid esters (sucrose and caprylic acid) already have regulatory approval and are commonly consumed as foods or food components. Caprylic acid (octanoic acid) is obtained from coconut oil or palm kernal oil where it is present at concentrations of 7.5% and 3.3%, respectively. Caprylic acid (octanoic acid) is approved by the FDA as a GRAS substance and direct food additive (21 CFR 184.1025 and 21 CFR 172.860).

8. *Endocrine disruption.* Sucrose fatty acid esters are not derived from nor contain any compounds which are known to be, or suspected to be, endocrine disruptors. Sucrose fatty acid esters are derived from a variety of 21 CFR-approved edible fats and oils.

D. Aggregate Exposure

AVA Chemical Ventures, L.L.C. believes that sufficient data exist to assess the hazards of sucrose fatty acid esters and to make a determination on aggregate exposure, consistent with section 408(c)(2), for an exemption from the requirement of a tolerance. Such data were submitted to the FDA prior to that agency's approval of sucrose fatty acid esters for use as an emulsifier in foods and as fruit coatings.

1. *Dietary exposure from food and feed uses, drinking water and non-dietary exposure*— i. *Dietary exposure.* Sucrose fatty acid esters made from 21 CFR-approved edible fats and oils and conforming to 21 CFR 172.860 are approved for use as food emulsifiers and as fruit coatings (21 CFR 172.859). They are also approved for food use in Europe and by the WHO Joint Expert Committee on Food Additives, with an acceptable daily intake (ADI) of 10 mg/kg body weight/day. Current world consumption in food applications is estimated to be 5,000 metric tons. Pesticide use would increase usage by approximately 1,000 metric tons, much of which will biodegrade prior to consumption of the crops to which it is applied.

ii. *Drinking water.* No drinking water exposure is anticipated as sucrose fatty acid esters are not soluble in water and biodegrade rapidly following use.

iii. *Non-dietary exposure.* Non-occupational, non-dietary exposure is highly unlikely given that the inhalation potential or dermal absorption of these substances are not feasible.

E. Cumulative Exposure

Sucrose octanoate fatty acid esters are non-toxic materials made from edible starting materials (sucrose and caprylic acid), which are commonly consumed as foods or food components. Sucrose fatty acid esters also biodegrade rapidly following use. A cumulative risk assessment is therefore not necessary.

F. Safety Determination

1. *U.S. population.* Sucrose fatty acid esters derived from edible fats and oils are approved for use as food emulsifiers and as fruit coatings under 21 CFR 172.859. The components of sucrose octanoate fatty acid esters (sucrose and caprylic acid) are commonly consumed as foods or food components.

Based on these materials' low-risk profiles, there is reasonable certainty that no harm to the U.S. population will result from aggregate exposure to sucrose fatty acid esters.

2. *Infants and children.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly or through the use of margin of exposure analysis through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

Due to the extensive toxicology data base that exists for the sucrose fatty acid esters, their widespread approval for use as food emulsifiers and as a component in protective coatings applied to fruits, as well as the fact that their starting materials are edible food commodities, AVA Chemical Ventures, L.L.C. does not believe a safety factor analysis is necessary in assessing the risk of these compounds. For the same reason, we believe an additional safety factor analysis is unnecessary.

G. Analytical Method

An analytical method for residues is not applicable as this petition proposes an exemption from the requirement of a tolerance.

H. Existing Tolerances

Sucrose fatty acid esters derived from edible fats and oils are approved for use as food emulsifiers and as fruit coatings under 21 CFR 172.859. Sucrose fatty acid esters are approved for use as food emulsifiers in Europe under E-470 and by the Joint FAO/WHO Expert Committee on Food Additives at an ADI of 10 mg/kg bwt/day.

There are no known approved CODEX maximum residue levels (MRLs) established for residues of sucrose fatty acid esters.

I. Conclusion

Based on the information and data considered, AVA Chemical Ventures, L.L.C. proposes that sucrose fatty acid esters derived from edible fats and oils be exempted from the requirement of a tolerance in or on all food commodities, when used as an insecticide in accordance with good agricultural practices.

2. EDEN Bioscience Corporation

PP 9F6027

A. Proposed Use Practices

EPA has received a pesticide petition PP 9F6027, from EDEN Bioscience Corporation, 11816 North Creek Parkway N., Bothell, WA 98011-8205, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the biochemical pesticide Harpin protein in or on all food crops.

The commercial name for the end product containing harpin is Messenger ™. The product uses include the management of plant diseases, the significant improvement in growth and yields, and the suppression of certain insects and other pests.

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* Harpin is a protein that is derived from and is chemically identical to a protein produced by a bacterium that is commonly found in nature. The harpin protein is an acidic, heat-stable, cell envelope associated protein with a molecular weight of about 40 kilodaltons. The protein consists of approximately 400 amino acid residues with no Cysteine. Harpin is characterized by its mobility on polyacrylamide SDS gel and high performance liquid chromotography (HPLC), and by laser desorption mass spectrometry.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* No residues of harpin protein are expected to occur at the time of harvest, as this proposes an exemption from the requirement of a tolerance.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* This notice proposes an exemption from the requirement of a tolerance, and thus no analytical method is required.

C. Mammalian Toxicological Profile

Messenger exhibits little or no mammalian toxicity and studies indicate that Messenger is a Toxicity Category IV substance. No toxicity was observed in acute oral toxicity studies conducted with Messenger. Acute oral and dermal toxicity LD_{50} values for Messenger were greater than 5,000 mg/kg in rat (Toxicity Category IV). The LC_{50} for Messenger was greater than 2 mg/L in an acute inhalation study in rat. Messenger showed no effect in eye and dermal irritation studies. For example, the dermal irritation index for Messenger was zero at 500 mg and no eye irritation was shown in rabbit at 100 mg. There have been no reported incidents of Messenger-induced hypersensitivity in individuals exposed to Messenger during research, production, and/or field testing and there are no published reports indicating that harpin proteins are toxic. Further, the harpin protein has a non-toxic mode of action by eliciting a systemic acquired resistance response in plants, and it has been demonstrated that the product has no direct antimicrobial effect on bacteria and fungi. Based on these studies, EDEN Bioscience Corporation has concluded that harpin poses no unique or additional risk to children or infants, and has proposed an exemption from the requirement of a tolerance for harpin.

D. Aggregate Exposure

1. *Dietary exposure*— i. *Food.* Messenger is applied at very low rates of application (generally 2 to 7 grams of active ingredient per acre). Because of the low use rates, no active ingredient residues are detectable, using available methods, on treated crops even immediately after application. Dietary exposure to harpin via consumption of treated food or feed is very negligible, if any at all. The product's other ingredients, which generally represent over 90% of the product, consist of food grade substances or other such low risk compounds.

ii. *Drinking water.* The active ingredient of Messenger is highly sensitive to very small amounts of chlorine as contained in many municipal water systems. Therefore, residues of harpin are unlikely to occur in drinking water or food, given the low application rate of the product and its rapid degradation in soil and water.

2. *Non-dietary exposure.* The Company believes that the potential for non-dietary exposure to the general population including infants and children is unlikely as the proposed use sites are primarily commercial, agricultural and horticultural settings and that non-dietary exposures would not be expected to pose any quantifiable risks due to lack of residues of toxicological concern. Increased non-dietary exposure of harpin via lawn care, etc., is not considered likely because of the low use rates and the lack

of persistence of the active ingredient in the environment.

E. Cumulative Exposure

Consideration of a common mode of toxicity is not appropriate, given that there is no indication of mammalian toxicity of harpin protein and no information that indicates that toxic effects would be cumulative with any other compounds. Moreover, harpin does not exhibit a toxic mode of action in its target pests or diseases.

F. Safety Determination

1. *U.S. population.* Harpin's lack of toxicity has been demonstrated by the results of acute toxicity testing in mammals in which harpin caused no adverse effects when dosed orally and via inhalation at the limit dose for each study. Thus, the aggregate exposure to harpin over a lifetime should pose negligible risks to human health.

2. *Infants and children.* Based on the lack of toxicity and low exposure, there is a reasonable certainty that no harm to infants, children, or adults will result from aggregate exposure to harpin residues. Exempting harpin from the requirement of a tolerance should pose no significant risk to humans or the environment.

G. Effects on the Immune and Endocrine Systems

EDEN Bioscience Corporation has no information to suggest that harpin will adversely affect the immune or endocrine systems.

H. Existing Tolerances

There are no existing tolerances for harpin protein in the United States.

I. International Tolerances

EDEN Bioscience Corporation is not aware of any tolerances, exemptions from tolerance or MRL's issued for harpin protein outside of the United States.

[FR Doc. 99–23414 Filed 9–8–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6435–1]

Carolina Creosoting Corporation Site; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: Under section 122(g) of the Comprehensive Environmental Response, Compensation, and Liability Act, the United States Environmental Protection Agency (EPA) has entered into an Administrative Order on Consent (AOC) to settle claims for past response cost at the Carolina Creosoting Site located in Leland, North Carolina.

The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

Copies of the proposed settlement are available from: Attn: Paula V. Batchelor, Waste Management Division, U.S. EPA, Region 4, 61 Forsythe Street SW, Atlanta, Georgia 30303, (404) 562–8887.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of publication.

Dated: August 30, 1999.

Franklin Hill,

Chief, Waste Programs Branch, Waste Management Division.

[FR Doc. 99–23411 Filed 9–8–99; 8:45 am]

BILLING CODE 6560–50–M

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States (Export-Import Bank)

SUMMARY: The Advisory Committee was established by Pub. L. 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress.

Time and Place: Tuesday, September 28, 1999, at 9:00 a.m. to 3:30 p.m. The meeting will be held at The Westin Peachtree Plaza, 210 Peachtree Street, French-American Rooms, Atlanta, GA 30303.

Agenda: The theme of this meeting will be "Outreach". This meeting will include a roundtable discussion on small business, panel discussion on non-traditional marketers and small business exporters.

Public Participation: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, place contact, prior to September 22, 1999, Teri Stumpf, Room 1203, Vermont Avenue, NW, Washington, DC 20571, Voice: (202) 565–3502 or TDD (202) 565–3377.

FOR FURTHER INFORMATION CONTACT: For further information, contact Teri Stumpf, Room 1203, 811 Vermont Avenue, NW, Washington, DC 20571, (202) 565–3502.

Lisa G. Geberth,

Assistant General Counsel.

[FR Doc 99–23345 Filed 9–8–99; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

[DA 99–805]

Annual Adjustment of Revenue Threshold

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This notice announces that the 1998 revenue threshold used for classifying carriers for accounting purposes remains at $112 million. Section 402(c) of the 1996 Act mandates that the Commission adjust the revenue requirements of certain rules on an annual basis to account for inflation.

DATES: Carriers exceeding the 1998 revenue threshold must file their initial cost allocation manual by December 8, 1999.

ADDRESSES: Federal Communications Commission, 445 " 12th Street, SW, Room, TW–A325, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Debbie Weber, Accounting Systems Branch, Accounting Safeguards Division, Common Carrier Bureau at (202) 418–0812.

SUPPLEMENTARY INFORMATION:

This gives notice that the revenue threshold used for classifying carriers for accounting purposes remains at $112 million. Section 402(c) of the 1996 Act mandates that we "adjust the revenue requirements" of §§ 32.11, 64.903, and part 43 of our rules "to account for inflation as of the release date of the Commission's Report and Order in CC Docket No. 91–141, and annually thereafter." Prior to passage of the 1996 Act, our rules established a $100 million threshold to classify carriers for accounting purposes in § 32.11, for filing cost allocation manuals in § 64.903, and for filing certain reports with the Commission in part 43.

The Commission uses the Gross Domestic Product Chain-type Price Index (GDP–CPI) to adjust the revenue threshold for inflation each year. We adjust revenue thresholds for inflation based on the annual average value of the GDP–CPI for the revenue year relative to the value of the GDP–CPI on October 19, 1992, rounded to the nearest $1 million.

The indexed revenue threshold for 1998 is calculated as follows:

[A] GDP-CPI (October 19, 1992) 100.69

[B] GDP-CPI (Annual) (1998) 112.71

[C] Ratio: GDP-CPI (Annual) (1998) GDP-CPI (October 19, 1992) 1.1194

[D] Original Revenue Threshold $100 million

[E] Indexed Revenue Threshold ([C] x [D]) $112 million

Accordingly, the indexed revenue threshold for 1998 is $112 million.

Source: National Data Tables, Survey of Current Business, Apr. 1999, tbl. 7.1.

Federal Communications Commission.

Kenneth P. Moran,

Chief, Accounting Safeguards Division.

[FR Doc. 99–23402 Filed 9–8–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Repudiation and Asset-backed Securitizations and Loan Participations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Withdrawal of proposed Statement of Policy

SUMMARY: The Federal Deposit Insurance Corporation (the FDIC) hereby gives notice that it has withdrawn its outstanding proposed Statement of Policy published on December 30, 1998, (46 FR 31018) that would have clarified the treatment of securitizations and loan participations after appointment by the FDIC as conservator or receiver of an insured depository institution. The proposed Statement of Policy, which was intended to provide sufficient assurances to permit the transfer of financial assets by insured depository institutions in connection with a securitization or loan participation to be accounted for as a sale under generally accepted accounting principles, is being withdrawn because the FDIC is proposing a rule that would have the same intended effect as the proposed Statement of Policy.

EFFECTIVE DATE: September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Bolt, Counsel, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429, (202) 736–0168.

By Order of the Board of Directors.

Dated at Washington, D.C., this 31st day of August, 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99–23383 Filed 9–8–99; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

DATE & TIME: Tuesday, September 14, 1999 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, September 16, 1999 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (ninth floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Status of Y2K Compliance.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary of the Commission.

[FR Doc. 99–23634 Filed 9–7–99; 3:46 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 232–011606–002.

Title: COSCON/KL Slot Exchange Agreement.

Parties:

Cosco Container Lines

Kawasaki Kisen Kaisha, Ltd.

Synopsis: The proposed agreement amendment increases the number of vessels to be used under the agreement and includes an additional service pattern on which slots will be made available. The parties request expedited review.

Agreement No.: 217–011652–001.

Title: Iceland Steamship/Samskip Slot Charter Agreement.

Parties:

Iceland Steamship Company Ltd.

Samskip hf.

Synopsis: The proposed amendment adds clarifying provisions regarding the parties' operations under their slot charter agreement.

Agreement No.: 224–200006–005.

Title: Oakland-DSR Senator/Cho Yang Terminal Use Agreement.

Parties:

Board of Port Commissioners, City of Oakland

DSR-Senator Lines GmbH

Cho Yang Shipping Company, Ltd.

Synopsis: The proposed agreement amendment would change the terminal facility used by the carrier parties.

Dated: September 3, 1999.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–23430 Filed 9–8–99; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 99-12407) published on pages 26966-26967 of the issue for Tuesday, May 18, 1999.

Under the Federal Reserve Bank of San Francisco heading, the entry for Dai-Ichi Kangyo Bank, Limited, Tokyo, Japan, is revised to read as follows:

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Dai-Ichi Kangyo Bank, Limited, Tokyo, Japan; to acquire Newcourt Credit Group, Inc., Toronto, Canada, and thereby engage in extending credit and servicing loans, pursuant to § 225.28(b)(1) of Regulation Y; engaging in activities related to the extension of credit, pursuant to § 225.28(b)(2) of Regulation Y; leasing personal or real property or acting as agent, broker, or adviser in leasing such property, pursuant to § 225.28(b)(3) of Regulation Y; financial and investment advisory activities, pursuant to § 225.28(b)(6) of Regulation Y; providing agency transactional services for customer investments, pursuant to § 225.28(b)(7) of Regulation Y; and providing data processing and data transmission services, pursuant to § 225.28(b)(14) of Regulation Y.

Comments on this application must be received by September 21, 1999.

Board of Governors of the Federal Reserve System, September 3, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–23462 Filed 9–8–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 1, 1999.

A. Federal Reserve Bank of Atlanta (Cynthia Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Horizon Bancorporation, Bradenton, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Horizon Bank, Bradenton, Florida (in organization).

Board of Governors of the Federal Reserve System, September 2, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–23361 Filed 9–8–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 22, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Banco Santander Central Hispano, S.A., Madrid, Spain; to engage *de novo* through its New York Branch, Banco Santander Central Hispano, S.A., New York, New York, in leasing personal or real property or acting as an agent, broker or advisor in leasing such property, pursuant to § 225.28(b)(3) of Regulation Y. Notificant will conduct this activity worldwide.

Board of Governors of the Federal Reserve System, September 2, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–23363 Filed 9–8–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, that engages either directly or through a subsidiary or other company, in a nonbanking activity. These activities will be conducted throughout worldwide.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 22, 1999.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. The Sanwa Bank, Limited, Osaka, Japan; to engage *de novo* through its subsidiary, Identrus LLC, New York, New York (formerly known as Global Trust Organization, LLC), in digital certification and data processing and data transmission activities, as described below. Notificant also proposes to engage in activities that it maintains are incidental to permissible digital certification and data processing and data transmission activities.

Notificant proposes to acquire more than 5 percent of the outstanding voting interests in Global Trust Organization, LLC, New York, New York (Company), a *de novo* limited liability company. Other investors in Company would include national banks and state member banks. Company would serve as the rulemaking authority for a network of participating financial institutions (Network), which would include Notificant, future equity investors in Company, and other financial institutions that elect to participate in the Network (collectively, Participants). The Network is designed to allow Participants to certify electronically the identity of parties conducting business or communicating electronically through the internet or otherwise. Participants in the Network would, among other things, issue to customers "digital certificates" that authenticate messages electronically sent by the customer, and confirm the validity of digital certificates issued by Participants. Participants also may issue warranties to customers who request verification of digital certificates issued by Participants, and post collateral to secure claims under any warranty issued by the Participant.

Company would develop, maintain, and enforce the rules governing the operation of, and participation in, the Network, and provide other services designed to facilitate the certification activities of Participants and operation of the Network. These activities would include issuing digital certificates to Participants and maintaining a current database of digital certificates that have been issued. Company and Participants would engage in a wide range of data processing and data transmission activities in connection with their proposed activities. A more complete description of the proposed activities of Company, Notificant, and other Participants is contained in the notices.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity that the Board has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. The Board previously has determined that certain data processing and data transmission services are closely related to banking for purposes of section 4(c)(8) of the BHC Act, pursuant to § 225.28(b)(14) of Regulation Y. Notificant contends that all of the proposed activities are so closely related to banking as to be a proper incident thereto, or are activities that are incidental to permissible activities, pursuant to § 225.21(a)(2) of Regulation Y.

In determining whether the proposal satisfies the proper incident to banking standard of section 4(c)(8) of the BHC Act, the Board must consider whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." 12 U.S.C. 1843(c)(8). Notificant contends that consummation of the proposal will facilitate the development of electronic commerce and will have a beneficial effect on competition for identity certification and related services.

In publishing the proposal for comment, the Board does not take a position on the issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues presented by the proposal and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act. The notice is available for immediate inspection at the Federal Reserve Bank indicated above and at the offices of the Board of Governors. Any request for a hearing on the notices must be accompanied by a statement of reasons explaining why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Board of Governors of the Federal Reserve System, September 2, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–23364 Filed 9–8–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than September 22, 1999.

A. Federal Reserve Bank of Atlanta (Cynthia Goodwin, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Morrison Family Partnership, L.P., Milledgeville, Georgia; to acquire voting shares of Exchange Bankshares, Inc., Milledgeville, Georgia, and thereby indirectly acquire voting shares of Exchange Bank, Milledgeville, Georgia.

Board of Governors of the Federal Reserve System, September 2, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–23362 Filed 9–8–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 972 3014]

Prolong Super Lubricants, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 8, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Gerald Wright, Federal Trade Commission, Western Regional Office, 901 Market St., Suite 570, San Francisco, CA 94103 (415) 356–5270.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been

placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 2, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Prolong Super Lubricants, Inc. ("PSL"). The agreement would settle a proposed complaint by the Federal Trade Commission that PSL engaged in unfair or deceptive acts or practices in violation of Section 5(a) of the Federal Trade Commission Act.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns advertising practices related to the sale of Prolong-brand Engine Treatment Concentrate ("ETC"). Prolong ETC is marketed for use as a supplemental additive to the motor oil used in gasoline automobile engines. The proposed complaint charges that, through the use of statements contained in PSL's television infomercial and other promotional materials, PSL made the following unsubstantiated representations: (1) Compared to motor oil alone, ETC reduces engine wear at start up; (2) compared to motor oil alone, ETC extends the duration of engine life; (3) ETC reduces corrosion in engines; and (4) ETC protects against engine breakdowns. In addition, the proposed complaint alleges that PSL made unsubstantiated claims that benefits that may be achieved through use of ETC in race cars or under racing conditions can be achieved by ordinary consumers in ordinary driving; and that consumer testimonials in PSL's infomercial reflected the typical and ordinary experience of consumers.

The proposed consent order contains provisions designed to prevent PSL from engaging in similar acts and practices in the future. Part I of the proposed order requires PSL to have scientific evidence substantiating claims that, compared to motor oil alone, ETC or any other product for use in an automobile, reduces engine wear at start up, or extends the duration of engine life, under any circumstances or conditions or by any quantitative amount. Similarly, Part I of the order requires PSL to have scientific evidence substantiating claims that ETC or any other product for use in an automobile reduces corrosion in engines, or protects against engine breakdowns, under any circumstances or conditions or by any quantitative amount.

Part I of the order also requires PSL to have scientific evidence substantiating claims that benefits achieved in race cars or under racing conditions will be achieved in ordinary automobiles in conventional use. Similarly, Part IV of the order requires PSL to have scientific evidence substantiating user testimonials or endorsements, or disclosing the limitations on the applicability of the speaker's experience to ordinary users.

Moreover, Part II of the proposed order requires PSL to have competent and reliable evidence, scientific where appropriate, substantiating any claim about the performance, benefits, efficacy, attributes or use of any product it sells. In addition, the proposed order prohibits PSL from misrepresenting the results of tests or studies relating to any product, or utilizing demonstrations to misrepresent a material quality, feature or merit of any product, or the superiority or comparability of a product.

The order also contains standard provisions regarding record-keeping, notification of changes in corporate status, distribution of the order, termination of the order, and the filing of a compliance report.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and the proposed order or to modify their terms in any way.

By direction of the Commission

Benjamin I. Berman,

Acting Secretary.

Statement of Commissioner Orson Swindle Concurring in Part and Dissenting in Part

The Commission accepts for public comment a consent agreement settling allegations that Prolong Super Lubricants, Inc., et al. ("Prolong"), made unsubstantiated claims about the attributes and benefits of Prolong's motor oil additive. I support the provisions in the proposed order prohibiting Prolong from making such claims in the future without adequate substantiation.

The consent agreement, however, also contains provisions prohibiting Prolong, in connection with the sale of any product, from misrepresenting the existence or results of tests and from misrepresenting that a demonstration confirms the benefits of a product. While firms should not misrepresent the existence or results of tests or demonstrations, it is inappropriate to include specific establishment and demonstration requirements as remedies in an order without corresponding complaint allegations. In this case, and in others from the recent past, there is a troubling lack of symmetry between the complaint and the order.

Accordingly, I dissent as to Paragraphs III and V of the proposed order.

[FR Doc. 99–23417 Filed 9–8–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Statement of Organization, Functions, and Delegations of Authority

Part N, National Institutes of Health, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 64 FR 24167, May 5, 1999, and redesignated from Part HN as Part N at 60 FR 56605, November 9, 1995), is amended as set forth below to reflect (1) the retitling of the National Institute of Dental Research as the National Institute of Dental and Craniofacial Research (NIDCR) within the NIH, pursuant to Section 212 of the Department of Health and Human Services Appropriation Act, 1999, Title II of Pub. L. 105–277, and (2) the revision of NIDCR's functional statement.

Section N–B, Organization and Functions, is amended as follows:

Under the heading National Institute of Dental Research (NP, formerly HNP), the title and functional statement are deleted in their entirety and the following is inserted:

National Institute of Dental and Craniofacial Research (NP, formerly HNP). To improve and promote craniofacial, oral, and dental health through research: (1) develops disease prevention, diagnostic, therapeutic, and health promotion measures through the conduct and support of basic, translational, applied, and demonstration research; (2) develops and maintains an adequate research personnel pool through the conduct and support of training and career development programs; (3) promotes the timely transfer and appropriate adoption of research findings by the public, professional and research communities; (4) disseminates accurate information to the public, professionals and policy-makers; and (5) coordinates and collaborates with, and assists and fosters relevant research and research-related activities with, other public and private agencies and organizations.

Delegations of Authority Statement

All delegations and redelegations of authority to offices and employees of NIH which were in effect immediately prior to the effective date of this realignment and are consistent with this realignment shall continue in effect, pending further redelegation.

Dated: August 30, 1999.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

[FR Doc. 99–23349 Filed 9–8–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project

Title: (1) TANF Data Report, ACF–1999 (including TANF Sampling and Statistical Methods Manual)

(2) SSP–MOE Data Report, ACF–204 (Including TANF Sampling and Statistical Methods Manual)

OMB No.: 0970–0199.

Description: 42 U.S.C. 611 and 45 CFR Part 265 require States to collect on a monthly basis and report quarterly the data in the ACF–199 and the ACF–204. A State may comply with these requirements by collecting and submitting case record information for its entire caseload or for a portion of the caseload that is obtained through the use of scientifically acceptable sampling methods. Currently 22 States are sampling their monthly caseloads and submitting the required TANF data based on these samples, and potentially 17 States could use sampling for the SSP–MOE Report. We expect similar numbers to use sampling in the future and the subject to the following revisions. We are proposing to revise the current information collection requirements by: (1) issuing the TANF Sampling and Statistical Methods Manual to provide guidance to States on the sampling process: (2) adding a section four to both data collection forms. The TANF Data Report—Section Four is designed to collect the weighting data for the State TANF program. The SSP–MOE Data Report—Section Four is designed to collect the weighting for the SSP–MOE programs. The current OMB inventory indicates an approved burden of 516,680 hours for the ACF–199 and the ACF–204. We estimate that the proposed revisions will increase the burden by 1,599 hours for a total revised estimated annual burden of 518,279 hours.

Respondents: State, Local or Tribal Government.

Annual Burden Estimates:

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
TANF Data Report	54	4	2,187.18	472,430
SSP–MOE Data Report	17	4	674.25	45,849

Estimated total Annual Burden Hours: 518,279.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: September 2, 1999.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 99–23347 Filed 9–8–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Grant to the Institute for Responsible Fatherhood and Family Revitalization

AGENCY: Office of Planning, Research and Evaluation, ACF, DHHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that a noncompetitive grant award is being made to the Institute for Responsible Fatherhood and Family Revitalization. Funding in the amount of $180,000 is being awarded for a 12-month project period, beginning October 1, 1999 and ending September 30, 2000. Under the title of "Evaluation of the Institute for Responsible Fatherhood and Family

Revitalization's Turning the Hearts of Fathers Program," the project proposes to test the value, effectiveness, efficiency and utility of its primary intervention, non-traditional outreach and counseling, in altering the lives of fathers, children, the mothers of their children, families and communities.

This project is being funded noncompetitively, because the Institute plans to use innovative and nontraditional techniques which offer the potential of connecting a non-custodial father with his children and forging an emotional bond. The study will employ a holistic approach in providing services to members of the family who impact the father's life.

FOR FURTHER INFORMATION CONTACT: John K. Maniha, Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW, Washington, DC 20447, Phone: 202–401–5372.

Dated: September 1, 1999.

Janet S. Hartnett,

Deputy Director, Office of Planning, Research and Evaluation.

[FR Doc. 99–23341 Filed 9–8–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Grant to The University of Hawaii, Center on the Family

AGENCY: Office of Planning, Research and Evaluation, ACF, DHHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that a noncompetitive grant award is being made to the University of Hawaii, Center on the Family, Honolulu, in the amount of $499,821 for a 30-month project. Under the title of "Financial Strain and Family Resiliency: A Comparison of Welfare and Working Poor Families," the project seeks to gain an understanding of the factors that foster resiliency in poor families in the face of severe financial strain. Specifically, this study will examine welfare families defined as those families receiving federally-funded Temporary Assistance to Needy Families (TANF) and state-funded Temporary Assistance to Other Needy Families (TAONF). The project will utilize an ecological systems framework that considers individual, family, and social network qualities as factors that influence family well-being, health, and psychological and work/school adjustment in these financially stressed groups. The project is unique in that it focuses on psychological and behavioral processes, considers family resiliency as well as vulnerability, and includes Asians (i.e., Filipinos) and Pacific Islanders as well as Caucasians.

This project is being funded noncompetitively, because the study will examine a broad range of attitudinal, psychological and family process variables that impact adjustment in several important psychosocial domains. Also, this study promises to provide useful information on how families cope with financial strain in a stragnant economy such as Hawaii which is in its ninth year of an economic recession.

FOR FURTHER INFORMATION CONTACT: Leonard Sternbach, Administration for Children and Families, 50 U.N. Plaza, San Francisco, California 94102, Telephone: (415) 437–7671.

Dated: September 1, 1999.

Janet S. Hartnett,

Deputy Director, Office of Planning, Research and Evaluation.

[FR Doc. 99–23340 Filed 9–8–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1087–N]

Medicare Program; Open Public Meeting To Discuss the Conduct of a Second Competitive Bidding Demonstration

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces a public meeting regarding the operation of a second competitive bidding demonstration. It is our intention to use this second demonstration to continue to examine the use of competitive bidding for the use of Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS). The principal subjects to be discussed will be the selection of the site and the designation of the group of DMEPOS services for which competitive bids will be solicited.

The first demonstration is in Polk County, Florida. The group of items on which competitive bids were solicited in Polk County were: oxygen supplies and equipment, enteral nutrition equipment and supplies, hospital beds, surgical dressings, and urological supplies. The sale of these products under competitively determined prices will begin October 1, 1999.

This meeting will offer an opportunity to manufacturers, distributors, suppliers, users, and other interested parties to furnish information and raise issues about the group of items to be offered and the site for the second competitive bidding demonstration. The meeting will also address the following issues:

- Quality standards for product categories.
- Bidding for urban versus sparsely populated areas.

DATES: The meeting is scheduled for Tuesday, October 5, 1999, from 9:00 a.m. to 1:00 p.m., e.d.t.

ADDRESSES: The meeting will be held in HCFA's Multipurpose Room, 7500 Security Boulevard, Baltimore, Maryland.

FOR FURTHER INFORMATION CONTACT:
Herbert Silverman, (410) 786–7702, hsilverman@hcfa.gov
or
Danielle Grush, (410) 786–0915, dgrush@hcfa.gov

SUPPLEMENTARY INFORMATION:

Background

Section 1847 of the Social Security Act, as added by section 4319 of the Balanced Budget Act of 1997, authorizes the implementation of up to five demonstration projects of competitive bidding for Part B services, but excludes physician services. Each demonstration project is to include specified products and/or services and could be conducted in up to three competitive acquisition areas for a 3-year period. However, all demonstrations must be completed by December 31, 2002.

The first demonstration will be operated in Polk County, Florida. We are now considering how to operate a second demonstration. Among the issues that will be addressed are:

- Site characteristics desirable or undesirable for the second demonstration.
- Group of DMEPOS items for inclusion in the second demonstration.

We are also interested in the quality standards widely used in the industry and the sources of those standards.

We are announcing this public meeting to provide an opportunity for individuals and organizations familiar with the characteristics of the DMEPOS markets to furnish information and raise issues pertaining to the second competitive bidding demonstration involving DMEPOS product categories and the standards that would assure high quality products and services. We intend to gather and present information related to these issues.

We will schedule short (10 to 15 minute) presentations by our staff and the public on these and other related topics. Individuals interested in making a presentation at the meeting must contact Herbert Silverman or Danielle Grush at the above noted telephone numbers or by fax at (410) 786–1048 no later than September 28, 1999. Individuals must identify the topic or issue they want to discuss. Only a limited number of presentations will be allowed because of time constraints. In an effort to assure that all viewpoints are represented, we will notify the participants selected to make presentations by September 30, 1999.

While the meeting is open to the public, attendance is limited to available space. Individuals must register in advance as described below.

Registration

Individuals may register by sending a fax to the attention of either Herbert Silverman or Danielle Grush at the above number. At the time of registration, please provide your name, address, and telephone and fax numbers. Your fax transmission sheet receipt will constitute confirmation of your registration. Individuals will be contacted only if space is unavailable. If you have questions regarding registration, please contact Ms. Grush. Materials will be provided at the time of the meeting.

We will accept written comments, questions, or other materials specific to the purpose of this meeting if received by September 28, 1999. Written submissions must be sent to: Health Care Financing Administration, Attn: Herbert Silverman, C4–17–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

You may contact Mr. Silverman at: Telephone: (410) 786–7702, Fax: (410) 786–1048, E-mail: hsilverman@hcfa.gov

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 1, 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration.

[FR Doc. 99–23348 Filed 9–8–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–017018

Applicant: Donald E. Taylor, Olympia, WA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–016881

Applicant: Hawthorn Corporation, Grayslake, IL.

The applicant requests a permit to export and re-import tigers (*Panthera tigris*), and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations, to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three-year period.

The following applicants have applied for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), and the regulations governing marine mammals (50 CFR Part 18).

PRT–017017

Applicant: Robert Deligans, Sherman, TX.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: September 2, 1999.

Kristen Nelson,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–23459 Filed 9–8–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Extension of Public Comment Period on Two Applications for Incidental Take Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Due to the recent relocation of our Sacramento Fish and Wildlife Office, the Fish and Wildlife Service is extending the public comment period on two separate applications for incidental take permits pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. These permit applications, from the California Department of Corrections and the Tulare Irrigation District, respectively, were noticed in the **Federal Register** on August 4, 1999 (64 FR 42407 and 42408).

DATES: Written comments on these applications should be received on or before September 15, 1999.

ADDRESSES: Comments should be addressed to the Field Supervisor, Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California 95825. Comments may be sent by facsimile to 916–414–6710.

FOR FURTHER INFORMATION CONTACT: Ms. Lori Rinek or Mr. Chris Davis, Fish and Wildlife Biologists, at the above address (telephone: 916–414–6600).

Dated: September 1, 1999.

Elizabeth H. Stevens,

Deputy Manager, California/Nevada Operations Office.

[FR Doc. 99–23379 Filed 9–8–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–040–1610–00]

AGENCY: Bureau of Land Management, Idaho.

ACTION: Notice of availability of the Challis Record of Decision and Resource Management Plan (ROD/RMP).

SUMMARY: The Idaho State Director, Bureau of Land Management, has documented her approval of the Challis Resource Management Plan through a Record of Decision signed July 29, 1999.

Pursuant to section 202 of the Federal Land Policy and Management Act of 1976, section 102(2)(C) of the National Environmental Policy Act of 1969, and BLM Planning Regulations (43 CFR part 1600), the Bureau of Land Management (BLM), Upper Columbia—Salmon Clearwater District prepared and analyzed a Draft Resource Management Plan/Environmental Impact Statement (BLM, May 1996) and Proposed Resource Management Plan/Final Environmental Impact Statement (Proposed RMP) (BLM, October 1998) for the Challis Resource Area. Following a 30-day public protest period and 60-day Governor's consistency review of the Proposed RMP, the BLM prepared, published, and distributed the Challis Record of Decision and Resource Management Plan (ROD/RMP) (BLM, July 1999). Changes to the Proposed RMP which are incorporated in the approved RMP are listed in the Record of Decision portion of the ROD/RMP document. When compared with the Proposed RMP, the approved RMP clarifies the wording of several decisions, maintains the existing off-highway vehicle use for the Dry Creek Road (rather than closing the road to OHV use), updates beneficial use information for surface waters within the planning area, and adds information about current authorized grazing use in the Challis Resource Area.

DATES: Implementation of the Challis RMP will begin as of September 9, 1999.

ADDRESSES: Copies of the Challis ROD/RMP document may be obtained upon request by contacting the Bureau of Land Management at Route 2, Box 610, Salmon, Idaho 83467; phone (208) 756–5400.

FOR FURTHER INFORMATION CONTACT: Further information about the Challis RMP and Record of Decision for the Plan may be obtained by contacting Kathe Rhodes, Planning and Environmental Coordinator, Bureau of Land Management, Route 2, Box 610, Salmon, Idaho 83467; phone (208) 756–5440.

SUPPLEMENTARY INFORMATION: The Challis RMP describes the BLM's plan for managing the approximately 792,657 acres of BLM public lands in the Challis Resource Area, located in Custer and Lemhi counties of east-central Idaho. More specifically, the Challis RMP presents the resource condition objectives, land use allocations, and management actions and direction to guide resource management of the Challis Resource Area on a long-term sustainable basis during the next 15 to 20 years. The Challis RMP replaces the three Management Framework Plans previously used by the Challis Resource Area. It also amends the Little Lost-Birch Creek Management Framework Plan (MFP) (BLM 1981), administered by the Upper Snake River District—BLM, by designating 4,714 acres of lands described in the MFP as part of the Donkey Hills Area of Critical Environmental Concern.

The Challis RMP describes the BLM's Wild and Scenic River suitability findings for rivers within the Challis Resource Area and designates 88,206 acres of public lands as Areas of Critical Environmental Concern (ACECs). The RMP continues to designate seven existing ACEC's (12,236 acres) and also designates seven new ACECs (75,970 acres). These 14 ACECs are designated in order to highlight the following resources for management and protection: unique plant communities, paleontological resources; fragile soils; a geologic area of interest; unique riparian habitats; fisheries habitats; roadless, primitive, and scenic values; crucial bighorn sheep and elk habitats; and unique cultural resources. The ACECs include a total of approximately 9,846 acres of Research Natural Areas (RNAs) which are designated to maintain native plant communities, special status species, and rare/endemic species in a natural condition for study purposes.

Dated: September 1, 1999.

Ted Graf,

Acting District Manager.

[FR Doc. 99–23351 Filed 9–8–99; 8:45 am]

BILLING CODE 4310–66–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–020–1310–00]

Notice of Availability of the Environmental Assessment, "Management for Bureau of Reclamation Withdrawn Lands Restored to Bureau of Land Management Jurisdiction in the Cody Field Office Planning Area," and Finding of No Significant Impact, for Public Review and Comment; and Notification of Open House

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The environmental assessment (EA) addresses four alternatives for managing about 150,000 acres of Bureau of Reclamation Withdrawn Lands that have been restored to Bureau of Land Management jurisdiction in the BLM's Cody Field Office Administrative Area in north central Wyoming. The restored lands are primarily in the YU Bench and Chapman Bench areas of Wyoming's Bighorn Basin. The Preferred Alternative in the EA describes planning decisions for the future multiple-use management of the restored lands and represents a proposed amendment to the Cody Resource Management Plan (RMP) (BLM 1990). Based on the analysis summarized in the EA, it has been determined that the impacts are not expected to be significant and that an environmental impact statement is not needed. An open house is scheduled for Tuesday, September 14 at the Cody Field Office for discussion of the EA and Preferred Alternative.

DATES: Reviewers will have 30 (thirty) days after this notice of availability (NOA) of the EA is published in the **Federal Register** to submit protests on the proposed decision (Preferred Alternative) as provided by 43 CFR 1610.5–2. All parts of the proposed decision may be protested. Protests shall be filed with the Director of the Bureau of Land Management, Attention: Ms. Brenda Williams, Protests Coordinator, WO–210/LS–1075, Department of the Interior, Washington, DC 20240.

The same 30-day time period will be allowed for commenting on the proposed decision, other elements of the EA, and the Finding of No Significant Impact; and a 60-day time period, beginning on the same date, will be allowed for review and comment on potential area of critical environmental concern (ACEC) designations (see 43 CFR 1610.7–2(b)). One such area relating to the management of long-billed curlew and mountain plover habitat on Chapman Bench is addressed in the EA. Comments should be directed to Bob Ross, BLM Planning Coordinator, Worland Field Office, P.O. Box 119, Worland, Wyoming 82401–0119.

FOR FURTHER INFORMATION CONTACT: Bob Ross, BLM Planning Coordinator, 101 South 23rd Street, Worland, WY 82401, (307) 347–5178, or the Cody Field Office, 1002 Blackburn Avenue, Cody, WY 82414, at (307) 587–2216. Requests for copies of the EA should be made to either office.

SUPPLEMENTARY INFORMATION: The BLM's Preferred Alternative is a proposed amendment to the Cody Resource Management Plan to incorporate the former BOR withdrawn lands into the RMP and apply the appropriate existing BLM planning decisions to their management. Currently, the lands are closed to the operation of the public land laws, including land sales and exchanges, and the staking and development of mining claims. There is also a moratorium on Federal mineral leasing on the lands until the BLM planning decisions for them are in place. The proposed RMP amendment would allow most of the lands to be opened to these potential actions and uses. Existing uses, such as livestock grazing, hunting and fishing, and other types of recreation would continue.

If any protests are received on the proposed amendment, these will be resolved by the BLM Director. Next, the EA will be revised if necessary and a Decision Record will be issued with a description of the comments and (or) protests on the proposed decisions, along with an explanation of how the comments and (or) protests were answered. The Decision Record will incorporate additional or changed land-use planning decisions, as needed, in amending the Cody RMP.

The September 14 open house to discuss the EA and Preferred Alternative has been announced in letters to interested parties on the Cody Field Office mailing list and in local and statewide media releases. The open house will be held at the Cody Field Office.

Comments, including names and street addresses of respondents will be available for public review at the Worland Field Office, 101 South 23rd Street, Worland, Wyoming, and at the Cody Field Office, 1002 Blackburn Avenue, Cody, Wyoming, during regular business hours (7:30 a.m. to 4:30 p.m.) Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comments. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: September 2, 1999.

Alan L. Kesterke,

Associate State Director.

[FR Doc. 99–23381 Filed 9–8–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–950–5700–77; AZA 31044]

Notice of Proposed Withdrawal and Notice of Public Meeting; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, proposes to withdraw 7,840 acres of National Forest System land to protect the Diamond Rim Quartz Crystal Interpretive Area. This notice segregates the land for up to 2 years from location and entry under the United States mining laws. The land will remain open to all other uses which may be made of National Forest System land. This notice also announces a public meeting. This application replaces withdrawal application AZA 30353, which has been canceled.

DATES: Comments should be received on or before December 8, 1999.

ADDRESSES: Comments should be sent to the Forest Supervisor, Tonto National Forest, 2324 E. McDowell Road, Phoenix, Arizona 85006.

FOR FURTHER INFORMATION CONTACT: Karyn Harbour, Tonto National Forest, 602–225–5200, or Rod Byers, Payson Ranger District, 520–474–7900.

SUPPLEMENTARY INFORMATION: On August 26, 1999, the Forest Service filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws, subject to valid existing rights:

Gila and Salt River Meridian

Tonto National Forest

T. 11 N., R. 11 E.,
- Sec. 1;
- Sec. 2;
- Sec. 3;
- Sec. 4, E½;
- Sec. 10;
- Sec. 11;
- Sec. 12;
- Sec. 13;
- Sec. 14;
- Sec. 15, NE¼;
- Sec. 23, N½;
- Sec. 24, N½.

T. 11½ N., R. 11 E.,
- Sec. 33, E½;
- Sec. 34;
- Sec. 35, W½ and SE¼;
- Sec. 36, SW¼.

The area described contains approximately 7,840 acres in Gila County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Forest Supervisor of the Tonto National Forest.

Notice is hereby given that a public meeting will be held to provide an opportunity for public comment regarding the proposed withdrawal. The meeting will be held from 1 p.m. to 3 p.m., Wednesday, October 27, 1999, at the Supervisor's Office, Tonto National Forest, 2324 E. McDowell Road, Phoenix, Arizona.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date.

Application AZA 30353, published in the 62 FR 50404, September 25, 1997, has been canceled.

Dated: August 30, 1999.

Michael A. Ferguson,

Deputy State Director, Resources Division.

[FR Doc. 99–23343 Filed 9–8–99; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

CALFED Bay-Delta Program, CA

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of an additional public hearing for the Draft Programmatic

Environmental Impact Statement/ Environmental Impact Report (EIS/EIR).

SUMMARY: An additional public hearing has been scheduled in Los Banos, California, for the Draft EIS/EIR for the CALFED Bay-Delta Program. A notice of availability of the Draft EIS/EIR appeared in the **Federal Register** (64 FR 34677–34678, Jun. 28, 1999). The notice for public hearings appeared in the **Federal Register** (64 FR 43223–43224, Aug. 9, 1999) providing locations and times for hearings in 15 California cities.

DATES: The additional public hearing will occur on Monday, September 13, 1999. A question and answer session will begin at 6:00 p.m. and the formal hearing will begin at 7:00 p.m.

ADDRESSES: The additional hearing will be at the Merced County Spring Fair-Los Banos, Germino Building, 403 F Street, Los Banos, California.

FOR FURTHER INFORMATION CONTACT: For further information regarding the public hearing, contact Mr. Rick Breitenbach, CALFED Bay-Delta Program, 1416 Ninth Street, Suite 1155, Sacramento CA 95814; telephone (800) 900–3587.

Dated: September 2, 1999.

Frank Michny,

Regional Environmental Officer.

[FR Doc. 99–23380 Filed 9–8–99; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Proposed City of Albuquerque Water Resources Strategy Implementation, Drinking Water Supply Project, Albuquerque, New Mexico

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a draft environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) proposes to prepare a draft environmental impact statement (EIS) on the proposed City of Albuquerque Water Resources Strategy Implementation, Drinking Water Supply Project, Albuquerque, New Mexico. The City of Albuquerque, Public Works Department (City) will act as a joint lead agency for NEPA compliance for the proposed project. The City proposes to develop infrastructure that will allow it to fully utilize its contracted (Secretary of the Interior) allotment of San Juan/ Chama Project surface water for drinking water and other consumptive uses, and to call for releases of its stored San Juan/Chama Project water in a manner consistent with the proposed use. The purpose of the proposed project is to provide a sustainable water supply for the City of Albuquerque by utilizing allocated surface water when available, and preserving the local ground water basin as a drought reserve. The proposed project will be implemented in conjunction with ongoing City efforts to implement local water reuse and non-potable supply projects and a water conservation program.

DATES: The dates and times of the scoping meetings will be as follows:

1. Thursday, September 23, 1999; 6:00 p.m. to 8:00 p.m.; Albuquerque, New Mexico, 87102.
2. Tuesday, September 28, 1999; 6:00 p.m. to 8:00 p.m.; Socorro, New Mexico, 87801.
3. Thursday, September 30, 1999; 6 p.m. to 8:00 p.m.; Española, New Mexico, 87532.

The date of release of the draft EIS for public comment, and the public hearings to be conducted to receive comments on the EIS, will be announced in the **Federal Register** and in the local news media, as these dates are established.

ADDRESSES: The locations of the public scoping meetings will be as follows:

1. Albuquerque Convention Center, Cimarron/Dona Ana rooms, 401 Second Street NW, Albuquerque, New Mexico, 87102.
2. New Mexico Tech, Macy Center, 801 Leroy Place, Socorro, New Mexico, 87801.
3. Northern New Mexico Community College, Joseph Montoya Building, 921 Paseo de Onate, Española, New Mexico, 87532.

FOR FURTHER INFORMATION CONTACT: Ms. Lori Robertson, Environmental Protection Specialist, Bureau of Reclamation, 505 Marquette Avenue NW, Suite 1313, Albuquerque, New Mexico, 87102; telephone (505) 248–5326.

SUPPLEMENTARY INFORMATION:

Background

Historically, the City and other water users in Bernalillo County have relied solely on a deep aquifer, the Santa Fe Group aquifer system, for their water supply. This resource is part of a regional aquifer called the Albuquerque underground water basin.

Aquifer studies conducted during the 1950's and 1960's indicated that the aquifer was extensive, and that flows in the Rio Grande recharged the aquifer sufficiently to allow extensive withdrawals without affecting the aquifer's long-term ability to supply water. However, recent studies by Reclamation, the U.S. Geological Survey, and New Mexico Bureau of Mines and Mineral Resources confirmed that the City's primary water supply aquifer was being depleted at a rate that is twice that of the recharge to the aquifer from the Rio Grande.

In 1997, the City adopted the Albuquerque Water Resources Management Strategy (AWRMS). The AWRMS is based on optimizing the City's use of existing water resources and developing new surface water supplies. The strategy is intended to provide a safe and sustainable water supply for the City by minimizing the continued pumping and sole reliance on ground water resources.

Current Activities

The City is currently planning to implement three water reclamation projects using reclaimed industrial wastewater, untreated surface water, and reclaimed municipal wastewater, for turf irrigation and industrial uses. These water reclamation projects will provide a non-potable water supply for non-drinking uses and reduce demands on the ground water aquifer. The City is also in the early planning stages for the drinking water supply project for which this Notice of Intent is being prepared.

The City implemented a broad-based water conservation program approximately 2 years ago. This program emphasizes low-demand landscaping, low-flow water fixtures, and public awareness regarding the scarcity of water and its overall value to the local and regional economy. The program has resulted in a reduction of almost 18 percent in overall City per capita water use. The goal of the program is to achieve a 30 percent per capita reduction in use.

Proposed Project

Infrastructure developed for the implementation of the drinking water project will include a diversion of surface water from the Rio Grande, a water treatment plant to treat surface water to Safe Drinking Water Act requirements, and transmission pipelines to convey the treated water into the existing water distribution network. The City currently stores its San Juan/Chama Project water in Abiquiu Reservoir, has short-term water sales and lease agreements for interim uses, and calls for the water to be delivered down the Rio Chama and into the Rio Grande as needed.

The City will also evaluate implementing an aquifer storage and recovery program that would allow the City to divert and store surface water underground during wet years, and use this stored supply in place of surface water during dry years when surface water is less available.

Alternative Measures

The City is currently examining potential alternative methods to divert, treat, store, and deliver its San Juan/ Chama Project water as the primary source of its drinking water supply. Alternatives are being developed for the location and methods of diversion, method of treatment conveyance options, and storage/operation options. Agency and public scoping processes will be used to present system component options, evaluation criteria, and evaluation approaches for comment regarding environmental and operational issues that should be addressed.

Indian Trust Assets

The environmental evaluation will assess the potential effects that the proposed project may have on Indian Trust Assets.

Environmental Justice

The environmental evaluation will assess the potential effects that the proposed project may have on minority and low-income populations.

Anyone interested in more information concerning the study, or who has information concerning the study or suggestions as to significant environmental issues and/or Indian Trust Assets, should contact Ms. Robertson as provided above.

Dated: September 3, 1999.

Charles A. Calhoun,

Regional Director, Upper Colorado Region.

[FR Doc. 99–23511 Filed 9–7–99; 3:24 pm]

BILLING CODE 4310–94–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

September 21, 1999 Board of Directors Meeting; Sunshine Act Notice

TIME AND DATE: Tuesday, September 21, 1999, 1:00 pm (Open Portion); 1:30 pm (Closed Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

STATUS: Meeting Open to the Public from 1:00 pm to 1:30 pm. Closed portion will commence at 1:30 pm (approx.).

MATTERS TO BE CONSIDERED:

1. President's Report
2. Testimonials
4. Approval of June 2, 1999 Minutes (Open Portion)
5. Approval of June 15, 1999 Minutes (Open Portion)

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 1:30 pm).

1. Proposed FY 2001 Budget Proposal and Allocation of Retained Earnings
2. Finance Project in Jordan
3. Finance Project in Brazil
4. Finance Project in Argentina
5. Insurance Project in Venezuela
6. Insurance Project in Venezuela
7. Insurance Project in Argentina
8. Insurance Project in Turkey
9. Approval of June 2, 1999 Minutes (Closed Portion)
10. Approval of June 15, 1999 Minutes (Closed Portion)
11. Pending Major Projects

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: September 7, 1999.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 99–23570 Filed 9–7–99; 1:16 pm]

BILLING CODE 3210–01–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–426–428 (Review), 731–TA–455 (Review), 731–TA–462 (Review), 731–TA–354 (Review)]

Small Business Telephone Systems From Japan, Korea, and Taiwan, Multiangle Laser Light-Scattering Instruments From Japan, Benzyl Paraben From Japan, Stainless Steel Hollow Products From Sweden

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year reviews.

SUMMARY: The subject five-year reviews were initiated in June and July 1999 to determine whether revocation of the existing antidumping duty orders would be likely to lead to continuation or recurrence of dumping and of material injury to a domestic industry. On September 1, 1999, the Department of Commerce published notice that it was revoking the orders because no domestic interested party responded to its notice of initiation by the applicable deadline (64 FR 47762–47763). Accordingly, pursuant to section 207.69 of the Commission's Rules of Practice and Procedure (19 CFR 207.69), the subject reviews are terminated.

EFFECTIVE DATE: September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Authority: These reviews are being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.69 of the Commission's rules (19 CFR 207.69).

Issued: September 2, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–23440 Filed 9–8–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Violence Against Women Grants Office; Agency Information Collection; Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; New collection.

Certification of Compliance With the Eligibility Requirements of Grants To Combat Violent Crimes Against Women on Campuses

The Department of Justice, Office of Justice Programs, Violence Against Women Grants Office has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. OMB approval is being sought for the information collection listed below. The proposed information collection is published in the **Federal Register** on September 9, 1999, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until October 12, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item contained in this notice, especially regarding the

estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 1220, 1331 F Street NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information

(1) *Type of Information Collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* Certification of Compliance with the Eligibility Requirements of Grants to Combat Violent Crimes Against Women on Campuses.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. Violence Against Women Grants Office, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be as or required to respond, as well as a brief abstract:* Primary: Institutions of Higher Education. Other: None.

The Grants to Combat Violent Crimes Against Women on Campuses were authorized through Section 826 of the Higher Education Amendments of 1998, to make funds available to institutions of higher education to combat domestic violence, sexual assault, and stalking crimes against women.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* The time burden of the 25 respondents to complete the certification form is estimated to be 30 minutes per respondent.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the certification form is 12.5 hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Office, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place, 1331 F Street, NW, Washington, DC 20530.

Dated: September 2, 1999.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 99–23385 Filed 9–8–99; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before October 24, 1999. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too, includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Army, Agency-wide (N1–AU–99–3, 3 items, 3 temporary items). Electronic copies of records created using electronic mail and word processing pertaining to the training of foreign nationals in U.S. Army facilities. Files include biographical data and academic reports on each student, invitations to American homes, reports to foreign embassies, invitational travel orders, and arrival/departure notices. This schedule also modifies the retention periods for recordkeeping copies of these files, which were previously approved for disposal.

2. Department of the Army, Agency-wide (N1–AU–99–8, 4 items, 3 temporary items). Records relating to the transfer of technology between designated Army laboratories and non-Federal collaborators, including a database of information about agreements, working files, and electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of cooperative research and development agreements, patent license agreements, and related policy documents are proposed for permanent retention.

3. Department of Defense, Office of the Inspector General (N1–509–99–6, 4 items, 4 temporary items). Hotline referral files consisting of correspondence, preliminary investigations, and memoranda of conversations relating to complaints received by the Department of Defense telephone hotline. Also included are electronic copies of documents created using electronic mail and word processing. This schedule also modifies the retention period for recordkeeping copies of these files, which were previously approved for disposal.

4. Department of Health and Human Services, Office of Public Health and Science (N1–468–99–3, 1 item, 1 temporary item). Lists, dating from 1897 to 1912, of medical supplies, suppliers, and prices for items, such as drugs, chemicals, alcoholic liquors, and equipment.

5. Department of Health and Human Services, National Institutes of Health (N1–443–99–5, 1 item, 1 temporary item). User access log of visits to the agency's World Wide Web site. The logs record the visitor's origin, time of visit, length of stay, and activities while at the site.

6. Department of Health and Human Services, Agency for Health Care Policy and Research (N1–510–99–2, 1 item, 1 temporary item). User access log of visits to the agency's World Wide Web site. The logs record the visitor's origin, time of visit, length of stay, and activities while at the site.

7. Department of Health and Human Services, Agency for Health Care Policy and Research (N1–510–99–3, 1 item, 1 temporary item). User access log of visits to the World Wide Web site of the agency's National Guideline Clearinghouse. The logs record the visitor's origin, time of visit, length of stay, and activities while at the site.

8. Department of Justice, U.S. Marshals Service (N1–527–99–3, 6 items, 5 temporary items). Speeches and testimony by U.S. Marshals Service personnel below the level of Associate Director. Also included are electronic copies of speeches and testimony created using electronic mail and word processing. Record-keeping copies of speeches and testimony given by the Director, Deputy Director, and Associate Director are proposed for permanent retention.

9. Environmental Protection Agency, Office of Radiation and Indoor Air Radiation (N1–412–99–7, 4 items, 2 temporary items). Software programs and system input documents associated with the Environmental Radiation Ambient Monitoring System (ERAMS), an electronic system that contains information on ambient levels of radiation in air, milk, and water. ERAMS master files and documentation are proposed for permanent retention. Published reports were previously scheduled for permanent retention.

10. National Institute of Standards and Technology, Boulder, Colorado, Laboratories (N1–167–99–2, 1 item, 1 temporary item). Unidentifiable and undocumented magnetic tapes created by the Boulder Laboratories of the National Bureau of Standards in 1960.

11. Overseas Private Investment Corporation (N1–420–99–1, 4 items, 4 temporary items). Loan case files and investment insurance case files used to manage and track loans and insurance relating to U.S. businesses operating overseas. Also included are electronic copies of these records created using electronic mail and word processing.

Dated: September 2, 1999.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 99–23396 Filed 9–8–99; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Docket No. 50–003

Consolidated Edison Company of New York, Inc.; Indian Point Nuclear Generating Station, Unit 1; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–5 issued to Consolidated Edison Company of New York, Inc. (the licensee), for the permanently shutdown Indian Point Nuclear Generating Station, Unit 1, located in Buchanan, New York.

The proposed amendment would revise Technical Specification (TS) Section 3.2.1.i. to be consistent with a similar TS for Indian Point, Unit 2. Specifically, Indian Point, Unit 1, Section 3.2.1.i would be revised to change the requirement that the operations manager or assistant operations manager be a licensed senior reactor operator. The revision would allow an individual who does not hold a current senior reactor operator license to be appointed as operations manager or assistant operations manager provided all other qualification requirements of ANSI N18.1–1971 are met.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended

(the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant hazards consideration because:

1. [The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.]

* * * This proposed change [to the TS Section 3.2.1.i] is administrative in nature.

* * * This change does not affect possible initiating events for accidents previously evaluated or alter the configuration or operation of the facility. The Limiting Safety System Settings and Safety Limits specified in the current Technical Specifications remain unchanged. Therefore, the proposed change would not involve a significant increase in the probability or in the consequences of an accident previously evaluated.

2. [The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.]

No. The proposed change is administrative in nature. The safety analysis of the facility remains complete and accurate. There are no physical changes to the facility and the plant conditions for which design basis accidents have been evaluated are still valid. The operating procedures and the emergency procedures are unaffected. Consequently no new failure modes are introduced as a result of the proposed change. Therefore, the proposed changes would not create the possibility of a new or different kind of accident from any new accident previously evaluated.

3. [The proposed change does not involve a significant reduction in a margin of safety.]

No. The proposed change is administrative in nature. Since there are no changes to the operation of the physical design of the facility, the Updated Final Safety Analysis Report (UFSAR) design basis, accident assumptions, or Technical Specification Bases are not affected. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 12, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the local public document room located at the White Plains Public Library, 100 Martine Avenue, White Plains, New York, 10601. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Brent L. Brandenburg, Esq., 4 Irving Place, New York, 10003, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated July 20, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the local public document room located at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Dated at Rockville, Maryland, this 2nd day of September 1999.

For The Nuclear Regulatory Commission.

John L. Minns,

Project Manager, Decommissioning Section, Project Directorate IV & Decommissioning Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–23409 Filed 9–8–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

State of Ohio: Discontinuance of Certain Commission Regulatory Authority Within the State

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of agreement with the State of Ohio.

SUMMARY: On August 11, 1999, Greta J. Dicus, Chairman of the U.S. Nuclear Regulatory Commission (NRC) and on August 18, 1999, Governor Bob Taft of the State of Ohio signed an Agreement as authorized by section 274b of the Atomic Energy Act. The Agreement provides for the Commission to discontinue its regulatory authority over source, byproduct and special nuclear materials (in quantities not sufficient to form a critical mass) in the State of Ohio, and for Ohio to assume the regulatory authority.

Under the Agreement, a person in Ohio possessing these materials is exempt from certain Commission regulations. The exemptions have been previously published in the **Federal Register** and are codified in the Commission's regulations as 10 CFR part 150. The Agreement is published here as required by section 274e of the Act.

FOR FURTHER INFORMATION CONTACT: Richard L. Blanton, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–2322 or e-mail RLB@NRC.GOV.

The draft Agreement was published in the **Federal Register** for comment once a week for four consecutive weeks (see, e.g. 64 FR 12187, March 11, 1999) as required by the Act. The public comment period ended on April 12, 1999. A total of 25 comment letters were received and were considered by the NRC staff. After considering the comments, the request for an Agreement by the Governor of Ohio, the supporting documentation submitted with the request for an Agreement, and its interactions with the staff of the Ohio Department of Health, Bureau of Radiological Health, the NRC staff completed an assessment of the Ohio program. Based on the staff's assessment, the Commission determined on August 4, 1999, that the proposed Ohio program for the control of radiation hazards is adequate to protect public health and safety and compatible with the Commission's program. NRC will retain jurisdiction over 19 materials licensees including certain Federal facilities and exempt distribution. In addition, NRC will retain jurisdiction over the gaseous diffusion plant in Portsmouth, Ohio and two nuclear power plants near Toledo and Painesville.

Copies of the comment analysis by the NRC staff, the staff assessment, and the Commission's decision may be viewed at the NRC website, *http://www.nrc.gov*. To view the documents, click on the "News and Information" icon, then select "Staff Papers" under the "Commission" heading. The documents are contained in the Commission paper numbered SECY–99–179.

An Agreement Between the United States Nuclear Regulatory Commission and the State of Ohio for the Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, The Governor of the State of Ohio is authorized under Chapter 3748. of the Ohio Revised Code to enter into this Agreement with the Commission; and,

Whereas, The Governor of the State of Ohio certified on June 22, 1998, that the State of Ohio (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the health and safety of the public and to protect the environment with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and,

Whereas, The Commission found on August 4, 1999 that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

Whereas, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, The Commission and the State recognize the desirability of reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

Whereas, This Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended;

Now Therefore, It is hereby agreed between the Commission and the Governor of the State of Ohio, acting on behalf of the State, as follows:

Article I

Subject to the exceptions provided in Articles II, III, and IV, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

A. Byproduct materials as defined in Section 11e.(1) of the Act;

B. Byproduct materials as defined in Section 11e.(2) of the Act;

C. Source materials;

D. Special nuclear materials in quantities not sufficient to form a critical mass;

E. The regulation of the land disposal of byproduct, source, or special nuclear waste materials received from other persons; and,

F. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission.

Article II

A. This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to:

1. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;

2. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

3. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in the regulations or orders of the Commission;

4. The regulation of the disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed without a license from the Commission.

B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct material as defined in Section 11e.(2) of the Atomic Energy Act:

1. Prior to the termination of a State license for such byproduct material, or for any activity that results in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met.

2. The Commission reserves the authority to establish minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of such byproduct material and of land used as a disposal site for such material.

Such reserved authority includes:

a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission; and with ownership requirements for such materials and its disposal site;

b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State at the option of the State (provided such option is exercised prior to termination of the license);

c. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or a State pursuant to paragraph 2.b. in this section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, provided that the Commission determines that such use would not endanger public health, safety, welfare, or the environment;

d. The authority to require, in the case of a license (if any) for any activity that produces such byproduct material (which license was in effect on November 8, 1981), transfer of land and material pursuant to paragraph 2.b. in this section, taking into consideration the status of such material and land and interests therein, and the ability of the licensee to transfer title and custody thereof to the United States or the State;

e. The authority to require the Secretary of the Department of Energy, other Federal agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect public health and safety, and other actions as the Commission deems necessary; and

f. The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance or maintenance of such byproduct material and its disposal site on land held in trust by the United States for any Indian Tribe or land owned by an Indian Tribe and subject to a restriction against alienation imposed by the United States.

Article III

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article IV

This Agreement shall not affect the authority of the Commission under Subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material.

Article V

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible. The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

Article VI

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State. Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the State has not complied with one or more of the requirements of Section 274 of the Act. The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this Agreement if, in the judgement of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act which requires a State program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

Article VIII

In the licensing and regulation of byproduct material as defined in Section 11e.(2) of the Act, or of any activity which results in production of such material, the State shall comply with the provisions of Section 274o of the Act. If in such licensing and regulation, the State requires financial surety arrangements for reclamation or long-term surveillance and maintenance of such material,

A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custody of such material and its disposal site is transferred to the United States upon termination of the State license for such material or any activity which results in the production of such material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and

B. Such surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long-term management of such byproduct material and its disposal site.

Article IX

This Agreement shall become effective on August 31, 1999, and shall remain in effect unless and until such time as it is terminated pursuant to Article VII.

Done at Rockville, Maryland, in triplicate, this 11th day of August, 1999.

For the United States Nuclear Regulatory Commission.

Greta Joy Dicus,

Chairman.

Done at Columbus, Ohio, in triplicate, this 18th day of August, 1999.

For the State of Ohio.

Bob Taft,

Governor.

Dated at Rockville, Maryland, this 2nd day of September, 1999.

For the U.S. Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–23407 Filed 9–8–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Stakeholder Meeting Concerning The Revision of the Safety Inspection Program for Nuclear Fuel Cycle Facilities

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of meeting.

SUMMARY: NRC will host a public meeting in Rockville, Maryland to provide the public, those regulated by the NRC, and other stakeholders, with information about and an opportunity to provide views on how NRC plans to revise its safety inspection program for nuclear fuel cycle facilities. Similar to the revisions of the inspection and oversight program for commercial nuclear power plants, NRC has initiated an effort to improve its programs for nuclear fuel cycle facilities. This is described in SECY–99–188 titled, EVALUATION AND PROPOSED REVISION OF THE NUCLEAR FUEL CYCLE FACILITY SAFETY INSPECTION PROGRAM. SECY–99–188 is available in the Public Document Room and on the NRC Web Page at http://www.nrc.gov/NRC/COMMISSION/SECYS/index.html.

Purpose: To explain the planned revision of the fuel cycle safety inspection program and obtain stakeholder's views. The baseline safety inspection program applies to nuclear fuel cycle facilities regulated under 10 CFR Parts 40, 70 and 76. The facilities currently include gaseous diffusion plants, highly enriched uranium fuel fabrication facilities, low-enriched uranium fuel fabrication facilities, and a uranium hexafluoride (UF_6) production facility. These facilities possess large quantities of materials that are potentially hazardous (i.e., radioactive, toxic, and/or flammable) to the workers, public, or environment. In revising the inspection program, the goals are to have an inspection program that: (1) Provides earlier and more objective indications of acceptable and changing safety performance, (2) increases stakeholder confidence in the NRC, and

(3) increases regulatory effectiveness and efficiency. In this regard, the NRC desires the revised inspection program to be more risk-informed and performance-based and more focused on significant risks. Where practicable, the program will use more objective safety performance indicators (PIs) with accompanying performance thresholds.

DATE: This meeting is scheduled for Thursday, September 16, 1999, from 9 am to 4 pm and is open to the public.

ADDRESS: NRC's Licensing Board Hearing Room at Two White Flint North, Room 3B45, 11545 Rockville Pike, Rockville, Maryland. Visitor parking around the NRC building is limited; however, the meeting site is located adjacent to the White Flint Station on the Metro Red Line.

FOR FURTHER INFORMATION CONTACT: Walter Schwink, Office of Nuclear Material Safety and Safeguards, US Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7253, e-mail *wss@nrc.gov*.

Dated at Rockville, Maryland this 2nd day of September, 1999.

For the Nuclear Regulatory Commission,

Philip Ting,

Chief, Operations Branch, Division of Fuel Cycle Safety and Safeguards.

[FR Doc. 99–23408 Filed 9–8–99; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

Notice of Visit

AGENCY: Postal Rate Commission.

ACTION: Notice of visit.

SUMMARY: A member of the recent Postal Service/Industry Periodicals task force, Rita Cohen, of the Magazine Publishers of America, will visit the Commission and present a briefing describing the analysis and conclusions of the task force. The briefing will begin at 10:00 a.m.

DATES: The date of the visit is Wednesday, September 15, 1999.

ADDRESSES: Postal Rate Commission (Hearing Room), 1333 H Street, NW., Suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street, NW., Washington, DC 20268–0001 (202) 789–6820.

Dated: September 2, 1999.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 99–23350 Filed 9–8–99; 8:45 am]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23987–812–11324]

The Galaxy Fund, et al.; Notice of Application

September 1, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under section 17(d) of the Investment Company Act of 1940 (the "Act") and rule 17d–1 under the Act.

Summary of Applicant: Applicants request an order to permit certain registered management investment companies and private accounts to deposit their uninvested cash and cash collateral from securities lending transactions in joint accounts that invest in short-term investments.

Applicants: The Galaxy Fund ("Galaxy"), The Galaxy VIP Fund ("Galaxy VIP"), Galaxy Fund II ("Galaxy II") (collectively the "Trusts"), Fleet Investment Advisors, Inc. ("Fleet") and Columbia Management Co. ("Columbia").

Filing Dates: The application was filed on September 24, 1998, and amended on August 10, 1999. Applicants have agreed to file an amendment to the application, the substance of which is reflected in this notice, during the notice period.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 27, 1999, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants: Trusts, 4400 Computer Drive, Westboro, Massachusetts 01581–5108; Fleet, 75 State Street, Boston, Massachusetts 02109–1810; Columbia, 1300 SW Sixth Avenue, P.O. Box 1350, Portland, Oregon 97207–1350.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Staff Attorney, at (202) 942–0634, or Michael W. Mundt, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. No. 202–942–8090).

Applicants' Representations

1. The Trusts are open-end management investment companies registered under the Act. Each Trust is comprised of multiple series (each a "Fund," collectively the "Funds"). The assets of the Funds are held by The Chase Manhattan Bank as custodian (the "Custodian"), which is not affiliated with Fleet or Columbia.

2. Fleet, an investment adviser registered under the Investment Advisers Act of 1940 ("Advisers Act") and an indirect wholly-owned subsidiary of Fleet Financial Group, Inc. ("FFG"), serves as investment adviser for each of the Funds of Galaxy and Galaxy II and certain Funds of Galaxy VIP. Fleet also serves as investment adviser or sub-adviser to individual, corporate, charitable and retirement accounts ("Private Accounts").[1] Columbia, an investment adviser registered under the Advisers Act and an indirect wholly-owned subsidiary of FFG, serves as investment adviser for certain Funds of Galaxy VIP. Fleet and Columbia are collectively referred to as the "Advisers."

3. Applicants request that any relief granted also apply to (i) all future series of the Trusts and each series of any other existing or future registered management investment company that is in the future advised or sub-advised by Fleet ("Future Funds," together with the Funds, the "Portfolios")[2] and (ii) Private Accounts.[3]

4. At the end of each trading day, the Portfolios and the Private Accounts ("Participants") may have uninvested cash comprised of cash attributable to shareholder or investment activity ("Uninvested Cash"). Currently, the Advisers must purchase short-term investments separately on behalf of each Portfolio as authorized by a Portfolio's investment policies and restrictions. Applicants assert that these separate purchases result in certain inefficiencies, limitations on the returns that some or all of the Participants could otherwise achieve, and higher costs.

5. Several of the Portfolios are authorized to engage in securities lending transactions for which the Custodian or another person that may or may not be affiliated with the Advisers or the Portfolios may serve as lending agent ("Securities Lending Agent").[4] In connection with these transactions, the Portfolios could receive cash collateral ("Cash Collateral," and together with Uninvested Cash, "Cash Balances").

6. Applicants propose to deposit Cash Balances into one or more joint accounts ("Joint Accounts") established at the Custodian. The daily balance in the Joint Accounts will be invested in one or more of the following: (i) repurchase agreements "collateralized fully" as defined in rule 2a–7 under the Act;[5] (ii) interest bearing or discounted commercial paper, including United States dollar denominated commercial paper of foreign issuers; and (iii) any other short-term money market instruments that constitute "eligible securities" (as defined in rule 2a–7 under the Act) (collectively, "Short-Term Investments").

7. Any repurchase agreements entered into through a Joint Account will comply with Investment Company Act Release No. 13005 (February 2, 1983) and any other existing and future staff positions taken by the SEC and the staff by rule, release, letter or otherwise relating to repurchase agreement transactions. In the event that the SEC or the staff sets forth guidelines with respect to other Short-Term Investments, all such investments made through the Joint Accounts will comply with these guidelines. All purchases through the Joint Accounts will comply with all present and future SEC and staff positions relating to the investment of Cash Collateral in connection with securities lending activities.

8. Participants will invest through a Joint Account only to the extent that, regardless of the Joint Accounts, they would desire to invest in Short-Term Investments that are consistent with their respective investment objectives, policies and restrictions. A Participant's decision to use a Joint Account will be based on the same factors as its decision to make any other Short-Term Investment.

9. The Advisers will be responsible for investing Cash Balances (unless the authority to invest Cash Collateral in instruments pre-approved by the Adviser rests with the Securities Lending Agent) held in the Joint Accounts, establishing accounting and control procedures, operating the Joint Accounts, and ensuring fair treatment of Participants. The Advisers will not participate monetarily in the Joint Accounts.

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from participating in any joint enterprise or arrangement in which that investment company is a participant, unless the SEC has issued an order authorizing the arrangement. In passing on these applications, the SEC considers whether the participation of the registered investment company in the proposed joint arrangement is consistent with the provisions, policies, and purposes of the Act and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Section 2(a)(3)(C) of the Act defines an "affiliated person" of another person to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Participants may be considered "affiliated persons" because they may be deemed to be under the common control of the Advisers. Applicants state that the Participants, by participating in the Joint Accounts, and the Advisers, by managing the Joint Accounts, could be deemed to be "joint participants" in a transaction within the meaning of section 17(d). In addition, applicants state that each Joint Account could be deemed to be a "joint enterprise or other joint arrangement" within the meaning of rule 17d–1.

3. Applicants submit that the proposed Joint Accounts meet the criteria of rule 17d–1 for issuance of an order. Applicants assert that no Portfolio would be in a less favorable position than any other Participant as a result of participating in the Joint Accounts. Each Participant's liability on any Short-Term Investment will be limited to its interest in the Short-Term Investment. Applicants also assert that the proposed operation of the Joint Accounts will not result in any conflicts of interest among any of the Participants or Advisers.

4. Applicants state that the operation of the Joint Accounts could result in certain benefits to the Participants. The Participants may earn a higher rate of return on investments through the Joint Accounts relative to the returns they could earn individually. Under most market conditions, applicants assert, it is possible to negotiate a rate of return on larger investments that is higher than the rate available on smaller investments. In addition, applicants state that the enhanced purchasing power available through a Joint Account may increase the number of dealers willing to enter into Short-Term Investments with the Participants and may reduce the possibility that a Participant's Cash Balances would remain uninvested. Finally, the Joint Accounts may result in certain administrative efficiencies and lessen the potential for error by reducing the number of trade tickets and cash wires that counterparties, the Custodian and the Advisers must process.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The Joint Accounts will not be distinguishable from any other accounts maintained by Participants at the Custodian except that Cash Balances from Participants will be deposited in the Joint Accounts on a commingled basis. The Joint Accounts will not have a separate existence and will not have indicia of a separate legal entity. The sole function of the Joint Accounts will be to provide a convenient way of aggregating individual transactions which would otherwise require daily management by the Advisers of Cash Balances.

2. Cash Balances in the Joint Accounts will be invested in Short-Term Investments as directed by the Advisers (or, in the case of Cash Collateral, by a Securities Lending Agent, if the authority to invest Cash Collateral in instruments pre-approved by the Adviser rests with the Securities Lending Agent). Short-Term Investments that are repurchase agreements would have a remaining maturity of seven (7) days or less and other Short-Term Investments would

[1] For purposes of the application, the term "Fleet" includes, in addition to Fleet Investment Advisers, Inc., any other person controlling, controlled by, or under common control with Fleet Investment Advisers, Inc. that acts in the future as an investment adviser to a registered management investment company or a Private Account.

[2] The requested relief would apply to Future Funds that are sub-advised by Fleet to the extent that Fleet manages the Cash Balances (as defined below) of the Future Fund.

[3] All existing registered management investment companies that intend to rely on the requested order are named as applicants. Any Future Fund or Private Account that relies on the requested order will do so only in accordance with the terms and conditions contained in the application.

[4] Applicants state that prior to the appointment of any affiliated person of the Advisers or Portfolios as Securities Lending Agent, applicants will seek appropriate exemptive relief from the SEC.

[5] The Portfolios will enter into "hold-in-custody" repurchase agreements (i.e., repurchase agreements where the counterparty or one of its affiliated persons may have possession of, or control over, the collateral subject to the agreement) only where cash is received late in the business day and otherwise would be unavailable for investment.

have a remaining maturity of 90 days or less, calculated in accordance with rule 2a–7 under the Act. Cash Collateral in a Joint Account would be invested in Short-Term Investments that have a remaining maturity of 397 days or less, calculated in accordance with rule 2a–7 under the Act.

3. All assets held in the Joint Accounts will be valued on an amortized cost basis to the extent permitted by applicable SEC releases, rules or orders.

4. Each Participant that is a registered investment company valuing its net assets in reliance on rule 2a–7 under the Act will use the average maturity of the instruments in the Joint Account in which such Participant has an interest (determined on a dollar-weighted basis) for the purpose of computing its average portfolio maturity with respect to its portion of the assets held in a Joint Account on that day.

5. In order to ensure that there will be no opportunity for any Participant to use any part of a balance of a Joint Account credited to another Participant, no Participant will be allowed to create a negative balance in any Joint Account for any reason, although each Participant will be permitted to draw down its entire balance at any time, provided that the Advisers determine that such draw-down would have no significant adverse impact on any other Participant in that Joint Account. Each Participant's decision to invest in a Joint Account would be solely at its option, and no Participant will be obligated to invest in a Joint Account or to maintain any minimum balance in a Joint Account. In addition, each Participant will retain the sole rights of ownership to any of its assets invested in the Joint Accounts, including interest payable on such assets invested in the Joint Accounts.

6. The Advisers will administer the investment of Cash Balances in, and the operation of, the Joint Accounts as part of their general duties under their advisory agreements with the Trusts and will not collect any additional or separate fees for advising any Joint Account.

7. The administration of the Joint Accounts will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 thereunder.

8. The boards of trustees or directors ("Boards") of each Trust will adopt procedures pursuant to which the Joint Accounts will operate, which will be reasonably designed to provide that the requirements of this application will be met. The Boards will make and approve such changes as they deem necessary to ensure that such procedures are followed. In addition, the Boards will determine, no less frequently than annually, that the Joint Accounts have been operated in accordance with the adopted procedures and will only permit a Portfolio to continue to participate in the Joint Accounts if the Board determines that there is a reasonable likelihood that the Portfolio and its shareholders will benefit from the Portfolio's continued participation.

9. Any Short-Term Investment made through the Joint Accounts will satisfy the investment policies and guidelines of all Participants participating in that Short-Term Investment.

10. The Advisers, each Participant, and the Custodian will maintain records documenting, for any given day, each Participant's aggregate investment in a Joint Account and each Participant's *pro rata* share of each Short-Term Investment made through such Joint Account. The records maintained for each Participant shall be maintained in conformity with Section 31 of the Act and the rules and regulations thereunder. A Private Account and any investment adviser not registered under the Advisers Act that advises a Private Account will make available to the SEC, upon request, such books and records with respect to the Private Account's participation in the Joint Accounts.

11. Short-Term Investments held in a Joint Account generally will not be sold prior to maturity, except if: (i) the Advisers believe the investment no longer presents minimal credit risks; (ii) the investment no longer satisfies the investment criteria of all Participants in the investment because of a downgrading or otherwise; or (iii) in the case of a repurchase agreement, the counterparty defaults. The Advisers may, however, sell any Short-Term Investment (or any fractional portion thereof) on behalf of some or all of the Participants prior to the maturity of the investment if the cost of such transactions will be borne solely by the selling Participants and the transaction will not adversely affect other Participants participating in that Joint Account. In no case would an early termination by less than all Participants be permitted if it would reduce the principal amount or yield received by other Participants in the Joint Account or otherwise adversely affect the other Participants. Each Participant participating in a Joint Account will be deemed to have consented to such sale and partition of the investments in the Joint Account.

12. Short-Term Investments held through a Joint Account with a remaining maturity of more than seven days, calculated pursuant to rule 2a–7 under the Act, will be considered illiquid and, for any Participant that is an open-end management investment company registered under the Act, subject to the restrictions that the Portfolio may not invest more than 10%, in the case of a money market fund, or 15%, in the case of a non-money market fund (or such other percentage as set forth by the SEC from time to time) of its net assets in illiquid securities, and any similar restriction set forth in the Portfolio's investment restrictions and policies, if the Advisers cannot sell the instrument, or the Portfolio's fractional interest in such instrument, pursuant to the preceding condition.

13. Every Participant in the Joint Accounts will not necessarily have its Cash Balances invested in every Short-Term Investment. However, to the extent that a Participant's Cash Balances are applied to a particular Short-Term Investment, the Participant will participate in and own its proportionate share of such Short-Term Investment, and any income earned or accrued thereon, based upon the percentage of such investment purchased with Cash Balances contributed by the Participant.

14. The Joint Accounts will be established as one or more separate cash accounts on behalf of the Participants at the Custodian. Each Participant may deposit daily all or a portion of its Cash Balances into the Joint Accounts. Each Participant whose regular custodian is a custodian other than the Custodian and that wishes to participate in a Joint Account, would appoint the Custodian as a sub-custodian for the limited purposes of: (i) receiving and disbursing Cash Balances; (ii) holding any Short-Term Investments; and (iii) holding any collateral received from a transaction effected through a Joint Account. All Portfolios that so appoint the Custodian will have taken all necessary actions to authorize such bank as its legal custodian, including all actions required under the Act.

For the SEC, by the Division of Investment management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23388 Filed 9–8–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23988; File No. 812–11620]

Maxim Series Funds, Inc. and GW Capital Management, LLC; Notice of Application

September 1, 1999.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an amended order under Section 6(c) of the Investment Company Act of 1940 (the "1940 Act") granting exemptive relief from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

Summary of Application: Applicatns seek an amended order to permit shares of any current of future series of the Maxim Series Fund, Inc. to be sold to and held by qualified pension and retirement plans outside the separate account context ("Qualified Plans").

Applicants: Maxim Series Fund, Inc. ("Maxim Fund" or "Fund") and GW Capital Management, LLC (the "Adviser").

Filing Date: The application was filed on May 26, 1999 and amended and restated on August 25, 1999.

Hearing or Notification of Hearing: An amended order granting the application was be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on September 27, 1999, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Beverly A. Byrne, Esquire, Great-West Life & Annuity Insurance Company, 8515 East Orchard Road, Englewood, Colorado 80111.

FOR FURTHER INFORMATION CONTACT: Ann L. Vlcek, Senior Counsel, or Susan M. Olson, Branch Chief, Office of Insurance Products, Division of Investment Management at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicant's Representations

1. The Adviser serves as investment adviser to each portfolio of the Fund. The Adviser is wholly-owned subsidiary of Great-West Life & Annuity Insurance Company, which in turn is a wholly-owned subsidiary of the Great-West Life Assurance Company.

2. The Fund, a registered, open-end management investment company, was incorporated in Maryland in 1981. The Fund currently consists of 28 series. In the future, additional series of shares may be added to the Fund. Shares of the Maxim Fund are currently offered to separate accounts ("Participating Separate Accounts") of both affiliated and unaffiliated life insurance companies ("Participating Insurance Companies") to serve as investment vehicles for variable annuity and variable life insurance contracts (collectively, "Variable Contracts").

3. On September 2, 1993, the Commission issued an order granting exemptive relief to permit shares of the Maxim Fund to be sold to and held by variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies (Investment Company Act Release No. 19676, the "Original Order"). Applicants represent that all of the facts asserted in the application for the Original Order and any amendments thereto remain true and accurate in all material respects to the extent that such facts are relevant to any relief on which Applicants continue to rely. Applicants state that the Original Order did not address the sale of shares of the Maxim Fund to Qualified Plans outside the separate account context.

4. Applicants state that changes in the federal tax law have created the opportunity for the Maxim Fund to increase its asset base through the sale of shares of Qualified Plans. Applicants state that Section 817(h) of the Internal Revenue Code of 1986, as amended (the "Code"), imposes certain diversification standards on the assets underlying Variable Contracts. Treasury Regulations generally require that, to meet the diversification requirements, all of the beneficial interests in the underlying investment company must be held by the segregated asset accounts of one or more life insurance companies. Notwithstanding this, Applicants note that the Treasury Regulations also contain an exception to this requirement that permits trustees of a Qualified Plan to hold shares of an investment company, the shares of which are also held by insurance company segregated asset accounts, without adversely affecting the status of the investment company as an adequately diversified underlying investment of Variable Contracts issued through such segregated asset accounts.

5. Applicants state that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act preceded the issuance of these Treasury Regulations. Thus, applicants assert that the sale of shares of the same investment company to both separate accounts and Qualified Plans was not contemplated at the time of the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15).

Applicants' Legal Analysis

1. Applicants request that the Commission issue an amended order pursuant to Section 6(c) of the 1940 Act, granting exemptive relief, to the extent necessary, from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder to permit shares of any current or future series of the Maxim Fund to be sold to and held by Qualified Plans under the conditions set forth herein. Applicants submit that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. The Maxim Fund previously requested and received relief from Sections 9(a), 13(a), 15(a), and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder to the extent necessary to permit mixed and shared funding by the Original Order did not address the sale of shares to Qualified Plans. Applicants submit that it is appropriate for the Commission to grant this same relief in connection with the sale of shares of Maxim Fund to Qualified Plans.

3. Section 6(c) of the 1940 Act provides in part that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security or transaction, or any class or classes of persons, securities or transactions from any provisions of the 1940 Act or the rules or regulations thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

In connection with the funding of scheduled premium variable life insurance contracts issued through a separate account registered under the

1940 Act as a unit investment trust ("UIT"), Rule 6e–2(b)(15) provides partial exemptions from various provisions of the 1940 Act, including the following: (1) Section 9(a), which makes it unlawful for certain individuals to act in the capacity of employee, officer, or director for a UIT, by limiting the application of the eligibility restrictions in Section 9(a) to affiliated persons directly participating in the management of a registered management investment company; and (2) Sections 13(a), 15(a) and 15(b) of the 1940 Act to the extent that those sections might be deemed to require "pass-through" voting with respect to an underlying fund's shares, by allowing an insurance company to disregard the voting instructions of contract owners in certain circumstances.

These exemptions are available, however, only where the management investment company underlying the separate account (the "underlying fund") offers its shares "exclusively to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company." Therefore, Rule 6e–2 does not permit either mixed funding or shared funding because the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an underlying fund that also offers its shares to a variable annuity or a flexible premium variable life insurance separate account of the same company or of any affiliated life insurance company. Rule 6e–2(b)(15) also does not permit the sale of shares of the underlying fund to Qualified Plans outside of the separate account context.

4. In connection with flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a UIT, Rule 6e–3(T)(b)(15) also provides partial exemption from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. These exemptions, however, are available only where the separate account's underlying fund offers its shares exclusively to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer its shares to variable annuity separate accounts of the life insurer or of an affiliated insurance company. Therefore, Rule 6e–(T) permits mixed funding but does not permit shared funding and also does not permit the sale of shares of the underlying fund to Qualified Plans. As noted above, the Original Order granted the Maxim Fund exemptive relief to permit mixed and shared funding, but did not expressly address the sale of its shares to Qualified Plans outside of the separate account context.

5. Applicants note that if an underlying fund were to sell shares only to Qualified Plan, exemptive relief under Rule 6e–2 and Rule 6e–3(T) would not be necessary. Applicants state that the relief for under Rule 6e–(b)(15) and Rule 6e–3(T)(b)(15) does not relate to qualified pension and retirement plans or to a registered investment company's ability to sell its shares to such plans.

6. Applicants state that changes in the federal tax law have created the opportunity for the Maxim Fund to increase its asset base through the sale of shares to Qualified Plans. Section 817(h) of the Code imposes certain diversification standards on the assets underlying Variable Contracts. Treasury Regulations generally require that, to meet the diversification requirements, all of the beneficial interests in the underlying investment company must be held by the segregated asset accounts of one or more life insurance companies. Notwithstanding this, Applicants not that the /Treasury Regulations also contain an exception to this requirement that permits trustees of a Qualified Plan to hold shares of an investment company, the shares of which are also held by insurance company segregated asset account, whithout adversely affecting the status of the investment company as an adequately diversified underlying investment of Variable Contracts issued through such segregated asset accounts (Treas. Reg. 1.817–5(f)(3)(iii)).

7. Applicants state that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) under the 1940 Act preceded the issuance of these Treasury Regulations. Thus, the sale of shares of the same investment company to both separate accounts and Qualified Plans was not contemplated at the time of the adoption of Rules 6e–(b)(15) and 6e–3(T)(b)(15).

8. Section 9(a) of the 1940 Act provides that is unlawful for any company to serve as investment adviser or principal underwriter of any registered open-end investment company if an affiliated person of that company is subject to a disqualification enumerated in Sections 9(A)(1) or (2). Rules 6e–(2)b)(15) and 6e–3(T)(b)(15) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management of the underlying portfolio investment company.

9. Applicants state that the relief granted in Rules 6e–2(b)(15) and 6e–3(T)(b)(15) from the requirements of Section 9 limits, in effect, the amount of monitoring of an insurer's personnel that would otherwise be necessary to ensure compliance with Section 9 to that what is appropriate in light of the policy and purposes of Section 9. Applicants submit that those Rules recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act of apply the provisions of Section 9(a) to the many individuals involved in an insurance company complex most of whom typically will have no involvement in matters pertaining to investment companies funding the separate accounts.

10. The Maximum Fund previously requested and received relief from Section 9(a) and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) to the extent necessary to permit mixed and shared funding. Applicants submit that the relief previously granted from Section 9(a) to the Maximum Fund will in no way be affected by the proposed sales of shares to Qualified Plans outside of the separate account context. Those individuals who participate in the management or administration of the Maxim Fund will remain the same regardless of whether Qualified Plans invest therein. Applicants maintain that more broadly applying the requirements of Section 9(a) because of investments by Qualified Plans would serve no regulatory purpose. Moreover, Qualified Plans, unlike separate accounts, are not themselves investment companies, and therefore are not subject to Section 9 of the 1940 Act.

11. Applicants state that Rules 6e–2(b)(15(iii) and 6e–3(T)(b)(15(iii) provide exemptions from the pass-through voting requirement with respect to several significant matters, assuming the limitations on mixed and shared funding are observed. Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the insurance company may disregard the voting instructions of its contract owners with respect to the investments of an underlying fund or any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority (subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of the Rules). Rules 6e–2(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) provide that the insurance company may disregard contract owners' voting instructions if

the contract owners initiate certain changes in an underlying fund's investment policies, principal underwriter, or any investment adviser (provided that disregarding such voting instructions is reasonable and subject to the other provisions of paragraphs (b)(5)(ii) and (b)(7)(ii)(B) and (C) of the Rules). Applicants request relief from these provisions to the extent necessary to permit shares of the Maxim Fund to be sold to and held by Qualified Plans consistent with the foregoing provisions regarding a Participating Insurance company's ability to disregard voting instructions under certain circumstances.

12. Applicants assert that Qualified Plans, which are not registered as investment companies under the 1940 Act, have no requirement to pass through the voting rights to plan participants. Applicants state that applicable law expressly reserves voting rights to certain specified persons. Under Section 403(a) of the Employee Retirement Income Security Act ("ERISA"), shares of a fund sold to a Qualified Plan must be held by the trustees of the Qualified Plan. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (1) when the Qualified Plan expressly provides that the trustee(s) are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees are subject to proper directions made in accordance with the terms of the Qualified Plans and not contrary to ERISA: and (2) when the authority to manage, acquire or dispose of assets of the Qualified Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the two above exceptions stated in Section 403(a) applies, Qualified Plan trustees have the exclusive authority and responsibility for voting proxies. Where a named fiduciary to a Qualified Plan appoints an investment manager, the investment manager has the responsibility to vote the shares held unless the right to vote such shares is reserved to the trustees or the named fiduciary. Where a Qualified Plan does not provide participants with the right to give voting instructions, Applicants do not see any potential for material irreconcilable conflicts of interest between or among variable contract holders and Qualified Plan investors with respect to voting of the respective Fund's shares. Accordingly, Applicants state that, unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to such Qualified Plans (outside of the separate account context) since the Qualified Plans are not entitled to pass-through voting privileges.

13. Even if a Qualified Plan were to hold a controlling interest in an underlying fund, Applicants believe that such control would not disadvantage other investors in such underlying fund to any greater extent than is the case when any institutional shareholder holds a majority of the voting securities of any open-end management investment company. In this regard, Applicants submit that investment in the Maxim Fund by a Qualified Plan will not create any of the voting complications occasioned by mixed funding or shared funding. Unlike mixed or shared funding, Qualified Plan investor voting rights cannot be frustrated by veto rights of insurers or state regulators.

14. Applicants state that some of the Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers), or another named fiduciary to exercise voting rights in accordance with instructions from participants. Where a Qualified Plan provides participants with the right to give voting instructions, Applicants see no reason to believe that participants in Qualified Plans generally or those in a particular Qualified Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage Variable Contract holders. In sum, Applicants maintain that the purchase of shares of the Maxim Fund by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

15. Applicants state that they do not believe that the sale of the shares of the Maxim Fund to Qualified Plans outside of the separate account context will increase the potential for material irreconcilable conflicts of interest between among different types of investors. In particular, Applicants see very little potential for such conflicts beyond that which would otherwise exist between variable annuity and variable life insurance contract owners.

As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable contracts held in an underlying mutual fund. The Code provides that a variable contract shall not be treated as an annuity contract or life insurance, as applicable, for any period (and any subsequent period) for which the investments are not, in accordance with regulations prescribed by the Treasury Department, adequately diversified. Applicants believe that the Treasury Regulations discussed above specifically permit "qualified pension or retirement plans" and separate accounts to invest in the same underlying fund. For this reason, Applicants have concluded that neither the Code nor the Treasury Regulations or revenue rulings thereunder presents any inherent conflict of interest.

16. Applicants note that while there are differences in the manner in which distributions from Variable Contracts and Qualified Plans are taxed, these differences will have no impact on the Maxim Fund. When distributions are to be made, and a Participating Separate Account or Qualified Plan is unable to net purchase payments to make the distributions, the Participating Separate Account or Qualified Plan will redeem underlying fund shares at net asset value in conformity with Rule 22c–1 under the 1940 Act (without the imposition of any sales charge) to provide proceeds to meet distribution needs. A Qualified Plan will make distributions in accordance with the terms of the Qualified Plan.

17. Applicants maintain that it is possible to provide an equitable means of giving voting rights to Participating Separate Account contract owners and to Qualified Plans. In connection with any meeting of shareholders, the Fund will inform each shareholder, including each Participating Insurance Company and Qualified Plan, of information necessary for the meeting, including their respective share of ownership in the Fund. Each Participating Insurance Company will then solicit voting instructions in accordance with Rules 6e–2 and 6e–3(T), as applicable, and its participating agreement with the Fund. Shares held by Qualified Plans will be voted in accordance with applicable law. The voting rights provided to Qualified Plans with respect to shares of the Fund would be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds sold to the general public.

18. Applicants have concluded that even if there should arise issues with respect to a state insurance commissioner's veto powers over investment objectives where the interests of contract owners and the interests of Qualified Plans are in conflict, the issues can be almost immediately resolved since the trustees of (or participants in) the Qualified Plans can, on their own, redeem the shares out of the Fund. Applicants note that the insurance commissioners have been given to veto power in recognition

of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, time-consuming, complex transactions must be undertaken to accomplish such redemptions and transfers. Conversely, the trustees of Qualified Plans or the participants in participant-directed Qualified Plans can make the decision quickly and redeem their interest in the Fund and reinvest in another funding vehicle without the same regulatory impediments faced by separate accounts or, as is the case with most Qualified Plans, even hold cash pending suitable investment.

19. Applicants also state that they do not see any greater potential for material irreconcilable conflicts arising between the interests of participants under Qualified Plans and contract owners of Participating Separate Accounts from possible future changes in the federal tax laws than that which already exists between variable annuity contract owners and variable life insurance contract owners.

20. Applicants state that the sale of shares of the Maxim Fund to Qualified Plans outside of the separate account context would permit a greater amount of assets available for investment by the Maxim Fund, thereby promoting economies of scale, by permitting increased safety through asset diversification, and by making the addition of new series more feasible. Applicants assert that making the Maxim Fund available to Qualified Plans will encourage more insurance companies to offer Variable Contracts. Applicants believe that this should result in increased competition with respect to both Variable Contract design and pricing, which in turn can be expected to result in more produce variation and lower charges to investors.

21. Applicants assert that, regardless of the type of shareholders in each portfolio of the Maxim Fund, the Adviser is or would be contractually and otherwise obligated to manage each portfolio solely and exclusively in accordance with that portfolio's investment objectives, policies and restrictions as well as any guidelines established by the Board of Directors of the Fund (the "Board"). The Adviser works with a pool of money and (except in a few instances where this may be required in order to comply with state insurance laws) does not take into account the identity of the shareholders. Thus, each portfolio of the Fund will be managed in the same manner as any other mutual fund. Applicants therefore see no significant legal impediment to permitting the sale of shares of the portfolios of Maxim Fund to Qualified Plans.

22. Applicants state that the Commission has permitted this relief in connection with sales to Qualified Plans. Applicants state that the amended order sought in the application is identical to precedent with respect to the conditions Applicants proposes for the sales to Qualified Plans.

Applicants' Conditions

If the requested amended order is granted, Applicants consent to the following conditions (in addition to the conditions applicable pursuant to the Original Order):

1. Any Qualified Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of a portfolio (or class thereof) of the Maxim Fund (a "Qualified Plan Participant") shall report any potential or existing conflicts to the Board. Such Qualified Plan Participants will be responsible for assisting the Board in carrying out its responsibilities under these conditions by providing the Board will all information reasonably necessary for the Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation on the part of each Qualified Plan Participant to inform the Board whenever voting instructions relating to the Maxim Fund are disregarded. The responsibility to report such conflicts and information, and to assist the Board will be contractual obligations of such Qualified Plan Participants under the agreement governing participation in the Fund and such agreement shall provide that such responsibilities will be carried out with a view only to the interests of participants in a Qualified Plan.

2. The Board will monitor the Fund for the existence of any material irreconcilable conflict among the interests of the contract owners of all the separate accounts investing in the Fund and participants in Qualified Plans investing in the Fund. A material irreconcilable conflict may arise for a variety of reasons, including: (a) an action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax or securities regulatory authorities; (c) an administrative or judicial decision in any relative proceeding; (d) the manner in which the investments of the Fund are being managed; (e) a difference in voting instructions given by variable annuity and variable life insurance contract owners; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract owners; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of its participants.

3. If it is determined by a majority of the Board of the Maxim Fund, or by a majority of its disinterested directors, that a material irreconcilable conflict exists, the relevant Qualified Plans shall, at their own expense and to the extent reasonably practicable (as determined by a majority of the disinterested trustees or directors), take whatever steps are necessary to remedy or eliminate the material irreconcilable conflict. Such steps should include: (a) Withdrawing the assets allocable to some or all of the Qualified Plans from the Fund or any portfolio thereof and reinvesting such assets in a different investment medium, which may include another portfolio of the Fund; and (b) establishing a new registered management investment company or managed separate account.

4. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard voting instructions of participants, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the Fund (or portfolio thereof), to withdraw its investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. To the extent permitted by applicable law, the responsibility of taking remedial action in the event of a Board determination of a material irreconcilable conflict and bearing the cost of such remedial action, will be a contractual obligation of all Qualified Plans under any agreement governing participation in the Fund, and these responsibilities will be carried out with a view only to the interests of participants in a Qualified Plan. For purposes of this condition, a majority of the disinterested members of the Board will determine whether or not any proposed action adequately remedies any material irreconcilable conflict, but in no event will the Fund or the Adviser be required to establish a new funding medium for any Qualified Plan. Further, no Qualified Plan shall be required by this condition to establish a new funding medium for any Qualified Plan if: (a) a majority of its participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or

(b) pursuant to governing Qualified Plan documents and applicable law, the Qualified Plan makes such decision without a vote of its participants.

5. The Board's determination of the existence of a material irreconcilable conflict and its implications will be made known promptly and in writing to Qualified Plans.

6. Each Qualified Plan will vote as required by applicable law governing Qualified Plan documents.

7. All reports of potential or existing conflicts received by a Board and all Board actions with regard to determining the existence of a conflict of interest, notifying Qualified Plans of a conflict, and determining whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the Board or other appropriate records, and such minutes or other records shall be made available to the Commission upon request.

8. The Maxim Fund will disclose in its prospectus that: (a) shares of the Fund may be offered to insurance company separate accounts on a mixed and shared basis and to Qualified Plans; (b) material irreconcilable conflicts may arise between the interests of Variable Contract owners participating in the Fund and the interests of Qualified Plans investing in the Fund; and (c) the Board of the Fund will monitor events in order to identify the existence of any material irreconcilable conflict and determine what action, if any, should be taken in response to such material irreconcilable conflict.

9. No less than annually, Qualified Plan Participants that have executed a participation agreement upon becoming an owner of 10% or more of the assets of a Portfolio (or a class thereof) of Maxim Fund shall submit to the Board such reports, materials or data as the Board may reasonably request so that the Board may carry out fully the obligations imposed upon it by the conditions contained in the application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Qualified Plan Participants to provide these reports, materials and data shall be a contractual obligation of all the Qualified Plan Participants under the agreements governing their participation in the Funds.

10. The Fund will not accept a purchase order from a Qualified Plan if such purchase would make the Qualified Plan shareholder an owner of 10% or more of the assets of the Fund (or portfolio thereof) unless such Qualified Plan executes a fund participation agreement with the Fund, including the conditions set forth herein to the extent applicable. A Qualified Plan will execute a shareholder participation agreement containing an acknowledgment of this condition at the time of its initial purchase of shares of such Fund.

Conclusions

For the reasons summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23389 Filed 9–8–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41810; File No. SR–OCC–99–01]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Relating to the Acceptance of Letters of Credit for Margin Purposes

August 30, 1999.

On January 22, 1999, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–OCC–99–01) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] to permit OCC to replace its current letter of credit form with a letter of credit form developed by the Uniform Clearing Group ("UCG").[2] Notice of the proposal was published in the **Federal Register** on June 14, 1999.[3] On August 2, 1999, OCC amended the proposed rule change.[4] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change will amend OCC's Rule 604(c) to incorporate the use of the Uniform Letter of Credit ("ULC") created by UCG. First, the rule change will require the issuing bank to make payment against the ULC within sixty minutes of presentment of a demand for payment. Second, the rule change will add a new paragraph to Rule 604(c) that gives OCC flexibility in specifying acceptable expiration dates for the ULC. Third, the rule change will delete the provisions of OCC's rules that permit a clearing member to issue instructions to OCC that restrict a previously unrestricted letter of credit or a portion thereof to serve as margin only for the clearing member's customers' accounts. Finally, the rule change will delete the last sentence of Rule 604(c)(4), which allows members to deposit letters of credit denominated in any foreign currency that is a trading currency.

II. Discussion

Section 17A(b)(3)(F)[5] of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. As set forth below, the Commission finds that the rule change is consistent with OCC's obligations under the Act.

By shortening the time period from the third banking day to 60 minutes, the proposed rule change should reduce the likelihood that OCC will be unable to fulfill its settlement obligations while it waits for a issuing bank to honor its demand on a letter of credit.

Currently, OCC requires that a letter of credit expire no later than the first day of the next calendar quarter. By allowing letters of credits to be issued with expiration dates more than one calendar quarter in the future, OCC may be able to simplify its record-keeping, and its members may be able to reduce their costs associated with obtaining letters of credit.

According to OCC, clearing members generally do not use the provisions that permit a clearing member to restrict a previously unrestricted letter of credit. Furthermore, placing the restriction on the face of the letter of credit may

[1] 15 U.S.C. 78s(b)(1).

[2] The UCG is an organization composed of all major securities and futures clearing organizations and depositories in the United States. The members of the UCG include the Boston Stock Exchange Clearing Corporation, The Depository Trust Company, Government Securities Clearing Corporation, MBS Clearing Corporation, National Securities Clearing Corporation, OCC, Board of Trade Clearing Corporation, Chicago Mercantile Exchange, Clearing Corporation of New York, Kansas City Board of Trade, Minneapolis Grain Exchange, New York Mercantile Exchange, Emerging Markets Clearing Corporation, and Clearing Corporation for Options and Securities.

[3] Securities Exchange Act Release No. 41486 (June 7, 1999), 64 FR 31889.

[4] The amendment filed by OCC was a technical amendment to the proposed rule change and as such did not require republication of the notice.

[5] 15 U.S.C. 78q–1(b)(3)(F).

provide better notice of the restriction and should reduce the likelihood of confusion over which letters are intended to be restricted and which letters are not. Finally, by expressly stating that letters of credit may be denominated in any foreign trading currency is unnecessary in light of other provisions in OCC's rules that specify that letters of credit may be denominated in any currency.

The Commission also finds that the rule change is consistent with OCC's obligations under the Act to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. The ULC was developed by OCC and the other members of the UCG to foster uniformity among the various U.S. securities and futures clearing organizations with respect to letters of credit that are deposited as collateral. This uniformity will help reduce operational burdens for securities and futures industry participants and their letter of credit issuers. It should also enhance the legal certainty that the letters of credit received by OCC and other UCG members as collateral will be enforceable.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It Is Therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–99–01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23390 Filed 9–8–99; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Modifications to the Disability Determination Procedures; Disability Claims Process Redesign Prototype; Correction

AGENCY: Social Security Administration.

ACTION: Notice of a prototype involving modifications to the disability determination procedures; Correction.

SUMMARY: The Social Security Administration (SSA) published a document in the **Federal Register** of August 30, 1999, announcing a prototype involving a combination of modifications to the disability determination process. The document contained an incorrect address for the Brooklyn branch of the New York Disability Determination Services (DDS).

FOR FURTHER INFORMATION CONTACT: Harry Pippin, Social Security Administration, Office of Disability, Disability Process Redesign Staff, 6401 Security Boulevard, Baltimore, Maryland 21235–6401, 410–965–9203.

Correction

In the **Federal Register** of August 30, 1999, in FR Doc. 99–22421, on page 47219, in the third column under the caption "Group II", correct the second address listed for the branch DDS for the state of New York to read as follows: State of New York, Division of Disability Determinations, 300 Cadman Plaza West, 13th Floor, Brooklyn, NY 11201–2701.

Dated: August 31, 1999.

Sue C. Davis,

Director, Disability Process Redesign Team.

[FR Doc. 99–23338 Filed 9–8–99; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week of August 27, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–6163

Date Filed: August 24, 1999

Parties: Members of the International Air Transport Association

Subject:

PTC23 AFR–TC3 0079 dated August 27, 1999

Mail Vote 032—TC23/TC123 Africa–TC3

Special Passenger Amending Resolution from Korea to Libya

Intended effective date: September 1, 1999

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–23391 Filed 9–8–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ending August 27, 1999

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–99–6166.

Date Filed: August 24, 1999.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 21, 1999.

Description: Application of Continental Airlines, Inc. pursuant to 49 U.S.C. 41108 and 41102 and subpart Q, applies for a certificate of public convenience and necessity, authoring Continental to provide scheduled foreign air transportation of persons, property and mail between Newark, New Jersey and Buenos Aires, Argentina, and for an allocation of the seven U.S.-Argentina frequencies which become available September 1, 2000.

Docket Number: OST–99–6172.

Date Filed: August 26, 1999.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 23, 1999.

Description: Application of American Airlines pursuant to 49 U.S.C. 41102 and subpart Q, applies for an amendment to its certificate of public convenience and necessity for route 560 (U.S.-Mexico) to engage in foreign air transportation of persons, property, and mail on the following route segments: Chicago-Acapulco, Chicago-Monterrey, Chicago-San Jose del Cabo, Dallas/Ft. Worth-Leon, Dallas/Ft. Worth-San Jose del Cabo, Los Angeles-Guadalajara.

Docket Number: OST–99–6173.

Date Filed: August 27, 1999.

Due Date for Answers, Conforming Applications, or Motions to Modify Scope: September 24, 1999.

Description: Application of Trans Borinquen Air, Inc. pursuant to 49 U.S.C. 41102 and subpart Q, applies for a certificate of public convenience and necessity authorizing Interstate and Foreign Charter air transportation (cargo only) to conduct all cargo operations between United States, Puerto Rico, Dominican Republic and the Caribbean.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–23392 Filed 9–8–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

Maritime Administration

[USCG 1998–3553]

Marine Transportation System: Waterways, Ports, and Their Intermodal Connections

AGENCY: Coast Guard, and Maritime Administration, DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: The Coast Guard and the Maritime Administration announce the availability of the Report to Congress "An Assessment of the Marine Transportation System". A task force comprised of private and public members prepared the Report, which was mandated in the Coast Guard Authorization Act of 1998. The Report is available for your review and comment.

DATES: Comments must be received by the Docket Management Facility by November 8, 1999.

ADDRESSES: To make sure your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, (USCG 1998–3553), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this notice. The comments will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also electronically access the public docket for this notice on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this notice, or the Marine Transportation System initiative, contact Ms. Margie Hegy, U.S. Coast Guard (G–MW), telephone 202–267–0415 or Mr. John Swank, Maritime Administration (MAR–240), telephone 202–366–5807. For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to submit comments and related material on the Report. If you do so, please include your name and address, identify the docket number for this notice (USCG–1998–3553), and give the reasons for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ × 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

A copy of the Report is available for review in the docket and may be electronically accessed on the Internet at *http://dms.dot.gov*. To request a printed copy of the Report, contact Ms. Joyce Short, telephone 202–267–6164, or Ms. Joann Spittle, telephone 202–366–4357.

Background

On November 13, 1998, the U.S. Congress directed, in Section 308 of the Coast Guard Authorization Act of 1998, that "The Secretary of Transportation, through the Coast Guard and the Maritime Administration, shall, in consultation with the National Ocean Service of the National Oceanic and Atmospheric Administration, the Corps of Engineers, and other interested Federal agencies and departments, establish a task force to assess the adequacy of the Nation's marine transportation system (including ports, waterways, harbor approach channels, and their intermodal connections) to operate in a safe, efficient, secure, and environmentally sound manner."

The task force was to consider the capability of the MTS, the adequacy of the depth of channels and harbors, and the cost to the Federal government of accommodating projected increases in foreign and domestic traffic over the next 20 years. Evaluations of the Nation's capability to dispose of dredged materials and the future of the navigational aid system were additional components of this effort. This Report summarizes the results of the task force's assessment and constitutes the response to Congress.

The Report reflects a highly collaborative effort among public sector agencies, private sector organizations, and other stakeholders in the MTS. The process began with seven regional listening sessions in spring 1998, hosted by the U.S. Coast Guard, the Maritime Administration, and 12 other Federal agencies. The purpose of these sessions was to learn what users, stakeholders, and the public perceived to be the current state of the MTS and its future needs.

The input received at the regional listening sessions became the basis for a National Conference on the Marine Transportation System hosted by the Secretary of Transportation in November 1998. Executives from industry, labor, and government participated in this conference. Through breakout groups and plenary sessions, the participants addressed two overarching issues—the development of a shared national vision for the MTS and public and private sector coordination of MTS activities. Participants also addressed specific MTS issues concerning safety, competitiveness, infrastructure, security, and the environment.

After the National Conference, the Secretary established the Congressionally mandated MTS Task Force. The Task Force included MTS users and service providers, such as Federal agencies and departments, ports, commercial carriers, shippers, labor, recreational boaters, fishermen, environmental organizations, and other MTS stakeholders.

The Report is available for your review and comment. We request information from the general public and system users on the strategic areas of action recommended and how to accomplish them. Identification of sub-issues and relevant data or other information that will assist us in developing strategies and action plans is

[6] 17 CFR 200.30–(a)(12).

also requested. In addition, information on relevant MTS activities that are ongoing or planned within the public or private sector is requested.

Next Steps

The Report is just another step in our process and is not intended to recommend absolute solutions. Comments received during the comment period will be considered by the Interagency Committee for the Marine Transportation System (ICMTS) as it begins the work to implement the recommendations. There is much work ahead for the public/private partnership that has emerged from this initiative.

James M. Loy,

Admiral, U.S. Coast Guard, Commandant.

Clyde J. Hart, Jr.,

Maritime Administrator.

[FR Doc. 99–23422 Filed 9–8–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–31]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Ch. I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before September 30, 1999.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9__NPRM__cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Terry Stubblefield (202) 267–7624 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on September 3, 1999.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29583.
Petitioner: Dassault Aviation.
Section of the FAR Affected: 14 CFR 25.785(b).
Description of Relief Sought: To allow installation of one or more side-facing divans on Falcon Model 2000 airplanes.

Dispositions of Petitions

Docket No.: 24541.
Petitioner: Boeing Commercial Airplane Group.
Section of the FAR Affected: 14 CFR 91.611.
Description of Relief Sought/Disposition: To permit BCAG to conduct ferry flights with one engine inoperative on its Boeing 707, 720, 727, 747, DC–10, MD–10, and MD–11 series airplanes without obtaining a special ferry permit.
GRANT: 7/28/99, Exemption No. 4467G.

Docket No.: 28673.
Petitioner: EAA Aviation Foundation and Experimental Aircraft Association.
Section of the FAR Affected: 14 CFR 91.315, 119.5(g), and 119.21(a).
Description of Relief Sought/Disposition: To permit EAA to operate its Boeing B–17 aircraft, which is certificated in the limited category, for the purpose of carrying its members for compensation or hire in its former military vintage airplane on local flights for educational and historical purposes. The exemption is further amended by (1) revising condition No. 13(c) to allow flight operations with a minimum flight visibility of not less than 3 statute miles and (2) revising condition No. 13(d) to allow flight operations with a minimum ceiling of not less than 1500 feet AGL.
GRANT: 7/30/99, Exemption No. 6541B.

Docket No.: 28964.
Petitioner: Raytheon Aircraft Company.
Section of the FAR Affected: 14 CFR 21.325(b)(3).
Description of Relief Sought/Disposition: To allow RAC to obtain airworthiness approval tags for its Hawker Model parts in accordance with §§ 21.21 and 21.303, and export those class II and class III parts located at certain Raytheon facilities outside the United States and modify conditions Nos. 1 and 2, adding condition No. 4, and redesignating condition No. 4 of the original exemption as condition No. 5.
GRANT, 7/26/99, Exemption No. 6720A.

Docket No.: 28991.
Petitioner: Joe Brigham, Inc.
Section of the FAR Affected: 14 CFR 133.33 (d) and (e) and 133.45(d).
Description of Relief Sought/Disposition: To allow JBI to operate a Bell Model UH–1B helicopter (Huey) (Registration No. N204JB, Serial No. 63–13088), a restricted-category helicopter, in external-load operations over congested areas, subject to an approved Congested Area Plan.
DENIAL, 7/30/99, Exemption No. 6934.

Docket No.: 29342.
Petitioner: Airbus Industrie.
Section of the FAR Affected: 14 CFR 61.77(a).
Description of Relief Sought/Disposition: To permit pilots and flight engineers employed by Airbus Industrie to be eligible for the issuance of special purpose pilot and flight engineer authorizations, under parts 61 and 65, as appropriate, for the purpose of performing delivery flights of U.S.-registered airplanes between foreign countries and from a foreign country to the United States.
GRANT, 7/28/99, Exemption No. 6850A.

Docket No.: 29451.
Petitioner: Boeing Commercial Airplane Group.
Section of the FAR Affected: 14 CFR 25.562(b)(2).
Description of Relief Sought/Disposition: To permit relief from the floor warpage testing requirement for flight deck seats on the Boeing Model 767–400ER airplanes.
GRANT, 8/4/99, Exemption No. 6935.

Docket No.: 29598.
Petitioner: McDonnell Douglas Corp., now a wholly owned subsidiary of The Boeing Company.

Section of the FAR Affected: 14 CFR 25.571(b) and 25.671(c)(1).
Description of Relief Sought/Disposition: To allow the McDonnell Douglas Corporation, now a wholly owned subsidiary of The Boeing Company, three years to analyze, redesign, and retrofit, as necessary, the flap system on the Model 717–200 airplane, in order to show compliance with the subject regulations.
GRANT, 8/20/99, Exemption No. 6951.

Docket No.: 29619.
Petitioner: Helicopter Experts, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit HEI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in each aircraft.
GRANT, 7/30/99, Exemption No. 6933.

Docket No.: 29621.
Petitioner: Ravenaire Aviation Services.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, appendices I & J of part 121.
Description of Relief Sought/Disposition: To permit RAS to conduct sightseeing rides at Genesee County Airport for a pancake breakfast on July 18, 1999, for compensation or hire, without complying with the drug testing and alcohol abuse prevention requirements of part 135.
GRANT, 7/15/99, Exemption No. 6923.

Docket No.: 29627.
Petitioner: Canton Airport Board.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 1135.353, appendices I & J of part 121.
Description of Relief Sought/Disposition: To permit CAB to conduct local sightseeing rides at Ellingson Field, Canton, South Dakota, for the annual Canton Car Show on July 25, 1999, for compensation or hire, without complying with the drug testing and alcohol abuse prevention requirements of part 135.
GRANT, 7/15/99, Exemption No. 6924.

Docket No.: 29637.
Petitioner: South Haven Area Regional Airport Authority.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, appendices I & J of part 121.
Description of Relief Sought/Disposition: To permit SHARAA to conduct sightseeing rides at South Haven Area Regional Airport for an annual, charity fly-in breakfast on August 15, 1999, for compensation or hire, without complying with the drug testing and alcohol abuse prevention requirements of part 135.
GRANT, 8/10/99, Exemption No. 6937.

Docket No.: 29646.
Petitioner: CREST–AERO.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, appendices I & J of part 121.
Description of Relief Sought/Disposition: To permit CREST–AERO to conduct sightseeing rides at Crest Airpark, during the annual fundraising event, "Covington Days," on July 17 and 18, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
GRANT, 7/15/99, Exemption No. 6925.

Docket No.: 29653.
Petitioner: Punxsutawney Municipal Airport Authority.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, appendices I & J of part 121.
Description of Relief Sought/Disposition: To permit PMAA to conduct local sightseeing rides at Punxsutawney Municipal Airport for its airport awareness days on July 24 and 25, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
GRANT, 7/21/99, Exemption No. 6927.

Docket No.: 29679.
Petitioner: Historical Aviation Organization of Logan County.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, appendices I & J of part 121.
Description of Relief Sought/Disposition: To permit HAOLC to conduct local sightseeing rides Bellefontaine Municipal Airport, for "Airfest 99" on August 7 and 8, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
GRANT, 8/5/99, Exemption No. 6936.

Docket No.: 29699.
Petitioner: Skyfest Michiana and Goshen Air Center.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, appendices I & J of part 121.
Description of Relief Sought/Disposition: To permit GAC to conduct local sightseeing rides at Goshen Municipal Airport, for the Goshen Air Show hosted by Skyfest Michiana, August 13, 14 and 15, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
GRANT, 8/13/99, Exemption No. 6939.

Petition for Exemption

Docket No.: 29583.
Petitioner: Dassault Aviation.
Regulations Affected: 25.785(b).
Description of Petition: Relief is requested to allow installation of one or more side-facing divans on Falcon Model 2000 airplanes.

[FR Doc. 99–23393 Filed 9–8–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Policy Statement Number ANM–99–1]

Improving Flightcrew Awareness During Autopilot Operation

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of policy statement; request for comments.

SUMMARY: This document announces an FAA proposed general statement of policy applicable to the type certification of transport category airplanes. This document advises the public, in particular manufacturers of transport category airplanes and automatic flight control (autopilot) systems, that FAA, when certifying automatic pilot installations, intends to evaluate various items that will improve the flightcrew's awareness during autopilot operation. This notice is necessary to advise the public of FAA policy and give all interested persons an opportunity to present their views on the policy statement.

DATES: Comments must be received on or before October 12, 1999.

ADDRESSES: Send all comments on this policy statement to the individual identified under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Dale Dunford, Federal Aviation Administration, Transport Airplane Directorate, Transport Standards Staff, Airplane & Flightcrew Interface Branch, ANM–111, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–2239; fax (425) 227–1100; e-mail: Dale.Dunford@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this policy statement by submitting such written data, views, or

arguments as they may desire. Commenters should identify the Policy Statement Number of this policy statement, and submit comments, in duplicate, to the address specified above. The Transport Airplane Directorate will consider all communications received on or before the closing date for comments.

Background

Recent incidents and accidents that have occurred worldwide involving pilot/autopilot interactions have emphasized to the FAA the need to reexamine the current certification policy relative to autopilot issues.

In 1991, the National Transportation Safety Board (NTSB) began an investigation as a result of an incident involving a transport category airplane that experienced an inflight upset. When the airplane was in cruise at flight level 310, the flightcrew noted that the inertial navigation system "FAIL" lights had illuminated. When the flightcrew crosschecked the instrument panel, they determined that the airplane was in a steep right-wing-down banking angle. The flight lost approximately 10,000 feet of altitude and the airplane approached supersonic speeds before recovery could be completed. The airplane eventually made a successful landing, and there were no injuries.

Investigation of the incident revealed, among other things, that a failure in the autopilot system could cause an airplane to slowly roll into a banking attitude. The roll rate induced from such a failure of the autopilot system may be barely perceptible to the flightcrew; it also may be difficult to detect without external visual attitude references or continuous close monitoring of the flight attitude instruments.

The NTSB has advised the FAA of its concern that some autopilot failures can result in changes in attitude at rates that may be imperceptible to the flightcrews, and thus remain undetected until the airplane reaches significant attitude deviations.

FAA Evaluation of Flight Crew/Flight Deck Automation Interfaces

In 1994, the FAA launched an in-depth study to evaluate all flightcrew/flight deck automation interfaces of current generation transport category airplanes. The FAA charted a Human Factor Team to conduct the study. Team members included experts from the FAA, the European Joint Airworthiness Authorities (JAA), and academia. The objective of the study was to look beyond the label of "flightcrew error," and investigate the contributing factors from the perspective of design, flightcrew training/qualifications, operations, and regulatory processes. The team also was tasked to develop recommendations to address any problems identified.

With regard to autopilot issues, the Team identified several specific problematic issues, including:

- Pilot/autopilot interactions that create hazardous out-of-trim conditions;
- Autopilots that can produce hazardous speed conditions and may attempt maneuvers that would not normally be expected by a pilot; and
- Insufficient wording in the Airplane Flight Manual regarding the capabilities and limitations of the autopilot.

Regulatory Initiatives

The FAA has acknowledged the autopilot issues raised by both the NTSB and the Human Factor Team, and has taken steps to address them. For example, the FAA has tasked a new Aviation Regulation Advisory Committee (ARAC) working group to review and propose harmonized revisions to the following three conditions:

- *14 CFR 25.1329* ("Automatic Pilot System"), which contains FAA's standard for certifying automatic pilot systems on transport category airplanes;
- *Advisory Circular (AC) 25–1329–1A* ("Automatic Pilot System Approval"), dated July 8, 1968, which describes an acceptable means by which compliance with the automatic pilot installation requirements of § 25.1329 may be shown; and
- *14 CFR 25.1335* ("Flight Director Systems"), which contains FAA's standards for certifying flight director systems on transport category airplanes.

The work of this ARAC working group, known as the Flight Guidance Systems Harmonization Working Group (FGSHWG), currently is in progress.

Current Certification Standards

In general, automatic pilot systems on transport category airplanes traditionally have been certified in accordance with § 25.1329 on the basis that they are conveniences to reduce flightcrew workload, and that they do not relieve the flightcrew of any responsibility for assuring proper flight path management. As a result, the autopilot evaluation criteria contained in AC 25.1329–1A, are primarily concerned with the effects of autopilot failures on the airplane. The most recent revision to AC 25–7A, "Flight Test Guide for Certification of Transport Category Airplanes," also defines some evaluation criteria for determining whether the autopilot is performing its intended function of relieving the flightcrew of some of their control functions.

Accordingly, even when the flightcrew is not manually performing a specific flight path control function, the FAA expected the flightcrew to be "aware" when this function is not being performed safely, and to take appropriate and timely corrective action. The installation certification guidelines presented in AC 25.1329–1A, for example, state "* * * at least one pilot (should) monitor the behavior of the airplane and associated autopilot performance at all times."

In certifying all autopilot systems to date, the FAA has accepted the premise that the capability for this flightcrew "awareness" comes from either:

- Adherence to operational training and/or procedures,
- A dedicated failure detection and annunciation feature on the flight deck; or
- Inherent aircraft operational cues (e.g., a perceived change of aircraft attitude or change of engine noise).

As evidenced by recent relevant accident and incident cases, one cannot assume that the flightcrew will reliably detect and accommodate adverse autopilot behavior solely from inherent operational cues; other cues are needed.

Inherent operational cues can be insufficient because:

1. During normal autopilot operations, the flightcrew may not be able to detect operational cues related to significant changes in aerodynamic characteristics, such as drag and controllability, as effectively as during manual operation. One specific example of this is the change of control response or "feel" during low speed operations as ice accumulates on the airplane surfaces, gradually and imperceptibly reducing control authority. This condition can progress, intangible to the flightcrew, until the autopilot exhausts its control authority and automatically disengages. The flightcrew then is suddenly required to take manual control of the airplane, which (1) is not in proper trim, (2) is at a low margin-to-stall, and (3) has significantly degraded aerodynamic performance.

2. As pointed out by the NTSB, and acknowledged by the FAA, some autopilot failures can result in changes in attitude at rates that may be imperceptible to the flightcrew, and thus remain undetected until the airplane reaches significant attitude deviations.

Neither the certification standards nor the relevant advisory material currently contain actions or detailed guidance to address these types of scenarios. In light of this, the FAA finds it necessary and appropriate to provide additional guidelines for the provision of design features needed to enable flightcrew control and awareness of the unintended changes of speed and attitude during the operation of the autopilot system. This information, presented here in the form of a general statement of policy, clarifies, details, and formally states items that the FAA:

- Assumes concerning the flightcrew's awareness capability;
- Employs or accepts on an on-going basis in making compliance findings relative to autopilot systems; and
- Considers frequently in the development of a means to prevent recurrences of the accident/incident scenarios described previously, or to enable an appropriate and timely response to other situations that could result in similar circumstances.

Effect of General Statement of Policy

Much of the information presented has been developed from service experience garnered and flightcrew conventions practices throughout the years since the guidance contained in AC 25.1329–1A was published in 1968. The FAA has assembled this information and is presenting it in this general statement of policy as a set of "guidelines" that are appropriate for use with § 25.1329 for autopilot certification.

Additionally, as discussed previously, actions currently are underway to revise the applicable airworthiness standards (§ 25.1329) and associated advisory material (AC 25.1329–1A) to more fully address the autopilot system and other flight deck issues. Until then, the guidance provided in this general statement of policy would serve as a reference to assist in the certification of new autopilot systems.

However, the general policy stated in this document is not intended to establish a binding norm; it does not constitute a new regulation and the FAA would not apply or rely upon it as a regulation. The FAA Aircraft Certification Offices (ACO) that certify transport category airplanes and/or the automatic pilot systems installed on them should generally attempt to follow this policy, when appropriate. However, in determining compliance with certification standards, each ACO has the discretion not to apply these guidelines where it determines that they are inappropriate. The ACO should coordinate with the Transport Airplane Directorate, for purposes of standardization, whenever the ACO determines that some deviation from this policy is appropriate. Applicants should expect that the certificating officials would consider this information when making findings of compliance relevant to new certificate actions. Applicants also may consider the material contained in this proposed policy statement as supplemental to that currently contained in AC 25.1329–1A when developing a means of compliance with the relevant certification standards.

Also, as with all advisory material, this statement of policy identifies one means, but not the only means, of compliance.

Because this proposed general statement of policy only announces what the FAA seeks to establish as policy, the FAA considers it to be an issue for which public comment is appropriate. Therefore, the FAA requests comment on the following proposed general statement of policy relevant to certification standards for autopilot systems.

For the convenience of the reader, this proposed general statement of policy has been formatted in outline form.

General Statement of Policy

1. General

1.a. Operational experience has shown that flightcrews may not have adequate awareness of potentially hazardous aircraft states or adequate capability to anticipate sudden, unexpected actions of the autopilot. In this regard, the autopilot design should take into consideration conditions that could create hazardous deviations in the flight path, specifically:

- Conditions that could make continued autopilot operation unsafe, or
- Conditions that could cause manual control of an upset following autopilot disengagement to require exceptional piloting skill or alertness. (Refer to 14 CFR § 25.1329(f), "Automatic Pilot System".)

Note that automatic disengagement may not be the safest autopilot response for all cases, particularly with trim conditions that could lead to a significant upset.

1.b. If automatic functions are provided that may be used with the autopilot (e.g., automatic thrust control or yaw damper), and use of the autopilot is permitted with any of these functions inoperative, then the design of the autopilot should comply with the provisions of this general policy statement and Advisory Circular 25.1329–1A, "Automatic Pilot Systems Aproval" with these functions operative and inoperative.

1.c. The auto pilot should perform its intended function in all configurations in which it may be used throughout all appropriate maneuvers and environmental conditions, including turbulence and icing, unless an appropriate operating limitations or statement is included in the Airplane Flight Manual.

2. Definitions

2.a. The term *autopilot* is synonymous with the term *automatic pilot*. The term autopilot includes the sensors, computers, power supplies, servo-motors, servo-actuators, and associated wiring necessary for its function. It includes any displays and controls necessary for the pilot to manage and supervise the system.

2.b. The term *autothrust* is synonymous with the term *autothrottle* or *automatic throttle control*.

2.c. The term *hazardous flight path deviations* includes deviations from the intended flight path that may lead to a hazardous state, aircraft attitude and attitude rates that will place the airplane in a hazardous state, and extreme high and low energy conditions that place the airplane in a hazardous state.

2.d. The term *extemely improbable* is defined as the average probability per flight hour of the occurrence of an event (e.g., a failure condition) which is on the order of 1×10^{-9} or less. Catastrophic failure conditions must be extremely improbably (ref. § 25.1309(b)(1)).

2.e. The term *warning* is defined as an indication for a hazard requiring immediate corrective action by the flightcrew.

2.f. The term *caution* is defined as an indication for an event requiring immediate crew awarness and possibly requiring subsequent timely corrective crew action.

3. Design, Installation, and Maintenance

3.a. The autopilot system design should not possess characteristics, in normal operation or when failed, that would degrade safety or lead to an unsafe condition, unless such failures can be limited by design or the effects can be limited and mitigated by the pilot response within a reasonable time. The allowable probability of any failure should be based on its safety effects in accordance with the requirement of § 25.1309.

3.b. Adequate precautions should be taken in the design process, and adequate procedures should be specified in the maintenance manual, to prevent the incorrect installation, connection, or adjustment of parts of the autopilot if such errors would create a hazard to the airplane (e.g., torque clutches or limit switches with a range

of adjustment such that maladjustment could be hazardous).

3.c. The autopilot should be designed and installed so that the tolerances demonstrated during certifcation tests can be maintained in service.

4. System Response

4.a. The autopilot should not cause nuisance oscillations, undue control activity, or sudden large attitude changes, especially, when configuration or power changes are taking place. All maneuvers should be accomplished smoothly, accurately, and in a manner similar to normal pilot control.

4.b. The autopilot should not command a maneuver resulting in an unsafe attitude such that the pilot, without using exceptional skill or strength, cannot safely take over control of the airplane.

4.c. The engagement of the autopilot should be transient-free in both steady and dynamic conditions.

4.d. Except for failure conditions that are shown to be extremely improbable, the pilot should be able to disengage the autopilot at any time without unacceptable out-of-trim forces. Forces on the manual controls, that result from an out-of-trim condition occurring after autopilot disconnect, are considered unacceptable if the sudden application of these forces:

- Require exceptional piloting skill, alertness, or strength; and
- Risk exceeding the airplane limit loads.

These forces should be less than the maximum one-hand force limits specified in § 25.143(c) ("Controllability and maneuverability, General").

4.e. Any automatic system disengagement of the autopilot should not result in an unsafe attitude, attitude-rate, or energy condition such that the pilot, without using exceptional skill or strength, cannot safely take over control of the airplane.

4.f. Transients occurring during autopilot disengagement in normal conditions, including operations at the boundaries of the normal operational parameters, should not cause unacceptable airplane responses. An airplane response is unacceptable if the flightcrew cannot return the airplane to its normal flight condition under full manual control:

- Without exceeding the loads or speed limits appropriate to the flight condition,
- Without engaging in any dangerous maneuver during recovery, and
- Without forces greater than those given in § 25.143(c).

5. Controls, Displays, and Alerting

5.a. Unless the probability of failure of the quick-disconnect button on the control wheel, or equivalent, is shown to be extremely improbable, an alternative means of disengagement, that is readily accessible in flight, should be provided.

5.b. The controls, displays, and alerts should be designated to minimize crew errors.

5.c. Mode, state, status, and malfunction indications should be presented in a manner compatible with the procedures and assigned tasks of the flightcrew. The indications should be grouped in a logical and consistent manner and be visible from each pilot's station under all expected lighting conditions.

5.d. *Autopilot Disconnect Warning*:

5.d.(1) Disengagement of the autopilot, whether intended by the pilot or not, should trigger both an aural and visual warning during any phase of flight, since immediate pilot action is required.

5.d.(2) The aural alert associated with the autopilot disconnect should be unique and distinct. The aural alert should be cancelable by the pilot pushing the quick-disconnect button on the control wheel or stick. The aural alert should sound until canceled by the pilot, except that a minimum cycle should sound. If the autopilot is disengaged by means of the quick-disconnect button, then an additional push of this button should be required to cancel the aural alert.

5.e. An aural alert and visual caution should be provided to the flightcrew for conditions that:

- Could make continued autopilot operation unsafe, or
- Could cause the manual control of an upset following autopilot disengagment to require exceptional piloting skill or alertness.

5.e.(1) The flightcrew alert should be generated before the conditions lead to an automatic disconnect, unsafe attitude, or stall warning.

5.e.(2) Whenever possible, the alert should provide the flightcrew enough time to be prepared with hands of the controls and to take appropriate corrective action (e.g., change thrust, set trim, disconnect autopilot).

5.e.(3) The thresholds for triggering the flightcrew alert should be designed carefully, with consideration for undue distraction (e.g., nuisance alerts) and potential "rippling" of multiple alerts triggered by the same or related conditions, which could mask or override the sounding of this alert.

5.e.(4) Conditions that should be considered for the flightcrew alert, and possibly automatic disengagement, include, but are not limited to:

- Limits of autopilot control authority;
- Out-of-trim;
- Excessive trim rates;
- Airspeeds greater than those intended for autopilot operations;
- Low speeds, (less than 1.2 V_{S1} for the current flap configuration, but greater than 1.07 V_S); and
- Bank and pitch angles beyond those intended for autopilot operation.

5.f. The means provided to comply with § 25.1329(h) (mode indications when coupled with airborne navigation equipment) should also give an appropriate indication when:

5.f.(1) The autopilot cannot engage the mode selected by the flightcrew; and

5.f.(2) The system automatically makes a mode change or mode disengagement that is considered operationally significant and, perhaps, unexpected. (For example, a change from altitude capture to altitude hold is significant, but expected; while a change from vertical path mode to vertical speed mode is both operationally significant and unexpected.)

5.g. If the autopilot has envelope limiting or protection capability, the system should trigger an alert to indicate to the pilots when envelope limiting or protection is invoked.

6. Engagement

If a flight director is available and active, the autopilot should engage in the same models as the flight director and provide consistent flight path guidance.

7. Airplane Flight Manual

Operating procedures for use with the autopilot should be established (see § 25.1585 ("Operating Procedures")) and documented. In this regard, the Airplane Flight Manual (AFM) should:

7.a. Identify conditions under which the autopilot will or will not engage, will disengage, or will revert to another mode. These conditions should include, but not be limited to:

7.a.(1) engagement above and below design speeds,

7.a.(2) engagement in a specific mode versus speed,

7.a.(3) engagement in a specific configuration versus speed,

7.a.(4) engagement in a specific configuration versus speed,

7.a.(5) engagement asymmetric configuration,

7.a.(6) engagement with asymmetric thrust,

7.a.(7) disengagement due to excessive low and high energy conditions, and

7.a.(8) disengagement due to forces applied to the control wheel or stick by the pilot.

7.b. Define the circumstances in which the autopilot should be engaged, disengaged, or used in a mode with greater or lesser authority.

7.c. Identify appropriate combinations of autopilot and manual/autothrust usage.

7.d Identify inappropriate combinations of autopilot and manual/autothrust usage.

7.e. Define the characteristics and principles of the autopilot design that have operational safety considerations.

7.f. Identify all prohibitions in the use of the autopilot regarding:

7.f.(1) loss or degradation of equipment,

7.f.(2) specific phases of flight,

7.f.(3) specific environmental conditions (e.g., icing, turbulence), and

7.f.(4) specific operational conditions (e.g., low or high speed, extreme attitudes).

7.g. Identify all limitations in the use of the autopilot regarding:

7.g.(1) loss or degradation of equipment,

7.f.(2) specific phases of flight,

7.f.(3) specific environmental conditions (e.g., icing, turbulence), and

7.f.(4) specific operational conditions (e.g., low or high speed, extreme attitudes), and

7.g.(5) unique indications of limiting conditions (e.g., unusual lateral trim or a "RETRIM ROLL" message due to icing conditions).

Conclusion

As discussed previously, the FAA intends to update 14 CFR 25.1329 and associated Advisory Circular (AC) 25.1329–1A to more fully address the autopilot issues found in this proposed general statement of policy and others. Until then, this general statement of policy, when finalized, will serve as a reference to supplement § 25.1329, and for use in the certification of new autopilot systems. Please inform the appropriate flight controls and systems designated engineering representatives (DER) of this proposed general statement of policy.

Issued in Renton, Washington, on August 30, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–23394 Filed 9–8–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Dubuque County, Iowa/ Jo Daviess County, Illinois.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent (cancellation).

SUMMARY: The FHWA is issuing this notice to advise the public that the Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) for a proposed highway capacity improvement project in Dubuque County, Iowa and Jo Daviess County, Illinois is cancelled. The NOI was originally published in the **Federal Register** on December 11, 1998. The cancellation is based on a decision to complete an Environmental Assessment (EA) for this project.

FOR FURTHER INFORMATION CONTACT: Rebecca Hiatt, Environmental Coordinator, Federal Highway Administration, 105 Sixth Street, Ames, Iowa 50010–6337, Telephone (515) 233–7300. Roger Larsen, Project Manager, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010, Telephone (515) 239–1791.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202)512–1661. Internet users may reach the office of the **Federal Register**'s home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at *http://www.access.gpo.gov/nara.*

Background

The NOI was originally published in the **Federal Register** on December 11, 1998 63FR68498. The cancelled EIS included alternatives located in a new corridor south of Dubuque and East Dubuque. Any alternative in this location would have significant environmental impacts. However, the study alternatives have been reduced to alignments following existing U.S. Route 20 (U.S. 20), and potentially significant environmental impacts have been avoided. Therefore, the Federal Highway Administration along with Federal and State resource agencies, has determined that an Environmental Assessment is the appropriate investigative process for this project. The FHWA, in cooperation with the Iowa Department of Transportation, will prepare an EA on a proposal to improve the capacity of U.S. 20 in Dubuque County, Iowa and Jo Daviess County, Illinois.

Comments or questions concerning this proposed action and EA should be directed to the FHWA or Iowa DOT at the addresses provided in the caption **FOR FURTHER INFORMATION CONTACT.**

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(Authority: 23 U.S.C. 315; 49 CFR 1.48)

Issued on: August 30, 1999.

Bobby W. Blackmon,

Division Administrator.

[FR Doc. 99–23405 Filed 9–8–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5683; Notice 2]

Dan Hill & Associates, Inc.; Grant of Application for Renewal of Temporary Exemption From Federal Motor Vehicle Safety Standard No. 224

For the reasons explained below, we are granting the application by Dan Hill & Associates, Inc. ("Dan Hill"), of Norman, Oklahoma, for a renewal of its existing temporary exemption from Motor Vehicle Safety Standard No. 224, *Rear Impact Protection.* As it did in applying for the existing exemption, Dan Hill asserts that compliance would cause substantial economic hardship and that it has tried in good faith to comply with the standard.

We published notice of receipt of the application in the **Federal Register** on May 19, 1999, and afforded an opportunity for comment 64 FR 27353). No comments were received.

We granted Dan Hill a 1-year temporary exemption from Standard No. 224 on January 26, 1998 (63 FR 3784). The exemption was to expire on February 1, 1999, but Dan Hill filed a timely application for renewal. Under 49 CFR 555.8(e), the timely filing of a renewal application had the effect of automatically extending the exemption until we make a decision on the application. The company has requested an extension of this exemption until February 1, 2001.

The information below is based on material from Dan Hill's original and renewal applications.

Why Dan Hill Says That it Needs to Renew its Exemption.

Dan Hill manufactures and sells a horizontal discharge trailer ("Flow Boy") that is used in the road construction industry to deliver asphalt and other road building materials to the construction site. The Flow Boy is designed to connect with and latch onto various paving machines ("pavers"). The Flow Boy, with its hydraulically controlled horizontal discharge system, discharges hot mix asphalt at a controlled rate into a paver which overlays the road surface with asphalt material.

Standard No. 224 required, effective January 26, 1998, that all trailers with a GVWR of 4536 Kg or more, including Flow Boy trailers, be fitted with a rear impact guard that conforms to Standard No. 223, *Rear impact guards*. Installation of the rear impact guard will prevent the Flow Boy from connecting to the paver. Thus, Flow Boy trailers will no longer be functional and contractors will be forced to use standard dump body trucks or trailers with their inherent limitations and safety risks.

Why Dan Hill Says That Compliance Would Cause it Substantial Economic Hardship and That it has Tried in Good Faith to Comply With Standard No. 224.

At the time of its application for the existing exemption, Dan Hill told us that it had manufactured 81 Flow Boy trailers in 1996 (plus 21 other trailers). Its production in the 12-month period preceding its application for renewal was "130 units for the domestic market and 35 units for the international market."

Dan Hill originally asked for a year's exemption in order to explore the feasibility of a rear impact guard that would allow the Flow Boy trailer to connect to a conventional paver. It has concentrated its efforts this past year in investigating the feasibility of a retractable rear impact guard, which will enable Flow Boys to continue to connect to pavers.

In the absence of an exemption, Dan Hill originally asserted that approximately 60 percent of its work force would have to be laid off; it now argues that failure to extend its exemption would ultimately cause a lay off of "approximately 70 percent" of its work force. If the exemption were not renewed, Dan Hill's gross sales would decrease by $8,273,117. Its cumulative net income after taxes for the fiscal years 1995, 1996, and 1997 was $303,303. It projected a net income of $356,358 for fiscal year 1998.

At the time of its original application, its studies show that the placement of the retractable rear impact guard would likely catch excess asphalt as it was discharged into the pavement hopper. Further, the increased cost of the Flow Body would likely cause contractors to choose the cheaper alternative of dump trucks. Finally, the increased weight of the retractable rear impact guard would significantly decrease the payload of the Flow Boy.

Dan Hill sent its Product Specialist to Germany in 1994 to view underride protection guards installed by a German customer on Flow Boy trailers but the technology proved inapplicable because of differences between German and American pavers. Manufacturers of paving machines are not interested in redesigning their equipment to accommodate a Flow Boy with a rear impact guard. Dan Hill contacted a British manufacturer of a retractable rear impact guard but the information received by the time of its initial application did not look encouraging.

During the time that the exemption has been in effect, Dan Hill has continued its efforts to locate a source for a retractable rear impact guard, locating one in Europe which "was in the process of designing a retractable guard that would meet Standard No. 223 specifications and attach to the Flow Boy trailer while allowing the Flow Boy to attach to a paver." However, the European retractable rear impact guard, which was of a "swing out" design, raised problems of worker safety, reduced payload because of the guard's weight, accumulation of asphalt paving material on the guard, and prohibitive costs.

Dan Hill is now examining the feasibility of a "swing in" guard. It is working with an English source to develop a guard that will comply with Standard No. 223. Dan Hill will then install the guard on several Flow Boy trailers to determine whether further design modifications are required. It anticipates full compliance at the end of a further exemption of 2 years.

Why Dan Hill Says That a Temporary Exemption Would be in the Public Interest and Consistent With Objectives of Motor Vehicle Safety

Dan Hill believes that an exemption would be in the public interest and consistent with traffic safety objectives because the Flow Boy aids in the construction of the national road system. Flow Boy spends very little of its operating life on the highway and the likelihood of its being involved in a rear-end collision is minimal. In addition, the design of the Flow Boy is such that the rear tires act as a buffer and reduce the likelihood of impact with the trailer.

Our Findings and Decision

As the exemption renewal petitions by Dan Hill and by Red River Manufacturing, Inc. (see 64 FR 10737) demonstrate, manufacturers of horizontal discharge trailers continue to find it difficult to develop a retractable rear impact guard that complies with Standard No. 223, and to fit it to its trailers to comply with Standard No. 224. During the past year, Dan Hill has investigated the feasibility of a "swing-out" design, which presented problems of an accumulation of asphalt paving material on the guard. Presently, it is examining a "swing-in" guard, and working with an English source to develop it. It anticipates full compliance by February 1, 2001. Dan Hill's yearly net income is substantially less than half a million dollars under the best of circumstances. Were the exemption denied, its estimated loss of gross sales exceeding $8,273,117 would appear to create a net loss of some magnitude.

Given the fact that Dan Hill and its principal competitor Red River dominate the horizontal asphalt discharge trailer market, and that both are experiencing the same difficulties in achieving compliance, it is in the public interest to maintain the existing level of competition by affording equal treatment to both companies. We note, also, that the risk to safety is minimized to the extent that road construction trailers spend comparatively little of their operating life traveling on the highways.

Accordingly, for the reasons set forth above, we hereby find that compliance with Standard No. 224 would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with Standard No. 224, and that an exemption would be in the public interest and consistent with the objectives of traffic safety. NHTSA Temporary Exemption No. 98–1 from Federal Motor Vehicle Safety Standard No. 224, Rear Impact Protection, applicable to Flow Boy horizontal discharge construction trailers, is hereby extended to expire on February 1, 2001. That date is slightly more than five years after Standard No. 224 was issued, and NHTSA does not anticipate providing further extensions of exemptions from compliance with Standard No. 224.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on September 1, 1999.

Ricardo Martinez,

Administrator.

[FR Doc. 99–23427 Filed 9–8–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–98–3355; Notice 4]

Red River Manufacturing, Inc.; Grant of Application for Renewal of Temporary Exemption From Federal Motor Vehicle Safety Standard No. 224

For the reasons explained below, we are granting the application by Red River Manufacturing, Inc., of West Fargo, North Dakota, for a renewal of NHTSA Temporary Exemption No. 98–3 from Motor Vehicle Safety Standard No. 224, *Rear Impact Protection*. Red River applied again on the basis that "compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard." 49 CFR 555.6(a).

We published notice of receipt of the application on March 5, 1999, and afforded an opportunity for comment (64 FR 10737).

We granted Red River a 1-year temporary exemption from Standard No. 224 on April 1, 1998 (63 FR 15909). The exemption was to expire on April 1, 1999, but Red River filed a timely application for renewal, and, as provided by 49 CFR 555.8(e), the exemption will continue in effect until we make a decision on its application. The company has requested an extension of this exemption until April 1, 2002. The discussion that follows is based on information contained in Red River's application.

Why Red River Says That it Needs to Renew its Temporary Exemption

On April 1, 1998, we granted Red River a temporary exemption of one year from Standard No. 224. See 63 FR 15909 for our decision.

Among other kinds of trailers, Red River manufactures and sells two types of horizontal discharge trailers which discharge their contents into hoppers, rather than on the ground. This makes it impractical to comply with Standard No. 224 by using a fixed rear impact guard. One type of horizontal discharge trailer is used in the road construction industry to deliver asphalt and other road building materials to the construction site. The other type is used to haul feed, seed, and agricultural products such as sugar beets and potatoes, from the fields to hoppers for storage or processing. Both types are known by the name "Live Bottom."

Standard No. 224 requires, effective January 26, 1998, that all trailers with a GVWR of 4536 Kg or more, including Live Bottom trailers, be fitted with a rear impact guard that conforms to Standard No. 223, *Rear impact guards*. Red River, which manufactured 225 Live Bottom trailers of all kinds in the 12 months preceding the filing of its application on December 22, 1998, has asked for a renewal of its exemption until April 1, 2002, in order to continue its efforts to develop a rear impact guard that conforms to Standard No. 223 and can be installed in compliance with Standard No. 224, while retaining the functionality and price-competitiveness of its trailers.

Why Red River Says That Compliance Would Cause it Substantial Economic Hardship

Live Bottoms accounted for almost half of Red River's production in 1997. In the absence of an exemption, Red River believes that approximately 60 percent of its work force would have to be laid off. Its projected loss of sales is $8,000,000 to $9,000,000 per year (net sales have averaged $14,441,822 over its 1995, 1996, and 1997 fiscal years).

We require hardship applicants to estimate the cost required to comply with a standard, as soon as possible, and at the end of a one, two, or three year exemption period. Red River estimates that even a 3-year exemption will require a retail price increase that will result in a loss of 35 percent of Live Bottom sales. Further, "more than 50 percent of available engineering time would be required for compliance and related modifications in this time frame, resulting in a significant reduction in support for non-Live Bottom products, and a 5% decline in non-Live Bottom sales."

Why Red River Says That it Has Tried to Comply With the Standard in Good Faith

In its initial application for a temporary exemption, Red River explained that, in mid 1996, its design staff began exploring options for compliance with Standard No. 224. Through a business partner in Denmark, the company reviewed the European rear impact protection systems. Because these designs must be manually operated by ground personnel, Red River decided that they would not be acceptable to its American customers. Later in 1996, Red River decided to investigate powered retractable rear impact guards. The initial design could not meet the energy absorption requirements of Standard No. 223. The company then investigated the use of pneumatic-over-mechanical retractable rear impact guards, and developed a prototype design which it began testing in the field in May 1998. This testing is disclosing a number of problems as yet unresolved. In the meantime, Red River consulted three commercial suppliers of underride devices but none produces a guard that could be used on the Live Bottoms.

Red River intends to continue its compliance efforts while an exemption is in effect, and believes that three years will enable it to conclude definitively whether it is feasible to design and manufacture a compliant rear guard that meets the requirements of its customers, and, if it is not feasible, to petifion the agency for rulemaking to exclude Live Bottoms from Standard No. 224.

Red River was able to conform its other trailers with Standard No. 224.

Why Red River Says That Exempting it Would Be Consistent with the Public Interest and Objectives of Motor Vehicle Safety

In its initial application, Red River argued that an exemption would be in the public interest and consistent with traffic safety objectives because the Live Bottom "can be used safely where it would be hazardous or impractical to use end dump trailers, such as on uneven terrain or in places with low overhead clearances." These trailers are "valuable to the agricultural sector" because of the advantages they offer in the handling of relatively fragile cargo. An exemption "would have no adverse effect on the safety of the general public" because the Live Bottom spends very little of its operating life on the highway and the likelihood of its being involved in a rear-end collision is minimal. In addition, the design of the Live Bottom is such that the rear tires act as a buffer and reduce the likelihood of impact with the trailer.

Red River reiterates these arguments in its application for renewal of its temporary exemption. It adds that it knows of no rear end collisions involving horizontal discharge trailers that have resulted in injuries, nor any instances in which there has been an intrusion by a horizontal discharge trailer into the passenger compartment of a vehicle impacting the rear of such a trailer.

Comments Received From the Public on the Application

We received four comments on Red River's application for renewal of its temporary exemption. Two commenters

opposed granting the renewal, and two commenters supported it.

Timpte Trailer Co. of David City, Nebraska, identified itself as a manufacturer of bulk commodity trailers "with the same limited engineering resources" as Red River, and opposed granting Red River's request. Timpte related that it was able to design a "live bottom" trailer with a telescoping rear underride protection system "which complied with FMVSS 224 on its original effective date." However, this added to the trailer's weight and cost, and Timpte says that the exemptions granted Red River and two other "live bottom" manufacturers placed Timpte at an unfair competitive advantage. As a consequence, it had to suspend production of its "live bottom" trailer and release approximately 20 percent of its workforce. Timpte argues that Red River has had adequate time to comply with the underride requirement, and that Timpte's system proves that this type of trailer can be equipped with a workable rear underride protection system that meets Federal requirements. It "strongly objects" to extending Red River's exemption.

E.D. Entyre & Co. of Oregon, Illinois, filed a similar comment in opposition. It designed a "live bottom" trailer with a retractable rear underride guard which it introduced in August 1998. The total engineering and test time spent on this retractable design "was approximately two man months and the mechanism has a manufacturing cost of approximately $500." The company believes that the extension should be denied "since a solution has been shown to be technically feasible," and complying companies have been placed at a competitive disadvantage.

Red River's application was supported by Dan Hill & Associates, Inc., which has been producing "live bottom" trailers pursuant to a temporary exemption we gave it in 1998, and Robert J. Crail, Transportation Engineering Consultant. Dan Hill states that it and Red River have dominated the horizontal flow discharge trailer market for the last few decades. In view of this experience, and understanding that Entyre has produced less than 20 complying "live bottom" trailers, Dan Hill comments that "Entyre's lack of experience in the horizontal discharge market [may have] erroneously lead Entyre to believe that it has successfully complied with a very complex issue." In any event, Dan Hill further comments that Entyre is a far larger company than it and Red River, with "considerably more resources to allocate to research and development." With respect to Timpte, Dan Hill comments that Timpte does not manufacture a horizontal discharge trailer for the road construction industry and thus does not have the problems associated with the asphalt paver/trailer interface.

Mr. Crail reiterates his previous support of Red River. He has examined one of its trailers and is convinced "that it will take at least an additional three years for Red River to determine whether it is feasible to manufacture an impact guard for these trailers." He believes that the impact of an exemption upon safety will be minimal, given the small number of trailers that would be covered by an exemption and the fact that "the Live Bottom trailers are used mostly off roads."

Our Findings and Decision

In granting a temporary exemption, we must find that a manufacturer has made a good faith effort to comply with the standard from which it has requested exemption. While the fact that another manufacturer may have achieved compliance indicates that a particular technological problem is not insoluble, it does not mean that a petitioner has failed to make a good faith compliance effort. It does indicate, however, that, during the period of any renewed exemption, a petitioner should carefully examine these solutions for applicability to its own product. The fact that Timpte and Entyre have commented that their "live bottom" trailers comply with Standard No. 224 should alert Red River that an alternative may exist to the prototype design that it began testing in May 1998 and which has disclosed a number of problems. We note that Red River's principal competitor, Dan Hill & Associates, Inc., believes that it will have a complying "swing-in" guard by February 1, 2001. For these reasons, we do not believe that Red River has sustained its request for an exemption for a period as long as April 1, 2002, and we are providing one commensurate with the extension granted Dan Hill, until February 1, 2001.

In the absence of extending the exemption, it appears that Red River could not produce trailers that have accounted for over 50 percent of its net sales, with the accompanying dislocation of its work force that this would entail. Given the apparent minimal risk to safety presented by a trailer that spends comparatively little of its life being operated on the public roads (construction trailers) and in which the rear tires can act as a buffer in the absence of an impact guard (agricultural trailer), and the public interest in maintaining full employment, Red River has met its burdens under the statutory procedures.

Accordingly, for the reasons set forth above, we hereby find that compliance with Standard No. 224 would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with Standard No. 224, and that an exemption would be in the public interest and consistent with the objectives of traffic safety. NHTSA Temporary Exemption No. 98–3 from Federal Motor Vehicle Safety Standard No. 224, *Rear Impact Protection*, applicable to horizontal discharge trailers, is hereby extended to expire on February 1, 2001. That date is slightly more than five years after Standard No. 224 was issued, and NHTSA does not anticipate providing further extensions of exemptions from compliance with Standard No. 224.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on: September 1, 1999.

Ricardo Martinez,

Administrator.

[FR Doc. 99–23428 Filed 9–8–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 552 (Sub-No. 3)]

Railroad Revenue Adequacy—1998 Determination

AGENCY: Surface Transportation Board.

ACTION: Notice of decision.

SUMMARY: On September 9, 1999, the Board served a decision announcing the 1998 revenue adequacy determinations for the Nation's Class I railroads. One carrier (Illinois Central Railroad Company) is found to be revenue adequate.

EFFECTIVE DATE: This decision is effective September 9, 1999.

FOR FURTHER INFORMATION CONTACT: Leonard J. Blistein, (202) 565–1529. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: The Board is required to make an annual determination of railroad revenue adequacy. A railroad will be considered revenue adequate under 49 U.S.C. 10704(a) if it achieves a rate of return on net investment equal to at least the current cost of capital for the railroad industry for 1998, determined to be 10.7% in *Railroad Cost of Capital—1998*, STB Ex Parte No. 558 (Sub-No. 2) (STB served May 17, 1999). In this proceeding, the Board applied the revenue adequacy standards to each Class I railroad, and it found one carrier, Illinois Central Railroad Company, to be revenue adequate.

Additional information is contained in the Board's formal decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Suite 210, 1925 K Street, N.W., Washington, DC 20423. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.] The decision is also available on the Board's internet site, www.stb.dot.gov. Environmental and energy considerations.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 603(b), we conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. The purpose and effect of the action is merely to update the annual railroad industry revenue adequacy finding. No new reporting or other regulatory requirements are imposed, directly or indirectly, on small entities.

Decided: September 1, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 99–23438 Filed 9–8–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Environmental Hazards, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Pub. L. 92–463 that a meeting of the Veterans; Advisory Committee on environmental Hazards will be held on Wednesday and Thursday, October 6–7, 1999, in room 203 of VA Central Office, 810 Vermont Avenue, N.W., Washington, DC 20420. The meeting will convene at 9:00 a.m. and adjourn at 5:00 p.m. on both days.

The purpose of the meeting is to review information relating to the health effects of exposure to ionizing radiation. The major items on the agenda for both days will be discussions and analyses of medical and scientific papers concerning the health effects of exposure to ionizing radiation. On the basis of their analyses and discussions, the Committee may make recommendations to the Secretary concerning diseases that are the result of exposure to ionizing radiation. The agenda for the second day will include planning future Committee activities and assignment of tasks among the members.

The meeting is open to the public on both days. Those who wish to attend or submit written questions or prepared statements for review by the Committee should contact Ersie Farber-Collins of the Department of Veterans Affairs, Compensation and Pension Service, 810 Vermont Avenue, N.W., Washington, DC 20420, prior to September 27, 1999. Ms. Farber-Collins may also be reached at 202–273–7268.

Dated: August 30, 1999.

By Direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 99–23406 Filed 9–8–99; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 64, No. 174
Thursday, September 9, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 261, 264, 265, 268, 271, and 302

[SWH–FRL–6413–4]

RIN 2050–AD85

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Chlorinated Aliphatics Production Wastes; Land Disposal Restrictions for Newly Identified Wastes; and CERCLA Hazardous Substance Designation and Reportable Quantities

Correction

In proposed rule document 99–20753, beginning on page 46476, in the issue of Wednesday, August 25, 1999, make the following correction(s):

On page 46495, remove the heading for Table III-4, and the tables designated as Table III-4A and Table III-4B, and add Table III-5A and Table III-5B as follows:

Table III-5. Summary of Excess Lifetime Arsenic Cancer Risks Attributable to Management of EDC/VCM Sludge in An Offsite Landfill

Table III-5A. Deterministic Risk Results

Receptor	HE	CT	High End Parameters
Farmer	3E-05	9E-07	Distance To Receptor Well and Exposure Duration
Child of Farmer/Child of Resident	9E-06	6E-07	
Adult Resident/Gardener/Fisher	2E-05	8E-07	

HE = High End; CT = Central Tendency

Time for Peak concentration to reach receptor is approximately 8800 years (HE), 9600 years (CT)

Table III-5B. Probabilistic Risk Results

Receptor	Percentile				
	50th	90th	95th	97.5th	100th
Farmer	2E-08	3E-06	8E-06	1E-05	3E-04
Adult Resident/Gardener/Fisher	2E-08	3E-06	6E-06	1E-05	2E-04
Child Resident					
Age 1-5	1E-08	2E-06	5E-06	9E-06	1E-04
Age 6-11	1E-08	2E-06	4E-06	8E-06	1E-04
Age 12-18	9E-09	1E-06	3E-06	6E-06	9E-05
Farm Child					
Age 1-5	3E-08	4E-06	9E-06	2E-05	2E-04
Age 6-11	2E-08	3E-06	6E-06	1E-05	2E-04
Age 12-18	1E-08	2E-06	5E-06	1E-05	1E-04

[FR Doc. C9–20753 Filed 9–8–99; 8:45 am]
BILLING CODE 1505–01–D

federal register

Thursday
September 9, 1999

Part II

Department of the Interior

Fish and Wildlife Service

50 Parts 25, 26 and 29

Proposed Compatibility Regulations Pursuant to the National Wildlife Refuge System Improvement Act of 1997 and Draft Compatibility Policy Pursuant to the National Wildlife Refuge System Improvement Act of 1997; Proposed Rule and Notice

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 25, 26, and 29

1018–AE98

Proposed Compatibility Regulations Pursuant to the National Wildlife Refuge System Improvement Act of 1997

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We propose to establish in regulations, the process for determining whether or not a use of a national wildlife refuge is a compatible use. The National Wildlife Refuge System Improvement Act of 1997 (NWRSIA–1997), that amends the National Wildlife Refuge System Administration Act of 1966 (NWRSAA–1966) requires this rulemaking. Published concurrently in this issue of the **Federal Register** is our draft compatibility policy describing in more detail the process for determining whether or not a use of a national wildlife refuge is a compatible use.

DATES: Submit comments on or before November 8, 1999.

ADDRESSES: Send comments concerning this proposed compatibility regulation via mail, fax or email to: Chief, Division of Refuges, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, Virginia 22203; fax (703) 358–2248; e-mail Compatibility__Regulations__Comments@fws. gov.

FOR FURTHER INFORMATION CONTACT: Jim Kurth, Chief, Division of Refuges, U.S. Fish and Wildlife Service, Telephone (703) 358–1744.

SUPPLEMENTARY INFORMATION: The NWRSIA–1997 amends and builds upon the NWRSAA–1966, providing an "Organic Act" for the National Wildlife Refuge System. It clearly establishes that wildlife conservation is the singular National Wildlife Refuge System Mission, provides guidance to the Secretary of the Interior (Secretary) for management of the National Wildlife Refuge System, provides a mechanism for national wildlife refuge planning, and gives Refuge Managers uniform direction and procedures for making decisions regarding wildlife conservation and uses of the National Wildlife Refuge System.

The NWRSAA–1966 required the Secretary, before permitting uses, to ensure that those uses are compatible with the purposes of the national wildlife refuge. We built this legal requirement into our policy and regulation. For 32 years, the compatibility standard for national wildlife refuge uses has helped us manage national wildlife refuge lands sensibly and in keeping with the general goal of putting wildlife conservation first. The NWRSIA–1997 maintains the compatibility standard as provided in the NWRSAA–1966, provides significantly more detail regarding the compatibility standard and compatibility determination process, and requires that we promulgate the compatibility process in regulations. These regulations will ensure that compatibility becomes a more effective conservation standard, more consistently applied across the entire National Wildlife Refuge System, and more understandable and open to involvement by the public.

Compatibility and the NWRSIA–1997

The NWRSIA–1997 includes a number of provisions that specifically address compatibility. The following is a summary of those provisions and how they apply to us.

We will not initiate or permit a new use of a national wildlife refuge or expand, renew, or extend an existing use of a national wildlife refuge, unless we have determined that the use is a compatible use and that the use is not inconsistent with public safety. We may make compatibility determinations for a national wildlife refuge concurrently with the development of a Comprehensive Conservation Plan.

On lands added to the National Wildlife Refuge System after March 25, 1996, we will identify, prior to acquisition, withdrawal, transfer, reclassification, or donation of any such lands, existing compatible wildlife-dependent recreational public uses (if any) that we will permit to continue on an interim basis pending completion of a Comprehensive Conservation Plan for the national wildlife refuge.

We may authorize wildlife-dependent recreational uses on a national wildlife refuge when we determine they are compatible uses and are not inconsistent with public safety. We are not required to make any other determinations or findings to comply with the NWRSAA–1966 or the Refuge Recreation Act of 1962 (RRA–1962) for wildlife-dependent recreational uses to occur except for consideration of consistency with State laws and regulations.

Compatibility determinations in existence on the date of enactment of the NWRSIA–1997, October 9, 1997, will remain in effect until and unless modified. In addition, we will make compatibility determinations prepared during the period between enactment of the NWRSIA-1997 and the effective date of these compatibility regulations under the existing compatibility process. After the effective date of these regulations, we will make compatibility determinations and re-evaluations of compatibility determinations under the compatibility process in these regulations.

By October 9, 1999, we will issue final regulations establishing the process for determining whether or not a use of a national wildlife refuge is a compatible use. These regulations will:

1. Identify the refuge official responsible for making compatibility determinations;

2. Require an estimate of the time-frame, location, manner, and purpose of each use;

3. Require the identification of the effects of each use on national wildlife refuge resources and purposes of each national wildlife refuge;

4. Require that compatibility determinations be made in writing;

5. Provide for the expedited consideration of uses that will likely have no detrimental effect on the fulfillment of the affected national wildlife refuge's purposes or the National Wildlife Refuge System Mission;

6. Provide for the elimination or modification of any use as expeditiously as practicable after we make a determination that the use is not a compatible use;

7. Require, after an opportunity for public comment, reevaluation of each existing use, other than wildlife-dependent recreational uses, if conditions under which the permitted use change significantly or if there is significant new information regarding the effects of the use, but not less frequently than once every 10 years, to ensure that the use remains a compatible use. In the case of any use authorized for a period longer than 10 years (such as an electric utility right-of-way), the reevaluation will examine compliance with the terms and conditions of the authorization, not examine the authorization itself;

8. Require, after an opportunity for public comment, reevaluation of each existing wildlife-dependent recreational use when conditions under which the permitted use change significantly or if there is significant new information regarding the effects of the use, but not less frequently than in conjunction with each preparation or revision of a comprehensive conservation plan or at least every 15 years, whichever is earlier; and

9. Provide an opportunity for public review and comment on each evaluation of a use, unless we have already provided an opportunity during the development or revision of a Comprehensive Conservation Plan for the national wildlife refuge or have already provided an opportunity during routine, periodic determinations of compatibility for wildlife-dependent recreational uses.

Purpose of This Proposed Rule

The purpose of this proposed rule is to establish in regulation, the process for determining compatibility of proposed national wildlife refuge uses and procedures for documentation and periodic review of existing uses, and to ensure that we administer proposed and existing uses according to the compatibility provisions of the NWRSIA–1997. Published concurrently in this **Federal Register** is our draft compatibility policy, Part 603 Chapter 3 (draft) of the Fish and Wildlife Service Manual, which reflects this proposed rule and provides additional detail for each step in the compatibility determination process.

Specific Changes to 50 CFR Part 25

We are revising § 25.12(a) by adding 20 new definitions and revising 3 existing definitions. Of the 20 new definitions, the NWRSIA–1997 provides 11 ("compatible use," "conservation, and management," "Director," "fish, wildlife, and fish and wildlife," "National Wildlife Refuge System Mission, and Refuge System Mission," "plant," "purpose(s) of the refuge," "Secretary," "sound professional judgment," "State, and United States," and "wildlife-dependent recreational use, and wildlife-dependent recreation") and we developed 9 ("compatibility determination," "comprehensive conservation plan," "Refuge Manager," "refuge use, and use of a refuge," "refuge management economic activity," "refuge management activity," "Regional Director," "Service, and we," and "you"). The 3 existing definitions ("coordination area," "national wildlife refuge, and refuge" and "National Wildlife Refuge System, and Refuge System") that we are revising are provided in the NWRSIA–1997 and are not significantly different from the existing ones. These definitions are necessary to consistently determine compatibility of proposed national wildlife refuge uses.

We are revising and expanding § 25.21 in order to explain how we open and close a national wildlife refuge to public access and use, and how we continue to allow an existing use of a national wildlife refuge. Currently, this part only addresses closing national wildlife refuges. We are expanding this section because this is the most appropriate place in this subchapter to state not only how we close a national wildlife refuge but how we open a national wildlife refuge and continue a use on a national wildlife refuge. This revision of § 25.21 consolidates existing regulations but does not change existing regulations regarding how we open and close national wildlife refuges or continue uses on national wildlife refuges. The following is a discussion of the specific sections we are adding.

Paragraph (a) of § 25.21—When and how do we open and close areas of the National Wildlife Refuge System to public access and use or continue a use?—states our long-standing policy and regulation under the NWRSAA–1966 that presumes that national wildlife refuges are closed to public access and use until they are specifically opened to public access and use. Simply stated, the NWRSAA–1966 closes national wildlife refuges until we administratively open them. This section also states that we may open national wildlife refuges by a number of methods. Depending on the type of allowed use, the Refuge Manager has several ways to open a given national wildlife refuge. For example, to open a national wildlife refuge to hunting, we revise a list of refuges allowing hunting found at 50 CFR part 32, whereas to open a national wildlife refuge to wildlife observation we may do so by posting a sign at an appropriate location. This revised section does not change the various ways we currently open a national wildlife refuge.

Paragraph (b) of § 25.21 states that we cannot allow a use of a national wildlife refuge unless we first determine that the use is a compatible use, except in emergencies when we may temporarily allow uses to protect the public or wildlife. This comes directly from the NWRSIA–1997. In addition, this section states that the compatibility standard applies to the development and use of Alaska Native Claims Settlement Act, Section 22(g) village lands in Alaska national wildlife refuges. The Alaska Statehood Act of 1959 allowed the new state to select 104 million acres of Federal lands (outside of existing parks, national wildlife refuges, and military reservations) but left the matter of Native land claims "* * *" for either future legislative action or judicial determination." Passage of the Alaska Native Claims Settlement Act (ANCSA) (December 18, 1971) later settled Native land claims by providing a cash settlement over a number of years, together with 44 million acres to be selected from Federal public lands. Section 22(g) of ANCSA provides, that "[I]f a patent is issued to any Village Corporation for land in the National Wildlife Refuge System, the patent shall reserve to the United States the right of first refusal if the land is ever sold by the Village Corporation. Notwithstanding any other provision of this Act, every patent issued by the Secretary pursuant to this Act—which covers lands lying within the boundaries of a National Wildlife Refuge on the date of enactment of this Act shall contain a provision that such lands remain subject to the laws and regulations governing use and development of such Refuge." The legislative history of ANCSA 22(g) clearly illustrates the Congressional intent that the national wildlife refuge compatibility standard applies as a protection to the basic integrity of the pre-1971 refuge lands from which ANCSA village conveyances may be made. S. Rep. No. 92–405, at 34 in a section-by-section analysis explains: "[T]his subsection provides that every patent issued by the Secretary pursuant to this section which covers lands lying within the boundaries of a Federal wildlife refuge on the date of Enactment of this Act, shall contain a provision that such lands shall remain subject to the laws and regulations governing use and development of refuges, as long as the lands continue within its boundaries. The purpose of this provision and limitation is to insure that the activities which take place within the refuges are compatible with the purposes for which the refuge was established. This section also assures continuing review by the appropriate Federal agencies."

Paragraph (c) of § 25.21 is a requirement to identify and inform the public, prior to adding lands to the National Wildlife Refuge System, as to which existing wildlife-dependent recreational public uses we will allow to continue on the newly added lands between the time we acquire the lands and completion of a Comprehensive Conservation Plan. This does not relieve us from the requirement that before we may allow a use on a national wildlife refuge, we must first determine that it is a compatible use. We will prepare a compatibility determination as we would for any other use, but in this case we will prepare the compatibility determination prior to adding the land to the National Wildlife Refuge System.

This comes directly from the NWRSIA–1997.

Paragraph (d) of § 25.21 states that we may close a national wildlife refuge to public access and use. This is essentially the same language as currently exists in § 25.21 and does not change the way we currently close a national wildlife refuge.

Paragraphs (e), (f), and (g) of § 25.21 require that we must periodically re-evaluate uses to ensure that they continue to be compatible. The NWRSIA–1997 provides specific criteria for re-evaluating three categories of uses (wildlife-dependent recreational uses, uses other than wildlife-dependent recreational uses except for uses authorized for more than 10 years, and uses authorized for more than 10 years). The re-evaluation schedule for wildlife-dependent recreational uses is tied closely to the Comprehensive Conservation Plan schedule. We must re-evaluate this category of uses at least every 15 years which is the same minimum requirement for revising Comprehensive Conservation Plans. The re-evaluation schedule for uses other than wildlife-dependent recreational uses is more stringent. We must re-evaluate this category of uses at least every 10 years. The third category is for special activities such as the granting of a utility line right-of-way which may require a term beyond ten years. The NWRSIA–1997 limits the re-evaluation in these cases to whether the original terms and conditions of the permit had been complied with by the permittee.

We will most likely re-evaluate the first two categories of uses more often than the minimum requirement because new information may become available or the conditions for conducting the use may change that would engage the re-evaluation requirement.

As noted previously, the NWRSIA–1997 specifically separates out uses authorized for a period longer than 10 years, and this will almost always involve a right-of-way use. The primary reason for this particular separation is to clarify that once we prepare a compatibility determination for a use specifically authorized for a relatively long period of time (greater than 10 years), we will not re-evaluate the use for compatibility until and unless the authorization has expired and we are considering extending or renewing the authorization. When we authorize a use for greater than 10 years, we develop terms and conditions associated with the use that the permittee must follow. We design terms and conditions to ensure that the authorized use will remain compatible, and we check compliance regularly with these terms and conditions.

We are revising § 25.44 to incorporate the definition of compatibility from the NWRSIA–1997 and to remove the option of using mitigation measures to make uses of easement areas of a national wildlife refuge compatible. We also changed the heading to comply with the plain language requirement for new regulations. The following is a discussion of the specific revised sections.

We are revising paragraph (b) of § 25.44 by placing a period after the word "compatible" and deleting "with the purposes for which the easement was acquired" in the third sentence. It is necessary to either end the sentence after the word "compatible" or repeat the entire definition of compatible which we now define in § 25.12. Since we use the term "compatible use" extensively throughout subchapter C, we will define this term in the definitions section and then only use the term without repeating the definition. We also made minor word changes to comply with the plain language requirement for new regulations.

We are revising paragraph (c)(1) of § 25.44 by placing a semicolon after the word "compatible" and deleting "with the purposes for which the Service's easement was acquired." This is necessary for the same reason described in the above paragraph.

We are removing paragraph (d) of § 25.44 for the reasons stated in the discussion of proposed paragraph (b) of § 26.41.

Specific Changes to 50 CFR Part 26

We are adding § 26.41 to establish in regulations the process for determining whether or not a proposed or existing use of a national wildlife refuge is a compatible use. Rather than revise an existing section of part 26 to include this process, we believe it should be a separate section within part 26.

This section clearly states that we cannot allow a use of a national wildlife refuge unless we first determine that it is a compatible use. This has been a legal requirement since 1962 for recreational uses and since 1966 for all uses. This rule does not change that legal requirement; however, it more clearly states the requirement and provides additional detail of how we will make the determination. This section requires that we make all compatibility determinations in writing and include the following information which is necessary to make the determination:

(1) *The proposed or existing use being evaluated.* This may be an individual use or a group of closely related uses or a use program. Whenever practicable, the Refuge Manager will concurrently consider similar uses or uses that are likely to have similar effects, in order to facilitate analysis of cumulative effects. This includes, all uses as defined by the term "refuge use" to mean a recreational use, refuge management economic activity, refuge action undertaken principally to support a recreational or other general public use, or other use of a national wildlife refuge by the public or other non-Service entity.

(2) *The name of the national wildlife refuge.* We will state the name of the national wildlife refuge where the proposed use may occur or where the existing use is occurring.

(3) *The authorities used to establish the national wildlife refuge.* This could include a variety of authorities including Executive Orders, public land orders, Secretarial Orders, refuge-specific legislation, or general legislation. For example, the establishing authority for Archie Carr National Wildlife Refuge in Florida is the Endangered Species Act of 1973 and for Breton National Wildlife Refuge in Louisiana it is Executive Order 7938.

(4) *The major purposes of the national wildlife refuge.* This will be a statement of the major purposes for which the refuge was established and will be based on those things that are referenced in the definition of the term "purposes of the refuge." For example, the purposes of Okefenokee National Wildlife Refuge in Georgia are "* * * as a refuge and breeding ground for migratory birds and other wildlife: * * *" Executive Order 7593, dated March 30, 1937, "* * * for use as an inviolate sanctuary, or for any other management purpose, for migratory birds." 16 U.S.C. 715d (Migratory Bird Conservation Act) and "* * * to conserve (A) fish or wildlife which are listed as endangered species or threatened species * * * or (B) plants * * *" 16 U.S.C. 1534 (Endangered Species Act of 1973).

(5) *The National Wildlife Refuge System Mission.* The Mission of the National Wildlife Refuge System is "to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans." This is directly from the NWRSIA–1997.

(6) *The nature and extent of the use including the following: (i) What is the use? (ii) Where would the use be conducted? (iii) When would the use be conducted? (iv) How would the use be conducted?* This will include such things as specific areas of the national wildlife refuge where the use would take place, habitat types and acres involved, key species in the area, time of year and duration of the use, number of people involved, and facilities needed.

With regard to facilities, structures, or improvements constructed or installed by us (or at our direction) in conjunction with a use, and refuge management activities undertaken in conjunction with a use, Part 603 Chapter 3 (draft) Section 3.9 of the Service Manual makes it clear to Refuge Managers that they must consider these things when making compatibility determinations. This requirement will apply to all such facilities, structures, improvements, and refuge actions associated with uses that we approve on or after the effective date of these regulations and to the replacement or major repair or alteration of facilities, structures, and improvements associated with already approved uses.

It goes without saying that these facilities, structures, and improvements are and have been subject to compatibility determinations when proposed by an applicant as part of a requested use. It has not, however, been our clear policy to include these types of facilities, structures, or improvements in such analyses when we have built or installed them. We have historically viewed them as part of our management activities and, as a general matter, they have not specifically been the subject of the compatibility determinations.

The NWRSIA–1997's amendments to the NWRSAA–1966 have caused us to re-address this issue. Requiring Refuge Managers to ensure that our installed facilities and management activities that are associated with public uses are compatible will provide an additional measure of protection for each national wildlife refuge and for the National Wildlife Refuge System. It will further enable us to accomplish the Secretary's responsibilities under the NWRSIA–1997's amendments to conserve fish, wildlife, plants, and their habitats; to ensure the biological integrity, diversity and environmental health of the National Wildlife Refuge System; and to ensure that we carry out the purposes of each national wildlife refuge and the National Wildlife Refuge System Mission.

With regard to refuge management economic activities (defined at § 25.12), we are also making it clear in Part 603 Chapter 3 (draft) Section 3.9 of the Service Manual that whenever an activity designed to achieve a management objective but performed by a member of the public will result in the generation of income or in a commodity that is or can be sold or traded by them, a Refuge Manager must make a compatibility determination before allowing the activity. The issue here is that some management activities (timber harvesting in order to provide a certain type of habitat, for example) can also generate local economic dependency upon a continuation of the activity or create an appearance that it is a use, not a management activity. In some instances, such a dependency could outweigh and override the management needs of the refuge and in fact become more in the nature of a use. In some past instances, this local economic dependency ultimately outweighed and overrode the biological needs or interests of the affected national wildlife refuges and became not compatible. We believe that the local economic aspect of these refuge management economic activities enhances the possibility of compatibility problems, thereby warranting the preparation of compatibility determinations. This requirement will apply to all refuge management economic activities approved or extended on or after the effective date of these regulations.

We want to make it clear that because a compatibility determination is not being required for other Service management activities, those activities will not escape scrutiny. To properly manage a national wildlife refuge, a Refuge Manager must take actions that will lead toward accomplishing the purposes of that national wildlife refuge. This, in fact, is a different but higher standard than that applied to uses. Authorizing a use requires the Refuge Manager to find that it will "not materially interfere with or detract from" fulfilling the refuge purposes and Refuge System Mission, whereas management activities of a Refuge Manager must be for accomplishing those purposes. Refuge Managers are constantly engaging in the difficult job of marshaling the necessary resources and equipment, controlling uses, providing the necessary habitat, managing personnel, seeking enhanced budget allocations, and taking numerous other actions all with the ultimate goal of accomplishing those purposes. Each Refuge Manager is responsible for ensuring that what we do at each particular national wildlife refuge in the name of management is done with that goal in mind.

(7) *An analysis of costs for administering and managing each use.* This will be an analysis of adequate resources (including financial, personnel, facilities, and other infrastructure) to properly develop, operate, and maintain the use at an acceptable level. It would include: resources involved in the administration and management of the use; special equipment, facilities or improvements necessary to support the use and comply with disabled access requirements, such as costs associated with special equipment, physical changes, or necessary improvements; maintenance costs associated with the use (e.g., trail maintenance and mowing, signing, garbage pickup or sanitation costs, parking areas, road repair or grading, building or structure repair, including blinds, boat ramps, kiosks, etc.); and monitoring costs to assess the impact of uses over time. This analysis of cost for administering and managing each use will only include the incremental increase above general operational costs that we can show as being directly caused by the proposed use.

(8) *The anticipated impacts of the use on the national wildlife refuge's major purposes and the National Wildlife Refuge System Mission.* This will include an assessment of the potential impacts of a proposed use on the national wildlife refuge purposes and the National Wildlife Refuge System Mission. Refuge Managers will use available sources of information to substantiate their analysis. Sources may include planning documents, environmental assessments, environmental impact statements, annual narratives, information from previously-conducted or ongoing research, data from refuge inventories or studies, published literature on related biological studies, State conservation management plans, field management experience, etc. We do not require Refuge Managers to independently generate new data on which to base compatibility determinations but rather to work with available information. The Refuge Manager may work at his or her discretion with the proponent of the use to gather additional information before making the determination. If the available information is insufficient to document that a proposed use will be compatible, the use is not compatible, and we will not authorize or permit the use.

(9) *A logical explanation describing how the proposed use affects fulfillment of the national wildlife refuge's major purposes and the National Wildlife Refuge System Mission.* After completing steps 1–8, the Refuge Manager will provide a written and logical explanation of the rationale for,

or the rational basis behind, the determination. The justification will describe how the proposed use affects the fulfillment of the national wildlife refuge's major purposes and the National Wildlife Refuge System Mission.

(10) *The amount of opportunity for public review and comment provided.* The Refuge Manager will provide an adequate opportunity for public review and comment on the proposed refuge use before issuing a final compatibility determination. Providing for public review and comment includes actively seeking to identify and inform individuals and organizations reasonably affected by or interested in the proposed refuge use. Additionally, review and comment will offer the public the opportunity to provide relevant information and express their views on whether or not a use is compatible. The Refuge Manager will determine the level of opportunity for public review and comment that is necessary or appropriate based upon the complexity or controversial nature of the use, the anticipated adverse impacts to the refuge and potential public interest. For compatibility determinations prepared concurrently with Comprehensive Conservation Plans, we can achieve public review and comment concurrently with the public review and comment of the draft Comprehensive Conservation Plan and associated NEPA document. For compatibility determinations prepared separate from a Comprehensive Conservation Plan, we will determine the appropriate level of opportunity for public review and comment through a tiered approach. For minor, incidental, or one-time uses which have been shown by past experience at this or other refuges in the Refuge System to result in no significant, cumulative, lingering or continuing adverse impacts to the refuge and would likely generate minimal public interest, the public review and comment requirement can be accomplished by posting a notice of the proposed determination at the refuge headquarters so as to maximize the opportunity for comment as is practicable. For all other uses, at a minimum, the Refuge Manager will solicit public comment by placing a public notice in a newspaper with wide local distribution. The notice must contain, at a minimum: a brief description of the compatibility determination process, a description of the use that is being evaluated, the types of information that may be used in completing the evaluation, how to provide comments, when comments are due, and how people may be informed of the decision the Refuge Manager will make regarding the use. The public will be given at least 14 calendar days to provide comments following the day the notice is published. This period may be reduced by the Refuge Manager when there is not sufficient time to provide the full 14-days. For evaluations of controversial or complex uses, the Refuge Manager should expand the public review and comment process to allow for additional opportunities for comment. This may include newspaper or radio announcements, notices or postings in public places, notices in the **Federal Register**, letters to potentially interested people such as adjacent landowners, holding public meetings, or extending the comment period.

(11) *Whether the use is compatible or not compatible.* The Refuge Manager will simply identify whether the use is compatible or not compatible based on the explanation under (9), above.

(12) *Stipulations necessary to ensure compatibility.* This will include such protective stipulations, detailed and specific, that are necessary for a particular use to be compatible. They may include such things as: limitations on time (daily, seasonal, or annual) or space where the use would occur; the routes or forms of access for the use; restrictions on the types of equipment used; and the number of people involved.

(13) *The name of the Regional Office Supervisor or designee that was consulted with and date of consultation prior to approving each compatibility determination.* Prior to approving each compatibility determination, the Refuge Manager will consult with their Regional Office Supervisor or designee. The Refuge Manager will document the consultation by recording on the compatibility determination form the date and name of person consulted with.

(14) *The Refuge Manager's signature and date signed.* The Refuge Manager will sign and date the compatibility determination.

Paragraph (b) of § 26.41 states that we will not allow making proposed refuge uses compatible through replacement of lost habitat values or other compensation (sometimes referred to as "mitigation" or as a component of mitigation.) This does not change the current general application of the compatibility standard and represents a change only in our application of the standard with regard to rights-of-way and easement area uses. The review and analysis of current regulations that we conducted while complying with the mandate of the NWRSIA–1997 to issue compatibility regulations caused us to look into the right-of-way and easement area uses regulations. We found no authority in law to allow an incompatible use where the Service receives some sort of compensatory mitigation. In this regard, we are also proposing to delete paragraph (d) of § 25.44, which authorizes the Service to require "mitigation measures" within the easement area to "make the proposed use compatible" and paragraph (c) of § 29.21–7, which authorizes the Service to require "mitigation measures" on- or off-site to "make the proposed use compatible."

A use is either compatible or not, and the fact that some "incompatible" impact might be compensated for by doing something to make up for the impacts cannot make a use compatible for purposes of the NWRSAA–1966. This change does not alter our current practice that if a use as proposed is deemed not compatible, the applicant can certainly re-propose or amend the original proposed use to avoid the troublesome impacts and render the use compatible.

Paragraph (c) of § 26.41 requires us to either terminate an existing use or modify an existing use to make it compatible as expeditiously as practicable whenever we determine an existing use is not compatible. For example, if a group of colonial nesting birds began nesting in an area open to fishing by motorized boats, and, consequently, we determined fishing in this area to be not compatible because of disturbance to the nesting birds, we would likely modify the fishing program (prohibit fishing from that particular portion of the area open to fishing or perhaps requiring non-motorized boats) in order to make it compatible.

Specific Changes to 50 CFR Part 29

We are revising § 29.1 by replacing "will not be incompatible with the purposes for which the refuge was established" with language consistent with the new definition of "compatible use." This revised language is consistent with the definition of compatible use in § 25.12. Since we use extensively the term "compatible use" throughout subchapter C, we define this term in § 25.12 and then only use the term without repeating the definition. We also made word changes throughout to comply with the plain language requirement for new regulations.

We are revising § 29.3 by replacing "compatible with the major purposes for which such areas are established" with language consistent with the new definition of "compatible use." This is necessary for the same reason described in the above paragraph. We also made word changes throughout to comply with the plain language requirement for new regulations.

We are revising § 29.21 by removing the definitions of "Secretary," "Service," and "Regional Director," and revising the definition of "Compatible." The three definitions are not necessary because we include them in § 25.12. Part 25 is the first part of subchapter C and is the most appropriate place for definitions used throughout subchapter C. It is generally not necessary to repeat definitions in other parts of this subchapter. We are revising the definition of "Compatible" to be consistent with the NWRSIA–1997. We define "Compatible use" in § 25.12; however, it is necessary to repeat it here because it explains the relationship between the terms "inconsistent" in the Mineral Leasing Act of 1920 and "compatible" in the NWRSIA–1997. The term "inconsistent" means the same as "not compatible."

We are removing § 29.21–7(c) for the reasons stated in the discussion of proposed paragraph (b) of § 26.41.

Comment Solicitation

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to: Chief, Division of Refuges, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, Virginia 22203. You may comment via the Internet to: Compatibility__Regulations__Comments@fws. gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include: "Attn: 1018–AE98" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (703) 358–1744. You may also fax comments to: Chief, Division of Refuges, (703) 358–2248. Finally, you may hand-deliver comments to the address mentioned above.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

We seek public comments on this proposed compatibility regulation and will take into consideration comments and any additional information received during the 60-day comment period. When finalized, we will incorporate this regulation into Title 50 Code of Federal Regulations (50 CFR) parts 25, 26, and 29. Part 25 contains general administrative provisions which govern national wildlife refuges, part 26 contains provisions that govern public entry and use of the National Wildlife Refuge System, and part 29 contains provisions that govern land use management.

We published a notice in the **Federal Register** on January 23, 1998 (63 FR 3583) notifying the public that we would be revising the Fish and Wildlife Service Manual, establishing regulations as they relate to the NWRSIA–1997, and offering to send copies of specific draft Service Manual chapters to anyone who would like to receive them. We will mail a copy of the draft compatibility Service Manual chapter published concurrently in this **Federal Register** to those who requested one, along with a copy of this proposed compatibility regulation. In addition, this proposed compatibility regulation and the draft compatibility Service Manual chapter will be available on the National Wildlife Refuge System web site (http://refuges.fws.gov) during the 60-day comment period.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the rule? (6) What else could we do to make the rule easier to understand?

Statutory Authority

The National Wildlife Refuge System Administration Act of 1966 (NWRSAA–1966), (16 U.S.C. 668dd–668ee), and the Refuge Recreation Act of 1962 (RRA–1962), (16 U.S.C. 460k–460k–4) govern the administration and use of the National Wildlife Refuge System.

The NWRSIA–1997 is the latest amendment to the NWRSAA–1966. It amends and builds upon the NWRSAA–1966 in a manner that provides an "Organic Act" for the National Wildlife Refuge System. It serves to ensure that we effectively manage the National Wildlife Refuge System as a national system of lands, waters and interests for the protection and conservation of our Nation's wildlife resources.

The NWRSAA–1966 states, first and foremost, that the National Wildlife Refuge System Mission is the conservation of fish, wildlife, and plant resources and their habitat. The NWRSAA–1966 prohibits the Secretary from initiating or permitting a new use of a national wildlife refuge or expanding, renewing, or extending an existing use of a national wildlife refuge, unless the Secretary has determined that the use is a compatible use and not inconsistent with public safety.

The RRA–1962 authorizes the Secretary to administer areas within the National Wildlife Refuge System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purpose(s) for which we established the areas. The RRA–1962 requires that any recreational use of national wildlife refuge lands be compatible with the primary purposes for which we established the national wildlife refuge and not inconsistent with other previously-authorized operations.

The Alaska National Interest Lands Conservation Act of 1980 (ANILCA), (16 U.S.C. 140hh–3233), (43 U.S.C. 1602–1784), requires that we administer national wildlife refuges in Alaska in accordance with the laws governing the administration of the National Wildlife Refuge System. Section 304 of the ANILCA adopted the compatibility standard of the NWRSAA–1966 for Alaska national wildlife refuges.

The ANILCA establishes the same standard of compatibility for Alaska national wildlife refuges as for other national wildlife refuges but the NWRSIA–1997 specifically requires that ANILCA take precedence if any conflict arises between the two laws. Additionally, the NWRSIA–1997 did not affect the provisions of ANILCA that

are the primary guidance Refuge Managers must use regarding subsistence use in Alaska.

The Alaska Native Claims Settlement Act of 1971, Section 22(g), provides that patents issued to Native village corporations or groups for selected land within the boundaries of a national wildlife refuge existing on the December 18, 1971, signing date of the Act will contain provisions which indicate that the land shall remain subject to laws and regulations governing the use and development of such national wildlife refuges. This includes application of the compatibility standard before uses or development may occur on the land.

Alaska national wildlife refuges established before the passage of the ANILCA have two sets of purposes. Purposes for pre-ANILCA national wildlife refuges (in effect on the day before the enactment of the ANILCA) remain in force and effect, except to the extent that they may be inconsistent with the ANILCA or the Alaska Native Claims Settlement Act, in which case the provisions of those Acts control. However, the original purposes for pre-ANILCA refuges apply only to those portions of the national wildlife refuge established by the prior executive order or public land order, and not to those portions of the national wildlife refuge added by the ANILCA.

The NWRSAA–1966 and the RRA–1962 authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

Required Determinations

Regulatory Planning and Review (E.O. 12866)

This document is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit or full economic analysis is not required. This rule is administrative, legal, technical, and procedural in nature. The regulation established the process for determining the compatibility of proposed national wildlife refuge uses as well as the procedures for documentation and periodic review of existing uses. We have been making compatibility determinations since passage of the NWRSAA–1966 in 1966. The NWRSIA–1997 passed in 1997 does not greatly change the compatibility standards so we expect these procedures to cause only minor modifications to existing national wildlife refuge public use programs. We expect a small increase, up to 5%, in the amount of public use activities allowed on refuges as a result of this rule.

The appropriate measure of the economic effect of changes in recreational use is the change in the welfare of recreationists. We measure this in terms of willingness to pay for the recreational opportunity. Total annual willingness to pay for all recreation at national wildlife refuges was estimated to be $372.5 million in FY 1995 (Banking on Nature: The Economic Benefits to Local Communities of National Wildlife Refuge Visitation, 1997). We expect the compatibility determination process implemented in this rule to cause at most a 5% increase in recreational use system-wide. This does not mean that every refuge will have the same increase in public use. Only refuges where increases in hunting, fishing, and non-consumptive visitation are compatible will we allow the increases. Across the entire Refuge System we expect an increase in hunting, fishing, and non-consumptive visitation to amount to no more than a 5% overall increase. If the full 5% increase in public use were to occur at national wildlife refuges, this would translate to a maximum additional willingness to pay of $21 million (1999 dollars) annually for the public. However, we expect the real benefit to be less than $21 million because we expect the final increase in public use to be smaller than 5%. Furthermore, if the public substitutes non-refuge recreation sites for refuges, then we would subtract the loss of benefit attributed to non-refuge sites from the $21 million estimate. Even the conservative estimate of $21 million annually is well below the $100 million annual impact required for a significant regulatory action under Executive Order 12866.

We measure the economic effect of commercial activity by the change in producer surplus. We can measure this as the opportunity cost of the change, i.e., the cost of using the next best production option if we discontinue production using the national wildlife refuge. National wildlife refuges use grazing, haying, timber harvesting, and row crops to help fulfill the National Wildlife Refuge System Mission and national wildlife refuge purposes. Congress authorizes us to allow economic activities of national wildlife refuges, and we do allow some. But, for all practical purposes, we invite (almost 100 percent) the economic activities to help achieve a national wildlife refuge purpose or National Wildlife Refuge System Mission. For example, we do not allow farming per se, rather we invite a farmer to farm on the national wildlife refuge under a Cooperative Farming Agreement to achieve a national wildlife refuge purpose. Compatibility applies to these economic activities, and this rule will likely have minor changes in the amounts of these activities occurring on national wildlife refuges. Information on profits and production alternatives for most of these activities is proprietary, so a valid estimate of the total benefits of permitting these activities on national wildlife refuges is not available.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency since the rule pertains solely to management of national wildlife refuges by the Service.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. There are no grants or other Federal assistance programs associated with public use of national wildlife refuges.

(4) This rule does not raise novel legal or policy issues; however, it does provide a new approach. This rule continues the practice of requiring public use of national wildlife refuges to be compatible. It adds the NWRSIA–1997 provisions that ensure that compatibility becomes a more effective conservation standard, more consistently applied across the entire National Wildlife Refuge System, and more understandable and open to involvement by the public.

Regulatory Flexibility Act

We certify that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Congress created the National Wildlife Refuge System to conserve fish, wildlife, and plants and their habitats and facilitated this conservation mission by providing Americans opportunities to visit and participate in compatible wildlife-dependent recreation, including fishing, hunting, wildlife observation and photography, and environmental education and interpretation as priority general public uses on national wildlife refuges and to better appreciate the value of, and need for, wildlife conservation.

This rule is administrative, legal, technical, and procedural in nature and provides more detailed instructions for the compatibility determination process than have existed in the past. This rule does not change the compatibility standard but implementation of the

National Wildlife Refuge System Improvement Act of 1997 may result in more opportunities for wildlife-dependent recreation on national wildlife refuges. For example, there may be more wildlife observation opportunities at Florida Panther National Wildlife Refuge in Florida or more hunting opportunities at Pond Creek National Wildlife Refuge in Arkansas. Such changes in permitted use are likely to increase visitor activity near the national wildlife refuge. To the extent visitors spend time and money in the area that would not have been spent there anyway, they contribute new income to the regional economy and benefit local businesses.

National wildlife refuge visitation is a small component of the wildlife recreation industry as a whole. In 1996, 77 million U.S. residents over 15 years old spent 1.2 billion activity-days in wildlife-associated recreation activities. They spent about $30 billion on fishing, hunting, and wildlife watching trips (Tables 49, 54, 59, 63, 1996 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation, DOI/FWS/FA, 1997). National wildlife refuges recorded about 29 million visitor-days that year (RMIS, FY1996 Public Use Summary). A study of 1995 national wildlife refuge visitors found their travel spending generated $401 million in sales and 10,000 jobs for local economies (Banking on Nature: The Economic Benefits to Local Communities of National Wildlife Refuge Visitation, DOI/FWS/Refuges, 1997). These spending figures include spending which would have occurred in the community anyway, and so they show the importance of the activity in the local economy rather than its incremental impact. Marginally greater recreational opportunities on national wildlife refuges will have little industry-wide effect.

Many small businesses will benefit from any increased national wildlife refuge visitation. We expect the incremental recreational opportunities to be marginal and scattered so we do not expect the rule to have a significant economic effect on a substantial number of small entities in any Region or nationally.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act as discussed in Regulatory Planning and Review section above. This rule:

a. Does not have an annual effect on the economy of $100 million or more;

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; and

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

Since this rule applies to use of federally-owned and managed national wildlife refuges, it does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. This rule does not have a significant or unique effect on State, local, tribal governments, or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required. These regulations may result in increased visitation at refuges and provide for minor changes to the methods of public use permitted within the National Wildlife Refuge System.

Federalism Assessment (E.O. 12612)

As discussed in the Regulatory Planning and Review, and Unfunded Mandates Act sections above, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 12612.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not contain any information collection requirements for which Office of Management and Budget approval under the Paperwork Reduction Act (44 U.S.C. 3501) is required.

Section 7 Consultation

We are in the process of reviewing the potential of these regulations to affect species subject to the Endangered Species Act of 1973 (16 U.S.C. 1531–1543). The findings of that consultation will be available as part of the administrative record for the final rule.

National Environmental Policy Act

We ensure compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) when developing national wildlife refuge Comprehensive Conservation Plans and public use management plans, and we make determinations required by NEPA before the addition of national wildlife refuges to the lists of areas open to public uses. The revisions to regulations as proposed in this document resolve a variety of issues concerning compatibility of national wildlife refuge uses. In accordance with 516 DM 2, Appendix 1, we have determined that this rule is categorically excluded from the NEPA process because it is limited to "the issuance and modification of procedures, including manuals, orders and guidelines of an administrative nature." 516 DM 2, Appendix 1, Sec. 1.4 A. (3) and (9). These proposed regulations qualify or otherwise define methods which we use for purposes of resource management.

Available Information for Specific National Wildlife Refuges

Individual national wildlife refuge headquarters retain information regarding public use programs and the conditions that apply to their specific programs, and maps of their respective areas.

You may also obtain information from the Regional Offices at the addresses listed below:

- Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington. Program Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Eastside Federal Complex, Suite 1692, 911 N.E. 11th Avenue, Portland, Oregon 97232-4181; Telephone (503) 231–6214.
- Region 2—Arizona, New Mexico, Oklahoma and Texas. Program Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766–1829.
- Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio and Wisconsin. Program Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612) 713–5300.
- Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina, Puerto Rico and the Virgin Islands. Program Assistant Regional Director—Refuges and

Wildlife, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; Telephone (404) 679–7152.

• Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia and West Virginia. Program Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589; Telephone (413) 253–8550.

• Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah and Wyoming. Program Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236–8145.

• Region 7—Alaska. Program Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3357.

Primary Author

J. Kenneth Edwards, Refuge Program Specialist, Division of Refuges, U.S. Fish and Wildlife Service, is the primary author of this proposed rule.

List of Subjects 50 CFR Part 25

Administrative practice and procedure, Concessions, Reporting and recordkeeping requirements, Safety, Wildlife refuges.

50 CFR Part 26

Recreation and recreation areas, Wildlife refuges.

50 CFR Part 29

Public lands-mineral resources, Public lands-rights-of-way, Wildlife refuges.

For the reasons set forth in the preamble, we propose to amend parts 25, 26, and 29 of Title 50, Chapter I, Subchapter C of the Code of Federal Regulations as follows:

PART 25—[AMENDED]

1. The authority citation for part 25 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i, 3901 *et seq.*; and Pub.L. 102–402, 106 Stat. 1961.

2. We propose to amend § 25.12 by:

a. Revising the heading;

b. Amending paragraph (a) by revising and placing in alphabetical order the definitions of "Coordination area," "National wildlife refuge, and refuge" and "National Wildlife Refuge System, and Refuge System;" and

c. Adding the definitions of "Compatible use," "Compatibility determination," "Comprehensive Conservation Plan," "Conservation, and Management," "Director," "Fish, Wildlife, and Fish and wildlife," "National Wildlife Refuge System Mission, and Refuge System Mission," "Plant," "Purpose(s) of the refuge," "Refuge Manager," "Refuge use, and Use of a refuge," "Refuge management economic activity," "Refuge management activity," "Regional Director," "Secretary," "Service, and We" "Sound professional judgment," "State, and United States," "Wildlife-dependent recreational use, and Wildlife-dependent recreation," and "You" in alphabetical order to read as follows:

§ 25.12 What do the following terms mean?

(a) * * *

Compatible use means a proposed or existing wildlife-dependent recreational use or any other use of a national wildlife refuge that, in the sound professional judgment of the Refuge Manager, will not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System Mission or the major purposes of the affected national wildlife refuge.

Compatibility determination means a written determination signed and dated by the Refuge Manager, signifying that a proposed or existing use of a national wildlife refuge is either a compatible use or a not compatible use. The Director delegates authority to make this determination through the Regional Director, to the Refuge Manager.

Comprehensive Conservation Plan means a document that describes the desired future conditions of a national wildlife refuge, and provides long-range guidance and management direction for a Refuge Manager to accomplish the purposes of the affected national wildlife refuge, contribute to the National Wildlife Refuge System Mission, and to meet other relevant mandates.

Conservation, and *Management* mean to sustain and, where appropriate, restore and enhance, healthy populations of fish, wildlife, and plants utilizing, in accordance with applicable Federal and State laws, methods, and procedures associated with modern scientific resource programs. Such methods and procedures include, consistent with the provisions of the National Wildlife Refuge System Administration Act (16 U.S.C. 668dd–668ee), protection, research, census, law enforcement, habitat management, propagation, live trapping and transplantation, and regulated taking.

Coordination area means a wildlife management area made available to a State: by cooperative agreement between the U. S. Fish and Wildlife Service and a State agency having control over wildlife resources pursuant to section 4 of the Fish and Wildlife Coordination Act (16 U.S.C. 664); or by long-term leases or agreements pursuant to title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010 *et seq.*). The States manage coordination areas as a part of the National Wildlife Refuge System.

Director means the Director, U.S. Fish and Wildlife Service or the authorized representative of such official.

* * * * *

Fish, Wildlife, and *Fish and wildlife* mean any member of the animal kingdom in a wild, unconfined state, whether alive or dead, including a part, product, egg, or offspring of the member.

* * * * *

National wildlife refuge, and *Refuge* mean a designated area of land, water, or an interest in land or water located within the external boundaries of the National Wildlife Refuge System but does not include coordination areas.

National Wildlife Refuge System, and *Refuge System* mean all lands, waters, and interests therein administered by, or subject to the jurisdiction of, the U.S. Fish and Wildlife Service as wildlife refuges, wildlife ranges, wildlife management areas, waterfowl production areas, and other areas administered by the U.S. Fish and Wildlife Service for the protection and conservation of fish and wildlife, including those that are threatened with extinction.

National Wildlife Refuge System Mission, and *Refuge System Mission* mean to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.

* * * * *

Plant means any member of the plant kingdom in a wild, unconfined state, including any plant community, seed, root, or other part of a plant.

Purpose(s) of the refuge means the purposes specified in or derived from the law, proclamation, executive order, agreement, public land order, donation document, or administrative memorandum establishing, authorizing, or expanding a national wildlife refuge, national wildlife refuge unit, or national wildlife refuge subunit.

Refuge Manager means the person who is directly in charge of a national wildlife refuge.

Refuge use, and *Use of a refuge* mean a recreational use (including refuge actions associated with a recreational use or other general public use), refuge management economic activity, or other use of a national wildlife refuge by the public or other non-Service entity.

Refuge management economic activity means any refuge management activity on a national wildlife refuge which results in generation of income or in a commodity which is or can be sold for income or revenue or traded for goods or services. Examples include: farming, grazing, haying, timber harvesting, and trapping. Specifically excluded from this definition are refuge management activities which generate commodities not sold for income or revenue and not traded for goods or services, on or off a national wildlife refuge.

Refuge management activity means an activity conducted by the Service or a Service-authorized agent to fulfill all purposes or at least one or more purposes of the national wildlife refuge, or the National Wildlife Refuge System Mission. Service-authorized agents include contractors, cooperating agencies, cooperating associations, friends organizations, and volunteers.

Regional Director means the official in charge of a region of the U.S. Fish and Wildlife Service or the authorized representative of such official.

Secretary means the Secretary of the Interior or the authorized representative of such official.

Service, and *We* means the U.S. Fish and Wildlife Service, Department of the Interior.

Sound professional judgment means a finding, determination, or decision that is consistent with principles of sound fish and wildlife management and administration, available science and resources, and adherence to the requirements of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), and other applicable laws. Included in this finding, determination, or decision is a Refuge Manager's field experience and a Refuge Manager's knowledge of the particular affected refuge's resources.

State, and *United States* mean one or more of the States of the United States, Puerto Rico, American Samoa, the Virgin Islands, Guam, and the territories and possessions of the United States.

* * * * *

Wildlife-dependent recreational use, and *Wildlife-dependent recreation* mean a use of a national wildlife refuge involving hunting, fishing, wildlife observation and photography, or environmental education and interpretation. The National Wildlife Refuge System Administration Act of 1966, as amended, specifies that these are the six priority general public uses of the National Wildlife Refuge System.

* * * * *

You means the public.

3. We propose to revise § 25.21 to read as follows:

§ 25.21 When and how do we open and close areas of the National Wildlife Refuge System to public access and use or continue a use?

(a) Except as provided below, all areas acquired or withdrawn for inclusion in the National Wildlife Refuge System are closed to public access until and unless we open the area for a use or uses in accordance with the NWRSAA–1966, the RRA–1962 and this subchapter C. We may open an area by regulation, individual permit, or public notice, in accordance with § 25.31 of this subchapter.

(b) We may open an area in the National Wildlife Refuge System for any refuge use, or expand, renew, or extend an existing refuge use only after the Refuge Manager determines that it is a compatible use and not inconsistent with any applicable law. Lands subject to the patent restrictions imposed by Section 22(g) of the Alaska Native Claims Settlement Act are subject to the compatibility requirements of Part 25 and Part 26 of 50 CFR. The Refuge Manager may temporarily allow or initiate any refuge use without making a compatibility determination if it is necessary to protect the health and safety of the public or any fish or wildlife population.

(c) When we add lands to the National Wildlife Refuge System, the Refuge Manager will identify, prior to acquisition, withdrawal, transfer, reclassification, or donation of those lands, existing wildlife-dependent recreational public uses (if any) determined to be compatible that we will permit to continue on an interim basis, pending completion of the Comprehensive Conservation Plan for the national wildlife refuge. We will make these compatibility determinations in accordance with procedures in § 26.41 of this subchapter.

(d) In the event of a threat or emergency endangering the health and safety of the public or property or to protect the resources of the area, the Refuge Manager may close or curtail refuge uses of all or any part of an opened area to public access and use in accordance with the provisions in § 25.31, without advance notice. See 50 CFR 36.42 for procedures on closing Alaska national wildlife refuges.

(e) We will re-evaluate compatibility determinations for existing wildlife-dependent recreational uses when conditions under which the permitted use change significantly, or if there is significant new information regarding the effects of the use, or concurrently with the preparation or revision of a Comprehensive Conservation Plan, or at least every 15 years, whichever is earlier.

(f) Except for uses specifically authorized for a period longer than 10 years (such as rights-of-way), we will re-evaluate compatibility determinations for all other existing uses when conditions under which the permitted use change significantly, or if there is significant new information regarding the effects of the use, or concurrently with the preparation or revision of a Comprehensive Conservation Plan, or at least every 10 years, whichever is earlier.

(g) For uses specifically authorized for a period longer than 10 years (such as rights-of-way), our re-evaluation will examine compliance with the terms and conditions of the authorization, not the authorization itself. We will monitor and review the activity to ensure that the permittee carries out all permit terms and conditions. We will make a new compatibility determination prior to extending or renewing such long-term uses at the expiration of the authorization.

4. We propose to amend § 25.44 by:

a. Revising the heading and paragraphs (b) and (c)(1);

b. Removing paragraph (d); and

c. Redesignating paragraph (e) as paragraph (d) to read as follows:

§ 25.44 How do we grant permits for easement area uses?

* * * * *

(b) We require permits for use of easement areas administered by us where proposed activities may affect the property interest acquired by the United States. Applications for permits will be submitted in writing to the Regional Director or a designee. We may grant special use permits to owners of servient estates, or to third parties with the owner's agreement, by the Regional Director or a designee, upon written determination that such permitted use is compatible. If we ultimately determine that the requested use will not affect the United States' interest, the Regional Director will issue a letter of non-objection.

(c) * * *

(1) The permitted use is compatible; and

* * * * *

PART 26—[AMENDED]

5. The authority citation for part 26 continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, 715i; Pub. L. 96–315 (94 Stat. 958) and Pub. L. 98–146 (97 Stat. 955).

6. We propose to add § 26.41 to read as follows:

§ 26.41 What is the process for determining if a use of a national wildlife refuge is a compatible use?

The Refuge Manager will not initiate or permit a new use of a national wildlife refuge or expand, renew, or extend an existing use of a national wildlife refuge, unless the Refuge Manager has determined that the use is a compatible use. This section provides guidelines for making compatibility determinations, and procedures for documenting compatibility determinations and for periodic review of compatibility determinations. We will make all compatibility determinations in writing.

(a) *Steps for preparing compatibility determinations.* All compatibility determinations will include the following information:

(1) The proposed or existing use;

(2) The name of the national wildlife refuge;

(3) The authorities used to establish the national wildlife refuge;

(4) The major purposes of the national wildlife refuge;

(5) The National Wildlife Refuge System Mission;

(6) The nature and extent of the use including the following:

(i) What is the use?

(ii) Where would the use be conducted?

(iii) When would the use be conducted?

(iv) How would the use be conducted?;

(7) An analysis of costs for administering and managing each use;

(8) The anticipated impacts of the use on the national wildlife refuge's major purposes and the National Wildlife Refuge System Mission;

(9) A logical explanation describing how the proposed use affects fulfilling the national wildlife refuge's major purposes and the National Wildlife Refuge System Mission;

(10) The amount of opportunity for public review and comment provided;

(11) Whether the use is compatible or not compatible (does it or will it materially interfere with or detract from the fulfillment of the National Wildlife Refuge System Mission or the major purposes of the national wildlife refuge);

(12) Stipulations necessary to ensure compatibility;

(13) The name of the Regional Office Supervisor or designee that was consulted with and date of consultation prior to approving each compatibility determination; and

(14) The Refuge Manager's signature and date signed.

(b) *Making a use compatible through replacement of lost habitat values or other compensation.* We will not allow making proposed refuge uses compatible through replacement of lost habitat values or other compensation. If we cannot make the proposed use compatible through stipulations we cannot allow the use.

(c) *Termination of uses that are not compatible.* When we determine an existing use is not compatible, we will terminate or modify the use to make it compatible as expeditiously as practicable.

PART 29—[AMENDED]

7. The authority citation for part 29 continues to read as follows:

Authority: Sec. 2, 33 Stat. 614, as amended, sec. 5, 43 Stat. 651, secs. 5, 10, 45 Stat. 449, 1224, secs. 4, 2, 48 Stat. 402, as amended, 1270, sec. 4, 76 Stat. 645; 5 U.S.C. 301, 16 U.S.C. 668dd, 685, 725, 690d, 715i, 664, 43 U.S.C. 315a, 16 U.S.C. 460k; 80 Stat. 926.

8. We propose to revise § 29.1 to read as follows:

§ 29.1 May we allow economic uses on national wildlife refuges?

We may authorize public or private economic use of the natural resources of any wildlife refuge area, in accordance with 16 U.S.C. 715s, where the use may contribute to the administration of the area. We may authorize economic use by appropriate permit only when we have determined the activity on a wildlife refuge area to be compatible. Persons exercising economic privileges on refuge areas will be subject to the applicable provisions of this subchapter and of other applicable laws and regulations governing wildlife refuge areas. Permits for economic use will contain such terms and conditions that we determine to be necessary for the proper administration of the resources. Economic use in this section includes but is not limited to grazing livestock, harvesting hay and stock feed, removing timber, firewood or other natural products of the soil, removing shell, sand or gravel, cultivating areas, or engaging in operations that facilitate approved programs on wildlife refuge areas.

9. We propose to revise § 29.3 to read as follows:

§ 29.3 What are nonprogram uses of national wildlife refuges?

Uses of wildlife refuge areas that make no contribution to the primary objectives of the refuge or to the objectives of the National Wildlife Refuge System are nonprogram uses. We may grant permission for such uses only when we determine they are compatible.

10. We propose to amend § 29.21 by:

a. Revising the heading;

b. Removing the paragraph designations;

c. Revising and placing in alphabetical order the definition of "Compatible use";

d. Removing "Secretary," "Service," and "Regional Director"; and

e. Placing the remaining definitions in alphabetical order to read as follows:

§ 29.21 What do the following terms mean?

Compatible use means a proposed or existing wildlife-dependent recreational use or any other use of a national wildlife refuge that, in the sound professional judgment of the Refuge Manager, will not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System Mission or the major purposes of the affected national wildlife refuge. The term "inconsistent" in section 28(b)(1) of the Mineral Leasing Act of 1920, as amended by Pub. L. 93–153, means a use that is not compatible.

* * * * *

11. We propose to amend § 29.21–7 by removing paragraph (c) and revising the heading to read as follows:

§ 29.21–7 What payment do we require for use and occupancy of national wildlife refuge lands?

Dated: May 26, 1999.

Donald J. Barry,

Assistant Secretary, Fish, Wildlife and Parks.

[FR Doc. 99–22992 Filed 9–8–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Compatibility Policy Pursuant to the National Wildlife Refuge System Improvement Act of 1997

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We propose to establish in policy, the process for determining whether or not a use of a national wildlife refuge is a compatible use. This draft compatibility policy incorporates the compatibility provisions of the National Wildlife Refuge System Improvement Act of 1997 (NWRSIA–1997), that amends the National Wildlife Refuge System Administration Act of 1966 (NWRSAA–1966), into our policy as Part 603 Chapter 3 of the Fish and Wildlife Service Manual. Published concurrently in this **Federal Register** are our proposed compatibility regulations describing the process for determining whether or not a use of a national wildlife refuge is a compatible use.

DATES: Submit comments on or before November 8, 1999.

ADDRESSES: Send comments concerning this draft compatibility policy via mail, fax or email to: Chief, Division of Refuges, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, Virginia 22203; fax (703)358–2248; e-mail Compatibility__Policy__Comments@fws. gov.

FOR FURTHER INFORMATION CONTACT: Chief, Division of Refuges, U.S. Fish and Wildlife Service, Telephone (703) 358–1744.

SUPPLEMENTARY INFORMATION: The NWRSIA–1997 amends and builds upon the NWRSAA–1966, providing an "Organic Act" for the National Wildlife Refuge System. It clearly establishes that wildlife conservation is the singular National Wildlife Refuge System Mission, provides guidance to the Secretary of the Interior (Secretary) for management of the National Wildlife Refuge System, provides a mechanism for national wildlife refuge planning, and gives Refuge Managers uniform direction and procedures for making decisions regarding wildlife conservation and uses of the National Wildlife Refuge System.

The NWRSAA–1966 required the Secretary, before permitting uses, to ensure that those uses are compatible with the purposes of the national wildlife refuge. We built this legal requirement into our policy and regulation. For 32 years, the compatibility standard for national wildlife refuge uses has helped us manage national wildlife refuge lands sensibly and in keeping with the general goal of putting wildlife conservation first. The NWRSIA–1997 maintains the compatibility standard as provided in the NWRSAA–1966, provides significantly more detail regarding the compatibility standard and compatibility determination process, and requires that we promulgate the compatibility process in regulations. This policy will ensure that compatibility becomes a more effective conservation standard, more consistently applied across the entire National Wildlife Refuge System, and more understandable and open to involvement by the public.

Compatibility and the NWRSIA–1997

The NWRSIA–1997 includes a number of provisions that specifically address compatibility. The following is a summary of those provisions and how they apply to us.

We will not initiate or permit a new use of a national wildlife refuge or expand, renew, or extend an existing use of a national wildlife refuge, unless we have determined that the use is a compatible use and that the use is not inconsistent with public safety. We may make compatibility determinations for a national wildlife refuge concurrently with the development of a Comprehensive Conservation Plan.

On lands added to the National Wildlife Refuge System after March 25, 1996, we will identify, prior to acquisition, withdrawal, transfer, reclassification, or donation of any such lands, existing compatible wildlife-dependent recreational public uses (if any) that we will permit to continue on an interim basis pending completion of a Comprehensive Conservation Plan for the national wildlife refuge.

We may authorize wildlife-dependent recreational uses on a national wildlife refuge when we determine they are compatible uses and are not inconsistent with public safety. We are not required to make any other determinations or findings to comply with the NWRSAA–1966 or the Refuge Recreation Act of 1962 (RRA–1962) for wildlife-dependent recreational uses to occur except for consideration of consistency with State laws and regulations.

Compatibility determinations in existence on the date of enactment of the NWRSIA–1997, October 9, 1997, will remain in effect until and unless modified. In addition, we will make compatibility determinations prepared during the period between enactment of the NWRSIA–1997 and the effective date of the compatibility regulations published concurrently with this notice under the existing compatibility process. After the effective date of the compatibility regulations, we will make compatibility determinations and re-evaluations of compatibility determinations under the compatibility process in the regulations.

By October 9, 1999, we will issue final regulations establishing the process for determining whether or not a use of a national wildlife refuge is a compatible use. These regulations will:

1. Identify the refuge official responsible for making compatibility determinations;

2. Require an estimate of the time-frame, location, manner, and purpose of each use;

3. Require the identification of the effects of each use on national wildlife refuge resources and purposes of each national wildlife refuge;

4. Require that compatibility determinations be made in writing;

5. Provide for the expedited consideration of uses that will likely have no detrimental effect on the fulfillment of the affected national wildlife refuge's purposes or the National Wildlife Refuge System Mission;

6. Provide for the elimination or modification of any use as expeditiously as practicable after we make a determination that the use is not a compatible use;

7. Require, after an opportunity for public comment, reevaluation of each existing use, other than wildlife-dependent recreational uses, if conditions under which the permitted use change significantly or if there is significant new information regarding the effects of the use, but not less frequently than once every 10 years, to ensure that the use remains a compatible use. In the case of any use authorized for a period longer than 10 years (such as an electric utility right-of-way), the reevaluation will examine compliance with the terms and conditions of the authorization, not examine the authorization itself;

8. Require, after an opportunity for public comment, reevaluation of each existing wildlife-dependent recreational use when conditions under which the permitted use change significantly or if there is significant new information regarding the effects of the use, but not less frequently than in conjunction with each preparation or revision of a comprehensive conservation plan or at least every 15 years, whichever is earlier; and

9. Provide an opportunity for public review and comment on each evaluation of a use, unless we have already provided an opportunity during the development or revision of a Comprehensive Conservation Plan for the national wildlife refuge or have already provided an opportunity during routine, periodic determinations of compatibility for wildlife-dependent recreational uses.

Purpose of This Draft Policy

The purpose of this draft policy is to establish in policy, the process for determining compatibility of proposed national wildlife refuge uses and procedures for documentation and periodic review of existing uses, and to ensure that we administer proposed and existing uses according to the compatibility provisions of the NWRSIA–1997. Published concurrently in this **Federal Register** are our proposed compatibility regulations. This draft compatibility policy reflects the proposed compatibility regulations and provides additional detail for each step in the compatibility determination process.

Fish and Wildlife Service Directives System

Because many of our field stations are located in remote areas across the United States, it is important that all employees have available and know the current policy and management directives that affect their daily activities. The Fish and Wildlife Service Directives System, consisting of the Fish and Wildlife Service Manual, Director's Orders, and National Policy Issuances, is the vehicle for issuing the standing and continuing policy and management directives of the Service. New directives are posted on the Internet upon approval, ensuring that all employees have prompt access to the most current guidance.

The Fish and Wildlife Service Manual contains our standing and continuing directives with which our employees must comply and has regulatory force and effect within the Service. We use it to implement our authorities and to "step down" our compliance with Statutes, Executive orders, and Departmental directives. It establishes the requirements and procedures to assist our employees in carrying out our authorities, responsibilities, and activities.

Director's Orders are limited to temporary policy, procedures, delegations of authority, emergency regulations, special assignments of functions, and initial functional statements on the establishment of new organizational units. All Director's Orders must be converted as soon as practicable to appropriate parts of the Fish and Wildlife Service Manual or removed. Material appropriate for immediate inclusion in the Fish and Wildlife Service Manual generally is not issued as a Director's Order.

National Policy Issuances promulgate the Director's national policies for managing the Service and its programs. These policies are necessarily broad and generally require management discretion or judgment in their implementation. They represent the Director's expectations of how the Service and its employees will act in carrying out their official responsibilities.

The Fish and Wildlife Service Manual, Director's Orders, and National Policy Issuances are available on the Internet at http://www.fws.gov/directives/direct.html. When finalized, we will incorporate this compatibility policy into the Fish and Wildlife Service Manual as Part 603 Chapter 3.

Comment Solicitation

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to: Chief, Division of Refuges, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 670, Arlington, Virginia 22203. You may comment via the Internet to: Compatibility__Policy__Comments@fws. gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include: "Attn: 1018–AE98" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at (703)358–1744. You may also fax comments to: Chief, Division of Refuges, (703)358–2248. Finally, you may hand-deliver comments to the address mentioned above.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

We seek public comments on this draft compatibility policy and will take into consideration comments and any additional information received during the 60-day comment period.

We published a notice in the **Federal Register** on January 23, 1998 (63 FR 3583) notifying the public that we would be revising the Fish and Wildlife Service Manual, establishing regulations as they relate to the NWRSIA–1997, and offering to send copies of specific draft Fish and Wildlife Service Manual chapters to anyone who would like to receive them. We will mail a copy of this draft Fish and Wildlife Service Manual compatibility chapter to those who requested one, along with a copy of the proposed compatibility regulations published concurrently in this **Federal Register**. In addition, this draft Fish and Wildlife Service Manual compatibility chapter and the proposed compatibility regulations will be available on the National Wildlife Refuge System web site (http://refuges.fws.gov) during the 60-day comment period.

Required Determinations

We have analyzed the impacts of this policy in concert with the proposed rule published concurrently in today's issue of the **Federal Register**. For compliance with applicable laws and Executive orders affecting the issuance of rules and policies, see the "Supplementary Information" section of the proposed rule.

Primary Author

J. Kenneth Edwards, Refuge Program Specialist, Division of Refuges, U.S. Fish and Wildlife Service, is the primary author of this notice.

Draft Compatibility Policy

FISH AND WILDLIFE SERVICE

NATIONAL WILDLIFE REFUGE SYSTEM USES

Refuge Management
Part 603 National Wildlife Refuge System Uses
Chapter 3 Compatibility
603 FW 3.1

3.1 What is the purpose of this chapter? This chapter provides guidance for determining compatibility of proposed and existing uses of national wildlife refuges.

3.2 What does this policy apply to? This policy applies to all proposed and existing uses of national wildlife refuges where we have jurisdiction over such uses.

3.3 What is the compatibility policy? The Refuge Manager will not initiate or permit a new use of a national wildlife refuge or expand, renew, or extend an existing use of a national wildlife refuge, unless the Refuge Manager has determined that the use is a compatible use.

3.4 What are the objectives of this chapter?

A. To provide guidelines for determining compatibility of proposed national wildlife refuge uses and procedures for documentation and periodic review of existing national wildlife refuge uses; and

B. To ensure that we administer proposed and existing national wildlife refuge uses according to laws, regulations, and policies concerning compatibility.

3.5 What are our statutory authorities for requiring uses of national wildlife refuges to be compatible?

A. National Wildlife Refuge System Administration Act of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997, 16 U.S.C. 668dd–668ee (Refuge Administration Act). This law states that "The Secretary is authorized, under such regulations as he may prescribe, to—(A) permit the use of any area within the System for any purpose, including but not limited to hunting, fishing, public recreation and accommodations, and access whenever he determines that such uses are compatible" and that "* * * the Secretary shall not initiate or permit a new use of a refuge or expand, renew, or extend an existing use of a refuge, unless the Secretary has determined that the use is a compatible use and that the use is not inconsistent with public safety." The law also provides that, in administering the Refuge System, "* * * the Secretary is authorized to * * * Issue regulations to carry out this Act."

A significant goal of the Refuge Administration Act is to ensure that we maintain the biological integrity, diversity, and environmental health of the Refuge System for present and future generations of Americans. Fragmentation of the Refuge System's wildlife habitats is a direct threat to the integrity of the Refuge System, both today and in the decades ahead. Uses that we reasonably may anticipate to reduce the quality or quantity or fragment habitats on a refuge will not be compatible.

B. Refuge Recreation Act of 1962, 16 U.S.C. 460k (Refuge Recreation Act). This law requires that any recreational use of a refuge must be compatible with the primary purposes for which the refuge was established.

C. Alaska National Interest Lands Conservation Act of 1980, 16 U.S.C. 140hh–3233, 43 U.S.C. 1602–1784 (ANILCA). Section 304 of the ANILCA adopted the compatibility standard of the Refuge Administration Act for Alaska refuges.

3.6 What do these terms mean?

A. Compatible use means a proposed or existing wildlife-dependent recreational use or any other use of a national wildlife refuge that, in the sound professional judgment of the Refuge Manager, will not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System Mission or the major purposes of the affected national wildlife refuge.

B. Compatibility determination means a written determination signed and dated by the Refuge Manager, signifying that a proposed or existing use of a national wildlife refuge is either a compatible use or a not compatible use. The Director delegates authority to make this determination through the Regional Director, to the Refuge Manager.

C. Comprehensive Conservation Plan means a document that describes the desired future conditions of a national wildlife refuge, and provides long-range guidance and management direction for a Refuge Manager to accomplish the purposes of the affected national wildlife refuge, contribute to the National Wildlife Refuge System Mission, and to meet other relevant mandates.

D. Conservation, and Management mean to sustain and, where appropriate, restore and enhance, healthy populations of fish, wildlife, and plants utilizing, in accordance with applicable Federal and State laws, methods, and procedures associated with modern scientific resource programs. Such methods and procedures include, consistent with the provisions of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), protection, research, census, law enforcement, habitat management, propagation, live trapping and transplantation, and regulated taking.

E. Coordination area means a wildlife management area made available to a State: (1) By cooperative agreement between the U.S. Fish and Wildlife Service and a State agency having control over wildlife resources pursuant to section 4 of the Fish and Wildlife Coordination Act (16 U.S.C. 664); or (2) by long-term leases or agreements pursuant to title III of the Bankhead-Jones Farm Tenant Act (7 U.S.C. 1010 et seq.). The States manage coordination areas as a part of the National Wildlife Refuge System. The compatibility standard does not apply to coordination areas.

F. Director means the Director, U.S. Fish and Wildlife Service or the authorized representative of such official.

G. Fish, Wildlife, and Fish and wildlife mean any member of the animal kingdom in a wild, unconfined state, whether alive or dead, including a part, product, egg, or offspring of the member.

H. National wildlife refuge, and Refuge mean a designated area of land, water, or an interest in land or water located within the external boundaries of the National Wildlife Refuge System but does not include coordination areas.

I. National Wildlife Refuge System, and Refuge System mean all lands, waters, and interests therein administered by, or subject to the jurisdiction of, the U.S. Fish and Wildlife Service as wildlife refuges, wildlife ranges, wildlife management areas, waterfowl production areas, and other areas administered by the U.S. Fish and Wildlife Service for the protection and conservation of fish and wildlife, including those that are threatened with extinction. A complete listing of all areas of the Refuge System is in the current annual "Report of Lands Under Control of the U.S. Fish and Wildlife Service."

J. National Wildlife Refuge System Mission, and Refuge System Mission mean to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans.

K. Plant means any member of the plant kingdom in a wild, unconfined state, including any plant community, seed, root, or other part of a plant.

L. Purpose(s) of the refuge means the purposes specified in or derived from the law, proclamation, executive order, agreement, public land order, donation document, or administrative memorandum establishing, authorizing, or expanding a national wildlife refuge, national wildlife refuge unit, or national wildlife refuge subunit.

M. Refuge Manager means the person who is directly in charge of a national wildlife refuge.

N. Refuge use, and Use of a refuge mean a recreational use (including refuge actions associated with a recreational use or other general public

use), refuge management economic activity, or other use of a national wildlife refuge by the public or other non-Service entity.

O. Refuge management economic activity means any refuge management activity on a national wildlife refuge which results in generation of income or in a commodity which is or can be sold for income or revenue or traded for goods or services. Examples include: farming, grazing, haying, timber harvesting, and trapping. Specifically excluded from this definition are refuge management activities which generate commodities not sold for income or revenue and not traded for goods or services, on or off a national wildlife refuge.

P. Refuge management activity means an activity conducted by the Service or a Service-authorized agent to fulfill all purposes or at least one or more purposes of the national wildlife refuge, or the National Wildlife Refuge System Mission. Service-authorized agents include contractors, cooperating agencies, cooperating associations, friends organizations, and volunteers.

Q. Regional Director means the official in charge of a region of the U.S. Fish and Wildlife Service or the authorized representative of such official.

R. Secretary means the Secretary of the Interior or the authorized representative of such official.

S. Service, and We mean the U.S. Fish and Wildlife Service, Department of the Interior.

T. Sound professional judgment means a finding, determination, or decision that is consistent with principles of sound fish and wildlife management and administration, available science and resources, and adherence to the requirements of the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee), and other applicable laws. Included in this finding, determination, or decision is a Refuge Manager's field experience and a Refuge Manager's knowledge of the particular affected refuge's resources.

U. State, and United States mean one or more of the States of the United States, Puerto Rico, American Somoa, the Virgin Islands, Guam, and the territories and possessions of the United States.

V. Wildlife-dependent recreational use, and Wildlife-dependent recreation mean a use of a national wildlife refuge involving hunting, fishing, wildlife observation and photography, or environmental education and interpretation. The National Wildlife Refuge System Administration Act of 1966, as amended, specifies that these are the six priority general public uses of the National Wildlife Refuge System.

3.7 What are our responsibilities?

A. Director.

(1) Provides national policy for making compatibility determinations to ensure that such determinations comply with all applicable authorities.

B. Regional Director.

(1) Ensures that Refuge Managers follow laws, regulations, and policies when making compatibility determinations.

(2) Notifies the Director regarding controversial or complex compatibility determinations.

C. Refuge Manager.

(1) Determines if a proposed or existing use is subject to the compatibility standard.

(2) Determines whether a use is compatible or not compatible. The Director delegates the authority to make this determination, through the Regional Director, to the Refuge Manager.

(3) Consults with the Regional Office supervisor or designee prior to approving each compatibility determination.

(4) Documents all compatibility determinations in writing.

(5) Ensures that we provide for public review and comment opportunities for all compatibility determinations, unless previously provided.

3.8 What is the compatibility standard for Alaska refuges?

A. The Refuge Administration Act, as amended, establishes the same standard for compatibility for Alaska refuges as for other national wildlife refuges, but it specifically acknowledges that the ANILCA provisions take precedence if any conflict arises between the two laws. Additionally, the provisions of the ANILCA are the primary guidance Refuge Managers should apply when examining issues regarding subsistence use. We may alter the compatibility process, in some cases, for Alaska refuges to include additional procedural steps, such as when reviewing applications for oil and gas leasing on non-North Slope lands (ANILCA Sec. 1008) and for applications for transportation and utility systems (ANILCA Sec. 1104).

B. Alaska refuges established before the passage of the ANILCA have two sets of purposes. Purposes for pre-ANILCA refuges (in effect on the day before the enactment of the ANILCA) remain in force and effect, except to the extent that they may be inconsistent with the ANILCA or the Alaska Native Claims Settlement Act, in which case the provisions of those Acts control. However, the original purposes for pre-ANILCA refuges apply only to those portions of the refuge established by the prior executive order or public land order, and not to those portions of the refuge added by the ANILCA.

C. Section 22(g) of the Alaska Native Claims Settlement Act provides that patents issued to Village Corporations for selected land within the boundaries of a refuge existing on December 18, 1971, the signing date of the Act, will contain provisions that these lands remain subject to laws and regulations governing the use and development of such refuges. This includes application of the compatibility standard in accordance with the Service's compatibility rules and procedures with regard to such use and development.

3.9 When is a compatibility determination required?

A. We require a compatibility determination for all refuge uses as defined by the term "refuge use" and must include in the analysis consideration of all associated facilities, structures, and improvements, including those constructed or installed by us or at our direction. This requirement will apply to all such facilities, structures, improvements, and refuge actions associated with uses that we approve on or after the effective date of this policy and to the replacement or major repair or alteration of facilities, structures, and improvements associated with already approved uses.

B. Facilities, structures, and improvements commonly associated with recreational public uses include: campgrounds/campsites; environmental education centers; boat/fishing docks; parking lots; boat ramps; roads; trails; viewing platforms/towers; and visitor centers.

C. Facilities, structures, and improvements commonly associated with refuge management economic activities include: loading/unloading areas; construction, operation, and maintenance buildings; parking lots; roads and trails; fences; stock ponds and other livestock watering facilities; and crop irrigation facilities.

D. We will make compatibility determinations for such facilities, structures, and improvements at the same time we make the compatibility determination for the use or activity in question.

3.10 When is a compatibility determination not required?

A. Refuge management activity. We do not require a compatibility determination for refuge management activities as defined by the term "refuge management activity" except for "refuge management economic activities." Examples include: prescribed burning; water level management; invasive species control; routine scientific monitoring, studies, surveys, and censuses; historic preservation activities; law enforcement activities; and maintenance of existing refuge facilities, structures, and improvements.

B. Other exceptions.

1. There are other circumstances under which the requirements of compatibility may not be applicable. The most common of these exceptions involves property rights that are not vested in the Federal Government, such as reserved rights to explore and develop minerals or oil and gas beneath a refuge. In some cases, these exceptions may include water rights, easements, or navigability issues. Exceptions may apply when there are rights or interests imparted by a treaty or other legally binding agreement, where primary jurisdiction of refuge lands falls to an agency other than us, or where legal mandates supersede those requiring compatibility. Where reserved rights or legal mandates provide that we must allow certain activities, we should not prepare a compatibility determination. In the case of reserved rights, the Refuge Manager should work with the owner of the property interest to develop stipulations in a special use permit or other agreement to alleviate or minimize adverse impacts to the refuge.

2. Communication and cooperation between the Refuge Manager and the owner of reserved rights will help protect refuge resources without infringing upon privately-held rights. Refuge Managers may find it helpful in these instances to secure legal advice from the Department of the Interior Solicitor's Office.

3. Compatibility provisions of the Refuge Administration Act do not apply to Department of Defense or other overflights above a refuge. However, other Federal laws (e.g., Airborne Hunting Act, Endangered Species Act, Bald Eagle Protection Act), may govern overflights above a refuge. For military overflights, active communication and cooperation between the Refuge Manager and the local base commander will be the most effective way to protect refuge resources.

4. Compatibility requirements apply to activities on bodies of water "in" or "within" any area of the Refuge System. Under 50 CFR 25.11, this is effectively to the extent of the ownership interest of the United States in lands or waters. Where activities on water bodies not within an area of the Refuge System are affecting refuge resources, the Refuge Manager should seek State cooperation in controlling the activities. If necessary, the refuge manger should consider refuge-specific regulations that would address the problem.

5. Compatibility provisions of the Refuge Administration Act do not apply to activities authorized, funded, or conducted by another Federal agency which has primary jurisdiction over the area where a refuge or a portion of a refuge has been established, if those activities are conducted in accordance with a memorandum of understanding between the Secretary or the Director and the head of the Federal agency with primary jurisdiction over the area.

C. Emergencies. The Refuge Administration Act states that the Secretary may temporarily suspend, allow, or initiate any use in a refuge in the Refuge System if the Secretary determines it is necessary to act immediately in order to protect the health and safety of the public or any fish or wildlife population. Authority to make decisions under this emergency power is delegated to the Refuge Manager. Temporary actions should not exceed 12-months and will usually be of shorter duration. Such emergency actions are not subject to the compatibility determination process as outlined in this chapter. When using this authority, the Refuge Manager will notify the Regional Office supervisor or designee in advance of the action, or in cases where the nature of the emergency requires immediate response, as soon as possible afterwards, and typically no later than the start of business on the first normal workday following the emergency action. The Refuge Manager will create a written record (memorandum to the file) of the decision, the reasons supporting it, and why it was necessary to protect the health and safety of the public or any fish or wildlife population.

D. Denying a proposed use without determining compatibility.

1. The Refuge Manager should deny a proposed use without determining compatibility if any of the following situations exist:

(a) the proposed use is inconsistent with any applicable law or regulation (e.g., Wilderness Act, Endangered Species Act, Marine Mammal Protection Act, Migratory Bird Treaty Act);

(b) the proposed use is inconsistent with the goals or objectives in an approved refuge management plan (e.g., Comprehensive Conservation Plan, Comprehensive Management Plan, Master Plan or step-down management plan);

(c) the proposed use has already been considered in an approved refuge management plan and was not accepted;

(d) the proposed use is inconsistent with any applicable Executive Order, or written Department of the Interior or Service policy;

(e) the proposed use is inconsistent with public safety;

(f) the proposed use is a use other than a wildlife-dependent recreational use that is not manageable within the available budget and staff; or

(g) the proposed use conflicts with other resource or management objectives provided that the Refuge Manager specifies those objectives in denying the use.

2. A compatibility determination should only be prepared for a proposed use after the Refuge Manager has determined that we have jurisdiction over the use and has considered items (a) through (g) above (see Exhibit 1).

E. Existing compatibility determinations. Compatibility determinations in existence prior to the effective date of this policy will remain in effect until and unless modified and will be subject to periodic re-evaluation as described in section 3.11 G. Any use specifically authorized for a period longer than 10 years (such as rights-of-way) is subject to a compatibility determination at the time of the initial application and when the term expires and we receive a request for renewal. We will use periodic re-evaluations for such long-term uses to review compliance with permit terms and conditions.

3.11 What are considerations when applying compatibility?

A. Sound professional judgment.

1. In determining what is a compatible use, the Refuge Administration Act relies on the "sound professional judgment" of the Director. The Director delegates authority to make compatibility determinations through the Regional Director to the Refuge Manager. Therefore, it is the Refuge Manager who is required and authorized to exercise sound professional judgment. Compatibility determinations are inherently complex and require the Refuge Manager to consider their field experiences and knowledge of a refuge's resources, particularly its biological resources and make conclusions that are consistent with principles of sound fish and wildlife management and administration, available scientific information, and applicable laws.

2. The Refuge Manager must also consider the extent to which available resources (funding, personnel, and facilities) are adequate to develop, manage, and maintain the proposed use so as to ensure compatibility. The Refuge Manager must make reasonable efforts to ensure that the lack of resources is not an obstacle to permitting otherwise compatible

wildlife-dependent recreational uses (hunting, fishing, wildlife observation and photography, and environmental education and interpretation). If reasonable efforts do not yield adequate resources to develop, manage, and maintain the wildlife-dependent recreational use, the use will not be compatible because the Service will lack the administrative means to ensure proper management of the public activity on the refuge.

3. Refuge Managers are reminded, that unless otherwise provided for in law or other legally binding directive, permitting uses of national wildlife refuges is a determination vested by law in the Service. Under no circumstances (except emergency provisions necessary to protect the health and safety of the public or any fish or wildlife population) may we authorize any use not determined to be compatible.

B. Materially interfere with or detract from.

1. When completing compatibility determinations, Refuge Managers use sound professional judgment to determine if a use will materially interfere with or detract from the fulfillment of the Refuge System Mission or the major purpose(s) of the refuge. Compatibility, therefore, is a threshold issue, and the proponent(s) of any use or combination of uses must demonstrate to the satisfaction of the Refuge Manager that the proposed use(s) pass this threshold test. The burden of proof is on the proponent to show that they pass; not on the Refuge Manager to show that they surpass. Some uses, like a proposed construction project on or across a refuge that affects the flow of water through a refuge, may exceed the threshold immediately, while other uses, such as boat fishing in a small lake with a colonial nesting bird rookery may be of little concern if it involves few boats, but of increasing concern with growing numbers of boats. Likewise, when considered separately, a use may not exceed the compatibility threshold, but when considered cumulatively in conjunction with other existing or planned uses, a use may exceed the compatibility threshold.

2. A use that has a tangible adverse effect will "materially interfere with or detract." That effect should be one where we can reasonably foresee a lingering or continued adverse effect or influence on refuge resources. For example, the removal of a number of individual animals from a refuge through regulated hunting, trapping or fishing would in many instances help the Refuge Manager manage for improving the health of wildlife populations. However, the take of even one individual of a threatened or endangered species could significantly impact the refuge's ability to manage for and perpetuate that species. Likewise, wildlife disturbance which is very limited in scope or duration may not result in a tangible, lingering or continued adverse effect on refuge resources. However, even unintentional harassment or disturbance during critical biological times, in critical locations, or repeated over time may exceed the compatibility threshold.

3. The Refuge Manager must consider not only the direct impacts of a use but also the indirect impacts associated with the use and the cumulative impacts of the use when conducted in conjunction with other existing or planned uses of the refuge, and uses of adjacent lands or waters that may exacerbate the effects of a refuge use.

C. Making a use compatible through replacement of lost habitat values or other compensation. We will not allow making proposed refuge uses compatible through replacement of lost habitat values or other compensation. If we cannot make the proposed use compatible through stipulations we cannot allow the use.

D. Refuge-specific analysis. We must base compatibility determinations on a refuge-specific analysis of reasonably anticipated impacts of a particular use on refuge resources. We should base this refuge-specific analysis on information readily available to the Refuge Manager, including field experience and familiarity with refuge resources, or made available to the Refuge Manager by the State, Tribes, proponent of the use, or through the public review and comment period. Refuge-specific analysis need not rely on refuge-specific biological impact data, but may be based on information derived from other areas or species which are similarly situated and therefore relevant to the refuge-specific analysis. We do not require Refuge Managers to independently generate data to make determinations. If available information to the Refuge Manager is insufficient to document that a proposed use is compatible, then the Refuge Manager would be unable to make an affirmative finding of compatibility and we must not authorize or permit the use.

E. Relationship to management plans. The Refuge Manager will usually complete compatibility determinations as part of the Comprehensive Conservation Plan or step-down management plan process for individual uses, specific use programs, or groups of related uses described in the plan. The Refuge Manager will incorporate compatibility determinations prepared concurrently with a plan as an appendix to the plan. These compatibility determinations may summarize and incorporate by reference what the Refuge Manager addressed in detail in the Comprehensive Conservation Plan, step-down management plan, or associated National Environmental Policy Act (NEPA) document.

F. Managing conflicting uses. The Refuge Manager may need to allocate uses in time and/or space to reduce or eliminate conflicts among users of the refuge. If this cannot be done, the Refuge Manager may need to terminate or disallow one or more of the uses. The Refuge Administration Act does not prioritize among the six wildlife-dependent recreational uses. Therefore, in the case of direct conflict between these priority uses, the Refuge Manager should evaluate, among other things, which use most directly supports long-term attainment of refuge purposes and the Refuge System Mission. This same analysis would support a decision involving conflict between two non-priority public uses. Where there are conflicts between priority and non-priority uses, priority uses take precedence.

G. Re-evaluation of uses.

1. We will re-evaluate compatibility determinations for existing wildlife-dependent recreational uses when conditions under which the permitted use changes significantly, or if there is significant new information regarding the effects of the use, or concurrently with the preparation or revision of a Comprehensive Conservation Plan, or at least every 15 years, whichever is earlier. In addition, a Refuge Manager always may re-evaluate the compatibility of a use at any time.

2. Except for uses specifically authorized for a period longer than 10 years (such as rights-of-way), we will re-evaluate compatibility determinations for all other existing uses when conditions under which the permitted use changes significantly, or if there is significant new information regarding the effects of the use, or concurrently with the preparation or revision of a Comprehensive Conservation Plan, or at least every 10 years, whichever is earlier. Again, a Refuge Manager always may re-evaluate the compatibility of a use at any time.

3. For uses specifically authorized for a period longer than 10 years (such as long-term rights-of-way), our re-evaluation will examine compliance with the terms and conditions of the authorization, not the authorization itself. However, we will frequently monitor and review the activity to ensure that all permit terms and conditions are being carried out. We will make a new compatibility determination prior to extending or renewing such long-term uses at the expiration of the authorization.

H. Public review and comment. An opportunity for public review and comment is required for all compatibility determinations. For compatibility determinations prepared concurrently with Comprehensive Conservation Plans or step-down management plans, we can achieve public review and comment concurrently with the public review and comment of the draft plan and associated NEPA document. For compatibility determinations prepared separate from a plan, we will determine the appropriate level of opportunity for public review and comment through a tiered approach based on complexity, controversy, and level of impact to the refuge. See 3.12 A10 for details on public review and comment.

3.12 What are the steps for preparing compatibility determinations?

A. The following steps outline the procedure for reviewing uses for compatibility. To maintain consistency, we will use the format provided in Exhibit 2 for documenting all compatibility determinations.

1. Use. Identify the use. A use may be proposed or existing, and may be an individual use, a specific use program, or a group of related uses. The Refuge Manager will determine whether to consider a use individually, a specific use program, or in conjunction with a group of related uses. However, whenever practicable, the Refuge Manager should concurrently consider related uses or uses that are likely to have similar effects, in order to facilitate analysis of cumulative effects and to provide opportunity for effective public review and comment.

2. Refuge name. Identify the name of the refuge.

3. Establishing and acquisition authority(ies). Identify the specific authority(ies) used to establish the refuge (e.g., Executive Order, public land order, Secretarial Order, refuge-specific legislation, or general legislation).

4. Refuge purpose(s). Identify the purpose(s) of the refuge from the documents identified in 3.12 A3. For a use proposed for designated wilderness areas within the Refuge System, the Refuge Manager must first analyze whether the activity can be allowed under the terms of the Wilderness Act (16 U.S.C. sections 1131–36). If so, the Refuge Manager must then determine whether the activity is compatible. As a matter of policy, the Refuge Manager will also analyze whether the activity is compatible with the purposes of the Wilderness Act, which makes such purposes supplemental to those of the national wildlife refuge.

5. National Wildlife Refuge System Mission. The Mission of the National Wildlife Refuge System is "to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans."

6. Description of use. Describe the nature and extent of the use. The Refuge Manager may work with the proponent(s) of a use to gather information required in items (a) through (e) below to describe the proposed use. If the use is described in sufficient detail in a Comprehensive Conservation Plan, step-down management plan, other plan, or associated NEPA document, the Refuge Manager may provide a summary of the use and reference the plan or NEPA document.

At a minimum, the Refuge Manager must address and include the following in the compatibility determination:

(a) What is the use?

(b) Where would the use be conducted? Describe the specific areas of the refuge that will be used: habitat types and acres involved; key fish, wildlife, and plants that occur in or use that habitat; and the proportion of total refuge acreage and the specific habitat type involved. Include a description of other areas that may be affected incidental to the specific use, such as access to the destination area and storage of equipment. This information may be described in writing and on a map.

(c) When would the use be conducted? Describe the time of year and day, and duration of the use.

(d) How would the use be conducted? Describe the techniques to be used, types of equipment required, and number of people per given period. Include supporting uses and facilities as appropriate, e.g., boating and boat ramps to support fishing, camping and campsites to support hunting, etc.

(e) Why is this use being proposed? Describe the reason for the use and the need to conduct the use on the refuge. Consider the extent to which other areas in the vicinity provide similar opportunities.

7. Availability of resources.

a. Complete an analysis of costs for administering and managing each use. Implicit within the definition of sound professional judgment is that adequate resources (including financial, personnel, facilities, and other infrastructure) exist or can be provided by the Service or a partner to properly develop, operate, and maintain the use in a way that will not materially interfere with or detract from fulfillment of the refuge purpose(s) and the Refuge System Mission. If resources are lacking for establishment or continuation of wildlife-dependent recreational uses, the Refuge Manager will make reasonable efforts to obtain additional resources or outside assistance from States, other public agencies, local communities, and/or private and non-profit groups before determining that the use is not compatible. If adequate resources cannot be secured, the use will be found not compatible and cannot be allowed. Efforts to find additional funding must be documented on the compatibility determination form.

b. For many refuges, analysis of available resources will have been made for general categories of uses when preparing Comprehensive Conservation Plans, step-down management plans, other plans, or NEPA documents. If the required and available resources are described in sufficient detail in a Comprehensive Conservation Plan, step-down management plan, other plan, or associated NEPA document, provide a summary of the required and available resources for the use and reference the plan or NEPA document. If not sufficiently covered in the planning document, the following should be documented in the compatibility determination:

(i) Resources involved in the administration and management of the use.

(ii) Special equipment, facilities or improvements necessary to support the use. Itemize expenses such as costs associated with special equipment, physical changes or improvements necessary on the refuge that would be required to comply with disabled access requirements.

(iii) Maintenance costs associated with the use (e.g., trail maintenance and mowing, signing, garbage pickup or sanitation costs, parking areas, road repair or grading, building or structure repair, including blinds, boat ramps, kiosks, etc.).

(iv) Monitoring costs (e.g., biological surveys, maintenance of control sites, etc) to assess the impact of uses over time.

c. This analysis of cost for administering and managing each use will only include the incremental increase above general operational costs

that we can show as being directly caused by the proposed use.

d. Offsetting revenues, such as entrance fees and user fees that are returned to the refuge, should be documented in determining the costs to administer individual or aggregated uses.

8. Anticipated impacts of the use.

a. Identify and describe the reasonably anticipated impacts of the use. In assessing the potential impacts of a proposed use on the refuge purpose(s) and the Refuge System Mission, Refuge Managers will use and cite available sources of information, as well as their best professional judgment, to substantiate their analysis. Sources may include planning documents, environmental assessments, environmental impact statements, annual narratives, information from previously-conducted or ongoing research, data from refuge inventories or studies, published literature on related biological studies, State conservation management plans, field management experience, etc. Refuge Managers are not required to independently generate data on which to base compatibility determinations. The Refuge Manager may work with the proponent of the use to gather additional information before making the determination. If available information to the Refuge Manager is insufficient to document that a proposed use is compatible, then the Refuge Manager would be unable to make an affirmative finding of compatibility and we must not authorize or permit the use.

b. Refuge Managers should distinguish between long-term and short-term impacts. For example, a use may initially only be expected to cause minor impacts to the resource, however, the cumulative impacts over time may become quite substantial. Other uses may have impacts which are very short in duration but very significant while they are occurring, or are the converse: very long in duration but very insignificant in effect.

c. Direct impacts on refuge resources, such as wildlife disturbance or destruction of habitats, may be easily predicted. However, the analysis of impacts must also address indirect and cumulative effects that may be reasonably associated with a specific use. A use with little potential for impact on its own may contribute to more substantive cumulative impacts on refuge resources when conducted in conjunction with or preceding or following other uses, and when considered in conjunction with proposed or existing uses of lands and waters adjacent to the refuge.

d. If the anticipated impacts of the use are described in sufficient detail in a Comprehensive Conservation Plan, step-down management plan, other plan, or associated NEPA document, Refuge Managers may provide a summary of the anticipated impacts of the use and reference the plan or NEPA document.

9. Justification. After completing the steps described above, the Refuge Manager will provide a logical explanation for the determination. The justification must describe how the proposed use is reasonably expected to affect fulfilling the refuge's major purpose(s) and the Refuge System Mission.

10. Public review and comment.

a. The Refuge Manager must provide for public review and comment on the proposed refuge uses(s) before issuing a final compatibility determination. Public review and comment, includes actively seeking to identify individuals and organizations that reasonably might be affected by, or interested in, a refuge use. Additionally, public review and comment will offer the public the opportunity to provide relevant information and express their views on whether or not a use is compatible. The extent and complexity of public review and comment that is necessary or appropriate will be determined by the Refuge Manager. For example, significantly modifying a popular hunting, fishing, or wildlife observation program would likely be controversial and would require considerable opportunity for public review and comment; whereas, temporarily closing a small portion of a wildlife observation trail would likely require much less opportunity for public review and comment. For compatibility determinations prepared concurrently with Comprehensive Conservation Plans or step-down management plans, public involvement can be achieved concurrently with the public review and comment of the draft plan and associated NEPA document. For compatibility determinations prepared separate from a plan, the level of public review and comment will be handled through the following tiered approach.

b. For minor, incidental, or one-time uses which have been shown by past experience at this or other refuges in the Refuge System to result in no significant, cumulative, lingering or continuing adverse impacts to the refuge and would likely generate minimal public interest, the public review and comment requirement can be accomplished by posting a notice of the proposed determination at the refuge headquarters so as to maximize the opportunity for comment as is practicable. For all other uses, at a minimum, the Refuge Manager will solicit public comment by placing a public notice in a newspaper with wide local distribution. The notice must contain, at a minimum: a brief description of the compatibility determination process, a description of the use that is being evaluated, the types of information that may be used in completing the evaluation, how to provide comments, when comments are due, and how people may be informed of the decision the Refuge Manager will make regarding the use. The public will be given at least 14 calendar days to provide comments following the day the notice is published. This period may be reduced by the Refuge Manager when there is not sufficient time to provide the full 14-days.

c. For evaluations of controversial or complex uses, the Refuge Manager should expand the public review and comment process to allow for additional opportunities for comment. This may include newspaper or radio announcements, notices or postings in public places, notices in the **Federal Register**, letters to potentially interested people such as adjacent landowners, holding public meetings, or extending the comment period.

d. Public review and comment efforts must be documented on the compatibility determination form and relevant information retained with compatibility determinations as part of the administrative record. The documentation must include a description of the process used, a summary of comments received, and a description of any actions taken because of the comments received. All written public comments will be retained in the administrative record. If a Comprehensive Conservation Plan or NEPA document is being prepared, this information would be included in these documents as part of the administrative record.

11. Use is compatible or not compatible. Identify whether the use is compatible or not compatible. This is where the Refuge Manager states whether the use materially interferes with or detracts from fulfilling the National Wildlife Refuge System Mission or the major purposes of the refuge.

12. Stipulations necessary to ensure compatibility.

a. Describe any stipulations necessary to ensure compatibility. If a use is not compatible as initially proposed, it may be modified with stipulations that avoid or minimize potential adverse impacts, making the use compatible. It is not the responsibility of the Refuge Manager to develop a sufficient set of stipulations so as to make an otherwise not compatible proposed use, compatible. If the use cannot be modified with stipulations to ensure compatibility, the use cannot be allowed.

b. Protective stipulations in the compatibility determination for a particular use should specify the manner in which that use must be carried out to ensure compatibility. Stipulations must be detailed and specific. They may identify such things as limitations on time (daily, seasonal, or annual) or space where a use could be safely conducted, the routes or forms of access to be used, and any restrictions on the types of equipment to be used or number of people to be involved. Monitoring of the use must be sufficient to evaluate compliance with stated conditions and swift action must be taken to correct or respond to any serious deviations.

13. Consultation with Regional Office. Prior to approving each compatibility determination, the Refuge Manager will consult with their Regional Office supervisor or designee. The consultation will be documented by recording on the compatibility determination form the date and name of person consulted with.

14. Signature. The Refuge Manager will sign and date the compatibility determination.

15. Mandatory 10 or 15-year re-evaluation date. At the time the compatibility determination is made, the Refuge Manager will insert the required maximum 10-year re-evaluation date for uses other than wildlife-dependent recreational uses or a 15-year maximum re-evaluation date for wildlife-dependent recreational uses.

3.13 How do we expedite the compatibility determination process? The Refuge Administration Act provides for expedited consideration of uses that will likely have no detrimental effect on the fulfillment of the purpose(s) of the refuge or the Refuge System Mission. The intent of this provision is to reduce the administrative burden on the Refuge Manager and speed the compatibility determination process for uses that are frequently found to be compatible. For minor, incidental, or one-time uses which have been shown to have no significant, cumulative, lingering, or continuing adverse impacts to the refuge and would likely generate minimal public interest, the time period for an opportunity for public review and comment may be reduced to the time available.

3.14 What do we do with existing uses that are not compatible? Existing uses determined to be not compatible will be terminated or modified to make the use compatible as expeditiously as practicable.

3.15 May we deny uses that are compatible? A determination that a use is compatible does not require the use to be allowed. Determinations on whether to allow otherwise compatible uses are based on compliance with other laws, the Refuge System Mission, policy, refuge purposes, availability of resources to manage the use, possible conflicts with other uses, public safety, and other administrative factors. The Refuge Manager must clearly document and describe in writing the administrative reasons for not permitting a compatible use. Usually, a Refuge Manager will make this decision prior to making a compatibility determination and completing one will be unnecessary.

3.16 What are the procedures for appealing a permit denial? Procedures for appealing a permit denial are provided in 50 CFR 25.45 (special use permits), 50 CFR 29.23 (rights-of-way), 50 CFR 36.41(b) (special use permits for refuges in Alaska), or 43 CFR 36.8 (rights-of-way for Alaska).

3.17 Compatibility on Lands Added to the National Wildlife Refuge System.

A. When we add lands to the National Wildlife Refuge System, the Refuge Manager assigned management responsibility for the land to be acquired, will identify prior to acquisition, withdrawal, transfer, reclassification, or donation of those lands, existing wildlife-dependent recreational public uses (if any) determined to be compatible that we will permit to continue on an interim basis, pending completion of the Comprehensive Conservation Plan. For this purpose, the Refuge Manager will make a pre-acquisition compatibility determination that will apply to existing wildlife-dependent recreational public uses that may be allowed, if determined to be compatible during the interim between acquisition and completion of the Comprehensive Conservation Plan. The purpose of this policy is to inform the public, prior to acquisition, which wildlife-dependent recreational public uses will be allowed to continue on newly acquired lands. Such decisions must be based on the compatibility standards and procedures outlined in this chapter. These pre-acquisition compatibility determinations for continuing existing wildlife-dependent recreational public uses will be made in writing, using the format in Exhibit 2.

B. Pre-acquisition compatibility determinations only apply to existing wildlife-dependent recreational public uses and are intended to be short term in nature, bridging the gap between acquisition of refuge lands and completion of refuge Comprehensive Conservation Plans. They should be made in conjunction with the preparation and release of appropriate pre-acquisition Realty documentation, prepared pursuant to NEPA. Pre-acquisition compatibility determinations should document the type, level and location of wildlife-dependent recreational public uses that are presently occurring on lands proposed for acquisition.

3.18 What is the relationship of compatibility to NEPA?

A. Analysis done to comply with NEPA with regard to proposed actions are closely related to the compatibility determination process because the NEPA process requires analysis of the impacts of a proposed action on the natural, cultural, and physical environment, and requires public participation in the decision-making process. The information developed in complying with NEPA will be useful in completing compatibility determinations.

B. Comprehensive Conservation Plans and step-down management plans will have associated NEPA compliance documentation, and Refuge Managers should ensure that the analysis in the NEPA document adequately covers the factors that are relevant to compatibility determinations. If this is done, it will only be necessary to summarize and reference the analysis and conclusion in the compatibility determination. Final compatibility determinations should be deferred until the NEPA document is completed and a decision is made on the proposed action. Public involvement efforts should be undertaken concurrently to the extent practicable.

C. A decision to allow a proposed use, or terminate or significantly modify an existing use made independent of a formal planning process should be accompanied by appropriate NEPA documentation. However, if a proposed use is not authorized, as a result of a compatibility determination, no action results that would require NEPA documentation. NEPA compliance for authorizations of uses that are categorically excluded should be documented with an Environmental Action Statement as described in 550 FW 3. The Refuge Manager may work with the proponent(s) of a use to provide the appropriate NEPA documentation.

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Exhibit 1

Compatibility Determination Flowchart

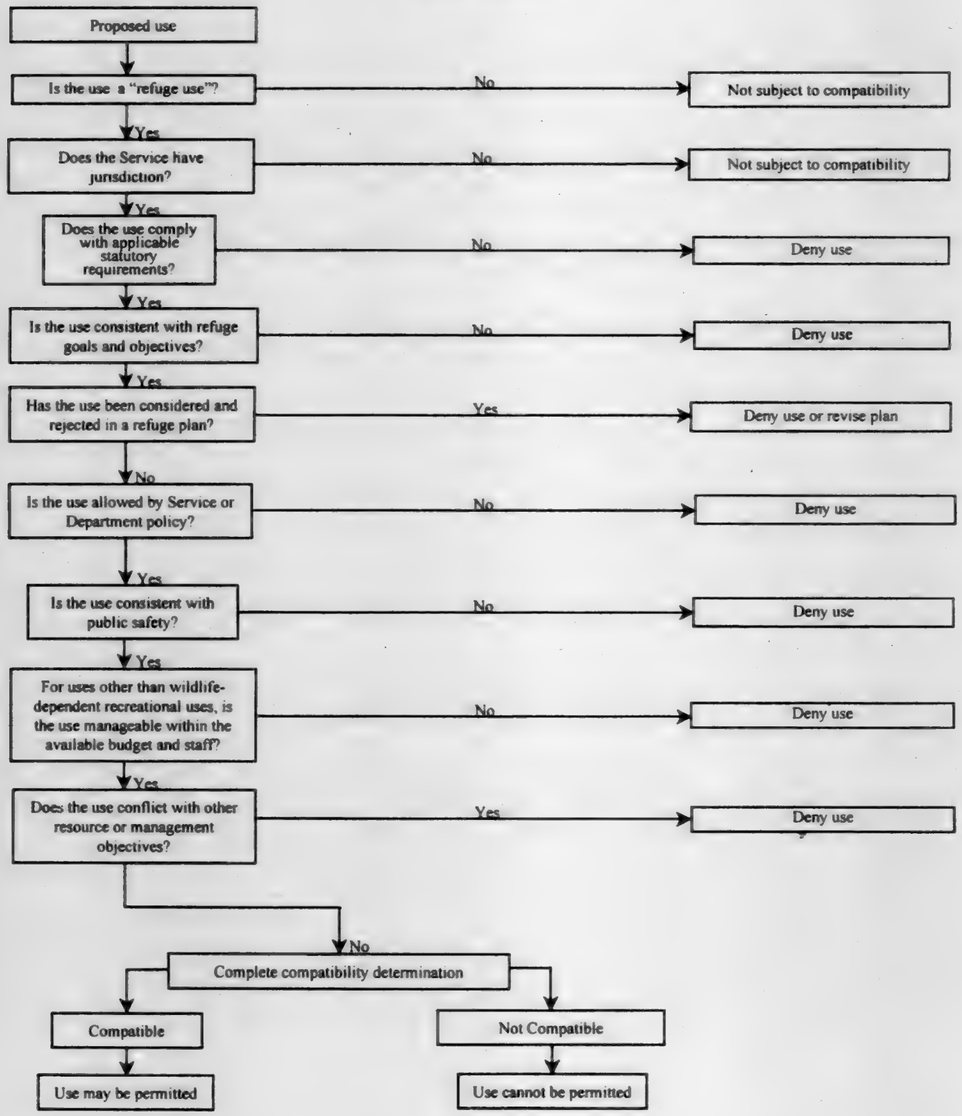

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Exhibit 2—Compatibility Determination

Use:
Refuge Name:
Establishing and Acquisition Authority(ies):
Refuge Purpose(s):
National Wildlife Refuge System Mission:
Description of Use:
Availability of Resources:
Anticipated Impacts of the Use:
Justification:
Public Review and Comment:
Use is Compatible or Not Compatible (circle one):
Stipulations Necessary to Ensure Compatibility:
Consultation with Regional Office:
Signature:
Refuge Manager:

_____

(Signature/Date)

Mandatory 10 or 15-year Reevaluation Date: _____

Dated: May 26, 1999.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 99–22993 Filed 9–8–99; 8:45 am]

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H.R. 211/P.L. 106–48

To designate the Federal building and United States courthouse located at 920 West Riverside Avenue in Spokane, Washington, as the "Thomas S. Foley United States Courthouse", and the plaza at the south entrance of such building and courthouse as the "Walter F. Horan Plaza". (Aug. 17, 1999; 113 Stat. 230)

H.R. 1219/P.L. 106–49

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H.R. 1568/P.L. 106–50

Veterans Entrepreneurship and Small Business Development Act of 1999 (Aug. 17, 1999; 113 Stat. 233)

H.R. 1664/P.L. 106–51

Emergency Steel Loan Guarantee and Emergency Oil and Gas Guaranteed Loan Act of 1999 (Aug. 17, 1999; 113 Stat. 252)

H.R. 2465/P.L. 106–52

Military Construction Appropriations Act, 2000 (Aug. 17, 1999; 113 Stat. 259)

S. 507/P.L. 106–53

Water Resources Development Act of 1999. (Aug. 17, 1999; 113 Stat. 269)

S. 606/P.L. 106–54

For the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical, LLC (successor to Kerr-McGee Chemical Corporation), and for other purposes. (Aug. 17, 1999; 113 Stat. 398)

S. 1546/P.L. 106–55

To amend the International Religious Freedom Act of 1998 to provide additional administrative authorities to the United States Commission on International Religious Freedom, and to make technical corrections to that Act, and for other purposes. (Aug. 17, 1999; 113 Stat. 401)

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Parts 300 and 301

[Docket No. 96–069–4]

High-Temperature Forced-Air Treatments for Citrus

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On July 13, 1999, the Animal and Plant Health Inspection Service published a direct final rule. (See 64 FR 37663–37665, Docket No. 96–069–3.) The direct final rule notified the public of our intention to amend the Plant Protection and Quarantine Treatment Manual, which is incorporated by reference into the Code of Federal Regulations, to allow navel oranges from Mexico and areas of the United States that are infested with plant pests in the genus *Anastrepha*, which includes *A. ludens*, the Mexican fruit fly, to be treated with a high-temperature forced-air process that was approved for tangerines, oranges other than navel oranges, and grapefruit from these areas. We did not receive any written adverse comments or written notice of intent to submit adverse comments in response to the direct final rule.

EFFECTIVE DATE: The effective date of the direct final rule is confirmed as: September 13, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Donna West, Import Specialist, Phytosanitary Issues Management, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 3rd day of September 1999.

Angel Cielo,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–23521 Filed 9–9–99; 8:45 am]

BILLING CODE 3410–34–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 795

OMB Control Numbers

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is updating its listing displaying the Office of Management and Budget (OMB) control numbers for information collection requirements found in NCUA regulations. The Paperwork Reduction Act mandates NCUA to make these revisions.

DATES: Effective September 10, 1999.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 2314–3428.

FOR FURTHER INFORMATION CONTACT: Regina M. Metz, Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

The Paperwork Reduction Act requires that agencies display a current OMB control number for each agency collection requirement found in a regulation. NCUA is revising 795.1(b) to reflect changes in NCUA's information collection requirements and OMB's control numbers for each requirement.

B. Final Rule

The NCUA Board is issuing this regulation as a final rule because of the strong public interest in updating the regulation, in accordance with the requirements of § 3507(f) of the Paperwork Reduction Act. The rule is effective upon publication so that the NCUA can display the current OMB control number for each information collection requirement in NCUA's regulations. Accordingly, for good cause, the Board finds that, pursuant to 5 U.S.C. 553(b)(3)(B), notice and public procedures are impracticable, unnecessary, and contrary to the public interest; and, pursuant to 5 U.S.C. 553(d)(3), the rule shall be effective immediately and without 30 days advance notice of publication.

C. Regulatory Procedures

1. Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any proposed regulation may have on a substantial number of small entities (primarily those under $1 million in assets). The NCUA has determined and certifies that this interim rule will not have a significant economic impact on a substantial number of small credit unions. Accordingly, the NCUA has determined that a Regulatory Flexibility Analysis is not required.

2. Paperwork Reduction Act

This proposed rule to update § 795.1(b) does not involve a collection of information under the Paperwork Reduction Act. Accordingly, NCUA has determined that a Paperwork Reduction analysis is not required.

3. Executive Order 12612

Executive Order 12612 requires NCUA to consider the effect of its actions on state interests. The final rule, as does the current rule, applies to all federally insured credit unions, including federally insured state chartered credit unions. However, since the final rule reduces regulatory burden, NCUA has determined that the final rule does not constitute a "significant regulatory action" for purposes of the Executive Order.

4. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. OMB is reviewing this rule to determine whether it is major for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 12 CFR Part 795

Credit unions, Collection requirements.

By the National Credit Union Administration Board on August 30, 1999.

Becky Baker,

Secretary of the Board.

For the reasons set forth above, National Credit Union Administration amends 12 CFR part 795 as follows:

PART 795—OMB CONTROL NUMBERS

1. The authority citation for part 795 continues to read as follows:

Authority: 12 U.S.C. 1766(a) and 5 U.S.C. 3507(f).

2. In § 795.1 paragraph (b) is revised to read as follows:

§ 795.1 OMB control numbers.

(a) * * *

(b) *Display.*

12 CFR part or section where identified and described	Current OMB control No.
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	3133–0158
	3133–0159
741	3133–0067
741.6	3133–0004
748	3133–0108
	3133–0121
749	3133–0032
760	3133–0143
792	3133–0146

[FR Doc. 99–23498 Filed 9–9–99; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–49–AD; Amendment 39–11224; AD 99–15–05]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes, and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information in an existing airworthiness directive (AD) that applies to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes, and C–9 (military) airplanes. That AD currently requires a one-time visual inspection to determine if all corners of the aft lower cargo doorjamb have been previously modified. That AD also requires low frequency eddy current inspections to detect cracks of the fuselage skin and doubler at all corners of the aft lower cargo doorjamb, various follow-on repetitive inspections, and modification, if necessary. This amendment corrects two typographical errors involving reference to a certain Principal Structural Element (PSE) and correction of a compliance time. This correction is necessary to ensure that the correct PSE is inspected, and that an appropriate period of time is permitted for compliance with a certain inspection.

DATE: Effective August 18, 1999.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the **Federal Register** as of August 18, 1999 (64 FR 37838, July 14, 1999).

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: On July 7, 1999, the Federal Aviation Administration (FAA) issued AD 99–15–05, amendment 39–11224 (64 FR 37838, July 14, 1999), which applies to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes, and C–9 (military) airplanes. That AD requires a one-time visual inspection to determine if all corners of the aft lower cargo doorjamb have been previously modified. That AD also requires low frequency eddy current inspections to detect cracks of the fuselage skin and doubler at all corners of the aft lower cargo doorjamb, various follow-on repetitive inspections, and modification, if necessary. That AD was prompted by fatigue cracks found in the fuselage skin and doubler at the corners of the aft lower cargo doorjamb. The actions specified by that AD are intended to detect and correct such fatigue cracking, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

Need for the Correction

The FAA has noted that a typographical error exists in paragraph (d) of the existing AD that involves the compliance time for performing a high frequency eddy current (HFEC) inspection to detect cracks on the skin adjacent to a certain modification of the corners of the right lower cargo doorjamb. That AD specified that the HFEC inspection should be performed "prior to the accumulation of 28,000 landings since accomplishment of that modification, or within 3,500 landings after the effective date of the AD." However, the intent of the FAA was to specify "prior to the accumulation of 28,000 landings since accomplishment of that modification, or within 3,575 landings after the effective date of the AD." Paragraph (d) of the existing AD has been revised to correctly specify 3,575 landings.

Additionally, a typographical error occurred in the identification of the Principle Structural Element (PSE) specified in paragraph (e) of the existing AD. The PSE was identified as "PSE 53.09.033;" however, the appropriate number for the PSE should have been identified as "53.09.035;" That correction has been included in this AD.

Correction of Publication

This document corrects the typographical errors in AD 99–15–05, and correctly adds the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The final rule is being reprinted in its entirety for the convenience of affected operators. The effective date of the AD remains August 18, 1999.

Since this action only identifies the appropriate PSE to be inspected and corrects a compliance time (which actually extends the compliance period somewhat from the existing AD), it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

List of Subject in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Corrected]

2. Section 39.13 is amended by correctly adding the following airworthiness directive (AD):

99–15–05: McDonnell Douglas: Amendment 39–11224. Docket 97–NM–49–AD.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes, and C–9 (military) airplanes, as listed in McDonnell Douglas DC–9 Service Bulletin DC9–53–278, dated November 4, 1996, or McDonnell Douglas DC–9 Service Bulletin DC9–53–278, Revision 01, dated April 29, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the fuselage skin or doubler at the corners of the aft lower cargo doorjamb, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane, accomplish the following:

Note 2: Where there are differences between the service bulletin and the AD, the AD prevails.

(a) Prior to the accumulation of 48,000 total landings, or within 3,575 landings after the effective date of this AD, whichever occurs later, perform a one-time visual inspection to determine if the corners of the aft lower cargo doorjamb have been modified prior to the effective date of this AD.

(b) If the visual inspection required by paragraph (a) of this AD reveals that the corners of the aft lower cargo doorjamb *have not been modified:* Prior to further flight, perform a low frequency eddy current (LFEC) or x-ray inspection to detect cracks of the fuselage skin and doubler at all corners of the aft lower cargo doorjamb, in accordance with McDonnell Douglas Service Bulletin DC9–53–278, dated November 4, 1996, or Revision 01, dated April 29, 1999.

(1) If no crack is detected during the LFEC or x-ray inspection required by this paragraph, accomplish the requirements of either paragraph (b)(1)(i) or (b)(1)(ii) of this AD.

(i) *Option 1.* Repeat the inspections as follows until paragraph (b)(1)(ii) of this AD is accomplished:

(A) If the immediately preceding inspection was conducted using LFEC techniques, conduct the next inspection within 3,575 landings.

(B) If the immediately preceding inspection was conducted using x-ray techniques, conduct the next inspection within 3,075 landings.

(ii) *Option 2.* Prior to further flight, modify the corners of the aft lower cargo doorjamb, in accordance with either service bulletin. Prior to the accumulation of 28,000 landings after accomplishment of that modification, perform a High Frequency Eddy Current (HFEC) inspection to detect cracks on the skin adjacent to the modification, in accordance with McDonnell Douglas Service Bulletin DC9–53–278, Revision 01, dated April 29, 1999. Repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(A) If no crack is detected on the skin adjacent to the modification during any HFEC or x-ray inspection required by paragraph (b) of this AD, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(B) If any crack is detected on the skin adjacent to the modification during any HFEC or x-ray inspection required by this paragraph, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) If any crack is found during any LFEC or x-ray inspection required by paragraph (b) of this AD and the crack is 2 inches or less in length: Prior to further flight, modify it in accordance with McDonnell Douglas Service Bulletin DC9–53–278, Revision 01, dated April 29, 1999. Prior to the accumulation of 28,000 landings after accomplishment of the modification, perform an HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(i) If no crack is detected during the HFEC inspection required by this paragraph, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(ii) If any crack is detected during the HFEC inspection required by this paragraph, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(3) If any crack is found during any LFEC or x-ray inspection required by this paragraph and the crack is greater than 2 inches in length: Prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(c) If the visual inspection required by paragraph (a) of this AD reveals that the corners of the aft lower cargo doorjamb *have been modified,* but not in accordance with the DC–9 Structural Repair Manual (SRM) or Service Rework Drawing, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(d) If the visual inspection required by paragraph (a) of this AD reveals that the corners of the aft lower cargo doorjamb *have been modified* in accordance with DC–9 SRM or Service Rework Drawing, prior to the accumulation of 28,000 landings since accomplishment of that modification, or within 3,575 landings after the effective date of this AD, whichever occurs later, perform a HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with McDonnell Douglas Service Bulletin DC9–53–278, Revision 01, dated April 29, 1999. Repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(1) If no crack is detected during any HFEC inspection required by this paragraph, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(2) If any crack is detected during any HFEC inspection required by this paragraph, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(e) Accomplishment of the actions required by this AD constitutes terminating action for inspections of Principal Structural Element (PSE) 53.09.035 (reference McDonnell Douglas Model DC–9 Supplemental Inspection Document, Report No. L26–008, Section 2 of Volume 1, Revision 5, dated July 1997, as required by AD 96–13–03, amendment 39–9671).

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) Except as provided by paragraphs (b)(1)(ii)(B), (b)(2)(ii), (b)(3), (c), and (d)(2) of this AD, the actions shall be done in accordance with McDonnell Douglas Service

Bulletin DC9–53–278, dated November 4, 1996, and McDonnell Douglas Service Bulletin DC9–53–278, Revision 01, dated April 29, 1999. This incorporation by reference was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of August 18, 1999 (64 FR 37838, July 14, 1999). Copies may be obtained from The Boeing Company, Douglas Products Division, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Contract Data Management, C1–255 (35–22). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) The effective date of this amendment remains August 18, 1999.

Issued in Renton, Washington, on September 3, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–23472 Filed 9–9–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Doramectin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pfizer, Inc. The supplemental NADA provides for further use of doramectin in cattle for treatment and control of the gastrointestinal roundworm *Trichostrongylus axei* L4 and for control of and protection from reinfection with *Haemonchus placei* for 35 days after treatment.

EFFECTIVE DATE: September 10, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Letonja, Center for Veterinary Medicine (HFV–135), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7576.

SUPPLEMENTARY INFORMATION: Pfizer, Inc., 235 East 42d St., New York, NY 10017–5755, filed supplemental NADA 141–095 that provides for topical use of Dectomax® (doramectin) pour-on solution for further use on cattle for treatment and control of *T. axei* L4 and for control of and protection from reinfection with *H. placei* for 35 days after treatment. The supplemental NADA is approved as of August 10, 1999, and the regulations are amended in 21 CFR 524.770(d)(2) to reflect this approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this supplemental application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval for food-producing animals qualifies for 3 years of marketing exclusivity beginning August 10, 1999, because the supplement contains substantial evidence of the effectiveness of the drug involved, any studies of animal safety or, in the case of food-producing animals, human food safety studies (other than bioequivalence or residue studies) required for approval of the supplement and conducted or sponsored by the applicant. Exclusivity applies only to the added indication for use of doramectin topical in cattle for treatment and control of *T. axei* L4 and for control of and protection from reinfection with *H. placei* for 35 days after treatment.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 524.770 is amended by revising paragraph (d)(2) to read as follows:

§ 524.770 Doramectin.

* * * * *

(d) * * *

(2) *Indications for use.* For treatment and control of gastrointestinal roundworms, lungworms, eyeworms, grubs, biting and sucking lice, horn flies, and mange mites. To control infections and to protect from reinfection with *Cooperia oncophora* and *Dictyocaulus viviparus* for 21 days, *Ostertagia ostertagi, C. punctata,* and *Oesophagostomum radiatum* for 28 days, and *Haemonchus placei* for 35 days after treatment.

* * * * *

Dated: August 27, 1999.

Claire M. Lathers,

Director, Office of New Animal Drug Evaluation.

[FR Doc. 99–23466 Filed 9–9–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lasalocid and Bambermycins

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Hoechst Roussel Vet. The NADA provides for combining approved single ingredient lasalocid and bambermycins Type A medicated articles to make Type C medicated broiler feeds to be used for prevention of certain forms of coccidiosis and for increased rate of weight gain and improved feed efficiency.

EFFECTIVE DATE: September 10, 1999.

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center for Veterinary Medicine (HFV–28), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1600.

SUPPLEMENTARY INFORMATION: Hoechst Roussel Vet, 30 Independence Blvd., P.O. Box 4915, Warren, NJ 07059, filed NADA 141–129 that provides for combining approved single ingredient Avatec® (lasalocid) and Flavomycin® (bambermycins) Type A medicated articles to make Type C medicated broiler feeds containing 68 to 113 grams per ton (g/t) lasalocid and 1 to 2 g/t bambermycins. The Type C medicated broiler feeds are used for prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima,* and for increased rate of weight gain and improved feed efficiency in broiler chickens. The NADA is approved as of August 6, 1999, and the regulations are amended in 21 CFR 558.95 by adding paragraph (d)(1)(xiv) and in 21 CFR 558.311 by adding paragraph (e)(4)(ii) to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.95 is amended by adding paragraph (d)(1)(xiv) to read as follows:

§ 558.95 Bambermycins.

* * * * *

(d) * * *

(1) * * *

(xiv) *Amount per ton.* Bambermycins 1 to 2 grams, plus lasalocid 68 to 113 grams.

(*a*) *Indications for use.* For prevention of coccidiosis caused by *E. tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima,* and for increased rate of weight gain and improved feed efficiency in broiler chickens.

(*b*) *Limitations.* For broiler chickens only. Feed continuously as sole ration. Lasalocid as provided by No. 063238 in § 510.600(c) of this chapter.

* * * * *

3. Section 558.311 is amended by adding paragraph (e)(4)(ii) to read as follows:

§ 558.311 Lasalocid.

* * * * *

(e) * * *

(4) * * *

(ii) Bambermycins as in § 558.95 of this chapter.

Dated: August 30, 1999.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 99–23467 Filed 9–9–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 200

[T.D. ATF–414]

RIN 1512–AB91

Rules of Practice in Permit Proceedings; Technical Amendments

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This Treasury decision amends the provisions of its rules of practice in permit proceedings to change the title designation "District Director" to "Director of Industry Operations (DIO)" wherever it appears, and to make other necessary conforming amendments. All such changes are to provide clarity and uniformity throughout Title 27 Code of Federal Regulations.

EFFECTIVE DATE: September 10, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy M. Kern, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, (202–927–8210).

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Alcohol, Tobacco and Firearms (ATF) administers regulations published in Chapter I of Title 27 Code of Federal Regulations. ATF determined that the regulations in part 200 should be revised to reflect the current ATF field structure reorganization, which established the positions of "Director of Industry Operations" for the respective ATF operating Field Divisions, and eliminated the positions of "District Directors" (formerly Regional Directors) for such districts.

These amendments do not make any substantive changes and are only intended to improve the clarity of Title 27.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no recordkeeping or reporting requirements.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C 601 *et seq.*) do not apply.

Executive Order 12866

This final rule is not subject to the requirements of Executive Order 12866 because the regulations make nonsubstantive technical amendments to previously published regulations.

Administrative Procedure Act

Because this final rule merely makes technical amendments and conforming changes to improve the clarity of the regulations, it is unnecessary to issue this final rule with notice and public procedure under 5 U.S.C. 553(b), or with the 30-day delayed effective date under 5 U.S.C. 553(b).

Drafting Information

The principal author of this document is Nancy M. Kern, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR 200

Administrative practice and procedure, Authority delegations.

Authority and Issuance

Title 27, Code of Federal Regulations is amended as follows:

PART 200—RULES OF PRACTICE IN PERMIT PROCEEDINGS

Paragraph 1. The authority citation for part 200 continues to read as follows:

Authority: 26 U.S.C. 7805, 27 U.S.C. 204.

PART 200—[AMENDED]

Par. 2. Section 200.5 is amended as follows:

(a) By revising in alphabetical order, the terms, Attorney for the Government, Director of Industry Operations and Initial Decision.

(b) By removing the term "District director" and by adding in alphabetical order, the term "Director of Industry Operations".

The additional revision reads as follows:

§ 200.5 Meaning of terms.

* * * * *

Attorney for the Government. The attorney in the appropriate office of Chief Counsel authorized to represent the Director of Industry Operations in the proceeding.

* * * * *

Director of Industry Operations. The principal ATF official in a field operations division responsible for administering the regulations in this part.

* * * * *

Initial decision. The decision of the Director of Industry Operations or administrative law judge in a proceeding on the suspension, revocation or annulment of a permit.

* * * * *

§ 200.25 [Amended]

Par. 3. Section 200.25 is amended by removing the words "Regional Director (compliance)" and by adding the words "Director of Industry Operations (DIO)" in place thereof. Section 200.25 is also amended by removing the words "district director" and by adding the words "director of industry operations" in place thereof.

* * * * *

Par. 4. The following sections of part 200 are amended by removing the words "district director" each place they appear and adding, in place thereof, the words "director of industry operations":

(a) Section 200.27;
(b) Section 200.29;
(c) Section 200.31;
(d) Section 200.35;
(e) Section 200.36;
(f) Section 200.37;
(g) Section 200.38;
(h) Section 200.45;
(i) Section 200.46;
(j) Section 200.48, introductory text;
(k) Section 200.49;
(l) Section 200.49a, introductory text;
(m) Section 200.49b, introductory text and paragraph (b);
(n) Section 200.55(a), introductory text;
(o) Section 200.57;
(p) Section 200.59;
(q) Section 200.60, paragraphs (a), (b), and (c);
(r) Section 200.61;
(s) Section 200.62;
(t) Section 200.64;
(u) Section 200.65;
(v) Section 200.70;
(w) Section 200.71;
(x) Section 200.72;
(y) Section 200.73;
(z) Section 200.75;
(aa) Section 200.78;
(bb) Section 200.79, paragraph (b);
(cc) Section 200.80;
(dd) Section 200.85, introductory text;
(ee) Section 200.105;
(ff) Section 200.106, paragraph (a);
(gg) Section 200.107;
(hh) Section 200.109;
(ii) Section 200.110;
(jj) Section 200.115;
(kk) Section 200.116;
(ll) Section 200.117;
(mm) Section 200.126;
(nn) Section 200.129.

§ 200.95 [Amended]

Par. 5. In § 200.95 remove the words "district directors" each place they appear and add, in place thereof, the words "directors of industry operations".

§§ 200.107 and 200.108 [Amended]

Par. 6. Sections 200.107a(a)(3) and 200.108 are amended by removing the words "district director's" each place they appear and adding the words "director of industry operations'".

§ 200.27 [Amended]

Par. 7. The section heading for § 200.27 is amended by removing the words "district director" and adding the words "director of industry operations" in place thereof.

§ 200.107 [Amended]

Par. 8. The undesignated heading that precedes § 200.107 is amended by removing the words "District Director" and adding the words "Director of Industry Operations" in place thereof.

§ 200.107a [Amended]

Par. 9. The section heading for § 200.107a is amended by removing the words "District Director's" and adding the words "Director of Industry Operations'" in place thereof.

Signed: July 29, 1999.

John W. Magaw,

Director.

Approved: August 17, 1999.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 99–23387 Filed 9–9–99; 8:45 am]

BILLING CODE 4810–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6434–4]

Finding of Failure To Submit a Required State Implementation Plan for Carbon Monoxide; Nevada—Las Vegas Valley

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action in making a finding, under the Clean Air Act (CAA or Act), that Nevada failed to make a carbon monoxide (CO) nonattainment area state implementation plan (SIP) submittal required for the Las Vegas Valley under the Act. Under certain provisions of the Act, states are required to submit SIPs providing for, among other things, reasonable further progress and attainment of the CO national ambient air quality standards (NAAQS) in areas classified as serious. The deadline for submittal of this plan for the Las Vegas Valley was May 3, 1999.

This action triggers the 18-month time clock for mandatory application of sanctions and 2-year time clock for a federal implementation plan (FIP) under the Act. This action is consistent with the CAA mechanism for assuring SIP submissions.

EFFECTIVE DATE: This action is effective as of August 31, 1999.

FOR FURTHER INFORMATION CONTACT: Larry A. Biland, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, California, 94105–3901, Telephone (415) 744–1227.

SUPPLEMENTARY INFORMATION:

I. Background

The CAA Amendments of 1990 were enacted on November 15, 1990. Under section 107(d)(1)(C) of the amended CAA, each CO area designated nonattainment prior to enactment of the 1990 Amendments, such as the Las Vegas Valley area, was designated nonattainment by operation of law upon enactment of the 1990 Amendments. Under section 186(a) of the Act, each CO area designated nonattainment under section 107(d) was also classified by operation of law as either "moderate" or "serious" depending on the severity of the area's air quality problem. CO areas with design values between 9.1 and 16.4 parts per million (ppm), such as the Las Vegas Valley area, were classified as moderate. These nonattainment designations and classifications were codified in 40 CFR part 81.[1] See 56 FR 56694 (November 6, 1991).

States containing areas that were classified as moderate nonattainment by operation of law under section 107(d) were required to submit SIPs designed to attain the CO NAAQS as expeditiously as practicable but no later than December 31, 1995.[2] Under section 186(a)(4), Nevada requested and EPA granted a one year extension of the December 31, 1995 attainment deadline (61 FR 57331, November 6, 1996). However, in the first quarter of 1996, Clark County recorded three exceedances of the CO standard at the East Charleston monitoring station. Clark County challenged the validity of the CO data collected at this site. EPA stated it would not disqualify the January to March winter 1996 CO season monitoring data from the East Charleston station without conclusive evidence that it was inaccurate. Therefore Region 9 worked with Clark County and the State of Nevada to properly site and approve a new monitoring site at Sunrise Acres, and worked collaboratively with the State and Clark County to examine whether East Charleston levels correlated with Sunrise Acres (the East Charleston replacement site) levels. Data received for the new Sunrise Acres monitor tracked closely with historical data from East Charleston.

On October 2, 1997 EPA made a final finding that the Las Vegas Valley, CO nonattainment area did not attain the CO NAAQS under the CAA after having received a one year extension from the mandated attainment date of December 31, 1995 for moderate nonattainment areas to December 31, 1996. As a result of that finding, which went into effect on November 3, 1997, (62 FR 51604 October 2, 1997) the Las Vegas Valley, Nevada CO nonattainment area was reclassified as serious. The State had 18 months or until May 3, 1999 to submit a new State Implementation Plan (SIP) demonstrating attainment of the CO NAAQS as expeditiously as practicable but no later than December 31, 2000, the CAA attainment date for serious areas. The Las Vegas Valley continues to exceed the CO standard with 1 exceedance in 1997 and two in 1998.

Notwithstanding significant efforts by the Clark County Department of Comprehensive Planning to complete their CO SIP, the State has failed to meet the May 3, 1999 deadline for the required SIP submission. EPA is therefore compelled to find that the State of Nevada has failed to make the required SIP submission for the Las Vegas Valley.

The CAA establishes specific consequences if EPA finds that a State has failed to meet certain requirements of the CAA. Of particular relevance here is CAA section 179(a)(1), the mandatory sanctions provision. Section 179(a) sets forth four findings that form the basis for application of a sanction. The first finding, that a State has failed to submit a plan required under the CAA, is the finding relevant to this rulemaking.

If Nevada has not made the required complete submittal by March 2, 2001, pursuant to CAA section 179(a) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b) will be applied in the affected area. If the State has still not made a complete submission by August 31, 2001, then the highway funding sanction will apply in the affected area, in accordance with 40 CFR 52.31.[3] In addition, CAA section 110(c) provides that EPA must promulgate a federal implementation plan (FIP).

The sanctions will not take effect if, before March 2, 2001, EPA finds that the State has made a complete submittal of a plan addressing the serious area CO requirements for Las Vegas Valley. In addition, EPA will not promulgate a FIP if the State makes the required SIP submittal and EPA takes final action to approve the submittal before August 31, 2001, (section 110(c)(1) of the Act). EPA encourages the responsible parties in Clark County to continue working together on the CO Plan which can eliminate the need for potential sanctions and FIP.

II. Final Action

A. Rule

Today, EPA is making a finding of failure to submit for the Las Vegas Valley CO nonattainment area, due to failure of the State to submit a SIP revision addressing the serious area CO requirements of the CAA.

B. Effective Date Under the Administrative Procedures Act

EPA has issued this action as a rulemaking because the Agency has treated this type of action as rulemaking in the past. However, EPA believes that it would have the authority to issue this action in an informal adjudication, and is considering which administrative process—rulemaking or informal adjudication—is appropriate for future actions of this kind.

Because EPA is issuing this action as a rulemaking, the Administrative Procedures Act (APA) applies.

Today's action will be effective on August 31, 1999. Under the APA, 5 U.S.C. 553(d)(3), agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if an agency has good cause to mandate an earlier effective date. Today's action concerns a SIP submission that is already overdue and the State is aware of applicable provisions of the CAA relating to overdue SIPs. In addition, today's action simply starts a "clock" that will not result in sanctions for 18 months, and that the State may "turn off" through the submission of a complete SIP submittal. These reasons support an effective date prior to 30 days after the date of publication.

C. Notice-and-Comment Under the Administrative Procedures Act

This notice is a final agency action, but is not subject to the notice-and-comment requirements of the APA, 5 U.S.C. 533(b). EPA believes that because of the limited time provided to make findings of failure to submit regarding SIP submissions, Congress did not intend such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C. 553(d)(3). Notice and comment are unnecessary because no EPA judgment is involved in making a nonsubstantive finding of failure to submit SIPs required by the CAA. Furthermore, providing notice and comment would

[1] The CO nonattainment area is the "Las Vegas Valley Hydrographic Area 212" within Clark County. 40 CFR 81.329.

[2] The moderate area SIP requirements are set forth in section 187(a) of the Act and differ depending on whether the area's design value is below or above 12.7 ppm. The Las Vegas Valley area has a design value above 12.7 ppm. 40 CFR 81.329.

[3] In a 1994 rulemaking, EPA established the Agency's selection of the sequence of these two sanctions: the offset sanction under section 179(b)(2) shall apply at 18 months, followed 6 months later by the highway sanction under section 179(b)(1) of the Act. EPA does not choose to deviate from this presumptive sequence in this instance. For more details on the timing and implementation of the sanctions, see 59 FR 39832 (August 4, 1994), promulgating 40 CFR 52.31, "Selection of sequence of mandatory sanctions for findings made pursuant to section 179 of the Clean Air Act."

be impracticable because of the limited time provided under the statute for making such determinations. Finally, notice and comment would be contrary to the public interest because it would divert Agency resources from the critical substantive review of submitted SIPs. See 58 FR 51270, 51272, note 17 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994).

D. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this action from review under Executive Order 12866.

E. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule is required by the Clean Air Act. Moreover, it does not create a mandate on State, local or tribal governments nor does the rule impose any enforceable duties on these entities. It simply makes an objective finding that the State of Nevada has failed to carry out a duty required by the Clean Air Act. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

F. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

G. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule is required by the Clean Air Act. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule. Moreover, because it finds a failure only by the state government of Nevada, it does not apply to or significantly or uniquely affect the communities of Indian tribal governments.

H. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule is not subject to notice and comment rulemaking; therefore, neither a regulatory flexibility analysis nor certification is required under the RFA.

I. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that today's action is not a Federal mandate. The Clean Air Act provisions discussed in this rule requires states to submit implementation plans. This notice merely provides a finding that Nevada has not met that requirement. This document does not, by itself, require any particular action by any State, local, or tribal government, or by the private sector. The consequences of the State's failure are mandated by the Clean Air Act and are not at EPA's discretion.

For the same reasons, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

J. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and

established an effective date of August 31, 1999. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

K. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 9, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations.

Dated: August 31, 1999.

David P. Howekamp,

Acting Regional Administrator, Region IX.

[FR Doc. 99–23412 Filed 9–9–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1706; MM Docket No. 99–148; RM–9556]

Radio Broadcasting Services; Del Norte, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 242A to Del Norte, Colorado, as that community's first local aural transmission service in response to a petition for rulemaking filed by Mountain West Broadcasting. *See* 64 FR 26718, May 17, 1999. Coordinates used for Channel 242A at Del Norte are 37–40–36 NL and 106–21–12 WL. With this action, the proceeding is terminated.

DATES: Effective October 12, 1999. A filing window for Channel 242A at Del Norte, Colorado, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–148, adopted August 18, 1999, and released August 27, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Del Norte, Channel 242A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–23458 Filed 9–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1706; MM Docket No. 99–149; RM–9557]

Radio Broadcasting Services; Dinosaur, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 247C1 to Dinosaur, Colorado, as that community's first local aural transmission service in response to a petition for rulemaking filed by Mountain West Broadcasting. *See* 64 FR 26718, May 17, 1999. Coordinates used for Channel 247C1 at Dinosaur are 40–14–42 NL and 109–00–30 WL. With this action, the proceeding is terminated.

DATES: Effective October 12, 1999. A filing window for Channel 247C1 at Dinosaur, Colorado, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–149, adopted August 18, 1999, and released August 27, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Dinosaur, Channel 247C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–23457 Filed 9–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1706; MM Docket No. 99–150; RM–9558]

Radio Broadcasting Services; Poncha Springs, CO

AGENCY: Fede.al Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 248A to Poncha Springs, Colorado, as that community's first local aural transmission service in response to a petition for rulemaking filed by Mountain West Broadcasting. *See* 64 FR 26718, May 17, 1999. Coordinates used for Channel 248A at Poncha Springs are 38–30–42 NL and 106–04–42 WL. With this action, the proceeding is terminated.

DATES: Effective October 12, 1999. A filing window for Channel 248A at Poncha Springs, Colorado, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–150, adopted August 18, 1999, and released August 27, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Poncha Springs, Channel 248A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–23456 Filed 9–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1706; MM Docket No. 99–152; RM–9560]

Radio Broadcasting Services; Captain Cook, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 226C1 to Captain Cook, Hawaii, as that community's first local aural transmission service in response to a petition for rule making filed by Mountain West Broadcasting. *See* 64 FR 26717, May 17, 1999. Coordinates used for Channel 226C1 at Captain Cook are 19–29–49 NL and 155–55–18 WL. With this action, the proceeding is terminated.

DATES: Effective October 12, 1999. A filing window for Channel 226C1 at Captain Cook, Hawaii, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–152, adopted August 18, 1999, and released August 27, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by adding Captain Cook, Channel 226C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–23455 Filed 9–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1707; MM Docket No. 99–106; RM–9509]

Radio Broadcasting Services; La Jara, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 246A to La Jara, Colorado, rather than Channel 221A, as proposed initially, as that community's first local aural transmission service in response to a petition for rule making filed by Mountain West Broadcasting. *See* 64 FR 17140, April 8, 1999. Coordinates used for Channel 246A at La Jara are 37–16–24 NL and 105–57–30 WL. With this action, the proceeding is terminated.

DATES: Effective October 12, 1999. A filing window for Channel 246A at La Jara, Colorado, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–106, adopted August 18, 1999, and released August 27, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding La Jara, Channel 246A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–23454 Filed 9–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1707; MM Docket No. 99–110; RM–9513]

Radio Broadcasting Services; Westcliffe, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 276A to Westcliffe, Colorado, rather than Channel 257A, as proposed initially, as that community's first local aural transmission service in response to a petition for rulemaking filed by Mountain West Broadcasting. *See* 64 FR 17138, April 8, 1999. Coordinates used for Channel 276A at Westcliff are 38–04–28 NL and 105–32–13 WL. With this action, the proceeding is terminated.

DATE: Effective October 12, 1999. A filing window for Channel 276A at Westcliffe, Colorado, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–110, adopted August 18, 1999, and released August 27, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Westcliffe, Channel 276A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–23453 Filed 9–9–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1707; MM Docket No. 99–171; RM–9574]

Radio Broadcasting Services; Carmel Valley, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 290A to Carmel Valley, California, as that community's first local FM transmission service in response to a petition for rulemaking filed by Mountain West Broadcasting. *See* 64 FR 30290, June 7, 1999. Coordinates used for Channel 290A at Carmel Valley are 36–20–28 NL and 121–42–51 WL. With this action, the proceeding is terminated.

DATES: Effective October 12, 1999. A filing window for Channel 290A at Carmel Valley, California, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–171, adopted August 18, 1999, and released August 27, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Carmel Valley, Channel 290A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–23452 Filed 9–9–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1707; MM Docket No. 99–172; RM–9575]

Radio Broadcasting Services; Nanakuli, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 295A to Nanakuli, Hawaii, as that community's first local aural transmission service in response to a petition for rule making filed by Mountain West Broadcasting. *See* 64 FR 30290, June 7, 1999. Coordinates used for Channel 295A at Nanakuli are 21–23–30 NL and 158–08–30 WL. With this action, the proceeding is terminated.

DATES: Effective October 12, 1999. A filing window for Channel 295A at Nanakuli, Hawaii, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report

and Order, MM Docket No. 99–172, adopted August 18, 1999, and released August 27, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by adding Nanakuli, Channel 295A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–23451 Filed 9–9–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1707; MM Docket No. 99–173; RM–9576]

Radio Broadcasting Services; Wahiawa, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 278A to Wahiawa, Hawaii, as that community's first local aural transmission service in response to a petition for rule making filed by Mountain West Broadcasting. *See* 64 FR 30289, June 7, 1999. Coordinates used for Channel 278A at Wahiawa are 21–30–00 NL and 158–02–00 WL. With this action, the proceeding is terminated.

DATES: Effective October 12, 1999. A filing window for Channel 278A at Wahiawa, Hawaii, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–173, adopted August 18, 1999, and released August 27, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by adding Wahiawa, Channel 278A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–23450 Filed 9–9–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1707; MM Docket No. 99–175; RM–9578]

Radio Broadcasting Services; Hanapepe, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 232C1 to Hanapepe, Hawaii, as that community's first local aural transmission service in response to a petition for rule making filed by Mountain West Broadcasting. *See* 64 FR 30289, June 7, 1999. Coordinates used for Channel 232C1 at Hanapepe are 21–54–43 NL and 159–35–43 WL. With this action, the proceeding is terminated.

DATES: Effective October 12, 1999. A filing window for Channel 232C1 at Hanapepe, Hawaii, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–175, adopted August 18, 1999, and released August 27, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by adding Hanapepe, Channel 232C1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–23449 Filed 9–9–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1707; MM Docket No. 99–176; RM–9579]

Radio Broadcasting Services; Holualoa, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 221C2 to Holualoa, Hawaii, as that community's first local aural transmission service in response to a petition for rule making filed by Mountain West Broadcasting. *See* 64 FR 30288, June 7, 1999. Coordinates used for Channel 221C2 at Holualoa are 19–37–06 NL and 155–57–00 WL. With this action, the proceeding is terminated.

DATES: Effective October 12, 1999. A filing window for Channel 221C2 at Holualoa, Hawaii, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–176, adopted August 18, 1999, and released August 27, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by adding Holualoa, Channel 221C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–23448 Filed 9–9–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1707; MM Docket No. 99–177; RM–9580]

Radio Broadcasting Services; Honokaa, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 275C2 to Honokaa, Hawaii, as that community's first local aural transmission service in response to a petition for rule making filed by Mountain West Broadcasting. *See* 64 FR 30292, June 7, 1999. Coordinates used for Channel 275C2 at Honokaa are 20–04–54 NL and 155–28–00 WL. With this action, the proceeding is terminated.

DATES: Effective October 12, 1999. A filing window for Channel 275C2 at Honokaa, Hawaii, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–177, adopted August 18, 1999, and released August 27, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by adding Honokaa, Channel 275C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–23447 Filed 9–9–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1707; MM Docket No. 99–178; RM–9581]

Radio Broadcasting Services; Kihei, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 298C2 to Kihei, Hawaii, as that community's first local aural transmission service in response to a petition for rule making filed by Mountain West Broadcasting. *See* 64 FR 30292, June 7, 1999. Coordinates used for Channel 298C2 at Kihei are 20–47–00 NL and 156–27–48 WL. With this action, the proceeding is terminated.

DATES: Effective October 12, 1999. A filing window for Channel 298C2 at Kihei, Hawaii, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–178, adopted August 18, 1999, and released August 27, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by adding Kihei, Channel 298C2.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–23446 Filed 9–9–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1707; MM Docket No. 99–179; RM–9582]

Radio Broadcasting Services; Kurtistown, HI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 271A to Kurtistown, Hawaii, as that community's first local aural transmission service in response to a petition for rule making filed by Mountain West Broadcasting. *See* 64 FR 30291, June 7, 1999. Coordinates used for Channel 271A at Kurtistown are 19–35–36 NL and 155–03–36 WL. With this action, the proceeding is terminated.

DATES: Effective October 12, 1999. A filing window for Channel 271A at Kurtistown, Hawaii, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–179, adopted August 18, 1999, and released August 27, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 73—[Amended]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Hawaii, is amended by adding Kurtistown, Channel 271A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–23445 Filed 9–9–99; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 581

[Docket No. NHTSA 99–5458]

RIN 2127–AH59

Bumper Standard; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; correction to technical amendment.

SUMMARY: This document corrects the technical amendment to S581.5(c)(1) of 49 CFR part 581 *Bumper Standard*, published on April 5, 1999. The technical amendment erroneously referred to "Table 2" of SAE J599 AUG97. The correct reference is to "Table 1."

DATES: The correction is effective September 10, 1999.

FOR FURTHER INFORMATION CONTACT: Taylor Vinson, Office of Chief Counsel, NHTSA (202–366–5263).

SUPPLEMENTARY INFORMATION: On April 5, 1999, we amended part 581 of Title 49, Code of Federal Regulations, which contains the Federal bumper standard issued under the authority of 49 U.S.C. Chapter 325 (64 FR 16359). As amended, 49 CFR 581.5(c)(1) reads:

(c) *Protective criteria.* (1) Each lamp or reflective device except license plate lamps shall be free of cracks and shall comply with applicable visibility requirements of S5.3.1.1 of Standard No. 108 (Sec. 571.108 of this chapter). The aim of each headlamp installed on the vehicle shall be adjustable to within the beam aim inspection limits specified in Table 2 of SAE Recommended Practice J599 AUG97, measured with the aiming method appropriate for that headlamp.

Koito Manufacturing, Inc., brought to our attention that SAE J599 AUG97 has no Table 2. We examined SAE J599 AUG97 and found that Koito was correct, and that the reference should have been to Table 1. We are amending § 581.5(c) to correct this error.

Because this amendment creates no burdens on any person, we are not required to give notice and afford an opportunity to comment on this rulemaking action. The amendment is effective upon its publication in the **Federal Register**.

List of Subjects in 49 CFR Part 581

Imports, Motor vehicles.

In consideration of the foregoing, FR Doc. 99–8185 published on April 5, 1999 (64 FR 16359) is corrected as follows: amended as follows:

PART 581—BUMPER STANDARD

1. The authority citation for part 581 continues to read as follows:

Authority: 49 U.S.C. 32502; 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50 and 501.8.

2. The second sentence of § 581.5(c)(1) is corrected:

§ 581.5 Requirements

* * * * *

(c) *Protective criteria.* (1) * * * The aim of each headlamp installed on the vehicle shall be adjustable to within the beam aim inspection limits specified in Table 1 of SAE Recommended Practice J599 AUG97, measured with the aiming method appropriate for that headlamp.

* * * * *

Issued on: August 31, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–23429 Filed 9–9–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 990121026–9229–02; I.D. 112498A]

RIN 0648–AL52

Pacific Coast Groundfish Fishery; Amendment 11

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; announcement of partial approval of an amendment to a fishery management plan, and announcement of stocks characterized as overfished.

SUMMARY: NMFS announces the approval of Amendment 11 to the Pacific Coast Groundfish Fishery Management Plan (FMP) except for the bycatch provisions which were disapproved. NMFS issues this final rule to implement portions of that amendment that define overfished, identify essential fish habitat, and comply with other requirements of the Sustainable Fisheries Act (SFA). This rule also implements Amendment 11's provisions governing the use of fish as compensation for fisher participation in collecting fishery resource information. NMFS also announces that it has informed the Pacific Fishery Management Council (Council) that three stocks managed under the Pacific Coast Groundfish FMP, Pacific ocean perch, lingcod, and bocaccio, are overfished. These regulations are intended to improve the types and amount of scientific information available for use in stock assessments and management of the Pacific Coast groundfish fishery.

DATES: Effective October 12, 1999.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) for Amendment 11 are available from Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2130 SW. Fifth Avenue, Suite 224, Portland, OR 97201.

Comments regarding the reporting burden estimate or any other aspect of the collection-of-information requirements contained in this rule should be sent to William Stelle, Jr. Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE. BIN C157000. Seattle, WA 98115–0070 or to Rodney R. McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Katherine King or Yvonne de Reynier at 206–526–6140 or the Pacific Fishery Management Council at 503–326–6352.

SUPPLEMENTARY INFORMATION: The Council submitted Amendment 11 to bring the Pacific Coast Groundfish FMP into compliance with the requirements in Section 303 (a) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) that were added by the SFA. Amendment 11 modifies the FMP framework that defines "optimum yield" (OY) for setting annual groundfish harvest limits; sets framework control rules on defining rates of "overfishing" and levels at which managed stocks are considered "overfished;" identifies Pacific Coast groundfish Essential Fish Habitat (EFH); sets a bycatch management objective and a framework for bycatch reduction measures; establishes a management objective to take the importance of fisheries to fishing communities into account when setting groundfish management measures; provides authority within the FMP for the Council to require groundfish use permits for all groundfish users; authorizes the use of fish for compensation for private vessels conducting NMFS-approved research; removes jack mackerel from the fishery management unit; and updates FMP objectives, definitions, and industry descriptions.

The Pacific Coast Groundfish FMP provides a framework for certain Council actions without requiring cumbersome amendment procedures for those actions. Portions of this amendment that are designed to meet several of the new Magnuson-Stevens Act requirements will change the way the Council manages the groundfish fishery without changing the regulations that implement the FMP. A new definition of OY, specific overfishing and overfished levels, and accounting for the needs of fishing communities in setting fishery management measures will become part of the guidelines the Council uses to set its annual specifications and management measures. Amendment 11 provides a framework to implement fishery management measures to protect groundfish EFH, which the Council will use to, among other things, investigate implementing marine research reserves. Amendment 11 also contains a bycatch management objective; however, NMFS has disapproved the bycatch provisions of Amendment 11 because they do not adequately meet § 303(a)(11) and National Standard 9 of the Magnuson-Stevens Act. These provisions require that conservation and management measures, to the extent practicable, minimize bycatch and bycatch mortality. Section 303(a)(11) also requires the establishment of a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery.

This rule implements the portions of Amendment 11 that authorize the use of fish as compensation for private vessels conducting NMFS-approved research. This action also makes minor changes to codified definitions of regulatory terms. Amendment 11 includes a provision to remove jack mackerel from the fishery management unit (FMU) of the Pacific Coast Groundfish FMP in order to place it in the FMU of the FMP for Coastal Pelagic Species. Amendment 8 to the Council's Northern Anchovy FMP, which renames that FMP as the Coastal Pelagic Species FMP and incorporates jack mackerel into the Coastal Pelagic Species FMU, was made available for public comment on March 12, 1999 (64 FR 12279) through May 25, 1999. Amendment 8 was partially approved on June 10, 1999. Therefore, jack mackerel has now been removed from the FMU of the Pacific Coast Groundfish FMP and placed in the FMU for the Coastal Pelagic Species FMP.

The notice of availability for Amendment 11 was published on December 1, 1998 (63 FR 66111), and NMFS requested public comments on Amendment 11 through February 1, 1999. A proposed rule to implement those portions of Amendment 11 that authorize the use of fish for compensation for private vessels conducting NMFS-approved research, and that changed some definitions, was published on February 10, 1999 (64 FR 6597). NMFS requested public comments on the proposed rule through March 29, 1999. During the comment period on the notice of availability for Amendment 11, NMFS received seven letters of comment, which are addressed later in the preamble to this final rule. During the comment period on the proposed rule, NMFS received one letter of comment, which is also addressed later in the preamble to this final rule, in the section entitled "Regulatory Definitions of Terms."

Partial Approval of Amendment 11; Disapproval of Bycatch Provisions

On March 3, 1999, NMFS approved all of Amendment 11 to the Pacific Coast Groundfish FMP, except for those portions concerning the reduction of bycatch and bycatch mortality. Amendment 11 addresses bycatch through the FMP's framework mechanism, by revising one of the objectives of the FMP to read, "Strive to reduce the economic incentives and regulatory measures that lead to wastage of fish. Also, develop management measures that minimize bycatch to the extent practicable and, to the extent that bycatch cannot be avoided, minimize the mortality of such bycatch. In addition, promote and support monitoring programs to improve estimates of total fishing-related mortality and bycatch, as well as those

to improve information necessary to determine the extent to which it is practicable to reduce bycatch and bycatch mortality."

Although NMFS supports the Council's continued use of framework provisions in the FMP's regulatory structure, the bycatch provisions in Amendment 11 fail to respond meaningfully to the bycatch requirements of the Magnuson-Stevens Act. Requirements at Section 303(a)(11) of the Magnuson-Stevens Act clearly state that an FMP must "establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority—(A) minimize bycatch; and (B) minimize the mortality of bycatch which cannot be avoided." A framework FMP would not necessarily include regulatory recommendations to reduce bycatch; however, the FMP's bycatch provisions should fully analyze and describe the Council's past efforts and planned future efforts to reduce bycatch and to establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the groundfish fishery, including a discussion of all reasonable alternatives to the current management regime.

The current Amendment 11 analysis on bycatch in the groundfish fisheries basically states that there is very little information on bycatch rates in the groundfish fisheries, and that this lack of information may or may not threaten the long-term health of the fish stocks and the long-term viability of the fishing industries and communities that depend on those stocks. There is no assessment of current bycatch levels in the groundfish fisheries; nor is there an analysis based on the best available scientific information of the biological and socio-economic effects of bycatch under current management measures. The bycatch provisions of Amendment 11 will be complete when the Council has submitted a full analysis of existing and possible future efforts to reduce bycatch in the groundfish fisheries, including a discussion of how bycatch is reduced to the maximum extent practicable under current management measures, a standardized reporting methodology that would be used to assess bycatch rates in the groundfish fishery, and an analysis of all practicable alternatives to the current year-round trip limit management system that could be expected to result in a reduction of bycatch rates.

The bycatch definition in Amendment 11 has also been disapproved because it is inconsistent with the definition of bycatch provided by the Magnuson-Stevens Act that states, at 16 U.S.C. 1802 (2), "The term 'bycatch' means fish which are harvested in a fishery, but which are not sold or kept for personal use, and includes economic discards and regulatory discards. Such term does not include fish released alive under a recreational catch and release fishery management program." According to Amendment 11, "[b]ycatch means fish which are harvested in a fishery, but which are not sold or kept for personal use or donated to a charitable organization and includes economic and regulatory discards." While NMFS does not deny the positive community effects of donating landed bycatch to charitable organizations, the act of donating such fish does not alter the fact that those fish are defined as bycatch by the Magnuson-Stevens Act. The FMP should use the Magnuson-Stevens Act definition of bycatch.

Comments and Responses

NMFS received seven letters of comment on Amendment 11 during the 60-day public comment period for Amendment 11 as established by the Notice of Availability (December 1, 1999, 63 FR 66111). These letters addressed the major Magnuson-Stevens Act issues in Amendment 11. A summary of these comments and NMFS' responses thereto, as well as NMFS' response to one comment received on the proposed rule, appear below in the following responses to public comments. Of the letters received, three letters were from marine-focused environmental advocacy organizations, two letters were from public utilities interests, one letter was from a public wastewater disposal and sanitation interest, and one letter was from a law firm writing on behalf of a variety of unspecified, land-based, commercial interests. Some comments opposed certain aspects of Amendment 11 provisions on overfishing, bycatch, and EFH. The other comments concerned only the EFH portion of Amendment 11. In addition to commenting on the amendment, two of the letters cited concerns with the NMFS consultation process for non-fishing effects on EFH. These comments on the EFH consultation process were not directly on Amendment 11 or on the proposed implementing regulation. NMFS Northwest Regional Office of Habitat Conservation is dealing with these consultation concerns. All comments received on Amendment 11 are summarized and responded to below.

Some of the commenters expressed a concern about, or misunderstanding of, the mechanics of a framework FMP and frameworking aspects of Amendment 11. The Council has been using the framework process since 1990, when it implemented Amendment 4 to the FMP. By frameworking the goals and actions of the FMP, the Council has maintained the FMP as a statement of principles with standards and procedures that allow a variety of implementing actions. Framework FMPs tend to be less confusing and less cumbersome than FMPs without frameworks. All Council actions, including those implementing the FMP and its amendments, are public processes with multiple opportunities for public review and comment on proposed actions. Public input is not lost under an FMP's framework procedure. On the contrary, FMP frameworks give the Council more flexibility to incorporate public-generated changes and corrections into its proposed actions than FMPs without frameworks. Framework FMPs also give the Council more flexibility in how it responds to problems, which, in turn, brings the public further into the policy-making process as a resource in reaching solutions to those problems. NMFS continues to support the Council's frameworking process as providing a public process.

Comments on Overfishing

Comment 1: Although the Council's default framework for avoiding overfishing is one of the strongest in the nation, the Council adopted two loopholes that allow excessive fishing. One loophole permits higher limits than the Council's own default policy, and the second loophole allows overfishing of single populations in a mixed population fishery. Both of these loopholes need to be deleted.

Response: NMFS disagrees with this suggested alteration of Amendment 11. The Magnuson-Stevens Act requires that FMPs be consistent with 10 national standards, the first of which reads, "Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the OY from each fishery for the United States fishing industry." Councils are also charged by the Magnuson-Stevens Act with rebuilding overfished fisheries. To meet these requirements, the Council had to amend its process for setting OYs for managed species to ensure that no OY would exceed the maximum sustainable yield (MSY) for a particular stock. In accordance with the national standard guidelines, OY would not exceed the acceptable biological catch (ABC) (or the sum of ABCs for a complex) unless the Council demonstrates that overfishing mixed stock exception criteria have been met.

This overfishing mixed stock exception is not a "loophole," but an implementation of a component of NMFS national standards guidelines, a tool for implementing the Magnuson-Stevens Act's broad policy requirements within the biological, ecological, and socio-economic realities of our nation's fisheries. According to the guidelines at 50 CFR 600.310(d)(6):

> Harvesting one species of a mixed-stock complex at its optimum level may result in the overfishing of another stock component in the complex. A Council may decide to permit this type of overfishing only if all of the following conditions are satisfied: (i) It is demonstrated by analysis that such action will result in long-term net benefits to the Nation. (ii) It is demonstrated by analysis that mitigating measures have been considered and that a similar level of long-term net benefits cannot be achieved by modifying fleet behavior, gear selection/configuration, or other technical characteristic in a manner such that no overfishing would occur. (iii) The resulting rate or level of fishing mortality will not cause any species or evolutionarily significant unit thereof to require protection under the ESA.

This careful language is clearly not a loophole, but rather, an acknowledgment that marine ecosystems support a wide variety of different fish species, and that fishing gear is often not selective enough to distinguish between species of healthy stock status and species of troubled stock status.

Amendment 11 calls for numerical OYs for individual species and species groups, and clarifies that the Council will decide on a case-by-case basis whether to establish OYs for individual species and species groups. A non-numerical OY may be retained for some species. For the Council to ensure that its OY recommendations do not exceed MSYs for managed species, it must know the MSYs of those species. Groundfish stock assessment processes are ongoing and primarily focus on the more heavily-targeted species, so for many managed species, there is no known species-specific MSY. Therefore, the Council recommended setting an "MSY control rule" for managed species that allows a conservative rate of fishing on those species for which there is no numerical MSY based on stock assessments. The MSY control rule for Pacific coast groundfish is a constant fishing mortality rate that serves as a limit. The default rate is $F_{40\%}$ for rockfish and $F_{35\%}$ for other species, both of which may be superseded based on better scientific information. ABC is defined as the appropriate F times the current biomass estimate. The default overfished/rebuilding threshold is 25 percent of $B_{unfished}$.

For stocks with biomass smaller than the MSY biomass, OY will be adjusted to be more conservative than ABC. Between B_{msy} and $B_{10\%}$, OY will be adjusted to be increasingly more conservative at lower biomass levels. A stock that is at or below $B_{10\%}$ will have a zero OY. This conservative guideline would serve as a default interim rebuilding adjustment to OY for stocks below their overfished/rebuilding threshold, and would be in effect until a formal rebuilding plan is developed for those stocks. Once the Secretary of Commerce (Secretary) has identified a stock as overfished, the Council has 1 year to develop a rebuilding plan. Based on the definition of "overfished" in Amendment 11, NMFS notified the Council on March 3, 1999, that Pacific ocean perch, lingcod, and bocaccio were considered overfished. The Council has already begun work on rebuilding plans for these stocks.

The Council may set the harvest level for a stock higher than the default control rule, but not higher than the MSY harvest rate, as long as the higher harvest rate is not inconsistent with rebuilding the stock to B_{msy}. Commenters on this issue also identified this exception to the default control rule as a "loophole." Like the mixed-stock exception for overfishing, this exception provides the Council flexibility in dealing with the challenges of managing a mixed-stock complex while meeting the requirement to rebuild overfished stocks. Under this exception, an overfished stock within a mixed-stock complex could be harvested at a rate above the default control rate, but below MSY. Even management measures that keep harvest rates on an overfished stock to the lowest possible incidental interception rates may fall within that range between the default control rate and MSY.

Comments on Bycatch

Comment 2: The bycatch provision is not adequate and needs to be strengthened by including such provisions as: (1) Adopting a mandatory west coast observer program; (2) for some species, adopting an alternative to the year-round fishery and to the use of trip limits—management tools that have been shown to result in increased discards; (3) establishing bycatch caps based on harvest guidelines; (4) allowing stackable permits; and (5) creating incentives for clean fishing by developing "harvest priorities" with options such as extra allocations for fishers with lower bycatch rates.

Response: NMFS agrees that the bycatch provisions in Amendment 11 are not adequate and has disapproved those provisions. Amendment 11, including the supporting analysis, neither assesses current bycatch rates, nor recommends management measures for reducing bycatch rates or gathering bycatch data. NMFS recognizes that the FMP is a framework FMP that sets the standards and procedures that govern the Council's actions. However, NMFS believes that the Amendment 11 framework objective for bycatch reduction by itself neither assesses bycatch in the groundfish fishery under current management measures nor addresses what steps the Council intends to take to assess and then reduce bycatch rates in the future.

NMFS recognizes that the Council has been exploring several alternatives to its current groundfish management system in order to address the waste issues in the groundfish fishery. There is no "silver bullet" that will solve all of the different problems in the fishery. Several different advisory committees have been formed to develop a suite of solutions to address the many challenges in groundfish management. At its April 1999 meeting, the Council proposed development of an observer program for Pacific Coast groundfish fisheries and appointed an Implementation Committee to design a statistically valid observer program. The Council's Total Catch Determination Committee has concluded that, in addition to an observer program, the fleet should move to enhanced logbook reporting. The Council is also convening a series of legal gear committees, with one committee for each gear group or fishing sector, that will address gear performance standards to reduce bycatch and to minimize gear impacts on EFH. Reducing overall fleet participation and capacity is being considered through development of programs for permit stacking and permit buyback. Many of the new ideas being explored by the Council would require a fundamental shift in how Pacific groundfish fisheries operate. NMFS will be working with the Council to develop new bycatch provisions through an FMP amendment, to implement management measures to minimize bycatch and discard mortality to the extent practicable, and to implement a data gathering system for bycatch.

Comments on EFH

Comment 3: By the terms of the SFA, EFH authorization is limited to "the description and identification of essential fish habitat in fishery management plans." 16 U.S.C. 1855(b)(1)(A). This limitation makes it clear that NMFS and the Council authority applies only to "fisheries".

There is no basis in the Magnuson-Stevens Act for the Councils to address, through plans, nonfishing activities or habitat outside of the Exclusive Economic Zone (EEZ) regulatory jurisdiction of the Council.

Response: NMFS disagrees with the commenter's interpretation of the Magnuson-Stevens Act. "Essential Fish Habitat" is defined at 16 U.S.C. 1802(3)(10) as "those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity." The Magnuson-Stevens Act requires at section 16 U.S.C. 1855(b)(1)(A) that NMFS "establish by regulation guidelines to assist the Councils in the description and identification of EFH in the fishery management plans (including adverse impacts on such habitat) and in the consideration of actions to ensure the conservation and enhancement of such habitat." The Council must also identify other actions to conserve EFH, which includes minimizing to the extent practicable adverse effects on EFH caused by fishing. Finally, the statute requires that every Federal agency consult with the Secretary of Commerce on any action (fishing or non-fishing) authorized, funded or undertaken by that agency that may adversely affect EFH. See 16 U.S.C. 1855(b)(3) and 16 U.S.C. 1953(a)(7). The statute and plan amendment make a clear distinction between what NMFS regulates, with Council input, under the plan (fishing that affects EFH) and what the Council and NMFS discuss and provide comments on (other activities that affect EFH). Amendment 11 does not take any regulatory action or require any regulations concerning non-fishing activities.

Comment 4: The EFH designations include "all waters from the mean higher high water line, or the upriver extent of saltwater intrusions into river mouths, along the coasts of Washington, Oregon, and California seaward to the boundary of the U.S. Exclusive Economic Zone (EEZ)." This area is too broad to be effectively managed as EFH. This limitless approach to identifying EFH is unlawful. It renders meaningless the terms "essential" and "necessary" as used in the Magnuson-Stevens Act, and otherwise clearly exceeds Congressional intent. If Congress had intended for EFH to include all waters in the general distribution of a species, it could have and would have done so. The proposed definition is too broad in that it unnecessarily identifies the entire geographic ranges of the managed species.

Response: The Magnuson-Stevens Act defines "essential fish habitat" as "those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity" 16 U.S.C. 1802 (3)(10). When Congress amended the Magnuson-Stevens Act with the SFA, it did not limit how the phrase "those waters and substrate necessary to fish for spawning breeding, feeding or growth to maturity" would apply to the different FMPs in different portions of the U.S. coast. As with the Magnuson-Stevens Act national standards, NMFS had to create a tool to implement these broad policy requirements within the realities of current scientific knowledge about managed fish stocks and their habitats. To address the difficult problem of describing EFH, NMFS issued an interim final rule to implement the EFH provisions of the Magnuson-Stevens Act (62 FR 66531, December 19, 1997; 50 CFR Part 600, Subparts J and K.)

This rule describes an approach for designating EFH under current information conditions and an ultimate goal for information about managed species EFH. Four levels of information range from (1) "Presence/absence distribution data are available for some or all portions of the geographic range of the species," to (4) "Production rates by habitat (for particular species) are available." 62 FR § 6552; 50 CFR § 600.815 (a)(2)(B). Under the Pacific Coast Groundfish FMP, the Council had to describe EFH for 82 different groundfish species, at life history stages ranging from eggs/parturition to adulthood and spawning adulthood. Over 400 EFH identifications were required to provide habitat descriptions for all life stages of all managed species. For most life stages of most species, only very basic presence/absence information was available. For some species, Level 2 information, "Habitat-related densities of the species are available" existed for adult life stages. However, identifying adult life stage EFHs for those species/stages for which there existed Level 2 information did not tend to diminish either the EFH of individual species over their entire life history or the entire EFH under the FMP. NMFS agrees that the Pacific Coast Groundfish FMP EFH is large. However, NMFS believes that the identified EFH is no larger than is supported by current scientific evidence. NMFS and the Council plan to continue research on Pacific Coast groundfish habitat with the aim of achieving the highest possible levels of information for all life stages of all managed species. NMFS cautions the public that while higher information levels will likely result in smaller specific EFHs for each life stage of each managed species, the cumulative size and shape of the 400+ EFH definitions might not be significantly smaller than the current EFH description.

Comment 5: The highest level information available must be used in EFH designations. It appears that the EFH portion of Amendment 11 gives higher credence to Level 1 information than to Level 2 information. Because the Council dismissed Level 2 information, it does not appear that NMFS and the Council have used the best scientific information available in designating EFH. Furthermore, the EFH portion of Amendment 11 should include a schedule and research plan to fill identified data gaps. The research plan should demonstrate that it will lead to the development of higher level EFH information.

Response: NMFS believes that the Council did not dismiss Level 2 information. On the contrary, EFH descriptions for individual species and life stages provide summaries of the highest level of information available for each species' life stages. NMFS agrees with commenters on the importance of research to provide higher levels of information for all species at all life stages. NMFS expects to continue to conduct research on groundfish habitat, and to keep abreast of similar research being conducted by other Federal agencies, states and tribes, academia, and private organizations. Because information is limited or lacking for many species and/or life stages, further research cannot help but lead to the development of higher level EFH information. Amendment 11 provides research recommendations for further efforts to provide higher and more detailed information on groundfish EFH, as required by 50 CFR 600.815(a)(10). In addition, groundfish EFH research priorities have been adopted into the Council's biennial "Research and Data Needs for 1998–2000," which summarizes the Council's scientific research needs for all fisheries under the Council's authority.

Comment 6: Amendment 11 includes a limited number of broadly defined "composite EFHs" to address the complexity of dealing with numerous individual species and unique life stages. We are concerned that this approach will require consultation on the effects of our activities on species that either do not occur off of our portion of the Pacific Coast, or which are rarely or anomalously observed in our waters. It is clear that not all of the non-fishing activities described will potentially impact all groundfish species.

Response: NMFS agrees that not all of the non-fishing activities described in the EFH portion of Amendment 11 will affect all groundfish species. The approach of using "composite EFHs" is designed to make the consultation process more simple, not more complex. If a particular activity is known to adversely affect only the marine component of the estuarine composite, for example, consultation would be limited to EFH for those species and life stages associated with the estuarine composite in the geographic area of the activity considered.

Comment 7: EFH designations must be updated through FMP amendments, rather than through an administrative process, so that updates of EFH designations include an opportunity for public review and comment.

Response: NMFS disagrees with this comment, for the reasons stated earlier in the discussion on frameworking. Amendment 11 sets the process of updating EFH designations within a framework that allows the Council to include new information more frequently than would be possible if EFH designations were updated through FMP amendments. All discussions by the Council and its advisory bodies concerning EFH will be open to the public, and any decisions made on updating EFH designation will be made only after public comment has been considered. The Council publicly announces all of its meetings, and makes particular effort to keep a wide range of constituents informed of its activities, and of the activities of its advisory bodies.

Comment 8: Effects of non-fishing activities on marine waters are already well regulated at the present time under a wide range of state and Federal programs. No adequate scientific or other justification is presented in the amendment or in supporting materials for adoption of general prescriptive measures against non-fishing activities that may affect EFH. Overgeneralized conclusions about the effects of non-fishing activities on EFH unnecessarily encumber NMFS and the Councils, as well as other Federal and state agencies and a huge number of nonfishing sector enterprises and communities with an overly complex consultation and coordination process. The measures suggested are likely to be redundant or in conflict with measures being pursued under other regulatory programs. Therefore, these suggested conservation and management measures are not in compliance with the Magnuson-Stevens Act national standards, which state that conservation and management measures be based on the best available scientific information, and that such measures shall, where practicable, minimize costs and avoid unnecessary duplication.

Response: The interim final rule (62 FR 66531, December 19, 1997; 50 CFR Part 600, Subparts J and K) discussed earlier, in the response to Comment 4, requires that FMPs "identify activities that have the potential to adversely affect EFH quantity or quality, or both." 50 CFR Section 600.815(a)(5). FMPs also must "describe options to avoid, minimize, or compensate for the adverse effects identified pursuant to (fishing and non-fishing activities)." 50 CFR Section 600.815(a)(7). The Council does not have regulatory authority over non-fishing activities affecting groundfish EFH. The FMP does not impose management measures on non-fishing interests. It provides the information called for in the statute and regulations, so that it can be used by the public and in the consultation process established in the statute.

The Magnuson-Stevens Act requires all Federal agencies whose activities may adversely affect EFH to consult with NMFS (16 U.S.C. 1855(b)(2)). According to 16 U.S.C. 1855(b)(4), NMFS is required to provide EFH conservation and enhancement recommendations to Federal and state agencies for actions that adversely affect EFH. State agencies and private parties are not required to consult directly with NMFS on their activities with EFH. However, if their activities are authorized, funded or undertaken by a Federal agency, then that Federal agency must consult with NMFS.

The EFH consultation requirements of the Magnuson-Stevens Act will be implemented, to the extent possible, through existing framework of established habitat conservation policies. EFH consultations will be combined with existing interagency consultations and environmental review procedures that may be required under other such statutes as the Endangered Species Act (ESA), Clean Water Act, the National Environmental Policy Act (NEPA), the Fish and Wildlife Coordination Act, the Federal Power Act, and the Rivers and Harbor Act. Combining habitat consultations for multiple laws minimizes possible conflicts between and redundancy in meeting the implementation requirements of those laws. Wherever possible, NMFS will also combine EFH consultations for multiple different projects in order to reduce the regulatory burden of consultation.

Comment 9: Potential effects of municipal wastewater discharge were too general, and, thus, not accurately described in Amendment 11. Furthermore, conservation measures suggested for wastewater discharge, such as "improved treatment of sewage," are unnecessary and unfeasible, and therefore inappropriate for inclusion in the EFH portion of Amendment 11.

Response: NMFS recognizes that wastewater discharge and water quality standards are already regulated through laws other than the Magnuson-Stevens Act, and that those laws require implementation of a variety of conservation measures. However, as stated in the response to Comment 8, Magnuson-Stevens Act amendments to FMPs must identify activities that may adversely affect EFH quantity or quality, and must further describe options to avoid, minimize, or compensate for those effects. The feasibility of implementing particular conservation measures to avoid, minimize, or compensate for the effects of non-fishing activities on EFH will vary in different areas of the Pacific Coast, depending on the regulatory requirements currently in place for those areas.

Comment 10: The EFH provision is not complete. It does not include any specific measures to reduce the impacts of fishing on EFH. The EFH section lacks the following required elements: (1) identification of habitat areas of particular concern (HAPCs) to help guide the application of habitat protection measures; and (2) adoption of specific and identifiable conservation and management measures to protect habitat from the impacts of harmful fishing practices, such as restrictions on gear or fishing practices, time or area closures, and no-take reserves to preserve habitat or provide base-line information.

Response: Identifying HAPCs is not a required element in implementing the EFH provisions of the Magnuson-Stevens Act. The NMFS interim final rule (62 FR 66531, December 18, 1997; 50 CFR Part 600 subparts J and K) states at § 600.815(a)(9), in part, "FMPs should identify HAPCs within EFH." Identifying HAPCs is NMFS' highest habitat research priority for Pacific Coast groundfish. NMFS anticipates that the Council will incorporate HAPCs into its EFH designations as soon as adequate information is available. Identifying HAPCs should also strengthen EFH description information for several key species managed by the FMP.

In addition to projects that identify HAPCs, NMFS has been working to incorporate EFH information into geographic information system databases, to better map habitats used by Pacific Coast groundfish. NMFS is

also focusing Pacific Coast research on the effects of fishing gear on EFH, and on the habitat needs of different rockfish species assemblages. The NMFS Southwest Fisheries Science Center has been studying whether there are particular rockfish habitats that are already inaccessible to fishing gear, and if so, whether those areas could be used as unaltered habitat baselines for research into the effects of fishing gear on rockfish habitat. Additionally, NMFS is working in partnership with its sister agency, the National Ocean Service, which manages U.S. National Marine Sanctuaries, to conduct habitat surveys of the ocean floor through the use of human-operated and remotely-operated submersible vehicles. All of these efforts, in combination with the research work of other public agencies, academic and private institutions, should greatly improve the level of information available on groundfish EFH. The Magnuson-Stevens Act provisions on EFH have created the impetus to move these projects forward.

At 16 U.S.C. 1853(a)(7), the Magnuson-Stevens Act requires that FMPs include practicable measures that minimize to the extent practicable the adverse effects of fishing on EFH. Amendment 11 includes a consideration of how the effects of fishing activities on EFH could be minimized and provides a framework for the Council to implement future management measures to protect EFH. Through this framework, the Council has already begun investigations into measures that would reduce the effects of fishing gear on EFH, including time and area closures to protect overfished species' habitat, gear alterations to minimize bycatch and habitat damage, and no-take marine reserves. Amendment 11 also describes the dearth of information on the interaction between groundfish fishing gear and Pacific coast groundfish habitat. There is a great deal of uncertainty about the effects of fishing gear on EFH. NMFS and other agencies are working on defining those effects so that the Council may properly evaluate what management measures may be practicable and effective in protecting EFH. NMFS and the Council consider Amendment 11 to be a first step in the development of practicable management measures that minimize the effects of fishing gear on EFH. NMFS will be working with the Council and encouraging swift progress in this area.

Comment 11: The EFH section does not adequately conduct an assessment of the potential adverse effects of all fishing equipment types used in waters described as EFH. The amendment cites lack of information on the effects of fishing gears on the habitat of Pacific Coast groundfish; however, we question why research from Georges Bank that shows that fishing gear that scrapes the bottom and has detrimental effects on benthic habitats would not be applicable to Pacific Coast groundfish habitat.

Response: The EFH portion of Amendment 11 does contain an assessment of potential adverse impacts of all fishing equipment types used in waters managed by the FMP. While describing these potential adverse effects based on information from other parts of the world, this assessment also discusses the dearth of information specific to Pacific Coast groundfish habitat. Georges Bank, a shallow plain on the continental shelf off eastern New England, is a different type of habitat from the rocky, high-relief habitat off the Pacific coast. Fishing strategies and gears used in Georges Bank are also quite different from fishing strategies off the Pacific coast. For example, there are no vessels using dredge gear in the Pacific Coast EEZ, and there are far fewer bottom trawlers operating off the Pacific coast than off the New England coast. As stated in the response to Comment 10, fishing effects on Pacific Coast groundfish EFH is a NMFS EFH research priority, and the Council has initiated an effort through its legal gear committee to begin considering changes to fishing gear to protect sensitive EFH.

Comment 12: The Council has neglected to evaluate the loss of prey species as an adverse effect on EFH and on a managed species. An evaluation of adverse effects from fishing activities must investigate whether and to what extent loss of prey from direct or indirect (i.e., bycatch) fishing activities is adversely affecting the feeding EFH of managed species.

Response: An evaluation of prey species stock status is not required for implementing the EFH provisions of the Magnuson-Stevens Act. The NMFS interim final rule (62 FR 66531, December 18, 1997) states at § 600.815(a)(8), in part, "FMPs should identify the major prey species for the species in the FMU and generally describe the location of prey species' habitat." Given the time constraints of meeting the October 1998 Magnuson-Stevens Act deadline for amendment approval, and the fact that there are 82 groundfish species in the Pacific Coast Groundfish FMP's fishery management unit, the Council chose to focus its efforts on required EFH elements. A description of EFH for 82 different groundfish species necessarily includes a great deal of marine habitat that is used both by managed species and by the prey of managed species.

Comment 13: Finalizing EFH amendments to the Pacific Coast Groundfish FMP can await revision of the NMFS interim final regulations and guidelines, which is being vigorously pursued. Amending FMPs in advance of that reform will require redoing the process later, and is likely to lead only to further disagreement and confusion in the meantime.

Response: Section 108(b) of the SFA required that regional fishery management councils submit FMP amendments to the Secretary implementing the SFA amendments to the Magnuson-Stevens Act by October 11, 1998. If the NMFS interim final regulations on implementing EFH are revised in the future, FMPs will reflect those changes as necessary. Additionally, the interim final rule recommends at § 600.815(11) that the Councils conduct a complete review of the EFH provisions of their FMPs at least once every 5 years.

Comments on the Environmental Assessment (EA)

Comment 14: The EA does not adequately evaluate previous relevant actions (such as NMFS having approved excessively high total allowable catches in past years); future relevant actions; and other direct, indirect, and cumulative ecological and economic effects of the selected recommendations in Amendment 11. The EA does not proceed from an appropriate baseline of information—a healthy ecosystem and a healthy fishery, one that has not been so overexploited as to have caused stocks to be overfished or to be approaching an overfished condition.

Response: The Amendment 11 EA did consider the Council's previous relevant actions, proposed future relevant actions, and the effects of actions recommended by Amendment 11, while also discussing the benefits and/or detractions of taking those actions. The current evaluations of past actions are what have shown us that harvest levels on some species have been unsustainably high. The Council's management actions are always based on the most recent available information, including information about and assessments of previous relevant management actions, particularly past harvest rates. Not all future relevant actions can be predicted, but Council decisions do take account of their future expected activities.

Comment 15: The Amendment 11 EA is inadequate as a National Environmental Policy Act document. It does not contain an adequate range of alternatives for designating EFH. We found neither a discussion of environmental impacts that might result from the amendment's EFH provisions, nor a Regulatory Impact Review (RIR) analysis. Socioeconomic impacts on non-fishing entities and communities are otherwise ignored, with the erroneous assertion that the action proposed is simply to describe and identify EFH for FMP species, which, in and of itself, will have no economic impact. An Environmental Impact Statement (EIS) must be prepared to address the potentially huge effects on the human environment of the pervasive and cumbersome EFH program reflected in the proposed amendment.

Response: NMFS disagrees. Operating under Magnuson-Stevens Act requirements to identify EFH and to describe fishing and non-fishing activities that may affect EFH, the Council considered the sum of the available information on groundfish habitat. The Council did not have the option of waiting to designate EFH until the scientific community builds a thorough database for all of the species managed under the groundfish FMP. As explained in the response to Comment 8, the Council does not have regulatory authority over non-fishing activities affecting groundfish EFH. Also explained in the response to Comment 8, any consultation activities resulting from the designation of Pacific Coast groundfish EFH will be conducted between NMFS and other Federal or state agencies, not between NMFS and private entities. The RIR in Amendment 11 focuses on fishery regulatory activity because the Council addresses fishing activities in the Pacific Coast EEZ.

Amendment 11 Provisions to Provide Fish as Compensation for Participation in Resource Surveys

The Magnuson-Stevens Act authorizes the Secretary to use the private sector to provide vessels, equipment, and services necessary to survey fishery resources and to pay for these surveys through the sale of fish taken during the survey or, if the quality or amount of fish is not adequate, on a subsequent commercial fishing trip (see § 402(e)). Section 303(b)(11) of the Magnuson-Stevens Act further enables the Secretary to "reserve a portion of the allowable biological catch of the fishery for use in scientific research."

The fishing industry, environmental groups, and NMFS have actively explored various ways to expand and improve information used to manage the groundfish fishery and to involve the fishing industry in gathering that information. Amendment 11 includes a provision to allow NMFS to use fish as compensation for fishers who participate in resource surveys. The preamble to the proposed rule to implement this provision (February 10, 1999, 64 FR 6597) provided a complete discussion of how owners of chartered vessels could be compensated for participation in resource surveys, of how commercial fishing vessel operations could be compensated for collecting resource information, of competitive bid solicitation, of scientific protocols for sample retention, of the issuance process for compensation exempted fishing permits, and of how compensation fish will be accounted for in the Council's annual process of setting ABCs and OYs. During the public comment period on this action, NMFS did not receive any comments addressing this portion of the proposed rule. There are no changes from the proposed rule to the regulatory text on compensation fishing.

Regulatory Definitions of Amendment 11 Terms, Comment and Response, Change from the Proposed Rule

Amendment 11 modified the FMP definitions of several terms, including terms used in groundfish regulations. In the proposed rule to implement Amendment 11, NMFS proposed amending the regulatory definitions of the terms "specification," and "processing or to process" to make those definitions consistent with the new Amendment 11 definitions, and proposed adding a definition for "optimum yield." NMFS received one public comment on the proposed rule to implement Amendment 11. The commenter asked that NMFS include the Amendment 11 definition of "processor" in the codified regulations. NMFS had not proposed including the definition of "processor" in the regulations because the current regulations do not directly regulate processor activities. However, including it in the regulations alerts the affected public, and provides notice to the persons who are newly defined as processors to pay attention to future Council actions that may affect them. Including this definition in the groundfish regulations will not alter the effect or enforcement of current Federal groundfish regulations. The definition of "processor" in Amendment 11 is, "Processor means a person, vessel, or facility that (1) engages in processing; or (2) receives live groundfish directly from a fishing vessel for retail sale without further processing." This definition is necessary to clarify that a person, vessel or facility that receives live fish directly from a fishing vessel for sale without further processing is considered a processor. This differs from previous use of the term, which was ambiguous with respect to the receipt and subsequent sale of live fish. Including this definition in the codified groundfish regulations does not alter the effect or enforcement of current Federal groundfish regulations.

Classification

The Administrator, Northwest Region, NMFS, determined that Amendment 11 is necessary for the conservation and management of the Pacific Coast groundfish fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed, that this rule, if adopted as proposed, would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) that have been approved by OMB, under OMB Control Number 0648–0203 for Federal fishing permits.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number. The public reporting burden for applications for exempted fishery permits. The public reporting burden for applications for exempted fishery permits is estimated at 1 hour per response; the burden for reporting by exempted fishing permittees is estimated at 30 minutes per response. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and revising the collection of information. Send comments regarding this burden estimate or any other aspect of the data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and to OMB, Washington, D.C. 20503 (ATTN: NOAA Desk Officer).

NMFS issued Biological Opinions (BOs) under the ESA on August 10, 1990, November 26, 1991, August 28,

1992, September 27, 1993, and May 14, 1996, pertaining to the impacts of the groundfish fishery on Snake River spring/summer chinook, Snake River fall chinook, Sacramento River winter chinook, and on Snake River sockeye. The BOs concluded that implementation of the FMP for the Pacific Coast Groundfish fishery is not expected to jeopardize the continued existence of any endangered or threatened species under the jurisdiction of NMFS, or result in the destruction or adverse modification of critical habitat. This rule is within the scope of these consultations. Because the impacts of this action fall within the scope of the impacts considered in these BOs, additional consultations on these species are not required for this action. Since the last BO, additional species have been listed under the ESA, including: coho salmon as threatened (Oregon coast/southern Oregon-northern California/ central California); chinook salmon as threatened (Puget Sound/ lower Columbia River/upper Willamette River) and endangered (upper Columbia River); chum salmon as threatened (Hood Canal/Columbia River); sockeye salmon as threatened (Ozette Lake); steelhead as threatened (middle and lower Columbia River/Snake River Basin/upper Willamette River/central California/south-central California) and endangered (upper Columbia River/ southern California); and, Umpqua River cutthroat trout as endangered.

NMFS has reinitiated consultation under Section 7 of the ESA on the Pacific Coast Groundfish fishery to consider its effect on newly listed species. Review of the available information indicates that these fisheries are not likely to affect listed coho, chum, sockeye, steelhead, or cutthroat trout, as these species are rarely, if ever, encountered in the groundfish fishery. Chinook salmon are caught incidentally to some of the groundfish net fisheries, and those fisheries may take chinook salmon from some of the newly listed runs. However, all four of the newly listed chinook evolutionary significant units are north or far-north migrating species, which greatly limits the potential for take in the groundfish fisheries. NMFS has reviewed the effects of groundfish management under the FMP on newly listed Pacific salmon stocks and has determined that implementation of the Amendment 11 final rule will not result in irretrievable or irreversible commitments of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures that may be developed and deemed necessary for future implementation in the Pacific Coast groundfish fishery.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: September 2, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 660.302, the definitions "Optimum yield" and "Processor" are added in alphabetical order, and the definitions of "Commercial harvest guideline or commercial quota", "Processing or to process", and "Specification" are revised to read as follows:

§ 660.302 Definitions.

* * * * *

Commercial harvest guideline or commercial quota means the harvest guideline or quota after subtracting any allocation for the Pacific Coast treaty Indian tribes, for recreational fisheries, and for compensation fishing under § 660.350. Limited entry and open access allocations are based on the commercial harvest guideline or quota.

* * * * *

Optimum yield (OY) means the amount of fish that will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and, taking into account the protection of marine ecosystems, is prescribed as such on the basis of the MSY from the fishery, as reduced by any relevant economic, social, or ecological factor; and, in the case of an overfished fishery, provides for rebuilding to a level consistent with producing the MSY in such fishery. OY may be expressed numerically (as a harvest guideline, quota, or other specification) or non-numerically.

* * * * *

Processing or to process means the preparation or packaging of groundfish to render it suitable for human consumption, retail sale, industrial uses or long-term storage, including, but not limited to, cooking, canning, smoking, salting, drying, filleting, freezing, or rendering into meal or oil, but does not mean heading and gutting unless additional preparation is done.

Processor means person, vessel, or facility that engages in processing; or receives live groundfish directly from a fishing vessel for retail sale without further processing.

* * * * *

Specification is a numerical or descriptive designation of a management objective, including but not limited to: ABC; optimum yield; harvest guideline; quota; limited entry or open access allocation; a set aside or allocation for a recreational or treaty Indian fishery; an apportionment of the above to an area, gear, season, fishery, or other subdivision; DAP, DAH, JVP, TALFF, or incidental bycatch allowances in foreign or joint venture fisheries.

* * * * *

3. In § 660.306, paragraphs (d), (e), and (f) are revised to read as follows:

§ 660.306 Prohibitions.

* * * * *

(d) Fish for groundfish in violation of any terms or conditions attached to an EFP under § 600.745 of this chapter or § 660.350.

(e) Fish for groundfish using gear not authorized under § 660.322 or in violation of any terms or conditions attached to an EFP under § 660.350 or part 600 of this chapter.

(f) Take and retain, possess, or land more groundfish than specified under § 660.321 and § 660.323, or under an EFP issued under § 660.350 or part 600 of this chapter.

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4. In § 660.321, paragraph (b) is revised to read as follows:

§ 660.321 Specifications and management measures.

* * * * *

(b) *Annual actions.* The Pacific Coast Groundfish fishery is managed on a calendar year basis. Even though specifications and management measures are announced annually, they may apply for more than 1 year. In general, management measures are designed to achieve, but not exceed, the specifications, particularly optimum yields (harvest guidelines and quotas), commercial harvest guidelines and quotas, limited entry and open access allocations, or other approved fishery allocations.

* * * * *

5. Section 660.350 is added to read as follows:

§ 660.350 Compensation with fish for collecting resource information—exempted fishing permits off Washington, Oregon, and California.

In addition to the reasons stated in § 600.745(b)(1) of this chapter, an EFP may be issued under this subpart G for the purpose of compensating the owner or operator of a vessel for collecting resource information according to a protocol approved by NMFS. NMFS may issue an EFP allowing a vessel to retain fish as compensation in excess of trip limits or to be exempt from other specified management measures for the Pacific coast groundfish fishery.

(a) *Compensation EFP for vessels under contract with NMFS to conduct a resource survey.* NMFS may issue an EFP to the owner or operator of a vessel that conducted a resource survey according to a contract with NMFS. A vessel's total compensation from all sources (in terms of dollars or amount of fish, including fish from survey samples or compensation fish) will be determined through normal Federal procurement procedures. The compensation EFP will specify the maximum amount or value of fish the vessel may take and retain after the resource survey is completed.

(1) *Competitive offers.* NMFS may initiate a competitive solicitation (request for proposals or RFP) to select vessels to conduct resource surveys that use fish as full or partial compensation, following normal Federal procurement procedures.

(2) *Consultation and approval.* At a Council meeting, NMFS will consult with the Council and receive public comment on upcoming resource surveys to be conducted if groundfish could be used as whole or partial compensation. Generally, compensation fish would be similar to surveyed species, but there may be reasons to provide payment with healthier, more abundant, less restricted stocks, or more easily targeted species. For example, NMFS may decline to pay a vessel with species that are, or are expected to be, overfished, or that are subject to overfishing, or that are unavoidably caught with species that are overfished or subject to overfishing. NMFS may also consider levels of discards, bycatch, and other factors. If the Council does not approve providing whole or partial compensation for the conduct of a survey, NMFS will not use fish, other than fish taken during the scientific research, as compensation for that survey. For each proposal, NMFS will present:

(i) The maximum number of vessels expected or needed to conduct the survey,

(ii) An estimate of the species and amount of fish likely to be needed as compensation,

(iii) When the survey and compensation fish would be taken, and

(iv) The year in which the compensation fish would be deducted from the ABC before determining the optimum yield (harvest guideline or quota).

(3) *Issuance of the compensation EFP.* Upon successful completion of the survey, NMFS will issue a "compensation EFP" to the vessel if it has not been fully compensated. The procedures in § 600.745(b)(1) through (b)(4) of this chapter do not apply to a compensation EFP issued under this subpart for the Pacific coast groundfish fishery (50 CFR part 660, subpart G).

(4) *Terms and conditions of the compensation EFP.* Conditions for disposition of bycatch or any excess catch, for reporting the value of the amount landed, and other appropriate terms and conditions may be specified in the EFP. Compensation fishing must occur during the period specified in the EFP, but no later than the end of September of the fishing year following the survey, and must be conducted according to the terms and conditions of the EFP.

(5) *Reporting the compensation catch.* The compensation EFP may require the vessel owner or operator to keep separate records of compensation fishing and to submit them to NMFS within a specified period of time after the compensation fishing is completed.

(6) *Accounting for the compensation catch.* As part of the annual specifications process (§ 660.321), NMFS will advise the Council of the amount of fish authorized to be retained under a compensation EFP, which then will be deducted from the next year's ABCs before setting the HGs or quotas. Fish authorized in an EFP too late in the year to be deducted from the following year's ABC will be accounted for in the next management cycle practicable.

(b) *Compensation for commercial vessels collecting resource information under a standard EFP.* NMFS may issue an EFP to allow a commercial fishing vessel to take and retain fish in excess of current management limits for the purpose of collecting resource information (§ 600.745(b) of this chapter). The EFP may include a compensation clause that allows the participating vessel to be compensated with fish for its efforts to collect resource information according to NMFS' approved protocol. If compensation with fish is requested in an EFP application, or proposed by NMFS, the following provisions apply in addition to those at § 600.745(b) of this chapter.

(1) *Application.* In addition to the requirements in § 600.745(b) of this chapter, application for an EFP with a compensation clause must clearly state whether a vessel's participation is contingent upon compensation with groundfish and, if so, the minimum amount (in metric tons, round weight) and the species. As with other EFPs issued under § 600.745 of this chapter, the application may be submitted by any individual, including a state fishery management agency or other research institution.

(2) *Denial.* In addition to the reasons stated in § 600.745(b)(3)(iii) of this chapter, the application will be denied if the requested compensation fishery, species, or amount is unacceptable for reasons such as, but not limited to, the following: NMFS concludes the value of the resource information is not commensurate with the value of the compensation fish; the proposed compensation involves species that are (or are expected to be) overfished or subject to overfishing, fishing in times or areas where fishing is otherwise prohibited or severely restricted, or fishing for species that would involve unavoidable bycatch of species that are overfished or subject to overfishing; or NMFS concludes the information can reasonably be obtained at a less cost to the resource.

(3) *Window period for other applications.* If the RA or designee agrees that compensation should be considered, and that more than a minor amount would be used as compensation, then a window period will be announced in the **Federal Register** during which additional participants will have an opportunity to apply. This notification would be made at the same time as announcement of receipt of the application and request for comments required under § 660.745(b). If there are more qualified applicants than needed for a particular time and area, NMFS will choose among the qualified vessels, either randomly, in order of receipt of the completed application, or by other impartial selection methods. If the permit applicant is a state, university, or Federal entity other than NMFS, and NMFS approves the selection method, the permit applicant may choose among the qualified vessels, either randomly, in order of receipt of the vessel application, or by other impartial selection methods.

(4) *Terms and conditions.* The EFP will specify the amounts that may be taken as scientific samples and as compensation, the time period during which the compensation fishing must occur, management measures that NMFS will waive for a vessel fishing under the EFP, and other terms and conditions appropriate to the fishery and the collection of resource information. NMFS may require compensation fishing to occur on the same trip that the resource information is collected.

(5) *Accounting for the catch.* Samples taken under this EFP, as well as any compensation fish, count toward the current year's catch or landings.

[FR Doc. 99–23486 Filed 9–9–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 090299A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of Pacific ocean perch in the Central Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of Pacific ocean perch in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the amount of the 1999 total allowable catch (TAC) of Pacific ocean perch in this area has been achieved.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 3, 1999, until 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson 907–481–1780 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The amount of the 1999 TAC of Pacific ocean perch in the Central Regulatory Area of the GOA was established as 6,760 metric tons by the Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999). See § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the amount of the 1999 TAC for Pacific ocean perch in the Central Regulatory Area of the GOA has been achieved. Therefore, NMFS is requiring that further catches of Pacific ocean perch in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the amount of the 1999 TAC for Pacific ocean perch in the Central Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. The fleet has taken the amount of the 1999 TAC for Pacific ocean perch in the Central Regulatory Area of the GOA. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 2, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–23443 Filed 9–3–99; 3:50 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 090199C]

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of northern rockfish in the Central Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of northern rockfish in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the amount of the 1999 total allowable catch (TAC) of northern rockfish in this area has been achieved.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 3, 1999, until 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson 907–481–1780 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The amount of the 1999 TAC of northern rockfish in the Central Regulatory Area of the GOA was established as 4,150 metric tons by the Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999). See § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the amount of the 1999 TAC for northern rockfish in the Central Regulatory Area of the GOA has been achieved. Therefore, NMFS is requiring that further catches of northern rockfish in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the amount of the 1999 TAC for northern rockfish in the Central Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. The fleet has taken the amount of the 1999 TAC for northern rockfish in the Central Regulatory Area of the GOA. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 2, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–23442 Filed 9–3–99; 3:50 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 090199D]

Fisheries of the Exclusive Economic Zone Off Alaska; Pelagic Shelf Rockfish in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of pelagic shelf rockfish in the Central Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of pelagic shelf rockfish in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the amount of the 1999 total allowable catch (TAC) of pelagic shelf rockfish in this area has been achieved.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 3, 1999, until 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson 907–481–1780 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The amount of the 1999 TAC of pelagic shelf rockfish in the Central Regulatory Area of the GOA was established as 3,370 metric tons by the Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999). See § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the amount of the 1999 TAC for pelagic shelf rockfish in the Central Regulatory Area of the GOA has been achieved. Therefore, NMFS is requiring that further catches of pelagic shelf rockfish in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the amount of the 1999 TAC for pelagic shelf rockfish in the Central Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. The fleet has taken the amount of the 1999 TAC for pelagic shelf rockfish in the Central Regulatory Area of the GOA. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 2, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–23441 Filed 9–3–99; 3:50 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304063–9063–01; I.D. 090399A]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel to Vessels Using "Other Gear" in the Eastern Aleutian District and Bering Sea Subarea of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for Atka mackerel by vessels using "other gear" in the Eastern Aleutian District and the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 1999 initial total allowable catch (ITAC) of Atka mackerel allocated to vessels using "other gear" in the Eastern Aleutian District and the Bering Sea subarea of the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 7, 1999, until 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP are found at subpart H of 50 CFR part 600 and CFR part 679.

The 1999 ITAC of Atka mackerel allocated to vessels using "other gear" in the Eastern Aleutian District and the Bering Sea subarea was established by the Final 1999 Harvest Specifications for Groundfish (64 FR 12103, March 11, 1999) as 15,568 metric tons (mt). See § 679.20(c)(6) and 679.20(a)(8).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1999 ITAC of Atka mackerel allocated to vessels using "other gear" in the Eastern Aleutian District and the Bering Sea subarea will be reached. Therefore, the Regional

Administrator is establishing a directed fishing allowance of 15,068 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance soon will be reached. Consequently, NMFS is prohibiting directed fishing for Atka mackerel for vessels using "other gear" in the Eastern Aleutian District and the Bering Sea subarea of the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the 1999 ITAC of Atka mackerel allocated to vessels using "other gear" in the Eastern Aleutian District and the Bering Sea subarea of the BSAI. A delay in the effective date is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 3, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–23459 Filed 9–3–99; 4:07 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 082599A]

Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of application period.

SUMMARY: NMFS announces an application period for persons applying for a groundfish or crab species license under the License Limitation Program (LLP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area, the Groundfish of the Gulf of Alaska, and the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands. This announcement is necessary to begin the application process to determine eligible participants in the fisheries managed under the LLP and is intended to provide potential eligible applicants with notice of the opportunity to apply for a groundfish or crab species license.

DATES: Applications must be postmarked or delivered to NMFS (see ADDRESSES) during the application period beginning September 13, 1999, and ending at the close of business on December 17, 1999.

ADDRESSES: Applications can be requested from, and must be sent to, Restricted Access Management, NMFS, P.O. Box 21668, Juneau, AK 99802–1668. Hand delivery or courier delivery of applications must be delivered to the Federal Building, 709 West 9th Street, Room 453, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: Restricted Access Management, 1–800–304–4846.

SUPPLEMENTARY INFORMATION: In June 1995, the North Pacific Fishery Management Council (Council) recommended that NMFS implement the LLP to address concerns of excess capital and capacity in the groundfish and crab fisheries off Alaska. As the next stage of a multistaged process to reduce capacity and capital in the affected fisheries, the LLP will replace the Vessel Moratorium Program (VMP). NMFS implemented the VMP to impose a temporary moratorium on the entry of new capacity into the groundfish and crab fisheries off Alaska and to define the class of entities that would be eligible for licenses under the LLP. The VMP is scheduled to expire on December 31, 1999. The final rule implementing the LLP (63 FR 52642, October 1, 1998) specifies that fishing will begin under the LLP on January 1, 2000.

A final rule establishing the application period and the procedures to apply for a license will become effective on September 7, 1999 (64 FR 42826, August 6, 1999). This rule provides at § 679.4(k)(6)(ii) that an application period of no less than 90 days will be specified by notification in the **Federal Register**. This rule also provides at § 679.4(k)(6)(i) that a person may request an application for a groundfish license or a crab species license issued under the LLP.

This notification is intended to comply with the application procedures established in § 679.4(k)(6). An application will be sent to the last known address of a person that appears to be an eligible applicant based on information in the official LLP record. All other persons are hereby notified that they must request an application from Restricted Access Management, NMFS (see **ADDRESSES**). The application period for groundfish licenses and crab species licenses under the LLP begins on September 13, 1999, and ends at the close of business on December 17, 1999. Incomplete applications will be returned to the applicant with specific kinds of information identified that are necessary to make the application complete. Applications postmarked after December 17, 1999, or delivered after the close of business on December 17, 1999, will be denied.

Classification

This action is taken under 50 CFR 679.4(k)(6) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 2, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–23487 Filed 9–9–99; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 175
Friday, September 10, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–323–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200, –200PF, and –200CB Series Airplanes Powered by Rolls-Royce RB211–535C/E4/E4B Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Boeing Model 757–200, –200PF, and –200CB series airplanes, that would have required modification of the engine thrust control cable installation, and repetitive inspections to detect certain discrepancies of the cables, pulleys, pulley brackets, and cable travel; and repair, if necessary. That proposal was prompted by reports of failure of certain engine thrust control cables. This new action would revise the proposed rule by extending the compliance time for certain actions, revising certain inspection procedures, and adding a requirement for a one-time inspection to determine the part number of thrust control cable pulleys and replacement of existing pulleys with new pulleys, if necessary. The actions specified by this new proposed AD are intended to prevent failure of certain engine thrust control cables, which could result in a severe asymmetric thrust condition during landing, and consequent reduced controllability of the airplane.

DATES: Comments must be received by October 5, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–323–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Kathrine Rask, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1547; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–323–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–323–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 757–200, –200PF, and –200CB series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on February 17, 1999 (64 FR 7822). That NPRM would have required modification of the engine thrust control cable installation, and repetitive inspections to detect certain discrepancies of the cables, pulleys, pulley brackets, and cable travel; and repair, if necessary. That NPRM was prompted by reports of failure of certain engine thrust control cables. That condition, if not corrected, could result in a severe asymmetric thrust condition during landing, and consequent reduced controllability of the airplane.

Actions Since Issuance of Previous Proposal

Due consideration has been given to the comments received in response to the NPRM. Certain of these comments and the information they provided have led the FAA to consider making certain significant changes to the proposal. These comments and the changes prompted by them are explained below.

Request to Extend Compliance Time

One commenter requests that the compliance time for the thrust control cable inspection [specified in paragraph (a) of the NPRM] be extended from 18 months or 6,000 flight hours after the effective date of this AD (whichever occurs first) to 24 months or 6,000 flight hours after the effective date of this AD (whichever occurs first). The commenter states that, for some operators, 6,000 flight hours would not closely correspond to 18 months.

The FAA concurs with the commenter's request to extend the compliance time somewhat. The FAA's intent is that the inspection specified in the proposal be performed during a regularly scheduled maintenance visit,

when the airplane is at a base where special equipment and trained personnel are readily available, if necessary. The FAA has determined that an interval of 24 months better corresponds to operators' normal maintenance schedules than an interval of 18 months. The FAA does not consider that such an extension of the compliance time to 24 months would adversely affect safety. Therefore, as the commenter requests, paragraph (a) of this supplemental NPRM has been revised accordingly. Similarly, the repetitive interval for the inspection specified in paragraph (a) of this supplemental NPRM has been revised from the earlier of 18 months or 6,000 flight hours to the earlier of 24 months or 6,000 flight hours, and paragraphs (c) and (d) of this supplemental NPRM [i.e., paragraphs (b) and (c) of the original NPRM] have been revised to incorporate a compliance time of 24 months or 6,000 flight hours after the effective date of this AD, whichever occurs first.

Request To Revise Inspection Procedure

Two commenters request that the "Thrust Control Cable Inspection Procedure," specified in paragraph (a) and described in Appendix 1 of the proposal, be revised to focus on minimizing the possibility of failure of an engine thrust control cable. One of the commenters suggests that the procedure be revised to eliminate all steps that don't contribute to the intent of the AD. The same commenter also suggests that the inspection procedure would be enhanced by adding an inspection of the cable joints.

The FAA concurs with the commenters' request, and the "Thrust Control Cable Inspection Procedure" specified in Appendix 1 of this supplemental NPRM has been revised accordingly.

Request To Add Requirement for Pulley Replacement

One commenter, the airplane manufacturer, suggests that the intent of the proposed AD would be enhanced by inclusion of a requirement for replacement of existing phenolic thrust control cable pulleys in the struts with aluminum pulleys. The commenter states that phenolic pulleys have seized due to delamination and loss of bearing lubrication, which would result in chafing of the engine thrust control cables. The commenter notes that this replacement is described in Boeing Service Letter 757–SL–76–004–A, dated July 21, 1997.

The FAA concurs with the commenter's request. Therefore, a new paragraph (b) has been added to this supplemental NPRM, which would require, for airplanes having line numbers 1 through 636 inclusive, a one-time inspection of the thrust control cable pulleys in the struts to determine the part number of the pulleys, and replacement of phenolic pulleys with new aluminum pulleys. Such replacement would be required to be accomplished in accordance with the Boeing 757 Airplane Maintenance Manual. A new **Note 2** also has been added to this supplemental NPRM to provide references for the location of the pulleys to be inspected in accordance with paragraph (b) of this proposed AD.

Request To Revise Cost Impact

One commenter, the airplane manufacturer, requests that the "Cost Impact" section of the proposal be revised to remove the statement that the manufacturer will provide certain parts at no cost to the operators. The FAA concurs with the commenter's request and has revised the Cost Impact section of this supplemental NPRM in accordance with new cost data provided by the manufacturer.

Explanation of Additional Change to the Original NPRM

The Cost Impact section in this supplemental NPRM has been revised to increase the number of affected airplanes in the worldwide fleet as well as on the U.S. Register from the numbers stated in the original NPRM. Since the issuance of the NPRM, more airplanes have been delivered by the manufacturer; thus the number of affected airplanes has increased. No change to the applicability statement of the AD has been made or is necessary.

Conclusion

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 483 airplanes of the affected design in the worldwide fleet. The FAA estimates that 248 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 3 work hours per airplane to accomplish the proposed inspection to verify the integrity of the thrust control cables, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection proposed by this AD on U.S. operators is estimated to be $44,640, or $180 per airplane, per inspection cycle.

It would take approximately 1 work hour per airplane to accomplish the proposed inspection to determine the part number of the thrust control cable pulleys, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection proposed by this AD on U.S. operators is estimated to be $14,880, or $60 per airplane, per inspection cycle.

For airplanes identified in Boeing Service Bulletin 757–76–1 (8 U.S.-registered airplanes), it would take approximately 2 work hours per airplane to accomplish the proposed guide bracket removal, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $960, or $120 per airplane.

For airplanes identified in Boeing Service Bulletin 757–76–0005 (14 U.S.-registered airplanes), it would take approximately 14 work hours per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would cost approximately $1,410 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $31,500, or $2,250 per airplane.

For airplanes identified in Boeing Alert Service Bulletin 757–30A0018, Revision 1 (167 U.S.-registered airplanes), it would take approximately 2 work hours per airplane to accomplish the proposed installation and adjustment, at an average labor rate of $60 per work hour. Required parts would cost approximately $192 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $52,104, or $312 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 98–NM–323–AD.

Applicability: Model 757–200, –200PF, and –200CB series airplanes powered by Rolls-Royce RB211–535C/E4/E4B turbofan engines, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine thrust control cable failure, which could result in a severe asymmetric thrust condition during landing, and consequent reduced controllability of the airplane, accomplish the following:

Inspections and Corrective Actions

(a) Within 24 months or 6,000 flight hours after the effective date of this AD, whichever occurs first: Accomplish the "Thrust Control Cable Inspection Procedure" specified in Appendix 1. (including Figure 1) of this AD to verify the integrity of the thrust control cables. Prior to further flight, repair any discrepancy found in accordance with the procedures described in the Boeing 757 Maintenance Manual. Repeat the inspection thereafter at intervals not to exceed 24 months or 6,000 flight hours, whichever occurs first.

(b) For airplanes having line numbers 1 through 636 inclusive: Within 24 months or 6,000 flight hours after the effective date of this AD, whichever occurs first, perform a one-time inspection of the 8 engine thrust control cable pulleys in the struts (4 in each strut) to determine the part number (P/N) of each pulley. If any pulley having P/N 65B80977–1 is installed, prior to further flight, replace it with a pulley having P/N 255T1232–7, in accordance with the procedures described in the Boeing 757 Airplane Maintenance Manual.

Note 2: The location of the pulleys to be inspected in accordance with paragraph (b) of this AD is specified in Chapters 53–11–53–04, 76–11–52–01, and 76–11–52–02 of the Boeing 757 Illustrated Parts Catalog.

Modifications

(c) For airplanes identified in Boeing Service Bulletin 757–76–1, dated May 18, 1984: Within 24 months or 6,000 flight hours after the effective date of this AD, whichever occurs first, remove the guide bracket of the engine thrust control cable located on the front spar of the right wing in accordance with the service bulletin.

(d) For airplanes identified in Boeing Service Bulletin 757–76–0005, dated May 5, 1988: Within 24 months or 6,000 flight hours after the effective date of this AD, whichever occurs first, remove the engine thrust control cable breakaway stop assemblies, and replace sections of the engine thrust control cables with smaller diameter cables in accordance with the service bulletin.

(e) For airplanes identified in Boeing Alert Service Bulletin 757–30A0018, Revision 1, dated September 17, 1998: Within 60 days after the effective date of this AD, install a support bracket assembly between the window heat wire bundle and the engine thrust control cable; and adjust the wire bundle clearance, as necessary, to parallel the minimum clearance specified in the alert service bulletin.

Alternative Method of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR) 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be acomplished. Issued in Renton, Washington, on September 2, 1999.

Appendix 1.—Thrust Control Cable Inspection Procedure

1. General

A. Clean the cables, if necessary, for the inspection, in accordance with Boeing 757 Maintenance Manual 12–21–31.

B. Use these procedures to verify the integrity of the thrust control cable system. The procedures must be performed along the entire cable run for each engine. To ensure verification of the portions of the cables which are in contact with pulleys and quadrants, the thrust control must be moved by operation of the thrust and/or the reverse thrust levers to expose those portions of the cables.

C. The first task is an inspection of the control cable wire rope. The second task is an inspection of the control cable fittings. The third task is an inspection of the pulleys.

Note: These three tasks may be performed concurrently at one location of the cable system on the airplane, if desired, for convenience.

2. Inspection of the Control Cable Wire Rope

A. Perform a detailed visual inspection to ensure that the cable does not contact parts other than pulleys, quadrants, cable seals, or grommets installed to control the cable routing. Look for evidence of contact with other parts. Correct the condition if evidence of contact is found.

Note: For the purposes of this procedure, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

B. Perform a detailed visual inspection of the cable runs to detect incorrect routing, kinks in the wire rope, or other damage. Replace the cable assembly if:

(1) One cable strand had worn wires where one wire cross section is decreased by more than 40 percent (see Figure 1),

(2) A kink is found, or

(3) Corrosion is found.

C. Perform a detailed visual inspection of the cable: To check for broken wires, rub a cloth along the length of the cable. The cloth catches on broken wires.

(1) Replace the 7x7 cable assembly if there are two or more broken wires in 12 continuous inches of cable or there are three or more broken wires anywhere in the total cable assembly.

(2) Replace the 7x19 cable assembly if there are four or more broken wires in 12 continuous inches of cable or there are six or more broken wires anywhere in the total cable assembly.

3. Inspection of the Control Cable Fittings

A. Perform a detailed visual inspection to ensure that the means of locking the joints

are intact (wire locking, cotter pins, turnbuckle clips, etc.). Install any missing parts.

B. Perform a detailed visual inspection of the swaged portions of swaged end fittings to detect surface cracks or corrosion. Replace the cable assembly if cracks or corrosion are found.

C. Perform a detailed visual inspection of the unswaged portion of the end fitting. Replace the cable assembly if a crack is visible, if corrosion is present, or if the end fitting is bent more than 2 degrees.

D. Perform a detailed visual inspection of the turnbuckle. Replace the turnbuckle if a crack is visible or if corrosion is present.

4. Inspection of Pulleys

A. Perform a detailed visual inspection to ensure that pulleys are free to rotate. Replace pulleys which are not free to rotate.

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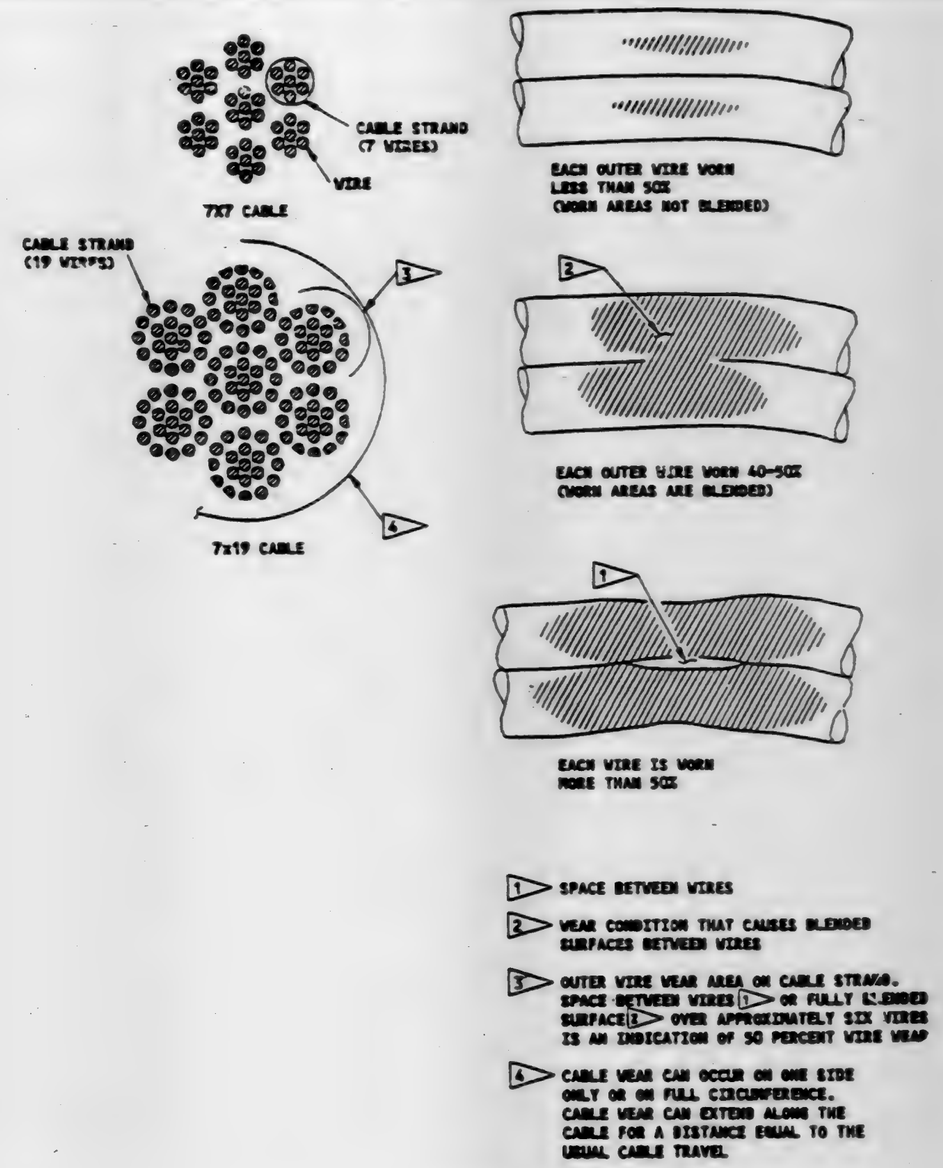

FIGURE 1

Dorenda D. Baker,
Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–23478 Filed 9–9–99; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–184–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A330 and A340 series airplanes. This proposal would require repetitive detailed visual inspections to detect cracking of the vertical flange of the inboard Z-stiffeners of the centerline panel of the fuselage belly fairing; and corrective actions, if necessary. This proposed AD also provides for optional terminating action for the repetitive inspections. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct fatigue cracking of the vertical flange of the inboard Z-stiffeners of the centerline panel of the fuselage belly fairing, which could result in reduced structural integrity of the belly fairing.

DATES: Comments must be received by October 12, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–184–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–184–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–184–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de Í Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A330 and A340 series airplanes. The DGAC advises that during full-scale fatigue testing, fatigue cracking occurred in one of the inboard Z-stiffeners at the fitting retaining the centerline panel between the main landing gear doors. The cracking initiated in the cut-out radius of the vertical flange and propagated downward. Such fatigue cracking, if not detected and corrected, could result in reduced structural integrity of the belly fairing.

Explanation of Relevant Service Information

The manufacturer has issued Airbus Service Bulletins A330–53–3020 (for Model A330 series airplanes) and A340–53–4029 (for Model A340 series airplanes); each dated November 30, 1995. These service bulletins describe procedures for repetitive detailed visual inspections to detect cracking of the vertical flange of the inboard Z-stiffeners of the centerline panel of the fuselage belly fairing; and corrective actions, if necessary. The detailed visual inspection includes the left- and right-hand sides of the centerline panel between the main landing gear doors. The corrective actions reference the accomplishment of Airbus Service Bulletin A330–53–3019 (for Model A330 series airplanes) or A340–53–4028 (for Model A340 series airplanes); each dated November 30, 1995. These service bulletins describe procedures for modification of the vertical flange of the inboard Z-stiffeners of the centerline panel of the fuselage belly fairing. The modification involves the installation of a new cut-out of the vertical flange of the inboard Z-stiffeners; and installation of an external reinforcement plate (strap), and modification of the assembly (length of fasteners) between the Z-stiffeners and the belly fairing panel.

Accomplishment of the modification of the vertical flange of the inboard Z-stiffeners of the centerline panel of the fuselage belly fairing eliminates the need for the repetitive inspections, provided that all cracking is eliminated. Accomplishment of the actions specified in the applicable service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified Airbus Service Bulletins A330–53–3020 and A340–53–4029 as mandatory and issued French airworthiness directives 96–056–029 (B) (for Model A330 series airplanes), and 96–057–042 (B) (for Model A340 series airplanes); each dated March 13, 1996; in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below. This proposed AD also would provide for optional terminating action for the repetitive inspections.

Operators should note that, in consonance with the findings of the DGAC, the FAA has determined that the repetitive inspections proposed by this AD can be allowed to continue in lieu of accomplishment of a terminating action. In making this determination, the FAA considers that, in this case, long-term continued operational safety will be adequately assured by accomplishing the repetitive inspections to detect cracking before it represents a hazard to the airplane.

Differences Between Proposed Rule and Service Bulletin

Unlike the procedures described in Airbus Service Bulletins A330–53–3020 (for Model A330 series airplanes) and A340–53–4029 (for Model A340 series airplanes), this proposed AD would not permit further flight if cracks are detected of the vertical flange of the inboard Z-stiffeners of the centerline panel of the fuselage belly fairing. The FAA has determined that, because of the safety implications and consequences associated with such cracking, any vertical flange of the inboard Z-stiffener that is found to be cracked must be repaired or modified to eliminate any cracking, or repaired (for any cracking that cannot be eliminated), prior to further flight.

Operators also should note that, although the service bulletins specify that the manufacturer may be contacted for disposition of certain cracking conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this proposed rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this proposed AD action. However, the FAA considers that this proposed rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $60 per airplane, per inspection cycle.

Should an operator elect to accomplish the optional terminating action proposed by this AD, it would require approximately 7 work hours to accomplish the proposed optional terminating action, at an average labor rate of $60 per work hour. Required parts would cost approximately $2,350 per airplane. Based on these figures, the cost impact of the optional terminating action is estimated to $2,770 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 99–NM–184–AD.

Applicability: Model A330 and A340 series airplanes; except those airplanes on which Airbus Modification 42605, or Airbus Service Bulletin A330–53–3019 (for Model A330 series airplanes) or A340–53–4028 (for Model A340 series airplanes) has been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the vertical flange of the inboard Z-stiffeners of the centerline panel of the fuselage belly fairing, which could result in reduced structural integrity of the belly fairing, accomplish the following:

Repetitive Detailed Visual Inspections

(a) Prior to the accumulation of 5,500 total flight cycles, or within 500 flight hours after the effective date of this AD, whichever occurs later, perform a detailed visual inspection to detect cracking of the vertical flange of the inboard Z-stiffeners of the centerline panel of the fuselage belly fairing, in accordance with Airbus Service Bulletin A330–53–3020 (for Model A330 series airplanes) or A340–53–4029 (for Model A340 series airplanes); each dated November 30, 1995; as applicable.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

(1) If no cracking is detected, repeat the inspection thereafter at intervals not to exceed 5,500 flight cycles, until the requirements of paragraph (b) of this AD are accomplished.

Corrective Actions

(2) If any cracking is detected during any inspection required by this AD, prior to further flight, modify the vertical flange of both inboard Z-stiffeners of the centerline panel of the fuselage belly fairing and re-inspect the modified area to determine if cracking has been eliminated, in accordance with Airbus Service Bulletin A330–53–3019 (for Model A330 series airplanes) or A340–53–4028 (for Model A340 series airplanes); each dated November 30, 1995; as applicable.

(i) If all cracking is not eliminated after accomplishment of the modification, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(ii) If all cracking is eliminated after the accomplishment of the modification, no further action is required by this AD.

Optional Terminating Action

(b) Modification of the vertical flange of both inboard Z-stiffeners of the centerline panel of the fuselage belly fairing in accordance with Airbus Service Bulletin A330–53–3019 (for Model A330 series airplanes) or A340–53–4028 (for Model A340 series airplanes); each dated November 30, 1995; as applicable constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed French airworthiness directives 96–056–029 (B) and 96–057–042 (B); each dated March 13, 1996; in order to assure the continued airworthiness of these airplanes in France.

Issued in Renton, Washington, on September 2, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–23477 Filed 9–9–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–313–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model BAe 125–1000A and Hawker 1000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM); proposed rescission.

SUMMARY: This document proposes to rescind an existing airworthiness directive (AD), applicable to certain Raytheon Model BAe 125–1000A and Hawker 1000 series airplanes, that currently requires inspections of the thrust reverser system for integrity, and correction of any discrepancy found. The actions specified by that AD are intended to prevent a significant reduction in the controllability of the airplane due to an in-flight deployment of a thrust reverser. Since the issuance of that AD, the FAA has issued a separate AD that requires the accomplishment of modifications that terminate the requirements of the existing AD.

DATES: Comments must be received by October 12, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–313–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

Information pertaining to this proposed rule may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–313–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–313–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On April 20, 1994, the FAA issued AD 94–09–11, amendment 39–8900 (59 FR 22125, April 29, 1994), applicable to certain Raytheon Model BAe 125–1000A and Hawker 1000 series airplanes, to require inspections of the thrust reverser system for integrity, and correction of any discrepancy found. That action was prompted by a report that there is a possibility of failure of the drive links (or attachments) on the thrust reversers of these airplanes due to the single link design concept of the thrust reverser link and lock system. That condition, if not corrected, could result in inadvertent deployment of a thrust reverser during flight. The requirements of that AD are intended to prevent a significant reduction in the controllability of the airplane due to an in-flight deployment of a thrust reverser.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has issued AD 96–22–03, amendment 39–9792 (61 FR 57295, November 6, 1996), which requires modifications of the thrust reversers on certain Raytheon Model BAe 125–1000A and Model Hawker 1000 series airplanes. AD 96–22–03 became effective on December 11, 1996, and the actions specified in that AD were required to be accomplished within 6 months after that date.

FAA's Conclusions

Since the actions required by AD 96–22–03 were required to be accomplished by June 11, 1997, and because such accomplishment constitutes terminating action for the requirements of AD 94–09–11, the FAA has determined that it is necessary to rescind AD 94–09–11 in order to prevent operators from performing an unnecessary action.

This proposed action would rescind AD 94–09–11. Rescission of AD 94–09–11 would constitute only such action, and, if followed by a final action, would not preclude the agency from issuing another notice in the future, nor would it commit the agency to any course of action in the future.

Cost Impact

The FAA estimates that 14 airplanes of U.S. registry are affected by AD 94–09–11. The actions that are currently required by that AD take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $180 per airplane. However, the adoption of this proposed rescission would eliminate those costs.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Dcket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8900.

Raytheon Aircraft Company: Amendment 39–. Docket 97–NM–313–AD. Rescinds AD 94–09–11, Amendment 39–8900.

Applicability: Model BAe 125–1000A and Hawker 1000 series airplanes; as listed in Raytheon Corporate Jets Service Bulletin SB 78–12, dated January 4, 1994; certificated in any category.

Issued in Renton, Washington, on September 3, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–23622 Filed 9–9–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–365–AD]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model SN–601 (Corvette) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Aerospatiale Model SN–601 (Corvette) series airplanes. This proposal would require repetitive inspections, and repair if necessary, of the locking indication system of the drag strut jack on the main landing gear (MLG) to detect corrosion and damage resulting from its operation. This proposal would also require replacement of seals and backup rings with new parts. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the locking indication system of the drag strut jack on the MLG due to corrosion. Such corrosion could prevent the MLG from locking and result in the subsequent collapse of the MLG.

DATES: Comments must be received by October 12, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–365–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–365–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–365–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Aerospatiale Model SN–601 (Corvette) series airplanes. The DGAC advises that one occurrence of corrosion has been reported in the locking indication system of the drag strut jack on the main landing gear (MLG). Such corrosion could cause failure of the locking indication system of the drag strut jack, which could prevent the MLG from locking and result in the subsequent collapse of the MLG.

Explanation of Relevant Service Information

Messier-Dowty, the manufacturer of the affected MLG, has issued Technical Instruction No. 20403, Issue 2, dated March 1998, which describes procedures for repetitive inspections to detect corrosion and other damage, and repair if necessary, of the locking indication system of the drag strut jack on the MLG. The Technical Instruction also describes procedures for verification of the free displacement of the plungers, replacement of damaged parts with new parts, and replacement of all seals and back up rings with new parts. Accomplishment of the actions specified in the technical instruction is intended to adequately address the identified unsafe condition. The DGAC classified this technical instruction as mandatory and issued French airworthiness directive 98–179–021(B), dated May 6, 1998, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the technical instruction described previously.

Cost Impact

The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. The cost of required parts would be minimal. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $960, or $480 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 98–NM–365–AD.

Applicability: All Model SN–601 (Corvette) series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the locking indication system of the drag strut jack on the main landing gear (MLG) due to corrosion that could prevent the MLG from locking and result in the subsequent collapse of the MLG, accomplish the following:

(a) Within 3,600 flight hours or 36 months after the effective date of this AD, whichever occurs first, perform a detailed visual inspection to detect certain discrepancies of the locking indication system on the drag strut jack on the MLG, in accordance with Messier-Dowty Technical Instruction No. 20403, Issue 2, dated March 1998. Prior to reassembling the parts, replace all the seals and backup rings with new parts, in accordance with the Technical Instruction.

(1) If no corrosion is found on either plunger, prior to further flight, inspect for the free displacement of both plungers, in accordance with the Technical Instruction.

(i) If the displacement of both plungers is free without any hard points, repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 72 months.

(ii) If the displacement of either plunger is not free, prior to further flight, replace the plunger with a new plunger, in accordance with the Technical Instruction. Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 72 months.

(2) If corrosion is found on either plunger, prior to further flight, replace the plunger with a new plunger, in accordance with the Technical Instruction. Repeat the inspection thereafter at intervals not to exceed 72 months.

(3) If no corrosion, marking, binding, or peening is found on any disassembled part removed from the stacking, other than the plungers, repeat the inspection thereafter at intervals not to exceed 72 months.

(4) If any corrosion, marking, binding or peening is found on any disassembled parts removed from the stacking, other than the plungers, prior to further flight, replace the part with a new part, in accordance with the Technical Instruction. Repeat the inspection thereafter at intervals not to exceed 72 months.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directive 98–179–021(B), dated May 6, 1998.

Issued in Renton, Washington, on September 3, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–23621 Filed 9–9–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–312–AD]

RIN 2120–AA64

Airworthiness Directives; Cessna Model 560 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Cessna Model 560 series airplanes, that currently requires revising the FAA-approved Airplane Flight Manual (AFM) to provide the flightcrew with limitations, operational procedures, and performance information to be used during approach and landing when residual ice is present or can be expected. That action was prompted by reports indicating that, while operating in icing conditions or when ice is on the wings, some of these airplanes have experienced uncommanded roll at (or slightly higher than) the speed at which the stall warning system is activated. This action would require revising the AFM and would revise the applicability of the existing AD. This action also would require modification of the stall warning system of the angle-of-attack computer. The actions specified by the proposed AD are intended to prevent uncommanded roll of the airplane during approach and landing when residual ice is present or can be expected.

DATES: Comments must be received by October 25, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–312–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Cessna Aircraft Co., P.O. Box 7706, Wichita, Kansas 67277. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Carlos Blacklock, Aerospace Engineer, Flight Test and Program Management Branch, ACE–117W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4166; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–312–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–312–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On November 29, 1996, the FAA issued AD 96–24–06, amendment 39–9844 (61 FR 64456, December 5, 1996), applicable to certain Cessna Model 560 series airplanes, to require revising the FAA-approved Airplane Flight Manual (AFM) to provide the flightcrew with limitations, operational procedures, and performance information to be used during approach and landing when residual ice is present or can be expected. That action was prompted by reports indicating that, while operating in icing conditions or when ice is on the wings, some of these airplanes have experienced uncommanded roll at (or slightly higher than) the speed at which the stall warning system is activated. The requirements of that AD are intended to prevent uncommanded roll of the airplane during approach and landing when residual ice is present or can be expected.

Actions Since Issuance of Previous Rule

In the preamble of AD 96–24–06, the FAA indicated that the actions required by that AD were considered "interim action" and that further rulemaking action was being considered. The FAA now has determined that further rulemaking action is indeed necessary; this AD follows from that determination.

The manufacturer has developed a modification to the stall warning system of the angle-of-attack computer, which will increase the stall warning margin during flight in icing conditions. Additionally, the manufacturer has made changes to the AFM, which provide limitations, operational procedures, and performance information to be used during approach and landing when residual ice is present or can be expected.

Explanation of Relevant Service Information

The FAA has reviewed and approved Cessna Model 560 Citation V Ultra, AFM Revision 7, dated July 16, 1998, and Cessna Model 560 Citation V, AFM Revision 11, dated July 16, 1998. These AFM revisions provide the flightcrew with limitations, operational procedures, and performance information to be used during approach and landing when residual ice is present or can be expected.

The FAA also has reviewed and approved Cessna Service Bulletins SB560–34–69, Revision 2, dated July 24, 1998, and SB560–34–70, dated July 14, 1998. These service bulletins describe procedures for modification of the stall warning system of the angle-of-attack computer. This modification involves replacing the angle-of-attack computer with a new, improved computer and installing related wiring. Accomplishment of the action specified in the applicable service bulletin and AFM is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede all the requirements of AD 96–24–06. This proposed AD would require revising the AFM and would revise the applicability of the existing AD to exclude certain airplanes on which the modification was accomplished during manufacturing. This action also would require modification of the stall warning system of the angle-of-attack computer. The actions would be required to be accomplished in accordance with the applicable service bulletin and revision to the AFM described previously.

Cost Impact

There are approximately 437 airplanes of the affected design in the worldwide fleet. The FAA estimates that 327 airplanes of U.S. registry would be affected by this proposed AD.

For all airplanes, the new AFM revision that is proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AFM revision proposed by this AD on U.S. operators is estimated to be $19,620, or $60 per airplane.

For airplanes listed in Cessna Service Bulletin SB560–34–69, the new modification that is proposed in this AD action would take approximately 40 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $8,036 per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $10,436 per airplane.

For airplanes listed in Cessna Service Bulletin SB560–34–70, the new modification that is proposed in this AD action would take approximately 40 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $7,762 per airplane. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be $10,162 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9844 (61 FR 64456, December 5, 1996), and by adding a new airworthiness directive (AD), to read as follows:

Cessna Aircraft Company: Docket 98–NM–312–AD. Supersedes AD 96–24–06, Amendment 39–9844.

Applicability: Model 560 series airplanes having serial numbers (S/N) 560–0001 through 560–0437 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded roll of the airplane during approach and landing when residual ice is present or can be expected, accomplish the following:

Airplane Flight Manual (AFM) Revisions

(a) Within 10 days after the effective date of this AD, revise the FAA-approved AFM; to provide the flightcrew with limitations, operational procedures, and performance information to be used during approach and landing when residual ice is present or can be expected; in accordance with the applicable revision of the AFM specified in paragraph (a)(1) or (a)(2) of this AD.

(1) For airplanes having S/N's 560–0001 through 560–0259 inclusive: AFM Model 560 Citation V, Revision 11, dated July 16, 1998.

(2) For airplanes having S/N's 560–0260 through 560–0437 inclusive: AFM Model 560 Citation V Ultra, Revision 7, dated July 16, 1998.

Modification

(b) Within 6 months after the effective date of this AD, modify the stall warning system of the angle-of-attack computer of the navigational system, in accordance with paragraph (b)(1) or (b)(2), as applicable, of this AD.

(1) For airplanes having S/N's 560–0001 through 560–0055 inclusive: Modify in accordance with Cessna Service Bulletin SB560–34–70, dated July 14, 1998.

(2) For airplanes having S/N's 560–0056 through 560–0437 inclusive: Modify in accordance with Cessna Service Bulletin SB560–34–69, Revision 2, dated July 24, 1998.

Spares

(c) As of the effective date of this AD, no person shall install on any airplane an angle-of-attack computer having part number C11606–2 or C11606–3.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 3, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–23620 Filed 9–9–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

28 CFR Part 16

[AAG/A Order No. 174–99]

Exemption of Records System Under the Privacy Act

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice proposes to exempt a Privacy Act system of records from subsection (d) of the Privacy Act, 5 U.S.C. 552a. This system of records, the "Practitioner Complaint/Disciplinary Files," (Justice/EOIR–003) may contain information which relates to official Federal investigations and matters of law and regulatory enforcement of the Executive Office for Immigration Review (EOIR). Accordingly, where applicable, the exemptions are necessary to avoid interference with the law and regulatory enforcement functions of EOIR. Specifically, the exemptions are necessary for the following: To prevent subjects of investigations from frustrating the investigatory process; to preclude the disclosure of investigative techniques; to impede the identification of confidential sources and of law and regulatory enforcement personnel, as well as to protect their physical safety; to ensure EOIR's ability to obtain facts from information sources; to protect the privacy of third parties; and to safeguard classified information as required by Executive Order 12958.

DATES: Submit any comments by October 12, 1999.

ADDRESSES: Address any comments to Mary E. Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

FOR FURTHER INFORMATION CONTACT: Mary E. Cahill, (202) 307–1823.

SUPPLEMENTARY INFORMATION: In the notice section of todays' **Federal Register**, the Department of Justice provides a description of the "Practitioner Complaint/Disciplinary Files (JUSTICE/EOIR 003)."

Regulatory Flexibility Act

This Order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, it is hereby stated that the order will not have a "significant economic impact on a substantial number of small entities."

Executive Order 12988

The rule complies with the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order No. 12988.

Executive Order 12866

The Attorney General has determined that this rule is not a significant regulatory action under Executive Order No. 12966, and accordingly, this rule has not been reviewed by the Office of Management and Budget.

List of Subjects in Part 16

Administrative Practices and Procedures, Courts, Freedom of Information Act, Privacy Act, and Government in Sunshine Act.

Dated: August 25, 1999.

Stephen R. Colgate,

Assistant Attorney General for Administration.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to amend 29 CFR part 16 as follows:

PART 16—[AMENDED]

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. It is proposed to amend 28 CFR 16.83 by adding paragraphs (c) and (d) to read as follows:

§ 16.83 Exemption of the Executive Office for Immigration Review System—limited access.

* * * * *

(c) The following system of records is exempted from 5 U.S.C. 552a(d).

(1) Practitioner Complaint/Disciplinary Files (JUSTICE/EOIR 003).

This exemption applies only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2). To the extent that information in a record pertaining to an individual does not relate to national defense or foreign policy, official Federal investigations, and/or law enforcement matters, the exemption does not apply. In addition, where compliance would not appear to interfere with or adversely affect the overall law or regulatory enforcement process, the applicable exemption may be waived by the Executive Office for Immigration Review.

(d) Exemption from subsection (d) is justified for the following reasons:

(1) From the access and amendment provisions of subsection (d) because access to the records contained in this system of records could inform the subject of the investigation of an actual or potential criminal, civil, or regulatory violation or the existence of that investigation; of the nature and scope of the information and evidence obtained as to the subject's activities; of the identity of confidential sources, witnesses, and law enforcement personnel; and of information that may enable the subject to avoid detection or apprehension. These factors would present a serious impediment to effective law and regulatory enforcement where they prevent the successful completion of the investigation, endanger the physical safety of confidential sources, witnesses, and law enforcement personnel, and/or lead to the improper influencing of witnesses, the destruction of evidence, or the fabrication of testimony. In addition, granting access to such information could disclose security-sensitive or confidential business information or information that would constitute an unwarranted invasion of the personal privacy of third parties. Finally, access to the records could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy. Amendment of the records would interfere with ongoing investigations and law enforcement activities and impose an enormous administrative burden by requiring investigations to be continuously reinvestigated.

[FR Doc. 99–23602 Filed 9–9–99; 8:45 am]

BILLING CODE 4410–CJ–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 918

[SPATS No. LA–018–FOR]

Louisiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of an amendment to the Louisiana regulatory program (Louisiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Louisiana proposes revisions to and additions of statutes concerning requirements for permit applications, eligibility requirements for the Small Operator Assistance Program (SOAP), and permit exemptions. Louisiana intends to revise the Louisiana program to be consistent with SMCRA and the Louisiana Surface Mining Regulations.

This document gives the times and locations that the Louisiana program and the amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4:00 p.m., c.d.t., October 12, 1999. If requested, we will hold a public hearing on the amendment on October 5, 1999. We will accept requests to speak at the hearing until 4:00 p.m., c.d.t. on September 27, 1999.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Michael C. Wolfrom, Director, Tulsa Field Office, at the address listed below.

You may review copies of the Louisiana program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office. Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430.

Louisiana Department of Natural Resources, Office of Conservation, Injection and Mining Division, 625 N. 4th Street, P. O. Box 94275, Baton Rouge, LA 70804, Telephone: (504) 342–5540.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581–6430. Internet: mwolfrom@tokgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Louisiana Program

On October 10, 1980, the Secretary of the Interior approved the Louisiana program. You can find background information on the Louisiana program, including the Secretary's findings and the disposition of comments in the October 10, 1980, **Federal Register** (45 FR 67340). You can find later actions concerning the Louisiana program at 30 CFR 918.15 and 918.16.

II. Description of the Proposed Amendment

By letter dated August 23, 1999 (Administrative Record No. LA–364), Louisiana sent us an amendment to its program under SMCRA. Louisiana sent the amendment at its own initiative. Louisiana proposes to amend the Louisiana Surface Mining Act. Below is a summary of the changes proposed by Louisiana. The full text of the program amendment is available for your inspection at the locations listed above under **ADDRESSES**.

A. Section 907, Application Requirements

1. Louisiana proposes to remove the provision at paragraph B(16) that requires an applicant to make information about coal seams, test borings, core samplings, or soil samples available to any person with an interest which is or may be adversely affected. Louisiana then proposes to add this removed provision at new paragraph B(17).

2. Louisiana also proposes to add new paragraph B(18) to require an applicant to submit with his or her permit application a description of the nature of cultural, historical, and archeological resources listed or eligible for listing on the National Register of Historic Places. This description must be based on all available information, and include a plan that describes the measures the applicant will take to prevent or minimize any adverse impacts the mining operation might have on the resources.

3. Louisiana further proposes to add new paragraph B(19) to require an applicant to submit with his or her permit application a description of fish and wildlife resource information for the permit area and adjacent area. The scope and level of detail for such information will be determined by the office of conservation. However, site specific resource information will be required when the permit area or adjacent area is likely to include endangered or threatened species of plants or animals or their habitats.

4. Louisiana proposes to add new paragraph B(20) to require an applicant to submit with his or her permit application a description of how the operator will minimize disturbances and adverse impacts on fish, wildlife, and related environmental values. The description will apply to the species and habitats identified in new paragraph B(19) and must include the protective measures that the operator will use during the active mining phase of the operation.

5. Finally, Louisiana proposes to revise Subsection C of this section to read as follows:

C. If the commissioner finds that the probable total annual production at all locations of any coal surface mining operator will not exceed three hundred thousand tons, the determination of probable hydrologic consequences, including the engineering analyses and designs necessary for the determination, required by Paragraph B(11) of this Section, cross-section maps and plans required by Paragraph B(14) of this Section, the drilling and statement of the result of test borings or core samplings required by Paragraph B(15) of this Section, the collection of archaeological and historical information and related plans required by Paragraph B(18) of this Section, the collection of site-specific resources information required by Paragraph B(19) of this Section, the production of protection and enhancement plans for fish and wildlife habitats required by Paragraph B(20) of this Section, and information and plans for any other environmental values required by the office of conservation and this Chapter, and pre-blast surveys required by R.S. 30:915(B)(15) shall, upon the written request of the operator, be performed by a qualified public or private laboratory designated by the commissioner and the cost of the preparation of such determination and statement shall be assumed by the commissioner.

B. Section 927, Surface Coal Mining Operations Not Subject to This Chapter.

Louisiana proposes to revise paragraph (2) whereby the requirements of Chapter 9 do not apply to the extraction of coal where coal does not exceed sixteen and two-thirds percent of the total tonnage of coal and other minerals removed for purposes of commercial use or sale.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are requesting comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Louisiana program.

Written Comments

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. You should explain the reason for any recommended change. In the final rulemaking, we will not necessarily consider or include in the Administrative Record any comments received after the time indicated under **DATES** or at locations other than the Tulsa Field Office.

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS No. LA–018–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Tulsa Field Office at (918) 581–6430.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., c.d.t. on September 27, 1999. We will arrange the location and time of the hearing with those persons requesting the hearing. If you are disabled and need special accommodation to attend a public hearing, contact the individual listed under **FOR FURTHER INFORMATION CONTACT.** The hearing will not be held if no one requests an opportunity to speak at the public hearing.

You should file a written statement at the time you request the hearing. This will allow us to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the amendment, request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We also make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10),

decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 918

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 1, 1999.

Ervin J. Barchenger,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 99–23489 Filed 9–9–99; 8:45 am]

BILLING CODE 4310–05–P

POSTAL RATE COMMISSION

39 CFR Part 3003

[Docket No. RM99–4]

Privacy Act; Implementation

AGENCY: Postal Rate Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes revisions to its rules of practice implementing the Privacy Act of 1974. The changes will conform the rules to prevailing law. Editorial changes will improve clarity.

DATES: Comments must be received on or before September 27, 1999.

ADDRESSES: Send comments regarding this document to the attention of Margaret P. Crenshaw, Secretary, Postal Rate Commission, 1333 H Street NW., Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, 1333 H Street NW., Washington, DC 20268–0001, 202–789–6824.

SUPPLEMENTARY INFORMATION: The Commission proposes revisions in its rules implementing the Privacy Act, contained in 39 CFR part 3003, to clarify their application and to shorten and simplify their language. The Commission's rules implementing the Privacy Act have been amended only in minor respects since their original adoption shortly after the passage of the Act in 1974. While the current rules have operated adequately, it is apparent on review that they are capable of both substantive and editorial improvement. Accordingly, the Commission proposes a redrafted set of rules to replace those currently contained in part 3003.

The substantive changes incorporated in the proposed rules are intended to conform them more closely to prevailing standards of Privacy Act administration without altering the rights of individuals or the obligations of the Commission under the Act. The proposed revision would eliminate the special procedure for access to medical records contained in current § 3003.6, under which access to such records is contingent on the judgment of the Commission's chief administrative officer, in favor of the general access provision in proposed § 3003.4. Proposed § 3003.2 would eliminate unnecessary definitions, cross-reference others to the text of the Privacy Act, and reword other definitions slightly for the sake of clarity. Also for clarification, proposed § 3003.1 would add a statement indicating that the Commission's Privacy Act rules are not intended either to broaden or narrow the scope of an individual's rights afforded by the Act.

While the proposed rules would alter the substance of the current rules pertaining to requests for individual records and appeals of denials only in minor ways, they would appreciably shorten and simplify those provisions. Language that does not relate directly to the exercise of rights by individuals under the Privacy Act, and thus is unnecessary, would be omitted from the revised rules. Additionally, the language of the current rules generally would be simplified and shortened without affecting individuals' exercise of their rights or the Commission's performance of its obligations under the Privacy Act.

Commission Order No. 1256 was distributed to the service list in Docket No. B97–1. It invited comments on the proposed revisions no later than August 23, 1999.Those not aware of the deadline should contact the Secretary of the Commission for information regarding submission of comments.

Dated: September 2, 1999.

Margaret P. Crenshaw,

Secretary.

List of Subjects in 39 CFR Part 3003

Administrative practice and procedure; Archives and records; Privacy; Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, 39 CFR part 3003 is proposed to be revised to read as follows:

PART 3003—PRIVACY ACT RULES

Sec.

3003.1 Purpose and scope.
3003.2 Definitions.
3003.3 Procedures for requesting inspection, copying, or correction.
3003.4 Response to a request.
3003.5 Appeals of denials of access or amendment.
3003.6 Fees.
3003.7 Exemptions.

Authority: Privacy Act of 1974 (Pub.L. 93–579), 5 U.S.C. 552a.

§ 3003.1 Purpose and scope.

This part implements the Privacy Act of 1974 (5 U.S.C. 552a) by establishing Commission policies and procedures that permit individuals to obtain access to and request amendment of information about themselves that is maintained in systems of records. This part does not expand or restrict any rights granted under the Privacy Act of 1974.

§ 3003.2 Definitions.

For purposes of this part:

(a) *Commission* means the Postal Rate Commission.

(b) *Individual*, *record*, and *system of records* have the meanings specified in 5 U.S.C. 552a(a).

(c) *Day* means a calendar day and does not include Saturdays, Sundays, and legal holidays.

§ 3003.3 Procedures for requesting inspection, copying, or correction.

(a) An individual who—

(1) Wishes to know whether a Commission system of records contains a record about him or her,

(2) Seeks access to a Commission record about him or her that is maintained in a system of records (including the accounting of disclosures), or

(3) Seeks to amend a record about him or her that is maintained in a system of records, may file a written request with the chief administrative officer of the Commission at the Commission's current address (1333 H Street NW., Suite 300, Washington, DC 20268–0001). The request should state on the outside of the envelope and in the request that it is a Privacy Act request.

(b) A request for amendment must describe the information sought to be amended and the specific reasons for the amendment.

(c) A requester—

(1) May request an appointment to inspect records at the Commission's offices between the hours of 8 a.m. and 4:30 p.m. on any day;

(2) Must present suitable identification, such as a driver's license, employee identification card, or Medicare card;

(3) If accompanied by another individual, must sign a statement, if requested by the chief administrative officer, authorizing discussion of his or her record in the presence of that individual;

(4) Who files a request by mail must include his or her date of birth, dates of employment at the Commission (if applicable), and suitable proof of identity, such as a facsimile of a driver's license, employee identification card, or Medicare card; and

(5) Must, if requested by the chief administrative officer, provide additional proof of identification.

§ 3003.4 Response to a request.

(a) In the case of a request for notice of the existence of a record, the chief administrative officer shall respond within 10 days of receipt of a request and shall inform the individual whether a system of records maintained by the Commission contains such a record.

(b) In the case of a request for access to a record or for a copy of a record, the chief administrative office shall acknowledge the request within 10 days and shall promptly thereafter—

(1) Fulfill the request by mail or arrange for an inspection by the requester in the Commission's offices; or

(2) If the request is denied, notify the requester of the denial, the reasons for the denial, the procedures for appealing the refusal, and the name and address of the Chairman of the Commission who will consider an appeal.

(c) In the case of a request for amendment, the chief administrative officer shall

(1) Acknowledge the request in writing within 10 days;

(2) Promptly review the record; and

(3)(i) Make any requested amendment of a record found to be not accurate, relevant, timely, or complete; notify the requester of the change and provide a copy of the corrected record; and notify any previous recipient of the record (excluding Commission staff who obtained the record in the performance of their duties and recipients under the Freedom of Information Act) of any change; or

(ii) Inform the requester of a refusal to amend the record, the reasons for the refusal, the procedures for appealing the refusal, and the name and address of the Chairman of the Commission who will consider an appeal.

§ 3003.5 Appeals of denials of access or amendment.

(a) If a request for access to or amendment of a record is denied, the requester may file a written appeal with the Chairman of the Commission. The Chairman will decide each appeal within 30 days of receipt unless the Chairman has, for good cause, extended the period for another 30 days.

(b) If an appeal is denied, the requester will be notified of the decision, the reasons for the denial, the right to file a concise statement of disagreement, the procedures for filing a statement of disagreement, the subsequent uses of a statement of disagreement, and of the right to seek judicial review in accordance with subsection (g) of the Privacy Act.

§ 3003.6 Fees.

The first copy of any record furnished under the Privacy Act of 1974 will be provided without charge. Additional copies will be charged at the cost of reproduction.

§ 3003.7 Exemptions.

The Postal Rate Commission has not established any exempt system of records.

[FR Doc. 99–23431 Filed 9–9–99; 8:45 am]

BILLING CODE 7710–FW–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 435, 436, and 440

[HCFA–2082–P]

RIN 0938–AG72

Medicaid Program; Optional Coverage of Certain Tuberculosis-Related Services to TB-Infected Individuals

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the existing Medicaid regulations to incorporate statutory provisions that allow States to cover a limited Medicaid service package to an eligibility group of low-income individuals infected with tuberculosis (TB). The services provided under this optional coverage are limited to those related to the treatment of TB. This optional coverage will ensure Medicaid services for the treatment of TB-infected individuals who would otherwise be unlikely to receive coverage under Medicaid. This proposed rule would incorporate and interpret provisions of the Omnibus Budget Reconciliation Act of 1993.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on November 9, 1999.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–2082–P, P.O. Box 9010, Baltimore, MD 21244–9010.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses: Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC, or C5–14–03, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–2082–P.

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (phone (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of comments to: Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, Attn: John Burke, HCFA–2082–P; and Lauren Oliven, HCFA Desk Officer, Office of Information and Regulatory Affairs, Room 3001, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ingrid Osborne (410) 786–4461, Gerald Zelinger (410) 786–5929.

SUPPLEMENTARY INFORMATION:

I. Background

Because of the emerging recurrence of tuberculosis (TB) in this country, Congress included provisions in its 1993 legislation that allows States, at their option, to extend Medicaid eligibility to low-income individuals infected with TB. The Omnibus Budget Reconciliation Act of 1993 (OBRA '93), Public Law 103–66, amended the Social Security Act (the Act) in several ways to provide for this coverage. Prior to OBRA '93, TB-infected individuals who did not qualify as disabled under the disability definition under the Supplemental Security Income (SSI) program would have been unlikely to receive Medicaid coverage. Even though these individuals might have met the income and resource requirements of the cash assistance programs, they could not meet the categorical requirements necessary to qualify for Medicaid.

Consistent with the addition of the new eligibility group whose eligibility is based on, among other factors, being infected with TB, Congress limited the services available to this new eligibility group. Congress effected this limitation by amending the statutory text following section 1902(a)(10)(F) of the Act to provide for an exception to the comparability rules, which require certain types of eligibility groups to be treated comparably in terms of the services available. The new exception provides that coverage for individuals who are eligible for Medicaid under the optional TB-infected eligibility group is limited to the TB-related services listed in section 1902(z)(2). Congress amended section 1915(g)(1) to permit States to provide targeted case management services to TB-infected individuals. Section 13603 of OBRA '93 added a new section 1902(z)(2) that specifies the categories of services that eligible TB-infected individuals may receive. The services listed in section 1902(z)(2) include—

(1) Prescribed drugs;

(2) Physicians' services and services described in section 1905(a)(2) of the Act (these services include outpatient hospital services, rural health clinic services, and Federally qualified health center services);

(3) Laboratory and X-ray services (including services to confirm the presence of infection);

(4) Clinic services and Federally qualified health center services;

(5) Case management services (as defined in section 1915(g)(2)); and

(6) Services (other than room and board) designed to encourage completion of regimens of prescribed drugs by outpatients, including services to directly observe the intake of prescribed drugs.

Since the last of these listed services was not previously within the scope of coverable Medicaid services, section 13603 of OBRA '93 amended section 1905(a)(19) of the Act to add to the overall list of coverable Medicaid services the TB-related services described in section 1902(z)(2)(F). Section 1902(z)(2)(F) describes the new services as services (other than room and board) designed to encourage completion of regimens of prescribed drugs by outpatients, including services to directly observe the intake of prescribed drugs.

The amendments made by section 13603 of OBRA '93 apply to medical assistance furnished on or after January 1, 1994, without regard to whether or not final regulations to carry out the amendments had been promulgated by that date.

II. Provisions of the Proposed Regulations

We propose to incorporate the OBRA '93 provisions relating to optional coverage of TB-infected individuals in the Medicaid regulations and provide the following interpretations:

A. Eligibility Requirements

Section 1902(z)(1) of the Act, as added by OBRA '93, describes the low-income individuals infected with TB who may be eligible for Medicaid. We propose to add new §§ 435.219 and 436.219 to incorporate this optional group and interpret the eligibility requirements.

1. Individuals Who Are Infected with TB

As indicated in the legislative history of section 13603 of OBRA '93, the conference committee intended that eligibility on the basis of the criterion of being infected with TB be interpreted as broadly as possible in order to allow the maximum number of TB-infected persons to receive services. (H. Rept. No. 213, 103rd Cong., 1st Sess. 833 (1993) and H. Rept. No. 111, 103rd Cong., 1st Sess. 219–220 (1993)).

Therefore, we are proposing that, in determining eligibility under this group, States need not rely on "positive" test results for determining who is infected with tuberculosis. The committee recognized that traditional TB tests and diagnostic methods are of questionable value, particularly among persons with low immune function, and may possibly produce both false positive and false negative test results. For purposes of determining eligible individuals infected with TB, we propose to use customary medical criteria that define the symptoms and conditions that differentiate TB from other diseases. We consulted the Centers for Disease Control and Prevention (CDC) regarding the types of medical criteria that physicians use when diagnosing suspected cases of TB. On the basis of the CDC medical advice, we propose to define a TB-infected individual for purposes of the section 1902(z)(1) requirement as any individual who has a positive diagnosis as confirmed by certain tests or a suspicion of TB infection in his or her diagnosis. These individuals could include—

- Any individual with a positive tuberculin skin test using the Mantoux method and who receives treatment for latent TB infection or active tuberculosis;
- Any individual with a negative tuberculin skin test but whose sputum culture or culture from another tissue sample is positive for the tuberculosis organism;
- Any individual who never received a tuberculin skin test but whose sputum culture or culture from another tissue sample is positive for the tuberculin organism;
- Any individual whose TB skin test is negative and whose sputum or other tissue culture for tuberculosis is not or cannot be obtained, but who, in the physician's judgment, requires and is given TB-related drug or surgical therapy or both; and
- Any symptomatic individual with a negative TB skin test who is being treated with a TB drug regimen while awaiting the TB culture results because the physician suspects the individual may have active TB, and whose cultures turn out to be negative for TB, causing the TB drug regimen to be discontinued.

2. Individuals Who Are Not Eligible as a Mandatory Categorically Needy Group or Special Group

According to the statute, the optional eligibility group of TB-infected individuals does not include any individuals who would be eligible for mandatory coverage because they are (or are deemed to be) cash assistance recipients or are members of special groups described under section 1902(a)(10)(A)(i) of the Act. The statute includes TB-infected persons as an optional categorically needy eligibility group only under the provisions of section 1902(a)(10)(A)(ii).

In terms of the distinction between mandatory and optional categorically needy groups, we believe that the language describing the new eligibility group as "not described as mandatory categorically needy" does not create a problem. This is because if an individual qualifies under a mandatory categorically needy group, the individual would have more services available (including TB-related services that the State elects to provide) than if the individual qualified only under the new TB-infected group. Since the service package available to mandatory categorically needy individuals must include all services otherwise available (under § 1902(a)(10)(b)(i)), these individuals will not lose access to any services.

3. Financial Eligibility Requirements

Sections 1902(z)(1)(B) and (z)(1)(C) of the Act specify the income and resource requirements that individuals must meet in order to be eligible for Medicaid as TB-infected individuals. While the individual need not be "disabled" as described in section 1902(a)(10)(A)(i) in order to be eligible for the optional TB-infected group, section 1902(z)(1)(b) requires that his or her gross income must not exceed the maximum amount a disabled individual may have and remain eligible for Medicaid under the State plan. Disabled individuals are among those eligible for benefits under the SSI program under title XVI of the Act, and among the types of individuals described in section 1902(a)(10)(A)(i) who are eligible for Medicaid because they are individuals to whom SSI benefits are being paid. Reading section 1902(z)(1) in context, we thus concluded that the reference to "disabled individual" in section 1902(z)(1)(B) is properly read to refer to disabled individuals under the SSI program. To develop a uniform standard for eligibility of TB-infected individuals, we thus looked to financial eligibility for disabled individuals under the SSI program. Many of the SSI income exclusions, however, are linked to circumstances related to particular disabilities. These exclusions would not be appropriate for the TB-infected eligibility group, since that group is generally not disabled, and would thus never qualify for these exclusions.

To give effect to the statutory link between eligibility for TB-infected individuals and the standards of the SSI program applicable to disabled individuals, while recognizing that TB-infected individuals are not disabled, we propose to use a method based on the most generous income exclusions under section 1612(b) of the Act that are not dependent on disabled status. Using this method, we calculate the maximum income level a TB-infected individual may have by determining the maximum income level that an individual hypothetically could have if these income exclusions were applied in full. The resulting amount is a national uniform standard for income eligibility for the TB-infected eligibility group. The income exclusions that we use in the formula to determine the maximum income for TB-infected individuals are the general earned or unearned income exclusions under section 1612(b)(2)(A), the general earned income exclusion under section 1612(b)(4)(B)(i), and the additional earned income exclusion under section 1612(b)(4)(B)(iii). Since these are the most generous income disregards that are not related to disabling conditions and connected expenses, using this methodology will result in the most liberal interpretation possible. The general income exclusion is $20, the general earned income exclusion is $65 (for a total of an $85 general exclusion), and the additional earned income exclusion is 50 percent of additional earned income. The formula that we propose to use to determine the maximum monthly income for eligibility as a TB-infected individual is 2 times the SSI Federal Benefit Rate (FBR) plus $85 (2 × FBR + $85). (See section 00810.350 of the Program Operations Manual System (POMS SI).) Income above this level would result in countable income in excess of ordinary SSI eligibility standards. We are proposing to require States to apply this SSI break-even point methodology for the income eligibility calculation of TB-infected individuals.

We note that this formula does not represent the actual application of SSI methods and standards to any particular individual, or even to any particular hypothetical individual, as he or she would apply under the SSI program. For example, under SSI, an individual with earned income sufficient to demonstrate "significant gainful activity" would not be "disabled," and thus the earned income disregard would not ordinarily be applicable to income of a disabled individual above the level to demonstrate significant gainful activity. Since TB-infected individuals are not ordinarily disabled, we did not believe it would be appropriate to limit earned income (and the earned income disregard) to the level showing significant activity in devising an eligibility formula for TB-infected individuals.

We propose to permit States to use the section 1902(r) authority (which permits States to use more liberal income and resource methodologies than those used under the cash assistance programs) to disregard income when making the eligibility determination for the section 1902(z) group. Use of the section 1902(r) authority will permit States to make eligible, under section 1902(z), persons with gross income in excess of the amount derived from the formula set forth above. Because the income eligibility standards are based on standards for disabled SSI recipients, we propose that the income limits set forth at section 1903(f) that limit Federal financial participation for individuals whose eligibility standards are related to the standards for Aid to Families with Dependent Children (in effect as of July 16, 1996) would not apply for TB-infected individuals. Otherwise these limits might render meaningless the financial eligibility standards permitted by section 1902(z)(1)(B).

In cases where both members of a married couple, or more than one member of a family are TB-infected, we have interpreted section 1902(z)(1) to mean that each applicant will be considered as a single *individual* and thus will be subject to income standards independent from his or her spouse or child. Section 1902(z) specifies that each family member should be considered separately by applying the eligibility standard for "a disabled individual."

When only one spouse is eligible or applies for Medicaid, the *other spouse's* income should be deemed to be considered as available income as permitted under the State plan. If the members of a couple were legally separated, or if some of the spouse's income was allocated to other individuals (for example, if the spouse had dependent children for whom the applicant was not legally responsible),

the income would be deemed accordingly.

We propose that the resource eligibility requirements for the optional TB-related group remain consistent with the SSI resource limit of $2,000 for an individual. However, States would again be permitted under the authority of section 1902(r)(2) to use more liberal resource requirements in making eligibility determinations for TB-infected applicants.

We propose to require section 1902(f) States that use more restrictive requirements than the SSI program uses to disregard SSI payments and optional State supplementation payments when determining financial eligibility of a TB-infected individual under section 1902(z)(1). A section 1902(f) State that includes aged, blind, or disabled individuals as medically needy under its approved plan must allow individuals deemed to be SSI recipients, essential spouses, State supplementation payment recipients, and individuals who are eligible for State supplements but who do not receive them to spend down to the State's more restrictive January 1, 1972 standard or to the SSI income standard. A section 1902(f) State that does not include aged, blind, or disabled individuals as medically needy may allow individuals to spend down only to the income standard that the State would use if there were no optional categorically needy eligibility groups included under its January 1, 1972 approved plan.

We propose to require that territories base their maximum financial eligibility levels for TB-infected individuals on the standards under their State Medicaid plans for disabled individuals, that is, the Aid to the Aged, Blind, or Disabled (AABD) program. The territories must describe in their State plans the financial eligibility standards and methodologies that are applicable to the TB-infected group. Although we recognize that this policy may restrict eligibility for TB-infected individuals in territories that have limited AABD programs, the statutory language specifically ties eligibility for TB-infected individuals to eligibility of disabled individuals under the State plan.

B. Services

1. New Service Category

Section 1905(a)(19) was amended by OBRA '93 to add a new TB-related service category to the overall list of coverable services. The new service category described in section 1902(z)(2)(F) of the Act specifies the limited services available to eligible individuals who are infected with TB. In order for a State to make this service available to any categorically needy eligible individual, including the new TB-infected group, the State must elect to cover this service under its State plan and make it available to all categorically needy individuals for whom the service is medically necessary. Like most other optional Medicaid services included in section 1905(a), when a State elects to make the service available under its Medicaid plan, the service must be equally available in amount and scope to all individuals in a covered group who need the service. As such, if a State elects this service it must be equally available to TB-infected categorically needy individuals. Similarly, if a State elects this service for its medically needy eligibility group, the service must be equally available to that population as well. However, because this service is described in the statute as a TB-related service it is available only to those individuals who are under a drug treatment regimen for the treatment of TB. We also propose to add a new § 440.164 to incorporate the services provisions. A further discussion of the scope of this benefit is provided below.

2. List of Services and Applicable Limitations

Section 1902(z)(2) lists the following service categories that are available to the group of eligible TB-infected individuals:

- Prescribed drugs;
- Physicians' services, outpatient hospital, rural health clinics, federally qualified health clinic services;
- Laboratory and x-ray services, including services to diagnose and confirm the presence of infection;
- Clinic and federally qualified health center services;
- Targeted case management services; and
- Services, other than room and board, designed to encourage completion of regimens of prescribed drugs by outpatients.

Even though section 1902(z)(2) lists these above services as available to the new eligibility group, the services (except for case management and services designed to encourage the completion of TB-drug regimens) are available only to the extent they are otherwise available to mandatory categorically needy eligibility groups under the State's Medicaid plan. That is, although the statutory material found in the matter following section 1902(a)(10)(F) (which provides exceptions to the Medicaid comparability rules), specifically limits the services available to the new group to those categories listed above, there is nothing in the exception to the comparability rules that would permit the State to offer the new eligibility groups any more services than are available to all other categorically needy groups.

Some of the services listed in section 1902(z)(2), specifically, physician, outpatient hospital, rural health center, federally qualified health center, laboratory, and x-ray services, are mandated services. This means that States that elect to extend eligibility to the new group of TB-infected individuals must make these categories of services available to the new group to the same extent the services are available under the plan as long as the services are TB-related.

With regard to prescribed drugs and clinic services, the State may only make these service categories available if the service category is already available under the approved State Medicaid plan. That is, a State could not make prescribed drugs available to an individual eligible under the new TB-infected group if the State does not make prescribed drugs available to the categorically needy under its State plan. To do so would violate the Medicaid comparability rules which require that services be available in equal amount, duration, and scope to all categorically needy individuals. Conversely, if a State offers prescribed drugs and clinic services under its plan, the comparability requirements dictate that the State must make these categories available to the new group to the same extent the services are available under the plan as long as the services are TB-related. Any limitations on amount, duration, and scope that otherwise apply under the plan also apply to the new group. For example, if a State limits the number of prescriptions an individual may receive in a month, that same limitation applies to individuals eligible under the new TB-infected group.

With regard to case management services, OBRA '93 also provides that a State may limit case management services to TB-infected individuals. In order to make the services available only to the new eligibility group, the State must identify the new eligibility group as a target group under its State plan. If a State chooses to broaden the target group to encompass all TB-infected individuals, including individuals in other categorically needy groups, it may do so.

As indicated earlier, services designed to encourage completion of drug regimens are not subject to the comparability rules that require services to be available in the same amount, duration, and scope to all eligibility groups. However, the comparability rules would apply within the covered TB-infected group.

With the exception of services designed to encourage completion of drug regimens, each of the outpatient services must meet the requirements and conditions of the existing regulations and statutory provisions applicable to regular Medicaid. That is—

- Prescribed drugs must meet the definition in § 440.120 and the FFP conditions of sections 1903(i) and 1927 of the Act relating to drug rebates and drug rebate agreements with manufacturers and the FFP limitations of §§ 441.25, 447.331, and 447.332.
- Physicians' services must meet the definition in § 440.50; outpatient hospital services and rural health clinic services must meet the definition in § 440.20; and Federally qualified health center services must meet the definition in section 1905(l)(2) of the Act. We propose to permit States to claim FFP for costs incurred by physicians who diagnose and treat individuals suspected of being infected with TB. Individuals whom a physician suspects are TB-infected are eligible to receive services. If the individual is later determined to not be TB-infected under the specified criteria, eligibility will end on the last day of the month in which the State takes action to terminate eligibility and sends appropriate advance notice.
- Laboratory and X-ray services, including services to confirm the presence of infection, must meet the definition in § 440.30;
- Clinic services must meet the definition in § 440.90, and Federally qualified health center services must meet the definition in section 1905(l)(2) of the Act;
- Case management services must meet the definition in section 1915(g)(2) of the Act.

With respect to the services described in section 1902(z)(2)(F) that are designed to encourage completion of regimens of prescribed drugs by outpatients, including services to directly observe the intake of prescribed drugs, we propose to permit States the option to authorize providers broad latitude in furnishing a limited package of TB-related services to individuals who qualify for Medicaid under the provisions of section 1902(z)(1) of the Act. We believe that services designed to encourage completion of drug regimens will vary among States. Permitting a broad interpretation will allow States to design the program most appropriate to their needs. Any service related to the completion of a prescribed drug regimen, except for inpatient services and room and board, may be covered. For example, the types of services may include:

(1) Transportation to and from necessary treatment services.

(2) In-home monitoring of the individual's illness and adherence to a prescribed drug regimen.

(3) Patient education and anticipatory guidance. These services are directly related to ensuring the patient's completion of the prescribed drug regimen.

(4) Certain other medical services which are not otherwise included under section 1905(a) that will encourage completion of the drug regimen; for example, coverage of pick up and delivery of prescribed drugs as long as this service is not generally provided for free in the community.

These services may also include other medical services designed to minimize barriers to completion of a prescribed drug regimen. However, nonmedical services would be excluded. For example, nonmedical services would include monetary incentives or gifts used as an incentive to induce recipients to complete drug regimens; these items are not medical nor would they minimize barriers to completion of a drug regimen.

We propose to require a State to specify in its State plan the services that will be made available under the benefit to encourage outpatients to complete regimens of prescribed drugs.

Services available to this new group are available only if they relate to the treatment of TB. We propose to allow the State to make the determination of whether any particular service relates to the treatment of TB on the basis of the individual's circumstances. For example, some prescribed drugs for the treatment of TB can cause side effects that may require additional care by specialists, such as ophthalmologists, and the prescription of additional drugs to treat side effects. Also, inpatient services are not covered, whether for acute care hospitalization or for long-term care (H.R. Rep. No. 111, 103rd Cong., 1st Sess., 219 (1993)).

C. Conforming Changes

We propose to amend §§ 435.201 and 436.201 to specify TB-infected individuals as a separate optional group. In addition, we propose to amend § 440.250 to specify the limitations on services to TB-infected persons.

III. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

IV. Regulatory Impact Statement

Section 804(2) of title 5, United Sates Code (as added by section 251 of Public Law 104–121), specifies that a "major rule" is any rule that the Office of Management and Budget finds is likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment productivity, innovation, or on the ability of United States based enterprises to compete with foreign based enterprises in domestic and export markets.

We estimate that the federal share of Medicaid program costs associated with this proposed rule, contingent upon 100 percent participation by States, is approximately $100 million in FY 1999. Therefore, this rule is a major rule as defined in Title 5, United States Code, section 804(2).

HCFA has examined the impact of this proposed rule as required by Executive Order 12866 and the Regulatory Flexibility Act (Public Law 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity. The Regulatory Flexibility Act requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, States and individuals are not considered small entities. However, we do consider most Medicaid-participating physicians to be small entities if they have revenues of $5 million or less annually.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural

hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This proposed rule would incorporate in regulations statutory changes that are already in effect. The statutory provisions are effective on the statutory established date, regardless of whether or not we have issued final regulations. The statutory changes that expand eligibility groups and coverage of services will increase Medicaid program expenditures independently of the promulgation of this rule. Program costs associated with these proposed regulations, which are reflected in the following chart, are the result of legislation or due to the interpretation of statutory changes already in effect.

[Dollars in millions rounded to the nearest $5 million]

	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003
Federal	100	105	115	125	135
State	75	85	90	95	105

These cost estimates are based on Center for Disease Control (CDC) data on active, suspected (where a treatment regimen is begun until infection is ruled out), and inactive (discovered during screenings and are put on a prevention regimen) TB cases. The cost estimates are also based on demographic, coverage, and income data in the Current Population Survey and make assumptions regarding case growth and medical inflation. The details of the cost estimate calculations are available upon request. In addition, Federal administrative costs associated with these proposed regulations are estimated at $5 million annually. State and local administrative costs are also estimated at $5 million annually.

For these reasons, we are not preparing analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this proposed rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

V. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), agencies are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- Whether the information collection is necessary and useful to carry out the proper functions of the agency;
- The accuracy of the agency's estimate of the information collection burden;
- The quality, utility, and clarity of the information to be collected; and
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Section 440.164 of this document contains requirements that a State must specify in its State Medicaid plan what services will be provided as TB-related services and describe any services that the State will cover as services designed to encourage completion of regimens of prescribed drugs by outpatients. We estimate that the public reporting burden for this collection of information is approximately 1 hour.

A notice will be published in the **Federal Register** when approval is obtained. Organizations and individuals desiring to submit comments on the information collection and recordkeeping requirements should direct them to the officials whose names appear in the **ADDRESSES** section of this preamble.

List of Subjects

42 CFR Part 435

Aid to Families with Dependent Children, Grant programs-health, Medicaid, Reporting and recordkeeping requirements, Supplemental Security Income (SSI), Wages.

42 CFR Part 436

Aid to Families with Dependent Children, Grant programs-health, Guam, Medicaid, Puerto Rico, Supplemental Security Income (SSI), Virgin Islands.

42 CFR Part 440

Grant programs-health, Medicaid.

42 CFR Chapter IV, Subchapter C, would be amended as follows:

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

A. Part 435 is amended as follows:

1. The authority citation for part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 435.201, the introductory text of paragraph (a) is republished, paragraphs (a)(7) and (a)(8) are reserved, and a new paragraph (a)(9) is added, to read as follows:

§ 435.201 Individuals included in optional groups.

(a) The agency may choose to cover as optional categorically needy any group or groups of the following individuals who are not receiving cash assistance and who meet the appropriate eligibility criteria for groups specified in the separate sections of this subpart.

* * * * *

(9) Individuals infected with tuberculosis (as defined in § 435.219).

* * * * *

3. A new § 435.219 is added under the undesignated center heading "Options for Coverage of Families and Children and the Aged, Blind, and Disabled" to read as follows:

§ 435.219 Individuals infected with tuberculosis (TB).

(a) *General rule.* The agency may provide certain tuberculosis (TB) related services (as defined in § 440.164 of this subchapter) as Medicaid to individuals who—

(1) Are not mandatory categorically needy under subpart B of this part;

(2) Are infected with tuberculosis, as defined in paragraph (b) of this section; and

(3) Meet the income and resource requirements specified in paragraph (c) of this section.

(b) *Definition of a TB-infected individual.* An individual is considered to be TB-infected if any of the following conditions exist:

(1) The individual has a positive tuberculin skin test using the Mantoux method and receives treatment for latent TB infection or active tuberculosis;

(2) The individual has a negative tuberculin skin test but has sputum culture or culture from another tissue sample that is positive for the tuberculosis organism;

(3) The individual has never received a tuberculin skin test but has sputum culture or culture from another tissue sample that is positive for the tuberculin organism;

(4) The individual has a tuberculosis skin test that is negative and whose sputum or other tissue culture for tuberculosis that is not or cannot be obtained, but in the physician's judgment the individual requires and is given TB-related drug or surgical therapy or both; or

(5) The individual has a negative tuberculosis skin test, is being treated with a tuberculosis drug regimen while awaiting the tuberculosis culture results because the physician suspects that the individual may have active tuberculosis, and has cultures that turn out to be negative for tuberculosis, causing the tuberculosis drug regimen to be discontinued.

(c) *Income and resource eligibility criteria.*

(1) Except as provided under paragraph (c)(2) of this section, the individual must have—

(i) Gross monthly income that does not exceed an amount equal to 2 times the SSI Federal Benefit Rate (as specified in 20 CFR §§ 416.105 and 416.410) plus $85; and

(ii) Resources that do not exceed the SSI resource standard.

(2) The State may use—

(i) More restrictive Medicaid financial eligibility requirements applicable to disabled individuals as specified in §§ 435.121 and 435.230; and

(ii) More liberal income and resource methodologies as specified under § 435.601(d).

B. Part 436 is amended as follows:

PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

1. The authority citation for part 436 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. In § 436.201, the introductory text of paragraph (a) is republished, paragraphs (a)(8) and (a)(9) are reserved, and a new paragraph (a)(10) is added, to read as follows:

§ 436.201 Individuals included in optional groups.

(a) The agency may choose to cover as optional categorically needy any group or groups of the following individuals who are not receiving cash assistance and who meet the appropriate eligibility criteria for groups specified in the separate sections of this subpart:

* * * * *

(10) Individuals infected with tuberculosis (as defined in § 436.219).

* * * * *

3. A new § 436.219 is added to read as follows:

§ 436.219 Individuals infected with tuberculosis (TB).

(a) *General rule.* The agency may provide certain tuberculosis (TB) related services (as defined in § 440.164 of this subchapter) as Medicaid to individuals who—

(1) Are not mandatory categorically needy under subpart B under this part;

(2) Are infected with tuberculosis, as defined in paragraph (b) of this section; and

(3) Meet the income and resource requirements specified in paragraph (c) of this section.

(b) *Definition of a TB-infected individual.* An individual is considered to be TB-infected if any of the following conditions exist:

(1) The individual has a positive tuberculin skin test using the Mantoux method and receives treatment for latent TB infection or active tuberculosis;

(2) The individual has a negative tuberculin skin test but has sputum culture or culture from another tissue sample that is positive for the tuberculosis organism;

(3) The individual has never received a tuberculin skin test but has sputum culture or culture from another tissue sample that is positive for the tuberculin organism;

(4) The individual has a tuberculosis skin test that is negative and whose sputum or other tissue culture for tuberculosis that is not or cannot be obtained, but in the physician's judgment the individual requires and is given TB-related drug or surgical therapy or both; or

(5) The individual has a negative tuberculosis skin test, is being treated with a tuberculosis drug regimen while awaiting the tuberculosis culture results because the physician suspects that the individual may have active tuberculosis, and has cultures that turn out to be negative for tuberculosis, causing the tuberculosis drug regimen to be discontinued.

(c) *Income and resource eligibility criteria.*

(1) Except as provided under paragraph (c)(2) of this section, the individual must have—

(i) Gross monthly income that does not exceed the AABD income standard for disabled individuals, applying the maximum income exclusion or disregards that are not dependent on disabled status.

(ii) Resources that do not exceed the AABD resource standard (as applicable to disabled individuals).

(2) The State may use more liberal income and resource methodologies as specified under § 436.601(d).

C. Part 440 is amended as follows:

PART 440—SERVICES: GENERAL PROVISIONS

1. The authority citation for part 440 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302).

2. A new § 440.164 is added to read as follows:

§ 440.164 Tuberculosis-related services.

Tuberculosis (TB)-related services for individuals described in §§ 435.219 and 436.219 of this subchapter means the following outpatient services—

(a) Prescribed drugs (as defined in § 440.120 and subject to the FFP limitations of §§ 441.25, 447.331 and 447.332 of this subchapter);

(b) Physicians' services (as defined in § 440.50) and services described in section 1905(a)(2) of the Act.

(c) Laboratory and X-ray services including services to confirm the presence of infection (as defined in § 440.30);

(d) Clinic services (as defined in § 440.90) and Federally qualified health center services (as defined in section 1905(l)(2) of the Act).

(e) Case management services (as defined in section 1915(g)(2) of the Act); and

(f) Services (other than room and board) designed to encourage completion of regimens of prescribed drugs by outpatients, including services to observe directly the intake of prescribed drugs.

(1) The agency must specify in its State plan the types of services it will provide under this benefit.

(2) The services may not include nonmedical services, such as monetary incentives or gifts, inpatient services, or room and board.

(3) The services may not include a service that is generally provided free in the community.

3. Section 440.250 is amended by adding a new paragraph (u), to read as follows:

§ 440.250 Limits on comparability of services.

* * * * *

(u) If the agency elects to cover individuals infected with tuberculosis as specified in §§ 435.219 and 436.219 of this subchapter, medical assistance to those individuals is limited to TB-related services described in § 440.164.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778—Medical Assistance Programs)

Dated: September 1, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: April 28, 1999.

Donna E. Shalala,

Secretary.

[FR Doc. 99–23515 Filed 9–9–99; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 15, 22, 24, 25, 26, 27, 90, 95, 100, and 101

[WT Docket No. 99–266, FCC 99–205]

Extending Wireless Telecommunications Services to Tribal Lands

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document seeks comment on potential terrestrial wireless and satellite policy initiatives to address the telecommunications needs of Indians living on tribal lands. The Commission has been instructed to help ensure that all Americans have access to affordable telecommunications services. Consistent with that mandate, the Commission seeks to secure for consumers living on tribal lands the same opportunities to take advantage of telecommunications capabilities that other Americans have. In addition, the Commission seeks comment on whether to extend these initiatives to consumers in other unserved areas.

DATES: Comments are due November 9, 1999, and reply comments are due December 9, 1999.

ADDRESSES: Federal Communications Commission, Secretary, 445 Twelfth Street, SW, Room TW–A325, Washington, DC 20554. Comments filed through the Commission's Electronic Comment Filing System (ECFS) can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. *See* the **SUPPLEMENTARY INFORMATION** section for additional information about paper and electronic filing.

FOR FUTHER INFORMATION CONTACT: Joel Taubenblatt, Wireless Telecommunications Bureau, at (202) 418–1513.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking (NPRM)* in WT Docket No. 96–266, adopted August 5, 1999 and released August 18, 1999. The complete text of this *NPRM* is available for inspection and copying during normal business hours in the Commission's Reference Center, room CY–A257, 445 12th Street SW, Washington, DC. This NPRM is also available through the Internet at *http://www.fcc.gov/Bureaus/Wireless/Notices/1999/fcc99205.pdf*. The complete text may be purchased from the Commission's duplicating contractor, International Transcription Service, Inc. (ITS, Inc.) at 1231 20th Street NW, Washington, DC 10036, (202) 857–3800.

I. Introduction

1. The Telecommunications Act of 1996 has instructed the Commission to help ensure that all Americans have access to affordable telecommunications services. Consistent with that mandate, the Commission seeks comment on the potential of terrestrial and satellite wireless technologies to provide basic telephone service on tribal lands and other unserved areas, particularly in remote areas where wireline alternatives would be significantly more expensive. The Commission also seeks comment on possible changes to our rules for terrestrial wireless and satellite services that would provide greater incentives for terrestrial wireless and satellite carriers to extend service to tribal lands and other unserved areas.

2. In conjunction with this NPRM, the Commission adopted a companion Further Notice of Proposed Rulemaking in CC Docket No. 96–45, FCC 99–204 (to be published at a later date in the **Federal Register**) in which the Commission proposes initiatives to encourage the extension of wireline service to tribal lands and other unserved areas and to expand subsidies for all telecommunications carriers—whether wireline, terrestrial wireless, or satellite—that serve such areas.

II. Background

3. Commission representatives have met with many tribal leaders and other representatives of Indian communities to obtain their insights into the problem of low telecommunications penetration on tribal lands. Earlier this year, the Commission held two public hearings at which federal and state officials, tribal officials, consumer advocates, and telecommunications service providers addressed issues such as the costs of delivering services to remote areas having very low population densities, the impact of the size of local calling areas on the affordability of service, the quality of telephone service on tribal lands, the complexities of governmental jurisdiction and sovereignty issues, and the effects of low incomes and high unemployment on tribal lands on telephone service.

4. Because many tribal lands, particularly those in the western United States, are geographically isolated, obtaining the lowest cost for providing basic telephone service to the population on the tribal land may often require use of a terrestrial wireless technology, a satellite technology, or a combination of these technologies. Terrestrial wireless technology includes both mobile services, such as cellular and Personal Communications Service (PCS), and fixed "wireless local loop" services (WLL). A hybrid terrestrial/satellite wireless model would involve a satellite providing the communications link between an isolated community and the nation's public switched telephone network for long distance telephony, with a terrestrial wireless loop used to link the individual residents and businesses in a particular community for local telephony. Alternatively, satellites can be used alone for long distance and local telephony through the use of handheld phones that can communicate directly with the satellites.

III. Discussion

5. Accordingly, this NPRM seeks comment on whether certain changes to the Commission's rules for terrestrial wireless and satellite services would provide greater incentives for existing carriers to extend these services to tribal lands and other unserved areas. Possible rule changes include: (a) Relaxing power and antenna height limits for wireless services to reduce the number of transmitting facilities required to provide service to a tribal land/unserved area, and thus reduce the cost of providing service to that tribal land/unserved area, without creating a significant risk of interference among wireless systems; (b) creating incentives in our buildout requirements to encourage buildout on tribal lands and other unserved areas (*e.g.*, for services subject to a specific population/geographic coverage requirement, apply a multiplier to the population or land area of a tribal land/unserved area for purposes of meeting the requirement);

(c) under certain conditions, allowing licensees to expand their coverage into adjacent licensing areas in order to provide full coverage to a tribal land, provided that the adjacent licensee has had a reasonable opportunity to extend coverage itself and has not done so, and provided that such coverage does not cause interference to the adjacent licensee's actual operations; (d) modifying restrictions on commercial use of spectrum by certain categories of non-commercial radio licensees in cases where such licensees wish to provide service to tribal lands or other unserved areas; (e) relaxing restrictions on the transfer of "designated entity" licenses to non-designated entities where the non-designated entity commits to provide service to a tribal land or other unserved area; and (f) adopting policies that encourage the use of satellite technology (or combined satellite-wireless technology) to provide service on tribal lands or other unserved areas, where such service would be technologically efficient. The NPRM also seeks comment on whether the grant of additional flexibility to wireless licensees should be conditioned on the existence of a binding agreement between the licensee and relevant tribal authority.

6. In addition to inquiring about incentives for existing terrestrial wireless and satellite carriers to extend service to tribal lands/unserved areas, the NPRM seeks comment on the following ways to encourage service to tribal lands/unserved areas in the Commission's development and licensing of new services: (a) Identifying frequency bands that are not currently allocated for telecommunications service that could potentially be used to provide basic telephone service on tribal lands/unserved areas; (b) allowing "drop-in" licensing of unused channels in otherwise allocated and licensed spectrum to provide service to tribal lands/unserved areas; (c) in new services, establishing licensing area boundaries that will not splinter tribal lands among multiple licensees; (d) adopting technical and operational rules that encourage development of low-cost technology in new services suitable for providing service in sparsely populated areas such as tribal lands; (e) in future auctions, awarding bidding credits to auction winners (regardless of designated entity status) who commit to provide service to tribal lands/unserved areas in their markets; and (f) using licensing authority to encourage the use of satellite technology to serve tribal lands/unserved areas.

IV. Procedural Matters

A. Ex Parte Rules—Permit-But-Disclose Proceeding

7. This proceeding is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 CFR 1.1202, 1.1203 and 1.1206.

B. Initial Regulatory Flexibility Analysis

8. As required by the Regulatory Flexibility Act, *see* 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the possible impact on small entities of the proposals suggested in this NPRM. The IRFA is set forth in the section V. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the NPRM, as set forth in the "DATES" section and they must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Office of Public Affairs, Reference Operations Division, will send a copy of this NPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act, *see* 5 U.S.C. 603(a).

C. Initial Paperwork Reduction Act of 1995 Analysis

9. This NPRM contains neither a new nor a modified information collection.

D. Comment Dates

10. Pursuant to §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, comments are due November 9, 1999, and reply comments are due December 9, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (May 1, 1998).

11. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

12. Parties who choose to file by paper must file an original and four copies of each filing. If participants would like each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, The Portals, 445 Twelfth Street, S.W., Room TW–A325, Washington, DC 20554.

13. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, The Portals, 445 Twelfth Street, S.W., Room CY–A257, Washington, DC 20554.

V. Initial Regulatory Flexibility Analysis

14. As required by the Regulatory Flexibility Act (RFA),[1] the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this Notice of Proposed Rulemaking. Written public comments are requested on this IRFA. These comments must be filed in accordance with the same filing deadlines for comments on the rest of this Notice of Proposed Rulemaking, as set forth in section IV.D of the **SUPPLEMENTARY INFORMATION**, and they must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Office of Public Affairs, Reference Operations Division, will send a copy of this Notice of Proposed Rulemaking, including the IRFA, to the Chief Counsel for Advocacy

[1] See 5 U.S.C. 603. The RFA, see 5 U.S.C. 601 et seq., has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

of the Small Business Administration, in accordance with the RFA.[2]

A. Need for and Objectives of the Proposed Rules

15. We are issuing this Notice of Proposed Rulemaking to seeks comment on potential terrestrial wireless and satellite policy initiatives to address the telecommunications needs of consumers living on tribal lands. As stated, the Telecommunications Act of 1996 instructed the Commission to help ensure that all Americans have access to affordable telecommunications services. Consistent with that mandate, we seek to secure for consumers living on tribal lands the same opportunities to take advantage of telecommunications capabilities that other Americans have. In addition, we seek comment on whether to extend these initiatives to consumers in other unserved areas.

16. Specifically, this Notice of Proposed Rulemaking seeks comment on the following potential initiatives for encouraging existing wireless licensees to provide telecommunications service to tribal lands and other unserved areas: (a) Relaxing antenna height and transmitter power limitations applicable to service providers in tribal lands and other unserved areas; (b) establishing flexible buildout requirements for carriers providing telephone service to tribal lands and other unserved areas; (c) permitting licensees to expand coverage into adjacent licensing areas in order to provide full coverage to tribal lands and other unserved areas; (d) allowing licensees in certain private (non-CMRS) services to provide basic telephone service to tribal lands and other unserved areas; (e) lifting restrictions on transfer of wireless licenses awarded to designated entities (DEs) for carriers providing service to tribal lands and other unserved areas; (f) modifying regulations to promote the deployment of satellite technology to tribal lands and other unserved areas; and (g) granting of additional flexibility to carriers providing service to tribal lands and other unserved areas based on the existence of a binding agreement between the carrier and the affected tribe.

17. In addition, this Notice of Proposed Rulemaking seeks comment on the following ways to encourage service to tribal lands/unserved areas in the Commission's development and licensing of new services: (a) Identifying frequency bands that are not currently allocated for telecommunications service that could potentially be used to provide basic telephone service on tribal lands/unserved areas; (b) allowing "drop-in" licensing of unassigned or unused channels in otherwise allocated and licensed spectrum to provide service to tribal lands/unserved areas; (c) establishing licensing area boundaries for new services that will not splinter tribal lands among multiple licensees; (d) adopting technical and operational rules that encourage development of low-cost technology in new services suitable for providing service in sparsely populated areas such as tribal lands; (e) in future auctions, awarding bidding credits to auction winners (regardless of designated entity status) who commit to provide service to tribal lands/unserved areas in their markets; and (f) using our licensing authority to encourage the provision of satellite-based telecommunication services to tribal lands and other unserved areas.

B. Legal Basis

18. The potential actions on which comment is sought in this Notice of Proposed Rulemaking would be authorized under sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 309(j).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

19. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[3] The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."[4] In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[5] A small business concern is one that: (a) Is independently owned and operated; (b) is not dominant in its field of operation; and (c) satisfies any additional criteria established by the Small Business Administration (SBA).[6] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."[7] Nationwide, as of 1992, there were approximately 275,801 small organizations.[8] And finally, "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000."[9] As of 1992, there were approximately 85,006 such jurisdictions in the United States.[10] This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000.[11] The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, we estimate that 81,600 (91 percent) are small entities.

20. We further describe and estimate the number of small business concerns that may be affected by the proposed rules, if adopted, including wireless and satellite service providers. To assist the Commission in analyzing the total number of potentially affected small entities, commenters are requested to provide estimates of the number of small entities that may be affected by any rule changes resulting from this Notice of Proposed Rulemaking.

i. Wireless (Radiotelephone) Providers

21. SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1,176 such companies in operation for at least one year at the end of 1992.[12] According to SBA's definition, a small business radiotelephone company is one employing no more than 1,500 persons.[13] The Census Bureau also reported that 1,164 of those radiotelephone companies had fewer than 1,000 employees. Thus, even if all of the remaining 12 companies had more than 1,500 employees, there would still be 1,164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although it seems certain that some of these carriers are not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,164 small entity radiotelephone companies that may be affected by the policies and rules proposed in this Notice of Proposed Rulemaking. We next attempt to refine further this estimate to correspond with the categories of wireless (radiotelephone) companies that are commonly used under our rules.

22. *Cellular, PCS, SMR and Other Mobile Service Providers.* In an effort to further refine our calculation of the number of radiotelephone companies that may be affected by the policies and rules proposed herein, if adopted, we consider the data that we collect annually in connection with the TRS for the subcategories Wireless Telephony (which includes Cellular, PCS, and SMR) and Other Mobile Service Providers. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to these broad subcategories, so we will utilize the closest applicable definition under SBA rules—which, for both categories, is for radiotelephone (wireless) companies.[14] To the extent that the Commission has adopted definitions for small entities providing PCS and SMR services, we discuss those definitions. According to our most recent TRS data, 732 companies reported that they are engaged in the provision of Wireless Telephony services and 23 companies reported that they are engaged in the provision of Other Mobile Services.[15] Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of Wireless Telephony Providers and Other Mobile Service Providers, except as described, that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 732 small entity Wireless Telephony Providers and fewer than 23 small entity Other Mobile Service Providers that might be affected by the policies and rules proposed in this Notice of Proposed Rulemaking.

23. *Broadband PCS Licensees.* The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years.[16] For Block F, an additional classification for "very small business" was added, and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.[17] These regulations defining "small entity" in the context of broadband PCS auctions have been approved by SBA.[18] No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses for Blocks D, E, and F. However, licenses for Blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we estimate that the number of small broadband PCS licenses will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by SBA and the Commissioner's auction rules.

24. *SMR Licensees.* Pursuant to 47 CFR 90.814(b)(1), the Commission has defined "small entity" in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. The definition of a "small entity" in the context of 800 MHz SMR has been approved by the SBA,[19] and approval for the 900 MHz SMR definition has been sought. The proposed rules may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. Consequently, we estimate, for purposes of this IRFA, that all of the extended implementation authorizations may be held by small entities, some of which may be affected by the policies and rules proposed in this Notice of Proposed Rulemaking.

25. The Commission recently held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. Based on this information, we estimate that the number of geographic area SMR licensees that may be affected by the policies and rules proposed in this Notice of Proposed Rulemaking includes these 60 small entities. No auctions have been held for 800 MHz geographic area SMR licenses. Therefore, no small entities currently hold these licenses. A total of 525 licenses will be awarded for the upper 200 channels in the 800 MHz geographic area SMR auction. The Commission, however, has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1,000 employees and that no reliable estimate of the number of prospective 800 MHz licensees can be made, we estimate, for purposes of this IRFA, that all of the licenses may be awarded to small entities, some of which may be affected by the policies and rules proposed in this Notice of Proposed Rulemaking.

26. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. There

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[2] See 5 U.S.C. 603(a).

[3] 5 U.S.C. 603(b)(3).

[4] *Id.* at 601(6).

[5] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3).

[6] Small Business Act, 15 U.S.C. 632.

[7] 5 U.S.C. 601(4).

[8] 1992 Economic Census, U.S. Bureau of the Census, Table 6 (special tabulation of data under contract to Office of Advocacy of the U.S. Small Business Administration).

[9] 5 U.S.C. 601(5).

[10] U.S. Dept. of Commerce, Bureau of the Census, "1992 Census of Governments."

[11] *Id.*

[12] United States Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities: Establishment and Firm Size, at Firm Size 1–123 (1995) ("1992 Census").

[13] 13 CFR 121.201, SIC Code 4812.

[14] *Id.*

[15] FCC, Carrier Locator: Interstate Service Providers, Figure 1 (Jan. 1999) (Carrier Locator). See also 47 CFR 64.601 *et seq.* (TRS). The most reliable source of information regarding the numbers of commercial wireless entities appears to be data the Commission publishes annually in its Carrier Locator report, derived from filings made in connection with the Telecommunications Relay Service (TRS).

[16] See Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, Report and Order, 61 FR 33859 (July 1, 1996); FCC 96–278, WT Docket No. 96–59, ¶¶ 57–60 (June 24, 1996), see also 47 CFR 24.720(b).

[17] *Id.*, at ¶ 60.

[18] Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, Fifth Report and Order, 59 FR 37566 (July 22, 1994), 9 FCC Rcd.5532, 5581–84 (1994).

[19] See Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896–901 MHz and the 935–940 MHz Bands Allotted to the Specialized Mobile Radio Pool, PR Docket No. 89–553, Second Order on Reconsideration and Seventh Report and Order, 60 FR 48913 (September 21, 1995), 11 FCC Rcd 2639, 2693–702 (1995); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93–144, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, 61 FR 6212 (February 16, 1996), 11 FCC Rcd 1463 (1995).

are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a definition of small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the definition under the SBA rules applicable to Radiotelephone Communications companies.[20] According to the Bureau of the Census, only 12 radiotelephone firms out of a total of 1,178 firms that operated during 1992 had 1,000 or more employees.[21] Therefore, if this general ratio continues to 1999 in the context of Phase I 220 MHz licensees, we estimate that nearly all such licensees are small businesses under the SBA's definition.

27. *220 MHz Radio Service—Phase II Licensees.* The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the 220 MHz *Third Report and Order* we adopted criteria for defining small businesses and very small businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.[22] We have defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than three million dollars for the preceding three years.[23] An auction of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998.[24] 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Companies claiming small business status won: one of the Nationwide licenses, 67% of the Regional licenses, and 54% of the EA licenses. As of January 22, 1999, the Commission announced that it was prepared to grant 654 of the Phase II licenses won at auction.[25] A reauction of the remaining, unsold licenses was completed on June 30, 1999, with 16 bidders winning 222 of the Phase II licenses.[26] As a result, we estimate that 16 or fewer of these final winning bidders are small or very small businesses.

28. *Paging Licensees.* On June 7, 1999, the Wireless Telecommunications Bureau announced the first in a series of auctions of paging licenses, the first to commence on December 7, 1999.[27] The Bureau has proposed that the first auction be composed of 2,499 licenses.[28] The Commission utilizes a two-tiered definition of small businesses in the context of auctioning licenses in the Common Carrier Paging and exclusive Private Carrier Paging services.[29] A small business is defined as either (a) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million, or (b) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. The SBA has approved this definition.[30] At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. In addition, according to the most recent *Carrier Locator* data, 137 carriers reported that they were engaged in the provision of either paging or messaging services, which are placed together in the data.[31] Because the auction has yet to occur, we do not have data specifying the number of winning bidders that will meet the above small business definition. Also, we will assume that there currently are 137 or fewer small businesses paging carriers.

29. *Narrowband PCS Licensees.* The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded by auction. Such auctions have not yet been scheduled, however. Given that nearly all radiotelephone companies have no more than 1,500 employees and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, we assume, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

30. *Rural Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service.[32] A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS).[33] We will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[34] There are approximately 1,000 licensees in the Rural Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA's definition.

31. *Air-Ground Radiotelephone Service.* The Commission has not adopted a definition of small entity specific to the Air-Ground Radiotelephone Service.[35] Accordingly, we will use the SBA's definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons.[36] There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small entities under the SBA definition.

32. *Private Land Mobile Radio (PLMR).* PLMR systems, also known as Private Mobile Radio Service (PMRS) systems, serve an essential role in a range of industrial, business, land transportation, and public safety activities.[37] These radios are used by companies of all sizes operating in all U.S. business categories. The Commission has not developed a definition of small entity specifically applicable to PLMR licensees due to the vast array of PLMR users. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. The Commission is unable at this time to estimate the number of small businesses, if any, that could be impacted by the proposed rules. However, the Commission's 1994 Annual Report on PLMRs [38] indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the proposed rules in this context could potentially impact any small U.S. business that chooses to become licensed in this service. On July 21, 1999, the Wireless Telecommunications Bureau requested public comment on whether the licensing of PMRS frequencies in the 800 MHz band for commercial SMR use would serve the public interest.[39]

33. *Fixed Microwave Services.* Microwave services include common carrier,[40] private-operational fixed [41] and broadcast auxiliary radio services.[42] At present, there are approximately 22,015 common carrier fixed licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, we will utilize the SBA's definition applicable to radiotelephone companies—*i.e.*, an entity with no more than 1,500 persons.[43] We estimate, for this purpose, that all of the Fixed Microwave licensees (excluding broadcast auxiliary licensees) would qualify as small entities under the SBA definition for radiotelephone companies.

34. *Offshore Radiotelephone Service.* This service operates on several UHF TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico.[44] At present, there are approximately 55 licensees in this service. We are unable at this time to estimate the number of licensees that would qualify as small entities under the SBA's definition for radiotelephone communications.

35. *Wireless Communications Services.* This service can be used for fixed, mobile, radio, location and digital audio broadcasting satellite uses. The Commission defined "small business" for the wireless communications services (WCS) auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a "very small business" as an entity with average gross revenues of $15 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. We conclude that the number of geographic area WCS licensees that may be affected by the decisions and rules proposed in the Further Notice includes these eight entities.

36. *Multipoint Distribution Systems (MDS).* The Commission has defined "small entity" for the auction of MDS as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years.[45] This definition of a small entity in the context of MDS auctions has been approved by the SBA.[46] The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas (BTAs). Of 67 winning bidders, 61 qualified as small entities.[47]

37. MDS is also heavily encumbered with licensees of stations authorized prior to the auction. The SBA has developed a definition of small entities for pay television services, which includes all such companies generating $11 million or less in annual receipts.[48] This definition includes multipoint distribution systems, and thus applies to MDS licensees and wireless cable operators who did not participate in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of $11 million annually. Therefore, for purposes of this IRFA, we find there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules, some which may be affected by the decisions and rules proposed in the Further Notice.

ii. Satellite Providers

38. *International Service Providers.* The Commission has not developed a definition of small entities applicable to licensees in the international services. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to Communications Services, Not Elsewhere Classified (NEC). This definition provides that a small entity is expressed as one with $11 million or less in annual receipts.[49] According to the Census Bureau, there were a total of 848 Communications Services NEC in operation in 1992, and a total of 775 had annual receipts of less than $9.999

[20] 13 CFR 121.201, SIC Code 4812. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons.

[21] U.S. Bureau of the Census, U.S. Department of Commerce, 1992 Census of Transportation, Communications, and Utilities, UC92–S–1, Subject Series, Establishment and Firm Size, Table 5, Employment Size of Firms: 1992, SIC code 4812 (issued May 1995).

[22] Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220–222 MHz Band by Private Land Mobile Radio Service, Third Report and Order and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10943, 11068–70, at paras. 291–295 (1997) (220 MHz Third Report and Order) 62 FR 15978 (April 3, 1997). The SBA has approved these definitions. See Letter from A. Alvarez, Administrator, SBA, to D. Phythyon, Chief, Wireless Telecommunications Bureau, FCC (Jan. 6, 1998).

[23] 220 MHz Third Report and Order, 62 FR 15978 (April 3, 1997), 12 FCC Rcd at 11068–69, para. 291.

[24] See generally Public Notice, "220 MHz Service Auction Closes," Report No. WT 98–36 (Wireless Telecom. Bur. Oct. 23, 1998).

[25] Public Notice, "FCC Announces It Is Prepared to Grant 654 Phase II 220 MHz Licenses After Final Payment Is Made," Report No. AUC–18–H, DA No. 99–229 (Wireless Telecom. Bur. Jan. 22, 1999).

[26] Public Notice, "Phase II 220 MHz Service Spectrum Auction Closes," Report No. AUC–99–24–E, DA No. 99–1287 (Wireless Telecom. Bur. July 1, 1999).

[27] Public Notice, "First Paging Service Spectrum Auction Scheduled for December 7, 1999," Report No. AUC–99–26–A, DA No. 99–1103, 64 FR 36009 (July 2, 1999). (Wireless Telecommunications Bureau, June 7, 1999).

[28] *Id.*

[29] See 47 CFR 20.9(a)(1) (noting that private paging services may be treated as common carriage services).

[30] See Letter from A. Alvarez, Administrator, SBA, to A.J. Zoslov, Chief, Auctions Division, Wireless Telecommunications Bureau, FCC (Dec. 2, 1998).

[31] Carrier Locator at Fig. 1.

[32] The service is defined in section 22.99 of the Commission's rules, 47 CFR 22.99.

[33] BETRS is defined in sections 22.757 and 22.759 of the Commission's rules, 47 CFR 22.757, 22.759.

[34] 13 CFR 121.201, SIC Code 4812.

[35] The service is defined in section 22.99 of the Commission's rules, 47 CFR 22.99.

[36] 13 CFR 121.201, SIC Code 4812.

[37] *See* 47 CFR 20.9(a)(2) (noting that certain Industrial/Business Pool service may be treated as common carriage service).

[38] Federal Communications Commission, *60th Annual Report, Fiscal Year 1994*, at 116.

[39] Public Notice, "Wireless Telecommunications Bureau Incorporates Nextel Communications, Inc. Waiver Record into WT Docket No. 99–87: Seeks Comment on Licensing of PMRS Channels in the 800 MHz Band for Use in Commercial SMR Systems," DA 99–1431 (Wireless Telecom. Bureau July 21, 1999).

[40] 47 CFR 101 *et seq.* (formerly, Part 21 of the Commission's rules).

[41] Persons eligible under Parts 80 and 90 of the Commission's rules can use Private Operational-Fixed Microwave services. *See* 47 CFR Parts 80 and 90. Stations in this service are called operational-fixed to distinguish them from common carrier and public fixed stations. Only the licensee may use the operational-fixed station, and only for communications related to the licensee's commercial, industrial, or safety operations.

[42] Auxiliary Microwave Service is governed by Part 74 of the Commission's Rules. *See* 47 CFR 74 *et seq.* Available to licensees of broadcast stations and to broadcast and cable network entities, broadcast auxiliary microwave stations are used for relaying broadcast television signals from the studio to the transmitter, or between two points such as a main studio and an auxiliary studio. The service also includes mobile TV pickups, which relay signals from a remote location back to the studio.

[43] 13 CFR 121.201, SIC Code 4812.

[44] This service is governed by Subpart I of Part 22 of the Commission's Rules. *See* 47 CFR 22.1001–22.1037.

[45] 47 CFR 21.961(b)(1).

[46] *See* Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act—Competitive Bidding, MM Docket No. 94–31 and PP Docket No. 93–253, Report and Order, 60 FR 36524 (July 17, 1999), 10 FCC Rcd 9589 (1995).

[47] One of these small entities, O'ahu Wireless Cable, Inc., was subsequently acquired by GTE Media Ventures, Inc., which did not qualify as a small entity for purposes of the MDS auction.

[48] 13 CFR 121.201.

[49] 13 CFR 120.121, SIC 4899.

million.[50] We note that those entities providing only international service will not be affected by our proposed rules, if adopted. We do not, however, have sufficient data to estimate with greater detail those entities providing both international and domestic services or only domestic service. Consequently, we estimate that there are fewer than 775 small international service entities potentially impacted by our rules.

39. *Fixed Satellite Transmit/Receive Earth Stations.* Based on actual payments from FY 1998, there are approximately 3,100 earth station authorizations, a portion of which are Fixed Satellite Transmit/Receive Earth Stations.[51] We do not request nor collect annual revenue information, and thus are unable to estimate the number of the earth stations that would constitute a small business under the SBA definition.

40. *Fixed Satellite Small Transmit/Receive Earth Stations.* There are 3,100 earth station authorizations, a portion of which are Fixed Satellite Small Transmit/Receive Earth Stations.[52] We do not request nor collect annual revenue information, and thus are unable to estimate the number of fixed satellite transmit/receive earth stations that would constitute a small business under the SBA definition.

41. *Fixed Satellite Very Small Aperture Terminal (VSAT) Systems.* These stations operate on a primary basis, and frequency coordination with terrestrial microwave systems is not required. Thus, a single "blanket" application may be filed for a specified number of small antennas and one or more hub stations. The Commission has processed 377 applications.[53] We do not request nor collect annual revenue information, and thus are unable to estimate the number of VSAT systems that would constitute a small business under the SBA definition.

42. *Mobile Satellite Earth Stations.* There are 11 licensees.[54] We do not request or collect annual revenue information, and thus are unable to estimate the number of mobile satellite earth stations that would constitute a small business under the SBA definition.

43. *Radio Determination Satellite Earth Stations.* There are four licensees.[55] We do not request nor collect annual revenue information, and thus are unable to estimate the number of radio determination satellite earth stations that would constitute a small business under the SBA definition.

44. *Space Stations (Geostationary).* Commission records show that there are 43 Geostationary Space Station licensees.[56] We do not request nor collect annual revenue information, and thus are unable to estimate the number of geostationary space stations that would constitute a small business under the SBA definition.

45. *Space Stations (Non-Geostationary).* There are 12 Non-Geostationary Space Station licensees, of which only two systems are operational.[57] We do not request nor collect annual revenue information, and thus are unable to estimate the number of non-geostationary space stations that would constitute a small business under the SBA definition.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

46. This Notice of Proposed Rulemaking proposes no additional reporting or recordkeeping measures. The Notice of Proposed Rulemaking does seek comment on whether the Commission should permit additional flexibility in its rules to create incentives for the extension of wireless or satellite service to tribal lands or other unserved areas. For example, in section III.A.1 of the Notice of Proposed Rulemaking, we seek comment on whether to relax antenna height and transmitter power limits for providers that commit to serving tribal lands or other unserved areas. In section III.A.2 of the Notice of Proposed Rulemaking, we seek comment on whether to liberalize our buildout rules for providers that commit to serve a tribal land or other unserved area. In section III.A.7 of the Notice of Proposed Rulemaking, we state that to the extent that we grant additional flexibility to providers, we believe it is important to ensure that providers actually provide service to tribal lands or other unserved areas in exchange for such flexibility. We therefore seek comment in that section on whether the grant of additional flexibility to wireless or satellite licensees should be conditioned on the existence of a binding agreement between the licensee and relevant tribal authority in the case of tribal lands, or a binding agreement between the licensee and another authority in the case of other unserved areas. To the extent that licensees choose to take advantage of any additional flexibility that we adopt, they may be required to comply with requirements to prove the existence of such binding agreements.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

47. As described in Section II of the Notice of Proposed Rulemaking, the Commission held two public hearings earlier this year at which federal and state officials, tribal officials, and telecommunications services providers addressed issues such as the costs of delivering services to remote areas having very low population densities, the impact of the size of local calling areas on the affordability of service, the quality of telephone service on tribal lands, the complexities of governmental jurisdiction and sovereignty issues, and the effects of low incomes and high unemployment on tribal lands on telephone service. Following up on the record developed in those hearings, we have decided to seek comment in this Notice of Proposed Rulemaking on specific potential initiatives that the Commission could adopt to facilitate the provision of telecommunications service to tribal lands and other unserved areas using wireless or satellite technologies.

48. For example, in section III.B.1 of the Notice of Proposed Rulemaking, we seek comment on whether there are unallocated or unlicensed spectrum bands that could be used by telecommunications providers, including small entities, to serve the needs of tribal lands and other unserved areas. In section III.B of the Notice of Proposed Rulemaking, we seek comment on whether there are unused channels in otherwise allocated and licensed spectrum that could be used by telecommunications providers, including small entities, to provide telephone service to tribal lands and other unserved areas. In section III.A.5 of the Notice of Proposed Rulemaking, we seek comment on whether the Commission should modify its restrictions on the transfer of spectrum from "designated entities" (DEs) (entrepreneurs and small businesses) to non-DEs in order to facilitate the provision of telecommunications service to tribal lands or other unserved areas. We believe that at this juncture it is necessary to seek comment on the various alternatives set forth in this Notice of Proposed Rulemaking, including the three listed as examples, for encouraging the provision of telecommunications service to tribal lands and other unserved areas. We encourage commenters to discuss any other alternatives that would minimize any significant economic impact on small entities.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

49. None.

List of Subjects

47 CFR Part 1

Communications common carriers, Radio, Telecommunications.

47 CFR Parts 15, 95, and 101

Communications equipment, Radio.

47 CFR Part 22

Communications common carriers, Communications equipment, Radio, Rural areas.

47 CFR Part 24

Personal communications services, Radio.

47 CFR Part 25

Communications common carriers, Communications equipment, Radio, Satellites.

47 CFR Part 26

Communications common carriers, Radio.

47 CFR Part 27

Wireless communications service, Radio.

47 CFR Part 90

Common carriers, Communications equipment, Radio.

47 CFR Part 100

Communications equipment, Radio, Satellites.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–23575 Filed 9–9–99; 8:45 am]

BILLING CODE 6712–01–P

[50] United States Dept. of Commerce, Bureau of Census, 1992 Economic Census Industry and Enterprise Receipts Size Report, at Table 2D.

[51] *See* Assessment and Collection of Regulatory Fees for Fiscal Year 1999, *Report and Order*, FCC 99–146, 64 FR 35831 (July 1, 1999) at Attachment A (released June 18, 1999).

[52] *Id.*

[53] *Id.*

[54] Id.

[55] Id.

[56] Id.

[57] Id.

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1712, MM Docket No. 99–275, RM–9704]

Radio Broadcasting Services; Keno, OR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Renaissance Community Improvement Association, Inc., seeking the allotment of Channel 235A to Keno, OR, as the community's second local aural service. The Commission also proposes to allow petitioner to amend its pending application (BPED–950206MB) to specify Channel 235A without loss of cut-off protection in order to resolve the mutual exclusivity with the pending application of St. Michael's Catholic Radio (BPED–950206MH). Channel 235A can be allotted to Keno in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 42–07–30 WL; 121–55–42 NL.

DATES: Comments must be filed on or before October 18, 1999, and reply comments on or before November 2, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Rev. Sandra Soho, President, Renaissance Community Improvement Association, Inc., P.O. Box 111, Klamath Falls, OR 97601–0006 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–275, adopted August 18, 1999, and released August 27, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–23461 Filed 9–9–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket NHTSA–99–5992, Notice 1]

Denial of Petition for Rulemaking; Federal Motor Vehicle Safety Standards Rear Impact Guards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition for rulemaking.

SUMMARY: Federal Motor Vehicle Safety Standard (FMVSS) No. 223 specifies a test procedure for demonstrating that rear impact guards comply with the strength and energy absorption requirements of the standard. This procedure involves a quasi-static test in which the horizontal member of the rear impact guard is slowly pushed for 125 mm, while the amount of resistance it offers is measured. Next, the guard is released and the amount of energy the guard absorbed is calculated.

The Truck Trailer Manufacturers Association (TTMA) submitted a petition for rulemaking requesting three changes to the test procedure. First, TTMA requested that we eliminate the lower bound of the range of acceptable rates of force application, so that the force can be applied in discrete start-stop steps. Second, TTMA requested that the requirement to displace the guard by a full 125 mm be eliminated if it appeared that the guard had met all requirements before that point. Third, TTMA suggested that the elastic rebound from guards that rebound very slowly following removal of the force not be subtracted from the calculated energy absorption. Each of the proposed revisions purports to ease the burden of testing on rear impact guard manufacturers, especially small businesses.

We are denying the petition. TTMA has not demonstrated a need for slower rates of force application. We have already lowered the permissible rate of force application to a level that is not

burdensome, and even allow a manufacturer to specify, within a broad range, the force application rate on which it based its certification. Stopping the test before a displacement of 125 mm is not practical for compliance testing. Since we would have no way of knowing how far a guard would rebound, we could not know, in advance, how much energy the guard would absorb. We have answered TTMA's third request by providing an interpretation of the existing regulatory language. Making that interpretation more explicit in the procedures is not necessary.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC, 20590:

For non-legal issues: Mr. Mike Huntley, Office of Crashworthiness Standards (202–366–0029), e-mail: mhuntley@nhtsa.dot.gov

For legal issues: Mr. Taylor Vinson, Office of the Chief Counsel (202–366–5263), e-mail: tvinson@nhtsa.dot.gov

SUPPLEMENTARY INFORMATION:

I. Background

On January 24, 1996, we published a final rule establishing FMVSS No. 223, Rear Impact Guards, which specifies performance requirements that rear impact guards must meet before they can be installed on new trailers and semitrailers. The standard (49 CFR 571.223) specifies strength and energy absorption requirements, as well as the procedures we will use to demonstrate compliance with the standard. Compliance with the standard may be demonstrated on a non-vehicle rigid "test fixture" or on a completed vehicle. We promulgated the energy absorption requirements to address concerns that the rule would permit overly rigid guards that would absorb little or no crash energy. We regarded these guards as undesirable because they would result in a greater likelihood of serious—and possibly fatal—driver and front passenger head and chest injuries by causing a colliding vehicle to stop too suddenly.

To demonstrate compliance with the strength requirements of the standard, the final rule specified a quasi-static test. A guard is tested for strength by slowly pushing it forward, as the guard is oriented on the trailer, with a 203 mm by 203 mm (8 inch by 8 inch) force plate at specified points along the rear side of the horizontal member of the guard. As issued in January 1996, the final rule specified that the guard be moved for a total distance of 125 mm (5 inches) at a constant rate of not less than 1 mm and not more than 1.5 mm per second (6.0 to 9.0 cm/minute). To pass, the guard must resist the specified force within the first 125 mm of displacement. We specified a quasi-static test, instead of a dynamic test (e.g., a crash test), to reduce the cost of testing for the many smaller firms in the trailer manufacturing industry. Such a firm which typically lacks the engineering capabilities and the sophisticated and expensive test equipment that would be required to properly conduct a dynamic test.

FMVSS No. 223's test for energy absorption is conducted by applying a force in the same manner as in the test for strength, but only at either of two specified test points. The force is recorded at least 10 times per 25 mm (1 inch) of displacement until the 125 mm (5 inch) displacement is reached and the force plate is completely withdrawn from the guard. The guard energy absorption is calculated from a force vs. deflection diagram plotted using the data recorded from the tested location. To discourage the manufacture of overly rigid guards, only plastic deformation (permanent deformation) is counted toward meeting the required amount of energy absorption—elastic rebound of the guard does not count. The minimum guard energy absorption of 5,650 joules (4,170 foot-pounds) is sufficient to absorb about 12 percent of the total kinetic energy of a 48 kph (30 mph) centric collision with a 1,135 kg (2,500 lb) vehicle.

In petitions for reconsideration, Great Dane Trailers, Inc. and STRICK Corporation asked us to reconsider the final rule and to increase the permissible range of force application during the strength and energy absorption tests. Both Great Dane and STRICK said they believed that the requirement to maintain a constant rate of between 1 mm and 1.5 mm per second would require them to invest in new and expensive test equipment to meet this requirement, and that the rate of displacement is not a significant indicator of the performance of the guard. In addition, STRICK petitioned the agency to change the requirement from maintaining a constant rate of displacement to one that is "approximately constant over a time of 1 to 5 minutes."

We published a response to petitions for reconsideration on January 26, 1998, which incorporated slight modifications to the test procedure (63 FR 3654). We accepted the assertions of the petitioners that new and expensive equipment might be required to achieve the original force application rate, especially when testing stronger guards. Noting that the rate of force application should not make a significant difference in test results when testing guards made of steel (the most common guard material), we significantly broadened the acceptable range of force application to 2.0 to 9.0 cm/minute. We also eliminated the word "constant" from the test procedure, as having to maintain a "constant" designated displacement rate would make it practically impossible for us to conduct compliance testing. Instead, we allowed the guard manufacturer to designate the displacement rate, within the range of 2.0 to 9.0 cm/minute, on which it based its certification. If we conduct compliance tests, we will use the manufacturer's designated rate, plus or minus 10 percent.

II. Summary of the TTMA Petition for Rulemaking

The TTMA petition requests three changes, each of which is intended to ease the burden of testing on guard manufacturers:

A. TTMA recommends eliminating the 2.0 cm/min lower bound for the force application rate. TTMA contends that this would facilitate testing using simple measuring equipment in a "stepped" manner by which a manufacturer could apply a force, measure the force and the corresponding displacement, apply more force, measure the new force and displacement, and continue in this start-and-stop manner until the specified energy absorbed or displacement is achieved. TTMA believes that the 2.0 cm/min lower bound on the force application rate, as a practical matter, prevents manufacturers from using this stepped application of force. Such an application of force could be accomplished using inexpensive test equipment such as manually-controlled pumps and simple measuring devices. A May 27, 1998 memo from TTMA stated that "the step application of the force for the energy absorption test per our petition of March 26, 1998, could be accomplished in under 30 minutes." We assume from this that TTMA would endorse, as an alternative to eliminating the lower bound of the force application rate, a further reduction of the lower bound so that the test could take as long as 30 minutes.

B. TTMA suggests that the test procedures be altered so that it is not necessary to displace the guard the full 125 mm as currently specified in S6.6(c). TTMA believes that if the minimum amount of energy absorption specified in that section has been exceeded during a displacement of less than 125 mm, and little elastic rebound is anticipated, completion of the test represents an unnecessary expenditure of test resources and money. For example, with a very rigid guard, application of a force sufficient to deflect the guard to 125 mm may destroy the test equipment.

C. TTMA requests the addition of an explicit description to the standard of the point at which the energy absorption test is considered complete. TTMA states that a guard may be designed to displace a material or fluid which, over a period of time, may return the guard to near its original position. TTMA contends that the potential energy stored in this type of guard should not be subtracted from the measured energy absorption in the test per S6.6(c) and Figure 2 of the standard. TTMA suggests that the following phrase be add to the energy absorption test procedures: "any reduction in displacement (rebound) of the guard one second or more after the force has been removed shall not be subtracted from the measured energy absorbed."

III. Analysis of the Petition

A. Stepped Application of Force

The final rule was designed in large part to accommodate the needs of small businesses. In specifying a quasi-static test as opposed to a dynamic (full speed crash) test, we sought to reduce the costs for the many small manufacturers that are common in the trailer manufacturing industry. We did this because we believe that a smaller manufacturer may lack the engineering capabilities and the sophisticated and expensive test equipment that would be required to properly conduct a dynamic test. Moreover, in adopting a standard that applies to equipment, we intended to allow small trailer manufacturers to purchase certified guards on the open market without having to conduct any tests before installing them on their trailers.

Our concern for small businesses was also reflected in our January 1998 response to petitions for reconsideration. Great Dane Trailers and STRICK Corporation expressed concern about the need to purchase expensive and sophisticated precision testing equipment to replace their current devices in order to meet the requirement stated in the final rule to maintain a constant rate of force application of between 1 mm and 1.5 mm per second (6.0 cm and 9.0 cm per minute) during strength and energy absorption tests. In response, we acknowledged that the specified rate of displacement during force application may have been too narrow to accommodate slow-pumping force application equipment. We accepted Great Dane's and STRICK's assertions that new and expensive equipment would be required for those companies to achieve the specified rate, noting that more powerful hydraulic pumps are required to achieve higher rates of displacement during the test—especially with stronger guards. Accordingly, we revised the lower bound for displacement rate to 0.33 mm/sec (2.0 cm/minute). We stated:

> Regarding the lower bound for displacement rate, the agency believes that 6.3 minutes is adequate time to achieve the required displacement *without the need for sophisticated control equipment and powerful pumps.* No petitioner has requested a longer period and, unless the agency is presented with evidence of a problem with this rate, it will consider longer periods as unnecessarily prolonging certification and compliance testing. As explained earlier, reasonably slower displacement rates will probably not make a significant difference in test results anyway. Therefore, NHTSA is granting part of STRICK's request and widening the specified displacement rate range to allow displacement rates as low as 0.33 mm/sec. Testing at this rate will allow a 125 mm (5 inch) test displacement to be achieved in a period of about 6 minutes.
>
> (63 FR 3659, emphasis added)

Thus, we have already *significantly broadened* the acceptable range of force application rate from a minimum of 6.0 cm/minute to a minimum of 2.0 cm/minute, to accommodate small manufacturers.

Our establishment of the revised lower bound of 2.0 cm/minute was based, at least in part, on an evaluation of the capabilities of the relatively unsophisticated test equipment used by the Vehicle Research and Test Center (VRTC) test program to evaluate the effectiveness of rear impact guard designs during the development of the final rule. Most modern test equipment is controlled by a computer with a feedback system capable of quickly and automatically adjusting the displacement rate. However, we recognized that precise adjustment of the rate without computer control may be impracticable. In an effort to be sensitive to smaller manufacturers, who may not have computer-controlled equipment, we revised the standard to specify the distance on a per-minute time scale (as opposed to a per-second time scale as initially required) to allow for practical adjustments of the rate of displacement within each minute.

When we conduct compliance testing, we use a continuous application of force, such that the displacement rate of the force application device is the rate, plus or minus 10 percent, of that designated by the guard manufacturer within the range of 2.0 cm per minute to 9.0 cm per minute. The petitioner does not address whether or how this test protocol would be compared with certification testing using a stepped application of force, versus a continuous application, as currently required. Eliminating the lower bound of force application rate altogether could theoretically allow guard manufacturers to perform a stepped application of force in a certification test over a period of many hours or even days if they believed that the physical properties of the guard material being used would somehow allow it to perform better with the force applied in small increments over extended time periods.

We did not contemplate such a slow application of force when we concluded from the testing leading up to the final rule that a quasi-static test would be an adequate alternative to a dynamic test. It is possible that some brittle materials with low ductility could pass the test under these conditions but fail at a force application rate higher than 2.0 cm/min. Obviously, such materials would not perform adequately as underride guards. Moreover, as we noted in our response to petitions for reconsideration, at some point, the slowing of force application rate creates administrative difficulties because it unnecessarily prolongs compliance testing.

Before we will eliminate or again lower the permissible force application rate specified in FMVSS No. 223, a petitioner must clearly demonstrate that a hardship exists. A petition for rulemaking must "set forth facts which it is claimed establish that an order is necessary" (see 49 CFR 552.4). TTMA's petition does not provide sufficient evidence that a significant number of smaller trailer manufacturers are currently unable to conduct testing because of the expense and sophistication of the test equipment required. It does not provide specific information regarding the number (or percentage) of trailer manufacturers that are being negatively affected, the cost differential between the equipment that is required to meet the current standard versus that which could be used if the proposed amendment were to be adopted, or any other supporting information that would persuade us that a hardship exists. Without such information, we are unable to conclude that there is a need for eliminating or further reducing the minimum force application rate specified in S6.6(a) of FMVSS No. 223.

B. Ending the Energy Absorption Test Prior to Full Guard Displacement

TTMA wants the test procedures revised to specify that the energy absorption test ends before 125 mm of displacement "if 5,650 J of energy absorption has been exceeded." TTMA contends that if the minimum amount of energy absorption required by S6.6(c) has been exceeded during a displacement of less than 125 mm, "and little elastic rebound is anticipated," it is not necessary to fully displace the guard to 125 mm as currently specified in S6.6(c). TTMA presumably believes that if little elastic rebound is anticipated, completion of the test to a full 125 mm after the guard has apparently exceeded the amount of energy absorption required would not change the test results, and therefore represents an unnecessary expenditure of test resources and money.

Our compliance test procedure is very explicit regarding how far the guard must be displaced, and is consistent with the final rule. The guard energy absorption portion of our compliance test procedure, TP–223–01, dated October 20, 1997, states:

> Apply force to the guard in a forward direction * * * until displacement of the force application device has reached 130 mm, + 0, – 5 mm. Then reduce the load until the guard no longer offers resistance to the force application device. Determine the energy absorbed in the guard by calculating the area bounded by the curve in the force vs. displacement plot. See Figure 2. Record the energy absorbed, and the maximum load and displacement on Data Sheet 3. Include the force vs. displacement plot with the data sheet.

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FIGURE 2. GUARD ENERGY ABSORPTION
(TYPICAL FORCE-DEFLECTION CURVE AT P3)

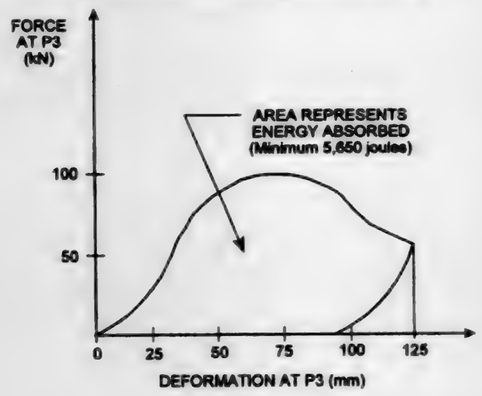

BILLING CODE 490–59–C
(Not actual test date—for illustrative purposes only.)

TTMA's suggested revision is not practicable. As noted earlier, the amount of energy is determined by calculating the area enclosed within the force deflection curve, and the elastic rebound (the small triangle in the lower right of the figure above) is not counted. When we conduct compliance testing, it is impracticable for us to predict the amount of elastic rebound that a given guard design will exhibit. While in some cases a premature end to the test might produce a force-deflection curve with enough area enclosed within it to pass the test, in other cases, it might not. If we ended the test prematurely and the guard unexpectedly exhibited excessive elastic rebound, it might not pass the test. In this case, we would need to conduct another test, pushing the guard to the full 125 mm in order to eliminate the possibility that the guard would experience more plastic deformation during the final centimeters, causing it to rebound less after the force was removed, and passing the test because of the increased area in the curve.

Moreover, basing a test procedure on assumptions that we make during a particular test would not meet the statutory requirement that our standards be objective. The required performance level must be based on a specific test procedure in order to be objective.

Finally, we note that manufacturers are free to conduct their certification tests in any way they wish. They may follow the test procedures in the FMVSS. Those are the procedures that the agency will follow in conducting its compliance tests. Alternatively, the manufacturers may follow other procedures or they use methods of analysis that do not involve testing, so long as they are reasonably likely to give the same results as the procedures in the FMVSS.

For example, in the specific case of FMVSS No. 223, it is reasonable to believe that a guard that absorbs the required amount of energy when displaced some amount less than 125 mm will absorb more energy when deflected by the full 125 mm. Therefore, a manufacturer could reasonably certify compliance based on a test that was ended prior to its completion. However, we will follow the test procedures in the FMVSS when conducting compliance tests. Further, the 125 mm requirement was specified based on the energy absorption of a NHTSA designed and built complying guard when subjected to a dynamic crash of a vehicle colliding with the guard at 48 kph (30 mph). Changing the test conditions would result in compromising the level of protection of the occupants of the colliding vehicle.

C. Definition of Termination of Energy Absorption Test

TTMA wants us to include in the energy absorbed any rebound that occurs more than one second after the force has been removed.

After the final rule was issued, we received a request for interpretation on this subject from Mr. Robert S. Toms. He asked whether the requirement that the energy absorption be accomplished by plastic deformation would preclude the use of a material produced by his company that returns to its original shape (i.e., elastic) very slowly, on the order of approximately 24 hours. In summary, our response to Mr. Toms stated that such slow-rebounding elastomeric materials could be used if the guards equipped with them passed the compliance test procedures.

Our August 4, 1998 response to Mr. Toms explained that the purposes of the standard could be fulfilled using a guard with a slow-rebounding elastomeric material. The requirement that guards absorb energy was intended to ensure that guards were not too rigid during the onset of force in a crash. The requirement that they absorb the energy by plastic deformation was to ensure that the guard did not subsequently return the absorbed energy to the colliding vehicle, because that energy return could increase the risk of death or injury to the occupants. Therefore, any rebound occurring after the crash event, especially slow rebound such as is produced by guards using some slow-acting elastomeric materials, would not, in the real world pose any threat to passenger vehicle occupants. Therefore, for real world safety purposes, the time frame within which a material must retain its deformed shape to be considered "plastic" is the duration of a crash event.

The relevant time period for compliance purposes, however, is longer. Standard No. 223 employs a quasi-static test, not a dynamic test, in testing for compliance with its requirements. We have no way of determining whether a material would rebound within the time frame of the crash. Therefore, if an elastomer reacts in such a way that it passes the test procedure, it will have passed the requirements. Identification of the end of the test is therefore critical in determining whether a material will pass the test. The interpretation defined the end of the test as follows:

> A specific event determines when the test ends. The force application/withdrawal portion of the test procedure is over as soon as the guard no longer offers resistance to the force application device. Since S6.6(c) is a list of steps to be performed, it is reasonable to assume that once a certain step is completed, the next step will be commenced. The step of reducing the force proceeds only "until the guard no longer offers resistance." In practical terms, the guard will generally cease to offer resistance when it loses contact with the force application device. NHTSA has no way of determining any small amount of residual force generated by your elastomer after that point. A properly calibrated load cell (a typical load measuring device) should register zero load, and the force deflection trace should meet the abscissa of the graph upon separation. After that happens, the test itself is completed and all that remains is the computation of the amount of energy absorbed using the area within the force deflection curve.

Therefore, while we generally agree with TTMA that the test should end when the force has been reduced to zero, there is no need to wait for one second to see if the guard re-connects with the test plate. Ending the test immediately when the test plate separates from the guard satisfies TTMA's concern. As explained in the interpretation letter, there is adequate support for that procedure in the existing regulatory text. The current language "[r]educe the force until the guard no longer offers resistance to the force application device" sufficiently describes the completion of the test for purposes of calculating the amount of energy that has been absorbed. We do not believe any change to the text of the standard is necessary to define the end of the test.

IV. Conclusion

For the reasons given above, we conclude that TTMA has not justified the need for further rulemaking on this standard. TTMA has not provided information demonstrating a need for a lower force application rate. It is not practicable or objective for compliance tests to end prematurely based on assumptions that we make about particular guard designs or materials. And, while we agree that the industry needs to understand precisely at what point the energy absorption test ends, the existing regulatory language on this issue has already been clarified through interpretation. We believe it is sufficiently explicit.

In accordance with 49 CFR part 552, this completes the agency's review of the petition. We have concluded that the TTMA has not adequately documented problems with the current procedures. Based on the available information, we believe that there is no reasonable possibility that the actions requested by TTMA would be taken at the conclusion of a rulemaking proceeding and that the problem alleged by TTMA does not warrant the expenditure of agency resources to conduct a rulemaking proceeding. Accordingly, we deny TTMA's petition.

Authority: 49 U.S.C. 30103, 30162; delegation of authority at 49 CFR 1.50 and 501.8.

Issued on: September 7, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–23520 Filed 9–9–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 990830239–9239–01; I.D. 082499A]

RIN 0648–AM99

Fisheries of the Northeastern United States; Northeast Multispecies and Atlantic Sea Scallop Fisheries; Northeast Multispecies and Atlantic Sea Scallop Fishery Management Plans

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; notice of a control date for the purposes of controlling capacity or latent effort in the Northeast multispecies and Atlantic sea scallop fisheries.

SUMMARY: NMFS announces that it is considering, and is seeking public comment on, proposed rulemaking under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to control future access to the Northeast multispecies and Atlantic sea scallop fisheries. This notification is intended, in part, to discourage speculative activation of previously unused effort or capacity while the New England Fishery Management Council (Council) and NMFS are considering whether and how to control capacity and latent effort. The date of publication of this notification, September 10, 1999, shall be known as the "control date", and may be used for establishing eligibility criteria for determining levels of future access to the Northeast multispecies and Atlantic sea scallop fisheries subject to Federal authority.

DATES: Comments must be received by October 12, 1999.

ADDRESSES: Comments should be directed to Patricia Kurkul, Regional Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298.

FOR FURTHER INFORMATION CONTACT: Susan A. Murphy, Fishery Policy Analyst, 978–281–9252.

SUPPLEMENTARY INFORMATION: The Northeast multispecies fishery is a major fishery on the Atlantic coast that extends from Cape Hatteras north to Maine. There are over 1,650 limited access permits and approximately 1,350 open access permits issued in the commercial fishery. Regulations implemented under the Northeast Multispecies Fishery Management Plan (FMP) impose an extensive system of effort controls to control fishing mortality. In addition to a permit moratorium to limit the number of participants in the fishery, vessels are subject to days-at-sea (DAS) restrictions, minimum fish sizes, closed areas, trip limits, and gear restrictions, among other measures.

The status of the individual regulated multispecies stocks varies for each species. Overall, fishing mortality for all species, except Georges Bank yellowtail flounder, witch flounder, and Southern New England winter flounder, is estimated to be too high to prevent overfishing and begin rebuilding biomass to appropriate levels. As necessary, management measures have been implemented to control fishing mortality and rebuild these stocks.

The Atlantic sea scallop fishery is a major commercial fishery that targets sea scallops from Cape Hatteras north to Maine. Regulations implemented under the Atlantic Sea Scallop FMP control fishing mortality through a variety of management measures, including a limit on the number of permits, DAS limitations, gear and crew restrictions, and closed areas. The fishery is presently prosecuted by about 250 vessels, although 365 permits have been issued.

According to the 29th Regional Stock Assessment Workshop, the U.S. Georges Bank stock of sea scallops is not overfished, but its biomass is below the B_{MSY} level (long-term biomass of the stock that will produce maximum sustainable yield on a continuing basis). The Mid-Atlantic stock is at or near the biomass threshold used to determine whether the stock is overfished. While both stocks are below B_{MSY}, the condition of both stocks has improved in recent years.

Many of the measures implemented over the last 5 years, in both the multispecies and sea scallop fisheries, reduced fishing opportunities and revenues for commercial fishers. These measures are working, as many of the stocks are gradually rebuilding to target levels. However, the Council is concerned because there is an excessive amount of unused harvesting capacity or effort that could jeopardize the continued rebuilding of the stocks. This unused capacity or effort is often referred to as latent effort. As fish stock sizes increase, it is more likely that industry would activate latent effort. If latent effort is activated too quickly, achievement of the objectives of the two FMPs to rebuild stocks could be hampered. This would require the Council and NMFS to impose even more restrictive management measures in order to meet the rebuilding requirements of the Magnuson-Stevens Act.

A review of the activity of multispecies limited access vessels indicates the potential magnitude of this problem. While the level of fishing mortality on most species in the multispecies complex was higher than the levels targeted by the management measures in the 1998 fishing year, about one-third (over 550) of the authorized limited access vessels did not fish for multispecies. On average, those permitted vessels that did fish for multispecies used only half their available DAS. Similarly, in the scallop fishery, 133 permits (51 full-time, 33 part-time, and 49 occasional) did not fish for scallops in 1998. Those permitted vessels (about 250) that did fish for scallops used about 84 percent of their available DAS.

The Council is examining the activity of these permits in detail to determine whether there is a justified concern over unused harvesting capacity. Some of the questions the Council must consider include:

1. What is the definition of latent effort?

2. Are permit holders who have not participated in the multispecies or scallop fisheries participating in another fishery?

3. Are these vessels likely to increase their effort in the multispecies or scallop fisheries or enter these fisheries?

4. Are these permits issued to vessels that can have a significant impact on fishing mortality?

5. Will these permitted vessels enter the fishery faster than rebuilt stocks can support the additional effort?

6. If these permitted vessels are likely to enter the fisheries and if having entered, they adversely impact the fishery, what can be done to mitigate or reverse these impacts?

7. How will limited access permit holders who have stopped fishing on multispecies or scallops or who have reduced their effort on these species (for any reason) be treated by the Council?

8. What will happen to vessels that hold a Confirmation of Permit History?

The Council and NMFS recognize the controversiality of limiting access to current permit holders. The Council and public discussion of alternatives to control capacity or latent effort in the absence of a control date may lead members of the fishing industry to reach premature conclusions on how, or whether the Council will choose to address these issues. Permit holders who have unused capacity or effort may believe that they are at risk of losing their opportunity to participate in the multispecies or scallop fisheries in the future if they do not immediately enter the fisheries. A rapid increase in effort may increase fishing mortality and could jeopardize the rebuilding of multispecies and scallop stocks. It would also complicate a reasoned discussion of the available alternatives because the Council would have to act quickly in response to the effort increase. Publication of a control date is intended to discourage speculative activation of previously unused effort or capacity in the Northeast multispecies and Atlantic sea scallop fisheries while potential management regimes to control capacity or latent effort are discussed and possibly developed and implemented. The control date communicates to permit holders that performance or fishing effort after the date of publication may not be treated the same as performance or effort that was expended prior to the control date. Although vessel owners are notified that participation in these fisheries after the control date will not assure them future access to the Northeast multispecies and Atlantic sea scallop fisheries on the grounds of previous participation, additional and/or other qualifying criteria may also be applied. The Council could choose different and variably weighted methods to qualify fishers, based on the type and length of participation in the fishery.

This notification establishes September 10, 1999, as the control date for potential use in determining historical or traditional participation in the Northeast multispecies and Atlantic sea scallop fisheries. Consideration of a control date does not commit the Council or NMFS to any particular management regime or criteria for participation in these fisheries. The Council and NMFS may choose a different control date or may choose a management program that does not make use of such a date. This notification does not prevent any other control date for determining levels of future effort in these fisheries or another method of controlling access and/or

latent effort from being proposed and implemented. Fishers are not guaranteed future participation in the fishery, regardless of their entry date or intensity of participation in these fisheries before or after the control date. Participants who enter, or additional effort expended in, the Northeast multispecies or Atlantic sea scallop fisheries on or after the control date may be treated differently than those with a history in these fisheries prior to the control date. The Council and NMFS may choose to give variably weighted consideration to fishers active in the fishery before and after the control date. The Council and NMFS may also choose to take no further action to control entry or access to the fishery, in which case the control date may be rescinded. Any action by the Council or NMFS will be taken pursuant to the requirements for FMP development established under the Magnuson-Stevens Act.

The public is also advised by this action that interested participants should locate and preserve records that substantiate and verify their participation in the Northeast multispecies and Atlantic sea scallop fisheries in Federal waters. This control date notification has been determined to be not significant under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 2, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–23479 Filed 9–9–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 64, No. 175

Friday, September 10, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Interim Advisory Committee on Food Security; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the Interim Advisory Committee on Food Security. The meeting will be held from 1:00 p.m. to 4:00 p.m. on October 5, 1999, and from 9:00 a.m. to 4:00 p.m. on October 6, 1999, in the United States Department of Agriculture, Foreign Agricultural Service conference room, 14th & Independence Avenue, SW, Washington, DC 20250–1081.

As part of its agenda, the Interim Advisory Committee on Food Security will review the Department of State's proposed country selections for pilot food security projects; receive an update on the National Community Food Security Initiative; review food security issues for the upcoming November 1999 WTO Round in Seattle, Washington; and receive an update on Africa: Seed of Hope and related legislation. The meeting is open to the public. Any interested person may attend the meeting, may file written statements with the Committee before or after the meeting, or present any oral statements in accordance with procedures established by the Committee, to the extent that time available for the meeting permits.

Those wishing to attend the meeting should contact Mr. Ronald Harvey at the Agency for International Development, Ronald Reagan Building, Office of Agriculture and Food Security, 1300 Pennsylvania Avenue, NW, Room 2.11–044, Washington, DC 20523–2110, telephone (202) 712–1058, fax (202) 216–3060 or internet [rharvey@usaid.gov] with your full name.

Anyone wishing to obtain additional information about the Interim Advisory Committee on Food Security should contact Mr. Ronald Harvey, the Designated Federal Officer for BIFAD. Write him in care of the Agency for International Development, Ronald Reagan Building, Office of Agriculture and Food Security, 1300 Pennsylvania Avenue, NW, Room 2.11–044, Washington, DC 20523–2110, telephone him at (202) 712–1058 or fax (202) 216–3060.

Ronald Harvey,

USAID Designated Federal Officer, Office of Agriculture and Food Security, Economic Growth Center, Bureau for Global Programs.

[FR Doc. 99–23595 Filed 9–9–99; 8:45 am]

BILLING CODE 6116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Board for International Food and Agricultural Development One Hundred and Thirtieth Meeting; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of the one hundred and thirtieth meeting of the Board for International Food and Agricultural Development (BIFAD). The meeting will be held from 9:00 a.m. to 5:00 p.m. on October 7, 1999, and from 9:00 a.m. to 4:00 p.m. on October 8, 1999, in the Hemisphere—A meeting room in the Ronald Reagan Building and International Trade Center, located at 1300 Pennsylvania Avenue, NW, Washington, DC 20523.

As part of its agenda, BIFAD will discuss the role of international trade in transferring new production technologies and bolstering economic prosperity in developing countries; U.S. agribusiness interest in developing and expanding international markets; the modernization of agriculture; and a strategic framework for aiding displaced domestic producers. An additional element of the agenda will be a discussion of the Africa: Seeds of Hope Act, a Congressional legislature program whose primacy objective is to support sustainable and broad-based agricultural and rural development in sub-Sahara Africa. This Act provides development assistance for programs and projects that improve food security, health and nutrition, trade liberalization, and economic growth in Africa. BIFAD will also discuss the progress it has made in revising institutional arrangements and structure for the former Joint Committee on Agricultural Research (JCARD) and its predecessor joint committees.

Those wishing to attend the meeting or obtain additional information about BIFAD should contact Mr. Ron Harvey, the Designated Federal Officer for BIFAD. Write him in care of the Agency for International Development, Ronald Reagan Building, Office of Agricultural and Food Security, 1300 Pennsylvania Avenue, NW, Room 2.11–044, Washington DC 20523–2110 or telephone him at (202) 712–1058 or fax (202) 216–3010.

Ronald Harvey,

USAID Designated Federal Officer for BIFAD, Office of Agriculture and Food Security, Economic Growth Center, Bureau for Global Programs.

[FR Doc. 99–23594 Filed 9–9–99; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 3, 1999.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification.

Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

The Assistant Secretary for Administration, Office of Outreach

Title: Small Farmer Outreach, Training and Technical Assistance.

OMB Control Number: 0560–0163.

Summary of Collection: The Food, Agriculture, Conservation and Trade Act of 1990, title XXV, section 2501 and the Department of Agriculture Appropriation Acts provides funding for the Small Farmer Outreach Training and Technical Assistance Program, and the Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program. These Acts provide the Office of Outreach with the authority to make grants and enter into contracts, cooperative agreements, and other agreements with entities to provide outreach, training, and technical assistance; to encourage and assist small limited resource and economically/socially disadvantaged farmers and ranchers to own and operate farms and ranches; and to increase their participation and accessibility to agricultural programs. Information is collected from organizations who wish to apply for grants. After a grant is awarded, additional information regarding the status of each project must be supplied to the Office of Outreach.

Need and Use of the Information: Information is collected from organizations applying for training and assistance grants to determine eligibility and experience and to evaluate the proposed projects against the goals of the outreach program. Once a grant is awarded, the Office of Outreach uses project reports and other information to ensure that the projects are performing well and achieving the desired goals.

Description of Respondents: Not-for-profit institutions; Farms; State, Local or Tribal Government.

Number of Respondents: 150.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Quarterly; Monthly; Annually.

Total Burden Hours: 5,888.

Rural Business-Cooperative Service

Title: Survey for Local Cooperatives' Role in the Emerging Grain and Feed Industries.

OMB Control Number: 0570–0032.

Summary of Collection: The mission of the Cooperative Services Program (CS) of the Rural Business-Cooperative Service (RBS) is to assist farmer-owned cooperatives in improving the economic well being of their farmer-members. This is accomplished through a comprehensive program of research on structural, operational, and policy issues affecting cooperatives; technical advisory assistance to individual cooperatives and to groups of producers who wish to organize cooperatives; and development of educational and informational material. The interplay between market and agricultural policy has shaped, and continues to shape the potential activities of grain marketing cooperatives. The passage of the Capper-Volstead Act in 1922, the Cooperative Marketing Act of 1926, and the Agricultural Marketing Act of 1929 were responses to the drastic declines in the prices for most agricultural commodities after World War I. The alternative was direct intervention by the federal government to limit supplies on the domestic market in order to raise prices. Cooperatives are found at all levels of the grain marketing industry, but their presence is strongest at the origination stage (procuring grain from farmers), and weakest in grain exporting. RBS will collect information through telephone and personal interviews surveys.

Need and Use of the Information: RBS will collect information through a survey to establish a baseline of cooperative resources and preferences. This information may ultimately provide a basis for structuring the standardized production and marketing grain sector desired by end-users. The information will be used by regional cooperatives to facilitate strategic planning with member local cooperatives.

Description of Respondents. Business or other for-profit.

Number of Respondents: 800.

Frequency of Responses: Reporting; Annually.

Total Burdenhours: 800.

Farm Service Agency

Title: Peanut Quota for 1996 through 2002 Crops—7 CFR 729 & 1446.

OMB Control Number: 0560–0006.

Summary of Collection: The Federal Agriculture Improvement and Reform Act of 1996 amended the Agriculture Adjustment Act of 1938, as amended, and the Agriculture Act of 1949, as amended which authorized the peanut program. The 1996 Act changed the peanut poundage quota program by reducing the national quota, providing temporary seed quota allocation, removing the carryover of undermarked quota, allowing for the transfer of peanut poundage quota to any other farm within the same State and providing for increasing marketing assessments under certain conditions to cover losses in area marketing pools. The Farm Service Agency (FSA) will collect information using various forms to determine peanut marketing activity and process quota allocations.

Need and Use of the Information: FSA will collect information to monitor and control compliance with the peanut program as outlined in CFR parts 729 and 1446. If the information is not monitored and data not required, the peanut program could not operate and the Act would not be implemented as required by Congress.

Description of Respondents: Not-for-profit institutions; Individuals or households; Federal Government.

Number of Respondents: 50,000.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Weekly; Monthly; Annually.

Total Burden Hours: 301,690.

Forest Service

Title: Meeting National Forest Recreationists' Needs through a Customer Service Paradigm.

OMB Control Number: 0596–NEW.

Summary of Collection: The Forest and Rangeland Renewable Resources Research Act of 1978 (P.L. 95–307, 92 Stat. 353, as amended: 16 U.S.C. 1600 (note), 1561 (note), 1641–1647) directs the Secretary of Agriculture to research the multiple uses and products, including recreation of forests and rangelands to facilitate their most effective use. Users of urban proximate National Forest wildland areas come from a variety of ethnic/racial, income, age, educational, and other socio-demograpic categories. Forest Service (FS) personnel will conduct a study to gain a better understanding of how residents living in an urban environment close to National Forest Systems lands, get or receive information about the recreational opportunities on these land. FS will collect information using mail-in questionnaries, telephone interviews, and face-to-face interviews.

Need and Use of the Information: FS will collect information on gender, age, education, ethnic or racial group affiliation, etc. The information will be used to assist resource managers in their

effective management of recreation activities in the region studied. In addition, the Wildlife Recreation and Urban Cultures Project will used the data to further analyze scientific issues involved, and expand its information base on visitor characteristics, customer service, and management of high quality recreation opportunities. If the information is not collected resource managers will have to make visitor based decisions on very limited, potentially biased, or non-existent information.

Description of Respondents: Individuals or households.

Number of Respondents: 365.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 103.

Forest Service

Title: Communication and Interpretation For Urban Proximate Forest Visitors

OMB Control Number: 0596–NEW.

Summary of Collection: The Forest and Rangeland Renewable Resources Research Act of 1978 (P.L. 95–307, 92 Stat. 353, as amended: 16 U.S.C. 1600 (note), 1561 (note), 1641–1647) directs the Secretary of Agriculture to research the multiple uses and products, including recreation of forests and rangelands to facilitate their most effective use. Users of urban proximate National Forest wildland areas come from a variety of ethnic/racial, income, age, educational, and other socio-demograpic categories. Forest Service (FS) personnel will conduct a study to further their understanding of recreationists' needs by applying and improving on existing interpretation and communication practices. A direct benefit to the affected public is anticipated through improvements in communications and interpretative services, more informed recreation management decisions, and increased attention to the diverse customers served by the National Forests. FS will collect information using mail-in questionnaries, telephone interviews, and face-to-face interviews.

Need and Use of the Information: FS will collect information on gender, age, education, ethnic or racial group affiliation, etc. The information will be used to assist resource managers in expanding their information base on communication with visitors, and promote the management of high quality recreation. If the information is not collected resource managers will have to make visitor based decisions on very limited, potentially biased, or non-existent information.

Description of Respondents: Individuals or households.

Number of Respondents: 515.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 145.

Forest Service

Title: Recreation on the San Gabriel Canyon Study.

OMB Control Number: 0596–NEW.

Summary of Collection: The Forest and Rangeland Renewable Resources Research Act of 1978 (P.L. 95–307, 92 Stat. 353, as amended; 16 U.S.C. 1600 (note), 1561 (note), 1641–1647) directs the Secretary of Agriculture to research the multiple uses and products, including recreation of forests and rangelands to facilitate their most effective use. Users of urban proximate National Forest wildland areas come from a variety of ethnic/racial, income, age, educational, and other socio-demographic categories. The activities pursued, information sources utilized, and site attributes preferred are just some of the items affected by these differences. There is no literature available about use along the entire watershed which includes other areas of the East and West Forks as well as use of the North Fork. Forest Service (FS) personnel will conduct a study to enable more effecive management of the watershed. A direct benefit to the affected public is anticipated through improvements in customer service, more informed recreation management decisions, and increased attention to the diverse customers served by the National Forests. FS will collect information using questionnaires and face-to-face interviews.

Need and Use of the Information: FS will collect information on gender, age, education, ethnic or racial group affiliation, etc. The information will be used to assist resource managers in their effective management of recreation activities in the San Gabriel Canyon. If the information is not collected resource managers will have to make visitor based decisions on very limited, potentially biased, or non-existent information.

Description of Respondents: Individuals or households.

Number of Respondents: 400.

Frequency of Responses: Reporting: on occasion.

Total Burden Hours: 100.

Forest Service

Title: Recreational and Management Preferences Survey.

OMB Control Number: 0596–NEW.

Summary of Collection: The Forest and Rangeland Renewable Resources Research Act of 1978 (P.L. 95–307, 92 Stat. 353, as amended; 16 U.S.C. 1600 (note), 1561 (note), 1641–1647) directs the Secretary of Agriculture to research the multiple uses and products, including recreation of forests and rangelands to facilitate their most effective use. Users of urban proximate National Forest wildland areas come from a variety of ethnic/racial, income, age, education, and other socio-demographic categories. The activities pursued, opinions about threatened and endangered species, preferred management approaches, and degree of trust in the agency are just some of the items affected by these differences. Additional challenges include increases in the number of visitors to recreation areas, and an increasing need to protect species and develop effective interventions to address recreational impacts. Without this study the Forest Service (FS) personnel in the southern province will be ill-equipped to handle management changes required to address recreational impacts and protect plant and animals species. A direct benefit to the affected public is anticipated through improvements in customer service, more informed recreation management decisions, and increased attentiont o the diverse customers served by the National Forests. FS will collect information using questionnaires and face-to-face interviews.

Need and Use of the Information: FS will collect information on gender, age, education, ethnic or racial group affiliation, etc. The information will be used to assist resource managers in their effective management of recreation activities in the region studied. Also, the information will provide further knowledge, from the perspective of the recreating public, on how species and their management are viewed. If the information is not collected resource managers will have to make species management decisions without the views of the recreating public, who will be impacted by many of those choices.

Description of Respondents: Individuals or households.

Number of Respondents: 1,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 250.

Forest Service

Title: The Day Use Study.

OMB Control Number: 0596–NEW.

Summary of Collection: The Forest and Rangeland Renewable Resources Research Act of 1978 (P.L. 95–307, 92 Stat. 353, as amended; 16 U.S.C. 1600 (note), 1561 (note), 1641–1647) directs the Secretary of Agriculture to research the multiple uses and products, including recreation of forests and rangelands to facilitate their most effective use. Users of urban proximate National Forests in Southern California come from a variety of ethnic/racial, income, age, educational, and other socio-demographic categories. The activities pursued, sources utilized, and site attributes preferred are just some of the items affected by these differences. Additional information is needed for the managers of the National Forests in Southern California, in part to validate results and in part because of the continuously changing visitor population recreating on the National Forests of Southern California. Without this study the Forest Service (FS) personnel will be ill-equipped to handle management changes required in response to visitor needs and preferences. A direct benefit to the affected public is anticipated through improvements in customer service, more informed recreation management decisions, and increased attention to the diverse customers served by the National Forests. FS will collect information using questionnaires and face-to-face interviews.

Need and Use of the Information: FS will collect information on gender, age, education, ethnic or racial group affiliation, etc. The information will be used to assist resource managers in their effective management of recreation activities in the region studied. The Wildland Recreation and Urban Cultures Project will use the information to further expand its information base on visitor characteristics, communication, and mitigation of depreciative behaviors, such as vandalism. If the information is not collected resource managers will have to make species management decisions without the views of the recreating public, who will be impacted by many of those choices.

Description of Respondents: Individuals or households.

Number of Respondents: 600.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 150.

Forest Service

Title: Recreational Participation and Environmental Activity Survey.

OMB Control Number: 0596–NEW.

Summary of Collection: The Forest and Rangeland Renewable Resources Research Act of 1978 (P.L. 95–307, 92 Stat. 353, as amended; 16 U.S.C. 1600 (note), 1561 (note), 1641–1647) directs the Secretary of Agriculture to research the multiple uses and products, including recreation of forests and rangelands to facilitate their most effective use. Users or urban proximate National Forest wildland, regional parks, and state recreation areas come from a variety of ethnic/racial, income, age, educational, and other socio-demographic categories. The activities pursued, amount of recreational participation overall, environmentally focused activities, and preferred site features are just some of the items affected by these differences. Without this study the Forest Service (FS) personnel in the southern province will be less-equipped to address recreational impacts and to understand what role recreation plays in environmental activities. A direct benefit to the affected public is anticipated through improvements in customer service, more informed recreation management decisions, and increased attention to the diverse customers served by the National Forests. FS will collect information using questionnaires and face-to-face interviews.

Need and Use of the Information: FS will collect information on socio-demographic characteristics of visitors including ethnic identity, visitation history and activities, annual recreational patterns, environmentally focused activities on-site and in the home, and preferred site features. The information will be used to further expand its information base on visitor characteristics, the role of ethnicity in environmental action and preferred site development, and the role of recreation in environmental. If the information is not collected resource managers will have to make species management decisions without the views of the recreating public, who will be impacted by many of those choices.

Description of Respondents: Individuals or households.

Number of Respondents: 500.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 125.

Barbara LaCour,

Departmental Clearance Officer.

[FR Doc. 99–23495 Filed 9–9–99; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Request for Comments; Publication Comment Cards

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intention to establish a new information collection. The collected information will help the Forest Service prepare scientific research publications that better serve those who request them. Information will be collected from individuals, institutions, organizations, and interest groups who receive scientific research publications produced by the Forest Service Southern Research Station.

DATES: Comments must be received in writing on or before November 9, 1999.

ADDRESSES: Send written comments to Marketing, Communications Office, Southern Research Station, Forest Service, USDA, P.O. Box 2680, Asheville, NC 28802.

Comments also may be submitted via facsimile to (828) 257–4840 or by email to mcarlson/srs@fs.fed.us.

The public may inspect comments received at the Southern Research Station, 200 Weaver Boulevard, Asheville, North Carolina. Visitors are urged to call ahead to facilitate entrance into the building.

FOR FURTHER INFORMATION CONTACT: Melissa Carlson, Communications Staff, at (828) 257–4849.

Description of Information Collection

The following describes the new information collection:

Title: Publication Comments Card.

OMB Number: New.

Expiration Date of Approval: New.

Type of Request: This is a new information collection and has not received approval from the Office of Management and Budget.

Abstract: Executive Order 12862, issued September 11, 1993, directed Federal agencies to change the way they do business, to reform their management practices, to provide service to the public that matches or exceeds the best service available in the private sector, and to establish and implement customer service standards to carry out principles of the National Performance Review. In response to this Executive Order, the Forest Service Southern Research Station developed a "Publication Comment" Card for inclusion when distributing scientific research publications.

Since the early 1920's, Southern Research Station scientists have published the results of their studies on temperate and tropical forests, forest resources, and forest products, as well as important conclusions about the dynamics of natural timber stands and plantations, watershed management, and wildlife habitats. These studies have provided long-term data that has

become increasingly valuable to landowners and others involved in natural resource land management. Data from the Publication Comment Card will help the Southern Research Station assess if Station publications meet the customer's expectations and address the customer's needs. The collected information also will help scientists and authors provide relevant information on effective, efficient, responsible land management in the Southern United States.

Forest Service research personnel will enclose Publication Comment Cards when providing publications to recipients in person or by mail. These Cards and some Station publications also will be made available via the Internet. The Card includes the following statements that will be rated on a scale of 1 to 5, with 1 being "Strongly agree" and 5 being "Strongly disagree."

1. The information is what I expected, based on the title and abstract.
2. The publication is well organized.
3. The content is presented clearly.
4. The technical subject matter was explained sufficiently to meet my needs.
5. The graphics (Photographs, tables, charts) were helpful.
6. This research information is useful to me.
7. I will continue to request Southern Research Station publications.

Respondents will complete the Publication Comment Cards and return them in person or mail them back to the Southern Research Station via surface mail or electronically via the Internet.

Data gathered in this information collection is not available from other sources.

Estimate of Burden: 5 minutes.

Type of Respondents: Respondents will include U.S. citizens; citizens of other countries; landowners or land lessees; timber customers; other forest-products customers; research scientists; special-use customers; educators; librarians; historians; writers; representatives of other Federal, State, county, or local Government agencies and representatives of foreign governments.

Estimated Number of Respondents: 19,500.

Estimated Number of Responses per Respondent: 3.

Estimated Total Annual Burden on Respondents: 1,625 hours.

Comment is Invited

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of Comment

All comments received in response to this notice, including name and address when provided, will become a matter of public record. Comments will be summarized and included in the request for Office of Management and Budget approval.

Dated: September 2, 1999.

Robert Lewis, Jr.

Deputy Chief for Research and Development.

[FR Doc. 99–23592 Filed 9–9–99; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Nebraska City, Nebraska, October 21–23, 1999. The purpose of the meeting is to discuss emerging issues in urban and community forestry.

DATES: The meeting will be held October 21–23 1999.

ADDRESSES: The meeting will be held at the Lied Conference Center, 2700 Sylvan Road, Nebraska City, Nebraska. A tour of local projects will be held on October 21 from 1:30 p.m. to 5:00 p.m.

Individuals who wish to speak at the meeting or to propose agenda items must send their names and proposals to Suzanne M. del Villar, Executive Assistant, National Urban and Community Forestry Advisory Council, 20628 Diane Drive, Sonora, CA 95370.

FOR FURTHER INFORMATION CONTACT: Suzanne M. del Villar, Cooperative Forestry Staff, (209) 536–9201.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided and individuals who have made written requests by October 8 will have the opportunity to address the Council at those sessions. Council discussion is limited to Forest Service staff and Council members.

Dated: August 27, 1999.

Janice H. McDougle,

Deputy Chief, State and Private Forestry.

[FR Doc. 99–23591 Filed 9–9–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Washington Provincial Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Washington Provincial Advisory Committee will meet on Friday, September 24, 1999, at the Oak Tree Restaurant meeting room, located at 102 Atlantic, Woodland, Washington. The meeting will begin at 9:30 a.m. and continue until 5 p.m. The purpose of the meeting is to present information about: (1) Managing Recreation within the Northwest Forest Plan; (2) Watershed Councils; and provide for (3) a Public Open Forum. All Southwest Washington Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The "open forum" provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The "open forum" is scheduled as part of agenda item (3) for this meeting. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct question regarding this meeting to Linda Turner, Public Affairs Specialist, at (360) 891–5195, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE. 51st Circle, Vancouver, WA 98682.

Dated: September 3, 1999.

Claire Lavendel,

Forest Supervisor.

[FR Doc. 99–23619 Filed 9–9–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Florida

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Florida for review and comment.

SUMMARY: It is the intention of NRCS in Florida to issue the following conservation practice standards for Florida: Irrigation Water Management (Code 449); Nutrient Management (Code 590); Forage Harvest Management (Code 511); Grazing Land Mechanical Treatment (Code 548); Waste Utilization (Code 633), in Section IV of the FOTG.

DATES: Comments will be received on or before October 12, 1999.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to T. Niles Glasgow, State Conservationist, Natural Resources Conservation Service (NRCS), P.O. Box 141510, Gainesville, Florida 32614–1510. Copies of the practice standards will be made available upon written request.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agricultural Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS in Florida will receive comments relative to the proposed changes. Following that period a determination will be made by NRCS in Florida regarding disposition of those comments and a final determination of change will be made.

Dated: August 31, 1999.

T. Niles Glasgow,

State Conservationist, Natural Resources Conservation Service, Gainesville, Florida.

[FR Doc. 99–23607 Filed 9–9–99; 8:45 am]

BILLING CODE 3410–16–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: October 12, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.
2. The action will result in authorizing small entities to furnish the commodities and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Tape, Pressure-Sensitive Adhesive
7510–00–283–0612
7510–00–290–2024
7510–00–290–2026
7510–00–290–2027
7510–00–297–6655
7510–00–297–6656
NPA: Cincinnati Association for the Blind, Cincinnati, Ohio

Services

Administrative Services
Federal Center/Battle Creek, Defense Reutilization & Marketing Service (DRMS), 74 North Washington, Battle Creek, Michigan
NPA: Peckham Vocational Industries, Inc., Lansing, Michigan

Administrative Services
National Advocacy Center, 1620 Pendleton Street, Columbia, South Carolina
NPA: Columbia Vocational Rehabilitation Center, Columbia, South Carolina

Grounds Maintenance
Naval and Marine Corps Reserve Center, 6735 North Basin Avenue, Portland, Oregon
NPA: Portland Habilitation Center, Inc., Portland, Oregon

Janitorial/Custodial
Naval Reserve Center, Fort Harrison, South Avenue, Helena, Montana
NPA: Helena Industries, Inc., Helena, Montana

Mailroom Operation
U.S. Army Space and Missile Defense Command (SMDC), 106 Wynn Drive, Huntsville, Alabama
NPA: Huntsville Rehabilitation Foundation, Huntsville, Alabama

Switchboard Operation
Ellsworth Air Force Base, South Dakota
NPA: BH Services, Inc., Box Elder, South Dakota

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 99–23576 Filed 9–9–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities previously furnished by such agencies.

EFFECTIVE DATE: October 12, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On January 11, and July 30, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (64 FR 1591, 41373 and 41374) of proposed additions to and deletion from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Janitorial/Custodial

Buildings 115, 985, 995, 2525, 2765, 2766, P600T and R–19, Naval Air Station, Whidbey Island, Washington

Mailroom Operation

Bureau of the Census, Suitland Federal Center and Metropolitan Area, 4700 Silver Hill Road, Suitland, Maryland

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodities.

3. The action may result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities are hereby deleted from the Procurement List:

Ladder, Straight (Wood)
5440–00–242–7151
5440–00–814–5084

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 99–23577 Filed 9–9–99; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DoC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Patent and Trademark Office (PTO).

Title: Electronic Application for Patent Examiners—Job Application Rating System (JARS).

Form Number: PTO/2041.

OMB Approval Number: None.

Agency Form Number: None.

Type of Request: New collection.

Burden: 1,850 hours annually.

Number of Respondents: 3,700 responses annually.

Avg. Hours Per Response: Based on estimates and knowledge of the form, the PTO estimates the burden hours required by the public to gather, prepare, and submit Form PTO/2041, Electronic Application for Patent Examiners—Job Application Rating System (JARS), to be approximately 30 minutes. Depending on the situation, it could take as little as 20 minutes or as much as one hour to complete the on-line application.

Needs and Uses: The Electronic Application for Patent Examiners—Job Application Rating System (JARS), Form PTO/2041, will be used by the public to apply for a position as a Patent Examiner in a user-friendly process. The PTO will use the electronic transmission of this information to review and rate applicants on-line almost instantaneously. It will also be used by the PTO to expedite the hiring process by eliminating the time used in the mail distribution process, thereby streamlining labor and reducing costs.

Affected Public: Individuals or households, farms, Federal Government, and state, local, or tribal governments.

Frequency: On occasion.

Respondent's Obligation: Required to obtain a benefit.

OMB Desk Officer: Peter Weiss, (202) 395–3630.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Departmental Forms Clearance Officer, Office of the Chief Information Officer, (202) 482–3272, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication to Peter Weiss, OMB Desk Officer, Room 10236, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: September 1, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–23571 Filed 9–9–99; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Minority Business Development Agency (MBDA).

Title: Narrative Reporting Requirements.

Agency Form Number: None.

OMB Approval Number: Previously approved under 0640–0007.

Type of Request: Reinstatement of a previously approved collection.

Burden: 2,208 hours.

Number of Respondents: 69 (multiple responses).

Avg. Hours Per Response: 8 hours.

Needs and Uses: MBDA's primary mission is to increase the opportunity for minority entrepreneurs to participate in our national economy through the formation and development of competitive minority—owned firms. To do this MBDA awards grants and cooperative agreements for the delivery of services to help minority firms and individuals. Effective management requires MBDA to evaluate the effectiveness of the services delivered. Thus, the performance reports are needed to evaluate individual projects and overall program performance by comparing accomplishments against planned performance. The information is used to evaluate the overall results of MBDA's funded programs.

Affected Public: Not-for-profit institutions, businesses or other for-profit organizations, individuals, state, local or tribal government.

Frequency: Quarterly.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: David Rostker (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Departmental Forms Clearance Officer, Office of the Chief Information Officer, (202) 482–3272, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: September 2, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer

[FR Doc. 99–23572 Filed 9–9–99; 8:45 am]

BILLING CODE 3510–21–P

DEPARTMENT OF COMMERCE

Census Bureau

Manufacturers' Shipments, Inventories and Orders (M3) Supplement: Unfilled Orders Benchmark Survey

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 9, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Lee Wentela, U.S. Census Bureau, Room 2232 FB–4, Washington, DC 20233, on (301) 457–4832.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau presently conducts the Manufacturers' Shipments, Inventories, and Orders (M3) survey under Office of Management and Budget (OMB) control number 0607–0008. The M3 survey collects monthly data on shipments, inventories, and new and unfilled orders from manufacturing companies. The orders, as well as the shipments and inventory data, are used widely and are valuable tools for analysts of business cycle conditions, including members of the Council of Economic Advisers, the Treasury Department, and the business community. The proposed supplement for unfilled orders will collect value of unfilled orders at the end of 1999. Estimates of unfilled orders will be made for industries classified according to the new North American Industry Classification System (NAICS). These estimates will provide benchmark levels of unfilled orders by NAICS industries for the monthly M3 indicator series.

The monthly M3 estimates are based on a relatively small sample and reflect primarily the month-to-month changes of large companies. There is a clear need for periodic benchmarking of the M3 estimates to reflect the entire manufacturing universe. The Annual Survey of Manufactures (OMB control number 0607–0449) provides annual benchmarks for the shipments and inventory data collected in this monthly survey. However, there is no annual benchmark for new and unfilled orders estimates. Because of the methodology used for the monthly indicator, any discrepancy between the indicator series and statistically derived measures can become exaggerated over time and the results can be misleading to policy makers. The last benchmark survey for unfilled orders estimates was for the year 1986. In addition to the long period between benchmark estimates, the conversion from the Standard Industrial Classification system to NAICS further exacerbates any discrepancy and makes the need for the benchmark survey more critical.

II. Method of Collection

The Census Bureau will use mail out/mail back survey forms to collect the data. Companies will be asked to respond to the survey within 45 days of receipt. Letters encouraging participation will be mailed to companies that have not responded by the designated time.

III. Data

OMB Number: 0607–0561 (to be reinstated).

Form Number: MA–300.

Type of Review: Regular.

Affected Public: Businesses, large and small, or other for profit organizations.

Estimated Number of Respondents: 10,000.

Estimated Time Per Response: .5 hours.

Estimated Total Annual Burden Hours: 5,000.

Estimated Total Annual Cost: $66,200.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance

of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 3, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–23512 Filed 9–9–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Census Bureau

Survey of Manufacturers' Shipments to Federal Government Agencies

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 9, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Lee Wentela, U.S. Census Bureau, Room 2232 FB–4, Washington, DC 20233, on (301) 457–4832.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau presently conducts the Manufacturers' Shipments, Inventories, and Orders (M3) survey under Office of Management and Budget (OMB) control number 0607–0008. The M3 survey collects monthly data on shipments, inventories, and new and unfilled orders from manufacturing companies. The orders, as well as the shipments and inventory data, are used widely and are valuable tools for analysts of business cycle conditions, including members of the Council of Economic Advisers, the Treasury Department, and the business community. The proposed Survey of Manufacturers' Shipments to Federal Government Agencies will collect value of shipments from manufacturers in 1999, the value of shipments to Federal agencies under prime contracts by selected agencies, and the value of shipments which are subcontracted from Federal contracts. Estimates of shipments to the Federal government will be made for industries classified according to the new North American Industry Classification System (NAICS). These estimates will provide benchmark levels of shipments for government and nongovernment categories by NAICS industries for the monthly M3 series.

The monthly M3 estimates are based on a relatively small sample and reflect primarily the month-to-month changes of large companies. There is a clear need for periodic benchmarking of the M3 estimates to reflect the entire manufacturing universe. The Annual Survey of Manufactures (OMB control number 0607–0449) provides annual benchmarks for the shipments and inventory data collected in this monthly survey. However, the annual survey does not distinguish between government and non-government shipments. Because of the methodology used for the monthly indicator, any discrepancy between the indicator series and statistically derived measures can become exaggerated over time and the results can be misleading to policy makers. The last benchmark survey for government shipments was for the year 1992. In addition to the long period between benchmark estimates, the conversion from the Standard Industrial Classification system to NAICS further exacerbates any discrepancy and makes the need for the benchmark survey more critical.

II. Method of Collection

The Census Bureau will use mail out/mail back survey forms to collect the data. Companies will be asked to respond to the survey within 45 days of receipt. Letters encouraging participation will be mailed to companies that have not responded by the designated time.

III. Data

OMB Number: 0607–0763 (to be reinstated).

Form Number: MC–9675.

Type of Review: Regular.

Affected Public: Businesses, large and small, or other for profit organizations.

Estimated Number of Respondents: 2,000.

Estimated Time Per Response: 1 hour.

Estimated Total Annual Burden Hours: 2,000.

Estimated Total Annual Cost: $26,480.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: September 3, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–23513 Filed 9–9–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–807]

Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review and New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 7, 1999, the Department of Commerce published in the **Federal Register** the preliminary results of the administrative review and new shipper review of the antidumping duty order on certain steel concrete reinforcing bars from Turkey. The administrative review covers one manufacturer/exporter of the subject merchandise to the United States, Ekinciler. The new shipper review covers one manufacturer/exporter of the subject merchandise to the United States, ICDAS. The periods of review are October 10, 1996, through March 31, 1998, in the administrative review, and October 10, 1996, through July 31, 1998, in the new shipper review.

We gave interested parties an opportunity to comment on our preliminary results. We have considered the comments received in these final results and have changed the results from those presented in the preliminary results of review.

EFFECTIVE DATE: September 10, 1999.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson or Irina Itkin, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1776 or (202) 482–0656, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 7, 1999, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of the 1996–1998 administrative review and new shipper review of the antidumping duty order on certain steel concrete reinforcing bars (rebar) from Turkey (64 FR 24578). The Department has now completed these administrative reviews, in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Reviews

The product covered by these reviews is all stock deformed steel concrete reinforcing bars sold in straight lengths and coils. This includes all hot-rolled deformed rebar rolled from billet steel, rail steel, axle steel, or low-alloy steel. It excludes (i) plain round rebar, (ii) rebar that a processor has further worked or fabricated, and (iii) all coated rebar. Deformed rebar is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7213.10.000 and 7214.20.000. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Periods of Review

The period of review (POR) is October 10, 1996, through March 31, 1998, for Ekinciler Holding A.S. and Ekinciler Demir Celik A.S. (collectively "Ekinciler") and October 10, 1996, through July 31, 1998, for ICDAS Celik Enerji Tersane ve Ulasim Sanayi A.S. (ICDAS).

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (1998).

Level of Trade and Constructed Export Price Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine normal value (NV) based on sales in the comparison market at the same level of trade as export price (EP) or constructed export price (CEP). The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses (SG&A) and profit. For EP, the U.S. level of trade is also the level of the starting-price sales, which are usually from the exporter to the unaffiliated U.S. customer. For CEP, it is the level of the constructed sales from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (Nov. 19, 1997).

Neither Ekinciler nor ICDAS claimed that it made home market sales at more than one level of trade. Based on the information on the record, no level of trade adjustment was warranted for either company. For a detailed explanation of this analysis, see the memorandum entitled "Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review on Certain Steel Concrete Reinforcing Bars from Turkey," dated April 30, 1999 ("the concurrence memorandum").

Regarding Ekinciler, in order to determine whether NV was established at a level of trade which constituted a more advanced stage of distribution than the level of trade of the CEP, we compared the selling functions performed for home market sales with those performed with respect to CEP transactions, which exclude those functions related to economic activities occurring in the United States, pursuant to section 772(d) of the Act. We found that Ekinciler performed essentially the same selling functions in its sales offices in Turkey for both home market and U.S. sales. Therefore, Ekinciler's sales in Turkey were not at a more advanced stage of marketing and distribution than the constructed U.S. level of trade, which represents an F.O.B. foreign port price after the deduction of expenses associated with U.S. selling activities. Because we find that no difference in level of trade exists between markets, we have not granted a CEP offset to Ekinciler. For further discussion, see the concurrence memorandum noted above.

Comparisons to Normal Value

To determine whether sales of rebar from Turkey were made in the United States at less than NV, we compared the CEP or EP, as appropriate, to the NV. Because Turkey's economy experienced high inflation during the POR (over 70 percent), we limited, as is Department practice, our comparisons to home market sales made during the same month in which the U.S. sale occurred and did not apply the "90/60" contemporaneity rule (*see, e.g., Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 63 FR 35191 (June 29, 1998) (affirming *Notice of Preliminary Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 63 FR 6155, 6158 (Feb. 6, 1998)); and *Certain Porcelain-on-Steel*

Cookware from Mexico: Final Results of Antidumping Duty Administrative Review, 62 FR 42496, 42503 (Aug. 7, 1997)). This methodology minimizes the extent to which calculated dumping margins are overstated or understated due solely to price inflation that occurred in the intervening time period between the U.S. and home market sales.

We first attempted to compare products sold in the U.S. and home markets that were identical with respect to the following hierarchical characteristics: grade, size, ASTM specification, and form. Where there were no home market sales of merchandise that were identical in these respects to the merchandise sold in the United States, we compared U.S. products with the most similar merchandise sold in the home market based on the hierarchy of characteristics listed above.

Export Price/Constructed Export Price

For all U.S. sales by Ekinciler, we used CEP, in accordance with section 772(b) of the Act. For all U.S. sales by ICDAS, we used EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted based on the facts of record.

A. Ekinciler

We based CEP on packed prices to the first unaffiliated purchaser in the United States. We made deductions from CEP for discounts, as appropriate. We also made deductions for foreign brokerage and handling expenses, inspection fees, ocean freight, marine insurance, U.S. customs duties, discharge expenses (offset by despatch revenue), wharfage expenses, sorting expenses, truck loading expenses, U.S. warehousing expenses and insurance, U.S. inland freight, and U.S. inland insurance, where appropriate, in accordance with section 772(c)(2)(A) of the Act. We based the amount of foreign brokerage and handling expenses on the amount that Ekinciler paid to an affiliated party, because we determined that these expenses were at arm's length. For further discussion, see the concurrence memorandum.

We made additional deductions from CEP, where appropriate, for Exporters' Association fees, bank charges, credit expenses, U.S. indirect selling expenses, including inventory carrying costs, in accordance with section 772(d)(1) of the Act. We recalculated U.S. credit expenses using the weighted average of the U.S. interest rates reported in Ekinciler's response. This average rate was based on the actual borrowing experience of Ekinciler's affiliated parties for their U.S.-dollar-denominated loans. *See Comment 4.*

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit, to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Ekinciler and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

B. ICDAS

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions for foreign inland freight expenses, ocean freight expenses, inspection fees, and loading charges, where appropriate, in accordance with section 772(c)(2)(A) of the Act.

Normal Value

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., the aggregate volume of home market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we compared the volume of each respondent's home market sales of the foreign like product to the volume of U.S. sales of subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that each respondent had a viable home market during the POR. Consequently, we based NV on home market sales.

Both respondents made sales of rebar to affiliated parties in the home market during the POR. Consequently, we tested these sales to ensure that, on average, they were made at arm's-length prices, in accordance with 19 CFR 351.403(c). To conduct this test, we compared the unit prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales were made at arm's length (*see* 19 CFR 351.403(c) and the preamble to the Department's regulations (*see Antidumping Duties; Countervailing Duties; Final rule*, 62 FR 27296, 27355 (May 19, 1997)). Accordingly, for Ekinciler, we only included in our margin analysis those sales to the affiliated party that were made at arm's length. Regarding ICDAS, we did not include in our analysis any sales made to affiliated parties because they failed the arm's-length test. Pursuant to 19 CFR 351.403(d), we based our analysis on the downstream sales of the affiliates to their unaffiliated customers. *See* the memorandum entitled "Arms-Length Test Performed in the Antidumping Duty Administrative New Shipper Review on Rebar from Turkey" from Irina Itkin to the File, dated September 16, 1998.

A. Ekinciler

Pursuant to section 773(b)(2)(A)(ii) of the Act, there were reasonable grounds to believe or suspect that Ekinciler had made home market sales at prices below their cost of production (COP) in this (the first) review because the Department had disregarded sales below the COP for this company in the LTFV investigation. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey*, 62 FR 9737, 9740 (Mar. 4, 1997) (*Rebar from Turkey*). As a result, the Department initiated an investigation to determine whether Ekinciler made home market sales during the POR at prices below their respective COPs.

We calculated the COP based on the sum of Ekinciler's cost of materials and fabrication for the foreign like product, plus amounts for SG&A and packing costs, in accordance with section 773(b)(3) of the Act. We relied on Ekinciler's information as submitted, except in the specific instances discussed below.

(1) We considered Ekinciler to be the manufacturer of all rebar which was rolled by unaffiliated subcontractors because we find that Ekinciler controlled the production of this merchandise. This is consistent with our treatment of Ekinciler's subcontracted production in the LTFV investigation. *See* the memorandum entitled "Antidumping Administrative Review on Certain Steel Concrete Reinforcing Bars (Rebar) from Turkey—Determination of Who Is the Producer for Rebar Rolled by Unaffiliated Subcontractors" from James Maeder to Louis Apple, dated April 30, 1999. *See also Stainless Steel Flanges From India; Notice of Final Determination of Sales at Less Than Fair Value*, 58 FR 68853 (Dec. 29, 1993); and

(2) We revised the calculation of depreciation expenses related to the revaluation of fixed assets in order to use the index published by the Turkish Ministry of Finance. *See* World Accounting, Orsini, Gould, McAllister, & Parikh, Matthew Bender & Co., Inc., 1998, page TRK–30.

As noted above, we determined that the Turkish economy experienced significant inflation during the POR. Therefore, in order to avoid the distortive effect of inflation on our comparison of costs and prices, we requested that Ekinciler submit the product-specific costs of manufacturing (COM) incurred during each month of the POR. We calculated a POR-average COM for each product after indexing the reported monthly costs during the POR to an equivalent currency level using the Turkish Wholesale Price Index from the International Financial Statistics published by the International Monetary Fund. We then restated the POR-average COMs in the currency values of each respective month.

We compared the weighted-average COP figures to home market prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether sales had been made at prices below the COP. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges and selling expenses.

In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made: (1) In substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. *See* sections 773(b)(2)(B), (C), and (D) of the Act.

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of Ekinciler's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of Ekinciler's sales of a given product were at prices below the COP, we found that sales of that model were made in "substantial quantities" within an extended period of time (as defined in section 773(b)(2)(B) of the Act), in accordance with section 773(b)(2)(C)(i) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for purposes of this administrative review, we disregarded the below-cost sales and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

In all cases, we found that comparison products existed for which there were sales at prices above the COP. Accordingly, we based NV on ex-factory, ex-warehouse or delivered prices to home market customers. We excluded from our analysis home market re-sales by Ekinciler of merchandise produced by unaffiliated companies. Where appropriate, we added an amount for interest revenue received from home market customers for delayed payment of invoices. Also where appropriate, we made deductions from the starting price for foreign inland freight, inland insurance, and off-site warehousing expenses, in accordance with section 773(a)(6)(B) of the Act. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act.

Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable costs of manufacturing for the foreign like product and subject merchandise, using POR-average costs as adjusted for inflation for each month of the POR, as described above.

B. ICDAS

We based NV on the starting price to unaffiliated customers. We made deductions for inland freight expenses (offset by freight revenue), where appropriate, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), we made circumstance-of-sale adjustments by deducting home market credit expenses (offset by interest revenue), where appropriate, and adding U.S. credit expenses, bank charges, and Exporters' Association fees. We recalculated home market credit expenses using the interest rates observed at verification. We included bank charges related to short-term loans in our recalculation. *See Comment 14.*

In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act.

Currency Conversion

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. However, the Federal Reserve Bank does not track or publish exchange rates for Turkish Lira. Therefore, we made currency conversions based on the daily exchange rates from the Dow Jones News/Retrieval Service. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod from Trinidad & Tobago*, 63 FR 9177, 9181 (Feb. 24, 1998) (*Steel Wire Rod from Trinidad & Tobago*). *See Comment 13.*

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received case briefs from Florida Steel Corp. and New Jersey Steel Corp. (the petitioners) and from both respondents. We also received rebuttal briefs from the petitioners and Ekinciler.

A. Ekinciler

Comment 1: Bank Charges Associated with Intra-Company Transfers. During the POR, Ekinciler sold rebar to its U.S. affiliate, Ferromin, which in turn resold the merchandise to unaffiliated customers. Ekinciler incurred certain bank charges related to the payment of the transfer price by Ferromin, and it reported these bank charges in a separate field in its U.S. sales listing. For purposes of the preliminary results, the Department treated these bank charges as CEP selling expenses and deducted them from CEP. Ekinciler argues that this treatment was incorrect, because the charges in question were associated with the payment between affiliated parties. As these transactions were incurred in Turkey and not directly linked to the sale to the first unaffiliated purchaser, Ekinciler asserts that they are indirect expenses which should not be deducted from CEP.

Ekinciler maintains that the Department is prohibited from making adjustments for expenses between affiliated parties under its regulations. Specifically, Ekinciler cites 19 CFR 351.402(b), which directs the Department to make no adjustment to the U.S. selling price for expenses that are related solely to the sale to an affiliated importer in the United States. Ekinciler notes that, in accordance with 19 CFR 351.402(b), the Department's practice is not to make such adjustments. As support for this position, Ekinciler cites *Porcelain-On-Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review*, 64 FR 26934 (May 18, 1999) (*Mexican Cookware*), where the Department stated that indirect selling expenses incurred in the home market relating to the sale to the affiliated purchaser are not deducted from CEP.

In any event, Ekinciler asserts that it is the Department's practice to consider any credit-related expenses associated with transfers between affiliates as

indirect selling expenses. As support for this position, Ekinciler cites the *Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from Korea*, 57 FR 42942, 42949 (Sept. 17, 1992), which states:

> These [bank charges] result from intra-company transfers which occurred before the sale to the first unrelated party, and are not directly tied to individual sales to unrelated customers. The Department considers such expenses to be indirect selling expenses. See, e.g., Final Results of Antidumping Duty Administrative Review: Color Television Receivers from Korea, 55 FR 26225 (July 27, 1990).

Ekinciler also cites the *Final Determination of Sales at Less Than Fair Value: Color Television Receivers from Taiwan*, 49 FR 7628 (Mar. 1, 1984), where the Department found that interest expenses between affiliated parties should be treated as indirect selling expenses because they are intra-company expenses not directly related to sales to unrelated U.S. buyers.

According to the petitioners, the bank charges in question are direct selling expenses because they: (1) Are associated with the sale to the first unaffiliated customer; and (2) can be directly tied to the sale of the rebar in question. The petitioners assert that, under 19 CFR 351.402(b), the relevant factor in determining whether an expense should be treated as part of the CEP deduction is where the economic activity associated with the expense occurs. The petitioners assert that, in this case, the relevant activity—the sale—occurred in the United States after importation. Therefore, the petitioners contend that the Department should deduct these expenses from CEP, or, barring that, the Department should treat them as a circumstance-of-sale adjustment to NV.

DOC Position. We agree with Ekinciler. Contrary to the petitioners' assertions, the bank charges in question are not associated with a sale to an unaffiliated customer in the United States. Rather, they relate solely to transactions between Ekinciler and its affiliated U.S. reseller. Moreover, because they cannot be tied directly to a sale to the first unaffiliated purchaser, they are indirect selling expenses.

The Department's regulations provide explicit guidance on the treatment of such expenses. Specifically, 19 CFR 351.402(b) states:

> In establishing constructed export price under section 772(d) of the Act, the Secretary will make adjustments for expenses associated with economic activities in the United States that relate to the sale to an unaffiliated purchaser, no matter where or when paid. The Secretary will not make an adjustment for any expense that is related solely to the sale to an affiliated importer in the United States, although the Secretary may make an adjustment to normal value for such expenses under section 773(a)(6)(C)(iii) of the Act.

This regulation is further explained in the preamble, which states:

> The purpose of these changes is to distinguish between selling expenses incurred on the sale to the unaffiliated customer, which may be deducted under 772(d), and those associated with the sale to the affiliated customer in the United States, which may not be deducted. In addition, the phrase "no matter where or when paid" is intended to indicate that if commercial activities occur in the United States and relate to the sale to an unaffiliated purchaser, expenses associated with those activities will be deducted from CEP even if, for example, the foreign parent of the affiliated U.S. importer pays those expenses. Finally, the reference to adjustments normal value reflects our agreement with the comment that the Secretary may adjust for direct selling expenses (as well as assumed expenses) associated with the sale to the affiliated importer under the circumstance of sale provision * * *

62 FR at 27351.

We explained our current practice in this area in a recent decision in *Mexican Cookware*. Specifically, we stated:

> The Department's current practice, as indicated by the preamble to the Department's new regulations, is to deduct indirect selling expenses incurred in the home market from the CEP calculation only if they relate to sales to the unaffiliated purchaser in the United States. We do not deduct from the CEP calculation indirect selling expenses incurred in the home market relating to the sale to the affiliated purchaser.

64 FR at 26942–43.

Consequently, in accordance with the Department's regulations and current practice, we have made no adjustment for the bank charges in question for purposes of the final results.

Comment 2: Indirect Selling Expenses Incurred in Turkey. The petitioners contend that the Department should require Ekinciler to report all indirect selling expenses incurred in Turkey to sell rebar in the United States. According to the petitioners, it is implausible that Ekinciler incurred no Turkish indirect selling expenses related to U.S. sales.

Ekinciler notes that, under its regulations and practice, the Department makes no adjustment for foreign indirect selling expenses. *See* 19 CFR 351.402(b) and *Mexican Cookware*. Therefore, Ekinciler asserts that, if the Department were to include these expenses in its calculations, it would do so only in the calculation of CEP profit. Ekinciler notes that this would result in the reduction of CEP profit, which would be to Ekinciler's advantage.

DOC Position. We disagree with the petitioners. As Ekinciler correctly notes, the expenses in question would be used only in the calculation of CEP profit because, in accordance with the Department's regulations, indirect selling expenses incurred in the home market relating to the sale to the affiliated purchaser are not deducted from the CEP calculation. *See* 19 CFR 351.402(b) and *Mexican Cookware*. Therefore, even if Ekinciler had incurred indirect selling expenses in Turkey related to U.S. sales, it was conservative for Ekinciler not to report these expenses. Accordingly, we have not requested any additional information from Ekinciler, nor have we based the amount of these expenses on facts available.

Comment 3: Pre-Sale Freight and Warehousing Expenses. According to the petitioners, the Department should deduct from NV neither any freight expenses incurred on the transportation of merchandise from the factory to Ekinciler's home market distribution warehouse nor the warehousing expenses themselves. The petitioners contend that these expenses should be treated as general expenses because they were incurred prior to the sale to the first unaffiliated customer.

According to Ekinciler, its transportation and warehousing expenses are incurred after the intra-corporate sale of the rebar to the respondent's affiliated trading company and are subsumed in the price to the unaffiliated customer. Ekinciler notes that both the Act and the regulations allow these types of adjustments. Ekinciler cites the preamble to the regulations at 62 FR 27410, which states that the Department is to deduct from NV all movement and related expenses incurred after the merchandise left the place of production.

DOC Position. We agree with Ekinciler. Section 773(a)(6)(B)(ii) of the Act directs the Department to reduce NV by the amount of any expenses incident to bringing the foreign like product from the original place of shipment (*i.e.*, the production facility) to the place of delivery. Moreover, under 19 CFR 351.401(e)(2), the Department considers warehousing expenses incurred after the foreign like product leaves the production facility to be movement expenses. Consequently, in accordance with section 773(a)(6)(B) of the Act and 19 CFR 351.401(e)(2), we have continued to treat the freight and warehousing expenses in question as movement charges and deducted them from NV for purposes of the final results.

Comment 4: Credit Expenses. For purposes of the preliminary results, the Department based the U.S. interest rate on the weighted average of the interest rates paid by Ekdemir (*i.e.*, the Ekinciler Group's rebar producer) and Ekdis (*i.e.*, the Ekinciler Group's international trading company) on their U.S.-dollar-denominated loans. According to the petitioners, the Department should base the U.S. interest rate only on the rates paid by Ekdemir because this rate is the most reflective of Ekinciler's weighted-average short-term borrowing experience in the currency of the transaction. The petitioners contend that the Department should disregard Ekdis' U.S.-dollar borrowings because Ekdis was not directly involved in making sales to the United States. The petitioners further argue that the Department should recalculate Ekdemir's U.S. interest rate using 365 days, rather than 360, in order to make this calculation consistent with the calculation of the credit period.

Ekinciler agrees that the Department should not base the U.S. interest rate on the weighted average of Ekdemir's and Ekdis' U.S.-dollar borrowings. However, Ekinciler argues that the Department should use the average short-term dollar lending rates calculated by the Federal Reserve, because Ekinciler's U.S. subsidiary, Ferromin, had no borrowings during the POR. Ekinciler asserts that this rate is appropriate because the U.S. subsidiary was the party which would have been required to finance the U.S. sales from the date of shipment from the U.S. warehouse until the date of payment by the U.S. customer. Ekinciler maintains that using the Federal Reserve rate would be consistent with Department practice. To demonstrate this, Ekinciler cites *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Reviews*, 63 FR 12725, 12742 (Mar. 16, 1998) (*Carbon Steel Flat Products from Canada*), where the Department based the U.S. interest rate on Federal Reserve data for EP sales, even though the respondent's U.S. subsidiary had actual U.S. dollar borrowings.

Nonetheless, Ekinciler argues that, should the Department decide to use its U.S.-dollar borrowings in Turkey, it would be inappropriate to use only one of the two group companies' borrowing rates. Ekinciler cites *Certain Cut-to-Length Carbon Steel Plate from Sweden; Final Results of Antidumping Duty Administrative Review*, 61 FR 15772, 15779 (Apr. 9, 1996), where the Department stated that calculating interest expense based on a company's consolidated financial statements is appropriate because the cost of capital is fungible.

Finally, Ekinciler maintains that the Department did, in fact, use 365 days in the calculation of U.S. credit. Therefore, Ekinciler asserts that no further change is necessary.

DOC Position. We disagree with the petitioners and with Ekinciler, in part, regarding the appropriate interest rate to use in the U.S. credit calculations. As we stated in Import Administration Policy Bulletin 98–2 (Feb. 23, 1998):

> For the purposes of calculating imputed credit expenses, we will use a short-term interest rate tied to the currency in which the sales are denominated. We will base this interest rate on the respondent's weighted-average short-term borrowing experience in the currency of the transaction... In cases where a respondent has no short-term currency borrowings in the currency of the transaction, we will use publicly available information to establish a short-term interest rate applicable to the currency of the transaction.

Contrary to Ekinciler's assertions, this bulletin does not indicate that the source of the U.S. dollar-denominated short-term interest rate must be a bank located in the United States. Rather, this bulletin shows a clear preference for the actual borrowing experience of the respondent.

In this case, there were three parties who were involved in the sale of rebar to the United States. Since the U.S. subsidiary most directly involved in selling the subject merchandise had no U.S. dollar borrowings, and because we have a preference for using actual experience where possible, we have continued to use the average of the rates paid by the other parties involved in making the sale, rather than the Federal Reserve rate. We disagree with the petitioners' contention that we should base the U.S. interest rate solely on the experience of Ekdemir, because Ekdis was also involved in the sale of the subject merchandise.

Moreover, we find that the situation in *Carbon Steel Flat Products from Canada* is factually distinguishable from the circumstances in this case. In that case, unlike here, neither the respondent nor any affiliated party involved directly or indirectly with the sale of the subject merchandise had any borrowings in U.S. dollars (although in *Carbon Steel Flat Products from Canada* the U.S. subsidiary had borrowings in U.S. dollars, it was not involved in the sale of subject merchandise). Thus, because the respondent had no actual U.S.-dollar-denominated borrowings in that case, we determined that the use of the Federal Reserve rate was appropriate. In contrast, the respondent in this case does have actual U.S. dollar-denominated borrowings, and we relied on these borrowings to determine the U.S. interest rate.

Regarding the calculation of the interest rate, we agree with the petitioners. We find that Ekinciler's methodology understates the annual interest rate, because Ekinciler misstated the portion of the year to which the interest expense applied. Consequently, we have recalculated the U.S. interest rate for purposes of the final results.

Comment 5: Packing Expenses According to the petitioners, the Department should base the amount of Ekinciler's packing expenses on facts available, because Ekinciler's response contains contradictory statements which cannot be reconciled. Specifically, the petitioners assert that Ekinciler made the following statements: (1) The reason the packing material costs differ significantly from month to month is due to changes in material prices and to varying packing requirements depending upon the market in which the product is sold; and (2) packing materials used for U.S. and Turkish sales are very similar, and, consequently, the costs are nearly identical. Moreover, the petitioners contend that Ekinciler failed to index its packing figures, and it also did not include any expenses for packing labor or overhead in its calculations.

Ekinciler argues that the Department should accept its packing expenses as reported. Ekinciler maintains that the statements identified by the petitioners are not contradictory because the differences in packing requirements referenced above relate to third country markets, rather than to the U.S. or home market. Ekinciler asserts that the packing requirements for U.S. and home market sales are virtually identical. Furthermore, Ekinciler notes that, contrary to the petitioners' assertions, it accounted for the effects of inflation in its packing calculations because it reported current costs for its packing materials in accordance with standard Department practice. Finally, regarding packing labor and overhead, Ekinciler notes that it was not possible to segregate these costs from other labor and overhead costs its accounting system. Nonetheless, Ekinciler contends that its inability to report these expenses separately does not affect the margin calculations because these expenses are: (1) extremely small; (2) virtually the

same for the U.S. and home markets; and (3) captured in the reported COM.

DOC Position. Ekinciler consistently described its packing expenses in its response and correctly based the expenses reported on its current cost of materials (*i.e.*, the price of materials in the same month as production). Moreover, we note that, while Ekinciler did not index these costs itself, these costs were indexed in the computer program used to calculate Ekinciler's margin for purposes of the preliminary results.

Regarding labor and overhead, we find that, because the packing process is essentially the same for the U.S. and home markets, there would be no material difference in the amount of labor and overhead allocated to the U.S. and home markets. Consequently, we have continued to rely on the packing data reported by Ekinciler for purposes of the final results.

Comment 6: Offset to Materials Costs. Ekinciler claimed an offset to the materials costs reported in its response for certain materials recovered during the production process (*e.g.*, billet ends and slag). According to the petitioners, Ekinciler understated the value of billet ends because it valued them at the average shredded scrap purchase price for the month in which they were created. The petitioners contend that this approach is only valid if the billet ends are also used in that month. According to the petitioners, the Department should use facts available to account for this error.

In addition, the petitioners contend that the Department should disallow Ekinciler's offset for slag. According to the petitioners, slag cannot be reused in an arc furnace and is typically sold for use in roadbeds and airport runways.

Finally, the petitioners contend that Ekinciler improperly valued other scrap which was recovered during the production process. According to the petitioners, the proper value is not the weighted average of the domestic scrap purchases during the same month, but rather the weighted average of Ekinciler's total scrap purchases within the same month.

Ekinciler contends that the petitioners' argument regarding billet ends is moot because billet ends are recycled daily. Nonetheless, Ekinciler argues that the value of scrap used as an offset should be valued when the scrap is generated, not when it is used. Ekinciler further notes that, had it understated the value of billet ends as the petitioners assert, the result would have been to overstate (not understate) costs, because the offset would have been too low.

Moreover, Ekinciler asserts that the Department should also accept its reported offset for slag. Ekinciler asserts that it is irrelevant whether the slag is used internally by Ekdemir or sold to outside purchasers for use in roadbeds. According to Ekinciler, because the petitioners admit that slag has value, there is no question that Ekinciler properly reported a value for the scrap that it recovered.

Finally, Ekinciler asserts that it provided a detailed description of the various types of scrap and the means that it used to value them in its supplemental questionnaire response. Ekinciler further asserts that it based its reported scrap recovery on the company's monthly records maintained in the ordinary course of business. Therefore, Ekinciler asserts that the petitioners' comments should be disregarded.

DOC Position. Ekinciler's methodology for valuing scrap recovered during the production process is reasonable. Specifically, Ekinciler valued each month's recovered scrap at the average of the purchase prices for scrap during the month. (*See* pages 21 and 22 of its March 16, 1999, supplemental response.) We do not agree with the petitioners that Ekinciler valued certain types of recovered scrap at the weighted average of the monthly domestic scrap purchases. This is the method by which Ekinciler valued recovered scrap in its accounting system, not the method by which it reported the value of such scrap to the Department. Consequently, we have accepted Ekinciler's data as reported.

Comment 7: Revaluation of Raw Materials Inventories. According to the petitioners, Ekinciler's failure to revalue its monthly raw materials inventories misstated the company's costs by failing to take into account the impact of inflation.

Ekinciler contends that it reported the usage of raw materials at the current monthly acquisition prices, as instructed in the questionnaire. According to Ekinciler, because the petitioners submitted no evidence to the contrary, the Department should disregard the petitioners' unfounded assertion.

DOC Position. In cases involving significant inflation, it is the Department's practice to require respondents to value raw materials using the purchase prices obtained in the month of production. *See, e.g., Rebar from Turkey, Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 62 FR 51629, 51631(Oct. 2, 1997), and *Ferrosilicon from Brazil; Final Results of Antidumping Duty Administrative Review*, 61 FR 59407, 59408 (Nov. 22, 1996). Because Ekinciler did so, we find that its costs appropriately account for the effects of inflation. Consequently, we have accepted these costs for purposes of the final results.

Comment 8: Value of Billets Purchased from an Affiliated Company. The petitioners allege that Ekinciler may have understated the value of certain billets purchased from an affiliated party in the home market. According to the petitioners, the Department cannot find that the transfer prices included a profit margin merely based on the fact that the price paid to the affiliate exceeded the price that the affiliate paid to its supplier. The petitioners note that the higher transfer prices may account for all, or part of, the inflation that occurred during the months between the affiliate's purchase and resale. The petitioners do not suggest a method by which the Department should adjust Ekinciler's billet costs.

Ekinciler maintains that it properly valued the billets in question. Ekinciler notes that, in its questionnaire response, it provided invoices showing that the transfer prices paid to the affiliated party exceeded the affiliate's acquisition cost for the same billet, and that the lag time between the purchase and resale was only a few days. According to Ekinciler, not only is this entirely consistent with the Department's practice, but it was not challenged by the petitioners prior to the briefing stage. Consequently, Ekinciler contends that the Department should accept its billet costs as reported.

DOC Position. In determining whether a transaction occurred at an arm's-length price, the Department compares the transfer price between the affiliated parties and the market price between unaffiliated parties. *See, e.g., Final Results of Antidumping Administrative Review: Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom*, 62 FR 2081, 2115 (Jan. 15, 1997).

In its questionnaire response, Ekinciler was able to demonstrate adequately that the transfer price exceeded the affiliate's acquisition price, paid to an unaffiliated supplier, for reasons unrelated to inflation. Accordingly, we find that the transfer price is at arm's length, and we have used the transfer price to value the billet purchased from the affiliated party.

Comment 9: Billet Production Costs. According to the petitioners, Ekinciler inappropriately allocated fabrication costs in the melt shop using total tonnage produced each month. The petitioners contend that the Department should base Ekinciler's melt shop fabrication costs on facts available because these costs should have been allocated based on processing times. The petitioners provide no suggestions regarding the appropriate source of facts available.

Ekinciler maintains that the Department should accept its costs as reported. According to Ekinciler, because there is only one product produced in the melt shop (*i.e.*, billet), allocating total fabrication costs over total production tonnage is reasonable.

DOC Position. Unlike in the rolling mill, production costs in the melt shop do not vary by processing times. Rather, these costs vary according to the number of tons produced. For example, the same amount of electricity is consumed to produce a billet used in the production of 14 mm rebar as for a billet used to make 32 mm rebar. Consequently, we find that allocating fabrication costs using production quantity is not only reasonable but appropriate, and we have continued to accept Ekinciler's costs as reported for purposes of the final results.

Comment 10: Work-in-Process. According to the petitioners, Ekinciler failed to report work-in-process at the end of its accounting period. The petitioners assert that, although Ekinciler stated that there are no unfinished units at the end of the accounting period, this statement is contradicted by the fact that Ekinciler valued raw materials using the weighted-average purchase price from the previous month (adjusted for inflation) in cases where Ekinciler did not make any purchases in the month when production occurred.

According to Ekinciler, it had no work-in-process at the end of the accounting period. Ekinciler asserts that steel mills do not close their accounting periods in mid-cast or in half-rolled bar, and that the production cycle is so short that the production process is completed by the end of the accounting period. Ekinciler further contends that the statements referenced by the petitioners are not contradictory because the petitioners confused several statements in Ekinciler's response. Specifically, Ekinciler notes that the petitioners appeared to confuse work-in-process (which was referenced in the statement regarding unfinished units) and raw materials (which was referenced in the statement regarding purchases). Accordingly, Ekinciler asserts that the Department should disregard the petitioners' comments.

DOC Position. We find that Ekinciler consistently described its production process and valuation methodologies in its response. Moreover, we find that Ekinciler appropriately valued the cost of materials, because it based these costs on the company's purchases in each month of the POR. Contrary to the petitioners' implication, the Department's practice in cases involving high inflation is to base COP on the current production costs incurred during each month of the POR. *See Rebar from Turkey*, 62 FR at 9739 and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Pasta from Turkey*, 61 FR 30309, 30314 (June 14, 1996). For this reason, the valuation of work-in-process is irrelevant to the dumping analysis in this case. Accordingly, we have based our final results on the data in Ekinciler's response.

Comment 11: General and Administrative Expenses (G&A). The petitioners contend that Ekinciler improperly calculated G&A. Specifically, the petitioners maintain that Ekinciler divided the G&A of the group's rebar producer (i.e., Ekdemir) over the cost of sales of all companies in the Ekinciler group. In addition, the petitioners assert that Ekinciler improperly included Ekdemir's real estate taxes and factory administrative costs in G&A. According to the petitioners, these actions result in an allocation of rebar-related expenses to non-subject merchandise.

Ekinciler contends that it did, in fact, allocate G&A over Ekdemir's (and not Ekinciler's) cost of sales. According to Ekinciler, the petitioners misread the headings in Ekinciler's G&A worksheets. Ekinciler further contends that, contrary to the petitioners' assertion, it classified factory administrative labor as part of factory overhead. Regarding real estate taxes, Ekinciler asserts that Ekdemir's corporate administrative offices are located at its mill, and, therefore, these costs were properly reported as part of G&A. In any event, Ekinciler notes that the amount of these taxes represents less than 0.001 percent of Ekdemir's rolling mill costs, and, consequently, any reallocation between G&A and COM would result in a *de minimis* adjustment.

DOC Position. We have continued to accept Ekinciler's G&A as reported for purposes of the final results. Ekinciler's G&A worksheets clearly show that Ekdemir's G&A were allocated over Ekdemir's cost of sales. *See* Exhibit 15 of the July 28, 1998, section A response and Exhibit 30 of the March 16, 1999, supplemental response. Moreover, Ekinciler's COM worksheets show that Ekinciler included supervisory labor (the largest component of factory administrative costs) as part of COM. *See* Exhibits 15 and 16 of the August 28, 1998, section D response and Exhibit 25 of the March 16, 1999, supplemental response.

Regarding real estate taxes, while we agree with the petitioners that the portion of the tax related to the rebar production facility should have been included in fixed overhead (rather than G&A), we find that reallocating these taxes in this case would have no material impact on COM. According to section 777A(a)(2) of the Act, the Department may decline to take into account adjustments which are insignificant in relation to the price or value of the merchandise. Consequently, in accordance with section 777A(a)(2) of the Act and 19 CFR 351.413, we have not included these taxes in fixed overhead.

Comment 12: Financing Expenses. According to the petitioners, all interest expenses incurred by Ekinciler should be included in COM. The petitioners reason that the expenses incurred by Ekdemir and Ekdis (*i.e.*, the group trading company) constitute a large portion of the interest expense reported by the Ekinciler Group for 1997 and in that regard resemble a foreign exchange expense incurred by Ekdemir and Ekdis in 1997. The petitioners speculate that these interest expenses relate to the acquisition of raw material outside Turkey and, thus, are associated with the purchase of raw materials. Moreover, the petitioners assert that Ekinciler failed to include gains and losses related to accounts payable transactions in COM, despite the Department's explicit instructions to do so. Therefore, the petitioners argue that the Department should also include all foreign exchange gains and losses in COM.

In addition, the petitioners contend that the Department should disallow offsets to financing expenses for financing income and foreign exchange income because Ekinciler failed to show why the former offset was appropriate and the latter was earned by entities which have no relationship to rebar.

Ekinciler contends that it properly included in COM all costs incurred on the purchase of materials, including bank fees and exchange losses on the purchase of materials. Ekinciler asserts that any other interest costs or exchange losses on payables are classified in the normal course of business as part of financing expenses and were treated as

such for purposes of Ekinciler's responses.

Regarding the offset for short-term interest income, Ekinciler asserts that the Department's practice is to allow offsets to financing expenses for financial income earned on short-term investments of working capital. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value; Stainless Steel Sheet and Strip in Coils from the United Kingdom*, 64 FR 30688, 30710 (June 8, 1999) (*Sheet and Strip from the UK*). Ekinciler asserts that it submitted substantial evidence that its financial income was earned on short-term uses of working capital. Therefore, Ekinciler asserts that its interest expense factor properly included an offset for this income.

Regarding the offset for foreign exchange gains, Ekinciler asserts that the Department's long-standing treatment of financing expenses is to base the calculation of such expenses on the consolidated corporate entity, due to the fungible nature of financing. Ekinciler notes that, in accordance with this policy, the Department specifically instructed Ekinciler to base its financing expenses on the combined expenses of all companies in the Ekinciler Group. Accordingly, Ekinciler asserts that the petitioners are misguided in contending that exchange gains earned by other entities in the group are irrelevant.

DOC Position. We agree with Ekinciler that it is the Department's practice to classify interest expenses incurred by a company as financing expenses and to calculate the expenses on a consolidated basis. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Japan*, 64 FR 30574, 30592 (June 8, 1999). It is also the Department's practice to grant offsets to financing expenses when respondents are able to demonstrate that such offsets are related to short-term interest income. *See, e.g., Sheet and Strip from the UK.* Because Ekinciler calculated its financing expenses in accordance with the Department's practice, we have accepted it for purposes of the final results.

Regarding the petitioners' allegation that Ekinciler improperly excluded exchange losses related to accounts payable transactions from COM, we find no evidence that this has occurred. Accordingly, we have made no adjustment to COM for exchange losses for purposes of the final results.

B. ICDAS

Comment 13: Currency Conversion. The Federal Reserve Bank does not track or publish exchange rates for Turkish Lira. Consequently, for purposes of the preliminary results, the Department made currency conversions using exchange rates published by the Dow Jones News/Retrieval Service. ICDAS argues that the Department should use the exchange rates published by the Central Bank of the Republic of Turkey for purposes of the final results because these rates better reflect commercial reality in Turkey.

ICDAS acknowledges that the Department generally uses the Dow Jones News/Retrieval Service rates in cases where Federal Reserve Bank rates are not available, including currency conversions in Turkish cases. However, ICDAS argues that the Department has the discretion to use a source other than the Dow Jones News/Retrieval Service when the rates in question are not published by the Federal Reserve Bank, since neither section 773A of the Act nor 19 CFR 351.415 prescribes the precise source to be used in currency conversions.

ICDAS asserts that the Department is not precluded from using the Central Bank rates, despite the fact that it did not raise this exchange rate issue in previous filings, since the rates consist of publicly available data which the Department may add to the record at any time during the proceeding. As support for this position, ICDAS cites the Notice of *Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke Order in Part: Dynamic Random Access Memory Semiconductors of One Megabyte or Above From the Republic of Korea*, 62 FR 39809, 39810 (July 24, 1997) (*DRAMS from Korea*); *Certain Cased Pencils From The People's Republic of China; Amended Final Results Of Antidumping Duty Administrative Review;* 62 FR 36491, 36492 (July 8, 1997) (*Pencils from China*); and *Live Swine From Canada; Final Results of Countervailing Duty Administrative Review*, 59 FR 12243, 12250 (Mar. 16, 1994) (*Live Swine from Canada*).

The petitioners argue that the Department should continue to use the rates published by the Dow Jones News/Retrieval Service because it is a well-established, reliable source of commercially available exchange rates and ICDAS has provided no evidence to show that the Central Bank rates are more reflective of commercial reality. Moreover, the petitioners assert that the use of the Dow Jones News/Retrieval Service rates would be consistent with Department practice. As support for their position, the petitioners cite to *Steel Wire Rod from Trinidad & Tobago*, where the Department rejected the respondent's argument to use a source other than the Dow Jones News/Retrieval Service in the absence of rates published by the Federal Reserve Bank.

The petitioners further argue that the Department is prohibited from using the Central Bank rates because they constitute new factual information. The petitioners maintain that ICDAS' reliance on the cases cited above is misplaced, because the facts in those cases are not analogous to the facts in the instant review. Specifically, the petitioners note that in *DRAMS from Korea*, the Department reviewed current market conditions at the time of the final results, which could not have been incorporated into the parties' filings prior to that time, while in *Pencils from China* the Department re-opened the administrative record to accept new factual information in conjunction with a remand, not a new shipper review. The petitioners assert that *Live Swine from Canada* makes clear that it is exceptional for the Department to accept new factual information after the date of the preliminary results of review.

DOC Position. In our exchange rate model, it is the Department's normal practice to use exchange rates provided by the Federal Reserve Bank. When the Federal Reserve does not provide exchange rates, the Department uses exchange rates obtained from the Dow Jones News/Retrieval Service because this service is a well-established, reliable source of commercially available exchange rates. *See, e.g., Notice of Final Results and Partial Recission of Antidumping Duty Administrative Review: Certain Pasta from Turkey*, 63 FR 68429 (Dec. 11, 1998) (affirming *Notice of Preliminary Results and Partial Recission of Antidumping Duty Administrative Review: Certain Pasta From Turkey*, 63 FR 42373 (Aug. 7, 1998)), *Steel Wire Rod from Trinidad & Tobago, Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube From Turkey*, 61 FR 69067 (Dec. 31, 1996), and *Rebar from Turkey.* For this reason, we find that the exchange rates obtained from the Dow Jones News/Retrieval Service are a reasonable alternative to those obtained from the Federal Reserve.

In this case, although ICDAS has asserted that the Turkish Central Bank rates are more reflective of commercial reality in Turkey, it has provided no evidence to support this assertion. Consequently, we find that ICDAS has provided inadequate reasons for the Department to depart from its established practice of using the Dow Jones rates, and we have continued to use these rates for purposes of the final results.

Comment 14: Calculation of the Home Market Short-Term Interest Rate. For purposes of the preliminary results, the Department adjusted the calculation of ICDAS" short-term home market interest rate to exclude bank commissions. ICDAS argues that the Department should include these bank commissions in the calculation of the home market short-term interest rate, because the commissions are part of the total cost of borrowing. In support of its position, ICDAS cites the following cases in which the Department included bank fees/charges in its calculation of the short-term borrowing rate: *Certain Corrosion Resistant Carbon Steel Flat Products and Certain Cut-To-Length Carbon Steel Plate From Canada; Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part*, 64 FR 2173, 2178–79 (Jan. 13, 1999) (*Corrosion Resistant Carbon Steel Flat Products from Canada); Certain Cold-Rolled Carbon Steel Flat Products From Korea; Final Results of Antidumping Duty Administrative Review*, 62 FR 781, 801 (Jan. 7, 1998) (*Cold-Rolled Carbon Steel Flat Products from Korea*); and *Final Results of Antidumping Duty Administrative Review; Large Power Transformers From Italy*, 52 FR 46806, 46811 (Dec. 10, 1987) (*LPTs from Italy*).

The petitioners argue that the Department should continue to exclude the bank commissions in question from the calculation of the home market short-term interest rate because there is no evidence on the record to indicate that these bank commissions were related to the loan in question or that they were part of the total costs to ICDAS of home market short-term borrowing.

DOC Position. According to the information gathered at verification, the commissions in question are directly related to the amount that the bank charged ICDAS for borrowing money. *See* Exhibit 16 to the ICDAS sales verification report. Therefore, because we find that these commissions are part of the total cost borrowing of ICDAS, we have revised our calculation of ICDAS' short-term home market borrowing rate to include bank commissions. *See Corrosion Resistant Carbon Steel Flat Products from Canada; Cold Rolled Carbon Steel Flat Products from Korea;* and *LPTs from Italy.*

Final Results of Review

As a result of comments received, we have revised our analysis and determine that the following margins exist for the respondents during the period October 10, 1996, through March 31, 1998 (for Ekinciler), and October 10, 1996, through July 31, 1998 (for ICDAS):

Manufacturer/producer/exporter	Margin percentage
Ekinciler Holding A.S./ Ekinciler Demir Celik A.S	0.30
ICDAS Celik Enerji Tersane ve Ulasim Sanayi A.S	9.67

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales. These rates will be assessed uniformly on all entries of that particular importer made during the POR. Pursuant to 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries for any importer for whom the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent). The Department will issue appraisement instructions directly to the Customs Service.

Further, the following deposit requirements will be effective for all shipments of certain steel concrete reinforcing bars from Turkey entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative and new shipper reviews, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rate for the ICDAS will be the rate stated above, and the cash deposit rate for Ekinciler will be zero; (2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 16.06 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). *See Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposting Sanction for Violation of a Protective Order*, 63 FR 24391, 24402 (May 4, 1998). Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative and new shipper reviews are issued and published in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: September 3, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–23630 Filed 9–9–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Closed Meeting of the U.S. Automotive Parts Advisory Committee (APAC)

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The APAC will have a closed meeting on September 24, 1999 at the U.S. Department of Commerce to discuss U.S.-made automotive parts sales in Japanese and other Asian markets.

DATES: September 24, 1999.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Reck, U.S. Department of Commerce, Room 4036, Washington, D.C. 20230, telephone: 202–482–1418.

SUPPLEMENTARY INFORMATION: The U.S. Automotive Parts Advisory Committee (the "Committee") advises U.S. Government officials on matters relating to the implementation of the Fair Trade in Automotive Parts Act of 1998 (Public Law 105–261). The Committee: (1) Reports to the Secretary of Commerce on barriers to sales of U.S.-made automotive parts and accessories in Japanese and other Asian markets: (2) reviews and considers data collected on

sales of U.S.-made auto parts and accessories in Japanese and other Asian markets; (3) advises the Secretary of Commerce during consultations with other Governments on issues concerning sales of U.S.-made automotive parts in Japanese and other Asian markets; and (4) assists in establishing priorities for the initiative to increase sales of U.S.-made auto parts and accessories to Japanese markets, and otherwise provide assistance and direction to the Secretary of Commerce in carrying out the intent of that section; and (5) assists the Secretary of Commerce in reporting to Congress by submitting an annual written report to the Secretary on the sale of U.S.-made automotive parts in Japanese and other Asian markets, as well as any other issues with respect to which the Committee provides advice pursuant to its authorizing legislation. At the meeting, committee members will discuss specific trade and sales expansion programs related to automotive parts trade policy between the United States and Japan and other Asian markets.

The Assistant Secretary for Administration, with the concurrence of the General Counsel formally determined on September 2, 1999, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the September 24 meeting of the Committee and of any subcommittee thereof, dealing with privileged or confidential commercial information may be exempt from the provisions of the Act relating to open meeting and public participation therein because these items are concerned with matters that are within the purview of 5 U.S.C. 552b(c)(4) and (9)(B). A copy of the Notice of Determination is available for public inspection and copying in the Department of Commerce Records Inspection Facility, Room 6020, Main Commerce.

Dated: September 2, 1999.

Henry P. Misisco,

Director, Office of Automotive Affairs.

[FR Doc. 99–23596 Filed 9–9–99; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090399B]

Requirements for All Marine Mammal Special Exception Permits To Take, Import and Export Marine Mammals; for Maintaining a Captive Marine Mammal Inventory

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 9, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ann Hochman, Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910, (301) 713–2289.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Marine Mammal Protection Act (MMPA), the Fur Seal Act and the Endangered Species Act (ESA) prohibit the taking, import, and export of marine mammals with certain exceptions. Respondents will be applicants for and holders of scientific research and enhancement permits, commercial and educational photograph permits, public display permits for captures and first-time imports, and General Authorizations for Level B scientific research projects. Applicants wanting a permit or authorization to take, import or export must provide certain information to be used as a basis for determining whether a permit or authorization should be issued. Permit holders and authorized researchers under the General Authorization are required to report periodically on activities conducted, species taken, and to update information as necessary on any marine mammals held captive for purposes of maintaining the marine mammal inventory as required under the 1994 Amendments to the MMPA.

II. Method of Collection

The collection of information will be in the form of applications, annual and final reports, and notifications responding to requirements in regulations and instructions; no forms are required.

III. Data

OMB Number: 0648–0084
Form Number: N/A
Type of Review: Regular submission
Affected public: Non-profit institutions; state, local, or tribal government; businesses or other for-profit; and Federal government. The majority of the affected public will be from the scientific research community, photographic journalists, and public display facilities.
Estimated Number of Respondents: 570
Estimated Time Per Response: 29 hours for permit applications for scientific research (SR), enhancement (EN), public display (PD), Letters of Intent under the General Authorization (GA), and major amendments to permits; 10 hours for applications for photography permits; 3 hours for minor amendments and requests for changes under the GA; 2 hours for requests for the retention or transfer of nonreleasable rehabilitated marine mammals; 12 hours each for reports for SR, EN or projects under the GA; and 2 hours for recordkeeping needs. Public display reports and annual recordkeeping are each estimated at 2 hours. Photography annual reports and recordkeeping are each estimated at 2 hours. Notifications of transports and submission of Marine Mammal Data Sheets have been estimated at one hour and one-half hour, respectively.
Estimated Total Annual Burden Hours: 6,295
Estimated Total Annual Cost to Public: $580

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and /or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 30, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Chief Information Officer.

[FR Doc. 99–23482 Filed 9–9–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090399C]

Requirements for Taking Endangered or Threatened Species for Research/Enhancement Purposes

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 9, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Karen Salvini, Office of Protected Resources, Room 13603, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910-3226, (301) 713-1401 (x130).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 et. seq.) imposed prohibitions against the taking of endangered species. Section 10 of the ESA allows permits authorizing the taking of endangered species for research/enhancement purposes. The corresponding regulations established procedures for persons to apply for such permits. In addition, the regulations set forth specific reporting requirements for such permit holders.

The required information is used to evaluate the impacts of the proposed activity on endangered species, to make the determinations required by the ESA prior to issuing a permit, and to establish appropriate permit conditions. In order to issue permits as under ESA section 10(a)(1)(A), NMFS must determine that(1) such exceptions were applied for in good faith, (2) if granted and exercised will not operate to the disadvantage of such endangered species, and (3) will be consistent with the purposes and policy set forth in section 2 of the ESA.

II. Method of Collection

The collection of information will be in the form of applications, annual reports, and final reports responding to requirements in regulations and instructions; no forms are required.

III. Data

OMB Number: None
Form Number: N/A
Type of Review: Regular submission
Affected public: Non-profit institutions; state, local, or tribal government; businesses or other for-profit; and Federal government.
Estimated Number of Respondents: 140
Estimated Time Per Response: 40 hours for permit applications, 10 hours for permit modification requests, 10 hours for annual reports, and 20 hours for final reports.
Estimated Total Annual Burden Hours: 4,000
Estimated Total Annual Cost to Public: $290

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and /or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 30, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Chief Information Officer.

[FR Doc. 99–23483 Filed 9–9–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090399D]

Application Form for Membership on Sanctuary Advisory Councils for the National Marine Sanctuary Program

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before November 9, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Elizabeth Moore, Marine

Sanctuaries Division, NOAA, 1305 East West Highway, SSMC4, N/ORM6, Silver Spring, Maryland, 20910.

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 315 of the National Marine Sanctuaries Act (16 U.S.C. 1445a) allows the Secretary to establish one or more advisory councils to provide assistance to the Secretary regarding the designation and management of national marine sanctuaries. Councils are individually chartered for each sanctuary to meet the needs of that specific site. Once a Council has been chartered, the Sanctuary Manager starts a process to recruit members for that Council by providing notice to the public and asking interested parties to apply for the available seats. An application form has been developed to help ease the application process for the public and facilitate the review process for the Sanctuary Manager.

II. Method of Collection

The availability of seats on a Council are announced through various public channels, including local press releases, announcements at local meetings, and posting on the Sanctuary's web page. Interested persons can request the application kit (containing the application form, a copy of the Council's charter, and some information about the Sanctuary itself) by phone, fax, or e-mail. The applicant then completes and returns the form to the Sanctuary office.

III. Data

OMB Number: None
Form Number: None
Type of Review: Regular submission
Affected public: Individuals or households, business or other for profit organizations, and not-for-profit institutions (Councils generally have a membership that reflects the local community and it would likely include all of these categories).
Estimated Number of Respondents: 75
Estimated Time Per Response: 1 hour
Estimated Total Annual Burden Hours: 75 hours
Estimated Total Annual Cost to Public: $150

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and /or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 30, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Chief Information Officer.

[FR Doc. 99–23484 Filed 9–9–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 990713192–9192–01; I.D. No. 080399D]

RIN 0648–ZA67

General Grant Administration Terms and Conditions of the Coastal Ocean Program

AGENCY: Center for Sponsored Coastal Ocean Research/Coastal Ocean Program (CSCOR), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice for Financial Assistance for Project Research Grants and Cooperative Agreements.

SUMMARY: It is the intent of NOAA/NOS/CSCOR/COP to continue to provide direct financial assistance in the form of discretionary Research Grants and Cooperative Agreements under its own program for the management of coastal ecosystems.

This document does not solicit proposals; but rather describes the general grant administration terms and conditions of the CSCOR/COP program for fiscal year 2000. It is CSCOR/COP's intent to issue supplemental Announcements of Opportunities (AOs) to request proposals on specific projects throughout the year on an as-needed basis. Any Announcements of Funding Opportunity will be issued through the **Federal Register**, the CSCOR/COP Home Page, and CSCOR/COP's e-mail list, and provide specific program descriptions.

CSCOR/COP supports research on critical issues which exist in the Nation's estuaries, coastal waters and the Great Lakes, and translates its findings into accessible information for coastal managers, planners, lawmakers and the public. CSCOR/COP's projects are multi-disciplinary, large in scale and long in duration (usually 3 to 5 years). Projects covering more than 1 year will usually be funded on an annual basis.

DATES: September 10, 1999.

ADDRESSES: Center for Sponsored Coastal Ocean Research/Coastal Ocean Program, National Oceanic and Atmospheric Administration, 1315 East West Highway, Room 9700, Silver Spring, MD 20910

FOR FURTHER INFORMATION CONTACT: Leslie McDonald, CSCOR/COP Grants Administrator,(301)713–3338/x137.

SUPPLEMENTARY INFORMATION:

(1) *Program Authority(s)*: 33 U.S.C. 1121 et seq., 33 U.S.C. 883a et seq., 33 U.S.C. 1442, 16 U.S.C. 1456c, Section 201(c) of P.L. 102–567 and Title VI of P.L. 105–383.

(2) *Catalog of Federal Domestic Assistance (CFDA)*: 11.478 Coastal Ocean Program

(3) *Program Description*: NOAA's CSCOR/COP provides predictive capability for managing coastal ecosystems through sponsorship of research. CSCOR/COP seeks to deliver the highest quality science in a timely manner for important coastal decisions. It supports research on critical issues which exist in the Nation's estuaries, coastal waters, and Great Lakes and translates its findings into accessible information for coastal managers, planners, lawmakers, and the public.

Coastal Ecosystem Oceanography

CSCOR/COP supports the conservation and management of marine ecosystems through sponsorship of improved ecological and oceanographic predictions for resource management. Studies focus on: (1) identifying critical processes that control replenishment of fishery resources; (2) determining critical habitat process that influence fishery ecosystems; and (3) quantifying species interactions so models can be used in management decisions. Current efforts support studies dealing with Bering Sea pollack, cod and haddock on Georges Bank, and salmon in the Pacific Northwest.

Cumulative Coastal Impacts

CSCOR/COP sponsors a series of regional watershed projects on the causes and impacts of multiple stresses on coastal ecosystems. Studies focus on: (l) developing indicators of stress; (2) predicting impacts of multiple stresses (3) valuing natural resources in ecological and economical terms; and (4) predicting the outcomes of management strategies. Current efforts are located in Chesapeake Bay, Florida Bay and the Keys, the Great Lakes and South Carolina.

Harmful Algal Blooms (HABs)

CSCOR/COP also sponsors studies on the ecology and oceanography of harmful algal blooms (HABs), focusing on identifying and modeling linkages between the physiology, ecology, behavior and toxicity of HABs and local/regional circulation patterns and water quality. These results will not only generate greater general knowledge of problematic species in U.S. coastal waters, but provide foundations for development of regional HAB forecasting capabilities, eventually providing a means to assess the effectiveness of prevention, control and mitigation strategies developed in the proframe. Current regional efforts are located in the Gulf of Maine, eastern Long Island, the mid-Atlantic States, and the western coast of Florida.

Benefits of the CSCOR/COP

Continued population pressures on the Nation's coastal areas and on-going changes in the environment will continue to stress our coastal waters, bays and estuaries and the Great Lakes. CSCOR/COP has focused on developing information for longer-range U.S. management and policy at large and complex scales. CSCOR/COP research will help the U.S. respond to the major challenges of the next century and to balance the needs of economic growth with those of conserving the environment.

(4) *Funding Availability:* On average, annual funding for each Announcement of Opportunity is approximately $1,000,000. Each CSCOR/COP project generally consists of several coordinated investigations with separate awards, ranging from $5,000 to $200,000. Actual funding levels will depend upon the final budget appropriations for the fiscal year. AOs will be released with specific applicable dollar amounts.

Financial History of CSCOR/COP Grants: FY97 $10.00M; FY98 $8.5M; FY99 $8.5M. Publication of this notice does not obligate Commerce/NOAA to any specific award or to obligate any part of the entire amount of funds available. Recipients and subrecipients are subject to all Federal laws and agency policies, regulations and procedures applicable to Federal financial assistance awards.

If an application for a financial assistance award is selected for funding, CSCOR/COP has no obligation to provide any additional prospective funding in connection with that award in subsequent years.

(5) *Matching Requirements*: None

(6) *Type of Funding Instrument*: Discretionary research grants and cooperative agreements

(7) Eligibility Criteria: CSCOR/COP funding opportunities are open to all interested, qualified, non-Federal, and Federal researchers. Non-Federal researchers should comply with their institutional requirements for proposal submission. Non-NOAA Federal applicants will be required to submit certifications or documentation which clearly show that they can receive funds from the Department of Commerce (DOC) for this research. Foreign researchers must subcontract with U.S. proposers. Non-federal researchers affiliated with NOAA-University Joint Institutes should comply with joint institutional requirements and will be funded either through grants to their institutions or joint institutes. Proposals deemed acceptable from Federal researchers will be funded through a mechanism other than a grant or cooperative agreement. DOC requirements will prevail if there is a conflict between DOC requirements and institutional requirements.

(8) *Award Period*: Typically, CSCOR/COP's projects average one to five years. Projects covering more than 1 year will usually be funded on an annual basis.

(9) *Application Forms and Kit*: When applying for financial assistance under a published AO, applicants will be able to obtain a standard NOAA Application Kit at the following World Wide Web address: http://www.cop.noaa.gov in a read-only format. If you are unable to access this information, you may also call (301)713–3338 to leave a mail request. At time of submission, the applicant will follow the requirements presented in the funding announcement.

The Standard Forms 424 (Rev July 1997) Application for Federal Assistance; 424A (Rev July 1997); Budget Information-Non-Construction Programs; and 424B (Rev July 1997) Assurances-Non Construction Programs, will be submitted at time of application for financial assistance as part of the initial review process. Applications not adhering to these stated guidelines will be returned to the applicant without further review.

In addition, other forms required as part of a complete application package include the CD–511, Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying; the CD–512, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying (this certification is to remain with the recipient and is not forwarded to the Grants Officer); and SF-LLL, Disclosure of Lobbying Activities (if applicable). These forms may be submitted at time of application, or at a later date if the application is subsequently notified of selection for funding.

(10) *Project Funding Priorities*: Priority considerations will be given to proposals that promote balanced coverage of the science goals, avoid duplication of completed or ongoing work and increase geographic diversity. Additional priorities may be detailed in CSCOR/COP Announcements of Funding Opportunities.

(11) *Evaluation Criteria*: The following criteria and evaluation weightings will be used for evaluating proposals:

(a) Scientific Merit (20 percent): Intrinsic scientific value of the proposed work and the likelihood that it will lead to fundamental advancements, new discoveries, or have substantial impact on progress in that field;

(b) Research Performance Competence (20 percent): The capability of the investigator and collaborators to complete the proposed work as evidenced by past research accomplishments, previous cooperative work, timely communication, and sharing of findings, data, and other research products;

(c) Relevance (20 percent): Likelihood that the research will make substantial contributions or develop products leading to improved management of coastal resources;

(d) Technical Approach (20 percent): The proposed work has focused science objectives and a complete but efficient strategy for making measurements and observations in support of the objectives. The approach is sound and logically planned throughout the cycle of the proposed work;

(e) Linkages (10 percent): Connections to existing or planned studies, or demonstrated cooperative arrangements to provide or use data or other research results to achieve the objectives.

(f) Costs (10 percent): Adequacy of the proposed resources to accomplish the proposed work, and the appropriateness of the requested proportion of the total available funds.

(l2) *Selection Procedures*: All proposals will be evaluated and ranked individually in accordance with the assigned weights of the above evaluation criteria by independent peer mail review and/or by independent peer panel review. Both Federal and non-

Federal experts in the field may be used in this process. The peer mail reviewers will be several individuals with expertise in the subjects addressed by particular proposals. Each mail reviewer will see only certain individual proposals within their area of expertise, and rank them individually on a scale of one to five, where scores represent respectively: Excellent, Very Good, Good, Fair, Poor.

The peer panel will be comprised of 8 to 10 individuals, with each individual having expertise in a separate area, so that the panel as a whole covers a range of scientific expertise. The panel will have access to all mail reviews of proposals, and will use the mail reviews in discussion and evaluation of the entire slate of proposals.

The program officer(s) will not vote as part of the independent peer panel. Those proposals receiving an average panel rank of Fair or Poor will not be given further consideration and proposers will be notified of non-selection. For the proposals rated by the panel as either Excellent, Very Good, or Good, the program managers will first select the proposals to be recommended for funding by applying the project funding priorities listed above and in each funding announcement; second, determine the total duration of funding for each proposal; and third, determine the amount of funds available for each proposal. Because of consideration of the project funding priorities, awards may not necessarily be made to the most highly-ranked proposals.

Investigators may be asked to modify objectives, work plans, or budgets and provide supplemental information required by the agency prior to the award. When a decision has been made (whether an award or declination), verbatim copies of reviews and summaries of review panel deliberations, if any, are available to the proposer.

(13) *Other Requirements*:

(a) Federal Policies and Procedures: Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations and procedures applicable to Federal financial assistance awards.

(b) Past Performance: Unsatisfactory performance by a recipient under prior Federal awards may result in an application not being considered for funding.

(c) Preaward Activities: If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that they may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs unless approved by the Grants Officer as part of the terms when the award is made.

(d) No Obligation for Future Funding: If an application is selected for funding, DOC/NOAA has no obligation to provide any additional future funding in connection with that award. Amendment of an award to increase funding or, unless the award specifically provides to the contrary, to extend the period of performance is at the total discretion of DOC/NOAA.

(e) Delinquent Federal Debts: No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until:

(i) The delinquent account is paid in full,

(ii) A negotiated repayment schedule is established and at least one payment is received, or

(iii) Other arrangements satisfactory to the Department of Commerce are made.

(f) Name Check Review: All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of, or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

(g) Debarment, Suspension, Drug-Free Workplace, and Lobbying Provisions: All applicants must comply with the requirements of l5 CFR part 26, "Government-wide Debarment and Suspension (nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)" and l5 CFR part 28, "New Restrictions on Lobbying," including the submission of required forms and obtaining certifications from lower tier applicants/bidders.

(h) False Statements: A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in l8 U.S.C. l00l.

(i) Intergovernmental Review: Applications under this program are not subject to Executive Order l2372, "Intergovernmental Review of Federal Programs."

(j) This action was determined to be not significant for purposes of Executive Order 12866.

(k) This document involves collections of information subject to the Paperwork Reduction Act (PRA) which have been approved by the Office of Management and Budget (OMB) under OMB control numbers 0348–0044, 0348–0040 and 0348–0046. Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection displays a current valid OMB control number.

Dated: September 2, 1999.

Captain Ted I. Lillestolen,

Deputy Assistant Administrator National Ocean Service.

[FR Doc. 99–23480 Filed 9–9–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082699A]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Mississippi/Louisiana Habitat Protection Advisory Panel (AP).

DATES: The meeting will begin at 9:00 a.m. on Thursday, September 23, 1999 and conclude by 3:00 p.m.

ADDRESSES: The meeting will be held at the New Orleans Airport Hilton, 901 Airline Highway, New Orleans, LA 70062; telephone: 504–469–5000.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Jeff Rester, Gulf States Marine Fisheries Commission; telephone: 228–875–5912.

SUPPLEMENTARY INFORMATION: The Louisiana/Mississippi group is part of a three unit Habitat Protection Advisory Panel of the Gulf of Mexico Fishery Management Council. The principal role of the advisory panels is to assist the Council in attempting to maintain optimum conditions within the habitat and ecosystems supporting the marine resources of the Gulf of Mexico. Advisory panels serve as a first alert system to call to the Council's attention proposed projects being developed and other activities which may adversely impact the Gulf marine fisheries and their supporting ecosystems. The panels may also provide advice to the Council on its policies and procedures for addressing environmental affairs.

At this meeting, the AP will discuss revision of the Council's Habitat Policy to include essential fish habitat (EFH) provisions, an update on EFH assessments in Council fishery management plan amendments, an update on the status of the EFH lawsuit, review of the Turkey Creek Development project in south Mississippi, and an update on the Broadwater Casino expansion project.

Although other issues not on the agenda may come before the AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. The AP's actions will be restricted to those issues specifically identified in the agenda listed as available by this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by September 16, 1999.

Dated: September 3, 1999.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–23485 Filed 9–9–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082799C]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an application to modify an enhancement permit (895); issuance of modifications to an existing scientific research permit (1144).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has received an application for a modifications to an existing permit from the U.S. Army Corps of Engineers at Walla Walla, WA (Corps) (895); and NMFS has issued a modification to a scientific research permit to Mr. Bruce D. Peery, Michael J. Bresette and Jonathan C. Gorham (1144).

DATES: Written comments or requests for public hearings on the new modification request must be received on or before October 12, 1999.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

For permit 895: Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

For permit 1144: Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910 (301–713–1401).

FOR FURTHER INFORMATION CONTACT:

For permit 895: Robert Koch, Portland, OR (503–230–5424).

For permit 1144: Terri Jordan, Silver Spring, MD (301–713–1401).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting hearings on an application listed in this notice should set out the specific reasons why hearings on that application would be appropriate (see **ADDRESSES**). The holding of such hearings are at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in this Notice

The following species and evolutionarily significant units (ESU's) are covered in this notice:

Sea Turtles

Green turtle (*Chelonia mydas*), Kemp's ridley turtle (*Lepidochelys kempii*), Loggerhead turtle (*Caretta caretta*).

Fish

Chinook salmon (*Oncorhynchus tshawytscha*): Snake River (SnR) fall, SnR spring/summer, upper Columbia River (UCR) spring.

Sockeye salmon (*Oncorhynchus nerka*): SnR.

Steelhead trout (*Oncorhynchus mykiss*): UCR.

Modification Request Received

The Corps requests a modification to enhancement permit 895. For the modification, the Corps requests an increase in the take of juvenile, threatened, naturally produced, SR spring/summer chinook salmon associated with the juvenile fish transportation program. The increase in take is requested because an unusually large number of wild juvenile spring/summer chinook salmon smolts survived the winter, due to very favorable rearing conditions, and are migrating out of the Snake River and are being collected and transported at the Corps' projects in 1999. The 1998 supplement to the biological opinion prepared by NMFS for the operation of the Federal hydropower system requires the transportation of all juvenile fish at the Snake River projects with transportation facilities. ESA-listed juvenile fish are proposed to be collected at the dams, transported downriver past the dams in aerated barges and trucks, and released below the dams to aid their outmigration to the Pacific Ocean. The Corps is not requesting an increase in ESA-listed juvenile fish indirect mortalities. The permit modification is requested to be valid for the duration of the permit.

Status of Previous Modification Request

Notice was published on April 21, 1999 (64 FR 19515), that an application had been filed by the Corps for a modification to enhancement permit 895. Permit 895 authorizes the Corps annual takes of ESA-listed juvenile fish associated with the operation of the juvenile fish transportation program at four hydroelectric projects on the Snake and Columbia Rivers in the Pacific Northwest. Permit 895 also authorizes the Corps annual incidental takes of ESA-listed adult salmonids associated with fallbacks through the juvenile fish bypass systems at the four dams. The purpose of the modification request was to include takes of juvenile, endangered, naturally produced and artificially propagated, UCR spring chinook salmon in the permit. Since the effective date of the take prohibitions for this endangered species was May 24, 1999, and since the Corps' juvenile fish

transportation program at McNary Dam started in June near the end of the juvenile UCR spring chinook salmon outmigration season, NMFS determined that the take of UCR spring chinook salmon by the Corps would be incidental in 1999 and could be addressed through the section 7 consultation process. Permit 895 expires on December 31, 1999.

Permit Modification Issued

Notice was published on May 13, 1999 (64 FR 25873), that Mr. Bruce D. Peery, Michael J. Bresette and Jonathan C. Gorham applied for a modification to permit 1144. Modification #1 authorizes a 1-year scientific research permit to take listed sea turtles. Up to 75 green, 25 loggerhead and 5 Kemp's ridley turtles will be taken in large mesh tangle nets for the purposes of stock assessment to characterize the sea turtles that utilize the southern Indian River Lagoon System, Florida. Captured turtles will be weighed, photographed, measured, tagged, and released. Notice is hereby given that on June 23, 1998, NMFS issued permit 1144. Modification #1 to Permit 1144 was issued on August 20, 1999, authorizing take of listed species. Permit 1144 expires July 31, 2000.

Dated: September 3, 1999.

Craig Johnson,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–23628 Filed 9–9–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Wool Textiles and Textile Products Produced or Manufactured in the People's Republic of China

September 8, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 10, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 67046, published on December 4, 1998.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 8, 1999.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 30, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on September 10, 1999, you are directed to adjust the limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Sublevels in Group I	
336	187,659 dozen.
338/339	2,520,661 dozen of which not more than 1,860,572 dozen shall be in Categories 338–S/339–S [2].
362	7,682,893 numbers.
410	1,078,970 square meters of which not more than 856,904 square meters shall be in Category 410–A [3] and not more than 856,983 square meters shall be in Category 410–B [4].

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[3] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[4] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.99–23697 Filed 9–9–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DoD Healthcare Quality Initiatives Review Panel

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the initial meeting of the DoD Healthcare Quality Initiatives Review Panel. The meeting will be open to the public. Notice of this meeting is required under the Federal Advisory Committee Act, (Pub. L. 92–463).

DATES: September 21, 1999.

ADDRESSES: Sheraton National Hotel, Columbia Pike & Washington Blvd., Arlington, VA.

PROPOSED SCHEDULE AND AGENDA: The DoD Healthcare Quality Initiatives Review Panel will meet in open session from approximately 8:30 am to 5:30 pm on September 21, 1999.

This meeting will include:

- Welcoming remarks and introductions
- Historical overview
- Review of statue
- Review of charter
- Orientation/Overview for Panel
- Suggested process for operation of the Panel; deliverable and timelines
- Twenty minutes for public comments

FOR FURTHER INFORMATION CONTACT: Public seating for this meeting is limited and is available on a first-come, first-served basis. For information please contact Gia Edmonds at (703) 933–8325.

Dated: September 3, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–23492 Filed 9–9–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Group of Advisors to the National Security Education Board Meeting

AGENCY: National Defense University.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the Group of Advisors to the National Security Education Board. The purpose of the meeting is to review and make recommendations to the Board concerning requirements established by the David L. Boren National Security Education Act, Title VIII of Public Law 102–183, as amended.

DATES: October 5, 1999.

ADDRESSES: National Security Education Program Office, 1101 Wilson Boulevard—Suite 1210, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond J. Collier, Deputy Director, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rosslyn P.O. Box 20010, Arlington, Virginia 22209–2248; (703) 696–1991. Electronic mail address: *colliere@ndu.edu*.

SUPPLEMENTARY INFORMATION: The Group of Advisors meeting is open to the public.

Dated: September 3, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison officer, Department of Defense.

[FR Doc. 99–23491 Filed 9–9–99; 8:45 am]

BILLING CODE 1001–10–M

DEPARTMENT OF DEFENSE

Department of the Army

Advisory Committee Meeting Notice

AGENCY: U.S. Army Training and Doctrine Command (TRADOC), DoD.

ACTION: Notice of meeting.

SUMMARY: In accordance with Section 10 (a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following meeting:

Name of Committee: Distance Learning/Training Technology Subcommittee of the Army Education Advisory Committee.

Date: 5–6 October 1999.

Place: Fort Eustis, Virginia.

Time: 0830–1630 (5 Oct 99); 0830–1640 (6 Oct 99).

Proposed Agenda: Swearing in of new members, a Command Overview briefing, and review of The Army Distance Learning Program (TADLP). This will include multimedia authoring standards, DL infrastructure, Deployable Training, Video Teletraining, a demonstration of DL Classroom, and demonstrations of CD ROM and Internet training products.

For Further Information Contact: All communications regarding this subcommittee should be addressed to Mr. Richard Karpinski, at Commander, Headquarters TRADOC, ATTN: ATTG–CF (Mr. Karpinski), Fort Monroe, VA 23651–5000; telephone number (757) 728–5531.

Supplementary Information: Meeting of the advisory committee is open to the public. Because of restricted meeting space, attendance will be limited to those persons who have notified the Advisory Committee Management Office in writing at least five days prior to the meeting of their intention to attend. Contact Mr. Karpinski (757) 728–5531 for meeting agenda and specific locations.

Any member of the public may file a written statement with the committee before, during, or after the meeting. To the extent that time permits, the committee chairman may allow public presentations or oral statements at the meeting.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–23593 Filed 9–9–99; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Availability of the Draft Programmatic Environmental Impact Statement (dPEIS) for the Dredged Material Management Plan (DMMP) for the Port of New York/New Jersey (PANY/NJ)

AGENCY: U.S. Army Corps of Engineers, New York District, DOD.

ACTION: Notice of availability.

SUMMARY: The responsible lead agency is the U.S. Army Engineer District New York. The DMMP project area is in and surrounds the Port of New York/New Jersey and includes the New York Bight Apex, the Lower Bay Complex, which includes the Lower Bay, Raritian and Sandy Hook Bays, the Upper Bay Complex which includes the Hudson and East Rivers, Kill Van Kull, and Newark Bay, and the lands contiguous to these water bodies for a radius of approximately 20 miles. The document contains three reports the dPEIS, the DMMP, and the Technical Appendix for the DMMP. The dPEIS explores the available options and the Recommended Course of Action identified in the DMMP.

DATES: Written comments received within 45 days of the publication of the Environmental Protection Agency's Notice of Availability in the **Federal Register** will be considered by the Corps in decision-making for the final PEIS.

FOR FURTHER INFORMATION CONTACT: Questions regarding the scoping process or requests for the draft Programmatic Environmental Impact Statement may be directed to Mr. Robert J. Kurtz, EIS Coordinator, U.S. Army Corps of Engineers, Planning Division-Technical Services, New York District, Jacob K. Javits Federal Building, New York, New York 10278–0090, (212) 264–2230.

SUPPLEMENTARY INFORMATION: Several authorities exist to conduct navigation studies and maintain the New York Harbor, these include the Rivers and Harbors Appropriation Act of 1899 (33 U.S.C. 401–466n), the Federal Water Pollution Control Act of 1972 (Clean Water Act—CWA), and the Marine Protection, Research and Sanctuaries Act of 1972 (MPRSA). With respect to the preparation of the DMMP, Corps planning guidance stated in EC1165–2–200 requires each district to maintain responsibility for preparation of long-term plans to accomplish the mission defined in the above documents.

The linked problems associated with dredging in the Port are that sedimentation creates shallow depths,

and a substantial volume of the material to be dredged contains contaminants at levels that may limit disposal options. The Port of New York/New Jersey has an ambient average depth of about 19 feet. Vessel draft for many years has exceeded this depth, requiring dredging. Furthermore the draft of modern vessels continue to increase. Currently, the newest vessels have drafts in excess of 50 feet. The shallow harbor requires continued dredging and even deepening of channels to accommodate deeper draft vessels. The current estimate for annual dredging averages in excess of 8.2 million cubic yards through 2010. This figure includes both maintenance and new work projects. The second problem is caused by anthropogenic (human generated) industrial activity that adds pollutants to the Port sediments. Currently, between 67 and 75% of the annual dredging volume may contain contaminants at concentrations that require special sites and handling to dispose of the dredged material to protect the marine and estuarine environment and biota.

The Port is a vital economic and environmental resource to the entire region and the nation. Dredging must occur in order that the Port of New York/New Jersey (PANY/NJ) remain a viable port for shipping in the future. Failure to do this, risks the loss of some 166,600 jobs and over $25 billion in commerce per year. There is also an opportunity to develop plans to safely place dredged material while investigating means of protecting and restoring the Port of New York/New Jersey's estuary. The Port stakeholders have met monthly under the Dredged Material Management Integration Work Group (DMMIWG) for the last several years. This work group represents the Federal and state governments including regulatory and government resources agencies, the State of New York and New Jersey, the Port Authority of the Port of New York/New Jersey, Port users and involved stakeholder organizations. Its purpose has been to provide a forum for input to the planning process for the DMMP, and to coordinate that effort. This effort includes the Harbor Estuary Plan (HEP) and its Comprehensive Conservation and Management Plan (CCMP) signed by all the major agencies with responsibilities for the port and its environment. In addition to this, formal group meetings are held monthly among port planners (NYD, PANY/NJ, States of NY and NJ) to discuss future needs and disposal/management options for the long-term. Other meetings have been held with local interested parties including working groups assembled by the borough presidents of Brooklyn and Staten Island.

The Corps of Engineers has held scoping meetings with the public on this plan. Public meetings included poster sessions on various options and the overall planning process during February through April 1997. Scoping meetings that included posters explaining the scope of the EIS, followed by question/answer periods and the opportunity to make taped statements, were held during April 1998. Written comments were also solicited and gathered at these meetings. Notices of public meetings held in 1997 and 1998 were sent out to agencies, and to more than 2,000 public officials, repositories and members of the public. Additionally, a Notice of Intent to produce a PEIS including an outline of the scope was published in the **Federal Register** on February 24, 1998. Two reports were circulated prior to the public meetings. The reports are the Interim Report (October 1996) and the Status Report (December 1997). Written comments to these reports, along with verbal comments at the meetings, were considered in revising the EIS scope, and addressing public concerns in the PEIS and DMMP.

Simeon Hook,

Acting Chief, Planning Division.

[FR Doc. 99–23358 Filed 9–9–99; 8:45 am]

BILLING CODE 3710–06–M

EMERGENCY STEEL GUARANTEE LOAN BOARD

EMERGENCY OIL AND GAS GUARANTEED LOAN BOARD

Public Meeting To Receive Input Regarding Operations of the Emergency Steel Guarantee Loan Program and the Emergency Oil and Gas Guaranteed Loan Program

AGENCY: Emergency Steel Guarantee Loan Board; Emergency Oil and Gas Guaranteed Loan Board.

ACTION: Notice; public meeting.

SUMMARY: On August 17, 1999, President Clinton signed Public Law 106–51, an act establishing two loan guarantee programs. One program guarantees loans to qualified steel and iron ore companies and the second guarantees loans to qualified oil and gas companies. The law established two Loan Guarantee Boards (Boards), each comprising the Chairman of the Board of Governors of the Federal Reserve System, as Chair of the Board, the Secretary of Commerce, and the Chairman of the Securities and Exchange Commission, to oversee the programs. The Boards have certain responsibilities under the law, including the issuance of necessary regulations. To receive public input regarding operations of the two programs, the Boards are holding a public meeting on September 22, 1999.

DATES: The public meeting will take place on Wednesday, September 22, 1999, from 9:30 a.m. to 5:00 p.m., with a lunch break from 12:30 p.m. to 1:30 p.m. Parties interested in participating in the public meeting must register with Dan Fee ((202) 482–6151) by close of business, Friday, September 17, 1999. Those who would like to present oral testimony at the meeting should so inform Mr. Fee when they register. Written comments and written statements of oral testimony must be submitted by September 17, 1999.

ADDRESSES: The public meeting will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Main Auditorium, Washington, DC 20230. Written comments and written statements of oral testimony should be sent to: Dan Fee, Office of the Secretary, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Room 5515, Washington, DC 20230. To enable prompt review and public access, paper submissions should include a version of the document on diskette in WordPerfect or Word format. Diskettes must be labeled with the name of the submitting party and the name and version of the word processing program.

FOR FURTHER INFORMATION CONTACT: Dan Fee, (202) 482–6151.

SUPPLEMENTARY INFORMATION: On August 17, 1999, President Clinton signed into law Public Law 106–51, an act providing authority for guarantees of loans to qualified steel and iron ore companies and to qualified oil and gas companies. Chapter 1 of Public Law 106–51, called the Emergency Steel Loan Guarantee Act of 1999, established a program for guaranteeing loans made by private sector lending institutions to qualified steel and iron ore companies. Chapter 2, called the Emergency Oil and Gas Guaranteed Loan Program Act of 1999, established a program for guaranteeing loans made by private sector lending institutions to qualified oil and gas companies. Each program is overseen by its own Loan Guarantee Board. While the Boards are distinct, the membership on each Board is identical. The Boards are composed of the Chairman of the Board of Governors of the Federal Reserve System, as Chair of each Board, the Secretary of Commerce, and the Chairman of the Securities and Exchange Commission. The Boards have certain responsibilities under the law, including the issuance of necessary regulations. Funds were appropriated to the Secretary of Commerce to implement and administer the program at the Board's direction.

The meeting will be held on Wednesday, September 22, 1999, at the Department of Commerce. The meeting will consist of parties presenting oral statements to staff of the agencies headed by the members of the Boards. Oral statement should address issues and make suggestions the presenters believe the Board should consider in designing the programs. In making their statements, parties should take into account the purposes of the programs and the specific requirements of Public Law 106–51. Neither written comments nor oral statements should address specific companies or applications.

We will make every effort to accommodate all parties wishing to speak at the meeting. It may, however, be necessary to limit the time available to each speaker. Interested parties not wishing to speak may submit written comments by no later than September 17, 1999. Parties may request to speak at the meeting by making a request when they register and submitting a written statement of their oral presentation to Dan Fee by no later than September 17, 1999, at Office of the Secretary, U.S. Department of Commerce, 14th Street, and Constitution Avenue, NW, Room 5515, Washington, DC 20230.

Under the law, the Boards may guarantee loans provided by private banking or investment companies to qualified steel companies and qualified oil and gas companies. A qualified steel company is defined in the law to mean any company that: (A) Is incorporated under the laws of any State; (B) is engaged in the production and manufacture of a product defined by the American Iron and Steel Institute as a basic steel mill product, including ingots, slab and billets, plates, flat-rolled steel, sections and structural products, bars, rail type products, pipe and tube, and wire rod; and (C) has experienced layoffs, production losses, or financial losses since the beginning of the steel import crisis, in January 1998, or that operates substantial assets of a company that meets these qualifications. An iron ore company incorporated under the laws of any State is treated as a qualified steel company for purposes of the steel program.

A qualified oil and gas company is a company that: (A) is an independent oil and gas company (within the meaning of section 57(a)(2)(B)(i) of the Internal Revenue Code of 1986) or a small business concern under section 3 of the Small Business Act (15 U.S.C. 632) (or a company based in Alaska, including an Alaska Native Corporation created pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)) that is an oil field service company whose main business is providing tools, products, personnel, and technical solutions on a contractual basis to exploration and production operators that drill, complete wells, and produce, transport, refine, and sell hydrocarbons and their byproducts as the main commercial business of the concern or company; and (B) has experienced layoffs, production losses, or financial losses since the beginning of the oil import crisis, after January 1, 1997.

Under the law, the Boards must make certain determinations in order to guarantee a loan: (A) That credit is not otherwise available to the qualified company under reasonable terms or conditions sufficient to meet its financing needs, as reflected in the financial and business plans of that company; (B) that the prospective earning power of that company, together with the character and value of the security pledged, furnish reasonable assurance of repayment of the loan to be guaranteed in accordance with its terms; (C) that the loan to be guaranteed bears interest at a rate determined by the Boards to be reasonable, taking into account the current average yield on outstanding obligations of the United States with remaining periods of maturity comparable to the maturity of such loan; (D) that the company agrees to an audit by the General Accounting Office prior to the issuance of the loan guarantee and annually thereafter while the guaranteed loan is outstanding; and (E) in a case of a purchaser of substantial assets of a qualified steel company, that the qualified steel company establishes that it is unable to reorganize itself.

Written comments and statements will be available for public inspection Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m. at the Department of Commerce. To the extent technically feasible, all comments received will be made available to the public on the Internet at: *http://www.doc.gov.*

Dated: September 3, 1999.

William M. Daley,

Secretary of Commerce, Member, Emergency Steel Guaranteed Loan Board, Emergency Oil and Gas Guaranteed Loan Board.

[FR Doc. 99–23503 Filed 9–8–99; 10:12 am]

BILLING CODE 3510–24–M

DEPARTMENT OF ENERGY

Draft Environmental Impact Statement (EIS) for the Treatment and Management of Sodium-Bonded Spent Nuclear Fuel; Public Comment Period Extension

AGENCY: Department of Energy (DOE).

ACTION: Extension of public comment period.

SUMMARY: In response to requests from the public, DOE has decided to extend the deadline for the transmittal of public comments on the "Draft Environmental Impact Statement for the Treatment and Management of Sodium-Bonded Spent Nuclear Fuel" (DOE/EIS–0306D) from September 13, 1999, to September 28, 1999.

DATES: Comments should be transmitted or postmarked by September 28, 1999, to ensure consideration. Comments submitted after that date will be considered to the extent practicable.

ADDRESSES: Written comments on the draft EIS, requests to be placed on the EIS distribution list, and questions concerning the project should be sent to: Ms. Susan M. Lesica, EIS Document Manager, Office of Nuclear Facilities Management, Office of Nuclear Energy, Science and Technology, U.S. Department of Energy, NE–40, 19901 Germantown Road, Germantown, Maryland 20874–1290.

Comments and requests may also be submitted by toll-free facsimile to (877) 621–8288 or telephone (877) 450–6904. Comments and requests may also be submitted by electronic mail to sodium.fuel.eis@hq.doe.gov.

FOR FURTHER INFORMATION CONTACT: For general information on DOE's NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), Office of Environment, Safety and Health, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0119; or telephone (202) 586–4600 or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: On July 30, 1999, DOE published a notice in the **Federal Register** (64 FR 41404) announcing the availability of the draft EIS. DOE received requests from several

parties to extend the comment period. In response to these requests and to ensure that all interested parties have time to comment, the deadline for transmittal of comments has been extended to September 28, 1999. Comments should be postmarked by September 28, 1999, to ensure consideration.

Issued in Washington, DC, this 3rd day of September 1999.

William D. Magwood, IV,

Director, Office of Nuclear Energy, Science and Technology.

[FR Doc. 99–23567 Filed 9–9–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–496–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 3, 1999.

Take notice that on August 31, 1999, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets proposed to become effective September 1, 1999:

Thirty-Eighth Revised Sheet No. 8
Thirty-Eighth Revised Sheet No. 9
Thirty-Seventh Revised Sheet No. 13
Forty-Sixth Revised Sheet No. 18

ANR states that the above-referenced tariff sheets are being filed to implement recovery of approximately $2.2 million of above-market costs that are associated with its obligations to Dakota Gasification Company (Dakota). ANR proposes a reservation surcharge applicable to its Part 284 firm transportation customers to collect ninety percent (90%) of the Dakota costs, and an adjustment to the maximum base tariff rates of Rate Schedule ITS and overrun rates applicable to Rate Schedule FTS–2, so as to recover the remaining ten percent (10%). ANR also advises that the proposed changes would decrease current quarterly Above-Market Dakota Cost recoveries from $2,368,566 to $2,156,641.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23540 Filed 9–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–495–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

September 3, 1999.

Take notice that on August 31, 1999, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in on Appendix A to the filing, to be effective October 1, 1999.

CIG states that the purpose of this filing is to comply with its FERC Gas Tariff, First Revised Volume No. 1, Article 20.1 of the General Terms and Conditions. CIG states these tariff sheets reflect the requirements of its FERC Gas Tariff, Article 20.1 and relates to gas quality controls associated with volumes which are delivered on CIG's "Valley Line".

CIG states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 88 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23537 Filed 9–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM00–1–32–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

September 3, 1999.

Take notice that on August 31, 1999, Colorado Interstate Gas Company (CIG), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Fourteenth Revised Sheet No. 11A, reflecting a decrease in its fuel reimbursement percentage for Lost, Unaccounted-For and Other Fuel Gas from 1.53% to 1.43%, reflecting an increase in the fuel reimbursement percentage for Transportation Fuel Gas from 2.38% to 2.47%, and reflecting an increase in the fuel reimbursement percentage for Storage Fuel Gas from 1.29% to 1.32% effective October 1, 1999.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23542 Filed 9–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM00–1–160–000]

Discovery Gas Transmission LLC; Notice of Proposed Changes in FERC Gas Tariff

September 3, 1999.

Take notice that on September 1, 1999, Discovery Gas Transmission LLC (Discovery) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, First Revised Tariff Sheet No. 20, to become effective October 1, 1999.

Discovery states that the purpose of this filing is to implement the Commission's revision to the unit rate of the Annual Charge Adjustment (ACA) clause pursuant to Docket No. RM87–3–000, Order No. 472.

Discovery states that copies of this filing are being mailed to its customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23543 Filed 9–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM00–1–171–000]

Dynegy Midstream Pipeline, Inc.; Notice of ACA Charge Tariff Filing

September 3, 1999.

Take notice that on August 31, 1999, Dynegy Midstream Pipeline, Inc. (DMP) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following proposed Tariff sheet, with an effective date of October 1, 1999:

First Revised Sheet No. 5

DMP states that this filing is submitted pursuant to Section 154.402(c) of the Commission's Regulations and Section 11.4 of the General Terms and Conditions of DMP's FERC Gas Tariff. DMP states that this is its first ACA charge filing, and its has revised Sheet No. 5 to reflect the ACA unit charge of $.0022 per Dekatherm specified by the Commission in Bill No. M9G90002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties tot he proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23545 Filed 9–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–488–000]

East Tennessee Natural Gas Company; Notice of Tariff Filing

September 3, 1999.

Take notice that on August 31, 1999, East Tennessee Natural Gas Company (East Tennessee), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with an effective date of October 1, 1999:

First Revised Sheet No. 52C
Fouth Revised Sheet No. 53
Sixth Revised Sheet No. 54
Original Sheet No. 54A
Original Sheet No. 54B
Third Revised Sheet No. 55
Fouth Revised Sheet No. 61
Second Revised Sheet No. 62
Original Sheet No. 62A
Original Sheet No. 62B
Sixth Revised Sheet No. 63
Second Revised Sheet No. 64
Second Revised Sheet No. 174

East Tennessee states that by this filing, it proposes to adjust the pricing provisions under the cashout mechanism of its tariff. East Tennessee further states that it currently uses an average month spot price for its monthly cashout reconciliation process. By this filing, East Tennessee proposes to convert to a "High/Low" monthly pricing system in place of using the current average monthly spot price.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 of 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23530 Filed 9–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–66–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Tariff Filing

September 3, 1999.

Take notice that on August 31, 1999, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered as part of its FERC Gas Tariff, Original Volume No. 2, the following tariff sheets, proposed to be effective September 1, 1999:

Forty-Fifth Revised Sheet No. 1
Second Revised Sheet No. 597
Thirty-First Revised Sheet No. 1000

Great Lakes states that the above-referenced tariff sheets are being filed to reflect the cancellation of Rate Schedule T–16 of Volume No. 2 following the request of Northern Minnesota Utilities to convert its Part 157 transportation service to Part 284.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23524 Filed 9–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–490–000]

Midwestern Gas Transmission Company; Notice of Tariff Filing

September 3, 1999.

Take notice that on August 31, 1999, Midwestern Gas Transmission Company (Midwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, original and revised tariff sheets pertaining to its pro forma Electronic Data Interchange (EDI) Trading Partner Agreement (TPA).

Midwestern states that this filing will remove its existing pro forma EDI TPA and instead incorporate the Model TPA of the Gas Industry Standards Board (GISB) which GISB filed with the Commission on November 3, 1998 (November 3, 1998 Model TPA). Additionally, the filing will modify Midwestern's Agency Authorization Agreement for EDI to list the relevant data sets and include space for additional GISB data sets. Midwestern further states that the purpose of these changes is to reduce the number of material deviation filings that Midwestern would be required to file under 18 CFR ¶ 154.1(d).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23532 Filed 9–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–145–004]

Natural Gas Pipeline Company of America; Notice of Supplement to Compliance Filing

September 3, 1999.

Take notice that on September 1, 1999, Natural Gas Pipeline Company of America (Natural), tendered for filing a Supplement to its Activity Report for Rate Schedule PALS Service for the period July 1, 1998 through June 30, 1999.

Natural states that on August 13, 1999, it filed its Activity Report for Rate Schedule PALS in compliance with Ordering Paragraph (B) of the Federal Energy Regulatory Commission's order issued June 30, 1998 in Docket No. RP98–145–001. Subsequently, Natural discovered that it had inadvertently omitted the Usage Rate Column for PALS activity for the month of February 1999. In addition, Natural corrected some incorrect totals previously reflected in the months of November 1998 and June 1999. Therefore, Natural submitted a supplement to its PALS Activity Report.

Natural states that copies of the filing have been mailed to all parties set out on the official service list in Docket No. RP98–145.

Any person desiring to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with § 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before September 10, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23527 Filed 9–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–610–000]

Natural Gas Processing Company; Notice of Application

September 3, 1999.

Take notice that on August 30, 1999, Natural Gas Processing Company (NGP), 101 Division Street, Worland, Wyoming 82401, filed in Docket No. CP99–610–000 an application pursuant to Section 7(f) of the Natural Gas Act (NGA) for a service area determination, a finding that NGP, operating through its division, Zia Natural Gas Company (Zia), qualifies as a local distribution company for purposes of Section 311 of the Natural Gas Policy Act (NGPA), and for a waiver of the Commission's regulatory requirements, including reporting and accounting requirements applicable to natural gas companies under the NGA and NGPA, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.httm (call 202–208–2222 for assistance).

NGP proposes to connect a 4-inch pipeline to its existing distribution system and cross the New Mexico/Texas border, just outside the city limits of Hobbs, in Lea County, to serve an unincorporated subdivision located in Gaines County, Texas and immediately adjacent to the border. The service area, it is said, would be the subdivision NGP proposes to serve through Zia.

NGP states that the grant of the requested service area determination would allow NGP to provide natural gas service to residents of Texas who have not been provided such service by any other entity.

Zia, it is said, would provide the service at the same rates and under the same service rules as it does for its customers in Hobbs. It is further said that Zia has applied for and received the necessary authorizations and permits from the State of Texas to operate a natural gas distribution system in Texas, and it would be subject to the jurisdiction of the Texas Railroad Commission.

It is stated that the total cost of the project is approximately $95,550.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before September 24, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that granting the certificates is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion, believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for NGP to appear or to be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–23523 Filed 9–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–494–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 3, 1999.

Take notice that on August 30, 1999, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed in the Appendix to the filing, to be effective October 1, 1999.

Northwest states that the purpose of this filing is to propose several unrelated changes to Northwest's tariff. Specifically, Northwest proposes (1) to modify Northwest's rate schedules to specify common types of rate discounts so that service agreements incorporating these discounts will not be considered non-conforming, (2) to afford more flexibility in providing in-field transfers at the Jackson Prairie storage project, (3) to clarify withdrawal obligations when capacity is no longer available for interruptible storage under Rate Schedule SGS–21, (4) to add provisions pertaining to pro-rata allocations of nominated Rate Schedule SGS–21 storage withdrawals and injections, (5) to change the monthly rates for Rate Schedules SGS–21 and LS–21 to daily rates, (6) to revise the annual contract quantity provision in Rate Schedule TF–2, changing the annual contract quantity period from a calendar year to a year ending September 30, (7) to remove the list of marketing affiliates from Northwest's tariff, and (8) to make other minor changes, including various housekeeping and clean-up changes.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23536 Filed 9–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR99–19–000]

ONEOK Gas Storage, L.L.C., ONEOK Sayre Storage Company; Notice of Petition for Rate Approval

September 3, 1999.

Take notice that on August 16, 1999, ONEOK Gas Storage, L.L.C. and ONEOK Sayre Storage Company (Applicants), tendered for filing pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable, market-based rates for interruptible storage services performed under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA). The rates for the individual storage services will be negotiated between Applicants and various shippers. Applicants do not propose to have established any maximum or minimum rate for any generic service. Applicants may also retain a percentage of the injected volumes as an allowance for compressor fuel and losses for storage of natural gas.

Applicants' petition states that they are operated together as an intrastate natural gas pipeline company within the meaning of section 2(16) of the NGPA in the State of Oklahoma. Applicants own storage facilities in the State of Oklahoma, which are the subject of this petition and which are located in Creek, Kingfisher, Logan, Muskogee, Okmulgee, Osage and Beckham Counties, Oklahoma.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the market-based negotiated rates for interruptible storage services will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to change for similar service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426 in accordance with §§ 385.211 and 385.214 of the Commission's rules of practice and procedures. All motions must be filed with the Secretary of the Commission on or before September 20, 1999. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc 99–23525 Filed 9–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–497–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

September 3, 1999.

Take notice that on August 31, 1999, Panhandle Eastern Pipe Line Company (Panhandle) rendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective October 1, 1999.

Panhandle states that this filing is to reinstate its Carryover Docket No. RP96–260–000 Settlement Volumetric Surcharge applicable to transportation service provided under Rate Schedules IT and EIT. The Initial Docket No. RP96–260–000 Settlement Volumetric Surcharge was established in a February 12, 1997 Stipulation and Agreement in Docket No. RP96–260–000 (February 12, 1997 Settlement). Panhandle has not fully recovered the Interruptible Docket No. RP96–260–000 Settlement Amount as of June 30, 1999. Accordingly, pursuant to Article I, Section 3(f)(ii) of the February 12, 1997 Settlement, Panhandle is proposing to implement a 1.26¢ per Dt. Carryover Docket No. RP96–260–000 Settlement Volumetric Surcharge to be in effect during the twelve month Docket No. RP96–260–000 Settlement Carryover Period commencing October 1, 1999.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc 99–23525 Filed 9–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–045]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 3, 1999.

Take notice that on September 1, 1999, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheet to be effective September 1, 1999:

Original Sheet No. 8H

REGT states that the purpose of this filing is to reflect the implementation of a negotiated rate contract.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with § 385.211 of the Commission's rules and regulations. All such protests must be filed as provided in § 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23526 Filed 9–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–491–000]

Southern Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

September 3, 1999.

Take notice that on August 31, 1999, South Georgia Natural Gas Company (South Georgia), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective October 1, 1999:

First Revised Sheet No. 54a
Third Revised Sheet No. 55

South Georgia states that the purpose of this filing is to revise Sections 8.1 and 8.2 of its tariff in order to permit changes to predetermined allocation (PDA) statements during additional confirmation periods.

South Georgia states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23533 Filed 9–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–492–000]

Southern Natural Gas Company; Notice of Cost Recovery Filing

September 3, 1999.

Take notice that on August 31, 1999, Southern Natural Gas Company (Southern), tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets with the proposed effective date of October 1, 1999:

Forty-Eighth Revised Sheet No. 14
Thirty-Fourth Revised Sheet No. 14A
Sixty-Ninth Revised Sheet No. 15
Fortieth Revised Sheet No. 15A
Forty-Eighth Revised Sheet No. 16
Thirty-Fourth Revised Sheet No. 16A
Sixth-Ninth Revised Sheet No. 17
Fortieth Revised Sheet No. 17A

Southern sets forth in the filing its revised demand surcharges for the recovery of Order No. 636 transition costs associated with Southern LNG Inc. from the period May 1, 1999 through July 31, 1999. These costs have arisen as a direct result of restructuring under Order No. 636.

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commissions Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23534 Filed 9–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–493–000]

Southern Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

September 3, 1999.

Take notice that on August 31, 1999, South Georgia Natural Gas Company (South Georgia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective October 1, 1999:

Fifth Revised Sheet No. 133
Second Revised Sheet No. 135

South Georgia states that the purpose of this filing is to revise Sections 8.1 and 8.2 of its Tariff in order to permit changes to predetermined allocation (PDA) statements during additional confirmation periods.

South Georgia states that copies of the filing will be served upon shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23535 Filed 9–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–496–000]

Southern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 3, 1999.

Take notice that on August 31, 1999, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the tariff sheets in Appendix A to its filing to become effective October 1, 1999.

Southern states that the proposed changes would increase revenue entitlements from jurisdictional service by $17 million based on the 12-month period ending April 30, 1999, as adjusted.

Southern states that the proposed changes reflect, among other changes, increases in cost of service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23538 Filed 9–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–480–001]

Texas Eastern Transmission Corporation; Notice of Errata Filing

September 3, 1999.

Take notice that on August 30, 1999, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following substitute tariff sheet to be effective September 23, 1999:

Sub Second Revised Sheet No. 456

Texas Eastern states that the sole purpose of this filing is to correct an inadvertent typographical error included in one of the tariff sheets filed by Texas Eastern on August 23, 1999 in its filing to include in its tariff a negotiated rates provision pursuant to the Alternative Rates Policy Statement [74 FERC 61,076 (1996)].

Texas Eastern states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to protest this filing should filed a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online rims.htm (call 202–208–2222) for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23529 Filed 9–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM00–1–18–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 3, 1999.

Take notice that on August 30, 1999, Texas Gas Transmission Corporation (Texas Gas), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, with an effective date of November 1, 1999:

Seventh Revised Sheet No. 14

Texas Gas states that the tariff sheet is being filed to establish a revised Effective Fuel Retention Percentage (EFRP) under the provisions of Section 16 "Fuel Retention" as found in the General Terms and Conditions of Texas Gas's FERC Gas Tariff, First Revised Volume No. 1. The revised EFRP may be in effect for the annual period November 1, 1999, through October 31, 2000. In general, the instant filing results in a minimal overall annual impact on most customers due to the fact each season and each zone of delivery has some EFRPs that increase and some that decrease from percentages charged during the last annual period.

Texas Gas states that copies of the tariff sheet are being mailed to Texas Gas's affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23541 Filed 9–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM00–1–161–000]

Venice Gathering System, L.L.C.; Notice of ACA Charge Tariff Filing

September 3, 1999.

Take notice that on August 31, 1999, Venice Gathering System, L.L.C. (VGS), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following proposed tariff sheet, with an effective date of October 1, 1999:

First Revised Sheet No. 4

VGS states that this filing is submitted pursuant to Section 154.402(c) of the Commission's Regulations and Section 12.4 of the General Terms and Conditions of VGS' FERC Gas Tariff. VGS states that this is its first ACA charge filing, and that it has revised Sheet No. 4 to reflect the ACA unit charge of $.0022 per Dekatherm specified by the Commission in Bill No. M9G90036.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23544 Filed 9–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–489–000]

Viking Gas Transmission Company; Notice of Tariff Filing

September 3, 1999.

Take notice that on August 30, 1999, Viking Gas Transmission Company (Viking), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing. Viking requests an effective date of September 1, 1999 for all of the sheets.

Viking states that the purpose of this filing is to clean-up Viking's tariff by making miscellaneous corrections and updates.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23531 Filed 9–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP99–257–002 and RP89–183–094]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

September 3, 1999.

Take notice that on August 27, 1999, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing a part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets with the proposed effective date of September 1, 1999:

Ninth Revised Sheet No. 6
Twelfth Revised Sheet No. 6A

Williams states that the purpose of the instant filing is to permit Williams to place into effect on September 1, 1999, tariff sheets that recover the GSR costs filed in Docket No. RP99–257–000 and RP89–183–085 and accepted and suspended by order dated March 31, 1999. Williams is concurrently filing a motion to place these tariff sheets into effect on September 1, 1999. As noted in that motion, if the Stipulation and Agreement certified to the Commission in this and related dockets on July 28, 1999 is approved without modification and becomes effective as to all parties, the GSR surcharges and rate components on the tariff sheets being submitted herewith would be eliminated.

Williams stated that a copy of its filing was served on all participants listed on the service lists maintained by the Commission in the dockets referenced above and on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23528 Filed 9–9–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–219–000, et al.]

Athens Generating Company, L.P., et al.; Electric Rate and Corporate Regulation Filings

September 2, 1999.

Take notice that the following filings have been made with the Commission:

1. Athens Generating Company, L.P.

[Docket No. EG99–219–000]

Take notice that on August 27, 1999, Athens Generating Company, L.P. (Athens), a limited partnership with its principal place of business at 7500 Old Georgetown Road, Bethesda, MD 20814, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Athens proposes to construct, own or lease and operate a nominally rated 1080 MW natural gas-fired, combined cycle power plant in the Town of Athens, Greene County, New York. The proposed power plant is expected to commence commercial operation in the first quarter of 2002. All output from the plant will be sold by Athens exclusively at wholesale.

Comment date: September 23, 1999, in accordance with Standard Paragraph

E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Lake Road Generating Company, L.P.

[Docket No. EG99–220–000]

Take notice that on August 30, 1999, Lake Road Generating Company, L.P. (Lake Road), a Delaware limited partnership with its principal place of business at 7500 Old Georgetown Road, Bethesda, MD 20814, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Lake Road was previously determined to be an EWG in Lake Road Generating Company, L.P., 86 FERC ¶ 62,178 (Letter Order issued March 5, 1999). That order was issued based upon Lake Road's plan, at the time, to construct, own and operate a nominally rated 792 MW natural gas-fired combined cycle power plant in the Town of Killingly, Connecticut (the Facility). It is now planned that the Facility will be owned by an unaffiliated entity, the Lake Road Trust Ltd. (the Trust). Lake Road will lease the Facility from the Trust, and will operate the Facility and sell all capacity and energy from it exclusively at wholesale. The Facility is expected to commence commercial operation in the year 2001.

Comment date: September 23, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Lake Road Trust Ltd.

[Docket No. EG99–221–000]

Take notice that on August 31, 1999, Lake Road Trust Ltd., a Delaware business trust with its principal place of business at 1100 North Market Street, Wilmington, Delaware, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Lake Road Trust Ltd. proposes to own a nominally rated 792 MW natural gas-fired combined cycle power plant in the Town of Killingly, Connecticut. Lake Road Trust Ltd. will lease the facility to Lake Road Generating Company, L.P. (LRGC). The proposed power plant is expected to commence commercial operation in the year 2001. All capacity and energy from the plant will be sold exclusively at wholesale by LRGC.

Comment date: September 23, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Alliance Strategies

[Docket No. ER95–1381–013]

Take notice that on August 30, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only.

5. Montana Power Company

[Docket No. ER98–2382–003]

Take notice that on August 16, 1999, Montana Power Company tendered for filing a compliance refund report in accordance with the Commission's letter order in Docket No. ER98–2382–003 issued July 2, 1999.

Comment date: September 22, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. SkyGen Energy Marketing LLC

[Docket No. ER99–972–002]

Take notice that on August 26, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only.

7. CLECO Marketing & Trading LLC

[Docket No. ER99–2300–001]

Take notice that on September 1, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only.

8. Bangor Hydro-Electric Company

[Docket No. ER99–4248–000]

Take notice that on August 26, 1999, Bangor Hydro-Electric Company filed an executed service agreement for non-firm point-to-point transmission service with Entergy Power Marketing Corp.

Bangor Hydro requests waiver of the Commission's 60-day notice requirements so that the agreement can become effective on August 23, 1999.

Comment date: September 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Bangor Hydro-Electric Company

[Docket No. ER99–4249–000]

Take notice that on August 26, 1999, Bangor Hydro-Electric Company filed an executed service agreement for firm point-to-point transmission service with Entergy Power Marketing Corp.

Bangor Hydro requests that the agreement become effective on August 23, 1999.

Comment date: September 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4250–000]

Take notice that on August 26, 1999 Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to American Electric Power Service Corporation (AEP).

Con Edison states that a copy of this filing has been served by mail upon AEP.

Comment date: September 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4251–000]

Take notice that on August 26, 1999, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Con Edison Solutions (CES).

Con Edison states that a copy of this filing has been served by mail upon CES.

Comment date: September 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Entergy Services, Inc.

[Docket No. ER99–2910–002 and EL98–74–000]

Take notice that on August 30, 1999, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a compliance refund report in accordance with the Commission's letter order in Docket Nos. ER98–2910–000 and EL98–74–000.

Comment date: September 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4252–000]

Take notice that on August 26, 1999 Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a service agreement to provide non-firm transmission service pursuant to its Open Access Transmission Tariff to Sithe Energies, Inc. (Sithe).

Con Edison states that a copy of this filing has been served by mail upon Sithe.

Comment date: September 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Tucson Electric Power Company

[Docket No. ER99–4253–000]

Take notice that on August 26, 1999, Tucson Electric Power Company (Tucson), tendered for filing an Amendment No. 1 to the Service Agreement between Tucson and Farmington Electric Utility System for power sales under Tucson's Coordination Tariff, FERC Electric Tariff Original Volume No. 1.

Comment date: September 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Consumers Energy Company

[Docket No. ER99–4254–000]

Take notice that on August 26, Consumers Energy Company (Consumers) tendered for filing executed service agreements for unbundled wholesale power service with Constellation Power Source, Inc. pursuant to Consumers' Market Based Power Sales Tariff accepted for filing in Docket No. ER98–4421–000 and Consumers cost based Power Sales Tariff accepted for filing in Docket No. ER97–964–000.

The Service agreements have an effective date of July 27, 1999.

Copies of the filing have been served on the Michigan Public Service Commission and Constellation Power Source, Inc.

Comment date: September 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. PECO Energy Company

[Docket No. ER99–4255–000]

Take notice that on August 26, 1999, PECO Energy Company (PECO) filed under Section 205 of the Federal Power Act, 16 U.S.C. S 792 et seq., a Transaction Letter dated August 25, 1999 with Horizon Energy Company d/b/a Exelon Energy (EXELON) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of September 1, 1999, for the Transaction Letter.

PECO states that copies of this filing have been supplied to EXELON and to the Pennsylvania Public Utility Commission.

Comment date: September 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Cinergy Services, Inc.

[Docket No. ER99–4256–000]

Take notice that on August 26, 1999, Cinergy Services, Inc. (Services) tendered for filing on behalf of its operating companies, PSI Energy, Inc. (PSI) a Second Amendment Agreement, dated August 1, 1999, to the Power Coordination Agreement, as amended, dated March 1, 1996, between Wabash Valley Power Association (Wabash Valley), PSI and Services.

PSI and Wabash Valley have agreed to replace Service Schedule D—Peaking Capacity and Energy.

Copies of the filing were served on Wabash Valley Power Association, Inc. and the Indiana Utility Regulatory Commission.

Comment date: September 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Montaup Electric Company

[Docket No. ER99–4257–000]

Take notice that on August 26, 1999 Montaup Electric Company (Montaup) tendered for filing a notice of cancellation of its System Sale and Exchange Tariff, FERC Electric Tariff, Original Volume No. IV, together with a notice of termination of associated service agreements, to be made effective as of October 31, 1999. Montaup states that notwithstanding such cancellation and termination, it will not terminate, prior to its term, any transaction in effect on October 31st. In such cases, the tariff and service agreement will remain in effect until the transaction terminates at the conclusion of such term.

Notice of the cancellation and termination have been served upon the following:

Aquila Energy Marketing Corporation, ER98–0569–000
Baltimore Gas & Electric Co., ER97–0800–000
Bangor Hydro-Electric Company, ER96–1306–000
Boston Edison Company, ER97–2662–000
Braintree Electric Light Department, ER96–0437–000
Catex Vitol Electric, L.L.C., ER95–1165–000
Central Maine Power Company, ER95–1527–000
Cinergy Capital & Trading, Inc., ER98–3350–000
Cinergy Services, Inc., ER97–2662–000
Citizens Power LLC, ER95–1165–000
City of Burlington Electric Department, ER95–1165–000
CMEX Energy, Inc., ER95–1527–000
CNG Energy Services Corporation, ER96–0437–000
Coastal Electric Services Company, ER96–0104–000
Commonweathl Electric Company, ER95–1165–000
Constellation Power Source, Inc., ER98–0569–000
Coral Power, L.L.C., ER97–0800–000
CPS Capital, Ltd., ER97–4623–000
CT Municipal Electric Energy Cooperative, ER95–1165–000
Duke Solutions, Inc., ER96–2817–000
Duke Louis Dreyfus LLC, ER98–0569–000
Eastern Power Distribution, Inc., ER97–0800–000
Edison Source, ER97–4623–000
Electric Clearinghouse, Inc., ER96–0104–000
Enron Power Marketing Inc., ER95–1165–000
Equitable Power Services Company, ER97–0800–000
Federal Energy Sales, Inc., ER97–0800–000
Fitchburg Gas and Electric Light Company, ER98–1782–000
FPL Energy Power Marketing, Inc., ER99–0633–000
Green Mountain Power Corporation, ER96–2306–000
Griffin Energy Marketing, L.L.C., ER99–0633–000
Intercoast Power Marketing Company, ER95–1165–000
KCS Power Marketing, Inc., ER96–0104–000
Koch Energy Trading, Inc., ER96–0437–000
LG&E Energy Marketing, Inc., ER96–2306–000
Long Island Lighting Co., ER95–1165–000
Louis Dreygus Electric Power, Inc., ER95–1165–000
Maine Public Service Company, ER95–1165–000
Mass Municipal Wholesale Electric Company, ER96–1306–000
Middleborough Gas and Electric Department, ER96–0437–000
Morgan Stanley Capital Group, Inc., ER97–2662–000
New Energy Ventures, Inc., ER97–4623–000
New England Power Company ER97–1306–000
New York State Electric & Gas Corporation, ER96–1306–000
Niagra Mohawk Energy, ER97–2662–000
Niagra Mohawk Power Corporation, ER95–1165–000
North American Energy Conservation Inc., ER96–0104–000
Northeast Energy Services, Inc., ER97–4623–000
Northeast Utilities Service Company, ER96–2306–000
NP Energy Inc., ER98–1782–000
NRG Power Marketing Inc., ER99–0633–000
PacificCorp Power Marketing, Inc., ER98–1782–000
PanEnergy Trading and Market Services, L.L.C., ER97–0800–000
Peco Energy Company, ER96–0104–000
PG&E Energy Trading, Power, L.P., ER96–2306–000
Phibro, Inc., ER96–0104–000
Rainbow Energy Marketing Corp., ER95–1165–000
Scana Energy Marketing L.P., ER98–3350–000
Sonat Power Marketing L.P., ER97–4623–000
Southern Company Energy Marketing L.P., ER97–0800–000
Taunton Municipal Lighting Plant, ER95–1165–000
The Power Company of America, L.P., ER97–2662–000
Tractebel Energy Marketing, Inc., ER97–4623–000
TransCanada Energy Ltd., ER97–0800–000

United Illuminating Company, ER96–0104–000
Unitil Power Corp., ER98–1782–000
Vermont Marble Power Division, ER95–1165–000
Western Power Services, Inc., ER97–2662–000
Williams Energy Services Company, ER97–4623–000

Comment date: September 15, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rule of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23522 Filed 9–9–99; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6436–4]

Agency Information Collection Activities: Continuing Collection; Comment Request; National Health Protection Survey of Beaches

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): National Health Protection Survey of Beaches, EPA ICR No. 1814.02, OMB Control No. 2040–0189, and current expiration date 02/28/2000. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before November 9, 1999.

ADDRESSES: Office of Water, Office of Science and Technology, Standards and Applied Science Division (4305), 401 M St. SW, Washington, DC 20460. Interested persons may obtain a copy of the ICR without charge by contacting EPA staff listed in the section below.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Kovatch at EPA, telephone 202–260–0642, email *kovatch.charles@epa.gov*, facsimile 202–260–9830.

SUPPLEMENTARY INFORMATION: *Affected entities:* Entities potentially affected by this action are State, County, City, and Tribal representatives with responsibilities for assessing the impact of water contaminated by microbiological pollutants on persons using beaches and related recreational waters.

Title: National Health Protection Survey of Beaches, OMB Control No. 2040–0189, EPA ICR No. 1814.02, expiring 02/28/2000.

Abstract: Bacterial and other microbiological contaminants continue to pose potentially adverse human health problems for the nation's recreational waters, including bathing beaches. These adverse effects have been one of EPA's long-standing concerns and are directly related to such Clean Water responsibilities as water quality standards, surface water quality, and Agency efforts to ensure that the waters of the United States are "fishable" and "swimmable." Recent studies have confirmed that health effects resulting from bathing in contaminated waters. Thus, water quality in bathing beach areas remains an important concern to EPA.

EPA believes there is a need to improve the overall quality and availability of public information about beach health protection activities; these include, but are not limited to, water quality standards, monitoring and assessment activities, and beach closures. Many organizations share responsibility for these activities. Consequently, EPA will survey environmental public health officials from State, Tribal, County, and City agencies, as well as representatives from various interest groups to compile and verify this information. EPA will then assemble it into a format that can be readily analyzed and shared with responsible parties, as well as the public. This information collection effort will involve distributing a questionnaire to various agencies (*e.g.*, State, Tribal, County, City) to evaluate the condition of bathing beaches at freshwater (the Great Lakes and others) and marine (estuarine and coastal) sites around the Nation. Responses to the questionnaire are required to determine compliance with water quality standards, assess public health risks, and determine what steps EPA should take next, if any. Completion of the questionnaire may be voluntary. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 2 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

(This burden assumes that the number of respondents will continue to increase as the survey is phased in. For the first two years of the program an average of 350 questionnaires were distributed. EPA assumes the total number of questionnaires to be sent in the next three years as 4,500; 1,000 surveys the first year; 1,500 questionnaires the second year; 2,000 questionnaires the third year.)

Estimated Number of Respondents: 1,500.

Frequency of Response: One time per year.

Estimated Total Annual Hour Burden: 3,000 hours (per year). (13,500 total hours/3 years; 3,000 hours the first year; 4,500 hours the second year; 6,000 hours the third year.)

Dated: September 1, 1999.

Tudor T. Davies,

Director, Office of Science and Technology.

[FR Doc. 99–23589 Filed 9–9–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6435–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; National Pollutant Discharge Elimination System and Sewage Sludge Management State Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: National Pollutant Discharge Elimination System and Sewage Sludge Management State Programs, OMB Control Number 2040–0057, which expires on November 30, 1999. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 12, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260–2740, by email at farmer.sandy@epa.gov, or download a copy of the ICR off the internet at http://www.epa.gov/icr and refer to EPA ICR No. 0168.07.

SUPPLEMENTARY INFORMATION: *Title:* National Pollutant Discharge Elimination System (NPDES) and Sewage Sludge Management State Programs (OMB Control No. 2040–0057; EPA ICR No. 0168.07) which expires on 11/30/99. This is a request for extension of a currently approved collection.

Abstract: Under the NPDES program, States, Federally Recognized Indian Tribes, and U.S. Territories, hereafter referred to as States, may acquire the authority to issue permits. These governments have the option of acquiring authority to issue general permits (permits that cover a category or categories of similar discharges). States with existing NPDES programs must submit requests for program modifications to add Federal facilities, or general permit authority. In addition, as federal statutes and regulations are modified, States must submit program modifications to ensure that their program continues to meet Federal requirements.

States have the option of obtaining a sludge management program. This program may be a component of a State NPDES Program, or it may be administered as a separate program. To obtain a NPDES or sludge program, a State must submit an application that includes a program description, an Attorney General's Statement, draft Memorandum of Agreement (MOA) with the EPA Region, and copies of the State's statutes and regulations.

Once a State obtains authority for an NPDES or sludge program, it becomes responsible for implementing the program in that jurisdiction. The State must retain records on the permittees and perform inspections. In addition, when a State obtains NPDES or sludge authority, EPA must oversee the program. Thus, States must submit permit information and compliance reports to the EPA.

When EPA issues a permit in an unauthorized State, that State must certify that the permit requirements comply with State water laws. According to the Clean Water Act (CWA) (section 510), States may adopt discharge requirements that are equal to or more stringent than requirements in the CWA or Federal regulations.

There are three categories of reporting requirements that are covered by this ICR. The first category, "State Program Requests," includes the activities States must complete to request a new NPDES or sludge program, or to modify an existing program. The second category, "State Program Implementation," includes the activities that approved States must complete to implement an existing program, such as certification of EPA-issued permits by non-NPDES States. The third category, "State Program Oversight," includes activities required of NPDES States so that EPA may satisfy its statutory requirements for state program oversight.

The information collected by EPA is used to evaluate the adequacy of a State's NPDES or sludge program and to provide EPA with the information necessary to fulfill its statutory oversight functions over State program performance and individual permit actions. EPA will use this information to evaluate State requests for full or partial program approval and program modifications. In order to evaluate the adequacy of a State's proposed program, appropriate information must be provided to ensure that proper procedures, regulations, and statutes are in place and consistent with the CWA requirements.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 6/9/98 (63 FR 31461); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information ranges from 4 to 2,080 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: states, tribes, territories.

Estimated Number of Respondents: 613.

Frequency of Response: varies.

Estimated Total Annual Hour Burden: 1,140,794 hours.

Estimated Total Annualized Cost Burden (non-labor): $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing

respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0168.07 and OMB Control No. 2040–0057 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: September 3, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–23586 Filed 9–9–99; 8:45 am]

BILLING CODE 6560–60–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6436–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, New Source Performance Standard (NSPS) for Industrial Surface Coating of Large Appliances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: New Source Performance Standard (NSPS) for Industrial Surface Coating of Large Appliances, 40 CFR part 60, subpart SS, OMB Number 2060–0108, expiration 10/31/99. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 12, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 0659.08.

SUPPLEMENTARY INFORMATION:

Title: New Source Performance Standard (NSPS) for Industrial Surface Coating of Large Appliances, 40 CFR part 60, subpart SS, OMB Number 2060–0108, EPA ICR Number 0659.08, expiration 10/31/99. This is a request for extension of a currently approved collection.

Abstract: The NSPS for Surface Coating of Large Appliances were proposed on December 24, 1980 and promulgated on October 27, 1982. These standards apply to each large appliance surface coating operation in which organic coatings are applied that commenced construction, modification or reconstruction after December 24, 1980. Approximately 255 sources are currently subject to the standard, and it is estimated that 26 sources per year will become subject to the standard while an equal number will go off-line during this time period. It is further assumed that there is an average of four affected facilities per plant. Volatile Organic Compounds (VOCs) are the pollutants regulated under this subpart, and this information is being collected to assure compliance with 40 CFR part 60, subpart SS.

Owners or operators of the affected facilities described must make initial reports when a source becomes subject; conduct and report on a performance test; demonstrate and report on continuous monitor performance; and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. Semiannual reports of excess emissions are required. These notifications, reports, and records are essential in determining compliance; and are required, in general, of all sources subject to NSPS.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least 2 years following the date of such measurements, maintenance reports, and records. The estimated total cost of this ICR will be $3,961,155 over the next three years (including labor hours, operating & maintenance costs, and start up costs; $1,320,385 per year x 3 years). All reports are sent to the delegated State or Local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on January 1, 1999: no comments were received.

Burden Statement: The annual reporting and record keeping burden for this collection of information is estimated to average 23 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/operators of the Large Appliance Surface Coating Industry.

Estimated Number of Respondents: 294.

Frequency of Response: Initial, quarterly, and semiannual reports.

Estimated Total Annual Hour Burden: 29,564 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $618,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0659.08 and OMB Control No. 2060–0108 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: September 3, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–23590 Filed 9–9–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6245–9]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153. Weekly receipt of Environmental Impact Statements Filed August 30, 1999 Through September 03, 1999 Pursuant to 40 CFR 1506.9.

EIS No. 990312, Final EIS, COE, OR, WA, Columbia and Lower Willamette River Federal Navigation Channel, Improvement Channel Deepening, OR and WA, Due: October 12, 1999, Contact: Steven J. Stevens (503) 808–4768.

EIS No. 990313, Draft EIS, FHW, WY, Wyoming Forest Highway 23 Project, Louis Lake Road also known as Forest Development Road 300, Improvements from Bruce's Parking Lot to Worthen Meadow Road, Funding, NPDES Permits and COE Section 404 Permit, Shoshone National Forest, Fremont County, WY, Due: October 29, 1999, Contact: Bert McCauley (303) 716–2141.

EIS No. 990314, Final EIS, AFS, CA, Herger-Feinstein Quincy Library Group Forest Recovery Act, Establishing and Conducting a Pilot Project, Lassen, Plumas and Tahoe National Forests, Shasta, Lassen, Tehama, Yuba, Plumas and Battle Counties, CA, Due: October 12, 1999, Contact: David Peters (503) 283–7821.

EIS No. 990315, Final EIS, FHW, PA, US 202 (Section 600) Transportation Corridor, Improvement from Johnson Highway in Norristown to PA 309 in Montgomery Square, Major Investment Study, Montgomery County, PA, Due: October 12, 1999, Contact: Ronald W. Carmichael (717) 221–3461.

EIS No. 990316, Final EIS, AFS, ID, Frank Church—River of No Return Wilderness (FC–RONRW), Implementation for the Future Management of Land and Water Resource, Bitterroot, Boise, Nez Perce, Payette and Salmon-Challis National Forests, ID, Due: October 12, 1999, Contact: Ken Wotring (208) 756–5131. Published FR–09–03–99—Correction to Comment Period.

EIS No. 990317, Draft EIS, COE, OH, Ashtabula River and Harbor Dredging and Disposal Project, Design, Construction, Operation and Maintenance, Ashtabula River Partnership (ARP), Ashtabula County, OH, Due: October 25, 1999, Contact: John Mahan (440) 964–0277.

EIS No. 990318, Final Supplement, NIH, MD, National Institutes of Health Bethesda Main Campus Comprehensive Master Plan, Updated and Additional Information for the Revision to the Northwest Sector Plan, Montgomery County, MD, Due: October 12, 1999, Contact: Janyce Hedetniemi (301) 496–3931.

EIS No. 990319, Draft EIS, COE, NY, NJ, Programmatic EIS—Port of New York and New Jersey Dredged Material Management Plan, Implementation Channel Depths and Deepen, NY and NJ, Due: October 25, 1999, Contact: Robert J. Kurtz (212) 264–2230.

EIS No. 990320, Draft EIS, FTA, CA, Downtown Sacramento—Folsom Corridor, To Improve Transit Services, US 50/Folsom Boulevard, COE Section 404 Permit, Transportation Systems Management (TSM) and Light Rail Transit (LRT), City and County of Sacramento, CA, Due: October 25, 1999, Contact: Bob Hom (415) 744–3133.

EIS No. 990321, Final EIS, AFS, ID, North Lochsa Face Landscape and Watershed Assessment Project, Implementation, Clearwater National Forest, Lochsa Ranger District, Idaho County, ID , Due: October 12, 1999, Contact: Kris Hazelbaker (208) 926–4275.

EIS No. 990322, Draft Supplement, FHW, AR, MS, AR, Great River Bridge, Construction, US 65 in Arkansas to MS–8 in Mississippi, Funding, COE Section 404 Permit and US Coast Guard Bridge Permit, Desha and Arkansas Counties, AR and Bolivar County, MS, Due: October 25, 1999, Contact: Elizabeth A. Romero (501) 324–5625.

Amended Notices

EIS No. 990231, Draft EIS, FHW, CO, Colorado Forest Highway 80, Guanella Pass Road (also known 381/ Forest Development Road 118) from US 285 in Grant to Georgetown, Improvements, Funding and COE Section 404, NPDES and Special Use Permits Issuance, Park and Clear Creek Counties, CO, Due: October 15, 1999, Contact: Richard Cushing (303) 716–2138. Published FR 07–16–99 Review Period Extended from 08–30–99 to 10–15–99.

EIS No. 990235, Final EIS, AFS, WA, I–90 Land Exchange between Forest Service and Plum Creek, within the Vicinity of the Wenatchee, Mt. Baker-Snoqualmie and Gifford Pinchot National Forests, Kittitas, King, Pierce, Lewis, Cowlitz and Skamania Counties, WA , Due: October 31, 1999, Contact: Floyd Rogalski (509) 674–4411. Published FR 07–16–99—Review Period extended from 08–16–99 to 10–31–99.

EIS No. 990303, Final EIS, FHW, HI, Saddle Road (HI–200) Improvements between Mamalahoa Highway (HI–190) to Milepost 6 near Hilo, Funding, NPDES and COE Section 404 Permit, Hawaii County, HI, Due: October 04, 1999, Contact: Bert McCauley (303) 716–2141. Published FR–09–03–99 Correction to Comment Period.

EIS No. 990305, Final EIS, AFS, AL, Longleaf Restoration Project, Implement a Systematic Five-Year Program for Restoration of the Native Longleaf Pine, Conecuh National Forest, Conecuh Ranger District, Covington and Escambia Counties, AL, Due: October 04, 1999, Contact: Robert Published FR 07–16–99—Correction to Commend Period.

EIS No. 990306, Final EIS, FHW, IL, IL–315 Federal Aid Primary (FAP) (Illinois-336) Transportation Project, Construction from FAP 315, IL 336 (Southeast of Carthage) to US 136 (Just West of Macomb), Funding, COE 404 Permit and NPDES Permit, Hancock and McDonough Counties, IL, Due: October 04, 1999, Contact: Ronald C. Marshall (217) 492–4640. Published FR–09–03–99—Correction to Comment Period.

EIS No. 990309, Final EIS, FHW, NM, US 84/285 Highway Transportation Improvements from Alamo Drive in Santa Fe to Viarrial Street in Pojoaque, Right-of-Way Acquisition, NPDES Permit and COE Section 404 Permit, Santa Fe County, NM, Due: October 04, 1999, Contact: Gregory D. Rawlings (505) 820–2027. Published—FR 09–03–99—Correction to Comment Period.

EIS No. 990310, Final Supplement, NRC, Generic EIS—License Renewal of Nuclear Plants for the Oconee Nuclear Station, Units 1, 2 and 3, Implmentation, Oconee County SC, Due: October 04, 1999, Contact: Donald P. Cleary (301) 415–3903. Published FR 09–03–99—Correction to Comment Period.

EIS No. 990311, Draft EIS, AFS, OR, Ashland Creek Watershed Protection Project, Proposal to Manage Vegetation, Rogue River National Forest, Ashland Ranger District, City of Ashland, Jackson County, OR, Due: October 18, 1999, Contact: Kristi Mastrafini (541) 482–3333. Published FR 09–03–09—Correction to Comment Period.

Dated: September 7, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–23616 Filed 9–9–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6246–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 2, 1999 Through August 6, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 9, 1999 (64 FR 17362).

Draft EISs

ERP No. D–AFS–J65302–UT

Rating EC2, South Manti Timber Salvage, To address Ecological and Economic Values affected by Spruce Beetle Activity in the South Manti Project, Manti-La National Forest, Ferron-Price and Sanpete Ranger Districts, Sanpete and Sevier Counties, UT.

Summary: EPA expressed environmental concerns regarding potential increased sediment loads to several water quality limited streams, and the analysis of potential wetland impacts. EPA recommends that the Forest Service identify and commit to mitigation that would reduce sediment yield to the 303(d) listed streams equal to or greater than the predicted sediment yield from project activities.

ERP No. D–BLM–J02036–WY

Rating EC2, Continental Divide/Wamsutter II Natural Gas Project, Implementation of Natural Gas Exploration and Development, Sweetwater and Carbon Counties, WY.

Summary: EPA expressed environmental concerns about potentially significant adverse impacts to air quality, surface water quality, wildlife, and desert habitat. EPA recommended the development and implementation of an Adaptive Environmental Management Plan (AEMP) to verify, monitor, and modify proposed mitigation measures to off-set potential adverse impacts.

ERP No. D–BLM–J02037–WY

Rating EC2, South Baggs Natural Gas Development Area, Proposal to Drill and Develop 50 Natural Gas Wells, Application for Permit to Drill and COE Section 404 Permit, Carbon County, WY.

Summary: EPA expressed environmental concerns about potentially significant adverse impacts to air quality, water quality, soils, wildlife and wetlands. EPA recommended the development and implementation of an Adaptive Environmental Management Plan (AEMP) to verify, monitor, and modify proposed mitigation measures to off-set potential adverse impacts.

ERP No. D–BLM–J65304–WY

Rating EC2, Wyodak Coal Bed Methane Project, Implementation of Road Construction, Drilling Operation, Electrical Distribution Line, Powder River Basin, Campbell and Converse Counties, WY.

Summary: EPA expressed environmental concerns related to water quantity and monitoring procedures. EPA requested that additional information on these issues be included in the next document.

ERP No. D–COE–F39036–IL

Rating EO2, Hunter Lake New Supplemental Water Supply Reservoir, Construction, City of Springfield Application for Permit, Sangamon County, IL.

Summary: EPA expressed objection regarding the Purpose and Need/alternatives analysis, potential impact to water quality and wetlands, and the lack of completed mitigation plans.

ERP No. D–FHW–D40299–WV

Rating EC2, Coalfields Expressway Transportation Improvements, Funding, NPDES and COE Section 404 Permits, McDowell, Wyoming and Raleigh Counties, WV.

Summary: EPA expressed environmental concerns that the level of detail provided for a highway corridor is not sufficient for selecting an alignment or footprint within that corridor. The Final EIS should explain whether there will be an opportunity to review and comment on alignments within the selected corridor.

ERP No. D–NOA–A91066–00

Rating EC2, Tilefish Fishery Management Plan (FMP), (Lopholatilus chamaeleonticeps), To Prevent Overfishing and to Rebuild the Resource of Tilefish, Located along the Atlantic Ocean.

Summary: EPA had environmental concerns about the proposed regulations and the sufficiency of the information in the document. Those concerns focused mainly on the alternatives section of the document.

Final EISs

ERP No. F–EDA–D80026–PA

Lackawanna County New Business Park, Development and Operation, Funding Support from Economic Development Administration (EDA) under Title I, Site Lies Within Moosic Mountain Range, Straddling Jessup and Olyphant Boroughs, Lackawanna County, PA.

Summary: EPA continues to have concerns with the selection of the preferred alternative and its impacts on a rare terrestial habitat and species of special status.

ERP No. F–NCP–D61050–MD

National Harbor Project, Construction and Operation along the Potomac River on a 534 acre site adjacent to the Capital Beltway and Oxon Hill Manor, COE Section 10 and 404 Permits, Prince George's County, MD.

Summary: EPA has concerns regarding impacts to aquatic resources, air pollution and environmental justice issues. EPA is trying to resolve some of the outstanding issues with the applicant.

ERP No. F–NOA–A91064–00

Atlantic Bluefish Fishery Management, Fishery Management Plan, Implementation, Nova Scotia to Florida, Northwestern Atlantic Ocean.

Summary: EPA expressed a lack of objection to the proposed action.

ERP No. F–USN–K11078–00

Marianas Islands Military Training, Implementation, Marianas Training Plan, Guam, Commonwealth of the Northern Mariana Islands, Asia, Hawaii and Alaska.

Summary: EPA expressed environmental concerns on the effects on coral spawning from military training; the possibility of accidental introduction of Brown Tree Snake to Farallon de Medinilla (FDM); and to requested additional compensatory mitigations for biological resource impacts on FDM.

Dated: September 7, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–23617 Filed 9–9–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6435–8]

Health Care Provider Outreach and Education; National Drinking Water Advisory Council; Notice of Conference Call

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Under section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given that a conference call of the Health Care Provider Outreach and Education Working Group of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held on September 27, 1999, from 2:00–4:00 p.m., Eastern Standard Time, in Room 1209, East Tower, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. The meeting is open to the public, but seating will be limited.

The purpose of this meeting is to provide feedback on a draft strategy and recommendations on health care provider outreach and education, and to discuss plans for presenting them to the National Drinking Water Advisory Council. Statements from the public will be taken if time permits.

For more information, please contact Ron Hoffer, Designated Federal Officer, Health Care Provider Outreach and Education Working Group, U.S. EPA, Office of Ground Water and Drinking Water, Mail Code 4607, 401 M Street SW, Washington, D.C. 20460. The telephone number is (202) 260–7096 or E-mail *hoffer.ron@epa.gov.*

Dated: September 2, 1999.

Charlene E. Shaw,

Designated Federal Officer, National Drinking Water Advisory Council.

[FR Doc. 99–23587 Filed 9–9–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6436–7]

Board of Scientific Counselors, Executive Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of teleconference.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C., App. 2) notice is hereby given that the Environmental Protection Agency (EPA), Office of Research and Development (ORD), Board of Scientific Counselors (BOSC), will hold a teleconference on September 21, 1999. The teleconference will begin at 12:00 noon and will adjourn at 2:00 p.m. For those interested, the call in number will be 202/260–8330; 1457# will access the teleconference. All times noted are Eastern Time.

DATES: Tuesday, September 21, 1999.

SUPPLEMENTARY INFORMATION: Agenda items will include, but not limited to: BOSC Upcoming Review of ORD's Particulate Matter Program. The teleconference is open to the public. Any member of the public wishing to make a presentation at the teleconference should contact Shirley Hamilton, Designated Federal Officer, Office of Research and Development (8701R), 401 M Street, S.W., Washington, D.C. 20460; or by telephone at (202) 564–6853. In general, each individual making an oral presentation will be limited to a total of three minutes.

FOR FURTHER INFORMATION CONTACT: Shirley R. Hamilton, Designated Federal Officer, U.S. Environmental Protection Agency, Office of Research and Development, NCERQA (MC 8701R), 401 M Street, S.W., Washington, D.C. 20460, (202) 564–6853.

Dated: August 31, 1999.

Peter W. Preuss,

Director, National Center for Environmental Research and Quality Assurance.

[FR Doc. 99–23583 Filed 9–9–99; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

September 2, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 9, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A–804, 445 Twelfth Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0176.

Title: Section 73.1510, Experimental authorizations.

Form Number: None.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 55.

Estimated Time per Response: 15 minutes (respondent time)—2–5 hours (consulting engineer).

Frequency of Response: Reporting, on occasion.

Total Annual Burden: 14 hours.

Total Annual Costs: $34,500.

Needs and Uses: Section 73.1510 requires that a licensee of an AM, FM and TV broadcast station file an informal application with the FCC to request an experimental authorization to conduct technical experimentation directed toward improvement of the technical phases of operation and service. This request shall describe the nature and purpose of experimentation to be conducted, the nature of the experimental signal to be transmitted,

and the proposed schedule of hours and duration of the experimentation. The data is used by FCC staff to maintain complete technical information about a broadcast station and to ensure that such experimentation will not cause interference to other stations.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–23573 Filed 9–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

September 2, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 9, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW, Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0161.

Title: Section 73.61 AM Directional Antenna Field Strength Measurements.

Form Number: None.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,877 AM Licensees.

Estimated Time per Response: 4–50 hours.

Frequency of Response: Recordkeeping.

Total Annual Burden: 36,082.

Total Annual Cost: $0.

Needs and Uses: Section 73.61 requires that each AM station using directional antennas make field strength measurement as often as necessary to insure proper directional antenna system operation. Stations not having approved sampling systems make field strength measurements every three months. Stations with approved sampling systems must make field strength measurements as often as necessary. Also, all AM stations using directional antennas must make partial proofs of performance as often as necessary. The data is used by FCC staff in field inspections/investigations and by AM licensees with directional antennas to ensure that adequate interference protection is maintained between stations and to ensure proper operation of antennas.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–23574 Filed 9–9–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL HOUSING FINANCE BOARD

[99–N–11]

Modification of Approval for the Federal Home Loan Bank of New York's Community Mortgage Asset Activities Program

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: On August 18, 1999, the Federal Housing Finance Board (Finance Board) adopted Finance Board Resolution No. 99–43 authorizing modifications to the Federal Home Loan Bank of New York's (FHLBank of New York) Community Mortgage Asset Activities Program (CMAA). The Finance Board originally approved CMAA on July 3, 1996 (Finance Board Resolution No. 96–44). While not obligated to publish notice for these modifications of the previously approved CMAA Pilot Program, the Finance Board, in the spirit of full disclosure, hereby provides notice of the CMAA modifications described herein. Further, the FHLBank of New York will not implement modifications to CMAA until the staff of the Office of Supervision (OS) conducts a pre-implementation examination of the modified CMAA Pilot Program and confirms that appropriate program policies, procedures and controls have been established. In no case shall implementation occur prior to the end of this 30-day notice period.

DATES: Comments must be received in writing on or before October 12, 1999.

ADDRESSES: Individuals wishing to submit comments should provide written comments by mail to: Elaine L. Baker, Secretary to the Board, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006. Comments will be available for public inspection at this address.

Background

On July 3, 1996, the Finance Board approved a request by the FHLBank of New York to establish a pilot program (CMAA) under which the FHLBank of New York proposed to fund up to $250 million in participation interests in housing and community development loans originated by members and eligible non-member borrowers and meeting the income targets established for the Community Investment Program (CIP). Finance Board approval was subject to certain conditions set forth in Finance Board Resolution No. 96–44.

The FHLBank of New York requested that Finance Board Resolution No. 96–44 be modified to lift the CIP restrictions, define member to include affiliates and subsidiaries of members and allow the FHLBank of New York to purchase mortgages originated by its members (including subsidiaries and affiliates of such members) from that member, pool the mortgages, participate back to the originating member the credit support tranche of the pool, and sell to the originating member or any other member any other tranches of the pool. The Finance Board approved those modifications in Finance Board Resolution No. 99–43.

As modified, the CMAA resolution would authorize the FHLBank of New York to operate a Sequential Participation Program under which the FHLBank of New York would (i) acquire whole residential mortgage loans, originated by its members (including subsidiaries and affiliates of such members) and eligible non-member borrowers that have an original balance falling within the conforming loan limits established pursuant to 12 U.S.C. 1717(b)(2), (ii) pool those mortgages and divide the mortgage pool into three tranches, consisting of a short cashflow tranche, a longer cashflow tranche, and a credit support tranche that would be sufficient to enhance the pool at least to the level of subordination afforded double-A rated mortgage-backed securities and which would act as first loss coverage for the life of the pool or until the position is exhausted, (iii) sell the credit support tranche of the pool back to the member or eligible non-member borrower that originated (or whose subsidiary or affiliate originated) the loans, and (iv) sell either of the non-credit support tranches to any member or eligible non-member borrower of the FHLBank of New York.

As indicated, while the Finance Board has formally revised Finance Board Resolution No. 96–44 to make the modifications requested, CMAA as modified will not be implemented by the FHLBank of New York until the end of the 30-day notice period, and even then not until the completion of a pre-implementation examination.

FOR FURTHER INFORMATION CONTACT: Christina K. Muradian, Senior Financial Analyst, Office of Policy, Research and Analysis (202) 408–2584, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC.

Bruce A. Morrison,

Chairman.

[FR Doc. 99–23568 Filed 9–9–99; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL HOUSING FINANCE BOARD

[99–N–12]

Pilot Mortgage Program Proposed by the Federal Home Loan Banks of Cincinnati, Indianapolis, and Seattle

AGENCY: Federal Housing Finance Board.

ACTION: Notice of availability.

SUMMARY: As described in a previous notice, 64 FR 44016 (August 12, 1999), the Federal Housing Finance Board (Finance Board) has before it for consideration an application from the FHLBanks of Cincinnati, Indianapolis and Seattle to initiate a pilot program to purchase mortgage loans from member financial institutions under a credit risk sharing arrangement. The Finance Board is making the application for the proposed Mortgage Purchase Program, or MPP, available through its website (http://www.fhfb.gov) in the "What's New" section.

FOR FURTHER INFORMATION CONTACT: Scott Smith, Deputy Director, Office of Policy, Research and Analysis, (202) 408–2991, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC, 20006.

Bruce A. Morrison,

Chairman.

[FR Doc. 99–23569 Filed 9–9–99; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 7, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Warwick Community Bancorp, Inc., Warwick, New York; to acquire 99.79 percent of the voting shares of The Towne Center Bank, Lodi, New Jersey (in formation).

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. FMLB Acquisition, Inc., Medicine Lodge, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of First Medicine Lodge Bancshares, Inc., Medicine Lodge, Kansas, and thereby indirectly acquire First National Bank of Medicine Lodge, Medicine Lodge, Kansas.

Board of Governors of the Federal Reserve System, September 7, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–23631 Filed 9–9–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10 a.m., Wednesday, September 15, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: September 8, 1999.

Robert deV. Frierson,

Associate Secretary of the Board

[FR Doc. 99–23702 Filed 9–8–99; 2:16 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meetings

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Standards and Security Work Group on Computer-based Patient Records.

Times and Dates: 9:00 a.m.–5:30 p.m., September 16, 1999, 9:00 a.m.–5:00 p.m., September 17, 1999.

Place: Conference Room 705A, Hubert H. Humphrey Building, 200 Independence Ave. S.W., Washington, D.C. 20201.

Status: Open.

Purpose: Under the Administrative Simplification provisions of P.L. 104–191, the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the National Committee on Vital and Health Statistics (NCVHS) is required to study the issues related to the adoption of uniform data standards for patient medical record information and the electronic interchange of such information, and report to the Secretary of Health and Human Services not later then August 2000 on recommendations and legislative proposals for such standards and electronic interchange. The NCVHS is the Department's federal advisory committee on health data, privacy and health information policy.

The NCVHS Subcommittee on Standards and Security, Working Group on Computer-based Patient Records, will meet on September 16–17, 1999 in Washington, D.C. At the meeting, the Working Group will hear from several panels of experts on health data quality, consider related issues concerning standards for computer-based patient records, and discuss their forthcoming letter to the Secretary relating to recommendations. The tentative agenda for the meeting, as well as a description of the panels of speakers, will be posted on the NCVHS website: http://aspe.os.dhhs.gov/ncvhs, when available.

Contact Person for More Information: Substantive program information about the meeting may be obtained from Michael Fitzmaurice (AHCPR, 301–594–3938) or Bob Mayes (HCFA, 410–786–6872), lead staff for the Computer-based Patient Record Working Group. Information about the NCVHS is available on the NCVHS home page of the HHS website, or from Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436–7050.

Dated: September 2, 1999.

James Scanlon,

Director, Division of Data Policy, Office of Program Systems, Office of the Assistant Secretary for Planning and Evaluation, and HHS Executive Staff Director NCVHS.

[FR Doc. 99–23490 Filed 9–9–99; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

Karrie Recknor, University of Washington: Based on a report dated January 27, 1999, by the University of Washington, Ms. Recknor's admission, and information obtained by ORI during its oversight review, ORI finds that Ms. Karrie Recknor, former Graduate Research Assistant, Department of Psychology, University of Washington, engaged in scientific misconduct arising out of certain biomedical research supported by a National Institute of Allergy and Infectious Diseases (NIAID), National Institutes of Health (NIH), grant.

Specifically, Ms. Recknor admitted to falsifying electronic mail responses presented to the Principal Investigator as part of a project, "Prognosis of Chronic Fatigue Syndrome." Ms. Recknor was responsible for conducting interviews on the impact of life events for six subjects and for assigning preliminary Brown and Harris' Life Events and Difficulties Schedule (B&H) scores to each interview. Ms. Recknor was required to send the interview notes and preliminary scores to a collaborator. The collaborator was to reassess the scores and e-mail the corrected scores or an agreement statement back to Ms. Recknor. Ms. Recknor failed to send the interview notes and preliminary scores for these six interviews to the collaborator for evaluation and instead falsified electronic mail responses to indicate that the collaborator's evaluation had been conducted. Ms. Recknor entered these scores into the research database for the above-mentioned project. The falsified scores did not appear in any publications.

Ms. Recknor has accepted the ORI finding and has entered into a Voluntary Settlement Agreement with ORI in which she has voluntarily agreed, for the two (2) year period beginning August 19, 1999:

(1) To exclude herself from serving in any advisory capacity to the Public Health Service (PHS), including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant; and

(2) That any institution that submits an application for PHS support for a research project on which her participation is proposed or which uses her in any capacity on PHS supported research, or that submits a report of PHS-funded research in which she is involved, must concurrently submit a plan for supervision of her duties to the funding agency for approval. The supervisory plan must be designed to ensure the scientific integrity of Ms. Recknor's research contribution. The institution also must submit a copy of the supervisory plan to ORI.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Research Investigations, Office of Research Integrity, 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Lawrence J. Rhoades,

Acting Director, Office of Research Integrity.

[FR Doc. 99–23463 Filed 9–9–99; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–99–34]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: CDC Application for Distance Learning Program, Laboratory Training, and Other Training—Revision—The Public Health Practice Program Office (PHPPO) in conjunction with the Public Health Training Network (PHTN) and the National Laboratory Training Network (NLTN) at CDC includes the Distance Learning Program which offers self-study, computer-based training, satellite broadcast, video courses, instructor-led field courses, and lab courses related to public health professionals worldwide. Employees of hospitals, universities, medical centers, laboratories, state and federal agencies, and state and local health departments apply for training in an effort to learn up-to-date public health procedures. The "Application for Training" forms are the official applications used for all training activities conducted by the CDC. The Continuing Education (CE) Program, which includes CDC's accreditation to provide Continuing Medical Education (CME), Continuing Nurse Education (CNE), and Continuing Education Unit (CEU) for almost all training activities, requires a unique identifying number, preferably the respondent's Social Security Number (SSN), to positively identify and track individuals who have been awarded CE credit. It is often necessary to identify individuals currently enrolled in courses, or to retrieve historical information as to when a particular individual completed a course or several courses over a time period. This information provides the basis for producing a requested transcript or determining if a person is enrolled in more than one course. The use of the SSN is the only positive way of assigning a unique number to a unique individual for this purpose. However, the use of the SSN is voluntary; if a student chooses not to submit a SSN, CDC assigns a unique identifier. The reason the SSN, rather than an arbitrary assigned number, is preferred is because students are not likely to remember an arbitrary number. A student's participation in the curriculum of self-study courses sometimes spans a number of years. The SSN is necessary for eliminating duplicate enrollments, for properly crediting students with completed course work who have similar names or have changed addresses, or for generating transcripts of previous completed course work on a cumulative basis. Due to the volume of enrollments, CDC Form 36.5 has been previously approved and used for years as an optical mark scan form. Use of this form, along with the use of the SSN, greatly enhances CDC's capability to process a much greater volume of enrollments in less time with much greater accuracy. The only cost to the respondent is the time involved to complete the application (3–5 minutes each).

Respondents	No. of respondents	No. of responses/respondent	Avg. burden of response (In hrs.)	Total burden (In hrs.)
Application for Training CDC—0.759A	6,300	1	5/60	525
Application for Laboratory Training—CDC–32.1	10,0001	1	5/60	833
Application for Distance Learning Program—CDC 36.5	40,000	1	10/60	6,667
Total	56,300			8,025

Dated: September 3, 1999.

Nancy Cheal,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 99–23507 Filed 9–9–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Conference on Attention Deficit Hyperactivity Disorder

The Division of Child Development, Disability, and Health (DCDDH) in the National Center for Environmental Health (NCEH) at the Centers for Disease Control and Prevention (CDC) announces the following conference.

Name: A conference entitled, Attention Deficit Hyperactivity Disorder: A Public Health Perspective, jointly sponsored by the Developmental Disabilities Branch, DCDDH, NCEH, CDC and the U.S. Department of Education.

Times and Dates: 8 a.m.–5:30 p.m., Sept. 23, 1999; 8 a.m.–12:30 p.m., Sept. 24, 1999.

Place: The Holiday Inn Select, Hotel and Conference Plaza, 130 Clairemont Avenue, Decatur, Georgia 30030.

Status: Open for participation by anyone with an interest in Public Health issues related to Attention Deficit Hyperactivity Disorder (ADHD), limited only by the space available. Persons wishing to participate must fax their request to (770) 488–7361 or (770) 488–7153 and indicate if they wish to attend.

Matters to be Discussed: The objectives for the conference are: (1) To discuss the public health implications of ADHD in our society, (2) to initiate a dialogue among professionals and across professions about public health concerns in ADHD, (3) to justify and propose potential public health, population-based, research agendas. The objectives will be met while specifically addressing previously identified priority areas and they are:

- Individual, Social, and Economic Burden of ADHD through the Lifespan
- The Epidemiologic Study of ADHD
- Public Health Issues in the Treatment of ADHD

Content and breakout sessions will flow from the three above noted priority areas. The conference will host a variety of professionals to identify the social implications of ADHD from a public health perspective and to explore the direction and mechanisms for related public health research.

Contact persons for more information: Catherine A. Lesesne, M.P.H., telephone (770) 488–7282, or Marilyn Deal, telephone (770) 488–7695, Division of Division of Child Development, Disability, and Health, NCEH, CDC, 4770 Buford Highway, NE, M/S F–15, Atlanta, Georgia 30341. Fax (770)488–7361.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 26, 1999.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–23504 Filed 9–9–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Safety and Occupational Health Study Section (SOHSS); Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease

Control and Prevention (CDC) announces the following committee meeting:

Name: Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH).

Times and Dates: 8 a.m.–5:30 p.m., October 28, 1999. 8 a.m.–5:30 p.m., October 29, 1999.

Place: Holiday Inn, 480 King Street, Alexandria, VA, 22314.

Status: Open 8 a.m.–8:15 a.m., October 28, 1999. Closed 8:15 a.m.–5:30 p.m., October 28, 1999. Closed 8 a.m.–5:30 p.m., October 29, 1999.

Purpose: The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) received in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health and allied areas.

It is the intent of NIOSH to support broad-based research endeavors in keeping with the Institute's program goals which will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects which will lead to improvements in the delivery of occupational safety and health services and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

Matters to be Discussed: The meeting will convene in open session from 8:00–8:15 a.m. on October 28, 1999, to address matters related to the conduct of Study Section business. The remainder of the meeting will proceed in closed session. The purpose of the closed sessions is for the Safety and Occupational Health Study Section to consider safety and occupational health related grant applications. These portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6) title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

Contact person for more information: Pervis C. Major, Ph.D., Scientific Review Administrator, Office of Extramural Coordination and Special Projects, Office of the Director, NIOSH, 1095 Willowdale Road, Morgantown, West Virginia 26505. Telephone 304/285–5979.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: August 31, 1999.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 99–23505 Filed 9–9–99; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Agency for Toxic Substances and Disease Registry

Senior Executive Service; Performance Review Board Members

AGENCY: Centers for Disease Control and Prevention (CDC), and Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: Title 5, U.S. Code, Section 4314 (c)(4) of the Civil Service Reform Act of 1978, Public Law 95–454, requires that appointment of Performance Review Board members be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Connie Clayton, Human Resources Management Office, Office of Program Support, Centers for Disease Control and Prevention, 4770 Buford Highway, Mailstop K–07, Atlanta, Georgia 30341–3724, telephone 770–488–1874.

SUPPLEMENTARY INFORMATION: The following persons will serve on the Performance Review Board which oversees the evaluation of performance appraisals of Senior Executive Service members of the Department of Health and Human Services in the Centers for Disease Control and Prevention, and the Agency for Toxic Substances and Disease Registry:

Virginia Shankle Bales, Chairperson
Stephen B. Blount, M.D., M.P.H.
Joseph R. Carter
James M. Hughes, M.D.
Richard J. Jackson, M.D., M.P.H.
James S. Marks, M.D., M.P.H.
Peter J. McCumiskey
Linda Rosenstock, M.D., M.P.H.
Stephen B. Thacker, M.D.

Dated: September 2, 1999.

Jeffrey P. Koplan,

Director, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–23506 Filed 9–9–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Nonvoting Representatives of Consumer and Industry Interests on Public Advisory Panels or Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for nonvoting consumer representatives and nonvoting industry representatives to serve on certain device panels of the Medical Devices Advisory Committee in the Center for Devices and Radiological Health (CDRH). Nominations will be accepted for current vacancies and for those that will or may occur through July 31, 2000.

FDA has a special interest in ensuring that women, minority groups, individuals with disabilities, and small businesses are adequately represented on advisory committees and, therefore, encourages nominations for appropriately qualified candidates from these groups, as well as nominations from small businesses that manufacture medical devices subject to the regulations.

DATES: Nominations should be received by October 12, 1999, for vacancies listed in this notice.

ADDRESSES: All nominations and curricula vitae for consumer representatives should be submitted in writing to Annette J. Funn (address below). All nominations and curricula vitae (which includes nominee's office address and telephone number) for industry representatives should be submitted in writing to Kathleen L. Walker (address below).

FOR FURTHER INFORMATION CONTACT:

Regarding consumer representatives: Annette J. Funn, Office of Consumer Affairs (HFE–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4421.

Regarding industry representatives: Kathleen L. Walker, Office of Systems and Management (HFZ–17), CDRH, Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1283, ext. 114.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for nonvoting members representing consumer and industry interests for the vacancies listed below:

Medical Devices Panels	Approximate Date Representative is Needed	
	Consumer	Industry
Clinical Chemistry and Clinical Toxicology Devices Panel	NV[1]	March 1, 2000
Dental Products Panel (Dental Drug)	NV[1]	November 1, 1999
Gastroenterology and Urology Devices Panel	NV[1]	January 1, 2000
General and Plastic Surgery Devices Panel	NV[1]	IMMED[2]
Hematology and Pathology Devices Panel	March 1, 2000	March 1, 2000
Microbiology Devices Panel	NV[1]	March 1, 2000
Radiological Devices Panel	NV[1]	IMMED[2]

[1] NV = No vacancy
[2] IMMED = Immediate vacancy

I. Function

The functions of the medical device panels are to: (1) Review and evaluate data on the safety and effectiveness of marketed and investigational devices and make recommendations for their regulation; (2) advise the Commissioner of Food and Drugs regarding recommended classification or reclassification of these devices into one of three regulatory categories; (3) advise on any possible risks to health associated with the use of devices; (4) advise on formulation of product development protocols; (5) review premarket approval applications for medical devices; (6) review guidelines and guidance documents; (7) recommend exemption to certain devices from the application of portions of the Federal Food, Drug, and Cosmetic Act (the act); (8) advise on the necessity to ban a device; (9) respond to requests from the agency to review and make recommendations on specific issues or problems concerning the safety and effectiveness of devices; and (10) make recommendations on the quality in the design of clinical studies regarding the safety and effectiveness of marketed and investigational devices.

II. Consumer and Industry Representation

Section 520(f)(3) of the act (21 U.S.C. 360j(f)(3)), as amended by the Medical Device Amendments of 1976, provides that each medical device panel include as members one nonvoting representative of consumer interests and one nonvoting representative of interests of the medical device manufacturing industry.

III. Nomination Procedures

A. Consumer Representatives

Any interested person may nominate one or more qualified persons as a member of a particular advisory committee or panel to represent consumer interests as identified in this notice. Self-nominations are also accepted. To be eligible for selection, the applicant's experience and/or education will be evaluated against Federal civil service criteria for the position to which the person will be appointed.

Nominations shall include a complete curriculum vitae of each nominee and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest. The nomination should state whether the nominee is interested only in a particular advisory committee or panel or in any advisory committee or panel. The term of office is up to 4 years, depending on the appointment date.

B. Industry Representatives

Any organization in the medical device manufacturing industry (industry interests) wishing to participate in the selection of an appropriate member of a particular panel may nominate one or more qualified persons to represent industry interests. Persons who nominate themselves as industry representatives for the panels will not participate in the selection process. It is, therefore, recommended that all nominations be made by someone with an organization, trade association, or firm who is willing to participate in the selection process.

Nominees shall be full-time employees of firms that manufacture products that would come before the panel, or consulting firms that represent manufacturers. Nominations shall include a complete curriculum vita of each nominee. The term of office is up to 4 years, depending on the appointment date.

IV. Selection Procedures

A. Consumer Representatives

Selection of members representing consumer interests is conducted through procedures which include use of a consortium of consumer organizations which has the responsibility for recommending candidates for the agency's selection. Candidates should possess appropriate qualifications to understand and contribute to the committee's work.

B. Industry Representatives

Regarding nominations for members representing the interests of industry, a letter will be sent to each person that has made a nomination, and to those organizations indicating an interest in participating in the selection process, together with a complete list of all such organizations and the nominees. This letter will state that it is the responsibility of each nominator or organization indicating an interest in participating in the selection process to consult with the others in selecting a single member representing industry interests for the panel within 60 days after receipt of the letter. If no individual is selected within 60 days, the agency will select the nonvoting member representing industry interests.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: August 30, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99–23464 Filed 9–9–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Antiviral Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Antiviral Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on October 4, 1999, 8 a.m. to 5 p.m., and on October 5, 1999, 8 a.m. to 12 m.

Location: Holiday Inn, The Ballrooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Rhonda W. Stover or John B. Schupp, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12531. Please call the Information Line for up-to-date information on this meeting.

Agenda: On October 4, 1999, presentations and committee discussions will address issues related to the potential applicability of information from non-U.S. studies of prevention of perinatal human immunodeficiency virus transmission to U.S. clinical settings.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by September 27, 1999. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on October 4, 1999. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 27, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: On October 4, 1999, from 2 p.m to 5 p.m., and on October 5, 1999, from 8 a.m. to 12 m., the meeting will be closed to permit discussion and review of trade secret and/or confidential commercial information relevant to pending investigational new drug applications and drug development plans (5 U.S.C. 552b(c)(4)).

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 2, 1999.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 99–23465 Filed 9–9–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food and Drug Administration/Industry Exchange Workshop on Medical Device Quality Systems Inspection Technique; Public Workshops

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of workshops.

SUMMARY: The Food and Drug Administration (FDA), Office of the Commissioner, Office of Regulatory Affairs, Center for Devices and Radiological Health, and the Regional Small Business Assistance Offices in cooperation with the American Society for Quality, Association of Food and Drug Officials, BioFlorida, Inc., Health Industry Manufacturers Association, Medical Alley, New England Biomedical Discussion Group, Organization of Regulatory and Clinical Associates, Pharmaceutical Quality Institute, and the Regulatory Affairs Professionals Society is announcing a series of workshops on the FDA Quality System Inspection Technique (QSIT). Topics for discussion include: Development of QSIT, Compliance Program and Warning Letter (Pilot), Management Controls, Corrective and Preventative Action, Design Controls, Production and Process Controls, and Industry Perspective of QSIT. Through the workshops, FDA seeks to increase the medical device community's understanding of QSIT, and ensure that the device industry takes appropriate actions to establish effective quality systems, thus preventing regulatory problems when inspections occur.

Date and Time: See Table 1 in the **SUPPLEMENTARY INFORMATION** section of this document.

Location: See Table 1 in the **SUPPLEMENTARY INFORMATION** section of this document.

Registration: Send registration information as listed in the **SUPPLEMENTARY INFORMATION** section of this document, along with the correct payment amount, to the registrar for the site you wish to attend. Fees cover refreshments, organization and site costs, and materials. Space is limited, therefore interested parties are encouraged to register early. If you need special accommodations due to a disability, please inform the registrar for your site at least 7 days in advance of the workshop.

Contact: Herman B. Janiger, Northeast Regional Office (HFRNE–17), Food and Drug Administration, 850 Third Ave., Brooklyn, NY 11232, 718–340–7000, ext. 5528.

SUPPLEMENTARY INFORMATION: In the fall of 1999, FDA field offices will begin using the QSIT nationwide as the primary tool for medical device good manufacturing practice/quality system inspections. QSIT was developed using a collaborative effort with stakeholders and tested in three districts. The following workshops are scheduled to increase the medical community's understanding of QSIT:

TABLE 1.

Workshop Address	Date and Local Time	Deadline to Register and Fee	Registrar and Cosponsor	FDA Contact Person
EAST ELMHURST: Crowne Plaza, LaGuardia Airport, 104–04 Ditmars Blvd., East Elmhurst, NY 11369, 718–457–6300.	Tuesday, October 12, 1999, 8:30 a.m. to 4:30 p.m.	Tuesday, September 28, 1999, $170.	James Blanchard, Health Industry Manufacturers Association, 1200 G St. NW, suite 400, Washington, DC 20005, 202–434–7231, FAX 202–783–8750.	Herman B. Janiger, Small Business Representative, Northeast Regional Office, 718–340–7000, ext. 5528.
PRINCETON: Holiday Inn, US Route 1 & Ridge Rd., Princeton, NJ 08540, 609–452–2400 or 800–465–4329.	Thursday, October 14, 1999, 8:30 a.m. to 4:30 p.m.	Thursday, September 30, 1999, $145.	Satish Laroia, Pharmaceutical Quality Institute, 33 Aspen Circle, Edison, NJ 08820, 973–890–1440, FAX 732–549–7487.	Marie T. Falcone, Small Business Representative, Central Regional Office, 215–597–2120, ext. 4003.
MINNEAPOLIS: Holiday Inn, Minneapolis West, 9970 Wayzata Blvd., Minneapolis, MN 55426, 612–593–1918 or 800–465–4329.	Thursday, October 21, 1999, 8:30 a.m. to 4:30 p.m.	Friday, October 15, 1999, $160 (member), $235 (nonmember).	Lisa Miller, Medical Alley, 1550 Utica Ave. South St., Louis Park, MN 612–542–3077, FAX 612–542–3088, or "www.medicalalley.org".	Marie T. Falcone, Small Business Representative, Central Regional Office, 215–597–2120, ext. 4003.
ORLANDO: Radisson Orlando Airport, 5555 Hazeltine National Dr., Orlando, FL 32812, 407–856–0100 or 800–333–3333.	Thursday, October 28, 1999, 8:30 a.m. to 4:30 p.m.	Thursday, October 14, 1999, $90.	Larry M. Clark, BioFlorida, Inc., 15205 SW 78th CT, Miami, FL 33157, 305–971–1495, FAX 305–971–1496.	Barbara Ward-Groves, Small Business Representative, Southeast Regional Office, 404–253–2238.
CAMBRIDGE: Volpe National Transportation Systems, Center Auditorium, rm. 1–11, Bldg. 2, Kendall Sq., Cambridge, MA 02142–1093.	Tuesday, November 2, 1999, 8:30 a.m. to 4:30 p.m.	Tuesday, October 19, 1999, $50.	Terrence Sullivan, New England Biomedical Discussion Group, P.O. Box 1282, Attleboro Falls, MA 02763–0282, 508–643–0434, FAX 508–643–2237.	Herman B. Janiger, Small Business Representative, Northeast Regional Office, 718–340–7000, ext. 5528.
HOUSTON: Marriott West Loop, 1750 West Loop South, Houston, TX 77027, 713–960–0111 or 800–228–9290.	Thursday, November 4, 1999, 8:30 a.m. to 4:30 p.m.	Thursday, October 21, 1999, $170.	Denise Rooney, Association of Food and Drug Officials, P.O. Box 3425, York, PA 17402, 717–757–2888, FAX 717–755–8089.	Brenda C. Baumert, Small Business Representative, Southwest Regional Office, 214–655–8100, ext. 133.
OAK BROOK: Marriott Oak Brook, 1401 West 22d St., Oak Brook, IL 60523, 630–573–8555 or 800–228–9290.	Wednesday, November 10, 1999, 8:30 a.m. to 4:30 p.m.	Wednesday, October 27, 1999, $80.	Susan B. Jacobs, American Society for Quality, 3516 North Wilshire Dr., Palatine, IL 60067, 847–359–4456, FAX 847–359–4512.	Marie T. Falcone, Small Business Representative, Central Regional Office, 215–597–2120, ext. 4003.
ATLANTA: Sheraton Colony Sq., 188 14th St. NE., Atlanta, GA 30361, 404–892–6000.	Tuesday, November 16, 1999, 8:30 a.m. to 4:30 p.m.	Tuesday, November 2, 1999, $170.	Denise Rooney, Association of Food and Drug Officials, P.O. Box 3425, York, PA 17402, 717–757–2888, FAX 717–755–8089.	Barbara Ward-Groves, Small Business Representative, Southeast Regional Office, 404–253–2238.
FOSTER CITY: Crowne Plaza Hotel, 1221 Chess Dr., Foster City, CA 94404, 650–570–5700.	Thursday, November 18, 1999, 8:30 a.m. to 4:30 p.m.	Thursday, November 4, 1999, $120.	Courtney Ford, Regulatory Affairs Professionals Society, 12300 Twinbrook Pkwy., suite 350, Rockville, MD 20852–1606, 301–770–2920, FAX 301–770–2924.	Acting Small Business Representative, Pacific Regional Office, 510–637–3980.
BELLEVUE: Rockwell Institute, 13218 North East 20th St., Bellevue, WA 90005, 425–747–7272.	Tuesday, November 23, 1999, 8:30 a.m. to 4:30 p.m.	Sunday, November 7, 1999, $100.	Jaimee Hansen, Organization of Regulatory & Clinical Associates, P.O. Box 3490, Redmond, WA 98073–3490, 425–487–7179, FAX 425–487–8666.	Acting Small Business Representative, Pacific Regional Office, 510–637–3980.

The workshops, scheduled above, will help to implement the FDA Plan for Statutory Compliance (developed under section 406 of the FDA Modernization Act (21 U.S.C. 393)) through working more closely with stakeholders and

ensuring access to needed scientific and technical expertise. These workshops also comply with the Small Business Regulatory Enforcement Fairness Act (Public Law 104–121) that requires outreach activities by Government agencies directed to small businesses.

This notice announcing the workshops and a registration form may also be accessed at the CDRH website at "http://www.fda.gov/cdrh/fedregin.html".

The following information is requested for registration:

REGISTRATION FORM

Quality System Inspection Technique (QSIT)

Regional Medical Device Workshop

Instructions: To register, complete this form and mail with registration fee to the Registrar for the workshop you wish to attend.

Date,_____

Location,_____

Fee enclosed,_____

Name,_____

Title,_____

Company,_____

Address,_____

Telephone,_____

Fax,_____

E-mail_____

Dated: September 2, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–23633 Filed 9–7–99; 4:16 pm]

BILLING CODE 4150–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–13]

Agency Information Collection Activities; Submission For OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Conditions of Coverage for Organ Procurement Organizations (OPOs) and Supporting Regulations in 42 CFR, Section 486.301–325;

Form No.: HCFA–R–13;

Use: An Organ Procurement Organization (OPO) is an entity that performs or coordinates the performance of retrieving, preserving and transporting organs and maintains a system of locating prospective recipients for available organs. OPOs are required to submit accurate data to HCFA concerning population and information on donors and organs on an annual basis in order to assure maximum effectiveness in the procurement and distribution of organs. This information collection lays out the conditions for coverage for OPOs;

Frequency: Annually;

Affected Public: Not-for-profit institutions;

Number of Respondents: 62;

Total Annual Responses: 62;

Total Annual Hours Requested: 1.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: August 19, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–23603 Filed 9–9–99; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–281]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the Information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed prior to the expiration of the normal time limits under OMB's regulations at 5 CFR, Part 1320. The HCFA–R–281 will be used to evaluate the effects of the "Medicare and You Handbook: 2000" to determine that beneficiaries not only received it and are aware of the information, but whether they understand the information and are able to use it in making informed choices about their Medicare plan. Without this information, HCFA would not be able to obtain the information necessary to determine whether these goals have been met. The Agency cannot reasonably comply with the normal clearance procedures because public harm is likely to result due to the possibility of beneficiaries not being properly informed/educated as to the importance of their Medicare plan choices.

HCFA is requesting OMB review and approval of this collection by 9/10/99, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below, by 9/9/99. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Collection Request: Revision of a currently approved collection;

Title of Information Collection: Survey of Medicare Beneficiaries for the National "Medicare and You Handbook: 2000" Evaluation;

Form No.: HCFA–R–281 (OMB #0938–0771);

Use: As part of the National Medicare Education Program (NMEP), HCFA plans a national mailing of the Medicare & You 2000 handbook to the entire Medicare population in September 1999. To evaluate the effects of the handbook, HCFA needs to know not only that beneficiaries received it and are aware of the information, but whether they understand the information and are able to use it in making informed choices about their Medicare plan.

To quantify whether these goals have been met, measures of what beneficiaries currently know and understand about the Medicare program must be established. It is also necessary to compare attitudes and behavior of beneficiaries who receive the information to those who do not to determine if the print campaign of the NMEP (Medicare & You handbook) has been effective.

This survey will be used to determine the effectiveness of the "Medicare and You Handbook: 2000".;

Frequency: Other: one time;

Affected Public: Business or other for-profit, and Individuals or Households;

Number of Respondents: 4,250;

Total Annual Responses: 4,250;

Total Annual Hours: 3,019.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of Information requirements. However, as noted above, comments on these Information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by 9/9/99:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850 and Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: August 31, 1999.

John Parmigiani,

Manager, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–23606 Filed 9–9–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–2058–PN]

RIN 0938–AJ68

Medicare and Medicaid Programs; Application of the Joint Commission for Accreditation of Healthcare Organizations (JCAHO) for Continued Approval of Deeming Authority for Home Health Agencies

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: This notice announces the receipt of an application from the Joint Commission for Accreditation of Healthcare Organizations (JCAHO) for recognition as a national accreditation program for home health agencies (HHAs) that wish to participate in the Medicare or Medicaid programs. The Social Security Act requires that the Secretary publish a notice identifying the national accreditation body making the request for approval, describing the nature of the request, and providing a 30-day public comment period.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided in **ADDRESSES** section, no later than 5 p.m. on October 12, 1999.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–2058–PN, P.O. Box 9010, Baltimore, Maryland 21244–9010.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses: Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room C5–16–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: Joan C. Berry, (410) 786–7233.

SUPPLEMENTARY INFORMATION:

Comments

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–2058–PN. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 445–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services from a home health agency (HHA) provided certain requirements are met. Sections 1861(o) and 1891 of the Social Security Act (the Act) and part 484 of the Medicare regulations specify the conditions that an HHA must meet in order to participate in the Medicare program.

Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to the activities relating to the survey and certification of facilities are at 42 CFR part 488.

Generally, in order to enter into an agreement, an HHA must first be certified by the State survey agency as complying with the conditions or standards set forth in the statute and part 484 of our regulations. Then, the HHA is subject to regular surveys by a State survey agency to determine whether it continues to meet the requirements. There is an alternative, however, to surveys by State agencies.

Section 1865(b)(1) of the Act permits "accredited" HHAs to be exempt from routine surveys by State survey agencies to determine compliance with Medicare conditions of participation. Section 1865(b)(1) of the Act provides that if the Secretary finds that accreditation of a provider entity by a national accreditation body demonstrates that all applicable conditions are met or exceeded, the Secretary "deems" those requirements to be met by the HHA. Our regulations concerning reapproval of accrediting organizations are set forth at §§ 488.4 and 488.8(d)(3). Section 488.8(d)(3) requires reapplication at least every 6 years and permits the Secretary to determine the required materials from those enumerated in § 488.4, and the deadline to reapply for continued approval of deeming authority. The Joint Commission for Accreditation of Healthcare Organizations (JCAHO) is a currently recognized accreditation organization for HHAs.

II. Approval of Deeming Organizations

Section 1865(b)(2) of the Act further requires that the Secretary's findings concerning review of national accrediting organizations consider, among other factors, the accreditation organization's requirements for accreditation, its survey procedures, its ability to provide adequate resources for conducting required surveys and ability

to supply information for use in enforcement activities, its monitoring procedures for provider entities found out of compliance with the conditions or requirements, and its ability to provide the Secretary with necessary data for validation.

Section 1865(b)(3)(A) of the Act requires that the Secretary publish, within 60 days of the receipt of an organization's complete application, a notice that identifies the national accreditation body making the request, describes the nature of the request, and provides at least a 30-day public comment period. Subsequently, the Secretary has 210 days from the receipt of the request to publish a finding of approval or denial of the application.

The purpose of this notice is to notify the public of JCAHO's request for reapproval and continuation of its deeming authority on the basis that the Secretary find that its separate accreditation programs for HHAs meet or exceed the Medicare conditions. This notice also solicits public comment on the ability of JCAHO requirements to meet or exceed the Medicare conditions of participation for HHAs.

III. Evaluation of Deeming Request

On July 26, 1999, JCAHO submitted all the necessary information concerning its request to be reapproved as a deeming organization for HHAs to permit us to make a determination. Under section 1865(b)(2) of the Act and our regulations at § 488.8 ("Federal review of accreditation organizations"), our review and evaluation of a national accreditation organization will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of JCAHO's requirements for an HHA to our comparable HHA conditions of participation.
- JCAHO's survey processes, to determine the following:

—The composition of the survey team, surveyor qualifications, and JCAHO's ability to provide continuing surveyor training.

—The comparability of its implemented processes to those of State agencies, including survey frequency, and its ability to investigate and respond appropriately to complaints against accredited facilities.

—Its procedures for monitoring HHAs found by JCAHO to be out of compliance with program requirements. (These procedures are used only when JCAHO identifies noncompliance. If noncompliance is identified through validation reviews, the survey agency monitors corrections as specified at § 488.7(b)(2).)

—Its ability to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

—The ability of JCAHO to provide us with electronic data in ASCII comparable code and any reports necessary for effective validation and assessment of its survey processes.

—The adequacy of JCAHO's staff and other resources, and its financial viability.

—JCAHO's ability to provide adequate funding for performing required surveys.

—JCAHO's policies with respect to whether surveys are announced or unannounced.

—JCAHO's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require (including corrective action plans).

IV. Notice Upon Completion of Evaluation

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a notice in the **Federal Register** announcing the result of our evaluation.

Authority: Sec. 1865(b)(3)(A) of the Social Security Act (42 U.S.C. 1395bb(b)(3)(A))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: September 1, 1999.

Michael M. Hash

Deputy Administrator,

Health Care Financing Administration.

[FR Doc. 99–23624 Filed 9–9–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–2059–PN]

RIN 0938–AJ69

Medicare and Medicaid Programs; Application of the Community Health Accreditation Program, Incorporated (CHAP) for Continued Approval of Deeming Authority for Home Health Agencies

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: This notice announces the receipt of an application from the Community Health Accreditation Program, Incorporated (CHAP) for recognition as a national accreditation program for home health agencies (HHAs) that wish to participate in the Medicare or Medicaid programs. The Social Security Act requires that the Secretary publish a notice identifying the national accreditation body making the request for approval, describing the nature of the request, and providing a 30-day public comment period.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided in **ADDRESSES** section, no later than 5 p.m. on October 12, 1999.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–2059–PN, P.O. Box 9010, Baltimore, Maryland 21244–9010.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201, or

Room C5–16–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

FOR FURTHER INFORMATION CONTACT: Joan C. Berry, (410) 786–7233.

SUPPLEMENTARY INFORMATION:

Comments

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–2059–PN. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 445–G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services from a home health agency (HHA) provided certain requirements are met. Sections 1861(o) and 1891 of the Social Security Act (the Act)and part 484 of the Medicare regulations specify the conditions that an HHA must meet in order to participate in the Medicare program.

Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to the activities relating to the survey and certification of facilities are at 42 CFR part 488.

Generally, in order to enter into an agreement, an HHA must first be certified by the State survey agency as complying with the conditions or standards set forth in the statute and part 484 of our regulations. Then, the HHA is subject to regular surveys by a State survey agency to determine whether it continues to meet the requirements. There is an alternative, however, to surveys by State agencies.

Section 1865(b)(1) of the Act permits "accredited" HHAs to be exempt from routine surveys by State survey agencies to determine compliance with Medicare conditions of participation. Section 1865(b)(1) of the Act provides that if the Secretary finds that accreditation of a provider entity by a national accreditation body demonstrates that all applicable conditions are met or exceeded, the Secretary "deems" those requirements to be met by the HHA. Our regulations concerning reapproval of accrediting organizations are set forth at §§ 488.4 and 488.8(d)(3). Section 488.8(d)(3) requires reapplication at least every 6 years and permits the Secretary to determine the required materials from those enumerated in § 488.4, and the deadline to reapply for continued approval of deeming authority. The Community Health Accreditation Program, Incorporated (CHAP) is a currently recognized accreditation organization for HHAs.

II. Approval of Deeming Organizations

Section 1865(b)(2) of the Act further requires that the Secretary's findings concerning review of national accrediting organizations consider, among other factors, the accreditation organization's requirements for accreditation, its survey procedures, its ability to provide adequate resources for conducting required surveys and ability to supply information for use in enforcement activities, its monitoring procedures for provider entities found out of compliance with the conditions or requirements, and its ability to provide the Secretary with necessary data for validation.

Section 1865(b)(3)(A) of the Act requires that the Secretary publish, within 60 days of the receipt of an organization's complete application, a notice that identifies the national accreditation body making the request, describes the nature of the request, and provides at least a 30-day public comment period. Subsequently, the Secretary has 210 days from the receipt of the request to publish a finding of approval or denial of the application.

The purpose of this notice is to notify the public of CHAP's request for reapproval and continuation of its deeming authority on the basis that the Secretary find that its separate accreditation programs for HHAs meet or exceed the Medicare conditions. This notice also solicits public comment on the ability of CHAP's requirements to meet or exceed the Medicare conditions of participation for HHAs.

III. Evaluation of Deeming Request

On July 15, 1999, CHAP submitted all the necessary information concerning its request to be reapproved as a deeming organizations for HHAs to permit us to make a determination. Under section 1865(b)(2) of the Act and our regulations at § 488.8 ("Federal review of accreditation organizations"), our review and evaluation of a national accreditation organization will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of CHAP's requirements for an HHA to our comparable HHA conditions of participation.
- CHAP's survey processes, to determine the following:

—The composition of the survey team, surveyor qualifications, and CHAP's ability to provide continuing surveyor training.

—The comparability of its implemented processes to those of State agencies, including survey frequency, and its ability to investigate and respond appropriately to complaints against accredited facilities.

—Its procedures for monitoring HHAs found by CHAP to be out of compliance with program requirements. (These procedures are used only when CHAP identifies noncompliance. If noncompliance is identified through validation reviews, the survey agency monitors corrections as specified at § 488.7(b)(2).)

—Its ability to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

—The ability of CHAP to provide us with electronic data in ASCII comparable code and any reports necessary for effective validation and assessment of its survey processes.

—The adequacy of CHAP's staff and other resources, and its financial viability.

—CHAP's ability to provide adequate funding for performing required surveys.

—CHAP's policies with respect to whether surveys are announced or unannounced.

—CHAP's agreement to provide us with a copy of the most current accreditation survey together with any other information related to the survey as we may require (including corrective action plans).

IV. Notice Upon Completion of Evaluation

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a notice in the **Federal Register** announcing the result of our evaluation.

Authority: Sec. 1865(b)(3)(A) of the Social Security Act (42 U.S.C. 1395bb(b)(3)(A))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: September 1, 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration.

[FR Doc. 99–23625 Filed 9–9–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–2057–PN]

Medicare and Medicaid Programs; Reapplication of the American Osteopathic Association (AOA) for Continued Approval of Deeming Authority for Hospitals

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: This notice announces the receipt of a renewal application from the American Osteopathic Association (AOA) for continued recognition as a national accreditation program for hospitals that wish to participate in the Medicare or Medicaid programs. Section 1865(b)(3)(A) of the Social Security Act (the Act) requires the Secretary to publish a notice within 60 days of the receipt of an organization's complete application, identifying the national accreditation body making the request, describing the nature of the request, and providing a 30-day public comment period.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on October 12, 1999.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–2057–PN, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–16–03, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Because of staffing and resource limitations, we cannot accept audio, visual, or facsimile (FAX) copies of comments. In commenting, please refer to file code HCFA–2057–PN. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (Phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Janice Adams-King, (410) 786–8354.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a hospital provided certain requirements are met. The regulations specifying the Medicare conditions of participation for hospital care are located in 42 CFR part 482. These conditions implement section 1861(e) of the Social Security Act (the Act), which specifies services covered as hospital care and the conditions that a hospital must meet in order to participate in the Medicare program. Other relevant sections of the Act are section 1811, which specifies eligibility requirements for the individual and the amount of benefits; and sections 1814(l), 1876(h)(2), and 1886(c)(6) of the Act, which contain conditions of payment for hospitals.

Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to the activities relating to the survey and certification of facilities are at 42 CFR part 488. Our regulations at 42 CFR part 482 specify the conditions that a hospital must meet in order to participate in the Medicare program, the scope of covered services, and the conditions for Medicare payment for hospital services.

Generally, in order to enter into an agreement, a hospital must first be certified by a State survey agency as complying with the conditions or standards set forth in part 482 of our regulations. Then, the hospital is subject to regular surveys by a State survey agency to determine whether it continues to meet these requirements. There is an alternative, however, to surveys by State agencies.

Section 1865(b)(1) of the Act permits "accredited" hospitals to be exempt from routine surveys by State survey agencies to determine compliance with Medicare conditions of participation. Section 1865(b)(1) of the Act provides that if a provider entity by a national accreditation body demonstrates that all applicable conditions are met or exceed the Medicare conditions, the Secretary can "deem" the hospital as having met the requirements.

Our regulations concerning reapproval of accrediting organizations are set forth at §§ 488.4 and 488.8(d)(3). The regulations at § 488.8(d)(3) require reapplication at least every 6 years and permit HCFA to determine the required materials from those enumerated in § 488.4, and the deadline to reapply for continued approval of deeming authority.

This organization is currently a recognized accreditation organization for hospitals.

II. Approval of Deeming Organizations

Section 1865(b)(2) of the Act further requires that the Secretary's findings concerning review and reapproval of national accrediting organizations consider, among other factors, the reapplying accreditation organization's requirements for accreditation, its survey procedures, its ability to provide adequate resources for conducting required surveys and ability to supply information for use in enforcement activities, its monitoring procedures for provider entities found out of compliance with the conditions or requirements, and its ability to provide the Secretary with necessary data for validation.

Section 1865(b)(3)(A) of the Act requires that the Secretary publish, within 60 days of the receipt of an organization's complete reapplication, a notice identifying the national accreditation body making the request, describing the nature of the request, and providing at least a 30-day public comment period. Subsequently, the Secretary has 210 days from the receipt of the request to publish a finding of approval or denial of the reapplication.

The purpose of this notice is to notify the public of the request of AOA for reapproval and continuation of its deeming authority on the basis that the Secretary find that its separate accreditation programs for hospital care meet or exceed the Medicare conditions. This notice also solicits public comment on the ability of each body's requirements to meet or exceed the Medicare conditions of participation.

III. Evaluation of Deeming Request

On ???1999, AOA submitted all the necessary information concerning its request for reapproval as a deeming organization for hospitals to permit us to make a determination. Under section 1865(b)(2) of the Act and our regulations at § 488.8 ("Federal review of accreditation organizations"), our review and evaluation of a national accreditation organization will be conducted in accordance with, but not necessarily limited to, the following criteria:

- The equivalency of AOA's requirements for a hospital to HCFA's comparable hospital requirements.
- AOA's survey process, to determine the following:

—The composition of the survey team, surveyor qualifications, and AOA's ability to provide continuing surveyor training.

—The comparability of AOA's implemented process to those of State agencies, including survey frequency, and its ability to investigate and respond appropriately to complaints against accredited facilities;

—AOA's procedures for monitoring providers or suppliers found to be out of compliance with AOA program requirements. (These procedures are used only when AOA identifies noncompliance. If noncompliance is identified through validation reviews, the survey agency monitors corrections as specified at § 488.7(b)(3).)

—AOA's ability to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

- The ability of AOA to provide us with electronic data in ASCII comparable code and any reports necessary for effective validation and assessment of its survey processes.
- The adequacy of AOA staff and other resources, and their financial viability.
- AOA's ability to provide adequate funding for performing required surveys.
- AOA's policies with respect to whether surveys are announced or unannounced.
- AOA's agreement to provide us with a copy of its most current accreditation survey with any other information related to the survey as we may require (including corrective action plans).

IV. Response to Comments and Notice Upon Completion of Evaluation

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the "DATES" section of this preamble.

Upon completion of our evaluation, including evaluation of comments received as a result of this notice, we will publish a notice in the **Federal Register** announcing the result of our evaluation.

Authority: Sec. 1865(b)(3)(A) of the Social Security Act (42 U.S.C. 1395bb(b)(3)(A))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: September 1, 1999.

Michael M. Hash,

Deputy Administrator, Health Care Financing Administration.

[FR Doc. 99–23626 Filed 9–9–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) notice is hereby given of the meeting of the National Cancer Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Advisory Board.

Dates: September 22–24, 1999.

Name of Committee: National Cancer Advisory Board, Subcommittee on Activities and Agenda.

Closed: September 22, 7:30 p.m.—Recess.

Agenda: To discuss activities related to methodologies for transmission and evaluation of confidential grant information, including demonstrations using live data.

Place: The Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20892.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, NIH, Executive Blvd., MSC 7405, Bethesda, MD 20892–7405, (301) 496–5147.

Name of Committee: National Cancer Advisory Board.

Dates: September 23–24, 1999.

Open: September 23, 9:00 a.m. to 3:30 p.m.; September 24, 9:00 to 11:15 a.m.

Agenda: Program reports and presentations; business of the Board. For detailed agenda: See NCI Homepage/Advisory Board and Groups, http://deainfor/nci.nih.gov/ADVISORY/boards.htm; Tentative agenda available 10 working days prior to meetings; Final agenda available 5 working days prior to meetings.

Closed: September 23, 3:45 p.m. to Recess.

Agenda: To review and evaluate grant applications.

Place: Building 31C, Conference Room 10, National Institutes of Health, 3100 Center Drive, Bethesda, MD 20892.

Contact Person: Dr. Marvin R. Kalt, Executive Secretary, National Cancer Institute, National Institutes of Health, Executive Plaza North, Suite 600, 6130 Executive Boulevard, Rockville, MD 20892, (301) 496–5147.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated August 31, 1990.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–23562 Filed 9–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Mouse Models of Human Cancers Consortium.

Date: September 15–17, 1999.

Time: 7:00 pm to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: Ray Bramhall, PhD, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Blvd, Rockville, MD 20892, (301) 496–3428.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research;; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: August 31, 1999.

LaVerne J. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–23563 Filed 9–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Eye Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other

reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Eye Council.

Date: September 16, 1999.

Open: 8:30 am to 11:30 am.

Agenda: Following opening remarks by the Director, NEI, there will be presentations by the staff of the Institute and discussions concerning Institute programs and policies.

Place: 6120 Executive Blvd., EPN Conference Room G, Rockville, MD 20852.

Closed: 11:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd., EPN Conference Room G, Rockvile, MD 20852.

Contact Person: Lois DeNinno, National Eye Institute, Executive Plaza South, Suite 350, 6120 Executive Blvd., MSC 7167, Bethesda, MD 20892, 301–496–9110.

This notice is being published less than 15 days prior to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: September 1, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–23561 Filed 9–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Contract Review: Rodent Disease Diagnostic Laboratory.

Date: September 8, 1999.

Time: 2:00 pm to 4:00 pm.

Agenda: To review and evaluate contract proposals.

Place: NIEHS-East Campus, Building 4401, Conference Room 122, 79 Alexander Drive, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: J. Patrick Mastin, PhD, Scientific Review Administrator, NIEHS, P.O. Box 12233 MD EC–24, Research Triangle Park, NC 27709, (919) 541–1446.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Contract Review: Studies to Evaluate the Toxicologic and Carcinogenic Potential of Chemicals by Oral and Dermal Exposure (RFP–NIH–ES–99–35).

Date: September 24, 1999.

Time: 2:00 pm to 4:00 pm.

Agenda: to review and evaluate contract proposals.

Place: NIEHS-East Campus, 79 TW Alexander Drive, Building 4401, Room 3446, Research Triangle Park, NC 27709 (Telephone Conference Call).

Contact Person: J. Patrick Mastin, PhD, Scientific Review Administrator, NIEHS, P.O. Box 12233, MD EC–24, Research Triangle Park, NC 27709, (919) 541–1446.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: September 2, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–23559 Filed 9–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Transition to Independent Positions (TIP) Review.

Date: October 14–15, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Hawthorne Suites, 300 Meredith Drive, Durham, NC 27713.

Contact Person: Linda K. Bass, PhD, Scientific Review Administrator, NIEHS, PO Box 12233, EC–24, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: September 1, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–23560 Filed 9–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel HIV Vaccine Design and Development Teams.

Date: October 20–21, 1999.

Time: 8:30 AM to 5:30 PM.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn Bethesda, Maryland Room, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Kevin W. Ryan, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research, 93.856, Microbiology and Infectious diseases Research, National Institutes of Health, HHS)

Dated: August 31, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–23564 Filed 9–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel Younkin Program Project.

Date: September 16, 1999.

Time: 1:PM to 4:30 PM.

Agenda: To review and evaluate grant applications.

Place: 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Paul Lenz, Phd, Office of Extramural Affairs, National Institute on Aging, Gateway Building, Room 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 30, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–23566 Filed 9–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: September 14, 1999.

Time: 2:00 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joseph Kimm, Ph.D, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178 MSC 7844, Bethesda, MD 20892, (301) 435–1249.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 31, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–23565 Filed 9–9–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–36]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1234; TTY number of the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also

published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administraiton*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable / available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number). HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available, or suitable/ unavailable.

For properties listed as suitable/available, the landholding agency has decided that the property cannot be declared excess or made unavailable for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; NAVY: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 686–9200; (These are not toll-free numbers).

Dated: September 2, 1999.

Joseph A. D'Agosta,

Acting General Deputy Assistant Secretary.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM—FEDERAL REGISTER REPORT FOR 9/10/00

Suitable/Available Properties

Buildings (by State)

California

Naval & Marine Corps Readiness
1700 Stadium Way
Los Angeles Co: Los Angeles 90012–
Landholding Agency: GSA
Property Number: 54199910005
Status: Excess
Comment: 133,484 sq. ft., suffered seismic damage, presence of asbestos/lead paint, historic covenants, 45% of property will revert to City
GSA Number: 9–N–CA–1523

Bldg. 105QA
Naval Station, San Diego
Mission Gorge Recreation Center
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 77199830002
Status: Excess
Comment: 1,000 sq. ft., needs repair, most recent use—water treatment facility, off-site use only

Bldg. 102QA
Naval Station, San Diego
Mission Gorge Recreation Center
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 77199830003
Status: Excess
Comment: 6,138 sq. ft., needs repair, most recent use—pro shop, off-site use only

Bldg. 118QA
Naval Station, San Diego
Mission Gorge Recreation Center
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 77199830004
Status: Excess
Comment: 5635 sq. Ft., needs repair, most recent use—coffee shop-grille, off-site use only

Bldg. 119QA
Naval Station, San Diego
Mission Gorge Recreation Center
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 77199830005
Status: Excess
Comment: 1277 sq. ft., needs repair, most recent use—lockers, off-site use only

Bldg. 129QA
Naval Station, San Diego
Mission Gorge Recreation Center
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 77199830006
Status: Excess
Comment: 2832 sq. ft., needs repair, most recent use—patio cover, off-site use only

Bldg. 140QA
Naval Station, San Diego
Mission Gorge Recreation Center
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 77199830007
Status: Excess
Comment: 1648 sq. ft., needs repair, most recent use—golf cart battery shop, off-site use only

Bldg. 176QA
Naval Station, San Diego
Mission Gorge Recreation Center
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 77199830008
Status: Excess
Comment: 5200 sq. ft., needs repair, most recent use—golf cart shelter, off-site use only

Bldg. 193
Naval Station
San Diego, CA 92136–5294
Landholding Agency: Navy
Property Number: 77199830112
Status: Excess
Comment: 780 sq. ft., needs major repairs, most recent use—utility plant, off-site use only

Bldg. 203
Naval Station
San Diego, CA 92136–5294
Landholding Agency: Navy
Property Number: 77199830113
Status: Excess
Comment: 360 sq. ft., needs major repairs, most recent use—valve house, off-site use only

Bldg. 228
Naval Station
San Diego, CA 92136–5294
Landholding Agency: Navy
Property Number: 77199830114
Status: Excess
Comment: 6142 sq. ft., needs major repairs, most recent use—workshop, off-site use only

Bldg. 286
Naval Station
San Diego, CA 92136–5294
Landholding Agency: Navy
Property Number: 77199830115
Status: Excess
Comment: 23,760 sq. ft., needs major repairs, most recent use—shop, off-site use only

Bldg. 308
Naval Station
San Diego CA 92136–5294
Landholding Agency: Navy
Property Number: 77199830116
Status: Excess
Comment: 3400 sq. ft., needs major repairs, most recent use—workshop, off-site use only

Bldg. 314
Naval Station
San Diego CA 92136–5294
Landholding Agency: Navy
Property Number: 77199830117
Status: Excess
Comment: 160 sq. ft., most recent use—water treatment facility, off-site use only

Bldg. 315
Naval Station
San Diego CA 92136–5294
Landholding Agency: Navy
Property Number: 77199830118
Status: Excess
Comment: 160 sq. ft., needs major repairs, most recent use—water treatment facility, off-site use only

Bldg. 335
Naval Station
San Diego CA 92136–5294
Landholding Agency: Navy
Property Number: 77199830119
Status: Excess
Comment: 14,000 sq. ft., needs major repairs, most recent use—workshop, off-site use only

Bldg. 398
Naval Station
San Diego CA 92136–5294
Landholding Agency: Navy
Property Number: 77199830120
Status: Excess
Comment: 1530 sq. ft., needs major repairs, most recent use—admin., off-site use only

Bldg. 3201
Naval Station
San Diego CA 92136–5294
Landholding Agency: Navy
Property Number: 77199830121
Status: Excess
Comment: 1750 sq. ft., needs major repairs, most recent use—workshop, off-site use only

Connecticut

Pier 7
Naval Undersea Warfare Center
New London Co: New London CT 06320–5594
Landholding Agency: Navy
Property Number: 77199710063
Status: Excess
Comment: 700' long by 30' wide, rectangular shape reinforced concrete pier

Bldg. 84, Anx. of Gilmore Hall
Naval Submarine Base New London
Groton Co: New London CT 06349–
Landholding Agency: Navy
Property Number: 77199830009
Status: Excess
Comment: 5400 sq. ft., 2-story, presence of asbestos/lead paint, needs rehab, off-site use only

Bldg. 150, McNeil Hall
Naval Submarine Base New London
Groton Co: New London CT 06349–
Landholding Agency: Navy
Property Number: 77199830010
Status: Excess
Comment: 27,120 sq. ft., 4-story, presence of asbestos/lead paint, needs rehab, off-site use only

Bldg. 437, Fife Hall
Naval Submarine Base New London
Groton Co: New London CT 06349–
Landholding Agency: Navy
Property Number: 77199830011
Status: Excess
Comment: 51,790 sq. ft., 3-story, presence of asbestos/lead paint, needs rehab, off-site use only

Bldg. 295
Naval Submarine Base New London
Groton Co: New London Ct 06349–
Landholding Agency: Navy
Property Number: 77199830012
Status: Excess
Comment: presence of asbestos/lead paint, needs rehab, off-site use only

Facility CH–901
Naval Submarine Base
Co: New London CT
Landholding Agency: Navy
Property Number: 77199830045
Status: Excess
Comment: 6161 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—community center, off-site use only

3 Bldgs.
Naval Submarine Base
R121444, R121458, R121469
Ledyard Co: New London CT 06335–
Landholding Agency: Navy
Property Number: 77199910019
Status: Unutilized
Comment: various sq. ft., wood, possible asbestos/lead paint, most recent use—storage, off-site use only

Hawaii

Bldg. S87, Radio Trans. Fac.
Lualualei, Naval Station, Eastern Pacific
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 77199240011
Status: Unutilized
Comment: 7566 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. 64, Radio Trans Facility
Naval Computer & Telecommunications Area
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 77199310004
Status: Unutilized
Comment: 3612 sq. ft., 1 story, access restrictions, needs rehab, most recent use—storage, off-site use only

Bldg. 442, Naval Station
Ford Island
Pearl Harbor Co: Honolu HI 96860–
Landholding Agency: Navy
Property Number: 77199630088
Status: Excess
Comment: 192 sq. ft., most recent use—storage, off-site use only

Bldg. S180
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640039
Status: Unutilized
Comment: 3412 sq. ft., 2-story, most recent use—bomb shelter, off-site use only, relocation may not be feasible

Bldg. S181
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640040
Status: Unutilized
Comment: 4258 sq. ft., 1-story, most recent use—bomb shelter, off-site use only, relocation may not be feasible

Bldg. 219
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640041
Status: Unutilized
Comment: 620 sq. ft., most recent use—damage control off-site use only, relocation may not be feasible

Bldg. 220
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640042
Status: Unutilized
Comment: 620 sq. ft., most recent use—damage control off-site use only, relocation may not be feasible

Bldg. 160
Naval Station, Pearl Harbor
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199840002
Status: Unutilized
Comment: 6070 sq. ft., needs rehab, presence of lead paint, most recent use—storage/office, off-site use only

Maine

Bldg. 22
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199840008
Status: Excess
Comment: 2687 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage, off-site use only

Bldg. 36
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199840009
Status: Excess
Comment: 8840 sq. ft., most recent use—storage, off-site use only

Bldg. 38
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199840010
Status: Excess
Comment: 19,612 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—office, off-site use only

Bldg. 234
Naval Air Station

Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199840011
Status: Excess
Comment: 768 sq. ft., presence of asbestos/lead paint, most recent use—generator bldg., off-site use only

Michigan

Parcel 1
Old Lifeboat Station
East Tawas Co: Iosco MI
Landholding Agency: GSA
Property Number: 54199730011
Status: Excess
Comment: 2062 sq. ft., station bldg., garage, boathouse, oilhouse, possible asbestos/lead paint, eligible for listing on National Register of Historic Places
GSA Number: 1–UU–MI–500

Minnesota

GAP Filler Radar Site
St. Paul Co: Rice MN 55101–
Landholding Agency: GSA
Property Number: 54199910009
Status: Excess
Comment: 1266 sq. ft., concrete block, presence of asbestos/lead paint, most recent use—storage, zoning requirements
GSA Number: 1–GR(1)–MN–475

Army Reserve Center
620 Turill St.
Le Sueur Co: MN 56058–
Landholding Agency: GSA
Property Number: 54199920007
Status: Excess
Comment: 4316 sq. ft., possible asbestos/lead paint, most recent use—educational and support facilities
GSA Number: 1–D–MN–568

New Hampshire

Bldg. 246
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199820028
Status: Unutilized
Comment: metal frame structure, off-site use only

Bldg. 335
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199820029
Status: Unutilized
Comment: 1000 sq. ft., brick, off-site use only

Bldg. 128
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830015
Status: Excess
Comment: 10,900 sq. ft., needs rehab, presence of asbestos, most recent use—storage, off-site use only

Bldg. 185
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830016
Status: Excess
Comment: 2310 sq. ft., needs rehab, presence of asbestos, most recent use—office, off-site use only

Bldg. 314
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830017
Status: Excess
Comment: cement block bldg., needs rehab, presence of asbestos, most recent use—storage, off-site use only

Bldg. 336
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830018
Status: Excess
Comment: metal bldg w/cement block foundation, off-site use only

Bldg. H–2
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199910044
Status: Unutilized
Comment: 1103 sq. ft., possible asbestos, off-site use only

Bldg. IY44
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199910045
Status: Unutilized
Comment: 1100 sq. ft., possible asbestos, most recent use—small arms magazine, off-site use only

Bldg. 160
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199910046
Status: Unutilized.
Comment: 6080 sq. ft., possible asbestos, most recent use—storage, off-site use only

Bldg. 97
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199920064
Status: Unutilized.
Comment: 573 sq. ft., most recent use—scale house/storage, off-site use only

New Jersey

ESMT Manasquan
124 Ocean Ave.
Manasquan Co: Monmouth NJ
Landholding Agency: GSA
Property Number: 54199730025
Status: Excess
Comment: main bldg. (5714 sq. ft.), paint locker (96 sq. ft.), garage (3880 sq. ft.), need repairs, presence of asbestos/lead paint, Coast Guard easement
GSA Number: 1–U–NJ–0632

New York

"Terry Hill"
County Road 51
Manorville, NY
Landholding Agency: GSA
Property Number: 54199830008
Status: Surplus
Comment: 2 block structures, 780/272 sq. ft., no sanitary facilities, most recent use—storage/comm. facility, w/6.19 acres in fee and 4.99 acre easement, remote area
GSA Number: 1–D–NY–864

Binghampton Depot
Nolans Road
Binghampton Co: NY 00000–
Landholding Agency: GSA
Property Number: 54199910015
Status: Excess
Comment: 45,977 sq. ft., needs repair, presence of asbestors, most recent use—office.
GSA Number: 1–G–NY–760A

101 Housing Units
Mitchel Complex
82B Mitchel Avenue
East Meadow Co: Nassau NY 11554–
Landholding Agency: Navy
Property Number: 77199810093
Status: Unutilized.
Comment: 422 sq. ft., frame, 2-story, presence of asbestos/lead paint, most recent use—residential, off-site use only

36 Garages
Mitchel Complex
82B Mitchel Avenue
East Meadow Co: Nassau NY 11554–
Landholding Agency: Navy
Property Number: 77199810094
Status: Unutilized.
Comment: 350 sq. ft., Masonary, most recent use—garage, off-site use only

Naval Reserve Center
201 Third Avenue
Frankfort NY 13340–1419
Landholding Agency: Navy
Property Number: 77199840017
Status: Unutilized.
Comment: 10,000 sq. ft., most recent use—training facility

Ohio

Lorain Housing
238–240 Augusta Ave.
Lorain OH 44051–
Landholding Agency: GSA
Property Number: 54199840006
Status: Excess
Comment: 3000 sq. ft. duplex, 2-story, good condition, possible lead based paint, existing easements
GSA Number: 1–U–OH–814

Pennsylvania

Bldg. 76
Naval Inventory Control
Point
Philadelphia Co: Philadelphia PA 19111–5098
Landholding Agency: Navy
Property Number: 77199730075
Status: Excess
Comment: 3475 sq. ft., cinder block/metal, most recent use—child care, needs repair, off-site use only

Bldg. 44
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830093
Status: Excess
Comment: 2154 sq. ft., needs repair, presence of asbestos, most recent use—medical clinic, off-site use only

Bldg. 48
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830094

Status: Excess
Comment: 2737 sq. ft., needs repair, presence of asbestos, most recent use—admin., off-site use only

Bldg. 49
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830095
Status: Excess
Comment: 3263 sq. ft., needs repair, presence of asbestos, most recent use—admin., off-site use only

Bldg. 64
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830096
Status: Excess
Comment: 3157 sq. ft., needs major repairs, presence of asbestos, most recent use—office, off-site use only

Bldg. 65 U/V
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830097
Status: Excess
Comment: 4829 sq. ft., needs repair, presence of asbestos, most recent use—quarters, off-site use only

Bldg. 133
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830098
Status: Excess
Comment: 27,600 sq. ft., needs repair, presence of asbestos, most recent use—admin., off-site use only

Bldg. 337
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830099
Status: Excess
Comment: 1025 sq. ft., needs major repairs, presence of asbestos, most recent use—garage, off-site use only

Bldg. 418
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830100
Status: Excess
Comment: 2578 sq. ft., needs repair, presence of asbestos, most recent use—quarters, off-site use only

Bldg. 570
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830101
Status: Unutilized
Comment: 9123 sq. ft., needs repair, presence of asbestos, most recent use—tool room, off-site use only

Bldg. 605
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830102
Status: Excess
Comment: 1118 sq. ft., needs repair, presence of asbestos, most recent use—garage, off-site use only

Rhode Island

Bldg. 69
Naval Education and Training Center
Newport Co: Newport RI 02841–
Landholding Agency: Navy
Property Number: 77199810052
Status: Unutilized
Comment: 600 sq. ft., concrete, presence of asbestos, most recent use—storage, off-site use only

Bldg. A33
Navy Hospital Gate 5
Newport RI 02841–
Landholding Agency: Navy
Property Number: 77199810083
Status: Underutilized
Comment: 1512 sq. ft., detached 5 stall garage, needs repair, presence of asbestos, off-site use only

Facility T
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 77199810175
Status: Unutilized
Comment: 1610 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—office, off-site use only

Facility U
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 77199810176
Status: Unutilized
Comment: 1593 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—maint. shop, off-site use only

Facility V
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 77199810177
Status: Unutilized
Comment: 1593 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—maint. shop, off-site use only

Facility W
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 77199810178
Status: Unutilized
Comment: 1593 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—training/office, off-site use only

Facility X
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 77199810179
Status: Unutilized
Comment: 1593 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—office, off-site use only

Facility Y
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 77199810180
Status: Unutilized
Comment: 1593 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—admin., off-site use only

Facility 322
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 77199810181
Status: Unutilized
Comment: 800 sq. ft., possible asbestos/lead paint, most recent use—maint. shop, off-site use only

Facility 323
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 77199810182
Status: Unutilized
Comment: 800 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—maint. shop, off-site use only

Facility 324
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 77199810183
Status: Unutilized
Comment: 800 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—maint. shop, off-site use only

Facility 325
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 77199810184
Status: Unutilized
Comment: 800 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—storage, off-site use only

Facility 326
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 77199810185
Status: Unutilized
Comment: 800 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—storage, off-site use only

Facility 327
Naval Education & Training Center
Coddington Park
Newport Co: Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 77199810186
Status: Unutilized
Comment: 800 sq. ft., needs rehab, possible asbestos/lead paint, most recent use—maint. shop, off-site use only

Bldg. 342
Coddington Park
Naval Education & Training Center
Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 771998101259
Status: Unutilized

Comment: 646 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only
Bldg. 340
Coddington Park
Naval Education & Training Center
Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 77199810260
Status: Unutilized
Comment: 96 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—heating plant bldg., off-site use only
Bldg. 697
Coddington Cove
Naval Education & Training Center
Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 77199810262
Status: Unutilized
Comment: 960 sq. ft., presence of asbestos/lead paint, most recent use—self help shop, off-site use only
Bldg. 696
Coddington Cove
Naval Education & Training Center
Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 77199810263
Status: Unutilized
Comment: 960 sq. ft., presence of abestos/lead paint, most recent use—elec/comm maint. shop, off-site use only
Bldg. 35
Coddington Cove
Naval Education & Training Center
Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 77199810264
Status: Unutilized
Comment: 2880 sq. ft., needs repair, presence of asbestos/lead paint, most recent use—auto storage, off-site use only
Bldg. 70
Naval Station, Newport
Middletown Co: Newport RI 02842–
Landholding Agency: Navy
Property Number: 77199840018
Status: Unutilized
Comment: 1900 sq. ft., most recent use—storage, off-site use only
Bldg. 111
Naval Station, Newport
Middletown Co: Newport RI 02842–
Landholding Agency: Navy
Property Number: 77199840019
Status: Unutilized
Comment: 560 sq. ft., most recent use—storage, off-site use only
Facility 700
Naval Station
Newport RI 02841–
Landholding Agency: Navy
Property Number: 77199840029
Status: Unutilized
Comment: 6230 sq. ft., most recent use—wastewater treatment plant, off-site use only
Facility 994
Naval Station
Newport RI 02841–
Landholding Agency: Navy
Property Number: 77199840030
Status: Unutilized
Comment: 960 sq. ft., most recent use—storage, off-site use only
Facility 449
Naval Station
Newport RI 02841–
Landholding Agency: Navy
Property Number: 77199840031
Status: Unutilized
Comment: 140 sq. ft., most recent use—chlorination shed, off-site use only
Facility 1324
Naval Station
Newport RI 02841–
Landholding Agency: Navy
Property Number: 77199840032
Status: Unutilized
Comment: 107 sq. ft., most recent use—lift station controls shed, off-site use only
Bldg. 118
Naval Undersea Warfare Center
Middletown Co: Newport RI 02841–1708
Landholding Agency: Navy
Property Number 77199920065
Status: Excess
Comment: 1604 sq. ft., presence of asbestos/lead paint, most recent use—offices/storage, off-site use only
Bldg. 136
Naval Undersea Warfare Center
Middletown Co: Newport RI 02841–1708
Landholding Agency: Navy
Property Number: 77199920066
Status: Excess
Comment: 882 sq. ft., presence of asbestos/lead paint, most recent use—operations office, off-site use only

Tennessee

3 Facilities, Guard Posts
Volunteer Army Ammunition Plant
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199930011
Status: Surplus
Comment: 48–64 sq. ft., most recent use—access control
GSA Number: 4–D–TN–594F
4 Bldgs
Volunteer Army Ammunition Plant
Railroad System Facilities
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199930012
Status: Surplus
Comment: 144–2,420 sq. ft., most recent use—storage/rail weighing facilities/dock, potential use/lease restrictions
GSA Number: 4–D–TN–594F
8 Bldgs
Volunteer Army Ammunition Plant
Missile Assembly
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199930013
Status: Surplus
Comment: concrete block bldgs. on approx. 100 acres, most recent use—assembly/storage/buffer, potential use restrictions
GSA Number: 4–D–TN–594F
200 Bunkers
Volunteer Army Ammunition Plant
Storage Magazines
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199930014
Status: Surplus
Comment: 200 concrete bunkers covering a land area of approx. 4000 acres, most recent use—storage/buffer area, potential use restrictions
GSA Number: 4–D–TN–594F
Bldg. 232
Volunteer Army Ammunition Plant
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199930020
Status: Surplus
Comment: 10,000 sq. ft., most recent use—office, presence of asbestos, approx. 5 acres associated w/bldg., potential use restrictions
GSA Number: 4–D–TN–594F
2 Laboratories
Volunteer Army Ammunition Plant
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199930021
Status: Surplus
Comment: 2,000–12,000 sq. ft., potential use/lease restrictions
GSA Number: 4–D–TN–594F
3 Facilities
Volunteer Army Ammunition Plant
Water Distribution Facilities
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199930022
Status: Surplus
Comment: 256–15,204 sq. ft., 35.86 acres associated w/bldgs., most recent use—water distribution system, potential use/lease restrictions
GSA Number: 4–D–TN–594F

Texas

Fairfield Federal Building
E. Main & Keechi St.
Fairfield Co: Freestone TX 75840–1556
Landholding Agency: GSA
Property Number: 54199920006
Status: Excess
Comment: 10,314 sq. ft., needs repair, most recent use—post office/Fed Bldg
GSA Number: 7–G–TX–1051

Virginia

Army Reserve Center
1 West Church St.
Martinsville Co: Henry VA 24112–
Landholding Agency: GSA
Property Number: 54199930010
Status: Excess
Comment: 12,225 sq. ft., 3 stories, most recent use—office, 2,250 sq. ft. leased to Postal Service •
GSA Number: 4–D–VA–719
Bldg. SP–63A
Naval Base Norfolk
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77199910017
Status: Excess
Comment: 480 sq. ft., needs rehab, presence of asbestos, most recent use—storage, off-site use only
Bldg. SP–63
Naval Base Norfolk
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 7719991018
Status: Excess

Comment: 1632 sq. ft., presence of asbestos, off-site use only
Bldg. MCE223
Naval Station Norfolk
Norfolk Co: VA 23511–2895
Landholding Agency: Navy
Property Number: 77199910053
Status: Excess
Comment: 256 sq. ft., presence of asbestos, most recent use—storage, off-site use only
Bldg. MCE221
Naval Station Norfolk
Norfolk Co: VA 23511–2895
Landholding Agency: Navy
Property Number: 77199910054
Status: Excess
Comment: 4000 sq. ft., presence of asbestos, most recent use—storage, off-site use only
Structure NH–201
Atlantic Fleet Hdqts.
Support Activity
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77199920149
Status: Excess
Comment: 4922 sq. ft., presence of asbestos/lead paint, most recent use—lab, off-site use only
Structure NH–203
Atlantic Fleet Hdqts.
Support Activity
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77199920150
Status: Excess
Comment: 1974 sq. ft., presence of asbestos/lead paint, most recent use—maint. shop, off-site use only
Structure NH–213
Atlantic Fleet Hdqts.
Support Activity
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77199920151
Status: Excess
Comment: 7840 sq. ft., presence of asbestos/lead paint, most recent use—storage, off-site use only

Washington

Moses Lake U.S. Army Rsv Ctr
Grant County Airport
Moses Lake Co: Grant WA 98837–
Landholding Agency: GSA
Property Number: 21199630118
Status: Surplus
Comment: 4499 sq. ft./2.86 acres, most recent use—admin.
GSA Number: 9–D–WA–1141
149 Duplexes
Navy Transient Family Accom.
Eastpark
90 Magnuson Way
Bremerton WA 98310–
Location: Structures 002–148, 150, 152–153, 157
Landholding Agency: Navy
Property Number: 77199820118
Status: Excess
Comment: 1286 sq. ft./1580 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing, off-site use only
9 Duplexes
Navy Transient Family Accom.
Eastpark
90 Magnuson Way
Bremerton WA 98310–
Location: Structures 151, 155–156, 158–163
Landholding Agency: Navy
Property Number: 77199820119
Status: Excess
Comment: 3082 sq. ft./3192 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing, off-site use only
2 Sixplexes
Navy Transient Family Accom.
Eastpark
90 Magnuson Way
Bremerton WA 98310–
Location: Structures 154, 189
Landholding Agency: Navy
Property Number: 77199820120
Status: Excess
Comment: 4618 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing, off-site use only
1 Single Unit
Navy Transient Family Accom.
Eastpark
90 Magnuson Way
Bremerton WA 98310–
Location: Structure 149
Landholding Agency: Navy
Property Number: 77199820121
Status: Excess
Comment: 790 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—housing, off-site use only
Storage Building
Navy Transient Family Accom.
Eastpark
90 Magnuson Way
Bremerton WA 98310–
Landholding Agency: Navy
Property Number: 77199820122
Status: Excess
Comment: 2160 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—storage, off-site use only
Admin. Building, Structure 001
Navy Transient Family Accom.
Eastpark
90 Magnuson Way
Bremerton WA 98310–
Landholding Agency: Navy
Property Number: 77199820123
Status: Excess
Comment: 9550 sq. ft., needs rehab, presence of asbestos/lead paint, most recent use—office, off-site use only

Wisconsin

Naval Reserve Center
215 South Eagle Street
Oshkosh Co: Winnebago WI 54903–
Landholding Agency: GSA
Property Number: 54199830002
Status: Excess
Comment: 16,260 sq. ft., excellent condition, presence of asbestos/lead paint, most recent use—office
GSA Number: 1–N–WI–596

Land (by State)

New York

Galeville Army Training Site
Shawangunk Co: Ulster NY 12589–
Landholding Agency: GSA
Property Number: 21199510128
Status: Excess
Comment: 55 acres of 622 acres are available, improved w/inactive runways, 234 acres is wetlands and habitat for threatened species
GSA Number: 2–D–NY–807

Ohio

Jersey Tower Site
Tract No. 100 & 100E
Jersey Co: Licking OH 00000–
Landholding Agency: GSA
Property Number: 54199910013
Status: Surplus
Comment: 4.24 acres, subject to preservation of wetlands
GSA Number: 1–W–OH–813

Tennessee

1500 acres
Volunteer Army Ammunition Plant
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199930015
Status: Surplus
Comment: scattered throughout facility, most recent use—buffer area, steep topography, potential use restrictions
GSA Number: 4–D–TN–594F

Suitable/Unavailable Properties

BUILDINGS (by State)

Alaska

10 Office Buildings
Anchorage Native Medical Center
225 Gambell St.
Achorage Co: Anchorage AK 99501–
Landholding Agency: GSA
Property Number: 54199710002
Status: Surplus
Comment: high maintenance costs, does not meet Fed. seismic standards, presence of asbestos, PCB's, lead paint
GSA Number: 9–F–AK–750
3 Storage Buildings
Anchorage Native Medical Center
225 Gambell St.
Anchorage Co: Anchorage AK 99501–
Landholding Agency: GSA
Property Number: 54199710003
Status: Surplus
Comment: high maintenance costs, does not meet Fed. seismic standards, presence of asbestos, PCB's, lead paint
GSA Number: 9–F–AK–750
1 Hospital
Anchorage Native Medical Center
225 Gambell St.
Anchorage Co: Anchorage AK 99501–
Landholding Agency: GSA
Property Number: 54199710004
Status: Surplus
Comment: 173,336 sq. ft., high maintenance costs, does not meet Fed. seismic standards, presence of asbestos, PCB's, lead paint
GSA Number: 9–F–AK–750

California

112 Bldgs.—Skaggs Island
Naval Security Group
Skaggs Island Co: Sonoma CA
Landholding Agency: GSA
Property Number 54199730001
Status: Excess
Comment: 32–13,374 sq. ft., temp. quonset huts to perm. wood/concrete most recent use—housing, admin., support facilities,

remote location, below sea level, high maintenance
GSA Number: 9–N–CA–1488

Marine Culture Laboratory
Granite Canyon
34500 Coast Highway
Monterey CA 93940–
Landholding Agency: GSA
Property Number: 54199830011
Status: Surplus
Comment: 3297 sq. ft. office bldg. & lab on 4.553 acres, envir. clean-up plans scheduled
GSA Number: 9–C–CA–1499

Natl Weather Svc Station
Blue Canyon Airport
Emigrant Gap CA 95715–
Landholding Agency: GSA
Property Number: 54199840007
Status: Surplus
Comment: 3140 sq. ft., presence of asbestos, most recent use—ofc/ residential/storage, land agreements w/U.S. Forest Service exist, special use permit
GSA Number: 9–C–CA–1521

Delaware

Unaccompanied Pers. Housing
800 Inlet Road
Rehoboth Beach Co: Sussex DE 19971–2698
Landholding Agency: GSA
Property Number: 54199840009
Status: Excess
Comment: 3600 sq. ft., 2-story, termite damage, most recent use—housing, off-site use only
GSA Number: 4–U–DE–462

Georgia

Phil Landrum Federal Bldg.
35 W. Church Street
Jasper Co: Pickens GA 30143–
Landholding Agency: GSA
Property Number: 54199810008
Status: Surplus
Comment: 9533 sq. ft., 2-story, no elevators/ no handicapped ramps, steps need repair, most recent use—postal service with parking lot
GSA Number: 4–G–GA–854

Federal Building
109 N. Main Street
Lafayette Co: Walker GA 30728–
Landholding Agency: GSA
Property Number: 54199910014
Status: Excess
Comment: approx. 4761 sq. ft., does not meet ADA requirements for accessibility, easements/reservations restrictions, historic protective covenants
GSA Number: 4–G–GA–858

Illinois

Radar Communication Link
½ mi east of 116th St.
Co: Will IL
Landholding Agency: GSA
Property Number: 54199820013
Status: Excess
Comment: 297 sq. ft. concrete block bldg. with radar tower antenna, possible lead based paint, most recent use—air traffic control
GSA Number: 2–U–IL–696

Natl Weather Svc. Meter. Obs.
Morris Blacktop Rd.
Miller Township Co: LaSalle IL 61341–
Landholding Agency: GSA
Property Number: 54199820014
Status: Excess
Comment: 1400 sq. ft. office bldg. & 500 sq. ft. garage
GSA Number: 1–C–IL–708

Indiana

Vincennes Federal Building
501 Busseron St.
Vincennes Co: Knox IN 47591–
Landholding Agency: GSA
Property Number: 54199820015
Status: Excess
Comment: 22,000 sq. ft., presence of asbestos, property is historically significant, most recent use—office bldg.
GSA Number: 1–G–IN–592

Former Army Reserve Center
White Oak Park
LaPorte Co: LaPorte IN 00000–
Landholding Agency: GSA
Property Number: 54199920003
Status: Excess
Comment: two—1600 sq. ft. picnic shelters, 4358 sq. ft. paved road, 200 sq. ft. rest room
GSA Number: 1–GR(1)–IN–430E

Kentucky

Site 11
Cannelton Locks and Dams
Brandenburg Co: Meade KY 40108–
Landholding Agency: GSA
Property Number: 54199920004
Status: Surplus
Comment: 320 sq. ft. comfort station on approx. 33.40 acres, most recent use—recreation/park, subject to complete flooding
GSA Number: 4–D–KY–539

Maine

Bldg. 376, Naval Air Station
Topsham Annex
Topsham Co: Sagadahoc ME
Landholding Agency: Navy
Property Number: 77199320011
Status: Unutilized
Comment: 4530 sq. ft., 2-story, most recent use—quarters, needs rehab

Bldg. 383
Topsham Annex, Naval Air Station
Brunswick ME 04011–
Landholding Agency: Navy
Property Number: 77199720025
Status: Unutilized
Comment: 4431 sq. ft., 1-story

Bldg. 382
Topsham Annex, Naval Air Station
Brunswick ME 04011–
Landholding Agency: Navy
Property Number: 77199720026
Status: Unutilized
Comment: 14855 sq. ft., 1-story, subject to contamination

Bldg. 381
Topsham Annex, Naval Air Station
Brunswick ME 04011–
Landholding Agency: Navy
Property Number: 77199720027
Status: Unutilized
Comment: 14057 sq. ft., 1-story

Maryland

Duplex House w/detached garage
710 Trail Ave.
Frederick MD 21702–5000
Landholding Agency: GSA
Property Number: 54199830007
Status: Excess
Comment: total 1230 sq. ft., needs repair, presence of lead-based paint
GSA Number: 4–F–MD–0597

Waldorf Housing
Country Lane and Spruce Street
Waldorf Co: Charles MD
Landholding Agency: GSA
Property Number: 54199840012
Status: Excess
Comment: 12 unit townhouse complex = 5 two bedroom, 1 bath; 5 three bedroom, 1 bath; 2 three bedroom, 2 bath; need rehab
GSA Number: 4–N–MD–0546

Cheltenham Naval Comm. Dtchmt.
9190 Commo Rd., AKA 7700 Redman Rd.
Clinton Co: Prince George MD 20397–5520
Landholding Agency: GSA
Property Number: 77199330010
Status: Excess
Comment: 32 bldgs., various sq. ft., most recent use—admin/com, & 39 family housing units on 230.35 acres, presence of lead paint/asbestos, 20.09 acres leased to County w/improvements
GSA Number: 4–N–MD–544A

Michigan

Detroit Job Corps Center
10401 E. Jefferson & 1438 Garland; 1265 St. Clair
Detroit Co: Wayne MI 42128–
Landholding Agency: GSA
Property Number: 54199510002
Status: Surplus
Comment: Main bldg. is 80,590 sq. ft., 5-story, adjacent parking lot, 2nd bldg. on St. Clair Ave. is 5140 sq. ft., presence of asbestos in main bldg., to be vacated 8/97
GSA Number: 2–L–MI–757

S. Haven Keeper's Dwelling
91 Michigan Ave.
South Haven Co: Van Buren MI 49090–
Landholding Agency: GSA
Property Number: 54199740012
Status: Excess
Comment: 3257 sq. ft., 2-story dwelling and 800 sq. ft. garage, presence of asbestos/lead paint
GSA Number: 1–U–MI–475C

Mississippi

Federal Building
236 Sharkey Street
Clarksdale Co: Coahoma MS 38614–
Landholding Agency: GSA
Property Number: 54199910004
Status: Excess
Comment: 15,233 sq. ft., courthouse
GSA Number: 4–G–MS–553

Nebraska

NE City Repair/Storage Garage
HWY 2
Nebraska City Co: Otoe NE 68410–
Landholding Agency: GSA
Property Number: 54199830003
Status: Excess
Comment: 6400 sq. ft. sheet metal bldg., w/ concrete and gravel floor on 1.84 acres of land
GSA Number: 7–D–NE–525

New York

Reserve Center
Sgt. H. Grover H. O'Connor
USARC
303 N. Lackawanna Street
Wayland Co: Steuben NY 14572–
Landholding Agency: GSA
Property Number: 21199710239
Status: Unutilized
Comment: 2 bldgs., 17,102 sq. ft. and 1,325 sq. ft., 1-story
GSA Number: 1–D–NY–866

North Carolina

Federal Building
146 North Main Street
Rutherfordton Co: Rutherford NC 28139–
Landholding Agency: GSA
Property Number: 54199730022
Status: Excess
Comment: 4919 sq. ft. more recent use–office, good condition
GSA Number: 4–G–NC–727

Tarheel Army Missile Plant
Burlington Co: Alamance NC 27215–
Landholding Agency: GSA
Property Number: 54199820002
Status: Excess
Comment: 31 bldgs., presence of asbestos, most recent use–admin., warehouse, production space and 10.04 acres parking area, contamination at site—environmental clean up in process
GSA Number: 4–D–NC–593

Coinjock Station
Canal Road
Coinjock Co: Currituck NC 27293–
Landholding Agency: GSA
Property Number: 54199840010
Status: Excess
Comment: 4 bldgs., most recent use—storage/ office
GSA Number: 4–U–NC–734

Bodie Island Lighttower
Cape Hatteras
Nags Head Co: Dare NC 27959–
Landholding Agency: GSA
Property Number: 54199910003
Status: Excess
Comment: lighttower, restricted use
GSA Number: 4–U–NC–733

Ohio

Zanesville Federal Building
65 North Fifth Street
Zanesville Co: Muskingum OH
Landholding Agency: GSA
Property Number: 54199520018
Status: Excess
Comment: 18750 sq. ft., most recent use—office, possible asbestos, eligible for listing on the Nat'l Register of Historic Places
GSA Number: 2–G–OH–781A

Naval & Marine Corps Res. Cntr
315 East LaClede Avenue
Youngstown OH
Landholding Agency: Navy
Property Number: 77199320012
Status: Unutilized
Comment: 3067 sq. ft. 2 Story, possible asbestos.

Oklahoma

Fed. Bldg./Courthouse
N. Washington & Broadway Streets
Ardmore Co: Carter OK 73402–
Landholding Agency: GSA
Property Number: 54199820009
Status: Excess
Comment: 4000 sq. ft. bldg. w/parking, 3 story plus basement, most recent use—office, subject to historic preservation covenants
GSA Number: 7–G–TX–559

NIPER
Natl. Inst. for Petroleum & Energy Research
220 Virginia Ave.
Bartlesville OK 74003–
Landholding Agency: GSA
Property Number: 54199840011
Status: Surolus
Comment: 25 structures on 15.66 acres of land, most recent use—offices to labs, environmental issues
GSA Number: 7–B–OK–563

Oregon

Gus Solomon U.S. Courthouse
620 SW Main Street
Portland Co: Multnomah OR 97205–
Landholding Agency: GSA
Property Number: 54199730023
Status: Underutilized
Comment: 15,775 sq. ft., 7-story, does not meet Federal seismic requirements, National Register of Historic Places, pending lease
GSA Number: 7–G–OR–724

Puerto Rico

Bldgs. 501 & 502
U.S. Naval Radio Transmitter Facility
State Road No. 2
Juana Diaz PR 00795–
Landholding Agency: Navy
Property Number: 77199530007
Status: Underutilized
Comment: Reinforced concrete structures, limited access, needs rehab, most recent use—transmitter and power house

Texas

Dempsey Strategic Storage Cent
1348 Palo Pinto Hwy
Palo Pinto Co: TX 76484–
Landholding Agency: GSA
Property Number: 54199910012
Status: Surplus
Comment: 51,680 sq. ft., metal bldg w/150 acres of pavement, most recent use—classrooms, presence of asbestos/lead paint
GSA Number: 7–Z–TX–1060

Virginia

Naval Medical Clinic
6500 Hampton Blvd.
Norfolk Co: Norfolk, VA 23508–
Landholding Agency: Navy
Property Number: 77199010109
Status: Unutilized
Comment: 3665 sq ft., 1 story, possible asbestos, most recent use—laundry

Washington

Vancouver Info Center
Interstate Rt 5
Vancouver Co: Clark WA 98663–
Landholding Agency: GSA
Property Number: 54199740011
Status: Excess
Comment: 1200 sq. ft., most recent use—visitor info center, excellent condition
GSA Number: 9–GR–WA–514E

747 Building Complex
805 Goethals Drive
Richland Co: Benton WA 99352–
Landholding Agency: GSA
Property Number: 54199820005
Status: Surplus
Comment: 4 bldgs. (2 bldgs. utilized w/lease provisions), most recent use—labs/offices, presence of asbestos/lead paint
GSA Number: 9–B–WA–1145

Wisconsin

Natl Weather Svc Forecast Ofc.
3009 W. Fairview Rd.
Neenah Co: Winnebago WI 54956–
Landholding Agency: GSA
Property Number: 54199820004
Status: Excess
Comment: 1755 sq. ft., good condition, presence of asbestos/lead paint, most recent use—office
GSA Number: 1–C–WI–594

Wausau Federal Building
317 First Street
Wausau Co: Marathon WI 54401–
Landholding Agency: GSA
Property Number: 54199820016
Status: Excess
Comment: 30,500 sq. ft., presence of asbestos, eligible for listing on the Natl Register of Historic Places, most recent use—office
GSA Number: 1–G–WI–593

Land (by State)

California

(P) Camp Elliott
Rosedale Tract
San Diego Co: San Diego CA
Landholding Agency: GSA
Property Number: 54199310008
Status: Surplus
Comment: Parcel 1—0.15 acre, Parcel 2—0.17 acre, located in the narrow median strip between Murphy Canyon Rd. and State Highway 15, previously leased by homeless provider
GSA Number: 9–GR(6)–CA–694A

Mira Loma Parcel
March Comm. Annex No. 2
Mira Loma Co: Riverside CA
Landholding Agency: GSA
Property Number: 54199910007
Status: Excess
Comment: 0.81 acres, potential utilities
GSA Number: 9–G–CA–1505

Reclamation Unit LC–2, Par. II
Texas Ave/Old Lewiston Rd
Lewiston Co: Trinity CA–
Landholding Agency: GSA
Property Number: 54199910008
Status: Excess
Comment: 28.3 acres with old barn in poor condition
GSA Number: 9–I–CA–1509

Redding Reserve Site
Redding Co: Shasta CA 96049–
Landholding Agency: GSA
Property Number: 54199920001
Status: Unutilized
Comment: 5.13 acres
GSA Number: 9–D–CA–1524

Florida

13.358 acres
Naval Air Station
Hwy 98 & Perimeter Drive
Pensacola Co: Escambia FL 32508–

Landholding Agency: Navy
Property Number: 77199820141
Status: Unutilized
Comment: paved, abandoned runway, reroute security fencing

Hawaii

Former S. Point AF Station
Island of HI Co: Naalehu HI 96772–
Landholding Agency: GSA
Property Number: 54199830001
Status: Excess
Comment: Parcel #1=5.739 acres w/2 deteriorated bldgs., Parcel #2=0.70 acres, properties are extremely remote
GSA Number: 9–D–HI–443–B

Indiana

Portion
Bureau of Prisons Vigo Farm
Linden Twp Co: Vigo IN
Landholding Agency: GSA
Property Number: 54199620002
Status: Excess
Comment: 17.65 acres, most recent use—agriculture
GSA Number: 2–J–IN–507C

Maine

GWEN Site (Patten)
Loring AFB
Stacyville Co: Herseytown ME 04742–
Landholding Agency: GSA
Property Number: 18199640018
Status: Excess
Comment: 23.55 acres w/226 sq. ft. relay station
GSA Number: 1–D–ME–630

Michigan

Parcel 3, Parcel B
East Tawas Co: Iosco MI
Landholding Agency: GSA
Property Number: 54199730013
Status: Excess
Comment: 2.02 acres of land, wooded and primarily wetlands, restricted acess
GSA Number: 1–U–MI–500

North Carolina

Greenville Relay Station
Site C
Greenville Co: Pitt NC
Landholding Agency: GSA
Property Number: 54199840013
Status: Excess
Comment: 589 acres w/27,830 sq. ft. concrete block bldg., (2 acre chemical waste storage site located on SE portion of property)
GSA Number: 4–GR–NC–0721–B

Puerto Rico

La Hueca—Naval Station
Roosevelt Roads
Vieques PR 00765–
Landholding Agency: GSA
Property Number: 54199420006
Status: Excess
Comment: 323 acres, cultural site

Virginia

Naval Base
Norfolk Co: Norfolk VA 23508–
Location: Northeast corner of base, near Willoughby housing area.
Landholding Agency: Navy
Property Number: 77199010156
Status: Unutilized
Comment: 60 acres; most recent use—sandpit; secured area with alternative access.

Land—CD area
Naval Base Norfolk
Norfolk VA 23511–2797
Landholding Agency: Navy
Property Number: 77199830022
Status: Unutilized
Comment: 2 acres, open space

West Virginia

Segments 11–14
Matewan Area
Matewan Co: Mingo WV 25678–
Landholding Agency: GSA
Property Number: 54199910002
Status: Excess
Comment: 13 acres, 81 tracts, subject to covenants/restrictions
GSA Number : 4–D–WV–532

Segment 8
Matewan Redevelopment Site
Matewan Co: Mingo WV
Landholding Agency: GSA
Property Number: 54199910006
Status: Excess
Comment: 3.39 acres, subject to covenants/restrictions
GSA Number : 4–D–WV–533

Suitable/To Be Excessed

Buildings (by State)

New Hampshire

Naval & Marine Corp. Rsv. Ctr.
199 North Main St.
Manchester NH 03102–
Landholding Agency: Navy
Property Number: 77199530005
Status: Excess
Comment: 3 bldgs. on 2.53 acres of land, limited utilities, limited use prior to environmental cleanup

Puerto Rico

Bldg. 561
Former Ramey AFB
Aguadilla PR 00604–
Landholding Agency: Navy
Property Number: 77199630001
Status: Unutilized
Comment: 10266 sq. ft. bldg. on 5.006 acres, most recent use–manufacturing, office and freight distribution center, presence of asbestos

Land (by State)

Illinois

Libertyville Training Site
Libertyville Co: Lake IL 60048–
Landholding Agency: Navy
Property Number: 77199010073
Status: Excess
Comment: 114 acres; possible radiation hazard; existing FAA use license.

Unsuitable Properties

Buildings (by State)

Alabama

Sand Island Light House
Gulf of Mexico
Mobile AL
Landholding Agency: GSA
Property Number: 54199610001
Status: Excess
Reason: Inaccessible
GSA Number: 4–U–AL–763

Alaska

0.04 acre/dock
Juneau Dock Natl Guard Site
Juneau Co: AK 99801–
Landholding Agency: GSA
Property Number: 54199910010
Status: Surplus
Reasons: Within 2000 ft. of flammable or explosive material Extensive deterioration
GSA Number: 9–D–AK–538B

Housing Ketchikan (0.27 Acre)
3615 Baranof Avenue
Ketchikan Co: Ketchikan AK 99801–
Landholding Agency: GSA
Property Number: 87199320005
Status: Surplus
Reasons: Within 2000 ft. of flammable or explosive material Extensive deterioration
GSA Number: 9–U–AK–754

California

Old SF Mint
88 5th Street
San Francisco Co: CA 94103–
Landholding Agency: GSA
Property Number: 54199910017
Status: Excess
Reason: Extensive deterioration
GSA Number: 9–G–Ca–1531

Bldg. 366
Naval Air Weapons Station, China Lake
China Lake Co: Kern CA 93555
Landholding Agency: Navy
Property Number: 77199520026
Status: Unutilized
Reason: Secured Area

Bldgs. 27, 30, 33, 36
Naval Command, Control & Ocean Surv. Center
San Diego CA
Landholding Agency: Navy
Property Number: 77199740045
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 89, Naval Station
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 77199810001
Status: Excess
Reason: unsound

Bldg. 164
Naval Station
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 77199810046
Status: Excess
Reason: Extensive deterioration

Bldg. 439
Naval Station
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 77199810048
Status: Excess
Reason: Extensive deterioration

Bldg. 173
Naval Station
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 77199810050
Status: Excess

Reason: Extensive deterioration

Bldg. 547
Naval Station, San Diego
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 77199810172
Status: Excess
Reason: Extensive deterioration

Bldgs. 3300–3309
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820064
Status: Excess
Reason: Extensive deterioration

Bldgs. 3310–3319
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820065
Status: Excess
Reason: Extensive deterioration

Bldgs. 3320–3329
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820066
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 3330–3339
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820067
Status: Excess
Reason: Extensive deterioration

Bldgs. 3340–3349
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820068
Status: Excess
Reason: Extensive deterioration

Bldgs. 3350–3359
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820069
Status: Excess
Reason: Extensive deterioration

Bldgs. 3360–3369
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820070
Status: Excess
Reason: Extensive deterioration

Bldgs. 3370–3379
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820071
Status: Excess
Reason: Extensive deterioration

Bldgs. 3380–3389
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820072
Status: Excess
Reason: Extensive deterioration

Bldgs. 3390–3399
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820073
Status: Excess
Reason: Extensive deterioration

Bldgs. 3400–3409
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820074
Status: Excess
Reason: Extensive deterioration

Bldgs. 3410–3419
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820075
Status: Excess
Reason: Extensive deterioration

Bldgs. 3420–3429
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820076
Status: Excess
Reason: Extensive deterioration

Bldgs. 3430–3439
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820077
Status: Excess
Reason: Extensive deterioration

Bldgs. 3440–3449
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820078
Status: Excess
Reason: Extensive deterioration

Bldgs. 3450–3459
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820079
Status: Excess
Reason: Extensive deterioration

Bldgs. 3460–3469
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820080
Status: Excess
Reason: Extensive deterioration

Bldgs. 3470–3479
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820081
Status: Excess
Reason: Extensive deterioration

Bldgs. 3480–3489
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820082
Status: Excess
Reason: Extensive deterioration

Bldgs. 3490–3499
Capehart Housing
China Lake Naval-Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820083
Status: Excess
Reason: Extensive deterioration

Bldgs. 3500–3509
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820084
Status: Excess
Reason: Extensive deterioration

Bldgs. 3510–3519
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820085
Status: Excess
Reason: Extensive deterioration

Bldgs. 3520–3529
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820086
Status: Excess
Reason: Extensive deterioration

Bldgs. 3530–3539
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820087
Status: Excess
Reason: Extensive deterioration

Bldgs. 3540–3549
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820088
Status: Excess
Reason: Extensive deterioration

Bldgs. 3550–3559
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820089
Status: Excess
Reason: Extensive deterioration

Bldgs. 3560–3569
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820090

Status: Excess
Reason: Extensive deterioration
Bldgs. 3570–3579
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820091
Status: Excess
Reason: Extensive deterioration
Bldgs. 3580–3589
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820092
Status: Excess
Reason: Extensive deterioration
Bldgs. 3590–3599
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820093
Status: Excess
Reason: Extensive deterioration
Bldgs. 3600–3609
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820094
Status: Excess
Reason: Extensive deterioration
Bldgs. 3610–3619
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820095
Status: Excess
Reason: Extensive deterioration
Bldgs. 3620–3629
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820096
Status: Excess
Reason: Extensive deterioration
Bldgs. 3630–3639
Capehart Housing
China Lake Naval Weapons Station
China Lake Co: Kern CA 93555–
Landholding Agency: Navy
Property Number: 77199820097
Status: Excess
Reason: Extensive deterioration
Bldg. 210
Naval Station, San Diego
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 77199830001
Status: Excess
Reason: Extensive deterioration
Bldg. 444
Naval Station, San Diego
San Diego CA 92136–5294
Landholding Agency: Navy
Property Number: 77199830122
Status: Excess
Reason: Extensive deterioration
Bldg. 209
Naval Station, San Diego
San Diego CA 92136–5065
Landholding Agency: Navy
Property Number: 77199840001
Status: Excess
Reason: Extensive deterioration
Bldg. 311
Naval Air Facility
El Centro Co: Imperial CA 92243–
Landholding Agency: Navy
Property Number: 77199920001
Status: Unutilized
Reason: Extensive deterioration
Bldg. 739
Naval Air Weapons Station, Point Mugu
Oxnard Co: Ventura CA 93042–5001
Landholding Agency: Navy
Property Number: 77199920028
Status: Excess
Reason: Extensive deterioration
Bldg. 703
Naval Air Weapons Station, Point Mugu
Oxnard Co: Ventura CA 93042–5001
Landholding Agency: Navy
Property Number: 77199920029
Status: Excess
Reason: Extensive deterioration
Bldg. 870
Naval Air Weapons Station, Point Mugu
Oxnard Co: Ventura CA 93042–5001
Landholding Agency: Navy
Property Number: 77199920030
Status: Excess
Reason: Extensive deterioration
Bldg. 871
Naval Air Weapons Station, Point Mugu
Oxnard Co: Ventura CA 93042–5001
Landholding Agency: Navy
Property Number: 77199920031
Status: Excess
Reason: Extensive deterioration
Bldg. 00431
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920032
Status: Excess
Reason: Extensive deterioration
Bldg. 00483
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920033
Status: Excess
Reason: Extensive deterioration
Bldg. 00484
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920034
Status: Excess
Reason: Extensive deterioration
Bldgs. 00491, 00493
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920035
Status: Excess
Reason: Extensive deterioration
Bldg. 00669
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920036
Status: Excess
Reason: Extensive deterioration
Bldg. 00929
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920037
Status: Excess
Reason: Extensive deterioration
Bldg. 00955
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920038
Status: Excess
Reason: Extensive deterioration
Bldg. 02032
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920039
Status: Excess
Reason: Extensive deterioration
Bldgs. 02294–02297
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920040
Status: Excess
Reason: Extensive deterioration
Bldg. 02309
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920041
Status: Excess
Reason: Extensive deterioration
Bldg. 02330
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920042
Status: Excess
Reason: Extensive deterioration
Bldg. 02338
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920043
Status: Excess
Reason: Extensive deterioration
Bldg. 91065
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920044
Status: Excess
Reason: Extensive deterioration
Bldg. 00032
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920045
Status: Excess
Reason: Extensive deterioration
Bldgs. 00352–00355
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920046
Status: Excess
Reason: Extensive deterioration
Bldg. 00652
Naval Air Weapons Station
China Lake Co: CA 93555–6001

Landholding Agency: Navy
Property Number: 77199920047
Status: Excess
Reason: Extensive deterioration
Bldg. 01026
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920048
Status: Excess
Reason: Extensive deterioration
Bldgs. 02299, 02300
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920049
Status: Excess
Reason: Extensive deterioration
Bldgs. 02328, 02331
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920050
Status: Excess
Reason: Extensive deterioration
Bldg. 02332
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920051
Status: Excess
Reason: Extensive deterioration
Bldgs. 02336, 02337
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920052
Status: Excess
Reason: Extensive deterioration
Bldg. 30702
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920053
Status: Excess
Reason: Extensive deterioration
Bldgs. 30713, 30745
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920054
Status: Excess
Reason: Extensive deterioration
Bldg. 675
Naval Surface Reserve Force
Terminal Island Co: CA 89104–
Landholding Agency: Navy
Property Number: 77199920086
Status: Unutilized
Reason: Extensive deterioration
Bldg. 6–2
Naval Air Weapons Station, Point Mugu
Oxnard Co: Ventura CA 93042–
Landholding Agency: Navy
Property Number: 77199920095
Status: Unutilized
Reason: Extensive deterioration
Bldg. 83
Naval Air Weapons Station, Point Mugu
Oxnard Co: Ventura CA 93042–
Landholding Agency: Navy
Property Number: 77199920096
Status: Unutilized
Reason: Extensive deterioration
Bldg. 619
Naval Air Weapons Station, Point Mugu
Oxnard Co: Ventura CA 93042–
Landholding Agency: Navy
Property Number: 77199920097
Status: Unutilized
Reason: Extensive deterioration
Bldg. 707
Naval Air Weapons Station, Point Mugu
Oxnard Co: Ventura CA 93042–
Landholding Agency: Navy
Property Number: 77199920098
Status: Unutilized
Reason: Extensive deterioration
Bldg. 713
Naval Air Weapons Station, Point Mugu
Oxford Co: Ventura CA 93042–
Landholding Agency: Navy
Property Number: 77199920099
Status: Unutilized
Reason: Extensive deterioration
Bldg. 714
Naval Air Weapons Station, Point Mugu
Oxford Co: Ventura CA 93042–
Landholding Agency: Navy
Property Number: 77199920100
Status: Unutilized
Reason: Extensive deterioration
Bldg. 742
Naval Air Weapons Station, Point Mugu
Oxford Co: Ventura CA 93042–
Landholding Agency: Navy
Property Number: 77199920101
Status: Unutilized
Reason: Extensive deterioration
Bldg. 772
Naval Air Weapons Station, Point Mugu
Oxford Co: Ventura CA 93042–
Landholding Agency: Navy
Property Number: 77199920102
Status: Unutilized
Reason: Extensive deterioration
Bldg. 813
Naval Air Weapons Station, Point Mugu
Oxford Co: Ventura CA 93042–
Landholding Agency: Navy
Property Number: 77199920103
Status: Unutilized
Reason: Extensive deterioration
Bldg. 7–818
Naval Air Weapons Station, Point Mugu
Oxford Co: Ventura CA 93042–
Landholding Agency: Navy
Property Number: 77199920104
Status: Unutilized
Reason: Extensive deterioration
Bldg. 00003
Naval Air Weapons Station
China Lake Co: CA 93555–
Landholding Agency: Navy
Property Number: 77199920105
Status: Excess
Reason: Extensive deterioration
10 Bldgs.
Naval Air Weapons Station
China Lake Co: CA 93555–
Location: 52, 989, 1021, 1022, 1025, 1029, 1032, 1033, 1040, 1042
Landholding Agency: Navy
Property Number: 77199920106
Status: Excess
Reason: Extensive deterioration
10 Bldgs.
Naval Air Weapons Station
China Lake Co: CA 93555–
Location: 1178, 2242, 2334, 2335, 2339, 3262, 15816, 15952, 20007, 20055
Landholding Agency: Navy
Property Number: 77199920107
Status: Excess
Reason: Extensive deterioration
10 Bldgs.
Naval Air Weapons Station
China Lake Co: CA 93555–
Location: 20185, 20192, 20195, 20209, 20263, 30140, 30855, 30888, 30929, 30954
Landholding Agency: Navy
Property Number: 77199920108
Status: Excess
Reason: Extensive deterioration
10 Bldgs.
Naval Air Weapons Station
China Lake Co: CA 93555–
Location: 30957, 30964, 30968, 31180, 31559, 31567, 31618, 32538, 50127, 91063
Landholding Agency: Navy
Property Number: 77199920109
Status: Excess
Reason: Extensive deterioration
10 Bldgs.
Naval Air Weapons Station
China Lake Co: CA 93555–
Location: 455, 935, 1097, 1363, 2315, 2316, 2317, 2325, 2612, 2614
Landholding Agency: Navy
Property Number: 77199920110
Status: Excess
Reason: Extensive deterioration
10 Bldgs.
Naval Air Weapons Station
China Lake Co: CA 93555–
Location: 10636, 10637, 10976, 11161, 11693, 15818, 15819, 15953, 16014, 16015
Landholding Agency: Navy
Property Number: 77199920111
Status: Excess
Reason: Extensive deterioration
10 Bldgs.
Naval Air Weapons Station
China Lake Co: CA 93555–
Location: 16082, 20004, 20008, 20032, 20033, 20065, 20066, 20106, 20117, 20120
Landholding Agency: Navy
Property Number: 77199920112
Status: Excess
Reason: Extensive deterioration
10 Bldgs.
Naval Air Weapons Station
China Lake Co: CA 93555–
Location: 20150, 20159, 20162, 20164, 20165, 20200, 20203, 20204, 20205, 20208
Landholding Agency: Navy
Property Number: 77199920113
Status: Excess
Reason: Extensive deterioration
10 Bldgs.
Naval Air Weapons Station
China Lake Co: CA 93555–
Location: 25001, 30710, 30840, 30863, 30879, 30885, 30886, 30902, 30918, 30955
Landholding Agency: Navy
Property Number: 77199920114
Status: Excess
Reason: Extensive deterioration
10 Bldgs.
Naval Air Weapons Station
China Lake Co: CA 93555–
Location: 30960, 30965, 30966, 30976, 30983, 31039, 31059, 31124, 31190, 31191

Landholding Agency: Navy
Property Number: 77199920115
Status: Excess
Reason: Extensive deterioration

10 Bldgs.
Naval Air Weapons Station
China Lake Co: CA 93555–
Location: 31417, 31427, 31483, 31503, 31505, 31511, 31514, 31515, 31518, 31579
Landholding Agency: Navy
Property Number: 77199920116
Status: Excess
Reason: Extensive deterioration

10 Bldgs.
Naval Air Weapons Station
China Lake Co: CA 93555–
Location: 31594, 31595, 31604, 31609, 32022, 32026, 32546, 32555, 32608, 70009
Landholding Agency: Navy
Property Number: 77199920117
Status: Excess
Reason: Extensive deterioration

10 Bldgs.
Naval Air Weapons Station
China Lake Co: CA 93555–
Location: 70020, 70024, 70025, 70038, 70039, 70045, 70047, 70050, 70051
Landholding Agency: Navy
Property Number: 77199920118
Status: Excess
Reason: Extensive deterioration

9 Bldgs.
Naval Air Weapons Station
China Lake Co: CA 93555–
Location: 70052, 70053, 70060, 70061, 70139, 91040, 91041, 91053, 91054
Landholding Agency: Navy
Property Number: 77199920119
Status: Excess
Reason: Extensive deterioration

Bldg. 529
Naval Warfare Assessment Station
Corona Co: CA 91718–
Landholding Agency: Navy
Property Number: 77199920133
Status: Excess
Reason: Extensive deterioration

Bldg. 535
Naval Warfare Assessment Station
Corona Co: CA 91718–
Landholding Agency: Navy
Property Number: 77199920134
Status: Excess
Reason: Extensive deterioration

Bldg. 540
Naval Warfare Assessment Station
Corona Co: CA 91718–
Landholding Agency: Navy
Property Number: 77199920135
Status: Excess
Reason: deterioration

Bldg. 545
Naval Warfare Assessment Station
Corona Co: CA 91718–
Landholding Agency: Navy
Property Number: 77199920136
Status: Excess
Reason: Extensive deterioration

Bldg. 223/223A
Naval Support Activity
Monterey Bay
Monterey Co: CA 93943–
Landholding Agency: Navy
Property Number: 77199930045
Status: Excess
Reason: Secured Area

Bldg. 224
Naval Support Activity
Monterey Bay
Monterey Co: CA 93943–
Landholding Agency: Navy
Property Number: 77199930046
Status: Excess
Reason: Secured Area

Connecticut

Naval Housing—7 Bldgs.
Naval Submarine Base
New London Co: Groton CT
Landholding Agency: Navy
Property Number: 77199510001
Status: Unutilized
Reason: Secured Area

Bldgs. DG–8, DG–9
Naval Submarine Base
New London
Groton Co: New London CT 06349–
Landholding Agency: Navy
Property Number: 77199720046
Status: Excess
Reason: Extensive deterioration

Dolphin Gardens, DG–8, DG–9
Naval Submarine Base
Groton CT 06349–
Landholding Agency: Navy
Property Number: 77199810084
Status: Underutilized
Reason: Extensive deterioration

Delaware

Mispillion River Light
Milford Co: Sussex DE 19963–
Landholding Agency: GSA
Property Number: 54199740001
Status: Excess
Reason: Extensive deterioration
GSA Number: 4–U–DE–461

Florida

East Martello Bunker #1
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77199010101
Status: Excess
Reason: Within airport runway clear zone

Bldg. 139
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199820098
Status: Unutilized
Reason: Secured Area

Bldg. 221
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199820099
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 226
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199820100
Status: Unutilized
Reason: Secured Area

Bldg. 654
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199820101
Status: Unutilized
Reason: Secured Area

Bldg. 701
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199820102
Status: Unutilized
Reason: Secured Area

Bldg. 1805
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199820103
Status: Unutilized
Reason: Secured Area

Bldg. 1806
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199820104
Status: Unutilized
Reason: Secured Area

Bldg. 1971
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199820105
Status: Unutilized
Reason: Secured Area

Bldg. 1994
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199820106
Status: Unutilized
Reason: Secured Area

Bldg. 2657
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199820107
Status: Unutilized
Reason: Secured Area

Bldg. 3213
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199820108
Status: Unutilized
Reason: Secured Area

Bldg. 3443
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199820109
Status: Unutilized
Reason: Secured Area

Quarters 9
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199820124
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Quarters 10
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy

Property Number: 77199820125
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 648
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920087
Status: Unutilized
Reason: Secured Area

Bldg. 1882
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920088
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 3228
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920089
Status: Unutilized
Reason: Secured Area

Bldg. 3604
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920090
Status: Unutilized
Reason: Secured Area

Bldg. 3605
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920091
Status: Unutilized
Reason: Secured Area

Bldg. 3626
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920092
Status: Unutilized
Reason: Secured Area

Bldg. 3674
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920093
Status: Unutilized
Reason: Secured Area

Georgia

Bldg. 3012
Naval Submarine Base
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 77199910001
Status: Unutilized
Reason: Extensive deterioration

Guam

Bldg. 296
Communications Annex
Dededo Co: GU 96537–
Landholding Agency: Navy
Property Number: 77199920132
Status: Unutilized
Reason: Secured Area

Bldg. 76
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930047
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 264
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930048
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 2012
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930049
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 3114
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930050
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 3151
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930051
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 3152
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930052
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 3153
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930053
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 3154
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930054
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 3155
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930055
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 3268A
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930056
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 4400
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930057
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 4402
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930058
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 4414
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930059
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 4425
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930060
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 4426–4428
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930061
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 5408
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930062

Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 5540
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930063
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 5541
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930064
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Small Craft Bldg.
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930065
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Hawaii

Bldg. 126, Naval Magazine
Waikele Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 77199230012
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Extensive deterioration, Secured Area

Bldg. Q75, Naval Magazine
Lualualei Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 77199230013
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 7, Naval Magazine
Lualualei Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 77199230014
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 6, Pearl Harbor
Richardson Recreational Area
Honolulu Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199410003
Status: Unutilized
Reason: Extensive deterioration

Bldg. 10, Pearl Harbor
Richardson Recreational Area
Honolulu Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199410004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 9
Navy Public Works Center
Kolekole Road
Lualualei Co: Honolulu HI 96792–
Landholding Agency: Navy
Property Number: 77199530009
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. X5
Nanumea Road
Pearl Harbor Co: Honolulu HI 96782–
Landholding Agency: Navy
Property Number: 77199530010
Status: Excess
Reason: Secured Area

Bldg. SX30
Nanumea Road
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199530011
Status: Excess
Reason: Secured Area

Bldg. 98
Pearl Harbor Naval Shipyard
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199620032
Status: Excess
Reason: Extensive deterioration

Bldg. Q13
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640035
Status: Unutilized
Reason: Extensive deterioration

Bldg. Q14
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640036
Status: Unutilized
Reason: Extensive deterioration

Bldg. 40
Naval Magazine Lualualei Co: Honolulu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830028
Status: Unutilized
Reason: Extensive deterioration

Bldg. 50
Naval Magazine Lualualei Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830029
Status: Unutilized
Reason: Extensive deterioration

Bldg. Q76
Naval Magazine Lualualei Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830030
Status: Unutilized
Reason: Extensive deterioration

Bldg. Q334
Naval Magazine Lualualei Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830031
Status: Unutilized
Reason: Extensive deterioration

Bldg. S380
Naval Magazine Lualualei Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830032
Status: Unutilized
Reason: Extensive deterioration

Bldg. S381
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830033
Status: Unutilized
Reason: Extensive deterioration

Bldg. Q410
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830034
Status: Unutilized
Reason: Extensive deterioration

Bldg. Q422
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830035
Status: Unutilized
Reason: Extensive deterioration

Bldg. 429
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830036
Status: Unutilized
Reason: Extensive deterioration

Bldg. 431
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830037
Status: Unutilized
Reason: Extensive deterioration

Bldg. 447
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830038
Status: Unutilized
Reason: Extensive deterioration

Facility S–721
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199840042
Status: Excess
Reason: Secured Area

Facility S–897
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199840043
Status: Excess
Reason: Secured Area

Facility S–937
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199840044
Status: Excess
Reason: Secured Area

Facility 19
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199840045
Status: Excess
Reason: Secured Area

Facility 63
Naval Computer & Telecomm. Station
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77199920013
Status: Excess
Reason: Extensive deterioration

Bldg. 442
Naval Station, Pearl Harbor
Honolulu Co: HI 96860–
Landholding Agency: Navy
Property Number: 77199920014
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 453K
Naval Station, Pearl Harbor
Honolulu Co: HI 96860–
Landholding Agency: Navy
Property Number: 77199920015
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Facility SX30
Navy Public Works Center
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199920027
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 102
Molokai Training Support Facility
Molokai Co: HI 96820–
Landholding Agency: Navy
Property Number: 77199930066
Status: Unutilized
Reason: Extensive deterioration

Bldg. 103
Molokai Training Support Facility
Molokai Co: HI 96820–
Landholding Agency: Navy
Property Number: 77199930067
Status: Unutilized
Reason: Extensive deterioration

Bldg. 104
Molokai Training Support Facility
Molokai Co: HI 96820–
Landholding Agency: Navy
Property Number: 77199930068
Status: Unutilized
Reason: Extensive deterioration

Bldg. 107
Molokai Training Support Facility
Molokai Co: HI 96820–
Landholding Agency: Navy
Property Number: 77199930069
Status: Unutilized
Reason: Extensive deterioration

Bldg. 108
Molokai Training Support
Facility
Molokai Co: HI 96820–
Landholding Agency: Navy
Property Number: 77199930070
Status: Unutilized
Reason: Extensive deterioration

Idaho

Admin. Site #2, Lot #3
Bean Lane
Salmon Co: Lemhi ID 83467–
Landholding Agency: GSA
Property Number: 54199910019
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 9–I–ID–543

Illinois

Bldg. 415
Naval Training Center
201 N. Decatur Ave.
Great Lakes IL
Landholding Agency: Navy
Property Number: 77199840023
Status: Unutilized
Reason: Secured Area

Bldg. 1015
Naval Training Center
201 N. Decatur Ave.
Great Lakes IL
Landholding Agency: Navy
Property Number: 77199840024
Status: Unutilized
Reason: Secured Area

Bldg. 1016
Naval Training Center
201 N. Decatur Ave.
Great Lakes IL
Landholding Agency: Navy
Property Number: 77199840025
Status: Unutilized
Reason: Secured Area

Bldg. 910
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920055
Status: Unutilized
Reason: Secured Area

Bldg. 800
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920056
Status: Unutilized
Reason: Secured Area

Bldg. 1000
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920057
Status: Unutilized
Reason: Secured Area

Bldg. 1200
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920058
Status: Unutilized
Reason: Secured Area

Bldg. 1400
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920059
Status: Unutilized
Reason: Secured Area

Bldg. 1600
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920060
Status: Unutilized
Reason: Secured Area

Bldg. 2600
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920061
Status: Unutilized
Reason: Secured Area

Indiana

5 Bldgs.
Naval Surface Warfare Center, Crane Div.
#54, 2530, 2812, 2929, 3031
Crane Co: Martin IN 41522–
Landholding Agency: Navy
Property Number: 77199830046
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Kansas

Sunflower AAP
DeSoto Co: Johnson KS 66018–
Landholding Agency: GSA
Property Number: 54199830010
Status: Excess
Reason: Extensive deterioration
GSA Number: 7–D–KS–0581

Maine

Bldg. 293, Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199240015
Status: Excess
Reason: Secured Area

Bldg. 384
Naval Air Station Topsham
Brunswick Co: Sagadahoc ME
Landholding Agency: Navy
Property Number: 77199340001
Status: Unutilized
Reason: Extensive deterioration

Aircraft Hanger #2
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199810015
Status: Excess
Reason: Extensive deterioration

Bldg. 13
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199840005
Status: Excess
Reason: Extensive deterioration

Bldg. 15
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199840006
Status: Excess
Reason: Extensive deterioration

Bldg. 16
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199840007
Status: Excess
Reason: Extensive deterioration

Maryland

15 Bldgs.
Naval Air Warfare Center
Patuxent River Co: St. Mary's MD 20670–5304
Landholding Agency: Navy
Property Number: 77199730062
Status: Unutilized
Reason: Extensive deterioration

Bldg. 510, Indian Head Div.
Naval Surface Warfare Center
Indian Head Co: Charles MD 20640–
Landholding Agency: Navy
Property Number: 77199740083
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material

Massachusetts

Frederick Murphy Federal Ctr
424 Trapelo Road
Waltham Co: MA 00000–
Landholding Agency: GSA
Property Number: 54199920005
Status: Surplus
Reason: Extensive deterioration
GSA Number: 1–G–MA–0848

Michigan

15 Offshore Lighthouses
Great Lakes MI
Landholding Agency: GSA
Property Number: 54199630014
Status: Excess
Reason: Extensive deterioration

Parcel 14, Boat House
East Tawas Co: Iosco MI
Landholding Agency: GSA
Property Number: 54199730014
Status: Excess
Reason: Extensive deterioration
GSA Number: 1–U–MI–500

Round Island Passage Light
Lake Huron
Lake Huron Co: Mackinac MI
Landholding Agency: GSA
Property Number: 54199730019
Status: Excess
Reason: Inaccessible
GSA Number: 1–U–MI–444B

St. Clair Flats Station
Harsens Island Co: St. Clair MI 48028–
Landholding Agency: GSA
Property Number: 54199730020
Status: Excess
Reasons: Floodway, Inaccessible
GSA Number: 1–U–MI–762

Granite Island Light Station
Lake Superior
Lake Superior MI
Landholding Agency: GSA
Property Number: 54199840001
Status: Excess
Reason: inaccessible
GSA Number: 1–U–MI–791

Tract 100–1
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: GSA
Property Number: 54199840003
Status: Excess
Reason: no legal access
GSA Number: 1–D–MI–659A

Tract 100–2, 100–3
Calumet Air Force Station
Calumet Co: Keweenaw MI 49913–
Landholding Agency: GSA
Property Number: 54199840004
Status: Excess
Reason: no legal access
GSA Number: 1–D–MI–659A

Bldg. 170
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199820110
Status: Unutilized
Reason: Secured Area

Bldg. 78
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–5001
Landholding Agency: Navy
Property Number: 77199830047
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 113
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–5001
Landholding Agency: Navy
Property Number: 77199830048
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 147
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–5001
Landholding Agency: Navy
Property Number: 77199830049
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 187
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–5001
Landholding Agency: Navy
Property Number: 77199830050
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 157
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199910035
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 217
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199910036
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 371
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199910037
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. C
Naval Station
Pascagoula Co: Jackson MS 39501–
Landholding Agency: Navy
Property Number: 77199910038
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. L
Naval Station
Pascagoula Co: Jackson MS 39501–
Landholding Agency: Navy
Property Number: 77199910039
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. M
Naval Station
Pascagoula Co: Jackson MS 39501–
Landholding Agency: Navy
Property Number: 77199910040
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. N
Naval Station
Pascagoula Co: Jackson MS 39501–
Landholding Agency: Navy
Property Number: 77199910041
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. V
Naval Station
Pascagoula Co: Jackson MS 39501–
Landholding Agency: Navy
Property Number: 77199910042
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. X
Naval Station
Pascagoula Co: Jackson MS 39501–
Landholding Agency: Navy
Property Number: 77199910043
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 86
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199920016
Status: Unutilized
Reasons: Extensive deterioration

Missouri

South Coast Guard Base
Iron Street
St. Louis MO 63111–2536
Landholding Agency: GSA
Property Number: 54199740010
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material, Floodway, Extensive deterioration
GSA Number: 7–U–MO–0576–B

Nevada

Former Weather Service Office
Winnemucca Airport
Winnemucca Co: Humblot NV 89445–
Landholding Agency: GSA
Property Number: 54199810001
Status: Excess
Reason: Within airport runway clear zone
GSA Number: 9–C–NV–509

New Hampshire

Bldg. 89
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830086
Status: Unutilized
Reason: Secured Area

Bldg. 93
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy

Property Number: 77199830087
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 99
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830088
Status: Unutilized
Reason: Secured Area

Bldg. 115
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830089
Status: Unutilized
Reason: Secured Area

Bldg. 178
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830090
Status: Unutilized
Reason: Secured Area

Bldg. 298
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830091
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. H–21
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830092
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Dry Dock 1
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199840012
Status: Underutilized
Reason: Secured Area

Dry Dock 3
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199840013
Status: Underutilized
Reason: Secured Area

Berth 2
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199840014
Status: Underutilized
Reason: Secured Area

Berth 11
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199840015
Status: Underutilized
Reason: Secured Area

Parcel #1
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199910002
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Parcel #2
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199910003
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Parcel #3
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199910004
Status: Underutilized
Reasons: With 2000 ft. of flammable or explosive material: Extensive deterioration

New Jersey

Telephone Repeater Site
U.S. Coast Guard
Monmouth Beach Co: Monmouth Beach NJ 07750–
Landholding Agency: GSA
Property Number:: 54199910001
Status: Excess
Reason: Exensive deterioration
GSA Number:: 1–U–NJ–628

Bldg 329
Naval Air Engineering
Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number:: 77199740008
Status: Unutilized
Reason: Extensive deterioration

Bldg. 116
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77199740009
Status: Unutilized
Reason: Extensive deterioration

Bldg. 188
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77199830065
Status: Unutilized
Reason: Extensive deterioration

Bldg. 473
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77199920024
Status: Unutilized
Reason: Extensive deterioration

Bldg. 474
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77199920025
Status: Unutilized
Reason: Extensive deterioration

New York

Bldg. P–1
Glen Falls Reserve Center
Glen Falls Co: Warren NY 12801–
Location: 67–73 Warren Street
Landholding Agency: GSA
Property Number: 21199540015
Status: Excess
Reason: Extensive deterioration
GSA Number: 1–D–NY–865

2 Offshore Lighthouses
Great Lakes NY
Landholding Agency: GSA
Property Number: 54199630015
Status: Excess
Reason: Extensive deterioration

Galloo Island Light
Lake Ontario
Hounsfield Co: Jefferson NY
Landholding Agency: GSA
Property Number: 54199740016
Status: Excess
Reason: Inaccessible
GSA Number: 1–U–NY–735C

Peconic "H" Facility
Brookhaven Co: Suffolk NY 00000–
Landholding Agency: GSA
Property Number: 54199920002
Status: Excess
Reason: No public access
GSA Number: 1–U–NY–641B

Point AuRoche Light
Beekmantown Co: Clinton NY 12901–
Landholding Agency: GSA
Property Number: 87199420002
Status: Excess
Reason: Floodway; Extensive deterioration
GSA Number: 2–4–NY–817

North Carolina

Bldg. M509
Camp Lejeune
Camp Lejenue Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77199810223
Status: Unutilized
Reason: Secured Area

Bldg. 96
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199820111
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 97
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199820112
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 169
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199820113
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 196
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199820114
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 477
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199820115

Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Bldg. 3422
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199820116
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 899
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77199830039
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 900
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77199830040
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 1300
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77199830041
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 1607
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77199830042
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. AS–822
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77199830043
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. BA115
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77199830044
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 908
Marine Corps Base
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77199840021
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. TC–849
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77199920062
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. TC–852
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77199920063
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 2159
Marine Corps Air Station,
Cherry Point
Havelock Co: Craven NC 28532–
Landholding Agency: Navy
Property Number: 77199920146
Status: Excess
Reasons: Secured Area; Extensive deterioration

Structure 3758
Marine Corps Air Station,
Cherry Point
Havelock Co: Craven NC 28532–
Landholding Agency: Navy
Property Number: 77199920147
Status: Excess
Reasons: Secured Area; Extensive deterioration

Ohio

Toledo Harbor Lighthouse
Lake Erie
Toledo Co: Lucas OH 43611–
Landholding Agency: GSA
Property Number: 54199710014
Status: Excess
Reason: Inacessible
GSA Number: 1–U–OH–801

Toledo Federal Building
234 Summit Avenue
Toledo Co: Lucas OH 43604–
Landholding Agency: GSA
Property Number: 54199810014
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 1–G–H–804

Oregon

Santo Hall U.S. Army Rsve Ctr
701 N. Columbus Ave.
Medford Co: Jackson OR 97501–
Landholding Agency: GSA
Property Number: 21199720211
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 9–D–OR–727

Portion, Former Kingsley Field
Air Force Base
Arnold Ave. & Joe Wright Rd.
Klamath Falls Co: Klamath OR 97603–
Landholding Agency: GSA
Property Number: 54199810003
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 10–D–OR–434–J

Troutdale Materials Lab
Troutdale Co: Multnomah OR 97060–9501
Landholding Agency: GSA
Property Number: 54199830009
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 9–D–OR–729

Pennsylvania

Rices Landing
Tracts A–L, & 1–4
Old Lock & Dam #
Rices Landing Co: Greene PA 15357–
Landholding Agency: GSA
Property Number: 5419930009
Status: Excess
Reason: Floodway
GSA Number: 4–D–PA–0786

Bldg. 22
Willow Grove Naval Air Station
Willow Grove Co: Montgomery PA 19090–
Landholding Agency: Navy
Property Number: 77199720028
Status: Excess
Reason: Extensive deterioration

Bldg. 11
Naval Inventory Control Point
Philadelphia Co: Philadelphia PA 19111–5098
Landholding Agency: Navy
Property Number: 77199730071
Status: Excess
Reason: Extensive deterioration

Bldg. 30
Naval Inventory Control Point
Philadelphia Co: Philadelphia PA 19111–5098
Landholding Agency: Navy
Property Number: 77199730072
Status: Excess
Reason: Extensive deterioration

Bldg. 31
Naval Inventory Control Point
Philadelphia Co: Philadelphia PA 19111–5098
Landholding Agency: Navy
Property Number: 77199730073
Status: Excess
Reason: Extensive deterioration

Bldg. 39
Naval Inventory Control Point
Philadelphia Co: Philadelphia PA 19111–5098
Landholding Agency: Navy
Property Number: 77199730074
Status: Excess
Reason: Extensive deterioration

Bldg. 022
Naval Inventory Control Point
Mechanicsburg PA 17055–0788
Landholding Agency: Navy
Property Number: 77199740062
Status: Unutilized
Reason: Extensive deterioration

Bldg. 913
Naval Inventory Control Point
Mechanicsburg PA 18055–0788
Landholding Agency: Navy
Property Number: 77199740063
Status: Unutilized
Reason: Extensive deterioration

Bldg. 610
Naval Inventory Control Point
Mechanicsburg PA 17055–0788
Landholding Agency: Navy
Property Number: 77199820140
Status: Unutilized
Reason: Extensive deterioration

Bldg. 524
Naval Systems Engineering Station
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830023
Status: Unutilized
Reason: Extensive deterioration

Bldg. 616
Naval Systems Engineering Station
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830024
Status: Unutilized
Reason: Extensive deterioration

Bldg. 707
Naval Systems Engineering Station
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830025
Status: Unutilized
Reason: Extensive deterioration

Bldg. 790
Naval Systems Engineering Station
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830026
Status: Unutilized
Reason: Extensive deterioration

Bldg. 879
Naval Systems Engineering Station
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830027
Status: Unutilized
Reason: Extensive deterioration

Bldg. 434
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830103
Status: Excess
Reason: Extensive deterioration

Bldg. 528
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830104
Status: Excess
Reason: Extensive deterioration

Bldg. 534
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830105
Status: Excess
Reason: Extensive deterioration

Bldg. 637
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830106
Status: Excess
Reason: Extensive deterioration

Bldg. 662
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830107
Status: Excess
Reason: Extensive deterioration

Bldg. 672
Philadelphia Naval Shipyard
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830108
Status: Excess
Reason: Extensive deterioration

Bldg. 714
Naval Surface Warfare Center
Philadelphia Co: PA 19112–
Landholding Agency: Navy
Property Number: 77199920148
Status: Unutilized
Reason: Extensive deterioration

Puerto Rico

Dry Dock & Ship Repair Fac.
U.S. Navy
San Juan PR
Landholding Agency: GSA
Property Number: 54199710012
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Floodway
GSA Number: 1–N–PR–491

NIH Primate Research Facility
Sabena Seca PR
Landholding Agency: GSA
Property Number: 54199720021
Status: Excess
Reason: Landlocked
GSA Number: 1–H–PR–503

Bldg. 433
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830066
Status: Unutilized
Reason: Extensive deterioration

Bldg. 434
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830067
Status: Unutilized
Reason: Extensive deterioration

Bldg. 464
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830068
Status: Unutilized
Reason: Extensive deterioration

Bldg. 762
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830069
Status: Unutilized
Reason: Extensive deterioration

Bldg. 763
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830070
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1927
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830071
Status: Unutilized
Reason: Extensive deterioration

Bldg. 175
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830072
Status: Unutilized
Reason: Extensive deterioration

Former No. 2091
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830073
Status: Unutilized
Reason: Extensive deterioration

Bldg. 261/1692
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830074
Status: Unutilized
Reason: Extensive deterioration

B–38
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830075
Status: Unutilized
Reason: Extensive deterioration

Bldg. 781
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910006
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1740
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910007
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1933
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910008
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1934
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910009
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1976
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910010
Status: Unutilized
Reason: Extensive deterioration

Bldg. 2001
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910011
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs.
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Location: 440, 441, 442, 443
Landholding Agency: Navy
Property Number: 77199920120
Status: Underutilized
Reason: Secured Area

Bldg. 444
STOP 7½ Compound, Naval Reservation
San Jaun Co: PR 34051–
Landholding Agency: Navy

Property Number: 77199920121
Status: Underutilized
Reason: Secured Area

Bldg. 445–447
STOP 7½ Compound, Naval Reservation
San Jaun Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920122
Status: Underutilized
Reason: Secured Area

6 Bldgs.
STOP 7½ Compound, Naval Reservation
San Jaun Co: PR 34051–
Location: 448, 449, 450, 451, 452, 455
Landholding Agency: Navy
Property Number: 77199920123
Status: Underutilized
Reason: Secured Area

Bldg. 458
STOP 7½ Compound, Naval Reservation
San Jaun Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920124
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 461, 2157
STOP 7½ Compound, Naval Reservation
San Jaun Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920125
Status: Underutilized
Reason: Secured Area

Bldgs. 28–29
STOP 7½ Compound, Naval Reservation
San Jaun Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920126
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 30–31
STOP 7½ Compound, Naval Reservation
San Jaun Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920127
Status: Unutilized
Reason: Extensive deterioration

Bldg. 104
STOP 7½ Compound, Naval Reservation
San Jaun Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920128
Status: Unutilized
Reason: Extensive deterioration

Bldg. 459
STOP 7½ Compound, Naval Reservation
San Jaun Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920129
Status: Unutilized
Reason: Extensive deterioration

Structure 460
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920130
Status: Underutilized
Reason: Secured Area

Rhode Island

Bldg. 32
Naval Underwater Systems Center
Gould Island Annex
Middletown Co: Newport RI 02840–
Landholding Agency: Navy
Property Number: 77199010273
Status: Excess
Reason: Secured Area

Bldg. W–31
Coddington Point
Naval Education & Training Center
Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 77199810261
Status: Unutilized
Reason: Extensive deterioration

Bldg. 121
Coasters Harbor Island
Naval Education & Training Center
Newport RI 02841–1711
Landholding Agency: Navy
Property Number: 77199810265
Status: Unutilized
Reason: Extensive deterioration

Bldg. 33
Naval Station, Gould Island
Newport RI 02842–
Landholding Agency: Navy
Property Number: 77199910025
Status: Unutilized
Reason: Inaccessible

Bldg. 53
Naval Station, Gould Island
Newport RI 02842–
Landholding Agency: Navy
Property Number: 77199910026
Status: Unutilized
Reason: Inaccessible

Bldg. 54
Naval Station, Gould Island
Newport RI 02842–
Landholding Agency: Navy
Property Number: 77199910027
Status: Unutilized
Reason: Inaccessible

Bldg. 56
Naval Station, Gould Island
Newport RI 02842–
Landholding Agency: Navy
Property Number: 77199910028
Status: Unutilized
Reason: Inaccessible

Bldg. 58
Naval Station, Gould Island
Newport RI 02842–
Landholding Agency: Navy
Property Number: 77199910029
Status: Unutilized
Reason: Inaccessible

Bldg. 59
Naval Station Gould Island
Newport Co: RI 02842–
Landholding Agency: Navy
Property Number: 77199910030
Status: Unutilized
Reason: Inaccessible

Bldg. 60
Naval Station Gould Island
Newport Co: RI 02842–
Landholding Agency: Navy
Property Number: 77199910031
Status: Unutilized
Reason: Inaccessible

Bldg. 70
Naval Station Gould Island
Newport Co: RI 02842–
Landholding Agency: Navy
Property Number: 77199910032
Status: Unutilized
Reason: Inaccessible

Bldg. 91G
Naval Station Gould Island
Newport Co: RI 02842–
Landholding Agency: Navy
Property Number: 77199910033
Status: Unutilized
Reason: Inaccessible

Bldg. 34
Naval Station Gould Island
Newport Co: RI 02841–
Landholding Agency: Navy
Property Number: 77199910047
Status: Unutilized
Reason: Inaccessible

Bldg. 94
Naval Station Gould Island
Newport Co: RI 02841–
Landholding Agency: Navy
Property Number: 77199910048
Status: Unutilized
Reason: Inaccessible

Bldg. 61
Naval Station Gould Island
Newport Co: RI 02841–
Landholding Agency: Navy
Property Number: 77199910049
Status: Unutilized
Reason: Inaccessible

Tennessee

22 Bldgs.
Volunteer Army Ammunition Plant
Warehouses (Southern Portion)
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199936016
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 4–D–TN–594F

17 Bldgs.
Volunteer Army Ammunition Plant
Acid Production
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199936017
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material; contamination
GSA Number: 4–D–TN–594F

41 Facilities
Volunteer Army Ammunition Plant
TNT Production
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199930018
Status: Surplus
Reason: Contamination
GSA Number: 4–D–TN–594F

5 Facilities
Volunteer Army Ammunition Plant
Waste Water Treatment
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199930019
Status: Surplus
Reason: Extensive deterioration
GSA Number: 4–D–TN–594F

6 Bldgs.
Volunteer Army Ammunition Plant
Offices (Southern Portion)
Chattanooga Co: Hamilton TN 37421–
Landholding Agency: GSA
Property Number: 54199930023
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 4–D–TN–594F

15 Bldgs.
Naval Support Activity, Memphis
Millington Co: Shelby TN 38054–
Location: 329, 400–408, 1585, S–159, S–160, S–163, 1278
Landholding Agency: Navy
Property Number: 77199820126
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

18 Bldgs.
Naval Support Activity, Memphis
Millington Co: Shelby TN 38054–
Location: 2001–2002, 2048–2051, 2064–2070, 2107–2111
Landholding Agency: Navy
Property Number: 77199820127
Status: Unutilized
Reason: Secured Area

P–348 (Bldgs. 409–417)
Naval Support Activity, Memphis
Millington Co: Shelby TN 38054–
Landholding Agency: Navy
Property Number: 77199830109
Status: Excess
Reasons: Secured Area; Extensive deterioration

P–349 (12 Bldgs.)
Naval Support Activity, Memphis
Millington Co: Shelby TN 38054–
Landholding Agency: Navy
Property Number: 77199830110
Status: Excess
Reasons: Secured Area; Extensive deterioration

P–350 (16 Bldgs.)
Naval Support Activity, Memphis
Millington Co: Shelby TN 38054–
Landholding Agency: Navy
Property Number: 77199830111
Status: Excess
Reasons: Secured Area; Extensive deterioration

11 Bldgs.
Naval Surface Warfare Center
Carderock Division
Detachment Memphis
Memphis Co: Shelby TN 38113–
Landholding Agency: Navy
Property Number: 77199840022
Status: Unutilized
Reason: Secured Area

Texas

Bldgs. 1561, 1562, 1563
Naval Air Station Joint Reserve Base
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77199820050
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 1190
Naval Air Station Joint Reserve Base
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77199820053
Status: Unutilized
Reason: Secured Area

Bldg. 1820
Naval Air Station Joint Reserve Base
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77199820054
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 700
Navy Air Station Kingsville
Kingsville Co: Kleberg TX 78363–
Landholding Agency: Navy
Property Number: 7719980077
Status: Unutilized
Reason: Extensive deterioration

Bldg. 701
Navy Air Station Kingsville
Kingsville Co: Kleberg TX 78363–
Landholding Agency: Navy
Property Number: 7719980078
Status: Unutilized
Reason: Extensive deterioration

Bldg. 704
Navy Air Station Kingsville
Kingsville Co: Kleberg TX 78363–
Landholding Agency: Navy
Property Number: 7719980079
Status: Unutilized
Reason: Extensive deterioration

Facilities 105 and 105C
Naval station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199910012
Status: Unutilized
Reason: Extensive deterioration

Weather Radar Tower
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199910050
Status: Unutilized
Reasons: Within airport runway clear zone; Extensive deterioration

Virginia

Fleet Training Center
Fire Fighting Training Facility
SDA–323, SDA–324, SDA–325, SDA–326
Norfolk, VA 23511–
Landholding Agency: Navy
Property Number: 77199740010
Status: Unutilized
Reason: Extensive deterioration

Bldg. O2
Naval Weapons Station
Yorktown Co: York VA 23691
Landholding Agency: Navy
Property Number: 77199810073
Status: Excess
Reason: Extensive deterioration

Bldg. 2208
Naval Medical Clinic
Quantico VA
Landholding Agency: Navy
Property Number: 77199820001
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 358, 359
Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199820023
Status: Excess
Reason: Extensive deterioration

Bldg. CAD–43
Cheatham Annex
Williamsburg VA 23185
Landholding Agency: Navy
Property Number: 77199820024
Status: Excess
Reason: Extensive deterioration

Bldg. CAD–102
Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199820025
Status: Excess
Reason: Extensive deterioration

Bldg. CAD–102A
Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199820026
Status: Excess
Reason: Extensive deterioration

Bldg. CAD–127
Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199820027
Status: Excess
Reason: Extensive deterioration

8 Bldgs.
Naval Base Norfolk
Norfolk VA
Location: #NH–A, NH–A1, NH–B, NH–C, NH–C1, NH–D, NH–D1, NH–B1
Landholding Agency: Navy
Property Number: 77199830052
Status: Unutilized
Reason: Extensive deterioration

CAD–40
Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199830084
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

13 Garages
Naval Base Norfolk Complex
Norfolk VA
Location: A–39A, F–32A, F–33E/W, G–31E, G–31W, G–45A, H–7A, SP–18A, SP–19A, SP–20A, SP–21A, SP–24A, SP–26A
Landholding Agency: Navy
Property Number: 77199840016
Status: Excess
Reason: Extensive deterioration

Bldg. 1256
Naval Amphibious Base Little Creek
Norfolk Co: VA 23521–2616
Landholding Agency: Navy
Property Number: 77199910013
Status: Excess
Reason: Extensive deterioration

Bldg. W219
Naval Base Norfolk
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77199910014
Status: Excess
Reason: Secured Area

Gym
Naval Air Station, Oceana
Virginia Beach Co: VA 23460–5120
Landholding Agency: Navy
Property Number: 77199910015
Status: Unutilized
Reason: Extensive deterioration

Runway

Naval Air Station, Oceana
Virginia Beach Co: VA 23460–5120
Landholding Agency: Navy
Property Number: 77199910016
Status: Unutilized
Reason: Extensive deterioration

Bldg. SP76AQ
Naval Air Station
Norfolk Co: VA 23511–2797
Landholding Agency: Navy
Property Number: 77199910051
Status: Excess
Reason: Extensive deterioration

Bldg. CA502
Naval Station Norfolk
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77199910052
Status: Excess
Reason: Secured Area

Bldg. 3074
Marine Corps Base
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77199920026
Status: Unutilized
Reason: Extensive deterioration

Bldg. SC–319
Armed Forces Staff College
Norfolk Naval Base
Norfolk Co: VA 23511–1702
Landholding Agency: Navy
Property Number: 77199920067
Status: Excess
Reason: Extensive deterioration

Bldg. 449
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920068
Status: Excess
Reason: Extensive deterioration

Bldg. 450
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920069
Status: Excess
Reason: Extensive deterioration

Bldg. 451
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920070
Status: Excess
Reason: Extensive deterioration

Bldg. 453
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920071
Status: Excess
Reason: Extensive deterioration

Bldg. 454
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920072
Status: Excess
Reason: Extensive deterioration

Bldg. 708
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920073
Status: Excess
Reason: Extensive deterioration

Bldg. 709
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920074
Status: Excess
Reason: Extensive deterioration

Bldg. 710
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920075
Status: Excess
Reason: Extensive deterioration

Bldg. 711
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920076
Status: Excess
Reason: Extensive deterioration

Bldg. 712
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920077
Status: Excess
Reason: Extensive deterioration

Bldg. 713
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920078
Status: Excess
Reason: Extensive deterioration

Bldg. 714
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920079
Status: Excess
Reason: Extensive deterioration

Bldg. 715
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920080
Status: Excess
Reason: Extensive deterioration

Bldg. 716
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920081
Status: Excess
Reason: Extensive deterioration

Bldg. 717
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920082
Status: Excess
Reason: Extensive deterioration

Bldg. 718
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920083
Status: Excess
Reason: Extensive deterioration

Bldg. 1454
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920084
Status: Excess
Reason: Extensive deterioration

Washington

Bldg. 844
Former Park Place Enlisted Club
808 Burwell St.
Bremerton Co: Kitsap WA 98314–
Landholding Agency: GSA
Property Number: 54199840002
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 9–D–WA–1164

Bldg. 913
Naval Undersea Warfare Center
Keyport Co: Kitsap WA 98345–7610
Landholding Agency: Navy
Property Number: 77199720014
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Excesive deterioration

Bldg. 6661
Naval Submarine Base, Bangor
Silverdale Co: Kitsap WA 98315–6499
Landholding Agency: Navy
Property Number: 77199730039
Status: Unutilized
Reason: Secured Area

Bldg. 1635
Naval Submarine Base, Bangor
Silverdale Co: Kitsap WA 98315–6499
Landholding Agency: Navy
Property Number: 77199730040
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 7457
Naval Submarine Base, Bangor
Silverdale Co: Kitsap WA 98315–1199
Landholding Agency: Navy
Property Number: 77199730041
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 4446
Naval Submarine Base, Bangor
Silverdale Co: Kitsap WA 98315–1199
Landholding Agency: Navy
Property Number: 77199740082
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 604, Pier 91
Naval Station Everett
Seattle Co: King WA
Landholding Agency: Navy
Property Number: 77199810011
Status: Excess
Reason: Extensive deterioration

Bldg. 1008
Naval Submarine Base, Bangor
Silverdale Co: Kitsap WA 98315–1199
Landholding Agency: Navy
Property Number: 77199810012
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1010
Naval Submarine Base, Bangor
Silverdale Co: Kitsap WA 98315–1199
Landholding Agency: Navy

Property Number: 77199810013
Status: Unutilized
Reason: Extensive deterioration

Bldg. 6460
Naval Submarine Base, Bangor
Silverdale Co: Kitsap WA 98315–1199
Landholding Agency: Navy
Property Number: 77199810014
Status: Unutilized
Reason: Extensive deterioration

Bldg. 604
Manchester Fuel Department
Port Orchard WA 98366–
Landholding Agency: Navy
Property Number: 77199810170
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 288
Fleet Industrial Supply Center
Bremerton WA 98314–5100
Landholding Agency: Navy
Property Number: 77199810171
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 332
NAS Whidbey Island
Whidbey Island WA
Landholding Agency: Navy
Property Number: 77199810217
Status: Excess
Reason: Secured Area

Bldg. 2512
NAS Whidbey Island
Whidbey Island WA
Landholding Agency: Navy
Property Number: 77199810218
Status: Excess
Reason: Secured Area

Bldg. 2536
NAS Whidbey Island
Whidbey Island WA
Landholding Agency: Navy
Property Number: 77199810219
Status: Excess
Reason: Secured Area

Bldg. 2591
NAS Whidbey Island
Whidbey Island WA
Landholding Agency: Navy
Property Number: 77199810220
Status: Excess
Reason: Secured Area

Bldg. 47
Naval Radio Station T Jim Creek
Arlington Co: Snohomish WA 98223–
Landholding Agency: Navy
Property Number: 77199820056
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 48
Naval Radio Station T Jim Creek
Arlington Co: Snohomish WA 98223–
Landholding Agency: Navy
Property Number: 77199820057
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Coal Handling Facilities
Puget Sound Naval Shipyard
#908, 919, 926–929
Bremerton WA 98314–5000
Landholding Agency: Navy
Property Number: 77199820142
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 193
Puget Sound Naval Shipyard
Bremerton WA 98310–
Landholding Agency: Navy
Property Number: 77199820143
Status: Unutilized
Reason: Contamination

Bldg. 202
Naval Air Station Whidbey Island
Oak Harbor WA 98278–
Landholding Agency: Navy
Property Number: 77199830019
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 2649
Naval Air Station Whidbey Island
Oak Harbor WA 98278–
Landholding Agency: Navy
Property Number: 77199830020
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Extensive deterioration

Bldg. 2669
Naval Air Station Whidbey Island
Oak Harbor WA 98278–
Landholding Agency: Navy
Property Number: 77199830021
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Extensive deterioration

Bldg. 2559
Naval Air Station Whidbey Island
Oak Harbor WA 98278–
Landholding Agency: Navy
Property Number: 77199830063
Status: Excess
Reason: Extensive deterioration

Bldgs. 35, 36
Naval Radio Station T Jim Creek
Arlington Co: Snohomish WA 98223–
Landholding Agency: Navy
Property Number: 77199830076
Status: Unutilized
Reason: Extensive deterioration

Bldg. 21
Naval Undersea Warfare Center Div.
Keyport Co: Kitsap WA 98345–7610
Landholding Agency: Navy
Property Number: 77199830083
Status: Excess
Reasons: Secured Area; Extensive deterioration

Bldg. 918
Puget Sound Naval Shipyard
Bremerton WA 98314–5000
Landholding Agency: Navy
Property Number: 77199840020
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 894
Naval Undersea Warfare Center
Keyport Co: Kitsap WA 98345–7610
Landholding Agency: Navy
Property Number: 77199920085
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 73
Naval Undersea Warfare Center
Keyport Co: Kitsap WA 98345–
Landholding Agency: Navy
Property Number: 77199920152
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 15
Naval Air Station Whidbey Island
Oak Harbor Co: WA 98278–3500
Landholding Agency: Navy
Property Number: 77199930071
Status: Unutilized
Reason: Extensive deterioration

Bldg. 119
Naval Air Station, Whidbey Island
Oak Harbor Co: WA 98278–3500
Landholding Agency: Navy
Property Number: 77199930072
Status: Unutilized
Reason: Extensive deterioration

Bldg. 853
Naval Air Station, Whidbey Island
Oak Harbor Co: WA 98278–3500
Landholding Agency: Navy
Property Number: 77199930073
Status: Unutilized
Reason: Extensive deterioration

Bldg. 854
Naval Air Station, Whidbey Island
Oak Harbor Co: WA 98278–3500
Landholding Agency: Navy
Property Number: 77199930074
Status: Unutilized
Reason: Extensive deterioration

Wisconsin

2 Offshore Lighthouses
Great Lakes WI
Landholding Agency: GSA
Property Number: 54199630016
Status: Excess
Reason: Extensive deterioration

Unsuitable Properties

Land (by State)

Arkansas

0.426 acres
Former Lower Level Windshear Alert Sys #4
Little Rock Co: Pulaski AR 57501–
Landholding Agency: GSA
Property Number: 54199910016
Status: Surplus
Reason: Within airport runway clear zone; Floodway
GSA Number: 7–U–AR–555

California

Parcel B
Santa Rosa Co: Sonoma CA
Landholding Agency: GSA
Property Number: 54199310016
Status: Excess
Reason: Sewage Treatment Plant
GSA Number: 9–G–CA–580C

Space Surv. Field Station
Portion/Off Heritage Road
San Diego CA 90012–1408
Landholding Agency: Navy
Property Number: 77199820049
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Parcel 3
Construction Battalion Center
Port Hueneme Co: Ventura CA 93043–
Landholding Agency: Navy
Property Number: 77199920137
Status: Underutilized
Reason: Within 2000 ft. of flammable or explosive material; Secured Area

Excess Land at Eureka Housing
Eureka Co: Humboldt CA 95501–
Landholding Agency: GSA
Property Number: 87199540001
Status: Excess
Reason: Inaccessible
GSA Number: 9UCA1527

Florida

Boca Chica Field
Naval Air Station
Key West Co: Monroe FL 23040–
Landholding Agency: Navy
Property Number: 77199010097
Status: Unutilized
Reason: Floodway

Georgia

Tract D–415
Lake Sidney Lanier
Gainesville Co: Hall GA 30501–
Landholding Agency: GSA
Property Number: 54199910011
Status: Excess
Reason: No public access
GSA Number: 4–D–GA–731

Guam

Submerged Lands
Ritidian Point GU
Landholding Agency: GSA
Property Number: 54199640003
Status: Excess
Reason: Inaccessible
GSA Number: 9–N–DU–437

Kentucky

9 Tracts
Daniel Boone National Forest
Co: Owsley KY 37902–
Landholding Agency: GSA
Property Number: 54199620012
Status: Excess
Reason: Floodway
GSA Number: 4–G–KY–607

Maine

37 Acres, Topsham Annex
Naval Air Station
Brunswick ME 04011–
Landholding Agency: Navy
Property Number: 77199720001
Status: Unutilized
Reason: Secured Area

Land—Triangular Area
NAS Brunswick, Wildwood
Subd. Encroachment
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199820117
Status: Excess
Reason: Landlocked

Maryland

5,635 sq. ft. of Land
Solomon's Annex
Solomon's MD
Landholding Agency: Navy
Property Number: 77199230001
Status: Excess
Reason: Drainage Ditch

Govt. Railroad
Naval Surface Warfare Center
Indian Head Div.
Indian Head Co: Charles MD 20640–
Landholding Agency: Navy
Property Number: 77199740084
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Floodway

Michigan

Port/EPA Large Lakes Rsch Lab
Grosse Ile Twp Co: Wayne MI
Landholding Agency: GSA
Property Number: 54199720022
Status: Excess
Reason: Within airport runway clear zone
GSA Number: 1–Z–MI–554–A

New York

Braddock Point Light Land
0.8 acres
Parma Co: NY 10950–
Landholding Agency: GSA
Property Number: 54199910021
Status: Excess
Reason: Inaccessible
GSA Number: 1–U–NY–870

North Carolina

0.85 parcel of land
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28553–
Landholding Agency: Navy
Property Number: 77199740074
Status: Unutilized
Reason: Secured Area

Ohio

Lewis Research Center
Cedar Point Road
Cleveland Co: Cuyahoga OH 44135–
Landholding Agency: GSA
Property Number: 54199610007
Status: Excess
Reasons: Within 200 ft. of flammable or explosive material; Within airport runway clear zone
GSA Number: 2–Z–OH–598–I

Pennsylvania

Grays Landing
Tract B, 101–07
Co: Fayette PA
Landholding Agency: GSA
Property Number: 54199810005
Status: Excess
Reason: Landlocked
GSA Number: 4–D–PA–784

Washington

Land-Port Hadlock Detachment
Naval Ordnance Center
Pacific Division
Port Hadlock Co: Jefferson WA 98339–
Landholding Agency: Navy
Property Number: 77199640019
Status: Underutilized
Reasons: Within 200 ft. of flammable or explosive material; Secured Area

Wyoming

Cody Industrial Area
Cody Co: Park WY 82414–
Landholding Agency: GSA
Property Number: 54199740008
Status: Excess
Reasons: Within 200 ft. of flammable or explosive material
GSA Number: 7–I–WY–0539

[FR Doc. 99–23296 Filed 9–9–99; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Intent To Prepare a Comprehensive Conservation Plan and Associated Environmental Document for Fish Springs National Wildlife Refuge, Dugway, UT

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: The U.S. Fish and Wildlife Service intends to gather information necessary to prepare a Comprehensive Conservation Plan and associated environmental document for the Fish Springs National Wildlife Refuge near Dugway. Utah. The Service is issuing this notice in compliance with its policy to advise other organizations and the public of its intentions and to obtain suggestions and information on the scope of issues to be considered in the planning process.

DATES: Written comments should be received by November 1, 1999.

ADDRESSES: Comments and requests for more information should be sent to: Refuge Manager, Fish Springs National Wildlife Refuge, P.O. Box 568, Dugway, Utah 84022. Fax (435) 831–5354. Email: *r6rw fhs@fws.gov*.

FOR FURTHER INFORMATION CONTACT: Jay Banta, Refuge Manager, (435) 831–5353, extension 102.

SUPPLEMENTARY INFORMATION: The Service has initiated comprehensive conservation planning for Fish Springs National Wildlife Refuge for the conservation and enhancement of its natural resources. This Refuge is located in the Snake Valley at the southern end of the Great Salt Lake Desert in western Utah and encompasses 17,992 acres between two small mountain ranges.

Comprehensive planning will develop management goals, objectives, and strategies to carry out the purposes of the Refuge and comply with laws and policies governing refuge management and public use of refuges. The Refuge is open to public use.

The Service requests input as to what issues, affecting management or public use, should be addressed during the planning process. The Service is especially interested in receiving public input in the following areas:

—What do you value most about Fish Springs NWR?
—What problems or issues do you see affecting management or public use of the Refuge?
—What improvements do you recommend for the Refuge?
—What changes, if any, would you like to see in the management of the Refuge?

The Service has provided the above questions for your optional use. The Service has no requirement that you provide information. The Planning Team developed these questions to facilitate finding out more information about individual issues and ideas. Comments received by the Planning Team will be used as part of the Planning process; individual comments will not be referenced in our reports or directly responded to.

An opportunity will also be provided for public input at an open house on September 18, 1999, (schedule of activities can be obtained from the Fish Springs National Wildlife Refuge at above address). All information provided voluntarily by mail, phone, or at public meetings becomes part of the official public record (i.e., names, addresses, letters of comment, input recorded during meetings). If requested under the Freedom of Information Act by a private citizen or organization, the Service may provide copies of such information.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), NEPA Regulations (40 CFR parts 1500–1508), other appropriate Federal laws and regulations, Executive Order 12996, the National Wildlife Refuge System Improvement Act of 1997, and Service policies and procedures for compliance with those regulations.

Dated: September 3, 1999.

Elliott Sutta,

Acting Regional Director, Denver, Colorado.

[FR Doc. 99–23509 Filed 9–9–99; 8:45 am]
BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service, Interior

Final Policy on the National Wildlife Refuge System and Compensatory Mitigation Under the Section 10/404 Program

AGENCY: Fish and Wildlife Service, Interior

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service announces the final policy on the National Wildlife Refuge System and Compensatory Mitigation under the Section 10/404 program. We are establishing guidelines regarding the use of the National Wildlife Refuge System for compensatory mitigation requirements for water resource development projects authorized by the Department of the Army under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. The purpose of the policy is to provide guidance to our personnel when they are evaluating whether a National Wildlife Refuge should be considered as a site for wetland restoration, enhancement, or creation to replace wetlands lost to dredge and fill impacts authorized by a Section 10/404 permit.

In general, we will not allow compensatory mitigation on National Wildlife Refuge System lands because these lands are already targeted for restoration, and we will be restoring these lands in the future. We recognize that under some limited and exceptional circumstances, compensatory mitigation on a National Wildlife Refuge may be appropriate. If compatible activities occurring on a National Wildlife Refuge require compensatory mitigation, the mitigation must occur within the boundaries of the National Wildlife Refuge being affected and must meet specific criteria. We will not support the use of National Wildlife Refuge System lands for establishment of mitigation banks. We may accept mitigation banks or mitigation projects as additions to the National Wildlife Refuge System subject to specific criteria. Where habitats have already been protected or restored under other Federal programs designed to increase the Nation's wetlands, we will not support the preservation of such restored wetlands as compensatory mitigation for habitat losses from other projects authorized under the Section 10/404 program, except in limited and exceptional circumstances.

EFFECTIVE DATE: The policy becomes effective on October 12, 1999.

FOR FURTHER INFORMATION CONTACT: U.S. Fish and Wildlife Service, Dr. Benjamin N. Tuggle, Chief, Division of Habitat Conservation, 400 ARLSQ, Washington, D.C. 20240, telephone (703) 358–2161; or Dr. Richard A. Coleman, Chief, Division of Refuges, 600 ARLSQ, Washington, D.C. 20240, telephone (703) 358–1744.

SUPPLEMENTARY INFORMATION:

Background

The national goal of no net loss of wetlands recognizes the importance and the special significance of wetlands to a variety of functions and values including water quality, flood damage reduction, groundwater recharge, and reduced sedimentation. In addition, wetlands are some of the most important habitats for fish and wildlife resources on the landscape. We (the U.S. Fish and Wildlife Service) strongly support and contribute to this national goal by helping to reduce wetland losses, by restoring lost or degraded wetlands, and by protecting valuable wetlands by bringing them into the National Wildlife Refuge System.

We administer over 92 million acres of land and water within the National Wildlife Refuge System, and we have at least one National Wildlife Refuge in each of the 50 states. The mission of the National Wildlife Refuge System is to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans. We may allow public uses of National Wildlife Refuge System lands, such as wildlife dependent recreation, when they are compatible with the purposes of the refuge. However, the National Wildlife Refuge System was established and is being managed first and foremost for fish, wildlife, and plant conservation.

At times, we have acquired lands that have been disturbed by past human activities. As such, some National Wildlife Refuges contain degraded fish and wildlife habitats. The development community, and others, have asked if these degraded habitats could be used as mitigation sites for wetland and wildlife habitat losses that occur outside the National Wildlife Refuge System. In the past, we have discouraged the use of National Wildlife Refuge System lands for compensatory mitigation, because we are authorized to restore degraded habitats within the National Wildlife Refuge System and we will be restoring these lands in the future, irrespective of off-Refuge development. However, until now, we have not had a specific policy that outlines when, or if, compensatory mitigation on National Wildlife Refuge System lands might be appropriate.

We recognize that allowing compensatory mitigation on a refuge could result in some resource gains within the National Wildlife Refuge System. However, if we were to target the National Wildlife Refuge System for compensatory mitigation, we could be facilitating a significant net loss of wetlands within the watershed. But we also recognize there may be some limited and exceptional circumstances where allowing compensatory

mitigation to be implemented on a refuge may be in the best interest of the fish, wildlife, and wetland resources in the area. Therefore, the policy provides guidance and flexibility to our personnel when they are determining whether, or under what circumstances, we might allow the National Wildlife Refuge System to be used for compensatory mitigation under the Section 10/404 program.

Previous Federal Action

We published the "Draft Policy on the National Wildlife Refuge System and Compensatory Mitigation under the Section 10/404 Program" in the **Federal Register** on July 31, 1998 (60 FR 58605). The public comment period closed on September 29, 1998.

Summary of Modifications

We modified the draft policy in response to the public comments and additional internal review. Here is a summary of the important changes:

1. We clarified how the policy relates to private lands and to wetlands that have been restored under other Federal programs, such as the Partners for Fish and Wildlife Program.

2. We clarified our explanation of why the policy does not apply to impacts to threatened or endangered species. Any impacts associated with these species are addressed separately under the Endangered Species Act.

3. We modified the "grandfather clause" in Part 7 of the policy. We inserted a statement indicating that mitigation projects currently being implemented are exempt from the policy. The policy will only apply to future projects.

4. We rewrote the policy in "Plain Language", updated and modified several definitions, and changed several technical terms for consistency.

Responses to Comments

The following is a summary of the major comments raised during the public comment period. We have included a summary of the comments, our response, and any modifications to the policy.

Comment: Several commenters asked about the scope of the policy, what we mean by "National Wildlife Refuge System land" and whether the policy applies to other forms of compensatory mitigation.

Response. The policy applies to all lands and waters within the National Wildlife Refuge System being considered for use as compensatory mitigation for activities authorized under the Section 10/404 program. The policy does not include lands that are within the authorized refuge acquisition boundary, unless they are already owned by the Fish and Wildlife Service as part of the NWRS. In addition, we recognize there are other forms of mitigation being conducted on NWRS lands, such as under Section 4(f) of the Department of Transportation Act of 1966; however, the policy only addresses compensatory mitigation required under the Section 10/404 program.

Comment: Several commenters are concerned that we are applying this policy to private lands, particularly wetlands restored under the Conservation Reserve Program, the Wetlands Reserve Program, and the Partners for Fish and Wildlife Program.

Response: This policy provides guidance to Service personnel evaluating compensatory mitigation proposals for activities authorized under the Section 10/404 program. In contrast to circumstances in which mitigation is proposed on lands within the National Wildlife Refuge System and thus under the control of the Service, our recommendations regarding mitigation proposals on private lands are advisory and not controlling upon the permitting agency.

Preservation of existing wetland habitat compensates for permitted wetland loss in only those limited and exceptional circumstances in which a change in ownership or protection status serves to maintain habitat that would otherwise be certain to be lost. We expect that many private landowners who have used Federal conservation programs to restore wetlands on their lands will allow those wetlands to remain after the term of their restoration agreement or easement expires. Accordingly, we will not recommend or support preservation of those restored wetlands as compensatory mitigation, except in the limited and exceptional circumstances in which their future loss is assured in the absence of additional conservation measures.

Comment: Several commenters stated that if wetlands restored under the Partners for Fish and Wildlife Program or the Conservation Reserve Program cannot be used for compensatory mitigation, they may be converted to non-wetland uses (e.g., agriculture) after the 10-year agreement expires. The commenters believe that Section 10/404 permit holders should target these lands for compensatory mitigation (i.e., preservation) to avoid conversion.

Response: We have clarified the policy to indicate that where wetlands have been restored under Federal wetland restoration programs, such as the Partners for Fish and Wildlife Program, we will not support the use of these lands as compensatory mitigation under the Section 10/404 program, during the term of the agreement (e.g., 10 years). Upon expiration of the wetland restoration agreement, we will not support the preservation of such restored wetlands as compensatory mitigation for wetland losses under the Section 10/404 program, except in limited and exceptional circumstances. This is consistent with our Mitigation Policy and the Federal guidelines for establishing, using, and operating mitigation banks.

Comment: Several commenters asked that we delete the restrictions on adding mitigation bank lands to a refuge.

Response: The policy retains the restrictions on accepting mitigation bank lands. We recognize the policy may necessitate changes in how mitigation banking and wetland restoration is done in conjunction with National Wildlife Refuge System lands. However, the purpose of the policy is to ensure national consistency regarding compensatory mitigation under the Section 10/404 program and the National Wildlife Refuge System.

Comment: Several commenters asked why we are adopting such rigid guidelines for accepting donated mitigation bank lands into the National Wildlife Refuge System since mitigation banking represents an important opportunity to expand our refuges.

Response: We recognize that accepting a mitigation bank into the National Wildlife Refuge System is an opportunity to protect wetlands and other wildlife habitat produced by compensatory mitigation projects. That is why we included specific provisions that allow these transfers to proceed. However, we want to avoid bringing wetlands and other habitats into the National Wildlife Refuge System that are either not fully restored, do not have sufficient operation and maintenance funding, have mitigation credits running, or otherwise diminish the responsibilities of the Section 10/404 program to fulfill its wetland preservation goals. That is, we are willing to accept donated mitigation bank lands only when they are clear of any outstanding mitigation requirements and associated liabilities.

Comment: Several commenters asked why the policy prohibits mitigation banks on National Wildlife Refuge System lands under all circumstances, since mitigation banking is another form of compensatory mitigation.

Response: If we allow mitigation banks to be established on National Wildlife Refuge System lands, it could result in a net loss of wetlands in the watershed. Since National Wildlife Refuge System lands are already protected and we will be restoring these lands, allowing mitigation banking on National Wildlife Refuge System lands would not replace the off-Refuge wetland functions and values that are lost to permitted development. By establishing mitigation banks on National Wildlife Refuge System lands and selling the mitigation credits, we would be "trading" off-Refuge wetlands for accelerated restoration of on-Refuge wetlands. Although this may result in some short-term habitat gains on National Wildlife Refuge System lands, in the long-term, it could facilitate a net loss of wetlands in the watershed.

In addition, there are several other concerns:

1. There may be an appearance of a conflict of interest if we are also commenting on and developing mitigation options for the permitted development through the Section 10/404 program;

2. If we allow mitigation banking on National Wildlife Refuge System lands, we might be assigned some degree of liability for future operation and maintenance of the bank if the bank sponsor abandons the project prior to satisfying all mitigation responsibilities; and

3. If we allow Section 10/404 permittees to establish mitigation banks on National Wildlife Refuge System lands, this may undermine entrepreneurial (i.e., economically-based) efforts to develop private mitigation banks elsewhere in the watershed.

Comment: One commenter asked why the policy does not apply to threatened or endangered species. The commenter is concerned that if a listed species is adversely affected by development permitted under Section 10/404, we might allow compensatory mitigation for threatened or endangered species to occur on National Wildlife Refuge System lands.

Response: We have clarified the policy to specifically state that consideration of impacts to threatened or endangered species is not within the scope of this policy. Any such concerns are addressed under the Endangered Species Act and its associated regulations at 50 CFR Parts 17, 402, and 424.

Comment: The "grandfather clause" in the policy could allow a significant amount of mitigation activities to be implemented on NWRS lands which are inconsistent with the policy. In the draft policy, the clause states: "The policy does not apply to existing mitigation agreements with the Service in effect at the time of policy issuance." However, we currently have several long-term agreements with various organizations and agencies that allow compensatory mitigation to be conducted in conjunction with National Wildlife Refuges. These agreements could provide a permanent exemption from the policy.

Response: We have deleted the statement that exempts existing mitigation agreements from the policy. Instead, we have stated that the policy does not apply to existing mitigation projects that are currently being implemented. However, we will review all mitigation agreements, and modify them as necessary, to ensure they are consistent with the policy. In other words, all mitigation projects currently underway are exempt, but any new projects must comply with the policy.

Record of Compliance

We have prepared a Record of Compliance documenting that this rule-making action complies with the various statutory, Executive Order, and Department of the Interior requirements that are applicable to rulemakings. A copy is available upon request. (See **FOR FURTHER INFORMATION CONTACT.**)

The number of acres of wetlands restored on National Wildlife Refuge System lands in FY96 was 79,291, but only approximately 10 acres were restored as compensatory mitigation under the Section 10/404 program. Likewise, of the 60,708 acres of wetlands restored on National Wildlife Refuge System lands in FY97, only 75 acres were restored under the Section 10/404 program. Since the policy was developed to reflect the informal practices currently used by Service personnel, the policy will serve to codify, but not significantly change, agency practice. Therefore, the numbers of acres of wetlands restored on National Wildlife Refuge System lands as mitigation for activities authorized under the Section 10/404 program will probably not change significantly with the policy.

This policy was reviewed under Executive Order 12866. As discussed above, only 85 acres during fiscal years 1996 and 1997 were restored on national wildlife refuges as a result of compensatory mitigation while a more than 130,000 acres were restored. Accordingly, this policy will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Similarly, this policy is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act.

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*), this policy does not affect State, local, and tribal governments since it only applies to lands and activities within the National Wildlife Refuge System. This policy does not produce a Federal mandate of $100 million or greater in any year, therefore, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

In accordance with Executive Order 12630, the policy does not have significant takings implications. This policy will not result in takings since it only applies to lands and activities within the National Wildlife Refuge System.

In accordance with Executive Order 12612, the policy does not have significant Federalism effects. This policy will not affect other governments since it only applies to lands and activities within the National Wildlife Refuge System. This policy will not affect small governments.

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the policy does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. This policy does not require any information collection for which Office of Management Budget approval is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*).

We have analyzed this policy in accordance with the criteria of the National Environmental Policy Act and 318 DM 2.2(g) and 6.3(D). This policy does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required. We have determined there are no effects on Federally recognized Indian tribes since it only applies to lands and activities within the National Wildlife Refuge System. The action is categorically excluded under Departmental NEPA procedures (516 DM 2, Appendix 1.10), which applies to policies, directives, regulations, and guidelines of an administrative, legal, technical, or procedural nature; or the environmental effects of which are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case.

Final Policy on the National Wildlife Refuge System and Compensatory Mitigation Under the Section 10/404 Permit Program

Part 1. What Is the Purpose of This Policy?

We are establishing a national policy on the National Wildlife Refuge System and compensatory mitigation requirements for water resource development activities administered by the Department of the Army under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. Our purpose is to provide guidance to our personnel that have a decision making role for the use of lands within the National Wildlife Refuge System as it applies to the Section 10/404 program.

The mission of the National Wildlife Refuge System is to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations. The Federal government established National Wildlife Refuges for the restoration, preservation, development, and management of wildlife and wildlands habitat; for the protection and preservation of endangered or threatened species and their habitat; and for the management of wildlife and wildlands to obtain the maximum benefits from these resources (50 CFR 25.11(b)). We are currently managing National Wildlife Refuge System lands to obtain the maximum fish, wildlife, and ecological benefits. Therefore, our management and restoration activities will occur regardless of other activities, including those authorized under the Section 10/404 program.

We provide recommendations to the Department of the Army, Corps of Engineers, for mitigation using the Clean Water Act, the Section 404(b)(1) guidelines, the Fish and Wildlife Coordination Act, the National Environmental Policy Act, and our Mitigation Policy (January 23, 1981, 46 FR 7644). These authorities and guidance documents state that the biological impacts must be determined by comparing the environmental conditions with the project in place (the "with-project conditions") against the environmental conditions without the project in place (the "without-project conditions"). Under our Mitigation Policy, we recommend compensatory mitigation for unavoidable adverse impacts to fish and wildlife resources only after project sponsors have taken all practicable actions to avoid or minimize the impacts.

We will continue to restore wetlands and wildlife habitat on National Wildlife Refuge System lands independent of off-Refuge water resource development activities; therefore, our NWRS restoration activities are part of the environmental conditions that would occur without the development project authorized by the Section 10/404 permit. If we allow wetland restoration activities to occur on National Wildlife Refuge System lands as compensatory mitigation for off-Refuge impacts authorized under Section 10/404, we could be facilitating a long-term net loss of wetlands within the watershed. Therefore, we will not recommend or allow compensatory mitigation on National Wildlife Refuge System lands for activities authorized under the Section 10/404 program, except as provided in this policy.

Part 2. What Are Definitions Used in This Policy?

There are numerous technical terms that are used throughout the policy. We are providing the definitions to ensure clarity and consistency.

Appropriate. The determination of what level of mitigation constitutes "appropriate" is based on the comparison between the functions and values of the aquatic resources that will be impacted and the potential of the proposed creation, restoration, enhancement, and/or preservation at the mitigation site to replace the lost functions and values after subtracting the baseline functions and values of the mitigation site.

Bank sponsor. Any public or private entity responsible for establishing and, in most circumstances, operating a mitigation bank.

Compensatory mitigation. For purposes of Section 10/404, compensatory mitigation is the restoration, creation, enhancement, or in exceptional circumstances, preservation of wetlands and/or other aquatic resources for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved (Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 FR 58605)).

Credit. A unit of measure representing the accrual or attainment of aquatic functions at a mitigation bank; the measure of function is typically indexed to the number of wetland acres restored, created, enhanced, or preserved (Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 FR 58605)).

Direct effects are caused by the action and occur at the same time and place. (CEQ NEPA regulations; 40 CFR 1508.8(a)).

Director means the Director of the United States Fish and Wildlife Service.

Fish and wildlife resources means birds, fish, mammals, and all other classes of wild animals and all types of aquatic and land vegetation upon which wildlife is dependent (U.S. Fish and Wildlife Service Mitigation Policy, Manual Chapter 501 FW 2).

Habitat means the area which provides direct support for a given species, population, or community. It includes all environmental features that comprise an area such as air quality, water quality, vegetation and soil characteristics and water supply, including both surface and groundwater. (U.S. Fish and Wildlife Service Mitigation Policy, Manual Chapter 501 FW 2).

Indirect effects are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable (CEQ NEPA regulations; 40 CFR 1508.8(b)).

Minimize means to reduce to the smallest practicable amount or degree. (U.S. Fish and Wildlife Service Mitigation Policy, Manual Chapter 501 FW 2).

Mitigation includes: (a) avoiding the impact altogether by not taking a certain action or parts of an action; (b) minimizing impacts by limiting the degree or magnitude of the action and its implementation; (c) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; (d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and (e) compensating for the impact by replacing or providing substitute resources or environments." (CEQ NEPA regulations; 40 CFR 1508.20(a–e)).

Mitigation bank. A mitigation bank is a site where wetland and/or other aquatic resources are restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources. For purpose of Section 10/404, use of a mitigation bank may only be authorized when impacts are unavoidable (Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 FR 58605)).

National Wildlife Refuge means a designated area of land, water or an interest in land or water within the National Wildlife Refuge System, but does not include Coordination Areas (*National Wildlife Refuge System Administration Act of 1966* (16 U.S.C. 668dd–668ee: 80 Stat. 927, as amended).

National Wildlife Refuge System means all lands, waters, and interests administered by the U.S. Fish and Wildlife Service as wildlife refuges, areas for the protection and conservation of fish and wildlife species threatened with extinction, wildlife ranges, game ranges, wildlife management areas, or waterfowl production areas, and other areas for the protection and conservation of fish and wildlife (*National Wildlife Refuge System Administration Act of 1966* (16 U.S.C. 668dd–668ee: 80 Stat. 927, as amended).

Practicable. Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes (Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 FR 58605)).

Project means any action, planning or approval process relating to an action that will directly or indirectly affect fish and wildlife resources (U.S. Fish and Wildlife Service Mitigation Policy, Manual Chapter 501 FW 2).

Purposes of the refuge means the purposes specified in or derived from law, proclamation, executive order, agreement, public land order, donation document, or administrative memorandum establishing, authorizing, or expanding a refuge, refuge unit, or refuge subunit (*National Wildlife Refuge System Administration Act of 1966* (16 U.S.C. 668dd–668ee: 80 Stat. 927, as amended).

Restoration. Re-establishment of wetland and/or other aquatic resource characteristics and function(s) at a site where they have ceased to exist, or exist in a substantially degraded state (Federal Guidance for the Establishment, Use and Operation of Mitigation Banks (60 FR 58605).

Part 3. What Are the Restrictions Regarding Compensatory Mitigation on National Wildlife Refuge System Lands?

We will not allow compensatory mitigation for habitat losses authorized through the Section 10/404 program to be implemented on lands and waters within the National Wildlife Refuge System, except under limited and exceptional circumstances. The criteria for considering compensatory mitigation within the National Wildlife Refuge System are as follows:

(a) The proposed water resource development project, including the mitigation plan, is consistent with the Section 404(b)(1) guidelines, has undergone all appropriate sequencing for avoidance and minimization of impacts, and is consistent with the U.S. Fish and Wildlife Service's Mitigation Policy (Manual Chapter 501 FW 2); and

(b) The proposed mitigation plan supports the mission of the National Wildlife Refuge System, is consistent with the purposes for which the refuge was established, and is consistent with an approved Comprehensive Conservation Plan or other approved management plan(s) for the refuge; and

(c) The mitigation would result in significantly increased natural resource benefits when compared to other appropriate, off-site mitigation options as determined by the Ecological Services Field Office supervisor and the Refuge manager; and

(d) The mitigation plan is written to ensure we are under no obligation to allow compensatory mitigation on any National Wildlife Refuge System lands in the future; and

(e) The Regional Director recommends the mitigation plan to the Director for approval.

Part 4. What Are the Restrictions for Mitigation Banks on National Wildlife Refuge System Lands?

We will not allow use of National Wildlife Refuge System lands for mitigation banks to compensate for the effects of activities authorized by the Section 10/404 program. We may accept mitigation banks as additions to the National Wildlife Refuge System under the following conditions:

(a) The mitigation bank is directly related to the purposes for which the refuge was established and is consistent with an approved Comprehensive Conservation Plan or other approved management plan(s) for the refuge, as determined by the Refuge manager;

(b) The mitigation bank is consistent with the mitigation banking agreement as determined by the appropriate Ecological Services Field Office supervisor;

(c) The bank sponsor fully funds the transfer, management, and protection of the mitigation bank/project as outlined in the "Federal Guidance for the Establishment, Use, and Operation of Mitigation Banks, II. E. Long-Term Management, Monitoring, and Remediation" (November 28, 1995; 60 FR 58605);

(d) The mitigation bank is an established, functioning wetland (or other wildlife habitat as appropriate) and the bank sponsor ensures that all success criteria have been met in accordance with the approved mitigation plan; and

(e) The bank sponsor withdraws or forfeits all mitigation credits before we acquire the bank. The Regional Director may grant exceptions to the requirement that all mitigation credits must be withdrawn or forfeited prior to acquisition. However, if we accept a mitigation bank before all credits are withdrawn, the bank sponsor must remain responsible for meeting the criteria in the mitigation banking agreement and must remain accountable for the mitigation credits.

The Regional Director must approve the addition of a mitigation bank to a National Wildlife Refuge. If lands within the authorized refuge acquisition boundary have been fully acquired, inclusion of a mitigation bank must be approved by the Director.

Part 5. What Are the Requirements for Compensatory Mitigation for Direct Effects on National Wildlife Refuge System Lands?

If we allow development activities under a Section 10/404 permit to occur on a National Wildlife Refuge that require compensatory mitigation, the mitigation must occur on the National Wildlife Refuge being directly affected by the activity. However, before we can authorize these activities on National Wildlife Refuge System lands, the Refuge manager must:

(a) Determine the activity is compatible;

(b) Ensure the project sponsor has made every effort to avoid and minimize the effects before they request compensatory mitigation;

(c) Determine the mitigation activities support the mission of the National Wildlife Refuge System and are consistent with the purposes of the refuge;

(d) Issue a special use permit, if appropriate; and

(e) Coordinate with the appropriate Ecological Services Field Office supervisor.

Part 6. How Do We Treat Lands Protected by Other Federal Wetland Programs?

Where habitats are protected or restored under other Federal programs or activities designed to increase the Nation's wetlands, we will not recommend, support, or advocate the use of these lands as compensatory mitigation, including mitigation banks, for habitat losses authorized under Section 10/404, under any circumstances, during the term of the restoration agreement. These other Federal programs and activities include easement areas associated with inventory and debt restructure

properties under the Food Security Act, lands protected or restored for conservation purposes under fee title transfers, lands protected by a habitat management agreement with the Service, or habitats protected by programs authorized by the Consolidated Farm and Rural Development Act, and the Food Security Act of 1985. After the wetland restoration agreement has expired, we will not recommend, support, or advocate the preservation of such restored wetlands as compensatory mitigation for habitat losses authorized under the Section 10/404 program, except in limited and exceptional circumstances.

Part 7. What Is the Scope of the Policy?

This policy applies to all lands and waters within the National Wildlife Refuge System considered for use as compensatory mitigation for activities authorized under Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act. The policy does not apply to existing mitigation projects currently being implemented. However, we will review all mitigation agreements currently in effect, and modify them as necessary, to ensure consistency with this policy.

The policy does not apply to public lands administered by other government agencies nor does it apply to private lands. However, the purpose of the policy is to provide guidance to our personnel when they are evaluating proposals for compensatory mitigation regarding a proposed Section 10/404 permit. These proposed permits could be for development actions occurring on either public or private lands.

This policy does not apply to threatened or endangered species. The requirements for threatened and endangered species are covered in the Endangered Species Act of 1973 and accompanying regulations at 50 CFR Parts 17, 402, and 424. Under Section 7 of the Endangered Species Act, as amended, all Federal agencies shall ensure that activities authorized, funded, or carried out by them are not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. Mitigating adverse impacts of a project would not in itself be viewed as satisfactory agency compliance with Section 7. Furthermore, it is clear to the Service that Congress considered the traditional concept of mitigation to be inappropriate for Federal activities impacting listed species or their critical habitat.

Part 8. What Are the Authorities for This Policy?

We are establishing this policy in accordance with the following authorities:

Fish and Wildlife Act of 1956 (16 U.S.C. 742(a)–754). This Act authorizes the development and distribution of fish and wildlife information to the public, the Congress, and the President; and the development of policies and procedures that are necessary and desirable to carry out the laws relating to fish and wildlife.

Fish and Wildlife Coordination Act (16 U.S.C. 661–667(e)). This Act authorizes the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State agencies responsible for fish and wildlife resources to investigate all proposed Federal undertakings and non-Federal actions needing a Federal permit or license which would impound, divert, deepen, or otherwise control or modify a stream or other body of water and to make mitigation and enhancement recommendations to the involved Federal agency.

Watershed Protection and Flood Prevention Act (16 U.S.C. 1001–1009). This Act allows the Secretary of the Interior to make surveys, investigation, and "* * * prepare a report with recommendations concerning the conservation and development of wildlife resources on small watershed projects".

National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347). This Act and its implementing regulations (40 CFR part 1500–1508) requires that Federal agencies, such as the U.S. Fish and Wildlife Service, be notified of all major Federal actions affecting fish and wildlife resources and their views and recommendations solicited. In addition, the Act provides that the Congress authorize and directs that, to the fullest extent possible, all agencies of the Federal Government identify and develop methods and procedures which will ensure that presently unquantified environmental values may be given appropriate consideration in decision making along with economic and technical considerations.

National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd–668ee: 80 Stat. 927, as amended). This Act states that the mission of the National Wildlife Refuge System is to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans. The Act requires, among other things, the Secretary of the Interior: to maintain the biological integrity, diversity, and environmental health of the National Wildlife Refuge System; to develop comprehensive conservation plans for National Wildlife Refuges; and not to initiate or permit a new use of a refuge or expand, renew, or extend an existing use of a refuge, unless the use has been determined to be compatible.

Part 9. What References Are Cited in This Policy?

Federal Guidance for the Establishment, Use, and Operation of Mitigation Banks, II. E. Long-Term Management, Monitoring, and Remediation (November 28, 1995, 60 FR 58605).

U.S. Fish and Wildlife Service Draft Policy on the National Wildlife Refuge System and Compensatory Mitigation under the Section 10/404 Program; Notice of Draft Policy and request for comments (July 31, 1998, 63 FR 40928–40932).

U.S. Fish and Wildlife Service Mitigation Policy; Notice of Final Policy (January 23, 1981, 46 FR 7644) as corrected.

Dated: March 12, 1999.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 99–23627 Filed 9–9–99; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–094–09–1920–00–4012: GP9–0303]

Temporary Closure of Public Lands; Lane County, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure of public lands in Lane County, Oregon.

SUMMARY: Notice is hereby given that certain public lands in Lane County, Oregon are temporarily closed to all public use, including recreation, parking, camping, shooting, hiking and sightseeing, from September 1, 1999 through October 31, 1999. The closure is made under the authority of 43 CFR 8364.1.

The public lands affected by this temporary closure are specifically identified as follows:

Federal lands located in Section 29, Township 17 South, Range 4 West of the Willamette Meridian, Oregon, more generally described as follows: All federal lands within the City of Eugene Urban Growth Boundary located in Section 29, Township 17 South, Range 4 West of the Willamette Meridian lying east of Greenhill Road, south of Royal Ave., west of Terry Street and a line running south from the end of Terry Street to the Southern Pacific Railroad tracks, and north of the Southern Pacific Railroad tracks.

Containing approximately 200 acres.

The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: Bureau, City of Eugene, and Corps of Engineers employees; state, local and federal law enforcement and fire protection personnel; agents for the Cone wetland mitigation sites; the contractor authorized to construct the Lower Amazon Wetland Restoration Project and its subcontractors. Access by additional parties may be allowed, but must be approved in advance in writing by the Authorized Officer.

Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0–7, which include a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

The public lands temporarily closed to public use under this order will be posted with signs at points of public access.

The purpose of this temporary closure is to provide for public safety, facilitate construction of the Lower Amazon Wetland Restoration Project facilities, and protection of property and equipment during the mobilization, construction and de-mobilization phases of the Lower Amazon Wetland Restoration construction project.

DATES: This closure is effective from September 1, 1999 through October 31, 1999.

ADDRESSES: Copies of the closure order and maps showing the location of the closed lands are available from the Eugene District Office, P.O. Box 10226 (2890 Chad Drive), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Diane Chung, Coast Range Field Office Manager, Eugene District Office, at (541) 683–6600.

Dated: August 31, 1999.

Dan M. Howells,

Acting Field Manager, Coast Range Resource Area.

[FR Doc. 99–23283 Filed 9–9–99; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–01; MTM 13213]

Public Land Order No. 7411; Revocation of Executive Order No. 5327 Dated April 15, 1930; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive order in its entirety as to approximately 278,734 acres withdrawn for oil shale classification purposes. The lands were classified and are no longer needed for the purpose for which they were withdrawn. This action will open the public lands to surface entry and nonmetalliferous mining subject to other segregations of record. The lands located within the National Forest will be open to such forms of disposition as may by law be made of National Forest System lands and nonmetalliferous mining. The lands have been and remain open to metalliferous mining and mineral leasing.

EFFECTIVE DATE: October 12, 1999.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107–6800, 406–255–2949.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Executive Order 5327 dated April 15, 1930, which established the oil shale reserve for classification purposes, is hereby revoked in its entirety. The areas involved aggregate approximately 278,734 acres in Beaverhead County.

2. At 9 a.m., on October 12, 1999, the public lands shall be opened to the operation of the public land laws generally and the National Forest System lands shall be opened to such forms of disposition as may by law be made of National Forest System lands, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m., on October 12, 1999, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on October 12, 1999, the lands shall be opened to location and entry under the United States mining laws for nonmetalliferous minerals, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of the lands that were classified pursuant to the Executive order stated in paragraph 1 under the general mining laws for nonmetalliferous minerals prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: August 20, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–23499 Filed 9–9–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–670–1220]

Recreation Management

AGENCY: Bureau of Land Management, Interior.

ACTION: Establishment of a supplementary rule prohibiting shooting except for the lawful pursuit of game, and prohibiting the use of paintball guns in the In-Ko-Pah mountains.

SUMMARY: This notice affects public lands under the administrative responsibility of the Bureau of Land Management, El Centro Field Office. The area includes all public lands within:

San Bernardino Baseline and Meridian

T.18 S., R.9 E.,
Sec. 4,5, 7, 8, 9.

All public lands in the above listed lands are hereby closed to the use of paintball guns and all shooting, except for the lawful pursuit of game. This prohibition is designed to reduce negative impacts to the natural environment and to minimize public safety concerns. Notices and signs will be posted in the areas restricted and maps detailing the exact locations will be available at the El Centro BLM office. It should be noted that all of the restrictions recommended do not prohibit legitimate hunting activities,

and therefore do not conflict with State Fish and Game Regulations.

EFFECTIVE DATE: This action will be effective upon publication of this notice in the **Federal Register** and will remain in effect until rescinded.

SUPPLEMENTARY INFORMATION: The authority for this rule is provided for in 43 CFR, 8365.1–6, Supplemental Regulations. Violation of this order is punishable by a fine not to exceed $100,000.00 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION CONTACT: Tim Finger, Outdoor Recreation Planner, or Walt Gabler, Law Enforcement Ranger, at the above address or telephone (760) 337–4400. Objections will be reviewed by the State Director, who may sustain, vacate or modify this action. In the absence of any objections, this action will be the final determination of the department of the Interior. Interested parties may submit comments to the Field Manager, El Centro Field Office, 1661 South 4th Street, El Centro, CA 92243.

Dated: August 27, 1999.

Greg Thomsen,

Field Manager.

[FR Doc. 99–23598 Filed 9–9–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; reinstatement, without change, of a previously approved collection for which approval has expired.

SUMMARY: COPS Count Survey.

The Department of Justice, Office of Community Oriented Policing Services, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 3, 1999, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until October 12, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 1220, National Place, 1331 F Street, NW, Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this collection:

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* COPS Count Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: COPS 31/01. Office of Community Oriented Policing Service, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The COPS Count Project surveys agencies who currently have been awarded a Hiring and/or MORE grant from the COPS Office. The information collected provides an accurate up to date account on the status of officers hired/redeployed.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Estimated number of respondents: 10,813. Estimated time for average respondent to respond: .75 (15 min. × 3 times per year = 45 min.).

(6) *An estimate of the total of public burden (in hours) associated with the collection:* Approximately 8,109.75 annual burden hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place, 1331 G Street, NW, Washington, DC 20530.

Dated: September 3, 1999.

Brenda E. Dyer,

Department Deputy Clearance Office, United States Department of Justice.

[FR Doc. 99–23497 Filed 9–9–99; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Pursuant to The Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed consent decree in *United States* v. *Chemspray Inc., et al.,* Civil No. 97–8922 CIV–DIMITROULEAS, was lodged on August 24, 1999, with the United States District Court for the Southern District of Florida ("Chemspray Decree"). The proposed Consent Decree would resolve certain claims under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9607, as amended, brought against defendants Chemspray Incorporated, Glades Formulating Corporation, Juan F. Montalvo, Sr. and John C. Hatton (collectively "Settling Defendants"), to recover response costs incurred by the Environmental Protection Agency in connection with the release of hazardous substances at Chemspray Site in Pahokee, Florida. Under the proposed Consent Decree, the Settling Defendants will pay $47,000 to the Hazardous Substances Superfund to reimburse the United States for Past Response Costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resource Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Chemspray, Inc., et al.,* S.D. Fla., Civil No. 97–8922 CIV–DIMITROULEAS, DOJ Ref. #90–11–2–1345.

The Consent Decree may be examined at the office of the Region 4 Office of the Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, GA 30303; and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting copies please refer to the referenced case and enclose a check in the amount of $5.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–23599 Filed 9–9–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 172–99]

Privacy Act of 1974; Notice of the Removal of a System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Immigration and Naturalization Service (INS), Department of Justice (DOJ) is removing a published Privacy Act system of records entitled "Finance Section Indexes, JUSTICE/INS–020." (JUSTICE/INS–020 was most recently published on May 14, 1997 (62 FR 26557).)

JUSTICE/INS–020 is being removed because the DOJ established a new Department-wide system of records which replaces those which now exist for separate Department components. The new system notice entitled, "Accounting Systems for the Department of Justice (DOJ), DOJ–001" was most recently published on May 28, 1999 (64 FR 29069).)

Therefore, JUSTICE/INS–020, "Finance Section Indexes," system notice is removed from the Department's compilation of Privacy Act systems.

Dated: August 25, 1999.

Stephen R. Colgate,

Assistant Attorney General for Administration.

[FR Doc. 99–23600 Filed 9–9–99; 8:45 am]

BILLING CODE 4410–CJ–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 173–99]

Privacy Act of 1974; Notice of New System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a) ("Act"), notice is hereby given that the Department of Justice proposes to establish a new system of records to be maintained by the Executive Office for Immigration Review (EOIR).

The record keeping system, designated as Practitioner Complaint/Disciplinary Files, is a new system of records for which no public notice consistent with the provisions of 5 U.S.C. 552a(e)(4) and (11) has been published to date.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment on the new routine uses of the system of records; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, we invite the public, OMB, and the Congress to submit comments within 30 days from the publication date of this notice to Mary E. Cahill, Management and Planning Staff, Justice Management Division, U.S. Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and Congress.

Dated: August 25, 1999.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/EOIR–003

SYSTEM NAME:

Practitioner Complaint/Disciplinary Files.

SYSTEM LOCATION:

United States Department of Justice (DOJ), Executive Office for Immigration Review (EOIR), 5107 Leesburg Pike, Suite 2400, Falls Church, VA 22041; and at EOIR field offices as detailed in Justice/EOIR–999, most recently published April 13, 1999 at 64 FR 18051.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Attorneys and authorized representatives, as defined under 8 CFR 292.1, who have been subject to disciplinary complaints filed with, or received by, EOIR, including complaints from any source whatsoever; complaints who file complaints against such attorneys and authorized representatives.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the following categories of records: Complaints filed by any person or organization; records of state disciplinary authority proceedings; criminal conviction records; investigatory records, including preliminary inquiry reports; communications with individuals and/or outside agencies concerning disciplinary investigations and proceedings; interagency communications; copies of Notices of Intent to Discipline (NID) filed by EOIR and/or the Immigration and Naturalization Service (INS), together with supporting documentation; disciplinary proceeding transcripts; and settlement agreements and other dispositions, including administrative disciplinary decisions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 292 of the Immigration and Nationality Act, as amended at 8 U.S.C. 1362 and 8 CFR part 3.

PURPOSE(S):

Information in the system is used by the office of the General Counsel, EOIR, in conducting disciplinary investigations and instituting disciplinary proceedings against immigration practitioners. The records are used in, and provide documentation of, among other things, disciplinary investigations and formal proceedings instituted by EOIR. The information may be further used to generate statistical reports and various administrative records, including docket printouts.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

EOIR may disclose relevant information as follows:

(1) To Federal or state agencies as required by law;

(2) In any proceeding before an adjudicative body before which DOJ, or any DOJ component or subdivision thereof, is authorized to appear and when any of the following is a party to litigation or has an interest in litigation and such records are determined by DOJ, or any component or subdivision thereof, to be arguably relevant to the litigation: DOJ or any DOJ components thereof; any DOJ employee in his/her official capacity; any DOJ employee in his/her individual capacity where DOJ has agreed to represent the employee; or the United States where DOJ, or any DOJ component thereof, determines that

litigation is likely to affect it or any of its subdivisions;

(3) To an actual or potential party, including an immigration practitioner, or to his or her attorney of record, for the purpose of negotiation or discussion on such matters as settlement of a case or matter, conducting informal discovery proceedings involving records in this system, or to otherwise ensure fair representation;

(4) To complainants who file disciplinary complaints, or to their counsel of record;

(5) To Federal, state, and local authorities, including, but not limited to, state bar grievance committees and other attorney discipline authorities for possible disbarment or disciplinary proceedings;

(6) In any disciplinary complaint in which there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, information, including investigatory information, may be disseminated to the appropriate agency (including any Federal, state, local, foreign, or tribal authority) charged with the responsibility of investigating or prosecuting such violation or with enforcing or implementing such law;

(7) To Members of Congress or their staff acting upon the Member's behalf where the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record;

(8) To any Federal agency or to any individual or organization for the purpose of performing audit or oversight operations of DOJ and to meet related reporting requirements;

(9) To the new media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy; and

(10) To the National Archives and Records Administration (NARA) in records management inspections that may be conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in file folders which are stored in filing cabinets. A subset of records are maintained on fixed magnetic disks or removable diskettes which are stored in filing cabinets. All records are stored in secured EOIR office space.

RETRIEVAL:

Records are retrieved by name and/or docket number of the individual who is subject to the disciplinary proceeding.

SAFEGUARDS:

Information maintained in the system is safeguarded in accordance with DOJ rules and procedures. Record files are maintained in file cabinets accessible only to EOIR employees. Automated information is stored on either fixed disks or removable diskette packs which are stored in filing cabinets or computers which may be accessed only through the use of passwords and/or name identifications issued to authorized EOIR employees. All manual and automated mediums are located in EOIR office space accessible only to EOIR employees and locked during off-duty hours.

RETENTION AND DISPOSAL:

Record files are maintained for six months after final disposition of the case, then forwarded to regional Federal Records Centers. Automated records are maintained at EOIR headquarters indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Executive Office for Immigration Review (EOIR), 5107 Leesburg Pike, Suite 2400, Falls Church, VA 22041.

NOTIFICATION PROCEDURES:

Same as Records Access Procedures.

RECORDS ACCESS PROCEDURES:

Portions of this system may be exempt from disclosure and contest pursuant to 5 U.S.C. 552a(k)(1) and (k)(2). Any individual desiring to contest or amend information not subject to exemption must direct his/her request to the system manager noted above. In all cases, requests for access to a record shall be made in writing. Written requests may be submitted by mail or in person. Clearly mark the envelope and letter "Privacy Access Request" and provide the full name and notarized signature of the individual who is the subject of the record and any other identifying number or information that may assist in locating the record in accordance with 28 CFR 16.41(d), and a return address.

CONTESTING RECORDS PROCEDURES:

Direct all requests to contest or amend information maintained in the system to the system manager listed above in the manner described above in Records Access Procedures. State clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORDS SOURCE CATEGORIES:

Law enforcement agencies, Federal and state courts, state bar licensing authorities, state bar grievance and/or disciplinary agencies, immigration practitioners responses during disciplinary proceedings, and inquiries and/or complaints from witnesses or members of the general public, including supporting documentation.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has proposed to exempt certain records of this system from the access provisions of the Privacy Act (5 U.S.C. 552a(d)), pursuant to 5 U.S.C. 552a(k)(1) and (k)(2). Rules have been proposed in accordance with the requirements of 5 U.S.C. 553 (b), (c), and (e), and have been published as of this date in the **Federal Register**.

[FR Doc. 99–23601 Filed 9–9–99; 8:45 am]

BILLING CODE 4410–CJ–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

September 2, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ({202} 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Title: Preparation and Maintenance of Accurate and Up-to-date Certified Mine Maps for Surface and Underground Coal Mines; Submittal of Underground Mine Closure Maps; and Notification of MSHA Prior to Opening New Mines or the Reopening of Inactive or Abandoned Mines.

OMB Number: 1219–0073.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response (hours)	Burden hours
75.1200, 75.1200–1, 75.1201, 75.1202, 75.1202–1, 75.1203, 75.1204, & 75.1204–1.	1,064	Biannual	750	11.28	17,024
75.1204 & 75.1204–1	1,500	On occasion	724	2	1,448
75.373 & 75.1721	1,500	On occasion	210	6	1,260
77,1200, 77.1201 & 77.1202	1,699	Quarterly	424	5	8,480
Totals	3,154		2,108		28,212

Total annual costs (operating/maintaining systems or purchasing services): $24,006,575.

Description: Requires mine operators to maintain up-to-date mine maps of the mine property drawn to scale, and certified by a registered engineer or surveyor. In addition, mine operators must notify MSHA in writing before an abandoned or inactive mine in reopened.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–23546 Filed 9–9–99; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

September 2, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ({202} 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ({202} 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: Employment and Training (ETA) Disaster Unemployment Assistance (DUA) Handbook and Program Operation Forms, including ETA 90–2, Disaster Payment Activities UNDER the "Stafford Disaster Relief Act".

OMB Number: 1205–0051.

Frequency: On occasion; Monthly.

Form #	Affected public	Respondents	Frequency	Average time per response (minutes)	Total manhours
ETA 90–2	Individuals or Households	50	6 Reports	9½	50
Initial Application	do.	11,000	Once	9½	1,833
Supplemental Form	do.	3,800	Once	9½–15	633
Weekly Form	do.	11,000	6 times	50	5,500
Notice of Overpayment	do.	235	Once	15	59

Total Burden Hours: 8,075.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: Unemployment compensation claims, final management and data on DUA activity are needed for

timely program evaluation necessary for competent administration of Sections 410 and 423 of the Act. Workload items are also used with fiscal reports to estimate the cost of administrating the Act.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–23547 Filed 9–9–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,934 and NAFTA–02969]

The Torrington Company Elberton, Georgia; Notice of Negative Determination Regarding Application for Reconsideration

By application dated July 6, 1999, the company requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA) and NAFTA-Transitional Adjustment Assistance (NAFTA–TAA), applicable to workers and former workers of the subject firm. The denial notices applicable to workers of the Torrington Company located in Elberton, Georgia, were signed on May 13, 1999, and published in the **Federal Register** on June 3, 1999 (64 FR 29888) and (64 FR 29889), respectively.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The TAA petition, filed on behalf of workers of The Torrington Company, Elberton, Georgia, producing automotive camshafts and shaft and yoke assemblies was denied because the "contributed importantly" group eligiblity requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. None of the Torrington Company customers reported increased import purchases or articles while decreasing purchases from Torrington's Elberton plant.

The NAFTA–TAA petition for the same worker group was denied because criteria (3) and (4) of the group eligibility requirements in paragraph (a)(1) of Section 250 of the Trade Act, as amended, were not met. There were no company imports of automotive camshafts or shaft and yoke assemblies from Mexico or Canada, nor was there a shift in production from the workers' firm to Mexico or Canada. A survey of the major declining customers of the Torrington Company showed that none of the respondents increased import purchases of automotive camshafts or shaft and yoke assemblies from Mexico or Canada.

In support of their application for reconsideration, the company asserts that a domestic manufacturer to whom Torrington lost a contract, has had to rely on imports of some of the parts and articles required in order to meet the specifications of the contract. The Torrington Company concludes that absent the new suppliers' imports, it would still benefit from the contract, and would not have had to layoff employees of the Elberton plant.

Imports of components cannot be considered as a basis for worker group certification. The Department is required to examine imports of the articles produced and sold by the workers' firm, which in this case are camshafts and shaft and yoke assemblies.

Conclusion

After a review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, DC, this 30th day of August 1999.

Edward a. Tomchick,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–23556 Filed 9–9–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,535]

Cooper Tools, Madison, Maine; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on July 12, 1999, in response to a petition filed on the same date on behalf of workers at Cooper Tools, Madison, Maine.

The company official submitting the petition ha requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 27th day of August, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–23557 Filed 9–9–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,975]

Goodyear Tire and Rubber Company Logan, Ohio; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Goodyear Tire and Rubber Company, Logan, Ohio. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–35,976; Goodyear Tire and Rubber Company Loan, Ohio (August 24, 1999)

Signed at Washington, DC this 25th day of August 24, 1999.

Grant D. Beale,

Progam Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–23553 Filed 9–9–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitions or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than September 20, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 20, 1999.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 9th day of August, 1999.

Edward A. Tomchick,

Program Manager, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 8/9/1999]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
36,648	Hoke, Inc. (Wrks)	Cresskill, NJ	7/20/1999	Fluid Flow Valves and Fittings.
36,649	Cabletron Systems, Inc (Wrks)	Ironton, OH	7/29/1999	PC Boards.
36,650	Tektronix, Inc. (Comp)	Wilsonville, OR	5/26/1999	Printers—Computers.
36,651	Chief Supply Corp (Wrks)	Eugene, OR	7/7/1999	Fire and Police Dept Equip. Bags.
36,652	Stewart and Stevenson (Wrks)	Williston, ND	7/09/1999	Gas Compressor Engines..
36,653	URI Industries (Wrks)	Kingsville, TX	7/21/1999	Uranium Oxide (Yellow Cake).
36,654	Milacron Resin Abrasives (USWA)	Carlisle, PA	7/27/1999	Grinding Wheels.
36,655	Akre, Inc. (Comp)	Oldtown, ID	4/15/1999	Logs.
36,656	Scurlock Permian LLC (Wrks)	Kilgore, TX	7/27/1999	Transport and Market Crude Oil.
36,657	Modine Aftermarket (Wrks)	Merced, CA	7/19/1999	Radiators and Radiator Cores.
36,658	Woodward Governor Company (Wrks)	Ft. Collins, Co	7/23/1999	Fuel Controls for Engines.
36,659	Jonner/Sayre Knit (Wrks)	Sayre, PA	7/26/1999	Knit Shirts.
36,660	Aimco Porducts, Inc. (Wrks)	Amherst, NY	7/26/1999	Automotive Brakes.
36,661	American and Efird (Wrks)	Meridian, MS	7/23/1999	Sewing Thread.
36,662	Diversified Trucking Corp (Comp)	Olney, IL	7/19/1999	Trucking Service.
36,663	Excelsior Manufacturing (Wrks)	Chambersburg, PA	7/29/1999	Men's Dress and Casual Pants.
36,664	Harvard industries (Comp)	Ripley, TN	7/28/1999	Automotive Die Castings.
36,665	Supreme Tooling, Inc (Comp)	Fremont, IN	7/23/1999	Die Models, Master Molds.
36,666	Lambda Electronics, Inc. (Comp)	McAllen, TX	7/28/1999	Metal Housing for Power Supplies.
36,667	Heinz Pet Foods (Wrks)	El Paso, TX	7/27/1999	Dog Food.
36,668	Burlington Denim Apparel (Wrks)	Stonewall, MS	7/18/1999	Denim Fabrics.
36,669	Apparel Sales and Print (Comp)	Prattville, AL	7/28/1999	Shirts.
36,670	General Electric Lighting (Comp)	Mattoon, IL	8/2/1999	Speciality Lamps.
36,671	Pride Refining, Inc (Wrks)	Abilene, TX	7/29/1999	Refined Diesel—Gasoline.
36,672	Range Production Co (Comp)	Fairview, OK	7/22/1999	Crude Oil.
36,673	Fina Oil and Chemical (Wrks)	Plano, TX	7/27/1999	Refined Petroleum.
36,674	Bendorf Services & Supply (Comp)	Breckenridge, TX	7/26/1999	Oil and Gas.
36,675	Oilfield Safety, Inc (Comp)	Williston, ND	7/29/1999	Oil Drilling.
36,676	Koch Industries, Inc (Wrks)	Wichita, KS	7/30/1999	Crude Oil.
36,677	Clark Oil Co (Comp)	Ada, OK	7/7/1999	Fuel and Oil.
36,678	Samedan Oil Corp (Wrks)	Denver, Co	7/27/1999	Oil and Gas Exploration.
36,679	ARCO Permian (Wrks)	Longview, TX	7/22/1999	Natural Gas.

[FR Doc. 99–23558 Filed 9–9–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,224]

Starke Uniform Manufacturing Co., Starke, Florida, Including Leased Workers of Accord Human Resources of Florida, Inc., Tampa, Florida; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 30, 1999, applicable to workers of Starke Uniform Manufacturing Co. located in Starke, Florida. The notice will be published soon in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the State shows that some workers of Starke Uniform Manufacturing Co. were leased from Accord Human Resources of Florida, Inc. to produce work uniforms at the Starke, Florida facility. Based on these findings, the Department is amending the certification to include

workers of Accord Human Resources of Florida, Inc. leased to Starke Uniform Manufacturing Co., Starke, Florida.

The intent of the Department's certification is to include all workers of Starke Uniform Manufacturing Co. adversely affected by imports.

The amended notice applicable to TA–W–36,224 is hereby issued as follows:

All workers of Starke Uniform Manufacturing Co., Starke, Florida and leased workers of Accord Human Resources of Florida, Inc., Tampa, Florida engaged in employment related to the production of work uniforms for Starke Uniform Manufacturing Co., Starke Florida who became totally or partially separated from employment on or after April 21, 1998 through July 30, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 30th day of August, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–23552 Filed 9–9–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment of Training Administration

[TA–W–36,062 and TA–W–36,062A]

Stonecutter Textiles, Inc., Spindale, North Carolina, New York, New York; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on June 17, 1999, applicable to workers of Stonecutter Textiles, Inc., located in Spindale, North Carolina. The notice was published in the **Federal Register** on August 11, 1999 (64 FR 43723).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred at the New York, New York location of Stonecutter Textiles, Inc. when it closed in July, 1999. The New York, New York location served as a showroom and provided sales, design and administrative support function services for Stonecutter's production facility in Spindale, North Carolina. The workers were engaged in employment related to the production of greige goods.

The intent of the department's certification is to include all workers of Stonecutter Textiles, Inc. who were adversely affected by increased imports. Accordingly, the Department is amending the certification to cover the workers of Stonecutter Textiles, New York, New York.

The amended notice applicable to TA–W–36,062 is hereby issued as follows:

All workers of Stonecutter Textiles, Inc., Spindale, North Carolina (TA–W–36,062) and New York, New York (TA–W–36,062A) who became totally or partially separated from employment on or after March 29, 1998 through June 17, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington DC this 25th day of August, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–23551 Filed 9–9–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,957]

The Stroh Brewery Company, Corporate Headquarters Detroit, MI, Including Field Sales Employees in the Following States: Alabama, Arkansas, Arizona, California, Colorado, Connecticut, Florida, Georgia, Iowa, Illinois, Indiana, Kansas, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Missouri, Mississippi, Montana, North Carolina, Nebraska, New Jersey, New York, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, Washington, and Wisconsin; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 18, 1999, applicable to workers of The Stroh Brewery Company, Corporate Headquarters, Detroit, Michigan. The notice was published in the **Federal Register** on June 30, 1999 (64 FR 35184).

At the request of the company, the Department reviewed the certification for workers of the subject firm. Information received from the company indicates that field sales workers, in numerous states, were separated from employment when the subject firm closed its breweries. These workers are considered part of the Corporate Headquarters and provide sales and marketing services for the production of beer at The Stroh Brewery Company.

The intent of the Department's certification is to include all workers of The Stroh Brewery Company adversely affected by increased imports of beer.

The amended notice applicable to TA–W–35,957 is hereby issued as follows:

All workers of The Stroh Brewery Company, Corporate Headquarters, Detroit, Michigan, including field sales workers in the States cited below, who became totally or partially separated from employment on or after March 15, 1998 through May 18, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974: Alabama, Arkansas, Arizona, California, Colorado, Connecticut, Florida, Georgia, Iowa, Illinois, Indiana, Kansas, Louisiana, Massachusetts, Maryland, Michigan, Minnesota, Missouri, Mississippi, Montana, North Carolina, Nebraska, New Jersey, New York, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, Washington, and Wisconsin.

Signed at Washington, DC this 25th day of August, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–23550 Filed 9–9–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,306]

Tennford Weaving Wartburg, Tennessee; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 9018(C) an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at the Tennford Weaving, Wartburg, Tennessee. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–35,306; Tennford Weaving Wartburg, Tennessee (August 20, 1999)

Signed at Washington, DC this 25th day of August, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

[FR Doc. 99–23554 Filed 9–9–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub.L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250 (b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Office of Trade Adjustment Assistance (OTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub.L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of OTAA at the U.S. Department of Labor (DOL) in Washington, D.C. provided such request if filed in writing with the Director of OTAA not later than September 20, 1999.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of OTAA at the address shown below not later than September 20, 1999.

Petitions filed with the Governors are available for inspection at the Office of the Director, OTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, N.W. Washington, D.C. 20210.

Signed at Washington, D.C. this 25th day of August, 1999.

Grant D. Beale,

Program Manager, Office of Trade Adjustment Assistance.

APPENDIX

Subject firm	Location	Date Received at Governor's Office	Petition No.	Articles produced
Phelps Dodge Magnet Wire (UAW)	Hopkinsville, KY	07/08/1999	NAFTA–3,292	Magnet wire.
Continental Natural Gas (Wkrs)	Spearman, TX	07/09/1999	NAFTA–3,293	Natural gas.
EFTC Corporation (Wkrs)	Greeley, CO	07/08/1999	NAFTA–3,294	Medical, industrial & avionic products.
Dixon Ticonderoga (Co.)	Deer Lake, PA	07/07/1999	NAFTA–3,295	Writing instruments.
Intermedics (Co.)	Angleton, TX	07/06/1999	NAFTA–3,296	Lead.
IBM (Wkrs)	San Jose, CA	06/24/1999	NAFTA–3,297	Hard disk drives & tape products.
Walls Industries (Co.)	Merkel, TX	07/08/1999	NAFTA–3,298	Insulated clothing.
Walls Industries (Co.)	Big Spring, TX	07/08/1999	NAFTA–3,298	Insulated clothing.
Texas Jeans (Wkrs)	El Paso, TX	07/12/1999	NAFTA–3,21999	Denim fabric.
AZT Sewing (Wkrs)	Commerce, CA	07/09/1999	NAFTA–3,300	Denim jeans.
Camco (Co.)	Midland, TX	07/13/1999	NAFTA–3,301	Electrical pumps.
Bachman Company (The) (BCTGM)	Phoenixville, PA	07/14/1999	NAFTA–3,302	Potato chips.
Motorola (Wkrs)	Boynton Beach, FL	06/02/1999	NAFTA–3,303	Pagers.
Gerber Childrenswear (Co.)	Lumberton, NC	07/08/1999	NAFTA–3,304	Children's underwear.
Stuart Entertainment (Co.)	McAllen, TX	07/14/1999	NAFTA–3,305	Bingo cards and bingo ink markers.
Pacific Softwoods—WTD Industries (Wkrs).	Philomath, OR	07/19/1999	NAFTA–3,306	Wood products.
Chief Supply—American Resources (Wkrs).	Eugene, OR	07/19/1999	NAFTA–3,307	Sewn products.
HG Bass (Co.)	S. Portland, ME	07/19/1999	NAFTA–3,308	Footwear.
Newcom (Wkrs)	Westlake Village, CA	07/01/1999	NAFTA–3,309	CD Rom's, modems.
Shaer Shoe (Wkrs)	Farmington, ME	07/19/1999	NAFTA–3,310	Women's shoes.
Locke Insulators (UE)	Baltimore, MD	06/18/1999	NAFTA–3,311	Porcelain high voltage insulators.
Western Gas Resources (Wkrs)	Midland, TX	07/20/1999	NAFTA–3,312	Natural gas.
Bunger Steel (Wkrs)	Phoenix, AZ	07/19/1999	NAFTA–3,313	Machinery.
Southwestern Cutting (Wkrs)	El Paso, TX	07/13/1999	NAFTA–3,314	Garment, jeans.
Justin Boot (Co.)	Fort Worth, TX	07/21/1999	NAFTA–3,315	Western boots.
Contract Apparel (Co.)	El Paso, TX	07/19/1999	NAFTA–3,316	Men's & women's shirts & blouses.
Weathervane Window (Wkrs)	Brighton, MI	07/22/1999	NAFTA–3,317	Glass.
Pabst Engineering (Wkrs)	Onalaska, WI	07/22/1999	NAFTA–3,318	Models and tooling.
Justin Boot (Wkrs)	Cassville, MO	07/26/1999	NAFTA–3,319	Western boots.
Justin Boot (Wkrs)	Carthage, MO	07/26/1999	NAFTA–3,319	Western boots.
Paramount Headware (Wkrs)	Bourbon, MO	07/26/1999	NAFTA–3,320	Headwear, caps, hats.
American National Can (IBT)	Longview, TX	07/26/1999	NAFTA–3,321	Aluminum cans.
Jet Composites (GMP)	Bluffton, TN	07/26/1999	NAFTA–3,322	Hoodliners, dash insulators, heat shield.
Supreme Tooling (Co.)	Fremont, IN	07/23/1999	NAFTA–3,323	Blow molds and fixturing.
Modine Aftermarket Holdings (Wkrs).	Merced, CA	07/26/1999	NAFTA–3,324	Heat transfer equipment.
Levi Strauss (Co.)	Wichita Falls, TX	07/27/1999	NAFTA–3,325	Denim and dockers.
Levi Strauss (Co.)	Harlingen, TX	07/27/1999	NAFTA–3,325	Denim and dockers.

APPENDIX—Continued

Subject firm	Location	Date Received at Governor's Office	Petition No.	Articles produced
Levi Strauss (Co.)	El Paso, TX	07/27/1999	NAFTA–3,325	Denim and dockers.
Levi Strauss (Co.)	McAllen, TX	07/27/1999	NAFTA–3,325	Denim and dockers.
Levi Strauss (Co.)	Johnson City, TN	07/27/1999	NAFTA–3,325	Denim and dockers.
Levi Strauss (Co.)	Mountain City, TN	07/27/1999	NAFTA–3,325	Denim and dockers.
Levi Strauss (Co.)	Warsaw, VA	07/27/1999	NAFTA–3,325	Denim and dockers.
Levi Strauss (Co.)	Valdosta, GA	07/27/1999	NAFTA–3,325	Denim and dockers.
Levi Strauss (Co.)	El Paso, TX	07/27/1999	NAFTA–3,325	Denim and dockers.
Levi Strauss (Co.)	Brownsville, TX	07/27/1999	NAFTA–3,325	Denim and dockers.
Levi Strauss (Co.)	San Benito, TX	07/27/1999	NAFTA–3,325	Denim and dockers.
Levi Strauss (Co.)	San Antonio, TX	07/27/1999	NAFTA–3,325	Denim and dockers.
Levi Strauss (Co.)	San Antonio, TX	07/27/1999	NAFTA–3,325	Denim and dockers.
Levi Strauss (Co.)	San Francisco, CA	07/27/1999	NAFTA–3,325	Denim and dockers.
Levi Strauss (Co.)	Blue Ridge, GA	07/27/1999	NAFTA–3,325	Denim and dockers.
Levi Strauss (Co.)	Powell, TN	07/27/1999	NAFTA–3,325	Denim and dockers.
Alcatel Data Networks (Wkrs)	Mt. Laurel, NJ	07/21/1999	NAFTA–3,326	Printed circuit boards.
AMI DDC (IBEW)	Cedar Knolls, NJ	07/21/1999	NAFTA–3,327	Rivets.
Walker McDonald (Wkrs)	Greenville, TX	07/27/1999	NAFTA–3,328	Tri-cone toller bits.
Total Petroleum (Wkrs)	Alma, MI	06/24/1999	NAFTA–3,329	Crude oil, refined crude oil.
AMP—A TYCO International (Co.)	Lowell, NC	07/28/1999	NAFTA–3,330	Electronic connectors.
Invensys Appliance Controls (USWA).	New Stanton, PA	07/28/1999	NAFTA–3,331	Controls for cooking and refrigeration.
Lincoln Industrial (IAMAW)	St. Louis, MO	07/26/1999	NAFTA–3,332	Screw machine.
Biochem Immunosystems (Wkrs)	Allentown, PA	07/28/1999	NAFTA–3,333	Hematology instruments.
Phelps Dodge Refinery (Co.)	El Paso, TX	07/28/1999	NAFTA–3,334	Copper cathode.
Ransom Industries (Wkrs)	Tyler, TX	07/29/1999	NAFTA–3,335	Cast iron pipe and fittings.
Harvard—Hayes Albion (Co.)	Ripley, TN	08/02/1999	NAFTA–3,336	Aluminum diecasting.
Vison Ease—BMC (Wkrs)	St. Cloud, MN	07/30/1999	NAFTA–3,337	Plastic lenses and glass lenses.
Huck Jacobson (Co.)	Kenilworth, NJ	07/21/1999	NAFTA–3,338	Steel conduit locknuts.
Milacron Resin Abrasives (USWA)	Carlisle, PA	07/30/1999	NAFTA–3,339	Grinding wheels.
Lambda Electronics (Co.)	McAllen, TX	07/29/1999	NAFTA–3,340	Metal housing for power supplies.
Western States Minerals (Wrks)	Reno, NV	08/05/1999	NAFTA–3,341	Metals.
Heinz Pet Products (Wkrs)	El Paso, TX	07/27/1999	NAFTA–3,342	Dog food.
Talismon Sugar Growers (Wkrs)	Belle Glade, FL	08/09/1999	NAFTA–3,343	Sugar products.
Flynt Fabrics (Wkrs)	Wadesboro, NC	08/03/1999	NAFTA–3,344	Knit fabrics.
Pacific Scientific (Wkrs)	Yorba Linda, CA	08/06/1999	NAFTA–3,345	Safety equipment for aircraft.
Fastrac Railroad Construction (Wrks).	Nebraska City, KS	08/06/1999	NAFTA–3,346	Copper.
Rexell (Wkrs)	Gaylord, MI	08/02/1999	NAFTA–3,347	Molds.
AMP (Wrks)	Clearwater, FL	04/15/1999	NAFTA–3,348	Plastic injection molds & dies.
New Tee's (Wkrs)	Greenleyville, SC	08/03/1999	NAFTA–3,349	T-shirts.
Cross Country Apparel (Wkrs)	Savannah, TN	08/06/1999	NAFTA–3,350	Clothing.
Colorado Contract Cut & Sew (Co.)	Denver, CO	08/09/1999	NAFTA–3,351	Baby accessories, apparel.
Henry Silverman Jewelers (Wkrs)	El Paso, TX	08/10/1999	NAFTA–3,352	Fine Jewelry, rings.
Sar Lee Sock (Co.)	High Point, NC	08/11/1999	NAFTA–3,353	Socks.
Placer Come Bald Mountain Mine (Wkrs).	Elko, NV	08/09/1999	NAFTA–3,354	Refining of gold ore.
Citgo Petroleum (Wkrs)	Lake Charles, LA	08/03/1999	NAFTA–3,355	Crude oil.
Micheal Foods—Monark Egg (IBT)	Kansas City, MO	08/13/1999	NAFTA–3,356	Egg products.
AMP (Wkrs)	Harrisburg, PA	08/11/1999	NAFTA–3,357	IMM card ege & amplimite product.
Aimco (IAM)	Amherst, NY	08/12/1999	NAFTA–3,358	Brake products.
Opal Lorraine Wardy Enterprises (Wkrs).	El Paso, TX	08/11/1999	NAFTA–3,359	Jacket, shirts, pants.
Logos Neckwear (Co.)	Pavisbord, NJ	08/13/1999	NAFTA–3,360	Neckwear.
H.L. Mill and Son (Wkrs)	Lola, KS	08/13/1999	NAFTA–3,361	Ladies dresses.

[FR Doc. 99–23555 Filed 9–9–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General way determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York
- NY990003 (Mar. 12, 1999)
- NY990013 (Mar. 12, 1999)
- NY990045 (Mar. 12, 1999)

Volume II

Maryland
- MD990048 (Mar. 12, 1999)

Pennsylvania
- PA990001 (Mar. 12, 1999)
- PA990002 (Mar. 12, 1999)
- PA990004 (Mar. 12, 1999)
- PA990018 (Mar. 12, 1999)
- PA990026 (Mar. 12, 1999)
- PA990042 (Mar. 12, 1999)

Volume III

Florida
- FL990014 (Mar. 12, 1999)
- FL990015 (Mar. 12, 1999)
- FL990017 (Mar. 12, 1999)
- FL990049 (Mar. 12, 1999)
- FL990053 (Mar. 12, 1999)
- FL990055 (Mar. 12, 1999)

Volume IV

Illinois
- IL990018 (Mar. 12, 1999)
- IL990025 (Mar. 12, 1999)

Indiana
- IN990024 (Mar. 12, 1999)

Volume V

Iowa
- IA990002 (Mar. 12, 1999)
- IA990003 (Mar. 12, 1999)
- IA990004 (Mar. 12, 1999)
- IA990005 (Mar. 12, 1999)
- IA990010 (Mar. 12, 1999)
- IA990016 (Mar. 12, 1999)
- IA990024 (Mar. 12, 1999)
- IA990025 (Mar. 12, 1999)
- IA990029 (Mar. 12, 1999)
- IA990031 (Mar. 12, 1999)
- IA990032 (Mar. 12, 1999)
- IA990034 (Mar. 12, 1999)
- IA990038 (Mar. 12, 1999)
- IA990047 (Mar. 12, 1999)
- IA990071 (Mar. 12, 1999)
- IA990078 (Mar. 12, 1999)

Kansas
- KS990006 (Mar. 12, 1999)
- KS990007 (Mar. 12, 1999)
- KS990010 (Mar. 12, 1999)
- KS990011 (Mar. 12, 1999)
- KS990013 (Mar. 12, 1999)
- KS990019 (Mar. 12, 1999)
- KS990021 (Mar. 12, 1999)
- KS990022 (Mar. 12, 1999)
- KS990023 (Mar. 12, 1999)
- KS990026 (Mar. 12, 1999)
- KS990029 (Mar. 12, 1999)
- KS990035 (Mar. 12, 1999)

Texas
- TX990003 (Mar. 12, 1999)
- TX990005 (Mar. 12, 1999)
- TX990007 (Mar. 12, 1999)
- TX990010 (Mar. 12, 1999)
- TX990018 (Mar. 12, 1999)
- TX990033 (Mar. 12, 1999)
- TX990034 (Mar. 12, 1999)
- TX990037 (Mar. 12, 1999)
- TX990081 (Mar. 12, 1999)

Volume VI

None

Volume VII

- AZ990001 (Mar. 12, 1999)
- AZ990002 (Mar. 12, 1999)
- AZ990006 (Mar. 12, 1999)
- AZ990007 (Mar. 12, 1999)

California
- CA990009 (Mar. 12, 1999)
- CA990029 (Mar. 12, 1999)
- CA990030 (Mar. 12, 1999)
- CA990033 (Mar. 12, 1999)
- CA990037 (Mar. 12, 1999)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage

Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 3rd day of September 1999.

Margaret J. Washington,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–23426 Filed 9–9–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. PennAmerican Coal L.P.

[Docket No. M–1999–062–C]

PennAmerican Coal L.P., R.D. #1, Box 119A, Avonmore, Pennsylvania 15618 has filed a petition to modify the application of 30 CFR 75.1100–2(e)(2) (quantity and location of firefighting equipment) to its Burrell Mine (I.D. No. 36–08525) located in Indiana County, Pennsylvania. The petitioner requests a variance from the mandatory standard to permit an alternate compliance method for fire fighting equipment at temporary electrical installations. The petitioner proposes to use two fire extinguishers or one fire extinguisher of twice the required capacity at all temporary electrical installations instead of one portable fire extinguisher and 240 pounds of rock dust. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

2. Bowie Resources, Ltd.

[Docket No. M–1999–063–C]

Bowie Resources, Ltd., 1855 Old Hwy. 133, P.O. Box 483, Paonia, Colorado 81428 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Bowie Mine No. 2 (I.D. No. 05–04591) located in Delta County, Colorado. The petitioner proposes to use a nominal voltage of longwall power circuits not to exceed 2,400 volts to supply power to the permissible high-voltage longwall mining equipment inby the last open crosscut. The petitioner has listed in this petition specific terms and conditions for using its proposed alternative method. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

3. Bowie Resources, Inc.

[Docket No. M–1999–064–C]

Bowie Resources, Inc., 1855 Old Hwy. 133, P.O. Box 483 has filed a petition to modify the application of 30 CFR 75.804(a) (underground high-voltage cables) to its Bowie Mine No. 2 (I.D. No. 05–04591) located in Delta County, Colorado. The petitioner requests a variance from the mandatory standard to use center ground check high-voltage longwall cables as an option for high-voltage longwall cables on longwall diesel equipment. The petitioner states that: (i) these cables will be in compliance with the existing standard or will be CABLEC/BICC Anaconda brand 5KV, 3/C type SHD+GC; Americable Tiger Brand, 3/C, 5KV, type SHD__CGC; Pirelli 5KV, 3/C, type SHD–CENTER–GC; or similar 5000-volt cable with a center ground check conductor, and manufactured to the ICEA standard S–75–381 for Type SHD, three-conductor cables, MSHA accepted as flame-resistant, and the ground check conductor will not be smaller than a No. 16 AWG stranded conductor; (ii) the cable construction will be symmetrical 3/C, 3/G and 1/GC; (iii) the electrical personnel who perform maintenance on the longwall will receive training in the installation, splicing, and repair of the cables before the alternative method is implemented; and (iv) proposed revisions to its Part 48 training plan will be submitted to the District Manager 60 days after the Proposed Decision and Order becomes final. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

4. Canterbury Coal Company

[Docket No. M–1999–065–C]

Canterbury Coal Company, R.D. #1, Box 119, Avonmore, Pennsylvania 15618 has filed a petition to modify the application of 30 CFR 75.1100–2(e)(2) (quantity and location of firefighting equipment) to its DiAnne Mine (I.D. No. 36–05708) located in Armstrong County, Pennsylvania. The petitioner requests a variance from the mandatory standard to permit an alternate compliance method for fire fighting equipment at temporary electrical installations. The petitioner proposes to use two fire extinguishers or one fire extinguisher of twice the required capacity at all temporary electrical installations instead of using one fire extinguisher and 240 pounds of rock dust. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

5. Hopkins County Coal LLC

[Docket No. M–1999–066–C]

Hopkins County Coal LLC, P.O. Box 711, Madisonville, Kentucky 42431 has filed a petition to modify the application of 30 CFR 75.513 (electric conductor; capacity and insulation) to its Island Mine #1 (I.D. No. 15–17515) located in Hopkins County, Kentucky. The petitioner proposes to use a smaller size cable to power each 300 KW Tag-A-Long rectifier, 315 KVA transformer approximately 379 FLA. The proposed modification would allow type 4/0 AWG 2KV 90°C unshielded copper power cable, rated 329 amperes by I.C.E.A. standards of 100 feet or less instead of a 350 MCM shielded 8KV power cable rated 513 amperes. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

6. Little Man Mining, Inc.

[Docket No. M–1999–067–C]

Little Man Mining, Inc., 11945 No. Big Creek Rd., Hatfield, Kentucky 41514 has filed a petition to modify the application of 30 CFR 75.1710 (canopies or cabs; diesel-powered and electric face equipment) to its No. 2 Mine (I.D. No. 15–18146) located in Pike County, Kentucky. The petitioner requests a waiver from the mandatory standard to permit the operation of its cutting machine without a canopy in coal seam heights between 42 to 50 inches. The petitioner asserts that using a canopy on the cutting machine will lessen the degree of safety for the machine operator.

7. Peabody Coal Company

[Docket No. M–1999–068–C]

Peabody Coal Company, P.O. Box 120, Morganfield, Kentucky 42437 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (nonpermissible diesel-powered equipment; design and performance requirements) to its Camp No. 11 Mine (I.D. No. 15–08357) located in Union County, Kentucky. The petitioner requests a variance from the mandatory standard to permit the Getman diesel grader to be used underground with only rear wheel brakes instead of brakes that act on each wheel of the vehicle. The petitioner proposes to limit the diesel grader speed to 10 miles per hour maximum and train grader operators to drop the grader blade if the brakes fail. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

8. The American Coal Company

[Docket No. M–1999–069–C]

The American Coal Company, P.O. Box 727, Harrisburg, Illinois 62946 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (nonpermissible diesel-powered equipment; design and performance requirements) to its Galatia Mine (I.D. No. 11–02752) located in Saline County, Illinois. The petitioner proposes to operate its Getman Roadbuilders, serial number 6187 and 6547, without front brakes, using instead the factory installed brake system on the four rear wheels. The petitioner asserts that adding brakes to the front wheels of the road grader will result in a diminution of safety to the miners.

9. Cyprus Emerald Resources Corporation

[Docket No. M–1999–070–C]

Cyprus Emerald Resources Corporation, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Emerald No. 1 Mine (I.D. No.36–00952) located in Greene County, Pennsylvania. The petitioner proposes to use trailing cables greater than 500 feet in length for mining equipment taken in by the last open crosscut. The cables would not exceed 1,000 feet in length. The petitioner has listed specific terms and conditions for using its proposed alternative method. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

10. Turris Coal Company

[Docket No. M–1999–071–C]

Turris Coal Company, P.O. Box 21, Elkhart, Illinois 62634 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) (nonpermissible diesel-powered equipment; design and performance requirements) to its Elkhart Mine (I.D. No. 11–02664) located in Logan County, Illinois. The petitioner requests a variance from the mandatory standard to permit an alternate method to installing front brakes on its six wheeled grader. The petitioner proposes to: (i) limit the maximum speed of the grader to less than 10 mph; (ii) provide training for grader operator on lowering the moldboard to provide additional stopping capability in emergencies; (iii) train grader operators on the appropriate speeds to use on different roadway conditions and slopes. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

11. Consolidation Coal Company

[Docket No. M–1999–072–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.364(b)(1) (weekly examination) to its Loveridge No. 22 Mine (I.D. No. 46–01433) located in Monogalia County, West Virginia. The petitioner requests that paragraph 4 of the Decision and Order (D&O) for its previously granted petition, docket number M–93–275–C, be amended for the aircourses ventilating the No. 3 North seals and the No. 2½ North seals to permit weekly examinations of the five monitoring stations instead of daily examinations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

12. Canyon Fuel Company, LLC

[Docket No. M–1999–073–C]

Canyon Fuel Company, LLC, HC 35, Box 380, Helper, Utah 84526 has filed a petition to modify the application of 30 CFR 75.1909 (b)(6) (nonpermissible diesel-powered equipment; design and performance requirements) to its Skyline Mine No. 3 (I.D. No. 42–01566), its Dugout Canyon Mines (I.D. Nos. 42–01888, 42–01889, and 42–01890), and its SUFco Mine (I.D. No. 42–00089) located in Sevier County, Utah. The petitioner requests a variance from the mandatory standard to permit its motor grader equipment to permit the use of motor graders equipped with OEM braking systems. The petitioner states that application of the mandatory standard will result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to "comments@msha.gov," or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 12, 1999. Copies of these petitions are available for inspection at that address.

Dated: August 30, 1999.

Carol J. Jones,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 99–23597 Filed 9–9–99; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Aerial Lifts (Manufacturer's Certification Record of Modification); Extension of the Office of Management and Budget's (OMB) Approval of an Information Collection (Paperwork) Requirement

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the proposed decrease, and extension of, the information collection requirement contained in the standard on Aerial Lifts (29 CFR 1910.67(b)(2)).

REQUEST FOR COMMENT: The Agency seeks comments on the following issues:

- Whether the information collection requirements are necessary for the proper performance of the Agency's

functions, including whether the information is useful;

• The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;

• The quality, utility, and clarity of the information collected; and

• Ways to minimize the burden on employers who must comply; for example, by using automated, electronic, mechanical, and other technological information and transmission collection techniques.

DATES: Submit written comments on or before November 9, 1999.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–99–24, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2222. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirement (manufacturer's certification record of modification) contained in the standard on Aerial Lifts (29 CFR 1910.67(b)(2)) is available for inspection and copying in the Docket Office, or mailed on request by telephoning Theda Kenney at (202) 693–2222 or Barbara Bielaski at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at http://www.osha.gov/comp-links.html, and click on "Information Collection Requests."

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is correct.

The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents. (29 U.S.C. 657.) In this regard, the standard on Aerial Lifts requires that when aerial lifts are "field modified" for uses other than those intended by the manufacturer, the modification must be certified in writing by the manufacturer or by any other equivalent entity, such as a nationally recognized testing laboratory to be in conformity with all applicable provisions of ANSI A92.2–1969 and the OSHA standard, to be at least as safe as the equipment was before modification.

II. Proposed Actions

OSHA proposes to decrease its earlier estimate of 72 burden hours to 45 burden hours for the provision pertaining to the manufacturer's certification record in the standard on Aerial Lifts (29 CFR 1910.67(b)(2)).

OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirement contained in the above standard.

Type of Review: Extension of currently approved information collection requirement.

Agency: Occupational Safety and Health Administration.

Title: Aerial Lifts, Manufacturer's Certification Record of Modification (29 CFR 1910.67(b)(2)).

OMB Number: 1218–0230.

Affected Public: business or other for-profit; not-for-profit institutions; Federal government, state, local or tribal government.

Number of Respondents: 900.

Frequency: On occasion.

Average Time per Response: 3 minutes (0.05 hour).

Estimated Total Burden Hours: 45.

II. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR part 1911.

Signed at Washington, DC, this 2nd day of September 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–23548 Filed 9–9–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–99–23]

Mechanical Power Presses, Inspection Certification Records; Extension of the Office of Management and Budget's (OMB) Approval of an Information Collection (Paperwork) Requirement

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the proposed decrease in, and extension of, the information collection requirements (inspection certification records) contained in the standard on Mechanical Power Presses, 29 CFR 1910.217.

Request for Comment

The Agency seeks comments on the following issues:

• Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;

• The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;

• The quality, utility, and clarity of the information collected; and

• Ways to minimize the burden on employers who must comply; for example, by using automated, electronic, mechanical, and other technological information and transmission collection techniques.

DATES: Submit written comments on or before November 9, 1999.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–99–23, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Theda Kenney, Directorate of Safety Standards Program, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2222. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirements (inspection certification records) contained in the standard on Mechanical Power Presses (29 CFR 1910.217) is available for inspection and copying in the Docket Office, or mailed on request by telephoning Theda Kenney at (202) 693–2222 or Barbara Bielaski at (202) 693–2444. For electronic copies of the ICR, contact OSHA on the Internet at http: //www.osha.gov/comp-links.html, and click on "Information Collection Requests."

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is correct.

The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents. (29 U.S.C. 657.) In this regard, the information collection requirements (the inspection certification records) in the standard on Mechanical Power Presses (29 CFR 1910.217) ensures that information is provided which can be used to properly maintain mechanical power presses and to ensure safe operating conditions for employees.

II. Proposed Actions

OSHA proposes to increase its earlier estimate of 1,372,945 burden hours to 2,063,230 burden hours for the provisions pertaining to the inspection certification records in the standard on Mechanical Power Presses (29 CFR 1910.217).

OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the above standard.

Type of Review: Extension of currently approved information collection requirement.

Agency: Occupational Safety and Health Administration.

Title: Mechanical Power Presses (Inspection Certification Records) (29 CFR 1910.217(e)(1)(I) and (e)(1)(ii)).

OMB Number: 1218–0229.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal government; state, local or tribal government.

Number of Respondents: 191,750.

Frequency: Annually.

Average Time per Response: Varies from 10 minutes (0.17 hour) to 20 minutes (0.33 hour).

Estimated Total Burden Hours: 2,063,230.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR part 1911.

Signed at Washington, DC, this 2 day of September 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–23549 Filed 9–9–99; 8:45 am]

BILLING CODE 4510–26–M

LEGAL SERVICES CORPORATION

Notice of Intent To Award 1999 Grants to Applicants To Provide Civil Legal Services to Eligible Low-Income Clients in Service Areas CO–1, NCO–1, and MCO in Colorado

AGENCY: Legal Services Corporation.

ACTION: Announcement of 1999 Competitive Grant Awards.

SUMMARY: The Legal Services Corporation (LSC or Corporation) hereby announces its intention to award grants and contracts to provide economical and effective delivery of high quality civil legal services to eligible low-income clients, in service areas CO–2, NCO–1, and MCO, for which competition was reopened in 1999.

DATES: All comments and recommendations must be received on or before the close of business on October 12, 1999.

ADDRESSES: Legal Services Corporation—Competitive Grants, 750 First Street NE, 10th Floor, Washington, D.C. 20002–4250.

FOR FURTHER INFORMATION CONTACT: Michael Genz, Director, Office of Program Performance, (202) 336–8852.

SUPPLEMENTARY INFORMATION: Pursuant to the Corporation's announcement of funding availability on February 19, 1999 (64 FR 8410—8411), LSC will award funds to Legal Aid Society of Metropolitan Denver, Inc. to provide civil legal services in service areas CO–2, NCO–1, and MCO in Colorado.

Dated: September 7, 1999.

Michael A. Genz,

Director, Office of Program Performance.

[FR Doc. 99–23677 Filed 9–9–99; 8:45 am]

BILLING CODE 7050–01–P

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

August 1, 1999.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of August 1, 1999, of three rescission proposals and three deferrals contained in two special messages for FY 1999. These messages were transmitted to Congress on October 22, 1998, and February 1, 1999.

Rescissions (Attachments A and C)

As of August 1, 1999, three rescission proposals totaling $35 million have been transmitted to the Congress. Attachment C shows the status of the FY 1999 rescission proposals.

Deferrals (Attachments B and D)

As of August 1, 1999, $644 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 1999.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the editions of the **Federal Register** cited below:

63 FR 63949, Tuesday, November 17, 1998

64 FR 6721, Wednesday, February 10, 1999

Jacob J. Lew,
Director.
Attachments

ATTACHMENT A.—STATUS OF FY 1999 RESCISSIONS

[In millions of dollars]

	Budgetary resources
Rescissions proposed by the President	35.0
Rejected by the Congress	.....
Amounts rescinded by P.L. 106–31, the FY 1999 Emergency Supplemental Appropriations and Rescissions Act	−16.8
Currently before the Congress	18.2

ATTACHMENT B.—STATUS OF FY 1999 DEFERRALS

[In millions of dollars]

	Budgetary resources
Deferrals proposed by the President	1,680.7
Routine Executive releases through June 1999 (OMB/Agency releases of $1,185.2 million, partially offset by a cumulative positive adjustment of $148.9 million)	−1,036.3
Overturned by the Congress	.....
Currently before the Congress	644.4

ATTACHMENT C.—STATUS OF FY 1999 RESCISSION PROPOSALS—AS OF AUGUST 1, 1999

[Amounts in thousands of dollars]

Agency/bureau/account	Rescission No.	Amounts pending before Congress		Date of message	Previously withheld and made available	Date made available	Amount rescinded	Congressional action
		Less than 45 days	More than 45 days					
Department of the Interior: Bureau of Land Management—Management of Lands and Resources.	R99–1	.....	6,800	2–1–99	*	.....	6,800	P.L. 106–31
Executive Office of the President: Unanticipated Needs—Unanticipated Needs for Natural Disasters.	R99–2	.....	10,000	2–1–99	*	.....	10,000	P.L. 106–31
International Assistance Programs: International Security Assistance—Foreign Military Financing Loan Program Account.	R99–3	.....	18,240	2–1–99	*	.....	.....	
Total, Rescissions		.....	35,040	.....	.....	.....	16,800	

* No funds were withheld.

ATTACHMENT D.—STATUS OF FY 1999 DEFERRALS—AS OF AUGUST 1, 1999

[Amounts in thousands of dollars]

Agency/bureau/account	Deferral No.	Amounts transmitted		Date of message	Releases (−)		Congressional action	Cumulative adjustments	Amount deferred as of 8–1–99
		Original request	Subsequent change (+)		Cumulative OMB/agency	Congressionally required			
Department of State: Other—United States Emergency Refugee and Migration Assistance Fund.	D99–1	82,858	17,724	10–22–98 2–1–99	92,724	.....		.....	7,858
International Assistance Programs: International Security Assistance Economic Support Fund.	D99–2	84,777	1,310,376	10–22–98 2–1–99	922,570	.....		83,606	556,189
Agency for International Development International Disaster Assistance.	D99–3	185,000	.....	2–1–99	169,900	.....		65,260	80,360
Total, Deferrals.		352,635	1,328,100	.....	1,185,194	.....		148,866	644,407

[FR Doc. 99–23493 Filed 9–9–99; 8:45 am]
BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23969; 812–11384]

Massachusetts Investors Trust, et al.; Notice of Application

September 2, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under section 17(d) of the Investment Company Act of 1940 (the "Act") and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants seek to amend an existing order to permit additional entities to rely on the existing order, which permits certain registered investment companies to pool cash balances in a joint account for the purpose of investing in short-term investments.

APPLICANTS: Massachusetts Investors Trust, MFS Series Trust I, MFS Series Trust II, MFS Series Trust III, MFS Series Trust IV, MFS Series Trust V, MFS Series Trust VI, MFS Series Trust VII, MFS Series Trust VIII, MFS Series Trust IX, MFS Series Trust X, MFS Series Trust XI, MFS Municipal Series Trust, MFS Growth Opportunities Fund, MFS Government Securities Fund, Massachusetts Investors Growth Stock Fund, MFS Government Limited Maturity Fund, MFS Institutional Trust, MFS Municipal Income Trust, MFS Intermediate Income Trust, MFS Multimarket Income Trust, MFS Government Markets Income Trust, MFS Charter Income Trust, MFS Special Value Trust, MFS/Sun Life Series Trust, MFS Variable Insurance Trust (the "MFS Trusts"), Money Market Variable Account, High Yield Variable Account, Capital Appreciation Variable Account, Government Securities Variable Account, World Governments Variable Account, Total Return Variable Account, Managed Sectors Variable Account (the "MFS Variable Funds") (together with the MFS Trusts, the "MFS Funds"). MFS Meridian U.S. Government Bond Fund, MFS Meridian Global Government Fund, MFS Meridian Charter Income Fund, MFS Meridian Limited Maturity Fund, MFS Meridian U.S. Emerging Growth Fund, MFS Meridian Global Equity Fund, MFS Meridian Money Market Fund, MFS Meridian U.S. Equity Fund, MFS Meridian Research Fund, MFS Meridian Global Balanced Fund, MFS Meridian Global Growth Fund, MFS Meridian Emerging Markets Debt Fund, MFS Meridian U.S. High Yield Fund, MFS Meridian Global Asset Allocation Fund, MFS Meridian Strategic Growth Fund, MFS Meridian Research International Fund (the "Meridian Funds"), MFS American Funds, Massachusetts Financial Services Company ("MFS"), MFS International Ltd. ("MIL"), Vertex Investment Management, Inc. ("Vertex").

FILING DATE: The application was filed on October 29, 1998. Applicants have agreed to file an amendment to the application, the substance of which is reflected in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 27, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants: MFS Trust, MFS, and Vertex, 500 Boylston Street, Boston, MA 02116; MFS Variable Funds, One Sun Life Executive Park, Wellesley Hills, MA 02181; Meridian Funds, Maples and Calder, P.O. Box 309, Grand Cayman, Cayman Islands, British West-Indies; MFS American Funds, 47, Boulevard Royal, c/o State Street Luxembourg, S.A., L–2449 Luxembourg, Grand-Duchy of Luxembourg; MIL, Cedar House, 41 Cedar Avenue, Hamilton HM12, Bermuda.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Staff Attorney, at (202) 942–0634, or Michael W. Mundt, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Each of the MFS Funds is an open-end or a closed-end management investment company registered under the Act. Each of the Meridian Funds is an open-end investment company incorporated as an exempt company under the laws of the Cayman Islands. Each of the MFS American Funds is an investment company established in Luxembourg. The Meridian Funds and the MFS American Funds are offered exclusively outside of the United States to non-United States residents and are collectively referred to as the "Offshore Funds."[1]

2. MFS, MIL, and Vertex are each registered as an investment adviser under the Investment Advisers Act of 1940. MFS is presently investment adviser to all of the MFS Funds, except for certain series of MFS Series Trust XI, and investment sub-adviser to all of the Offshore Funds. MIL serves as investment adviser to all of the Offshore Funds. Vertex serves as an investment adviser to certain series of MFS Series Trust XI. MIL and Vertex are each a wholly-owned subsidiary of MFS.

3. Pursuant to a prior order, as amended previously (the "Prior Order"),[2] the MFS Funds are permitted to pool cash balances and reserves in a joint account (the "Joint Account") for the purpose of investing in certain short-term investments ("Short-Term Investments"). The requested order would amend the Prior Order to allow the Offshore Funds to participate in the Joint Account. Applicants propose to continue to operate the Joint Account in the same manner as permitted by the Prior Order.[3]

4. Applicants request that any relief granted also apply to (i) all existing or future series of the MFS Funds and the Offshore Funds; (ii) all existing or future registered management investment companies for which MFS (or an entity controlling, controlled by, or under common control with MFS) in the future acts as investment adviser or future Offshore Funds ("Future Funds," together with the MFS Funds and the Offshore Funds, the "Funds"); and (iii) any existing or future entity controlling, controlled by, or under common control with MFS that in the future serves as investment adviser to any Future Fund (together with MFS, MIL, and Vertex, the "Adviser").

5. The Funds will purchase Short-Term Investments through the Joint Account that are consistent with their investment objectives and policies.[4] All Short-Term Investments constitute "eligible securities," as defined in rule 2a–7 under the Act. The Offshore Funds will use the same systems and standards for evaluating and acquiring Short-Term Investments as the MFS Funds. Prior to participation by any Offshore Fund in the Joint Account, the board of directors of the Offshore Fund must make findings similar to those made by the boards of trustees/managers of the MFS Funds (together with the Offshore Funds' boards of directors, the "Boards").

Applicants' Legal Analysis

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, for participating in any joint enterprise or arrangement in which that investment company is a participant, unless the SEC has issued an order authorizing the arrangement. In passing on these applications, the SEC considers whether the participation of the registered investment company in the proposed joint arrangement is consistent with the provisions, policies, and purposes of the Act and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Section 2(a)(3)(C) of the Act defines an "affiliated person" or another person to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that the Funds may be considered "affiliated persons" because they may be deemed to be under the common control of the Adviser. Applicants state that the Offshore Funds, by participating with the other Funds in the Joint Account, and the Adviser, by administering the Joint Account, could be deemed to be "joint participants" in a transaction within the meaning of section 17(d). In addition, applicants state that each Joint Account could be deemed to be a "joint enterprise or other joint arrangement" within the meaning of rule 17d–1.

3. Applicants submit that the proposed amendment to the Prior Order is consistent with the findings required by section 17(d) of the Act and rule 17d–1 for granting orders pursuant to rule 17d–1, including the finding that any Fund would participate in the Joint Account on a basis no different from or less advantageous than that of any other Fund. Applicants state that participation by the Offshore Funds in the Joint Account will not result in any conflicts of interest between any of the Funds or between a Fund and the Adviser. Applicants assert that the Offshore Funds will participate in the Joint Account on the same terms and conditions as the MFS Funds.

Applicants' Conditions

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. The Joint Account will not be distinguishable from any other accounts maintained by a Fund at its custodian bank, except that monies from the Funds will be deposited in the Joint Account on a commingled basis. The Joint Account will not have a separate existence and will not have indicia of a separate legal entity. The sole function of the Joint Account will be to provide a convenient way of aggregating individual transactions which would otherwise require daily management by each Fund.

2. Cash in the Joint Account will be invested in one or more of the following Short-Term Investments: (i) interest bearing or discounted commercial paper with a remaining maturity of 60 days or less; (ii) repurchase agreements, with maturities not to exceed 60 days, "collateralized fully," as that term is defined in rule 2a–7 under the Act, by U.S. Government Securities; (iii) U.S. Government Securities with remaining maturities of up to 60 days; (iv) tax-exempt variable rate demand notes ("VRDNs") that have demand features providing for maturities of up to 30 days or one month; or (v) securities other than VRDNs exempt from federal and/or state income tax with remaining maturities of up to 60 days.

3. Any investment made through the Joint Account will satisfy the investment criteria of all Funds participating in that investment.

4. All assets held in the Joint Account will be valued on an amortized cost basis to the extent permitted by applicable SEC releases, rules, or orders.

5. Each Fund valuing its net assets in reliance on rule 2a–7 under the Act will use the average maturity of the instruments in the Joint Account in which such Fund has an interest (determined on a dollar weighted basis) for the purpose of computing its average portfolio maturity with respect to its portion of the assets held in a Joint Account on that day.

6. In order to assure that there will be no opportunity for any Fund to use any part of a balance of the Joint Account credited to another Fund, no Fund will be allowed to create a negative balance in the Joint Account for any reason. Each Fund's decision to invest in the Joint Account will be solely at the Fund's option. No Fund will be obligated to invest in the Joint Account or to maintain any minimum balance in the Joint Account. In addition, each Fund will retain the sole rights of ownership of any of its assets held through the Joint Account, including interest payable on such assets.

7. The Adviser and the custodian of each Fund will maintain records documenting, for any given day, each Fund's aggregate investment in the Joint Account and each Fund's pro rata share of each investment made through the Joint Account. The records maintained for each Fund will be maintained in conformity with section 31 of the Act and rules and regulations thereunder. Each Offshore Fund will maintain and make available to the SEC, upon request, books and records containing information related to its participation in the Joint Account.

8. Not every Fund participating in the Joint Account will necessarily have its cash invested in every Short-Term Investment held in the Joint Account. However, to the extent a Fund's cash is applied to a particular Short-Term Investment made through the Joint Account, the Fund will participate in and own a proportionate share of the investment, and the income earned or accrued thereon, based upon the percentage of the investment purchased with monies contributed by the Fund.

9. The Adviser will administer the investments of the Joint Account as part of its duties under its existing or any future investment advisory agreements with the Funds and will not collect any additional fees for the management of the Joint Account.

10. Each Board will adopt procedures pursuant to which the Joint Account will operate, which will be reasonably designed to provide that the requirements of the application will be met. Each Board will make and approve such changes as it deems necessary to ensure that such procedures are

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[1] For purposes of the application, the term "Offshore Funds" includes other pooled investment vehicles advised by, or in the future advised by, MFS (or an entity controlling, controlled by, or under common control with MFS) offered exclusively outside of the United States to non-United States residents.

[2] *MFS Capital Development Fund, et al.*, Investment Company Act Release Nos. 19109 (Nov. 19, 1992) (notice) and 19158 (Dec. 16, 1992) (order), as amended by *Massachusetts Investors Trust, et al.*, Investment Company Act Release Nos. 20354 (Jun. 14, 1994) (notice) and 20395 (Jul. 12, 1994) (order).

[3] All entities that currently intend to rely on the requested order are named as applicants. Any entity that relies upon the requested order in the future will company with the terms and conditions contained in the application.

[4] The Funds will enter into "hold-in-custody" repurchase agreements (i.e., repurchase agreements where the counterparty or one of its affiliated persons may have possession of, or control over, the collateral subject to the agreement) only where cash is received late in the business day and otherwise would be unavailable for investment.

followed. In addition, each Board will determine, no less frequently than annually, that the Joint Account has been operated in accordance with the proposed procedures and will permit a Fund to continue to participate therein only if it determines that there is a reasonable likelihood that the Fund and its shareholders will benefit from the Fund's continued participation.

11. The administration of the Joint Account will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 under the Act.

12. Short-Term Investments held in the Joint Account generally will not be sold prior to maturity except if: (i) the Adviser believes the investment no longer presents minimal credit risks; (ii) the investment no longer satisfies the investment criteria of all participating Funds in the investment because of a downgrading or otherwise; or (iii) in the case of a repurchase agreement, the counterparty defaults. A Fund may, however, sell any Short-Term Investment (or any fractional portion thereof) prior to the maturity of the investment if the cost of such transaction will be borne solely by the selling Fund and the transaction will not adversely affect other Funds participating in the Short-Term Investment. In no case would an early termination by less than all participating Funds be permitted if it would reduce the principal amount or yield received by other Funds participating in a particular Short-Term Investment or otherwise adversely affect the other participating Funds. Each Fund participating in the Joint Account will be deemed to have consented to such sale and partition of the investments in the Joint Account.

13. Short-Term Investments held through a Joint Account with a remaining maturity of more than seven days, as calculated pursuant to rule 2a–7 under the Act, will be considered illiquid and will be subject to the restriction that a Fund may not invest more than 15% or, in the case of a money market fund, more than 10% (or, in either case, such other percentage as set forth by the SEC from time to time) of its net assets in illiquid securities, if the Fund cannot sell the instrument, or the Fund's fractional interest in the instrument, pursuant to the preceding condition, or if the investment would otherwise be considered illiquid if held by a money market fund.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23609 Filed 9–9–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23990, 812–11468]

Liberty Funds Trust IX, et al.; Notice of Application

September 2, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF APPLICATION: Applicants, Liberty Funds Trust IX (the "Trust") and Liberty Asset Management Company ("Adviser"), request an order that would permit applicants to enter into and materially amend subadvisory agreements without obtaining shareholder approval.

FILING DATES: The application was filed on January 13, 1999, and amended on April 28, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is included in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 27, 1999, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609; Liberty Funds Trust IX, One Financial Center, Boston, MA 02111, and Liberty Asset Management Company, Federal Reserve Plaza, 600 Atlantic Avenue, Boston, MA 02210–2214.

FOR FURTHER INFORMATION CONTACT: John K. Forst, Attorney-Advisor, at (202) 942–0549, or Michael W. Mundt, Branch Chief at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone 202–942–8090).

Applicants' Representations

1. The Trust, a Massachusetts business trust, is registered under the Act as an open-end management investment company currently offering one series, the Liberty All-Star Growth and Income Fund ("Fund").[1]

2. The Adviser, registered under the Investment Advisers Act of 1940 ("Advisers Act"), serves as the investment adviser to the Fund pursuant to an investment advisory agreement ("Advisory Agreement"). Under the Advisory Agreement, the Adviser, subject to the supervision of the board of trustees of the Trust (the "Board") sets overall investment strategies for the Fund, recommends subadvisers for the Fund, allocates and reallocates the Fund's portfolio among two or more subadvisers, and monitors and evaluates the investment performance of the subadvisers, including their compliance with the Fund's investment objective, policies and restrictions. The Adviser pays the subadvisers' fees out of the fees the Adviser receives from the Fund.

3. Under subadvisory agreements between the subadvisers and the Fund ("Subadvisory Agreements"), the subadvisers' responsibility is limited to the investment management of the respective portions of the Fund's assets assigned to them by the Adviser and related recordkeeping and reporting. The Fund currently has five subadvisers. All subadvisers of the Fund are registered as investment advisers under the Advisers Act.

4. Applicants request an order to permit the Adviser to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to a subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust or the Adviser, other than by reason of serving as subadviser to the Fund or a Future Fund ("affiliated Subadviser").

[1] Applicants also request relief with respect to future series of the Trust that are advised by the Adviser and operated in substantially the same manner as the Fund and that comply with the terms and conditions contained in the application ("Future Funds").

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written contract approved by a majority of the investment company's outstanding voting shares. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Section 6(c) of the Act authorizes the Commission to exempt persons or transactions from the provisions of the Act to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants believe that their requested relief meets this standard for the reasons discussed below.

3. Applicants assert that the Fund's investors rely on the Adviser to select, monitor, and replace subadvisers best suited to manage the Fund's portfolio. Applicants represent that the Adviser has experience in performing these functions. Applicants submit that, from the perspective of an investor, the role of the subadvisers is comparable to that of individual portfolio managers employed by other investment company advisory firms. Applicants submit that the requested relief will allow the multi-manager structure of the Fund to operate more efficiently. Applicants note that the Advisory Agreement will remain subject to section 15(a) of the Act and rule 18f–2 under the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Future Fund may rely on the requested order, the operation of the Future Fund in the manner described in the application will be approved by its initial shareholder before shares of the Future Fund are made available to the public.

2. The Trust will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, the Fund and any Future Fund will hold itself out to the public as employing the sub-adviser structure described in the application. The prospectus with respect to the Fund and any Future Fund will prominently disclose that the Adviser is responsible for overseeing the subadvisers and recommending their hiring, termination, and replacement.

3. Neither the Fund nor any Future Fund will enter into a Subadvisory Agreement with any Affiliated Subadviser, without the Subadvisory Agreement, including the compensation to be paid under that Agreement, being approved by the shareholders of the applicable Fund.

4. At all times, a majority of the Board will be persons each of whom is not an "interested person" of the Fund or any Future Fund as defined in section 2(a)(19) of the Act ("Independent Trustees"), and the nomination of new or additional Independent Trustees will be at the discretion of the then-existing Independent Trustees.

5. No trustee of officer of the Trust or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by the trustee, director, or officer) any interest in any subadviser, except for (i) ownership of interests in the Adviser or any other entity that controls, is controlled by, or is under common control with the Adviser; or (ii) ownership of less than one percent of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a subadviser or any entity that controls, is controlled by, or is under common control with a subadviser.

6. When a change of a subadviser is proposed for the Fund or any Future Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board's minutes, that the change is in the best interests of the Fund or in the Future Fund and its shareholders and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

7. Within 90 days of the hiring of a subadviser for the Fund or any Future Fund, its shareholders will be furnished all information about the subadviser that would be included in a proxy statement, including any change in such disclosure caused by the addition of the new subadviser. The Adviser will meet this condition by providing shareholders, within 90 days of the hiring of a subadviser, with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

8. The Adviser, subject to review and approval by the Board, will provide general investment management services to the Fund and any Future Fund, including overall supervisory responsibility for the general management and investment of such Fund's portfolio. In this capacity, the Adviser will: (i) set overall investment strategies for the Fund; (ii) recommend subadvisers for the Fund; (iii) when appropriate allocate and reallocate the Fund's assets among subadvisers; and (iv) monitor and evaluate the investment performance of the subadvisers, including their compliance with the Fund's investment objective, policies, and restrictions.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23608 Filed 9–9–99 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41822; File No. SR–CBOE–99–47]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Increase the Size of Orders Eligible for Automatic Execution for Certain Classes of Options

September 1, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 23, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. On August 23, 1999, the CBOE submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE is proposing to increase the size limit of orders in certain classes of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the CBOE makes additional representations regarding trading system and market maker capacity. *See* letter from Christopher R. Hill, Attorney, CBOE, to Michael A. Walinskas, Associate Director, Division of Market Regulation, Commission, dated August 20, 1999 ("Amendment No. 1").

options contracts which are eligible for entry into the CBOE's Retail Automatic Execution System ("RAES") to 50 contracts, in order to match the size limits of orders which will be eligible for entry into the automatic execution system of the Philadelphia Stock Exchange ("Phlx").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CBOE Rule 6.8(e) limits the size of RAES orders to twenty or fewer contracts.[4] As of August 20, 1999, options on Dell Computers (DLQ) are listed only on the Phlx, options on International Business Machines Corp. (IBM), Johnson & Johnson (JNJ), and Coca Cola (KO) are listed only on the CBOE, and Ford Motor Corporation (F) is dually listed on both the CBOE and the Phlx. However, in conformity with procedures of The Options Clearing Corporation ("OCC") established under the Joint Exchange Options Plan ("Plan"), the Phlx recently sent notification to the OCC, the Commission, and the other options exchanges that it is seeking to multiply list options on IBM, JNJ, and KO. The CBOE has done likewise with respect to DLQ. As a result, on Monday, August 23, 1999, pursuant to OCC procedures, the Phlx plans to commence trading options on IBM, JNJ, and KO, and the CBOE plans to commence trading options on DLQ.

On August 19, 1999, the Phlx announced, pursuant to Rule 1080(c), that its order size limit for automatic execution for DLQ, IBM, JNJ, and KO will be 50 contracts. The current size limit for automatic execution of orders in F is already 50 contracts.

[4] Subsequently, the Commission has approved a proposed rule filing by the CBOE to increase the size limit of all RAES orders to 50 contracts. *See* Securities Exchange Act Release No. 41821 (September 1, 1999) (SR–CBOE–99–17).

Therefore, pursuant to CBOE Rule 6.8 and Interpretation and Policy .01, the CBOE proposes to increase the RAES order size limit in F, IBM, JNJ, and KO to 50 contracts, and to set the initial order size limit for DLQ at 50 contracts, in order to match the size limits for orders in these option classes which are eligible for automatic execution on the Phlx.

The Exchange represents that RAES has the capacity to accommodate a RAES order limit size of 50 contracts in DLQ, IBM, JNJ, and KO, both in terms of systems capacity as well as the market-making capacity of market-makers participating in RAES.[5]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Sections 6(b)(5) and 6(b)(8) of the Act in particular, in that it is designed to remove unnecessary burdens on competition, as well as remove impediments to and perfect the mechanism of a free and open market and a national market system, for the benefit of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange, it has become effective pursuant to section 19(b)(3)(A)(i) of the Act and subparagraph (f)(1) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

[5] *See* Amendment No. 1.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–47 and should be submitted by October 1, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23612 Filed 9–9–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41833; File No. SR–NASD–99–07]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the National Association of Securities Dealers, Inc. Creating a Discovery Guide for Use in NASD Arbitrations

September 2, 1999.

I. Introduction

On January 29, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder.[2] Under its

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposal, NASD Regulation seeks to create a discovery guide for use in NASD arbitrations. Notice of the proposal, as amended by Amendment No. 1 and Amendment No. 2, was published in the **Federal Register** on April 23, 1999 ("Notice").[3] The Commission received eight comment letters on the filing.[4]

II. Description of the Proposal

NASD Regulation proposes to create a Discovery Guide to streamline the discovery process in NASD arbitrations involving customers. The Discovery Guide, which contains Document Production Lists, provides parties to an arbitration proceeding guidance on which documents they should exchange without arbitrator or NASD Regulation staff intervention. Further, the Discovery Guide provides arbitrators with guidance in determining which documents should be produced by customers and member firms or associated persons in customer arbitrations.

The Discovery Guide, which includes the Document Production Lists, is intended to function as a guide for parties and arbitrators in the discovery process. It is not intended to bind arbitrators or parties in a particular case. Further, nothing in the Discovery Guide precludes parties from voluntarily agreeing to an exchange of documents in a manner or scope different from that set forth in the Discovery Guide or Document Production Lists. In addition, any party can make a motion objecting to the production of particular documents included on the applicable Document Production List(s) in any arbitration proceeding. Likewise, any party can request that additional documents, not included on any of the Document Production Lists, be produced. However, if an arbitrator directs compliance with the Discovery Guide in connection with ordering the production of documents, the order, like any other document production order, is binding on the parties.

Background

The Discovery Guide is a consensus document that was developped over a two-year period. In January 1996, the Arbitration Policy Task Force ("Task Force") chaired by former Commission Chairman David Ruder recommended that "[a]utomatic production of essential documents should be required for all parties, and arbitrators should play a much greater role in directing discovery and resolving discovery disputes."[5] Based on Task Force recommendations, the NASD's National Arbitration and Mediation Committee, together with advisors from various diverse backgrounds, helped to draft the Discovery Guide in an effort to implement these recommendations. Among those contributing to the Discovery Guide were persons who are members of the Securities Industries Conference on Arbitration ("SICA")[6], members of SIA, directors of PIABA, industry representatives, representatives from major broker-dealers, counsel for claimants, and counsel for the industry. The Discovery Guide reflects a compromise between the various interests of the drafters.

Discovery Guide Features

NASD Regulation proposes that the Discovery Guide be used as a supplement or an addendum to the guidance regarding discovery set forth in *The Arbitrator's Manual*, published by SICA, and particularly the provisions in the section entitled, "Prehearing Conference," at pages 11–16. SICA members compiled *The Arbitrator's Manual* as a guide for arbitrators, and it is designed to supplement and explain the Uniform Code of Arbitration as developed by SICA. The procedures and policies set out in both *The Arbitrator's Manual* and the Discovery Guide are discretionary and may be changed by the arbitrator(s) so long as they are consistent with the rules of the forum. Further, nothing in the Discovery Guide, including the Document Production Lists, precludes the parties from voluntarily agreeing to an exchange of documents in a manner different from that set forth in the Discovery Guide.

The Discovery Guide consists of introductory and instructional text, and fourteen Document Production Lists. The first two lists, one for firms or associated persons and one for customers, contain documents that are presumptively discoverable in all customer cases, unless the arbitrator(s), in the exercise of discretion, determines that some or all of the documents in the two lists should not be produced. The next twelve lists, which are dispute specific, contain additional documents that should be produced by both customers and firms or associated persons for respectively, claims of churning, failure to supervise, misrepresentation/omissions, negligence/breach of fiduciary duty, unauthorized trading, and unsuitability. For example, a party involved in a churning claim should produce documents from either List One or Two, which apply to all customer cases, and documents from List Three or Four, which apply to churning claims.

NASD Regulation's Office of Dispute Resolution ("ODR") will provide the parties with the Discovery Guide at the time ODR serves the statement of claim. If a particular Document Production List is applicable, the parties should consider those documents to be presumptively discoverage. Unless the party files a timely objection, those documents should be produced not later than 30 calendar days from the date the answer is due or filed, whichever is earlier. Objections to production of any document on a Document Production List, and any responses thereto, are to be considered by the arbitrator(s). The arbitrator(s) then determine whether the objecting party has overcome the presumption of discoverability based upon sufficient reason(s).

In addition to specific document production requirements, the Discovery Guide provides general guidance on other issues such as confidential treatment of documents, additional discovery requests, depositions, admissibility of evidence, arbitrator participation, and sanctions. This guidance is discussed below.

Confidential Treatment. The Discovery Guide provides that parties may stipulate to the confidential treatment of documents. Alternatively, the arbitrator(s) may issue confidentiality orders. However, the Discovery Guide further advises that arbitrator(s) should not issue orders or use confidentiality agreements to require parties to produce documents

[3] *See* Securities Exchange Act Release No. 41302 (April 16, 1999), 64 FR 20036 (File No. SR–NASD–99–07).

[4] *See* letters from Cliff Palefsky, National Employment Lawyers Association ("NELA"), to Secretary, Commission, dated May 4, 1999 ("NELA Letter"); Barbara Black, Professor of Law, to Secretary, Commission, dated May 13, 1999 ("Black Letter"); Mark E. Maddox, Public Investors Arbitration Bar Association ("PIABA"), to Jonathan G. Katz, Secretary, Commission, dated May 18, 1999 ("PIABA Letter"); Linda P. Drucker, Charles Schwab & Co. Inc. ("Schwab"), to Jonathan G. Katz, Secretary, Commission, dated May 14, 1999 ("Schwab Letter"); Stephen G. Sneeringer, Securities Industry Association ("SIA"), to Jonathan G. Katz, Secretary, Commission, dated May 14, 1999 ("SIA Letter"); Paul L. Matecki, Raymond James & Associates, Inc. ("Raymond James"), to Jonathan G. Katz, Secretary, Commission, dated May 14, 1999 ("Raymond James Letter"); Norman S. Poser, Professor of Law, to Secretary, Commission, dated May 13, 1999 ("Poser Letter"); Dan Jamieson, to Jonathan G. Katz, Secretary, Commission, dated June 1, 1999 ("Jamieson Letter").

[5] *See Securities Arbitration Reform: Report of the Arbitration Policy Task Force to the Board of Governors of NASD ("Task Force Report")* at 2.

[6] SICA was formed to develop and maintain a Uniform Code of Arbitration and to provide a forum for the discussion of new developments in securities arbitration among arbitration self-regulatory organization ("SRO") forums and participants in those forums. The membership includes representatives from the SROs with securities arbitration forums, three or four "public" members, and a representative from the SIA.

otherwise protected by established privileges. As discussed more fully below, a party objecting to discovery on grounds of privilege has the burden to demonstrate that a particular document is privileged.

Additional Discovery Requests. The Discovery Guide states that parties may request documents in addition to those identified in the Document Production Lists, and it provides guidance regarding the timing of such requests. Unless a longer period is allowed by the requesting party, requests should be satisfied or objected to within 30 days from the date of service of the document request. Any response to objections to a request should be served on all parties within 10 days or service of the objection.

The Discovery Guide also provides a mechanism for a party to seek to compel production of documents when the adverse party refuses to produce such documents or offers only to produce alternative documents that are unacceptable to the requesting party. The Discovery Guide instructs that the arbitrator(s) carefully consider such motions, regardless of whether the item requested is on any of the Document Production Lists.

Depositions. The Discovery Guide discusses the arbitrator(s)' authority to permit depositions. It suggests depositions be limited to circumstances such as: (a) To preserve the testimony of ill or dying witnesses; (b) to accommodate essential witnesses who are unable or unwilling to travel long distances for a hearing and may not otherwise be required to participate in the hearing; (c) to expedite large or complex cases; and (d) to address unusual situations where the arbitrator(s) determines that circumstances warrant departure from the general guidance.

Admissibility. Production of documents listed in the Discovery Guide does not create a presumption that the documents are admissible at the arbitration hearing. Nothing in the Discovery Guide prevents a party from objecting to the introduction of any document as evidence at the hearing to the same extent that any other objection may be raised in arbitration.

Arbitrator Participation. Under the Discovery Guide, the NASD arbitrator(s) will participate in the initial and subsequent prehearing conferences to organize the management of the case, set a discovery cut-off date, identify dispositive or other potential motions, schedule hearing dates, determine whether mediation is desirable, and resolve any other preliminary issues. If, at the time of the initial prehearing conference, the exchange of properly requested discovery has not occurred, the Discovery Guide provides that the arbitrator(s) should order the production of all required documents subject to production

Sanctions. The Discovery Guide instructs arbitration panels to issue sanctions if any party fails to produce documents or information required by a written order, unless the panel[7] finds that there is "substantial justification" for the failure to produce the documents or information. The Discovery Guide recognizes that panels have wide discretion to address non-compliance with discovery orders. For example, the panel may make an adverse inference against a party or assess adjournment fees, forum fees, costs and expenses, and/or attorneys' fees caused by noncompliance. In extraordinary cases, the Discovery Guide suggests the panel may initiate a disciplinary referral against a registered entity or person who is a party or witness in the proceeding or may, pursuant to Rule 10305(b), dismiss a claim, defense, or proceeding with prejudice as a sanction for intentional failure to comply with an order of the arbitrator(s) if lesser sanctions have proven ineffective.

III. Summary of Comments

The Commission received eight comment letters on the proposal.[8] One commenter urged the adoption of the Discovery Guide as proposed.[9] Further, none of the commenters opposed the concept of creating a Discovery Guide for use in customer arbitration.[10] However, most of the commenters had particular criticisms about certain aspects of the Discovery Guide. Additionally, seven of the eight commenters made suggestions on how to improve the Discovery Guide.[11] With respect to several specific criticisms, the comments were evenly distributed on both sides of the issue.

Discovery Guide as a Proposed Rule Change

Three commenters assert that the Discovery Guide should not be filed with the Commission as a proposed rule change.[12] They content that arbitration relies on the flexibility of arbitrators, and adopting the Discovery Guide as a rule would limit arbitrator(s)' discretion. In addition, they argue that because the Discovery Guide will be part of *The Arbitrator's Manual*, which is not a rule, and will only be a "guide," it should not be submitted as a rule under the rule filing process. Finally, the commenters maintain that adopting the Discovery Guide as a rule will give it more importance than what was intended by its drafters. In contrast, another commenter contends that, because the Discovery Guide contains guidelines and not mandates, whether it is issued as a rule is immaterial.[13] Further, that commenter commends the Commission for allowing the public to comment on the guidelines through the formal rulemaking process.

Customer Personal Financial Information

Three commenters contend that producing certain documents reflecting personal financial information infringes on customers' privacy rights.[14] In particular, these commenters argue that the production of tax returns and other financial information, such as business ownership records, should be limited to certain types of claims, not be required at all, or the firm should have the burden of establishing the relevance of these documents in specific cases. One of these commenters asserts that a customer's right to privacy can only be waived by the customer, and not by the committees who created the Discovery Guide or by the securities industry as a condition of the industry complying with its legal obligation to provide relevant information in an arbitration.[15] The commenter argues that decisions affecting important rights of individual customers (*i.e.*, forced disclosure of personal and private information) should be made on a case-by-case basis, and the information should not be subject to routine disclosure. In addition, another commenter states that the production of statements concerning a customer's net worth is unfair because most customers would have to create these statements.[16]

On the other hand, three industry commenters argue that customer tax returns and other financial information are crucial in all types of customer/

[7] An arbitration panel's ruling need only be by majority vote; it need not be unanimous.

[8] *See supra* note 4.

[9] *See* PIABA Letter.

[10] Out of the eight commenters, seven stated that they were in favor of the concept of a Discovery Guide. *See* PIABA Letter, Black Letter, Schwab Letter, SIA Letter, Raymond James Letter, Poser Letter, and Jamieson Letter. The eighth, from NELA, stated that while the desire to facilitate discovery is appropriate, NELA believed that the proposed Discovery Guide is problematic in certain material aspects. *See* NELA Letter.

[11] *See* NELA Letter, Black Letter, Schwab Letter, SIA Letter, Raymond James Letter, Poser Letter, and Jamieson Letter.

[12] *See* Schwab Letter, SIA Letter, and Raymond James Letter.

[13] *See* Jamieson Letter.

[14] *See* NELA Letter, Black Letter, and Poser Letter.

[15] *See* NELA Letter.

[16] *See* Jamieson Letter.

broker disputes.[17] According to one of these commenters, tax returns and information about net worth are often the only pertinent documentation that a customer has.[18] Further, they assert that a customer's entire tax return (not only the portions listed in the Discovery Guide) and the customer items in List 8, such as a resumé, should be produced in every case. These commenters believe that this information is relevant in every dispute.

Production Burden on Firms

The three industry commenters argue that the use of documents dealing with an associated person's disciplinary history violates a basic premise of the *Federal Rules of Evidence*.[19] They maintain that evidence of prior bad acts, such as records of disciplinary history or information reported on Forms U–4 and U–5, should not be used in arbitration to demonstrate an alleged bad act. In response to these comments, another commenter states that production of these records is not prejudicial since an associated person's disciplinary history is already publicly available through the NASD's Public Disclosure Program.[20]

Additionally, one industry commenter argues that the production of disciplinary history documents would be particularly burdensome for discount and on-line brokers.[21] The commenter contends that because a customer of a discount broker deals with many associated persons, a firm's production burden would be tremendous for many types of disputes. In response to this problem, the commenter suggests limiting the production of documents to those concerning an associated person who is regularly and permanently assigned to the account, if any. On the other hand, another commenter notes that the materials to be produced by firms under the Discovery Guide are kept in the normal course of a firm's business pursuant to industry recordkeeping requirements.[22]

The three industry commenters also argue that firms should not have to produce internal audit reports in failure to supervise claims.[23] They maintain that since failure to supervise can be alleged in almost all claims, internal audit reports will have to be produced in every case. Moreover, these commenters assert that production might affect the vitality and candor of internal audit reports, and thus harm the "self-policing" obligation of firms.[24] Another commenter, however, argues that any increased exposure of internal audit reports will help ensure that the reports' recommendations are followed internally, and that self-policing will thereby by improved.[25] Furthermore, one commenter agrees with the Discovery Guide that internal audit reports are likely to be relevant in a failure to supervise case, regardless of whether they focus on a particular associated person.[26]

Miscellaneous

Most of the commenters make suggestions on how to improve the Discovery Guide and, in particular, the Document Production Lists. For example, one commenter suggests that the first two lists, which apply to all customer cases, be "pruned" to avoid placing an unreasonable burden on the parties.[27] In addition, another commenter suggests that confidentiality orders or stipulations be used sparingly because investors already have little information about the arbitration process.[28] Another commenter expressed concern that the Discovery Guide's recognition of "privacy" and "confidentiality" as valid objections to document production may encourage parties to make objections to delay the discovery process.[29]

Several commenters addressed privilege issues. Four commenters contend that the Discovery Guide should not contain a list of privileges because privileges are traditionally governed by state law.[30] Similarly, three of these commenters state that because most privileges would only be available to customers, a list of applicable privileges should not be included in the Discovery Guide.[31] In addition, one commenter recommends that the Discovery Guide contain a requirement that parties produce a privilege log to identify documents not produced as a result of the assertion of a privilege.[32] The commenter believes this will help protect parties from the improper assertion of a privilege.

In addition, one commenter argues that arbitrators should be given more power to sanction parties for non-production of documents.[33] The commenter states that with the current proposal, an arbitrator first needs an order for production before the arbitrator can issue sanctions. The commenter believes that the Discovery Guide should be amended so that if a party fails to produce a listed document, the party should be sanctioned unless the party can provide a substantial justification for not producing the document. Similarly, another commenter contends that the documents on the lists should not be presumptively discoverable, but automatically produced.[34] The commenter believes this will help streamline the arbitration process.

IV. Discussion

One commenter states that the Commission should give deference to this proposal because it was reached through compromise by organizations who represent opposing interests.[35] The Discovery Guide reflects a compromise between the various interests of the drafters. The Discovery Guide was drafted over a two-year period with the input of organizations who represent different interests within the securities industry. Among those contributing to the Discovery Guide were persons who are members of SICA, members of SIA, directors of PIABA, industry representatives, representatives from major broker-dealers, counsel for claimants, and counsel for the industry. Similarly, the comment letters received by the Commission reflect the views of a cross section of the securities industry, plaintiff representatives, academicians, and others involved in the arbitration process. The Discovery Guide, when considered as a whole, provides useful guidance to arbitrators, claimants, and industry participants in customer arbitrations and fairly balances their respective interests.

As noted above, several commenters assert that the Discovery Guide should not be filed with the Commission as a proposed rule change because arbitration relies on the flexibility of arbitrators, and adopting the Discovery Guide as a rule would limit arbitrators'

[17] *See* Schwab Letter, SIA Letter, and Raymond James Letter.

[18] *See* Schwab Letter.

[19] *See* Schwab Letter, SIA Letter, and Raymond James Letter.

[20] *See* Jamieson Letter.

[21] *See* Schwab Letter.

[22] *See* Jamieson Letter.

[23] *See* Schwab Letter, SIA Letter, and Raymond James Letter.

[24] Notwithstanding these comments, the Commission reminds all regulated entities and persons that nothing in the Discovery Guide or Document Production Lists changes or reduces their obligations to monitor compliance with the federal securities laws or rules of self-regulatory organizations.

[25] *See* Jamieson Letter.

[26] *See* Poser Letter.

[27] *See* Poser Letter.

[28] *See* Jamieson Letter.

[29] *See* Black Letter.

[30] *See* Schwab Letter, SIA Letter, Raymond James Letter, and Jamieson Letter.

[31] *See* Schwab Letter, SIA Letter, and Raymond James Letter.

[32] *See* NELA Letter.

[33] *See* Poser Letter.

[34] *See* Black Letter.

[35] *See* PIABA Letter.

discretion.[36] In addition, one commenter notes the Discovery Guide states that an arbitration panel should issue sanctions if a party fails to produce documents or information required by a written order, not for non-compliance with the Discovery Guide itself.[37] That commenter, therefore, argues that arbitrators should be given more power to sanction parties for non-compliance with the Discovery Guide. Further, another commenter asserts that instead of being presumptively discoverable as they are under the Discovery Guide, the Documents on the document Production Lists should be automatically produced.[38]

By its terms, the Discovery Guide provides for arbitrator(s) to exercise discretion in tailoring the Discovery Guide to particular cases.[39] Arbitrator(s) can change any Provision of the Discovery Guide. Further, nothing in the Discovery Guide shifts the burden of proof a party bears in arbitration, and the mere fact that a document is contained in a Document Production List does not make the document automatically admissible in any arbitration proceeding.

As stated in the Discovery Guide and the Purpose section of NASD Regulation's filing with the Commission, the Discovery Guide (including the Document Production Lists) is intended to function as a guide for arbitrators and parties in the discovery process and is not intended to bind arbitrators or parties in a particular case. While parties should consider the documents on the lists to be presumptively discoverable, the Discovery Guide specifically notes that all of the documents on each list are not required to be produced in every case. Nothing in the Discovery Guide prevents parties from voluntarily agreeing to an exchange of documents in a manner or scope different from that set forth in the Discovery Guide.

Furthermore, parties may also object to the production of any particular document, or seek the production of additional documents not on any of the Document Production Lists. The arbitrator(s) then makes a determination whether production is required. To the extent that an arbitrator uses the Discovery Guide in connection with ordering the production of documents, the order is binding on the parties. The failure to comply with the Discovery Guide itself does not automatically result in sanctions; rather, sanctions are imposed only after a party has failed to comply with an arbitrator's order. Thus, arbitrators retain their discretion under the Discovery Guide to manage arbitrations as they deem appropriate.

Some commenters objected to the burden on customers to produce certain documents in all customer arbitrations. For example, three commenters contend that producing certain documents infringes on customers' privacy rights.[40] Conversely, other commenters object to firms' production burdens under the Discovery Guide.[41] The Discovery Guide reflects a fair compromise between the interests of the drafters and will benefit arbitrators in handling document production. Further, we note that the Document Production Lists were drafted to provide parties with information that is reasonably calculated to lead to the discovery of admissible evidence in arbitrations.[42] Arbitrator(s) should use their discretion to consider whether in a particular case, the documents on the Document Production Lists will lead to the discovery of admissible evidence. Nothing in the Discovery Guide affects a party's ability to object to the production of any particular document or class of documents, or to request additional documents.

Three commenters also assert that firms should not have to produce documents about an associated person's disciplinary history because production would be burdensome and the documents would be inadmissible.[43] As one commenter noted, some disciplinary information about firms and associated persons is already available to the public through the NASD's Public Disclosure Program. Furthermore, as stated in the Discovery Guide, the production of documents in discovery under the Discovery Guide does not create a presumption that the documents are admissible in the arbitration proceeding.

In addition, three commenters argue that firms should not have to produce internal audit reports in failure to supervise claims because production might affect the vitality and candor of these reports. Another commenter, however, takes the opposite view—the commenter believes the production of these reports will result in better self-policing. The Discovery Guide is narrowly focused in that it only calls for the production of internal audit reports, if they exist, in failure to supervise claims. In addition, internal audit reports may help a firm defend a failure to supervise claim. Nothing in the Discovery Guide or the Document Production Lists changes firms' obligations to monitor compliance with the federal securities laws or rules of self-regulatory organizations. To the extent a firm objects to the production of such internal audit reports in any particular claim, nothing in the Discovery Guide precludes a firm from filing an objection with the arbitrator(s). In addition, whether such a report is admissible is a decision for the arbitrator(s).

Many of the commenters made specific suggestions on how to improve the Discovery Guide and, in particular, the Document Production Lists. For example, one commenter suggests that confidentiality orders or stipulations be used sparingly because investors already have little information on the arbitration process.[44] The Discovery Guide does not change current features of the arbitration process. Stipulations are, by definition, made by agreement of the parties and confidentiality orders can only be issued by arbitrator(s) after they fully consider the issue. While a confidentiality order may prevent the public dissemination of particular documents or information, it should not affect the arbitration process. The same commenter also asserts that the production of statements concerning a customer's net worth is unfair because most customers would have to create these statements. Nothing in the Discovery Guide requires customers to create documents that do not otherwise exist. Indeed, the Discovery Guide provides that, if a party has no responsive documents to any document request, the party should provide an affirmation to that effect.

In addition, many of the commenters made specific suggestions to modify one or more aspects of the Document Production Lists. Many of these suggestions may have considerable merit in particular cases. For example, one commenter suggests that the first two Document Production Lists be "pruned" to avoid placing an unreasonable burden on the parties. In this regard, if production of a particular document or class of documents called for under an applicable Document Production List is unduly burdensome to a party, that party may object to production on that or any other grounds. The arbitrator(s) retains the ability to modify any request in order to protect against discovery abuses. Furthermore, there is nothing in the Discovery Guide that prevents a party from asking for additional documents such as those suggested by some commenters. We recognize the commenters' intentions to improve the Discovery Guide and the discovery process in general. However, the Discovery Guide reflects a compromise, which was obtained after a long period of negotiation, between various interests of the drafters. For each item that one commenter thought would be burdensome for a customer, another commenter believed a different item would be burdensome to a firm. As adopted, the Discovery Guide will benefit arbitrators and parties in handling document production.

One commenter suggests that parties produce a privilege log to identify documents not produced as a result of the assertion of a privilege. NASD Rule IM–10100 states that "[i]t may be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 2110 for a member of a person associated with a member to * * * fail to appear or to produce any document in his possession or control as directed pursuant to provisions of the NASD Code of Arbitration Procedure * * *" All parties should act in good faith and carefully consider the relevant case law when asserting a privilege, and arbitrators should consider whether a privilege log is necessary to help facilitate the discovery process.[45] It is expected that the NASD Regulation will take appropriate action against members and registered persons who do not act in good faith or otherwise violate IM–10100.

The Discovery Guide will streamline the discovery process. By creating lists of documents that should be produced in all customer arbitrations as well as particular types of cases, the Discovery Guide will help expedite the discovery process and reduce the number of discovery disputes between parties, which in turn should help lower the cost of the arbitration discovery process. Further, nothing in the Discovery Guide changes the burden of establishing or defending any aspect of a claim. When considered as a whole, the Discovery Guide provides useful guidance to parties and arbitrators in NASD-sponsored customer arbitrations.

In addition, the Commission finds that the proposal is consistent with the requirements of Section 15A of the Act[46] and the rules and regulations thereunder that govern the NASD.[47] In particular, the Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act[48] which requires, among other things, that the rules of an association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[49] that the proposed rule change (SR–NASD–99–07), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[50]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23610 Filed 9–9–99; 8:45 am]

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[36] *See* Schwab Letter, SIA Letter, and Raymond James Letter.

[37] *See* Poser Letter.

[38] *See* Black Letter.

[39] Under Rule 19b–4, a stated policy, practice, or interpretation of the self-regulatory organization shall be deemed to be a proposed rule change unless (1) it is reasonably and fairly implied by an existing rule of the self-regulatory organization or (2) it is concerned solely with the administration of the self-regulatory organization and is not a stated policy, practice, or interpretation with respect to meaning, administration, or enforcement of an existing rule of the self-regulatory organization. 17 CFR 240.19b–4(c). Proposed rule changes submitted under Section 19 of the Act and Rule 19b–4 are subject to a notice and comment period. The Discovery Guide falls within Rule 19b–4.

[40] *See* NELA Letter, Black Letter, and Poser Letter.

[41] *See* Schwab Letter, SIA Letter, and Raymond James Letter.

[42] *See e.g.*, Fed. R. Civ. P. 26(b)(1).

[43] *See* Schwab Letter, SIA Letter, and Raymond James Letter.

[44] *See* Jamieson Letter.

[45] The Commission agrees with several commenters that applicable privileges, which are usually a matter of state law, should not be specified in the Discovery Guide.

[46] 15 U.S.C. 78*o*–3.

[47] In addition, pursuant to Section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[48] 15 U.S.C. 78*o*–3(b)(6).

[49] 15 U.S.C. 78s(b)(2).

[50] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41820; File No. SR–NASD–99–35]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Definition of "Person Associated with a Member"

September 1, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 3, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Association. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend the definition of "person associated with a member" in the By-Laws of the NASD, NASD Regulation, Inc. ("NASD Regulation"), and The Nasdaq Stock Market, Inc. ("Nasdaq"). The text of the proposed rule change is set forth below. Additions are italicized and deletions are bracketed.

* * * * *

BY-LAWS OF THE NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

ARTICLE I DEFINITIONS

* * * * *

(ee) "person associated with a member" or "associated person of a member" means: (1) a natural person *who is* registered *or has applied for registration* under the Rules of the Association; [or] (2) a sole proprietor, partner, officer, director, or branch manager of a member, or [a] *other* natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the NASD under these By-Laws or the Rules of the Association; *or*[3] *(3) for purposes of Rule 8210, any other person listed in Schedule A of Form BD of a member;*

* * * * *

The NASD proposes conforming changes to Article I(y) of the NASD Regulation By-Laws and Article I(r) of the Nasdaq By-Laws, respectively.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The NASD has approved the substitution of the word "or" in place of the word "and" in the proposed text here as it appeared in the NASD's original filing, to make clear that item (3) represents an alternative meaning of "associated person." Telephone conversation between Mary Dunbar, Associate General Counsel, NASD Regulation, and Gordon Fuller, Special Counsel, and Ira L. Brandriss, Attorney, Division of Market Regulation, Commission (August 11, 1999).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections, A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The NASD proposes two amendments to the definition of "person associated with a member" in Article I of the NASD By-Laws, and conforming amendments to the NASD Regulation and Nasdaq By-Laws. The term is currently defined to include: (1) a natural person registered under the Rules of the Association; or (2) a sole proprietor, partner, officer, director, or branch manager of a member, or a natural person occupying a similar status or performing similar functions, or a natural person engaged in the investment banking or securities business who is directly or indirectly controlling or controlled by a member, whether or not any such person is registered or exempt from registration with the NASD under the By-Laws or the Rules of the Association.

Two issues have arisen with respect to the definition. The first issue is whether the definition should be expanded to apply to certain owners of members. Currently, the definition only includes owners who are natural persons engaged in the member's investment banking or securities business and who have a direct or indirect "control" relationship with the member.[4] While the NASD does not believe that the definition of associated person should include all owners and thereby subject them to all NASD rules, the NASD would like to amend the definition with what it views as a modest and incremental expansion to give the staff authority to require the provision of information and testimony under Rule 8210 ("the Rule") from any person—including a natural person or corporate or other entity—who holds a five percent or greater interest in a member firm, regardless of whether they "control" the member firm or are actively engaged in its securities or investment banking business.

The NASD can identify such owners because members must list them in Schedule A of Form BD, which is filed with the NASD and the Commission. For example, if the member is a corporation, the member generally must list each shareholder that directly owns five percent or more of a class of a voting security of the member. If the member is a partnership, the member must list all general partners and those limited and special partners that have contributed, or have the right to receive upon dissolution, five percent or more of the partnership's capital. Members have a continuing obligation to update Schedule A.

The NASD is not recommending any change to the Rule itself, which is one for the staff's primary tools for carrying out its regulatory responsibilities. The Rule authorizes the staff, for the purpose of an investigation, complaint, examination, or proceeding authorized by the NASD By-Laws or rules, to require a member or associated person to provide information or testimony. The Rule also authorizes the staff to inspect and copy the books, records, and accounts of such member or person with respect to any matter involved in the investigation, complaint, examination, or proceeding. The proposed amendment to the definition of associated person would permit the staff to direct a Rule 8210 request to any owner—individual, corporate, partnership, trust, or otherwise—listed in Schedule A of Form BD, whether or not such owner controls the member firm. The NASD does not believe that it is necessary at this time to apply any other NASD rules to this group of owners or to amend Rule 8210; however, an owner who falls within the associated person definition but fails to comply with a Rule 8210 request may be disciplined by the NASD.

The second issue involves an anomaly between the By-Law definition of the term "person associated with a member" and a Form U–4, which is the application form for registration that must be signed by the prospective registered person. The Form U–4 states that by signing the Form, the applicant is subject to the jurisdiction of the NASD and any state in which he is applying for registration. However, the current definition of "associated person" in the By-Laws does not address applicants for registration. The NASD proposes that the By-Law should be made expressly consistent with the Form U–4 in this respect.

Finally, the word "other" is inserted into subsection 2 of the definition to clarify that the subsection describes only natural persons.

The NASD proposes to make the rule change effective for all members within 45 days after Commission approval. The effective date will be announced at least 15 days in advance in a Notice To Members.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[5] of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that the proposed rule change will help it obtain necessary information to conduct its regulatory investigations and proceedings and clarify its jurisdiction over applicants for registration.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the NASD. All submissions should refer to File No. SR–NASD–99–35 and should be submitted by October 1, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

[4] The By-Laws do not define the term "control." Form BD defines "control" as the "power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any person that * * * directly or indirectly has the right to vote 25% or more of a class of voting securities or has the power to sell or direct the sale of 25% or more of a class of voting securities; or * * * in the case of a partnership, has the right to receive upon dissolution, or has contributed 25% or more of the capital, is presumed to control that company."

[5] 15 U.S.C. 78o–3(b)(6).

[6] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41824; File No. SR–PCX–99–24]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 2 and Order Granting Partial Accelerated Approval to a Proposed Rule Change by the Pacific Exchange, Inc. Relating to Automated Opening Rotations

September 1, 1999.

I. Introduction

On July 13, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change related to automated opening rotations ("AOR"s). On August 4, 1999, the PCX filed with the Commission Amendment No. 1 to the proposal.[3] Notice of the proposed rule change appeared in the **Federal Register** on August 30, 1999.[4] On September 1, 1999, the PCX filed Amendment No. 2 to the proposal.[5] The Commission is publishing this notice to solicit comments on Amendment No. 2. In addition, for the reasons discussed below, the Commission has determined to grant accelerated approval of PCX's request in Amendment No. 2 to implement automated opening rotations for 16 issues on a thirty day pilot basis.

II. Description of the Proposal

A. Introduction

The Exchange is proposing to adopt a new procedure to facilitate trading of option contracts during the opening rotation.[6] Opening rotations are held promptly following the opening of the underlying security on the principal market where it is traded.[7] Opening rotations are conducted by an Order Book Official ("OBO"), who is an Exchange employee.[8] The PCX rules on opening rotations apply to both index and equity options contracts.[9]

In its initial filing, as amended by Amendment No. 1, the PCX proposed a new process that would allow the Exchange to conduct AORs. The Exchange proposed a procedure to allow the OBO to establish electronically a single price opening for executing eligible market and marketable limit orders in the POETS system. In the event of an imbalance, any remaining orders in the system that are eligible to be executed will be assigned to market makers participating on the Auto-Ex System. The new process involves three basic steps: first, the markets are established; second, the opening rotation is automatically processed for the majority of series; and finally, any series with manual orders or compilation is opened manually, *i.e.*, pursuant to the current procedures for opening rotations.

More specifically, under the new AOR process, opening rotations on the PCX will occur in the following manner: Prior to the opening, the OBO will determine whether there are any orders in the trading crowd to be executed at the opening. Once the underlying security has opened, the OBO will request from the trading crowd bids and offers in the specific option issue. The trading crowd may determine that the posted bids and offers are accurate, or alternatively, may request by public outcry that certain quotes be modified.[10] Once the bid and asking price in each series has been ascertained, the OBO and AOR system will identify all series that are eligible for the AOR and that can be opened immediately, and will also identify all series that are not eligible for the AOR. Those that are not eligible for the AOR must be opened manually.[11]

B. Amendment No. 2

In Amendment No. 2, the PCX requests that the Commission grant accelerated approval of a thirty day pilot program ("Pilot") that would allow the Exchange to use automated openings for 16 issues during the pilot period. The 16 issues are Microsoft Corp. (MSQ), Compaq Computer Corp. (CPQ), Sun Microsystems, Inc. (SUQ), Applied Materials (AMAT), 3Com Corp. (THQ), Advanced Micro Devices (AMD), Tellabs, Inc. (TLAB), Schering-Plough Corp. (SGP), McKesson HBOC, Inc. (MCK), ALZA Corp. (AZA), R&B Falcon Corp. (FLC), First Union Corp. (FTU), NIKE, Inc. (Class B) (NKE), Newbridge Networks Corp. (NN), Data General

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange further clarifies the operation of automated openings, provides rule text related to the new procedures, and justifies its request for accelerated approval. *See* letter from Michael D. Pierson, Director, Regulatory Policy, PCX, to Michael A. Walinskas, Associate Director, Division of Market Regulation ("Division"), SEC, dated August 3, 1999 ("Amendment No. 1").

[4] *See* Securities Exchange Act Release No. 41774 (August 20, 1999), 64 FR 47210.

[5] In Amendment No. 2, the Exchange provides additional details about the operation of automated openings and proposes limited use of such openings for certain issues on a pilot basis. *See* letter from Michael D. Pierson, Director, Regulatory Policy, PCX, to Richard Strasser, Assistant Director, Division, SEC, dated September 1, 1999 ("Amendment No. 2").

[6] The Exchange intends to continue to employ the current (manual) procedures for closing rotations.

[7] *See* PCX Rule 6.64, Comment .01(a).

[8] *See* PCX Rules 6.51 and 6.64.

[9] *See* PCX Rule 7.10.

[10] Prior to an automated opening, the members of the trading crowd must establish a bid and offer for each series in a given issue. This occurs basically as follows: The OBO will first display a bid price and an offering price for a particular series. (These prices will have been established either by the Auto-Quote feature of POETS or by a manual process, *i.e.*, a member or members of the trading crowd will vocalize bids and offers that a Market Quote Terminal Operator will enter into the system and display on the overhead screen.) The OBO will then ask the crowd if the displayed prices are "all right" (or other words to that effect). There will then be a short window period when the displayed prices may be adjusted. While the trading crowd is establishing the market, any member may vocalize a bid or offer that improves the market, and the OBO will be required to update the market accordingly. *See* Amendment No. 1.

[11] For a more detailed description of the current and proposed processes, *see* Securities Exchange Act Release No. 41774 (August 20, 1999), 64 FR 47210 (August 30, 1990).

Corp. (DGN), and Baker Hughes Inc. (BHI). These issues, previously traded only on the PCX, now will be approved for trading on other options exchanges.

Amendment No. 2 also further details how the proposed automated openings would work during the Pilot period and beyond. First, the Exchange clarifies when manual openings will be held. Generally, a series will not be eligible for an AOR if one or more members of the trading crowd has reasonably requested a manual opening rotation in that series. The Exchange anticipates that such requests will fall into two general categories. The first category involves mergers and takeovers. The second category would cover system problems or system limitations. For example, the POETS system may be unable to generate an accurate market because it is unable to take into account the fact that a takeover will occur on the following day, and as such, the system is unable to factor in the correct model. In these situations, the series will be opened manually.

As for the provision allowing manual openings when imbalance thresholds are exceeded, the Exchange proposes to implement this provision in the following manner. Initially, each option issue will have a minimum imbalance threshold of 20 contracts. However, a Lead Market Maker in an issue may increase the imbalance threshold in that issue to a number greater than 20, but not exceeding 999 contracts (due to system constraints). The decision to change the imbalance threshold will be made pursuant to proposed Rule 6.64(b)(2)(D). Language in subsection D was previously in subsection C. The modified rule text follows. Proposed text is italicized.

(C) Series for which one or more members of the trading crowd has reasonably requested that a manual opening rotation be conducted. Two Floor Officials may deny member requests for manual opening rotations in the absence of reasonable justification for doing so.

(D) Series in which the "imbalance threshold" has been exceeded. Prior to the opening, the OBO, in conjunction with the Lead Market Maker in the issue, will set for each option issue a number of contracts that constitutes an imbalance threshold, i.e., a specific number of option contracts to buy in excess of the number of contracts to sell or a specific number of contracts to sell in excess of the number of contracts to buy. The POETS system will not automatically open any series with an imbalance exceeding the threshold for that issue.

Second, the Exchange amends the proposed rule text to explicitly provide for the manual accommodation of non-bookable orders when automated openings occur. The text of additional subsection, PCX Rule 6.64(b)(4), follows. New text is italicized.

(4) Manual Accommodations of Non-Bookable Orders. If a non-bookable order is represented in the trading crowd and disclosed to the Order Book Official prior to the opening rotation, and if the order is either a market order or a limit order with a limit price equal to the opening price of the particular series, then that order will be entitled to an execution immediately following the opening of that series as follows:

(A) If the order is a market order or limit order for a public customer, the order will be filled in its entire size by the Market Makers in the trading crowd (assuming that any contingency accompanying the order is satisfied).

(B) If the order is a limit order for a broker-dealer, the order will be entitled to be filled up to a number of contracts equal to a pro rata share of the number of contracts that the Auto-Ex system assigns to the Market Makers pursuant to subsection (3), above. If a broker is holding more than one order to trade at the same limit price, then that broker is limited to no more than one pro rata share of the number of contracts that the Auto-Ex System assigns to the Market Makers.

III. Discussion

The Commission finds that the proposed rule change relating to the establishment of a Pilot for a 30-day period is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] Specifically, the Commission believes the Pilot is consistent with the Section 6(b)(5)[13] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and not be designed to permit unfair discrimination between customers, issuers, brokers or dealers. The proposed rule change represents an effort to facilitate the execution of orders at the opening by providing market-makers with a means of establishing electronically a single opening price. By facilitating an expedited opening of options series included in the Pilot, AOR should remove an impediment to and help perfect the mechanism of a free and open market consistent with the Exchange's responsibilities under Section 6 of the Act.[14] Moreover, by integrating features into AOR, such as the crossing of customer orders, and by providing procedures for handling non-bookable orders in the opening process, the Commission believes that the proposal should promote fair participation in AOR by all market participants.

The Commission finds good cause for approving the Pilot prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that the Pilot will only be for a limited duration and for a limited number of issues. Thus, the Commission believes that accelerated approval of the Pilot will enable the Commission and the Exchange to gain experience with AOR before the Commission considers permanent approval of the Pilot.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–99–24 and should be submitted by October 1, 1999.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[16] that the Pilot program proposed in Amendment No. 2 to SR–PCX–99–24 be and hereby is approved on an accelerated basis to expire October 1, 1999.[17]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23613 Filed 9–9–99; 8:45 am]

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[12] In approving Amendment No. 2, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78f.

[15] The Commission notes the issues selected for the Pilot are newly introduced for trading on more than one exchange. ROS, an electronic opening system for the Chicago Board Options Exchange, Inc., has already received Commission approval. The Commission expects the PCX to report back on if and how the existence of automatic opening systems at multiple exchanges for newly multiply listed options affects the efficiency of trading and competition among exchanges.

Approval of the 30-day Pilot period should not be interpreted as suggesting that the Commission is predisposed to approving the proposal on a permanent basis or that the Commission is predisposed to extending the Pilot to all issues.

[16] 15 U.S.C. 78s(b)(2).

[17] In approving Amendment No. 2, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITES AND EXCHANGE COMMISSION

[Release No. 34–41823; File No. SR–PCX–99–04]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 4 by the Pacific Exchange, Inc. Relating to the Maximum Size of Option Orders That My Be Executed Automatically

September 1, 1999.

I. Introduction

On February 10, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending its rules on the automatic execution of options orders to increase the maximum number of contracts that may be designated for automatic execution on an issue-by-issue basis. On February 25, 1999 the Exchange submitted Amendment No. 1 to the proposed rule change.[3] On May 25, 1999 the Exchange submitted Amendment No. 2 to the proposed rule change.[4] On July 2, 1999 the Exchange submitted Amendment No. 3 to the proposed rule change.[5] Notice of the proposal was published in the **Federal Register** on July 22, 1999.[6] On September 1, 1999 the Exchange filed Amendment No. 4 to the proposed rule change. The Commission received no comment on the proposal. This order approves the proposal.[7]

II. Description of the Proposal

Generally, public customer market and marketable limit orders for up to twenty options contracts may be automatically executed through the Exchange's Auto-Ex system. The Exchange proposes to change its rules on the automatic execution of equity and index option orders by increasing the maximum number of contracts that may be designated for automatic execution, on an issue-by-issue basis, to fifty contracts.[8] The PCX proposes to distinguish between equity and index options for matters relating to increasing the maximum number of contracts that may be designated for automatic execution.[9] The Exchange proposes to increase the maximum size of equity option orders that the Options Floor Trading Committee ("OFTC") may designate for automatic execution in an increase from twenty to fifty contracts and to allow the OFTC to determine the size of index options orders that are eligible to be executed through Auto-Ex with a maximum order size of fifty contracts for the following Index Options: (1) The PSE Technology Index; (2) the Wilshire Small Cap Index; and (3) the Morgan Stanley Emerging Growth Index.[10]

In addition, the Exchange proposes to add subsection (k) to PCX Rule 6.87 to address the allocation of Auto-Ex orders. Specifically, the Exchange proposes that the OFTC will determine, on an issue-by-issue basis, the manner in which orders entered through the Auto-Ex system will be assigned to individual market makers for execution. Each market maker who is participating on the Auto-Ex system will be required to execute a maximum of ten option contracts per Auto-Ex trade, except that the OFTC may permit individual market makers and LMM to be allocated a number of contracts greater than ten and no more than fifty, upon the request of the individual market maker or LMM. Further, the Exchange proposes that, in accordance with the provision of LMMs' guaranteed participation in PCX Rule 6.82(d)92), the LMM in an issue will be required to either (i) participate in every other trade executed on Auto-Ex in that issue or (ii) participate in a percentage of every trade consistent with the amount of the LMM's guaranteed participation.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1 the Exchange proposed to set the maximum order size for execution through its Automatic Execution System ("Auto-Ex") for equity options and for index options on the PSE Technology Index, the Wilshire Small Cap Index, and the Morgan Stanley Emerging Growth Index at fifty contracts. Additionally, in Amendment No. 1 the PCX withdrew SR–PCX–99–05, which was filed with the Commission on February 22, 1999. *See* Letter from Robert P. Pacileo, Staff Attorney, PCX, to Micheal A. Walinskas, Deputy Associate Director, Division of Market Regulation, Commission, dated February 24, 1999.

[4] In Amendment No. 2 the Exchange proposed to add subsection (k) to PCX Rule 6.87 to address the allocation of Auto-Ex orders. *See* letter from Robert P. Pacileo, Staff Attorney, PCX, to Michael A. Walinskas, Associate Director, Division of Market Regulation, Commission, dated May 24, 1999.

[5] In Amendment No. 3 the Exchange replaced the proposal in its entirety to restate and clarify the purpose of the proposal, to address technical modifications to PCX Rule 6.87 made in a separate filing with the Commission (SR–PCX–99–23), and to add a proposal to amend PCX Rule 6.86 regarding trading crowd firm disseminated market quotes. *See* letter from Robert P. Pacileo, Staff Attorney, PCX, to Michael A. Walinskas, Associate Director, Division of Market Regulation, Commission, dated July 1, 1999.

[6] *See* Securities Exchange Act Release No. 41611 (July 9, 1999), 64 FR 39548.

[7] In Amendment No. 4 the Exchange proposed to allow a notice and comment period for market makers and Lead Market Makers ("LMMs") subject to PCX Rule 6.87(k)(1)(C). *See* letter from Robert P. Pacileo, Staff Attorney, PCX, to Michael A. Walinskas, Associate Director, Division of Market Regulation, Commission, dated August 31, 1999 ("Amendment No. 4").

[8] The Commission approved the Pacific Options Exchange Trading System ("POETS") and its Auto-Ex feature as a pilot program in January 1990. *See* Securities Exchange Act Release No. 27633 (January 18, 1990), 55 FR 2466 (January 24, 1990) (order approving File No. SR–PSE–89–26). On July 30, 1993, the Commission approved the program on a permanent basis. *See* Securities Exchange Act Release No. 32703 (July 30, 1993), 58 FR 42117 (August 6, 1993). The Auto-Ex system permits eligible market or marketable limit orders sent from member firms to be executed automatically at the displayed bid or offering price. Participating market makers are designated as a contra side to each Auto-Ex order. Participating market makers are assigned by Auto-Ex on a rotating basis, with the first market maker selected at random from the list of signed-on market makers. Auto-Ex preserves Book priority in all options. Automatic executions through Auto-Ex are currently available for public customer orders of ten contracts or less (or in certain issues, for twenty contracts or less) in all series of options traded on the Options Floor of the Exchange.

[9] Currently, PCX Rule 6.87(c) provides: "The Options Floor Trading Committee may increase the size of Auto-Ex-eligible orders in one or more classes of multiply traded equity options to the extent that other options exchanges permit such larger-size orders in multiply traded equity options of the same class or classes to be entered into their own automated execution systems. If the Options Floor Trading Committee intends to increase the Auto-Ex order size eligibility pursuant to this subsection, the Exchange will notify the Securities and Exchange Commission pursuant to Section 19(b)(3)(A) of the Exchange Act." In addition, PCX Rule 6.28(9) provides that the Exchange may increase the permissible size of orders that may be automatically executed over the Auto-Ex system to up to 50 contracts only during high volume or high volatility emergency situations. *See* Securities Exchange Act Release No. 41481 (June 4, 1999), 64 FR 31674 (June 11, 1999).

[10] The PCX Technology Department has confirmed that POETS is capable of, and has the capacity to, execute trade at 50-up on an issue-by-issue basis, which can equate to floor-wide 50-up if done for all issues.

The Exchange also proposes that the OFTC may require market makers or an LMM who is participating on Auto-Ex in a particular issue to execute a number of contracts greater than ten. Before doing so, however, the OFTC must take into account whether this would place a market maker at undue risk based on that market maker's capitalization. In addition, prior to imposing any requirement to increase to a number of contracts greater than ten under proposed PCX Rule 6.87(k)(1)(C), the Exchange proposes to allow market makers and LMMs a one-day notice and comment period to express their views and opinions on the proposed increase.[11]

The Exchange proposes that the OFTC seek to assure that each market maker participating on Auto-Ex in a particular issue will be assigned up to the same maximum number of option contracts per Auto-Ex trade. The OFTC may permit exceptions to this procedure only in unusual situations where the OFTC finds good cause for permitting differences in the maximum number of contracts executed by individual market makers.

The Exchange believes that these changes will help it to meet the changing needs of customers in the market place and give the Exchange better means of competing with other options exchanges for order flow, particularly in multiply traded issues. The exchange also believes that the proposal will allow the Exchange to enhance its operational efficiency, particularly during times when large influxes of manual orders create undue congestion in particular trading crowds.

The Exchange also proposes to amend PCX Rule 6.86, governing trading crowd firm disseminated market quotes. Specifically, the Exchange proposes to add subsection (g) to PCX Rule 6.86 to require that, if the OFTC determines, pursuant to PCX Rule 6.87(b), the size of orders in an issue that are eligible to be executed on Auto-Ex will be greater than twenty contracts, then the trading crowd will be required to provide a market depth in that greater amount. The exchange proposes this rule change to update, clarify and keep consistent PCX rules governing size of market orders and market depth.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, the requirements of Section 6 of the Act.[13] Section 6(b)(5)[14] of the Act states that the rules of an exchange must be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating securities transactions. These rules also must help to remove impediments to and perfect the mechanism of a free and open market.

Moreover, the Commission finds good cause for approving Amendment No. 4 prior to the 30th day after notice of the Amendment is published in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[15] Amendment No. 4 provides that market makers or LMMs must receive notice and the opportunity to comment prior to an OFTC requirement to execute a number of contracts greater than ten under proposed PCX Rule 6.87(k)(1)(C). The Commission finds that accelerated approval of Amendment No. 4 is appropriate due to the immediate need for market makers and LMMs to be informed of and comment on any proposed requirement to execute an increased number of contracts on Auto-Ex.

The Commission does not object at this time to extending the benefits available through the use of the Exchange's Auto-Ex system to larger-size customer orders up to 50 contracts. The Commission believes that increasing to 50 the number of option contracts executable through the Exchange's Auto-Ex order execution system will enable the Exchange to more effectively and efficiently manage increased order flow in actively traded option classes consistent with its obligations under the Act. In addition, this increase should bring to speed and efficiency of automated execution to a greater number of retail orders. We also believe that the PCX should have flexibility to compete for order flow with other exchanges without being limited to responding to increases in automatic execution eligibility levels initiated by those other exchanges. The Commission notes that it has approved similar proposals by other exchanges that increased to fifty the maximum size of orders that may be executed automatically.[16]

The Commission believes, based on representations by the Exchange, that the increase will not expose the Exchange's Auto-Ex system to risk of failure or operational break-down. Our approval of this increase is expressly conditioned on PCX's representation that its systems capacity is sufficient to accommodate the increased number of automatic executions anticipated to result from implementation of this proposal.[17]

Although we have a degree of comfort with respect to the proposed increase, we note that any proposed increases above fifty contracts may raise additional issues, including such matters as market maker financial exposure, price improvement, and quote dissemination. Because of these concerns, the Commission welcomes the opportunity to review the Exchange's experience with any increase in maximum order size to fifty contracts. If, in the future, exchanges seek to increase order size levels above fifty contracts, this examination will help us assess whether any such increases are appropriate and, if so, whether we should seek additional assurances regarding such increases.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 4, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–99–04 and should be submitted by October 1, 1999.

[11] *See* Amendment No. 4, *supra* note 7.

[12] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(2).

[16] *See* Securities Exchange Act Release No. 36601 (December 18, 1995), 60 FR 66817 (December 26, 1995) (SR–PHLX–95–39) and Securities Exchange Act Release No. 41821 (September 1, 1999) (SR–CBOE–99–17).

[17] *See supra* note 10.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5).[18]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–PCX–99–04) is approved; and that Amendment No. 4 is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23614 Filed 9–9–99; 8:45 am]

BILLING CODE 8010–01–M

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intention to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before November 9, 1999.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Mr. Charles Thomas, Small Business Administration, Office of Financial Assistance, 409 3rd Street SW., Suite 8300, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Charles Thomas, Financial Assistance, 202–205–6656 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: SBAExpress/Community Express Borrower Information Form.

Type of Request: New Information Collection.

Form No: SBA Form 1919.

Description of Respondents: Borrowers.

Annual Responses: 12,000.

Annual Burden: 4,800.

Title: Request for SBAExpress/Community Express Loan Number.

Type of Request: New Information Collection.

Form Number: SBA Form 1920.

Description of Respondents: Lenders/Borrowers.

Annual Responses: 12,000.

Annual Burden: 1,200.

Title: Eligibility Information Required for SBAExpress/Community Express Submission.

Type of Request: New Information Collection.

Form Number: SBA Form 2092.

Description of Respondents: Lenders/Borrowers.

Annual Responses: 12,000.

Annual Burden: 12,000.

Title: Supplemental Information for PLP Express/Community Express Processing.

Type of Request: New Information Collection.

Form Number: SBA Form 2093.

Description of Respondents: Lenders/Borrowers.

Annual Responses: 12,000.

Annual Burden: 4,800.

Dated: September 3, 1999.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 99–23496 Filed 9–9–99; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

North American Free Trade Agreement: Sanitary and Phytosanitary Committee

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of public meeting and request for comments.

SUMMARY: In accordance with legislation implementing the North American Free Trade Agreement, we are informing the public of a meeting to be held Tuesday, September 21, 1999 at the U.S. Department of Agriculture (USDA) in Washington, D.C. The purpose of this meeting is to solicit public comment on proposed agenda items for the next scheduled meeting of the North American Free Trade Agreement (NAFTA) Sanitary and Phytosanitary (SPS) Committee, November 2–3, 1999, in Ottawa, Canada. It is also to seek public input in identifying any new issues of concern that should be considered for the agenda. Representatives from each of the SPS Committee's eight Technical Working Groups (TWGs) will also be present to apprise the public of each TWG's progress and to respond to questions.

The November meeting will be the Eighth Meeting of the NAFTA SPS Committee and will include co-chairs or other representatives from the TWGs that report to the Committee. The purpose of the NAFTA SPS Committee is to address sanitary and phytosanitary trade issues affecting the entry of agricultural products among the three member countries.

DATES: The public meeting date will take place Tuesday, September 21, 1999, 9:00 a.m. to 11:00 a.m., USDA South Building (at the back of USDA cafeteria, 1st floor), 14th Street and Independence Avenue, SW, Washington, DC. Written comments should be submitted by September 16, 1999.

FOR FURTHER INFORMATION CONTACT: Carolyn T. Cohen, Foreign Agricultural Service, International Trade Policy, Food Safety and Technical Services Division, Room 5545, South Building, 14th Street and Independence Avenue SW, Washington DC, 20250, (202) 720–1301; or e-mail ofsts@fas.usda.gov.

SUPPLEMENTARY INFORMATION: In accordance with Article 722 of NAFTA, the NAFTA SPS Committee is responsible for facilitating: (a) the enhancement of food safety and sanitary and phytosanitary conditions in the terrorizes of the parties; (b) activities of the Parties pursuant to Articles 713 and 714 relating respectively to international standards and equivalence; (c) technical cooperation; and (d) consultation on specific bilateral issues. An SPS issue can be raised by any party and is sent to the Committee for consideration. The Committee will either consider the matter itself or refer the issue to an individual, working group or relevant standard setting organization for technical advice.

Since the entry into force of NAFTA on January 1, 1994, the NAFTA SPS Committee has met on seven separate occasions: March 24, 1994, in Washington, DC; October 6, 1994, in Washington, DC; September 21, 1995, in Mexico City; February 14, 1996, in Mexico City; June 20, 1996, in Ottawa; November 18–19, 1997, in Washington, DC; and November 4–5, 1998, in Mexico City. The Committee meets at least once a year with meetings rotating among the three countries. Starting in 1998, the dates for meetings of the NAFTA SPS Committee are fixed for the first week in November. Each TWG is to send at least one representative to the annual Committee meeting to report on its progress and activity. The eight TWGs under the NAFTA SPS Committee and their points of contacts are as follows:

1. Animal Health

A. Point of Contact: Dr. Alfonso Torres, Animal and Plant Health Inspection Service (APHIS), USDA.

B. Status: Bilateral working groups exist within the larger TWG. The North American Animal Health Committee is a trilateral forum.

C. Work in Progress: 1. Harmonization of veterinary biologics licensing processes and standardization of import policies; and 2. Establishing a regional approach on transmissible spongiform encephalopathies (TSEs).

D. Future Work Plan: The North American Animal Health Meeting issues: 1. Harmonization of diagnostic services; 2. common approach for disease freedom recognition; 3. emergency preparedness; 4. approach to evaluate the veterinary services within member countries; 5. North American interaction with OIE; and, 6. management of the North American FMD vaccine bank.

E. Meeting Schedule: The North American Animal Health Committee has been meeting since 1972. The 29th Annual Tripartite meeting took place in Victoria, Canada, on April 20–22, 1999. The next meeting is scheduled for April, 10–14, 2000 in Oaxaca, Mexico.

2. Plant Health, Seeds & Fertilizers

A. Point of Contact: Mr. Ronald Campbell, Phytosanitary Issues Management, APHIS/USDA.

B. Status: Annual bilateral plant protection meetings are held in addition to the North American Plant Protection Organization (NAPPO) which is trilateral.

C. Work in Progress: 1. Harmonization of Japanese beetle regulations; 2. Developing harmonized approach to Asian & European Gypsy Moth; 3. Equivalency of Greenhouse certification; 4. Recognition of accredited laboratories for seed certification; and, 5. Panels on Accreditation, Biological Control, Biotechnology, Citrus, Forestry, Fruit Flies, Grapevines, Grains, Fruit Trees, Pest Risk Analysis, Potatoes, and Standards, to discuss issues of mutual concern in each area.

D. Future Work Plan: 1. Recognition of private laboratories; and 2. NAPPO's priorities for international standards: Regulated non-quarantine pests, Pest Risk Assessments for Quarantine pests, Phytosanitary certificates, Regulated pest lists, Notifications of interceptions and non-compliance, and Wood Dunnage.

E. Meeting Schedule: The 23rd Annual NAPPO meeting will be in Cancun, Mexico, from October 18–22, 1999. There are 3 NAPPO Working Group meetings and 3 NAPPO Executive Committee Meetings per year. Each panel meets at least once during the year.

3. Fish & Fishery Product Inspection

A. Point of Contact: Dr. Philip Spiller, Office of Seafood, Food and Drug Administration (FDA).

B. Status: This TWG is trilateral and last met March 4–5, 1998 in San Antonio, Texas.

C. Issues Addressed to Date: 1. Development of US-Canada Mutual Recognition Agreement on seafood inspection; 2. Exchange of letters between US and Canada regarding seafood HACCP and inspection; 3. Negotiation of US-Canada equivalence agreement regarding molluscan shellfish inspection programs; 4. Development of criteria for seafood equivalence determination as part of the process for reaching an agreement; and, 5. Approaches for training and accreditation in HACCP/QMP audit and verification.

D. Future Work Plan: 1. Continuation of MRA/Equivalence discussions; 2. Development of a joint protocol on how to conduct audits of inspection systems; 3. Continuation of the work of the SWG on Essential Quality and Composition; and 4. Establishment of "North American Centers of Expertise" that would see Canada, Mexico and the United States potentially combine their efforts on various studies and research development initiatives.

E. Meeting Schedule: The TWG meets annually with the next meeting scheduled for October 1999 in Halifax, Canada.

4. Meat, Poultry & Egg Inspection

A. Point of Contact: Dr. John C. Prucha, Food Safety Inspection Service, USDA.

B. Status: This TWG is trilateral and has met eight times over the last four years.

C. Work in Progress: 1. Achieving and maintaining equivalency; 2. Exchange of information on proposed changes; 3. Exchange of information on foreign system and establishment reviews; 4. Finalizing USDA's position recognizing Mexico's poultry system as equivalent; and 5. Exchange of information on import reinspection procedures, including import inspection standards and inspection procedure for residues of chemical contaminants.

D. Future Work Plan: 1. Harmonization of inspection procedures; 2. Examination of health certificates; 3. Technical Subgroup addressing technical inspection matters; activity report presented at each meeting; and, 4. Coordination of planning & implementation of changes.

E. Meeting Schedule: This TWG meets approximately twice a year, depending on the availability of its members. It plans to meet again in the fall or winter 1999/2000.

5. Dairy, Fruits, Vegetables and Processed Foods

A. Point of Contact: Dr. Terry Troxell, Office of Plant & Dairy Foods & Beverages, FDA.

B. Status: This TWG is bilateral (US-Canada), as representatives have not yet been identified by Mexico.

C. Issues Addressed to Date: 1. Discussion of equivalence of US-Canada Grade A dairy inspection systems; and 2. Harmonization of US-Canada potato grade system.

D. Future Work Plan: 1. Continuation of Equivalence Discussions, and 2. Full integration of Mexico into the TWG.

E. Meeting Schedule: The first and only meeting of the TWG was in November 1997. A specific date has not been set for a future meeting.

6. Veterinary Drugs & Feed

A. Point of Contact: Dr. Robert Livingstone, Center for Veterinary Medicine, FDA.

B. Status: This TWG is bilateral (US-Canada), as a representatives has not been identified by Mexico. This TWG last met in 1995.

C. Issues Addressed to Date: 1. Methods harmonization; 2. Discussions of equivalence of registration systems; and, 3. Coordination with corresponding Codex activities.

D. Future Work Plan: 1. Equivalence of analytical methods for drug residues; and 2. Integration of Mexico into the TWG.

E. Meeting Schedule: None scheduled at this time.

7. Food Additives and Contaminants

A. Point of Contact: Dr. Alan Rulis, Office of Pre-Market Approval, FDA.

B. Status: This TWG is trilateral.

C. Issues Addressed to Date: 1. Harmonization of US-Canada food additive regulations; and, 2. Discussion of issues and positions for the Codex Committee on Food Additives & Contaminants (CCFAC).

D. Future Work Plan: 1. Development of joint positions for the CCFAC; and, 2. Further exploration of potential for joint reviews of food additives petitions.

E. Meeting Schedule: This TWG last met January 19–20, 1998 in Mexico City. The next session for this TWG has not been scheduled.

8. Pesticides

A. Point of Contact: Ms. Marcia Mulkey, Office of Pesticide Programs, Environmental Protection Agency.

B. Status: This TWG is trilateral, consisting of an Executive Board, a Secretariat, Technical Subcommittee and Project Teams. This TWG last met May 24–26, 1999 in San Antonio, Texas.

C. Issues Addressed to Date: 1. Completed four US/Canada joint reviews (three reduced risk pesticides and one pheromone); 2. Focused cooperative work to reevaluate and reregister older chemical pesticides on organophosphates, carbamates, and B2 carcinogens and agreed to share information on the associated tolerance reassessment process to minimize trade problems; 3. Developed clear categories to trade irritants and a procedure and priority scheme for their resolution; 4. Harmonized 17 environmental fate and toxicology protocols; 5. Completed a prototype ecoregion map that will lead to reduced data development costs for terrestrial field studies; 6. Coordinated development of field residue data among NAFTA countries to support registration of pesticides for minor crops; and 7. Developed stakeholder projects to promote Integrated Pest Management (IPM) strategies for canola and cranberries.

D. Future Work Plan: 1. Develop and implement strategic plan for communicating areas of pesticide regulatory harmonization; 2. Work with the Departments of Agriculture, growers, and industry to identify and prioritize registration needs in NAFTA countries to facilitate equal access to pesticides and avoid potential agricultural impediments to trade; 3. Investigate the impact of EPA's emergency use exemption program on Mexican/Canadian growers; 4. Complete the first trinational review of a pesticide (zoxamide) for use on grapes and potatoes; 5. Work cooperatively to reevaluate and reregister older chemical pesticides; 6. Work toward a harmonized approach to pesticide certification and training; 7. Share information and explore how NAFTA countries might work together on the evaluation and regulation of persistent, bioaccumulative, and toxic substances and endocrine disrupting chemicals; and, 8. Increase interaction between the TWG on Pesticides and the US-Mexico Pesticide Information Exchange Program.

E. Meeting Schedule: The full TWG, which includes stakeholder participation, meets annually. The Executive Board meets formally two times per year. The TWG Executive Board will meet in January 2000 in Mexico City. The full TWG will have its annual meeting in June 2000 in Ottowa.

Public Meeting

The public meeting date will take place Tuesday, September 21, 1999, 9:00 a.m. to 11:00 a.m., USDA South Building (at the back of USDA cafeteria, 1st floor), 14th Street and Independence Avenue, SW, Washington, DC.

Written Comments

Those persons wishing to submit written comments should provide five (5) typed copies to John Payne, Director for SPS Affairs, Office of the United States Trade Representative, 600 17th St., NW, Room 421; Washington, DC 20508. If the submission contains business confidential information, five copies of a confidential version must also be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked "Confidential" at the top and bottom of the cover page (or letter) and of each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, "public version" or "non-confidential."

Written comments submitted in connection with this request, except for information granted "business confidential" status pursuant to 15 CFR 2003.6, will be available for public inspection in the USTR Reading Room, Room 101, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC. An appointment to review the file may be made by calling Brenda Webb (202) 395–6186. The Reading Room is open to the public from 9:30 a.m. to 12 noon, and from 1 p.m. to 4 p.m., Monday through Friday.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 99–23623 Filed 9–9–99; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of The Secretary

[Docket No. OST–95–246]

North American Free Trade Agreement's Land Transportation Standards Subcommittee and Transportation Consultative Group: Annual Plenary Session

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: This notice (1) announces the sixth joint annual plenary session of the North American Free Trade Agreement's (NAFTA) Land Transportation Standards Subcommittee (LTSS) and the Transportation Consultative Group (TCG) and other related meetings; and (2) invites representatives of non-governmental entities with an interest in land transportation issues to participate in a listening session immediately preceding the plenary meeting and to attend a briefing at a later date. Only U.S., Canadian, and Mexican government officials may attend the plenary and working group meetings.

Background

The Land Transportation Standards Subcommittee (LTSS) was established by the North American Free Trade Agreement's (NAFTA) Committee on Standards-Related Measures to examine the land transportation regulatory regimes in the United States, Canada, and Mexico, and to seek to make certain standards more compatible. The Transportation Consultative Group (TCG) was formed by the three countries' departments of transportation to address non-standards-related issues that affect cross-border movements among the countries, but that are not included in the NAFTA's LTSS work program (Annex 913.5.a–1).

Meetings and Deadlines

The sixth joint annual LTSS/TCG plenary session will be held from October 25 to 28, 1999, at the Hilton Baltimore and Towers, 20 West Baltimore Street, Baltimore, Maryland 21201. The following LTSS working groups will meet during the same week and at the same location: (1) Compliance and Driver and Vehicle Standards; (2) Vehicle Weights and Dimensions; and (3) Hazardous Materials Transportation Standards. Similarly, the following TCG working groups are expected to meet: (1) Cross-Border Operations and Facilitation; (2) Rail Safety and Economic Issues; (3) Automated Data Exchange; (4) Science and Technology; and (5) Maritime and Ports Policy.

Also at the same Baltimore site, on October 25, 1999, from 2:00 p.m. to 5:00 p.m., a listening session will be held for representatives of the truck, bus, and rail industries, transportation labor unions, brokers and shippers, chemical manufacturers, insurance industry, public safety advocates, and others who have notified us of their interest to attend and have submitted copies of their presentations, in English and

Spanish, to the address below by October 12, 1999. This is an opportunity for presenters to voice their concerns, provide technical information, and offer suggestions relevant to achieving greater standards compatibility and improving cross-border trade. While written statements may be of any length, oral presentations will be limited to 10 minutes per presenter. After October 12, statements may be submitted for the record, and requests to present oral comments at the listening session will be accommodated only on a time-available basis.

Although participation in the LTSS and TCG plenary and working group meetings is limited to government officials only, representatives of non-governmental entities also are invited to take part in parallel topical discussions, visits to transport facilities, and a final briefing by the heads of the U.S., Canadian, and Mexican delegations to be held on October 28.

Hotel reservations may be arranged by calling the Hilton Baltimore and Towers directly at 1–800–445–8667 or 1–888–466–4644, by electronic mail at www.hilton.com. In order to ensure that they receive the special group rate for guest rooms, callers must identify themselves as delegates to the NAFTA LTSS Conference and make their reservations by September 20, 1999.

A briefing to report on the outcome of the Baltimore meetings will be conducted at DOT at the address below, in Room 3200–04, on November 30, 1999, from 10:00 a.m. to noon. Interested parties may notify DOT of their interest to attend this briefing by calling (202) 366–2892 by November 26.

SUPPLEMENTARY INFORMATION: LTSS-related documents, including past working group reports and statements received by DOT from industry associations, transportation labor unions, public safety advocates, and others are available for review in Docket No. OST–95–246, at the address below, Room PL–401, between 9:00 a.m. and 5:00 p.m., e.s.t., Monday through Friday, except national holidays. The Docket, which is updated periodically, may also be accessed electronically at http://dms.dot.gov.

Address and Phone Numbers

Individuals and organizations interested in participating in the listening session on October 25, 1999 must send notice of their interest and copies of their presentations by October 12 to Maria Lameiro, U.S. Department of Transportation, OST/X–20, Room 10300, 400 Seventh Street, SW., Washington, DC 20590. Respondents may also send information by fax at (202) 366–7417. For additional information, call (202) 366–2892.

Dated: September 3, 1999.

Bernestine Allen,

Acting Director, Office of International Transportation and Trade.

[FR Doc. 99–23517 Filed 9–9–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Reopening of the Public Comment Period Regarding the Receipt of Noise Compatibility Program and Request for Review; Anchorage International Airport, Anchorage, Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Reopening of comment period.

SUMMARY: The Alaskan Region of the Federal Aviation Administration (FAA) announces it has reopened the public comment period regarding the Receipt of Noise Compatibility Program and Request for Review, submitted under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 and 14 CFR Part 150, for Anchorage International Airport, Anchorage, Alaska to allow additional opportunity for public review and comment.

Interested agencies and persons are invited to submit written comments regarding the noise compatibility program.

DATES: In order to be considered, written comments must be received on or before October 6, 1999.

ADDRESSES: Send comments to Ms. Patricia A. Sullivan, Federal Aviation Administration, Airports Division, AAL–600, 222 West 7th Avenue, #14, Anchorage, Alaska, 99513.

Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., Room 617 Washington, DC 20591.

Federal Aviation Administration, Alaskan Region, Airports Division, AAL–600, 222 West 7th Avenue, #14, Anchorage, Alaska 99513.

Maryellen Tuttell, Noise Program Manager, Anchorage International Airport, P.O. Box 196960, Anchorage, Alaska 99519–6960.

Issued in Anchorage, Alaska on August 31, 1999.

Ronnie V. Simpson,

Manager, Airports Division, AAL–600, Alaskan Region.

[FR Doc. 99–23519 Filed 9–9–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at St. Cloud Regional Airport, St. Cloud, Minnesota

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at St. Cloud Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before October 12, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Minneapolis Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota 55450–2706.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Brian D. Ryks, Airport Manager, of the City of St. Cloud at the following address: St. Cloud Regional Airport, 1550 45th Avenue SE, St. Cloud, Minnesota 56304–9535.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of St. Cloud under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Huber, Assistant Manager, Airports District Office, 6020 28th Avenue South, Room 102, Minneapolis, Minnesota, 55450, telephone (612) 713–4357. The application may be viewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at St. Cloud Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 17, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of St. Cloud was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 11, 1999.

The following is a brief overview of the application.

PFC application number: 99–01–C–000–STC.

Level of the proposed PFC: $3.00.

Proposed charge effective date: February 1, 2000.

Proposed charge expiration date: August 1, 2020.

Total estimated PFC revenue: $1,197,200.000.

Brief description of proposed projects: electrical revisions, airline terminal design services, airport issues study, airline terminal building, electrical improvements, snow removal equipment building addition, aircraft rescue and firefighting vehicle and braking meter, snow removal equipment with radios, security fencing, airport master plan update, and aircraft rescue and firefighting building construction, PFC application administration costs.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Ambulance Operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the St. Cloud Regional Airport Manager's Office.

Issued in Des Plaines, Illinois, on September 1, 1999.

Cameron Bryan,

Acting Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.

[FR Doc. 99–23518 Filed 9–9–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Federal Highway Administration

Environmental Impact Statement on Transportation Improvements Within the Roosevelt Boulevard Corridor in Philadelphia, Pennsylvania

AGENCY: Federal Transit Administration and Federal Highway Administration, USDOT.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA) as federal co-lead agencies, in cooperation with the Pennsylvania Department of Transportation, the City of Philadelphia and the Southeastern Pennsylvania Transportation Authority (SEPTA) as local lead agencies, are issuing this notice to advise interested agencies and the public that an environmental impact statement (EIS) may be prepared for transportation improvements in the Roosevelt Boulevard Corridor in Philadelphia, Pennsylvania. The Philadelphia City Planning Commission, the Mayor's Office of Transportation, and SEPTA are undertaking a Transportation Investment Study (TIS) to consider solutions to the problems of capacity and quality of transportation in the Roosevelt Boulevard Corridor which is marked by congestion and long travel times, especially for public transit riders. The TIS will include the NEPA scoping process, the identification and evaluation of design concept and scope alternatives, and the selection of a preferred alternative or alternatives. Subsequently, if an EIS is prepared, alternative alignments and designs that are consistent with the selected design concept and scope will be addressed in that document. Sponsorship of the EIS will depend on the outcome of the TIS and the alternatives remaining under evaluation. It is important to note that a final decision to prepare an EIS has not been made at this time. This decision will be made at the end of the TIS and will depend upon the nature of the selected concept and its expected impacts.

DATES: *Comment Due Date:* Written comments on the scope of the alternatives and impacts to be considered should be sent to Andrew Lenton, Project Manager, Philadelphia City Planning Commission, by October 15, 1999. See **ADDRESSES** below. *Scoping Meetings:* Public scoping meetings will be held on Wednesday, September 22, 1999 and Thursday, September 23, 1999, from 7:00 p.m. to 9:00 p.m. See **ADDRESSES** below.

ADDRESSES: Written comments on the scope should be sent to Andrew Lenton, Project Manager, Philadelphia City Planning Commission, 1 Parkway Building, 13th floor, 1515 Arch Street, Philadelphia, PA 19102. Scoping meetings will be held at the following locations:

Public Scoping Meeting #1

Wednesday, September 22, 1999, from 7:00 p.m. to 9:00 p.m., Frankford Group Ministries, Main Meeting Room, Orthodox & Griscom Streets, Philadelphia, PA 19124

Public Scoping Meeting #2

Thursday, September 23, 1999, from 7:00 p.m. to 9:00 p.m., Nazareth Hospital, Physician's Office Building (P.O.B.), 2601 Holme Avenue, Philadelphia, PA 19152.

FOR FURTHER INFORMATION CONTACT: John T. Garrity, Federal Transit Administration, or Carmine M. Fiscina, Federal Highway Administration, at (215) 656–7070.

SUPPLEMENTARY INFORMATION:

I. Scoping

Public scoping meetings will be hosted by the Philadelphia City Planning Commission (PCPC), the Mayor's Office of Transportation (MOT) and the Southeast Pennsylvania Transit Authority (SEPTA) on Wednesday, September 22, 1999, and Thursday, September 23, 1999, between 7:00 p.m. and 9:00 p.m. See **ADDRESSES** above. FTA, FHWA, PCPC, MOT and SEPTA invite interested individuals, organizations and public agencies to attend the scoping meetings and participate in establishing the purpose, alternatives, time framework and analysis approach, as well as an active public involvement program. The public is invited to comment on the alternatives currently proposed and to suggest additional alternatives which are more cost effective or which have less environmental impact while achieving similar transportation objectives. Comments should address the modes and technologies to be evaluated, the alignments and termination points to be considered, the environmental, social and economic impacts to be analyzed, and the evaluation approach to be used to select a locally preferred alternative.

To ensure that a full range of issues is addressed and all significant issues identified, comments and suggestions are invited from all interested parties.

Comments may be provided at the public scoping meetings, verbally and/or in writing. Comments or questions can also be directed to the PCPC (See **ADDRESSES** above.), or via e-mail to netis@libertynet.org or via telephone to (215) 790–3140. People with special needs should call Andrew Lenton at (215) 683–6429. The Nazareth Hospital site is accessible to people with disabilities.

An information packet is available which describes the purpose of the project, the possible alternatives, the impact areas to be evaluated, the citizen involvement program, and the schedule. The packet will be available at the public scoping meetings. It is also being mailed to affected federal, state and local agencies and to interested parties on record. Others may request the scoping materials by contacting Andrew Lenton, Project Manager, Philadelphia City Planning Commission. See **ADDRESSES** above.

II. Description of Study Area and its Transportation Needs

The Roosevelt Boulevard Corridor is located in the Northeast portion of Philadelphia, extending approximately 14 miles from Broad Street to the Philadelphia City Line. The Corridor is approximately one mile wide (width varies according to impact under consideration). It serves an area that includes some 400,000 residents of Northeast Philadelphia, including areas adjacent to Bucks and Montgomery Counties, and communities toward Center City, such as Olney, Feltonville, Hunting Park and Logan. Major attractors in the corridor include One & Olney Square, the Friends Hospital, Metropolitan Hospital, Northeast Tower Center, Rising Sun Plaza, Frankford Stadium, the future Frankford Transportation Center, Oxford Circle, the Northeast Regional Library, Roosevelt Mall, Nazareth Hospital, Evangelical and Baptist Homes, the Northeast Shopping Center, Northeast Philadelphia Airport, the Red Lion Shopping Center, the Swenson Skills Center, the Northeast Industrial Park, Boulevard Plaza, Byberry East Industrial Park, Community College of Philadelphia, and the Neshaminy Interplex Business Center. Environmental features include Hunting Park, Tacony Creek, Pennypack Creek, Pennypack Park, and Poquessing Creek.

The area is currently served or crossed by taxicab services, 27 bus routes, the R8 Fox Chase Regional Rail line and the termini of the Market-Frankford Subway-Elevated and the Broad Street Subway lines. Roosevelt Boulevard itself is a right of way nearly 200 feet wide in many sections. It is an attractive parkway with three express lanes and three local lanes in each direction. Traffic may move between the local and express lanes via slip ramps. The Boulevard itself crosses most intersections at grade, but at Oxford Circle, Pennypack Circle and Cottman Avenue, the express lanes are depressed below grade and continue through without grade crossings. The Boulevard serves as the main transportation spine of Northeast Philadelphia.

Travelers in the Boulevard Corridor presently experience quite long travel times, particularly by public transportation. The capacity and quality of transportation have not increased in proportion to the recent growth of population and employment in the corridor. Motorist and pedestrian safety also are primary concerns in the Corridor. Air quality tops the list of general concerns, because of the Philadelphia region's non-attainment of EPA air quality standards. Finally, the changing nature of land uses continues to further separate employment from residential locations, particularly for mobility-constrained households. The Northeast spine therefore presents a considerable need for transportation improvement.

III. Alternatives

It is expected that the scoping meeting and written comments will be a major source of candidate alternatives for consideration in the study. The following briefly describes the general alternatives that are suggested for consideration along the Corridor:

- *No Project.* Certain transportation improvement projects already slated for construction, such as the Woodhaven Expressway Extension and I–95 reconstruction, would proceed. However, no major improvements would occur in the Boulevard Corridor.
- *Transportation System Management (TSM).* TSM would involve making operational and low cost capital improvements to existing roadways and transit facilities. Pursuing this alternative could result in options such as enhancing bus service in the corridor, changing the design and operation of intersections, and improving bus stop waiting areas.
- *Additional Grade Separations.* Additional underpasses—similar to the one at Cottman Avenue—could address the Corridor's transportation needs.
- *Expressway.* This concept would lower the inner travel lanes below the cross streets.
- *Busway.* An exclusive travel lane for limited stop express buses could be implemented along the Boulevard.
- *Light Metro.* Under this concept, rail vehicles would operate at street level along the Boulevard median as an extension of the Broad Street Subway, crossing intersections at grade along the Boulevard. The vehicles would draw electricity from a third rail while in the subway and from overhead wires while on the Boulevard.
- *Broad Street Extension.* The Broad Street Line would extend up the Boulevard from Broad-Erie Station as either a subway or a modern elevated line.
- *Broad Street Extension with Expressway.* The Broad Street Line would operate in the median of the expressway described earlier.
- *Market-Frankford Extension.* The Market-Frankford Line would extend from Frankford Terminal along Bustleton Avenue, and from that point follow the Boulevard alignment. The line could operate as a subway or a modern elevated.
- *Market-Frankford Extension with Expressway.* From Bustleton Avenue northward, the Market-Frankford Line extension could operate in the median of the expressway described earlier.
- *Broad Street Extension with a One-Station Market-Frankford Extension.* In this suggested concept, the Broad Street Line would extend as a subway or elevated, as described above, and would meet a short extension of the Market-Frankford Line.
- *New York Short Line.* Either Broad Street Subway service or the Regional Rail network would be extended along the western portion of the study area, sharing the right-of-way of an existing freight railroad.

Based on public input received during scoping, variations of the above alternatives and additional alternatives suggested during scoping, as well as other transportation-related improvement options, both transit and non-transit, will be considered for the Roosevelt Boulevard Corridor.

IV. Probable Effects

Most of the Corridor runs through densely populated residential neighborhoods, with row homes facing the Boulevard. Also, the Boulevard is an attractive, tree-lined parkway. Issues and impacts to be considered during the study include potential changes to: the physical environment (air quality, noise and vibration, water quality, aesthetics, etc.); the social environment (land use, development, neighborhoods, job accessibility, etc.); parklands and historic resources; transportation system performance, including vehicular and pedestrian circulation and parking; capital, operating and maintenance costs; financial resources available and financial impact. Evaluation criteria will include consideration of the local goals and objectives established for the study, measures of effectiveness identified during scoping, and criteria established by FTA for "New Start" transit projects.

Issued on: September 7, 1999.

Sheldon A. Kinbar,

Regional Administrator, FTA.

Carmine M. Fiscina,

Technology and Safety Engineer, FHWA.

[FR Doc. 99–23615 Filed 9–9–99; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Advisory Council on Transportation Statistics

AGENCY: Bureau of Transportation Statistics.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to Section 10(A)(2) of the Federal Advisory Committee Act (Public law 72–363; 5 U.S.C. App.2) notice is hereby given of a meeting of the Bureau of Transportation Statistics (BTS) Advisory Council on Transportation Statistics (ACTS) to be held Friday, September 17, 1999, 10:00 to 4:00 p.m. The meeting will take place at the U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC in conference room 3328 of the Nassif Building.

The Advisory Council, called for under Section 6007 of Public law 102–240, Intermodal Surface Transportation Efficiency Act of 1991, December 18, 1991, and chartered on June 19, 1995, was created to advise the Director of BTS on transportation statistics and analyses, including whether or not the statistics and analysis disseminated by the Bureau are of high quality and are based upon the best available objective information.

The agenda for this meeting will include an introduction of a new Advisory Council member, Director's programs update, BTS strategic plan, review of staffing, discussion of customer service outreach and marketing, report on focus groups held on BTS publications, update on safety conferences, identification of substantive issues, review of plans and schedule, other items of interest, discussion and agreement of date(s) for subsequent meetings, and comments from the floor.

Since access to the DOT building is controlled, all persons who plan to attend the meeting must notify Ms. Lillian "Pidge" Chapman, Council Liaison, on (202) 366–1270 prior to September 15. Attendance is open to the interested public but limited to space available. With the approval of the Chair, members of the public may present oral statements at the meeting. Noncommittee members wishing to present oral statements, obtain information, or who plan to access the building to attend the meeting should also contact Ms. Chapman.

Members of the public may present a written statement to the Council at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Chapman (202) 366–1270 at least seven days prior to the meeting.

Issued in Washington, DC, on September 3, 1999.

Ashish Sen,

Director.

[FR Doc. 99–23516 Filed 9–9–99; 8:45 am]

BILLING CODE 4910–FE–P

DEPARTMENT OF THE TREASURY

Departmental Offices; International Financial Institution Advisory Commission

AGENCY: Department of the Treasury.

ACTION: Notice of meeting.

SUMMARY: Under section 603 of the foreign Operations, Export Financing and Related Programs Appropriations Act, 1999, the International Financial Institution Advisory Commission (the "Commission") shall advise and report to the Congress on the future role and responsibilities of the international financial institutions (defined as the International Monetary Fund, International Bank for Reconstruction and Development, European Bank for Reconstruction and Development, International Development Association, International Finance Corporation, Multilateral Investment Guarantee Agency, African Development Bank, African Development Fund, Asian Development Bank, Inter-American Development Bank, and Inter-American Investment Corporation), the World Trade Organization, and the Bank for International Settlements.

DATES: The second meeting of the Advisory Commission will be held on September 28, 1999, beginning at 9:30 a.m. and tentatively ending at 3:30 p.m., in Room H 327 in the U.S. Capitol, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Designated Federal Official: William McFadden Senior Policy Advisory, Office of International Monetary and Financial Policy, Room 4444, Department of the Treasury, 1500 Pennsylvania Avenue N.W., Washington, D.c. 20220. Telephone number 202–622–0343, fax number (202) 622–7664.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda tentatively includes discussion of the following:

- Sources of financial crises and instability; relation of instability to crises; size of bank failures and depth of crises.
- Role and evolving functions of the International Monetary Fund.

Procedural

This meeting is open to the public. Please note that the meeting may close early if all business is finished. Members of the public may submit written comments. If you wish to furnish comments, please provide 16 copies of your written material to the Designated Federal Official. If you wish to have your comments distributed to members of the Commission in advance of the first meeting, 16 copies of any written material should be provided to the Designated Federal Official no later than September 20, 1999.

Dated: September 3, 1999.

William McFadden,

Designated Federal Official.

[FR Doc. 99–23494 Filed 9–9–99; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF VETERANS AFFAIRS

Medical Research Service Merit Review Committee, Notice of Meetings

The Department of Veterans Affairs gives notice under the Federal Advisory Committee Act, 5 U.S.C. App., of the following meetings to be held from 8 a.m. to 5 p.m. as indicated below:

Subcommittee for	Date	Location
Endocrinology	September 16–17, 1999	Washington Plaza.
Nephrology	September 22, 1999	1400 I St, NW, #400.
Epidemiology	September 27, 1999	Holiday Inn Central.
Mental Hlth & Behavioral Sciences	September 30–October 1, 1999	Holiday Inn Central.
Cardiology	October 1, 1999	1400 I St, NW, #400.
Oncology	October 4–5, 1999	Crowne Plaza.
Respiration	October 4, 1999	Holiday Inn Central.
Neurobiology-D	October 14–15, 1999	Holiday Inn Central.
Hematology	October 14, 1999	1400 I St, NW, #400.
Neurobiology-C	October 18, 1999	1400 I St, NW, #400.
Immunology	October 18–19, 1999	Crowne Plaza.
Aging and Clinical Geriatrics	October 18, 1999	1400 I St, NW, #400.
Infectious Diseases	October 21–22, 1999	Holiday Inn Central.
Surgery	October 23, 1999	1400 I St, NW, #400.
Gastroenterology	October 25–26, 1999	1400 I St, NW, #400.
Alcohol and Drug Dependence	October 28, 1999	1400 I St, NW, #400.
General Medical Science	October 28–29, 1999	Holiday Inn Central.
Medical Research Service Merit Review Committee	December 2, 1999	Holiday Inn Central.

The addresses of the hotels are:
Crowne Plaza, 1001—14th Street, NW, Washington, DC 20005.
Holiday Inn Central, 1501 Rhode Island Avenue, NW, Washington, DC 20005.
Washington Plaza, 10 Thomas Circle, NW, Washington, DC 20005.

These subcommittee meetings will be for the purpose of evaluating the scientific merit of research conducted in each specialty by Department of Veterans Affairs (VA) investigators working in VA Medical Centers and Clinics.

The subcommittee meetings will be open to the public for approximately one hour at the start of each meeting to discuss the general status of the program. The remaining portion of each subcommittee meeting will be closed to the public for the review, discussion, and evaluation of initial and renewal projects.

The closed portion of the meetings involves discussion, examination, reference to, and oral review of site visits, staff and consultant critiques of research protocols and similar documents. During this portion of the subcommittee meetings, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which could significantly frustrate implementation of proposed agency action regarding such research projects.

As provided by subsection 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, closing portions of these subcommittee meetings is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B). Those who plan to attend or would like to obtain a copy of minutes of the subcommittee meetings and rosters of the members of the subcommittees should contact Dr. LeRoy Frey, Chief, Program Review Division, Medical Research Service, Department of Veterans Affairs, Washington, DC, (202) 408–3630.

Dated: August 31, 1999.

By Direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 99–23605 Filed 9–9–99; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Prosthetics and Special-Disabilities Programs, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Pub. L. 92–463 that a meeting of the Advisory Committee on Prosthetics and Special-Disabilities Programs (Committee) will be held Thursday and Friday, September 23–24, 1999. The meeting on September 23 will be held at VA Headquarters, Room 430, 810 Vermont Avenue, NW., Washington, DC, and the meeting on September 24 will be held at the Senate Russell Office Building, Room 418, 1st and Constitution Avenue, NE., Washington, DC. The September 23 session will convene at 8:00 a.m. and adjourn at 4 p.m. and the September 24 session will convene at 9:00 a.m. and adjourn at 12:00 noon. The purpose of the Advisory Committee on Prosthetics and Special-Disabilities Programs is to advise the Department on its prosthetic programs designed to provide state-of-the-art prosthetics and the associated rehabilitation research, development, and evaluation of such technology. The Committee also advises the Department on special disability programs which are defined as any program administered by the Secretary to serve veterans with spinal cord injury, blindness or vision impairment, loss of or loss of use of extremities, deafness or hearing impairment, or other serious incapacities in terms of daily life functions.

On the morning of September 23, the Committee will receive a status report concerning implementation of an integrated prosthetics organization within each Veterans Integrated Servce Network (VISN). The Committee will also receive briefings by the National Program Directors of the Special-Disabilities Programs regarding the status of their activities over the last five months. On the morning of September 24, the Committee will review and discuss with staff members of the House and Senate Veterans' Affairs Committee the Report to Congress on Maintaining Capacity for the Specialized Treatment and Rehabilitative Needs of Disabled Veterans and the Report by the Senate Minority Staff, Committee on Veterans' Affairs, of VA Programs for Veterans with Special Needs.

The meeting is open to the public. For those wishing to attend, contact Kathy Pessagno, Veterans Health Administration (113), phone (202) 273–8512, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, prior to September 17, 1999.

Dated: August 31, 1999.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 99–23604 Filed 9–9–99; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group, Notice of Meeting

As required by the Federal Advisory Committee Act, the VA hereby gives notice that the Special Medical Advisory Group has scheduled a meeting on September 28, 1999. The meeting will convene at 8:30 a.m. and end at 2:00 p.m. The meeting will be held in Room 830 at VA Central Office, 810 Vermont Avenue, N.W., Washington, D.C. The purpose of the meeting is to advise the Secretary and Under Secretary for Health relative to the care and treatment of disabled veterans, and other matters pertinent to the Department's Veterans Health Administration (VHA).

The agenda for the meeting will include discussion of VA Research Program systemwide, update on the service line principles and recommendations, issues in education and curriculum, and VA efforts in the computerized patient record.

All sessions will be open to the public up to the seating capacity of the meeting room. Those wishing to attend should contact Celestine Brockington, Office of the Under Secretary for Health, Department of Veterans Affairs. Her phone number is 202.273.5878.

Dated: August 27, 1999.

By Direction of the Secretary:

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 99–23500 Filed 9–9–99; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 64, No. 175
Friday, September 10, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

THE PRESIDENT

3 CFR

Proclamation 7219 of September 2, 1999

Contiguous Zone of the United States

Correction

In Presidential document 99–23460 beginning on page 48701 in the issue of Wednesday, September 8, 1999, the date "August 3, 1999," in the subject heading of the Proclamation was incorrect and should read "September 3, 1999," and the date in the running heads should read "September 8, 1999."

[FR Doc. C9–23460 Filed 9–9–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99-471-000]

Williams Field Services Group, Inc. v. El Paso Natural Gas Company; Notice of Compliant

Correction

In notice document 99–22136 beginning on page 46668 in the issue of Thursday, August 26, 1999, the docket number should appear as set forth above.

[FR Doc. C9–22136 Filed 9–9–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM00-1-55-000]

Questar Pipeline Company; Notice of Tariff Filing

Correction

In notice document 99–22137 beginning on page 46666 in the issue of Thursday, August 26, 1999, the docket number should appear as set forth above.

[FR Doc. C9–22137 Filed 9–9–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM00-1-143-000]

TransColorado Gas Transmission Company; Notice of Tariff Filing

Correction

In notice document 99–22138 beginning on page 46667 in the issue of Thursday, August 26, 1999, the docket number should appear as set forth above.

[FR Doc. C9–22138 Filed 9–9–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99-4026-000]

Mobile Energy Services Co., L.L.C.; Notice of Filing

Correction

In notice document 99–22140 beginning on page 46665 in the issue of Thursday, August 26, 1999, the docket number should appear as set forth above.

[FR Doc. C9–22140 Filed 9–9–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106527–98]

RIN 1545–AW22

Capital Gains, Partnership, Subchapter S, and Trust Provisions

Correction

In proposed rule document 99–20368, beginning on page 43117, in the issue of Monday, August 9, 1999, make the following corrections:

§ 1.1(h)–1 [Corrected]

1. On page 43121, in the second column, in § 1.1(h)–1(f), in *Example 1*, the table is corrected to read as follows:

	Assets	
	Adjusted basis	Market value
Cash	$3,000	$3,000
Loans owed to partnership	10,000	10,000
Collectibles	1,000	3,000
Other capital assets	6,000	2,000
Capital assets	7,000	5,000
Unrealized receivables	[illegible]	14,000
Total	$20,000	$32,000
	Liabilities and capital	
Liabilities	$2,000	$2,000
Capital:		
A	9,000	15,000
B	9,000	15,000
Total	$20,000	$32,000

§ 1.1223–3 [Corrected]

2. On page 43123, in the first column, in § 1.1223–3(e), in *Example 4*, the table is corrected to read as follows:

	Assets	
	Adjusted basis	Market value
Cash	$5,000	$5,000
Unrealized Receivables	0	6,000
Capital Asset 1	3,000	8,000
Capital Asset 2	2,000	5,000
Capital Assets	5,000	13,000
Total	$10,000	$24,000

[FR Doc. C9–20368 Filed 9–9–99; 8:45 am]

BILLING CODE 1505–01–D

federal register

Friday
September 10, 1999

Part II

Department of Agriculture

Forest Service

36 CFR Part 242

Department of the Interior

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2000—2001 Subsistence Taking of Fish and Wildlife Regulations; Proposed Rules

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AF74

Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2000–2001 Subsistence Taking of Fish and Wildlife Regulations

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise regulations for seasons, harvest limits, methods, and means related to taking of wildlife for subsistence uses during the 2000–2001 regulatory year. The rulemaking is necessary because Subpart D is subject to an annual public review cycle. When final, this rulemaking will replace the wildlife regulations included in the "Subsistence Management Regulations for Public Lands in Alaska, Subpart D—1999–2000 Subsistence Taking of Fish and Wildlife Regulations," which expire on June 30, 2000. This rule would also amend the Customary and Traditional Use Determinations of the Federal Subsistence Board (Section __.24 of Subpart C).

DATES: The Federal Subsistence Board must receive your written public comments and proposals to change this proposed rule no later than November 5, 1999. Federal Subsistence Regional Advisory Councils (Regional Councils) will hold public meetings to receive proposals to change regulations contained in this proposed rule from September 28–October 28, 1999, at various locations in Alaska. See **SUPPLEMENTARY INFORMATION** for additional information on meetings.

ADDRESSES: You may submit written comments and proposals to the Office of Subsistence Management, 1011 E. Tudor Road, Anchorage, Alaska 99503.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management; (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, (907) 271–2540.

SUPPLEMENTARY INFORMATION:

Meeting Locations and Written Comment Procedures

The Federal Subsistence Board (Board) will hold meetings on this proposed rule at the following locations in Alaska:

Southeast Regional Council	Angoon	October 27, 1999.
Southcentral Regional Council	Anchorage	October 14, 1999.
Kodiak/Aleutians Regional Council	King Cove	September 28, 1999.
Bristol Bay Regional Council	Naknek	October 5, 1999.
Yukon-Kuskokwim Delta Regional Council	Quinhagak	October 12, 1999.
Western Interior Regional Council	Aniak	October 13, 1999.
Seward Peninsula Regional Council	Anchorage	October 18, 1999.
Northwest Arctic Regional Council	Anchorage	October 19, 1999.
Eastern Interior Regional Council	Fort Yukon	October 6, 1999.
North Slope Regional Council	Anchorage	October 19, 1999.

We will publish notice of specific dates, times, and meeting locations in local and statewide newspapers prior to the meetings. We may need to change locations and dates based on weather or local circumstances. The amount of work on each Regional Council's agenda will determine the length of the Regional Council meetings. We will compile and distribute for additional public review during early November 1999 the written proposals to change Subpart D hunting and trapping regulations and customary and traditional use determinations in Subpart C. A 30-day public comment period will follow distribution of the compiled proposal packet. We will accept written public comments on distributed proposals during the public comment period. You may present comments on published proposals to change hunting and trapping and customary and traditional use determination regulations to the Regional Councils at their winter meetings; locations, dates, and times to be announced. The Board will deliberate and take final action on proposals received that request changes to this proposed rule at a public meeting to be held in Anchorage during May 2000.

The Board's review of your comments and proposals will be facilitated by you providing the following information: (a) Your name, address, and telephone number; (b) The section and/or paragraph of the proposed rule for which your change is being suggested; (c) A statement explaining why the change is necessary; (d) The proposed wording change; (e) Any additional information you believe will help the Board in evaluating your proposal. Proposals which fail to include the above information, or proposals which are beyond the scope of authorities in § __.24, Subpart C and § __.25, Subpart D, may be rejected. The Board may defer review and action on some proposals if workload exceeds work capacity of staff, Regional Councils, or Board. These deferrals will be based on recommendations of the affected Regional Council, staff members and on the basis of least harm to the subsistence user. Proposals should be specific to customary and traditional use determinations or to subsistence hunting and trapping seasons, harvest limits, and/or methods and means.

Public Review Process—Regulation Comments, Proposals, and Public Meetings

You may submit written comments or proposed regulation changes in writing to the address identified at the beginning of this rulemaking by November 5, 1999. You may also present comments or proposals at Regional Council meetings to be held from September 28—October 28, 1999.

The Board Will Not Consider Proposals for Changes Relating to Fish or Shellfish Regulations, and Changes to the Overall Program by at This Time. Fish and shellfish regulations are currently extended through September 30, 1999. A separate rulemaking process resulted from the consolidated "Katie John" litigation and petitions to the Secretaries regarding extended

jurisdiction. Those regulations were published in the **Federal Register** January 8, 1999, (64 FR 1276) and become effective October 1, 1999. The Board will be calling for proposed changes to those regulations early in 2000.

Following public distribution of proposals for changes to the 2000–2001 proposed regulations, we will provide a comment period to allow public review of those proposals that will be considered by the Board. We will also hold a second series of Regional Council meetings in February and March 2000, to assist the Regional Councils in developing recommendations to the Board. You may submit written comments on proposals to the U.S. Fish and Wildlife Service before conclusion of the comment period which is presently scheduled to end on January 14, 2000. The Board will discuss and evaluate proposed changes to this rule during a public meeting scheduled to be held in Anchorage, May 2000. The public may provide additional oral testimony on specific proposals before the Board at that time.

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability which are consistent with ANILCA, and which provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell* versus *State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in *McDowell* required the State to delete the rural preference from the subsistence statute, and therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114–27170). Consistent with Subparts A, B, and C of these regulations, the Departments established a Federal Subsistence Board to administer the Federal subsistence management program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Area Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies have participated in development of regulations for Subparts A, B, and C, and the annual Subpart D regulations. All Board members have reviewed this rule and agree with its substance. Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text would be incorporated into 36 CFR part 242 and 50 CFR part 100.

Applicability of Subparts A, B, and C

Subparts A, B, and C (unless otherwise amended) of the Subsistence Management Regulations for Public Lands in Alaska, 50 CFR §§ 100.1 to 100.23 and 36 CFR §§ 242.1 to 242.23, remain effective and apply to this rule. Therefore, all definitions located at 50 CFR § 100.4 and 36 CFR § 242.4 apply to regulations found in this subpart.

Navigable Waters

At this time, Federal subsistence management program regulations apply to all non-navigable waters located on public lands and to navigable waters located on the public lands identified at 50 CFR § 100.3(b) and 36 CFR § 242.3(b) of the Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964) published May 29, 1992. Nothing in these regulations is intended to enlarge or diminish authorities of the Departments to manage submerged lands, title to which is held by the United States government.

The Board recognizes Judge Holland's order granting preliminary relief to the plaintiffs in the case of the *Native Village of Quinhagak et al.* versus *United States of America et al.* Therefore, to the extent that these regulations would continue any existing restrictions on the taking of rainbow trout by the residents of Quinhagak and Goodnews Bay in the Kanektok, Arolik, and Goodnews Rivers, those regulations will not be enforced pending completion of proceedings in that case. However, in light of the continuation of the proceedings in the consolidated "Katie John" litigation, a petition to the Secretaries of the Interior and Agriculture addressing jurisdiction in navigable waters, and activities in the State Legislature, no attempt is being made to alter the fish and shellfish portions of the regulations (Sections __.26 and __.27) until final guidance has been received regarding the jurisdictional authority of the Federal government over navigable waters in general, and specifically with respect to the waters at issue in *Native Village of Quinhagak et al.* versus *United States of America et al.*

Federal Subsistence Regional Advisory Councils

Pursuant to the Record of Decision, Subsistence Management Regulations for Federal Public Lands in Alaska, April 6, 1992, and the Subsistence Management Regulations for Federal Public Lands in Alaska, 36 CFR 242.11 (1992) and 50 CFR 100 (1992), and for the purposes identified therein, we divide Alaska into ten subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council (Regional Council). The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska pubic lands. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

The Regional Councils have a substantial role in reviewing the proposed rule and making recommendations for the final rule. Moreover, the Council Chairs, or their designated representatives, will present their Council's recommendations at the Board meeting in May 2000.

Proposed Changes from 1999–2000 Seasons and Bag Limit Regulations

Subpart D regulations are subject to an annual cycle and require development of an entire new rule each year. Customary and traditional use determinations are also subject to an annual review process providing for modification each year. The text of the 1999–2000 Subparts C and D Final Rule served as the foundation for the 2000–2001 Subparts C and D proposed rule. The regulations contained in this proposed rule will take effect on July 1, 2000, unless elements are changed by

subsequent Board action following the public review process outlined herein.

Conformance with Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, it was the decision of the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, to implement Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

Compliance with Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but it does not appear that the program may significantly restrict subsistence uses.

Paperwork Reduction Act

These rules contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. They apply to the use of public lands in Alaska. The information collection requirements described below were approved by OMB under 44 U.S.C. 3501 and were assigned clearance number 1018–0075, which expires 5/31/2000. The information requirements described below will be submitted to OMB for approval beyond that date. We will not conduct or sponsor, and you are not required to respond to a collection of information request unless it displays a currently valid OMB control number.

The collection of information will be achieved through the use of the Federal Subsistence Hunt Permit Application. This collection information will establish whether the applicant qualifies to participate in a Federal subsistence hunt on public land in Alaska and will provide a report of harvest and location of harvest.

The likely respondents to this collection of information are rural Alaska residents who wish to participate in specific subsistence hunts on Federal land. The collected information is necessary to determine harvest success and harvest location in order to make management decisions relative to the conservation of healthy wildlife populations. The annual burden of reporting and recordkeeping is estimated to average 0.25 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. The estimated number of likely respondents under this rule is less than 5,000, yielding a total annual reporting and recordkeeping burden of 1,250 hours or less.

Direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 224 ARLSQ, Washington, D.C. 20240; and the Office of Management and Budget, Paperwork Reduction Project (Subsistence), Washington, D.C. 20503. Additional information collection requirements may be imposed if Local Advisory Committees subject to the Federal Advisory Committee Act are established under Subpart B.

Other Requirements

This rule was not subject to OMB review under Executive Order 12866.

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§ " and a numbered heading; for example, [§ __.24 Customary and traditional determinations.]) (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand. Send a copy of any comments that concern how we could make this rule easier to understand to: USFWS, Office of Subsistence Management, Thomas H. Boyd, 1011 E. Tudor Road, Anchorage, Alaska 99503. You may also e-mail the comments to this address: Bill__Knauer@fws.gov.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as ammunition, snowmachine, and gasoline dealers. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

In general, the resources harvested under this rule will be consumed by the local harvester and do not result in a dollar benefit to the economy. However, it is estimated that 2 million pounds of meat are harvested by the local subsistence users annually and, if given a dollar value of $3.00 per pound, would equate to $6 million State wide.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 et seq., that this rulemaking will not impose a cost of $100 million or more in any given year on local or state governments or private entities. The implementation of this rule is by Federal agencies and there is no cost involved to any state or local entities or tribal governments.

The Service has determined that these final regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

In accordance with Executive Order 12612, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising management authority over wildlife resources on Federal lands.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

Drafting Information

William Knauer drafted these regulations under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Peggy Fox, Alaska State Office, Bureau of Land Management; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Area Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service provided additional guidance.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Federal Subsistence Board proposes to amend Title 36, part 242, and Title 50, part 100, of the Code of Federal Regulations, as set forth below.

PART __—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

1. We propose for the authority citation for both 36 CFR Part 242 and 50 CFR Part 100 to continue to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Subpart C—Board Determinations

2. We propose to amend Subpart C of 36 CFR part 242 and 50 CFR part 100, by revising § __.24(a)(1) to read as follows:

§ __.24 Customary and traditional use determinations.

(a) * * *

(1) Wildlife determinations.

Area	Species	Determination
Unit 1(C)	Black Bear	Residents of Unit 1(C), 1(D), 3, and residents of Hoonah, Pelican, Point Baker, Sitka, and Tenakee Springs.
1(A)	Brown Bear	Residents of Unit 1(A) except no subsistence for residents of Hyder.
1(B)	Brown Bear	Residents of Unit 1(A), Petersburg, and Wrangell, except no subsistence for residents of Hyder.
1(C)	Brown Bear	Residents of Unit 1(C), Haines, Hoonah, Kake, Klukwan, Skagway, and Wrangell, except no subsistence for residents of Gustavus.
1(D)	Brown Bear	Residents of 1(D).
1(A)	Deer	Residents of 1(A) and 2.
1(B)	Deer	Residents of Unit 1(A), residents of 1(B), 2 and 3.
1(C)	Deer	Residents of 1(C) and (D), and residents of Hoonah, Kake, and Petersburg.
1(D)	Deer	No Federal subsistence priority.
1(B)	Goat	Residents of Units 1(B) and 3.
1(C)	Goat	Residents of Haines, Kake, Klukwan, Petersburg, and Hoonah.
1(B)	Moose	Residents of Units 1, 2, 3, and 4.
1(C) Berner's Bay	Moose	No Federal subsistence priority.
1(D)	Moose	Residents of Unit 1(D).
Unit 2	Brown Bear	No Federal subsistence priority.
2	Deer	Residents of Unit 1(A) and residents of Units 2 and 3.
Unit 3	Deer	Residents of Unit 1(B) and 3, and residents of Port Alexander, Port Protection, Pt. Baker, and Meyer's Chuck.
3, Wrangell and Mitkof Islands	Moose	Residents of Units 1(B), 2, and 3.
Unit 4	Brown Bear	Residents of Unit 4 and Kake.
4	Deer	Residents of Unit 4 and residents of Kake, Gustavus, Haines, Petersburg, Pt. Baker, Klukwan, Port Protection, Wrangell, and Yakutat.

Area	Species	Determination
4	Goat	Residents of Sitka, Hoonah, Tenakee, Pelican, Funter Bay, Angoon, Port Alexander, and Elfin Cove.
Unit 5	Black Bear	Residents of Unit 5(A).
5	Brown Bear	Residents of Yakutat.
5	Deer	Residents of Yakutat.
5	Goat	Residents of Unit 5(A)
5	Moose	Residents of Unit 5(A).
5	Wolf	Residents of Unit 5(A).
Unit 6(A)	Black Bear	Residents of Yakutat and residents of 6(C) and 6(D), except no subsistence for Whittier
6, remainder	Black Bear	Residents of Unit 6(C) and 6(D), except no subsistence for Whittier.
6	Brown Bear	No Federal subsistence priority.
6(A)	Goat	Residents of Unit 5(A), 6(C), Chenega Bay and Tatitlek.
6(C) and (D)	Goat	Residents of Unit 6(C) and (D).
6(A)	Moose	Unit 6(A)—Residents of Units 5(A), 6(A), 6(B) and 6(C).
6(B) and (C)	Moose	Residents of Units 6(A), 6(B) and 6(C).
6(D)	Moose	No Federal subsistence priority.
6(A)	Wolf	Residents of Units 5(A), 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
6, remainder	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 7	Brown Bear	No Federal subsistence priority.
7	Caribou	No Federal subsistence priority.
7, Brown Mountain hunt area	Goat	Residents of Port Graham and English Bay.
7, that portion draining into Kings Bay	Moose	Residents of Chenega Bay and Tatitlek.
7, remainder	Moose	No Federal subsistence priority.
7	Sheep	No Federal subsistence priority.
Unit 8	Brown Bear	Residents of Old Harbor, Akhiok, Larsen Bay, Karluk, Ouzinkie, and Port Lions.
8	Deer	Residents of Unit 8.
8	Elk	Residents of Unit 8.
8	Goat	No Federal subsistence priority.
Unit 9(D)	Bison	No Federal subsistence priority.
9(A) and (B)	Black Bear	Residents of Units 9(A) and (B), and 17(A), (B), and (C).
9(A)	Brown Bear	Residents of Pedro Bay.
9(B)	Brown Bear	Residents of Unit 9(B).
9(C)	Brown Bear	Residents of Unit 9(C).
9(D)	Brown Bear	Residents of Units 9(D) and 10 (Unimak Island).
9(E)	Brown Bear	Residents of Chignik, Chignik Lagoon, Chignik Lake, Egegik, Ivanof Bay, Perryville, Pilot Point, Ugashik, and Port Heiden/Meshik.
9(A) and (B)	Caribou	Residents of Units 9(B), 9(C) and 17.
9(C)	Caribou	Residents of Unit 9(B), 9(C), 17 and residents of Egegik.
9(D)	Caribou	Residents of Unit 9(D), and residents of False Pass.
9(E)	Caribou	Residents of Units 9(B), (C), (E), 17, and residents of Nelson Lagoon and Sand Point.
9(A), (B), (C) and (E)	Moose	Residents of Unit 9(A), (B), (C) and (E).
9(D)	Moose	Residents of Cold Bay, False Pass, King Cove, Nelson Lagoon, and Sand Point.
9(B)	Sheep	Residents of Iliamna, Newhalen, Nondalton, Pedro Bay, and Port Alsworth.
9, remainder	Sheep	No determination.
9	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16—26.
9(A), (B), (C), & (E)	Beaver	Residents of Units 9(A), (B), (C), (E), and 17.
Unit 10 Unimak Island	Brown Bear	Residents of Units 9(D) and 10 (Unimak Island)
Unit 10 Unimak Island	Caribou	Residents of False Pass, King Cove, and Sand Point.
10, remainder	Caribou	No determination.
10	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 11	Bison	No Federal subsistence priority.
11, north of the Sanford River	Black Bear	Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Tazlina, Tonsina, and Units 11 and 12.
11, remainder	Black Bear	Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Tazlina, Tonsina, and Unit 11.
11, north of the Sanford River	Brown Bear	Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Tazlina, Tonsina, and Units 11 and 12.

Area	Species	Determination
11, remainder	Brown Bear	Residents of Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Tazlina, Tonsina, and Unit 11.
11, north of the Sanford River	Caribou	Residents of Units 11, 12, and 13 (A)–(D) and the residents of Chickaloon, Healy Lake, and Dot Lake.
11, remainder	Caribou	Residents of Units 11 and 13 (A)–(D) and the residents of Chickaloon.
11	Goat	Residents of Unit 11 and the residents of Chitina, Chistochina, Copper Center, Gakona, Glennallen, Gulkana, Mentasta Lake, Tazlina, Tonsina, and Dot Lake.
11, north of the Sanford River	Moose	Residents of Units 11, 12, and 13 (A)–(D) and the residents of Chickaloon, Healy Lake, and Dot Lake.
11, remainder	Moose	Residents of Units 11, 13 (A)–(D), and residents of Chickaloon.
11, north of the Sanford River	Sheep	Residents of Unit 12 and the communities and areas of Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Glennallen, Gulkana, Healy Lake, Kenny Lake, Mentasta Lake, Slana, McCarthy/South Wrangell/ South Park, Tazlina and Tonsina; residents along the Nabesna Road—Milepost 0–46 (Nabesna Road), and residents along the McCarthy Road—Milepost 0–62 (McCarthy Road).
11, remainder	Sheep	Residents of the communities and areas of Chisana, Chistochina, Chitina, Copper Center, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, McCarthy/South Wrangell/ South Park, Tazlina and Tonsina; residents along the Tok Cutoff—Milepost 79–110 (Mentasta Pass), residents along the Nabesna Road—Milepost 0–46 (Nabesna Road), and residents along the McCarthy Road—Milepost 0–62 (McCarthy Road).
11	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
11	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 12, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
11	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 12, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 12	Brown Bear	Residents of Unit 12 and Dot Lake, Chistochina, Gakona, Mentasta Lake, and Slana.
12	Caribou	Residents of Unit 12 and residents of Dot Lake, Healy Lake, and Mentasta Lake.
12, south of a line from Noyes Mountain, southeast of the confluence of Tatschunda Creek to Nabesna River.	Moose	Residents of Unit 11 north of 62nd parallel (excluding North Slana Homestead and South Slana Homestead); and residents of Unit 12, 13(A)–(D) and the residents of Chickaloon, Dot Lake, and Healy Lake.
12, east of the Nabesna River and Nabesna Glacier, south of the Winter Trail from Pickerel Lake to the Canadian Border.	Moose	Residents of Unit 12 and Healy Lake
12, remainder	Moose	Residents of Unit 12 and residents of Dot Lake, Healy Lake, and Mentasta Lake.
12	Sheep	Residents of Unit 12 and residents of Chistochina, Dot Lake, Healy Lake, and Mentasta Lake.
12	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 13	Brown Bear	Residents of Unit 13.
13(B)	Caribou	Residents of Units 11, 12 (along the Nabesna Road), 13, residents of Unit 20(D) except Fort Greely, and the residents of Chickaloon.
13(C)	Caribou	Residents of Units 11, 12 (along the Nabesna Road), 13, and the residents of Chickaloon, Dot Lake and Healy Lake.
13(A) & (D)	Caribou	Residents of Units 11, 12 (along the Nabesna Road), 13, and the residents of Chickaloon.
13(E)	Caribou	Residents of Units 11, 12 (along the Nabesna Road), 13, and the residents of Chickaloon, McKinley Village, and the area along the Parks Highway between milepost 216 and 239 (except no subsistence for residents of Denali National Park headquarters).
13(D)	Goat	No Federal subsistence priority.
13(A) and (D)	Moose	Residents of Unit 13 and the residents of Chickaloon.
13(B)	Moose	Residents of Units 13, 20(D) except Fort Greely, and the residents of Chickaloon.

Area	Species	Determination
13(C)	Moose	Residents of Units 12, 13 and the residents of Chickaloon, Healy Lake, and Dot Lake.
13(E)	Moose	Residents of Unit 13 and the residents of Chickaloon and of McKinley Village, and the area along the Parks Highway between milepost 216 and 239 (except no subsistence for residents of Denali National Park headquarters).
13(D)	Sheep	No Federal subsistence priority.
13	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
13	Grouse (Spruce, Blue, Ruffed & Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 & 23.
13	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 & 23.
Unit 14(B) and (C)	Brown Bear	No Federal subsistence priority.
14	Goat	No Federal subsistence priority.
14	Moose	No Federal subsistence priority.
14(A) and (C)	Sheep	No Federal subsistence priority.
Unit 15(C)	Black Bear	Residents of Port Graham and Nanwalek only.
15, remainder	Black Bear	No Federal subsistence priority.
15	Brown Bear	No Federal subsistence priority.
15(C), Port Graham and English Bay hunt areas	Goat	Residents of Port Graham and Nanwalek.
15(C), Seldovia hunt area	Goat	Residents Seldovia area.
15	Moose	Residents of Ninilchik, Nanwalek, Port Graham, and Seldovia.
15	Sheep	No Federal subsistence priority.
15	Ptarmigan (Rock, Willow and White-tailed).	Residents of Unit 15.
15	Grouse (Spruce)	Residents of Unit 15.
15	Grouse (Ruffed)	No Federal subsistence priority.
Unit 16(B)	Black Bear	Residents of Unit 16(B).
16	Brown Bear	No Federal subsistence priority.
16(A)	Moose	No Federal subsistence priority.
16(B)	Moose	Residents of Unit 16(B).
16	Sheep	No Federal subsistence priority.
16	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
16	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
16	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 17(A) and that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake.	Black Bear	Residents of Units 9(A) and (B), 17, and residents of Akiak and Akiachak.
17, remainder	Black Bear	Residents of Units 9(A) and (B), and 17.
17(A)	Brown Bear	Residents of Unit 17, and residents of Akiak, Akiachak, Goodnews Bay and Platinum.
17(A) and (B), those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Brown Bear	Residents of Kwethluk.
17(B), that portion draining into Nuyakuk Lake and Tikchik Lake.	Brown Bear	Residents of Akiak and Akiachak.
17(B) and (C)	Brown Bear	Residents of Unit 17.
17	Caribou	Residents of Units 9(B), 17 and residents of Lime Village and Stony River.
Unit 17(A, that portion west of the Izaveieknik River, Upper Togiak Lake, Togiak Lake, and the main course of the Togiak River.	Caribou	Residents of Goodnews Bay, Platinum, Quinhagak, Eek, Tuntutuliak, and Napakiak.
17(A) and (B), those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Caribou	Residents of Kwethluk.
Unit 17(B), that portion of Togiak National Wildlife Refuge within Unit 17(B).	Caribou	Residents of Bethel, Goodnews Bay, Platinum, Quinhagak, Eek, Tuntutuliak, and Napakiak.
17(A) and (B), those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Moose	Residents of Kwethluk.

Area	Species	Determination
17(A)	Moose	Residents of Unit 17 and residents of Goodnews Bay and Platinum; however, no subsistence for residents of Akiachak, Akiak and Quinhagak.
17(B) and (C)	Moose	Residents of Unit 17, and residents of Nondalton, Levelock, Goodnews Bay, and Platinum.
17	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
17	Beaver	Residents of Units 9(A), (B), (C), (E), and 17.
Unit 18	Black Bear	Residents of Unit 18, residents of Unit 19(A) living downstream of the Holokuk River, and residents of Holy Cross, Stebbins, St. Michael, Twin Hills, and Togiak.
18	Brown Bear	Residents of Akiachak, Akiak, Eek, Goodnews Bay, Kwethluk, Mt. Village, Napaskiak, Platinum, Quinhagak, St. Mary's, and Tuluksak.
18	Caribou (Kilbuck caribou herd only).	Interim Determination by Federal Subsistence Board (12/18/91): residents of Tuluksak, Akiak, Akiachak, Kwethluk, Bethel, Oscarville, Napaskiak, Napakiak, Kasigluk, Atmanthluak, Nunapitchuk, Tuntutliak, Eek. Quinhagak, Goodnews Bay, Platinum, Togiak, and Twin Hills.
18, north of the Yukon River	Caribou (except Kilbuck caribou herd).	Residents of Alakanuk, Andreafsky, Chevak, Emmonak, Hooper Bay, Kotlik, Kwethluk, Marshall, Mountain Village, Pilot Station, Pitka's Point, Russian Mission, St. Marys, St. Michael, Scammon Bay, Sheldon Point, and Stebbins.
18, remainder	Caribou (except Kilbuck caribou herd).	Residents of Kwethluk.
18, that portion of the Yukon River drainage upstream of Russian Mission and that portion of the Kuskokwim River drainage upstream of, but not including the Tuluksak River drainage.	Moose	Residents of Unit 18 and residents of Upper Kalskag, Lower Kalskag, Aniak, and Chuathbaluk.
18, remainder	Moose	Residents of Unit 18 and residents of Upper Kalskag and Lower Kalskag.
18	Muskox	No Federal subsistence priority.
18	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 19(C),(D)	Bison	No Federal subsistence priority.
19(A) and (B)	Brown Bear	Residents of Units 19 and 18 within the Kuskokwim River drainage upstream from, and including, the Johnson River.
19(C)	Brown Bear	No Federal subsistence priority.
19(D)	Brown Bear	Residents of Units 19(A) and (D), and residents of Tulusak and Lower Kalskag.
19(A) and (B)	Caribou	Residents of Units 19(A) and 19(B), residents of Unit 18 within the Kuskokwim River drainage upstream from, and including, the Johnson River, and residents of St. Marys, Marshall, Pilot Station, Russian Mission.
19(C)	Caribou	Residents of Unit 19(C), and residents of Lime Village, McGrath, Nikolai, and Telida.
19(D)	Caribou	Residents of Unit 19(D), and residents of Lime Village, Sleetmute, and Stony River.
19(A) and (B)	Moose	Residents of Unit 18 within Kuskokwim River drainage upstream from and including the Johnson River, and Unit 19.
Unit 19(B), west of the Kogrukluk River	Moose	Residents of Eek and Quinhagak.
19(C)	Moose	Residents of Unit 19.
19(D)	Moose	Residents of Unit 19 and residents of Lake Minchumina.
19	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 20(D)	Bison	No Federal subsistence priority.
20(F)	Black Bear	Residents of Unit 20(F)and residents of Stevens Village and Manley.
20(E)	Brown Bear	Residents of Unit 12 and Dot Lake.
20(F)	Brown Bear	Residents of Unit 20(F) and residents of Stevens Village and Manley.
20(A)	Caribou	Residents of Cantwell, Nenana, and those domiciled between milepost 216 and 239 of the Parks Highway. No subsistence priority for residents of households of the Denali National Park Headquarters.
20(B)	Caribou	Residents of Unit 20(B), Nenana, and Tanana.

Area	Species	Determination
20(C)	Caribou	Residents of Unit 20(C) living east of the Teklanika River, residents of Cantwell, Lake Minchumina, Manley Hot Springs, Minto, Nenana, Nikolai, Tanana, Talida, and those domiciled between milepost 216 and 239 of the Parks Highway and between milepost 300 and 309. No subsistence priority for residents of households of the Denali National Park Headquarters.
20(D) and (E)	Caribou	Residents of 20(D), 20(E), and Unit 12 north of the Wrangell-St. Elias National Park and Preserve.
20(F)	Caribou	Residents of 20(F), 25(D), and Manley.
20(A)	Moose	Residents of Cantwell, Minto, and Nenana, McKinley Village, the area along the Parks Highway between mileposts 216 and 239, except no subsistence for residents of households of the Denali National Park Headquarters.
20(B)	Moose	Minto Flats Management Area—residents of Minto and Nenana.
20(B)	Moose	Remainder—residents of Unit 20(B), and residents of Nenana and Tanana.
20(C)	Moose	Residents of Unit 20(C) (except that portion within Denali National Park and Preserve and that portion east of the Teklanika River), and residents of Cantwell, Manley, Minto, Nenana, the Parks Highway from milepost 300–309, Nikolai, Tanana, Telida, McKinley Village, and the area along the Parks Highway between mileposts 216 and 239. No subsistence for residents of households of the Denali National Park Headquarters.
20(D)	Moose	Residents of Unit 20(D) and residents of Tanacross.
20(F)	Moose	Residents of Unit 20(F), Manley, Minto, and Stevens Village.
20(F)	Wolf	Residents of Unit 20(F) and residents of Stevens Village and Manley.
20, remainder	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
20(D)	Grouse, (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23.
20(D)	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23.
Unit 21	Brown Bear	Residents of Units 21 and 23.
21(A)	Caribou	Residents of Units 21(A), 21(D), 21(E), Aniak, Chuathbaluk, Crooked Creek, McGrath, and Takotna.
21(B) & (C)	Caribou	Residents of Units 21(B), 21(C), 21(D), and Tanana.
21(D)	Caribou	Residents of Units 21(B), 21(C), 21(D), and Huslia.
21(E)	Caribou	Residents of Units 21(A), 21(E) and Aniak, Chuathbaluk, Crooked Creek, McGrath, and Takotna.
21(A)	Moose	Residents of Units 21(A), (E), Takotna, McGrath, Aniak, and Crooked Creek.
21(B) and (C)	Moose	Residents of Units 21(B) and (C), Tanana, Ruby, and Galena.
21(D)	Moose	Residents of Units 21(D), Huslia, and Ruby.
21(E)	Moose	Residents of Unit 21(E) and residents of Russian Mission.
21	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 22(A)	Black Bear	Residents of Unit 22(A) and Koyuk.
22(B)	Black Bear	Residents of Unit 22(B).
22(C), (D), and (E)	Black Bear	No Federal subsistence priority.
22	Brown Bear	Residents of Unit 22.
22(A)	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22 (except residents of St. Lawrence Island), 23, 24, and residents of Kotlik, Emmonak, Hooper Bay, Scammon Bay, Chevak, Marshall, Mountain Village, Pilot Station, Pitka's Point, Russian Mission, St. Marys, Sheldon Point, and Alakanuk.
22, remainder	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22 (except residents of St. Lawrence Island), 23, 24.
22	Moose	Residents of Unit 22.
22(B)	Muskox	Residents of Unit 22(B).
22(C)	Muskox	Residents of Unit 22(C).
22(D)	Muskox	Residents of Unit 22(D) excluding St. Lawrence Island.

Area	Species	Determination
22(E)	Muskox	Residents of Unit 22(E) excluding Little Diomede Island.
22	Wolf	Residents of Units 23, 22, 21(D) north and west of the Yukon River, and residents of Kotlik.
22	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23.
22	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23.
Unit 23	Black Bear	Residents of Unit 23, Alatna, Allakaket, Bettles, Evansville, Galena, Hughes, Huslia, and Koyukuk.
23	Brown Bear	Residents of Units 21 and 23.
23	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, residents of Galena, and residents of Units 22, 23, 24 including residents of Wiseman but not including other residents of the Dalton Highway Corridor Management Area, and 26(A).
23	Moose	Residents of Unit 23.
23, south of Kotzebue Sound and west of and including the Buckland River drainage.	Muskox	Residents of Unit 23 South of Kotzebue Sound and west of and including the Buckland River drainage.
23, remainder	Muskox	Residents of Unit 23 east and north of the Buckland River drainage.
23	Sheep	Residents of Point Lay and Unit 23 north of the Arctic Circle.
23	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
23	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23.
23	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22, and 23.
Unit 24, that portion south of Caribou Mountain, and within the public lands composing or immediately adjacent to the Dalton Highway Corridor Management Area.	Black Bear	Residents of Stevens Village and residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24, remainder	Black Bear	Residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24, that portion south of Caribou Mountain, and within the public lands composing or immediately adjacent to the Dalton Highway Corridor Management Area.	Brown Bear	Residents of Stevens Village and residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24, remainder	Brown Bear	Residents of Unit 24 including Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24	Caribou	Residents of Unit 24 including Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area; residents of Galena, Kobuk, Koyukuk, Stevens Village, and Tanana.
24	Moose	Residents of Unit 24, Koyukuk, and Galena.
24	Sheep	Residents of Unit 24 residing north of the Arctic Circle and residents of Allakaket, Alatna, Hughes, and Huslia.
24	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 25(D)	Black Bear	Residents of Unit 25(D).
25(D)	Brown Bear	Residents of Unit 25(D).
25, remainder	Brown Bear	No Federal subsistence priority.
25(D)	Caribou	Residents of 20(F), 25(D), and Manley.
25(A)	Moose	Residents of Units 25(A) and 25(D).
25(D) West	Moose	Residents of Beaver, Birch Creek, and Stevens Village.
25(D), remainder	Moose	Residents of Remainder of Unit 25.
25(A)	Sheep	Residents of Arctic Village, Chalkytsik, Fort Yukon, Kaktovik, and Venetie.
25(B) and (C)	Sheep	No Federal subsistence priority.
25(D)	Wolf	Residents of Unit 25(D).
25, remainder	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 26	Brown Bear	Residents of Unit 26 (except the Prudhoe Bay-Deadhorse Industrial Complex) and residents of Anaktuvuk Pass and Point Hope.
26(A)	Caribou	Residents of Unit 26, Anaktuvuk Pass and Point Hope.
26(B)	Caribou	Residents of Unit 26, Anaktuvuk Pass, Point Hope, and Wiseman.
26(C)	Caribou	Residents of Unit 26, Anaktuvuk Pass and Point Hope.

Area	Species	Determination
26	Moose	Residents of Unit 26, (except the Prudhoe Bay-Deadhorse Industrial Complex), and residents of Point Hope and Anaktuvuk Pass.
26(A)	Muskox	Residents of Anaktuvuk Pass, Atqasuk, Barrow, Nuiqsut, Point Hope, Point Lay, and Wainwright.
26(B)	Muskox	Residents of Anaktuvuk Pass, Nuiqsut, and Kaktovik.
26(C)	Muskox	Residents of Kaktovik.
26(A)	Sheep	Residents of Unit 26, Anaktuvuk Pass, and Point Hope.
26(B)	Sheep	Residents of Unit 26, Anaktuvuk Pass, Point Hope, and Wiseman.
26(C)	Sheep	Residents of Unit 26, Anaktuvuk Pass, Arctic Village, Chalkytsik, Fort Yukon, Point Hope, and Venetie.
26	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.

Subpart D—Subsistence Taking of Fish and Wildlife

3. We propose to amend Subpart D of 36 CFR part 242 and 50 CFR part 100, by revising § __.25 effective July 1, 2000, through June 30, 2001, to read as follows:

§ __.25 Subsistence taking of wildlife.

(a) Definitions. The following definitions shall apply to all regulations contained in this section:

ADF&G means the Alaska Department of Fish and Game.

Aircraft means any kind of airplane, glider, or other device used to transport people or equipment through the air, excluding helicopters.

Airport means an airport listed in the Federal Aviation Administration, Alaska Airman's Guide and chart supplement.

Animal means those species with a vertebral column (backbone).

Antler means one or more solid, horn-like appendages protruding from the head of a caribou, deer, elk, or moose.

Antlered means any caribou, deer, elk, or moose having at least one visible antler.

Antlerless means any caribou, deer, elk, or moose not having visible antlers attached to the skull.

Bear means black bear, or brown or grizzly bear.

Bow means a longbow, recurve bow, or compound bow, excluding a crossbow, or any bow equipped with a mechanical device that holds arrows at full draw.

Broadhead means an arrowhead that is not barbed and has two or more steel cutting edges having a minimum cutting diameter of not less than seven-eighths inch.

Brow tine means a tine on the front portion of a moose antler, typically projecting forward from the base of the antler toward the nose.

Buck means any male deer.

Bull means any male moose, caribou, elk, or musk oxen.

Closed season means the time when wildlife may not be taken.

Cub bear means a brown or grizzly bear in its first or second year of life, or a black bear (including cinnamon and blue phases) in its first year of life.

Designated hunter means a Federally qualified, licensed hunter who may take all or a portion of another Federally qualified, licensed hunter's harvest limit(s) only under situations approved by the Board.

Edible meat means the breast meat of ptarmigan and grouse, and, those parts of black bear, brown and grizzly bear, caribou, deer, elk, mountain goat, moose, musk oxen, and Dall sheep that are typically used for human consumption, which are: the meat of the ribs, neck, brisket, front quarters as far as the juncture of the humerus and radius-ulna (elbow), hindquarters as far as the distal joint (bottom) of the tibia-fibula (hock) and that portion of the animal between the front and hindquarters; however, *edible meat* of species listed above does not include: meat of the head, meat that has been damaged and made inedible by the method of taking, bones, sinew, and incidental meat reasonably lost as a result of boning or close trimming of the bones, or viscera.

Federally-qualified subsistence user means a rural Alaska resident qualified to harvest fish or wildlife on Federal public lands in accordance with the Federal Subsistence Management Regulations in this part.

Fifty-inch (50-inch) moose means a bull moose with an antler spread of 50 inches or more.

Full curl horn means the horn of a Dall sheep ram; the tip of which has grown through 360 degrees of a circle described by the outer surface of the horn, as viewed from the side, or that both horns are broken, or that the sheep is at least 8 years of age as determined by horn growth annuli.

Furbearer means a beaver, coyote, arctic fox, red fox, lynx, marten, mink, weasel, muskrat, river (land) otter, red squirrel, flying squirrel, ground squirrel, marmot, wolf, or wolverine.

Grouse collectively refers to all species found in Alaska, including spruce grouse, ruffed grouse, blue grouse and sharp-tailed grouse.

Hare or hares collectively refers to all species of hares (commonly called rabbits) in Alaska and includes snowshoe hare and tundra hare.

Harvest limit means the number of any one species permitted to be taken by any one person in a Unit or portion of a Unit in which the taking occurs.

Highway means the driveable surface of any constructed road.

Household means that group of people residing in the same residence.

Hunting means the taking of wildlife within established hunting seasons with archery equipment or firearms, and as authorized by a required hunting license.

Marmot collectively refers to all species of marmot that occur in Alaska including the hoary marmot, Alaska marmot, and the woodchuck.

Motorized vehicle means a motor-driven land, air, or water conveyance.

Open season means the time when wildlife may be taken by hunting or trapping; an open season includes the first and last days of the prescribed season period.

Otter means river or land otter only, excluding sea otter.

Permit hunt means a hunt for which State or Federal permits are issued by registration or other means.

Poison means any substance which is toxic, or poisonous upon contact or ingestion.

Possession means having direct physical control of wildlife at a given time or having both the power and intention to exercise dominion or control of wildlife either directly or through another person or persons.

Ptarmigan collectively refers to all species found in Alaska, including white-tailed ptarmigan, rock ptarmigan, and willow ptarmigan.

Ram means a male Dall sheep.

Registration permit means a permit which authorizes hunting and is issued to a person who agrees to the specified hunting conditions. Hunting permitted by a registration permit begins on an announced date and continues throughout the open season, or until the season is closed by Board action. Registration permits are issued in the order applications are received and/or are based on priorities as determined by 50 CFR 100.17 and 36 CFR 242.17.

Sealing means placing a mark or tag on a portion of a harvested animal by an authorized representative of the ADF&G; sealing includes collecting and recording information about the conditions under which the animal was harvested, and measurements of the specimen submitted for sealing or surrendering a specific portion of the animal for biological information.

Seven-eighths curl horn means the horn of a male Dall sheep, the tip of which has grown through seven-eights (315 degrees) of a circle, described by the outer surface of the horn, as viewed from the side, or with both horns broken.

Skin, hide, pelt, or fur means any tanned or untanned external covering of an animal's body; excluding bear. The skin, hide, fur, or pelt of a bear shall mean the entire external covering with claws attached.

Spike-fork moose means a bull moose with only one or two tines on either antler; male calves are not spike-fork bulls.

Take or *Taking* means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

Tine or *antler point* refers to any point on an antler, the length of which is greater than its width and is at least one inch.

Transportation means to ship, convey, carry, or transport by any means whatever and deliver or receive for such shipment, conveyance, carriage, or transportation.

Trapping means the taking of furbearers within established trapping seasons and with a required trapping license.

Unclassified wildlife or unclassified species means all species of animals not otherwise classified by the definitions in this paragraph (a), or regulated under other Federal law as listed in paragraph (i) of this section.

Ungulate means any species of hoofed mammal, including deer, caribou, elk, moose, mountain goat, Dall sheep, and musk oxen.

Unit means one of the 26 geographical areas in the State of Alaska known as Game Management Units, or GMU, and collectively listed in this section as Units.

Wildlife means any hare (rabbit), ptarmigan, grouse, ungulate, bear, furbearer, or unclassified species and includes any part, product, egg, or offspring thereof, or carcass or part thereof.

(b) Hunters may take wildlife for subsistence uses by any method, except as prohibited in this section or by other Federal statute. Taking wildlife for subsistence uses by a prohibited method is a violation of this part. Seasons are closed unless opened by Federal regulation. Hunting or trapping during a closed season or in an area closed by this part is prohibited.

(1) Except for special provisions found at paragraphs (k)(1) through (26) of this section, the following methods and means of taking wildlife for subsistence uses are prohibited:

(i) Shooting from, on, or across a highway;

(ii) Using any poison;

(iii) Using a helicopter in any manner, including transportation of individuals, equipment or wildlife; however, this prohibition does not apply to transportation of an individual, gear, or wildlife during an emergency rescue operation in a life threatening situation;

(iv) Taking wildlife from a motorized land or air vehicle, when that vehicle is in motion or from a motor-driven boat when the boat's progress from the motor's power has not ceased;

(v) Using a motorized vehicle to drive, herd, or molest wildlife;

(vi) Using or being aided by use of a machine gun, set gun, or a shotgun larger than 10 gauge;

(vii) Using a firearm other than a shotgun, muzzle-loaded rifle, rifle or pistol using center-firing cartridges, for the taking of ungulates, bear, wolves or wolverine, except that—

(A) An individual in possession of a valid trapping license may use a firearm that shoots rimfire cartridges to take wolves and wolverine;

(B) Only a muzzle-loading rifle of .54-caliber or larger, or a .45-caliber muzzle-loading rifle with a 250-grain, or larger, elongated slug may be used to take brown bear, black bear, elk, moose, musk oxen and mountain goat;

(viii) Using or being aided by use of a pit, fire, artificial light, radio communication, artificial salt lick, explosive, barbed arrow, bomb, smoke, chemical, conventional steel trap with a jaw spread over nine inches, or conibear style trap with a jaw spread over 11 inches;

(ix) Using a snare, except that an individual in possession of a valid hunting license may use nets and snares to take unclassified wildlife, ptarmigan, grouse, or hares; and, individuals in possession of a valid trapping license may use snares to take furbearers;

(x) Using a trap to take ungulates or bear;

(xi) Using hooks to physically snag, impale, or otherwise take wildlife; however, hooks may be used as a trap drag;

(xii) Using a crossbow to take ungulates, bear, wolf, or wolverine in any area restricted to hunting by bow and arrow only;

(xiii) Taking of ungulates, bear, wolf, or wolverine with a bow, unless the bow is capable of casting a 7/8 inch wide broadhead-tipped arrow at least 175 yards horizontally, and the arrow and broadhead together weigh at least one ounce (437.5 grains);

(xiv) Using bait for taking ungulates, bear, wolf, or wolverine; except, you may use bait to take wolves and wolverine with a trapping license, and, you may use bait to take black bears with a hunting license as authorized in Unit-specific regulations at paragraphs (k)(1) through (26) of this section. Baiting of black bears is subject to the following restrictions:

(A) Before establishing a black bear bait station, you must register the site with ADF&G;

(B) When using bait you must clearly mark the site with a sign reading "black bear bait station" that also displays your hunting license number and ADF&G assigned number;

(C) You may use only biodegradable materials for bait; you may use only the head, bones, viscera, or skin of legally harvested fish and wildlife for bait;

(D) You may not use bait within one-quarter mile of a publicly maintained road or trail;

(E) You may not use bait within one mile of a house or other permanent dwelling, or within one mile of a developed campground, or developed recreational facility;

(F) When using bait, you must remove litter and equipment from the bait station site when done hunting;

(G) You may not give or receive payment for the use of a bait station, including barter or exchange of goods;

(H) You may not have more than two bait stations with bait present at any one time;

(xv) Taking swimming ungulates, bears, wolves or wolverine;

(xvi) Taking or assisting in the taking of ungulates, bear, wolves, wolverine, or other furbearers before 3:00 a.m. following the day in which airborne

travel occurred (except for flights in regularly scheduled commercial aircraft); however, this restriction does not apply to subsistence taking of deer;

(xvii) Taking a bear cub or a sow accompanied by cub(s).

(2) Wildlife taken in defense of life or property is not a subsistence use; wildlife so taken is subject to State regulations.

(3) The following methods and means of trapping furbearers, for subsistence uses pursuant to the requirements of a trapping license are prohibited, in addition to the prohibitions listed at paragraph (b)(1) of this section:

(i) Disturbing or destroying a den, except that you may disturb a muskrat pushup or feeding house in the course of trapping;

(ii) Disturbing or destroying any beaver house;

(iii) Taking beaver by any means other than a steel trap or snare, except that you may use firearms in certain Units with established seasons as identified in Unit-specific regulations found in this subpart;

(iv) Taking otter with a steel trap having a jaw spread of less than five and seven-eighths inches during any closed mink and marten season in the same Unit;

(v) Using a net, or fish trap (except a blackfish or fyke trap);

(vi) Taking beaver in the Minto Flats Management Area with the use of an aircraft for ground transportation, or by landing within one mile of a beaver trap or set used by the transported person;

(vii) Taking or assisting in the taking of furbearers by firearm before 3:00 a.m. on the day following the day on which airborne travel occurred; however, this does not apply to a trapper using a firearm to dispatch furbearers caught in a trap or snare.

(c) Possession and transportation of wildlife. (1) Except as specified in paragraphs (c)(3)(ii) or (c)(4) of this section, or as otherwise provided, you may not take a species of wildlife in any Unit, or portion of a Unit, if your total take of that species already obtained anywhere in the State under Federal and State regulations equals or exceeds the harvest limit in that Unit.

(2) An animal taken under Federal or State regulations by any member of a community with an established community harvest limit for that species counts toward the community harvest limit for that species. Except for wildlife taken pursuant to § __.6(f)(3) or as otherwise provided for by this Part, an animal taken as part of a community harvest limit counts toward every community member's harvest limit for that species taken under Federal or State of Alaska regulations.

(3) Harvest limits. (i) Harvest limits, including those related to ceremonial uses, authorized by this section and harvest limits established in State regulations may not be accumulated.

(ii) Wildlife taken by a designated hunter for another person pursuant to § __.6(f)(2), counts toward the individual harvest limit of the person for whom the wildlife is taken.

(4) The harvest limit specified for a trapping season for a species and the harvest limit set for a hunting season for the same species are separate and distinct. This means that if you have taken a harvest limit for a particular species under a trapping season, you may take additional animals under the harvest limit specified for a hunting season or vice versa.

(5) A brown/grizzly bear taken in a Unit or portion of a Unit having a harvest limit of one brown/grizzly bear per year counts against a one brown/grizzly bear every four regulatory years harvest limit in other Units; an individual may not take more than one brown/grizzly bear in a regulatory year.

(6) A harvest limit applies to the number of animals that can be taken during a regulatory year; however, harvest limits for grouse, ptarmigan, and caribou (in some Units) are regulated by the number that may be taken per day. Harvest limits of grouse and ptarmigan are also regulated by the number that can be held in possession.

(7) Unless otherwise provided, any person who gives or receives wildlife shall furnish, upon a request made by a Federal or State agent, a signed statement describing the following: names and addresses of persons who gave and received wildlife, the time and place that the wildlife was taken, and identification of species transferred. Where a qualified subsistence user has designated another qualified subsistence user to take wildlife on his or her behalf in accordance with § __.6, the permit shall be furnished in place of a signed statement.

(8) A rural Alaska resident who has been designated to take wildlife on behalf of another rural Alaska resident in accordance with § __.6, shall promptly deliver the wildlife to that rural Alaska resident.

(9) You may not may possess, transport, give, receive, or barter wildlife that was taken in violation of Federal or State statutes or a regulation promulgated thereunder.

(10) Evidence of sex and identity.

(i) If subsistence take of Dall sheep is restricted to a ram, you may not possess or transport a harvested sheep unless both horns accompany the animal.

(ii) If the subsistence taking of an ungulate, except sheep, is restricted to one sex in the local area, you may not possess or transport the carcass of an animal taken in that area unless sufficient portions of the external sex organs remain attached to indicate conclusively the sex of the animal; however, this paragraph (c)(10)(ii) does not apply to the carcass of an ungulate that has been butchered and placed in storage or otherwise prepared for consumption upon arrival at the location where it is to be consumed.

(iii) If a moose harvest limit includes an antler size or configuration restriction, you may not possess or transport the moose carcass or its parts unless both antlers accompany the carcass or its parts. If you possess a set of antlers with less than the required number of brow tines on one antler, you must leave the antlers naturally attached to the unbroken, uncut skull plate; however, this paragraph (c)(10)(iii) does not apply to a moose carcass or its parts that have been butchered and placed in storage or otherwise prepared for consumption after arrival at the place where it is to be stored or consumed.

(11) You must leave all edible meat from caribou and moose harvested in Units 9(B), 17, and 19(B) prior to October 1 on the bones of the front quarters and hind quarters until you remove the meat from the field or process it for human consumption.

(d) If you take an animal that has been marked or tagged for scientific studies, you must, within a reasonable time, notify the ADF&G or the agency identified on the collar or marker, when and where the animal was taken. You also must retain any ear tag, collar, radio, tattoo, or other identification with the hide until it is sealed, if sealing is required; in all cases, you must return any identification equipment to the ADF&G or to an agency identified on such equipment.

(e) Sealing of bear skins and skulls. (1) Sealing requirements for bear shall apply to brown bears taken in all Units, except as specified in this paragraph, and black bears of all color phases taken in Units 1–7, 11–17, and 20.

(2) You may not possess or transport from Alaska, the untanned skin or skull of a bear unless the skin and skull have been sealed by an authorized representative of ADF&G in accordance with State or Federal regulations, except that the skin and skull of a brown bear taken under a registration permit in the Western Alaska Brown Bear Management Area, the Northwest Alaska Brown Bear Management Area, Unit 5, or Unit 9(B) need not be sealed unless removed from the area.

(3) You must keep a bear skin and skull together until a representative of the ADF&G has removed a rudimentary premolar tooth from the skull and sealed both the skull and the skin; however, this provision shall not apply to brown bears taken within the Western Alaska Brown Bear Management Area, the Northwest Alaska Brown Bear Management Area, Unit 5, or Unit 9(B) which are not removed from the Management Area or Unit.

(i) In areas where sealing is required by Federal regulations, you may not possess or transport the hide of a bear which does not have the penis sheath or vaginal orifice naturally attached to indicate conclusively the sex of the bear.

(ii) If the skin or skull of a bear taken in the Western Alaska Brown Bear Management Area is removed from the area, you must first have it sealed by an ADF&G representative in Bethel, Dillingham, or McGrath; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(iii) If you remove the skin or skull of a bear taken in the Northwestern Alaska Brown Bear Management Area from the area or present it for commercial tanning within the Management Area, you must be first have it sealed by an ADF&G representative in Barrow, Fairbanks, Galena, Nome, or Kotzebue; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(iv) If you remove the skin or skull of a bear taken in Unit 5 from the area, you must first have it sealed by an ADF&G representative in Yakutat; at the time of sealing, the ADF&G representative shall remove and retain the skin of the skull and front claws of the bear.

(4) You may not falsify any information required on the sealing certificate or temporary sealing form provided by the ADF&G in accordance with State regulations.

(f) Sealing of beaver, lynx, marten, otter, wolf, and wolverine. You may not possess or transport from Alaska the untanned skin of a marten taken in Units 1–5, 7, 13(E), and 14–16 or the untanned skin of a beaver, lynx, otter, wolf, or wolverine, whether taken inside or outside the state, unless the skin has been sealed by an authorized representative of ADF&G in accordance with State regulations.

(1) You must seal any wolf taken in Unit 2 on or before the 30th day after the date of taking.

(2) You must leave the radius and ulna of the left foreleg naturally attached to the hide of any wolf taken in Units 1–5 until the hide is sealed.

(g) A person who takes a species listed in paragraph (f) of this section but who is unable to present the skin in person, must complete and sign a temporary sealing form and ensure that the completed temporary sealing form and skin are presented to an authorized representative of ADF&G for sealing consistent with requirements listed in paragraph (f) of this section.

(h) Utilization of wildlife. (1) You may not use wildlife as food for a dog or furbearer, or as bait, except for the following:

(i) The hide, skin, viscera, head, or bones of wildlife;

(ii) The skinned carcass of a furbearer;

(iii) Squirrels, hares (rabbits), grouse, and ptarmigan; however, you may not use the breast meat of grouse and ptarmigan as animal food or bait;

(iv) Unclassified wildlife.

(2) If you take wildlife for subsistence, you must salvage the following parts for human use:

(i) The hide of a wolf, wolverine, coyote, fox, lynx, marten, mink, weasel, or otter;

(ii) The hide and edible meat of a brown bear, except that the hide of brown bears taken in the Western and Northwestern Alaska Brown Bear Management Areas and Units 5 and 9(B) need not be salvaged;

(iii) The hide and edible meat of a black bear;

(iv) The hide or meat of squirrels, hares (rabbits), marmots, beaver, muskrats, or unclassified wildlife.

(3) You must salvage the edible meat of ungulates, bear, grouse and ptarmigan.

(4) Failure to salvage the edible meat may not be a violation if such failure is caused by circumstances beyond the control of a person, including theft of the harvested wildlife, unanticipated weather conditions, or unavoidable loss to another animal.

(i) The regulations found in this section do not apply to the subsistence taking and use of wildlife regulated pursuant to the Fur Seal Act of 1966 (80 Stat. 1091, 16 U.S.C. 1187), the Endangered Species Act of 1973 (87 Stat. 884, 16 U.S.C. 1531–1543), the Marine Mammal Protection Act of 1972 (86 Stat. 1027; 16 U.S.C. 1361–1407), and the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703–711), or any amendments to these Acts. The taking and use of wildlife, covered by these Acts, will conform to the specific provisions contained in these Acts, as amended, and any implementing regulations.

(j) Rural residents, non-rural residents, and nonresidents not specifically prohibited by Federal regulations from hunting or trapping on public lands in an area, may hunt or trap on public lands in accordance with the appropriate State regulations.

(k) Unit regulations. You may take for subsistence unclassified wildlife, all squirrel species, and marmots in all Units, without harvest limits, for the period of July 1–June 30. You may not take for subsistence wildlife outside established Unit seasons, or in excess of the established Unit harvest limits, unless otherwise provided for by the Board. You may take wildlife under State regulations on public lands, except as otherwise restricted at paragraphs (k)(1) through (26) of this section. Additional Unit-specific restrictions or allowances for subsistence taking of wildlife are identified at paragraphs (k)(1) through (26) of this section.

(1) *Unit 1.* Unit 1 consists of all mainland drainages from Dixon Entrance to Cape Fairweather, and those islands east of the center line of Clarence Strait from Dixon Entrance to Caamano Point, and all islands in Stephens Passage and Lynn Canal north of Taku Inlet:

(i) Unit 1(A) consists of all drainages south of the latitude of Lemesurier Point including all drainages into Behm Canal, excluding all drainages of Ernest Sound;

(ii) Unit 1(B) consists of all drainages between the latitude of Lemesurier Point and the latitude of Cape Fanshaw including all drainages of Ernest Sound and Farragut Bay, and including the islands east of the center lines of Frederick Sound, Dry Strait (between Sergief and Kadin Islands), Eastern Passage, Blake Channel (excluding Blake Island), Ernest Sound, and Seward Passage;

(iii) Unit 1(C) consists of that portion of Unit 1 draining into Stephens Passage and Lynn Canal north of Cape Fanshaw and south of the latitude of Eldred Rock including Berners Bay, Sullivan Island, and all mainland portions north of Chichagof Island and south of the latitude of Eldred Rock, excluding drainages into Farragut Bay;

(iv) Unit 1(D) consists of that portion of Unit 1 north of the latitude of Eldred Rock, excluding Sullivan Island and the drainages of Berners Bay;

(v) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Public lands within Glacier Bay National Park are closed to all taking of wildlife for subsistence uses;

(B) Unit 1(A)—in the Hyder area, the Salmon River drainage downstream from the Riverside Mine, excluding the Thumb Creek drainage, is closed to the taking of bear;

(C) Unit 1(B)—the Anan Creek drainage within one mile of Anan Creek downstream from the mouth of Anan Lake, including the area within a one mile radius from the mouth of Anan Creek Lagoon, is closed to the taking of black bear and brown bear;

(D) Unit 1(C):

(*1*) You may not hunt within one-fourth mile of Mendenhall Lake, the U.S. Forest Service Mendenhall Glacier Visitor's Center, and the Center's parking area;

(*2*) You may not take mountain goat in the area of Mt. Bullard bounded by the Mendenhall Glacier, Nugget Creek from its mouth to its confluence with Goat Creek, and a line from the mouth of Goat Creek north to the Mendenhall Glacier;

(vi) You may not trap furbearers for subsistence uses in Unit 1(C), Juneau area, on the following public lands:

(A) A strip within one-quarter mile of the mainland coast between the end of Thane Road and the end of Glacier Highway at Echo Cove;

(B) That area of the Mendenhall Valley bounded on the south by the Glacier Highway, on the west by the Mendenhall Loop Road and Montana Creek Road and Spur Road to Mendenhall Lake, on the north by Mendenhall Lake, and on the east by the Mendenhall Loop Road and Forest Service Glacier Spur Road to the Forest Service Visitor Center;

(C) That area within the U.S. Forest Service Mendenhall Glacier Recreation Area;

(D) A strip within one-quarter mile of the following trails as designated on U.S. Geological Survey maps: Herbert Glacier Trail, Windfall Lake Trail, Peterson Lake Trail, Spaulding Meadows Trail (including the loop trail), Nugget Creek Trail, Outer Point Trail, Dan Moller Trail, Perseverance Trail, Granite Creek Trail, Mt. Roberts Trail and Nelson Water Supply Trail, Sheep Creek Trail, and Point Bishop Trail;

(vii) Unit-specific regulations:

(A) You may hunt black bear with bait in Units 1(A), 1(B), and 1(D) between April 15 and June 15;

(B) You may not use boats to take ungulates, bear, wolves, or wolverine, unless you are certified as disabled;

(C) You may take wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, if:

(*1*) The person organizing the religious ceremony, or designee, contacts the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, and the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(D) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Black Bear: 2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30
Brown Bear: 1 bear every four regulatory years by State registration permit only	Sept. 15–Dec. 31. Mar. 15–May 31.
Deer:	
Unit 1(A)—4 antlered deer	Aug. 1–Dec. 31.
Unit 1(B)—2 antlered deer	Aug. 1–Dec. 31.
Unit 1(C)—4 deer; however, antlerless deer may be taken only from Sept. 15–Dec. 31	Aug. 1–Dec. 31.
Goat:	
Unit 1(A)—Revillagigedo Island only	No open season.
Unit 1(B)—that portion north of LeConte Bay. 1 goat by State registration permit only; the taking of kids or nannies accompanied by kids is prohibited.	Aug. 1–Dec. 31.
Unit 1(B)—that portion between LeConte Bay and the North Fork of Bradfield River/Canal. 2 goats; a State registration permit will be required for the taking of the first goat and a Federal registration permit for the taking of a second goat; the taking of kids or nannies accompanied by kids is prohibited.	Aug. 1–Dec. 31.
Unit 1(A) and Unit 1(B)—remainder—2 goats by State registration permit only	Aug. 1–Dec. 31.
Unit 1(C)—that portion draining into Lynn Canal and Stephens Passage between Antler River and Eagle Glacier and River, and all drainages of the Chilkat Range south of the Endicott River—1 goat by State registration permit only.	Oct. 1–Nov. 30.
Unit 1(C)—that portion draining into Stephens Passage and Taku Inlet between Eagle Glacier and River and Taku Glacier.	No open season.
Unit 1(C)—remainder—1 goat by State registration permit only	Aug. 1–Nov. 30.
Unit 1(D)—that portion lying north of the Katzehin River and northeast of the Haines highway—1 goat by State registration permit only.	Sept. 15–Nov. 30.
Unit 1(D)—that portion lying between Taiya Inlet and River and the White Pass and Yukon Railroad	No open season.
Unit 1(D)—remainder—1 goat by State registration permit only	Aug. 1–Dec. 31.
Moose:	
Unit 1(A)—1 antlered bull	Sept. 15–Oct. 15.
Unit 1(B)—1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler, by State registration permit only.	Sept. 15–Oct. 15.
Unit 1(C), that portion south of Point Hobart including all Port Houghton drainages—1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler, by State registration permit only.	Sept. 15–Oct. 15.
Unit 1(C)—remainder, excluding drainages of Berners Bay—1 antlered bull by State registration permit only	Sept. 15–Oct. 15.
Unit 1(D)	No open season.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Aug. 1–Apr. 30.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
Trapping	
Beaver: Unit 1(A), (B), and (C)—No limit	Dec. 1–May 15.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Dec. 1–Feb. 15.
Mink and Weasel: No limit	Dec. 1–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Dec. 1–Feb. 15.
Wolf: No limit	Nov. 10–Apr. 30.
Wolverine: No limit	Nov. 10–Apr. 30.

(2) *Unit 2.* Unit 2 consists of Prince of Wales Island and all islands west of the center lines of Clarence Strait and Kashevarof Passage, south and east of the center lines of Sumner Strait, and east of the longitude of the western most point on Warren Island.

(i) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may not use boats to take ungulates, bear, wolves, or wolverine, unless you are certified as disabled;

(C) You may take wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, if:

(*1*) The person organizing the religious ceremony, or designee, contacts the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, and the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(D) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

(ii) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear: 2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
Deer: 4 deer; however, no more than one may be an antlerless deer. Antlerless deer may be taken only during the period Oct. 15–Dec. 31 by Federal registration permit only.	Aug. 1–Dec. 31.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Dec. 1–Mar. 31.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
Trapping	
Beaver: No limit	Dec. 1–May 15.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.

Harvest limits	Open season
Marten: No limit	Dec. 1–Feb. 15.
Mink and Weasel: No limit	Dec. 1–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Dec. 1–Feb. 15.
Wolf: No limit.	Dec. 1–Mar. 31.
Wolverine: No limit	Nov. 10–Apr. 30.

(3) *Unit 3.* (i) Unit 3 consists of all islands west of Unit 1(B), north of Unit 2, south of the center line of Frederick Sound, and east of the center line of Chatham Strait including Coronation, Kuiu, Kupreanof, Mitkof, Zarembo, Kashevarof, Woronkofski, Etolin, Wrangell, and Deer Islands.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) In the Petersburg vicinity, you may not take ungulates, bear, wolves, and wolverine along a strip one-fourth mile wide on each side of the Mitkof Highway from Milepost 0 to Crystal Lake campground;

(B) You may not take black bears in the Petersburg Creek drainage on Kupreanof Island;

(C) You may not hunt in the Blind Slough draining into Wrangell Narrows and a strip one-fourth mile wide on each side of Blind Slough, from the hunting closure markers at the southernmost portion of Blind Island to the hunting closure markers one mile south of the Blind Slough bridge.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may not use boats to take ungulates, bear, wolves, or wolverine, unless you are certified as disabled;

(C) You may take wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, if:

(*1*) The person organizing the religious ceremony, or designee, contact the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, and the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(D) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Black Bear: 2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
Deer:	
Unit 3—Mitkof Island, Woewodski Island, Butterworth Islands, and that portion of Kupreanof Island which includes Lindenburg Peninsula east of the Portage Bay/Duncan Canal Portage—1 antlered deer by State registration permit only; however, the city limits of Petersburg and Kupreanof are closed to hunting.	Oct. 15–Oct. 31.
Unit 3—remainder—2 antlered deer	Aug. 1–Nov. 30.
Moose: 1 antlered bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler by State registration permit only.	Sept. 15–Oct. 15.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Aug. 1–Apr. 30.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
Trapping	
Beaver:	
Unit 3—Mitkof Island—No limit	Dec. 1–Apr. 15.
Unit 3—except Mitkof Island—No limit	Dec. 1–May 15.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black, and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Dec. 1–Feb. 15.
Mink and Weasel: No limit	Dec. 1–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Dec. 1–Feb. 15.
Wolf: No limit	Nov. 10–Apr. 30.

Harvest limits	Open season
Wolverine: No limit	Nov. 10.–Apr. 30.

(4) *Unit 4.* (i) Unit 4 consists of all islands south and west of Unit 1(C) and north of Unit 3 including Admiralty, Baranof, Chichagof, Yakobi, Inian, Lemesurier, and Pleasant Islands.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take bears in the Seymour Canal Closed Area (Admiralty Island) including all drainages into northwestern Seymour Canal between Staunch Point and the southernmost tip of the unnamed peninsula separating Swan Cove and King Salmon Bay including Swan and Windfall Islands;

(B) You may not take bears in the Salt Lake Closed Area (Admiralty Island) including all lands within one-fourth mile of Salt Lake above Klutchman Rock at the head of Mitchell Bay;

(C) You may not take brown bears in the Port Althorp Closed Area (Chichagof Island), that area within the Port Althorp watershed south of a line from Point Lucan to Salt Chuck Point (Trap Rock);

(D) You may not use any motorized land vehicle for brown bear hunting in the Northeast Chichagof Controlled Use Area (NECCUA) consisting of all portions of Unit 4 on Chichagof Island north of Tenakee Inlet and east of the drainage divide from the northwest point of Gull Cove to Port Frederick Portage, including all drainages into Port Frederick and Mud Bay;

(E) You may not use any motorized land vehicle for the taking of marten, mink, and weasel on Chichagof Island.

(iii) Unit-specific regulations:

(A) You may not use boats to take bear, wolves, or wolverine, unless you are certified as disabled;

(B) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time;

(C) You may take of wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, if:

(*1*) The person organizing the religious ceremony, or designee, contacts the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, and the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur.

Harvest limits	Open season
Hunting	
Brown Bear:	
Unit 4—Chichagof Island south and west of a line that follows the crest of the island from Rock Point (58° N. lat., 136° 21′ W. long.) to Rodgers Point (57° 35′ N. lat., 135° 33′ W. long.) including Yakobi and other adjacent islands; Baranof Island south and west of a line which follows the crest of the island from Nismeni Point (57° 34′ N. lat., 135° 25′ W. long.) to the entrance of Gut Bay (56° 44′ N. lat. 134° 38′ W. long.) including the drainages into Gut Bay and including Kruzof and other adjacent islands—1 bear every four regulatory years by State registration permit only.	Sept. 15–Dec. 31. Mar. 15–May 31.
Unit 4—that portion in the Northeast Chichagof Controlled Use Area—1 bear every four regulatory years by State registration permit only.	Mar. 15–May 20.
Unit 4—remainder—1 bear every four regulatory years by State registration permit only	Sept. 15–Dec. 31. Mar. 15–May 20.
Deer: 6 deer; however, antlerless deer may be taken only from Sept. 15—Jan. 31	Aug. 1–Jan. 31.
Goat: 1 goat by State registration permit only	Aug. 1–Dec. 31.
Coyote: 2 coyotes.	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black, and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Aug. 1–Apr. 30.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1.–May 15.
Trapping	
Beaver:	
Unit 4—that portion east of Chatham Strait—No limit	Dec. 1–May 15.
Remainder of Unit 4	No open season.
Coyote: No limit	Dec. 1–Feb. 15.

Harvest limits	Open season
Fox, Red (including Cross, Black, and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten:	
Unit 4—Chichagof Island—No limit	Dec. 1—Dec. 31.
Remainder of Unit 4—No limit	Dec. 1–Feb. 15.
Mink and Weasel:	
Unit 4—Chichagof Island—No limit	Dec. 1–Dec. 31.
Remainder of Unit 4—No limit	Dec. 1–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Dec. 1–Feb. 15.
Wolf: No limit	Nov. 10–Apr. 30.
Wolverine: No limit	Nov. 10–Apr. 30

(5) *Unit 5.* (i) Unit 5 consists of all Gulf of Alaska drainages and islands between Cape Fairweather and the center line of Icy Bay, including the Guyot Hills:

(A) Unit 5(A) consists of all drainages east of Yakutat Bay, Disenchantment Bay, and the eastern edge of Hubbard Glacier, and includes the islands of Yakutat and Disenchantment Bays;

(B) Unit 5(B) consists of the remainder of Unit 5.

(ii) You may not take wildlife for subsistence uses on public lands within Glacier Bay National Park.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may not use boats to take ungulates, bear, wolves, or wolverine, except for persons certified as disabled;

(C) You may hunt brown bear in Unit 5 with a Federal registration permit in lieu of a State metal locking tag; if you have obtained a Federal registration permit prior to hunting;

(D) You may take wildlife outside the seasons or harvest limits provided in this part for food in traditional religious ceremonies which are part of a funerary or mortuary cycle, including memorial potlatches, if:

(*1*) The person organizing the religious ceremony, or designee, contacts the appropriate Federal land management agency prior to taking or attempting to take game and provides to the appropriate Federal land managing agency the name of the decedent, the nature of the ceremony, the species and number to be taken, and the Unit(s) in which the taking will occur;

(*2*) The taking does not violate recognized principles of fish and wildlife conservation;

(*3*) Each person who takes wildlife under this section must, as soon as practicable, and not more than 15 days after the harvest, submit a written report to the appropriate Federal land managing agency, specifying the harvester's name and address, the number, sex and species of wildlife taken, the date and locations of the taking, and the name of the decedent for whom the ceremony was held;

(*4*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in that area where the harvesting will occur;

(E) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer or moose on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Black Bear: 2 bears, no more than one may be a blue or glacier bear	Sept. 1–June 30.
Brown Bear: 1 bear by Federal registration permit only	Sept. 1–May 31.
Deer:	
Unit 5(A)—1 buck	Nov. 1–Nov. 30.
Unit 5(B)	No open season.
Goat: 1 goat by Federal registration permit only	Aug. 1–Jan. 31.
Moose:	
Unit 5(A), Nunatak Bench—1 moose by State registration permit only. The season will be closed when 5 moose have been taken from the Nunatak Bench.	Nov. 15–Feb. 15.
Unit 5(A), except Nunatak Bench—1 antlered bull by Federal registration permit only. The season will be closed when 60 antlered bulls have been taken from the Unit. The season will be closed in that portion west of the Dangerous River when 30 antlered bulls have been taken in that area. From Oct. 15–Oct. 21, public lands will be closed to taking of moose, except by residents of Unit 5(A).	Oct. 8–Nov. 15.
Unit 5(B)—1 antlered bull by State registration permit only. The season will be closed when 25 antlered bulls have been taken from the entirety of Unit 5(B).	Sept. 1–Dec. 15.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes.	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): 5 hares per day	Sept. 1–Apr. 30.
Lynx: 2 lynx	Dec. 1–Feb. 15.
Wolf: 5 wolves	Aug. 1–Apr. 30.
Wolverine: 1 wolverine	Nov. 10–Feb. 15.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.

Harvest limits	Open season
Trapping	
Beaver: No limit	Nov. 10–May 15.
Coyote: No limit	Dec. 1–Feb. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit	Dec. 1–Feb. 15.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Nov. 10–Feb. 15.
Mink and Weasel: No limit	Nov. 10–Feb. 15.
Muskrat: No limit	Dec. 1–Feb. 15.
Otter: No limit	Nov. 10–Feb. 15.
Wolf: No limit	Nov. 10–Apr. 30.
Wolverine: No limit	Nov. 10–Apr. 30.

(6) *Unit 6.* (i) Unit 6 consists of all Gulf of Alaska and Prince William Sound drainages from the center line of Icy Bay (excluding the Guyot Hills) to Cape Fairfield including Kayak, Hinchinbrook, Montague, and adjacent islands, and Middleton Island, but excluding the Copper River drainage upstream from Miles Glacier, and excluding the Nellie Juan and Kings River drainages:

(A) Unit 6(A) consists of Gulf of Alaska drainages east of Palm Point near Katalla including Kanak, Wingham, and Kayak Islands;

(B) Unit 6(B) consists of Gulf of Alaska and Copper River Basin drainages west of Palm Point near Katalla, east of the west bank of the Copper River, and east of a line from Flag Point to Cottonwood Point;

(C) Unit 6(C) consists of drainages west of the west bank of the Copper River, and west of a line from Flag Point to Cottonwood Point, and drainages east of the east bank of Rude River and drainages into the eastern shore of Nelson Bay and Orca Inlet;

(D) Unit 6(D) consists of the remainder of Unit 6.

(ii) For the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take mountain goat in the Goat Mountain goat observation area, which consists of that portion of Unit 6(B) bounded on the north by Miles Lake and Miles Glacier, on the south and east by Pleasant Valley River and Pleasant Glacier, and on the west by the Copper River;

(B) You may not take mountain goat in the Heney Range goat observation area, which consists of that portion of Unit 6(C) south of the Copper River Highway and west of the Eyak River.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may take coyotes in Units 6(B) and 6(C) with the aid of artificial lights.

Harvest limits	Open season
Hunting	
Black Bear: 1 bear	Sept. 1–June 30.
Deer: 4 deer; however, antlerless deer may be taken only from Oct. 1–Dec. 31	Aug. 1–Dec. 31.
Goats:	
Unit 6(A), (B)—1 goat by State registration permit only	Aug. 20–Jan. 31.
Unit 6(C)	No open season.
Unit 6(D) (subareas RG242,RG244, RG249, RG266 and RG252 only)—1 goat by Federal registration permit only In each of the Unit 6(D) subareas, goat seasons will be closed when harvest limits for that subarea are reached. Harvest quotas are as follows: RG242—2 goats, RG244—2 goats, RG249—2 goats, RG266—4 goats, RG252—1 goat.	Aug. 20–Jan. 31.
Unit 6(D) (subareas RG243 and RG245)—The taking of goats is prohibited on all public lands	No open season.
Coyote:	
Unit 6(A) and (D)—2 coyotes	Sept. 1–Apr. 30.
Unit 6(B)—No limit	July 1–June 30.
Unit 6(C)—south of the Copper River Highway and east of the Heney Range—No limit	July 1–June 30.
Unit 6(C)—remainder—No limit	July 1–June 30.
Fox, Red (including Cross, Black and Silver Phases):	No open season.
Hare (Snowshoe and Tundra): No limit.	July 1–June 30.
Lynx:	No open season.
Wolf: 5 wolves.	Aug. 10–Apr. 30.
Wolverine: 1 wolverine.	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 5 per day, 10 in possession	Aug. 1–May 15.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 1–May 15.
Trapping	
Beaver: 20 beaver per season	Dec. 1–Mar. 31.
Coyote:	
Unit 6(A), (B), and (D)—No limit	Nov. 10–Mar. 31.
Unit 6(C)—south of the Copper River Highway and east of the Heney Range—No limit	Nov. 10–Apr. 30.
Unit 6(C)—remainder—No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Jan. 1–Feb. 15.
Marten: No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.

Harvest limits	Open season
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(7) *Unit 7.* (i) Unit 7 consists of Gulf of Alaska drainages between Gore Point and Cape Fairfield including the Nellie Juan and Kings River drainages, and including the Kenai River drainage upstream from the Russian River, the drainages into the south side of Turnagain Arm west of and including the Portage Creek drainage, and east of 150° W. long., and all Kenai Peninsula drainages east of 150° W. long., from Turnagain Arm to the Kenai River.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take wildlife for subsistence uses in the Kenai Fjords National Park;

(B) You may not hunt in the Portage Glacier Closed Area in Unit 7, which consists of Portage Creek drainages between the Anchorage-Seward Railroad and Placer Creek in Bear Valley, Portage Lake, the mouth of Byron Creek, Glacier Creek, and Byron Glacier; however, you may hunt grouse, ptarmigan, hares, and squirrels with shotguns after September 1.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15; except in the drainages of Resurrection Creek and its tributaries.

(B) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear: Unit 7—3 bears	July 1–June 30.
Moose:	
Unit 7—that portion draining into Kings Bay—1 bull with spike-fork or 50-inch antlers or 3 or more brow tines on either antler may be taken by the community of Chenega Bay and also by the community of Tatitlek. Public lands are closed to the taking of moose except by eligible rural residents.	Aug. 10—Sept. 20.
Unit 7—remainder	No open season.
Coyote: No limit	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Wolf:	
Unit 7—that portion within the Kenai National Wildlife Refuge—2 wolves	Aug. 10–Apr. 30.
Unit 7—Remainder—5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Mar. 31.
Trapping	
Beaver: 20 beaver per season	Dec. 1–Mar. 31.
Coyote: No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Jan. 1–Feb. 15.
Marten: No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–May 15.
Otter: No limit	Nov. 10–Feb. 28.
Wolf: No limit	Nov. 10–Feb. 28.
Wolverine: No limit	Nov. 10–Feb. 28.

(8) *Unit 8.* Unit 8 consists of all islands southeast of the centerline of Shelikof Strait including Kodiak, Afognak, Whale, Raspberry, Shuyak, Spruce, Marmot, Sitkalidak, Amook, Uganik, and Chirikof Islands, the Trinity Islands, the Semidi Islands, and other adjacent islands.

(i) If you have a trapping license, you may take beaver with a firearm in Unit 8 from Nov. 10–Apr. 30.

(ii) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take deer on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Brown Bear: 1 bear by Federal registration permit only. Up to 1 permit may be issued in Akiok; up to 1 permit may be issued in Karluk; up to 3 permits may be issued in Larsen Bay; up to 2 permits may be issued in Old Harbor; up to 2 permits may be issued in Ouzinkie; and up to 2 permits may be issued in Port Lions.	Dec. 1–Dec. 15. Apr. 1–May 15.
Deer:	

Harvest limits	Open season
Unit 8—that portion of Kodiak Island north of a line from the head of Settlers Cove to Crescent Lake (57° 52′ N. lat., 152° 58′ W. long.), and east of a line from the outlet of Crescent Lake to Mount Ellison Peak and from Mount Ellison Peak to Pokati Point at Whale Passage, and that portion of Kodiak Island east of a line from the mouth of Saltery Creek to the mouth at Elbow Creek, and adjacent small islands in Chiniak Bay—1 deer; however, antlerless deer may be taken only from Oct. 25—Oct. 31.	Aug. 1—Oct. 31.
Unit 8—that portion of Kodiak Island and adjacent islands south and west of a line from the head of Terror Bay to the head of the south-western most arm of Ugak Bay—5 deer; however, antlerless deer may be taken only from Oct. 1—Jan. 31.	Aug. 1—Jan. 31.
Unit 8—remainder—5 deer; however, antlerless deer may be taken only from Oct. 1—Jan. 31; no more than 1 antlerless deer may be taken from Oct. 1—Nov. 30.	Aug. 1—Jan. 31.
Elk: Afognak Island above mean high tide—1 elk per household by Federal registration permit only; only 1 elk in possession for each two hunters in a party. Entry for elk hunting shall be from marine waters only. The season will be closed by announcement of the Refuge Manager, Kodiak National Wildlife Refuge when the combined Federal/State harvest reaches 15% of the herd.	Sept. 1—Nov. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1—Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1—June 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10—Apr. 30.
Trapping	
Beaver: 30 beaver per season	Nov. 10—Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10—Mar. 31.
Marten: No limit	Nov. 10—Jan. 31.
Mink and Weasel: No limit	Nov. 10—Jan. 31.
Muskrat: No limit	Nov. 10—June 10.
Otter: No limit	Nov. 10—Jan. 31.

(9) *Unit 9.* (i) Unit 9 consists of the Alaska Peninsula and adjacent islands including drainages east of False Pass, Pacific Ocean drainages west of and excluding the Redoubt Creek drainage; drainages into the south side of Bristol Bay, drainages into the north side of Bristol Bay east of Etolin Point, and including the Sanak and Shumagin Islands:

(A) Unit 9(A) consists of that portion of Unit 9 draining into Shelikof Strait and Cook Inlet between the southern boundary of Unit 16 (Redoubt Creek) and the northern boundary of Katmai National Park and Preserve;

(B) Unit 9(B) consists of the Kvichak River drainage;

(C) Unit 9(C) consists of the Alagnak (Branch) River drainage, the Naknek River drainage, and all land and water within Katmai National Park and Preserve;

(D) Unit 9(D) consists of all Alaska Peninsula drainages west of a line from the southernmost head of Port Moller to the head of American Bay including the Shumagin Islands and other islands of Unit 9 west of the Shumagin Islands;

(E) Unit 9(E) consists of the remainder of Unit 9.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take wildlife for subsistence uses in Katmai National Park;

(B) You may not use motorized vehicles, except aircraft, boats, or snowmobiles used for hunting and transporting a hunter or harvested animal parts from Aug. 1—Nov. 30 in the Naknek Controlled Use Area, which includes all of Unit 9(C) within the Naknek River drainage upstream from and including the King Salmon Creek drainage; however, you may use a motorized vehicle on the Naknek-King Salmon, Lake Camp, and Rapids Camp roads and on the King Salmon Creek trail, and on frozen surfaces of the Naknek River and Big Creek;

(C) If you have a trapping license, you may use a firearm to take beaver in Unit 9(B) from April 1–May 31 and in the remainder of Unit 9 from April 1–April 30;

(D) In Unit 9(B), Lake Clark National Park and Preserve, residents of Nondalton, Iliamna, Newhalen, Pedro Bay, and Port Alsworth, may hunt brown bear by Federal registration permit in lieu of a resident tag; ten permits will be available with at least one permit issued in each community but no more than five permits will be issued in a single community; the season will be closed when four females or ten bears have been taken, whichever occurs first;

(E) Residents of Newhalen, Nondalton, Iliamna, Pedro Bay, and Port Alsworth may take up to a total of 10 bull moose in Unit 9(B) for ceremonial purposes, under the terms of a Federal registration permit from July 1 through June 30. Permits will be issued to individuals only at the request of a local organization. This 10 moose limit is not cumulative with that permitted for potlatches by the State.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 9(B)—Lake Clark National Park and Preserve—Rural residents of Nondalton, Iliamna, Newhalen, Pedro Bay, and Port Alsworth only—1 bear by Federal registration permit only.	July 1–June 30.
Unit 9(B), remainder—1 bear by State registration permit only	Sept. 1–May 31.
Unit 9(E)—1 bear by Federal registration permit	Oct. 1–Dec. 31. May 10–May 25.
Caribou:	

Harvest limits	Open season
Unit 9(A)—4 caribou; however, no more than 2 caribou may be taken Aug. 10–Sept. 30 and no more than 1 caribou may be taken Oct. 1–Nov. 30.	Aug. 10–Mar. 31.
Unit 9(C), that portion within the Alagnak River drainage—1 caribou	Aug. 1–Mar. 31.
Unit 9(C), remainder—1 bull by Federal registration permit or State Tier II permit. Federal public lands are closed to the taking of caribou except by residents of Units 9(C) and (E).	Aug. 10–Sept. 20. Nov. 15–Feb. 28.
Unit 9(B)—5 caribou; however, no more than 2 bulls may be taken from Oct. 1–Nov. 30	Aug. 1–Apr. 15.
Unit 9(D)—closed to all hunting of caribou	No open season.
Unit 9(E)—1 bull by Federal registration permit or State Tier II permit. Federal public lands are closed to the taking of caribou except by residents of Units 9(C) and (E).	Aug. 10–Sept. 20 Nov. 1–Apr. 30.
Sheep:	
Unit 9(B)—Residents of Iliamna, Newhalen, Nondalton, Pedro Bay, and Port Alsworth only—1 ram with 7/8 curl horn by Federal registration permit only.	Aug. 10–Oct. 10.
Remainder of Unit 9—1 ram with 7/8 curl horn	Aug. 10–Sept. 20.
Moose:	
Unit 9(A)—1 bull	Sept. 1–Sept. 15.
Unit 9(B)—1 bull	Aug. 20–Sept. 15. Dec. 1–Jan. 15.
Unit 9(C)—that portion draining into the Naknek River from the north—1 bull	Sept. 1–Sept. 15. Dec. 1–Dec. 31.
Unit 9(C)—that portion draining into the Naknek River from the south—1 bull. However, during the period Aug. 20–Aug. 31, bull moose may be taken by Federal registration permit only. During the December hunt, antlerless moose may be taken by Federal registration permit only. The antlerless season will be closed when 5 antlerless moose have been taken. Public lands are closed during December for the hunting of moose, except by eligible rural Alaska residents	Aug. 20–Sept. 15. Dec. 1–Dec. 31.
Unit 9(C)—remainder—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31	Sept. 1–Sept. 15. Dec. 1–Dec. 31.
Unit 9(E)—1 bull	Sept. 1–Sept. 20. Dec. 1–Jan. 20.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White): No limit	Dec. 1–Mar. 15.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 10–Feb. 28.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
Unit 9(B)—40 beaver per season; however, no more than 20 may be taken between Apr. 1–May 31	Jan. 1–May 31.
Unit 9—remainder—40 beaver per season; however, no more than 20 may be taken between Apr. 1–Apr. 30	Jan. 1–Apr. 30.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White): No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Nov. 10–Feb. 28.
Marten: No limit	Nov. 10–Feb. 28.
Mink and Weasel: No limit	Nov. 10–Feb. 28.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(10) *Unit 10.* (i) Unit 10 consists of the Aleutian Islands, Unimak Island, and the Pribilof Islands.
(ii) You may not take any wildlife species for subsistence uses on Otter Island in the Pribilof Islands.

Harvest limits	Open season
Hunting	
Caribou:	
Unit 10—Unimak Island only	No open season.
Unit 10—remainder—No limit	July 1–June 30.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): No limit	July 1–June 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30
Wolf: 5 wolves	Aug. 10–Apr. 30
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): No limit	July 1–June 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.

Harvest limits	Open season
Mink and Weasel: No limit	Nov. 10–Feb. 28.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(11) *Unit 11.* Unit 11 consists of that area draining into the headwaters of the Copper River south of Suslota Creek and the area drained by all tributaries into the east bank of the Copper River between the confluence of Suslota Creek with the Slana River and Miles Glacier.
(i) Unit-specific regulations:
(A) You may use bait to hunt black bear between April 15 and June 15;
(B) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou and moose on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.
(ii) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: Unit 11–1 bear	Sept. 1—May 31.
Caribou: Unit 11	No open season.
Sheep:	
1 sheep	Aug. 10–Sept. 20.
1 sheep by Federal registration permit only by persons 60 years of age or older. No designated hunter permits will be issued for this hunt.	Sept. 21–Oct. 20.
Goat:	
Unit 11—that portion within the Wrangell-St. Elias National Park and Preserve—1 goat by Federal registration permit only. Federal public lands will be closed to the harvest of goats when a total of 45 goats have been harvested between Federal and State hunts.	Aug. 25–Dec. 31.
Moose: 1 antlered bull	Aug. 20–Sept. 20.
Coyote: 10 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Dec. 15–Jan. 15.
Wolf: 10 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Jan. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Mar. 31.
Trapping	
Beaver: 30 beaver per season	Nov. 10–Apr. 30.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Jan. 31.

(12) *Unit 12.* Unit 12 consists of the Tanana River drainage upstream from the Robertson River, including all drainages into the east bank of the Robertson River, and the White River drainage in Alaska, but excluding the Ladue River drainage.
(i) Unit-specific regulations:
(A) You may use bait to hunt black bear between April 15 and June 30;
(B) You may not use a steel trap, or a snare using cable smaller than 3/32 inch diameter to trap wolves in Unit 12 during April and October;
(C) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou and moose on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.
(ii) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: 1 bear	Aug. 10–June 30.
Caribou:	

Harvest limits	Open season
Unit 12—that portion west of the Nabesna River within the drainages of Jack Creek, Platinum Creek, and Totschunda Creek—The taking of caribou is prohibited on public lands.	No open season.
Unit 12—that portion lying east of the Nabesna River and Nabesna Glacier, and south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—The taking of caribou is prohibited on public lands.	No open season.
Unit 12—remainder—1 bull	Sept. 1–Sept. 20.
1 bull caribou may be taken by a Federal registration permit during a winter season to be announced	Winter season to be announced by the Board.
Sheep: 1 ram with full curl horn or larger	Aug. 10–Sept. 20.
Moose:	
Unit 12—that portion within the Tetlin National Wildlife Refuge and those lands within the Wrangell-St. Elias National Preserve north and east of a line formed by the Pickerel Lake Winter Trail from the Canadian border to the southern boundary of the Tetlin National Wildlife Refuge—1 antlered bull; however during the Aug. 15–Aug. 28 season only bulls with spike/fork antlers may be taken. The November season is open by Federal registration permit only.	Aug. 15–Aug. 28. Sept. 1–Sept. 15. Nov. 20–Nov. 30.
Unit 12—that portion lying east of the Nabesna River and Nabesna Glacier and south of the Winter Trail running southeast from Pickerel Lake to the Canadian border—1 antlered bull; however during the Aug. 15–Aug. 28 season only bulls with spike/fork antlers may be taken.	Aug. 15–Aug. 28. Sept. 1–Sept. 30.
Unit 12—remainder—1 antlered bull; however during the Aug. 15–Aug. 28 season only bulls with spike/fork antlers may be taken.	Aug. 15–Aug. 28. Sept. 1–Sept. 15.
Coyote: 10 coyotes; however, no more than 2 coyotes may be taken before October 1	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Mar. 15.
Wolf: 10 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver: 15 beaver per season	Nov. 1–Apr. 15.
Coyote: No limit	Nov. 1–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit	Sept. 20–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Oct. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Feb. 28.

(13) *Unit 13.* (i) Unit 13 consists of that area westerly of the east bank of the Copper River and drained by all tributaries into the west bank of the Copper River from Miles Glacier and including the Slana River drainages north of Suslota Creek; the drainages into the Delta River upstream from Falls Creek and Black Rapids Glacier; the drainages into the Nenana River upstream from the southeast corner of Denali National Park at Windy; the drainage into the Susitna River upstream from its junction with the Chulitna River; the drainage into the east bank of the Chulitna River upstream to its confluence with Tokositna River; the drainages of the Chulitna River (south of Denali National Park) upstream from its confluence with the Tokositna River; the drainages into the north bank of the Tokositna River upstream to the base of the Tokositna Glacier; the drainages into the Tokositna Glacier; the drainages into the east bank of the Susitna River between its confluences with the Talkeetna and Chulitna Rivers; the drainages into the north bank of the Talkeetna River; the drainages into the east bank of the Chickaloon River; the drainages of the Matanuska River above its confluence with the Chickaloon River:

(A) Unit 13(A) consists of that portion of Unit 13 bounded by a line beginning at the Chickaloon River bridge at Mile 77.7 on the Glenn Highway, then along the Glenn Highway to its junction with the Richardson Highway, then south along the Richardson Highway to the foot of Simpson Hill at Mile 111.5, then east to the east bank of the Copper River, then northerly along the east bank of the Copper River to its junction with the Gulkana River, then northerly along the west bank of the Gulkana River to its junction with the West Fork of the Gulkana River, then westerly along the west bank of the West Fork of the Gulkana River to its source, an unnamed lake, then across the divide into the Tyone River drainage, down an unnamed stream into the Tyone River, then down the Tyone River to the Susitna River, then down the southern bank of the Susitna River to the mouth of Kosina Creek, then up Kosina Creek to its headwaters, then across the divide and down Aspen Creek to the Talkeetna River, then southerly along the boundary of Unit 13 to the Chickaloon River bridge, the point of beginning;

(B) Unit 13(B) consists of that portion of Unit 13 bounded by a line beginning at the confluence of the Copper River and the Gulkana River, then up the east bank of the Copper River to the Gakona River, then up the Gakona River and Gakona Glacier to the boundary of Unit 13, then westerly along the boundary of Unit 13 to the Susitna Glacier, then southerly along the west bank of the Susitna Glacier and the Susitna River to the Tyone River, then up the Tyone River and across the divide to the headwaters of the West Fork of the Gulkana River, then down the West Fork of the Gulkana River to the confluence of the Gulkana River and the Copper River, the point of beginning;

(C) Unit 13(C) consists of that portion of Unit 13 east of the Gakona River and Gakona Glacier;

(D) Unit 13(D) consists of that portion of Unit 13 south of Unit 13(A);

(E) Unit 13(E) consists of the remainder of Unit 13.

(ii) Within the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take wildlife for subsistence uses on lands within Mount McKinley National Park as it existed prior to December 2, 1980. Subsistence uses as authorized by this paragraph (k)(13) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) You may not use motorized vehicles or pack animals for hunting from Aug. 5—Aug. 25 in the Delta Controlled Use Area, the boundary of which is defined as: a line beginning at the confluence of Miller Creek and the Delta River, then west to vertical angle bench mark Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 Richardson Highway, then north along the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Cantwell Glacier, then west along the north bank of the Canwell Glacier and Miller Creek to the Delta River;

(C) Except for access and transportation of harvested wildlife on Sourdough and Haggard Creeks, Meiers Lake trails, or other trails designated by the Board, you may not use motorized vehicles for subsistence hunting, is prohibited in the Sourdough Controlled Use Area. The Sourdough Controlled Use Area consists of that portion of Unit 13(B) bounded by a line beginning at the confluence of Sourdough Creek and the Gulkana River, then northerly along Sourdough Creek to the Richardson Highway at approximately Mile 148, then northerly along the Richardson Highway to the Meiers Creek Trail at approximately Mile 170, then westerly along the trail to the Gulkana River, then southerly along the east bank of the Gulkana River to its confluence with Sourdough Creek, the point of beginning.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou and moose on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
HUNTING	
Black Bear: 3 bears.	July 1—June 30.
Brown Bear: 1 bear. Bears taken within Denali National Park must be sealed within 5 days of harvest. That portion within Denali National Park will be closed by announcement of the Superintendent after 4 bears have been harvested.	Aug. 10—May 31.
Caribou: 2 caribou by Federal registration permit only. Hunting within the Trans-Alaska Oil Pipeline right-of-way is prohibited. The right-of-way is identified as the area occupied by the pipeline (buried or above ground) and the cleared area 25 feet on either side of the pipeline.	Aug. 10–Sept. 30. Oct. 21–Mar. 31
Sheep: Unit 13—excluding Unit 13(D) and the Tok Management Area and Delta Controlled Use Area—1 ram with 7/8 curl horn.	Aug 10–Sept. 20.
Moose:	
Unit 13(E)—1 antlered bull moose by Federal registration permit only; only 1 permit will be issued per household.	Aug. 1–Sept. 20.
Unit 13—remainder—1 antlered bull moose by Federal registration permit only	Aug. 1–Sept. 20.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Dec. 15–Jan. 15.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Jan. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Mar. 31.
Trapping	
Beaver: 30 beaver per season	Oct. 10–Apr. 30.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Dec. 1–Feb. 15.
Marten: No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Jan. 31.

(14) *Unit 14.* (i) Unit 14 consists of drainages into the north side of Turnagain Arm west of and excluding the Portage Creek drainage, drainages into Knik Arm excluding drainages of the Chickaloon and Matanuska Rivers in Unit 13, drainages into the north side of Cook Inlet east of the Susitna River, drainages into the east bank of the Susitna River downstream from the Talkeetna River, and drainages into the south bank of the Talkeetna River:

(A) Unit 14(A) consists of drainages in Unit 14 bounded on the west by the Susitna River, on the north by Willow Creek, Peters Creek, and by a line from the head of Peters Creek to the head of the Chickaloon River, on the east by the eastern boundary of Unit 14, and on the south by Cook Inlet, Knik Arm, the south bank of the Knik River from its mouth to its junction with Knik Glacier, across the face of Knik Glacier and along the north side of Knik Glacier to the Unit 6 boundary;

(B) Unit 14(B) consists of that portion of Unit 14 north of Unit 14(A);

(C) Unit 14(C) consists of that portion of Unit 14 south of Unit 14(A).

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) You may not take wildlife for subsistence uses in the Fort Richardson and Elmendorf Air Force Base Management Areas, consisting of the Fort Richardson and Elmendorf Military Reservation;

(B) You may not take wildlife for subsistence uses in the Anchorage Management Area, consisting of all drainages south of Elmendorf and Fort Richardson military reservations and north of and including Rainbow Creek.

(iii) Unit-specific regulations:

Harvest limits	Open season
Hunting	
Black Bear: Unit 14(C)—1 bear	July 1–June 30.
Coyote: Unit 14(C)—2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): Unit 14(C)—2 foxes	Nov. 1–Feb. 15.
Hare (Snowshoe and Tundra): Unit 14(C)—5 hares per day	Sept. 8–Apr. 30.
Lynx: Unit 14(C)—2 lynx	Dec. 15–Jan. 15.
Wolf: Unit 14(C)—5 wolves	Aug. 10–Apr. 30.
Wolverine: Unit 14(C)—1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): Unit 14(C)—5 per day, 10 in possession	Sept. 8–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): Unit 14(C)—10 per day, 20 in possession.	Sept. 8–Mar. 31.
Trapping	
Beaver:	
Unit 14(C)—that portion within the drainages of Glacier Creek, Kern Creek, Peterson Creek, the Twentymile River and the drainages of Knik River outside Chugach State Park—20 beaver per season.	Dec. 1–Apr. 15.
Coyote: Unit 14(C)—No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases): Unit 14(C)—1 fox	Nov. 10–Feb. 28.
Lynx: Unit 14(C)—No limit	Dec. 15–Jan. 15.
Marten: Unit 14(C)—No limit	Nov. 10–Jan. 31.
Mink and Weasel: Unit 14(C)—No limit	Nov. 10–Jan. 31.
Muskrat: Unit 14(C)—No limit	Nov. 10–May 15.
Otter: Unit 14(C)—No limit	Nov. 10–Feb. 28.
Wolf: Unit 14(C)—No limit	Nov. 10–Feb. 28.
Wolverine: Unit 14(C)—No limit	Nov. 10–Feb. 28.

(15) *Unit 15.* (i) Unit 15 consists of that portion of the Kenai Peninsula and adjacent islands draining into the Gulf of Alaska, Cook Inlet, and Turnagain Arm from Gore Point to the point where longitude line 150° 00′ W. crosses the coastline of Chickaloon Bay in Turnagain Arm, including that area lying west of longitude line 150° 00′ W. to the mouth of the Russian River, then southerly along the Chugach National Forest boundary to the upper end of Upper Russian Lake; and including the drainages into Upper Russian Lake west of the Chugach National Forest boundary:

(A) Unit 15(A) consists of that portion of Unit 15 north of the Kenai River and Skilak Lake;

(B) Unit 15(B) consists of that portion of Unit 15 south of the Kenai River and Skilak Lake, and north of the Kasilof River, Tustumena Lake, Glacier Creek, and Tustumena Glacier;

(C) Unit 15(C) consists of the remainder of Unit 15.

(ii) You may not take wildlife, except for grouse, ptarmigan, and hares that may be taken only from October 1–March 1 by bow and arrow only, in the Skilak Loop Management Area, which consists of that portion of Unit 15(A) bounded by a line beginning at the eastern most junction of the Sterling Highway and the Skilak Loop (milepost 76.3), then due south to the south bank of the Kenai River, then southerly along the south bank of the Kenai River to its confluence with Skilak Lake, then westerly along the north shore of Skilak Lake to Lower Skilak Lake Campground, then northerly along the Lower Skilak Lake Campground Road and the Skilak Loop Road to its western most junction with the Sterling Highway, then easterly along the Sterling Highway to the point of beginning.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15;

(B) You may not trap furbearers for subsistence in the Skilak Loop Wildlife Management Area;

(C) You may not trap marten in that portion of Unit 15(B) east of the Kenai River, Skilak Lake, Skilak River, and Skilak Glacier;

(D) You may not take red fox in Unit 15 by any means other than a steel trap or snare;

(E) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take moose on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Black Bear:	
Unit 15(C)—3 bears	July 1–June 30.
Unit 15—remainder	No open season.
Moose:	
Unit 15(A)—excluding the Skilak Loop Wildlife Management Area.—1 antlered bull with spike-fork or 50-inch antlers or with 3 or more brow tines on either antler, by Federal registration permit only.	Aug. 18–Sept. 20.
Unit 15(A)—Skilak Loop Wildlife Management Area	No open season.
Unit 15(B) and (C)—1 antlered bull with spike-fork or 50-inch antlers or with 3 or more brow tines on either antler, by Federal registration permit only.	Aug. 10–Sept. 20.
Coyote: No limit	Sept. 1–Apr. 30.

Harvest limits	Open season
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Wolf:	
Unit 15—that portion within the Kenai National Wildlife Refuge—2 Wolves	Aug. 10–Apr. 30.
Unit 15—remainder—5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 Wolverine	Sept. 1–Mar. 31.
Grouse (Spruce):	
15 per day, 30 in possession	Aug. 10–Mar. 31.
Grouse (Ruffed):	No open season.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 15 (A) and (B)—20 per day, 40 in possession	Aug. 10–Mar. 31.
Unit 15(C)—20 per day, 40 in possession	Aug. 10–Dec. 31.
Unit 15(C)—5 per day, 10 in possession	Jan. 1–Mar. 31.
Trapping	
Beaver: 20 Beaver per season	Dec. 1–Mar. 31.
Coyote: No limit	Nov. 10–Feb. 28.
Fox, Red (including Cross, Black and Silver Phases): 1 Fox	Nov. 10–Feb. 28.
Lynx: No limit	Jan. 1–Feb. 15.
Marten:	
Unit 15(B)—that portion east of the Kenai River, Skilak Lake, Skilak River, and Skilak Glacier	No open season.
Remainder of Unit 15—No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–May 15.
Otter:	
Unit 15(A), (B)—No limit	Nov. 10–Jan. 31.
Unit 15(C)—No limit	Nov. 10–Feb. 28.
Wolf: No limit	Nov. 10–Feb. 28.
Wolverine: Unit 15(B) and (C)—No limit	Nov. 10–Feb. 28.

(16) *Unit 16.* (i) Unit 16 consists of the drainages into Cook Inlet between Redoubt Creek and the Susitna River, including Redoubt Creek drainage, Kalgin Island, and the drainages on the west side of the Susitna River (including the Susitna River) upstream to its confluence with the Chulitna River; the drainages into the west side of the Chulitna River (including the Chulitna River) upstream to the Tokositna River, and drainages into the south side of the Tokositna River upstream to the base of the Tokositna Glacier, including the drainage of the Kahiltna Glacier:

(A) Unit 16(A) consists of that portion of Unit 16 east of the east bank of the Yentna River from its mouth upstream to the Kahiltna River, east of the east bank of the Kahiltna River, and east of the Kahiltna Glacier;

(B) Unit 16(B) consists of the remainder of Unit 16.

(ii) You may not take wildlife for subsistence uses in the Mount McKinley National Park, as it existed prior to December 2, 1980. Subsistence uses as authorized by this paragraph (k)(16) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15.

(B) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear: 3 bears.	July 1–June 30.
Caribou: 1 caribou	Aug. 10–Oct. 31.
Moose:	
Unit 16(B)—Redoubt Bay Drainages south and west of, and including the Kustatan River drainage—1 antlered bull.	Sept. 1–Sept. 15.
Unit 16(B)—remainder—1 moose; however, antlerless moose may be taken only from Sept. 25–Sept. 30 and from Dec. 1–Feb. 28 by Federal registration permit only.	Sept. 1–Sept. 30. Dec. 1–Feb. 28.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Dec. 15–Jan. 15.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Mar. 31.
Trapping	
Beaver: 30 beaver per season	Nov. 10–Apr. 30.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Feb. 28.
Lynx: No limit	Dec. 15–Jan. 15.
Marten: No limit	Nov. 10–Jan. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.

Harvest limits	Open season
Wolverine: No limit	Nov. 10–Feb. 28.

(17) *Unit 17.* (i) Unit 17 consists of drainages into Bristol Bay and the Bering Sea between Etolin Point and Cape Newenham, and all islands between these points including Hagemeister Island and the Walrus Islands:

(A) Unit 17(A) consists of the drainages between Cape Newenham and Cape Constantine, and Hagemeister Island and the Walrus Islands;

(B) Unit 17(B) consists of the Nushagak River drainage upstream from, and including the Mulchatna River drainage, and the Wood River drainage upstream from the outlet of Lake Beverley;

(C) Unit 17(C) consists of the remainder of Unit 17.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) Except for aircraft and boats and in legal hunting camps, you may not use any motorized vehicle for hunting ungulates, bears, wolves, and wolverine, including transportation of hunters and parts of ungulates, bear, wolves, or wolverine in the Upper Mulchatna Controlled Use Area consisting of Unit 17(B), from Aug. 1–Nov. 1;

(B) You may hunt brown bear by State registration permit in lieu of a resident tag in the Western Alaska Brown Bear Management Area which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19(A) and (B) downstream of and including the Aniak River drainage, if you have obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 15.

(B) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear: 2 bears	Aug. 1–May 31.
Brown Bear: Unit 17—1 bear by State registration permit only	Sept. 1–May 31.
Caribou:	
Unit 17(A) and (C)—that portion of 17(A) and (C) consisting of the Nushagak Peninsula south of the Igushik River, Tuklung River and Tuklung Hills, west to Tvativak Bay—2 caribou by Federal registration permit. Public lands are closed to the taking of caribou except by the residents of Togiak, Twin Hills, Manokotak, Aleknagik, Dillingham, Clark's Point, and Ekuk during seasons identified above.	Aug. 1–Sept. 30. Dec. 1–Mar. 31.
Unit 17(B) and (C)—that portion of 17(C) east of the Wood River and Wood River Lakes—5 caribou; however, no more than 2 bulls may be taken from Oct. 1–Nov. 30.	Aug. 1–Apr. 15.
Unit 17(A)—remainder and 17(C)—remainder—selected drainages; a harvest limit of up to 5 caribou will be determined at the time the season is announced.	Season, harvest limit, and hunt area to be announced by the Togiak National Wildlife Refuge Manager between Aug. 1–Mar. 31.
Sheep: 1 ram with full curl horn or larger	Aug. 10–Sept. 20.
Moose:	
Unit 17(A)	No open season.
Unit 17(B)—that portion that includes all the Mulchatna River drainage upstream from and including the Chilchitna River drainage—1 bull by State registration permit only during the period Aug. 20–Aug. 31. During the period Sept. 1–Sept. 15 only a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket.	Aug. 20–Sept. 15.
Unit 17(C)—that portion that includes the lowithla drainage and Sunshine Valley and all lands west of Wood River and south of Aleknagik Lake—1 bull by State registration permit only during the period Aug. 20–Aug. 31. During the period Sept. 1–Sept. 15 only a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket.	Aug. 20–Sept. 15.
Unit 17(A)—remainder and 17(C)—remainder—1 bull by State registration permit only during the periods Aug. 20–Aug. 31 and Dec. 1–Dec. 31. During the period Sept. 1–Sept. 15 only a spike/fork bull or a bull with 50-inch antlers or with 3 or more brow tines on one side may be taken with a State harvest ticket.	Aug. 20–Sept. 15. Dec. 1–Dec. 31.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): No limit	Dec. 1–Mar. 15.
Fox, Red (including Cross, Black and Silver Phases): 2 foxes	Sept. 1–Feb. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 10–Feb. 28.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver: Unit 17—40 beaver per season	Nov. 10–Feb. 28.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White Phase): No limit	Nov. 10–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 10–Mar. 31.
Lynx: No limit	Nov. 10–Mar. 31.
Marten: No limit	Nov. 10–Feb. 28.
Mink and Weasel: No limit	Nov. 10–Feb. 28.

Harvest limits	Open season
Muskrat: 2 muskrats	Nov. 10–Feb. 28.
Otter: No limit	Nov. 10–Feb. 28.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Feb. 28.

(18) *Unit 18.* (i) Unit 18 consists of that area draining into the Yukon and Kuskokwim Rivers downstream from a straight line drawn between Lower Kalskag and Paimiut and the drainages flowing into the Bering Sea from Cape Newenham on the south to and including the Pastolik River drainage on the north; Nunivak, St. Matthew, and adjacent islands between Cape Newenham and the Pastolik River.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public lands:

(A) In the Kalskag Controlled Use Area which consists of that portion of Unit 18 bounded by a line from Lower Kalskag on the Kuskokwim River, northwesterly to Russian Mission on the Yukon River, then east along the north bank of the Yukon River to the old site of Paimiut, then back to Lower Kalskag, you may not use aircraft for hunting any ungulate, bear, wolf, or wolverine, including the transportation of any hunter and ungulate, bear, wolf, or wolverine part; however, this does not apply to transportation of a hunter or ungulate, bear, wolf, or wolverine part by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the Area and points outside the Area;

(B) You may hunt brown bear by State registration permit in lieu of a resident tag in the Western Alaska Brown Bear Management Area which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19(A) and (B) downstream of and including the Aniak River drainage, if you have obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations:

(A) If you have a trapping license, you may use a firearm to take beaver in Unit 18 from Apr. 1–Jun. 10;

(B) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take caribou south of the Yukon River on his or her behalf. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: 1 bear by State registration permit only	Sept. 1–May 31.
Caribou:	
Unit 18—that portion south of the Yukon River—A harvest limit of up to 5 caribou will be determined at the time the season is announced and will be based on the management objectives in the "Qavilnguut (Kilbuck) Caribou Herd Cooperative Management Plan." The season will be closed when the total harvest reaches guidelines as described in the approved "Qavilnguut (Kilbuck) Caribou Herd Cooperative Management Plan".	Season to be announced by the Yukon Delta National Wildlife Refuge Manager between Aug. 25 and Mar. 31.
Unit 18—that portion north of the Yukon River—5 caribou per day	Aug. 1–Mar. 31.
Moose:	
Unit 18—that portion north and west of a line from Cape Romanzof to Kuzilvak Mountain, and then to Mountain Village, and west of, but not including, the Andreafsky River drainage—1 antlered bull.	Sept. 5–Sept. 25.
Unit 18—south of and including the Kanektok River drainages	No open season.
Unit 18—Kuskokwim River drainage—1 antlered bull. A 10-day hunt (1 bull, evidence of sex required) will be opened by announcement sometime between Dec. 1 and Feb. 28.	Aug. 25–Sept. 25. Winter season to be announced.
Unit 18—remainder—1 antlered bull. A 10-day hunt (1 bull, evidence of sex required) will be opened by announcement sometime between Dec. 1 and Feb. 28.	Sept. 1–Sept. 30 Winter season to be announced.
Public lands in Unit 18 are closed to the hunting of moose, except by Federally-qualified rural Alaska residents during seasons identified above.	
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): 2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 10–Mar. 31.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–May 30.
Trapping	
Beaver: No limit	Nov. 1–June 10.
Coyote: No limit	Nov. 10–Mar. 31.
Fox, Arctic (Blue and White Phase): No limit	Nov. 10–Mar. 31.
Fox, Red (Including Cross, Black and Silver Phases): No limit	Nov. 10–Mar. 31.
Lynx: No limit	Nov. 10–Mar. 31.
Marten: No limit	Nov. 10–Mar. 31.
Mink and Weasel: No limit	Nov. 10–Jan. 31.

Harvest limits	Open season
Muskrat: No limit	Nov. 10–June 10.
Otter: No limit	Nov. 10–Mar. 31.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 10–Mar. 31.

(19) *Unit 19.* (i) Unit 19 consists of the Kuskokwim River drainage upstream from a straight line drawn between Lower Kalskag and Piamiut:

(A) Unit 19(A) consists of the Kuskokwim River drainage downstream from and including the Moose Creek drainage on the north bank and downstream from and including the Stony River drainage on the south bank, excluding Unit 19(B);

(B) Unit 19(B) consists of the Aniak River drainage upstream from and including the Salmon River drainage, the Holitna River drainage upstream from and including the Bakbuk Creek drainage, that area south of a line from the mouth of Bakbuk Creek to the radar dome at Sparrevohn Air Force Base, including the Hoholitna River drainage upstream from that line, and the Stony River drainage upstream from and including the Can Creek drainage;

(C) Unit 19(C) consists of that portion of Unit 19 south and east of a line from Benchmark M#1.26 (approximately 1.26 miles south of the northwest corner of the original Mt. McKinley National Park boundary) to the peak of Lone Mountain, then due west to Big River, including the Big River drainage upstream from that line, and including the Swift River drainage upstream from and including the North Fork drainage;

(D) Unit 19(D) consists of the remainder of Unit 19.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not take wildlife for subsistence uses on lands within Mount McKinley National Park as it existed prior to December 2, 1980. Subsistence uses as authorized by this paragraph (k)(19) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) In the Upper Kuskokwim Controlled Use Area, which consists of that portion of Unit 19(D) upstream from the mouth of Big River including the drainages of the Big River, Middle Fork, South Fork, East Fork, and Tonzona River, and bounded by a line following the west bank of the Swift Fork (McKinley Fork) of the Kuskokwim River to 152° 50′ W. long., then north to the boundary of Denali National Preserve, then following the western boundary of Denali National Preserve north to its intersection with the Minchumina-Telida winter trail, then west to the crest of Telida Mountain, then north along the crest of Munsatli Ridge to elevation 1,610, then northwest to Dyckman Mountain and following the crest of the divide between the Kuskokwim River and the Nowitna drainage, and the divide between the Kuskokwim River and the Nixon Fork River to Loaf benchmark on Halfway Mountain, then south to the west side of Big River drainage, the point of beginning, you may not use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the Controlled Use Area, or between a publicly owned airport within the area and points outside the area;

(C) You may hunt brown bear by State registration permit in lieu of a resident tag in the Western Alaska Brown Bear Management Area, which consists of Unit 17(A), that portion of 17(B) draining into Nuyakuk Lake and Tikchik Lake, Unit 18, and that portion of Unit 19(A) and (B) downstream of and including the Aniak River drainage, if you have obtained a State registration permit prior to hunting.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30.

(B) [Reserved]

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 19(A) and (B)—those portions which are downstream of and including the Aniak River drainage—1 bear	Sept. 1–May 31.
Unit 19(A)—remainder, 19(B)—remainder, and Unit 19(D)—1 bear every four regulatory years	Sept. 10–May 25.
Caribou:	
Unit 19(A)—north of Kuskokwim River—1 caribou	Aug. 10–Sept. 30. Nov. 1–Feb. 28.
Unit 19(A)—south of the Kuskokwim River and Unit 19(B) (excluding rural Alaska residents of Lime Village)—5 caribou.	Aug. 1–Apr. 15.
Unit 19(C)—1 caribou	Aug. 10–Oct. 10.
Unit 19(D)—south and east of the Kuskokwim River and North Fork of the Kuskokwim River—1 caribou	Aug. 10–Sept. 30. Nov. 1–Jan. 31.
Unit 19(D)—remainder—1 caribou	Aug. 10–Sept. 30.
Unit 19—rural Alaska residents domiciled in Lime Village only—no individual harvest limit but a village harvest quota of 200 caribou; cows and calves may not be taken from Apr. 1–Aug. 9. Reporting will be by a community reporting system.	July 1–June 30.
Sheep: 1 ram with 7/8 curl	Aug. 10–Sept. 20.
Moose:	
Unit 19—Rural Alaska residents of Lime Village only—no individual harvest limit, but a village harvest quota of 40 moose (including those taken under the State Tier II system); either sex. Reporting will be by a community reporting system.	July 1–June 30.

Harvest limits	Open season
Unit 19(A)—that portion north of the Kuskokwim River upstream from, but not including the Kolmakof River drainage and south of the Kuskokwim River upstream from, but not including the Holokuk River drainage—1 moose; however, antlerless moose may be taken only during the Feb. 1–Feb. 10 season.	Sept. 1–Sept. 20. Nov. 20–Nov. 30. Jan. 1–Jan. 10. Feb. 1–Feb. 10.
Unit 19(A)—remainder—1 bull	Sept. 1–Sept. 20. Nov. 20–Nov. 30. Jan. 1–Jan. 10. Feb. 1–Feb. 10.
Unit 19(B)—1 antlered bull	Sept. 1–Sept. 30.
Unit 19(C)—1 antlered bull	Sept. 1–Oct. 10.
Unit 19(C)—1 bull by State registration permit	Jan. 15–Feb. 15.
Unit 19(D)—that portion of the Upper Kuskokwim Controlled Use Area within the North Fork drainage upstream from the confluence of the South Fork to the mouth of the Swift Fork—1 antlered bull.	Sept. 1–Sept. 30.
Unit 19(D)—remainder of the Upper Kuskokwim Controlled Use Area—1 bull	Sept. 1–Sept. 30.
Unit 19(D)—remainder—1 antlered bull	Dec. 1–Feb. 28. Sept. 1–Sept. 30. Dec. 1–Dec. 15.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Feb. 28.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver: No limit	Nov. 1–Jun. 10.
Coyote: No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit.	Nov. 1–Mar. 31.
Lynx: No limit	Nov. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Mar. 31.

(20) *Unit 20.* (i) Unit 20 consists of the Yukon River drainage upstream from and including the Tozitna River drainage to and including the Hamlin Creek drainage, drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, the Ladue River and Fortymile River drainages, and the Tanana River drainage north of Unit 13 and downstream from the east bank of the Robertson River:

(A) Unit 20(A) consists of that portion of Unit 20 bounded on the south by the Unit 13 boundary, bounded on the east by the west bank of the Delta River, bounded on the north by the north bank of the Tanana River from its confluence with the Delta River downstream to its confluence with the Nenana River, and bounded on the west by the east bank of the Nenana River;

(B) Unit 20(B) consists of drainages into the north bank of the Tanana River from and including Hot Springs Slough upstream to and including the Banner Creek drainage;

(C) Unit 20(C) consists of that portion of Unit 20 bounded on the east by the east bank of the Nenana River and on the north by the north bank of the Tanana River downstream from the Nenana River;

(D) Unit 20(D) consists of that portion of Unit 20 bounded on the east by the east bank of the Robertson River and on the west by the west bank of the Delta River, and drainages into the north bank of the Tanana River from its confluence with the Robertson River downstream to, but excluding the Banner Creek drainage;

(E) Unit 20(E) consists of drainages into the south bank of the Yukon River upstream from and including the Charley River drainage, and the Ladue River drainage;

(F) Unit 20(F) consists of the remainder of Unit 20.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not take wildlife for subsistence uses on lands within Mount McKinley National Park as it existed prior to December 2, 1980. Subsistence uses as authorized by this paragraph (k)(20) are permitted in Denali National Preserve and lands added to Denali National Park on December 2, 1980;

(B) You may not use motorized vehicles or pack animals for hunting from Aug. 5–Aug. 25 in the Delta Controlled Use Area, the boundary of which is defined as: a line beginning at the confluence of Miller Creek and the Delta River, then west to vertical angle bench mark Miller, then west to include all drainages of Augustana Creek and Black Rapids Glacier, then north and east to include all drainages of McGinnis Creek to its confluence with the Delta River, then east in a straight line across the Delta River to Mile 236.7 Richardson Highway, then north along the Richardson Highway to its junction with the Alaska Highway, then east along the Alaska Highway to the west bank of the Johnson River, then south along the west bank of the Johnson River and Johnson Glacier to the head of the Canwell Glacier, then west along the north bank of the Canwell Glacier and Miller Creek to the Delta River;

(C) You may not use motorized vehicles, except aircraft and boats, and to licensed highway vehicles, snowmobiles, and firearms except as provided below in the Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway. The use of snowmobiles is authorized only for the subsistence taking of wildlife by residents living within the Dalton Highway Corridor Management Area. You may use licensed highway vehicles only on designated roads within the Dalton Highway Corridor Management Area. Only the residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor may use firearms within the Corridor;

(D) You may not use any motorized vehicle for hunting from August 5–September 20 in the Glacier Mountain Controlled Use Area, which consists of that portion of Unit 20(E) bounded by a line beginning at Mile 140 of the Taylor Highway, then north along the highway to Eagle, then west along the cat trail from Eagle to Crooked Creek, then from Crooked Creek southwest along the west bank of Mogul Creek to its headwaters on North Peak, then west across North Peak to the headwaters of Independence Creek, then southwest along the west bank of Independence Creek to its confluence with the North Fork of the Fortymile River, then easterly along the south bank of the North Fork of the Fortymile River to its confluence with Champion Creek, then across the North Fork of the Fortymile River to the south bank of Champion Creek and easterly along the south bank of Champion Creek to its confluence with Little Champion Creek, then northeast along the east bank of Little Champion Creek to its headwaters, then northeasterly in a direct line to Mile 140 on the Taylor Highway; however, this does not prohibit motorized access via, or transportation of harvested wildlife on, the Taylor Highway or any airport;

(E) You may by permit only hunt moose on the Minto Flats Management Area, which consists of that portion of Unit 20 bounded by the Elliot Highway beginning at Mile 118, then northeasterly to Mile 96, then east to the Tolovana Hotsprings Dome, then east to the Winter Cat Trail, then along the Cat Trail south to the Old Telegraph Trail at Dunbar, then westerly along the trail to a point where it joins the Tanana River three miles above Old Minto, then along the north bank of the Tanana River (including all channels and sloughs except Swan Neck Slough), to the confluence of the Tanana and Tolovana Rivers and then northerly to the point of beginning;

(F) You may hunt moose by bow and arrow only in the Fairbanks Management Area, which consists of the Goldstream subdivision (SE ¼ SE ¼, Section 28 and Section 33, Township 2 North, Range 1 West, Fairbanks Meridian) and that portion of Unit 20(B) bounded by a line from the confluence of Rosie Creek and the Tanana River, northerly along Rosie Creek to the divide between Rosie Creek and Cripple Creek, then down Cripple Creek to its confluence with Ester Creek, then up Ester Creek to its confluence with Ready Bullion Creek, then up Ready Bullion Creek to the summit of Ester Dome, then down Sheep Creek to its confluence with Goldstream Creek, then easterly along Goldstream Creek to its confluence with First Chance Creek, then up First Chance Creek to Tungsten Hill, then southerly along Steele Creek to its intersection with the Trans-Alaska Pipeline, then southerly along the pipeline right-of-way to the Chena River, then along the north bank of the Chena River to the Moose Creek dike, then southerly along Moose Creek dike to its intersection with the Tanana River, and then westerly along the north bank of the Tanana River to the point of beginning.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30;

(B) You may not use a steel trap, or a snare using cable smaller than 3/32 inch diameter to trap wolves in Unit 20(E) during April and October;

(C) Residents of Unit 20 and 21 may take up to three moose per regulatory year for the celebration known as the Nuchalawoyya Potlatch, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Tanana. This three moose limit is not cumulative with that permitted by the State.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 20(E)—1 bear	Aug. 10–June 30.
Unit 20—remainder—1 bear every four regulatory years	Sept. 1–May 31.
Caribou:	
Unit 20(E)—1 bull by joint State/Federal registration permit only. The fall season will close when a combined State/Federal harvest of 55 bulls has been reached. The winter season will close when the combined fall and winter State/Federal harvest quota of 150 bulls for the Fortymile herd has been reached. The season closures will be announced by the Northern Field Office Manager, Bureau of Land Management, after consultation with the National Park Service and Alaska Department of Fish and Game.	Aug. 10–Sept. 30. Nov. 15–Feb. 28.
Unit 20(F)—Tozitna River drainage—1 caribou; however, only bull caribou may be taken Aug. 10–Sept. 30	Aug. 10–Sept. 30. Nov. 26–Dec. 10. Mar. 1–Mar. 15.
Unit 20(F)—south of the Yukon River—1 caribou	Dec. 1–Dec. 31.
Remainder of Unit 20(F)—1 bull	Aug. 10–Sept. 30.
Moose:	
Unit 20(A)—1 antlered bull	Sept. 1–Sept. 20.
Unit 20(B)—that portion within the Minto Flats Management Area—1 bull by Federal registration permit only	Sept. 1–Sept. 20. Jan. 10–Feb. 28.
Unit 20(B)—remainder—1 antlered bull	Sept. 1–Sept. 20.
Unit 20(C)—that portion within Denali National Park and Preserve west of the Toklat River, excluding lands within Mount McKinley National Park as it existed prior to December 2, 1980—1 antlered bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken.	Sept. 1–Sept. 30. Nov. 15–Dec. 15.
Unit 20(C)—remainder—1 antlered bull; however, white-phased or partial albino (more than 50 percent white) moose may not be taken.	Sept. 1–Sept. 30.
Unit 20(E)—that portion within Yukon Charley National Preserve—1 bull	Aug. 20–Sept. 30.

Harvest limits	Open season
Unit 20(E)—that portion drained by the Ladue, Sixty-mile, and Forty-mile Rivers (all forks) from Mile 9½ to Mile 145 Taylor Highway, including the Boundary Cutoff Road—1 antlered bull; however during the period Aug. 20–Aug. 28 only a bull with Spike/fork antlers may be taken.	Aug. 20–Aug. 28. Sept. 1–Sept. 15.
Unit 20(F)—that portion within the Dalton Highway Corridor Management Area—1 antlered bull by Federal registration permit only.	Sept. 1–Sept. 25.
Unit 20(F)—remainder—1 antlered bull	Sept. 1–Sept. 25.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx:	
Unit 20(E)—2 lynx	Nov. 1–Jan. 31.
Unit 20—remainder—2 lynx	Dec. 1–Jan. 31.
Wolf: 10 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
Unit 20(D)—that portion south of the Tanana River and west of the Johnson River—15 per day, 30 in possession, provided that not more than 5 per day and 10 in possession are sharp-tailed grouse.	Aug. 25–Mar. 31.
Unit 20—remainder—15 per day, 30 in possession	Aug. 10—Mar. 31.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 20—those portions within five miles of Alaska Route 5 (Taylor Highway, both to Eagle and the Alaska-Canada boundary) and that portion of Alaska Route 4 (Richardson Highway) south of Delta Junction—20 per day, 40 in possession.	Aug. 10–Mar. 31.
Unit 20—remainder—20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
Units 20(A), 20(B), Unit 20(C), and 20(F)—No limit	Nov. 1–Apr. 15.
Units 20(D) and (E)—25 beaver	Nov. 1–Apr. 15.
Coyote:	
Unit 20(E)—No limit	Nov. 1–Feb. 28.
Remainder Unit 20—No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.
Lynx:	
Unit 20(A), (B), (D), (E), and (C) east of the Teklanika River—No limit	Dec. 1–Feb. 15.
Unit 20(F) and the remainder of 20(C)—No limit	Nov. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat:	
Unit 20(E)—No limit	Sept. 20–June 10.
Unit 20—remainder—No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf:	
Unit 20(E)—No limit	Oct. 1–Apr. 30.
Unit 20—remainder—No limit	Nov. 1–Mar. 31.
Wolverine: No limit	Nov. 1—Feb. 28.

(21) *Unit 21.* (i) Unit 21 consists of drainages into the Yukon River upstream from Paimiut to, but not including the Tozitna River drainage on the north bank, and to, but not including the Tanana River drainage on the south bank; and excluding the Koyukuk River drainage upstream from the Dulbi River drainage:

(A) Unit 21(A) consists of the Innoko River drainage upstream from and including the Iditarod River drainage, and the Nowitna River drainage upstream from the Little Mud River;

(B) Unit 21(B) consists of the Yukon River drainage upstream from Ruby and east of the Ruby-Poorman Road, downstream from and excluding the Tozitna River and Tanana River drainages, and excluding the Nowitna River drainage upstream from the Little Mud River, and excluding the Melozitna River drainage upstream from Grayling Creek;

(C) Unit 21(C) consists of the Melozitna River drainage upstream from Grayling Creek, and the Dulbi River drainage upstream from and including the Cottonwood Creek drainage;

(D) Unit 21(D) consists of the Yukon River drainage from and including the Blackburn Creek drainage upstream to Ruby, including the area west of the Ruby-Poorman Road, excluding the Koyukuk River drainage upstream from the Dulbi River drainage, and excluding the Dulbi River drainage upstream from Cottonwood Creek;

(E) Unit 21(E) consists of the Yukon River drainage from Paimiut upstream to, but not including the Blackburn Creek drainage, and the Innoko River drainage downstream from the Iditarod River drainage.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) The Koyukuk Controlled Use Area, which consists of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk, then northerly to the confluences of the Honhosa and Kateel Rivers, then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65° 57′ N. lat., 156° 41′ W. long.), then easterly to the south end of Solsmunket Lake, then east to Hughes, then south to Little Indian River, then southwesterly to the crest of Hochandochtla Mountain, then southwest to the mouth of Cottonwood Creek then southwest to Bishop Rock, then westerly along the north bank of the Yukon River (including Koyukuk

Island) to the point of beginning, is closed during moose-hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or moose part; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area; all hunters on the Koyukuk River passing the ADF&G operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to ADF&G personnel at the check station;

(B) The Paradise Controlled Use Area, which consists of that portion of Unit 21 bounded by a line beginning at the old village of Paimiut, then north along the west bank of the Yukon River to Paradise, then northwest to the mouth of Stanstrom Creek on the Bonasila River, then northeast to the mouth of the Anvik River, then along the west bank of the Yukon River to the lower end of Eagle Island (approximately 45 miles north of Grayling), then to the mouth of the Iditarod River, then down the east bank of the Innoko River to its confluence with Paimiut Slough, then south along the east bank of Paimiut Slough to its mouth, and then to the old village of Paimiut, is closed during moose hunting seasons to the use of aircraft for hunting moose, including transportation of any moose hunter or part of moose; however, this does not apply to transportation of a moose hunter or part of moose by aircraft between publicly owned airports in the Controlled Use Area or between a publicly owned airport within the area and points outside the area.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30;

(B) If you have a trapping license, you may use a firearm to take beaver in Unit 21(E) from Apr. 1–June 1;

(C) The residents of Unit 20 and 21 may take up to three moose per regulatory year for the celebration known as the Nuchalawoyya Potlatch, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Tanana. This three moose limit is not cumulative with that permitted by the State;

(D) The residents of Unit 21 may take up to three moose per regulatory year for the celebration known as the Kaltag/Nulato Stickdance, under the terms of a Federal registration permit. Permits will be issued to individuals only at the request of the Native Village of Kaltag or Nulato. This three moose limit is not cumulative with that permitted by the State.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: 1 bear every four regulatory years	Sept. 1–May 31.
Caribou:	
Unit 21(A)—1 caribou	Aug. 10–Sept. 30. Dec. 10–Dec. 20.
Unit 21(B), (C), and (E)—1 caribou	Aug. 10–Sept. 30.
Unit 21(D)—north of the Yukon River and east of the Koyukuk River 1 caribou; however, 2 additional caribou may be taken during a winter season to be announced.	Aug. 10–Sept. 30. Winter season to be announced.
Unit 21(D)—remainder—5 caribou per day; however, cow caribou may not be taken May 16–June 30	July 1–June 30.
Moose:	
Unit 21(A)—1 bull	Aug. 20–Sept. 25. Nov. 1–Nov. 30.
Unit 21(B) and (C)—1 antlered bull	Sept. 5–Sept. 25.
Unit 21(D)—1 moose; moose may not be taken within one-half mile of the Yukon River during the February season. During the Sept. 1–Sept. 25 season a State registration permit is required within the Koyukuk Controlled Use Area.	Sept. 1–Sept. 25. Feb. 1–Feb. 10.
Unit 21(E)—1 moose; however, only bulls may be taken from Aug. 20–Sept. 25; moose may not be taken within one-half mile of the Innoko or Yukon River during the February season.	Aug. 20–Sept. 25. Feb. 1–Feb. 10.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Feb. 28.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver: No Limit	Nov. 1–June 10.
Coyote: No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.
Lynx: No limit	Nov. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Mar. 31.

(22) *Unit 22.* (i) Unit 22 consists of Bering Sea, Norton Sound, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from, but excluding, the Pastolik River drainage in southern Norton Sound to, but not including, the Goodhope River drainage in Southern Kotzebue Sound, and all adjacent islands in the Bering Sea between the mouths of the Goodhope and Pastolik Rivers:

(A) Unit 22(A) consists of Norton Sound drainages from, but excluding, the Pastolik River drainage to, and including, the Ungalik River drainage, and Stuart and Besboro Islands;

(B) Unit 22(B) consists of Norton Sound drainages from, but excluding, the Ungalik River drainage to, and including, the Topkok Creek drainage;

(C) Unit 22(C) consists of Norton Sound and Bering Sea drainages from, but excluding, the Topkok Creek drainage to, and including, the Tisuk River drainage, and King and Sledge Islands;

(D) Unit 22(D) consists of that portion of Unit 22 draining into the Bering Sea north of, but not including, the Tisuk River to and including Cape York, and St. Lawrence Island;

(E) Unit 22(E) consists of Bering Sea, Bering Strait, Chukchi Sea, and Kotzebue Sound drainages from Cape York to, but excluding, the Goodhope River drainage, and including Little Diomede Island and Fairway Rock.

(ii) You may hunt brown bear by State registration permit in lieu of a resident tag in the Northwest Alaska Brown Bear Management Area, which consists of Unit 22, except 22(C), those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24, and Unit 26(A), if you have obtained a State registration permit prior to hunting. Aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears, or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) If you have a trapping license, you may use a firearm to take beaver in Unit 22 during the established seasons;

(B) Coyote, incidentally taken with a trap or snare intended for red fox or wolf, may be used for subsistence purposes.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 22(A)—1 bear by State registration permit by residents of Unit 22(A) only	Sept. 1–May 31.
Unit 22(B)—1 bear by State registration permit by residents of Unit 22(B) only	Sept. 1–May 31.
Unit 22(C)	No open season.
Unit 22—remainder—1 bear by State registration permit.	Sept. 1–May 31.
Caribou: Unit 22(A) and (B)—5 caribou per day; however, cow caribou may not be taken May 16–June 30.	July 1–June 30.
Moose:	
Unit 22(A)—1 bull; however, the period of Dec. 1–Jan. 31 is closed to hunting except by residents of Unit 22(A) only.	Aug. 1–Sept. 30. Dec. 1–Jan. 31.
Unit 22(B)—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31; no person may take a cow accompanied by a calf.	Aug. 1–Jan. 31.
Unit 22(C)—1 antlered bull	Sept. 1–Sept. 14.
Unit 22(D)—that portion within the Kuzitrin River drainage—1 antlered bull	Aug. 1–Jan. 31.
Unit 22(D)—remainder—1 moose; however, antlerless moose may be taken only from Dec. 1–Dec. 31; no person may take a cow accompanied by a calf.	Aug. 1–Jan. 31.
Unit 22(E)—1 moose; no person may take a cow accompanied by a calf	Aug. 1–Mar. 31.
Muskox:	
Unit 22(D)—1 bull by Federal registration permit or State Tier II permit. Federal public lands are closed to the taking of muskox except by Federally-qualified subsistence users. Twelve Federal permits may be issued in conjunction with the State Tier II hunt; the combined total of Federal and State permits will not exceed 36 permits. Six Federal permits will be issued for National Park Service lands and six for Bureau of Land Management lands.	Aug. 1–Mar. 15.
Unit 22(E)—1 bull by Federal registration permit or State Tier II permit. Federal public lands are closed to the taking of muskox except by Federally-qualified subsistence users. Nine Federal permits may be issued in conjunction with the State Tier II hunt; the combined total of Federal and State permits will not exceed 18 permits..	Aug. 1–Mar. 15.
Unit 22—remainder	No open season.
Beaver:	
Unit 22(A), (B), (D), and(E)—50 beaver	Nov. 1–June 10.
Unit 22—remainder	No open season.
Coyote: Federal public lands are closed to the taking of coyotes	No open season.
Fox, Arctic (Blue and White Phase): 2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes.	Nov. 1–Apr. 15.
Hare (Snowshoe and Tundra): No limit	Sept. 1–Apr. 15.
Lynx:	
2 lynx	Nov. 1–Apr. 15.
Marten:	
Unit 22(A) 22(B)—No limit	Nov. 1–Apr. 15.
Unit 22—remainder	No open season.
Mink and Weasel: No limit	Nov. 1–Jan. 31.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 15.
Wolverine: 3 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 22(A) and 22(B) east of and including the Niukluk River drainage—40 per day, 80 in possession	Aug. 10–Apr. 30.
Unit 22 Remainder—20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	

Harvest limits	Open season
Unit 22(A), (B), (D), and (E)—50 beaver	Nov. 1–June 10.
Unit 22(C)	No open season.
Coyote: Federal public lands are closed to the taking of coyotes	No open season.
Fox, Arctic (Blue and White Phase): No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Apr. 15.
Lynx: No limit	Nov. 1–Apr. 15.
Marten: No limit	Nov. 1–Apr. 15.
Mink and Weasel: No limit	Nov. 1–Jan. 31.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit.	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 15.
Wolverine: No limit	Nov. 1–Apr. 15.

(23) *Unit 23.* (i) Unit 23 consists of Kotzebue Sound, Chukchi Sea, and Arctic Ocean drainages from and including the Goodhope River drainage to Cape Lisburne.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not use aircraft in any manner either for hunting of ungulates, bear, wolves, or wolverine, or for transportation of hunters or harvested species in the Noatak Controlled Use Area, which consists of that portion of Unit 23 in a corridor extending five miles on either side of the Noatak River beginning at the mouth of the Noatak River, and extending upstream to the mouth of Sapun Creek, is closed for the period August 25–September 15. This does not apply to the transportation of hunters or parts of ungulates, bear, wolves, or wolverine by regularly scheduled flights to communities by carriers that normally provide scheduled air service;

(B) You may hunt brown bear by State registration permit in lieu of a resident tag in the Northwest Alaska Brown Bear Management Area, which consists of Unit 22, except 22(C), those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24, and Unit 26(A); if you have obtained a State registration permit prior to hunting. Aircraft may not be used in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears; however, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) You may take caribou from a boat under power in Unit 23;

(B) You may take swimming caribou with a firearm using rimfire cartridges;

(C) If you have a trapping license, you may take beaver with a firearm in all of Unit 23 from Nov. 1–Jun. 10;

(D) For the Baird and DeLong Mountain sheep hunts—A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take sheep on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 23—except the Baldwin Peninsula north of the Arctic Circle—1 bear by State registration permit	Sept. 1–May 31.
Unit 23—remainder—1 bear every four regulatory years	Sept. 1–Oct. 10. Apr. 15—May 25.
Caribou: 15 caribou per day; however, cow caribou may not be taken May 16–June 30	July 1–June 30.
Sheep:	
Unit 23—south of Rabbit Creek, Kyak Creek and the Noatak River, and west of the Cutler and Redstone Rivers (Baird Mountains)—1 ram with full curl or larger horns by Federal registration permit. The Superintendent of the Western Arctic National Parklands may issue permits for the harvest of up to 20 full curl rams, based on a quota to be announced locally after the annual sheep population survey is completed. Federal public lands are closed to the taking of sheep except by Federally-qualified subsistence users.	Aug. 1–Sept. 30. The season will be closed when half of the quota has been harvested.
Unit 23—south of Rabbit Creek, Kyak Creek and the Noatak River, and west of the Cutler and Redstone Rivers (Baird Mountains)—1 ram with full curl or larger horns by Federal registration permit. The Superintendent of the Western Arctic National Parklands may issue permits for the harvest of up to 20 full curl rams, based on a quota to be announced locally after the annual sheep population survey is completed. Federal public lands are closed to the taking of sheep except by Federally-qualified subsistence users.	Oct. 1–Apr. 1. The season will be closed when the total quota of sheep has been harvested including those harvested during the Aug. 1–Sept. 30 season.

Harvest limits	Open season
Unit 23—north of Rabbit Creek, Kyak Creek and the Noatak River, and west of the Aniuk River (DeLong Mountains)—1 ram with full curl or larger horns by Federal registration permit. The Superintendent of the Western Arctic National Parklands may issue permits for the harvest of up to 10 full curl rams in the DeLong Mountains, Units 23 and 26(A), based on a quota to be announced locally after the annual sheep population survey is completed.	Aug. 1–Sept. 30. The season will be closed when half of the quota has been harvested in the DeLong Mountains.
Unit 23—north of Rabbit Creek, Kyak Creek and the Noatak River, and west of the Aniuk River (DeLong Mountains)—1 ram with full curl or larger horns by Federal registration permit. The Superintendent of the Western Arctic National Parklands may issue permits for the harvest of up to 10 full curl rams in the DeLong Mountains, Units 23 and 26(A), based on a quota to be announced locally after the annual sheep population survey is completed.	Oct. 1–Apr. 1. The season will be closed when the total quota of sheep has been harvested in the DeLong Mountains including those harvested during the Aug. 1—Sept. 30 season
Unit 23, remainder (Schwatka Mountains)—1 ram with 7/8 curl horn or larger	Aug. 10–Sept. 20.
Unit 23, remainder (Schwatka Mountains)—1 sheep	Oct. 1–Apr. 30.
Moose:	
Unit 23—that portion north and west of and including the Singoalik River drainage, and all lands draining into the Kukpuk and Ipewik Rivers—1 moose; no person may take a cow accompanied by a calf.	July 1–Mar. 31.
Unit 23—that portion lying within the Noatak River drainage—1 moose; however, antlerless moose may be taken only from Nov. 1–Mar. 31; no person may take a cow accompanied by a calf.	Aug. 1–Sept. 15. Oct. 1–Mar. 31.
Unit 23—remainder—1 moose; no person may take a cow accompanied by a calf	Aug. 1–Mar. 31.
Muskox:	
Unit 23—south of Kotzebue Sound and west of and including the Buckland River drainage—1 bull by Federal registration permit or State Tier II permit. Federal public lands are closed to the taking of muskox except by Federally-qualified subsistence users. Eight Federal permits may be issued in conjunction with the State Tier II hunt; the combined total of Federal and State permits will not exceed 10 permits.	Aug. 1–Mar. 15.
Unit 23—remainder	No open season.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): 2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	Sept. 1–Mar. 15.
Hare: (Snowshoe and Tundra) No limit	July 1–June 30.
Lynx: 2 lynx	Dec. 1–Jan. 15.
Wolf: 5 wolves	Nov. 10–Mar. 31.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
Unit 23—the Kobuk and Selawik River drainages—50 beaver	Nov. 1–June 10.
Unit 23—remainder—30 beaver	Nov. 1–June 10.
Coyote: No limit	Nov. 1–Apr. 15
Fox, Arctic (Blue and White Phase): No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Apr. 15.
Lynx: 3 lynx	Dec. 1–Jan. 15.
Marten: No limit	Nov. 1–Apr. 15.
Mink and Weasel: No limit	Nov. 1–Jan. 31.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 10–Mar. 31.
Wolverine: No limit	Nov. 1–Apr. 15.

(24) *Unit 24.* (i) Unit 24 consists of the Koyukuk River drainage upstream from but not including the Dulbi River drainage.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not use motorized vehicles, except aircraft and boats, and licensed highway vehicles, snowmobiles, and firearms in the Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, except as follows: Residents living within the Dalton Highway Corridor Management Area may use snowmobiles only for the subsistence taking of wildlife. You may use licensed highway vehicles only on designated roads within the Dalton Highway Corridor Management Area. The residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor may use firearms within the Corridor is authorized only for subsistence taking of wildlife;

(B) You may not use aircraft for hunting moose, including transportation of any moose hunter or moose part in the Kanuti Controlled Use Area, which consists of that portion of Unit 24 bounded by a line from the Bettles Field VOR to the east side of Fish Creek Lake, to Old Dummy Lake, to the south end of Lake Todatonten (including all waters of these lakes), to the northernmost headwaters of Siruk Creek, to the highest peak of Double Point Mountain, then back to the Bettles Field VOR; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly

owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area;

(C) You may not use aircraft for hunting moose, including transportation of any moose hunter or moose part in the Koyukuk Controlled Use Area, which consists of those portions of Units 21 and 24 bounded by a line from the north bank of the Yukon River at Koyukuk, then northerly to the confluences of the Honhosa and Kateel Rivers, then northeasterly to the confluences of Billy Hawk Creek and the Huslia River (65° 57′ N. lat., 156° 41′ W. long.), then easterly to the south end of Solsmunket Lake, then east to Hughes, then south to Little Indian River, then southwesterly to the crest of Hochandochtla Mountain, then southwest to the mouth of Cottonwood Creek, then southwest to Bishop Rock, then westerly along the north bank of the Yukon River (including Koyukuk Island) to the point of beginning; however, this does not apply to transportation of a moose hunter or moose part by aircraft between publicly owned airports in the controlled use area or between a publicly owned airport within the area and points outside the area; all hunters on the Koyukuk River passing the ADF&G operated check station at Ella's Cabin (15 miles upstream from the Yukon on the Koyukuk River) are required to stop and report to ADF&G personnel at the check station;

(D) You may hunt brown bear by State registration permit in lieu of a resident tag in the Northwest Alaska Brown Bear Management Area, which consists of Unit 22, except 22(C), those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24, and Unit 26(A), if you have obtained a State registration permit prior to hunting. You may not use aircraft in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears. However, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30;

(B) Arctic fox, incidentally taken with a trap or snare intended for red fox, may be used for subsistence purposes.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: Unit 24—1 bear by State registration permit.	Sept. 1–May 31.
Caribou:	
Unit 24—the Kanuti River drainage upstream from Kanuti, Chalatna Creek, the Fish Creek drainage (including Bonanza Creek)—1 bull.	Aug. 10–Sept. 30.
Remainder of Unit 24—5 caribou per day; however, cow caribou may not be taken May 16–June 30	July 1–June 30.
Sheep:	
Unit 24—(Anaktuvuk Pass residents only)—that portion within the Gates of the Arctic National Park—community harvest quota of 60 sheep, no more than 10 of which may be ewes and a daily possession limit of 3 sheep per person no more than 1 of which may be a ewe.	July 15–Dec. 31.
Unit 24—(excluding Anaktuvuk Pass residents)—that portion within the Gates of the Arctic National Park—3 sheep.	Aug. 1–Apr. 30.
Unit 24—that portion within the Dalton Highway Corridor Management Area; except, Gates of the Arctic National Park—1 ram with 7/8 curl horn or larger by Federal registration permit only.	Aug. 10–Sept. 20.
Unit 24—remainder—1 ram with 7/8 curl horn or larger	Aug. 10–Sept. 20.
Moose:	
Unit 24—that portion within the Koyukuk Controlled Use Area—1 moose; however, upstream from Huslia antlerless moose may only be taken during the periods of Sept. 21–Sept. 25, Dec. 1–Dec. 10, and Mar. 1–Mar. 10.	Sept. 1–Sept. 25. Dec. 1–Dec. 10. Mar. 1–Mar. 10.
Unit 24—that portion that includes the John River drainage within the Gates of the Arctic National Park—1 moose.	Aug. 1–Dec. 31.
Unit 24—the Alatna River drainage within the Gates of the Arctic National Park—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25 and Mar. 1–Mar. 10.	Aug. 25–Dec. 31. Mar. 1–Mar. 10.
Unit 24—all drainages to the north of the Koyukuk River upstream from and including the Alatna River to and including the North Fork of the Koyukuk River, except those portions of the John River and the Alatna River drainages within the Gates of the Arctic National Park—1 moose; however, antlerless moose may be taken only from Sept. 21–Sept. 25 and Mar. 1–Mar. 10.	Aug. 25–Sept. 25. Mar. 1–Mar. 10.
Unit 24—that portion within the Dalton Highway Corridor Management Area; except, Gates of the Arctic National Park—1 antlered bull by Federal registration permit only.	Aug. 25–Sept. 25.
Unit 24—remainder—1 antlered bull. Public lands in the Kanuti Controlled Use Area are closed to taking of moose, except by eligible rural Alaska residents	Aug. 25–Sept. 25.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30
Lynx: 2 lynx	Nov. 1–Feb. 28.
Wolf: 5 wolves	Aug. 10–Apr. 30.
Wolverine: 1 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver: No limit	Nov. 1–Apr. 15.
Coyote: No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.
Lynx: No limit	Nov. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Mar. 31.

(25) *Unit 25.* (i) Unit 25 consists of the Yukon River drainage upstream from but not including the Hamlin Creek drainage, and excluding drainages into the south bank of the Yukon River upstream from the Charley River:

(A) Unit 25(A) consists of the Hodzana River drainage upstream from the Narrows, the Chandalar River drainage upstream from and including the East Fork drainage, the Christian River drainage upstream from Christian, the Sheenjek River drainage upstream from and including the Thluichohnjik Creek, the Coleen River drainage, and the Old Crow River drainage;

(B) Unit 25(B) consists of the Little Black River drainage upstream from but not including the Big Creek drainage, the Black River drainage upstream from and including the Salmon Fork drainage, the Porcupine River drainage upstream from the confluence of the Coleen and Porcupine Rivers, and drainages into the north bank of the Yukon River upstream from Circle, including the islands in the Yukon River;

(C) Unit 25(C) consists of drainages into the south bank of the Yukon River upstream from Circle to the Subunit 20(E) boundary, the Birch Creek drainage upstream from the Steese Highway bridge (milepost 147), the Preacher Creek drainage upstream from and including the Rock Creek drainage, and the Beaver Creek drainage upstream from and including the Moose Creek drainage;

(D) Unit 25(D) consists of the remainder of Unit 25.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not use of motorized vehicles, except aircraft and boats, and licensed highway vehicles, snowmobiles, and firearms in the Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, except as follows: Residents living within the Dalton Highway Corridor Management Area may use snowmobiles only for the subsistence taking of wildlife. You may use licensed highway vehicles only on designated roads within the Dalton Highway Corridor Management Area. Residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor may use firearms within the Corridor;

(B) The Arctic Village Sheep Management Area consists of that portion of Unit 25(A) north and west of Arctic Village, which is bounded on the east by the East Fork Chandalar River beginning at the confluence of Red Sheep Creek and proceeding southwesterly downstream past Arctic Village to the confluence with Crow Nest Creek, continuing up Crow Nest Creek, through Portage Lake, to its confluence with the Junjik River; then down the Junjik River past Timber Lake and a larger tributary, to a major, unnamed tributary, northwesterly, for approximately 6 miles where the stream forks into 2 roughly equal drainages; the boundary follows the easternmost fork, proceeding almost due north to the headwaters and intersects the Continental Divide; the boundary then follows the Continental Divide easterly, through Carter Pass, then easterly and northeasterly approximately 62 miles along the divide to the head waters of the most northerly tributary of Red Sheep Creek then follows southerly along the divide designating the eastern extreme of the Red Sheep Creek drainage then to the confluence of Red Sheep Creek and the East Fork Chandalar River.

(iii) Unit-specific regulations:

(A) You may use bait to hunt black bear between April 15 and June 30;

(B) You may take caribou and moose from a boat under power in Unit 25;

(C) The taking of bull moose outside the seasons provided in this part for food in memorial potlatches and traditional cultural events is authorized in Unit 25(D) west provided that:

(*1*) The person organizing the religious ceremony or cultural event contact the Refuge Manager, Yukon Flats National Wildlife Refuge prior to taking or attempting to take bull moose and provide to the Refuge Manager the name of the decedent, the nature of the ceremony or cultural event, number to be taken, the general area in which the taking will occur;

(*2*) Each person who takes a bull moose under this section must submit a written report to the Refuge Manager, Yukon Flats National Wildlife Refuge not more than 15 days after the harvest specifying the harvester's name and address, and the date(s) and location(s) of the taking(s);

(*3*) No permit or harvest ticket is required for taking under this section; however, the harvester must be an Alaska rural resident with customary and traditional use in Unit 25(D) west;

(*4*) Any moose taken under this provision counts against the annual quota of 30 bulls.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear: Unit 25(D)—1 bear	July 1–June 30.
Caribou:	
Unit 25(C)—that portion south and east of the Steese Highway—1 bull by joint State/Federal registration permit only. The fall season will close when a combined State/Federal harvest of 30 bulls has been reached. The winter season will close when the combined fall and winter State/Federal harvest quota of 150 bulls for the Fortymile herd has been reached. The season closures will be announced by the Northern Field Office Manager, Bureau of Land Management after consultation with the National Park Service and Alaska Department of Fish and Game.	Aug. 10–Sept. 30. Nov. 15–Feb. 28.

Harvest limits	Open season
25(C)—that portion north and west of the Steese Highway—1 caribou; however, only bull caribou may be taken during the Aug. 10–Sept. 20 season. During the winter season, caribou may be taken only with a Federal registration permit. The winter season will be closed by announcement of the Northern Field Office, BLM, when the quota of 30 caribou has been taken.	Aug. 10–Sept. 20. Feb. 1–Mar. 31.
Unit 25 (D)—that portion of Unit 25(D) drained by the west fork of the Dall River west of 150° W. long.—1 bull	Aug. 10–Sept. 30. Dec. 1–Dec. 31.
Unit 25(A), (B), and the remainder of Unit 25(D)—10 caribou	July 1–Apr. 30.
Sheep:	
Unit 25(A)—that portion within the Dalton Highway Corridor Management Area	No open season.
Units 25(A)—Arctic Village Sheep Management Area—2 rams by Federal registration permit only. Public lands are closed to the taking of sheep except by rural Alaska residents of Arctic Village, Venetie, Fort Yukon, Kaktovik, and Chalkytsik during seasons identified above.	Aug. 10–Apr. 30.
Unit 25(A)—remainder—3 sheep by Federal registration permit only	Aug. 10–Apr. 30.
Moose:	
Unit 25(A)—1 antlered bull	Aug. 25–Sept. 25. Dec. 1–Dec. 10.
Unit 25(B)—that portion within Yukon Charley National Preserve—1 bull	Aug. 20–Sept. 30.
Unit 25(B)—that portion within the Porcupine River drainage upstream from, but excluding the Coleen River drainage—1 antlered bull.	Aug. 25–Sept. 30. Dec. 1–Dec. 10.
Unit 25(B)—that portion, other than Yukon Charley National Preserve, draining into the north bank of the Yukon River upstream from and including the Kandik River drainage, including the islands in the Yukon River—1 antlered bull.	Sept. 5–Sept. 30. Dec. 1–Dec. 15.
Unit 25(B)—remainder—1 antlered bull	Aug. 25–Sept. 25. Dec. 1–Dec. 15.
Unit 25(C)—1 antlered bull	Sept. 1–Sept. 15.
Unit 25(D)(West)—that portion lying west of a line extending from the Unit 25(D) boundary on Preacher Creek, then downstream along Preacher Creek, Birch Creek and Lower Mouth Birch Creek to the Yukon River, then downstream along the north bank of the Yukon River (including islands) to the confluence of the Hadweenzik River, then upstream along the west bank of the Hadweenzik River to the confluence of Forty and One-Half Mile Creek, then upstream along Forty and One-Half Mile Creek to Nelson Mountain on the Unit 25(D) boundary—1 bull by a Federal registration permit. Alternate permits allowing for designated hunters are available to qualified applicants who reside in Beaver, Birch Creek, or Stevens Village. Moose hunting on public land in this portion of Unit 25(D)(West) is closed at all times except for residents of Beaver, Birch Creek, and Stevens Village during seasons identified above. The moose season will be closed when 30 moose have been harvested in the entirety of Unit 25(D)(West).	Aug. 25–Feb. 28.
Unit 25(D)—remainder—1 antlered moose	Aug. 25–Sept. 25. Dec. 1–Dec. 20.
Beaver:	
Unit 25, excluding Unit 25(C)—1 beaver per day; 1 in possession	Apr. 16–Oct. 31.
Unit 25(C)	No Federal open season.
Coyote: 2 coyotes	Sept. 1–Apr. 30. Sept. 1–Mar. 15.
Fox, Red (including Cross, Black and Silver Phases): 10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1.	
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx:	
Unit 25(C)—2 lynx	Dec. 1–Jan. 31.
Unit 25—remainder—2 lynx	Nov. 1—Feb. 28.
Wolf:	
Unit 25(A)—No limit	Aug. 10–Apr. 30.
Remainder of Unit 25—10 wolves	Aug. 10–Apr. 30. Sept. 1—Mar. 31.
Wolverine: 1 wolverine	
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed):	
Unit 25(C)—15 per day, 30 in possession	Aug. 10–Mar. 31.
Unit 25—remainder—15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed):	
Unit 25(C)—those portions within 5 miles of Route 6 (Steese Highway)—20 per day, 40 in possession	Aug. 10–Mar. 31.
Unit 25—remainder—20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Beaver:	
Unit 25(C)—No limit	Nov. 1–Apr. 15.
Unit 25—remainder—50 beaver	Nov. 1–Apr. 15.
Coyote: No limit	Nov. 1–Mar. 31.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Feb. 28.
Lynx: No limit.	Nov. 1–Feb. 28.
Marten: No limit	Nov. 1–Feb. 28.
Mink and Weasel: No limit	Nov. 1–Feb. 28.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Mar. 31.
Wolverine:	
Unit 25(C)—No limit	Nov. 1–Feb. 28.
Unit 25—remainder—No limit	Nov. 1–Mar. 31.

(26) *Unit 26.* (i) Unit 26 consists of Arctic Ocean drainages between Cape Lisburne and the Alaska-Canada border including the Firth River drainage within Alaska:

(A) Unit 26(A) consists of that portion of Unit 26 lying west of the Itkillik River drainage and west of the east bank of the Colville River between the mouth of the Itkillik River and the Arctic Ocean;

(B) Unit 26(B) consists of that portion of Unit 26 east of Unit 26(A), west of the west bank of the Canning River and west of the west bank of the Marsh Fork of the Canning River;

(C) Unit 26(C) consists of the remainder of Unit 26.

(ii) In the following areas, the taking of wildlife for subsistence uses is prohibited or restricted on public land:

(A) You may not use of aircraft in any manner for moose hunting, including transportation of moose hunters or parts of moose from Aug. 1–Aug. 31 and from Jan. 1–Mar. 31 in Unit 26(A). No hunter may take or transport a moose, or part of a moose in Unit 26(A) after having been transported by aircraft into the unit. However, this does not apply to transportation of moose hunters or moose parts by regularly scheduled flights to and between villages by carriers that normally provide scheduled service to this area, nor does it apply to transportation by aircraft to or between publicly owned airports;

(B) You may not use motorized vehicles, except aircraft and boats, and licensed highway vehicles, snowmobiles, and firearms in the Dalton Highway Corridor Management Area, which consists of those portions of Units 20, 24, 25, and 26 extending five miles from each side of the Dalton Highway from the Yukon River to milepost 300 of the Dalton Highway, except as follows: Residents living within the Dalton Highway Corridor Management Area may use snowmobiles only for the subsistence taking of wildlife. You may use licensed highway vehicles only on designated roads within the Dalton Highway Corridor Management Area. The residents of Alatna, Allakaket, Anaktuvuk Pass, Bettles, Evansville, Stevens Village, and residents living within the Corridor may use firearms within the Corridor;

(C) You may hunt brown bear by State registration permit in lieu of a resident tag in the Northwest Alaska Brown Bear Management Area, which consists of Unit 22, except 22(C), those portions of Unit 23, except the Baldwin Peninsula north of the Arctic Circle, Unit 24, and Unit 26(A), if you have obtained a State registration permit prior to hunting. You may not use aircraft in the Northwest Alaska Brown Bear Management Area in any manner for brown bear hunting under the authority of a brown bear State registration permit, including transportation of hunters, bears or parts of bears. However, this does not apply to transportation of bear hunters or bear parts by regularly scheduled flights to and between communities by carriers that normally provide scheduled service to this area, nor does it apply to transportation of aircraft to or between publicly owned airports.

(iii) Unit-specific regulations:

(A) You may take caribou from a boat under power in Unit 26;

(B) You may take swimming caribou with a firearm using rimfire cartridges;

(C) In Kaktovik, a Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take sheep on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time;

(D) For the DeLong Mountain sheep hunts—A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take sheep on his or her behalf unless the recipient is a member of a community operating under a community harvest system. The designated hunter must obtain a designated hunter permit and must return a completed harvest report. The designated hunter may hunt for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

Harvest limits	Open season
Hunting	
Black Bear: 3 bears	July 1–June 30.
Brown Bear:	
Unit 26(A)—1 bear by State registration permit	Sept. 1–May 31.
Unit 26(B) and (C)—1 bear	Sept. 1–May 31.
Caribou:	
Unit 26(A)—10 caribou per day; however, cow caribou may not be taken May 16–June 30. Federal lands south of the Colville River and east of the Killik River are closed to the taking of caribou by non-Federally qualified subsistence users from Aug. 1–Sept. 30.	July 1–June 30.
Unit 26(B)—10 caribou per day; however, cow caribou may be taken only from Oct. 1–Apr. 30	July 1–June 30.
Unit 26(C)—10 caribou per day	July 1–Apr. 30.
You may not transport more than 5 caribou per regulatory year from Unit 26 except to the community of Anaktuvuk Pass.	
Sheep:	
Unit 26(A) and (B)—(Anaktuvuk Pass residents only)—that portion within the Gates of the Arctic National Park—community harvest quota of 60 sheep, no more than 10 of which may be ewes and a daily possession limit of 3 sheep per person no more than 1 of which may be a ewe.	July 15–Dec. 31.
Unit 26(A)—(excluding Anaktuvuk Pass residents)—those portions within the Gates of the Arctic National Park—3 sheep.	Aug. 1–Apr. 30.
Unit 26(A)—that portion west of Howard Pass and the Etivluk River (DeLong Mountains)—1 ram with full curl or larger horns by Federal registration permit. The Superintendent of the Western Arctic National Parklands may issue permits for the harvest of up to 10 full curl rams in the DeLong Mountains, Units 23 and 26(A), based on a quota to be announced locally after the annual sheep population survey is completed.	Aug. 1–Sept. 30. The season will be closed when half of the quota has been harvested in the DeLong Mountains.

Harvest limits	Open season
Unit 26(A)—that portion west of Howard Pass and the Etivluk River (DeLong Mountains)—1 ram with full curl or larger horns by Federal registration permit. The Superintendent of the Western Arctic National Parklands may issue permits for the harvest of up to 10 full curl rams in the DeLong Mountains, Units 23 and 26(A), based on a quota to be announced locally after the annual sheep population survey is completed.	Oct. 1–Apr. 1. The season will be closed when the total quota of sheep has been harvested in the DeLong Mountains including those harvested during the Aug. 1–Sept. 30 season.
Unit 26(B)—that portion within the Dalton Highway Corridor Management Area—1 ram with 7/8 curl horn or larger by Federal registration permit only.	Aug. 10–Sept. 20.
Unit 26(A)—remainder and 26(B)—remainder—including the Gates of the Arctic National Preserve—1 ram with 7/8 curl horn or larger.	Aug. 10–Sept. 20.
Unit 26(C)—3 sheep per regulatory year; the Aug. 10–Sept. 20 season is restricted to 1 ram with 7/8 curl horn or larger. A Federal registration permit is required for the Oct. 1–Apr. 30 season.	Aug. 10–Sept. 20. Oct. 1–Apr. 30.
Moose:	
Unit 26(A)—that portion of the Colville River drainage downstream from the mouth of the Anaktuvuk River—1 bull. Federal public lands are closed to the taking of moose by non-Federally qualified subsistence users.	Aug. 1–31.
Unit 26—remainder	No open season.
Muskox:	
Unit 26(C)—1 muskox by Federal registration permit only; 12 permits for bulls and 3 permits for cows may be issued to rural Alaska residents of the village of Kaktovik only. Public lands are closed to the taking of muskox, except by rural Alaska residents of the village of Kaktovik during open seasons.	Sept. 15–Mar. 31.
Coyote: 2 coyotes	Sept. 1–Apr. 30.
Fox, Arctic (Blue and White Phase): 2 foxes	Sept. 1–Apr. 30.
Fox, Red (including Cross, Black and Silver Phases):	
Unit 26(A) and (B)—10 foxes; however, no more than 2 foxes may be taken prior to Oct. 1	Sept. 1–Mar. 15.
Unit 26(C)—10 foxes	Nov. 1–Apr. 15.
Hare (Snowshoe and Tundra): No limit	July 1–June 30.
Lynx: 2 lynx	Nov. 1–Apr. 15.
Wolf: 15 wolves	Aug. 10–Apr. 30.
Wolverine: 5 wolverine	Sept. 1–Mar. 31.
Grouse (Spruce, Blue, Ruffed, and Sharp-tailed): 15 per day, 30 in possession	Aug. 10–Apr. 30.
Ptarmigan (Rock, Willow, and White-tailed): 20 per day, 40 in possession	Aug. 10–Apr. 30.
Trapping	
Coyote: No limit	Nov. 1–Apr. 15.
Fox, Arctic (Blue and White Phase): No limit	Nov. 1–Apr. 15.
Fox, Red (including Cross, Black and Silver Phases): No limit	Nov. 1–Apr. 15.
Lynx: No limit	Nov. 1–Apr. 15.
Marten: No limit	Nov. 1–Apr. 15.
Mink and Weasel: No limit	Nov. 1–Jan. 31.
Muskrat: No limit	Nov. 1–June 10.
Otter: No limit	Nov. 1–Apr. 15.
Wolf: No limit	Nov. 1–Apr. 30.
Wolverine: No limit	Nov. 1–Apr. 15.

Dated: July 14, 1999.

Thomas H. Boyd,

Acting Chair, Federal Subsistence Board, Fish and Wildlife Service.

Dated: July 23, 1999.

James A. Caplan,

Acting Regional Forester, USDA-Forest Service.

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September 10, 1999

Part III

Nuclear Regulatory Commission

48 CFR Chapter 20

Acquisition Regulation (NRCAR); Final Rule

NUCLEAR REGULATORY COMMISSION

48 CFR Chapter 20

RIN 3150–AF52

Acquisition Regulation (NRCAR)

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations governing the procurement of goods and services. The final rule is intended to meet the requirements of Public Law 103–355 (the Federal Acquisition Streamlining Act—FASA) and Public Law 104–106 (the Federal Acquisition Reform Act (FARA), and the Information Technology Management Reform Act (ITMRA.)) Both public laws modify and streamline Federal Acquisition Regulation (FAR) requirements. This final rule eliminates obsolete coverage and makes necessary technical and conforming amendments to the NRCAR. The NRCAR applies to all contracts, including simplified acquisitions where specified, and to modifications that require a justification for other than full and open competition.

EFFECTIVE DATE: The final rule becomes effective October 12, 1999.

FOR FURTHER INFORMATION CONTACT: Timothy F. Hagan, Director, Division of Contracts and Property Management, Office of Administration, Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone: (301) 415–7305.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Nuclear Regulatory Commission Acquisition Regulations (NRCAR) in 48 CFR Chapter 20 implement and supplement the government-wide Federal Acquisition Regulation (FAR) and ensure that the policies governing the procurement of goods and services within the NRC satisfy the needs of the agency. The NRCAR includes policies, procedures, solicitation provisions, and contract clauses needed to ensure the effective and efficient evaluation, negotiation, and administration of procurements.

The Proposed Rule

The NRCAR was published as a proposed rule, the amendments are intended to comply with FAR streamlining requirements and to eliminate obsolete coverage and make necessary technical and conforming amendments to its policies, procedures, solicitation provisions, and contract clauses.

The proposed rule was published for public comment on December 8, 1998 (63 FR 67726). The comment period on the proposed rule closed February 22, 1999. The NRC did not receive any public comments in response to the proposed rule.

Summary of Changes

The following discussion summarizes the changes made to the NRCAR by this final rule.

1. Part 2002-Definitions—This Part is amended to add language designating Task and Delivery Order Ombudsman in accordance with FASA requirements.

2. Part 2003—Improper business practices and personal conflicts of interest—This Part is amended to cite the Office of Government Ethics (OGE) regulations covering standards of conduct for Federal employees rather than the NRC's regulation in this area. The OGE regulations were published at 61 FR 66830–66851 (December 18, 1996), and took effect on January 17, 1997. The OGE regulations supersede the NRC standards of conduct regulations previously found in 10 CFR Part 0. Standards of conduct and requirements for financial disclosure are now published in 5 CFR Parts 2635, 5801, and 2634 respectively. 10 CFR Part 0 has been eliminated.

3. Part 2009 Contractor Qualifications—Section 2009.1 "Responsible prospective contractors" as amended. The language in § 2009.100 is simplified to enhance understanding of the NRC's policy covering award of contracts to former NRC employees and the award of contracts to firms that employ former NRC employees. The language also clarifies the procurement actions that are considered noncompetitive for the purposes of this policy.

a. The NRC requires information provided under § 2052.209–70 "Current/Former Agency Employee Involvement" to ensure that conflict of interests are avoided and fairness is maintained during the selection process. Section 2052.209–71 "Contractor Organizational Conflicts of Interest (representation)" is required by statute (42 U.S.C. Sec. 2221, Sec. 170A of the Atomic Energy Act of 1954, as amended). The Certification requirement of both sections, which required a high level review within a contractor's organization, is downgraded to a Representation requirement. This action is intended to lessen a contractor's reporting burden under to Section 4301 of Pub. 109–106 (FARA).

4. Part 2009.5—Organizational Conflicts of Interest—This Part is amended to bring the definition of "Subcontractor" in § 2009.570–2 into conformance with Section 170A of the Atomic Energy Act.

5. Part 2010—Specifications, Standards, and Other Purchase Descriptions—This Part, as well as § 2010.004—Brand name products or equal, are deleted in their entirety. FAR Part 10 is now devoted to Market Research. Guidance on the use of brand name products is now found under FAR Part 11. FAR Subpart 11.104 describes brand name products as "Items peculiar to one manufacturer." The FAR now allows some flexibility in acquiring brand name products. This flexibility is now evident in the NRCAR prescription and clause (§ 2052.210–70). Some restriction on ordering brand name products is evident in FAR 6.302–1. This provision requires a sole source justification for brand name product purchases. The basis for not providing for maximum practicable competition must now be documented in the file when the acquisition is awarded through simplified acquisition procedures.

6. Part 2015—Contracting By Negotiation—This Part is amended to reflect changes made under the NRC's Procurement Reinvention Laboratory. Sections 2015.209–70(b) and § 2052.215–75 encourage the contracting officer to ask Offerors to submit technical and management proposals either by an oral presentation or by a written document. Section 2015.209–70(b) further clarifies that proposal preparation instructions be tailored to assure that all sections of the instructions reflect a one-to-one relationship to the evaluation criteria. Section 2015.304 allows the contracting officer flexibility in selection evaluation procedures/criteria (e.g., weighted criteria or evaluations based upon non-weighted narrative evaluations) which are appropriate to the type of solicitation and requirement. Section 2015.304 encourages the contracting officer to use a minimum number of evaluation factors by referencing FAR 15.304(b). This section of the FAR emphasizes that evaluation factors and significant subfactors must represent key areas of importance and emphasis to be considered in the source selection decision.

7. Part 2016—Types of Contracts—This Part is amended to allow the contracting officer the flexibility to negotiate ceiling rates for indirect costs and to streamline task order technical proposal language.

8. Part 2032—Contract Financing—§ 2032.4—This Part is amended to bring its language in line with FAR Part 32.4 which covers advance payments for non-commercial items.

9. Part 2025—Foreign Acquisition—This Part is deleted in its entirety due to a regulatory change in FAR Part 2025. The NRCAR previously required the contracting officer to approve a written determination not to acquire US-produced supplies for public use. The Head of the Contracting Activity (HCA) was required to approved such a determination for acquisitions which exeeded $1 million. FAR 25.102 has since been revised to give the contracting officer some flexibility in making the nonavailability of US-produced supplies determination. FAR 25.102 has done this by eliminating the requirement and dollar threshold for HCA approval of the contracting officer's determination, and stating that the HCA may (vice "must" under previous FAR language) make a nonavailability determination for any circumstance other than what was considered by the contracting officer. Due to this regulatory change, NRCAR coverage of foreign acquisitions is no longer needed.

10. Part 2033—Protests, Disputes and Appeals—This Part is amended to clarify agency procedures for responding to agency protests and for handling disputes and appeals pursuant to the Contracts Dispute Act. This Part is amended to update the address for the U.S. Department of Energy Board of Contract Appeals.

11. Part 2035 Research and Development Contracting—This Part is amended to give the contracting officer flexibility to choose the evaluation criteria which will be used to select contractors under Broad Agency Announcements.

The Final Rule.

The final rule is now updated to meet the requirements of Pub. L. 103–355 (the Federal Acquisition Streamlining Act—FASA) and Pub. L. 104–106 (the Federal Acquisition Reform Act (FARA), and the Information Technology Management Reform Act (ITMRA.)) Both public laws modify and streamline FAR requirements. In the process of updating the NRCAR to comply with FAR acquisition streamlining requirements, the NRC has eliminated obsolete coverage and made necessary technical and conforming amendments to its policies, procedures, solicitation provisions, and contract clauses. The NRC expects that any new reporting burden that would be incurred as a result of these changes would be offset by elimination of other reporting requirement burdens specific to this agency (e.g., pre-award proposal preparation requirements).

Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 194–113, requires that agencies use technical standards that are developed or adopted by voluntary consensus standard bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is amending its regulations that supplements the Federal Acquisition Regulation (FAR) and, in connection with the FAR, govern the procurement of goods and services by the agency. This internal action does not constitute the establishment of a standard that establishes generally-applicable requirements. Furthermore, the NRC has determined that the adoption of consensus standards as an alternative to this final rule is not permitted.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in the categorical exclusion set forth in 10 CFR 51.22(c)(5). Therefore, neither an environmental impact statement nor an environmental assessment is required for this final rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget approval numbers 3150–0169 and 3150-0193.

Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

This final rule amends the procedures and requirements necessary to implement and supplement the FAR. The final rule presents amendments to the regulations necessary to ensure that the regulations governing the procurement of goods and services within the NRC to satisfy the particular needs and requirements of the NRC. This final rule constitutes an administrative action governing the procurement activities of the NRC. These provisions do not have an adverse economic impact on any contractor or potential contractor because they merely supplement the requirements applicable to the acquisition of goods and services by the agency. By clearly and explicitly implementing the FAR and presenting those additional provisions necessary to reflect the needs of the NRC, the final rule allows a contractor or potential contractor to understand more easily the regulations used in soliciting, evaluating and awarding contracts for the provision of goods and services. This constitutes the regulatory analysis for this final rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule amends the procedures and requirements necessary to implement and supplement the FAR. These regulations govern the acquisition of goods and services by the NRC. To the extent that the final rule affects a small entity, it sets out provisions applicable to small business, small, disadvantaged business, and women-owned business concerns.

Backfit Analysis

The NRC has determined that a backfit analysis does not apply to this final rule because it does not involve any provision which imposes backfits as defined in 10 CFR 50.109(a)(1).

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

List of Subjects

48 CFR Parts 2001, 2002, 2003, 2004, and 2005

Government procurement, Nuclear Regulatory Commission Acquisition Regulations.

48 CFR Part 2009

Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and recordkeeping requirements.

48 CFR Parts 2011 and 2013

Government procurement, Nuclear Regulatory Commission Acquisition Regulations.

48 CFR Parts 2014 and 2015

Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and recordkeeping requirements.

48 CFR Parts 2016 and 2017

Government procurement, Nuclear Regulatory Commission Acquisition Regulations.

48 CFR Part 2019

Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and recordkeeping requirements.

48 CFR Parts 2022 and 2024

Government procurement, Nuclear Regulatory Commission Acquisition Regulations.

48 CFR Part 2027

Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and recordkeeping requirements.

48 CFR Parts 2030, 2031, 2032, 2033, and 2035

Government procurement, Nuclear Regulatory Commission Acquisition Regulations.

48 CFR Part 2042

Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and recordkeeping requirements.

48 CFR Part 2045

Government procurement, Nuclear Regulatory Commission Acquisition Regulations Reporting and recordkeeping requirements.

48 CFR Part 2052

Government procurement, Nuclear Regulatory Commission Acquisition Regulations, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, 5 U.S.C. 553, and FAR Subpart 1.3, the NRC is revising Chapter 20 to Title 48 of the Code of Federal Regulations in its entirety to read as follows:

CHAPTER 20—NUCLEAR REGULATORY COMMISSION

SUBCHAPTER A—GENERAL

PART 2001—NUCLEAR REGULATORY COMMISSION ACQUISITION REGULATION SYSTEM

Subpart 2001.1—Purpose, Authority, Issuance

Sec.
2001.101 Purpose.
2001.102 Authority.
2001.103 Applicability.
2001.104 Issuance.
2001.104–1 Publication and code arrangement.
2001.104–2 Arrangement of the regulations.
2001.104–3 Copies.
2001.105 Information collection requirements: OMB approval.

Subpart 2001.3—Agency Acquisition Regulations

2001.301 Policy.
2001.303 Public participation.

Subpart 2001.4—Deviations from the FAR and the NRCAR

2001.402 Policy.
2001.403 Individual deviations.
2001.404 Class deviations.

Subpart 2001.6—Contracting Authority and Responsibilities

2001.600–70 Scope of subpart.
2001.601 General.
2001.602–3 Ratification of unauthorized commitments.
2001.603 Selection, appointment, and termination of appointment.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 418(b).

Subpart 2001.1—Purpose, Authority, Issuance

2001.101 Purpose.

This subpart establishes Chapter 20, the Nuclear Regulatory Commission Acquisition Regulation (NRCAR), and provides for the codification and publication of uniform policies and procedures for acquisitions by the NRC. The NRCAR is not, by itself, a complete document. It must be used in conjunction with the Federal Acquisition Regulation (FAR) (48 CFR Chapter 1).

2001.102 Authority.

The NRCAR and the amendments to it are issued by the Senior Procurement Executive under a delegation from the Executive Director for Operations dated May 16, 1997, in accordance with the authority of the Atomic Energy Act of 1954, as amended (42. U.S.C. 161), the Energy Reorganization Act of 1974 (42 U.S.C. 5841, 5872), the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 486(c)), as amended, FAR subpart 1.3, and other applicable law.

2001.103 Applicability.

The FAR and NRCAR apply to all NRC acquisitions of supplies and services which obligate appropriated funds, unless exempted by Sections 31 and 161 of the Atomic Energy Act of 1954 as amended, and Section 205 of the Energy Reorganization Act of 1974 as amended. For procurements made from nonappropriated funds, the Director, Division of Contracts and Property Management, shall determine the rules and procedures that apply.

2001.104 Issuance.

2001.104–1 Publication and code arrangement.

(a) The NRCAR and its subsequent changes are:

(1) Published in the daily issue of the **Federal Register**; and

(2) Codified in the Code of Federal Regulations (CFR).

(b) The NRCAR is issued as 48 CFR Chapter 20.

2001.104–2 Arrangement of the regulations.

(a) *General.* Chapter 20 is divided into parts, subparts, sections, subsections, paragraphs, and further subdivisions as necessary.

(b) *Numbering.* The numbering system and part, subpart and section titles used in this Chapter conform with those used in the FAR as follows:

(1) Where Chapter 20 implements the FAR or supplements a parallel part, subpart, section, subsection, or paragraph of the FAR, that implementation or supplementation is numbered and captioned to the FAR part, subpart, section, or subsection being implemented or supplemented, except that the implementation or supplementation is preceded with a 20 or 200 so that there will always be four numbers to the left of the decimal. For example, NRC's implementation of FAR 1.104–1 is shown as § 2001.104–1 and the NRC's implementation of FAR 24.1 is shown as § 2024.1.

(2) When the NRC supplements material contained in the FAR, it is given a unique number containing the numerals "70" or higher. The rest of the number parallels the FAR part, subpart, section, subsection, or paragraph it is supplementing. For example, Section 170A of the Atomic Energy Act of 1954, as amended, requires a more comprehensive organizational conflict of interest review for NRC than is contemplated by FAR 9.5. This supplementary material is identified as § 2009.570.

(3) Where material in the FAR requires no implementation or supplementation, there is no corresponding numbering in the NRCAR. Therefore, there may be gaps in the NRCAR sequence of numbers where the FAR requires no further implementation.

(c) *Citation.* The NRCAR will be cited in accordance with Office of the Federal Register standards approved for the FAR. Thus, this section when referred to in the NRCAR is cited as § 2001.104–2(c). When this section is referred to formally in official documents, such as legal briefs, it should be cited as "48 CFR 2001.104–2(c)." Any section of the NRCAR may be formally identified by the section number, e.g., "NRCAR 2001.104–2." In the NRCAR, any reference to the FAR will be indicated by "FAR" followed by the section number, for example FAR 1–104.

2001.104–3 Copies.

Copies of the NRCAR in **Federal Register** and CFR form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, DC 20402.

2001.105 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has approved the information collection requirements contained in this part under control number 3150–0169.

(b) The information collection requirements contained in this part appear in §§ 2009.570–3, 2009.570–5, 2009.570–8, 2014.201–670, 2027.305–3, 2042.570–1, 2042.803, 2045.371, 2052.204–70, 2052.204–71, 2052.209–70, 2052.209–71, 2052.209–72, 2052.211–70, 2052.211–71, 2052.211–72, 2052.211–72 Alternate 1, 2052.214–71, 2052.214–72, 2052.214–74, 2052.215–70, 2052.215–71, 2052.215–74, 2052.215–75, 2052.215–75 Alternate 1, 2052.215–75 Alternate 2, 2052.215–78, 2052.216–72, 2052.227–70, 2052.235–70, 2052.235–71, 2052.242–70, and 2052.242–71.

(c) This part contains information collection requirements in addition to those approved under the control number specified in paragraph (a) of this section. These information collection requirements and control numbers under which they are approved are as follows:

(1) In § 2052.215–77(a) and § 2052.215–78(b), NRC Form 445 is approved under control number 3150–0193.

(2) [Reserved]

Subpart 2001.3—Agency Acquisition Regulations

2001.301 Policy.

Policy, procedures, and guidance of an internal nature will be promulgated through internal NRC issuances such as Management Directives or Division of Contracts and Property Management Instructions.

2001.303 Public participation.

FAR 1.301 and section 22 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 418b) require rulemaking for substantive acquisition rules, but allow discretion in the matter for other than significant issues meeting the stated criteria. Accordingly, the NRCAR has been promulgated and may be revised from time to time in accordance with FAR 1.301. This procedure for significant subject matter generally involves issuing a notice of proposed rulemaking that invites public comment, review and analysis of comments received, and publication of a final rule. The final rule includes a discussion of the public comments received and describes any changes made as a result of the comments.

Subpart 2001.4—Deviations From the FAR and the NRCAR

2001.402 Policy.

(a) Deviations from the provisions of the FAR or NRCAR may be granted as specified in this subpart when necessary to meet the specific needs of the requesting office. The development and testing of new techniques and methods of acquisition should not be discouraged simply because the action would require a FAR or NRCAR deviation.

(b) Requests for authority to deviate from the provisions of the FAR or the NRCAR must be signed by the requesting office and submitted to the Director, Division of Contracts and Property Management, in writing, as far in advance as possible. Each request for deviation must contain the following:

(1) A statement of the deviation desired, including identification of the specific paragraph number(s) of the FAR or NRCAR from which a deviation is requested;

(2) The reason why the deviation is considered necessary or would be in the best interest of the Government;

(3) If applicable, the name of the contractor and identification of the contract affected;

(4) A description of the intended effect of the deviation;

(5) A statement of the period of time for which the deviation is needed; and

(6) Any pertinent background information which will contribute to a full understanding of the desired deviation.

2001.403 Individual deviations.

In individual cases, deviations from either the FAR or the NRCAR will be authorized only when essential to effect only one contracting action or where special circumstances make the deviations clearly in the best interest of the Government. Individual deviations must be authorized in advance by the Director, Division of Contracts and Property Management.

2001.404 Class deviations.

Class deviations affect more than one contracting action. Where deviations from the FAR or NRCAR are considered necessary for classes of contracts, requests for authority to deviate must be submitted in writing to the Director, Division of Contracts and Property Management, who will consider the submission jointly with the Chairperson of the Civilian Agency Acquisition Council, as appropriate.

Subpart 2001.6—Contracting Authority and Responsibilities

2001.600–70 Scope of subpart.

This subpart deals with the placement of contracting authority and responsibility within the agency, the selection and designation of contracting officers, and the authority of contracting officers.

2001.601 General.

(a) Contracting authority vests in the Chairman. The Chairman has delegated this authority to the Executive Director for Operations (EDO). The EDO has delegated this authority to the Deputy Executive Director for Management Services (DEDM). The DEDM has delegated this authority to the Director, Office of Administration (ADM). The Director, ADM, has delegated the authority to the Director, Division of Contracts and Property Management (DCPM), who, in turn, makes contracting officer appointments within Headquarters and Regional Offices. All of these delegations are formal written delegations containing dollar limitations and conditions.

(b) The Director, Division of Contracts Division of Contracts and Property Management, establishes contracting

policy throughout the agency; monitors the overall effectiveness and efficiency of the agency's contracting office; establishes controls to assure compliance with laws, regulations, and procedures; and delegates contracting officer authority.

2001.602–3 Ratification of unauthorized commitments.

(a) The Government is not bound by agreements or contractual commitments made to prospective contractors by persons to whom contracting authority has not been delegated. Any unauthorized commitment may be in violation of the Federal Property and Administrative Services Act, other Federal laws, the FAR, the NRCAR, and good acquisition practice. Certain requirements of law and regulation necessary for the proper establishment of a contractual obligation may not be met under an unauthorized commitment; for example, the certification of the availability of funds, justification for other than full and open competition, competition of sources, determination of contractor responsibility, certification of current pricing data, price/cost analysis, administrative approvals, and negotiation of appropriate contract clauses.

(b) The execution of otherwise proper contracts made by individuals without contracting authority, or by contracting officers in excess of the limits of their delegated authority, may later be ratified. To be effective, the ratification must be in the form of a written procurement document clearly stating that ratification of a previously unauthorized commitment is intended. All ratifications of procurement actions valued at $2,500 or less may be approved by the appropriate regional administrator or Headquarters contracting officer. For any such action, all other terms of subpart 2001.6 are applicable. All ratification actions exceeding $2,500 shall be approved by the Competition Advocate.

(c) Requests received by contracting officers for ratification of commitments made by personnel lacking contracting authority must be processed as follows:

(1) The Designating Official that is responsible for the office request shall furnish the contracting officer all records and documents concerning the commitment and a complete written statement of facts, including, but not limited to:

(i) A written statement consistent with the complexity and size of the action as to why the contracting office was not used including the name of the employee who made the commitment;

(ii) A statement as to why the proposed contractor was selected;

(iii) A list of other sources considered;

(iv) A description of work performed, or to be performed, or products to be furnished;

(v) The estimated or agreed upon contract price;

(vi) A certification of the appropriated funds available;

(vii) A description of how unauthorized commitments in similar circumstances will be avoided in the future.

(2) The contracting officer shall review the written statement of facts for a determination of approval of all actions valued at $2,500 or less. For actions greater than $2,500, the contracting officer shall forward the written statement of facts to the Competition Advocate through the Director, Division of Contracts and Property Management with any comments or information that should be considered in evaluating the request for ratification.

(3) The NRC legal advisor may be asked for an opinion, advice, or concurrence if there is concern regarding the propriety of the funding source, appropriateness of the expense, or when some other legal issue is involved.

2001.603 Selection, appointment, and termination of appointment.

The Director, Division of Contracts and Property Management, is authorized by the Director, Office of Administration, to select and appoint contracting officers and to terminate their appointment as prescribed in FAR 1.603. Delegations of contracting officer authority are issued by memorandum which includes a clear statement of the delegated authority, including responsibilities and limitations in addition to the "Certificate of Appointment", SF 1402. The Director, Division of Contracts and Property Management, may delegate micro-purchase authority in accordance with agency procedures. This delegation may be accomplished by written memorandum. (ref. FAR 1.603–3(b))

PART 2002—DEFINITIONS

Subpart 2002.1—Definitions

Sec.
2002.100 Definitions.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 418(b).

Subpart 2002.1—Definitions

2002.100 Definitions.

Agency means the Nuclear Regulatory Commission (NRC).

Agency Head or *Head of the Agency* means the NRC Executive Director for Operations, for the purposes specified in the regulations in this chapter and the FAR. This delegation does not extend to internal NRC requirements such as clearance levels and Commission papers which specify higher levels of authority.

Commission means the NRC Commission of five members, or a quorum thereof, sitting as a body, as provided by Section 201 of the Energy Reorganization Act of 1974 (42 U.S.C. 5841).

Competition Advocate means the individual appointed as such by the Agency Head as required by Public Law 98–369. The Director, Division of Contracts and Property Management, has been appointed the Competition Advocate for the NRC.

Head of the Contracting Activity means the Director, Division of Contracts and Property Management.

Senior Procurement Executive means the individual appointed as such by the Agency Head pursuant to Executive Order 12352. The Deputy Executive Director for Management Services, has been appointed the NRC Senior Procurement Executive.

Simplified acquisitions means those acquisitions conducted using the methods, policies, and procedures of FAR part 13 for making purchases of supplies or services.

Task and Delivery Order Ombudsman means the Director, Division of Contracts and Property Management, or designee pursuant to Section 1004(a) of Public Law 103–355, the Federal Acquisition Streamlining Act.

PART 2003—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

Subpart 2003.1—Safeguards

Sec.
2003.101–3 Agency regulations.

Subpart 2003.2—Contractor Gratuities to Government Personnel

Sec.
2003.203 Reporting suspected violations of the gratuities clause.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 418(b).

Subpart 2003.1—Safeguards

2003.101–3 Agency regulations.

Standards of conduct for Federal employees are published in 5 CFR parts 2635 and 5801. Requirements for financial disclosure are published in 5 CFR part 2634.

Subpart 2003.2—Contractor Gratuities to Government Personnel

2003.203 Reporting suspected violations of the gratuities clause.

(a) Suspected violations of the "Gratuities" clause, FAR 52.203.3, must be reported orally or in writing directly to the NRC Office of the Inspector General. A report must include all facts and circumstances related to the case. Refer to 5 CFR part 2635 for an explanation regarding what is prohibited and what is permitted.

(b) When appropriate, discussions with the contracting officer or a higher procurement official, procurement policy staff, and the procurement legal advisor before filing a report are encouraged.

PART 2004—ADMINISTRATIVE MATTERS

Subpart 2004.4—Safeguarding Classified Information Within Industry

Sec.
2004.404 Contract clauses.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 418(b).

2004.404 Contract clauses.

(a) The contracting officer shall insert the clause at § 2052.204–70 Security, in all solicitations and contracts under which the contractor may have access to, or contact with, classified information, including National Security information, restricted data, formerly restricted data, and other classified data.

(b) The contracting officer shall insert the clause § 2052.204–71 Site Access Badge Requirements, in all solicitations and contracts under which the contractor will require access to Government facilities. The clause may be altered to reflect any special conditions to be applied to foreign nationals.

SUBCHAPTER B—COMPETITION AND ACQUISITION PLANNING

PART 2005—PUBLICIZING CONTRACT ACTIONS

Subpart 2005.5—Paid Advertisements

Sec.
2005.502 Authority.

Authority: (42 U.S.C. 2201); 42 U.S.C. 5841; 41 U.S.C. 401 *et seq.*

Subpart 2005.5—Paid Advertisements

2005.502 Authority.

Before placing paid advertisements in newspapers and trade journals to publicize contract actions, written authority must be obtained from the Director, Division of Contracts and Property Management, for Headquarters activities, or the Director, Division of Resource Management and Administration, within each regional office for a regional procurement.

PART 2009—CONTRACTOR QUALIFICATIONS

Subpart 2009.1—Responsible Prospective Contractors

Sec.
2009.100 NRC policy.
2009.105–70 Contract provisions.

Subpart 2009.4—Debarment, Suspension, and Ineligibility

2009.403 Definitions.
2009.404 Consolidated lists of parties excluded from Federal procurement or non-procurement programs.
2009.405 Effect of listing.
2009.405–1 Continuation of current contracts.
2009.405–2 Restrictions on subcontracting.
2009.406 Debarment.
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2009.407 Suspension.
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Subpart 2009.5—Organizational Conflicts of Interest

2009.500 Scope of subpart.
2009.570 NRC organizational conflicts of interest.
2009.570–1 Scope of policy.
2009.570–2 Definitions.
2009.570–3 Criteria for recognizing contractor organizational conflicts of interest.
2009.570–4 Representation.
2009.570–5 Contract clauses.
2009.570–6 Evaluation, findings, and contract award.
2009.570–7 Conflicts identified after award.
2009.570–8 Subcontracts.
2009.570–9 Waiver.
2009.570–10 Remedies.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C 418(b).

Subpart 2009.1—Responsible Prospective Contractors.

2009.100 NRC policy.

(a) It is NRC policy that only competitively awarded contracts shall be placed with an individual who was employed by the NRC within two years from the date of the Request for Procurement Action. This policy also applies to:

(1) The noncompetitive award of contracts to organizations where former NRC employees have dominant ownership interests in the organization, such as partners or majority stockholders;

(2) The noncompetitive award of contracts to organizations where former NRC employees have dominant management interests, such as principal officers, or where the organization is predominantly staffed by former NRC employees; and

(3) The noncompetitive award of contracts, task orders or other NRC work assignments where the particular assignment is to be performed by designated former NRC employees, including principal investigators, key personnel, and others who will perform more than a nominal amount of the work in question.

(b) The following procurement actions are considered noncompetitive for the purposes of this policy:

(1) Contracts awarded noncompetitively under the Small Business Administration's 8(a) Program;

(2) Individual task orders if the former employee was not identified as "key personnel" in a proposal which was evaluated under competitive procedures;

(3) Unsolicited proposals;

(4) Subcontracts that require review for the purpose of granting consent under NRC prime contracts.

(c) The term *NRC employee* includes special Government employees performing services for NRC as experts, advisors, consultants, or members of advisory committees, if—

(1) The contract arises directly out of the individual's activity as a special employee;

(2) The individual is in a position to influence the award of the contract; or

(3) The Contracting Officer determines that another conflict of interest exists.

(d) A justification explaining why it is in the best interest of the Government to contract with an individual or firm described in paragraphs (a) and (b) of this section on a noncompetitive basis may be approved by the Senior Procurement Executive after consulting with the Executive Director for Operations. This is in addition to any justification and approvals which may be required by the FAR for use of other than full and open competition.

(e) Nothing in this policy statement relieves former employees from obligations prescribed by law, such as 18 U.S.C. 207, Restrictions on Former Officers, Employees, and Elected Officials of the Executive and Legislative Branches.

2009.105–70 Contract provisions.

The contracting officer shall insert the following provisions in all solicitations:

(a) § 2052.209–70 Current/Former Agency Employee Involvement.

Subpart 2009.4—Debarment, Suspension, and Ineligibility

2009.403 Definitions.

As used in § 2009.4:

Debarring official means the Senior Procurement Executive.

Suspending official means the Senior Procurement Executive.

2009.404 Consolidated list of parties excluded from Federal procurement or non-procurement programs.

The contracting officer responsible for the contract affected by the debarment or suspension shall perform the actions required by FAR 9.404(c) (1) through (6).

2009.405 Effect of listing.

Compelling reasons are considered to be present where failure to contract with the debarred or suspended contractor would seriously harm the agency's programs and prevent accomplishment of mission requirements. The Senior Procurement Executive is authorized to make the determinations under FAR 9.405. Requests for these determinations must be submitted from the Head of the Contracting Activity, through the Director, Office of Administration, to the Senior Procurement Executive.

2009.405–1 Continuation of current contracts.

The Head of the Contracting Activity is authorized to make the determination to continue contracts or subcontracts in existence at the time the contractor was debarred, suspended, or proposed for debarment in accordance with FAR 9.405–1.

2009.405–2 Restrictions on subcontracting.

The Head of the Contracting Activity is authorized to approve subcontracts with debarred or suspended subcontractors under FAR 9.405–2.

2009.406 Debarment.

2009.406–3 Procedures.

(a) *Investigation and referral.* (1) When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for debarment, the contracting officer must first submit a complete statement of facts (including a copy of any criminal indictments, if applicable) and a recommendation for action to the Head of the Contracting Activity. If the contracting officer's statement of facts indicates misconduct on the part of the contractor in regard to an NRC contract, the Head of the Contracting Activity will refer the matter of misconduct to the Inspector General to determine if an investigation is required prior to referring the case to the debarring official.

(2) To the extent the Head of the Contracting Activity believes that sufficient grounds for debarment exist, independent of any pending investigation by the Inspector General, the Head of the Contracting Activity shall immediately forward the case, without reference to any pending investigation, and a recommendation for action to the Senior Procurement Executive for review. In such circumstances, the Head of the Contracting Activity will take no additional action in regard to a specific matter of misconduct referred to the Inspector General prior to consulting with the Inspector General.

(b) *Decision-making process.* If, after reviewing the recommendations and consulting with the Office of the General Counsel and, if appropriate, the Office of the Inspector General, the debarring official determines debarment is justified, the debarring official shall initiate the proposed debarment in accordance with FAR 9.406–3(c) and notify the Head of the Contracting Activity of the action taken. If the contractor fails to submit a timely written response within 30 days after receipt of the notice in accordance with FAR 9.406–3(c)(4), the debarring official may notify the contractor in accordance with FAR 9.406–3(d) that the contractor is debarred.

(c) *Fact-finding proceedings.* For actions listed under FAR 9.406–3(b)(2), the contractor shall be given the opportunity to appear at an informal hearing. The hearing should be held at a location and time that is convenient to the parties concerned and no later than 30 days after the contractor received the notice, if at all possible. The contractor and any specifically named affiliates may be represented by counsel or any duly authorized representative. Witnesses may be called by either party. The proceedings must be conducted expeditiously and in such a manner that each party will have an opportunity to present all information considered pertinent to the proposed debarment.

2009.407 Suspension.

2009.407–3 Procedures.

(a) *Investigation and referral.* (1) When a contracting officer becomes aware of possible irregularities or any information which may be sufficient cause for suspension, the contracting officer must first submit a complete statement of facts (including a copy of any criminal indictments, if applicable) and a recommendation for action to the Head of the Contracting Activity. If the contracting officer's statement of facts indicates misconduct on the part of the contractor in regard to an NRC contract, the Head of the Contracting Activity will refer the matter of misconduct to the Inspector General to determine if an investigation is required prior to referring the case to the suspension official.

(2) To the extent the Head of the Contracting Activity believes that sufficient grounds for debarment exist, independent of any pending investigation by the Inspector General, the Head of the Contracting Activity shall immediately forward the case, without reference to any pending investigation, and a recommendation for action to the Senior Procurement Executive for review. In such circumstances, the Head of the Contracting Activity will take no additional action in regard to a specific matter of misconduct referred to the Inspector General prior to consulting with the Inspector General.

(b) *Decision-making process.* If, after reviewing the recommendations and consulting with the Office of the General Counsel, and if appropriate, the Office of the Inspector General, the suspending official determines suspension is justified, the suspending official shall initiate the proposed suspension in accordance with FAR 9.407–3(b)(2). The contractor shall be given the opportunity to appear at an informal hearing, similar in nature to the hearing for debarments as discussed in FAR 9.406–3(b)(2). If the contractor fails to submit a timely written response within 30 days after receipt of the notice in accordance with FAR 9.407–3(c)(5), the suspending official may notify the contractor in accordance with FAR 9.407–3(d) that the contractor is suspended.

2009.470 Appeals.

A debarred or suspended contractor may appeal the debarring/suspending official's decision by mailing or otherwise furnishing a written notice within 90 days from the date of the decision to the Executive Director for Operations. A copy of the notice of appeal must be furnished to the debarring/suspending official.

Subpart 2009.5—Organizational Conflicts of Interest

2009.500 Scope of subpart.

In accordance with 42 U.S.C. 2210a., NRC acquisitions are processed in accordance with § 2009.570, which takes precedence over FAR 9.5 with respect to organizational conflicts of interest. Where non-conflicting guidance appears in FAR 9.5, that guidance must be followed.

2009.570 NRC organizational conflicts of interest.

2009.570–1 Scope of policy.

(a) It is the policy of NRC to avoid, eliminate, or neutralize contractor organizational conflicts of interest. The NRC achieves this objective by requiring all prospective contractors to submit information describing relationships, if any, with organizations or persons (including those regulated by the NRC) which may give rise to actual or potential conflicts of interest in the event of contract award.

(b) Contractor conflict of interest determinations cannot be made automatically or routinely. The application of sound judgment on virtually a case-by-case basis is necessary if the policy is to be applied to satisfy the overall public interest. It is not possible to prescribe in advance a specific method or set of criteria which would serve to identify and resolve all of the contractor conflict of interest situations that might arise. However, examples are provided in the regulations in this chapter to guide application of this policy guidance. The ultimate test is as follows: Might the contractor, if awarded the contract, be placed in a position where its judgment may be biased, or where it may have an unfair competitive advantage?

(c) The conflict of interest rule contained in this subpart applies to contractors and offerors only. Individuals or firms who have other relationships with the NRC (e.g., parties to a licensing proceeding) are not covered by the regulations in this chapter. This rule does not apply to the acquisition of consulting services through the personnel appointment process. NRC agreements with other Govern ment agencies, international organizations, or state, local, or foreign Governments. Separate procedures for avoiding conflicts of interest will be employed in these agreements, as appropriate.

2009.570–2 Definitions.

Affiliates means business concerns which are affiliates of each other when either directly or indirectly one concern or individual controls or has the power to control another, or when a third party controls or has the power to control both.

Contract means any contractual agreement or other arrangement with the NRC except as provided in § 2009.570–1(c).

Contractor means any person, firm, unincorporated association, joint venture, co-sponsor, partnership, corporation, affiliates thereof, or their successors in interest, including their chief executives, directors, key personnel (identified in the contract), proposed consultants or subcontractors, which are a party to a contract with the NRC.

Evaluation activities means any effort involving the appraisal of a technology, process, product, or policy.

Offeror or *prospective contractor* means any person, firm, unincorporated association, joint venture, co-sponsor, partnership, corporation, or their affiliates or successors in interest, including their chief executives, directors, key personnel, proposed consultants, or subcontractors, submitting a bid or proposal, solicited or unsolicited, to the NRC to obtain a contract.

Organizational conflicts of interest means that a relationship exists whereby a contractor or prospective contractor has present or planned interests related to the work to be performed under an NRC contract which:

(1) May diminish its capacity to give impartial, technically sound, objective assistance and advice, or may otherwise result in a biased work product; or

(2) May result in its being given an unfair competitive advantage.

Potential conflict of interest means that a factual situation exists that suggests that an actual conflict of interest may arise from award of a proposed contract. The term *potential conflict of interest* is used to signify those situations that—

(1) Merit investigation before contract award to ascertain whether award would give rise to an actual conflict; or

(2) Must be reported to the contracting officer for investigation if they arise during contract performance.

Research means any scientific or technical work involving theoretical analysis, exploration, or experimentation.

Subcontractor means any subcontractor of any tier who performs work under a contract with the NRC except subcontracts for supplies and subcontracts in amounts not exceeding $10,000.

Technical consulting and management support services means internal assistance to a component of the NRC in the formulation of administration of its programs, projects, or policies which normally require that the contractor be given access to proprietary information or to information that has not been made available to the public. These services typically include assistance in the preparation of program plans, preliminary designs, specifications, or statements of work.

2009.570–3 Criteria for recognizing contractor organizational conflicts of interest.

(a) *General.* (1) Two questions will be asked in determining whether actual or potential organizational conflicts of interest exist:

(i) Are there conflicting roles which might bias an offeror's or contractor's judgment in relation to its work for the NRC?

(ii) May the offeror or contractor be given an unfair competitive advantage based on the performance of the contract?

(2) NRC's ultimate determination that organizational conflicts of interest exist will be made in light of common sense and good business judgment based upon the relevant facts. While it is difficult to identify and to prescribe in advance a specific method for avoiding all of the various situations or relationships that might involve potential organizational conflicts of interest, NRC personnel will pay particular attention to proposed contractual requirements that call for the rendering of advice, consultation or evaluation activities, or similar activities that directly lay the groundwork for the NRC's decisions on regulatory activities, future procurements, and research programs. Any work performed at an applicant or licensee site will also be closely scrutinized by the NRC staff.

(b) *Situations or relationships.* The following situations or relationships may give rise to organizational conflicts of interest:

(1) The offeror or contractor shall disclose information that may give rise to organizational conflicts of interest under the following circumstances. The information may include the scope of work or specification for the requirement being performed, the period of performance, and the name and telephone number for a point of contact at the organization knowledgeable about the commercial contract.

(i) Where the offeror or contractor provides advice and recommendations to the NRC in the same technical area where it is also providing consulting assistance to any organization regulated by the NRC.

(ii) Where the offeror or contractor provides advice to the NRC on the same or similar matter on which it is also providing assistance to any organization regulated by the NRC.

(iii) Where the offeror or contractor evaluates its own products or services,

or has been substantially involved in the development or marketing of the products or services of another entity.

(iv) Where the award of a contract would result in placing the offeror or contractor in a conflicting role in which its judgment may be biased in relation to its work for the NRC, or would result in an unfair competitive advantage for the offeror or contractor.

(v) Where the offeror or contractor solicits or performs work at an applicant or licensee site while performing work in the same technical area for the NRC at the same site.

(2) The contracting officer may request specific information from an offeror or contractor or may require special contract clauses such as provided in § 2009.570–5(b) in the following circumstances:

(i) Where the offeror or contractor prepares specifications that are to be used in competitive procurements of products or services covered by the specifications.

(ii) Where the offeror or contractor prepares plans for specific approaches or methodologies that are to be incorporated into competitive procurements using the approaches or methodologies.

(iii) Where the offeror or contractor is granted access to information not available to the public concerning NRC plans, policies, or programs that could form the basis for a later procurement action.

(iv) Where the offeror or contractor is granted access to proprietary information of its competitors.

(v) Where the award of a contract might result in placing the offeror or contractor in a conflicting role in which its judgment may be biased in relation to its work for the NRC or might result in an unfair competitive advantage for the offeror or contractor.

(c) *Policy application guidance.* The following examples are illustrative only and are not intended to identify and resolve all contractor organizational conflict of interest situations.

(1)(i) *Example.* The ABC Corp., in response to a Request For Proposal (RFP), proposes to undertake certain analyses of a reactor component as called for in the RFP. The ABC Corp. is one of several companies considered to be technically well qualified. In response to the inquiry in the RFP, the ABC Corp. advises that it is currently performing similar analyses for the reactor manufacturer.

(ii) *Guidance.* An NRC contract for that particular work normally would not be awarded to the ABC Corp. because the company would be placed in a position in which its judgment could be biased in relationship to its work for the NRC. Because there are other well-qualified companies available, there would be no reason for considering a waiver of the policy.

(2)(i) *Example.* The ABC Corp., in response to an RFP, proposes to perform certain analyses of a reactor component that is unique to one type of advanced reactor. As is the case with other technically qualified companies responding to the RFP, the ABC Corp. is performing various projects for several different utility clients. None of the ABC Corp. projects have any relationship to the work called for in the RFP. Based on the NRC evaluation, the ABC Corp. is considered to be the best qualified company to perform the work outlined in the RFP.

(ii) *Guidance.* An NRC contract normally could be awarded to the ABC Corp. because no conflict of interest exists which could motivate bias with respect to the work. An appropriate clause would be included in the contract to preclude the ABC Corp. from subsequently contracting for work with the private sector that could create a conflict during the performance of the NRC contract. For example, ABC Corp. would be precluded from the performance of similar work for the company developing the advanced reactor mentioned in the example.

(3)(i) *Example.* The ABC Corp., in response to a competitive RFP, submits a proposal to assist the NRC in revising NRC's guidance documents on the respiratory protection requirements of 10 CFR part 20. ABC Corp. is the only firm determined to be technically acceptable. ABC Corp. has performed substantial work for regulated utilities in the past and is expected to continue similar efforts in the future. The work has and will cover the writing, implementation, and administration of compliance respiratory protection programs for nuclear power plants.

(ii) *Guidance.* This situation would place the firm in a role where its judgment could be biased in relationship to its work for the NRC. Because the nature of the required work is vitally important in terms of the NRC's responsibilities and no reasonable alternative exists, a waiver of the policy, in accordance with § 2009.570–9 may be warranted. Any waiver must be fully documented in accordance with the waiver provisions of this policy with particular attention to the establishment of protective mechanisms to guard against bias.

(4)(i) *Example.* The ABC Corp. submits a proposal for a new system to evaluate a specific reactor component's performance for the purpose of developing standards that are important to the NRC program. The ABC Corp. has advised the NRC that it intends to sell the new system to industry once its practicability has been demonstrated. Other companies in this business are using older systems for evaluation of the specific reactor component.

(ii) *Guidance.* A contract could be awarded to the ABC Corp. if the contract stipulates that no information produced under the contract will be used in the contractor's private activities unless this information has been reported to the NRC. Data on how the reactor component performs, which is reported to the NRC by contractors, will normally be disseminated by the NRC to others to preclude an unfair competitive advantage. When the NRC furnishes information about the reactor component to the contractor for the performance of contracted work, the information may not be used in the contractor's private activities unless the information is generally available to others. Further, the contract will stipulate that the contractor will inform the NRC contracting officer of all situations in which the information, developed about the performance of the reactor component under the contract, is proposed to be used.

(5)(i) *Example.* The ABC Corp., in response to a RFP, proposes to assemble a map showing certain seismological features of the Appalachian fold belt. In accordance with the representation in the RFP and § 2009.570–3(b)(1)(i), ABC Corp. informs the NRC that it is presently doing seismological studies for several utilities in the eastern United States, but none of the sites are within the geographic area contemplated by the NRC study.

(ii) *Guidance.* The contracting officer would normally conclude that award of a contract would not place ABC Corp. in a conflicting role where its judgment might be biased. Section 2052.209–72(c) Work for Others, would preclude ABC Corp. from accepting work which could create a conflict of interest during the term of the NRC contract.

(6)(i) *Example.* AD Division of ABC Corp., in response to a RFP, submits a proposal to assist the NRC in the safety and environmental review of applications for licenses for the construction, operation, and decommissioning of fuel cycle facilities. ABC Corp. is divided into two separate and distinct divisions, AD and BC. The BC Division performs the same or similar services for industry. The BC Division is currently providing the same or similar services required under the NRC's contract for an applicant or licensee.

(ii) *Guidance.* An NRC contract for that particular work would not be awarded to the ABC Corp. The AD Division could be placed in a position to pass judgment on work performed by the BC Division, which could bias its work for NRC. Further, the Conflict of Interest provisions apply to ABC Corp. and not to separate or distinct divisions within the company. If no reasonable alternative exists, a waiver of the policy could be sought in accordance with § 2009.570–9.

(7)(i) *Example.* The ABC Corp. completes an analysis for NRC of steam generator tube leaks at one of a utility's six sites. Three months later, ABC Corp. is asked by this utility to perform the same analysis at another of its sites.

(ii) *Guidance.* Section 2052.290–72(c)(3) would prohibit the contractor from beginning this work for the utility until one year after completion of the NRC work at the first site.

(8)(i) *Example.* ABC Corp. is assisting NRC in a major on-site analysis of a utility's redesign of the common areas between its twin reactors. The contract is for two years with an estimated value of $5 million. Near the completion of the NRC work, ABC Corp. requests authority to solicit for a $100K contract with the same utility to transport spent fuel to a disposal site. ABC Corp. is performing no other work for the utility.

(ii) *Guidance.* The Contracting Officer would allow the contractor to proceed with the solicitation because it is not in the same technical area as the NRC work; and the potential for technical bias by the contractor because of financial ties to the utility is slight due to the relative value of the two contracts.

(9)(i) *Example.* The ABC Corp. is constructing a turbine building and installing new turbines at a reactor site. The contract with the utility is for five years and has a total value of $100 million. ABC Corp. has responded to an NRC Request For Proposal requiring the contractor to participate in a major team inspection unrelated to the turbine work at the same site. The estimated value of the contract is $75K.

(ii) *Guidance.* An NRC contract would not normally be awarded to ABC Corp. because these factors create the potential for financial loyalty to the utility that may bias the technical judgment of the contractor.

(d) *Other considerations.*

(1) The fact that the NRC can identify and later avoid, eliminate, or neutralize any potential organizational conflicts arising from the performance of a contract is not relevant to a determination of the existence of conflicts prior to the award of a contract.

(2) It is not relevant that the contractor has the professional reputation of being able to resist temptations which arise from organizational conflicts of interest, or that a follow-on procurement is not involved, or that a contract is awarded on a competitive or a sole source basis.

§ 2009.570–4 Representation.

(a) The following procedures are designed to assist the NRC contracting officer in determining whether situations or relationships exist which may constitute organizational conflicts of interest with respect to a particular offeror or contractor. The procedures apply to small purchases meeting the criteria stated in the following paragraph (b) of this section.

(b) The organizational conflicts of interest representation provision at § 2052.209–71 must be included in solicitations and contracts resulting from unsolicited proposals. The contracting officer must also include this provision for task orders and contract modifications for new work for:

(1) Evaluation services or activities;

(2) Technical consulting and management support services;

(3) Research; and

(4) Other contractual situations where special organizational conflicts of interest provisions are noted in the solicitation and would be included in the resulting contract. This representation requirement also applies to all modifications for additional effort under the contract except those issued under the "Changes" clause. Where, however, a statement of the type required by the organizational conflicts of interest representation provisions has previously been submitted with regard to the contract being modified, only an updating of the statement is required.

(c) The offeror may, because of actual or potential organizational conflicts of interest, propose to exclude specific kinds of work contained in a RFP unless the RFP specifically prohibits the exclusion. Any such proposed exclusion by an offeror will be considered by the NRC in the evaluation of proposals. If the NRC considers the proposed excluded work to be an essential or integral part of the required work and its exclusion would be to the detriment of the competitive posture of the other offerors, the NRC shall reject the proposal as unacceptable.

(d) The offeror's failure to execute the representation required by paragraph (b) of this section with respect to an invitation for bids is considered to be a minor informality. The offeror will be permitted to correct the omission.

§ 2009.570–5 Contract clauses.

(a) *General contract clause.* All contracts and simplified acquisitions of the types set forth in § 2009.570–4(b) must include the clause entitled, "Contractor Organizational Conflicts of Interest," set forth in § 2052.209–72.

(b) *Other special contract clauses.* If it is determined from the nature of the proposed contract that an organizational conflict of interest exists, the contracting officer may determine that the conflict can be avoided, or, after obtaining a waiver in accordance with § 2009.570–9, neutralized through the use of an appropriate special contract clause. If appropriate, the offeror may negotiate the terms and conditions of these clauses, including the extent and time period of any restriction. These clauses include but are not limited to:

(1) Hardware exclusion clauses which prohibit the acceptance of production contracts following a related non-production contract previously performed by the contractor;

(2) Software exclusion clauses;

(3) Clauses which require the contractor (and certain of its key personnel) to avoid certain organizational conflicts of interest; and

(4) Clauses which provide for protection of confidential data and guard against its unauthorized use.

§ 2009.570–6 Evaluation, findings, and contract award.

The contracting officer shall evaluate all relevant facts submitted by an offeror and other relevant information. After evaluating this information against the criteria of § 2009.570–3, the contracting officer shall make a finding of whether organizational conflicts of interest exist with respect to a particular offeror. If it has been determined that real or potential conflicts of interest exist, the contracting officer shall:

(a) Disqualify the offeror from award;

(b) Avoid or eliminate such conflicts by appropriate measures; or

(c) Award the contract under the waiver provision of § 2009.570–9.

§ 2009.570–7 Conflicts identified after award.

If potential organizational conflicts of interest are identified after award with respect to a particular contractor and the contracting officer determines that conflicts do exist and that it would not be in the best interest of the Government to terminate the contract, as provided in the clauses required by § 2009.570–5, the contracting officer shall take every reasonable action to avoid, eliminate, or,

after obtaining a waiver in accordance with § 2009.570–9, neutralize the effects of the identified conflict.

§ 2009.570–8 Subcontracts.

The contracting officer shall require offerors and contractors to submit a representation statement from all subcontractors (other than a supply subcontractor) and consultants performing services in excess of $10,000 in accordance with § 2009.570–4(b). The contracting officer shall require the contractor to include contract clauses in accordance with § 2009.570–5 in consultant agreements or subcontracts involving performance of work under a prime contract.

§ 2009.570–9 Waiver.

(a) The contracting officer determines the need to seek a waiver for specific contract awards with the advice and concurrence of the program office director and legal counsel. Upon the recommendation of the Senior Procurement Executive, and after consultation with legal counsel, the Executive Director for Operations may waive the policy in specific cases if he determines that it is in the best interest of the United States to do so.

(b) Waiver action is strictly limited to those situations in which:

(1) The work to be performed under contract is vital to the NRC program;

(2) The work cannot be satisfactorily performed except by a contractor whose interests give rise to a question of conflict of interest.

(3) Contractual and/or technical review and surveillance methods can be employed by the NRC to neutralize the conflict.

(c) The justification and approval documents for any waivers must be placed in the NRC Public Document Room.

§ 2009.570–10 Remedies.

In addition to other remedies permitted by law or contract for a breach of the restrictions in this subpart or for any intentional misrepresentation or intentional nondisclosure of any relevant interest required to be provided for this section, the NRC may debar the contractor from subsequent NRC contracts.

PART 2011—DESCRIBING AGENCY NEEDS

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 418(b).

Subpart 2011.4—Delivery or Performance Schedules—Contract Clauses

§ 2011.104–70 NRC Clauses.

(a) The contracting officer shall insert the clause at § 2052.211–70 Preparation of Technical Reports, when deliverables include a technical report.

(b) The contracting officer shall insert the clause at § 2052.211–71 Technical Progress Report, in all solicitations and contracts except—

(1) Firm fixed price; or

(2) Indefinite-delivery contracts to be awarded on a time-and-materials or labor-hour basis, or that provide for issuing delivery orders for specific products/services (line items).

(c) The contracting officer shall insert the clause at § 2052.211–72 Financial Status Report, in applicable cost reimbursement solicitations and contracts when detailed assessment of costs is warranted and a Contractor Spending Plan is required. The contracting officer shall use the clause at § 2052.211–72 Financial Status Report—Alternate 1 when no Contractor Spending Plan is required.

(d) The contracting officer may alter clauses at §§ 2052.211–70, 2052.211–71, 2052.211–72, and 2052.211–72, Alternate 1 before issuing the solicitation or during competition by solicitation amendment. Reporting requirements should be set at a meaningful and productive frequency. Insignificant changes may also be made by the contracting officer on a case-by-case basis during negotiations without solicitation amendment.

SUBCHAPTER C—CONTRACTING METHODS AND CONTRACT TYPES

PART 2013—SIMPLIFIED ACQUISITION PROCEDURES [RESERVED]

PART 2014—SEALED BIDDING

Subpart 2014.2—Solicitation of Bids

Sec.
2014.201 Preparation of invitation for bids.
2014.201–670 Solicitation provisions.

Subpart 2014.4—Opening of Bids and Award of Contract

2014.407 Mistakes in bids.
2014.407–3 Other mistakes disclosed before award.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 418(b).

Subpart 2014.2—Solicitation of Bids

§ 2014.201 Preparation of invitation for bids.

§ 2014.201–670 Solicitation provisions.

(a) The contracting officer may insert the provision at § 2052.214–70, Prebid Conference, in Invitations for Bids (IFB) where there will be a prebid conference. This provision may be altered by the contracting officer to fit the circumstances of the procurement.

(b) The contracting officer may insert the provision at § 2052.214–71, Bidder Qualifications and Past Experience in IFBs on an optional basis to fit the circumstances of the requirement;

(c) The contracting officer shall insert the provision at § 2052.214–72 Bid Evaluation in all IFBs. Paragraph(f) of this provision is optional.

(d) The contracting officer shall insert the provision at § 2052.214–73 Timely Receipt of Bids in all IFBs.

(e) The contracting officer shall insert the provision at § 2052.214–74 Disposition of Bids in all IFBs.

Subpart 2014.4—Opening of Bids and Award of Contract

2014.407 Mistakes in bids.

2014.407–3 Other mistakes disclosed before award.

The Director, Division of Contracts and Property Management, is delegated the authority to make the determinations concerning mistakes in bids, including those with obvious clerical errors, discovered prior to award. These determinations will be concurred in by legal counsel prior to notification of the bidder.

§ 2014.407–4 Mistakes after award.

The cognizant contracting officer is delegated the authority to make determinations concerning mistakes disclosed after award in accordance with FAR 14.407–4. These determinations will be concurred in by legal counsel prior to notification of the contractor.

PART 2015—CONTRACTING BY NEGOTIATION

Subpart 2015.2—Solicitation and Receipt of Proposals and Information

Sec.
2015.209–70 Solicitation provisions and contract clauses.

Subpart 2015.3—Source Selection Processes and Techniques

2015.300 Scope of subpart.
2015.303 Responsibilities.
2015.304 Evaluation factors.
2015.305 Proposal evaluation.

Subpart 2015.6—Unsolicited Proposals

2015.606 Agency procedures.
2015.606–1 Receipt and initial review.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2015.2—Solicitation and Receipt of Proposals and Implementation

2015.209–70 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the following clauses in solicitations and contracts that are applicable to the requirement:

(1) Section 2052.215–70, Key Personnel in applicable solicitations and contracts;

(2)(i) Section 2052.215–71, Project Officer Authority in applicable solicitations and contracts for cost-reimbursement, cost-plus-fixed-fee, cost-plus-award-fee, cost sharing, labor-hour or time-and-materials, including task order contracts. This clause and the following alternate clauses are intended for experienced, trained project officers, and may be altered to delete duties where appropriate:

(ii) Section 2052.215–71 Alternate 1. For solicitations for issuance of delivery orders for specific products/services;

(iii) Section 2052.215–71 Alternate 2. For solicitations for firm fixed price contracts, with paragraph (b)(1) of Alternate 1 deleted and the remainder of the clause renumbered.

(3) The contracting officer shall insert the provision at § 2052.215–72, Timely Receipt of Proposals in all solicitations;

(4) The contracting officer shall insert the provision at § 2052.215–73, Award Notification and Commitment of Public Funds in all solicitations; and

(5) The contracting officer shall insert the provision at § 2052.215–74, Disposition of Proposals in all solicitations.

(b) The contracting officer may insert the following provisions in all solicitations as applicable. These provisions may be altered to fit the circumstances of the requirement. These provisions shall be tailored to assure that all sections of the instructions for the Technical and Management Proposal, or Oral Presentation and Supporting Documentation, reflect a one-to-one relationship to the evaluation criteria:

(1) Section 2052.215–75, Proposal Presentation and Format for negotiated procurements for cost type contracts;

(2) Section 2052.215–75 Alternate 1 may be used for all solicitations for negotiated task order contracts;

(3) Section 2015.215–75 Alternate 2 may be used for all solicitations for negotiated fixed price, labor hour, or time and materials contracts:

(c) The contracting officer shall insert the provision at § 2052.215–76, PreProposal Conference, in solicitations which include a PreProposal conference. This provision may be altered to fit the circumstances of the requirement.

(d) The contracting officer shall insert the following clauses in solicitations and contracts as applicable:

(1) Section 2052.215–77, Travel Approvals and Reimbursement, must be inserted in cost reimbursement solicitations and contracts which require travel but do not set a specific ceiling amount on that travel. Requests for foreign travel must be submitted to the NRC 30 days in advance of the travel date.

(2) Section 2052.215–78, Travel Approvals and Reimbursement—Alternate 1, shall be inserted in cost reimbursement solicitations and contracts which include a ceiling amount on travel. Requests for foreign travel must be submitted to the NRC 30 days in advance of the travel.

(e) The contracting officer shall include the following provisions in all solicitations for competitive procurements to describe the relationship of technical considerations to cost considerations. The contracting officer may make appropriate changes to these provisions to accurately reflect other evaluation procedures, such as evaluation of proposals against mandatory criteria and bench marking criteria for Information Technology (IT) procurements:

(1) Section 2052.215–79 Contract Award and Evaluation of Proposals, shall be included in all solicitations where technical merit is more important than cost,

(2) Section 2052.215–79 Alternate 1 must be included when proposals are to be evaluated on a lowest price, technically acceptable basis.

(3) Section 2052.215–79 Alternate 2 shall be included where cost and technical merit are of equal significance.

Subpart 2015.3—Source Selection Processes and Techniques

2015.300 Scope of subpart.

This subpart applies to all contracts awarded on a competitive basis in accordance with FAR part 15. This subpart does not apply to contracts awarded on a non-competitive basis to the Small Business Administration under Section 8(a) of the Small Business Act.

2015.303 Responsibilities.

(a) The source selection authority is the contracting officer. The contracting officer, acting as the source selection authority, shall select an offer for award based on review of the Source Evaluation Panel's recommendation contained in the reports described in paragraph (c) of this section.

(b) Any cancellation of solicitations and subsequent rejection of all proposals must be approved by the Head of the Contracting Activity.

(c) For all proposed contracts with total estimated values in excess of the simplified acquisition threshold and expected to result from competitive technical and price/cost negotiations, the cooperative review efforts of technical, contracting, and other administrative personnel are formalized through establishment of a Source Evaluation Panel. A single technical member may be appointed to the Source Evaluation Panel to evaluate proposals with the contracting officer's approval. In these instances, the Designating Official may appoint technical advisors (non-voting members) to assist the single technical member. The Source Evaluation Panel should not exceed five members, including the Chairperson except in unusual cases. The Source Evaluation Panel's proposal evaluation report(s) may include a Competitive Range Report and a Final Evaluation Report (to be used when award will be made after conducting discussions), or a Recommendation for Award Report (to be used when award will be made without discussions).

(d) The Designating Official (Office Director or designee) is responsible for appointing a Source Evaluation Panel to evaluate competitive technical proposals in accordance with the solicitation technical criteria. The Designating Official is also responsible for conducting an independent review and evaluation of the Source Evaluation Panel's proposal evaluation report(s) to the contracting officer.

2015.304 Evaluation factors.

The evaluation factors included in the solicitation serve as the standard against which all proposals are evaluated and are the basis for the development of proposal preparation instructions in accordance with FAR 15.304(b). The solicitation may indicate the relative importance of evaluation factors and subfactors by assigning a numerical weight to each factor. If a solicitation uses numerical weights, those weights shall be stated in the solicitation. The relative importance of factors that are not numerically weighted will be stated in the solicitation. Examples of factors which may not be numerically weighted are conflict of interest, estimated cost, and "go/no go" evaluation factors.

2015.305 Proposal evaluation.

The contracting officer may provide offerors' cost proposals and supporting

financial information to members of the Source Evaluation Panel at the same time technical proposals are distributed for evaluation. The Source Evaluation Panel shall use this information to perform an accurate integrated assessment of each offeror's proposal based on all the facts presented to them.

Subpart 2015.6—Unsolicited Proposals

2015.606 Agency procedures.

(a) The Division of Contracts and Property Management is the point of contact for the receipt, acknowledgment, and handling of unsolicited proposals.

(b) An original and two copies of the unsolicited proposal as well as requests for additional information regarding their preparation, must be submitted to: U.S. Nuclear Regulatory Commission, Division of Contracts and Property Management, Mail Stop T–7–I–2, Washington, DC 20555.

(c) The Division of Contracts and Property Management shall enter each unsolicited proposal into the unsolicited proposal tracking system.

2015.606–1 Receipt and initial review.

(a) The Division of Contracts and Property Management shall acknowledge receipt of an unsolicited proposal, complete a preliminary review, assign a docket number, and send copies of the unsolicited proposal to the appropriate program office Director(s) or designee for evaluation.

(b) The Division of Contracts and Property Management shall be responsible for controlling reproduction and distribution of proposal material by notifying evaluators of their responsibilities and tracking the number of proposals received and forwarded to evaluators.

(c) An acknowledgment letter will be sent to the proposer by The Division of Contracts and Property Management. The letter will provide an estimated date for a funding decision or identifying the reasons for non-acceptance of the proposal for review in accordance with FAR 15.606–1(b) and FAR 15.606–1(c).

PART 2016—TYPES OF CONTRACTS

Subpart 2016.3—Cost Reimbursement Contracts

Sec.
2016.307–70 .Contract provisions and clauses.

Subpart 2016.5—Indefinite-Delivery Contracts

6016.506–70 Contract provisions and clauses.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 418(b).

Subpart 2016.3—Cost Reimbursement Contracts

2016.307–70 Contract provisions and clauses.

(a) The contracting officer shall insert the provision at § 2052.216–70, Level of Effort, in solicitations for negotiated procurements containing labor costs other than maintenance services to be awarded on a cost reimbursement, cost sharing, cost-plus-award fee, cost-plus-fixed fee, time and materials, or labor hour basis.

(b) The contracting officer may insert the following provisions and clauses in cost reimbursement contracts as applicable:

(1) Section 2052.216–71, Indirect Cost Rates (where provisional rates without ceilings apply).

(2) Section 2052.216–71, Indirect Cost Rates—Alternate 1 (where redetermined rates apply).

(3) Section 2052.216–71, Indirect Cost Rates (Ceiling)—Alternate 2 (where provisional rates with ceilings apply).

(c) The contracting officer may make appropriate changes to these clauses to reflect different arrangements.

Subpart 2016.5—Indefinite-Delivery Contracts.

2016.506–70 Contract provisions and clauses.

The contracting officer shall insert the following clauses in all solicitations and contracts that contain task order procedures. These clauses may be altered by the contracting officer to fit the circumstances of the requirement.

(a) Section 2052.216–72, Task Order Procedures;

(b) Section 2052.216–73, Accelerated Task Order Procedures.

PART 2017—SPECIAL CONTRACTING METHODS

Subpart 2017.2—Options

Sec.
2017.204 Contracts

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 481(b).

Subpart 2017.2—Options

2017.204 Contracts

(a) The contracting officer may approve non-competitive extensions, within the limits of his/her delegation, to five-year contracts up to a total of an additional 6 months for the purpose of completing the competitive process for a follow-on contract if the request for procurement action for a follow-on or replacement contract was received in the Division of Contracts and Property Management not less than 6 months before the end of the fifth year.

(b) Other extensions beyond five years must be approved by the Competition Advocate.

SUBCHAPTER D—SOCIOECONOMIC PROGRAMS

PART 2019—SMALL BUSINESS PROGRAMS

Subpart 2019.7—Subcontracting with small business, small disadvantaged business, and women-owned small business concerns

Sec.
2019.705 Responsibilities of the contracting officer under the subcontracting assistance program.
2019.705–4 Reviewing the subcontracting plan.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 418(b).

Subpart 2019.7—Subcontracting with small business, small disadvantaged business, and women-owned small business concerns

2019–705 Responsibilities of the contracting officer under the subcontracting assistance program.

2019.705–4 Reviewing the subcontracting plan.

The contracting officer may accept the terms of an overall or "master" company subcontracting plan incorporated by reference into a specific subcontracting plan submitted by the apparent successful offeror/bid for a specific contract, only upon ensuring that the required information, goals, and assurances are included in accordance with FAR 19.704.

PART 2022—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

Subpart 2022.1—Basic Labor Policies

Sec.
2022.101–1 General.
2022.103–4 Approvals.

Subpart 2022.9—Nondiscrimination Because of Age

2022.901–70 Contract provisions.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 4186 (b)

Subpart 2022.1—Basic Labor Policies

2022.101–1 General.

The Head of the Contracting Activity shall designate programs or requirements for which it is necessary that contractors be required to notify the Government of actual or potential labor disputes that are delaying or threaten to delay the timely contract performance. Contractor notification shall be made in accordance with FAR 52.222–1, "Notice to the Government of Labor Disputes."

2022.103–4 Approvals.

The agency approving official for contractor overtime is the contracting officer.

Subpart 2022.9—Nondiscrimination Because of Age

2022.901–70 Contract provisions.

The contracting officer shall insert the provision found at § 2052.222–70, Nondiscrimination Because of Age, in all solicitations.

PART 2024—PROTECTION OF PRIVACY AND FREEDOM OF INFORMATION

Subpart 2024.1—Protection of Individual Privacy

Sec.
2024.103 Procedures.

Subpart 2024.2—Freedom of Information Act

2024.202 Policy.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

Subpart 2024.1—Protection of Individual Privacy

2024.103 Procedures.

The provisions at 10 CFR part 9, subpart B, Privacy Act Regulations, are applicable to the maintenance or disclosure of information for a system of records on individuals.

Subpart 2024.2—Freedom of Information Act

2024.202 Policy.

The provisions at 10 CFR part 9, subpart A, Freedom of Information Act Regulations, are applicable to the availability of NRC records to the public.

SUBCHAPTER E—GENERAL CONTRACTING REQUIREMENTS

PART 2027—PATENTS, DATA, AND COPYRIGHTS

Subpart 2027.3—Patent Rights Under Government Contract

Sec.
2027.305–3 Follow-up by Government.
2027.305–70 Solicitation provisions and contract clauses.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 418(b).

Subpart 2027.3—Patent Rights Under Government Contracts

2027.305–3 Follow-up by Government.

(a) The contracting officer shall, as a part of the closeout of a contract, require each contractor to report any patents, copyrights, or royalties attained using any portion of the contract funds in writing.

(b) If no activity is to be reported, the contractor shall provide the following written determination before final payment and closeout of the contract:

(1) No inventions or discoveries were made,

(2) No copyrights were secured, produced, or composed,

(3) No notices or claims of patent or copyright infringement have been received by the contractor or its subcontractors; and

(4) No royalty payments were directly involved in the contract or reflected in the contract price to the Government, nor were any royalties or other payments paid or owed directly to others.

(c) The contracting officer may waive any of the requirements in paragraphs (b) (1) through (4) of this section, after documenting the file to indicate the—

(1) Impracticality of obtaining the document(s); and

(2) Steps taken to attempt to obtain them.

(d) The contracting officer shall notify agency legal counsel responsible for patents whenever a contractor reports any patent, copyright, or royalty activity. The contract officer shall document the official file with the resolution to protect the Government's rights before making any final payment and closing out the contract.

2027.305–70 Solicitation provisions and contract clauses.

The contracting officer shall insert the clause at § 2052.227–70, Drawings, Designs, Specifications, and Data, in all solicitations and contracts in which drawings, designs, specifications, or other data will be developed and the NRC is required to retain full rights to them (except for the contractor's right to retain a copy for its own use). When any of the clauses prescribed at FAR 27.409, Solicitation Provisions and Contract Clauses, are included in the solicitation/contract, this clause will not be used.

PART 2030—COST ACCOUNTING STANDARDS

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 418(b).

Subpart 2030.2—CAS Program Requirements

2030.201–5 Waiver.

Requests to waive Cost Accounting Standards (CAS) requirements must be submitted to the Chairman, CAS Board by the Competition Advocate. The requests for waiver must be forwarded through the Head of the Contracting Activity with supporting documentation and rationale in accordance with FAR 30.201–5.

PART 2031—CONTRACT COST PRINCIPLES AND PROCEDURES

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 418(b).

Subpart 2031.1—Applicability

2031.109–70 Contract clauses.

The contracting officer shall insert the clause at § 2052.231–70, Precontract Costs, in all cost type contracts when costs in connection with work under the contract will be incurred by the contractor before the effective date of the contract. Approval for use of this clause must be obtained at one level above the contracting officer.

PART 2032—CONTRACT FINANCING

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 418(b).

Subpart 2032.4—Advance Payments for Non-Commercial Items

2032.402 General.

(a) The contracting officer has the responsibility and authority for making findings and determinations and for approval of contract terms concerning advance payments.

(b) Before authorizing any advance payment agreements, except for subscriptions to publications, the contracting officer shall coordinate with the Office of the Chief Financial Officer, Division of Accounting and Finance, to ensure completeness of contractor submitted documentation.

PART 2033—PROTESTS, DISPUTES, AND APPEALS

Subpart 2033.1—Protests

Sec.
2033.103 Protests to the agency.

Subpart 2033.2—Disputes and Appeals

2033.204 Policy.
2033.211 Contract Claims—Contracting officer's decision.
2033.215 Contract clause.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 418(b).

Subpart 2033.1—Protests

2033.103 Protests to the agency.

Protests to the agency are first considered by the contracting officer. In accordance with FAR 33.103(d)(4), the protestor may appeal the contracting officer's decision by delivering or providing a written request to the agency Director, Division of Contracts or Property Management, or designee, to

conduct an independent review of the Contracting Officer's decision.

Subpart 2033.2—Disputes and Appeals

2033.204 Policy.

Final decisions of the NRC contracting officer on contract disputes and appeals issued under to the Contracts Disputes Act will be heard by the Department of Energy Board of Contract Appeals (EBCA) under an interagency agreement between the NRC and the Department of Energy. The EBCA rules appear in 10 CFR part 1023.

2033.211 Contract Claims—Contracting officer's decision.

The contracting officer shall alter the paragraph at FAR 33.211(a)(4)(v) to identify the Energy Board of Contract Appeals and include its address: U.S. Department of Energy, Board of Contract Appeals, HG–50, Building 950, 1000 Independence Ave., SW, Washington, DC 20585, when preparing a written decision.

2033.215 Contract clause.

The contracting officer shall use the clause at FAR 52.233–1, Disputes, with its Alternate I, where continued performance is vital to national security, the public health and safety, critical and major agency programs, or other essential supplies or services whose timely reprocurement from other sources would be impractical.

SUBCHAPTER F—SPECIAL CATEGORIES OF CONTRACTING

PART 2035—RESEARCH AND DEVELOPMENT CONTRACTING

Sec.
2035.70 Contract clauses.
2035.71 Broad agency announcements.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; and 41 U.S.C. 418(b).

2035.70 Contract clauses.

(a) The contracting officer shall insert the following clause in all solicitations and contracts for research and development by private contractors and universities and for other technical services, as appropriate:

(1) Section 2052.235–70, Publication of Research Results;

(2) Section 2052.235–72 Safety, Health and Fire Protection.

2035.71 Broad agency announcements.

(a) Criteria for selecting contractors may include such factors as:

(1) Unique and innovative methods, approaches, or concepts demonstrated by the proposal.

(2) Overall scientific, technical, or economic merits of the proposal.

(3) The offeror's capabilities, related experience, facilities, techniques, or unique combinations of these which are integral factors for achieving the proposal objectives.

(4) The qualifications, capabilities, and experience of the proposed principal investigator, team leader, or key personnel who are critical in achieving the proposal objectives.

(5) Potential contribution of the effort to NRC's mission.

(6) Overall standing among similar proposals available for evaluation and/or evaluation against the known state-of-the-art technology.

(b) Once a proposal is received, communication between the agency's scientific or engineering personnel and the principal investigator is permitted for clarification purposes only and must be coordinated through the Division of Contracts and Property Management.

(c) After evaluation of the proposals, the Designating Official shall submit a comprehensive evaluation report to the contracting officer which recommends the source(s) for contract award. The report must reflect the basis for the selection or nonselection of each proposal received.

SUBCHAPTER G—CONTRACT MANAGEMENT

PART 2042—CONTRACT ADMINISTRATION

Subpart 2042.570—Differing Professional Views (DPV)

Sec.
2042.570–1 Policy.
2042.570–2 Solicitation provisions and contract clauses.

Subpart 2042.8—Disallowance of Costs

2042.803 Disallowing costs after incurrence.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 418(b).

Subpart 2042.570—Differing Professional Views (DPV)

§ 2042.570–1 Policy.

The Nuclear Regulatory Commission's (NRC) policy is to support the contractor's expression of professional health and safety-related concerns associated with the contractor's work for the NRC that may differ from a prevailing NRC staff view, disagree with an NRC decision or policy position, or take issue with proposed or established agency practices. An occasion may arise when an NRC contractor, contractor's personnel, or subcontractor personnel believes that a conscientious expression of a competent judgement is required to document these concerns on matters directly associated with its performance of the contract. The procedure described in § 2052.242–71, Procedures for Resolving NRC Contractor Differing Professional Views, provides for the expression and resolution of DPVs of health and safety-related concerns associated with the mission of the agency by NRC contractors, contractor personnel, or subcontractor personnel on matters directly associated with its performance of the contract. The contractor shall provide a copy of the NRC DPV procedure to all of its employees performing under this contract and to all subcontractors who shall, in turn, provide a copy of the procedure to its employees. The prime contractor or subcontractor shall submit all DPV's received but need not endorse them.

2042.570–2 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the clause at § 2052.242–70, Resolving NRC Contractor Differing Professional Views, in the body of cost reimbursement solicitations and contracts for professional services, as appropriate. This clause may not be altered by the contracting officer.

(b) The contracting officer shall include the clause at § 2052.242–71, Procedures for Resolving NRC Contractor Differing Professional Views, as an attachment to cost reimbursement solicitations and contracts for professional services, as appropriate. This clause may not be altered by the contracting officer.

Subpart 2042.8—Disallowance of Costs

2042.803 Disallowing costs after incurrence.

(a) Vouchers and invoices submitted to NRC must be submitted to the contracting officer or designee for review and approval for payment. If the examination of a voucher or invoice raises a question regarding the allowability of a cost submitted, the contracting officer or designee shall:

(1) Hold informal discussions with the contractor as appropriate.

(2) If the discussions do not resolve the matter, the contracting officer shall issue a notice advising the contractor of costs disallowed. The notice must advise the contractor that it may:

(i) If in disagreement with the disallowance, submit a written claim to the contracting officer for payment of the disallowed cost and explain why the cost should be reimbursed; or

(ii) If the disagreement(s) cannot be settled, file a claim under the disputes clause which will be processed in accordance with disputes procedures found at FAR subpart 33.2; and

(3) Process the voucher or invoice for payment and advise the NRC Division of Accounting and Finance to deduct the disallowed costs when scheduling the voucher for payment.

(b) When audit reports or other notifications question costs or consider them unallowable, the contracting officer shall resolve all cost issues through discussions with the contractor and/or auditor within six months of receipt of the audit report whenever possible.

(1) One of the following courses of action must be pursued:

(i) Accept and implement audit recommendations as submitted;

(ii) Accept the principle of the audit recommendation but adjust the amount of the questioned costs;

(iii) Reject audit findings and recommendations.

(2) When implementing the chosen course of action, the contracting officer shall:

(i) Hold discussions with the auditor and contractor, as appropriate;

(ii) If the contracting officer agrees with the auditor concerning the questioned costs, attempt to negotiate a mutual settlement of questioned costs;

(iii) Issue a final decision, including any disallowance of questioned costs; inform the contractor of his/her right to appeal the decision under the disputes procedures found at FAR subpart 33.2; and provide a copy of the final decision to the Office of the Inspector General; and

(iv) Initiate immediate recoupment actions for all disallowed costs owed the Government by one or more of the following methods:

(A) Request that the contractor provide a credit adjustment (offset) and an adequate description/explanation of the adjustment against amounts billed the Government on the next or other future invoice(s) submitted under the contract for which the disallowed costs apply;

(B) Deduct the disallowed costs from the next invoice submitted under the contract;

(C) Deduct the disallowed costs on a schedule determined by the contracting officer after discussion with the contractor (if the contracting officer determines that an immediate and complete deduction is inappropriate); and

(D) Advise the contractor that a refund is immediately payable to the Government (in situations where there are insufficient payments owed by the Government to effect recovery from the contract).

PART 2045—GOVERNMENT PROPERTY

Subpart 2045.3—Providing Government Property to Contractors

Sec.
2045.370 Providing Government property (in general).
2045.371 Property accountability procedures.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 418(b).

Subpart 2045.3—Providing Government Property to Contractors

2045.370 Providing Government property (in general).

(a) Unless otherwise provided for in FAR 45.302–1(d), applicable to Government facilities with a unit cost of less than $10,000, a contractor may be provided Government property or allowed to purchase the property at Government expense if the contracting officer, with the advice of the agency property official determines that:

(1) No practicable or economical alternative exists; e.g., acquisition from other sources, utilization of subcontractors, rental of property, or modification of program project requirements;

(2) Furnishing Government property is likely to result in substantially lower costs to the Government for the items produced or services rendered when all costs involved (e.g., transportation, installation, modification, maintenance, etc.) are compared with the costs to the Government of the contractor's use of privately-owned property; and

(3) The Government receives adequate consideration for providing the property.

§ 2045.371 Property accountability procedures.

(a) The threshold for detailed reporting of capitalized equipment by contractors is $50,000.

(b) The contractor shall send a copy of each Financial Status Report (NRCAR 2052.211–72, and 2052.211–72 Alternate 1), that references the acquisition of, or change in status of, contractor-held property purchased with government funds valued at the time of purchase at $50,000 or more to the Chief, Property and Acquisition Oversight Branch, Division of Contracts and Property Management.

SUBCHAPTER H—CLAUSES AND FORMS

PART 2052—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Subpart 2052.2—Text of Provisions and Clauses

Sec.
2052.200 Authority.
2052.204–70 Security.
2052.204–71 Site access badge requirements.
2052.209–70 Current/former agency employee involvement.
2052.209–71 Contractor organizational conflicts of interest (representation).
2052.209–72 Contractor organizational conflicts of interest.
2052.211–70 Preparation of technical reports.
2052.211–71 Technical progress report.
2052.211–72 Financial status report.
2052.214–70 Prebid conference.
2052.214–71 Bidder qualifications and past experiences.
2052.214–72 Bid evaluation.
2052.214–73 Timely receipt of bids.
2052.214–74 Disposition of bids.
2052.215–70 Key personnel.
2052.215–71 Project officer authority.
2052.215–72 Timely receipt of proposals.
2052.215–73 Award notification and commitment of public funds.
2052.215–74 Disposition of proposals.
2052.215–75 Proposal presentation and format.
2052.215–76 Preproposal conference.
2052.215–77 Travel approvals and reimbursement.
2052.215–78 Travel approvals and reimbursement—Alternate 1.
2052.215–79 Contract award and evaluation of proposals.
2052.216–70 Level of effort.
2052.216–71 Indirect cost rates.
2052.216–72 Task order procedures.
2052.216–73 Accelerated task order procedures.
2052.222–70 Nondiscrimination because of age.
2052.227–70 Drawings, designs, specifications, and other data
2052.231–70 Precontract costs.
2052.235–70 Publication of research results.
2052.235–71 Safety, health, and fire protection.
2052.242–70 Resolving differing professional views.
2052.242–71 Procedures for resolving differing professional views.

Authority: 42 U.S.C. 2201; 42 U.S.C. 5841; 41 U.S.C. 418(b).

Subpart 2052.2—Text of Provisions and Clauses

2052.200 Authority.

2052.204–70 Security.

As prescribed at § 2004.404(a), the contracting officer shall insert the following clause in solicitations and contracts during which the contractor may have access to, or contact with

classified information, including National Security information, restricted data, formerly restricted data, and other classified data:

Security (Oct 1999)

(a) Security/Classification Requirements Form. The attached NRC Form 187 (See List of Attachments) furnishes the basis for providing security and classification requirements to prime contractors, subcontractors, or others (e.g., bidders) who have or may have an NRC contractual relationship that requires access to classified information or matter, access on a continuing basis (in excess of 90 or more days) to NRC Headquarters controlled buildings, or otherwise requires NRC photo identification or card-key badges.

(b) It is the contractor's duty to safeguard National Security Information, Restricted Data, and Formerly Restricted Data. The contractor shall, in accordance with the Commission's security regulations and requirements, be responsible for safeguarding National Security Information, Restricted Data, and Formerly Restricted Data, and for protecting against sabotage, espionage, loss, and theft, the classified documents and material in the contractor's possession in connection with the performance of work under this contract. Except as otherwise expressly provided in this contract, the contractor shall transmit to the Commission any classified matter in the possession of the contractor or any person under the contractor's control in connection with performance of this contract upon completion or termination of this contract.

(1) The contractor shall complete a certificate of possession to be furnished to the Commission specifying the classified matter to be retained if the retention is:

(i) Required after the completion or termination of the contract; and

(ii) Approved by the contracting officer.

(2) The certification must identify the items and types or categories of matter retained, the conditions governing the retention of the matter and their period of retention, if known. If the retention is approved by the contracting officer, the security provisions of the contract continue to be applicable to the matter retained.

(c) In connection with the performance of the work under this contract, the contractor may be furnished, or may develop or acquire, proprietary data (trade secrets) or confidential or privileged technical, business, or financial information, including Commission plans, policies, reports, financial plans, internal data protected by the Privacy Act of 1974 (Pub. L. 93–579), or other information which has not been released to the public or has been determined by the Commission to be otherwise exempt from disclosure to the public. The contractor agrees to hold the information in confidence and not to directly or indirectly duplicate, disseminate, or disclose the information, in whole or in part, to any other person or organization except as necessary to perform the work under this contract. The contractor agrees to return the information to the Commission or otherwise dispose of it at the direction of the contracting officer. Failure to comply with this clause is grounds for termination of this contract.

(d) Regulations. The contractor agrees to conform to all security regulations and requirements of the Commission which are subject to change as directed by the NRC Division of Facilities and Security and the Contracting Officer. These changes will be under the authority of the FAR Changes clause referenced in Section I of this document.

(e) Definition of National Security Information. As used in this clause, the term National Security Information means information that has been determined pursuant to Executive Order 12958 or any predecessor order to require protection against unauthorized disclosure and that is so designated.

(f) Definition of Restricted Data. As used in this clause, the term Restricted Data means all data concerning design, manufacture, or utilization of atomic weapons; the production of special nuclear material; or the use of special nuclear material in the production of energy, but does not include data declassified or removed from the Restricted Data category under to Section 142 of the Atomic Energy Act of 1954, as amended.

(g) Definition of Formerly Restricted Data. As used in this clause the term Formerly Restricted Data means all data removed from the Restricted Data category under Section 142–d of the Atomic Energy Act of 1954, as amended.

(h) Security clearance personnel. The contractor may not permit any individual to have access to Restricted Data, Formerly Restricted Data, or other classified information, except in accordance with the Atomic Energy Act of 1954, as amended, and the Commission's regulations or requirements applicable to the particular type or category of classified information to which access is required. The contractor shall also execute a Standard Form 312, Classified Information Nondisclosure Agreement, when access to classified information is required.

(i) Criminal liabilities. Disclosure of National Security Information, Restricted Data, and Formerly Restricted Data relating to the work or services ordered hereunder to any person not entitled to receive it, or failure to safeguard any Restricted Data, Formerly Restricted Data, or any other classified matter that may come to the contractor or any person under the contractor's control in connection with work under this contract, may subject the contractor, its agents, employees, or subcontractors to criminal liability under the laws of the United States. (See the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.*; 18 U.S.C. 793 and 794; and Executive Order 12958.)

(j) Subcontracts and purchase orders. Except as otherwise authorized, in writing, by the contracting officer, the contractor shall insert provisions similar to the foregoing in all subcontracts and purchase orders under this contract.

(k) In performing contract work, the contractor shall classify all documents, material, and equipment originated or generated by the contractor in accordance with guidance issued by the Commission. Every subcontract and purchase order issued under the contract that involves originating or generating classified documents, material, and equipment must provide that the subcontractor or supplier assign the proper classification to all documents, material, and equipment in accordance with guidance furnished by the contractor.

(End of Clause)

2052.204–71 Site access badge requirements.

As prescribed at § 2004.404(b), the contracting officer shall insert the following clause in all solicitations and contracts under which the contractor will require access to Government facilities. The clause may be altered to reflect any special conditions to be applied to foreign nationals:

Site Access Badge Requirements (Jan 1993)

During the life of this contract, the rights of ingress and egress for contractor personnel must be made available as required. In this regard, all contractor personnel whose duties under this contract require their presence on-site shall be clearly identifiable by a distinctive badge furnished by the Government. The Project Officer shall assist the contractor in obtaining the badges for contractor personnel. It is the sole responsibility of the contractor to ensure that each employee has proper identification at all times. All prescribed identification must be immediately delivered to the Security Office for cancellation or disposition upon the termination of employment of any contractor personnel. Contractor personnel shall have this identification in their possession during on-site performance under this contract. It is the contractor's duty to assure that contractor personnel enter only those work areas necessary for performance of contract work and to assure the safeguarding of any Government records or data that contractor personnel may come into contact with.

(End of Clause)

2052.209–70 Current/former agency employee involvement.

As prescribed at § 2009.105–70, the contracting officer shall insert the following provision in all solicitations:

Current/Former Agency Employee Involvement Oct 1999

(a) The following representation is required by the NRC Acquisition Regulation 2009.105–70(b). It is not NRC policy to encourage offerors and contractors to propose current/former agency employees to perform work under NRC contracts and as set forth in the above cited provision, the use of such employees may, under certain conditions, adversely affect NRC's consideration of non-competitive proposals and task orders.

(b) There ( ) are ( ) are no current/former NRC employees (including special Government employees performing services as experts, advisors, consultants, or members of advisory committees) who have been or will be involved, directly or indirectly, in developing the offer, or in negotiating on behalf of the offeror, or in managing, administering, or performing any contract, consultant agreement, or subcontract resulting from this offer. For each individual so identified, the Technical and Management proposal must contain, as a separate attachment, the name of the individual, the individual's title while employed by the NRC, the date individual left NRC, and a brief description of the individual's role under this proposal.

(End of Provision)

2052.209–71 Contractor organizational conflicts of interest (representation).

As prescribed in § 2009.570–4(b) and § 2009.570–8, the contracting officer must insert the following provision in applicable solicitations and in contracts resulting from unsolicited proposals. The contracting officer must also include the following in task orders and contract modifications for new work.

Contractor Organizational Conflicts of Interest Representation Oct 1999

I represent to the best of my knowledge and belief that:

The award to _____ of a contract or the modification of an existing contract does / / does not / / involve situations or relationships of the type set forth in 48 CFR 2009.570–3(b).

(a) If the representation, as completed, indicates that situations or relationships of the type set forth in 48 CFR 2009.570–3(b) are involved, or the contracting officer otherwise determines that potential organizational conflicts of interest exist, the offeror shall provide a statement in writing that describes in a concise manner all relevant factors bearing on his representation to the contracting officer. If the contracting officer determines that organizational conflicts exist, the following actions may be taken:

(1) Impose appropriate conditions which avoid such conflicts;

(2) Disqualify the offeror; or

(3) Determine that it is otherwise in the best interest of the United States to seek award of the contract under the waiver provisions of 48 CFR 2009–570–9.

(b) The refusal to provide the representation required by 48 CFR 2009.570–4(b), or upon request of the contracting officer, the facts required by 48 CFR 2009.570–3(b), must result in disqualification of the offeror for award.

(End of Provision)

§ 2052.209–72 Contractor organizational conflicts of interest.

As prescribed at § 2009.570–5(a) and § 2009.570–8, the contracting officer must insert the following clause in all applicable solicitations, contracts, and simplified acquisitions of the types described; § 2009.570–4(b):

Contractor Organizational Conflicts of Interest (Jan 1993)

(a) Purpose. The primary purpose of this clause is to aid in ensuring that the contractor:

(1) Is not placed in a conflicting role because of current or planned interests (financial, contractual, organizational, or otherwise) which relate to the work under this contract; and

(2) Does not obtain an unfair competitive advantage over other parties by virtue of its performance of this contract.

(b) Scope. The restrictions described apply to performance or participation by the contractor, as defined in 48 CFR 2009.570–2 in the activities covered by this clause.

(c) Work for others.

(1) Notwithstanding any other provision of this contract, during the term of this contract, the contractor agrees to forego entering into consulting or other contractual arrangements with any firm or organization the result of which may give rise to a conflict of interest with respect to the work being performed under this contract. The contractor shall ensure that all employees under this contract abide by the provision of this clause. If the contractor has reason to believe, with respect to itself or any employee, that any proposed consultant or other contractual arrangement with any firm or organization may involve a potential conflict of interest, the contractor shall obtain the written approval of the contracting officer before the execution of such contractual arrangement.

(2) The contractor may not represent, assist, or otherwise support an NRC licensee or applicant undergoing an NRC audit, inspection, or review where the activities that are the subject of the audit, inspection, or review are the same as or substantially similar to the services within the scope of this contract (or task order as appropriate) except where the NRC licensee or applicant requires the contractor's support to explain or defend the contractor's prior work for the utility or other entity which NRC questions.

(3) When the contractor performs work for the NRC under this contract at any NRC licensee or applicant site, the contractor shall neither solicit nor perform work in the same or similar technical area for that licensee or applicant organization for a period commencing with the award of the task order or beginning of work on the site (if not a task order contract) and ending one year after completion of all work under the associated task order, or last time at the site (if not a task order contract).

(4) When the contractor performs work for the NRC under this contract at any NRC licensee or applicant site,

(i) The contractor may not solicit work at that site for that licensee or applicant during the period of performance of the task order or the contract, as appropriate.

(ii) The contractor may not perform work at that site for that licensee or applicant during the period of performance of the task order or the contract, as appropriate, and for one year thereafter.

(iii) Notwithstanding the foregoing, the contracting officer may authorize the contractor to solicit or perform this type of work (except work in the same or similar technical area) if the contracting officer determines that the situation will not pose a potential for technical bias or unfair competitive advantage.

(d) Disclosure after award.

(1) The contractor warrants that to the best of its knowledge and belief, and except as otherwise set forth in this contract, that it does not have any organizational conflicts of interest as defined in 48 CFR 2009.570–2.

(2) The contractor agrees that if, after award, it discovers organizational conflicts of interest with respect to this contract, it shall make an immediate and full disclosure in writing to the contracting officer. This statement must include a description of the action which the contractor has taken or proposes to take to avoid or mitigate such conflicts. The NRC may, however, terminate the contract if termination is in the best interest of the Government.

(3) It is recognized that the scope of work of a task-order-type contract necessarily encompasses a broad spectrum of activities. Consequently, if this is a task-order-type contract, the contractor agrees that it will disclose all proposed new work involving NRC licensees or applicants which comes within the scope of work of the underlying contract. Further, if this contract involves work at a licensee or applicant site, the contractor agrees to exercise diligence to discover and disclose any new work at that licensee or applicant site. This disclosure must be made before the submission of a bid or proposal to the utility or other regulated entity and must be received by the NRC at least 15 days before the proposed award date in any event, unless a written justification demonstrating urgency and due diligence to discover and disclose is provided by the contractor and approved by the contracting officer. The disclosure must include the statement of work, the dollar value of the proposed contract, and any other documents that are needed to fully describe the proposed work for the regulated utility or other regulated entity. NRC may deny approval of the disclosed work only when the NRC has issued a task order which includes the technical area and, if site-specific, the site, or has plans to issue a task order which includes the technical area and, if site-specific, the site, or when the work violates paragraphs (c)(2), (c)(3) or (c)(4) of this section.

(e) Access to and use of information.

(1) If, in the performance of this contract, the contractor obtains access to information, such as NRC plans, policies, reports, studies, financial plans, internal data protected by the Privacy Act of 1974 (5 U.S.C. Section 552a (1988)), or the Freedom of Information Act (5 U.S.C. Section 552 (1986)), the contractor agrees not to:

(i) Use this information for any private purpose until the information has been released to the public;

(ii) Compete for work for the Commission based on the information for a period of six months after either the completion of this contract or the release of the information to the public, whichever is first;

(iii) Submit an unsolicited proposal to the Government based on the information until one year after the release of the information to the public; or

(iv) Release the information without prior written approval by the contracting officer unless the information has previously been released to the public by the NRC.

(2) In addition, the contractor agrees that, to the extent it receives or is given access to proprietary data, data protected by the Privacy Act of 1974 (5 U.S.C. Section 552a (1988)), or the Freedom of Information Act (5 U.S.C. Section 552 (1986)), or other confidential or privileged technical, business, or financial information under this contract, the contractor shall treat the information in accordance with restrictions placed on use of the information.

(3) Subject to patent and security provisions of this contract, the contractor shall have the right to use technical data it produces under this contract for private purposes provided that all requirements of this contract have been met.

(f) Subcontracts. Except as provided in 48 CFR 2009.570–2, the contractor shall include this clause, including this paragraph, in subcontracts of any tier. The terms *contract*, *contractor*, and *contracting officer*, must be appropriately modified to preserve the Government's rights.

(g) Remedies. For breach of any of the above restrictions, or for intentional nondisclosure or misrepresentation of any relevant interest required to be disclosed concerning this contract or for such erroneous representations that necessarily imply bad faith, the Government may terminate the contract for default, disqualify the contractor from subsequent contractual efforts, and pursue other remedies permitted by law or this contract.

(h) Waiver. A request for waiver under this clause must be directed in writing to the contracting officer in accordance with the procedures outlined in 48 CFR 2009.570–9.

(i) Follow-on effort. The contractor shall be ineligible to participate in NRC contracts, subcontracts, or proposals therefor (solicited or unsolicited) which stem directly from the contractor's performance of work under this contract. Furthermore, unless so directed in writing by the contracting officer, the contractor may not perform any technical consulting or management support services work or evaluation activities under this contract on any of its products or services or the products or services of another firm if the contractor has been substantially involved in the development or marketing of the products or services.

(1) If the contractor under this contract, prepares a complete or essentially complete statement of work or specifications, the contractor is not eligible to perform or participate in the initial contractual effort which is based on the statement of work or specifications. The contractor may not incorporate its products or services in the statement of work or specifications unless so directed in writing by the contracting officer, in which case the restrictions in this paragraph do not apply.

(2) Nothing in this paragraph precludes the contractor from offering or selling its standard commercial items to the Government.

(End of Clause)

2052.211–70 Preparation of technical reports.

As prescribed at § 2011.104–70(a), the contracting officer shall insert the following clause in solicitations and contracts when deliverables include a technical report. The contracting officer may alter this clause before issuing the solicitation or during competition by solicitation amendment. Insignificant changes may also be made by the contracting officer on a case-by-case basis during negotiation without amending the solicitation.

Preparation of Technical Reports (Jan 1993)

All technical reports required by Section C and all Technical Progress Reports required by Section F are to be prepared in accordance with the attached Management Directive 3.8, "Unclassified Contractor and Grantee Publications in the NUREG Series." Management Directive 3.8 is not applicable to any Contractor Spending Plan (CSP) and any Financial Status Report that may be included in this contract. (See List of Attachments).

(End of Clause)

2052.211–71 Technical progress report.

As prescribed at § 2011.104–70(b), the contracting officer shall insert the following clause in all solicitations and contracts except firm fixed price or indefinite delivery contracts to be awarded on a time-and-materials or labor-hour basis, or which provide for issuance of delivery orders for specific products/serviced line items. The contracting officer may alter this clause prior to issuance of the solicitation or during competition by solicitation amendment. Insignificant changes may also be made by the contracting officer on a case-by-case basis during negotiation without amending the solicitation.

Technical Progress Report (Jan 1993)

The contractor shall provide a monthly Technical Progress Report to the project officer and the contracting officer. The report is due within 15 calendar days after the end of the report period and must identify the title of the project, the contract number, appropriate financial tracking code specified by the NRC Project Officer, project manager and/or principal investigator, the contract period of performance, and the period covered by the report. Each report must include the following for each discrete task/task order:

(a) A listing of the efforts completed during the period, and milestones reached or, if missed, an explanation provided;

(b) Any problems or delays encountered or anticipated and recommendations for resolution. If the recommended resolution involves a contract modification, e.g., change in work requirements, level of effort (cost) or schedule delay, the contractor shall submit a separate letter to the contracting officer identifying the required change and estimated cost impact;

(c) A summary of progress to date; and

(d) Plans for the next reporting period.

(End of Clause)

2052.211–72 Financial status report.

As prescribed at § 2011.104–70(c), the contracting officer shall insert the following clause in applicable cost reimbursement solicitations and contracts when a detailed assessment of costs is warranted and a contractor spending plan is required. The contracting officer may alter this clause and Alternate 1 of this clause before issuing the solicitation or during competition by amending the solicitation. Insignificant changes may also be made by the contracting officer on a case-by-case basis during negotiation, without amending the solicitation.

Financial Status Report (Oct 1999)

The contractor shall provide a monthly Financial Status Report (FSR) to the project officer and the contracting officer. The FSR shall include the acquisition of, or changes in the status of, contractor-held property acquired with government funds valued at the time of purchase at $50,000 or more. Whenever these types of property changes occur, the contractor shall send a copy of the report to the Chief, Property and Acquisition Oversight Branch, Office of Administration. The report is due within 15 calendar days after the end of the report period and must identify the title of the project, the contract number, the appropriate financial tracking code (e.g., Job Code Number or JCN) specified by the NRC Project Officer, project manager and/or principal investigator, the contract period of performance, and the period covered by the report. Each report must include the following information for each discrete task:

(a) Total estimated contract amount.

(b) Total funds obligated to date.

(c) Total costs incurred this reporting period.

(d) Total costs incurred to date.

(e) Detail of all direct and indirect costs incurred during the reporting period for the entire contract or each task, if it is a task ordering contract.

(f) Balance of obligations remaining.

(g) Balance of funds required to complete contract/task order.

(h) Contractor Spending Plan (CSP) status: A revised CSP is required with the Financial Status Report whenever the contractor or the contracting officer has reason to believe that the total cost for performance of this contract will be either greater or substantially less than what had been previously estimated.

(1) Projected percentage of completion cumulative through the report period for the project/task order as reflected in the current CSP.

(2) Indicate significant changes in the original CSP projection in either dollars or percentage of completion. Identify the change, the reasons for the change, whether there is any projected overrun, and when additional funds would be required. If there have been no changes to the original NRC-approved CSP projections, a written statement to that effect is sufficient in lieu of submitting a detailed response to item "h".

(i) Property status:

(1) List property acquired for the project during the month with an acquisition cost between $500 and $49,999. Give the item number for the specific piece of equipment.

(2) Provide a separate list of property acquired for the project during the month with an acquisition cost of $50,000 or more. Provide the following information for each item of property: item description or nomenclature, manufacturer, model number, serial number, acquisition cost, and receipt date. If no property was acquired during the month, include a statement to that effect. The same information must be provided for any component or peripheral equipment which is part of a "system or system unit."

(3) For multi-year projects, in the September monthly financial status report provide a cumulative listing of property with an acquisition cost of $50,000 or more showing the information specified in paragraph (i)(2) of this clause.

(4) In the final financial status report provide a closeout property report containing the same elements as described above for the monthly financial status reports, for all property purchased with NRC funds regardless of value unless title has been vested in the contractor. If no property was acquired under the contract, provide a statement to that effect. The report should note any property requiring special handling for security, health, safety, or other reasons as part of the report.

(j) Travel status. List the starting and ending dates for each trip, the starting point and destination, and the traveler(s) for each trip.

(k) If the data in this report indicates a need for additional funding beyond that already obligated, this information may only be used as support to the official request for funding required in accordance with the Limitation of Cost (LOC) Clause (FAR 52.232–20) or the Limitation of Funds (LOF) Clause FAR 52.232–22.

(End of Clause)

Alternate 1 (Oct 1999)

As prescribed in § 2011.104–70(c), the contracting officer shall insert the following clause in applicable cost reimbursement solicitations and contracts when no contractor spending plan is required:

Financial Status Report—Alternate 1 (Oct 1999)

The contractor shall provide a monthly Financial Status Report (FSR) to the Project Officer and the contracting officer. The FSR shall include the acquisition of, or changes in the status of, contractor-held property acquired with government funds valued at the time of purchase at $50,000 or more. Whenever these types of changes occur, the contractor shall send a copy of the report to the Chief, Property and Acquisition Oversight Branch, Office of Administration. The report is due within 15 calendar days after the end of the report period and shall identify the title of the project, the contract number, project manager and/or principal investigator, the contract period of performance, and the period covered by the report. Each report shall include the following information for each discrete task:

(a) Total estimated contract amount.

(b) Total funds obligated to date.

(c) Total costs incurred this reporting period.

(d) Total costs incurred to date.

(e) Detail of all direct and indirect costs incurred during the reporting period for the entire contract or each task, if it is a task ordering contract.

(f) Balance of obligations remaining.

(g) Balance of funds required to complete contract/task order.

(h) Property status:

(1) List property acquired for the project during the month with an acquisition cost between $500 and $49,999. Give the item number for the specific piece of equipment.

(2) Provide a separate list of property acquired for the project during the month with an acquisition cost of $50,000 or more. Provide the following information for each item of property: item description or nomenclature, manufacturer, model number, serial number, acquisition cost, and receipt date. If no property was acquired during the month, include a statement to that effect. The same information must be provided for any component or peripheral equipment which is part of a "system or system unit."

(3) For multi-year projects, in the September monthly financial status report provide a cumulative listing of property with an acquisition cost of $50,000 or more showing the information specified in paragraph (h)(3) of this clause.

(4) In the final financial status report provide a closeout property report containing the same elements as described above for the monthly financial status reports, for all property purchased with NRC funds regardless of value unless title has been vested in the contractor. If no property was acquired under the contract, provide a statement to that effect. The report should note any property requiring special handling for security, health, safety, or other reasons as part of the report.

(i) Travel status: List the starting and ending dates for each trip, the starting point and destination, and the traveler(s) for each trip.

(j) If the data in this report indicates a need for additional funding beyond that already obligated, this information may only be used as support to the official request for funding required in accordance with the Limitation of Cost (LOC) Clause (FAR 52.232–20) or the Limitation of Funds (LOF) Clause FAR 52.232–22.

(End of Clause)

2052.214–70 Prebid conference.

As prescribed at § 2014.201–670(a), the contracting officer may insert the following provision in invitations for bids which require a prebid conference:

Prebid Conference (Jan 1993)

(a) A prebid conference is scheduled for:

Date: *

Location: *

Time: *

(b) This conference is to afford interested parties an opportunity to present questions and clarify uncertainties regarding this solicitation. You are requested to mail written questions concerning those areas of uncertainty which, in your opinion, require clarification or correction. You are encouraged to submit your questions in writing not later than * working day(s) before the conference date. Receipt of late questions may result in the questions not being answered at the conference although they will be considered in preparing any necessary amendment to the solicitation. If you plan to attend the conference, notify * by letter or telephone * , no later than close of business * . Notification of your intention to attend is essential in the event the conference is rescheduled or canceled. (Optional statement: Due to space limitations, each potential bidder is limited to * representatives at the conference.)

(c) Written questions must be submitted to: U.S. Nuclear Regulatory Commission, Division of Contracts and Property Management, Attn: *, Mail Stop T–7–I–2, Washington, DC 20555.

(d) The envelope must be marked "Solicitation No. * /Prebid Conference."

(e) A transcript of the conference will be furnished to all prospective bidders through the issuance of an amendment to the solicitation.

*To be incorporated into the solicitation.

(End of Provision)

2052.214–71 Bidder qualifications and past experiences.

As prescribed in § 2014.201–670(b), the contracting officer may insert the following provision on an optional basis to fit the circumstances of the invitation for bid.

Bidder Qualifications and Past Experience (Oct 1999)

(a) The bidder shall list previous/current contracts performed within the past * years (with no omissions) in which the Bidder was the prime or principal subcontractor. This information will assist the contracting officer in his/her Determination of Responsibility. Lack of previous/current contracts or failure to submit this information will not necessarily result in an unfavorable Determination of Responsibility.

(b) The following information shall be provided for each previous/current contract listed:

(1) Contract No.:

(2) Contract performance dates:

(3) Estimated total value of the contract (base plus all option years):

(4) Brief description of work performed under the contract:

(5) Contract Standard Industrial Code:

(6) Name and address of Government agency or commercial entity:

(7) Technical Point of Contact and current telephone number:

(8) Contracting Officer name and current telephone number:

(c) The bidder shall also provide the name, title and full telephone number of its

technical representative and contracts/business representative:

(1) Technical Representative name:
Title:
Telephone No.( )
(2) Contracts/Business Representative name:
Title:
Telephone No. ( )

*To be incorporated into the solicitation

(End of Provision)

2052.214–72 Bid evaluation.

As prescribed at § 2014.201–670(c), the contracting officer shall insert the following provision in applicable invitations for bids (paragraph "(f)" of this provision is optional):

Bid Evaluation (Jan 1993)

(a) Award will be made to that responsive, responsible bidder within the meaning of FAR Subpart 9.1 whose total bid amount, as set forth by the bidder in Section B of this Invitation for Bid (IFB), constitutes the lowest overall evaluated final contract price to the Government based upon the requirements for the schedule. Bids will be evaluated for purposes of award by first ascertaining the sum of the total amount for each of the items specified in Section B of this solicitation. This will constitute the bidder's "Total Bid Amount."

(b) Bidders shall insert a definite price or indicate "no charge" in the blank space provided for each item and/or sub-item listed in Section B. Unless expressly provided for in the bid, no additional charge will be allowed for work performed under the contract other than the unit prices stipulated for each item and/or sub-item.

(c) Any bid which is materially unbalanced as to price for the separate items specified in Section B of this IFB may be rejected as nonresponsive. An unbalanced bid is defined as one which is based on prices which, in the opinion of the NRC, are significantly less than cost for some work and/or prices that may be significantly overstated for other work.

(d) Separation charges, in any form, are not solicited. Bids containing charges for discontinuance, termination, failure to exercise an option, or for any other purpose will cause the bid to be rejected as nonresponsive.

(e) A preaward on-site survey of the bidder's facilities, equipment, etc., in accordance with FAR 9.105 and 9.106, may be made by representatives of the Commission for the purpose of determining whether the bidder is responsible within the meaning of FAR 9.1, and whether the bidder possesses qualifications that are conducive to the production of work that will meet the requirements, specifications, and provisions of this contract. If requested by the Commission, the prospective contractor may also be required to submit statements within * hours after receiving the request:

(1) Concerning their ability to meet any of the minimum standards set forth in FAR 9.104,

(2) Samples of work, and

(3) Names and addresses of additional clients, Government agencies, and/or commercial firms which the bidder is now doing or had done business with.

(f) Notwithstanding paragraph (b) of this section, the award of any contract resulting from this solicitation will be made on an "all or none" basis. Thus, bids submitted on fewer than the items listed in Section B of this IFB, or on fewer than the estimated quantity, will cause the bid to be rejected as nonresponsive.

*To be inserted into solicitation.

(End of Provision)

2052.214–73 Timely receipt of bids.

As prescribed at § 2014.670(b), the contracting officer shall insert the following provision in all invitations for bids:

Timely Receipt of Bids (Oct 1999)

Sealed offers for furnishing the services or supplies in the schedule are due at the date and time stated in block 9 of Standard Form 33, Solicitation, Offer and Award. Offers sent through the U.S. Mail (including U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee) must be addressed to the place specified in the solicitation. All hand-carried offers including those made by private delivery services (e.g., Federal Express and Airborne Express) must be delivered to the NRC loading dock security station located at 11545 Rockville Pike, Rockville, Maryland 20852 and received in the depository located in Room T–7–I–2. All offerors should allow extra time for internal mail distribution or for pick up of hand-carried deliveries. The NRC is a secure facility with perimeter access-control and NRC personnel are only available to receive hand-carried offers during normal working hours, 7:30 AM–3:30 PM, Monday through Friday, excluding Federal holidays.

(End of Provision)

2052.214–74 Disposition of bids.

As prescribed at § 2014.670(b), the contracting officer shall insert the following provision in applicable invitation for bids:

Disposition of Bids (Jan 1993)

After award of the contract, one copy of each unsuccessful bid will be retained by the NRC's Division of Contracts and Property Management in accordance with the General Records Schedule 3(5)(b). Unless return of the additional copies of the bid is requested by the bidder upon submission of the bid, all other copies will be destroyed. This request should appear in a cover letter accompanying the bid.

(End of Provision)

2052.215–70 Key personnel.

As prescribed at § 2015.209–70(a)(1), the contracting officer shall insert in solicitations and contracts the following clause as applicable to the requirement:

Key Personnel (Jan 1993)

(a) The following individuals are considered to be essential to the successful performance of the work hereunder:

*

The contractor agrees that personnel may not be removed from the contract work or replaced without compliance with paragraphs (b) and (c) of this section.

(b) If one or more of the key personnel, for whatever reason, becomes, or is expected to become, unavailable for work under this contract for a continuous period exceeding 30 work days, or is expected to devote substantially less effort to the work than indicated in the proposal or initially anticipated, the contractor shall immediately notify the contracting officer and shall, subject to the con currence of the contracting officer, promptly replace the personnel with personnel of at least substantially equal ability and qualifications.

(c) Each request for approval of substitutions must be in writing and contain a detailed explanation of the circumstances necessitating the proposed substitutions. The request must also contain a complete resume for the proposed substitute and other information requested or needed by the contracting officer to evaluate the proposed substitution. The contracting officer and the project officer shall evaluate the contractor's request and the contracting officer shall promptly notify the contractor of his or her decision in writing.

(d) If the contracting officer determines that suitable and timely replacement of key personnel who have been reassigned, terminated, or have otherwise become unavailable for the contract work is not reasonably forthcoming, or that the resultant reduction of productive effort would be so substantial as to impair the successful completion of the contract or the service order, the contract may be terminated by the contracting officer for default or for the convenience of the Government, as appropriate. If the contracting officer finds the contractor at fault for the condition, the contract price or fixed fee may be equitably adjusted downward to compensate the Government for any resultant delay, loss, or damage.

(End of Clause)

*To be incorporated into any resultant contract

2052.215–71 Project officer authority.

As prescribed in § 2015.209–70(a)(2)(i), the contracting officer shall insert the following clause in applicable solicitations and contracts for cost-reimbursement, cost-plus-fixed-fee, cost-plus-award-fee, cost sharing, labor-hour or time-and-materials, including task order contracts. This clause and the following alternate clauses are intended for experienced, trained projects officers, and may be altered to delete duties where appropriate:

Project Officer Authority (Oct 1999)

(a) The contracting officer's authorized representative hereinafter referred to as the project officer for this contract is:

Name: *
Address: *
Telephone Number: *

(b) Performance of the work under this contract is subject to the technical direction of the NRC project officer. The term *technical direction* is defined to include the following:

(1) Technical direction to the contractor which shifts work emphasis between areas of work or tasks, authorizes travel which was unanticipated in the Schedule (i.e., travel not contemplated in the Statement of Work or changes to specific travel identified in the Statement of Work), fills in details, or otherwise serves to accomplish the contractual statement of work.

(2) Provide advice and guidance to the contractor in the preparation of drawings, specifications, or technical portions of the work description.

(3) Review and, where required by the contract, approve technical reports, drawings, specifications, and technical information to be delivered by the contractor to the Government under the contract.

(c) Technical direction must be within the general statement of work stated in the contract. The project officer does not have the authority to and may not issue any technical direction which:

(1) Constitutes an assignment of work outside the general scope of the contract.

(2) Constitutes a change as defined in the "Changes" clause of this contract.

(3) In any way causes an increase or decrease in the total estimated contract cost, the fixed fee, if any, or the time required for contract performance.

(4) Changes any of the expressed terms, conditions, or specifications of the contract.

(5) Terminates the contract, settles any claim or dispute arising under the contract, or issues any unilateral directive whatever.

(d) All technical directions must be issued in writing by the project officer or must be confirmed by the project officer in writing within ten (10) working days after verbal issuance. A copy of the written direction must be furnished to the contracting officer. A copy of NRC Form 445, Request for Approval of Official Foreign Travel, which has received final approval from the NRC must be furnished to the contracting officer.

(e) The contractor shall proceed promptly with the performance of technical directions duly issued by the project officer in the manner prescribed by this clause and within the project officer's authority under the provisions of this clause.

(f) If, in the opinion of the contractor, any instruction or direction issued by the project officer is within one of the categories defined in paragraph (c) of this section, the contractor may not proceed but shall notify the contracting officer in writing within five (5) working days after the receipt of any instruction or direction and shall request that contracting officer to modify the contract accordingly. Upon receiving the notification from the contractor, the contracting officer shall issue an appropriate contract modification or advise the contractor in writing that, in the contracting officer's opinion, the technical direction is within the scope of this article and does not constitute a change under the "Changes" clause.

(g) Any unauthorized commitment or direction issued by the project officer may result in an unnecessary delay in the contractor's performance and may even result in the contractor expending funds for unallowable costs under the contract.

(h) A failure of the parties to agree upon the nature of the instruction or direction or upon the contract action to be taken with respect to the instruction or direction is subject to § 52.233–1—Disputes.

(i) In addition to providing technical direction as defined in paragraph (b) of the section, the project officer shall:

(1) Monitor the contractor's technical progress, including surveillance and assessment of performance, and recommend to the contracting officer changes in requirements.

(2) Assist the contractor in the resolution of technical problems encountered during performance.

(3) Review all costs requested for reimbursement by the contractor and submit to the contracting officer recommendations for approval, disapproval, or suspension of payment for supplies and services required under this contract.

(End of Clause)

Alternate 1 (Oct 1999)

As prescribed at § 2015.209–70(a)(2)(ii), the contracting officer shall insert the following clause in solicitations and contracts which require issuance of delivery orders for specific products/services.

Project Officer Authority—Alternate 1 (Oct 1999)

(a) The contracting officer's authorized representative, hereinafter referred to as the project officer, for this contract is:

Name: *
Address: *
Telephone Number: *

(b) The project officer shall:

(1) Place delivery orders for items required under this contract up to the amount obligated on the contract award document.

(2) Monitor contractor performance and recommend changes in requirements to the contracting officer.

(3) Inspect and accept products/services provided under the contract.

(4) Review all contractor invoices/vouchers requesting payment for products/services provided under the contract and make recommendations for approval, disapproval, or suspension.

(c) The project officer may not make changes to the express terms and conditions of this contract.

*To be incorporated into any resultant contract.

(End of Clause)

Alternate 2 (Oct 1999)

As prescribed at § 2015.209(a)(2)(iii), the contracting officer shall insert in solicitations for firm fixed price contracts, the clause at 2052.215–71 Project Officer Authority Alternate 1 which shall be used with paragraph (b)(1) deleted and the remainder of the clause renumbered.

2052.215–72 Timely receipt of proposals.

As prescribed in § 2015.209–70(a)(3), the contracting officer shall insert the following provision in all solicitations:

Timely Receipt of Proposals (Oct 1999)

Sealed offers for furnishing the services or supplies in the schedule are due at the date and time stated in block 9 of Standard Form 33, Solicitation, Offer and Award. Offers sent through the U.S. Mail (including U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee) must be addressed to the place specified in the solicitation. All hand-carried offers including those made by private delivery services (e.g., Federal Express and Airborne Express) must be delivered to the NRC loading dock security station located at 11545 Rockville Pike, Rockville, Maryland 20852 and received in the depository located in Room T–7–I–2. All offerors should allow extra time for internal mail distribution or for pick up of hand-carried deliveries. The NRC is a secure facility with perimeter access-control and NRC personnel are only available to receive hand-carried offers during normal working hours, 7:30 AM—3:30 PM, Monday through Friday, excluding Federal holidays.

(End of Provision)

2052.215–73 Award notification and commitment of public funds

As prescribed at § 2015.209–70 (a)(4), the contracting officer shall insert the following clause in applicable solicitations:

Award Notification and Commitment of Public Funds (Oct 1999)

(a) All offerors will be notified of their exclusion from the competitive range in accordance with FAR 15.503(a)(1). Under the requirements of FAR 15.503(a)(2), preliminary notification will be provided before award for small business set-aside procurements on negotiated procurements. The contracting officer shall provide written postaward notice to each unsuccessful offeror in accordance with FAR 15.503(b).

(b) The contracting officer is the only individual who can legally commit the NRC to the expenditure of public funds in connection with this procurement. This means that, unless provided in a contract document or specifically authorized by the contracting officer, NRC technical personnel may not issue contract modifications, give informal contractual commitments, or otherwise bind, commit, or obligate the NRC contractually. Informal contractual commitments include:

(1) Encouraging a potential contractor to incur costs before receiving a contract;

(2) Requesting or requiring a contractor to make changes under a contract without formal contract modifications;

(3) Encouraging a contractor to incur costs under a cost-reimbursable contract in excess of those costs contractually allowable; and

(4) Committing the Government to a course of action with regard to a potential contract, contract change, claim, or dispute.

(End of Clause)

2052.215–74 Disposition of proposals.

As prescribed in § 2015.209–70(a)(5), the contracting officer shall insert the following provision in all solicitations:

Disposition of Proposals (Jan. 1993)

After award of the contract, one copy of each unsuccessful proposal is retained by the NRC's Division of Contracts and Property Management in accordance with the General Records Schedule 3(5)(b). Unless return of the additional copies of the proposals is requested by the offeror upon submission of the proposals, all other copies will be destroyed. This request should appear in a cover letter accompanying the proposal.

(End of Provision)

2052.215–75 Proposal presentation and format.

As prescribed at § 2015.209–70(b)(1), the contracting officer may insert the following provision in applicable negotiated procurements for cost type solicitations. This clause may be tailored to each procurement and solicitation evaluation criteria by the contracting officer to fit the circumstances of the procurement.

Proposal Presentation and Format (Oct. 1999)

(a) Information submitted in response to this solicitation must be typed, printed, or reproduced on letter-size paper and each copy must be legible. All information provided, including all resumes, must be accurate, truthful, and complete to the best of the offeror's knowledge and belief. The Commission will rely upon all representations made by the offeror both in the evaluation process and for the performance of the work by the offeror selected for award. The Commission may require the offeror to substantiate the credentials, education, and employment history of its employees, subcontractor personnel, and consultants, through submission of copies of transcripts, diplomas, licenses, etc.

(b) The offeror shall submit the following material which constitutes its offer, as defined by FAR 2.101, in two separate and distinct parts at the date and time specified in * of the solicitation for receipt of sealed offers.

(1) Part 1—Solicitation Package/Offer. Two (2) original signed copies of this solicitation package/offer. All applicable sections must be completed by the offeror.

(2) Part 2—Cost Proposal. One (1) original and * copies of the "Cost Proposal."

(i) The cost proposal shall be submitted separately from the Technical and Management Proposal or Oral Presentation and Supporting Documentation (as applicable).

(ii) The offeror's request for an exception to submitting cost or pricing data shall be made in accordance with FAR 52.215–20(a).

(iii) If the contracting officer does not grant the offeror an exception from the requirement to submit cost or pricing data, the offeror's cost proposal shall conform with the requirements of FAR 52.215–20(b). Cost information shall include pertinent details sufficient to show the elements of cost upon which the total cost is predicted in accordance with the requirement of FAR 52.215–20 (b)(1).

(iv) When the offeror's estimated cost for the proposed work exceeds $100,000 and the duration of the contract period exceeds six months, the offeror shall submit a Contractor Spending Plan (CSP) as part of its cost proposal. Guidance for completing the CSP is attached.

(v) For any subcontract discussed under the Technical and Management Proposal, or Oral Presentation Material, provide supporting documentation on the selection process, i.e., competitive vs. noncompetitive, and the cost evaluation.

(c) "Written Technical and Management Proposal" or "Oral Presentation and Supporting Documentation" (as applicable). One (1) original and * copies.

(1) The written Technical and Management Proposal or Oral Presentation and Supporting Documentation may not contain any reference to cost. Resource information, such as data concerning labor hours and categories, materials, subcontracts, travel, computer time, etc., must be included so that the offeror's understanding of the scope of work may be evaluated.

(2) The offeror shall submit in the written Technical and Management Proposal or Oral Presentation and Supporting Documentation full and complete information as set forth below to permit the Government to make a thorough evaluation and a sound determination that the proposed approach will have a reasonable likelihood of meeting the requirements and objectives of this procurement.

(3) The written Technical Proposal or Oral Presentation and Supporting Documentation must be tailored to assure that all information reflects a one-to-one relationship to the evaluation criteria.

(4) Statements which paraphrase the statement of work without communicating the specific approach proposed by the offeror, or statements to the effect that the offeror's understanding can or will comply with the statement of work may be construed as an indication of the offeror's lack of understanding of the statement of work and objectives.

(d) Written Technical or Oral Presentation and Supporting Documentation Requirements—Instructions.

*

*To be incorporated into the solicitation.

(End of Provision)

Alternate 1 (Oct. 1999)

As prescribed at § 2015.209–70(b)(2), this Alternate 1 may be used for solicitations for negotiated task orders. Include the following paragraph (iv) in place of paragraph (b)(2)(iv) of the basic provision:

(b)(2)(iv) The offeror's cost proposal shall be based on the NRC's estimated level of effort. The NRC's estimated level of effort for this procurement is approximately * professional and * clerical staff-years for the duration of this contract. This information is advisory and is not to be considered as the sole basis for the development of the staffing plan. For the purposes of the Government estimate, 2000 hours constitute a staff year. The total estimated cost proposed by the offeror is used for evaluation purposes only. Any resultant contract, except a requirements contract, contains an overall cost ceiling whereby individual task orders may be issued. The cost and fee, if any, for each task order is individually negotiated and also contains a cost ceiling.

Alternate 2 (Oct. 1999)

As proposed at § 2015.209–70(b)(3), Alternate 2 may be used for solicitations for negotiated fixed price, labor hour, or time and materials contracts. Substitute the following paragraph (b)(2)(ii) for the paragraph (b)(2)(ii) of the basic provision, delete paragraphs (b)(2)(iii)—(iv) of the basic provision, and renumber the remaining paragraphs.

(ii) Submittal of information other than cost or pricing data shall be made in accordance with FAR 52.215–20 Alternate IV.

2052.215–76 Preproposal conference.

As prescribed at § 2015.407–70(c), the contracting officer may insert the following provision in applicable solicitations which include a preproposal conference:

Preproposal Conference (Jan. 1993)

(a) A preproposal conference is scheduled for:

Date: *

Location: *

Time: *

(b) This conference is to afford interested parties an opportunity to present questions and clarify uncertainties regarding this solicitation. You are requested to mail written questions concerning those areas of uncertainty which, in your opinion, require clarification or correction. You are encouraged to submit your questions in writing not later than * working day(s) before the conference date. Receipt of late questions may result in the questions not being answered at the conference although they will be considered in preparing any necessary amendment to the solicitation. If you plan to attend the conference, notify * by letter or telephone * , no later than close of business * . Notification of your intention to attend is essential in the event the conference is rescheduled or canceled. (Optional statement: Due to space limitations, each potential offeror is limited to * representatives at the conference.)

(c) Written questions must be submitted to: U.S. Nuclear Regulatory Commission, Division of Contracts and Property Management, Attn: *, Mail Stop T–7–I–2, Washington, DC 20555.

(d) The envelope must be marked "Solicitation No. */Preproposal Conference."

*To be incorporated into the solicitation.

(e) A transcript of the conference will be furnished to all prospective offerors through the issuance of an amendment to the solicitation.

(End of Provision)

§ 2052.215–77 Travel approvals and reimbursement.

As prescribed at 2015.209–70(d), the contracting officer shall insert the following clause in cost reimbursement solicitations and contracts which require travel but do not set a specific ceiling amount on that travel. Requests for foreign travel must be submitted to the NRC 30 days in advance of the travel date.

Travel Approvals and Reimbursement (Oct. 1999)

(a) All foreign travel must be approved in advance by the NRC on NRC Form 445, Request for Approval of Official Foreign Travel, and must be in compliance with FAR 52.247–63 Preference for U.S. Flag Air Carriers. The contractor shall submit NRC Form 445 to the NRC no later than 30 days before beginning travel.

(b) The contractor must receive written approval from the NRC Project Officer before taking travel that was unanticipated in the Schedule (i.e., travel not contemplated in the Statement of Work, or changes to specific travel identified in the Statement of Work).

(c) The contractor will be reimbursed only for travel costs incurred that are directly related to this contract and are allowable subject to the limitations prescribed in FAR 31.205–46.

(d) It is the responsibility of the contractor to notify the contracting officer in accordance with the Limitations of Cost clause of this contract when, at any time, the contractor learns that travel expenses will cause the contractor to exceed the estimated costs specified in the Schedule.

(e) Reasonable travel costs for research and related activities performed at State and nonprofit institutions, in accordance with Section 12 of Pub. L. 100–679, must be charged in accordance with the contractor's institutional policy to the degree that the limitations of Office of Management and Budget (OMB) guidance are not exceeded. Applicable guidance documents include OMB Circular A–87, Cost Principles for State and Local Governments; OMB Circular A–122, Cost Principles for Nonprofit Organizations; and OMB Circular A–21, Cost Principles for Educational Institutions.

(End of Clause)

§ 2052.215–78 Travel approvals and reimbursement—Alternate 1.

As prescribed in § 2015.209–70(d), the contracting officer shall insert the following clause in cost reimbursement solicitations and contracts which include a ceiling amount on travel. Requests for foreign travel must be submitted to the NRC 30 days in advance of the travel date.

Travel Approvals and Reimbursement—Alternate 1 (Oct. 1999)

(a) Total expenditure for travel may not exceed _____ * _____ without the prior approval of the contracting officer.

(b) All foreign travel must be approved in advance by the NRC on NRC Form 445, Request for Approval of Official Foreign Travel, and must be in compliance with FAR 52.247–63 Preference for U.S. Flag Air Carriers. The contractor shall submit NRC Form 445 to the NRC no later than 30 days prior to the commencement of travel.

(c) The contractor will be reimbursed only for travel costs incurred that are directly related to this contract and are allowable subject to the limitations prescribed in FAR 31.205–46.

(d) It is the responsibility of the contractor to notify the contracting officer in accordance with the FAR Limitations of Cost clause of this contract when, at any time, the contractor learns that travel expenses will cause the contractor to exceed the travel ceiling amount identified in paragraph (a) of this clause.

(e) Reasonable travel costs for research and related activities performed at State and nonprofit institutions, in accordance with Section 12 of Pub. L. 100–679, must be charged in accordance with the contractor's institutional policy to the degree that the limitations of Office of Management and Budget (OMB) guidance are not exceeded. Applicable guidance documents include OMB Circular A–87, Cost Principles for State and Local Governments; OMB Circular A–122, Cost Principles for Nonprofit Organizations; and OMB Circular A–21, Cost Principles for Educational Institutions.

*To be incorporated into any resultant contract.

(End of Clause)

2052.215–79 Contract award and evaluation of proposals.

As prescribed in § 2015.209(a)(1), the contracting officer shall insert the following provision in solicitations when technical merit is more important than cost:

Contract Award and Evaluation of Proposals (Oct 1999)

(a) By use of narrative and numerical (as appropriate) scoring techniques, proposals are evaluated against the evaluation factors specified in paragraph * below. These factors are listed in their relative order of importance.

(b) The Government intends to award a contract or contracts resulting from this solicitation to the responsible offeror(s) whose proposal(s) represents the best value, as defined in FAR 2.101, after evaluation in accordance with the factors and subfactors in the solicitation.

(c) The Government may:

(1) Reject any or all proposals if the action is in the Government's interest.

(2) Waive informalities and minor irregularities in proposals received.

(d) The Government intends to evaluate proposals and award a contract without discussions with offerors. The Government reserves the right to seek proposal clarifications (e.g., capability issues as described in FAR 15.306(a) or minor or clerical errors as described in FAR 14.407); and hold communications as described in FAR 15.306(b)). Therefore, the offeror's initial proposal should contain the offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

(e) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the proposal.

(f) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.

(g) Exchanges with offerors after receipt of a proposal do not constitute a rejection or counteroffer by the Government.

(h) The Government may determine that a proposal is unacceptable if the prices proposed are materially unbalanced between line items or subline items. Unbalanced pricing exists when, despite an acceptable total evaluated price, the price of one or more contract line items is significantly overstated or understated as indicated by the application of cost or price analysis techniques. A proposal may be rejected if the Contracting Officer determines that the lack of balance poses an unacceptable risk to the Government.

(i) If a cost realism analysis is performed, cost realism may be considered by the source selection authority in evaluating performance or schedule risk.

(j) A written award or acceptance of proposal mailed or otherwise furnished to the successful offeror within the time specified in the proposal shall result in a binding contract without further action by either party.

(k) A separate cost analysis is performed on each cost proposal. To provide a common base for evaluation of cost proposals, the level of effort data must be expressed in staff hours. Where a Contractor Spending Plan (CSP) is required by other provisions of this solicitation, consideration is given to the Plan for completeness, reasonableness, and as a measure of effective management of the effort.

* To be incorporated into the solicitation.

(End of Provision)

Alternate 1 (Oct 1999)

As prescribed at § 2015.209–70(e)(2), Alternate 1 may be used when proposals are to be evaluated on a lowest price, technically acceptable basis. Substitute the following paragraph for paragraph (b) in the clause at § 2052.215–79:

(b) Although technical merit in the evaluation criteria set forth below is a factor in the evaluation of proposals, award will be made on the basis of the lowest evaluated price of proposals meeting or exceeding the acceptability standards for non-cost factors.

Alternate 2 (Oct 1999)

As prescribed at § 2015.209–70(e)(2), Alternate 2 may be used when cost and technical merit are of equal significance. Substitute the following paragraph for paragraph (b) in the clause at § 2052.215–79:

(b) In the selection of a contractor, technical merit in the evaluation criteria set forth below and cost bear equal significance.

To be selected for an award, the proposed cost must be realistic and reasonable.

2052.216–70 Level of effort.

As prescribed at § 2016.307–70(a) the contracting officer shall insert the following provision in solicitations for negotiated procurements containing labor costs other than maintenance services, to be awarded on a cost reimbursement, cost sharing, cost-plus-award-fee, cost-plus-fixed-fee, time and materials, or labor hours basis.

Level of Effort (Jan 1993)

The NRC's estimate of the total effort for this project is approximately * professional and * clerical staff-years for the duration of this contract. This information is advisory and is not to be considered as the sole basis for the development of the staffing plan. For the purposes of the Government estimate, 2000 hours constitute a staff year.

*To be incorporated into any resultant contract.

(End of Provision)

2052.216–71 Indirect cost rates.

As prescribed at § 2016.307–70(b), the contracting officer may insert the following clause in solicitations and contracts where provisional rates without ceiling apply.

Indirect Cost Rates (Jan 1993)

(a) Pending the establishment of final indirect rates which must be negotiated based on audit of actual costs, the contractor shall be reimbursed for allowable indirect costs as follows:

*

(b) The contracting officer may adjust these rates as appropriate during the term of the contract upon acceptance of any revisions proposed by the contractor. It is the contractor's responsibility to notify the contracting officer in accordance with FAR 52.232–20, Limitation of Cost, or FAR 52.232–22, Limitation of Funds, as applicable, if these changes affect performance of work within the established cost or funding limitations.

*To be incorporated into any resultant contract.

(End of Clause)

Alternate 1

As prescribed at § 2016.307–70(b)(2), the contracting officer may insert the following clause in applicable solicitations and contracts where predetermined rates apply:

Indirect Cost Rates—Alternate 1 (Jan 1993)

The contractor is reimbursed for allowable indirect costs in accordance with the following predetermined rates:

*

*To be incorporated into any resultant contract.

(End of Clause)

Alternate 2 (Oct. 1999)

As prescribed at § 2016.307–70(b), the contracting officer may insert the following clause in applicable solicitations and contracts where provisional rates with ceilings apply:

Indirect Costs (Ceiling)—Alternate 2 (Oct 1999)

(a) For this contract, the ceiling amount reimbursable for indirect costs is as follows:

*

(b) In the event that indirect rates developed by the cognizant audit activity on the basis of actual allowable costs result in a lower amount for indirect costs, the lower amount will be paid. The Government may not be obligated to pay any additional amounts for indirect costs above the ceiling rates set forth above for the applicable period.

*To be incorporated into any resultant contract.

(End of Clause)

2052.216–72 Task order procedures.

As prescribed at § 2016.506–70(a), the contracting officer may insert the following clause in applicable solicitations and contracts that contain task order procedures. This clause may be altered to fit the circumstances of the requirement.

Task Order Procedures (Oct 1999)

(a) Task order request for proposal. When a requirement within the scope of work for this contract is identified, the contracting officer shall transmit to the contractor a Task Order Request for Proposal (TORFP) which may include the following, as appropriate:

(1) Scope of work/meetings/travel and deliverables;

(2) Reporting requirements;

(3) Period of performance—place of performance;

(4) Applicable special provisions;

(5) Technical skills required; and

(6) Estimated level of effort.

(b) Task order technical proposal. By the date specified in the TORFP, the contractor shall deliver to the contracting officer a written or verbal (as specified in the TORFP technical proposal submittal instructions) technical proposal that provides the technical information required by the TORFP.

(c) Cost proposal. The contractor's cost proposal for each task order must be fully supported by cost and pricing data adequate to establish the reasonableness of the proposed amounts. When the contractor's estimated cost for the proposed task order exceeds $100,000 and the period of performance exceeds six months, the contractor may be required to submit a Contractor Spending Plan (CSP) as part of its cost proposal. The TORP indicates if a CSP is required.

(d) Task order award. The contractor shall perform all work described in definitized task orders issued by the contracting officer. Definitized task orders include the following:

(1) Statement of work/meetings/travel and deliverables;

(2) Reporting requirements;

(3) Period of performance;

(4) Key personnel;

(5) Applicable special provisions; and

(6) Total task order amount including any fixed fee.

(End of Clause)

2052.216–73 Accelerated task order procedures.

As prescribed at § 2016.506–70(b), the contracting officer may insert the following clause in applicable solicitations and contracts that contain task order procedures. This clause may be altered to fit the circumstances of the requirement.

Accelerated Task Order Procedures (Jan 1993)

(a) The NRC may require the contractor to begin work before receiving a definitized task order from the contracting officer. Accordingly, when the contracting officer verbally authorizes the work, the contractor shall proceed with performance of the task order subject to the monetary limitation established for the task order by the contracting officer.

(b) When this accelerated procedure is employed by the NRC, the contractor agrees to begin promptly negotiating with the contracting officer the terms of the definitive task order and agrees to submit a cost proposal with supporting cost or pricing data. If agreement on a definitized task order is not reached by the target date mutually agreed upon by the contractor and contracting officer, the contracting officer may determine a reasonable price and/or fee in accordance with Subpart 15.8 and Part 31 of the FAR, subject to contractor appeal as provided in 52.233–1, Disputes. In any event, the contractor shall proceed with completion of the task order subject only to the monetary limitation established by the contracting officer and the terms and conditions of the basic contract.

(End of Clause)

2052.222–70 Nondiscrimination because of age.

As prescribed at § 2022.901–70, the contracting officer shall insert the following clause in all solicitations:

Nondiscrimination Because of Age (Jan 1993)

It is the policy of the Executive Branch of the Government that:

(a) Contractors and subcontractors engaged in the performance of Federal contracts may not, in connection with the employment, advancement, or discharge of employees or in connection with the terms, conditions, or privileges of their employment, discriminate against persons because of their age except upon the basis of a bona fide occupational qualification, retirement plan, or statutory requirement; and

(b) That contractors and subcontractors, or persons acting on their behalf, may not specify, in solicitations or advertisements for employees to work on Government contracts, a maximum age limit for employment unless the specified maximum age limit is based upon a bona fide occupational qualification, retirement plan, or statutory requirement.

(End of Provision)

2052.227–70 Drawings, designs, specifications, and other data.

As prescribed at § 2027.305–70, the contracting officer shall insert the following clause in all solicitations and contracts in which drawings, designs, specifications, and other data will be developed and the NRC must retain full rights to them (except for the contractor's right to retain a copy for its own use). When any of the clauses prescribed at FAR 27.409 are included in the solicitation and contract, this clause will not be used.

Drawings, Designs, Specifications, and Other Data (Jan 1993)

All drawings, sketches, designs, design data, specifications, notebooks, technical and scientific data, and all photographs, negatives, reports, findings, recommendations, other data and memoranda of every description relating thereto, as well as all copies of the foregoing relating to the work or any part thereto, are subject to inspection by the Commission at all reasonable times. Inspection of the proper facilities must be afforded the Commission by the contractor and its subcontractors. These data are the property of the Government and may be used by the Government for any purpose whatsoever without any claim on the part of the contractor and its subcontractors and vendors for additional compensation and must, subject to the right of the contractor to retain a copy of the material for its own use, be delivered to the Government, or otherwise disposed of by the contractor as the contracting officer may direct during the progress of the work or upon completion or termination of this contract. The contractor's right of retention and use is subject to the security, patent, and use of information provisions, if any, of this contract.

(End of Clause)

2052.231–70 Precontract costs.

As prescribed in § 2031.109–70, following clause may be used in all cost type contracts when costs in connection with work under the contract will be incurred by the contractor before the effective date of the contract. Approval for use of this clause must be obtained at one level above the contracting officer.

Precontract Costs (Jan 1993)

Allowable costs under this contract include costs incurred by the contractor in connection with the work covered by this contract during the period from * and including * to the effective date of this contract that would have been allowable under the terms of this contract if this contract had been in effect during that period. However, the costs may not in aggregate exceed * which is included in the estimated cost of this contract.

*To be incorporated into any resultant contract.

(End of Clause)

2052.235–70 Publication of research results.

As prescribed in § 2035.70(a)(1), the contracting officer shall insert the following clause in applicable solicitations and contracts for research and development by private contractors and universities and for other technical services as appropriate.

Publication of Research Results (Oct 1999)

(a) The principal investigator(s)/contractor shall comply with the provisions of NRC Management Directive 3.8 (Vol. 3, Part 1) and NRC Handbook 3.8 (Parts I-IV) regarding publication in refereed scientific and engineering journals or dissemination to the public of any information, oral or written, concerning the work performed under this contract. Failure to comply with this clause shall be grounds for termination of this contract.

(b) The principal investigator(s)/contractor may publish the results of this work in refereed scientific and engineering journals or in open literature and present papers at public or association meetings at interim stages of work, in addition to submitting to NRC the final reports and other deliverables required under this contract. However, such publication and papers shall focus on advances in science and technology and minimize conclusions and/or recommendations which may have regulatory implications.

(c) The principal investigator(s) shall coordinate all such publications with, and transmit a copy of the proposed article or paper to, the NRC Contracting Officer or Project Officer, prior to publication. The NRC agrees to review and provide comments within thirty (30) days after receipt of a proposed publication. However, in those cases where the information to be published is (1) subject to Commission approval, (2) has not been ruled upon, or (3) disapproved by the Commission, the NRC reserves the right to disapprove or delay the publication. Further, if the NRC disagrees with the proposed publication for any reason, it reserves the right to require that any publication not identify the NRC's sponsorship of the work and that any associated publication costs shall be borne by the contractor.

(End of Clause)

2052.235–71 Safety, health, and fire protection.

As prescribed in § 2035.70(a)(2), the contracting officer shall insert the following clause in applicable solicitations and contracts for research and development by private contractors and universities and for other technical services as appropriate:

Safety, Health, and Fire Protection (Jan. 1993)

The contractor shall take all reasonable precautions in the performance of the work under this contract to protect the health and safety of its employees and of members of the public, including NRC employees and contractor personnel, and to minimize danger from all hazards to life and property. The contractor shall comply with all applicable health, safety, and fire protection regulations and requirements (including reporting requirements) of the Commission and the Department of Labor. If the contractor fails to comply with these regulations or requirements, the contracting officer may, without prejudice to any other legal or contractual rights of the Commission, issue an order stopping all or any part of the work. Thereafter, a start work order for resumption of work may be issued at the discretion of the contracting officer. The contractor may not make a claim for an extension of time or for compensation or damages by reason of, or in connection with, this type of work stoppage.

(End of Clause)

2052.242–70 Resolving differing professional views.

As prescribed in § 2042.570–1, the contracting officer shall insert the following clause in the body of cost reimbursement solicitations and contracts for professional services, as appropriate. This clause may not be altered by the contracting officer.

Resolving NRC Contractor Differing Professional Views (DPVs) (Date)

(a) The Nuclear Regulatory Commission's (NRC) policy is to support the contractor's expression of professional health and safety related concerns associated with the contractor's work for NRC that may differ from a prevailing NRC staff view, disagree with an NRC decision or policy position, or take issue with proposed or established agency practices. An occasion may arise when an NRC contractor, contractor's personnel, or subcontractor personnel believes that a conscientious expression of a competent judgement is required to document such concerns on matters directly associated with its performance of the contract. The NRC's policy is to support these instances as Differing Professional Views (DPVs).

(b) The procedure that will be used provides for the expression and resolution of differing professional views (DPVs) of health and safety related concerns associated with the mission of the agency by NRC contractors, contractor personnel or subcontractor personnel on matters directly associated with its performance of the contract. This procedure may be found in Attachments to this document. The contractor shall provide a copy of the NRC DPV procedure to all of its employees performing under this contract and to all subcontractors who shall, in turn, provide a copy of the procedure to its employees. The prime contractor or subcontractor shall submit all DPV's received but need not endorse them.

(End of Clause)

2052.242–71 Procedures for Resolving Differing Professional Views.

As prescribed in 2042.570–2(b), the contracting officer shall include the following clause as an attachment to

cost reimbursement solicitations and contracts for professional services, as appropriate. This clause may not be altered by the contracting officer.

Procedures for Resolving NRC Contractor Differing Professional Views (DPVs) (Oct. 1999)

(a) The following procedure provides for the expression and resolution of differing professional views (DPVs) of health and safety related concerns of NRC contractors and contractor personnel on matters connected to the subject of the contract. Subcontractor DPVs must be submitted through the prime contractor. The prime contractor or subcontractor shall submit all DPV's received but need not endorse them.

(b) The NRC may authorize up to eight reimbursable hours for the contractor to document, in writing, a DPV by the contractor, the contractor's personnel, or subcontractor personnel. The contractor shall not be entitled to any compensation for effort on a DPV which exceeds the specified eight hour limit.

(c) Before incurring costs to document a DPV, the contractor shall first determine whether there are sufficient funds obligated under the contract which are available to cover the costs of writing a DPV. If there are insufficient obligated funds under the contract, the contractor shall first request the NRC contracting officer for additional funding to cover the costs of preparing the DPV and authorization to proceed.

(d) Contract funds shall not be authorized to document an allegation where the use of this NRC contractor DPV process is inappropriate. Examples of such instances are: allegations of wrongdoing which should be addressed directly to the NRC Office of the Inspector General (OIG), issues submitted anonymously, or issues raised which have already been considered, addressed, or rejected, absent significant new information. This procedure does not provide anonymity. Individuals desiring anonymity should contact the NRC OIG or submit the information under NRC's Allegation Program, as appropriate.

(e) When required, the contractor shall initiate the DPV process by submitting a written statement directly to the NRC Office Director or Regional Administrator responsible for the contract, with a copy to the Contracting Officer, Division of Contracts and Property Management, Office of Administration. Each DPV submitted will be evaluated on its own merits.

(f) The DPV, while being brief, must contain the following as it relates to the subject matter of the contract:

(1) A summary of the prevailing NRC view, existing NRC decision or stated position, or the proposed or established NRC practice.

(2) A description of the submitter's views and how they differ from any of the above items.

(3) The rationale for the submitter's views, including an assessment based on risk, safety and cost benefit considerations of the consequences should the submitter's position not be adopted by NRC.

(g) The Office Director or Regional Administrator will immediately forward the submittal to the NRC DPV Review Panel and acknowledge receipt of the DPV, ordinarily within five (5) calendar days of receipt.

(h) The panel will normally review the DPV within seven calendar days of receipt to determine whether enough information has been supplied to undertake a detailed review of the issue. Typically, within 30 calendar days of receipt of the necessary information to begin a review, the panel will provide a written report of its findings to the Office Director or Regional Administrator and to the Contracting Officer, which includes a recommended course of action.

(i) The Office Director or Regional Administrator will consider the DPV Review Panel's report, make a decision on the DPV and provide a written decision to the contractor and the Contracting Officer normally within seven calendar days after receipt of the panel's recommendation.

(j) Subsequent to the decision made regarding the DPV Review Panel's report, a summary of the issue and its disposition will be included in the NRC Weekly Information Report submitted by the Office Director. The DPV file will be retained in the Office or Region for a minimum of one year thereafter. For purposes of the contract, the DPV shall be considered a deliverable under the contract. Based upon the Office Director or Regional Administrator's report, the matter will be closed.

(End of Clause)

Dated at Rockville, Maryland this 16th day of August, 1999.

For the Nuclear Regulatory Commission.

Frank J. Miraglia, Jr.

Acting Executive Director for Operations.

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H.R. 211/P.L. 106–48
To designate the Federal building and United States courthouse located at 920 West Riverside Avenue in Spokane, Washington, as the "Thomas S. Foley United States Courthouse", and the plaza at the south entrance of such building and courthouse as the "Walter F. Horan Plaza". (Aug. 17, 1999; 113 Stat. 230)

H.R. 1219/P.L. 106–49
Construction Industry Payment Protection Act of 1999 (Aug. 17, 1999; 113 Stat. 231)

H.R. 1568/P.L. 106–50
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Emergency Steel Loan Guarantee and Emergency Oil and Gas Guaranteed Loan Act of 1999 (Aug. 17, 1999; 113 Stat. 252)

H.R. 2465/P.L. 106–52
Military Construction Appropriations Act, 2000 (Aug. 17, 1999; 113 Stat. 259)

S. 507/P.L. 106–53
Water Resources Development Act of 1999. (Aug. 17, 1999; 113 Stat. 269)

S. 606/P.L. 106–54
For the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical, LLC (successor to Kerr-McGee Chemical Corporation), and for other purposes. (Aug. 17, 1999; 113 Stat. 398)

S. 1546/P.L. 106–55
To amend the International Religious Freedom Act of 1998 to provide additional administrative authorities to the United States Commission on International Religious Freedom, and to make technical corrections to that Act, and for other purposes. (Aug. 17, 1999; 113 Stat. 401)

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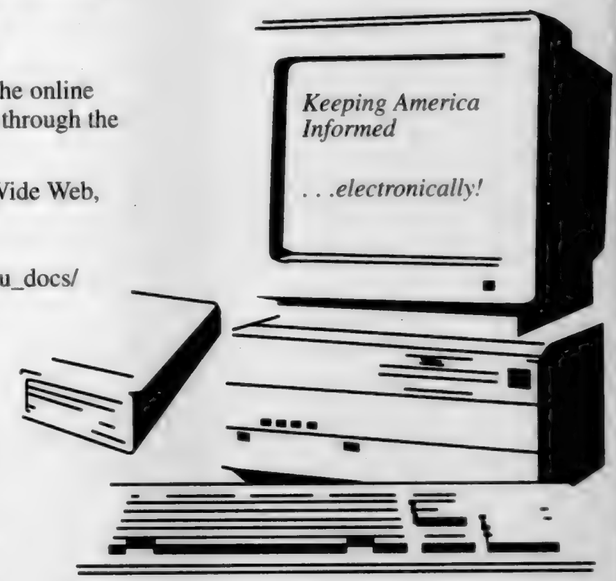

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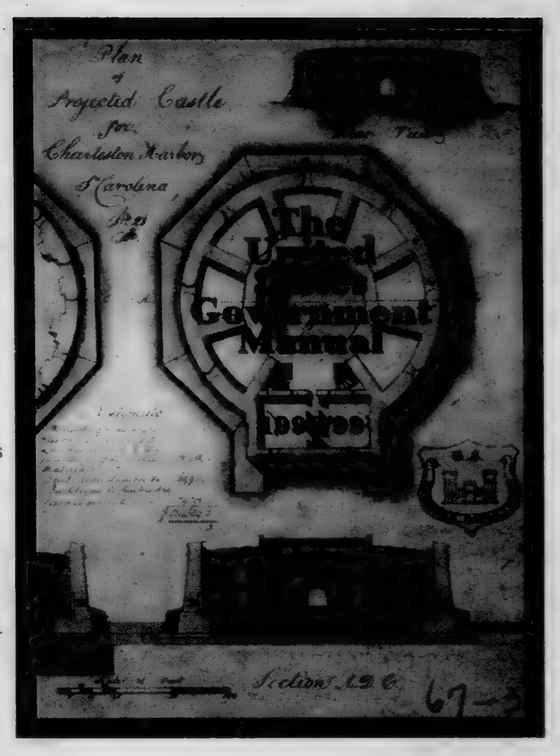

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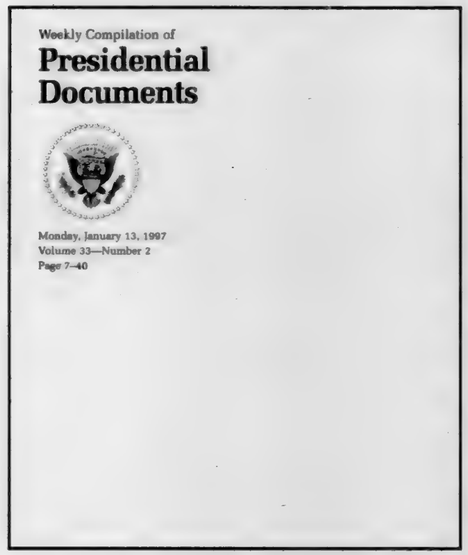

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1220

[No. LS–99–12]

Notice of Opportunity to Request a Soybean Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of opportunity to request referendum.

SUMMARY: The Agricultural Marketing Service (AMS) is announcing that soybean producers may request a referendum to determine if producers want a referendum on the Soybean Promotion and Research Order (Order) as authorized under the Soybean Promotion, Research, and Consumer Information Act (Act).

If at least 10 percent (not in excess of one-fifth of which may be producers in any one State) of the 600,813 eligible producers as determined by the Department of Agriculture (Department) nationwide participate in the Request for Referendum, a referendum will be held within 1 year from that determination. If results of the Request for Referendum indicate that a referendum is not supported, a referendum would not be conducted.

DATES: Soybean producers may request a referendum during a 4-week period beginning on October 20, 1999, and ending on November 16, 1999. Producers who certify that they were engaged in the production of soybeans anytime between January 1, 1997, and November 16, 1999, and who own or share the ownership and risk of loss of those soybeans are eligible to participate in the Request for Referendum.

Forms may be obtained by mail, fax, or in person from the Farm Service Agency (FSA) county offices from October 20, 1999, through November 16, 1999. Completed forms must be returned to FSA offices by fax or in person no later than November 16, 1999, or if returned by mail must be post marked by November 16, 1999.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief; Marketing Programs Branch, Room 2627–S; Livestock and Seed Program, AMS, USDA; STOP 0251; 1400 Independence Avenue, SW.; Washington, DC 20250–0251. Telephone number 202/720–1115.

SUPPLEMENTARY INFORMATION: In accordance with the Act (7 U.S.C. 6301 *et. seq.*), this Notice announces the dates when the Request for Referendum will be conducted and the place where soybean producers may request a referendum on the Order. The Order appears in the Code of Federal Regulations at 7 CFR Part 1220. The Act provides that the Secretary, 5 years after the conduct of the initial referendum, shall give soybean producers the opportunity to request an additional referendum on the Order. Individual producers and other producer entities will be provided the opportunity to request a referendum, at the county FSA office where FSA maintains and processes the producer's administrative farm records. For the producer not participating in FSA programs, the opportunity to request a referendum will be provided at the county FSA office serving the county where the producer owns or rents land. Participation in the Request for Referendum is not mandatory.

On August 20, 1999, the Department published in the **Federal Register** (64 FR 45413) a final rule that sets forth procedures the Department will use in conducting the Request for Referendum. The final rule includes definitions, provisions for supervising the process for requesting a referendum, eligibility, certification procedures for requesting the required forms, where the Request for Referendum will be conducted, counting forms, reporting results, and disposition of the forms and records. Since the Request for Referendum will be conducted at the county FSA offices, FSA employees will assist AMS by determining eligibility, counting ballots, and reporting results.

Pursuant to the Act the Department is conducting the required Request for Referendum from October 20, 1999, through November 16, 1999.

Producers who certify that they where engaged in the production of soybeans anytime between January 1, 1997, and November 16, 1999, and who own or share the ownership and risk of loss of those soybeans are eligible to participate in the Request for Referendum. Only those producers who are in favor of a referendum on the Order would participate.

Forms may be requested in person, by mail, or by facsimile from October 20, 1999, through November 16, 1999. Individual producers and other producer entities would request a referendum at the county FSA office where FSA maintains and processes the producer's administrative farm records. For the producer not participating in FSA programs, the opportunity to request a referendum would be provided at the county FSA office serving the county where the producer owns or rents land. Completed forms must be postmarked, faxed, or returned in person no later than November 16, 1999.

The purpose of the Request for Referendum is to determine whether eligible producers favor the conduct of a referendum on the Order.

In accordance with the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et. seq.*], the information collection requirements made in connection with the Request for Referendum have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0581–0093.

Authority: 7 U.S.C. 6301–6311.

Dated: September 8, 1999.

Barry L. Carpenter,

Deputy Administrator, Livestock and Seed Program.

[FR Doc. 99–23727 Filed 9–8–99; 4:04 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 923

[Docket No. FV99–923–1 FIR]

Sweet Cherries Grown in Designated Counties in Washington; Change in Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule without change, the provisions of an interim final rule changing the pack requirements currently prescribed under the Washington cherry marketing order. The marketing order regulates the handling of sweet cherries grown in designated counties in Washington and is administered locally by the Washington Cherry Marketing Committee (Committee). This rule finalizes the establishment of two additional row count/row size designations for Washington cherries when containers destined for fresh market channels are marked with a row count/row size designation. The two additional row count/row size designations are 8 row (84/64 inches in diameter) and 8½ row (79/64 inches in diameter). This change will allow the Washington cherry industry to further differentiate cherries by row count/row size. The change is intended to provide handlers more marketing flexibility, clarify the choices available to buyers, and improve returns to producers.

EFFECTIVE DATE: October 13, 1999.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, Room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 134 and Marketing Order No. 923 (7 CFR part 923), regulating the handling of sweet cherries grown in designated counties in Washington, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect changes to the pack requirements currently prescribed under the Washington cherry marketing order by establishing two additional row count/row size designations for Washington cherries when containers destined for fresh market channels are marked with a row count/row size designation.

Section 923.52 of the order authorizes the issuance of regulations for grade, size, quality, maturity, pack, and container for any variety or varieties of cherries grown in any district or districts of the production area during any period or periods. Section 923.53 further authorizes the modification, suspension, or termination of regulations issued under 923.52.

Minimum grade, size, quality, maturity, container, and pack requirements for cherries regulated under the order are specified in 923.322. Paragraph (e) of that section provides that when containers of cherries are marked with a row count/row size designation the row count/row size marked shall be one of those shown in Column 1 of the following table and that at least 90 percent, by count, of the cherries in any lot shall not be smaller than the corresponding diameter shown in Column 2 of the table: *Provided*, That the content of individual containers in the lot are not limited to the percentage of undersize; but the total of undersize of the entire lot shall be within the tolerance specified.

The following table shows the row count/row size designations prior to this change:

TABLE

Column 1, row count/row size	Column 2 diameter (inches)
9	75/64
9½	71/64
10	67/64
10½	64/64
11	61/64
11½	57/64
12	54/64

The Committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Washington cherries which have been issued on a continuing basis. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews Committee recommendations and information submitted by the Committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

At its May 13, 1999, meeting, the Committee unanimously recommended changing the pack requirements prescribed under the Washington cherry marketing order. The Committee recommended establishing two additional row count/row size designations for Washington cherries when containers are marked with a row count/row size designation. The additional row count/row size designations are 8 row (84/64 inches in diameter) and 8½ row (79/64 inches in diameter) and are shown in the following revised table from 923.322(e):

TABLE

Column 1, row count/row size	Column 2 diameter (inches)
8	84/64
8½	79/64
9	75/64
9½	71/64
10	67/64
10½	64/64
11	61/64
11½	57/64
12	54/64

When the row count/row sizes were modified in 1993, cherry sizes as large as 8 and 8½ row were not produced. The new varieties developed since that time tend to size larger. Further differentiation by row count/row size will allow handlers and producers to benefit from the extra effort and costs involved in producing and marketing larger sized cherries, and accrue the premium prices generally received for large-sized cherries.

Price data shows an increase of $2 per container for each row count/row size designation increase. Therefore, it is anticipated that 8 row and 8½ row cherries will receive an additional $2 and $4 per container, respectively, over 9 row cherries. While the current percentage of larger cherries produced and shipped is small, the production of large-sized cherry varieties is trending upward.

The largest row count/row size previously designated was 9 row (75/64 inches in diameter). Hence, handlers marketing cherries larger than 9 row were not able to differentiate their pack to receive the higher prices generally received for larger-sized cherries. The Committee believes that differentiation by row count/row size will provide handlers more marketing flexibility and clarify the choices available to buyers. By allowing handlers the opportunity to differentiate these cherries with the larger row count/row size designations, the Committee believes that producers' returns will improve.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of Washington cherries who are subject to regulation under the marketing order and approximately 1,100 cherry producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Currently, about 93 percent of the Washington cherry handlers ship under $5,000,000 worth of cherries and 7 percent ship over $5,000,000 worth on an annual basis. In addition, based on acreage, production, and producer prices reported by the National Agricultural Statistics Service, and the total number of Washington cherry producers, the average annual grower revenue is approximately $100,000. In view of the foregoing, it can be concluded that the majority of handlers and producers of Washington cherries may be classified as small entities.

This rule continues in effect changes to the pack requirements currently prescribed under the Washington cherry marketing order by establishing two additional row count/row size designations for Washington cherries when containers are marked with a row count/row size designation.

At its May 13, 1999, meeting, the Committee unanimously recommended changing the pack requirements prescribed under the Washington cherry marketing order. The Committee recommended establishing two additional row count/row size designations for Washington cherries when containers destined for fresh market channels are marked with a row count/row size designation. The additional row count/row size designations are 8 row (84/64 inches in diameter) and 8½ row (79/64 inches in diameter).

When the row count/row sizes were modified in 1993, cherry sizes as large as 8 and 8½ row were not produced. The new varieties developed since that time tend to size larger. Further differentiation by row count/row size cherries will allow handlers and producers to benefit from the extra effort and costs involved in producing and marketing larger-sized cherries, and accrue the premium prices generally received for large-sized cherries.

Price data shows an increase of $2 per container for each row count/row size designation increase. Therefore, it is anticipated that 8 row and 8½ row cherries will receive an additional $2 and $4 per container, respectively, over 9 row cherries. While the current percentage of larger cherries is small, the production of large-sized cherry varieties is trending upward.

The largest row count/row size previously designated was 9 row (75/64 inches in diameter). Hence, handlers marketing cherries larger than 9 row were not able to differentiate their pack to receive the higher prices generally received for larger-sized cherries. The Committee believes that differentiation by row count/row size will provide handlers more marketing flexibility and clarify the choices available to buyers. By allowing handlers the opportunity to differentiate these cherries with the larger row count/row size designations, the Committee believes that producers' returns will improve.

The Committee anticipates that this rule will not negatively impact small businesses. This rule will allow handlers to market larger cherries in containers designated with the larger row counts/row sizes. Accurate identification of the sizes packed in the containers is expected to benefit buyers. Further, this rule will allow handlers greater flexibility in marketing the Washington cherry crop.

The Committee did not discuss any alternatives to this rule, except not to allow the larger row count/row size designations for larger cherries. This was not acceptable because producers and handlers would not be able to reap the benefits expected from further differentiation of the larger sizes.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, as noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Washington cherry industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the May 13, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of 15 members, of which 5 are handlers and 10 are producers, the majority of whom are small entities.

An interim final rule concerning this action was published in the **Federal Register** on June 24, 1999. A copy of the rule was mailed to the Committee's administrative office for distribution to producers and handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended August 23, 1999. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may

be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (64 FR 33741, June 24, 1999) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

Accordingly, the interim final rule amending 7 CFR part 923 which was published at 64 FR 33741 on June 24, 1999, is adopted as a final rule without change.

Dated: September 7, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–23791 Filed 9–10–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 947

[Docket No. FV99–947–1 FIR]

Irish Potatoes Grown in Modoc and Siskiyou Counties, California, and in All Counties in Oregon, Except Malheur County; Temporary Suspension of Handling Regulations and Establishment of Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule without change, the provisions of an interim final rule suspending, for the 1999–2000 season only, the minimum grade, size, quality, maturity, pack, and inspection requirements currently prescribed under the Oregon-California potato marketing order. The marketing order regulates the handling of Irish potatoes grown in Modoc and Siskiyou Counties, California, and in all Counties in Oregon, except Malheur County, and is administered locally by the Oregon-California Potato Committee (Committee). During this suspension of the handling regulations, reports from handlers will be required to obtain information necessary to administer the marketing order. This rule is expected to reduce industry expenses.

EFFECTIVE DATE: October 13, 1999.

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax: (503) 326–7440 or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 114 and Marketing Order No. 947, both as amended (7 CFR part 947), regulating the handling of Irish potatoes grown in Modoc and Siskiyou Counties in California, and in all counties in Oregon, except Malheur County, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

This rule continues in effect the suspension of the handling regulations currently prescribed under the order from July 1, 1999, to June 30, 2000. This rule allows the Oregon-California potato industry to market potatoes without minimum grade, size, quality, maturity, pack, and inspection requirements. The handling regulations will resume July 1, 2000, for the 2000–2001 season and future seasons. This rule also establishes handler reporting requirements during the same time period. Reporting requirements will allow the Committee to obtain information from handlers necessary to administer the order.

Section 947.52 of the order authorizes the issuance of regulations for grade, size, quality, maturity, and pack for any variety of potatoes grown in the production area during any period. Section 947.51 authorizes the modification, suspension, or termination of regulations issued under § 947.52.

Section 947.60 provides that whenever potatoes are regulated pursuant to § 947.52, such potatoes must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations. The cost of inspection and certification is borne by handlers.

Section 947.80 authorizes the Committee, with the approval of the Secretary, to require reports and other information from handlers that are necessary for the Committee to perform its duties.

Minimum grade, size, quality, maturity, and pack requirements for potatoes regulated under the order are specified in § 947.340 *Handling Regulation* [7 CFR 947.340]. This regulation, with modifications and exemptions for different varieties and types of shipments, provides that all potatoes grade at least U.S. No. 2; be at least 2 inches in diameter or weigh at least 4 ounces; and be not more than moderately skinned. Additionally, potatoes packed in cartons must be U.S. No. 1 grade or better, with an additional tolerance allowed for internal defects, or U.S. No. 2 grade weighing at least 10 ounces. Section 947.340 also includes waivers of inspection procedures, reporting and safeguard requirements for special purpose shipments, and a minimum quantity exemption of 19 hundredweight per day.

The Committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Oregon-California potatoes which have been issued on a continuing basis. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews Committee recommendations and information submitted by the Committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

At its February 23, 1999, meeting, the Committee unanimously recommended suspending the handling regulations and establishing handler reporting requirements for the 1999–2000 season. The Committee met again on May 14, 1999, to review the recommendation made at the earlier meeting. After extensive discussion, the Committee decided not to rescind or modify their earlier recommendation to suspend handling regulations. The Committee requested that this rule be effective for the fiscal period beginning July 1, 1999, which is also the date shipments of the 1999 Oregon-California potato crop began.

The objective of the handling requirements is to ensure that only acceptable quality potatoes enter fresh market channels, thereby ensuring consumer satisfaction, increasing sales, and improving returns to producers. While the industry continues to believe that quality is an important factor in maintaining sales, the Committee believes the cost of inspection and certification (mandated when minimum requirements are in effect) may exceed the benefits derived.

Potato prices have been at low levels in recent seasons, and many producers have faced difficulty covering their production costs. Therefore, the Committee has been discussing the possibility of reducing costs through the elimination of mandatory inspection. The Committee is concerned, however, that the elimination of current handling and inspection requirements could possibly result in lower quality potatoes being shipped to fresh markets. Also, there is some concern that the Oregon-California potato industry could lose sales to other potato producing areas that are covered by quality and inspection requirements. For these reasons, the Committee recommended that the suspension of handling requirements be effective for the 1999–2000 season only. This will enable the Committee to study the impacts of the suspension and consider appropriate actions for ensuing seasons.

This rule will enable handlers to ship potatoes without regard to the minimum grade, size, quality, maturity, pack, and inspection requirements for the 1999–2000 season only. This rule will allow handlers to decrease costs by eliminating the costs associated with inspection. This rule will not restrict handlers from seeking inspection on a voluntary basis. The Committee will evaluate the effects of removing the minimum requirements on marketing and on producer returns at its meeting next spring.

The suspension of the handling regulations will result in the elimination of the monthly inspection report from the Federal-State Inspection Service which the Committee used as a basis for the collection of assessments from handlers. This inspection report was compiled by the Federal-State Inspection Service from inspection certificates. During the suspension of the handling regulations, reports from handlers will be needed for the Committee to obtain information on which to collect assessments. Therefore, a new § 947.180 *Reports* is established which requires each handler to submit a monthly assessment report to the Committee containing the following information: (a) The date and quantity of fresh potatoes sold including identification numbers; (b) the name and address of the producers; (c) the assessment payment due; and (d) the name and address of the handler. Authorization to assess handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. Although adding reporting requirements, this rule through the elimination of inspection and certification requirements is expected to reduce industry expenses.

Consistent with the suspension of § 947.340, this rule also suspends §§ 947.120, 947.123, 947.130, 947.132, 947.133, and 947.134 of the rules and regulations in effect under the order. Sections 947.120 and 947.123 provide authority for hardship exemptions from inspection and certification, and establish reporting and recordkeeping requirements when such exemptions are in place. Sections 947.130, 947.132, 947.133, and 947.134 are safeguard and reporting provisions of the order that are applicable to special purpose shipments when inspection and certification requirements are in place.

Contained within § 947.340(i) of the current handling regulations is a minimum quantity exemption under which a handler may ship not more than 19 hundredweight of potatoes on any day without regard to the inspection and assessment requirements issued under the order. The suspension of the handling regulations removes all inspection requirements. To continue the current minimum quantity exemption for assessments, a new § 947.125 *Minimum quantity exemption* is established. This section simply continues the current minimum quantity exemption under which a handler may ship not more than 19 hundredweight of potatoes on any day without regard to the assessment requirements issued under the order.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 30 handlers of Oregon-California potatoes who are subject to regulation under the marketing order and approximately 450 potato producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

Currently, about 83 percent of the Oregon-California potato handlers ship less that $5,000,000 worth of potatoes and 17 percent ship more than $5,000,000 worth on an annual basis. In addition, based on acreage, production, and producer prices reported by the National Agricultural Statistics Service, and the total number of Oregon-California potato producers, average annual producer receipts are approximately $285,000. In view of the foregoing, it can be concluded that the majority of handlers and producers of

Oregon-California potatoes may be classified as small entities.

This rule suspends the handling regulations and establishes reporting requirements from July 1, 1999, through June 30, 2000. This rule will allow the Oregon-California potato industry to market potatoes without minimum grade, size, quality, maturity, pack, and inspection requirements. The handling regulations currently specified in § 947.340 will resume July 1, 2000, for the 2000–2001 season and future seasons. Reporting requirements will allow the Committee to obtain information from handlers necessary to collect assessments.

At its February 23, 1999, meeting, the Committee unanimously recommended suspending the handling regulations and establishing reporting requirements for the 1999–2000 season. The Committee met again on May 14, 1999, to review the recommendation made at the earlier meeting. After extensive discussion, the Committee decided not to rescind or modify their earlier recommendation to suspend handling regulations. The Committee requested that this rule be effective for the fiscal period beginning July 1, 1999, which is also the date shipments of the 1999 Oregon-California potato crop began.

The objective of the handling requirements is to ensure that only acceptable quality potatoes enter fresh market channels, thereby ensuring consumer satisfaction, increasing sales, and improving returns to producers. While the industry continues to believe that quality is an important factor in maintaining sales, the Committee believes the cost of inspection and certification (mandated when minimum requirements are in effect) may exceed the benefits derived.

Potato prices have been at low levels in recent seasons, and many producers have faced difficulty covering their production costs. Therefore, the Committee has been discussing the possibility of reducing costs through the elimination of mandatory inspection. The Committee is concerned, however, that the elimination of current handling and inspection requirements could possibly result in lower quality potatoes being shipped to fresh markets. Also, there is some concern that the Oregon-California potato industry could lose sales to other potato producing areas that are covered by quality and inspection requirements. For these reasons, the Committee recommended that the suspension of handling requirements be effective for the 1999–2000 season only. This will enable the Committee to study the impacts of the suspension and consider appropriate actions for ensuing seasons.

This rule will enable handlers to ship potatoes without regard to the minimum grade, size, quality, maturity, pack, and inspection requirements for the 1999–2000 season only. This rule will allow handlers to decrease costs by eliminating the costs associated with inspection. This rule will not restrict handlers from seeking inspection on a voluntary basis. The Committee will evaluate the effects of removing the minimum requirements on marketing and on producer returns at its meeting next spring.

The suspension of the handling regulations will result in the elimination of the monthly inspection report from the Federal-State Inspection Service which the Committee used for billing purposes. This inspection report was compiled by the Federal-State Inspection Service from inspection certificates. During this suspension of the handling regulations, reports from handlers will be necessary for the Committee to obtain information on which to collect assessments. This rule establishes a new § 947.180 *Reports* which requires each handler to submit a monthly assessment report to the Committee containing the following information: (a) The date and quantity of fresh potatoes sold including identification numbers; (b) the name and address of the producers; (c) the assessment payment due; and (d) the name and address of the handler. Authorization to assess handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. Although adding reporting requirements, this rule through the elimination of inspection and certification requirements is expected to reduce industry expenses.

Contained within § 947.340(i) of the current handling regulations is a minimum quantity exemption under which a handler may ship not more than 19 hundredweight of potatoes on any day without regard to the inspection and assessment requirements issued under the order. The suspension of the handling regulations removes all inspection requirements. To continue the current minimum quantity exemption for assessments, a new 947.125 *Minimum quantity exemption* is established. This section simply continues the current minimum quantity exemption under which a handler may ship not more than 19 hundredweight of potatoes on any day without regard to the assessment requirements issued under the order.

The Committee anticipates that this rule will not negatively impact small businesses. This rule will suspend minimum grade, size, quality, maturity, pack, and inspection requirements. Further, this rule will allow handlers and producers the choice to obtain inspection for potatoes, as needed, thereby reducing cost to producers and handlers. The total cost of inspection and certification for fresh shipments of Oregon-California potatoes during the 1998–99 marketing season is estimated at $600,000. This is approximately $20,000 per handler. The Committee expects, however, that most handlers will continue to have some of their potatoes inspected and certified by the Federal-State Inspection Service.

The Committee investigated the use of other types of inspection programs as another option to reduce the cost of inspection, but believed they were not viable at this time. With the suspension of handling regulations, there are no alternatives to reporting requirements to ensure the collection of assessments needed to administer the order.

This rule will require monthly reports from handlers to obtain information necessary to collect assessments. Although this rule establishes new reporting requirements, the suspension of the handling regulations eliminates the more frequent reporting requirements that were included under the safeguard provisions of the order.

Therefore, any additional reporting or recordkeeping requirements on either small or large potato handlers are expected to be offset by the elimination of reporting requirements currently in effect. In addition, the elimination of inspection and certification requirements is expected to further reduce industry expenses. Finally, as with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0178. It is estimated that it will take a handler 20 minutes to complete a monthly assessment report, and that each handler will fill out 12 monthly assessment reports each year. This creates an estimated total industry burden of approximately 120 hours. It is estimated that it currently takes a handler 5 minutes to complete a safeguard reporting form. With an estimated 2,000 safeguard reports completed each year, the estimated decrease in burden because of the elimination of safeguard reporting requirements is estimated to be 167 hours.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule. Further, the Committee's meetings were widely publicized throughout the Oregon-California potato industry and all interested persons were invited to attend the meetings and participate in Committee deliberations. Like all Committee meetings, the February 23, 1999, and May 14, 1999, meetings were public meetings and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of 14 members, of which 5 are handlers and 9 are producers. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

An interim final rule concerning this action was published in the **Federal Register** on June 25, 1999. A copy of the rule was mailed to the Committee's administrative office for distribution to producers and handlers. In addition, the rule was made available through the Internet by the Office of the **Federal Register**. That rule provided for a 60-day comment period which ended August 24, 1999. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (64 FR 34113, June 25, 1999) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 947

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

PART 947—IRISH POTATOES GROWN IN MODOC AND SISKIYOU COUNTIES, CALIFORNIA, AND IN ALL COUNTIES IN OREGON, EXCEPT MALHEUR COUNTY

Accordingly, the interim final rule amending 7 CFR part 947 which was published at 64 FR 34113 on June 25, 1999, is adopted as a final rule without change.

Dated: September 7, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–23792 Filed 9–10–99; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL ELECTION COMMISSION

11 CFR PARTS 9003, 9004, 9008, 9032, 9033, 9034, 9035, and 9036

[Notice 1999–17]

Public Financing of Presidential Primary and General Election Candidates

AGENCY: Federal Election Commission.

ACTION: Final Rule and Transmittal of Regulations to Congress.

SUMMARY: The Commission is revising its regulations governing publicly financed Presidential primary and general election candidates. These regulations implement the provisions of the Presidential Election Campaign Fund Act ("Fund Act") and the Presidential Primary Matching Payment Account Act ("Matching Payment Act"), which establish eligibility requirements for Presidential candidates seeking public financing, and indicate how funds received under the public financing system may be spent. They also require the Commission to audit publicly financed campaigns and seek repayment where appropriate. The revised rules reflect the Commission's experience in administering this program during several previous Presidential election cycles and also seek to resolve some questions that may arise during the 2000 Presidential election cycle. Further information is provided in the supplementary information that follows.

DATES: Further action, including the publication of a document in the **Federal Register** announcing an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 26 U.S.C. 9009(c) and 9039(c).

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith, Acting Assistant General Counsel, 999 E Street, NW, Washington, DC 20463, (202) 694–1650 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revisions to its regulations governing the public financing of Presidential campaigns, 11 CFR Parts 9001 through 9039, to more effectively administer the public financing program during the year 2000 election cycle. These rules implement 26 U.S.C. 9001 *et. seq.* and 26 U.S.C. 9031 *et. seq.* On December 16, 1998, the Commission issued a Notice of Proposed Rulemaking (NPRM) in which it sought comments on proposed revisions to these regulations. 63 FR 69524 (Dec. 16, 1998).

In response to the NPRM, written comments were received from Aristotle Publishing, Inc.; America Online, Inc.; Philadelphia 2000; Perot for President '96; James Madison Center for Free Speech; Common Cause and Democracy 21 (joint comment); Brennan Center for Justice; Lyn Utrecht, Eric Kleinfeld, and Patricia Fiori (joint comment); Democratic National Committee; Hervey W. Herron (two comments); Republican National Committee; the Internal Revenue Service, and Carl P. Leubsdorf and twenty nine executives of news organizations (joint comment). The Internal Revenue Service stated that it has reviewed the NPRM and finds no conflict with the Internal Revenue Code or regulations thereunder. Subsequently, the Commission reopened the comment period and held a public hearing on March 24, 1999, at which the following eight witnesses presented testimony on the issues raised in the NPRM: Kim Hume (Fox News), George Condon (Copley News Service), Lyn Utrecht (Ryan, Phillips, Utrecht & MacKinnon), Joseph E. Sandler (Democratic National Committee), Thomas J. Josefiak (Republican National Committee), David Eisner and Trevor Potter (America Online, Inc.), and James Bopp, Jr. (James Madison Center for Free Speech).

Please note that the Commission has already published separately final rules modifying the candidate agreement provisions so that federally-financed Presidential committees must electronically file their reports. *See* Explanation and Justification of 11 CFR 9003.1 and 9033.1, 63 FR 45679 (August 27, 1998). Those regulations took effect on November 13, 1998. *See* Announcement of Effective Date, 63 FR 63388 (November 13, 1998). In addition, the Commission has issued final rules governing the matchability of contributions made by credit and debit cards, including those transmitted over the Internet. *See* Explanation and Justification of 11 CFR 9034.2 and 9034.3, 64 FR 32394 (June 17, 1999). An effective date for the matching fund rules will be announced once those regulations have been before Congress for thirty legislative days. Final rules concerning coordinated party committee

expenditures in the pre-nomination period and reimbursement by the news media for travel expenses are also pending before Congress. *See* Explanation and Justification of 11 CFR 110.7, 9004.6 and 9034.6, 64 FR 42579 (Aug. 5, 1999).

The NPRM discussed several other topics that are not included in the attached final rules. The Commission expects to address the following areas at a later date: (1) Coordination between candidates and party committees on political ads, polling, media production, consulting services and sharing of employees; (2) Modifications to the audit process; (3) Bases for primary repayment determinations; 4) The "bright line" between primary expenses and general election expenses; and (5) Pre-nomination formation of Vice Presidential committees.

Sections 9009(c) and 9039(c) of Title 26, United States Code, require that any rules or regulations prescribed by the Commission to carry out the provisions of Title 26 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. The final rules that follow were transmitted to Congress on September 7, 1999.

Explanation and Justification

Part 9003—Eligibility for Payments

Section 9003.3 Allowable Contributions; General Election Legal and Accounting Compliance Fund

1. Pre-nomination Formation of a GELAC

Section 9003.3 contemplates that a nominee of a major political party who accepts public financing for the general election may establish a privately funded General Election Legal and Accounting Compliance Fund ("GELAC") for certain limited purposes. A GELAC may be set up before the candidate is actually nominated for the office of President or Vice President. The Commission sought comments on several changes to this section to address problems that have arisen when primary candidates established GELACs relatively early in the primary campaign but subsequently failed to win their party's nomination. One difficulty is that candidates who do not receive their party's nomination must return all private contributions received by the GELAC. However, if some of those funds have been used to defray overhead expenses or to solicit additional contributions for the GELAC, a total refund has presented difficulties. Another problem has been ensuring that the GELAC is not improperly used to make primary election expenditures. In particular, this may become an issue when a candidate secures the nomination well in advance of the convention and has almost completely exhausted the spending limits for the primary. To avoid a recurrence of these situations, the NPRM sought comments on the following five alternative amendments to paragraph (a)(1)(i) of section 9003.3:

(1) Bar GELAC fundraising prior to the candidate's nomination at the party's national nominating convention. Under this approach, a candidate may establish a GELAC before the date of nomination, but only for the limited purpose of receiving correctly redesignated contributions that would otherwise have to be refunded as excessive primary contributions.

(2) Bar GELAC fundraising before a specified date, such as April 15 of the Presidential election year. Under this alternative, starting on April 15 of the Presidential election year, candidates may begin soliciting contributions for the GELAC. However, if the candidate does not become the nominee, all contributions accepted for the GELAC, including redesignated contributions, must be refunded within sixty (60) days of the candidate's date of ineligibility.

(3) Allow GELAC fundraising beginning 90 days before each candidate's date of nomination. This approach means that the nominees of the two major parties will begin GELAC fundraising on different dates.

(4) Bar Presidential candidates from establishing a GELAC until the date of the last Presidential primary before the national nominating convention. A variation on this approach is to allow the eventual nominee to form a GELAC at an earlier point, but to prohibit GELAC fundraising before the last Presidential primary.

(5) Allow any Presidential primary candidate to establish and to raise funds for a GELAC at any time. Under this approach, those who do not win their party's nomination do not have to return all the funds they raise. Instead, they could offset their fundraising and administrative expenses, and would only need to refund the amount remaining in their account as of the date their party selects a nominee. The NPRM asked whether all contributors should receive a proportional refund or whether a first-in-first-out method should be used to determine which contributions have been spent, with refunds going to the most recent contributors. The NPRM noted that this alternative is significant departure from the treatment of general election contributions received by losing primary candidates in Congressional races.

The two witnesses who addressed this topic stressed the importance of implementing policies that encourage candidates to spend money to achieve voluntary compliance with the campaign financing laws. Hence, they both urged the Commission to make no changes that would create a disincentive to spend money on compliance. They urged the Commission to continue to allow candidates to have the discretion to determine when to form a GELAC and begin GELAC solicitations. Thus, they both supported alternative 5, under which losing primary candidates only be required to refund or obtain donor redesignation for funds remaining in the account.

The Commission has decided to adopt a modified version of alternative 2. Under this approach, paragraph (a)(1)(i) continues to permit GELACs to be established at any time. However, new language indicates that before June 1 of the Presidential election year, the GELAC may only be used for the deposit of primary election contributions that exceed the contributors' contribution limits and are properly redesignated under 11 CFR 110.1. Please note that overhead and reporting expenses incurred by the GELAC may be defrayed from interest received on the account. The modifications to these regulations also specify that the GELAC may not solicit contributions before June 1 of the Presidential election year. This date has been selected because, barring unforeseen circumstances, this is the point when a party's prospective nominee can be reasonably assured that he or she will need to raise funds for a GELAC. This time frame also gives the prospective nominee sufficient time to raise the funds that will be needed. Please note that revisions to the rules governing joint fundraising between the primary campaign and the GELAC are discussed below in section 9034.4.

Paragraph (a)(1)(i) of this section is also being revised to state more clearly that a GELAC may be established by an individual who is seeking his or her party's nomination, but who is not yet a general-election candidate as defined in section 9002.2.

The Commission is also amending paragraph (a)(1)(i) of section 9003.3 to indicate that if the candidate does not become the nominee, all contributions accepted for the GELAC, including redesignated contributions, must be refunded within sixty (60) days of the candidate's date of ineligibility. Such refunds are consistent with the Commission's decision in the last

Presidential election cycle to require refunds within 60 days of the date on which the political party of the unsuccessful primary candidate selects its nominee. These refunds are also consistent with the policies applicable to non-publicly funded Congressional candidates who accept designated general election contributions, but who thereafter lose their parties' primaries. *See* 11 CFR 102.9(e)(2), and Advisory Opinions 1992–15 and 1986–17. Please note that if contributors do not cash the refund checks, the provisions of section 9007.6 governing stale dated checks will apply.

2. Transfers from the Primary Campaign Committee to the GELAC

The regulations at 11 CFR 9003.3(a)(1)(i) through (v) place certain restrictions on transferring funds from a Presidential candidate's primary committee to a GELAC. The purpose of these limitations is to ensure that the GELAC is not used as a way to increase a candidate's entitlement to matching funds or to decrease a candidate's repayment obligations. The NPRM sought suggestions as to how these provisions could be strengthened, and whether it is advisable to do so. The sole comment that addressed this issue stated that the current regulations at 11 CFR 9003.3(a)(1) are more than adequate to ensure that the GELAC is not used to increase candidate entitlement or decrease repayments. The Commission has decided not to amend these transfer regulations because it agrees that the current rules adequately fulfill these objectives.

Section 9003.5 Documentation of Disbursements

Section 9003.5(b)(1) sets forth the documentation publicly financed general election committees must provide for disbursements in excess of $200. The documentation includes a canceled check that has been negotiated by the payee. However, paragraph (b)(1)(iv) of this section refers back to this canceled check without specifically restating that it must be negotiated by the payee. To avoid possible confusion, the Commission is amending section 9003.5(b)(1)(iv) by adding the words "negotiated by the payee." This change is consistent with the recent judicial decision in *Fulani* v. *Federal Election Commission*, 147 F.3d 924 (D.C. Cir. 1998). A cross reference is also being added to assist the reader in locating the reporting regulations that list examples of acceptable and unacceptable descriptions of "purpose." *See* 11 CFR 104.3(b)(3)(i)(B). None of the public comments or testimony addressed these changes.

Part 9004—Entitlement of Eligible Candidates to Payments; Use of Payments

Section 9004.4

1. Winding Down Costs

Two technical changes are being made to the winding down provisions found in paragraph (a)(4) of section 9004.4. First, the "or" at the end of paragraph (a)(4)(i) is being changed to "and," to clarify that the expenses listed in both paragraphs (a)(4)(i) and (a)(4)(ii) are considered winding down costs. Second, paragraph (a)(4)(ii) is being amended to more clearly indicate that the winding down costs described in this paragraph are costs associated with the general election campaign.

2. Lost, Misplaced, or Stolen Items

Paragraph (b)(8) of this section addresses situations where equipment in the possession of general election committees is lost or damaged. As a general matter, the cost of lost or misplaced items may not be defrayed with public funds. However, given that there are varying degrees of responsibility in this area, the rules provide that certain factors should be considered, such as whether the committee demonstrates that it made conscientious efforts to safeguard the missing equipment; whether the committee sought or obtained insurance on the items; the type of equipment involved; and the number and value of items that were lost.

The Commission has decided to modify this paragraph to include stolen items and to add as another factor whether a police report was filed. There were no public comments on this portion of the regulations.

Section 9004.9 Net Outstanding Qualified Campaign Expenses

The amendments to the provisions governing the disposition of capital assets in section 9004.9(d)(1) are discussed below. *See* the Explanation and Justification for 11 CFR 9034.5(c)(1).

Part 9008—Federal Financing of Presidential Nominating Conventions and Host Committees

Section 9008.7 Use of Funds

New paragraph (c) is being added to section 9008.7 to address situations where equipment in the possession of convention committees is lost, misplaced, or stolen. The rule indicates that as a general matter, the cost of lost, misplaced, or stolen items may not be defrayed with public funds. However, the Commission recognizes that there are varying degrees of responsibility in this area. Accordingly, the regulation also provides that certain factors should be considered, such as whether the committee demonstrates that it made conscientious efforts to safeguard the missing equipment; whether the committee sought or obtained insurance on the items; whether the committee filed a police report; the type of equipment involved; and the number and value of items that were lost. This approach is consistent with the Commission's treatment of items lost or misplaced by, or stolen from, publicly funded candidates. *See* 11 CFR 9004.4(b)(8) and 9034.4(b)(8). None of the public comments or testimony specifically addressed this aspect of the convention regulations.

Section 9008.14 Petitions for Rehearings; Stays of Repayment Determinations

In section 9008.14, the term "final repayment determinations" is being replaced by "repayment determinations." This amendment conforms with the changes in terminology made when the rules setting out audit and repayment procedures were last revised in 1995.

Section 9008.52 Receipts and Disbursements of Host Committees

1. Local Banks and Local Individuals

The NPRM sought comments on amending section 9008.52(c)(1), which addresses the receipt of donations by host committees. Specifically, the NPRM sought to allow local banks to donate funds and make in-kind donations for the limited purposes described in these rules. The two commenters who addressed this topic supported the proposed amendment. They found no rationale for the long standing distinction in the rules between donations from local corporations and donations from local branches of national banks. One of the commenters argued that local branches of national banks have the same interest as other local businesses in promoting the city and supporting commerce.

The Commission agrees with these comments. Consequently this amendment is being included in the attached final rules that follow. Please note that the revised rules supersede, in part, Advisory Opinion 1995–31 regarding local branches of national banks.

The second changes to section 9008.52(c)(1) concerns the categories of individuals who may donate funds or

make in-kind donations to host committees, government agencies and municipal corporations. The revisions restrict these donations to individuals who either maintain a local residence or who work for a business's local office, or a labor organization's local office, or another organization's local office. This new language is consistent with AO 1995–32 with respect to donations by individuals.

Two commenters opposed restricting donations to "local" individuals on several grounds. They argued that the Commission misinterpreted its own regulation in AO 1995–32. In addition, one commenter stated that the policy concerns regarding corporate aggregation of wealth are not applicable to individuals. This comment appears to overlook the compelling governmental purposes—preventing corruption and the appearance of corruption—that underlie the statutory restrictions on individual contributions. One of the commenters also asserted that this change to the regulation impermissibly infringes upon the First Amendment's guarantee of freedom of speech. Given that the FECA's contribution limitations were upheld in *Buckley* v. *Valeo*, 424 U.S. 1 (1976), in the face of a First Amendment challenge, this argument is not persuasive. In addition, one commenter also argued that there are compelling reasons why individuals residing outside the metropolitan area of the convention city would want to support the host committee. However, the comment failed to indicate what such reasons might be.

Consequently, the Commission does not find the commenters' arguments persuasive. Therefore, this change is being included in the final rules.

2. Permissible Host Committee Expenses

During the audits of the 1996 convention and host committees, a number of questions were raised as to the scope of expenses that may be paid by a host committee instead of a convention committee. Section 9008.52(c)(1) enumerates the types of expenses that host committees may defray with donated funds. Section 9008.7(a) lists the types of convention expenses that may be paid for using public funds. These two sections of the regulations are not mutually exclusive. Nor do they cover every conceivable type of expense that may arise. Consequently, the NPRM sought comments on amending one or both of these provisions to provide greater specificity regarding allowable or nonallowable expenses for convention or host committees. Disputed items have included: (1) Badges, passes or other types of credentials used to gain entry to the convention hall or specific locations within the hall; (2) electronic vote tabulation systems; and (3) lighting and rigging costs, including paying stagehands, riggers, projectionists, electricians, and producers. The NPRM noted that with respect to lighting and rigging expenses, in particular, it can be difficult to distinguish between the costs associated with improving the infrastructure of the convention hall and the costs of producing and broadcasting the convention proceedings to the general public or to those within the convention hall. Specific changes to these regulations were not included in the NPRM.

One host committee and two national party committees urged the Commission to defer consideration and implementation of any significant changes regarding permissible host committee expenditures until after the year 2000 Presidential elections because the host committees and national party committees have already finalized their contractual arrangements for the year 2000 Presidential nominating conventions. One of these witnesses observed that the purpose and functions of host committees are nonpartisan, namely to maximize the economic benefit to the city. This party committee witness argued that the current rules are adequate and provide the flexibility necessary to accommodate the unique circumstances found in different host cities and in light of swiftly changing technology. Consequently, this witness opposed new restrictions on the goods and services that a host committee may provide. The other party committee witness indicated that it is contemplating selective use of the advisory opinion process to obtain clarification, as needed, of the existing regulations.

Given that the party committees have already entered into contractual agreements with the sites selected, the Commission has decided not to modify the existing regulations at this time with regard to the division of expenses between convention committees and host committees. Please note also that the Commission's decisions regarding the audits of the 1996 convention and host committees serve to provide additional guidance for the 2000 election cycle.

Section 9008.53 Receipts and Disbursements of Government Agencies and Municipal Corporations

The changes being made to 11 CFR 9008.53(b)(1), which governs the receipt of donations by government agencies and municipal corporations, generally follow the revisions to section 9008.52(c)(1). Consequently, a separate fund or account of a government agency or municipality may accept donations from local banks and individuals who either maintain a local residence or who work for a business's local office, or a labor organization's local office, or another organization's local office.

Part 9032—Definitions

Section 9032.11 State

The definition of "State" in section 9032.11 is being updated by deleting the Canal Zone and by adding American Samoa, which holds Presidential primaries consisting of caucuses. There is no corresponding provision in the general election rules.

Part 9033—Eligibility for Payments

Section 9033.11 Documentation of Disbursements

The revisions to section 9033.11 follow the amendments to section 9003.5 discussed above. No public comments were received regarding these changes.

Part 9034—Entitlements

Section 9034.4 Use of Contributions and Matching Payments

1. Winding Down Costs

The regulations at 11 CFR 9034.4(a)(3) permit candidates to receive contributions and matching funds, and to make disbursements, for the purpose of defraying winding down costs over an extended period after the candidate's date of ineligibility ("DOI"). However, after the implementation of the "bright line" rules in 1995, questions arose as to whether all salary and overhead incurred after the date of the candidate's nomination must be attributed to the general election, including those associated with winding down the primary campaign. *See* 11 CFR 9034.4(d)(3). Accordingly, the NPRM sought comments on revising section 9034.4(a)(3)(i) and (iii) to indicate that for candidates who win their parties' nominations, no salary and overhead expenses may be treated as winding down costs until after the end of the expenditure report period, which is thirty days after the general election takes place.

The written comments of two witnesses opposed this change. One witness viewed the proposal as a "success penalty" for winning primary candidates. This witness noted that all primary candidates, whether they win or lose the nomination, must incur wind down costs. Similarly, the other witness stated that general election candidates must incur primary campaign wind down costs during the general election period for such activities as paying debts, filing FEC reports, making matching fund submissions, and responding to FEC auditor requests in preparation for the audit. Consequently, this witness argued that the primary committees of the candidates who win the nomination should be able to pay these expenses. This comment also noted that the proposed rule would lower the amount of matching funds that could be received for these legitimate primary expenses, thereby treating winning primary candidates differently from those who lose their party's nomination.

The Commission has concluded that this area needs to be clarified. During the general election campaign, there are significant distinctions between the winding down activities of candidates who win their parties' nominations and those who do not, particularly with regard to legal and accounting compliance expenses. Accordingly, the revised rules indicate that a publicly funded primary candidate who does not run in the general election may begin to treat 100% of salary and overhead expenses as compliance after the candidate's date of ineligibility. However, federally financed primary candidates who continue on to the general election, as well as non-federally financed primary candidates who accept general election funding, must wait until after the end of the expenditure report period for the general election before they may begin treating all salary and overhead expenses as compliance expenses. Please note that the 100% figure applies to the salaries of those who continue to provide substantial services to the committee after the end of the expenditure report period. Compliance expenses between the date of nomination and the end of the expenditure report period are covered by the revisions to section 9035.1(c)(1), discussed below.

2. Lost, Misplaced, or Stolen Items

The revisions to paragraph (b)(8) of section 9034.4 follow the changes made to section 9004.4(b)(8). None of the public comments or testimony addressed this provision.

3. "Bright Line" Distinction Between Primary and General Election Expenses

Paragraph (e) of section 9034.4 sets forth certain "bright line" distinctions as to which expenses should be attributed to a candidate's primary campaign and which ones should be considered general election expenses. Revisions are being made to this paragraph to reflect that not all candidates may accept public funding in both the primary and the general election. Nevertheless, candidates accepting federal financing for only the general election will also need guidance in attributing their expenditures between their primary election committees and their general election committees. Accordingly, paragraph (e) is being amended to indicate that it applies to Presidential campaign committees that accept federal funds for either election.

As noted above, the Commission expects to address a variety of other issues involving the bright line in a separate set of final rules to be issued at a later date.

4. Joint Primary/GELAC Solicitations

Paragraph (e)(6)(i) of section 9034.4 addresses situations where a candidate's GELAC and his or her primary committee issue joint solicitations for contributions. Under the revised rules that took effect for the 1996 elections, the costs of such solicitations were divided equally between the two committees, regardless of how much money is actually raised for each. One difficulty with this, however, was that in some situations it enabled the GELAC to absorb a relatively high portion of fundraising costs while receiving a relatively low proportion of the funds raised. Thus, this provision was at odds with the joint fundraising rules applicable to other types of joint fundraising conducted by publicly funded Presidential primary committees under 11 CFR 9034.8. In effect, section 9034.4(e)(6)(i) could permit the GELAC to subsidize fundraising expenses that would otherwise be paid by the primary committee and subject to spending limits. Questions were also raised as to whether the rule should cover only the cost of a solicitation, or whether it would be more appropriate to include other fundraising costs, such as staff salaries, consulting fees, catering, facilities rental, and the candidate's travel to the event site. Consequently, the NPRM suggested the following four alternatives to paragraph (e)(6)(i):

(1) Allocate solicitation expenses and the distribution of net proceeds from a fundraiser in the same manner as described in 11 CFR 9034.8(c)(8) (i) and (iii), which are the provisions that apply to unaffiliated committees.

(2) Prohibit joint fundraising between the primary and the GELAC. If each committee performs its own fundraising, the difficulties inherent in apportioning expenses do not arise. This approach eliminates the problem that the recipient committees may not know which of several solicitation letters or fundraising events generated a given contribution.

(3) Treat all expenses incurred by the GELAC prior to the candidate's date of ineligibility or date of nomination as qualified campaign expenses for the primary election. This approach avoids GELAC subsidization of the primary campaign, and is easy to work with.

(4) Specify in § 9003.3(a)(2)(i)(E) that the GELAC may only pay for the following solicitation costs: printing invitations and solicitations, mailing, postage and telemarketing expenses. This approach excludes GELAC payment for catering, facilities rental, fundraising consultants, employee salaries, and travel to the event site.

Two witnesses addressed this topic in their written comments. They both supported the current 50/50 rule for its simplicity. One commenter specifically urged that this rule be expanded to cover all types of fundraising costs, including event and travel costs. The other witness indicated that it would also make sense to follow the already-established joint fundraising rules.

The Commission has decided to implement the first alternative, which treats joint primary/GELAC fundraising the same as joint fundraising by unaffiliated committees. The joint fundraising rules in § 9034.8 are well-established and have proved to work well in other contexts. Under the revisions to 9034.4(e)(6)(i), the GELAC and the primary committee must apportion their fundraising costs, including printing invitations and solicitations, mailing, postage, telemarketing expenses, catering, facilities rental, fundraising consultants, and employee salaries, using the percentage of contributions each committee receives from the joint fundraising effort. Given the unique relationship between the primary campaign and the GELAC, and the fact that the candidate's primary committee receives public financing in exchange for voluntary compliance with spending limits, it is important to ensure that costs are correctly apportioned and net proceeds are properly distributed. Under this new provision, for example, if the GELAC receives 25% of the net proceeds, it may only pay 25% of the fundraising expenses, and no more than that amount.

Section 9034.5 Net Outstanding Campaign Obligations

In determining a Presidential primary committee's net outstanding campaign obligations ("NOCO"), § 9034.5(c)(1) permits candidates to deduct 40% of the

original cost of capital assets for depreciation. Similarly, § 9004.9(d)(1) provides for a straight 40% depreciation figure for capital assets purchased by general election campaign committees for purposes of the general election committee's statement of net outstanding qualified campaign expenses ("NOQCE"). At one time, the Commission had permitted federally financed Presidential campaign committees to demonstrate that a higher depreciation was appropriate for capital assets. In 1995, as part of an effort to streamline the audit process and to establish "bright lines" between primary expenses and general election expenses, the Commission adopted the straight 40% depreciation figure for all assets purchased after the change in the regulations took effect. It was believed that situations where the 40% figure was too low would be counterbalanced by situations where the figure was too high. Experience during the 1996 Presidential audits has shown that the 40% depreciation figure is unrealistically low for capital assets such as vehicles, computer systems, telephone systems, and other equipment that is heavily used during a Presidential primary campaign.

For this reason, the NPRM sought comments on the amending § 9034.5(c)(1) to allow primary candidates to demonstrate a higher depreciation figure through documentation of the fair market value. A similar amendment was proposed for the corresponding general election provision in 11 CFR 9004.9(d). Two comments addressed this proposed change. Both of them agreed that candidates should be allowed to demonstrate a higher depreciation. As the Commission concurs, this amendment is being included in both sections of the final rules.

The NPRM also contemplated the establishment of a minimum fair market value of 60% of the purchase price in situations where a candidate's primary committee transfers or sells capital assets to his or her publicly financed general-election committee. Both comments argued that the price for assets transferred from primary to general election committee should be based on actual fair market value, which may be less, rather than an artificial percentage applicable to all types of capital assets.

The final rules include the "bright line" approach, whereby the value of transferred assets is 60% of original purchase price. The Commission has concluded that it would be too complex to determine the fair market values of every capital asset actually transferred. The 60% figure is intended to reflect that while some capital assets are worth less, others are worth more. Sixty percent is reasonable in light of the fact that capital assets such as computer systems or telecommunications systems are customized and configured specifically to meet the needs of that particular campaign organization. It may also be of added value to the campaign staff to continue to work with familiar equipment, and to avoid the disruption that would occur if new equipment were obtained, instead. With respect to the sale of non-capital assets from the primary to the general election committee, new language in paragraph (d)((1)(iii) indicates that an inventory must be prepared. This is needed to verify the valuation included on the primary committee's NOCO statement as well as the amount listed on the general election committee's NOQCE statement.

The revised regulations in 11 CFR 9004.9(d) indicate that once the general election campaign is over, the value of assets obtained from the primary campaign committee shall be listed on the NOQCE statement as 20% of the original cost to the primary committee. Please note that campaigns do not have the option of demonstrating that an amount less than 20% is appropriate. Based on past experience, the Commission has concluded that a 20% residual value is a realistic figure for equipment that has been used throughout both the primary and general election campaigns.

The commenters argued that this figure should also be based on actual fair market value, which may be less, rather than an artificial percentage applicable to all types of capital assets. Nevertheless, the Commission has concluded that this is another area where it would be too complex to determine the fair market values of every capital asset on hand. Some capital assets may be worth less, while others may be worth more. Accordingly, the revisions to 11 CFR 9004.9(d) incorporate the 20% residual value figure. Please note that the general election committee may, if it wishes, sell these capital assets to the GELAC for the 20% residual value.

Another revision included in 11 CFR 9004.9 and 9034.5 is a clarification of the term "capital asset." A new sentence is being added to sections 9004.9(d) and 9034.5(c)(1) to indicate that when the components of a system, such as a computer system or a telecommunications system, are used together and the total cost of the components exceeds $2000, the entire system is considered a capital asset. This new language conforms to the Commission's previous interpretation of its rules. *See* Explanation and Justification for 11 CFR 9034.5, 60 FR 31868 (June 16, 1995). The NPRM sought comments on whether computer software should be treated as a capital asset. One commenter argued that software should not be considered to be a capital asset because the vendors' licensing agreements may bar transfer of the software. The Commission notes that some software programs may be sold as a package together with a computer system, thus making it impracticable to list them as separate capital assets on a NOCO statement.

Lastly, please note that an incorrect reference to the date of ineligibility in paragraph (d)(1)(i) of section 9004.9 has been changed to refer to the end of the expenditure report period.

Part 9035—Expenditure Limitations

Section 9035.1 Campaign Expenditure Limitation; Compliance and Fundraising Exemptions

The rules at 11 CFR 9035.1(c)(1) set forth an exemption from the overall spending limit for legal and accounting compliance costs incurred by federally financed Presidential primary committees. In the past, to claim this exemption, campaign committees have had to keep detailed records of salary and overhead expenses, including records indicating which duties are considered compliance and the percentage of time each person spends on such activities. The NPRM sought to amend this regulation to provide a simpler and easier method of calculating the compliance exemption. Accordingly, comments were sought on revising this paragraph to state that an amount equal to 10% of all operating expenditures for each reporting period may be treated as compliance expenses not subject to the candidate's spending limit. The NPRM noted that this amount could be readily derived from line 23, Operating Expenses, on the committee's reports.

Several commenters and witnesses stressed the importance of implementing policies that encourage candidates to spend money to achieve voluntary compliance with the campaign financing laws. Consequently, some of these opposed establishing an upper limit of 10% of operating costs that could be spent for compliance costs, arguing that the Commission should not discourage spending more money on compliance. They also pointed out that compliance costs may be unrelated to the overall amount of operating costs, and that committees having low operating costs could be disadvantaged. One witness urged the Commission to let committees demonstrate that their actual legal and accounting costs are higher than the standard percentage.

The Commission agrees that it is not sound policy to artificially limit or discourage compliance spending. Nevertheless, establishing a "standard deduction" for compliance has the advantage of simplicity and ease of application. Consequently, the Commission has decided to modify the initial proposal so that an amount equal to 15% of the candidate's overall expenditure limit may be excluded as exempt legal and accounting compliance costs under 11 CFR 100.8(b)(15). A review of previous Presidential campaigns indicates that this figure approximates the upper amount publicly funded primary committees have spent in previous election cycles. Unlike the initial proposal, this approach is not tied to monthly operating expenditures. Thus, it allows for greater flexibility in earlier reporting periods when committees may be setting up their legal and accounting systems. A similar approach has worked well with respect to fundraising expenses. *See* 11 CFR 100.8(b)(21) and 9035.1(c)(2). Note that the final rule does not permit committees to demonstrate that they have actually incurred a higher amount because the Commission is seeking to move away from its previous resource-intensive system that required the creation, maintenance, and review of considerable paperwork to document compliance costs. However, as explained above, in addition to the 15% of the overall spending limits, publicly funded primary candidates may also treat 100% of their overhead and salary expenses as exempt compliance costs after their date of ineligibility or after the end of the expenditure report period. These changes to the regulations are intended to decrease the time it takes for the Commission to verify compliance costs during the audit process. They should also reduce the resources campaign committees must devote to tracking compliance costs.

Please note that the title of section 9035.1 is also being revised and subheadings for each paragraph are being added to assist readers in locating the material in this section more easily.

Part 9036—Review of Matching Fund Submissions and Certification of Payments by Commission

Section 9036.1 Threshold Submission

During the 1996 Presidential election cycle, the Commission instituted a new program whereby primary campaign committees may submit contributions for matching fund payments through the use of digital imaging technology such as computer CD ROMs, instead of submitting paper photocopies of checks and deposit slips. For the 2000 election cycle, the Commission is expanding this program to permit the use of digital imaging for primary committees' threshold submissions. *See* new language in paragraph (b)(3) of section 9036.1. Please note that committees wishing to submit paper records and documentation, instead of digital images, may do so. The only written set of comments to address this topic supported the submission of this documentation via CD ROM.

Section 9036.2 Additional Submissions for Matching Fund Payments

Paragraph (b)(1)(vi) of this section is being revised to enable primary committees to submit digital images of contributor redesignations, reattributions and supporting statements and materials needed to establish the matchability of contributions. The single set of written comments to address this topic indicated that it would be burdensome for committees to maintain paper copies of original documentation other than contributor cards and affidavits. The Commission notes that the amendment to the regulations is only intended to give Presidential primary committees the option, in lieu of paper submissions, of electronically submitting digital images of contributor redesignations, contributor reattributions and the types of supporting statements commonly found on contributor cards. The requirements of 11 CFR 110.1(l) for maintaining the original documents are not being changed. Hence, revised section 9036.2 does not impose additional recordkeeping burdens on Presidential committees.

Additional Issues

During the course of this rulemaking, the Commission considered other possible changes to the regulations that it did not ultimately incorporate into the final rules. A summary of these proposals follows.

1. Allocation of Presidential Travel Costs

The Commission's regulations at 11 CFR 9004.7 and 9034.7 govern the allocation of travel expenses when other candidates or elected officials accompany a publicly funded Presidential candidate, or such candidate's staff, on campaign-related trips. One commenter addressed several differences between these rules and the provisions of 11 CFR 106.3 governing travel expenses for Congressional candidates and for Presidential candidates who don't accept federal funds for their campaigns.

The Commission has concluded that these proposals are beyond the scope of this rulemaking. At a later date, however, they may be included in a new rulemaking addressing possible revisions to 11 CFR 106.3. Changes in this area would impact all federal candidates, not just those who have or are running for President and have accepted federal funding for their campaigns. Thus, the Commission would want to have the benefit of obtaining comments from non-Presidential candidates before promulgating new rules that would affect them. In addition, to the extent possible, the Commission would need to closely consider consistency with Congressional guidelines regarding travel.

2. Aircraft Owned by Individuals and Charter Rates

The Commission's regulations at 11 CFR 114.9(e) create exceptions to the definitions of contribution and expenditure to allow candidates and their campaign staff to travel on aircraft owned by corporations or labor organizations if they provide reimbursement within specified time periods. Similarly, 11 CFR 9004.7 and 9034.7 provide for reimbursement for campaign-related travel on government aircraft such as Air Force One or Air Force Two. However, no comparable provisions cover travel on aircraft owned by individuals, partnerships or other unincorporated entities. One commenter urged the Commission to amend its regulations to apply the same first-class reimbursement requirement to travel on private aircraft regardless of the nature of the owner of the aircraft. With regard to travel between cities not having first class service, the comment urged the Commission to let authorized committees use the "lowest available" charter rate instead of the "usual" charter rate.

For some of the reasons mentioned above, the Commission has concluded

that these proposals are beyond the scope of this rulemaking. They could, however, be included in a new Notice of Proposed Rulemaking at a later date. Changes of this nature would impact all federal candidates, not just those who have are running for President and have accepted federal funding for their campaigns. Thus, the Commission would want to have the benefit of obtaining comments from non-Presidential candidates before promulgating new rules that would affect them. In addition, this complex area is also subject to regulation by the Federal Aviation Administration, and consultation with that agency would be advisable before issuing final rules. Similarly, the Commission would need to carefully consider the consistency of its rules with Congressional guidelines regarding travel.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached final rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that very few small entities will be affected by these proposed rules, and the cost is not expected to be significant. Further, any small entities affected have voluntarily chosen to receive public funding and to comply with the requirements of the Presidential Election Campaign Fund Act or the Presidential Primary Matching Payment Account Act in these areas.

List of Subjects

11 CFR Part 9003

Campaign funds, Reporting and recordkeeping requirements

11 CFR Part 9004

Campaign funds

11 CFR Part 9008

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements

11 CFR Part 9032.

Campaign funds.

11 CFR Parts 9033—9035

Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9036

Administrative practice and procedure, Campaign funds, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Subchapters E and F of Chapter I of Title 11 of the *Code of Federal Regulations* are amended as follows:

PART 9003—ELIGIBILITY FOR PAYMENTS

1. The authority citation for Part 9003 continues to read as follows:

Authority: 26 U.S.C. 9003 and 9009(b).

2. In § 9003.3, the headings for paragraphs (a) and (a)(1) are republished, and the section heading, the introductory text of paragraph (a)(1)(i), and paragraph (a)(1)(i)(A) are revised to read as follows:

§ 9003.3 Allowable contributions; General election legal and accounting compliance fund.

(a) *Legal and accounting compliance fund—major party candidates.*

(1) *Sources.*

(i) A major party candidate, or an individual who is seeking the nomination of a major party, may accept contributions to a legal and accounting compliance fund if such contributions are received and disbursed in accordance with this section. A general election legal and accounting compliance fund ("GELAC") may be established by such individual prior to being nominated or selected as the candidate of a political party for the office of President or Vice President of the United States. Before June 1 of the calendar year in which a Presidential general election is held, contributions may only be deposited in the GELAC if they are made for the primary and exceed the contributor's contribution limits for the primary and are lawfully redesignated by the contributor for the GELAC pursuant to 11 CFR 110.1.

(A) All solicitations for contributions to the GELAC shall clearly state that Federal law prohibits private contributions from being used for the candidate's election and that contributions will be used solely for legal and accounting services to ensure compliance with Federal law, and shall clearly state how contribution checks should be made payable. Contributions shall not be solicited for the GELAC before June 1 of the calendar year in which a Presidential general election is held. If the candidate does not become the nominee, all contributions accepted for the GELAC, including redesignated contributions, shall be refunded within sixty (60) days after the candidate's date of ineligibility.

* * * * *

3. Section 9003.5 is amended by revising paragraphs (b)(1)(iv) and (b)(3)(ii) to read as follows:

§ 9003.5 Documentation of disbursements.

* * * * *

(b) * * *

(1) * * *

(iv) If the purpose of the disbursement is not stated in the accompanying documentation, it must be indicated on the canceled check negotiated by the payee.

* * * * *

(3) * * *

(ii) *Purpose* means the full name and mailing address of the payee, the date and amount of the disbursement, and a brief description of the goods or services purchased. Examples of acceptable and unacceptable descriptions of goods and services purchased are listed at 11 CFR 104.3(b)(3)(i)(B).

* * * * *

PART 9004—ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS

4. The authority citation for part 9004 continues to read as follows:

Authority: 26 U.S.C. 9004 and 9009(b).

5. Section 9004.4 is amended by revising paragraphs (a)(4) and (b)(8) to read as follows:

§ 9004.4 Use of payments.

(a) * * *

(4) *Winding down costs.* The following costs shall be considered qualified campaign expenses:

(i) Costs associated with the termination of the candidate's general election campaign such as complying with the post-election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries, and office supplies; and

(ii) Costs associated with the candidate's general election campaign and incurred by the candidate prior to the end of the expenditure report period for which written arrangement or commitment was made on or before the close of the expenditure report period.

* * * * *

(b) * * *

(8) *Lost, misplaced, or stolen items.* The cost of lost, misplaced, or stolen items may be considered a nonqualified campaign expense. Factors considered by the Commission in making this determination shall include, but not be limited to, whether the committee demonstrates that it made conscientious efforts to safeguard the missing equipment; whether the committee sought or obtained insurance on the items; whether the committee filed a police report; the type of equipment involved; and the number and value of items that were lost.

6. Section 9004.9 is amended by revising paragraph (d)(1) to read as follows:

§ 9004.9 Net outstanding qualified campaign expenses.

* * * * *

(d) (1) *Capital assets and assets purchased from the primary election committee.*

(i) For purposes of this section, the term *capital asset* means any property used in the operation of the campaign whose purchase price exceeded $2000 when acquired by the committee. Property that must be valued as capital assets under this section includes, but is not limited to, office equipment, furniture, vehicles and fixtures acquired for use in the operation of the candidate's campaign, but does not include property defined as "other assets" under paragraph (d)(2) of this section. Capital assets include items such as computer systems and telecommunications systems, if the equipment is used together and if the total cost of all components that are used together exceeds $2000. A list of all capital assets shall be maintained by the committee in accordance with 11 CFR 9003.5(d)(1). The fair market value of capital assets shall be considered to be 60% of the total original cost of such items when acquired, except that items received after the end of the expenditure report period must be valued at their fair market value on the date acquired. A candidate may claim a lower fair market value for a capital asset by listing that capital asset on the statement separately and demonstrating, through documentation, the lower fair market value.

(ii) If capital assets are obtained from the candidate's primary election committee, the purchase price shall be considered to be 60% of the original cost of such assets to the candidate's primary election committee. For purposes of the statement of net outstanding qualified campaign expenses filed after the end of the expenditure report period, the fair market value of capital assets obtained from the candidate's primary election committee shall be considered to be 20% of the original cost of such assets to the candidate's primary election committee.

(iii) Items purchased from the primary election committee that are not capital assets, and also are not other assets under paragraph (d)(2) of this section, shall be listed on an inventory that states their valuation.

* * * * *

PART 9008—FEDERAL FINANCING OF PRESIDENTIAL NOMINATING CONVENTIONS

7. The authority citation for part 9008 continues to read as follows:

Authority: 2 U.S.C. 437, 438(a)(8); 26 U.S.C. 9008 and 9009(b).

8. Section 9008.7 is amended by adding new paragraph (c) to read as follows:

§ 9008.7 Use of funds.

* * * * *

(c) *Lost, misplaced, or stolen items.* The cost of lost, misplaced, or stolen items may not be defrayed with public funds under certain circumstances. Factors considered by the Commission in making this determination shall include, but not be limited to, whether the committee demonstrates that it made conscientious efforts to safeguard the missing equipment; whether the committee sought or obtained insurance on the items; whether the committee filed a police report; the type of equipment involved; and the number and value of items that were lost.

9. Section 9008.14 is revised to read as follows:

§ 9008.14 Petitions for rehearing; stays of repayment determinations.

Petitions for rehearing following the Commission's repayment determination and requests for stays of repayment determinations will be governed by the procedures set forth at 11 CFR 9007.5 and 9038.5. The Commission will afford convention committees the same rights as are provided to publicly funded candidates under 11 CFR 9007.5 and 9038.5.

10. Section 9008.52 is amended by republishing the heading of paragraph (c), and by revising the introductory text of paragraph (c)(1) to read as follows:

§ 9008.52 Receipts and disbursements of host committees.

* * * * *

(c) *Receipt of donations from local businesses and organizations.* (1) Local businesses (including banks), local labor organizations, and other local organizations or individuals who maintain a local residence or who work for a local business, local labor organization, or local organization may donate funds or make in-kind donations to a host committee to be used for the following purposes:

* * * * *

11. Section 9008.53 is amended by republishing the heading of paragraph (b), and by revising the introductory language of paragraph (b)(1) to read as follows:

§ 9008.53 Receipts and disbursements of government agencies and municipal corporations.

* * * * *

(b) *Receipt of donations to a separate fund or account.* (1) Local businesses (including banks), local labor organizations, and other local organizations or individuals who maintain a local residence or who work for a local business, local labor organization, or local organization may donate funds or make in-kind donations to a separate fund or account of a government agency or municipality to pay for expenses listed in 11 CFR 9008.52(c), provided that:

* * * * *

PART 9032—DEFINITIONS

12. The authority citation for part 9032 continues to read as follows:

Authority: 26 U.S.C. 9032 and 9039(b).

13. Section 9032.11 is revised to read as follows:

§ 9032.11 State.

State means each State of the United States, Puerto Rico, American Samoa, the Virgin Islands, the District of Columbia, and Guam.

PART 9033—ELIGIBILITY FOR PAYMENTS

14. The authority citation for Part 9033 continues to read as follows:

Authority: 26 U.S.C. 9003(e), 9033 and 9039(b).

15. Section 9033.11 is amended by revising paragraphs (b)(1)(iv) and (b)(3)(ii) to read as follows:

§ 9033.11 Documentation of disbursements.

* * * * *

(b) * * *

(1) * * *

(iv) If the purpose of the disbursement is not stated in the accompanying documentation, it must be indicated on the canceled check negotiated by the payee.

* * * * *

(3) * * *

(ii) *Purpose* means the full name and mailing address of the payee, the date and amount of the disbursement, and a brief description of the goods or services purchased. Examples of acceptable and unacceptable descriptions of goods and services purchased are listed at 11 CFR 104.3(b)(3)(i)(B).

* * * * *

PART 9034—ENTITLEMENTS

16. The authority citation for Part 9034 continues to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

17. Section 9034.4 is amended by revising paragraph (a)(3)(iii), paragraph (b)(8), the heading and introductory text of paragraph (e), and paragraph (e)(6)(i) to read as follows:

§ 9034.4 Use of contributions and matching payments.

(a) * * *

(3) * * *

(iii) In the case of a candidate who does not receive public funding for the general election, for purposes of the expenditure limitations set forth in 11 CFR 9035.1, 100% of salary, overhead and computer expenses incurred after a candidate's date of ineligibility may be treated as exempt legal and accounting compliance expenses beginning with the first full reporting period after the candidate's date of ineligibility. For candidates who continue to campaign or re-establish eligibility, this paragraph shall not apply to expenses incurred during the period between the date of ineligibility and the date on which the candidate either re-establishes eligibility or ceases to continue to campaign. For purposes of the expenditure limitations set forth in 11 CFR 9035.1, candidates who receive public funding for the general election must wait until the end of the expenditure report period described in 11 CFR 9002.12 before they may treat 100% of salary, overhead and computer expenses as exempt legal and accounting compliance expenses.

* * * * *

(b) * * *

(8) *Lost, misplaced, or stolen items.* The cost of lost, misplaced, or stolen items may be considered a nonqualified campaign expense. Factors considered by the Commission in making this determination shall include, but not be limited to, whether the committee demonstrates that it made conscientious efforts to safeguard the missing equipment; whether the committee sought or obtained insurance on the items; whether the committee filed a police report; the type of equipment involved; and the number and value of items that were lost.

* * * * *

(e) *Attribution of expenditures between the primary and the general election spending limits.* The following rules apply to candidates who receive public funding in either the primary or the general election, or both.

* * * * *

(6) * * *

(i) *Solicitations and fundraising costs.* The costs of fundraising, including that of events and solicitation costs, shall be attributed to the primary election or to the GELAC, depending on the purposes of the fundraising. If a candidate raises funds for both the primary election and for the GELAC in a single communication or through a single fundraising event, the allocation of fundraising costs and the distribution of net proceeds will be made in the same manner as described in 11 CFR 9034.8(c)(8)(i) and (ii).

* * * * *

18. Section 9034.5 is amended by revising paragraph (c)(1) to read as follows:

§ 9034.5 Net outstanding campaign obligations.

* * * * *

(c) (1) *Capital assets.* For purposes of this section, the term *capital asset* means any property used in the operation of the campaign whose purchase price exceeded $2000 when received by the committee. Property that must be valued as capital assets under this section includes, but is not limited to, office equipment, furniture, vehicles and fixtures acquired for use in the operation of the candidate's campaign, but does not include property defined as "other assets" under paragraph (c)(2) of this section. Capital assets include items such as computer systems and telecommunications systems, if the equipment is used together and if the total cost of all components that are used together exceeds $2000. A list of all capital assets shall be maintained by the committee in accordance with 11 CFR 9033.11(d). The fair market value of capital assets shall be considered to be 60% of the total original cost of such items when acquired, except that items received after the date of ineligibility must be valued at their fair market value on the date received. A candidate may claim a lower fair market value for a capital asset by listing that capital asset on the statement separately and demonstrating, through documentation, the lower fair market value. If the candidate receives public funding for the general election, a lower fair market value shall not be claimed under this section for any capital assets transferred or sold to the candidate's general election committee.

* * * * *

PART 9035—EXPENDITURE LIMITATIONS

19. The authority citation for part 9035 continues to read as follows:

Authority: 26 U.S.C. 9035 and 9039(b).

20. Section 9035.1 is revised to read as follows:

§ 9035.1 Campaign expenditure limitation; compliance and fundraising exemptions.

(a) *Spending limit.* (1) No candidate or his or her authorized committee(s) shall knowingly incur expenditures in connection with the candidate's campaign for nomination, which expenditures, in the aggregate, exceed $10,000,000 (as adjusted under 2 U.S.C. 441a(c)), except that the aggregate expenditures by a candidate in any one State shall not exceed the greater of: 16 cents (as adjusted under 2 U.S.C. 441a(c)) multiplied by the voting age population of the State (as certified under 2 U.S.C. 441a(e)); or $200,000 (as adjusted under 2 U.S.C. 441a(c)).

(2) The Commission will calculate the amount of expenditures attributable to the overall expenditure limit or to a particular state using the full amounts originally charged for goods and services rendered to the committee and not the amounts for which such obligations were settled and paid, unless the committee can demonstrate that the lower amount paid reflects a reasonable settlement of a bona fide dispute with the creditor.

(b) *Allocation of expenditures.* Each candidate receiving or expecting to receive matching funds under this subchapter shall also allocate his or her expenditures in accordance with the provisions of 11 CFR 106.2.

(c) *Compliance and fundraising exemptions.* (1) A candidate may exclude from the overall expenditure limitation set forth in paragraph (a) of this section an amount equal to 15% of the overall expenditure limitation as exempt legal and accounting compliance costs under 11 CFR 100.8(b)(15).

(2) A candidate may exclude from the overall expenditure limitation of 11 CFR 9035.1 the amount of exempt fundraising costs specified in 11 CFR 100.8(b)(21)(iii).

(d) *Candidates not receiving matching funds.* The expenditure limitations of 11 CFR 9035.1 shall not apply to a candidate who does not receive matching funds at any time during the matching payment period.

21. The title of Part 9036 is revised to read as follows:

PART 9036—REVIEW OF MATCHING FUND SUBMISSIONS AND CERTIFICATION OF PAYMENTS BY COMMISSION

22. The authority citation for Part 9036 continues to read as follows:

Authority: 26 U.S.C. 9036 and 9039(b).

23. Section 9036.1 is amended by revising paragraph (b)(3) to read as follows:

§ 9036.1 Threshold submission.

* * * * *

(b) * * *

(3) The candidate shall submit a full-size photocopy of each check or written instrument and of supporting documentation in accordance with 11 CFR 9034.2 for each contribution that the candidate submits to establish eligibility for matching funds. For purposes of the threshold submission, the photocopies shall be segregated alphabetically by contributor within each State, and shall be accompanied by and referenced to copies of the relevant deposit slips. In lieu of submitting photocopies, the candidate may submit digital images of checks and other materials in accordance with the procedures specified in 11 CFR 9036.2(b)(1)(vi). Digital images of contributions do not need to be segregated alphabetically by contributor within each State.

* * * * *

24. Section 9036.2 is amended by revising paragraph (b)(1)(vi) to read as follows:

§ 9036.2 Additional submissions for matching fund payments.

* * * * *

(b) * * *

(1) * * *

(vi) The photocopies of each check or written instrument and of supporting documentation shall either be alphabetized and referenced to copies of the relevant deposit slip, but not segregated by State as required in the threshold submission; or such photocopies may be batched in deposits of 50 contributions or less and cross-referenced by deposit number and sequence number within each deposit on the contributor list. In lieu of submitting photocopies, the candidate may submit digital images of checks, written instruments and deposit slips as specified in the Computerized Magnetic Media Requirements. The candidate may also submit digital images of contributor redesignations, reattributions and supporting statements and materials needed to verify the matchability of contributions. The candidate shall provide the computer equipment and software needed to retrieve and read the digital images, if necessary, at no cost to the Commission, and shall include digital images of every contribution received and imaged on or after the date of the previous matching fund request. Contributions and other documentation not imaged shall be submitted in photocopy form. The candidate shall maintain the originals of all contributor redesignations, reattributions and supporting statements and materials that are submitted for matching as digital images.

* * * * *

Dated: September 7, 1999.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 99–23578 Filed 9–10–99; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE153, Special Condition 23–096–SC]

Special Conditions; Meridian PA–46–400TP

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to The New Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960 for a type certificate for the Meridian PA–46–400TP airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic flight instrument system (EFIS) displays for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is August 27, 1999. Comments must be received on or before October 13, 1999.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. CE153, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE153. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–6941.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: "Comments to CE153." The postcard will be date stamped and returned to the commenter.

Background

On February 12, 1997, The New Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960, made an application to the FAA for a new Type Certificate for the Meridian PA–46–400TP airplane. The Meridian is a derivative of the PA–46–350P Malibu Mirage currently approved under TC No. A25SO. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an EFIS, that is vulnerable to HIRF external to the airplane.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, The New Piper Aircraft, Inc., must show that the Meridian PA–

46–400TP meets the following provisions, or the applicable regulations in effect on the date of application for the change to the Meridian PA–6–400TP:

Federal Aviation Regulations part 23 effective February 1, 1965, as amended by Amendments 23–1 through 23–52; Federal Aviation Regulations part 34 effective September 10, 1990, as amended by the amendment in effect on the date of certification; Federal Aviation Regulations part 36 effective December 1, 1969, as amended by amendment 36–1 through the amendment in effect on the day of certification; The Noise Control Act of 1972; exemptions, if any; and the special conditions adopted by this rulemaking action.

Discussion

If the Administrator finds that the applicable airworthiness standards do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions are normally issued in accordance with § 11.49, after public notice, as required by §§ 11.28 and 11.29(b), and become a part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The New Piper Aircraft, Inc., plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include EFIS, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems From High Intensity Radiated Fields (HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

Frequency	Field strength (volts per meter)	
	Peak	Average
10 kHz—100 kHz	50	50
100 kHz—500 kHz	50	50
500 kHz—2 MHz	50	50
2 MHz—30 MHz	100	100
30 MHz—70 MHz	50	50
70 MHz—100 MHz	50	50
100 MHz—200 MHz	100	100
200 MHz—400 MHz	100	100
400 MHz—700 MHz	700	50
700 MHz—1 GHz	700	100
1 GHz—2 GHz	2000	200
2 GHz—4 GHz	3000	200
4 GHz—6 GHz	3000	200
6 GHz—8 GHz	1000	200
8 GHz—12 GHz	3000	300
12 GHz—18 GHz	2000	200
18 GHz—40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, peak electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems, or both, that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Applicability

As discussed above, these special conditions are applicable to The New Piper Aircraft, Inc., Meridian PA–46–400TP. Should The New Piper Aircraft, Inc., apply at a later date for a change to the type certificate to include any other model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR part 21, §§ 21.16 and 21.17; and 14 CFR part 11, §§ 11.28 and 11.49.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for The New Piper Aircraft, Inc., Meridian PA–46–400TP airplane:

1. Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).

Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies:

Critical Functions: Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri on August 27, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–23720 Filed 9–10–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE149; Special Condition 23–097–SC]

Special Conditions: Soloy Corporation Model Pathfinder 21 Airplane; Airframe.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Soloy Corporation Model Pathfinder 21 airplane. The Model Pathfinder 21 airplane is a Cessna Model 208B airplane as modified by Soloy Corporation to be considered as a multiengine, part 23, normal category airplane. The Model Pathfinder 21 airplane will have a novel or unusual design features associated with installation of the Soloy Dual Pac propulsion system, which consists of two Pratt & Whitney Canada Model PT6D–114A turboprop engines driving a single, Hartzell, five-blade propeller. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: October 13, 1999.

FOR FURTHER INFORMATION CONTACT: Dave Keenan, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 601 East 12th Street, Kansas City, Missouri 64106; 816–426–5688, fax 816–426–2169.

SUPPLEMENTARY INFORMATION:

Background

On February 6, 1992, Soloy Corporation applied for a supplemental type certificate (STC) for the Model Pathfinder 21 airplane, which would modify the Cessna Model 208B airplane by installing the Soloy Dual Pac propulsion system. This propulsion system consists of two Pratt & Whitney Canada (PWC) Model PT6D–114A turboprop engines driving a single, Hartzell, five-blade propeller through a combining gearbox. Soloy Corporation is seeking approval for this airplane, equipped with a Soloy Dual Pac propulsion system, as a normal category multiengine airplane. Title 14 CFR part 23 is not adequate to address a multiengine airplane with a single propeller. Hence, the requirement for these proposed special conditions, which will be applied in addition to the applicable sections of part 23.

The Soloy Dual Pac propulsion system is mounted in the nose of the Model Pathfinder 21 airplane. With this arrangement, an engine failure does not cause an asymmetric thrust condition that would exist with a conventional twin turboprop airplane. This asymmetric thrust compounds the flightcrew workload following an engine failure. The Model Pathfinder 21 airplane configuration has the potential to substantially reduce this workload.

Since the Model Pathfinder 21 airplane produces only centerline thrust, the only direct airplane control implications of an engine failure are the change in torque reaction and propeller slipstream effect. These transient characteristics require substantially less crew action to correct than an asymmetric thrust condition and do not require constant effort by the flightcrew to maintain control of the airplane for the remainder of the flight.

Safety Analysis

The FAA has conducted a safety analysis that recognizes both the advantages and disadvantages of the proposed Model Pathfinder 21 airplane. The scope of this safety analysis was limited to the areas affected by the unique propulsion system installation and assumes compliance with the design-related requirements of these proposed special conditions. The FAA examined the accident and incident history of small twin turboprop operations for the years of 1983 to 1994 in the United States and the United Kingdom. The FAA evaluated each event and determined if the outcome,

given the same pilot, weather, and airplane except with centerline thrust and one propeller, would have been more favorable, less favorable, or unchanged. Examination of the incident data revealed a number of failure modes that, if not addressed as part of the Model Pathfinder 21 airplane design, could result in a potential increase in the number of accidents for the Model Pathfinder 21 airplane compared to the current fleet. Examples of such failure modes include loss of a propeller blade tip or failure of the propeller control system. Although these proposed special conditions contain provisions to prevent catastrophic failures of the remaining non-fail-safe components of the Model Pathfinder 21 airplane after compliance with the design related requirements, the analysis assumes that these components will fail in a similar manner to the failures contained in the incident data. Given these assumptions, the FAA determined that the projected accident rate of the Model Pathfinder 21 airplane would be equal to or lower than the current small twin turboprop airplane fleet. Considering that analysis, the FAA has determined that the advantages of centerline thrust compensate for the disadvantages of the non-fail-safe design features. Once that determination was made, these proposed special conditions were formulated with the objective of substantially reducing or eliminating risks associated with the non-redundant systems and components of the Model Pathfinder 21 airplane design that have been identified and providing a level of safety equivalent to that of conventional multiengine airplanes.

The FAA data review conducted to prepare these proposed special conditions is applicable only to the Model Pathfinder 21 airplane. For the concept of a single-propeller, multiengine airplane to be extended to other projects, a separate analysis of the accident and incident data for similarly sized airplanes would be required. If the advantages of centerline thrust compensated for the disadvantages of the non-fail-safe components, based on the service history of similarly sized airplanes, development of separate special conditions would be required.

Type Certification Basis

Under the provisions of 14 CFR part 21, § 21.101, Soloy Corporation must show that the Model Pathfinder 21 airplane continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate (TC) Data Sheet A37CE or the applicable regulations in effect on the date of application for change. The regulations incorporated by reference are commonly referred to as the "original type certification basis." The regulations incorporated by reference in TC No. A37CE are as follows:

The type certification basis for Cessna Model 208B airplanes shown on TC Data Sheet A37CE for parts not changed or not affected by the changes proposed by Soloy Corporation is part 23 of the Federal Aviation Regulations dated February 1, 1965, as amended by Amendments 23–1 through 23–28; part 36 dated December 1, 1969, as amended by Amendments 36–1 through 36–18; Special Federal Aviation Regulations (SFAR) 27 dated February 1, 1974, as amended by Amendments 27–1 through 27–4. Soloy Corporation must show that the Model Pathfinder 21 airplane meets the applicable provisions of part 23, including multiengine designated sections, as amended by Amendment 23–42 (the Pathfinder 21 type certification basis is based on the date of STC application: February 6, 1992) for parts changed or affected by the change. Soloy Corporation has also elected to comply with § 23.561, Emergency Landing Conditions—General (Amendment 23–48); § 23.731, Wheels (Amendment 23–45); § 23.733, Tires (Amendment 23–45); § 23.783, Doors (Amendment. 23–49); § 23.807, Emergency Exits (Amendment 23–49); § 23.811, Emergency Exit Marking (Amendment 23–46); § 23.901, Installation (Amendment 23–51); § 23.955, Fuel Flow (Amendment 23–51); § 23.1041, Cooling—General (Amendment 23–51); § 23.1091, Air Induction System (Amendment 23–51); § 23.1181, Designated Fire Zones; Regions Included (Amendment 23–51); § 23.1189, Shutoff Means (Amendment 23–43); § 23.1305, Powerplant Instruments (Amendment 23–52); and § 23.1351, Electrical Systems and Equipment—General (Amendment 23–49). The type certification basis for the Model Pathfinder 21 airplane also includes parts 34 and 36, each as amended at the time of certification. Soloy Corporation may also elect to comply with subsequent part 23 requirements to facilitate operators' compliance with corresponding part 135 requirements. The type certification basis for this airplane will include exemptions, if any; equivalent level of safety findings, if any; and the special conditions adopted by this rulemaking action.

If the Administrator finds that the applicable airworthiness regulations (part 23, as amended) do not contain adequate or appropriate safety standards for the Model Pathfinder 21 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by § 11.28 and § 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for an STC to modify any other model included on the same TC to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

The Soloy Dual Pac was certified as a propulsion system under part 33 and special conditions in Docket No. 93–ANE–14; No. 33–ANE–01 (62 FR 7335, February 19, 1997) under STC No. SE00482SE to the PWC Model PT6 engine TC E4EA. Those special conditions were created in recognition of the novel and unusual features of the proposal, specifically the combining gearbox.

Novel or Unusual Design Features

The Model Pathfinder 21 will incorporate a novel or unusual design feature by installing the Soloy Dual Pac propulsion system, which consists of two PWC Model PT6D–114A engines driving a single, Hartzell, five-blade propeller through a Soloy-designed combining gearbox. The combining gearbox incorporates redundant freewheeling, drive, governing, and lubricating systems. A system of one-way clutches both prevents the propeller shaft from driving the engine input shafts and allows either engine to drive the propeller should the other engine fail.

Propulsion System

The propulsion drive system includes all parts necessary to transmit power from the engines to the propeller shaft. This includes couplings, universal joints, drive shafts, supporting bearings for shafts, brake assemblies, clutches, gearboxes, transmissions, any attached accessory pads or drives, and any cooling fans that are attached to, or mounted on, the propulsion drive system. The propulsion drive system for this multiengine installation must be designed with a "continue to run" philosophy. This means that it must be able to power the propeller after failure of one engine or failure in one side of the drive system, including any gear, bearing, or element expected to fail. Common failures, such as oil pressure loss or gear tooth failure, in the propulsion drive system must not prevent the propulsion system from providing adequate thrust. These design requirements, and other propulsion drive system requirements, are included in the part 33 special conditions, and, therefore, are required as part of these proposed special conditions.

Section 23.903(b)(1) states, in part, "Design precautions must be taken to minimize the hazards to the airplane in the event of a rotor failure." Part 33 containment requirements address blade failures but do not require containment of failed rotor disks; therefore, § 23.903(b)(1) requires that airplane manufacturers minimize the hazards in the event of a rotor failure. This is done by locating critical systems and components out of impact areas as much as possible. The separation inherent in conventional twin engine arrangements by locating the engines on opposite sides of the fuselage provides good protection from engine-to-engine damage. Although most multiengine installations have the potential for an uncontained failure of one engine damaging the other engine, service history has shown that the risk of striking the opposite engine is extremely low.

The Model Pathfinder 21 airplane propulsion system installation does not have the inherent engine-to-engine isolation of a conventional twin turboprop airplane. For the Model Pathfinder 21 airplane to obtain a level of safety equivalent to that of a conventional multiengine airplane, the effects of rotor failure must be addressed. Soloy Corporation must demonstrate that the engine type in relevant installations has at least ten million hours of service time without a high energy rotor failure (for example, disks, hubs, compressor wheels, and so forth). Additionally, for any lower energy fragments released during this extensive service life of the engine (for example, blades), a barrier must be placed between the engines to contain these low energy fragments. Even after installation of a barrier, engine-to-engine isolation following failure of either engine could be compromised through the common mount system or shared system interfaces such as firewalls, electrical busses, or cowlings. Soloy Corporation must, therefore, demonstrate any loads transmitted through the common mount system as a result of an engine failure do not prevent continued safe flight and landing with the operating engine.

Section 23.903(b)(1) also addresses damage caused by engine case burn-through. Engine case burn-through results in a concentrated flame that has the capability to burn through the firewall mandated by § 23.1191; therefore, § 23.903(b)(1) requires that design precautions must be taken to minimize the hazards to the airplane in the event of a fire originating in the engine that burns through the engine case. Similar to uncontained engine failures, the conventional multiengine airplane arrangement provides inherent protection from engine-to-engine damage associated with engine case burn-through by placing the engines on opposite sides of the fuselage. The Model Pathfinder 21 airplane propulsion system does not have this inherent isolation; therefore, the FAA is requiring that engine type in a relevant installation to have either at least ten million hours of service time without an engine case burn-through, or a firewall able to protect the operating engine from engine case burn-through installed between the engines.

Soloy Corporation is not required to show compliance to § 21.35, per § 21.115 because the Model Pathfinder 21 airplane certification is being conducted under an STC project. Section 21.35(f)(1), Flight Tests, requires aircraft incorporating turbine engines of a type not previously used in a type certificated aircraft to operate for at least 300 hours with a full complement of engines that conform to a type certificate as part of the certification flight test. The propulsion system installation is, however, different from any other airplane previously certified; therefore, the FAA is requiring as part of these special conditions that Soloy Corporation show compliance with § 21.35(f)(1).

Propeller Installation

As demonstrated by the data discussed in the Safety Analysis section, propeller blade failures near the hub result in substantial airplane damage on a conventional twin turboprop airplane. One of the eight events was catastrophic. Blade debris has damaged critical components and structure of the airplane, and large unbalance loads in the propeller have led to engine, mount, and wing structural failure. In contrast, service history has demonstrated that blade tip failures are not necessarily catastrophic on a conventional multiengine airplane because the flightcrew is able to secure the engine with the failed propeller and safely land the airplane. However, if the Model Pathfinder 21 airplane's single propeller failed near the tip, the failure would be likely to result in a catastrophic accident caused by the total loss of thrust capability and severe vibration. Other propeller system structural failures would be equally catastrophic; therefore, steps must be taken to reduce the potential for propeller system structural failures.

As discussed earlier, the FAA has determined additional testing is required for non-redundant components to ensure that equivalency to the fail-safe and isolation requirements of § 23.903(c) is met. The Model Pathfinder 21 airplane's single propeller system must be installed and maintained in such a manner as to substantially reduce or eliminate the occurrence of failures that would preclude continued safe flight and landing. To ensure the propeller installation and production and maintenance programs are sufficient to achieve the fail-safe equivalency requirement, these proposed special conditions include a 2,500 cycle validation test. This corresponds to the FAA's estimated annual usage for a turboprop airplane operating in scheduled service. An airplane cycle includes idle, takeoff, climb, cruise, descent, and reverse. The test must utilize production parts installed on the engine and should include a wide range of ambient and wind conditions, several full stops, and validation of scheduled and unscheduled maintenance practices.

Furthermore, these special conditions require identification of the critical parts of the propeller assembly, which are components whose failure during ground or flight operation could cause a catastrophic effect on the airplane, including loss of the ability to produce controllable thrust. The FAA is proposing to require that a critical parts plan, modeled after plans required by Joint Aviation Requirements 27 and 29 for critical rotorcraft components, be established and implemented for the critical components of the propeller assembly. This plan draws the attention of the personnel involved in the design, manufacture, maintenance, and overhaul of a critical part to the special nature of the part. The plan should define the details of relevant special instructions to be included in the Instructions for Continued Airworthiness. The Instructions for Continued Airworthiness, required by § 23.1529, should contain life limits, mandatory overhaul intervals, and conservative damage limits for return to service and repair, as appropriate, for the critical parts identified in accordance with these special conditions.

On a conventional multiengine airplane, the flightcrew will secure an engine to minimize effects of propeller imbalance. Most of these airplanes also incorporate quick acting manual or

automatic propeller feathering systems that further reduce the time the airplane is exposed to the effects of propeller imbalance. In addition to the propeller blade failures discussed earlier, the unbalanced condition could be caused by a propeller system failure such as loss of a de-icing boot, malfunction of a de-icing boot in icing conditions, an oil leak into a blade butt, asymmetric blade pitch, or a failure in a counterweight attachment. The Model Pathfinder 21 airplane design does not provide any means to reduce the vibration produced by an unbalanced propeller; therefore, these proposed special conditions require that the engines, propulsion drive system, engine mounts, primary airframe structure, and critical systems must be designed to function safely in the high vibration environment generated by those less severe propeller failures. In addition, the degree of flight deck vibration must not jeopardize the crew's ability to continue to operate the airplane in a safe manner. Component failures that generate vibrations beyond the capability of the airplane must be addressed as a critical part in the same manner as required for propeller blade failures.

Propeller Control System

Propeller control system failures on a conventional twin engine airplane may result in a one-engine-inoperative configuration. To ensure an equivalent level of safety in the event of a propeller control system failure, these special conditions require that the Model Pathfinder 21 airplane propulsion system be designed such that the airplane meets the one-engine-inoperative requirements of § 23.53 and § 23.67 after the most critical propeller control system failure.

There are several means to accomplish these special condition elements. Soloy Corporation plans to address them by providing a mechanical high-pitch stop, which would be set to a "get home" pitch position, thereby preventing the propeller blades from rotating to a feather-pitch position when oil pressure is lost in the propeller control system. This would allow the propeller to continue to produce a minimum amount of thrust as a fixed-pitch propeller. These special conditions provide design requirements that the FAA has determined are critical to a default fixed-pitch position feature. These include maintaining engine and propeller limits following an automatic or manual pitch change, the ability to manually select and deselect the default fixed-pitch position in flight in the event of a propeller control system failure that does not result in a loss of oil pressure, and the means to indicate to the flightcrew when the propeller is at the default fixed-pitch position.

Propulsion Instrumentation

On a conventional multiengine airplane, the pilot has positive indication of an inoperative engine created by the asymmetric thrust condition. The airplane will not yaw when an engine or a portion of the propulsion drive system fails because of the centerline thrust of the Model Pathfinder 21 airplane propulsion system installation. The flightcrew will have to rely on other means to determine which engine or propulsion drive system element has failed so as to secure the correct engine; therefore, these special conditions require that a positive indication of an inoperative engine or a failed portion of the propulsion drive system must be provided.

Section 23.1305 requires instruments for the fuel system, engine oil system, fire protection system, and propeller control system. This rule is intended for powerplants consisting of a single-engine, gearbox, and propeller. To protect the portions of the propulsion drive system that are independent of the engines, additional instrumentation, which includes oil pressure, oil quantity, oil temperature, propeller speed, gearbox torque, and chip detection, is required.

Fire Protection System

On a conventional twin engine airplane, the engines are sufficiently separated to eliminate the possibility of a fire spreading from one engine to another. Since the Soloy Dual Pac propulsion system is installed in the nose of the airplane, the engines are separated only by a firewall. The fire protection system of the Model Pathfinder 21 airplane must include features to isolate each fire zone from any other zone and the airplane to maintain isolation of the engines during a fire; therefore, these special conditions mandate that the firewall required by § 23.1191 be extended to provide firewall isolation between either engine and the propulsion drive system. These special conditions require that heat radiating from a fire originating in any fire zone must not affect components in adjacent compartments in such a way as to endanger the airplane.

Airplane Performance

Section 23.67, and paragraphs in § 23.53, § 23.69 and § 23.75, provide performance requirements for multiengine airplanes with one engine inoperative. These rules are not adequate for multiengine, single propeller airplanes. In these special conditions, the airplane configuration requirements specified in § 23.53(b)(1), § 23.67(c)(1), § 23.69(b), and § 23.75(g) have been adapted to accommodate the propeller system of the Model Pathfinder 21 airplane to ensure a level of safety equivalent to that of conventional multiengine airplanes.

Airspeed Indicator

Section 23.1545(b)(5) provides one-engine-inoperative marking requirements for the airspeed indicator. This rule is not adequate to address critical propeller control system failures on the Model Pathfinder 21 airplane. As a result, these special conditions require that the airspeed markings required by § 23.1545(b)(5) be based on the most critical flight condition between one engine inoperative or a failed propeller control system in order to ensure a level of safety equivalent to that of conventional multiengine airplanes.

Airplane Flight Manual

Sections 23.1585 and 23.1587 require pertinent information to be included in the Airplane Flight Manual (AFM). These rules are not adequate to address critical propeller control system failures on the Model Pathfinder 21 airplane. As a result, these special conditions require that the critical procedures and information required by § 23.1585, paragraph (c), and § 23.1587, paragraphs (c)(2) and (c)(4), include consideration of these critical propeller control system failures in order to ensure a level of safety equivalent to that of conventional multiengine airplanes.

Discussion of Comments

Notice of proposed special conditions, Notice No. 23–98–05–SC, Docket No. CE149, for the Soloy Corporation Model Pathfinder 21 airplane was published in the **Federal Register** on March 25, 1999 (64 FR 14401). On April 21, 1999, Soloy Corporation requested that the comment period be extended to allow them sufficient time to comment on the proposals. The FAA reopened the comment period in the **Federal Register** dated June 1, 1999 (64 FR 29247). The new comment period closed July 1, 1999. The following is a summary of the comments received and a response to each comment.

Only one commenter, Hartzell Propeller, Inc., responded to the notice of proposed special conditions. Their comments are summarized below:

1. *Comment:* This requirement has no clearly stated objectives. Is the purpose of each cycle to exercise the blade pitch mechanism or to subject the propeller to fatigue cycles? This propeller is derived from a model that has been in service since the 1970's and has accumulated more than 4 million hours. From the propeller's perspective, there is no apparent benefit in adding 2,500 cycles to this experience.

FAA Response: The purpose of this test is not only for the propeller alone, but also for the entire propulsion system of the Pathfinder 21 airplane. The object of this test is to establish the reliability of the engines, combining gearbox, and the propeller system together, as installed on the Pathfinder 21 airplane. This propulsion system reliability is being imposed due to a multiengine aircraft having only a single propeller.

2. *Comment:* Balance criteria is very subjective. While most could agree when something is within acceptable limits, people's tolerance for unbalance can vary widely, making this requirement difficult to quantify. The ability of the propeller and airframe structure to withstand unbalance far exceeds that of the crew and passengers to tolerate it.

FAA Response: Since this design is being classified as a multiengine aircraft, the flight crew will not have the ability to shutdown and feather an engine that is running rough due to some form of imbalance and continue on with the remaining powerplant. A Pathfinder 21 flightcrew may be required to operate the propulsion system at higher levels of imbalance than might be required of a conventional twin-engine airplane. This special condition is an attempt to quantify those levels of imbalance.

3. *Comment:* There is no § 23.53(b)(1)(ii). The text of § 23.53(b)(1) specifically states both engines are operative. Section 23.67 makes specific reference to reciprocating engines and weights below 6,000 pounds, neither of which apply to the Pathfinder 21.

FAA Response: Section 23.53(b)(1)(ii), Takeoff speeds, in Amendment 23–34 specifically states, "Each normal, utility, and acrobatic category airplane, upon reaching a height of 50 feet above the takeoff surface, must have a speed of not less than the following: For multiengine airplanes, the higher of 1.3 V_{S1}, or any lesser speed, not less than V_X plus 4 knots, that is shown to be safe under all conditions, including turbulence and complete engine failure."

Section 23.67(c), Climb: one engine inoperative, in Amendment 23–42 specifically states, "For normal, utility, and acrobatic category turbine engine-powered multiengine airplanes the following apply: The steady climb gradient must be determined at each weight, altitude, and ambient temperature within the operational limits established by the applicant, with the airplane in the configuration as prescribed in paragraph (a) of this section. Each airplane must be able to maintain at least the following climb gradients with the airplane in the configuration prescribed in paragraph (a) of this section: 1.5 percent at a pressure altitude of 5,000 feet and a speed not less than 1.2 V_{S1}, and at standard temperature (41°F); and 0.75 percent at a pressure altitude of 5,000 feet at a speed not less than 1.2 V_{S1} and 81°F (standard temperature plus 40°F). The minimum climb gradient specified in paragraphs (c)(2)(i) and (ii) of this section must vary linearly between 41°F and 81°F and must change at the same rate up to the maximum operating temperature approved for the airplane."

4. *Comment:* Any means to provide a secondary method to select blade angle would affect the type design of the propeller and introduce unconventional features which could adversely affect the established reliability of the propeller.

FAA Response: The FAA agrees and this requirement has been removed from the special conditions.

5. *Comment:* The special conditions state that "a means to indicate to the flight crew when the propeller is at the default fixed-pitch position must be provided." The obvious signal that the propeller has defaulted to a fixed-pitch condition is a reduction in RPM.

FAA Response: The FAA agrees and this requirement has been removed from the special conditions.

Applicability

As discussed above, these special conditions are applicable to the Soloy Corporation Model Pathfinder 21 airplane . Should Soloy Corporation apply at a later date for a supplemental type certificate to modify any other model included on TC No. A37CE, the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model of airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 49.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Cessna Model 208B airplanes modified by the Soloy Corporation.

1. Propulsion System.

(a) Engine Requirements. The propulsion system must comply with the Soloy Corporation Soloy Dual Pac Engine Special Conditions (Docket No. 93–ANE–14; No. 33–ANE–01), published in **Federal Register**, Volume 62, Number 33, dated February 19, 1997.

(b) Engine Rotor Failure. In addition to showing compliance with 23.903(b)(1) (Amendment 23–40), compliance must be shown with the following:

(1) The engine type to be installed must be shown to have demonstrated a minimum of ten million hours of actual service experience in installations of equivalent or higher disk rotation loading without an uncontained high energy rotor failure; and a shield capable of preventing all fragments of an energy level that have been released during uncontained engine failures experienced in service from impacting the adjacent engine must be installed; and

(2) It must be shown that the adjacent engine is not affected following any expected engine failure.

(c) Engine case Burn-Through. In addition to showing compliance with § 23.903(b)(1) (Amendment 23–40), the engine type to be installed must be shown to have demonstrated a minimum of ten million hours of actual service experience in installations of equivalent or higher combustor pressures and temperatures without an engine case burn-through event; or a firewall capable of containing a fire originating in the engine that burns through the engine case must be installed between the engines.

(d) Propulsion System Function and Reliability Testing. The applicant must complete the testing required by § 21.35(f)(1) (Amendment 21–51).

2. Propeller Installation.

(a) The applicant must complete a 2,500 airplane cycle evaluation of the propeller installation. This evaluation may be accomplished on the airplane in a combination of ground and flight

cycles or on a ground test facility. If the testing is accomplished on a ground test facility, the test configuration must include sufficient interfacing system hardware to simulate the actual airplane installation, including the engines, propulsion drive system, and mount system.

(b) Critical Parts. (1) The applicant must define the critical parts of the propeller assembly. Critical parts are those parts whose failure during ground or flight operation could cause a catastrophic effect to the airplane, including loss of the ability to produce controllable thrust. In addition, parts, of which failure or probable combinations of failures would result in a propeller unbalance greater than that defined under paragraph (c), are classified as critical parts.

(2) The applicant must develop and implement a plan to ensure that the critical parts identified in paragraph (b)(1) are controlled during design, manufacture, and throughout their service life so that the risk of failure in service is minimized.

(c) Propeller Unbalance. The applicant must define the maximum allowable propeller unbalance that will not cause damage to the engines, propulsion drive system, engine mounts, primary airframe structure, or to critical equipment that would jeopardize the continued safe flight and landing of the airplane. Furthermore, the degree of flight deck vibration caused by this unbalance condition must not jeopardize the crew's ability to continue to operate the airplane in a safe manner.

3. Propeller Control System.

(a) The propeller control system must be independent of the turbine engines such that a failure in either turbine engine or an engine control system will not result in loss of propeller control.

(b) The propeller control system must be designed so that the occurrence of any single failure or probable combination of failures in the system which would prevent the propulsion system from producing thrust at a level required to meet § 23.53(b)(1)(ii) (Amendment 23–34) and § 23.67(c) (Amendment 23–42) is extremely improbable.

(c) The propeller control system must be designed to implement a default fixed-propeller pitch position in the event of a propeller control system failure:

(1) A pitch change to the default fixed-pitch position must not exceed any limitation established as part of the engine and propeller type certificates;

4. Propulsion Instrumentation.

(a) Engine Failure Indication. A positive means must be provided to indicate when an engine is no longer able to provide torque to the propeller. This means may consist of instrumentation required by other sections of part 23 or these special conditions if it is determined that those instruments will readily alert the flightcrew when an engine is no longer able to provide torque to the propeller.

(b) Propulsion Drive System Instrumentation. In addition to the requirements of § 23.1305 (Amendment 23–52), the following instruments must be provided for any power gearbox or transmission:

(1) An oil pressure warning means and indicator for each pressure-lubricated gearbox;

(2) A low oil quantity indicator for each gearbox, if lubricant is self-contained;

(3) An oil temperature indicator;

(4) A tachometer for the propeller;

(5) A torquemeter for the transmission driving a propeller shaft if the sum of the maximum torque that each engine is capable of producing exceeds the maximum torque for which the propulsion drive system has been certified under 14 CFR part 33; and

(6) A chip detecting and indicating system for each gearbox.

5. Fire Protection System.

(a) In addition to § 23.1191(a) and (b) (not amended),

(1) Each engine must be isolated from the other engine and the propulsion drive system by firewalls, shrouds, or equivalent means; and

(2) Each firewall or shroud, including applicable portions of the engine cowling, must be constructed so that no hazardous quantity of liquid, gas, or flame can pass from the isolated compartment to the other engine or the propulsion drive system and so that firewall temperatures under all normal or failure conditions would not result in auto-ignition of flammable fluids and vapors present in the other engine and the propulsion drive system.

(b) Components, lines, and fittings located in the engine and propulsion drive system compartments must be constructed of such materials and located at such distances from the firewall that they will not suffer damage sufficient to endanger the airplane if a fire is present in an adjacent engine compartment.

6. Airplane Performance.

(a) In addition to § 23.53(b)(1) (Amendment 23–34), the airplane, upon reaching a height of 50 feet above the takeoff surface level, must have reached a speed of not less than 1.3 V_{S1}, or any lesser speed, not less than V_X plus 4 knots, that is shown to be safe under all conditions, including turbulence and the propeller control system failed in any configuration that is not extremely improbable.

(b) In lieu of § 23.67(c)(1) (Amendment 23–42), the steady climb gradient must be determined at each weight, altitude, and ambient temperature within the operational limits established by the applicant, with the airplane in the following configurations:

(1) Critical engine inoperative, remaining engine at not more than maximum continuous power or thrust, wing flaps in the most favorable position, and means for controlling the engine cooling air supply in the position used in the engine cooling tests required by § 23.1041 (Amendment 23–7) through § 23.1045 (Amendment 23–7);

(2) Both engines operating normally and the propeller control system failed in any configuration that is not extremely improbable, the engines at not more than maximum continuous power or thrust, wing flaps in the most favorable position, and means for controlling the engine cooling air supply in the position used in the engine cooling tests required by § 23.1041 (Amendment 23–7) through § 23.1045 (Amendment 23–7).

(c) Enroute climb/descent.

(1) Compliance to § 23.69(a) (Amendment 23–50) must be shown.

(2) The steady gradient and rate of climb/descent must be determined at each weight, altitude, and ambient temperature within the operational limits established by the applicant with—

(i) The critical engine inoperative, the engines at not more than maximum continuous power, the wing flaps retracted, and a climb speed not less than 1.2 V_{S1}.

(ii) Both engines operating normally and the propeller control system failed in any configuration that is not extremely improbable, the engines at not more than maximum continuous power, the wing flaps retracted, and a climb speed not less than 1.2 V_{S1}.

(d) In addition to § 23.75 (Amendment 23–42), the horizontal distance necessary to land and come to a complete stop from a point 50 feet above the landing surface must be determined as required in § 23.75 (Amendment 23–42) with both engines operating normally and the propeller control system failed in any configuration that is not extremely improbable.

7. Airspeed Indicator.

In lieu of the requirements of § 23.1545(b)(5) (Amendment 23–23), for one—engine inoperative or the propeller control system failed in any configuration that is not extremely improbable, whichever is most critical, the best rate of climb speed V_Y, must be identified with a blue sector extending from the V_Y speed at sea level to the V_Y speed at an altitude of 5,000 feet, if V_Y is less than 100 feet per minute, or the highest 1,000-foot altitude (at or above 5,000 feet) at which the V_Y is 100 feet per minute or more. Each side of the sector must be labeled to show the altitude for the corresponding V_Y.

8. Airplane Flight Manual. (a) In addition to the requirements of § 23.1585(c) (Amendment 23–34), the following information must be included in the Airplane Flight Manual (AFM):

(1) Procedures for maintaining or recovering control of the airplane at speeds above and below V_{S1} with the propeller control system failed in any configuration that is not extremely improbable.

(2) Procedures for making a landing with the propeller control system failed in any configuration that is not extremely improbable and procedures for making a go-around with the propeller control system failed in any configuration that is not extremely improbable, if this latter maneuver can be performed safely; otherwise, a warning against attempting the maneuver.

(3) Procedures for obtaining the best performance with the propeller control system failed in any configuration that is not extremely improbable, including the effects of the airplane configuration.

(b) In lieu of the requirements of § 23.1587 (c)(2) and (c)(4) (Amendment 23–39), the following information must be furnished in the Airplane Flight Manual:

(1) The best rate-of-climb speed or the minimum rate-of-descent speed with one engine inoperative or the propeller control system failed in any configuration that is not extremely improbable, whichever is more critical.

(2) The steady rate or gradient of climb determined in Special Condition #6, Airplane Performance, paragraph (b)(1) or paragraph (b)(2), whichever is more critical, and the airspeed, power, and airplane configuration.

(c) The steady rate and gradient of climb determined in Special Condition #6, Airplane Performance, paragraph (c), must be furnished in the Airplane Flight Manual.

(d) The landing distance determined under § 23.75 (Amendment 23–42) or in Special Condition #6, Airplane Performance, paragraph (d) of these proposed special conditions, whichever is more critical.

Issued in Kansas City, Missouri on August 27, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–23721 Filed 9–10–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–43]

Amendment to Class E Airspace; Sikeston, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Sikeston Memorial Municipal Airport, Sikeston, MO. A review of the Class E airspace are for Sikeston Memorial Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D.

In addition, the Sikeston Nondirectional Radio Beacon (NDB) and coordinates have been added to the text header and reference to the NDB is included in the airspace description.

The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), add the Sikeston NDB and coordinates, and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, December 30, 1999.

Comments for inclusion in the Rules Docket must be received on or before October 20, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 99–ACE–43, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Sikeston, MO. A review of the Class E airspace for Sikeston Memorial Municipal Airport, MO, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Sikeston Memorial Municipal Airport, MO, will provide additional controlled airspace for aircraft operating under IFR, include the Sikeston NDB and coordinates, and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal**

Register indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the captain **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ACE–43." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Sikeston, MO [Revised]

Sikeston Memorial Municipal Airport, MO
(Lat. 36°53′56″N., long. 89°33′42″W.)
Sikeston NDB
(Lat. 36°53′16″N., long. 89°33′53″W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Sikeston Memorial Municipal Airport and within 2.6 miles each side of the 021° bearing from the Sikeston NDB extending from the 6.5-mile radius to 7 miles north of the airport.

* * * * *

Issued in Kansas City, MO, on September 3, 1999.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 99–23724 Filed 9–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–42]

Amendment to Class E Airspace; Malden, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Malden Municipal Airport, Malden, MO. A review of the Class E airspace area for Malden Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D.

The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR) and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, December 30, 1999.

Comments for inclusion in the Rules Docket must be received on or before October 20, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 99–ACE–42, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Malden, MO. A review of the Class E airspace for Malden Municipal Airport, MO, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Malden Municipal Airport, MO, will provide additional controlled airspace for aircraft operating under IFR, and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ACE–42." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Malden, MO [Revised]

Malden Municipal Airport, MO
(Lat. 36°36′02″N., long. 89°59′32″W.)
Malden VORTAC
(Lat. 36°33′18″N., long. 89°54′41″W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Malden Municipal Airport and within 2.6 miles each side of the 121° radial of the Malden VORTAC extending from the 6.7-mile radius to 7 miles southeast of the VORTAC.

* * * * *

Issued in Kansas City, MO, on September 3, 1999.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 99–23723 Filed 9–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–34]

Amendment to Class E Airspace; Kansas City, MO

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule.

SUMMARY: This notice amends the Class E airspace area at Kansas City International Airport, MO. The Kansas City VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) has been relocated from its present position to the Kansas City International airport, MO. Relocating the Kansas City VORTAC requires amending the radial for the VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) or Tactical Air Navigation (TACAN) Runway (RWY) 27, Standard Instrument Approach Procedure (SIAP). Also, a review of the Class E airspace area for Kansas City International Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. This notice enlarges the Class E airspace to conform to the criteria of FAA Order 7400.2D. The review indicated the Instrument Landing System (ILS) localizer RWY 19R, ILS RWY 19L, ILS RWY 1L, ILS RWY 1R, and coordinates should be included in the text header for the Kansas City International Airport, MO. Minor corrections are also being made to the legal description of the Kansas City International Airport Class E airspace.

EFFECTIVE DATE: 0901 UTC November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 E. 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION:

History

On July 19, 1999, the FAA proposed to amend part 71 of the Federal Regulations (14 CFR part 71) by amending the Class E airspace area at Kansas City, MO (64 FR 38607). This action will provide additional controlled airspace to accommodate the VOR/DME or TACAN RWY 27 SIAP and comply with the criteria of FAA Order 7400.2D. Minor corrections are also being made to the text header and legal description of the Class E airspace. After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require adoption of the rule. The FAA has determined that this correction will not change the meaning of the action nor add any additional burden on the public beyond that already published.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Regulations (14 CFR part 71) amends the Class E airspace area at Kansas city, MO, by providing additional controlled airspace for aircraft executing the VOR/DME or TACAN RWY 27 SIAP to the Kansas City International airport, and comply with the criteria of FAA Order 7400.2D. This action also corrects the legal description of the airspace. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Kansas City International Airport, MO

Kansas City International Airport, MO
(Lat. 39°17′51″N., long. 94°42′50″W.)
Kansas City Downtown Airport, MO
(Lat. 39°07′24″N., long. 94°35′34″W.)
Fort Leavenworth, Sherman Army Airfield (AAF), KS
(Lat. 39°22′06″N., long. 94°54′53″W.)
Kansas City, VORTAC
(Lat. 39°17′07″N., long. 94°44′13″W.)
DOTTE LOM
(Lat. 39°13′15″N., long. 94°45′00″W.)
Riverside VOR/DME
(Lat. 39°07′14″N., long. 94°35′48″W.)
ILS RWY 19R localizer
(Lat. 39°17′24″N., long. 94°43′49″W.)
ILS RWY 19L localizer
(Lat. 39°16′44″N., long. 94°42′35″W.)
ILS RWY 1L localizer
(Lat. 39°19′30″N., long. 94°43′12″W.)
ILS RWY 1R localizer
(Lat. 39°18′34″N., long. 94°42′03″W.)

That airspace extending upward from 700 feet above the surface within a 7.6-mile radius of the Kansas City International Airport and within 4.4 miles each side of the Kansas City International Runway 19R ILS localizer north course and within 4.4 miles east of the Kansas City International Runway 19L ILS localizer north course extending from the 7.6-mile radius to 21.7 miles north of the DOTTE LOM and within 4.4 miles each side of the 093° radial of the Kansas City VORTAC extending from the Kansas City International Airport 7.6-mile radius to 12 miles east of the Kansas City VORTAC, and within 2.5 miles west of the Kansas City International Runway 1L ILS localizer south course and within 2.6 miles each side of the Kansas City International Runway 1R ILS localizer course extending from the 7.6-mile radius to 9.5 miles south of the DOTTE LOM and within a 6.7-mile radius of the Kansas City Downtown Airport and within 3 miles each side of the 210° radial of the Riverside VOR/DME extending from the 6.7-mile radius to 12.6 miles southwest of the Downtown Airport, and within a 6.5-mile radius of the Sherman AAF.

* * * * *

Issued in Kansas City, MO on September 3, 1999.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 99–23725 Filed 9–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29733; Amdt. No. 1948]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual *SIAP copies may be obtained from:*

1. FAA Public Inquiry Center (APA–200). FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on September 3, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF,SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . Effective October 7, 1999

Storm Lake, IA, Storm Lake Muni, GPS RWY 35, Amdt 1
El Paso, TX, El Paso Intl, GPS RWY 4, Orig
El Paso, TX, El Paso Intl, GPS RWY 22, Orig
El Paso, TX, El Paso Intl, GPS RWY 26L, Orig

. . . Effective November 4, 1999

Kenai, AK, Kenai Muni, ILS RWY 19R, Orig
Kenai, AK, Kenai Muni, ILS/DME RWY 19R, Orig, CANCELLED
St. George, AK, St. George, GPS–B, Orig
Avon Park, FL, Avon Park Muni, GPS RWY 4, Orig
Avon Park, FL, Avon Park Muni, GPS RWY 9, Orig
Marco Island, FL, Marco Island, GPS RWY 35, Orig
Canton, GA, Cherokee County, GPS RWY 4, Amdt 1
Belvidere, IL, Belvidere LTD, VOR or GPS–A, Amdt 1, CANCELLED
Chicago/Aurora, IL, Aurora Muni, VOR or GPS RWY 2/36, Amdt 2
Poplar Grove, IL, Poplar Grove, VOR–A, Orig
Harlan, IA, Harlan Muni, NDB RWY 33, Amdt 5
Harlan, IA, Harlan Muni, GPS RWY 15, Orig
Harlan, IA, Harlan Muni, GPS RWY 33, Orig
Minneapolis, MN, Minneapolis-St. Paul Intl (World-Chamberlain), ILS PRM RWY 12L, Amdt 3
Minneapolis, MN, Minneapolis-St. Paul Intl (World-Chamberlain), ILS RWY 12L, Amdt 5
Gulfport, MS, Gulfport-Biloxi Regional, GPS RWY 14, Orig
Gulfport, MS, Gulfport-Biloxi Regional, GPS RWY 18, Orig
Gulfport, MS, Gulfport-Biloxi Regional, GPS RWY 32, Orig
Gulfport, MS, Gulfport-Biloxi Regional, GPS RWY 36, Orig
Boonville, MO, Jesse Viertel Memorial, NDB RWY 18, Amdt 10
Boonville, MO, Jesse Viertel Memorial, GPS RWY 18, Orig
Boonville, MO, Jesse Viertel Memorial, GPS RWY 36, Orig
Joplin, MO, Joplin Regional, LOC BC RWY 31, Amdt 20
Joplin, MO, Joplin Regional, NDB RWY 13, Amdt 24
Joplin, MO, Joplin Regional, ILS RWY 13, Amdt 23
Joplin, MO, Joplin Regional, ILS/DME RWY 18, Amdt 1
Joplin, MO, Joplin Regional, GPS RWY 13, Orig
Joplin, MO, Joplin Regional, GPS RWY 18, Orig
Joplin, MO, Joplin Regional, GPS RWY 36, Orig
Hartington, NE, Hartington Muni, GPS RWY 13, Orig
Hartington, NE, Hartington Muni, GPS RWY 31, Orig
Thedford, NE, Thomas County, VOR RWY 11, Orig
Thedford, NE, Thomas County, GPS RWY 11, Orig
Thedford, NE, Thomas County, GPS RWY 29, Orig
Albany, NY, Albany Intl, VOR OR GPS RWY 28, Amdt 6, CANCELLED
Albany, NY, Albany Intl, VOR/DME OR GPS RWY 1, Amdt 10, CANCELLED
Albany, NY, Albany Intl, VOR/DME RWY 28, Orig
Albany, NY, Albany Intl, ILS RWY 1, Amdt 9
Albany, NY, Albany Intl, ILS RWY 19, Amdt 21
Albany, NY, Albany Intl, COPTER ILS RWY 1, Orig
Albany, NY, Albany Intl, GPS RWY 1, Orig
Albany, NY, Albany Intl, GPS RWY 10, Orig
Albany, NY, Albany Intl, GPS RWY 19, Orig
Albany, NY, Albany Intl, GPS RWY 28, Orig
Bryan, OH, Williams County, NDB–A, Amdt 6
Bryan, OH, Williams County, GPS RWY 7, Orig
Bryan, OH, Williams County, GPS RWY 25, Orig
Pottstown, PA, Pottstown-Limerick, VOR/DME–A, Amdt 3
Pottstown, PA, Pottstown-Limerick, LOC RWY 28, Amdt 1
Pottstown, PA, Pottstown-Limerick, NDB RWY 28, Amdt 1
Pottstown, PA, Pottstown-Limerick, GPS RWY 28, Orig
Mayaguez, PR, Eugenio Maria De Hostos, VOR OR GPS RWY 9, Amdt 9
Arlington, TN, Arlington Muni, LOC RWY 15, Amdt 2, CANCELLED
Arlington, TN, Arlington Muni, NDB OR GPS RWY 15, Amdt 8A, CANCELLED
Arlington, TN, Arlington Muni, NDB OR GPS RWY 33, Amdt 8, CANCELLED
Memphis, TN, Memphis Intl, Radar-1, Amdt 38
Nashville, TN, John C. Tune, GPS RWY 19, Orig
Richmond/Ashland, VA, Hanover County Muni, GPS RWY 16, Amdt 1
South Hill, VA, Meckleburg-Brunswick Regional, GPS RWY 19, Orig
Omak, WA, Omak, GPS RWY 35, Orig

[FR Doc. 99–23803 Filed 9–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29709; Amdt. No. 1947]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on August 20, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103.40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

. . . EFFECTIVE UPON PUBLICATION

FDC date	State	City	Airport	FDC No.	SIAP
06/07/99	CO.	STEAMBOAT SPRINGS	BOB ADAMS FIELD	9/3928	VOR/DME–C, AMDT 1A ...
07/06/99	DE.	MIDDLETON	SUMMIT	9/4695	VOR OR GPS–B, AMDT 1A ...
07/06/99	DE.	WILMINGTON	NEW CASTLE COUNTY	9/4697	VOR OR GPS RWY 1 AMDT 3A ...
07/06/99	DE.	WILMINGTON	NEW CASTLE COUNTY	9/4698	VOR RWY 27 AMDT 3A ...
07/06/99	DE.	WILMINGTON	NEW CASTLE COUNTY	9/4699	GPS RWY 9 ORIG ...
07/07/99	VA.	FREDERICKSBURG	SHANNON	9/4728	VOR RWY 24 AMDT 7 ...
07/07/99	VA.	LYNCHBURG	LYNCHBURG REGIONAL/PRESTON GLENN FIELD.	9/4727	VOR OR GPS RWY 3 AMDT 11A ...
07/07/99	VA.	MELFA	ACCOMACK COUNTY	9/4729	VOR/DME OR GPS RWY 3 ORIG ...
07/07/99	VA.	MELFA	ACCOMACK COUNTY	9/4730	NDB RWY 3 AMDT 8 ...
07/07/99	VA.	WAKEFIELD	WAKEFIELD MUNI	9/4731	NDB OR GPS RWY 20 AMDT 4A ...
07/13/99	VA.	HOT SPRINGS	INGALLS FIELD	9/4918	ILS RWY 24 AMDT 2B ...

FDC date	State	City	Airport	FDC No.	SIAP
08/03/99	WA.	ELLENSBURG	BOWERS FIELD	9/5610	VOR OR GPS–A, AMDT 2A ...
08/04/99	KY.	LONDON	LONDON-CORBIN ARPT-MAGEE FLD.	9/5644	VOR RWY 5, AMDT 12B ...
08/04/99	KY.	LONDON	LONDON-CORBIN ARPT-MAGEE FLD.	9/5645	GPS RWY 23, ORIG ...
08/04/99	KY.	LONDON	LONDON-CORBIN ARPT-MAGEE FLD.	9/5646	GPS RWY 5, ORIG ...
08/05/99	GA.	DUBLIN	W.H. "BUD" BARROW	9/5681	NDB RWY 2, AMDT 2 ...
08/05/99	GA.	DUBLIN	W.H. "BUD" BARROW	9/5682	ILS RWY 2, ORIG ...
08/05/99	KY.	LONDON	LONDON-CORBIN ARPT-MAGEE FLD.	9/5674	VOR/DME RNAV RWY 5, AMDT 3A ...
08/05/99	NM.	ALBUQUERQUE	DOUBLE EAGLE II	9/5680	ILS RWY 22, AMDT 2 ...
08/05/99	SC.	LAURENS	LAURENS COUNTY	9/5661	NDB RWY 8, AMDT 1A ...
08/09/99	IL.	PONTIAC	PONTIAC MUNICIPAL	9/5813	VOR RWY 24, AMDT 1 ...
08/09/99	VA.	RICHMOND	RICHMOND INTL	9/5815	VOR OR GPS RWY 25 AMDT 15 ...
08/09/99	WV.	BLUEFIELD	MERCER COUNTY	9/5810	ILS RWY 23 AMDT 14C ...
08/11/99	OH.	RAVENNA	PORTAGE COUNTY	9/5864	VOR/DME RNAV OR GPS RWY 27, AMDT 2 ...
08/12/99	KS.	PITTSBURG	ATKINSON MUNI	9/5902	NDB OR GPS RWY 16, AMDT 3A ...
08/13/99	MO.	ST. JOSEPH	ROSECRANS MEMORIAL	9/5932	NDB OR GPS RWY 35, AMDT 28B ...
08/13/99	MO.	ST JOSEPH	ROSECRANS MEMORIAL	9/5933	NDB RWY 17, AMDT 8 ...
08/13/99	MO.	ST JOSEPH	ROSECRANS MEMORIAL	9/5934	VOR/DME RNAV OR GPS RWY 17, AMDT 4 ...
08/13/99	OK.	OKMULGEE	OKMULGEE MUNI	9/5930	NDB RWY 17, AMDT 3 ...
08/13/99	OK.	OKMULGEE	OKMULGEE MUNI	9/5931	ILS RWY 17, ORIG ...
08/13/99	VA.	LYNCHBURG	LYNCHBURG REGIONAL/PRESTON GLENN FIELD.	9/5937	VOR OR GPS RWY 3 AMDT 11B ...
08/16/99	FL.	FORT MYERS	PAGE FIELD	9/5994	GPS RWY 23, ORIG ...
08/17/99	WY.	EVANSTON	EVANSTON-UINTA COUNTY BURNS FIELD.	9/6003	VOR/DME OR GPS–A ORIG ...
08/17/99	WY.	EVANSTON	EVANSTON-UINTA COUNTY BURNS FIELD.	9/6004	VOR/DME OR GPS RWY 23, AMDT 2 ...

[FR Doc. 99–23802 Filed 9–10–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 742 and 745

[Docket No. 990416096–9237–02]

RIN 0694–AB67

Chemical Weapons Conventions; Revisions to the Export Administration Regulations; States Parties; Licensing Policy Clarification

AGENCY: Bureau of Export Administration, Commerce

ACTION: Interim rule.

SUMMARY: On May 18, 1999, the Bureau of Export Administration published an interim rule (64 FR 27138) implementing the export control and reporting provisions of the Chemical Weapons Convention. This rule adds Estonia, Holy See, Micronesia, Nigeria and Sudan to the list of States Parties to the Convention, and makes clarifications in the licensing policy for exports and reexports of Schedule 2 and Schedule 3 chemicals. Finally, this rule also adds the addresses of the authorized agencies in Taiwan responsible for issuing End-Use Certificates, and removes the previously listed office.

DATES: This rule is effective September 13, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy Crowe or Sharron Cook, Regulatory Policy Division, Bureau of Export Administration, at (202) 482–2440.

SUPPLEMENTARY INFORMATION: On May 18, 1999, the Bureau of Export Administration published an interim rule (64 FR 27138) implementing the export control and certain reporting provisions of the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction (Convention or CWC). This rule amends Supplement No. 2 to Part 745 of the Export Administration Regulations (EAR) to add Estonia, Holy See, Micronesia, Nigeria and Sudan to the list of States Parties to the Convention. This rule also clarifies that for CWC States Parties status only, Hong Kong is treated like the People's Republic of China. This does not change the export licensing policy for Hong Kong.

This rule also amends § 742.18(b) of the EAR to clarify the licensing policy for exports and reexports of Schedule 2 and Schedule 3 chemicals to non-States Parties. Specifically, § 742.18(b) is amended by removing the presumption of approval language with regard to exports and reexports of Schedule 2 and Schedule 3 chemicals to CWC States Parties as well as non-States Parties. This language is being removed because no license is required for exports and reexports of Schedule 2 and Schedule 3 chemicals to States Parties for the Chemical Weapons ("CW") reason for control. Further, no license is required for exports of Schedule 2 chemicals to non-States Parties prior to April 29, 2000, for the CW reason for control unless the exporter is not able to obtain an End-Use Certificate prior to the export. Finally, no license is required for exports of Schedule 3 chemicals to non-States Parties for the CW reason for control unless the exporter is not able to obtain an End-Use Certificate prior to the export. Applications for exports of Schedule 2 and Schedule 3 chemicals to non-States Parties when no End-Use Certificate is obtained will generally be denied. Note that the revisions to § 742.18(b) do not change current licensing policy.

Finally, this rule also amends Supplement No. 3 to Part 745 to add the addresses of the authorized agencies in Taiwan responsible for issuing End-Use Certificates and remove the Taiwan office previously listed. Three offices in Taiwan have the responsibility for issuing End-Use Certificates. Two of the three offices (Export Processing Zone Administration and the Science-Based Industrial Park Administration) are in special economic zones and are responsible for the activity in their respective zones only.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and, to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, extended by Presidential notice of August 13, 1998 (63 FR 55121, August 17, 1998).

Rulemaking Requirements

1. This interim rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0088 and 0694–0117.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed Rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

List of Subjects

15 CFR Parts 742

Exports, Foreign trade.

15 CFR Part 745

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, parts 742 and 745 of the Export Administration Regulations (15 CFR Parts 730–799) are amended as follows:

1. The authority citation for 15 CFR part 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of November 12, 1998, 63 FR 63589, 3 CFR, 1998 Comp., p. 305; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

2. The authority citation for 15 CFR part 745 is revised to read as follows:

Authority: 50 U.S.C. 1701 *et seq.*; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of November 12, 1998, 63 FR 63589, 3 CFR, 1998 Comp., p. 305; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

PART 742—AMENDED

3. Section 742.18 is amended by removing paragraph (b)(2)(i), redesignating paragraphs (b)(2)(ii) and (iii) as (b)(2)(i) and (ii), and revising newly redesignated paragraph (b)(2)(i)(A) to read as follows:

§ 742.18 Chemical Weapons Convention (CWC or Convention).

* * * * *

(b) * * *

(1) * * *

(2) *Schedule 2 and Schedule 3 chemicals.* (i)(A) *ECCN 1C350.* Applications to export Schedule 2 chemicals prior to April 29, 2000, and Schedule 3 chemicals controlled under ECCN 1C350 to CWC non-States parties will generally be denied.

* * * * *

PART 745—AMENDED

4. Section 745.2 is amended by revising the third and fourth sentences in paragraph (a)(1), to read as follows:

§ 745.2 End—Use Certificate reporting requirements under the Chemical Weapons Convention.

* * * * *

(a)(1) * * * Supplement No. 3 to this part includes foreign authorized agencies responsible for issuing End-Use Certificates pursuant to this section. Additional foreign authorized agencies responsible for issuing End-Use Certificates will be included in Supplement No. 3 to this part when known. * * *

* * * * *

5. Supplement No. 2 to part 745 is revised to read as follows:

Supplement No. 2 to Part 745—States Parties to the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction

List of States Parties as of September 13, 1999

Albania
Algeria
Argentina
Armenia
Australia
Austria
Bahrain
Bangladesh
Belarus
Belgium
Benin
Bolivia
Bosnia-Herzegovina
Botswana
Brazil
Brunei Darussalam
Bulgaria
Burkina Faso
Burundi
Cameroon
Canada
Chile
China*
Cook Islands
Costa Rica
Cote d'Ivoire (Ivory Coast)
Croatia
Cuba
Cyprus
Czech Republic
Denmark
Ecuador
El Salvador
Equatorial Guinea
Estonia
Ethiopia
Fiji
Finland
France
Gambia
Georgia
Germany
Ghana
Greece
Guinea
Guyana

* For CWC purposes only, China includes Hong Kong.

Holy See
Hungary
Iceland
India
Indonesia
Iran
Ireland
Italy
Japan
Jordan
Kenya
Korea (Republic of)
Kuwait
Laos (P.D.R.)
Latvia
Lesotho
Lithuania
Luxembourg
Macedonia
Malawi
Maldives
Mali
Malta
Mauritius
Mauritania
Mexico
Micronesia
Moldova (Republic of)
Monaco
Mongolia
Morocco
Namibia
Nepal
Netherlands
New Zealand
Niger
Nigeria
Norway
Oman
Pakistan
Panama
Papua New Guinea
Paraguay
Peru
Philippines
Poland
Portugal
Qatar
Romania
Russian Federation
Saint Lucia
Saudi Arabia
Senegal
Seychelles
Singapore
Slovak Republic
Slovenia
South Africa
Spain
Sri Lanka
Sudan
Suriname
Swaziland
Sweden
Switzerland
Tajikistan
Tanzania
Togo
Trinidad and Tobago
Tunisia
Turkey
Turkmenistan
United Kingdom
Ukraine
United States
Uruguay
Uzbekistan
Venezuela
Vietnam
Zimbabwe

6. Supplement No. 3 to part 745 is amended by revising the title to the supplement, and the entry for Taiwan, to read as follows:

Supplement No. 3 to Part 745—Foreign Authorized Agencies Responsible for Issuing End-Use Certificates Pursuant to § 745.2

* * * * *

Taiwan [1]

Board of Foreign Trade, Ministry of Economic Affairs, 1 Hukou St., Taipei, Tel: (02) 2351–0271, Fax: (02) 2351–3603
Export Processing Zone Administration, Ministry of Economic Affairs, 600 Chiachang Rd., Nantze, Kaohsiung, Tel: (07) 361–1212, Fax: (07) 361–4348
Science-Based Industrial Park Administration, National Science Council, Executive Yuan, 2 Hsin-an Rd., Hsinchu, Tel: (03) 577–3311, Fax: (03) 577–6222

Dated: September 1, 1999.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 99–23309 Filed 9–10–99; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 746

[Docket No. 990827238–9238–01]

RIN 0694–AB94

Reexports to Libya of Foreign Registered Aircraft Subject to the Export Administration Regulations

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) by reinstating provisions of License Exception AVS for temporary reexports to Libya of foreign registered aircraft subject to the EAR. This limited action is taken in response to suspended United Nations sanctions.

DATES: This rule is effective April 5, 1999.

FOR FURTHER INFORMATION CONTACT: James A. Lewis, Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, Telephone: (202) 482–4196.

SUPPLEMENTARY INFORMATION:

Background

On April 5, 1999, the United Nations Security Council (UNSC) suspended the sanctions against Libya set forth in UNSC resolutions 748 and 883. In light of this suspension, the United States has taken action that will allow, under License Exception AVS, the temporary reexport to Libya of foreign registered aircraft subject to the EAR. Foreign registered aircraft meeting all the temporary sojourn requirements of License Exception AVS may fly from foreign countries to Libya without obtaining prior written authorization from BXA. This action is limited in scope and in no way impacts other U.S. sanctions against Libya. Note that License Exception AVS remains unavailable for U.S. registered aircraft.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and to the extent permitted by law, the provisions of the EAA, as amended, in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527) August 13, 1997 (62 FR 43629), August 13, 1998 (63 FR 44121), and August 10, 1999 (64 FR 44101).

Rule Making Requirements

1. This final rule has been determined to be non-significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. This regulation does not involve any paperwork collections.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rule making and opportunities for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Frank J. Ruggiero, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

[1] Two of the three offices (Export Processing Zone Administration and the Science-Based Industrial Park Administration) are in special economic zones and are responsible for the activity in their respective zones.

List of Subjects in 15 CFR Parts 746

Embargoes, Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, Part 746 of the Export Administration Regulations (15 CFR Parts 730–774) is amended to read as follows:

1. The authority citation for 15 CFR Part 746 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 6004; E.O. 12854, 58 FR 36587, 3 CFR 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p.917; E.O. 13088, 63 FR 32109, 3 CFR, 1998 Comp., p. 191; E.O. 13121 of April 30, 1999, 64 FR 24021 (May 5, 1999); Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

PART 746—[AMENDED]

2. Section 746.4 is amended by revising paragraph (b)(2)(ii)(G) to read as follows:

§ 746.4 Libya

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(G) Aircraft and vessels (AVS) for vessels only (see § 740.15 (c)(1) of the EAR), and temporary reexports of foreign registered aircraft (see § 740.15 (a)(4) of the EAR).

* * * * *

Dated: September 7, 1999.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 99–23785 Filed 9–10–99; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority to correct position titles for delegates in the Center for Drug Evaluation and Research (CDER). This action is necessary to ensure the continued accuracy of the regulations.

EFFECTIVE DATE: September 13, 1999.

FOR FURTHER INFORMATION CONTACT:

Leanne Cusumano, Center for Drug Evaluation and Research (HFD–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041, or
Donna G. Page, Division of Management Programs (HFA–340), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4816.

SUPPLEMENTARY INFORMATION: FDA is correcting its regulations in subpart B of part 5 (21 CFR part 5) in two sections that reflect incorrect position titles for delegates within CDER. In the **Federal Register** of January 17, 1997 (62 FR 2554), FDA amended the regulations for delegations of authority to update titles of CDER delegates and organizational components to reflect organizational restructuring. In two instances, the position titles for the Director and Deputy Director, Office of Generic Drugs (OGD), Office of Pharmaceutical Science (OPS), CDER were inadvertently changed to reflect the Director and Deputy Director, Division of Bioequivalence, OGD, OPS, CDER. Previously, the Director and Deputy Director, OGD, OPS, CDER held those authorities. The Director and Deputy Division Director of Bioequivalence titles should be removed.

List of Subjects in 21 CFR Part 5

Authority delegations (Government agencies), Imports, Organization and functions (Government agencies).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 5 is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. The authority citation for 21 CFR part 5 continues to read as follows:

Authority: 5 U.S.C. 504, 552, App. 2; 7 U.S.C. 138a, 2271; 15 U.S.C. 638, 1261–1282, 3701–3711a; 15 U.S.C. 1451–1461; 21 U.S.C. 41–50, 61–63, 141–149, 321–394, 467f, 679(b), 801–886, 1031–1309; 35 U.S.C. 156; 42 U.S.C. 241, 242, 242a, 242l, 242n 243, 262, 263, 264, 265, 300u–300u–5, 300aa–1; 1395y, 3246b, 4332, 4831(a), 10007–10008; E.O. 11921, 41 FR 24294, 3 CFR, 1977 Comp., p. 124–131; E.O. 12591, 52 FR 13414, 3 CFR, 1988 Comp., p. 220–223.

§ 5.22 [Amended]

2. Section 5.22 *Certification of true copies and use of Departmental seal* is amended by removing paragraph (a) (13) (viii).

3. Section 5.31 is amended by revising paragraph (f) (3) to read as follows:

§ 5.31 Petitions under part 10.

(f) * * *

(3) The Director and Deputy Director, Office of Generic Drugs, Office of Pharmaceutical Science, CDER, except for those drug products listed in § 314.440(b) of this chapter, are authorized to issue responses to citizen petitions submitted under § 10.30 of this chapter seeking a determination of the suitability of an abbreviated new drug application for a drug product.

* * * * *

4. Section 5.93 is amended by revising paragraph (b) to read as follows:

§ 5.93 Submission of and effective approval dates for abbreviated new drug applications and certain new drug applications.

* * * * *

(b) The Director and Deputy Director, Office of Generic Drugs, Office of Pharmaceutical Science, CDER.

* * * * *

Dated: September 7, 1999.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning and Legislation.

[FR Doc. 99–23683 Filed 9–10–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Nicarbazin and Bambermycins

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Hoechst Roussel Vet. The NADA provides for combining approved single ingredient nicarbazin and bambermycins Type A medicated articles to make Type C medicated broiler chicken feeds to be used as an aid in preventing outbreaks of cecal and intestinal forms of coccidiosis, and for increased rate of weight gain and improved feed efficiency.

EFFECTIVE DATE: September 13, 1999

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1600.

SUPPLEMENTARY INFORMATION: Hoechst Roussel Vet, 30 Independence Blvd., P.O. Box 4915, Warren, NJ 07059, filed NADA 140–339 that provides for combining approved single ingredient Nicarb® (nicarbazin) and Flavomycin® (bambermycins) Type A medicated articles to make Type C medicated broiler chicken feeds containing 113.5 grams per ton (g/t) nicarbazin and 1 to 2 g/t bambermycins. The Type C medicated broiler chicken feeds are used as an aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina, E. maxima, E. necatrix,* and *E. brunetti*) coccidiosis, and for increased rate of weight gain and improved feed efficiency in broiler chickens. The NADA is approved as of August 6, 1999, and the regulations are amended in § 558.95 (21 CFR 558.95) by adding paragraph (d)(5)(iv), and in 21 CFR 558.366 in the table in paragraph (c) by adding an entry, to reflect the approval. Also, the introductory text of § 558.95(d)(5) is revised to better reflect the combination approvals.

In accordance with the freedom of information provisions of 21 CFR parts 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

This approval is for use of single ingredient Type A medicated articles to make combination drug Type C medicated feeds. One ingredient, nicarbazin, is a Category II drug as defined in 21 CFR 558.3(b)(1)(ii). As provided in 21 CFR 558.4(b), an approved form FDA 1900 is required to make Type C medicated feed from a Category II drug. Under section 512(m) of the act (21 U.S.C. 360b(m)), as amended by the Animal Drug Availability Act of 1996 (Public Law 104–250), medicated feed applications have been replaced by a requirement for feed mill licenses. Therefore, use of Type A medicated articles to make Type C medicated feeds as provided in NADA 140–339 is limited to manufacture in a licensed feed mill.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.95 is amended by revising the introductory text of paragraph (d)(5) and by adding paragraph (d)(5)(iv) to read as follows:

§ 558.95 Bambermycins.

* * * * *

(d) * * *

(5) Bambermycins may be used in chickens as in paragraph (d)(1) of this section in combination with:

* * * * *

(iv) Nicarbazin as in § 558.366.

3. Section 558.366 is amended in the table in paragraph (c) under the entry for "113.5 (0.0125 pct)" by alphabetically adding an item for "Bambermycins 1 to 2" and revising the item for "Lincomycin 2" to read as follows:

§ 558.366 Nicarbazin.

* * * * *

(c) * * *

Nicarbazin in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
* *	*	*	*	* *
113.5 (0.0125 pct)		* * *	* * *	* * *
* *	*	*	*	* *
	Bambermycins 1 to 2	Broiler chickens; aid in preventing outbreaks of cecal (*Eimeria tenella*) and intestinal (*E. acervulina, E. maxima, E. necatrix,* and *E. brunetti*) coccidiosis, for increased rate of weight gain and improved feed efficiency.	Feed continuously as sole ration from time chicks are placed on litter until past the time when coccidiosis is ordinarily a hazard; do not use as a treatment for coccidiosis; do not use in flushing mashes; do not feed to laying hens; withdraw 4 days before slaughter. Nicarbazin as provided by 063271.	012799

Nicarbazin in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
	Lincomycin 2 (0.00044 pct)	Broiler chickens; aid in preventing outbreaks of secal (*Eimeria tenella*) and intestinal (*E. acervulina, E. maxima, E. necatrix,* and *E. brunetti*) coccidiosis; for increased rate of weight gain.	Feed continuously as sole ration from time chicks are placed on litter until past the time when coccidiosis is ordinarily a hazard; do not use as a treatment for coccidiosis; do not use in flushing mashes; do not feed to laying hens; withdraw 4 days before slaughter.	060728 063271
* *	*	*	*	* *

Dated: August 30, 1999.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 99–23665 Filed 9–10–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[T.D. ATF–417; Ref. Notice No. 871]

RIN: 1512–AB80

Extension for Johannisberg Riesling; Additional Grape Varieties (98R–406P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Treasury Decision, final rule.

SUMMARY: This final rule amends the wine labeling regulations to allow use of the term "Johannisberg Riesling" on American wine labels for an additional seven years. The effect of this amendment allows American wineries additional time to educate consumers regarding the name change and allow for transitional time regarding the labeling, packaging and merchandising of Johannisberg Reisling. Additionally, ATF is adding two new names, Traminette and Aglianico, to the list of prime grape variety names for use in designating American varietal wines.

EFFECTIVE DATE: October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Teri Byers, Regulations Division, 650 Massachusetts Avenue, NW, Washington, DC 20226; Telephone (202) 927–8195, or alcohol/tobacco@atfhq.atf.treas.gov.

SUPPLEMENTARY INFORMATION:

Background

Law and Regulations

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), vests broad authority in the Director, as a delegate of the Secretary of the Treasury, to prescribe regulations intended to prevent deception of the consumer, and to provide the consumer with adequate information as to the identity and quality of the product. Regulations which implement the provisions of section 105(e) as they relate to wine are set forth in title 27, Code of Federal Regulations, part 4.

The regulations at § 4.23(b) provide that a grape variety name may be used as the type designation of a grape wine if not less than 75 percent of the wine is derived from grapes of that variety. The wine must be labeled with an appellation of origin. Under § 4.23(d), a bottler may use two or more grape variety names as the type designation of a grape wine if all the wine is made from grapes of the labeled varieties, and the percentage of the wine derived from each grape variety is shown on the label.

T.D. ATF–370

In 1996, ATF issued a final rule containing a list of approved prime grape variety names which may be used as the designation for American wines. The purpose of creating a list of prime grape variety names was to help standardize wine label terminology and prevent consumer confusion by reducing the large number of synonyms for grape varieties that were previously used for labeling American wines.

The rule contained two other lists of alternative names that could be used as grape wine designations until January 1, 1997, or January 1, 1999. Finally, the rule also contained a procedure by which interested persons could petition the Director for the addition of names to the list of prime grape names.

Johannisberg Riesling

In T.D. ATF–370, ATF announced that the name "Johannisberg Riesling" should no longer be permitted as a grape variety designation on American wines. The true name for this grape variety is simply "Riesling." However, in the United States, wineries had long used the terms "Johannisberg Riesling" and "White Riesling" to distinguish the true Riesling grape from other grapes that were incorrectly designated as "Riesling."

The final rule listed "Riesling" as the prime name for this grape. The term "White Riesling" was listed as a synonym for "Riesling." This term is used internationally as a designation for this wine, and is also the botanical name for this grape.

The final rule placed the name "Johannisberg Riesling" as an alternative name that could be used only to label American wines bottled prior to January 1, 1999. ATF noted that "Johannisberg Riesling" is not the correct name for this grape variety. Furthermore, "Johannisberg" is a German geographic term, and the name of a specific winegrowing region within Germany. Since the final rule authorized use of the name Riesling, standing by itself, as the prime name for wine made from this grape, ATF determined that there was no longer the necessity to distinguish wine made from the true Riesling grape by use of the term "Johannisberg Riesling." Owing to the necessity to prepare new packaging and marketing materials, its use was authorized for wines bottled prior to January 1, 1999.

Petition

ATF subsequently received a petition from the law firm of Buchman & O'Brien, filed on behalf of trade

associations representing United States wineries. The petition asked ATF to extend the phase-out period for the term Johannisberg Riesling for an additional seven years to January 1, 2006.

The petition provided several reasons for extending the phase-out date. Despite the fact that ATF made it clear in the notices issued prior to T.D. ATF–370 that there was significant controversy surrounding the term Johannisberg Riesling, the petition alleged that ATF failed to provide the industry with notice that it was phasing out the term. The petitioner also cited the 10 year phase-out period in the recently published Treasury decision relating to Gamay Beaujolais as support for extending the period. The petition asserted that because the Johannisberg Riesling designation had been in documented commercial use for over 100 years, an additional seven years would provide enough transitional time to educate the consuming public regarding the designation change. Finally, the petition states that the abrupt elimination of Johannisberg Riesling would cause material economic harm and hardship to the United States wine industry.

The petitioners also submitted a letter from the Deutsches Weininstitut GmbH in support of the extension. Letters were also submitted from several wineries, including Stimson Lane Vineyards & Estates ("Stimson Lane") setting forth the reasons for an extension. Stimson Lane noted that in the 1960s and 1970s, "many inferior riesling products were being produced in the United States. * * * To overcome the stigma that had become associated with these various rieslings, we and other producers focused our attention and brand investments on the term Johannisberg Riesling to refer to a medium-dry, highly complex wine."

Stimson Lane argued that it would take several years to educate American consumers that the term "Riesling", standing alone, now designates the same wine previously known as "Johannisburg Riesling." In fact, Stimson Lane suggested that the mere prospect was so "overwhelming and complex that the industry has not even begun to agree how they are going to accomplish this." They noted that the term "Johannisberg Riesling" had been used for more than 100 years, and has sales of 36,000,000 bottles per year. Accordingly, an additional seven years would provide a more reasonable phase-out period.

The petition also included a letter from ELGIN, a marketing communications company, which provided marketing information illustrating the negative impact on wineries and consumers should ATF restrict the Johannisberg Riesling phase-out period to three years. ELGIN drew a comparison between Johannisberg Riesling and the 1982 Nissan Corporation's decision to change the Datsun brand name to Nissan. ELGIN asserted that this change in brand name was implemented in the United States over a six-year period; however, Nissan still saw its share drop in the first two years from 5.9 percent to 4.5 percent due to the name change.

Notice No. 871

In response to the petition, ATF issued Notice No. 871 on January 6, 1999 (64 FR 813). In the notice, ATF proposed extending the phase-out period for an additional seven years. We sought comments on the addition of four grape variety names to the list of prime names.

ATF also issued a rule that temporarily extended the effective date for phasing out the use of "Johannisberg Riesling" on American wine labels. *See* T.D. ATF–405 (64 FR 753). The date was deferred until September 30, 1999, so that ATF would have time to evaluate the comments received in response to the notice of proposed rulemaking. ATF stated that the proposed extension of the phase-out period did not signify any change in ATF's position regarding the eventual removal of "Johannisberg Riesling" from the list of prime names.

Comments Received in Response to Notice No. 871

ATF received nine comments in response to Notice No. 871. Six comments were in favor of allowing the continued use of the designation "Johannisberg Riesling" on American wine labels for an additional seven years. One comment flatly opposed any extension, while another comment suggested that a two-year extension would be more appropriate. The ninth comment addressed semigeneric designations.

Comments in Favor of the Proposed Extension

Comments in favor of the proposed extension were received from the President's Forum of the Beverage Alcohol Industry, Sand Castle Winery, Stimson Lane Vineyards and Estates, the California Association of Winegrape Growers (CAWG), the Washington Wine Institute and the Washington Wine Commission, and Buchman & O'Brien.

Several commenters stated that an insufficient phase-out period would have a significant economic impact on many growers and vintners. For example, the comment from CAWG stated that the proposed extension was consistent with actions taken by ATF with respect to other labeling terms, such as Gamay Beaujolais, and that "[g]iven the huge investment made by growers and vintners in developing markets for our products, we believe the transition time provided by this proposal is appropriate and fair."

A comment on behalf of the Washington Wine Institute and Washington Wine Commission noted the "serious economic consequences" to Washington growers and vintners that would result from a shorter phase-out period. The comment stated that "Because 95% of all Riesling wine has been sold in the U.S. as Johannisberg Riesling, we need every minute of the proposed extension period to educate our consumers in the hope that we can minimize ultimate damages to the Riesling category."

Other wineries also commented that it would take several years to do the type of consumer education necessary to avoid major defections from their brands. Stimson Lane reiterated in its comment the serious economic consequences that would be associated with having to "jettison this name without the necessary transition period requested in our petition." A comment from Sand Castle Winery reiterated the need to educate the public on the new terminology.

The President's Forum of the Beverage Alcohol Industry reiterated its prior support of the extension, and stated that extension would be in the best interests of consumers and the U.S. wine industry.

JBC International submitted a comment on behalf of CAWG and the Wine Institute. In this comment, it was noted that Wine Institute supported the extension of the phase-out of the term "Johannisberg Riesling." However, the comment stressed that the industry's position with respect to the term "Johannisberg Riesling," which is not a semigeneric designation, "does not indicate any future positions the U.S. industry might take with regard to the use of semi-generic terms."

Comments in Opposition to Proposed Extension

ATF received two comments in opposition to the proposed seven year extension. The National Association of Beverage Importers, Inc. (NABI) suggested that a two year extension would be more appropriate. Coudert Brothers, on behalf of the Deutscher Weinfonds, opposed any extension of the phase-out period.

NABI suggested that further use of the term "Johannisberg Riesling" would be misleading to consumers, since Johannisberg is a place of origin, and the wine does not come from Johannisberg. While they supported a "reasonable" phase-out period for U.S. winemakers, NABI suggested that a 10 year phase-out (the original three years provided by the final rule, plus the proposed seven year extension) was too long.

The NABI comment also supported ATF's original determination in 1996 to set a 3 year phase-out period, and the adequacy of ATF's notice to the wine industry on this issue. Finally, the NABI comment pointed out that German Riesling wines are not labeled as "Johannisberg Riesling" unless the wines were made from grapes grown in the geographic region of Johannisberg.

Coudert Brothers submitted a comment on behalf of the Deutscher Weinfonds ("DW"), a quasigovernmental authority in the Federal Republic of Germany. The comment opposed the proposed extension as unnecessary. Coudert Brothers reiterated that "Johannisberg Riesling" is not a correct varietal name, and that the term "Johannisberg" is instead a geographic term referencing a district in the Rheingau region of Germany where grapes have been grown for more than a thousand years.

The comment from Coudert Brothers supported the adequacy of ATF's notice on this issue, and suggested that since "Johannisberg Riesling" is not a brand name, the petitioners' analogies to the length of time needed to build consumer recognition of a new brand name were not appropriate.

Finally, the comment from Coudert Brothers noted that the petition had attached a letter in support of the proposed extension from Deutches Weininstitut GmbH. Coudert Brothers asserted that Deutches Wineinstitut is an affiliate of DW, and that after a full review of the facts and history, Deutches Weininstitut had reconsidered its statements in that letter and adopted the position of DW.

Conclusion

After carefully considering the comments on this issue, ATF has decided to extend the phase-out period for an additional seven years. Accordingly, the term may be used on labels of American wines bottled prior to January 1, 2006. We believe that this period of time will allow wineries sufficient time to educate consumers regarding the name change, and to make necessary changes in the labeling, packaging, and merchandising of "Riesling" and "White Riesling" wines.

ATF's statutory mandate under the FAA Act is to regulate the use of terms on wine labels so as to ensure that consumers are not misled, but instead are adequately informed as to the identity of the wine. We stand behind the reasons set forth in T.D. ATF–370 for discontinuing the use of "Johannisberg Riesling" as a prime name for a grape variety. It is not the correct name for the variety, and there are two better names ("Riesling" and "White Riesling") that are recognized throughout the world, and which do not contain the geographic reference "Johannisberg."

Nonetheless, the vintners and grape growers affected by this decision have made a persuasive case that American consumers still associate the name "Johannisberg Riesling" with the true Riesling grape in the United States. American consumers may not associate the term "Riesling," standing by itself, with the wine that has been labeled for so many years as "Johannisberg Riesling."

It is reasonable to allow the industry an additional seven years to educate consumers as to the true meaning of the "Riesling" and "White Riesling" varietal designations. By the end of this period, American consumers will have sufficient information about the product so that they will be able to make an educated choice once the labeling terminology changes.

Two commenters suggested that ATF should not further perpetuate the use of a misleading geographic term as a varietal name. While ATF agrees that the name "Johannisberg Riesling" should be phased out, it does not agree that its continued use for another seven years will mislead consumers. It should be noted that wines labeled with a varietal designation must also bear an appellation of origin. *See* 27 CFR § 4.23(a). Thus, the labels for "Johannisberg Riesling" wines will clearly indicate the true geographic origin of the wines. Accordingly, we do not believe that this limited extension of the phase-out period will result in consumer confusion.

Traminette and Aglianico

In Notice No. 871, ATF proposed to add the names "Traminette" and "Aglianico" to the list of approved prime names in § 4.91. As discussed in further detail in the notice, ATF was provided with sufficient evidence to satisfy the requirements under § 4.93. No comments were received regarding these varietal names. Accordingly, ATF is amending § 4.91 to include "Traminette" and "Aglianico" in the list of approved prime names for grape varieties.

Vernaccia and Counoise

In Notice No. 871, ATF also sought additional comments regarding the inclusion of "Vernaccia" and "Counoise" as prime names in § 4.91. No comments were received on either of these names.

Millbrook Winery petitioned ATF for approval of "Vernaccia" as a prime name. Millbrook's petition stated that they obtained Vernaccia cuttings from the foundation Plants Materials Service at the University of California at Davis several years ago, and have cultivated this grape in their vineyards.

As we stated in Notice No. 871, the available literature indicates that the name "Vernaccia" is associated with several unrelated Italian grape varieties, including Vernacci di Oristano, Vernacci di San Giminiano, Vernaccia di Serrapetrona, and Vernaccia Trentina. These varieties include both green and black grapes, and are used in making distinctively different red, white, and sparkling wines.

It was unclear from the petition which "Vernaccia" grape was actually contained in the FPMS collection and grown in U.S. vineyards. Accordingly, ATF sought information on this issue in the notice of proposed rulemaking. However, no comments were submitted. In the absence of a positive identification as to which "Vernaccia" grape is being grown in the United States, the requirements of § 4.93 have not been met with respect to this name. Accordingly, ATF is not adding "Vernaccia" to the list of prime names in section 4.91.

Eberle Winery in Paso Robles, California, petitioned ATF to list "Counoise" in § 4.91. Although this is a well-documented red variety from the Rhone region of France, ATF had insufficient information to determine whether "Counoise" is suitable for wine production in the United States, or the extent to which "Counoise" may be grown domestically.

Accordingly, ATF solicited information on the domestic cultivation of the "Counoise" grape. No comments on this issue were received. Since the requirements of § 4.93 have not been met regarding this grape name, we are not amending § 4.91 to add the name "Counoise."

Trousseau vs. Bastardo

Section 4.91 currently lists Trousseau as a prime grape name while § 4.92 lists Bastardo as an alternative name for this grape variety which cannot be used for designating American wine bottled after

January 1, 1997. Trousseau is a French name for the grape, while Bastardo is the Portuguese name. ATF was asked to reexamine whether the name Bastardo should be authorized as a synonym for Trousseau, or whether Bastardo should replace Trousseau as the prime grape name at § 4.91.

ATF received no comments on this issue. Accordingly, ATF sees no reason to overturn the decision made in T.D. ATF–370. Trousseau will remain the prime name for this grape.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entitles. This regulation will extend the phase-out period for the use of the term Johannisberg Riesling and it will permit the use of other grape varietal names. The regulation will not impose any recordkeeping or reporting requirements. Accordingly, a regulatory flexibility analysis is not required because this final rule does not (1) have significant secondary or incidental effects on a substantial number of small entities; or (2) I impose, or otherwise cause a significant increase in the reporting, recordkeeping, or other compliance burdens on substantial entities.

Executive Order 12866

It has been determined that this regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this final rule is not subject to the analysis required by this Executive Order.

Drafting Information

The principal author of this document is Ms. Teri Byers, Regulations Division, Bureau of Alcohol, Tobacco and Firearms. However, other personnel within ATF and the Treasury Department participated in developing this document.

List of Subjects in 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspections, Imports, Labeling, Packaging and containers, Wine.

Authority and Issuance

Accordingly, 27 CFR part 4, Labeling and Advertising of Wine, is amended as follows:

PART 4—AMENDED

Paragraph 1. The authority citation for Part 4 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Section 4.91 is amended by adding the names "Aglianico" and "Traminette," in alphabetical order, to the list of prime grape names, to read as follows:

§ 4.91 List of approval prime names.

* * * * *

Aglianico

* * * * *

Traminette

* * * * *

Par. 3. Section 4.92 is amended by removing the name "Johannisberg Riesling" from paragraph (b) and by adding a new paragraph (c), to read as follows:

§ 4.92 Alternative names permitted for temporary use.

(c) *Wines bottled prior to January 1, 2006.*

Alternative Name	Prime Name
Johannisberg Riesling	Riesling.

Signed: July 22, 1999.

John W. Magaw,

Director.

Approved: August 13, 1999.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff & Trade Enforcement).

[FR Doc. 99–23784 Filed 9–10–99; 8:45 am]

BILLING CODE 4810–31–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

32 CFR Part 2001

[Directive No. 1; Appendix A]

[RIN 3095–AA92]

Classified National Security Information

AGENCY: Information Security Oversight Office (ISOO), National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: This rule establishes a uniform referral standard that Federal agencies must use for multi-agency declassification issues. The new provision responds to a need for further guidance to Federal agencies in implementing section 3.7(b) of Executive Order 12958, Classified National Security Information. This rule provides standards and guidelines for identifying equities of other agencies and foreign governments contained in information requiring referral for review before declassification and subsequent public disclosure. It includes guidelines for referring, redacting, and properly marking information that is subject to the automatic declassification provisions of the Executive order.

EFFECTIVE DATE: October 13, 1999.

FOR FURTHER INFORMATION CONTACT: Steven Garfinkel, Director, ISOO. Telephone: 202–219–5250.

SUPPLEMENTARY INFORMATION: This rule is issued pursuant to the provisions of Sections 3.4 and 3.7 (b) of Executive Order 12958, published April 20, 1995 (60 Fed. Reg. 19825). Section 3.4 of E.O. 12958 requires that all classified national security information contained in records that (1) are more than 25 years old, and (2) have been determined to have permanent historical value under title 44, United States Code, will be automatically declassified whether or not the records have been reviewed. Subsequently, all classified information in such records will be automatically declassified no longer than 25 years from the date of its original classification, except for information properly exempted in accordance with the Order. Section 3.7(b) requires that, when an agency receives any request for documents in its custody that contain information that was originally classified by another agency, or comes across such documents in the process of automatic declassification or systematic review provisions of this Order, the agency must refer copies of any request and the pertinent documents to the originating agency for processing, and may, after consultation with the originating agency, inform any requester of the referral unless such an association is itself classified under this Order.

This amendment was developed and approved by more than 25 agencies that serve on the External Referral Working Group (ERWG) sponsored and endorsed by the Intelligence Community's Declassification Program Managers' Council. Forty-two agencies responded to ISOO's May 1998 call for comment on the amendment. Eight of them provided written comments or suggestions, all of which were considered and incorporated as appropriate by February 1999. The amendment is being published as a new subsection to Part 2001, the Executive Order's implementing Directive No. 1, issued by the Director of Office of Management and Budget (OMB) on October 13, 1995, when ISOO was a component of OMB. With the enactment of the Treasury, Postal Service and General Government Appropriations Act for Fiscal Year 1996, ISOO became a component of the National Archives and Records Administration.

This rule is being issued as a final rule without prior notice of proposed rulemaking as allowed by the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(A) for rules of agency procedure. This rule is not a significant regulatory action for the purposes of Executive Order 12866. This rule is not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking. As required by the Regulatory Flexibility Act, we certify that this rule will not have a significant impact on small entities because it applies only to Federal agencies.

List of Subjects in 32 CFR Part 2001

Archives and records, Authority delegations (Government agencies), Classified information, Executive orders, Freedom of Information, Information, Intelligence, National defense, National security information, Presidential documents, Reporting and recordkeeping requirements, Security information, Security measures.

For the reasons set forth in the preamble, NARA amends part 2001 of title 32, Code of Federal Regulations, as follows:

PART 2001—CLASSIFIED NATIONAL SECURITY INFORMATION

The authority citation for part 2001 continues to read:

Authority: Section 5.2(a) and (b), and section 5.4 E.O. 12958, 60 FR 19825, April 20, 1995.

2. Add § 2001.55 to subpart E to read:

§ 2001.55 Document referral.

(a) *Purpose.* Under E.O. 12958, agencies reviewing records for declassification must facilitate the review of equities of other agencies contained in their records. Because agencies have a variety of processes for review and referral, common language and standards are needed to ensure clear, concise communication and coordinated action among all agencies involved in the referral process. Common language and standards are needed for declassification, exemption from automatic declassification, and proper marking of information subject to the automatic declassification provision of the Order. Consistent declassification of information through standardized procedures should result in lower cost and greater process efficiency, review accuracy, and the protection of the equities of all executive branch agencies.

(b) *Applicability.* These standards are binding on all executive branch agencies that create or handle classified information and are applicable to records covered under Section 3.4 of the Order. With respect to records reviewed prior to the issuance of these standards, deviations are acceptable as long as prior practice does not completely obstruct record referral.

(c) *Responsibility.* The senior agency official is responsible for the agency's referral program. The senior agency official shall designate agency personnel to assist in carrying out this responsibility.

(d) *Definitions.* For the purpose of this section:

Declassified or Declassification means the authorized change in the status of information from classified information to unclassified information.

Exempted means a declassification technique that regards information at the full document level. Any exemptible portion of a document may result in exemption (failure) of the entire document. Documents that contain no exemptible information are passed and therefore declassified. Declassified documents may be subject to other FOIA exemptions other than the security classification exemption ((b)(1), and the requirements placed by legal authorities governing Presidential holdings.

Pass/fail (P/F) means a declassification technique that regards information at the full document level. Any exemptible portion of a document may result in exemption (failure) of the entire document. Documents that contain no exemptible information are passed and therefore declassified. Declassified documents may be subject to other FOIA exemptions other than the security exemption ((b)(1)), and the requirements placed by legal authorities governing Presidential holdings.

Record means the statutory definition as provided under title 44 U.S.C. 3301 and 44 U.S.C. 2111, 2111 note, and 2201.

Redaction means a sanitization technique that involves removal (editing out) of exempted information from a document.

Tab means a narrow paper sleeve placed around a document or group of documents in such a way that it would be readily visible

(e) *Approaches to declassification.* The exchange of information between agencies and the final disposition of documents are affected by differences in the approaches to declassification. Agencies conducting pass/fail reviews may refer documents to agencies that redact. Actions taken by the sender and the recipient may differ as noted below:

(1) When referral is from a pass/fail agency to a pass/fail agency, both agencies conduct pass/fail reviews and annotate the classification or declassification decisions on the tabs and/or documents in accordance with NARA guidelines. The receiving agency should also notify the referring agency that the review has been completed.

(2) When referral is from a pass/fail agency to a redaction agency, the redaction agency is only required to conduct pass/fail reviews of documents referred by a pass/fail agency. If the redaction agency wishes to redact the document, it must do so on a copy of the referred document, then file the redacted version with the original. The redaction agency should also notify the pass/fail referring agency that the review has been completed.

(3) Referrals from redaction agencies to pass/fail agencies will be in the form of document copies. In the course of review the pass/fail agency may either pass or fail the document or its equities. Failed documents will be reviewed and redacted when practicable.

(4) Referrals between redaction agencies may result in redaction of any exemptible equities.

(f) *Referral decisions.* When agencies review documents only to the point at which exemptible information is identified, they must take one of the following actions to protect any other unidentified equities that may be in the unreviewed portions of the document:

(1) Complete a review of the document to identify other agency equities and notify those agencies; or

(2) Exempt the document and assign a Date/Event for automatic declassification, before which time they must provide timely notification to any equity agencies. Agencies reviewing previously exempted documents may apply a different exemption and new Date/Event for automatic declassification based upon the content of previously unreviewed equities.

(g) *Unmarked or improperly marked documents.* Agencies that find other agency information in unmarked or improperly marked documents that have been maintained and protected as classified information must afford those documents appropriate protection and tab or refer the documents as described in paragraph (h) of this section.

Agencies must provide other pertinent information, if available, regarding additional copies or possible public disclosure.

(h) *Means of Referral.* The reviewing agency must communicate referrals to equity agencies. They may use either of the methods below:

(1) *Full text referral.* Agencies will make referrals on media and in a format mutually agreed to by the referring and receiving agencies. Each referral request will clearly identify the referring agency and may identify the sections or areas of the document containing the receiving agency's equities and the requested action.

(2) *Tab and notify.*

(i) Agencies will use NARA-approved tabs and will clearly indicate on them the agency or agencies having equity in the document(s) held within the tabs. Successive documents with identical equity(ies) may be grouped within a single tab. Documents with differing equities, or non-successive documents, must be tabbed individually. In general, document order may not be changed to facilitate tabbing. In cases where there are so many tabbed documents in a box that tabbing documents individually would seriously overfill the box, the reviewer may group documents under a single tab for each agency equity at the back of each file folder, or back of the box if there are no file folders.

(ii) Agency notification must include, at a minimum, the following information: the approximate volume of equity, the highest classification of documents, the exact location (to box level) of the documents so marked, and instructions related to access to the boxes containing the documents.

(iii) Agencies will acknowledge receipt of referral notifications. They should notify the agency that placed the tabs that the review is complete. Any additional equities noted in the review must be annotated on the tab and brought to the attention of the agency that tabbed the document so the tabbing agency can notify those newly identified agencies.

(i) [Reserved].

(j) *Reviewed document marking.* Consistency in marking is essential in the referral of significant numbers of documents under the Executive Order. Decisions made during review must be communicated clearly to all subsequent reviewers.

(1) Redactions must never be indicated on original documents, only on copies. Redaction agencies need a means of tracking the results of review (at the document level) by all reviewing agencies and a reason for each redaction.

(2) If only one exemption from declassification applies to all redacted portions of a document, the applicable exemption may be indicated on the front page of the redacted copy. If more than one exemption applies to a document, each redacted portion for which an exemption is asserted must be marked on the redacted copy.

(3) Redacted portions must be marked to indicate the agency and the number of the applicable exemption, for example, DIA25X1.

(4) Agencies reviewing a referred document must indicate on the tab, folder, or box the result of the review (i.e., exemption or declassification). The original document should be marked with the final action only by the agency responsible for the final declassification decision. Options include marking a copy of the document, marking the tab, notification as part of a transmittal, or marking the box or folder according to NARA guidelines. Automated agencies may forgo marking documents, provided the required information is maintained in an agency database and is accessible to other agencies. Exempt documents may be marked.

(i) *Sample Exempted Document Stamp.* Exempt documents may be stamped as shown in the following example:

EXEMPTED PER E.O. 12958

Exemption Code: _____

Date/Event _____

Other Agency Equity: _____

Reviewed By: _____ **Date:** _____

(A) Normally, only one stamp should be placed on the document with any subsequent reviewing agencies adding their information to the stamp on the document, if possible. The stamp should not cover any writing on the document.

(B) Specific fields in the stamp must be completed as follows:

(*1*) *Exemption Code:* Agency(ies) ID and 25X plus exemption code(s).

(*2*) *Date/Event:* A specific date or event for declassification.

(*3*) *Other Agency Equity:* This line is used to track other agency equities and their review. The declassification authority enters "NONE" if no other agency equities are present, the identifiers of agencies with equity, or "TBD" (To be determined) if equities are unknown. Agency identifiers are crossed off as the reviews are completed and names may be added if additional equities are found.

(4) *Reviewed by:* Optional. If used, enter name or other personal identifier.

(5) *Date:* Enter date the action was taken.

(ii) Sample Stamp for Document Declassification. (A) When agencies mark declassified documents, the stamp must, at a minimum, include the information shown in the following example:

DECLASSIFIED
PER E.O. 12958

Agency: _____

By: _____ Date: _____

(B) Specific fields in the stamp must be completed as follows:

(*1*) *Agency:* Name of the agency.

(*2*) *By:* Name or personal identifier of the reviewer. (Optional)

(*3*) *Date:* Date the action was taken.

Dated: September 7, 1999

John W. Carlin,

Archivist of the United States.

[FR Doc. 99–23800 Filed 9–10–99; 8:45 am]

BILLING CODE 7515–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–156]

Drawbridge Operation Regulations: Gowanus Canal, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations governing the operation of the Ninth Street Bridge, mile 1.4, across Gowanus Canal in New York City, New York. This deviation allows the bridge owner to require an eight hour advance notice for openings from 4 p.m. to 8 a.m., daily, from September 7, 1999, through November 5, 1999. This action is necessary to facilitate necessary repairs to the operating machinery at the bridge.

DATES: This deviation is effective from September 7, 1999, to November 5, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Joeseph Schmied, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Ninth Street Bridge, at mile 1.4, across the Gowanus Canal in New York City, New York, has a vertical clearance of 5 feet at mean high water, and 9 feet at mean low water in the closed position. The bridge is required to open on signal at all times. The bridge owner, New York City Department of Transportation (NYCDOT), requested a deviation from the drawbridge operating regulations to facilitate repairs to the operating machinery at the bridge. This deviation from the operating regulations allows the Ninth Street Bridge to open on signal; except that, from 4 p.m. to 8 a.m., daily, from September 7, 1999, through November 5, 1999, the draw shall open if at least eight hours notice is given by calling the number posted at the bridge.

Thirty days notice to the Coast Guard for approval of this maintenance repair was not given by the bridge owner and was not required because this work involves vital, unscheduled maintenance that must be performed without undue delay. The Coast Guard has approved NYCDOT's request to because the work was determined to be necessary for public safety and the continued operation of the bridge.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: September 2, 1999.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 99–23715 Filed 9–10–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–159]

Drawbridge Operation Regulations: Mystic River, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations governing the operation of the Amtrak Bridge, mile 2.4, across the Mystic River in Mystic, Connecticut. This deviation from the regulations allows the bridge owner to require a two hour advance notice for openings, Sunday through Thursday, 9:30 p.m. to 11:30 p.m., and 12:30 a.m. to 5 a.m., September 7, 1999, through September 27, 1999. This action is necessary to facilitate electrical modifications at the bridge.

DATES: This deviation is effective from September 7, 1999, through September 27, 1999.

FOR FURTHER INFORMATION CONTACT: Joe Schmied, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Amtrak Bridge, mile 2.4, across the Mystic River in Mystic, Connecticut, has a vertical clearance of 4 feet at mean high water, and 7 feet at mean low water in the closed position. The bridge owner, National Railroad Passenger Corporation (Amtrak), requested a temporary deviation from the operating regulations to facilitate electrical modifications at the bridge.

The Coast Guard granted a deviation allowing AMTRAK to deviate from the normal operating regulations to facilitate necessary repairs for 39 days beginning on July 25, 1999, through September 2, 1999. The work did not begin on July 25 as scheduled. Work did not start until August 3, 1999. The bridge owner has requested a second deviation for 21 days to complete the work.

This deviation to the operating regulations allows the bridge owner to require a two hour advance notice for bridge openings for the Amtrak Bridge, mile 2.4, across the Mystic River in Mystic, Connecticut. This deviation will be in effect from Sunday through Thursday, 9:30 p.m. to 11:30 p.m., and 12:30 a.m. to 5 a.m., September 7, 1999, through September 27, 1999. Requests for bridge openings can be made by calling (860) 395–2355 or on marine radio channel 13 VHF/FM. Mariners requiring an emergency opening are advised to call Amtrak's Chief Dispatcher at (617) 345–7569. Vessels that can pass under the bridge without

an opening may do so at all times during the closed periods.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: September 2, 1999.

R.M. LaRrabee,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 99–23713 Filed 9–10–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–152]

RIN 2115–AA97

Safety Zone: Periphonics Corp. 30th Anniversary Fireworks, New York Harbor, Upper Bay

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Periphonics Corp. 30th Anniversary Fireworks Display located in Federal Anchorage 20C, New York Harbor, Upper Bay. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of Federal Anchorage 20C.

DATES: This rule is effective from 9 p.m. until 10:30 p.m., on Saturday, September 25, 1999. There is no rain date for this event.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4193.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM and for making this regulation effective less than 30 days after **Federal Register** publication. Due to the date the Application for Approval of Marine Event was received, there was insufficient time to draft and publish an NPRM and publish the final rule 30 days before its effective date. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to close the waterway and protect the maritime public from the hazards associated with this fireworks display.

Background and Purpose

On August 17, 1999, Fireworks by Grucci Inc. submitted an application to hold a fireworks program on the waters of Upper New York Bay in Federal Anchorage 20C. The fireworks program is being sponsored by Periphonics Corp. This regulation establishes a safety zone in all waters of Upper New York Bay within a 360 yard radius of the fireworks barge in approximate position 40°41′16.5″N 074°02′23″W (NAD 1983), approximately 360 yards east of Liberty Island, New York. The safety zone is in effect from 9 p.m. until 10:30 p.m. on Saturday, September 25, 1999. There is no rain date for this event. The safety zone prevents vessels from transiting a portion of Federal Anchorage 20C and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Recreational and commercial vessel traffic will be able to anchor in the unaffected northern and southern portions of Federal Anchorage 20C. Federal Anchorages 20A and 20B, to the north, and Federal Anchorages 20D and 20E, to the south, are also available for vessel use. Marine traffic will still be able to transit through Anchorage Channel, Upper Bay, during the event as the safety zone only extends 125 yards into the 925-yard wide channel. Public notifications will be made prior to the event via the Local Notice to Mariners and marine information broadcasts.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone, that vessels may safely anchor to the north and south of the zone, that vessels may still transit through Anchorage Channel during the event, and extensive advance notifications which will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain *Federal mandates.* A Federal mandate is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This final rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165T.0–152 to read as follows:

§ 165.T01–152 Safety Zone: Periphonics Corp. 30th Anniversary Fireworks, New York Harbor, Upper Bay.

(a) *Location.* The following area is a safety zone: All waters of New York Harbor, Upper Bay within a 360-yard radius of the fireworks barge in approximate position 40°41′16.5″N 074°02′23″W (NAD 1983), approximately 360 yards east of Liberty Island, New York.

(b) *Effective period.* This section is effective from 9 p.m. until 10:30 p.m. on Saturday, September 25, 1999. There is no rain date for this event.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: September 3, 1999.

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 99–23717 Filed 9–10–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–154]

RIN 2115–AA97

Safety Zone: City of Yonkers Fireworks, New York, Hudson River

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the City of yonkers Fireworks Display located on the Hudson River. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of the Hudson River.

DATES: This rule is effective from 7:30 p.m. until 9 p.m., on Saturday, September 18, 1999. There is no rain date for this event.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4193.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM and for making this regulation effective less than 30 days after **Federal Register** publication. Due to the date the Application for Approval of Marine Event was received, there was insufficient time to draft and publish an NPRM and publish the final rule 30 days before its effective date. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to close the waterway and protect the maritime public from the hazards associated with this fireworks display.

Background and Purpose

Bay Fireworks has submitted an application to hold a fireworks program on the waters of the Hudson River. The fireworks program is being sponsored by the City of Yonkers. This regulation establishes a safety zone in all waters of the Hudson River within a 360 yard radius of the fireworks barge in approximate position 40°56′14″ 073°54′28″W (NAD 1983), approximately 350 yards northwest of the Yonkers Municipal Pier. The safety zone is in effect from 7:30 p.m. until 9 p.m. on Saturday, September 18, 1999. There is no rain date for this event. The safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Recreational and commercial vessel traffic will be able to transit to the west of the zone. Public notifications will be made prior to the event via the Local Notice to Mariners and marine information broadcasts.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the minimal time that vessels will be restricted from the zone, that vessels may safely transit to the west of the zone, and extensive advance notifications which will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain *Federal mandates*. A Federal mandate is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This final rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–154 to read as follows:

§ 165.T01–154 Safety Zone: City of Yonkers Fireworks, New York Hudson River.

(a) *Location.* The following area is a safety zone: All waters of the Hudson River within a 360 yard radius of the fireworks barge located in approximate position 40°56′14″N 073°54′28″W (NAD 1983), approximately 350 yards northwest of the Yonkers Municipal Pier.

(b) *Effective period.* This section is effective from 7:30 p.m. until 9 p.m. on Saturday, September 18, 1999. There is no rain date for this event.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: September 3, 1999.

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 99–23716 Filed 9–10–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Western Alaska–99–012]

RIN 2115–AA97

Safety Zone; Gulf of Alaska, Southeast of Narrow Cape, Kodiak Island, Alaska

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Gulf of Alaska, southeast of Narrow Cape, Kodiak Island, Alaska. The zone is needed to protect the safety of persons and vessels operating in the vicinity of the safety zone during a rocket launch from the Alaska Aerospace Development Corporation, Narrow Cape, Kodiak Island facility. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Commander, Seventeen Coast Guard District, the Coast Guard Captain of the Port, Western Alaska, or his on scene representative. The safety zone will ensure the safety of human life and property during the rocket launch.

DATES: This temporary final rule is effective from 6 a.m. on September 11, 1999, until 10 p.m. on November 15, 1999.

ADDRESSES: The public docket for this rulemaking is maintained by Coast Guard Marine Safety Office Anchorage, 510 "L" Street, Suite 100, Anchorage, AK 99501. Materials in the public docket are available for inspection and copying at Coast Guard Marine Safety Office Anchorage. Normal Office hours are 7:30 a.m. to 4 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Byron Black, Marine Safety Office Anchorage, at (907) 271–6700.

SUPPLEMENTARY INFORMATION:

Regulatory History

On July 21, 1999, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Gulf of Alaska, southeast of Narrow Cape in the **Federal Register** (64 FR 39108). The Coast Guard received no letters commenting on the proposed rulemaking. No public hearing was requested, and none was held.

Background and Purpose

The Alaska Aerospace Development Corporation (AADC), in conjunction with the United States Air Force, will launch an unmanned rocket from their facility at Narrow Cape, Kodiak Island, Alaska sometime between September 11, 1999, and November 15, 1999. The safety zone is necessary to protect spectators and transiting vessels from the potential hazards associated with the launch.

The launch time is scheduled to take place something between September 11, 1999, and November 15, 1999. The Coast Guard will announce via Broadcast Notice to Mariners the anticipated date and time of the launch and will grant general permission to enter the safety zone during those times in which the launch does not pose a hazard to mariners. Because the hazardous condition is expected to last for approximately 4 hours of one day, and because general permission to enter the safety zone will be given during non-hazardous times, the impact of this rule on commercial and recreational traffic is expected to be minimal.

Discussion of Comments and Changes

No comments were received relating to the NPRM. Due to the latest information received from the Alaska Aerospace Development Corporation, the launch window was moved forward four days from September 15, 1999, to a new start date of September 11, 1999. Based upon the trajectory information received after the NPRM was published, the size of the safety zone has been expanded to provide a greater safety buffer in the event that the launch is aborted shortly after take-off. The safety zone includes an area approximately 133 square nautical miles in the Gulf of Alaska, southeast of Narrow Cape, Kodiak Island, Alaska. Specifically, the zone includes the waters of the Gulf of Alaska that are within the area by a line drawn from a point located at 57°30.5′ North, 152°23.5′ West, thence southeast to a point located at 57°22.0′ North, 151°52.5′ West, thence southwest to a point located at 57°15.0′ North, 152°00.0′ West, and thence northwest to a point located at 57°25.0′ North, 152°29.5′ West, and thence northeast to the point located at 57°30.5′ North, 152°23.5′ West. All coordinates reference Datum: NAD 1983.

This safety zone is necessary to protect spectators and transiting vessels from the potential hazards associated with the launch of the Alaskan Aerospace rocket. The safety zone becomes effective at 6 a.m. on September 11, 1999, and terminates at 10 p.m. on November 15, 1999.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this rule would have significant economic impacts on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. Because the hazardous condition is expected to last for approximately four hours of one day, and because general permission to enter the safety zone will be given during non-hazardous times, the impact of this rule on commercial and recreational traffic should be minimal. The Coast Guard believes there will be minimal impact to small entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. No comments or requests for assistance were received by the point of contact listed in the NPRM.

Collection of Information

This rule contains no information collection requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. The justification for this categorical exclusion is that this rule is to establish a navigation safety zone. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Vessels, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 reads as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.401–1,6.04–6, and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T17–012 to read as follows:

§ 165.T17–012 Alaska Aerospace Development Corporation, Narrow Cape, Kodiak Island safety zones.

(a) *Description.* This safety zone includes an area approximately 133 square nautical miles in the Gulf of Alaska, southeast of Narrow Cape, Kodiak Island, Alaska. Specifically, the zone includes the waters of the Gulf of Alaska that are within the area bounded by a line drawn from a point located at 57° 30.5′ North, 152° 23.5′ West, thence southeast to a point located at 57° 22.0′ North, 151° 52.5′ West, thence southwest to a point located at 57° 15.0′ West, and thence northwest to a point located at 57° 25.0′ North, 152° 29.5′ West, and thence northeast to the point located at 57° 30.5′ North, 152° 23.5′ West. All coordinates reference Datum: NAD 1983.

(b) *Effective dates:* This section is effective from 6 a.m. on September 11, 1999, to 10 p.m. on November 15, 1999.

(c) *Regulations.*

(1) The Captain of the Port and the Duty Officer at Marine Safety Office, Anchorage, Alaska can be contacted at telephone number (907) 271–6700 or on VHF marine channel 16.

(2) Captain of the Port may authorize and designate any Coast Guard commissioned, warrant, or petty officer to act on his behalf in enforcing the safety zone.

(3) The general regulations governing safety zones contained in Title 33 Code of Federal Regulations, part 165.23 apply. No person or vessel may enter or remain in this safety zone, with the exception of attending vessels, without first obtaining permission from the Captain of the Port, or his on scene representative. The Captain of the Port, Western Alaska, or his on scene representative may be contacted onboard the U.S. Coast Guard cutter in the vicinity of Narrow Cape via VHF marine channel 16.

Dated: August 30, 1999.

W.J. Hutmacher,

Captain, U.S. Coast Guard, Captain of the Port, Western Alaska.

[FR Doc. 99–23714 Filed 9–10–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN 190–9930a; TN 196–9931a; FRL–6433–4]

Approval and Promulgation of Implementation Plans Tennessee: Approval of Revisions to the Tennessee State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On March 17, 1997, and May 8, 1997, the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), submitted revisions to the Tennessee State Implementation Plan (SIP). The revisions pertain to Sulfur Dioxide Emission Regulations for the New Johnsonville and Copper Basin Additional Control Areas. EPA is granting final approval to these revisions.

DATES: This direct final rule is effective November 12, 1999 without further notice, unless EPA receives adverse comment by October 13, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be provided to Scott Martin, Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104.

Division of Air Pollution Control, Tennessee Department of Environment and Conservation, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531.

FOR FURTHER INFORMATION CONTACT: Scott M. Martin, Regulatory Planning Section, Air Planning Branch, Air, Pesticides & Toxics Management Division, Region 4 Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104. The telephone number is (404)–562–9036.

SUPPLEMENTARY INFORMATION:

On March 17, 1997, and May 8, 1997, the TDEC submitted revisions to the Tennessee SIP incorporating revisions to Chapter 1200–3–19 Emission Standards and Monitoring Requirements for Particulate and Sulfur Dioxide Nonattainment. A public hearing for these revisions was held on January 16, 1997, and the revisions became State effective on November 30, 1996, and April 16, 1997. The revisions are described below:

Chapter 1200–3–19–.19 Sulfur Dioxide Regulations for the Copper Basin Additional Control Area.

This rule is being revised to remove references to sources that have ceased operation and are being physically removed.

Chapter 1200–3–19–.14 Sulfur Dioxide Emission Regulations for the New Johnsonville Additional Control Area.

Paragraph (1)(b)2 is being amended by correcting a rule cite which reads 1200–3–14–.02(1)(e) to read 1200–3–14–02(1)(d). This corrects a typographical error.

Final Action

EPA is approving the aforementioned changes to the SIP because they are consistent with the Clean Air Act and EPA requirements.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective November 12, 1999 without further notice unless the Agency receives adverse comments by October 13, 1999.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on November 12, 1999 and no further action will be taken on the proposed rule.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 12, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: August 13, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart RR—Tennessee

2. Section 52.2220(c) is amended by revising the following State citations for Chapter 1200–3–19 to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

EPA Approved Tennessee Regulations

* * * * *

CHAPTER 1200–3–19 EMISSION STANDARDS AND MONITORING REQUIREMENTS FOR PARTICULATE AND SULFUR DIOXIDE NONATTAINMENT AREAS

* * * * *

State citation	Title/subject	Adoption date	EPA approval date	Comments
Section 1200–3–19–.14	Sulfur Dioxide Emission Regulations for the New Johnsonville Nonattainment Area.	04/16/97	9/13/99	

State citation	Title/subject	Adoption date	EPA approval date	Comments
• •	• • •	•		•
Section 1200–3–19–.19	Sulfur Dioxide Regulations for the Copper Basin Nonattainment Area.	11/30/96	9/13/99	
• •	• • •	•		•

[FR Doc. 99–23191 Filed 9–10–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 192–0161; FRL–6434–2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Mojave Desert Air Quality Management District and Tehama County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval to revisions to the California State Implementation Plan (SIP) which concern the recision of rules for the Mojave Desert Air Quality Management District (MDAQMD) and Tehama County Air Pollution Control District (TCAPCD). These rules concern emissions from orchard heaters and fuel burning equipment. The intended effect of this action is to bring the MDAQMD and TCAPCD SIPs up to date in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act).

EFFECTIVE DATE: This action is effective on October 13, 1999.

ADDRESSES: Copies of the rules and EPA's evaluation report of the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW, Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

Mojave Desert Air Quality Management District, 15428 Civic Drive, Suite 200, Victorville, CA 92392

Tehama County Air Pollution Control District, 1760 Walnut Street, Red Bluff, CA 96080

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1135.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being finalized for recision from the MDAQMD portion of the California SIP are included in San Bernardino County Air Pollution Control District (SBCAPCD) Regulation VI, Orchard, Field or Citrus Grove Heaters, consisting of Rule 100, Definitions; Rule 101, Exceptions; Rule 102, Permits Required; Rule 103, Transfer; Rule 104, Standards for Granting Permits; Rule 109, Denial of Application; Rule 110, Appeals; Rule 120, Fees; Rule 130, Classification of Orchard Heaters; Rule 131, Class I Heaters Designated; Rule 132, Class II Heaters Designated; Rule 133, Identification of Heaters; Rule 134, Use of Incomplete Heaters Prohibited; Rule 135, Cleaning, Repairs; Rule 136, Authority to Classify Orchard Heaters; and Rule 137, Enforcement. These rules were previously submitted by the California Air Resources Board (CARB) to EPA on February 21, 1972 and approved on May 31, 1972 (37 FR 10856) for incorporation into the SIP. These rule recisions were adopted by the MDAQMD on June 24, 1996 and submitted by CARB to EPA on March 3, 1997.

The rule being finalized for recision from the TCAPCD portion of the California SIP is TCAPCD Rule 4.13, Fuel Burning Equipment. This rule was previously submitted by CARB to EPA on February 21, 1972 and approved on May 31, 1972 (37 FR 10856) for incorporation into the SIP. This rule recision was adopted by the TCAPCD on September 10, 1985 and submitted by CARB to EPA on February 10, 1986.

II. Background

On May 31, 1972, the EPA approved SBCAPCD Regulation VI, Rules 100–104, 109, 110, 120, and 130–137, Orchard, Field or Citrus Grove Heaters, for incorporation into the SIP. The SBCAPCD rescinded Regulation VI from its rulebook prior to 1977. The recision of SBCAPCD Regulation VI was disapproved by EPA on September 8, 1978 (43 FR 40018) as a SIP relaxation. On July 1, 1993, the SBCAPCD became the Mojave Desert Air Quality Management District (MDAQMD) by act of the California Legislature. In 1994, MDAQMD added portions of Riverside County, the Palo Verde Valley, and Blythe. The SBCAPCD rules remain in effect after July 1, 1993 until the MDAQMD rescinds or supersedes them. The rules being finalized for recision by MDAQMD were originally adopted by SBCAPCD for the purpose of controlling particulate matter PM–10 emissions from orchard heaters. In the spring of 1995, the MDAQMD conducted a survey of affected industry to determine if Class I and Class II orchard heaters were still in use. The survey determined that no known facility within the MDAQMD uses this antiquated technology. Wind machines are currently used to protect crops from frost. Therefore, the recision of SBCAPCD Regulation VI by MDAQMD does not relax the SIP control strategy.

On July 12, 1990, EPA approved TCAPCD Rule 4.9, Specific Contaminants, and Rule 4.14, Fuel Burning Equipment (Operational), for incorporation into the SIP. Rule 4.13, Fuel Burning Equipment, is submitted for recision, since Rules 4.9 and 4.14 provide regulation of the same pollutant emissions. Rule 4.9 regulates SO_X and combustion contaminant (particulate matter) emissions by limiting the respective concentrations in the gas, instead of by absolute quantities of emissions. Rule 4.14 regulates NO_X emissions by limiting the concentration in the gas, instead of by absolute quantity of emissions. SIP-approved Rules 4.9 and 4.14 strengthen the SIP relative to Rule 4.13, except for large fuel burning equipment with a capacity in excess of about 500 million British Thermal Units per hour. The TCAPCD does not have larger capacity sources; therefore, the recision of TCAPCD rule 4.13 does not relax the SIP control strategy.

In response to section 110(a) and Part D of the Act, the State of California submitted many PM–10 rules for incorporation into the California SIP, including the rule recisions being acted on in this document. This document addresses EPA's final action to approve the recision of SBCAPCD Regulation VI, which includes Rules 100–104, 109, 110, 120, and 130–137, from the SIP. The recision was adopted June 24, 1996 by MDAQMD. This submittal was found to be complete on August 12, 1997, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V.[1]

This document also addresses EPA's final action to approve the recision of TCAPCD Rule 4.13 from the SIP. The recision was adopted by TCAPCD September 10, 1985. The following are EPA's response to public comments and evaluation and final action for these rules.

III. Response to Public Comments

EPA proposed this action and announced a 30-day public comment period on May 13, 1999 (64 FR 25822). On the same day, EPA published a direct final approval of the proposed action. EPA received one comment letter on the proposed rule from Eldon Heaston, MDAQMD. As a result, EPA withdrew the direct final approval on July 12, 1999 (64 FR 37406). The comment has been evaluated by EPA and a summary of the comment and EPA's response is set forth below.

Comment: Mr. Heaston commented that it is not clear that the EPA recision action deleted [San Bernardino County APCD] Regulation VI from the SIP and corrected the previous disapproval of the recision in 40 CFR 52.220(c)(39)(ii)(D) and 40 CFR 52.228(b)(1)(iv).

Response: EPA determined that the original submittal and approval dates of San Bernardino County APCD Regulation VI were incorrect in EPA records, therefore the incorporation by reference into the CFR was incorrect. This final action corrects the original submittal and approval dates, corrects the incorporation by reference to 40 CFR 52.220(b)(3)(ii), and deletes the previous disapproval in 40 CFR 52.220(c)(39)(ii)(D) and in 40 CFR 52.228(b)(1)(iv).

[1] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

IV. EPA Evaluation and Final Action

In determining the approvability of a PM–10 rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). EPA must also ensure that rules strengthen the SIP or maintain the SIP's control strategy.

EPA has evaluated the submitted rule recisions and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, the recision of SBCAPCD Regulation VI, Rules 100–104, 109, 110, 120, and 130–137 and TCAPCD Rule 4.13 are approved under section 110(k)3 of the CAA as meeting the requirements of section 110(a) and part D.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any

rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 12, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Particulate matter.

Dated: August 26, 1999.

David P. Howekamp,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by removing paragraph (c)(39)(ii)(D) and by adding paragraphs (b)(3)(ii) and (b)(4) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(b) * * *

(3) * * *

(ii) Previously approved on May 31, 1972 and now deleted without replacement Rule 4.13.

(4) San Bernardino County APCD.

(i) Previously approved on May 31, 1972 and now deleted without replacement Regulation VI, Rules 100 to 104, 109, 110, 120, and 130 to 137.

* * * * *

3. Section 52.228 is amended by removing paragraph (b)(1)(iv).

[FR Doc. 99–23588 Filed 9–10–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL193–1a; FRL–6435–6]

Approval and Promulgation of Implementation Plan; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On July 9, 1999, the State of Illinois submitted a site-specific State Implementation Plan (SIP) revision revising Volatile Organic Compound (VOC) Reasonably Available Control Technology (RACT) requirements for Sun Chemical Corporation (Sun) in Northlake, Illinois. The SIP revision exempts 17 resin storage tanks from bottom or submerged pipe fill requirements, subject to certain conditions. This rulemaking action approves, using the direct final process, the Illinois SIP revision request.

DATES: This rule is effective on November 12, 1999, unless EPA receives adverse written comments by October 13, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Copies of the revision request for this rulemaking action are available for inspection at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone Mark J. Palermo at (312) 886–6082 before visiting the Region 5 Office).

FOR FURTHER INFORMATION CONTACT: Mark J. Palermo, Environmental Protection Specialist, at (312) 886–6082.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever "we," "us," or "our" are used we mean EPA.

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I. Petitions for Judicial Review

I. What Is EPA Approving in This Rule?

We are approving, through the direct final process, a July 9, 1999, SIP revision request for the Sun facility in Northlake, Illinois. Sun is subject to VOC RACT requirements under section 182(b)(2) of the Clean Air Act (Act).[1] The SIP revision changes RACT as it applies to Sun by exempting 17 resin storage tanks from bottom or submerged pipe fill requirements, subject to certain conditions.

II. Who Is Affected by This SIP Revision?

This SIP revision only affects VOC control requirements at Sun's facility located in Northlake, Illinois. Sun's manufacturing operations consist primarily of batch processes involving the mixing or blending of resin, solvents, pigments, and varnishes to make finished inks and bases.

[1] It should be noted that under Illinois' regulations, the State uses the term "Volatile Organic Material (VOM)" rather than VOC, in referring to volatile organic emissions. The State's definition of VOM is equivalent to EPA's definition of VOC, and are interchan geable when discussing volatile organic emissions. For consistency with the Act and with EPA policy, we are using the term VOC in this rulemaking.

III. What Were Sun's Previous SIP Requirements?

Section 182(b)(2) of the Act requires States to adopt RACT rules covering "major sources" of VOC for all areas classified moderate nonattainment for ozone and above.[2] The Chicago ozone nonattainment area (Cook, DuPage, Kane, Lake, McHenry, and Will Counties and Aux Sable and Goose Lake Townships in Grundy County and Oswego Township in Kendall County) is classified as "severe" nonattainment for ozone, and is subject to the Act's RACT requirement. Under section 182(d) of the Act, sources located in severe ozone nonattainment areas are considered "major sources" if they have the potential to emit 25 tons per year or more of VOC. Sun's Northlake facility has the potential to emit more than 25 tons of VOC per year, and, consequently, is subject to RACT requirements.

On September 9, 1994, we approved, as a revision to the Illinois SIP, several rules under 35 Ill. Adm. Code Parts 211 and 218 pertaining to VOC RACT for the Chicago severe ozone nonattainment area (59 FR 46562). The Illinois rules replaced the Chicago area Federal Implementation Plan (FIP), and the rules are generally patterned after the FIP's RACT requirements.

Included in part 218 is "Subpart AA: Paint and Ink Manufacturing." Sun operates resin storage tanks which, with the adoption of subpart AA, became subject to the rule. Particularly, section 218.626(b), which is included under subpart AA, requires paint and ink manufacturers to equip their stationary Volatile Organic Liquid (VOL) storage containers with a submerged fill pipe or bottom fill pipe. Fill pipes are the conduits through which liquids enter the tanks. Containers with a capacity less than or equal to 946 liters (250 gallons) are exempt from the requirements. The intention behind the fill pipe requirement is to reduce VOC emissions from tanks by preventing splashing of volatile liquids as tanks are being filled.

IV. Why Is Sun Unable To Meet The Previous SIP Requirements?

Sun has 17 resin storage tanks which have been subject to subpart AA submerged or bottom fill pipe requirements, but still have overhead fill pipe systems. The tanks were installed in 1962, before emission control equipment on such tanks was contemplated. The tanks involved are in close proximity to the each other, with some only a few feet apart, which Sun contends makes installing control equipment difficult and costly. Additionally, the substances stored in the tanks are thick and can not be pumped at normal temperatures. Because of this, Sun would have to install bottom fill rather than submerged fill pipes, since the raw materials would clog a submerged fill pipe and require frequent cleaning. Sun maintains that installing bottom fill pipes on these tanks would be more difficult and expensive than submerged pipe installation because they require fully cleaning out the tanks and cutting into the tanks.

The Illinois Environmental Protection Agency (IEPA) estimates that only 0.0203 tons per year of VOC is emitted from the 17 tanks at issue. The low VOC emissions is due to the fact that liquids stored in the tanks have a vapor pressure significantly less than 0.5 Pounds Per Square Inch Absolute (psia), and most of the materials stored in the tanks have vapor pressures less than 0.005 psia. Materials with a psia this low have low volatility, and hence are not subject to rapid vaporization and easy escape of vapors to the surrounding air.

The IEPA cost figures for installing bottom fill pipes on the 17 tanks is approximately $285,960 to $298,510. The IEPA estimates the cost per ton of VOC emissions reduced by complying with section 218.626(b) is $1,452,338.31 per ton of VOC reduced.

V. What Are the Changes to Sun's SIP Requirements?

On May 20, 1999, the Illinois Pollution Control Board (IPCB) adopted Adjusted Standard 99–4, which provides that section 218.626(b) shall not apply to the 17 storage tanks at Sun's Northlake, Illinois facility. These tanks are identified as tanks no. 26, 27, 35, 36, 37, 42, 43, 44, 47, 48, 49, 53, 54, 55, 59, 60, and 67 in Sun's petition for adjusted standard, and in the IEPA's January 29, 1999, response.

The adjusted standard will remain in effect so long as (a) no odor nuisance exists at the Sun's Northlake facility, and (b) the vapor pressures of materials stored in the 17 identified tanks remain less than 0.5 psia at 70 degrees Fahrenheit. Under the adjusted standard, Sun must keep all records necessary to establish that the vapor pressures of the materials stored in the 17 identified tanks are less than 0.5 psia at 70 degrees Fahrenheit. Each record

[2] A definition of RACT is cited in a General Preamble-Supplement published at 44 FR 53761 (September 17, 1979). RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.

shall be retained at the facility for a period of no less than 3 years.

This adjusted standard exempts Sun only from the requirements of section 218.626(b) for the 17 storage tanks listed in the adjusted standard, and not from any other requirements under part 218. Sun must continue to comply with all other applicable regulations of part 218, and any existing or new storage tanks not explicitly listed in the adjusted standard order are not exempted by the adjusted standard from section 218.626(b). Sun is subject to the test methods of part 218, including section 218.109 "Vapor Pressure of Volatile Organic Liquids," which will ensure that the vapor pressure of VOL loaded into the 17 tanks are less than 0.5 psia at 70 degrees Fahrenheit. Section 218.109 was incorporated into the SIP on September 9, 1994 (59 FR 46562).

VI. What Is the Procedural History of This SIP Revision?

On October 22, 1998, Sun filed a petition for an adjusted standard with the IPCB. The IPCB held a public hearing on the adjusted standard on April 15, 1999, in Chicago, Illinois. On May 20, 1999, the IPCB adopted a Final Opinion and Order granting the adjusted standard. On July 9, 1999, IEPA submitted the adjusted standard as a SIP revision request to EPA. On July 28, 1999, we sent a letter to IEPA which deemed the SIP revision submittal administratively complete.

VII. What Is the Justification for Approving This SIP Revision?

IEPA indicates that Sun based its adjusted standard petition on section 218.122 of the Chicago area RACT rules. This section contains the State's general VOL storage tank loading requirements. This rule requires that stationary tanks with a storage capacity of greater than 946 liters (250 gallons) must be equipped with a permanent submerged load pipe or equivalent control device, unless no odor nuisance exists and the vapor pressure of the VOL loaded is less than or equal to 17.24 kilopascals (2.5 psia) at 294.3 degrees Kelvin (70 degrees Fahrenheit). Because of the high cost in installing bottom fill tanks on the 17 tanks, and the negligible emission benefit installing such pipes would achieve, IEPA believes that RACT for the storage tanks should be the level of control represented under the adjusted standard.

We agree that bottom fill or submerged fill pipe controls for the 17 tanks at the Sun facility are not technically and economically feasible. Further, we have issued no Control Techniques Guideline (CTG) justifying bottom fill or submerged fill pipe controls for Sun's tanks.[3] We are not aware of any paint or ink manufacturing facilities with storage tanks having similar design and holding similar materials as the tanks operated by Sun, which have replaced overhead fill pipes with bottom or submerged fill pipes in a manner that is less costly than what IEPA expects such replacement to cost Sun. Given that the vapor pressure limitation will prevent emissions to significantly increase from the current low emission levels, we find that the adjusted standard constitutes RACT for Sun's 17 tanks.

VIII. Final Rulemaking Action

In this rulemaking action, we are approving the July 9, 1999, Illinois SIP revision submittal of an adjusted standard for Sun's Northlake facility, which was granted by the IPCB on May 20, 1999. We are publishing this action without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the SIP revision should adverse written comments be filed. This action will be effective without further notice unless we receive relevant adverse written comment by October 13, 1999. Should we receive such comments, we will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on November 12, 1999.

IX. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation.

In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding this rulemaking action under section 801 because this is a rule of particular applicability.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 12, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping, Volatile organic compounds.

Dated: August 30, 1999.

Robert Springer,

Acting Regional Administrator, Region 5.

For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(153) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(153) On July 9, 1999, the State of Illinois submitted a site-specific State Implementation Plan (SIP) revision affecting Volatile Organic Material control requirements at Sun Chemical Corporation (Sun) in Northlake, Illinois. The SIP revision changes requirements for 17 resin storage tanks operated by Sun. Specifically, the SIP revision exempts the 17 tanks from the bottom or submerged fill pipe requirements, provided that no odor nuisance exists at the Sun Northlake facility, and that the vapor pressures of materials stored in the tanks remain less the 0.5 pounds per square inch absolute at 70 degrees Fahrenheit.

(i) Incorporation by reference.

May 20, 1999, Opinion and Order of the Illinois Pollution Control Board, AS 99–4, effective May 20, 1999.

[FR Doc. 99–23581 Filed 9–10–99; 8:45 am]

BILLING CODE 6560–50–P

[3] CTGs are documents published by EPA which contain information on available air pollution control techniques and provide recommendations on what the EPA considers the "presumptive norm" for RACT.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–75–1–9910a; KY–97–1–9911a; FRL–6435–4]

Approval and Promulgation of Implementation Plans

Kentucky: Approval of Revisions to the Louisville State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the Air Pollution Control District of Jefferson County portion of the State Implementation Plan (SIP) submitted by the Commonwealth of Kentucky through the Natural Resources and Environmental Protection Cabinet on November 12, 1993, and amended on April 5, 1994, and June 30, 1997, which includes the 15 Percent Rate-of-Progress Plan (15 percent plan) for the Louisville moderate ozone nonattainment area. This submittal was made to meet the 15 percent reduction in emissions of volatile organic compounds (VOCs) requirement of section 182(b)(1)(A) of the Clean Air Act, as amended in 1990 (CAA). EPA is approving the plan, including the individual measures that achieve the 15 percent reduction in VOCs and the Jefferson County 1990 Base Year Emissions Inventory. The inventory was submitted by Kentucky to fulfill requirements of section 182(b) of the CAA.

DATES: This direct final rule is effective November 12, 1999 without further notice, unless EPA receives adverse comment by October 13, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Scott M. Martin at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Reference file KY–97.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Environmental Protection Agency, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104.

Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, Division of Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

Air Pollution Control District of Jefferson County, 850 Barrett Avenue, Suite 205, Louisville, Kentucky 40204.

FOR FURTHER INFORMATION CONTACT: Scott M. Martin, Regulatory Planning Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, Region 4 Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104. The telephone number is 404–562–9036.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

- Background.
- 1990 Base year emissions inventory.
- Adjusted base year inventory.
- 1990 Rate-of-progress inventory.
- 15 Percent plan.
- Creditable 15 percent reduction.
- Total expected reductions by 1996.
- Target level emissions for 1996.
- Reductions needed by 1996 to achieve 15 percent accounting for growth.
- Reductions required by 1996.
- 1996 Projected emissions.
- Control strategies to meet the 15 percent reduction requirement and approval of supporting regulations.
- Final action.
- Administrative requirements.

Background

The Louisville area was classified as a multi-state moderate ozone nonattainment area on November 15, 1990, pursuant to the CAA. The Louisville nonattainment area consists of Jefferson County and parts of Bullit and Oldham Counties, Kentucky, and Floyd and Clark Counties, Indiana.

Section 182(b) of the CAA requires that each state in which all or part of a moderate nonattainment area is located submit, by November 15, 1992, an inventory of actual emissions from all sources, as described in section 172(c)(3) and 182(a)(1), in accordance with guidance provided by the Administrator. This inventory is for calendar year 1990 and is designated the base year inventory. The inventory should include both anthropogenic and biogenic sources of volatile organic compounds (VOCs), nitrogen oxides (NOx), and carbon monoxide (CO), and must address actual emissions of these pollutants in the nonattainment area during the peak ozone season. The inventory should include all point and area sources, as well as all highway and non-highway mobile sources.

In addition, section 182(b)(1)(A) of the CAA requires ozone nonattainment areas classified as moderate and above to develop plans to reduce VOC emissions by 15 percent from the 1990 base year. The plans were to be submitted by November 15, 1993, and the reductions were required to be achieved within six years of enactment or November 15, 1996. The CAA also set limitations on the creditability of certain types of reductions. Specifically, a state cannot take credit for reductions achieved by Federal Motor Vehicle Control Program (FMVCP) measures promulgated prior to 1990, or for reductions resulting from requirements to lower the Reid Vapor Pressure (RVP) of gasoline promulgated prior to 1990 or required under section 211(h) of the CAA, which restricts gasoline RVP. Furthermore, the CAA does not allow credit for corrections to vehicle I/M Programs or corrections to Reasonably Available Control Technology (RACT) rules as these programs were required prior to 1990.

1990 Base Year Emissions Inventory

In this action, the EPA is approving the 1990 base year emissions inventory for the Louisville area. Detailed information on the emissions calculations can be obtained at the Regional Office address above. The following table is a summary of the base year emissions inventory.

LOUISVILLE 1990 BASE YEAR EMISSIONS INVENTORY

[Tons/day]

Source type	VOC	NO_x	CO
Point	83.75	147.87	10.14
Area	38.69	4.5	28.04
Mobile	92.81	40.49	541.22
Nonroad	12.68	16.58	54.61
Biogenic	20.9	N/A	N/A
Total	248.83	209.44	634.01

The EPA is approving this inventory as satisfying the requirements of section 182(a)(1) of the CAA.

Adjusted Base Year Inventory

The adjusted base year inventory for VOCs requires exclusion of emission reductions that would occur by 1996 as a result of the FMVCP and RVP regulations promulgated prior to 1990. The following table is a summary of the adjusted base year inventory.

LOUISVILLE 1990 ADJUSTED BASE YEAR INVENTORY

[Tons/day]

Source type	VOC
Point	83.75
Area	38.69
Mobile	49.52
Nonroad	12.68
Total	184.64

1990 Rate-of-Progress Inventory

The Rate-of-Progress inventory is comprised of the anthropogenic stationary (point and area) and total mobile source emissions in the nonattainment area with all biogenic emissions removed from the base year inventory. The following table is a summary of the Rate-of-Progress baseline inventory.

LOUISVILLE 1990 RATE-OF-PROGRESS BASE YEAR

[Tons/day]

Source type	VOC
Point	83.75
Area	38.69
Mobile	92.81
Nonroad	12.68
Total	227.93

15 Percent Plan

Kentucky submitted a 15 percent Plan for the Louisville nonattainment area to EPA on November 12, 1993, with additional information submitted on April 5, 1994, and June 30, 1997. This submittal was required in order to demonstrate reasonable further progress in attaining the National Ambient Air Quality Standard (NAAQS) for ozone. This 15 percent plan is not intended to demonstrate attainment of the ozone NAAQS. The CAA required Kentucky to submit a plan by November 15, 1993, and to attain the ozone NAAQS by 1996. In order to demonstrate progress, the Commonwealth must achieve actual VOC emission reductions of at least 15 percent during the first six years after enactment of the CAA. The 15 percent reduction must be based on a decrease from the 1990 base year emissions, excluding emissions from other reduction programs and emission sources outside the nonattainment area.

Creditable 15 Percent Reduction

The adjusted base year inventory of 184.64 tons/day is multiplied by 0.15 to calculate the creditable 15 percent reduction in tons/day. Louisville needs a reduction of 27.70 tons/day to obtain the creditable 15 percent reduction.

Total Expected Reductions by 1996

The total expected reductions by 1996 include the required 15 percent (27.70 tons/day), the reductions from FMVCP and RVP (43.29 tons/day), corrections to RACT rules (0.00 tons/day) and corrections to I/M programs (0.00 tons/day). Louisville was required to have a total of 70.99 tons/day of VOC reductions by 1996.

Target Level Emissions for 1996

To calculate the 1996 target emissions level, the total expected reductions (70.99 tons/day) are subtracted from the 1990 Rate-of-Progress base year inventory (227.93 tons/day) for the Louisville nonattainment area. This gives a 1996 target level emissions of 156.94 tons/day.

Reductions Needed by 1996 to Achieve 15 Percent Accounting for Growth

The reductions needed to achieve 15 percent accounting for growth are determined by subtracting the target level emissions (156.94 tons/day) from the 1996 estimated emissions (199.57 tons/day) giving a total of 42.63 tons/day in additional reductions needed.

Reductions Required by 1996

In order to meet the target level required for 1996, Louisville must reduce VOC emissions by an additional 42.63 tons/day. The 1990 Rate-of-Progress Base Year inventory is the base inventory from which the 15 percent reduction on existing sources and the reduction from growth by 1996 must be calculated to meet requirements of the CAA.

The following is a summary of the reductions Louisville obtained to meet this requirement. More detailed information concerning specific areas of reduction can be found in the Technical Support Document (TSD) located at the Regional EPA address listed above.

SUMMARY OF VOC REDUCTIONS NEEDED

Jefferson county	Required	Expected	Outcome
Point Sources	16.37	16.78	0.41
Area Sources	8.98	7.53	−1.45
Mobile Sources	15.48	17.87	2.39
Subtotal	40.83	42.18	1.35
Bullit/Oldham Counties	1.79	1.20	−0.59

SUMMARY OF VOC REDUCTIONS NEEDED—Continued

Jefferson county	Required	Expected	Outcome
Total	42.62	43.38	(1)

[1] 0.76 tons/day excess reductions.

1996 Projected Emissions

The projected emissions for 1996 have been calculated by applying the control measures discussed below to the 1996 Estimated Emissions. The 1996 Projected Emissions are shown as follows:

1996 PROJECTED EMISSIONS

[Tons/day]

Point	70.85
Area	31.66
Mobile	39.51
Nonroad	14.17
Total	156.19

The 1996 Projected Emissions of 156.19 tons/day are less than the 1996 Target Level Emissions of 156.94 tons/day.

Control Strategies to Meet the 15 Percent Reduction Requirement and Approval of Supporting Regulations

Industrial Source Control Measures

Regulation 1.18 Rule Effectiveness

Regulation 1.18 Rule Effectiveness is being added and applies to sources subject to Regulation 6.43 VOC Emission Reduction Requirements. Sources must develop a rule effectiveness improvement plan and have all measures implemented by November 15, 1996. These improvements reduce VOC emissions by 12,740 lbs/day or 6.37 tons/day.

1990 Non-Compliance Sources

There were three industrial sources that were not in compliance with existing VOC emission requirements during 1990. The actual emissions of these sources were included in the 1990 emissions inventory. These sources subsequently implemented compliance plans and are now in compliance with these VOC emissions requirements. The reductions from the actual emissions levels down to the allowed emissions levels are included in the final 15 percent VOC emissions reduction plan for the industrial source categories. This results in a reduction of 2,696 lbs/day or 1.35 tons/day.

Regulation 6.43 VOC Emission Reduction Requirements

Regulation 6.43 VOC Emission Reduction Requirements establishes emissions, equipment, and operational requirements for 16 sources. Each source voluntarily agreed to the requirements. The sources are as follows: Akzo Nobel Resins; Alcan Rolled Products Company, Louisville Plant; American Synthetic Rubber Corporation; Ashland Petroleum Company, Aetna Terminal; the Carbide/Graphite Group, Inc.; Courtaulds Coatings, Plant #1; DuPont Dow Elastomers L.L.C.; the Earthgrains Company; Ford Motor Company; Gateway Press, Inc.; Marathon Oil Company, Louisville Terminal; Phillip Morris Incorporated, Maple Street Plant; Reynolds Metals Company, Plant #1; Rohm and Haas Kentucky Inc.; United Defense Louisville Plant; Zeon Chemicals KY, Inc. These requirements reduce VOC emissions by 7,127 lbs/day or 3.56 tons/day. Further details pertaining to the requirements specific to each source can be obtained from the Regional EPA address listed above.

Use of Emission Reduction Credits (ERCs)—Industry Held

The voluntary use of industry held ERCs is a component of Regulation 6.43 and will provide a reduction of 5,859 lbs/day or 2.93 tons/day in VOC emissions. These ERCs have been retired from Louisville's ERC Bank.

Regulation 2.12 Emissions Trading (Including Banking and Bubble Rules)

This regulation is being added to develop Louisville's emission trading and banking program. The regulation is applicable to any pollutant for which Louisville has adopted stationary source control regulations. The application procedures, creation of ERCs, the use of ERCs, the withdrawal of ERCs, and the air quality modeling requirements for use of particulate matter, sulfur dioxide, and carbon monoxide ERCs are all established in the regulation. EPA is not taking action on section 8 Alternate Emission Standards (Bubbles), section 9 Transmittals to EPA, and section 10 Amendments to the State Implementation Plan: Requirements and Exemptions. Approval of these sections is not required for the Louisville area to operate a banking and trading program and the sections do not meet EPA guidance.

Use of Unallocated Community-Held ERCs.

Regulation 2.12 Emissions Trading (Including Banking and Bubble Rules) is being added to the Louisville SIP to establish the procedural requirements for the use of unallocated community held ERCs. The ERCs used toward the 15 percent plan have been retired from the bank and will provide a reduction of 5,129 lbs/day or 2.56 tons/day in VOC emissions.

Area Source Control Measures

Regulation 1.16 Standards for Volatile Organic Compound Content of Architectural and Industrial Maintenance Coatings

This regulation is being added to require a 25 percent reduction in VOC content in coatings used for architectural and industrial maintenance. There are two emission categories relevant to this area: architectural surface coatings and traffic markings. The total projected 1996 emissions from these categories is 12,090 lbs/day. Multiplying this by 0.25 gives a reduction of 3,022 lbs/day or 1.51 tons/day.

Regulation 6.40 Standards of Performance for Gasoline Transfer to Motor Vehicles (Stage II Vapor Recovery and Control)

This regulation is being added to the Louisville SIP and is applicable to gasoline dispensing facilities dispensing gasoline from storage tanks to motor vehicle fuel tanks. This regulation applies to both new and existing gasoline dispensing facilities whose monthly throughput exceeds 10,000 gallons of gasoline based upon calculating the average volume of gasoline dispensed per month over the consecutive 12 month period preceding the effective date of this regulation (August 9, 1993). Regulation 6.40 does not apply to a gasoline dispensing facility of an independent small business marketer which dispenses an average monthly throughput of less than 25,000 gallons of gasoline per month. The application of Stage II vapor recovery equipment on the gasoline dispensing facilities in the County as specified in Regulation 6.40 is expected to result in a reduction of 95 percent in the relevant VOC emissions. Since the use of reformulated gasoline has been mandated for the area through the Commonwealth's opt-in to the program, an allowance was made for this reduction prior to calculating the Stage II reduction. The EPA estimate of 3.5% was used. The following provides the basis for the estimate of the emission reduction:

1996 Projected Emissions (no RFG)—11,299 lbs/day
3.5% Reduction for RFG— – 395 lbs/day
Net projected 1996 Emissions—10,904 lbs/day
10,904 lbs/day × 0.95 = 10,358 lbs/day or 5.18 tons/day reduction.

Regulation 6.44 Standards of Performance for Existing Commercial Motor Vehicle and Mobile Equipment Refinishing Operations and Regulation 7.79 Standards of Performance for New Commercial Motor Vehicle and Mobile Equipment Refinishing Operations

These regulations are being added to the Louisville SIP and are applicable to commercial facilities making spot repairs, panel repairs, refinishing of parts and/or the refinishing of the entire motor vehicle or mobile equipment. These regulations require auto refinishing shops to reduce VOC emissions by limiting solvent use, paints, equipment used or some combination of these options and result in 0.57 tons/day reduction in VOC emissions.

Regulation 6.45 Standards of Performance for Existing Solid Waste Landfills

This regulation is being added to the Louisville SIP and is applicable to existing solid waste landfills located in Jefferson County, Kentucky that commenced operation before or after February 2, 1994. This regulation involves the control of VOC emissions from landfill waste disposal sites implementing collection and combustion of landfill gases and will result in a 0.10 tons/day reduction in VOC emissions.

Gasoline Controls for Off-Road Mobile Sources

By adopting the use of reformulated gasoline for non-road engines Louisville will obtain a reduction of 0.17 tons/day.

Mobile Source Control Measures

Regulation 8.03 Commuter Vehicle Testing Requirements

This regulation is being added to the Jefferson County SIP and is applicable to the owners or operators of vehicles who routinely or regularly commute to Jefferson County, Kentucky for employment or self employment. The provisions of this regulation also apply to all employers and self-employers with one or more employees who routinely or regularly commute to Jefferson County for employment or self employment. Commuters shall have their vehicle's emissions tested on an annual basis at a Jefferson County Vehicle Emissions Testing Center and shall comply with Regulation 8.01 unless exempted. This regulation will result in a 4.98 tons/day reduction in VOC emissions.

Gasoline Controls

Implementation of reformulated gasoline for onroad mobile sources reduces VOC emissions by of 9.99 tons/day.

Other Control Measures

In an effort to gain additional reductions, Louisville is implementing the following programs: Transit (1.30 ton/day), Rideshare (1.10 tons/day), Alternate Fuel Vehicles (0.10 tons/day), and Traffic Signal Improvements (0.40 tons/day) for a total reduction in VOC emissions of 2.90 tons/day.

Final Action

The EPA is granting final approval of the Louisville 1990 Base Year Emissions Inventory and 15 percent plan because they are consistent with the CAA and EPA requirements. Final approval is also being granted to the regulations discussed in the previous section of this document.

Also included in this submittal were revisions to Regulation 1.02 Definitions; Regulation 1.04 Performance Tests; Regulation 1.06 Source Self Monitoring and Reporting; Regulation 1.07 Emissions During Shutdowns, Malfunctions, and Emergencies; Regulation 1.08 Administrative Procedures; Regulation 2.02 Air Pollution Regulation; Regulation 2.03 Permit Requirements—Non-Title V Operating Permits and Construction/Demolition Permits; Regulation 2.07 Public Notification; Regulation 2.08 Emission Fees, Permit Fees, and Permit Renewal Procedures; Regulation 5.14 Hazardous Air Pollutants; and Regulation 6.42 VOC and NOx RACT. Action on these regulations will be taken in a separate notice.

Nothing in this action should be construed as making any determination or expressing any position regarding Kentucky's audit privilege and penalty immunity law, Kentucky—"KRS 224.01–040", or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act program resulting from the effect of Kentucky's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

I. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not

required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 12, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: August 20, 1999.

Michael V. Peyton,

Acting Regional Administrator, Region 4.

Part 52 of chapter I, title 40, *Code of Federal Regulations*, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

Subpart S—Kentucky

2. Section 52.939, is amended by adding paragraph (c)(94) to read as follows:

§ 52.939 Original identification of plan section.

* * * * *

(c) * * *

(94) Approval of the Louisville 15 percent plan and supporting regulations including the 1990 Base Year Emissions Inventory submitted by Kentucky on November 12, 1993, and amended on April 5, 1994, and June 30, 1997.

(i) Incorporation by reference.

Regulation 6.43 Volatile Organic Compound Emission Reduction Requirements, amended May 21, 1997.

Regulation 1.18 Rule Effectiveness, adopted September 21, 1994.

Regulation 2.12 Emissions Trading (Including Banking and Bubble Rules), sections 1–7, amended December 18, 1996.

Regulation 1.16 Standards for Volatile Organic Compound Content of Architectural and Industrial Maintenance Coatings, adopted February 2, 1994.

Regulation 6.40 Standards of Performance for Gasoline Transfer to Motor Vehicles (Stage II Vapor Recovery and Control), amended August 9, 1993.

Regulation 6.44 Standards of Performance for Existing Commercial Motor Vehicles and Mobile Equipment Refinishing Operations, adopted February 2, 1994.

Regulation 7.79 Standards of Performance for New Commercial Motor Vehicle and Mobile Equipment Refinishing Operations, adopted February 2, 1994.

Regulation 6.45 Standards of Performance for Existing Solid Waste Landfills, adopted February 2, 1994.

Regulation 8.03 Commuter Vehicle Testing Requirements, amended September 15, 1993.

(ii) Other material. None.

* * * * *

[FR Doc. 99–23579 Filed 9–10–99; 8:45 am]

BILLING CODE 6560–50–P

CHRISTOPHER COLUMBUS QUINCENTENARY JUBILEE COMMISSION

45 CFR Chapter XXII

Removal of CFR chapter

Effective December 31, 1993, the Christopher Columbus Quincentenary Jubilee Commission was terminated by Public Law 98–375, 98 Stat. 1257; as amended by Public Law 100–94, 101 Stat. 700. Therefore, the **Office of the Federal Register** is removing CCQJC regulations pursuant to its authority to maintain an orderly system of codification under 44 U.S.C. 1510 and 1 CFR part 8.

Accordingly, 45 CFR is amended by removing parts 2200 through 2299 and vacating Chapter XXII.

[FR Doc. 99–55529 Filed 9–10–99; 8:45 am]

BILLING CODE 1505–01–D

Proposed Rules

Federal Register
Vol. 64, No. 176
Monday, September 13, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[Docket No. PRM–73–10]

State of Nevada; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking, dated June 22, 1999, which was filed with the Commission by the State of Nevada. The petition was docketed by the NRC on July 13, 1999, and has been assigned Docket No. PRM–73–10. The petitioner requests that the NRC amend its regulations governing safeguards for shipments of spent nuclear fuel against sabotage and terrorism. The petitioner requests that the NRC conduct a comprehensive assessment of the consequences of terrorist attacks that have the capability of radiological sabotage, including attacks against transportation infrastructure used during nuclear waste shipments, attacks involving capture of nuclear waste shipments and use of high energy explosives against a cask or casks, and direct attacks upon a nuclear waste shipping cask or casks using antitank missiles or other military weapons.

DATES: Submit comments by November 29, 1999. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. Federal workdays.

For a copy of the petition, write to David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

You may also provide comments via the NRC's interactive rulemaking website at http://ruleforum.llnl.gov. This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: cag@nrc.gov).

The petition and copies of comments received may be inspected and copied for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–7162 or Toll Free: 800–368–5642.

SUPPLEMENTARY INFORMATION:

The Petitioner

The petitioner (the State of Nevada) is a corridor state for spent nuclear fuel (SNF) shipments, and has been a destination and origin state for SNF shipments to and from federal research facilities. Under current law, Nevada is the potential host state for a federal geologic repository and could become the ultimate destination for shipments of SNF and high-level radioactive waste (HLW). The petitioner has an interest in protecting the citizens of Nevada from risks associated with the transportation of SNF and HLW. The petitioner also has an interest as the entity responsible for immediate emergency response, in ensuring that transporters of SNF have adequately prepared for potential emergencies within the State of Nevada. The petitioner notes a particular concern for physical protection of SNF shipments under 10 CFR part 73.

Background

As part of this petition, the petitioner has included two separate reports—

(1) *Nuclear Waste Transportation Security and Safety Issues; The Risk of Terrorism and Sabotage Against Repository Shipments,* prepared by Robert J. Halstead, Transportation Consultant , Portage, Wisconsin, and James David Ballard, School of Criminal Justice, Grand Valley State University, Grand Rapids, Michigan, dated October 1997 (Attachment A); and

(2) *The Transportation of Spent Nuclear Fuel and High-Level Waste; A Systematic Basis for Planning and Management at National, Regional, and Community Levels,* prepared for the Nevada Nuclear Waste Project Office by the Planning Information Corporation, dated September 10, 1996 (Attachment B).

The petitioner's primary interest is the potential for many thousands of SNF and HLW shipments to Yucca Mountain and the Nevada Test Site. The Nuclear Waste Policy Amendments Act (NWPAA) of 1987 designated Yucca Mountain as the site to be characterized for a national geologic repository for SNF and HLW. The petitioner states that legislation pending in Congress would designate the Nevada Test Site as sole location for a centralized interim storage facility. The petitioner states that a study prepared for the Nevada Agency for Nuclear Projects, estimates that 20,200 shipments (13,900 by rail/6,300 by truck) will occur over about 30 years. The same study projected 56,600 to 104,500 shipments over 40 years, for a repository combined with an interim storage facility.

The petitioner believes that a national repository or interim storage facility may have a greater symbolic value to terrorists as a target for attack than at a reactor storage facility, and that the enhanced symbolic value of the facility as a target may extend to SNF shipments to a national repository or interim storage facility. The petitioner states that in a review of national storage and disposal policy options, the U.S. Nuclear Waste Technical Review Board (NWTRB) observed that compared to reactor sites "a single facility with a large stockpile of spent fuel might be a more tempting and visible target." [1] The petitioner agrees with the NWTRB

[1] Report of the U.S. Nuclear Waste Technical Review Board entitled "Disposal and Storage of Spent Nuclear Fuel—Finding the Right Balance; A Report to Congress and the Secretary of Energy," at 20 (March 1996).

conclusion that more analyses are needed to determine if "either an at-reactor or centralized storage facility would be more exposed to theft or sabotage," and that these analyses should also consider SNF shipments to a centralized facility. The petitioner also believes that a storage or disposal facility operated by the U.S. Department of Energy (DOE), the U.S. government agency responsible for producing nuclear weapons, may have greater symbolic value to terrorists as a target for attack than commercial storage facilities, and that the enhanced symbolic value may extend to DOE's shipments of SNF and HLW to this type of facility.

The petitioner believes that the nature of the terrorist threat has changed significantly since the Commission last evaluated the adequacy of its SNF transportation safeguards regulations in 1984. The petitioner believes that a general strengthening of the regulations intended to safeguard SNF shipments is necessary because of what they identify as new developments in two critical areas:

(1) Changes in the nature of the terrorist threat; and

(2) Increased vulnerability of shipping casks to terrorist attacks involving high-energy explosive devices.

It is the petitioner's position that since 1984, three major changes have occurred in the nature of the terrorist threat that argue for a strengthening of the safeguards regulations:

(1) An increase in lethality of terrorist attacks in the United States;

(2) An increase in serious terrorist attacks and threats against transportation systems; and

(3) A renewal of concern about nuclear terrorism generally, and specifically terrorist actions involving potential radioactive contamination.

The petitioner believes that the willingness of terrorists to kill or injure large numbers of Americans, demonstrated in the World Trade Center and Oklahoma City bombings, compels a focus on incidents that are clearly intended to cause, or could cause, radiological sabotage.

The petitioner believes that developments in two related areas have increased the vulnerability of spent fuel shipping casks to terrorist attacks involving high-energy explosive devices since the NRC last evaluated the adequacy of its SNF transportation safeguards regulations. Their first premise is that the capabilities and availability of explosive devices, especially antitank weapons, have increased significantly. Their second is that new spent fuel shipping cask designs, developed to increase payloads without exceeding specified weight limits, appear to be more vulnerable to attacks involving past, current, and future weapons systems and commercial explosives. The petitioner believes that these developments argue for a strengthening of the safeguards regulations.

The petitioner believes that portable tank weapons have become more powerful, more reliable, and more available worldwide since the early 1980s. The petitioner believes that most, if not all, of the antitank missiles identified in Attachment A of the petition (Table 5), have warheads capable of completely perforating a truck cask and its spent fuel cargo, and most are capable of deeply penetrating or completing perforating a rail cask and damaging the spent fuel inside. The petitioner states that these weapons are designed to hit moving targets at a distance of 30 meters or more, eliminating the need to capture the cask, and facilitating selection of optimal attack times and locations. The petitioner believes that the portability of these weapons allows further flexibility in attack planning, including use of multiple warheads, and in escape planning.

The petitioner believes that the SNF shipping casks are vulnerable to attacks using military and commercial explosives, particularly conical shaped charges. The petitioner states that DOE-sponsored tests in the early 1980s demonstrated that an attack on a truck using a large military shaped charge could result in release of one percent of the SNF cargo, and that well-trained terrorists planning to capture, control and directly attack spent fuel shipping casks are likely to use shaped charges as their weapon of choice. The petitioner believes that the technology of shape charges and detonation systems, especially for applications in the construction and petroleum industries, and for specialized purposes such as military demining, have continued to evolve since the early 1980s. Numerous "off the shelf" military and commercial shape charges weighing around one kilogram are capable of penetrating 10 to 20 inches of steel.

The petitioner believes that new spent fuel shipping cask designs, developed to increase payloads without exceeding specified weight limits, appear vulnerable to attacks involving current and future military weapons systems and commercial explosives. The petitioner believes the casks used for shipments to a repository and/or interim storage facility shipments will have different design configurations, and will use different structural and shielding materials, compared to casks currently in use, and compared to the older casks that were assumed in the DOE and NRC sabotage consequence assessments in the early 1980s. The petitioner states that some of these differences may make them more vulnerable to attack with armor-piercing weapons or high-energy explosives.

The Petition

The petitioner requests that the NRC reexamine the issue of terrorism and sabotage against spent nuclear fuel and high-level radioactive waste shipments to determine the adequacy of the current physical protection regulations and to assist the DOE and the affected stakeholders in the preparation of a legally sufficient environmental impact statement as part of the NRC licensing process for a geologic repository or an interim storage facility.

The petitioner requests that the NRC conduct a comprehensive assessment of consequences of three types of attacks that have the potential for radiological sabotage—

(1) Attacks against transportation infrastructure used by nuclear waste shipments,

(2) Attacks involving capture of a nuclear waste shipment and use of high-energy explosives against the cask; and

(3) Direct attacks upon a nuclear shipping cask using antitank missiles or other military weapons.

The petitioner states that the consequence assessment for repository shipments should address the full range of impact of a terrorism/sabotage event resulting in a release of radioactive materials: immediate and long-term implications for public health; environmental impacts, broadly defined; standard socio-economic impacts, including cleanup and disposal costs and opportunity costs to affected individuals and businesses; and so-called special socio-economic impacts, including individual and collective psychological trauma, and economic losses resulting from public perceptions of risk and stigma effects.

The petitioner requests that the Commission reexamine the design basis threat used to design safeguards systems to protect shipments of SNF against acts of radiological sabotage. The current regulations under 10 CFR 73.1(a)(1)(i), require licensees to design safeguards systems to protect shipments against attacks involving several well-trained and dedicated individuals, hand-held automatic weapons, a four-wheel drive land vehicle, and hand-carried equipment, including incapacitating agents and explosives. The regulations

should also specify that the attackers may receive insider (employee) assistance and use a four-wheel drive land vehicle bomb.

The petitioner requests that the Commission clarify the meaning of "hand-carried equipment" within the current design basis threat. The petitioner requests that the NRC amend the design basis threat to include use of explosive devices and other weapons larger than those commonly considered to be hand-carried or hand-held, and the use of vehicles other than four-wheel drive civilian land vehicles. The petitioner states that well-trained and dedicated adversaries could conceivably obtain and use military attack vehicles or military aircraft armed with bombs, missiles, or other powerful weapons. The petitioner believes that the possibility of attacks involving stolen or otherwise diverted military weapons system should be given special consideration considering the number and nature of military installations in Nevada and along the transportation corridors to Nevada.

The petitioner requests that the NRC reexamine the definition of "radiological sabotage" in 10 CFR 73.2. Currently, NRC regulations define "radiological sabotage" as "* * * any deliberate act directed against a plant or transport in which an activity licensed pursuant to the regulations in * * * (10 CFR part 73) is conducted, or against a component of such a plant or transport which could directly or indirectly endanger the public health and safety by exposure to radiation."

The petitioner believes that the wording "could directly or indirectly endanger" implies a judgment by the NRC regarding the consequences of the action, as opposed to the intentions of the individuals carrying out the action. The petitioner states that actions against SNF shipments that are intended to cause a loss of shielding or a release of radioactive materials should be included in the definition of "radiological sabotage," regardless of the success or failure of the action. The petitioner states that the definition should include deliberate actions that cause, or are intended to cause, economic damage or social disruption regardless of the extent to which public health and safety are actually endangered by exposure to radiation. The petitioner believes that an incident involving an intentional release of radioactive materials, especially in a heavily populated area, could cause widespread social disruption and substantial economic losses even if there were no immediate human casualties and few projected latent cancer fatalities. The petitioner believes that local fears and anxieties would be amplified by national and international media coverage. The petitioner believes that adverse economic impacts would include the cost of emergency response, evacuation, decontamination and disposal; opportunity costs to affected individuals, property-owners, and businesses; and economic losses resulting from public perceptions of risk and stigma effects.

The petitioner requests that the NRC reexamine its regulations requiring advance route approval requirements, in light of the expected increase in SNF shipments once a Federal repository or interim storage facility begins operations. The petitioner states that neither the current physical protection regulations, nor the U.S. Department of Transportation's routing regulations, require shippers and carriers to minimize shipments through highly populated areas. The petitioner states that since 1979, the NRC has approved many highway routes through heavily populated areas, including I–15 through Las Vegas, NV, and I–80 through Reno-Sparks, NV. The petitioner states that a transportation risk assessment recently published by the NRC assumes that tens of thousands of truck shipments to a repository at Yucca Mountain, NV, could travel through Las Vegas, NV, and other heavily populated areas of Clark County, Nevada.

The current regulations requiring advance route approval require licensees to provide for advance approval by the NRC of the routes used for road and rail shipments of spent fuel, and of any U.S. ports where vessels carrying spent fuel shipments are scheduled to stop [10 CFR 73.37(b)(7)].

The petitioner believes that the NRC should specifically require shippers and carriers to identify primary and alternate routes that minimize highway and rail shipments through heavily populated areas. The petitioner states that the NRC should adopt the route selection criteria in NUREG–0561 [2] as part of the regulations, and specifically require shippers and carriers to minimize use of routes that fail to comply with the route selection criteria.

The petitioner requests that the NRC reexamine its regulations requiring armed escorts for SNF shipments by road. These current regulations state, in part:

§ 73.37 Requirements for physical protection of irradiated reactor fuel in transit.

(c) * * *

(1) A transport vehicle within a heavily populated area is:

(i) Occupied by at least two individuals, one of whom serves as escort, and escorted by an armed member of the local law enforcement agency in a mobile unit of such agency: or

(ii) Led by a separate vehicle occupied by at least one armed escort, and trailed by a third vehicle occupied by at least one armed escort.

(2) A transport vehicle not within any heavily populated area is:

(i) Occupied by at least one driver and one other individual who serves as escort; or

(ii) Occupied by a driver and escorted by a separate vehicle occupied by at least two escorts; or

(iii) Escorted as set forth in paragraph (c)(1) of this section.

* * * * *

The petitioner requests that the NRC amend its regulations to eliminate the differential armed escort requirements based on population. The petitioner contends that the current requirements for shipments within a heavily populated area should be uniformly applied to all road shipments. The petitioner believes that residents of small cities, towns, and rural areas along shipment routes are entitled to the same level of protection as residents of heavily populated areas. The petitioner states that there are many Nevada locations outside of designated, heavily populated areas with significant population concentrations within one-half mile of a potential SNF shipment route. The petitioner asserts that many difficult-to-evacuate facilities, such as schools, hospitals, industrial plants, shopping centers, hotels, and resorts, are located immediately adjacent to potential truck shipment routes in small cities and towns; several major water supplies and outdoor recreation facilities with high, seasonal population densities are located in close proximity to potential truck shipments routes in rural Nevada.

The petitioner also requests the NRC to increase the armed escort requirements for truck shipments. The petitioner believes that new, high-capacity, legal-weight truck SNF shipping cask designs may be particularly vulnerable to attacks involving high-energy explosive devices. At a minimum, the NRC should consider requiring at least one armed escort each in a lead vehicle and a chase vehicle, with one escort being a state or local law enforcement officer.

[2] Copies of NUREGS may be purchased from the Reproduction and Distribution Section, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy is also available for inspection and/or copying at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

The petitioner requests that the NRC eliminate the differential armed escort requirements for rail shipments based on population. The current regulations state, in part:

§ 73.37 Requirements for physical protection of irradiated reactor fuel in transit.

(d) * * *

(1) A shipment car within a heavily populated area is accompanied by two armed escorts (who may be members of a local law enforcement agency), at least one of whom is stationed at a location on the train that will permit observation of the shipment car while in motion.

(2) A shipment car not within any heavily populated area is accompanied by at least one escort stationed at a location on the train that will permit observation of the shipment car while in motion.

* * * * *

The petitioner states that in Nevada and other western states, many small cities and towns grew up around rail lines and rail service facilities. In these communities, there are significant population concentrations within one-half mile of a potential SNF rail shipment route. In Nevada and other western states, mainline railroads are frequently located in river valleys near major water supplies. The petitioner also states that mainline railroads of national economic significance may, in-and-of themselves, be as attractive as targets for terrorists as heavily populated areas. The Union Pacific Salt Lake City-Los Angeles mainline through southern Nevada, potentially the primary shipment route to Yucca Mountain, is a rail route of national economic significance.

The petitioner requests that the NRC, as part of re-examining its physical protection requirements, consider increasing substantially the armed escort requirements for rail shipments. The petitioner believes that new high-capacity (125 ton) rail shipping cask designs may be particularly vulnerable to attacks involving antitank missiles, and that armed escorts aboard the train could be incapacitated at the beginning of an attack, or as a result of a train derailment. The petitioner requests that the NRC consider requiring at least two armed escorts in an escort vehicle, in addition to the two armed escorts aboard the train.

Based on recent experience during the foreign research reactor SNF shipments through Nevada, the petitioner believes the NRC should also consider requiring continuous, real-time aircraft surveillance along certain rail route segments through rough terrain and through heavily populated areas. The NRC should evaluate the advantages and disadvantages of requiring a level of protection comparable to that provided for rail shipments of strategic special nuclear materials (SNM); seven armed escorts stationed in a variety of configurations aboard the train or in one or more escort vehicles.

The petitioner requests that the NRC adopt additional planning and scheduling requirements for the physical protection of SNF shipments based on the precautions already applied to shipments of SNM. The current regulations for shipments of SNM state, in part:

§ 73.26 Transportation physical protection systems, subsystems, components, and procedures.

(b) * * *

(1) Shipments shall be scheduled to avoid regular patterns and preplanned to avoid areas of natural disaster or civil disorders, such as strikes or riots. Such shipments shall be planned in order to avoid storage times in excess of 24 hours and to assure that deliveries occur at a time when the receiver at the final delivery point is present to accept the shipment.

* * * * *

The petitioner requests that the NRC amend the general requirements for physical protection of irradiated reactor fuel in transit by adopting the same planning and scheduling requirements for special nuclear material in transit.

The petitioner requests that the NRC require all rail shipments of SNF to be made in dedicated trains. Considering the potentially large number of cross-country rail shipments to a repository and/or storage facility, more than 12,000 rail cask shipments of SNF and more than 1,000 rail cask shipments of HLW, the petitioner believes that the performance objectives set forth in § 73.37(a)(1) can only be met by requiring all rail shipments to be made in dedicated trains. The petitioner also requests that the NRC consider the physical protection implications of shipping SNF in dedicated trains compared to general rail freight service. While continuing to believe that the use of dedicated trains should be mandatory, the petitioner acknowledges arguments that dedicated trains pose certain disadvantages from a physical protection standpoint. The petitioner states that dedicated trains may facilitate target tracking and attack scheduling by potential adversaries, and multiple casks in a short train may facilitate target selection and weapon delivery. According to the petitioner, the NRC's consequence assessment should evaluate the advantages and disadvantages of shipping SNF in dedicated trains, assuming both current and enhanced requirements or rail shipment armed escorts.

The Petitioner's Conclusions

The petitioner submits that the foregoing regulatory amendments and the need for a comprehensive assessment are necessitated by changes in the nature of the terrorist threat and increased vulnerability of shipping casks to terrorist attacks involving high-energy explosive devices, as set forth in the petition. In the interest of safeguarding the public health, safety, and welfare, the petitioner urges the Commission to undertake the tasks outlined in the petition.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 7th day of September, 1999.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–23691 Filed 9–10–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE154; Notice No. 23–99–01–SC]

Special Conditions: Cessna Aircraft Company, Model 525A, High Altitude Operation.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Cessna Aircraft Company Model 525A airplane. This airplane will have novel or unusual design features associated with high altitude operation. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before October 13, 1999.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE154, 601 East 12th Street, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address.

Comments must be marked: CE154. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Lowell Foster, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 601 East 12th Street, Kansas City, Missouri, 816–426–5688, fax 816–426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to CE154." The postcard will be date stamped and returned to the commenter.

Background

On May 14, 1998, Cessna Aircraft Company applied to amend the Model 525 Type Certificate to add a new Model 525A. The Model 525A is a derivative of the Model 525 currently approved under Type Certificate Data Sheet A1WI.

The Cessna Model 525A, a derivative of the Model 525, will be certified for operation to a maximum altitude of 45,000 feet. This will be the first of this series to be approved above 41,000 feet. The certification basis of the Model 525 was primarily 14 CFR part 23, as amended by Amendments 23–1 through 23–40, plus special conditions. This unusually high operating altitude constitutes a novel or unusual design feature for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. Therefore, it is necessary to develop special conditions that provide the level of safety to that established by the regulations.

The FAA has previously issued Special Conditions No. 23–ACE–87, to another small turbojet airplane model with requested approval for operation up to 49,000 feet.

The FAA policy is to apply special conditions to part 23 airplanes when the certified altitude exceeds the capability of the oxygen system (in this case, the passenger system). This was the situation for a part 23 turbojet airplane. Thus, the special conditions were deemed to be appropriate for the Cessna Model 525A and provide the basis for formulating the special conditions described below:

Damage tolerance methods are proposed to assure pressure vessel integrity while operating at the higher altitudes. Crack growth data is used to prescribe an inspection program, which should detect cracks before an opening in the pressure vessel would allow rapid depressurization. Initial crack sizes for detection are determined under 23.571 as amended by Amendment 23–48.

The cabin altitude after failure may not exceed the cabin altitude/time history curve limits shown in Figures 3 and 4.

Continuous flow passenger oxygen equipment is certified for use up to 40,000 feet; however, for rapid decompressions above 34,000 feet, reverse diffusion leads to low oxygen partial pressures in the lungs, to the extent that a small percentage of passengers may lose useful consciousness at 35,000 feet. The percentage increases to an estimated 60 percent at 40,000 feet, even with the use of the continuous flow system. To prevent permanent physiological damage, the cabin altitude must not exceed 25,000 feet for more than 2 minutes. The maximum peak cabin altitude of 40,000 feet is consistent with the standards established for previous certification programs. In addition, at these altitudes the other aspects of decompression sickness have a significant, detrimental effect on pilot performance (for example, a pilot can be incapacitated by internal expanding gases).

Decompression above the 37,000 foot limit of Figure 4 approaches the physiological limits of the average person; therefore, every effort must be made to provide the pilot with adequate oxygen equipment to withstand these severe decompressions. Reducing the time interval between pressurization failure and the time the pilot receives oxygen will provide a safety margin against being incapacitated and can be accomplished by the use of mask-mounted regulators. The special condition, therefore, requires pressure demand masks with mask-mounted regulators for the flightcrew. This combination of equipment will provide the best practical protection for the failures covered by the special conditions and for improbable failures not covered by the special conditions, provided the cabin altitude is limited.

Type Certification Basis

Under the provisions of 21.101, Cessna Aircraft Company must show that the Cessna Model 525A meets the applicable provisions of the regulations incorporated by reference in Type Certificate Data Sheet A1WI or the applicable regulations in effect on the date of application for the change to the Cessna Model 525A. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate Data Sheet A1WI are as follows:

(1) Part 23 of the Federal Aviation Regulations effective February 1, 1965, as amended by Amendments 23–1 through 23–40;

(a) In addition, if the regulations incorporated by reference do not provide adequate standards with respect to the change, the applicant must comply with certain regulations in effect on the date of application for the change. The FAA has determined that the Cessna Model 525A must also be shown to comply with the following sections of part 23:

Federal Aviation Regulations §§ 23.331, 23.351, 23.421, 23.423, 23.425, 23.427, 23.939, and 23.1163 as amended by Amendments 23–1 through 23–42;

Federal Aviation Regulations §§ 23.943, 23.951, 23.957, 23.961, 23.967, 23.991, 23.993, 23.997, 23.999, 23.1001, 23.1011, 23.1019, 23.1041, 23.1061, 23.1189, 23.1322, 23.1357, 23.1391, 23.1393, 23.1395, and 23.1445 as amended by Amendments 23–1 through 23–43;

Federal Aviation Regulations §§ 23.305, 23.321, 23.361, 23.397, 23.479, 23.485, 23.613, 23.615, 23.621, 23.731 and 23.1549 as amended by Amendments 23–1 through 23–45;

Federal Aviation Regulations §§ 23.335, 23.337, 23.341, 23.343, 23.345, 23.347, 23.371, 23.393, 23.399, 23.415, 23.441, 23.443, 23.455, 23.457, 23.473, 23.499, 23.561, 23.571, 23.572, 23.611, 23.629, 23.673, and 23.725 as amended by Amendments 23–1 through 23–48;

Federal Aviation Regulations §§ 23.677, 23.723, 23.785, 23.787, 23.791, 23.853, 23.855, 23.1303, 23.1307, 23.1321, 23.1351, 23.1353, 23.1361, and 23.1401 as amended by Amendments 23–1 through 23–49;

Federal Aviation Regulations §§ 23.233, 23.235, 23.1555, and 23.1589 as amended by Amendments 23–1 through 23–50;

Federal Aviation Regulations §§ 23.901, 23.903, 23.929, 23.963, 23.965, 23.1013, 23.1043, 23.1143, 23.1183, 23.1191, and 23.1337 as amended by Amendments 23–1 through 23–51;

(2) Federal Aviation Regulations part 36 effective December 1, 1969, as amended by Amendments 36–1 through the amendment in effect at the time of TC issuance.

(3) Federal Aviation Regulations part 34 effective September 10, 1990, as amended by Amendment 34–1, Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes.

(4) Special Conditions as follows:

(a) 23–ACE–55, additional requirements for engine location, performance, characteristics, and protection of electronic systems from lightning and high intensity radiated electromagnetic fields (HIRF).

(b) Special conditions adopted by this rulemaking action.

(5) Exemption: Exemption number 5759 granted. Model 525A to use Federal Aviation Regulations § 25.181 in lieu of damping criteria of Federal Aviation Regulations § 23.181(b).

(6) Compliance with ice protection will be demonstrated in accordance with Federal Aviation Regulations § 23.1419.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 23) do not contain adequate or appropriate safety standards for the Cessna Model 525A because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model 525A must comply with the part 23 fuel vent and exhaust emission requirements of 14 CFR part 34 and the part 23 noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to § 611 of Public Law 92–574, the "Noise Control Act of 1972."

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, or should any other model already included on the same type certificate be modified to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of 21.101(a)(1).

Novel or Unusual Design Features

The Model 525A will incorporate the following novel or unusual design features:

The methods used to ensure pressure vessel integrity and to provide ventilation, air conditioning, and pressurization will be unique due to the operating altitude of this airplane.

Applicability

As discussed above, these special conditions are applicable to the Cessna Model 525A. Should the Cessna Aircraft Company apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on one model of airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17; and 14 CFR 11.28 and 11.29(b).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Cessna Aircraft Company Model 525A airplane.

1. Pressure Vessel Integrity

(a) The maximum extent of failure and pressure vessel opening that can be demonstrated to comply with paragraph 4 (Pressurization), of this special condition must be determined. It must be demonstrated by crack propagation and damage tolerance analysis supported by testing that a larger opening or a more severe failure than demonstrated will not occur in normal operations.

(b) Inspection schedules and procedures must be established to assure that cracks and normal fuselage leak rates will not deteriorate to the extent that an unsafe condition could exist during normal operation.

2. Ventilation

In addition to the requirements of § 23.831(b), the ventilation system must be designed to provide a sufficient amount of uncontaminated air to enable the crewmembers to perform their duties without undue discomfort or fatigue and to provide reasonable passenger comfort during normal operating conditions and in the event of any probable failure of any system that could adversely affect the cabin ventilating air. For normal operations, crewmembers and passengers must be provided with at least 10 cubic feet of fresh air per minute per person, or the equivalent in filtered recirculated air, based on the volume and composition at the corresponding cabin pressure altitude of no more than 8,000 feet.

3. Air Conditioning

In addition to the requirements of § 23.831, the cabin cooling system must be designed to meet the following conditions during flight above 15,000 feet mean sea level (MSL):

(a) After any probable failure, the cabin temperature/time history may not exceed the values shown in Figure 1.

(b) After any improbable failure, the cabin temperature/time history may not exceed the values shown in Figure 2.

4. Pressurization

In addition to the requirements of § 23.841, the following apply:

(a) The pressurization system, which includes for this purpose bleed air, air conditioning, and pressure control systems, must prevent the cabin altitude from exceeding the cabin altitude-time history shown in Figure 3 after each of the following:

(1) Any probable malfunction or failure of the pressurization system, in conjunction with any undetected, latent malfunctions or failures, must be considered.

(2) Any single failure in the pressurization system combined with the occurrence of a leak produced by a complete loss of a door seal element, or a fuselage leak through an opening

having an effective area 2.0 times the effective area that produces the maximum permissible fuselage leak rate approved for normal operation, whichever produces a more severe leak.

(b). The cabin altitude-time history may not exceed that shown in Figure 4 after each of the following:

(1) The maximum pressure vessel opening resulting from an initially detectable crack propagating for a period encompassing four normal inspection intervals. Mid-panel cracks and cracks through skin-stringer and skin-frame combinations must be considered.

(2) The pressure vessel opening or duct failure resulting from probable damage (failure effect) while under maximum operating cabin pressure differential due to a tire burst, engine rotor burst, loss of antennas or stall warning vanes, or any probable equipment failure (bleed air, pressure control, air-conditioning, electrical source(s), etc.) that affects pressurization.

(3) Complete loss of thrust from all engines.

(c) In showing compliance with paragraphs 4a and 4b of these special conditions (Pressurization), it may be assumed that an emergency descent is made by an approved emergency procedure. A 17-second crew recognition and reaction time must be applied between cabin altitude warning and the initiation of an emergency descent.

Note: For the flight evaluation of the rapid descent, the test article must have the cabin volume representative of what is expected to be normal, such that Cessna must reduce the total cabin volume by that which would be occupied by the furnishings and total number of people.

5. Oxygen Equipment and Supply

(a) In addition to the requirements of § 23.1441(d), the following applies: A quick-donning oxygen mask system with a pressure-demand, mask mounted regulator must be provided for the flightcrew. It must be shown that each quick-donning mask can, with one hand and within 5 seconds, be placed on the face from its ready position, properly secured, sealed, and supplying oxygen upon demand.

(b) In addition to the requirements of § 23.1443, the following applies: A continuous flow oxygen system must be provided for each passenger.

(c) In addition to the requirements of § 23.1445, the following applies: If the flightcrew and passengers share a common source of oxygen, a means to separately reserve the minimum supply required by the flightcrew must be provided.

BILLING CODE 4910–13–P

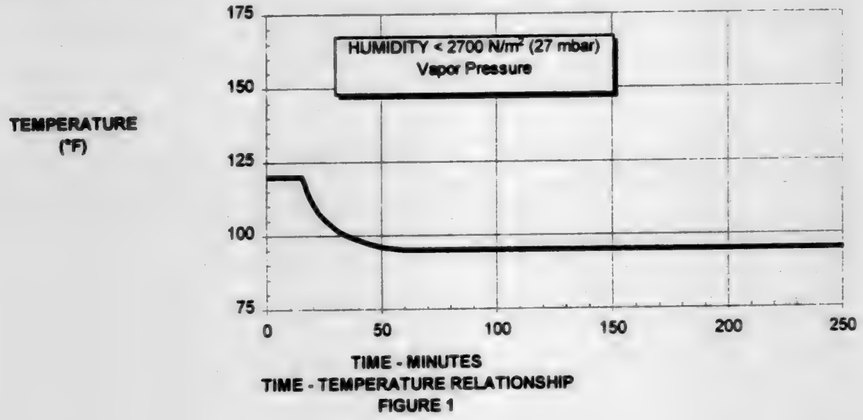

TIME - TEMPERATURE RELATIONSHIP
FIGURE 1

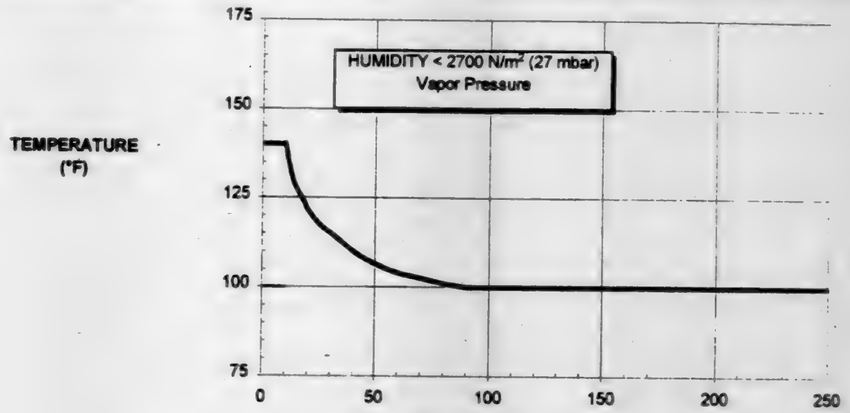

TIME - TEMPERATURE RELATIONSHIP
FIGURE 2

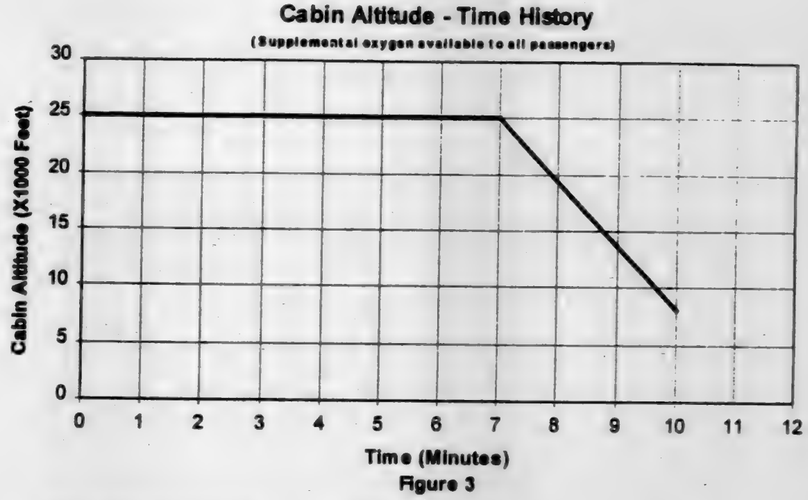

Figure 3

NOTE: For figure 3, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 30,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

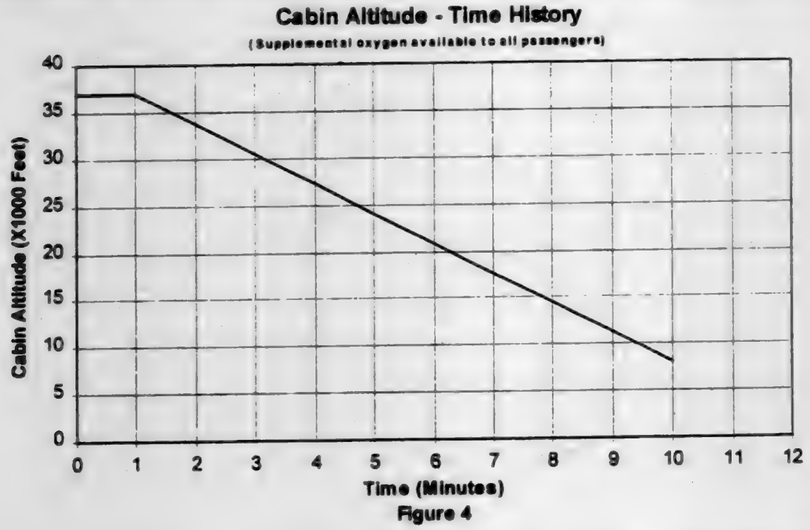

Figure 4

NOTE: For figure 4, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 40,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

Issued in Kansas City, Missouri on August 31, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–23719 Filed 9–10–99; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–200–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes. This proposal would require repetitive inspections of the control quadrant for loose screws, and replacement of the control quadrant with a modified part, which constitutes terminating action for the repetitive inspections. This proposal is promoted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent the power levers from binding due to the backing out of screws that secure the solenoid bracket within the flight idle stop assembly, which could result in the malfunction of the flight idle stop mechanism and the inability to move the power levers to flight idle.

DATES: Comments must be received by October 13, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–200–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–200–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Tranport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–200–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, recently notified the FAA that an unsafe condition may exist on certain Saab Model SAAB SF340A and SAAB 340B series airplanes. The LFV advises that an operator has reported a problem with the left-hand power lever binding and not going into reverse after landing. The investigation showed that a screw had backed out of a cam and caused binding within the control quadrant. Backing out of the screw has been attributed to failure to apply locking compound during installation. Another screw was also found to be missing locking compound. This condition, if not corrected, could result in the malfunction of the flight idle stop mechanism and the inability to move the power levers to flight idle.

Explanation of Relevant Service Information

Saab has issued Service Bulletin 340–76–043, Revision 01, dated July 29, 1999, which describes procedures for repetitive inspections of the control quadrant for loose screws, and replacement of the control quadrant with a modified control quadrant. Such replacement would eliminate the need for the repetitive inspections. The accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. the LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive SAD No. 1–143, dated July 2, 1999, in order to assure the continued airworthiness of these airplanes in Sweden.

The Saab service bulletin references Adams Rite Aerospace Service Letter General SL–01, dated April 6, 1999, as an additional source of service information to accomplish the inspection.

FAA's Conclusions

These airplane models are manufactured in Sweden and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 289 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $17,340, or $60 per airplane, per inspection cycle.

The FAA estimates that it would take approximately 4 work hours per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would be supplied by the parts manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed replacement on U.S. operators is estimated to be $69,360, or $240 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Saab Aircraft AB: Docket 99–NM–200–AD.

Applicability: Saab Model SAAB SF340A series airplanes, serial numbers 004 through 159 inclusive; and Model SAAB 340B series airplanes, series number 160 through 459 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the power levers from binding due to the backing our of screws that secure the solenoid bracket within the flight idle stop assembly, which could result in the

malfunction of the flight idle stop mechanism and the inability to move the power levers to flight idle, accomplish the following:

Inspection

(a) Within 800 flight hours after the effective date of this AD, perform a borescopic inspection of the control quadrant for loose screws, in accordance with Saab Service Bulletin 340–76–043, Revision 01, dated July 29, 1999. If no loose screws are found, repeat the inspection thereafter at intervals not to exceed 800 flight hours, until the requirements of paragraph (c) are accomplished.

Note 2: Saab Service Bulletin 340–76–043, dated July 2, 1999, references Adams Rite Aerospace Service Letter General SL–01, dated April 6, 1999, as an additional source of service information to accomplish the inspection.

Note 3: Inspections and replacements accomplished prior to the effective date of this AD in accordance with Saab Service Bulletin 340–76–043, dated July 2, 1999, are considered acceptable for compliance with the applicable action specified in this amendment.

Corrective Action

(b) If any loose screw is found during any inspection performed in accordance with paragraph (a) of this AD, prior to further flight, replace the exiting control quadrant with a modified control quadrant in accordance with Saab Service Bulletin 340–76–043, dated July 2, 1999.

Terminating Action

(c) Within 8,000 flight hours or 6 years after the effective date of this AD, whichever occurs earlier: Replace the existing control quadrant with a modified control quadrant in accordance with Saab Service Bulletin 340–76–043, dated July 2, 1999. Such replacement constitutes terminating action for the repetitive inspections required by paragraph (a) of this AD.

Spares

(d) As of the effective date of this AD, no person shall install, on any airplane, a control quadrant with a part number and reference letter combination other than the following: part number 53082 and reference letter A

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operations shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the, Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 5: The subject of this AD is addressed in Swedish airworthiness directive SAD No. 1–143, dated July 2, 1999.

Issued in Renton, Washington, on September 7, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–23743 Filed 9–10–99; 8:45 am]

BILLING CODE 4910–12–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–205–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A310, and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A300 series airplanes, that currently requires certain changes to the procedures in the Airplane Flight Manual (AFM) related to operation of the emergency lighting system. This action would require modification of the emergency lighting system and a revision to the AFM to ensure the preservation of the airplane batteries. This proposal would also provide, for certain airplanes, terminating action for the existing AFM revision, and replacement with a different AFM revision. This proposal would also expand the applicability to include certain Model A310 and A300–600 series airplanes. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to ensure that the emergency lighting is available for evacuation in an emergency situation.

DATES: Comments must be received by October 13, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–205–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–205–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–205–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On August 8, 1988, the FAA issued AD 88–18–01, amendment 39–5998 (53 FR 30975, August 17, 1988), applicable to certain Airbus Model A300 series airplanes, to require certain changes to the procedures in the FAA-approved Airplane Flight Manual (AFM) related to operation of the emergency lighting system. That action was prompted by pilot reports that the emergency lighting system did not illuminate with loss of AC power, and that the AFM did not contain compensating procedures which would ensure that the lights would be turned on by the flightcrew prior to the need for an emergency evacuation. The requirements of that AD are intended to ensure that emergency lighting for evacuation of the airplane's occupants would be provided in an emergency when the airplane's normal AC power is interrupted.

In the preamble to AD 88–18–01, the FAA indicated that the actions required by that AD were considered "interim action" and that further rulemaking action was being considered. The FAA now has determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the manufacturer has developed new service information that addresses the unsafe condition.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A300–33–0119 (for Model A300 series airplanes), A310–33–2025 (for Model A310 series airplanes), and A300–33–6020 (for Model A300–600 series airplanes); all dated March 1, 1993; and A300–33–6013, dated March 30, 1989 (for Model A300–600 series airplanes). These service bulletins describe procedures for modification of the wiring of the emergency lighting system. The two service bulletins for Model A300–600 series airplanes apply to different groups of airplanes. Airbus has also issued temporary revisions 3.02.00/7, 3.02.00/8, and 3.02.00/11 to the applicable AFM to ensure the preservation of the airplane batteries. Accomplishment of the actions specified in the service bulletins (and incorporation of the AFM temporary revisions) is intended to adequately address the identified unsafe condition. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified these service bulletins as an acceptable means of compliance with French airworthiness directive 89–107–096(B)R4, dated August 13, 1997, which was issued to ensure the continued airworthiness of these airplanes in France.

Applicability of Proposed AD

The applicability of the existing AD has been expanded in this proposed AD to correspond to that of the French airworthiness directive.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 88–18–01 to continue to require certain changes to the Model A300 AFM until the emergency lighting system is modified. The proposed AD would also require, for all affected airplanes, modification of the emergency lighting system and a revision to the AFM procedures in order to preserve battery power. This proposed AD would provide, for certain airplanes, terminating action for the existing AFM revision, and replacement with a different AFM revision.

Difference Between Proposed Rule and Foreign AD

The proposed AD would differ from the parallel French airworthiness directive in that the French airworthiness directive mandates a different set of service bulletins than this proposed AD. The DGAC has approved the service bulletins that the FAA proposes to require as an equivalent means of satisfying the requirements of the French airworthiness directive, however. The modifications described by the service bulletins mandated by the French airworthiness directive do not fully satisfy the FAA requirements for emergency lighting as specified in section 25.812 of the Federal Aviation Regulations (14 CFR part 25). Therefore, Airbus produced a set of service bulletins that modified the system in such a manner that it would comply with the FAA requirements. However, the modification specified in the service bulletins specified in this proposed AD requires that an AFM change be introduced that would ensure that, in the event of the loss of both engines or both engine electrical generators, the flightcrew would take the necessary action to ensure that emergency lighting would be available when needed. The modification specified in the service bulletins mandated by the French airworthiness directive does not require the AFM changes. The service bulletins proposed to be required by this AD action and those mandated by the French airworthiness directive are different, but they address the same unsafe condition.

Cost Impact

There are approximately 157 airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 88–18–01, and retained in this proposed AD, take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $60 per airplane.

The modification that is proposed in this AD action would take approximately 18 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $500 per airplane. Based on these figures, the cost impact of the proposed modification of this AD on U.S. operators is estimated to be $248,060, or $1,580 per airplane.

The AFM revision that is proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AFM revision of this AD on U.S. operators is estimated to be $9,420, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–5998 (53 FR 30975, August 17, 1988), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 98–NM–205–AD. Supersedes AD 88–18–01, Amendment 39–5998.

Applicability: Model A300 and A310 series airplanes, except those on which Airbus Modification 10002 has been accomplished; and Model A300–600 series airplanes, except those on which Airbus Modification 7738 or 10002 has been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the emergency lighting is available for evacuation in an emergency situation, accomplish the following:

Restatement of Requirements of AD 88–18–01, Amendment 39–5998

AFM Revision

(a) For Model A300 series airplanes (excluding Model A300–600 series airplanes): Within 10 days after September 2, 1988 (the effective date of AD 88–18–01, amendment 39–5998), the following procedures must be applied and a copy of this AD or the changes indicated below must be inserted in the appropriate Section of the Airplane Flight Manual (AFM), as indicated below:

(1) This sentence is to be inserted facing 3–02–00 page 11:

"EMERGENCY PROCEDURES-DITCHING

When ditching, the MIN CABIN LT selector (if installed) must be switched ON."

(2) This sentence is to be inserted facing 3–02–00 page 12:

"EMERGENCY PROCEDURES-EMERGENCY EVACUATION

When the procedure EMERGENCY EVACUATION is applied, the EMER EXIT LT selector must be selected 'ON' after parking brake is ON."

(3) This sentence is to be inserted facing 4–03–00 page 1:

"NORMAL PROCEDURES-TAXI

Prior to push back, the MIN CABIN LT selector (if installed) must be switched 'ON' and remain ON until gear retraction."

(4) This sentence is to be inserted facing 4–03–00 page 4:

"NORMAL PROCEDURES-LANDING

Before landing, the MIN CABIN LT selector (if installed) must be switched 'ON' and should remain ON until engine shutdown or until parked."

New Requirements of This AD

Modification

(b) For all airplanes: Within 6 months after the effective date of this AD, modify the emergency lighting system, in accordance with the applicable service bulletin specified in paragraph (b)(1), (b)(2), (b)(3), or (b)(4), of this AD.

(1) For Model A300 series airplanes: Airbus Service Bulletin A300–33–0119, dated March 1, 1993.

(2) For Model A310 series airplanes: Airbus Service Bulletin A310–33–2025, dated March 1, 1993.

(3) For Model A300–600 series airplanes listed in Airbus Service Bulletin A300–33–6013, dated March 30, 1989: Airbus Service Bulletin A300–33–6013, dated March 30, 1989.

(4) For Model A300–600 series airplanes listed in Airbus Service Bulletin A300–33–6020, dated March 1, 1993: Airbus Service Bulletin A300–33–6020, dated March 1, 1993.

AFM Revisions

(c) Prior to further flight following accomplishment of the modification required by paragraph (b) of this AD: Revise the FAA-approved Airplane Flight Manual (AFM) by adding the temporary revision (TR) specified in paragraph (c)(1), (c)(2), or (c)(3), as applicable, of this AD.

(1) For Model A300 series airplanes: Insert AFM TR 3.02.00/7. After accomplishment of the modification required by paragraph (b) of this AD, the TR required by paragraph (a) of this AD may be removed [paragraph (a) applies to Model A300 series airplanes only].

(2) For Model A310 series airplanes: Insert AFM TR 3.02.00/8.

(3) For Model A300–600 series airplanes: Insert AFM TR 3.02.00/11.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 89–107–096(B)R4, dated August 13, 1997.

Issued in Renton, Washington, on September 7, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–23742 Filed 9–10–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 141

RIN 1515–AC15

Anticounterfeiting Consumer Protection Act: Customs Entry Documentation

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to implement section 12 of the Anticounterfeiting Consumer Protection Act of 1996 (ACPA), enacted by Congress to protect consumers and American businesses from counterfeit copyrighted and trademarked products. Section 12 of the ACPA concerns the content of entry documentation required by Customs to determine whether the imported merchandise or its packaging bears an infringing trademark. The proposed regulatory provision requires importers to provide on the invoice a listing of all trademarks appearing on imported merchandise and its packaging. The amendment is designed to help Customs fight counterfeiting more effectively.

DATES: Comments must be submitted by November 12, 1999.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Suite 3000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lou Alfano, Commercial Enforcement, Office of Field Operations, (202) 927–0005.

SUPPLEMENTARY INFORMATION:

Background

Finding that counterfeit products cost American businesses an estimated $200 billion each year worldwide, Congress enacted the Anticounterfeiting Consumer Protection Act of 1996 (ACPA) to make sure that Federal law adequately addresses the scope and sophistication of modern counterfeiting. The provisions of the ACPA are designed to provide important weapons in the fight against counterfeiters. On July 2, 1996, the President signed the ACPA into law (Pub.L. 104–153, 110 Stat. 1386).

The ACPA contains 14 sections, 13 of which are substantive in nature. Section 14 of the ACPA directs the Secretary of the Treasury to prescribe such regulations or amendments to existing regulations as may be necessary to implement and enforce particular provisions of the ACPA.

This document concerns section 12 of the ACPA, which amends section 484(d) of the Tariff Act of 1930 (19 U.S.C. 1484(d)) concerning Customs entry documentation. The amendment to section 484(d) adds a new provision authorizing the Secretary of the Treasury to require that entry documentation contain such information as may be necessary to enable Customs to determine whether the imported merchandise bears an infringing trademark on either the goods or packaging in violation of section 42 of the Act of July 5, 1946 (commonly referred to as the "Trademark Act of 1946" (15 U.S.C. 1124)), or any other applicable law. The amendment enables Customs to identify shipments likely to contain counterfeit products that come from locations where goods bearing a particular mark are not legitimately manufactured.

In this document Customs proposes to implement the entry documentation content requirement by amending paragraph (a)(3) of § 141.86, Customs Regulations (19 CFR 141.86(a)(3)), which concerns the general information requirements of invoices, to specifically require that importers provide on the invoice a listing of any trademark information appearing on imported merchandise and its packaging. This amendment is necessary because while the current section requires information regarding "marks, numbers, and symbols" to be set forth on the invoice, it does not specify trademark information.

Comments

Before adopting this proposed regulatory amendment as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC.

Inapplicability of the Regulatory Flexibility Act, and Executive Order 12866

Pursuant to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that this amendment, if adopted, will not have a significant economic impact on a substantial number of small entities, as the amendment concerns identifying information regarding imported merchandise of a sort that is already maintained by the importer. Accordingly, this amendment is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. This document does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

List of Subjects in 19 CFR Part 141

Customs duties and inspection, Entry of merchandise, Foreign trade statistics, Invoices, Packaging, Prohibited merchandise, Release of merchandise, Reporting and recordkeeping requirements, Restricted merchandise (counterfeit goods), Trademarks, Trade names.

Amendment to the Regulations

For the reasons stated above, it is proposed to amend part 141 of the Customs Regulations (19 CFR part 141) as set forth below:

PART 141—ENTRY OF MERCHANDISE

1. The general authority citation for part 141 continues to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * *

2. In § 141.86, paragraph (a)(3) is revised to read as follows:

§ 141.86 Contents of invoices and general requirements.

(a) * * *

(3) A detailed description of the merchandise, including the name by which it is known; marks, numbers, and symbols under which it is sold by the seller or manufacturer to the trade in the country of exportation; the grade or quality of the merchandise; and a listing of any trademarks appearing on the merchandise or its components; together with a listing of the marks, numbers, and any trademarks appearing on the

packages in which the merchandise is packed;

* * * * *

Raymond W. Kelly,

Commissioner of Customs.

Approved: July 6, 1999

Dennis M. O'Connell,

Acting Deputy Assistant Secretary of the Treasury

[FR Doc. 99–23686 Filed 9–10–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 09–99–007]

Safety Zone, Detroit River

AGENCY: Coast Guard, DOT.

ACTION: Notice; withdrawal of proposed rule.

SUMMARY: The Coast Guard is withdrawing a notice of proposed rulemaking (NPRM) to establish a temporary safety zone on the American side of the Detroit River for the Windsor Can-AM Offshore Power Boat Race. The event sponsor withdrew his application for safety reasons, and based on comments received by the Coast Guard, the proposed rule was criticized and deemed not in the best interest of this vital international waterway.

DATES: This proposed rule is withdrawn effective July 30, 1999.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at Marine Safety Office, Detroit between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LTJG French, Coast Guard Marine Safety Office Detroit, 110, at 313–568–9580.

SUPPLEMENTARY INFORMATION:

Regulatory History

On 3 May, 1999, the Coast Guard published a notice of proposed rulemaking in the **Federal Register** (64 FR 23570–23571) that the American side of the Detroit River would be closed for the Windsor Can-Am Offshore Race, which at the time was scheduled to take place on August 22, 1999. In the mean time, the Coast Guard received notice from the event organizer on June 4, 1999 of his intention not to hold the race. The organizer noted safety concerns resulting from recent fatal accidents in the Detroit river where high currents and murky waters made rescue of victims impossible. The event sponsor believed such a race in such a location was "unsafe."

The Coast Guard received 7 letters in response to its proposed rulemaking during the public comment period, all of which were opposed to the closure. Relevant issued commenters raised ranged from adverse economic consequences that were likely to result from the river closure to possible violations of existing binational agreements between the United States and Canada

1. The Detroit and St. Clair River system hereafter called the Detroit River Corridor, is a key international trade route, that if closed, would adversely affect the entire Great Lakes and restrict access to other key economic ports.

2. The proposed closure appears to contradict the Boundary Waters Treaty of 1909 which states in part, "The navigation of all boundary waters shall forever continue free and open for the purposes of commerce to the inhabitants and to the ships, vessels and boats of both countries equally." The treaty goes on to establish a precedence to be observed among the various uses enumerated . . . for these waters." According to the treaty, "No use shall be permitted which tends materially to conflict with or restrain any other use which is given preference over it in this order of precedence:

(1) Uses for domestic and sanitary purposes;

(2) Uses for navigation

(3) Uses for power and irrigation."

As the term "domestic" is not defined, and recreational use is not spelled out or given priority in the treaty, decisions on boundary water uses are in the purview of the International Joint Commission.

3. Closure of the river for even a few hours has a ripple effect on commercial shipping in the Great Lakes that causes more than a minor inconvenience to vessels. Closure of any part of the Detroit River Corridor presents safety issue for vessel operators related to reduced speed and steerage. Compound that with closure of the Belle Isle Anchorage and, for the prudent commercial mariner, you shut down the entire river system for up to six hours, shutting down commercial navigation from Lake Erie to Lake Huron. Such a closure would have a detrimental effect not only on vessel operators, but also pilots and terminal operators, with impacts on the time sensitive nature of delivering raw materials to Great lakes ports and plants.

4. Race locations are variables that can be controlled, so as not to impede safe commercial navigation. Races similar to the one proposed are conducted in other areas all over the Great Lakes without river closures. A notable example is the Detroit Thunderfest. Those events are held in locations mutually agreeable to recreational and navigational interests. Closure of the river for this event to promote essentially a single sponsor's commercial use of the river over navigational use would set a precedent that might lead to applications for more such events in the future, resulting in further restrictions to navigation. More than that, though, a decision to close the river to the commercial advantage of one sponsor gives that sponsor a material benefit that other sponsors do not get—an arbitrary and capricious decision in favor of one person or group, made to the disadvantage and harm of others. It isn't fair.

5. The proposed rulemaking does not address fully the idea of just compensation for the maritime community adversely affected by the action. Costs are difficult to calculate, especially hidden costs. A more detailed agreement on compensation would need to be worked out well in advance of any such event.

The Coast Guard agrees with all these points of contention. Before withdrawing his permit application, the event sponsor did not have the benefit of the public comments in this matter or an opportunity to address the issues raised during the comment period. The Coast Guard appreciates all the efforts of the regulated community in sharing its views and will retain the public docket for future use. Accordingly, the Coast Guard is withdrawing the notice of proposed rulemaking and terminating further rulemaking on this proposal. Based on the regulatory history of this event, the Coast Guard Captain of the Port Detroit will be reluctant to consider proposed closures in any part of the Detroit River Corridor in the future. The Coast Guard will also work closely with Canadian Officials and the International Joint Commission to ensure that all provisions of the Boundary Waters Treaty of 1909 are upheld.

Dated July 30, 1999.

B. P. Hall,

Commander, USCG, Acting Captain of the Port, Detroit.

[FR Doc. 99–23718 Filed 9–10–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN 190–9930b; TN 196–9931b; FRL–6433–3]

Approval and Promulgation of Implementation Plans, Tennessee: Approval of Revisions to the Tennessee State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On March 17, 1997, and May 8, 1997, the State of Tennessee, through the Tennessee Department of Environment and Conservation (TDEC), submitted revisions to the Tennessee State Implementation Plan (SIP). The revisions pertain to Sulfur Dioxide Emission Regulations for the New Johnsonville and Copper Basin Additional Control Areas.

In the Rules section of this **Federal Register**, EPA is approving the Tennessee State Plan submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action.

DATES: Written comments must be received on or before October 13, 1999.

ADDRESSES: Written comments should be addressed to Scott Martin at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104.

Division of Air Pollution Control, Tennessee Department of Environment and Conservation, L & C Annex, 9th Floor, 401 Church Street, Nashville, Tennessee 37243–1531.

FOR FURTHER INFORMATION CONTACT: Scott Martin at (404) 562–9036.

SUPPLEMENTARY INFORMATION:

See the information provided in the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: August 13, 1999.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–23192 Filed 9–10–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL193–1b; FRL 6435–5]

Approval and Promulgation of Implementation Plan; Illinois

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the July 9, 1999, Illinois site-specific State Implementation Plan (SIP) revision revising Volatile Organic Compound (VOC) Reasonably Available Control Technology (RACT) requirements for Sun Chemical Corporation in Northlake, Illinois. The SIP revision exempts 17 resin storage tanks from bottom or submerged fill pipe requirements, subject to certain conditions.

In the final rules section of this **Federal Register**, the EPA is approving the State's request as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless the Agency receives relevant adverse written comment on this action. Should the Agency receive such comment, it will publish a final rule informing the public that the direct final rule will not take effect and such public comment received will be addressed in a subsequent final rule based on this proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document and no further activity will be taken on this proposed rule. EPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before October 13, 1999.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6082.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the final rules section of this **Federal Register**.

Dated: August 30, 1999.

Robert Springer,

Acting Regional Administrator, Region 5.

[FR Doc. 99–23582 Filed 9–10–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[KY–75–1–9910b; KY–97–1–9911b; FRL–6436–6]

Approval and Promulgation of Implementation Plans

Kentucky: Approval of Revisions to the Louisville State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the Air Pollution Control District of Jefferson County portion of the State Implementation Plan (SIP) submitted by the Commonwealth of Kentucky through the Natural Resources and Environmental Protection Cabinet on November 12, 1993, and amended on April 5, 1994, and June 30, 1997, which includes the 15 Percent Rate-of-Progress Plan (15 percent plan) for the Louisville moderate ozone nonattainment area. This submittal was made to meet the 15 percent reduction in emissions of volatile organic compounds (VOCs) requirement of section 182(b)(1)(A) of the Clean Air Act, as amended in 1990 (CAA).

In the Rules section of this **Federal Register**, EPA is approving the

Kentucky Plan submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action.

DATES: Written comments must be received on or before October 13, 1999.

ADDRESSES: Written comments should be addressed to Scott Martin at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104.

Department for Environmental Protection, Natural Resources and Environmental Protection Cabinet, Division of Air Quality, 803 Schenkel Lane, Frankfort, Kentucky 40601.

Air Pollution Control District of Jefferson County, 850 Barrett Avenue, Suite 205, Louisville, Kentucky 40204.

FOR FURTHER INFORMATION CONTACT: Scott Martin at (404) 562–9036.

SUPPLEMENTARY INFORMATION: See the information provided in the Direct Final document which is located in the Rules section of this **Federal Register**.

Dated: August 20, 1999.

Michael V. Peyton,

Acting Regional Administrator, Region 4.

[FR Doc. 99–23580 Filed 9–10–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 51, 68, 76

[WT Docket No. 99–217; CC Docket No. 96–98; DA 99–1563]

Promotion of Competitive Networks in Local Telecommunications Markets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: In this document, the Commercial Wireless Division (the "Division") of the Federal Communications Commission gives notice that the Commission granted in part motions for extension of time to file comments and reply comments on the Notice of Proposed Rulemaking and Notice of Inquiry in WT Docket No. 99–217 and the Third Further Notice of Proposed Rulemaking in CC Docket No. 96–98 concerning the promotion of competitive networks in local telecommunications markets. These motions were filed by Commonwealth Edison Company, Duke Energy Corporation, and Southern Company (collectively, the "Utilities") and the Local and State Government Advisory Committee (LSGAC). The Division found that the record for this Notice of Proposed Rulemaking, Third Further Notice of Proposed Rulemaking, and Notice of Inquiry might not be adequately developed unless additional time was granted to all interested parties to prepare comments and reply comments.

DATES: The deadline for receipt of comments on the Notice of Proposed Rulemaking in WT Docket No. 99–217 and Third Further Notice of Proposed Rulemaking in CC Docket No. 96–98 was extended until August 27, 1999 and reply comments on these items are due September 27, 1999. Comments on the Notice of Inquiry in WT Docket No. 99–217 are due October 12, 1999 and reply comments on this item are due December 13, 1999.

ADDRESSES: Parties who choose to file comments by paper should send comments to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW; TW–A325; Washington, DC 20554. Comments filed through the Commission's Electronic Comment Filing System (ECFS) can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. *See* the "Supplementary Information" section below for additional information about paper and electronic filing.

FOR FURTHER INFORMATION CONTACT: Jeff Steinberg at (202) 418–0896 or Joel Taubenblatt at (202) 418–1513 (Wireless Telecommunications Bureau).

SUPPLEMENTARY INFORMATION: This is a summary of the Order Extending Pleading Cycle (the "Order"), DA 99–1563, adopted August 6, 1999 and released August 6, 1999. The complete text of the document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 445 12th Street, SW, CY–B400, Washington, DC 20554. The document is also available via the Internet at <http://www.fcc.gov/Bureaus/Wireless/Orders/1999/index.html>.

In this document, the Division grants in part a motion by the Utilities for an extension of time to file comments and reply comments on the Notice of Proposed Rulemaking in WT Docket No. 99–217, 64 FR 41887, August 2, 1999, and Third Further Notice of Proposed Rulemaking in CC Docket No. 96–98, 64 FR 41884, August 2, 1999. The Division also grants in part a request by LSGAC for an extension of time to file comments and reply comments on the Notice of Inquiry in WT Docket No. 99–217, 64 FR 41883, August 2, 1999. The Notice of Proposed Rulemaking and Notice of Inquiry in WT Docket No. 99–217 and the Third Further Notice of Proposed Rulemaking in CC Docket No. 96–98 were issued by the Commission on July 7, 1999 under FCC 99–141.

This document states that, although it is the policy of the Commission that motions for extensions of time shall not be routinely granted, the Division finds that the record for the Notice of Proposed Rulemaking and Notice of Inquiry in WT Docket No. 99–217 and the Third Further Notice of Proposed Rulemaking in CC Docket No. 96–98 might not be adequately developed unless additional time is granted to all interested parties to prepare comments and reply comments. Therefore, the Order extends the pleading cycle for the Notice of Proposed Rulemaking in WT Docket No. 99–217 and Third Further Notice of Proposed Rulemaking in CC Docket No. 96–98 to August 27, 1999 for comments and September 27, 1999 for reply comments. In addition, the Order extends the pleading cycle for the Notice of Inquiry in WT Docket No. 99–217 to October 12, 1999 for comments and December 13, 1999 for reply comments.

Filing Procedures

Pursuant to 47 CFR 1.415, 1.419, interested parties may file comments in accordance with the schedule listed in the "Dates" section above. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24,121, May 1, 1998.

Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, TW–A325, Washington, DC 20554.

Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, Inc., 445 12th Street, SW, CY–B400, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC 20554.

Comments and reply comments must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with 47 CFR 1.49, and all other applicable sections of the Commission's rules. The Commission also directs all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission.

List of Subjects

47 CFR Parts 1 and 51

Communications common carriers, Telecommunications.

47 CFR Part 68

Communications common carriers, Communications equipment.

47 CFR Part 76

Cable television.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–23404 Filed 9–10–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 990811218–9218–01; I.D. 050399A]

RIN 0648–AL27

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Amendment 12 to the Northeast Multispecies Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule, request for comments.

SUMMARY: NMFS issues this proposed rule to implement measures contained in Amendment 12 to the Northeast Multispecies Fisheries Management Plan (FMP) to address the management of silver hake (whiting), red hake, offshore hake, and ocean pout and to implement the framework measure approved in Amendment 11 to the FMP regarding essential fish habitat. Amendment 12 and these proposed regulations would establish differential whiting possession limits based on the mesh size with which a vessel chooses to fish. The intended effect of this action is to reduce fishing mortality rates on whiting and red hake to eliminate overfishing and rebuild the biomass in accordance with the requirements of the Sustainable Fisheries Act (SFA).

DATES: Comments must be received on or before October 28, 1999.

ADDRESSES: Comments on this proposed rule should be sent to Pat Kurkul, Regional Administrator, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on Proposed Rule for Amendment 12."

Comments regarding burden-hour estimates for collection-of-information requirements or other aspects of the collection-of-information requirements contained in this proposed rule should be sent to NMFS and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

Copies of the Amendment 12 document, its Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA), the Supplemental Environmental Impact Statement (SEIS), and other supporting documents for the FMP amendment, as well as all documents pertaining to Amendment 11, are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, Massachusetts 01906–1036.

FOR FURTHER INFORMATION CONTACT: Peter Christopher, Fishery Management Specialist, 978–281–9288.

SUPPLEMENTARY INFORMATION: The New England Fishery Management Council (Council) developed Amendment 12 to the Northeast Multispecies FMP (commonly called the Whiting Amendment) primarily to comply with the new requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), as amended by the SFA on October 11, 1996. NMFS published a notice of availability for this amendment in the **Federal Register** at 64 FR 29257, June 1, 1999, soliciting public comments on this amendment through August 2, 1999. Public comments that were received on or before August 2, 1999, will be considered in the approval/disapproval decision. Comments received after that date, but before the end of the comment period for this proposed rule, will not be considered in the approval/disapproval decision of the amendment, but will be considered in the decision on issuance of the final rule with respect to matters not related to approval/disapproval of FMP measures. Copies of Amendment 12 are available upon request (see **ADDRESSES**).

Whiting and red hake have been part of the Northeast Multispecies FMP since the implementation of Amendment 4 in 1991. Since that time, one reason no management measures have existed to manage directly the whiting and red hake fisheries is that management measures incorporated into the Multispecies FMP for other species provide indirect protection for whiting

and red hake. Geographic areas that are closed to fishing and minimum mesh sizes that are inefficient at catching whiting and red hake provided some level of protection for whiting and red hake. However, directed whiting fisheries in the Southern New England Regulated Mesh Area (SNE RMA) and exempted or experimental fisheries in the Gulf of Maine/Georges Bank Regulated Mesh Area (GOM/GB RMA) have continued to produce high levels of whiting and red hake catches. In anticipation of additional restrictions to manage whiting, the Council established September 9, 1996, as the control date for whiting and announced that it could limit future access to the whiting fishery through a moratorium on whiting permits.

In September 1997, NMFS' report to Congress on the "Status of Fisheries of the United States" concluded that red hake and the Southern stock of whiting are overfished and that the Northern stock of whiting is approaching an overfished condition. In response, the Council began the development of Amendment 12 to specifically address overfishing.

Amendment 12 proposes to end overfishing in 4 years. Management measures in years 1, 2, and 3 would be the same, unless changed through framework action or amendment. If the reduction in fishing mortality and exploitation during the first 3 years is not sufficient to meet the goals of Amendment 12, a fourth year default measure has been proposed to achieve the target fishing mortality rates and end overfishing.

Amendment 12 proposes to do the following: (1) Establish new overfishing definitions for two stocks of silver hake, two stocks of red hake, and offshore hake (*Merluccius albidus*); (2) specify Optimum Yield (OY) for silver hake (whiting), red hake and offshore hake; (3) identify whiting, red hake, and offshore hake as "small mesh multispecies"; (4) identify geographic areas for potential use in management of different stocks of whiting; (5) implement a moratorium on commercial permits to fish for whiting, red hake and offshore hake (small mesh multispecies); (6) implement an open access permit category to allow an incidental catch; (7) implement new measures for the Cultivator Shoal Whiting Fishery; (8) initiate management measures for all areas excluding the Cultivator Shoal Whiting Fishery based on mesh size/possession limit categories; (9) add measures which may be implemented by a framework adjustment; (10) implement codend specifications and restrictions on net strengtheners; (11) restrict the transfer of small mesh multispecies; (12) provide a default measure to be implemented at the beginning of year 4 if management measures do not meet the fishing mortality objectives; (13) designate Essential Fish Habitat for offshore hake; and (14) establish a Whiting Monitoring Committee (WMC).

After a preliminary review of Amendment 12, NMFS found that the limited access program would be inconsistent with national standard 4 and section 304(e) of the Magnuson-Stevens Act. The qualification criteria allow vessels that participated in either the Gulf of Maine whiting raised footrope or separator trawl experimental fisheries to qualify for a limited access permit with 1,000 lb (453.6 kg) of landings over 3 years, rather than 50,000 lb (22,680 kg) of landings over 18 years. Vessels would be subject to the same restrictions regardless of how the vessel qualified for the permit. This portion of the proposed limited access program is inconsistent with national standard 4 because different sectors of the industry could qualify for the same level of fishing with different landings requirements. Further, vessels may have been excluded from participation in experimental fisheries because NMFS imposed participation restrictions and these restrictive controls may have discouraged vessels from participating.

The limited access program also proposes that at the beginning of year 6 of the Amendment, unless otherwise extended, vessels would be eligible for limited access small mesh multispecies permits without having to meet the landings criteria, provided the vessels possessed a limited access multispecies permit that was valid on the date the final rule for this amendment is published and that continues to be valid in year 6. The sunset provision may give vessel owners who would not qualify for the limited access permit unrealistic expectations that they may be able to participate in the whiting (small mesh multispecies) fisheries as a limited access vessel when it is unlikely to happen. Further, there has been no analysis of the potential effects of such effort on the rebuilding schedule. Amendment 12 proposes to end overfishing in year 4 and to rebuild the stocks of whiting and red hake within 10 years. Because it is uncertain that the fishery could sustain additional vessel participation just 1 year beyond the target date to end overfishing, rebuilding goals may be compromised. This measure would, therefore, be inconsistent with section 304(e) of the Magnuson-Stevens Act that specifies that overfished fisheries be rebuilt within a period not to exceed 10 years.

As a result of this preliminary review, NMFS is returning the limited access program to the Council in its entirety. To return only the two problematic portions would alter significantly the limited access program proposed in Amendment 12, thus changing the limited access program that was approved by the majority of the voting members of the Council. Under section 304(c)(3) of the Magnuson-Stevens Act, the Secretary of Commerce may not implement a limited access system that has not been approved by the majority of the voting members of the Council. Therefore, NMFS's only option in order to avoid implementing the two problematic measures of the limited access program is to exclude the limited access portion of Amendment 12 from regulations proposed for public comment. The open access permit category for small mesh multispecies is also omitted from this regulation because it would serve no purpose without the limited access permit categories.

Proposed Measures

The "Open Access Nonregulated Multispecies Permit" would be renamed the "Open Access Multispecies Permit" to avoid confusion that would result from the elimination of the definition of "Nonregulated Multispecies." Vessels currently issued "Open Access Nonregulated Multispecies Permits" would not be required to acquire a new "Open Access Multispecies Permit," but rather would receive a renamed permit when they apply for permit renewal at the end of the fishing year in which this regulation is implemented. The restrictions pertaining to the "Open Access Nonregulated Multispecies Permit" would remain in effect for these vessels.

Amendment 12 proposes to change the season for the Cultivator Shoal Whiting Fishery by decreasing its duration by 1 month. The Cultivator Shoal Whiting Fishery season would begin on June 15 and end on September 30 of each year. Currently, the fishery ends on October 31 each year. The reduction in fishing effort by the elimination of the month of October is expected to contribute toward Amendment 12's overall goal of a 63–percent reduction in whiting exploitation across all stock areas.

Vessels enrolled in the Cultivator Shoal Whiting Fishery would be restricted to a minimum mesh size of 3 in (7.62 cm) subject to applicable codend restrictions. Vessels enrolled in the fishery would also be restricted to a possession limit of 30,000 lb (13,608 kg) of whiting and offshore hake. Vessels would be allowed to fish in areas other than the Cultivator Shoal Whiting Fishery area while enrolled in this fishery but would be subject to the more restrictive mesh and possession measures regardless of where they fish. These measures allow participants in the Cultivator Shoal Whiting Fishery flexibility to fish in other whiting areas when whiting are not concentrated on the Cultivator Shoal. The possession limit would serve to eliminate extremely large whiting trips that contribute to excessive fishing mortality in the area, yet allow for economically feasible trips.

Amendment 12 would implement whiting and offshore hake possession limits for all areas excluding the Cultivator Shoal Whiting Fishery. Vessels issued a Federal multispecies permit would be allowed the following possession limits of whiting and offshore hake: up to 3,500 lb (1,588 kg), while using a mesh size less than, but not equal to 2.5 in (6.35 cm); up to 7,500 lb (3,402 kg), while using a codend mesh size of 2.5 in (6.35 cm) or larger, provided the vessel has a letter of authorization from the Administrator, Northeast Region, NMFS (Regional Administrator) on board; and up to 30,000 lb (13,608 kg), while using a codend mesh size of 3 in (7.62 cm) or larger, provided the vessel has a letter of authorization from the Regional Administrator on board. Letters of authorization for these mesh size categories would be valid for a minimum of 30 days. However, vessels could withdraw from the minimum mesh size category after a minimum of 7 days, but they would be subject to a possession limit of 3,500 lb (1,588 kg) regardless of the mesh size in use and would not be able to re-enter the original authorization category for the remainder of the original 30 days. Vessels that do not receive a letter of authorization would automatically be restricted to a possession limit of 3,500 lb (1,588 kg) of whiting and offshore hake, regardless of the mesh size in use.

Amendment 12 proposes that while participating in the Northern shrimp fishery, to retain whiting and offshore hake, a vessel would be required to be issued a Federal multispecies permit and that vessels would be allowed a possession limit of whiting and offshore hake equal to the amount of Northern shrimp on board up to 3,500 lb (1,588 kg).

This proposed rule includes instructions for vessel owners to follow in order for them to receive the required letters of authorization to participate in one of the minimum mesh size and corresponding possession limit categories. To request a letter of authorization, vessel owners would be required to call the Northeast Region Permit Office during normal business hours and provide the vessel name, owner name, permit number, the desired mesh size/possession limit category and the period of time that the vessel would be enrolled. Since letters of authorization would be effective on the date of receipt vessel owners should allow appropriate processing and mail time. To withdraw from a category, vessel owners must call the Northeast Region Permit Office. Withdrawals would be effective upon date of request.

Amendment 12 proposes that a vessel issued a Federal multispecies permit would be allowed to transfer small mesh multispecies at sea up to 500 lb (226.8 kg), provided it has a letter of authorization to transfer fish at sea on board the vessel. A total of 500 lb (226.8 kg) would automatically be deducted from the vessel's possession limit regardless of the actual amount transferred. Vessels receiving the small mesh multispecies at sea would be required to have a receipt for the transferred fish. The allowance for transfers at sea would provide continued flexibility for vessels that have traditionally purchased bait from other vessels while in the course of targeting such other species as lobster or tuna.

Amendment 12 proposes new codend specifications for vessels fishing for small mesh multispecies. For vessels less than or equal to 60 ft (18.28 m) in length overall, the mesh size would be determined by measuring the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net. For a vessel greater than 60 ft (18.28 m) in length overall, the mesh size would be determined by measuring the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net. This restriction would not apply to vessels using less than 2.5–in (6.35 cm) mesh and being subject to other codend specifications specified in this part.

The proposed management measures controlling mesh size are intended to provide an incentive for vessels to use larger mesh to fish for small mesh multispecies. Allowance of several mesh sizes accounts for differences in the characteristics of the various small mesh fisheries (such as squid and herring) which exist.

Amendment 12 proposes to allow vessels using mesh less than 2.5 in (6.35 cm) to use net strengtheners. This provision allows vessels which have traditionally used net strengtheners in other small mesh fisheries to continue with their use while maintaining the expected conservation benefits by prohibiting the use of net strengtheners in directed small mesh multispecies fisheries.

On May 1, 2002 (the beginning of year 4 under the schedule proposed by Amendment 12), if target mortality and biomass objectives have not been achieved and if the Council and NMFS have not implemented other adequate management measures, default measures would ensure that the fishing mortality objectives of Amendment 12 are achieved. The default measures would include the following:

A regulated mesh area to be defined prior to the effective date of the default measure, with a 3–in (7.62 cm) minimum mesh requirement for all fishing activities (with the exception of fisheries with larger minimum mesh sizes). In the absence of a defined small mesh multispecies regulated mesh area, the default measures would be effective throughout the range of the species. Vessels participating in any fishery would be required to use the minimum mesh or larger unless fishing in a fishery that has been determined exempt from the minimum mesh size.

A possession limit of whiting and offshore hake up to 10,000 lb (4,536 kg) for vessels possessing a Federal multispecies permit would be allowed.

A possession limit of 100 lb (45.36 kg) of whiting and offshore hake for vessels participating in an exempted fishery would be allowed.

A provision to allow a vessel to fish with mesh less than 3 in (7.62 cm), if fishing is determined to be exempted from the minimum mesh size by demonstrating a bycatch of small mesh multispecies that is less than 10 percent of total catch.

Analysis of these management measures indicated that it may be very difficult to achieve the conservation objectives of the proposed amendment without decreasing the amount of whiting retained or discarded with mesh less than 2.5 in (6.35 cm). Therefore, the default measures described above further increase the likelihood that the incidental, as well as the directed, catch of small mesh multispecies will be reduced.

Additional measures that can be implemented through the framework procedure have been proposed under Amendment 12 to allow future adjustments for the small mesh multispecies. The following measures that can be implemented through the framework procedure have been proposed: A total allowable landings limit (and appropriate seasonal adjustments) for vessels fishing in the northern area requiring that the fishery be closed when the limit is reached; modifications or adjustments to whiting

grate/mesh configuration requirements; adjustments to whiting stock boundaries for management purposes; modifications to requirements for fisheries to be exempt from the minimum mesh requirements for small mesh multispecies; and season adjustments, declarations and participation requirements for the Cultivator Shoal Whiting Fishery. Amendment 12 also proposes the following management measures that could be implemented through a framework adjustment to the FMP provided that they are accompanied by a full set of public hearings: A whiting Days at Sea (DAS) effort reduction program and a whiting total allowable catch (TAC), either by region or for the entire fishery. In addition, Amendment 11 to the FMP, which was approved on March 3, 1999, adds essential fish habitat measures to the framework list. The framework procedure for essential fish habitat, which was inadvertently not included in regulations at the time Amendment 11 to the FMP was approved, is now included in this rule.

The framework adjustment process allows the Council flexibility to develop and analyze management actions over a shorter time period than is possible under the amendment process. Framework development still involves notification of proposed measures to the public and opportunities for public comment.

Amendment 12 proposes to establish the Whiting Monitoring Committee (WMC) to monitor the progress of the rebuilding of small mesh multispecies stocks on an annual basis. The role, structure, and process for the WMC would be identical to the Multispecies Monitoring Committee (MMC), with the exception that the WMC would contain at least three industry representatives: At least one from New England, one from Southern New England, and one from the Mid-Atlantic regions. Establishment of a monitoring committee provides regular, consistent evaluation of the management measures to ensure that the goals of the Northeast Multispecies FMP specific to small mesh multispecies are achieved.

This rule proposes to correct references to the appeals paragraphs of the multispecies permitting section and to clarify the net strengthener provision at § 648.80(g).

Classification

The Council prepared and NMFS has adopted a SEIS for this amendment; a notice of availability was published at 63 FR 48727, September 11, 1998. Although short-term negative impacts would result from lowered allowed catches of small mesh multispecies, the proposed management action would have long-term positive impacts on affected physical, biological, and human environments. A copy of the SEIS may be obtained from the Council (see **ADDRESSES**).

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

Initial Regulatory Flexibility Analysis

The Council prepared an IRFA for this proposed rule, pursuant to the Regulatory Flexibility Act (5 U.S.C. 603), without a final determination as to whether the proposal would have a significant impact on a substantial number of small entities. In September of 1997, NMFS determined that some stocks of whiting and red hake are overfished or approaching an overfished condition. This proposed rule is published to comply with the new requirements of the Magnuson-Stevens Act which requires that a management plan be developed and implemented to end overfishing and to rebuild overfished stocks. This proposed rule intends to end overfishing by implementing whiting, offshore hake, and red hake possession limits; minimum mesh sizes; and a year 4 default measure to ensure that the elimination of overfishing is attained. To ensure that there will be effective recordkeeping and compliance for the proposed measures, this proposed rule would establish two new collection-of-information requirements and include one collection-of-information requirement that was previously omitted. These two new requirements consist of a requirement for a vessel owner or operator to call the Regional Administrator to request a letter of authorization to fish under one of the mesh size/possession limit categories and of a requirement to make a receipt for fish bought through a transfer of fish at sea. The omitted requirement is a requirement to call in to receive a letter of authorization to transfer fish other than regulated multispecies at sea. Measures analyzed in the IRFA include the full set of management measures with particular attention to mesh size and possession limits and the year 4 default measure. The small entities considered in this analysis are 1,156 vessels whose reported landing was made of one or more combined pounds of whiting, red hake, and offshore hake during the calendar years 1995 to 1997. The following is a brief discussion of the measures and alternatives analyzed in the IRFA.

Measures proposed in this amendment are intended to reduce landings of whiting and red hake and to control effort on these fisheries. Vessels that would continue fishing for small mesh multispecies would be subject to substantial reductions in landings from their historical fishing activity. The most significant effects would be caused by the 4th year default measures, which are expected to result in the largest economic loss for fishery participants. The management measures for years 1–3 are estimated to reduce gross revenues from all species by more than 5 percent for 81 vessels (7 percent of small mesh multispecies participants). If the default measure is implemented, approximately 20 percent of small mesh multispecies fishery participants (222 vessels) are estimated to experience a reduction in annual gross revenues of 5 percent or more.

Additionally, short- and long-run profitability analyses of small mesh multispecies commercial fishing vessels indicate that management measures proposed in this amendment would force some vessels to cease operations. In the short run, vessels may be assumed to maintain business operations, provided operating costs can be paid. In the long run, vessels may be able to maintain business operations only if all costs (fixed and operating) can be paid from gross receipts. Estimated profitability for the years 1–3 and year 4 default management measures indicated that two percent, or more, of the vessels may not be able to operate at positive long-run profit upon implementation of the FMP by this proposed rule. Under the years 1–3 measures, a total of 25 vessels estimated to be earning positive profit under the status quo, (2.2 percent of all small mesh multispecies fishery participants) would be operating at negative profit. Similarly, a total of 61 vessels estimated to be earning positive profit under the status quo (5.3 percent of all small mesh multispecies fishery participants) would be operating at negative profit under the year 4 default measure. It is assumed such vessels would cease operations as a result of their negative profit.

The impact of the proposed action would not be distributed evenly among vessels or sectors of the industry. Impacts of the proposed management action would be the greatest on the communities that depend most heavily on small mesh multispecies fisheries. Most of the effort in the small mesh fisheries and resulting landings are from vessels based in Rhode Island, New York, and New Jersey. Therefore, with management measures designed to reduce effort and landings, vessels fishing from these states would experience the effects of the management measures to the greatest extent. Compared to the status quo, however, industry may realize much greater benefits in the long term as stocks of small mesh species recover, and value of the species increases as a result of the proposed management measures.

An analysis of the management measures in an open access fishery was also conducted. Although it is likely that current numbers of vessels permitted to fish for small mesh multispecies would remain at current levels or slightly increase, it is uncertain what the actual level of participation, effort and catch levels will result. However, vessels that would have qualified for the limited access permits would remain subject to greater restrictions and therefore would be equally impacted under a limited access or open access fishery. Vessels that would have been excluded from the limited access fishery would likely recognize greater profitability as a result of an open access system over the short-term. Therefore, because the open access fishery would result in increased profitability for some small entities when compared to the limited access permit program, NMFS determines that the management measures in an open access system would have a reduced negative impact on small entities.

Other measures proposed in this amendment, including minimum mesh and possession limit enrollment programs (not including the direct reductions of catch and landings caused by minimum mesh sizes and possession limits), codend specifications, the net strengthener provision, and the transfer at sea provision have no quantifiable economic impact. However, these measures are expected to have minimal economic impact on participating vessels because they would not result in the loss of catch or landings and would allow continued flexibility.

Alternatives Considered But Rejected by the Council

1. The Council considered a "no action" alternative that would result in no changes to the current measures under the Northeast Multispecies FMP. The no action alternative was rejected because it would not fulfill the requirements of the Sustainable Fisheries Act with respect to overfished stocks. Further, evaluations of biological, social, and economic impacts suggest that the proposed management measures would result in greater, long-term benefits to the industry.

2. The Council considered various management measures specific to northern, southern, and the Cultivator Shoal Whiting Fishery areas, using the boundary between the Gulf of Maine/Georges Bank and the Southern New England Regulated Mesh Areas to differentiate between the northern and southern areas. Management measures that were considered included minimum mesh sizes, eastern and western zone delineation in the southern area, and possession limits based on mesh size, areas fished, seasons, and vessel size. While the Council maintained the Cultivator Shoal Whiting Fishery exemption area, it rejected further delineation because it felt that area-specific measures would be unnecessary with simplified and uniform management measures for all areas, except the Cultivator Shoal Whiting exemption area.

3. Seasonal restrictions, including a reduction of the current season, were considered by the Council for management measures for the Cultivator Shoal Whiting Fishery. The Council had considered reducing the season of the fishery by 2 months by eliminating June and October from the allowed season. In addition, various possession limits and participation restrictions were considered. While Amendment 12 proposes a 1-month reduction of the season that eliminates the month of October, the elimination of the June portion was rejected. Public comment during the public hearing stage suggested that landings from the fishery in June are of high value because of the lack of other available fish or allowed whiting fisheries. The possession limits and other restrictions, other than the proposed measures in this rule, were rejected for consideration in Amendment 12 because they were too complex or not feasible. The Council felt that, while the low possession limits would ensure that fishing mortality goals relative to the Cultivator Shoal area would be reached quickly, vessels would not be able to profit from trips to the Cultivator Shoal area with low possession limits.

4. The Council considered three options for possible transfers of small mesh multispecies at sea. One measure would prohibit transfers; a second would allow unlimited transfers; and a third would allow vessels to transfer limited amounts of small mesh multispecies. The Council rejected the prohibition of transfers because it would not allow the needed flexibility in the industry. The unlimited transfer at sea option was also rejected because it would compromise the effectiveness of the possession limits it was developing.

5. The Council considered implementing minimum fish sizes for whiting, but rejected the idea due to the likelihood that measuring whiting would be impractical and difficult to enforce given the high-volume nature of the fishery and that whiting is a highly perishable product.

6. The Council considered spawning season closures to protect spawning stocks of whiting and red hake, but rejected the measure because spawning data for whiting are incomplete. The data that are available suggest that existing large mesh measures in the Northeast Multispecies FMP provide protection for known spawning fish.

NMFS seeks comments regarding the IRFA. Copies of the IRFA are available from the Council (see **ADDRESSES**).

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

This proposed rule contains three new collection-of-information requirements subject to the Paperwork Reduction Act and have been submitted to OMB for approval. This proposed rule also repeats an existing requirement that has been approved by OMB under control number 0648–0202. The public reporting burden for these collection-of-information requirements is indicated in the parentheses in the following statements and includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Public comment is sought regarding whether the proposed collection-of-information requirements are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimates; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology. Send comments regarding these reporting burden estimates or any other aspects of the collection of information, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

The new requirements are:

Call-in to NMFS Region for Enrollments for Authorization Letter to Transfer at Sea, (2 minutes/response);

Written Receipt for At-Sea Transfers of Small mesh Multispecies, (1 minute/response);

Call-in to NMFS Region for Enrollments for Mesh Size/ Possession Limit Authorization Letter, (2 minutes/response).

The repeated existing requirement is:

Call in to NMFS Region for Enrollment for the Cultivator Shoal Whiting Fishery Authorization Letter, (2 minutes/response).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 1, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648–FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.2, the definition for "Nonregulated multispecies" is removed, the definitions for "Dealer" and "Northeast (NE) multispecies or multispecies" are revised, and the definitions for "Small mesh multispecies" and "Whiting Monitoring Committee (WMC)" are added to read as follows:

§ 648.2 Definitions.

* * * * *

Dealer means any person who receives, for a commercial purpose (other than solely for transport on land), from the owner or operator of a vessel issued a valid permit under this part, any species of fish, the harvest of which is managed by this part, unless otherwise exempted in this part.

* * * * *

Northeast (NE) multispecies or *multispecies* means the following species:

American plaice- *Hippoglossoides platessoides.*

Atlantic cod- *Gadus morhua.*

Haddock- *Melanogrammus aeglefinus.*

Ocean Pout- *Macrozoarces americanus.*

Offshore Hake- *Merluccius albidus.*

Pollock- *Pollachius virens.*

Redfish- *Sebastes fasciatus.*

Red hake- *Urophycis chuss.*

Silver hake (whiting)- *Merluccius bilinearis.*

White hake- *Urophycis tenuis.*

Windowpane flounder- *Scophthalmus aquosus.*

Winter flounder- *Pleuronectes americanus.*

Witch flounder- *Glyptocephalus cynoglossus.*

Yellowtail flounder- *Limanda ferruginea.*

* * * * *

Small mesh multispecies means the subset of Northeast multispecies that includes silver hake, offshore hake, and red hake.

* * * * *

Whiting Monitoring Committee (WMC) means a team appointed by the NEFMC to review, analyze, and recommend adjustments to the management measures addressing small mesh multispecies. The team consists of staff from the NEFMC and MAFMC, NMFS Northeast Regional Office, the NEFSC, the USCG, at least one industry representative from each geographical area (northern New England, southern New England, and the Mid-Atlantic), and no more than two representatives, appointed by the Commission, from affected states.

3. In § 648.4, paragraph (a)(1)(ii) is revised to read as follows:

§ 648.4 Vessel and individual commercial permits.

(a) * * *

(1) * * *

(ii) *Open access permits.* A vessel of the United States that has not been issued a limited access multispecies permit is eligible for and may be issued an "open access multispecies", "handgear", or "charter/party" permit and may fish for, possess on board, and land multispecies finfish subject to the restrictions in § 648.88. A vessel that has been issued a valid limited access scallop permit, but that has not been issued a limited access multispecies permit, is eligible for and may be issued an open access scallop multispecies possession limit permit and may fish for, possess on board, and land multispecies finfish subject to the restrictions in § 648.88. The owner of a vessel issued an open access permit may request a different open access permit category by submitting an application to the Regional Administrator at any time.

* * * * *

4. In § 648.6, paragraph (a) is revised to read as follows:

§ 648.6 Dealer/processor permits.

(a) *General.* All NE multispecies, sea scallop, summer flounder, surf clam and ocean quahog dealers, and surf clam and ocean quahog processors must have been issued under this section, and have in their possession, a valid permit for these species. As of January 1, 1997, all mackerel, squid, and butterfish dealers and all scup dealers, and, as of June 1, 1997, all black sea bass dealers must have been issued under this section, and have in their possession, a valid permit for these species. As of [*insert the date the final rule is effective*], persons on board vessels receiving small mesh multispecies at sea for use exclusively as bait are deemed not to be dealers for purposes of receiving such small mesh multispecies and are not required to possess a valid dealer's permit under this section, provided the vessel complies with the provisions specified under § 648.13.

* * * * *

5. In § 648.13, paragraph (b) is revised and paragraph (e) is added to read as follows:

§ 648.13 Transfers at sea.

* * * * *

(b)(1) Except as provided in paragraph (b)(2) of this section, vessels issued a multispecies permit under § 648.4(a)(1) or a scallop permit under § 648.4(a)(2) are prohibited from transferring or attempting to transfer any fish from one vessel to another vessel, except that vessels issued a Federal multispecies permit under § 648.4(a)(1) and specifically authorized in writing by the Regional Administrator to do so, may transfer species other than regulated species from one vessel to another vessel.

(2) Vessels issued a Federal multispecies permit under § 648.4(a)(1) may transfer only up to 500 lb (226.8 kg) of combined small mesh multispecies per trip for use as bait from one vessel to another, provided:

(i) The transferring vessel possesses a Federal multispecies permit as specified under § 648.4(a)(1);

(ii) The transferring vessel has a letter of authorization issued by the Regional Administrator on board; and

(iii) The receiving vessel possesses a written receipt for any small mesh multispecies purchased at sea.

* * * * *

(e) Vessels issued a letter of authorization from the Regional Administrator to transfer small mesh multispecies at sea for use as bait will automatically have 500 lb (226.8 kg) deducted from the vessel's combined silver hake and offshore hake possession limit, as specified under § 648.86(c), for every trip during the participation period specified on the letter of authorization, regardless of whether or not a transfer of small mesh multispecies at sea occurred or whether or not the actual amount that was transferred was less than 500 lb (226.8 kg). This deduction will be noted on the transferring vessel's letter of authorization from the Regional Administrator.

* * * * *

6. In § 648.14, paragraphs (a)(42), (a)(43), (b), (c) introductory text, (c)(7) and (t) are revised, and paragraphs (x)(4)(iii) and (z) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(42) Fish within the areas described in § 648.80(a)(4) with nets of mesh smaller than the minimum size specified in § 648.80(a)(2) or § 648.80(a)(4)(i)(B), and unless the vessel is issued and possesses on board an authorizing letter issued under § 648.80(a)(4)(i).

(43) Violate any of the provisions of § 648.80, including paragraphs (a)(3), the small mesh Northern shrimp fishery exemption area; (a)(4), the Cultivator Shoals whiting fishery exemption area; (a)(8), Small Mesh Area 1/Small Mesh Area 2; (a)(9), the Nantucket Shoals dogfish fishery exemption area; (a)(11), the Nantucket Shoals mussel and sea urchin dredge exemption area; (a)(12), the GOM/GB monkfish gillnet exemption area; (a)(13), the GOM/GB dogfish gillnet exemption area; (b)(3), exemptions (small mesh); (b)(5), the SNE monkfish and skate trawl exemption area; (b)(6), the SNE monkfish and skate gillnet exemption area; (b)(7), the SNE dogfish gillnet exemption area; (b)(8), the SNE mussel and sea urchin dredge exemption area; or (b)(9), the SNE little tunny gillnet exemption area. A violation of any of these paragraphs in § 648.80 is a separate violation.

* * * * *

(b) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any person owning or operating a vessel holding a multispecies permit, issued an operator's permit, or issued a letter under § 648.4(a)(1)(i)(M)(*3*), to land, or possess on board a vessel, more than the possession or landing limits specified in § 648.86(a),(b) and (c) or to violate any of the other provisions of § 648.86, unless otherwise specified in § 648.17.

(c) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) and (b) of this section, it is unlawful for any person owning or operating a vessel issued a limited access multispecies permit or a letter under § 648.4(a)(1)(i)(M)(*3*), unless otherwise specified in § 648.17 to do any of the following:

* * * * *

(7) Possess or land per trip more than the possession or landing limits specified under § 648.86(a), (b), (c), (d) and under § 648.82(b)(3), if the vessel has been issued a limited access multispecies permit.

* * * * *

(t) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) through (h) of this section, it is unlawful for any person owning or operating a vessel issued an open access multispecies permit to possess or land any regulated species as defined in § 648.2, or to violate any applicable provisions of § 648.88, unless otherwise specified in § 648.17.

* * * * *

(x) * * *

(4) * * *

(iii) All small mesh multispecies retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested from the EEZ.

* * * * *

(z) *Small mesh multispecies.* (1) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, and subject to paragraph (a)(32) of this section it is unlawful for any person owning or operating a vessel issued a Federal multispecies permit to land, offload, or otherwise transfer, or attempt to land, offload, or otherwise transfer, small mesh multispecies from one vessel to another in excess of the limits specified in § 648.13, unless both vessels fish exclusively in state waters and neither vessel has been issued a multispecies permit.

(2) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, beginning May 1, 2002, it is unlawful for any vessel to do any of the following:

(i) Fish with, use or have available for immediate use within the areas described in §§ 648.80(a), (b) and (c), nets of mesh whose size is smaller than 3–in (7.62–cm), unless otherwise exempted pursuant to § 648.80(a)(7) or unless the vessel has not been issued a permit under § 648.4 and fishes exclusively in state waters.

(ii) If issued a Federal multispecies permit, land, or possess on board a vessel, more than 10,000 lb (4,536 kg) of combined whiting and offshore hake.

7. In § 648.80, paragraphs (a)(3)(i), (a)(4)(i)(A) through (a)(4)(i)(D), (a)(7), (a)(8)(i), (a)(9)(i)(D), (b)(3)(i), (c)(4), (g)(1) and (g)(2)(i) are revised, and (a)(4)(i)(E) through (a)(4)(i)(G), and (g)(4) are added to read as follows:

§ 648.80 Regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(3) * * *

(i) *Restrictions on fishing for, possessing, or landing fish other than shrimp.* (A) Until May 1, 2002, a vessel fishing in the northern shrimp fishery described in this section under this exemption may not fish for, possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as allowable incidental species: Longhorn sculpin; combined silver hake and offshore hake—up to an amount equal to the total weight of shrimp possessed on board or landed, not to exceed 3,500 lb (1,588 kg); and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(B) Beginning May 1, 2002, a vessel fishing for Northern shrimp may not fish for, possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as allowable incidental species: Longhorn sculpin; combined silver hake and offshore hake—up to 100 lb (45.36 kg); and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less.

* * * * *

(4) * * *

(i) * * *

(A) A vessel fishing in the Cultivator Shoal Whiting Fishery under this exemption must have a letter of authorization issued by the Regional Administrator on board and is subject to the following:

(B) Until May 1, 2002, a vessel participating in this fishery may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined—up to a maximum of 30,000 lb (13,608 kg), except for the following, with the restrictions noted, as allowable incidental species: Herring; longhorn sculpin; squid; butterfish; mackerel; dogfish, and red hake—up to 10 percent each, by weight, of all other species on board; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by

weight, of all other species on board or 200 lobsters, whichever is less.

(C) Beginning May 1, 2002, a vessel fishing in the Cultivator Shoal Whiting Fishery is subject to the mesh size restrictions specified in paragraph (a)(4)(i)(D) of this section and may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined—up to a maximum of 10,000 lb (4,536 kg), except for the allowable incidental species listed in paragraph (a)(4)(i)(B) of this section.

(D) All nets must comply with a minimum mesh size of 3 in (7.62 cm) square or diamond mesh applied to the first 100 meshes (200 bars in the case of square mesh) counted from the terminus of the net for vessels greater than 60 ft (18.28 m) in length and the first 50 meshes (100 bars in the case of square mesh) counted from the terminus of the net for vessels less than or equal to 60 ft (18.28 m) in length.

(E) Fishing is confined to a season of June 15 through September 30, unless otherwise specified by notification in the **Federal Register**.

(F) When transiting through the GOM/GB Regulated Mesh Area specified under paragraph (a)(1) of this section, any nets with a mesh size smaller than the minimum mesh specified in paragraph (a)(2) of this section must be stowed in accordance with one of the methods specified in § 648.23(b), unless the vessel is fishing for small mesh multispecies under another exempted fishery specified in paragraph (a) of this section during the course of the trip.

(G) A vessel participating in the Cultivator Shoal Fishery may fish for small mesh multispecies in exempted fisheries outside of the Cultivator Shoal Whiting Fishery Exemption Area, provided that the vessel complies with the requirements specified in paragraph (a)(4)(i) of this section for the entire trip.

* * * * *

(7) *Addition or deletion of exemptions*—(i)(A) *Regulated multispecies.* An exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of regulated species bycatch, if the Regional Administrator, after consultation with the NEFMC, determines that the percentage of regulated species caught as bycatch is, or can be reduced to, less than 5 percent, by weight, of total catch and that such exemption will not jeopardize fishing mortality objectives. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Administrator may take into consideration various factors including, but not limited to, juvenile mortality. A fishery can be defined, restricted, or allowed by area, gear, season, or other means determined to be appropriate to reduce bycatch of regulated species. An existing exemption may be deleted or modified if the Regional Administrator determines that the catch of regulated species is equal to or greater than 5 percent, by weight, of total catch, or that continuing the exemption may jeopardize meeting fishing mortality objectives. Notification of additions, deletions or modifications will be made through issuance of a rule in the **Federal Register**.

(B) *Small mesh multispecies.* Beginning May 1, 2002, an exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of small mesh multispecies bycatch, if the Regional Administrator, after consultation with the NEFMC, determines that the percentage of small mesh multispecies caught as bycatch is, or can be reduced to, less than 10 percent, by weight, of total catch and that such exemption will not jeopardize fishing mortality objectives. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Administrator may take into consideration various factors including, but not limited to, juvenile mortality. A fishery can be defined, restricted, or allowed by area, gear, season, or other means determined to be appropriate to reduce bycatch of small mesh multispecies. An existing exemption may be deleted or modified if the Regional Administrator determines that the catch of regulated species is equal to or greater than 10 percent, by weight, of total catch, or that continuing the exemption may jeopardize meeting fishing mortality objectives. Notification of additions, deletions, or modifications will be made through issuance of a rule in the **Federal Register**.

(ii) The NEFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.90(b), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Administrator to determine, without public comment, percentage catch of regulated species or small mesh multispecies.

(8) * * *

(i)(A) Unless otherwise prohibited in § 648.81, until May 1, 2002, a vessel subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish with or possess nets with a mesh size smaller than the minimum size, provided the vessel complies with the requirements of paragraphs (a)(3)(ii) or (a)(8)(iv) of this section from July 15 through November 15 when fishing in Small Mesh Area 1 and from January 1 through June 30 when fishing in Small Mesh Area 2. A vessel may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake, butterfish, dogfish, herring, mackerel, ocean pout, scup, squid and red hake, except for the following allowable incidental species (bycatch as the term is used elsewhere in this part) with the restrictions noted: Longhorn sculpin; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less.

(B) Unless otherwise prohibited in § 648.81, beginning May 1, 2002, in addition to the requirements specified in paragraph (a)(8)(i)(A) of this section, vessels are subject to the mesh size restrictions specified in paragraph (a)(4)(i)(D) of this section and may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake—up to 10,000 lb (4,536 kg), butterfish, dogfish, herring, mackerel, ocean pout, scup, squid and red hake, except for the following allowable incidental species (bycatch as the term is used elsewhere in this part) with the restrictions noted: Longhorn sculpin; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less.

(C) Small mesh areas 1 and 2 are defined by straight lines connecting the following points in the order stated (copies of a chart depicting these areas are available from the Regional Administrator upon request (see Table 1 to § 600.502 of this chapter)):

Small Mesh Area 1

Point	N. lat.	W. long.
SM1	43°03'	70°27'
SM2	42°57'	70°22'
SM3	42°47'	70°32'
SM4	42°45'	70°29'
SM5	42°43'	70°32'

Small Mesh Area 1

Point	N. lat.	W. long.
SM6	42°44'	70°39'
SM7	42°49'	70°43'
SM8	42°50'	70°41'
SM9	42°53'	70°43'
SM10	42°55'	70°40'
SM11	42°59'	70°32'
SM1	43°03'	70°27'

Small Mesh Area 2

Point	N. lat.	W. long.
SM13	43°05.6'	69°55.0'
SM14	43°10.1'	69°43.3'
SM15	42°49.5'	69°40.0'
SM16	42°41.5'	69°40.0'
SM17	42°36.6'	69°55.0'
SM13	43°05.6'	69°55.0'

* * * * *

(9) * * *

(i) * * *

(D)(*1*) Until May 1, 2002, the following species may be retained, with the restrictions noted, as allowable incidental species in the Nantucket Shoals Dogfish Fishery Exemption Area: Longhorn sculpin; silver hake—up to 200 lb (90.72 kg); monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less; and skate or skate parts—up to 10 percent, by weight, of all other species on board.

(*2*) Beginning May 1, 2002, vessels are subject to the mesh size restrictions specified in paragraph (a)(4)(i)(D) of this section and may retain the allowable incidental species listed in paragraph (a)(9)(i)(D)(*1*) of this section.

* * * * *

(b) * * *

(3) * * *

(i) *Species exemptions.* (A) Until May 1, 2002, vessels subject to the minimum mesh size restrictions specified in paragraph (b)(2) of this section may fish for, harvest, possess, or land butterfish, dogfish (trawl only), herring, mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake, and weakfish with nets of a mesh size smaller than the minimum size specified in the SNE Regulated Mesh Area, provided such vessels comply with requirements specified in paragraph (b)(3)(ii) of this section and with the mesh size and possession limit restrictions specified under § 648.86(c).

(B) Beginning May 1, 2002, vessels subject to the minimum mesh size restrictions specified in paragraph (b)(2) of this section may not use nets with mesh size less than 3 in (7.62 cm), unless exempted pursuant to paragraph (b)(4) of this section, and may fish for, harvest, possess, or land butterfish, dogfish (trawl only), herring, mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake - up to 10,000 lb (4,536 kg), and weakfish with nets of a mesh size smaller than the minimum size specified in the SNE Regulated Mesh Area, provided such vessels comply with requirements specified in paragraph (a)(4)(i)(D) and (b)(3)(ii) of this section and with the mesh size and possession limit restrictions specified under § 648.86.

* * * * *

(c) * * *

(4) *Addition or deletion of exemptions.* Same as paragraph (a)(7) of this section.

* * * * *

(g) *Restrictions on gear and methods of fishing*—(1) *Net obstruction or constriction.* Except as provided in paragraph (g)(4) of this section, a fishing vessel shall not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net subject to minimum mesh size restrictions except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 in (7.62 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the trawl net. "The top of the trawl net" means the 50 percent of the net that (in a hypothetical situation) would not be in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes are not considered part of the top of the trawl net.

(2) * * * (i) Except as provided in paragraph (g)(4) of this section, a fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net subject to minimum mesh size restrictions, as defined in paragraph (g)(1) of this section, if it obstructs the meshes of the net in any manner.

* * * * *

(4) Net strengthener restrictions when fishing for small mesh multispecies. A vessel fishing for small mesh multispecies in the GOM/GB, SNE, or MA Regulated Mesh Areas as defined in paragraphs (a), (b), and (c) of this section with nets of mesh size smaller than 2.5–in (6.35–cm) may use a net strengthener provided that the net strengthener complies with the provisions specified under § 648.23(d).

* * * * *

8. In § 648.86, paragraphs (c) and (d) are redesignated as paragraphs (e) and (f) respectively and new paragraphs (c) and (d) are added to read as follows:

§ 648.86 Possession restrictions.

* * * * *

(c) *Small mesh multispecies until May 1, 2002.* (1) Vessels issued a valid Federal multispecies permit specified under § 648.4(a)(1) are subject to the following possession limits for small mesh multispecies:

(i) Mesh size smaller than 2.5 in (6.35 cm) and vessels without a letter of authorization. Vessels fishing for, in possession of, or landing small mesh multispecies with nets, or with nets on board that have not been properly stowed, of mesh size smaller than 2.5 in (6.35 cm), and, vessels which have not been issued a letter of authorization pursuant to paragraph (c)(1)(ii) or (c)(1)(iii) of this section may possess on board and land up to only 3,500 lb (1,588 kg) of combined silver hake and offshore hake. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(ii) Mesh size 2.5 in (6.35 cm) or greater. Vessels fishing for, in possession of, or landing small mesh multispecies may possess on board and land up to only 7,500 lb (3,402 kg) of combined silver hake and offshore hake when fishing with nets with a minimum mesh size of 2.5 in (6.35 cm) provided the vessel has a letter of authorization issued by the Regional Administrator as described in paragraph (c)(2) of this section requiring mesh size of at least 2.5 in (6.35 cm) to be used and provided that any nets of mesh size smaller than 2.5 in (6.35 cm) have not been used to catch such fish and are properly stowed pursuant to § 648.81(e). Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(iii) Mesh size of 3 in (7.62 cm) or greater. Vessels fishing for, in possession of, or landing small mesh multispecies may possess on board and land up to only 30,000 lb (13,608 kg) of

combined silver hake and offshore hake when fishing with nets with a minimum mesh size of 3 in (7.62 cm) provided the vessel has a letter of authorization issued by the Regional Administrator as described in paragraph (c)(2) of this section requiring mesh size of at least 3 in (7.62 cm) to be used and provided that any nets of mesh size smaller than 3 in (7.62 cm) have not been used to catch such fish and are properly stowed pursuant to § 648.81(e). Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(2) *Letter of authorization.* Vessels fishing pursuant to paragraphs (c)(1)(ii) or (c)(1)(iii) of this section must carry a letter of authorization to fish in the minimum mesh size/possession limit category on board the vessel. To request a letter of authorization, vessel owners must call the Northeast Region Permit Office during normal business hours and provide the vessel name, owner name, permit number, the desired mesh size/possession limit category and the period of time that the vessel would be enrolled. Since letters of authorization would be effective on the date of receipt, vessel owners should allow appropriate processing and mail time. Enrollment must be a minimum of 30 days. To withdraw from a category, vessel owners must call the Northeast Region Permit Office. Withdrawals would be effective upon date of request. Withdrawals may occur after a minimum of 7 days of enrollment in which case vessel owners may not re-enroll the vessel in any mesh size/possession limit category until 30 days from the original enrollment period have passed and are subject to a silver hake and offshore hake possession limit of 3,500 lb (1,588 kg) regardless of the mesh size in use. For example, if a vessel owner enrolls in the 3–in (7.62 cm) mesh/30,000 (13,608 kg) lb possession limit category which is effective October 1 and chooses November 30 as the end date but withdraws on October 7 and enrolls in the possession limit category, the vessel may not be re-enrolled in the 2.5–in (6.35 cm)/ 7,500 lbs (3,402 kg) or 3–in mesh/30,000 lb (13,608 kg) possession limit category until October 31.

(3) *Possession limit for vessels participating in the Northern shrimp fishery.* Vessels participating in the Small mesh Northern Shrimp Fishery exemption, as described in § 648.80(a)(3) and issued a valid Federal multispecies permit specified under § 648.4(a)(1) may possess and land silver hake and offshore hake, combined, up to an amount equal to the weight of shrimp on board, not to exceed 3,500 lb (1,588 kg). Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(4) *Possession restriction for vessels electing to transfer small mesh multispecies at sea.* Vessels issued a valid Federal multispecies permit and issued a letter of authorization to transfer small mesh multispecies at sea according to the provisions specified in § 648.13(b) will be subject to a combined silver hake and offshore hake possession limit which is 500 lb (226.8 kg) less than the possession limit the vessel would otherwise receive. This deduction will be noted on the transferring vessel's letter of authorization from the Regional Administrator.

(d) *Small mesh multispecies beginning on May 1, 2002*—(1) *Federal multispecies permit holders.* A vessel issued a valid Federal multispecies permit specified under § 648.4 (a)(1) may possess on board and land up to 10,000 lb (4,536 kg) of combined silver hake and offshore hake. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(2) *Possession limit for vessels participating in the Northern shrimp fishery.* Vessels participating in the Small Mesh Northern Shrimp Fishery exemption, as described in § 648.80(a)(3) and issued a valid Federal multispecies permit specified under § 648.4(a)(1) may possess and land silver hake and offshore hake, combined, up to 100 lb (45.36 kg). Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(3) *Possession restriction for vessels electing to transfer small mesh multispecies at sea.* Vessels issued a valid Federal multispecies permit and issued a letter of authorization to transfer small mesh multispecies at sea according to the provisions specified in § 648.13(b) will be subject to a combined silver hake and offshore hake possession limit which is 500 lb (226.9 kg) less than the possession limit the vessel would otherwise receive. This deduction will be noted on the transferring vessel's letter of authorization from the Regional Administrator.

* * * * *

9. In § 648.90, paragraphs (a) introductory text, (a)(1) through (a)(4), and (b)(1) are revised to read as follows:

§ 648.90 Framework specifications.

(a) *Annual review.* The Multispecies Monitoring Committee (MSMC) shall meet on or before November 15 of each year to develop target TACs for the upcoming fishing year and to develop options for NEFMC consideration on any changes, adjustments, or additions to DAS allocations, closed areas, or on other measures necessary to achieve the NE Multispecies FMP goals and objectives. For the year 2000 and thereafter, the MMC and the Whiting Monitoring Committee (WMC) shall meet separately on or before November 15 of each year to develop options for NEFMC consideration on any changes, adjustments, or on additions to DAS allocations, if applicable, closed areas or other measures necessary to achieve the NE Multispecies FMP goals and objectives.

(1) The MSMC and WMC, as applicable, shall separately review available data pertaining to: Catch and landings, discards, DAS, and other measures of fishing effort, survey results, stock status, current estimates of fishing mortality, and any other relevant information.

(2) Based on this review, the MSMC shall recommend target TACs and develop options necessary to achieve the FMP goals and objectives, which may include a preferred option. The WMC shall recommend management options necessary to achieve FMP goals and objectives pertaining to small mesh multispecies, which may include a preferred option. The MSMC and WMC must demonstrate through analyses and documentation that the options they develop are expected to meet the NE Multispecies FMP goals and objectives. The MSMC and WMC may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the MSMC or WMC may include any of the management measures in the NE Multispecies FMP, including, but not limited to: Annual target TACs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the NE Multispecies FMP for the 10 regulated species or small mesh multispecies; DAS changes; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; description and identification of essential fish habitat (EFH), fishing gear management measures to protect EFH, designation of habitat areas of particular concern within EFH; and any other management measures currently included in the NE Multispecies FMP. In addition, for the 2002 fishing year, the WMC must consider, and recommend as appropriate, management options other than the default measures for small mesh multispecies management (mesh and possession limit restrictions for small mesh multispecies beginning May 1, 2002).

(3) The NEFMC shall review the recommended target TACs recommended by the MSMC and all of the options developed by the MSMC and WMC, and other relevant information, consider public comment, and develop a recommendation to meet the NE Multispecies FMP objective pertaining to regulated species or small mesh multispecies that is consistent with other applicable law. If the NEFMC does not submit a recommendation that meets the NE Multispecies FMP objectives and is consistent with other applicable law, the Regional Administrator may adopt any option developed by the MSMC or WMC, unless rejected by the NEFMC, as specified in paragraph (a)(6) of this section, provided the option meets the NE Multispecies FMP objectives and is consistent with other applicable law.

(4) Based on this review, the NEFMC shall submit a recommendation to the Regional Administrator of any changes, adjustments or additions to DAS allocations (if applicable), closed areas or other measures necessary to achieve the NE Multispecies FMP's goals and objectives. Included in the NEFMC's recommendation will be supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the NEFMC.

* * * * *

(b) * * * (1) *Adjustment process.* (i) After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures, other than to address gear conflicts, must come from one or more of the following categories: DAS changes, effort monitoring, data reporting, possession limits, gear restrictions, closed areas, permitting restrictions, crew limits, minimum fish sizes, onboard observers, minimum hook size and hook style, the use of crucifiers in the hook-gear fishery, fleet sector shares, recreational fishing measures, area closures and other appropriate measures to mitigate marine mammal entanglements and interactions, description and identification of essential fish habitat (EFH), fishing gear management measures to protect EFH, designation of habitat areas of particular concern within EFH, and any other management measures currently included in the FMP. In addition, the Council's recommendation on adjustments or additions to management measures pertaining to small mesh multispecies, other than to address gear conflicts, must come from one or more of the following categories: Quotas and appropriate seasonal adjustments for vessels fishing in experimental or exempted fisheries that use small mesh in combination with a separator trawl/grate (if applicable), modifications to separator grate (if applicable) and mesh configurations for fishing for small mesh multispecies, adjustments to whiting stock boundaries for management purposes, adjustments for fisheries exempted from minimum mesh requirements to fish for small mesh multispecies (if applicable), season adjustments, declarations, and participation requirements for the Cultivator Shoal Whiting Fishery Exemption Area

(ii) *Adjustment process for Whiting TACs and DAS.* The Council may develop recommendations for a Whiting DAS effort reduction program or a Whiting TAC through the framework process outlined in paragraph (c)(1) of this section only if these options are accompanied by a full set of public hearings that span the area affected by the proposed measures in order to provide adequate opportunity for public comment.

* * * * *

[FR Doc. 99–23488 Filed 9–10–99; 8:45 am]
BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 176
Monday, September 13, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV99–944–1 NC]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for specified exempt import commodities.

DATES: Comments on this notice must be received by November 12, 1999.

ADDITIONAL INFORMATION OR COMMENTS: Contact Valerie L. Emmer-Scott, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S., P.O. Box 96456, Washington, DC 20090–6456; Tel: (202) 205–2829, Fax: (202) 720–5698, or E-mail: moabdocket__clerk@usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Specified Commodities Imported into the United States Exempt from Import Requirements.

OMB Number: 0581–0167.

Expiration Date of Approval: May 31, 2000.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Section 8e of the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674) requires that whenever the Secretary of Agriculture issues grade, size, quality, or maturity regulations under domestic marketing orders for certain commodities, the same or comparable regulations on imports of those commodities must be issued. Import regulations apply only during those periods when domestic marketing order regulations are in effect. Currently, the following commodities are subject to Section 8e import regulations: avocados, dates (other than dates for processing), hazelnuts, grapefruit, table grapes, kiwifruit, limes, olives (other than Spanish-style olives) onions, oranges, Irish potatoes, prunes, raisins, tomatoes, and walnuts. However, imports of these commodities are exempt from such requirements if they are imported for such outlets as processing, charity, animal feed, seed, and distribution to relief agencies, when those outlets are exempt under the applicable marketing order.

Safeguard procedures in the form of importer and receiver reporting requirements are used to ensure that the imported commodity is provided to authorized exempt outlets. The safeguard procedures are similar to the reports currently required by most domestic marketing orders. The import regulations require importers and receivers of imported fruit, vegetable, and specialty crops to submit a form, as provided in sections 944.350, 980.501, and 999.500.

An importer wishing to import commodities for exempt purposes must complete, prior to importation, an Importer's Exempt Commodity Form (FV–6), which is a four-part form. Copy one is presented to the U.S. Customs Service. The importer files copy two with the Marketing Order Administration Branch (MOAB) of the Fruit and Vegetable Programs, AMS, within two days after the commodity enters the United States. The third copy of the form accompanies the exempt shipment to its intended destination. The receiver certifies that the commodity has been received and that it will be utilized for authorized exempt purposes. The receiver then files copy three with MOAB, within two days after receiving the commodity. The fourth copy is retained by the importer.

The Department of Agriculture (Department) utilizes this information to ensure that imported goods destined for exempt outlets are given no less favorable treatment than that afforded to domestic goods destined for such exempt outlets. These exemptions are consistent with Section 8e import regulations under the Act.

This form requires the minimum amount of information necessary to effectively carry out the requirements of the Act, and its use is necessary to fulfill the intent of the Act, and to administer Section 8e compliance activities.

In addition, included in this extension and revision of a currently approved information collection is another form titled, "Civil Penalty Stipulation Agreement" (FV–7). This form provides AMS with an additional tool to obtain resolution of certain cases under the AMAA without the cost of going to a hearing. Stipulation agreements may be appropriate for, but not limited to, instances of minor violations of a marketing order or marketing agreement or section 8e of the AMAA. However, AMS is not under any obligation to issue stipulation agreements. The only requirement for this form is a signature, therefore, there is no burden on the person if they agree to the Agreement and return it.

The information collected is used primarily by authorized representatives of the Department, including AMS, Fruit and Vegetable Programs' regional and headquarters staff. AMS is the primary user of the information.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .1698 hours per response.

Respondents: Importers and receivers of exempt commodities.

Estimated Number of Respondents: 1,920.

Estimated Number of Responses per Respondent: 5.

Estimated Total Annual Burden on Respondents: 1,632 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–0167 and be mailed to Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, D.C. 20090-6456; Fax (202) 720–5698; or E-mail: moabdocket—clerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be available for public inspection in the Office of the Docket Clerk during regular USDA business hours at 14th and Independence Ave., S.W., Washington, D.C., room 2525–S.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed: September 7, 1999

Robert C. Keeney

Deputy Administrator, Fruit and Vegetable Programs

[FR Doc. 99–23790 Filed 9–10–99; 8:45 am]

BILLING CODE 3410–02–p

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Notice and Request for Public Comment on the Watermelon Pilot Crop Insurance Program

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Notice with request for comments.

SUMMARY: This notice announces that the Federal Crop Insurance Corporation (FCIC) is hereby suspending the current watermelon pilot crop insurance program for the 2000 crop year. FCIC will continue to work with producers, industry representatives, and others to develop a revised watermelon insurance program that may better meet the needs of producers. The intended effect of this action is to advise all interested parties of FCIC's suspension of the current watermelon program for the 2000 crop year and to solicit comments regarding a revised watermelon pilot crop insurance program.

DATES: Written comments and opinions on suggested improvements for the insurance of watermelons will be accepted until close of business November 12, 1999.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Research and Evaluation Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Comments may also be sent via the Internet to DIRECTORPDD@RM.FCIC.USDA.GOV. A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., CDT, Monday through Friday except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: Kathy Tiefel, Insurance Management Specialist, Research and Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926–6343.

SUPPLEMENTARY INFORMATION: The current watermelon pilot crop insurance program was implemented for the 1999 crop year in the following fifteen counties in eight States: Geneva County in Alabama; Sussex County in Delaware; Alachua, Jackson, and Manatee Counties in Florida; Crisp, Tift, Turner, and Worth Counties in Georgia; Wicomico County in Maryland; Chowan and Sampson Counties in North Carolina; and Duval, Frio, and Hidalgo Counties in Texas. The selected pilot program counties accounted for approximately 19 percent of the national watermelon planted acreage. The pilot program utilized an actual production history (APH) plan of insurance. As a result of complaints received regarding the watermelon pilot crop insurance program concerning excess watermelon production and determination of market prices, FCIC is suspending the current program for the 2000 crop year. FCIC will continue to work with producers, industry representatives, and others to develop a watermelon insurance program that may better meet the needs of producers.

Notice

FCIC is hereby suspending the current watermelon pilot crop insurance program for the 2000 crop year. Producers with existing watermelon policies will have those policies canceled by the cancellation date in accordance with the terms of the policy. FCIC will continue to work with producers, industry representatives, and others to develop a watermelon insurance program that may better meet the needs of producers. Plans of insurance other than the APH plan will be considered. FCIC is soliciting comments regarding a revised watermelon pilot crop insurance program.

Authority: 7 U.S.C. 1506(l), 1506(p).

Signed in Washington, DC, on September 7, 1999.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 99–23795 Filed 9–10–99; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes in NCRS National Handbook of Conservation Practices for Review and Comment

AGENCY: Natural Resources Conservation Service (NRCS), DOA.

ACTION: Notice of proposed changes in the NRCS National Handbook of Conservation Practices for review and comment.

SUMMARY: Notice is hereby given of the intention of NRCS to issue a series of new or revised conservation practice standards in its National Handbook of Conservation Practices. These standards include Closure of Waste Impoundments, Conservation Cover, Contour Farming, Cover Crop, Contour Stripcropping, Grassed Waterway, and Irrigation System—Microirrigation. NRCS State Conservationists who choose to adopt these practices for use within their States will incorporate them into Section IV of their Field Office Technical Guide. These practices may be used in conservation systems that treat highly erodible land or on land determined to be wetland.

EFFECTIVE DATES: Comments will be received on or before November 12, 1999. This series of new or revised conservation practice standards will be adopted after the close of the 60-day period.

FOR FURTHER INFORMATION CONTACT: Single copies of these standards are available from NRCS-CED in Washington, DC. Submit individual inquiries and return any comments in writing to William Hughey, National Agricultural Engineer, Natural Resources Conservation Service, Post Office Box 2890, Room 6139–S, Washington, DC 20013–2890. Telephone Number 202–720–5023. The standards are also available and can be downloaded from the Internet at: http://www.ftw.nrcs.usda.gov/practice__stds.html.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires NRCS to make available for public review and comment proposed

revisions to conservation practice standards used to carry out the highly erodible land and wetland provisions of the law. For the next 60 days, NRCS will receive comments relative to the proposed changes. Following that period, a determination will be made by NRCS regarding disposition of those comments, and a final determination of change will be made.

Pearlie S. Reed,

Chief, Natural Resources Conservation Service, Washington, D.C.

[FR Doc. 99–23673 Filed 9–10–99; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Brazos Electric Power Cooperative, Inc.; Notice of Availability of an Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of availability of an environmental assessment.

SUMMARY: Notice is hereby given that the Rural Utilities Service (RUS) is issuing an Environmental Assessment with respect to the potential environmental impacts related to the construction and operation of the Lewisville 345/138 kV Switching Station in the City of Lewisville, Texas. The project is proposed by Brazos Electric Power Cooperative, Inc. (Brazos), of Waco, Texas. RUS may provide financing assistance for the project.

FOR FUTHER INFORMATION CONTACT: Dennis E. Rankin, Environmental Protection Specialist, RUS, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone: (202) 720–1953 or e-mail: *drankin@rus.usda.gov.*; or David McDaniel, Brazos, PO Box 2585, Waco, Texas 76702–2585, telephone: (254) 750–6324 or e-mail: dmcdaniel@brazoselectric.com.

SUPPLEMENTARY INFORMATION: Brazos is planning to construct an 8–10 acre 345/138 kV switching station in Denton County, Texas. The proposed site is located in the vicinity of the northwest corner of North Mill Street and Jones Street in the City of Lewisville. Existing transmission facilities are located in the immediate area.

An environmental report (ER) which describes the project further and discusses the environmental impacts of the proposed project was prepared by Brazos. RUS has conducted an independent evaluation of the ER and believes that it accurately assesses the impacts of the proposed project. No adverse impacts are expected with the construction of the project. RUS has reviewed and accepted the document as its Environmental Assessment and is making it available for public review.

The EA can be reviewed at the address provided above or at the following locations:

Brazos Electric Power Cooperative, Inc., 2404 LaSalle Avenue, Waco, Texas 76702–2585, Telephone: (254) 750–6324

CoServ, 3501 FM 2181, Corinth, Texas 76205–3741, Telephone: (940) 321–4640

Lewisville Public Library, 1197 West Main Street, Lewisville, Texas 75067–3425, Telephone: (972) 219–3570

Questions and comments should be sent to RUS at the address provided. RUS should receive comments on the Environmental Assessment in writing by October 15, 1999, to ensure that the comments are taken into consideration prior to RUS making its environmental determination.

Dated: September 2, 1999.

Glendon D. Deal,

Acting Director, Engineering and Environmental Staff.

[FR Doc. 99–23793 Filed 9–10–99; 8:45 am]

BILLING CODE 3410–15–P

APPLACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE COMMISSION

Annual Meeting

Time and Date: 9:00 a.m.—12:00 p.m. October 20, 1999

Place: Harrisburg Hilton and Towers, One North Second Street, Harrisburg, PA 17101.

Status: Most of the meeting will be open to the public. An executive session closed to the public will be held about 9:15 a.m. to 10:00 a.m.

Matters to be Considered:

Portions Open to the Public: The primary purpose of this meeting is to (1) Review the independent auditors' report of the Commissions' financial statement for fiscal year 1998–1999; (2) Review the Commission's annual reports for fiscal years 1997–1998 and 1998–1999; (3) Consider a proposed budget for fiscal year 2000–2001; (4) Review the project reports for the low-level radioactive waste (LLRW) disposal facility siting process in Pennsylvania; (5) Review the status of siting efforts in other states and compacts; (6) Review and discuss the General Accounting Office's (GAO) report on management and disposal of LLRW; and (7) Discuss renewal of Commission's investment agreement with the Pennsylvania Office of the Treasurer.

Portions Closed to the Public: Executive Session from about 9:15 a.m. to 10:00 a.m. to discuss personal matter

Contact person for more information: Richard R. Janati, Chairman Seif's Staff Member on the Commission, at 717–787–2163.

Richard R. Janati,

Chairman's Staff Member on the Commission.

[FR Doc. 99–23681 Filed 9–10–99; 8:45 am]

BILLING CODE 0000–00–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 45–99]

Foreign-Trade Zone 27—Boston, MA; Application for Subzone, J. Baker, Inc. (Distribution of Apparel, Footwear and Accessories), Canton, MA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Massachusetts Port Authority (Boston, MA), grantee of FTZ 27, requesting special-purpose subzone status for the apparel, footwear and accessories warehousing/distribution facilities of J. Baker, Inc., located in Canton, MA, some 22 miles south of Boston. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on September 7, 1999.

The Baker facilities are located at 330 Turnpike Street (750,000 sq. ft. on 30.7 acres) and 555 Turnpike Street (45,850 sq. ft. on 4.16 acres). There are 800 employees at the two facilities. The facilities are used for storage, inspection, finishing, packaging and distribution of a wide variety of apparel, footwear and accessories such as neckties, belts, hosiery, gloves and novelty items. About 65 percent of the products are sourced from abroad and over 5 percent are exported. No authority is being sought for activity conducted under FTZ procedures that would result in a change in tariff classification.

Zone procedures would exempt Baker from Customs duty payments on foreign products that are reexported. On its domestic sales, the company would be able to defer duty payments until merchandise is shipped from the plant. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 12, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 29, 1999).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, 164 Northern Avenue, World Trade Center, Suite 307, Boston, MA 02210

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: September 7, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–23774 Filed 9–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 43–99]

Foreign-Trade Zone 49—Newark/Elizabeth, NJ; Application for Subzone, Firmenich, Inc. (Flavor and Fragrance Products) Plainsboro and Port Newark, NJ

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port Authority of New York and New Jersey, grantee of FTZ 49, Newark/Elizabeth, NJ, requesting special-purpose subzone status for the flavor and fragrance manufacturing facilities of Firmenich, Inc., located in Plainsboro and Port Newark, New Jersey. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on September 1, 1999.

The Firmenich, Inc. facilities are located at 250 Plainsboro Road (384,220 sq. ft. on 58 acres, 575 employees), Plainsboro and at 150 Firmenich Way (833,041 sq. ft. on 19 acres, 129 employees), Port Newark. The facilities are used to produce a variety of flavor and fragrance products, which are used in perfumes, cosmetics, soaps, detergents, personal care products, prepared foods, soft drinks, dairy foods, pharmaceuticals, dietary foods and confectionary products. Most of the finished products are categorized as flavor and fragrance products (duty rate—zero). The products are blended from numerous natural and synthetic ingredients, including a number of natural compounds not available in the U.S. Foreign-sourced materials may, depending on the product, account for a substantial portion of the finished products' value. It is estimated that overall foreign-sourced materials account for some 75 percent of total material value.

The foreign-sourced materials which will account for the primary FTZ savings are as follows:

Essential Oils	HTSUS 3301.13.0000, 4.6%
	HTSUS 3301.12.0000, 3.2%
Heterocyclic compounds with nitrogen hetero-atoms	HTSUS 2933.39.2700, 9.5%
Heterocyclic compounds with oxygen hetero-atoms	HTSUS 2932.99.9000, 3.7%
	HTSUS 2932.29.5050, 3.7%
	HTSUS 2932.29.4500, 1.8/kg+11.4%
	HTSUS 2932.19.5000, 3.7%
	HTSUS 2932.19.1000, 6.5%
Carboxylic acids	HTSUS 2918.30.9000, 3.7%
Unsaturated acyclic monocarboxylic acids, cyclic monocarboxylic acids	HTSUS 2916.19.5000, 3.7%
Ketones and quinones whether or not with other oxygen functions, and their halogenated, sulfonated, nitrated, or nitrosated derivatives.	HTSUS 2914.40.0000, 4.8%
	HTSUS 2914.29.5000, 4.8%
	HTSUS 2914.23.0000, 5.5%
Aldehydes, whether or not with oxygen function; cyclic polymers of aldehydes; paraformaldehyde.	HTSUS 2913.30.2000, 4.8%
Epoxides, epoxy alcohols, expoxyphenols and epoxy ethers	HTSUS 2910.90.5000, 4.8%
Cyclic alcohols	HTSUS 2906.19.5000, 5.5%
Acyclic alcohols	HTSUS 2905.29.9000, 3.7%
	HTSUS 2905.22.5050, 4.8%
	HTSUS 2905.22.5010, 4.8%

The application indicates that the company may also import under FTZ procedures a wide variety of other flavor and fragrance materials from the following general categories: sugars, gelatins, chlorides, fruit and vegetable extracts and oils, as well as various other natural and synthetic ingredients and products used in production, packaging and distribution of flavor and fragrance products (duty rates range 0–19.6%).

Zone procedures would exempt Firmenich from Customs duty payments on foreign materials used in production for export. On domestic shipments, the company would be able to defer Customs duty payments on foreign materials and choose the duty rate that applies to the finished products (duty free) instead of the rates otherwise applicable to the foreign materials (noted above). The company would also be exempt from duty payments on foreign merchandise that becomes scrap/waste. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 12, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to November 29, 1999.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, 6 World Trade Center, Rm. 635, New York, NY 10048

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue NW, Washington, DC 20230

Dated: September 2, 1999.
Dennis Puccinelli,
Acting Executive Secretary.
[FR Doc. 99–23772 Filed 9–10–99; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 44–99]

Foreign-Trade Zone 44—Mt. Olive, NJ; Request for Manufacturing Authority, Givaudan Roure Corporation, (Flavor and Fragrance Products), Mt. Olive, NJ

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the New Jersey Commerce and Economic Growth Commission, Trenton, NJ, grantee of FTZ 44, pursuant to § 400.28(a)(2) of the Board's regulations (15 CFR part 400), requesting authority on behalf of Givaudan Roure Corporation (Givaudan) to manufacture flavor and fragrance products under FTZ procedures within FTZ 44. It was formally filed on September 3, 1999.

The Givaudan facility (186,000 sq. ft.) is located at 300 Waterloo Valley Road within FTZ 44 in Mt. Olive, New Jersey. The Givaudan facility (186 employees) is used to produce a variety of flavors and fragrances, which are used in soaps, detergents, perfumes, cosmetics, toiletries and household products blended from numerous natural and synthetic ingredients. Most of the finished products are categorized as fragrance compounds (duty rate—zero). The products are blended from a variety of natural and synthetic ingredients, a number of which are not available in the U.S. Foreign-sourced materials will account for, on average, 50 percent of the finished products' value, and include compounds such as tropional, peach pure, fixambrene, verdantiol, evernyl, hexenyl salicylate-cis-3, ethyl methyl butyrate, phenoxyethyl isobutyrate, phenyl ethyl acetate, linalyl acetate synthetic FCC, hexenyl acetate-CIS 3, jasnone cis, isoraldeine, ionone beta synthetic, methylionantheme gamma, isoraldeine pure, lilial, cyclamen aldehyde extra, tricyclal, vernaldehyde, cyclal, lemarome, melonal, sandalore, linalool synthetic, ethyl linalool, rhodinol, tetrahydro linalool, and dimetol (duty rates on these items range from 3.7% to 12.2%). The application indicates that the company may also import under FTZ procedures a wide variety of other fragrance compounds, as well as other materials related to packaging and distribution of fragrance products.

Zone procedures would exempt Givaudan from Customs duty payments on foreign materials used in production for export. On domestic shipments, the company would be able to defer Customs duty payments on foreign materials and choose the duty rate that applies to the finished products (duty free) instead of the rates otherwise applicable to the foreign materials (noted above). The company would also be exempt from duty payments on foreign merchandise that becomes scrap/waste (1%). The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is November 12, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 29, 1999).

A copy of the application and accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: September 3, 1999.
Dennis Puccinelli,
Acting Executive Secretary.
[FR Doc. 99–23773 Filed 9–10–99; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–801, A–475–801, A–588–804, A–559–801, A–401–801, A–549–801, A–412–801]

Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Italy, Japan, Singapore, Sweden, Thailand, and the United Kingdom; Amended Final Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, United States Department of Commerce.
ACTION: Notice of amended final results of administrative reviews.

SUMMARY: The United States Court of International Trade and the United States Court of Appeals for the Federal Circuit have affirmed the Department of Commerce's final remand results affecting final assessment rates for the administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Italy, Japan, Singapore, Sweden, Thailand, and the United Kingdom. The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof, cylindrical roller bearings and parts thereof, and spherical plain bearings and parts thereof. The period of review is May 1, 1992, through April 30, 1993. As there is now a final and conclusive court decision in these cases (with the exception of the case on Japan for which certain decisions are on appeal to the Court of Appeals for the Federal Circuit), we are amending our final results of reviews and we will instruct the U.S. Customs Service to liquidate entries subject to these reviews with the exception of those still under appeal.

EFFECTIVE DATE: September 13, 1999.

FOR FURTHER INFORMATION CONTACT: Larry Tabash or Robin Gray, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–5047 or (202) 482–4023, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions in effect as of December 31, 1994. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations as codified at 19 CFR part 353 (1995).

Background

On February 28, 1995, the Department published its final results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Germany, Italy, Japan, Singapore, Sweden, Thailand, and the United Kingdom, covering the period May 1, 1992, through April 30, 1993 (*AFBs 4*). See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Reviews, Partial Termination of Administrative Reviews, and Revocation In Part of Antidumping Duty Orders*, 60 FR 10900,10959 (February 28, 1995). These final results were amended on March 31, 1995, May 15, 1995, June 13, 1995, June 29, 1995, December 19, 1995, and August 8, 1997 (see 60 FR 16608, 60 FR 25887, 60 FR 31143, 60 FR 33791, 60 FR 65264, and 62 FR 42745, respectively). The classes or kinds of merchandise covered by these reviews are ball bearings and parts thereof (BBs), cylindrical roller bearings and parts thereof (CRBs), and spherical plain bearings and parts thereof (SPBs). A domestic producer, the Torrington Company, and a number of respondent interested parties filed lawsuits with the United States Court of International Trade (CIT) challenging the final results. These lawsuits were litigated at the CIT and the United States Court of Appeals for the Federal Circuit (CAFC). In the course of this litigation, the CIT and CAFC issued a number of orders and opinions, of which the following have resulted in changes to the antidumping margins calculated in *AFBs 4*:

The Torrington Company v. *United States*, Slip Op. 97–107 (CIT September 17, 1997) with respect to France;

The Torrington Company v. *United States*, Slip Op. 97–136 (CIT September 19, 1997) with respect to Sweden;

The Torrington Company v. *United States*, Slip Op. 97–29 (CIT March 7, 1997) with respect to Sweden;

NSK Ltd. v. *United States*, Slip Op. 95–163 (CIT September 25, 1995) with respect to Japan;

NSK Ltd. v. *United States*, Slip Op. 97–154 (CIT November 20, 1997) with respect to Japan;

NSK Ltd. v. *United States*, Slip Op. 98–34 (CIT March 24, 1998) with respect to Japan;

FAG Italia S.p.A. and FAG Bearings Corporation; SKF USA Inc., and SKF Industrie S.p.A. v. *United States et al. (FAG/SKF/Torrington)*, Slip Op. 96–187 (CIT November 22, 1996) with respect to Italy;

The Torrington Company v. *United States*, Slip Op. 98–116 (CIT August 12, 1998) with respect to Singapore;

The Torrington Company v. *United States*, Slip Op. 97–140 (CIT September 26, 1997) with respect to Thailand; the CAFC upheld the CIT on October 7, 1998, at 156 F. 3d 1361 (Fed. Cir. 1998);

FAG U.K. et al v. *United States*, Slip Op. 97–77 (CIT June 18, 1997) with respect to the United Kingdom; the CAFC dismissed appeal number 97–1550 on December 5, 1997.

In the context of the above-cited litigation, the CIT (in some cases based on decisions by the CAFC) ordered the Department to make methodological changes and to recalculate the antidumping margins for certain firms under review. Specifically, the CIT ordered the Department, *inter alia*, to make the following changes on a company-specific basis:

SNR France—correct a ministerial error;

SKF France—correct a ministerial error;

Nachi Japan—correct a clerical error;

NSK Japan—

(1) correct a clerical error,

(2) apply a tax-neutral methodology in computing the value-added tax adjustment,

(3) deny the adjustment to foreign market value for NSK's return rebates and post-sale price adjustments, and

(4) exclude NSK's zero-priced sample transfers from its U.S. sales database;

IKS Japan—

(1) correct the erroneous calculation of a negative United States price for certain observations and

(2) correct the erroneous inclusion of movement expenses incurred in Japan in the calculation of movement expenses for further-manufactured merchandise;

FAG Italy—

(1) use the approved tax-neutral methodology for adjusting for value-added taxes,

(2) explain the circumstances in which it will apply the reimbursement regulation in an exporter's sales price (ESP) situation, and

(3) correct the clerical error and recalculate FAG's margin to include margins for best information available sales;

SKF Italy—

(1) use the approved tax-neutral methodology for adjusting for value-added taxes,

(2) explain the circumstances in which it will apply the reimbursement regulation in an ESP situation, and

(3) correct a clerical error;

NMB/Pelmec—recalculate NMB's constructed value (CV) and cost of production (COP) after allocating research and development costs of Minebea Co., Ltd., over total consolidated cost of sales;

SKF Sweden—

(1) treat Astra and Asea Brown Bovery as unrelated to SKF Sverige AB,

(2) use a tax-neutral value-added tax methodology,

(3) explain when the reimbursement regulation would apply in an ESP situation,

(4) consider whether a company-specific arm's-length test is warranted and, if so, to apply such a test, and

(5) to correct clerical errors in the computer program;

NMB/Pelmec Thailand—

(1) recalculate NMB's CV and COP after allocating research and development costs of Minebea Co., Ltd., over total consolidated cost of sales, and

(2) correct the packing expense clerical error;

FAG-Barden and NSK–RHP U.K.—

(1) correct the clerical error with respect to FAG's U.S. sales,

(2) use the approved tax-neutral methodology for adjusting for value-added taxes,

(3) correct the clerical error in the conversion of insurance costs to dollars in cases in which the U.S. sales were already valued in dollars, and

(4) correct a clerical error in the application of value-added tax to the HEDGE value.

The CIT affirmed the Department's final remand results affecting final assessment rates for all the above cases (except the reviews involving certain Japanese companies which are still subject to further litigation). As there are now final and conclusive court decisions in these actions, we are amending our final results of review in these matters, with the exception of those cases which are still under appeal, and we will subsequently instruct the Customs Service to liquidate entries subject to these reviews.

Amendment to Final Results

Pursuant to section 516A(e) of the Act, we are now amending the final results of administrative reviews of the antidumping duty orders on antifriction bearings (other than tapered roller bearings) and parts thereof from France, Italy, Japan, Singapore, Sweden, Thailand, and the United Kingdom, except for those cases still under appeal, for the period May 1, 1992, through April 30, 1993. The revised weighted-average margins are as follows:

Company	BBs	CRBs	SPBs
FRANCE			
SKF	2.37	(1)	37.98
SNR	1.89	2.58	(2)
ITALY			
FAG	2.48	(1)	.....
SKF	3.68	0.00	.....
JAPAN			
IKS	4.65	(2)	(2)
Nachi	12.46	1.03	(2)
NSK	16.10	10.37	(1)
SINGAPORE			
NMB/Pelmec	4.70	.....	.....
SWEDEN			
SKF	13.55	10.62	.....
THAILAND			
NMB/Pelmec	0.01	.....	.....

Company	BBs	CRBs	SPBs
UNITED KINGDOM			
FAG-Barden	4.65	8.22	.....
NSK-RHP	14.49	20.03	.....

[1] No U.S. sales during the review period.
[2] No review requested.

Accordingly, the Department will determine and the U.S. Customs Service will assess appropriate antidumping duties on entries of the subject merchandise made by firms covered by these reviews. Individual differences between United States price and foreign market value may vary from the percentages listed above. The Department has already issued appraisement instructions to the Customs Service for certain companies whose margins have not changed from those announced in *AFBs 4* and the previous amendments. For companies covered by these amended results, the Department will issue appraisement instructions to the U.S. Customs Service after publication of these amended final results of reviews.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 1, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–23775 Filed 9–10–99; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–401–601]

Final Results of Expedited Sunset Review: Brass Sheet and Strip From Sweden

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review: Brass Sheet and Strip from Sweden.

SUMMARY: On February 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping order on brass sheet and strip from Sweden (64 FR 4840) pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act"). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of domestic interested parties and inadequate response (in this case, a waiver) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the "Final Result of Review" section of this notice.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

EFFECTIVE DATE: September 13, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752(c) of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

This order covers shipments of brass sheet and strip, other than leaded and tinned, from Sweden. The chemical composition of the covered products is currently defined in the Copper Development Association ("C.D.A.") 200 Series or the Unified Numbering System ("U.N.S.") C2000. This review does not cover products with chemical compositions that are defined by anything other than either the C.D.A. or U.N.S. series. In physical dimensions, the products covered by this review have a solid rectangular cross section over .0006 inches (.15 millimeters) through .1888 inches (4.8 millimeters) in finished thickness or gauge, regardless of width. Coiled, wound-on-reels (traverse wound), and cut-to-length products are included. The merchandise is currently classified under Harmonized Tariff Schedule ("HTS") item numbers 7409.21.00 and 7409.29.00. The HTS numbers are provided for convenience and U.S. Customs purposes. The written description remains dispositive.

History of the Order

The antidumping duty order on brass sheet and strip from Sweden was published in the **Federal Register** on March 6, 1987 (52 FR 6998).[1] In that order, the Department indicated that the weighted-average dumping margin for all entries of brass sheet and strip from Sweden is 9.49 percent.[2] Since that time, the Department has completed several administrative reviews.[3] The order remains in effect for all manufacturers and exporters of the subject merchandise.

Background

On February 1, 1999, the Department initiated a sunset review of the antidumping order on brass sheet and strip from Sweden (64 FR 4840), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of Heyco Metals, Inc. ("Heyco"), Hussey Copper Ltd. ("Hussey"), Olin Corporation-Brass Group ("Olin"), Outokumpu American Brass ("OAB") (formerly American Brass Company),[4] PMX Industries, Inc. ("PMX"), Revere Copper Products, Inc. ("Revere"), the International Association of Machinists and Aerospace Workers, the United Auto Workers (Local 2367), and the United Steelworkers of America (AFL/CIO) (collectively "the domestic interested parties") on February 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. The domestic interested parties claimed interested party status under sections 771(9)(C) and 771(9)(D) of the Act as U.S. brass mills, rerollers, and unions whose workers are engaged in the production of subject brass sheet and strip in the United States.

We received a complete substantive response from the domestic interested parties on March 3, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). In their substantive response, the domestic interested parties indicate that most of their members were parties to the original investigation with a few exceptions: Heyco did not participate in the original investigation but fully supports the instant review, and PMX was established after the original petitions were filed. The domestic parties also note that OAB was formerly known as American Brass Company.

We received a statement of waiver from respondent interested party, Outokumpu, to this proceeding, (*see* Outokumpu's March 3, 1999 Statement of Waiver). In its waiver, Outokumpu made unsolicited comments that it no longer produces the subject merchandise in Sweden, and that it dismantled and removed the machinery required to produce the subject merchandise from Swedish plants.[5] As a result of Outokumpu's filing of waiver, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of this order.[6]

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order—an order which was in effect on January 1, 1995, *see* section 751(c)(6)(C) of the Act. The Department determined that the sunset review of the antidumping duty order on brass sheet and strip from Sweden is extraordinarily complicated. Therefore, on June 7, 1999, the Department extended the time limit for completion of the preliminary results of this review until not later than August 30, 1999, in accordance with section 751(c)(5)(B) of the Act.[7]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, the domestic interested parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department received a statement of waiver from the only respondent interested party, Outokumpu.

In their substantive response, the domestic interested parties propose that revocation of the order will likely lead to continuation or recurrence of dumping of brass sheet and strip from Sweden (*see* March 3, 1999 Substantive Response of the domestic interested parties at 44–45). To illustrate their contention, the domestic interested parties point out a drastic decline of import volumes of the subject merchandise since the issuance of the order. Also, the domestic interested parties indicate that, since the imposition of the order, dumping of the subject merchandise has continued and is presently persisting above the *de minimis* level. *Id.* 39–40.[8] As a result, the domestic interested parties conclude, dumping of the subject merchandise will continue if the order were revoked.

With respect to the import volumes of the subject merchandise, the domestic interested parties note that the post-order import volume in 1987 was a mere 35.4 percent of the pre-order import volume in 1985. *Id.*[9] In addition, the domestic interested parties state that imports of the subject merchandise continue to decline: just 189,000

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[1] *See Antidumping Duty Order: Brass Sheet and Strip From Sweden*, March 6, 1987 (52 FR 6998).

[2] However, the order and subsequent reviews dealt with only one Swedish company, Outokumpu (in the original investigation, Outokumpu was doing business under the name Metallverken Nederland B.V., *see* March 3, 1999, Substantive Response of the domestic interested parties at 27).

[3] *See Brass Sheet and Strip From Sweden: Final Results of Antidumping Duty Administrative Review*, November 27, 1990 (55 FR 49317); *Brass Sheet and Strip From Sweden: Final Results of Antidumping Duty Administrative Reviews*, January 23, 1992 (57 FR 2706); *Brass Sheet and Strip From Sweden: Amendment to Final Results of Antidumping Duty Administrative Review*, May 7, 1991 (56 FR 21128); *Brass Sheet and Strip From Sweden: Final Results of Antidumping Duty Administrative Review*, July 1, 1992 (57 FR 29278); *Brass Sheet and Strip From Sweden: Affirmation of the Results of Redetermination Pursuant to Court Remand*, April 28, 1994 (59 FR 21958); and *Brass Sheet and Strip From Sweden: Final Results of Antidumping Duty Administrative Review*, January 18, 1995 (60 FR 3617).

[4] Outokumpu American Brass is opposing continuation of the antidumping duty order against Sweden. *See* March 3, 1999 Substantive Response of the domestic interested parties at page 3, footnote 1.

[5] To support this, Outokumpu submitted two unsolicited affidavits, each attesting to the fact that Outokumpu no longer produces the subject merchandise in Sweden: one from Programme Director of Trade Policy for the Federation of Swedish Industries and the other from Division for the Americas Desk Officer at the Swedish Ministry for Foregin Affairs. Nonetheless, as per section 351.218(d)(2)(i) of the Sunset Regulation, the Department did not consider the unsolicited comments made by Outokumpu in making its determination.

[6] The domestic interested parties filed comments, pertaining to the Department's decision to conduct a expedited (120-day) sunset review for the present review, in which the domestic party concurred with the Department's decision, *see* May 12, 1999 the domestic interested parties' comments on the Adequacy of Responses and the Appropriateness of Expedited Sunset Review at 2.

[7] *See Porcelain-on-Steel Cooking Ware From the People's Republic of China, Porcelain-on-Steel Cooking Ware From Taiwan, Top-of-the-Stove Stainless Steel Cooking Ware From Korea (South) (AD & CVD), Top-of-the-Stove Stainless Steel Cooking Ware From Taiwan (AD & CVD), Standard Carnations From Chile (AD & CVD), Fresh Cut Flowers From Mexico, Fresh Cut Flowers From Ecuador, Brass Sheet and Strip From Brazil (AD & CVD), Brass Sheet and Strip From Korea (South), Brass Sheet and Strip From France (AD & CVD), Brass Sheet and Strip From Germany, Brass Sheet and Strip From Italy, Brass Sheet and Strip From Sweden, Brass Sheet and Strip From Japan, Pompon Chrysanthemums From Peru: Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 30305 (June 7, 1999).

[8] After finding all exporters/manufacturers were dumping the subject merchandise at a weighted-average margins of 9.49 in the less than fair value investigation, the Department has dealt exclusively with Outokumpu as a lone respondent interested party in all the subsequent administrative reviews. For the following reviews, Outokumpu's dumping margins were as indicated: 5.64 percent for 1986–1988, 5.41 percent for 1988–1989, 6.32 percent for 1989–1990, 9.49 percent for 1990–1991, 8.60 percent for 1991–1992., *see* footnote 3, supra.

[9] The domestic interested parties acknowledge that during 1987–1991 the imports of the subject merchandise increased slightly; nonetheless, they remained well below the 1985 level.

pounds in 1992, no imports for 1993–1997, and in 1998 just 761 pounds. *Id.*

In conclusion, the domestic interested parties urge that the Department should find that dumping would be likely to continue if the order is revoked because dumping margins for the subject merchandise have existed significantly above the *de minimis* level over the life of the order, because the imports of the subject merchandise immediately and substantially declined after the issuance of the order, and because the imports of the subject merchandise have become nearly non-existent since 1992. The aforementioned circumstances, according to the domestic interested parties, provide a clear indication that the Swedish brass industry is unable to sell in the United States without dumping.

As indicated in Section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and House Report at 63–64, the Department considered whether dumping continued at any level above *de minimis* after the issuance of the order. If companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue were the discipline removed. After examining the published findings with respect to weighted-average dumping margins in previous administrative reviews, the Department agrees with the domestic interested parties that weighted-average dumping margins at a level above *de minimis* have persisted over the life of the order and currently remain in place for all Swedish producers and exporters of brass sheet and strip.[10]

Consistent with section 752(c) of the Act, the Department also considered the volume of imports before and after the issuance of the order. The data supplied by the domestic interested parties and those of the United States Census Bureau IM146s and the United States International Trade Commission indicate that, since the imposition of the order, import volumes of the subject merchandise have declined substantially. Namely, the import volumes of the subject merchandise declined substantially immediately following the imposition of the order. Moreover, for the period 1994–1998, Census Bureau IM 146 data do not reflect any annual imports of the subject merchandise.[11] Therefore, the Department determines that the import volumes of the subject merchandise decreased significantly after the issuance of the order.

Given that dumping has continued over the life of the order; that import volumes of the subject merchandise decreased significantly after the issuance of the order; that respondent interested parties have waived their right to participate in this review; and that there are no arguments and/or evidence to the contrary, the Department agrees with the domestic interested parties' contention that the Swedish brass industry is incapable of selling the subject merchandise in the United States at fair value. Consequently, the Department determines that dumping is likely to continue if the order is revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The Department, in its final determination of sales at less-than-fair-value, published a weighted-average dumping margin for Outokumpu and "all others": 9.49 percent (52 FR 819, January 9, 1987).[12] We note that, to date, the Department has not issued any duty absorption findings in this case.

In its substantive response, citing the SAA at 890 and the *Sunset Policy Bulletin*, the domestic interested parties state that the Department normally will provide the Commission with the dumping margins from the investigation because those are the only calculated margins that reflect the behavior of exporters without the discipline of the order in place. (*See* the March 3, 1999 Substantive Response of the domestic interested parties at 45–46.) Therefore, the domestic interested parties urge, the Department should abide by its practice, as set forth in the regulations, and should provide to the Commission the margin set forth in the original investigation.

The Department agrees with the domestic interested parties' suggestion pertaining to the margin that is likely to prevail if the order were revoked. Because the original 9.49 percent margin accurately reflects the behavior of Swedish producers and exporters without the discipline of an order in place, the Department will provide to the Commission that margin found in the original investigation. Absent argument and evidence to the contrary, the Department sees no reason to change its usual practice of selecting the rate from the original investigation. We will report to the Commission the company-specific and all others rates contained in the Final Results of Review section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping order would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
Outokumpu (formerly Metallverken AB)	9.49
All Others	9.49

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 30, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

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[10] *See* footnote 3, supra, for the list of final determinations of administrative reviews in which the Department found above *de minimis* weighted-average margins for Swedish producers/exporters in all periods of investigation. Also, *see* footnotes 7, supra for a history of weighted-average dumping margins found for the subject merchandise.

[11] Although domestic interested parties state that 761 pounds of the subject merchandise were imported in 1998, no source is given for this figure.

[12] See footnote 2, supra.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–840]

Manganese Metal From the People's Republic of China; Final Results of Second Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review of Manganese Metal from the People's Republic of China.

SUMMARY: We have determined that sales by China Metallurgical Import & Export Hunan Corporation/Hunan Nonferrous Metals Import & Export Associated Corporation have been made below normal value during the period of review of February 1, 1997, through January 31, 1998. Since we were unable to verify that China Hunan International Economic Development Corporation reported all of its U.S. sales during the period of review, we are applying adverse facts available to calculate the dumping margin for this exporter of the subject merchandise. Based on these final results of review, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price and normal value on all appropriate entries.

EFFECTIVE DATE: September 13, 1999.

FOR FURTHER INFORMATION CONTACT: Greg Campbell or Craig Matney, Group 1, Office I, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–2239 or (202) 482–1778, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, all references to the Department's regulations are to 19 CFR Part 351 (April 1998).

Background

On February 6, 1996, the Department of Commerce (the Department) published in the **Federal Register** the antidumping duty order on manganese metal from the People's Republic of China (PRC). *See Notice of Amended Final Determination and Antidumping Duty Order: Manganese Metal from the People's Republic of China*, 61 FR 4415 (February 6, 1996) (*LTFV Investigation*). In accordance with 19 CFR 351.213(b)(2), on February 9, 1998, Elkem Metals Company and Kerr-McGee Chemical Corporation (the petitioners) requested that we conduct an administrative review of this order. On March 23, 1998, in accordance with 19 CFR 351.213(c)(3), we published a notice of initiation of this antidumping duty administrative review. *See* 63 FR 13837.

On March 8, 1999, we published our preliminary results of review. *See* 64 FR 10986. Included in our *Preliminary Results* notice was our notice of partial rescission of this review with respect to two PRC exporters: China National Electronics Import and Export Hunan Company (CEIEC) and Minmetals Precious & Rare Minerals Import & Export Corporation (Minmetals).

We subsequently provided interested parties an opportunity to comment on the preliminary results, and held a public hearing on May 14, 1999. The following parties submitted comments: Elkem Metals Company and Kerr-McGee Chemical Corporation (together comprising the petitioners), and China Hunan International Economic Development Corporation (HIED) and China Metallurgical Import & Export Hunan Corporation/Hunan Nonferrous Metals Import & Export Associated Corporation (CMIECHN/CNIECHN) (together comprising the respondents), as well as Sumitomo Canada, Limited (SCL) (a Canadian reseller of subject merchandise). Because it was not practicable to complete the review within the time limit mandated by section 751(a)(3)(A) of the Act, on July 1, 1999, we published a notice of extension of time limit for this review. *See* 64 FR 35626.

The Department is conducting this administrative review in accordance with section 751 of the Act. The period of review (POR) is February 1, 1997 through January 31, 1998.

Scope of Review

The merchandise covered by this review is manganese metal; which is composed principally of manganese, by weight, but also contains some impurities such as carbon, sulfur, phosphorous, iron and silicon. Manganese metal contains by weight not less than 95 percent manganese. All compositions, forms and sizes of manganese metal are included within the scope of this administrative review, including metal flake, powder, compressed powder, and fines. The subject merchandise is currently classifiable under subheadings 8111.00.45.00 and 8111.00.60.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Verification

We verified factor information provided by Xiang Tan Huan Yu Metallurgical Products Plant (Huan Yu). We also conducted sales verifications at HIED, CMIECHN/CNIECHN, and Minmetals. Our verification at each of these companies consisted of standard verification procedures, including the examination of relevant sales and financial records and the selection of original documentation containing relevant information. In addition to these standard verifications, we also verified the sales documents submitted by SCL. Our verification results for each of these companies are detailed in the verification reports on file in the Central Records Unit (CRU) in room B–099 of the Department's main building.

Export Price

For those U.S. sales made by CMIECHN/CNIECHN and which we verified, we calculated an export price, in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated purchasers in the United States prior to importation into the United States and constructed export price treatment was not otherwise indicated.

For these sales, we calculated export price based on the price to unaffiliated purchasers. We deducted an amount, where appropriate, for foreign inland freight, ocean freight, and marine insurance.[1] The costs for these items were valued in the surrogate country.

As discussed in the *Customs Data* section below, there were many more shipments of manganese metal listing CMIECHN/CNIECHN as the manufacturer/exporter entered into the United States during the POR than the number of CMIECHN/CNIECHN's verified U.S. sales. We have determined that these additional entries are not CMIECHN/CNIECHN sales for the purposes of this review and, therefore,

[1] For a detailed discussion of how we derived net export price and constructed value, *see Memorandum to the Case File; Calculations for the Final Results of Review for CMIECHN/CNIECHN* (September 7, 1999), a public version of which is available in room B–099 of the Department's main building.

we have not calculated an export price for these entries. Likewise, for the reasons enumerated in the *Facts Available* section below, we have not calculated an export price for HIED's sales.

Normal Value

1. Non-Market-Economy Status

For companies located in NME countries, section 773(c)(1) of the Act provides that the Department shall determine normal value (NV) using a factors-of-production methodology if (1) the merchandise is exported from an NME country, and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

The Department has treated the PRC as an NME country in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is a NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Furthermore, available information does not permit the calculation of NV using home-market prices, third-country prices or constructed value under section 773(a) of the Act. Therefore, we treated the PRC as a NME country for purposes of this review and calculated NV by valuing the factors of production in a comparable market-economy country which is a significant producer of comparable merchandise.

2. Surrogate-Country Selection

In accordance with section 773(c)(4) of the Act and section 351.408(b) of our regulations, we find that India has a level of economic development comparable to the PRC and that it is a significant producer of comparable merchandise.[2] Therefore, for this review, we have selected India as the surrogate country and have used publicly available information relating to India, unless otherwise noted, to value the various factors of production.

3. Factors-of-Production Valuation

For purposes of calculating NV, we valued PRC factors of production, in accordance with section 773(c)(1) of the Act. Factors of production include but are not limited to the following elements: (1) hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital cost, including depreciation. In examining potential surrogate values, we selected, where possible and appropriate, the publicly available value which was: (1) an average non-export value; (2) representative of a range of prices either within the POR or most contemporaneous with the POR; (3) product-specific; and (4) tax-exclusive. Where we could not obtain a POR-representative price for an appropriate surrogate value, we selected a value in accordance with the remaining criteria mentioned above and which was the closest in time to the POR. In accordance with this methodology, we have valued the factors as described below.[3]

We valued manganese ore using a June 1998 export price quotation (in U.S. dollars) from a Brazilian manganese mine for manganese carbonate ore. Consistent with our methodology used in the first administrative review final results, this price was adjusted to reflect the decline in manganese ore world prices since the POR.[4] We adjusted this price further to account for the reported manganese content of the ore used in the PRC manufacture of the subject merchandise and to account for the differences in transportation distances.

To value various process chemicals used in the production of manganese metal, we used prices obtained from the following Indian sources: *Indian Chemical Weekly* (February 1997 through November 1997); the *Monthly Statistics of Foreign Trade of India, Volume II—Imports* (February through May 1997) (*Import Statistics*); price quotations from Indian chemicals producers, and the *Indian Minerals Yearbook* (1995) (*IMY*). Where necessary, we adjusted these values to reflect inflation up to the POR using an Indian wholesale price index (WPI) published by the International Monetary Fund (IMF). Additionally, we adjusted these values, where appropriate, to account for differences in chemical content and to account for freight costs incurred between the suppliers and manganese metal producers.

To value the labor input, consistent with 19 CFR 351.408(c)(3), we used the regression-based estimated wage rate for the PRC as calculated by the Department and updated in May 1999.

For selling, general, and administrative expenses (SG&A), factory overhead, and profit values, we used information from the *Reserve Bank of India Bulletin* (January 1997) for the Indian industrial grouping "Processing and Manufacturing: Metals, Chemicals, and Products Thereof." To value factory overhead, we calculated the ratio of factory overhead expenses to the cost of materials and energy. Using the same source, we also calculated the SG&A expense as a percentage of the cost of materials, energy and factory overhead, and profit as a percentage of the cost of production (*i.e.*, materials, energy, labor, factory overhead and SG&A).

For most packing materials values, we used per-unit values based on the data in the *Import Statistics*. For iron drums, however, we used a price quotation from an Indian manufacturer rather than a value from the *Import Statistics* because the quoted price was for the appropriate type of container used, whereas the *Import Statistics* were aggregated over various types of containers. We made further adjustments to account for freight costs incurred between the PRC supplier and manganese metal producers.

To value electricity, we used the average rate applicable to large industrial users throughout India as reported in the *1995 Confederation of Indian Industries Handbook of Statistics*. We adjusted the March 1, 1995, value to reflect inflation up to the POR using the WPI published by the IMF.

To value rail freight, we relied upon rates published in June 1998 by the Indian Railway Conference Association, deflated by the Indian WPI to derive a surrogate value contemporaneous with the POR. To value truck freight, we used a price quotation from an Indian freight provider. Because this quotation was for a period subsequent to the POR, we deflated the value back to the POR using the WPI published by the IMF.

4. Changes Since the Preliminary Results

We have made certain changes, as identified below, in our margin calculations pursuant to comments we received from interested parties, to the availability of updated information, and to the discovery of clerical errors since the preliminary results.

(a) Liquid ammonium: *see Comment 5*
(b) Sulphuric acid: *see Comment 5*
(c) Rail freight: *see Comment 10*
(d) Packing materials: *see Comment 13*

(e) Labor: In May 1999, the Department revised its regression-based PRC wage rate (as published on the Department's website). This revised wage rate has been incorporated into these final results.

Customs Data

In the course of this administrative review, the Department obtained customs entry documentation from the U.S. Customs Service (Customs). We initially requested this customs data to verify the non-shipment claims by certain PRC exporters. Our request for entry data was also responsive to concerns expressed by the petitioners that many more shipments of manganese metal had entered the United States during the POR than were reported as sales by the respondents. The information we obtained included the documentation submitted by the U.S. importers, as required upon entry, for each shipment of subject merchandise that entered during the POR. We have closely examined this documentation for each entry and find the following.[5]

To start, the customs data indicates that many more shipments of manganese metal listing CMIECHN/CNIECHN as the exporter were entered into the United States than the number of U.S. sales reported by CMIECHN/CNIECHN and verified by the Department. In fact, the verified sales represent less than five percent of the total value of POR entries listing CMIECHN/CNIECHN as the exporter. CMIECHN/CNIECHN maintains that its verified sales are the only sales it made to the United States during the POR. Thus, the issue before the Department was whether this merchandise was properly identified as being exported by CMIECHN/CNIECHN and, consequently, whether these entries were entitled to CMIECHN/CNIECHN's cash deposit rate.

An examination of this customs documentation shows that these disputed CMIECHN/CNIECHN entries can be classified into three categories. The first category consists of entries which correspond to sales of subject merchandise reported by the respondents in the first administrative review. The Department therefore has previously reviewed these sales and calculated the appropriate dumping margin on these entries accordingly.

The second category of disputed CMIECHN/CNIECHN entries includes what appear to be resales of subject merchandise that was, at some point, purchased from CMIECHN/CNIECHN. The documentation for these reseller entries generally includes a commercial invoice from the reseller to the U.S. importer. In certain instances this commercial invoice also indicates that this merchandise was originally sourced from CMIECHN/CNIECHN.[6] The defining characteristic of the documentation for this category of entries, however, is that there are no commercial invoices from CMIECHN/CNIECHN addressed directly to the U.S. importer.

We note that most of the entries in the second-category are U.S. sales of the third-country reseller SCL. During this review, the Department verified at SCL that this merchandise was, in fact, purchased from CMIECHN/CNIECHN. The Department also verified at SCL and CMIECHN/CNIECHN that there was no reason to believe that CMIECHN/CNIECHN would have known that these sales to SCL were destined for exportation to the United States.[7]

The third category of disputed CMIECHN/CNIECHN entries is comprised of shipments for which the customs documentation includes commercial invoices from CMIECHN/CNIECHN directly to the U.S. importer. CMIECHN/CNIECHN alleges that these commercial invoices and certain other documents submitted to Customs for these entries are, in fact, forged and has formally asked Customs to investigate whether these documents represent customs fraud. However, Customs has not made any determination regarding the accuracy and authenticity of these documents as of the date of these final results.

Nevertheless, in the course of this review the Department has examined a considerable amount of evidence regarding the nature of and circumstances surrounding these disputed CMIECHN/CNIECHN entries. There is substantial evidence which supports a finding that CMIECHN/CNIECHN was improperly identified as the exporter of record of these disputed entries and, consequently, that these entries should not have been subject to CMIECHN/CNIECHN's cash deposit rate.[8] For instance, an affidavit on the record of this review suggests that one U.S. importer may have knowingly entered subject merchandise incorrectly under CMIECHN/CNIECHN's cash deposit rate rather than under the PRC-wide rate. Moreover, we note that the relationship between other PRC exporters and the other U.S. importer of these disputed CMIECHN/CNIECHN entries is already in question and was one of the reasons we have used adverse facts available to determine HIED's dumping margin in these final results. *See Facts Available* section below. Thus, based on this evidence and the fact that these entries do not reflect sales from third-country resellers, there is reason to believe that the importers of these disputed entries did not enter the merchandise at the proper cash deposit rate.

Given the above, and based upon our verification of CMIECHN/CNIECHN's total U.S. sales, we have determined that the disputed CMIECHN/CNIECHN entries which comprise this third category are neither U.S. sales nor exports by CMIECHN/CNIECHN for the purposes of this review. Consequently, we determine that these entries were not entitled to CMIECHN/CNIECHN's cash deposit rate and, instead, should have been subject to the PRC-wide rate of 143.32 percent. Therefore, as explained in the *Assessment and Cash Deposit Rates* section below these entries will be liquidated at the PRC-wide rate of 143.32 percent.

Facts Available

Section 776(a)(2) of the Act provides that if an interested party (1) withholds information that has been requested by the Department, (2) fails to provide such information in a timely manner or in the form requested, (3) significantly impedes a proceeding under the antidumping statute, or (4) provides information that cannot be verified, the Department shall use, subject to section 782(d), facts available in reaching the applicable determination. While section 782(d) of the Act provides certain conditions that must be satisfied before the Department may disregard all or part of the information submitted by a respondent, these conditions only apply when the information submitted can be verified and the interested parties have cooperated to the best of their abilities. *See* section 782(e) of the Act.

1. Application of Facts Available

We determine that, in accordance with sections 776(a)(2) and 776(b) of the

[2] *See Memorandum to Susan Kuhbach from Jeff May; Non-Market-Economy Status and Surrogate Country Selection* (June 23, 1998), a public copy of which is available in the Central Records Unit.

[3] For a more detailed explanation of the methodology used in calculating various surrogate values, *see Memorandum to the File from Case Team; Factors of Production Valuation for the Final Results* (September 7, 1999).

[4] *See Manganese Metal from the PRC; Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 12440, 12442 (March 13, 1998) (*First Review Results*).

[5] For a detailed analysis of the issues raised by this customs data, *see Memorandum to Richard W. Moreland from Greg Campbell; Major Concurrence Issues for the Final Results of Review* (September 7, 1999) (*Final Concurrence Memo*), a public version of which is available in room B–099 of the Department's main building.

[6] The documentation for some of these reseller entries also includes inspection certificates, country of origin certificates, or secondary commercial invoices indicating that the merchandise was, at some point, purchased from CMIECHN/CNIECHN.

[7] For a detailed account of the Department's verification at SCL, *see Memorandum to the Case File: Results of Verification of SCL* (July 23, 1999), a public version of which is available in room B–099 of the Department's main building.

[8] *See Final Concurrence Memo.*

Act, the use of facts otherwise available, adverse to the company, is appropriate for HIED because its sales data could not be verified and because it did not cooperate to the best of its ability in the course of this review. The bases for these conclusions are detailed below.

On August 13, 1998, the Department provided HIED with the customs data showing the POR entries into the United States of manganese metal purportedly from HIED. In an accompanying letter we noted that these entries differed in material ways from HIED's reported U.S. sales and requested that HIED comment on this inconsistency. HIED replied that its reported sales were correct and could be reconciled with its books. HIED further noted that any inconsistencies were likely due to "fraudulent schemes" on the part of other exporters to export subject merchandise into the United States under the most favorable circumstances.

The Department subsequently conducted a verification of HIED's reported sales. During the course of verification, we encountered numerous inconsistencies and delays, and certain documents were not available. For instance, HIED officials' explanation of the company's relationship to its U.S. customer was, in general, incongruous and incomplete and, at times, entirely contrary to what other company officials had stated previously. Moreover, although company officials claimed initially that only one of HIED's departments and one of its affiliates made sales of manganese metal during the POR, Department officials conducting the verification (the Verification Team) subsequently identified accounting records which indicated that at least one additional business unit may also have been involved in selling manganese metal. Furthermore, the Verification Team was unable to verify the total quantity and value of subject merchandise sold by HIED and its affiliates because certain intermediate accounting records could not be reconciled to source data or to the financial statements.

Verification of the completeness of HIED's sales reporting was also seriously hindered by the Verification Team's inability to review several of the sales and accounting records reportedly maintained by HIED. In some cases, the source documentation requested by the Department to verify total sales was reportedly discarded prior to verification. Company officials offered no explanation as to why they were unable to retrieve other sales and accounting records, maintained at the company headquarters, for the majority of HIED's sales departments. Sales and accounting records for HIED's affiliates, including those selling manganese metal, were likewise not available though, according to HIED management, this was because company officials were unwilling to travel to other locations in the PRC where the documents were kept.

There were many significant delays in the verification process as a result of sorting through conflicting statements by officials and of the difficulty in locating documents which were explicitly requested by the Department in the verification outline sent prior to the verification. Despite the fact that the verification was extended—at the Department's initiative—for an additional half day, several important documents were not presented to the Verification Team until near or at the end of verification, preventing an adequate review of important data.

Subsequent to verification, the Department received from Customs supporting documentation (*e.g.*, Customs Form 7501, commercial invoices, packing lists) filed by the U.S. importer upon entering the subject merchandise into the United States for several of the entries which appeared in the customs data. The supporting documentation for several entries listed in the customs data identified HIED as the actual exporter of the subject merchandise. However, for many of these entries there were no corresponding sales listed in HIED's U.S. sales listing, as submitted to the Department.

These numerous inconsistencies and delays, and the unavailability of documentation, taken together, constitute a verification failure under section 776(a)(2)(D) of the Act. Thus, we have determined that HIED failed to report sales it made to the United States. The Department has, therefore, determined that, because HIED's reported sales data could not be verified and, generally, the credibility of the information contained in HIED's questionnaire responses could not be established, section 776(a) of the Act requires the Department to disregard HIED's questionnaire responses and apply facts available.

2. Use of Adverse Facts Available

In selecting from among the facts available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See Statement of Administrative Action* (SAA), H.R. Doc. 316, Vol. 1, 103rd Cong., 2d sess. 870 at 870 (1994). To examine whether the respondent "cooperated" by "acting to the best of its ability" under section 776(b) of the Act, the Department considers, *inter alia*, the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–53820 (October 16, 1997).

As discussed above, HIED failed to provide much of the documentation requested by the Verification Team and necessary to verify HIED's sales. Moreover, various company officials' statements were contradictory on several points central to a successful verification. Furthermore, the Department identified unreported sales of subject merchandise by HIED which the company knew, or should have known, should have been properly included in the reported U.S. sales list. Thus, we have determined that HIED withheld information we requested and significantly impeded the antidumping proceeding.

We find, therefore, that HIED has not acted to the best of its ability to comply with our requests for information. Accordingly, consistent with section 776(b) of the Act, we have applied adverse facts available to this company.

3. Corroboration of Secondary Information

In this review, we are using as adverse facts available the PRC-wide rate (143.32 percent) determined for non-responding exporters involved in the *LTFV Investigation*. This margin represents the highest margin in the petition, as modified by the Department for the purposes of initiation. *See Initiation of Antidumping Duty Investigation: Manganese Metal from the PRC*, 59 FR 61869 (December 2, 1994) (*LTFV Initiation*).

Information derived from the petition constitutes secondary information within the meaning of the SAA. *See* SAA at 870. Section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The SAA provides that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value. The SAA at 870, however, states further that "the fact that corroboration may not be practicable in a given circumstance will not prevent the agencies from applying an adverse inference." In addition, the SAA, at 869, emphasizes that the Department need not prove that the facts available are the best alternative information.

To corroborate secondary information, to the extent practicable the Department will examine the reliability and relevance of the information to be used. To examine the reliability of margins in the petition, we examine whether, based on available evidence, those margins reasonably reflect a level of dumping that may have occurred during the period of investigation by any firm, including those that did not provide us with usable information. This generally consists of examining, to the extent practicable, whether the significant elements used to derive the petition margins, or the resulting margins, are supported by independent sources. With respect to the relevance aspect of corroboration, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin not relevant. Where circumstances indicate that the selected margin may not be relevant, the Department will attempt to find a more appropriate basis for facts available. *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin as best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin).

For the initiation of the investigation, based on an analysis of the petition and a subsequent supplement to the petition, the Department modified the dumping margin contained in the petition. *See LTFV Initiation* at 61870. In the petition, the U.S. price was based on price quotations obtained for manganese metal from the PRC during December 1993 through May 1994. The factors of production were valued, where possible, using publicly available published information for India. Where Indian values were not available, the petitioners used data based on their own costs. For the initiation, however, the Department disallowed all factors valued by using the petitioners' own costs. Instead, we recalculated factory overhead and depreciation expenses using the statistics in the *Reserve Bank of India Bulletin* (December 1992), a publicly available and independent source used in other investigations of imports from the PRC. We also recalculated the valuation of several process chemicals using data from the independent source *Chemical Marketing Reporter*. Furthermore, we revalued electricity costs using World Bank data on electricity rates for industrial users in Indonesia, an appropriate surrogate country at a comparable level of economic development to the PRC.

We find, therefore, for the purpose of these final results that the PRC-wide margin established in the *LTFV Investigation* is reliable. As there is no information on the record of this review that demonstrates that the rate selected is not an appropriate adverse facts available rate for HIED, we determine that this rate has probative value and, therefore, is an appropriate basis for facts otherwise available.

Analysis of Comments Received

We received comments from interested parties regarding the following general topics: (1) The use of facts available, (2) the appropriate rate for resellers, and (3) the valuation of factors of production and the by-product credit. Summaries of the comments and rebuttals, as well as the Department's responses to the comments, are included below.

1. Use of Facts Otherwise Available

Comment 1: The petitioners argue that the Department, consistent with its established practice regarding respondents who have failed to report a significant portion of their U.S. sales, should apply total adverse facts available to all customs entries indicating HIED or CMIECHN/CNIECHN as the manufacturer/exporter. As a basis for this adverse facts available finding, the petitioners note that customs entry documentation and port arrival data indicate that there were several more entries from these exporters than their reported U.S. sales. None of the record information or arguments submitted by the respondents, the petitioners maintain, adequately accounts for these additional entries which the respondents claim not to have made.

First, argue the petitioners, the respondents have not sufficiently substantiated their allegations that these additional entries represent customs fraud. Minor differences in the appearance of the sales documents of an exporter are not uncommon, and do not establish one document form as authentic and the other fraudulent.

Second, the petitioners continue, even if these additional, disputed entries do represent legitimate sales by the respondents to intermediary resellers, who then resold the merchandise to the United States, these sales might still be U.S. sales for the purposes of this review if the respondents had knowledge of the ultimate U.S. destination of the sales.

The petitioners further argue that the Department encountered major problems at the verification of HIED and CMIECHN/CNIECHN and, therefore, was unable to verify the completeness of these respondents' sales reporting. In particular, the verification of CMIECHN/CNIECHN's total sales was dependent on the respondent's consistent use of its invoice numbering system. The petitioners note that the invoice numbers on many of the disputed CMIECHN/CNIECHN entries were not consistent with this numbering system. Moreover, although the Department examined at verification all of CMIECHN/CNIECHN's sales invoices reflecting this system, the Department could not then trace those invoices to the company's general accounting records. Therefore, the petitioners assert, the completeness of CMIECHN/CNIECHN's reporting of total sales remains unverified.

With regard to HIED, the petitioners note that the Department applied adverse facts available to this exporter in the preliminary results based in part on the fact that the Department could not confirm HIED's sales at verification. There is no new information on the record since the preliminary results, the petitioners maintain, that would warrant a change in this decision.

Given the above, in the petitioners' view, the Department cannot reasonably conclude that the disputed entries do not represent U.S. sales by the respondents for the purpose of this review. The Department, therefore, cannot proceed with its intention, as stated in the preliminary results, of assigning facts available to CMIECHN/CNIECHN's "unreported sales" while applying a calculated margin to that company's "reviewed sales." The petitioners maintain that the Department has a longstanding practice of applying facts available to all of a respondent's sales if a significant portion of those sales are found to be unreported. Therefore, the petitioners argue, the Department should apply total adverse facts available to all of CMIECHN/CNIECHN's sales, "reported and unreported," for these final results. Likewise, the Department should continue to apply total adverse facts available to all of HIED's sales.

The respondents counter that there is no credible evidence on the record that CMIECHN/CNIECHN failed to include a significant portion of its U.S. sales, that it withheld information, or that it has done anything wrong in this case. To the contrary, the respondents argue, CMIECHN/CNIECHN has provided

accurate and complete information regarding its U.S. sales.

The respondents further note that CMIECHN/CNIECHN's allegations regarding fraudulent entry data are still under consideration by Customs. *See Customs Data* section above. Therefore, until Customs makes an official determination regarding these allegations, no wrongdoing by CMIECHN/CNIECHN can be proven, and the petitioners arguments are mere speculation. CMIECHN/CNIECHN cannot be penalized based on the disputed customs data, the respondents maintain, if no finding in any fraud investigation by Customs has been made.

Moreover, the respondents continue, CMIECHN/CNIECHN has cooperated fully with the Department's requests for information and fully disclosed the required U.S. sales information. Contrary to the petitioners' assertion, insist the respondents, at verification the Department was able to review and trace a variety of records and documents, none of which indicated unreported sales. The Department has not found any of the problems initially identified in CMIECHN/CNIECHN's accounting practices at verification to be evidence of unreported U.S. sales.

Therefore, the respondents conclude, the Department should continue to base CMIECHN/CNIECHN's dumping margin on the sales and factors data submitted by the company. Likewise, the Department should apply a separate rate to HIED for these final results because HIED has cooperated with the Department.

Department's Position: We agree with the respondents that adverse facts available is not the appropriate basis for determining the dumping margin of CMIECHN/CNIECHN. The petitioners point to the disputed entries in the customs data and the Department's alleged inability to verify CMIECHN/CNIECHN's total sales at verification as support for the use of total adverse facts available. With regard to the first issue, for the reasons discussed in the *Customs Data* section above we have determined that the disputed CMIECHN/CNIECHN entries are not U.S. sales by CMIECHN/CNIECHN for the purposes of this review.

As to the verification of sales, although the Department experienced certain difficulties in tracing total sales through CMIECHN/CNIECHN's accounting system, these difficulties did not preclude us from verifying the completeness of CMIECHN/CNIECHN's sales reporting.[9] It is true that, due to the nature of CMIECHN/CNIECHN's methodology for recording sales, the company's accounting records cannot be fully relied upon to confirm sales made during the POR. However, for the purposes of conducting an antidumping review the Department does not require that responding companies adopt a specific accounting methodology. The Department recognizes that while some companies maintain more sophisticated records including audited financial statements, other companies have more rudimentary record-keeping systems and may lack audited financial statements. In these cases, the Department attempts to use other reasonable methods of verifying the respondents' data.

Therefore, in the case of CMIECHN/CNIECHN, because sales were not necessarily recorded in their accounting system in a consistent manner, we found other means at verification of confirming that no POR manganese metal sales were unreported. For instance, relying on the accuracy of the company's invoicing system, we reviewed in sequential order the commercial invoices for sales of all products by CMIECHN/CNIECHN. In this process, we did not identify any evidence of unreported sales.

The petitioners contend that because there were no means of confirming the accuracy and consistency of this invoicing system, the Department cannot rely on this system to verify sales. Apart from the allegedly-forged commercial invoices for the disputed entries, however, we found no inconsistencies or inaccuracies in CMIECHN/CNIECHN's application of its system of assigning numbers to its commercial invoices. We therefore find that it is reasonable to rely on this system as one means of establishing the completeness and accuracy of CMIECHN/CNIECHN reported U.S. sales.

With regard to HIED, we agree with the petitioners that continued use of adverse facts available in these final results is warranted. No significant new information has become available since the preliminary results that would lead us to reconsider this position. In response to the respondents' argument that the Department should apply a separate rate to HIED for these final results because HIED has cooperated with the Department, we note that the rate we have found for HIED is a separate rate based on facts available. Moreover, for the reasons enumerated in the *Facts Available* section above, we find that HIED has not fully cooperated with the Department in this review.

2. Appropriate Rate for Resellers

Comment 2: During the POR, SCL imported into the United States subject merchandise which it had purchased from CMIECHN/CNIECHN.[10] SCL entered its appearance in this review subsequent to the preliminary results and submitted, along with its case brief, sales documentation for all of its POR entries. SCL argues that it was necessary to become a party to this proceeding in order to object to the change in practice, as first articulated in the preliminary results, in the Department's treatment of third country exporters of subject merchandise. SCL argues that this change is an abuse of the Department's discretion and is contrary to law, for the following reasons.

First, SCL states that the Department's established policy is to assign a third-country exporter of subject merchandise the specific rate applicable to its supplier of subject merchandise in instances where the third-country exporter has not been named in a request for review, has not received a questionnaire from the Department, and where no allegation of middleman dumping has been made. SCL maintains that it is clear from the facts of this case that SCL meets these criteria and is, therefore, entitled to CMIECHN/CNIECHN's reviewed rate.

Second, the Department cannot, SCL argues, draw the adverse inference that all of the disputed entries not reported directly by CMIECHN/CNIECHN are not genuine sales of CMIECHN/CNIECHN-supplied material. To do so would be to treat SCL, a legitimate reseller of CMIECHN/CNIECHN-supplied material, the same as an unscrupulous importer committing customs fraud. In entering its merchandise under CMIECHN/CNIECHN's cash deposit rate, SCL maintains, it was not acting fraudulently but was merely acting according to its understanding of the Department's practice concerning resellers of PRC material.

Third, SCL notes that 19 U.S.C. 1675(a)(2)(B) (section 751(a)(2)(B) of the Act) provides for "new shipper reviews" in instances where the Department receives a request for review from a producer or exporter who did not export, during the period of investigation, the merchandise subject to the antidumping duty order. However, SCL argues, it was not eligible for a new shipper review given that its supplier CMIECHN/CNIECHN had previously exported merchandise subject to the dumping order.

Fourth, SCL argues that the PRC-wide rate which the Department preliminarily determined to apply to all of the disputed CMIECHN/CNIECHN entries was originally calculated in the *LTFV Investigation* based on adverse best information available because some PRC suppliers in the investigation refused to respond to the Department's questionnaire. This adverse best information available (BIA) rate was imposed prior to the URAA. The current review, however, is subject to the URAA amendments to the Act. Under the amended Act, SCL continues, the Department can only apply facts otherwise available (formerly BIA) where an interested party withholds information, fails to provide the information in the form or manner requested by the Department, impedes the proceeding, or provides information which cannot be verified. None of these criteria apply to the actions of SCL. Moreover, the Department cannot apply inferences adverse to SCL because SCL has never failed to cooperate with the Department but, rather, has acted to the best of its ability by providing its sales documents along with its case brief as soon as it was made aware in the preliminary results of the Department's intended change in practice regarding resellers.

Based on the above, SCL argues that the Department should not liquidate SCL's entries at the PRC-wide rate, as envisioned in the preliminary results, but instead adopt one of the following alternative approaches. First, the Department could initiate a changed circumstances review in order to determine the extent of third-country sales of CMIECHN/CNIECHN merchandise and the identity of the third-country resellers. Under this approach, SCL argues, SCL would be given the opportunity to establish that CMIECHN/CNIECHN supplied SCL's merchandise and that the sales were not made below normal value.

A second alternative approach suggested by SCL would be to assess CMIECHN/CNIECHN's calculated rate on all direct or indirect sales to the United States of CMIECHN/CNIECHN material. The Department would accept SCL's factual information (submitted after the preliminary results) and then verify SCL's sales data to confirm that the merchandise was originally sourced from CMIECHN/CNIECHN.

A final alternative proposed by SCL would be to calculate a new rate specific to SCL based, not on adverse facts available, but on SCL's reported U.S. sales prices.

The petitioners argue that, according to SCL's own admission, SCL, not CMIECHN/CNIECHN, was the party with the knowledge of the U.S. destination of the merchandise entered by SCL. Thus, the petitioners contend, SCL is the exporter for the purposes of the antidumping law. Furthermore, the petitioners assert, the statute clearly requires the Department to assess antidumping duties on entries at the margin of dumping on those entries. Therefore, CMIECHN/CNIECHN's assessment rate cannot be applied to entries of merchandise exported by SCL given that the calculation of CMIECHN/CNIECHN's rate does not take into account the prices of sales from SCL to its unrelated U.S. customers.

The petitioners further maintain that if the Department finds that CMIECHN/CNIECHN, not SCL, is the exporter of these entries, then the Department must conclude that CMIECHN/CNIECHN failed to report a significant volume of U.S. sales to SCL. Therefore, the Department would have to apply the 143.32 percent facts available rate to all entries corresponding to CMIECHN/CNIECHN sales.

If the Department concludes that SCL is the exporter of these POR entries, then SCL was required to request an administrative review to obtain an assessment rate for those entries different from the PRC-wide rate. The petitioners argue that even if SCL was not the exporter of the merchandise and, therefore, could not request a new shipper review, SCL could nevertheless have requested an administrative review as the U.S. importer. The petitioners continue that the Department cannot now calculate a margin for SCL after the preliminary results when the company failed to request in a timely manner a review of its POR entries.

Finally, the petitioners contend, the Department could apply the PRC-wide rate to SCL even if that rate was based on BIA (or facts available) because in other proceedings the courts have upheld the Department's application of a BIA-based PRC-wide rate to parties that failed to request administrative reviews.

Department's Position: We agree with SCL that it's been the Department's established practice to assign to the entries of non-PRC exporters of subject merchandise from the PRC the rate applicable to the PRC supplier of that exporter. *See e.g., Manganese Metal from the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Review*, 64 FR 7624, 7626 (February 16, 1999); *Fresh Garlic from the PRC; Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review*, 62 FR 23758, 23760; *Sparklers from the PRC; Final Results of Antidumping Duty Administrative Review*, 61 FR 39630, 39631.

The assessment language in the preliminary results was premised on the information on the record at the time. Prior to the preliminary results, much of the available information and argument centered on the possibility of unreported sales by CMIECHN/CNIECHN and potential fraud on the part of U.S. importers. At that point, SCL had not entered an appearance as an interested party. Recognizing the potential need for additional information, in the notice of our preliminary results we stated that we would reconsider, in the final results, our preliminary determination that CMIECHN/CNIECHN was not the exporter of these disputed entries in the event that "any substantive new information on the matter, including any potential determination by the Customs Service regarding alleged customs fraud, becomes available." 64 FR at 10988.

Since we issued the preliminary results, substantial new information has become available that has clarified the status of SCL as a reseller. This new information includes, *inter alia*, SCL's sales documentation tracing its purchases of manganese metal from CMIECHN/CNIECHN and the subsequent resale of this subject merchandise into the United States. Our subsequent verification of SCL's documents further confirmed SCL's position as a third-country reseller of merchandise supplied by CMIECHN/CNIECHN. The SCL verification also further confirmed that, at the time of the sales transactions, CMIECHN/CNIECHN was not aware of the ultimate U.S. destination of the merchandise it sold to SCL. Moreover, the additional customs documentation which the Department obtained only after the preliminary results were issued played an important part in differentiating the disputed CMIECHN/CNIECHN entries that represented sales by the reseller SCL from those disputed entries for which customs fraud has been alleged. *See Customs Data* section above.

We took the unusual step in this review of accepting substantial new information onto the record from an interested party which entered its appearance only after the preliminary

[9] For a detailed account of the Department's verification at CMIECHN/CNIECHN, *see Memorandum to the Case File; Results of Verification of CMIECHN/CNIECHN* (October 14, 1998), a public version of which is available in room B–099 of the Department's main building.

[10] SCL was both the foreign exporter and the U.S. importer of record for its entries of subject merchandise.

results were issued. However, the facts and circumstances of this review, particularly as they relate to the customs data and alleged customs fraud, are themselves highly unusual. Moreover, these final results were postponed in part to develop an adequate record on which to make a determination with respect to SCL, and to give all parties sufficient time to analyze and comment on the additional information the Department has collected since the preliminary results. Therefore, the interests of no party have been prejudiced by this unusual step.

For all the above reasons, we find that the PRC-wide rate is not the rate applicable to SCL's POR entries and that SCL, as a third-country reseller, was entitled to enter the subject merchandise under CMIECHN/CNIECHN's cash deposit rate.

3. Valuation of Factors of Production

(a) Ore Valuation

Comment 3: In the preliminary results, to value the respondents' "ore 1" we used a June 1998 price quotation for carbonate manganese ore obtained by the respondents from a Brazilian manganese ore mine. The petitioners argue that this was an inappropriate surrogate value given that, according to information on the record provided by the petitioners, the Brazilian ore producer had ceased mining operations by 1998 and was only selling from its remaining small stock, consisting of off-specification ore, at the time of the price quote. According to the petitioners, companies in the process of closing down operations often reduce their prices below normal market levels and, therefore, this price quotation is not representative of a commercial value for the ore. The petitioners further note that the U.S. manganese importer to whom the ore price quotation was addressed (and from whom the respondents obtained the price information) has otherwise been implicated in this review in the respondents' fraud allegation. The Department cannot, the petitioners assert, rely on this price quotation as though it were obtained from a party whose information can be relied upon as truthfully presented and obtained in good faith. There is, finally, no compelling reason to rely on this price quotation given that, according to the petitioners, there are other reasonable surrogate ore values on the record, including the value the Department used in the *First Review Results*.[11]

The respondents counter by noting, first, that the price quotation from the Brazilian ore producer included the full specifications for the type of ore being offered; based on the chemical content listed, there is no reason to believe that the price quoted was for off-grade ore. Second, the respondents note that the price quotation originated from the Brazilian ore producer, not the U.S. importer to whom the quotation was addressed. In lieu of any indication or allegation that the document itself was fraudulent, the respondents argue, there is no reason to reject the price quotation as inaccurate or unreliable merely because it was addressed to an importer allegedly committing customs fraud. Finally, the respondents contend, this price quotation represents the best ore surrogate value because it is the most current information available and because it pertains to an ore type most similar to that used by the PRC manganese metal producers.

Department's Position: We agree with the respondents that the 1998 Brazilian ore price quotation represents the best ore surrogate information available on the record. To start, we note that the ore price quotation originated with the Brazilian ore producer in question, whereas the seemingly contrary information was provided by the petitioners' researcher. In light of other information regarding this surrogate value, we cannot conclude that commercial sales did not exist during the POR simply because the petitioners' researcher could not obtain information on commercial prices from the ore producer's management.

Next, we note that the ore grade's chemical composition and physical properties listed in the 1998 price quote, with the exception of the moisture content, were provided at a level of detail and specificity greater than that of the 1993 price quote, the suggested surrogate of the petitioners. The petitioners are correct in that the ore specifications listed (in either the 1993 or the 1998 quote) do not account for 100 percent of the ore's chemical content. However, based on the criteria established on the record of this and previous segments of this proceeding, we find the level of specification and detail, with regard to the ore's primary physical and chemical properties, to be sufficient for determining the quotation's suitability as a surrogate value.[12]

Moreover, given that the specifications stated for the 1998 price quotation were essentially the same as those for the 1993 price quotation (which was, undisputably, for a commercial grade ore), it would seem likely that the ore producer, a long-established seller of ore on the world market, would clearly indicate in the 1998 quotation that the ore grade on offer was not of commercial quality, if that were the case. There is nothing in the 1998 price quote, however, indicating that the merchandise on offer is not of normal commercial grade. Also, contrary to the information provided by the petitioners' researcher that "the remaining inventories of 1998 refers to the cleaning of stocks, with very low quantity * * *" the quoted 1998 price is for a quantity of 35,000 to 44,000 metric tons, an amount which would generally be considered commercial. Additionally, despite the petitioners' general assertion to the contrary, there is no evidence on the record to suggest that in 1998 the Brazilian mine sold its ore at a discount merely because it was in the process of closing down its mining operations.

Furthermore, we reject the petitioners' argument that we should not utilize information that was sent to a company accused by parties in this case of customs fraud. The price quotation was generated by the Brazilian producer and there is no evidence indicating that the producer was involved in any fraudulent activity.

Despite the petitioners' argument that there is no compelling reason to use the 1998 price quotation because there are other reasonable ore surrogate values on the record, we find that the 1998 price quotation represents the best ore 1 surrogate available. As discussed in the *Factors of Production Valuation* section above, where we could not identify an appropriate POR-representative surrogate value, we selected a value, in accordance with the normal surrogate criteria, which was the closest in time to the POR. In the first administrative review of this proceeding, we selected the ore grade from the Brazilian producer because among all the available ore surrogates, it best fulfilled the standard criteria for surrogate selection. However, because the 1993 price quotation was not contemporaneous with the first review POR, we adjusted the quoted price to reflect movement in manganese ore prices in the intervening years. Using the 1993 price quotation in the current administrative review, however, would require a time-adjustment spanning roughly four years. Given that the 1998 price quotation is dated only four months after the POR, consistent with the Department's established methodology we have used the more contemporaneous 1998 value.

(b) Electricity Valuation

Comment 4: To value electricity in the preliminary results, we used the average electricity rate for large industrial electricity users in India as of March 1, 1995, inflated to the POR using the Indian WPI. Subsequent to the preliminary results, the petitioners submitted an Indian WPI that was specific to the electricity industry. The petitioners argue that the general Indian WPI used in the preliminary results reflects changes in the price of a wide variety of goods across the full spectrum of the Indian economy. In contrast, the electricity-specific WPI reflects more accurately the movement in Indian electricity prices in particular. Given the Department's practice of selecting surrogates that correspond as closely as possible to the inputs used by the respondents, the petitioners argue, the Department should inflate the 1995 electricity rate by the electricity-specific WPI to derive an electricity surrogate value that is contemporaneous with the POR.

The respondents counter that, consistent with the calculations performed in previous segments of this proceeding, the Department should continue using the general Indian WPI to inflate the 1995 electricity rate. The respondents further note that the Department has never used in any case before the electricity-specific WPI submitted by the petitioners.

Department's Position: We have continued to use the general WPI to inflate the 1995 Indian electricity rate. The petitioners are correct in stating that it is the Department's general practice to use surrogate information as specific as possible to the input and industry in question. Thus, we considered very carefully the electricity-specific WPI that the petitioners submitted. Given that the Department has not examined this information in prior proceedings, and given that the publisher of this data appears to be a private research organization rather than a government agency, we attempted to analyze the methodology used to collect, synthesize and report this data.[13] We found, however, that there was insufficient information on the record to confirm the accuracy, objectivity, and breadth of coverage (*i.e.*, the extent to which the electricity data reflects price trends throughout all of India) of the data presented.

Therefore, considering the uncertainty surrounding this data, we find that the continued use of the general Indian WPI, as published in the *International Financial Statistics* and as used by the Department for factors of production surrogates in numerous prior PRC cases, is more appropriate for purposes of this administrative review.

(c) Chemical Valuation

Comment 5: The respondents argue that the Department incorrectly calculated the tax-exclusive price for sulphuric acid. The respondents claim that Indian excise and sales taxes are assessed sequentially, a fact the Department has acknowledged in other cases, and that this should be accounted for in the calculation of tax-exclusive prices for this chemical.

Moreover, the respondents argue that we did not properly exclude the non-market economy imports from the *Import Statistics* used to value liquid ammonium. The respondents point to other cases where the Department has explicitly excluded the imports of these countries when deriving surrogate values.

The petitioners have no comment.

Department's Position: We agree with the respondents that our calculation for excluding taxes from the sulphuric acid surrogate value was incorrect in our preliminary results. For these final results, we have corrected this calculation so that it is consistent with the Department's established formula for deriving tax-exclusive Indian surrogate values, as articulated in *Chrome Plated Lug Nuts from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 63 FR 53872, 53874 (October 7, 1998).

Likewise, the respondents are correct regarding our practice of excluding non-market economy imports from the trade data used as surrogate values. We have revised our liquid ammonium surrogate value in these final results accordingly.

Comment 6: In our preliminary results, we valued selenium dioxide using a 1998 price quotation from an Indian selenium manufacturer. The respondents argue that we should use the Indian import statistics they submitted to value the input because the import statistics are publicly-available published information.

The petitioners argue that the Department used the correct surrogate value in the preliminary results. The value in the Indian import statistics is for selenium, the petitioners note, whereas the manufacturer's price quotation is for selenium dioxide, the input actually used by the respondents.

Department's Position: We agree with the petitioners that the 1998 price quotation used in our preliminary results is the best available surrogate value because it is for the actual chemical used by the respondents. The value in the *Import Statistics* preferred by the respondents is for selenium, not selenium dioxide.

Moreover, the regulations at section 351.408(c)(1) state that the Department "will normally use publicly available information to value factors." In prior segments of this proceeding, as well as in numerous other proceedings, the Department has used price quotations to value production factors. As discussed above, for instance, we have used a price quotation submitted by the respondents to value ore 1 in these final results. *See Normal Value* section above. We, therefore, have continued to value selenium dioxide in these final results using this price quotation.

Comment 7: The respondents argue that the Department misunderstood the information they submitted regarding the concentration of the SDD chemical used in the production of the respondents' merchandise. In the preliminary results, the Department used a price quotation from an Indian chemicals producer for SDD with a 40 percent purity. We then adjusted this price to account for the fact that the reported purity of the SDD actually used by the respondents was significantly different. The respondents claim that all standard SDD has a purity level of 40 percent, and that the respondents' reported purity level should be interpreted as a percentage of the 40 percent.

The petitioners counter that the information on which the respondents base their arguments was first submitted on the record by the respondents with their case brief, well after the deadline for new factual information. Moreover, the petitioners continue, it is not clear that the information in the affidavit, provided by the respondents in support of their argument, pertains to the type of SDD used by the PRC manganese metal producers. Nor does it appear, the petitioners note, that the manganese

[11] In the first administrative review of this proceeding, the Department used as a surrogate value for ore 1 a 1993 price quotation for the same basic grade of ore from the same Brazilian mine.

[12] The suitability of alternative ore surrogate values was a particularly contentious and closely examined issue in the investigation and first administrative review segments of this proceeding. The Department has, therefore, accumulated extensive expertise in considering the physical and chemical properties of manganese ore, one of the most significant inputs in the subject merchandise. *See LTFV Investigation* and *First Review Results*.

[13] *See Memorandum to the Case File from Andrew Covington: Research into Center for Monitoring Indian Economy* (August 31, 1999), a copy of which is available in the Department's Central Records Unit.

metal producer certified these facts supplied by the respondent.

Department's Position: We have not revised our adjustment to the SDD surrogate value for these final results. In the Department's June 12, 1998 initial questionnaire, we asked the respondents' to report "the chemical composition/purity for each raw material input * * *" and, in our subsequent August 21, 1998 supplemental questionnaire we asked them to confirm the correct composition of their SDD input. In our preliminary results, we used the purity level as reported and confirmed by the respondents.

Although the respondents had ample opportunity to clarify or revise any misleading or incorrect information in their responses within the regulatory deadlines for factual information, it was not until their April 16, 1999 case brief that the respondents submitted additional factual information regarding purported standard purity levels for this chemical. In a May 18, 1999 letter to the respondents' counsel, the Department informed the respondents that this portion of the case brief contained untimely filed, new factual information which would be removed from the record of this review.

Therefore, for these final results, we have continued to adjust the SDD surrogate value to reflect the SDD purity level as reported in the respondents' questionnaire and supplemental responses.

(d) Overhead, SG&A and Profit

Comment 8: The respondents argue that the Department should include the labor and labor benefit items, such as the "Provident Fund" and "Employees Welfare Expense," in the cost of manufacture before calculation of overhead, SG&A and profit ratios. The respondents cite an accounting textbook that states that, "* * * a labor-intensive firm—a firm whose operations are performed manually and only incidentally by machines—should use a labor-oriented base * * *" in making labor-exclusive overhead allocations." Citing several past cases, the respondents claim further that the standard Department practice is to include such expenses in the COM for determining the overhead, SG&A and profit ratios.

Furthermore, the respondents argue that the fact that the Department adopted an approach similar to that used in the preliminary results in calculating labor-exclusive overhead and SG&A ratios in *TRBs–10*[14] is irrelevant to this proceeding because the surrogate values used in *TRBs–10* were from a different source and because the methodology in *TRBs–10* was an exception to the Department's normal practice.

The petitioners counter by first noting that, contrary to the respondents' assertion, the Department did include labor costs in its calculation of a surrogate profit percentage. The petitioners continue by stating that it was appropriate for the Department to exclude all labor from the calculation of overhead and SG&A surrogate percentages because the Department separately had valued all labor, including direct and indirect factory labor and SG&A labor. Had the Department not excluded all labor from the numerator and denominator in calculating factory overhead and SG&A expense ratios, certain labor costs would have been double-counted. Rather, the Department's approach in the preliminary results was consistently applied and appropriate given the level of detail on the record of the respondents' reported labor costs.

Moreover, continue the petitioners, the respondents' quotation from the accounting text is irrelevant in this instance. In looking at the context of the quotation, the petitioners argue that the text deals with the cost-accounting issue of allocation of factory overhead costs among multiple products. Given that this review involves non-market economy producers, producers costs are irrelevant and no allocation among different products is being made.

Finally, the petitioners argue, the overhead and SG&A ratios in this case are based on Indian, and not PRC, production experience. Although the amount of labor hours incurred in different countries in the production of a unit of given merchandise may vary significantly, the amounts of raw materials and energy consumed per unit of output is generally more uniform. Therefore, the petitioners claim that it is appropriate to use a labor-exclusive basis for calculating the surrogate overhead and SG&A percentages in one country that will be used to derive production costs in a different country.

Department's Position: We believe that the calculation of labor-exclusive surrogate overhead and SG&A percentages is appropriate and reasonable. To start, we note that our calculation of the profit surrogate ratio fully includes all labor costs in the numerator and denominator. We have excluded all labor costs from our calculation of overhead and SG&A ratios, however, to increase the accuracy and specificity of our valuation of the respondents' costs of production. In particular, we have the somewhat unusual benefit in this case of having reported total unit labor inputs (broken down into direct, factory overhead and SG&A labor categories). We therefore have valued the total unit labor costs of the PRC producers by multiplying the total unit labor inputs by the surrogate wage rate. In many past cases, only direct labor was reported and, therefore, overhead and SG&A labor was subsumed within the general surrogate percentages for the overhead and SG&A cost categories.

Given that we are valuing overhead and SG&A labor directly based on the respondents' reported factors, we have excluded all labor (from both the numerator and denominator) in calculating surrogate ratios for the remaining overhead and SG&A costs. Likewise, we have excluded all labor components from the respondents' direct inputs cost base to which we apply these labor-exclusive surrogate overhead and SG&A ratios. As the petitioners point out, failure to do so would in this case overstate the respondents' total labor costs.

Turning to the respondents' other points, the passage in the accounting text cited by the respondents does not necessarily pertain to the facts of this case. First, it does not appear that the respondents' producer is a labor-intensive firm, "whose operations are performed manually and only incidentally by machines." To the contrary, based on reported and verified information, the manufacture of manganese metal is technologically sophisticated, involving advanced equipment and machinery to support complex chemical and electrolytic processes. Labor, therefore, would not appear to be the central input driving the overhead and SG&A cost structure of the producer.

Moreover, we agree with the petitioners' argument that the cited passage is referring to the allocation of factory overhead costs among multiple products. The issue at hand, however, is the appropriate means of estimating the costs of certain producers (the PRC manganese metal manufacturers) based on the relative size of certain costs to the total cost structure of other producers (Indian chemicals and metals manufacturers).

[14] *Tapered Roller Bearing and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 1996–97 Antidumping Duty Administrative Review and Determination Not to Revoke Order in Part*, 63 FR 63842 (November 17, 1998) (*TRBs–10*).

Furthermore, it is true that the overhead and SG&A ratios in *TRBs–10* were based on the reported costs of particular Indian TRBs producers whereas the overhead and SG&A surrogates in this review are based on the aggregated data of Indian chemicals and metals producers generally as published by the Reserve Bank of India. It is important to note, first, that these two sources are not that dissimilar given that the aggregate data presumably incorporates the experiences of individual producers. Any differences between the surrogates, however, are beside the point. Whether or not to exclude labor in deriving overhead and SG&A ratios is a methodological issue specific to each case which depends on whether and to what extent the Department must adjust and manipulate the surrogate data to derive cost estimates that best reflect the production costs in the respondents' country.

Therefore, for the reasons above, we have continued to derive labor-exclusive overhead and SG&A surrogate ratios for these final results.

Comment 9: To value the respondents' factory overhead, SG&A and profit in the preliminary results, we calculated surrogate ratios based on financial data reported in the *Reserve Bank of India Bulletin* (*RBI Data*). Subsequent to the preliminary results, the petitioners submitted data published by the *Center for Monitoring Indian Economy* (*CMIE Data*) regarding factory overhead, SG&A and profit of Indian nonferrous metals producers. The petitioners argue that we should use the *CMIE Data* to value these costs because the Department's established practice is to base surrogates upon the industry experience closest to the producer under investigation. The petitioners suggest that the *CMIE Data* which is specific to Indian nonferrous metals producers is more representative of manganese metal manufacture than the RBI data, which more broadly encompasses the "processing and manufacture" of "metals, chemicals and products thereof."

Moreover, the petitioners continue, the *RBI Data* pertains to the period 1992–93, whereas the *CMIE Data* reports financial information for 1996–97 and is, therefore, more contemporaneous with the POR. The petitioners thus conclude that the *CMIE Data* is a more appropriate basis for deriving surrogate ratios for overhead, SG&A and profit.

The respondents disagree that the *CMIE Data* is the most appropriate surrogate source for these expenses for several reasons. First, this source has never been used by the Department in other PRC cases to value these expenses whereas the Department has relied upon the *RBI Data* as a basis for valuing overhead, SG&A and profit. To support this contention, the respondents cite to several past proceedings and note that, in several cases, the surrogates in earlier segments were based on other sources but that in the more recent segments of those proceedings the Department relied on the *RBI Data*.

The respondents also maintain that, contrary to the claims of the petitioners, the *CMIE Data* is not specific to nonferrous metals producers, but rather, according to the notes accompanying the data, includes information for a wide variety of non-metals related manufacturers (*e.g.*, food products, fertilizers, chemicals). Moreover, the respondents continue, this data appears to encompass "central government public sector" companies as well as companies with an indeterminate volume of sales.

Department's Position: We have continued to use the *RBI Data* in these final results to derive surrogate factory overhead, SG&A and profit ratios. The Department has used this source of data to value these expenses in all previous segments of this proceeding as well as in numerous other PRC cases.

The petitioners' proposed data is based on the same source as their electricity-specific Indian WPI discussed in *Comment 4* above. Given that the Department has not examined this information in prior proceedings, and given that the publisher of this data appears to be a private research organization rather than a government agency, we attempted to analyze the methodology used to collect, synthesize and report this data. Although we do not necessarily agree with the inferences regarding industry coverage the respondents draw from CMIE's notes on its sampling methodologies, we find, nevertheless, that there is insufficient information on the record to confirm the accuracy, objectivity, and breadth of coverage (*i.e.*, the extent to which the data reflects the financial experience of companies across all of India) of the data presented.

This paucity of background and explanatory information for the *CMIE Data* is especially worrisome in light of the fact that, as the petitioners note, several further adjustments must be made to the reported data so that it comports with the standard definitions and methodology underlying the Department's surrogate overhead, SG&A and profit calculations. For instance, in their proposed calculation of a factory overhead rate, the petitioners estimated certain expense line items, which were not reported individually in the *CMIE Data*, based on allocation ratios derived from data in a separate publication. Given that we know so little about how this data is collected, aggregated and reported, it is not clear that deriving allocation ratios based on the information in one publication to adjust the data from a different publication is methodologically correct and reasonable.

Therefore, considering the uncertainty surrounding this data, we find that the continued use of the *RBI Data*, as used by the Department for valuing surrogates in numerous prior PRC cases, is more appropriate for the purposes of this administrative review.

(e) Freight Valuation

Comment 10: In the preliminary results, we valued inland rail freight using Indian rail rates reported in an August 13, 1997 ore price quotation from an Indian manganese mine. The petitioners argue that manganese metal is packed in drums or closed containers whereas manganese ore is shipped in open rail cars and, therefore, rates quoted for ore transportation are not representative of manganese metal freight costs. Instead, the petitioners contend, the Department should rely on rates published by the Indian Railway Conference Association (IRCA), as contained in the petitioners' March 29, 1999 submission. According to the petitioners, this surrogate source for rail freight has been used by the Department in several other cases for valuing the costs of rail transportation of finished metals such as manganese metal.

The respondents counter[15] that the petitioners' proposed surrogate rail rates are inappropriate because (1) they came into effect only after the POR and (2) the rates do not apply to the respondents' reported freight distances.

Department's Position: We agree with the petitioners that the IRCA data is a more accurate surrogate source for rail freight. In choosing among alternative surrogate values, we select the one that, *inter alia*, most broadly represents the cost of the input across the surrogate country. The surrogate rail values used in our preliminary results were based on the rates offered by one Indian ore producer, whereas the IRCA data provided by the petitioners represents rates widely available throughout India, as published with the authority of the central Indian government.

It is true that, all other things being equal, the Department will normally

[15] Based on the context of the comment, the respondents appear to be addressing the petitioners' proposed rail freight although the actual text of respondents' comment refers to "truck rates."

choose the surrogate value most contemporaneous with the POR. In this instance, however, the IRCA values came into effect only roughly five months after the POR. Moreover, although the IRCA data submitted by the petitioners does not correspond to the reported rail distances for the respondents' factor inputs, the data does correspond to the distances reported for the rail transportation of the respondents' end product. The input freight costs are inconsequential relative to the costs of transporting inland the manganese metal. We note that the surrogate value used in the preliminary results and favored here by the respondents did not directly correspond to the reported transportation distances of either the input factors or the manufactured manganese metal.

Finally, we note that the IRCA data has been used in other recent cases by the Department to value PRC rail freight rates.[16] Therefore, weighing all of the above considerations, we find that the IRCA data is the most appropriate surrogate source for valuing the respondents' rail freight costs, and have revised the calculations for these final results accordingly.

Comment 11: The respondents claim that the Department's decision to apply facts available to value ocean freight was unreasonable and ungrounded and that the Department should use CMIECHN/CNIECHN's reported information to value ocean freight in these final results. The respondents argue that although the bills of lading reviewed at verification did not show freight charges, they are otherwise accurate and complete, and can be tied to CMIECHN/CNIECHN's expense ledgers and audited financial statements which show the applicable freight charges. Additionally, the respondents state that it is not reasonable to disregard CMIECHN/CNIECHN's international freight information on the basis that the payments for this service were made through a local Chinese agent. The respondents point out that foreign freight forwarders must hire local agents to handle billing if that company is not locally registered. However, if the Department determines that it should continue to apply facts available for ocean freight, the respondents argue that it should calculate a more reasonable surrogate value based on price quotations from a sample of international forwarding companies.

The petitioners contend that the Department should reject the respondents' argument because CMIECHN/CNIECHN was unable to support at verification its claim that it purchased ocean freight services from market-economy carriers and that there is no evidence that the PRC companies from which CMIECHN/CNIECHN purchased ocean freight acted merely as agents for the market-economy carriers, rather than PRC resellers of ocean freight services.

The petitioners argue, citing to 19 U.S.C. 1673b(c) of the Act, that the Department cannot use the ocean freight information provided by the respondents because transactions between NME entities are presumed to be distorted and unuseable for purposes of calculating a dumping margin. The petitioners point out that the Department will normally determine ocean freight using the actual amounts paid by NME entities to market-economy shippers; however, in situations where the NME exporter purchased the ocean freight services from an NME entity, the Department must use a surrogate value. In *Saccharin*,[17] note the petitioners, the Department rejected the use of an actual freight cost, as directed by the statute, because those costs were purchased from a domestic supplier in an NME.

The petitioners further argue that the fact that CMIECHN/CNIECHN paid rates to NME entities that are well below surrogate rates is evidence that it did not pay market-determined rates.

Department's Position: We agree with the petitioners that CMIECHN/CNIECHN was unable to support its claim that it purchased ocean freight services from market-economy carriers. Furthermore, the respondents have not supplied evidence that the PRC agents from which CMIECHN/CNIECHN allegedly purchased ocean freight acted as agents for the market-economy carriers, rather than as PRC resellers of ocean freight services. At verification, the Department reviewed ocean freight documentation for the majority of CMIECHN/CNIECHN's sales. Ultimately the verification team could not determine that the ocean freight CMIECHN/CNIECHN reported as supplied by a market-economy carrier was, in fact, supplied by a market-economy carrier. Furthermore, the bills of lading did not tie to the other documentation pertaining to the ocean freight costs nor did they tie to the company's accounting records. Additionally, there was no evidence that CMIECHN/CNIECHN purchased ocean freight directly from the market-economy carrier. Therefore, in these final results the Department has continued to value CMIECHN/CNIECHN's ocean freight costs using a surrogate freight rate. With regard to the respondents' arguments regarding which surrogate value we should use for ocean freight, see the following comment.

Comment 12: The petitioners state that, consistent with the Department's established practice of using the most specific surrogate data available, the Department should rely on the ocean freight values submitted by the petitioners subsequent to the preliminary results, since these values are both route- and product-specific. The petitioners contend that the ocean freight surrogates used in the preliminary results are not as accurate because they are based on averages of quoted rates to the U.S. east and west coasts freight rates, taken from *TRBs–9*[18] and adjusted using the U.S. producer price index. The petitioners maintain that the freight quotations they provided are specific to manganese metal and are specific to the actual routes and destinations, as reported by the respondents, to which the subject merchandise was shipped.

The respondents counter that if the Department uses a surrogate to value ocean freight in these final results, the Department should continue to use the surrogate source used in the preliminary results. The petitioners' preferred surrogate rates, the respondents claim, should be disregarded as aberrational because these rates increased in excess of inflation over a three-year period. Furthermore, the respondents note, the petitioners' rate quotes were in effect only after the POR. Moreover, the respondents note that the petitioners' quotations are not publicly available published information.

Department's Position: We have continued to use the surrogate rates used to value ocean freight in the preliminary results. Although the petitioners' rates appear to be closer to (though still not contemporaneous with) the POR than those used in our preliminary results, the petitioners surrogate information, in its entirety, was submitted as proprietary data. As stated in the Department's response above to the comment regarding selenium dioxide surrogate values, the regulations at section 351.408(c)(1) state that the Department "will normally use publicly available information to value factors." In this instance, the petitioners' ocean freight rate quotations do not constitute publicly available information.

Moreover, there is no information on the record that suggests the rates used in *TRBs–9*, as supplied by the same shipping company that supplied the petitioners' rates, are not applicable to the shipment of manganese metal. Therefore, because the *TRBs–9* rates are publicly available information, and because there is no reason to believe they are not representative of the costs of shipping manganese metal, we have continued to use these rates as a surrogate for valuing ocean freight in these final results.

(f) Packing Material Valuation

Comment 13: The petitioners claim that the *Import Statistics* used by the Department as surrogate values for plastic bags and wooden pallets are based on imports that pre-date the POR. The petitioners argue that the Department should rely on the data submitted by the petitioners subsequent to the preliminary results to value plastic bags and pallets because this import data, for the period June 1997 through October 1997, is contemporaneous with the POR.

The respondents agree with the Department's choice of surrogates in the preliminary results for packing materials.

Department's Position: We agree with the petitioners. We have reviewed the *Import Statistics* used in the preliminary results to value plastic bags and wooden pallets and note that, although these *Import Statistics* cover Indian imports in general through the initial months of the POR, there appear not to have been POR imports within the particular product categories relevant to the packing materials in question. The more recent *Import Statistics* submitted by the petitioners subsequent to the preliminary results, however, report POR imports for these particular product categories. Therefore, in these final results we have based our valuation of plastic bags and wooden pallets on these more recent *Import Statistics*.

(4) Valuation of By-Product Credit

Comment 14: To value the "positive mud" generated as a by-product in manganese metal manufacture, we have used the 82–84 percent manganese dioxide ore price published in the *Indian Minerals Yearbook* (IMY). The respondents argue that this IMY 82–84 percent ore is an incorrect surrogate value, for several reasons. First, positive mud is not an ore, but a by-product resulting from the electrolytic processing of MnO2 ore. Therefore, the respondents reason, a product resulting from the transformation of the ore cannot be considered to be the ore itself. Rather, the resulting product should command a higher price than the ore. However, the IMY 82–84 percent ore surrogate value the Department used for positive mud was "at an almost 100 percent lower price" than the surrogate the Department used to value the respondents' "ore 2" input.

According to the respondents, the IMY 82–84 percent manganese dioxide ore surrogate value is clearly aberrational and should be disregarded. This finding would be consistent with the Department's practice in the *LTFV Investigation* where, according to the respondents, to value this by-product the Department used manganese dioxide but not manganese dioxide ore. Therefore, conclude the respondents, in these final results the Department should use a value for electrolytic manganese dioxide (EMD) to value positive mud.

The petitioners counter that the IMY 82–84 percent manganese dioxide ore price used in the preliminary results is a proper surrogate. The petitioners note that respondents did not provide detailed information specifying the full metallurgical content of the positive mud. And, in fact, the only specification the respondents did provide'the manganese oxide content'was roughly comparable to that of the IMY 82–84 percent surrogate.

According to the petitioners, the respondents' argument that, based on reported differences in manganese contents, the value of the positive mud surrogate value should be almost double the value of the ore 2 surrogate value, is mistaken and is based on confusion in understanding the reported metallurgical composition; the content of the positive mud is stated as a percentage of manganese dioxide whereas the content of the ore 2 surrogate is stated in terms of manganese (only). The petitioners state that the IMY 82–84 manganese dioxide ore is an appropriate surrogate for positive mud precisely because the MnO2 content is the only specification reported by the respondents for the positive mud. The MnO2 content is known for the 82–84 percent ore but not known for the ore 2 surrogate value. Using the IMY 82–84 percent surrogate enables the Department to make the appropriate adjustments to the surrogate price to reflect the actual MnO2 content of the positive mud.

Finally, the petitioners conclude, electrolytic manganese dioxide (EMD) prices should not be used as a surrogate value for positive mud because EMD is a high-value product used mainly in the production of dry-cell batteries, and was specifically rejected by the Department as a surrogate in the first administrative review in this proceeding.

Department's Position: As suggested by the parties' comments, we have considered this issue in prior segments of this proceeding. As in the first administrative review, we disagree with the respondents' contention that the IMY 82–84 percent manganese dioxide ore is an inappropriate surrogate for valuing positive mud. In the *First Review Results* we stated,

> The Department disagrees with the respondents' argument for the use of EMD as a surrogate value. First, the respondents are incorrect in stating that the Department used for a by-product surrogate in the *LTFV Investigation* an Indian import value for manganese dioxide excluding ores. In the LTFV Final Determination, the Department used an 82–84 percent MnO2 peroxide ore, as listed in the 1993 *Indian Minerals Yearbook*, to value the respondents' by-product credit. EMD is a very high-valued product used mainly in the production of dry-cell batteries * * * The respondents have not sufficiently demonstrated that the PRC by-product is of the same rigorous specifications as EMD.
>
> The respondents have demonstrated, however, that their by-product does have some resale value. In lieu of any information on the Indian value of the actual by-product in question, the Department is maintaining the methodology used in the *LTFV Final Determination* of using for a surrogate the price of high-valued Indian manganese dioxide ore. (63 FR at 12448).

Moreover, we find the respondents' comparison of the surrogate value for positive mud with the surrogate value for ore 2 to be misplaced. The respondents reason that the value of a by-product must be greater than the value of an input from which the by-product was generated. However, a by-product (as distinct from a co-product) is something that is generated incidentally in the course of manufacturing some primary finished good, in this case manganese metal. The fact that the respondents' by-product happens to have some residual value does not require that value to be greater than the value of the ore used in the manufacturing process.

The respondents imply that our choice of a lower-valued by-product surrogate suggests value destruction, which occurs when the value of the inputs is greater than the value of the final product. This is not the case. The value created in this manufacturing

[16] *See, e.g., TRBs–10.*

[17] *Final Determination of Sales at Less Than Fair Value: Saccharin from the People's Republic of China*, 59 FR 58818, 58825 (November 15, 1994).

[18] *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review*, 62 FR 36764 (July 9, 1997) (*TRBs–9*).

process is captured in the price of the primary product—manganese metal—and is fully recoverable, under normal market conditions, in the sale of that product. Any value recovered from the sale of the by-product merely serves to offset the production costs incurred in the production of the primary product. We, therefore, have not changed our choice of the positive mud surrogate value for these final results.

Final Results of the Review

We hereby determine that the following weighted-average margins exist for the period February 1, 1997, through January 31, 1998:

Exporter	Margin (percent)
CMIECHN/CNIECHN	4.30
HIED	143.32

Because we are rescinding the review with respect to CEIEC and Minmetals, the respective company-specific rates for these exporters remain unchanged.

Assessment and Cash Deposit Rates

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs.

In order to assess duties on appropriate entries as a result of this review, we have calculated entry-specific duty assessment rates based on the ratio of the amount of duty calculated for each of CMIECHN/CNIECHN's verified sales during the POR to the total entered value of the corresponding entry. The Department will instruct Customs to assess these rates only on those entries which correspond to sales verified by the Department as having been made directly by CMIECHN/CNIECHN. The Department will also instruct Customs to liquidate all POR entries by bona fide third-country resellers at rates equal to the cash deposit rate required at the time of their entry.

On all remaining entries that entered under CMIECHN/CNIECHN's cash deposit rate, the Department will instruct Customs to assess the PRC-wide rate of 143.32 percent. The Department will likewise instruct Customs to assess the facts available rate, also 143.32 percent, on all POR entries which entered under HIED's cash deposit rate.

Moreover, the following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) For HIED and CMIECHN/CNIECHN, the cash deposit rate will be the rates for these firms established in the final results of this review; (2) for Minmetals and CEIEC, which we determined to be entitled to a separate rate in the *LTFV Investigation* but which did not have shipments or entries to the United States during the POR, the rates will continue to be 5.88 percent and 11.77 percent, respectively (these are the rates which currently apply to these companies); (3) for all other PRC exporters, all of which were found not to be entitled to a separate rate, the cash deposit rate will continue to be 143.32 percent; and (4) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 7, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–23777 Filed 9–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–508–605]

Industrial Phosphoric Acid From Israel: final results and partial recission of countervailing duty administrative review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results and partial recission of Countervailing Duty administrative review.

SUMMARY: On May 7, 1999, the Department of Commerce published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on industrial phosphoric acid (IPA) from Israel for the period January 1, 1997 through December 31, 1997 (64 FR 24582). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended. For information on the net subsidy for each reviewed company, and for all non-reviewed companies, please see the *Final Results of Review* section of this notice. We will instruct the U.S. Customs Service to assess countervailing duties as detailed in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: September 13, 1999.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein or Sean Carey, Office of CVD/AD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3208 or (202) 482–3964, respectively.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 CFR 351.213(b), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers Rotem-Amfert Negev Ltd. (Rotem) and Haifa Chemicals Ltd. (Haifa). Haifa did not export the subject merchandise during the period of review (POR). Therefore, in accordance with section 351.213(d)(3) of the Department of Commerce's (the Department) regulations, we are rescinding the review with respect to Haifa. This review also covers eleven programs.

Since the publication of the preliminary results, the following events have occurred. We invited interested parties to comment on the preliminary results. On June 7, 1999 case briefs were filed by both petitioners (FMC Corporation and Albright & Wilson Americas Inc.) and respondents (the Government of Israel (GOI) and Rotem-Amfert Negev, the producer/exporter of IPA to the United States during the review period). On June 11, 1999, respondents filed a rebuttal brief; petitioners filed a rebuttal brief on June 14, 1999.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department is conducting this administrative review in accordance with section 751(a) of the Act. All citations to the Department's regulations reference 19 CFR Part 351 (1998), unless otherwise indicated.

Scope of the Review

Imports covered by this review are shipments of industrial phosphoric acid (IPA) from Israel. Such merchandise is classifiable under item number 2809.20.00 of the *Harmonized Tariff Schedule* (HTS). The HTS item number is provided for convenience and U.S. Customs Service purposes. The written description of the scope remains dispositive.

Subsidies Valuation Information

Period of Review

The period for which we are measuring subsidies is calendar year 1997.

Allocation Period

In *British Steel plc.* v. *United States*, 879 F. Supp. 1254 (CIT 1995) (*British Steel I*), the U.S. Court of International Trade (the Court) ruled against the allocation period methodology for non-recurring subsidies that the Department had employed for the past decade, a methodology that was articulated in the *General Issues Appendix* appended to the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37217 (July 9, 1993) (*GIA*). In accordance with the Court's decision on remand, the Department determined that the most reasonable method of deriving the allocation period for non-recurring subsidies is a company-specific average useful life (AUL) of non-renewable physical assets. This remand determination was affirmed by the Court on June 4, 1996. *British Steel plc.* v. *United States*, 929 F.Supp 426, 439 (CIT 1996) (*British Steel II*).

However, in administrative reviews where the Department examines non-recurring subsidies received prior to the period of review (POR) which have been countervailed based on an allocation period established in an earlier segment of the proceeding, it is not practicable to reallocate those subsidies over a different period of time. Where a countervailing duty rate in earlier segments of a proceeding was calculated based on a certain allocation period and resulted in a certain benefit stream, redefining the allocation period in later segments of the proceeding would entail taking the original grant amount and creating an entirely new benefit stream for that grant.

In this administrative review, the Department is considering non-recurring subsidies previously allocated in earlier administrative reviews under the old practice, non-recurring subsidies also previously allocated in recent administrative reviews under the new practice, and non-recurring subsidies received during the instant POR. Therefore, for purposes of these preliminary results, the Department is using the original allocation period of 10 years assigned to non-recurring subsidies received prior to the 1995 administrative review (the first review for which the Department implemented the *British Steel I* decision). For non-recurring subsidies received since 1995, Rotem has submitted, in each administrative review including this one, AUL calculations based on depreciation and asset values of productive assets reported in its financial statements. In accordance with the Department's practice, we derived Rotem's company-specific AUL by dividing the aggregate of the annual average gross book values of the firm's depreciable productive fixed assets by the firm's aggregated annual charge to depreciation for a 10-year period. In the current review, this methodology has resulted in an AUL of 23 years; thus, non-recurring subsidies received during the POR have been allocated over 23 years.

Privatization

Israel Chemicals Limited (ICL), the parent company which owns 100 percent of Rotem's shares, was partially privatized in 1992, 1993, 1994, and 1995. In this administrative review, the Government of Israel (GOI) and Rotem reported that additional shares of ICL were sold in 1997. We have previously determined that the partial privatization of ICL represents a partial privatization of each of the companies in which ICL holds an ownership interest. *See Final Results of Countervailing Duty Administrative Review; Industrial Phosphoric Acid from Israel*, 61 FR 53351, 53352 (October 11, 1996) *(1994 Final Results)*. In this review and prior reviews of this order, the Department found that Rotem and/or its predecessor, Negev Phosphates Ltd., received non-recurring countervailable subsidies prior to these partial privatizations. Further, the Department found that a portion of the price paid by a private party for all or part of a government-owned company represents partial repayment of prior subsidies. *See GIA*, 58 FR at 37262. Therefore, in 1992, 1993, and 1995 reviews, we calculated the portion of the purchase price paid for ICL's shares that went toward the repayment of prior subsidies. In the 1994 privatization, less than 0.5 percent of ICL shares were privatized. We determined that the percentage of subsidies potentially repaid through this privatization could have no measurable impact on Rotem's overall net subsidy rate. Thus, we did not apply our repayment methodology to the 1994 partial privatization. *See 1994 Final Results*, 61 FR at 53352. However, we are applying this methodology to the 1997 partial privatization because 17 percent of ICL's shares were sold. This approach is consistent with our findings in the *GIA* and Department precedent under the URAA. *See e.g., GIA*, 58 FR at 37259; *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Countervailing Duty Administrative Review*, 61 FR 58377 (November 14, 1996); *Final Affirmative Countervailing Duty Determination: Certain Pasta from Italy*, 61 FR 30288 (June 14, 1996).

Discount Rates

We considered Rotem's cost of long-term borrowing in U.S. dollars as reported in the company's financial statements for use as the discount rate used to allocate the countervailable benefit over time. However, this information includes Rotem's borrowing from its parent company, ICL, and thus does not provide an appropriate discount rate. Therefore, we considered ICL's cost of long-term commercial borrowing in U.S. dollars in each year from 1984 through 1997 as the most appropriate discount rate. ICL's interest rates are shown in the notes to the company's financial statements, public documents which are in the record of this review: *See Comment 9* in the *1995 Final Results*.

Analysis of Programs

Based upon the responses to our questionnaire and written comments from the interested parties, we determine the following:

I. Programs Conferring Subsidies

A. Encouragement of Capital Investments Law (ECIL)

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. Our review of the record and our analysis of the comments submitted by the interested parties, summarized below, has not led us to modify our calculations for this program from the preliminary results. Accordingly, the net subsidy for this

program remains unchanged from the preliminary results and is as follows:

[Percent ad valorem]

Manufacturer/exporter	Rate
Rotem Amfert Negev	5.43

B. Infrastructure Grant Program

In the preliminary results, we found that this program conferred countervailable subsidies on the subject merchandise. We did not receive any comments on this program from the interested parties, and our review of the record has not led us to change any findings or calculations. Accordingly, the net subsidy for this program remains unchanged from the preliminary results and is as follows:

[Percent ad valorem]

Manufacturer/exporter	Rate
Rotem Amfert Negev	0.22

II. Programs Found to be Not Used

In the preliminary results, we found that the producers and/or exporters of the subject merchandise did not apply for or receive benefits under the following programs:

1. Encouragement of Industrial research and Development Grants (EIRD)
2. Environmental Grant Program
3. Reduced Tax Rates under ECIL
4. ECIL Section 24 Loans
5. Dividends and Interest Tax Benefits under Section 46 of the ECIL
6. ECIL Preferential Accelerated Depreciation
7. Exchange Rate Risk Insurance Scheme
8. Labor Training Grants
9. Long-Term Industrial Development Loans

We did not receive any comments on these programs from the interested parties, and our review of the record has not led us to change our findings from the preliminary results.

Analysis of Comments

Comment 1: The Privatization Calculation

Respondents contend that the Department's privatization calculation is incorrect and should be corrected in two areas: the numerators used in the ratios which are averaged to calculate the "gamma" should include all of the subsidies received by Rotem over the years; and, the gamma itself is understated because the numerators contain only the grants received in a given year, while the denominators are accumulated values in that they contain Rotem's net worth in each year (*i.e.*, net worth is, by definition, the accumulation of a company's financial results since its inception), resulting in a ratio of apples to oranges.

Respondents note that in calculating the "gamma" used in the privatization calculation, the Department did not include in the numerators the subsidies received by Rotem arising from ECIL grants to projects 8, 12, and 13. Respondents note that although grants to projects 12 and 13 were fully countervailed in prior administrative reviews, Rotem nevertheless reported these grants so the Department could include them in the gamma calculation. However, the Department failed to include these grants in the gamma numerators in the relevant years, and did not include any grants to project 8 in the gamma numerators, presumably because of the earlier finding that grants to project 8 do not benefit IPA production. Respondents argue that in calculating gamma, the Department is not seeking to determine the level of countervailable subsidization, but rather the level of total subsidization, relative to a company's net worth. Respondents cite the final results of the prior administrative review, where the Department stated that the "gamma calculation serves as a reasonable historic surrogate for the percentage of subsidies that constitute the overall value (*i.e.* net worth of the company) at a given point in time," (64 FR at 2884) and argue that the only way the gamma can be an accurate historic surrogate is if *all* the subsidies received are included in its calculation. Respondents note that the Department rejected this argument in the previous administrative review, and urge the Department to reconsider its position. *See Final Results of Countervailing Duty Administrative Review; Industrial Phosphoric Acid from Israel*, 64 FR 2879 (January 19, 1999) *(1996 Final Results)*.

Respondents also argue that the numerators and the denominators used in calculating the gamma are not consistent in that the value of the denominators, Rotem's net worth in each of the relevant years is, by definition, an accumulated value, while the value the Department uses in the numerators, the value of the subsidies in the same year, is not an accumulated value. Respondents argue that the Department should correct this methodological error by using a value in the numerator which represents the accumulated value of the subsidies in the relevant year.

Respondents note that in both the 1996 and the 1995 administrative reviews, the Department rejected this argument. In the 1995 review, the Department reasoned that respondents had ignored the fact that the value of the subsidies is eroding over time. *See 1995 Final Results*. Respondents further note that in the 1996 review, the Department took the position that respondents incorrectly assumed "that the company's net worth increased in direct proportion to the value of the subsidies received by the firm." 64 FR at 2884. Respondents now argue that the Department's 1995 conclusion ignores the fact that the net worth of the company is also eroding to a comparable degree as a result of the depreciation of the company's assets (that is, but for additional capital infusions, some of which are subsidies included in the gamma numerator which increase the company's net worth, the net worth would also decline over time, just as the subsidies do). This depreciation of assets (which is manifest in the denominator), according to respondents, offsets the erosion of the subsidies (manifest in the numerator) over time. Respondents also argue that the Department's 1996 reasoning ignores the fact that the grants to Rotem were "capital infusions" used by Rotem to build infrastructure, illustrating that, contrary to the Department's conclusion, Rotem's equity is increasing as a result of the grants, in direct proportion to their value. Finally, respondents argue that the Department's privatization calculation methodology is internally inconsistent because the Department does not accumulate the subsidies to calculate the gamma, but does so to calculate the percent of subsidies repaid: the net present value (NPV) used in the privatization formula is nothing more than the subsidies accumulated, based on a ten year, declining benefit stream. Thus, respondents argue, the subsidies are being accumulated for the "percent repaid" calculation, but are not being accumulated for the gamma calculation. According to respondents, either both should be accumulated or neither should be accumulated.

Petitioners note that respondents make two now familiar attacks on the Department's privatization methodology. Petitioners contend that the Department has properly rejected these arguments in the past two administrative reviews of this order. With respect to including all, rather than just countervailable subsidies in the gamma numerators, petitioners argue that this would lead to the absurd result of requiring the Department to investigate all subsidies, regardless of their countervailability, to construct an appropriate privatization calculation. With respect to respondents' arguments about the mismatch between the gamma numerators and denominators, petitioners urge the Department to continue to apply the sound reasoning applied in the two previous administrative reviews.

Department's Position

The Department has considered respondents' arguments with respect to the privatization methodology in the last two administrative reviews of this countervailing duty order. *See 1995 Final Results; 1996 Final Results*. We continue to believe that these arguments are without merit. First, the Department does not calculate a benefit from subsidies which have been fully countervailed, or subsidies that are not countervailable because they do not benefit the subject merchandise. Therefore, the Department's privatization methodology does not address the repayment of such subsidies. After calculating the gamma, and therefore determining the portion of the purchase price which "repays" past subsidies, that portion of the purchase price is deducted from the net present value of the remaining benefit stream of all non-recurring subsidies that are being countervailed. If all subsidies were included in the gamma numerator, the net present value calculation would also have to include all other subsidies, even if they were found not to benefit the production of subject merchandise, or if they have already been fully countervailed. Accepting respondents' arguments would require the Department to monitor and allocate over time even subsidies which were found non-countervailable, in the event that a company were to experience a change in ownership at some time during the administration of a countervailing duty order. This practice could give rise to many unintended consequences, including increasing respondents' burden of complying with the countervailing duty law, and allowing the parties to continue to address issues relating to a program's countervailability, regardless of earlier findings.

Second, we reject respondents' argument that the Department's privatization methodology is inconsistent by virtue of the gamma denominator representing accumulated net worth and the gamma numerator not representing the accumulated value of subsidies received over time. Thus, we reject respondents' conclusion that the methodology assumes that the benefits of a subsidy disappear at the end of the year of receipt. As we stated in the *1995 Final Results* and the *1996 Final Results*, the gamma calculation attempts to determine the portion of the company's net worth which is comprised of subsidies in the year prior to privatization. Once again, we believe that respondents' proposal to compare the accumulated value of a company's subsidies in the year before privatization to the company's net worth in that year would overstate the value of the subsidies in relationship to the company's net worth by assuming that a company's net worth increases in direct proportion to the value of the subsidies received by that firm. Moreover, as we stated in the last administrative review, a company's net worth is not increasing in direct proportion to the value of the subsidies received because the value of the subsidies is eroding over time. *See 1996 Final Results*.

We also reject respondents' suggestion that the Department either remove the net present value element from the "percent repaid" calculation or add it to the gamma calculation (by accumulating the subsidies). This suggestion might have merit if our gamma methodology only considered the subsidies to net worth ratio in the year prior to privatization in isolation. However, the gamma looks at ten years of data and averages those ten years, thus providing a historical context to the ratio of subsidies to net worth over time. In addition, we note that while the gamma itself does not factor in the net present value of past subsidies, the results of the gamma calculation are applied to the present value of the remaining benefit streams at the time of privatization. Thus, our current calculations, as a whole, do properly account for the present value of the remaining benefits at the time of privatization. *See Final Affirmative Countervailing Duty Determination: Certain Hot-Rolled Flat Rolled Carbon Quality Steel Products from Brazil*, 64 FR 38742 (July 19, 1999); *1996 Final Results*.

Finally, respondents have once again provided a Coopers & Lybrand report in support of their privatization methodology arguments and maintain that the Department's failure to accept this report in the last two administrative reviews indicates that the Department does not understand the arguments presented therein. As explained above, while the Department does appreciate the argument, we do not believe that it merits a change in our privatization methodology. This methodology aims, through the calculation of the gamma, to determine the percentage of subsidies that constitute the overall value (*i.e.*, net worth) of the company at a given point in time, and then to use that gamma to determine the portion of total subsidies which are repaid through the privatization transaction and the portion which remains with the company and continues to provide countervailable benefits. *See, GIA*, 58 FR at 37263, and *1995 Final Results*, 63 FR at 13635, 13636. This methodology has been accepted by the courts as a reasonable way to determine the impact of privatization on previously bestowed subsidies. *See Inland Steel Bar Co.*, v. *United Engineering Steels, Ltd.*, 155 F.3d 1370, 1374–75 (Fed. Cir. 1998) (the Court affirmed the Department's methodology for determining the amount of a subsidy that is repaid); *Saarstahl AG* v. *United States*, 177 F. 3d 1314 (Fed. Cir. 1999).

Comment 2: Rotem's AUL Calculation

Petitioners contend that the Department's calculation of Rotem's AUL is flawed in that it excludes a category of assets referred to as "Furniture, vehicles, and equipment." Petitioners argue that it is inappropriate for the Department to accept Rotem's explanation that these assets should be excluded from the AUL calculation because they are not "productive assets." Some of these assets are identified by Rotem as "office equipment" which, according to petitioners consists of computers and/or related software which may be essential to Rotem's production and operations; assets identified as "vehicles" could, petitioners maintain, be used in, or essential to, production and operations. Petitioners believe that the determination of what constitutes productive assets is a factual determination which the Department must make on a case-by-case basis; petitioners maintain that the record in this review does not contain the necessary factual information for this determination. Petitioners urge the Department to require Rotem to provide a detailed listing of the specific assets which comprise this category and their uses so that the Department can evaluate and petitioners can comment on whether they should be included in the AUL calculation.

Respondents note that it should be clear from the items enumerated that the category is intended for office-type assets. Productive assets are accounted for in the category "facilities, machinery, and equipment," and respondents believe that the difference between productive and non-productive assets is clear from the accounting records.

Department's Position

We disagree with petitioners' argument that the category of Rotem's assets entitled "furniture, vehicles, and office equipment," requires any further examination by the Department. Rotem complied with the Department's request and provided information from its audited financial statements for use in the Department's company-specific AUL calculations. We note that the verification reports from the 1995 administrative review, which were submitted on the record of the current review, discuss the calculation of Rotem's company-specific AUL and its components. The information discussed in these reports is consistent with the information that Rotem submitted during the current review. Therefore, because respondent submitted its AUL information in the manner that the Department requested and this information has previously been verified and tied to Rotem's audited financial statements, we find no reason to change the calculation of Rotem's AUL for these final results.

Final Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1997 through December 31, 1997, we determine the net subsidy for Rotem to be 5.65 percent *ad valorem*.

We will instruct the U.S. Customs Service (Customs) to assess countervailing duties as indicated above. The Department will also instruct Customs to collect cash deposits of estimated countervailing duties in the percentages detailed above of the f.o.b. invoice price on all shipments of the subject merchandise from reviewed companies, entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in § 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F.Supp. 782 (CIT 1993); *Floral Trade Council* v. *United States*, 822 F.Supp. 766 (CIT 1993). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding conducted under the Act, as amended by the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding pursuant to the statutory provisions that were in effect prior to the URAA amendments is applicable. *See 1992/93 Final Results*, 61 FR at 28842. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1997 through December 31, 1997, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply is a violation of the APO.

This administrative review is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: September 7, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–23776 Filed 9–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Final Results of Full Sunset Review: Sugar From the European Community

[C–408–046]

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Full Sunset Review: Sugar From the European Community.

SUMMARY: On April 26, 1999, the Department of Commerce ("the Department") issued the preliminary results of full sunset review of the countervailing duty order on sugar from the European Community ("the EC") (64 FR 20257) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). We provided interested parties an opportunity to comment on our preliminary results. We received comments filed on behalf of domestic interested parties. As a result of this review, the Department finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy. The net countervailable subsidy and the nature of the subsidy are identified in the "Final Results of Review" section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th & Constitution, N.W., Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: September 13, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations") and in 19 CFR Part 351 (1998) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Scope

The merchandise subject to this countervailing duty order is sugar, with the exception of specialty sugars (*e.g.*, cones, hats, pearls, loaves), from the European Community. Blends of sugar and dextrose, a corn-derived sweetener, containing at least 65 percent sugar are within the scope of this order. According to the final results of the Department's most recent administrative review, the merchandise subject to this order is currently classifiable under item numbers 1701.11.00, 1701.12.00, 1701.91.20, and 1701.99.00 of the Harmonized Tariff Schedule of the United States ("HTSUS") (*see* Sugar From the European Community; Final Results of Countervailing Duty Administrative Review, 55 FR 35703 (August 31, 1990). In their substantive response, the domestic interested parties asserted that the merchandise subject to the order is currently classifiable under item numbers 1701.11.0025, 1701.11.0045, and 1702.90.300 of the HTSUS. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description remains dispositive.

Background

On April 26, 1999, the Department issued the Preliminary Results of Full Sunset Review: Sugar From the European Community (64 FR 20257). In our preliminary results, we found that revocation of the order would be likely to lead to continuation or recurrence of a countervailable subsidy. Further, we found the net countervailable subsidy likely to prevail if the order were revoked is 10.80 cents per pound, the subsidy from the original investigation. Finally, we found that, although qualifying as a countervailable export subsidy, Article 3 of the Subsidies Agreement did not apply to the export restitution payments program.

On June 8, 1999, we received comments on behalf of the United States Beet Sugar Association and its individual members and the United States Cane Sugar Refiners' Association and its individual members (collectively "the Associations"), within the deadline specified in 19 CFR 351.309(c)(1)(i). We did not receive comments from respondent interested parties.

Comments

Comment 1: The Associations assert that the Department's preliminary determination that revocation of the order would likely lead to continuation or recurrence of a countervailable subsidy was appropriate and should be maintained for the final results. The Associations further assert that the Department properly applied the relevant standards, and the record in the underlying sunset review cannot support any alternative conclusion.

Department Position: We agree with the Associations. For the reasons enunciated in our notice of preliminary results (*see* Preliminary Results of Full Sunset Review: Sugar From the European Community, 64 FR 20257 (April 26, 1999)), we continue to find that revocation of the countervailing duty order would likely lead to continuation or recurrence of a countervailable subsidy.

Comment 2: The Associations assert that the Department correctly concluded that the export restitution payments on European sugar constitute a countervailable subsidy. However, they argue that the Department incorrectly concluded that the subsidies are exempt from Articles 3 and 6 of the Subsidies Agreement.

The Associations argue that the respondent foreign government and/or industry bears the burden of demonstrating that the export subsidy program at issue is in conformance with the provisions of Part V of the Agreement on Agriculture before the Department may properly determine that the program is exempt from Articles 3, 5, or 6 of the Subsidies Agreement. Further, the Associations assert that the European Commission failed to place evidence on the record or set forth arguments supporting the proposition that the restitution payment system under the CAP conforms to Part V of the Agreement on Agriculture. The Associations assert that in their substantive response they had presented significant evidence that the sugar restitution payments under the CAP have repeatedly been found to violate GATT/WTO principles. Additionally, they assert that they had presented further evidence showing that it is likely that the European Union ("EU") will be unable to meet its GATT/WTO commitments to reduce the levels of these export subsidies, in light of the increasing gap between the EU and world price of sugar and the likely accession of ten new member states to the EU in the near term.

In conclusion the Associations argue that the EU's sugar export restitution payments most certainly constitute a prohibited countervailable subsidy, whether under Article 3 of the Subsidies Agreement or under Article 13(c) of the Agreement on Agriculture.

Department's Position: We disagree with the Associations' assertion that the burden is on the respondent government and/or exporters to provide evidence demonstrating that the export subsidy program at issue is in conformance with the provisions of Part V of the Agreement on Agriculture before the Department may properly determine that the program is exempt from Articles 3, 5, or 6 of the Subsidies Agreement. While the provision of such evidence would certainly aid the Department in its determination, failure of the respondent government to provide such evidence does not preclude the Department from finding that the program is in conformance with the provisions of Part V of the Agreement on Agriculture.

Further, we do not agree with the Associations that the evidence they presented regarding prior determinations is sufficient to find this program is a prohibited subsidy under the WTO Agreements. The Associations referred to prior determinations by Treasury, Commerce, the Commission, and the Canadian International Trade Tribunal, that export restitution payments under the CAP are countervailable subsidies. We agree that each of these determinations supports a finding that the program is a countervailable export subsidy; however, they do not address the question of whether the program is a prohibited export subsidy under the Subsidies Agreement. In addition, the Associations refer to the GATT Dispute Panel Report on Complaint by Brazil Concerning EC Refunds on Exports of Sugar (adopted November 10, 1980) and the GATT Dispute Panel Report on Complaint by Australia Concerning EC Refunds on Exports of Sugar (adopted November 6, 1979). While both of these adopted Panel Reports held that the CAP sugar regime constitutes a form of subsidy subject to the provisions of Article XVI of the GATT, neither of these reports addresses the question of whether the program is in conformance with the provisions of Part V of the WTO Agreement on Agriculture.

As to the Associations' assertions that falling world sugar prices and the pending application of ten new former Eastern bloc countries currently seeking admission to the EU make it, at best, uncertain whether the EU will be able to meet its commitments to reduce export subsidies, we find these allegations insufficient to support a finding that the program is not in conformance with Part V of the WTO Agreement on Agriculture.

Article 13(c) of the Agreement on Agriculture states that export subsidies conforming to the provisions of Part V of the Agreement on Agriculture shall be exempt from actions based on Article

XVI of GATT 1994 or Articles 3, 5, and 6 of the Subsidies Agreement. Part V of the Agreement on Agriculture, specifically Articles 8 and 9, refers to the export subsidy commitments as specified in the Schedule of each Member. Nothing on the record suggests that the restitution payments on sugar do not conform to the commitments as reflected in the EU's Schedule. Therefore, we continue to find that, although qualifying as a countervailable export subsidy, Articles 3 and 6 of the Subsidies Agreement do not apply to the export restitutions payment program on sugar under the CAP.

Comment 3: The Associations argue that the Department should make an upward adjustment to the net countervailable subsidy rate to arrive at a rate that represents the countervailing duty rate likely to prevail if the order is revoked. The Associations assert that the evidence set forth in their substantive response supports a net countervailable subsidy rate of 27.97 cents/pound of sugar and that even the data presented in the EC's response supports a net subsidy rate of 18.61 cents/pound of sugar. The Associations argue that, in the present case, because the investigation rate is based on data that is more than 20 years old and both domestic and foreign interested parties have provided the Department with more recent data establishing a current net subsidy rate of at least 18.61 cents/pound, there is sufficient cause for the Department to make an exception to the general rule of selecting the subsidy rate from the original investigation.

In conclusion, the Associations request that the Department make an upward adjustment to the countervailing duty rate likely to exist in the event of revocation to reflect the current prevailing rate of 27.97 cents/pound, or 18.61 cents/pound at a minimum.

Department's Position: In sunset reviews, the Department is assigned the responsibility of providing to the International Trade Commission ("the Commission") the magnitude of the net countervailable subsidy that is likely to prevail if the order is revoked. For purposes of determining whether revocation of a countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy, section 752(b)(1) of the Act directs the Department to consider the net countervailable subsidy determined in the investigation and subsequent reviews and whether any change in the program which gave rise to the net countervailable subsidy has occurred that is likely to affect that net countervailable subsidy. The Department noted in its Sunset Policy Bulletin that, consistent with the Statement of Administrative Action ("the SAA")[1] at 890, and the House Report[2] at 64, the Department normally will select a rate from the investigation, because that is the only rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place (*see* section III.B.1 of the Sunset Policy Bulletin). Additionally, the Department noted that the rate from the investigation may not be the most appropriate if it was derived from a subsidy program which was found in a subsequent review to have undergone a program-wide change (*see id.* at section III.B.3).

The Department defines "program-wide change" as a change that (1) is not limited to an individual firm or firms and (2) is effectuated by an official act, such as the enactment of a statute, regulation, or decree, or contained in the schedule of an existing statute, regulation, or decree.[3]

As described in numerous **Federal Register** notices regarding the underlying investigation and administrative reviews, export restitution payments made under the CAP are a means of guaranteeing sugar producers a stated export price for sugar (see e.g., Sugar From the European Community; Preliminary Results of Countervailing Duty Administrative Review, 55 FR 28799 (July 13, 1990)). Further, export restitution payments are only granted when the world price of sugar as established in international markets is lower than the "threshold price" established by the EC. Changes in the world market price are not effectuated by the EC. However, the "threshold price," the amount of restitution payments to be provided, are determined by the EC, effectuated by regulation, and published in the Official Journal. As such, these changes constitute program-wide changes that the Department may consider in determining the net countervailable subsidy likely to prevail if the order were revoked.

Therefore, in a change from our preliminary results, we agree with the Associations that the Department should determine the net countervailable subsidy likely to prevail were the order revoked based on more recent information. In its substantive response, the EC identified the average export refund for marketing years 1995/1996, 1996/1997, and 1997/1998. In its substantive response, the Committee calculated a subsidy rate based on the export refund rate from October 1998. Because, as the Committee argues, the world price of sugar has been declining since 1995, we determine that recent data would more closely approximate the level of subsidy if the order were revoked than would the subsidy levels from the original investigation or administrative reviews conducted in the early 1980's.

We do not, however, agree with the Associations' suggestion that a rate based on an October 1998 announcement is the most appropriate. Over the 1995–1998 time period, the average export refund has varied from year to year and we do not have a basis to select one year over the other as the most probative rate. Because we must provide the Commission with the rate likely to prevail in the future based upon past experience, we have determined that an average of the marketing year refunds since the implementation of the WTO Agreement on Agriculture, as reported in the EC's response, is an appropriate representation of the net countervailable subsidy likely to prevail if the order were revoked. On this basis, we find that the net countervailable subsidy likely to prevail were the order revoked is 23.69 cents per pound of sugar, the rate established by the record as reflecting recent trends in the level of export refunds.

Comment 4: The Associations argue that the Department's determination to conduct a full sunset review is plainly inconsistent with its own regulations, and will have the effect of rendering the provision of 19 CFR 351.218(e)(3)(ii) meaningless in all countervailing duty sunset determinations going forward. Specifically, the Associations assert that none of the foreign respondent producers filed any substantive responses to the notice of initiation and, therefore, the Department should have determined that it did not receive adequate response since it did not have complete substantive responses from respondent interested parties accounting on average for more than 50 percent of the total exports of the subject merchandise. Given that the legislative history contemplates that a response from the foreign government in addition to responses from the foreign industry respondents is essential to the sunset determination, foreign governments are not entitled to a full review where all of the industry participants that the government presumably represents have failed to respond.

In conclusion, the Associations argue that the Department should determine that a full review in this case was unnecessary and unwarranted.

Department's Position: We disagree. The Department's regulations do not require that the Department conduct an expedited review. Rather, the regulations provide that the Department *normally* will conduct an expedited review where it does not receive adequate response, where adequate response is described as responses from parties accounting for more than 50 percent of the volume of exports over the five years preceding initiation of the sunset review. The Department *must* conduct an expedited sunset review of a countervailing duty order only when the foreign government does not participate.

Unlike other countervailing duty investigations or reviews, where company-specific information is required in order to measure the amount of countervailable subsidy, the subsidy rate from the only program investigated over the life of this order has consistently been determined without the need for, or use of, company-specific information. Because adequacy determinations are made for the purpose of determining whether there is sufficient participation to warrant a full review, in a case such as this, where company-specific information provides no additional input into our determinations, we believe that requiring producer/exporter participation is not warranted. Therefore, in this sunset review, we continue to believe that the response of the EC forms an adequate basis for conducting a full review to determine whether revocation of the countervailing duty order on sugar from the EC will likely lead to continuation or recurrence of a countervailable subsidy and, if so, what the level of the net countervailable subsidy would be.

Final Results of Review

As a result of this review, the Department finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy for the reasons set forth in the preliminary results of review. For the reasons set forth in the preliminary results of review, we continue to determine the country-wide net countervailable subsidy in terms of cents per pound. However, for this final, we find the net countervailable subsidy likely to prevail if the order were revoked is 23.69 cents per pound. Although qualifying as a countervailable export subsidy, Articles 3 and 6 of the Subsidies Agreement do not apply to the export restitution payments program under the EC's CAP.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 27, 1999.

Bernard T. Carreau,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–23040 Filed 9–10–99; 8:45 am]

BILLING CODE 3510–DS–P

[1] H.R. Doc. No. 103–316, vol. 1 (1994).

[2] H.R. Rep. No. 103–826, pt. 1 (1994).

[3] *See* 19 CFR 351.526 (1999), which although not applicable to this sunset review, nonetheless provides guidance on the Department's policy.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082699B]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Florida/Alabama Habitat Protection Advisory Panel (AP).

DATES: The meeting will begin at a.m. on Tuesday, September 28, 1999 and conclude by p.m.

ADDRESSES: The meeting will be held at the Hilton Tampa Aiport Westshore, 2225 Lois Avenue, Tampa, FL 33607; telephone: 813–877–6688.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Jeff Rester, Gulf States Marine Fisheries Commission; telephone: 228–875–5912.

SUPPLEMENTARY INFORMATION: The Florida/Alabama group is part of a three unit Habitat Protection Advisory Panel of the Gulf of Mexico Fishery Management Council. The principal role of the advisory panels is to assist the Council in attempting to maintain optimum conditions within the habitat and ecosystems supporting the marine resources of the Gulf of Mexico. Advisory panels serve as a first alert system to call to the Council's attention proposed projects being developed and other activities which may adversely impact the Gulf marine fisheries and their supporting ecosystems. The panels may also provide advice to the Council on its policies and procedures for addressing environmental affairs.

At this meeting, the AP will discuss revision of the Council's Habitat Policy to include essential fish habitat (EFH) provisions, an update on EFH assessments in Council fishery management plan amendments, an update on the status of the EFH lawsuit, impact of two new gas pipelines between Mobile, AL and central Florida, status of the new marine reserves off the Florida panhandle, and an update on Alabama's expansion of their artificial reef zone.

Although other issues not on the agenda may come before the AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. The AP's actions will be restricted to those issues specifically identified in the agenda listed as available by this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by September 21, 1999.

Dated: September 7, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–23798 Filed 9–10–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090799B]

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a public meeting with the limited access permit holders in the golden crab fishery in the South Atlantic region.

DATES: The meeting will be held on Monday, September 27, 1999, from 1:00 p.m. until 6:00 p.m.

ADDRESSES: The meeting will be held at the Best Western, 411 South Krome, Florida City, FL 33034; telephone: 305-246-5100.

Council address: South Atlantic Fishery Management Council, One Southpark Circle, Suite 306; Charleston, SC 29407-4699.

FOR FURTHER INFORMATION CONTACT: Robert Mahood, Executive Director; telephone: (843) 571-4366; fax: (843) 769-4520; email: robert.mahood@noaa.gov

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for Council staff to meet with the limited access permit holders in the golden crab fishery to gather information in preparation for Amendment 1 to the Golden Crab Fishery Management Plan.

Although other issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by September 20, 1999.

Dated: September 8, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–23799 Filed 9–10–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082599B]

Fisheries of the Exclusive Economic Zone off Alaska; Groundfish of the Gulf of Alaska Management Area; Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of an exempted fishing permit (EFP).

SUMMARY: NMFS announces the issuance of exempted fishing permit (EFP) 99–04 to the Alaska Fisheries Development Foundation, Inc. (AFDF). The EFP authorizes AFDF to conduct an experiment in the Gulf of Alaska (GOA) to test artificial bait fabricated from Alaska pollock offal. This EFP is necessary to obtain information that could prove valuable for Alaska fisheries. It is intended to further the goals of the Magnuson-Stevens Fishery Conservation and Management Act.

ADDRESSES: Copies of the EFP and the Environmental Assessment (EA) prepared for the EFP are available from Lori Gravel, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Nina Mollett, 907–586–7462.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska authorizes the issuance of EFPs for fishing for groundfish in a manner that would otherwise be prohibited under existing regulations. The procedures for issuing EFPs are set out at 50 CFR 679.6 and 600.745.

NMFS received an EFP application from AFDF on April 19, 1999, to conduct field trials in the GOA to test artificial longline bait fabricated from Alaska seafood offal. An announcement of receipt of the EFP application was published in the **Federal Register** on June 8, 1999 (64 FR 30488). The North Pacific Fishery Management Council (Council) approved the application at its June 9–14, 1999, meeting in Kodiak.

AFDF is receiving funding for this project from the Alaska Science Technology Foundation and is conducting its research collaboratively with MARCO Marine; the Center for Applied Regional Studies (based in Cambridge, Massachusetts); and the Wildlife Conservation Society, which is run by the Bronx Zoo in New York City.

AFDF plans to conduct the experiment in the GOA, near Seward, Kodiak, or Sitka, and will charter longline vessels under 60 feet for the purpose. The experiment will consist of two trials: One in late July, consisting of 8 days of fishing, and one in September, consisting of 12 days of fishing. The objective of the experiment is to compare the effectiveness between artificial and natural bait under commercial fishing conditions.

The first trial is intended to determine whether the artificial bait is effective and to make any changes needed in the bait itself or in the procedures followed. The second trial is intended to obtain meaningful and, if possible, statistically significant results on the effectiveness of the bait. The bait will be tested for its attractiveness to Pacific cod, to other species taken as incidental catch in the Pacific cod fishery, and to Pacific halibut.

AFDF sees both environmental and socioeconomic benefits accruing from its experiment, which, if successful, will lead to the substitution of artificial bait for much of the natural bait that is currently used. Potential environmental benefits include:

1. Recycling waste that is currently being dumped into the ocean into a productive use;

2. Reducing fishing pressure on bait species that are also used for human consumption, such as squid and herring;

3. Enhancing fishermen's ability to target species and size of fish desired, thus lowering bycatch and discard rates. Norwegian studies have indicated that bait type may be the most important gear factor affecting species and size selectivity.

Potential socioeconomic benefits include:

1. Creation of Alaskan jobs in producing the artificial bait, and money brought into Alaska through sale of artificial bait, as opposed to natural bait currently bought out of state.

2. Cost savings from bait that is less subject to loss, can continue to attract fish for longer periods underwater, and is more consistent in quality. Frozen bait, bought sight unseen, is sometimes rotten, and natural bait is often lost when it is cut into wrong size pieces;

3. Cheaper bait—AFDF anticipates that its artificial bait will be less expensive by 15 to 20 percent;

4. Higher catch rates if artificial bait proves to be indeed more successful in attracting fish than natural bait; and

5. Improved safety in that uniform sized bait will be less likely to cause problems in automatic bait machines.

AFDF plans to make two to four sets per day, depending on the weather. It will use four strings of longlines per set, each consisting of four skates and 200 hooks. Natural bait (herring) and artificial bait will be fished on each longline, alternating every ten hooks. Hook timers will be used to determine whether fish are attacking the bait and not being hooked and to compare catch over time and the success of hooking rates among bait types. Temperature-depth-time recorders will be used to determine fishing time on the bottom. Underwater video observations will be taken twice daily, for two hours at a time, to observe fish behavior with artificial and natural bait and to interpret the data recorded by the hook timers.

Data collected prior to each set and before recovering gear will include vessel location, time, date, set number, set direction, beginning and ending set time, bottom depth, wind speed, swell height, chop height, presence of birds, and so forth. While hauling in the gear, data collected will include the bait type, hook number in the sequence, presence of hook timer, bait status when nothing is caught (bait intact, partially gone, lost, hook lost, snood entanglement), species caught, and hook location.

AFDF is required by the terms of the permit to report within 24 hours the beginning and ending times of each fishing trip taken under the EFP. It is also required to provide a report to NMFS by February 2000, including all catch data and its analysis and findings, and to coordinate with the Council on presenting the results of its experiment at a Council meeting.

For the purposes of this experiment, AFDF will be allowed to catch 20,800 lb (9.45 mt) of Pacific cod and 1,100 lb (0.5 mt) of rockfish. The participants are expected to catch relatively small amounts of other species while fishing. NMFS is not including these other species as a limiting factor in the EFP.

The EFP states that, if AFDF approaches its limit on Pacific cod or rockfish, the Administrator, Alaska Region, NMFS (Regional Administrator), must be notified immediately and will make a decision on whether to stop fishing under the EFP or to modify the terms of the permit, pursuant to 50 CFR 679.6(f).

The applicant estimated a catch of up to 12,000 lb (5.44 mt) of Pacific halibut. However, the vessel is receiving no allowance of prohibited species bycatch and the halibut must be counted against the chartered vessel's individual fishing quota (IFQ) for halibut.

Groundfish mortality associated with this experiment will not be deducted from total allowable catch (TAC) specified for the 1999 groundfish fisheries. This additional groundfish mortality will not cause a conservation problem for groundfish species because estimated total removals under the EFP are very small compared with the overall TACs for these species and would not contribute in a meaningful way to approaching overfishing levels already considered in the EA for the 1999 groundfish specifications.

Failure of the permit holder to comply with the terms and conditions of the EFP may be grounds for revocation, suspension, or modification of the EFP under 15 CFR part 904 with respect to any or all persons and vessels conducting activities under the EFP. Failure to comply with applicable laws also may result in sanctions imposed under those laws.

Classification

The Regional Administrator has determined that fishing activities conducted under this action will not affect endangered and threatened species or critical habitat in any manner not considered in prior consultations on the groundfish fisheries. Participating vessels must take seabird avoidance measures; in the unlikely event that a short-tailed albatross is taken, it would be counted against the four short-tailed albatrosses allowed under the U.S. Fish and Wildlife Service's Biological Opinion on the effects of the hook-and-line groundfish fisheries in the Gulf of Alaska and Bering Sea and Aleutian Islands Area, March 19, 1999.

This notice is exempt from review under E.O. 12866. It also is exempt under the Regulatory Flexibility Act (RFA) because prior notice and opportunity for public comment are not required. Therefore, the analytical requirements of the RFA are inapplicable.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 7, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–23797 Filed 9–10–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Removing Companies From List of Companies From Which Customs Shall Deny Entry to Textiles and Textile Products

September 8, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs directing Customs not to apply the directive regarding denial of entry to shipments from certain companies.

EFFECTIVE DATE: September 13, 1999.

FOR FURTHER INFORMATION CONTACT: Martin Walsh, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 12475 of May 9, 1984, as amended.

In a notice and letter to the Commissioner of Customs, dated July 27, 1999, and published in the **Federal Register** on July 30, 1999 (64 FR 41395), the Chairman of CITA directed the U.S. Customs Service to deny entry to textiles and textile products allegedly manufactured by certain listed companies; Customs had informed CITA that these companies were found to have been illegally transshipping, closed, or unable to produce records to verify production.

Based on information received since that time, CITA has determined that Macau Ltd., Fabrica de Artigos de Vestuario; and Tong Heng, Fabrica de Vestuario, two of the listed companies, should not be subject to that directive. Effective on September 13, 1999, Customs should not apply the directive to shipments of textiles and textile products allegedly manufactured by these two companies: CITA expects that Customs will conduct on-site verifications of these companies' textile and textile product production.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 8, 1999.

Commissioner of Customs
Department of Treasury, Washington, DC 20229

Dear Commissioner: In the letter to the Commissioner of Customs, dated July 27, 1999 (64 FR 41395), the Chairman of CITA directed the U.S. Customs Service to deny entry to textiles and textile products allegedly manufactured by certain listed companies; Customs had informed CITA that these companies were found to have been illegally transshipping, closed, or unable to produce records to verify production.

Based on information received since that time, CITA has determined that Macau Ltd., Fabrica de Artigos de Vestuario; and Tong Heng, Fabrica de Vestuario, two of the listed companies, should not be subject to that directive. Effective on September 13, 1999, Customs is directed to not apply the directive to shipments of textiles and textile products allegedly manufactured by these two companies. CITA expects that Customs will conduct on-site verifications of these companies' textile and textile product production.

CITA has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements

[FR Doc. 99–23893 Filed 9–9–99; 2:28pm]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

AGENCY: U.S. Consumer Product Safety Commission, Washington, DC 20207.

TIME AND DATE: Wednesday, September 15, 1999, 10:00 a.m. (Previously scheduled for Thursday, September 16, 1999 at 2:00 p.m.).

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: September 9, 1999.

Todd A. Stevenson,

Deputy Secretary.

[FR Doc. 99–23937 Filed 9–9–99; 3:30 pm]

BILLING CODE 6355–01–M

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Meeting

Pursuant to the provision of the "Government in the Sunshine Act" (5 U.S.C. § 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) meeting described below.

TIME AND DATE OF MEETING: 9:00 a.m., September 29, 1999.

PLACE: The Defense Nuclear Facilities Safety Board, Public Hearing Room, 625 Indiana Avenue, NW, Suite 300, Washington, DC 20004.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Defense Nuclear Facilities Safety Board will convene the eleventh quarterly briefing regarding the status of progress of the activities associated with the Department of Energy's Implementation Plans for the Board's Recommendations 95–2, Integrated Safety Management ("ISM") and 98–1, Integrated Safety Management (Response to Issues Identified by the Office of Internal Oversight). In addition to a briefing on the status of these items, specific topics will include, but not be limited to, the following.

- Actions necessary to achieve full ISM implementation at defense nuclear facilities by September 2000;
- Presentations by the Rocky Flats Environmental Technology Site and the Savannah River Site regarding completion of initial ISM program implementation, and processes for ensuring continuous improvement;
- The result of Authorization Agreement reviews by the Offices of Defense Programs and Environmental Management;
- The status of ISM guidance document preparation;
- Progress on development of performance indicators; and
- Action items arising from the recent ISM Feedback and Improvement Workshop.

CONTACT PERSON FOR MORE INFORMATION: Richard A. Azzaro, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: The Defense Nuclear Facilities Safety Board reserves its right to further schedule and otherwise regulate the course of this meeting, to recess, reconvene, postpone or adjourn the meeting, and otherwise exercise its authority under the Atomic Energy Act of 1954, as amended.

Dated: September 8, 1999.

John T. Conway,

Chairman.

[FR Doc. 99–23960 Filed 9–9–99; 3:31 pm]

BILLING CODE 3670–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 12, 1999.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 7, 1999.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: The Study of Personnel Needs in Special Education (SPeNSE).

Frequency: One-time.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 8,083.

Burden Hours: 5,578.

Abstract: The Study of Personnel Needs in Special Education (SPeNSE) will describe the number and qualifications of personnel serving students with disabilities. SPeNSE will explore variation in workforce adequacy and identify working conditions, State and local policies, preservice education, and continuing professional development practices that explain that variation.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *OCIO_IMG_Issues@ed.gov* or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Sheila Carey at 202–708–6287 or electronically mail her at internet address sheila_carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Special Education Elementary Longitudinal Study (SEELS).

Frequency: Biennially.

Affected Public: Individuals or households; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 31,095.

Burden Hours: 17,049.

Abstract: SEELS will provide the first national picture of the experiences and outcomes of students in special education ages 6 through 12 at the outset of the study. The study will inform special education policy development and support Government Performance and Results Act (GPRA) measurement and Individuals with Disabilities Education Act (IDEA) reauthorization. Data will be collected three times over a five-year period from the parents, teachers and principals of sample students.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *OCIO_IMG_Issues@ed.gov* or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Sheila Carey at 202–708–6287 or electronically mail her at internet address sheila_carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Annual Protection and Advocacy of Individual Rights (PAIR) Program Performance Report.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 57.

Burden Hours: 342.

Abstract: Form RSA–509 will be used to analyze and evaluate the Protection and Advocacy of Individual Rights (PAIR) Program administered by eligible systems in states. These systems provide services to eligible individuals with disabilities to protect their legal and human rights.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *OCIO_IMG_Issues@ed.gov* or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Sheila Carey at 202–708–6287 or electronically mail her at internet address sheila_carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–23676 Filed 9–10–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Los Alamos; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATE: Wednesday, September 29, 1999; 6:00 p.m.–9:00 p.m.

ADDRESS: Pojoaque High School, Music Room, Route 502, Pojoaque, NM.

FOR FURTHER INFORMATION CONTACT: Ann DuBois, Northern New Mexico Citizens' Advisory Board, 1640 Old Pecos Trail, Suite H, Santa Fe, NM 87505. Phone: 505–989–1662; Fax: 505–989–1752; E-mail: *adubois@doeal.gov*; or Internet http:www.nmcab.org.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Public Comment, 6:30 p.m.–7 p.m.
2. Committee Reports: Environmental Restoration, Monitoring and Surveillance, Waste Management, Community Outreach, Budget.
3. Election of Officers for FY 2000.
4. Other Board business will be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ann DuBois at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 528 35th Street, Los Alamos, NM 87544. Hours of operation for the Public Reading Room are 9 a.m. and 4 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Ann DuBois at the Board's office address or telephone number listed above.

Issued at Washington, DC on September 8, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–23704 Filed 9–10–99; 8:45 am]

BILLING CODE 6405–01–P

DEPARTMENT OF ENERGY

Environmental Management Site Specific Advisory Board, Savannah River Site; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site Specific Advisory Board (EM SSAB), Savannah River Site

DATES: Monday, September 27, 1999: 6:30 p.m.–7 p.m. (Public Comment Session) 7 p.m.–9 p.m. (Individual Subcommittee meetings); Tuesday, September 28, 1999: 8:30 a.m.–4 p.m.

ADDRESSES: All meetings will be held at: Savannah Rapids Pavillion, Evans-to-Lock Road, Martinez, GA 30809.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Office of Environmental Quality, Department of Energy Savannah River Operations Office, PO Box A, Aiken, SC 29802 (803) 725–5374.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

Monday, September 27, 1999

6:30 p.m. Public Comment Session
7:00 p.m. Subcommittee meetings
9:00 p.m. Adjourn

Tuesday, September 28, 1999

8:30 a.m. Approval of Minutes, Agency Updates (approximately 15 minutes)
Public Comment Session (5-minute rule, approximately 10 minutes)
Facilitator Update (approximately 15 minutes)
SRS 1998 annual Report (approximately 45 minutes)
12:00 p.m. Lunch Break
Environmental Restoration and Waste Management Subcommittee Report continued (approximately 30 minutes)
Nuclear Materials Management Subcommittee Report (approximately 30 minutes)
Risk Management and Future Use Subcommittee (approximately 45 minutes)
Administrative Subcommittee Report (approximately 20 minutes)
Budget Subcommittee Report (approximately 10 minutes)
Outreach Subcommittee Report (approximately 10 minutes)
Public Comments (approximately 10 minutes)
4:00 p.m. Adjourn

If needed, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting, Monday, September 27, 1999.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday except Federal holidays. Minutes will also be available by writing to Gerri Flemming, Department of Energy Savannah River Operations Office, PO Box A, Aiken, S.C. 29802, or by calling (803)–725–5374.

Issued at Washington, DC on September 7, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–23705 Filed 9–10–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Pantex Plant; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex Plant, Amarillo, Texas. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATE AND TIME: Tuesday, September 28, 1999: 10 p.m.–2:30 p.m.

ADDRESSES: Amarillo Senior Citizens' Center, 1217 South Tyler Street, Amarillo, TX.

FOR FURTHER INFORMATION CONTACT: Jerry S. Johnson, Assistant Area Manager, Department of Energy, Amarillo Area Office, PO Box 30030, Amarillo, TX 79120, (806) 477–3125.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to advise the Department of Energy and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

10:00 Welcome-Agenda Review-Approval of minutes
10:15 Co-Chair Comments
10:30 Task Force/Subcommittee Reports
11:15 Ex-Officio Reports
11:30 Updates-Occurrence Reports-DOE
12:00 Lunch
1:00 Environmental Restoration/Off-Site Activities Update
2:00 Closing Remarks
2:15 Public Comments
2:30 Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jerry Johnson's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and every reasonable provision will be made to accommodate the request in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX, phone (806) 371–5400. Hours of operation are from 7:45 a.m. to 10 p.m. Monday through Thursday; 7:45 a.m. to 5 p.m. on Friday; 8:30 a.m. to 12 noon on Saturday; and 2 p.m. to 6 p.m. on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX, phone (806) 537–3742. Hours of operation are from 9 a.m. to 7 p.m. on Monday; 9 a.m. to 5 p.m. Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Jerry S. Johnson at the address or telephone number listed above.

Issued at Washington, DC on September 8, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–23706 Filed 9–10–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC99–567–000, (FERC–567)]

Proposed Information Collection and Request for Comments

September 7, 1999.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of Section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Consideration will be given to comments submitted on or before November 12, 1999.

ADDRESSES: Copies of the proposed collection of information can be obtained from and written comments may be submitted to the Federal Energy Regulatory Commission, Attn: Michael Miller, Office of the Chief Information Officer, CI–1, 888 First Street N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Michael Miller may be reached by telephone at (202) 208–1415, by fax at (202) 208–2425, and by e-mail at mmiller@ferc.fed.us.

SUPPLEMENTARY INFORMATION:

Abstract: The information collected under the requirements of FERC–567 "Gas Pipeline Certificates: Annual Reports of System Flow Diagrams and System Capacity" (OMB Control No. 1902–0005) is used by the Commission to implement the statutory provisions of Section 4, 5, 6, 7, 9, 10(a) and 16 of the Natural Gas Act (NGA) (Pub. L. 75–688), and Title III, Sections 301(a)(1), 303(a), 304(d), Title IV, Sections 401 and 402, Title V, Section 508 of the Natural Gas Policy Act (Pub. L. 95–621). The information collected under the requirements of FERC–567 is used by the Commission to obtain accurate data on pipeline facilities and the peak day capacity of these facilities. Specifically, the FERC–567 data is used in determining the configuration and location of installed pipeline facilities; evaluating the need for proposed facilities to serve market expansions; determining pipeline interconnections and receipt and delivery points; and developing and evaluating alternatives to proposed facilities as a means to mitigate environmental impact of new pipeline construction.

FERC–567 also contains valuable information that can be used to assist federal officials in maintaining adequate natural gas service in times of national emergency. The Commission implements these filing requirements in the Code of Federal Regulations (CFR) under 18 CFR Part 260.8 and 284.12.

Action: The Commission is requesting a three-year extension of the current expiration date, with no changes to the existing collection of data.

Burden Statement: Public reporting burden for this collection is estimated as follows:

Number of responses annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)×(2)×(3)
91	1.714*	81.58	12,724

*Derived by dividing the total number of responses expected annually (156) by the number of respondents (91) and rounding to three places.

The estimated reporting cost to respondents is $672,225 (12,724 hours divided by 2,080 hours per full-time employee-year multiplied times $109,889 per year (the estimated average salary per employee (including overhead expenses)) = $672,225).

There is a net increase of 977 hours in the total burden hours over the last Office of Management and Budget (OMB) clearance of the FERC–567 data collection, from 11,747 hours to 12,724 hours. This increase is an adjustment resulting from an increase in the number of respondents from 89 to 91 with a simultaneous increase in the number of responses per respondent from 1.62 to 1.71 (rounded). The number of responses per respondent is greater than one because some respondents are required to file both of the FERC–567 filing requirements while others are required to submit only one of the two.

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other

technological collection techniques or other forms of information technology *e.g.* permitting electronic submission of responses.

David P. Boergers,

Secretary.

[FR Doc. 99–23752 Filed 9–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL99–87–000]

Clarksdale Public Utilities Commission v. Entergy Services, Inc., as Agent for Entergy Arkansas, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Gulf States, Inc., Notice of Complaint

September 7, 1999.

Take notice that on September 3, 1999, Clarksdale Public Utilities Commission of the City of Clarksdale, Mississippi (Clarksdale) tendered for filing a complaint against Entergy Services Inc., as agent for Entergy Arkansas, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Gulf States, Inc. (collectively, Entergy) in connection with Entergy's May 6, 1999 update to its Open Access Transmission Tariff (OATT) filed in Docket No. ER99–2854–000.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before September 23, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before September 23, 1999.

David P. Boergers,

Secretary.

[FR Doc. 99–23750 Filed 9–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. P–11814–000]

The Coalition for the Fair and Equitable Regulation of Docks on Lake of the Ozarks, Inc. v. Union Electric Company, d/b/a AmerenUE; Notice of Complaint

September 7, 1999.

Take notice that on September 3, 1999, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206, The Coalition for the Fair and Equitable Regulation of Docks on Lake of the Ozarks, Inc., by and through its attorney, Stephen P. Brick, 550 39th Street, Des Moines, Iowa 50312, filed with the Federal Energy Regulatory Commission a complaint regarding certain actions by Union Electric Company, d/b/a AmerenUE (AmerenUE), concerning the implementation, the authority to implement and the substance of AmerenUE's 1999 Permit Program.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before September 23, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This Filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before September 23, 1999.

David P. Boergers,

Secretary.

[FR Doc. 99–23759 Filed 9–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL99–88–000]

Delmarva Power & Light Company; Notice of Filing

September 7, 1999.

Take notice that on September 3, 1999, Delmarva Power & Light Company (Delmarva) tendered for filing a Petition for Declaratory Order and Request for Expedited Consideration. Delmarva's petition concerns Section 305(a) of the Federal Power Act.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 15, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23751 Filed 9–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–609–000]

Texas Gas Transmission Corporation; Notice of Application

September 7, 1999.

Take notice that on August 27, 1999, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP99–609–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon a natural gas exchange service with Memphis Light, Gas & Water Division (Memphis) of the City of Memphis, Tennessee, a local distribution company, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Specifically, Texas Gas proposes to abandon the exchange service with Memphis that was provided under Texas Gas's Rate Schedule X–35. Texas Gas states that this exchange service is no longer required and has been terminated by mutual agreement of the parties by letter dated August 9, 1999.

The name, address and telephone number of the person to whom correspondence and communications concerning this application should be addressed is: David N. Roberts, Manager of Certificates and Tariffs, Texas Gas Transmission Corporation, P.O. Box 20008, Owensboro, KY 42304.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 28, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice for such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Gas to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–23748 Filed 9–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–612–000]

Transcontinental Gas Pipe Line Corporation; Notice of Request Under Blanket Authorization

September 7, 1999.

Take notice that on September 3, 1999, Transcontinental Gas Pipe Line Corporation (Transco), filed a request with the Commission in Docket No. CP–99–612–000, pursuant to Sections 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to abandon by sale an existing delivery meter station in Rockingham County, North Carolina, referred to as the "Cardinal Meter Station", authorized in blanket certificate issued in Docket No. CP82–426–000, all as more fully set forth in the request on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Transco proposes to abandon the Cardinal Meter Station (meter station) by sale to Cardinal Pipeline Company, LLC (Cardinal Pipeline). Cardinal, a Hinshaw pipeline whose rates and service are subject to regulation by the North Carolina Utilities Commission, would own and operate the meter station as part of its pipeline system and would continue to use the meter station to measure gas delivered by Transco. Transco reports that the meter station is used for deliveries of gas to Cardinal Pipeline for the account of Public Service Company of North Carolina, Inc. and Piedmont Natural Gas Company, Inc. Transco states that both Cardinal Pipeline and Piedmont have consented to the proposed abandonment. Transco states that the proposed abandonment would have no impact on Transco's peak day deliveries and little or no impact on Transco's annual deliveries.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

David P. Boergers,

Secretary.

[FR Doc. 99–23749 Filed 9–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–129–005 (Phase I Remand)]

Trunkline Gas Company; Notice of Informal Settlement Conference

September 7, 1999.

Take notice that an informal settlement conference will be convened in these proceedings on September 14, 1999 at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, for the purpose of exploring the possible settlement of the issues and drafting possible settlement documents in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Marc G. Denkinger (202) 208–2215 or Lorna J. Hadlock (202) 208–0737.

David P. Boergers,

Secretary.

[FR Doc. 99–23760 Filed 9–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License and Soliciting Comments, Motions To Intervene, and Protests

September 7, 1999.

Take notice that the following application has been filed with the

Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No:* 2512–046.

c. *Date Filed:* August 17, 1999.

d. *Applicants:* Elkem Metals Company L.P. and Elkem Metals Company—Alloy, LP.

e. *Name and Location of Project:* The Hawks Nest—Glen Ferris Project is on the New and Kanawha Rivers in Fayette County, West Virginia. The project does not occupy federal or tribal lands.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contacts:* Ms. Amy S. Koch, Cameron McKenna LLP, 1275 K Street, NW, 5th Floor, Washington, DC 20037, (202) 466–0060 and Mr. Henry Shaffer, Elkem Metals Company L.P., Airport Office Park, Bldg. 2, 400 Rouser Road, Moon Township, PA 15108–2749, (412) 229–7217.

h. *FERC Contact:* Any questions on this notice should be addressed to James Hunter at (202) 219–2839, or e-mail address: james.hunter@ferc.fed.us.

i. *Deadline for filing comments and or motions:* October 14, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (P–2512–046) on any comments or motions filed.

j. *Description of Proposal:* Applicants propose a transfer of the license for Project No. 2512 from Elkem Metals Company L.P. to Elkem Metals Company—Alloy, LP. Transfer is being sought as part of a larger corporate restructuring of the United States operations of the parent company, Elkem Holding, Inc.

The current licensee, Elkem Metals Company, no longer exists. When the new license for the project was issued in 1987, the licensee was a general partnership. However, in January 1994, the partners converted the company to a limited partnership known as Elkem Metals Company L.P. The applicants request after-the-fact Commission approval of the transfer of the project license from Elkem Metals Company to Elkem Metals Company L.P., as well as approval of the prospective transfer from Elkem Metals Company L.P. to Elkem Metals Company—Alloy, LP.

k. *Locations of the application:* A copy of the application is for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item g above.

1. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agenices are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–23753 Filed 9–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

September 7, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11805–000.

c. *Date filed:* August 23, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Pomme De Terre Dam Hydroelectric Project.

f. *Location:* On the Pomme De Terre River in Hickory County, Missouri.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–825(r).

h. *Applicant Contact:* Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. *FERC Contact:* Héctor M. Pérez, *hector.perez@ferc.fed.us,* (202)–219–2843, or Robert Bell, *robert.bell@ferc.fed.us, (202) 219–2806.*

j. *Deadline for filing motions to intervene, protest and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would utilize the Corps of Engineers' Pomme De Terre Dam and consist of: (1) two 80-foot-long and 96-inch-diameter steel penstocks at the outlet works; (2) a powerhouse with two turbine generator units with a total installed capacity of 4.6 megawatts; (3) a tailrace consisting of an exhaust apron; (4) a 14.7-kV, 300-foot-long transmission line; and (5) other appurtenances.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm (call (202)208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLIATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–23754 Filed 9–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

September 7, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 11806–000.

c. Date filed: August 23, 1999.

d. Applicant: Universal Electric Power Corporation.

e. Name of Project: Melvern Dam Hydroelectric Project.

f. Location: On the Marais Des Cygness River in Osage County, Kansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. FERC Contact: Héctor M. Pérez, *hector.perez@ferc.fed.us,* (202)–219–2843, or Robert Bell, *robert.bell@ferc.fed.us* (202) 219–2806.

j. Deadline for filing motions to intervene, protest and comments: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would utilize the Corps of Engineers' Melvern Dam and consist of: (1) one 80-foot-long and 114-inch-diameter steel penstock at the outlet works; (2) a powerhouse with a turbine generator unit with an installed capacity of 2 megawatts; (3) a tailrace consisting of an exhaust apron; (4) a 14.7-kV, 1,500-foot-long transmission line; and (5) other appurtenances.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888

First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http//www.ferc.fed.us/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date of the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–23755 Filed 9–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

September 7, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 11807–000.

c. Dated filed: August 23, 1999.

d. Applicant: Universal Electric Power Corporation.

e. Name of Project: Wilson Dam Hydroelectric Project.

f. Location: On the Saline River in Russell County, Kansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. FERC Contact: Héctor M. Pérez, *hector.perez@ferc.fed.us*, (202)–219–2843, or Robert Bell, *robert.bell@ferc.fed.us*. (202) 219–2806.

j. Deadline for filing motions to intervene, protest and comments: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would utilize the Corps of Engineer's Wilson Dam and consist of: (1) one 80-foot-long and 108-inch-diameter steel penstock at the outlet works; (2) a powerhouse with two turbine generator units with a total installed capacity of 2 megawatts; (3) a tailrace consisting of an exhaust apron; (4) a 14.7-kV, 1,200-foot-long transmission line; and (5) other appurtenances.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the result of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 211,.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–23756 Filed 9–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

September 7, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 11808–000.

c. Date filed: August 23, 1999.

d. Applicant: Universal Electric Power Corporation.

e. Name of Project: Kanapolis Dam Hydroelectric Project.

f. Location: On the Smoky Hill River in Ellsworth County, Kansas.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. FERC Contact: Héctor M. Pérez, *hector.perez@ferc.fed.us*, (202)–219–2843, or Robert Bell, *robert.bell@ferc.fed.us*. (202) 219–2806.

j. Deadline for filing motions to intervene, protests, and comments: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would utilize the Corps of Engineers' Kanopolis Dam and consist of: (1) two 80-foot-long and 96-inch-diameter steel penstock at the outlet work; (2) a powerhouse with two turbine generator units with a total installed capacity of 1.3 megawatts; (3) a tailrace consisting of an exhaust apron; (4) a 14.7-kV, 2-mile-long transmission line; and (5) other appurtenances.

l. A copy of the application is available for inspection and reproduction at the Commission's

Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission , 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–23757 Filed 9–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of application Accepted for Filing and Soliciting Motion To Intervene, Protests, and Comments

September 7, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 11809–000.

c. Date filed: August 23, 1999.

d. Applicant: Universal Electric Power Corporation.

e. Name of Project: Deadwood Dam Hydroelectric Project.

f. Location: On the Deadwood River in Valley County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44301, (330) 535–7115.

i. FERC Contact: Héctor M. Pérez, *hector.perez@ferc.fed.us*, (202)–219–2843, or Robert Bell, *robert.bell@ferc.fed.us*, (202) 219–2806.

j. Deadline for filing motions to intervene, protest and comments: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would utilize the Corps of Engineers' Deadwood Dam and consist of: (1) one 50-foot-long and 96-inch-diameter steel penstocks at the outlet works; (2) a powerhouse with a turbine generator unit with an installed capacity of 1.76 megawatts; (3) a tailrace consisting of an exhaust apron; (4) a 14.7-kV, 25-mile-long transmission line; and (5) other appurtenances.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission on or before a specified comment date for the particular application either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. the work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the result of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulation to: The Secretary, Federal Energy Regulatory commission, 888 First Street, NW, Washington, DC 20426. An additional copy must be send to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be send to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–23758 Filed 9–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

September 8, 1999.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: September 15, 1999, 10:00 a.m.

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

* **Note:** Items listed on the Agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers Secretary, Telephone (202) 208–0400, for a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro 725th Meeting—September 15, 1999, Regular Meeting (10:00 a.m.)

CAH–1.
Docket No. P–7115,030, Homestead Energy Resources, LLC

CAH–2.
Docket No. P–9423,027, Summit Energy Storage, Inc.

CAH–3.
Docket No. UL98–1,002, Great Northern Paper, Inc.
Other Nnos. P–2634,009, Great Northern Paper, Inc.

CAH–4.
Docket No. P–2523,017, N.E.W. Hydro, Inc.

CAH–5.
Docket No. P–4270,004, Mountain Rhythm Resources

Consent Agenda—Electric

CAE–1.
Docket No. ER99–3408,000, Avista Corporation

CAE–2.
Docket No. ER99–3713,000, Pacific Gas and Electric Company
Other Nos. EL99–50,000, Fresno Irrigation District

CAE–3.
Docket No. ER99–3821,000, Southern Company Services, Inc., Alabama

Power Company, Georgia Power Company and Mississippi Power Company, et al.
Other Nos. ER91–150,013, Southern Company Services, Inc.; ER91–326,005, Southern Company Services, Inc.; ER99–4055,000, Southern Company Services, Inc.

CAE–4.
Docket No. ER99–3637,000, Oswego Harbor Power, L.L.C.
Other Nos. ER99–3643,000, Okeechobee Generating Company; ER99–3668,000, Duke Energy Merchants, LLC; ER99–3677,000, CMS Generation Michigan Power, L.L.C.; ER99–3693,000, Midwest Generation, L.L.C.; ER99–3822,000, Casco Bay Energy Company, LLC; ER99–3911,000, Northbrook New York, L.L.C.; ER99–4081,000, Bay State GPE, Inc.

CAE–5.
Docket No. ER99–3339,000, California Independent System Operator Corporation

CAE–6.
Docket No. ER99–3876,000, Montana Power Company

CAE–7.
Docket No. ER99–3657,000, New England Power Pool

CAE–8.
Docket No. ER99–3110,000, Nevada Power Company

CAE–9.
Docket No. ER99–3888,000, PP&L, Inc.

CAE–10.
Docket No. ER98–1096,000, Southern Company Services, Inc.
Other Nos. EL98–24,000, Southern Company Services, Inc.; ER94–1348,000, Southern Company Services, Inc.; ER95–1468,000, Southern Company Services, Inc.; OA96–27,000, Southern Company Services, Inc.

CAE–11.
Docket No. ER98–1292,000, Dayton Power and Light Company
Other Nos. EL98–20,000, Dayton Power and Light Company

CAE–12.
Docket No. ER99–2331,001, Duke Energy Corporation

CAE–13.
Docket No. ER99–2884,001, Pacific Gas and Electric Company

CAE–14.
Docket No. ER97–2355,000, Southern California Edison Company
Other Nos. ER98–1261,000, Southern California Edison Company; ER98–1685,000, Southern California Edison Company

CAE–15.
Docket No. ER99–3468,000, Delmarva Power & Light Company

CAE–16.
Docket No. ER98–2369,000, Southern California Edison Company

CAE–17.
Docket No. ER98–3759,000, Portland General Electric Company

CAE–18.
Docket No. ER99–933,000, California Power Exchange Corporation

CAE–19.
Docket No. EC99–83,000, Duquesne Light Company, Firstenergy Operating Companies and the Cleveland Electric Illuminating Company, et al.

CAE–20.
Docket No. ER99–3508,000, New York Independent System Operator, Inc. and Central Hudson Gas & Electric Corporation, et al.

CAE–21.
Docket No. ER99–2229,001, California Power Exchange Corporation

CAE–22.
Docket No. ER98–3853,003, New England Power Pool

CAE–23.
Docket No. QF95–61,003, Geysers Power Company, LLC

CAE–24.
Docket No. EC96–19,032, California Power Exchange Corporation
Other Nos. ER96–1663,033, California Power Exchange Corporation

CAE–25.
Docket No. ER98–3527,002, PJM Interconnection, L.L.C.

CAE–26.
Docket No. OA96–78,004, Detroit Edison Company

CAE–27.
Docket No. ER97–1523,005, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc. and Long Island Lighting Company, et al.
Other Nos. EC99–31,001, New York Power Pool; ER97–1523,006, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc. and Long Island Lighting Company, et al.; ER97–4234,004, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc. and Long Island Lighting Company, et al.; OA97–470, 006, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc. and Long Island Lighting Company, et al.

CAE–28.
Omitted

CAE–29.
Docket No. ER93–150,012, Boston Edison Company
Other Nos. EL93–10,007, Boston Edison Company

CAE–30.
Docket No. ER99–1132,003, Duquesne Light Company

CAE–31.
Docket No. EG99–199,000, Duke Energy St. Francis, LLC

CAE–32.
Docket No. EL99–79,000, PP&L Montana, LLC

CAE–33.
Docket No. EL99–81,000, Tennessee Power Company

CAE–34.
Docket No. EL99–77,000, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc. and Long Island Lighting Company, et al.

CAE–35.
Docket No. EL99–66,000, Wabash Valley Power Association, Inc. and American Municpal Power-Ohio, Inc. v. American Electric Power Service Corporation
Other Nos. EL99–72,000, Indiana Municipal Power Agency v. American Electric Power Service Corporation

Consent Agenda—Gas and Oil

CAG–1.
Docket No. RP99–443,001, Petal Gas Storage Company

CAG–2.
Omitted

CAG–3.
Docket No. PR99–12,000, Transok, LLC

CAG–4.
Omitted

CAG–5.
Docket No. PR99–14,000, Shenandoah Gas Company

CAG–6.
Docket No. RP94–271,002, East Tennessee Natural Gas Company

CAG–7.
Docket No. RP99–437,001, Dauphin Island Gathering Partners

CAG–8.
Docket No. RP99–448,000, Southern Natural Gas Company

CAG–9.
Docket No. RP95–408,000, Columbia Gas Transmission Corporation

CAG–10.
Docket No. RP96–272,008, Northern Natural Gas Company

CAG–11.
Docket No. RP97–187,010, Arkansas Western Pipeline, L.L.C.

CAG–12.
Omitted

CAG–13.
Omitted

CAG–14.
Docket No. RP99–421,000, KN Interstate Gas Transmission Company

CAG–15.
Docket No. RP99–227,000, High Island Offshore System, L.L.C.

CAG–16.
Docket No. RS92–11,026, Texas Eastern Transmission Corporation

CAG–17.
Omitted

CAG–18.
Docket No. RP94–72,010, Iroquois Gas Transmission System, L.P.
Other Nos. FA92–59,008, Iroquois Gas Transmission System, L.P.; RP97–126,017, Iroquois Gas Transmission System, L.P.

CAG–19.
Docket No. RP98–117,007, KN Interstate Gas Transmission Company

CAG–20.
Docket No. RP98–380,002, East Tennessee Natural Gas Company

CAG–21.
Docket No. RP99–274,001, Kern River Gas Transmission Company

CAG–22.
Docket No. OR99–4,000, Sinclair Oil Corporation v. Platte Pipe Line Company

CAG–23.
Omitted

CAG–24.
Omitted

CAG–25.
Docket No. CP98–538,003, Midwestern Gas Transmission Company

CAG–26.
Docket No. CP96–542,001, Panhandle Eastern Pipe Line Company

CAG–27.
Docket No. CP96–27,004, Natural Gas Pipeline Company of America

CAG–28.
Docket No. CP97–256,003, KN Wattenberg Transmission Limited Liability Company

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Reserved

Regular Agenda—Miscellaneous

M–1.
Docket No. RM98–16,000, Collaborative Procedures for Energy Facility Applications

M–2.
Docket No. RM98–1,000, Regulations Governing Off-the-Record Communications
Final Rule.

Oil and Gas Agenda

I.
Pipeline Rate Matters

PR–1.
Reserved

II.
Pipeline Certificate Matters

PC–1.
Docket No. PL99–3,000, Determining the Need for New Interstate Natural Gas Pipeline Facilities
Statement of Policy.

David P. Boergers,
Secretary.

[FR Doc. 99–23855 Filed 9–9–99; 10:52 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southwestern Power Administration

Proposed Rate Schedule Changes

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of Opportunity for Public Review and Comment.

SUMMARY: The Administrator, Southwestern Power Administration (Southwestern), has determined that revisions to the terms and conditions related to real power losses and both operating reserves ancillary services within existing rate schedules NFTS–98B and P–98B are required. Since the proposed changes to the rate schedules are associated with the terms and conditions of service and revised billing units for the ancillary services and do not impact the revenue requirements for the Integrated System, the net results of the 1997 Integrated System Power Repayment Studies, which was the basis for the existing rate schedules, will not be altered. Southwestern held informal meetings with customers to discuss proposed changes and to provide opportunity for input in the development of these changes.

DATES: Written comments on the proposed rate schedule changes are due on or before October 13, 1999.

ADDRESSES: Five copies of written comments should be submitted to: Michael A. Deihl, Administrator, Southwestern Power Administration, One West Third Street, Suite 1400, Tulsa, OK 71103.

FOR FURTHER INFORMATION CONTACT: Mr. Forrest E. Reeves, Assistant Administrator, Office of Corporate Operations, (918) 595–6696, reeves@swpa.gov.

SUPPLEMENTARY INFORMATION: The names of the rate schedules will be changed to NFTS–98C and P–98C in order to reflect the fact that revisions have been made. Two areas of the rate schedules are being revised to reflect changes to the terms and conditions of both (1) Real Power Losses to allow for self-provision, and (2) the Spinning and Supplemental Operating Reserve Ancillary Services to be consistent with the application of Southwestern's provision for such services which will result in a change in rates for these services. These changes are addressed in detail below.

Real Power Losses

The basis for determining the rate to charge for Real Power Losses (Losses) in the current rate schedules (P–98B and NFTS–98B) for transmission service is the average actual costs incurred by Southwestern for the purchase of energy to replace Losses during the most recent twelve-month period. Additionally, the current rate schedules require customers to purchase Losses from Southwestern to meet their obligation to replace loss energy. In the proposed rate schedules, the basis for determining the loss rate will remain the same; however, the period will be based on the previous fiscal year (October through September) rather than the most recent twelve-month period. The rate for Losses, to be effective the next calendar year, will be posted on Southwestern's Open Access Same-Time Information System by November 1 of each year. Southwestern also proposes, in addition to the existing rate schedule provision in which the customer purchases Losses, to allow the customer to annually elect to self-provide all loss energy for which it is responsible. Such election for the self-provision of Losses shall be for a full calendar year and shall be exercised by the execution of a Service Agreement, or equivalent, on or before November 30th of the prior calendar year. Southwestern proposes to initially implement this new procedure effective January 1, 2000. Thereafter, the rate for losses will be reviewed and adjusted as needed to become effective at the beginning of each subsequent calendar year.

Spinning and Supplemental Reserve Ancillary Services

The Federal Energy Regulatory Commission's Order No. 888 states that the transmission provider is required "to *offer* to provide the ancillary services" for Spinning Operating Reserves and Supplemental Operating Reserves "to transmission customers serving load in the transmission provider's control area." The transmission customer may make alternative arrangements to acquire these services if the transmission customer demonstrates to the transmission provider that it has adequately done so. Consequently,

Southwestern designed its rates for these services on that basis and provided (in Rate Schedules P–98B and NFTS–98B) that the rates for these services were only to be applied to the transmission transactions that served load within Southwestern's control area.

For reliability purposes, Southwestern operates its control area in accordance with the operating criteria of the Southwest Power Pool (SPP). The SPP criteria related to operating reserves require that each control area maintain an amount of operating reserves based on its net load responsibility. The effect of this is that Southwestern provides operating reserves on all generation in its control area for both internal and external delivery.

After reviewing the existing operating conditions, Southwestern has determined that rate schedules P–98B and NFTS–98B need to be revised to reflect the criteria under which Southwestern operates its transmission system and provides the Operating Reserve Services. Southwestern proposes to revise the terms and conditions relating to the two Operating Reserve ancillary services to charge for these services for all transmission transactions utilizing generation sources located within Southwestern's control area because Southwestern is actually providing the Operating Reserve services for those transactions. In addition to these changes, the billing units for these services will be revised to reflect the additional users of these services, resulting in a decrease in the unit rate for these services from $0.03 per kW/month for Spinning Operating Reserve Services and $0.03 per kW/month for Supplemental Operating Reserve Services to approximately $0.0073 per kW/month for each of these two ancillary services. This *will not* change Southwestern's revenue requirements to recover the cost of providing these services.

Redlined versions of the revised rate schedules NFTS–98C and P–98C will be made available upon request. To request a copy, please contact Barbara Otte at 918–595–6674 or at *otte@swpa.gov* or Tracey Hannon at 918–595–6677 or at *hannon@swpa.gov*.

The Administrator has determined that written comments will provide adequate opportunity for public participation in the rate schedule revision process. Therefore, an opportunity is presented for interested parties to submit written comments on the proposed rate schedule changes. Written comments are due no later than thirty (30) days following publication of this notice in the **Federal Register**. Five copies of written comments should be submitted to: Michael A. Deihl, Administrator, Southwestern Power Administration, One West Third Street, Suite 1400, Tulsa, OK 74103.

Following review and consideration of written comments, the Administrator will finalize and submit the proposed rate schedules to the Secretary of Energy for approval on an interim basis. The Secretary will then forward the proposed rate schedules to the Federal Energy Regulatory Commission for confirmation and approval on a final basis.

Issued at Tulsa, OK this 25th day of August 1999.

Michael A. Deihl,

Administrator.

[FR Doc. 99–23660 Filed 9–10–99; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00277; FRL–6096–4]

Pre-Manufacture Reporting and Exemption Requirements; Request for Comments on Proposed Renewal Information Collection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), EPA is seeking public comment and information on the following Information Collection Request (ICR): Pre-Manufacture Review Reporting and Exemption Requirements for New Chemical Substances and Significant New Use Reporting Requirements for Chemical Substances (EPA ICR No. 0574.11, OMB No. 2070–0012). This ICR involves a collection activity that is currently approved and scheduled to expire on December 31, 1999. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket control number "OPPTS–00277" and administrative record number 215, must be received on or before November 12, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION" section of this notice.

FOR FURTHER INFORMATION CONTACT: For general information contact: Christine M. Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; Telephone: 202–554–1404; TDD: 202–554–0551; e-mail: TSCA-Hotline@epa.gov. For technical information contact: Jim Alwood, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202–260–1857; Fax: 202–260–8168; e-mail: alwood.jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does This Notice Apply to Me?

You may be potentially affected by this notice if you manufacture or import new chemical substances, as defined by the Toxic Substances Control Act (TSCA), or manufacture, process, or import a chemical substance for a use that has been determined a significant new use, as defined by TSCA. Potentially affected categories and entities may include, but are not limited to the following:

Type of Business	Standard Industrial Classification (SIC) Code
Chemical manufacturing	28
Petroleum refining	29
Photographic equipment	386

This table is not intended to be exhaustive but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions at 40 CFR part 720, Subpart B, 40 CFR part 721, Subparts A and C, 40 CFR part 723, Subpart B, and 40 CFR part 725, Subparts A, B, D, E, F, G, and L. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information or Copies of This Document or Other Support Documents?

A. Electronic Availability

Electronic copies of this ICR are available from the EPA website at the "**Federal Register**-Environmental Documents" entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/). You can follow the menu to find this **Federal Register** notice using the publication date or the **Federal Register** citation for this notice.

B. Fax-on-Demand

You may request to receive a faxed copy of the ICR by using a faxphone to call 202–401–0527 and selecting item 4071. You may also follow the automated menu.

C. In Person or By Phone

If you have any questions or need additional information about this notice or the ICR referenced, please contact the person identified in the "FOR FURTHER INFORMATION CONTACT" section.

In addition, the official record for this notice, including the public version, has been established under docket control number "OPPTS–00277" (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in the TSCA Nonconfidential Information Center, Rm. NE B–607, 401 M St., SW., Washington, DC. The Center is open from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is 202–260–7099.

III. How Can I Respond to This Notice?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number "OPPTS–00277" and administrative record number 215 in your correspondence.

1. *By mail.* Submit written comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver written comments to: Document Control Office in Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC, Telephone: 202–260–7093.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: oppt.ncic@epa.gov. Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number "OPPTS–00277" and administrative record number 215. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information That I Want To Submit To the Agency?

You may claim information that you submit in response to this notice as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must also be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person, listed in the "FOR FURTHER INFORMATION CONTACT" section.

C. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(a) of the PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

D. What Should I Consider When I Prepare My Comments for EPA?

We invite you to provide your views on the various options we propose, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide solid technical information and/or data to support your views.
- If you estimate potential burden or costs, explain how you arrived at the estimate.
- Provide specific examples to illustrate your concerns.
- Offer alternative ways to improve the collection activity.
- Make sure to submit your comments by the deadline in this notice.
- At the beginning of your comments (e.g., as part of the "Subject" heading), be sure to properly identify the document on which you are commenting. You can do this by providing the docket control number assigned to the notice, along with the name, date, and **Federal Register** citation, or by using the appropriate EPA or OMB ICR number.

IV. To What Information Collection Activity or ICR Does This Notice Apply?

EPA is seeking comments on the following ICR:

Title: Pre-Manufacture Review Reporting and Exemption Requirements for New Chemical Substances and Significant New Use Reporting Requirements for Chemical Substances.

ICR numbers: EPA ICR No. 0574.11, OMB No. 2070–0012.

ICR status: This ICR is currently scheduled to expire on December 31, 1999. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instrument or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: TSCA section 5 requires manufacturers and importers of new

chemical substances to submit to EPA notice of intent to manufacture or import a new chemical substance 90 days before manufacture or import begins. EPA reviews the information contained in the notice to evaluate the health and environmental effects of the new chemical substance. On the basis of the review, EPA may take further regulatory action under TSCA, if warranted. If EPA takes no action within 90 days, the submitter is free to manufacture or import the new chemical substance without restriction.

TSCA section 5 also authorizes EPA to issue Significant New Use Rules (SNURs). EPA uses this authority to take follow-up action on new or existing chemicals that may present an unreasonable risk to human health or the environment if used in a manner that may result in different and/or higher exposures of a chemical to humans or the environment. Once a use is determined to be a significant new use, persons must submit a notice to EPA 90 days before beginning manufacture, processing, or importation of a chemical substance for that use. Such a notice allows EPA to receive and review information on such a use and, if necessary, regulate the use before it occurs.

Finally, TSCA section 5 also permits applications for exemption from section 5 review under certain circumstances. An applicant must provide information sufficient for EPA to make a determination that the circumstances in question qualify for an exemption. In granting an exemption, EPA may impose appropriate restrictions.

Responses to the collection of information are mandatory (see 40 CFR parts 720, 721, and 723). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

V. What Are EPA's Burden and Cost Estimates for This ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 101.5 hours per response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Entities potentially affected by this action are manufacturers or importers of new chemical substances, as defined by the TSCA, or manufacturers, processors, or importers of a chemical substance for a use that has been determined a significant new use, as defined by TSCA.

Estimated total number of potential respondents: 432.

Frequency of response: On occasion.

Estimated total/average number of responses for each respondent: 5–6 (average).

Estimated total annual burden hours: 241,611 hours.

Estimated total annual burden costs: $31.665 million.

VI. Are There Changes in the Estimates From the Last Approval?

There is no change in burden from that indicated in the information collection most recently approved by OMB.

VII. What is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

List of Subjects

Environmental protection, Information collection requests, Reporting and recordkeeping requirements.

Dated: September 2, 1999.

Susan H. Wayland,

Deputy Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–23711 Filed 9–10–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6436–1]

Prevention of Significant Deterioration of Air Quality (PSD) Final Determinations

AGENCY: Environmental Protection Agency.

ACTION: Notice of final actions.

SUMMARY: The purpose of this document is to announce that between April 9, 1997, and February 28, 1999, the U.S. Environmental Protection Agency (EPA) Region 2 Office, issued 2 final determinations, the New Jersey Department of Environmental Protection issued 4 final determinations and the New York State Department of Environmental Conservation (NYSDEC) issued 2 final determinations pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified at 40 CFR 52.21. In addition, this notice announces a third EPA Region 2 final determination that occurred after February 28, 1999 on the AES Puerto Rico, L.P. PSD permit issued by EPA.

DATES: The effective dates for the above determinations are delineated in the following chart (See **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Mr. Frank Jon of the Permitting Section, Air Programs Branch, Division of Environmental Planning and Protection, U.S. Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866, at (212) 637–4085.

SUPPLEMENTARY INFORMATION: Pursuant to the PSD regulations, the EPA Region 2 Office, the NJDEP, and the NYSDEC have made final PSD determinations relative to the sources listed below:

Name	Location	Project	Agency	Final action	Date
American Ref-Fuel Company of Essex County.	Newark, New Jersey	Municipal waste incinerator with a NO_X limit of 164 ppm (3-hour average) revised to 155 ppm (24-hour average)..	NJDEP	PSD Permit Revision	June 29, 1997.
Hoffman La Roche—Roche Vitamins.	Belvidere, New Jersey	New combustion turbine (GE Frame 6, MS6001B) rated at 40 MW and heat recovery steam generator with duct burner for supplemental firing of 167 MMBTU/hr. This new cogeneration will replace existing cogeneration (reciprocating engines) and will result in net reduction of 2023 per year (tpy) of NO_X and 701 tpy of SO^2.	NJDEP	PSD Permit Revision	October 8, 1997.
Wyeth Ayerst Pharmaceuticals.	Town of Orangetown, New York.	Modification to an existing PSD facility to allow the firing of natural gas (as the primary fuel) and number 2 distillate oil (as the backup fuel) in their existing two duct burners in the cogen.	NYSDEC ..	PSD Permit Modification.	December 12, 1997.

Name	Location	Project	Agency	Final action	Date
Hess Oil Virgin Islands Corporation (HOVIC).	St. Croix, Virgin Islands ..	HOVIC owns and operates a petroleum refinery and requested the following facility changes to its PSD permit: 1. Increasing the maximum throughput limit of the fluid catalytic cracking unit (FCCU) complex to 150,000 barrels per day of low sulfur fuel-oil (from 125,000 barrels per day), and increasing the VOC mass emission limits to 12.1 pounds per hour (from 9.6 pounds per hour) and 52.7 tons per year (from 40 tons per year); 2. Increasing the production limit of the sulfuric acid plant to 320 tons per day (from 275 tons per day), and increasing the sulfuric acid mist mass emission limits to 2 pounds per hour (from 1.7 pounds per hour) and 8.8 tons per year (from 7.5 tons per year); 3. Incorporating start-up exemptions from the PSD emission limits, for the FCCU complex, the sulfuric acid plant, and the sulfuric acid plant process heaters; and 4. Providing increased flexibility in the types and amounts of fuel-oil allowed to be burned in existing fuel-consuming units. This flexibility includes use of an intermittent control strategy (i.e., switch-over to a lower sulfur fuel-oil) based on atmospheric conditions	EPA	PSD Permit Revision	December 12, 1997

Name	Location	Project	Agency	Final action	Date
Abbott Laboratories	Barceloneta, Puerto Rico	EPA revised the permit conditions with respect to 3 oil-fired boilers (two existing units and one "new," replacement unit), which are not PSD-affected emission units (that is, these existing units did not require a BACT review or air quality impact analyses). The conditions for these boilers were originally incorporated into the Abbott PSD permit to provide contemporaneous decreases for PM emission exceedances from Abbott's PSD-affected cogeneration facility and, in the subject case, to provide contemporaneous decreases for a PSD non-applicability determination. Specifically, the changes from the currently-effective PSD permit with respect to the 3 oil-fired boilers will not cause a significant increase in emissions of any PSD-affected pollutant.	EPA	PSD Permit Administrative Amendment.	April 3, 1998.

Name	Location	Project	Agency	Final action	Date
Union County Resource Recovery Facility.	Rahway, New Jersey	Permit amendment to clarify an increased waste throughput and the acceptance of ID type 27 waste. The facility was designed and permitted at a "nominal capacity" of 1440 tons per day (tpd) of solid waste for three units (i.e., 480 tpd per unit) having a higher heating value (HHV) of 5400 BTU per pound of waste. This corresponds to the design input of 216 MMBTU per hour per unit. Based on operational data, HHV of the waste processed has averaged 5050 BTU per pound of waste. In order to maintain the design heat input of 216 MMBTU per hour per unit, the facility must process a refuse throughput of 513.33 tpd of waste having an average of HHV of 5050 BTU per pound of waste. Based on the facility's original stoker diagram, it operating envelop allows an actual waste throughput for each unit to vary between 432 tpd and 528 tpd (i.e., HHV ranging from 3,800 to 6,000 BTU per pound of waste), for maintaining the design heat input of 216 MMBTU per hour per unit. Therefore, NJDEP is not authorizing a change in the operation of the facility, but rather is clarifying the intent of the original approval.	NJDEP	PSD Permit Administrative Amendment.	April 29, 1998.
New York City Department of Sanitation—Fresh Kills Gas Flaring Project.	Staten Island, New York	Project consists of landfill gas collection and flaring systems. It includes ten enclosed flares (9 active and one standby). The maximum flaring capacity will be 32,728 cubic feet per minute of landfill gas. This project is subject to PSD for NO_X, SO_2, and PM/PM_{10}. In addition, the project is subject to nonattainment review for CO and NO_X.	NYSDEC ..	New PSD Permit	July 6, 1998.

Name	Location	Project	Agency	Final action	Date
AES Puerto Rico, L.P.	Guayama, Puerto Rico ...	A new coal-fired 454 MW steam electric cogeneration facility. The PSD permit was appealed in November 1998. On May 27,1999, EPA's Environmental Appeals Board (EAB) denied the petitions for review.	EPA	New PSD Permit	Permit Issuance: September 18, 1998 PSD Permit Effective Date: May 27, 1999.
Roche Vitamins—Hoffman La-Roche.	Belvidere, New Jersey	Project consists of four boilers. Boilers No. 1, 2, 3, and 4 having fuel firing capacity of 84.4, 13.4, 15.2 and 11.8 MMBTU/hr, respectively. The PSD permit was revised to change the backup fuel from No. 6 fuel oil to No. 2 fuel oil with 0.05% sulfur in all boilers.	NJDEP	PSD Permit Revision	February 5, 1999.

This document lists only the sources that have received final PSD determinations. Anyone who wishes to review these determinations and related materials should contact the following offices:

EPA Actions

U.S. Environmental Protection Agency, Region 2 Office, Air Programs Branch—25th Floor 290 Broadway, New York, New York 10007–1866.

NJDEP Actions

New Jersey Department of Environmental Protection and Energy, Division of Environmental Quality, Bureau of Engineering and Technology 401 East State Street, Trenton, New Jersey 08625.

NYSDEC Actions

New York State Department of Environmental Conservation, Division of Air Resources, Source Review and Regional Support Section 50 Wolf Road, Albany, New York 12233–0001

If available pursuant to the Consolidated Permit Regulations (40 CFR part 124), judicial review of these determinations under section 307(b)(1) of the Clean Air Act (the Act) may be sought *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which these determinations are published in the **Federal Register**. Under section 307(b)(2) of the Act, these determinations shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

Dated: August 26, 1999.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 99–23585 Filed 9–10–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 99–1830]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On September 8, 1999, the Commission released a public notice announcing the September 28 and 29, 1999, meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

FOR FURTHER INFORMATION CONTACT: Jeannie Grimes at (202) 418–2320 or jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The Portals, 445 Twelfth Street, S.W., Suite 6A320, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: September 8, 1999.

The next meeting of the North American Numbering Council (NANC) will be held on Tuesday, September 28, 1999, from 8:30 a.m., until 5:00 p.m., and on Wednesday, September 29, 1999, from 8:30 a.m., until 12 noon. The meeting will be held at the Federal Communications Commission, Portals II, 445 Twelfth Street, S.W., Room TW–C305, Washington, DC 20554.

This meeting is open to the members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Jeannie Grimes at the address under **FOR FURTHER INFORMATION CONTACT**, stated above.

Proposed Agenda—Tuesday, September 28, 1999

1. Approval of August 24–25, 1999, meeting minutes.
2. Local Number Portability Administration (LNPA) Working Group Report. Update on wireline wireless integration report.
3. Reseller's Code Usage and Forecast Reporting. Discussion and closure on recommendaton for reporting of reseller's data.
4. Numbering Resource Optimization (NRO) Working Group Report. Final review of modifications to telephone number reservation process.
5. Issue Management Group, Paragraph 165, Notice of Proposed Rulemaking, CC Docket 99–200. Review finalized report.

6. North American Numbering Plan Administration (NANPA) Oversight Working Group Report.

7. Lockheed Martin-CIS NANPA update regarding geographic area code splits that follow other than existing rate center lines.

Wednesday, September 29, 1999

8. Cost Recovery Working Group Report. Review issue statement which explores the long range relationships of the Number Portability Administration Center (NPAC) and Limited Liability Corporations (LLCs).

9. Audits Issue Management Group. NANC review of NANPA Central Office (CO) Code Audit Obligations and Audit Framework Recommendation documents.

10. Industry Numbering Committee (INC) Report.

11. Steering Group Report.

12. Other Business.

Federal Communications Commission.

Kurt A. Schroeder,

Acting Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 99–23804 Filed 9–10–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3134–EM]

Illinois; Amendment No. 6 to Notice of an Emergency

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Illinois (FEMA–3134–EM), dated January 8, 1999, and related determinations.

EFFECTIVE DATE: August 23, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of Illinois, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of January 8, 1999:

Douglas County for reimbursement for emergency protective measures, Category B, under the Public Assistance program for a period of 48 hours.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program).

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–23741 Filed 9–10–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1283–DR]

Minnesota; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota, (FEMA–1283–DR), dated July 28, 1999, and related determinations.

EFFECTIVE DATE: September 2, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Minnesota is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 28, 1999:

Beltrami County for Individual Assistance and Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99–23737 Filed 9–10–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1286–DR]

Nebraska; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Nebraska (FEMA–1286–DR), dated August 20, 1999, and related determinations.

EFFECTIVE DATE: August 20, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 20, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Nebraska, resulting from severe storms and flooding beginning on August 6, 1999, and continuing through August 9, 1999, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Nebraska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Charles E. Biggs of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Nebraska to have been affected adversely by this declared major disaster:

Burt, Douglas and Washington Counties for Individual Assistance and Public Assistance.

All counties within the State of Nebraska are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 99–23735 Filed 9–10–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1287–DR]

Texas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Texas (FEMA–1287–DR), dated August 22, 1999, and related determinations.

EFFECTIVE DATE: August 22, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 22, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Texas, resulting from severe storms and flooding caused by Hurricane Bret beginning on August 21, 1999, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Texas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide debris removal and emergency protective measures (Categories A and B), under the Public Assistance program, and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Brad Gair of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Texas to have been affected adversely by this declared major disaster:

The counties of Aransas, Cameron, Kenedy, Kleberg, Nueces, San Patricio, and Willacy for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program.

All counties within the State of Texas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–23736 Filed 9–10–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1287–DR]

Texas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA–1287–DR), dated August 22, 1999, and related determinations.

EFFECTIVE DATE: August 25, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 22, 1999:

Brooks, Duval, Jim Wells, and Webb Counties for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–23738 Filed 9–10–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1287–DR]

Texas; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA–1287–DR), dated August 22, 1999, and related determinations.

EFFECTIVE DATE: August 26, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 26, 1999.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used

for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–23739 Filed 9–10–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1287–DR]

Texas; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas, (FEMA–1287–DR), dated August 22, 1999, and related determinations.

EFFECTIVE DATE: August 30, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Texas is hereby amended to include the Individual Assistance program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of August 22, 1999:

Arsansas, Brooks, Cameron, Duval, Jim Wells, Kenedy, Kleberg, Nueces, Webb, and Willacy Counties for Individual Assistance (already designated for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program).

Hidalgo County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 99–23740 Filed 9–10–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1285–DR]

Utah; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Utah (FEMA–1285–DR), dated August 16, 1999, and related determinations.

EFFECTIVE DATE: August 16, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 16, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Utah, resulting from a tornado, severe thunderstorms, and hail on August 11, 1999, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Utah.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance, Public Assistance, and Hazard Mitigation in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Steve L. Olsen of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Utah to have been affected adversely by this declared major disaster:

Salt Lake County for Individual Assistance and Public Assistance.

All counties within the State of Utah are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 99–23734 Filed 9–10–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1284–DR]

Wisconsin; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Wisconsin (FEMA–1284–DR), dated August 16, 1999, and related determinations.

EFFECTIVE DATE: August 16, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 16, 1999, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Wisconsin, resulting from severe storms, straight-line winds, and flooding beginning on July 4, 1999 and continuing through July 31, 1999, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Wisconsin.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Thomas Davies of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Wisconsin to have been affected adversely by this declared major disaster:

Ashland, Bayfield, Douglas, Florence, Iron, Oneida, Price, Rusk, Sawyer, and Vilas Counties for Public Assistance.

All counties within the State of Wisconsin are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

James L. Witt,

Director.

[FR Doc. 99–23733 Filed 9–10–99; 8:45 am]

BILLING CODE 6718–02–PS4703

FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of June 29–30, 1999.

In accordance with § 271.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on June 29–30, 1999.[1] The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests continued vigorous expansion in economic activity. Nonfarm payroll employment has increased at a relatively rapid pace in recent months and the civilian unemployment rate, at 4.2 percent in May, matched its low for the year. Manufacturing output rose substantially further in May. Total retail sales increased briskly last month after recording large gains on average earlier in the year. Housing activity has remained robust in recent months. Available indicators suggest that business capital spending, especially for information technology, has accelerated this spring. The nominal deficit on U.S. trade in goods and services widened somewhat in April from its first-quarter average. Consumer price inflation was up somewhat on balance in April and May, boosted by a sharp increase in energy prices; improving productivity has held down increases in unit labor costs despite very tight labor markets.

Interest rates have risen somewhat since the meeting on May 18, 1999. Key measures of share prices in equity markets are unchanged to somewhat lower on balance over the intermeeting period. In foreign exchange markets, the trade-weighted value of the dollar has changed little over the period in relation to the currencies of a broad group of important U.S. trading partners.

After recording sizable increases in April, apparently owing to a tax-related buildup in liquid accounts, growth of M2 and M3 slowed in May as tax payments cleared and appears to have remained moderate in June. For the year through June, M2 is estimated to have increased at a rate somewhat above the Committee's annual range and M3 at a rate near the upper end of its range. Total domestic nonfinancial debt has continued to expand at a pace somewhat above the middle of its range.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee reaffirmed at this meeting the ranges it had established in February for growth of M2 and M3 of 1 to 5 percent and 2 to 6 percent respectively, measured from the fourth quarter of 1998 to the fourth quarter of 1999. The range for growth of total domestic nonfinancial debt was maintained at 3 to 7 percent for the year. For 2000, the Committee agreed on a tentative basis to set the same ranges for growth of the monetary aggregates and debt, measured from the fourth quarter of 1999 to the fourth quarter of 2000. The behavior of the monetary aggregates will continue to be evaluated in the light of progress toward price level stability, movements in their velocities, and developments in the economy and financial markets.

To promote the Committee's long-run objectives of price stability and sustainable economic growth, the Committee in the immediate future seeks conditions in reserve markets consistent with increasing the federal funds rate to an average of around 5 percent. In view of the evidence currently available, the Committee believes that prospective developments are equally likely to warrant an increase or a decrease in the federal funds rate operating objective during the intermeeting period.

By order of the Federal Open Market Committee, September 3, 1999.

Donald L. Kohn,

Secretary, Federal Open Market Committee.

[FR Doc. 99–23690 Filed 9–10–99; 8:45 am]

BILLING CODE 6210–01–F

[1] Copies of the Minutes of the Federal Open Market Committee meeting of June 29–30, 1999, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–3087]

American Ingredients Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that American Ingredients Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of sodium stearoyl lactylate as an emulsifier.

stabilizer, and texturizer in cream liqueur drinks.

FOR FURTHER INFORMATION CONTACT: Mary E. LaVecchia, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3072.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9A4684) has been filed by American Ingredients Co., 3947 Broadway, Kansas City, MO 64111. The petition proposes to amend the food additive regulations in § 172.846 *Sodium stearoyl lactylate* (21 CFR 172.846) to provide for the expanded safe use of sodium stearoyl lactylate as an emulsifier, stabilizer, and texturizer in cream liqueur drinks.

The agency has determined under 21 CFR 25.32(k) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: August 31, 1999.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–23682 Filed 9–10–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–2997]

Engelhard Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Engelhard Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 1-naphthelenesulfonic acid, 2-[(4,5-dihydro-3-methyl-5-oxo-1-(3-Sulfopheny)-1H-pyrazol-4-yl)azo]-, strontium and calcium salt (1:1) (C.I. Pigment 209 and C.I. Pigment 209:1) as colorants for polymers intended for food-contact applications.

FOR FURTHER INFORMATION CONTACT: Mark Hepp, Center for Food Safety and Applied Nutrition, HFS–215, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, (202) 418–3098.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9B4691) has been filed by Engelhard Corp., Pigments and Additives Group, 3400 Bank St., Louisville, KY 40212. The petition proposes to amend the food additive regulations in § 178.3297 *Colorants for polymers* (21 CFR 178.3297)to provide for the safe use of 1-naphthelenesulfonic acid, 2-[(4,5-dihydro-3-methyl-5-oxo-1-(3-Sulfopheny)-1H-pyrazol-4-yl)azo]-,strontium and calcium salt (1:1) (C.I. Pigment 209 and C.I. Pigment 209:1) as colorants for polymers intended for food-contact applications. The agency has determined under 21 CFR 25.32(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: August 25, 1999

Alan M. Rulis

Director, Office of Premarket Approval, Center for Food Safety and Nutrition

[FR Doc. 99–23664 Filed 9–10–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0656]

Guidance for Industry on Submission of Abbreviated Reports and Synopses In Support of Marketing Applications; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Submission of Abbreviated Reports and Synopses in Support of Marketing Applications." This guidance, which implements section 118 of the Food and Drug Administration Modernization Act of 1997 (Modernization Act), is intended to assist applicants who wish to submit abbreviated reports and synopses in lieu of full reports for certain clinical studies, both in marketing applications for new products and in supplements to approved applications. The guidance describes which studies may be submitted as abbreviated reports or synopses and describes a format for such submissions.

DATES: General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this guidance for industry are available on the Internet at http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/cber/guidelines.htm. Submit written requests for single copies of the guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 or the Manufacturers Assistance and Communication Staff (HFM–42), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20857. Comments are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Debbie J. Henderson, Center for Drug Evaluation and Research (HFD–6), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–6779.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 21, 1998 (63 FR 50251), FDA announced the availability of a draft version of this guidance for industry entitled "Submission of Abbreviated Reports and Synopses in Support of Marketing Applications." The agency has finalized that draft guidance after considering comments received on the draft version. Only few comments were received, and minor changes were made to the draft version in an effort to make the document clearer.

This guidance implements section 118 of the Modernization Act, "Data requirements for drugs and biologics," which directs FDA to issue guidance on when abbreviated study reports may be submitted in new drug applications (NDA's) and biologics license applications (BLA's) in lieu of full reports. Applicants have experienced difficulties in the past in deciding when a full study report is required by the reviewing body. For example, clinical drug and biologic product development programs often include numerous clinical studies and resulting data that are not intended to contribute to the evaluation of the effectiveness of a product for a particular use and are not needed to support information included in labeling. Accordingly, such studies may be submitted as abbreviated reports or synopses, and this guidance is intended to facilitate their submission. This guidance is intended to provide guidance on the types of studies that may be submitted in abbreviated reports or synopses. The guidance also provides recommendations on the formats that should be used.

In the **Federal Register** of September 21, 1998 (63 FR 50241), FDA announced that it was submitting to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (PRA) the collection of information entitled "Application for FDA Approval to Market a New Drug—21 CFR Part 314—(OMB Control Number 0910–0001)." In that notice, FDA stated that the draft guidance entitled "Submission of Abbreviated Reports and Synopses in Support of Marketing Applications" (a notice announcing the availability of the draft guidance was published in the same issue of the **Federal Register**) would reduce the industry burden for submitting marketing applications under § 314.56 (21 CFR 314.50). FDA estimated that this reduction in burden would be approximately 300 hours, and reduced the industry burden estimate for § 314.50 accordingly. The **Federal Register** notice also requested comments on the burden estimates for part 314 (21 CFR part 314). OMB received no comments on the notice and approved the information collection for part 314 until November 30, 2001. In addition, none of the comments received in response to the notice announcing the availability of the draft guidance pertained to information collection issues under the PRA.

This guidance represents the agency's current thinking on submission of full study reports, abbreviated reports, and synopses of information related to effectiveness for new drugs and biological products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes, regulations, or both.

Interested persons may submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 19, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–23663 Filed 9–10–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Program Support Center; Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Program Support Center (PSC), will periodically publish summaries of proposed information collection projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the PSC Reports Clearance Officer on (301) 443–2045.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

1. HHS Payment Management System Forms (PSC–270, formerly PMS–270) and (PSC–272, formerly PMS–272)—0937–0200—Extension

The PSC–270 (formerly PMS–270), Request for Advance or Reimbursement is used to make advances or reimbursement payments to grantees. It serves in place of the SF–270. Respondents: State and local governments; profit and nonprofit businesses and organizations receiving grants for HHS; Total Number of Respondents: 10; Frequency of Response: monthly; Average Burden per Response: 15 minutes; Estimated Annual Burden: 30 hours.

The PSC–272 (formerly PMS–272), Federal Cash Transactions Report, is used to monitor Federal cash advances to grantees and obtain Federal cash disbursement data. It serves in place of the SF–272. Respondents: State and local governments, profit and nonprofit businesses and institutions receiving grants from HHS; Total Number of Respondents: 16,800; Frequency of Response: quarterly; Average Burden per Reponse: 4 hours; Estimated Annual Burden: 268,800 hours.

Total Burden: 268,830 hours.

Send comments to Norman E. Prince, Jr., Acting PSC Reports Clearance Officer, Room 17A08, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: September 3, 1999.

Lynnda M. Regan,

Director, Program Support Center.

[FR Doc. 99–23666 Filed 9–10–99; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice to Reopen the Public Comment Period for the Draft Recovery Plan for the Giant Garter Snake (*Thamnophis gigas*)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of reopening of public comment period.

SUMMARY: The U.S. Fish and Wildlife Service gives notice that the comment period announced in the July 2, 1999 (64 FR 36033), notice of availability of the Draft Recovery Plan for the Giant Garter Snake (*Thamnophis gigas*) will be reopened for an additional 30 days. Substantial public interest in the draft plan led the Service to distribute additional copies and to provide additional opportunities for the public to comment on the plan. This draft recovery plan contains recovery criteria and actions for threatened giant garter snake. Additional species of concern that will benefit from recovery actions taken for the giant garter snake are also discussed in the draft plan. The Service reopens the comment period and solicits review and comment from the public on this draft plan.

DATE: Comments on the draft recovery plan received by October 13, 1999 will be considered by the Service.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following location: U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California (telephone (916) 414–6600); and U.S. Fish and Wildlife Service, Regional Office, Ecological Services, 911 NE. 11th Avenue, Eastside Federal Complex,

Portland, Oregon 97232–4181 (telephone (503) 231–2071). Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to Wayne S. White, Field Supervisor, Ecological Services, at the above Sacramento address.

FOR FURTHER INFORMATION CONTACT: Diane Elam, Fish and Wildlife Biologist, at the above Sacramento address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide recovery efforts, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the recovery measures needed. The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plan. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plan, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

The giant garter snake is an endemic species of wetlands in the Central Valley of California. Historically, giant garter snakes were found in the Sacramento and San Joaquin Valleys from the vicinity of Butte County southward to Buena Vista Lake, near Bakersfield in Kern County. Today, populations of the giant garter snake are found in the Sacramento Valley and isolated portions of the San Joaquin Valley. They historically inhabited natural wetlands and now occupy a variety of agricultural, managed, and natural wetlands including their waterways and adjacent uplands. This species is threatened by historic wetland habitat loss and resulting habitat fragmentation, and by continuing urban expansion. The objective of this draft recovery plan is to delist the giant garter snake through implementation of a variety of recovery measures including (1) habitat protection; (2) public participation, outreach and education; (3) habitat management and restoration; (4) surveying and monitoring; and (5) research.

Public Comments Solicited

The Service solicits written comments on the draft recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 3, 1999.

Elizabeth H. Stevens,

Acting Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 99–23510 Filed 9–10–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT080–09–1310–00]

Intent To Prepare an Environmental Assessment for Amending the Book Cliffs Resource Management Plan, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to prepare an environmental assessment for amending the Book Cliffs Resource Management Plan (RMP) by changing oil and gas leasing categories on crucial mule deer winter range.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Utah Bureau of Land Management, Vernal Field Office will be writing an Environmental Assessment (EA) on a proposed amendment to the Book Cliffs RMP that covers portions of Uintah County, Utah. The amendment would change the oil and gas leasing category on 162,500 acres of crucial mule deer winter range from Category 1 (Standard Stipulations) to Category 2 (Special stipulations) for protection of mule deer. Protective measures would include seasonal restrictions, rehabilitation requirements, siting of oil and gas wells, clustering of wells to reduce habitat disturbance and fragmentation, and other mitigative measures.

Alternatives identified at this time include the proposed action and the no action alternatives. Issues to be analyzed include impacts on wildlife, minerals, cultural resources and special status plants and animals. Potential impacts on Northern Ute tribal interests also will be considered.

DATES: Public scoping comments relating to issues and potential additional alternatives will be accepted for 30 days following the publication date of this notice. Comments must be submitted on or before October 13, 1999.

ADDRESSES: Scoping comments should be sent to Field Office Manager, Bureau of Land Management, Vernal Field Office, 170 South 500 East, Vernal, Utah 84078, ATTN: Book Cliffs RMP Amendment for Oil and Gas Leasing Categories on Crucial Deer Winter Range.

Comments, including names and street addresses of respondents will be available for public review at the BLM Vernal Field Office and will be subject to disclosure under the Freedom of Information Act (FOIA). They may be published as part of the Environmental Assessment and other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review and disclosure under the FOIA, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

SUPPLEMENTARY INFORMATION: In 1992, the Utah Division of Wildlife Resources, in consultation with BLM wildlife biologists updated big game habitat delineations in the Book Cliffs. The updated delineations were the result of new and more detailed habitat information provided by field biologists. Analysis of this new information permitted more accurate identification and expansion of the boundaries of crucial mule deer winter range. Because mule deer crucial winter range has now been identified in areas presently offered for oil and gas leasing without protective measures for mule deer, a plan amendment is being considered.

FOR FURTHER INFORMATION CONTACT: Duane De Paepe (435) 781–4403 or e-mail: ddepaepe@ut.blm.gov.

Dated: September 1, 1999.

Linda S. Colville,

Acting State Director.

[FR Doc. 99–23679 Filed 9–10–99; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1010–00]

Notice of Meeting

AGENCY: Bureau of Land Management (BLM), Montana, Billings and Miles City Field Offices, Interior.

ACTION: Notice of Meeting.

SUMMARY: The Eastern Montana Resource Advisory Council will have a meeting October 13, 1999 at the Mon-Dak Heritage Center, 120 Third Ave. SE, Sidney, Montana starting at 8:00 a.m. Agenda topics include Bureau of Reclamation transfer of parcels along the Yellowstone River, and continued discussion on access, and the draft off-highway vehicle environmental impact statement.

The meeting is open to the public and the public comment period is set for 11:00 a.m. on October 13. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying during regular business hours.

FOR FURTHER INFORMATION CONTACT: Marilyn Krause, Public Affairs Specialist, Miles City Field Office, 111 Garryowen Road, Miles City, Montana 59301, telephone (406) 233–2831.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management. The 15 member Council includes individuals who have expertise, education, training or practical experience in the planning and management of public lands and their resources and who have a knowledge of the geographical jurisdiction of the Council.

Dated: September 1, 1999.

Timothy M. Murphy,

Miles City Field Manager

[FR Doc. 99–23671 Filed 9–10–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–930–1820–00]

Realignment of the BLM Office in Great Falls

AGENCY: Bureau of Land Management, DOI.

ACTION: None.

SUMMARY: This notice provides information about the decision to change the Great Falls Field Office to an Oil and Gas Field Station. This change became effective on August 1, 1999.

The Great Falls Field Office is Removed From the Organization Structure

The Great Falls Field Office has been converted to an oil and gas field station reporting to the Montana State Office, Division of Resources, Branch of Fluid Minerals, in Billings, Montana. This realignment will provide more efficient utilization of existing staff among the affected offices.

Other Programs Realigned

Responsibility for all other programs, other than oil and gas, has been reassigned to the Lewistown Field Office and its Havre Field Station. The Lewistown Field Office will assume responsibility for program activities in Pondera, Teton, Lewis and Clark (north of 46 degrees), Cascade, and Meagher counties. The Havre Field Station will assume responsibility for activities in Liberty, Glacier and Toole counties.

Oil and Gas Field Station Management

A supervisory position will be established in the OIL AND GAS FIELD STATION. The supervisor will report to the Montana State Office, Division of Resources, Branch of Fluid Minerals, in Billings, Montana.

FOR FURTHER INFORMATION CONTACT: Janet Singer, Deputy State Director, Division of Support Services, 5001 Southgate Drive, P.O. Box 36800, Billings, Montana 59107.

Dated: September 1, 1999.

Larry E. Hamilton.

State Director, Montana State Office.

[FR Doc. 99–23672 Filed 9–10–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–090–5700–77; WYW–6360 and WYW–145402]

Notices of Realty Action: Recreation and Public Purposes (R&PP) Act Classification in Lincoln County, WY (WYW–6360); and Federal Land Management Policy and Management Act (FLPMA) Direct Sale of Public Lands in Lincoln County, WY (WYW–145402)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This Notice covers two separate but related realty actions. The first action is to amend the existing R&PP classification to include the disposal of land currently leased to Lincoln County for sanitary landfill lease (WYW–6360). The following public lands in Lincoln County, Wyoming are suitable for classification for conveyance under the Recreation and Public Purposes Act, as amended, (43 U.S.C. 869 *et seq.*).

Sixth Principal Meridian, Lincoln County, Wyoming

T. 24 N., R. 119 W.,
Sec. 4, Lot 48, Lot 47 of Tract 91.
The above land contains 40 acres.

The second action is the direct FLPMA sale of public land (WYW–145402), which is adjacent to the public lands involved in the R&PP lease. The Bureau of Land Management has determined that the lands described below are suitable for direct sale under section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713:

Sixth Principal Meridian, Lincoln County, Wyoming

T. 24 N., R. 119 W.,
Lots 2, 3, 6, and 46 of Tract 91,
Lot 45 of Tract 94,
Lots 1 and 4 of Section 9.
The above land contains 93.78 acres.

FOR FURTHER INFORMATION CONTACT: Mark Hatchel, Realty Specialist, Kemmerer Field Office, 312 Highway 189 North, Kemmerer, Wyoming, 83101, (307) 828–4507.

SUPPLEMENTARY INFORMATION (WYW–6360): The lands are not needed for Federal purposes. The conveyance of these lands to Lincoln County for sanitary landfill purposes is consistent with the Kemmerer Resource Management Plan and would be in the public interest. The planning document and environmental assessment covering

the proposed sale are available for review at the Bureau of Land Management, Kemmerer Field Office, Kemmerer, Wyoming. The R&PP patent (WYW–6360) when issued, will be subject to the following terms, conditions, covenants, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way to the United States for ditches and canals pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove such minerals from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

4. The patentee shall comply with all Federal and State laws applicable to the disposal, placement, or release of hazardous substances.

5. Lincoln County, its successors or assign, assumes all liability for and shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to in this clause as the United States), from all claims, loss, damage, actions, causes of action, expense, and liability (hereinafter referred to in this clause as claims) resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person or persons (including the patentee's employees) or property growing out of, occurring, or attributable directly or indirectly, to the disposal of solid waste on, or the release of hazardous substances from these patented lands, regardless of whether such claims shall be attributable to: (1) The concurrent, contributory, or partial fault, failure, or negligence of the United States, or (2) the sole fault, failure, or negligence of the United States.

6. Existing rights of record including a right-of-way WYW–76620 to All West Communications for an access road.

7. The above described land has been used for solid waste disposal. Solid waste commonly includes small quantities of commercial hazardous waste and household hazardous waste as determined in the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6901), and defined in 40 CFR 261.4 and 261.5. Although there is no indication these materials pose any significant risk to human health or the environment, future land uses should be limited to those which do not penetrate the liner or final cover of the landfill unless excavation is conducted subject to applicable State and Federal requirements.

8. No portion of the land covered by such patent shall under any circumstances revert to the United States.

Conveyance of these lands to Lincoln County is consistent with applicable Federal and county land use plans and will help meet the needs of Lincoln County residents for solid waste disposal. Persons wishing to obtain detailed information on either of these actions may contact or write the Field Manager, Kemmerer Field Office, 312 Highway 189 North, Kemmerer, Wyoming, 83101, (307) 828–4502.

Until October 28, 1999, interested parties may submit comments regarding the proposed conveyance or classification of the land to the Field Manager, Bureau of Land Management, 312 Highway 189 North, Kemmerer, Wyoming, 83101.

Classification Comments

Interested parties may submit comments involving the request to amend the classification to include conveyance. Comments on the classification are restricted to whether the conveyance will maximize the future uses of the land, whether the use is consistent with local planning and zoning or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application for conveyance and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a sanitary landfill.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective November 12, 1999.

SUPPLEMENTARY INFORMATION (WYW–145402): The existing landfill is being utilized by Lincoln County and is near capacity, resulting in the need for an expansion landfill area. The expansion lands are expected to provide an additional 50+ years of operation. The proposed sale is consistent with the Kemmerer Resource Area Management Plan and would serve important public objectives which cannot be achieved prudently or feasibly elsewhere. The lands contain no other known public values. The planning document and environmental assessment covering the proposed sale are available for review at the Bureau of Land Management, Kemmerer Field Office, Kemmerer, Wyoming. Conveyance of the above public lands will be subject to:

1. Reservation of a right-of-way to the United States for ditches and canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.

2. Reservation of all minerals pursuant to section 209(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719.

Upon publication of this notice in the **Federal Register**, the FLPMA sale land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for leasing under the mineral leasing laws.

Until October 28, 1999, interested parties may submit comments to the Field Manager, Kemmerer Field Office, Bureau of Land Management, 312 Hwy. 189 North, Kemmerer, WY.

Dated: August 12, 1999.

Jeff Rawson,

Field Manager.

[FR Doc. 99–23745 Filed 9–10–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

Request for Reinstatement and Revision of a Previously Approved Information Collection

AGENCY: National Park Service, Interior.

ACTION: Notice of Request for Reinstatement and Revision of a Previously Approved Information Collection.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the National Park Service's intention to request a reinstatement for and revision to a previously approved information collection in support of its Concessions Management Program based on re-estimates.

DATES: Comments on this notice must be received no later than November 12, 1999 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Contact Cynthia Orlando, Program Manager, Concessions Program Division, National Park Service, 1849 C Street, NW., Washington, DC 20240 or call (202) 565–1210.

SUPPLEMENTARY INFORMATION:

Title: Concessioner Annual Financial Reports, 10–356 and 10–356A.

OMB Number: 1024–0029.

Expiration Date of Approval: December 31, 1995.

Type of Request: Reinstatement and revision of a previously approved information collection.

Abstract: The National Park Service (NPS) authorizes private businesses known as concessioners to provide necessary and appropriate visitor facilities and services in areas of the National Park Systems. The concessioner Annual Financial Report (Forms 10–356 and 10–356A) provides concessioner financial information to the NPS as required by each concession contract. This information is necessary to comply with requirements placed on the NPS by the Congress.

Public Law 105–391 requires that the NPS exercise its authority in a manner consistent with a reasonable opportunity for a concessioner to realize a profit on its operation as a whole commensurate with the capital invested and the obligations assumed. It also requires that franchise fees be determined with consideration to both gross receipts and capital invested. The financial information collected is necessary to provide insight into and knowledge of the concessioner's operation so that this authority can be exercised appropriately and franchise fees determined in a timely manner without undue burden on the concessioner.

Estimate of Burden

Gross Receipts

Under $250,000: approximately 4 hours per response.

Over $250,000: approximately 16 hours per response.

Estimated Number of Respondents

Gross Receipts

Under $250,000—419 respondents.

Over $250,000—181 respondents.

Estimated Number of Responses per Respondent: One.

Estimated Total Annual Burden on Respondents

Gross Receipts

Under $250,000—approximately 1.676 hours.

Over $250,000—approximately 2,896 hours.

Sample copies of this information collection can be obtained from Cynthia Orlando, Program Manager, Concessions Program Division, 1849 C Street, NW., Room 7313, Washington, DC 20240 at (202) 565–1210.

Send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information to Cynthia Orlando, Program Manager, Concessions Program Division, National Park Service, 1849 C Street, NW., Room 7313, Washington, DC 20240.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: September 1, 1999.

Linda Canzanelli,

Acting Associate Director, Park Operations and Education.

[FR Doc. 99–23766 Filed 9–10–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Effigy Mounds National Monument

AGENCY: National Park Service, Interior.

ACTION: Notice of availability of a Finding of No Significant Impact (FONSI) for the Environmental Assessment of the General Management Plan Amendment and Boundaries Study, Effigy Mounds National Monument, Iowa.

SUMMARY: Pursuant to the Council of Environmental Quality regulations and National Park Service (NPS) policy, the NPS prepared and made available for a 30-day public review a general management plan amendment/boundaries study and an environmental assessment (EA) for Effigy Mounds National Monument, Iowa. During the review period, the NPS held public meetings to discuss the document.

After the end of the 30-day public availability period, the NPS selected the preferred alternative as described in the document, and determined that implementation of the preferred alternative will not cause a significant environmental impact. In making that selection and determination, the NPS considered the information and analysis contained in the EA and the comments received during the public review period. The NPS has prepared a Finding of No Significant Impact (FONSI) for the project.

Because the GMP amendment/boundaries study is closely similar to projects for which the NPS would normally require an environmental impact statement, the NPS will make the FONSI available for a 30-day public review before implementation of the amendment/boundaries study begins.

DATES: The public review period for comment on the FONSI will end October 13, 1999.

SUPPLEMENTARY INFORMATION: Requests for copies of the FONSI, or for any additional information, should be directed to Superintendent Kate Miller, Effigy Mounds National Monument, 151 Highway 76, Harpers Ferry, Iowa 52146, Telephone: 319–873–3491. Comments on the FONSI may be sent to Superintendent Miller at this address or at e-mail: efmo_superintendent@nps.gov

Dated: September 2, 1999.

Catherine A. Damon,

Acting Regional Director, Midwest Region.

[FR Doc. 99–23764 Filed 9–10–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement for General Management Plan; Whiskeytown Unit, Whiskeytown-Shasta-Trinity National Recreation Area; Notice of Availability

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 (Pub.L. 91–190 as amended), the National Park Service, Department of the Interior, has prepared a final environmental impact statement assessing the potential impacts of the proposed General Management Plan for Whiskeytown Unit, Whiskeytown-Shasta-Trinity National Recreation Area, Shasta County, California. Once approved, the plan will guide the management of the unit over the next 15 years.

PROPOSED ACTION AND ALTERNATIVES: The final General Management Plan and Environmental Impact Statement presents a proposal and three alternatives for the management, use, and development of Whiskeytown Unit. The proposed general management plan includes provisions for preserving significant natural and cultural resources and for restoring the backcountry to more natural conditions through watershed restoration activities. The plan provides for increasing the range and depth of interpretive services, expands opportunities for backcountry use, and manages recreation at Whiskeytown Lake to provide opportunities for tranquil recreation experiences. To facilitate more tranquil experience, the use of personal watercraft at the reservoir is discontinued and enforcement of existing noise standards is increased.

Alternative A: No Action, would continue the current situation at Whiskeytown. Management focus would remain on the lake and natural

and cultural resource values would continue to decline because of the lack of human and financial resources for their management and protection.

Alternative B: Minimum Requirements, would be similar to Alternative C in terms of provisions for resource management and protection, but would provide fewer visitor services. The visitor service emphasis would continue to be focused on the lake and on safety and visitor protection, with only limited commitments to interpretation. The existing range of recreation uses, including the use of personal watercraft, would continue.

Alternative D: Expanded Recreation, retains the current management focus on active water-based recreation, and increases the capacity of the lake to accommodate use by adding a major new developed area near the mouth of Boulder Creek. Major new utility infrastructure would be required to support this development, and South Shore Drive would be widened, realigned, and paved to provide access. The existing spectrum of recreation uses on the lake, including use of personal watercraft, would be retained. However, a zoning plan would separate the reservoir into a low-speed zone, where personal watercraft use would be discouraged, and an unrestricted zone where all types of activities would be accommodated.

Background

The Draft EIS/GMP was released for a 75-day public review ending November 30, 1998. Altogether nine public meetings were held in local communities. Both the Draft and Final documents evaluate the same Proposed Action and Alternatives. The environmental consequences of the alternatives are fully documented in the Final EIS. No significant adverse impacts are foreseen from the three Action Alternatives, because the plans include provisions to avoid or mitigate potentially significant impacts. However, the No-Action Alternative would result in significant long-term impacts to natural and cultural resources due to insufficient management and protection.

SUPPLEMENTARY INFORMATION: Written comments or questions regarding the final general management plan and environmental impact statement should be directed to the Superintendent, Whiskeytown NRA, PO Box 188, Whiskeytown, California 96095. Copies may be requested by contacting the Superintendent at (530) 241–6584. The no-action period for the FEIS/GMP will extend for thirty days after the Environmental Protection Agency's notification of the filing of the document is published in the **Federal Register**. Subsequently, the National Park Service will publish a notice of the Record of Decision in the **Federal Register**. The official responsible for the decision is the Regional Director, Pacific West Region; the official responsible for implementation is the Superintendent, Whiskeytown Unit.

Dated: September 1, 1999.

John J. Reynolds,

Regional Director, Pacific West Region.

[FR Doc. 99–23763 Filed 9–10–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Primary Restoration Plan for Santa Cruz Island, Channel Islands National Park, Santa Barbara County, California; Notice of Intent To Prepare an Environmental Impact Statement

SUMMARY: Pursuant to § 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91–190) and Council on Environmental Quality regulations (40 CFR 1508.22), the National Park Service intends to prepare an Environmental Impact Statement for a Primary Restoration Plan that focused on removing non-native species from Santa Cruz Island, Channel Islands National Park, California. During the ensuing conservation planning-environmental analysis process, comprehensive management alternatives will be developed which will address recovery of the island's natural communities. Throughout the restoration planning process will be conducted in consultation with affected federal agencies, State and local governments, tribal groups, and interested organizations and individuals.

BACKGROUND: The National Park Service completed a General Management Plan (GMP) and Environmental Impact Statement for Channel Islands National Park in 1985. The park's Resources Management Plan was approved in 1994 (and last updated in 1998). Both documents set clear direction and priorities for responding to invasive species. This focused restoration planning effort is intended to expand and refine that management direction, with the focused objective of preparing a Primary Restoration Plan and Environmental Impact Statement (PRP/EIS) specific to Santa Cruz Island. The PRP/EIS will identify, analyze, and select the immediate, critical management actions necessary to initiate recovery of the island's natural communities. Of special concern is the pressing need to address alternative methods for removal of feral pigs (*Sus scrofa*) and control of fennel (*Foeniculum vulgare*), an invasive alien plant species. Based upon scientific review, at this time it is anticipated that bringing management and control efforts to bear primarily upon these two species would facilitate the restoration of many other native ecosystem components. The fennel and feral pig initiatives will be implemented in collaboration with The Nature Conservancy, Santa Cruz Island Preserve.

SCOPING: The NPS is hereby initiating the scoping phase with a request for comments and information from interested individuals, organizations, and agencies. Responses are encouraged, and may address current issues and concerns, relevant research, immediate management options, mitigation strategies, future direction for recovery efforts, and other factors relevant to a comprehensive restoration planning process. Written comments must be postmarked not later than November 30, 1999, and should be directed to the Superintendent, Channel Islands National Park, 1901 Spinnaker Dr., Ventura, CA 93001. In addition, public scoping sessions are scheduled for October 20 (Ventura) and October 27 (Santa Barbara). Details as to time and location will be announced via local and regional press releases, notices distributed to area libraries, and direct mailings.

SUPPLEMENTARY INFORMATION: Periodic information updates about various aspects of the restoration planning process will be distributed via direct mailings, the park's website (http://www.nps.gov/chis/naturalresources/restoration.html), and regional and local news media. To request placement on the PRP/EIS mailing list, interested parties may contact Mr. Steve Ortega, Restoration Biologist, at (805) 658–5784 or CHIS__Restoration@NPS.gov.

REVIEW AND DECISION PROCESS: The Draft PRP/EIS is anticipated to be available for public review and comment during winter-spring, 1999–2000. Availability of the Draft document for review and written comment will be announced by formal Notice in the **Federal Register**, through local and regional news media, the internet, and direct mailing. At this time it is anticipated that the Final PRP/EIS will be completed during October, 2000. Subsequently, notice of an approved Record of Decision would be published in the **Federal Register** not sooner than thirty (30) days after the Final document is distributed. This is expected to occur by December, 2000. The official responsible for the decision is the Regional Director, Pacific West Region, National Park Service; the official responsible for implementation is the Superintendent, Channel Islands National Park.

Dated: August 31, 1999.

John J. Reynolds,

Regional Director, Pacific West Region.

[FR Doc. 99–23765 Filed 9–10–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Prepare an Environmental Impact Statement to Amend the General Management Plan for the Backcountry of Denali National Park and Preserve

AGENCY: National Park Service, Interior.

ACTION: General Management Plan Amendment and Environmental Impact Statement, Denali National Park and Preserve, Alaska.

SUMMARY: The National Park Service (NPS) is preparing an amendment to the general management plan, a backcountry management plan and an accompanying environmental impact statement (EIS) for Denali National Park and Preserve. The purpose of the management plan and EIS is to formulate a comprehensive plan for the backcountry, including designated wilderness, of Denali National Park and Preserve that will provide management direction over the next 15–20 years. This new management plan will amend the 1986 General Management Plan for the backcountry of Denali National Park and Preserve. The backcountry of Denali National Park and Preserve is defined to include all of the park except for those areas designated specifically for development in the entrance area and along the road corridor. Many issues to be addressed in the backcountry management plan would affect the entire park, including developed areas. The NPS has initiated this management plan and EIS to address the rapidly growing level and diversity of uses, resource management needs, and the anticipated demand for future uses not foreseen or addressed in the 1986 General Management Plan.

Primary issues that the management plan and EIS will address are types and levels of visitor use, the visitor experience, resource protection, subsistence use, facility development and maintenance, administration of the backcountry management program, coordination with other land management agencies, research and other scientific uses, motorized uses including snowmachine and aircraft use, and fire management.

The proposed action in the management plan and EIS will include guidelines for the types and levels of a variety of backcountry uses and outline methods for resource protection. The proposal will allocate visitor use of the backcountry to prevent user conflicts and to continue providing for high quality visitor experiences and diverse opportunities. The proposed action will include zoning to provide for a spectrum of visitor opportunities ranging from motorized use areas to "quiet zones" where motorized uses would be prohibited. This will address visitor and management concerns about the existing conditions in which user conflicts occur.

Possible alternatives in the EIS will propose variations in the types and levels of backcountry uses. One alternative to the proposed action will be to provide for expanded uses similar to the level and types of uses in national parks in the lower 48. A second alternative will limit recreational and other backcountry uses so that Denali National Park and Preserve would be more comparable to other large national parks in Alaska with less visitor use. A no action alternative will also be included.

The NPS is seeking ideas on possible alternatives. The NPS will hold open house scoping sessions in fall 1999 in Fairbanks, the Denali National Park area, Talkeetna/Trapper Creek, and Anchorage. Specific dates, times, and locations of these scoping sessions will be announced in area newspapers. The NPS will continue to meet with other government agencies, organizations, and the public for information sharing.

The draft management plan/EIS is anticipated to be available for public review in late summer 2000. Public meetings will be scheduled in the Denali National Park/Healy area, the Talkeetna/Trapper Creek area, Fairbanks, and Anchorage, Alaska, after release of the draft management plan/EIS. The final EIS is expected to be released during summer 2001.

Interested groups, organizations, individuals and government agencies are invited to comment on the plan. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

The EIS is being prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4331 *et seq.*) and its implementing regulations at 40 CFR part 1500.

FOR FURTHER INFORMATION CONTACT: Stephen P. Martin, Superintendent, Denali National Park and Preserve, PO Box 9, Denali Park, Alaska 99755. Telephone (907) 683–2294.

Dated: September 1, 1999.

John Quinley,

Acting Regional Director, Alaska.

[FR Doc. 99–23762 Filed 9–10–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of Plan of Operations and Environmental Assessment for Continuing Operations of 6 Gas Wells; Pantera Energy Company, (Lake Meredith National Recreation Area), Hutchinson County, TX

Notice is hereby given in accordance with Section 9.52(b) of Title 36 of the Code of Federal Regulations that the National Park Service has received from Pantera Energy Company a Plan of Operations for the continuing operations of 6 gas wells within Lake Meredith National Recreation Area, Hutchinson County, Texas.

The Plan of Operation and Environmental Assessment are available for public review and comment for a period of 30 days from the publication date of this notice in the Office of the Superintendent, Lake Meredith National Recreation Area/Alibates Flint Quarries National Monument, 419 East Broadway, Fritch, TX. Copies are available from the Superintendent, Lake Meredith National Recreation Area/Alibates Flint Quarries National Monument, Post Office Box 1460, Fritch, Texas 79036 and will be sent

upon request, subject to a charge for copying.

John Benjamin,

Superintendent.

[FR Doc. 99–23761 Filed 9–10–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before September 4, 1999. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by September 28, 1999.

Carol D. Shull,

Keeper of the National Register.

FLORIDA

Charlotte County

El Jobean Hotel, 4381 Garden Rd., El Jobean, 99001203

Putnam County

Bostwick School, 125 Tillman St., Bostwick, 99001204

IOWA

Appanoose County

Second Baptist Church (Centerville MPS), 422 S. 18th St., Centerville, 99001223

Dubuque County

Basilica of St. Francis Xavier, Church and Rectory, 114 2nd St. SW, Dyersville, 99001205

St. Boniface of New Vienna Historic District, 7401 Columbus St., New Vienna, 99001207

Keokuk County

Irwin, John N. and Mary L. (Rankin), House, 633 Grand Ave., Keokuk, 99001206

MISSOURI

Lafayette County

Stramcke, Thomas Talbot and Rebecca Walton Smithers, House, 15834 Highway O, Lexington vicinity, 99001208

NEW YORK

Dutchess County

Mumford, Lewis, House, 187 Leedsville Rd., Amenia, 99001209

SOUTH DAKOTA

Clay County

South Dakota Department of Transportation Bridge No. 14–120–222 (Historic Bridges in South Dakota MPS), Local Rd. over Ash Creek, Wakonda vicinity, 99001218

Deuel County

Kliegle Garage, Lots 1 and 2 of the Original Townsite of Goodwin, Goodwin, 99001213

Turner County

South Dakota Department of Transportation Bridge No. 63–197–130 (Historic Bridges in South Dakota MPS), Local Rd. over E Fork of Vermillion R., Davis vicinity, 99001210

South Dakota Department of Transportation Bridge No. 63–177–160 (Historic Bridges in South Dakota MPS), Local Rd. over Turkey Ridge Creek, Hurley vicinity, 99001211

South Dakota Department of Transportation Bridge No. 63–198–181 (Historic Bridges in South Dakota MPS), Local Rd. over East Fork of Vermillion R., Davis vicinity, 99001212

South Dakota Department of Transportation Bridge No. 63–186–020 (Historic Bridges in South Dakota MPS), Local Rd. over Long Creek, Parker vicinity, 99001214

South Dakota Department of Transportation Bridge No. 63–132–040 (Historic Bridges in South Dakota MPS), Local Rd. over unnamed stream, Parker vicinity, 99001215

South Dakota Department of Transportation Bridge No. 63–210–282 (Historic Bridges in South Dakota MPS), Local Rd. over east Fork of Vermillion R., Centerville vicinity, 99001216

South Dakota Department of Transportation Bridge No. 63–052–030 (Historic Bridges in South Dakota MPS), Local Rd. over West Fork of Vermillion R., Marion vicinity, 99001217

WASHINGTON

Mason County

Big Creek Archeological Site—45MS100, Address Restricted, Hoodsport vicinity, 99001219

WISCONSIN

Ozaukee County

Port Washington Light Station, 311 E. Johnson St., Port Washington, 99001222

Walworth County

Horticultural Hall, 330 Broad St., Lake Geneva, 99001220

WYOMING

Carbon County

Downtown Rawlins Historic District (Boundary Increase), Roughly along 5th St., from W. Spruce to W. Cedar, Rawlins, 99001221

A request for Removal has been made for the following resource:

KANSAS

Reno County

Plevna General Store, 3rd and Main, Plevna, 88002968

[FR Doc. 99–23767 Filed 9–10–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Custer County, SD in the Possession of the South Dakota State Archaeological Research Center, Rapid City, SD

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Custer County, SD in the possession of the South Dakota State Archaeological Research Center, Rapid City, SD.

A detailed assessment of the human remains was made by South Dakota State Archaeological Research Center (SARC) professional staff in consultation with representatives of the Three Affiliated Tribes of the Fort Berthold Reservation and the Pawnee Indian Tribe of Oklahoma.

Between 1935 and 1950, human remains representing three individuals were recovered from the Phelps site (39CU206) located on the left bank of Battle Creek, Custer County, SD by Mrs. Phelps, the private landowner of the site. No known individuals were identified. The seven associated funerary objects include one unidentifiable mammal rib, two cedar fragments, one limestone bead, charcoal, one stone biface, and one stone uniface.

Based on the associated funerary objects and the manner of interment, these individuals have been identified as Native American. The associated funerary objects, manner of interment, and the remainder of the artifact assemblage from the site, including side-notched projectile points, freshwater shells, large bifaces, and ceramics, indicate the burials date to the Upper Republican Aspect of the Central Plains Tradition (1000-1500 A.D.).

Based on continuities of material culture, architecture, skeletal morphology, oral tradition, and historical evidence, the cultural affiliation of the Phelps site and the individuals listed above can be affiliated with the Arikara. In 1870, the Mandan, Hidatsa, and Arikara tribes were moved to the Fort Berthold Indian Reservation in North Dakota and are now known as the Three Affiliated Tribes of the Fort Berthold Reservation.

Based on the above mentioned information, officials of the South Dakota State Archaeological Research Center have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of three individuals of Native American ancestry. Officials of the South Dakota State Archaeological Research Center have also determined that, pursuant to 43 CFR 10.2 (d)(2), the seven objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the South Dakota State Archaeological Research Center have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Three Affiliated Tribes of the Fort Berthold Reservation.

This notice has been sent to officials of the Three Affiliated Tribes of the Fort Berthold Reservation and the Pawnee Indian Tribe of Oklahoma.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Renee Boen, Curator, State Archaeological Center, South Dakota Historical Society, P.O. Box 1257, Rapid City, SD 57709-1257; telephone: (605) 394-1936, before October 13, 1999. Repatriation of the human remains and associated funerary objects to the Three Affiliated Tribes of the Fort Berthold Reservation may begin after that date if no additional claimants come forward.

Dated: August 23, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–23770 Filed 9–10–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Wisconsin in the Possession of the State Historical Society of Wisconsin, Madison, WI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Wisconsin in the possession of the State Historical Society of Wisconsin, Madison, WI.

A detailed assessment of the human remains was made by State Historical Society of Wisconsin professional staff in consultation with representatives of the Ho-Chunk Nation of Wisconsin.

In 1966, human remains representing a minimum of two individuals were recovered from site 47–TR–31, Mound 26, HB–1, also known as the Trempealeau Lakes or Schwerts Mound Group, Trempealeau County, WI during excavations conducted by field crews of the State Historical Society of Wisconsin. No known individuals were identified. The 21 associated funerary objects include bracelets, rings, fabric fragments, cowrie shells, tubular beads, seed beads, and coin earrings.

Based on historic material culture, including a wood coffin, associated with these burials and historic associated funerary objects, these individuals have been identified as Native American from early this century (1900-1920 A.D.). Based on the material culture and Ho-Chunk oral history, these individuals have been identified as Ho-Chunk.

Based on the above mentioned information, officials of the State Historical Society of Wisconsin have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of two individuals of Native American ancestry. Officials of the State Historical Society of Wisconsin have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 21 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the State Historical Society of Wisconsin have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Ho-Chunk Nation of Wisconsin.

This notice has been sent to officials of the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Ms. Jennifer Kolb, Director, Museum Archeology Program, State Historical Society of Wisconsin, 816 State Street, Madison, WI 53706; telephone (608) 264–6560; e-mail: jlkolb@mail.shsw.wisc.edu before October 13, 1999. Repatriation of the human remains and associated funerary objects to the Ho-Chunk Nation of Wisconsin may begin after that date if no additional claimants come forward.

Dated: August 24, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–23768 Filed 9–12–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service, Interior.

Notice of Intent to Repatriate Cultural Items in the Possession of the State Historical Society of Wisconsin, Madison, WI

AGENCY: National Park Service, Interior.

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the State Historical Society of Wisconsin which meet the definition of "sacred object" and "object of cultural patrimony" under Section 2 of the Act.

The 28 cultural items consist of one cloth wrapper, two cane flutes, nine ermine skins, two fire-sets, a gourd rattle, a gourd bowl, an iron spear point, three war clubs, a rattle, a quillwork strip, a calico bundle containing a bird, a mat wrapper, a packet of roots, a buckskin bag, a packet of green paint, and a buckskin wrapper. Collectively, these cultural items comprise a Ho-Chunk Stealer Bundle.

In 1930, Charles Brown, representing the State Historical Society of Wisconsin, purchased the Stealer Bundle from John Blackhawk of Black River Falls, WI.

Consultation evidence presented by the Ho-Chunk Nation of Wisconsin confirms that all cultural items listed above are used in the Eagle Clan Lodge ceremony. Representatives of *wa ma nu ka cha bra* (Eagle Clan) have stated that these items are needed by traditional religious leaders for the practice of Native American religion by their present-day adherents. Representatives of the Ho-Chunk Nation of Wisconsin and the Eagle Clan of the Ho-Chunk Nation of Wisconsin have indicated that the Stealer Bundle and all associated items are owned communally by the clan as a whole and no individual had

the right to sell or otherwise alienate the Stealer Bundle or and associated items.

Based on the above-mentioned information, officials of the State Historical Society of Wisconsin have determined that, pursuant to 43 CFR 10.2 (d)(3), these 28 cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the State Historical Society of Wisconsin have also determined that, pursuant to 43 CFR 10.2 (d)(4), these 28 cultural items have ongoing historical, traditional, and cultural importance central to the culture itself, and could not have been alienated, appropriated, or conveyed by any individual. Officials of the State Historical Society of Wisconsin have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the Ho-Chunk Nation of Wisconsin.

This notice has been sent to officials of the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Ms. Jennifer Kolb, Director, Museum Archeology Program, State Historical Society of Wisconsin, 816 State Street, Madison, WI 53706; telephone (608) 264-6560; e-mail: jlkolb@mail.shsw.wisc.edu before October 13, 1999. Repatriation of these objects to the Ho-Chunk Nation of Wisconsin may begin after that date if no additional claimants come forward.

Dated: August 24, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–23769 Filed 9–10–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains in the Possession of the University of Pennsylvania Museum of Archaeology and Anthropology, University of Pennsylvania, Philadelphia, PA

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of the University of Pennsylvania Museum of Archaeology and Anthropology, University of Pennsylvania, Philadelphia, PA.

A detailed assessment of the human remains was made by University of Pennsylvania professional staff in consultation with representatives of the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska.

During the 1850s, human remains representing two individuals were removed from an unknown site by P. Gregg. In 1893, these human remains were acquired by the Academy of Natural Sciences, Philadelphia, PA. In 1966, these remains were placed on loan at the University of Pennsylvania Museum and were officially transferred into the University of Pennsylvania Museum's collections in 1998. No known individuals were identified. No associated funerary objects are present.

Based on original accession information, these individuals have been identified as Native American. Also based on original accession information, these individuals have been identified as Winnebago. No further information exists for these individuals.

Based on the above mentioned information, officials of the University of Pennsylvania Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of two individuals of Native American ancestry. Lastly, officials of the University of Pennsylvania Museum have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska.

This notice has been sent to officials of the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Jeremy Sabloff, the Williams Director, University of Pennsylvania Museum of Archaeology and Anthropology, 33rd and Spruce Streets, Philadelphia, PA 19104-6324; telephone: (215) 898-4051, fax (215) 898-0657, before October 13, 1999. Repatriation of the human remains to the Ho-Chunk Nation of Wisconsin and the Winnebago Tribe of Nebraska may begin after that date if no additional claimants come forward.

Dated: August 23, 1999.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 99–23771 Filed 9–10–99; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99–12]

Frank D. Jackson, M.D.; Revocation of Registration

On December 17, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Frank D. Jackson, M.D. (Respondent) of Boston, Massachusetts, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AJ8888806 pursuant to 21 U.S.C. 824(a)(4), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that his continued registration would be inconsistent with the public interest.

By letter dated January 28, 1999, Respondent requested a hearing on the issues raised by the order to Show Cause and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On February 19, 1999, Judge Bittner issued an Order for Prehearing Statements. The Government filed its prehearing statement on March 10, 1999, but Respondent did not file a prehearing statement.

On April 20, 1999, the Government filed a Motion for Summary Disposition and a Motion to Terminate the Proceedings. The Government's motions alleged that (1) Respondent is not currently licensed to handle controlled substances in the state where he is registered with DEA, and (2) Respondent's failure to file a prehearing statement acts as a waiver of his right to a hearing. Respondent was given until May 18, 1999, to file a response to the Government's motions, yet he did not do so.

On May 27, 1999, Judge Bittner issued her Opinion and Recommended Decision, finding that Respondent lacks authorization to handle controlled substances in the Commonwealth of Massachusetts; granting the Government's Motion for Summary Disposition; recommending that

Respondent's DEA Certificate of Registration be revoked; and concluding that having granted the Government's Motion for Summary Disposition, it is unnecessary to rule on the Government's Motion to Terminate. Neither party filed exceptions to her opinion, and on June 28, 1999, Judge Bittner transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds that the Commonwealth of Massachusetts, Board of Registration in Medicine suspended Respondent's Massachusetts medical license, effective March 10, 1999. As a result, the Deputy Administrator concludes that Respondent is not currently authorized to practice medicine in the Commonwealth of Massachusetts, and therefore,it is reasonable to infer that he is not currently authorized to handle controlled substances in that state.

The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16,193 (1997); Demetris A. Green, M.D., 61 FR 60,728 (1996); Dominick A. Ricci, M.D., 58 FR 51,104 (1993).

Here it is clear that Respondent is not currently authorized to handle controlled substances in the Commonwealth of Massachusetts, where he is registered with DEA. As a result, he is not entitled to a DEA registration in that state.

In light of the above, Judge Bittner properly granted the Government's Motion for Summary Disposition. The parties did not dispute the fact that Respondent is not currently authorized to handle controlled substances in California. Therefore, it is well-settled that when no question of fact is involved, or when the material facts are agreed upon, a plenary, adversarial proceeding involving evidence and cross-examination of witnesses is not required. See Jesus R. Juarez, M.D., 62 FR 14945 (1997). The rationale is that Congress does not intend administrative agencies to perform meaningless tasks. *See Philip E. Kirk, M.D.*, 48 FR 32887 (1983), *aff'd sub nom Kirk* v. *Mullen*, 749 F.2d 297 (6th Cir. 1984); *see also NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers*, AFL–CIO, 549 F.2d 634 (9th Cir. 1977).

Since DEA does not have the statutory authority to maintain Respondent's DEA registration because he is not currently authorized to handle controlled substances in Massachusetts, the Deputy Administrator concludes that it is unnecessary to determine whether Respondent's continued registration would be inconsistent with the public interest, as alleged in the Order to Show Cause.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AJ8888806, previously issued to Frank D. Jackson, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration, be, and they hereby are, denied. This order is effective October 13, 1999.

Dated: August 24, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–23669 Filed 9–10–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

KK Pharmacy; Revocation of Registration

On April 2, 1999, the Deputy Assistant Administrator, Office of Division Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to KK Pharmacy, of Osage Each, Missouri, notifying it of an opportunity to show cause as to why DEA should not revoke its DEA Certificate of Registration BK1488104 pursuant to 21 U.S.C. 824(a)(1), 824(a)(4) and 824(a)(5), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that the pharmacy materially falsified an application for DEA registration, is continued registration would be inconsistent with the public interest, and it has been mandatorily excluded from participation in a program pursuant to 41 U.S.C. 1320a–7(a). The order also notified KK Pharmacy that should no request for a hearing be field within 30 days of receipt of the Order to Show Cause, its hearing right would be deemed waived.

DEA received a signed receipt indicating that the Order to Show Cause was received on April 10, 1999. No request for a hearing or any other reply was received by DEA from KK Pharmacy or anyone purporting to represent it in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing have been received, concludes that KK Pharmacy is deemed to have waived its hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Daniel J. Vossman is the owner of KK Pharmacy and is also its pharmacist-in-charge. KK Pharmacy is located in Missouri and currently possesses DEA Certificate of Registration BK1488104.

In 1980, Mr. Vossman was the vice president of a corporation which owned several pharmacies and a wholesale distributor in Kansas. In June of 1980, Mr. Vossman admitted to the Kansas Pharmacy Board (Kansas Board) that on paper, he had been transferring the controlled substance Eskatrol from the distributor to one of the pharmacies, but in fact, he had been giving the drug to his wife for her personal use without a physician's authorization. According to Mr. Vossman, he diverted approximately 1,300 dosage units of the drug this way. A subsequent audit revealed a shortage of 1,300 dosage units of the drug this way. A subsequent audit revealed a shortage of 1,897 dosage units of Eskatrol from the pharmacy and 150 dosage units from the distributor. A later investigation revealed that prescriptions could not be found for many Schedule II prescription numbers and many Schedule II prescriptions that were on hand were unsigned. In addition, an audit covering the period January 1, 1977 to August 25, 1980, revealed discrepancies for a number of Schedule II controlled substances, including a shortage of 2,207 dosage units of Eskatrol or 53.2% for which it was accountable.

As a result, on December 3, 1980, the Kansas Board issued an Order effective October 1, 1980, which suspended Mr. Vossman's pharmacist registration for 90 days, 60 days of which were suspended, and then placed his registration on probation for one year. In addition, the wholesale distributor's registration was limited to non-

controlled substances only. Since the wholesale distributor was not longer authorized to handle controlled substances by the state, Mr. Vossman surrendered the wholesale distributor's DEA Certificate of Registration on January 12, 1981.

On December 5, 1990, Mr. Vossman filed an application to review KK Pharmacy's DEA Certificate of Registration BK1488104. Mr. Vossman answered "No" to the question on the application (hereinafter referred to as the liability question) which asks, "If the applicant is a * * * pharmacy, has any officer, partner, stockholder or proprietor * * * ever surrendered or had a Federal controlled substance registration revoked, suspended, restricted or denied, or ever had a State professional license or controlled substance registration revoked, suspended, denied, restricted or placed on probation?"

Between July 22, 1988 and December 16, 1997, the Missouri Board of Pharmacy (Missouri Board) conducted ten inspections of KK Pharmacy. Throughout these inspections, various repeated violations of state and federal controlled substance laws were noted, such as controlled substances were dispensed on a number of occasions without a physician's authorization, required information was missing from prescriptions, prescriptions were missing from the pharmacy's files, and a photocopied prescription for a Schedule II controlled substance was filled by the pharmacy. As a result of these inspections, the Missouri regulatory authorities took action on several occasions against KK Pharmacy's state permits.

On August 17, 1993, the Missouri Board issued a Stipulation and Agreement which placed the pharmacy permit of KK Pharmacy on probation from August 27, 1993 through August 26, 1998. This agreement was declared null and void in November 1996.

Mr. Vossman submitted another renewal application for his DEA Certificate of Registration on November 28, 1993. Again, Mr. Vossman Answered "No" to the liability question, and also answered "No" to another liability question which asks whether, "the applicant [has] ever * * * had a State professional license or controlled substance registration revoked, suspended, restricted or denied or ever had a State professional license or controlled substance registration revoked, suspended, denied, restricted or place on probation?"

On February 2, 1994, KK Pharmacy entered into a Memorandum of Understanding with the Missouri Bureau of Narcotics and Dangerous Drugs (Missouri BNDD). Mr. Vossman agreed that for five years he would provide the Missouri BNDD with prescription and refill information on a quarterly basis; permit access to pharmacy records by the Missouri Board and the Missouri BNDD; and meet all conditions set forth in the Stipulation and Agreement with the Missouri Board.

KK Pharmacy failed to provide the Missouri BNDD with prescription information as required by the Memorandum of Understanding, and failed to renew its Missouri controlled substance registration. As a result, on February 16, 1995, KK Pharmacy entered into a second Memorandum of Understanding with the Missouri BNDD, in which Mr. Vossman agreed to take a completed and accurate inventory by hand of all controlled substances upon the signing of the Memorandum. In addition, Mr. Vossman agreed that for seven years he would, among other things, take an exact count of all controlled substances on hand every six months; maintain a perpetual inventory of all controlled substances; provide the Missouri BNDD with prescription and refill information on a quarterly basis; maintain all records in accordance with state and federal laws; maintain Schedule II order forms in accordance with federal law; not dispense Schedule II controlled substances without a signed prescription; not partially fill Schedule II prescriptions; and meet annually with the Missouri BNDD.

On November 15, 1996, a 29-count felony information was filed against Mr. Vossman in the Circuit Court of Camden County, Missouri alleging that Mr. Vossman, d/b/a KK Pharmacy made false statements to receive health care payments. Two of these counts involved controlled substances. On October 1, 1997, Mr. Vossman pled guilty to one count of the information, and was sentenced to probation for five years.

On November 22, 1996, Mr. Vossman submitted an application to renew KK Pharmacy's DEA Certificate of Registration. On this application, Mr. Vossman answered "Yes" to the liability questions. In his explanation accompanying the application, Mr. Vossman indicated that he had been charged with making a false statement to receive a health care benefit, and that he had signed a Memorandum of Understanding with the Missouri BNDD on February 16, 1995, but that this Memorandum was being contested in the Circuit Court of Cole County, Missouri. However, Mr. Vossman failed to mention the 1980 suspension and probation of his license to practice pharmacy in Kansas, his surrender in 1981 of the wholesale distributor's DEA registration, or the 1994 Memorandum of Understanding with the Missouri BNDD.

By letter dated August 16, 1996, the Missouri Department of Health proposed the denial of KK Pharmacy's application for renewal of its controlled substance registration. The letter stated that Mr. Vossman has failed to provide satisfactory proof that the managing officers of KK Pharmacy are of good moral character. The letter further stated that registration of KK Pharmacy is inconsistent with the public interest because the pharmacy has not maintained effective controls against the diversion of controlled substances, has not operated in compliance with applicable state and federal law and has provided false or fraudulent material information on its application for registration.

Ultimately, by letter dated December 3, 1996, Mr. Vossman was advised that KK Pharmacy's application for a state controlled substance registration was denied and that he had 30 days to request a hearing. The letter listed as reasons for the denial that Mr. Vossman made a false statement on an application for a Missouri controlled substance registration; between June 1994 and August 1995, KK Pharmacy filled or refilled 81 controlled substance prescriptions without a physician's authorization; the pharmacy did not maintain 25 controlled substance prescriptions on file for a period of two years; it filled two Schedule II prescriptions in excess of a 30-day supply without a physician's written justification; it filled four Schedule II prescriptions for which there was no signed prescription order; and it filled two Schedule II prescriptions without the dispenser's signature. Mr. Vossman requested a hearing on the denial.

On July 16, 1997, Mr. Vossman and the Missouri BNDD filed a 'Joint Stipulation of Facts, With Proposed AHC [Administrative Hearing Committee] Conclusions of Law and Proposed AHC Order and with Joint Agreement and Terms of Discipline," hereinafter referred to as the Joint Agreement. In this filing the parties stipulated that KK Pharmacy's Missouri controlled substance registration expired on July 31, 1994 and was not renewed until February 16, 1995, yet the pharmacy continued to dispense controlled substances. The parties also stipulated that KK Pharmacy furnished false information to the Missouri BNDD on three applications and dispensed 27 refills of generic Darvocet N–100 to a customer in 1992 and 1993 without a physician's knowledge or authorization.

As a result of this Joint Agreement, KK Pharmacy was issued a Missouri controlled substance registration which was placed on probation for five years subject to various terms and conditions, including that KK Pharmacy will maintain a perpetual inventory for all controlled substances using the Pharmacy's computer, conduct background checks on all current and future pharmacist employees; maintain records showing the dates and times each pharmacy employee works; employ a consulting pharmacist to review the pharmacy's controlled substance handling; provide the Missouri BNDD with prescription and refill information on a quarterly basis; not accept any Schedule II telephone prescription; verify that all information on controlled substance prescriptions is complete and accurate; and verify on a daily basis a printout of prescription data for that day.

On November 20, 1997, the consulting pharmacist filed her first report with the Missouri BNDD noting that KK Pharmacy seemed to be making efforts to comply with the Joint Agreement, however she was still finding problems with the Schedule III through V perpetual inventory resulting in an ability to reconcile the drugs. The consulting pharmacist submitted her second report on March 10, 1998, in which she noted a decline in KK Pharmacy's compliance with the Joint Agreement and many violations of pharmacy law. The consulting pharmacist stated in her report that "I must also say that over the last three months I have felt that there have been attempts to hide or cover missing information needed by me to make an accurate assessment of the pharmacy's compliance with the agreement." The consulting pharmacist further "found it to be virtually impossible to reconcile the inventory in this pharmacy because there have been so many errors and corrections that there is no way to trace [the drugs.]" The consulting pharmacist concluded that "[o]ver the last three months I have felt that Mr. Vossman has not taken the initiative to be responsible for the pharmacy, but has expected that I or the technicians would come in and do the job for him[,]" and that "I am not sure that Mr. Vossman has the incentive or the skills needed to comply with the terms of this agreement."

By letter dated February 27, 1998, Mr. Vossman was notified by the Department of Health and Human Services that he was being excluded from participation in the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs for a period of five years pursuant to 42 U.S.C. 1320a–7(a).

On March 11, 1998, a Felony Conviction Complaint was filed with the Missouri Board stating that Mr. Vossman's conviction is an offense reasonably related to the qualifications, functions, or duties of a pharmacist or involves moral turpitude, and asking the Missouri Board to conduct a hearing and to impose appropriate discipline. Following a hearing, not attended by Mr. Vossman or a representative, the Missouri Board issued its Findings of Fact, Conclusions of Law, and Order of Discipline (Order) on April 23, 1998, revoking Mr. Vossman's pharmacist license. Thereafter, on April 30, 1998, Mr. Vossman filed a Petition for Review of the Missouri Board's Order stating that he did not attend the disciplinary hearing because he was not aware of it, and even had he been aware of the hearing, he would not have had sufficient time to prepare for it. In addition, Mr. Vossman filed a motion on April 30, 1998, in the Circuit Court of Cole County, Missouri seeking a stay of the Missouri Board's Order pending resolution of the appeal. The Court granted Mr. Vossman's motion for a stay on April 30, 1998.

On June 18, 1998, Mr. Vossman filed a request for rehearing while his petition for review of the Missouri Board's revocation of his pharmacist license was pending. The Missouri Board withdrew its April 23, 1998 Order, and a hearing was held on July 9, 1998. On July 16, 1998, the Missouri Board issued its Findings of Fact, Conclusions of Law, and Order of Discipline (Order) revoking Mr. Vossman's pharmacist license and prohibiting him from applying for reinstatement of his license for three years. Mr. Vossman again filed a petition for review of the Missouri Board's Order on July 24, 1998, in the Circuit Court of Cole County, Missouri. Mr. Vossman also filed a motion in the Circuit Court of Cole County, Missouri, requesting a stay of the Missouri Board's Order pending appeal, which was granted on July 27, 1998. There is no further evidence in the file regarding the disposition of this matter.

The Deputy Administrator may revoke or suspend a DEA Certificate of Registration under 21 U.S.C. 824(a), upon a find that the registrant:

(1) Has materially falsified any application filed pursuant to or required by this subchapter or subchapter II of this chapter;

(2) Has been convicted of a felony under this subchapter or subchapter II of this chapter or any other law of the United States, or of any State, relating to any substance defined in this subchapter as a controlled substance;

(3) Has had his State license or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the manufacturing, distribution, or dispensing of controlled substances or has had the suspension, revocation or denial of his registration recommended by competent State authority;

(4) Has committed such acts as would render his registration under section 823 of this title inconsistent with the public interest as determined under such section; or

(5) Has been excluded (or directed to be excluded) from participation in a program pursuant to section 1320a–7(a) or Title 42.

The Deputy Administrator finds that it is well-settled that a pharmacy operates under the control of owners, stockholders, pharmacists or other employees, and therefore the acts of these individuals are relevant in determining whether grounds exist to revoke a pharmacy's DEA Certificate of Registration. See Rick's Pharmacy, Inc., 62 FR 42595 (1997), Maxicare Pharmacy, 61 FR 27368 (1996); Big-T Pharmacy, Inc. 47 FR 51830 (1982).

Pursuant to 21 U.S.C. 824(a)(1), a registration may be revoked if the registrant has materially falsified an application for registration. DEA has previously held that in finding that there has been a material falsification of an application, it must be determined that the applicant knew or should have known that the response given to the liability question was false. See, Martha Hernandez, M.D., 62 FR 61145 (1997); Herbert J. Robinson, M.D. 59 FR 6304 (1994).

On KK Pharmacy's renewal application dated December 5, 1990, Mr. Vossman answered "No" to the liability question, even though his Kansas pharmacist license had been suspended and then placed on probation in 1980, and he surrendered his wholesale distributor's DEA registration in 1981.

Mr. Vossman also falsified KK Pharmacy's renewal application dated November 28, 1993, by again answering "No" to the liability question. Like the 1900 renewal application, Mr. Vossman should have disclosed the action against his Kansas pharmacist license in 1980 and the surrender of his wholesale distributor DEA registration in 1981. In addition, Mr. Vossman should have answered the liability question in the affirmative based upon the Missouri Board's action in August 1993 placing

the pharmacy permit of KK pharmacy on probation for five years. While the Missouri Board's action was ultimately declared null and void in November 1996, it was in effect in November 1993 when Mr. Vossman submitted the renewal application.

Finally, while Mr. Vossman did answer "Yes" to the liability question on KK Pharmacy's renewal application dated November 22, 1996, he failed to note in his explanation for his response that he had entered into a Memorandum of Understanding with the Missouri BNDD in 1994; that his Kansas pharmacist license was suspended and then placed on probation in 1980; and that he surrendered the DEA registration of his wholesale distributor in 1981.

The Deputy Administrator concludes that Mr. Vossman materially falsified KK Pharmacy's 1990, 1993 and 1996 renewal applications for its DEA Certificate of Registration, and therefore grounds exists to revoke the pharmacy's DEA registration.

Next, pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16422 (1989).

As to factor one, the file is replete with actions against KK Pharmacy and Mr. Vossman by various state licensing agencies. Mr. Vossman's Kansas pharmacist license was suspended in 1980 and then placed on probation. KK Pharmacy entered into a Memorandum of Understanding with the Missouri BNDD in 1994, and again in 1995. Action was taken by the Missouri BNDD to deny KK Pharmacy's state controlled substance registration in December 1996. The pharmacy was ultimately issued a new state controlled substance registration in July 1997 that was subject to various terms and conditions for five years. Then in 1998, Mr. Vossman's pharmacist permit was revoked by the Missouri Board, but that revocation was stayed pending appeal of the Missouri Board's Order.

Factors two and four, KK Pharmacy's experience in dispensing controlled substances and its compliance with applicable laws, are clearly relevant in determining the public interest. In 1980, Mr. Vossman diverted controlled substances from his then pharmacy and wholesale distributor for his wife's personal use without a physician's authorization. Between 1988 and 1997, the Missouri Board conducted ten inspections of the pharmacy which revealed numerous repeated violations. Particularly noteworthy is that Mr. Vossman continued to dispense controlled substances on a number of occasions without a physican's authorization.

In 1997, Mr. Vossman was given another chance by the Missouri Board to come into compliance. However, the consulting pharmacist hired to review KK Pharmacy's handling of controlled substances reported in March 1998 that, "there have been attempts to hide or cover missing information needed * * * to make an accurate assessment of the pharmacy's compliance with the agreement." The consulting pharmacist concluded that, "Mr. Vossman has not taken the initiative to be responsible for the pharmacy, but has expected that I or the technicians would come in and do the job for him," and that "I am not sure that Mr. Vossman has the incentive or the skills needed to comply with the terms of this agreement."

While there is no evidence under factor three that Mr. Vossman or KK Pharmacy has been convicted of a controlled substance related offense, the Deputy Administrator does find Mr. Vossman's conviction for making a false statement to receive a health care benefit relevant under factor five. A registrant's truthfulness and trustworthiness are appropriately considered in determining the public interest.

The Deputy Administrator concludes that there are serious questions as to whether Mr. Vossman and KK Pharmacy can be trusted to responsibly handle controlled substances. Accordingly, the Deputy Administrator concludes that KK Pharmacy's continued registration would be inconsistent with the public interest and therefore grounds exist to revoke the pharmacy's DEA Certificate of Registration pursuant to 21 U.S.C. 824(a)(4).

Finally, there is a basis to revoke KK Pharmacy's DEA Certificate of Registration pursuant to 21 U.S.C. 824(a)(5). Mr. Vossman was advised by letter from the Department of Health and Human Services dated February 27, 1998, that pursuant to 42 U.S.C. 1320a–7(a) he was excluded from participation in the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs for a period of five years. The Deputy Administrator finds that while this exclusion was based upon Mr. Vossman's conviction for a non-controlled substance related offense, DEA has previously held that misconduct which does not involve controlled substances may constitute grounds, under 21 U.S.C. 824(a)(5), for the revocation of a DEA Certificate of Registration. See Stanley Dubin, D.D.S., 61 FR 60727 (1996), George D. Osafo, M.D., 58 FR 37508 (1993); Gilbert L. Franklin, D.D.S., 57 FR 3441 (1992).

Therefore, the Deputy Administrator concludes that grounds exist to revoke KK Pharmacy's DEA Certificate of Registration pursuant to 21 U.S.C. 824(a)(1), (4), and (5). No evidence of explanation or mitigating circumstances was offered by KK Pharmacy, Mr. Vossman, or anyone purporting to represent the pharmacy.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824, and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BK1488104, previously issued to KK Pharmacy, be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration, be, and they hereby are, denied. This order is effective October 13, 1999.

Dated: August 24, 1999.

Donnie R. Marshall,

Deputy Administration.

[FR Doc. 99–23667 Filed 9–10–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 22, 1999, Novartis Pharmaceutical Corporation, 59 Route 10, East Hanover, New Jersey 07926, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture finished product for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than November 12, 1999.

Dated: August 31, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcemenet Administration.

[FR Doc. 99–23670 Filed 9–10–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2015–99; AG Order No. 2254–99]

RIN 1115—AE 26

Extension of Designation of Somalia Under Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice extends the Attorney General's designation of Somalia under the Temporary Protected Status (TPS) program until September 17, 2000. Eligible nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) may re-register for TPS and an extension of employment authorization. Re-registration is limited to persons who registered for the initial period TPS, which ended on September 16, 1992, or who registered after that date under the late initial registration provision. Persons who are eligible for late initial registration may register for TPS during this extension.

EFFECTIVE DATES: The extension of the TPS designation for Somalia is effective September 18, 1999, and will remain in effect until September 17, 2000. The 30-day re-registration period begins September 13, 1999 and will remain in effect until October 13, 1999.

FOR FURTHER INFORMATION CONTACT: Michael Valverde, Residence and Status Services Branch, Adjudications, Immigration and Naturalization Service, Room 3214, 425 I Street, NW, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Authority Does the Attorney General Have to Extend the Designation of Somalia Under the TPS Program?

Section 244(b)(3)(A) of the Immigration and Nationality Act (Act) states that at least 60 days before the end of an extension or a designation, the Attorney General must review conditions in the foreign state for which the designation is in effect. 8 U.S.C. 1254a(b)(3)(A). If the Attorney General determines that the foreign state continues to meet the conditions for designation, the period of extension is extended, pursuant to section 244(b)(3)(C) of the Act. 8 U.S.C. 1254a(b)(3)(C). Through such an extension, TPS is available only to persons who have been continously physically present and have continously resided in the United States from the effective date of the initial designation, in this case, since September 16, 1991.

Who Did the Attorney General Decide To Extend the TPS Designation for Somalia?

On September 16, 1991, the Attorney General initially designated Somalia under the TPS program for a period of 12 months. 56 FR 46804. Since that date, the Departments of State and Justice have annually reviewed conditions within Somalia. Based on this year's review, the Attorney General finds that the armed conflict in Somalia is ongoing, and that the extraordinary and temporary conditions that provided a basis for the initial TPS designation continue to warrant the extension of Somalia's TPS designation. 8 U.S.C. 1254a(b)(1)(C).

If I Currently Have TPS, How Do I Register for an Extension?

Persons previously granted TPS under the Somalia program may apply for an extension by filing a Form I–821, Application for Temporary Protected Status, without the fee, during the re-registration period that begins September 13, 1999 and ends October 13, 1999. Additionally, you must file a Form I–765, Application for Employment Authorization. See the chart below to determine whether or not you must submit the one-hundred dollar ($100) filing fee with the Form I–765.

If—	Then—
You are applying for employment authorization through September 17, 2000.	You must complete and file the Form I–765, Application for Employment Authorization, with the one-hundred dollar ($100) fee.
You already have employment authorization or do not require employment authorization.	You must complete and file the Form I–765, Application for Employment Authorization, with no fee.
You are applying for employment authorization and are requesting a fee waiver.	You must complete and file Form I–765 and a fee waiver request and affidavit (and any other information) in accordance with 8 CFR 244.20.

To re-register for TPS, you also must include two identification photographs (1½″ × 1½″).

Is Late Registration Possible?

Yes. In addition to timely re-registration, late initial registration is possible for some persons from Somalia under 8 CFR 244.2(f)(2). To apply for late initial registration an applicant must

(1) be a national of Somalia (or alien having no nationality who last habitually resided in Somalia);

(2) have been continuously physically present in the United States since September 16, 1991;

(3) have continuously resided in the United States since September 16, 1991; and

(4) be admissible as an immigrant, except as otherwise provided in section 244(c) of the Act. 8 CFR 244.2(f)(2).

Additionally, the applicant must be able to demonstrate that, during the initial registration period from

September 16, 1991, through September 16, 1992, he or she

(1) was in valid immigrant or nonimmigrant status, or had been granted voluntary departure status, or any relief from removal;

(2) had an application for change of status, asylum, voluntary departure status or any relief from removal;

(3) was a parolee or had a pending request for reparole; or

(4) was the spouse or child of an alien currently eligible to be a TPS registrant. Id.

An applicant for late initial registration must register no later than sixty (60) days from the expiration or termination of the qualifying condition. Id.

Where Should I File for an Extension of TPS?

Nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) seeking to register for an extension of TPS must submit an application and accompanying materials to the Immigration and Naturalization Service local office that has jurisdiction over the applicant's place of residence.

When Can I File for an Extension of TPS?

The 30-day re-registration period begins September 13, 1999 and will remain in effect until October 13, 1999.

How Does an Application for TPS Affect My Application for Asylum or Other Immigration Benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit. A national of Somalia (or alien having no nationality who last habitually resided in Somalia) who is otherwise eligible for TPS and has applied for or plans to apply for asylum, but who has not yet been granted asylum or withholding of removal, may also apply for TPS. Denial of an application for Asylum or any other immigration benefit does not affect an applicant's ability to register for TPS, although the grounds of denial may also be grounds of denial for TPS. For example, a person who has been convicted of an aggravated felony is not eligible for asylum or TPS.

Does This Extension Allow Nationals of Somalia (or Aliens Having No Nationality Who Last Habitually Resided in Somalia) Who Entered the United States After September 16, 1991, To File for TPS?

No. This is a notice of an extension of the TPS designation for Somalia. It is not a notice of redesignation of Somalia under the TPS program. An extension of TPS does not change the required dates of continuous physical presence and residence in the United States, and does not expand the TPS program to include nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) who arrived in the United States after the date of the original designation, in this case, September 16, 1991.

Notice of Extension of Designation of Somalia Under the TPS Program

By the authority vested in me as Attorney General under section 244(b)(3)(A) of the Act, I have consulted with the appropriate agencies of the Government concerning whether the conditions under which Somalia was initially designated for TPS continue to exist. As a result, I determine that, the armed conflict in Somalia is ongoing, and that the extraordinary and temporary conditions that provided a basis for the initial TPS designated for Somalia continue to exist. Accordingly, I order as follows:

(1) The designation of Somalia under section 244(b) of the Act is extended for an additional 12-month period from September 18, 1999, until September 17, 2000. 8 U.S.C. 1254a(b)(3)(C).

(2) I estimate that there are approximately 350 nationals of Somalia (or alien having no nationality who last habitually resided in Somalia) who have been granted TPS and who are eligible for re-registration.

(3) In order to be eligible for TPS during the period from September 18, 1999, through September 17, 2000, a national of Somalia (or aliens having no nationality who last habitually resided in Somalia) who received a grant of TPS during the initial period of designation from September 16, 1991, until September 16, 1992, must re-register for TPS by filing a new Application for Temporary Protected Status, Form I–821, along with an Application for Employment Authorization, Form I–765, within the 30-day period beginning on September 13, 1999 and ending on October 13, 1999.

(4) Pursuant to section 244(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before September 17, 2000, the designation of Somalia under the TPS program to determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the reasons underlying it, will be published in the **Federal Register.**

(5) Information concerning the TPS program for nationals of Somalia (or aliens having no nationality who last habitually resided in Somalia) will be available at local Service offices upon publication of this notice.

Dated: September 3, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–23728 Filed 9–10–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Extension of the Unemployment Insurance (UI) Title XII Advances Process

ACTION: Notice.

SUMMARY: The Department of Labor (DOL), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the process for requesting advances from the Federal Unemployment Account (FUA) and repayment of such advances under Title XII of the Social Security Act(SSA). Technically, there is no request for information. There is, however, a paperwork burden on States because they must prepare and transmit formal requests for the authority to request advances and the repayment of said advances.

A copy of the proposed procedure can be obtained by contacting the addressee listed below.

DATES: Written comments must be submitted on or before November 12, 1999.

ADDRESSES: Office of Workforce Security, Employment and Training Administration, Department of Labor, Room C 4514, 200 Constitution Ave, NW., Washington, DC 20210; 202 219–7831 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: James E. Herbert 202–219–5653, jherbert@doleta.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Title XII section 1201 of the SSA provides for advances to States from the FUA. The law further sets out specific requirements to be met by a State requesting an advance:

- The Governor must apply for the advance;
- The application must cover a three month period and the Secretary of Labor must be furnished with estimates of the amounts needed in each month of the three month period;
- An application for an advance shall be made on such forms and shall contain such information and data (fiscal and otherwise) concerning the operation and administration of the State unemployment compensation law as the Secretary of Labor deems necessary or relevant to the performance of his duties under this title;
- The amount required by any State for the payment of compensation in any month shall be determined with due allowance for contingencies and taking into account all other amounts that will be available in the State's unemployment fund for the payment of compensation in such month;
- The term "compensation" means cash benefits payable to individuals with respect to their unemployment exclusive of expenses of administration.

Section 1202(a) of the SSA provides that the Governor of any State may at any time request that funds be transferred from the account of such State to the FUA in repayment of part or all of the balance of advances made to such State under section 1201. These applications and repayments may be requested by an individual designated for that authority in writing by the Governor. The DOL proposes to extend this procedure through September, 2002.

II. Review Focus

The DOL is particularly interested in comments which:

- Evaluate whether the proposed extension of the current procedure is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed extension of the current procedure, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the procedure; and
- Minimize the burden of the procedure on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

III. Current Actions

This action is requested to maintain the continuity of current procedures which have succeeded in the orderly application and repayment operations at both the State and Federal levels. This is not a data collection process.

Agency: Employment and Training Administration, Department of Labor

Title: Governor's requests for advances from the Federal unemployment account or requests for voluntary repayment of such advances.

OMB Number: 1205–0199.

Affected Public: State governments (State Employment Security Agencies).

Total Respondents: 50 States, Washington, DC, the Virgin Islands, and Puerto Rico are covered by this process. The DOL estimates that no State will be requesting advances and making repayments in FY 2000, 2001, and 2002. However, in the event of a recession, that estimate may be revised, and that contingency must be accommodated. In the last recession, six States requested advances.

Frequency: As needed, based on a State's discretion.

Total Responses: 0.

Average Time Per Response: 1 hour.

Estimated Total Burden Hours: None under current forecasts. This estimate may change as a result of economic recession.

Estimated Total Burden Cost: None under current forecasts. This estimate may change as a result of economic recession.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: September 3, 1999.

Cheryl Atkinson,

Deputy Director, Unemployment Insurance Service.

[FR Doc. 99–23688 Filed 9–10–99; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training and Partnership Act (JTPA), Title IV—Pilot and Demonstration Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice, solicitation of grant applications for proposals to conduct regional consortium building activities.

SUMMARY: The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), using funds authorized under the JTPA Section 452 (c) for Pilot and Demonstration programs, is seeking to award regional consortium building grants as stated in the Conference Report (H. Rep. No. 105–825). The purpose of these awards is to support the creation and development of regional skills consortia for the purpose of assessing employer skill needs and of assessing the need for closing the gaps between the skills needed by industry and the skills currently held by regional workers.

All Information Required To Submit a Grant Application is Contained in This Announcement.

It is anticipated that up to $9 million will be available for funding the projects covered by this solicitation. Approximately 15 grants will be awarded, and the estimated range of awards will be $500,000 to $1 million. At the Government's discretion, it is possible that awards would be made above this amount.

DATES: Applications for grant awards will be accepted commencing September 13, 1999. The closing date for receipt of applications is Monday, November 15, 1999, at 4 p.m. (Eastern Time) at the address below. Telefacsimile (FAX) applications will not be honored.

ADDRESSES: Applications must be mailed to : U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Ms. Mamie D. Williams, Reference: SGA/DFA 99–021, 200 Constitution Avenue, NW, Room S–4203, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Questions should be faxed to Mamie D. Williams, at (202) 219–8739 (this is not a toll free number). All inquiries should include the SGA number (SGA/DFA 99–021) and a contact name, telephone and fax number. This solicitation will also be published on the Internet, on the Employment and Training

Administration's Home Page at http://www.doleta.gov. Award notifications will also be published on this Homepage.

SUPPLEMENTARY INFORMATION: There is clear emphasis in the Workforce Investment Act of 1998 (WIA) on regional planning and cooperation. It is envisioned that the successful applicants will play a significant contributory role toward establishing that capacity. One of the roles of the consortia will be to work in tandem with the emerging structures under WIA to develop a strong cohesive basis for workforce planning and development so that skills shortages in industry are identified and resolved, and training opportunities for workers are clearly available and publicized.

This program places strong emphasis on supporting existing or emerging regional consortia that put a primary focus on technical skills training—whether in a single industry or occupation or in a broader multi-industry or occupational setting that is more geographically based. While significant latitude will be given in terms of the composition of an eligible applicant's porposed regional consortium, inclusion of a local board(s) as authorized under Section 117 of WIA is highly desirable and encouraged.

Part I—Application Process

A. Eligible Applicants

Awards under this Solicitation will be made to organizations and regional consortia of organizations that demonstrate the capacity to develop a comprehensive skill training plan for the area. The intent is to create partnerships that are broadly inclusive of groups in a geographic region or of entities focusing on a single industry or skilled occupation in an area.

There is no requirement that any of the partners in a consortium submitting an application be a private industry council (PIC) established under section 102 of the Job Training Partnership Act (JTPA) or a local workforce investment board that oversees training programs and projects operated in the local workforce investment systems created under the Workforce Investment Act of 1998 (WIA). It is not, however, the intent of this program to fund the establishment of a parallel workforce training system to the one that has already been established under JTPA and WIA. Therefore, applicants are strongly encouraged to consult with the workforce investment entities (PICs or WIBs) in their local area and seek to develop a partnership that works in consonance with those entities. The applicant may (but is not required to) submit a certification from a PIC or WIB attesting to the fact that such consultation is going on and a cooperative working relationship exists (or is being developed).

This Solicitation is extremely open-ended in terms of defining which organizations are eligible to apply for grant awards or to participate in the partnerships. Specifically, organizations eligible to apply may include but are not limited to organizations and regional consortia that comprise businesses, business and trade associations, labor unions, community colleges and other post-secondary institutions, and community-and faith-based organizations. In view of the fact that one of the foci of this initiative is closing regional skills gaps, it would be highly desirable to include businesses as participants which represent industries and occupations in which there are regional skills shortages. PICs or local boards may also apply for these grants both singly and in partnership with other PICs or other organizations. The governing criterion should be that the organization, group, consortium, or partnership is interested in addressing activities relating to regional job skills, gaps/needs and is interested, in the case of a single organization applicant, in creating a regional consortium for that purpose.

As noted above, these regional consortia will probably be multi-jurisdictional and may, in some cases, cross State boundaries, however, no minimum size is established, and the smallest grant could conceivably encompass a single local workforce investment area or service delivery area.

B. Submission of Proposals

Applicants must submit four (4) copies of their proposal, with original signatures. The proposal must consist of two (2) distinct parts, Parts I and II.

• Part I of the proposal shall contain the Standard Form (SF) 424, "Application for Federal Assistance"(appendix A) and a "Budget Information Sheet" (appendix B). All copies of the (SF) 424 MUST have original signatures of the legal entity applying for grant funding. The individual who signs the application should be the same individual who signs the certification discussed in the previous section. Applicants shall indicate on the (SF) 424 the organization's IRS status, if applicable. According to the Lobbying Disclosure Act of 1995, section 18, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant, or loan.

• Part II must contain a technical proposal that demonstrates the applicant's capabilities in accordance with the Statement of Work contained in this announcement. A grant application is limited to twenty (20) double-spaced, single-side, 8.5-inch × 11-inch pages with 1-inch margins. Attachments may not exceed fifteen (15) pages. Text type willl be 11 point or larger. Applications that do not meet these requirements will not be considered. Each application must include a Time Line outlining project activities and an Executive Summary not to exceed two pages. The Time Line and the Executive Summary do not count against the 20-page limit. No cost data or reference to price should be included in the technical proposal.

C. Hand—Delivered Proposals

If proposals are hand-delivered, all copies must be received at the designated place by 4 p.m., Eastern Time, Monday, November 15, 1999. All overnight mail will be considered to be hand delivered and must be received at the designated place by 4 on the specified closing date. Telegraphed and/or faxed proposals will not be honored. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness.

D. Late Proposals

A proposal received at the designated office after the exact time specified for receipt will not be considered unless it is received before award is made and it:

• Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (e.g., an offer submitted in response to a solicitation requiring receipt of applications by the 20th of the month must be mailed by the 15th);

•Was sent by U.S. Postal Service Express Mail Next Day Service, Post Office to addressee, not later than 5 p.m. at the place of mailing two working days prior to the date specified for proposals. The term "working days" excludes weekends and U.S. Federal holidays.

The only acceptable evidence that an application was sent in accordance with these requirements is a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied or affixed on the date of mailing by employees of the U.S. Postal Service.

E. Funding Availability and Period of Performance

The Department of Labor expects to make approximately 15 awards, with a total investment of approximately $9,000,000. The period of performance will be for 18 months from the date the grant is awarded. Because ETA views these grants as initial start up funding, it is anticipated that these awards will be one-time grants with no provision of an option year. The Department expects that the award amounts will range from $500,000 to $1 million. At the Government's discretion, it is possible that awards would be made above this amount.

F. Definitions

• Region, for the purpose of this solicitation, means an area which exhibits a commonality of economic interest. Thus, a region may comprise a few labor market areas, one large labor market, one labor market area joined together with one or more adjacent rural districts, one or more special purpose districts, or one or more contiguous PICs or local boards. Clearly, if the region involves multiple economic or political jurisdictions, it is essential that they be contiguous to one another. A region may be either intrastate or interstate. Although the rating criteria will provide more detail, it is the applicant's responsibility to demonstrate the regional nature of the area which that application covers. Also, a region may be coterminous with a single PIC or local board.

• Persons who may have fewer educational or occupational credentials means those individuals who have the educational or occupational credential level enumerated in section 101 (33) of WIA (which, in another context, is employed to describe an "out of school youth"). Specifically, that definition refers to a school dropout or someone who has received a secondary school diploma or its equivalent but is basic skills deficient, (as defined in WIA, sec 101 (4)), unemployed or underemployed.

Part II—Statement of Work/Reporting Requirements

Background

The Conference Agreement for the Fiscal Year 1999 appropriation for Title IV of JTPA states that it includes $9 million for the competitions for "creation of regional consortia for the purpose of assessing employer skill needs...H. Rep No. 105–825, 105th Cong., 2nd Sess. (Oct. 19, 1998)." This set-aside is also intended to assess the need for closing the gaps between business and the skills held by regional workers.

Traditionally, overall tight labor markets and even skill shortages are good for workers in that they can lead to rising wages, improved working conditions, and new opportunities for workers and new labor market entrants. What is a skill shortage? In the simplest terms possible, a shortage occurs in a market economy when the demand for workers in a particular occupation at an ascertainable skill level is greater than the supply of workers who are qualified, available, and willing to do the job. Problematic regional or sectoral industry skills shortages—those that occur when there is imbalance between worker supply and demand for a persistent period of time—can mean that particular goods and services are not provided and that the economy is operating less efficiently than it could. At the microeconomic level, i.e., for individual employers, the inability to find an adequate supply of workers " even after offering higher wages and better working conditions—can cause a loss of business and profits.

One theme in WIA refers to regional planning, cooperation, and cohesion. This regional consortium building initiative—with its heavy emphasis on partnership-creation—is an opportunity to learn how to build better quality, longer-term partnerships. Thus, one underlying purpose of this effort is to develop, test, and evaluate "models" for use by States and local boards.

Project Summary

A. Purpose

ETA intends to allocate up to $9 million for grants to existing or emerging regional consortia, or organizations seeking to form a consortia, for the primary purpose of forming a cohesive regional planning structure which has the capacity to assess employer skill needs, determine the gap between those industry needs and the skills possessed by regional workers, and develop a concrete action plan to train regional workers to fill the identified skill gaps.

The first priority in making these awards will be to support the process of consortium building. Thus, a successful applicant may be a single group which has developed a well-conceived and structured proposal that creates the necessary linkages with key organizations within a defined region to form the basis of a strong consortium.

The evidence of these linkages will be a signed consortium agreement that articulates the linkages being developed and describes in some detail what the roles of the various partners will be. Because a major purpose of the consortia will be to address industry skill needs, applicants are encouraged to enter into partnership arrangements with entities which possess a sound grasp of the job marketplace in the region. Typically, such organizations would include businesses (including small-and medium-size businesses) and business, trade or industry associations such as local Chambers of Commerce.

A significant aspect of the consortium-building effort is the resources that entities can bring to the table and contribute to the partnership. The Employment and Training Administration (ETA) does not require a match for this competition. However, a major aspect of this undertaking is to create regional consortia to address skill shortages that can sustain themselves once the consortium building grant has expired, and a substantial determining factor of that sustainability will be the amount of resources—both cash and in kind—that can be generated and leveraged by the participants in the consortium. Sustainability is an important consideration for the full implementation of the action plan that will be developed as part of this project but will be acted upon beyond the scope of this grant.

A second major purpose of the consortia is to assess the skills possessed by regional workers and develop strategies for making sure those skills are aligned with the requirements for filling the job vacancies that exist in regional industries. With this in mind, it is very important that consortia include a broad spectrum of organizations that have an understanding of regional skills needs and can provide the skills training to meet those needs. Specifically, the applicants are encouraged to reach out and involve groups such as labor unions, community colleges and other accredited post secondary educational institutions, and community-based organizations.

The result of the regional skills assessments described above should be an action plan which formulates an approach for resolving particular skills gaps that exist in the region. The action plan should carefully enumerate what the major skills shortage occupations are in the particular area and present a detailed series of steps designed to close those gaps. The action plan should be viewed as a key product of these grants.

Although the design and testing of curriculum is not the central concern of this start up consortium building initiative, it is entirely appropriate and desirable that regional consortia that

have established the necessary partnership structure and have developed a partnership agreement that defines respective organizational roles within the structure begin work on curriculum development for skills shortage training while formulating their action plan. Having a membership that includes educational organizations such as community colleges and other accredited post secondary education and training institutions will assist the consortia in formulating and testing such skills training curriculum approaches.

Many of the job vacancies that emerge in the region may require substantial technical skills. Therefore, it is anticipated that significant technical skill training may be necessary to fill those employment opportunities. Such technical skill training may combine academic instruction with work place learning and instruction and training customized to the needs of specific firms. To the extent that applicants target for service persons with barriers to employment as described by section 203 (b) and (c) of JTPA (in particular, young adults aged 18–24) who may have fewer educational or occupational credentials, it is important that they spell out career paths which will help those individuals acquire high proficiency levels that may be required for some of the vacancies.

B. Reporting Requirements

Once grant awards are made, the following reports and documents will be required:

- Quarterly Financial Reports. The awardee must submit to the Grant Officer's Technical Representative (GOTR) within the 30 days following each quarter, two copies of a quarterly Financial Status Report, Standard Form (SF) 269, until such time as all funds have been expended or the period of availability has expired.
- Progress Reports. The awardee must submit quarterly reports to the GOTR within the 30 days following each quarter. Two copies are to be submitted; the report will provide a detailed account of activities undertaken during the quarter.
- The awardee shall work with the GOTR in submitting a copy of the signed consortium agreement. The agreement shall include a written statement of operating principles and procedures defining roles and decision-making processes for the consortium.
- The awardee shall work with the GOTR in submitting a copy of the signed consortium action plan.
- Final Report. A draft final report which summarizes project activities and results of the demonstration shall be submitted no later than 30 days prior to the expiration date of the grant.

Part III—Review Process and Rating Criteria

A careful evaluation of applications will be made by a technical review panel who will evaluate the applications against the criteria listed below. The panel results are advisory in nature and not binding on the Grant Officer. The Government may elect to award the grant with or without discussions with the offeror. In situations without discussions, an award will be based on the offeror's signature on the (SF) 424, which constitutes a binding offer. The Grant Officer will make final award decisions based upon what is in the best interest of the Government.

Rating Criteria

A. Statement of Need (20 Points)

The applicant must provide a clear statement describing the geographic region that the planned consortium, or organizations seeking to form a consortia, will encompass.

What are the economic, demographic and governmental considerations that make this a region that should be considered for funding under this SGA? In order to be acceptable, the description should discuss these factors with precision, utilizing appropriate socioeconomic and statistical data. Applicants are encouraged to utilize all available data resources—e.g., expressed hiring needs of employers in the region and The America's Labor Market Information System—in responding to this criterion.

Other pertinent questions that will provide greater depth of description of the region's characteristics and needs include: What is the general business environment? What industries and occupations are growing, and which ones are contracting? What are the characteristics of the major employers in the region?

B. Planning Strategy, Including Strength of Linkages/Partnerships and Sustainability (35 Points)

The applicant should enumerate who the partners (or potential partners) are in this endeavor and how it is envisioned they will link together. The focus of this criterion is on the structural aspects of the consortium. What kinds of inter-organizational linkages have been (are going to be) created? What resource(s) is each partner willing to commit to the consortium? It is vitally important that all the partners be enumerated and thoroughly discussed to provide a clear picture of the potential the consortium will have for contributing to improved strategic planning within the region and within the workforce investment system and for substantively addressing skill shortage issues both on a regional basis and, to the extent that the region in question impacts upon broader national shortage issues, on a national basis. As noted earlier, applicants are not required to include a PIC or a WIB as a partner, however, they are encouraged to do so.

This procurement does not require that applicants provide a match. ETA feels strongly, however, that applicants and their partners should leverage additional resources—both Federal and non-Federal—to establish an entity which will be strong and have "staying power." It is hoped that the consortium will have leveraged sufficient resources to provide a viable base for continuing its activities once the funds from this grant award are exhausted.

C. Prospective Target Population (20 Points)

The primary goals of this initiative are to build regional consortia and to develop viable action plans for bridging the gap between the skills needed by industry and those possessed by the regional workforce. Thus, there may be little, if any, actual provision of training services to individuals for the duration of this initial start up grant. Nevertheless, in describing the regional workforce, the applicant should develop a clear sense of who comprises the target population.

The description of the characteristics of those individuals the plan envisions serving should be clear and sufficiently detailed to determine the potential participants' needs for workforce development services. Documentation should be provided showing that a significant number of workers with defined skill needs are available for participation within the project's defined regional area.

Applicants are strongly encouraged to include underrepresented communities and populations in their proposal particularly those that may reside in any Empowerment Zones and Enterprise Communities (EZ/ECs) in the region. In particular, applicants are encouraged to plan for providing services to individuals with serious barriers to employment such as those described by section 203 (b) and (c) of JTPA (in particular, young adults aged 18–24) who may have fewer educational or occupational credentials.

D. Prior Experience (15 Points)

Applicants should provide a detailed discussion of their specific experience in the activities contemplated by the Solicitation. What kinds of exposure has the applicant had to labor market analysis and/or economic planning including the use of economic and demographic data to identify skill shortage occupations? The application should also enumerate experience in developing strategies for addressing such shortages. Also, applicant should detail any background that it has in coalition or organization building work.

The applicant should include resumes of key staff who are proposed for this section. It may well be that individual staff members do not have much experience in consortium-building activities for workforce training. Therefore, it will be acceptable to show that the key staff has substantial background in economic planning for workforce and employment needs and related activities contemplated as part of the consortium building for this effort.

Also, a management plan should be included in the proposal which describes how a grant of this sort would be administered together with specific management experience possessed by grantee staff.

E. Cost Effectiveness (10 Points)

Applicants must provide a detailed discussion of the expected cost effectiveness of their proposal. This discussion should be couched in terms of the reasonableness of the cost in relation to the activities planned.—e.g., the consortium building activities. What expenses will be incurred in terms of bringing the concerned parties together in collaborative, cooperative partnership arrangements? How do these expenses compare to the capacity generated by the resulting consortium? What are the benefits of assessing community needs and factoring in workers' needs and attempting to calibrate those two in a comprehensive plan?

This section should also provide some discussion of what leveraged resources will be committed to the project, specifying the nature of those resources—e.g., Federal, non Federal, cash or in kind, capital equipment.

Signed this date, September 8, 1999 at Washington, DC.

Laura A. Cesario,

Grant Officer.

Appendices

Appendix A: (SF) 424—Application For Federal Assistance

Appendix B: Budget Information Form

BILLING CODE 4510-30-P

APPENDIX A

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction		2. DATE SUBMITTED	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐-☐☐☐☐☐☐☐	7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐ A. State H. Independent School Dist. B. County I. State Controlled Institution of Higher Learning C. Municipal J. Private University D. Township K. Indian Tribe E. Interstate L. Individual F. Intermunicipal M. Profit Organization G. Special District N. Other (Specify): _____
8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es): ☐ ☐ A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify): _____	9. NAME OF FEDERAL AGENCY:
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 17-249 TITLE:	11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):	

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?	
a. Federal	$ .00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____	
b. Applicant	$ .00		
c. State	$ .00	b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372	
d. Local	$ .00	☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW	
e. Other	$ .00		
f. Program Income	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?	
g. TOTAL	$ .00	☐ Yes If "Yes," attach an explanation.	☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: **Entry:**

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable)

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided.

   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.

Item: **Entry:**

12. List only the largest political entities affected (e.g., State, counties, cities.

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

APPENDIX B

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: ***Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).***

SECTION A - Budget Summary by Categories

1. ***Personnel:*** *Show salaries to be paid for project personnel which you are required to provide with W2 forms.*

2. ***Fringe Benefits****: Indicate the rate and amount of fringe benefits.*

3. ***Travel****: Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. ***Equipment****: Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more. Also include a detailed description of equipment to be purchased including price information.*

5. ***Supplies****: Include the cost of consumable supplies and materials to be used during the project period.*

6. ***Contractual****: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. ***Other****: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. ***Total, Direct Costs****: Add lines 1 through 7.*

9. ***Indirect Costs****: Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. ***Training /Stipend Cost:*** *(If allowable)*

11. ***Total Federal funds Requested****: Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 99–23689 Filed 9–10–99; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act: Indian and Native American Employment and Training Programs; Solicitation for Grant Applications: Final Grantee Designation Procedures for Program Years 2000 and 2001

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of final designation procedures for grantees.

SUMMARY: This document contains the procedures by which the Department of Labor (DOL) will select and designate service providers for Program Years 2000 and 2001 for Indian and Native American Employment and Training Programs under the Workforce Investment Act. Grantees or potential eligible providers participating in Public Law 102–477 Demonstration Projects must apply for designation if they wish to receive WIA funds. This law allows Federally-recognized tribes to consolidate their formula-funded employment and training and related dollars under a single service plan administered by the Bureau of Indian Affairs. This notice provides the information that applicants need to submit appropriate requests for designation.

DATES: Notices of Intent must be received in the Department by October 1, 1999, or no later than 30 days from date of publication of this solicitation in the **Federal Register**, whichever is later. If not received by that **Federal Register** publication date, Notices of Intent must be postmarked by the U.S. Postal Service no later than that publication date. Failure to meet this requirement will disqualify the applicant from further consideration.

ADDRESSES: Send a signed original and two copies of the Notice of Intent to Mr. James C. DeLuca, Chief, Division of Indian and Native American Programs, Room N–4641 FPB ATTN: MIS Desk, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Workforce Investment Act: Indian and Native American Programs; Final Designation Procedures for Program Years 2000 and 2001

Table of Contents

Introduction: Scope and Purpose of Notice
I. General Designation Principles
II. Notice of Intent
III. Use of Panel Review Procedure
IV. Notification of Designation/ Nondesignation
V. Special Designation Situations
VI. Designation Process Glossary

Introduction: Scope and Purpose of Notice

Section 166 of the Workforce Investment Act (WIA) authorizes programs to serve the employment and training needs of Indians and Native Americans.

Requirements for these programs are set forth in the Act, and in the WIA section 166 regulations at 20 CFR part 668, published at 64 FR 18622, 18736 (April 15, 1999). The specific eligibility and application requirements for designation are set forth at 20 CFR part 668, subpart B. Pursuant to these requirements, the Department of Labor (DOL) selects entities for funding under WIA, section 166 for a two-year designation period. Designated Native American section 166 service providers will be funded annually during the designation period, contingent upon all other grant award requirements being met and the continuing availability of Federal funds.

The Notice of Intent (see Part II, below) is mandatory for all applicants. Any organization interested in being designated as a Native American section 166 grantee should be aware of and comply with the procedures in these parts.

The amount of WIA section 166 funds to be awarded to designated Native American organizations is determined under procedures described at 20 CFR 668.296(b) and not through this designation process.

I. General Designation Principles

Based on WIA and applicable regulations, the following general principles are intrinsic to the designation process:

(1) *All applicants* for designation shall comply with the requirements found at 20 CFR part 668, subpart B, which contains the basic eligibility, application, and designation requirements. Potential applicants should be aware that a non-incumbent entity must have a population within the designated geographic service area which would provide formula funding under 20 CFR 668.296(b) in the amount of at least $100,000 per program year. Federally-recognized tribes wishing to participate in the demonstration under Public Law 102–477 must have a service area and population which generates at least $20,000 per year in section 166 formula funds.

(2) High unemployment, lack of training, lack of employment opportunity, societal and other barriers exist within predominantly INA communities and among INA groups residing in other communities. The nature of this program is such that Indians and Native Americans are best served by a responsible Indian and Native American organization directly representing them, with the demonstrated knowledge and ability to coordinate resources within the respective communities. The WIA and the governing regulations establish a priority for Indian and Native American organizations. That priority is the basis for the steps which will be followed in designating grantees.

(3) *A Federally-recognized tribe, band or group on its reservation, and Alaska Native entities defined in the Alaska Native Claims Settlement Act (ANCSA)* or consortia that include a tribe or an entity are given highest priority over any other organization if they have the capability to administer the program and meet all eligibility and regulatory requirements. This priority applies only to the areas over which the organizations have legal jurisdiction.

In the event that such a tribe, band or group (including an Alaska Native entity) is not designated to serve its reservation or geographic service area, the DOL will consult with the governing body of such entities when designating alternative service deliverers. Such consultation may be accomplished in writing, in person, or by telephone, as time and circumstances permit. When it is necessary to select alternative service deliverers, the Grant Officer will, in accordance with 20 CFR 668.280, whenever possible, accommodate the views and recommendations of the INA community leaders and the Division of Indian and Native American Programs (DINAP).

(4) In designating Native American section 166 grantees for areas not covered by the highest priority in accordance with (3) above, DOL will designate Indian and Native American-controlled organizations as service providers. This would include the group referred to in (3) applying for off-reservation areas. As noted in (3) above, when vacancies occur, the Grant Officer will select alternates in accordance with 20 CFR 668.280.

(5) Incumbent and non-incumbent applicants seeking additional areas are expected to clearly demonstrate a working knowledge of the community that they plan to serve, including available resources, resource utilization and acceptance by the service population.

(6) Special employment and training services for Indian and Native American

people have been provided through an established service delivery network for the past 24 years under the authority of JTPA section 401 and its predecessor, section 302 of the repealed Comprehensive Employment and Training Act (CETA). The DOL intends to exercise its designation authority to both preserve the continuity of such services and to prevent the undue fragmentation of existing geographic service areas. Consistent with the present regulations and other provisions of this notice, this will include priority for those Native American organizations with an existing demonstrated capability to deliver employment and training services within an established geographic service area, and for organizations which directly represent the recipients of WIA services. Such preference will be determined through input and recommendations from the Chief of DOL's Division of Indian and Native American Programs (DINAP) and the Director of DOL's Office of National Programs (ONP),

(7) In preparing applications for designation, applicants should bear in mind that the purpose of section 166 of WIA is "to support employment and training activities for Indian, Alaska Native, and Native Hawaiian individuals in order—

(A) To develop more fully the academic, occupational, and literacy skills of such individuals;

(B) To make such individuals more competitive in the workforce; and

(C) To promote the economic and social development of Indian, Alaska Native, and Native Hawaiian communities in accordance with the goals and values of such communities."

II. Notice of Intent

1. Dates and Address for Submittal

Send a signed original and two copies of the completed Notice of Intent (NOI) to Mr. James C. DeLuca, Chief, Division of Indian and Native American Programs, Room N–4641 FPB, ATTN: MIS Desk, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210.

Notices of Intent which comply with the requirements of this solicitation must be received by or postmarked by October 1, 1999, or 30 days from date of publication of this solicitation in the **Federal Register**, whichever is later. NOIs not received by the publication deadline will be accepted only with an official, U.S. Postal Service postmark indicating timely submission. Dates indicating submission by private express delivery service or by metered mail are unacceptable as proof of submission.

When more than one eligible organization applies to provide services in the same area, a review of the applicants will be conducted and when necessary, a competitive selection will be made. Competing applicants will be notified of such competition no later than November 15, 1999, and may submit revised Notices of Intent to be received by the department or postmarked no later than January 5, 2000. At a minimum, revised Notices of Intent should include the information required in Part A as applicable and Part B. All Notices of Intent must be submitted to the Chief of DINAP at the above address.

2. Notice of Intent Content and Procedure

The information required in *Part A* must be provided by *all applicants*. Additionally, *competing organizations* will be required, if notified by the Grant Officer, to provide the information in *Part B*.

Part A

1. A completed SF–424, "Application for Federal Assistance", signed by the authorized signatory official;

2. An identification of the applicant's legal status, including articles of incorporation or consortium agreement as appropriate;

3. A specific description of the territory being applied for, by State(s), counties, reservation(s) or similar area, or service population;

4. A very brief summary, including the funding source, contact person and phone number of the employment and training or human resource development programs serving Native Americans that the entity currently operates or has operated within the previous two-year period;

5. A brief description of the planning process used by the entity, including involvement of the governing body and local employers.

6. Evidence to establish an entity's ability to administer funds under 20 CFR 668.220 and 668.230 which should at a minimum include:

(a) A statement that fraud or criminal activity has not been found in the organization, OR a brief description of the circumstance where it has been found and a description of resolution, corrective action and current status, AND

(b) A narrative demonstrating that an entity has or can acquire the necessary program and management personnel to safeguard federal funds and effectively deliver program services that support the purposes of the Workforce Investment Act, AND

(c) If not otherwise provided, a narrative demonstrating that an entity has successfully carried out or has the ability to successfully carry out activities that will strengthen the ability of the individuals served to obtain or retain unsubsidized employment, including the past two-year history of publically funded grants/contracts administered including identification of the fund source and a contact person.

The Grant Officer may require additional, clarifying, or other information including a site visit, prior to designating applicants.

Part B

If the Grant Officer determines that there is competition for all or part of a given service area, the following information will be required of competing entities:

(1) Evidence that the entity represents the community proposed for services such as: Demonstration of support from Native American-controlled organizations, State agencies, or individuals in a position to speak to the employment and training competence of the entity in the specific area applied for; and

(2) Submission of a service plan and other information expanding on the information required at Part A which the applicant feels can strengthen its case, including information on any unresolved or outstanding administrative problems.

Exclusive of charts or graphs and letters of support, the additional information submitted to augment the Notice of Intent in a situation involving competition should not exceed *75* pages of double-space unreduced type.

Incumbent and non-incumbent Federally-recognized tribes and Alaska entities need not submit evidence of support regarding their own reservations or areas of legal jurisdiction. However, such entities are required to provide such evidence for any area which they wish to serve beyond their reservation boundaries, or their Congressionally-mandated or Federally-established service areas.

All applicants for non-contiguous geographic service areas must prepare a separate, complete Notice of Intent (including the above-referenced supplementary information if applicable) for each such area.

III. Use of Panel Review Procedure

An initial review of all applicants, conducted by DINAP and with the concurrence of the Grant Officer, will identify priority applicants and

recommend those areas requiring further competition. A formal panel review process may be utilized under the following circumstances:

(1) When one or more new applicants, none qualifying for the highest priority for the requested area, can demonstrate the potential for superiority over the incumbent organization, OR

(2) When two or more applicants, none qualifying for the highest priority, request an area and the incumbent organization fails to apply for designation.

When further competition occurs, the Grant Officer will convene a review panel to score the information submitted with the Notice of Intent (Part A *and* B). This panel will include individuals with knowledge of or expertise in programs dealing with Indians and Native Americans. The purpose of the panel is to review and evaluate an organization's potential, *based on its application (including the required supplemental information)*, to provide services to a specific Native American community, to rate the proposals in accordance with the rating criteria and to make recommendations to the Grant Officer. The panel will be provided the information described in the Notice of Intent and supplemental information provided through the Grant Officer.

It is DOL's policy that no information affecting the panel review process will be solicited or accepted past the regulatory postmarked or hand-delivered deadlines. All information provided before these deadlines must be in writing.

This policy does not preclude the Grant Officer from requesting additional information independent of the panel review process.

During the review, the panel will not give weight to undocumented assertions. Any information must be supported by adequate and verifiable documentation, *e.g.*, supporting references must contain the name of the contact person, an address, and telephone number. Panel recommendations are advisory to the Grant Officer.

The factors listed below will be considered in evaluating the applicants approach to providing services.

	Points
1. (a) Previous experience in successfully operating an employment and training program serving Indians and Native Americans, OR (b) Previous experience in operating other human resources development programs serving Indians or Native Americans or coordinating employment and training services.	20
2. Approach to providing services including: Identification of the training and employment problems and needs in the requested area and approach to addressing such needs and demonstration of the ability to maintain continuity of services to Indian or Native American participants consistent with those previously provided in the community	40
3. Description of Planning Process including involvement of community leaders, involvement with local Workforce Investment Boards and Youth Councils, etc	15
4. Coordination, linkages and the ability to utilize existing resources within the community, including one-stop systems (as applicable), to eliminate duplication of effort	15
5. Demonstration of support and recognition of the Native American community and service population	10
Total	100

IV. Notification of Designation/ Nondesignation

The Grant Officer will make the final designation decision giving consideration to the following factors: the review panel's recommendation, in those instances where a panel is convened; input from DINAP, the Office of National Programs, other offices within the Employment and Training Administration, and the DOL Office of the Inspector General; and any other available information regarding the organization's financial and operational capability, and responsibility. The Grant Officer will select the entity that demonstrates the ability to produce the best outcomes for its customers. Decisions will be made by March 1, 2000, and will be provided to applicants as follows:

(1) *Designation Letter.* The designation letter signed by the Grant Officer will serve as official notice of an organization's designation. The letter will include the geographic service area for which the designation is made. It should be noted that the Grant Officer is not required to adhere to the geographical service area requested in the Notice of Intent. The Grant Officer may make the designation applicable to all of the area requested, a portion of the area requested, or if acceptable to the designee, more than the area requested.

(2) *Conditional Designation Letter.* Conditional designations will include the nature of the conditions, the actions required to be finally designated and the time frame for such actions to be accomplished. Failure to satisfy such conditions may result in a withdrawal of designation.

(3) *Non-Designation Letter.* Any organization not designated, in whole or in part, for a geographic service area requested will be notified formally of the Non-Designation and given the basic reasons for the determination. An applicant for designation which is refused such designation, in whole or in part, will be afforded the opportunity to appeal its Non-Designation as provided at 20 CFR 668.270.

V. Special Designation Situations

(1) *Alaska Native Entities*

DOL has established geographic service areas for Alaska Native employment and training grantees based on the following: (a) The boundaries of the regions defined in the Alaska Native Claims Settlement Act (ANCSA); (b) the boundaries of major sub-regional areas where the primary provider of human resource development related services is an Indian Reorganization Act (IRA)-recognized tribal council; and (c) the boundaries of the one Federal reservation in the State. Within these established geographic service areas, DOL will designate the primary Alaska Native-controlled human resource development services provider or an entity formally selected by such provider. In the past, these entities have been regional nonprofit corporations, IRA-recognized tribal councils, and the tribal government of the Metlakatla Indian Community. DOL intends to follow these principles in designating Native American grantees in Alaska for Program Years 2000 and 2001.

(2) *Oklahoma Indians*

DOL has established a service delivery system for Indian employment and training programs in Oklahoma based on a preference for Oklahoma Indian tribes and organizations to serve portions of the State. Generally, service areas have been designated geographically as countywide areas. In cases in which a significant portion of the land area of an individual county lies within the traditional jurisdiction(s) of more than one tribal government, the service area has been subdivided to a certain extent on the basis of tribal identification information contained in the most recent Federal Decennial Census of Population. Wherever possible, arrangements mutually satisfactory to grantees in adjoining or overlapping geographic service areas will be honored by DOL. Where mutually satisfactory arrangements cannot be made, DOL will designate and assign service area to Native American grantees in a manner which is consistent with WIA and that will preserve the continuity of services and prevent unnecessary fragmentation of the programs.

VI. Designation Process Glossary

In order to ensure that all interested parties have the same understanding of the process, the following definitions are provided:

(1) *Indian or Native American-Controlled Organization*

This is defined as any organization with a governing board, more than 50 percent of whose members are Indians or Native Americans. Such an organization can be a tribal government, Native Alaska or Native Hawaiian entity, consortium, or public or private nonprofit agency. For the purpose of designation determinations, the governing board must have decision-making authority for the WIA section 166 program. It should be noted that, pursuant to WIA section 166(d)(2)(B), individuals who were eligible to participate under section 401 of JTPA on August 6, 1998, shall be eligible to participate under WIA. Organizations serving such individuals shall be considered "Indian controlled" for WIA section 166 purposes.

(2) *Service Area*

This is defined as the geographic area described as States, counties, and/or reservations for which a designation is made. In some cases, it will also show the specific population to be served. The service area is identified by the Grant Officer in the formal designation letter. Grantees must ensure that all eligible population members have equitable access to employment and training services within the service area.

(3) *Incumbent Organizations*

Organizations which are current grantees under JTPA section 401, during PY 1999, are considered incumbent grantees for the existing service area, for the purposes of WIA.

Signed at Washington, DC, this third day of September, 1999.

Anne W. Goddard,

Director, Office of National Programs.

James C. Deluca,

Chief, Division of Indian and Native American Programs.

E. Fred Tello,

Grant Officer, Division of Federal Assistance.

BILLING CODE 4510-30-P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction		2. DATE SUBMITTED	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐-☐☐☐☐☐☐☐	7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐ A. State H. Independent School District B. County I. State Controlled Institution of Higher Learning C. Municipal J. Private University D. Township K. Indian Tribe E. Interstate L. Individual F. Intermunicipal M. Profit Organization G. Special District N. Other (Specify): _____
8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es): ☐ ☐ A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify): _____	9. NAME OF FEDERAL AGENCY:
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐ TITLE:	11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:
12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):	

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON
DATE _____
b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required face sheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

-- "New" means a new assistance award.

-- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

-- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans, and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF 424 (REV 4-88) Back

[FR Doc. 99–23687 Filed 9–10–99; 8:45 am]
BILLING CODE 4510–30–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting of the Board of Directors; Notice

TIME AND DATE: The Board of Directors of the Legal Services Corporation will meet on September 18, 1999. The meeting will begin at 10:00 a.m. and continue until conclusion of the Board's agenda.

LOCATION: The W Seattle Hotel, 1112 Fourth Avenue, Seattle Washington 98101.

STATUS OF MEETING: Open, except that a portion of the meeting may be closed pursuant to a vote of the Board of Directors to hold an executive session. At the closed session, the Corporation's General Counsel will report to the Board on litigation to which the Corporation is or may become a party, and the Board may act on the matters reported. The closing is authorized by the relevant provisions of the Government in the Sunshine Act [5 U.S.C. 552b(c) (10)] and the corresponding provisions of the Legal Services Corporation's implementing regulation [45 CFR § 1622.5(h)]. A copy of the General Counsel's Certification that the closing is authorized by law will be available upon request.

MATTERS TO BE CONSIDERED:

Open Session

1. Approval of agenda.
2. Approval of minutes of the Board's meeting of June 12, 1999.
3. Approval of minutes of the executive session of the Board's meeting of June 12, 1999.
4. Public Speakers.
5. Chairman's Report.
6. Members' Report.
7. President's Report
8. Inspector General's Report.
9. Consider and act on the report of the Board's Finance Committee.
10. Consider and act on the report of the Board's Committee on Provision for the Delivery of Legal Services.
11. Establish the Board's 1999 Annual Performance Reviews Committee to conduct the 1999 annual performance appraisals of the Corporation's President and its Inspector General.
12. Report on the status of the special panel established to study and report to the board on issues relating to LSC grantees' representation of legal alien workers and the requirement that they be "present in the United States."
13. Report by the President and Inspector General on the status of and progress made with the Corporation's case service reporting system.

Closed Session

14. Briefing by the Inspector General on the activities of the OIG.
15. Briefing[1] by the President on internal personnel and operational matters.
16. Consider and act on the General Counsel's report on potential and pending litigation involving the Corporation.

Open Session

17. Consider and act on the proposed establishment of the office of Vice President for Government Relations and Public Affairs, and the appointment of Maurico Vivero to that office.
18. Consider and act on the proposed establishment of the office of Vice President for Legal Affairs, and the appointment of Victor M. Fortuno to that office.
19. Consider and act on other business.
20. Public Comment.

CONTACT PERSON FOR INFORMATION: Victor M. Fortuno, General Counsel and Secretary of the Corporation, at (202) 336–8810.

SPECIAL NEEDS: Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8810.

Dated: September 7, 1999.
Victor M. Fortuno,
General Counsel.
[FR Doc. 99–23892 Filed 9–9–99; 1:07 pm]
BILLING CODE 7050–01–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

United States Section; Correction of Notice of Intent To Prepare an Environmental Impact Statement for The El Paso-Las Cruces Regional Sustainable Water Project Sierra and Doña Ana Counties, New Mexico and El Paso County, Texas

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Correcting text.

SUMMARY: This document corrects text appearing in the subject Notice of Intent that was published in the **Federal Register** (63 FR 47042–47043) on Thursday, September 3, 1998. The purpose of this correction is to add the United States Bureau of Land Management as a cooperating agency to the project.

EFFECTIVE DATE: August 3, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Echlin, Environmental Protection Specialist, Environmental Management Division, USIBWC, 4171 North Mesa Street, C–310, El Paso, Texas 79902 or call 915/832–4741. E-mail: dougechlin@ibwc.state.gov.

SUPPLEMENTARY INFORMATION: On page 47043 of the Thursday, September 3, 1998 **Federal Register**, the incorrect text under section 3. Scoping Process is in the second column, "The United States Bureau of Reclamation and United States Fish and Wildlife Service have indicated that they will participate as cooperating agencies pursuant to 40 CFR 1501.6, to the extent possible." The correct text should read, "The United States Bureau of Reclamation, United States Fish and Wildlife Service, and United States Bureau of Land Management have indicated that they will participate as cooperating agencies pursuant to 40 CFR 1501.6, to the extent possible."

Dated: August 10, 1999.
William A. Wilcox, Jr.,
Legal Advisor.
[FR Doc. 99–23678 Filed 9–10–99; 8:45 am]
BILLING CODE 4710–03–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

September 8, 1999.

TIME AND DATE: 11:00 a.m., Tuesday, September 7, 1999.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW, Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of the Commission that the Commission consider and act upon the following in closed session:

1. *Secretary of Labor on behalf of Bernardyn* v. *Reading Anthracite Co.*, Docket Nos. PENN 99–158–D and PENN 99–129–D (Issues include request to vacate or stay judge's order dissolving

[1] Any portion of the closed session consisting solely of staff briefings does not fall within the Sunshine Act's definition of the term "meeting" and, therefore, the requirements of the Sunshine Act do not apply to any such portion of the closed session. 5 U.S.C. 552(b) (a)(2) and (b). *See* also 45 CFR § 1622.2 & 1622.3

previously issued temporary reinstatement order).

No earlier announcement of the meeting was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,
Chief Docket Clerk.
[FR Doc. 99–23961 Filed 9–9–99; 3:49 pm]
BILLING CODE 6735–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361 and 50–362]

Southern California Edison Co., (San Onofre Nuclear Generating Station, Units 2 and 3); Exemption

I

Southern California Edison Company (SCE, or the licensee) is the holder of Facility Operating License Nos. NPF–10 and NPF–15, which authorize operation of the San Onofre Nuclear Generating Station (SONGS), Units 2 and 3. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

These facilities consist of two pressurized-water reactors located at the licensee's site in San Diego County, California.

II

Regulatory requirements for the hydrogen control system are specified in 10 CFR 50.44 and 10 CFR Part 50, Appendix A, (General Design Criteria 41, 42, and 43). Different requirements apply to facilities according to the date of publication of the Notice of Hearing for the Construction Permit. With regard to hydrogen recombiner and purge-repressurization system requirements, SONGS Units 2 and 3 are subject to the requirements of 10 CFR 50.44(e) which states:

> For facilities whose notice of hearing on the application for a construction permit was published on or after November 5, 1970, purging and/or repressurization shall not be the primary means for controlling combustible gases following a LOCA [loss-of-coolant accident]. However, the capability for controlled purging shall be provided. For these facilities, the primary means for controlling combustible gases following a LOCA shall consist of a combustible gas control system, such as recombiners, that does not result in a significant release from containment.

SONGS Units 2 and 3 are also subject to 10 CFR 50.44(d) which states:

> For facilities that are in compliance with [section] 50.46(b), the amount of hydrogen contributed by core metal-water reaction (percentage of fuel cladding that reacts with water), as a result of degradation, but not total failure, of emergency core cooling functioning shall be assumed either to be five times the total amount of hydrogen calculated in demonstrating compliance with [section] 50.46(b)(3), or to be the amount that would result from reaction of all the metal in the outside surfaces of the cladding cylinders surrounding the fuel (excluding the cladding surrounding the plenum volume) to a depth of 0.00023 inch (0.0058 mm), whichever amount is greater.

III

The licensee proposed to remove hydrogen control requirements from the SONGS Units 2 and 3 design basis. The licensee stated that the hydrogen control requirements in the SONGS design basis are not required to provide assurance that the containment would not fail due to combustible gas accumulation and ignition during accidents where fission products would be present in the containment atmosphere. The licensee also proposed to modify emergency operating instructions to remove operator action requirements for monitoring and controlling hydrogen concentration in containment.

The licensee's proposed removal of the hydrogen control requirements from the SONGS Units 2 and 3 design basis requires an exemption from certain requirements of 10 CFR 50.44(d) and (e). By its letter dated September 10, 1998, as supplemented July 19, 1999, the licensee submitted its exemption request.

IV

Section 50.12(a) of Title 10 of the Code of Federal Regulations part 50 states that the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are (1) authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security, and (2) the Commission will not consider granting an exemption unless special circumstances are present.

Section 50.12(a)(2)(ii) of 10 CFR part 50 states that special circumstances are present when application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

V

The staff has evaluated the licensee's analysis and documented its evaluation in the enclosed safety evaluation. The staff's evaluation is summarized below.

The underlying purpose of 10 CFR 50.44 is to ensure that following a LOCA, an uncontrolled hydrogen-oxygen recombination would not take place, or that the plant could withstand the consequences of uncontrolled hydrogen-oxygen recombination without loss of safety function. The licensee demonstrated that the plant could withstand the consequences of uncontrolled hydrogen-oxygen recombination without loss of safety function without credit for the hydrogen recombiners or the hydrogen purge system for both the design-basis and the more limiting severe accident with up to 75 percent metal-water reaction that remains in-vessel scenario. Several risk studies, such as NUREG–1150, "Severe Accident Risk: An Assessment for Five U.S. Nuclear Plants," and those performed by the licensee have shown that the relative importance of hydrogen combustion for large, dry containments with respect to containment failure to be quite low. The licensee also demonstrated that hydrogen recombiners are insignificant from a large, dry containment integrity perspective and the radiological consequences remain unchanged with or without recombiners. Therefore, the requirements for hydrogen recombiners and the backup hydrogen purge capability for large, dry containments, such as SONGS Units 2 and 3, are not necessary. Accordingly, the Commission has determined that special circumstances are present as defined in 10 CFR 50.12(a)(2)(ii).

VI

The Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and is otherwise in the public interest.

Therefore, the Commission hereby grants Southern California Edison Company an exemption from the requirements of 10 CFR 50.44(d) and (e) to remove hydrogen control requirements from the SONGS Units 2 and 3 design basis. The exemption also allows the licensee to modify its emergency operating instructions to remove operator action requirements for controlling hydrogen concentration in containment.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant effect on the quality of the human environment (64 FR 48211).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 3rd day of September 1999.

For The Nuclear Regulatory Commission.

Suzanne C. Black,

Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–23693 Filed 9–10–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–271]

Vermont Yankee Nuclear Power Corporation; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Vermont Yankee Nuclear Power Corporation (the licensee) to withdraw its April 20, 1999, application for proposed amendment to Facility Operating License No. DPR–28 for the Vermont Yankee Nuclear Power Station, located in Windham County Vermont.

The proposed amendment would have revised the reactor core spiral reloading pattern such that it begins around a source range monitor.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 19, 1999 (64 FR 27328). However, by letter dated August 18, 1999, the licensee superseded, in its entirety, the April 20, 1999, request, thereby withdrawing the proposed change.

For further details with respect to this action, see the application for amendment dated April 20, 1999, and the licensee's letter dated August 18, 1999, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301.

Dated at Rockville, MD., this 27th day of August 1999.

For the Nuclear Regulatory Commission.

Richard P. Croteau,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–23692 Filed 9–10–99; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

[Docket No. C99–4]

Technical and Settlement Conference; Meeting

AGENCY: Postal Rate Commission.

ACTION: Notice of technical and settlement conference.

SUMMARY: An initial technical and settlement conference has been scheduled in docket no. C99–4. The conference will address a cost study, physical operation of Bulk Parcel Return Service (BPRS), potential settlement proposals, and other issues in the docket. The conference will assist in clarifying issues and allowing the settlement coordinator to respond to the Commission's request that a report on the potential for settlement be filed by September 17, 1999.

DATES: The technical and settlement conference has been scheduled for Tuesday, September 14, 1999. For time and other dates, see the **SUPPLEMENTARY INFORMATION** section.

ADDRESSES: The conference will be held in the Commission's hearing room at 1333 H Street NW., Suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Ted P. Gerarden, OCA director, at 202–789–6838.

SUPPLEMENTARY INFORMATION: The Commission's OCA hereby gives notice of a technical and settlement conference to discuss resolution of the complaint filed on June 9, 1999, by the Continuity Shippers Association (CSA). On September 3, 1999, the Commission issued a notice of formal proceedings to consider the complaint and provided until September 17, 1999, for the parties to explore settlement.[1]

The CSA complaint alleges that the rate for BPRS is excessive. The complaint raises issues concerning the BPRS cost study performed by the Postal Service in October 1998, in compliance with the Commission's recommended decision in docket no. MC97–4. The complaint also alleges similarities between BPRS and Special Standard (B) mail. The Commission noted the Postal Service's responses to CSA's allegations, but determined that there was inadequate justification for dismissal of the complaint.

[1] Order No. 1260, Order Denying Motion of United States Postal Service to Dismiss Complaint and Notice of Formal Proceeding. Ordering paragraph 4 designated OCA to represent the interests of the general public and to act as settlement coordinator pursuant to rule 85 of the Commission's rules of practice and procedure [39 CFR § 3001.85].

Under the circumstances presented, it is imperative that the parties utilize "appropriate informal inquiry methods to define the issues, further the exchange of information and explanations between the Postal Service and the complainant, and facilitate settlement." 39 CFR 3001.85(a). Because the October 1998 study and the physical operation of BPRS in comparison to other mail services are central to addressing the rate for BPRS, an informal technical conference is needed as well as an informal settlement conference. Complainant CSA, the Postal Service, and other interested parties are hereby placed on notice that they are expected to have individuals present at the conference who are thoroughly familiar with the BPRS cost study and with the operational characteristics of BPRS. CSA and the Postal Service are encouraged to discuss the issues raised by the complaint and to share information or proposals in advance of the informal technical and settlement conference.

The informal technical and settlement conference will be held September 14, 1999, beginning at 9:30 a.m. in the Commission's hearing room at 1333 H Street NW., Washington, DC. All interested persons are welcome to attend the conference, but all such persons are placed on notice that attendance at the conference will not confer party status. Any interested person must file pursuant to rule 20 or 20a of the Commission's rules (39 CFR §§ 20 or 20a) in order to intervene or to obtain limited participation status in this proceeding.

The Secretary of the Commission is requested to arrange for publication of this notice in the **Federal Register**.

Authority: 39 U.S.C. 3662.

Dated: September 8, 1999.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 99–23851 Filed 9–10–99; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23995; 812–11656]

LSA Variable Series Trust and LSA Asset Management LLC, Notice of Application

September 7, 1999.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

SUMMARY OF APPLICATION: Applicants request an order to permit applicants to enter into and materially amend subadvisory agreements without shareholder approval and to grant relief from certain disclosure requirements.

APPLICANTS: LSA Variable Series Trust (the "Trust"), on behalf of its series, Focused Equity Fund, Growth Equity Fund, Disciplined Equity Fund, Value Equity Fund Balanced Fund, and Emerging Growth Domestic Equity Fund (collectively, the "Funds"), and LSA Asset Management LLC (the "Manager") (collectively, "Applicants").

FILING DATE: The application was filed on June 16, 1999 and amended on August 27, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on October 1, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609; Applicants, 3100 Sanders Road, Suite J5B, Northbrook, Illinois 60062.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 or George J. Zornada, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicant's Representations

1. The Trust is a Delaware business trust and is registered under the Act as an open-end management investment company. Each Fund has its own investment objective, policies and restrictions.[1] Shares of the Funds will serve as the funding vehicles for variable annuity contracts and variable life insurance policies offered through separate accounts ("Separate Accounts") of Allstate Life Insurance Company ("Allstate") and other life insurance companies (owners of such contracts and policies, "Owners"). The Funds are not sold directly to the public, although in the future shares of the Funds may also be sold to qualified pension plans. The Manager is a wholly-owned subsidiary of Allstate and is an investment adviser registered under the Investment Advisers Act of 1940 ("Advisers Act").

2. The Manager will serve as investment adviser to the Funds pursuant to an investment advisory agreement entered into with the Trust ("Management Agreement"). Under the Management Agreement, the primary responsibilities of the Manager, subject to the supervision and direction of the Trust's board of trustees ("Board"), are to provide the Trust with investment management services and to select and contract with one or more investment advisers ("Advisers") to manage the Funds' investment portfolios. Each Fund currently will be advised by a single Adviser. Each Adviser recommended by the Manager will be selected and approved by the Board, including a majority of the trustees who are not "interested persons" (as defined in section 2(a)(19) of the Act), of the Trust, the Manager, or the Advisers ("Independent Trustees"). Each Adviser is, and any future Adviser will be, registered as an investment adviser under the Advisers Act and will perform services under a subadvisory agreement ("Advisory Agreement") between the Manager and the Adviser. Each Adviser's fees will be paid by the Manager out of the management fees received by the Manager from the Funds.

3. Although the Manager is a newly-formed entity, its parent company, Allstate, has extensive experience in asset management and in evaluating and hiring investment advisers. As a wholly-owned subsidiary of Allstate, the Manager will have access to and draw upon Allstate's advisory experience and expertise. In providing investment management evaluation services, the Manager will conduct quantitative and qualitative analyses of the Advisers and will consider, among other factors, each Adviser's level of expertise, relative performance, consistency of results, and investment discipline or philosophy. The Manager will monitor the compliance of each Adviser with the investment objective and related policies and restrictions of each Fund and will review the performance of each Adviser and report periodically to the Board on such performance. The Manager is responsible for communicating performance expectations and evaluations to each Adviser and ultimately to determine whether each Advisory Agreement should be renewed, modified, or terminated. The Manager will provide reports to the Board with respect to the results of its evaluation, monitoring functions and determinations with respect to each Adviser.

4. Applicants request relief to permit the manager to enter into and materially amend Advisory Agreements without seeking shareholder approval. The requested relief will not extend to an Adviser that is an "affiliated person," as defined in section 2(a)(3) of the Act, of the Trust or the Manager, other than by reason of serving as an Adviser to one or more of the Funds ("Affiliated Adviser").

5. Applicants also request an exemption form the various disclosure provisions described below that may require each Fund to disclose fees paid by the Manager to the Advisers. The Trust will disclose for each Fund (both as a dollar amount and as a percentage of the Fund's net assets): (a) Aggregate fees paid to the Manger and Affiliated Advisers, and (b) aggregate fees paid to Advisers other than Affiliated Advisers ("Aggregate Fee Disclosure") The Aggregate Fee Disclosure also will include separate disclosure of any advisory fees paid to any Affiliated Adviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

[1] Applicants also request relief with respect to all future series of the Trust and to all subsequently registered open-end management investment companies including all series thereof that in the future are advised by the Manger (or any entity controlling, controlled by, or under common control with the Manager), provided that such companies (1) operate in substantially the same manner as the Trust and (2) comply with the terms and conditions of the requested order ("Future Investment Companies"). The Trust is the only existing investment company that currently intends to rely on the requested order.

2. Form N–1A is the registration statement used by open-end investment companies. Items 3, 6(a)(1)(ii), and 15(a)(3) of Form N–1A require disclosure of the method and amount of the investment adviser's compensation.

3. Form N–14 is the registration form for business combinations involving open-end investment companies. Item 3 of Form N–14 requires the inclusion of a "table showing the current fees for the registrant and the company being acquired and pro forma fees, if different, for the registrant after giving effect to the transaction."

4. Rule 20a–1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (the "Exchange Act"). Item 22(a)(3)(iv) of Schedule 14A requires a proxy statement for a shareholder meeting at which a new fee will be established or an existing fee increased to include a table of the current and pro forma fees. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8), and 22(c)(9), taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the "rate of compensation of the investment adviser," the "aggregate amount of the investment adviser's fee," a description of the "terms of the contract to be acted upon," and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

5. Form N–SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N–SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Advisers.

6. Regulation S–X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b) and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

7. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants believe that their requested relief meets this standard for the reasons discussed below.

8. Applicants assert that the Owners are relying on the Manager to select and monitor the activities of the Advisers and to respond promptly to any significant change in the advisory services provided to the Funds. Applicants submit that in many respects, the relationship between the Manager and the Advisers resembles the relationship between a traditionally structured investment company and its investment adviser, where no shareholder approval is required for the investment adviser to change a portfolio manager or revise the portfolio manager's salary or conditions of employment. Applicants note that the Management Agreement will remain fully subject to the requirements of section 15(a) of the Act and rule 18f–2 under the Act.

9. Applicants assert that some Advisers use a "posted" rate schedule to set their fees. Applicants believe that the Manger will not be able to negotiate below "posted" fee rates with Advisers if each Adviser's fees are required to be disclosed. Applicants submit that the nondisclosure of the individual Adviser's fees is in the best interest of the Funds and the Owners, where disclosure of such fees would increase costs to Owners without an offsetting benefit to the Trust and the Owners.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund or a Future Investment Company may rely on the requested order, the operation of the Fund or the Future Investment Company will be approved by the Owners or a majority of the outstanding voting securities or, in the case of a Fund or a Future Investment Company whose public shareholders purchased shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder(s) before offering shares of that Fund or Future Investment Company to the public (or the Owners).

2. The Trust will disclose in the prospectus the existence, substance, and effect of any order granted pursuant to this application. In addition, each Fund relying on the requested order will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Manager has ultimate responsibility (subject to oversight to the Board) to oversee the Advisers and recommend their hiring, termination, and replacement.

3. Within ninety (90) days of the hiring of any new Adviser, Owners with assets allocated to any subaccount of a registered Separate Account for which the applicable Fund serves as a funding medium will be furnished all information about the new Adviser or Advisory Agreement that would be included in a proxy statement, except as modified by the order to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in such disclosure caused by the addition of a new Adviser. The Manager will satisfy this condition by providing these Owners with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the 1934 Act and Item 22 of Schedule 14A under the 1934 Act, except as modified permit Aggregate Fee Disclosure.

4. The Manager will not enter into an Advisory Agreement with any Affiliated Adviser without that Advisory Agremenet, including the compensation to paid thereunder, being approved by the Owners with assets allocated to any subaccount of a registered Separate Account for which the applicable Fund serves as a funding medium or by the shareholders in the case of a publicly available Fund.

5. At all times, a majority of the Board will be Independent Trustees and the nomination of new or additional Independent Trustees will continue to be at the discretion of the then-existing Independent Trustees.

6. When an Adviser change is proposed for a Fund with an Affiliated Adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Fund and Owners with assets allocated to any subaccount of a registered Separate Account for which the fund serves as a funding medium or shareholders in the case of publicly available Fund and does not involve a conflict of interest from which the Manager or the Affiliated Adviser derives an inappropriate advantage.

7. Independent counsel knowledgeable about the Act and the duties of Independent Trustees will be engaged to represent the Independent Trustees of the Trust. The selection of such counsel will be within the discretion of the Independent Trustees of the Trust.

8. The Manager will provide the Board, no less frequently than quarterly, with information about the Manager's profitability on a per-Fund basis. This information will reflect the impact on profitability of the hiring or termination of any Adviser during the applicable quarter.

9. Whenever an Adviser is hired or terminated, the Manager will provide the Board with information showing the expected impact on the Manger's profitability.

10. The Manager will provide general management services to the Trust and its Funds, including overall supervisory responsibility for the general management and investment of each Fund's securities portfolio and, subject to review and approval by the Board, will: (i) Set each Fund's overall investment strategies; (ii) evaluate, select, and recommend Advisers to manage all or part of a Fund's portfolio; (iii) allocate and, when appropriate, reallocate a Fund's assets among multiple Advisers; (iv) monitor and evaluate the performance of Advisers; and (v) implement procedures reasonably designed to ensure that the Advisers comply with each Fund's investment objective, policies, and restrictions.

11. No trustee/director of officer of the Trust or director or office of the Manger will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by that trustee/director or office) any interest in any Adviser except for: (i) Ownership of interests in the Manager or any entity that controls, is controlled by, or is under common control with the Manger; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either an Adviser or an entity that controls, is controlled by, or is under common control with an Adviser.

12. The Trust will disclose in its registration statement the Aggregate Fee Disclosure.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23747 Filed 9–10–99; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, SSA is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, comments and recommendations regarding the information collections would be most useful if received by the Agency within 60 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer at the address listed at the end of this publication. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed at the end of this publication.

1. Referral System for Vocational Rehabilitation Providers 0960—NEW

Background

In 1996 the Social Security Administration (SSA) initiated an innovative expansion of its vocational rehabilitation (VR) referral and payment program. Under this program, SSA pays VR providers for the costs of VR services provided to disability beneficiaries, if such services result in the individual going to work at a specified earnings level for at least nine months. Throughout this project, SSA has expanded its VR program to increase the base of providers who are available to serve people with disabilities. By increasing this base, more people will be able to get the services they need to go to work, become independent of the benefit rolls, and thus achieve savings to SSA's trust funds.

In September 1997, SSA contracted with Birch & Davis Associates, Inc. (B&D), to provide management support to its expanded VR referral and payment program. This contract is for a three-year demonstration project known as the Referral System for Vocational Rehabilitation Providers (Project RSVP). SSA continues to be responsible for awarding Alternate Participant (AP) contracts to VR providers, determining the appropriateness of claims submitted by APs, and reimbursing APs for the costs of their services if the requirements for payment are met.

B&D supports SSA's efforts by marketing to and recruiting VR providers, training providers on SSA's VR program requirements, and operating an Information and Referral System to link providers with beneficiaries. In addition, B&D will conduct surveys of beneficiaries and APs to determine customer satisfaction and to identify program areas requiring improvement.

Information Collection

In support of the RSVP project, SSA will conduct semi-annual voluntary information collections of both AP's and Beneficiaries/Recipients (B/R). The data collection effort will be conducted in survey format and has four goals:

1. To help program administrators understand the reasons for varying levels of satisfaction with the program; 2. To help program administrators understand the potential causes for varying levels of success of the program; 3. To guide program change; and 4. If necessary, to plan continuation of the program after the initial trial period.

Through these voluntary surveys, SSA will collect three types of data:

1. Descriptive data that describe the B/R and data that describe the APs' vocational rehabilitation practice that are not available and are necessary to evaluate respondents' satisfaction in the context of their actual experience; 2. Quantitative data on B/R and AP satisfaction with the program; and 3. Free-text comments by B/Rs and APs regarding their experience with the program.

The data will be aggregated for all B/Rs and for all APs. A semi-annual report will be generated for SSA. The information will be used by AP program administrators at SSA and by B&D project management staff. The respondents will be SSI/SSDI beneficiaries and APs under contract with SSA to provide vocational rehabilitation services to beneficiaries.

Survey form	Number of respondents	Frequency of response	Average burden per response (minutes)	Estimated annual burden (hours)
Survey for APs who have submitted claims	12	2	20	8
Survey for APs who have not submitted a claim	314	2	20	210
Survey for B/Rs who have signed a Rehabilitation or Employment Plan	44	2	20	30
Survey for B/Rs who have not signed a Rehabilitation or Employment Plan	2,000	2	20	1,334
Total Annual Burden Hours Requested				1,582

2. Statement of Income and Resources—0960–0124. The information collected by the Social Security Administration on Form SSA–8010 is necessary in the SSI eligibility/payment process. Information about the income and resources of ineligible spouses/parents/children and sponsors of aliens is used in the "Deeming" process. "Deeming" is the attribution of another's income to an eligible individual/child/alien. The respondents are ineligible spouses, parents, and children who live in the same household as an eligible individual/child, and sponsors of aliens.

Number of Respondents: 355,000.

Frequency of Response: 1.

Average Burden Per Response: 25 minutes.

Estimated Annual Burden: 147,917 hours.

II. The information collections listed below have been submitted to OMB for clearance. Written comments and recommendations on the information collections would be most useful if received within 30 days from the date of this publication. Comments should be directed to the SSA Reports Clearance Officer and the OMB Desk Officer at the addresses listed at the end of this publication. You can obtain a copy of the OMB clearance packages by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him.

1. Application for Supplemental Security Income-0960–0444. The information collected on the SSA–8001 is used by the Social Security Administration to determine whether applicants for SSI benefits meet all statutory and regulatory requirements for eligibility and, if so, the amount of benefits payable. The respondents are applicants for SSI benefits.

Number of Respondents: 1,011,046.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 252,762 hours.

2. 0960–NEW. State Partnership Initiative (SPI) Cooperative Agreements. Executive Order (E.O.) 13078 dated March 13, 1998, Increasing Employment of Adults With Disabilities, orders that a National Task Force be established to create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment at a rate that is as close as possible to that of the general adult population. E.O. 13078 specifies that the Task Force "evaluate and, where appropriate, coordinate and collaborate on, research and demonstration priorities of Task Force member agencies related to employment of adults with disabilities."

To comply with the E.O., SSA released cooperative agreement announcements in 1998 to approximately 650 State agencies nationwide to conduct demonstration projects that assist States in developing service delivery models that increase the rates of gainful employment of people with disabilities. Eighteen State agencies have been selected to participate in the demonstration projects.

SSA has employed a monitoring and technical assistance contractor, Virginia Commonwealth University (VCU) to collect information from the State awardees' databases on behalf of SSA. VCU will use the information to evaluate whether and to what extent the service delivery models achieve the overall goals of the demonstration projects and will report project results to SSA. SSA will use the results to conduct a net outcome evaluation to determine the long term effectiveness of the interventions.

Following is a table that outlines the public reporting burden of State agencies for this project:

Title of collection	Number of responses	Frequency of response	Average burden per response (minute(s))	Estimated annual burden (hour(s))
Demonstration Site Form	16 (electronic)	One Time	1	.3
	2 (manual)	One Time	1	.1
Participant Demographic Data Form	3,080 (electronic)	One Time	15	770
	300 (manual)	One Time	20	100
Participant Employment Data Form	3,080 (electronic)	One Time	5	257
	300 (manual)	One Time	7	35
Participant Update Form	3,080 (electronic)	Quarterly	4	821
	300 (manual)	Quarterly	5	100
Change in Employment Status	1,540 (electronic)	(1)	3	77
	150 (manual)	(1)	4	10
State Quarterly and	72	Quarterly	(2)	18
State Semiannual and	36	Semiannual	(2)	9
Annual Reports	18	Annual	(2)	4.5
Stakeholder Interviews	50	Varies per Stakeholder.	10	8.3
Total				2,210.2

[1] Completed only if employment changes.
[2] 15 minutes for each report.

(SSA Address), Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 6401 Security Blvd., 1–A–21 Operations Bldg., Baltimore, MD 21235.

(OMB Address), Office of Management and Budget, OIRA, Attn: Lori Schack, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, DC 20503.

Dated: September 7, 1999.

Frederick W. Brickenkamp,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 99–23703 Filed 9–10–99; 8:45 am]

BILLING CODE 4190–29–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Executive Meeting No. 3).

TIME AND DATE: 9 a.m. (EDT), September 15, 1999.

PLACE: TVA Knoxville West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

Agenda

New Business

A—Budget and Financing

A1. Approval of power system operating and capital budgets for Fiscal Year 2000.

A2. Approval of short-term borrowing from the Treasury.

C—Energy

C1. Contract with Bechtel Power Corporation for installation of the replacement steam generators at Sequoyah Nuclear Plant Unit 1.

Information Items

1. Filing of condemnation cases concerning the Charleston District-Riceville Transmission line in McMinn County, Tennessee, and the Wheeler Dam-Guntersville Dam Transmission line in Morgan County, Alabama.

2. Approval of renegotiation and extension of coal purchase contract with Peabody COALSALES Company.

3. Approval of renegotiation of coal purchase contract with Coastal Coal Company, LLC.

4. Approval of TVA contribution rate to the TVA Retirement System for Fiscal Year 2000.

For more information: Please call TVA Public Relations at (423) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999.

Dated: September 8, 1999.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 99–23910 Filed 9–9–99; 2:19 pm]

BILLING CODE 8120–08–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Small and Minority Business (ISAC–14)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting.

SUMMARY: The Industry Sector Advisory Committee on Small and Minority Business (ISAC–14) will hold a meeting on September 13, 1999, from 9:15 a.m. to 2:45 p.m. The meeting will be open to the public from 9:15 a.m. to 12:00 noon and again from 1:45 p.m. to 2:45 p.m. and closed to the public from 12:00 to 1:45 p.m.

DATES: The meeting is scheduled for September 13, 1999, unless otherwise notified.

ADDRESSES: The meeting will be held at the Department of Commerce, Room 4830, located at 14th Street and Constitution Avenue, NW, Washington, DC, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Millie Sjoberg or Cory Churches, Department of Commerce, 14th St. and Constitution Ave., NW, Washington, DC 20230, (202) 482–4792 or Ladan Manteghi, Office of the United States Trade Representative, 1724 F St, NW, Washington, DC 20508, (202) 395–6120.

SUPPLEMENTARY INFORMATION: The ISAC–14 will hold a meeting on September 13, 1999 from 9:15 a.m. to 2:45 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code and Executive Order 11846 of March 27, 1975, the Office of the U.S. Trade Representative has determined that part of this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. During the discussion of such matters, the meeting will be closed to the public from 12:00 noon to 1:45 p.m. The meeting will be open to the public and press from 9:15 a.m. to 12:00 p.m., and again from 1:45 p.m. to 2:45 p.m. when other trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committees will not be invited to comment.

Pate Felts,

Acting Assistant United States Trade Representative, Intergovernmental Affairs and Public Liaison.

[FR Doc. 99–23778 Filed 9–10–99; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending September 3, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–6202.

Date Filed: September 3, 1999.

Parties: Members of the International Air Transport Association.

Subject: PTC COMP 0501 dated 31 August 1999, Composite Resolutions, Minutes—PTC COMP 0502 and 0503 dated 31 August 1999, Intended effective date: 1 April 2000.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–23732 Filed 9–10–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Research and Development Programs Meeting Agenda

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice provides the agenda for a public meeting at which the National Highway Traffic Safety Administration (NHTSA) will describe and discuss specific research and development projects.

DATES AND TIMES: As previously announced, NHTSA will hold a public meeting devoted primarily to presentations of specific research and development projects on September 16, 1999, beginning at 1:30 p.m. and ending at approximately 5 p.m.

ADDRESSES: The meeting will be held at the Tysons Westpark Hotel, 8401 Westpark Drive, McLean, Virginia.

SUPPLEMENTARY INFORMATION: This notice provides the agenda for the twenty-fourth in a series of public meetings to provide detailed information about NHTSA's research and development programs. This meeting will be held on September 16, 1999. The meeting was announced on August 11, 1999 (64 FR 43811). For additional information about the meeting, consult that announcement.

Starting at 1:30 p.m. and concluding by 5 p.m., NHTSA's Office of Research and Development will discuss the following topics:

International Harmonized Research Activities (IHRA) including: (1) IHRA Overview and (2) Status Reports on the following IHRA Working Groups: (a) Biomechanics, (b) Side Impact, (c) Frontal Impact Protection/ Compatibility, and (d) Intelligent Transportation Systems.

NHTSA has based its decisions about the agenda, in part, on the suggestions it received in response to the announcement published August 11, 1999.

As announced on August 11, 1999, in the time remaining at the conclusion of the presentations, NHTSA will provide answers to questions on its research and development programs, where those questions have been submitted in writing to Raymond P. Owings, Ph.D., Associate Administrator for Research and Development, National Highway Traffic Safety Administration, NRD–01, Washington, DC 20590. Fax number: 202–366–5930.

FOR FURTHER INFORMATION CONTACT: Rita I. Gibbons, Staff Assistant, Office of Research and Development, 400 Seventh Street, SW, Washington, DC 20590. Telephone: 202–366–4862. Fax number: 202–366–5930.

Issued: September 8, 1999.

Raymond P. Owings,

Associate Administrator for Research and Development.

[FR Doc. 99–23712 Filed 9–10–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications Delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(a) RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001, (202) 366–4535.

Key to "Reasons for Delay"

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of exemption applications

Meaning of Application Number Suffixes

N—New application
M—Modification request
PM—Party to application with modification request

Issued in Washington, DC, on September 7, 1999.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

NEW EXEMPTION APPLICATIONS

Application number	Applicant	Reason for delay	Estimated date of completion
11699–N	GEO Specialty Chemicals, Bastrop, LA	4	9/30/1999
11767–N	Ausimont USA, Inc., Thorofare, NJ	4	9/30/1999
11862–N	The BOC Group, Murray Hill, NJ	4	9/30/1999
11927–N	Alaska Marine Lines, Inc., Seattle, WA	4	9/30/1999
12029–N	NACO Technologies, Lombard, IL	4	9/30/1999
12106–N	Air Liquide America Corporation, Houston, TX	4	9/30/1999
12123–N	Eastman Chemical Co., Kingsport, TN	4	9/30/1999
12125–N	Mayo Foundation, Rochester, MN	4	9/30/1999
12126–N	LaRoche Industries, Inc., Atlanta, GA	4	9/30/1999
12138–N	Gas Supply Resources, Inc., Albany, NY	4	10/29/1999
12142–N	Aristech Chemical Corp., Pittsburgh, PA	4	9/30/1999
12146–N	Luxfer Gas Cylinders, Riverside, CA	4	9/30/1999
12148–N	Eastman Kodak Company, Rochester, NY	4	9/30/1999
12156–N	Columbia Falls Aluminum Co., Columbia Falls, MT	4	9/30/1999
12158–N	Hickson Corporation, Conley, GA	4	9/30/1999
12164–N	Rhodia Inc., Shelton, CT	4	9/30/1999
12166–N	Dow Corning Corp., Midland, MI	4	9/30/1999
12171–N	Arichell Technologies, Inc., West Newton, MA	4	9/30/1999
12181–N	Aristech, Pittsburgh, PA	4	9/30/1999
12203–N	Celanese Ltd., Dallas, TX	4	9/30/1999
12205–N	Independent Chemical Corp., Glendale, NY	4	9/30/1999
12206–N	General Electric Silicones, Waterford, NY	4	9/30/1999
12220–N	d/b/a Laird Farms, Waterloo, NY	4	10/29/1999
12230–N	Chemtran Services USA, Inc., Houston, TX	4	9/30/1999
12238–N	Eastman Kodak Co., Rochester, NY	4	10/29/1999

MODIFICATIONS TO EXEMPTIONS

Application number	Applicant	Reason for delay	Estimated date of completion
6611–M	Gardner Cryogenics, Lehigh Valley, PA	4	9/30/1999
6765–M	Gardner Cryogenics, Lehigh Valley, PA	4	10/29/1999
8723–M	Buckley Powder Company, Englewood, CO	4	9/30/1999
266–M	ERMEWA, Inc., Houston, TX	4	10/29/1999
10480–M	Gardner Cryogenics, Lehigh Valley, PA	4	10/29/1999
10921–M	The Procter & Gamble Company, Cincinnati, OH	4	9/30/1999
10929–M	Consolidated Rail Corporation, Philadelphia, PA	4	9/30/1999
10977–M	Federal Industries Corporation, Plymouth, MN	4	9/30/1999
11327–M	Phoenix Services Limited Partnership, Pasadena, MD	4	9/30/1999
11526–M	BOC Gases, Murray Hill, NJ	4	9/30/1999

[FR Doc. 99–23801 Filed 9–10–99; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33794]

Boston and Maine Corporation and Springfield Terminal Railway Company—Trackage Rights Exemption—Milford-Bennington Railroad Company

Milford-Bennington Railroad Company (MBR) has agreed to grant overhead trackage rights to Boston and Maine Corporation and Springfield Terminal Railway Company (B&M/ST) between approximately milepost N–16.36, in Wilton, NH, and approximately milepost 19.67, in Lyndeboro, NH.[1]

The parties report that they intend to consummate the transaction on or about September 3, 1999. The earliest the transaction can be consummated is September 6, 1999, the effective date of the exemption (7 days after the exemption was filed).

The purpose of the trackage rights is to allow B&M/ST to serve a customer in Milford, NH.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33794, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Robert B. Culliford, Esq., Iron Horse Park, North Billerica, MA 10862.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

By the Board, David M. Konschnik, Director, Office of Proceedings.

Decided: September 7, 1999.

Vernon A. Williams,

Secretary.

[FR Doc. 99–23779 Filed 9–10–99; 8:45 am]

BILLING CODE 4915–00–P

[1] While the verified notice of exemption states that the term of the trackage rights agreement will be for two years from August 20, 1999, trackage rights approved under the class exemption normally remain effective indefinitely regardless of any durational contract provisions. Before B&M/ST can discontinue its operations over the rail lines, it must obtain appropriate authority under 49 U.S.C. 10903 from the Board.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 2, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before October 13, 1999 to be assured of consideration.

Departmental Offices/Assistant Secretary for International Affairs/ Office of Program Services

OMB Number: 1505–0123.

Form Number: TD F 90–19.1 and TD F 90–19.2.

Type of Review: Reinstatement.

Title: Survey of Foreign Portfolio Investment in the United States.

Description: This survey determines the level of foreign portfolio investment in the United States, the types of investors, and foreign investment patterns. The data is used for policy formulation, the computation of the U.S. balance of payments and international investment position, and to satisfy 22 U.S.C. 3101. The affected public consists of major U.S. corporations.

Respondents: Business or other for-profit, Federal Government.

Estimated Number of Respondents/ Recordkeepers: 1,200.

Estimated Burden Hours Per Respondent/Recordkeeper: 50 hours.

Frequency of Response: Other (approximately every 5 years).

Estimated Total Reporting/ Recordkeeping Burden: 60,000 hours.

Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW, Washington, DC 20220.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–23780 Filed 9–10–99; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 2, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to

OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before October 13, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1218.

Regulation Project Number: CO–25–96 Final.

Type of Review: Extension.

Title: Regulations Under Section 1502 of the Internal Revenue Code of 1986; Limitations on Net Operating Loss Carryforwards and Certain Built-in Losses and Credits Following an Ownership Change of a Consolidated Group

Description: Section 1502 provides for the promulgation of regulations with respect to corporations that file consolidated income tax returns. Section 382 limits the amount of income that can be offset by loss carryovers and credits after an ownership change. These final regulations provide rules for applying section 382 to groups of corporations that file a consolidated return.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 12,054.

Estimated Burden Hours Per Respondent: 20 minutes.

Frequency of Response: On occasion, Other (changes in group membership).

Estimated Total Reporting Burden: 662 hours.

OMB Number: 1545–1237.

Regulation Project Number: REG–209831–96 Final (formerly CO–24–96 Final).

Type of Review: Extension.

Title: Consolidated Returns—Limitations on the Use of Certain Losses and Deductions.

Description: Section 1502 provides for promulgation of regulations with respect to corporations that file consolidated income tax returns. These regulations amend the current regulations regarding the use of certain losses and deductions by such corporations.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 8,000.

Estimated Burden Hours Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2,000 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–23781 Filed 9–10–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[FI–27–89; FI–61–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning existing final regulations, FI–27–89 (TD 8366), Real Estate Mortgage Investment Conduits; Reporting Requirements and Other Administrative Matters, and FI–61–91 (TD 8431), Allocation of Allocable Investment Expense; Original Issue Discount Reporting Requirements (§§ 1.67–3, 1.860D–4, 1.860F–4, 1.6049–4 and 1.6049–7).

DATES: Written comments should be received on or before November 12, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: FI–27–89, Real Estate Mortgage Investment Conduits; Reporting Requirements and Other Administrative Matters, and FI–61–91, Allocation of Allocable Investment Expense; Original Issue Discount Reporting Requirements.

OMB Number: 1545–1018.

Regulation Project Number: FI–27–89 and FI–61–91.

Abstract: The regulations prescribe the manner in which an entity elects to be taxed as a real estate mortgage investment conduit (REMIC) and the filing requirements for REMICs and certain brokers.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 655.

Estimated Time Per Respondent: 1 hour, 30 minutes.

Estimated Total Annual Burden Hours: 978.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 3, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–23786 Filed 9–10–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8820

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8820, Orphan Drug Credit.

DATES: Written comments should be received on or before November 12, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Orphan Drug Credit.

OMB Number: 1545–1505.

Form Number: 8820.

Abstract: Filers use this form to elect to claim the orphan drug credit, which is 50% of the qualified clinical testing expenses paid or incurred with respect to low or unprofitable drugs for rare diseases and conditions, as designated under section 526 of the Federal Food, Drug, and Cosmetic Act.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100.

Estimated Time Per Respondent: 9 hours, 39 minutes.

Estimated Total Annual Burden Hours: 965.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 2, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–23788 Filed 9–10–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209817–96]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, REG–209817–96, Treatment of Obligation-Shifting Transactions (§ 1.7701(l)–2).

DATES: Written comments should be received on or before November 12, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Treatment of Obligation-Shifting Transactions.

OMB Number: 1545–1515.

Regulation Project Number: REG–209817–96.

Abstract: This regulation relates to the treatment of certain multiple-party financing transactions in which one party realizes income from leases or similar agreements and another party claims deductions related to that income. In order to prevent tax avoidance, this regulation recharacterizes these transactions in a manner that clearly reflects income. The regulation affects only persons that engage in these transactions. The regulation generally does not apply to routine transactions lacking characteristics of tax avoidance.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Recordkeepers: 100.

Estimated Time Per Recordkeeeper: 5 hours.

Estimated Total Annual Recordkeeping Burden: 500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: September 7, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–23787 Filed 9–10–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Internal Revenue Service Pilot of an Electronic Transcript Delivery System

AGENCY: Internal Revenue Service (IRS), Department of the Treasury.

ACTION: Notice and Request for Public Comment on Internal Revenue Service Pilot of an Electronic Transcript Delivery System.

SUMMARY: The mission of the Electronic Tax Administration Office of the Department of the Treasury's Internal Revenue Service (IRS) is to revolutionize how taxpayers transact and communicate with the IRS. The IRS seeks comments on a program to automate provision of tax information to a third-party entity designated by the taxpayer. The IRS requests comments on various aspects of the piloting and implementation of this program, as well as specific questions concerning privacy, authentication, and security.

DATES: Comments must be received by October 13, 1999.

ADDRESSES: Mail written comments to: Electronic Transcript Delivery Pilot Project, Electronic Tax Administration, OP:ETA:E:P, Internal Revenue Service, Room C5–463, 5000 Ellin Road, Lanham, MD 20706.

Paper submissions should include three paper copies and a version on diskette in ASCII, Microsoft Word (please specify version), or WordPerfect (please specify version) format. Comments submitted in electronic form should be in ASCII, Microsoft Word (please specify version) or WordPerfect (please specify version) format to: *www.*transcript@m1.irs.gov.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Kelley, IRS, (202) 283–1990.

SUPPLEMENTARY INFORMATION:

Background: The mission of the Electronic Tax Administration Office of the Department of the Treasury's Internal Revenue Service (IRS) is to revolutionize how taxpayers transact and communicate with the IRS. Strategies to fulfill the mission include:

- Making electronic filing, payments, transactions and communications so simple, inexpensive, and trusted that taxpayers will prefer these to calling and mailing;
- Providing additional taxpayer access methods to products and services centering on electronic filing, payment, transaction, and communication products and services;
- Aggressively protecting transaction and information integrity and quality; and
- Seeking the best people, ideas and partners to assure IRS success.

In response to the IRS' Restructuring and Reform Act of 1998, the IRS has been tasked with increasing electronic communications and services to the public. One of the services provided by the IRS is to respond to over six (6) million requests annually from taxpayers requesting copies of paper tax returns, return transcripts (an electronic version of your submitted tax return), verification of non-filing and W–2s. Of the six (6) million, approximately two (2) million are from taxpayers requesting that their tax information be sent to a designated "third-party" entity. Examples of third-party entities include tax practitioners, financial institutions, the mortgage industry, colleges/universities and local, state, and federal government entities. The most frequent use of tax information by these third parties is to provide income verification for loans, grants, subsidies or other monetary guarantees, while tax practitioners assist taxpayers in resolving tax issues.

Chapter 61 of the Internal Revenue Code addresses the confidentiality and disclosure of returns and return information. Under Section 6103(e) (Disclosure of Persons Having Material Interest), a taxpayer has the right to obtain his/her tax return and/or most return information held by the IRS that pertains to the taxpayer. Under Section 6103(c) (Disclosure of Returns and Return Information to Designee of Taxpayer), a taxpayer may designate a third-party recipient to receive his/her return or return information and may authorize the IRS to release that information to that third party.

The IRS uses Form 4506 "Request for Copy or Transcript of Tax Form" for taxpayers to request copies of return transcripts. The current process is as follows:

1. A taxpayer obtains a Form 4506. Form 4506 may be obtained from the IRS' website, an IRS office, or it may be presented to the taxpayer by the third party for the loan, grant, or subsidy application process.
2. The taxpayer completes the Form 4506 to authorize the IRS to release their tax information to a designated third party. Completing the Form 4506 includes signing and dating the Form 4506.
3. The taxpayer mails the completed, signed and dated form to the appropriate IRS Service Center. In cases where the third party has provided the Form 4506 to the taxpayer, the third party mails, or in some cases, delivers the Form 4506 to the appropriate IRS Service Center.
4. The IRS receives the Form 4506, routes it to the appropriate IRS function and retrieves the requested tax information.
5. The IRS mails the requested tax information to the taxpayer or to the third party designated by the taxpayer on the form.

Improving Customer Service

The IRS seeks to develop a process to automate the paper process of the Form 4506 for third-party requests. The system would electronically receive and process requests for disclosure of tax return information from a third-party entity authorized by individual taxpayers. To assist the IRS in final development of this program, the IRS seeks comments and feedback from taxpayers and the private and public sectors on access methods.

Since one third of the Form 4506 requests (over two (2) million annually) are taxpayers requesting their tax information be sent to a third party, the IRS seeks to improve customer service to the taxpayer by:

(1) Accelerating Delivery Time. Currently, the receipt, processing and retrieval of the return information for a designated third party takes the IRS approximately seven (7) to ten (10) days, excluding the time it takes for the tax information to be mailed to the third party. It is proposed that the electronic delivery of return transcripts could be made available within a 24-hour time period.

(2) Providing Electronic Authentication and Signature. The proposed system would have an electronic Form 4506 that would be filled out on a computer. Electronic authentication and an electronic signature would ensure to the IRS that the taxpayer is authorizing the release of the information.

(3) Making the Process a One-Stop Service. Currently, the taxpayer (or business entity using the Form 4506 as part of their financial benefit processing package) must retrieve the Form 4506 from an on-line site or from an IRS office. The proposed system would provide this in an electronic form through a computer at the office where the taxpayer is applying for the loan, benefit, subsidy, or other financial transaction.

(4) Reducing the Amount of Information Currently Released Through a Standard Return Transcript. Currently, when a taxpayer authorizes his/her return transcript be sent to a third party, a full return transcript (over 200 lines of information transcribed from the taxpayer's return) is sent. The proposed system would tailor the needs of public and private industry to specific information from the taxpayer's return that will aid in the processing of the application.

(5) Ensuring Timely Processing of the Request. Currently, the third-party entity providing the Form 4506 to the taxpayer at the time of application processing may request the taxpayer to sign but not date the form. This allows the third-party to send in the Form 4506 at a later date, in instances such as a mortgage resale which may occur a year or two from the original application processing. The proposed system would authenticate the taxpayer to the IRS (see item #2 above) and then electronically date the request, locking it from further manipulation. The taxpayer will be assured that the designated recipient is receiving the data within a 24-hour period.

Proposed Pilot of the Electronic Program

The IRS plans to pilot an electronic transcript delivery system with approximately 100 industry users. Pilot participants (hereinafter referred to as "Contractor") will be selected competitively through the Request For Proposal (RFP) process and will be awarded contracts, with the possibility of a user fee, for a period of up to one year, with an option to extend the term of the contract.

The RFP will be open for thirty (30) days to all private sector businesses/firms in the following industries in the state of California who perform income verification for loans, grants or subsidies or who provide resolution to tax problems or issues:

	Standard industrial classification codes
Tax Practitioners	Industry Numbers 7291, 8721.
Financial Institutions	Major Group 60.
Mortgage Industries	Major Group 61.
Credit Bureaus/Credit Reporting Services	Industry Number 7323.

These industries comprise the largest volume of designated recipients on the Forms 4506 from taxpayers and will enable the IRS to pilot with a large audience to test an electronic transcript delivery system in terms of customer satisfaction, system capacity and security, and ease of use. For the pilot, the geographical limitation to the state of California is to maintain software support and reduce burden and cost to Contractors for training. In addition, it will limit costs to the IRS in random reviews of system performance, security of information checks, observation of taxpayer processing and Contractor performance to the terms and conditions of the contract.

The capability to collect a user fee for the electronic transcript service is being developed and a user fee may be collected from the Contractors at some point during the pilot.

The Contractors will be required to have available (purchase, lease or rent) hardware equipment and software systems to be specified in the RFP. This equipment must be available by the start up of the training period and will be needed for the entire length of the pilot. Training on the systems will be at the expense of the Contractors and will be structured as a two-day class at the IRS Service Center in Fresno, California.

During the pilot, the IRS will ask for several reports. Status reports to be completed by the Contractors will be used to evaluate problems, determine any changes to be made during the pilot, evaluate lessons learned and to gather recommendations for improvement of the system. These reports are geared towards the Contractor's experience in dealing with the system, the customers, the hardware and software, the quality of training, the assistance provided by the IRS' Help Desk and the usefulness of an IRS-provided User's Guide.

The IRS will also conduct a Taxpayer Satisfaction Survey with a random sample of taxpayers who participated in the electronic transcript delivery pilot. The Contractors will not have knowledge of the particular taxpayers selected for this random survey.

To help the IRS evaluate discrepancies between income reported by a taxpayer versus income stated on an application form, the Contractors will be required to complete a form that captures statistical data on discrepancies of income reporting. This will require the Contractors to track and record the number of requests processed, the number of discrepancies from the information provided by the taxpayers and the number of loans, grants or subsidies that were declined based on the data provided by the electronic transcript delivery pilot. All information collected will be statistical in nature and will not identify individual taxpayers.

The Contractor will also be required to provide a written notice to each taxpayer prior to their participation in the electronic transcript delivery pilot. This written notice makes the taxpayer aware of their privacy interests and explains the purpose and scope of the pilot.

A draft Request For Proposals (RFP) titled "Draft Request For Proposals TIRNO–99–R–00043" is posted on the IRS' Procurement website at www.procurement.irs.treas.gov/opportun.htm. This accompanies a Request For Information (RFI) (TIRNO–99–H–00005), which is the method the IRS is using to seek business responses to this program.

One of the most important requirements of the RFP will be for the Contractors to maintain the confidentiality and security of the taxpayer's data. Although this information is supplied by the Contractor at the taxpayer's consent, the IRS will require that all information received through this program meet the following stringent security requirements:

(1) Tax return information will be kept confidential.

(2) Tax return information will be used solely for the purpose directed by the taxpayer.

(3) Tax return information will be stored in locked containers when not in use.

(4) Tax return information will not be discussed unless specifically referring to the taxpayer's application.

(5) Tax return information will not be further disclosed, traded, bartered, or sold without the express authorization of the taxpayer (i.e., the Contractor will be required to obtain another authorization from the taxpayer for further disclosures).

Requested Comments

The Internal Revenue Service is seeking comments and input from industry, federal, state and local agencies and taxpayers concerning the piloting/implementation of this concept. In particular, the Internal Revenue Service is interested in responses to the following, but will appreciate all comments or reactions to the proposed pilot:

1. Based on commercial practice, what would be the best vehicle to deliver this product (e.g., encrypted Internet, encrypted e-mail, encrypted modem with digitized signature pads, etc.)? What issues do each of these methods raise with regards to security, authentication, safeguarding data, etc.?

2. How might companies and/or industry sectors self regulate the safeguarding of sensitive taxpayer information?

3. Please comment on the effort which businesses and agencies expend in income verification on an annual basis.

4. Do you, your company or agency currently do sensitive transactions related to income verification or tax resolution issues over the Internet or via e-mail? Are most of these types of interactions internet-based or paper-based? Is your office fully automated (i.e., do all employees have a computer, e-mail and Internet accessibility?)

5. Is there common knowledge and use in your industry of the IRS' Form 4506 and the ability to receive a copy of a paper return, return transcript, W–2 or verification of non-filing?

6. What on-line experiences have you encountered in which privacy and safeguarding of income verification or tax resolution information have been at issue? In what instances have they appeared at risk? In what instances were they well protected? In what ways have businesses or organizations been responsive to privacy and information safeguarding concerns? Have you had any negative experiences in protecting your privacy on line?

7. What circumstances give rise to good privacy and information safeguarding protection in a traditional business setting or on line?

8. Please comment on whether you feel an electronic transcript system should be made universally available to any business requiring income verification or tax resolution. Would 24-hour delivery of income verification by the IRS accomplish accelerated processing of a loan, grant or subsidy or resolution of a tax issue?

9. Please comment on the proposed 24-hour delivery versus the current seven (7) to ten (10) day process. What advantages would you, your business or agency have if the information were available in a "real time" on-line basis?

10. Please comment on whether you feel third-party entities would maintain the confidentiality and security of the provided return information.

11. Do you, your business or agency regularly sell customer information for marketing or advertising purposes?

12. What do you, your business or agency see as methods to increase confidentiality, security and improve customer service to the taxpayer in providing electronic transcripts?

13. What do you, your business or agency see as elements of enforcement mechanisms necessary for maintaining effective confidentiality, security or enhancing customer service to the taxpayer?

14. What do you, your business or agency see as the main advantage(s) and disadvantage(s) of such a system?

15. What would you, your business or agency identify as an appropriate consequence for any mishandling, misuse or unauthorized disclosure of your tax return information by a third party that requires taxpayer information to process a loan, grant or subsidy or resolve a tax issue?

16. What existing privacy policies do you, your business or agency follow? In what ways do they effectively address concerns about privacy in the information to which they apply? In what ways do they fail?

17. Please comment on what you think the responsibilities of the government, businesses or agencies are in protecting taxpayer data. To what extent do these parties have a right to collect and use information to further their commercial interests?

18. Should the government have an interest in reducing the proliferation of taxpayer consent-based disclosures?

19. Please comment on whether you think that a growth in taxpayer consent-based disclosures will have an impact (positive or negative) on voluntary tax law compliance by the taxpayers.

20. Would you, your business or agency be amenable to paying a user fee for this accelerated service? If so, what would you see as a reasonable charge for this service?

21. What would you, your business or agency see as a viable means of authenticating the taxpayer to the IRS within this electronic format? What form of electronic signature (e.g., selection of a personal identification number, signing digitized signature pad, a public key-private key system, etc.) would be best and would ensure legal recourse?

22. What type of information do you, your business or agency use in processing applications for income verification for loans, grants, subsidies, etc.? Is this information corroborated with information secured from other private or public agencies?

23. Please comment on the types of written reports and statistical accounting required by the pilot participants.

24. Please comment on the draft RFP (Draft Request For Proposals TIRNO–99–R–00043) at the IRS' website (www.procurement.irs.treas.gov/opportun.htm) including input on contractual boundaries, rules and regulations.

25. Please indicate your industry type or if you are an individual.

Dated: August 30, 1999.

Robert E. Barr,

Assistant Commissioner, Electronic Tax Administration.

[FR Doc. 99–23789 Filed 9–10–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Resolution Authorizing (1) Disposition of Securities Held by Organization, and (2) Execution and Delivery of Bonds of Indemnity.

DATES: Written comments should be received on or before November 12, 1999, to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Resolution Authorizing (1) Disposition of Securities Held by organization, and (2) Execution and Delivery of Bonds of Indemnity.

OMB Number: 1535–0052.

Form Number: PD F 1011.

Abstract: The information is requested to establish the authority of an organization to dispose of registered United States securities and/or execute bonds of indemnity.

Current Actions: None.

Type of Review: Extension.

Affected Public: Business or other for-profit/not-for-profit institutions.

Estimated Number of Respondents: 485.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 243.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 7, 1999.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 99–23680 Filed 9–10–99; 8:45 am]

BILLING CODE 4810–39–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: "Only the Best": Masterpieces of the Calouste Gulbenkian Museum, Lisbon

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 133359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Only the Best": Masterpieces of the Calouste Gulbenkian Museum, Lisbon imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, NY., from on or about November 15, 1999 to on or about February 27, 2000, is in the Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Carol Epstein, Assistant General Counsel, Office of the General Counsel, 202/619–6981, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW Washington, DC 20547–0001.

Dated: September 7, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–23782 Filed 9–10–99; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: "Still-Life Paintings From the Netherlands, 1550–1720"

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985). I hereby determine that the objects to be included in the exhibit "Still-Life Paintings from the Netherlands, 1550–1720" imported from abroad for temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the listed exhibit objects at the Cleveland Museum of Art, Cleveland, OH, from on or about October 31, 1999, to on or about January 9, 2000, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For a copy of the list of exhibit objects or for further information, contact Carol Epstein, Assistant General Counsel, Office of the General Counsel, United States Information Agency, at 202/619–6981, or USIA, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: September 8, 1999.

Les Jin,

General Counsel.

[FR Doc. 99–23783 Filed 9–10–99; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Bureau of Educational and Cultural Affairs; Program Title: The FREEDOM Support Act/Future Leaders Exchange (FSA/FLEX) Program; Inbound, NIS Secondary School Initiative

NOTICE: Request for proposals.

SUMMARY: The Youth Programs Division/Office of Citizen Exchanges of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for the FREEDOM Support Act (FSA)

Future Leaders Exchange (FLEX) program. For applicants' Information, on October 1, 1999, the Bureau will become part of the U.S. Department of State. The integration will not affect the content of this announcement or nature of the program described. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to recruit and select host families for high school students between the ages of 15 and 17 from the New Independent States (NIS) of the former Soviet Union. In addition to identifying schools and screening, selecting, and orienting host families, organizations will be responsible for: orienting students at the local level; providing support services for students; arranging enhancement activities that reinforce program goals; monitoring students during their stay in the U.S.; providing re-entry training; and assessing student performance and progress. The award of grants and the number of students who will participate is subject to the availability of funding in fiscal year 2000.

Program Information

Overview

Background

Academic year 2000/01 will be the eight year of the FSA/FLEX program, which now includes over 7,100 alumni. This component of the NIS Secondary School Initiative was originally authorized under the FREEDOM Support Act of 1992 and is funded by annual allocations from the Foreign Operations and the Bureau of Educational and Cultural Affairs appropriations. The goals of the program are to promote mutual understanding and foster a relationship between the people of the NIS and the U.S.; assist the successor generation of the NIS to develop the qualities it will need to lead in the transformation of those countries in the 21st century; and to promote democratic values and civic responsibility by giving NIS youth the opportunity to live in American society and participate in goal-oriented activities for an academic year.

Objectives

To place approximately 1,000 pre-selected high school students from the NIS in qualified, well-motivated host families and welcoming schools. To expose program participants to American culture and democracy through homestay experiences and enhancement activities that will enable them to attain a broad view of the society and culture of the U.S. To encourage FSA/FLEX program participants to share their culture, lifestyle and traditions with U.S. citizens. Through participation in the FLEX program, students should:

1. Acquire an understanding of important elements of a civil society. This includes concepts such as volunteerism, the idea that American citizens can and do act at the grass roots level to deal with societal problems, and an awareness of and respect for the rule of law.

2. Acquire an understanding of a free market economy and private enterprise. This includes an awareness of privatization and an appreciation of the role of the entrepreneur in economic growth.

3. Develop an appreciation for American culture.

4. Interact with Americans and generate enduring ties.

5. Teach Americans about the cultures of their home countries.

6. Gain leadership capacity that will enable the initiation and support of development and community activities in their role as program alumni.

Other Components

Two organizations operating as a consortium have been awarded grants to perform the following functions: recruitment and selection of students; targeted recruitment for students with disabilities; assistance in documentation and preparation of IAP–66 forms; preparation of cross-cultural materials; pre-departure orientation; international travel from home to host community and return; facilitation of ongoing communication between the natural parents and placement organizations, as needed; maintenance of a student database and provision of data to the Bureau; and ongoing follow-up with alumni after their return to the NIS. Additionally, a separate grant will be awarded for a one-week mid-year civic education program in Washington, D.C., for a select number of students who successfully compete for the Washington program. Most of the students with disabilities, as well as a select number of additional students who are identified as needing English language enhancement before entering their host communities, will attend an English enrichment and cultural orientation program in July 2000, conducted under a grant awarded exclusively for that purpose. The announcements of the competitions for these grants will be published separately.

Guidelines

Organizations chosen under this competition are responsible for the following: recruitment, screening, selection, and cultural-specific orientation of host families; school enrollment; local orientation for participants; placement of a small number of students with disabilities; ensuring that all students identified for the pre-academic-year English and cultural enrichment program have their permanent year-program; specialized training of local staff and volunteers to work with NIS students; preparation and dissemination of materials to students pertaining to the respective placement organization; program-related enhancement activities; supervision and monitoring of students; trouble shooting and periodic reporting on students' progress; when appropriate, communication with the organizations conducting other program components; evaluation of the students' performance; quarterly evaluation of the organization's success in achieving program goals; and re-entry training to prepare students for readjustment to their home environments.

Applicants may request a grant for the placement of at least 20 students. There is no ceiling on the number of students who may be placed by one organization. It is anticipated that 10 to 15 grants will be awarded for this component of the FLEX program. Placements will be distributed throughout the U.S. Students may be clustered in one or more regions or dispersed. If dispersed, applicants should demonstrate that training of local staff ensures their competence in providing NIS-specific orientation programs, appropriate enhancement activities, and quality supervision and counseling of students from the NIS. Please refer to the Solicitation Package, available on request from the address listed below, for details on essential program elements, permissible costs, and criteria used to select students.

Grants should begin at the point that the complete applications on selected finalists are delivered to the placement organizations, no later than March 15, 2000. Participants arrive in their host communities during the month of August and remain for 10 or 11 months until their departure during the period mid-May to late June 2001.

Administration of the program must be in compliance with reporting and withholding regulations for federal, state, and local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

Applicants should submit the health and accident insurance plans they intend to use for students on this program. The Bureau will compare any external plans with the Bureau's plan and make a determination of which will be applicable.

Participants will travel on J–1 visas issued by the Bureau using a government program number. Organizations must comply with J–1 visa regulations in carrying out their responsibilities under the FLEX program. Please refer to Solicitation Package for further information.

Budget Guidelines

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. Per capita costs should not exceed $4,850. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Allowable costs for the program include the following:

(1) A monthly stipend and incidentals allowance for participants, as established by the Bureau.

(2) Costs associated with student enhancements and orientations.

(3) Administrative costs associated with host family recruiting, staff training, monitoring, and other functions.

(4) Health and accident insurance. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFP should reference the above title and number E/P–00–06.

FOR FURTHER INFORMATION CONTACT: The Office of Youth Programs, ECA/PE/C/PY, Room 568, Bureau of Educational and Cultural Affairs, 301 4th Street, S.W., Washington, D.C. 20547, tel. (202) 619–6299, fax (202) 619–5311, e-mail <amussman@usia.gov> to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Anna Mussman on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from the Bureau's website at http://e.usia.gov/education/rfps. Please read all information before downloading.

Deadline for Proposals: All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, D.C. time on Monday, October 25, 1999. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and 6 copies of the application should be sent to: U.S. Department of State, Bureau of Educational and Cultural Affairs, Ref.: E/P–00–06, Office of Program Management, ECA/EX/PM, Room 336, 301 4th Street, SW, Washington, DC 20547.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy, the Bureau shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries. Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with the Bureau. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

The Bureau therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Department of State regional authorities and embassies overseas, where appropriate. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department of State entities. Final funding decisions are at the discretion of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity, including assurance that all students will be

placed in a timely fashion. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable and feasible and should coincide with those for the FLEX program stated above. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term linkages.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity both in host community and family placements and in program content (e.g., orientation, enhancement activities, community service).

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to ensure that all functions are carried out efficiently to achieve the program goals.

7. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by contracting authorities. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit quarterly reports, which should be included as an inherent component of the work plan.

9. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

10. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world. The funding authority for the program above is provided through legislation pertaining to the Bureau and Foreign Operations appropriations.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposals budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: September 7, 1999.

William P. Kiehl,

Acting Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 99–23661 Filed 9–10–99; 8:45 am]

BILLING CODE 8230–31–M

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: The U.S. Advisory Commission on Public Diplomacy will meet on September 15 in Room 600, 301 4th Street, SW, Washington, DC, from 9:00 a.m. to 10:00 a.m.

FOR FURTHER INFORMATION CONTACT: Please call Jim Conley, (202 619–4457, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: September 3, 1999.

Rose Royal,

Management Analyst Federal Register Liaison.

[FR Doc. 99–23662 Filed 9–10–99; 8:45 am]

BILLING CODE 8230–01–M

federal register

Monday
September 13, 1999

Part II

Department of Labor

Mine Safety and Health Administration

30 CFR Parts 56 and 57 et al.

Health Standards for Occupational Noise Exposure; Final Rule

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, 62, 70 and 71

RIN 1219–AA53

Health Standards for Occupational Noise Exposure

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Final rule.

SUMMARY: This final comprehensive rule replaces MSHA's existing standards for occupational noise exposure in coal mines and metal and nonmetal mines. The final rule establishes uniform requirements to protect the Nation's miners from occupational noise-induced hearing loss. The rule is derived in part from existing MSHA noise standards, and from the Department of Labor's existing occupational noise exposure standard for general industry promulgated by the Occupational Safety and Health Administration (OSHA).

As a result of the Agency's ongoing review of its safety and health standards, MSHA determined that its existing noise standards, which are more than twenty years old, do not adequately protect miners from occupational noise-induced hearing loss. A significant risk to miners of material impairment of health from workplace exposure to noise over a working lifetime exists when miners' exposure exceeds an 8-hour time-weighted average (TWA_8) of 85 dBA.

MSHA expects that the final rule will significantly reduce the risk of material impairment within the mining industry as a whole.

DATES: The final rule is effective September 13, 2000.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Acting Director, Office of Standards, Regulations, and Variances, MSHA, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Ms. Jones can be reached at cjones@msha.gov (Internet E-mail), 703/235–1910 (voice), or 703/235–5551 (fax).

SUPPLEMENTARY INFORMATION:

I. Background

a. Noise-Induced Hearing Loss

Noise is one of the most pervasive health hazards in mining. The National Institute for Occupational Safety and Health (NIOSH) has identified noise-induced hearing loss as one of the ten leading work-related diseases and injuries. Exposure to hazardous sound levels results in the development of occupational noise-induced hearing loss, which is distinguishable from hearing loss associated with aging or with medical conditions. For many years, the risk of acquiring noise-induced hearing loss was accepted as an inevitable consequence of mining occupations, in which the use of mechanized equipment often subjects miners to hazardous noise exposures. But noise-induced hearing loss can be diagnosed, prevented, and its progress delayed.

Prolonged exposure to noise over a period of years generally causes permanent damage to the auditory nerve or its sensory components. Hearing loss is rapid when exposures are over a prolonged period at high sound levels. Hearing loss may also be gradual, so that the impairment is not noticed until after a substantial amount of hearing loss occurs. Noise-induced hearing loss is irreversible. Considerable safety risks arise because workers with noise-induced hearing loss may not hear audible warnings and safety signals. In addition, most people with noise-induced hearing loss have reduced hearing sensitivity to higher frequencies and lose the ability to discriminate consonants, making them unable to distinguish among words differing only by one or more consonants. This impairment jeopardizes the safety of affected miners as well as the safety of those around them, and, as a result, general employee health and productivity.

Revising the existing rules to protect miners from noise-induced hearing loss is necessary because exposure to workplace noise continues to present a significant risk of material impairment of health to miners. MSHA estimates that 13.4% of the mining population of the United States (approximately 13,000 coal miners and 24,000 metal and nonmetal miners) will develop a material hearing impairment during a working lifetime under current working conditions. MSHA anticipates that miners will benefit substantially from the final rule's effect of improving miner health and lessening the personal and social hardships of occupational noise-induced hearing loss.

b. Rulemaking Process

MSHA's existing noise standards in metal and nonmetal mines (30 CFR §§ 56.5050 and 57.5050) and in coal mines (30 CFR §§ 70.500–70.511, and §§ 71.800–71.805) were originally promulgated in the early 1970's. They were derived from the Walsh-Healey Public Contracts Act occupational noise standard, which adopted a permissible exposure level of 90 dBA, a 5–dB exchange rate, and a 90–dBA threshold. After considering the recurrent incidence of noise-induced hearing loss among miners and repeated recommendations from the mining community that MSHA adopt a single noise standard covering all mines, MSHA published an Advance Notice of Proposed Rulemaking (ANPRM) (54 FR 50209) on December 4, 1989. In response, the Agency received numerous comments from mine operators, trade associations, labor groups, equipment manufacturers, and other interested parties.

After reviewing the comments to the ANPRM, MSHA published a proposed rule (61 FR 66348) on December 17, 1996. The comment period, originally scheduled to close on February 18, 1997, was extended to April 21, 1997 (62 FR 5554), and 6 public hearings were conducted in Beckley, West Virginia; St. Louis, Missouri; Denver, Colorado; Las Vegas, Nevada; Atlanta, Georgia; and Washington, D.C. Transcripts of the proceedings were made available to the public. Supplementary statements and data were received from interested persons until the record closed on August 1, 1997.

After the close of the record, NIOSH sent MSHA a report entitled, "Prevalence of Hearing Loss For Noise-Exposed Metal/Nonmetal Miners." On December 16, 1997, MSHA published a notice (62 FR 65777) announcing that the report was available and had been entered into the rulemaking record. Then, on December 23, 1997, MSHA published a follow-up notice (62 FR 67013) inviting interested persons to comment on the NIOSH report, with the comment period closing on February 23, 1998.

Early commenters on the proposal expressed concern that the spirit of section 103(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) was not being met. Section 103(c) requires that miners or their representatives be allowed to observe any monitoring or measuring of hazards in their workplaces and to have access to monitoring records. Proposed § 62.120(f) contained a provision requiring operators to establish a system of monitoring for effectively evaluating each miner's noise exposure, but did not require that miners be allowed to observe.

In response, on December 31, 1997, MSHA published a notice (62 FR 68468) supplementing its proposed rule with proposed § 62.120(g), asked for comments, and scheduled a public hearing. The comment period for the supplement closed on February 17, and a public hearing was held in Washington, DC on March 10. The post-hearing comment period and rulemaking record closed on April 9, 1998.

On May 26, 1998, MSHA published a notice (63 FR 28496) announcing its preliminary determination of no significant environmental impact; requesting comments; and reopening the rulemaking record for the limited purpose of receiving these comments.

The agency received many comments on the proposed noise rule, including the supplemental proposed rule on observation of monitoring. The agency received a total of 182 written and electronic comments. In addition, 57 speakers provided verbal comments at the public hearings. Comments were received from various entities including mine operators, industry trade associations, such as the National Mining Association, National Stone Association, American Iron and Steel Institute and American Portland Cement Alliance; organized labor groups, such as the United Mine Workers of America and the United Steelworkers of America; noise equipment manufacturers; the American Industrial Hygiene Association; the National Hearing Conservation Association; the Acoustical Society of America; colleges and universities; and other Federal agencies, such as NIOSH and the U.S. Small Business Administration.

c. Current Standards

MSHA's existing maximum noise exposure levels for metal and nonmetal mines (30 CFR 56/57.5050) and for coal mines (30 CFR 70.500 through 70.511 and 71.800 through 71.805), were derived from the Walsh-Healey Public Contracts Act occupational noise standard. The standards adopted a permissible exposure level of 90 dBA as an eight-hour time weighted average and a 5–dB exchange rate.

MSHA's existing metal and nonmetal noise standards require the use of feasible engineering or administrative controls when a miner's noise exposure exceeds the permissible exposure level. Hearing protectors are also required if the exposure cannot be reduced to within the permissible exposure level. The existing metal and nonmetal standards do not require the mine operator to post the procedures for any administrative controls used, to conduct specific training, or to enroll miners in hearing conservation programs.

MSHA's existing practices for coal mines are different from those for metal and nonmetal mines due to differences in the circumstances under which the Agency is authorized to issue citations. In metal and nonmetal mines, a citation is issued based exclusively on the exposure measurement. In coal mines, a citation is not issued if appropriate hearing protectors are being worn. Moreover, when a coal mine operator receives a citation for noise exposure exceeding the permissible exposure level, the operator is required to promptly institute administrative and/or engineering controls to assure compliance. In addition, within 60 days of receiving the citation, a coal mine operator is required to submit a plan to MSHA for the administration of a continuing, effective hearing conservation program.

The Federal Mine Safety and Health Review Commission (Commission) has addressed the "feasibility" of noise controls regarding the existing standards. In determining technological feasibility, the Commission has held that a control is deemed achievable if through reasonable application of existing products, devices, or work methods with human skills and abilities, a workable engineering control can be applied to the noise source. The control does not have to be "off-the-shelf;" but it must have a realistic basis in present technical capabilities. In determining economic feasibility, the Commission has held that MSHA must assess whether the costs of the control are disproportionate to the "expected benefits", and whether the costs are so great that it is irrational to require its use to achieve those results. The Commission has expressly stated that cost-benefit analysis is unnecessary in order to determine whether a noise control is required. According to the Commission, an engineering control may be feasible even though it fails to reduce exposure to permissible levels contained in the standard, as long as there is a significant reduction in exposure. In *Todilto Exploration and Development Corporation, 5* FMSHRC 1894 (1983), the Commission accepted the Agency's determination that a 3 dBA reduction is significant.

MSHA has interpreted the "expected benefits" to be the amount of noise reduction achievable by the control. MSHA generally considers a reduction of 3 dBA or more to be a significant reduction of the sound level because it represents at least a 50% reduction in sound energy. Consequently, a control that achieves relatively little noise reduction at a high cost could be viewed as not meeting the Commission s test of economic feasibility.

MSHA estimates that the costs attributable to the final rule requirement to use engineering and administrative controls would be significantly offset by the paperwork savings the coal mining industry will accrue. The existing costly, paperwork-intensive requirements for biannual coal miner noise exposure surveys, supplemental noise surveys, calibration reports, survey reports, and survey certifications are eliminated by the final rule. Rather, the final rule has a flexible requirement for mine operators to establish a monitoring program that effectively evaluates miner exposures.

II. Final Rule

a. General Requirements Applicable to All Mines

The following summarizes general requirements for all mines in the final rule although, the rule and this preamble should be consulted for details. A mine operator must establish a system of monitoring which evaluates each miner's noise exposure. In addition, the mine operator must give prior notice and provide affected miners and their representatives with an opportunity to observe the monitoring. When an exposure equals or exceeds the action level, exceeds the permissible exposure level, or exceeds the dual hearing protection level, the mine operator must notify a miner of his or her exposure. A copy of the notification must be kept for the duration of the affected miner's exposure at or above the action level and for at least 6 months thereafter.

If a miner's noise exposure is less than the action level, no action is required by the mine operator. If the miner's exposure equals or exceeds the action level, but does not exceed the permissible exposure level, the operator must enroll the miner in a hearing conservation program which includes a system of monitoring, voluntary use of operator-provided hearing protectors, voluntary audiometric testing, training, and record keeping. If a miner's exposure exceeds the permissible exposure level, the operator must use or continue to use all feasible engineering and administrative controls to reduce exposure to the permissible exposure level, enroll the miner in a hearing conservation program including ensuring the use of operator-provided hearing protectors, post administrative controls and provide a copy to the affected miner; and must never permit a miner to be exposed to sound levels exceeding 115 dBA. If a miner's exposure exceeds the dual hearing protection level, the operator must enroll the miner in a hearing conservation program, continue to meet all the requirements for exposures above the permissible exposure level, and

ensure the concurrent use of an earplug and earmuff.

b. Major Features of the Final Rule

Consistent with OSHA's noise exposure standard, MSHA has adopted the existing permissible exposure level of 90 dBA as an 8-hour time-weighted average (TWA_8). The final rule, however, requires the use of all feasible engineering and administrative controls to reduce a miner's noise exposure to the permissible exposure level. Such controls may be used separately or in combination. When controls do not reduce exposure to the permissible exposure level, miners must be provided hearing protectors and mine operators are required to ensure that the miners use them.

The final rule also addresses a currently recognized hazard that is not covered by existing standards: noise exposures at or above a TWA_8 of 85 dBA but below the permissible exposure level. Exposure at a TWA_8 of 85 dBA is termed the "action level," and, under the final rule, mine operators are required to enroll miners exposed at or above the action level in a hearing conservation program consisting of exposure monitoring, the use of hearing protectors, audiometric testing, training, and recordkeeping.

The final rule has been revised from the proposal in several respects, which makes it more consistent with existing OSHA regulations:

MSHA had proposed that all sound levels between 80 dBA and 130 dBA be included in determining exposure for both the action level and permissible exposure level. Based on comments received, the final rule requires inclusion of sound levels between 90 dBA and at least 140 dBA for determining exposure with respect to the permissible exposure level. The final rule adopts the proposed inclusion of sound levels from 80 dBA to at least 130 dBA for determining exposure with respect to the action level.

In response to the proposed definition of a hearing conservation program, commenters suggested that, for the sake of consistency, the final rule adopt the existing definition included in the OSHA noise standard. MSHA agrees and has revised the final rule to incorporate all relevant elements of a hearing conservation program under this definition.

The proposed rule would have required mine operators to ensure that miners participate in an audiometric testing program if their noise exposures were above the permissible exposure level. In response to commenters, the final rule requires only that mine operators offer audiometric testing, leaving it to the miner to decide whether to participate in the testing program.

The proposed rule would have required that mine operators ensure that miners were not exposed to workplace noise during a 14-hour quiet period required before a baseline audiogram is taken. In addition, the use of hearing protectors would not have been permitted as a substitute for the quiet period. Many commenters suggested that prohibiting the use of hearing protectors to meet the quiet period requirement was not practical, because many miners work 12-hour shifts and that OSHA's noise standard allows hearing protection to be used during the quiet period. The final rule permits the use of hearing protectors during the quiet period.

The proposed rule would have required a mine operator, upon termination of a miner's employment, to provide the miner with a copy of the records required under part 62. Commenters overwhelmingly supported giving copies of records only to those miners who request them. In response to comments, the proposed provision was not adopted in the final rule, and the final rule instead requires that mine operators provide copies of records to miners upon request.

The final rule departs from the OSHA noise standard in several respects:

The final rule adopts the proposed "dual hearing protection level" at a TWA_8 of 105 dBA. This requirement for dual hearing protection is supported by research showing that greater noise reduction results from the use of both earplugs and earmuffs than from either type of hearing protector alone. Accordingly, mine operators must provide and require the use of both an earplug and an earmuff at a TWA_8 of 105 dBA.

The final rule does not include detailed, technical procedures and criteria for conducting audiometric testing. Rather, the rule is performance-oriented, requiring only that audiometric testing be conducted in accordance with scientifically validated procedures, such as those in OSHA's noise standard.

Nor does the final rule require determining the adequacy of hearing protectors. Although OSHA's noise standard includes such information in its mandatory Appendix B, MSHA's research on mining applications indicates that hearing protectors provide less reduction than their ratings suggest and that the reduction achieved is highly variable. These two factors prevent accurate prediction of the effectiveness of hearing protectors for a given individual. However, MSHA recognizes that in some environments it may not be feasible to reduce miners' noise exposures to the permissible exposure level with the use of engineering or administrative controls. In these circumstances, the interim use of personal hearing protectors may offer the best protection until controls become feasible and can be implemented.

The final rule is consistent with Executive Order 12866, the Regulatory Flexibility Act, the Small Business Regulatory Enforcement Fairness Act (SBREFA), the National Environmental Policy Act (NEPA), the Paperwork Reduction Act, the Unfunded Mandates Reform Act, and the Mine Act. MSHA estimates that metal and nonmetal mines with fewer than 20 miners would incur an average cost increase of about $460 annually. Coal mines with fewer than 20 miners would have an average cost increase of about $400, reflecting the elimination of the numerous survey and paperwork requirements in the current noise rules for the coal sector.

In accordance with the SBREFA Amendments to the Regulatory Flexibility Act, MSHA has taken steps to minimize the compliance burden on small mines. The effective date of the final rule, one year after promulgation, provides time for small mines to achieve compliance. In addition, MSHA is mailing a copy of the final rule to each mine operator, which benefits small mine operators.

MSHA anticipates that the mining community will benefit substantially from the final rule. The primary benefit will be a sizable reduction, by as much as two-thirds, in the incidence of occupational hearing impairment among miners. The final rule will also serve to mitigate the progression of hearing loss in working miners and preserve the health and quality of life of miners newly entering the industry.

Two charts compare key features of the final standard to MSHA's existing standards. Note that entries in the charts and the discussions in the preamble reflect legal and/or policy interpretations that would not be apparent from the text of the standards. Other parts of this preamble should be consulted for details.

CHART 1: GENERAL REQUIREMENTS

Noise level	Final rule	Existing metal and nonmetal rules	Existing coal rules
At or above a TWA_8 of 85 dBA (action level).	Enroll miner in HCP which includes requirements for training, monitoring, recordkeeping, voluntary hearing tests, voluntary use of operator-provided HP in most cases, but use of HP is mandatory in particular instances.	No requirements	No requirements.
Above a TWA_8 of 90 dBA (PEL).	Use or continue to use all feasible engineering and administrative controls to reduce exposure to PEL; enroll miner in an HCP including ensuring use of operator-provided HP, post administrative controls and provide copy to affected miner, never permit miner to be exposed to sound levels exceeding 115 dBA.	Use all feasible engineering or administrative controls and provide HP if noise level cannot be lowered to PEL.	Use all feasible engineering and/or administrative controls, but can first reduce exposure by rated value of HP minus 7 unless cited for failure to require HP use; also must enroll miners in HCP if cited.
At or above 105 dBA (dual hearing protection level).	Ensure concurrent use of earplug and earmuff type HPs in addition to above requirements for the action level and PEL.	Limited requirement for dual HPs.	N/A

Abbreviations: HP (hearing protector), HCP (hearing conservation program), TWA_8 (eight-hour time-weighted average), dBA (decibel, A-weighted), PEL (permissible exposure level); Hz (hertz), and n/a (not applicable).

COMPARISON CHART 2: GENERAL FEATURES

Feature	Final rule	Existing metal and nonmetal rules	Existing coal rules
Monitoring	Operator must establish an effective system of monitoring noise exposure.	No requirement on mine operator.	Mine operator required to conduct periodic monitoring.
Notification of exposure	Operator must notify miner of certain exposures	Not required	Not required.
Dual Threshold (lowest sound level counted).	85 dBA for action level and 90 dBA for PEL	90 dBA for PEL	90 dBA for PEL.
Exchange rate	5 dB	5 dB	5 dB.
Training	Specific training requirements	Part 48	Part 48.
Quiet period prior to audiometric examination.	14 hours for baseline audiogram and use of HP permitted.	N/A	N/A.
Standard Threshold shift	Average of 10 dB at 2000, 3000, and 4000 Hz in either ear.	N/A	N/A.
Reportable hearing loss	Average of 25 dB at 2000, 3000, and 4000 Hz in either ear.	Reporting required but level was undefined.	Reporting required but level was undefined.
Employee access to records	Available upon request	N/A	N/A.

Abbreviations: HP (hearing protector), dBA (decibel, A-weighted), PEL (permissible exposure limit); Hz (hertz), n/a (not applicable).

III. Paperwork Reduction Act of 1995

The information collection requirements contained in this final rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), as implemented by OMB in regulations at 5 CFR part 1320. The Paperwork Reduction Act of 1995 (PRA 95) defines collection of information as "the obtaining, causing to be obtained, soliciting, or requiring the disclosure to third parties or the public of facts or opinions by or for an agency regardless of form or format." (44 U.S.C. 3502(3)(A)). Under PRA 95, no person may be required to respond to, or may be subjected to a penalty for failure to comply with, these information collection requirements until they have been approved and MSHA has announced the assigned OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**. In accordance with § 1320.11(h) of the implementing regulations, OMB has 60 days from today's publication date in which to approve, disapprove, or instruct MSHA to make a change to the information collection requirements in this final rule.

Recordkeeping requirements in the final rule are found in §§ 62.110, 62.130, 62.170, 62.171, 62.172, 62.173, 62.174, 62.175, 62.180, and 62.190.

MSHA received comments both supporting and opposing the proposed information collection requirements. MSHA has reviewed these comments. Several commenters questioned MSHA's estimates of the paperwork burden reduction of the noise rule. Two commenters noted that the February 1984 Program Information Bulletin 84–1C "eliminated virtually all paperwork requirements for operators" and that the "paperwork involves one letter and two 32 cent stamps per year per coal operator." The February 1984 Program Information Bulletin eliminated the requirement for the completion and submission to MSHA of a Coal Mine Noise Data Report Form when operator noise exposure surveys are found to be within compliance. The Program Information Bulletin retained the requirement that a written and signed statement (certification) be submitted to MSHA that the required surveys were made and that the surveys show compliance. The Program Information Bulletin did not drop the requirement for noise surveys to be conducted, exclude the requirement for supplemental noise surveys for exposures at or above the permissible exposure level (and a submission of them), or eliminate the requirement of

surveying all miners and retaining a record.

In addition, as MSHA stated in the proposal, there are labor and equipment costs related to performing the surveys twice a year, completing survey reports and certifications, doing calibration reports annually, and collecting a noise monitoring record for all coal miners. Under PRA 95, all activities related to the generation of a paperwork item must be considered when calculating the costs and burden of paperwork tasks. For these reasons, MSHA's estimates in the final rule are consistent with the requirements of PRA 95.

Other commenters stated that they will still have to conduct surveys, retain survey records, conduct training and audiometric testing, and implement engineering and administrative controls to demonstrate compliance. The existing standards require coal mine operators to perform semiannual monitoring for each miner. Under the final rule, mine operators must establish a system of monitoring that evaluates each miner's noise exposure sufficiently to determine continuing compliance with this part. However, under the final rule mine operators may use their own monitoring records as well as the Agency's data from inspector sampling to determine compliance.

Some commenters stated that the performance-based system of monitoring may result in increased monitoring. MSHA anticipates that a number of mine operators will use some form of representative sampling within job classes or work areas to minimize costs related to dose determination. In addition, large operators who use the same equipment on more than one shift may conduct monitoring on a single shift to determine miner exposures, provided that the circumstances are similar.

The Agency published a supplemental proposal that would give affected miners and their representatives the right to observe operator monitoring. MSHA estimated that the time required for observation of monitoring would take about 2 hours annually at small mines and about 5 hours annually at large mines. Several commenters questioned the Agency's estimates. One commenter questioned the Agency's estimate of 5 hours for a large mine. The commenter believed that for a mine which employed 1,500 workers, 12,000 hours will be spent on noise monitoring (1,500 workers * an 8 hour workday). Under the final rule, mine operators will need to determine miners' exposure; this may be achieved in a number of ways including the use of existing monitoring records (particularly for coal mine operators), review of MSHA sampling records, or by the use of representative sampling. Since mine operators are not specifically required by the final rule to monitor each employee but may use a more flexible approach, MSHA anticipates that its estimates of an average of 2 hours and 5 hours annually at small and large mines respectively (reflecting 30 minute monitoring for each of four miners in a small mine and ten miners in a large mine) are reasonable.

Another commenter questioned if there will be an observation time limit and also believed that MSHA's estimate of 5 hours annually was too low. Also, a commenter questioned MSHA's estimates of lost production, the length of time needed for observation, and MSHA's average time estimates per small mine and per large mine. A commenter also believed that the total estimated annual information collection burden was low. With the exception of the one commenter who provided the estimate of 12,000 hours annually to observe monitoring, none provided data to support their statements.

At the public hearing, several commenters testified that they considered MSHA's time estimates and photocopy cost estimates high. In particular, they believed that the time to give instructions to the secretary were excessive. Further, they stated MSHA's estimates for the length of time to perform typing and posting were too high. Other commenters stated that the bulk of the paperwork would be completed by safety professionals and industrial hygienists as opposed to clerical workers. Based upon a review of all the comments and MSHA's experience, the Agency believes the estimates in the final rule are reasonable.

The proposed rule would have required mine operators to obtain from the physician, audiologist, or qualified technician who conducts an audiometric test a certification that each test was conducted in accordance with scientifically validated procedures. Commenters stated that requiring mine operators to obtain a certification for each individual audiogram was unduly burdensome. The Agency agrees and the proposed certification requirement has not been adopted in the final rule. Under the final rule, evidence is simply required that the audiograms were conducted in accordance with scientifically validated procedures. For example, the evidence may consist of a single statement from the audiometric test provider or a single billing record that indicates that required procedures were followed for a number of audiograms.

The proposed rule would have required mine operators to provide miners with a copy of all their records relating to this standard when those miners terminate employment. Commenters stated that this was an unnecessary requirement which generated too much paper and that miners may not even want a copy of the records. In response, the final rule requires mine operators to provide copies of records to a miner if the miner requests such records.

Numerous commenters stated that records should not have to be retained at the mine site. MSHA agrees and the final rule provides that records are not required to be maintained at the mine site, and therefore can be electronically filed in a central location, so long as the records are made available to the authorized representative of the Secretary upon request within a reasonable time, in most cases one day.

Although the final rule does not require backing up the data, some means are necessary to ensure that electronically stored information is not compromised or lost. MSHA encourages mine operators who store records electronically to provide a mechanism that will allow the continued storage and retrieval of records in the year 2000.

MSHA solicited comment on what actions would be required, if any, to facilitate the maintenance of records in electronic form by those mine operators who desire to do so, while ensuring access in accordance with these requirements. The Agency received several comments supporting electronic storage of records, but no specifics regarding actions required to facilitate the maintenance of the records in electronic form. In revising the requirements from those that appeared in the proposed rule, MSHA has evaluated the necessity and usefulness of the collection of information; reevaluated MSHA's estimate of the information collection burden, including the validity of the underlying methodology and assumptions; and minimized the information collection burden on respondents to the greatest extent possible. The following charts provide, by section, the paperwork requirements for Year 1 and for each succeeding year, respectively.

TABLE 1.—SUMMARY OF NET INFORMATION COLLECTION BURDEN HOURS IN YEAR 1

Section	Paperwork requirements and associated tasks	Coal mines		M/NM mines		Total
		Small	Large	Small	Large	
62.110 to 62.130	Evaluate noise exposure; notify miners, prepare, post, and distribute administrative controls; and permit observation of monitoring.	(7,988)	(50,666)	14,605	12,579	(31,471)
62.170	Perform audiograms; and notify miners to appear for testing and of need to avoid high noise levels.	940	4,181	3,577	5,271	13,969
62.171	Compile an audiometric test record; and obtain evidence.	1,021	4,616	3,882	5,820	15,339
62.172	Provide information and audiometric test record; and perform audiometric retests.	1,413	4,374	5,474	5,513	16,774
62.173	Perform otological evaluations; and provide information and notice.	7	27	29	34	98
62.174	Prepare a retraining certification; and review effectiveness of engineering and administrative controls.	105	334	407	420	1,266
62.175	Inform miners of test results and tSTS.	1,038	4,623	3,950	5,829	15,440
62.180	Prepare and file a training certificate.	1,280	4,165	4,957	5,180	15,581
62.190	Provide access to, and transfer, records	244	303	1,027	915	2,489
Total		(1,941)	(28,045)	37,909	41,561	49,484

TABLE 2.—SUMMARY OF NET INFORMATION COLLECTION BURDEN HOURS FOR AFTER YEAR 1

Section	Paperwork requirements and associated tasks	Coal mines		M/NM mines		Total
		Small	Large	Small	Large	
62.110 to 62.130	Evaluate noise exposure; notify miners, prepare, post, and distribute administrative controls; and permit observation of monitoring.	(8,532)	(48,006)	6,595	3,567	(46,376)
62.171	Compile an audiometric test record; and obtain evidence.	153	692	582	873	2,301
62.172	Provide information and audiometric test record; and perform audiometric retests.	212	656	821	827	2,516
62.173	Perform otological evaluations; and provide information and notice.	1	4	4	5	15
62.174	Prepare a retraining certification; and review effectiveness of engineering and administrative controls.	16	53	62	67	198
62.175	Inform miners of test results and STS	156	694	593	874	2,316
Total		(7,994)	(45,907)	8,658	6,213	(39,029)

Executive Order 12866 and Regulatory Flexibility Analysis

In accordance with Executive Order 12866, MSHA has prepared a final analysis of the estimated costs and benefits associated with the revisions of the noise standards for coal and metal and nonmetal mines.

The final Regulatory Economic Analysis containing this analysis is available from MSHA. The final rule will cost approximately $8.7 million annually and will prevent or contribute to the prevention of approximately 595 hearing impairment cases annually. The benefits are expressed in terms of cases of hearing impairment that can be avoided and have not been monetized. Although the Agency has attempted to quantify the benefits, it believes that monetization of these benefits would be difficult and inappropriate.

Based upon the economic analysis, MSHA has determined that this rule is not an economically significant regulatory action pursuant to section 3(f)(1) of Executive Order 12866. The Agency does consider this rulemaking significant under section 3(f)(4) of the Executive Order for other reasons, and has so designated the rule in its annual agenda.

Regulatory Flexibility Certification

In accordance with section 605 of the Regulatory Flexibility Act, the Mine Safety and Health Administration certifies that the final noise rule does not have a significant economic impact on a substantial number of small entities. Traditionally, MSHA considers small mines to be mines with fewer than 20 employees. Under the Regulatory Flexibility Act, MSHA must use the SBA definition for a small mine of 500 employees or fewer or, after consultation with the SBA Office of Advocacy, establish an alternative definition in the **Federal Register** for notice and comment. The alternative definition could be the Agency's traditional definition of "fewer than 20 miners" or some other definition. As reflected in the certification, MSHA analyzed the costs of this final rule for small and large mines using both the traditional Agency definition and SBA's definition, as required by the Regulatory Flexibility Act, of a small mine. No small governmental jurisdictions or

nonprofit organizations are adversely affected.

Under the Small Business Regulatory Enforcement Fairness Act (SBREFA) amendments to the Regulatory Flexibility Act, MSHA must include in the final rule a factual basis for this certification. The Agency must also publish the regulatory flexibility certification statement in the **Federal Register**, along with the factual basis, followed by an opportunity for the public to comment. The Agency has consulted with the Small Business Administration (SBA) Office of Advocacy and believes that this analysis provides a reasonable basis for the certification in this case.

In the proposal, MSHA specifically solicited comments on the Agency's regulatory flexibility certification statement, including cost estimates and data sources. To facilitate public participation in the rulemaking process, MSHA mailed a copy of the proposal and will mail a copy of the final rule, including the preamble and regulatory flexibility certification statement, to every mine operator and miners' representative.

Factual Basis for Certification

General Approach

The Agency's analysis of impacts on "small entities" and "small mines" begins with a "screening" analysis. The screening compares the estimated compliance costs of the final rule for small mine operators in the affected sector to the estimated revenues for that sector. When estimated compliance costs are less than 1 percent of estimated revenues (for the size categories considered), the Agency believes it is generally appropriate to conclude that there is no significant impact on a substantial number of small entities. When estimated compliance costs approach or exceed 1 percent of revenue, it tends to indicate that further analysis may be warranted.

Derivation of Costs and Revenues

The Agency performed its analysis separately for two groups of mines: the coal mining sector as a whole, and the metal and nonmetal mining sector as a whole. Based on a review of available sources of public data on the mining industry, the Agency believes that a quantitative analysis of the impacts on various mining subsectors (that is, beyond the 4-digit SIC level) is not feasible. The Agency requested comments, however, on whether there are special circumstances that warrant separate quantification of the impact of this final rule on any mining subsector and information on how it might readily obtain the data necessary to conduct such a quantitative analysis. The Agency is fully cognizant of the diversity of mining operations in each sector, and has applied that knowledge as it developed the final rule.

In determining revenues for coal mines, MSHA multiplied coal production data (in tons) for mines in specific size categories (reported to MSHA quarterly) by $18.14 per ton, Department of Energy (1997). For metal and nonmetal mines, the Agency estimated revenues for specific mine size categories as the proportionate share of these mines' contribution to the Gross National Product, Department of Interior (1998).

Results of Screening Analysis

As shown in the following chart, for coal mine operators with fewer than 20 employees, the estimated yearly cost of the final rule is $400 per mine operator, and estimated yearly costs as a percentage of revenues are 0.08 percent. As shown in the next chart, for coal mine operators with 500 or fewer employees, the estimated yearly savings from the final rule are $634 per mine operator. The savings are due to the elimination of existing coal industry requirements for performing and recording semiannual surveys and other related surveys and reports.

TABLE 1.—THE IMPACT OF FINAL RULE ON THE COAL MINING INDUSTRY*

Mine type	Estimated costs	Estimated revenue	Estimated cost per mine	Cost as percent of revenue
Small (<20)	$603,941	$767,307,869	$400	0.08
Large (≥20)	763,112	18,964,691,818	727	0.00

*Source: Preliminary Data 1997 from CM441 and Department of Energy/Energy Information Agency. Annual Energy Review 1997. POE/EIA–038497. July 1998. P. 187.

TABLE 2.—THE IMPACT OF FINAL RULE ON THE COAL MINING INDUSTRY*

Mine type	Estimated costs	Estimated revenue	Estimated cost per mine	Cost as percent of revenue
Small (≤500)	$1,296,461	$19,038,974,646	$508	0.01
Large (<500)	70,592	693,025,041	6,403	0.01

*Source: Preliminary Data 1997 from CM441 and Department of Energy/Energy Information Agency. Annual Energy Review 1997. POE/EIA–038497. July 1998, P. 187.

As shown in the following chart, for metal/nonmetal mines with fewer than 20 employees, the estimated yearly cost of the final rule is $414 per mine operator, and estimated costs as a percentage of revenues are 0.04 percent. As shown in the next chart, for metal/nonmetal mine operators with 500 or fewer employees, the estimated yearly cost is $617 per mine operator, and estimated costs as a percentage of revenues are 0.02 percent.

TABLE 3.—THE IMPACT OF FINAL RULE ON THE METAL/NONMETAL MINING INDUSTRY*

Mine type	Mine costs	Estimated revenue	Estimated Cost per mine	Cost as percent of revenue
Small (<20)	$4,321,282	$10,651,022,009	$460	0.04
Large (≥20)	3,056,036	27,348,977,991	1,945	0.01

*Source: Preliminary Data 1997 from CM441 and Department of Interior, Bureau of Mines, Mineral.

TABLE 4.—DISTRIBUTION OF MINE OPERATIONS AND EMPLOYMENT BY MINE TYPE AND SIZE INCLUDING INDEPENDENT CONTRACTORS AND CONTRACTOR WORKERS POTENTIALLY AFFECTED BY THE FINAL RULE*

Mine Size (No. of employees)	Coal			Metal/nonmetal		
	No. of mines	No. of miners	Miners per mine	No. of mines	No. of miners	Miners per mine
Small (<20)	2,401	14,347	5.97	10,098	56,859	5.63
Large (≥20)	1,133	82,142	72.48	1,666	122,378	73.45
Total	3,535	96,489	27.30	11,764	179,238	15.24

*Source: Table 2 and Table 3. Office workers are not included in these employment figures.

In all cases, the cost of complying with the final rule is less than one percent of revenues, well below the level suggesting that the final rule might have a significant impact on a substantial number of small entities. Accordingly, MSHA has certified that there is no such impact on small coal mines or small metal/nonmetal mines.

Regulatory Alternatives Considered

The limited impacts on small mines, regardless of size definition, reflect decisions by MSHA not to include more costly regulatory alternatives. In considering regulatory alternatives for small mines, MSHA must observe the requirements of its authorizing statute. Section 101(a)(6)(A) of the Mine Act requires the Secretary to set standards which most adequately assure, on the basis of the best available evidence, that no miner will suffer material impairment of health over his/her working lifetime. In addition, the Mine Act requires that the Secretary, when promulgating mandatory standards pertaining to toxic materials or harmful physical agents, consider other factors, such as the latest scientific data in the field, the feasibility of the standard, and experience gained under the Act and other health and safety laws. Thus, the Mine Act requires that the Secretary, in promulgating a standard, attain the highest degree of health and safety protection for the miner, based on the "best available evidence," with feasibility as a consideration.

As a result of this statutory requirement, MSHA considered two alternatives that would have significantly increased costs for small mine operators lowering the permissible exposure level to a TWA_8 of 85 dBA, and lowering the exchange rate to 3 dB. In both cases, the scientific evidence in favor of these approaches was strong, but commenters offered divergent views on the alternatives. In both cases, for the purpose of this final rule, MSHA has concluded that it would not be feasible for the mining industry to accomplish these more protective approaches. The impact of these approaches on small mine operators was an important consideration in this regard.

Further, MSHA proposed using an 80-dBA threshold for determining the permissible exposure level. If the Agency had done this, the number of mines with exposure levels at or above the permissible exposure level would have increased substantially. Accordingly, with more mines above this level, the total cost of compliance would have been higher, including penalties. Many commenters opposed the change in the threshold. They believed that the current 90-dBA threshold was sufficient for achieving adequate health protection for miners and was compatible with OSHA's noise standard. Additionally, as discussed in more detail later in the preamble, MSHA did not intend to change the permissible exposure level for noise. A change in the threshold would have had this effect. For these reasons, the final rule includes the existing threshold for the permissible exposure level.

Under the proposal, the mine operator would have had to make certain that miners exposed above the permissible exposure level take the audiometric examination. Several commenters expressed concerns about the enforceability of this provision. MSHA considered these concerns, and under the final rule, audiometric testing is voluntary. In this regard, it is also compatible with OSHA's noise standard.

In addition, under the proposal, mine operators would not have been allowed to use hearing protectors as a substitute for the 14-hour quiet period prior to an audiogram. Mine operators had stated that they could not, without substantial burden to production and management, meet this requirement. Some noted that in cases in which the audiometric testing cannot be scheduled on a day after a non-work day, the only way to ensure a 14-hour quiet period was to pay the miner not to work. Under the final rule, mine operators may use hearing protectors as a substitute for the quiet period. Again, this is compatible with OSHA's noise standard.

Paperwork Impact

In accordance with the Regulatory Flexibility Act and the Paperwork Reduction Act of 1995, MSHA has analyzed the paperwork burden for both metal and nonmetal and coal mines. While the final rule results in a net paperwork burden decrease for large coal mines in year one and both small and large coal mines after year one, there will be an increase in paperwork burden hours for small coal mines in year one and in metal and nonmetal mines' year one and every year thereafter.

For small coal mines with fewer than 20 miners the final rule will result in an increase of about 485 paperwork burden hours in year one. After year one there will be a savings of 4,438 paperwork burden hours for small coal mines. For large coal mines with 20 or more miners, the final rule will result in a decrease of about 10,405 paperwork

burden hours in year one, and a savings of 28,498 each year thereafter. For metal and nonmetal mines, the final rule will result in an increase of paperwork burden hours for both small and large mines. There will be an increase of 33,955 paperwork burden hours for small metal and nonmetal mines and increase of 38,183 paperwork burden hours for large metal and nonmetal mines in year one. After year one, there will be an increase of 15,526 paperwork burden hours per year for small metal and nonmetal mines, and an increase of 14,331 per year for large.

Although the substantial increases in paperwork burden hours result from §§ 62.175 and 62.180 for coal mines, these will be offset by the net savings of §§ 62.110–62.130, which eliminate current requirements for biannual noise surveys and other miscellaneous reports and surveys in that sector. However, for metal and nonmetal mines there will be an increase in paperwork burden hours associated with complying with the final rule.

As required by the Paperwork Reduction Act of 1995, MSHA has included in its paperwork burden estimates the time needed to perform tasks associated with information collection. For example, the final rule requires a mine operator to notify a miner if the miner's noise exposure equals or exceeds the action level. In order to determine if notification is necessary, the mine operator must perform a dose determination. MSHA has included the time needed for dose determination in its burden estimate, as required under PRA 95.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

In accordance with the Small Business Regulatory Enforcement Fairness Act (SBREFA) amendments to the Regulatory Flexibility Act, MSHA carefully considered all of the proposed requirements, in addition to alternatives to the proposal, to ensure that the final rule would provide the least burdensome impact necessary to promote miner health. MSHA believes that it has complied with the SBREFA amendments.

The preamble to the proposed rule included a full discussion of MSHA's preliminary conclusions about regulatory alternatives. The public was invited to suggest additional alternatives for compliance.

MSHA is taking several actions to minimize the compliance burden on small mines. The effective date of the final rule will be a full year after its publication, to provide adequate time for small mines to achieve compliance and for MSHA to brief the mining community about the rule's requirements. Also, as stated previously, MSHA will mail a copy of the final rule to every mine operator, which benefits small mine operators. The Agency has committed itself to issuance of a compliance guide for all mines; MSHA believes that compliance workshops or other approaches will be valuable and the Agency will hold such workshops if requested.

For this rulemaking's Regulatory Flexibility Analysis, the Agency is using its traditional definition of "small mine" as a mine with fewer than 20 employees, in addition to the SBA's definition of operations with fewer than 500 employees, as required by the Regulatory Flexibility Act. For purposes of this final rule, MSHA has continued its past practice of using "under 20 miners" as the appropriate point of reference, in addition to SBA's definition. Reviewers will note that the paperwork and cost discussions continue to refer to the impacts on "small" mines with fewer than 20 employees. The Agency has not established a definition of "small entity" for purposes of the final rule. Based on this analysis, MSHA concludes that whatever definition of "small entity" is eventually selected, the final noise rule does not have a significant economic impact on a substantial number of small entities.

Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

In accordance with Executive Order 13045, MSHA has evaluated the environmental health and safety effects of the final rule on children. The Agency has determined that the final rule will have no adverse effects on children.

Environmental Assessment

The final noise rule has been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council of Environmental Quality (CEQ) (40 CFR part 1500) and the Department of Labor's NEPA compliance procedures (29 CFR part 11). In the **Federal Register** of May 26, 1998 (63 FR 28496), MSHA made a preliminary determination that the proposed noise rule was of a type that does not have a significant impact on the human environment. In response, one comment was received by the Agency. The commenter expressed a concern that the Agency had not prepared an environmental assessment in accordance with NEPA, the CEQ and the Department's procedural regulations. MSHA's preliminary determination was based on its Regulatory Impact Analysis which explained the costs and benefits of the proposed rule. MSHA has complied with the requirements of the NEPA, including the Department of Labor's compliance procedures and the regulations of the Council on Environmental Quality. The Agency has not received any new information or comments that would affect its previous determination. As a result of the Agency's review of the final noise rule, MSHA has concluded that the rule will not have significant environmental impacts, and therefore neither an environmental assessment nor an environmental impact statement is required. In addition, MSHA believes that the final rule will indirectly aid the environment since many of the engineering controls which control noise, such as mufflers and curtains, also aid in controlling environmental pollutants.

Executive Order 13084 (Consultation and Coordination With Indian Tribal Governments)

MSHA certifies that the final rule does not impose substantial direct compliance costs on Indian tribal governments. Further, MSHA provided the public, including Indian tribal governments which operated mines, the opportunity to comment on the proposal and to participate in the public hearing process. No Indian tribal government applied for a waiver or commented on the proposal.

Executive Order 12612 Federalism

Executive Order 12612, regarding federalism, requires that agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions which would restrict state policy options, and take such actions only when there is clear constitutional authority and the presence of a problem of national scope. Because this final rule does not limit state policy options, it complies with the principles of federalism and with Executive Order 12612.

Unfunded Mandates Reform Act of 1995

MSHA has determined that, for purposes of § 202 of the Unfunded Mandates Reform Act of 1995, this final rule does not include any Federal mandate that may result in increased expenditures by State, local, or tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million. Moreover, the Agency has determined that for purposes of § 203 of that Act, this final rule does not significantly or uniquely affect small governments.

Background

The Unfunded Mandates Reform Act was enacted in 1995. While much of the Act is designed to assist the Congress in determining whether its actions will impose costly new mandates on State, local, and tribal governments, the Act also includes requirements to assist Federal agencies to make this same determination with respect to regulatory actions.

Analysis

Based on the analysis in the Agency's final Regulatory Economic Analysis, the annualized cost of this final rule is approximately $8.9 million. Accordingly, there is no need for further analysis under § 202 of the Unfunded Mandates Reform Act.

MSHA has concluded that small governmental entities are not significantly or uniquely impacted by the final regulation. The final rule will impact approximately 15,299 coal and metal and nonmetal mining operations; however, increased costs will be incurred only by those operations (approximately 10,476 mines) where noise exposures exceed the allowable limits. MSHA estimates that approximately 187 sand and gravel or crushed stone operations are run by state, local, or tribal governments and will be impacted by this rule.

When MSHA issued the proposed rule, the Agency affirmatively sought input of any state, local, and tribal government which may be affected by the noise rulemaking. This included state and local governmental entities who operate sand and gravel mines in the construction and repair of highways and roads. MSHA mailed a copy of the proposed rule to these entities. No state, local or tribal government entity commented on the proposed rule. When the final rule is published, MSHA will mail a copy to all 187 entities.

IV. Miscellaneous

Permissible Exposure Level

The final rule affirms MSHA's initial determination, set out in the proposal, that there is a significant risk for miners of material impairment from noise exposures at or above an 8-hour time-weighted average of 85 dBA. However, the final rule also comports with MSHA's initial conclusion that it would not be either technologically or economically feasible at this time for the mining industry to implement a reduced permissible exposure level for noise, including a reduction in the exchange rate. For these reasons the final rule does not reduce the permissible exposure level, but it does require mine operators to take a number of other actions that will substantially reduce miners' risk of occupational noise-induced hearing loss.

MSHA will continue to examine closely the feasibility of a reduction in the permissible exposure level for miners' noise exposure. This will include, but is not limited to, assessment of the availability and suitability of equipment retrofits for noise control, evaluation of the state of existing noise control technology appropriate for mining applications, and the availability of alternative, and less noisy, equipment for various mining tasks. MSHA intends to work closely with all segments of the mining community in its continuing assessment of feasibility.

NIOSH Criteria Document

In March 1996, the National Institute for Occupational Safety and Health (NIOSH) released for peer review a draft Criteria Document for Occupational Noise Exposure, which was intended to update an earlier NIOSH Criteria Document for Noise that had been issued in 1972. MSHA summarized the recommendations of the draft Criteria Document in the preamble to the proposed rule (61 FR 66369–66370), and considered the draft Criteria Document recommendations, as well as comments that addressed the draft Criteria Document, in developing this final rule.

In June 1998 NIOSH issued the final Criteria Document for Occupational Noise Exposure, which in large part adopts the recommendations of the 1996 draft Criteria Document, which, as mentioned above, were considered as part of this rulemaking. However, the final Criteria Document does include several recommendations which differ from recommendations in the 1996 draft Criteria Document. The main differences between the draft and the final Criteria Documents are as follows:

1. Action level. In the draft document, NIOSH proposed what was essentially an "action level" that would trigger establishment of a Hearing Loss Prevention Program. The "action level" would have been an 8-hour TWA of 85 dBA. The final Criteria Document does not adopt the "action level" concept, and instead would trigger establishment of a Hearing Loss Prevention Program at the recommended exposure limit of an 85 dBA TWA_8. Under MSHA's final rule, a miner's noise exposure at 85 dBA TWA_8 requires enrollment of the miner in a Hearing Conservation Program.

2. Ceiling Level. The NIOSH draft Criteria Document recommended a ceiling at a 115 dBA sound pressure level. The final Criteria Document recommends a 140 dBA sound pressure level ceiling limit for continuous, varying, intermittent, or impulsive noise.

3. Dual Hearing Protection Level. The draft Criteria Document did not make a recommendation for such a level. However, the final Criteria Document recommends the use of dual hearing protection at exposures exceeding a TWA_8 of 100 dBA.

4. Quiet Period. The draft Criteria Document recommended a 14-hour quiet period prior to a baseline audiogram, and would not permit the use of hearing protectors as a substitute. The final Criteria Document recommends a quiet period of 12 hours, and still would not permit the use of hearing protectors in lieu of the quiet period.

Rule Format

In the preamble to the proposed rule MSHA solicited comments on the appropriate format for the final rule, providing examples for commenters of alternate approaches. There was no clear consensus among commenters to the proposal that the traditional format of MSHA's regulations should be changed. As a result, the final rule adopts the format of existing MSHA regulations.

Unlike the proposal the final rule does not include a question and answer section. Instead, after publication of the final rule, MSHA will develop and issue a compliance guide for the mining community to facilitate its understanding of and compliance with the requirements of the final rule. Additionally, MSHA is receptive to submission by the mining community of suggestions for issues that should be addressed in the compliance guide.

V. Material Impairment

Section 101(a)(6) of the Federal Mine Safety and Health Act of 1977 (Mine Act) provides that, in dealing with toxic materials or harmful physical agents, standards set by the Secretary shall:

* * * most adequately assure on the basis of the best available evidence that no miner will suffer material impairment of health or functional capacity even if such miner has regular exposure to the hazards dealt with by such standard for the period of his working life.

MSHA has determined that there is a significant risk of material impairment of health and functional capacity to miners from exposure to workplace noise despite the existing noise standards, and the Agency's rulemaking evidence supports this. MSHA anticipates that the final rule will reduce, by approximately two-thirds, the number of miners who will suffer a material impairment due to exposure to

occupational noise under the existing regulations.

MSHA's conclusion that there is a significant risk of material impairment of health for workers exposed over their working lifetimes to sound levels of 85 dBA is based on the Agency's definition of material impairment, which is referred to in this preamble as the OSHA/NIOSH–72 definition. Under the OSHA/NIOSH–72 definition, the excess risk of a hearing impairment from occupational noise exposure is 15% or one-hundred fifty-in-a-thousand miners at an 85 dBA TWA_8 exposure for a working lifetime. The Supreme Court has indicated, in discussing significant risk in the context of litigation under section 6(f) of the OSH Act, that OSHA is free to use conservative assumptions in interpreting data so long as they are supported by reputable scientific concepts, and that a one-in-a-thousand risk is significant. *Industrial Union Department, AFL–CIO* v. *American Petroleum Institute*, 448 U.S. 607, 655 (1980) (the Benzene Case). If the Mine Act were to impose the same risk-finding requirement as the OSH Act, MSHA's determination of a significant risk of material impairment of health falls well within the Supreme Court's direction to OSHA in the Benzene Case.

Exposure to hazardous sound levels results in noise-induced hearing loss. Noise-induced hearing loss is often described in terms of the relationship between the sound level to which a person is exposed and the duration of the exposure. Exposures to noise at sound levels equal to or greater than the 8-hour average sound level of 85 dBA have been shown to lead to hearing loss, which can be temporary or permanent.

Noise-induced hearing loss causes difficulty in hearing and understanding speech. People suffering from significant noise-induced hearing loss require even nearby persons to speak loudly and clearly to be understood, and they are often frustrated by missing vital information. Also, background noise affects the person's ability to distinguish meaningful sounds from ambient noise. Little benefit can be derived from the use of a hearing aid because it amplifies sound indiscriminately, without increasing clarity, decreasing distortion, or screening out unwanted sounds. Noise also produces secondary, non-auditory effects.

Although the secondary effects of noise-induced hearing loss are more difficult to identify, document, and quantify than the hearing loss itself, recent laboratory and field studies have found an association between noise and cardiovascular problems and other illnesses such as hypertension. Studies also suggest that holding exposure below a time-weighted average of 85 dBA will significantly improve both psychological and physiological stress reactions.

Safety risks at the workplace may arise as a result of noise-induced hearing loss. Workers suffering from noise-induced hearing loss may not hear safety signals because of reduced hearing sensitivity to higher frequencies. In addition, noise-induced hearing loss results in the loss of the ability to distinguish between many pairs of consonants, which makes speech incomprehensible. As a result, miners suffering from noise-induced hearing loss may have trouble understanding directions or warnings given by their supervisors or co-workers.

Definition of Material Impairment

MSHA has determined that a 25 dB hearing level averaged over 1000, 2000, and 3000 Hz in both ears is the most appropriate gauge of a miner's risk of developing significant noise-induced hearing loss. MSHA therefore considers such a loss to constitute a material impairment in hearing. MSHA's definition of material impairment is based on one developed in 1972 by NIOSH and subsequently adopted by OSHA in its noise standard for general industry, referred to below as the OSHA/NIOSH–72 definition. (As noted by a commenter, the preamble to the proposed rule incorrectly stated that the OSHA/NIOSH–72 definition included the phrase "in either ear." This mistake is corrected here and in the final rule.) In addition, as discussed elsewhere in this preamble, MSHA notes that it has not adopted the revised definition of material impairment set forth in the final NIOSH Criteria Document issued in June 1998. Throughout this preamble, therefore, MSHA will continue to refer to the definition of material impairment developed by NIOSH in 1972.

In nearly all studies of risk, material impairment from exposure to noise is defined as a 25-dB hearing level. Hearing level is the deviation in hearing sensitivity from audiometric zero. Positive values indicate poorer hearing sensitivity than audiometric zero, while negative values indicate better hearing. Audiometric zero is the lowest sound pressure level that the average, young adult with normal hearing can hear. Because of the widespread use of this definition in the scientific community, MSHA has used it in the final rule.

Most definitions of hearing impairment are based solely on pure tone audiometry, in which an audiometer is used to measure an individual's threshold hearing level the lowest level of discrete frequency tones that he or she can hear. The test procedures for pure tone audiometry are relatively simple, widely used, and standardized. Although there is little debate in the scientific community about the usefulness of pure tone audiometry in assessing hearing loss, there is some disagreement about the range of audiometric frequencies that should be used in determining hearing loss.

When OSHA initially published its noise standard establishing noise exposure limits for employees, most medical professionals used the 1959 criteria developed by the American Academy of Ophthalmology and Otolaryngology (AAOO), a subgroup of the American Medical Association (AMA). This definition (AAOO 1959) of hearing impairment is a hearing level exceeding 25 dB, referenced to audiometric zero, averaged over 500, 1000, and 2000 Hz in either ear. The American Academy of Otolaryngology Committee on Hearing and Equilibrium and the American Council of Otolaryngology Committee on the Medical Aspects of Noise (AAO–HNS) modified the 1959 criteria in 1979 by adding the hearing level at 3000 Hz to the 500, 1000, and 2000 Hz frequencies. The AAOO 1959 and AAO–HNS 1979 definitions cover all types of hearing loss and were designed for hearing speech under relatively quiet conditions. The NIOSH–72 definition includes the higher frequencies, which are crucial to the comprehension of speech under everyday conditions.

In its draft 1996 Criteria Document for occupational noise exposure, NIOSH indicated that it was considering a new definition for material impairment of a 25 dB or greater hearing loss at 1000, 2000, 3000, and 4000 Hz in both ears. This definition was a recommendation of a Task Force to the American Speech-Language-Hearing Association (ASHA) in 1981. In 1997, NIOSH conducted a reanalysis of the NIOSH-Occupational Noise and Hearing Survey data and reevaluated the excess risk of material hearing impairment incorporating the 4000 hertz audiometric frequency in the definition of material impairment. (Excess risk is defined by NIOSH as the percentage with material impairment of hearing in an occupational noise exposed population after subtracting the percentage who would normally incur such impairment from other causes in a population not exposed to occupational noise.) In 1998, NIOSH published the results of this reanalysis in its final Criteria Document. The excess risk of developing occupational noise induced hearing loss under the reassessment is 8%. The excess risk of developing occupational noise induced hearing loss under the 1972 NIOSH definition of material impairment is 15% for average noise exposure level of 85 dBA. The final Criteria Document recommends that the reanalysis reaffirms support for the 85 dBA NIOSH recommended exposure limit.

The final rule does not adopt the revised NIOSH definition for hearing impairment. Several commenters noted that this definition has not been adopted by the scientific community, and no state workers' compensation agency awards compensation for hearing impairment based upon the current NIOSH hearing impairment criterion. Despite the fact that noise-induced hearing loss usually first becomes detectable at 4000 Hz, MSHA finds that the scientific evidence does not, as yet, support including 4000 Hz in the frequencies used for calculating hearing impairment. Inclusion of test frequencies above 2000 Hz, however, is necessary to show the effect of noise below 90 dBA on hearing, so MSHA continues to include the 3000 Hz frequency. Several commenters suggested that MSHA use the AAO–HNS 1979 definition of material impairment. There were relatively few commenters in favor of using the AAO–HNS 1979 definition. MSHA has excluded the 500 Hz frequency from the definition of hearing impairment because it is not as critical for understanding speech and is least affected by noise. MSHA chose the hearing levels at 1000, 2000, and 3000 Hz on which to base its definition of material impairment because high frequency hearing is critically important to the understanding of speech, which often takes place in noisy conditions. The Agency's determination is consistent with OSHA's reasoning for its noise standard, and many comments and studies cited support this approach.

Risk of Impairment

The risk of developing a material impairment becomes significant over a working lifetime when workplace exposure to noise exceeds sound levels of 85 dBA. Data reviewed by the Agency indicate that lowering exposure from 90 dBA to 85 dBA does not eliminate the risk, it reduces the risk by approximately half.

Typically, noise-induced hearing loss occurs first at 4000 Hz and then progresses into the lower and higher frequencies. MSHA notes that because noise does not affect hearing sensitivity equally across all frequencies, the population defined as impaired will differ according to the frequencies that are used in the measurement criteria. For example, AAOO 1959 is weighted toward the lower frequencies, because it was developed to determine an individual's ability to communicate under quiet conditions. AAO–HNS, which includes 3000 Hz, is weighted toward the higher frequencies. Because OSHA/NIOSH–72 is weighted even more towards the higher frequencies due to the elimination of the hearing level at 500 Hz, the population of those impaired due to noise exposure will be greater than under the AAOO 1959 and AAO–HNS 1979 definition.

MSHA has found that there is no reliable mathematical relationship among the three ways of assessing hearing impairment, so that direct comparisons of their results are not possible. That is, it is not possible to accurately predict the values computed using one definition from values computed using either of the other two methods. In addition, most of the raw data that would allow conversion from one definition to another are no longer available. Nonetheless, the results from all three approaches tend to demonstrate the same result.

Measuring Risk

MSHA could not determine an individual miner's risk from exposure to particular levels of noise because at any given noise exposure, some miners will suffer harm long before others, and a miner's susceptibility cannot be measured in advance of exposure. However, as MSHA noted in the proposal, risks can be determined for entire populations. The probability of acquiring a material impairment of hearing in a given population can be determined by extrapolating from data obtained from a test population exposed to the same sound levels. Three methods are generally used to express this population risk:

(1) The hearing level of the exposed population;

(2) The percentage of an exposed population meeting the selected criteria; and

(3) The percentage of an exposed population meeting the selected criteria minus the percentage of a non-noise exposed population meeting the same criteria, provided both populations are similar, apart from their occupational noise exposures.

MSHA has determined that the third method, commonly known as "excess risk," provides the most accurate picture of the risk of hearing loss resulting from occupational noise exposure. OSHA also used this method in quantifying the degree of risk in the preamble to its noise standard (46 FR 9739, 1983). This method allows the differentiation of the population expected to develop a hearing impairment due to occupational noise exposure from the population expected to develop an impairment from non-occupational causes, such as aging or medical problems.

Although studies of hearing loss in the rulemaking record consistently indicate that exposure to increased sound levels or increased duration results in increased hearing loss, the reported risk estimates of occupational noise-induced hearing loss vary considerably from one study to another. The variation is due to three factors:

(1) The definition of "material impairment" used (discussed above);

(2) The screening of the control (non-noise-exposed) group; and

(3) The sound level below which material impairment from noise exposure is not expected to occur.

In some of the data used by MSHA, researchers did not screen their study and control populations, while in others they used a variety of screening criteria. Theoretically, screening does not have a significant impact on the magnitude of occupational noise-induced hearing loss experienced by given populations as long as the same criteria are used to screen both the noise-exposed and the non-noise-exposed populations being compared. However, failure to take into account any non-occupational noise exposure, loss of hearing sensitivity due to aging, or both, can have a profound effect when considering whether the subjects have exceeded an established definition of material impairment. For example, if both the exposed and control populations are screened to eliminate persons with a history of military exposure, use of medicines harmful to the ear, noisy hobbies, and conductive hearing loss from acoustic trauma or illness, the excess risk would be significantly different from that determined using unscreened populations.

The studies used by MSHA for the final as well as the proposed rule generally assumed exposures below 80 dBA to be nonhazardous. Although a few researchers—Kryter (1970) and Ambasankaran et al. (1981)—have reported hearing loss from exposure to sound levels below 80 dBA, most scientists believe that the risk of developing a material impairment of hearing from exposure to such low levels over a working lifetime is negligible. Accordingly, almost all noise risk studies consider the population exposed only to average levels of noise below 80 dBA as a "non-noise exposed"

control group. Thus, 80 dBA has become the lower sound level against which other noise exposures are compared to determine the "excess risk." This position was adopted by OSHA in its evaluation of the risk of hearing loss for its existing standard on hearing conservation.

Review of Study Data

As noted in the preamble to the proposed rule, Table 1 is derived from the preamble to OSHA's noise standard (46 FR 4084). It displays the percentage of the population expected to develop a hearing impairment meeting the AAOO 1959 definition if exposed to the specified sound levels over a working lifetime of 40 years. This is a compilation of data developed by the U.S. Environmental Protection Agency (EPA) in 1973, the International Standards Organization (ISO) in 1975, and NIOSH in 1972. EPA, ISO, and NIOSH developed their risk assessments based on the AAOO 1959 definition, which was used by the original researchers.

TABLE 1.—OSHA RISK TABLE

Sound level (dBA)	Excess risk (%)			
	ISO (1975)	EPA (1973)	NIOSH (1972)	Range
80	0	5	3	0–5
85	10	12	15	10–15
90	21	22	29	21–29

The excess risk of material impairment under the 1997/1998 NIOSH reanalysis is discussed earlier in this preamble under *Definition of Material Impairment.*

Table 1 shows that the excess risk of material impairment after a working lifetime at a noise exposure of 80 dBA is low. On the other hand, a noise exposure of 85 dBA indicates a risk ranging from 10% to 15%. At a noise exposure of 90 dBA, the risk ranges from 21% to 29%.

Table 2 presents additional information on the risk assessments calculated by NIOSH (Table XVII, Criteria Document, 1972), one portion of which was included in Table 1. Table 2 is based on both the AAOO 1959 and the OSHA/NIOSH–72 definitions. It shows that NIOSH's risk assessment found little difference between using the OSHA/NIOSH–72 definition and using the AAOO 1959 criteria.

TABLE 2.—NIOSH RISK TABLE

Sound level (dBA)	Excess risk (%)	
	OSHA/ NIOSH–72	AAOO 1959
80	3	3
85	16	15
90	29	29

Regarding how adjustments to the definitions used would affect the excess risk figures above, MSHA agrees with several researchers referred to by commenters. Suter (1988) estimates that the excess risk would be somewhat higher if 500 Hz were excluded and 3000 Hz were included in the definition of material impairment. Sataloff (1984) reports that the effect of including hearing loss at 3000 Hz in the AAOO 1959 definition of hearing impairment would dramatically increase the prevalence of hearing impairment, as follows. After 20 years of exposure to intermittent noise that peaked at 118 dBA, 3% of the workers experienced hearing impairment according to the AAOO 1959 definition of hearing impairment. If the AAO–HNS 1979 definition is used, the percentage increases to 9%. Royster et al. confirmed that the exclusion of 500 Hz and the inclusion of 3000 Hz increased the number of hearing impaired individuals in their study of potential workers' compensation costs for hearing impairment (Royster et al., 1978). Using an average hearing loss of 25 dB as the criterion, Royster found that 3.5% of the industrial workers developed a hearing impairment according to AAOO 1959, 6.2% according to AAO–HNS 1979, and 8.6% according to the OSHA/NIOSH–72 definition.

MSHA included the following three tables in the preamble to the proposed rule in order to show data regarding the working lifetime risk of material impairment based upon the three different definitions commonly used for material impairment. Table 3 is based on AAO 1959, Table 4 is based on AAO–HNS 1979, and, Table 5 is based on the OSHA/NIOSH–72 definition. MSHA constructed these tables based on data presented in Volume 1 of the Ohio State Research Foundation Report (Melnick et al., 1980) commissioned by OSHA. The hearing level data used to construct the tables are taken from summary graphs in that report. The noise-exposed population was 65 years old, with 40 years of noise exposure. Because the control group was not screened for the cause of hearing loss, a high level of non-occupational hearing loss may undervalue the excess risk from occupational noise exposure. The researchers (Melnick et al., 1980) added the component of noise-induced permanent threshold shift (the actual shift in hearing level due only to noise exposure) to the control data.

MSHA did not receive any comments on the three tables reflecting the predictable fact that, for any given population, the excess risk of material impairment due to noise exposure will be greater using the AAO–HNS 1979 definition than using the AAOO 1959 definition. Likewise, the excess risk of material impairment due to noise exposure will be greater using the OSHA/NIOSH–72 definition than using the AAO–HNS 1979 definition. All three tables show a smaller excess risk than did the data presented in Table 1.

TABLE 3.—RISK OF IMPAIRMENT USING AAOO 1959 DEFINITION OF IMPAIRMENT AND USING MELNICK ET AL., 1980 DATA

Exposure	Percent with impairment	Excess risk (percent) with noise exposure
non-noise	26.8	0.0
80 dBA	26.8	0.0
85 dBA	27.8	1.0
90 dBA	31.4	4.6

TABLE 4.—RISK OF IMPAIRMENT USING AAO–HNS 1979 DEFINITION OF IMPAIRMENT AND USING MELNICK ET AL., 1980 DATA

Exposure	Percent with impairment	Excess risk (percent) with noise exposure
non-noise	41.6	0.0
80 dBA	41.8	0.2

TABLE 4.—RISK OF IMPAIRMENT USING AAO–HNS 1979 DEFINITION OF IMPAIRMENT AND USING MELNICK ET AL., 1980 DATA—Continued

Exposure	Percent with impairment	Excess risk (percent) with noise exposure
85 dBA	44.4	2.8
90 dBA	50.0	8.4

TABLE 5.—RISK OF IMPAIRMENT USING OSHA/NIOSH–72 DEFINITION OF IMPAIRMENT AND USING MELNICK ET AL., 1980 DATA

Exposure	Percent with impairment	Excess risk (percent) with noise exposure
non-noise	48.5	0.0
80 dBA	48.7	0.2
85 dBA	51.5	3.0
90 dBA	57.9	9.4

The excess risk in Table 1 represents the risk assessments conducted by ISO, EPA, and NIOSH in three different years during the early 1970's. All three agencies used the same definition of impairment (AAOO 1959) in evaluating available studies. Their results are similar.

MSHA applied three different definitions of hearing impairment to the same data (Melnick 1980) to show that the excess risk of impairment varies depending on how you define impairment. Tables 3, 4, and 5 present the results of this analysis. Because Melnick did not screen his control group for the cause of the hearing loss (could be non-occupational noise exposure), the amount of hearing loss in the supposed non-noise exposed group is high. By subtracting the value for the non-noise exposed (control) group from the values determined for groups with different levels of occupational noise exposure, we determined the excess risk for populations exposed at that level.

Tables 6 and 7 were also included in the preamble to the proposed rule to show data derived by Melnick in *Forensic Audiology* (1982) for risk of impairment due to noise exposure. These tables show the results of applying the AAO-HNS 1979 method to a population that is 60 years old with 40 years of exposure to the specified sound levels. In both tables, the data represent the noise-induced permanent threshold shift calculated by Johnson, but the screening criteria used in the two tables are different. Melnick's data in Table 6 are based upon the screened age-induced hearing loss data (that is, they are screened for non-occupational hearing loss) of Robinson and Passchier-Vermeer, whereas Table 7 is based on unscreened, non-occupational hearing loss data from the 1960–62 U.S. Public Health Survey.

Overall, the excess risk information presented in these tables is closer to that in Table 1 than to that in Tables 3, 4, and 5, but still differs. Tables 6 and 7 directly illustrate the effect of screening populations in determining excess risk due to occupational noise exposure. Comparison of these tables shows that the percentage of workers with hearing impairment is greater in the table constructed with an unscreened population as the base.

TABLE 6.—RISK OF IMPAIRMENT USING AGE-INDUCED HEARING LOSS DATA OF PASSCHIER-VERMEER AND ROBINSON

Exposure	Percent with impairment	Excess risk (percent) with noise exposure
75 dBA	3	0
80 dBA	5	2
85 dBA	9	6
90 dBA	21	18

TABLE 7.—RISK OF IMPAIRMENT USING NON-OCCUPATIONAL HEARING

Exposure	Percent with impairment	Excess risk (percent) with noise exposure
75 dBA	27	0
80 dBA	29	2
85 dBA	33	6
90 dBA	40	13

Chart 1 incorporates the risk assessment results of Tables 3, 4, 5, 6, and 7.

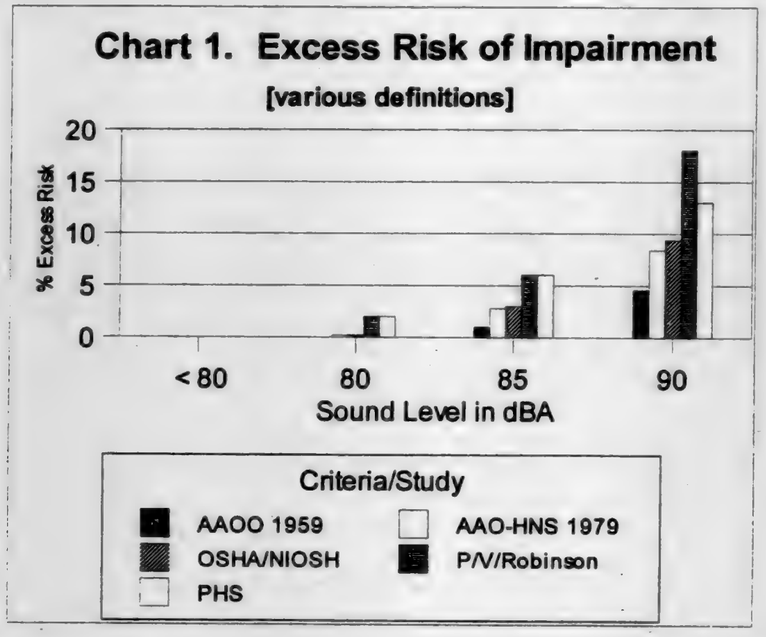

Note that the data from both Table 6 and Table 7 used the AAO-HNS 1979 definition. The exact numbers of those at risk varies with the study because of the definition of material impairment used, the screening criteria used, and the selection of the control group. Despite these differences, the data consistently demonstrate three points:

(1) The excess risk increases as noise exposure increases;

(2) There is a significant risk of material impairment of hearing loss for workers exposed over their working lifetimes to sound levels of 85 dBA; and

(3) Lowering the exposure from 90 dBA to 85 dBA reduces the excess risk of developing a material impairment by approximately half.

Related Studies of Worker Hearing Loss

The preamble to the proposed rule indicated that MSHA examined a large body of data on the effects of varying industrial sound levels on worker hearing sensitivity, including studies that specifically addressed the mining industry. Regardless of the industry in which the data were collected, MSHA found that exposures to similar sound levels results in similar degrees of material impairment in workers. These studies support the conclusions reached in the previous section about the risk of impairment at different sound levels.

NIOSH (Lempert and Henderson, 1973) published a report in which the relationship of noise exposure to noise-induced hearing loss was described. NIOSH studied 792 industrial workers whose daily noise exposures were 85 dBA, 90 dBA, and 95 dBA. The noise-exposed workers were compared to a control group whose noise exposures were lower than 80 dBA. The exposures were primarily to steady-state noise, but the exposure levels fluctuated slightly in each category. Both groups were screened to exclude non-occupational noise exposure or medical complications. The subjects ranged in age from 17 to 65 years old. The report clearly shows that workers whose noise exposures were 85 dBA experienced more hearing loss than the control group. In addition, as the noise exposures increased to 90 dBA and 95 dBA, the magnitude of the hearing loss increased.

NIOSH reanalyzed these data in a report, "Reexamination of NIOSH Risk Estimates" (Prince et al., 1997), which was published after MSHA's proposed rule. The authors reanalyzed the data from NIOSH's report (Lempert and Henderson, 1973) that had established a dose-response relationship for noise. In the original study, Lempert and Henderson had interpreted response to be proportional to dose. Prince interpreted the relationship to be a more complex one, and this analysis resulted in a better fit with the data. Prince's approach also consistently yielded a slightly lower excess risk. Thus, Prince concluded that there is an excess risk of developing a hearing impairment from a noise exposure of 85 dBA and above.

NIOSH (1976) published the results from a study on the effects of prolonged exposure to noise on the hearing sensitivity of 1,349 coal miners. From this study, NIOSH concluded that coal miners were losing their hearing sensitivity at a faster rate than would be expected from the measured environmental sound levels. While the majority of noise exposures were less than a TWA_8 of 90 dBA (only 12% of the noise exposures exceeded a TWA_8 of 90 dBA), the measured hearing loss of the older coal miners was indicative of noise exposures between a TWA_8 of 90 dBA and 95 dBA. NIOSH offered as a possible explanation that some miners are exposed to "very intense noise" for a sufficient number of months to cause the hearing loss.

Coal miners in the NIOSH (1976) study experienced a higher incidence of hearing impairment than the non-occupational-noise-exposed group (control group) at each age. Using the OSHA/NIOSH–72 definition of material impairment, 70% of 60-year-old coal miners were impaired while only a third of the control group were. This would correspond to an excess risk of 37%.

NIOSH also sponsored a study, conducted by Hopkinson (1981), on the prevalence of middle ear disorders in coal miners. In this study, the hearing sensitivity of 350 underground coal miners was measured. The results of this study supported the results of the 1976 NIOSH study on the hearing sensitivity of underground coal miners (i.e., coal miners had worse hearing than the controls); the measured median hearing levels of the miners were the same in the two studies.

OSHA's 1981 preamble to its Hearing Conservation Amendment referred to studies conducted by Baughn; Burns and Robinson; Martin et al.; and Berger et al. Baughn (1973) studied the effects of average noise exposures of 78 dBA, 86 dBA, and 90 dBA on 6,835 industrial workers employed in midwestern plants producing automobile parts. Noise exposures for these workers were measured for 14 years and, through interviews, exposure histories were estimated as far back as 40 years. Neither the control group nor the noise-exposed groups were screened for anatomical abnormalities of the ear.

Baughn used this data to estimate the hearing levels of workers exposed to 80 dBA, 85 dBA, and 92 dBA and extrapolated the exposures up to 115 dBA. Based upon the analysis, 43% of 58-year-old workers exposed for 40 years to noise at 85 dBA would meet the AAOO 1959 definition for hearing impairment. Thirty-three percent of an identical but non-noise exposed population would be expected to meet the same definition of impairment. The excess risk from exposure to noise at 85 dBA would therefore be 10%. Using the same procedure, the excess risk for 80 dBA is 0% and for 90 dBA is 19%.

Burns and Robinson (1970) studied the effects of noise on 759 British factory workers exposed to average sound levels between 75 dB and 120 dB with durations ranging between one month and 50 years. The control group consisted of 97 non-noise exposed workers. Thorough screening removed workers with unknown exposure histories. Also excluded were people with ear disease or abnormalities and language difficulty. Burns and Robinson analyzed 4,000 audiograms and found that the hearing levels of workers exposed to low sound levels for long periods of time were equivalent to those of other workers exposed to higher sound levels for shorter durations. From the data, the researchers developed a mathematical model that predicts hearing loss between 500 Hz and 6000 Hz in certain segments of the exposed population.

Using the Burns and Robinson mathematical model, MSHA constructed Chart 2. The chart shows that a noise exposure of 85 dBA over a 40-year career is clearly hazardous to the hearing sensitivity of 60-year-old workers. Chart 2 compares the same three definitions of impairment to the Burns-Robinson Model as used in Tables 3, 4, and 5 with the Melnick data. Chart 2 confirms the relationship between the definition of impairment and the computation of excess risk.

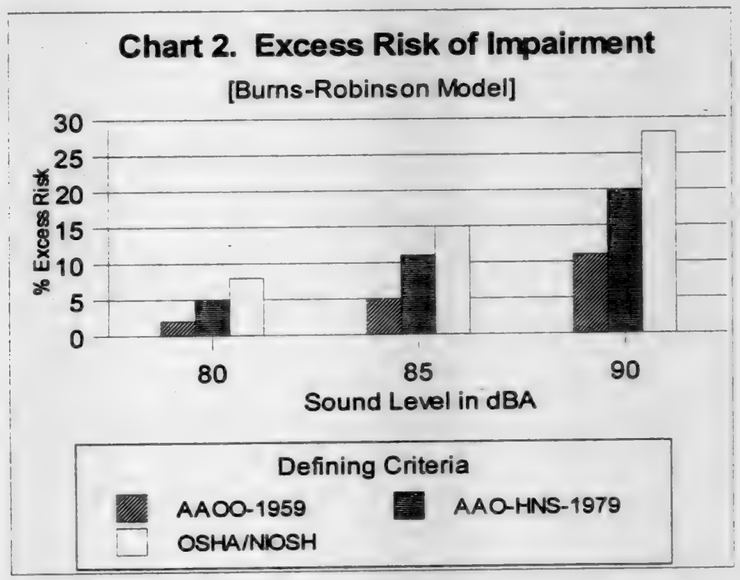

The prevalence of hearing loss in a group of 228 Canadian steel workers, ranging in age from 18 to 65 years of age, was compared to a control group of 143 office workers in a study conducted by Martin et al. (1975). The researchers reported that the risk of hearing impairment (average of 25 dB at 500, 1000, and 2000 Hz) increases significantly between 85 dBA and 90 dBA. Up to 22% of these workers would be at risk of incurring a hearing impairment with a TWA_8 90 dBA permissible exposure level compared to 4% with a TWA_8 85 dBA permissible exposure level. Both the noise-exposed and the control groups were screened to exclude workers with non-occupational hearing loss.

Passchier-Vermeer (1974) reviewed the results of eight field investigations on hearing loss among 20 groups of workers. About 4,600 people were included in the analysis. The researcher concluded that the limit of permissible noise exposure (defined as the maximum level which did not cause measurable noise-induced hearing loss, regardless of years of exposure) was shown to be 80 dBA. Furthermore, the researcher found that noise exposures

above 90 dBA caused considerable hearing loss in a large percentage of employees and recommended that noise control measures be instituted at this level. The researcher also recommended that audiometric testing be implemented when the noise exposure exceeds 80 dBA.

Berger, Royster, and Thomas (1978) studied 42 male and 58 female workers employed at an industrial facility and a control group of 222 persons who were not exposed to occupational noise. Of the 322 individuals included in the study, no one was screened for exposures to non-occupational noise such as past military service, farming, hunting, or shop work, since these exposures were common to all. The researchers found that exposure to a daily steady-state L_{eq} of 89 dBA for 10 years caused a measurable hearing loss at 4000 Hz (L_{eq} is an average sound level computed on a 3-dB exchange rate). According to the researchers, the measurable loss was in close agreement with the predictions of Burns and Robinson, Baughn, NIOSH, and Passchier-Vermeer.

Studies of Impact of Lower Sound Levels

Table 8 reproduces the most recent data on the harm that can occur at lower sound levels, found in the International Standards Organization's publication ISO 1999 (1990). The noise exposures for the population ranged between 75 dBA and 100 dBA. Table 8 presents the mean and various percentages of the hearing level of a 60-year-old male exposed to noise for 40 years. The noise-induced permanent threshold shift in hearing was combined with the age-induced hearing loss values to determine the total hearing loss. The age-induced hearing loss values were from an unscreened population representing the general population.

TABLE 8.—HEARING LEVEL RESULTING FROM SELECTED NOISE EXPOSURES

Sound level in dBA	Hearing level in dB			
	500 Hz	1000 Hz	2000 Hz	3000 Hz
80	12	6	10	30
85	12	6	11	33
90	12	6	16	42

Information about the effects of lower noise exposures on hearing are especially valuable in attempting to identify subpopulations particularly sensitive to noise. The Committee on Hearing, Bioacoustics, and Biomechanics of the National Research Council (CHABA) (1993) reviewed the scientific literature on hazardous exposure to noise. The report reaffirmed many of the earlier findings of the Committee. Based on temporary threshold shift (TTS) studies, the report suggests that to prevent noise-induced hearing loss, exposures must remain below 76 dBA to 78 dBA. Based on field studies, the report suggests that, to guard against any permanent hearing loss at 4000 Hz, the sound level should be less than 85 dBA, and possibly less than 80 dBA. Finally, the report suggests that therapeutic drugs, such as aminoglycoside antibiotics and salicylates (aspirin), can interact synergistically with noise to yield more hearing loss than would be expected by either stressor alone.

Few current studies of unprotected U.S. workers exposed to a TWA_8 between 85 and 90 dBA are available, because the hearing conservation program of OSHA's noise standard requires protection at those levels for most industries (the exception being employers engaged in oil and gas well drilling and servicing operations). The difficulty in constructing new retrospective studies of U.S. workers has been noted by Kryter (1984) in his chapter entitled "Noise-Induced Hearing Loss and Its Prediction." He states that due to the global trend in the last decade to institute noise control and hearing conservation programs, new retrospective studies are no longer feasible. Kryter believes that the retrospective studies of Baughn, Burns and Robinson, and the U.S. Public Health Service are thus the best available on the subject of noise-induced permanent threshold shift. Kryter developed a formula to derive the effective noise exposure level for damage to hearing from the earlier studies and determined the noise-induced permanent threshold shift at different percentiles of sensitivity at various audiometric test frequencies for a population of workers.

Studies of workers in other countries can provide valuable information in assessing the consequences of workplace noise exposure between 85 dBA and 90 dBA. Differences in socioeconomic factors such as recreational noise exposure, use of medicines harmful to the ear, and inflammation of the middle ear (otitis media) make it difficult to directly apply the results of studies of workers from other countries. However, MSHA has determined that these studies can be used as further support for the existence of a risk in the 80 to 90 dBA range.

Rop, Raber, and Fischer (1979) studied the hearing loss of 35,212 male and female workers in several Austrian industries, including mining and quarrying. The researchers measured the hearing levels of workers exposed to sound levels ranging from less than 80 dBA up to 115 dBA and arranged them into eight study groups based on average exposures. Assuming that exposure to sound levels less than 80 dBA did not cause any hearing loss, they assigned workers exposed to these levels to the control group. The researchers reported that workers with 6 to 15 years of exposure at 85 dBA had significantly worse hearing than the control group. For the five groups whose exposure was between 80 dBA and 103.5 dBA, hearing loss tended to increase steadily during their careers but leveled off after 15 years. In contrast, for workers exposed to sound levels above 103.5 dBA, hearing loss continued to increase beyond 15 years.

A statistical method for predicting hearing loss was developed using the data collected in the Rop study. The researchers predicted that 20.1% of the 55-year old males in the control group with 15 years of work experience would incur hearing loss. For a comparable group of males with exposures at 85 dBA the risk increased to 41.6%; at 92 dBA the risk increased to 43.6%; and at 106.5 dBA the risk increased to 72.3%. The study concluded that exposure to sound levels at or above 85 dBA damaged workers' hearing.

A study (Schwetz et al., 1980) of 25,000 Austrian workers concluded that the workers exposed to sound levels between 85 dBA and 88 dBA experienced greater hearing loss than workers exposed to sound levels less than 85 dBA. The study further concluded that at 85 dBA there is no hearing recovery, ultimately causing noise-induced hearing loss. Schwetz, therefore, recommended 85 dBA as the critical intensity—the permissible exposure limit.

Stekelenburg (1982) calculated age-induced hearing loss according to Spoor and noise-induced hearing loss according to Passchier-Vermeer. Based upon these calculations, Stekelenburg suggested 80 dBA as the acceptable level for noise exposure over a 40 year work history. At this exposure, Stekelenburg calculates that socially impaired hearing due to noise exposure would be expected in 10% of the population.

A study of 537 textile workers by Bartsch et al. (1989), which defined socially significant hearing loss as a 40 dB hearing level at 3000 Hz, found that the hearing loss resulting from exposures below 90 dBA mainly occurs at frequencies above 8000 Hz (these frequencies are not normally tested during conventional audiometry). Even though the study concluded that the hearing loss was not of "social importance," it did support a reduced hearing loss risk criterion of 85 dBA be used to protect the workers' hearing.

With the exception of the Bartsch study, the results of the foreign studies are generally consistent with those of U.S. workers. The Bartsch conclusion that the hearing loss is not of "social importance" is not supported by the many studies, discussed earlier, that point to the importance of good hearing sensitivity at 3000 Hz in order to understanding speech in everyday, noisy environments. Based on experience, MSHA has found that people will encounter hearing difficulty before their hearing loss level reaches 40 dB at 3000 Hz.

One commenter stated that the studies cited by MSHA in justifying the risk of material impairment at exposures below 90 dBA were based on sound levels determined using older instrumentation. Assuming that MSHA would be using more modern instrumentation for compliance purposes, he suggested that the Agency should not use the old data and studies. The commenter suggested that MSHA either raise or retain the criterion level of a TWA_8 of 90 dBA or have the studies re-done with newer instrumentation before proceeding with rulemaking. MSHA maintains that the studies remain valid, however, because they were conducted using methodologies based on sound level meters. The studies, like the final rule, were based on the standardized definitions of A-weighting network and slow response and usually measured steady-state noise. Therefore, the studies are reliable and applicable. MSHA's risk assessment is based upon the best scientific data available to the Agency, as required by the Mine Act.

Reported Hearing Loss Among Miners

To confirm the magnitude of the risks of noise-induced hearing loss among miners, MSHA examined the following evidence of reported hearing loss among miners.

Audiometric Databases

Audiometric testing is not currently required in metal and nonmetal mining and is offered in coal mining only after a determination of overexposure to noise. However, in connection with its ongoing assessments of the effectiveness of the current standards in protecting miner health, MSHA has obtained two audiometric databases consisting of 20,022 audiograms conducted on 3,439 coal miners and 42,917 audiograms conducted on 9,050 metal and nonmetal miners. The audiometric evaluations on the coal miners were conducted between 1971 and 1994, mostly during the latter years. The audiograms on metal and nonmetal miners were collected between 1974 and 1995. Each audiogram in the data set contained a miner identification number, age, date of test, and audiometric thresholds for each ear at 500, 1000, 2000, 3000, 4000, and 6000 Hz. Supplemental data such as dates of employment, noise exposures, use of protective equipment, and training histories were not provided. MSHA asked NIOSH to examine the audiometric data and both MSHA and NIOSH (Franks, 1996) have performed analyses of the coal miner database.

Coal Miner Audiometric Data

Franks used a computer expert system to screen the data for year-to-year consistency of the audiograms, test-room background noise, and asymmetry in hearing that might indicate a unilateral loss of hearing (which is not characteristic of occupational noise-induced hearing loss). More than 2,500 questionable audiograms were reviewed by NIOSH audiologists.

The final screened database consisted of 17,260 audiograms representing 2,871 coal miners. It was compared to the database in Annex A of "ISO–1999.2 Acoustics—Determination of Occupational Noise Exposure and Estimation of Noise-Induced Hearing Loss." NIOSH's report entitled "Analysis of Audiograms for a Large Cohort of Noise-Exposed Miners" (NIOSH, 1996) indicates that 90% of these coal miners had a hearing impairment (defined as an average 25-dB hearing level at 1000, 2000, 3000, and 4000 Hz) by age 51 compared with only 10% of the general population. Even at age 69, only 50% of the non-noise-exposed population acquire a hearing impairment.

By age 35 the average miner has a mild hearing loss, and 20% of miners have a moderate loss. By age 64, fewer than 20% of the miners have marginally normal hearing, while 80% have moderate to profound hearing loss. In contrast, 80% of the non-noise-exposed population will not acquire a hearing loss as severe as the average miner's, regardless of how long they live. Further, Franks concluded that miners, after working 20 to 30 years, could find themselves in life-threatening situations resulting from their inability to hear safety signals and roof talk.

Metal and Nonmetal Miner Audiometric Data

NIOSH used a computer expert system to screen the audiometric data on metal and nonmetal miners. The data were screened for year-to-year consistency of the audiograms, test room background noise, and asymmetry in hearing that might indicate a loss of hearing in only one ear (not characteristic of an occupational noise-induced hearing loss). The expert system identified 20,429 questionable audiograms, and a subset of 1000 were reviewed by an audiologist.

The final screened database consisted of 22,488 audiograms representing 5,244 metal and nonmetal miners. The data were compared to those in Annex A of "ISO–1999.2 Acoustics—Determination of Occupational Noise Exposure and Estimation of Noise-Induced Hearing Loss." NIOSH's report, entitled "Prevalence of Hearing Loss for Noise-Exposed Metal/Nonmetal Miners" (NIOSH, 1997), supports the conclusions of earlier scientific studies that metal and nonmetal miners are losing their hearing sensitivity faster than the general population. It indicates that, "At age 20, approximately 2% have hearing impairment, rising to around 7% at age 30, 25% at age 40, 49% at age 50, and 70% by age 60. By contrast, 9% of the non-occupationally noise-exposed have hearing impairment at age 50." Franks noted a difference in the increase of hearing loss between men and women. He also noted that, due to the NIOSH definition of hearing impairment used in the study (inclusion of 4,000 Hz.), there was a sufficient degree of hearing impairment in the population to cause communications problems, because miners would have difficulty in understanding some consonants whose

frequency is between 3,000 and 4,000 Hz.

MSHA received comments on both NIOSH studies. One commenter asserted that Franks used an incorrect screening process for the audiograms as well as the incorrect control group (ANNEX A of ISO R–1999) and alleged other deficiencies in the studies. This commenter stated that he reanalyzed the data using minimal screening of audiograms, and compared it to the "correct" control group (Annex C of ANSI S3.44–1996, "Acoustics—Determination of Occupational Noise Exposure") estimating that the hearing impairment of the miners was caused by noise exposure. The commenter concluded that both the coal and metal and nonmetal audiometric data suggest that typical occupational noise exposures are on the order of lifetime time-weighted exposures of about 89 dBA. This commenter thus suggests that there is no need for MSHA to continue with rulemaking, as the current regulations are adequate in protecting miners' hearing sensitivity. Some commenters concurred with the re-analysis of the NIOSH studies performed by this commenter. MSHA notes, however, that there was no significant difference between the control groups, as the International Standards Organization 1999.2 standard and the American National Standards Institute S3.44 standard are virtually identical—the ANSI document having been adapted from the ISO document.

However, MSHA also received a great deal of support for the NIOSH studies, which showed that the use of the Annex A control group—highly screened audiometric data was appropriate and the use of Annex B or C in the reanalysis was inappropriate.

One commenter stated, "The use of Annex B * * * is questionable because these data were not screened to exclude persons with occupational noise exposure."

MSHA agrees with Dr. Franks in that Annex A was the most appropriate database for the analysis conducted because it is the only database in ISO 1999 for which year-to-year changes in hearing and prevalence of hearing impairment could be calculated. MSHA also received support from commenters for the NIOSH studies. Additionally, MSHA conducted its own research and determined that miners are still losing more of their hearing sensitivity than non-noise-exposed workers. Annex A is a more stringent screening method than Annex C which was used by Dr. Clark. Annex A was selected because it represents a highly screened sample, free from "undue noise exposure" and ear disease.

Several researchers who studied the health status of miners provided testimony based on numerous research reports. Their conclusion was that miners have incurred a greater loss of hearing sensitivity than the general population has. MSHA believes that the NIOSH studies are valid evidence that supports the rule.

MSHA conducted a separate analysis of the audiometric data for coal miners, using the 25 dB hearing level at 1000, 2000, and 3000 Hz definition of material impairment of hearing. In order to reflect current trends, the percentage of current coal miners (whose latest audiogram was taken between 1990 and 1994) with material impairment of hearing was compared to NIOSH's study on coal miners published in 1976. The results are shown in Chart 3, along with NIOSH's 1976 results for both the noise-exposed miners and the non-noise-exposed controls.

The data points for Chart 3 represent the mean hearing loss of both ears at 1000, 2000, and 3000 Hz relative to audiometric zero. The top line represents the 1976 (pre-noise-regulation) group, the middle line represents the 1990–1994 (noise-regulated) group, and the bottom line represents the non-noise-exposed group. Although there has been some progress under the existing regulations, miners are still losing more of their hearing sensitivity than non-noise-exposed workers. This is true even if the analysis is limited to miners under 40 years of age (that is, those who have worked only under the current coal noise regulations).

Chart 3. Percentage of Coal Miners Exceeding 25 dB Hearing Loss

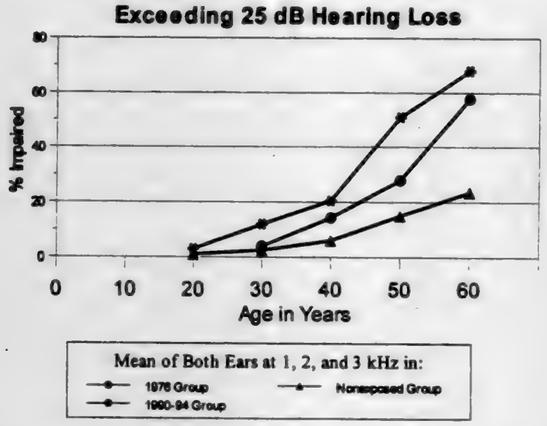

MSHA also analyzed the audiometric data for the number of standard threshold shifts and reportable hearing loss cases. In the preamble to the proposal, MSHA defined a standard threshold shift as a change in hearing threshold level, relative to the miner's original or supplemental baseline audiogram, of an average of 10 dB or more at 2000, 3000, and 4000 Hz in either ear. The final rule adopts this definition. The importance of a standard threshold shift is that it reveals that a permanent loss in hearing sensitivity has occurred. When the change from the baseline averages 25 dB or more at the same frequencies, the hearing loss must be reported to MSHA. "Standard threshold shift" and "reportable hearing loss" are discussed in greater detail below.

For the second analysis, the first audiogram of each miner was assumed to be the baseline. The last audiogram of each miner was compared to the baseline. Neither audiogram was corrected for age-induced hearing loss. Also, because of the lack of supporting data, it was not possible to exclude non-occupational standard threshold shifts, resulting in a greater number of standard threshold shifts. The results of the 3,102 coal miners audiograms analyzed are presented in Chart 4.

Chart 4. Percentage of Coal Miners Exceeding Selected Criteria

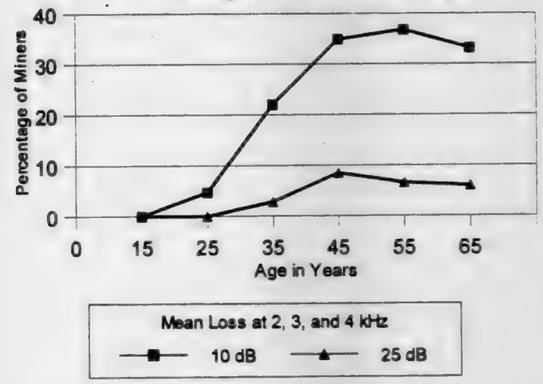

Chart 4 clearly shows that many of the coal miners were found to have a standard threshold shift. The likelihood of acquiring a standard threshold shift generally increases with advancing age. The MSHA analysis was conservative in that only the first and last audiograms were included, resulting in each miner having only one standard threshold shift. In fact, a miner may have experienced multiple standard threshold shifts.

In addition to the above audiometric data, two NIOSH studies mentioned in the section of this preamble on risk of impairment support MSHA's conclusion that miners are at risk of noise-induced hearing loss. In the 1976 NIOSH study, although the majority of noise exposures were less than 90 dBA, approximately 70% of the 60-year old coal miners had experienced a material impairment of hearing using the OSHA/NIOSH–72 definition. The Hopkinson (1981) NIOSH study also supports the earlier NIOSH results.

Data Provided by Commenters

Two commenters to the proposed rule provided information on the hearing sensitivity of miners. The first commenter estimated that 45 to 50% of employed miners have experienced a standard threshold shift (at least 25% if corrected for age-induced hearing loss). Further, this commenter estimated that about 25% of the miners have an average hearing loss of 25 dB or more at 1000, 2000, and 3000 Hz. Corrected for age-induced hearing loss, the percentage of miners with this level of hearing loss decreased to about 15%.

The second commenter referred to an oral presentation by Smith et al. at the 1989 Alabama Governor's Safety and Health Conference. (MSHA notes that the Smith presentation itself is not part of the rulemaking record, although Smith verified that the comment was correct via letter (December 5, 1994). MSHA believes that the Smith paper is valid evidence which supports the rule.) This commenter stated that Smith et al. reported on the evaluation of serial audiograms from 100 workers exposed to sound levels less than 85 dBA. The authors found that 15% of these workers would have some degree of hearing impairment using the AAO–HNS 1979 definition. They also reported that at least 26% of the mining population would have some degree of hearing impairment using the same definition.

In response to MSHA's request for additional specific information regarding hearing loss among miners, some commenters stated that they had no workers' compensation awards for miners' hearing loss at their operations. No commenters supplied information regarding the cost of compensation awards. Some commenters supplied specific information on miner's age, occupation, and degree of hearing loss. Several commenters submitted data, some in conjunction with an analysis of the data, in support of their position that hearing protectors can be effective as the primary means of protecting miners against occupational noise-induced hearing loss.

The NIOSH (Franks) analysis of the two databases cited by MSHA and the three analyses conducted by Clark and Bohl under the auspices of the National Mining Association (the first a report summarizing a reanalysis of the NIOSH Coal Miner Study, the second a report containing a reanalysis of the NIOSH Metal and Nonmetal Miner Study, and the third a report containing an analysis of two data bases from the National Mining Association) indicate that miners are developing hearing losses to a degree that constitutes material impairment. These analyses also indicate that the amount of hearing loss and the percentage of the population that is impaired is highly variable. Further, some individual miners received a substantial hearing loss. The differences in the conclusions of these studies are attributable to the different baselines used in the analyses for comparison of the exposed populations. The NIOSH analysis included detailed screening of the data and used a control group (described in Appendix A of

ANSI S3.44, "American National Standard Determination of Occupational Noise Exposure and Estimation of Noise-Induced Hearing Impairment") where the hearing losses of the group are strictly due to aging. In contrast, the Clark-Bohl analyses and conclusions did not include screening of the data and used for comparison the control group (described in Appendix C of ANSI S3.44) where the control group's hearing losses included those due to exposures to less than two weeks of occupational noise, exposures to non-occupational noise, otological abnormalities, as well as those due to aging. There is insufficient information in the studies to allow a determination of which method of analysis is more appropriate or superior. As a result of the differences in approach between these analyses, the analyses arrive at different conclusions regarding the magnitude of the hearing losses exhibited by miners, although all of these analyses do indicate that some miners are developing a material impairment of hearing in varying degrees. Additionally, these analyses do not support the conclusion that a hearing conservation program that relies primarily or exclusively on the use of hearing protectors effectively protects all miners from noise-induced occupational hearing loss.

Other studies and data were submitted by other commenters in support of their position that a hearing conservation program that relies primarily or soley on the use of hearing protectors can adequately protect miners' hearing. These studies and data are discussed later in the preamble.

Reported Hearing Loss Data

Under MSHA's existing regulations at 30 CFR part 50, mine operators are required to report cases of noise-induced hearing loss to MSHA when it is diagnosed by a physician or when the affected miner receives an award of compensation. Between 1985 and 1997, mine operators reported a total of 2,590 cases of noise-induced hearing loss. In a substantial number of these cases, the occupational noise exposures occurred after the implementation of the current noise regulations.

Coal mine operators reported 674 cases among surface miners, 1,098 cases among underground miners, and 14 cases among miners whose positions were not identified. According to coal mine operators, 710 of the 1,786 cases began working at a mine after the implementation of the noise regulations for coal mines—1972 for underground coal mining and 1973 for surface coal mining. Workers with no reported mining experience were excluded from the analysis.

Metal and nonmetal mine operators reported 650 cases among surface miners and 154 cases among underground miners, a total of 804 cases. According to mine operators, 172 of the 804 cases began working at a mine after the implementation of noise regulations for metal and nonmetal mines in 1975. Again, workers with no reported mining experience were excluded from the analysis.

Comparing the two types of mining, there were significantly more reported hearing loss cases at coal mines than at metal and nonmetal mines, and a higher proportion of those cases were reported of workers who began working after the implementation of the current standards. This is despite the fact that, at present, there are more metal and nonmetal miners than coal miners employed in the United States. A possible explanation of the difference between reported cases of noise-induced hearing loss among coal and metal and nonmetal miners may be that there is more frequent use of engineering noise controls in metal and nonmetal mining. Because the occupational noise standards for coal mines allow inspectors to take into account the use of hearing protectors in determining compliance, most coal mines use hearing protectors for compliance unless the engineering controls are inexpensive or come with the equipment. Metal/nonmetal mines are not allowed to use hearing protectors for compliance unless they have implemented all feasible engineering and administrative controls. Other possible reasons include differences in the severity of the noise exposures, variations among states' criteria for workers' compensation awards, continual use of hearing protectors, and the effectiveness of selected hearing protectors.

MSHA reviewed the narrative associated with each case of noise-induced hearing loss to determine the average degree of hearing loss. Although many narratives included reasons for reporting the noise-induced hearing loss, others only listed the illness as "hearing loss." Approximately half the cases had no information on the severity of the hearing loss. Some contained designations such as standard threshold shift, OSHA reportable case, or percent disability. The narratives did not contain enough information with which to determine an average severity for cases of noise-induced hearing loss.

At least 40% of the reported cases in coal mining resulted in the miner being compensated for noise-induced hearing loss. Another 7% of the reported cases indicated that a workers' compensation claim for noise-induced hearing loss had been filed. In metal and nonmetal mines, at least 21% of the reported cases resulted from the miner being compensated for noise-induced hearing loss. Nearly another 4% of the reported cases indicated that a workers' compensation claim for noise-induced hearing loss had been filed.

The low number of cases reported to the Agency are believed to be due to either:

(1) The lack of a specific definition of a noise-induced hearing loss in MSHA's part 50 regulations and the resulting confusion on the part of mine operators about which cases to report;

(2) The lack of consistency among state requirements for awarding compensation for a noise-induced hearing loss and among physicians in diagnosing what constitutes a hearing loss caused by noise; or

(3) The lack of required periodic audiometric testing in the mining industry.

In sum, the hearing loss currently reported to MSHA under part 50 cannot be used to accurately characterize the incidence, prevalence, or severity of hearing loss in the mining industry. However, the data clearly show that miners are experiencing noise-induced hearing loss.

Workers' Compensation Data

The preamble to the proposal reviewed a study by Valoski (1994) of the number of miners receiving workers' compensation and the associated indemnity costs of those awards. Despite contacting each state workers' compensation agency and using two national databases, Valoski was unable to obtain data for all states, including those with significant mining activities. Valoski reported that between 1981 and 1985 at least 2,102 coal miners and 312 metal and nonmetal miners were awarded compensation for occupational hearing loss. The identified total indemnity costs of those awards exceeded $12.5 million, excluding rehabilitation or medical costs.

In a letter to MSHA, NIOSH cited the Chan et al. (1995) investigation for NIOSH of the incidence of noise-induced hearing loss among miners using information from the Bureau of Labor Statistics' (BLS) Supplementary Data System. In the 15 states that participated in the BLS program between 1984 and 1988, a total of 217 miners (93 coal miners and 124 metal and nonmetal miners) were awarded workers' compensation for noise-induced hearing loss. During those years, mine operators from all states reported 873 cases of noise-induced hearing loss among coal miners and 286 cases among metal and nonmetal miners. Chan et al. stated that because of differing state workers' compensation requirements, it is not possible to directly compare noise-induced hearing losses among the states. These factors limit the usefulness of the data obtained.

MSHA reviewed reports on workers' compensation in Canada and Australia in the preamble to the proposed rule. The noise regulations and mining equipment used in these countries are similar to those in the United States. A recent report on workers' compensation awards to miners in Ontario, Canada (1991) showed that between 1985 and 1989, noise-induced hearing loss was the second leading compensable occupational disease. Approximately 250 claims for noise-induced hearing loss involving miners were awarded annually during that time.

Lescouflair et al. (1980) studied 278 metal and asbestos miners working in Quebec, Canada who claimed compensation for hearing loss. After excluding 28.7% (80) cases of non-mining noise-induced hearing loss, approximately 50% (99) of those diagnosed as having noise-induced hearing loss were shown to have a hearing impairment, based on the AAOO 1959 definition. An estimated 63% (125) showed an impairment based on AAO–HNS 1979 definition. The miners were exposed to noise for 15 to 49 years and showed a similar occurrence of hearing loss in both surface and underground occupations. The researchers also reported that there was no significant difference in noise-induced hearing loss between those miners exposed to a combination of intermittent and continuous noise and those exposed to intermittent noise, except at 2000 Hz.

Eden (1993) reported on the Australian mining industry's experience with hearing conservation. Eden quoted statistics from the Joint Coal Board which revealed that noise-induced hearing loss made up 59% to 80% of the reported occupational diseases from 1982 to 1992. Eden also reported that in New South Wales, 474 of 16,789 coal miners were awarded compensation for noise-induced hearing loss. The incidence rate for the total mining industry in New South Wales was about 23 cases per 1,000 workers during 1990–1991. This was the highest rate for any industry in New South Wales.

Although the compensation data are incomplete and cannot be used for estimating the prevalence of noise-induced hearing loss in the mining industry, the limited data available show that numerous cases are being filed each year, at considerable cost. Furthermore, according to the data reported by mine operators, many miners who developed noise-induced hearing loss worked in mining only after the implementation of the current noise regulations. This evidence of continued risk, although limited, supplements and supports the data previously presented from scientific studies.

Exposures in the U.S. Mining Industry

Miners in the U.S. are at significant risk of experiencing material impairment as a result of exposure to noise. Exposure levels remain high in all sectors of the mining industry, even though noise regulations have been implemented for some time. Exposures are particularly high in the coal mining sector, where hearing protectors, rather than engineering or administrative controls, remain the primary means of protection against noise-induced hearing loss.

Inspection Data

Noise exposure data has been collected by MSHA inspectors from thousands of samples gathered over many years. Table 9 indicates samples which present readings exceeding the permissible exposure level, (TWA_8 of 90 dBA) and also shows noise dose trends in metal and nonmetal mines based on over 232,500 full-shift samples collected using personal noise dosimeters by MSHA from 1974 through 1997.

TABLE 9.—MNM MINES NOISE DOSE TRENDS CYS 1974–97*

Fiscal year	Number of samples	Number samples exceeding 90 dBA TWA_8	Percent exceeding 90 dBA TWA_8
1974	363	139	38.3
1975	3,826	1,661	43.4
1976	9,164	3,725	40.6
1977	13,485	5,047	37.4
1978	17,326	6,415	37.0
1979	21,176	7,638	36.1
1980	15,185	5,203	34.3
1981	11,278	3,651	32.4
1982	3,208	876	27.3
1983	7,628	2,188	28.7
1984	8,525	2,311	27.1
1985	8,040	2,094	26.0
1986	9,213	2,402	26.1
1987	10,145	2,818	27.8
1988	10,514	2,417	23.0
1989	10,279	2,208	21.5
1990	13,067	2,721	20.8
1991	14,936	2,947	19.7
1992	14,622	2,809	19.2
1993	14,566	2,529	17.4
1994	15,979	2,627	16.4
1995	13,865	1,989	14.4
1996	16,686	2,228	13.4
1997	10,731	1,989	14.3

*From USBM's MIDAS data base. Italicized data not included in chart 9a.

Table 10 shows samples with readings exceeding the permissible exposure level (TWA_8 of 90 dBA) and noise dose trends in coal mines based on 75,691 full-shift samples collected by MSHA from 1986 through 1997 using personal noise dosimeters. MSHA began routine sampling in coal mines in 1978 but did not begin building the database until 1986.

TABLE 10.—COAL MINE NOISE DOSE TRENDS, FYS 86–97

Fiscal year	Number of samples	Number samples exceeding 90 dBA TWA_8	Percent exceeding 90 dBA TWA_8
1986	2,037	593	29.1
1987	12,774	3,314	25.9
1988	11,888	2,702	22.7
1989	11,035	2,313	21.0
1990	10,861	2,388	22.0
1991	6,898	1,635	23.7
1992	6,636	1,660	25.0
1993	7,223	1,908	26.4
1994	6,339	1,656	26.1
1995	5,407	1,219	22.5
1996	6,064	1,256	20.7
1997	6,542	1,388	21.2

The inspection data for the coal and metal and nonmetal mining sectors have been graphed in Charts 9a and 10a, which indicate that the metal and nonmetal sector shows a gradual but consistent downward trend in the percentage of samples exceeding the current permissible exposure level. However, there was no such clear trend for coal mines during the same period. MSHA attributes this difference to the established use of engineering and administrative controls in metal and nonmetal mines.

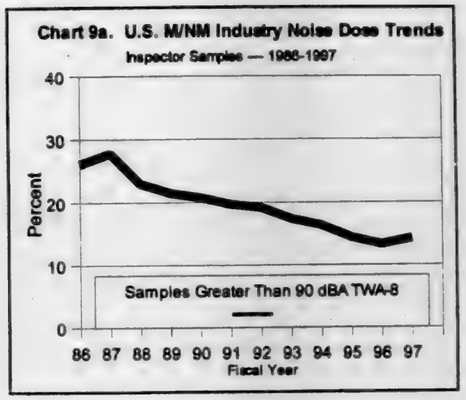

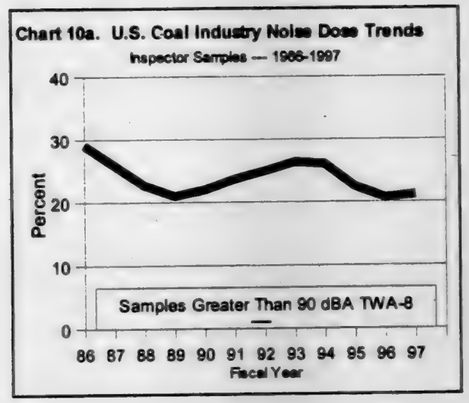

MSHA notes that the interaction of two factors in the data represented in these charts may offset each other. First, the database is made up of samples collected in noisier mines and occupations. Second, the database includes both initial overexposure and the results of any resampling to determine compliance after the mine operator has utilized engineering or administrative controls (in the case of an overexposure found during an initial survey).

Dual Survey Data

MSHA conducted a special survey to compare noise exposures at different threshold levels, because the final rule requires integration of sound levels between 80 dBA and at least 130 dBA for the action level and between 90 dBA and at least 140 dBA for the permissible exposure level. The survey, referred to as the dual-threshold survey, involved the collection by MSHA inspectors of data in coal, metal, and nonmetal mines. Each sample was collected using a personal noise dosimeter capable of collecting data at both thresholds simultaneously. All other dosimeter settings were the same as those used during normal compliance inspections (the 90 dBA criterion level, 5-dB exchange rate, and A-weighting and slow response characteristics). The noise doses were mathematically converted to their corresponding TWA_8.

Tables 11 and 12 display the dual-threshold data in metal and nonmetal mines and in coal mines. Table 11 shows the dual-threshold data collected for metal and nonmetal mines from March 1991 through December 1994 using personal noise dosimeters. This data consisted of more than 42,000 full-shift samples.

TABLE 11.—M/NM DUAL-THRESHOLD NOISE SAMPLES EQUAL TO OR EXCEEDING SPECIFIED TWA_8 SOUND LEVELS—MARCH 1991 THROUGH DECEMBER 1994

TWA_8 sound level (in dBA)	90 dBA threshold		80 dBA threshold	
	Number of samples	Percent of samples	Number of samples	Percent of samples
90 (PEL)	7,360	17.4	.....	.....

TABLE 11.—M/NM DUAL-THRESHOLD NOISE SAMPLES EQUAL TO OR EXCEEDING SPECIFIED TWA_8 SOUND LEVELS—MARCH 1991 THROUGH DECEMBER 1994—Continued

TWA_8 sound level (in dBA)	90 dBA threshold		80 dBA threshold	
	Number of samples	Percent of samples	Number of samples	Percent of samples
85 (action level)	.....	.....	28,250	66.9

As indicated in Table 11, 17.4% of all samples collected by MSHA in metal and nonmetal mines during the specified period equaled or exceeded the permissible exposure level (a TWA_8 of 90 dBA using a 90-dBA threshold)—slightly less than the results of the inspectors' samplings in Table 9. Under the final rule feasible engineering and administrative controls are required to be implemented in such instances in all mines to reduce the noise exposure to the permissible exposure level. Furthermore, 67% of the samples in metal and nonmetal mines exceeded the action level (a TWA_8 of 85 dBA using an 80–dBA threshold).

MSHA's dual-threshold sampling data for coal mines is presented in Table 12. These data consist of over 4,200 full-shift samples collected from March 1991 through December 1995 using personal noise dosimeters.

TABLE 12.—COAL DUAL-THRESHOLD NOISE SAMPLES EQUAL TO OR EXCEEDING SPECIFIED TWA_8 SOUND LEVELS

[March 1991 Through December 1995]

TWA_8 sound level (in dBA)	90 dBA threshold		80 dBA threshold	
	Number of samples	Percent of samples	Number of samples	Percent of samples
90 (PEL)	1,075	25.3	.....	.....
85 (action level)	.....	.....	3,268	76.9

As indicated in Table 12, 25.3% of all samples collected by MSHA in coal mines during the specified period equaled or exceeded the permissible exposure level (a TWA_8 of 90 dBA using a 90-dBA threshold). Furthermore, almost 77% of the survey samples from the coal industry showed noise exposures equaling or exceeding a TWA_8 of 85 dBA using an 80–dBA threshold (the action level).

Tables 13 and 14 present some of the MSHA dual-threshold sampling data by occupation for the most frequently sampled occupations in metal and nonmetal and coal mines, respectively.

TABLE 13.—PERCENTAGE OF MSHA M/NM INSPECTOR NOISE SAMPLES EXCEEDING SPECIFIED TWA_8 SOUND LEVELS, BY SELECTED OCCUPATION †

Occupation	Number of samples	90 dBA threshold	80 dBA threshold
		Percent of samples >90 dBA (PEL)	Percent of samples ≥85 dBA (action level)
Front-End-Loader Operator	12,812	12.9	67.7
Truck Driver	6,216	13.1	73.7
Crusher Operator	5,357	19.9	65.1
Bulldozer Operator	1,440	50.7	86.2
Bagger	1,308	10.2	65.0
Sizing/Washing Plant Operator	1,246	13.2	59.7
Dredge/Barge Attendant	1,124	27.2	78.7
Clean-up Person	927	19.3	71.3
Dry Screen Operator	871	11.7	57.6
Utility Worker	846	12.4	60.6
Mechanic	761	3.8	43.9
Supervisors/Administrators	730	9.0	32.2
Laborer	642	17.1	65.7
Dragline Operator	583	34.0	82.5
Backhoe Operator	546	8.4	52.6
Dryer/Kiln Operator	517	10.5	55.5
Rotary Drill Operator (electric/hydraulic)	543	39.6	83.1
Rotary Drill Operator (pneumatic)	489	64.4	89.0

† These occupations comprise about 87 percent of the 42,206 MSHA dual-threshold samples collected at metal/nonmetal mines from March 1991 through December 1994 using a personal noise dosimeter over a miner's full shift

TABLE 14.—PERCENTAGE OF MSHA COAL INSPECTOR NOISE SAMPLES EXCEEDING SPECIFIED TWA_8 SOUND LEVELS, BY SELECTED OCCUPATION †

Occupation	Number of samples	90 dBA threshold	80 dBA threshold
		Percent of samples >90 dBA (PEL)	Percent of samples ≥85 dBA (action level)
Continuous Miner Helper	68	33.8	88.2
Continuous Miner Operator	262	49.6	96.2
Roof Bolter Operator (Single)	234	21.8	85.5
Roof Bolter Operator (Twin)	92	31.5	98.9
Shuttle Car Operator	260	13.5	78.5
Scoop Car Operator	94	18.1	74.5
Cutting Machine Operator	22	36.4	63.6
Headgate Operator	20	40.0	100.0
Longwall Operator	34	70.6	100.0
Jack Setter (Longwall)	25	32.0	68.0
Cleaning Plant Operator	107	36.4	77.6
Bulldozer Operator	225	48.9	94.2
Front-End-Loader Operator	244	16.0	75.6
Highwall Drill Operator	83	21.7	77.1
Refuse/Backfill Truck Driver	162	13.6	78.4
Coal Truck Driver	28	17.9	64.3

† These occupations comprise about 71 percent of the 4,247 MSHA dual-threshold samples collected at coal mine from March 1991 to December 1995 using a personal noise dosimeter over a miner's full shift

As shown in these tables, the percentage of miners exceeding the specified noise exposures varied greatly according to occupation. For example, Table 13 shows that only 8.4% of the backhoe operators in metal and nonmetal mines had noise exposures exceeding the permissible exposure level, while 64.4% of the pneumatic rotary drill operators had similar exposures. 52.6% of the backhoe operators and 89.0% of the pneumatic rotary drill operators would have noise exposures exceeding the action level.

Conclusion: Miners at Significant Risk of Material Impairment

MSHA has concluded that, despite many years under existing standards, noise exposures in all sectors of mining continue to pose a significant risk of material impairment to miners over a working lifetime. Specifically, MSHA estimates in the REA that 14% of coal miners (13,294 miners) will incur a material impairment of hearing under present exposure conditions.

Table 15 presents MSHA's profile of the projected number of miners currently subjected to a significant risk of developing a material impairment due to occupational noise-induced hearing loss under existing exposure conditions. The totals represent 13% of metal and nonmetal miners and 13.4% of miners as a whole.

TABLE 15.—PROJECTED NUMBER OF MINERS LIKELY TO INCUR NOISE-INDUCED HEARING IMPAIRMENT UNDER MSHA'S EXISTING STANDARDS AND EXPOSURE CONDITIONS

	<80 dBA	80–84.9 dBA	85–89.9 dBA	90–94.9 dBA	95–99.9 dBA	100–104.99 dBA	≥105 dBA	Total*
COAL	0	464	10,954	1,315	456	104	1	13,294
M/NM	0	1,091	15,472	6,030	1,002	48	0	23,643
Total*	0	1,555	26,426	7,345	1,458	152	1	36,937

* Includes contractor employees. Does not include office workers. Discrepancies are due to rounding.

MSHA promulgated noise standards for underground coal mines in 1971, for surface coal mines in 1972, and for metal and nonmetal mines in 1974. At that time, the Agency regarded compliance with the requirements as adequate to prevent the occurrence of noise-induced hearing loss in the mining industry. Since that time, however, there have been numerous awards of compensation for hearing loss among miners. Moreover, in light of MSHA's experience and that of other domestic and foreign regulatory agencies, as well as expert opinion on what constitutes an effective prevention program, the Agency's requirements are dated. NIOSH, for example, currently recommends a comprehensive program which includes the institution of a hearing conservation program to prevent noise-induced hearing loss, but MSHA's current standards do not include such protection.

Some commenters suggested that the existing standards adequately protect miners against noise-induced hearing loss and that MSHA over-estimates the hazard. However, the vast majority of the current scientific evidence demonstrates that noise-induced hearing loss constitutes a serious hazard to miners. MSHA's experience in enforcing its existing standards bears this out, necessitating the replacement of those standards with new ones that would provide additional protection to miners consistent with section 101(a)(6)(A) of the Federal Mine Safety and Health Act of 1977 (Mine Act), which states that MSHA's promulgation of health standards must:

> * * * [A]dequately assure on the basis of the best available evidence that no miner will

suffer material impairment of health or functional capacity even if such miner has regular exposure to the hazards dealt with by such standard for the period of his working life.

Based on the numerous studies and MSHA's calculations and analysis presented above, the Agency has concluded that the new requirements in this rule are necessary to address the continued excess risk of material impairment due to occupational noise-induced hearing loss.

Compliance will reduce noise-induced hearing loss among miners, as well as the associated workers' compensation costs. The new rule provides the added benefit of making MSHA's noise rule consistent with OSHA's noise standard for general industry, as recommended by many commenters.

VI. Feasibility

Section 101(a)(6)(A) of the Mine Act requires the Secretary to set standards which most adequately assure, on the basis of the best available evidence, that no miner will suffer material impairment of health or functional capacity over his or her working lifetime. Standards promulgated under this section must be based upon research, demonstrations, experiments, and such other information as may be appropriate. MSHA, in setting health standards, is required to achieve the highest degree of health and safety protection for the miner, and must consider the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws.

In relation to promulgating health standards, the legislative history of the Mine Act states that:

> This section further provides that "other considerations" in the setting of health standards are "the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws." While feasibility of the standard may be taken into consideration with respect to engineering controls, this factor should have a substantially less significant role. Thus, the Secretary may appropriately consider the state of the engineering art in industry at the time the standard is promulgated. However, as the circuit courts of appeals have recognized, occupational safety and health statutes should be viewed as "technology-forcing" legislation, and a proposed health standard should not be rejected as infeasible "when the necessary technology looms in today's horizon". *AFL–CIO* v. *Brennan*, 530 F.2d 109) (3d Cir. 1975); *Society of Plastics Industry* v. *OSHA*, 509 F.2d 1301 (2d Cir. 1975) cert. den. 427 U.S. 992 (1975).
>
> Similarly, information on the economic impact of a health standard which is provided to the Secretary of Labor at a hearing or during the public comment period, may be given weight by the Secretary. In adopting the language of [this section], the Committee wishes to emphasize that it rejects the view that cost benefit ratios alone may be the basis for depriving miners of the health protection which the law was intended to insure.
>
> S. Rep. No. 95–181, 95th Cong., 1st Sess. 21 (1977).

In *American Textile Manufacturers' Institute* v. *Donovan*, 452 U.S. 490, 508–509 (1981), the Supreme Court defined the word "feasible" as "capable of being done, executed, or effected." The Court further stated, however, that a standard would not be considered economically feasible if an entire industry's competitive structure were threatened.

In promulgating standards, hard and precise predictions from agencies regarding feasibility are not required. The "arbitrary and capricious test" is usually applied to judicial review of rules issued in accordance with the Administrative Procedures Act. The legislative history of the Mine Act indicates that Congress explicitly intended the "arbitrary and capricious test" be applied to judicial review of mandatory MSHA standards. "This test would require the reviewing court to scrutinize the Secretary's action to determine whether it was rational in light of the evidence before him and reasonably related to the law's purposes. * * *" S. Rep. No. 95–181, 95th Cong., 1st Sess. 21 (1977). Thus,

MSHA need only base its predictions on reasonable inferences drawn from the existing facts. Accordingly, to establish the economic and technological feasibility of a new rule, an agency is required to produce a reasonable assessment of the likely range of costs that a new standard will have on an industry, and the agency must show that a reasonable probability exists that the typical firm in an industry will be able to develop and install controls that will meet the standard.

Technological Feasibility

MSHA has determined that a permissible exposure level of a TWA_8 of 90 dBA is technologically feasible for the mining industry. An agency must show that modern technology has at least conceived some industrial strategies or devices that are likely to be capable of meeting the standard, and which industry is generally capable of adopting. *American Iron and Steel Institute* v. *OSHA*, (AISI–II) 939 F.2d 975, 980 (D.C. Cir. 1991); *American Iron and Steel Institute* v. *OSHA*, (AISI–I) 577 F.2d 825 (3d Cir. 1978) at 832–835; and *Industrial Union Dep't., AFL–CIO* v. *Hodgson*, 499 F.2d 467 (D.C. Cir. 1974). The Secretary may also impose a standard that requires protective equipment, such as respirators, if technology does not exist to lower exposure to safe levels. See *United Steelworkers of America, AFL–CIO–CLC* v. *Marshall*, 647 F.2d 1189, 1266 (D.C. Cir. 1981).

The Agency has vast experience in working with the mining community in continually refining and improving existing noise control technology. At the request of MSHA's Coal Mine Safety and Health or Metal and Nonmetal Mine Safety and Health, MSHA's Technical Support staff actively assists mine operators in developing effective noise controls. Based on this experience, the Agency has concluded that there are few circumstances in mining where such controls do not exist.

MSHA acknowledges that some mining equipment historically has presented technological feasibility challenges for the mining industry. However, MSHA has evaluated, under actual mining conditions, newly developed noise controls for surface self-propelled equipment, underground diesel-powered haulage equipment, jumbo drills, track drills, hand-held percussive drills, draglines/shovels, portable crushers, channel burners, and mills, and has found them to be effective in producing a significant reduction in a miner's noise exposure. Some of these feasible engineering controls are already designed into new equipment. In many cases, effective and feasible controls are available through retrofitting or the proper use of noise barriers.

Several commenters in the metal and nonmetal sector of the mining industry expressed concern regarding the technological and economic feasibility of controls for their particular operations. In Volume IV of MSHA's Program Policy Manual, which covers an interpretation, application, and guidelines on enforcement of MSHA's existing noise standards in metal and nonmetal mines, the Agency includes a list of feasible noise engineering controls for the major classifications of equipment used in the metal and nonmetal mining industry. The Agency intends to continue applying its existing guidelines on enforcement of the permissible exposure level in the final rule because the permissible exposure level is unchanged from the existing standards. MSHA, therefore, encourages mine operators to use this list so they will be knowledgeable of available noise control technology.

Acoustically Treated Cabs

For mining equipment such as haul trucks, front-end-loaders, bulldozers, track drills, and underground jumbo drills, acoustically treated cabs are among the most effective noise controls. Such cabs are widely available, both from the original equipment manufacturer and the manufacturers of retrofit cabs, for machines manufactured within the past 25 years. Today, most manufacturers include an acoustically treated cab as part of the standard equipment on the newest pieces of mobile mining equipment. The noise reduction of factory-installed, acoustically treated cabs is generally more effective and often less costly than that of retrofit cabs. According to some manufacturers, sound levels at the machine operator's position inside factory cabs are often below 90 dBA and, in some cases, below 85 dBA.

Additionally, environmentally controlled operator's cabs have the added advantages of reducing dust exposure, heat stress, and ergonomic-related hazards.

Occasionally, underground mining conditions are such that full-sized surface haulage equipment can be used. Where this is possible, such equipment can be equipped with a cab as described above.

These engineering noise controls are not new technology. The former United States Bureau of Mines (USBM) published two manuals entitled "Bulldozer Noise Controls" (1980) and "Front-End Loader Noise Controls" (1981) which describe in detail installations of retrofit cabs and acoustical materials.

Barrier Shields

For some equipment, generally over 25 years old, an environmental cab may not be available from the original equipment manufacturer or from manufacturers of retrofit cabs. In such cases, a partial barrier with selective placement of acoustical material can usually be installed at nominal cost to block the noise reaching the equipment operator. These techniques are demonstrated in "Bulldozer Noise Controls" (1980).

Barrier shields and partial enclosures can also be used on track drills where full cabs are infeasible. Such shields and enclosures can be either freestanding or attached to the drill. Typically, however, they are not as effective as cabs and usually do not reduce the miner's noise exposure to the TWA_8 of 90 dBA permissible exposure level. This barrier can be constructed at minimal cost from used conveyor belting and other materials found at the mine site.

Exhaust Mufflers

Diesel-powered machinery can be equipped with an effective exhaust muffler in addition to an environmental cab or barrier shield. The muffler's exhaust pipe can be relocated away from the equipment operator and the emissions can be redirected away from the operator. For underground mining equipment, exhaust mufflers are ordinarily not needed where water scrubbers are used. A water scrubber offers some noise reduction, but the addition of an exhaust muffler may create excessive back pressure or interfere with the proper functioning of the scrubber. Exhaust mufflers can, however, be installed on underground equipment where catalytic converters are used.

Exhaust mufflers can also be installed on pneumatically powered equipment. For example, exhaust mufflers are offered by the manufacturers of almost every jackleg drill, chipping hammer, and jack hammer. In the few cases where such exhaust mufflers are not available from the original equipment manufacturer, they can be easily constructed by the mine operator. MSHA has a videotape available to the mining community showing the construction of such an exhaust muffler for a jackleg drill. This muffler can be constructed at minimal cost from a section of rubber motorcycle tire.

Acoustical Materials

Various types of acoustical materials can be strategically used for blocking, absorbing, and/or damping sound and vibration. Damping vibration reduces the generated sound field. Generally such materials are installed on the inside walls of equipment cabs or operator compartments, and in control rooms and booths. Barrier and absorptive materials can be used to reduce noise emanating from the engine and transmission compartments, and acoustical material can be applied to the firewall between the employee and transmission compartment. Noise reduction varies depending upon the specific application. Care must be taken to use acoustical materials that will not create a fire hazard or emit toxic fumes if exposed to heat.

Control Rooms and Booths

Acoustically treated control rooms and booths are frequently used in mills, processing plants, or at portable operations to protect miners from noise created by crushing, screening, or processing equipment. Such control rooms and booths are typically successful in reducing exposures of employees working in them to below 85 dBA.

In addition, remote controlled video cameras can be used to provide visual observation of screens, crushing equipment, or processing equipment, minimizing the need for a miner to be near these loud noise sources.

Substitution of Equipment

In the few cases where sound levels are particularly severe and neither retrofit nor factory controls are available, the equipment may need to be replaced with a type that produces less noise. For example, hand-held channel burners were used for many years in the mining industry to cut granite in dimension stone quarries. Sound levels typically exceeded 120 dBA at the operator's ear. Several years ago, however, alternative and quieter methods of cutting granite, such as high pressure water jet technology, automated channel burners, and diamond wire saws, were developed in the dimension stone industry. Dimension stone operators were notified by MSHA of the availability of these alternatives and given time to phase out the use of diesel-fueled, hand-held burners and replace them with one of the quieter and more protective alternatives.

New Equipment Design

Hand-held channel burners can be replaced with automated channel burners supplied with liquid oxygen. The automated design does not require the operator to be near the channel burner, thereby using distance to attenuate the noise.

The MSHA document entitled, "Summary of Noise Controls for Mining Machinery," (Marraccini et al., 1986) provides case histories of effective noise controls installed on specific makes and models of mining equipment. The case histories describe the controls used, their cost, and the amount of noise reduction achieved. In particular, these include engineering noise control methods for coal cutting equipment, longwall equipment, conveyors, and diesel equipment. Underground coal mining equipment may require some unique noise controls. However, for coal extracting machines such as continuous miners and longwall shearers, the use of remote control is the single most effective noise control. The installation of noise damping materials and enclosure of motors and gear cases can be used to aid in controlling noise of coal transporting equipment such as conveyors and belt systems. Diesel

equipment used underground can be equipped with controls similar to those used on surface equipment. Mufflers, sound controlled cabs, and barriers will provide much of the needed noise control for this type of equipment. MSHA has found that the controls utilized in these specific cases can be extended to other pieces of mining equipment. The Agency is currently updating this publication, and plans to reissue it at a later date in order to assist mine operators in complying with the requirements of the final rule.

Economic Feasibility

MSHA has determined that a permissible exposure level of a TWA_8 of 90 dBA is economically feasible for the mining industry. Economic feasibility does not guarantee the continued existence of individual employers. It would not be inconsistent with the Act to have a company which turned a profit by lagging behind the rest of an industry in providing for the health and safety of its workers to consequently find itself financially unable to comply with a new standard; see, *United Steelworkers*, 647 F.2d at 1265. Although it was not Congress' intent to protect workers by putting their employers out of business, the increase in production costs or the decrease in profits would not be enough to strike down a standard. *Industrial Union Dep't.*, 499 F.2d at 477. Conversely, a standard would not be considered economically feasible if an entire industry's competitive structure were threatened. *Id.* at 478; see also, *AISI–II*, 939 F.2d at 980; *United Steelworkers*, 647 F.2d at 1264–65; *AISI–I*, 577 F.2d at 835–36. This would be of particular concern in the case of foreign competition, if American companies were unable to compete with imports or substitute products. The cost to government and the public, adequacy of supply, questions of employment, and utilization of energy may all be considered.

MSHA has determined that retention of the existing permissible exposure level, threshold, and exchange rate under the final standard would not result in any incremental costs for engineering controls for the metal and nonmetal sector and would result in annualized costs of $1.6 million for the coal mining sector. As described in more detail in the Agency's final Regulatory Economic Analysis, MSHA evaluated various engineering controls and their related costs.

In determining which engineering controls the metal and nonmetal industry will have to use under the final rule, MSHA considered the engineering controls that are used under the current rule. MSHA expects that there will be no significant change because the requirements for meeting the permissible exposure level are the same. For the coal industry, however, MSHA expects the cost to differ significantly. Under the current coal standards, personal hearing protectors have typically been substituted for engineering and administrative controls; therefore, the industry has not exhausted the use of feasible controls capable of significantly reducing sound levels. Accordingly, the coal sector is projected to experience relatively higher costs for engineering controls under the final rule than the metal and nonmetal sector.

MSHA believes the requirements for engineering and administrative controls clearly meet the feasibility requirements of the Mine Act, its legislative history, and related case law. The most convincing evidence that the final rule will be economically feasible for the mining industry as a whole is the fact that the total cost of the final rule borne by the mining industry, $8.7 million annually, is only 0.01 percent of annual industry revenues of approximately $59.7 billion. Nevertheless, MSHA recognizes that, in a few cases, individual mine operators, particularly small operators, may have difficulty in achieving full compliance with the final rule immediately because of a lack of financial resources to purchase and install engineering controls. However, ultimate compliance with the final rule is expected to be achieved.

Whether controls are feasible for individual mine operators is based in part upon legal guidance from the Federal Mine Safety and Health Review Commission (Commission). According to the Commission, a control is feasible when it: (1) Reduces exposure; (2) is economically achievable; and (3) is technologically achievable. See *Secretary of Labor* v. *A.H. Smith*, 6 FMSHRC 199 (1984); *Secretary of Labor* v. *Callanan Industries, Inc.*, 5 FMSHRC 1900 (1983).

In determining the technological feasibility of an engineering control, the Commission has ruled that a control is deemed achievable if, through reasonable application of existing products, devices, or work methods, with human skills and abilities, a workable engineering control can be applied to the noise source. The control does not have to be "off-the-shelf," but it must have a realistic basis in present technical capabilities.

In determining the economic feasibility of an engineering control, the Commission has ruled that MSHA must assess whether the costs of the control are disproportionate to the "expected benefits," and whether the costs are so great that it is irrational to require its use to achieve those results. The Commission has expressly stated that cost-benefit analysis is unnecessary in order to determine whether a noise control is required.

Consistent with Commission case law, MSHA considers three factors in determining whether engineering controls are feasible at a particular mine: (1) The nature and extent of the overexposure; (2) the demonstrated effectiveness of available technology; and (3) whether the committed resources are wholly out of proportion to the expected results. A violation under the final standard would entail MSHA determining that a miner has been overexposed, that controls are feasible, and that the mine operator failed to install or maintain such controls. According to the Commission, an engineering control may be feasible even though it fails to reduce exposure to permissible levels contained in the standard, as long as there is a significant reduction in a miner's exposure. *Todilto Exploration and Development Corporation* v. *Secretary of Labor*, 5 FMSHRC 1894, 1897 (1983). MSHA intends to continue its longstanding policy of determining that a control is feasible where a control or a combination of controls could achieve a 3-dBA noise reduction, which represents at least a 50% reduction in sound energy. Where any single control does not provide at least a 3-dBA noise reduction, mine operators must consider the reduction achieved by a combination of all available controls.

Some commenters were uncertain as to whether MSHA's policy referred to a 3-dBA reduction in sound level or a 3-dBA reduction in a miner's noise exposure. Exposure and sound level are not synonymous terms because an exposure includes a time factor. MSHA has determined that a 3-dBA reduction in a miner's exposure is the relevant factor in determining feasibility. This is true because the permissible exposure level is a personal exposure standard, which can be controlled using engineering and administrative controls. MSHA chose a 3-dBA reduction because accuracy of the current noise measurement instrumentation is 2 dBA, a control would not be deemed effective until the measured reduction exceeds the accuracy of the instrumentation. The 3-dBA reduction in a miner's exposure is different from and should not be confused with the discussion of the exchange rate in this preamble.

The Agency is cognizant that there may be instances where all feasible engineering and administrative controls have been used and a miner's noise exposure cannot be reduced to the permissible exposure level. Under those circumstances, in both the coal and metal and nonmetal sectors, MSHA intends to enforce the final rule consistent with its current p code policy for metal and nonmetal mines.

Currently, when MSHA issues a citation for a noise overexposure, the operator must use all feasible engineering and administrative controls to bring noise exposures within the permissible level. Under current MSHA policy where feasible engineering or administrative controls have failed to lower noise exposures to a permissible level at a metal or nonmetal mine, the citation may be terminated on the condition that personal protective equipment is provided and worn. This type of termination, referred to as a "P" code, is permitted after certain procedures have been followed.

If the District Manager where the citation was issued believes a "P" code is warranted, the Manager reviews the situation in consultation with field enforcement staff, headquarters officials, and MSHA technical experts. This review includes an evaluation of the circumstances surrounding the overexposure, with particular emphasis on assessing the feasibility and effectiveness of control options.

If the reviewers determine that a "P" code is appropriate, the citation will be terminated and the termination will state the minimum acceptable performance requirements for hearing protectors, and the minimum acceptable engineering and administrative controls that must be used in conjunction with the hearing protectors. After a "P" code has been issued, MSHA provides the National Institute for Occupational Safety and Health (NIOSH) a copy of the associated technical documentation to alert researchers of the specific instances of noise overexposures where noise exposures cannot be reduced to permissible levels using feasible engineering or and administrative controls. SHA considers both technological capabilities and the economic impact of a control.

MSHA regularly reviews those instances where "P" codes have been issued to determine whether conditions have changed or new technology is available to warrant reconsidering the justification for the "P" code. MSHA may withdraw the "P" code if the original justification for the "P" code is no longer valid. The decision may be based on such factors as a change in operating conditions, new technology, or failure of the mine operator to comply with the specified control measures.

VII. Section-by-Section Analysis

Section 62.100 Purpose and Scope; Effective Date

The purpose of the mandatory health standard established in part 62 is to prevent the occurrence and reduce the progression of occupational noise-induced hearing loss among miners in every surface and underground metal, nonmetal, and coal mine subject to the Federal Mine Safety and Health Act of 1977.

The final rule establishes a single uniform noise standard applicable to all mines. Most commenters favored the one-rule format, agreeing with the Agency that consolidation and simplification of the existing multiple standards may help to facilitate understanding of, and thus compliance with, regulatory requirements.

Prior to this final rule, MSHA had four sets of noise standards: for surface metal and nonmetal mines (30 CFR 56.5050), for underground metal and nonmetal mines (30 CFR 57.5050), for underground coal mines (30 CFR part 70, subpart F), and for surface coal mines and surface work areas of underground coal mines (30 CFR part 71, subpart I). The surface and underground noise standards for metal and nonmetal mines were identical, and the surface and underground noise standards for coal mines were nearly identical.

MSHA was influenced by several factors in deciding to promulgate this final rule: the prevalence of hearing loss among miners despite experience with the current standard, conditions in the mining industry, MSHA's review of the latest scientific information, the comments submitted in response to the proposed rule, and the requirements of the Mine Act.

The rule contains provisions that are consistent with many of OSHA's requirements yet tailored to meet the specific needs of the mining community. In addition, many of the provisions are similar, if not identical, to the existing MSHA noise standards, which will allow for continuity in the transition to the new rule.

The final rule takes effect one year after the date of publication. MSHA recognizes that successful implementation of the final rule requires training of MSHA personnel and guidance to miners and mine operators, particularly small mine operators. Therefore, in response to several supportive comments, the Agency has decided that this delayed effective date best meets the needs of the mining community.

Section 62.101 Definitions

The definitions discussed below are included in the final rule to facilitate understanding of technical terms that are used in this part. Some of the proposed definitions have been revised to be consistent with the common usage of such terms. For example, the Agency's proposed use of the term "supplemental baseline audiogram" has been changed to the more commonly used "revised baseline audiogram."

The final rule also includes a definition for action level. MSHA moved the definition of action level from the text of the proposed rule and included it in the definition section of the final rule to be consistent with the terms permissible exposure level and dual hearing protection level which are in the definition section. In addition, on the suggestion of several commenters who expressed confusion over the use of the proposed term "designated representative," MSHA has not adopted this term in the final rule, but instead has substituted the term "miner's designee." Also, because no commenter supported MSHA's proposed definition of a "hearing conservation program," that definition has not been adopted in the final rule. In its place, MSHA is incorporating the elements of a traditional hearing conservation program into the text of the final rule.

Several commenters requested that MSHA provide a definition for "feasible" engineering and administrative controls, indicating that the term is vague and subject to varying interpretations. Because of the performance-oriented nature of the requirements for the use of engineering and administrative controls, MSHA has refrained from including an explicit definition of this term. Rather, MSHA notes in the discussion under "Feasibility" (Part VI of this preamble), that it follows the Federal Mine Safety and Health Review Commission case law as to what constitutes a feasible noise control for enforcement purposes. MSHA further notes in that discussion that it will provide additional guidance in a companion compliance guide to this final rule.

A few comments were received regarding MSHA's use of non-standard terminology and abbreviations in the proposal, in particular, the use of the terms "decibel A-weighted," "dBA," and "sound level (in dBA)." MSHA intends for the terminology used throughout this rule to be both

technically correct and readily understood. Therefore, for technical accuracy and consistency with usage in the mining community for the past 25 years, the Agency is deleting the definition of the term "decibel A-weighted" and is rephrasing the definition of the term "sound level."

The following is a summary of some of the key features of the definitions that are used in the final rule along with a discussion of the comments that the Agency received in response to the proposal.

Access is the right to examine and copy records. MSHA is adopting the definition from the proposal, which is consistent with the term used in several of MSHA's and OSHA's existing health standards. In response to commenters who requested that MSHA include a "no cost" provision in this definition, MSHA notes that such a provision is included in the specific section in which it would be applicable. The term "access" is discussed further under § 62.190, regarding records.

Action level is an 8-hour time-weighted average sound level (TWA_8) of 85 dBA, or equivalently a dose of 50%, integrating all sound levels from 80 dBA to at least 130 dBA. The action level is discussed further under § 62.120 of the preamble.

Audiologist is a professional specializing in the study and rehabilitation of hearing and who is certified by the American Speech-Language-Hearing Association or is licensed by a state board of examiners. The vast majority of commenters indicated no preference for further restrictions to MSHA's proposed definition, which is identical to that used by OSHA in its occupational noise standard.

Some commenters, however, believed that the definition of "audiologist" should specifically require certification by the American Speech-Language Hearing Association (ASHA), as evidenced by a Certificate of Clinical Competence. Other commenters supported a proviso being added to the definition of "audiologist" that state licensing requirements guarantee that the licensees are as competent as those certified by ASHA. The rationale for this comment was that state licensing boards vary significantly from state to state, and licensing requirements in some states are not as stringent as ASHA certification requirements.

The final rule does not adopt the suggestion of commenters that the final rule accept licensing by only those states whose licensing standards are sufficiently rigorous, because although some state licensing requirements are more stringent than others, even the least rigorous of the state requirements will provide an acceptable level of competence for audiologists. The final rule adopts the requirement that audiologists hold an ASHA certification or a license from a state board of examiners, which is consistent with MSHA's determination that such a certification or license is essential to the implementation of an effective hearing conservation program. Properly trained and certified audiologists are qualified to conduct audiometric testing, evaluate audiograms, and supervise technicians who conduct and evaluate audiograms.

The licensing requirements for audiologists in the final rule are also consistent with similar requirements in OSHA's noise standard. The term "audiologist" is discussed further under § 62.170 of the preamble regarding audiometric testing.

Baseline audiogram is the audiogram, recorded in accordance with § 62.170 of this part, against which subsequent audiograms are compared to determine the extent of hearing loss, except in those situations in which this part requires the use of a revised baseline audiogram for such a purpose. With the exception of the term "revised," which replaces the term "supplemental," the definition of baseline audiogram is unchanged from the proposal. The baseline audiogram establishes a reference for making hearing loss determinations.

Although many commenters favored the proposal, others believed that a true baseline, by definition, is conducted prior to exposure to noise. MSHA notes that the final rule explicitly allows mine operators to use existing audiograms as the baseline, provided that they were taken under the conditions meeting the testing requirements of this rule. For the final rule, the Agency concludes that the reasons discussed in the preamble to the proposal remain valid. There MSHA discussed the importance of the testing requirements that are to be followed in conducting the baseline audiogram, as it is the reference against which subsequent audiograms are to be compared. If the baseline audiogram is not conducted properly, it will not truly reflect the miner's hearing thresholds. As a result, any changes between the baseline and subsequent tests may be masked. Accordingly, MSHA is adopting the proposed definition.

The definition of baseline audiogram also includes the provision that hearing loss determinations may require the use of a "revised" baseline under specific circumstances. Those circumstances are noted in the further discussion of baseline audiogram and audiometric testing under § 62.170(a) of the final rule.

Criterion level refers to the sound level which, if applied for 8 hours, results in 100% of the dose permitted by the standard. The definition remains unchanged from the proposal. Under § 62.110(b)(2)(iv) of the final rule, the criterion level is a sound level of 90 dBA. If applied for 8 hours, this sound level will result in a dose of 100% of the permissible exposure level (PEL), established by § 62.130 as an 8-hour time-weighted average (TWA_8) of 90 dBA. The criterion level is a constant. On the other hand, the permissible exposure level is a sound level of 90 dBA for 8 hours or a sound level of 95 dBA for 4 hours. Further discussion is provided under § 62.110(b)(2)(iv) of the preamble regarding dose determination.

Decibel (dB) is a unit of measure of sound pressure levels. It is defined in the final rule in one of two ways, depending upon the use. The proposed definition remains unchanged; it continues to include definitions for measuring sound pressure levels and for measuring hearing threshold levels:

(1) For measuring sound pressure levels, the decibel is 20 times the common logarithm of the ratio of the measured sound pressure to the standard reference sound pressure of 20 micropascals (μPa), which is the threshold of normal hearing sensitivity at 1000 Hertz; and

(2) For measuring hearing threshold levels, the decibel is the difference between audiometric zero (reference pressure equal to 0 hearing threshold level) and the threshold of hearing of the individual being tested at each test frequency.

Dual Hearing Protection Level is a TWA_8 of 105 dBA, or equivalently, a dose of 800% of that permitted by the standard, integrating all sound levels from 90 dBA to at least 140 dBA. In the proposal, the definition was included within the dual hearing protection requirement itself. The term is set forth as a definition in the final rule for the sake of clarity.

Exchange rate is the amount of increase in sound level, in decibels, which would result in reducing the allowable exposure time by half in order to maintain the same noise dose. In response to a comment which requested clarification of this definition, MSHA has added language to the final rule which states that for purposes of this part, the exchange rate is 5 decibels (5 dB). In the final rule, a 5-dB increase or decrease in the sound level corresponds to a halving or doubling of the allowable exposure time. Thus, a 5-dB increase, from 90 dBA to 95 dBA, would result in halving the allowable exposure time from 8 hours to 4 hours, and a 5-dB decrease, from 100 dBA to 95 dBA, would result in doubling the allowable exposure time from 2 hours to 4 hours. Exchange rate is discussed further under § 62.110(b)(2)(iv), regarding dose determination.

Hearing protector refers to any device or material, capable of being worn on the head or in the ear canal, sold wholly or in part on the basis of its ability to reduce the level of sound entering the ear, and which bears a scientifically accepted indicator of noise reduction value. The proposed definition remains unchanged in the final rule. Although one commenter suggested that the phrase "sold wholly or in part on the basis of its ability to reduce the level of sound" be deleted from this definition because a hearing protector's effectiveness cannot be reliably determined on the basis of the intended purpose for which it is sold, MSHA's definition follows the Environmental Protection Agency's (EPA) labeling standards for hearing protectors (40 CFR § 211.203(m)). Under the EPA labeling standards, a hearing protector is defined as:

> * * * any device or material, capable of being worn on the head or in the ear canal, that is sold wholly or in part on the basis of its ability to reduce the level of sound entering the ear.
>
> This includes devices of which hearing protection may not be the primary function, but which are nonetheless sold partially as providing hearing protection to the user.

Accordingly, MSHA is adopting the proposed definition. As a result, not all devices or materials that are inserted in or that cover the ear to reduce the noise exposure qualify as a hearing protector under the final rule. For example, a hearing aid or cotton does not qualify as an acceptable hearing protector under the final rule.

Although several commenters agreed with the proposal that the hearing protector should be required to have a scientifically accepted indicator of noise reduction value, other commenters suggested that MSHA's definition specifically include the manufacturer's noise reduction rating (NRR) or a requirement that the attenuation be measured according to standards of the American National Standards Institute (ANSI). Since EPA requires that all hearing protector manufacturers include labeling information indicating a noise reduction rating, a hearing protector bearing such a label would indicate to a mine operator that it meets MSHA's definition of a hearing protector.

However, MSHA is not limiting the range of hearing protectors only to those with a noise reduction rating. MSHA noted in the preamble to the proposed rule that the noise reduction ratings do not reflect actual reductions in noise in workplace situations. Moreover, other organizations have recommended that the EPA reconsider its rating system. Therefore, MSHA is adopting the language in the proposed definition which permits any scientifically accepted indicator of noise reduction value. Further discussion of noise reduction ratings is located under § 62.110(b)(2)(i), regarding noise exposure assessment.

Hertz (Hz) is the international unit of frequency, equal to cycles per second. The definition has been changed from the proposal. One commenter suggested that stating the range of audible frequencies for humans with normal hearing is superfluous to a definition for hertz. MSHA agrees, and the reference has not been adopted in the final rule.

Medical pathology is a condition or disease affecting the ear. The definition of medical pathology remains unchanged from the proposal. A few commenters suggested that the definition be reworded. The term, which is also used in OSHA's occupational noise standard, is adopted in MSHA's final rule for use in contexts which do not require actual diagnosis and treatment, but which may ultimately be diagnosed and treated by a physician. The Agency intends that ear injuries be included as a condition or disease affecting the ear. Medical pathology is discussed further in the preamble sections addressing § 62.160(a)(5), regarding hearing protectors, § 62.172(b)(1), regarding evaluation of audiograms, and § 62.173(a) and (b), regarding follow-up evaluation when the audiogram is invalid.

Miner's designee is any individual or organization to whom a miner gives written authorization to exercise the miner's right of access to records. This definition is new to the final rule. MSHA received several comments to the proposal's use of the term "designated representative," which caused confusion with the term "representative of miners" in 30 CFR § 40.1(b). MSHA intended that the two terms have distinct meanings. Accordingly, for clarification, MSHA has replaced the proposed term with the new term, "miner's designee." Further discussion of the term "miner's designee" is found under § 62.190(b), regarding records.

Permissible exposure level is a TWA_8 of 90 dBA or equivalently a dose of 100% of that permitted by the standard, integrating all sound levels from 90 dBA to at least 140 dBA. No miner shall be exposed during any work shift to noise that exceeds the permissible exposure level. The permissible exposure level is discussed further under § 62.130 of the preamble.

Qualified technician is a person who has been certified by the Council for Accreditation in Occupational Hearing Conservation (CAOHC) or by another recognized organization offering equivalent certification. The proposed definition remains unchanged in the final rule.

Several commenters suggested additional requirements while other commenters favored less restrictive requirements for the qualified technician: some commenters did not agree with the proposed requirement that a qualified technician be certified by the Council for Accreditation in Occupational Hearing Conservation or by another recognized organization offering equivalent certification. Several commenters recommended that MSHA adopt the requirements for technicians in the OSHA noise rule, which allows physicians and audiologists discretion to judge the qualifications of technicians. A number of commenters advocated that the final rule be consistent with the OSHA noise standard and exempt technicians who operate microprocessor audiometers from any certification requirement. This was based on the commenters' views that a properly trained technician, under the direction of a physician or an audiologist, would have the competence to perform the tests. These commenters believed that a requirement for certification by CAOHC or an equivalent body would unnecessarily limit the flexibility of mine operators in testing employees, and could result in fewer tests being conducted. One commenter stated that the final rule should require CAOHC certification as the minimum qualification for audiometric technicians, and not accept certifications by other organizations, pointing out that CAOHC is currently the only organization that currently issues such certifications.

MSHA has concluded that a certification requirement for audiometric technicians is not overly restrictive, and it ensures the necessary level of knowledge and proficiency to perform audiometric tests under the final rule. MSHA has also concluded that certifications from organizations other than CAOHC are acceptable, provided that the organization imposes equivalent requirements. Contrary to the statements of some commenters, CAOHC is not the only organization that issues such certifications—the U.S. armed forces train technicians to

perform audiometric tests and issues certifications. Such certifications would be accepted under the final rule.

The final rule also adopts the proposed requirement that technicians who operate microprocessor audiometers have CAOHC or equivalent certification, to ensure that these technicians demonstrate the same level of proficiency as those technicians who operate manual audiometers. Although microprocessor audiometers may be easier to operate than manual audiometers, MSHA has concluded that a certification requirement is still appropriate for technicians who operate this equipment. MSHA's final rule, unlike OSHA's noise standard, does not include detailed procedural requirements for audiometric testing. Instead, the training and expertise of the individuals conducting tests is an essential element of an effective audiometric testing program. For these reasons, MSHA has chosen not to exempt technicians who operate microprocessor audiometers from the certification requirements in the final rule. Further, the requirement for CAOHC or equivalent certification is not overly burdensome on the mining industry, as 19,000 technicians currently hold this qualification due to OSHA's requirement for CAOHC certification. The 19,000 CAOHC technicians are located around the country.

The requirements for audiometric technicians in the final rule are similar to requirements in regulations of the U.S. Army, Air Force, and Navy, which require the technician to be CAOHC-certified or certified through equivalent military medical training and be under the supervision of a physician or audiologist. Qualified technicians are further discussed under § 62.170, regarding audiometric testing and § 62.172(a)(2), regarding evaluation of audiograms.

Reportable hearing loss is a change in hearing sensitivity for the worse, relative to the miner's baseline audiogram or a revised baseline audiogram established in accordance with § 62.170(c)(2), of an average of 25 dB or more at 2000, 3000, and 4000 Hz in either ear. The definition of reportable hearing loss remains essentially unchanged from the proposal, with the exception that the proposal's reference to "supplemental baseline audiogram" has been replaced with "revised baseline audiogram."

Under the final rule, reportable hearing loss is calculated by subtracting the current hearing levels from those on the baseline audiogram at 2000, 3000, and 4000 Hz and may be corrected for age. When the permanent hearing loss at all three frequencies is averaged, the hearing loss must be reported if the average loss in either ear is 25 dB or greater. In making this calculation, a revised baseline would be established and used where there has been a significant improvement in hearing sensitivity, in accordance with the provisions of § 62.170(c)(2).

MSHA is adopting the proposed definition of reportable hearing loss—the extent of hearing loss that must be reported to the Agency pursuant to § 62.175(b) of the final rule. Some commenters who were satisfied with the proposed 25-dB level for reporting a hearing loss expressed concern that the proposed requirement does not discriminate between occupational and non-occupational hearing loss. Other commenters favored a lower, 10 dB or 15 dB, hearing loss for reportability purposes because the proposed 25-dB hearing loss level permits too much damage to occur before reporting is required. Still other commenters recommended that a hearing loss should be reportable only if it is the subject of a workers' compensation award. These commenters believed that workers' compensation data would make good reporting criteria and also noted that the accuracy of the reported data could be confirmed with state workers' compensation agencies. Additionally, the complex calculations currently necessary for determining whether a reportable hearing loss has occurred could be avoided.

MSHA's definition of a reportable hearing loss represents a substantial loss of hearing, which would provide a reliable indication of the effectiveness of the intervention strategies of the mining industry. The requirement is consistent with the existing OSHA noise standard which requires any 25-dB loss to be recorded in an employer's records. In addition, § 62.175(b) of the final rule, which is identical to § 62.190 of the proposal, creates an exception for reportable hearing loss when a physician or audiologist has determined that the loss is neither work-related nor aggravated by occupational noise exposure. Furthermore, workers' compensation reporting criteria, which are controlled by the states and varies from state to state, may produce inconsistent reporting to MSHA, depending upon the state criteria that are being applied. Further discussion of reportable hearing loss is provided under § 62.175(b), regarding the notification of audiometric test results and reporting requirements.

Revised baseline audiogram is an annual audiogram designated, as a result of the circumstances set forth in § 62.170(c)(1) or (c)(2), to be used in lieu of the baseline audiogram in measuring changes in hearing sensitivity. With the exception of the clarifying change in terms from "supplemental" baseline audiogram to "revised" baseline audiogram, the definition in the final rule remains unchanged from the proposal. Use of the term "revised" is consistent with the OSHA noise standard. Some commenters suggested using the term "reference" baseline audiogram, however; MSHA believes that less confusion will result by adopting the term used by OSHA. In addition, for further clarity and accuracy, MSHA is replacing the proposed reference to hearing "acuity" with hearing "sensitivity." Further discussion of a revised baseline audiogram is provided under § 62.170(c), in addition to the related discussions on reportable hearing loss and standard threshold shift.

Sound level is the sound pressure level in decibels, measured using the A-weighting network and a slow response. The final definition is essentially unchanged from the proposal but is reworded for accuracy. Sound consists of pressure changes in air caused by vibrations. These pressure changes produce waves that move out from the vibrating source. The sound level is a measure of the amplitude of these pressure changes and is generally perceived as loudness. For the purpose of this rule, the sound level is expressed in the unit "dBA."

Under § 62.110(b)(2)(v) of the final rule, sound pressure levels would be measured using the A-weighting network and the slow response. A-weighting refers to the frequency response network closely corresponding to the frequency response of the human ear. This network reduces sound energy in the upper and lower frequencies (less than 1000 and greater than 5000 Hz) and slightly amplifies sound energy between the frequencies of 1000 and 5000 Hz. The slow-response time refers to the slow exponential-time-averaging characteristic. The specifications of the A-weighting network and the slow-response time are found in ANSI S1.25–1991, "Specification for Personal Noise Dosimeters," and ANSI S1.4–1983, "American National Standard Specification for Sound Level Meters."

A few commenters were concerned that MSHA's abbreviation "dBA" was technically incorrect, because it is the sound level that is A-weighted, not the decibel. MSHA recognizes that there are several scientific fields employing distinct acoustical terminology, including noise-control engineering, mining engineering and industrial hygiene. A term that is conventional or commonly accepted in one field may not be accepted in another. Because the abbreviation "dBA" has come to be a widely accepted way of succinctly denoting a sound level that is A-weighted and because the majority of the mining community has used this terminology over the past 25 years and did not voice any opposition, MSHA has adopted the proposed abbreviation "dBA" in the final rule. Further discussion of the A-weighting and slow response time are provided under § 62.110(b)(v), regarding noise exposure assessment.

Standard threshold shift is a change in hearing sensitivity for the worse relative to a miner's baseline audiogram or relative to the most recent revised audiogram, where one has been established. The hearing loss is calculated by subtracting the current hearing levels from those measured by the baseline or revised baseline audiogram at 2000, 3000, and 4000 Hz, and, optionally, correcting for age. A standard threshold shift is defined as when the average loss in either ear has reached 10 dB. The proposal is essentially unchanged, except that the term "sensitivity" has replaced the term "acuity."

OSHA defines a standard threshold shift in essentially the same way and requires that an employee's annual audiogram be compared to his or her baseline audiogram to determine if the annual audiogram is valid and if a standard threshold shift has developed.

NIOSH (1995) recommends that the criteria for a standard threshold shift be a 15–dB decrease in hearing sensitivity at any one of the audiometric test frequencies from 500 to 6000 Hz on two sequential audiograms. The shift in hearing sensitivity must be in the same ear. NIOSH believes this criteria is sufficiently stringent to detect developing hearing loss while excluding normal variability in workers' hearing sensitivity. NIOSH's previous (1972) criteria defined standard threshold shift as a change of 10 dB or more at 500, 1000, 2000 or 3000 Hz; or 15 dB or more at 4000 or 6000 Hz.

MSHA's definition of standard threshold shift in the final rule will identify individuals suffering shifts as large as 30 dB at 4000 Hz with no shifts at the lower frequencies. This permits the early identification of individuals at risk, so that corrective measures may be instituted. For example, there are some instances where significant threshold shifts in hearing level occur at higher test frequencies (4000 and 6000 Hz) with little or no change in hearing level at the middle frequencies. While such large shifts are uncommon, they may occur in noise-sensitive individuals, especially in the early stages of noise-induced hearing loss.

Many commenters voiced concern that any hearing loss would be considered a result of occupational noise exposure. These commenters believed that many non-occupational causes could produce a hearing loss and that MSHA should recognize such non-occupational origins of hearing loss. As stated elsewhere in this preamble, MSHA leaves it to the professional judgement of medical and technical personnel to determine, through interviewing and thorough examination, whether the origin of hearing loss is occupational or non-occupational.

MSHA believes, after considering the relevant factors and reviewing current U.S. armed forces and international standards, that the definition of a standard threshold shift in the final rule is the most appropriate. Further discussion is provided under § 62.172, regarding the evaluation of audiograms.

Time-weighted average-8 hour (TWA_8) is the sound level which, if constant over 8 hours, would result in the noise dose measured. The proposed definition remains unchanged in the final rule. This value is used in the final rule in connection with various limits; for example, the permissible exposure level is a TWA_8 of 90 dBA and the action level is a TWA_8 of 85 dBA.

Not all noise-measurement instruments provide readouts in terms of an 8-hour time-weighted average. Personal noise dosimeters, for example, measure noise as a percentage of permitted dosage, with the permissible exposure level equated to 100%. Noise dose may be converted, in accordance with § 62.110 of the final rule, to an equivalent TWA_8 to determine if the action level or the permissible exposure level has been exceeded and to evaluate the impact of engineering and administrative controls. Accordingly, MSHA has provided a list of TWA_8 conversion values in Table 62–2 of the final rule, based on a criterion level of 90 dBA for 8 hours.

Noise exposure must be determined for the entire shift, but regardless of the length of the work shift, a determination of noncompliance with the noise standard will be based upon exceeding 100% exposure and the TWA_8 (and a 5-dB exchange rate). It would thus be improper to adjust a TWA_8 reading for an extended work shift.

Section 62.110 Noise Exposure Assessment

The requirements of § 62.110 of the final rule have been adopted from both the proposal and supplemental proposal to include in one section all provisions that address mine operators' assessment and evaluation of miners' noise exposures. The provisions of this section of the final rule include the requirements that mine operators:

(1) Establish a system to monitor miners' noise exposures;

(2) Evaluate each miner's noise exposure to determine continuing compliance with this part;

(3) Provide affected miners and their representatives the opportunity to observe noise exposure monitoring; and

(4) Notify miners when their noise exposure equals or exceeds certain limits set by this final rule.

The provisions of this section are similar to provisions in § 62.120(a) and (f) of the proposal and § 62.120(g) of the supplemental proposal. The final rule, like the proposal, requires the mine operator to establish a system of monitoring to evaluate each miner's noise exposure. The monitoring requirement establishes specific goals for a mine operator's monitoring system, including:

(1) Determining if miners' noise exposures reach any of the limits established by this final rule;

(2) Assessing the effectiveness of the engineering and administrative noise controls in place;

(3) Identifying areas of the mine where the use of hearing protectors is required; and

(4) Ensuring that the noise exposure information necessary for proper evaluation of miners' audiograms is furnished to audiometric test providers.

The rule is flexible, that is, it does not prescribe how the mine operator will accomplish the goals it sets, but rather leaves it to the mine operator to determine the best means by which to achieve those goals.

Like the supplemental proposal, the final rule requires the mine operator to give prior notice to affected miners and their representatives of the date and time of exposure monitoring by the mine operator, and to provide miners and their representatives the opportunity to observe such monitoring.

The final rule also requires that the mine operator notify miners in a timely manner if their noise exposures reach the levels specified. This ensures that miners are aware that they have been exposed to excessive noise and may encourage them to use the hearing protectors provided by the mine

operator and participate in the audiometric testing program provided by the mine operator. Miners must also be notified of the corrective action taken if their exposures exceed the permissible exposure level.

System of Monitoring

Paragraph (a) of § 62.110 of the final rule requires mine operators to establish a system of monitoring that evaluates each miner's noise exposure sufficiently to determine continuing compliance with all aspects of the final rule. The final rule, like the proposal, takes a performance-oriented approach, and neither the methodology nor the intervals of monitoring are specified. Under § 62.120(f) of the proposed rule, mine operators would have been required to establish a system of monitoring "which effectively evaluates each miner's noise exposure."

Despite a number of commenters who questioned the need for monitoring by the mine operator, MSHA has determined that operator monitoring is needed to identify those miners who are subjected to noise exposures that may be injurious to their hearing, so that protective measures can be implemented. Most commenters supported the need for monitoring and favored a performance-oriented approach, but some suggested a detailed specification-oriented monitoring program similar to the program previously applicable to coal mines. Those commenters questioned how MSHA would evaluate "an effective system of monitoring," urging MSHA to define this term. Other commenters questioned mine operators' ability to conduct reliable noise exposure monitoring.

MSHA intends to evaluate the effectiveness of mine operators' monitoring programs by how well the programs achieve the specified goals. During mine inspections, MSHA will continue to evaluate miners' noise exposures. Overexposures may indicate deficiencies in the mine operator's noise monitoring program, and may result in close scrutiny of the program by MSHA. In view of the wide variety of mining operations to which the final rule applies, MSHA has concluded that the establishment of rigid and specific monitoring requirements would be unnecessarily inflexible and stifle innovation and improvements in monitoring technology. The test of whether the monitoring system is effective is how well the monitoring system protects miners. Thus, a monitoring program which meets the specified goals will be considered effective under the final rule.

Another concern of commenters was the proposed requirement that mine operators establish a system of monitoring which "effectively evaluates each miner's noise exposure." These commenters expressed concern that this provision could place an undue burden on mine operators. Many of these commenters suggested that monitoring areas of the mine, representative job tasks, or similar occupations would be sufficient to meet the intent of the rule. A few commenters suggested that monitoring should occur only when information exists that a miner's noise exposure equals or exceeds the action level. According to one commenter, because a mine operator's insurance carrier may conduct noise exposure monitoring, monitoring by the mine operator would not be necessary.

In response to these commenters, the language of this section of the final rule has been reworded to provide that the mine operator must establish a system of monitoring that "evaluates each miner's noise exposure sufficiently to determine continuing compliance with this part." This reflects the intent of both the proposal and the final rule, and does not require that each miner be individually evaluated for noise exposure, provided that the established monitoring system serves to detect individual miner exposures equaling or exceeding the specified levels in the final rule. As noted by commenters, depending upon the circumstances, monitoring of areas of the mine or representative job tasks may provide a mine operator with sufficient information to determine compliance with the final rule. Regardless of the system of monitoring that a mine operator implements, mine operators continue to be fully responsible for ensuring that no miner is exposed to noise above permissible limits, and for ensuring that the required corrective actions are taken if a miner's noise exposure equals or exceeds the action level or exceeds the permissible exposure level or the dual hearing protection level. As indicated in the preamble to the proposed rule, a mine operator could use results of MSHA sampling or information from equipment manufacturers on the sound levels produced by their equipment in determining compliance with this rule. Additionally, as suggested by one commenter, a mine operator could also consider the results of other sampling, such as sampling conducted by an insurance carrier, in determining compliance. It would nonetheless benefit mine operators to determine miners' noise exposure using a personal noise dosimeter or the formula included in paragraph (b) of this section of the final rule.

Determination of Dose

Paragraphs (b)(1) and (b)(2) of § 62.110 of the final rule include requirements for determining a miner's noise dose. These requirements are essentially the same as those in § 62.120(a) of the proposal. They contain several revisions in language to accommodate the changes in the threshold and range of integration for the permissible exposure level and dual hearing protection level. Additionally, the final rule, unlike the proposal, specifically refers to the use of personal noise dosimeters in determining a miner's noise dose. Finally, the final rule does not adopt the term "miner's noise exposure measurement" used in the proposal, but instead substitutes the term "miner's noise dose determination" to be consistent with the flexible and performance-oriented approach taken by the final rule. This change in terminology reflects the fact that mine operators may choose to determine a miner's noise dose and comply with the requirements of the final rule without taking an actual, physical measurement of a miner's personal noise exposure.

Paragraph (b)(1) of § 62.110 provides that a miner's noise dose may be determined in one of two ways:

(1) Through the use of a personal noise dosimeter; or

(2) When sound levels and corresponding exposure times are known, the dose is computed using the specified formula.

In order to use the formula, it is necessary to know the distribution of sound levels and exposure times throughout the work shift. Table 62–1 provides reference durations for the sound levels to be used in the calculation of dose, and Table 62–2 addresses converting from dose readings to equivalent TWA_8 values.

The ratios of the actual exposure times to the reference duration for each specified sound level equal to or exceeding the threshold (lower bound on the integration range) are summed and expressed as a percentage of the permitted standard. A reference duration is the time over which a miner, exposed at the associated sound level, receives 100% of the permissible noise dose. The reference duration for an 80-dBA sound level was added to the table in the final rule to reflect the use of the 80-dBA threshold for the determination of conformance with the action level, and is consistent with OSHA's noise standard.

Formula for Computing a Miner's Noise Exposure

If a sound level meter is used, corresponding discrete exposure times for each sound level are determined, and the formula established in this section is used to compute the miner's noise exposure. A personal noise dosimeter automatically computes a miner's noise exposure in the same manner as the formula does for readings taken with a sound level meter over the entire measurement period.

Like the proposal, the final rule includes Table 62–1, which lists incremental sound levels and their associated reference durations. The table in the final rule differs from the table included in the proposal because the sound levels that must be integrated into the noise exposure determination under the final rule are different than they would have been under the proposal for the permissible exposure level and the dual hearing protection level (see §§ 62.120, 62.130, and 62.140). These sound levels are essentially the same as those shown in Table G–16a in the OSHA noise standard, except that values above 115 dBA are excluded.

Although sound levels in excess of 115 dBA are not shown in Table 62–1, they are to be integrated into the noise exposure determination. However, inclusion of these values in Table 62–1 might lead the reader to erroneously infer that a miner is permitted to be exposed to sound at such levels, contrary to § 62.130(c) of the final rule, which prohibits the exposure of miners to sound levels exceeding 115 dBA. To avoid any such confusion, Table 62–1 has not been expanded to include the corresponding reference durations for sound levels greater than 115 dBA. Additionally, the Table includes the notation that at no time must any excursion exceed 115 dBA. MSHA notes that, in any case, the reference durations for sound levels that are not in the table can be calculated in accordance with the formula in the table's note. Further, discussion of the range of sound levels that are integrated into a miner's noise dose is included under § 62.110(b)(2), regarding range of integration.

Conversion From Dose to TWA_8

Table 62–2 is provided to allow conversion of the dose (percent) to the equivalent eight-hour time-weighted average (TWA_8). The requirements of paragraph (b)(1) have been adopted unchanged from § 62.120(a)(2) of the proposal. However, the full shift over which the dose determination is made may be shorter or longer than 8 hours. Thus, the table is included because it provides an easy reference for converting the noise dose expressed as a percentage of the permissible exposures to the corresponding TWA_8.

MSHA noted in the preamble to the proposed rule that the TWA_8 and the dose are to be used interchangeably, and that the TWA_8 is not to be adjusted for extended work shifts, because the criterion level is based on eight hours. Noise exposures must reflect the entire shift in order to determine compliance with the final rule. If the noise dose exceeds 100 percent, regardless of the length of the work shift, the miner will be considered to be overexposed to noise. MSHA requested that commenters provide suggestions to help the Agency ensure that its intent is clearly conveyed in this final rule, but received no additional comments. The Agency provides the following additional guidance. If a miner's noise dose exceeds 800 percent, regardless of the length of the work shift, the miner will be considered to be exposed above the dual hearing protection level. If a miner's noise dose equals or exceeds a TWA_8 of 85 dBA, regardless of the length of the work shift, the miner will be considered to be exposed above the action level. Since the action level and permissible exposure level are determined using 80-dBA and 90-dBA thresholds, respectively, the noise dose using the 90-dBA threshold will always be lower or equal to the noise dose using the 80-dBA threshold.

Table 62–2 has been constructed by equating the permissible exposure level to a dose of 100 percent (criterion level of a TWA_8 of 90 dBA). More specifically, the TWA_8 conversion values in Table 62–2 are based on the use of a 90-dBA criterion level and a 5-dB exchange rate. Interpolation for values not found in this table can be determined using the following formula:

$TWA_8 = 16.61 \log_{10} (D/100) + 90$,

where D is the dose. Table 62–2 can be used to determine the equivalent TWA_8 from the percent noise dose. The conversion is made from dose in percent to TWA_8, regardless of the work shift time, and compared to the action level (TWA_8 of 85 dBA), the permissible exposure level (TWA_8 of 90 dBA), or dual hearing protection level (TWA_8 of 105 dBA). Some models of personal noise dosimeters will provide readings in both the percent dose and TWA_8, and in such cases the conversion table would not be needed.

MSHA notes here, as it did in the preamble to the proposal, that noise exposure is interpreted as if averaged over 8 hours. For example, a dose of 200 percent is equivalent to a TWA_8 of 95 dBA, whether it is collected for 4 hours, 8 hours, or 12 hours, and would indicate noncompliance with the permissible exposure level. A miner working only 5 or 6 hours can be exposed to higher sound levels during those hours than during an 8-hour shift. Thus, although exposure at 95 dBA is not permitted for 8 hours, exposure at that level would be permitted for a 4-hour work shift. Conversely, if a miner works a shift longer than 8 hours, the sound levels would need to be lower. Thus, although exposure at 90 dBA is permitted for 8 hours, it is not permitted for a 10-hour work shift. In this way, the conversion of percent dose to TWA_8 simplifies compliance determination.

Paragraph (b)(2) of this section (1) prohibits adjustments of dose determinations for the use of hearing protectors; (2) specifies the minimum range of sound levels that must be included in a miner's noise dose determination; (3) requires that the dose determination reflect the miner's full shift; (4) requires the use of a 90–dB criterion level and a 5–dB exchange rate; and (5) requires the use of an A-weighting and slow response instrument setting.

Noise Reduction Ratings

Section 62.110(b)(2)(i) of the final rule remains unchanged from § 62.120(a)(3)(i) of the proposal and requires that a miner's noise exposure be determined without adjusting for the use of any hearing protector. MSHA chose not to require the use of any method to determine the effectiveness of hearing protectors. Similarly, the Agency also chose not to provide for any scheme for the use or derating of the noise reduction rating (NRR) currently determined by manufacturers for hearing protectors based on laboratory testing under Environmental Protection Agency (EPA) regulations at 40 CFR §§ 211.201 through 211.214. The noise reduction rating is an estimate of the noise reduction achievable under optimal conditions and was designed to be used with C-weighted sound levels. EPA regulations require every hearing protector manufactured for distribution in the United States to bear a label that includes the protector's noise reduction rating.

Several commenters supported this aspect of the proposal, and agreed that the noise reduction provided by a hearing protector worn by a miner should not be considered in determining the miner's noise exposure. They believed the noise should be controlled by using engineering methods, rather than by relying on

miners to wear hearing protectors. These commenters observed that under MSHA's existing enforcement policy for coal mining, in many cases, once adjustment is made for hearing protector use when determining compliance, previously installed engineering noise controls are not maintained. Other commenters stated that the EPA noise reduction rating is a poor predictor of field performance; still others were of the opinion that the noise reduction of hearing protectors should be determined for individual wearers, not using average values such as the EPA noise reduction ratings.

On the other hand, many other commenters believed that some consideration of the noise reduction value of a hearing protector is called for in determining noncompliance. Some of these commenters stated that the EPA noise reduction rating is a scientifically accepted indicator of noise reduction value and should be retained. A number of those commenters believed that hearing protectors could be used effectively and were the most cost-effective method to achieve compliance with the rule. Other commenters recommended that hearing protectors be rated using methods recommended by the National Hearing Conservation Association, while others stated that the NIOSH method of adjusting hearing protector ratings should be used. Both of these methods are discussed below.

Several commenters provided audiometric data from their hearing conservation programs, claiming that the data showed that hearing protectors adequately protect the hearing sensitivity of miners. As discussed earlier, the NIOSH (Franks) analysis of the two databases cited by MSHA and the three analyses conducted by Clark and Bohl under the auspices of the National Mining Association indicate that miners are developing hearing loss of a degree that constitutes material impairment. The differences in the conclusions of these studies are largely attributable to different attributes of the control groups, *i.e.* prior noise exposure or the existence of otological abnormalities (which generally results in poor hearing), which were used in the studies. As noted earlier in the preamble, Franks' analysis used a non-noise exposed population and the audiograms of miners who had experienced otological abnormalities were screened out. Clark and Bohl, however, used a population that could have had an occupational noise exposure or an otological abnormality. Because of the different baselines, the conclusions reached by Clark and Bohl are different from those reached by Franks regarding the magnitude of the hearing losses exhibited by miners. In any event, although the analyses arrive at different conclusions, all of these analyses indicate that some miners are developing varying degrees of a material impairment of hearing. Additionally, these analyses do not support the conclusion that a hearing conservation program that relies primarily or exclusively on the use of hearing protectors effectively protects all miners from noise-induced occupational hearing loss. The Agency also notes that it has examined data submitted by mine operators in accordance with the Agency's notification regulations under 30 CFR Part 50. This data shows that a number of miners have incurred a hearing loss despite the use of hearing protectors.

Other studies and data were submitted by TU Services, Rochester Group, Kerr-McGee Coal Corporation, and BHP Minerals Inc., in support of their position that a hearing conservation program that relies primarily or solely on the use of hearing protectors can adequately protect miners' hearing. However, all these studies lack sufficient data to allow such a conclusion to be drawn because no information has been provided that indicates the miners' history of noise exposure; the history of the use of hearing protectors; the type of hearing protectors used or the circumstances of use; and what type, if any, of engineering or administrative controls that may have been implemented. In addition, the data or studies lacked information on employment history and training history. Also, no details of the audiometric testing procedures were provided to the Agency. One study submitted by Kerr-McGee used an internal control to which the hearing of miners were compared. However, the noise exposure of the control group was not indicated. Because of the lack of such essential information for all the raw data or studies submitted to the Agency, it is impossible for MSHA to determine with any degree of certainty the level of effectiveness of any hearing protectors that may have been used, and as a result to give any of these studies significant weight in the development of the final rule. Moreover data by BHP and the Rochester Group showed the rates for a standard threshold shift (STS) to be unacceptably high, in excess of 5% (BHP had a 7% rate and the Rochester Group had a 6.6% STS rate in 1996 and a 7.9% STS rate between 1988 and 1997).

Some commenters recommended a requirement for NIOSH Method No. 1, which uses the spectrum of the noise and the attenuation of the hearing protector at individual frequencies to estimate the sound level beneath the hearing protector. Other commenters stated their belief that mine operators lack the sophistication to use this method. The NIOSH Method No. 1 requires the use of advanced instrumentation and MSHA believes that few mine operators would have the expensive instruments. In addition, because noise in mining is almost constantly changing its frequency, content, or sound level, many measurements of individual noises will need to be conducted before an appropriate hearing protector could be recommended.

In its *Compendium of Hearing Protection Devices* (1994), NIOSH compares several sets of laboratory-measured noise reduction values (obtained using various standardized methods), including the noise reduction rating. NIOSH lists the noise reduction of various hearing protectors estimated by these various methods. Also, listed are the physical attributes, composition, and compatibility with other personal safety equipment of the hearing protectors.

NIOSH (1995) recommends a rating adjustment scheme based on the type of hearing protector, resulting in the following field-adjusted ratings:

(1) Earmuffs—75% of the noise reduction rating;

(2) Formable earplugs—50% of the noise reduction rating; and

(3) All other earplugs—30% of the noise reduction rating.

The National Hearing Conservation Association's Task Force on Hearing Protector Effectiveness (Royster, 1995) recommends that the EPA's noise reduction rating be replaced with a noise reduction rating-subject fit, or NRR(SF). According to the researchers, the NRR(SF) more realistically reflects the field performance of hearing protectors. The noise reduction rating-subject fit is determined by laboratory testing after a person fits the hearing protector to his or her head. This differs from EPA's noise reduction rating, which is determined after a researcher fits the hearing protector to the person. Both are averages for general populations, but the noise reduction rating-subject fit is more realistic because it more closely approximates field conditions by having the user insert or put on the hearing protection device. The Task Force also recommends continued audiometric testing whenever hearing protectors are used.

MSHA notes that the American Industrial Hygiene Association (AIHA, 1995) requested that EPA revise its noise rule on noise labeling requirements for hearing protectors. The reasons given for this request included:

(1) The current method of rating hearing protectors overestimates the actual workplace protection by 140 to almost 2000 percent.

(2) Absolute levels of protection from labeled values cannot be predicted.

(3) The labeled values are a poor predictor of relative performance of one hearing protector versus another.

(4) There are no provisions for retesting the hearing protectors on a recurring basis.

(5) There is no requirement for quality assessment or accreditation of the test laboratory.

Despite the fact that OSHA's noise standard includes methods to estimate the effectiveness of hearing protectors, MSHA has concluded that there is no scientific consensus regarding the method that should be used to determine the noise reduction of a hearing protector.

Many field studies have been conducted on the effectiveness of hearing protectors in the mining industry. With one exception, these studies report that hearing protectors, whether old or new, provide much less noise reduction than was measured in the laboratory. In many instances, noise reduction was minimal and highly variable, indicating that hearing protector effectiveness cannot be reliably predicted under actual use conditions and is substantially less than that indicated by the noise reduction rating of the manufacturer. These studies are summarized below.

Durkt (1993) studied the effectiveness of 11 models of new earmuffs using miniature microphones inside and outside the ear cups. A total of 107 tests were conducted at surface mines on operators of equipment that included bulldozers, front-end-loaders, and overburden drills. When the noise spectrum included significant amounts of low frequency noise, the measured noise reduction was much less than the noise reduction rating. This is relevant in mining because most diesel-powered equipment, including the machines used at the surface mines, generate noise primarily in the low frequency range.

Kogut and Goff (1994) studied the effectiveness of earmuffs being used in surface and underground mines. A total of 540 miners were tested wearing their normal earmuffs. The procedure was similar, but not identical, to the procedure used by Durkt (1993). Like Durkt, the researchers concluded the noise reduction provided by earmuffs was related to the spectrum of the noise. According to the researchers, "The earmuffs' effectiveness in reducing noise exhibited great variability and frequently fell far short of the NRR." The researchers did develop a method for predicting the effectiveness of earmuffs, but it is complex as well as impractical.

Giardino and Durkt (1996) and Giardino and Durkt (1994) expanded on the two previously discussed studies. A total of 1,265 tests were performed on 545 distinct machines of 20 different types. According to the researchers, earmuffs provided minimal noise reduction for operators of equipment powered by internal combustion engines. They concluded that the noise reduction rating was a poor predictor of earmuff performance under actual mining conditions.

Bertrand and Zeiden (1993), the exception noted above, determined the effectiveness of hearing protectors by measuring the hearing levels of miners exposed to sound levels exceeding 115 dBA. They found that, although the hearing protectors provided less noise reduction than their ratings indicated, the difference was not significant. For example, miners exposed to 118 dBA experienced hearing levels consistent with exposure to 98 dBA, indicating that the hearing protector rated at 24 dBA provided 20 dBA of noise reduction.

Several research studies performed in other industries by Pfeiffer (1992), Hempstock and Hill (1990), Green et al. (1989), Behar (1985), Lempert and Edwards (1983), Crawford and Nozza (1981), and Regan (1975) also indicate that hearing protector effectiveness is substantially less than the noise reduction rating indicated by the manufacturer.

Other findings by these researchers sometimes conflict with one or more of the others, underscoring the logic of MSHA's decision not to mandate any rating adjustment system at this time:

Regan (1975) found that earmuff-type protectors provide the most noise reduction and custom molded earplugs the least.

Behar (1985) found that the measured noise reduction rating in industrial settings averaged 14.9 dB lower and reached 25 dB lower than the manufacturer's rated value.

Green et al. (1989) report workers who used earplugs and were receiving one-third to one-half of the laboratory-based noise reduction rating value, and workers enrolled in an effective hearing conservation program obtain greater noise reduction from their hearing protectors.

Crawford and Nozza (1981) report that the average noise reduction of the earplugs was typically 50% of the manufacturer's values, except for user-molded earplugs, whose actual noise reduction in the field was near the laboratory values.

Lempert and Edwards (1983) report that, in the majority of cases, workers received less than one-half of the potential noise reduction of earplugs. They conclude that regardless of the type of earplug used at a facility, a large portion of the workers obtained little or no noise reduction.

Hempstock and Hill (1990) report that the workplace performance of earmuffs more closely approximated the laboratory performance than earplugs. For both earmuffs and earplugs, the measured workplace noise reductions were lower and the standard deviations higher than those measured in the laboratory. The researchers attribute these results to the ease of fitting an earmuff compared to fitting an earplug. Their study also revealed that the decrease in effectiveness was dependent upon the model of hearing protector and even differed between sites; safety glasses substantially degraded the performance of earmuffs; workers wearing safety glasses received approximately one-half of the laboratory noise reduction.

Royster et al. (1996) also found that personal protective equipment such as hard hats and safety glasses worn by miners may affect the noise reduction of hearing protectors. In their study, wearing safety glasses reduced the noise reduction of earmuffs by about 5 dB at all frequencies.

Pfeiffer (1992) surveyed studies of hearing protector effectiveness in German industry, and reports that at industrial sites, earplugs provided between 10 and 15 dB less noise reduction, and earmuffs about 6 dB less, than they did in the laboratory. In another part of the study, used but not defective earmuffs were tested against new ones. The used earmuffs provided significantly less noise reduction than new ones. The decrease in reduction depended on the model and frequency tested, exceeding 7 dB for some frequencies.

Abel and Rokas (1986) report that the noise reduction of earplugs decreases with wearing time, and that head and jaw movement accelerate the decline. Cluff (1989) investigated the effect of jaw movement on the noise reduction provided by earplugs and determined that the change in reduction depended on the type of earplug. Self-expanding viscose foam earplugs retained more of

their noise reduction ability than multi-flanged or glass-fiber earplugs.

At Noise-Con 81, Berger (1981) concluded that the performance of hearing protectors decreased with wearing time. Kasden and D'Aniello (1976, 1978) found that custom molded earplugs retained their noise reduction after three hours of use during normal activity, but typical earplug performance decreased after three hours of use. Krutt and Mazor (1980) report that the noise reduction of mineral down earplugs decreases over a three-hour period of wear, but the noise reduction of expandable foam earplugs does not. Casali and Grenell (1989) tested the effect of activity on the noise reduction provided by an earmuff and found that there was significant decrease only at 125 Hz and that the noise reduction was highly dependent on the fit.

Royster and Royster (1990) report that the noise reduction rating cannot be used to determine or even rank the field effectiveness of hearing protectors. They found that two individuals, using the same model of hearing protector, can obtain vastly different levels of noise reduction. They conclude that "Products that are more goof-proof (earmuffs and foam earplugs) provided higher real-world attenuation than other HPDs [hearing protection devices]."

Casali and Park (1992) report that the noise reduction at 500 or 1000 Hz showed a high correlation with the overall noise reduction of hearing protectors. Therefore, they believe, models can be developed to predict the overall reduction of hearing protectors based upon the measured reduction at a single frequency, eliminating the need to adjust the noise reduction rating to accurately reflect noise reduction in the field. Casali and Park also believe that this model could be used to fit hearing protectors objectively.

Berger (1992), in "Field Effectiveness and Physical Characteristics of Hearing Protectors," reports on the progress of the American National Standards Institute (ANSI) Working Group S12/WG11, which is charged with developing a laboratory methodology of rating hearing protectors that reflects the noise reduction obtained by workers in the field. Berger also summarizes the results of 16 studies involving over 2,600 subjects on the field performance of hearing protectors. Earplug field ratings averaged about 25% of the published U.S. laboratory ratings (ranging from 6% to 52%) and earmuff reduction rates averaged about 60% of the laboratory rates (ranging from 33% to 74%).

Royster et al. (1996) also report on the progress of the American National Standards Institute Working Group that has developed a methodology that reflects the reduction achieved by workers in a well managed hearing conservation program, and is in the process of drafting an ANSI standard around it. While testing their methodology, the researchers concluded that because some test subjects could not properly insert an earplug by simply reading the manufacturer's instructions, these instructions may be inadequate.

As summarized above, many researchers have compared the results of standardized methods of measuring the noise reduction of hearing protectors in a laboratory setting to estimated or measured field reductions. Researchers have yet to develop a standardized test for measuring the noise reduction of hearing protectors in the field. In general, commenters concurred with MSHA's preliminary conclusion in the proposal that, while methods exist to measure the noise reduction provided to an individual by a hearing protector, none of these methods has been standardized or shown to be effective in field usage or applies equally to all types of hearing protectors. This makes it virtually impossible to accurately predict in any systematic way the in-mine effectiveness of hearing protectors in reducing noise exposures for individual miners.

In addition to the studies that have been summarized above, MSHA has reviewed the procedures for exposure measurement in regulations and codes of practice (mandatory or recommended) of OSHA, selected branches of the U. S. armed services, international communities, the International Standards Organization, American National Standards Institute, and the American Conference of Governmental Industrial Hygienists. A variety of methods are used by these organizations, but nearly all of the entities either specify or imply that noise reduction provided by hearing protectors should not be considered in determining a worker's noise exposure.

Accordingly, based on the rulemaking record, and consistent with OSHA's noise standard, the final rule adopts the proposed requirement that a miner's noise dose be measured or computed without regard to any noise reduction provided by the use of personal hearing protectors. This is consistent with MSHA's determination that there are other factors that may be as important or even more important than a hearing protector's noise reduction in ensuring that a miner is protected from occupational noise-induced hearing loss. These factors include comfort, training, fit, maintenance, and consistent use. Because engineering and administrative controls are more reliable and measurable, they must be the first line of defense in reducing noise exposures. This fact does not, however, diminish the usefulness of hearing protectors as part of a continuing and effective hearing conservation program. In recognition of the role played by hearing protectors in a hearing conservation program, MSHA will provide guidance to the mining community in estimating the adequacy of hearing protectors as applied to individuals in the form of a compliance guide that will be issued after the publication of the final rule.

Range of Integration

Section 62.110(b)(2)(ii) of the final rule requires the integration of all sound levels over the appropriate range in determining a miner's noise dose. Under the proposal, the range of integration for the action level, the permissible exposure level, and the dual hearing protection level would have been from 80 to 130 dBA. The "range of integration" means the level at which the dosimeter starts recognizing the sound level and counting it to the sound level where the dosimeter stops counting. Unlike the proposal, the final rule establishes dual thresholds: § 62.120 of the final rule sets the range of integration for the action level from 80 to at least 130 dBA, while the range of integration for both the permissible exposure level and the dual hearing protection level is from 90 to at least 140 dBA (§§ 62.130(a) and 62.140). To accommodate the dual thresholds, the language of the final rule has been revised to require the "appropriate range" of integration of sound levels, rather than specifying the range of integration set forth in the proposed rule for all dose determinations.

The term "all sound levels" in the final rule includes, but is not limited to, continuous, intermittent, fluctuating, impulse, and impact noises. A discussion of impulse and impact noise is provided at the end of this section.

Dual Thresholds

Many commenters urged MSHA to develop a rule consistent with the OSHA noise standard, which requires an 80-dBA threshold for the action level and a 90-dBA threshold for the permissible exposure level. Some commenters, however, supported the proposed 80-dBA threshold for both the action level and permissible exposure level. Also, a few commenters requested that MSHA adopt a threshold of 85 dBA for the permissible exposure level, while other commenters recommended that MSHA retain the 90-dBA threshold used under MSHA's existing noise standards, believing that sound levels less than 90 dBA were not hazardous and that an 80-dBA threshold for compliance with the permissible exposure level would merely increase the number of citations without significantly benefitting the miners.

MSHA has concluded that the adoption of a dual threshold in the final rule is protective and will decrease a miner's risk of developing noise-induced hearing loss. In not adopting the proposed 80-dBA threshold for both the permissible exposure level and the action level, MSHA is not ignoring the scientific evidence, noted in Part V, *Material Impairment*, which demonstrates that there is a risk of hearing loss from exposure to sound levels at or above 80 dBA. The Agency addressed the risk of hearing impairment from prolonged exposure above 80 dBA in the preamble to the proposed rule. However, MSHA concludes that the dual thresholds in the final rule will protect miners against noise-induced hearing loss which occurs at those sound levels, primarily because the final rule incorporates significant changes to the proposed hearing conservation program.

MSHA has concluded that the protection provided by the final rule adequately addresses the risk of noise-induced hearing loss which occurs at exposures between a TWA_8 of 85 dBA and a TWA_8 of 90 dBA. Under the final rule, mine operators are required to implement a system of monitoring that evaluates each miner's noise exposure sufficiently to determine compliance with part 62. All sound levels ranging from 80 to at least 130 dBA must be integrated to determine whether a miner's noise exposure equals or exceeds a TWA_8 of 85 dBA—the action level. Mine operators are required to enroll miners whose noise exposure equals or exceeds the action level into a hearing conservation program. Under the hearing conservation program, mine operators are required to provide enrolled miners with hearing protectors, audiometric testing, and training, all in accordance with specific requirements.

Commenters noted that, in addition to being protective, a dual threshold is workable. Many mine operators are currently using personal noise dosimeters with dual threshold capability for measuring noise exposures. Some commenters, familiar with both OSHA and MSHA regulations, recommend thatMSHA require measuring a worker's noise exposure using dual thresholds in order to be consistent with OSHA. Nearly all personal noise dosimeters currently being manufactured have variable threshold settings that facilitate the collection of noise exposures using two different thresholds. Some older personal noise dosimeters that lack the capability of dual thresholds but which have been used to measure a miner's noise exposure under MSHA's existing noise regulations—may be somewhat obsolete, but can still be used to make a noise exposure measurement to determine conformance with either the action level or the permissible exposure level. They simply cannot do both simultaneously. Additionally, some of the older instruments may not be capable of integrating the required range of sound under the final rule, and will need to be replaced.

Impulse/Impact Noise

As noted above, § 62.110(b)(2)(ii) of the final rule requires that "all sound levels," including impulse and impact noise, be integrated into a miner's noise dose determination. Impulse noise sources, such as gunshots, or impact noise sources, such as a sledge hammer striking metal, result in high sound pressure levels being generated almost instantaneously. These sources are hazardous because their duration is so short that the protective mechanisms of the ear do not have sufficient time to react. The final rule, like the proposal, does not include a separate provision for impulse or impact noise.

In the preamble to the proposed rule, MSHA discussed in depth the many factors it considered in determining the merit of proposing an impulse/impact noise limit for the mining industry. Although there is evidence in the literature on the harmful effects of impulse/impact noise, MSHA concluded that, currently, there is insufficient scientific consensus to support a separate impulse/impact noise standard. Further, existing procedures for identifying and measuring such sounds lack the practicality to enable its effective measurement. This is due, in part, to the complexity of the phenomena, where consideration must be given to such technical factors as the peak sound pressure level, the shape of the wave form, the number of impulses per day, the presence or absence of steady-state (background) sound, the frequency spectrum of the sound, and the protective effect of the middle ear acoustic reflex.

As discussed in Part V, *Material Impairment*, when impulse/impact noise is combined with continuous noise, hearing loss is exacerbated. Because industrial impulse noises are almost always superimposed on a background of moderate-to-high levels of continuous noise, and because both can be harmful, it is reasonable to consider their combined effect, rather than to treat each separately. MSHA has therefore concluded, and the final rule reflects, that impulse/impact noise must be combined with continuous noise when a miner's noise exposure is determined. This is consistent with provisions in OSHA's noise standard.

MSHA has received comments on whether impulse and impact noise can be accurately integrated into determining a miner's noise dose. The studies cited by these commenters predated the new ANSI S1.25–1991 "American National Standard Specification for Personal Noise Dosimeters." Personal noise dosimeters meeting this standard cover the ranges of sound levels that are to be integrated into a miner's noise dose under §§ 62.120, 62.130(a), and 62.140 and accurately integrate impulse and impact noise into a worker's noise exposure.

MSHA received comments in response to its request for data addressing a critical level to prevent a traumatic hearing loss. A critical level is one which causes immediate and irreparable damage to the hearing mechanism. The comments received dealt primarily with impulse and impact noise as it pertained to the proposed ceiling level of 115 dBA, and these comments are therefore addressed under § 62.130 of this preamble.

Full Work Shift

Section 62.110(b)(2)(iii) of the final rule has been adopted with some changes from proposed § 62.120(a)(3)(ii), and requires that a miner's noise dose determination reflect the miner's full work shift. Under the proposed rule, a miner's noise exposure measurement would have been required to integrate all sound levels from 80 dBA to 130 dBA during the miner's full work shift. Many commenters supported the proposal, based on their belief that a miner's noise exposure should be monitored for the entire work shift. Several commenters specifically recommended that full-shift sampling also include extended work shifts, that is, those that are longer than 8 hours. Another supported the use of dosimetry to determine a miner's noise exposure.

MSHA received several comments suggesting alternatives to full-shift sampling. Several commenters suggested that miners could be monitored only during the loudest portion of their work shift, assuming that this portion was predictable. Under

this suggested approach, if monitoring during the loudest portion of the work shift did not indicate an overexposure, a full-shift measurement would be unnecessary. One commenter wanted MSHA to specify that the noise measurement be conducted for at least two-thirds of the work shift, because this commenter believed that a mine operator cannot always monitor a miner for the complete work shift, and because two-thirds of a work shift would provide sufficient information to accurately characterize the shift.

MSHA noted in the preamble to the proposal that because most mining jobs have highly variable work tasks, high mobility, and irregular work schedules, measurement of a miner's noise exposure for a partial shift may not reliably project the miner's noise exposure for a full work shift (one that is at least 8 hours), and monitoring the loudest part of the work shift could overestimate the miner's exposure.

MSHA also received several comments suggesting other ways to measure sound levels or a miner's noise exposure. A few commenters suggested that if the sound level measured with an area sample indicated that no possible overexposure exists, a full-shift measurement would be unnecessary. A few commenters suggested that the final rule require a 40-hour multiple-shift sampling period in order to better define a representative work exposure.

The monitoring requirements of the final rule are intended to be highly performance-oriented. The final rule simply requires that mine operators effectively evaluate a miner's noise exposure to determine compliance with part 62.

To be consistent with this performance-oriented approach, the language of this section of the final rule has been revised from the proposal to require that the miner's dose determination reflects the miner's full shift. This means that the mine operator has flexibility in determining a miner's noise dose, and may choose to use a method that does not necessitate sampling over the course of the entire shift.

For example, if a miner who works an eight-hour shift typically spends four hours in a noisy area of the mine and the other four hours in a quiet area, such as a mine office, the mine operator may choose to sample the miner's noise exposure only during the four-hour period that the miner is exposed to higher noise levels. In such a case, the mine operator would have a reasonable basis for concluding that a full-shift measurement is not needed to verify that the miner is not being overexposed. Mine operators are free to select the sampling methodology that is appropriate for their mines. However, mine operators should be aware that a full work shift sample is typically more indicative of a miner's noise exposure than is a partial-shift sample, and that mine operators are responsible under the final rule for ensuring that miners are protected from exposures in excess of the permissible exposure level. Mine operators also must ensure that miners with noise exposures that equal or exceed the action level must be enrolled in a hearing conservation program.

MSHA therefore recommends that, when a personal noise dosimeter is used for measurement, the determination be made over the duration of the entire shift. Alternatively, if another dose determination methodology is used, it must reflect the noise dose for the miner's full shift. For example, the multiple-shift sampling approach recommended by a commenter would produce results that are not relevant to compliance with the standard, which is based upon a miner's exposure over a full work shift.

One commenter expressed concern that personal noise dosimeters would only integrate sound levels for 8 hours. On the contrary, it has been MSHA's experience that personal noise dosimeters integrate sound levels for at least 8 hours, or until the personal noise dosimeters are either turned off or placed in a standby mode. Therefore, personal noise dosimeters can measure a miner's noise exposure during an extended shift.

Criterion Level and Exchange Rate

Section 62.110(b)(2)(iv) of the final rule remains unchanged from proposed § 62.120(a)(3)(iii) and establishes the criterion level of 90 dBA. Because commenters who referenced the criterion level did so in the context of the permissible exposure level, their comments are addressed under § 62.130 of the preamble.

Section 62.110(b)(2)(iv) of the final rule also adopts the 5-dB exchange rate, which was proposed in § 62.120(a)(3)(iii). The exchange rate is the change in sound level which corresponds to a doubling or a halving of the exposure duration. For example, using a 5-dB exchange rate, a miner who receives the maximum permitted noise dose over an 8-hour exposure to 90 dBA would have accumulated the same dose as a result of only a 4-hour exposure at 95 dBA, or 2-hour exposure at 100 dBA. If the exchange rate were reduced to 3 dB, a miner would receive the same dose with a 4-hour exposure at only 93 dBA or a 2-hour exposure at 96 dBA. In the preamble to the proposal, MSHA specifically sought comments on changing the exchange rate from 5 dB to 3 dB.

Many commenters favored the 5–dB exchange rate because they thought that implementing a 3–dB exchange rate was infeasible. Some of these commenters, believing that a 5–dB exchange rate is based on work shifts with intermittent noise exposure, felt that a 5–dB exchange rate is more appropriate because mining noise exposures are generally intermittent. A few of the commenters believed the 3–dB exchange rate was not supported by scientific evidence. Some commenters also suggested that, if the 5–dB exchange rate is retained, the permissible exposure level should be lowered to 88 or 85 dBA, and that either a 3–dB exchange rate apply above 115 dBA, or mine operators be prohibited from implementing administrative controls to control exposures to sound levels exceeding 100 or 105 dBA.

As indicated in the preamble to the proposal, MSHA evaluated the impact a 3–dB exchange rate would have on the measured noise exposure of miners working in U.S. metal and nonmetal mines. Federal mine inspectors collected measurements during the course of their regular inspections using personal noise dosimeters, collecting data using 5–dB and 3–dB exchange rates simultaneously.

The measurements for a 5–dB exchange rate were made using a 90–dBA threshold, while the 3–dB exchange rate data were obtained without a threshold, allowing for analysis of data at values below a TWA_8 of 90 dBA, which is not possible with a 90–dBA threshold. The results of the study indicated the selection of an exchange rate substantially affects the measured noise exposure in the following ways:

(1) The percentage of miners whose noise exposures would be calculated to exceed a TWA_8 of 90 dBA permissible exposure level (or an $L_{eq,8}$ of 90 dBA in the case of a 3–dB exchange rate) increased from 26.9% to 49.9% when the exchange rate changed from 5 dB to 3 dB;

(2) Switching to a 3–dB exchange rate and setting the permissible exposure level at an $L_{eq,8}$ of 85 dBA would increase the percentage of miners whose exposure is out of compliance with the permissible exposure level from 67.6% to 85.5%; and

(3) Additional engineering and administrative noise controls would be required under the 3–dB exchange rate, and they would be more expensive.

Although the Agency has not compiled similar data for coal mines, MSHA has concluded that the consequences of adopting a 3–dB exchange rate would be similar. This conclusion is based on the similarity of mining operations and equipment and the consistency of the exposure data at the 5–dB exchange rate in either sector of the mining industry.

Several commenters advocated the use of a 3–dB exchange rate, citing scientific studies to support their position.

In the preamble to the proposed rule, MSHA noted its awareness of a consensus in the recent literature that noise dose actually doubles more quickly than measured by the 5–dB exchange rate, and that there appears to be a consensus for an exchange rate of 3 dB. However, the Agency also noted in the preamble to the proposal that it intended to retain the proposed 5–dB exchange rate because of feasibility considerations.

Under the Mine Act, MSHA is required, when promulgating a standard, to make a reasonable prediction, based on the "best available evidence," that the industry can generally comply with the standard within an allotted period of time. The Agency must demonstrate a reasonable probability that the typical mine operator will be able to develop and install controls meeting the standard. MSHA noted in the preamble to the proposal that the exposure data, in conjunction with the study referenced above, suggested that it would be difficult for MSHA to make such a showing in proposing a 3–dB exchange rate. This is particularly true at smaller mines, where many mines would not have enough employees to allow implementation of certain administrative controls, such as job rotation. Although some commenters were not persuaded by the discussion in the preamble to the proposal that a 3–dB exchange rate would be infeasible in the mining industry, MSHA received no additional data from commenters contradicting this determination.

Additionally, MSHA believes that any decision on the appropriate exchange rate for noise dose determinations is closely linked to a decision on the appropriate permissible exposure level, and should be considered as part of that process. As indicated in the preamble discussion of feasibility and under § 62.130, MSHA has concluded that the existing permissible exposure level should not be revised at this time. Revision of the applicable exchange rate should also be deferred. Accordingly, MSHA continues to conclude that it would be extremely difficult and prohibitively expensive for the mining industry to comply with the existing permissible exposure level with a 3–dB exchange rate, using currently available engineering and administrative noise controls. MSHA therefore cannot demonstrate that implementation of such an exchange rate would be feasible. However, the Agency will continue to monitor the feasibility of adopting a 3–dB exchange rate.

A-Weighting and Slow Response Instrument Setting

Section 62.110(b)(2)(v) of the final rule, like § 62.120(a)(3)(iv) of the proposed rule, requires that instruments used for measuring noise exposures be set for the A-weighting network and slow response. OSHA also uses the A-weighting network and the slow response for evaluating exposure to noise.

Weighting networks were originally designed to approximate the loudness-level-sensitivity of the human ear to pure tones. The human ear does not respond uniformly to all frequencies of tones. At low sound pressure levels (e.g., 50 dB), the ear is less responsive to low- and high-frequency tones. At higher sound pressure levels (that is, 90 dB), the ear responds more uniformly to low- and high-frequency tones. Low-frequency tones are, however, less damaging to hearing than mid-frequency tones.

Several weighting networks have been developed to take these differences into account and have been designated as A, B, and C. Early researchers suggested the use of the A-weighting network when the sound pressure level was less than 55 dB; the B-weighting network between 55 and 85 dB; and the C-weighting network for sound pressure levels exceeding 85 dB (Scott, 1957). Since that time, however, a scientific consensus has developed on the use of the A-weighting network to measure occupational noise exposure at all sound levels.

The acoustical performance of the A-weighting network has been defined in consensus standards established by the American National Standards Institute (ANSI). ANSI S1.4–1983, "American National Standard Specification for Sound Level Meters," and ANSI S1.25–1991, "American National Standard Specification for Personal Noise Dosimeters," define the identical A-weighting networks for the respective instruments. No comments were received recommending the use of a weighting network other than the A-weighting network.

Response time is a measurement of the speed at which an instrument responds to a fluctuating noise. There are several instrument response times that have been standardized fast, slow, impulse, exponential, and peak. The quickest response is the peak response and the slowest is the slow. Originally the slow response (1000 milliseconds) was used to characterize occupational noise exposure, because reading the needle deflections on a meter in rapidly fluctuating noise was easier. Using the fast response (125 milliseconds) resulted in needle deflections that were too difficult for the human eye to follow. The slow response was in use to characterize noise exposure at the time when most damage risk criteria were developed. As a result, both the previously referenced ANSI S1.4 and S1.25 instrumentation standards for sound level meters and personal noise dosimeters, respectively, contain specifications for the slow response.

Some commenters suggested that MSHA adopt the fast response for all measurements. Others objected to the use of the slow response only with personal noise dosimeters, where, they believe, the slow response overestimates the noise exposure for fluctuating or intermittent noise. These commenters had no objection to using the slow response with sound level meters where the effect of intermittency could be taken into account. One commenter stated MSHA should use the fast response to conform with an international consensus standard.

However, the majority of the scientific community and most international regulatory authorities accept slow response as the appropriate measurement parameter for characterizing occupational noise exposures, and it has been used by the U.S. Department of Labor since the adoption of the Walsh-Healey Public Contracts Act noise regulations of 1969 to measure occupational noise exposure. Based upon data included in Part V, *Material Impairment,* which showed good correlation between hearing loss and A-weighted noise exposures, and the accepted use of the slow response setting, the final rule adopts the proposed A-weighting and slow response settings for instruments that are used to determine a miner's noise exposure.

Observation of Monitoring

Paragraph (c) of § 62.110 of the final rule, like proposed § 62.120(g), requires mine operators to provide affected miners and their representatives with an opportunity to observe any monitoring required under this rule. In addition, the

final rule requires mine operators to give prior notice to miners and their representatives of the dates and times when the mine operators intend to conduct the monitoring. MSHA has no existing requirement in this area.

This provision is consistent with section 103(c) of the Mine Act, which requires that regulations issued by MSHA for monitoring or measuring toxic materials or harmful physical agents such as noise provide miners or their representatives with an opportunity to observe such monitoring. MSHA views mine operator monitoring as an important component in operators' efforts to protect the hearing of the miners they employ. The primary purpose of operator monitoring is protection of miners. Monitoring provides operators with an awareness of the miners' noise exposures at their mines and the specific sound levels to which miners are exposed. In addition, it reminds operators of their obligations to reduce excessive sound levels to ensure protection of miners.

The Agency received a number of comments on this aspect of the proposal. Several commenters supported providing miners and their representatives with an opportunity to observe required monitoring. Several commenters stated that miners should be paid when observing monitoring. On the other hand, many commenters stated that section 103(f) of the Mine Act, which requires mine operators to compensate representatives of miners who accompany MSHA inspectors on inspections, does not apply to observation of operator monitoring because it is not conducted as part of an MSHA inspection. MSHA agrees. Section 103(f) of the Mine Act requires "walkaround pay" when a representative of miners who is employed by the operator accompanies an MSHA inspector during an inspection of the mine. Section 103(f) does not authorize "walkaround pay" for time spent by a representative of miners observing a mine operator's monitoring program. The final rule, therefore, does not include a requirement for mine operators to compensate a representative of miners for participating in the observation of monitoring.

One commenter stated that by requiring mine operators to provide miners' representatives with an opportunity to observe noise monitoring, MSHA is improperly expanding the scope of section 103(c) of the Mine Act, which addresses monitoring of "toxic materials" or "harmful physical agents."

MSHA has consistently considered noise to be a "harmful physical agent" covered under section 103(c) of the Mine Act. The legislative history of the Federal Coal Mine Health and Safety Act of 1969, Conference Report 91–761, indicates that excessive noise was one of the harmful physical agents that Congress anticipated would be the subject of health standards. Also, the legislative history of the Federal Mine Safety and Health Act of 1977 reveals that NIOSH had conducted studies on "toxic substances," including substances in metal and nonmetal mines, and had developed criteria documents on those substances, which included noise. In addition, a U.S. Circuit Court of Appeals has determined that noise is a "harmful physical agent" under the Occupational Safety and Health Act. *Forging Industry Association* v. *Secretary of Labor*, 773 F.2d 1436, 1444 (4th Cir. 1985). Accordingly, MSHA has concluded that noise falls within the scope of section 103(c) of the Mine Act, and that MSHA has the authority to establish regulations that provide miners and their representatives access to noise exposure monitoring conducted by mine operators.

Several commenters recommended that the Agency substitute the term "representatives of miners" for "their representatives," because they believed that it was important to clarify that the representatives referred to in this section are miners' representatives designated under MSHA's regulations at 30 CFR part 40.

Under part 40, the definition of "representative of miners" includes "'representatives authorized by the miners,' 'miners or their representative,' 'authorized miner representative,' and other similar terms as they appear in the Act." Consequently, MSHA believes that the terminology used in the final rule is sufficient to indicate that the "representative" referred to in this section is a "miner's representative" designated under part 40. The final rule therefore does not adopt the suggestion of commenters.

Many commenters were opposed to allowing both miners and their representatives to observe operator monitoring. Several commenters stated that because most mine operators use personal noise dosimeters, which must be placed on the miner, the miner is effectively participating in the monitoring, and is told of the results at the end of the day. These commenters believe that requiring a miners' representative to observe would be redundant and result in adversarial relations between labor and management. The final rule does not adopt this comment, because MSHA broadly interprets the opportunity for observation of this monitoring to extend to both miners and their representatives, consistent with the underlying purposes of the Mine Act. Further, participation by miners and their representatives will enhance miner safety and health awareness and contribute to greater understanding of the nature and extent of the noise hazard.

In its Preliminary Regulatory Impact Analysis for the proposed rule, MSHA used the terms "off-duty" and "non-duty" miners in the context of observation of monitoring. One commenter raised concerns about MSHA's use of these terms, and questioned whether MSHA intended to create a new category of miner. MSHA did not intend by using this term to create a new category of miner. Instead, MSHA used the two terms interchangeably to refer to a miner who works on a shift other than the one where he or she is observing the monitoring. To avoid any confusion, MSHA uses only the term "off-duty" miner in the final Regulatory Economic Analysis.

One commenter was opposed to letting an off-duty miner or miners' representative on the property to observe noise monitoring. The commenter stated that this raised a number of issues, including:

> Who would be responsible for escorting these people around the property? Is the operator supposed to provide them with transportation? What happens if they should get injured? They are off duty but still on the mine property. How would this be classified?

The final rule does not specify how the requirement of observation of monitoring must be implemented. Instead, mine operators have the flexibility to determine, based on an assessment of their unique mining operations, how to best implement this provision. MSHA does not believe that it is either necessary or in the best interest of miners' health to impose additional restrictions on who should be allowed to observe monitoring, or how the observation of monitoring should be conducted. Most if not all of the hypothetical situations raised by the commenter could occur in contexts other than the observation of monitoring. MSHA expects that these questions will be resolved through the labor-management processes already in place.

Several commenters were concerned that allowing miners' representatives to observe could place the miners' representative in unsafe positions, especially in the case of single occupancy equipment such as a shuttle car, scraper, or bulldozer. The Agency does not intend that the exercise of the right to observe noise monitoring will expose miners or their representatives to unsafe working conditions. The purpose of observation by the miners' representative is to ensure that the miner is operating the equipment under normal working conditions and that the instrumentation is being used properly. Thus, in those cases where mobile, single-occupancy equipment is involved, the miners' representative can observe the monitoring from a safe distance.

Several commenters questioned whether the number of observers or the observation time would be limited. The final rule does not limit the number of miners, their representatives, or time spent observing monitoring. Therefore, under the final rule miners have the option of observing monitoring for the full shift, part of the shift, or not at all.

MSHA considers field calibration of the instruments, and any recording of results to be included within the right of observation. MSHA believes that miners who observe operator's monitoring procedures gain insight into the nature and extent of the noise hazard, and are more likely to become more involved in the hearing conservation program. This involvement should increase the motivation for proper use of hearing protectors, thereby increasing the effectiveness of the program and allowing them to share their knowledge with their fellow miners, thus improving overall health at the mine.

Paragraph (c) also requires mine operators to give prior notice to affected miners and their representatives of the date and time they intend to conduct monitoring. One commenter supported the provision as proposed, stating that it is an acceptable and reasonable practice.

Several commenters stated that requiring notification of both miners and their representatives of operator monitoring would be unduly burdensome, and would not enhance health and safety. One commenter recommended that MSHA adopt OSHA's provision, which simply requires employees or their representatives to be afforded an opportunity to observe noise measurements.

The Agency concludes that miners and miners' representatives need time to make necessary preparations to exercise their right to observe monitoring, and that notification is necessary to achieve this goal. Notification may be needed in order to alert the miner and the miners' representative of the need to come to the mine on an off-shift, or to arrive early at the mine to observe field calibration of instrumentation. Other commenters stated that providing prior notice compromises integrity and the ability of the mine operator to inspect for safety or conduct health surveys for the benefit of workers. Because miners and their representatives will only be observing monitoring and not actually conducting monitoring, prior notice will not compromise the integrity of the monitoring. Nonetheless, MSHA emphasizes that the exercise of the right to observe monitoring should not interfere with the monitoring process.

Several commenters stated that requiring mine operators to provide prior notification of monitoring would interfere with spot area sampling. Another commenter stated that providing prior notice is not always possible, such as during the introduction of a new piece of equipment or machinery. Several commenters also questioned whether MSHA intended to require mine operators to give prior notice of all operator monitoring and whether miners and their representatives should have the opportunity to observe any and all such monitoring. These commenters suggested that the final rule require that the mine operator provide notice and the opportunity for observation only of a reasonably representative number of such monitoring events.

The final rule does not require prior notice of such activities as spot area sampling or measurement of the sound produced by a new piece of equipment before the equipment is placed into service. Under the final rule, mine operators are required to give prior notice only of monitoring that is conducted to determine whether a miner's noise dose equals or exceeds the action level, or exceeds the permissible exposure level or the dual hearing protection level.

Additionally, paragraph (c) of this section of the final rule, like the proposal, does not specify a required method of notification. One commenter supported the provision because of its flexibility with respect to such notification. Another commenter stated that for notice to be unambiguous it must be in writing and either mailed or posted on the mine bulletin board. Several commenters also questioned what would constitute adequate prior notice. For example, one commenter supported requiring prior notice but stated that the notice should be given at least five days in advance so that miners and their representatives had sufficient time to prepare to observe. Several commenters, on the other hand, stated that requiring five days' written notice would be extremely restrictive and would reduce the flexibility of the vast majority of mine operators to adjust to a changing work environment.

MSHA agrees with these commenters, and the final rule, like the proposal, requires prior notice to miners and their representatives but does not specify how this notice is to be given. The Agency considers "prior notice" under the final rule to be a reasonable amount of time which is practical under the circumstances to allow miners and their representatives to exercise the opportunity to observe monitoring. Under the final rule, the operator may use any method of notification—including oral, written, and posted notification—which effectively informs miners and their representatives of intended monitoring. For example, some mine operators may use informal talks as an effective means of keeping miners informed on a day-to-day basis. Other mine operators may elect to inform miners in writing to avoid confusion and to demonstrate compliance. Finally, some mine operators may elect posting because miners know where the bulletin board is located and because posting is an accepted and well established method of disseminating information at mine sites. Any of these methods would be an effective means of providing the notification required under the final rule. Therefore, this provision is adopted as proposed.

Miner Notification

Paragraph (d) of § 62.110, like § 62.120(f)(2) of the proposal, requires notification when a miner's noise exposure equals or exceeds the action level or exceeds the permissible exposure level or the dual hearing protection level. Whenever a miner's exposure is determined to exceed any of the levels established in §§ 62.120, 62.130, or 62.140 of this part, based on exposure evaluations conducted either by the mine operator or by MSHA, and the miner has not received notification of exposure at such level within the prior 12 months, the mine operator must notify the miner in writing within 15 calendar days of the exposure determination and of the corrective action being taken. The mine operator must maintain a copy of any such miner notification, or a list on which the relevant information about that miner's notification is recorded, for the duration of the affected miner's exposure at or above the action level and for at least 6 months thereafter.

The notification requirement in the final rule is consistent with section 103(c) of the Mine Act, which states in pertinent part:

> Each operator shall promptly notify any miner who has been or is being exposed to * * * harmful physical agents * * *at levels which exceed those prescribed by an applicable mandatory health or safety standard promulgated under section 101 * * *and shall inform the miner who is being thus exposed of the corrective action being taken.

Several commenters supported the requirement for written notification and requested that MSHA also require written notification to the miners' representative. Other commenters suggested that the required written notification also be submitted to MSHA. One commenter believed that notification should not be required if all miners are enrolled in a hearing conservation program. A number of other commenters questioned the need to notify affected miners in writing. Some of these commenters stated that posting the exposure determination results would be sufficient notification for the affected miner and any other miners working in the area. Other commenters believed that the mine operator should be able to choose any method of notification as long as the miner received the required notice. One commenter supported the notification requirement, and suggested including a statement concerning the mandatory use of hearing protectors, if appropriate.

The notification provided for in this paragraph is required under section 103(c) of the Mine Act. In addition, MSHA has determined that such notification is an integral part of the protection afforded to miners whose noise exposures may be injurious to their hearing. The Agency also believes that in order to ensure that all affected miners are properly notified and informed of the additional precautions necessary to protect their hearing, such notification must be in writing and must be recorded. Noise exposures at or above the action level present a significant risk of material impairment (as discussed under Part V of this preamble, *Material Impairment*). Miners must be notified when their noise exposures are at or above the action level because of this risk, and also because such exposures trigger specific corrective actions by the mine operator under the final rule—training miners, providing miners with hearing protectors, and offering miners audiometric testing. Notification alerts miners of the need to conscientiously wear their hearing protectors and may also provide some additional incentive for participation in the voluntary audiometric testing program.

MSHA has also concluded, and the final rule reflects, that the notification should be in writing. This ensures that the miner understands the exposure determination and the corrective actions being taken.

Several commenters agreed with the approach taken by the proposal that would make notification unnecessary if the mine operator had already notified the affected miner of the exposure level during the past 12 months. One of the primary objectives of notification, as explained above, is to ensure that miners are aware of the importance of taking the additional precautions to protect their hearing. If a miner's noise exposure has not changed, there would be no additional benefit to be gained by repeated notification. In any case, annual retraining is required for those miners whose noise exposures continue to equal or exceed the action level.

Many commenters took issue with the proposed time frame of 15 calendar days for mine operators to notify a miner in writing that the miner's noise exposure exceeded any limit prescribed in proposed § 62.120. Most of the commenters believed that the 15-day time frame was too restrictive and suggested that this period be extended. Among the reasons given in support for this suggestion were delays in obtaining exposure reports from consultants and employee vacations. Commenters recommended time frames for notification that ranged from 15 to 60 days. A few recommended that the mine operator be allowed to determine the appropriate time frame. One commenter, however, suggested that the time allowed for notification be reduced to 24 hours for exposure determinations and 7 days for reporting the mine operator's plan of corrective actions to reduce the noise exposure. One commenter was opposed to the notification requirement, because OSHA's noise standard lacks this provision.

MSHA believes that timely notification is an important first step in protecting miners from excessive noise exposure. The final rule therefore adopts the proposed requirement that the mine operator notify the miner within 15 calendar days of any noise exposure that equals or exceeds the action level or exceeds the permissible exposure level or the dual hearing protection level. The 15-day time frame is adopted from the proposal based on MSHA's determination that 15 days affords the mine operator sufficient time to provide this notification. This determination takes into account the fact that administrative delays may arise, but balances these delays against the need for miners to be alerted promptly of potentially harmful noise exposures, and to be informed of the steps that are being taken to remedy the situation.

The proposal would have required that records of required notification be maintained at the mine site. Several commenters requested that the final rule allow the required records to be maintained at a central location, such as a corporate office, to ease the burden of managing the records of multiple mine sites. Commenters also stated that they believed this would make it easier for MSHA to review the required records for these sites.

As stated in Part III of this preamble, MSHA agrees with the points made by these commenters, particularly in light of the fact that electronic records are common in the mining industry, and that many or all of a mine's records may be stored on computer at a centralized location. The final rule therefore does not adopt the proposed requirement that these records be maintained at the mine site, and does not specify a location where the records must be maintained. However, the records must be stored in a location that will allow the mine operator to produce them for an MSHA inspector within a relatively short period of time, which in most cases will be no longer than one business day.

Commenters also presented their views on record retention. Under the proposal, records of miner notification would have been required to be retained for the duration of the miner's exposure above the action level and for 6 months thereafter. A few commenters believed a requirement for record retention was unnecessary. Other commenters believed the records should be maintained for longer than 6 months beyond the duration of exposure. The recommended record retention time ranged up to 40 years. Several commenters believed the exposure records should be treated as medical records. Another commenter believed the exposure records should be retained for at least the duration of the affected miner's employment.

MSHA has concluded, and the final rule reflects, that it is sufficient for the mine operator to retain exposure notification records for the duration of the miner's exposure at or above the action level and for at least 6 months thereafter. The retention period provided for by the final rule calls for records to be retained for a relatively short period of time after cessation of exposure at or above the action level, minimizing the recordkeeping burden on mine operators. The extended record retention periods recommended by some commenters would be appropriate if the records were to be used for epidemiological purposes. However, the records required to be maintained under this section of the final rule are not the type of dose determinations that would be suitable for epidemiological analysis. Additionally, unlike the effects of exposure to carcinogens, hearing loss due to noise exposure manifests itself shortly after the exposure. The effects of exposure to carcinogens may not be seen until years after exposure. Requiring the retention of noise exposure records for many years therefore serves no purpose. The final rule therefore does not adopt this comment.

Warning Signs

The proposed rule did not include any requirements for the posting of warning signs at mines to alert miners of noise hazards that may be present. In the preamble to the proposed rule, MSHA acknowledged the possible value of warning signs but concluded that the constantly changing mining environment presents significant obstacles to effective posting. MSHA therefore determined that the miner training requirements of the final rule will ensure that miners are sufficiently informed of the noise hazards to which they may be exposed.

Although MSHA did not solicit comments in the proposed preamble on warning signs, several commenters did express their opinions on this issue. Some commenters believed the warning signs should be required, other commenters believed posting signs is appropriate only where hearing protectors must be worn. Several other commenters believed that posted warning signs were not effective because they were ignored.

MSHA continues to conclude that the posting of warning signs should be optional and is best left to the discretion of the operator. As stated in the proposed preamble, MSHA expects that many mine operators will voluntarily post signs to indicate areas of the mine where hearing protectors should be worn.

Section 62.120 Action Level

Like the proposal, § 62.120 of the final rule requires mine operators to take certain actions when a miner's noise exposure equals or exceeds an 8-hour time-weighted average of 85 dBA during any work shift. Under proposed § 62.120(b)(1) and (b)(2), mine operators would have been required to provide training to a miner exposed above the action level, provide hearing protection to such miner, and enroll the miner in a hearing conservation program that included audiometric testing.

Under the final rule, the mine operator is required to enroll a miner in a hearing conservation program that complies with § 62.150, which consolidates the elements of a hearing conservation program into a single section. These elements include a system of monitoring that complies with § 62.110; the use of hearing protectors under § 62.160; audiometric testing under §§ 62.170 through 62.175; training under § 62.180; and recordkeeping under § 62.190. Although the language of the final rule differs from that of the proposal, the requirements are essentially the same. This reorganization of the rule was made in response to commenters who recommended that the final rule take a more traditional approach to the hearing conservation program. This issue is discussed in greater detail under § 62.150 of the preamble.

The final rule requires that the mine operator enroll a miner in a hearing conservation program if, during any work shift, the miner's noise exposure equals or exceeds a TWA_8 of 85 dBA or, equivalently, a dose of 50%. Like the proposal, the final rule requires that all sound levels from 80 dBA to at least 130 dBA be integrated into the noise exposure determination for the action level. This integration range requirement is identical to the one in OSHA's noise standard. Sound levels below the 80-dBA threshold are not integrated into the noise exposure measurement. It should be noted that a noise dose determination for the permissible exposure level requires the use of a 90-dBA threshold. In practice, when a noise exposure measurement is performed, either two separate noise dosimeters (one set for an 80-dBA threshold for the action level, and one set for a 90-dBA threshold for the permissible exposure level), or a single dosimeter with dual threshold capabilities would be required.

The final rule clarifies that the mine operator must enroll a miner in a hearing conservation program if during any work shift the miner's exposure equals or exceeds the action level. The proposal would have provided that the mine operator take action if the miner's exposure exceeded the action level. A number of commenters recommended this clarification to ensure that the final rule was consistent with OSHA's noise standard. The final rule has been revised accordingly.

Many commenters supported the concept of an action level but wanted MSHA to be consistent with the requirements of OSHA's noise standard. In particular, the commenters supported the proposed requirement for taking initial protective action at the level of 85 dBA, and the threshold of 80 dBA for integrating all sound levels when computing the action level. These commenters stated that the 85-dBA action level and 80-dBA threshold were more protective of miners and based on the best available scientific information, and were also compatible with OSHA's noise standard.

However, a number of commenters were opposed to the proposed establishment of an action level. Several commenters questioned the appropriate action level, stating that the level should be set at a TWA_8 of 90 dBA. Some of these commenters believed that noise control technology for complying with an action level of a TWA_8 of 85 dBA is not available, and that an allowance for the use of hearing protectors should be made when determining compliance with the action level.

MSHA's determination that it is necessary to establish an action level in the final rule is based on several considerations. The first and most important of these factors is that MSHA's review of the scientific literature and Agency risk data, coupled with the comments submitted under this rulemaking, indicates that there is a significant risk of material impairment to miners from a lifetime of exposure to noise at a TWA_8 of 85 dBA, as discussed in the preamble section on material impairment. For that reason, miners need to be protected from noise exposures at or above this level. However, as explained in greater detail under the preamble discussion of the permissible exposure level, the Agency has determined that it is not feasible at this time for the mining industry to comply with a lower permissible exposure level. The issue of risk to miners is discussed in greater detail under the material impairment section of this preamble.

MSHA has nonetheless concluded that it is necessary to provide miners with protection at this level in order to reduce instances of new hearing loss and to prevent the progression of existing hearing loss. Agency data reveal that a miner's risk of developing a significant hearing loss drops by approximately half under the new action level requirements of the final rule.

As stated above, the hearing conservation program in which miners are enrolled under the final rule must comply with § 62.150, and must address the use of hearing protectors, provide

miners with audiometric testing, and provide effective monitoring of their noise exposures. Although some commenters disputed the effectiveness of hearing conservation programs, MSHA has reviewed the research concerning such programs, especially the OSHA hearing conservation program, and has determined that hearing conservation programs are effective in protecting workers.

Under the final rule, a miner who is exposed to noise at or above the action level must, as part of the enrollment in a hearing conservation program, receive specialized training that addresses the hazards of noise and protective methods. Specific topics that must be addressed by this training include the effects of noise on hearing, the purpose and value of wearing hearing protectors, and the mine operator's and miner's respective tasks in maintaining noise controls.

Additionally, a miner who is enrolled in a hearing conservation program must be provided with properly fitted hearing protectors and receive training on their use. Although MSHA has concluded that the difficulty in determining the noise reduction provided by a given hearing protector makes it inappropriate to adjust a dose determination on that basis, hearing protectors can serve as an effective means of protecting miners from the hazards of excessive noise.

Miners enrolled in a hearing conservation program must also be offered annual audiograms at no cost. Annual audiometric testing will enable mine operators and miners to take protective measures in response to identified early hearing loss, and enable the prevention of further deterioration of hearing.

As discussed in the preamble to the proposed rule, a number of studies have addressed the effectiveness of hearing conservation programs in preventing hearing loss. Many of the studies indicate that a hearing conservation program can be effective in reducing and controlling noise-induced hearing loss, but only if management and employees strictly follow the program requirements.

MSHA has therefore concluded that enrollment in a hearing conservation program for miners whose noise exposure equals or exceeds the action level can protect miners from occupational hearing loss. Consistent with this determination, the final rule requires these miners to be enrolled in such a program. However, as stated above, the effectiveness of the program in protecting miners depends on the commitment of mine operators and miners to conscientious compliance with the requirements of the program.

MSHA agrees with the commenters who stated that noise control technology may not always be available to reduce the noise exposure below the action level. The lack of available technology was one of the bases for MSHA's determination that a permissible exposure level of a TWA_8 of 85 dBA is not feasible for the mining industry at this time. Consistent with that determination, the final rule does not require that noise controls be implemented to reduce miners' noise exposures to the action level. Instead, mine operators are required to enroll miners in a hearing conservation program if the miners' exposures reaches the action level.

Some commenters stated that the proposed action level requirement would create unnecessary paperwork and cost burdens for mine operators. MSHA has evaluated all of the paperwork provisions in the final rule and has chosen the alternatives which impose minimal paperwork burdens on the industry. Although the final rule does eliminate some existing paperwork requirements, MSHA believes that the remaining paperwork provisions in the final rule are necessary for improving protection for miners.

Many commenters supported the proposed integration of all sound levels from 80 dBA to at least 130 dBA when computing the action level. They stated that this was consistent with OSHA's noise standard, would be more protective of miners, and would allow resources to be directed at the worst exposures. Other commenters opposed the proposed integration range of 80 dBA to 130 dBA, stating that it would unnecessarily inflate the calculated noise dose and dramatically increase the time-weighted average daily exposure dose. Based on a review of the entire record, the final rule reflects the proposed integration range of 80 dBA to at least 130 dBA as appropriate for protecting miners from experiencing additional hearing impairment.

MSHA notes that the requirements in § 62.110(b) of the final rule, which apply to miners' dose determinations, must be complied with when a noise exposure assessment is conducted for the action level. This means that, in addition to integrating all sound levels over the appropriate range, the determination must be made without adjustment for hearing protectors; must reflect the miner's full work shift; must use a 90-dB criterion level and a 5-dB exchange rate; and use the A-weighting and slow response instrument settings.

The requirements in proposed § 62.120(b)(2) that the mine operator provide hearing protectors to the affected miners and ensure their use, if it would take more than 6 months to conduct the baseline audiogram or if a miner is determined to have incurred a standard threshold shift, have been adopted in § 62.160(c)(1) and (c)(2) of the final rule.

Additionally, as indicated under § 62.160 of the preamble, proposed § 62.120(b)(3), which would have required that the mine operator provide any miner who has been exposed to noise above the action level with hearing protectors upon request, is not specifically adopted in the final rule. Because the final rule requires that such a miner be enrolled in a hearing conservation program, which must include the provision of hearing protectors under § 62.160 of the final rule, the adoption of the proposed requirement is unnecessary.

Section 62.130 Permissible Exposure Level (PEL)

Section 62.130(a) of the final rule adopts proposed § 62.130(c) and establishes a permissible exposure level of an 8-hour time-weighted average (TWA_8) of 90 dBA, which represents no substantive change from the existing standards. Under the final rule, a TWA_8 of 90 dBA is equivalent to a dose of 100%. The final rule provides that no miner be exposed during any work shift to noise that exceeds the permissible exposure level. Paragraph (a) also provides that if during any work shift a miner's noise exposure exceeds the permissible exposure level, the mine operator must use all feasible engineering and administrative controls to reduce the miner's noise exposure to the permissible level, and enroll the miner in a hearing conservation program.

Under the current metal and nonmetal noise standard, feasible engineering or administrative controls are required to be used when a miner's noise exposure exceeds the permissible exposure level. The noise reduction provided by a hearing protector is not considered in determining a miner's exposure at metal and nonmetal mines. Under the current coal noise standard, feasible engineering and/or administrative controls are required to be used when a miner's exposure exceeds the permissible exposure level.

Unlike the metal and nonmetal standard, however, the coal standard states that required controls may include hearing protectors in specific circumstances. Credit is also given at coal mines for the noise reduction value of hearing protectors in determining a miner's noise exposure.

The final rule specifies that mine operators must integrate sound levels from 90 dBA to at least 140 dBA. MSHA proposed integrating sound levels between 80 dBA and 130 dBA into the permissible exposure level, but stated in the proposed preamble that MSHA was not recommending a lower permissible exposure level, since it would be infeasible for the mining industry. However, in evaluating and reviewing the rulemaking record, MSHA has concluded that lowering the threshold of sound levels integrated into the permissible exposure level determination for purposes of measuring a miner's noise exposure would in fact result in a lower permissible exposure level, something that the Agency did not intend. The final provision is therefore less restrictive than the proposed provision would have been, but is consistent with MSHA's findings on feasibility.

The final rule requires that mine operators use all feasible engineering and administrative noise controls to bring miners' noise exposures within permissible levels. Mine operators must provide miners with hearing protectors and ensure that the protectors are properly used if engineering and administrative controls fail to reduce exposure to the permissible exposure level.

Unlike the enforcement policy at metal and nonmetal mines, current coal enforcement policy allows mine inspectors to subtract the estimated noise reduction provided by hearing protectors when determining a miner's noise exposure. When a coal mine operator does receive a citation for a miner's exposure exceeding the permissible exposure level, the operator must promptly institute engineering or administrative controls, or both. Within 60 days of receipt of the citation, the mine operator must submit to MSHA a plan for the administration of a continuing, effective hearing conservation program, which includes provisions for reducing environmental sound levels to achieve compliance, providing hearing protectors, and pre-employment and periodic audiograms.

The final rule now requires that mine operators in both the coal sector and metal and nonmetal sectors use all feasible engineering and administrative controls to reduce a miner's noise exposure to the permissible exposure level. The final rule does not place preference on the use of engineering controls over administrative controls. MSHA intends for mine operators to have a choice of which type of control they use, as long as mine operators use all feasible controls necessary to bring a miner's exposure to within the permissible exposure level.

Section 62.130(a) of the final rule also requires that if a miner's noise exposure exceeds the permissible exposure level, the mine operator must enroll the miner in a hearing conservation program that complies with § 62.150 of the final rule. Implementation of a hearing conservation program is a new requirement for metal and nonmetal mine operators and for some coal mine operators.

The final rule adopts the proposed requirement for mine operators who use administrative controls. Those mine operators must now post procedures for such controls on the mine bulletin board and provide a copy of the procedures to each affected miner.

Paragraph (b) of § 62.130 of the final rule, like the proposal, provides that if feasible engineering and administrative controls fail to reduce a miner's exposure to the permissible exposure level, the mine operator must continue to use all engineering and administrative controls to reduce the miner's exposure to as low a level as is feasible.

The proposed rule would have also required that the mine operator ensure that a miner exposed above the permissible exposure level submit to the audiometric testing provided as part of the hearing conservation program. The final rule, however, does not adopt this provision. Further discussion of this issue is provided under § 62.170, addressing audiometric testing.

Section 62.130(c) of the final rule adopts the proposed provision that at no time must a miner be exposed to sound levels exceeding 115 dBA, and also clarifies that the sound level must be determined without adjustment for the use of hearing protectors.

Finally, proposed § 62.120(d), which addressed the dual hearing protection level, has been moved to § 62.140 of the final rule.

Section 62.130 of the final rule establishes a permissible exposure level of a TWA_8 of 90 dBA, which represents no substantive change from existing MSHA standards. The permissible exposure level is the maximum time-weighted average sound level to which a miner may be exposed. The exposure needed to reach the permissible exposure level varies by sound level and duration. For example, a miner's exposure would reach the permissible exposure level if the miner is exposed to a sound level of 90 dBA for 8 hours or to a sound level of 95 dBA for only 4 hours.

A number of commenters favored a permissible exposure level of a TWA_8 of 85 dBA, stating that because a significant risk of impairment occurs at this level, miners need greater protection. MSHA gave serious consideration to establishing a lower permissible exposure level, including a reduced exchange rate, based on its determination that there is a significant risk to miners of a material impairment of health when noise exposures equal or exceed a TWA_8 of 85 dBA. MSHA has concluded, however, that it is infeasible at this time for the mining industry to achieve a more protective level by using engineering and administrative controls. Therefore, under the final rule, MSHA continues to require a permissible exposure level of a TWA_8 of 90 dBA, but miner protection is increased from that provided under existing MSHA noise standards by requiring that mine operators take protective measures at an action level of a TWA_8 of 85 dBA.

Some commenters believe that MSHA did not adequately justify that a permissible exposure level of a TWA_8 of 85 dBA was technologically and economically infeasible. Also, one commenter objected to considering economic infeasibility in the rationale for not reducing the permissible exposure level to a TWA_8 of 85 dBA. Section 101(a)(6)(A) of the Mine Act directs that the Secretary's rulemaking authority be exercised within the boundaries of feasibility, and, as discussed in the preamble to the proposal, MSHA considered both technological capabilities and the economic impact of a lower permissible exposure level. MSHA made a preliminary determination, set forth in the preamble to the proposal, that a lower permissible exposure level was not feasible. MSHA also requested that commenters submit relevant additional data on this issue but did not receive adequate supporting data in response to this request.

Regarding the feasibility of a TWA_8 of 85 dBA, MSHA has found that a typical mine operator will not be able to develop and install engineering controls at this time which will meet a permissible exposure level lower than a TWA_8 of 90 dBA. The Agency's finding is based on the large number of mines which would require engineering and administrative controls to reduce current exposures and on an evaluation of noise control technology under actual mining conditions, including retrofitting equipment, and the cost of implementing such controls. As stated in the preamble to the proposed rule, MSHA conducted a survey of noise exposures in the mining industry to

assess the capability of the industry to comply with a permissible exposure level lower than the current TWA_8 of 90 dBA through the use of engineering and administrative controls. The survey is referenced as the "dual-threshold survey" in the section that addresses material impairment in this preamble. Exposure data collected by MSHA indicated that with a permissible exposure level of a TWA_8 of 85 dBA and an 80-dBA threshold, over two-thirds of the metal and nonmetal mining industry and over three-quarters of the coal mining industry would need to use engineering and administrative controls to reduce current exposures (see Tables 11 and 12 in Part V of this preamble).

A typical mine operator would not be able to develop and install engineering controls at this time which would result in compliance with a permissible exposure level lower than a TWA_8 of 90 dBA. Although the discussion of feasibility in this preamble references control rooms and booths and acoustically treated cabs as being capable of reducing exposures to below 85 dBA, MSHA has found that, for the most part, sound levels for most mining equipment cannot be reduced to that extent using engineering controls. This includes consideration of retrofit noise control technology to achieve 85 dBA or less which is not available for the majority of mining equipment without major redesign of the equipment. The Agency's finding is based, in part, on the evaluation of newly developed noise controls under actual mining conditions described in "Summary of Noise Controls for Mining Machinery" (Marraccini et al., 1986). Therefore, the Agency has concluded that a typical mine operator will not be able to develop and install engineering controls at this time that will result in compliance with a permissible exposure level lower than a TWA_8 of 90 dBA.

In addition, the Agency has found that, where available, the cost of implementing controls would be prohibitively expensive, based on the large percentage of mines that would be out of compliance if a lower permissible exposure level were to be adopted. As reflected under the preamble discussion of feasibility, MSHA has determined that retention of the existing permissible exposure level and threshold under the final rule would not result in any incremental costs for engineering controls for the metal and nonmetal sector, but would result in costs of $1.79 million for engineering controls for the coal sector. Costs would be incurred only by the coal mining sector under the final rule, because hearing protectors have generally been substituted for engineering controls in coal mines under the current regulations. Thus, unlike the metal and nonmetal mining industry, the coal mining industry has not exhausted the use of feasible engineering and administrative controls to reduce noise exposures to within the permissible exposure level of a TWA_8 of 90 dBA. However, significant costs would be incurred by the entire mining industry if the permissible exposure level were to be reduced to a TWA_8 of 85 dBA and an 80-dBA threshold.

MSHA's "dual-threshold survey" shows that a significant percentage of all mines, which would be out of compliance if a lower permissible exposure level were adopted, would incur costs. Engineering controls that are needed to reduce exposure levels to a TWA_8 of 85 dBA are more costly than those which reduce exposure to a TWA_8 of 90 dBA. MSHA's analysis indicates that where it is available, retrofitting equipment to achieve a permissible exposure level of a TWA_8 of 85 dBA can cost $15,000 or more per piece of equipment. Remote control in conjunction with a fully-treated, environmentally-controlled operator's booth can cost $10,000 or more depending on the size of the booth and the extent of technology needed to run the process or equipment remotely. MSHA has estimated that a permissible exposure level of a TWA_8 of 85 dBA with a 3 dB exchange rate would cost over $54 million annually just to retrofit equipment. However, retrofitting existing equipment alone would not enable most mines to achieve compliance with a permissible exposure level of 85 dBA as a TWA_8. For some of these mines, capital equipment would need to be replaced by quieter equipment capable of meeting the lower 85 dBA level, but the cost would be enormous. For example, where new equipment exists, depending on its size, costs range from approximately $260,000 to $360,000 for single boom drills with fully treated operator cabs, to approximately $2,000,000 for a 240 ton haul truck with a fully treated operator cab. However, as previously noted, for many types of capital equipment, no compliant replacement equipment currently exists. Because most mines could not fully meet a lower permissible exposure level using currently available technology, the Agency has determined that a lower permissible exposure level would not be feasible at this time. Accordingly, the Agency is adopting the existing permissible exposure level of a TWA_8 of 90 dBA, but is also requiring hearing conservation measures when the exposure reaches a TWA_8 of 85 dBA.

Another commenter suggested that a long phase-in period, such as 10 years, be adopted for a permissible exposure level of a TWA_8 of 85 dBA. In considering the technological and economic impact of a new standard, MSHA must make a reasonable prediction, based on the best available evidence, as to whether the mining industry can generally comply with the rule within an allotted period of time. MSHA seriously considered establishing a permissible exposure level of a TWA_8 of 85 dBA in conjunction with an extended phase-in schedule for compliance. However, the Agency could not project, with any reasonable certainty, when the mining industry would be capable of developing and installing the necessary control technology to meet such a permissible exposure level. In the preamble to the proposal, MSHA made no assumptions about the development of new technologies to further assist mine operators in controlling noise. The Agency requested commenters to provide information but received none. Although enforcement of the final rule requires that individual mine operators only use those controls which are feasible for the particular mine operator, MSHA is unable to demonstrate a reasonable probability that the mining industry as a whole would be able to comply, even with a long phase-in period.

Several commenters wanted MSHA to adjust the permissible exposure level of a TWA_8 of 90 dBA for those miners working extended work shifts, and one commenter believed that it was important to include extended work shifts in the definition of the permissible exposure level. The final rule requires mine operators to determine a miner's noise exposure for the full work shift, regardless of length of time the miner works on the shift. MSHA acknowledges that extended work shifts are becoming a more common practice in the mining industry and intends for miners working on these shifts to receive the full protection of the final rule. Sampling for a full shift is consistent with the OSHA standard as well as current noise regulations for both coal and metal and nonmetal mines.

Section 62.130(a) of the final rule differs from the proposal in that a miner's exposure determination for comparison to the permissible exposure level requires the integration of all sound levels from 90 to at least 140 dBA. The proposal would have required integration of sound levels from 80 to at least 130 dBA. Several commenters to the proposed standard brought to

MSHA's attention that the proposed range of sound integration would result in a lower permissible exposure level for the mining industry, an unintended result of the rule, discussed earlier. Moreover, the final rule's adoption of the proposed 80-dBA threshold for determining whether miners' exposures equal or exceed the action level ensures that miners are afforded protection at or above an exposure of a TWA_8 of 85 dBA.

Section 62.130(a) also requires that when a miner's noise exposure exceeds the permissible exposure level, the mine operator must use all feasible engineering and administrative controls to reduce a miner's exposure to the permissible exposure level before relying on hearing protectors. In addition, mine operators must establish a hearing conservation program for affected miners.

The final rule does not place preference on the use of engineering controls over administrative controls to protect miners exposed above the permissible exposure level. All feasible controls, of both types if necessary, must be implemented to reduce noise exposure to the permissible exposure level, or to the lowest feasible level if the permissible exposure level cannot be achieved. In response to commenters who questioned which controls mine operators must use, MSHA emphasizes that mine operators have a choice of which control method they will use first. Under the final rule, they may use engineering controls, administrative controls, or both; but if administrative controls are utilized, a copy of such procedures must be posted and given to each affected miner. The final rule affords mine operators flexibility in selecting the most appropriate control method applicable under the circumstances.

Although the final rule does not give preference to engineering controls over administrative controls, engineering controls provide a permanent method of modifying the noise source, the noise path, or the environment of the miner exposed to the noise, thereby decreasing the miner's exposure to harmful sound levels. Engineering controls do not depend upon individual performance or human intervention to function. Moreover, the effectiveness of engineering controls can be readily determined using standardized acoustical measurement and assessment procedures. In addition, routine maintenance ensures the long-term effectiveness of engineering controls. Thus, MSHA has concluded that the use of engineering controls provides the most consistent and reliable protection to miners.

Administrative controls reduce exposure by limiting the amount of time that a miner is exposed to noise through such actions as rotation of miners to areas with lower sound levels, rescheduling of tasks, and modifying work activities. MSHA believes that administrative controls can be as effective as engineering controls and are typically less costly than engineering controls, and MSHA anticipates growing interest in implementation of administrative controls by the mining community. MSHA will make guidance materials pertaining to administrative controls available to the mining community before the effective date of the final rule.

In the proposed preamble, MSHA had requested comment from the mining community on the primacy of engineering and administrative controls. The Agency received a number of comments from the public in support of the primacy of engineering and administrative controls, as well as a number of comments in support of equating personal hearing protectors with controls. These comments are discussed below.

Commenters who favored permitting the use of hearing protectors to meet the permissible exposure level asserted that hearing protectors adequately protect the hearing of miners, are more cost effective, and provide greater noise reduction than engineering controls. In addition, some commenters believe that personal hearing protectors used in conjunction with a hearing conservation program are as effective as engineering and administrative controls.

Other commenters wanted MSHA to permit the use of hearing protectors in lieu of engineering and administrative controls, provided that the noise exposure did not exceed a TWA_8 of 100 dBA. These commenters stressed that this is allowed by OSHA's current enforcement policy.

The OSHA noise standard at 29 CFR § 1910.95 requires employers to use engineering and administrative controls. Under the OSHA noise standard, hearing protectors may be used only to supplement controls. Current OSHA enforcement policy allows employers to rely on personal protective equipment and a hearing conservation program rather than engineering and/or administrative controls when hearing protectors will effectively attenuate the noise to which the employee is exposed to acceptable levels as specified in Tables G–16 or G–16a of the standard. Furthermore, hearing protectors may not reliably be used when employee exposure levels border on 100 dBA. MSHA's rulemaking record indicates that a number of professional organizations have recommended that OSHA rescind this policy and rely on engineering and administrative controls.

As explained in the preamble discussion of § 62.110 of the final rule, MSHA has decided to adopt the approach of the proposal, which is not to accept personal hearing protectors in lieu of engineering or administrative controls. The Agency's position is supported by its own research on noise reduction values of hearing protectors under actual mining conditions. Additionally, this position is supported by studies referenced in the preamble discussion of § 62.110 that address noise dose determination without adjustment for the use of hearing protectors. Moreover, promulgating a rule which is consistent with OSHA policy would result in a diminution of safety to miners in the metal and nonmetal sectors of the mining industry. Section 101(a)(9) of the Mine Act requires that no new standard reduce the protection afforded miners by an existing standard. For metal and nonmetal mines, MSHA currently requires the use of engineering or administrative controls to the extent feasible to reduce exposures to the permissible exposure level. Under existing standards if the permissible exposure level cannot be achieved, hearing protectors must be made available to miners. If OSHA's policy were to be adopted into the final rule, the benefits of using feasible engineering and administrative controls would be lost. In addition, OSHA's noise enforcement policy is based on a judicial interpretation of "feasible" as used in the context of OSHA's noise standard which is an established federal standard adopted without rulemaking at the OSH Act's inception under Section 6(a) of the OSH Act rather than the product of a regular OSHA rulemaking under Section 6(b) of the OSH Act.

Under the Mine Act, one of the roles of the National Institute for Occupational Safety and Health (NIOSH) is to advise MSHA in establishing mandatory health and safety standards. While MSHA is aware that NIOSH is seeking to develop an approach that would more accurately adjust the noise reduction ratings of hearing protectors in actual workplace use, the prospects for this remain uncertain. In addition, adjustment methods that are appropriate for general industry may not be appropriate in the mining environment. As explained in the preamble discussion of § 62.110 of the final rule, MSHA has found that hearing protectors provide much less

noise reduction under actual mining conditions than was measured in the laboratory. In many instances, noise reduction was minimal and highly variable, indicating that hearing protector effectiveness cannot be reliably predicted under actual use conditions.

During the rulemaking process, MSHA requested that NIOSH provide its opinion on the hierarchy of noise controls. NIOSH stated in its December 16, 1994, response (NIOSH, 1994) that there are three elements in the hierarchy of effective noise controls:

(1) Preventing or containing workplace noise at its source;

(2) Removing the noise by modifying the pathway between the worker and the noise source; and

(3) Controlling the worker's exposure by providing a barrier between the worker and the noise source.

NIOSH further stated that noise controls must provide reliable, consistent, and adequate levels of protection for each individual worker throughout the life span of the controls, minimize dependence on human intervention, consider all routes of entry (bone and air conduction), and not exacerbate existing health or safety problems or create additional problems of its own.

The conclusions of a report published by the Office of Technology Assessment in 1985, entitled "Preventing Illness and Injury in the Workplace," also support MSHA's position. This report found that health professionals rank engineering controls as the priority means of controlling exposure, followed by administrative controls, with personal protective equipment as a last resort.

In addition, Nilsson et al. (1977) studied hearing loss in shipbuilding workers. The workers were divided into two groups. The first group was exposed to sound levels of 94 dBA, with 95% of the workers using hearing protectors. The second group was exposed to sound levels of 88 dBA, with 90% of workers wearing hearing protectors. Both groups were subjected to impulse noise up to 135 dB.

Despite the fact that the vast majority of the workers in both groups wore hearing protectors, cases of noise-induced hearing loss were common. As exposure durations increased, the amount of noise-induced hearing loss increased, so workers exposed to sound at 94 dBA exhibited more hearing loss than those exposed to 88 dBA. Slightly more than fifty-eight percent of all of the workers had some degree of hearing impairment, only 1.8% of which was caused by factors other than noise. According to the researchers, the hearing protectors should have reduced the noise by at least 13 dBA. They concluded that reliance on hearing protectors alone is not sufficient to protect the hearing sensitivity of the workers.

Although many commenters may prefer to use hearing protectors in lieu of engineering or administrative controls to protect miners from noise overexposures, MSHA has concluded that the scientific evidence does not support this position, and that the approach taken in the final rule best protects miners from further noise-induced hearing loss.

A few commenters were concerned that the miner would suffer a loss of pay if administrative controls were instituted and the miner was rotated to a lower-paying job. However, the Mine Act does not authorize the Secretary to require pay retention for miners rotated for the purpose of reducing exposure to a harmful physical agent, and the final rule does not adopt that comment.

Paragraph (a) of § 62.130 of the final rule also adopts the requirement of proposed § 62.120(c)(1) that mine operators post on the mine bulletin board the procedures for the administrative controls in effect at the mine and provide all affected miners with a copy. MSHA believes that miners must be specifically notified of the administrative controls being used and actively follow them to achieve effective results. Posting informs miners of critical work practices necessary for reducing their noise exposures, especially when miners are temporarily assigned to a different job. Moreover, this requirement is consistent with section 109 of the Mine Act, which requires a mine operator to have a bulletin board at the mine office or in an obvious place near a mine entrance for posting of certain documents, including notices required by MSHA regulations.

A number of commenters objected to a requirement for written notification of miners of the administrative controls in use at the mine. Some of these commenters were of the opinion that written notification may not be the best method for alerting miners of administrative control procedures, since these procedures may need to be revised on a daily basis. Some commenters suggested that MSHA accept informal workplace talks and safety meetings as compliance with the written notification provision, which they believed would be burdensome for mine operators.

MSHA has reviewed alternative methods for compliance under this provision and has concluded that a notification provision with a narrow application, such as in the final rule, appropriately informs miners of critical measures to protect their hearing. Moreover, commenters are encouraged to review the summary of the Regulatory Economic Analysis.

Most commenters requested that MSHA clarify the meaning of the term "feasible." Many commenters specifically requested that MSHA include economic considerations in the definition of feasibility. What constitute "feasible" engineering and administrative noise controls is discussed in Part VI of this preamble. As part of that discussion, MSHA cites applicable case law, which specifically provides that a consideration of feasibility must include both technological and economic factors.

Some commenters suggested that "feasible" engineering controls need to be capable of reducing a miner's noise exposure to the permissible exposure level rather than to the lowest level achievable for the control. Others suggested that a control should produce at least a 3-dBA noise reduction before that control is considered "feasible," which corresponds with MSHA's current policy. The applicable case law on this issue provides that an engineering control may be feasible even though it fails to reduce exposure to the permissible level set by the standard, as long as there is a significant reduction in exposure. As stated in the proposed preamble and reiterated in the discussion of feasibility in this preamble, MSHA considers a significant noise reduction to be a 3-dBA reduction in the miner's noise exposure.

Several commenters were concerned about the development and availability of engineering controls, including retrofit packages in the marketplace. Engineering noise controls, including retrofit equipment, are currently available for many types of mining machinery, and many manufacturers sell noise control packages as options. Furthermore, mining equipment manufacturers are diligently developing new engineering controls to reduce exposure to noise. The preamble discussion on feasibility includes a list of available controls for commonly used mining equipment. Suggestions are also included in that section for retrofitting existing mining equipment. MSHA is also available to assist mine operators with obtaining retrofit packages and other necessary controls for reducing noise sources.

Several commenters questioned whether the assumption that engineering controls currently feasible in metal and nonmetal mines could be adapted for use in coal mines. In fact, MSHA's experience has been that many of the engineering noise controls developed for machinery used in metal and nonmetal mines could be easily used on the same types of machinery in coal mining, and vice versa.

A few commenters requested that MSHA continue to "grandfather" older equipment, as the Agency does at metal and nonmetal mines. Current metal and nonmetal enforcement policy allows a mine operator, upon written request to the District Manager, up to 12 months to retire a piece of machinery once it has been identified as the source of a noise overexposure.

This comment has not been adopted in the final rule. Protection of miners from the harmful effects of noise must be the first consideration. The final rule does not take effect until 12 months after the date of publication, which provides all mine operators with adequate time to retire older, noisy equipment. After the final rule takes effect no exceptions will be allowed for equipment that may be nearing the end of its useful life.

One commenter stated that the final rule should not be technology-forcing. However, Congress intended that MSHA health standards advance technology in order to better protect miners' health. It is therefore appropriate for MSHA to take into account, in determining feasibility, the state-of-the-art engineering that exists in the mining industry at the time the standard is promulgated.

A few commenters suggested that the final rule require mine operators to develop a written plan for eliminating overexposures, so that both miners and MSHA will be aware of the specifics of how a mine operator intends to abate noise overexposures at a particular mine. MSHA does not believe that requiring a written plan under the final rule enhances health protection beyond that afforded by an action level and implementation of all feasible controls. MSHA is also mindful of its responsibilities under section 103(e) of the Mine Act, which cautions the Agency not to impose an unreasonable burden on mine operators, especially those operating small businesses, when requesting information consistent with the underlying purposes of the Mine Act. It should be noted, however, that § 62.110(d) of the final rule requires mine operators to notify a miner whose noise exposure equals or exceeds the action level of the corrective action being taken to address that exposure.

Paragraph (b) of § 62.130 of the final rule, like proposed § 62.120(c)(2)(i), requires that if feasible engineering and administrative controls fail to reduce a miner's exposure to the permissible exposure level, the mine operator must continue to use the controls to reduce the miner's exposure to as low a level as is feasible.

Section 62.130(c) of the final rule adopts proposed § 62.120(e) and provides that at no time must a miner be exposed to sound levels exceeding 115 dBA. Some commenters found the proposal somewhat confusing, questioning whether there is a complete prohibition against exposure to noise above 115 dBA or whether, under proposed Table 62–1 regarding reference durations, the rule permits a period of exposure to noise above this level that is incorporated into a miner's dose determination. MSHA intends the requirement of this paragraph to be applied as has the existing prohibition in metal and nonmetal regulations that no miner must be exposed to non-impulsive sound levels exceeding 115 dBA. A clarifying notation has been added to Table 62–1 that at no time must any excursion exceed 115 dBA. To avoid confusion, the term "ceiling level," which was used in the proposal, has not been adopted in the final rule. MSHA notes that OSHA's noise standard does not use the term "ceiling level." The preamble to OSHA's noise standard further indicates that OSHA's "* * * current standard does not permit exposures above 115 dB, regardless of duration" (46 FR 4078, 4132). In addition, to be consistent with exposure determinations under § 62.110(b)(2)(i), the final rule clarifies that exposure determinations under this paragraph must be made without adjustment for the use of any hearing protectors.

NIOSH's 1972 criteria document recommended a ceiling limit of 115 dBA. In its 1996 draft Criteria Document, NIOSH reaffirmed its recommendation of a 115 dBA limit. Under this draft recommendation, exposures to sound levels greater than 115 dBA would not be permitted regardless of the duration of the exposure. NIOSH indicated that recent research with animals indicates that the critical level is between 115 and 120 dBA. Below this critical level, the amount of hearing loss is related to the intensity and duration of exposure; but above this critical level, the amount of hearing loss is related only to intensity. MSHA proposed the 115 dBA sound level limit based on these recommendations, and also on the fact that MSHA's noise standard at metal and nonmetal mines currently includes this limit.

Commenters took various positions on whether 115 dBA is the correct level for maximum exposure. A number of commenters, however, believed that the proposed prohibition of noise exposure above 115 dBA would be too restrictive and unrealistic for the mining industry. Some of these commenters suggested that occasional exposures above this level are unavoidable when performing certain job tasks and that the level should include a specified allowable time limit for these exposures, ranging from 5 to 15 minutes. MSHA is not persuaded by these commenters' concerns. In fact, the 115 dBA limit has been in effect at metal and nonmetal mines for a number of years. Further, the potential damage to miners' hearing when exposed to sound at such levels is so great that it is not unreasonable to expect mine operators to take extra steps to prevent miners' exposures.

It must be emphasized that this provision prohibits exposures above 115 dBA for any duration, not as a time-weighted average. This means that Table 62–1, which includes reference durations of noise exposures at various sound levels, should not be read as allowing excursions above 115 dBA, even though the average over a quarter of an hour would not exceed 115 dBA. However, it should also be noted that MSHA intends to apply this prohibition as it has enforced the same limit under the metal and nonmetal standard. This means that miners may not be exposed to sound levels exceeding 115 dBA as measured using A-weighting and slow response. As a practical matter, there may be some exposure to sound above this level which is of such limited duration that it cannot be measured. Obviously, compliance and enforcement are affected by the limitations of the instrumentation used to measure sound.

Some commenters stated that older mining machinery as well as equipment such as pneumatic tools, jackleg drills, welding machines, and relief valves typically exceed the 115 dBA limit. MSHA is aware that there are noise sources in the mining industry, which may also include unmuffled pneumatic rock drills and hand-held channel burners, that produce sound levels which exceed 115 dBA. However, based on MSHA's experience, practically all of these noise sources can be managed with engineering controls and kept below the sound level of 115 dBA. For example, there is a muffler available for the jackleg drill, and burner tips are available for the hand-held channel burner, that in many cases will lower the sound level to below 115 dBA. Sound from other pneumatic tools can also be muffled.

In addition, mine operators should be aware that significant noise reductions

can be achieved by using alternative equipment, such as the diamond wire saw and water jet, instead of a hand-held channel burner. In the coal mining sector, for example, roof bolting machines have replaced stopers, which are hand-held pneumatic roof drills. The roof bolting machines produce much less noise than the stoper.

Some commenters requested that MSHA permit exposures to exceed 115 dBA when the noise source is a warning signal or an alarm. The Agency does not intend that the 115 dBA sound level limit apply to warning signals or alarms; the ability to hear these signals is critical to the safety of miners. However, alarm and warning signal sound levels must be integrated into the overall noise exposure of miners.

Several commenters objected to enforcing a ceiling level with personal noise dosimeters. They believed that shouting, bumping the microphone, or whistling could give false readings which may be interpreted as exceeding the 115-dBA level. As a practical matter, the fact that the indicator on a personal noise dosimeter shows that the 115-dBA sound level was exceeded does not mean that MSHA will take enforcement action. Rather, the duration of the sound level would need to be sufficient for it to exceed 115 dBA when measured using the slow response on a sound level meter, or on an equivalent type of instrument. This measurement procedure should also serve to eliminate concerns that impulse/impact noise would exceed the 115 dBA limit and result in a citation.

In the preamble to the proposed rule, MSHA requested comments on whether there should be an absolute dose ceiling, regardless of the economic feasibility of control by an individual mine operator. One commenter stated that it would be inappropriate to include a maximum dose ceiling in the final rule without taking feasibility considerations into account. As a result of the lack of scientific consensus on this issue, MSHA has determined that a separate provision for a dose ceiling is unnecessary. The 115-dBA sound level limit, in conjunction with the requirement for dual hearing protectors at a TWA_8 of 105 dBA in § 62.140 of the final rule, adequately protects the hearing sensitivity of miners.

The final rule, like the proposal, does not include a separate provision for impact or impulse noise. Presently, there is insufficient scientific data to support such a standard. MSHA is unaware of any effective sampling methodology for identifying and measuring sound at this level. Since industrial impulse and impact noise are almost always superimposed on a background of moderate-to-high levels of continuous noise, and since both types of noise may be harmful, MSHA believes that it is only reasonable to consider their effect together, rather than to treat each separately. Accordingly, under the final rule all sounds from 90 dBA to at least 140 dBA are to be included in the range of integration. Impact or impulse noise is therefore considered with continuous noise when determining a miner's noise exposure level.

Section 62.140 Dual Hearing Protection Level

This section of the final rule establishes requirements for the use of dual hearing protection. Included in this section is the requirement that the mine operator must provide and ensure that both an earplug-and an earmuff-type hearing protector are used simultaneously when a miner's noise exposure exceeds the dual hearing protection level of a TWA_8 of 105 dBA, or equivalently, a dose of 800% of that permitted by the standard during any work shift.

Two features of the final rule are slightly different from § 62.120(d) of the proposal. First, explicit language has been added that the dual hearing protector requirement is in addition to the actions required for noise exposure that exceed the permissible exposure level. The preamble discussion of proposed § 62.120(d) reflected this intent. This language has been added to § 62.140 of the final rule for the purpose of clarifying the requirements of this section, which are set forth separately from the section on the permissible exposure level.

In addition, the final rule also includes the range of sound levels, from 90 dBA to at least 140 dBA, which must be integrated in determining a miner's exposure under this section. The range is included in the definition of "dual hearing protection level" in final § 62.101. MSHA had proposed that a miner's noise exposure measurement integrate all sound levels between 80 dBA to at least 130 dBA during the miner's full work shift. MSHA decided, however, not to lower the range of integrated sound levels for a miner's dose determination under § 62.130 of the final rule regarding the permissible exposure level (see discussion of § 62.130). The dual hearing protection requirement of § 62.140 is directly related to § 62.130, in that it requires dual hearing protection in addition to engineering and administrative controls. A more detailed explanation of the range of integration is provided in the preamble discussion on § 62.110(b)(2)(ii), regarding noise exposure assessment.

The proposed dual hearing protection requirement generated many comments. The proposal was favored by some commenters, and a few who favored the use of dual hearing protection also suggested that MSHA reduce the dual hearing protection level to 100 dBA. Most commenters who opposed the proposal suggested that a single hearing protector with a sufficient noise reduction rating can attenuate sound levels and reduce miner exposures below the permissible exposure level. One commenter believed that MSHA should replace the proposal with performance-oriented language which would require the use of "adequate" hearing protection. Also, one commenter questioned the adequacy of the scientific studies upon which MSHA based the proposed requirement.

MSHA is adopting the proposed dual hearing protection requirement because the scientific evidence shows that the additional noise reduction that is gained by the use of dual hearing protection will protect the hearing sensitivity of miners who are exposed to high sound levels. In addition, the scientific evidence supports MSHA's conviction that a TWA_8 of 105 dBA (800%) is an appropriate level above which dual hearing protection should be required, since this level of noise exposure can quickly damage the hearing sensitivity of the exposed miner. MSHA is also relying upon the research which shows that a single hearing protector may not adequately protect workers whose noise exposures exceed a TWA_8 105 dBA.

The research discussed in the preamble to the proposal (Berger, 1984; Berger, 1986; and Nixon and Berger, 1991) shows that dual hearing protectors provide significantly greater protection than a single hearing protector and is effective for protecting workers above a TWA_8 of 105 dBA.

For example, Berger, in EARLOG 13 (1984), has shown that the use of dual hearing protectors provides greater noise reduction, on the order of at least 5 dB greater than the reduction of either hearing protector alone. Berger recommends dual hearing protectors whenever the TWA_8 exceeds 105 dBA. In addition, Nixon and Berger (1991) report that earplugs worn in combination with earmuffs or helmets typically provided more attenuation than either hearing protector alone.

The use of dual hearing protection is also required by the U.S. armed services when workers are exposed to high sound levels. Additionally, MSHA's policy under the existing standards for

coal, metal, and nonmetal sectors requires the use of dual hearing protectors whenever the noise reduction of a single hearing protector does not reduce the miner's noise exposure to within the permissible exposure level. Current metal and nonmetal policy indicates the need to consider dual hearing protection specifically at sound levels exceeding 105 dBA where hand-held percussive drills are used. Also, dual hearing protection is recommended by policy where hand-held channel burners and jumbo drills are used, but no sound level is specified at which such protection should be used.

Regarding the commenters who supported the requirement for dual hearing protection, but requested that MSHA reduce the dual hearing protection level to a TWA_8 of 100 dBA, the Agency does not believe that there is adequate scientific evidence to support lowering the proposed level. Rather, the Agency is relying upon the scientific studies noted above which recommend dual hearing protectors whenever the TWA_8 exceeds 105 dBA.

With respect to the use of canal cap-type hearing protectors under this paragraph of the final rule, MSHA notes that it considers a canal cap-type hearing protector to be neither an earplug-type or earmuff-type hearing protector. A canal cap hearing protector is an acceptable single-type hearing protector but cannot be combined with either a plug-type or muff-type protector, because a proper seal or fit cannot be achieved. Therefore, the Agency intends that a canal cap-type hearing protector may not be used for compliance with the dual hearing protector requirements of this paragraph.

Several commenters believed that the proposed dual hearing protection requirement created a safety hazard because the hearing protectors would prevent a miner from hearing warning signals, audible alarms, verbal communication, and roof talk. MSHA believes that the use of dual hearing protectors would not create an additional safety hazard because the high sound levels generated by some mining equipment will interfere with the detection of roof talk, verbal communications, and audible alarms. In fact, research by Prout, 1973, discussed under § 62.160 of the preamble, shows that the noise emitted by mining equipment operating in close proximity to a miner's assigned work area masks roof talk. Moreover, if hearing protectors are not worn, a temporary threshold shift will impair a miner's ability to hear roof talk, verbal communications, or warning signals when the mining equipment ceases to operate. Because the use of dual hearing protectors will minimize the extent of any temporary threshold shift experienced during exposure to high sound levels, MSHA expects that the dual hearing protection will be used in high sound level environments and removed in quiet environments. This procedure would enhance safety.

A few commenters who opposed the proposal for dual hearing protection were concerned that the use of earmuffs may interfere with the use of other personal protective equipment such as hard hats, safety glasses, and welding shields. MSHA believes that the proper selection and combination of hearing protectors should alleviate this concern. For example, newer models of ear muffs, which are readily available, are specifically designed to be used with hard hats. Other models which were specifically designed for use with safety glasses or welding shields are also readily available.

In response to the commenter who expressed a concern regarding compliance with this section under the circumstances where a medical condition would preclude the use of a hearing protector, MSHA notes that the dual hearing protection requirement of this section must be provided in accordance with § 62.160. Section 62.160(a)(5) allows the miner to choose a different hearing protector if wearing the selected hearing protectors is subsequently precluded due to a medical pathology of the ear.

Section 62.150 Hearing Conservation Program

Under the proposed rule, the individual elements of a hearing conservation program were located in several separate sections. "Hearing conservation program" was defined in § 62.110 of the proposal as a "generic reference" to the requirements in proposed §§ 62.140 through 62.190, which addressed audiometric testing requirements and miner notification and reporting requirements.

In the interest of clarity and in response to commenters, this section consolidates the elements of a hearing conservation program in one location in the final rule, rendering a definition of "hearing conservation program" unnecessary, and the proposed definition has therefore not been adopted in the final rule. In addition to the elements referenced in the proposed definition of "hearing conservation program," this section also includes as program elements a system of monitoring under § 62.110, the use of hearing protectors under § 62.160, miner training under § 62.180, and recordkeeping under § 62.190. This new section is consistent with OSHA's definition of a hearing conservation program.

MSHA received a number of general comments on specific elements that commenters believed should be included in any hearing conservation program. MSHA also received many comments on specific requirements that were proposed for each of those elements, such as appropriate audiometric test procedures and the use and maintenance of hearing protectors. Comments addressing the elements that should be included in a hearing conservation program are discussed under this section of the preamble. Comments which address the specific requirements for each program element are discussed under the section where the specific requirements are located. For example, a comment that addresses the role of hearing protectors in a hearing conservation program is discussed here, while a comment dealing with fitting of hearing protectors is discussed in the preamble under § 62.160.

None of the commenters supported MSHA's proposed definition of "hearing conservation program." Some commenters pointed out that the proposed definition constituted an audiometric testing program only, not a hearing conservation program. These commenters recommended that the use of hearing protectors should also be included. A number of commenters recommended that MSHA adopt the traditional definition of a hearing conservation program used by OSHA, stating that any other definition would be confusing. These commenters stated that the term "hearing conservation program" has been used in general industry since the 1970's to refer to a comprehensive package of actions, including noise exposure monitoring, noise controls, hearing evaluation and protection, training, and recordkeeping.

MSHA agrees with the commenters who believed that the proposed definition of "hearing conservation program" was too narrow and that adoption of a definition that was similar in scope to OSHA's would avoid unnecessary confusion. Accordingly, the elements identified for inclusion in a hearing conservation program under this section of the final rule are, with one exception, consistent with OSHA's definition of "hearing conservation program."

Like OSHA's noise standard, MSHA's final rule does not include the use of engineering and administrative controls as an element of a hearing conservation

program. However, § 62.130 of the final rule requires the implementation of all feasible engineering and administrative noise controls whenever a miner's noise exposure exceeds the permissible exposure level. Therefore, although a "hearing conservation program" under the final rule does not specifically include the use of engineering and administrative controls, the application of such controls is required to remedy miner overexposure. MSHA regards an effective hearing conservation program as a supplement to the first line of defense against noise overexposures, which is the implementation of all feasible engineering and administrative noise controls.

This section of the final rule provides that, when a miner's noise exposure equals or exceeds the action level of TWA_8 of 85 dBA, the mine operator must promptly enroll the miner in a hearing conservation program. This requirement is derived in part from proposed requirements in § 62.120(b)(2) and (c)(1), which would have provided for a miner's enrollment in a hearing conservation program if the miner's noise exposure exceeded either the action level or the permissible exposure level. Proposed § 62.120 would also have required miner training, hearing protector use, and a system of monitoring, but did not specifically designate those items as elements of a hearing conservation program, as does the final rule.

Paragraphs (a) through (e) of § 62.150 of the final rule enumerate the elements of a hearing conservation program, which include a system of monitoring, the use of hearing protectors, audiometric testing, training, and recordkeeping. Each paragraph also refers to the specific section of the final rule where the detailed requirements of each program element are located.

Paragraph (a) of § 62.150 of the final rule requires that the hearing conservation program include a system of monitoring in accordance with § 62.110, which provides that the system of monitoring must evaluate each miner's noise exposure sufficiently to determine continuing compliance with the requirements of part 62. This requirement is derived from proposed § 62.120(f), which would have required a system of monitoring, but which did not include monitoring as an element of the hearing conservation program. A more detailed discussion of exposure monitoring is included in the preamble under § 62.110.

Paragraph (b) of § 62.150 of the final rule includes the use of hearing protectors, in accordance with § 62.160, as an element of the hearing conservation program. This requirement is derived from proposed § 62.120(b)(3). A detailed discussion of hearing protectors is found under § 62.160 of the preamble.

Paragraph (c) of § 62.150 of the final rule includes audiometric testing, in accordance with §§ 62.170 through 62.175 of the final rule, as a hearing conservation program element. As discussed above, audiometric testing would have been included as a program element under the proposal, and has been adopted as an element in the final rule. Detailed discussion of audiometric testing, test procedures, evaluation of audiograms, and other related issues can be found in the preamble under §§ 62.170 through 62.175.

Paragraph (d) of § 62.150 of the final rule includes miner training, to be conducted in accordance with § 62.180 of the final rule, as an element of the hearing conservation program. Under § 62.120(b)(1) of the proposal, training would have been required for miners whose exposure exceeded the action level, but the proposed rule would not have included training as a hearing conservation program element. Extensive discussion of miner training under the final rule can be found in the preamble under § 62.180.

Finally, paragraph (e) of § 62.150 of the final rule provides that the hearing conservation program must include recordkeeping in accordance with § 62.190 of the final rule. Issues related to access to records, maintenance, and retention are discussed in detail in the preamble under § 62.190.

Section 62.160 Hearing Protectors

Section 62.160 specifies the requirements for hearing protectors. The final rule is essentially identical to proposed § 62.125 with a few minor changes. Proposed § 62.125 required that miners have a choice of one plug-type and one muff-type hearing protector. Under § 62.160(a)(2) of the final rule, miners must be allowed to choose from at least two of each type. In the event that, under § 62.140, dual hearing protection is required, miners must be allowed to choose one of each type from the selection offered under § 62.160(a)(2).

Under §§ 62.120 and 62.125 of the proposal, mine operators would have been required to ensure that miners wore hearing protection in specific circumstances: when a miner's exposure exceeded the permissible exposure level; or when a miner's exposure exceeded the action level and the miner was determined to have a standard threshold shift or would have to wait 6 months before a baseline audiogram. The hearing protectors would have been required to be worn at any sound level between 80 and 130 dBA. In its place, § 62.160(b) of the final rule specifies that mine operators must ensure that miners wear hearing protectors under similar circumstances. Under the final rule the mine operator must ensure that hearing protectors are worn by miners whenever their noise exposure exceeds the permissible exposure level, either until feasible engineering and administrative controls have been implemented, or despite the use of all feasible engineering and administrative controls. Additionally, mine operators must ensure that a miner whose exposure equals or exceeds the action level wears hearing protectors, either if the miner has experienced a standard threshold shift or more than 6 months will pass before a baseline audiogram can be conducted. The final rule, however, does not adopt the provision proposed at § 62.125(b) that in those cases where hearing protectors are required to be worn, the mine operator must ensure that the protector is worn by the miner when exposed to sound levels required to be integrated into a miner's noise exposure measurement.

The final rule adopts the proposed provisions that the hearing protector is to be fitted and maintained in accordance with the manufacturer's instructions; that hearing protectors and necessary replacements are to be provided by the mine operator at no cost to the miner; a miner whose hearing protector causes or aggravates a medical pathology of the ear must be allowed to select a different hearing protector from among those offered.

Selection of Hearing Protectors

MSHA's existing noise standards require mine operators to provide adequate hearing protectors but do not specify that a variety of hearing protectors be offered. OSHA's noise standard requires that employees be allowed to select from a variety of suitable hearing protectors provided by the employer but does not define variety. OSHA states in the 1981 preamble to its noise standard that "[T]he company must make a concerted effort to find the right protector for each worker-one that offers the appropriate amount of attenuation, is accepted in terms of comfort, and is used by the employee."

MSHA considered several studies and comments before concluding that the minimum selection appropriate for miners consists of at least two types of earmuffs and two types of earplugs that would provide adequate noise reduction.

The National Hearing Conservation Association's Task Force on Hearing Protector Effectiveness (Royster, 1995) recommends that employers consider numerous criteria when selecting the variety of hearing protectors to be made available to their workers. According to the Task Force, the most important criterion for choosing a hearing protector is "the ability of a wearer to achieve a comfortable noise-blocking seal which can be maintained during all noise exposures." Other criteria include the hearing protector's reduction of noise, the wearer's daily noise exposure, variations in sound level during a work shift, user preference, communication needs, hearing sensitivity of the wearer, compatibility with other safety equipment, the wearer's physical limitations, climate, and working conditions.

Berger (1986) stresses the importance of comfort, arguing that if a miner will not wear a highly rated but uncomfortable hearing protector, its actual effectiveness is greatly reduced (or nonexistent). Conversely, the miner may wear a comfortable but less effective hearing protector consistently, thereby gaining greater effective protection. Berger (1981) also recommends that an employee should have two weeks to try out an adequate hearing protector and select another one if the original selection does not perform satisfactorily.

MSHA believes that such a trial period further encourages miners' acceptance of the use of hearing protectors and may be necessary for miners to determine if the hearing protectors they have selected are comfortable and appropriate for prolonged periods of use. If significant discomfort occurs, MSHA encourages the mine operator to allow the affected miner to select an alternate hearing protector. In any case, provision of an alternative hearing protector is mandatory under the final rule if required by a medical condition or because the miner has experienced a standard threshold shift.

Mine conditions such as dust, temperature, and humidity can cause one type of hearing protector to be more comfortable than another. For example, even under normal mining conditions, some miners may experience problems with earmuffs because of a buildup of perspiration under the seals. The report *Communication in Noisy Environments* (Coleman et al., 1984) finds earmuffs to be better suited to mining conditions than earplugs, because helmet-mounted earmuffs are comfortable, easy to fit and remove, effective, and hygienic. However, compressible foam earplugs interfere less with communication and awareness of surroundings than do earmuffs, and may be more comfortable in hot, humid conditions.

Comfort alone does not determine a miner's choice of hearing protector. Coleman et al. (1984) state that other factors, such as:

> * * * concern with hygiene, belief in (real or presumed) communication difficulties, and social constraints * * * can influence the extent to which workers will use the protection provided * * * Sweetland (1981) found concern about communication difficulties to be a major factor in mine workers' acceptance of protectors.

One commenter suggested that because earmuffs might not provide adequate noise reduction, mine operators should be allowed to require specific hearing protectors to ensure that their employees receive the best protection. MSHA agrees that employees should receive the best available protection.

Accordingly, the final rule does not prevent mine operators from selecting among the wide variety of styles, types, and noise-reduction ratings available in hearing protectors which would afford miners the best protection available. Moreover, MSHA maintains that the requirement that mine operators encourage the safe and effective use of hearing protectors gives them incentive to provide an appropriate variety of types. MSHA further maintains that if miners are allowed to choose from a selection of hearing protectors, particularly if given appropriate training, as required under this rule, they will be more likely to wear and maintain their hearing protectors for optimal noise reduction.

The comment that "miners will only wear plugs that are comfortable" represents the consensus view, and a number of comments to the proposed rule noted that a choice from at least one of each type is inadequate. On the basis of comments reviewed and the international consensus (including the U. S. armed services) that workers should choose from a selection of several hearing protectors, MSHA has concluded that the use of hearing protectors will be better accepted by miners if they have the opportunity to choose appropriate hearing protectors from an expanded, but not unlimited, selection. Thus, the final rule requires that at least two plug-type and two muff-type protectors be offered to miners.

Hearing Protectors for Miners With Significant Hearing Loss

Hearing loss due to noise and aging both affect the ear at higher sound frequencies, and most earplugs and earmuffs are more effective at reducing sounds of higher than lower frequencies. As a result, a miner with significant hearing loss who is wearing a normal hearing protector would experience even further reduction in hearing at the higher frequencies. In this situation, the miner could run the risk of not hearing or comprehending otherwise audible warnings.

Pfeiffer (1992) supports this reasoning, suggesting that greater care be exercised when selecting hearing protectors for workers experiencing hearing loss. He notes that it is important not to overprotect workers, because if workers experience difficulty in communicating, they will be reluctant to wear hearing protectors.

An alternative is the communication-type hearing protector, which combines an earmuff with a radio receiver so that the wearer can hear important conversations or warnings. Although no comments were received on the use of communication-type hearing protection devices for hearing impaired miners, MSHA cautions mine operators against their use in very high noise areas because the sound level transmitted into the ear cup may be hazardous. Some manufacturers of communication-type hearing protectors, however, have placed limiters in the electronics to prevent potentially hazardous sound levels being transmitted.

Even though some researchers have indicated that using a hearing protector may cause communication problems for a hearing impaired miner, MSHA has determined not to require special hearing protectors and not to limit the choices of hearing protectors for the hearing impaired. As a result, the rule allows mine operators the maximum flexibility in addressing this matter in ways appropriate to local conditions and individual needs.

Use of Hearing Protectors Above 80 dBA

Under § 62.125(b) of the proposal, the use of hearing protectors would have been required when the sound levels exceed those which were proposed to be integrated into the noise exposure measurement. This requirement has not been adopted in the final rule. This provision, while intended to require the use of hearing protectors above 80 dBA when the miner's exposure exceeded the permissible exposure level, would in effect have required hearing protector usage above 80 dBA, and some commenters to the proposed rule were concerned that this would result in all miners having to wear hearing protectors throughout every shift. A number of commenters who objected to

the proposal noted that miners should be permitted to remove hearing protectors when the sound level falls below 80 dBA, and that MSHA should recommend wearing hearing protectors above 85 dBA and require them above 90 dBA. One commenter noted that it is impossible to enforce the use of hearing protectors based on the sound level unless there is a practical means of knowing what the sound level is at all times, in order to know when it exceeds the threshold level.

MSHA agrees with the commenters who pointed out that the provision in the proposal would have required hearing protector usage above 80 dBA, which would have resulted in miners having to wear hearing protectors throughout every shift. MSHA did not intend for the use of hearing protectors to be based on the threshold level, thus the proposed provision has not been adopted. The final rule does set forth specific circumstances under which mine operators must ensure that miners use hearing protectors: when the miner's noise exposure exceeds the permissible exposure level, until engineering and administrative controls have been implemented, or despite the use of such controls; and when the miner's exposure is at or above the action level, and the miner has incurred a standard threshold shift, or more than 6 months will pass before the miner's baseline audiogram can be conducted.

Use of hearing protectors is not based on the threshold levels. MSHA has determined that it is the responsibility of the mine operator to determine when beyond the specific requirements of the final rule hearing protectors should be worn. This is one goal of the mine operator's monitoring program.

Fitting of Hearing Protectors

Section 62.160(a)(3) of the final rule addresses the fitting of hearing protectors, and is identical to § 62.125(c) of the proposed rule. The final rule requires that mine operators ensure that hearing protectors be fitted in accordance with manufacturer's instructions.

Many commenters supported the requirement that hearing protectors be properly fitted. A number of commenters observed that earplugs vary more from laboratory data than earmuffs because earplugs are harder to fit properly. Several commented that proper fit depends upon the wearer's ear canal size and shape, manual dexterity, and motivation. Others stated that people often select a comfortable earplug that does not effectively seal the ear canal, so that it provides little protection. MSHA recognizes a lack of consensus on fitting procedures but notes that research demonstrates that proper fitting can increase the effectiveness of hearing protectors.

For example, Chung et al. (1983) report that the major factor in the performance of earmuffs is the fit, which is dependent on headband tension. They report that, while adequate tension is necessary for effective noise reduction, high headband tension also generally causes discomfort. Chung et al. concluded that proper fitting can increase the effectiveness of earmuffs.

MSHA considered the use of audiometric data base analysis the long-term collection of audiograms to determine the effectiveness of hearing protectors and concluded that audiometric data base analysis is inappropriate for determining fit because it does not provide immediate feedback on individual fit. Audiometric data base analysis requires multiple subjects, and is useful for determining the adequacy of the hearing conservation program (protecting the hearing sensitivity of a group of workers) but not the adequacy in protecting an individual. Furthermore, audiometric data base analysis requires audiograms to be conducted on an annual basis. If no interim protection is provided between audiograms, a miner's hearing sensitivity could be irreversibly damaged.

As stated in the preamble to the proposal, MSHA agrees that proper fitting is necessary to ensure optimal effectiveness of hearing protectors and that it should not be left solely up to the individual miner to determine if the hearing protector fits properly.

Some commenters saw the need for an accurate, reliable, and inexpensive method of testing the fit of earplugs and earmuffs. MSHA agrees that such a fit test for earplugs and earmuffs is needed in order to determine the amount of protection an individual obtains from a hearing protector, but none exists at this time. MSHA believes that, until such a test is developed, the manufacturer's instructions should be used to fit earmuffs and earplugs.

Some commenters noted that not all manufacturers' instructions are adequate to ensure proper fit. In addition, one commenter was opposed to mandating the manufacturers' instructions, claiming that doing so was an unlawful delegation of MSHA's responsibility. MSHA disagrees. There are many instances of regulations requiring that manufacturers' instructions be followed, because the manufacturer of the instrument, machine, or protective device is the most knowledgeable of the features, performance, and use of the device. For example, the safety standards for explosives at metal and nonmetal mines require that initiation systems be used in accordance with the manufacturer's instructions. Therefore, in light of the wide variety of hearing protectors available, the broad range of subjective fitting procedures, and the lack of consensus on an objective fitting method, MSHA has concluded that the manufacturers' instructions provide the best model for fit at this time.

One commenter noted that the best fit is obtained when individualized training is available to the user. MSHA agrees that training is a key element in the fitting of hearing protectors, as reflected in the final rule (see § 62.180).

Maintenance of Hearing Protectors

Section 62.160(a)(3) of the final rule requires that mine operators ensure that a hearing protector is maintained in accordance with the manufacturer's instructions. Many manufacturers recommend soap, warm water, and careful rinsing to clean the hearing protector. Manufacturers also discourage solvents and disinfectants as cleaning agents because they can cause skin irritation and some can damage the hearing protector. In most cases, the proper insertion technique for earplugs includes proper basic hygiene cleaning the hands before rolling or inserting earplugs.

MSHA reviewed standards of hearing protector maintenance among the U.S. armed forces and the international community. The consensus of the standards was that damaged or deteriorated hearing protectors must be replaced. Research also demonstrates that non-disposable hearing protectors should be replaced between 2 and 12 times per year (Berger, 1980). Constant wear causes hearing protectors to lose their effectiveness. For example, headbands on earmuffs can lose their compression ability; the soft seals surrounding the ear cup on earmuffs can become inflexible; and plastic earplugs can develop cracks, shrink, or lose their elasticity. All types are susceptible to contamination.

MSHA recognizes that it is difficult to keep hearing protectors clean in the mining environment. Using contaminated hearing protectors, however, may contribute to a medical pathology of the ear. Once the skin has been abraded or inflamed, microorganisms in the ear or on a hearing protector can invade the skin. When hearing protectors appear to be the cause of inflammation of the external ear canal (otitis externa), the hearing protector is often found to be contaminated with an irritating or abrasive substance. This situation can be corrected with proper cleaning of the hearing protector before use.

As noted in the proposed rule, miners have been known to alter hearing protectors to make them more comfortable. Such alterations have included cutting off the ends of earplugs or stretching out the head-band on earmuffs to decrease the tension. These alterations can significantly decrease the hearing protector's effectiveness. In addition, hearing protectors can be damaged from exposure to heat, cold, ozone, chemicals, or dirt. Because such conditions are common in the mining industry, hearing protectors must be periodically checked and replaced if damage is found. While MSHA recognizes that it is difficult to keep hearing protectors clean and undamaged in the mining environment, the final rule requires mine operators to ensure that hearing protectors are maintained in accordance with manufacturers' instructions.

Replacement of Hearing Protectors

Section 62.160(a)(4) of the final rule is identical to proposed § 62.125(d). This section requires the mine operator to provide the hearing protector and necessary replacements at no cost to the miner. MSHA intends for this section to include repairs to a miner's hearing protector when it becomes damaged or deteriorated to the point that the required protection is compromised. Commenters agreed that this should be the case.

Replacement of hearing protectors would take place according to the manufacturer's instructions upon finding any deterioration that could adversely affect the hearing protector's effectiveness or upon diagnosis of a medical pathology caused or aggravated by the hearing protector provided (see following section for discussion of medical pathology). For example, manufacturers of disposable earplugs may state in their instructions that the earplugs should be replaced after each use.

Replacement Due to Medical Pathology

Section 62.160(a)(5) of the final rule is identical to proposed § 62.125(e). This section requires the mine operator to provide an individual miner with a different, more appropriate, type of hearing protector when presented with evidence of a medical pathology (for example, otitis externa or contact dermatitis). The definition of "medical pathology" is intended to cover injuries. If, for example, a miner suffered a burn in the ear canal and could no longer use the earplugs he or she had earlier selected, he or she must be allowed to select an earmuff. Comments to the proposed rule indicated a consensus that miners should be permitted to change their choice of hearing protector on the basis of the opinion of a medical professional. A preliminary diagnosis of medical pathology by a family physician or nurse must be accepted by a mine operator for the purposes of this requirement.

One commenter stated that people wearing hearing protectors are prone to ear infections. Berger (1985), however, reports that although there are some preexisting ear canal conditions and environmental conditions that prevent the use of certain hearing protectors, in general, otitis externa occurs in approximately 2% of both users and nonusers of hearing protectors. He therefore concludes that regular wear of hearing protectors does not increase a person's chances of contracting otitis externa. In any case, disposable hearing protectors may be warranted for individuals prone to infections.

MSHA's existing noise standards do not specifically address the replacement of hearing protectors. OSHA's noise standard simply requires that hearing protectors be replaced as necessary. Based upon the research and several international standards, MSHA believes that hearing protectors need to be replaced whenever a medical pathology is present. Such replacements must also be available at no cost to the miner.

Circumstances Requiring the Use of Hearing Protection

Section 62.160(b) of the final rule sets forth the circumstances in which mine operators must ensure that hearing protectors are worn. Section 62.160(b) incorporates requirements of proposed §§ 62.125(b)(2) and 62.125(c)(2)(iii). Section 62.160(b) requires that mine operators ensure the use of hearing protectors when the miner's exposure exceeds the permissible exposure level before the implementation of all feasible engineering and administrative controls, or if the miner's exposure continues to exceed the permissible level despite the use of all feasible controls. Sections 62.160(c)(1) and (c)(2) require that mine operators ensure the use of hearing protectors when the miner's noise exposure is at or above the action level and the miner has experienced a standard threshold shift or it takes more than 6 months to conduct the baseline audiogram.

The proposal's requirement that the mine operator ensure the use of hearing protectors under particular circumstances generated comments concerning convenience, comfort, and noise reduction. One commenter to the proposed rule noted that to meet the proposed requirement, miners would need to wear hearing protectors throughout entire shifts, which would be very inconvenient.

Some research supports the assumption that miners would resist wearing hearing protectors as prescribed. Despite mandatory use of hearing protectors, most workers in the Abel (1986) study admitted to wearing their hearing protectors less than 50% of the time. Further, many modified their hearing protectors to provide greater comfort. Many of the modifications lowered the effectiveness of the hearing protectors.

As noted by Berger (1981), persons with medical pathologies of the ear are more likely than others to resist wearing hearing protectors because of pain or extreme discomfort associated with their use. Berger suggests that persons who are more prone to otitis externa would need to be monitored more closely for failure to wear their hearing protectors.

As many have emphasized, hearing protectors are only effective if they are worn. Their effectiveness is diminished if they are not worn for the duration of any exposure. Chart NR1, below, illustrates that the amount of noise reduction provided is directly dependent upon the proportion of exposed time during which the hearing protector is worn.

For example, if a hearing protector with a noise reduction rating (NRR) of 29 dB is worn during only half the exposure time, the wearer will effectively obtain only about 5 dB of noise reduction. A noise reduction rating of 29 dB is among the highest reported by hearing protector manufacturers; yet, if a hearing protector with this rating is not worn 100% of the time that the wearer is exposed to noise, it is no more effective than a much lower-rated protector.

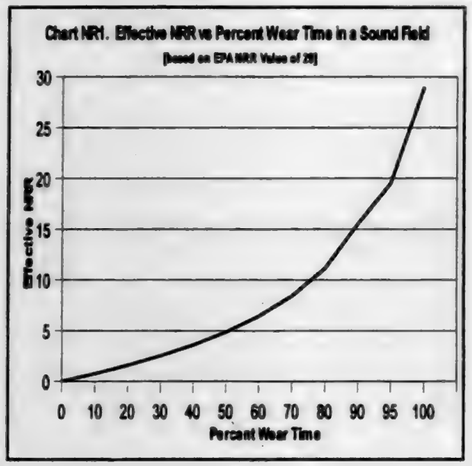

Many commenters oppose mandatory use of hearing protectors because they believe that they would interfere with the aural detection of warning signals and alarms at mine sites. Also, some commenters believe that the use of hearing protectors hampers an underground coal miner's ability to hear sounds generated by changing stresses in the geologic structure of the mine—commonly known as "roof talk." MSHA acknowledges that miners need to be aware of the location and movement of equipment in the mining environment. These commenters stated that the ability to hear these sounds allows miners to retreat from an unsafe area before the roof collapses, saving their lives and the lives of others wearing hearing protectors. These commenters submitted anecdotal information to MSHA in support of their position. Other commenters were concerned that hearing protectors limit the ability of miners to communicate, hear warning signals, and properly operate mining machinery. Still others, however, stated that miners can hear roof talk while wearing hearing protectors, and that roof fall accidents could not have been prevented if hearing protectors had not been worn.

The rulemaking record contains evidence from which MSHA concludes that for persons with normal hearing, the use of hearing protectors will not interfere with the aural detection of warning signals and alarms at mine sites. Nixon and Berger (1991), have concluded that "[h]earing protection devices equally attenuate the levels of both the noise of the environment and auditory signals. An auditory warning signal may sound different when a hearing protection device is worn, yet recognition is ordinarily the same whether the ears are protected or unprotected." Prout et al. (1975), found that hearing protectors do not generally prevent a miner from hearing and analyzing roof talk when the noise level is high enough to require hearing protectors, but they diminish the ability to interpret roof warning signals in quiet. Thus hearing protectors should not be worn in quiet conditions. In addition, Berger (1986) found that the use of hearing protectors by persons with normal hearing had no significant effect on the ability to detect warning signals and that for persons with non-normal hearing, "[w]arning sounds may be adjusted in pitch and loudness to achieve optimum perceptibility." Berger (1986) also referenced additional studies which showed that the use of hearing protectors reduced rather than increased the number of industrial mishaps.

The U.S. armed services and many international communities have specified sound levels above which hearing protectors must be worn. However, MSHA concludes that requiring specific trigger levels for hearing protectors in specific circumstances would be burdensome and require mine operators to conduct a comprehensive survey on each piece of equipment. Instead, the Agency is taking the more practical approach of requiring mine operators to ensure through their policies that hearing protectors are worn whenever noise-producing equipment is operating in the miner's work area and that miners are permitted to remove their hearing protectors in areas with low sound levels. This should minimize communication difficulties and the sense of isolation caused by wearing hearing protectors in such areas.

The final rule does not adopt proposed § 62.120(b)(3), which would have required mine operators to provide hearing protection, upon request, to a miner whose exposure exceeded the action level. Because the final rule requires mine operators to enroll miners whose exposures equal or exceed the action level, and hearing protectors are provided to miners as a part of that program, the proposed requirement is unnecessary, and has not been adopted in the final rule.

Section 62.170 Audiometric Testing

This section of the final rule establishes requirements for the audiometric testing conducted as part of the hearing conservation program under § 62.150 of the final rule. Included in this section are specific qualification requirements for persons who conduct audiometric testing; a requirement that audiometric testing performed under this part be offered at no cost to the miner; and procedures for baseline audiograms, annual audiograms, and revised baseline audiograms.

The requirements in this section of the final rule are nearly identical to the requirements of proposed § 62.140, with a few relatively minor changes that are described in detail below. This section requires that audiometric tests performed to satisfy the requirements of part 62 be provided by the mine operator at no cost to the miner, and be conducted by a physician or an audiologist, or by a qualified technician under the direction of a physician or an audiologist. Section 62.101 of the final rule defines "audiologist" as a professional specializing in the study and rehabilitation of hearing, who is certified by the American Speech-Language-Hearing Association or licensed by a state board of examiners. "Qualified technician" is defined in § 62.101 of the final rule as a technician who has been certified by the Council for Accreditation in Occupational Hearing Conservation (CAOHC) or another recognized organization offering equivalent certification. A number of comments were received regarding the appropriate qualifications for audiologists or technicians who perform audiometric testing. These issues are discussed in greater detail in the preamble under § 62.101, addressing the definitions provided in that section.

Commenters disagreed as to what qualifications were necessary for physicians performing audiometric testing. Some commenters were concerned that physicians may not have the specific knowledge necessary to conduct audiometric testing, while other commenters believed that physicians were appropriately qualified. Several commenters stated that many, if not most, physicians do not have the training, the expertise, or the equipment to perform the audiometric testing called for under this part. Some commenters suggested that physicians conducting audiometric testing under the final rule be required to be board-certified otolaryngologists; others were of the opinion that the final rule should require that physicians conducting the testing have expertise in hearing and hearing loss. Several commenters preferred a requirement for both certification and licensure or that the physician be an otolaryngologist or an otologist. However, MSHA recognizes that many miners working in outlying areas may not have easy access to an audiologist who is both licensed and certified.

The final rule does not adopt the suggestion of some commenters that minimum qualifications be included in the rule for physicians who conduct audiometric testing. MSHA recognizes that a license to practice medicine does not guarantee that a physician has the specialized training or experience needed to conduct audiometric testing, evaluate audiograms, and supervise those technicians who perform such activities. However, states enforce stringent medical licensing requirements, and the medical profession maintains a high degree of accountability for physicians and has established strict ethical standards for medical practitioners. In light of these controls, the Agency expects physicians to exercise professional judgment in assessing whether they possess the experience and qualifications to conduct audiometric testing and evaluate audiograms. The final rule therefore does not adopt commenters' suggestions that additional licensing or qualification requirements be established for physicians conducting audiometric testing and evaluating audiograms.

The final rule adopts the proposed requirement that qualified technicians conducting audiometric tests be under the direction or supervision of a physician or an audiologist. Although the final rule does not require that the physician or audiologist be present when the technician conducts the audiometric testing, the physician or audiologist must oversee the activities of the technician enough to ensure adherence to the appropriate test procedures.

This section provides that all audiometric tests performed pursuant to part 62 must be provided by the mine operator at no cost to the miner. This requirement essentially adopts the proposed requirement that participation in a hearing conservation program would be provided by the mine operator at no cost to the miner. The proposed elements of a hearing conservation program would have included the annual audiometric testing and required follow-up examinations and actions.

Baseline Audiogram

The requirements in paragraphs (a)(1) through (a)(3) of § 62.170 of the final rule are derived from virtually identical requirements in proposed § 62.140(b). Under these requirements:

(1) A miner enrolled in a hearing conservation program must be offered an audiometric test within specified time periods to establish a valid baseline audiogram;

(2) The mine operator must provide the miner with a 14-hour quiet period prior to the baseline audiogram; and

(3) Revisions in the miner's baseline audiogram are not permitted because of changes in the miner's enrollment status in the hearing conservation program. However, a new baseline may be established for a miner who is away from the mine for more than 6 consecutive months.

Unlike the proposal, the final rule allows the use of hearing protectors as a substitute for the 14-hour quiet period.

Commenters who addressed the issue of audiometric testing generally acknowledged the need for a valid baseline audiogram as part of an effective hearing conservation program. However, commenters disagreed on whether audiometric testing under the final rule should be mandatory and on the appropriate time frame for establishing the miner's baseline. Some commenters suggested pre-employment audiograms be used as the baseline.

The final rule, like the proposal, requires mine operators to offer miners whose noise exposure exceeds the action level the opportunity for audiometric testing to establish a baseline and at least annually after the baseline has been established. The proposed rule would have also required, under § 62.120(c)(2)(ii), that mine operators ensure that a miner whose exposure to noise exceeded the permissible exposure level actually submitted to the audiometric testing offered as part of the hearing conservation program. MSHA proposed this mandatory testing requirement for several reasons, including a concern that without mandatory testing, standard threshold shifts and reportable hearing losses would go undetected. MSHA was also concerned that a voluntary program might have a low rate of participation. Finally, the Agency was concerned that unless participation was mandatory, the costs of miner testing would provide an incentive for mine operators, who will bear the costs of such testing, to discourage miners from participating. MSHA recognized that this provision would be controversial for many in the mining community, and specifically solicited comments on this issue in the proposed preamble.

The mandatory audiometric testing requirement has not been adopted in the final rule, in response to a number of commenters who were opposed either to any type of mandatory audiometric testing or to placing the burden on the mine operator to ensure that the miner submit to such testing. Some commenters stated that mine operators could not force miners to take hearing examinations. These commenters believed that mine operators should be required to offer miners such testing, but should not be penalized if miners do not take advantage of the offer. Other commenters believed that MSHA should directly require miner participation in the testing, not put the responsibility on the mine operator to see that miners participate. Finally, one other commenter believed that forcing a miner to participate in an audiometric testing program may violate existing labor contracts.

A number of commenters supported the concept of mandatory audiometric testing. One commenter stated that audiometric testing is essential to assess an employee's hearing and determine future changes in hearing sensitivity.

This commenter further stated that the audiogram could therefore not be an optional medical evaluation, but is the keystone of a comprehensive hearing conservation program. Other commenters were of the opinion that if audiometric testing were voluntary, miners would be sent the wrong message and a mine operator's efforts to run an effective hearing conservation program would be undermined. These commenters further stated that if audiometric testing is voluntary and a miner refuses the offer of an audiogram, any hearing loss should be presumed to be non-work-related. Another commenter questioned whether a miner would have the right to refuse to participate in an audiometric testing program. This commenter stated that if a miner could refuse, mine operators would be placed at a disadvantage in monitoring work-related hearing loss, and be subject to unwarranted workers' compensation claims. This commenter was also concerned that, without mandatory audiometric testing, mine operators would be unable to collect accurate data to identify hearing-related problems, hampering mine operators' ability to take appropriate corrective action to provide a healthier workplace.

MSHA notes that the commenters who supported the concept of mandatory audiometric testing for miners varied greatly as to when such tests should be required. A number of commenters believed that audiometric testing should be mandatory for miners whose noise exposures equal or exceed the action level, and that all miners enrolled in a hearing conservation program should be required to submit to audiometric examinations. Other commenters supported mandatory audiometric testing for all miners, regardless of their noise exposures. One commenter who supported mandatory testing stated that the Americans with Disabilities Act (ADA) protects miners from discrimination based on hearing disability, and any confidentiality concerns would be addressed both by the ADA and the protections in the proposed rule.

MSHA has concluded that mandatory audiometric testing is inappropriate at all levels of noise exposure, based on several considerations. MSHA acknowledges the concerns of the commenters who believe that a voluntary audiometric testing program could allow miner hearing loss to go undetected and unaddressed. However, MSHA is reluctant to require miners, either directly or indirectly, to submit to medical examinations that they do not wish to undergo. MSHA is also reluctant to require miners to submit to testing when the miners may have concerns about the privacy and confidentiality of audiometric test records and follow-up evaluations. MSHA also believes that a miner who voluntarily participates in audiometric testing will more likely wear hearing protectors, maintain engineering noise controls, and comply with administrative noise controls. Mine operators remain free to make audiometric testing mandatory for their miners. However, a miner's refusal to participate in a mandatory audiometric testing program would be a labor-management issue rather than an MSHA enforcement issue, and is outside the scope of this rule.

Under § 62.120 of the final rule, mine operators must enroll miners whose exposure to noise exceeds the action level in a hearing conservation program, and offer those miners the opportunity for regular audiometric tests. Information from these tests indicating that miners are experiencing hearing loss should prompt both the mine operator and the Agency to examine the effectiveness of existing noise controls. For example, if a miner incurs a standard threshold shift, the mine operator, at the very minimum, should ensure that a hearing protector is provided to and worn by the miner (see preamble for § 62.160(c)(1) for further discussion). If the miner already has a hearing protector, the mine operator should determine whether the hearing protector needs to be changed. The information obtained through audiometric testing may indicate the need to pinpoint the source of the noise causing the problem, and may reveal an undetected failure of existing noise controls, failure to properly fit, maintain or utilize hearing protectors, or failure of the training to provide adequate instruction.

Paragraph (a) of § 62.170 of the final rule, like the proposal, requires that a miner be offered the opportunity for audiometric testing to establish a baseline audiogram, against which subsequent annual audiograms can be compared. An existing audiogram may be used as the baseline audiogram if it meets the audiometric testing requirements of § 62.171 of the final rule. OSHA also accepts existing audiograms as a baseline because, in most cases, use of an existing baseline audiogram is more protective for the employee. Establishing a miner's baseline after the miner has been exposed to high levels of noise for many years is likely to result in less protection for the miner, because the new audiogram would typically show higher thresholds. Consequently, the true extent of future hearing losses would appear smaller than if they had been compared to a baseline that had been established prior to the years of noise exposure.

A few commenters believed that the audiogram should be conducted within 12 months of the effective date of the rule to be considered a baseline. Other commenters believed an existing baseline should be used; otherwise, experienced miners would be placed at a disadvantage if their baselines were established after the implementation of the final rule.

MSHA encourages the use of existing audiograms as baselines because, as explained above, this approach would provide a greater degree of protection for the affected miner. Therefore, the final rule adopts the proposed provision that permits the use of existing audiograms as the baseline at the discretion of the mine operator, if the audiograms meet the testing requirements of this part. MSHA acknowledges the concerns of commenters about miners who may already have incurred a hearing loss before the effective date of the final rule, whose hearing loss may not be accurately assessed if new baseline audiograms are used under this rule. However, the establishment of a comprehensive scheme that addresses existing hearing loss among miners is outside the scope of the final rule, whose purpose is the prevention of occupational noise-induced hearing loss among miners and the reduction of the progression of such hearing loss.

Paragraph (a)(1) adopts the proposed requirement that the audiometric testing which results in a baseline audiogram be offered to the miner within 6 months of enrollment of the miner in a hearing conservation program, or, if mobile test vans are used, within 12 months of the miner's enrollment. These requirements are consistent with the requirements of OSHA's noise standard. MSHA's existing noise standards for coal mines do not specify a deadline for baseline audiograms for those miners under a hearing conservation plan, and the existing noise standards for metal and nonmetal mines do not require baseline audiograms.

Commenters offered differing views on the appropriate period within which a baseline audiogram should be conducted. One commenter believed that a miner's audiometric baseline should be determined within 90 days of the miner's enrollment in the hearing conservation program, rather than 6 months or a year. Others were of the opinion that 6 months for a baseline (12 months if a mobile test van is used) established in the proposal was a reasonable deadline. In contrast, the National Institute for Occupational Safety and Health (NIOSH) has recommended that baseline audiograms be conducted within 30 days of enrollment in a hearing conservation program, even if a mobile test van is used. NIOSH believes that waiting up to 6 months for a baseline audiogram is unacceptable, because exposure to high sound levels for a relatively short period of time can adversely affect the hearing sensitivity of susceptible individuals. Other commenters advocated the use of pre-employment audiometric testing, under the rationale that such examinations should be part of the battery of tests conducted when a miner is hired. These commenters believed that there is a need to document a miner's existing hearing loss at the point that the miner is hired, so that mine operators can establish what part of a miner's hearing loss can be attributed to noise exposure at that mine. Another commenter requested that the first annual or periodic audiogram conducted after the effective date of the noise rule should be considered the baseline audiogram.

Baseline audiograms provide an essential point of comparison for subsequent audiograms, and are critical in determining the extent of a miner's hearing loss. If the baseline audiometric test is not conducted properly and at the appropriate time, it may not accurately reflect the miner's hearing thresholds, and any changes between the baseline audiograms and subsequent audiograms may be masked. Because of the importance of the baseline audiogram, it is highly desirable to conduct the baseline testing before a miner is exposed to hazardous noise.

MSHA has determined that a deadline of 6 months (or 12 months if a mobile test van is used) for obtaining the baseline audiogram is reasonable. This is because in many cases it is not possible to conduct it any sooner due to the remote location and intermittent operation of many mines and to the unavailability of adequate audiometric testing facilities. MSHA recommends that testing should take place as soon as possible.

The 12-month period for testing by a mobile van allows mine operators to schedule baseline and annual audiograms simultaneously, and thus substantially reduce the cost when mobile test vans are used. The 12-month deadline for mobile van testing recognizes that there may be significant logistical and scheduling considerations in a visit to a mine by a mobile test van. Scheduling may need to be done months in advance.

It should be noted that § 62.160(c)(2) of the final rule requires mine operators not only to provide all miners enrolled in a hearing conservation program with hearing protectors, but also to ensure the hearing protectors are used if the baseline audiogram cannot be conducted within the 6-month deadline. The final rule's requirements for baseline audiograms, including the use of hearing protectors, are consistent with the OSHA rule.

14-hour Quiet Period

Paragraph (a)(2) of § 62.170 of the final rule has been adopted with a substantive change from proposed §§ 62.140(b)(2) and (b)(3). This paragraph, like the proposal, requires that the mine operator notify the miner of the need to avoid high levels of noise for at least 14 hours immediately preceding the baseline audiogram. This paragraph also requires that the mine operator not expose the affected miner to workplace noise for at least a 14-hour period immediately prior to receiving the baseline audiogram. The final rule, unlike the proposal, allows the use of hearing protectors as a substitute for this quiet period. Although existing MSHA standards for noise do not include provisions for a quiet period before a baseline audiogram, these requirements are similar to a provision in OSHA's noise standard.

The 14-hour quiet period provides a miner's hearing sufficient rest to allow recovery from any temporary elevation of hearing levels due to noise exposure (temporary threshold shift) caused by pre-test noise exposure. Hearing levels return to normal after a period of quiet. If the baseline audiogram is skewed by a temporary threshold shift, comparisons of the baseline to subsequent annual audiograms will not provide an accurate indication of the extent of damage incurred during the time between the baseline and subsequent tests. It is critical that a miner's baseline audiogram reflect no temporary threshold shift. Otherwise, it will be essentially impossible to determine the magnitude or progression of future hearing loss.

Some commenters supported extending the quiet period requirement to annual audiograms as well as baseline audiograms. Other commenters opposed a mandatory 14-hour quiet period, maintaining that requiring miners to be protected from workplace noise prior to the baseline test was unreasonable for mines with extended shifts. In those mines, unless the miner missed all or part of the work shift, he or she would not receive 14 hours of quiet time. This would severely disrupt the operation of those mines. Another commenter questioned how a mine operator could possibly ensure that a miner was not exposed to high levels of non-occupational noise.

MSHA agrees that the mine operator has no control over a miner's exposure to noise away from work. However, the training required under the final rule should encourage miners to avoid high noise exposures off the job before audiometric testing. One commenter also suggested that the 14-hour quiet period be reduced to 12 hours, because it would minimize any interference with normal work shifts.

Research has been conducted on the length of the hearing recovery period from a temporary threshold shift due to exposure to noise. Fodor and Oleinick (1986), in their study on workers' compensation programs in the United States, reported that the initial recovery from a temporary threshold shift appeared to be very rapid at the end of the noise exposure, but that the rate of recovery appeared to slow as time went on. Most researchers, however, report complete recovery from a temporary threshold shift taking no longer than 16 hours, provided that the temporary threshold shift did not exceed 40 dB. On the other hand, some states require that a worker be away from noise exposure for 6 months before hearing loss is evaluated for workers' compensation purposes. Standards of the U.S. Navy require a quiet period of at least 14 hours, and the U.S. Air Force requires a 15-hour quiet period before audiometric testing.

After consideration of all of the comments and a review of the available scientific literature on the subject, MSHA has concluded that a quiet period is necessary to obtain a valid baseline audiogram, and that a 14-hour quiet period is the most appropriate of several alternatives. This conclusion is consistent with the requirements in OSHA's noise standard and should provide sufficient time to avoid or recover from a temporary threshold shift before the baseline audiogram is conducted.

A quiet period of longer than 14 hours would place an undue burden on mine operators, because in many instances the miner would have to stay away from the work site to comply with the quiet period when the miner works a slightly extended shift; many work shifts exceed 8 hours, especially when a lunch period is taken into account.

The proposal, like the final rule, prohibits the exposure of miners to "workplace noise" during the 14-hour quiet period. Several commenters requested a definition for "workplace

noise," suggesting that the final rule provide that miners would be considered to be protected from "workplace noise" if they are not exposed to noise above the action level or above the permissible exposure level.

Two researchers, Shaw (1985) and Suter (1983), contend that sound levels must be below 72 dBA to be considered "effective quiet." Schwetz et al. (1980) found that a sound level below 85 dBA is needed for recovery from a temporary threshold shift. Studies have shown that individuals with a temporary threshold shift recovered their normal hearing more quickly when exposed to a 75-dBA sound level than they did when they were exposed to an 85-dBA sound level. The 1972 NIOSH Criteria Document recommends a sound pressure level of 65 dB as "effective quiet," based on work by Schmidek et al. (1972). Hodge and Price (1978) concluded that a sound level must fall below 60 dBA to provide effective quiet and not contribute to the development of a temporary threshold shift.

Recovery from a temporary threshold shift requires exposures below 80 dBA, and based on scientific studies, extended exposure to noise above 80 dBA may lead to a material hearing impairment. MSHA has therefore concluded that an acceptable definition of "workplace noise" is a sound level that exceeds 80 dBA, without taking into account the noise reduction provided by a hearing protector.

Because the mine operator has no control over the non-occupational noise exposure of a miner, the final rule does not limit non-occupational noise to a specified sound level during the quiet period; however, as noted below, the final rule does require that the mine operator notify miners of the need to avoid high levels of noise during the 14-hour period preceding the test. It is to the miner's benefit to limit non-occupational exposure to noise in order to obtain accurate audiometric testing.

As mentioned above, the final rule, unlike the proposal, adopts the suggestion of a number of commenters to permit the use of hearing protectors as a substitute for the quiet period. The specific prohibition against hearing protectors as a substitute for a quiet period in § 62.140(b)(2) of the proposal elicited a number of comments. Many commenters believed that the use of hearing protectors should be allowed because they would provide adequate protection for miners. Many also believed that a mandatory 14-hour quiet period would be impractical without the use of hearing protectors. Several commenters advocated that hearing protectors be permitted to be used to satisfy the 14-hour quiet period providing the following conditions were met: required retraining of the miner on the use of hearing protectors within 5 days prior to the baseline audiogram; a requirement that an earmuff-type hearing protector or a foam earplug be used, and that the protector be in satisfactory condition; and mandatory use of dual hearing protectors if the noise exposure exceeds 100 dBA. Many of the commenters who opposed the use of hearing protectors as a quiet period substitute were those who opposed the use of hearing protectors for any reason (see the preamble discussion of engineering and administrative controls under § 62.130). As discussed elsewhere, although hearing protectors are not as effective as engineering and administrative controls in protecting miners, MSHA has concluded that they have an appropriate place in a hearing conservation scheme.

OSHA's noise standard allows the use of hearing protectors as an alternative to the 14-hour quiet period prior to the baseline audiogram, under the rationale that they may provide sufficient noise reduction to prevent a noise-induced temporary threshold shift from contaminating a baseline audiogram, and that the previous restriction on hearing protectors as a quiet period substitute was unnecessarily restrictive.

MSHA's final rule is consistent with OSHA's noise standard in that it allows hearing protectors to be substituted for the 14-hour quiet period prior to the baseline audiogram. Although MSHA recognizes that this decision may result in some miners having measured thresholds that are higher than their actual thresholds, as a result of exposure to some high sound levels, the magnitude of the elevated thresholds should be small unless the noise exposure is severe.

Data indicate that in order to prevent contamination of the baseline, the sound levels encountered during the quiet period would need to be below 80 dBA. MSHA is particularly concerned with the ability of hearing protectors to reduce noise to such low levels. Some researchers have concluded that even an 80 dBA level may be inadequate to protect the most susceptible individuals. However, MSHA has concluded that prohibiting the use of hearing protectors to fulfill the 14-hour quiet period is too impractical a restriction for most mine operators. Such a restriction may be too disruptive of the operations at many mines. Hearing protectors that are correctly fitted and used should provide an acceptable quiet period. The final rule, like OSHA's noise standard, therefore allows the use of hearing protectors as a substitute for the 14-hour quiet period.

MSHA nonetheless strongly recommends that mine operators make reasonable attempts to provide a quiet period for miners before their baseline audiogram, instead of relying on hearing protectors. For example, a mine operator could provide a miner with a quiet period by scheduling the baseline audiogram after a miner's regularly scheduled day off or immediately following a weekend during which the miner does not work. This avoids any disruption of operations, while at the same time ensuring that the audiogram is not contaminated.

Sound Level Avoidance

Paragraph (a)(2) of § 62.170 of the final rule, like § 62.140(b)(3) of the proposal, requires mine operators to notify the miner of the need to avoid high levels of noise during the 14-hour period immediately preceding the baseline audiogram. This requirement is identical to provisions in OSHA's noise standard.

Only a few commenters addressed this issue. Some commenters agreed that workers need to be advised to avoid non-occupational noise exposure prior to taking the baseline audiogram. Several commenters were concerned that notifying the miners to avoid high levels of noise could lead to fraud in workers' compensation cases. These commenters were concerned that miners might intentionally expose themselves to high levels of noise prior to the baseline audiogram in order to provoke a temporary threshold shift and eventually receive an award of compensation. MSHA expects that competent audiologists and physicians will be able to determine if a miner has purposely incurred a temporary threshold shift.

The 1983 preamble to revisions to OSHA's noise standard (48 FR 9757) reflects OSHA's conclusion that the likelihood of non-occupational noise exposure contaminating the baseline audiogram can be substantially reduced by counseling workers of the need to avoid such exposures in the period before their baseline tests. MSHA agrees with OSHA's conclusion regarding worker notification, and the final rule reflects this determination. It should be noted that the final rule does not require written notification. However, it may be in a mine operator's interest to put the notification in writing, because it provides the mine operator with proof of notification.

Exceptions for Revising Baseline Audiograms or Revised Baseline Audiograms

The requirements of paragraph (a)(3) of § 62.170 of the final rule are nearly identical to proposed § 62.140(b)(4) in that a mine operator must not establish a new baseline audiogram or revised baseline audiogram, where one has been established, due to changes in the miner's enrollment status in the hearing conservation program. However, baseline audiograms may be revised if a miner is away from the mine for a period of time exceeding 6 consecutive months. OSHA's noise standard does not contain such a requirement. This restriction is intended to ensure that a new baseline audiogram is not established or a miner's baseline audiogram is not revised even if a miner moves in and out of enrollment in a hearing conservation program because of time away from the mine due to unemployment or extended periods of vacation. Otherwise, a miner's incremental losses of hearing may be erased by revised baseline audiograms, and the true extent of a miner's hearing loss may escape accurate measurement.

Some commenters believed a new baseline should be established if the affected miner is away from the mine for at least 6 or 12 months. Another commenter stated the mine operator should be allowed to obtain a new baseline for a miner who returns to work after working for another mine operator, regardless of how long the miner had been away. These commenters were concerned about being held responsible for a miner's hearing loss that results from overexposure to noise during other employment. A large number of contract and transient employees work in the mining industry. Additionally, many metal and nonmetal mines operate seasonally or otherwise intermittently throughout the year. As a result, a large number of miners are typically away from the job site for long periods of time. MSHA agrees that mine operators should not be held responsible for a miner's hearing loss incurred during employment at other mines or during extended periods of unemployment. Therefore, the final rule adopts the proposed provision that allows for the revision of the baseline audiograms or revised baseline audiograms, where one has been established, for those miners who have been away from their employment at a particular mine for periods longer than 6 consecutive months.

Annual Audiogram

Paragraph (b) of § 62.170 of the final rule adopts the requirement of § 62.140(c) of the proposal that, after the baseline audiogram has been established, the mine operator must continue to offer the miner subsequent audiometric tests every 12 months as long as the miner remains enrolled in a hearing conservation program.

Existing MSHA standards for metal and nonmetal mines do not require audiometric testing. Under existing standards for coal mines, pre-employment and periodic audiograms are offered to miners at mines operating under a hearing conservation plan, but no procedures or time frames for these audiograms are specified (although MSHA policy provides that periodic audiograms must be offered at least every two years). Because MSHA policy has allowed consideration of the noise reduction value of hearing protectors to be considered when determining compliance with the permissible exposure level in coal mining, few coal mines have hearing conservation plans, and only one percent of coal miners are currently covered by such plans.

Some commenters supported annual audiometric testing, while several others supported periodic audiometric testing but recommended different intervals, ranging from once a year to once every three years depending upon the severity of the noise exposure or of the existing hearing loss. However, none of these commenters offered suggestions for the relationship between the severity of a miner's noise exposure and the frequency of audiometric testing. One commenter requested clarification as to whether the annual audiometric tests would be required to be administered once each year or once each 12 months. Several commenters questioned how a mine operator could be protected from liability for non-occupational hearing loss that occurs between the annual audiometric tests. Once baseline audiograms have been obtained, OSHA requires that an audiogram be offered annually to each employee exposed at or above the action level in order to identify changes in hearing sensitivity. This allows the use of hearing protectors to be prescribed or other follow-up measures initiated before the miner's hearing loss can worsen. OSHA adopted the annual audiometric test requirement because of the potential seriousness of the hearing damage that can occur within a 2-year period, before the hearing loss is identified by an audiogram.

MSHA has concluded that annual audiometric testing is necessary for evaluating the hearing level of miners whose exposure equals or exceeds the action level for extended periods of time. These annual audiograms can be used to detect changes in a miner's hearing sensitivity, thus triggering several important actions provided for in the final rule. For example, retraining of the miner could be required. If a miner is enrolled in the hearing conservation program as a result of noise exposure at or above the action level, but the miner's noise exposure is below the permissible exposure level, detection of a standard threshold shift will require the mine operator to provide the miner with a hearing protector and ensure its use. If a miner is already using a hearing protector, the miner must be allowed to select a different hearing protector. Detection of a standard threshold shift also requires reevaluation of the engineering and administrative controls being used at the mine.

With regard to those commenters who were concerned about being held responsible for non-occupational hearing loss that occurs between annual audiograms, MSHA has concluded that the physicians or audiologists who conduct the audiometric tests are in a position to determine whether any hearing loss detected by the test is due to non-occupational causes.

The intervals between annual audiometric testing conducted under the final rule must not exceed 12 months. This means that testing once every calendar year would not be acceptable unless the interval between the tests is 12 months or less. For example, an annual audiogram in January of one calendar year cannot be followed by testing any later than January of the following calendar year. Otherwise, the interval between annual audiograms could extend to nearly 24 months, an unacceptably long time period, for the reasons explained above.

After a review of comments, the relevant scientific literature, and regulations of other governmental agencies, MSHA has concluded, and the final rule reflects, that annual audiometric testing is both necessary and appropriate, and is an integral part of a comprehensive hearing conservation program.

Revised Baseline Audiogram

Paragraphs (c)(1) and (c)(2) of § 62.170 of the final rule, which have been adopted from proposed §§ 62.140(d)(1) and (d)(2), require that the mine operator establish a revised baseline audiogram when:

(1) the standard threshold shift revealed by the annual audiogram is persistent; or

(2) the hearing threshold shown in the annual audiogram indicates significant improvement over the baseline audiogram.

These requirements are the same as those in OSHA's noise standard, and, in response to commenters, MSHA has adopted the term used by OSHA of "revised baseline audiogram" rather than "supplemental baseline audiogram" used in the proposed rule.

Many commenters favored revising the baseline if a standard threshold shift is persistent. Several commenters suggested that MSHA adopt the guidelines of the National Hearing Conservation Association for revising baseline audiograms, to establish some consistency in determinations.

MSHA has concluded that allowing revision of the baseline after a standard threshold shift has been identified will prevent the same standard threshold shift from being identified repeatedly. The annual audiogram on which the standard threshold shift is identified then becomes the revised baseline audiogram. In addition, MSHA intends that each ear be treated separately when the baseline audiogram is revised. If the baseline is revised for both ears when only one has a standard threshold shift, detection of a standard threshold shift in the other ear may not be possible, even if the miner has lost a substantial amount of hearing sensitivity.

Under the final rule, the revised baseline audiogram should be compared with future annual audiograms to identify a second standard threshold shift. The original baseline audiogram continues to be used to quantify the total hearing loss, and is considered in determining whether the hearing loss constitutes a "reportable hearing loss."

Some commenters favored revising the baseline if the annual audiogram showed an improvement in hearing. One commenter recommended that a revised baseline be permitted only if the improvement in the miner's hearing was consistent for multiple consecutive tests. Another commenter stated that MSHA should not adopt the provision for revised audiograms in the final rule, because hearing sensitivity does not improve with noise exposure or increasing age. While it is true that hearing sensitivity does not improve; MSHA recognizes that audiometric tests can sometimes reflect an apparent improvement. Under the final rule, MSHA leaves it to the professional judgement of the medical professional or audiologist to conduct multiple tests to confirm that the apparent improvement is real.

Paragraph (c)(2) requires revision of the baseline if the annual audiogram shows significant improvement in hearing level. This provision has been adopted unchanged from the proposal, and provides additional protection to the miner because it allows more accurate evaluation of the true extent of hearing loss that may occur in the future. When a baseline audiogram is revised due to an improvement in hearing sensitivity, the revised baseline must be considered the original baseline for determining when a standard threshold shift occurs and for quantifying the total reportable hearing loss under part 50. The latter is reflected in § 62.101 of the final rule, under the definition of a "reportable hearing loss."

Finally, one commenter suggested that separate baselines be kept for a standard threshold shift and otologic referrals. This measure is not needed, however, because the final rule requires that all audiograms be retained as part of the audiometric test record under § 62.171(b)(2). Revision of the baseline audiogram does not permit the destruction of the original baseline audiogram.

Temporary and Seasonal Miners

In the preamble to proposed § 62.120, MSHA solicited comments on how to best protect temporary or seasonal miners whose occupational noise exposures equal or exceed the action level. MSHA raised this issue because mines producing certain commodities, such as sand, gravel, and crushed stone frequently cease operations during the winter months. As a result, miners at these operations may only work part of the year, and protecting the hearing of these miners can be extremely problematic, given the long periods when miners are away from the mine site.

Some commenters believed that the fact that the proposal would allow mine operators 6 months to arrange for miners to receive baseline audiograms would effectively exclude most temporary or seasonal miners, because their employment relationship with the mine operator would end before the deadline for their audiometric testing had passed. Other commenters suggested that the use of hearing protectors on the job would adequately protect temporary miners from experiencing an occupational noise-induced hearing loss. One commenter suggested that it would be too burdensome for a mine operator to enroll miners who had worked less than one year in the audiometric testing program. Several commenters opposed any exemption that would result in temporary miners receiving less protection than that provided to other miners.

OSHA has no exemption for audiometric testing for temporary or seasonal workers, and, like the proposal, MSHA's final rule does not provide any exemption for temporary or seasonal miners from the final rule's audiometric testing requirements. MSHA has determined that such an exemption would mean that miners who work intermittently in the mining industry may never receive an audiometric test to detect hearing loss, even if they work under very noisy conditions, and would never receive any of the protections required under the final rule for miners who have incurred hearing loss.

Although the 6-month time period (12 months where a mobile van is used) allowed under the final rule for obtaining an audiogram could effectively exclude many temporary or seasonal miners from the audiometric testing program, prudent mine operators will offer audiometric tests to temporary or seasonal miners and not take advantage of the 6-month period to avoid offering these miners audiometric tests.

Section 62.171 Audiometric Test Procedures

This section of the final rule establishes the procedural and recordkeeping requirements for the audiometric testing conducted under this part. This section specifies the frequencies to be used in the testing, and requires the mine operator to compile and maintain an audiometric test record for each miner tested. The requirements of this section are essentially the same as those proposed in § 62.150, with several relatively minor changes.

Paragraph (a) of this section of the final rule adopts the proposed requirement that audiometric testing under part 62 be conducted in accordance with scientifically validated procedures. MSHA's metal and nonmetal noise standards do not contain audiometric testing provisions. While MSHA's noise standards applicable to coal mines require audiometric testing, they do not include any procedural requirements for this testing. The final rule does not specify detailed procedures for audiometric testing, calibration of audiometers, or qualifying of audiometric test rooms. Instead, the final rule takes a performance-oriented approach, not only to allow flexibility in compliance but also to accommodate technology developed in the future. The final rule specifies basic parameters for the testing while allowing the physician or the audiologist to use professional judgment in selecting the appropriate testing procedures.

This aspect of the proposal generated a significant amount of comment. Several commenters stated that the proposed requirement that tests be conducted in accordance with "scientifically validated procedures" was too vague, and recommended that the final rule clarify or define the phrase "scientifically validated procedures." Some commenters believed that if the Agency failed to specify the test procedures that should be followed, audiometric test results would not be uniform. Other commenters, some of whom strongly supported a performance-oriented approach to testing procedures, suggested that the final rule include an appendix specifying the level of testing performance expected, or at least providing examples of acceptable procedures that may be followed. Commenters stated that this would allow mine operators to determine if the procedures they have adopted comply with the requirements of the final rule.

Several commenters recommended specific changes regarding audiometric testing, including audiometric test instruments, calibration procedures, and audiometric test rooms. Several commenters believed that the audiometric testing procedures required by the final rule should be identical to OSHA's requirements, which contain detailed testing procedures in 29 CFR § 1910.95(h) and in associated appendices. Others recommended that the final rule require audiometric testing to be conducted in accordance with several standards of the American National Standards Institute (ANSI), including ANSI S3.21–1978, "Methods for Manual Pure-Tone Threshold Audiometry," which provides detailed procedures for conducting audiometric tests; ANSI S3.1–1991, "Maximum Permissible Ambient Noise Levels for Audiometric Test Rooms," which provides a criterion for the maximum background sound pressure levels to obtain a valid audiogram; and ANSI S3.6–1996, "Specification for Audiometers," which provides design criteria for various classes of audiometers.

Some commenters suggested that MSHA specify calibration procedures for audiometers. The suggestions included requiring daily calibration of audiometers as well as annual laboratory calibration. Other commenters recommended that MSHA specify the maximum background sound pressure levels acceptable during audiometric testing.

Several commenters suggested, in the absence of a definition for "scientifically validated procedures," that the final rule provide that if the qualified professional who conducts the audiometric tests certifies the test's scientific validity, the mine operator is permitted to rely in good faith on such certification.

After reviewing the comments, the scientific literature, and several governmental standards, MSHA has concluded that the final rule should adopt the proposed performance-oriented approach, and should not include detailed, highly technical procedures and criteria for conducting audiometric testing in the final rule. Instead, the final rule adopts the proposed requirement that audiometric testing procedures be governed by scientifically validated procedures, which would be any method or procedure that has been proven to be effective and is generally recognized by experts in the technical field. Such procedures may be incorporated, for example, into consensus standards, governmental specifications, or military regulations, including OSHA's audiometric testing procedures and criteria or the procedures included in the three ANSI standards referenced above.

MSHA anticipates that most audiograms conducted under the final rule will employ the procedures specified in OSHA's noise standard, in large part because many physicians and audiologists are already familiar with those procedures, and many computer programs used for or in conjunction with audiometric testing are based on that standard. Further, many audiology texts and training courses of the Council for Accreditation in Occupational Hearing Conservation (CAOHC) reference OSHA's audiometric testing procedures and criteria in detail. OSHA's audiometric testing requirements and associated appendices can be found in 29 CFR § 1910.95. To assist the mining community in complying with the audiometric requirements in the final rule, MSHA will post OSHA's requirements on our Internet Home Page at www.msha.gov.

Another possible source of acceptable procedures under the final rule are the recommendations provided by audiometer manufacturers on audiometer use and calibration (in both the laboratory and the field). These equipment manufacturers are in a position to issue specific recommendations on the use and calibration of their audiometers. By following manufacturer's recommendations, accurate audiometric testing will be ensured.

Under the final rule the individual who conducts the testing must have the specialized qualifications of a physician, audiologist, or technician, all of whom should be knowledgeable and familiar with scientifically validated procedures and capable of exercising professional judgment in choosing the appropriate testing procedures. Further, the final rule allows the use of any scientifically validated procedure, which provides flexibility for the use of new procedures or technology that may be developed in the future. This means that if a new, possibly more accurate, procedure is developed and has been scientifically validated, the physicians and audiologists who perform audiometric testing under this part may readily adopt its use.

Test Parameters

Paragraph (a) of § 62.171 of the final rule, like the proposal, requires that audiometric tests be pure tone, air conduction, hearing threshold examinations, with test frequencies at 500, 1000, 2000, 3000, 4000, and 6000 Hz. The final rule also requires that each ear is to be tested separately. This aspect of the final rule is consistent both with OSHA's requirements for audiometric testing frequencies and with NIOSH's recommendations in its 1972 Criteria Document. Existing MSHA regulations do not include any specifications for audiometric testing.

A few commenters directly addressed the audiometric test parameters in the proposal. Of these, one commenter specifically supported the test frequencies as proposed. A few other commenters supported the adoption of the test frequencies either in the OSHA noise standard or in ANSI S3.21–1978, "Methods for Manual Pure-Tone Threshold Audiometry," and ANSI S3.6–1996, "Specification for Audiometers," or a combination of these standards. As stated above, the test frequencies required by the final rule are identical to those required in OSHA's noise standard. The ANSI standards include the additional test frequencies of 250 and 8000 Hz. Other commenters supported adding 8000 Hz to the test frequencies included in the proposal. These commenters believed that adding the frequency of 8000 Hz would assist the evaluator of the audiogram in determining the cause of the hearing loss more accurately. Commenters pointed out that because this frequency is standard on audiometers manufactured since 1974, inclusion of this frequency would not

present a significant burden on the individual conducting the test.

As noted elsewhere in this preamble, noise-induced hearing loss is a permanent sensorineural condition that cannot be improved medically, and is characterized by a declining sensitivity to high frequency sounds. This loss usually appears first and is most severe at the 4000 Hz frequency, and the "4000 Hz notch" in the audiogram is typical of noise-induced hearing loss. Continued exposure causes the loss to include other audiometric test frequencies, with 500 Hz being the least affected. While 500, 1000, and 6000 Hz are not included in the definition of a standard threshold shift, MSHA, like OSHA, believes that these test frequencies contribute to a more thorough audiometric profile and are helpful in assessing the validity of the audiogram as a whole. Testing at 500 and 1000 Hz makes it easier for an audiologist or physician to differentiate conductive hearing loss from noise-induced hearing loss, and testing at 6000 Hz allows better differentiation between age-induced and noise-induced hearing loss, so testing at 8000 Hz is unnecessary. However, this would not prevent testing at additional frequencies.

Audiometric Testing Records

The requirements of paragraphs (b)(1) through (b)(5) of § 62.171 of the final rule specify which audiometric testing records a mine operator must maintain. They have been adopted from proposed § 62.150(c) with one change. Under the final rule mine operators are required to compile an audiometric test record for each miner tested, including the miner's name and job classification, copies of all of the miner's audiograms required under part 62, evidence that the audiometric tests were conducted in accordance with paragraph (a) of this section, any exposure determinations for the miner, and the results of any follow-up examinations. The proposal would have required the mine operator to obtain a certification from the physician or audiologist that the audiometric testing had been conducted in accordance with scientifically validated procedures. In lieu of this requirement, the final rule provides greater flexibility by requiring evidence that the audiograms were conducted in accordance with the final rule's requirements. MSHA's existing standards currently contain no recordkeeping or record maintenance requirements.

Many commenters raised issues concerning the proposed requirements for audiometric testing records. Several commenters proposed that MSHA adopt the requirements of OSHA's noise standard, which requires not only the name and job classification of the employee, but also the date of the last acoustic or exhaustive calibration of the audiometer. OSHA also requires employers or audiometric test service providers to maintain an accurate record of background sound pressure levels in audiometric test rooms. However, as discussed above, OSHA's noise standard includes specific procedures for audiometric testing, and the additional records required under OSHA's standard are intended to show that the required procedures have been followed. Without such specific procedures, these additional records are unnecessary. OSHA's noise standard, like the final rule, requires that employers maintain a record of audiometric test results.

One commenter requested clarification of the recordkeeping requirement, asking if it was limited to individual readings for specific miners or also included records of area or group monitoring. The requirement covers only personal noise exposure determinations, because this information will allow persons evaluating audiometric testing results to make a better determination regarding the nature of a miner's hearing loss.

The recordkeeping requirements for audiometric testing in the final rule provide essential information to MSHA and to health professionals for the evaluation of a miner's audiogram. The information is also necessary for identifying the audiograms, for evaluating whether the audiometric tests have been conducted properly, and for determining whether the results are valid. Further, the information is critical to the evaluator in determining whether an identified hearing loss is occupationally induced or aggravated by occupational noise exposure.

Section 62.150(b) of the proposal would have required mine operators to obtain a certification from the physician or audiologist responsible for conducting audiometric tests under this part that such tests had been conducted in accordance with scientifically validated procedures. In its place paragraph (b)(3) of this section of the final rule requires that the audiometric test record include evidence that the audiometric tests conducted under part 62 have been conducted in accordance with the scientifically validated procedures required under paragraph (a) of this section.

One commenter was of the opinion that mine operators should be allowed to rely on the professionals certifying the audiometric test results, and should not be held responsible for improper procedures if they have received a certification from the professional conducting the test. Another commenter believed that, since the proposal would already require that the person conducting the test have minimum qualifications, such a certification would be unnecessary.

Some commenters, who believed that requiring mine operators to obtain a certification for each individual audiogram was unduly burdensome, stated that the final rule should allow mine operators to obtain a certification for a group of audiograms.

The Agency agrees with commenters that the certification requirement set forth in the proposal would be unnecessarily rigid. However, MSHA has also concluded that some type of evidence is necessary to indicate that the audiometric tests conducted under this part are in accordance with scientifically validated procedures. Therefore, the final rule provides that audiometric test records required to be maintained must include evidence that the audiograms were conducted in accordance with paragraph (a) of this section of the final rule, which provides that scientifically validated procedures must be followed. Such evidence could include a letter from a physician, audiologist, or qualified technician that states which audiometric test procedures have been followed. A billing record that indicates the test procedures used would also be acceptable. Finally, the audiogram itself may include information about the test procedures used sufficient to satisfy this requirement. Other types of evidence not listed here may also be acceptable under the final rule, provided they reflect compliance with the procedural requirements of the final rule. Evidence that a group of audiograms were conducted in accordance with required procedures would also be sufficient, provided that it makes clear which audiograms are involved. This responds to commenters who believed the proposed requirements, which could have been read to require an individual certification for each audiogram, were unnecessarily burdensome.

MSHA agrees that the mine operator would ordinarily not have sufficient medical knowledge to determine if the tests were properly conducted, and would ordinarily rely on the physician, audiologist, or qualified technician to provide the evidence required under this paragraph. The final rule does hold the mine operator responsible for obtaining this evidence from these professionals—MSHA assumes that mine operators, as a result of their business or contractual relationships with providers of audiometric tests, can easily specify that such evidence must be provided as part of the terms and conditions of the service agreement.

Paragraph (c) of § 62.171 of the final rule, which has been adopted with two changes from proposed § 62.150(d), specifies the location and duration for maintenance of the testing records compiled under paragraph (b). In response to commenters, the final rule does not adopt the proposed requirement that the records be maintained at the mine site. The final rule also clarifies that these records must made be available for inspection by an authorized representative of the Secretary of Labor. MSHA's existing standards contain no requirements in this area. OSHA standards require that audiometric testing records, along with all other employee medical records required to be kept under OSHA standards, be maintained for at least the duration of the worker's employment plus 30 years, with the exception of employees who have worked for less than one year for the employer. Additionally, the OSHA rule provides that employee medical records need not be retained beyond the term of employment if they are provided to the employee upon termination.

MSHA received a number of comments specifically addressing time frames for maintaining audiometric test records. Commenters recommended several different periods of record retention beyond the duration of the miner's employment—6 months, 12 months, or 30 years, which is the retention period required by OSHA. Requirements for maintenance and retention of audiometric tests records of the U. S. armed forces, including the Navy, the Air Force, and the Army, and several foreign countries require the retention of audiometric test records for at least the duration of the test subject's employment, and in most cases for some period of time after the termination of employment.

MSHA's rationale in requiring retention of audiometric test records for at least 6 months beyond the duration of the miner's employment is that the miner's risk of occupational hearing loss stops with the cessation of employment.

Retention of audiometric records for an additional 6 months will ensure that the records remain available for use by the mine operator to conduct further evaluations should the miner return to employment within that period. This 6-month retention period does not place an unduly heavy paperwork burden on mine operators, but also addresses the seasonal operations in the metal and nonmetal mining industry, which cease operations during the winter months every year. MSHA expects that the periods of unemployment experienced by miners at those operations generally will not exceed 6 months, thus ensuring that these miners' audiometric records will be retained throughout their cycles of employment.

Under the final rule, "duration of employment" is the period of time between the date of a miner's initial hiring and the date on which the miner is released, quits, retires, or is otherwise separated. There must be a period of at least 6 months after formal termination of employment before a mine operator can destroy the audiometric test records. Moreover, under the final rule, a layoff, strike, lockout, furlough, period of leave (paid or unpaid), or other temporary break in service is not considered a formal termination of employment, even if it exceeds 6 months.

MSHA expects that many mine operators will retain miners' audiograms long after the miners' employment ceases, because the records could prove to be relevant if a miner should file a subsequent workers' compensation claim for hearing loss, especially because some states allow workers to file such a compensation claim many years after termination of employment.

Many commenters took issue with the proposed requirement that audiometric testing records be maintained at the mine site, and requested that MSHA permit the records to be stored at a site remote from the mine. These commenters believed maintaining these records at the mine would be burdensome, and that it may be much more efficient for many mine operators to store records at a central site, especially if several small mining operations were in the same general vicinity.

MSHA agrees with the points made by these commenters, particularly in light of the fact that electronic records are becoming more common in the mining industry, and may be stored on computer at a centralized location. The final rule therefore allows mine operators to keep audiometric test records at a location other than the mine site. However, the records must be stored within sufficient proximity to the mine to allow the mine operator to produce them to an MSHA inspector within a relatively short time. MSHA expects that in most cases this period will be no longer than one business day.

The final rule also clarifies that these records must be available for review by an authorized representative of the Secretary of Labor. MSHA inspectors already have the authority to review records required to be kept by the Mine Act or by the regulations established under it; this added language merely affirms this authority.

Section 62.172 Evaluation of Audiograms

This section of the final rule has been adopted unchanged from proposed § 62.160. It establishes the requirements for evaluating audiograms conducted under part 62. This section requires that the mine operator inform the person evaluating the audiogram of the requirements of this part and provide the evaluator with copies of the miner's audiometric test records. Additionally, the mine operator is responsible for having a physician, audiologist, or qualified technician determine if an audiogram is valid and if a standard threshold shift or reportable hearing loss has occurred.

This section also includes a provision to protect miners' non-occupational medical findings or diagnoses from disclosure to the mine operator and requires a prompt audiometric retest if a miner's audiogram is invalid. Finally, this section permits, but does not require, the adjustment of results of audiometric tests for age-induced hearing loss. Tables for this purpose are included in the final rule.

MSHA's existing noise standards do not address the evaluation of audiograms. The requirements in this section are similar to the requirements of OSHA's noise standard; the few differences are noted below.

A number of commenters noted that, although a doctor can distinguish hearing loss that has been caused by illness or injury from hearing loss caused by noise exposure, it is not possible to distinguish between hearing loss from work-related noise exposure and from non-work-related noise exposure. These commenters pointed out that many of their employees were very active during their non-working hours and had hobbies that could expose them to high sound levels, such as woodworking, hunting, motorcycling, snowmobiling, etc. These commenters took issue with the fact that, under the proposed rule, mine operators would be held responsible for all noise-induced hearing loss, regardless of whether it is occupationally related. MSHA agrees that hearing loss may result from many causes, not all of which are occupationally related. Under the final rule physicians and audiologists have the obligation to determine if the hearing loss was the result of or aggravated by occupational noise exposure or a medical condition aggravated by the use of hearing

protectors. If the hearing loss is not the result of or aggravated by occupational noise exposure or aggravated by the wearing of hearing protectors, mine operators would not be responsible for corrective action. In addition, the final rule allows correction of audiograms for hearing loss due to aging.

MSHA acknowledges that determining whether hearing loss is occupationally related is not always straightforward. However, physicians and audiologists conducting audiometric testing should routinely ask about a miner's employment history and both occupational and non-occupational noise exposures, in order to make reasoned assessments and conclusions about the source of any hearing loss that may be detected in the course of audiometric testing. If the miner's occupational noise exposures are minimal, and yet the miner has incurred a severe hearing loss, this should indicate to the physician or audiologist that he or she must look beyond the workplace for the cause of the hearing loss. The doctor can make an educated determination that a hearing loss is occupational based on certain patterns commonly seen in occupational loss. Some of these indicators are—

1. If the hearing loss is consistent in both ears;
2. If the loss is more severe in the higher speech frequencies;
3. If the patient has a history of exposures to noisy workplaces; and
4. If the patient has no evidence of illness or injury to the head or ears and there is no history of familial hearing loss or noisy pastimes (rock music, motorcycles, hunting). MSHA has concluded that taking this approach in such instances of uncertainty provides the best protection for miners.

Paragraph (a)(1) of § 62.172 of the final rule is adopted from proposed § 62.160(a)(1), and requires that the mine operator inform the person evaluating the audiogram of the requirements of part 62 and provide the evaluator with copies of the miner's audiometric test records.

The intent of this provision is to ensure that physicians and audiologists are sufficiently familiar with the final rule's requirements to evaluate miners' audiograms in compliance with the regulations. For example, the evaluator should be aware of how the final rule defines a standard threshold shift, the criteria in the final rule for audiometric retesting or medical follow-up, procedures for correction for age-induced hearing loss, and recordkeeping requirements. OSHA's noise standard requires employers to provide the evaluator of the audiograms with a copy of the requirements of its standard, copies of the employee's baseline and most recent audiometric test records, the background sound pressure levels in the audiometric test room, and a record of audiometer calibrations. Under MSHA's final rule, the person conducting the audiometric testing and evaluation of the audiogram is required to use scientifically validated procedures, and therefore has some discretion over which procedures are used. No comments were received addressing this aspect of the proposal, and it has been adopted unchanged in the final rule.

Under paragraphs (a)(2)(i) and (a)(2)(ii) of this section, which have been adopted from § 62.160(a)(2) of the proposal, the mine operator must have a physician or an audiologist, or a qualified technician under the direction or supervision of a physician or an audiologist, determine if an audiogram is valid and if a standard threshold shift or reportable hearing loss has occurred. This requirement is consistent with provisions in OSHA's noise standard.

Several commenters stated that only those physicians with experience and expertise in hearing and hearing loss should be permitted to review audiograms. MSHA has concluded that physicians should be included among those professionals who may evaluate audiograms, for reasons addressed in greater detail in the preamble discussion for § 62.170 of the final rule.

Other commenters stated that the final rule should define what constitutes an invalid audiogram, in light of the fact that physicians, audiologists, and qualified technicians, under the direction of a physician or audiologist, are required to determine whether the audiogram is invalid. One commenter recommended that the final rule adopt the Head and Neck Surgery referral criteria of the American Academy of Otolaryngology for determining whether an audiogram is invalid.

MSHA has not adopted the suggestion above and does not provide a definition for invalid audiogram, or a list in the final rule of the deficiencies that could render an audiogram invalid. Instead, the final rule requires that this assessment be made by qualified professionals—physicians, audiologists, and qualified technicians—and relies on their professional judgment and expertise in determining whether an audiogram is valid. These professionals are free to use whatever criteria they deem appropriate in making such a determination, including the American Academy of Otolaryngology referral criteria referenced above. In any case, it would not be possible to provide an exhaustive list of indicators of possible invalid audiograms. However, some factors that may indicate an invalid audiogram include, but are not limited to: large differences in hearing thresholds between the two ears; unusual frequency patterns that are not typical of noise-induced hearing loss; thresholds that are not repeatable; or an unusually large hearing loss incurred in less than a year.

One commenter advocated that the final rule require the supervising physician or audiologist to establish specific criteria for a technician to follow in determining whether the audiogram is valid or a standard threshold shift or a reportable hearing loss has occurred. This comment has not been adopted in the final rule, because the rule already requires that a qualified technician work under the supervision or direction of a physician or an audiologist. The physician or audiologist is ultimately responsible under the final rule for ensuring that the technician performs audiometric testing and evaluation with the requisite level of proficiency. MSHA has therefore concluded that it is unnecessary to include a specific requirement for making this determination.

Another commenter challenged the proposed requirement that the mine operator instruct the physician, audiologist, or qualified technician to determine if an audiogram is valid, maintaining that mine operators should rely on the medical professional's judgement instead.

MSHA agrees with commenters that mine operators typically would not have the expertise to determine the validity of an audiogram. However, the final rule places on mine operators the responsibility to ensure that miners are protected from occupational hearing loss. One part of an effective hearing conservation program is regular audiometric testing for miners at risk, and MSHA has concluded that it is appropriate to require mine operators to ensure that the professionals who conduct and evaluate audiometric tests do so in accordance with the requirements of the final rule.

Paragraph (a)(2)(ii) also requires the evaluator of the audiogram to determine whether a miner has incurred a standard threshold shift in hearing. Determination of a standard threshold shift triggers specific remedial actions, designed to prevent additional hearing loss. Commenters raised a number of issues concerning the appropriate definition for "standard threshold shift," defined in § 62.101 of the final rule, which are addressed in detail in the preamble discussion of that section.

Paragraph (a)(2)(ii) of this section of the final rule also requires the evaluator of audiograms to determine if there has been a "reportable hearing loss." Under part 50 of MSHA regulations, mine operators must notify MSHA within ten working days of detection of a miner's hearing loss. "Reportable hearing loss" is defined in § 62.101 of the final rule as a change in hearing sensitivity for the worse relative to a miner's baseline audiogram, of an average of 25 dB or more at 2000, 3000, and 4000 Hz in either ear. Several commenters disagreed with the proposed definition of "reportable hearing loss," and this issue is discussed in detail in the preamble in § 62.101.

Paragraph (a)(3) of this section of the final rule adopts proposed § 62.160(a)(3), with one addition, and requires the mine operator to instruct the physician, audiologist, or qualified technician not to reveal to the mine operator, without the written consent of the miner, specific findings or diagnoses unrelated to the miner's exposure to occupational noise or the wearing of hearing protectors. In response to commenters, the final rule includes qualified technicians among those who would receive this instruction. Although OSHA's air quality standards and benzene and lead standards contain similar provisions, neither MSHA's nor OSHA's noise standard currently includes such a restriction.

This aspect of the proposal elicited many comments. A number of commenters opposed the proposed restriction, for a variety of reasons. Some stated that if the physician or audiologist discovers a condition that could affect the safety or health of the miner or other miners in the workplace, the mine operator should be provided with that information, and the miner should not be permitted to withhold it. Others believed that if mine operators are required to pay for the testing, they are entitled to have access to the information. Still others believe that because mine operators are responsible for protecting miners against noise-induced hearing loss, all information relating to the miner's hearing loss, whether occupationally related or not, should be made available to mine operators or persons employed by operators to administer hearing conservation programs or who are responsible for the working conditions and job assignments of individual miners. On the other hand, one commenter stated that voluntary audiometric testing results should be treated as confidential medical information, and not be disclosed to anyone without the miner's consent.

MSHA has concluded that some protection must be provided to individual miners' medical information that is not occupationally related. Accordingly, to safeguard the privacy of individual miners, the final rule adopts the proposed provision that requires mine operators to instruct the physician or audiologist conducting the audiometric test not to reveal to the mine operator information that is not occupationally related.

Although MSHA agrees that it is conceivable that some non-occupational medical conditions (such as an inner ear condition that affects the miner's balance) discovered during an audiometric examination could have a bearing on a miner's safety at the mine site, it has concluded that concerns for the miner's privacy outweigh the mine operator's need for such information. Any greater access to results of audiometric testing could discourage miners from submitting to this voluntary testing. In any case, the miner is free to share such information with the mine operator if he or she chooses to do so.

Other commenters were concerned about the impact the proposed restriction would have on the ability of mine operators to defend against hearing loss claims filed under state workers' compensation laws. These commenters were afraid that the restriction would limit mine operators' access to relevant information on non-occupationally related conditions discovered during the course of audiometric testing, and would therefore prevent them from using this information as a defense. Nothing in the final rule would prevent a mine operator from arranging a medical examination for a miner to determine the validity of a workers' compensation claim. Such an examination would be outside the purview of this rule and not subject to the limitations imposed under this section. Additionally, information that is relevant to a workers' compensation claim may be subject to the discovery process in civil litigation and may be required to be produced under state law. The restriction in the final rule would not preclude such disclosure.

One commenter suggested that the final rule should make clear that physicians and audiologists who are employees of the mine operator have the same access to test findings and diagnoses as any other physician or audiologist, even though the company-employed professionals could be considered to be agents of the mine operator. The commenter believed that a literal interpretation of this provision would preclude company physicians or audiologists from either conducting audiometric tests or evaluating audiograms. MSHA agrees that medical professionals conducting audiometric testing who are employees of the mine operator should have the same access to test findings and diagnoses, and are bound by the same strictures on confidentiality as professionals who are independently employed. However, MSHA has concluded that clarification of this interpretation in the preamble is sufficient, and no specific provision needs to be included in the final rule.

Several commenters pointed out that the proposal would require the mine operator to instruct the physician or audiologist not to reveal information to the mine operator, but would not require a qualified technician performing the audiometric testing to be similarly instructed. This commenter believed that technicians should be given the same direction by the mine operator. As stated above, MSHA has adopted this comment in the final rule for consistency. The expectation is that the physician, audiologist, or qualified technician will receive the instruction from the mine operator and will ensure that the information will be protected.

Under paragraph (a)(4) of § 62.172 of the final rule, which has been adopted without change from § 62.160(a)(4) of the proposal, the mine operator must obtain the audiometric test results and the interpretation of the results from the person evaluating the audiogram within 30 days of the testing. OSHA's noise standard does not specify a deadline for the evaluation of audiograms.

Some commenters stated that 30 calendar days may not be sufficient for a mine operator to obtain audiometric test results from the test provider. Several commenters expressed concerns about this deadline, and felt that it would be unrealistic, particularly if a mobile test van provides the audiometric testing. A number of commenters suggested the deadline be extended to 60 days. One other commenter believed that 75 days would be appropriate. Other commenters believed it would be unfair to penalize the mine operator, who has little or no control over the promptness with which the test provider furnishes test results to the operator. Several commenters suggested that the final rule require mine operators to do what they can to obtain test results within 30 days, but should not penalize operators for late results when the delay is beyond their control. In contrast, one commenter recommended that the time limit be reduced to 15 days.

MSHA has determined that a 30-calendar-day time limit for the evaluation of audiograms is reasonable, and is necessary to prevent undue delays in the evaluation of the audiogram and in notification of the miner of the results. Because § 62.175 of the final rule allows mine operators 10 working days after receipt of test results to notify a miner of those results, more than 40 days may pass from the date of an audiometric test until the miner receives notification of the test results. In those cases where an audiometric retest is appropriate, miners may not receive their test results more than 100 days after the initial testing. MSHA has concluded that increasing the deadline to 60 or 75 days would result in unacceptably long delays in miner notification. Moreover, contrary to the assertions of commenters, MSHA does not believe that mine operators have little or no control over the promptness with which test results will be furnished. Under the final rule mine operators will either directly employ test providers, in which case meeting the 30-day time frame will be directly within their control, or contract for this service, in which case they may ensure that compliance with the 30-day deadline is a requirement of the contract. Accordingly, MSHA has concluded and the final rule reflects that the mine operator must obtain the requisite evaluation of an audiogram within 30 days.

Paragraph (b)(1) of § 62.172 of the final rule, which is adopted from § 62.160(b)(1) of the proposal, requires the mine operator to offer an audiometric retest within 30 calendar days of receiving a determination that an audiogram is invalid, provided any medical pathology has improved to the point that a valid audiogram may be obtained. If the results of an annual audiogram demonstrate a standard threshold shift or a reportable hearing loss, paragraph (b)(2) of this section allows a mine operator to offer the miner one retest within 30 calendar days of receiving the results. This will allow mine operators to verify the results of the annual audiogram. The mine operator may then substitute the results of the retest for the annual audiogram. These provisions are similar to provisions in OSHA's noise standard, which permits a retest within 30 days to confirm a standard threshold shift, but which does not specifically require a retest if the audiogram is judged to be invalid.

Few comments were received on this aspect of the proposal. One commenter stated that scheduling miners for a retest can be difficult, and recommended that the final rule allow 60 days for a mine operator to offer a miner a retest. One other commenter recommended that MSHA adopt the provisions in OSHA's standard for audiometric retests if a standard threshold shift is found.

Under the final rule, audiometric retesting where a miner's initial audiogram has been determined to be invalid must occur within 30 calendar days, provided that any medical pathology that may have prevented the taking of a valid audiogram has improved to the point where a valid retest can be conducted. It should be noted that the 30-day period does not begin until the medical pathology causing the problem has improved. The provision in paragraph (b)(2) for a retest after detection of a standard threshold shift allows the mine operator to substantiate that the shift has occurred and confirm that the hearing loss detected is permanent before taking required corrective actions such as miner retraining and review of the effectiveness of noise controls at the operator's mine. In the event that the miner declines to submit to a retest, the 30-day period within which corrective action must be taken would begin from the date of the miner's refusal of a retest.

MSHA has concluded that 30 days is a reasonable deadline for audiometric retesting, recognizing that 30 days may not be sufficient time for a retest if a mine operator must rely on a mobile test van to provide the retesting. However, where retesting is necessary, MSHA believes that it should be conducted as quickly as possible, and the mine operator may find it necessary to send the miner to the nearest available testing facility rather than waiting for a mobile test van.

Paragraph (c) of § 62.172, which is adopted unchanged from proposed § 62.160(c), allows the adjustment of audiometric test results for the contribution of age-induced hearing loss in determining whether a standard threshold shift or reportable hearing loss has occurred. Adjustment of audiometric test results for age-induced hearing loss is optional under the final rule; however, any such adjustment must be made to both the baseline and annual audiograms, in accordance with the procedures set forth in paragraphs (c)(1) through (c)(3). For each audiometric test frequency, determine from Table 62–3 or 62–4 the age correction values for the miner by: (1) Finding the age at which the baseline audiogram or revised baseline audiogram was taken and recording the corresponding values of age corrections at 2000 Hz through 4000 Hz; (2) Finding the age at which the most recent audiogram was taken and recording the corresponding values of age corrections at 2000 Hz through 4000 Hz; and (3) Subtracting the values found in step (1) from the value found in step (2). The differences calculated represent that portion of the change in hearing that may be due to aging. For example: the miner is a 32-year-old male. The audiometric history for his right ear is shown in decibels below.

Miner's age	Audiometric test frequency (Hz)		
	2000	3000	4000
26	5	5	10
27*	0	0	5
28	0	0	10
29	0	5	15
30	5	10	20
31	10	20	15
32*	10	10	25

The audiogram at age 27 is considered the baseline since it shows the best hearing threshold levels. Asterisks have been used to identify the baseline and most recent audiogram. A threshold shift of 20 dB exists at 4000 Hz between the audiograms taken at ages 27 and 32. (The threshold shift is computed by subtracting the hearing threshold at age 27, which was 5, from the hearing threshold at age 32, which is 25). A retest audiogram has confirmed this shift. The contribution of aging to this change in hearing may be estimated in the following manner. Go to Table 62–3 and find the age correction values, in dB, for 4000 Hz at age 27 and age 32.

	Frequency (Hz)		
	2000	3000	4000
Age 32	5	7	10
Age 27	4	6	7
Difference	1	1	3

The difference represents the amount of hearing loss that may be attributed to aging in the time period between the baseline audiogram and the most recent audiogram. In this example, the difference at 4000 Hz is 3 dB. This value is subtracted from the hearing level at 4000 Hz, which in the most recent audiogram is 25, yielding 22 after adjustment. Then the hearing threshold in the baseline audiogram at 4000 Hz (5) is subtracted from the adjusted annual audiogram hearing threshold at 4000 Hz (22). Thus the age-corrected threshold shift would be 17 dB (as opposed to a threshold shift of 20 dB without age correction).

OSHA's noise standard also permits the use of age-induced hearing loss

correction factors at the employer's option. OSHA's rationale for inclusion of these correction factors is that they aid in distinguishing between occupationally induced and age-induced hearing loss. This is particularly important because the pattern of hearing loss due to aging closely resembles that of hearing loss due to noise exposure.

Many commenters who addressed this issue supported the use of age correction factors. Some of these commenters believed that failure to adjust audiometric test results based on a miner's age would result in inaccurate data, and may indicate that there is a higher incidence of hearing loss due to workplace noise exposure than actually would be occurring. Some commenters stated that many older miners would be found to have a standard threshold shift. As a result, mine operators would be required to take unnecessary corrective measures at their mines to address these miners' hearing loss, which may be unrelated to occupational noise exposure. One commenter stated that adjustment for age-induced hearing loss is a widely accepted practice, and is supported by the scientific community and by the relevant scientific literature. Some commenters opposed the use of age corrections, because they were concerned that it could interfere with the detection of noise-induced hearing loss in some miners, and because necessary corrective actions would not be taken, and the miners' hearing would be permitted to deteriorate even further.

NIOSH currently recommends that audiograms not be corrected for age, based on the reasoning that it is inappropriate to apply age correction factors from a population to an individual. NIOSH maintains that if a worker's audiogram is to be corrected for age, the hearing loss of a non-occupational noise-exposed group with the same demographic characteristics as the worker should be used.

MSHA has concluded that the optional use of age correction factors is appropriate, and has adopted in the final rule the proposed provisions that allow it. Such adjustments are consistent with current scientific practice and with OSHA's noise standard.

MSHA agrees that not all individuals' hearing is affected to the same degree by age. Additionally, studies have shown that individuals in environments free from noise exposure display little evidence of age-induced hearing loss. However, MSHA agrees with the commenters who stated that failure to allow age correction in the final rule would result in many miners being found to have incurred standard threshold shifts, when the primary cause of the shift is the aging process.

The age correction procedures and tables included in the proposal and adopted in the final rule are those that were used by NIOSH in its 1972 Criteria Document on Occupational Exposure to Noise. Although there may be slight variations in adjustment at individual frequencies among similar tables developed by other researchers, the NIOSH age values are similar to those of other widely accepted and applied age-induced hearing loss data bases, such as the database of the U.S. Public Health Service, the data used by Robinson and Burns, and those of Passchier-Vermeer. The NIOSH data are derived from a highly screened population, that is, one which excluded individuals with any significant noise exposure on the job, off the job, or during military service. Use of a single set of age values will standardize the process of determining standard threshold shifts nationwide. Proposed Tables 62–3 and 62–4 have been adopted under the same numbers in the final rule.

Section 62.173 Follow-Up Evaluation When an Audiogram Is Invalid

This section of the final rule has been adopted from § 62.170 of the proposal, and establishes requirements for a follow-up evaluation of a miner's hearing if a valid audiogram cannot be obtained because of a suspected medical pathology caused or aggravated by noise exposure or the use of hearing protectors. This section also provides that, in the event that the medical pathology is unrelated to noise exposure or to the use of hearing protectors, the mine operator must instruct the physician or audiologist to inform the miner of the need for an examination. Finally, mine operators must instruct the physician, audiologist, or qualified technician not to reveal to the mine operator findings or diagnoses unrelated to the miner's occupational noise exposure or the wearing of hearing protectors. MSHA's current noise standards have no provisions that address follow-up evaluations.

Paragraph (a) of § 62.173 of the final rule provides that if a valid audiogram cannot be obtained due to a suspected medical pathology of the ear, and the physician or audiologist evaluating the audiogram believes that the problem was caused or aggravated by the miner's exposure to noise or wearing of hearing protectors, a miner must be referred for a clinical-audiological or otological evaluation, as appropriate, at the mine operator's expense. Section 62.101 of the final rule defines "medical pathology" as "a condition or disease."

Several commenters maintained that physicians should not be included among those who may determine that a miner needs a follow-up evaluation, because physicians who are not hearing specialists may not be qualified to determine that a miner needs a follow-up examination. MSHA has not adopted the suggestion of these commenters in light of the licensing and ethical standards that apply to physicians. The Agency expects that physicians will exercise professional judgment in assessing whether they possess the experience and qualifications to make the required medical determinations. This issue of the qualification of physicians is addressed in greater detail in the preamble discussion of § 62.170.

If the physician or audiologist believes that the suspected pathology that prevents taking a valid audiogram is related to occupational noise exposure or to the wearing of hearing protectors, the final rule requires the mine operator to pay for the miner's follow-up medical evaluations. Several commenters to the proposed rule were concerned that this could be read to require the mine operator to pay for a follow-up examination for an ear infection, if the audiologist or physician merely "believes" that the infection is aggravated by occupational noise exposure or the wearing of hearing protectors. These commenters stated that the mine operator should be required to pay only for treatment of conditions that actually result from noise exposure that occurs or hearing protectors that are used at the mine operator's facility.

The final rule reflects MSHA's conclusion that mine operators have primary responsibility for work-related medical problems. Under the final rule, if the physician or audiologist determines that the suspected medical pathology is unrelated to the miner's occupational noise exposure or to the wearing of hearing protectors, the mine operator must instruct the medical professional to inform the miner of the need for an otological examination. The final rule does not require the mine operator to pay for this examination, which will be at the miner's expense.

Another commenter suggested that mine operators be required to pay for follow-up evaluations only if there has been a determination of significant occupational noise exposure. The final rule does not adopt this comment, because a determination of the need for a clinical-audiological or an otological examination under this section should not be based solely on a miner's noise

exposure, but should be made after a review of a miner's audiometric records and a finding of a suspected medical pathology related to occupational noise exposure or the wearing of hearing protectors. In some cases information on a miner's noise exposure may be scarce or nonexistent. Although noise exposure measurements provided by the mine operator may form part of the basis upon which the qualified reviewer makes a determination, the final rule does not adopt the commenter's suggestion that mine operators be required to pay for follow-up examinations only when the miner has been exposed to significant occupational noise.

The preamble to the proposal noted that the type of follow-up evaluation that should be conducted as a result of the suspected medical pathology (clinical-audiological or otological) depends upon the specific circumstances in each case. Standards found in the international community and the U. S. armed forces vary to some degree regarding certain elements, such as the extent of follow-up examinations. A clinical-audiological evaluation is generally more comprehensive, intensive, and accurate than the routine audiometric testing conducted to identify a hearing loss, and may be warranted if, for example, an unusually large threshold shift occurs in one year given relatively low noise exposures. An otological evaluation, on the other hand, is a medical procedure conducted by a medical specialist such as an otolaryngologist to identify a medical pathology of the ear, such as an acoustic neuroma, a type of tumor. Another more common reason for an otological examination is for the removal of impacted ear wax, which reduces hearing sensitivity and can be aggravated by the use of earplug-type hearing protectors. Audiometric testing can indicate the existence of such medical pathologies.

Making the determinations under this section will not require a diagnosis by a physician-specialist confirming a medical pathology. The rule is intended to allow the audiologist or physician authorized to review the audiograms to make a determination as to whether a follow-up examination is appropriate and who pays for it. Accordingly, the word "suspected" precedes the words "medical pathology" in this section.

Finally, one commenter suggested changing the term "medical pathology" in this paragraph to "medical condition", because the term "pathology" implies illness. The final rule does not adopt the suggestion of this commenter, because the definition of "medical pathology" in § 62.101 of the final rule is not limited to illness, and encompasses not only a "disease" but also a "condition" affecting the ear.

Paragraph (b) provides that if the physician or audiologist has concluded that the suspected medical pathology of the ear which prevents obtaining a valid audiogram is unrelated to the miner's exposure to occupational noise or the wearing of hearing protectors, the mine operator must instruct the physician or audiologist to inform the miner of the need for an otological evaluation. In such cases, the final rule imposes no financial obligation on the mine operator.

Paragraph (c) of § 62.173 adopts, with one addition, the proposed requirement that the mine operator instruct the physician or audiologist not to reveal to the mine operator any specific findings or diagnoses unrelated to the miner's exposure to noise or the wearing of hearing protectors without the written consent of the miner. As under the similar requirement in § 62.172, commenters suggested adding qualified technician to the list of persons that the mine operator must instruct. MSHA has adopted this suggested change in the final rule.

Some commenters were concerned that this restriction would be counterproductive and harmful to the miner in cases where the miner's medical condition should be better understood by the mine operator in order to allow the miner to be more effectively protected on the job. This aspect of the proposal, which is similar to the restriction in § 62.172(a)(3) of the final rule, was the subject of several comments. Some commenters were opposed to the proposed restriction for a variety of reasons. Some of these commenters stated that if the physician or audiologist discovers a condition that could affect the safety or health of the miner in the workplace, the mine operator should be provided with that information, and the miner should not be permitted to withhold it. One commenter was concerned about the impact the proposed restriction would have on the ability of mine operators to defend against hearing loss claims filed under state workers' compensation laws. Others maintained that because the mine operator is responsible for protecting miners against noise-induced hearing loss, all information relating to the miner's hearing loss, whether occupationally related or not, should be made available to the mine operator.

MSHA has concluded that some protection must be given to individual miners' medical information that is not occupationally related. Accordingly, to safeguard the privacy of individual miners, the final rule adopts the proposed provision that requires mine operators to instruct the physician or audiologist not to reveal to the mine operator information not occupationally related. A more detailed discussion of the basis for MSHA's conclusion on this issue can be found in the preamble under § 62.172(a)(3).

Section 62.174 Follow-Up Corrective Measures When a Standard Threshold Shift Is Detected

This section of the final rule, which adopts the requirements of proposed § 62.180, establishes the corrective measures that must be taken by a mine operator when a miner is determined to have incurred a standard threshold shift in hearing sensitivity. This section provides that, unless a physician or audiologist determines that the standard threshold shift is neither work-related nor aggravated by occupational noise exposure, mine operators must take specified corrective actions within 30 calendar days after receiving evidence or confirmation of a standard threshold shift. "Standard threshold shift" is defined in § 62.101 of the final rule as a change in hearing sensitivity for the worse relative to the miner's baseline audiogram (or revised baseline audiogram) of an average of 10 dB or more at 2000, 3000, and 4000 Hz in either ear.

The corrective actions that mine operators are required to take under § 62.174 of the final rule when a miner experiences a standard threshold shift include: Retraining the affected miner in accordance with § 62.180 of the final rule, providing the miner with the opportunity to select a different hearing protector, and reviewing the effectiveness of any engineering and administrative controls to identify and correct any deficiencies.

A number of commenters supported the need for intervention by the mine operator when a miner has experienced a standard threshold shift. Several of these commenters stated that it should not matter whether or not a standard threshold shift is work-related, and that intervention should be required in any case to prevent further hearing loss. One of these commenters stated that it is probably not realistic to believe that the mining industry can identify outside causes of hearing loss. Another commenter was of the opinion that miners whose audiograms indicate such a degree of hearing loss should still be provided with information and training on how they can protect themselves. Still another commenter stated that the final rule should require additional

actions, including examination of the noise exposure of the affected miner or of other miners with similar occupations. This commenter strongly supported a requirement that the mine operator investigate the cause of the miner's standard threshold shift.

One commenter believed that effective training and audiometric testing would make corrective measures after the detection of a standard threshold shift unnecessary. This commenter added that miners should be encouraged to take responsibility for their own health. Several other commenters stated that the proposed requirements for corrective action underscored a need for mandatory participation by miners in audiometric testing. These commenters maintained that an effective hearing conservation program must require miners to submit to such tests.

MSHA has concluded that it is essential that mine operators be required to take certain corrective measures to prevent further deterioration of miners' hearing sensitivity after a standard threshold shift has been detected. A hearing loss of 10 dB is sufficiently significant to warrant intervention by a mine operator, unless it is determined the loss is not work-related. If miners are experiencing that level of occupationally related noise-induced hearing loss, as determined by a physician or audiologist, it is a clear indication that the noise controls in place at the work site have been ineffective. In such situations further action is appropriate to determine why the miner has not been adequately protected.

Paragraph (a) of § 62.174 of the final rule requires that the miner be retrained, which includes the instruction required by § 62.180 of the final rule, under which training must address such topics as the effects of noise on hearing, the value and effective use of hearing protectors, the operator's and miner's respective tasks in maintaining mine noise controls, and the value of audiometric testing. Commenters on this aspect of the proposal generally supported the training requirement.

As indicated in the preamble to the proposal, if the noise controls in place are effective—including the training—this hearing loss should not be occurring. Providing the miner with retraining after the miner has experienced a standard threshold shift is intended to ensure that the miner is not inadvertently being overexposed to noise because of a lack of awareness about effective use of noise controls or hearing protectors. This retraining may also emphasize to the miner the importance of regular audiometric testing, to ensure that the hearing loss does not progress. Also as indicated in the preamble to the proposal, the required training may be conducted in conjunction with annual refresher training under 30 CFR Part 48, but only if the training will be conducted within 30 days of the detection of the standard threshold shift, the time frame established in this section.

Paragraph (b), like the proposal, requires the mine operator to provide the miner with an opportunity to select a hearing protector, or a different hearing protector if the miner has previously selected a hearing protector, from among those offered by the mine operator in accordance with § 62.160. Several commenters advocated the inclusion of the additional requirement that the hearing protector be checked to ensure that it is in good condition, and replaced if necessary. These commenters also recommended that miners should be encouraged to select a hearing protector providing greater noise reduction.

The final rule, like the proposal, allows miners to select their own hearing protectors. The effectiveness of any hearing protector depends on a number of factors, only one of which is its noise reduction rating value. Even though a miner may not select the hearing protector with the highest noise reduction rating, factors such as comfort, fit, and personal preference are critical in ensuring that the miner will fully utilize this essential piece of personal protective equipment. Moreover, there is no standardized objective method to determine the degree of protection a given hearing protector will provide a miner. MSHA has therefore determined that requiring that miners be encouraged to select a hearing protector based primarily or exclusively on the protector's noise reduction rating value would not be well advised, and this comment has therefore not been adopted in the final rule. The final rule also does not adopt commenters' suggestions that mine operators be required to check the fit and condition of the hearing protector and replace it, if necessary, because these concerns are already addressed in other sections of the final rule. As § 62.180 of the final rule requires that miner training address the care, fitting, and use of hearing protectors, miners will be trained to evaluate the condition of their hearing protectors and notify the mine operator when the condition of the protector has deteriorated and needs to be replaced. The issue of selection and effectiveness of hearing protectors is addressed in greater detail in the preamble discussion of § 62.160.

Several commenters supported the addition of a requirement that the miner use a hearing protector and the mine operator enforce its use when a standard threshold shift is detected. The final rule also requires that the mine operator provide and ensure that miners wear hearing protectors under certain conditions, including when the miner incurs a standard threshold shift and is exposed to noise at or above the action level. A more detailed discussion of mandatory use of hearing protectors is included under § 62.130 of the preamble, which addresses the permissible exposure level.

Paragraph (c) of this section of the final rule requires the mine operator to review the effectiveness of any engineering and administrative noise controls, in order to identify and correct any deficiencies. The implementation and maintenance of engineering and administrative noise controls when miners are subjected to noise exposures above the permissible exposure level is the primary method for reducing miners' noise exposure and their risk of hearing loss. Because ineffective engineering and administrative controls may be the primary cause of a miner's standard threshold shift, the final rule requires the mine operator to review the effectiveness of existing controls and update or modify them to enhance the protection provided to miners. OSHA's existing noise standard does not require such a review when a standard threshold shift is detected.

Some commenters supported the proposed review of engineering and administrative controls when a miner experiences a standard threshold shift. However, several commenters noted that a mine operator should not be required to review the effectiveness of engineering and administrative noise controls if the standard threshold shift occurs in a single miner and can be positively attributed to the inaction of that miner.

This comment has not been adopted in the final rule. Mine operators are responsible for protecting miners from overexposures to noise at the mine site. The mine operator must determine which are the best and most protective controls for the particular operation. The degree to which the noise controls that have been implemented rely on the actions of individuals may have some bearing on how well the controls work. Effective engineering noise controls protect the miner without the need for the miner's active participation. If the controls in place rely too heavily on the participation of a miner and have

proven to be inadequate (as evidenced by the detection of a standard threshold shift), a prudent mine operator will explore implementation of engineering controls that will be effective regardless of the miner's actions. The mine operator determines working conditions at the mine site and is responsible for ensuring the design, implementation, and use of effective controls to protect miners from overexposure to noise and resulting hearing loss.

Although the proposed rule would not have provided for the transfer of a miner with a diagnosed occupational hearing loss to a low-noise work environment, MSHA did solicit comments on whether a miner transfer provision was necessary. Some commenters stated that it would not be appropriate to include a miner transfer provision in the final rule, arguing that miners could manipulate audiogram results (for example, by listening to loud music prior to the test) in an attempt to force mine operators to move them to different, more desirable jobs. Other commenters supported the concept of a miner transfer provision, arguing that this is appropriate when other efforts to halt the progression of the miner's hearing loss have failed and that miners who were transferred should suffer no loss in wages or benefits as a result, similar to the provisions in MSHA's part 90 regulations for coal miners who have evidence of black lung disease.

The preamble to the proposed rule suggested that a miner transfer program would be extremely complex for mine operators to administer, and may be quite infeasible for the metal and nonmetal mining industry. The majority of metal and nonmetal mines are smaller mines, many of which would be unable to rotate miners with hearing loss to other, less noisy assignments on a long-term basis. Although MSHA encourages mine operators to transfer miners who have incurred a hearing impairment to jobs with reduced noise exposure, it has concluded that a miner transfer provision is not feasible at most small mining operations, due to the small number of employees and the limited number of positions with low noise exposure to which miners with hearing loss could be transferred. Because of the significant feasibility problems presented by mandatory miner transfer and the lack of consensus in the mining community on the advisability of a transfer program, the final rule does not adopt a miner transfer provision.

Section 62.175 Notification of Results; Reporting Requirements

This section of the final rule is identical to § 62.190 of the proposal, providing for miner notification of audiometric test findings and for notification to MSHA of any instances of "reportable hearing loss," as defined in § 62.101 of the final rule.

Paragraph (a) of this section of the final rule requires that mine operators notify the miner in writing of the results of an audiogram or a follow-up evaluation within 10 working days of receiving the results. There are no existing MSHA regulations that impose such a requirement.

MSHA received no comments opposing a miner notification requirement, although several commenters believed that mine operators should be required to notify a miner of test results only when the results indicate a significant shift in the miner's hearing level, consistent with OSHA requirements. These commenters believed that miner notification was not warranted if the audiometric test indicated no additional hearing loss.

Commenters disagreed on the length of the period within which such notification should occur. Several commenters recommended that MSHA adopt the provision in OSHA's noise standard that requires employee notification within 21 days. Other commenters recommended a 15-day deadline, while still others believed that a 30-day deadline was appropriate. The commenters who supported a longer period believed that 10 days was insufficient to allow mine operators to review the audiograms and to provide the required notification, particularly if large numbers of miner audiograms were conducted and processed at the same time. One commenter stated that miners should be informed of a standard threshold shift at the time of the test, and provided with the results of audiograms within 5 days rather than 10.

Although no commenter specifically objected to the requirement that the miner notification be in writing, several commenters stated that the method of notification should be left to the discretion of the mine operator. Another commenter recommended that mine operators notify miners in a timely manner and also share the results with other miners during annual refresher training, apparently based on the belief that if miners hear of co-workers' hearing losses, it might serve to reinforce their own understanding of the need for noise controls and the importance of using hearing protectors.

After considering the comments, MSHA has concluded that informing miners of the results of their audiometric tests in a timely manner is critical to the effectiveness of a hearing conservation program. Immediate feedback to the miner at the completion of the test provides the greatest benefit, because that is the point at which miners typically have the greatest interest in information on the effects of noise on their hearing, and are more likely to take action, such as wearing hearing protectors conscientiously; stringently complying with administrative noise controls; or continuing to submit to audiometric testing.

The Agency realizes that it may not be practical to inform miners immediately of the results of their audiometric tests. However, because of the importance of the information, it is necessary to establish a maximum time frame for mine operators to inform miners of the audiometric test findings and results. Therefore, the final rule adopts the requirements of the proposed rule and allows mine operators up to 10 working days after the receipt of test results to inform the miner. This means that mine operators will have up to two weeks to make this notification, which is a sufficient time frame for this notification.

MSHA has also concluded that it is appropriate to require written notification to miners of their test results. Important that miners are made aware of their test results, and written notice minimizes the risk of misunderstanding on the part of miners. Some commenters stated that notification is necessary only when a standard threshold shift has occurred, but MSHA believes that notification of good results serves to reinforce effective practices and strengthens the effects of a hearing conservation program.

Because of the confidentiality of audiometric test results, it would be inappropriate, as suggested by a commenter, for the final rule to require a mine operator to share an individual miner's test results with other miners. The final rule therefore does not adopt this comment.

Paragraph (a)(1) of this section adopts without change § 62.190(a)(1) of the proposal, and requires that the mine operator inform the miner of the results and interpretation of the audiometric test, including any finding of a standard threshold shift or reportable hearing loss. This differs from OSHA's noise standard, which only requires notification of a confirmed standard threshold shift. The requirements of this paragraph ensure that miners receive timely information of the results of their audiometric tests, and can take appropriate actions in conjunction with the mine operator, in order to reduce further occupational noise-induced hearing loss.

Paragraph (a)(2) of § 62.175, like the proposal, requires that the mine operator notify the miner of the need and reasons for any further testing or evaluation, if applicable.

One commenter stated that a mine operator could not notify miners of the reason for further testing or evaluation, because under the proposal, adopted in § 62.173(c) of the final rule, mine operators would not be told of findings or diagnoses when the condition diagnosed is not work-related. MSHA has concluded that this limitation does not present an obstacle to mine operators notifying miners of the need and reasons for further testing or evaluation. If the problem encountered is occupationally related, the mine operator will be informed of the specific reasons why a follow-up is needed. If the problem is not occupationally related, the mine operator will be informed only that a follow-up is warranted and must pass that information on to the miner as part of the notification required under this section. MSHA expects that in most if not all cases miners will already be aware of both the need and reasons why a follow-up is recommended, because the person performing the audiometric tests will convey this information to them during the course of the test. Notification by the mine operator will reinforce any information that may have been provided to the miner during the test procedure.

Paragraph (b) of § 62.175 of the final rule, like the proposal, requires mine operators to inform MSHA when a miner has incurred a reportable hearing loss as defined in part 62, unless the physician or audiologist has determined the loss is neither work-related nor aggravated by occupational noise exposure. This provision parallels existing requirements in part 50, which require mine operators to report a miner's hearing loss whenever a physician determines that it is work-related, or whenever an award of compensation is made. Section 50.20–6 specifically includes noise-induced hearing loss as an example of a reportable occupational illness. However, § 62.101 of the final rule now provides an explicit definition of "reportable hearing loss," in order to clarify mine operators' compliance responsibilities and promote the development of improved data on hearing loss in the mining community.

Section 62.101 of the final rule adopts the proposed definition of "reportable hearing loss" as a change in hearing sensitivity for the worse, relative to the miner's baseline audiogram, of an average of 25 dB or more at 2000, 3000, and 4000 Hz in either ear. The issue of the definition of reportable hearing loss is discussed in the preamble under § 62.101.

An important goal of the final rule is to clarify the level of hearing loss that is reportable to MSHA under part 50. MSHA acknowledges that its current reporting requirements have resulted in inconsistent reporting; some mine operators have reported even small hearing losses, while other operators only report a miner's hearing loss when the miner has received an award of compensation. In other cases, mine operators have not reported a miner's hearing loss even when an award of compensation was made because the miner had retired. Inconsistent reporting of miners' hearing loss may also stem from the fact that the definition of compensable hearing loss under workers' compensation laws varies widely from state to state. For these reasons, MSHA had concluded that its miner hearing loss data under part 50 tends to underestimate the prevalence or degree of hearing loss in the mining industry.

Providing a specific definition in the final rule for "reportable hearing loss" as it is used under part 50 is intended to eliminate exclusive reliance on workers' compensation awards as a criterion for defining when noise-induced hearing loss must be reported. Nevertheless, part 50 will still require that mine operators report to MSHA hearing loss for which an award of compensation has been made if the hearing loss has not been previously reported. Two examples of such cases are: (1) If the miner incurred the hearing loss before the current mine operator conducted the baseline or pre-employment audiogram and subsequent testing did not measure a reportable loss; and (2) if the miner has not been in a hearing conservation program or has not received an audiometric test while employed by the mine operator.

In determining what degree of occupational hearing loss should be reportable under part 50, MSHA gave serious consideration to the fact that a hearing loss of 25 dB diminishes the quality of life. The hearing loss that is reportable under the final rule, although not equal to material impairment, is substantial enough to diminish the quality of life, and it provides a reliable indication of the effectiveness of the existing action level and permissible exposure level.

Several commenters expressed support for the proposed provision, which is adopted unchanged in this section of the final rule, that a mine operator is not required to report a miner's hearing loss to MSHA if a physician or audiologist has determined that the loss is neither work-related nor aggravated by occupational noise exposure. However, some commenters advocated that any hearing loss be presumed to be non-occupationally related, and that the final rule should require the physician or audiologist to determine definitively that the hearing loss is work-related before the hearing loss would be reportable. These commenters objected to the fact that the proposal seemed to presume that any hearing loss detected would be both noise-induced and work-related.

The final rule reflects MSHA's determination that it is reasonable to place the responsibility on the physician or audiologist to determine when a hearing loss is unrelated to the miner's occupational exposure to noise or to the wearing of hearing protectors. Although in some cases it may not be easy to determine whether an identified hearing loss is work-related or not, the final rule follows the approach of the proposal that the loss would be reportable in the absence of evidence that the hearing loss is not work-related. MSHA has concluded that this approach is the most protective for miners, and has adopted it in the final rule.

Several commenters stated that the rule is unclear regarding who would be responsible for reporting a loss when a miner has been employed by several operators. MSHA specifically solicited comments in the proposal on how to capture data on work-related noise-induced hearing loss that is not discovered until after the miner's employment is terminated, or that the miner had accumulated from work with several employers. Commenters did not provide any data, information, or suggestions. The final rule requires the mine operator currently employing the affected miner to report the hearing loss no matter where the miner may have incurred the loss, provided it has not been previously reported.

The final rule does not require that mine operators report the same "reportable hearing loss" to MSHA each year that the miner works at the mine. An additional report to MSHA under part 50 of a hearing loss involving the same miner is required only if the miner has incurred an additional 25-dB shift (50-dB shift from the original baseline). However, each ear should be treated independently in terms of reporting hearing loss, unless the reportable loss occurs in both ears during a particular year. Although not specifically required in the final rule, MSHA anticipates that

mine operators will report under part 50 the actual average hearing loss, the ear(s) in which the reportable loss occurred, and whether the audiograms were corrected for age-induced hearing loss.

Section 62.180 Training

This section establishes specific requirements for training miners under the final rule. These requirements are very similar to requirements proposed under §§ 62.120(b)(1) and 62.130. Under the final rule, training of miners is one of the elements of a hearing conservation program. Mine operators are required to enroll miners in hearing conservation programs under § 62.120, and to provide training under § 62.180 to miners whose noise exposure equals or exceeds the action level under § 62.120. Miners are also required under § 62.160(a)(1) to be trained before they select hearing protectors. Retraining the miner, including the instruction required under this section, is also required under § 62.174(a) when the miner is determined to have experienced a standard threshold shift.

Section 62.180(a) requires that mine operators provide miners with initial training under this section within 30 days of their enrollment in a hearing conservation program. Retraining at least every 12 months thereafter must be provided if a miner's exposure continues to equal or exceed the action level under § 62.120. The proposal would have required that mine operators provide a miner with initial training at the time that the miner's exposure exceeded the action level. In response to commenters who were concerned that the proposal did not set a deadline for such training, the final rule requires that initial training be conducted within 30 days of a miner's enrollment in the hearing conservation program. OSHA's noise standard includes training requirements that are similar to those in the final rule.

Paragraphs (a)(1) through (a)(7) of § 62.180 of the final rule, like § 62.130(a) of the proposal, establish specific requirements for the training and retraining of miners. Under the final rule, the mine operator must provide the miner with instruction in the areas of: the effects of noise on hearing; the purpose and value of wearing hearing protectors; the advantages and disadvantages of the hearing protectors to be offered; the care, fitting, and use of the hearing protector worn by the miner, and the various types of hearing protectors offered by the mine operator; the general requirements of part 62; the mine operator's and miner's respective tasks in maintaining mine noise controls; and the purpose and value of audiometric testing and a summary of the procedures. Few commenters specifically addressed the topics in the noise training program. However, several commenters stated that it was important to stress the selection, fitting, use, and limitations of hearing protectors.

Although all commenters appeared to support the concept of training miners on noise-related topics, they disagreed about whether a separate training requirement was warranted. Some commenters believed that training miners under this part was unnecessary because miners are already required to receive training under existing MSHA regulations in part 48, which require regular training of miners on a variety of safety-and health-related topics, including the purpose of taking noise measurements. Some of these commenters were concerned that the training requirements under this part would create additional recordkeeping requirements for mine operators and would not serve any purpose, and they opposed adding additional training requirements under this part.

Other commenters stated that there is not enough time to cover all the topics required under part 48 training, and therefore separate training under this part was appropriate, to ensure that miners were well informed about the hazards of noise and how to ensure that they are adequately protected. Some of these commenters supported training on work-related noise hazards as well as proper fitting of hearing protectors. They argued that miners need training to make them aware of the damage acoustical energy can do to hearing, and that the proposed rule seemed to suggest that there was no need to train workers until they have been enrolled in a hearing conservation program. These commenters advocated training as a preventive measure rather than as after-the-fact treatment.

In the preamble to the proposed rule, MSHA stated that there is considerable precedent for requiring training as part of hearing conservation programs. As indicated in the preamble, Suter (1986) states, "Workers who understand the mechanism of hearing and how it is lost will be more motivated to protect themselves." Other researchers concur with this opinion (Wright, 1980; Royster et al., 1982). Moreover, the first line of defense against risks in mining has always been training. Accordingly, the final rule provides for annual instruction to enhance awareness of noise risks, operator requirements, and available controls. This training is required for any miner whose noise exposure is at or above the action level, an exposure which MSHA has identified to be hazardous.

MSHA has determined that specialized training on the hazards of noise and the importance of hearing conservation is necessary because, as several commenters pointed out, part 48 training typically does not routinely include detailed training on noise and hearing loss. One reason for this, as commenters also pointed out, is that there are a number of safety and health topics required to be covered under part 48 in a relatively short period of time. This does not allow the type of in-depth training on a narrow topic that is contemplated under this final rule.

Several commenters took issue with the proposed requirement that the training be provided "at the time" that the miner's noise exposure exceeds the action level. These commenters stated that the language should be modified to allow the mine operator more flexibility regarding how and when training is conducted. Some commenters recommended one week, while others suggested that mine operators be allowed 30 days to satisfy this requirement, in order to accommodate varying shift schedules and to develop and conduct an effective training program. One commenter recommended that the final rule specify at least one hour of initial training be given and at least 30 minutes of annual retraining be given.

MSHA agrees that the language of the proposed rule could be read to allow mine operators little time to provide training under this part, and the final rule allows mine operators 30 days to provide the training after a miner has been enrolled in a hearing conservation program. Under § 62.120 of the final rule, mine operators must enroll a miner in a hearing conservation program when the miner's noise exposure equals or exceeds the action level. This time frame will ensure that miners receive the necessary training in a timely manner, while at the same time providing mine operators with a reasonable amount of time to provide the training.

The final rule does not provide detailed requirements for the training provided by the mine operator. Instead, like other performance-oriented aspects of this final rule, mine operators have the flexibility under this section to determine how best to provide the training as well as which programs are best suited to conditions at their mines. The final rule requires that certain topics be covered by this training, but does not specify how long the training must last nor what qualifications the training instructors must have. Unlike part 48, the final rule does not require MSHA approval of the mine operator's training plan. However, mine operators may satisfy the requirements of the final rule and part 48 with the same training, provided that training complies with both sets of requirements.

MSHA intends that the training required under the final rule address the advantages and disadvantages of different types of hearing protectors, including earmuffs, earplugs, and canal caps as they relate to the needs of the miner and the specific conditions at the mine. In addition, the mine operator should discuss the specific advantages and disadvantages of any special hearing protectors offered.

MSHA recommends that mine operators tailor the training provided under the final rule to the operations at their mines, and may choose to emphasize certain topics more than others. Although the final rule provides a basic framework for minimum areas of instruction, the training requirements provided here are intended to be performance-oriented and allow for training to be tailored to the individual mine's circumstances or to individual needs.

Effective training of miners serves to enlist miner participation in hearing conservation, which is critically important for proper use of hearing protectors and compliance with applicable administrative noise controls. Effective training of miners also helps to ensure that miners will submit to regular audiometric testing, which is completely voluntary on the part of miners under the final rule. Studies have shown a correlation between instruction and the amount of protection afforded a miner by the use of hearing protectors. These include Merry et al. (1992), Park and Casali (1991), Barham et al. (1989), and Casali and Lam (1986).

Section 62.180(b) of the final rule adopts the proposed requirement that the mine operator certify the date and type of training given each miner and maintain the miner's most recent certification for as long as the miner is enrolled in the hearing conservation program and for at least 6 months thereafter. The final rule does not adopt the proposed requirement that the person conducting the training sign the certification, nor that the certification be maintained at the mine site.

A few commenters recommended that the miner be required to sign the training certificate. This comment has not been adopted in the final rule. MSHA does not believe that requiring the miner to sign a certificate furthers the goal of providing quality training. This is appropriate, given the fact that the mine operator is ultimately responsible for providing adequate training to miners under this final rule. For the same reason, the proposed requirement that the training provider sign the certification has not been adopted.

Some commenters strongly urged that the final rule allow training certification to be maintained at locations other than the mine site, since it may be more efficient for some mine operators to store records at a central location. MSHA agrees, particularly in light of the fact that electronic records are becoming more common in the mining industry and may be stored on computer at centralized locations. The final rule therefore allows mine operators to store training certifications at a location other than the mine site. However, they must be stored in sufficient proximity to the mine to be produced for an MSHA inspector within a relatively short period of time. MSHA expects that in most cases this will be no longer than one business day.

Mine operators must retain the most recent training certification for as long as a miner is in the hearing conservation program and for at least 6 months thereafter. There were only a few comments on this issue. One commenter suggested that the training records should be maintained for 12 months, rather than 6 months, beyond the miner's enrollment in a hearing conservation program, but did not explain why that would be preferable.

The final rule adopts the proposed requirement that training records be kept as long as the miner is in the hearing conservation program and for at least 6 months thereafter. As stated in the proposed preamble, the retention period is short and not burdensome—only the most recent certifications must be retained and only for 6 months after the miner's enrollment in the hearing conservation program has ended. These records will serve to allow MSHA inspectors to verify that the required training has been provided.

Section 62.190 Records

The requirements of proposed §§ 62.200 and 62.210 are combined in § 62.190 of the final rule, and address access to and transfer of records required to be kept under this rule. The final rule defines "access" as the right to examine and copy records. MSHA's final rule is essentially the same as OSHA's requirements.

Under paragraph (a), as in the proposal, the mine operator must provide authorized representatives of the Secretaries of Labor and Health and Human Services with access to all records required under this part. Several commenters stated that confidential medical records should be accessible to government agencies only with the written consent of the miner. MSHA has a statutory right to have access to records, including medical records. Section 103(h) of the Federal Mine Safety and Health Act of 1977 (Mine Act) provides that:

> In addition to such records as are specifically required by this Act, every operator of a coal or other mine shall establish and maintain such records, make such reports, and provide such information, as the Secretary or the Secretary of Health, Education, and Welfare [now Health and Human Services] may reasonably require from time to time to enable him to perform his functions under this Act * * *

The Agency believes that access to medical records is essential; the records will be valuable in enforcement of the final rule, will be useful in research into the effects of occupational noise exposure, and will help to evaluate the effectiveness of hearing conservation programs.

Another commenter noted that the preamble stated that mine operators would have to provide authorized representatives of the Secretaries with immediate access to all records required under this part. It was not MSHA's intent that records be provided immediately to authorized representatives of the Secretaries. MSHA agrees that requiring immediate access to records to authorized representatives of the Secretaries might be too restrictive or burdensome on the mine operator. Although the preamble to the proposal contained the term "immediate," the final rule does not. Following current practice, MSHA intends that authorized representatives of the Secretaries have access to records within a reasonable amount of time that does not hinder the authorized representatives' conduct of business. In most cases MSHA expects that this will be no longer than one business day.

MSHA solicited comment on what actions would be required, if any, to facilitate the maintenance of records in electronic form by those mine operators who desire to do so, while ensuring access in accordance with these requirements. The Agency received several comments supporting electronic storage of records, but no specifics regarding actions required to facilitate the maintenance of the records in electronic form.

As in the proposal, paragraph (a) of the final rule also provides that, upon written request, the mine operator must

provide, within 15 calendar days of the request, access to records to miners, former miners, miners' designees, and representatives of miners. The first copy must be provided at no cost, and any additional copies at reasonable cost.

Several commenters supported the provisions of access and transfer of records, but suggested that MSHA have a separate standard, as OSHA does. The provisions in this final rule are similar to those in other health standards proposed in recent years by MSHA and are similar to OSHA's. MSHA and NIOSH have statutory rights to access of records, but since MSHA does not have generic recordkeeping and access requirements, including recordkeeping and retention requirements in the substantive noise regulation will facilitate compliance. This will provide the regulated community with better clarity regarding applicable requirements.

Paragraph (a)(1) of this section of the final rule remains relatively unchanged from the proposal and provides that a miner, or a miner's designee with the miner's written consent, has access to all the records that the mine operator is required to maintain for that miner under this part. Several commenters asked whether the term "miner's designated representative" used in § 62.200(a)(1) of the proposal referred to the representative designated by two or more miners under part 40 of MSHA's regulations. In fact, the term "miner's designated representative" used in § 62.200(a)(1) of the proposal was intended to refer to a representative specifically designated by the miner to have access to records. MSHA agrees that the terms used in the proposed rule are imprecise; the final rule now substitutes the term "miner's designee" in paragraph (a)(1) for "miner's designated representative." The term "miner's designee" has also been defined in § 62.101 of the final rule as "an individual or organization to whom a miner gives written authorization to exercise a right of access to records." These changes are intended to make clear that the "miner's designee" referred to in this section is not a representative of miners designated under part 40.

Paragraph (a)(2) clarifies that the miners' representative referred to is the representative designated under part 40 of the regulations. Section 62.200(a)(2) of the proposal used the ambiguous term "miners' representative" and left doubt in some commenters' minds as to whether this was the miners' representatives under part 40. Commenters expressed concern that although the Mine Act gave the part 40 miners' representative access only to training records and exposure records, not to confidential medical records, the proposed rule language was unclear on this distinction. Paragraph (a)(2) of this section of the final rule clarifies the intent of the proposed rule that miners' representatives designated under part 40 have access to training certifications compiled in accordance with § 62.180(b) of the final rule, and to notices of exposure determinations in accordance with § 62.110(d). Paragraph (a)(2) does not provide for access to medical records by the part 40 miners' representative. This is consistent with the requirements of the Mine Act, and responds to commenters who were concerned about maintaining the confidentiality of miners' medical records.

The final rule does not adopt the provision in proposed § 62.200(a)(1) that would have provided former miners with access to all records that the mine operator would be required to maintain under part 62. Instead, the final rule provides that any former miner may have access to records which indicate his or her own noise exposures. This revision results from MSHA's recognition that the Mine Act gives former miners limited access to records. Section 103(c) of the Mine Act explicitly provides that "[s]uch regulations [those dealing with toxic substances and harmful physical agents] shall also make appropriate provisions for each miner or former miner to have access to such records as will indicate his own exposure to toxic materials or harmful physical agents." Paragraph (a)(3) has therefore been added to the final rule to make clear that a former miner may have access to those records which indicate his or her own noise exposures, but not to other records that are required to be kept by the mine operator under this part, as would have been required under the proposal.

One commenter stated that the operator should not be responsible for providing access to records for anyone other than the affected employee unless such employee is totally incapacitated, arguing that review of the preamble and the section-by-section analysis provides no rationale for including persons other than the employee to have access to records. MSHA has determined, however, that miners should have the right to designate someone to access records on their behalf, if they so desire. For example, a miner who is ill can authorize a designee (who may be a family member) to retrieve a copy of his or her records.

Several commenters stated that records should not be directly accessible to any private organizations. Under the final rule, a private organization may only have access if a miner selects the organization as his or her designee. In that case, the organization would have access as the miner's designee to all records required to be kept under this part for that individual miner.

One commenter maintained that the miner's designee should not be required to have written permission to see his or her records when no other person with access is required to have it. The commenter argues further that if this is due to the confidentiality of medical records, then anyone should be required to have the written permission of the miner, including MSHA and NIOSH. However, these agencies have a statutory right to access to records and do not need the written consent of the miner, but a designee does not and would therefore need written authorization to access records that may contain personal, private information.

Paragraph (a)(2) requires that any representative of miners designated under part 40 of this title must have access to noise training certifications required under § 62.180(b) as well as any notice of exposure determination in accordance with § 62.110(d) of this part for the miners he or she represents. Several commenters stated that the miners' representative should not have access to miners' records unless the miner has given written consent. One commenter stated that MSHA should change this section to provide access only to the individual miner involved. Several commenters stated that MSHA should clarify that the miners' representative will only have access to the training certificate.

MSHA intends that the miners' representative have access to training certifications and exposure determination records for miners they represent, without the written consent of individual miners. Providing access to training certifications is consistent with the Agency's part 48 training regulations at §§ 48.9 and 48.29, which require training certificates for each miner to be available for inspection by the miners' representative. Further, section 103(c) of the Mine Act states:

> The Secretary, in cooperation with the Secretary of Health, Education, and Welfare, [now Health and Human Services] shall issue regulations requiring operators to maintain accurate records of employee exposures to potentially toxic materials or harmful physical agents which are required to be monitored or measured under any applicable mandatory health or safety standard promulgated under this Act. Such regulations shall provide miners or their representatives with an opportunity to observe such monitoring or measuring, and to have access to the records thereof * * *

The final rule does not adopt proposed paragraph (b) of this section, which would have required an operator, upon termination of a miner's employment, to provide the miner (at no cost) a copy of all records that the operator is required to maintain for that individual miner under this part. The majority of commenters stated that it would be unduly burdensome to supply records to all terminated employees, that the provision was redundant with paragraph (c), and that records should only be provided to those employees who provide a written request for them. MSHA agrees that mine operators should not have to provide copies of records to miners unless requested to do so. Paragraph (c) of this section of the final rule, therefore, like the proposal, allows persons who have access to records to request a copy of all records from the mine operator. MSHA believes that this requirement will provide miners necessary information about their health. Proposed paragraph (b) has therefore not been adopted in the final rule.

Paragraph (a)(3), which is identical to proposed 62.200(c), states that when a person with access to records requests a copy of a record, the first copy must be provided without cost to that person, and any additional copies requested by that person must be provided at reasonable cost. Several commenters suggested that MSHA define "reasonable cost" so that mine operators can properly determine whether they are complying with the requirements of this part when charging for additional copies. The Agency expects mine operators to charge reasonable copying costs and labor rates which are generally applicable in their geographical locations for the same or similar services and which may vary somewhat from place to place. Therefore, the final rule does not adopt this comment.

Paragraph (b)(1) is similar to proposed § 62.210(a), requiring the mine operator to transfer all records required to be maintained by this part, or copies of them, to a successor mine operator who must maintain the records for the length of time required by this part. Several commenters supported the provision as proposed. One commenter stated that MSHA should clarify that this requirement does not apply to a successor operator hiring a miner who has never worked at that mine location. MSHA considers paragraph (b)(1) clear in stating that the mine operator must transfer all records required to be maintained by this part to a successor mine operator who then becomes responsible for maintaining them for the period required.

Paragraph (b)(2) is identical to proposed § 62.210(b), requiring the successor operator to use the baseline audiogram, or revised baseline audiogram as appropriate, obtained by the original operator for determining the existence of a standard threshold shift or reportable hearing loss. MSHA believes that requiring successor mine operators to maintain the prior baseline audiogram will provide miners with the greatest possible degree of protection. Otherwise, if a new baseline were allowed to be established by the arrival of a successor mine operator, the record of any existing hearing loss would be wiped out and reporting or corrective action postponed. The Agency did not receive any comments on this provision, and paragraph (b)(2) is adopted as proposed.

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List of Subjects

30 CFR Parts 56 and 57

Metals, Mine safety and health, Noise control.

30 CFR Part 62

Mine safety and health, Noise control.

30 CFR Parts 70 and 71

Coal, Mine safety and health, Noise control.

Dated: August 30, 1999.

J. Davitt McAteer,

Assistant Secretary for Mine Safety and Health.

Accordingly, Chapter I of Title 30 of the Code of Federal Regulations is amended as follows:

PART 56—[AMENDED]

1. The authority citation for part 56 continues to read as follows:

Authority: 30 U.S.C. 811.

§ 56.5050 [Removed]

2. Section 56.5050 and the undesignated center heading preceding it are removed.

PART 57—[AMENDED]

3. The authority citation for part 57 continues to read as follows:

Authority: 30 U.S.C. 811.

§ 57.5050 [Removed]

4. Section 57.5050 and the undesignated center heading preceding it are removed.

PART 70—[AMENDED]

5. The authority citation for part 70 continues to read as follows:

Authority: 30 U.S.C. 811 and 961.

Subpart F—[Removed]

6. Subpart F (§§ 70.500 through 70.511) is removed.

PART 71—[AMENDED]

7. The authority citation for part 71 continues to read as follows:

Authority: 30 U.S.C. 811, 951, 957, 961.

Supbart I—[Removed]

8. Subpart I (§§ 71.800 through 71.805) is removed.

Subchapters M and N—[Redsignated]

9. Subchapter M is redesignated as Subchapter I, Subchapter N is redesignated as Subchapter K, and Subchapter N is reserved.

10. A new Subchapter M is added, "Uniform Mine Health Regulations."

11. A new part 62 is added to new Subchapter M to read as follows:

PART 62—OCCUPATIONAL NOISE EXPOSURE

Sec.

62.100 Purpose and scope; effective date
62.101 Definitions
62.110 Noise exposure assessment
62.120 Action level
62.130 Permissible exposure level
62.140 Dual hearing protection level
62.150 Hearing conservation program
62.160 Hearing protectors
62.170 Audiometric testing
62.171 Audiometric test procedures
62.172 Evaluation of audiograms
62.173 Follow-up evaluation when an audiogram is invalid
62.174 Follow-up corrective measures when a standard threshold shift is detected
62.175 Notification of results; reporting requirements
62.180 Training
62.190 Records
Appendix to part 62

Authority: 30 U.S.C. 811.

§ 62.100 Purpose and scope; effective date.

The purpose of these standards is to prevent the occurrence and reduce the progression of occupational noise-induced hearing loss among miners. This part sets forth mandatory health standards for each surface and underground metal, nonmetal, and coal mine subject to the Federal Mine Safety and Health Act of 1977. The provisions of this part become effective September 13, 2000.

§ 62.101 Definitions.

The following definitions apply in this part:

Access. The right to examine and copy records.

Action level. An 8-hour time-weighted average sound level (TWA_8) of 85 dBA, or equivalently a dose of 50%, integrating all sound levels from 80 dBA to at least 130 dBA.

Audiologist. A professional, specializing in the study and rehabilitation of hearing, who is certified by the American Speech-Language-Hearing Association (ASHA) or licensed by a state board of examiners.

Baseline audiogram. The audiogram recorded in accordance with § 62.170(a) of this part against which subsequent audiograms are compared to determine the extent of hearing loss.

Criterion level. The sound level which if constantly applied for 8 hours results in a dose of 100% of that permitted by the standard.

Decibel (dB). A unit of measure of sound pressure levels, defined in one of two ways, depending upon the use:

(1) For measuring sound pressure levels, the decibel is 20 times the common logarithm of the ratio of the measured sound pressure to the standard reference sound pressure of 20 micropascals (μPa), which is the threshold of normal hearing sensitivity at 1000 Hertz (Hz).

(2) For measuring hearing threshold levels, the decibel is the difference between audiometric zero (reference pressure equal to 0 hearing threshold level) and the threshold of hearing of the individual being tested at each test frequency.

Dual Hearing Protection Level. A TWA_8 of 105 dBA, or equivalently, a dose of 800% of that permitted by the standard, integrating all sound levels from 90 dBA to at least 140 dBA.

Exchange rate. The amount of increase in sound level, in decibels, which would require halving of the allowable exposure time to maintain the same noise dose. For the purposes of this part, the exchange rate is 5 decibels (5 dB).

Hearing protector. Any device or material, capable of being worn on the head or in the ear canal, sold wholly or in part on the basis of its ability to reduce the level of sound entering the ear, and which has a scientifically accepted indicator of noise reduction value.

Hertz (Hz). Unit of measurement of frequency numerically equal to cycles per second.

Medical pathology. A condition or disease affecting the ear.

Miner's designee. Any individual or organization to whom a miner gives written authorization to exercise a right of access to records.

Qualified technician. A technician who has been certified by the Council for Accreditation in Occupational Hearing Conservation (CAOHC), or by another recognized organization offering equivalent certification.

Permissible exposure level. A TWA_8 of 90 dBA or equivalently a dose of 100% of that permitted by the standard, integrating all sound levels from 90 dBA to at least 140 dBA.

Reportable hearing loss. A change in hearing sensitivity for the worse, relative to the miner's baseline audiogram, or the miner's revised baseline audiogram where one has been established in accordance with § 62.170(c)(2), of an average of 25 dB or more at 2000, 3000, and 4000 Hz in either ear.

Revised baseline audiogram. An annual audiogram designated to be used in lieu of a miner's original baseline audiogram in measuring changes in hearing sensitivity as a result of the circumstances set forth in §§ 62.170(c)(1) or 62.170(c)(2) of this part.

Sound level. The sound pressure level in decibels measured using the A-weighting network and a slow response, expressed in the unit dBA.

Standard threshold shift. A change in hearing sensitivity for the worse relative to the miner's baseline audiogram, or relative to the most recent revised baseline audiogram where one has been established, of an average of 10 dB or more at 2000, 3000, and 4000 Hz in either ear.

Time-weighted average–8 hour (TWA_8). The sound level which, if constant over 8 hours, would result in the same noise dose as is measured.

§ 62.110 Noise exposure assessment.

(a) The mine operator must establish a system of monitoring that evaluates each miner's noise exposure sufficiently to determine continuing compliance with this part.

(b) The mine operator must determine a miner's noise dose (D, in percent) by using a noise dosimeter or by computing the formula: $D=100(C_1/T_1+C_2/T_2+ \ldots +C_n/T_n)$, where Cn is the total time the miner is exposed at a specified sound level, and T_n is the reference duration of exposure at that sound level shown in Table 62–1.

(1) The mine operator must use Table 62–2 when converting from dose readings to equivalent TWA_8 readings.

(2) A miner's noise dose determination must:

(i) Be made without adjustment for the use of any hearing protector;

(ii) Integrate all sound levels over the appropriate range;

(iii) Reflect the miner's full work shift;

(iv) Use a 90-dB criterion level and a 5-dB exchange rate; and

(v) Use the A-weighting and slow response instrument settings.

(c) *Observation of monitoring.* The mine operator must provide affected miners and their representatives with an opportunity to observe noise exposure monitoring required by this section and must give prior notice of the date and time of intended exposure monitoring to affected miners and their representatives.

(d) *Miner notification.* The mine operator must notify a miner of his or her exposure when the miner's exposure is determined to equal or exceed the action level, exceed the permissible exposure level, or exceed the dual hearing protection level, provided the mine operator has not notified the miner of an exposure at such level within the prior 12 months. The mine operator must base the notification on an exposure evaluation conducted either by the mine operator or by an authorized representative of the Secretary of Labor. The mine operator must notify the miner in writing within 15 calendar days of:

(1) The exposure determination; and

(2) the corrective action being taken.

(e) The mine operator must maintain a copy of any such miner notification, or a list on which the relevant information about that miner's notice is recorded, for the duration of the affected miner's exposure at or above the action level and for at least 6 months thereafter.

§ 62.120 Action level.

If during any work shift a miner's noise exposure equals or exceeds the action level the mine operator must enroll the miner in a hearing conservation program that complies with § 62.150 of this part.

§ 62.130 Permissible exposure level.

(a) The mine operator must assure that no miner is exposed during any work shift to noise that exceeds the permissible exposure level. If during any work shift a miner's noise exposure exceeds the permissible exposure level, the mine operator must use all feasible engineering and administrative controls to reduce the miner's noise exposure to the permissible exposure level, and enroll the miner in a hearing conservation program that complies with § 62.150 of this part. When a mine operator uses administrative controls to reduce a miner's exposure, the mine operator must post the procedures for such controls on the mine bulletin board and provide a copy to the affected miner.

(b) If a miner's noise exposure continues to exceed the permissible exposure level despite the use of all feasible engineering and administrative controls, the mine operator must continue to use the engineering and administrative controls to reduce the miner's noise exposure to as low a level as is feasible.

(c) The mine operator must assure that no miner is exposed at any time to sound levels exceeding 115 dBA, as determined without adjustment for the use of any hearing protector.

§ 62.140 Dual hearing protection level.

If during any work shift a miner's noise exposure exceeds the dual hearing protection level, the mine operator must, in addition to the actions required for noise exposures that exceed the permissible exposure level, provide and ensure the concurrent use of both an ear plug and an ear muff type hearing protector. The following table sets out mine operator actions under MSHA's noise standard.

Provision	Condition	Action required by the mine operator
§ 62.120	Miner's noise exposure is less than the action level.	None.
§ 62.120	Miner's exposure equals or exceeds the action level, but does not exceed the permissible exposure level (PEL).	Operator enrolls the miner in hearing conservation program (HCP) which includes (1) a system of monitoring, (2) voluntary, with two exceptions, use of operator-provided hearing protectors, (3) voluntary audiometric testing, (4) training, and (5) record keeping.
§ 62.130	Miner's exposure exceeds the PEL	Operator uses/continues to use all feasible engineering and administrative controls to reduce exposure to PEL; enrolls the miner in a HCP including ensured use of operator-provided hearing protectors; posts administrative controls and provides copy to affected miner; must never permit a miner to be exposed to sound levels exceeding 115 dBA.
§ 62.140	Miner's exposure exceeds the dual hearing protection level.	Operator enrolls the miner in a HCP, continues to meet all the requirements of § 62.130, ensures concurrent use of earplug and earmuff.

§ 62.150 Hearing conservation program.

A hearing conservation program established under this part must include:

(a) A system of monitoring under § 62.110 of this part;

(b) The provision and use of hearing protectors under § 62.160 of this part;

(c) Audiometric testing under §§ 62.170 through 62.175 of this part;

(d) Training under § 62.180 of this part; and

(e) Recordkeeping under § 62.190 of this part.

§ 62.160 Hearing protectors.

(a) A mine operator must provide a hearing protector to a miner whose noise exposure equals or exceeds the action level under § 62.120 of this part. In addition, the mine operator must:

(1) Train the miner in accordance with § 62.180 of this part;

(2) Allow the miner to choose a hearing protector from at least two muff types and two plug types, and in the event dual hearing protectors are required, to choose one of each type;

(3) Ensure that the hearing protector is in good condition and is fitted and maintained in accordance with the manufacturer's instructions;

(4) Provide the hearing protector and necessary replacements at no cost to the miner; and

(5) Allow the miner to choose a different hearing protector(s), if wearing the selected hearing protector(s) is subsequently precluded due to medical pathology of the ear.

(b) The mine operator must ensure, after satisfying the requirements of paragraph (a) of this section, that a miner wears a hearing protector whenever the miner's noise exposure exceeds the permissible exposure level before the implementation of engineering and administrative controls, or if the miner's noise exposure continues to exceed the permissible exposure level despite the use of all feasible engineering and administrative controls.

(c) The mine operator must ensure, after satisfying the requirements of paragraph (a) of this section, that a miner wears a hearing protector when

the miner's noise exposure is at or above the action level, if:

(1) The miner has incurred a standard threshold shift; or

(2) More than 6 months will pass before the miner can take a baseline audiogram.

§ 62.170 Audiometric testing.

The mine operator must provide audiometric tests to satisfy the requirements of this part at no cost to the miner. A physician or an audiologist, or a qualified technician under the direction or supervision of a physician or an audiologist must conduct the tests.

(a) *Baseline audiogram.* The mine operator must offer miners the opportunity for audiometric testing of the miner's hearing sensitivity for the purpose of establishing a valid baseline audiogram to compare with subsequent annual audiograms. The mine operator may use an existing audiogram of the miner's hearing sensitivity as the baseline audiogram if it meets the audiometric testing requirements of § 62.171 of this part.

(1) The mine operator must offer and provide within 6 months of enrolling the miner in a hearing conservation program, audiometric testing which results in a valid baseline audiogram, or offer and provide the testing within 12 months where the operator uses mobile test vans to do the testing.

(2) The mine operator must notify the miner to avoid high levels of noise for at least 14 hours immediately preceding the baseline audiogram. The mine operator must not expose the miner to workplace noise for the 14-hour quiet period before conducting the audiometric testing to determine a baseline audiogram. The operator may substitute the use of hearing protectors for this quiet period.

(3) The mine operator must not establish a new baseline audiogram or a new revised baseline audiogram, where one has been established, due to changes in enrollment status in the hearing conservation program. The mine operator may establish a new baseline or revised baseline audiogram for a miner who is away from the mine for more than 6 consecutive months.

(b) *Annual audiogram.* After the baseline audiogram is established, the mine operator must continue to offer subsequent audiometric tests at intervals not exceeding 12 months for as long as the miner remains in the hearing conservation program.

(c) *Revised baseline audiogram.* An annual audiogram must be deemed to be a revised baseline audiogram when, in the judgment of the physician or audiologist:

(1) A standard threshold shift revealed by the audiogram is permanent; or (2) The hearing threshold shown in the annual audiogram indicates significant improvement over the baseline audiogram.

§ 62.171 Audiometric test procedures.

(a) All audiometric testing under this part must be conducted in accordance with scientifically validated procedures. Audiometric tests must be pure tone, air conduction, hearing threshold examinations, with test frequencies including 500, 1000, 2000, 3000, 4000, and 6000 Hz. Each ear must be tested separately.

(b) The mine operator must compile an audiometric test record for each miner tested. The record must include:

(1) Name and job classification of the miner tested;

(2) A copy of all of the miner's audiograms conducted under this part;

(3) Evidence that the audiograms were conducted in accordance with paragraph (a) of this section;

(4) Any exposure determination for the miner conducted in accordance with § 62.110 of this part; and

(5) The results of follow-up examination(s), if any.

(c) The operator must maintain audiometric test records for the duration of the affected miner's employment, plus at least 6 months, and make the records available for inspection by an authorized representative of the Secretary of Labor.

§ 62.172 Evaluation of audiograms.

(a) The mine operator must:

(1) Inform persons evaluating audiograms of the requirements of this part and provide those persons with a copy of the miner's audiometric test records;

(2) Have a physician or an audiologist, or a qualified technician who is under the direction or supervision of a physician or audiologist:

(i) Determine if the audiogram is valid; and

(ii) Determine if a standard threshold shift or a reportable hearing loss, as defined in this part, has occurred.

(3) Instruct the physician, audiologist, or qualified technician not to reveal to the mine operator, without the written consent of the miner, any specific findings or diagnoses unrelated to the miner's hearing loss due to occupational noise or the wearing of hearing protectors; and

(4) Obtain the results and the interpretation of the results of audiograms conducted under this part within 30 calendar days of conducting the audiogram.

(b)(1) The mine operator must provide an audiometric retest within 30 calendar days of receiving a determination that an audiogram is invalid, provided any medical pathology has improved to the point that a valid audiogram may be obtained.

(2) If an annual audiogram demonstrates that the miner has incurred a standard threshold shift or reportable hearing loss, the mine operator may provide one retest within 30 calendar days of receiving the results of the audiogram and may use the results of the retest as the annual audiogram.

(c) In determining whether a standard threshold shift or reportable hearing loss has occurred, allowance may be made for the contribution of aging (presbycusis) to the change in hearing level. The baseline, or the revised baseline as appropriate, and the annual audiograms used in making the determination should be adjusted according to the following procedure:

(1) Determine from Tables 62–3 or 62–4 the age correction values for the miner by:

(i) Finding the age at which the baseline audiogram or revised baseline audiogram, as appropriate, was taken, and recording the corresponding values of age corrections at 2000, 3000, and 4000 Hz;

(ii) Finding the age at which the most recent annual audiogram was obtained and recording the corresponding values of age corrections at 2000, 3000, and 4000 Hz; and

(iii) Subtracting the values determined in paragraph (c)(1)(i) of this section from the values determined in paragraph (c)(1)(ii) of this section. The differences calculated represent that portion of the change in hearing that may be due to aging.

(2) Subtract the values determined in paragraph (c)(1)(iii) of this section from the hearing threshold levels found in the annual audiogram to obtain the adjusted annual audiogram hearing threshold levels.

(3) Subtract the hearing threshold levels in the baseline audiogram or revised baseline audiogram from the adjusted annual audiogram hearing threshold levels determined in paragraph (c)(2) of this section to obtain the age-corrected threshold shifts.

§ 62.173 Follow-up evaluation when an audiogram is invalid.

(a) If a valid audiogram cannot be obtained due to a suspected medical pathology of the ear that the physician or audiologist believes was caused or aggravated by the miner's occupational exposure to noise or the wearing of hearing protectors, the mine operator must refer the miner for a clinical-audiological evaluation or an otological examination, as appropriate, at no cost to the miner.

(b) If a valid audiogram cannot be obtained due to a suspected medical pathology of the ear that the physician or audiologist concludes is unrelated to the miner's occupational exposure to noise or the wearing of hearing protectors, the mine operator must instruct the physician or audiologist to inform the miner of the need for an otological examination.

(c) The mine operator must instruct the physician, audiologist, or qualified technician not to reveal to the mine operator, without the written consent of the miner, any specific findings or diagnoses unrelated to the miner's occupational exposure to noise or the wearing of hearing protectors.

§ 62.174 Follow-up corrective measures when a standard threshold shift is detected.

The mine operator must, within 30 calendar days of receiving evidence or confirmation of a standard threshold shift, unless a physician or audiologist determines the standard threshold shift is neither work-related nor aggravated by occupational noise exposure:

(a) Retrain the miner, including the instruction required by § 62.180 of this part;

(b) Provide the miner with the opportunity to select a hearing protector, or a different hearing protector if the miner has previously selected a hearing protector, from among those offered by the mine operator in accordance with § 62.160 of this part; and

(c) Review the effectiveness of any engineering and administrative controls to identify and correct any deficiencies.

§ 62.175 Notification of results; reporting requirements.

(a) The mine operator must, within 10 working days of receiving the results of an audiogram, or receiving the results of a follow-up evaluation required under § 62.173 of this part, notify the miner in writing of:

(1) The results and interpretation of the audiometric test, including any finding of a standard threshold shift or reportable hearing loss; and

(2) The need and reasons for any further testing or evaluation, if applicable.

(b) When evaluation of the audiogram shows that a miner has incurred a reportable hearing loss as defined in this part, the mine operator must report such loss to MSHA as a noise-induced hearing loss in accordance with part 50 of this title, unless a physician or audiologist has determined that the loss is neither work-related nor aggravated by occupational noise exposure.

§ 62.180 Training.

(a) The mine operator must, within 30 days of a miner's enrollment into a hearing conservation program, provide the miner with training. The mine operator must give training every 12 months thereafter if the miner's noise exposure continues to equal or exceed the action level. Training must include:

(1) The effects of noise on hearing;

(2) The purpose and value of wearing hearing protectors;

(3) The advantages and disadvantages of the hearing protectors to be offered;

(4) The various types of hearing protectors offered by the mine operator and the care, fitting, and use of each type;

(5) The general requirements of this part;

(6) The mine operator's and miner's respective tasks in maintaining mine noise controls; and

(7) The purpose and value of audiometric testing and a summary of the procedures.

(b) The mine operator must certify the date and type of training given each miner, and maintain the miner's most recent certification for as long as the miner is enrolled in the hearing conservation program and for at least 6 months thereafter.

§ 62.190 Records.

(a) The authorized representatives of the Secretaries of Labor and Health and Human Services must have access to all records required under this part. Upon written request, the mine operator must provide, within 15 calendar days of the request, access to records to:

(1) The miner, or with the miner's written consent, the miner's designee, for all records that the mine operator must maintain for that individual miner under this part;

(2) Any representative of miners designated under part 40 of this title, to training certifications compiled under § 62.180(b) of this part and to any notice of exposure determination under § 62.110(d) of this part, for the miners whom he or she represents; and

(3) Any former miner, for records which indicate his or her own exposure.

(b) When a person with access to records under paragraphs (a)(1), (a)(2), or (a)(3) of this section requests a copy of a record, the mine operator must provide the first copy of such record at no cost to that person, and any additional copies requested by that person at reasonable cost.

(c) Transfer of records. (1) The mine operator must transfer all records required to be maintained by this part, or a copy thereof, to a successor mine operator who must maintain the records for the time period required by this part.

(2) The successor mine operator must use the baseline audiogram, or revised baseline audiogram, as appropriate, obtained by the original mine operator to determine the existence of a standard threshold shift or reportable hearing loss.

Appendix to Part 62

TABLE 62–1.—REFERENCE DURATION

dBA	T (hours)
80	32.0
85	16.0
86	13.9
87	12.1
88	10.6
89	9.2
90	8.0
91	7.0
92	6.1
93	5.3
94	4.6
95	4.0
96	3.5
97	3.0
98	2.6
99	2.3
100	2.0
101	1.7
102	1.5
103	1.3
104	1.1
105	1.0
106	0.87
107	0.76
108	0.66
109	0.57
110	0.50
111	0.44
112	0.38
113	0.33
114	0.29
115	0.25

At no time shall any excursion exceed 115 dBA. For any value, the reference duration (T) in hours is computed by: $T = 8/2^{(L-90)/5}$ where L is the measured A-weighted, slow-response sound pressure level.

TABLE 62–2.—"DOSE"/TWA_8 EQUIVALENT

Dose (percent)	TWA_8
25	80
29	81
33	82
38	83
44	84
50	85
57	86
66	87

TABLE 62–2.—"DOSE"/TWA_8 **Equivalent**—Continued

Dose (percent)	TWA_8
76	88
87	89
100	90
115	91
132	92
152	93
174	94
200	95
230	96
264	97
303	98
350	99
400	100
460	101
530	102
610	103
700	104
800	105
920	106
1056	107
1213	108
1393	109
1600	110
1838	111
2111	112
2425	113
2786	114
3200	115

Interpolate between the values found in this Table, or extend the Table, by using the formula: $TWA_8 = 16.61 \log_{10} (D/100) + 90$.

TABLE 62–3.—AGE CORRECTION VALUE IN DECIBELS FOR MALES (SELECTED FREQUENCIES)

Age (years)	kHz		
	2	3	4
20 or less	3	4	5
21	3	4	5
22	3	4	5
23	3	4	6
24	3	5	6
25	3	5	7
26	4	5	7
27	4	6	7
28	4	6	8
29	4	6	8
30	4	6	9
31	4	7	9
32	5	7	10
33	5	7	10
34	5	8	11
35	5	8	11
36	5	9	12
37	6	9	12
38	6	9	13
39	6	10	14
40	6	10	14
41	6	10	14
42	7	11	16
43	7	12	16
44	7	12	17
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48	8	14	20
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50	9	16	22
51	9	16	23
52	10	17	24
53	10	18	25
54	10	18	26
55	11	19	27
56	11	20	28
57	11	21	29
58	12	22	31
59	12	22	32
60 or more	13	23	33

TABLE 62–4.—AGE CORRECTION VALUE IN DECIBELS FOR FEMALES (SELECTED FREQUENCIES)

Age (years)	kHz		
	2	3	4
20 or less	4	3	3
21	4	4	3
22	4	4	4
23	5	4	4
24	5	4	4
25	5	4	4
26	5	5	4
27	5	5	5
28	5	5	5
29	5	5	5
30	6	5	5
31	6	6	5
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50	10	11	12
51	10	11	12
52	10	12	13
53	10	13	13
54	11	13	14
55	11	14	14
56	11	14	15
57	11	15	15
58	12	15	16
59	12	16	16
60 or more	12	16	17

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federal register

Monday
September 13, 1999

Part III

Department of Labor

30 CFR Parts 56, 57, 62, 70 and 71
Occupational Noise Exposure Final Rule; Correction

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Parts 56, 57, 62, 70 and 71

RIN 1219–AA53

Occupational Noise Exposure; Correction

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Final rule; correction.

SUMMARY: This document corrects the preamble to the final rule for health standards for occupational noise exposure published elsewhere in today's **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Carol J. Jones, Acting Director, Office of Standards, Regulations, and Variances, MSHA, (703) 235–1910.

Correction

MSHA is publishing elsewhere in this issue of the **Federal Register** a final rule on health standards for occupational noise exposure. This document adds text inadvertently left out of the preamble. Certain text that should have been included under the heading "Section 62.130 Permissible exposure level" was inadvertently omitted. The text should have followed this paragraph:

> Although many commenters may prefer to use hearing protectors in lieu of engineering or administrative controls to protect miners from noise overexposures, MSHA has concluded that the scientific evidence does not support this position, and that the approach taken in the final rule best protects miners from further noise-induced hearing loss.

The text to be added reads as follows:

MSHA noted earlier in this discussion that it had conducted a study of the noise reduction values of hearing protectors in the actual mining environment. The inability to accurately predict the noise reduction provided by a hearing protector to an individual miner led to MSHA's decision to reject the use of hearing protectors as the primary means of reducing a miner's noise exposure to the permissible exposure level. Not only do engineering and administrative controls best protect miners from noise-induced hearing loss, they increase the protection afforded by a hearing protector.

One commenter requested that MSHA provide a definition of an engineering noise control. MSHA addresses engineering controls in significant detail under the discussion of feasibility in Part VI of this preamble.

Several commenters wanted MSHA to recognize the noise-cancellation ear muff as an engineering noise control. Noise-cancellation ear muffs are hearing protectors that are designed to generate sound that cancels harmful noise signals under the cup of the ear muff. MSHA has not found any data substantiating a standardized method of evaluating the efficacy of noise-cancellation ear muffs in a manner similar to engineering controls. Also, noise-cancellation ear muffs in the active mode cannot be evaluated using the American National Standards Institute (ANSI) method for evaluating hearing protectors. Noise-cancellation ear muffs are not engineering controls, and the final rule does not accept them as such but does recognize them as hearing protectors, where an NRR value has been assigned under EPA regulations.

Some other commenters believed that the use of operator cabs, which are engineering controls that allow the miner to work within a protective sound enclosure, creates a safety hazard, especially in low-seam underground mines. Although the Agency has limited experience with the use of noise-control cabs in underground mines, MSHA has had extensive experience with the use of cabs in underground mines to provide protection from falling objects, including roof falls. This experience demonstrates that equipment cabs can be safely used in the underground mine environment. In any case, MSHA would not expect a mine operator to use a cab as an engineering control if it created a safety hazard. As a practical matter, the final rule provides mine operators with significant flexibility in choosing among various noise controls, and does not compel the use of one type of control over another.

Many commenters believe administrative controls create unnecessary problems for mine operators. Some of their concerns include restrictions in labor contracts, the limited numbers of qualified miners who can be rotated in and out of a job, and the difficulty in tracking rotated miners. MSHA has concluded that the effectiveness of administrative controls, when they are feasible, compels their application prior to allowing mine operators to use personal hearing protectors to control their miners' noise exposures.

Regarding the feasibility of noise controls, the American Portland Cement Alliance commented that there are several operational areas where it is particularly difficult and expensive to control noise, for example raw and finish ball mills, crusher and screening areas, and coal unloading, compressor and blower rooms. In one example, the commenter estimated that it would cost "hundreds of thousands of dollars" in manpower, materials, lost production and equipment, to retrofit rubber liners in the interior walls of the mills. The commenter also noted that alternative means of milling would cost between 3-million and 10-million dollars per ball mill. Section VI of this preamble discusses the feasibility of a permissible exposure level for the mining industry, and, in addition, the feasibility of complying with the permissible exposure level for a particular operator. Regarding noise controls which may be feasible for particular operators of milling operations, the Agency intends to adhere to the enforcement guidelines set forth in volume IV of its existing program policy manual because the permissible exposure level in the final rule remains unchanged from the existing noise standards. The program policy manual indicates that frequently, mining personnel are exposed to noise levels of up to 114 dBA from milling operations, and that engineering noise controls may be feasible for such operations. Such controls include: resiliently backed liners; acoustically treated control booths; full or partial topless enclosures around mill equipment or employee work locations; and acoustic baffles suspended above enclosures. In order to determine which control or combination of controls are feasible and effective to reduce the noise exposure of employees working in mills, it is usually necessary to do a time study to pinpoint the locations and noise sources contributing to the employee's overexposure. In some situations an acoustically treated control booth may be all that is needed, in others more extensive treatments may be necessary. Administrative controls may also be feasible to limit employee exposure to particularly noisy areas of a mill.

Control booths can be constructed and acoustically treated by mine operators or can be purchased from commercial sources. Resiliently backed liners can be put on chutes, bins and other drop or impact points to reduce noise from these sources. In situations where numerous employees are exposed to the noise, full or partial topless enclosures around the mill may be feasible. Dependent upon the noise reduction required to lower an employee's exposure to the permissible exposure level, acoustical absorptive material may be needed within or above the enclosure. Acoustical baffles suspended above such enclosures has proven to be an effective method of reducing the overall noise levels.

The cost for such enclosures is dependent on the type of materials utilized in its construction and the overall size of the enclosure. In three demonstrations of this technology, total material costs have ranged between $3500 and $7000. MSHA intends to assess, on a case-by-case basis, whether engineering and administrative controls are feasible at a particular mine that is experiencing an overexposure.

Dated: September 9, 1999.

Carol J. Jones,

Acting Director, Office of Standards, Regulations, and Variances.

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 211/P.L. 106–48
To designate the Federal building and United States courthouse located at 920 West Riverside Avenue in Spokane, Washington, as the "Thomas S. Foley United States Courthouse", and the plaza at the south entrance of such building and courthouse as the "Walter F. Horan Plaza". (Aug. 17, 1999; 113 Stat. 230)

H.R. 1219/P.L. 106–49
Construction Industry Payment Protection Act of 1999 (Aug. 17, 1999; 113 Stat. 231)

H.R. 1568/P.L. 106–50
Veterans Entrepreneurship and Small Business Development Act of 1999 (Aug. 17, 1999; 113 Stat. 233)

H.R. 1664/P.L. 106–51
Emergency Steel Loan Guarantee and Emergency Oil and Gas Guaranteed Loan Act of 1999 (Aug. 17, 1999; 113 Stat. 252)

H.R. 2465/P.L. 106–52
Military Construction Appropriations Act, 2000 (Aug. 17, 1999; 113 Stat. 259)

S. 507/P.L. 106–53
Water Resources Development Act of 1999. (Aug. 17, 1999; 113 Stat. 269)

S. 606/P.L. 106–54
For the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical, LLC (successor to Kerr-McGee Chemical Corporation), and for other purposes. (Aug. 17, 1999; 113 Stat. 398)

S. 1546/P.L. 106–55

To amend the International Religious Freedom Act of 1998 to provide additional administrative authorities to the United States Commission on International Religious Freedom, and to make technical corrections to that Act, and for other purposes. (Aug. 17, 1999; 113 Stat. 401)

Last List August 18, 1999

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–034–00001–1)	5.00	[5] Jan. 1, 1999
3 (1997 Compilation and Parts 100 and 101)	(869–038–00002–4)	20.00	[1] Jan. 1, 1999
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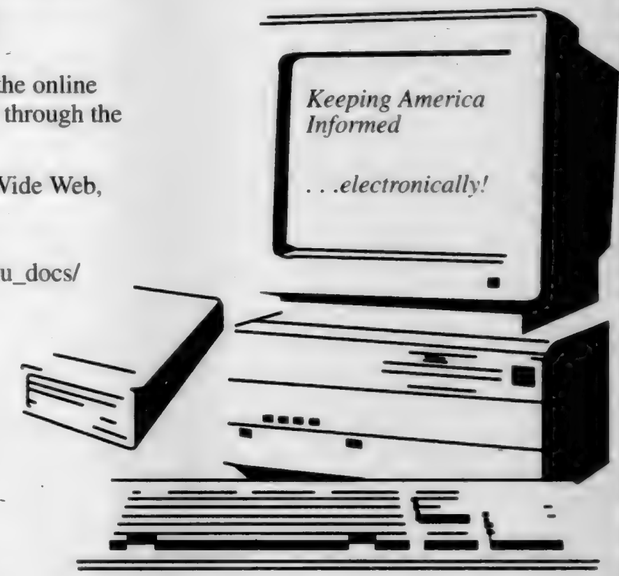

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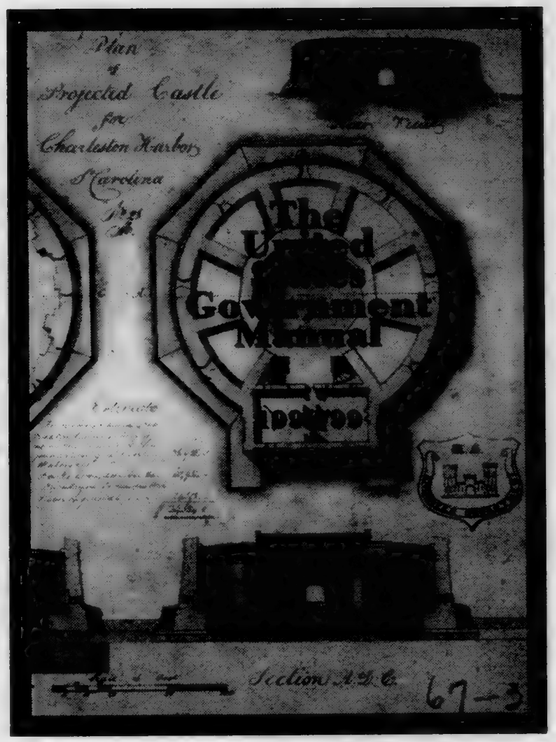

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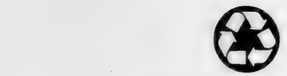

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Federal Register
Vol. 64, No. 177
Tuesday, September 14, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

ADVISORY COMMITTEE ON FEDERAL PAY

5 CFR Chapter IV

Removal of CFR chapter

Effective January 25, 1991, the Advisory Committee on Federal Pay was terminated. Therefore, the **Office of the Federal Register** is removing ACFP regulations pursuant to its authority to maintain an orderly system of codification under 44 U.S.C. 1510 and 1 CFR part 8.

Accordingly, 5 CFR is amended by removing parts 1400 through 1499 and vacating Chapter IV.

[FR Doc. 99–55530 Filed 9–13–99; 8:45 am]
BILLING CODE 1505–01–D

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2634

RIN 3209–AA00

Revisions to the Public Financial Disclosure Gifts Waiver Provision

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule amendments.

SUMMARY: The Office of Government Ethics is amending portions of the executive branch regulation which allows the OGE Director to grant a waiver of certain gift disclosure requirements for filers of the public financial disclosure report form, SF 278. The amendments permit the grant of a waiver in appropriate cases, if the basis of the relationship between the grantor and grantee of a gift and the motivation behind a gift are personal. The changes also clarify that the cover letter requesting a waiver will be publicly available if the Director of OGE approves the waiver request, either in whole or in part. Additionally, the amendments expressly require that a description of the gift and its value be included in a waiver request. Finally, the changes explicitly require that the information required to be in a waiver request pertaining to the donor must include the necessary information for each donor when a gift has multiple donors.

EFFECTIVE DATE: October 14, 1999.

FOR FURTHER INFORMATION CONTACT: Judy H. Mann, Attorney-Advisor, or Norman B. Smith, Senior Associate General Counsel, Office of Government Ethics; telephone: 202–208–8000; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION: On May 13, 1999, OGE published proposed minor amendments to the executive branch regulation which requires the disclosure of certain gifts received by the filers of the Standard Form (SF) 278 Public Financial Disclosure Report forms, their spouses, and their dependent children. See 64 FR 25849–25851. After a 60-day comment period, no outside comments from the public or agencies were received. Therefore, OGE is publishing the proposed amendments, subject to a few minor modifications that OGE has decided to make, as a final rule, effective October 14, 1999. A summary of the amendments follows.

Under 5 CFR 2634.304, and 5 U.S.C. app., section 102(a)(2) of the Ethics in Government Act, a person who files an SF 278 is required to report certain gifts that he, his spouse, or his dependent child receives. Section 2634.304, as authorized by the Ethics Act, permits a filer not to disclose certain gifts if the filer receives a waiver from OGE. These final rule amendments to OGE's financial disclosure regulation permit the OGE Director to grant a waiver of reporting if he determines that the basis of the relationship between the grantor and the grantee and the motivation behind the gift are "personal," rather than "entirely personal," provided that no countervailing public purpose requires public reporting. In addition, the final amendments will provide a few technical clarifications. First, the amendments clarify at § 2634.304(f)(2) that the public can access the cover letter of a waiver request for which the Director of OGE has granted full or partial approval. Second, new § 2634.304(f)(3)(ii)(D) will require the filer explicitly to include both a description of the gift and its value in the waiver request. Finally, under § 2634.304(f)(3)(iii) as revised, a filer must provide the required information with respect to each donor of the gift.

The Office of Government Ethics has determined on its own to make a few minor adjustments which will further clarify the rule. First, we are now amending the passage in the introductory text of § 2634.304(f)(1), which states that a gift for which a waiver is granted "need not be aggregated under this section by public filers," to state that "the value of a gift as defined in § 2634.105(h) need not be aggregated for reporting threshold purposes under this section by public filers, and therefore the gift need not be reported on an SF 278" if a waiver is granted. The revised language will help clarify the relationship between aggregation and reporting by stating that the waiver of the requirement for SF 278 filers to aggregate a gift has the effect of waiving the requirement to report the gift, since gifts are only reportable if they aggregate more than the dollar value threshold from any single source. The new wording also reemphasizes that the waiver procedure applies to filers of SF 278s rather than filers of the OGE Form 450. Because the OGE Form 450 is nonpublic, no purpose would be served by a procedure for waiving public disclosure of information which they contain. In the final minor technical modification, the language as proposed in paragraph ii of the new example to paragraph (f)(1) of § 2634.304 will be changed from stating that "the Director of OGE will consider a request for a waiver of reporting for each of these gifts" to "the Director of OGE may grant a request for a waiver of the requirement to aggregate and report on an SF 278 each of these gifts." This new language will clarify that the waiver is for the requirement to aggregate and report on an SF 278 and that the Director, depending on the facts, may grant a waiver request for each particular gift.

Matters of Regulatory Procedure

Executive Order 12866

In promulgating these final rule amendments, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866,

Regulatory Planning and Review. These amendments have not been reviewed by the Office of Management and Budget under that Executive order, since they are not deemed "significant" thereunder.

Executive Order 12988

As Deputy Director of the Office of Government Ethics, I have reviewed this final amendatory regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Regulatory Flexibility Act

As Deputy Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch departments and agencies and certain of their employees who file SF 278 reports.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply, because this rulemaking does not contain information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2634

Certificates of divestiture, Conflict of interests, Government employees, Penalties, Reporting and recordkeeping requirements, Trusts and trustees.

Approved: September 9, 1999.

F. Gary Davis,

Deputy Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending 5 CFR part 2634 as follows:

PART 2634—EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF DIVESTITURE

1. The authority citation for part 2634 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; Pub. L. 101–410, 104 Stat. 890, 28 U.S.C. 2461 note (Federal Civil Penalties Inflation Adjustment Act of 1990), as amended by Sec. 31001, Pub. L. 104–134, 110 Stat. 1321 (Debt Collection Improvement Act of 1996); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. Section 2634.304 is amended by:

a. Revising the introductory text of paragraph (f)(1);

b. Revising paragraph (f)(1)(i);

c. Adding an Example after paragraph (f)(1)(ii);

d. Revising paragraph (f)(2); and

e. Revising paragraph (f)(3).

The revisions and addition read as follows:

§ 2634.304 Gifts and reimbursements.

* * * * *

(f) * * * (1) *In general.* In unusual cases, the value of a gift as defined in § 2634.105(h) need not be aggregated for reporting threshold purposes under this section by public filers, and therefore the gift need not be reported on an SF 278, if the Director of OGE receives a written request for and issues a waiver, after determining that:

(i) Both the basis of the relationship between the grantor and the grantee and the motivation behind the gift are personal; and

(ii) * * *

Example to paragraph (f)(1). i. The Secretary of Education and her spouse receive the following two wedding gifts:

A. Gift 1—A crystal decanter valued at $285 from the Secretary's former college roommate and lifelong friend, who is a real estate broker in Wyoming.

B. Gift 2—A gift of a print valued at $300 from a business partner of the spouse, who owns a catering company.

ii. Under these circumstances, the Director of OGE may grant a request for a waiver of the requirement to aggregate and report on an SF 278 each of these gifts.

(2) *Public disclosure of waiver request.* If approved in whole or in part, the cover letter requesting the waiver shall be subject to the public disclosure requirements in § 2634.603 of this part.

(3) *Procedure.* (i) A public filer seeking a waiver under this paragraph (f) shall submit a request to the Office of Government Ethics, through his agency. The request shall be made by a cover letter which identifies the filer and his position and which states that a waiver is requested under this section.

(ii) On an enclosure to the cover letter, the filer shall set forth:

(A) The identity and occupation of the donor;

(B) A statement that the relationship between the donor and the filer is personal in nature;

(C) A statement that neither the donor nor any person or organization who employs the donor or whom the donor represents, conducts or seeks business with, engages in activities regulated by, or is directly affected by action taken by, the agency employing the filer. If the preceding statement cannot be made without qualification, the filer shall indicate those qualifications, along with a statement demonstrating that he plays no role in any official action which might directly affect the donor or any organization for which the donor works or serves as a representative; and

(D) A brief description of the gift and the value of the gift.

(iii) With respect to the information required in paragraph (f)(3)(ii) of this section, if a gift has more than one donor, the filer shall provide the necessary information for each donor.

[FR Doc. 99–23930 Filed 9–13–99; 8:45 am]

BILLING CODE 6345–01–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 97–006F]

RIN 0583–AC33

Addition of Mexico to the List of Countries Eligible to Export Poultry Products into the United States

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is adding Mexico to the list of countries eligible to export poultry products to the United States. Reviews of Mexico's laws, regulations, and other materials show that the requirements of its poultry processing system are equivalent to relevant provisions in the Poultry Products Inspection Act (PPIA) and its implementing regulations.

Only products processed from poultry slaughtered in federally inspected establishments in the United States or in establishments in other countries eligible to export poultry from certified slaughter establishments to the United States may be imported into the United States after processing in certified Mexican establishments. FSIS inspectors will reinspect poultry products exported from Mexico to the United States at U.S. ports of entry. This action enables certified poultry processing establishments in Mexico to export processed poultry products to the United States.

EFFECTIVE DATE: October 14, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Manis, Director, International Policy Development Division, Office of Policy, Program Development and Evaluation; (202) 720–6400.

SUPPLEMENTARY INFORMATION:

Background

On November 28, 1997, FSIS published a proposal in the **Federal Register** (62 FR 63284) to add Mexico to the list of countries eligible to export poultry products to the United States. In the proposal, FSIS reported that Mexico had met the certification requirements imposed in the U.S.' poultry products inspection regulations, that its poultry processing inspection system is equivalent to that of the United States, and that its official residue control laboratory is fully capable of testing poultry products. Therefore, FSIS proposed to permit Mexico to export processed poultry products to the United States, provided the poultry processed in Mexican establishments approved for export to the United States is slaughtered in the United States under USDA inspection or in establishments certified by countries that are eligible to export slaughtered poultry and poultry products to the United States.

Comments

FSIS received six comments on the proposed rule. Three were from American poultry products companies, two from Mexican poultry products companies, and one from a trade association. Five commenters fully supported finalizing the rule as proposed; one commenter supported the proposed rule provided FSIS ensures that the Mexican poultry processing system is equivalent to the U.S. poultry processing system before any Mexican establishments are certified to export processed poultry products to the United States.

All commenters support free and open trade between Mexico and the United States. Many noted that the proposal would help both countries compete in the global economy. According to three commenters, allowing Mexico to export processed poultry products to the United States would support the North American Free Trade Agreement. A fourth commenter noted that allowing such imports is consistent with U.S. obligations under the Agreement on the Application of Sanitary and Phytosanitary Measures.

Three commenters mentioned that both the Mexican and U.S. poultry industries will benefit if the proposed rule is finalized. One commenter, a Mexican corporation, said that besides the increased sales to be reaped by U.S. poultry producers, U.S. producers of other products will benefit as well, including producers of packaging materials, brokers, and distributors. The commenter went on to say that there is little or no possibility of Mexican poultry-based processed foods displacing sales by U.S. processed food suppliers, at least by the corporation's poultry-based products, because those products consist primarily of distinctive Mexican foods that will not compete directly with the products marketed by U.S. suppliers.

The second commenter of these three commenters pointed out that not only will the proposed rule benefit the economy of Mexico, in that more jobs will be created for Mexican citizens, but that the U.S. economy will also benefit because of the increase in poultry exports. This commenter also pointed out that consumers will benefit from the proposed rule because they will have additional choices as to the processed poultry products they buy and possibly lower prices for those products. Another commenter echoed this idea by stating that the proposal would keep jobs in the United States, since Mexican establishments will only be able to process poultry that has been slaughtered in establishments certified by countries that are eligible to export to the U.S.

One commenter supported the proposal, provided certain conditions are met. First, FSIS must ensure that the Mexican system continues to comply with the requirements of 9 CFR 381.196, specifically, that the foreign system is equivalent to the U.S. system. The commenter indicated that its support is conditioned upon FSIS review and determination that the Mexican establishments certified to export processed poultry products to the United States meet equivalent requirements for Sanitation Standard Operating procedures (SSOPs) and the Hazard Analysis and Critical Control Points System (HACCP). Second, the commenter continued, FSIS should issue a schedule of the on-site reviews of the Mexican establishments, in operation, at the time any final rule is published. Finally, the commenter stated that Mexico must develop a program to ensure that the limitations on the approval to export poultry products to the United States are followed, and that FSIS must find the program satisfactory, before a final rule is issued.

To ensure that all foreign establishments certified to export to the U.S. comply with all relevant FSIS laws and regulations, including SSOPs and HACCP, FSIS conducts periodic on-site audits of each eligible foreign country's inspection system to verify that its regulatory authority is implementing the system as described in the country's application to export poultry to the U.S. No Mexican establishment may begin exporting processed poultry products to the United States until Mexico has certified that (1) the establishment is eligible to export processed poultry products to the United States, (2) establishments randomly selected for review during the on-site audit by FSIS operate in a way that shows FSIS that the country's inspection system is working as described, *and* (3) the country has been added to the poultry products inspection regulations as a country eligible to export poultry products to the United States.

Since publication of the proposed rule, FSIS has conducted an on-site audit of Mexico's inspection system. As part of that audit, FSIS has verified that Mexico will enforce the Pathogen Reduction/HACCP final rule in establishments that will be certified to export to the U.S. by the required date (January 1999 for establishments with less than 500 employees), including the SSOPs, and *Salmonella* testing requirements. At the same time, FSIS also reviewed the program Mexico has developed to ensure that only poultry from eligible countries and establishments is used in poultry products processed in Mexico destined for the United States. FSIS is satisfied that the program does so and that it has been satisfactorily implemented.

After reviewing all of the documents submitted by Mexico and evaluating the findings of the on-site audits and subsequent written assurances of government officials, FSIS has determined that the government of Mexico will enforce the Pathogen Reduction/HACCP rule in establishments it has certified as eligible to prepare processed poultry products for export to the United States, and that reliance can be placed upon the certificates from the authorities of Mexico that are required under the PPIA.

Accordingly, FSIS is amending § 381.196 of the poultry products inspection regulations to add Mexico as a country eligible to export processed poultry products to the United States. As a country eligible to export such products to the United States, the government of Mexico will certify to FSIS which establishments are operating in accordance with U.S. requirements. FSIS retains the right to verify that establishments certified by the Mexican government are meeting U.S. requirements.

Although a foreign country may be listed as eligible to export processed poultry products, those processed products must also comply with other U.S. requirements, including

restrictions under Title 9, Part 94 of the Animal and Plant Health Inspection Service's regulations (9 CFR Part 94) relating to the importation of processed poultry products from foreign countries into the United States.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule: (1) Preempts all state and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Executive Order 12866

This final rule has been determined to be significant and, therefore, has been reviewed by the Office of Management and Budget under Executive Order 12866. This Order requires FSIS to identify, and if possible, quantify and monetize potential incremental benefits and costs associated with this rule. This section provides such an analysis.

In 1995, Mexico requested a determination of eligibility to export poultry and poultry products to the United States. From October 1995 to June 1996, FSIS conducted a study to evaluate the equivalence of the Mexican poultry inspection system with that of the United States. After completing that study, FSIS concluded that the Mexican poultry processing system is equivalent to that of the United States and therefore began developing this rule.

This rule will allow U.S. poultry establishments to export slaughtered birds to Mexico, have the birds processed in Mexico, import the processed poultry products back into the U.S., and then sell those products to U.S. consumers.

To determine Mexico's potential exports of poultry products, FSIS requested the Office of Agricultural Affairs of the U.S. Embassy in Mexico to collect information from Mexican exporters. FSIS has learned that, at this time, there are only two plants that plan to export processed poultry products to the U.S. These establishments intend to export cut-up chicken, cooked chicken, and chicken products. The total quantity of these exports is estimated to be 6 million pounds or 2,727 metric tons (MT). The most likely initial volume of exports to the U.S., therefore, will be no more than 3,000 MT.

Because only two Mexican establishments have expressed an interest in exporting processed poultry products to the U.S., and because their anticipated export volume is less than 3,000 MT, FSIS does not believe that the volume of processed poultry products exported to the U.S. will exceed 5,000 MT in the near future. Mexico has not had yearly world exports of poultry meat and poultry products in excess of this number in over 30 years. FSIS does believe, however, that the potential growth of Mexican exports of processed poultry products to the U.S. is significant. Unfortunately, FSIS has no way of assessing the future interest of Mexican establishments in processing U.S. poultry for export back to the U.S.

Between 1993 and 1997, U.S. exports of cut-up broilers to Mexico increased almost 40 percent, from 77,909 MT in 1993 to 108,364 MT in 1997. The value of U.S. exports of cut-up broilers increased 32.6 percent during this period. At the same time, U.S. exports of whole broilers fell almost 62 percent, from 7,765 MT in 1993 to 2,995 MT in 1997, while the corresponding value of whole broilers fell by 60.5 percent. However, the estimated price of cut-up broilers fell by nearly 5 percent, while the estimated price of whole broilers rose 3.5 percent (*See* Table 1).

TABLE 1.—TRENDS IN U.S. EXPORTS OF BROILERS TO MEXICO, 1993–1997

Calendar year	Cut-up			Whole		
	Quantity metric tons	Value $000	Average price $/mt	Quantity metric tons	Value $000	Average price $/mt
1993	77,909	63,384	810	7,765	8,911	1,150
1994	93,963	74,404	790	6,252	7,672	1,230
1995	87,208	70,999	810	5,519	4,618	890
1996	96,622	87,483	900	2,353	2,764	1,170
1997	108,364	84,060	770	2,995	3,521	1,190
Average	92,813	76,066	816	4,977	5,497	1,126
Change (97 minus 93)	30,455	20,676	−40	4,770	−5,390	40
Percent Change	39.09	32.62	−4.93	−61.43	−60.49	3.48

Source: U.S. Department of Agriculture, Foreign Agricultural Service
Note: 1 Metric Ton = 2,204 pounds

Table 2 shows U.S. exports of turkey to Mexico, classified into cut-up and whole products, over the last five calendar years. Similar to exports of cut-up broilers, the quantity and value of cut-up turkey exported between 1993 and 1997 rose 28.6 percent and 27.4 percent, respectively. Also, the quantity of whole turkeys exported to Mexico increased 3.6 percent. However, the value of whole turkeys exported to Mexico during that period decreased 4.9 percent. The price for both cut-up and whole turkeys fell: the price for cut-up turkey fell by 1.4 percent, while the price for whole turkeys fell more than 8 percent.

TABLE 2.—TRENDS IN U.S. EXPORTS OF TURKEY TO MEXICO, 1993–1997

Calendar year	Cut-up			Whole		
	Quanity metric tons	Value $000	Average price $/MT	Quantity metric tons	Value $000	Average price $/MT
1993	63,205	89,926	1,420	1,803	3,059	1,690
1994	62,829	97,292	1,550	3,903	6,445	1,650
1995	54,543	69,618	1,270	689	1,165	1,690
1996	67,880	93,782	1,380	2,583	4,223	1,630
1997	81,271	114,579	1,400	1,868	2,910	1,550

TABLE 2.—TRENDS IN U.S. EXPORTS OF TURKEY TO MEXICO, 1993–1997—Continued

Calendar year	Cut-up			Whole		
	Quanity metric tons	Value $000	Average price $/MT	Quantity metric tons	Value $000	Average price $/MT
Average	65,945	93,039	1,404	2,169	3,560	1,642
Change (97 minus 93)	18,066	24,653	−20	65	−149	−140
Percent Change	28.58	27.41	−1.41	3.61	−4.87	−8.28

Source: U.S. Department of Agriculture, Foreign Agricultural Service
Note: 1 Metric Ton = 2,204 pounds

Adoption of this rule will stimulate increased exports of whole and partial birds from the U.S. to Mexico for processing for various reasons. Poultry processing is labor intensive. Therefore, the U.S. poultry industry will most likely attempt to reduce its processing costs by shifting that activity to Mexico, where labor is relatively less costly. U.S. companies will be able to import the products that have been processed in Mexico and still save money over the cost of doing the processing in the U.S. This will result in employment increases in the poultry processing industry in Mexico and earnings increases in U.S. poultry slaughter establishments.

Poultry exports to Mexico from the U.S. will also increase because Mexican establishments will, for the first time, be able to export processed poultry products to the U.S. At the present time, poultry processed in Mexico may not be exported to the U.S., even if the birds were produced and slaughtered in the U.S. The fact that Mexican establishments will be able to process only birds that have been slaughtered in the U.S. (or in countries eligible to export poultry to the U.S.) will also limit the market from which Mexican establishments can obtain birds to process. (Realistically, the great majority, if not all of the carcasses, will come from the U.S.)

The expected lower prices of poultry products processed in Mexico will increase the quantity demanded in the U.S., but the change should be insignificant. This is because the U.S. demand for poultry and poultry products is relatively inelastic, i.e., insensitive to price. Price elasticity of demand is the percent change in demand associated with a 1 percent change in price. A review of 11 economic studies of the demand for poultry shows that the elasticity ranges from (−0.1) to (−0.94). In other words, a decrease in the price of poultry by 1 percent would be associated with an increase in demand of 0.1 to 0.94 percent (see Table 3). Table 3 also shows that the estimated elasticities vary with the time periods for which the data were analyzed and the types of models employed by the analysts.

Since the estimated elasticities are pure numbers, FSIS calculated an average elasticity. It is (−0.46). Therefore, an average decrease in price of poultry by 1 percent would be associated with an increase in demand of poultry by approximately only −0.5 percent. As a result, any decrease in price due to imports from Mexico is unlikely to increase demand for poultry significantly in the U.S. Therefore, U.S. processors of poultry products are unlikely to lose their market shares as a result of imports from Mexico, and employment decreases will be small.

TABLE 3.—PRICE ELASTICITY OF DEMAND FOR POULTRY

[A Review of Economic Studies]

Study No.	Author(s)	Price elasticity	Time period	Model
1	Alston & Chalfont (1993)	−0.94	1967–1988 Quarterly	Rotterdam.
2	Brester & Wohlgenant (1991)	−0.296	1962–1989 Annual	Interrelated demand.
3	Capps et al. (1994)	−0.893	January 1986 to June 1987 Weekly	Retail Demand Functions.
4	Eales, J. (1994)	−0.63	1966–1992 Quarterly	Inverse Lewbel Demands.
5	Eales & Unnevehr (1993)	−0.233	1966–1988 Quarterly	Simultaneity & Structural Change.
6	Gao & Shankwiler (1993)	−0.47	1956–1987 Annual	Taste Change.
7	Hahn, W. (1994)	−0.299	1981–1992 Monthly	Random Coefficient.
8	Hahn, W. (1988)	−0.14	1960–1987 Quarterly	Income Differences.
9	Moschini & Meilke (1989)	−0.10	1967–1987 Quarterly	Structural Change.
10	Thurman (1987)	−0.64	1955–1981 Annual	Demand Stability.
11	Wohlgenant (1989)	−0.42	1956–1983 Annual	Complete System.

Regulatory Flexibility Analysis

The Administrator has determined that this rule will not have a significant economic impact on a substantial number of small entities. Data from the 1994 Survey of Industries suggest that the poultry slaughtering and processing industry in the U.S. is highly competitive, with 332 firms owning 567 establishments. The industry consists of relatively large size (employment of 500 or more) establishments. For example, in 1994, almost 51 percent of all establishments were classified as large according to the definition of employment used by the U.S. Small Business Administration. In 1994, this industry employed 207,875 workers, with a payroll of $3.5 billion. The estimated revenue of this industry amounted to $27.1 billion in 1994.

The effects of the importation of processed poultry products from Mexico on national, regional and local poultry producers are dependent on many factors, such as where the products would enter U.S. marketing and distribution channels, and where they would ultimately be consumed. Transporting whole birds is relatively costly. Therefore, to save transportation costs, it is likely that export of whole

birds to Mexico and import of cut-up products to the U.S. would be by truck and concentrated in border areas of the U.S., including the States of Arizona, California, New Mexico and Texas.

If a local retail chain or wholesaler purchases processed poultry products from Mexico, they are likely to be consumed regionally. If a national wholesaler purchases them, they could be consumed anywhere in the U.S. The effect on small producers would be more pronounced if the imports affect only Arizona, California, New Mexico, and Texas.

Because exports of whole birds and imports of cut-up products are likely to be confined to states bordering Mexico due to transport costs from other states in the U.S. to Mexico, FSIS analyzed data for four border states: Arizona, California, New Mexico, and Texas. The U.S. Bureau of the Census collected these data for the Survey of Industries, 1994. These data do not separate statistics of slaughtering establishments from those of processing establishments. There are no poultry slaughtering/processing establishments in Arizona and only one in New Mexico. There are 37 slaughtering/processing establishments in California and 22 in Texas.

The "very small" size establishments are defined, as in FSIS's Pathogen Reduction/HACCP final rule, as having less than 10 employees. The "small" and "large" size establishments are defined, according to the Small Business Administration's definition of employment, as having 500 or less employees, and more than 500 employees, respectively.

Some of the establishments in California (11 out of 37, or 34 percent) are very small. In Texas, 6 out of 22 (27 percent) establishments are very small. No data were available for New Mexico. In 1997, California's total broiler production was 107,532 MT, while Texas produced 206,443 MT. California also produced 9,528 MT of turkey.

If processed poultry products enter national distribution channels, and, therefore, economic effects are shared by all U.S. producers, there would not be a significant economic impact on small entities no matter the volume (low (100 MT), medium (1,000 MT) or high (5,000 MT)) of imports assumed.[1] Even under a high-volume scenario, where Mexico exports approximately 5,000 MT (2,000 MT more than the most likely amount anticipated) of poultry products to the U.S., to be consumed locally in Arizona, California, New Mexico and Texas, there likely will not be a significant economic impact on small entities in the U.S. Combined, California and Texas produced 323,503 MT of poultry products in 1997. If Mexico exports 5,000 MT of poultry, it will be only .02 percent of California's and Texas' combined annual poultry production. Adding New Mexico's poultry production numbers to the equation (data unavailable) will make this percentage fall even lower.

[1] These volumes (low-100 MT per year, medium-1,000 MT per year and high-5,000 MT per year) were chosen because they reflect the range of Mexican worldwide exports of broilers since 1990. Mexico had yearly world exports of 5,000 MT of poulty and products in 1990, 1991 and 1992. However, in 1993, 1994 and 1995, Mexico exported no poultry and other poultry products, and, since 1996, has exported less than 1,000 MT of poultry and other poultry products annually. *U.S. Department of Agriculture, Production, Supply, and Distribution database.*

Civil Rights Impact Analysis

Pursuant to Departmental Regulation 4300–4, "Civil Rights Impact Analysis," dated September 22, 1993, FSIS has considered the potential civil rights impacts of this final rule on minorities, women, and persons with disabilities.

This final rule will add Mexico to the list of countries eligible to export poultry products to the U.S. Only products processed from poultry slaughtered in federally inspected establishments in the U.S. or in establishments in other countries eligible to export poultry from certified slaughter establishments to the U.S. may be imported into the U.S. after processing in certified Mexican establishments. This action will enable certified poultry processing establishments in Mexico to export processed poultry products to the U.S.

With the possibility of U.S. poultry establishments exporting slaughtered poultry to Mexico for further processing, there is the potential for an adverse impact on minorities, women, and persons with disabilities. One such impact might be the potential loss of employment as a result of the processing work being done in Mexico, rather than the U.S. However, further processing in Mexico may improve the competitiveness of poultry relative to other foods and expand production and consequently employment elsewhere in the poultry industry. While there may be an adverse impact on hiring or loss of jobs, FSIS has no data on poultry processing establishments and their employment rates, nor does FSIS have data on the race, sex, national origin, and disabilities of employees hired by such establishments.

As the rule points out, however, if poultry products further processed in Mexico enter national distribution chains in the U.S., and, therefore, all U.S. producers share economic effects, there will not be a significant negative economic impact on small entities, no matter the volume of imports assumed. If U.S. producers do not suffer a negative economic impact, there should be no adverse impact on hiring or loss of jobs by minorities, women, and persons with disabilities.

Between 1973 and 1991, the poultry dressing and processing industry showed a 3.9 percent increase in productivity gains. This was the largest such gain for a manufacturing industry (with employment in 1992 of more than 100,000) during that time period. Poultry employment had a 4 percent annual growth rate from 1980 to 1992, due to new product innovations and markets, for a total 96 percent increase over the period. While productivity gains slowed after 1992, the poultry dressing and processing industry still showed a 0.1 percent increase in productivity in 1994. (Compare this to meat packing plants, where productivity in 1994 dropped 3.7 percent.)

Poultry production is expected to remain strong in the year 2000. Broiler production is expected to increase between 5 and 6 percent in the year 2000. Stronger production increases might be realized if exports strengthen between now and then. Turkey production is expected to increase about 2 percent in the year 2000. As with broilers, strengthening of the export market should provide a boost for turkey production.

Continued productivity gains in the U.S. poultry dressing and processing industry should result in continued and additional poultry employment through and beyond the year 2000. As a result, FSIS anticipates that there will be no adverse impact on hiring or loss of jobs by minorities, women, and persons with disabilities.

Paperwork Requirements

FSIS has submitted a request for emergency approval for the reinstatement of information collection package 0583–0094, which includes burden associated with any recordkeeping requirements imposed by this rulemaking. On November 19, 1998, FSIS announced, in the **Federal Register**, its request for the Office of Management and Budget (OMB) to extend the approval of this package. The following is the request as published in that notice.

FSIS has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.*). These statutes mandate that FSIS protect the public by ensuring that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged. FSIS is requesting an extension and revision to the information collection package addressing meat and poultry paperwork and recordkeeping requirements regarding exportation, transportation, and importation of meat and poultry products. FSIS requires that meat and poultry establishments exporting product to foreign countries complete an export certificate. Establishments must supply the type, amount, and destination of product being exported. The information required by this form does not duplicate any information required by other Federal agencies. The form is necessary to certify to the importing countries that FSIS inspectors have inspected the product and have found it sound and wholesome. Additionally, FSIS uses the information from the form in its annual Report to Congress as required by sections 301(c)(4) and 20(e) of the FMIA and sections 27 and 5(c)(4) of the PPIA.

Meat and poultry products not marked with the mark of inspection and shipped from one official establishment to another for further processing must be transported under FSIS seal to prevent such unmarked product from entering into commerce. To track products shipped under seal, FSIS requires shipping establishments to complete a form that identifies the type, amount, and weight of the product.

A foreign country exporting meat or poultry products to the U.S. must establish eligibility for importation of product into the U.S. and annually certify that its inspection systems are equivalent to the U.S. inspection system. To maintain eligibility, a representative of the foreign inspection system must prepare a written report for each establishment listed in the certification. Additionally, a health certificate must accompany meat and poultry products intended for import into the U.S. It must be signed by an official of the foreign government and state that certified foreign establishments have produced the products. Establishments or brokers wishing to import product into the United States must complete a form that specifies the type, amount, originating country, and destination of the meat and poultry product. The amount of meat and poultry product imported into the United States is included in FSIS's annual Report to Congress. Additionally, FSIS has established procedures allowing establishments importing product to stamp such product with the inspection legend prior to FSIS inspection, if they receive FSIS prior approval.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average .0773501 hours per response.

Respondents: Meat and poultry establishments.

Estimated Number of Respondents: 7,374

Estimated Number of Responses per Respondent: 295.88866

Estimated Total Annual Burden on Respondents: 168,769 hours

Copies of this information collection assessment and comments can be obtained from Lee Puricelli, Paperwork Specialist, Food Safety and Inspection Service, USDA, 300 12th Street SW, Room 109, Washington, DC 20250–3700, (202) 720–0346. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS's functions, including whether the information will have practical utility; (b) the accuracy of FSIS's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology.

List of Subjects 9 CFR Part 381

Imports, Poultry and Poultry products.

For the reasons set out in the preamble, 9 CFR part 381 is amended as follows:

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 450; 21 U.S.C. 451–470; 7 CFR 2.18, 2.53.

2. Section 381.196 is amended by adding "Mexico[2]" in alphabetical order to the list of countries in paragraph (b) to read as follows:

§ 381.196 Eligibility of foreign countries for importation of poultry products into the United States.

* * * * *

(b) * * *

[2] May export to the United States only processed poultry products slaughtered under Federal inspection in the United States or in a country eligible to export slaughtered poultry products to the United States.

Done at Washington, DC, on: September 2, 1999.

Thomas J. Billy,

Administrator.

Appendix 1—References

Note: This appendix will not appear in the Code of Federal Regulations.

Alston, J.M. and J.A. Chalfant (1993). "The Silence of the Lambdas: A Test of the Almost Ideal and Rotterdam Models." *American Journal of Agricultural Economics*, Vol. 75, No. 2, (May 1993), pp. 304–313.

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[FR Doc. 99–23794 Filed 9–13–99; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWP–11]

Airport Name Change and Revision of Legal Description of Class D, Class E2 and Class E4 Airspace Areas; Barbers Point NAS, HI

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule, correction and delay of effective date.

SUMMARY: This action corrects a final rule that was published in the **Federal Register** on Thursday, August 12, 1999 (64 FR 43907), Airspace Docket No. 99–AWP–11, changing the name of Barbers Point NAS, HI, and it's associated airspace areas to Kalaeloa Airport and delaying the effective date of the rule.

EFFECTIVE DATE: The final rule published on August 12, 1999 (64 FR 43907) as corrected by this document is effective 0901 UTC, November 14, 1999.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Airspace Specialist, Airspace Branch, AWP–520.10, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6613.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 99–20524, Airspace Docket No. 99–AWP–11, published on August 12, 1999, changed the name of Barbers Point NAS and it's associated Class D, Class E2, and Class E4 airspace areas to Kalaeloa Airport, Kapeloi, HI. The airport geographical reference points and the spelling of the city of reference listed in that document were incorrect. This action corrects those errors. The effective date of the rule was originally published as September 13, 1999, and is delayed until November 4, 1999.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description for Kalaeloa Airport, Kapolei, HI, it's associated airspace areas, and the spelling of the city of reference are corrected as follows:

PART 71—[CORRECTED]

§ 71.1 [Corrected]

On page 43908, columns 1 and 2, correct the geographical coordinates of the Kalaeloa Airport, it's associated airspace areas, and the spelling of the city of reference, incorporated by reference in § 71.1, as follows:

* * * * *

AWP HI D Kalaeloa Airport, Kapolei, HI [Corrected]

Kalaeloa Airport, HI
(lat. 21°18′26″N, long. 158°04′13″W)

That airspace extending upward from the surface up to and including 2,500 feet MSL within a 4.3 mile radius of Kalaeloa Airport, excluding the airspace within the Honolulu, HI, Class B airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory, Pacific Chart Supplement.

AWP HI E2 Kalaeloa Airport, Kapolei, HI [Corrected]

Kalaeloa Airport, HI
(lat. 21°18′26″N, long. 158°04′13″W)

That airspace extending upward from the surface within a 4.3 mile radius of Kalaeloa Airport, excluding the airspace within the Honolulu, HI, Class B airspace area. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AWP HI E4 Kalaeloa Airport, Kapolei, HI [Corrected]

Kalaeloa Airport, HI
(lat. 21°18′21″N, long. 158°04′13″W)
Point of Origin
(lat. 21°18′21″N, long. 158°03′54″W)

That airspace extending upward from the surface within 3 miles each side of the 242° bearing from the Point of Origin, extending from the 4.3 mile radius of Kalaeloa Airport to 8.5 miles west of the Point of Origin and within 1.8 miles each side of the 289° bearing from the Point of Origin, extending from the 4.3 mile radius of the airport to 6.6 miles west of the Point of Origin, excluding the airspace within the Honolulu, HI, Class B airspace area.

Issued in Los Angeles, California, on August 27, 1999.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc 99–23722 Filed 9–13–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–44]

Amendment to Class E Airspace; Winfield/Arkansas City, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Strother Field, Winfield/Arkansas City, KS. A review of the Class E airspace area for Strother Field, KS indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace has been enlarged to conform to the criteria of FAA Order 7400.2D. The review also indicates the extension to the south can be eliminated.

The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), eliminate the extension, and comply with the criteria of FA Order 7400.2D.

DATES: Effective date: 0901 UTC, December 30, 1999.

Comments for inclusion in the Rules Docket must be received on or before October 25, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 99–ACE–44, 601 East 12th Street, Kansas City, MO 64106.

The official may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Winfield/Arkansas City, KS. A review of the Class E airspace for Strother Field, KS, indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1,200 feet AGL is based on a standard climb gradient for 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Strother Field, KS, will provide additional controlled airspace for aircraft operating under IFR, eliminate the extension, and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenters' ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ACE–44." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Winfield/Arkansas City, KS [Revised]

Winfield/Arkansas City, Strother Field, KS
(Lat. 37°10′05″N., long. 97°02′14″W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Strother Field.

* * * * *

Issued in Kansas City, MO, on September 3, 1999.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 99–23938 Filed 9–13–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–38]

Modification of Class E Airspace; Bryan, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This notice modifies Class E airspace at Bryan, OH. A Global Positioning System (GPS) Standard

Instrument Approach Procedure (SIAP) to Runway (Rwy) 07, and a GPS SIAP to Rwy 25, have been developed for Williams County Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action increases the radius of the existing controlled airspace for this airport.

EFFECTIVE DATE: 0901 UTC, December 30, 1999.

FOR FURTHER INFORMATION CONTACT: Annette Davis, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, July 23, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Bryan, OH (64 FR 39950). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Bryan, OH, to accommodate aircraft executing the proposed GPS Rwy 07 SIAP and GPS Rwy 25 SIAP at Williams County Airport by modifying the existing controlled airspace. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Bryan, OH [Revised]

Bryan, Williams County Airport, OH
(Lat. 41°28′03″N., long. 84°30′24″W)
Bryan NDB
(Lat. 41°28′47″N., long. 84°27′58″W)
Community Hospitals of Williams County, Inc., OH, Point in Space Coordinates
(Lat. 41°27′47″N., long. 84°33′28″W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Williams County Airport and within 1.7 miles each side of the 068° bearing from the Bryan NDB, extending from the NDB to 7.0 miles east of the NDB, and within a 6.0-mile radius of the Point in Space serving Community Hospitals of Williams County, Inc., excluding the airspace within the Defiance, OH, Class E airspace area.

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Issued in Des Plaines, Illinois on August 30, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–23945 Filed 9–13–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

14 CFR Part 71

[Airspace Docket No. 99–AGL–34]

Modification of Class E Airspace; Escanaba, MI.; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects the legal description of a final rule that was published in the Federal Register on Friday, August 27, 1999 (64 FR 46817), Airspace Docket No. 99–AGL–34. The final rule modified Class E Airspace at Escanaba, MI.

EFFECTIVE DATE: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Annette Davis, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone: (847) 294–7477.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 99–22295, Airspace Docket No. 99–AGL–34, published on August 27, 1999 (64 FR 46817), modified Class E Airspace at Escanaba, MI. An incomplete legal description for the Class E airspace for Escanaba, MI, was published. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the legal description for the Class E airspace, Escanaba, MI, as published in the **Federal Register** August 27, 1999 (64 FR 46817), (FR Doc. 99–22295), is corrected as follows:

PART 71—[CORRECTED]

§71.1 [Corrected]

On page 46818, Column 1, replace the Class E airspace designation for Escanaba, MI, incorporated by reference in Sec. 71.1, with the following:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL MI E2 Escanaba, MI [Revised]

Escanaba, Delta County Airport, MI
(Lat. 45° 43′ 22″N., long. 87° 05′ 37″W.)
Escanaba VORTAC
(Lat. 45° 43′ 22″N., long. 87° 05′ 23″W.)

Within a 4.3-mile radius of the Escanaba, Delta County airport, and within 2.6 miles each side of the Escanaba VORTAC 007° radial, extending from the 4.3-mile radius to 7.4 miles north of the VORTAC, and within 2.6 miles each side of the Escanaba VORTAC 101° radial, extending from the 4.3-mile radius to 7.4 miles east of the VORTAC, and within 2.6 miles each side of the Escanaba VORTAC 266° radial, extending from the 4.3-mile radius to 7.0 miles west of the VORTAC, and within 3.2-miles each side of the Escanaba VORTAC 171° radial, extending from the 4.3 mile radius to 7.0 miles south of the VORTAC.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Escanaba, MI [Revised]

Escanaba, Delta County Airport, MI
(Lat. 45° 43′ 22″N., long. 87° 05′ 37″W.)
Escanaba VORTAC
(Lat. 45° 43′ 22″N., long. 87° 05′ 23″W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Escanaba, Delta County Airport, and within 2.6 miles each side of the Escanaba VORTAC 007° radial, extending from the 6.8-mile radius to 7.4 miles north of the VORTAC, and within 2.6 miles each side of the Escanaba VORTAC 101° radial, extending from the 6.8-mile radius to 7.8 miles east of the VORTAC, and within 2.6 miles north and 3.5 miles south of the Escanaba VORTAC 270° radial extending from the 6.8-mile radius to 11.7 miles west of the VORTAC, and within 3.2 miles each side of the Escanaba VORTAC 171° radial, extending from the 6.8-mile radius to 7.0 miles south of the VORTAC.

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Issued in Des Plaines, Illinois on September 1, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–23940 Filed 9–13–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29734; Amdt. No. 1949]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (404) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air

commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on September 3, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; AND § 97.35 COPTER SIAPs, identified as follows:

. . . EFFECTIVE UPON PUBLICATION

FDC date	State	City	Airport	FDC No.	SIAP
08/18/99	FL	DELAND	DELAND MUNI-SIDNEY H. TAYLOR FIELD.	9/6063	GPS RWY 12, ORIG...
08/18/99	FL	DELAND	DELAND MUNI-SIDNEY H. TAYLOR FIELD.	9/6064	GPS RWY 5, ORIG...
08/18/99	FL	DELAND	DELAND MUNI-SIDNEY H. TAYLOR FIELD.	9/6065	NDB OR GPS RWY 30, AMDT 1...
08/18/99	FL	DELAND	DELAND MUNI-SIDNEY H. TAYLOR FIELD.	9/6066	VOR OR GPS RWY 23, AMDT 2...
08/18/99	MO	KANSAS CITY	KANSAS CITY INTL	9/6035	ILS RWY 27, ORIG...
08/18/99	TN	BRISTOL/JOHNSON/KING-SPORT.	TRI-CITIES REGIONAL	9/6041	ILS RWY 23, AMDT 24B...
08/18/99	VA	HOT SPRINGS	INGALLS FIELD	9/6075	ILS RWY 24 AMDT 2C...
08/18/99	VA	HOT SPRINGS	INGALLS FIELD	9/6078	GPS RWY 6 ORIG...
08/18/99	VA	HOT SPRINGS	INGALLS FIELD	9/6080	GPS RWY 24 ORIG...
08/19/99	DE	WIILMINGTON	NEW CASTLE COUNTY	9/6107	NDB RWY 1, AMDT 18...
08/19/99	DE	WIILMINGTON	NEW CASTLE COUNTY	9/6108	GPS RWY 27, ORIG...
08/19/99	MD	HAGERSTOWN	HAGERSTOWN REGIONAL-RICHARD A. HENSON FLD.	9/6109	VOR OR GPS RWY 9, AMDT 6A...
08/19/99	MI	CLARE	CLARE MUNI	9/6128	VOR OR GPS–A AMDT 1...
08/19/99	NJ	TRENTON	TRENTON MERCER	9/6110	VOR OR GPS RWY 24, AMDT 4...
08/19/99	PR	SAN JUAN	LUIS MUNOZ MARIN INTL	9/6120	HI–ILS/DME RWY 8...
08/19/99	PR	SAN JUAN	LUIS MUNOZ MARIN INTL	9/6121	ILS RWY 8, AMDT 15B...
08/20/99	LA	ALEXANDRIA	ALEXANDRIA ESLER REGIONAL	9/6187	LOC BC RWY 8, AMDT 10A...
08/20/99	LA	ALEXANDIA	ALEXANDRIA ESLER REGIONAL	9/6188	ILS RWY 26, AMDT 13...
08/20/99	NJ	ATLANTIC CITY	ATLANTIC CITY INTL	9/6189	VOR OR GPS RWY 31 AMDT 15A...
08/20/99	NJ	TRENTON	TRENTON MERCER	9/6159	VOR/DME RNAV RWY 34 AMDT 5...
08/20/99	NJ	TRENTON	TRENTON MERCER	9/6160	NDB OR GPS RWY 6 AMDT 6...
08/20/99	NJ	TRENTON	TRENTON MERCER	9/6165	GPS RWY 34 ORIG...
08/20/99	NJ	TRENTON	TRENTON MERCER	9/6166	GPS RWY 16 ORIG...
08/20/99	NJ	WILDWOOD	CAPE MAY COUNTY	9/6190	GPS RWY 10 ORIG–A...
08/20/99	PR	SAN JUAN	LUIS MUNOZ MARIN INTL	9/6148	GPS RWY 8 ORIG–A...
08/20/99	PR	SAN JUAN	LUIS MUNOZ MARIN INTL	9/6150	GPS RWY 10 ORIG...
08/20/99	PR	SAN JUAN	LUIS MUNOZ MARIN INTL	9/6151	VOR OR GPS RWY 26 AMDT 18A...
08/24/99	FL	FORT PIERCE	ST. LUCIE COUNTY INTL	9/6301	ILS RWY 9 AMDT 1...
08/24/99	FL	FORT PIERCE	ST. LUCIE COUNTY INTL	9/6302	NDB OR GPS RWY 27 ORIG...
08/24/99	FL	FORT PIERCE	ST. LUCIE COUNTY INTL	9/6303	NDB–A ORIG...
08/24/99	FL	FORT PIERCE	ST. LUCIE COUNTY INTL	9/6304	VOR/DME OR GPS RWY 14 AMDT 7A...
08/24/99	FL	FORT PIERCE	ST. LUCIE COUNTY INTL	9/6305	NDB RWY 9 ORIG...
08/24/99	FL	FORT PIERCE	ST. LUCIE COUNTY INTL	9/6306	GPS RWY 9 ORIG...
08/24/99	MI	DETROIT	DETROIT METROPOLITAN WAYNE COUNTY.	9/6320	ILS RWY 6L AMDT 14A (CAT I, II, III)...
08/24/99	MI	IRON MOUNTAIN/DINGS-FORD.	FORD	9/6294	LOC/DME BC RWY 19 AMDT 12...

FDC date	State	City	Airport	FDC No.	SIAP
08/25/99	FL	FORT LAUDERDALE	FORT LAUDERDALE-HOLLYWOOD INTL.	9/6339	ILS RWY 27R AMDT 5A...
08/25/99	FL	ORLANDO	KISSIMMEE MUNI	9/6358	GPS RWY 6, ORIG...
08/25/99	FL	ORLANDO	KISSIMMEE MUNI	9/6359	GPS RWY 15, ORIG...
08/25/99	FL	ORLANDO	KISSIMMEE MUNI	9/6360	GPS RWY 33, ORIG...
08/25/99	FL	ORLANDO	KISSIMMEE MUNI	9/6361	VOR/DME OR GPS–A, ORIG...
08/25/99	MT	BAKER	BAKER MUNI	9/6337	GPS RWY 31 ORIG...
08/25/99	NY	MASSENA	MASSENA INTL-RICHARDS FIELD	9/6340	VOR/DME RNAV OR GPS RWY 23 AMDT 7...
08/25/99	NY	MASSENA	MASSENA INTL-RICHARDS FIELD	9/6341	VOR OR GPS RWY 27 AMDT 4...
08/25/99	NY	SARANCA LAKE	ADIRONDACK REGIONAL	9/6357	VOR/DME OR GPS RWY5 AMDT 2A...
08/27/99	CA	PALM SPRINGS	PALM SPRINGS INTL	9/6491	VOR OR GPS–B AMDT 2...
08/27/99	CA	SANTA MARIA	SANTA MARIA PUBLIC/CAPTAIN G. ALLAN HANCOCK FIELD.	9/6485	ILS RWY 12 AMDT 9...
08/27/99	CT	BRIDGEPORT	IGOR I. SIKORSKY MEMORIAL	9/6466	GPS RWY 29 AMDT 1...
08/27/99	CT	BRIDGEPORT	IGOR I. SIKORSKY MEMORIAL	9/6471	VOR RWY 29 AMDT 1...
08/27/99	CT	WINDSOR LOCKS	BRADLEY INTL	9/6474	VOR OR TACAN RWY 15 AMDT 2...
08/27/99	CT	WINDSOR LOCKS	BRADLEY INTL	9/6476	GPS RWY 15 AMDT 3...
08/27/99	MA	BEDFORD	LAURENCE G. HANSCOM FIELD	9/6470	GPS RWY 23 ORIG...
08/27/99	MA	NANTUCKET	NANTUCKET MEMORIAL	9/6478	LOC BC RWY 6 AMDT 9...
08/27/99	MA	NANTUCKET	NANTUCKET MEMORIAL	9/6482	GPS RWY 33 ORIG–A...
08/27/99	MA	VINEYARD HAVEN	MARTHA'S VINEYARD	9/6481	VOR OR GPS RWY 6 ORIG–B...
08/27/99	MA	WORCESTER	WORCESTER REGIONAL	9/6612	VOR/DME RWY 33 ORIG–B...
08/27/99	MA	WORCESTER	WORCESTER REGIONAL	9/6613	GPS RWY 33 AMDT 1...
08/27/99	MD	SALISBURY	SALISBURY-OCEAN CITY WICOMICO REGIONAL.	9/6483	VOR OR GPS RWY 5 AMDT 8A...
08/27/99	MD	WESTMINSTER	CARROL COUNTY REGIONAL/JACK B. POAGE FIELD.	9/6432	VOR OR GPS–A, ORIG...
08/27/99	MO	POPLAR BLUFF	POPLAR BLUFF MUNI	9/6494	SDF RWY 36, AMDT 1A...
08/27/99	MO	POPLAR BLUFF	POPLAR BLUFF MUNI	9/6495	GPS RWY 36, ORIG...
08/27/99	MO	POPLAR BLUFF	POPLAR BLUFF MUNI	9/6496	GPS RWY 18, ORIG...
08/27/99	MO	POPLAR BLUFF	POPLAR BLUFF MUNI	9/6497	NDB RWY 36, AMDT 1A...
08/27/99	NY	JAMESTOWN	CHAUTAUQUA COUNTY/JAMESTOWN.	9/6437	VOR/DME RNAV OR GPS RWY 31 AMDT 2...
08/27/99	NY	JAMESTOWN	CHAUTAUQUA COUNTY/JAMESTOWN.	9/6440	VOR/DME OR GPS RWY 7 AMDT 3...
08/27/99	NY	OGDENSBURG	OGDENSBURG INTL	9/6442	NDB OR GPS RWY 27 ORIG...
08/27/99	NY	OGDENSBURG	OGDENSBURG INTL	9/6443	LOC RWY 27 AMDT 1A...
08/27/99	RI	PROVIDENCE	THEODORE FRANCIS GREEN STATE.	9/6484	VOR/DME RWY 16 AMDT 4...
08/27/99	VA	DANVILLE	DANVILLE REGIONAL	9/6473	GPS RWY 20 ORIG...
08/27/99	VA	LYNCHBURG	LYNCHBURG REGIONAL/PRESTON GLENN FIELD.	9/6456	GPS RWY 21 ORIG...
08/27/99	VA	LYNCHBURG	LYNCHBURG REGIONAL/PRESTON GLENN FIELD.	9/6460	VOR/DME RWY 21, AMDT 8...
08/27/99	VA	NEWPORT NEWS	NEWPORT NEWS/WILLIAMSBURG INTL.	FDC 9/6486	NDB RWY 25, AMDT 48...
08/27/99	VA	NORFOLK	NORFOLK INTL	9/6458	VOR/DME RWY 32, AMDT 4A...
08/27/99	VA	NORFOLK	NORFOLK INTL	9/6461	GPS RWY 32, AMDT 1A...
08/27/99	VA	NORFOLK	NORFOLK INTL	9/6463	GPS RWY 14, ORIG–A...
08/27/99	VA	NORFOLK	NORFOLK INTL	9/6467	VOR/DME RWY 14, AMDT 2A...
08/27/99	VA	NORFOLK	NORFOLK INTL	9/6469	VOR/DME RNAV RWY 14, AMDT 4A...
08/27/99	WV	BECKLEY	RALEIGH COUNTY MEMORIAL	9/6445	ILS RWY 19 AMDT 4...
08/27/99	WV	BECKLEY	RALEIGH COUNTY MEMORIAL	9/6447	VOR OR GPS RWY 19 AMDT 3A...
08/27/99	WV	BECKLEY	RALEIGH COUNTY MEMORIAL	9/6448	VOR OR GPS RWY 10 AMDT 12A...
08/27/99	WV	BECKLEY	RALEIGH COUNTY MEMORIAL	9/6571	VOR/DME OR GPS RWY 1 AMDT 3...
08/27/99	WV	HUNTINGTON	TRI-STATE/MILTON J. FERGUSON FIELD.	9/6477	NDB OR GSP RWY 12 AMDT 17...
08/27/99	WV	MORGANTOWN	MORGANTOWN-MUNI-WALTER L. BILL HART FIELD.	9/6480	VOR/DME RWY 18 AMDT 6B...
08/27/99	WV	PARKERSBURG	WOOD COUNTY AIRPORT-GILL ROBB WILSON FIELD.	9/6444	VOR OR GPS RWY 21 AMDT 15...
08/27/99	WV	WHEELING	WHEELING OHIO COUNTY	9/6475	VOR OR GPS RWY 21 AMDT 14...
08/30/99	AR	LITTLE ROCK	ADAMS FIELD	9/6598	NDB RWY 22R, AMDT 7...
08/30/99	AR	LITTLE ROCK	ADAMS FIELD	9/6599	GPS RWY 22R, ORIG...

FDC date	State	City	Airport	FDC No.	SIAP
08/30/99	AR	LITTLE ROCK	ADAMS FIELD	9/6600	VOR/DME RNAV RWY 22R, AMDT 11...
08/30/99	CA	RAMONA	RAMONA	9/6551	VOR/DME OR GPS–A AMDT 1B...
08/30/99	CA	RAMONA	RAMONA	9/6552	GPS RWY 9 ORIG...
08/30/99	CA	SANTA YNEZ	SANTA YNEZ	9/6553	GPS–A ORIG–A...
08/30/99	CA	SANTA YNEZ	SANTA YNEZ	9/6557	VOR OR GPS–B AMDT 7B...
08/30/99	FL	LAKELAND	LAKELAND LINDER REGIONAL	9/6592	NDB OR GPS RWY 5, AMDT 2A...
08/30/99	FL	LAKELAND	LAKELAND LINDER REGIONAL	9/6593	ILS RWY 5, AMDT 5A...
08/30/99	FL	LAKELAND	LAKELAND LINDER REGIONAL	9/6594	VOR OR GPS RWY 27, AMDT 5A...
08/30/99	FL	LAKELAND	LAKELAND LINDER REGIONAL	9/6595	VOR OR GPS RWY 9, AMDT 2...
08/30/99	GUA	AGANA	GUAM INTL	9/6555	NDB/DME RWY 24R ORIG...
08/30/99	MA	HYANNIS	BARNSTABLE MUNI-BOARDMAN/ POLANDO FIELD.	9/6581	VOR OR GPS RWY 6 AMDT 7B...
08/30/99	MD	SALISBURY	SALISBURY-OCEAN CITY WICOMICO REGIONAL.	9/6569	VOR OR GPS RWY 32 AMDT 8A...
08/30/99	MN	LITTLE FALLS	LITTLE FALLS-MORRISON COUNTY	9/6565	NDB RWY 30 AMDT 6...
08/30/99	MN	LITTLE FALLS	LITTLE FALLS-MORRISON COUNTY	9/6566	GPS RWY 30 ORIG...
08/30/99	OR	ASTORIA	ASTORIA REGIONAL	9/6591	ILS RWY 26 AMDT 2...
08/30/99	OR	EUGENE	EUGENE/MAHLON SWEET FIELD	9/6588	NDB RWY 16 AMDT 29A...
08/30/99	OR	PORTLAND	PORTLAND INTL	9/6585	ILS RWY 28R AMDT 12...
08/30/99	OR	SALEM	MCNARY FIELD	9/6587	ILS RWY 31 AMDT 27A...
08/30/99	RI	PROVIDENCE	THEODORE FRANCIS GREEN STATE.	9/6583	GPS RWY 16 ORIG...
08/30/99	WA	MOSES LAKE	GRANT COUNTY INTL	9/6582	ILS RWY 32R, AMDT 19...
08/30/99	WA	MOSES LAKE	GRANT COUNTY INTL	9/6584	HI–IL/DME RWY 32R AMDT 1...
08/30/99	WA	MOSES LAKE	GRANT COUNTY INTL	9/6586	HI–VOR/DME OR TACAN RWY 32R, AMDT 1...
08/30/99	WA	MOSES LAKE	GRANT COUNTY INTL	9/6589	MLS RWY 32R, ORIG...
08/30/99	WA	SEATTLE	SEATTLE-TACOMA INTL	9/6580	ILS/DME RWY 34L, AMDT 1...
08/30/99	WY	TORRINGTON	TORRINGTON MUNI	9/6560	GPS RWY 28, ORIG...
08/30/99	WY	TORRINGTON	TORRINGTON MUNI	9/6561	GPS RWY 10, ORIG...
08/30/99	WY	TORRINGTON	TORRINGTON MUNI	9/6562	NDB RWY 28, AMDT 1...
08/30/99	WY	TORRINGTON	TORRINGTON MUNI	9/6563	NDB RWY 10, AMDT 1...
08/31/99	CA	FIREBAUGH	FIREBAUGH	9/6637	VOR/DME OR GPS–A, AMDT 2A...
08/31/99	DE	WILMINGTON	NEW CASTLE COUNTY	9/6633	GPS RWY 9 ORIG–A...
08/31/99	PA	BRADFORD	BRADFORD REGIONAL	9/6625	VOR/DME OR GPS RWY 14 AMDT 8A...
08/31/99	PA	FRANKLIN	VENAGO REGIONAL	9/6626	VOR OR GPS RWY 2 AMDT 3A...
08/31/99	PA	JOHNSTOWN	JOHNSTOWN-CAMBRIA COUNTY	9/6629	VOR/DME OR GPS RWY 15 AMDT 4A...
08/31/99	PA	STATE COLLEGE	UNIVERSITY PARK	9/6627	VOR/DME RNAV OR GPS RWY 6 AMDT 6A...
08/31/99	WV	MARTINSBURG	EASTERN WEST VIRGINIA REGIONAL/SHEPHERD FIELD.	9/6639	LOC/DME BC RWY 8 AMDT 5A...

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 343

[Docket No. 77N–094A]

Internal Analgesic, Antipyretic, and Antirheumatic Drug Products for Over-the-Counter Human Use; Final Rule for Professional Labeling of Aspirin, Buffered Aspirin, and Aspirin in Combination with Antacid Drug Products; Technical Amendments

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendments.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for internal analgesic, antipyretic, and antirheumatic drug products for over-the-counter (OTC) use to correct inadvertent errors and to clarify the labeling for over-the-counter drug products written for health professionals.

EFFECTIVE DATE: The regulation is effective October 25, 1999.

FOR FURTHER INFORMATION CONTACT: Ida I. Yoder, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION: FDA has discovered that inadvertent errors were incorporated into the agency's regulations for internal analgesic, antipyretic, and antirheumatic drug products (21 CFR part 343), that published on October 23, 1998 (63 FR 56802). This document corrects those errors and clarifies the labeling for over-the-counter drug products written for health professionals. Publication of this document constitutes final action under the Administrative Procedure Act (5 U.S.C. 553). FDA has determined that notice and public comment are unnecessary because this amendment is nonsubstantive.

List of Subjects in 21 CFR Part 343

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 343 is amended as follows:

PART 343—INTERNAL ANALGESIC, ANTIPYRETIC, AND ANTIRHEUMATIC DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 343 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

2. Section 343.80 is amended by revising paragraph (a)(1) to read as follows:

§ 343.80 Professional labeling.

(a) * * *

(1) The labeling contains the following prescribing information under the heading "Comprehensive Prescribing Information" and the subheadings "Description," "Clinical Pharmacology," "Clinical Studies," "Animal Toxicology," "Indications and Usage," "Contraindications," "Warnings," "Precautions," "Adverse Reactions," "Drug Abuse and Dependence," "Overdosage," "Dosage and Administration," and "How Supplied" in the exact language and the exact order provided as follows:

COMPREHENSIVE PRESCRIBING INFORMATION

DESCRIPTION

(Insert the proprietary name and the established name (if any) of the drug, type of dosage form (followed by the phrase "for oral administration"), the established name(s) and quantity of the active ingredient(s) per dosage unit, the total sodium content in milligrams per dosage unit if the sodium content of a single recommended dose is 5 milligrams or more, the established name(s) (in alphabetical order) of any inactive ingredient(s) which may cause an allergic hypersensitivity reaction, the pharmacological or therapeutic class of the drug, and the chemical name(s) and structural formula(s) of the drug.) Aspirin is an odorless white, needle-like crystalline or powdery substance. When exposed to moisture, aspirin hydrolyzes into salicylic and acetic acids, and gives off a vinegary-odor. It is highly lipid soluble and slightly soluble in water.

CLINICAL PHARMACOLOGY

Mechanism of Action

Aspirin is a more potent inhibitor of both prostaglandin synthesis and platelet aggregation than other salicylic acid derivatives. The differences in activity between aspirin and salicylic acid are thought to be due to the acetyl group on the aspirin molecule. This acetyl group is responsible for the inactivation of cyclo-oxygenase via acetylation.

Pharmacokinetics

Absorption: In general, immediate release aspirin is well and completely absorbed from the gastrointestinal (GI) tract. Following absorption, aspirin is hydrolyzed to salicylic acid with peak plasma levels of salicylic acid occurring within 1–2 hours of dosing (see **Pharmacokinetics**—*Metabolism*). The rate of absorption from the GI tract is dependent upon the dosage form, the presence or absence of food, gastric pH (the presence or absence of GI antacids or buffering agents), and other physiologic factors. Enteric coated aspirin products are erratically absorbed from the GI tract.

Distribution: Salicylic acid is widely distributed to all tissues and fluids in the body including the central nervous system (CNS), breast milk, and fetal tissues. The highest concentrations are found in the plasma, liver, renal cortex, heart, and lungs. The protein binding of salicylate is concentration-dependent, i.e., nonlinear. At low concentrations (< 100 micrograms/milliliter (µg/mL)), approximately 90 percent of plasma salicylate is bound to albumin while at higher concentrations (> 400 µg/mL), only about 75 percent is bound. The early signs of salicylic overdose (salicylism), including tinnitus (ringing in the ears), occur at plasma concentrations approximating 200 µg/mL. Severe toxic effects are associated with levels > 400 µg/mL. (See **Adverse Reactions** and **Overdosage**.)

Metabolism: Aspirin is rapidly hydrolyzed in the plasma to salicylic acid such that plasma levels of aspirin are essentially undetectable 1–2 hours after dosing. Salicylic acid is primarily conjugated in the liver to form salicyluric acid, a phenolic glucuronide, an acyl glucuronide, and a number of minor metabolites. Salicylic acid has a plasma half-life of approximately 6 hours. Salicylate metabolism is saturable and total body clearance decreases at higher serum concentrations due to the limited ability of the liver to form both salicyluric acid and phenolic glucuronide. Following toxic doses (10–20 grams (g)), the plasma half-life may be increased to over 20 hours.

Elimination: The elimination of salicylic acid follows zero order pharmacokinetics; (i.e., the rate of drug elimination is constant in relation to plasma concentration). Renal excretion of unchanged drug depends upon urine pH. As urinary pH rises above 6.5, the renal clearance of free salicylate increases from < 5 percent to > 80 percent. Alkalinization of the urine is a key concept in the management of salicylate overdose. (See **Overdosage**.) Following therapeutic doses, approximately 10 percent is found excreted in the urine as salicylic acid, 75 percent as salicyluric acid, and 10 percent phenolic and 5 percent acyl glucuronides of salicylic acid.

Pharmacodynamics

Aspirin affects platelet aggregation by irreversibly inhibiting prostaglandin cyclo-oxygenase. This effect lasts for the life of the platelet and prevents the formation of the platelet aggregating factor thromboxane A2. Nonacetylated salicylates do not inhibit this enzyme and have no effect on platelet aggregation. At somewhat higher doses, aspirin reversibly inhibits the formation of prostaglandin I_2 (prostacyclin), which is an arterial vasodilator and inhibits platelet aggregation.

At higher doses aspirin is an effective anti-inflammatory agent, partially due to inhibition of inflammatory mediators via cyclo-oxygenase inhibition in peripheral tissues. In vitro studies suggest that other mediators of inflammation may also be suppressed by aspirin administration, although the precise mechanism of action has not been elucidated. It is this nonspecific suppression of cyclo-oxygenase activity in peripheral tissues following large doses that leads to its primary side effect of gastric irritation. (See **Adverse Reactions**.)

CLINICAL STUDIES

Ischemic Stroke and Transient Ischemic Attack (TIA): In clinical trials of subjects with TIA's due to fibrin platelet emboli or ischemic stroke, aspirin has been shown to significantly reduce the risk of the combined endpoint of stroke or death and the combined endpoint of TIA, stroke, or death by about 13–18 percent.

Suspected Acute Myocardial Infarction (MI): In a large, multi-center study of aspirin, streptokinase, and the combination of aspirin and streptokinase in 17,187 patients with suspected acute MI, aspirin treatment produced a 23-percent reduction in the risk of vascular mortality. Aspirin was also shown to have an additional benefit in patients given a thrombolytic agent.

Prevention of Recurrent MI and Unstable Angina Pectoris: These indications are supported by the results of six large, randomized, multi-center, placebo-controlled trials of predominantly male post-MI subjects and one randomized placebo-controlled study of men with unstable angina pectoris. Aspirin therapy in MI subjects was associated with a significant reduction (about 20 percent) in the risk of the combined endpoint of subsequent death and/or nonfatal reinfarction in these patients. In aspirin-treated unstable angina patients the event rate was reduced to 5 percent from the 10 percent rate in the placebo group.

Chronic Stable Angina Pectoris: In a randomized, multi-center, double-blind trial designed to assess the role of aspirin for prevention of MI in patients with chronic stable angina pectoris, aspirin significantly reduced the primary combined endpoint of nonfatal MI, fatal MI, and sudden death by 34 percent. The secondary endpoint for vascular events (first occurrence of MI, stroke, or vascular death) was also significantly reduced (32 percent).

Revascularization Procedures: Most patients who undergo coronary artery revascularization procedures have already had symptomatic coronary artery disease for which aspirin is indicated. Similarly, patients with lesions of the carotid bifurcation sufficient to require carotid endarterectomy are likely to have had a precedent event. Aspirin is recommended for patients who undergo revascularization procedures if there is a preexisting condition for which aspirin is already indicated.

Rheumatologic Diseases: In clinical studies in patients with rheumatoid arthritis, juvenile rheumatoid arthritis, ankylosing spondylitis and osteoarthritis, aspirin has been shown to be effective in controlling various indices of clinical disease activity.

ANIMAL TOXICOLOGY

The acute oral 50 percent lethal dose in rats is about 1.5 g/kilogram (kg) and in mice 1.1 g/kg. Renal papillary necrosis and decreased urinary concentrating ability occur in rodents chronically administered high doses. Dose-dependent gastric mucosal injury occurs in rats and humans. Mammals may develop aspirin toxicosis associated with GI symptoms, circulatory effects, and central nervous system depression. (See **Overdosage**.)

INDICATIONS AND USAGE

Vascular Indications (Ischemic Stroke, TIA, Acute MI, Prevention of Recurrent MI, Unstable Angina Pectoris, and Chronic Stable Angina Pectoris): Aspirin is indicated to: (1) Reduce the combined risk of death and nonfatal stroke in patients who have had ischemic stroke or transient ischemia of the brain due to fibrin platelet emboli, (2) reduce the risk of vascular mortality in patients with a suspected acute MI, (3) reduce the combined risk of death and nonfatal MI in patients with a previous MI or unstable angina pectoris, and (4) reduce the combined risk of MI and sudden death in patients with chronic stable angina pectoris.

Revascularization Procedures (Coronary Artery Bypass Graft (CABG), Percutaneous Transluminal Coronary Angioplasty (PTCA), and Carotid Endarterectomy): Aspirin is indicated in patients who have undergone revascularization procedures (i.e., CABG, PTCA, or carotid endarterectomy) when there is a preexisting condition for which aspirin is already indicated.

Rheumatologic Disease Indications (Rheumatoid Arthritis, Juvenile Rheumatoid Arthritis, Spondyloarthropathies, Osteoarthritis, and the Arthritis and Pleurisy of Systemic Lupus Erythematosus (SLE)): Aspirin is indicated for the relief of the signs and symptoms of rheumatoid arthritis, juvenile rheumatoid arthritis, osteoarthritis, spondyloarthropathies, and arthritis and pleurisy associated with SLE.

CONTRAINDICATIONS

Allergy: Aspirin is contraindicated in patients with known allergy to nonsteroidal anti-inflammatory drug products and in patients with the syndrome of asthma, rhinitis, and nasal polyps. Aspirin may cause severe urticaria, angioedema, or bronchospasm (asthma).

Reye's Syndrome: Aspirin should not be used in children or teenagers for viral infections, with or without fever, because of the risk of Reye's syndrome with concomitant use of aspirin in certain viral illnesses.

WARNINGS

Alcohol Warning: Patients who consume three or more alcoholic drinks every day should be counseled about the bleeding risks involved with chronic, heavy alcohol use while taking aspirin.

Coagulation Abnormalities: Even low doses of aspirin can inhibit platelet function leading to an increase in bleeding time. This can adversely affect patients with inherited (hemophilia) or acquired (liver disease or vitamin K deficiency) bleeding disorders.

GI Side Effects: GI side effects include stomach pain, heartburn, nausea, vomiting, and gross GI bleeding. Although minor upper GI symptoms, such as dyspepsia, are common and can occur anytime during therapy, physicians should remain alert for signs of ulceration and bleeding, even in the absence of previous GI symptoms. Physicians should inform patients about the signs and symptoms of GI side effects and what steps to take if they occur.

Peptic Ulcer Disease: Patients with a history of active peptic ulcer disease should avoid using aspirin, which can cause gastric mucosal irritation and bleeding.

PRECAUTIONS

General

Renal Failure: Avoid aspirin in patients with severe renal failure (glomerular filtration rate less than 10 mL/minute).

Hepatic Insufficiency: Avoid aspirin in patients with severe hepatic insufficiency.

Sodium Restricted Diets: Patients with sodium-retaining states, such as congestive heart failure or renal failure, should avoid sodium-containing buffered aspirin preparations because of their high sodium content.

Laboratory Tests

Aspirin has been associated with elevated hepatic enzymes, blood urea nitrogen and serum creatinine, hyperkalemia, proteinuria, and prolonged bleeding time.

Drug Interactions

Angiotensin Converting Enzyme (ACE) Inhibitors: The hyponatremic and hypotensive effects of ACE inhibitors may be diminished by the concomitant administration of aspirin due to its indirect effect on the renin-angiotensin conversion pathway.

Acetazolamide: Concurrent use of aspirin and acetazolamide can lead to high serum concentrations of acetazolamide (and toxicity) due to competition at the renal tubule for secretion.

Anticoagulant Therapy (Heparin and Warfarin): Patients on anticoagulation therapy are at increased risk for bleeding because of drug-drug interactions and the effect on platelets. Aspirin can displace warfarin from protein binding sites, leading to prolongation of both the prothrombin time and the bleeding time. Aspirin can increase the anticoagulant activity of heparin, increasing bleeding risk.

Anticonvulsants: Salicylate can displace protein-bound phenytoin and valproic acid, leading to a decrease in the total concentration of phenytoin and an increase in serum valproic acid levels.

Beta Blockers: The hypotensive effects of beta blockers may be diminished by the concomitant administration of aspirin due to inhibition of renal prostaglandins, leading to decreased renal blood flow, and salt and fluid retention.

Diuretics: The effectiveness of diuretics in patients with underlying renal or cardiovascular disease may be diminished by the concomitant administration of aspirin due to inhibition of renal prostaglandins, leading to decreased renal blood flow and salt and fluid retention.

Methotrexate: Salicylate can inhibit renal clearance of methotrexate, leading to bone marrow toxicity, especially in the elderly or renal impaired.

Nonsteroidal Anti-inflammatory Drugs (NSAID's): The concurrent use of aspirin with other NSAID's should be avoided because this may increase bleeding or lead to decreased renal function.

Oral Hypoglycemics: Moderate doses of aspirin may increase the effectiveness of oral hypoglycemic drugs, leading to hypoglycemia.

Uricosuric Agents (Probenecid and Sulfinpyrazone): Salicylates antagonize the uricosuric action of uricosuric agents.

Carcinogenesis, Mutagenesis, Impairment of Fertility

Administration of aspirin for 68 weeks at 0.5 percent in the feed of rats was not carcinogenic. In the Ames Salmonella assay, aspirin was not mutagenic; however, aspirin did induce chromosome aberrations in cultured human fibroblasts. Aspirin inhibits ovulation in rats. (See *Pregnancy.*)

Pregnancy

Pregnant women should only take aspirin if clearly needed. Because of the known effects of NSAID's on the fetal cardiovascular system (closure of the ductus arteriosus), use during the third trimester of pregnancy should be avoided. Salicylate products have also been associated with alterations in maternal and neonatal hemostasis mechanisms, decreased birth weight, and with perinatal mortality.

Labor and Delivery

Aspirin should be avoided 1 week prior to and during labor and delivery because it can result in excessive blood loss at delivery. Prolonged gestation and prolonged labor due to prostaglandin inhibition have been reported.

Nursing Mothers

Nursing mothers should avoid using aspirin because salicylate is excreted in breast milk. Use of high doses may lead to rashes, platelet abnormalities, and bleeding in nursing infants.

Pediatric Use

Pediatric dosing recommendations for juvenile rheumatoid arthritis are based on well-controlled clinical studies. An initial dose of 90–130 mg/kg/day in divided doses, with an increase as needed for anti-inflammatory efficacy (target plasma salicylate levels of 150–300 µg/mL) are effective. At high doses (i.e., plasma levels of greater than 200 µg/mL), the incidence of toxicity increases.

ADVERSE REACTIONS

Many adverse reactions due to aspirin ingestion are dose-related. The following is a list of adverse reactions that have been reported in the literature. (See **Warnings**.)

Body as a Whole: Fever, hypothermia, thirst.

Cardiovascular: Dysrhythmias, hypotension, tachycardia.

Central Nervous System: Agitation, cerebral edema, coma, confusion, dizziness, headache, subdural or intracranial hemorrhage, lethargy, seizures.

Fluid and Electrolyte: Dehydration, hyperkalemia, metabolic acidosis, respiratory alkalosis.

Gastrointestinal: Dyspepsia, GI bleeding, ulceration and perforation, nausea, vomiting, transient elevations of hepatic enzymes, hepatitis, Reye's Syndrome, pancreatitis.

Hematologic: Prolongation of the prothrombin time, disseminated intravascular coagulation, coagulopathy, thrombocytopenia.

Hypersensitivity: Acute anaphylaxis, angioedema, asthma, bronchospasm, laryngeal edema, urticaria.

Musculoskeletal: Rhabdomyolysis.

Metabolism: Hypoglycemia (in children), hyperglycemia.

Reproductive: Prolonged pregnancy and labor, stillbirths, lower birth weight infants, antepartum and postpartum bleeding.

Respiratory: Hyperpnea, pulmonary edema, tachypnea.

Special Senses: Hearing loss, tinnitus. Patients with high frequency hearing loss may have difficulty perceiving tinnitus. In these patients, tinnitus cannot be used as a clinical indicator of salicylism.

Urogenital: Interstitial nephritis, papillary necrosis, proteinuria, renal insufficiency and failure.

DRUG ABUSE AND DEPENDENCE

Aspirin is nonnarcotic. There is no known potential for addiction associated with the use of aspirin.

OVERDOSAGE

Salicylate toxicity may result from acute ingestion (overdose) or chronic intoxication. The early signs of salicylic overdose (salicylism), including tinnitus (ringing in the ears), occur at plasma concentrations approaching 200 µg/mL. Plasma concentrations of aspirin above 300 µg/mL are clearly toxic. Severe toxic effects are associated with levels above 400 µg/mL. (See **Clinical Pharmacology**.) A single lethal dose of aspirin in adults is not known with certainty but death may be expected at 30 g. For real or suspected overdose, a Poison Control Center should be contacted immediately. Careful medical management is essential.

Signs and Symptoms: In acute overdose, severe acid-base and electrolyte disturbances may occur and are complicated by hyperthermia and dehydration. Respiratory alkalosis occurs early while hyperventilation is present, but is quickly followed by metabolic acidosis.

Treatment: Treatment consists primarily of supporting vital functions, increasing salicylate elimination, and correcting the acid-base disturbance. Gastric emptying and/or lavage is recommended as soon as possible after ingestion, even if the patient has vomited spontaneously. After lavage and/or emesis, administration of activated charcoal, as a slurry, is beneficial, if less than 3 hours have passed since ingestion. Charcoal adsorption should not be employed prior to emesis and lavage.

Severity of aspirin intoxication is determined by measuring the blood salicylate level. Acid-base status should be closely followed with serial blood gas and serum pH measurements. Fluid and electrolyte balance should also be maintained.

In severe cases, hyperthermia and hypovolemia are the major immediate threats to life. Children should be sponged with tepid water. Replacement fluid should be administered intravenously and augmented with correction of acidosis. Plasma electrolytes and pH should be monitored to promote alkaline diuresis of salicylate if renal function is normal. Infusion of glucose may be required to control hypoglycemia.

Hemodialysis and peritoneal dialysis can be performed to reduce the body drug content. In patients with renal insufficiency or in cases of life-threatening intoxication, dialysis is usually required. Exchange transfusion may be indicated in infants and young children.

DOSAGE AND ADMINISTRATION

Each dose of aspirin should be taken with a full glass of water unless patient is fluid restricted. Anti-inflammatory and analgesic dosages should be individualized. When aspirin is used in high doses, the development of tinnitus may be used as a clinical sign of elevated plasma salicylate levels except in patients with high frequency hearing loss.

Ischemic Stroke and TIA: 50–325 mg once a day. Continue therapy indefinitely.

Suspected Acute MI: The initial dose of 160–162.5 mg is administered as soon as an MI is suspected. The maintenance dose of 160–162.5 mg a day is continued for 30 days post-infarction. After 30 days, consider further therapy based on dosage and administration for prevention of recurrent MI.

Prevention of Recurrent MI: 75–325 mg once a day. Continue therapy indefinitely.

Unstable Angina Pectoris: 75–325 mg once a day. Continue therapy indefinitely.

Chronic Stable Angina Pectoris: 75–325 mg once a day. Continue therapy indefinitely.

CABG: 325 mg daily starting 6 hours post-procedure. Continue therapy for 1 year post-procedure.

PTCA: The initial dose of 325 mg should be given 2 hours pre-surgery. Maintenance dose is 160–325 mg daily. Continue therapy indefinitely.

Carotid Endarterectomy: Doses of 80 mg once daily to 650 mg twice daily, started presurgery, are recommended. Continue therapy indefinitely.

Rheumatoid Arthritis: The initial dose is 3 g a day in divided doses. Increase as needed for anti-inflammatory efficacy with target plasma salicylate levels of 150–300 µg/mL. At high doses (i.e., plasma levels of greater than 200 µg/mL), the incidence of toxicity increases.

Juvenile Rheumatoid Arthritis: Initial dose is 90–130 mg/kg/day in divided doses. Increase as needed for anti-inflammatory efficacy with target plasma salicylate levels of 150–300 µg/mL. At high doses (i.e., plasma levels of greater than 200 µg/mL), the incidence of toxicity increases.

Spondyloarthropathies: Up to 4 g per day in divided doses.

Osteoarthritis: Up to 3 g per day in divided doses.

Arthritis and Pleurisy of SLE: The initial dose is 3 g a day in divided doses. Increase as needed for anti-inflammatory efficacy with target plasma salicylate levels of 150–300 µg/mL. At high doses (i.e., plasma levels of greater than 200 mµ/mL), the incidence of toxicity increases.

HOW SUPPLIED

(Insert specific information regarding, strength of dosage form, units in which the dosage form is generally available, and information to facilitate identification of the dosage form as required under § 201.57(k)(1), (k)(2), and (k)(3).) Store in a tight container at 25 °C (77 °F); excursions permitted to 15–30 °C (59–86 °F).

REV: October 23, 1998.

Dated: September 7, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–23684 Filed 9–13–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lasalocid and Virginiamycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Roche Vitamins, Inc. The NADA provides for

use of approved lasalocid and virginiamycin Type A medicated articles to make Type C medicated feeds used for prevention of coccidiosis and for increased rate of weight gain and improved feed efficiency in growing turkeys.

EFFECTIVE DATE: September 14, 1999.

FOR FURTHER INFORMATION CONTACT: Charles J. Andres, Center for Veterinary Medicine (HFV–128), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–1600.

SUPPLEMENTARY INFORMATION: Roche Vitamins, Inc., 45 Waterview Blvd., Parsippany, NJ 07054–1298, filed NADA 141–150 that provides for use of Avatec® (90.7 grams per pound (g/lb) of lasalocid as lasalocid sodium) and Stafac® (20 or 227 g/lb of virginiamycin) Type A medicated articles to make Type C medicated feeds for growing turkeys. The Type C medicated feeds are used for prevention of coccidiosis caused by *Eimeria meleagrimitis, E. gallopavonis,* and *E. adenoeides,* and for increased rate of weight gain and improved feed efficiency in growing turkeys. The NADA is approved as of August 6, 1999, and the regulations are amended in 21 CFR 558.311 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.311 is amended in the table in paragraph (e)(1)(xiv), under the "Combination in grams per ton" column, by alphabetically adding an entry for "Virginiamycin 10 to 20" to read as follows:

§ 558.311 Lasalocid.

* * * * *

(e)(1) * * *

Lasalocid sodium activity in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
* *	*	*	* *	*
(xiv) 68 (0.0075 pct) to 113 (0.0125 pct).		* * *	* * *	* * *
* *	*	*	* *	*
	Virginiamycin 10 to 20	Growing turkeys; for prevention of coccidiosis caused by *E. meleagrimitis, E. gallopavonis,* and *E. adenoeides,* and for increased rate of weight gain and improved feed efficiency.	Feed continuously as sole ration. As lasalocid sodium provided by 063238 and virginiamycin provided by 000069.	063238
* *	*	*	* *	*

* * * * *

Dated: August 30, 1999.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 99–23970 Filed 9–13–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 982

[Docket No. FR–4428–C–03]

RIN 2577–AB91

Section 8 Tenant-Based Assistance Programs Statutory Merger of Section 8 Certificate and Voucher Programs; Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Correction.

SUMMARY: This document makes various corrections to HUD's May 14, 1999 interim rule amending the regulations for the Section 8 tenant-based rental voucher program. The interim rule implemented most of the Section 8 tenant-based program provisions contained in the Quality Housing and Work Responsibility Act of 1998 (the "Public Housing Reform Act"). Of particular significance, the May 14, 1999 interim rule implemented section 545 of the Public Housing Reform Act. Section 545 provides for the complete merger of the Section 8 tenant-based Certificate and Voucher programs. The purpose of this document is to make various corrections to the May 14, 1999 interim rule.

DATES: *Effective Date:* October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4210, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–0477, extension 4069 (this is not a toll-free number). Hearing or speech impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. HUD's May 14, 1999 Interim Rule

On May 14, 1999 (64 FR 26632), HUD published for public comment an interim rule amending the regulations for the Section 8 tenant-based rental voucher program.

The interim rule implemented most of the Section 8 tenant-based program provisions contained in the Quality Housing and Work Responsibility Act of 1998 (Pub.L. 105–276, approved October 21, 1998; 112 Stat. 2461) (the "Public Housing Reform Act"). Of particular significance, the May 14, 1999 interim rule implemented section 545 of the Public Housing Reform Act, which provides for the complete merger of the Section 8 tenant-based Certificate and Voucher programs. Accordingly, the May 14, 1999 established a new merged program known as the Housing Choice Voucher program.

HUD had previously promulgated regulations (known as the "conforming rule") which combined and conformed rules for Section 8 tenant-based assistance to the extent permitted by prior law. The new Housing Choice Voucher program has features of the previously authorized certificate and voucher programs plus new features, as described in the preamble to the interim rule.

The May 14, 1999 interim rule provided for a 90-day delayed effective date for the interim rule (in contrast to the customary 30-day delayed effective date for most HUD rules issued for effect), in order to afford public housing agencies (PHAs) additional time to prepare for the implementation of the interim rule. The interim was scheduled to become effective on August 12, 1999.

On August 11, 1999 (64 FR 43613), HUD published a notice in the **Federal Register** delaying the effective date of the May 14, 1999 interim rule until October 1, 1999. HUD decided to delay the effective date in order to provide decided to delay the effective date until October 1, 1999, to allow PHAs more time to prepare for implementation of the Housing Choice Voucher Program and to allow PHAs to revise their computer software to accommodate the new subsidy formula.

II. This Document

The purpose of this document is to make various corrections to the May 14, 1999 interim rule. The major corrections made by this document are as follows:

1. *Definition of "merger date."* The definition of "merger date" in § 982.4 is corrected to specify that this term means October 1, 1999, the delayed effective date of the interim voucher merger rule pursuant to HUD's August 11, 1999 **Federal Register** notice.

2. *Use of "family size" to determine initial eligibility.* Section 982.201(b)(4) is corrected to specify that the PHA must use the income limit "for the family size" to determine initial eligibility at admission to the program. The published rule incorrectly indicated that the PHA should use the "family unit size" for this purpose (emphasis supplied). "Family *unit* size" is used to determine the appropriate unit size and maximum subsidy for a family, not to determine eligibility for admission to the program.

3. *Screening of family behavior.* Section 982.307(a)(1) of the published rule provides that the PHA may opt to screen "family behavior" or suitability for tenancy. This provision is intended to implement section 8(o)(6)(B) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)(6)(B)) (the "1937 Act"), as amended by section 545 of the Public Housing Reform Act, which provides that a PHA "may elect to screen applicants for the program. . . ." The interim rule is corrected:

- To clarify, as originally intended (see the interim rule preamble discussion at 64 FR 26632), that § 982.307(a)(1) is only intended to authorize PHA screening of program applicants, not to authorize PHA screening of a program participant seeking to move to another unit (either within the PHA jurisdiction or under portability procedures) (§ 982.307(a)(1)).
- To specify that such PHA screening of program applicants must be "in accordance with policies stated in the PHA administrative plan" (§ 982.307(a)(1)).
- To add a reference to such PHA screening in the regulation that lists PHA policies that must be included in the administrative plan (§ 982.54(d)(23)).
- To add a conforming provision which clarifies that the PHA may at any time deny program assistance for an applicant in accordance with the PHA administrative plan policy on screening of applicants for family behavior or suitability for tenancy (§ 982.552(e)).

4. *Approval of acceptability criteria variations.* Section 982.401(a)(4)(iii)(A) is revised to correct the description of requirements for approval of acceptability criteria variations in accordance with section 8(o)(8)(B) of the 1937 Act. The corrected rule specifies that HUD may approve variations that meet or exceed the "performance requirements," which describe minimum program Housing Quality Standards (HQS) requirements.

5. *Payment standard amount and schedule.* Section 982.503 is corrected:

- By adding a new paragraph (b)(1)(iii)) to specify that a PHA may establish a higher payment standard within the basic range (between 90 percent and 110 percent of the published Fair Market Rent (FMR)) when required as a reasonable accommodation for a family that includes a person with disabilities.
- By adding the term "upper range" (in redesignated § 982.503(c)(2)(i)) to refer to the interval from 110 percent to 120 percent of the published FMR.
- By adding new paragraph (c)(2)(ii) to specify that the HUD field office may approve PHA establishment of a payment standard in the "upper range" when required as a reasonable accommodation for a family that includes a person with disabilities.

6. *Payment standard used to calculate subsidy in an exception area.* Section 982.505(c)(2) is corrected to clarify that the payment standard used to calculate the subsidy for a dwelling unit located in an exception area is calculated in accordance with § 982.503, which describes the process for establishing the payment standard for an exception area.

7. *Title of § 982.508.* The title of § 982.508 is revised to clarify that this section specifies the maximum "family share" (defined as gross rent minus the amount of the housing assistance payment) at initial occupancy, rather than the maximum "rent to owner," as suggested by the original title.

8. *Description of amortization cost.* Section 982.623(b)(3) is corrected by restoring the description of "amortization cost," which is used to calculate the amount of assistance for a manufactured home space rental under the pre-merger certificate program (for a tenancy commenced before the "merger date"). This provision was inadvertently deleted by the interim rule.

9. *FMR for manufactured home space.* Section 982.623 is corrected by consolidating two paragraphs

concerning determination of the FMR for a manufactured home space (§ 982.623(c)(1)).

Accordingly, in the interim rule captioned "Section 8 Tenant-Based Assistance; Statutory Merger of Section 8 Certificate and Voucher Programs," FR Document 99–12082, beginning at 64 FR 26632, in the issue of Friday, May 14, 1999, the following corrections are made:

1. On page 26641, in the first column, the definition of "Merger date" in § 982.4 is corrected to read as follows:

§ 982.4 Definitions.

* * * * *

(b) * * *

Merger date. October 1, 1999.

* * * * *

2. On page 26641, in the third column, regulatory amendment 31 is corrected to read as follows:

31. Amend § 982.54 as follows:

a. Revise paragraphs (d)(1), (d)(2), (d)(14) and (d)(15);

b. Remove paragraph (d)(16);

c. Redesignate paragraphs (d)(17), (d)(18), (d)(19), (d)(20), (d)(21) and (d)(22) as paragraphs (d)(16), (d)(17), (d)(18), (d)(19), (d)(20) and (d)(21) respectively;

d. Revise newly designated paragraphs (d)(20) and (d)(21); and

e. Add paragraphs (d)(22) and (d)(23).

The revisions and additions read as follows:

§ 982.54 Administrative plan.

* * * * *

(d) * * *

(1) Selection and admission of applicants from the PHA waiting list, including any PHA admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening the PHA waiting list;

(2) Issuing or denying vouchers, including PHA policy governing the voucher term and any extensions or suspensions of the voucher term. "Suspension" means stopping the clock on the term of a family's voucher after the family submits a request for approval of the tenancy. If the PHA decides to allow extensions or suspensions of the voucher term, the PHA administrative plan must describe how the PHA determines whether to grant extensions or suspensions, and how the PHA determines the length of any extension or suspension;

* * * * *

(14) The process for establishing and revising voucher payment standards;

(15) The method of determining that rent to owner is a reasonable rent (initially and during the term of a HAP contract);

* * * * *

(20) Restrictions, if any, on the number of moves by a participant family (see § 982.314(c));

(21) Approval by the Board of Commissioners or other authorized officials to charge the administrative fee reserve;

(22) Procedural guidelines and performance standards for conducting required HQS inspections; and

(23) PHA screening of applicants for family behavior or suitability for tenancy.

§ 982.201 [Corrected]

3. On page 26643, in the second column, § 982.201(b)(4) is corrected by revising the reference to "(for the family unit size)" to read "(for the family size)".

4. On page 26645, in the first column, § 982.307(a)(1) is corrected to read as follows:

§ 982.307 Tenant screening.

(a) *PHA option and owner responsibility.* (1) The PHA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy. However, the PHA may opt to screen applicants for family behavior or suitability for tenancy. The PHA must conduct any such screening of applicants in accordance with policies stated in the PHA administrative plan.

* * * * *

§ 982.401 [Corrected]

5. On page 26646, in the third column, § 982.401(a)(4)(iii)(A) is corrected by revising the reference to "Acceptability criteria" to read "Performance requirements".

6. On page 26648, in the second and third columns, § 982.503 is corrected by adding paragraph (b)(1)(iii) and revising paragraph (c)(2) to read as follows:

§ 982.503 Voucher tenancy: Payment standard amount and schedule.

* * * * *

(b) * * *

(1) * * *

(iii) The PHA may establish a higher payment standard within the basic range if required as a reasonable accommodation for a family that includes a person with disabilities.

(c) * * *

(2) *Above 110 percent of FMR to 120 percent of FMR.* (i) The HUD Field Office may approve an exception payment standard amount from above 110 percent of the published FMR to 120 percent of the published FMR (upper range) if such office determines that such approval is justified by either the median rent method or the 40th percentile rent as described below (and that such approval is also supported by an appropriate program justification in accordance with paragraph (c)(4) of this section).

(A) *Median rent method.* In the median rent method, HUD determines the exception payment standard amount by multiplying the FMR times a fraction of which the numerator is the median gross rent of the exception area and the denominator is the median gross rent of the entire FMR area. In this method, HUD uses median gross rent data from the most recent decennial United States census, and the exception area may be any geographic entity within the FMR area (or any combination of such entities) for which median gross rent data is provided in decennial census products.

(B) *40th percentile rent method.* In this method, HUD determines that the area exception rent equals the 40th percentile of rents to lease standard quality rental housing in the exception area. HUD determines the 40th percentile rent in accordance with the methodology described in § 888.113 of this title for determining fair market rents. A PHA must present statistically representative rental housing survey data to justify HUD approval.

(ii) The HUD Field Office may approve an exception payment standard amount within the upper range if required as a reasonable accommodation for a family that includes a person with disabilities.

* * * * *

7. On page 26649, in the third column, § 982.505(c)(2) is corrected to read as follows:

§ 982.505 Voucher tenancy: How to calculate housing assistance payment.

* * * * *

(c) * * *

(2) If the dwelling unit is located in an exception area, the PHA must use the appropriate payment standard amount established by the PHA for the exception area in accordance with § 982.503.

* * * * *

8. On page 26649, in the third column, the section heading for § 982.508 is corrected to read as follows:

§ 982.508 Maximum family share at initial occupancy.

* * * * *

9. On page 26650, in the third column. § 982.552 is corrected by adding paragraph (e) to read as follows:

§ 982.552 PHA denial or termination of assistance for family.

* * * * *

(e) *Applicant screening.* The PHA may at any time deny program assistance for an applicant in accordance with the PHA policy, as stated in the PHA administrative plan, on screening of applicants for family behavior or suitability for tenancy.

10. On page 26651, in the second and third columns, § 982.623 is corrected as follows:

a. Remove paragraph (a);

b. Redesignate paragraphs (b) and (c) as paragraphs (a) and (b), respectively;

c. Add paragraph (a)(3); and

c. Revise newly designated paragraph (b)(1).

§ 982.623 Manufactured home space rental: Housing assistance payment.

(a) * * *

(3) *Amortization cost.* (i) The amortization cost may include debt service to amortize cost (other than furniture costs) included in the purchase price of the manufactured home. The debt service includes the payment for principal and interest on the loan. The debt service amount must be reduced by 15 percent to exclude debt service to amortize the cost of furniture, unless the PHA determines that furniture was not included in the purchase price.

(ii) The amount of the amortization cost is the debt service established at time of application to a lender for financing purchase of the manufactured home if monthly payments are still being made. Any increase in debt service due to refinancing after purchase of the home is not included in amortization cost.

(iii) Debt service for set-up charges incurred by a family that relocates its home may be included in the monthly amortization payment made by the family. In addition, set-up charges incurred before the family became an assisted family may be included in the amortization cost if monthly payments are still being made to amortize such charges.

(b) *Housing assistance payment for voucher tenancy.* (1) There is a separate FMR for a family renting a manufactured home space. The FMR for a manufactured home space is determined in accordance with § 888.113(e) of this title. The FMR for rental of a manufactured home space is generally 30 percent of the published FMR for a two-bedroom unit (see FMR notices published by HUD pursuant to part 888).

* * * * *

Dated: September 8, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–23895 Filed 9–13–99; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF JUSTICE

28 CFR Part 68

[EOIR No. 116F; A.G. ORDER No. 2255–99]

RIN 1125–AA17

Office of the Chief Administrative Hearing Officer; Executive Office for Immigration Review; Rules of Practice and Procedure for Administrative Hearings Before Administrative Law Judges in Cases Involving Allegations of Unlawful Employment of Aliens, Unfair Immigration-Related Employment Practices, and Document Fraud

AGENCY: Office of the Chief Administrative Hearing Officer, Executive Office for Immigration Review, Justice.

ACTION: Final rule.

SUMMARY: This final rule adopts the interim rule of the Office of the Chief Administrative Hearing Officer (OCAHO), published February 12, 1999, at 64 FR 7066. This final rule amends the regulations of OCAHO pertaining to employer sanctions, unfair immigration-related employment practice cases, and immigration-related document fraud. The final rule implements various provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 and the Debt Collection Improvement Act of 1996, makes various other changes to the OCAHO's procedural regulations, and sets forth clerical and technical corrections to the interim rule.

DATES: This final rule is effective September 14, 1999.

FOR FURTHER INFORMATION CONTACT: Charles Adkins-Blanch, Acting General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, Virginia 22041, telephone number (703) 305–0470.

SUPPLEMENTARY INFORMATION: The IIRIRA, enacted on September 30, 1996, amends the employer sanctions, unfair immigration-related employment practices and document fraud sections of the Immigration and Nationality Act (INA) in several ways (sections 274A, 274B, and 274C of the INA, respectively). The Debt Collection Improvement Act of 1996, Public Law 104–134, Title III ("Debt Collection Improvement Act"), 110 Stat. 1321, 1321–1358 (1996), mandates that the civil penalties in each of these three sections of the INA be adjusted to reflect inflation. In addition, the OCAHO examined its regulations and made various changes perceived as necessary in light of case-by-case experiences since the 1991 amendments to its regulations. On February 12, 1999, the Department of Justice published an interim rule containing changes to the OCAHO's regulations designed to make the regulations comport with one of the aforementioned statutes, clarify any existing ambiguity, and similarly contribute to the fair and efficient administration of sections 274A, 274B, and 274C of the INA. Although comments were requested, none were received. Accordingly, the changes to the regulations, previously published as an interim rule, are now adopted as a final rule with technical corrections.

Need for Correction

Upon further review of the interim rule, the OCAHO is making certain clerical and technical corrections. These corrections are purely technical and non-substantive, and do not impose new requirements.

In the heading and introductory text of § 68.33(c), the final rule replaces the word "respondents" with the phrase "parties other than the Department of Justice." This technical correction is necessary as complainants in cases arising under section 274B of the INA may be individuals or entities other than the Department of Justice. In § 68.33(c)(3)(iii), the word "finds" was inadvertently omitted. The final rule corrects this clerical omission. All other corrections are for punctuation.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100,000,000 or

more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant economic impact on a substantial number of small entities. No additional costs will be incurred as a result of this rule.

Executive Order 12866

The Attorney General has determined that this rule is not a significant regulatory action under Executive Order No. 12866, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12612

This rule has no Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order No. 12612.

Executive Order 12988

This complies with the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order No. 12988

List of Subjects in 28 CFR Part 68

Administrative practices and procedure, Aliens, Citizenship and naturalization, Civil rights, Discrimination in employment, Employment, Equal employment opportunity, Immigration, Nationality, Non-discrimination.

Accordingly, the interim rule amendment 28 CFR Part 68 which was published at 64 FR 7066 on February 12, 1999, is adopted as a final rule with the following corrections:

PART 68—RULES OF PRACTICE AND PROCEDURE FOR ADMINISTRATIVE HEARINGS BEFORE ADMINISTRATIVE LAW JUDGES IN CASES INVOLVING ALLEGATIONS OF UNLAWFUL EMPLOYMENT OF ALIENS, UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES, AND DOCUMENT FRAUD

1. The authority citation for part 68 continues to read as follows:

Authority: 5 U.S.C. 301, 554; 8 U.S.C. 1103, 1324a, 1324b, and 1324c.

2. In § 68.2, remove the period at the end of the sentence defining "Unfair immigration-related employment practice cases" and add, in its place, a semicolon. Remove the semicolon at the end of the sentence defining "Unlawful employment cases" and add, in its place, a period.

3. In § 68.33, revise paragraph (c) heading and introductory text, and paragraph (c)(3)(iii) to read as follows:

§ 68.33 Participation of parties and representation.

(c) *Representation for parties other than the Department of Justice.* Persons who may appear before the Administrative Law Judges on behalf of parties other than the Department of Justice include:

* * * * *

(3) * * *

(iii) *Denial of authority to appear.* Except as provided in paragraph (c)(3)(iv) of this section, the Administrative Law Judge may enter an order denying the privilege of appearing to any individual who the Judge finds does not possess the requisite qualifications to represent others; is lacking in character or integrity; has engaged in unethical or improper professional conduct; or has engaged in an act involving moral turpitude.

* * * * *

4. In § 6852, paragraph (c)(5), remove the comma after the phrase "on or after March 15, 1999" the second time it appears.

Dated: September 4, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–23842 Filed 9–13–99; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF DEFENSE

Defense Security Service

32 CFR Part 321

[Defense Security Service Reg. 01-13]

Defense Security Service Privacy Program

AGENCY: Defense Security Service, DOD.

ACTION: Final rule, with comments.

SUMMARY: The Defense Investigative Service (DIS) has changed its name to the 'Defense Security Service (DSS)'. This agency name change demands administrative updates to 32 CFR part 321. Therefore, DIS is being changed to DSS throughout the rule, addresses are being updated, and two exemption rules are being consolidated into one rule.

EFFECTIVE DATE: September 14, 1999. However, comments received on or before October 14, 1999, will be considered by this agency.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie Blake (703) 325-9450.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, 'Regulatory Planning and Review'

It has been determined that 32 CFR part 321 is not a significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of $100 million or more; or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Public Law 96-354, 'Regulatory Flexibility Act' (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 96-511, 'Paperwork Reduction Act' (44 U.S.C. Chapter 35)

It has been certified that this part does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 32 CFR Part 321

Privacy.

Accordingly, 32 CFR part 321 is revised to read as follows:

PART 321—DEFENSE SECURITY SERVICE PRIVACY PROGRAM

Sec.

321.1 Purpose and applicability.
321.2 Definitions.
321.3 Information and procedures for requesting notification.
321.4 Requirements for identification.
321.5 Access by subject individuals.
321.6 Medical records.
321.7 Request for correction or amendment.
321.8 DSS review of request for amendment.
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321.11 Fees.
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321.13 Exemptions.
321.14 DSS implementation policies.

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

§ 321.1 Purpose and applicability.

(a) This part establishes rules, policies and procedures for the disclosure of personal records in the custody of the Defense Security Service (DSS) to the individual subjects, the handling of requests for amendment or correction of such records, appeal and review of DSS decisions on these matters, and the application of general and specific exemptions, under the provisions of the Privacy Act of 1974. It also prescribes other policies and procedures to effect compliance with the Privacy Act of 1974 and DoD Directive 5400.11 [1].

(b) The procedures set forth in this part do not apply to DSS personnel seeking access to records pertaining to themselves which previously have been available. DSS personnel will continue to be granted ready access to their personnel, security, and other records by making arrangements directly with the maintaining office. DSS personnel should contact the Office of Freedom of Information and Privacy, DSSHQ, for access to investigatory records pertaining to themselves or any assistance in obtaining access to other records pertaining to themselves, and may follow the procedures outlined in these rules in any case.

§ 321.2 Definitions.

(a) All terms used in this part which are defined in 5 U.S.C. 552a shall have the same meaning herein.

(b) As used in this part, the term agency means the Defense Security Service.

§ 321.3 Information and procedures for requesting notification.

(a) *General.* Any individual may request and receive notification of whether he is the subject of a record in any system of records maintained by DSS using the information and procedures described in this section.

(1) Paragraphs (b) and (c) of this section give information that will assist an individual in determining in what systems of DSS records (if any) he may be the subject. This information is presented as a convenience to the individual in that he may avoid consulting the lengthy systems notices elsewhere in the Federal Register.

(2) Paragraph (d) of this section details the procedure an individual should use to contact DSS and request notification. It will be helpful if the individual states what his connection with DSS has or may have been, and about what record system(s) he is inquiring. Such information is not required, but its absence may cause some delay.

(b) *DSS Records Systems.* A list of DSS records systems is available by contacting Defense Security Service, Office of FOI and Privacy, 1340 Braddock Place, Alexandria, VA, 22314-1551.

(c) *Categories of individuals in DSS Record Systems.* (1) Any person who is the subject or co-subject of an ongoing or completed investigation by DSS should have an investigative case file/record in system V5-01, if the record meets retention criteria. An index to such files should be in V5-02.

(2) If an individual has ever made a formal request to DSS under the Freedom of Information Act or the Privacy Act of 1974, a record pertaining to that request under the name of the requester, or subject matter, will be in system V1-01.

(3) Persons of Counterintelligence interest who have solicited from industrial contractors/DoD installations information which may appear to be sensitive in nature may have a record in system V5-04.

(4) Individuals who have been applicants for employment with DSS, or nominees for assignment to DSS, but who have not completed their DSS affiliation, may be subjects in systems V4-04, V5-01, V5-02, V5-03, or V6-01.

(5) Any individual who is a subject, victim or cross-referenced personally in an investigation by an investigative element of any DoD component, may be referenced in the Defense Clearance and Investigations Index, system V5-02, in an index to the location, file number, and custodian of the case record.

(6) Individuals who have ever presented a complaint to or have been connected with a DSS Inspector General inquiry may be subjects of records in system V2-01.

(7) If an individual has ever attended the Defense Industrial Security Institute or completed training with the DSS Training Office he should be subject of a record in V7-01.

(8) If an individual has ever been a guest speaker or instructor at the Defense Industrial Security Institute, he should be the subject of a record in V7-01.

(9) If an individual is an employee or major stockholder of a government contractor or other DoD-affiliated company or agency and has been issued, now possesses or has been processed for a security clearance, he may be subject to a record in V5-03.

(d) *Procedures.* The following procedures should be followed to determine if an individual is a subject of records maintained by DSS, and to request notification and access.

(1) Individuals should submit inquiries in person or by mail to the Defense Security Service, Office of FOI and Privacy, 1340 Braddock Place, Alexandria, VA 22314-1651. Inquiries by personal appearance should be made Monday through Friday from 8:30 to 11:30 a.m. and 1:00 to 4:00 p.m. The information requested in Sec. 321.4 must be provided if records are to be accurately identified. Telephonic requests for records will not be honored. In a case where the system of records is not specified in the request, only systems that would reasonably contain records of the individual will be checked, as described in paragraph (b) of this section.

(2) Only the Director or Chief, Office of FOI and Privacy may authorize exemptions to notification of individuals in accordance with § 321.13.

§ 321.4 Requirements for identification.

(a) *General.* Only upon proper identification, made in accordance with the provisions of this section, will any individual be granted notification concerning and access to all releasable records pertaining to him which are maintained in a DSS system.

(b) *Identification.* Identification of individuals is required both for accurate record identification and to verify identity in order to avoid disclosing records to unauthorized persons. Individuals who request notification of, access to, or amendment of records pertaining to themselves, must provide their full name (and additional names such as aliases, maiden names, alternate spellings, etc., if a check of these variants is desired), date and place of birth, and social security number (SSN).

(1) Where reply by mail is requested, a mailing address is required, and a telephone number is recommended to expedite certain matters. For military requesters residing in the United States, home address or P.O. Box number is preferred in lieu of duty assignment address.

(2) Signatures must be notarized on requests received by mail. Exceptions may be made when the requester is well known to releasing officials. For requests made in person, a photo identification card, such as military ID, driver's license or building pass, must be presented.

(3) While it is not required as a condition of receiving notification, in many cases the SSN may be necessary to obtain an accurate search of DCII (V5-02) records.

[1] Copies may be obtained via internet at http://web7.whs.osd.mil/corres.htm

(c) A DSS Form 30 (Request for Notification of/Access to Personal Records) will be provided to any individual inquiring about records pertaining to himself whose mailed request was not notarized. This form is also available at the DSS Office of FOI and Privacy, 1340 Braddock Place, Alexandria, VA 22314-1651, for those who make their requests in person.

§ 321.5 Access by subject individuals.

(a) *General.* (1) Individuals may request access to records pertaining to themselves in person or by mail in accordance with this section. However, nothing in this section shall allow an individual access to any information compiled or maintained by DSS in reasonable anticipation of a civil or criminal action or proceeding, or otherwise exempted under the provisions of § 321.13.

(2) A request for a pending personnel security investigation will be held in abeyance until completion of the investigation and the requester will be so notified.

(b) *Manner of access.* (1) Requests by mail or in person for access to DSS records should be made to the DSS Office of FOI and Privacy, 1340 Braddock Place, Alexandria, VA 22314-1651.

(2) Any individual who makes a request for access in person shall:

(i) Provide identification as specified in Sec. 321.4.

(ii) Complete and sign a request form.

(3) Any individual making a request for access to records by mail shall include a signed and notarized statement to verify his identity, which may be the DSS request form if he has received one.

(4) Any individual requesting access to records in person may be accompanied by an identified person of his own choosing while reviewing the record. If the individual elects to be accompanied, he shall make this known in his written request, and include a statement authorizing disclosure of the record contents to the accompanying person. Without written authorization of the subject individual, records will not be disclosed to third parties accompanying the subject.

(5) During the course of official business, members of DSS field elements may be given access to records maintained by the field elements/ Operations Center without referral to the Office of FOI and Privacy. An account of such access will be kept for reporting purposes.

(6) In all requests for access, the requester must state whether he or she desires access in person or mailed copies of records. During personal access, where copies are made for retention, a fee for reproduction and postage may be assessed as provided in Sec. 321.11. Where copies are mailed because personal appearance is impractical, there will be no fee.

(7) All individuals who are not affiliates of DSS will be given access to records, if authorized, in the Office of FOI and Privacy, or by means of mailed copies.

§ 321.6 Medical records.

General. Medical records that are part of DSS records systems will generally be included with those records when access is granted to the subject to which they pertain. However, if it is determined that such access could have an adverse effect upon the individual's physical or mental health, the medical record in question will be released only to a physician named by the requesting individual.

§ 321.7 Request for correction or amendment.

(a) *General.* Upon request and proper identification by any individual who has been granted access to DSS records pertaining to himself or herself, that individual may request, either in person or through the mail, that the record be amended. Such a request must be made in writing and addressed to the Defense Security Service, Office of FOI and Privacy, 1340 Braddock Place, Alexandria, VA 22314-1651.

(b) *Content.* The following information must be included to insure effective action on the request:

(1) Description of the record. Requesters should specify the number of pages and documents, the titles of the documents, form numbers if there are any, dates on the documents and names of individuals who signed them. Any reasonable description of the document is acceptable.

(2) Description of the items to be amended. The description of the passages, pages or documents to be amended should be as clear and specific as possible.

(i) Page, line and paragraph numbers should be cited where they exist.

(ii) A direct quotation of all or a portion of the passage may be made if it isn't otherwise easily identifiable. If the passage is long, a quotation of its beginning and end will suffice.

(iii) In appropriate cases, a simple substantive request may be appropriate, e.g., 'delete all references to my alleged arrest in July 1970.'

(iv) If the requester has received a copy of the record, he may submit an annotated copy of documents he wishes amended.

(3) Type of amendment. The requester must clearly state the type of amendment he is requesting.

(i) Deletion or expungement, i.e., a complete removal from the record of data, sentences, passages, paragraphs or documents.

(ii) Correction of the information in the record to make it more accurate, e.g., rectify mistaken identities, dates, data pertaining to the individual, etc.

(iii) Additions to make the record more relevant, accurate or timely may be requested.

(iv) Other changes may be requested; they must be specifically and clearly described.

(4) Reason for amendment. Requests for amendment must be based on specific reasons, included in writing. Categories of reasons are as follows:

(i) Accuracy. Amendment may be requested where matters of fact are believed incorrectly recorded, e.g., dates, names, addresses, identification numbers, or any other information concerning the individual. The request, whenever possible, should contain the accurate information, copies of verifying documents, or indication of how the information can be verified.

(ii) Relevance. Amendment may be requested when information in a record is believed not to be relevant or necessary to the purposes of the record system.

(iii) Timeliness. Amendment may be requested when information is thought to be so old as to no longer be pertinent to the stated purposes of the records system. It may also be requested when there is recent information of a pertinent type that is not included in the record.

(iv) Completeness. Amendment may be requested where information in a record is incomplete with respect to its purpose. The data thought to have been omitted should be included or identified with the request.

(v) Fairness. Amendment may be requested when a record is thought to be unfair concerning the subject, in terms of the stated purposes of the record. In such cases, a source of additional information to increase the fairness of the record should be identified where possible.

(vi) Other reasons. Reasons for requesting amendment are not limited to those cited above. The content of the records is authorized in terms of their stated purposes which should be the basis for evaluating them. However, any matter believed appropriate may be submitted as a basis of an amendment request.

(vii) Court orders and statutes may require amendment of a file. While they do not require a Privacy Act request for execution, such may be brought to the attention of DSS by these procedures.

(c) *Assistance.* Individuals seeking to request amendment of records pertaining to themselves that are maintained by DSS will be assisted as necessary by DSS officials. Where a request is incomplete, it will not be denied, but the requester will be contacted for the additional information necessary to his request.

(d) This section does not permit the alteration of evidence presented to courts, boards and other official proceedings.

§ 321.8 DSS review of request for amendment.

(a) *General.* Upon receipt from any individual of a request to amend a record pertaining to himself and maintained by the Defense Security Service, Office of FOI and Privacy will handle the request as follows:

(1) A written acknowledgment of the receipt of a request for amendment of a record will be provided to the individual within 10 working days, unless final action regarding approval or denial can be accomplished within that time. In that case, the notification of approval or denial will constitute adequate acknowledgment.

(2) Where there is a determination to grant all or a portion of a request to amend a record, the record shall be promptly amended and the requesting individual notified. Individuals, agencies or components shown by accounting records to have received copies of the record, or to whom disclosure has been made, will be notified, if necessary, of the amendment by the responsible official. Where a DoD recipient of an investigative record cannot be located, the notification, if necessary, will be sent to the personnel security element of the parent Component.

(3) Where there is a determination to deny all or a portion of a request to amend a record, the office will promptly:

(i) Advise the requesting individual of the specifics of the refusal and the reasons;

(ii) Inform the individual that he may request a review of the denial(s) from 'Director, Defense Security Service, 1340 Braddock Place, Alexandria, VA 22314-1651.' The request should be brief, in writing, and enclose a copy of the denial correspondence.

(b) DSS determination to approve or deny. Determination to approve or deny and request to amend a record or portion thereof may necessitate additional investigation or inquiry be made to verify assertions of individuals requesting amendment. Coordination will be made with the Director for Investigations and the Director of the Personnel Investigations Center in such instances.

§ 321.9 Appeal of initial amendment decision.

(a) *General.* Upon receipt from any individual of an appeal to review a DSS refusal to amend a record, the Defense Security Service, Office of FOI and Privacy will assure that such appeal is handled in compliance with the Privacy Act of 1974 and DoD Directive 5400.11 and accomplish the following:

(1) Review the record, request for amendment, DSS action on the request and the denial, and direct such additional inquiry or investigation as is deemed necessary to make a fair and equitable determination.

(2) Recommend to the Director whether to approve or deny the appeal.

(3) If the determination is made to amend a record, advise the individual and previous recipients (or an appropriate office) where an accounting of disclosures has been made.

(4) Where the decision has been made to deny the individual's appeal to amend a record, notify the individual:

(i) Of the denial and the reason;

(ii) Of his right to file a concise statement of reasons for disagreeing with the decision not to amend the record;

(iii) That such statement may be sent to the Defense Security Service, Office of FOI and Privacy, (GCF), 1340 Braddock Place, Alexandria, VA 22314-1651, and that it will be disclosed to users of the disputed record;

(iv) That prior recipients of the disputed record will be provided a copy of the statement of disagreement, or if they cannot be reached (e.g., through deactivation) the personnel security element of their DoD component;

(v) And, that he may file a suit in a Federal District Court to contest DSS's decision not to amend the disputed record.

(b) *Time limit for review of appeal.* If the review of an appeal of a refusal to amend a record cannot be accomplished within 30 days, the Office of FOI and Privacy will notify the individual and advise him of the reasons, and inform him of when he may expect the review to be completed.

§ 321.10 Disclosure to other than subject.

(a) *General.* No record contained in a system of records maintained by DSS shall be disclosed by any means to any person or agency outside the Department of Defense, except with the written consent or request of the individual subject of the record, except as provided in this section. Disclosures that may be made without the request or consent of the subject of the record are as follows:

(1) To those officials and employees of the Department of Defense who have a need for the record in the performance of their duties, when the use is compatible with the stated purposes for which the record is maintained.

(2) Required to be disclosed by the Freedom of Information Act.

(3) For a routine use as described in DoD Directive 5400.11.

(4) To the Census Bureau, National Archives, the U.S. Congress, the Comptroller General or General Accounting Office under the conditions specified in DoD Directive 5400.11.

(5) At the written request of the head of an agency outside DoD for a law enforcement activity as authorized by DoD Directive 5400.11.

(6) For statistical purposes, in response to a court order, or for compelling circumstances affecting the health or safety of an individual as described in DoD Directive 5400.11.

(7) Legal guardians recognized by the Act.

(b) *Accounting of disclosures.* Except for disclosures made to members of the DoD in connection with their routine duties, and disclosures required by the Freedom of Information Act, an accounting will be kept of all disclosures of records maintained in DSS systems.

(1) Accounting entries will normally be kept on a DSS form, which will be maintained in the record file jacket, or in a document that is part of the record.

(2) Accounting entries will record the date, nature and purpose of each disclosure, and the name and address of the person or agency to whom the disclosure is made.

(3) An accounting of disclosures made to agencies outside the DoD of records in the Defense Clearance and Investigations Index (V5-02) will be kept as prescribed by the Director of Systems, DSS.

(4) Accounting records will be maintained for at least 5 years after the last disclosure, or for the life of the record, whichever is longer.

(5) Subjects of DSS records will be given access to associated accounting records upon request, except as exempted under § 321.13.

§ 321.11 Fees.

Individuals may request copies for retention of any documents to which they are granted access in DSS records pertaining to them. Requestors will not be charged for the first copy of any

records provided; however, duplicate copies will require a charge to cover costs of reproduction. Such charges will be computed in accordance with DoD Directive 5400.11.

§ 321.12 Penalties.

(a) An individual may bring a civil action against the DSS to correct or amend the record, or where there is a refusal to comply with an individual request or failure to maintain any record with accuracy, relevance, timeliness and completeness, so as to guarantee fairness, or failure to comply with any other provision of 5 U.S.C. 552a. The court may order correction or amendment. It may assess against the United States reasonable attorney fees and other costs, or may enjoin the DSS from withholding the records and order the production to the complainant.

(b) Where it is determined that the action was willful or intentional with respect to 5 U.S.C. 552a(g)(1) (C) or (D), the United States shall be liable for the actual damages sustained, but in no case less than the sum of $1,000 and the costs of the action with attorney fees.

(c) Criminal penalties may be imposed against an officer or employee of the DSS who fully discloses material, which he knows is prohibited from disclosure, or who willfully maintains a system of records without the notice requirements; or against any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses. These offenses shall be misdemeanors with a fine not to exceed $5,000.

§ 321.13 Exemptions.

(a) *General.* The Director of the Defense Security Service establishes the following exemptions of records systems (or portions thereof) from the provisions of these rules, and other indicated portions of Pub. L. 93-579, in this section. They may be exercised only by the Director, Defense Security Service and the Chief of the Office of FOI and Privacy. Exemptions will be exercised only when necessary for a specific, significant and legitimate reason connected with the purpose of a records system, and not simply because they are authorized by statute. Personal records releasable under the provisions of 5 U.S.C. 552 will not be withheld from subject individuals based on these exemptions.

(b) All systems of records maintained by DSS shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that the system contains any information properly classified under Executive Order 12958 and which is required by the Executive Order to be withheld in the interest of national defense of foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions herein may contain items of information that have been properly classified.

(c) *System identifier:* V1-01.

(1) System name: Privacy and Freedom of Information Request Records.

(2) Exemptions: (i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

(iii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iv) Any portion of this system that falls under the provisions of 5 U.S.C. 552a(k)(2), (k)(3), (k)(5) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H) and (I); and (f).

(3) Authority: 5 U.S.C. 552a(k)(2), (k)(3), (k)(5).

(4) Reasons: (i) From subsection (c)(3) because it will enable DSS to conduct certain investigations and relay law enforcement information without compromise of the information, protection of investigative techniques and efforts employed, and identities of confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise);

(ii) From subsections (e)(1), (e)(4)(G), (H), and (I) because it will provide protection against notification of investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise);

(iii) From subsections (d) and (f) because requiring DSS to grant access to records and agency rules for access and amendment of records would unfairly impede the agency's investigation of allegations of unlawful activities. To require DSS to confirm or deny the existence of a record pertaining to a requesting individual may in itself provide an answer to that individual relating to an on-going investigation. The investigation of possible unlawful activities would be jeopardized by agency rules requiring verification of record, disclosure of the record to the subject, and record amendment procedures.

(d) *System identifier:* V5-01.

(1) System name: Investigative Files System

(2) Exemption: (i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

(iii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iv) Any portion of this system that falls under the provisions of 5 U.S.C. 552a(k)(2), (k)(3), or (k)(5) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f).

(3) Authority: 5 U.S.C. 552a(k)(2), (k)(3), or (k)(5).

(4) Reasons: (i) From subsection (c)(3) because it will enable DSS to conduct certain investigations and relay law enforcement information without compromise of the information, protection of investigative techniques and efforts employed, and identities of confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(ii) From subsections (e)(1), (e)(4)(G), (H), and (I) because it will provide protection against notification of investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(iii) From subsections (d) and (f) because requiring DSS to grant access to records and agency rules for access and amendment of records would unfairly impede the agency's investigation of allegations of unlawful activities. To require DSS to confirm or deny the existence of a record pertaining to a requesting individual may in itself provide an answer to that individual relating to an on-going investigation. The investigation of possible unlawful activities would be jeopardized by agency rules requiring verification of record, disclosure of the record to the subject, and record amendment procedures.

(e) *System identifier: V5-02.*

(1) System name: Defense Clearance and Investigations Index (DCII).

(2) Exemption: Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source. Any portion of this system that falls under the provisions of 5 U.S.C. 552a(k)(2) may be exempt from the following subsections of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f).

(3) Authority: 5 U.S.C. 552a(k)(2).

(4) Reasons: (i) From subsection (c)(3) because it will enable DSS to conduct certain investigations and relay law enforcement information without compromise of the information, protection of investigative techniques and efforts employed, and identities of confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(ii) From subsections (e)(1), (e)(4)(G), (H), and (I) because it will provide protection against notification of investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(iii) From subsections (d) and (f) because requiring DSS to grant access to records and agency rules for access and amendment of records would unfairly impede the agency's investigation of allegations of unlawful activities. To require DSS to confirm or deny the existence of a record pertaining to a requesting individual may in itself provide an answer to that individual relating to an on-going investigation. The investigation of possible unlawful activities would be jeopardized by agency rules requiring verification of record, disclosure of the record to the subject, and record amendment procedures.

(f) *System identifier:* V5-03.

(1) System name: Case Control Management System (CCMS).

(2) Exemption: (i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source. Any portion of this system that falls under the provisions of 5 U.S.C. 552a(k)(2) or (k)(5) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f).

(3) Authority. 5 U.S.C. 552a(k)(2) and (k)(5).

(4) Reasons. (i) From subsection (c)(3) because it will enable DSS to conduct certain investigations and relay law enforcement information without compromise of the information, protection of investigative techniques and efforts employed, and identities of confidential sources who might not otherwise come forward and who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(ii) From subsections (e)(1), (e)(4)(G), (H), and (I) because it will provide protection against notification of investigatory material including certain reciprocal investigations and counterintelligence information, which might alert a subject to the fact that an investigation of that individual is taking place, and the disclosure of which would weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy who furnished information under an express promise that the sources' identity would be held in confidence (or prior to the effective date of the Act, under an implied promise).

(iii) From subsections (d) and (f) because requiring DSS to grant access to records and agency rules for access and amendment of records would unfairly impede the agency's investigation of allegations of unlawful activities. To require DSS to confirm or deny the existence of a record pertaining to a requesting individual may in itself provide an answer to that individual relating to an on-going investigation. The investigation of possible unlawful activities would be jeopardized by agency rules requiring verification of

record, disclosure of the record to the subject, and record amendment procedures.

(g) *System identifier:* V5-04.

(1) System name: Counterintelligence Issues Database (CII-DB).

(2) Exemption: (i) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1-R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(iii) Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

(iv) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(v) Any portion of this system that falls within the provisions of 5 U.S.C. 552a(k)(1), (k)(2), (k)(3) and (k)(5) may be exempt from the following subsections (c)(3); (d)(1) through (d)(5); (e)(1); (e)(4)(G), (H), and (I); and (f).

(3) Authority. 5 U.S.C. 552a(k)(1), (k)(2), (k)(3) and (k)(5).

(4) Reasons. (i) From subsection (c)(3) because giving the individual access to the disclosure accounting could alert the subject of an investigation to the existence and nature of the investigation and reveal investigative or prosecutive interest by other agencies, particularly in a joint-investigation situation. This would seriously impede or compromise the investigation and case preparation by prematurely revealing its existence and nature; compromise or interfere with witnesses or make witnesses reluctant to cooperate with the investigators; lead to suppression, alteration, fabrication, or destruction of evidence; and endanger the physical safety of confidential sources, witnesses, law enforcement personnel and their families.

(ii) From subsection (d) because the application of these provisions could impede or compromise an investigation or prosecution if the subject of an investigation had access to the records or were able to use such rules to learn of the existence of an investigation before it would be completed. In addition, the mere notice of the fact of an investigation could inform the subject and others that their activities are under or may become the subject of an investigation and could enable the subjects to avoid detection or apprehension, to influence witnesses improperly, to destroy evidence, or to fabricate testimony.

(iii) From subsection (e)(1) because during an investigation it is not always possible to detect the relevance or necessity of each piece of information in the early stages of an investigation. In some cases, it is only after the information is evaluated in light of other evidence that its relevance and necessity will be clear. In other cases, what may appear to be a relevant and necessary piece of information may become irrelevant in light of further investigation. In addition, during the course of an investigation, the investigator may obtain information that related primarily to matters under the investigative jurisdiction of another agency, and that information may not be reasonably segregated. In the interest of effective law enforcement, DSS investigators should retain this information, since it can aid in establishing patterns of criminal activity and can provide valuable leads for Federal and other law enforcement agencies.

(iv) From subsections (e)(4)(G), (e)(4)(H), (e)(4)(I) and (f) because this system is exempt from subsection (d) of the Act, concerning access to records. These requirements are inapplicable to the extent that these records will be exempt from these subsections. However, DSS has published information concerning its notification and access procedures, and the records source categories because under certain circumstances, DSS could decide it is appropriate for an individual to have access to all or a portion of his/her records in this system of records.

§ 321.14 DSS implementation policies.

(a) *General.* The implementation of the Privacy Act of 1974 within DSS is as prescribed by DoD Directive 5400.11. This section provides special rules and information that extend or amplify DoD policies with respect to matters of particular concern to the Defense Security Service.

(b) *Privacy Act rules application.* Any request which cites neither Act, concerning personal record information in a system or records, by the individual to whom such information pertains, for access, amendment, correction, accounting of disclosures, etc., will be governed by the Privacy Act of 1974, DoD Directive 5400.11 and these rules exclusively. Requests for like information which cite only the Freedom of Information Act will be governed by the Freedom of Information Act, DoD Regulation 5400.7R [2]. Any denial or exemption of all or part of a record from notification, access, disclosure, amendment or other provision, will also be processed under these rules, unless court order or other competent authority directs otherwise.

(c) *First amendment rights.* No DSS official or element may maintain any information pertaining to the exercise by an individual of his rights under the First Amendment without the permission of that individual unless such collection is specifically authorized by statute or necessary to and within the scope of an authorized law enforcement activity.

(d) *Standards of accuracy and validation of records.* (1) All individuals or elements within DSS which create or maintain records pertaining to individuals will insure that they are reasonably accurate, relevant, timely and complete to serve the purpose for which they are maintained and to assure fairness to the individual to whom they pertain. Information that is not pertinent to a stated purpose of a system of records will not be maintained within those records. Officials compiling investigatory records will make every reasonable effort to assure that only reports that are impartial, clear, accurate, complete, fair and relevant with respect to the authorized purpose of such records are included, and that reports not meeting these standards or serving such purposes are not included in such records.

(2) Prior to dissemination to an individual or agency outside DoD of any record about an individual (except for a Freedom of Information Act action or access by a subject individual under these rules) the disclosing DSS official will by review, make a reasonable effort to assure that such record is accurate, complete, timely, fair and relevant to the purpose for which they are maintained.

(e) *The Defense Clearance and Investigations Index (DCII).* It is the policy of DSS, as custodian, that each DoD component or element that has

[2] See footnote 1 to 321.1.

direct access to or contributes records to the DCII (V5-02), is individually responsible for compliance with the Privacy Act of 1974 and DoD Directive 5400.11 with respect to requests for notification, requests for access by subject individuals, granting of such access, request for amendment and corrections by subjects, making amendments or corrections, other disclosures, accounting for disclosures and the exercise of exemptions, insofar as they pertain to any record placed in the DCII by that component or element. Any component or element of the DoD that makes a disclosure of any record whatsoever to an individual or agency outside the DoD, from the DCII, is individually responsible to maintain an accounting of that disclosure as prescribed by the Privacy Act of 1974 and DoD Directive 5400.11 and to notify the element placing the record in the DCII of the disclosure. Use of and compliance with the procedures of the DCII Disclosure Accounting System will meet these requirements. Any component or element of DoD with access to the DCII that, in response to a request concerning an individual, discovers a record pertaining to that individual placed in the DCII by another component or element, may refer the requester to the DoD component that placed the record into the DCII without making an accounting of such referral, although it involves the divulging of the existence of that record. Generally, consultation with, and referral to, the component or element placing a record in the DCII should be effected by any component receiving a request pertaining to that record to insure appropriate exercise of amendment or exemption procedures.

(f) *Investigative operations.* (1) DSS agents must be thoroughly familiar with and understand these rules and the authorities, purposes and routine uses of DSS investigative records, and be prepared to explain them and the effect of refusing information to all sources of investigative information, including subjects, during interview, in response to questions that go beyond the required printed and oral notices. Agents shall be guided by DSS Handbook for Personnel Security Investigations in this respect.

(2) All sources may be advised that the subject of an investigative record may be given access to it, but that the identities of sources may be withheld under certain conditions. Such advisement will be made as prescribed in DSS Handbook for Personnel Security Investigations, and the interviewing agent may not urge a source to request a grant of confidentiality. Such pledges of confidence will be given sparingly and then only when required to obtain information relevant and necessary to the stated purpose of the investigative information being collected.

(g) *Non-system information on individuals.* The following information is not considered part of personal records systems reportable under the Privacy Act of 1974 and may be maintained by DSS members for ready identification, contact, and property control purposes only. If at any time the information described in this paragraph is to be used for other than these purposes, that information must become part of a reported, authorized record system. No other information concerning individuals except that described in the records systems notice and this paragraph may be maintained within DSS.

(1) Identification information at doorways, building directories, desks, lockers, name tags, etc.

(2) Identification in telephone directories, locator cards and rosters.

(3) Geographical or agency contact cards.

(4) Property receipts and control logs for building passes, credentials, vehicles, weapons, etc.

(5) Temporary personal working notes kept solely by and at the initiative of individual members of DSS to facilitate their duties.

(h) *Notification of prior recipients.* Whenever a decision is made to amend a record, or a statement contesting a DSS decision not to amend a record is received from the subject individual, prior recipients of the record identified in disclosure accountings will be notified to the extent possible. In some cases, prior recipients cannot be located due to reorganization or deactivations. In these cases, the personnel security element of the receiving Defense Component will be sent the notification or statement for appropriate action.

(i) *Ownership of DSS Investigative Records.* Personnel security investigative reports shall not be retained by DoD recipient organizations. Such reports are considered to be the property of the investigating organization and are on loan to the recipient organization for the purpose for which requested. All copies of such reports shall be destroyed within 120 days after the completion of the final personnel security determination and the completion of all personnel action necessary to implement the determination. Reports that are required for longer periods may be retained only with the specific written approval of the investigative organization.

(j) *Consultation and referral.* DSS system of records may contain records originated by other components or agencies which may have claimed exemptions for them under the Privacy Act of 1974. When any action that may be exempted is initiated concerning such a record, consultation with the originating agency or component will be effected. Where appropriate such records will be referred to the originating component or agency for approval or disapproval of the action.

Dated: September 8, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–23824 Filed 9–13–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 110 and 165

[CGD 05–99–080]

RIN 2115–AA98

Safety Zone and Anchorage Regulations; Delaware Bay and River

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Army Corps of Engineers will begin dredging parts of the Delaware River, including the Marcus Hook Range Ship Channel. Because of the dredging operations, temporary additional requirements will be imposed in Marcus Hook Anchorage (Anchorage 7), the Deepwater Point Anchorage (Anchorage 6), and the Mantua Creek Anchorage (Anchorage 9). The Coast Guard is also establishing a temporary moving safety zone around the dredge vessel Ozark that will be working in the Marcus Hook Range Ship Channel adjacent to Anchorage 7.

DATES: Sections 110.157(b)(11) and 165.T05–080 are effective from August 28, 1999 until November 28, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the U.S. Coast Guard Captain of the Port, 1 Washington Ave., Philadelphia, PA 19147–4395 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (215) 271–4888.

FOR FURTHER INFORMATION CONTACT: BMCS R.L. Ward, Project Officer, U.S. Coast Guard Captain of the Port, Phone: (215) 271–4888.

SUPPLEMENTARY INFORMATION:

Regulatory History

A Notice of Proposed Rule Making (NPRM) was not published for this regulation. In keeping with 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing an NPRM. In keeping with the requirements of 5 U.S.C. 553(d)(3), the Coast Guard also finds good cause exists for making this regulation effective less than 30 days after publication in the **Federal Register**. U.S. Army Corps of engineers, Philadelphia District, informed the Coast Guard on 16 July 1999 that dredging operations would commence on 30 August 1999. Publishing a NPRM and delaying its effective date would be contrary to the public interest, since immediate action is needed to protect mariners against potential hazards associated with the dredging operations in the Marcus Hook Range Ship Channel and to modify the anchorage regulations to facilitate vessel traffic.

Background and Purpose

The U.S. Army Corps of Engineers (ACOE) notified the Coast Guard that it needed to conduct dredging operations on the Delaware River, in the vicinity of the Marcus Hook Range Ship Channel. The dredging is needed to maintain the project depth of the channel. Similar dredging is conducted each year. This period of dredging begins 30 August 1999 and is anticipated to end on 28 November 1999.

To reduce the hazards associated with dredging the channel, vessel traffic that would normally transit through the Marcus Hook Range Ship Channel will be diverted through part of Anchorage 7 during the dredging operations. This necessitates additional requirements/restrictions on the use of Anchorage 7. For the protection of mariners transiting in the vicinity of dredging operations, the Coast Guard is also establishing a safety zone around the dredging vessel OZARK. The safety zone will ensure mariners remain a safe distance from the potentially dangerous dredging equipment.

Discussion of the Regulation

Section 110.157(b)(2) allows vessels to anchor for up to 48 hours in the anchorages listed in § 110.157(a), which includes Anchorage 7. However, because of the limited anchorage space available in Anchorage 7, the Coast Guard is adding a temporary paragraph 33 CFR 110.157(b)(11) to provide additional requirements and restrictions on vessels utilizing Anchorage 7. During the effective period, vessels desiring to use Marcus Hook Anchorage (Anchorage 7) must obtain permission from the Captain of the Port Philadelphia at least 24 hours in advance. The Captain of the Port will permit only one vessel at a time to anchor in Anchorage 7 and will grant permission on a "first come, first serve" basis. A vessel will be directed to a location within Anchorage 7 where it may anchor, and will not be permitted to remain in the Anchorage 7 for more than 12 hours.

The Coast Guard expects that vessels normally permitted to anchor in Anchorage 7 will use Anchorage 6 off Deepwater Point or Anchorage 9 near the entrance to Manuta Creek, because they are the closest anchorages to Anchorage 7. To control access to Anchorage 7, the Coast Guard is requiring a vessel desiring to anchor in Anchorage 7 obtain advance permission from the Captain of the Port. To control access to Anchorages 6 and 9, the Coast Guard is requiring any vessel 700 feet or greater in length obtain advance permission from the Captain of the Port before anchoring. The Coast Guard is also concerned that the holding ground in Anchorages 6 and 9 is not as good as in Anchorage 7. Therefore, a vessel 700 to 750 feet in length is required to have one tug standing alongside while at anchor, and a vessel of over 750 feet in length must have two tugs standing alongside. The tug(s) must have sufficient horsepower to prevent the vessel they're attending from swinging into the channel.

The Coast Guard is also establishing a safety zone within a 150-yard radius of the dredging operations being conducted in the Marcus Hook Range Ship Channel in the vicinity of Anchorage 7 by the dredge vessel OZARK.

The safety zone will protect mariners transiting the area from the potential hazards associated with dredging operations. Vessels transiting the Marcus Hook Range Ship Channel will have to divert from the main ship channel through Anchorage 7, and must operate at the minimum safe speed necessary to maintain steerage and reduce wake. No vessel may enter the safety zone unless it receives permission from the Captain of the Port.

Regulatory Evaluation

This temporary final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has exempted it from review under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation requires certain vessels to have one or two tugs alongside while at anchor, the requirement only applies to vessels 700 feet or greater in length, that choose to anchor in Anchorages 6 and 9. Alternate anchorages, such as Anchorage A (Breakwater) and Anchorage 1 (Big Stone) in Delaware Bay, are also reasonably close and generally available. Vessels anchoring in Anchorage A and 1 are not required to have tugs alongside, except when specifically directed to do so by the Captain of the Port because of a specific hazardous condition. Furthermore, few vessels 700 feet or greater are expected to enter the port during the effective period. The majority of vessels expected are less than 700 feet and thus will not be required to have tugs alongside.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this temporary final rule will have a significant economic impact on a substantial number of small entities. "Small Entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This regulation's greatest impact is on vessels greater than 700 feet in length which choose to anchor in Anchorages 6 and 9 will have virtually no impact on any small entities. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this temporary final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This temporary final rule does not provide for a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this temporary final rule under the principles and criteria contained in Executive Order 12612, and has determined that it does not have sufficient federalism implications to warrant the preparation of a federalism Assessment.

Environment

The Coast Guard has analyzed this temporary final rule and concluded that, under figure 2–1, paragraph (34)(f) and (34)(g) of Commandant Instruction M16475.1C, this temporary final rule is categorically excluded from further environmental documentation. Regulations changing the size of anchorage grounds and regulations establishing safety zones are excluded under that authority.

List of Subjects

33 CFR Part 110

Anchorage grounds.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR 110 and 33 CFR 165 as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. A new temporary section 110.156(b)(11) is added to read as follows:

§ 110.157 Delaware Bay and River

* * * * *

(b) * * *

(11) Additional requirements and restrictions for the anchorages defined in paragraphs (a)(7), (a)(8), and (a)(10).

(i) Prior to anchoring in Anchorage 7 off Marcus Hook, as described in paragraph (a)(8) of this section, a vessel must first obtain permission from the Captain of the Port, Philadelphia, at least 24 hours in advance of arrival. Permission to anchor will be granted on a "first-come, first-serve" basis. The Captain of the Port will allow only one vessel at a time to anchor in Anchorage 7, and no vessel may remain within Anchorage 7 for more than 12 hours.

(ii) For Anchorage 6 as described in paragraph (a)(7) of this section, and Anchorage 9 as described in paragraph (a)(10) of this section.

(A) Any vessel 700 feet or greater in length requesting anchorage shall obtain permission from the Captain of the Port, Philadelphia, Pennsylvania, at least 24 hours in advance.

(B) Any vessel from 700 to 750 feet in length shall have one tug alongside at all times while the vessel is at anchor.

(C) Any vessel greater than 750 feet in length shall have two tugs alongside at all times while the vessel is at anchor.

(D) The master, owner or operator of a vessel at anchor shall ensure that a tug required by this section is of sufficient horsepower to assist with necessary maneuvers to keep the vessel clear of the navigation channel.

(iii) *Captain of the Port or COTP* means the Captain of the Port, Philadelphia, Pennsylvania or any Coast Guard commissioned, warrant, or petty officer authorized to act on his behalf.

(iv) This paragraph is effective from 28 August 1999 until 28 November 1999.

PART 165—[AMENDED]

3. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

4. A new § 165.T05–080 is added to read as follows:

§ 165.T05–080 Safety Zone; Delaware Bay and River

(a) *Location:* The following area is a safety zone: All waters within the arc of a circle with a 150 yard radius having at its center dredging vessel OZARK operating in or near the Marcus Hook Range Ship channel in the vicinity of Anchorage 7.

(b) *Effective Dates:* This section is effective from 28 August 1999 until 28 November 1999.

(c) *Regulations:* The following regulations shall apply within the safety zone.

(1) In accordance with the general regulations in § 165.23, entry into this safety zone is prohibited unless authorized by the Captain of the Port. The remaining general requirements of § 165.23 also apply to this regulation.

(2) The operator of any vessel in the safety zone shall proceed as directed by the Captain of the Port.

(3) The Coast Guard vessel enforcing the safety zone may be contacted on channels 13 and 16 VHF–FM. The Captain of the Port, Philadelphia may be contacted at telephone number (215) 271–4940.

(d) *Captain of the Port or COTP* means The Captain of the Port, Philadelphia, Pennsylvania or any Coast Guard commissioned, warrant, or petty officer authorized to act on his behalf.

Dated: August 27, 1999.

Roger T. Rufe,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 99–23949 Filed 9–13–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–99–055]

Drawbridge Operating Regulation; Chevron Oil Company Canal, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the SR 3090 swing bridge across the Chevron Oil Company Canal, mile 0.5 near Leeville, Lafourche Parish, Louisiana. This deviation allows the Greater Lafourche Port Commission to maintain the bridge in the closed-to-navigation position continuously from 7 a.m. on Monday, September 13 ,1999 until 5 p.m. on Friday, September 24, 1999. The bridge will open on signal if at least 24 hours notice is given for the subsequent period of 5 p.m. on Friday, September 24, 1999 until 5 p.m. on Friday, October 15, 1999. This temporary deviation was issued to allow for the replacement of the roadway deck surface.

DATES: This deviation is effective from September 13, 1999, through October 15, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. David Frank, Bridge Administration Branch Commander (obc), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana, 70130-3396, telephone number 504–580–2965.

SUPPLEMENTARY INFORMATION:

Navigation on the waterway consists of oilfield related equipment, houseboats, and other recreational craft. The Greater Lafourche Port Commission requested a temporary deviation from the regulation 33 CFR 117.5 governing the normal operation of the bridge in order to accommodate the replacement of the roadway decking of the bridge.

The bridge has opened approximately 20 times over the past year for the movement of oil field equipment and houseboats transiting to camp sites. The Port Commission has previously informed the local fisherman and businesses in the area regarding the

work. Vessels needing to move through the bridge have already done so. The vertical clearance of the bridge in the closed to navigation position is 12 feet above mean high water, elevation 3.0 feet Mean Sea Level.

The deviation allows the draw of the SR 3090 swing drawbridge across the Chevron Oil Company Canal, mile 0.5, near Leeville, Lafourche Parish, Louisiana, to remain in the closed-to-navigation position continuously from 7 a.m. on Monday, September 13, 1999 until 5 p.m. on Friday, September 24, 1999. The bridge will open on signal if at least 24 hours is given for the subsequent period of 5 p.m. on Friday, September 24, 1999 until 5 p.m. on Friday, October 15 , 1999. Presently, the draw opens on signal for the passage of vessels. In case of an approaching hurricane, the bridge will be returned to normal operation as soon as practicable.

Dated: September 3, 1999.

K.J. Eldridge,

Captain, U.S. Coast Guard, Commander, 8th Coast Guard Dist., Acting.

[FR Doc. 99–23948 Filed 9–13–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–147]

RIN 2115–AA97

Safety Zone: Fireworks, 100YR Anniversary for Architect Society, Boston Harbor, Boston, MA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the 100YR Anniversary for Architect Society Fireworks, Boston Harbor, Boston, MA. This regulation establishes a safety zone on the waters of Boston Harbor, Boston, MA in a radius of four hundred (400) yards around a fireworks barge moored in approximate position 42°21.5′ N. 71°0.3′ W (NAD 1983). The safety zone is in effect from 6 p.m. until 9:30 p.m. on Tuesday, September 14, 1999. This safety zone prevents entry into or movement within this portion of Boston Harbor, and it is needed to protect the boating public from the dangers posed by a fireworks display.

DATES: This rule is effective from 6 p.m. until 9:30 p.m. on Tuesday, September 14, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: ENS Rebecca Montleon, Waterways Management Division, Coast Guard Marine Safety Office Boston, (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM and for making this regulation effective in less than 30 days after **Federal Register** publication. Conclusive information about this event was not provided to the Coast Guard until August 2, 1999, making it impossible to draft or publish an NPRM or a final rule 30 days in advance of its effective date with appropriate time allowed for public comment. Publishing a NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to close a portion of the waterway and protect the maritime public from the hazardous associated with this fireworks display, which is intended for public entertainment.

Background and Purpose

On August 2, 1999 the American Society of Landscape Architects, Washington, DC, filed a marine event permit with the Coast Guard to hold a fireworks program over the waters of Boston Harbor, Boston, MA. This regulation establishes a safety zone on the waters of Boston Harbor in a four hundred (400) yards radius around the fireworks barge moored in approximate position 42°21.5′ N. 71°02.3′ W (NAD 1983). The safety zone is in effect from 6 p.m. until 9:30 p.m. on Tuesday, September 14, 1999. This safety zone prevents entry into or movement within this portion of Boston Harbor, and it is needed to protect the boating public from the dangers posed by a fireworks display.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary since the safety zone will be limited in duration, marine advisories will be made in advance of the implementation of the safety zone, and the safety zone will not restrict the entire harbor, allowing traffic to continue without obstruction.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) that this rule will not have a significant impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this final rule and concluded that, under Figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–147 to read as follows:

§ 165.T01–147 Safety Zone: Fireworks, 100YR Anniversary For Architect Society, Boston Harbor, Boston, MA.

(a) *Location.* The following area is a safety zone: all waters of Boston Harbor, Boston, MA in a four hundred (400) yard radius around the fireworks barge moored in approximate position 42°21.5′N, 71°02.3′W (NAD 1983).

(b) *Effective Date.* This section is effective from 6 p.m. until 9:30 p.m. on Tuesday, September 14, 1999.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Boston.

(2) All persons and vessels shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(3) The general regulations covering safety zones in § 165.23 of this part apply.

Dated: August 14, 199.

M.A. Skordinksi,

Commander, U.S. Coast Guard, Acting Captain of the Port, Boston, Massachusetts.

[FR Doc. 99–23950 Filed 9–13–99; 8:45 am]

BILLING CODE 4910–15–M

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 96–3C]

Notice and Recordkeeping for Digital Transmission of Sound Recordings Under Statutory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Interim rule amendment.

SUMMARY: The Copyright Office of the Library of Congress is amending the regulation that requires the filing of an initial notice of digital transmissions of sound recordings under statutory license with the Copyright Office to state that a suggested format for the Initial Notice will be posted on the Office's website, in an effort to better ensure that Initial Notices filed with the Office fully comply with the regulation.

DATES: Effective September 14, 1999.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Attorney Advisor, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 1995, Congress enacted the Digital Performance Right in Sound Recordings Act of 1995 ("DPRA"), Pub. L. 104–39, 109 Stat. 336 (1995). The DPRA gave to sound recording copyright owners an exclusive right to perform their works publicly by means of a digital audio transmission subject to a statutory license. 17 U.S.C. 106(6); 17 U.S.C. 114.

The statutory license requires adherence to regulations under which copyright owners may receive reasonable notice of use of their sound recordings under the statutory license and under which entities performing the sound recordings shall keep and make available records of such use. 17 U.S.C. 114(f)(2). On May 13, 1996, the Copyright Office initiated a rulemaking proceeding to promulgate regulations to govern the notice and recordkeeping requirements. 61 FR 22004 (May 13, 1996). This rulemaking concluded with the issuance of interim rules to govern the filing of an initial notice of digital transmissions of sound recordings under statutory license, 37 CFR 201.35, and the filing of reports of use of sound recordings under statutory license, 37 CFR 201.36. *See* 63 FR 34289 (June 24, 1998).

Since promulgation of the interim rules, several entities have filed Initial Notices with the Copyright Office in accordance with § 201.35. However, the majority of these Initial Notices have not provided all of the information required under § 201.35. As stated in § 201.35(c), "[t]he Copyright Office does not provide printed forms for the filing of Initial Notices." However, the Copyright Office is amending this section to state that a suggested format for the Initial Notice will be posted on the Copyright Office website, in an effort to better ensure that Initial Notices filed with the Office provide all of the information required under § 201.35.

List of Subjects in 37 CFR Part 201

Copyright.

Regulations

For the reasons set forth in the preamble, part 201 of title 37 of the Code of Federal Regulations is amended as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

§ 201.35 [Amended]

2. Section 201.35(c) is amended by removing "The Copyright Office does not provide printed forms for the filing of Initial Notices." and adding in its place "A suggested format for the Initial Notices may be found on the Copyright Office website."

Dated: August 19, 1999.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 99–23908 Filed 9–13–99; 8:45 am]

BILLING CODE 1410–31–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[FRL–6437–6]

National Primary Drinking Water Regulation: Consumer Confidence Reports; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA published in the **Federal Register** of August 19, 1998, a final rule setting out the requirements for annual drinking water quality reports that water suppliers must provide to their customers. An appendix to that rule mistakenly referred to "leaching from PVC pipes" as a major source of tetrachloroethylene in drinking water. This rule deletes that incorrect reference. The correction has no impact on water systems that have already produced their reports.

DATES: Effective on September 14, 1999.

FOR FURTHER INFORMATION CONTACT: Rob Allison: 202–260–9836 or allison.rob@epa.gov.

SUPPLEMENTARY INFORMATION: In the August 19, 1998 **Federal Register** (63 FR 44511), EPA published the Consumer Confidence Report Rule. Appendix B to subpart O of that rule (63 FR 44533) lists

"leaching from PVC pipes" as a major source of tetrachloroethylene in drinking water. EPA mistakenly included that listing although in fact leaching from PVC pipes is not a source of tetrachloroethylene in drinking water. This rule deletes that part of the entry, so that the amended Appendix lists only "Discharge from factories and dry cleaners" as a major source of tetrachloroethylene in drinking water supplies.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, an agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because EPA merely is correcting a minor error in the promulgated rule. Thus, notice and public comment procedure are unnecessary. The Agency finds that this constitutes good cause under 5 U.S.C. 553(b)(B). Moreover, since today's action does not create any new regulatory requirements and affected parties have known of the underlying rule since August 19, 1998, EPA finds that good cause exists to provide for an immediate effective date pursuant to 5 U.S.C. 553(d)(3) and 808(2).

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655, May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined under E.O. 12866. Further, EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. This rule is not subject to the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) because it does not involve any technical standards. EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the August 19, 1998 **Federal Register** notice.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of September 14, 1999. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 141

Environmental protection, Chemicals, Water supply.

Dated: September 7, 1999.

J. Charles Fox,

Assistant Administrator, Office of Water.

For the reasons set out in the preamble, 40 CFR part 141 is amended as follows:

PART 141—[AMENDED]

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

2. Appendix B to Subpart O is amended by revising entry 68 to read as follows:

Appendix B to Subpart O-Regulated Contaminants

* * * * *

Contaminant (units)	MCLG	MCL	Major sources in drinking water
• • •	•	•	• • •
68. Tetrachloroethylene (ppb)	0	5	Discharge from factories and dry cleaners.
• • •	•	•	• • •

[FR Doc. 99–23918 Filed 9–13–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL–6422–1]

Texas: Final Authorization and Incorporation by Reference of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Texas has revised its Hazardous Waste Program under the Resource Conservation and Recovery Act (RCRA). With respect to today's document, Texas has made conforming changes to make its regulations internally consistent relative to the revisions made in this document. Texas has also revised its regulations to make them more consistent with the Federal requirements. The EPA has reviewed Texas Natural Resource Conservation Commission's (TNRCC) revisions to its program and has determined that Texas' Hazardous Waste Program revision satisfies all of the requirements necessary to qualify for final authorization. Unless adverse written comments are received during the review and comment period, EPA's decision to approve Texas' Hazardous Waste Program revision will take effect as provided below. In addition, today's document corrects technical errors made in the table of authorities published in the March 1, 1990 (55 FR 7318), April 11, 1994 (59 FR 16987), and September 12, 1997 (62 FR 47947) authorization documents for Texas.

The EPA uses part 272 of Title 40 Code of Federal Regulations (CFR) to provide notice of the authorization status of State programs, and to incorporate by reference those provisions of the State statutes and regulations that are part of the authorized State program. Thus, EPA intends to revise and incorporate by reference, the Texas authorized State program in 40 CFR part 272. The purpose of this action is to incorporate by reference into CFR the currently authorized State hazardous waste program in Texas. This document incorporates by reference provisions of State hazardous waste statutes and regulations and clarifies which of these provisions are included in the authorized and Federally enforceable program.

DATES: This rule and final authorization for Texas's program revisions shall be effective November 15, 1999, unless an adverse comment pertaining to the State's revision discussed in this document is received by the end of the comment period. If an adverse written comment is received, EPA will publish either: (1) a withdrawal of the immediate final rule or, (2) a document containing a response to the comment that either affirms that the immediate final rule takes effect or withdraws the rule. All comments on the program revisions must be received by October 14, 1999. The incorporation by reference of certain Texas statutes and regulations was approved by the Director of the **Federal Register** as of November 15, 1999 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

ADDRESSES: Written comments referring to Document number TX 99–1 should be sent to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202--2733, phone (214) 665–8533. Copies of Texas program revisions and materials which EPA used in evaluating the revisions are available for inspection and copying from 8:30 a.m. to 4 p.m. Monday through Friday at the following addresses: Texas Natural Resource Conservation Commission, 1700 N. Congress Avenue, Austin, TX 78711–3087, phone (512) 239–1000 and EPA Region 6, 1445 Ross Avenue, Dallas, Texas 65202, Phone number: (214) 665–6444.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multi-Media Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533.

SUPPLEMENTARY INFORMATION:

I. Authorization of State-Initiated Changes

A. Background

States with final authorization under section 3006(b) of the RCRA, 42 U.S.C. 6926(b); have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal Hazardous Waste Program. Revisions to State Hazardous Waste Programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260–266, 268, 270, 273, and 279.

B. Texas

Texas initially received final authorization on December 26, 1984 (49 FR 48300), to implement its Base Hazardous Waste Management Program. This authorization was clarified in a notice published March 26, 1985 (50 FR 11858). Texas received authorization for revisions to its program on January 31, 1986, effective October 4, 1985 (51 FR 3952), effective February 17, 1987 (51 FR 45320), effective March 15, 1990 (55 FR 7318), effective July 23, 1990 (55 FR 21383), effective October 21, 1991 (56 FR 41626), effective December 4, 1992 (57 FR 45719), effective June 27, 1994 (59 FR 16987), effective June 27, 1994 (59 FR 17273), effective November 26, 1997 (62 FR 47947) and, effective December 3, 1997 (62 FR 49163).

The EPA reviewed Texas's application, and today is making an immediate final decision, subject to public review and comment, that Texas's Hazardous Waste Program revisions satisfies all of the requirements necessary to qualify for final authorization. Consequently, the EPA intends to grant authorization for the additional program modifications to Texas. The public may submit written comments on EPA's final decision until October 14, 1999. Copies of Texas' program revisions are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document.

Approval of TNRCC's program revision shall become effective 60 days from the date this document is published, unless an adverse comment pertaining to the State's revision discussed in this document is received by the end of the comment period. If an adverse written comment is received, EPA will publish either: (1) a withdrawal of the immediate final rule or, (2) a document containing a response to the comment that either affirms that the immediate final rule takes effect or withdraws the rule.

The EPA grants Texas final authorization to carry out the following provisions of the State's program in lieu of the Federal program. These provisions are analogous to the indicated RCRA regulations found at 40 CFR as of July 1, 1994.

State requirement	Federal requirement
30 Texas Administrative Code (TAC) §305.62(a), effective June 13, 1996 (except the phrase "§305.70 of this title * * * Solid Waste Class I Modifications" and the sentence "If the permittee requests a modification of a municipal solid waste permit * * * Solid Waste Class I Modifications.").	40 CFR 124.5(a).
30 TAC §305.69(d)(2), introductory paragraph, effective February 26, 1996	40 CFR 270.42(c)(2) (introductory paragraph).
30 TAC §305.69(d)(2)(F), effective February 26, 1996	40 CFR 270.42(c)(2)(v).
30 TAC §305.69(g), effective February 26, 1996	40 CFR 270.42(f).
30 TAC §305.141(a), effective June 13, 1996	40 CFR 270.30 (introductory paragraph).
30 TAC §335.19(b), effective March 1, 1996	40 CFR 260.31(b).
30 TAC §335.22, effective November 20, 1996	40 CFR 260.40.
30 TAC §335.23, introductory paragraph, effective November 20, 1996	40 CFR 260.41 (introductory paragraph).
30 TAC §335.23(1), effective November 20, 1996	40 CFR 260.41(a).
30 TAC §335.69(a), introductory paragraph, effective February 26, 1996	40 CFR 262.34(a) (introductory paragraph).
30 TAC §335.112(a)(13), effective November 20, 1996	40 CFR 265, Subpart N (except 265.301(f)–(i), 265.314, and 265.315).
30 TAC §335.112(a)(22), introductory paragraph, effective November 20, 1996	40 CFR 265, Appendices.
30 TAC §335.112(a)(22)(B)–(D), effective November 20, 1996	40 CFR 265, Appendices II–V.
30 TAC §335.152(a)(5), effective November 20, 1996	40 CFR 264.110–264.120.
30 TAC §335.152(a)(20), introductory paragraph, effective November 20, 1996	40 CFR 264, Appendices.
30 TAC §335.152(a)(20)(B)–(E), effective November 20, 1996	40 CFR 264, Appendices IV, V, VI and IX.
30 TAC §335.152(b), effective November 20, 1996	40 CFR 264.18(b).
30 TAC §335.154(a)(3), effective July 14, 1987	40 CFR 264.75(d).
30 TAC §335.164(7)(C), effective October 29, 1990	40 CFR 264.98(g)(3).
30 TAC §335.504(2), effective March 6, 1996	40 CFR 262.11(b).

In addition to the above listed changes, EPA is authorizing changes to the following State provisions. These provisions do not have a direct analog in the Federal RCRA regulations. However, none of these provisions are considered broader in scope than the Federal program. This is so because these provisions were either previously authorized as part of Texas' base authorization or have been added to make the State's regulations internally consistent with changes made for the other authorizations listed in the first paragraph of this section. The EPA has reviewed these provisions and has determined that they are consistent with and no less stringent than the Federal requirements. Additionally, this authorization does not affect the status of State permits and those permits issued by EPA because no new substantive requirements are a part of these revisions.

State Requirement
Texas Solid Waste Disposal Act (TSWDA) §361.063(h); Texas Health and Safety Code Ann. (THSC) (Vernon's Supp. 1997), effective September 1, 1996, as amended.
TSWDA §361.079; THSC (Vernon's Supp. 1997), effective September 1, 1996, as amended.
TSWDA §361.089(d); THSC (Vernon's Supp. 1997), effective September 1, 1996, as amended.
30 Texas Administrative Code (TAC) §281.2, introductory paragraph, effective November, 7, 1994.
30 TAC §281.2(4), effective November 7, 1994.
30 TAC §305.50(1), effective November 20, 1996.
30 TAC §305.69(c)(11), effective February 26, 1996.
30 TAC §305.69(d)(2)(A), effective February 26, 1996.
30 TAC §335.112(b), effective November 20, 1996.
30 TAC §335.112(c), effective February 26, 1996.
30 TAC §335.152(c), effective November 20, 1996.

Texas is not authorized to operate the Federal program on Indian lands. This authority remains with EPA.

C. Decision

I conclude that Texas' application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Texas is granted final authorization to operate its hazardous waste program as revised. Upon effective final approval Texas will be responsible for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Texas also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

II. Corrections

A. Corrections to March 1, 1990 (55 FR 7318) Authorization Document

There were omissions in the table published as part of the March 1, 1990 (55 FR 7318), authorization notice for Texas. The affected entry for that table is shown in the table below. The corrections have been bolded and italicized.

Federal citation	State analog
5. Financial Responsibility—Settlement Agreement—changes to 40 CFR part 260, subpart B; 264 subparts G and H; 265, subparts G and H; and 270, subparts B, D, and G—as published in the Federal Register on May 2, 1986..	5. 31 TAC §§335.1; 335.152(a)(5) and (6); 335.178; 335.112(a)(6) and (7); 335.118(a) and (b); 335.119; 335.127; 305.50(4); 305.51; 305.62(c)(2)(C)(x) and 305.64(g), revised July 14, 1987.

B. Corrections to April 11, 1994 (59 FR 16987) Authorization Document

There was a typographical error in the table published as part of the April 11, 1994 (59 FR 16987) authorization notice for Texas. The affected entry, No. 26, for that table regarding Checklist 54 incorrectly cites 305.184(1)–(3). Subparagraph (3) was removed by Checklist 54. The correct citation is 305.184(1)–(2).

C. Corrections to the September 12, 1997 (62 FR 47947) Authorization Document

There were numerous typographical and effective date errors in the tables published as part of the September 12, 1997 (62 FR 47947) authorization notice for Texas. The affected entries for that table are shown in the table below. The corrections have been bolded and italicized. In addition, entry No. 39 is added to the table.

Federal citation	State analog
2. Burning of Hazardous Waste in Boilers and Industrial Furnaces; Corrections and Technical Amendments I, July 17, 1991 (56 FR 32688). (Checklist 94).	TSWDA, Chapter 361, Secs. 361.003(12), 361.061, 361.064 THSC Ann., (Vernon 1992 and Supplement 1996), effective September 1, 1995, as amended; TSWDA and THSC Sec. 361.032 (Vernon Supplement 1996), effective August 28, 1995, as amended, TSWDA and THSC Secs. 361.036, 361.078 (Vernon 1992), effective September 1, 1989, Title 30 TAC Sec. 305.50(4)(A), effective November 23, 1993, Sec. 305.69(d)(1)(D), effective February 26, 1996, as amended, Title 30 TAC 305.69(h)(1), effective February 22, 1994, as amended, Sec. 335.69(h)(1)(A), Title 30 TAC Sec. 305.69(h)(1)(D), effective February 26, 1996, as amended, Title 30 TAC 305.69(i), L.5, effective July 29, 1992, as amended, Title 30 TAC Secs. *305.572 (introductory paragraph),* 305.572(1), 305.572(2), and 305.572(5), effective July 29, 1992, as amended, *November 20, 1996,* as amended, Title 30 TAC Sec. 305.42(b), effective October 29, 1990, as amended and Title 30 TAC Sec. 335.43(b), effective November 7, 1991, as amended, Title 30 TAC Sec. 335.24(b), effective September 1, 1986, Title 30 TAC Sec. 335.24(b)(2), effective September 1, 1986, Title 30 TAC Sec. 335.112(a) (112)(a)(15), TAC Secs. 335.221(b)(1), effective *February 26, 1996,* as amended, 335.221(b)(3), effective July 29, 1992, as amended, Title 30 TAC Sec. 335.221(b)(2), effective March 1, 1996, and 1992, as amended, Secs. 335.221(a)(3), 335.221(a)(5), 335.221(a)(6), 335.221(a)(7), 335.221(a)(10), 335.221(a)(11), 335.221(a)(15), 335.221(a)(17), 335.221(a)(13), 335.221(a)(18), 335.221(a)(19), 335.221(a)(20), 335.221(a)(21), 335.221(a)(23), effective March 1, 1996, as amended, Title 30 TAC Sec. 335.224(5), effective February 26, 1996, Title 30 TAC Sec. 335.24(b), effective September 1, 1996, as amended, Title 30 Sec. 335.24(b)(2), effective September 1, 1986, Title 30 TAC Sec. 335.112(a)(15), effective November 23, 1993, as amended, Title 30 TAC Secs. 335.221(a), 335.221(a) (1) and (9) effective March 1, 1996, as amended, Title 30 TAC Sec. 335.112(a)(6), effective February 26, 1996, as amended, Title 30 TAC Secs. 335.224(5)(H), 335.224(5)(H)(i), and 335.224(5)(H)(ii), effective February 26, 1996, as amended, Title 30 TAC Sec. 335.224(7), effective November 23, 1993 as amended, Title 30 TAC Sec. 335.224(14), effective February 26, 1996, as amended, Title 30 TAC Secs. 335.221(a)(4), and 335.221(a)(22), effective March 1, 1996, as amended, Title 30 TAC Sec. 335.1, effective February 26, 1996, as amended, Title 30 TAC Sec. 20.15, effective June 6, 1996, Title 30 TAC 335.41(g), effective March 6, 1996, as amended, Title 30 TAC Sec. 335.222(c)(1), effective July 29, 1992, as amended, and Title 30 TAC Sec. 335.222(c)(2), effective February 26, 1996, as amended.
4. Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendments II, August 27, 1991 (56 FR 42504). (Checklist 96).	TSDWA Chapter 361, THSC Secs. 361.003(34), 361.024(Vernon 1992 & Supp. 1996) effective September 1, 1995, as amended, TSDWA, THSC Sec. 361.078 (Vernon 1992), effective September 1, 1989, Title 30 TAC Sec. 335.1, effective March 1, 1996, as amended, TSWDA, THSC Secs. 361.003(12), 361.024, 361.061 (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended, TSWDA, THSC Sec. 361.032 (Vernon Supp 1996), effective August 28, 1995, as amended, TSWDA, THSC Secs. 361.036, 361.078 (Vernon 1992), effective September 1, 1989, TAC Sec. 2001.021 Texas Government Code Ann. (Vernon Supp 1996) effective September 1, 1993, Title 30 TAC Secs. 335.24(b), 335.24(b)(2), effective September 1, 1986, effective November 23, 1993, as amended, Sec. 335.221(b)(1), effective March 6, 1996, as amended, Sec. 335.221(b)(3), effective July 29, 1992, as amended, Sec. 335.221(b)(2), effective March 1, 1996, 1992, as amended, Secs. 335.221(a) *(1),* (3), (5), (6), (7), *(9),* (10), (11), (13), *(14),* (15), (17), (18), (19), (20), (21), (23), Sec. 335.221(a) effective March 1, 1996, Sec. 335.224(5), effective February 26, 1996, Secs. *305.572 (introductory paragraph),* 1992, as amended, Sec. 335.112(a)(6), effective February 26, 1996, Sec. 335.112(a) (1), (9), effective *February 26, 1996,* Secs. 335.224(5)(H), (i)–(ii), effective February 26, 1996, Sec. 335.224(7), effective 335.223(b), effective July 29, November 23, 1993, Sec. 335.224(14), effective February 26, 1996, Sec. 335.221(a)(22), effective March 1, 1996, Sec. 335.1, effective February 26, 1996, Sec. 20.15, effective June 6, 1996, Sec. 335.41(g), effective March 6, 1996, Sec. 335.222(c)(1), July 29, 1992, and Sec. 335.222(c)(2), effective February 26, 1996 as amended.

Federal citation	State analog
15. Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris, (57 FR 37194–37282) August 18, 1992. (Checklist 109).	TSWDA, THSC, Secs. 361.003(12), 361.024, 361.064, (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended, TSWDA, THSC, Sec. 361.078 (Vernon 1992), effective 1992 & Supp. 1996), effective September 1, 1995, as amended, TSWDA, THSC Sec. 361.078 (Vernon 1992), effective September 1, 1989, Title 30 TAC Sec. 355.1, effective July 14, 1987, as amended, Title 30 TAC Sec. 335.431(c)(1) *and (c)(3),* effective March 22, 1995, as amended, Title 30 TAC Sec. 305.50(4)(A), effective November 23, 1993, as amended, TSWDA, THSC, Secs. 361.024 (Vernon 1992 & Supp 1996), effective September 1, 1995, as amended, TSWDA, THSC Sec. 361.078 (Vernon 1992), effective September 1, 1989, Title 30 TAC Sec. 335.1, effective February 26, 1996, as amended, Title 30 TAC Sec. 335.69(a)(1)(C), effective February 26, 1996, as amended, Title 30 TAC Sec. 335.69(a)(1)(D), Title 30, TAC Sec. 335.69(a)(1)(D)(i)–(ii), Title 30 TAC Sec. 335.69(a)(2), Title 30 TAC Sec. 335.152(a)(5)–(6), Title 30 TAC Sec. 335.152(a)(19), Title 30 TAC Sec. 335.112(a)(6), *Sec. 335.112 (a)(7),* Title 30 TAC Sec. 335.118(b), Title 30 TAC Secs. 335.112(a)(10) and (21), effective February 26, 1996, as amended, Title 30 TAC Sec. 305.69(f)(5)(B)(ii), Title 30 TAC Sec. 305.69(i), I.6, Title 30 TAC Sec. 305.69(i),(N), Title 30 TAC Sec. 305.51(c)(6), effective February 26, 1996.
17. Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendment III, [57 FR 38558–38566] August 25, 1992. (Checklist 111).	TSDWA Chapter 361, THSC Secs. 361.003(34), 361.024 (Vernon 1992 & Supp. 1996) effective September 1, 1995, as amended, TSDWA, THSC Sec. 361.078 (Vernon 1992), effective September 1, 1989, Title 30 TAC Sec. 335.1, effective March 1, 1996, as amended, TSWDA, THSC Secs. 361.003(12), 361.024, 361.061 (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended, TSWDA, THSC Sec. 361.032 (Vernon Supp 1996), effective August 28, 1995, as amended, TSWDA, THSC Secs. 361.036, 361.078 (Vernon 1992), effective September 1, 1989, TAC Sec. 2001.021 Texas Government Code Ann. (Vernon Supp 1996) effective September 1, 1993, Title 30 TAC Secs. 335.24(b), 335.24(b)(2), effective September 1, 1986, Sec. 335.221(b)(2), effective March 1, 1996, 1992, as amended, Secs. 335.221(a)*(1),* (10), (11), (15), (17), (18), (19), (23), Sec. 335.221(a) effective March 1, 1996, Sec. 335.224(5), effective *February 26, 1996,* Sec. 335.223(b), effective July 29, 1992, as amended, Sec. 335.112(a)(1), (9), effective *February 26, 1996,* Secs. 335.224(5)(H), (i)–(ii), effective February 26, 1996, Sec. 335.224(7), effective November 23, 1993, Sec. 335.224(14), effective February 26, 1996, Sec. 335.221(a)(22), effective March 1, 1996, Sec. 335.1, effective February 26, 1996, Sec. 20.15, effective June 6, 1996, Sec. 335.41(g), effective March 6, 1996, Sec. 335.222(c)(1), July 29, 1992, and Sec. 335.222(c)(2), effective February 26, 1996 as amended.
18. Consolidated Liability Requirements, (53 FR 33938–33960) July 1, 1991, and [57 FR 42832–42844] September 16, 1992. (Checklists 113, 113.1, & 113.2).	TSWDA, THSC, Secs. 361.024, 361.085 (Vernon 1992 Supp. 1996), effective September 1, 1995, as amended, TSWDA, THSC, Sec. 361.078 (Vernon 1992), effective September 1, 1989; Title 30 TAC Secs. 335.152(a)(6), 335.152(a)(6)(C), effective February 26, 1996, as amended, Title 30 TAC Secs. 335.112(a)(7), 335.152(a)(6), effective February 26, 1996, as amended.
19. Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendment IV, (57 FR 44999–45001) September 30, 1992. (Checklist 114).	TSDWA Chapter 361, THSC Secs. 361.003(34), 361.024 (Vernon 1992 & Supp. 1996) effective September 1, 1995, as amended, TSDWA, THSC Sec. 361.078 (Vernon 1992), effective September 1, 1989, Title 30 TAC Sec. 335.1, effective March 1, 1996, as amended, TSWDA, THSC Secs. 361.003(12), 361.024, 361.061 (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended, TSWDA, THSC Sec. 361.032 (Vernon Supp 1996), effective August 28, 1995, as amended, TSWDA, THSC Secs. 361.036, 361.078 (Vernon 1992), effective September 1, 1989, TAC Sec. 2001.021 Texas Government Code Ann. (Vernon Supp 1996) effective September 1, 1993, Title 30 TAC Secs. 335.24(b), 335.24(b)(2), effective September 1, 1986, Sec. 335.221(b)(2), effective March 1, 1996, 1992, as amended, Secs. 335.221(a) (3), (5), (6), (7), (10), (11), (13), (15), (17), (18), (19), (20), (21), (23), Sec. 335.221(a) effective March 1, 1996, Sec. 335.224(5), effective February 26, 1996, Sec. 335.223(b), effective July 29,1992, as amended, Sec. 335.112(a)(1), (9), effective *February 26, 1996,* Secs. 335.224(5)(H), (i)–(ii), effective February 26, 1996, Sec. 335.224(7), effective November 23, 1993, Sec. 335.224(14), effective February 26, 1996, Sec. 335.221(a)(22), effective March 1, 1996, Sec. 335.1, effective February 26, 1996, Sec. 20.15, effective June 6, 1996, Sec. 335.41(g), effective March 6, 1996, Sec. 335.222(c)(1), July 29, 1992, and Sec. 335.222(c)(2), effective February 26, 1996 as amended.
20. Chlorinated Teluenes Production Waste Listing, (57 FR 47376–47386) October 15, 1992. (Checklist 115).	TSWDA, THSC, Secs. 361.003(12), 361.024 (Vernon 1992 * Supp. 1996), effective September 1, 1995, as amended, TSWDA, THSC Sec. 361.078 (Vernon 1992), effective September 1, 1989, as amended, Title 30 TAC Sec. 335.1, effective July 14, 1987, as amended, Title 30 TAC Sec. 335.29(4), effective *November 20, 1996,* as amended.
26. Wood Preserving; Revisions to Listings and Technical Requirements, (57 FR 61492–61505) December 24, 1992. (Checklist 120).	Safety Code (THSC) Annotated Secs. 361.003(34), 361.024 (Vernon 1992 and Supplement 1996), effective September 1, 1995, as amended; TSWDA and THSC Sec. 361.078 (Vernon 1992), Title 30 Texas Administrative Code (TAC) Chapter Sec. 335.1, March 1, 1996, as amended, Sec. 335.1 effective July 14, 1987, Title 30 TAC Secs. 335.152(a)(15), 335.112(a)(18), effective November 23, 1993.

Federal citation	State analog
28. Recycled Used Oil Management Standards, (57 FR 41566) September 10, 1992, (58 FR 26420) May 3, 1993, (58 FR 33341) June 17, 1993, (59 FR 10550) March 4, 1994. (Checklists 112, 122, 122.1 and 130).	Texas Used Oil Collection, Management, and Recycling Act, Chapter 371, THSC (Vernon Supp 1992), effective September 1, 1995, as amended (H&SC); Title 30 TAC Chapter 324, Secs. 324.1 *through 324.21,* effective March 6, 1996, Secs. 335.6(j), 335.41(g), 335.78(j), 335.221(b)(1), 335.504(1), 335.504(4), Secs. 324.1, 324.2, 324.3, and 324.4, effective March 6, 1996. *30 TAC Secs. 335.1 definition of "used oil", 335.24(b) & (c), effective March 1, 1996.* The Texas Used Oil Collection, Management, and Recycling Act in 30 TAC Chapter 324 Subchapter A are more stringent then the federal program for management of used oil. THSC Sec. 371.041(b)(4) expressly prohibits the intentional application of used oil to roads or land for dust suppression without exception. The Code allows Do-it-Yourself Used Oil Collection center that is also a used oil generator to commingle household DIY oil with the used oil it generates. The code also requires a DIY used oil collection center to register biennially and report annually the amount of household used oil collected.
30. Land Disposal Restrictions for Ignitable and Corrosive Characteristic Wastes Whose Treatment Standards Were Vacated, (58 FR 29860–29887) May 24, 1993. (Checklist 124).	TSWDA, THSC, Secs. 361.024, 361.064 (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended, TSWDA, THSC, Sec. 361.078 (Vernon 1992), effective September 1, 1989; Title 30 TAC Secs. 335.41(d)(1) effective *March 6, 1996,* as amended, 335.431(c) (1) effective March 22, 1995, and Title 30 TAC Sec. 305.69(i), B, effective February 26, 1996, as amended.
32.Testing and Monitoring Activities, (58 FR 46040–46051), August 31, 1993. (Checklist 126).	Tex. Water Code Ann. Sec. 5.103 (Vernon 1988 & Supp. 1996), effective September 1, 1995, as amended; TSWDA Chapter 361, Sec. 361.024, THSC (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended, TSWDA Chapter 361 Sec. 361.078 THSC (Vernon 1992), effective September 1, 1989; TSWDA Chapter 361, Sec. 361.003, THSC (Vernon 1992), effective September 1, 1991, as amended; Title 30 TAC Sec. 335.1 effective January 26, 1994, as amended; Secs. *335.31,* 335.29(2)–(3), 335.152(a)(8), 335.175(c), 335.112(a)(9), 335.125(d), 305.150, 305.172(2)(A)(iii)–(iv), *305.572 (introductory paragraph)* 305.572(2), effective November 20, 1996, as amended, *Secs. 335.431(c)(1), (3), effective March 22, 1995,* and 305.50(A), effective November 23, 1993.
34. Wastes From the Use of Chlorophenolic Formulations in Wood Surface Protection, (59 FR 458–469) January 4, 1994. (Checklist 128).	Tex. Water Code Ann. Sec. 5.103 (Vernon 1988 & Supp. 1996), effective September 1, 1995, as amended; TSWDA, Chapter 361, Sec. 361.024, THSC (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended; TSWDA, Chapter 361, Sec. 361.078 THSC (Vernon 1992) effective September 1, 1989; Title 30 TAC Secs. 335.29(5) and *335.31,* effective November 20, 1996.
35. Recordkeeping Instructions; Technical Amendment, (59 FR 13891–13893) March 24, 1994. (Checklist 131).	Tex. Water Code Ann. Sec. 5.103 (Vernon 1988 & Supp. 1996), effective September 1, 1995, as amended; TSWDA, Chapter 361, Sec. 361.024, THSC (Vernon 1992 & Supp.1996), effective September 1, 1995, as amended; TSWDA Chapter 361, Sec. 361.078, THSC (Vernon 1992), effective September 1, 1989; Title 30 TAC Secs. 335.152 *(20)*(A), and 335.112(a)*(22)*(A), effective November 20, 1996.
36. Wood Surface Protection; Correction, (59 FR 28484) June 2, 1994. (Checklist 132).	Tex. Water Code Ann. Sec. 5.103 (Vernon 1988 & Supp. 1996), effective September 1, 1995, as amended; TSWDA, Chapter 361, Sec. 361.024, THSC (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended; TSWDA, Chapter 361, Sec. 361.078 THSC (Vernon 1992) effective September 1, 1989; Title 30 TAC Sec. *335.31,* effective November 20, 1996.
37. Letter of Credit Revision, (59 FR 29958–29960) June 10, 1994. (Checklist 133).	Tex Water Code Ann. Sec. 5.103 (Vernon 1988 & Supp. 1996), effective September 1, 1995, as amended; TSWDA Chapter 361, Sec. 361.024 THSC (Vernon 1992 & Supp. 1996), effective September 1, 1995, as amended; TSWDA Chapter 361, Sec. 361.078 THSC (Vernon 1992), effective September 1, 1989; *Title 30 TAC Sec. 335.152(a)(6), effective November 20, 1996.*
38. Correction of Beryllium Powder (P015) Listing, (59 FR 31551–31552) June 20, 1994. (Checklist 134).	Tex. Water Code Ann. Sec. 5.103 (Vernon & Supp. 1996), effective September 1995, as amended; TSWDA, Chapter 361, Sec. 361.024, THSC (Vernon 1992 & Supp. 1996), effective September 1995, amended; TSWDA, Chapter 361, Sec. 361.0 THSC (Vernon 1992) effective September 1989; Title 30 TAC Sec. 335.1, effective January 26, 1994, as amended; *Sec. 335.29(5), effective November 20, 1996; and* 335.431(c)(1), effective *March 22, 1995,* as amended.
39. Revision of Conditional Exemption for Small Scale Treatability Studies (59 FR 8362–8366), February 18, 1994. (Checklist 129).	*Title 30 Texas Administrative Code (TAC) Chapter 335 Sec. 335.2(g) as amended effective November 20, 1996.*

III. Incorporation By Reference

A. Background

Effective December 3, 1997 (62 FR 49163), EPA incorporated by reference Texas' then authorized hazardous waste program. Effective November 26, 1997 (62 FR 47947), EPA granted authorization to Texas for additional program revisions. In this document, EPA is incorporating the currently authorized State hazardous waste program in Texas RCRA Clusters II through IV.

The EPA provides notice of its approval of State programs in 40 CFR part 272 and incorporates by reference therein the State statutes and regulations that are part of the authorized State program under RCRA. This effort will provide clearer notice to the public of the scope of the authorized program in Texas. Such notice is particularly important in light of HSWA, PL 98–616. Revisions to State hazardous waste programs are necessary when Federal statutory or regulatory authority is modified. Because HSWA extensively amended RCRA, State programs must be modified to reflect those amendments. By incorporating by reference the authorized Texas program and by amending the CFR whenever a new or different set of requirements is authorized in Texas, the status of Federally approved requirements of the Texas program will be readily discernible.

The Agency will only enforce those provisions of the Texas Hazardous Waste Program for which authorization approval has been granted by EPA.

B. Texas Authorized Hazardous Waste Program

The EPA is revising the incorporation by reference of the Texas authorized hazardous waste program in subpart SS of 40 CFR part 272. The State statutes and regulations are incorporated by reference at 40 CFR 272.2201(b)(1) and the Memorandum of Agreement, the Attorney General's Statement and the Program Description are referenced at §§ 272.2201(b)(5), (b)(6) and (b)(7), respectively.

The Agency retains the authority under sections 3007, 3008, 3013 and 7003 of RCRA to undertake enforcement actions in authorized States. With respect to such an enforcement action, the Agency will rely on Federal sanctions, Federal inspection authorities, and the Federal Administrative Procedure Act rather than the authorized State analogues to these requirements.

Therefore, the Agency does not intend to incorporate by reference for purposes of enforcement such particular, authorized Texas enforcement authorities. Section 272.2201(b)(2) of 40 CFR lists those authorized Texas authorities that are part of the authorized program but are not incorporated by reference.

The public also needs to be aware that some provisions of the State's Hazardous Waste Program are not part of the federally authorized State program. These non-authorized provisions include:

(1) Provisions that are not part of the RCRA subtitle C program because they are "broader in scope" than RCRA subtitle C, 40 CFR 271.1(i));

(2) Unauthorized amendments to authorized State provisions.

State provisions which are "broader in scope" than the Federal program are not incorporated by reference for purposes of enforcement in 40 CFR part 272. Section 272.2201(b)(3) of 40 CFR lists for reference and clarity the Texas statutory and regulatory provisions which are "broader in scope" than the Federal program and which are not, therefore, part of the authorized program being incorporated by reference. "Broader in scope" provisions will not be enforced by EPA; the State, however, will continue to enforce such provisions.

Since EPA cannot enforce a State's requirements which have not been reviewed and approved according to the Agency's authorization standards, it is important that EPA clarify any limitations on the scope of a State's approved hazardous waste program. Thus, in those instances where a State has made unauthorized amendments to previously authorized sections of State code, EPA will provide this clarification by: (1) incorporating by reference the relevant State legal authorities according to the requirements of the Office of Federal Register; and (2) subsequently identifying in § 272.2201(b)(4) any requirements which while adopted and incorporated by reference, are not authorized by EPA, and therefore are not federally enforceable. Thus, notwithstanding the language in the Texas hazardous waste regulations incorporated by reference at § 272.2201(b)(1), EPA would only enforce the State provisions that are actually authorized by EPA. For the convenience of the regulated community, the actual State regulatory text authorized by EPA for the citations listed at § 272.2201(b)(4) is compiled as a separate document, Addendum to the EPA–Approved Texas Regulatory and Statutory Requirements Applicable to the Hazardous Waste Management Program, December, 1997. This document is available from EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733. With respect to HSWA requirements for which the State has not yet been authorized, EPA will continue to enforce the Federal HSWA standards until the State receives specific HSWA authorization from EPA.

C. HSWA Provisions

As noted above, the Agency is not amending 40 CFR part 272 to include HSWA requirements and prohibitions that are immediately effective in Texas and other States. Section 3006(g) of RCRA provides that any requirement or prohibition of HSWA (including implementing regulations) takes effect in authorized States at the same time that it takes effect in non-authorized States. Thus, EPA has immediate authority to implement a HSWA requirement or prohibition once it is effective.

A HSWA requirement or prohibition supercedes any less stringent or inconsistent State provision which may have been previously authorized by EPA (50 FR 28702, July 15, 1985).

Because of the vast number of HSWA statutory and regulatory requirements taking effect over the next few years, EPA expects that many previously authorized and incorporated by reference State provisions will be affected. The States are required to revise their programs to adopt the HSWA requirements and prohibitions by the deadlines set forth in 40 CFR 271.21, and then to seek authorization for those revisions pursuant to 40 CFR part 271. The EPA expects that the States will be modifying their programs substantially and repeatedly. Instead of amending the 40 CFR part 272 every time a new HSWA provision takes effect under the authority of RCRA section 3006(g), EPA will wait until the State receives authorization for its analog to the new HSWA provision before amending the State's 40 CFR part 272 incorporation by reference. In the interim, persons wanting to know whether a HSWA requirement or prohibition is in effect should refer to 40 CFR 271.1(j), as amended, which lists each such provision.

The incorporation by reference of State authorized programs in the CFR should substantially enhance the public's ability to discern the current status of the authorized State program and clarify the extent of Federal enforcement authority. This will be particularly true as more State program revisions to adopt HSWA provisions are authorized.

IV. Regulatory Requirements

A. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the Texas program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action because this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate hazardous waste treatment, storage or disposal facilities (TSDFs), they are already subject to the regulatory requirements under the existing State laws that are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

B. Certification Under the Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the regulatory requirements under the existing State laws that are now being authorized by EPA. The EPA's authorization does not impose any significant additional burdens on these small entities. This is because EPA's authorization would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Pursuant to the provision at 5 U.S.C. 605(b), the Agency hereby certifies that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

C. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

D. Compliance With Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this rule from the requirements of Executive Order 12866.

E. Compliance With E.O. 12875-Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, the EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1 (a) of E.O. 12875 do not apply to this rule.

F. Compliance With E.O. 13045-Protection of Children From Environmental Health Risk and Safety Risks

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," applies to any rule that: (1) the OMB determines is "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

G. Compliance with E.O. 13084-Consultation and Coordination With Indian Tribal Governments

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies with consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule is not subject to E.O. 13084 because it does not significantly or uniquely affects the communities of Indian tribal governments. Texas is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that EPA implements in the Indian country within the State.

H. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 272

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Incorporation by reference, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority

This document is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: June 24, 1999

Jerry Clifford,

Deputy Regional Administrator, Region 6.

For the reasons set forth in the preamble, 40 CFR part 272 is amended as follows:

PART 272—APPROVED STATE HAZARDOUS WASTE MANAGEMENT PROGRAMS

1. The authority citation for part 272 continues to read as follows:

Authority: Sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(b).

2. Subpart SS is amended by revising § 272.2201 to read as follows:

§ 272.2201 Texas State-Administered Program: Final Authorization.

(a) Pursuant to section 3006(b) of RCRA, 42 U.S.C. 6926(b), the EPA granted Texas final authorization for Base program effective on December 26, 1984. Subsequent program revision applications were approved effective on October 4, 1985, February 17, 1987, March 15, 1990, July 23, 1990, October 21, 1991, December 4, 1992, June 27, 1994, November 26, 1997, December 3, 1997, and November 15, 1999.

(b) State statutes and regulations.

(1) The Texas statutes and regulations cited in this paragraph are incorporated by reference as part of the hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(i) The EPA Approved Texas Statutory Requirements Applicable to the Hazardous Waste Management Program, December 1997.

(ii) The EPA Approved Texas Regulatory Requirements Applicable to the Hazardous Waste Management Program, December 1997.

(2) The following statutes and regulations concerning State procedures and enforcement, although not incorporated by reference, are part of the authorized State program:

(i) Texas Health and Safety Code (THSC) Annotated, (Vernon, 1992), effective September 1, 1991: Chapter 361, The Texas Solid Waste Disposal Act, sections 361.002, 361.017 (except 361.017(d)&(e)), 361.024(b)-(d), 361.033, 361.036, 361.037(a), 361.063(b), 361.063(e)-(g), 361.063(i), 361.063(k)&(l), 361.066(b), 361.078, 361.080(a), 361.082(b), 381.082(c) (except second sentence), 361.082(e), 361.084(c) (except the phrase ", or evidence of * * * waste management"), 361.085(a)-(d), 361.088(b), 361.089(g), 361.090, 361.095(b)-(f), 361.096, 361.097, 361.098(a) (except the phrase "Except as provided in subsections (b) and (c),"), 361.099(a), 361.100, 361.101, 361.103 through 361.108, 361.109(a), 361.221 (except 361.221(c)&(e), 361.222 (except 361.222(d)-(u)), 361.223(c), 361.227, 361.301, 361.303, 361.321(b), 361.321(c) (except the phrase "Except as provided by section 361.322(a)"), and 361.321(d); Chapter 371, Texas Oil Collection, Management, and Recycling Act, sections 371.043(a)&(b), 371.044(b) and 371.045.

(ii) Texas Health and Safety Code (THSC) Annotated, (Vernon, 1997 Supplement), effective September 1, 1996: Chapter 361, The Texas Solid Waste Disposal Act, sections 361.016, 361.017(d)&(e), 361.018, 361.024(a), 361.024(e), 361.032, 361.061, 361.063(a), 361.063(c), 361.063(d), 361.063(j), 361.063(h), 361.064, 361.067, 361.068(a), 361.069 (except last sentence), 361.079, 361.083, 361.084 (except 361.084(c)), 361.085(e)-(j), 361.088(a)&(c), 361.089(a)-(f), 361.102(a) (except the phrase "Except as provided by subsections (b) and (c)"), 361.223(a)&(b), 361.224(a)&(b), 361.225, 361.226, 361.228, 361.229, 361.301, 361.303, 361.321(a), and 361.321(e) (except the phrase "Except as provided by section 361.322(e)"); Chapter 371, Texas Oil Collection, Management, and Recycling Act, sections 371.0025(b)&(c), 371.003 (introductory paragraph), 371.024(a), 271.024(c)&(d), 371.026(a)&(b), 371.028, 371.041(b)-(d), 371.042, 371.043(c)&(d), and 371.044(a).

(iii) Texas Water Code (TWC), Texas Codes Annotated (Vernon, 1992), effective September 1, 1985, as amended: Chapter 5, sections 5.103, 5.104, 5.105; Chapter 26, section 26.011; and Chapter 27, section 27.019.

(iv) Texas Administrative Code (TAC), Title 30, Environmental Quality, 1994, as amended, effective through January 1, 1994: Chapter 305, sections 305.98 and 305.99.

(v) Texas Administrative Code (TAC), Title 30, Environmental Quality, 1997, as amended, effective through January 1, 1997: Chapter 281, sections 281.1 (except the clause "except as provided by * * * Prioritization Process)"), 281.2 (introductory paragraph), 281.2(4), 281.3(a)&(b), 281.5, 281.17(d)-(f), 281.18(a), 281.19, 281.20, 281.21 (except 281.21(e)), 281.22(a)&(b), 268.23 281.24; Chapter 305, sections 305.29(b)&(c), 305.64(d)&(f), 305.66(c), 305.66(e)-(l), 305.91 through 305.95, 305.97, 305.100, 305.101 (except 305.101(c)), 305.102, 305.103, 305.105, 305.123, 305.125(1)&(3), 305.125(20), 305.127(1)(B)(i), 305.127(4)(A)&(C), 305.127(6), 305.401 (except 305.401(c)); Chapter 324, sections, 324.17 through 324.20; and Chapter 335, sections 335.2(b), 335.206, 335.391 through 335.393.

(3) The following statutory and regulatory provisions are broader in scope than the Federal program, are not part of the authorized program, and are not incorporated by reference:

(i) Texas Health and Safety Code (THSC) Annotated, (Vernon 1992), effective September 1, 1991: Chapter 361, The Texas Solid Waste Disposal Act, sections 361.131 through 361.140; Chapter 371, Texas Oil Collection, Management, and Recycling Act, sections 371.021, 371.022, 371.024(e), 371.025, and 371.026(c).

(ii) Texas Health and Safety Code (THSC) Annotated, (Vernon 1997 Supplement), effective September 1, 1996: Chapter 361, The Texas Solid Waste Disposal Act, sections 361.131 through 361.140; Chapter 371, Texas Oil Collection, Management, and Recycling Act, sections 371.021, 371.022, 371.024(e), 371.0245, 371.0246, 371.025, and 371.026(c).

(iii) Texas Administrative Code (TAC), Title 30, Environmental Quality, 1997, as amended, effective through January 1, 1997: Chapter 305, sections 305.27 (as it pertains to solid waste), 305.53, 305.64(b)(4); and Chapter 335, sections 335.321 through 335.332 and Appendices I and II.

(4) Unauthorized State Amendments. The following authorized provisions of the Texas regulations include amendments published in the Texas Register that are not approved by EPA. Such unauthorized amendments are not part of the State's authorized program and are, therefore, not Federally enforceable. Thus, notwithstanding the language in the Texas hazardous waste regulations incorporated by reference at § 272.2201(b)(1), EPA will only enforce the authorized State provisions with the effective dates indicated in the following table. The actual State regulatory text authorized by EPA for the listed provisions is available as a separate document, Addendum to the EPA-Approved Texas Regulatory and Statutory Requirements Applicable to the Hazardous Waste Management Program, December, 1997. Copies of the document can be obtained from U.S. EPA Region 6, Grants and Authorization Section, RCRA Programs Branch, U.S. EPA Region 6, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202.

State provision	Effective date of authorized provision	Unauthorized state amendments	
		Texas Register reference	Effective date
335.2(c)	11/7/91	18 TexReg 2799	5/12/93
		18 TexReg 8218	11/23/93
335.6(a)	7/29/92	18 TexReg 2799	5/12/93
335.6(c) introductory paragraph	7/29/92	17 TexReg 8010	11/27/92
		20 TexReg 2709	4/24/95
		20 TexReg 3722	5/30/95
		21 TexReg 1425	3/1/96
		21 TexReg 2400	3/6/96
335.6(g)	7/29/92	18 TexReg 3814	6/28/93
335.10(b)(22)	7/27/88	17 TexReg 8010	11/27/92
335.24(b) introductory paragraph	3/1/96	21 TexReg 10983	11/20/96
335.24(c) introductory paragraph	3/1/96	21 TexReg 10983	11/20/96
335.41(c)	9/1/86	18 TexReg 8218	11/23/93
335.45(b)	9/1/86	17 TexReg 5017	7/29/92
335.204(a)(1)	5/28/86	16 TexReg 6065	11/7/91
335.204(b)(1)	5/28/86	16 TexReg 6065	11/7/91
335.204(b)(6)	5/28/86	16 TexReg 6065	11/7/91
335.204(c)(1)	5/28/86	16 TexReg 6065	11/7/91
335.204(d)(1)	5/28/86	16 TexReg 6065	11/7/91
335.204(e)(6)	5/28/86	16 TexReg 6065	11/7/91

(5) Memorandum of Agreement. The Memorandum of Agreement between EPA Region VI and the Texas Natural Resource Conservation Commission (TNRCC), signed by the EPA Regional Administrator on July 24, 1997, is referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(6) Statement of Legal Authority. "Attorney General's Statement for Final Authorization", signed by the Attorney General of Texas on May 22, 1984 and revisions, supplements and addenda to that Statement dated November 21, 1986, July 21, 1988, December 4, 1989, April 11, 1990, July 31, 1991, February 25, 1992, November 30, 1992, March 8, 1993, January 7, 1994, August 9, 1996, October 16, 1996, as amended February 7, 1997, and March 11, 1997, are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

(7) Program Description. The Program Description and any other materials submitted as part of the original application or as supplements thereto are referenced as part of the authorized hazardous waste management program under subtitle C of RCRA, 42 U.S.C. 6921 *et seq.*

3. Appendix A to part 272, State Requirements, is amended by revising the listing for "Texas" to read as follows:

Appendix A to Part 272—State Requirements

* * * * *

Texas

The statutory provisions include:

Texas Health and Safety Code (THSC) Annotated, (Vernon 1992), effective September 1, 1991: Chapter 361, The Texas Solid Waste Disposal Act, sections 361.003 (introductory paragraph), 361.003(1), 361.082(a), 361.082(f), 361.086, 361.087, 361.093, 361.095(a), 361.099(b), and 361.110; Chapter 371, The Texas Oil Collection, Management, and Recycling Act, section 371.041(a).

Texas Health and Safety Code (THSC) Annotated, (Vernon 1997 Supplement), effective September 1, 1996: Chapter 361, The Texas Solid Waste Disposal Act, sections 361.003 except (3), (4), (19), (27), (35) and (39)), 361.066(a), and 361.094; Chapter 371, The Texas Oil Collection, Management, and Recycling Act, sections 371.003, 371.024(b), and 371.026(d).

Copies of the Texas statutes that are incorporated by reference are available from West Publishing Company, 610 Opperman Drive, P. O. Box 64526, St. Paul, Minnesota 55164–0526.

The regulatory provisions include:

Texas Administrative Code (TAC), Title 30, Environmental Quality, 1994, as amended, effective through January 1, 1994: Chapter 305, section 305.50(4); Chapter 335, sections 335.6(d) (except last sentence), 335.6(e), 335.9(b), 335.10(a) (introductory paragraph), 335.10(a)(1), 335.10(b)(5)&(8), 335.13(c)&(d), 335.13(g), 335.15 (introductory paragraph), 335.23(2), 335.24(e), 335.71, 335.214(a).

Texas Administrative Code (TAC), Title 30, Environmental Quality, 1997, as amended, effective through January 1, 1997: Chapter 20, section 20.15; Chapter 281, section 281.3(c); Chapter 305, 305.1(a), 305.2 (except the definitions for "by-pass," "Class I sludge management facility," "component," "continuous discharge," "CWA," "daily average concentration," "daily average flow," "direct discharge," "discharge monitoring report," "effluent limitation," "Environmental Protection Agency," "facility mailing list," "functionally equivalent component," "indirect discharger," "injection well permit," "National Pollution Discharge Elimination System," "new discharger," "new source," "outfall," "primary industry category," "process wastewater," "publicly owned treatment works," "recommencing discharger," "regional administrator," "schedule of compliance," "severe property damage," "sewage sludge," "Texas pollution discharge elimination system," "toxic pollutant," "treatment works treating domestic sewage," "variance," and "wetlands"), 305.29(a)&(d), 305.41, 305.42, 305.43(b), 305.44, 305.45, 305.47, 305.50 (introductory paragraph), 305.50(1), 305.50(2) (except the paragraph beginning "Also to be submitted are listings * * *" to the end of the subsection), 305.50(3), 305.50(5)–(8), 305.50(13)&(14), 305.51, 305.61, 305.62(a) (except the phrase "§ 305.70 of this title * * * Solid Waste Class I Modifications" in the first sentence and the fifth sentence "If the permittee requests a modification of a municipal solid waste permit * * * Solid Waste Class I Modifications."), 305.62(b)–(h), 305.63 (introductory paragraph), 305.63(1)&(2), 305.63(3) (except the last sentence), 305.63(4)–(6), 305.64(a), 305.64(b) (except 305.64(b)(4)&(5)), 305.64(c), 305.64(e), 305.64(g), 305.66(a) (except 305.66(a)(7)&(8)), 305.67, 305.69 (except 305.69(i) A.8–A.10), 305.121, 305.122(a)–(c), 305.124, 305.125 (except 305.125(1), (3), and (20)), 305.127 (introductory paragraph), 305.127(1)(B)(iii), 305.127(1)(E)&(F), 305.127(2)&(3), 305.127(4)(B), 305.127(5)(C), 305.128, 305.141 through 305.145, 305.146 (introductory paragraph), 305.146(1), 305.150, 305.171 through 305.174, 305.181 through 305.184, 305.191 through 305.194, 305.401(c), 305.571, 305.572 (except the date "September 5, 1991" in the (introductory paragraph)), 305.573; Chapter 324, sections, 324.1 through 324.4, 324.6, 324.7, 324.11 through 324.16, 324.21; Chapter 335, sections 335.1 (introductory paragraph), 335.1 (except the definitions for "activities associated with the exploration, development, and protection of oil or gas, or geothermal resources," "class 1 wastes," "class 2 wastes," "class 3 wastes," "commercial hazardous waste facility," "contaminant," "contaminated medium/media," "control," "decontaminate," "essentially insoluable," "hazardous industrial waste," "hazardous substance," "industrial solid waste," "Petroleum substance," "remediation," "remove," shipment," "spill," and "treatment"), 335.2(a), 335.2(c)–(g), 335.2(i)&(j), 335.4, 335.5, 335.6(a)–(c), 335.6(f)–(j), 335.7, 335.8(a)(3)&(4), 335.9 (except 335.9(b)), 335.10(a)(3) (except the phrase ", unless the generator is identified in paragraph (2) of this section"), 335.10(a)(4), 335.10(a)(6), 335.10(b) (except 335.10(b)(5)&(8)), 335.10(c) (except the phrase "the United States customs official,"), 335.10(d)–(f), 335.11 (except 335.11(d)), 335.12 (except 335.12(a)(5)), 335.13(a), 335.13(e)&(f), 335.14, 335.15(1), 335.17, 335.18, 335.19, 335.20 through 335.22, 335.23 (except 335.23(2)), 335.24(a)–(d), 335.24(f), 335.29, 335.30, 335.31, 335.41(a)–(h), 335.43 through 335.45, 335.47 (except the second sentence in 335.47(c)(3)), 335.61(a)–(e), 335.63 through 335.68, 335.69(a)–(h), 335.70, 335.73, 335.74, 335.76, 335.77, 335.78 (except 335.78(d)(2)), 335.91 through 335.94, 335.111, 335.112 (except 335.112(a)(17)), 335.113, 335.114(a), 335.115 through 335.123, 335.124 (except second sentence in 335.124(e)), 335.125 through 335.127, 335.151 through 335.153, 335.154(a), 335.155 through 335.178, 335.201(a) (except 335.201(a)(3)), 335.201(c), 335.202 (except the definitions for "active geologic processes," "area subject to active shoreline erosion," "areas of direct drainage," "commercial hazardous waste management facility," "critical habitat of an endangered species," "erosion," "public water system," and "residence"), 335.203, 335.204(a) (introductory paragraph), 335.204(a)(1)–(5), 335.204(b)(1)–(6), 335.204(c)(1)–(5), 335.204(d)(1)–(5), 335.204(e) (introductory paragraph), 335.204(e)(1) (introductory paragraph) (except the phrase "Except as * * * (B) of this paragraph," and the word "event" at the end of the paragraph), 335.204(e)(2)–(7), 335.204(f), 335.205(a)&(b), 335.205(i), 335.211 through 335.213, 335.214(b), 335.221 through 335.226, 335.241, 335.251, 335.361 through 335.367, 335.431, and 335.504.

Copies of the Texas regulations that are incorporated by reference are available from West Publishing Company, 610 Opperman Drive, P. O. Box 64526, St. Paul, Minnesota 55164–0526.

* * * * *

[FR Doc. 99–22181 Filed 9–13–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1706; MM Docket No. 99–98; RM–9483]

Radio Broadcasting Services; Judsonia, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 237A to Judsonia, Arkansas, as that community's first local aural transmission service in response to a petition for rule making filed on behalf of White County Broadcasters. *See* 64 FR 17138, April 8, 1999. Coordinates used for Channel 237A at Judsonia are 35–17–06 NL and 91–37–45 WL. With this action, the proceeding is terminated.

DATES: Effective October 12, 1999. A filing window for Channel 237A at Judsonia, Arkansas, will not be opened at this time. instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–98, adopted August 18, 1999, and released August 27, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, WS., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

Part 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Judsonia, Channel 237A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–23816 Filed 9–13–99; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Part 225

[DFARS Case 99–D020]

Defense Federal Acquisition Regulation Supplement; Acquisitions for Foreign Military Sales

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify that the contracting officer must not require the submission of cost or pricing data for a foreign military sales acquisition if the foreign government has conducted a competition resulting in adequate price competition. The rule also clarifies that all costs incurred for offset agreements with a foreign government or international organization are allowable if financed wholly with customer cash or repayable foreign military finance credits.

EFFECTIVE DATE: September 14, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0288; telefax (703) 602–0350. Please cite DFARS Case 99–D020.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS 225.7303 to clarify that the contracting officer must not require the submission of cost or pricing data for a foreign military sales acquisition if the foreign government has conducted a competition resulting in adequate price competition. Such competition meets the requirement of FAR 15.403–1(b)(1), which states that the contracting officer must not require the submission of cost or pricing data when prices are based on adequate price competition.

This rule also amends DFARS 225.7303–2 and 225.7303–5 to clarify that all costs incurred for offset agreements with a foreign government or international organization are allowable if financed wholly with customer cash or repayable foreign military finance credits. In 1996, DoD amended the language at DFARS 225.7303–2 to clarify that U.S. contractors may recover the full cost necessary to implement such agreements (61 FR 7739, February 29, 1996; 60 FR 49358, September 25, 1995). Since there appear to be differences in the way the language is being interpreted and implemented, this rule makes further clarifications.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, DoD will consider comments form small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 99–D020.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 225 is amended as follows:

1. The authority citation for 48 CFR Part 225 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

2. Section 225.7303 is revised to read as follows:

225.7303 Pricing acquisitions for FMS.

(a) Price FMS contracts using the same principles as are used in pricing other defense contracts. Application of the pricing principles in FAR parts 15 and 31 to an FMS contract may result in prices that differ from other defense contract prices for the same item due to the considerations in this section.

(b) If the foreign government has conducted a competition resulting in adequate price competition (see FAR 15.403–1(b)(1)), the contracting officer must not require the submission of cost or pricing data. The contracting officer should consult with the foreign government through security assistance personnel to determine if adequate price competition has occurred.

3. Section 225.7303–2 is amended by revising paragraph (a)(3) introductory text and paragraph (a)(3)(i) to read as follows:

225.7303–2 Cost of doing business with a foreign government or an international organization.

(a) * * *

(3) Offset costs.

(i) A U.S. defense contractor may recover all costs incurred for offset agreements with a foreign government or international organization if the LOA is financed wholly with customer cash or repayable foreign military finance credits.

* * * * *

4. Section 225.7303–5 is amended by revising paragraph (c) to read as follows:

225.7303–5 Acquisitions wholly paid for from nonrepayable funds.

* * * * *

(c) A U.S. defense contractor may not recover costs incurred for offset agreements with a foreign government or international organization if the LOA is financed with funds made available on a nonrepayable basis.

[FR Doc. 99–23730 Filed 9–13–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Parts 237 and 252

[DFARS Case 99–D018]

Defense Federal Acquisition Regulation Supplement; Officials Not To Benefit Clause

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update the formats used for educational service agreements and patent license contracts to reflect the removal of the Officials Not to Benefit clause from the Federal Acquisition Regulation (FAR).

EFFECTIVE DATE: September 14, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Kathleen Fenk, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0296; telefax (703) 602–0350. Please cite DFARS Case 99–D018.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the format for educational service agreements at DFARS 237.7204, and the Patent License and Release Contract clause at DFARS 252.227–7012, to remove references to the clause at FAR 52.203–1, Officials Not to Benefit. The clause at FAR 52.203–1 was removed from the FAR on September 19, 1995 (60 FR 37773, July 21, 1995). This rule also makes other minor editorial changes to update the DFARS text at 237.7204 and 252.227–7012.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 99–D018.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 237 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 237 and 252 are amended as follows:

1. The authority citation for 48 CFR Parts 237 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 237—SERVICE CONTRACTING

2. Section 237.7204 is amended by revising the text under the heading "General Provisions" to read as follows:

237.7204 Format and clauses for educational service agreements.

* * * * *

General Provisions

Use the following clauses in educational service agreements:

1. FAR 52.202–1, Definitions, and add the following paragraphs (h) through (m).

(h) "Term" means the period of time into which the Contractor divides the academic year for purposes of instruction. This includes "semester," "trimester," "quarter," or any similar word the Contractor may use.

(i) "Cause" means a series of lectures or instructions, and laboratory periods, relating to one specific representation of subject matter, such as Elementary College Algebra, German 401, or Surveying. Normally, a student completes a course in one term and receives a certain number of semester hours credit (or equivalent) upon successful completion.

(j) "Curriculum" means a series of courses having a unified purpose and belonging primarily to one major academic field. It will usually include certain required courses and elective courses within established criteria. Examples include Business Administration, Civil Engineering, Fine and Applied Arts, and Physics. A curriculum normally covers more than one term and leads to a degree or diploma upon successful completion.

(k) "Catalog" means any medium by which the Contractor publicly announces terms and conditions for enrollment in the Contractor's institution, including tuition and fees to be charged. This includes "bulletin," "announcement," or any other similar word the Contractor may use.

(l) "Tuition" means the amount of money charged by an educational institution for instruction, not including fees.

(m) "Fees" means those applicable charge directly related to enrollment in the Contractor's institution. Unless specifically allowed in the request for services, fees shall not include—

(1) Any permit charge, such as parking and vehicle registration; or

(2) Charges for services of a personal nature, such as food, housing, and laundry.

2. FAR 52.203–3, Gratuities.

3. FAR 52.203–5, Covenant Against Contingent Fees.

4. FAR 52.204–1, Approval of Contract, if required by department/agency procedures.

5. FAR 52.215–2, Audit and Records—Negotiation.

6. FAR 52.215–8, Order of Precedence—Uniform Contract Format.

7. Conflicts Between Agreement and Catalog. Insert the following clause:

Conflicts Between Agreement and Catalog

If there is any inconsistency between this agreement and any catalog or other document incorporated in this agreement by reference or any of the Contractor's rules and regulations, the provisions of this agreement shall govern.

8. FAR 52.222–3, Convict Labor.

9. Under FAR 22.802, FAR 22.807, and FAR 22.810, use the appropriate clause from FAR 52.222–26, Equal Opportunity.

10. FAR 52.233–1, Disputes.

11. Assignment of Claims. Insert the following clause:

Assignment of Claims

No claim under this agreement shall be assigned.

12. FAR 52.252–4, Alterations in Contract, if required by department/agency procedures.

Signature Page

Agreement No. _____

Date _____

The United States of America

By: _____

(Contracting Officer)

Activity _____

Location _____

(Name of Contractor)

By: _____

(Title) _____

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.227–7012 is revised to read as follows:

252.227–7012 Patent license and release contract.

As prescribed at 227.7012, insert the following clause in patent releases, license agreements, and assignments:

_____

(Contract No.)

Patent License and Release Contract (Sep 1999)

This CONTRACT is effective as of the ____ day of [month, year], between the UNITED STATES OF AMERICA (hereinafter called the Government), and _____ (hereinafter called the Contractor), (a corporation organized and existing under the laws of the State of _____), (a partnership consisting of _____), (an individual trading as _____), of the City of _____, in the State of _____.

Whereas, the Contractor warrants that it has the right to grant the within license and release, and the Government desires to procure the same, and

Whereas, this contract is authorized by law, including 10 U.S.C. 2386.

Now Therefore, in consideration of the grant, release and agreements hereinafter recited, the parties have agreed as follows:

Article 1. License Grant.*

(Insert the clause at 252.227–7004 for a paid up license, or the clause at 252.227–7006 for a license on a running royalty basis.)

Article 2. License Term.*

(Insert the appropriate alternative clause at 252.227–7005 for a paid up license, or the clause at 252.227–7007 for a license on a running royalty basis.)

Article 3. Release of Past Infringement.

(Insert the clause at 252.227–7001.)

Article 4. Non-Estoppel.

(Insert the clause at 252.227–7000.)

Article 5. Payment.

The Contractor shall be paid the sum of _____ Dollars ($_____) in full compensation for the rights herein granted and agreed to be granted. (For a license on a running royalty basis, insert the clause at 252.227–7006 in accordance with the instructions therein, and also the clause as specified at 252.227–7002 and 252.227–7009 and 252.227–7010.)

Article 6. Covenant Against Contingent Fees.

(Insert the clause at FAR 52.203–5.)

Article 7. Assignment of Claims.

(Insert the clause at FAR 52.232–23.)

Article 8. Gratuities.

(Insert the clause at FAR 52.203–3.)

Article 9. Disputes.

(Insert the clause at FAR 52.233–1.)

Article 10. Successors and Assignees.

This Agreement shall be binding upon the Contractor, its successors** and assignees, but nothing contained in this Article shall authorize an assignment of any claim against the Government otherwise than as permitted by law.

In Witness Whereof, the parties hereto have executed this contract.

THE UNITED STATES OF AMERICA

By _____

Date _____

(Signature and Title of Contractor Representative) _____

By _____

Date _____

*If only a release is procured, delete this article; if an assignment is procured, use the clause at 252.227–7011.

**When the Contractor is an individual, change "successors" to "heirs"; if a partnership, modify appropriately.

(End of clause)

[FR Doc. 99–23731 Filed 9–13–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 090899B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of Pacific ocean perch in the Western Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of Pacific ocean perch in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the amount of the 1999 total allowable catch (TAC) of Pacific ocean perch in this area has been achieved.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 8, 1999, until 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson 907–481–1780 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999) established the amount of the 1999 TAC of Pacific ocean perch in the Western Regulatory Area of the GOA as 1,850 metric tons. See § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the amount of the 1999 TAC for Pacific ocean perch in the Western Regulatory Area of the GOA has been achieved. Therefore, NMFS is requiring that further catches of Pacific ocean perch in the Western Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the amount of the 1999 TAC for Pacific ocean perch in the Western Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to public interest. The fleet has taken the amount of the 1999 TAC for Pacific ocean perch in the Western Regulatory Area of the GOA. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 8, 1999.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–23806 Filed 9–8–99; 4:59 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 090899C]

Fisheries of the Exclusive Economic Zone Off Alaska; Shortraker and Rougheye Rockfish in the Western Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National

Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of shortraker and rougheye rockfish in the Western Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of shortraker and rougheye rockfish in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the amount of the 1999 total allowable catch (TAC) of shortraker and rougheye rockfish in this area has been achieved.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 8, 1999, until 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson 907–481–1780 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Final 1999 Harvest Specifications of Groundfish for the GOA (64 FR 12094, March 11, 1999) established the amount of the 1999 TAC of shortraker and rougheye rockfish in the Western Regulatory Area of the GOA as 160 metric tons. See § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the amount of the 1999 TAC for shortraker and rougheye rockfish in the Western Regulatory Area of the GOA has been achieved. Therefore, NMFS is requiring that further catches of shortraker and rougheye rockfish in the Western Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the amount of the 1999 TAC for shortraker and rougheye rockfish in the Western Regulatory Area of the GOA. A delay in the effective date is impracticable and contrary to the public interest. The fleet has taken the amount of the 1999 TAC for shortraker and rougheye rockfish in the Western Regulatory Area of the GOA. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 8, 1999.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–23805 Filed 9–8–99; 4:59 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 090999A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS issues an inseason adjustment closing the C fishing season for pollock in Statistical Area 610 effective 1200 hrs, Alaska local time (A.l.t.), September 9, 1999, and opening the D fishing season for pollock in Statistical Area 610 effective 1200 hrs, A.l.t., September 14, 1999. This adjustment is necessary to manage the C seasonal allowance of the pollock total allowable catch (TAC) and allow the D fishing season to begin in Statistical Area 610 of the Gulf of Alaska (GOA).

DATES: The C fishing season for pollock in Statistical Area 610 will close 1200 hrs, A.l.t., September 9, 1999, and directed fishing for pollock in Statistical Area 610 will be opened at 1200 hrs, A.l.t., September 14, 1999. Comments must be received at the following address no later than 4:30 p.m., A.l.t., September 24, 1999.

ADDRESSES: Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th Street, Room 453, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The emergency interim rule (EIR) establishing Steller sea lion protection measures for pollock off Alaska (64 FR 3437, January 22, 1999 and 64 FR 39087, July 21, 1999) defines the C fishing season for pollock in Statistical Area 610 of the GOA as starting from 1200 hrs, A.l.t., September 1, 1999, until the directed fishery is closed or 1200 hrs, A.l.t., October 1, 1999, whichever comes first. The D fishing season is to begin 5 days after the closure of the C fishing season in Statistical Area 610.

NMFS issued an inseason adjustment effective September 1, 1999 for Statistical Area 610, limiting the initial opening of the C season fishery to 6 hours in accordance with § 679.25(a)(1)(i)(64 FR 48331, September 3, 1999).

NMFS also extended the C fishing season by inseason adjustment to delay the start of the D fishing season until the agency had determined whether sufficient amounts of the C season allowance remained unharvested to allow another opening within the C fishing season prior to the harvest of the pollock authorized for the D season. NMFS has determined that the C seasonal allowance of pollock has been taken and is closing the C fishing season in Statistical Area 610. Under § 679.23 (d)(3)(iv) the D season fishery for Statistical Area 610 will open 5 days after the closure of the C fishing season.

In accordance with § 679.25(a)(2)(iii), NMFS has determined that closing the C fishing season is the least restrictive management adjustment that will allow the D fishing season to begin given that the C seasonal allowance of the pollock TAC has been achieved. Pursuant to § 679.25(b)(2), NMFS has considered data regarding catch per unit effort and rate of harvest in making this adjustment.

Classification

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment or

delaying the effective date of this action is impracticable and contrary to the public interest. Without this inseason adjustment, NMFS could not allow the D seasonal allowance of the pollock TAC in Statistical Area 610 of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the preceding address until September 24, 1999.

This action is required by §§ 679.20 and 679.25 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: September 9, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–23920 Filed 9–9–99; 4:28 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 177
Tuesday, September 14, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 202

[Regulation B; Docket No. R–1040]

Equal Credit Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is requesting comment on proposed revisions to Regulation B, which implements the Equal Credit Opportunity Act. The Board previously published a proposed rule that permits creditors to use electronic communication (for example, communication via personal computer and modem) to provide disclosures required by the act and regulation, if the applicant agrees to such delivery. (A similar rule was also proposed under various other consumer financial services regulations administered by the Board.) In response to comments received on the proposals, the Board is publishing for comment an alternative proposal on the electronic delivery of disclosures, together with proposed commentary that would provide further guidance on electronic communication issues. The Board is also publishing for comment proposed revisions to allow disclosures in other languages.

DATES: Comments must be received by October 29, 1999.

ADDRESSES: Comments, which should refer to Docket No. R–1040, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room, both in the Board's Eccles building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room MP–500 between 9:00 a.m. and 5:00 p.m., pursuant to § 261.12, except as provided in § 261.14 of the Board's Rules Regarding the Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Jane E. Ahrens, Senior Counsel, or Natalie E. Taylor, Staff Attorney, Division of Consumer and Community Affairs, at (202) 452–3667 or (202) 452–2412. Users of Telecommunications Device for the Deaf (TDD) *only*, contact Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691 *et seq.*, makes it unlawful for creditors to discriminate in any aspect of a credit transaction on the basis of sex, race, color, religion, national origin, marital status, age (provided the applicant has the capacity to contract), because all or part of an applicant's income derives from public assistance, or because an applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Board's Regulation B (12 CFR part 202) implements the act.

The ECOA and Regulation B require a number of disclosures to be provided in writing, presuming that creditors provide paper documents. Under many laws that call for information to be in writing, information in electronic form is considered to be "written." Information produced, stored, or communicated by computer is also generally considered to be a writing, where visual text is involved.

In May 1996, the Board revised Regulation E (Electronic Fund Transfers) following a comprehensive review. During that process, the Board determined that electronic communication for delivery of information required by federal laws governing financial services could effectively reduce compliance costs without adversely affecting consumer protections. Consequently, the Board simultaneously issued a proposed rule to permit financial institutions to use electronic communication to deliver disclosures that Regulation E requires to be given in writing. (61 FR 19696, May 2, 1996.) The 1996 proposal required that disclosures be provided in a form the consumer may retain, a requirement that institutions could satisfy by providing information in a format that may be printed or downloaded. The proposed rule also allowed consumers to request a paper copy of a disclosure for up to one year after its original delivery.

Following a review of the comments, on March 25, 1998, the Board issued an interim rule under Regulation E (the "interim rule"), 63 FR 14528. The Board also published proposals under Regulations DD (Truth in Savings), 63 FR 14533, M (Consumer Leasing), 63 FR 14538, Z (Truth in Lending), 63 FR 14548, and B (Equal Credit Opportunity), 63 FR 14552, (collectively, the "March 1998 proposed rules"). The rules would apply to financial institutions, creditors, lessors, and other entities that are required to give disclosures to consumers and others. (For ease of reference, this background section uses the terms "financial institutions," "institutions," and "consumers.") The interim rule and the March 1998 proposed rules were similar to the May 1996 proposed rule; however, they did not require financial institutions to provide paper copies of disclosures to a consumer upon request if the consumer previously agreed to receive disclosures electronically. The Board believed that most institutions would accommodate consumer requests for paper copies when feasible or redeliver disclosures electronically; and the Board encouraged financial institutions to do so.

The March 1998 proposed rules and the interim rule permitted financial institutions to provide disclosures electronically if the consumer agreed, with few other requirements. The rule was intended to provide flexibility and did not specify any particular method for obtaining a consumer's agreement. Whether the parties had an agreement would be determined by state law. The proposals and the interim rule did not preclude a financial institution and a consumer from entering into an agreement electronically, nor did they prescribe a formal mechanism for doing so.

The Board received approximately 200 written comments on the interim rule and the March 1998 proposed rules. The majority of comments were submitted by financial institutions and their trade associations. Industry commenters generally supported the use of electronic communication to deliver

information required by the ECOA and Regulation B. Nevertheless, many sought specific revisions and additional guidance on how to comply with the disclosure requirements in particular transactions and circumstances.

Industry commenters were especially concerned about the condition that a consumer had to "agree" to receive information by electronic communication, because the rule did not specify a method for establishing that an "agreement" was reached. These commenters believed that relying on state law created uncertainty about what constitutes an agreement and, therefore, potential liability for noncompliance. To avoid uncertainty over which state's laws apply, some commenters urged the Board to adopt a federal minimum standard for agreements or for informed consent to receive disclosures by electronic communication. These commenters believed that such a standard would avoid the compliance burden associated with tailoring legally binding "agreements" to the contract laws of all jurisdictions where electronic communication may be sent.

Consumer advocates generally opposed the March 1998 interim rule and proposed rules. Without additional safeguards, they believed, consumers may not be provided with adequate information about electronic communication before an "agreement" is reached. They also believed that promises of lower costs could induce consumers to agree to receive disclosures electronically without a full understanding of the implications. To avoid such problems, they urged the Board, for example, either to require institutions to disclose to consumers that their account with the institution will not be adversely affected if they do not agree to receive electronic disclosures, or to permit institutions to offer electronic disclosures only to consumers who initiate contact with the institution through electronic communication. They also noted that some consumers will likely consent to electronic disclosures believing that they have the technical capability to retrieve information electronically, but might later discover that they are unable to do so. They questioned consumers' willingness and ability to access and retain disclosures posted on Internet websites, and expressed their apprehension that the goals of federally mandated disclosure laws will be lost.

Consumer advocates and others were particularly concerned about the use of electronic disclosures in connection with home-secured loans and certain other transactions that consumers typically consummate in person (citing as examples automobile loans and leases, short-term "payday" loans, or home improvement financing contracts resulting from door-to-door sales). They asserted that there is little benefit to eliminating paper disclosures in such transactions and that allowing electronic disclosures in those cases could lead to abusive practices. Accordingly, consumer advocates and others believed that paper disclosures should always accompany electronic disclosures in mortgage loans and certain other transactions, and that consumers should have the right to obtain paper copies of disclosures upon request for all types of transactions (deposit account, credit card, loan or lease, and other transactions).

A final issue raised by consumer advocates was the integrity of disclosures sent electronically. They stated that there may be instances when the consumer and the institution disagree on the terms or conditions of an agreement and consumers may need to offer electronic disclosures as proof of the agreed-upon terms and to enforce rights under consumer protection laws. Thus, to assure that electronic documents have not been altered and that they accurately reflect the disclosures originally sent, consumer advocates recommended that the Board require that electronic disclosures be authenticated by an independent third party.

The Board's Consumer Advisory Council considered the electronic delivery of disclosures in 1998 and again in 1999. Many Council members shared views similar to those expressed in written comment letters on the 1998 proposals. For example, some Council members expressed concern that the Board was moving too quickly in allowing electronic disclosures for certain transactions, and suggested that the Board might go forward with electronic disclosures for deposit accounts while proceeding more slowly on credit and lease transactions. Others expressed concern about consumer access and consumers' ability to retain electronic disclosures. They believed that, without specific guidance from the Board, institutions would provide electronic disclosures without knowing whether consumers could retain or access the disclosures, and without establishing procedures to address technical malfunctions or nondelivery. The Council also discussed the integrity and security of electronic documents.

II. Overview of Proposed Revisions

Based on a review of the comments and further analysis, the Board is requesting comment on a modified proposed rule that is more detailed than the interim rule and March 1998 proposed rules. It is intended to provide specific guidance for creditors that choose to use electronic communication to comply with Regulation B's requirements to provide written disclosures, and to ensure effective delivery of disclosures to applicants through this medium. Though detailed, the proposal provides flexibility for compliance with the electronic communication rules. The modified proposal recognizes that some disclosures may warrant different treatment under the rule. Where written disclosures are made to consumers who are transacting business in person, these disclosures generally would have to be made in paper form. The modified proposal for Regulation B would not contain this in-person exception as the Board does not believe the exception is necessary given the timing and delivery provision for providing information, as discussed below under 4(e)(2).

The Board is soliciting comment on a modified approach that addresses both industry and consumer group concerns. Under the proposal, creditors would have to provide specific information about how the applicant can receive and retain electronic disclosures—through a standardized disclosure statement—before obtaining applicants' acceptance of such delivery, with some exceptions. If they satisfy these requirements and obtain applicants' affirmative consent, creditors would be permitted to use electronic communication. As a general rule a creditor would be permitted to offer the option of receiving electronic disclosures to all applicants, whether they initially contact the creditor by electronic communication or otherwise.

Creditors would have the option of delivering disclosures to an e-mail address designated by the applicant or making disclosures available at another location such as the creditor's website, for printing or downloading. If the disclosures are posted at a website location, creditors generally must notify applicants at an e-mail address about the availability of the information. (Creditors may offer consumers the option of receiving alert notices at a postal address.) The disclosures must remain available at that site for 90 days.

Disclosures provided electronically would be subject to a "clear and conspicuous" standard, must be in a form that the applicant can retain, and would be subject to the format and timing rules in Regulation B. For example, a creditor that provides electronic disclosures and denies an applicant's credit request must provide an electronic adverse action notice

within 30 days after receiving a completed application.

Creditors generally must provide a means for applicants to confirm the availability of equipment to receive and retain electronic disclosure documents. A creditor would not otherwise have a duty to verify applicants' actual ability to receive, print, or download the disclosures. Some commenters suggested that creditors should be required to verify delivery by return receipt. The Board solicits comment on the need for such a requirement and the feasibility of that approach.

As previously mentioned, consumer advocates and others have expressed concerns that electronic documents can be altered more easily than paper documents. The issue of the integrity and security of electronic documents affects electronic commerce in general and is not unique to the written disclosures required under the consumer protection laws administered by the Board. Applicants' ability to enforce rights under the consumer protection laws could be impaired in some cases, however, if the authenticity of disclosures that they retain cannot be demonstrated. Signatures, notary seals, and other established verification procedures are used to detect alterations for transactions memorialized in paper form. The development of similar devices for electronic communication should reduce uncertainty over time about the ability to use electronic documents for resolving disputes.

The Board's rules require creditors to retain evidence of compliance with Regulation B. Specific comment is solicited on the feasibility of complying with a requirement that creditors provide disclosures in a format that cannot be altered without detection, or have systems in place capable of detecting whether or not information has been altered, as well as the feasibility of requiring use of independent certification authorities to verify disclosure documents.

Elsewhere in today's **Federal Register**, the Board is publishing similar proposals for comment under Regulations E, M, Z, and DD. In a separate notice the Board is publishing an interim rule under Regulation DD, which implements the Truth in Savings Act, to permit depository institutions to use electronic communication to deliver disclosures on periodic statements. For ease of reference, the Board has assigned new docket numbers to the modified proposals published today.

III. Section-by-Section Analysis

Pursuant to its authority under section 703 of the ECOA, the Board proposes to amend Regulation B to permit creditors to use electronic communication to provide disclosures and other information required by the act and regulation to be in writing. Below is a section-by-section analysis of the rules for providing disclosures by electronic communication, including references to proposed commentary provisions.

Section 202.4 General Rules

4(e) Electronic Communication

4(e)(1) Definition. The definition of the term "electronic communication" in the March 1998 proposed rule remains unchanged. Section 202.4(e)(1) limits the term to a message transmitted electronically that can be displayed on equipment as visual text, such as a message that is displayed on a computer monitor screen. Most commenters supported the term as defined in the March 1998 proposed rule. Some commenters favored a more expansive definition that would encompass communications such as audio and voice response telephone systems. Because the proposal is intended to permit electronic communication to satisfy the statutory requirement for written disclosures, the Board believes visual text is an essential element of the definition.

Commenters asked the Board to clarify the coverage of certain types of communications. A few commenters asked about communication by facsimile. Facsimiles are initially transmitted electronically; the information may be received either in paper form or electronically through software that allows a consumer to capture the facsimile, display it on a monitor, and store it on a computer diskette or drive. Thus, information sent by facsimile may be subject to the provisions governing electronic communication. When disclosures are sent by facsimile, a creditor should comply with the requirements for electronic communication unless it knows that the disclosures will be received in paper form. Proposed comment 4(e)(1)-1 contains this guidance.

4(e)(2) Electronic Communication between Creditor and Applicant. Section 202.4(e)(2) would permit creditors to provide disclosures using electronic communication, if the creditor complies with provisions in new § 202.4(e)(3), discussed below.

1. Presenting Disclosures in a Clear and Conspicuous Format

Currently, Regulation B does not expressly require creditors to present required information in a clear and conspicuous format. In contrast, Regulations DD (Truth in Savings), E (Electronic Fund Transfers), M (Consumer Leasing), and Z (Truth in Lending) all require that information be provided in a clear and conspicuous (or conspicuous or clear and readily understandable) format. Because clarity requirements for written disclosures (whether electronic or not) exist for those regulations, the Board requested comment in the March 1998 proposed rule on whether these requirements should be extended to electronic communication under Regulation B. Also, the Board recently issued a proposed rule for Regulation B as part of its periodic review of regulations. As part of the review, the Board requested comment on whether the "clear and conspicuous" requirement should apply to all—paper or electronic—disclosures and information required by Regulation B. (64 FR 44581, August 16, 1999).

Most commenters to the March 1998 proposed rule suggested that the Board adopt the clear and conspicuous requirement for electronic communication under Regulation B. These commenters noted that the requirements for electronic communication should be consistent among the regulations, and that extension of this requirement to Regulation B would not be burdensome. A few commenters, however, suggested that either the Board adopt the clear and conspicuous requirement for all disclosures under the regulation—paper or electronic—or that it leave the requirement as it is. They argued that imposing a different standard for paper and electronic disclosures might result in applicants receiving disclosures in different formats based on how they apply for credit and for what product they apply.

The proposal would extend a "clear and conspicuous" requirement to electronic communication under Regulation B, consistent with the proposed changes to Regulation B discussed above. See § 202.4(d) of the August 16, 1999 proposed rule for Regulation B (64 FR 44581). The Board does not intend to discourage or encourage specific types of technologies. Regardless of the technology, however, disclosures provided electronically must be presented in a clear and conspicuous format.

When applicants consent to receive disclosures electronically and they confirm that they have the equipment to do so, creditors generally would have no further duty to determine that applicants are able to receive the disclosures. Creditors do have the responsibility of ensuring the proper equipment is in place in instances where the creditor controls the equipment. Proposed comment 4(e)(2)–1 contains this guidance.

2. Providing Disclosures in a Form the Applicant May Keep

Currently under Regulation B, only one notice (§ 202.9(a)(3)(i)(B), regarding business credit) must be provided in a form the applicant may retain. On the other hand, Regulations DD, E, M, and Z all require that information be provided in a retainable form. In the March 1998 proposed rule, the Board requested comment on whether a retainability requirement should be extended to electronic communication under Regulation B generally.

Most commenters supported a retainability requirement for electronic communication under Regulation B. These commenters noted that the requirements for electronic communication should be as consistent as practicable for all of the regulations, and that extension of this requirement would not be burdensome. Some commenters, however, supported leaving the requirement as it is. They believe a retainability requirement for disclosures sent by electronic communication would discourage the use of electronic communication by creating different rules for disclosures sent by mail and those sent by electronic communication. As part of its August 1999 proposed rule for Regulation B, discussed above, the Board requested comment on whether a "retainability" requirement should apply to all—paper or electronic—disclosures and information required by Regulation B. See § 202.4(d) of the August 16, 1999 Regulation B proposed rule (64 FR 44581).

Under the 1998 proposals and interim rule, a creditor would satisfy the retainability requirement by providing information that can be printed or downloaded. The modified proposal adopts the same approach but also provides that the information must be sent to a specified location to ensure that applicants have an adequate opportunity to retain the information.

Applicants communicate electronically with creditors through a variety of means and from various locations. Depending on the location (at home, at work, in a public place such as a library), an applicant may not have the ability at a given time to preserve ECOA disclosures presented on-screen. Therefore, when a creditor provides disclosures by electronic communication, to satisfy the retention requirements, the creditor must send the disclosures to an applicant's e-mail address or other location where information may be retrieved at a later date. Proposed comment 4(e)(2)–2 contains this guidance; see also the discussion under § 202.4(e)(4), below. In instances where a creditor controls an electronic terminal used to provide electronic disclosures, a creditor may provide equipment for the applicant to print a paper copy in lieu of sending the information to the applicant's e-mail address or posting the information at another location such as the creditor's website. See proposed comment 4(e)(2)–1.

3. Timing

Creditors must ensure that electronic disclosures comply with all relevant timing requirements of the regulation. For example, under §§ 202.9(a)(1) and (2), a creditor must send a written notice within 30 days after receiving a completed application, if the creditor takes adverse action.

To illustrate the timing requirements for electronic communication, assume that a consumer is interested in obtaining a loan and uses a personal computer at home to access the creditor's website on the Internet. The creditor provides disclosures to the consumer about the use of electronic communication (the § 202.4(e)(3) disclosures discussed below) and the consumer responds affirmatively. If the creditor's procedures permit the consumer to apply for a loan at that time, and the creditor denies the credit request, the written notice required by § 202.9 must be provided. Under the proposal, the creditor would satisfy the regulation's timing requirements if, within 30 days of receiving the completed application, an adverse action notice is sent to the applicant's e-mail address, or is posted on the creditor's website and the applicant is informed that the notice is available.

If an applicant is transacting business at a creditor's website and is at a point in the transaction where in order to go forward the applicant must receive disclosures, the disclosures must appear on the screen. By displaying the disclosures on the screen, creditors meet the timing and delivery requirements of the regulation. For example, if an applicant applies over the Internet for a loan to purchase a principal dwelling, the request for monitoring information required by § 202.13(a) and the disclosure required by § 202.13(c) concerning the collection of the information must appear on the screen before the application can be sent to the creditor for processing. The timing requirements for requesting the information and providing the disclosure would not be met if, in this example, the creditor permitted the applicant to complete the application and apply for credit and sent the request for monitoring information and the applicable disclosure to an e-mail address thereafter. Proposed comment 4(e)(2)–3 contains this guidance.

4(e)(3) Disclosure Notice. Section 202.4(e)(3) would identify the specific steps required before a creditor could use electronic communication to satisfy the regulation's disclosure requirements. Proposed Sample Forms C–11, C–12, C–14, and C–15 are published to aid compliance with these requirements.

4(e)(3)(i) Notice by Creditor. Section 202.4(e)(3)(i) outlines the information that creditors must provide before electronic disclosures can be given. The creditor must: (1) Describe the information to be provided electronically and specify whether the information is also available in paper form or whether the credit product is offered only with electronic disclosures; (2) identify the address or location where the information will be provided electronically, and if it will be available at a location other than the applicant's electronic address, specify for how long and where it can be obtained once that period ends; (3) specify any technical requirements for receiving and retaining information sent electronically, and provide a means for the applicant to confirm the availability of equipment meeting those requirements; and (4) provide a toll-free telephone number and, at the creditor's option, an electronic or a postal address for questions about receiving electronic disclosures or for updating applicants' electronic addresses, and for seeking assistance with technical or other difficulties (see proposed comments to 4(e)(3)(i)). The Board requests comment on whether other information should be disclosed regarding the use of electronic communication and on any format changes that might improve the usefulness of the notice for applicants.

Under the proposal, the § 202.4(e)(3)(i) disclosures must be provided, as applicable, before the creditor uses electronic communication to deliver any information required by the regulation. The approach of requiring a standardized disclosure statement addresses, in several ways, the concern that applicants may be steered into using electronic communication without fully understanding the implications. Under this approach, the specific disclosures that would be delivered electronically

must be identified, and applicants must be informed whether there is also an option to receive the information in paper form. Applicants must provide an e-mail address where one is required. Technical requirements must also be stated, and applicants must affirm that their equipment meets the requirements, and that they have the capability of retaining electronic disclosures by downloading or printing them (see proposed comment 4(e)(3)–1). Thus, the § 202.4(e)(3)(i) disclosures should allow applicants to make informed judgments about receiving electronic disclosures.

Some commenters requested clarification of whether a creditor may use electronic communication to provide some required disclosures while using paper for others. The proposed rule would permit creditors to do so; the disclosure given under § 202.4(e)(3)(i) must specify which ECOA disclosures will be provided electronically.

Commenters requested further guidance on a creditor's obligation under the regulation if the applicant chooses not to receive information by electronic communication. A creditor could offer an applicant the option of receiving disclosures in paper form, but it would not be required to do so. A creditor could establish credit products for which disclosures are given only by electronic communication. Section 202.4(e)(3)(i)(A) would require creditors to tell applicants whether or not they have the option to receive disclosures in paper form. Section 202.4(e)(3)(i)(D) would require creditors to provide a toll-free number that applicants could use to inform creditors if they wish to discontinue receiving electronic disclosures. In such cases the creditor must inform the applicant whether the credit product is also available with disclosures in paper form. Proposed sample notices in which the applicant has an option to receive electronic or paper disclosures (Form C–14) or electronic disclosures only (Form C–15) are contained in appendix C.

4(e)(3)(ii) Response by Applicant. Proposed § 202.4(e)(3)(ii) would require creditors to provide a means for the applicant to affirmatively indicate that information may be provided electronically. Examples include a "check box" on a computer screen or a signature line (for requests made in paper form). The requirement is intended to ensure that applicants' consent is established knowingly and voluntarily, and that consent to receive electronic disclosures is not inferred from the submission of an application for credit. See proposed comment 4(e)(3)(ii)–1.

4(e)(3)(iii) Changes. Creditors would be required to notify applicants about changes to the information that is provided in the notice required by § 202.4(e)(3)(i)—for example, if upgrades to computer software are required. Proposed comment 4(e)(3)(iii)–1 contains this guidance.

The notice must include the effective date of the change and be provided before that date. Proposed comment 4(e)(3)(iii)–2 would provide that the notice must be sent a reasonable period of time before the effective date of the change. Although the number of days that constitutes reasonable notice may vary, depending on the type of change involved, the comment would provide creditors with a safe harbor: fifteen days' advance notice would be considered a reasonable time in all cases. The same time period is stated in similar proposals under Regulations E, Z, and DD published in today's **Federal Register**. Comment is requested on whether a safe harbor of 15 days is an appropriate time period, and whether a uniform period for changes involving electronic communication is desirable. Proposed comment 4(e)(3)(iii)–3 contains guidance on delivery requirements for the notice of change.

The notice of a change must also include a toll-free telephone number or, at the creditor's option, an address for questions about receiving electronic disclosures. For example, a consumer may call regarding problems related to a change, such as an upgrade to computer software that is not provided by the creditor. Applicants may also use the toll-free number if they wish to discontinue receiving electronic disclosures. In such cases, the creditor must inform applicants whether the credit product is also available with disclosures in paper form. (See proposed comments 4(e)(3)(iii)–4 through –6).

If the change involves providing additional disclosures by electronic communication, creditors generally would be required to provide the notice in § 202.4(e)(3)(i) and obtain the applicant's consent. That notice would not be required if the creditor previously obtained the applicant's consent to the additional disclosures in its initial notice by disclosing the possibility and specifying which disclosures might be provided electronically in the future. Comment is specifically requested on this approach. A list of additional disclosures may be necessary to ensure that applicants' consent is informed and knowing (provided it does not cause confusion).

4(e)(4) Address or Location to Receive Electronic Communication. Proposed § 202.4(e)(4) identifies addresses and locations where creditors using electronic communication may send information to the applicant. Creditors may send information to an applicant's electronic address, which is defined in proposed comment 4(e)(4)(i)–1 as an e-mail address that the applicant also may use for receiving communications from parties other than the creditor. For notices of action taken, for example, a creditor's responsibility to provide notice under § 202.9 will be satisfied when the notice of action taken is sent to the applicant's electronic address in accordance with the applicable proposed rules concerning delivery of disclosures by electronic communication.

Guidance accompanying the March 1998 proposed rule provided that a creditor would not meet delivery requirements by simply posting information to an Internet site such as a creditor's "home page" without appropriate notice on how applicants can access the information. Industry commenters wanted to retain the flexibility of posting disclosures on an Internet website. They did not object to providing a separate notice alerting applicants about the disclosures' availability but requested more guidance on the issue. Consumer advocates and others expressed concern that the mere posting of information inappropriately places the responsibility to obtain disclosures on applicants, and undermines the purpose of the delivery requirements of the regulation.

The Board recognizes that currently, because of security and privacy concerns associated with data transmissions, a number of creditors may choose to provide disclosures at their websites, where the applicant may retrieve them under secure conditions. Under § 202.4(e)(4), a creditor may make disclosures available to an applicant at a location other than the applicant's electronic address. The creditor must notify the applicant when the information becomes available and identify the credit transaction involved. The notice must be sent to the electronic mail address designated by the applicant; the creditor may, at its option, permit the applicant to designate a postal address. A proposed sample notice (Form C–13) is published below; see also proposed comment 4(e)(4)(ii)–1.

The Board believes it would be inconsistent with the ECOA to require an applicant to initiate a search—for example, to search the website of each creditor with whom the applicant applied for credit—to determine whether a disclosure has been provided.

The proposed approach ensures that an applicant would not be required to check a creditor's website repeatedly, for example, to learn whether the creditor posted a notice of adverse action.

The requirements of the regulation would be met only if the required information is posted on the website and the applicant is notified of its availability in a timely fashion. For example, creditors must provide adverse action notices to applicants within 30 days after receiving a completed application. For an adverse action notice posted on the Internet, a creditor must both post the notice and notify the applicant of its availability within 30 days of receiving a completed application.

Commenters sought guidance on how long disclosures posted at a particular location must be available to applicants. There is a variety of circumstances when an applicant may not be able immediately to access the information due to illness, travel, or computer malfunction, for example. Under § 202.4(e)(4), creditors must post information that is sent to a location other than the applicant's electronic mail address for 90 days. Proposed comment 4(e)(4)(ii)–2 contains this guidance.

Under the modified proposal, creditors that post information at a location other than the applicant's electronic mail address are required—after the 90 day period—to make disclosures available to applicants upon request for a period of not less than 25 months, except as otherwise provided, from the date disclosures are required to be made, consistent with the record retention requirements under § 202.12(b). (See § 202.12(b) of the August 16, 1999 proposed rule for Regulation B (64 FR 44581). The Board requests comment on this approach, including suggestions for alternative means for providing consumers continuing access to disclosures.

4(e)(5) Applicant Use of Electronic Communication. Proposed § 202.4(e)(5) would clarify applicants' ability to provide certain information to creditors by electronic communication. Regulation B provides that an applicant, upon written request, is entitled to receive a copy of an appraisal report under § 202.5a and a statement of specific reasons for adverse action under § 202.9(a)(3)(ii). Under the proposal, applicants generally would have the option to use electronic communication for these written notices if the applicant has chosen to receive information by electronic communication. Because the applicant's electronic communication serves as written notice, the creditor could not also require paper notice. Creditors could, however, specify a particular electronic address for receiving the notices.

The issue of the applicant's ability to provide certain information to creditors by electronic communication was not raised in the March 1998 proposed rule for Regulation B. In issuing the March 1998 Regulation E interim rule, the Board stated that financial institutions could require paper confirmation of electronic notices in the two instances where the regulation allows written confirmation—stop-payment notices and notices of error. This approach was consistent with guidance provided in the May 1996 proposed rule, where the Board stated that (as in the case of an oral communication) if the consumer sends an electronic communication to the financial institution, the institution could require paper confirmation from the consumer (particularly since the consumer was entitled to a paper copy of a disclosure upon request under the May 1996 proposal).

Views were mixed on whether financial institutions should be permitted to require paper confirmations of electronic notices. Many industry commenters requested that the Board allow financial institutions to request paper confirmations; some stated that paper confirmations protect both the consumer and the financial institution. Consumer advocates and other commenters believed it would be unfair to require paper confirmation of an electronic communication from consumers who receive electronic communication from a financial institution.

Based upon the comments received and further analysis, and subject to certain limitations discussed below, the Board is proposing that applicants be permitted to provide electronically any information that an applicant is required to provide a creditor to exercise the applicant's rights under the regulation, such as the request for a written statement of reasons. If a creditor uses electronic communication to provide disclosures about appraisal rights under § 202.5a and notices under § 202.9, it is appropriate to allow applicants to use electronic communication to provide notices to the creditor. If, however, a creditor limits its use of electronic communication to the delivery of information required at the time the application is taken—the disclosure concerning the collection of monitoring information for home-secured loans—creditors would not be required to accept electronic communication from applicants.

4(e)(5)(ii) Creditor's Designation of Address. Section 202.4(e)(5)(ii) would provide that a creditor may designate the electronic address that must be used by an applicant for sending electronic communication as permitted by § 202.4(e)(5)(i).

4(f) Foreign Language Disclosures. To provide consistency among the regulations, the Board would add guidance permitting disclosures to be made in languages other than English (provided they are available in English upon request). This guidance would be set forth in proposed § 202.4(f).

Appendix C to Part 202—Sample Notification Forms

The Board solicits comment on two proposed sample disclosure forms and three sample notice forms for use by creditors to aid compliance with the disclosure requirements of §§ 202.4(e)(3) and (e)(4). Forms C–11 and C–12 would implement § 202.4(e)(3), regarding the notice that creditors must give prior to using electronic communication to provide required disclosures. Form C–13 would implement § 202.4(e)(4), regarding notices to applicants about the availability of electronic information at locations such as the creditor's website. Use of any modified version of these forms would be in compliance as long as the creditor does not delete information required by the regulation or rearrange the format in a way that affects the substance, clarity, or meaningful sequence of the disclosure. For example, where a creditor combines Regulation B and Regulation Z disclosures for a credit card account, the creditor may provide a single disclosure statement about electronic delivery.

Sample Form C–14 illustrates the disclosures under § 202.4(e)(3). The sample assumes the creditor also offers paper disclosures for applicants who choose not to receive electronic disclosures. Sample Form C–15 assumes that applicants must accept electronic disclosures if they want to apply for the particular credit product.

Other issues

Preemption

A few commenters suggested that any final rule issued by the Board permitting electronic disclosures should explicitly preempt any state law requiring paper disclosures. Under § 202.11(a) of the regulation, state laws are preempted if they are inconsistent with the act and regulation and only to the extent of the inconsistency. The proposed rule would provide creditors with the option of

giving required disclosures by electronic communication as an alternative to paper. There is no apparent inconsistency with the act and regulation if state laws require paper disclosures. The Board will, however, review preemption issues that are brought to the Board's attention. Section 202.11(b)(2) outlines the Board's procedures for determining whether a specific law is preempted, which will guide the Board in any determination requested by a creditor, state, or other interested party following publication of a final rule regarding electronic communication.

IV. Form of Comment Letters

Comment letters should refer to Docket No. R–1040, and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch computer diskettes in any IBM-compatible DOS- or Windows-based format.

V. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the proposed amendments to Regulation B. Although the proposal would add disclosure requirements with respect to electronic communication, overall, the proposed amendments are not expected to have any significant impact on small entities. A creditor's use of electronic communication to provide disclosures required by the regulation is optional. The proposed rule would give creditors flexibility in providing disclosures. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB number. The OMB control number is 7100–0201.

The collection of information requirements that are relevant to this proposed rulemaking are in 12 CFR part 202. This information is mandatory (15 U.S.C. 1691b(a)(1) and Public Law 104–208, § 2302(a)) to evidence compliance with the requirements of Regulation B and the Equal Credit Opportunity Act. The purpose of the act is to ensure that credit is made available to all creditworthy customers without discrimination on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to contract), receipt of public assistance, or the fact that the applicant has in good faith exercised any right under the Consumer Credit Protection Act (15 U.S.C. 1600 *et. seq.*). The respondents/recordkeepers are for-profit financial institutions, including small businesses. Creditors are also required to retain records for 12 to 25 months. This regulation applies to all types of creditors, not just state member banks; however, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The proposed revisions would allow creditors the option of using electronic communication (for example, via personal computer and modem) to provide disclosures and other information required by the regulation. Although the proposal would add disclosure requirements with respect to electronic communication, the optional use of electronic communication would likely reduce the paperwork burden of creditors. With respect to state member banks, it is estimated that there are 988 respondents/recordkeepers and an average frequency of 4,765 responses per respondent each year. Therefore, the current amount of annual burden is estimated to be 123,892 hours. There is estimated to be no additional annual cost burden and no capital or start-up cost.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises; however, any information obtained by the Federal Reserve may be protected from disclosure under exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522(b)(4), (6) and (8)). The adverse action disclosure is confidential between creditors and the applicants involved.

The Federal Reserve requests comments from creditors, especially state member banks, that will help to estimate the number and burden of the various disclosures that would be made in the first year this proposed regulation would be effective. Comments are invited on: (a) The cost of compliance; (b) ways to enhance the quality, utility, and clarity of the information to be disclosed; and (c) ways to minimize the burden of disclosure on respondents, including through the use of automated disclosure techniques or other forms of information technology. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0201), Washington, DC 20503, with copies of such comments sent to Mary M. West, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

List of Subjects in 12 CFR Part 202

Aged, Banks, banking, Civil rights, Credit, Federal Reserve System, Marital status discrimination, Penalties, Religious discrimination, Reporting and recordkeeping requirements, Sex discrimination.

Text of Proposed Revisions

Certain conventions have been used to highlight proposed changes to Regulation B. New language is shown inside bold-faced arrows.

For the reasons set forth in the preamble, the Board proposes to amend Regulation B, 12 CFR part 202, as set forth below:

PART 202—EQUAL CREDIT OPPORTUNITY (REGULATION B)

1. The authority citation for part 202 would continue to read as follows:

Authority: 15 U.S.C. 1691–1691f.

2. Section 202.4 as proposed to be revised at 64 FR 44595, August 16, 1999, is further amended by adding new paragraphs (e) and (f) to read as follows:

§ 202.4 General rules.

* * * * *

(e) *Electronic communication*—(1) *Definition. Electronic communication* means a message transmitted electronically between an applicant and a creditor in a format that allows visual text to be displayed on equipment such as a personal computer monitor.

(2) *Electronic communication between creditor and applicant.* A creditor that has complied with paragraph (e)(3) of this section may provide by electronic communication any information required by this regulation to be in writing.

(3) *Disclosure notice.* The disclosure notice required by paragraph (e)(3) of this section shall be clear and conspicuous and in a form the consumer may keep, and shall be provided in a manner substantially similar to the applicable sample notice set forth in Appendix C of this part (Sample Forms C–11 and C–12).

(i) *Notice by creditor.* A creditor shall:

(A) Describe the information to be provided electronically and specify whether the information is also available in paper form or whether the credit product is offered only with electronic disclosures;

(B) Identify the address or location where the information will be provided electronically; and if it is made available at a location other than the applicant's electronic address, how long the information will be available, and how it can be obtained once that period ends;

(C) Specify any technical requirements for receiving and retaining information sent electronically, and provide a means for the applicant to confirm the availability of equipment meeting those requirements; and

(D) Provide a toll-free telephone number and, at the creditor's option, an address for questions about receiving electronic disclosures, for updating applicants' electronic addresses, and for seeking technical or other assistance related to electronic communication.

(ii) *Response by applicant.* A creditor shall provide a means for the applicant to accept or reject electronic disclosures.

(iii) *Changes.* (A) A creditor shall notify affected applicants of any change to the information provided in the notice required by paragraph (e)(3)(i) of this section. The notice shall include the effective date of the change and must be provided before that date. The notice shall also include a toll-free telephone number, and, at the creditor's option, an address for questions about receiving electronic disclosures.

(B) In addition to the notice under paragraph (e)(3)(iii)(A) of this section, if the change involves providing additional disclosures by electronic communication, a creditor shall provide the notice in paragraph (e)(3)(i) of this section and obtain the applicant's consent. A notice is not required under paragraph (e)(3)(i) if the creditor's initial notice states that additional disclosures may be provided electronically in the future and specifies which disclosures could be provided.

(4) *Address or location to receive electronic communication.* A creditor that uses electronic communication to provide information required by this regulation shall:

(i) Send the information to the applicant's electronic address; or

(ii) Post the information for at least 90 days at a location such as a website, and send a notice to the applicant when the information becomes available. Thereafter the information shall be available upon request for a period of not less than 25 months, except as otherwise provided, from the date disclosures are required to be made. The notice required by this paragraph (e)(4)(ii) shall identify the credit product or application involved, shall be sent to an electronic address designated by the applicant (or to a postal address, at the creditor's option), and shall be substantially similar to the sample notice set forth in Appendix C of this part (Sample Form C–13).

(5) *Applicant use of electronic communication.* (i) *General.* An applicant may use electronic communication to exercise any right under § 202.5a and § 202.9(a)(3) if the applicant has consented to receive information required by these sections by electronic communication.

(ii) *Creditor's designation of address.* A creditor may designate the electronic address or location that applicants must use if they send electronic communication under this paragraph.

(f) *Foreign language disclosures.* Disclosures may be made in languages other than English, provided they are available in English upon request.◄

3. Appendix C to Part 202 as proposed to be revised at 64 FR 44616, August 16, 1999, is further amended by adding new Forms C–11, C–12, C–13, C–14, and C–15 to read as follows:

Appendix C to Part 202—Sample Notification Forms

* * * * *

Form C–11—Sample Disclosures for Electronic Communication (Disclosures Available in Paper or Electronically)

You can choose to receive important information required by the Equal Credit Opportunity Act in paper or electronically.

Read this notice carefully and keep a copy for your records.

- You can choose to receive the following information in paper form or electronically: (description of specific disclosures to be provided electronically).
- How would you like to receive this information
  - ☐ I want paper disclosures.
  - ☐ I want electronic disclosures.
- **[**We may provide the following additional disclosures electronically in the future: (description of specific disclosures).**]**
- **[**If you choose electronic disclosures, this information will be available at: (specify location) for _____ days. After that, the information will be available upon request (state how to obtain the information). When the information is posted, we will send you a message at the electronic mail address you designate here: (applicant's electronic mail address).**]**

[If you choose electronic disclosures this information will be sent to the electronic mail address that you designate here: (applicant's electronic mail address).**]**

- To receive this information you will need: (list hardware and software requirements).

Do you have access to a computer that satisfies these requirements?

☐ Yes ☐ No

- Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

☐ Yes ☐ No

- To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, contact us at (telephone number).

Form C–12—Sample Disclosures for Electronic Communication (Disclosures Available Only Electronically)

You will receive important information required by the Equal Credit Opportunity Act electronically.

Read this notice carefully and keep a copy for your records.

- The following information will be provided electronically: (description of specific disclosures to be provided electronically).
- This credit product is not available unless you accept electronic disclosures.
- **[**We may provide the following additional disclosures electronically in the future: (description of specific disclosures).**]**
- **[**If you choose electronic disclosures, this information will be available at: (specify location) for _____ days. After that, the information will be available upon request (state how to obtain the information). When the information is posted, we will send you a message at the electronic mail address you designate here: (applicant's electronic mail address).**]**

[If you choose electronic disclosures this information will be sent to the electronic mail address that you designate here: (applicant's electronic mail address).**]**

- To receive this information you will need: (list hardware and software requirements).

Do you have access to a computer that satisfies these requirements?

☐ Yes ☐ No

- Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

☐ Yes ☐ No

Do you want this credit product with electronic disclosures?

☐ Yes ☐ No

- To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, contact us at (telephone number).

Form C–13—Sample Notice for Delivery of Information Posted at Certain Locations

Information about your (identify loan application or credit transaction) is now

available at [website address or other location]. The information discusses (describe the disclosure). It will be available for _____ days.

BILLING CODE 6210-01-P

FORM C-14–SAMPLE NOTICE FOR ELECTRONIC COMMUNICATION
(Disclosures Available in Paper or Electronically)

You can choose to receive important information required by the Equal Credit Opportunity Act in paper form or electronically.

Read this notice carefully and keep a copy for your records.

- You can choose to receive the following information in paper form or electronically: Notice of action taken, notice of the right to a written statement of reasons, statement of reasons, notice of the right to receive a copy of an appraisal report, or appraisal report.
- Please indicate how you would like to receive this information:

  ☐ I want paper disclosures ☐ I want electronic disclosures
- If you choose electronic disclosures, this information will be available at our Internet website: *http://www._____.com* for 90 days. After that, the information will be available upon request by contacting us at *1-800-xxx-xxxx*. When the information is posted on our website, we will send you a message at your e-mail address:

  insert address
- To receive this information electronically, you will need: a minimum web browser version of (Browser name). Do you have access to a computer that satisfies these requirements?

  ☐ Yes ☐ No
- Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

  ☐ Yes ☐ No
- To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, you may contact us by telephone at *1-800-xxx-xxxx* or by electronic mail at _____*.help@isp.com*.

FORM C-15—SAMPLE NOTICE FOR ELECTRONIC COMMUNICATION
(Disclosures Available Only Electronically)

You will receive important information required by the Equal Credit Opportunity Act electronically.

Read this notice carefully and keep a copy for your records.

- The following information will be provided electronically: Notice of action taken, notice of the right to a written statement of reasons, statement of reasons, notice of the right to receive a copy of an appraisal report, or an appraisal report.
- This credit product is available only if you accept these disclosures electronically.
- Information about your loan application or credit transaction will be available at our Internet website: *http://www._____.com* for 90 days. After that, the information will be available upon request by contacting us at *1-800-xxxx-xxxx*. When the information is posted on our website, we will send you a message at your e-mail address:

  insert address

- To receive this information electronically, you will need: a minimum web browser version of (Browser name). Do you have access to a computer that satisfies these requirements?

  ☐ Yes ☐ No

- Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

  ☐ Yes ☐ No

- Do you want this credit product with electronic disclosures?

  ☐ Yes ☐ No

- To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, you may contact us by telephone at *1-800-xxx-xxxx* or by electronic mail at _____*.help@isp.com.*◄

BILLING CODE 6210-01-C

4. Supplement I to Part 202, as proposed to be revised at 64 FR 44618, August 16, 1999, is further amended under *Section 202.4—General Rules* by adding a new paragraph 4(e) *Electronic Communication* to read as follows:

Supplement I to Part 202—Official Staff Interpretations

* * * * *

Section 202.4—General Rules

* * * * *

► 4(e) Electronic Communication

4(e)(1) *Definition.*

1. *Coverage.* Information transmitted by facsimile may be received in paper form or electronically, although the party initiating the transmission may not know at the time the disclosures are sent which form will be used. A creditor that provides disclosures by facsimile should comply with the requirements for electronic communication unless the creditor knows that the disclosures will be received in paper form.

4(e)(2) *Electronic communication between creditor and applicant.*

1. *Disclosures provided on creditor's equipment.* Creditors that control equipment providing electronic disclosures to applicants (for example, computer terminals in a creditor's lobby or kiosks located in public places) must ensure that the equipment satisfies the regulation's requirements to provide disclosures in a clear and conspicuous format and in a form the consumer may keep. A creditor that controls the equipment may provide a printer for applicants' use in lieu of sending the information to the applicant's electronic mail address or posting the information at another location such as the creditor's website.

2. *Retainability.* Creditors must provide electronic disclosures in a retainable format (for example, they can be printed or downloaded). Applicants may communicate electronically with creditors through a variety of means and from various locations. Depending on the location (at home, at work, in a public place such as a library), an applicant may not have the ability at a given time to preserve ECOA disclosures presented on-screen. To ensure that applicants have an adequate opportunity to retain the disclosures, the creditor also must send them to the applicant's designated electronic mail address or to another location, for example, on the creditor's website, where the information may be retrieved at a later date.

3. *Timing and delivery.* When an applicant applies for credit on the Internet, for example, in order to meet the timing and delivery requirements, creditors must ensure that disclosures applicable at that time appear on the screen and are in a retainable format. The delivery requirements would not be met if disclosures do not either appear on the screen or if the applicant is allowed to apply for credit before receiving the disclosures. For example, a creditor can provide a link to electronic disclosures appearing on a separate page as long as applicants cannot bypass the link and they are required to access the disclosures before completing the application.

4(e)(3) *Disclosure notice.*

1. *Applicant's affirmative responses.* Even though an applicant accepts electronic disclosures in accordance with § 202.4(e)(3)(ii), a creditor may deliver disclosures by electronic communication only if the applicant provides an electronic address where one is required, and responds affirmatively to questions about technical requirements and the ability to print or download information (see sample forms C–14 and C–15 in appendix C to this part).

Paragraph 4(e)(3)(i)

1. *Toll-free telephone number.* The number must be toll-free for nonlocal calls made from an area code other than the one used in the creditor's dialing area. Alternatively, a creditor may provide any telephone number that allows an applicant to call for information and reverse the telephone charges.

2. *Creditor's address.* Creditors have the option of providing either an electronic or postal address for applicants' use in addition to the toll-free telephone number.

3. *Discontinuing electronic disclosures.* Applicants may use the toll-free number (or optional address) if they wish to discontinue receiving electronic disclosures. In such cases, the creditor must inform applicants whether the credit product is also available with disclosures in paper form.

Paragraph 4(e)(3)(ii)

1. *Nature of consent.* Applicants must agree to receive disclosures by electronic communication knowingly and voluntarily. An agreement to receive electronic disclosures is not implied from an applicant's submission of an application for credit.

Paragraph 4(e)(3)(iii)

1. *Examples.* Examples of changes include a change in technical requirements, such as upgrades to software affecting the creditor's disclosures provided on the Internet.

2. *Timing for notices.* A notice of a change must be sent a reasonable period of time before the effective date of the change. The length of a reasonable notice period may vary, depending on the type of change involved; however, fifteen days is a reasonable time for providing notice in all cases.

3. *Delivery of notices.* A creditor meets the delivery requirements if the notice of a change is sent to the address provided by the applicant for receiving other disclosures. For example, if the applicant provides an electronic address to receive a notice of action taken, the same electronic address may be used for the change notice. The applicant's postal address must be used, however, if the applicant consented to additional disclosures by electronic communication when receiving the initial notice under § 202.4(e)(3)(i), but provided a postal address to receive the notice of action taken.

4. *Toll-free number.* See comment 4(e)(3)(i)–1.

5. *Creditor's address.* See comment 4(e)(3)(i)–2.

6. *Applicant inquiries.* Applicants may use the toll-free number (or optional address) for questions or assistance with problems related to a change, such as an upgrade to computer software, that is not provided by the creditor. Applicants may also use the toll-free number if they wish to discontinue receiving electronic disclosures; in such cases, the creditor must inform applicants whether the credit product is also available with disclosures in paper form.

4(e)(4) *Address or location to receive electronic communication.*

Paragraph 4(e)(4)(i)

1. *Electronic address.* An applicant's electronic address is an electronic mail address that may be used by the applicant for receiving communications transmitted by parties other than the creditor.

Paragraph 4(e)(4)(ii)

1. *Identifying application or transaction involved.* A creditor is not required to identify a loan application or credit transaction by reference to a number. For example, where the applicant has not applied for credit with the creditor before, and no confusion would result, the creditor may refer to "your credit card application," or "your home equity line application."

2. *Availability.* Information that is not sent to an applicant's electronic mail address must be available for at least 90 days from the date the information becomes available or from the date the notice required by § 202.4(e)(4)(ii) is sent to the applicant, whichever occurs later.◄

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By order of the Board of Governors of the Federal Reserve System, August 31, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–23137 Filed 9–13–99; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–1041]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is requesting comment on proposed revisions to Regulation E, which implements the Electronic Fund Transfer Act. The Board previously published an interim rule that permits financial institutions to use electronic communication (for example, communication via personal computer and modem) to provide disclosures required by the act and regulation, if the consumer agrees to such delivery. (A similar rule was also proposed under various other consumer financial services and fair lending regulations administered by the Board.) In response to comments received on the interim rule (and the proposals), the

Board is publishing for comment an alternative proposal on the electronic delivery of disclosures, together with proposed commentary that would provide further guidance on electronic communication issues. The interim rule remains in effect. The Board is also publishing for comment technical amendments involving error resolution notices.

DATES: Comments must be received by October 29, 1999.

ADDRESSES: Comments, which should refer to Docket No. R–1041, may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room, both in the Board's Eccles Building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room MP–500 between 9:00 a.m. and 5:00 p.m., pursuant to § 261.12, except as provided in § 261.14 of the Board's Rules Regarding the Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Michael L. Hentrel, Staff Attorney, or John C. Wood, Senior Attorney, Division of Consumer and Community Affairs, at (202) 452–2412 or (202) 452–3667. Users of Telecommunications Device for the Deaf (TDD) *only*, contact Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Electronic Fund Transfer Act (EFTA), 15 U.S.C. 1693 *et seq.*, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The Board's Regulation E (12 CFR part 205) implements the act. Types of transfers covered by the act and regulation include transfers initiated through an automated teller machine (ATM), point-of-sale terminal, automated clearinghouse, telephone bill-payment plan, or home-banking program. The act and regulation prescribe restrictions on the unsolicited issuance of ATM cards and other access devices; disclosure of terms and conditions of an EFT service; documentation of EFTs by means of terminal receipts and periodic account statements; limitations on consumer liability for unauthorized transfers; procedures for error resolution; and certain rights related to preauthorized EFTs.

The EFTA and Regulation E require a number of disclosures to be provided in writing, presuming that institutions provide paper documents. Under many laws that call for information to be in writing, information in electronic form is considered to be "written." Information produced, stored, or communicated by computer is also generally considered to be a writing, where visual text is involved.

In May 1996, the Board revised Regulation E (Electronic Fund Transfers) following a comprehensive review. During that process, the Board determined that electronic communication for delivery of information required by federal laws governing financial services could effectively reduce compliance costs without adversely affecting consumer protections. Consequently, the Board simultaneously issued a proposed rule to permit financial institutions to use electronic communication to deliver disclosures that Regulation E requires to be given in writing. (61 FR 19696, May 2, 1996.) The 1996 proposal required that disclosures be provided in a form the consumer may retain, a requirement that institutions could satisfy by providing information in a format that may be printed or downloaded. The proposed rule also allowed consumers to request a paper copy of a disclosure for up to one year after its original delivery.

Following a review of the comments, on March 25, 1998, the Board issued an interim rule under Regulation E (the "interim rule"), 63 FR 14528. The Board also published proposals under Regulations DD (Truth in Savings), 63 FR 14533, M (Consumer Leasing), 63 FR 14538, Z (Truth in Lending), 63 FR 14548, and B (Equal Credit Opportunity), 63 FR 14552, (collectively, the "March 1998 proposed rules"). The rules would apply to financial institutions, creditors, lessors, and other entities that are required to give disclosures to consumers and others. (For ease of reference this background section uses the terms "financial institutions," "institutions," and "consumers.") The interim rule and the March 1998 proposed rules were similar to the May 1996 proposed rule; however, they did not require financial institutions to provide paper copies of disclosures to a consumer upon request if the consumer previously agreed to receive disclosures electronically. The Board believed that most institutions would accommodate consumer requests for paper copies when feasible or redeliver disclosures electronically; and the Board encouraged financial institutions to do so.

The March 1998 proposed rules and the interim rule permitted financial institutions to provide disclosures electronically if the consumer agreed, with few other requirements. The rule was intended to provide flexibility and did not specify any particular method for obtaining a consumer's agreement. Whether the parties had an agreement would be determined by state law. The proposals and the interim rule did not preclude a financial institution and a consumer from entering into an agreement electronically, nor did they prescribe a formal mechanism for doing so.

The Board received approximately 200 written comments on the interim rule and the March 1998 proposed rules. The majority of comments were submitted by financial institutions and their trade associations. Industry commenters generally supported the use of electronic communication to deliver information required by the EFTA and Regulation E. Nevertheless, many sought specific revisions and additional guidance on how to comply with the disclosure requirements in particular transactions and circumstances.

Industry commenters were especially concerned about the condition that a consumer had to "agree" to receive information by electronic communication, because the rule did not specify a method for establishing that an "agreement" was reached. These commenters believed that relying on state law created uncertainty about what constitutes an agreement and, therefore, potential liability for noncompliance. To avoid uncertainty over which state's laws apply, some commenters urged the Board to adopt a federal minimum standard for agreements or for informed consent to receive disclosures by electronic communication. These commenters believed that such a standard would avoid the compliance burden associated with tailoring legally binding "agreements" to the contract laws of all jurisdictions where electronic communication may be sent.

Consumer advocates generally opposed the March 1998 interim rule and proposed rules. Without additional safeguards, they believed, consumers may not be provided with adequate information about electronic communication before an "agreement" is reached. They also believed that promises of lower costs could induce consumers to agree to receive disclosures electronically without a full understanding of the implications. To avoid such problems, they urged the Board, for example, either to require institutions to disclose to consumers that their account with the institution will not be adversely affected if they do not agree to receive electronic disclosures, or to permit institutions to offer electronic disclosures only to consumers who initiate contact with the institution through electronic communication. They also noted that some consumers will likely consent to electronic disclosures believing that they have the technical capability to retrieve information electronically, but might later discover that they are unable to do so. They questioned consumers' willingness and ability to access and retain disclosures posted on Internet websites, and expressed their apprehension that the goals of federally mandated disclosure laws will be lost.

Consumer advocates and others were particularly concerned about the use of electronic disclosures in connection with home-secured loans and certain other transactions that consumers typically consummate in person (citing as examples automobile loans and leases, short-term "payday" loans, or home improvement financing contracts resulting from door-to-door sales). They asserted that there is little benefit to eliminating paper disclosures in such transactions and that allowing electronic disclosures in those cases could lead to abusive practices. Accordingly, consumer advocates and others believed that paper disclosures should always accompany electronic disclosures in mortgage loans and certain other transactions, and that consumers should have the right to obtain paper copies of disclosures upon request for all types of transactions (deposit account, credit card, loan or lease, and other transactions).

A final issue raised by consumer advocates was the integrity of disclosures sent electronically. They stated that there may be instances when the consumer and the institution disagree on the terms or conditions of an agreement and consumers may need to offer electronic disclosures as proof of the agreed-upon terms and to enforce rights under consumer protection laws. Thus, to assure that electronic documents have not been altered and that they accurately reflect the disclosures originally sent, consumer advocates recommended that the Board require that electronic disclosures be authenticated by an independent third party.

The Board's Consumer Advisory Council considered the electronic delivery of disclosures in 1998 and again in 1999. Many Council members shared views similar to those expressed in written comment letters on the 1998 proposals. For example, some Council members expressed concern that the Board was moving too quickly in allowing electronic disclosures for certain transactions, and suggested that the Board might go forward with electronic disclosures for deposit accounts while proceeding more slowly on credit and lease transactions. Others expressed concern about consumer access and consumers' ability to retain electronic disclosures. They believed that, without specific guidance from the Board, institutions would provide electronic disclosures without knowing whether consumers could retain or access the disclosures, and without establishing procedures to address technical malfunctions or nondelivery. The Council also discussed the integrity and security of electronic documents.

II. Overview of Proposed Revisions

Based on a review of the comments and further analysis, the Board is requesting comment on a modified proposed rule that is more detailed than the interim rule and March 1998 proposed rules. It is intended to provide specific guidance for institutions that choose to use electronic communication to comply with Regulation E's requirements to provide written disclosures, and to ensure effective delivery of disclosures to consumers through this medium. Though detailed, the proposal provides flexibility for compliance with the electronic communication rules. The modified proposal recognizes that some disclosures may warrant different treatment under the rule. Where written disclosures are made to consumers who are transacting business in person, these disclosures generally would have to be made in paper form.

The Board is soliciting comment on a modified approach that addresses both industry and consumer group concerns. Under the proposal, financial institutions would have to provide specific information about how the consumer can receive and retain electronic disclosures—through a standardized disclosure statement—before obtaining consumers' acceptance of such delivery, with some exceptions. If they satisfy these requirements and obtain consumers' affirmative consent, financial institutions would be permitted to use electronic communication. As a general rule an institution would be permitted to offer the option of receiving electronic disclosures to all consumers, whether they initially contact the institution by electronic communication or otherwise. To address concerns about potential abuses, however, the proposal provides that if a consumer contracts for an EFT service in person, initial disclosures must be given in paper form.

Financial institutions would have the option of delivering disclosures to an e-mail address designated by the consumer or making disclosures available at another location such as the institution's website, for printing or downloading. If the disclosures are posted at a website location, financial institutions generally must notify consumers at an e-mail address about the availability of the information. (Financial institutions may offer consumers the option of receiving alert notices at a postal address.) The disclosures must remain available at that site for 90 days.

Disclosures provided electronically would be subject to the "clear and readily understandable" standard, and the existing format, timing, and retainability rules in Regulation E. For example, to satisfy the timing requirement, if disclosures are due at the time a consumer contracts for an EFT service, the disclosures would have to appear on the screen before the consumer could complete the transaction.

Financial institutions generally must provide a means for consumers to confirm the availability of equipment to receive and retain electronic disclosure documents. A financial institution would not otherwise have a duty to verify consumers' actual ability to receive, print, or download the disclosures. Some commenters suggested that institutions should be required to verify delivery by return receipt. The Board solicits comment on the need for such a requirement and the feasibility of that approach.

As previously mentioned, consumer advocates and others have expressed concerns that electronic documents can be altered more easily than paper documents. The issue of the integrity and security of electronic documents affects electronic commerce in general and is not unique to the written disclosures required under the consumer protection laws administered by the Board. Consumers' ability to enforce rights under the consumer protection laws could be impaired in some cases, however, if the authenticity of disclosures that they retain cannot be demonstrated. Signatures, notary seals, and other established verification procedures are used to detect alterations for transactions memorialized in paper form. The development of similar devices for electronic communication should reduce uncertainty over time

about the ability to use electronic documents for resolving disputes.

The Board's rules require financial institutions to retain evidence of compliance with Regulation E. Specific comment is solicited on the feasibility of complying with a requirement that financial institutions provide disclosures in a format that cannot be altered without detection, or have systems in place capable of detecting whether or not information has been altered, as well as the feasibility of requiring use of independent certification authorities to verify disclosure documents.

The interim rule for Regulation E adopted by the Board in 1998 remains in effect. To the extent the interim rule is modified when final action is taken on the current proposal, the Board will provide a reasonable time period before the mandatory compliance date for any new requirements.

Elsewhere in today's **Federal Register**, the Board is publishing similar proposals for comment under Regulations B, M, Z, and DD. In a separate notice the Board is publishing an interim rule under Regulation DD, which implements the Truth in Savings Act, to permit depository institutions to use electronic communication to deliver disclosures on periodic statements. For ease of reference, the Board has assigned new docket numbers to the modified proposals published today.

III. Section-by-Section Analysis

Pursuant to its authority under section 904 of the EFTA, the Board proposes to amend Regulation E to permit institutions to use electronic communication to provide the information required by this regulation in writing. Below is a section-by-section analysis of the rules for providing disclosures by electronic communication, including references to proposed commentary provisions.

Section 205.4 General Disclosure Requirements; Jointly Offered Services

4(a) Form of Disclosures

4(a)(2) Foreign Language Disclosures

To provide consistency among the regulations, the guidance currently contained in comment 4(a)–2 permitting disclosures to be made in languages other than English (provided they are available in English upon request) would be set forth in a new § 205.4(a)(2).

4(c) Electronic Communication

4(c)(1) Definition

The definition of the term "electronic communication" in the interim rule remains unchanged. Section 205.4(c)(1) limits the term to a message transmitted electronically that can be displayed on equipment as visual text, such as a message that is displayed on a computer monitor screen. Most commenters supported the term as defined in the interim rule. Some commenters favored a more expansive definition that would encompass communications such as audio and voice response telephone systems. Because the proposal is intended to permit electronic communication to satisfy the statutory requirement for written disclosures, the Board believes visual text is an essential element of the definition.

Commenters asked the Board to clarify the coverage of certain types of communications. A few commenters asked about communication by facsimile. Facsimiles are initially transmitted electronically; the information may be received either in paper form or electronically through software that allows a consumer to capture the facsimile, display it on a monitor, and store it on a computer diskette or drive. Thus, information sent by facsimile may be subject to the provisions governing electronic communication. When disclosures are sent by facsimile, a financial institution should comply with the requirements for electronic communication unless it knows that the disclosures will be received in paper form. Proposed comment 4(c)(1)–1 contains this guidance.

4(c)(2) Electronic Communication between Financial Institution and Consumer

Section 205.4(c)(2)(i) would permit financial institutions to provide disclosures using electronic communication, if the institution complies with provisions in new § 205.4(c)(3), discussed below.

1. Presenting Disclosures in a Clear and Readily Understandable Format

The Board does not intend to discourage or encourage specific types of technologies. Regardless of the technology, however, disclosures provided electronically must be presented in a clear and readily understandable format as is the case for all written disclosures under the act and regulation. See § 205.4(a).

When consumers consent to receive disclosures electronically and they confirm that they have the equipment to do so, financial institutions generally would have no further duty to determine that consumers are able to receive the disclosures. Institutions do have the responsibility of ensuring the proper equipment is in place in instances where the institution controls the equipment. Proposed comment 4(c)(2)-1 contains this guidance.

2. Providing Disclosures in a Form the Consumer May Keep

As with other written disclosures, information provided by electronic communication must be in a form the consumer can retain. Under the 1998 proposals and interim rule, a financial institution would satisfy this requirement by providing information that can be printed or downloaded. The modified proposal adopts the same approach but also provides that the information must be sent to a specified location to ensure that consumers have an adequate opportunity to retain the information.

Consumers communicate electronically with financial institutions through a variety of means and from various locations. Depending on the location (at home, at work, in a public place such as a library), a consumer may not have the ability at a given time to preserve EFTA disclosures presented on-screen. Therefore, when a financial institution provides disclosures by electronic communication, to satisfy the retention requirements, the institution must send the disclosures to a consumer's e-mail address or other location where information may be retrieved at a later date. Proposed comment 4(c)(2)–2 contains this guidance; see also the discussion under § 205.4(c)(4), below. In instances where an institution controls an electronic terminal used to provide electronic disclosures, an institution may provide equipment for the consumer to print a paper copy in lieu of sending the information to the consumer's e-mail address or posting the information at another location such as the institution's website. See proposed comment 4(c)(2)–1.

3. Timing

Institutions must ensure that electronic disclosures comply with all relevant timing requirements of the regulation. For example, initial disclosures must be provided at the time a consumer contracts for an EFT service or before the first transaction. The rule ensures that consumers have an opportunity to read important information about costs and other terms before contracting for or using the service.

To illustrate the timing requirements for electronic communication, assume that an existing customer of a bank is interested in signing up for an on-line bill-payment service and uses a personal computer at home to access the bank's website on the Internet. The bank provides disclosures to the consumer about the use of electronic communication (the § 205.4(c)(3) disclosures discussed below) and the consumer responds affirmatively. If the bank's procedures permit the consumer to sign up for and use the EFT service at that time, disclosures required under § 205.7 would have to be provided. Thus, the disclosures must automatically appear on the screen or the consumer must be required to access the information before contracting for the service (or before the first transaction). The timing requirements for providing initial disclosures would not be met if, in this example, the bank permitted the consumer to sign up for and immediately use an EFT service and sent initial disclosures to an e-mail address thereafter. Proposed comment 4(c)(2)–3 contains this guidance.

On the other hand, assume that a consumer requests an EFT service and the institution delays processing the consumer's request until the required disclosures have been delivered by e-mail. In that case the information would not have to also appear on the screen; delivery to the consumer's e-mail address would be sufficient. In either case, the consumer must receive the disclosures before contracting for the service or before the first transaction.

4(c)(2)(ii) In-Person Exception

The proposal contains an exception to the general rule allowing information required by Regulation E to be provided by electronic communication; where the exception applies, paper disclosures would be required. The exception, contained in § 205.4(c)(2)(ii), seeks to address concerns about potential abuses where consumers are transacting business in person but are offered disclosures in electronic form. In such transactions, there is a general expectation that consumers would be given paper copies of disclosures along with paper copies of other documents evidencing the transaction.

Under § 205.4(c)(2)(ii), if a consumer contracts for an EFT service in person, the financial institution must provide initial disclosures in paper form. For example, if a consumer signs up for an ATM card while opening an account at a financial institution, initial disclosures are required before contracting for the card (or the first transaction) and they must be provided in paper form; directing the consumer to disclosures posted on the institution's website would not be sufficient. An institution also complies if a consumer signs up for an EFT service on the Internet and is sent disclosures electronically at or around that time, even though the institution's procedures requires the consumer to visit the institution at a later time to complete the transaction (for example, to complete a signature card). Proposed comment 4(c)(2)(ii)–1 contains this guidance.

4(c)(3) Disclosure Notice

Section 205.4(c)(3) would identify the specific steps required before an institution could use electronic communication to satisfy the regulation's disclosure requirements. Proposed Model Forms A–6 and A–7, and Sample Forms A–9 and A–10 are published to aid compliance with these requirements.

4(c)(3)(i) Notice by Financial Institution

Section 205.4(c)(3)(i) outlines the information that financial institutions must provide before electronic disclosures can be given. The financial institution must: (1) describe the information to be provided electronically and specify whether the information is also available in paper form or whether the EFT service is offered only with electronic disclosures; (2) identify the address or location where the information will be provided electronically, and if it will be available at a location other than the consumer's electronic address, specify for how long and where it can be obtained once that period ends; (3) specify any technical requirements for receiving and retaining information sent electronically, and provide a means for the consumer to confirm the availability of equipment meeting those requirements; and (4) provide a toll-free telephone number and, at the institution's option, an electronic or postal address for questions about receiving electronic disclosures or for updating consumers' electronic addresses, and for seeking assistance with technical or other difficulties (see proposed comments to 4(c)(3)(i)). The Board requests comment on whether other information should be disclosed regarding the use of electronic communication and on any format changes that might improve the usefulness of the notice for consumers.

The Board also solicits comment on the benefits of requiring an annual notice in paper form to consumers who receive disclosures by electronic communication. The notice would contain general information about receiving electronic disclosures including, for example, a reminder of the toll-free number where consumers may contact the institution if they have questions regarding their electronic disclosures.

Under the proposal, the § 205.4(c)(3)(i) disclosures must be provided, as applicable, before the financial institution uses electronic communication to deliver any information required by the regulation. The approach of requiring a standardized disclosure statement addresses, in several ways, the concern that consumers may be steered into using electronic communication without fully understanding the implications. Under this approach, the specific disclosures that would be delivered electronically must be identified, and consumers must be informed whether there is also an option to receive the information in paper form. Consumers must provide an e-mail address where one is required. Technical requirements must also be stated, and consumers must affirm that their equipment meets the requirements, and that they have the capability of retaining electronic disclosures by downloading or printing them (see proposed comment 4(c)(3)–1). Thus, the § 205.4(c)(3)(i) disclosures should allow consumers to make informed judgments about receiving electronic disclosures.

Some commenters requested clarification of whether a financial institution may use electronic communication to provide some required disclosures while using paper for others. The proposed rule would permit institutions to do so; the disclosure given under § 205.4(c)(3)(i) must specify which EFTA disclosures will be provided electronically.

Commenters requested further guidance on a financial institution's obligation under the regulation if the consumer chooses not to receive information by electronic communication. A financial institution could offer a consumer the option of receiving disclosures in paper form, but it would not be required to do so. A financial institution could establish accounts or services for which disclosures are given only by electronic communication. Section 205.4(c)(3)(i)(A) would require financial institutions to tell consumers whether or not they have the option to receive disclosures in paper form. Section 205.4(c)(3)(i)(D) would require financial institutions to provide a toll-free number that consumers could use to inform institutions if they wish to discontinue receiving electronic disclosures. In such cases the institution must inform the consumer whether the EFT service is also available with disclosures in paper form. Proposed sample disclosure statements in which

the consumer has an option to receive electronic or paper disclosures (Form A–9) or electronic disclosures only (Form A–10) are contained in appendix A.

4(c)(3)(ii) Response by Consumer

Proposed § 205.4(c)(3)(ii) would require financial institutions to provide a means for the consumer to affirmatively indicate that disclosures may be provided electronically. Examples include a "check box" on a computer screen or a signature line (for requests made in paper form). The requirement is intended to ensure that consumers' consent is established knowingly and voluntarily, and that consent to receive electronic disclosures is not inferred from consumers' use of the account or acceptance of general account terms. See proposed comment 4(c)(3)(ii)–1.

4(c)(3)(iii) Changes

Financial institutions would be required to notify consumers about changes to the information that is provided in the notice required by § 205.4(c)(3)(i)—for example, if upgrades to computer software are required. Proposed comment 4(c)(3)(iii)–1 contains this guidance.

The notice must include the effective date of the change and be provided before that date. Proposed comment 4(c)(3)(iii)–2 would provide that the notice must be sent a reasonable period of time before the effective date of the change. Although the number of days that constitutes reasonable notice may vary, depending on the type of change involved, the comment would provide institutions with a safe harbor: fifteen days' advance notice would be considered a reasonable time in all cases. The same time period is stated in similar proposals under Regulations B, Z, and DD published in today's **Federal Register**. Comment is requested on whether a safe harbor of 15 days is an appropriate time period, and whether a uniform period for changes involving electronic communication is desirable. An alternative approach would adopt notice requirements that are consistent with change-in-terms requirements under the respective regulations. Under this approach, for example, the safe harbor would be 21 days under § 205.8 for Regulation E, 15 days under § 226.9 for Regulation Z, and 30 days under § 230.5 for Regulation DD. Proposed comment 4(c)(3)(iii)–3 contains guidance on delivery requirements for the notice of change.

The notice of a change must also include a toll-free telephone number or, at the institution's option, an address for questions about receiving electronic disclosures. For example, a consumer may call regarding problems related to a change, such as an upgrade to computer software that is not provided by the institution. Consumers may also use the toll-free number if they wish to discontinue receiving electronic disclosures. In such cases, the institution must inform consumers whether the EFT service is also available with disclosures in paper form. (See proposed comments 4(c)(3)(iii)–4 through –6.)

If the change involves providing additional disclosures by electronic communication, institutions generally would be required to provide the notice in § 205.4(c)(3)(i) and obtain the consumer's consent. That notice would not be required if the institution previously obtained the consumer's consent to the additional disclosures in its initial notice by disclosing the possibility and specifying which disclosures might be provided electronically in the future. Comment is specifically requested on this approach. A list of additional disclosures may be necessary to ensure that consumers' consent is informed and knowing (provided it does not cause confusion).

4(c)(4) Address or Location to Receive Electronic Communication

Proposed § 205.4(c)(4) identifies addresses and locations where institutions using electronic communication may send information to the consumer. Institutions may send information to a consumer's electronic address, which is defined in proposed comment 4(c)(4)(i)–1 as an e-mail address that the consumer also may use for receiving communications from parties other than the financial institution. For notices of preauthorized transfers, for example, a financial institution's responsibility to provide notice under § 205.10(d) will be satisfied when the information is sent to the consumer's electronic address in accordance with the applicable proposed rules concerning delivery of disclosures by electronic communication.

Guidance accompanying the interim rule provided that an institution would not meet delivery requirements by simply posting information to an Internet site such as a financial institution's "home page" without appropriate notice on how consumers can access the information. Industry commenters wanted to retain the flexibility of posting disclosures on an Internet website. They did not object to providing a separate notice alerting consumers about the disclosures' availability but requested more guidance on the issue. Consumer advocates and others expressed concern that the mere posting of information inappropriately places the responsibility to obtain disclosures on consumers, and undermines the purpose of the delivery requirements of the regulation.

The Board recognizes that currently, because of security and privacy concerns associated with data transmissions, a number of institutions may choose to provide disclosures at their websites, where the consumer may retrieve them under secure conditions. Under § 205.4(c)(4), a financial institution may make disclosures available to a consumer at a location other than the consumer's electronic address. The institution must notify the consumer when the information becomes available and identify the account involved. The notice must be sent to the electronic mail address designated by the consumer; the financial institution may, at its option, permit the consumer to designate a postal address. A proposed model form (Model Form A–8) is published below; see also proposed comment 4(c)(4)(ii)–1.

The Board believes it would be inconsistent with the EFTA to require a consumer to initiate a search—for example, to search the website of each financial institution with which an account is held—to determine whether a disclosure has been provided. The proposed approach ensures that a consumer would not be required to check an institution's website repeatedly, for example, to learn whether the institution posted a change in a term that affects an EFT service used by the consumer.

The requirements of the regulation would be met only if the required disclosure is posted on the website and the consumer is notified of its availability in a timely fashion. For example, financial institutions must provide a change-in-terms notice to consumers at least 21 days in advance of the change. (12 CFR 205.8(a).) For a change-in-terms notice posted on the Internet, an institution must both post the notice and notify consumers of its availability at least 21 days in advance of the change.

Commenters sought guidance on how long disclosures posted at a particular location must be available to consumers. There is a variety of circumstances when a consumer may not be able immediately to access the information due to illness, travel, or computer malfunction, for example. Under § 205.4(c)(4), institutions must post information that is sent to a location other than the consumer's electronic mail address for 90 days. Proposed comment 4(c)(4)(ii)–2 contains this guidance.

Under the modified proposal, institutions that post information at a location other than the consumer's electronic mail address are required—after the 90 day period—to make disclosures available to consumers upon request for a period of not less than two years from the date disclosures are required to be made, consistent with the record retention requirements under § 205.13(b). The Board requests comment on this approach, including suggestions for alternative means for providing consumers continuing access to disclosures.

4(c)(5) Consumer Use of Electronic Communication

Proposed § 205.4(c)(5) would clarify consumers' ability to provide certain information to financial institutions by electronic communication. Regulation E provides that a consumer may allege an error or stop payment of a preauthorized EFT by notifying the institution orally or in writing; the institution may require written confirmation of an oral notice of error or stop-payment order. The revised proposal differs from guidance accompanying the interim rule; under the proposal, consumers generally would have the option to use electronic communication for these written notices (including written confirmations) if the consumer has chosen to receive information by electronic communication. Because the consumer's electronic communication serves as written confirmation, the financial institution could not also require paper confirmation. Institutions could, however, specify a particular electronic address for receiving the notices.

In issuing the March 1998 interim rule, the Board stated that financial institutions could require paper confirmation of electronic notices in the two instances where the regulation allows written confirmation—stop-payment notices and notices of error. This approach was consistent with guidance provided in the May 1996 proposed rule, where the Board stated that (as in the case of an oral communication) if the consumer sends an electronic communication to the financial institution, the institution could require paper confirmation from the consumer (particularly since the consumer was entitled to a paper copy of a disclosure upon request under the May 1996 proposal).

Views were mixed on whether financial institutions should be permitted to require paper confirmations of electronic notices. Many industry commenters requested that the Board allow financial institutions to request paper confirmations; some stated that paper confirmations protect both the consumer and the financial institution. Consumer advocates and other commenters believed it would be unfair to require paper confirmation of an electronic communication from consumers who receive electronic communication from a financial institution.

Based upon the comments received and further analysis, and subject to certain limitations discussed below, the Board is proposing that consumers be permitted to provide electronically any information that a consumer is required to provide a financial institution to preserve the consumer's rights under the regulation, such as the stop-payment notice and the notice of error. If an institution uses electronic communication to provide disclosures to consumers on a continuing basis, such as change-in-terms notices or periodic statements, it is appropriate to allow consumers to use electronic communication to provide notices to the institution. If, however, an institution limits its use of electronic communication to the delivery of initial disclosures (that is, if all subsequent disclosures regarding the EFT service are provided in paper form), institutions would not be required to accept electronic communication from consumers.

4(c)(5)(ii) Institution's Designation of Address

Section 205.4(c)(5)(ii) would provide that an institution may designate the electronic address that must be used by a consumer for sending electronic communication as permitted by § 205.4(c)(5)(i).

Appendix A to Part 205—Model Disclosure Clauses and Forms

The Board solicits comment on three proposed model forms and two sample forms for use by financial institutions to aid compliance with the disclosure requirements of §§ 205.4(c)(3) and (c)(4). Model Forms A–6 and A–7 would implement § 205.4(c)(3), regarding the notice that financial institutions must give prior to using electronic communication to provide required disclosures. Model Form A–8 would implement § 205.4(c)(4), regarding notices to consumers about the availability of electronic disclosures at locations such as the financial institution's website. Use of any modified version of these forms would be in compliance as long as the institution does not delete information required by the regulation or rearrange the format in a way that affects the substance, clarity, or meaningful sequence of the disclosure. For example, institutions that combine Regulation E and Regulation DD disclosures on a deposit account can modify the model form to provide a single disclosure statement about electronic delivery of those disclosures.

Sample Form A–9 illustrates the disclosures under § 205.4(c)(3) for an electronic banking service. The sample assumes that the institution also offers paper disclosures for consumers who choose not to receive electronic disclosures. Sample Form A–10 assumes that consumers must accept electronic disclosures if they want to contract for the EFT service.

Additional Issues

1. Signature Requirements

Section 205.10(b) requires that preauthorized EFTs be authorized only by a writing signed or similarly authenticated by the consumer. The phrase "or similarly authenticated" was added in the 1996 review of Regulation E. The Official Staff Commentary to Regulation E states that an example of a consumer's authorization that is not in the form of a signed writing but is instead "similarly authenticated" is a consumer's authorization under § 205.10(b) for using a home-banking system. The Board indicated in the supplementary information to the 1996 final rule that the authentication method should provide the same assurance as a signature in a paper-based system. Since the publication of the amended regulation and accompanying commentary, the Board has been asked to give further guidance on this issue. In the supplementary information to the March 1998 interim rule, the Board expressed interest in learning about other ways in which authentication in an electronic environment might occur in lieu of a consumer's signature.

Some commenters provided alternatives for verifying a consumer's identity, including alphanumeric codes (combinations of letters and numbers) or combinations of unique identifiers (such as account numbers combined with a number representing algorithms of the account numbers). In the supplementary information to the March 1998 interim rule, the Board cited security codes and digital signatures as examples of authentication devices that might meet the requirements of authentication and signatures. Many commenters stated

their concern that the Board approved only these or similar methods. These commenters urged the Board to take a flexible approach to this requirement. They suggested that the Board's implied or explicit endorsement of any particular method could hinder the development of new technologies. Further, these commenters requested that the Board take a "wait and see" approach to this issue, to allow the industry to develop alternatives that will result in more security for consumers.

To avoid unduly influencing the development of electronic authentication methods and to encourage innovation and flexibility, the Board will limit its guidance to the general principle that a home-banking or other electronic communication system must use an authentication device that provides the same assurance as a signature in a paper-based system.

2. Preemption

A few commenters suggested that any final rule issued by the Board permitting electronic disclosures should explicitly preempt any state law requiring paper disclosures. Under § 205.12(b) of the regulation, state laws are preempted if they are inconsistent with the act and regulation and only to the extent of the inconsistency. The proposed rule would provide financial institutions with the option of giving required disclosures by electronic communication as an alternative to paper. There is no apparent inconsistency with the act and regulation if state laws require paper disclosures. The Board will, however, review preemption issues that are brought to the Board's attention. Section 205.12(b)(1) outlines the Board's procedures for determining whether a specific law is preempted, which will guide the Board in any determination requested by a state, financial institution, or other interested party following publication of a final rule regarding electronic communication.

3. Technical Amendment to Error Resolution Notice

In September 1998, the Board revised the time periods for investigating alleged errors involving point-of-sale and foreign-initiated transactions. (63 FR 52115, September 29, 1998.) The amendments to § 205.11 require financial institutions to provisionally credit an account within 10 business days (rather than 20). At the same time, the Board extended the time periods to provisionally credit funds and investigate claims involving new accounts. The amended rule permits institutions to take up to 20 business days to provisionally credit funds and up to 90 calendar days to complete the investigation. The Board proposes to revise the model error resolution notices contained in Appendix A (Forms A–3 and A–5) to conform with § 205.11 as amended.

IV. Form of Comment Letters

Comment letters should refer to Docket No. R–1041, and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch computer diskettes in any IBM-compatible DOS-or Windows-based format.

V. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act and section 904(a)(2) of the EFTA, the Board has reviewed the proposed amendments to Regulation E. Although the proposal would add disclosure requirements with respect to electronic communication, overall, the proposed amendments are not expected to have any significant impact on small entities. A financial institution's use of electronic communication to provide disclosures required by the regulation is optional. The proposed rule would give financial institutions flexibility in providing disclosures. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB number. The OMB control number is 7100–0200.

The collection of information requirements that are relevant to this proposed rulemaking are in 12 CFR Part 205 and in Appendix A. This information is mandatory (15 U.S.C. 1693 *et seq.*) to evidence compliance with the requirements of the Regulation E and the Electronic Fund Transfer Act (EFTA). The revised requirements would be used to ensure adequate disclosure of basic terms, costs, and rights relating to services affecting consumers using certain home-banking services and consumers receiving certain disclosures by electronic communication. The respondents/recordkeepers are for-profit financial institutions, including small businesses. Institutions are also required to retain records for 24 months. This regulation applies to all types of depository institutions, not just state member banks; however, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The proposed revisions would allow institutions the option of using electronic communication (for example, via personal computer and modem) to provide disclosures required by the regulation. Although the proposal would add disclosure requirements with respect to electronic communication, the optional use of electronic communication would likely reduce the paperwork burden of financial institutions. With respect to state member banks, it is estimated that there are 851 respondents/recordkeepers and an average frequency of 85,808 responses per respondent each year. Therefore the current amount of annual burden is estimated to be 462,839 hours. There is estimated to be no additional annual cost burden and no capital or start-up cost.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises; however, any information obtained by the Federal Reserve may be protected from disclosure under exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522 (b)(4), (6) and (8)). The disclosures and information about error allegations are confidential between institutions and the customer.

The Federal Reserve requests comments from institutions, especially state member banks, that will help to estimate the number and burden of the various disclosures that would be made in the first year this proposed regulation would be effective. Comments are invited on: (a) the cost of compliance; (b) ways to enhance the quality, utility, and clarity of the information to be disclosed; and (c) ways to minimize the burden of disclosure on respondents, including through the use of automated disclosure techniques or other forms of information technology. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0200), Washington, DC 20503, with copies of such comments sent to Mary M. West, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

List of Subjects in 12 CFR Part 205

Banks, banking, Consumer protection, Electronic fund transfers, Reporting and record keeping requirements.

Text of Proposed Revisions

Certain conventions have been used to highlight proposed changes to Regulation E. New language is shown inside bold-faced arrows, deletions inside bold-faced brackets.

For the reasons set forth in the preamble, the Board proposes to amend Regulation E, 12 CFR part 205, as set forth below:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for part 205 would continue to read as follows:

Authority: 15 U.S.C. 1693–1693r.

2. Section 205.4 is amended by redesignating paragraph (a) as paragraph (a)(1), adding a new paragraph (a)(2), and revising paragraph (c) to read as follows:

§ 205.4 General disclosure requirements; jointly offered services.

(a) ►(1)◄ Form of disclosures. * * *

►(2) *Foreign language disclosures.* Disclosures may be made in languages other than English, provided they are available in English upon request.◄

* * * * *

►(c) *Electronic communication.* (1) *Definition. Electronic communication* means a message transmitted electronically between a financial institution and a consumer in a format that allows visual text to be displayed on equipment such as a personal computer monitor.

(2) *Electronic communication between financial institution and consumer.* (i) *General.* Except as provided in paragraph(c)(2)(ii) of this section, a financial institution that has complied with paragraph (c)(3) of this section may provide by electronic communication any information required by this regulation to be in writing.

(ii) *In-person exception.* When a consumer contracts for an electronic fund transfer service in person, the disclosures required under § 205.7 shall be provided in paper form, unless the consumer requested the service by electronic communication and disclosures were provided in compliance with paragraph (c)(3)(i) and (c)(3)(ii) of this section at or around that time.

(3) *Disclosure notice.* The disclosure notice required by this paragraph shall be provided in a manner substantially similar to the applicable model form set forth in Appendix A of this part (Model Forms A–6 and A–7).

(i) *Notice by financial institution.* A financial institution shall:

(A) Describe the information to be provided electronically and specify whether the information is also available in paper form or whether the electronic fund transfer service is offered only with electronic disclosures;

(B) Identify the address or location where the information will be provided electronically; and if it is made available at a location other than the consumer's electronic address, how long the information will be available, and how it can be obtained once that period ends;

(C) Specify any technical requirements for receiving and retaining information sent electronically, and provide a means for the consumer to confirm the availability of equipment meeting those requirements; and

(D) Provide a toll-free telephone number and, at the institution's option, an address for questions about receiving electronic disclosures, for updating consumers' electronic addresses, and for seeking technical or other assistance related to electronic communication.

(ii) *Response by consumer.* A financial institution shall provide a means for the consumer to accept or reject electronic disclosures.

(iii) *Changes.* (A) A financial institution shall notify affected consumers of any change to the information provided in the notice required by paragraph (c)(3)(i) of this section. The notice shall include the effective date of the change and must be provided before that date. The notice shall also include a toll-free telephone number, and, at the institution's option, an address for questions about receiving electronic disclosures.

(B) In addition to the notice under paragraph (c)(3)(iii)(A) of this section, if the change involves providing additional disclosures by electronic communication, a financial institution shall provide the notice in paragraph (c)(3)(i) of this section and obtain the consumer's consent. A notice is not required under paragraph (c)(3)(i) of this section if the institution's initial notice states that additional disclosures may be provided electronically in the future and specifies which disclosures could be provided.

(4) *Address or location to receive electronic communication.* A financial institution that uses electronic communication to provide information required by this Regulation E (12 CFR Part 205) shall:

(i) Send the information to the consumer's electronic address; or

(ii) Post the information for at least 90 days at a location such as a website, and send a notice to the consumer when the information becomes available. Thereafter the information shall be available upon request for a period of not less than two years from the date disclosures are required to be made. The notice required by this paragraph (c)(4) shall identify the account involved, shall be sent to an electronic address designated by the consumer (or to a postal address, at the financial institution's option), and shall be substantially similar to the model form set forth in Appendix A of this part (Model Form A–8).

(5) *Consumer use of electronic communication.* (i) *General.* A consumer may use electronic communication to assert any right under § 205.10(c) and § 205.11 if the consumer has consented to receive information required by this regulation by electronic communication, except when the consumer consented to receive only the disclosures required under § 205.7 by electronic communication.

(ii) *Institution's designation of address.* A financial institution may designate the electronic address or location that consumers must use if they send electronic communication under this paragraph.◄

3. Appendix A to Part 205 is amended by:

a. Revising the table of contents at the beginning of the appendix;

b. Revising Appendices A–3 and A–5; and

c. Adding new Appendices A–6, A–7, A–8, A–9, and A–10.

The revisions and additions read as follows:

Appendix A to Part 205—Model Disclosure Clauses and Forms

A–1—Model Clauses for Unsolicited Issuance (§ 205.5(b)(2))
A–2—Model Clauses for Initial Disclosures (§ 205.7(b))
A–3—Model Forms for Error-Resolution Notice (§§ 205.7(b)(10) and 205.8(b))
A–4—Model Form for Service-Providing Institutions (§ 205.14(b)(1)(ii))
A–5—Model Forms for Government Agencies (§ 205.15(d)(1) and (2))

►A–6—Model Disclosures for Electronic Communication (§ 205.4(c)(3)) (Disclosures Available in Paper or Electronically)
A–7—Model Disclosures for Electronic Communication (§ 205.4(c)(3)) (Disclosures Available Only Electronically)
A–8—Model Notice for Delivery of Information Posted at Certain Locations (§ 205.4(c)(4))
A–9—Sample Form for Electronic Communication (§ 205.4(c)(3)) (Disclosures Available in Paper or Electronically)
A–10—Sample Form for Electronic Communication (§ 205.4(c)(3)) (Disclosures Available Only Electronically)◄

* * * * *

A–3—MODEL FORMS FOR ERROR RESOLUTION NOTICE (§§ 205.7(b)(10) and 205.8(b))

(a) *Initial and annual error resolution notice §§ 205.7(b)(10) and 205.8(b)).* In case of errors or questions about your electronic transfers telephone us at [insert telephone number] or write us at [insert address] as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared.

(1) Tell us your name and account number (if any).

(2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

►For errors involving new accounts, point-of-sale, and foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.◄

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation.

You may ask for copies of the documents that we used in our investigation.

* * * * *

A–3—MODEL FORMS FOR GOVERNMENT AGENCIES (§ 205.15(d)(1) AND (2))

(1) *Disclosure by government agencies of information about obtaining account balances and account histories § 205.15(d)(1)(i) and (ii).* You may obtain information about the amount of benefits you have remaining by calling [telephone number]. That information is also available [on the receipt you get when you make a transfer with your card at (an ATM)(a POS terminal)][when you make a balance inquiry at an ATM][when you make a balance inquiry at specified locations].

You also have the right to receive a written summary of transactions for the 60 days preceding your request by calling [telephone number]. [Optional: Or you may request the summary by contacting your caseworker.]

(2) *Disclosure of error resolution procedures for government agencies that do not provide periodic statements § 205.15(d)(1)(iii) and (d)(2)).* In case of errors or questions about your electronic transfers telephone us at [telephone number] or write us at [address] as soon as you can, if you think an error has occurred in your [EBT][agency's name for program] account. We must hear from you no later than 60 days after you learn of the error. You will need to tell us:

- Your name and [case] [file] number.
- Why you believe there is an error, and the dollar amount involved.
- Approximately when the error took place.

If you tell us orally, we may require that you send us your complaint or question in writing.

[We will generally complete our investigation within 10 business days and correct any error promptly.]

►We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

For errors involving new accounts, point-of-sale, and foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.◄ [In some cases, an investigation may take longer, but you will have the use of the funds in question after the 10 business days.] If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account during the investigation.

[For errors involving transactions at point-of-sale terminals in food stores, the periods referred to above are 20 business days instead of 10 business days.]

If we decide that there was no error, we will send you a written explanation within three business days after we finish our investigation. You may ask for copies of the documents that we used in our investigation.

If you need more information about our error resolution procedures, call us at [telephone number][the telephone number shown above].

►A–6—MODEL DISCLOSURES FOR ELECTRONIC COMMUNICATION (§ 205.4(c)(3)) (Disclosures Available in Paper or Electronically)

You can choose to receive important information required by the Electronic Fund Transfer Act in paper or electronically.

Read this notice carefully and keep a copy for your records.

- You can choose to receive the following information in paper form or electronically: (description of specific disclosures to be provided electronically).
- How would you like to receive this information
  - ☐ I want paper disclosures.
  - ☐ I want electronic disclosures.
- [We may provide the following additional disclosures electronically in the future: (description of specific disclosures).]
- [If you choose electronic disclosures, this information will be available at: (specify location) for ____ days. After that, the information will be available upon request (state how to obtain the information). When the information is posted, we will send you a message at the electronic mail address you designate here: (consumer's electronic mail address).]

[If you choose electronic disclosures this information will be sent to the electronic mail address that you designate here: (consumer's electronic mail address).]

- To receive this information you will need: (list hardware and software requirements). Do you have access to a computer that satisfies these requirements?
  - ☐ Yes ☐ No
- Do you have access to a printer, or the ability to download information, in order to keep copies for your records?
  - ☐ Yes ☐ No
- To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, contact us at (telephone number).

A–7—MODEL DISCLOSURES FOR ELECTRONIC COMMUNICATION (§ 205.4(c)(3)) (Disclosures Available Only Electronically)

You will receive important information required by the Electronic Fund Transfer Act electronically.

Read this notice carefully and keep a copy for your records.

- The following information will be provided electronically: (description of specific disclosures to be provided electronically).
- This electronic fund transfer service is not available unless you accept electronic disclosures.
- [We may provide the following additional disclosures electronically in the future: (description of specific disclosures).]
- [If you choose electronic disclosures, this information will be available at: (specify location) for ____ days. After that, the information will be available upon request (state how to obtain the information). When the information is posted, we will send you a message at the electronic mail address you designate here: (consumer's electronic mail address).]

[If you choose electronic disclosures this information will be sent to the electronic mail address that you designate here: (consumer's electronic mail address).]

- To receive this information you will need: (list hardware and software requirements). Do you have access to a computer that satisfies these requirements?
  - ☐ Yes ☐ No
- Do you have access to a printer, or the ability to download information, in order to keep copies for your records?
  - ☐ Yes ☐ No
- Do you want this electronic fund transfer service with electronic disclosures?
  - ☐ Yes ☐ No
- To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, contact us at (telephone number).

A–8—MODEL NOTICE FOR DELIVERY OF INFORMATION POSTED AT CERTAIN LOCATIONS (§ 205.4(c)(4))

Information about your (identify account) is now available at [website address or other location]. The information discusses (describe the disclosure). It will be available for ____ days.

BILLING CODE 6210–01–P

A-9 SAMPLE FORM ELECTRONIC COMMUNICATION (§ 205.4(c)(3))
(Disclosures Available in Paper or Electronically)

You can choose to receive important information required by the Electronic Fund Transfer Act in paper form or electronically.

Read this notice carefully and keep a copy for your records.

- You can choose to receive the following information in paper form or electronically: Terms and Conditions of our Electronic Banking Service, monthly statements, and change-in-terms notices.
- Please indicate how you would like to receive this information:

  ☐ I want paper disclosures ☐ I want electronic disclosures
- If you choose electronic disclosures, this information will be available at our Internet website: *http://www._____.com* for 90 days. After that, the information will be available upon request by contacting us at *1-800-xxx-xxxx*. When the information is posted on our website, we will send you a message at your e-mail address:

  insert address
- To receive this information electronically, you will need: a minimum web browser version of (Browser name). Do you have access to a computer that satisfies these requirements?

  ☐ Yes ☐ No
- Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

  ☐ Yes ☐ No
- To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, you may contact us by telephone at 1-800-xxx-xxxx or by electronic mail at _____*.help@isp.com.*

A-10 SAMPLE FORM ELECTRONIC COMMUNICATION (§ 205.4(c)(3))
(Disclosures Available Only Electronically)

You will receive important information required by the Electronic Fund Transfer Act electronically.

Read this notice carefully and keep a copy for your records.

- The following information will be provided electronically: Terms and Conditions of our Electronic Banking Service, monthly statements, and change-in-terms notices.
- This electronic fund transfer service is available only if you accept these disclosures electronically.
- Information about your account will be available at our Internet website: *http://www._____.com* for 90 days. After that, the information will be available upon request by contacting us at *1-800-xxxx-xxxx*. When the information is posted on our website, we will send you a message at your e-mail address:

  insert address
- To receive this information electronically, you will need: a minimum web browser version of (Browser name). Do you have access to a computer that satisfies these requirements?

  ☐ Yes ☐ No
- Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

  ☐ Yes ☐ No
- Do you want this electronic fund transfer service with electronic disclosures?

  ☐ Yes ☐ No
- To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, you may contact us by telephone at *1-800-xxx-xxxx* or by electronic mail at_____*.help@isp.com.*

BILLING CODE 6210-01-C

4. In Supplement I to Part 205, under *Section 205.4—General Disclosure Requirements; Jointly Offered Services,* the following amendments are made:

a. Under paragraph *4(a) Form of Disclosures,* paragraph 2. is removed; and

b. A new paragraph *4(c) Electronic Communication* is added.

The additions read as follows:

Supplement I To Part 205—Official Staff Interpretations

* * * * *

SECTION 205.4—GENERAL DISCLOSURE REQUIREMENTS; JOINTLY OFFERED SERVICES

* * * * *

►*4(c) Electronic Communication*

Paragraph 4(c)(1)—Definition

1. *Coverage.* Information transmitted by facsimile may be received in paper form or electronically, although the party initiating the transmission may not know at the time the disclosures are sent which form will be used. A financial institution that provides disclosures by facsimile should comply with the requirements for electronic communication unless the institution knows that the disclosures will be received in paper form.

Paragraph 4(c)(2)—Electronic Communication between Financial Institution and Consumer

1. *Disclosures provided on institution's equipment.* Institutions that control equipment providing electronic disclosures to consumers (for example, computer terminals in an institution's lobby or kiosks located in public places) must ensure that the equipment satisfies the regulation's requirements to provide disclosures in a clear and readily understandable format and in a form the consumer may keep. A financial institution that controls the equipment may provide a printer for consumers' use in lieu of sending the information to the consumer's electronic mail address or posting the information at another location such as the institution's website.

2. *Retainability.* Institutions must provide electronic disclosures in a retainable format (for example, they can be printed or downloaded). Consumers may communicate electronically with financial institutions through a variety of means and from various locations. Depending on the location (at home, at work, in a public place such as a library), a consumer may not have the ability at a given time to preserve EFTA disclosures presented on-screen. To ensure that consumers have an adequate opportunity to retain the disclosures, the institution also must send them to the consumer's designated electronic mail address or to another location, for example, on the institution's website, where the information may be retrieved at a later date.

3. *Timing and delivery.* When a consumer signs up for and is able to use an EFT service on the Internet, for example, in order to meet the timing and delivery requirements, institutions must ensure that disclosures applicable at that time appear on the screen and are in a retainable format. The delivery requirements would not be met if disclosures do not either appear on the screen or if the consumer is allowed to sign up for and use an EFT service before receiving the disclosures. For example, an institution can provide a link to electronic disclosures appearing on a separate page as long as consumers cannot bypass the link and they are required to access the disclosures before completing the sign-up process or using the EFT service.

Paragraph 4(c)(2)(ii)—In-person Exception

1. *Initial disclosures in paper form.* If a consumer contracts for an EFT service in person the financial institution generally must provide initial disclosures in paper form. For example, if a consumer visits a financial institution's branch office to sign up for an ATM card while opening an account, initial disclosures are required before the consumer contracts for the service or before the first transaction and they must be provided in paper form; directing the consumer to disclosures posted on the institution's website would not be sufficient. If, however, a consumer makes a request on the Internet to open an account and obtain an ATM card, a financial institution may send disclosures electronically at or around that time even though the financial institution's procedures require the consumer to visit a branch office at a later time to complete the agreement (for example, to execute a signature card).

Paragraph 4(c)(3)—Disclosure Notice

1. *Consumer's affirmative responses.* Even though a consumer accepts electronic disclosures in accordance with § 205.4(c)(3)(ii), a financial institution may deliver disclosures by electronic communication only if the consumer provides an electronic address where one is required, and responds affirmatively to questions about technical requirements and the ability to print or download information (see Sample Forms A–9 and A–10) in appendix A to this part.

Paragraph 4(c)(3)(i)—Notice by Financial Institution

1. *Toll-free telephone number.* The number must be toll-free for nonlocal calls made from an area code other than the one used in the institution's dialing area. Alternatively, a financial institution may provide any telephone number that allows a consumer to call for information and reverse the telephone charges.

2. *Institution's address.* Financial institutions have the option of providing either an electronic or postal address for consumers' use in addition to a toll-free telephone number.

3. *Discontinuing electronic disclosures.* Consumers may use the toll-free number (or optional address) if they wish to discontinue receiving electronic disclosures. In such cases, the institution must inform consumers whether the EFT service is also available with disclosures in paper form.

Paragraph 4(c)(3)(ii)—Response by Consumer

1. *Nature of consent.* Consumers must agree to receive disclosures by electronic communication knowingly and voluntarily. An agreement to receive electronic disclosures is not implied from consumers' use of an account or acceptance of general account terms. Paragraph 4(c)(3)(iii)—Changes

1. *Examples.* Examples of changes include a change in technical requirements, such as upgrades to computer software affecting the institution's disclosures provided on the Internet.

2. *Timing for notices.* A notice of a change must be sent a reasonable period of time before the effective date of the change. The length of a reasonable notice period may vary, depending on the type of change involved; however, fifteen days is a reasonable time for providing notice in all cases.

3. *Delivery of notices.* An institution meets the delivery requirements if the notice of a change is sent to the address provided by the consumer for receiving other disclosures. For example, if the consumer provides an electronic address to receive notices about periodic statements posted at the institution's website, the same electronic address may be used for the change notice. The consumer's postal address must be used, however, if the consumer consented to additional disclosures by electronic communication when receiving the initial notice under § 205.4(c)(3)(i), but provided a postal address to receive periodic statements in paper form.

4. *Toll-free number.* See comment 4(c)(3)(i)–1.

5. *Institution's address.* See comment 4(c)(3)(i)–2.

6. *Consumer inquiries.* Consumers may use the toll-free number (or optional address) for questions or assistance with problems related to a change, such as an upgrade to computer software that is not provided by the institution. Consumers may also use the toll-free number if they wish to discontinue receiving electronic disclosures; in such cases, the institution must inform consumers whether the EFT service is also available with disclosures in paper form.

Paragraph 4(c)(4)—Address or Location to Receive Electronic Communication

Paragraph 4(c)(4)(i)

1. *Electronic address.* A consumer's electronic address is an electronic mail address that may be used by the consumer for receiving communications transmitted by parties other than the financial institution.

Paragraph 4(c)(4)(ii)

1. *Identifying account involved.* A financial institution is not required to identify an account by reference to the account number. For example, where the consumer does not have multiple accounts, and no confusion would result, the financial institution may refer to "your checking account,' or when the consumer has multiple accounts the institution may use a truncated account number.

2. *Availability.* Information that is not sent to a consumer's electronic mail address must be available for at least 90 days from the date the information becomes available or from the date the notice required by § 205.4(c)(4)(ii) is sent to the consumer, whichever occurs later.

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 31, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–23139 Filed 9–13–99; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Regulation M; Docket No. R–1042]

Consumer Leasing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is requesting comment on proposed revisions to Regulation M, which implements the Consumer Leasing Act. The Board previously published a proposed rule that permits lessors to use electronic communication (for example, communication via personal computer and modem) to provide disclosures required by the act and regulation, if the consumer agrees to such delivery. (A similar rule was also proposed under various other consumer financial services and fair lending regulations administered by the Board.) In response to comments received on the proposals, the Board is publishing for comment an alternative proposal on the electronic delivery of disclosures, together with proposed commentary that would provide further guidance on electronic communication issues.

DATES: Comments must be received by October 29, 1999.

ADDRESSES: Comments, which should refer to Docket No. R–1042, may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room, both in the Board's Eccles Building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in room MP–500 between 9:00 a.m. and 5:00 p.m., pursuant to § 261.12, except as provided in § 261.14 of the Board's Rules Regarding the Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Kyung H. Cho-Miller, Staff Attorney, or Jane Ahrens, Senior Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667. Users of Telecommunications Device for the Deaf (TDD) *only,* contact Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Consumer Leasing Act (CLA), 15 U.S.C. 1667–1667e, was enacted into law in 1976 as an amendment to the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.* The CLA requires lessors to provide consumers with uniform cost and other disclosures about consumer lease transactions. The act generally applies to consumer leases of personal property in which the contractual obligation does not exceed $25,000 and has a term of more than four months. An automobile lease is the most common type of consumer lease covered by the act. The Board's Regulation M (12 CFR part 213) implements the act.

The CLA and Regulation M require disclosures to be provided to consumers in writing, presuming that lessors provide paper documents. Under many laws that call for information to be in writing, information in electronic form is considered to be "written." Information produced, stored, or communicated by computer is also generally considered to be a writing, where visual text is involved.

In May 1996, the Board revised Regulation E (Electronic Fund Transfers) following a comprehensive review. During that process, the Board determined that electronic communications for delivery of information required by federal laws governing financial services could effectively reduce compliance costs without adversely affecting consumer protections. Consequently, the Board simultaneously issued a proposed rule to permit financial institutions to use electronic communication to deliver disclosures that Regulation E requires to be given in writing. (61 FR 19696, May 2, 1996.) The 1996 proposal required that disclosures be provided in a form the consumer may retain, a requirement that institutions could satisfy by providing information in a format that may be printed or downloaded. The proposed rule also allowed consumers to request a paper copy of a disclosure for up to one year after its original delivery.

Following a review of the comments, on March 25, 1998, the Board issued an interim rule under Regulation E (the "interim rule"), 63 FR 14528. The Board also published proposals under Regulations DD (Truth in Savings), 63 FR 14533, M (Consumer Leasing), 63 FR 14538, Z (Truth in Lending), 63 FR 14548, and B (Equal Credit Opportunity), 63 FR 14552, (collectively, the "March 1998 proposed rules"). The rules would apply to financial institutions, creditors, lessors, and other entities that are required to give disclosures to consumers and others. (For ease of reference this background section uses the terms "financial institutions," "institutions," and "consumers.") The interim rule and the March 1998 proposed rules were similar to the May 1996 proposed rule; however, they did not require financial institutions to provide paper copies of disclosures to a consumer upon request if the consumer previously agreed to receive disclosures electronically. The Board believed that most institutions would accommodate consumer requests for paper copies when feasible or redeliver disclosures electronically; and the Board encouraged financial institutions to do so.

The March 1998 proposed rules and the interim rule permitted financial institutions to provide disclosures electronically if the consumer agreed, with few other requirements. The rule was intended to provide flexibility and did not specify any particular method for obtaining a consumer's agreement. Whether the parties had an agreement would be determined by state law. The proposals and the interim rule did not preclude a financial institution and a consumer from entering into an agreement electronically, nor did they prescribe a formal mechanism for doing so.

The Board received approximately 200 written comments on the interim rule and the March 1998 proposed rules. The majority of comments were submitted by financial institutions and their trade associations. Industry commenters generally supported the use of electronic communication to deliver information required by the CLA and Regulation M. Nevertheless, many sought specific revisions and additional guidance on how to comply with the disclosure requirements in particular transactions and circumstances.

Industry commenters were especially concerned about the condition that a consumer had to "agree" to receive information by electronic communication, because the rule did not specify a method for establishing that an "agreement" was reached. These commenters believed that relying on state law created uncertainty about what

constitutes an agreement and, therefore, potential liability for noncompliance. To avoid uncertainty over which state's laws apply, some commenters urged the Board to adopt a federal minimum standard for agreements or for informed consent to receive disclosures by electronic communication. These commenters believed that such a standard would avoid the compliance burden associated with tailoring legally binding "agreements" to the contract laws of all jurisdictions where electronic communications may be sent.

Consumer advocates generally opposed the March 1998 interim rule and proposed rules. Without additional safeguards, they believed, consumers may not be provided with adequate information about electronic communications before an "agreement" is reached. They also believed that promises of lower costs could induce consumers to agree to receive disclosures electronically without a full understanding of the implications. To avoid such problems, they urged the Board, for example, either to require institutions to disclose to consumers that their account with the institution will not be adversely affected if they do not agree to receive electronic disclosures, or to permit financial institutions to offer electronic disclosures only to consumers who initiate contact with the institution through electronic communication. They also noted that some consumers will likely consent to electronic disclosures believing that they have the technical capability to retrieve information electronically, but might later discover that they are unable to do so. They questioned consumers' willingness and ability to access and retain disclosures posted on Internet websites, and express their apprehension that the goals of federally mandated disclosure laws will be lost.

Consumer advocates and others were particularly concerned about the use of electronic disclosures in connection with home-secured loans and certain other transactions that consumers typically consummate in person (citing as examples automobile loans and leases, short-term "payday" loans, or home improvement financing contracts resulting from door-to-door sales). They asserted that there is little benefit to eliminating paper disclosures in such transactions and that allowing electronic disclosures in those cases could lead to abusive practices. Accordingly, consumer advocates and others believed that paper disclosures should always accompany electronic disclosures in mortgage loans and certain other transactions, and that consumers should have the right to obtain paper copies of disclosures upon request for all types of transactions (deposit account, credit card, loan or lease, and other transactions).

A final issue raised by consumer advocates was the integrity of disclosures sent electronically. They stated that there may be instances when the consumer and the institution disagree on the terms or conditions of an agreement and consumers may need to offer electronic disclosures as proof of the agreed-upon terms and to enforce rights under consumer protection laws. Thus, to assure that electronic documents have not been altered and that they accurately reflect the disclosures originally sent, consumer advocates recommended that the Board require that electronic disclosures be authenticated by an independent third party.

The Board's Consumer Advisory Council considered the electronic delivery of disclosures in 1998 and again in 1999. Many Council members shared views similar to those expressed in written comment letters on the 1998 proposals. For example, some Council members expressed concern that the Board was moving too quickly in allowing electronic disclosures for certain transactions, and suggested that the Board might go forward with electronic disclosures for deposit accounts while proceeding more slowly on credit and lease transactions. Others expressed concern about consumer access and consumers' ability to retain electronic disclosures. They believed that, without specific guidance from the Board, institutions would provide electronic disclosures without knowing whether consumers could retain or access the disclosures, and without establishing procedures to address technical malfunctions or nondelivery. The Council also discussed the integrity and security of electronic documents.

II. Overview of Proposed Revisions

Based on a review of the comments and further analysis, the Board is requesting comment on a modified proposed rule that is more detailed than the interim rule and March 1998 proposed rules. It is intended to provide specific guidance for lessors that choose to use electronic communication to comply with Regulation M's requirements to provide written disclosures, and to ensure effective delivery of disclosures to consumers through this medium. Though detailed, the proposal provides flexibility for compliance with electronic communication rules.

The modified proposal does not permit the electronic delivery of Regulation M disclosures where a consumer enters into a lease agreement in person, and the required Regulation M disclosures are provided at that time (either as part of the lease agreement or separately), those disclosures have to be in paper form. .

The Regulation M leasing disclosures must be given to consumers before they become obligated for a lease, and must reflect the legal obligation. The disclosures can be made in a separate statement or in the lease contract or other document evidencing the lease. Lessors typically include the disclosures in the lease agreement. Few lessors currently consummate lease agreements electronically; however, as standards are developed for establishing legal agreements by electronic communication, more lease contracts may be entered into by that means.

While leases are typically not consummated on-line, consumers are able to shop on-line and apply for leases. The purpose of the Regulation M disclosures is to ensure that consumers have meaningful information about lease terms and to promote comparison shopping. Therefore, the use of electronic communication may allow lessors to provide Regulation M disclosures to consumers earlier in the leasing process.

The Board is soliciting comment on a modified approach that addresses both industry and consumer group concerns. Under the proposal, lessors would have to provide specific information about how the consumer can receive and retain electronic disclosures—through a standardized disclosure statement—before obtaining consumers' acceptance of such delivery, with some exceptions. If they satisfy these requirements and obtain consumers' affirmative consent, lessors would be permitted to use electronic communications. As a general rule a lessor would be permitted to offer the option of receiving electronic disclosures to all consumers, whether they initially contact the lessor by electronic communications, or otherwise. To address concerns about potential abuses, however, the proposal provides that if a consumer consummates a lease in person, disclosures required to be given at that time must be in paper form.

Lessors would have the option of delivering disclosures to an e-mail address designated by the consumer or making disclosures available at another location such as the lessor's website, for printing or downloading. If the disclosures are posted at a website location, lessors generally must notify consumers at an e-mail address about the availability of the information. (Lessors may offer consumers the option of receiving alert notices at a postal address.) The disclosures must remain available at that site for 90 days.

Disclosures provided electronically would be subject to the "clear and conspicuous" standard, and the existing format, timing, and retainability rules in Regulation M. For example, to satisfy the timing requirement, if disclosures are due at the time an electronic transaction is being conducted, they would have to appear on the screen before the consumer could consummate the transaction.

Lessors generally must provide a means for consumers to confirm the availability of equipment to receive and retain electronic disclosure documents. A lessor would not otherwise have a duty to verify consumers' actual ability to receive, print, or download the disclosures. Some commenters suggested that lessors should be required to verify delivery by return receipt. The Board solicits comment on the need for such a requirement and the feasibility of that approach.

As previously mentioned, consumer advocates and others have expressed concerns that electronic documents can be altered more easily than paper documents. The issue of the integrity and security of electronic documents affects electronic commerce in general and is not unique to the written disclosures required under the consumer protection laws administered by the Board. Consumers' ability to enforce rights under the consumer protection laws could be impaired in some cases, however, if the authenticity of disclosures that they retain cannot be demonstrated. Signatures, notary seals, and other established verification procedures are used to detect alterations for transactions memorialized in paper form. The development of similar devices for electronic communications should reduce uncertainty over time about the ability to use electronic documents for resolving disputes.

The Board's rules require lessors to retain evidence of compliance with Regulation M. Specific comment is solicited on the feasibility of complying with a requirement that lessors provide disclosures in a format that cannot be altered without detection, or have systems in place capable of detecting whether or not information has been altered, as well as the feasibility of requiring use of independent certification authorities to verify disclosure documents.

Elsewhere in today's **Federal Register**, the Board is publishing similar proposals for comment under Regulations B, E, Z, and DD. In a separate notice the Board is publishing an interim rule under Regulation DD, which implements the Truth in Savings Act, to permit depository institutions to use electronic communication to deliver disclosures on periodic statements. For ease of reference, the Board has assigned new docket numbers to the modified proposals published today.

III. Section-by-Section Analysis

Pursuant to its authority under section 187 of the CLA, the Board proposes to amend Regulation M to permit lessors to use electronic communication to provide the disclosures required by § 213.4. Below is a section-by-section analysis of the rules for providing disclosures by electronic communication, including references to proposed commentary provisions.

The March 1998 proposed rule addressed electronic communication in § 213.3 of the regulation, which contains the general disclosure requirements. In the revised proposal, the rules on electronic communications are contained in § 213.6 for easier reference and to avoid complicating the general Regulation M disclosure requirements.

Section 213.6 Requirements for Electronic Communication

6(a) Definition

The definition of the term "electronic communication" in the March 1998 proposed rule remains unchanged. Section 213.6(a) limits the term to a message transmitted electronically that can be displayed on equipment as visual text, such as a message that is displayed on a computer monitor screen. Most commenters supported the term as defined in the proposed rule. Some commenters favored a more expansive definition that would encompass communications such as audio and voice response telephone systems. Because the proposal is intended to permit electronic communication to satisfy the statutory requirement for written disclosures, the Board believes visual text is an essential element of the definition.

Commenters asked the Board to clarify the coverage of certain types of communications. A few commenters asked about communication by facsimile. Facsimiles are initially transmitted electronically; the information may be received either in paper form or electronically through software that allows a consumer to capture the facsimile, display it on a monitor, and store it on a computer diskette or drive. Thus, information sent by facsimile may be subject to the provisions governing electronic communication. When disclosures are sent by facsimile, a lessor should comply with the requirements for electronic communication unless it knows that the disclosures will be received in paper form. Proposed comment 6(a)–1 contains this guidance.

6(b) Electronic Communication Between Lessor and Consumer

Section 213.6(b)(1) would permit lessors to provide disclosures using electronic communication, if the lessor complies with provisions in new § 213.6(c), discussed below.

1. *Presenting disclosures in a clear and conspicuous format.* The Board does not intend to discourage or encourage specific types of technologies. Regardless of the technology, however, disclosures provided electronically must be presented in a clear and conspicuous format as is the case for all written disclosures under the act and regulation. See § 213.3(a).

When consumers consent to receive disclosures electronically and they confirm that they have the equipment to do so, lessors generally would have no further duty to determine that consumers are able to receive the disclosures. Lessors do have the responsibility of ensuring the proper equipment is in place in instances where the lessor controls the equipment.

2. *Providing disclosures in a form the consumer may keep.* As with other written disclosures, information provided by electronic communication must be in a form the consumer can retain. Under the 1998 proposals and interim rule, a lessor would satisfy this requirement by providing information that can be printed or downloaded. The modified proposal adopts the same approach but also provides that the information must be sent to a specified location to ensure that consumers have an adequate opportunity to retain the information.

Consumers communicate electronically with lessors through a variety of means and from various locations. Depending on the location (at home, at work, in a public place such as a library), a consumer may not have the ability at a given time to preserve CLA disclosures presented on-screen. Therefore, when a lessor provides disclosures by electronic communication, to satisfy the retention requirements, the lessor must send the disclosures to a consumer's e-mail address or other location where

information may be retrieved at a later date. Proposed comment 6(b)–1 contains this guidance; see also the discussion under § 213.6(d), below. If a lessor controlled an electronic terminal used to provide electronic disclosures, a lessor could provide equipment for the consumer to print a paper copy in lieu of sending the information to the consumer's electronic mail address or posting the information at another location such as the lessor's website.

3. *Timing.* Lessors must ensure that electronic disclosures comply with all relevant timing requirements of the regulation. For example, disclosures must be provided prior to consummation of a lease. The rule ensures that consumers have an opportunity to read important information about costs and other terms before becoming obligated.

To illustrate the timing requirements for electronic communication, assume that a consumer is interested in leasing a vehicle on-line and uses a personal computer at home to access the lessor's website on the Internet. The lessor provides disclosures to the consumer about the delivery of Regulation M disclosures by electronic communication (the § 213.6(c) disclosures discussed below) and the consumer responds affirmatively. If the lessor's procedures permit the consumer to lease a vehicle at that time, disclosures required under § 213.4 would have to be provided before the consumer becomes obligated on-line. Thus, the disclosures must automatically appear on the screen or the consumer must be required to access the information before consummating the lease on-line. The timing requirements for providing disclosures would not be met if, in this example, the lessor permitted the consumer to consummate the lease on-line and sent disclosures to an e-mail address thereafter. Proposed comment 6(b)–2 contains this guidance.

On the other hand, assume that a consumer applies for a lease on-line and the lessor delays processing the consumer's request until the required disclosures have been delivered by e-mail. In that case the information would not have to also appear on the screen; delivery to the consumer's e-mail address would be sufficient. In either case, the consumer must be given the opportunity to receive the disclosures before consummation.

6(b)(2) In-Person Exception

The proposal contains an exception to the general rule allowing information required by Regulation M to be provided by electronic communication; in these cases, paper disclosures would be required. The exception, contained in § 213.6(b)(2), seeks to address concerns about potential abuses where consumers are transacting business in person but are offered disclosures in electronic form. In such transactions, there is an expectation that consumers would have to be given paper copies of disclosures along with paper copies of other documents evidencing the transaction.

Under § 213.6(b)(2), if a consumer consummates a lease in person, the lessor must generally provide disclosures in paper form. For example, if a consumer goes to a lessor's place of business to consummate a lease, disclosures are required before consummation and they must be provided in paper form; directing the consumer to disclosures posted on the lessor's website would not be sufficient. If, however, a consumer applies for a lease on the Internet, a lessor may send disclosures electronically at or around that time, even though the lessor's procedures require the consumer to visit the lessor at a later time to complete the transaction (for example, to sign a lease agreement). Proposed comment 6(b)(2)–1 contains this guidance.

6(c) Disclosure Notice

Section 213.6(c) would identify the specific steps required before a lessor could use electronic communication to satisfy the regulation's disclosure requirements. Proposed Model Forms A–4 and A–5, and Sample Forms A–7 and A–8 are published to aid compliance with these requirements.

6(c)(1) Notice by Lessor

Section 213.6(c)(1) outlines the information that lessors must provide before electronic disclosures can be given. The lessor must: (1) Describe the information to be provided electronically and specify whether the information is also available in paper form or whether the lease is offered only with electronic disclosures; (2) identify the address or location where the information will be provided electronically; and if it will be available at a location other than the consumer's electronic address, specify for how long and where it can be obtained once that period ends; (3) specify any technical requirements for receiving and retaining information sent electronically, and provide a means for the consumer to confirm the availability of equipment meeting those requirements; and (4) provide a toll-free telephone number and, at the lessor's option, an electronic or a postal address for questions about receiving electronic disclosures and for seeking assistance with technical or other difficulties (see proposed comments to 6(c)(1)). The Board requests comment on whether other information should be disclosed regarding the use of electronic communication and on any format changes that might improve the usefulness of the notice for consumers.

Under the proposal, the § 213.6(c)(1) disclosures must be provided, as applicable, before the lessor uses electronic communication to deliver the disclosures required by § 213.4 of the regulation. The approach of requiring a standardized disclosure statement addresses, in several ways, the concern that consumers may be steered into using electronic communication without fully understanding the implications. Under this approach, the specific disclosures that would be delivered electronically must be identified, and consumers must be informed whether there is also an option to receive the information in paper form. Consumers must provide an e-mail address where one is required. Technical requirements must also be stated, and consumers must affirm that their equipment meets the requirements, and that they have the capability of retaining electronic disclosures by downloading or printing them (see proposed comment 6(c)–1). Thus, § 213.6(c)(1) disclosures should allow consumers to make informed judgments about receiving electronic disclosures.

Commenters generally requested guidance on when the consumer chooses not to receive information by electronic communication. A lessor could offer a consumer the option of receiving disclosures in paper form, but it would not be required to do so. For example, a lessor could offer particular leases for which disclosures are given only by electronic communication. Section 213.6(c)(1)(i) would require lessors to tell consumers whether or not they have the option to receive disclosures in paper form. Proposed sample disclosure statements in which the consumer has an option to receive electronic or paper disclosures (Form A–7) or electronic disclosures only (Form A–8) are contained in appendix A.

6(c)(2) Response by Consumer

Proposed § 213.6(c)(2) would require lessors to provide a means for the consumer to affirmatively indicate that disclosures may be provided electronically, for example, a "check box" on a computer screen. The requirement is intended to ensure that consumers' consent is established knowingly and voluntarily.

6(d) Address or Location To Receive Electronic Communication

Proposed § 213.6(d) identifies addresses and locations where lessors using electronic communication may send information. Lessors may send information to a consumer's electronic address, which is defined in proposed comment 6(d)(1)–1 as an e-mail address that the consumer also may use for receiving communications from parties other than the lessor. For example, a lessor's responsibility to provide disclosures by electronic communication will be satisfied when the information is sent to the consumer's electronic address in accordance with the applicable proposed rules concerning delivery of disclosures by electronic communication.

The Board recognizes that currently, because of security and privacy concerns associated with data transmissions, a number of lessors may choose to provide disclosures at their websites, where the consumer may retrieve them under secure conditions. Under § 213.6(d), a lessor may make disclosures available to a consumer at a location other than the consumer's electronic address. The lessor must notify the consumer when the information becomes available and identify the lease involved. The notice must be sent to the electronic mail address designated by the consumer; the lessor may, at its option, permit the consumer to designate a postal address. A proposed model form (Model Form A–6) is published below.

The requirements of the regulation would be met only if the required disclosure is posted on the website and the consumer is notified of its availability in a timely fashion. For example, lessors must provide disclosures to consumers prior to consummation of a lease. (12 CFR 213.3(a)(3).)

There is a variety of circumstances when a consumer may not be able immediately to access the information due to illness, travel, or computer malfunction, for example. Under § 213.6(d), lessors must post information sent to a location other than the consumer's electronic address for 90 days. Proposed comment 6(d)(2)–1 contains this guidance.

Under the modified proposal, lessors that post information at a location other than the consumer's electronic mail address are required—after the 90 day period—to make disclosures available to consumers upon request for a period of not less than two years from the date disclosures are required to be made, consistent with the record retention requirements under § 213.8. The Board requests comments on this approach, including suggestions for alternative means for providing consumers continuing access to disclosures.

Section 213.7 Advertising

7(b) Clear and Conspicuous Standard

7(b)(1) Amount Due at Lease Signing

Under § 213.7(b)(1), in an advertisement, lessors cannot refer to a component of the total amount due prior to or at consummation or by delivery (except for the periodic payment amount) more prominently than the total amount due. Also, lessors that advertise a percentage rate must include a statement about the limitations of the rate, which must be as prominent as the rate. Proposed comment 7(b)(1)–3 contains guidance on how this rule applies in an electronic advertisement.

7(b)(2) Advertisement of a Lease Rate

Under § 213.7(b)(2), if a lessor includes a rate in an advertisement, the rate cannot be more prominent than any of the disclosures in § 213.4. Comment 7(b)(2)–1 would be revised to provide guidance on how this rule applies in an electronic advertisement.

7(c) Catalogs and Multi-Page Advertisement

Stating certain credit terms in an advertisement for a lease triggers the disclosure of additional terms. Section 213.7(c) permits lessors using a multiple-page advertisement to state the additional disclosures in a table or schedule as long as the triggering lease terms appearing anywhere else in the advertisement refer to the page where the table or schedule is printed. Several commenters asked the Board to clarify the rules for electronic advertisements.

Section 213.7(c) would be amended to cover electronic advertisements. Lessors that advertise using electronic communication generally would comply with § 213.7(c) if the table or schedule with the additional information is set forth clearly and conspicuously and the triggering lease terms appearing anywhere else in the advertisement clearly refer to the page or location where the table or schedule begins. Proposed comment 7(c)–2 contains this guidance.

Appendix A to Part 213—Model Forms

The Board solicits comment on three proposed model forms and two sample forms for use by lessors to aid compliance with the disclosure requirements of §§ 213.6(c) and 6(c). Model Forms A–4 and A–5 would implement § 213.6(c), regarding the notice that lessors must give prior to using electronic communication to provide required disclosures. Model Form A–6 would implement § 213.6(d), regarding notices to consumers about the availability of electronic disclosures at locations such as the lessor's website. Use of any modified version of these forms would be in compliance as long as the lessor does not delete information required by the regulation or rearrange the format in a way that affects the substance, clarity, or meaningful sequence of the disclosure.

Sample Form A–7 illustrates the disclosures under § 213.6(a)(3) for a vehicle lease transaction. The sample assumes that the lessor also offers paper disclosures for consumers who choose not to receive electronic disclosures. Sample Form A–8 assumes that consumers must accept electronic disclosures if they want to contract for the lease.

Additional Issues Raised by Electronic Communication

Preemption

A few commenters suggested that any final rule issued by the Board permitting electronic disclosures should explicitly preempt any state law requiring paper disclosures. Under § 213.9 of the regulation, state laws are preempted if they are inconsistent with the act and regulation and only to the extent of the inconsistency. The proposed rule would provide lessors with the option of giving required disclosures by electronic communication as an alternative to paper. There is no apparent inconsistency with the act and regulation if state laws require paper disclosures. The Board will, however, review preemption issues that are brought to the Board's attention. Section 213.9(b) outlines the Board's procedures for determining whether a specific law is preempted, which will guide the Board in any determination requested by a state, lessor, or other interested party following publication of a final rule regarding electronic communication.

IV. Form of Comment Letters

Comment letters should refer to Docket No. R–1042 and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document

in paper form, comments may be submitted on 3½-inch computer diskettes in any IBM-compatible DOS- or Windows-based format.

V. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the proposed amendments to Regulation M. Although the proposal would add disclosure requirements with respect to electronic communication, overall, the proposed amendments are not expected to have any significant impact on small entities. A lessor's use of electronic communication to provide disclosures required by the regulation is optional. The proposed rule would give lessors flexibility in providing disclosures. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The Federal Reserve may not ~ conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB number. The OMB control number is 7100–0202.

The collection of information requirements that are relevant to this proposed rulemaking are in 12 CFR 213.3, 213.4, 213.5, 213.7, 213.8 and in Appendix A. This information is mandatory (15 U.S.C. 1667 *et seq.*) to evidence compliance with the requirements of Regulation M and the Consumer Leasing Act (CLA). The revised requirements would be used to ensure adequate disclosure of basic terms, costs, and rights relating to lease transactions, at or before the time lessees enter into a consumer lease transaction and when the availability of a consumer lease on particular terms is advertised and lessees receive certain disclosures by electronic communication. The respondents/recordkeepers are for-profit lessors, including small businesses. Lessors are also required to retain records for 24 months. This regulation applies to all types of lessors, not just state member banks; however, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The proposed revisions would allow lessors the option of using electronic communication (for example, via personal computer and modem) to provide disclosures required by the regulation. Although the proposal would add disclosure requirements with respect to electronic communication, the optional use of electronic communication would likely reduce the paperwork burden of lessors. With respect to state member banks, it is estimated that there are 310 respondents/recordkeepers subject to the disclosure requirements with an average frequency of 37,200 responses per respondent each year. It is also estimated of the 310 respondent/recordkeepers, approximately 15 are subject to the advertising requirement. This subset of respondent/recordkeepers has an average frequency of 45 responses per respondent each year. Therefore the current amount of annual burden is estimated to be 11,179 hours. There is estimated to be no additional annual cost burden and no capital or start-up cost.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises; however, any information obtained by the Federal Reserve may be protected from disclosure under exemptions (b) (4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522(b) (4), (6) and (8)). The disclosures and information about error allegations are confidential between lessors and the customer.

The Federal Reserve requests comments from lessors, especially state member banks, that will help to estimate the number and burden of the various disclosures that would be made in the first year this proposed regulation would be effective. Comments are invited on: (a) The cost of compliance; (b) ways to enhance the quality, utility, and clarity of the information to be disclosed; and (c) ways to minimize the burden of disclosure on respondents, including through the use of automated disclosure techniques or other forms of information technology. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0202), Washington, DC 20503, with copies of such comments sent to Mary M. West, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

List of Subjects in 12 CFR Part 213

Advertising, Federal Reserve System, Reporting and recordkeeping requirements, Truth in lending.

Text of Proposed Revisions

Certain conventions have been used to highlight proposed changes to Regulation M. New language is shown inside bold-faced arrows and deletions are shown in bold-faced brackets.

For the reasons set forth in the preamble, the Board proposes to amend Regulation M, 12 CFR part 213, as set forth below:

PART 213—CONSUMER LEASING (REGULATION M)

1. The authority citation for part 213 would continue to read as follows:

Authority: 15 U.S.C. 1604, 1667f.

2. Section 213.6 is added to read as follows:

►§ 213.6 Requirements for electronic communication.

(a) *Definition. Electronic communication* means a message transmitted electronically between a consumer and a lessor in a format that allows visual text to be displayed on equipment such as a personal computer monitor.

(b) *Electronic communication between lessor and consumer.* (1) *General.* Except as provided in paragraph (b)(2) of this section, a lessor that has complied with paragraph (c) of this section may provide by electronic communication the disclosures required by § 213.4. Disclosures required under this section must be made clearly and conspicuously, in writing or by electronic communication, and in a form the consumer may keep.

(2) *In-person exception.* Prior to consummation of a lease in person, disclosures required under § 213.4 must be provided in paper form, unless the consumer requested the transaction by electronic communication and the lessor provided disclosures in compliance with paragraph (c) (1) and (2) of this section at or around that time.

(c) *Disclosure notice.* The disclosure notice required by this paragraph shall be provided in a manner substantially similar to the applicable model form in Appendix A of this part (Model Forms A–4 and A–5).

(1) *Notice by lessor.* A lessor shall:

(i) Describe the information to be provided electronically and specify whether the information is also available in paper form or whether the lease is offered only with electronic disclosures;

(ii) Identify the address or location where the information will be provided electronically; and if it is made available at a location other than the consumer's electronic address, how long the information will be available, and how it can be obtained once that period ends;

(iii) Specify any technical requirements for receiving and retaining information sent electronically, and provide a means for the consumer to confirm the availability of equipment meeting those requirements; and

(iv) Provide a toll-free telephone number and, at the lessor's option, an address for questions about receiving electronic disclosures and for seeking technical or other assistance related to electronic communication.

(2) *Response by consumer.* A lessor shall provide a means for the consumer to accept or reject electronic disclosures.

(d) *Address or location to receive electronic communication.* A lessor that uses electronic communication to provide the disclosures required by § 213.4 shall:

(1) Send the information to the consumer's electronic address; or

(2) Post the information for at least 90 days at a location such as a website, and send a notice to the consumer when the information becomes available. Thereafter the information shall be available upon request for a period of not less than two years from the date disclosures are required to be made. The notice required by paragraph (d)(2) of this section shall identify the lease property in accordance with § 213.4(a), shall be sent to an electronic address designated by the consumer (or to a postal address, at the lessor's option), and shall be substantially similar to the model form set forth in Appendix A of this part (Model Form A–6).◄

3. Section 213.7 is amended by revising paragraph (c) to read as follows:

§ 213.7 Advertising.

* * * * *

(c) *Catalogs, [and] multiple-page* ►, and electronic◄ *advertisements.* A catalog or other multiple-page advertisement►, or an advertisement using electronic communication◄ that provides a table or schedule of the required disclosures shall be considered a single advertisement if, for lease terms that appear without all the required disclosures, the advertisement refers to the page or [pages on which]►location where◄ the table or schedule appears.

* * * * *

4. Appendix A to Part 213 is amended by adding a new Appendix A–4, Appendix A–5, Appendix A–6, Appendix A–7, and Appendix A–8 to read as follows:

Appendix A to Part 213—Model Forms

* * * * *

►*Appendix A–4 Model Disclosures for Electronic Communication (§ 213.6(c))*

(Disclosures Available in Paper or Electronically)

You can choose to receive important information required by the Consumer Leasing Act in paper or electronically.

Read this notice carefully and keep a copy for your records.

• You can choose to receive the following information in paper form or electronically: (description of Regulation M disclosures).

• How would you like to receive this information: _____ I want paper disclosures. _____ I want electronic disclosures.

• [If you choose electronic disclosures, this information will be available at: (specify location) for _____ days. After that, the information will be available upon request (state how to obtain the information). When the information is posted, we will send you a message at the electronic mail address you designate here: (consumer's electronic mail address).]

[If you choose electronic disclosures this information will be sent to the electronic mail address that you designate here: (consumer's electronic mail address).]

• To receive this information you will need: (list hardware and software requirements). Do you have access to a computer that satisfies these requirements? _____Yes _____No

• Do you have access to a printer, or the ability to download information, in order to keep copies for your records? _____Yes _____No

• If you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, contact us at (telephone number).

A–5 Model Disclosures for Electronic Communication (§ 213.6(c))

(Disclosures Available Only Electronically)

You will receive important information required by the Consumer Leasing Act electronically.

Read this notice carefully and keep a copy for your records.

• The following information will be provided electronically: (description of Regulation M disclosures).

• This lease is not available unless you accept electronic disclosures.

• [If you choose electronic disclosures, this information will be available at: (specify location) for _____ days. After that, the information will be available upon request (state how to obtain the information). When the information is posted, we will send you a message at the electronic mail address you designate here: (consumer's electronic mail address).]

[If you choose electronic disclosures this information will be sent to the electronic mail address that you designate here: (consumer's electronic mail address).]

• To receive this information you will need: (list hardware and software requirements). Do you have access to a computer that satisfies these requirements? _____Yes _____No

• Do you have access to a printer, or the ability to download information, in order to keep copies for your records? _____Yes _____No

• Do you want this lease with electronic disclosures? _____Yes _____No

• If you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, contact us at (telephone number).

A–6 Model Notice for Delivery of Information Posted at Certain Locations (§ 213.6(d))

Information about your (identify lease) is now available at [website address or other location]. The information discusses (describe the disclosure). It will be available for _____days.

BILLING CODE 6210–01–P

A-7 Sample Form Electronic Communication (§ 213.6(c))
(Disclosures Available in Paper or Electronically)

You can choose to receive important information required by the Consumer Leasing Act in paper form or electronically.

Read this notice carefully and keep a copy for your records.

- You can choose to receive the following information in paper form or electronically: Cost and Terms of the lease.
- Please indicate how you would like to receive this information:

  ☐ I want paper disclosures ☐ I want electronic disclosures

- If you choose electronic disclosures, this information will be available at our Internet website: *http://www._____.com* for 90 days. After that, the information will be available upon request by contacting us at *1-800-xxx-xxxx*. When the information is posted on our website, we will send you a message at your e-mail address:

  insert address

- To receive this information electronically, you will need: a minimum web browser version of (Browser name). Do you have access to a computer that satisfies these requirements?

  ☐ Yes ☐ No

- Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

  ☐ Yes ☐ No

- If you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, you may contact us by telephone at *1-800-xxx-xxxx* or by electronic mail at _____*.help@isp.com*.

A-8 Sample Form Electronic Communication (§ 213.6(a)(3))
(Disclosures Available Only Electronically)

You will receive important information required by the Consumer Leasing Act electronically.

Read this notice carefully and keep a copy for your records.

- The following information will be provided electronically: Cost and Terms of the lease.
- This lease is available only if you accept these disclosures electronically.
- Information about your account will be available at our Internet website: *http://www._____.com* for 90 days. After that, the information will be available upon request by contacting us at *1-800-xxxx-xxxx*. When the information is posted on our website, we will send you a message at your e-mail address:

  insert address

- To receive this information electronically, you will need: a minimum web browser version of (Browser name). Do you have access to a computer that satisfies these requirements?

  ☐ Yes ☐ No

- Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

  ☐ Yes ☐ No

- Do you want this lease with electronic disclosures?

  ☐ Yes ☐ No

- If you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, you may contact us by telephone at *1-800-xxx-xxxx* or by electronic mail at _____*.help@isp.com*.

BILLING CODE 6210-01-C

5. In Supplement I to Part 213, a new *Section 213.6 Requirements for Electronic Communication* is added to read as follows:

Supplement I to Part 213—Official Staff Commentary to Regulation M

* * * * *

►**Section 213.6—Requirements for Electronic Communication**

6(a) Definition

1. *Coverage.* Information transmitted by facsimile may be received in paper form or electronically, although the party initiating the transmission may not know at the time the disclosures are sent which form will be used. A lessor that provides disclosures by facsimile machine should comply with the requirements for electronic communication unless the lessor knows that the disclosures will be received in paper form.

6(b) Electronic Communication Between Lessor and Consumer

1. *Retainability.* Lessors must provide electronic disclosures in a retainable format (for example, they can be printed or downloaded). Consumers may communicate electronically with lessors through a variety of means and from various locations. Depending on the location (at home, at work, in a public place such as a library), a consumer may not have the ability at a given time to preserve CLA disclosures presented on-screen. To ensure that consumers have an adequate opportunity to retain the disclosures, the lessor also must send them to the consumer's designated electronic mail address or to another location, for example, on the lessor's website, where the information may be retrieved at a later date.

2. *Timing and delivery.* When a consumer becomes obligated for a lease transaction on the Internet, for example, in order to meet the timing and delivery requirements, lessors must ensure that disclosures applicable at that time appear on the screen and are in a retainable format. The delivery requirements would not be met if disclosures do not either appear on the screen or if the consumer is allowed to consummate the lease before receiving the disclosures. For example, a lessor can provide a link to electronic disclosures appearing on a separate page as long as consumers cannot bypass the link and they are required to access the disclosures before becoming obligated on the lease.

6(b)(2) In-Person Exception

1. *Disclosures in paper form.* If a consumer consummates a lease in person, the lessor must generally provide disclosures in paper form. For example, if a consumer goes to a lessor's place of business to consummate a lease, disclosures are required before consummation and they must be provided in paper form; directing the consumer to disclosures posted on the lessor's website would not be sufficient. If, however, a consumer applies for a lease on the Internet, a lessor may send disclosures electronically at or around that time even though the lessor's procedures require the consumer to visit the lessor at a later time to complete the transaction (for example, to sign a lease agreement).

6(c) Disclosure Notice

1. *Consumer's affirmative responses.* Even though a consumer accepts electronic disclosures in accordance with § 213.6(c)(2), a lessor may deliver disclosures by electronic communication only if the consumer provides an electronic address where one is required, and responds affirmatively to questions about technical requirements and the ability to print or download information (see sample forms A–7 and A–8 in appendix A to this part).

6(c)(1) Notice by Lessor

1. *Toll-free telephone number.* The number must be toll-free for nonlocal calls made from an area code other than the one used in the lessor's dialing area. Alternatively, a lessor may provide any telephone number that allows a consumer to call for information and reverse the telephone charges.

2. *Lessor's address.* Lessors have the option of providing either an electronic or postal address for consumers' use in addition to the toll-free telephone number.

6(d) Address or Location To Receive Electronic Communication.

Paragraph 6(d)(1)

1. *Electronic address.* A consumer's electronic address is an electronic mail address that may be used by the consumer for receiving communications transmitted by parties other than the lessor.

Paragraph 6(d)(2)

1. *Availability.* Information that is not sent to a consumer's electronic mail address must be available for at least 90 days from the date the information becomes available or from the date the notice required by § 213.6(d)(2) is sent to the consumer, whichever occurs later.◄

* * * * *

6. In Supplement I to Part 213, in § 213.7—Advertising, the following amendments are made:

a. Under *7(b)(1) Amount due at Lease Signing or Delivery*, a new paragraph 3. is added;

b. Under *7(b)(2) Advertisement of a Lease Rate*, paragraph 1. is revised; and

c. Under *7(c) Catalogs and Multi-Page Advertisements*, paragraph 12 is redesignated as paragraph 2 and revised. The addition and revisions read as follows:

* * * * *

§ 213.7 Advertising

* * * * *

7(b)(1) Amount due at Lease Signing or Delivery

* * * * *

►3. *Electronic advertisements.* A lessor that has an electronic advertisement does not comply with the prominence rule in § 213.7(b)(1) if both the triggering terms and the required disclosures cannot be viewed simultaneously.◄

7(b)(2) Advertisement of a Lease Rate

1. *Location of statement.* The notice required to accompany a percentage rate stated in an advertisement must be placed in close proximity to the rate without any other intervening language or symbols. For example, a lessor may not place an asterisk next to the rate and place the notice elsewhere in the advertisement. In addition, with the exception of the notice required by § 213.4(s), the rate cannot be more prominent than any § 213.4 disclosure stated in the advertisement. ►A lessor does not comply with the prominence rule in § 213.7(b)(2) if a rate contained in an electronic advertisement and the required disclosures cannot be viewed simultaneously.◄

7(c) Catalogs and Multi-Page Advertisements

* * * * *

2. *Cross-references.* A ►catalog, multiple-page, or electronic◄ [multi-page] advertisement is a single advertisement (requiring only one set of lease disclosures) if it contains a table, chart, or schedule with the disclosures required under § 213.7(d)(2)(i) through (v). If one of the triggering terms listed in § 213.7(d)(1) appears in a catalog ►,◄[or other] multiple-page ►, or electronic◄ advertisement, ► it must clearly direct the consumer to the page or location where the table, chart, or schedule begins. For example, in an electronic advertisement, a term triggering additional disclosures may be accompanied by a link that directly connects the consumer to the additional information (but see comments under § 213.7(b) about the prominence rule).◄ [the page on which the triggering term is used must clearly refer to the specific page where the table, chart, or schedule begins.]

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 31, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–23141 Filed 9–13–99; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1043]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is requesting comment on proposed revisions to Regulation Z, which implements the Truth in Lending Act. The Board previously published a proposed rule that permits creditors to use electronic communication (for example, communication via personal computer and modem) to provide disclosures required by the act and regulation, if the consumer agrees to such delivery. (A similar rule was also proposed under various other consumer financial services and fair lending regulations administered by the Board.) In response to comments received on the proposals, the Board is publishing for comment an alternative proposal on the electronic delivery of disclosures, together with proposed commentary that would provide further guidance on electronic communication issues. The Board is also publishing for comment proposed revisions to allow disclosures in other languages.

DATES: Comments must be received by October 29, 1999.

ADDRESSES: Comments, which should refer to Docket No. R–1043, may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room, both in the Board's Eccles Building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in room MP–500 between 9:00 a.m. and 5:00 p.m., pursuant to § 261.12, except as provided in § 261.14 of the Board's Rules Regarding the Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: For information pertaining to open-end credit, John C. Wood, Senior Attorney, or Jane E. Ahrens, Senior Counsel; for information pertaining to closed-end credit, Michael L. Hentrel or Kyung H. Cho-Miller, Staff Attorneys, Division of Consumer and Community Affairs, at (202) 452–3667 or (202) 452–2412. Users of Telecommunications Device for the Deaf (TDD) *only*, contact Diane Jenkins at (202) 452-3544.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.*, is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The Board's Regulation Z (12 CFR part 226) implements the act. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (the APR). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping. TILA requires additional disclosures for loans secured by consumers' homes and permits consumers to rescind certain transactions that involve their principal dwellings.

TILA and Regulation Z require a number of disclosures to be provided in writing, presuming that creditors provide paper documents. Under many laws that call for information to be in writing, information in electronic form is considered to be "written." Information produced, stored, or communicated by computer is also generally considered to be a writing, where visual text is involved.

In May 1996, the Board revised Regulation E (Electronic Fund Transfers) following a comprehensive review. During that process, the Board determined that electronic communications for delivery of information required by federal laws governing financial services could effectively reduce compliance costs without adversely affecting consumer protections. Consequently, the Board simultaneously issued a proposed rule to permit financial institutions to use electronic communication to deliver disclosures that Regulation E requires to be given in writing. (61 FR 19696, May 2, 1996.) The 1996 proposal required that disclosures be provided in a form the consumer may retain, a requirement that institutions could satisfy by providing information in a format that may be printed or downloaded. The proposed rule also allowed consumers to request a paper copy of a disclosure for up to one year after its original delivery.

Following a review of the comments, on March 25, 1998, the Board issued an interim rule under Regulation E (the "interim rule"), 63 FR 14528. The Board also published proposals under Regulations DD (Truth in Savings), 63 FR 14533, M (Consumer Leasing), 63 FR 14538, Z (Truth in Lending), 63 FR 14548, and B (Equal Credit Opportunity), 63 FR 14552, (collectively, the "March 1998 proposed rules"). The rules would apply to financial institutions, creditors, lessors, and other entities that are required to give disclosures to consumers and others. (For ease of reference this background section uses the terms "financial institutions," "institutions," and "consumers.") The interim rule and the March 1998 proposed rules were similar to the May 1996 proposed rule; however, they did not require financial institutions to provide paper copies of disclosures to a consumer upon request if the consumer previously agreed to receive disclosures electronically. The Board believed that most institutions would accommodate consumer requests for paper copies when feasible or redeliver disclosures electronically; and the Board encouraged financial institutions to do so.

The March 1998 proposed rules and the interim rule permitted financial institutions to provide disclosures electronically if the consumer agreed, with few other requirements. The rule was intended to provide flexibility and did not specify any particular method for obtaining a consumer's agreement. Whether the parties had an agreement would be determined by state law. The proposals and the interim rule did not preclude a financial institution and a consumer from entering into an agreement electronically, nor did they prescribe a formal mechanism for doing so.

The Board received approximately 200 written comments on the interim rule and the March 1998 proposed rules. The majority of comments were submitted by financial institutions and their trade associations. Industry commenters generally supported the use of electronic communication to deliver information required by the TILA and Regulation Z. Nevertheless, many sought specific revisions and additional guidance on how to comply with the disclosure requirements in particular transactions and circumstances.

Industry commenters were especially concerned about the condition that a consumer had to "agree" to receive information by electronic communication, because the rule did not specify a method for establishing that an "agreement" was reached. These commenters believed that relying on state law created uncertainty about what constitutes an agreement and, therefore, potential liability for noncompliance. To avoid uncertainty over which state's laws apply, some commenters urged the Board to adopt a federal minimum standard for agreements or for informed consent to receive disclosures by electronic communication. These commenters believed that such a standard would avoid the compliance burden associated with tailoring legally binding "agreements" to the contract laws of all jurisdictions where electronic communications may be sent.

Consumer advocates generally opposed the March 1998 interim rule and proposed rules. Without additional safeguards, they believed, consumers may not be provided with adequate information about electronic communication before an "agreement" is reached. They also believed that promises of lower costs could induce consumers to agree to receive disclosures electronically without a full

understanding of the implications. To avoid such problems, they urged the Board, for example, either to require institutions to disclose to consumers that their account with the institution will not be adversely affected if they do not agree to receive electronic disclosures, or to permit institutions to offer electronic disclosures only to consumers who initiate contact with the institution through electronic communication. They also noted that some consumers will likely consent to electronic disclosures believing that they have the technical capability to retrieve information electronically, but might later discover that they are unable to do so. They questioned consumers' willingness and ability to access and retain disclosures posted on Internet websites, and expressed their apprehension that the goals of federally mandated disclosure laws will be lost.

Consumer advocates and others were particularly concerned about the use of electronic disclosures in connection with home-secured loans and certain other transactions that consumers typically consummate in person (citing as examples automobile loans and leases, short-term "payday" loans, or home improvement financing contracts resulting from door-to-door sales). They asserted that there is little benefit to eliminating paper disclosures in such transactions and that allowing electronic disclosures in those cases could lead to abusive practices. Accordingly, consumer advocates and others believed that paper disclosures should always accompany electronic disclosures in mortgage loans and certain other transactions, and that consumers should have the right to obtain paper copies of disclosures upon request for all types of transactions (deposit account, credit card, loan or lease, and other transactions).

A final issue raised by consumer advocates was the integrity of disclosures sent electronically. They stated that there may be instances when the consumer and the institution disagree on the terms or conditions of an agreement and consumers may need to offer electronic disclosures as proof of the agreed-upon terms and to enforce rights under consumer protection laws. Thus, to assure that electronic documents have not been altered and that they accurately reflect the disclosures originally sent, consumer advocates recommended that the Board require that electronic disclosures be authenticated by an independent third party.

The Board's Consumer Advisory Council considered the electronic delivery of disclosures in 1998 and again in 1999. Many Council members shared views similar to those expressed in written comment letters on the 1998 proposals. For example, some Council members expressed concern that the Board was moving too quickly in allowing electronic disclosures for certain transactions, and suggested that the Board might go forward with electronic disclosures for deposit accounts while proceeding more slowly on credit and lease transactions. Others expressed concern about consumer access and consumers' ability to retain electronic disclosures. They believed that, without specific guidance from the Board, institutions would provide electronic disclosures without knowing whether consumers could retain or access the disclosures, and without establishing procedures to address technical malfunctions or nondelivery. The Council also discussed the integrity and security of electronic documents.

II. Overview of Proposed Revisions

Based on a review of the comments and further analysis, the Board is requesting comment on a modified proposed rule that is more detailed than the interim rule and the March 1998 proposed rules. It is intended to provide specific guidance for creditors that choose to use electronic communication to comply with Regulation Z's requirements to provide written disclosures, and to ensure effective delivery of disclosures to consumers through this medium. Though detailed, the proposal provides flexibility for compliance with the electronic communication rules. The modified proposal recognizes that some disclosures may warrant different treatment under the rule. Some disclosures are generally available to the public—for example, credit card costs in solicitations. Under the modified proposal, such disclosures could be made available electronically without obtaining a consumer's consent. Where written disclosures are made to consumers who are transacting business in person, these disclosures generally would have to be made in paper form.

The Board is soliciting comment on a modified approach that addresses both industry and consumer group concerns. Under the proposal, creditors would have to provide specific information about how the consumer can receive and retain electronic disclosures—through a standardized disclosure statement—before obtaining consumers' acceptance of such delivery, with some exceptions. If they satisfy these requirements and obtain consumers' affirmative consent, creditors would be permitted to use electronic communications. As a general rule a creditor would be permitted to offer the option of receiving electronic disclosures to all consumers, whether they initially contact the creditor by electronic communication or otherwise. To address concerns about potential abuses, however, the proposal provides that if a consumer becomes obligated for an extension of credit in person, disclosures must be given in paper form.

Creditors would have the option of delivering disclosures to an e-mail address designated by the consumer or making disclosures available at another location such as the creditor's website, for printing or downloading. If the disclosures are posted at a website location, creditors generally must notify consumers at an e-mail address about the availability of the information. (Creditors may offer consumers the option of receiving alert notices at a postal address.) The disclosures must remain available at that site for 90 days.

Disclosures provided electronically would be subject to the "clear and conspicuous" standard, and the existing format, timing, and retainability rules in Regulation Z. For example, to satisfy the timing requirement, if disclosures are due at the time an electronic transaction is being conducted, the disclosures have to appear on the screen before the consumer could complete the transaction.

Creditors generally must provide a means for consumers to confirm the availability of equipment to receive and retain electronic disclosure documents. A creditor would not otherwise have a duty to verify consumers' actual ability to receive, print, or download the disclosures. Some commenters suggested that creditors should be required to verify delivery by return receipt. The Board solicits comment on the need for such a requirement and the feasibility of that approach.

As previously mentioned, consumer advocates and others have expressed concerns that electronic documents can be altered more easily than paper documents. The issue of the integrity and security of electronic documents affects electronic commerce in general and is not unique to the written disclosures required under the consumer protection laws administered by the Board. Consumers' ability to enforce rights under the consumer protection laws could be impaired in some cases, however, if the authenticity of disclosures that they retain cannot be demonstrated. Signatures, notary seals, and other established verification procedures are used to detect alterations for transactions memorialized in paper form. The development of similar devices for electronic communications should reduce uncertainty over time about the ability to use electronic documents for resolving disputes.

The Board's rules require creditors to retain evidence of compliance with Regulation Z. Specific comment is solicited on the feasibility of complying with a requirement that creditors provide disclosures in a format that cannot be altered without detection, or have systems in place capable of detecting whether or not information has been altered, as well as the feasibility of requiring use of independent certification authorities to verify disclosure documents.

Elsewhere in today's **Federal Register**, the Board is publishing similar proposals for comment under Regulations B, E, M, and DD. In a separate notice the Board is publishing an interim rule under Regulation DD, which implements the Truth in Savings Act, to permit depository institutions to use electronic communication to deliver disclosures on periodic statements. For ease of reference, the Board has assigned new docket numbers to the modified proposals published today.

III. Section-by-Section Analysis

Pursuant to its authority under section 105 of the TILA, the Board proposes to amend Regulation Z to permit creditors to use electronic communication to provide the information required by this regulation to be in writing. Below is a section-by-section analysis of the rules for providing disclosures by electronic communication, including references to proposed commentary provisions.

The March 1998 proposed rule addressed electronic communication in Subpart B (open-end credit plans), Subpart C (closed-end transactions), and Subpart E (certain mortgage transactions). To ease compliance, the Board proposes to add a new Subpart F and Appendix M to the regulation to address in a single location all rules affecting electronic communication for consumer credit transactions. The revised proposal also amends § 226.27 to allow creditors to provide disclosures in another language so long as English disclosures are provided upon request.

Subpart B—Open-end Credit

Section 226.5a Credit and Charge Card Applications and Solicitations

5a(b) Required Disclosures

5a(b)(1) Annual Percentage Rate

Regulation Z requires credit and charge card issuers to provide credit disclosures in certain applications and solicitations to open credit and charge card accounts. Format and content requirements differ for applications or solicitations sent in direct mail campaigns and for those made available to the general public such as in "take-ones" and catalogs or magazines. Disclosures accompanying direct mail applications and solicitations must be presented in a table. Disclosures in a take-one also may be presented in a table with the same content as for direct mail, but the act and regulation permit alternatives for format and content. Where terms are disclosed, card issuers are required to disclose the periodic rate that would apply, expressed as an APR. For fixed rates, card issuers are required to disclose the APR currently available under the plan. For variable rates, the APR disclosed in a direct mail solicitation must be accurate within 60 days before mailing; in a take-one, within 30 days before printing.

The supplementary information to the March 1998 proposed rule addressed compliance with § 226.5a in the context of electronic communication. The Board indicated that card issuers should follow (1) the direct-mail rules if a card issuer sends an application or solicitation by electronic communication that alerts the consumer that the application or solicitation has arrived, such as electronic mail, and (2) the take-one rules if an issuer makes an application or solicitation publicly available, such as by posting it on an Internet site. Thus, for applications and solicitations posted on the Internet, the 1998 proposal would require that APRs generally be accurate within 30 days before the card issuer's most recent update of the Internet site; where direct mail rules apply, the APR would be accurate within 60 days before the card issuer's electronic mailing.

Most commenters concurred with the Board's guidance on when the direct mail requirements would apply to electronic disclosures, although a few commenters suggested that the Board simplify the proposal by establishing one rule for all solicitations by electronic communication. Regarding the APR, several commenters asked the Board what would constitute the "most recent" update of an Internet site. For example, commenters questioned whether the term referred to an update of any aspect of a creditor's website, or was limited to an update of the application or solicitation. Many commenters (including state and federal regulators) urged the Board to provide guidance by recommending a frequency for updating Internet sites. Other commenters stated that updates to information provided on the Internet, including the APR, should be required frequently, and within a set period of time.

To simplify the rule and to address commenters' concerns, the Board is proposing a single standard that would apply to the accuracy of APRs contained in applications or solicitations offered via electronic communication. Proposed would § 226.5a(b)(1)(iii) provides that when a variable rate is in an application or solicitation transmitted via electronic communication, the rate should be one that was in effect within the previous 30-day period. The 30-day period should allow card issuers sufficient flexibility in updating websites or in preparing electronic direct mail applications or solicitations without adversely affecting the consumer. The Board continues to believe that as to the format and content of the disclosures, applications or solicitations sent to a consumer's designated e-mail address should comply with the direct mail rules under § 226.5a(c) and that applications and solicitations available on a website should comply with the take-one rules under § 226.5a(e). Proposed comment 5a(a)(2)–7(i) contains this guidance. The Board requests comment on any compliance difficulties this approach may pose, and possible suggestions for their resolution.

Section 226.5b Requirements for Home-Equity Plans

5b(b) Time of Disclosures

Consumers interested in an open-end plan secured by the consumer's dwelling are provided with a booklet and other disclosures generically describing the creditor's product when an application is provided. Creditors may delay the delivery of the booklet and disclosures for up to three business days when, among other circumstances, applications are received by telephone. 12 CFR 226.5b(b), n. 10a.

Creditors have requested guidance on using electronic communication to provide the disclosures required by § 226.5b(b) when the consumer is transacting business at a creditor's website. Some believe the timing rules for applications by telephone should apply. The rationale underlying the deferral is that creditors cannot provide the booklet and other disclosures in written form as required by the regulation by telephone. That problem does not exist with on-line transactions. Thus, the Board believes there is no need for a delay in delivering disclosures. If the creditor's procedures permit the consumer to apply for credit on-line (and the creditor has complied with § 226.34(c)), the booklet and loan-product disclosures required by § 226.5b

would have to appear on the screen *before* the consumer starts the application process. This fulfills the rule's purpose to ensure that consumers have the opportunity to read important information about costs and other terms before the consumer completes an application or pays a nonrefundable fee. Proposed comment 5b(b)–7 contains this guidance. See also the discussion under § 226.19(b), below, for similar guidance regarding disclosures provided at application for certain mortgage loans.

Section 226.16 Advertising

16(c) Catalogs and Multiple-page Advertisements

Stating certain credit terms in an advertisement for an open-end credit plan triggers the disclosure of additional terms. Section 226.16(c) permits creditors using a multiple-page advertisement to state the additional disclosures in a table or schedule as long as the triggering credit terms appearing anywhere else in the advertisement refer to the page where the table or schedule is printed. Several commenters asked the Board to clarify the rules for electronic advertisements. Specifically, they asked whether creditors could utilize the multiple-page advertisement provisions when advertising electronically and if so, asked for guidance on the requirement to reference clearly where the table or schedule begins.

Section 226.16(c) would be amended to cover electronic advertisements. Creditors that advertise using electronic communication would comply with § 226.16(c) if the table or schedule with the additional information is set forth clearly and conspicuously and the triggering credit terms appearing anywhere else in the advertisement clearly refer to the location where the table or schedule begins. Proposed comment 16(c)(1)–2 contains this guidance.

Subpart C—Closed-end Credit

Section 226.17 General Disclosure Requirements

17(g) Mail or Telephone Orders—Delay in Disclosures

Section 226.17(g) allows creditors to defer TILA disclosures when a consumer makes a credit-purchase or requests credit by mail, telephone, or other "electronic means" without face-to-face or direct solicitation by the creditor. In such cases, creditors may delay providing disclosures until the first payment due date, provided certain information is "made available in written form" before the consumer's request. The rationale underlying the deferral is that creditors cannot provide transaction-specific disclosures in written form as required by the regulation at the time of the consumer's purchase or request.

Under the March 1998 proposal, creditors offering loan products by "electronic communication" (for example, those offered on the Internet) could not delay providing disclosures under § 226.17(g). The rationale underlying the proposal is that the deferral rule in § 226.17(g) pre-dates Internet banking; "other electronic means" typically involved non-interactive, non-visual means such as telegraph transmissions. The difficulties in providing disclosures for credit requests by mail or telephone are not present for credit requests received by electronic means of communication using visual text. Thus, the March 1998 proposed rule provided that specific disclosures must be provided before transactions are consummated using electronic communication. Most commenters agreed with the Board's position, that the same limitations that apply to requests made by telephone should not apply to electronic means of communication using visual text, such as the Internet.

Several commenters disagreed with the proposed rule and believed that deferral of TILA disclosures should apply to credit requests initiated by electronic communication, even where visual text is used, because of the transaction-specific nature of the disclosures such as the APR and payment schedule. Some commenters believed that the Board's proposal would require creditors to be available at all times to prepare these personalized disclosures. The Board does not intend such a result. As is the case of credit applications by other means, creditors are not required to respond immediately to a request for credit. Also, advances in technology permit creditors to provide transaction-specific disclosures by combining information provided by a consumer with credit programs offered by a creditor.

Other commenters were concerned that some devices using electronic communication, such as automated loan machines or automated teller machines, may not have the same capacity to store and provide disclosures as other means. Machines with the capability to process credit applications or disburse loan proceeds are generally controlled by the creditor or operated by a third party retained by the creditor. Under the March 1998 proposal, creditors have the responsibility to ensure proper equipment is in place where consumers receive electronic disclosures via equipment controlled by the creditor. This means that the equipment it operates or controls—including devices such as automated loan machines or automated teller machines—must meet clear and conspicuous standards and must provide a means for consumers to retain disclosures such as printers incorporated into terminals or a screen message offering to transmit the disclosure to the consumer's electronic mail or post office address. (See proposed comment 34(b)–1.)

Section 226.19 Certain Residential Mortgage Transactions

19(b) Certain Variable-rate Transactions

For certain loans with variable-rate features (loans where the APR may increase during the loan term) that are secured by the consumer's principal dwelling, creditors must provide consumers with a booklet and other disclosures generically describing the creditor's product when an application is provided (or a nonrefundable fee is paid, whichever occurs earliest). Creditors may delay the delivery of the booklet and disclosures for up to three business days when, among other circumstances, applications are received by telephone. 12 CFR 226.19(b), n. 45b. Consistent with proposed comment 5b(b)–7 addressing certain home-secured open-end plans, comment 19(b)–2 would be restructured and revised to address when the booklet and disclosures required by § 226.19(b) must be provided when an application is received by electronic communication.

Section 226.24 Advertising

Regulation Z prescribes certain disclosure rules for closed-end loan advertisements, including the use of multiple-page advertisements. Proposed amendments concerning electronic advertisements for open-end credit plans under § 226.16 are discussed above. Although specific requirements differ somewhat for closed-end loans and open-end credit plans, proposed amendments for closed-end loan advertisements are substantially similar to those discussed above for open-end credit plans.

24(b) Advertisement of Rate of Finance Charge

Section 226.24(b) permits creditors to state a simple annual rate or periodic rate in addition to the APR, as long as the rate is stated in conjunction with, but not more conspicuously than, the APR. Proposed comment 24(b)–6 contains guidance on how this rule applies to rates stated in an electronic advertisement.

24(d) Catalogs and Multiple-page Advertisements

Section 226.24(d) permits creditors using a multiple-page advertisement to state the additional disclosures in a table or schedule so long as the triggering credit terms appearing anywhere else in the advertisement refer to the page where the table or schedule is printed. Section 226.24(d) would be amended to cover electronic advertisements. Creditors that advertise using electronic communication generally would comply with § 226.24(d) if the table or schedule with the additional information is set forth clearly and the triggering credit terms appearing anywhere else in the advertisement clearly refers to the location where the table or schedule begins. Proposed comment 24(d)–4 contains this guidance.

Subpart D—Miscellaneous

Section 226.27 Spanish Language Disclosures

Section 226.27 provides that all disclosures required by the regulation must be provided in English, except in the Commonwealth of Puerto Rico, where disclosures may be provided in Spanish if the disclosures are available in English upon the consumer's request. The proposal would revise this provision, consistent with the language requirements in Regulation DD (Truth in Savings) and Regulation M (Consumer Leasing). Creditors would be permitted to give disclosures in another language as long as disclosures in English are given to a consumer who requests them. The Board believes that a more permissive rule could promote the delivery of more meaningful disclosures to some consumers.

Subpart F—Electronic Communications

Section 226.34 Requirements for Electronic Communications

34(a) Definition

The definition of the term "electronic communication" in the March 1998 proposed rule remains unchanged. Section 226.34(a) limits the term to a message transmitted electronically that can be displayed on equipment as visual text, such as a message that is displayed on a computer monitor screen. Most commenters supported the term as defined in the March 1998 proposed rule. Some commenters favored a more expansive definition that would encompass communications such as audio and voice response telephone systems. Because the proposal is intended to permit electronic communication to satisfy the statutory requirement for written disclosures, the Board believes visual text is an essential element of the definition.

Commenters asked the Board to clarify the coverage of certain types of communications. A few commenters asked about communication by facsimile. Facsimiles are initially transmitted electronically; the information may be received either in paper form or electronically through software that allows a consumer to capture the facsimile, display it on a monitor, and store it on a computer diskette or drive. Thus, information sent by facsimile may be subject to the provisions governing electronic communication. When disclosures are sent by facsimile, a creditor should comply with the requirements for electronic communication unless it knows that the disclosures will be received in paper form. Proposed comment 34(a)–1 contains this guidance.

34(b) Electronic Communication between Creditor and Consumer

Section 226.34(b) would permit creditors to provide disclosures using electronic communication, if the creditor complies with provisions in new § 226.34(d), discussed below.

1. Presenting Disclosures in a Clear and Conspicuous Format

The Board does not intend to discourage or encourage specific types of technologies. Regardless of the technology, however, disclosures provided electronically must be presented in a clear and conspicuous format as is the case for all written disclosures under the act and regulation. See §§ 226.5(a)(1), 226.17(a)(1), and 226.31(b).

When consumers consent to receive disclosures electronically and they confirm that they have the equipment to do so, creditors generally would have no further duty to determine that consumers are able to receive the disclosures. Creditors do have the responsibility of ensuring the proper equipment is in place in instances where the creditor controls the equipment. Proposed comment 34(b)–1 contains this guidance.

2. Providing Disclosures in a Form the Consumer May Keep

As with other written disclosures, information provided by electronic communication must be in a form the consumer can retain. Under the 1998 proposals and interim rule, a creditor would satisfy this requirement by providing information that can be printed or downloaded. The modified proposal adopts the same approach but also provides that the information must be sent to a specified location to ensure that consumers have an adequate opportunity to retain the information.

Consumers communicate electronically with creditors through a variety of means and from various locations. Depending on the location (at home, at work, in a public place such as a library), a consumer may not have the ability at a given time to preserve TILA disclosures presented on-screen. Therefore, when a creditor provides disclosures by electronic communication, to satisfy the retention requirements, the creditor must send the disclosures to a consumer's e-mail address or other location where information may be retrieved at a later date. Proposed comment 34(b)–2 contains this guidance; see also the discussion under § 226.34(e), below. In instances where a creditor controls an electronic terminal used to provide electronic disclosures, a creditor may provide equipment for the consumer to print a paper copy in lieu of sending the information to the consumer's e-mail address or posting the information at another location such as the creditor's website. See proposed comment 34(b)–1.

3. Timing

Creditors must ensure that electronic disclosures comply with all relevant timing requirements of the regulation. TILA and Regulation Z require that disclosures be given at different times, depending on the credit product or the stage of the credit process at which consumers are receiving cost and other information. For example, generic disclosures, including educational brochures, about home-equity lines of credit and adjustable rate mortgage loans must be given at application. Disclosures, oftentimes containing estimated costs, for home-purchase loans must be given three days after application. Disclosures for loans covered by the Home Ownership and Equity Protection Act, 15 U.S.C. 1601 *et seq.*, must be given three days before consummation. Other loan disclosures have to be given anytime prior to becoming obligated for an extension of credit. These timing rules ensure that consumers have an opportunity to read important information about costs and other terms at different stages of the credit process—when shopping, at or shortly after applying for credit, or before becoming obligated under a plan or consummating a transaction.

To illustrate the timing requirements for electronic communication for an open-end plan, assume that a consumer is interested in opening a credit card account with an on-line retailer and uses a personal computer at home to access the retailer's website on the Internet. The creditor provides disclosures to the consumer about the use of electronic communication (the § 226.34(d) disclosures discussed below) and the consumer responds affirmatively. If the creditor's procedures permit the consumer to open the account and make a purchase immediately thereafter, initial disclosures required under § 226.6 would have to be provided. Thus, the disclosures must automatically appear on the screen or the consumer must be required to access the information before becoming obligated on the plan. The timing requirements for providing initial disclosures would not be met if, in this example, the retailer permitted the consumer simultaneously to open the credit card account and make a purchase and sent initial disclosures to an e-mail address thereafter. Proposed comment 34(b)–3 contains this guidance.

On the other hand, if the retailer delays processing the consumer's request to open a credit card account until the required disclosures have been delivered by e-mail, disclosures would not have to also appear on the screen; delivery to the consumer's e-mail address would be sufficient. In either case, the consumer must receive the disclosures before the first transaction.

Similar rules would apply for the timing requirements for electronic communication for a closed-end transaction. For an installment loan, if the creditor's procedures permit the consumer to consummate the loan on-line, disclosures required under § 226.18 must be provided before the consumer becomes obligated. For example, before consummation, the disclosures must automatically appear on the screen or the consumer must be required to access the disclosures on-line before continuing. The timing requirements would not be met if the creditor permitted the consumer to consummate the loan on-line and later sent disclosures to an e-mail address.

34(c) In-Person Exception

The proposal contains some exceptions to the general rule allowing information required by Regulation Z to be provided by electronic communication; where the exceptions apply, paper disclosures would be required. The exceptions, contained in § 226.34(c), seek to address concerns about potential abuses where consumers are transacting business in person but are offered disclosures in electronic form. In such transactions, there is a general expectation that consumers would be given paper copies of disclosures along with paper copies of other documents evidencing the transaction.

Under § 226.34(c), if a consumer becomes obligated for credit in person, the creditor must provide disclosures in paper form. (See § 226.6 for disclosures regarding open-end plans and § 226.18 for closed-end transactions.) The rule would ensure that consumers have the opportunity to consider the costs and terms of the transaction under the timing rules for providing disclosures established by TILA even if the disclosures were provided electronically at an earlier date. Proposed comment 34(c)–1 contains this guidance. The rule also addresses concerns by consumer advocates that providing disclosures by electronic communication is inappropriate when consumers conduct business in person and other aspects of the transaction are paper-based. The Board believes the burden associated with providing paper-based disclosures for in-person transactions is minimal, since other documents will be provided in paper form at that time.

In some instances, creditors may deliver disclosures by electronic communication even if the consumer becomes obligated in person. Under the proposal, if a consumer uses electronic communication to initiate a credit transaction not secured by a dwelling and requests electronic disclosures as provided in paragraph (d), the creditor could provide disclosures electronically. The creditor would have complied with the timing rules under TILA (before the first transaction for open-end plans, before consummation for closed-end transactions) and—assuming the disclosures remain accurate—would not be required to provide disclosures in paper form if the consumer later becomes obligated in person. Proposed comment 34(c)–2 contains this guidance. The Board believes this approach fosters TILA's purpose to promote the informed use of credit. Consumers receiving disclosures by electronic communication could benefit by having additional time to review the costs and terms of the transaction rather than receiving them shortly before becoming obligated for the credit, as is often the case for in-person transactions.

For credit secured by a dwelling, however, the proposal requires paper disclosures if the consumer becomes obligated in person. This is the case even though the creditor previously provided electronic disclosures that remain accurate at the time the consumer becomes obligated. The Board believes that most home-secured loans are consummated in person due to legal requirements such as the need to obtain authenticated signatures, and that most institutions would likely provide paper disclosures for in-person transactions in any event. Moreover, special protection is appropriate generally where a consumer's home is at risk for any extension of credit and specifically where predatory lending practices may occur and the consequences could be the loss of a consumer's home.

Rescission Notices

TILA and Regulation Z provide that in certain transactions secured by a consumer's principal dwelling, the consumer has three business days to rescind the transaction after becoming obligated on the debt (§§ 226.15 and 226.23). Consumers with an ownership interest in the dwelling used as security must receive: (1) Cost disclosures about the transaction, and (2) two copies of a notice that explains consumers' rescission rights and how to effect rescission, including a form the consumer may use to notify the creditor if the consumer decides to rescind the transaction.

In the March 1998 proposed rule, the Board did not explicitly address the electronic delivery of rescission notices. Some commenters asked the Board to clarify whether creditors could provide rescission notices by electronic means, and if so, whether two copies must be sent. Other commenters questioned whether electronic rescission notices should be permitted in any case. One commenter noted that because the potential significant impact of the rescission remedy, creditors would likely continue to deliver paper copies of the rescission notice even if the notices could be delivered electronically.

Under the proposal, creditors must provide notices required under §§ 226.15 and 226.23 in paper form if the consumer either becomes obligated under the plan or consummates the transaction in person. This approach is consistent with other proposed requirements to provide paper-based disclosures for dwelling-secured transactions, and recognizes the significance to both creditors and consumers of ensuring delivery of the notice explaining rescission rights and the accompanying form for the consumer's use. See § 226.34(f)(3) for proposed rules permitting consumers to rescind by electronic communication if

the creditor designates an electronic address for that purpose.

34(d) Disclosure Notice

Section 226.34(d) would identify the specific steps required before a creditor could use electronic communication to satisfy the regulation's disclosure requirements. Proposed Model Forms M–1 and M–2 and Sample Forms M–4 and M–5 are published to aid compliance with these requirements.

34(d)(2)(i) Notice by Creditor

Section 226.34(d)(2)(i) outlines the information that creditors must provide before electronic disclosures can be given. The creditor must: (1) Describe the information to be provided electronically and specify whether the information is also available in paper form or whether the transaction or account is offered only with electronic disclosures; (2) identify the address or location where the information will be provided electronically, and if it will be available at a location other than the consumer's electronic address, specify for how long and where it can be obtained once that period ends; (3) specify any technical requirements for receiving and retaining information sent electronically, and provide a means for the consumer to confirm the availability of equipment meeting those requirements; and (4) provide a toll-free telephone number and, at the creditor's option, an electronic or a postal address for questions about receiving electronic disclosures, or for updating consumers' electronic addresses, and for seeking assistance with technical or other difficulties (see proposed comments to 34(d)(2)(i)). The Board requests comment on whether other information should be disclosed regarding the use of electronic communication and on any format changes that might improve the usefulness of the notice for consumers.

The Board also solicits comment on the benefits of requiring an annual notice in paper form to consumers who receive disclosures by electronic communication. The notice would contain general information about receiving electronic disclosures including, for example, a reminder of the toll-free telephone number where consumers may contact the creditor if they have questions regarding their electronic disclosures. Comment is also requested on whether such a notice may be for feasible for certain types of credit (such as open-end) than others.

Under the proposal, the § 226.34(d)(2)(i) disclosures must be provided, as applicable, before the creditor uses electronic communication to deliver any information required by the regulation. The approach of requiring a standardized disclosure statement addresses, in several ways, the concern that consumers may be steered into using electronic communication without fully understanding the implications. Under this approach, the specific disclosures that would be delivered electronically must be identified, and consumers must be informed whether there is also an option to receive the information in paper form. Consumers must provide an e-mail address where one is required. Technical requirements must also be stated, and consumers must affirm that their equipment meets the requirements, and that they have the capability of retaining electronic disclosures by downloading or printing them (see proposed comment 34(d)–1). Thus, the § 226.34(d)(2)(i) disclosures should allow consumers to make informed judgments about receiving electronic disclosures.

Some commenters requested clarification of whether a creditor may use electronic communication to provide some required disclosures while using paper for others. The proposed rule would permit creditors to do so; the disclosure given under § 226.34(d)(2)(i) must specify which TILA disclosures will be provided electronically.

Commenters requested further guidance on a creditor's obligation under the regulation if the consumer chooses not to receive information by electronic communication. A creditor could offer a consumer the option of receiving disclosures in paper form, but it would not be required to do so. A creditor could establish accounts or loans for which disclosures are given only by electronic communication. Section 226.34(d)(2)(i)(A) would require creditors to tell consumers whether or not they have the option to receive disclosures in paper form. Section 226.34(d)(2)(i)(D) would require creditors to provide a toll-free number that consumers could use to inform creditors if they wish to discontinue receiving electronic disclosures. In such cases the creditor must inform the consumer whether credit transaction is also available with disclosures in paper form. Proposed sample disclosure statements in which the consumer has an option to receive electronic or paper disclosures (Form M–4) or electronic disclosures only (Form M–5) are contained in appendix M.

34(d)(2)(ii) Response by Consumer

Proposed § 226.34(d)(2)(ii) would require creditors to provide a means for the consumer to affirmatively indicate that disclosures may be provided electronically. Examples include a "check box" on a computer screen or a signature line (for requests made in paper form). The requirement is intended to ensure that consumers' consent is established knowingly and voluntarily, and that consent to receive electronic disclosures is not inferred from consumers' use of the account or acceptance of general account terms. See proposed comment 34(d)(2)(ii)–1.

34(d)(3) Changes

Creditors would be required to notify consumers about changes to the information that is provided in the notice required by § 226.34(d)(2)(i)—for example, if upgrades to computer software are required. Proposed comment 34(d)(3)–1 contains this guidance.

The notice must include the effective date of the change and be provided before that date. Proposed comment 34(d)(3)–2 would provide that the notice must be sent a reasonable period of time before the effective date of the change. Although the number of days that constitutes reasonable notice may vary, depending on the type of change involved, the comment would provide creditors with a safe harbor: fifteen days' advance notice would be considered a reasonable time in all cases. The same time period is stated in similar proposals under Regulations B, E, and DD published in today's **Federal Register**. Comment is requested on whether a safe harbor of 15 days is an appropriate time period, and whether a uniform period for changes involving electronic communication is desirable. An alternative approach would adopt notice requirements that are consistent with change-in-terms requirements under the respective regulations. Under this approach, for example, the safe harbor would be 15 days under § 226.9 for Regulation Z, 21 days under § 205.8 for Regulation E, and 30 days under § 230.5 for Regulation DD. Proposed comment 34(b)(3)–3 contains guidance on delivery requirements for the notice of change.

The notice of a change must also include a toll-free telephone number or, at the creditor's option, an address for questions about receiving electronic disclosures. For example, a consumer may call regarding problems related to a change, such as an upgrade to computer software that is not provided by the creditor. Consumers may also use the toll-free number if they wish to discontinue receiving electronic disclosures. In such cases, the creditor must inform consumers whether the credit transaction is also available with

disclosures in paper form. (See proposed comments 34(d)(3)–4 through –6.)

If the change involves providing additional disclosures by electronic communication, creditors generally would be required to provide the notice in § 226.34(d)(2)(i) and obtain the consumer's consent. That notice would not be required if the creditor previously obtained the consumer's consent to the additional disclosures in its initial notice by disclosing the possibility and specifying which disclosures might be provided electronically in the future. Comment is specifically requested on this approach. A list of additional disclosures may be necessary to ensure that consumers' consent is informed and knowing (provided it does not cause confusion).

34(d)(4) Exceptions

Section 226.5a requires creditors to provide certain disclosures on or with a solicitation or an application to open a credit card account. When solicitations or applications appear electronically, the disclosures required by § 226.5a should appear on the screen before the solicitation or application appears. Proposed comment 5a(a)(2)–7(ii) contains this guidance. Since a solicitation or an application is more analogous to an advertisement than to a transaction-specific disclosure, however, the notices to be provided by the creditor regarding the use of electronic communication under § 226.34(d)(2)(i) would not be required. Proposed § 226.34(d)(4) exempts a solicitation or an application to open a credit or charge card account from § 226.34(d)(1)–(d)(3).

34(e) Address or Location to Receive Electronic Communication

Proposed § 226.34(e) identifies addresses and locations where creditors using electronic communication may send information to the consumer. Creditors may send information to a consumer's electronic address, which is defined in proposed comment 34(e)(1)–1 as an e-mail address that the consumer also may use for receiving communications from parties other than the creditor. For periodic statements, for example, a creditor's responsibility to provide disclosures by electronic communication will be satisfied when the information is sent to the consumer's electronic address in accordance with the applicable proposed rules concerning the delivery of disclosures by electronic communication.

Guidance accompanying the March 1998 proposed rule provided that a creditor would not meet delivery requirements by simply posting information to an Internet site such as a creditor's "home page" without appropriate notice on how consumers can access the information. Industry commenters wanted to retain the flexibility of posting disclosures on an Internet website. They did not object to providing a separate notice alerting consumers about the disclosures' availability but requested more guidance on the issue. Consumer advocates and others expressed concern that the mere posting of information inappropriately places the responsibility to obtain disclosures on consumers, and undermines the purpose of the delivery requirements of the regulation.

The Board recognizes that currently, because of security and privacy concerns associated with data transmissions, a number of creditors may choose to provide disclosures at their websites, where the consumer may retrieve them under secure conditions. Under § 226.34(e), a creditor may make disclosures available to a consumer at a location other than the consumer's electronic address. The institution must notify the consumer when the information becomes available and identify the account involved. The notice must be sent to the electronic mail address designated by the consumer; the creditor may, at its option, permit the consumer to designate a postal address. A proposed model form (Model Form M–3) is published below; see also proposed comment 34(e)(2)–1.

The Board believes it would be inconsistent with the TILA to require a consumer to initiate a search—for example, to search the website of each card issuer with whom a consumer has a credit card account—to determine whether a disclosure has been provided. The proposed approach ensures that a consumer would not be required to check a creditor's website repeatedly, for example, to learn whether the creditor posted a change in a term that affects the consumer's credit card account.

The requirements of the regulation would be met only if the required disclosure is posted on the website and the consumer is notified of its availability in a timely fashion. For example, creditors offering open-end plans must provide a change-in-terms notice to consumers at least 15 days in advance of the change. (12 CFR 226.9(c).) For a change-in-terms notice posted on the Internet, a creditor must both post the notice and notify consumers of its availability at least 15 days in advance of the change.

Commenters sought guidance on how long disclosures posted at a particular location must be available to consumers. There is a variety of circumstances when a consumer may not be able immediately to access the information due to illness, travel, or computer malfunction, for example. Under § 226.34(e)(2), creditors must post information that is sent to a location other than the consumer's electronic mail address for 90 days. Proposed comment 34(e)(2)–3 contains this guidance.

Under the modified proposal, creditors that post information at a location other than the consumer's electronic mail address are required—after the 90-day period—to make disclosures available to consumers upon request for a period of not less than two years from the date disclosures are required to be made, consistent with the record retention requirements under § 226.25. The Board requests comments on this approach, including suggestions for alternative means for providing consumers continuing access to disclosures.

As discussed above in connection with proposed § 226.34(b), the provisions of proposed § 226.34(e) are based in part upon the Regulation Z requirement that a creditor provide disclosures in a form that the consumer can retain. Certain disclosures, however, are not subject to the retainability requirement. In particular, footnote 8 to § 226.5(a) excepts the disclosures under §§ 226.5a, 226.5b(d), 226.9(a)(2), 226.9(e), and 226.10(b) from this requirement. Proposed comment § 226.34(e)(2)–4 clarifies that the existing exception applies to electronic disclosures and that the requirements of § 226.34(e) would not apply to disclosures referenced in footnote 8, except § 226.5b(d).

The Board believes that the disclosures required to be given along with an application for a home equity line of credit under § 226.5b(d) should not be excepted from the requirements of proposed § 226.34(e). Although the § 226.5b(d) disclosures are not required, under footnote 8, to be provided in retainable form in the context of paper, as a practical matter consumers usually have the opportunity to keep a copy of these disclosures by some means; indeed, the first disclosure listed in § 226.5b(d) is "a statement that the consumer should make or otherwise retain a copy of the disclosures." In addition, the § 226.5b(d) disclosures contain important information that may not be duplicated by disclosures provided later to the consumer (such as the § 226.6 disclosures); in contrast, the disclosures under § 226.5a are mostly repeated in the § 226.6 disclosures.

34(f) Consumer Use of Electronic Communication

Proposed § 226.34(f) would clarify consumers' ability to provide certain information to creditors by electronic communication. For open-end accounts, Regulation Z provides that a consumer must submit a written request for the refund of credit balances, that a cardholder may inform a card issuer about the loss or theft of a credit card by notifying the card issuer orally or in writing, and that a consumer with a billing error must provide a written notice to the creditor to initiate the billing-error resolution process. Under the revised proposal, consumers generally would have the option to use electronic communication for these written notices if the consumer has chosen to receive information by electronic communication. Because the consumer's electronic communication serves as written notice, the creditor could not also require a paper notice. A creditor could, however, specify a particular electronic address for receiving the notices.

The issue of consumers' ability to provide certain information to creditors by electronic communication was not raised in the March 1998 proposed rule. The Board, however, stated in the Regulation E interim rule that financial institutions could require paper confirmation of electronic notices where the regulation allows written confirmation. This approach was consistent with the Regulation E 1996 proposed rule, where the Board stated that (as in the case of an oral communication) if the consumer sends an electronic communication to the financial institution, the institution could require paper confirmation from the consumer (particularly since the consumer was entitled to a paper copy of a disclosure upon request under the Regulation E 1996 proposed rule).

Views were mixed on whether institutions should be permitted to require paper confirmations of electronic notices. Many industry commenters requested that the Board allow institutions to request paper confirmations; some stated that paper confirmations protect both the consumer and the institution. Consumer advocates and other commenters believed it would be unfair to require paper confirmation of an electronic communication from consumers who receive electronic communication from an institution.

Based upon the comments received and further analysis, and subject to certain limitations discussed below, the Board is proposing that consumers be permitted to use electronic communications to comply with the regulation.

34(f)(1) Open-end Credit

For open-end transactions, proposed § 226.34(f)(1) permits the consumer to use electronic communications if a creditor uses electronic communication to provide periodic statements which establishes a continuing electronic relationship between the creditor and consumer. If, however, a creditor limits its use of electronic communication to the delivery initial disclosures (that is, if all subsequent disclosures regarding the credit transaction are provided in paper), creditors would not be required to accept an electronic notice, such as a request for refund of credit balances or notice of lost or stolen credit card or of a billing error, from consumers.

34(f)(2) Closed-end Credit

For closed-end transactions, a consumer is required to submit a written request in one instance—to request the refund of credit balances. In contrast to open-end transactions, the disclosure requirements imposed on the creditor for closed-end transactions generally end at consummation with the exception of variable-rate transactions. Therefore, proposed § 226.34(f)(2) permits a consumer to use electronic communication to request the refund of credit balances only if the creditor has designated an electronic address for that purpose.

34(f)(3) Rescission

Similar to allowing a consumer to use electronic communication to request the refund of credit balances in a closed-end transaction, proposed § 226.34(f)(3) allows a consumer to rescind by using electronic communication if the creditor has designated an electronic address for that purpose. (See, also, the discussion in § 226.34(c) regarding the use of electronic communication to provide rescission notices.)

34(f)(4) Creditor's Designation of Address

Section 226.34(f)(4) would provide that a creditor may designate the electronic address that must be used by a consumer for sending electronic communication as permitted by § 226.34(f)(1) through (3).

34(g) Signatures and Similar Authentication

There are three signature requirements under Regulation Z. Under § 226.4(d) consumers may elect to accept credit insurance or debt cancellation coverage by signing or initialing an affirmative written request after receiving disclosures about the insurance. Under §§ 226.15 and 226.23 (and the corresponding model forms and official staff commentary) consumers may cancel certain home-secured loans or waive this right by providing a written signed notice to the creditor. Under § 226.31(c) (and the official staff commentary) telephone disclosures may be provided if the consumer initiates a change and at consummation new disclosures are provided and the consumer and creditor sign a statement indicating that the telephone disclosures were provided three days before consummation.

Proposed § 226.34(g) would allow consumers and creditors to similarly authenticate signatures where required by the regulation. A similar amendment was made to Regulation E in the 1996 review of the regulation.

The Board indicated in the May 1996 Regulation E proposal that any authentication method should provide the same assurance as a signature in a paper-based system. Since the publication of the amended Regulation E and its accompanying commentary, the Board has been asked to give further guidance on this issue. In the supplementary information to the March 1998 proposed rule, the Board expressed interest in learning about other ways in which authentication in an electronic environment might occur in lieu of a consumer's signature.

Some commenters provided alternatives for verifying a consumer's identity, including alphanumeric codes (combinations of letters and numbers) or combinations of unique identifiers (such as account numbers combined with a number representing algorithms of the account numbers). In the supplementary information to the March 1998 proposed rule, the Board cited security codes and digital signatures as examples of authentication devices that might meet the requirements of authentication and signatures. Many commenters stated their concern that the Board approved only these or similar methods. These commenters urged the Board to take a flexible approach to this requirement. They suggested that the Board's implied or explicit endorsement of any particular method could hinder the development of new technologies. Further, these commenters requested that the Board take a "wait and see" approach to this issue, to allow the industry to develop alternatives that will result in more security for consumers.

To avoid unduly influencing the development of electronic authentication methods and to encourage innovation and flexibility, the Board will limit its guidance to the general principle that a home-banking or other electronic communication system must use an authentication device that provides the same assurance as a signature in a paper-based system.

Appendix M to Part 226—Electronic Communication Model Forms and Clauses

The Board solicits comment on three proposed model forms and two sample forms for use by creditors to aid compliance with the disclosure requirements of §§ 226.34(d) and (e). Appendix M–1 and Appendix M–2 would implement § 226.34(d), regarding the notices that creditors must give prior to using electronic communication to provide required disclosures. Appendix M–3 would implement § 226.34(e), regarding notices to consumers about the availability of electronic disclosures at locations such as the creditor's website. Use of any modified version of these forms would be in compliance as long as the creditor does not delete information required by the regulation or rearrange the format in a way that affects the substance, clarity, or meaningful sequence of the disclosure.

Sample Form M–4 illustrates the disclosures under § 226.34(d) for a credit account. The sample assumes that the creditor also offers paper disclosures for consumers who choose not to receive electronic disclosures. Sample Form M–5 assumes that consumers must accept electronic disclosures if they want to open the account or consummate the transaction.

Additional Issue Raised by Electronic Communication

Preemption

A few commenters suggested that any final rule issued by the Board permitting electronic disclosures should explicitly preempt any state law requiring paper disclosures. Under § 226.28 of the regulation, state laws are preempted if they are inconsistent with the act and regulation and only to the extent of the inconsistency. The proposed rule would provide creditors with the option of giving required disclosures by electronic communication as an alternative to paper. There is no apparent inconsistency with the act and regulation if state laws require paper disclosures. The Board will, however, review preemption issues that are brought to the Board's attention. Appendix A outlines the Board's procedures for determining whether a specific law is preempted, which will guide the Board in any determination requested by a state, creditor, or other interested party following publication of a final rule regarding electronic communication.

IV. Form of Comment Letters

Comment letters should refer to Docket No. R–1043, and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch computer diskettes in any IBM-compatible DOS-or Windows-based format.

V. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the proposed amendments to Regulation Z. Although the proposal would add disclosure requirements with respect to electronic communication, overall, the proposed amendments are not expected to have any significant impact on small entities. A creditor's use of electronic communication to provide disclosures required by the regulation is optional. The proposed rule would give creditors flexibility in providing disclosures. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB number. The OMB control number is 7100–0199.

The collection of information requirements that are relevant to this proposed rulemaking are in 12 CFR Part 226 and in Appendices F, G, H, J, K, and L. This information is mandatory (15 U.S.C. 1604(a)) to evidence compliance with the requirements of Regulation Z and the Truth in Lending Act (TILA). The revised requirements would be used to ensure adequate disclosure of basic terms, costs, and rights relating to credit transactions, at or before the time consumers enter into a consumer credit transaction and when the availability of consumer credit on particular terms is advertised, for consumers receiving certain disclosures by electronic communication. The respondents/recordkeepers are for-profit creditors, including small businesses. Creditors are also required to retain records for 24 months. This regulation applies to all types of creditors, not just state member banks; however, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The proposed revisions would allow creditors the option of using electronic communication (for example, via personal computer and modem) to provide disclosures required by the regulation. Although the proposal would add disclosure requirements with respect to electronic communication, the optional use of electronic communication would likely reduce the paperwork burden of creditors. With respect to state member banks, it is estimated that there are 988 respondents/recordkeepers and an average frequency of 134,658,472 responses per respondent each year. Therefore the current amount of annual burden is estimated to be 1,873,223 hours. There is estimated to be no additional annual cost burden and no capital or start-up cost.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises; however, any information obtained by the Federal Reserve may be protected from disclosure under exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522 (b)(4), (6) and (8)). The disclosures and information about error allegations are confidential between creditors and the customer.

The Federal Reserve requests comments from creditors, especially state member banks, that will help to estimate the number and burden of the various disclosures that would be made in the first year this proposed regulation would be effective. Comments are invited on: (a) the cost of compliance; (b) ways to enhance the quality, utility, and clarity of the information to be disclosed; and (c) ways to minimize the burden of disclosure on respondents, including through the use of automated disclosure techniques or other forms of information technology. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503, with copies of such comments sent to Mary M. West, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

List of Subjects in 12 CFR Part 226

Advertising, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

Text of Proposed Revisions

Certain conventions have been used to highlight proposed changes to Regulation Z. New language is shown inside bold-faced arrows, deletions inside bold-faced brackets.

For the reasons set forth in the preamble, the Board proposes to amend Regulation Z, 12 CFR part 226, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 would continue to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

Subpart B—Open-End Credit

2. Section 226.5a is amended by revising paragraph (b)(1)(ii) and adding a new paragraph (b)(1)(iii) to read as follows:

§ 226.5a Credit and charge card applications and solicitations.

* * * * *

(b) *Required disclosures.* * * *

(1) *Annual percentage rate.* * * *

(ii) ►Unless paragraph (b)(1)(iii) of this section applies,◄ when variable rate disclosures are provided under paragraph (c) of this section, an annual percentage rate disclosure is accurate if the rate was in effect within 60 days before mailing the disclosures. When variable rate disclosures are provided under paragraph (e) of this section, an annual percentage rate disclosure is accurate if the rate was in effect within 30 days before printing the disclosures.

► (iii) When variable rate disclosures are provided by electronic communication, an annual percentage rate disclosure is accurate if the rate is one that was in effect within the previous 30-day period before the disclosures are sent or posted.◄

* * * * *

3. Section 226.16 is amended by revising paragraph (c) to read as follows:

§ 226.16 Advertising.

* * * * *

(c) *Catalogs, [and] multiple-page►,* and electronic◄ advertisements. (1) If a catalog or other multiple-page advertisement►, or an advertisement using electronic communication◄ gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (b) of this section, it shall be considered a single advertisement if:

(i) The table or schedule is clearly and conspicuously set forth; and

(ii) Any statement of terms set forth in § 226.6 appearing anywhere else in the catalog or advertisement clearly refers to [that page on which] ►the page or location where◄ the table or schedule begins.

(2) A catalog, [or] multiple-page►, or electronic◄ advertisement complies with this paragraph if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

* * * * *

Subpart C—Closed-End Credit

4. Section 226.17 is amended by revising the introductory text in paragraph (g) to read as follows:

§ 226.17 General disclosure requirements.

* * * * *

(g) *Mail or telephone orders—delay in disclosures.* If a creditor receives a purchase order or a request for an extension of credit by mail, telephone, or any other written [or electronic] communication►, excluding electronic communication as described in § 226.34(a),◄ without face-to-face or direct telephone solicitation, the creditor may delay the disclosures until the due date of the first payment, if the following information for representative amounts or ranges of credit is made available in written form to the consumer or to the public before the actual purchase order or request:

* * * * *

5. Section 226.24 is amended by revising paragraph (d) to read as follows:

§ 226.24 Advertising.

* * * * *

(d) *Catalogs, [and] multiple-page►,* and electronic◄ advertisements. (1) If a catalog or other multiple page advertisement►, or an advertisement using electronic communication◄ gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (c)(2) of this section, it shall be considered a single advertisement if:

(i) The table or schedule is clearly set forth; and

(ii) Any statement of terms of the credit terms in paragraph (c)(1) of this section appearing anywhere else in the catalog or advertisement clearly refers to [that page on which] ►the page or location where◄ the table or schedule begins.

(2) A catalog, [or] multiple-page►, or electronic◄ advertisement complies with paragraph (c)(2) of this section if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

Subpart D—Miscellaneous

6. Section 226.27 is revised to read as follows:

§ 226.27 [Spanish] Language ►of◄ disclosures.

All disclosures required by this regulation ►may be made in a language other than English, provided that the disclosures are made available in English upon the consumer's request.◄ [shall be made in the English language, except in the Commonwealth of Puerto Rico, where creditors may, at their option, make disclosures in the Spanish language. If Spanish disclosures are made, English disclosures shall be provided on the consumer's request, either in substitution for or in addition to the Spanish disclosures.] This requirement for providing English disclosures on request shall not apply to advertisements subject to §§ 226.16 and 226.24 of this regulation.

7. Part 226 is amended by adding a new Subpart F to read as follows:

►Subpart F—Electronic Communications

§ 226.34 Requirements for electronic communications.

(a) *Definition. Electronic communication* means a message transmitted electronically between a creditor and a consumer in a format that allows visual text to be displayed on equipment such as a personal computer monitor.

(b) *Electronic communication between creditor and consumer.* Except as provided in paragraph (c) of this section, a creditor that complied with paragraph (d) of this section may provide by electronic communication any information required by this

regulation to be in writing. The creditor shall make the disclosures required by this part clearly and conspicuously and in a form that the consumer may keep.

(c) *In-person exception.* (1) *General.* When a consumer becomes obligated on an open-end plan or consummates a closed-end transaction in person, the disclosures required under § 226.6 or § 226.18, respectively, shall be provided in paper form; the notice of right to cancel shall also be provided in paper form if, in connection with the plan or transaction, a consumer has a right to rescind under § 226.15 or § 226.23.

(2) *Credit not secured by a dwelling.* For credit not secured by a dwelling, paragraph (c)(1) of this section does not apply if the consumer previously requested the credit by electronic communication and disclosures were provided in compliance with paragraph (d)(2)(i) and (d)(2)(ii) of this section at or around that time.

(d) *Disclosures.* (1) *General.* Except as provided under paragraph (d)(4) of this section, the disclosure notice required by paragraph (d)(2) of this section shall be provided in a manner substantially similar to the applicable model form set forth in Appendix M of this part (Model Forms M–1 and M–2).

(2) *Notice by creditor.* (i) A creditor shall:

(A) Describe the information to be provided electronically and specify whether the information is also available in paper form or whether the credit is offered only with electronic disclosures;

(B) Identify the address or location where the information will be provided electronically; and if it is made available at a location other than the consumer's electronic address, how long the information will be available, and how it can be obtained once that period ends;

(C) Specify any technical requirements for receiving and retaining information sent electronically, and provide a means for the consumer to confirm the availability of equipment meeting those requirements; and

(D) Provide a toll-free telephone number and, at the creditor's option, an address for questions about receiving electronic disclosures, for updating consumers' electronic addresses, and for seeking technical or other assistance related to electronic communication.

(ii) *Response by consumer.* A creditor shall provide a means for the consumer to accept or reject electronic disclosures.

(3) *Changes.* (i) A creditor shall notify affected consumers of any change to the information provided in the notice required by paragraph (d)(2)(i) of this section. The notice shall include the effective date of the change and must be provided before that date. The notice shall also include a toll-free telephone number, and, at the creditor's option, an address for questions about receiving electronic disclosures.

(ii) In addition to the notice under (d)(3)(i) of this section, if the change involves providing additional disclosures by electronic communication, a creditor shall provide the notice in paragraph (d)(2)(i) of this section and obtain the consumer's consent. A notice is not required under paragraph (d)(2)(i) if the creditor's initial notice states that additional disclosures may be provided electronically in the future and specifies which disclosures could be provided.

(4) *Exception.* A solicitation or an application to open an account referenced in § 226.5a shall be exempt from paragraphs (d)(1) through (d)(3) of this section.

(e) *Address or location to receive electronic communication.* A creditor that uses electronic communication to provide information required by this regulation shall:

(1) Send the information to the consumer's electronic address; or

(2) Post the information for at least 90 days at a location such as a website, and send a notice to the consumer when the information becomes available. Thereafter the information shall be available upon request for a period of not less than two years from the date disclosures are required to be made. The notice required by this paragraph (e)(2) shall identify the account involved, shall be sent to an electronic address designated by the consumer (or to a postal address, at the creditor's option), and shall be substantially similar to the model form set forth in Appendix M of this part (Model Form M–3).

(f) *Consumer use of electronic communication.* (1) *Open-end credit plans.* If a creditor uses electronic communication to provide periodic statements, the consumer also may use electronic communication to:

(i) Request a refund under § 226.11(b);

(ii) Notify the creditor of the theft or loss of a credit card under § 226.12(b)(3);

(iii) Assert a claim or defense under § 226.12(c); and

(iv) Notify the creditor of a billing error under § 226.13(b).

(2) *Closed-end credit.* A consumer may request a refund of any credit balance under § 226.21(b) by electronic communication if the creditor has designated an electronic address for that purpose.

(3) *Rescission.* A consumer may exercise or waive a right to rescind under § 226.15 or § 226.23 by electronic communication only if the creditor has designated an electronic address for that purpose.

(4) *Creditor's designation of address.* A creditor may designate the electronic address or location that must be used by a consumer for sending electronic communication under this paragraph.

(g) *Signatures and similar authentication.* Where a writing is required to be signed or initialed, for purposes of an electronic communication, it may be similarly authenticated.◄

9. Part 226 is amended by adding a new appendix M to read as follows:

►Appendix M to Part 226—Electronic Communication Model Forms and Clauses

M–1 Model Disclosures for Electronic Communication (§ 226.34(d)) (Disclosures Available in Paper or Electronically)
M–2 Model Disclosures for Electronic Communication (§ 226.34(d)) (Disclosures Available Only Electronically)
M–3 Model Notice for Delivery of Information Posted at Certain Locations (§ 226.34(e))
M–4 Sample Form for Electronic Communication (§ 226.34(d)) (Disclosures Available in Paper or Electronically)
M–5 Sample Form for Electronic Communication (§ 226.34(d)) (Disclosures Available Only Electronically)

M–1 MODEL DISCLOSURES FOR ELECTRONIC COMMUNICATION (§ 226.34(d)) (Disclosures Available in Paper or Electronically)

You can choose to receive important information required by the Truth in Lending Act in paper or electronically.

Read this notice carefully and keep a copy for your records.

• You can choose to receive the following information in paper form or electronically: (description of specific disclosures to be provided electronically).

• How would you like to receive this information

☐ I want paper disclosures.

☐ I want electronic disclosures.

• [We may provide the following additional disclosures electronically in the future: (description of specific disclosures).]

• [If you choose electronic disclosures, this information will be available at: (specify location) for ____ days. After that, the information will be available upon request (state how to obtain the information). When the information is posted, we will send you a message at the electronic mail address you designate here: (consumer's electronic mail address).]

[If you choose electronic disclosures this information will be sent to the electronic mail address that you designate here: (consumer's electronic mail address).]

• To receive this information you will need: (list hardware and software requirements).

Do you have access to a computer that satisfies these requirements?

☐ Yes ☐ No

• Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

☐ Yes ☐ No

• To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, contact us at (telephone number).

M–2 MODEL DISCLOSURES FOR ELECTRONIC COMMUNICATION (§ 226.34(d)) (Disclosures Available Only Electronically)

You will receive important information required by the Truth in Lending Act electronically.

Read this notice carefully and keep a copy for your records.

• The following information will be provided electronically: (description of specific disclosures to be provided electronically).

• This credit transaction is not available unless you accept electronic disclosures.

• [We may provide the following additional disclosures electronically in the future (description of specific disclosures).]

• [If you choose electronic disclosures, this information will be available at: (specify location) for ____ days. After that, the information will be available upon request (state how to obtain the information). When the information is posted, we will send you a message at the electronic mail address you designate here: (consumer's electronic mail address).]

[If you choose electronic disclosures this information will be sent to the electronic mail address that you designate here: (consumer's electronic mail address).]

• To receive this information you will need: (list hardware and software requirements).

Do you have access to a computer that satisfies these requirements?

☐ Yes ☐ No

• Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

☐ Yes ☐ No

Do you want this credit transaction with electronic disclosures?

☐ Yes ☐ No

• To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, contact us at (telephone number).

M–3 MODEL NOTICE FOR DELIVERY OF INFORMATION POSTED AT CERTAIN LOCATIONS (§ 226.34(e))

Information about your (identify account) is now available at [website address or other location]. The information discusses (describe the disclosure). It will be available for ____ days.

BILLING CODE 6210–01–P

M-4 SAMPLE FORM ELECTRONIC COMMUNICATION (§ 226.34(d))
(Disclosures Available in Paper or Electronically)

You can choose to receive important information required by the Truth in Lending Act in paper form or electronically.

Read this notice carefully and keep a copy for your records.

- You can choose to receive the following information in paper form or electronically: Terms and Conditions of our Credit Card Account, monthly statements, and change-in-terms notices.
- Please indicate how you would like to receive this information:

  ☐ I want paper disclosures ☐ I want electronic disclosures
- If you choose electronic disclosures, this information will be available at our Internet website: *http://www._____.com* for 90 days. After that, the information will be available upon request by contacting us at *1-800-xxx-xxxx*. When the information is posted on our website, we will send you a message at your e-mail address:

  insert address
- To receive this information electronically, you will need: a minimum web browser version of (Browser name). Do you have access to a computer that satisfies these requirements?

  ☐ Yes ☐ No
- Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

  ☐ Yes ☐ No
- To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, you may contact us by telephone at *1-800-xxx-xxxx* or by electronic mail at _____*.help@isp.com*.

M-5 SAMPLE FORM ELECTRONIC COMMUNICATION (§ 226.34(d))
(Disclosures Available Only Electronically)

You will receive important information required by the Truth in Lending Act electronically.

Read this notice carefully and keep a copy for your records.

- The following information will be provided electronically: Terms and Conditions of our Credit Card Account, monthly statements, and change-in-terms notices.
- This electronic fund transfer service is available only if you accept these disclosures electronically.
- Information about your account will be available at our Internet website: *http://www._____.com* for 90 days. After that, the information will be available upon request by contacting us at *1-800-xxxx-xxxx*. When the information is posted on our website, we will send you a message at your e-mail address:

  insert address
- To receive this information electronically, you will need: a minimum web browser version of (Browser name). Do you have access to a computer that satisfies these requirements?

  ☐ Yes ☐ No
- Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

  ☐ Yes ☐ No
- Do you want this electronic fund transfer service with electronic disclosures?

  ☐ Yes ☐ No
- To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, you may contact us by telephone at *1-800-xxx-xxxx* or by electronic mail at _____*.help@isp.com*.◄

BILLING CODE 6210-01-C

10. In Supplement I to Part 226, *Section 226.5a—Credit and Charge Card Applications and Solicitations*, under *5a(a)(2) Form of Disclosures*, a new paragraph 7. is added to read as follows:

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart B—Open-End Credit

* * * * *

Section 226.5a—Credit and Charge Card Applications and Solicitations

* * * * *

5a(a) General rules.

* * * * *

5a(a)(2) Form of Disclosures.

* * * * *

►7. *Electronic applications or solicitations.* i. *Format and content of disclosures.* The format and the content of disclosures (other than the accuracy of variable rates) for applications or solicitations made available by electronic communication must comply with:

A. Section 226.5a(c), if the application or solicitation is sent to a consumer's electronic mail address.

B. Section 226.5a(e), if the application or solicitation is made available at another location such as an Internet website.

ii. *Timing.* The disclosures required by § 226.5a must appear on the screen before the solicitation or application appears electronically.◄

* * * * *

11. In Supplement I to Part 226, *Section 226.5b—Requirements for Home Equity Plans*, under *5b(b) Time of Disclosures*, a new paragraph 7. is added to read as follows:

* * * * *

5b(b) Time of Disclosures

* * * * *

►7. *Applications available by electronic communication.* If an application is available by electronic communication such as on a creditor's website, the disclosures and a brochure must appear before an application is provided.◄

* * * * *

12. In Supplement I to Part 226, *Section 226.16—Advertising*, the following amendments are made:

a. The heading *16(c) Catalogs and multiple-page advertisements.* is revised; and

b. Under *Paragraph 16(c)(1).*, paragraph 1. is revised and a new paragraph 2. is added.

The addition and revisions read as follows:

* * * * *

Section 226.16—Advertising

* * * * *

16(c) Catalogs, ►and◄ multiple-page ►, and electronic◄ advertisements

* * * * *

Paragraph 16(c)(1).

1. *General.* Section 226.16(c)(1) permits creditors to put credit information together in one place in a catalog, ►[or]◄ multiple page►, or electronic◄ advertisement. The rule applies only if the catalog, ►[or]◄ multiple page►, or electronic◄ advertisement contains one or more of the triggering terms from § 226.16(b).

►2. *Electronic communication.* If an advertisement using electronic communication uses the table or schedule permitted under § 226.16(c)(1), any statement of terms set forth in § 226.6 appearing anywhere else in the advertisement must clearly direct the consumer to the page or location where the table or schedule begins. For example, a term triggering additional disclosures may be accompanied by a link that directly connects the consumer to the additional information.◄

* * * * *

13. In Supplement I to Part 226, *Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions*, under *19(b) Certain variable-rate transactions.*, paragraph 2. is revised to read as follows:

* * * * *

Subpart C—Closed-End Credit

* * * * *

Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions

* * * * *

19(b) Certain variable-rate transactions.

* * * * *

►2. *Timing.* A creditor must give the disclosures required under this section at the time an application form is provided or before the consumer pays a nonrefundable fee, whichever is earlier.

i. *Intermediary agent or broker.* In cases where a creditor receives a written application through an intermediary agent or broker, however, footnote 45b provides a substitute timing rule requiring the creditor to deliver the disclosures or place them in the mail not later than three business days after the creditor receives the consumer's written application. (See comment 19(b)–3 for guidance in determining whether or not the transaction involves an intermediary agent or broker.) This three-day rule also applies where the creditor takes an application over the telephone.

ii. *Telephone request.* In cases where the consumer merely requests an application over the telephone, the creditor must include the early disclosures required under this section with the application that is sent to the consumer.

iii. *Mail solicitations.* In cases where the creditor solicits applications through the mail, the creditor must also send the disclosures required under this section if an application form is included with the solicitation.

iv. *Conversion.* In cases where an open-end credit account will convert to a closed-end transaction subject to this section under ■ written agreement with the consumer, disclosures under this section may be given at the time of conversion. (See the commentary to § 226.20(a) for information on the timing requirements for § 226.19(b)(2) disclosures when a variable-rate feature is later added to a transaction.)

v. *Electronic applications.* In cases where the creditor makes applications available by electronic communication such as on ■ creditor's website, the disclosures required under this section must appear on-line before an application is provided.◄

* * * * *

14. In Supplement I to Part 226, *Section 226.24—Advertising*, the following amendments are made:

a. Under *24(b) Advertisement of rate of finance charge.*, a new paragraph 6. is added; and

b. Under *24(d) Catalogs and multiple-page advertisements.*, the heading and paragraph 2. are revised and a new paragraph 4. is added.

The revisions and additions would read as follows:

* * * * *

Section 226.24—Advertising

* * * * *

24(b) Advertisement of rate of finance charge.

* * * * *

►6. *Electronic communication.* A simple annual rate or periodic rate that is applied to an unpaid balance may be stated only if it is provided in conjunction with an annual percentage rate. In an advertisement using electronic communication, both rates must appear in the same location so that both rates may be viewed simultaneously. This requirement is not satisfied if the annual percentage rate can be viewed only by use of a link that connects the consumer to information appearing at another location.◄

* * * * *

24(d) Catalogs, ►[and] multiple-page◄, and electronic◄ advertisements.

* * * * *

2. *General.* Section 226.24(d) permits creditors to put credit information together in one place in a catalog, ►[or]◄ multiple page►, or electronic◆ advertisement. The rule applies only if the catalog, ►[or]◄ multiple page◆, or electronic◄ advertisement contains one or more of the triggering terms from § 226.24(c)(1). A list of different annual percentage rates applicable to different balances, for example, does not trigger further disclosures under § 226.24(c)(2) and so is not covered by § 226.24(d).

* * * * *

►4. *Electronic advertising.* If an advertisement using electronic communication uses the table or schedule permitted under § 226.24(d)(1), any statement of terms set forth in § 226.24(c)(1) appearing anywhere else in the advertisement must clearly direct the consumer to the page or location where the table or schedule begins. For example, a term triggering additional disclosures may be accompanied by a link that directly connects the consumer to the additional information (but see comment 24(b)–6).◄

* * * * *

15. In Supplement I to Part 226, a new *Subpart F—Electronic communication*, is added to read as follows:

* * * * *

►**Subpart F—Electronic Communication**

Section 226.34—Requirements for Electronic Communication

34(a) Definition

1. *Coverage.* Information transmitted by facsimile may be received in paper form or electronically, although the party initiating the transmission may not know at the time the disclosures are sent which form will be used. A creditor that provides disclosures by facsimile should comply with the requirements for electronic communication unless the creditor knows that the disclosures will be received in paper form.

34(b) Electronic Communication between Creditor and Consumer

1. *Disclosures provided on creditor's equipment.* Creditors that control equipment providing electronic disclosures to consumers (for example, computer terminals in a creditor's lobby or kiosks located in public places) must ensure that the equipment satisfies the regulation's requirements to provide disclosures in a clear and conspicuous format and in a form that the consumer may keep. A creditor that controls the equipment may provide a printer for consumers' use in lieu of sending the information to the consumer's electronic mail address or posting the information at another location such as the creditor's website.

2. *Retainability.* Creditors must provide electronic disclosures in a retainable format (for example, they can be printed or downloaded). Consumers may communicate electronically with creditors through a variety of means and from various locations. Depending on the location (at home, at work, in a public place such as a library), a consumer may not have the ability at a given time to preserve TILA disclosures presented on-screen. To ensure that consumers have an adequate opportunity to retain the disclosures, the creditor also must send them to the consumer's designated electronic mail address or to another location, for example, on the creditor's website, where the information may be retrieved at a later date.

3. *Timing and delivery.* When a consumer opens a credit card account and makes a purchase with the card (or when a consumer consummates a loan) on the Internet, for example, in order to meet the timing and delivery requirements, creditors must ensure that disclosures applicable at that time appear on the screen and are in a retainable format. The delivery requirements would not be met if disclosures do not either appear on the screen or if the consumer is allowed to open a credit card account and make a purchase at that time before receiving the disclosures. For example, a creditor can provide a link to electronic disclosures appearing on a separate page as long as consumers cannot bypass the link and they are required to access the disclosures before making a purchase (or consummating a loan).

34(c) Exceptions

1. *Redisclosure required.* Section 226.34(c) requires certain disclosures in paper form prior to consummation, even if they have been provided electronically at an earlier date, and redisclosure would not otherwise be required.

2. *Initial disclosures in paper form.* If a consumer opens a credit account or consummates a credit transaction in person the creditor generally must provide initial disclosures in paper form. For example, if a consumer visits a creditor's office to close ■ loan, disclosures are required before consummation and they must be provided in paper form; directing the consumer to disclosures posted on the creditor's website would not be sufficient. If, however, a consumer applies for credit on the Internet, a creditor may send disclosures electronically at or around that time even though the creditor's procedures require the consumer to visit an office at a later time to complete the transaction (for example, to close the loan).

34(d) Disclosure Notice

1. *Consumer's affirmative responses.* Even though a consumer accepts electronic disclosures in accordance with § 226.34(d)(2)(ii), a creditor may deliver disclosures by electronic communication only if the consumer provides an electronic address where one is required, and responds affirmatively to questions about technical requirements and the ability to print or download information (see sample forms M–4 and M–5 in appendix M to this part).

34(d)(2)(i) Notice by Creditor

1. *Toll-free telephone number.* The number must be toll-free for nonlocal calls made from an area code other than the one used in the creditor's dialing area. Alternatively, a creditor may provide any telephone number that allows a consumer to call for information and reverse the telephone charges.

2. *Creditor's address.* Creditors have the option of providing either an electronic or postal address for consumers' use in addition to the toll-free telephone number.

3. *Discontinuing electronic disclosures.* Consumers may use the toll-free number (or optional address) if they wish to discontinue receiving electronic disclosures. In such cases, the creditor must inform consumers whether the credit transaction is also available with disclosures in paper form.

34(d)(2)(ii) Response by consumer

1. *Nature of consent.* Consumers must agree to receive disclosures by electronic communication knowingly and voluntarily. An agreement to receive electronic disclosures is not implied from consumers' use of an account or acceptance of general account terms.

34(d)(3) Changes

1. *Examples.* Examples of changes include a change in technical requirements, such as upgrades to computer software affecting the creditor's disclosures provided on the Internet.

2. *Timing for notices.* A notice of a change must be sent a reasonable period of time before the effective date of the change. The length of a reasonable notice period may vary, depending on the type of change involved; however, fifteen days is a reasonable time for providing notice in all cases.

3. *Delivery of notices.* A creditor meets the delivery requirements if the notice of change is sent to the address provided by the consumer for receiving other disclosures. For example, if the consumer provides an electronic address to receive notices about periodic statements posted at the creditor's website, the same electronic address could be used for the change notice. The consumer's postal address must be used, however, if the consumer consented to additional disclosures by electronic communication when receiving the initial notice under § 226.34(d)(2)(i), but provided a postal address to receive periodic statements in paper form.

4. *Toll-free number.* See comment 34(d)(2)(i)–1.

5. *Creditor's address.* See comment 34(d)(2)(i)–2.

6. *Consumer inquiries.* Consumers may use the toll-free number (or optional address) for questions or assistance with problems related to a change, such as an upgrade to computer software, that is not provided by the creditor. Consumers may also use the toll-free number if they wish to discontinue receiving electronic disclosures; in such cases, the creditor must inform consumers whether the credit transaction is also available with disclosures in paper form.

34(e) Address or location to receive electronic communication.

Paragraph 34(e)(1)

1. *Electronic address.* A consumer's electronic address is an electronic mail address that may be used by the consumer for receiving communications transmitted by parties other than the creditor.

Paragraph 34(e)(2)

1. *Identifying account involved.* A creditor is not required to identify an account by reference to the account number. For example, where the consumer does not have multiple accounts, and no confusion would result, the creditor may refer to "your credit card account," or when the consumer has multiple accounts the creditor may use a truncated account number.

2. *Effective delivery.* Delivery by posting to a location other than the consumer's electronic mail address is effective only after the creditor posts and notifies the consumer when the information becomes available.

3. *Availability.* Information that is not sent to a consumer's electronic mail address must be available for at least 90 days from the date the information becomes available or from the date the notice required by § 226.34(e)(2) is sent to the consumer, whichever occurs later.

4. *Certain open-end disclosures.* The disclosures required under §§ 226.5a, 226.9(a)(2), 226.9(e), and 226.10(b) and referenced in footnote 8 shall be exempt from § 226.34(d)(1).

By order of the Board of Governors of the Federal Reserve System, August 31, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–23138 Filed 9–13–99; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R–1044]

Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is requesting comment on proposed revisions to Regulation DD, which implements the Truth in Savings Act (TISA). The Board previously published a proposed rule that permits depository institutions to use electronic communication (for example, communication via personal computer and modem) to provide disclosures required by the act and regulation, if the consumer agrees to such delivery. (A similar rule was also proposed under various other consumer financial services and fair lending regulations administered by the Board.) In response to comments received on the proposals, the Board is publishing for comment an alternative proposal on the electronic delivery of disclosures, together with proposed commentary that would provide further guidance on electronic communication issues.

DATES: Comments must be received by October 29, 1999.

ADDRESSES: Comments, which should refer to Docket No. R–1044, may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room, both in the Board's Eccles Building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in room MP–500 between 9:00 a.m. and 5:00 p.m., pursuant to § 261.12, except as provided in § 261.14 of the Board's Rules Regarding the Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Michael L. Hentrel, Staff Attorney, or Jane E. Ahrens, Senior Counsel, Division of Consumer and Community Affairs, at (202) 452–2412 or (202) 452–3667. Users of Telecommunications Device for the Deaf (TDD) *only,* contact Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Truth in Savings Act (TISA), 12 U.S.C. 4301 *et seq.*, requires depository institutions to disclose to consumers yields, fees, and other terms concerning deposit accounts to consumers at account opening, upon request, when changes in terms occur, and in periodic statements. It also includes rules about advertising for deposit accounts. The Board's Regulation DD (12 CFR part 230) implements the act. Credit unions are governed by a substantially similar regulation issued by the National Credit Union Administration.

The TISA and Regulation DD require a number of disclosures to be provided in writing, presuming that institutions provide paper documents. Under many laws that call for information to be in writing, information in electronic form is considered to be "written." Information produced, stored, or communicated by computer is also generally considered to be a writing, where visual text is involved.

In May 1996, the Board revised Regulation E (Electronic Fund Transfers) following a comprehensive review. During that process, the Board determined that electronic communication for delivery of information required by federal laws governing financial services could effectively reduce compliance costs without adversely affecting consumer protections. Consequently, the Board simultaneously issued a proposed rule to permit financial institutions to use electronic communication to deliver disclosures that Regulation E requires to be given in writing. (61 FR 19696, May 2, 1996.) The 1996 proposal required that disclosures be provided in a form the consumer may retain, a requirement that institutions could satisfy by providing information in a format that may be printed or downloaded. The proposed rule also allowed consumers to request a paper copy of a disclosure for up to one year after its original delivery.

Following a review of the comments, on March 25, 1998, the Board issued an interim rule under Regulation E (the "interim rule"), 63 FR 14528. The Board also published proposals under Regulations DD (Truth in Savings), 63 FR 14533, M (Consumer Leasing), 63 FR 14538, Z (Truth in Lending), 63 FR 14548, and B (Equal Credit Opportunity), 63 FR 14552 (collectively, the "March 1998 proposed rules"). The rules would apply to financial institutions, creditors, lessors, and other entities that are required to give disclosures to consumers and others. (For ease of reference, this background section uses the terms "financial institutions," "institutions," and "consumers.") The interim rule and the March 1998 proposed rules were similar to the May 1996 proposed rule; however, they did not require financial institutions to provide paper copies of disclosures to a consumer upon request if the consumer previously agreed to receive disclosures electronically. The Board believed that most institutions would accommodate consumer requests for paper copies when feasible or redeliver disclosures electronically; and the Board encouraged financial institutions to do so.

The March 1998 proposed rules and the interim rule permitted financial institutions to provide disclosures electronically if the consumer agreed, with few other requirements. The rule was intended to provide flexibility and did not specify any particular method for obtaining a consumer's agreement. Whether the parties had an agreement would be determined by state law. The proposals and the interim rule did not preclude a financial institution and a consumer from entering into an agreement electronically, nor did they prescribe a formal mechanism for doing so.

The Board received approximately 200 written comments on the interim rule and the March 1998 proposed rules. The majority of comments were submitted by financial institutions and their trade associations. Industry commenters generally supported the use of electronic communication to deliver information required by the TISA and Regulation DD. Nevertheless, many sought specific revisions and additional guidance on how to comply with the disclosure requirements in particular transactions and circumstances.

Industry commenters were especially concerned about the condition that a consumer had to "agree" to receive information by electronic communication, because the rule did not specify a method for establishing that an "agreement" was reached. These commenters believed that relying on state law created uncertainty about what constitutes an agreement and, therefore, potential liability for noncompliance. To avoid uncertainty over which state's laws apply, some commenters urged the Board to adopt a federal minimum standard for agreements or for informed consent to receive disclosures by electronic communication. These commenters believed that such a standard would avoid the compliance burden associated with tailoring legally binding "agreements" to the contract laws of all jurisdictions where electronic communications may be sent.

Consumer advocates generally opposed the March 1998 interim rule and proposed rules. Without additional safeguards, they believed, consumers may not be provided with adequate information about electronic communications before an "agreement" is reached. They also believed that promises of lower costs could induce consumers to agree to receive disclosures electronically without a full understanding of the implications. To avoid such problems, they urged the Board, for example, either to require institutions to disclose to consumers that their account with the institution will not be adversely affected if they do not agree to receive electronic disclosures, or to permit institutions to offer electronic disclosures only to consumers who initiate contact with the institution through electronic communication. They also noted that some consumers will likely consent to electronic disclosures believing that they have the technical capability to retrieve information electronically, but might later discover that they are unable to do so. They questioned consumers' willingness and ability to access and retain disclosures posted on Internet websites, and expressed their apprehension that the goals of federally mandated disclosure laws will be lost.

Consumer advocates and others were particularly concerned about the use of electronic disclosures in connection with home-secured loans and certain other transactions that consumers typically consummate in person (citing as examples automobile loans and leases, short-term "payday" loans, or home improvement financing contracts resulting from door-to-door sales). They asserted that there is little benefit to eliminating paper disclosures in such transactions and that allowing electronic disclosures in those cases could lead to abusive practices. Accordingly, consumer advocates and others believed that paper disclosures should always accompany electronic disclosures in mortgage loans and certain other transactions, and that consumers should have the right to obtain paper copies of disclosures upon request for all types of transactions (deposit account, credit card, loan or lease, and other transactions).

A final issue raised by consumer advocates was the integrity of disclosures sent electronically. They stated that there may be instances when the consumer and the institution disagree on the terms or conditions of an agreement and consumers may need to offer electronic disclosures as proof of the agreed-upon terms and to enforce rights under consumer protection laws. Thus, to assure that electronic documents have not been altered and that they accurately reflect the document originally sent, consumer advocates recommended that the Board require that electronic disclosures be authenticated by an independent third party.

The Board's Consumer Advisory Council considered the electronic delivery of disclosures in 1998 and again in 1999. Many Council members shared views similar to those expressed in written comment letters on the 1998 proposals. For example, some Council members expressed concern that the Board was moving too quickly in allowing electronic disclosures for certain transactions, and suggested that the Board might go forward with electronic disclosures for deposit accounts while proceeding more slowly on credit and lease transactions. Others expressed concern about consumer access and consumers' ability to retain electronic disclosures. They believed that, without specific guidance from the Board, institutions would provide electronic disclosures without knowing whether consumers could retain or access the disclosures, and without establishing procedures to address technical malfunctions or nondelivery. The Council also discussed the integrity and security of electronic documents.

II. Overview of Proposed Revisions

Based on a review of the comments and further analysis, the Board is requesting comment on a modified proposed rule that is more detailed than the interim rule and the March 1998 proposed rules. It is intended to provide specific guidance for institutions that choose to use electronic communication to comply with Regulation DD's requirements to provide written disclosures, and ensure effective delivery of disclosures to consumers through this medium. Though detailed, the proposal provides flexibility for compliance with the electronic communication rules. The modified proposal recognizes that some disclosures may warrant different treatment under the rule. Some disclosures are generally available to the public—for example, bank account fee schedules. Under the modified proposal, such disclosures could be made available electronically without obtaining a consumer's consent. Where written disclosures are made to consumers who are transacting business in person, these disclosures generally would have to be made in paper form.

The Board is soliciting comment on a modified approach that addresses both industry and consumer group concerns. Under the proposal, depository institutions would have to provide specific information about how the consumer can receive and retain electronic disclosures—through a standardized disclosure statement—before obtaining consumers' acceptance of such delivery, with some exceptions. If they satisfy these requirements and obtain consumers' affirmative consent, depository institutions would be permitted to use electronic communications. As a general rule an institution would be permitted to offer the option of receiving electronic disclosures to all consumers, whether they initially contact the institution by electronic communication or otherwise. To address concerns about potential abuses, however, the proposal provides that if a consumer contracts to open a deposit account in person, initial disclosures must be given in paper form.

Depository institutions would have the option of delivering disclosures to an e-mail address designated by the consumer or making disclosures available at another location such as the institution's website, for printing or downloading. If the disclosures are posted at a website location, depository institutions generally must notify consumers at an e-mail address about the availability of the information. (Depository institutions may offer consumers the option of receiving alert notices at a postal address.) The disclosures must remain available at that site for 90 days.

Disclosures provided electronically would be subject to the "clear and conspicuous" standard, and the existing format, timing, and retainability rules in Regulation DD. For example, to satisfy the timing requirement, if disclosures are due at the time a deposit account is being opened electronically, the disclosure would have to appear on the screen before the consumer could complete the process.

Depository institutions generally must provide a means for consumers to confirm the availability of equipment to receive and retain electronic disclosure documents. A depository institution would not otherwise have a duty to verify consumers' actual ability to receive, print or download the disclosures. Some commenters suggested that institutions should be required to verify delivery by return receipt. The Board solicits comment on

the need for such a requirement and the feasibility of that approach.

As previously mentioned, consumer advocates and others have expressed concerns that electronic documents can be altered more easily than paper documents. The issue of the integrity and security of electronic documents affects electronic commerce in general and is not unique to the written disclosures required under the consumer protection laws administered by the Board. Consumers' ability to enforce rights under the consumer protection laws could be impaired in some cases, however, if the authenticity of disclosures that they retain cannot be demonstrated. Signatures, notary seals, and other established verification procedures are used to detect alterations for transactions memorialized in paper form. The development of similar devices for electronic communications should reduce uncertainty over time about the ability to use electronic documents for resolving disputes.

The Board's rules require institutions to retain evidence of compliance with Regulation DD. Specific comment is solicited on the feasibility of complying with a requirement that institutions provide disclosures in a format that cannot be altered without detection, or have systems in place capable of detecting whether or not information has been altered, as well as the feasibility of requiring use of independent certification authorities to verify disclosure documents.

Elsewhere in today's **Federal Register**, the Board is publishing similar proposals for comment under Regulations B, E, M, and Z. In a separate notice the Board is publishing an interim rule under Regulation DD, to permit depository institutions to use electronic communication to deliver disclosures on periodic statements. For ease of reference, the Board has assigned new docket numbers to the modified proposals published today.

III. Section-by-Section Analysis

Pursuant to its authority under section 269 of the TISA, the Board proposes to amend Regulation DD to permit institutions to use electronic communication to provide the disclosures required by this regulation to be in writing. Below is a section-by-section analysis of the rules for providing disclosures by electronic communication, including references to proposed commentary provisions.

Section 230.2 Definitions

(q) Periodic Statement

The interim rule under Regulation DD permits institutions to use electronic communication to deliver disclosures on periodic statements. Comment 230.2(q)-1(ii), which addresses information provided by computer through home banking services, would be deleted as obsolete.

Section 230.3 General Disclosure Requirements

3(g) Electronic Communication

3(g)(1) Definition

The definition of the term "electronic communication" in the March 1998 proposed rule remains unchanged. Section 230.3(g)(1) limits the term to a message transmitted electronically that can be displayed on equipment as visual text, such as a message that is displayed on a computer monitor screen. Most commenters supported the term as defined in the March 1998 proposed rule. Some commenters favored a more expansive definition that would encompass communications such as audio and voice response telephone systems. Because the proposal is intended to permit electronic communication to satisfy the statutory requirement for written disclosures, the Board believes visual text is an essential element of the definition.

Commenters asked the Board to clarify the coverage of certain types of communications. A few commenters asked about communication by facsimile. Facsimiles are initially transmitted electronically; the information may be received either in paper form or electronically through software that allows a consumer to capture the facsimile, display it on a monitor, and store it on a computer diskette or drive. Thus, information sent by facsimile may be subject to the provisions governing electronic communication. When disclosures are sent by facsimile, a depository institution should comply with the requirements for electronic communication unless it knows that the disclosures will be received in paper form. Proposed comment 3(g)(1)-1 contains this guidance.

3(g)(2) Electronic Communication between Depository Institution and Consumer

Section 230.3(g)(2) would permit depository institutions to provide disclosures using electronic communication, if the institution complies with provisions in new § 230.3(g)(3), discussed below.

1. *Presenting Disclosures in a Clear and Conspicuous Format.* The Board does not intend to discourage or encourage specific types of technologies. Regardless of the technology, however, disclosures provided electronically must be presented in a clear and conspicuous format as is the case for all written disclosures under the act and regulation. See § 230.3(a).

When consumers consent to receive disclosures electronically and they confirm that they have the equipment to do so, depository institutions generally would have no further duty to determine that consumers are able to receive the disclosures. Institutions do have the responsibility of ensuring sure the proper equipment is in place in instances where the institution controls the equipment. Proposed comment 3(g)(2)–1 contains this guidance.

2. *Providing Disclosures in a Form the Consumer May Keep.* As with other written disclosures, information provided by electronic communication must be in a form the consumer can retain. Under the March 1998 proposals and the interim rule, a depository institution would satisfy this requirement by providing information that can be printed or downloaded. The modified proposal adopts the same approach but also provides that the information must be sent to a specified location to ensure that consumers have an adequate opportunity to retain the information.

Consumers communicate electronically with depository institutions through a variety of means and from various locations. Depending on the location (at home, at work, in a public place such as a library), a consumer may not have the ability at a given time to preserve TISA disclosures presented on-screen. Therefore, when a depository institution provides disclosures by electronic communication, to satisfy the retention requirements, the institution must send the disclosures to a consumer's e-mail address or other location where information may be retrieved at a later date. Proposed comment 3(g)(2)–2 contains this guidance; see also the discussion under § 230.3(g)(4), below. In instances where an institution controls an electronic terminal used to provide electronic disclosures, an institution may provide equipment for the consumer to print a paper copy in lieu of sending the information to the consumer's e-mail address or posting the information at another location such as the institution's website. See proposed comment 3(g)(2)–1.

3. *Timing.* Institutions must ensure that electronic disclosures comply with all relevant timing requirements of the regulation. For example, account-opening disclosures must be provided before an account is opened or a service is provided. The rule ensures that consumers have an opportunity to read important information about costs and other terms before opening an account or agreeing to have a service provided.

To illustrate the timing requirements for electronic communication, assume that a consumer is interested in opening a checking account and uses a personal computer at home to access a bank's website on the Internet. The institution provides disclosures to the consumer about the use of electronic communication (the § 230.3(g)(3) disclosures discussed below) and the consumer responds affirmatively. If the institution's procedures permit the consumer to open the account at that time, disclosures required under § 230.4 would have to be provided. Thus, the disclosures must automatically appear on the screen or the consumer must be required to access the information before the account is opened (or before the consumer pays any fees). The timing requirements for providing account-opening disclosures would not be met if, in this example, the bank permitted the consumer to open a deposit account and sent disclosures to an e-mail address thereafter. Proposed comment 3(g)(2)–3 contains this guidance.

On the other hand, assume that a consumer desires to open an account and the institution delays processing of the consumer's request to open the account until the required disclosures have been delivered by e-mail. In that case the information would not have to also appear on the screen; delivery to the consumer's e-mail address would be sufficient. In either case, the consumer must be given the opportunity to receive the disclosures before opening the account.

3(g)(2)(ii) In-Person Exception

The proposal contains an exception to the general rule allowing information required by Regulation DD to be provided by electronic communication; where the exception applies, paper disclosures would be required. The exception, contained in § 230.3(g)(2)(ii), seeks to address concerns about potential abuses where consumers are transacting business in person but are offered disclosures in electronic form. In such transactions, there is a general expectation that consumers would be given paper copies of disclosures along with paper copies of other documents evidencing the transaction.

Under § 230.3(g)(2)(ii), if a consumer opens an account in person, the depository institution must provide account-opening disclosures in paper form. For example, if a consumer opens a deposit account at a depository institution and is provided with TISA account disclosures at that time, the institution would be required to provide those disclosures in paper form; directing the consumer to disclosures posted on the institution's website would not be sufficient. An institution also complies if a consumer opens an account on the Internet and is sent disclosures electronically at or around that time, even though the institution's procedures require the consumer to visit the institution at a later time to complete the transaction (for example, to complete a signature card). Proposed comment 3(g)(2)(ii)–1 contains this guidance. If a consumer makes a request in person for account disclosures pursuant to § 230.4(a)(2), the disclosures also must be provided in paper form.

3(g)(3) Disclosure Notice

Section 230.3(g)(3) would identify the specific steps required before an institution can use electronic communication to satisfy the regulation's disclosure requirements. Proposed Model Forms B–10 and B–11 and proposed Sample Forms B–13 and B–14, are published to aid compliance with these requirements.

3(g)(3)(i) Notice by Depository Institution

Section 230.3(g)(3)(i) outlines the information that depository institutions must provide before electronic disclosures can be given. The depository institution must: (1) describe the information to be provided electronically and specify whether the information is also available in paper form or whether the account is offered only with electronic disclosures; (2) identify the address or location where the information will be provided electronically; and if it will be available at a location other than the consumer's e-mail address, specify for how long and where it can be obtained once that period ends; (3) specify any technical requirements for receiving and retaining information sent electronically, and provide a means for the consumer to confirm the availability of equipment meeting those requirements; and (4) provide a toll-free telephone number and, at the institution's option, an electronic or a postal address for questions about receiving electronic disclosures, or for updating consumers' electronic addresses, and for seeking assistance with technical or other difficulties (see proposed comments to 3(g)(3)(i)). The Board requests comment on whether other information should be disclosed regarding the use of electronic communication and on any format changes that might improve the usefulness of the notice for consumers.

The Board also solicits comment on the benefits of requiring an annual notice in paper form to consumers who receive disclosures by electronic communication. The notice would contain general information about receiving electronic disclosures including, for example, a reminder of the toll-free telephone number where consumers may contact the institution if they have questions regarding their electronic disclosures. The Board solicits comment on whether an annual notice is feasible for all types of accounts covered by Regulation DD.

Under the proposal, the § 230.3(g)(i) disclosures must be provided, as applicable, before the depository institution uses electronic communication to deliver any information required by the regulation. The approach of requiring a standardized disclosure statement addresses, in several ways, the concern that consumers may be steered into using electronic communication without fully understanding the implications. Under this approach, the specific disclosures that would be delivered electronically must be identified, and consumers must be informed whether there is also an option to receive the information in paper form. Consumers must provide an e-mail address where one is required. Technical requirements must also be stated, and consumers must affirm that their equipment meets the requirements, and that they have the capability of retaining electronic disclosures by downloading or printing them (see proposed comment 3(g)(3)–1). Thus, the § 230.3(g)(3)(i) disclosures should allow consumers to make informed judgments about receiving electronic disclosures.

Some commenters requested clarification of whether a depository institution may use electronic communication to provide some required disclosures while using paper for others. The proposed rule would permit institutions to do so; the disclosure given under § 230.3(g)(3)(i) must specify which TISA disclosures will be provided electronically.

Commenters requested further guidance on a depository institution's obligation under the regulation if the consumer chooses not to receive information by electronic communication. A depository institution could offer a consumer the

option of receiving disclosures in paper form, but it would not be required to do so. A depository institution could establish accounts or services for which disclosures are given only by electronic communication. Section 230.3(g)(3)(i)(A) would require institutions to tell consumers whether or not they have the option to receive disclosures in paper form. Section 230.3(g)(i)(D) would require depository institutions to provide a toll-free number that consumers could use to inform institutions if they wish to discontinue receiving electronic disclosures. In such cases, the institution must inform the consumer whether the deposit account is also available with disclosures in paper form. Proposed sample disclosure statements in which the consumer has an option to receive electronic or paper disclosures (Form B–13) or electronic disclosures only (Form B–14) are contained in appendix B.

3(g)(3)(ii) Response by Consumer

Proposed § 230.3(g)(3)(ii) would require a means for the consumer to affirmatively indicate that disclosures may be provided electronically. Examples include a signature (for requests made in paper form) or a "check box" on a computer screen or a signature line (for requests made in paper form). The requirement is intended to ensure that consumers' consent is established knowingly and voluntarily, and that consent to receive electronic disclosures is not inferred from consumers' use of the account or acceptance of general account terms. See proposed comment 3(g)(3)(ii)–1.

3(g)(3)(iii) Changes

Depository institutions would be required to notify consumers about changes to the information provided in the notice required by § 230.3(g)(3)(i)—for example, if technical upgrades to software are required. Proposed comment 3(g)(3)(iii)–1 contains this guidance.

The notice must include the effective date of the change and be provided before that date. Proposed comment 3(g)(3)(iii)–2 would provide that the notice must be sent a reasonable period of time before the effective date of the change. Although the number of days that constitutes reasonable notice may vary, depending on the type of change involved, the comment would provide institutions with a safe harbor: fifteen days' advance notice would be considered a reasonable time in all cases. The same time period is stated in similar proposals under Regulations B, Z, and E published in today's **Federal Register**. Comment is requested on whether a safe harbor of 15 days is an appropriate time period, and whether a uniform period for changes involving electronic communication is desirable. An alternative approach would adopt notice requirements that are consistent with change-in-terms requirements under the respective regulations. Under this approach, for example, the safe harbor would be 21 days under § 205.8 for Regulation E, 15 days under § 226.9 for Regulation Z, and 30 days under § 230.5 for Regulation DD. Proposed comment 3(g)(3)(iii)–3 contains guidance on delivery requirements for the notice of change.

The notice of a change must also include a toll-free telephone number or, at the institution's option, an address for questions about receiving electronic disclosures. For example, a consumer may call regarding problems related to a change, such as an upgrade to computer software that is not provided to the institution. Consumers may also use the toll-free number if they wish to discontinue receiving electronic disclosures. In such cases, the institution must inform consumers whether the account is also available with disclosures in paper form. (See proposed comments 3(g)(3)(iii)–4 through –6.)

If the change involves providing additional disclosures by electronic communication, institutions generally would be required to provide the notice in § 230.3(g)(3)(i) and obtain the consumer's consent. That notice would not be required if the institution previously obtained the consumer's consent to the additional disclosures in its initial notice by disclosing the possibility and specifying which disclosures might be provided electronically in the future. Comment is specifically requested on this approach. A list of additional disclosures may be necessary to ensure that consumers' consent is informed and knowing (provided it does not cause confusion).

3(g)(4) Address or Location To Receive Electronic Communication

Proposed § 230.3(g)(4) identifies addresses and locations where institutions using electronic communication may send information to the consumer. Institutions may send information to a consumer's electronic address, which is defined in proposed comment 3(g)(4)(i)–1 as an e-mail address that the consumer also may use for receiving communications from parties other than the depository institution. For periodic statements, for example, a depository institution's responsibility to provide disclosures by electronic communication will be satisfied when the information is sent to the consumer's e-mail address in accordance with the applicable proposed rules concerning delivery of disclosures by electronic communication.

Guidance accompanying the March 1998 proposed rule provided that an institution would not meet delivery requirements by simply posting information to an Internet site such as the institution's "home page" without appropriate notice on how consumers can access the information. Industry commenters wanted to retain the flexibility of posting disclosures on an Internet website. They did not object to providing a separate notice alerting consumers about the disclosures' availability but requested more guidance on the issue. Consumer advocates and others expressed concern that the mere posting of information inappropriately places the responsibility to obtain disclosures on consumers, and undermines the purpose of the delivery requirements of the regulation.

The Board recognizes that currently, because of security and privacy concerns associated with data transmissions, a number of institutions may choose to provide disclosures at their websites, where the consumer may retrieve them under secure conditions. Under § 230.3(g)(4), a depository institution may make disclosures available to a consumer at a location other than the consumer's electronic address. The institution must notify the consumer when the information becomes available and identify the account involved. The notice must be sent to the electronic mail address designated by the consumer; the depository institution may, at its option, permit the consumer to designate a postal address. A proposed model form (Model Form B–12) is published below; see also proposed comment 3(g)(4)(ii)–1.

The Board believes it would be inconsistent with the TISA to require a consumer to initiate a search—for example, to search the website of each institution with which an account is held—to determine whether a disclosure has been provided. The proposed approach ensures that a consumer would not be required to check an institution's website repeatedly, for example, to learn whether the institution posted a change in a term that affects a deposit account held by the consumer.

The requirements of the regulation would be met only if the required disclosure is posted on the website and the consumer is notified of its availability in a timely fashion. For example, depository institutions must provide a change-in-terms notice to consumers at least 30 days in advance of the change. (12 CFR 230.5(a).) For a change-in-terms notice posted on the Internet, an institution must both post the notice and notify consumers of its availability at least 30 days in advance of the change.

Commenters sought guidance on how long disclosures posted at a particular location must be available to consumers. There is a variety of circumstances when a consumer may not be able immediately to access the information due to illness, travel, or computer malfunction, for example. Under § 230.3(g)(4), institutions must post information that is sent to a location other than the consumer's e-mail address for 90 days. Proposed comment 3(g)(4)(ii)–2 contains this guidance.

Under the modified proposal, institutions that post information at a location other than the consumer's e-mail address are required—after the 90 day period—to make disclosures available to consumers upon request for a period of not less than two years from the date disclosures are required to be made, consistent with the record retention requirements under § 230.9(c). The Board requests comment on this approach, including suggestions for alternative means for providing consumers continuing access to disclosures.

Section 230.4 Account Disclosures

4(a) Delivery of Account Disclosures—(1) Account Opening.

Account-opening disclosures required under § 230.4(a) set forth the terms and conditions of the account. These disclosures inform the consumers of the types and amount of any fees that may be imposed and the interest rate and annual percentage yield that will be paid on the account. Section 230.4(a)(1) requires that account disclosures be provided before an account is opened or a service is provided, whichever is earlier; § 230.4(a)(2) requires that account disclosures be provided upon request.

Section 266(b) of TISA and § 230.4(a)(1) of the regulation provide that if the consumer is not physically present at the institution when an initial deposit is accepted (and the disclosures have not been furnished previously) the institution shall mail or deliver the disclosures no later than ten days after the account is opened or the service is provided. The rationale underlying the ten-day delay is that the institution cannot provide written disclosures before an account is opened in some instances (such as when an account is opened by telephone). Similarly, § 230.4(a)(2) provides that if the consumer is not present at the institution when the request for account disclosures is made, the institution must mail or deliver the disclosures within a reasonable time after the institution receives the request; comment 4(a)(2)(i)–3 clarifies that ten days is a reasonable time.

The Board indicated in the March 1998 proposed rule that the ten-day delay did not apply to accounts opened by electronic communication, such as on the Internet. The difficulties associated with an account opening by telephone, for example, do not exist for accounts opened electronically; thus, depository institutions would be required to provide account-opening disclosures before the account is opened or a service is provided, when an account is opened using electronic communication.

Views were mixed on the Board's interpretation that the ten-day delay in providing disclosures would not apply to accounts opened electronically. Many commenters were opposed to the Board's position. These commenters believed that it would be difficult to furnish transaction-specific disclosures before the account is opened. For example, interest rates may change after the consumer submits account information but before the account is opened in accord with the institution's procedures. Other commenters supported the Board's position. They believed that all of the information that would be available to a consumer present in a depository institution is available to a consumer via a website controlled by the depository institution. A few commenters stated that it would not be overly burdensome to provide required disclosures on a website.

Based on the comments received and further analysis, the modified proposals address an institution's duties when a consumer is not physically present at the institution and uses electronic communication to open an account or request a service, or to request account disclosures. Section 230.4(a)(1)(ii) is proposed under the Board's exception authority in section 269(a)(3) of the act and would require institutions to provide account disclosures before an account is opened or a service is provided; the ten-day delay would not apply. Proposed § 230.4(a)(2)(i) would provide that institutions must respond to requests within a reasonable period after receiving the request and may provide account disclosures electronically to a consumer's electronic mail address or in paper form. The requirements of § 230.3(g)(3) would not apply to such requests. Comment is also requested on whether, in the context of electronic communication, the ten-day time period provided in comment 4(a)(2)(i)–3 for responding to requests for account disclosures is reasonable.

Section 230.8 Advertising

8(a) Misleading or Inaccurate Advertisements

Section 230.8 provides that advertising certain terms triggers the disclosure of other account terms. Although Regulation DD does not address multi-page advertisements, Regulations Z (Truth in Lending) and M (Consumer Leasing) permit creditors to provide required advertising disclosures on more than one page, if certain conditions are met. Elsewhere in today's **Federal Register**, the Board is proposing guidance to creditors and lessors on how to comply with rules on multi-page advertising in the context of electronic advertisements. Consistent with the approach taken for Regulations Z and M, the Board believes that a depository institution that advertises electronically can comply with the regulation's advertising requirements if the required terms are disclosed at more than one location, under certain conditions. If a triggering term (such as a bonus or an annual percentage yield) appears at a location that does not contain other required disclosures, the location with the triggering term must clearly refer the consumer to the page or location that sets forth clearly and conspicuously all additional required disclosures. Proposed comment 8(a)–9 contains this guidance.

8(b) Permissible Rates

Section 230.8(b) provides that an advertisement may state an interest rate, as long as the interest rate is stated in conjunction with, but not more conspicuously than, the annual percentage yield to which it relates. Proposed comment 8(b)–4 contains guidance on how this rule applies to rates stated in an electronic advertisement.

8(e) Exemption for Certain Advertisements

Section 230.8(e) exempts advertisements made through broadcast or electronic media, such as television and radio, from several of the advertising disclosures. The Board provided guidance on the scope of the exemption in the supplementary information to the March 1998 proposed rule. The Board stated that the "electronic media" exemption would

not apply to advertisements made electronically, such as those posted on the Internet.

The rationale for the broadcast and electronic media exemption is that these media have time or space constraints that make it extremely burdensome to provide the required disclosures. The Board believes that advertisements posted on the Internet generally do not have these constraints. A few commenters disagreed. They stated that there are space constraints on "non-proprietary" websites and urged the Board to apply the exemption to third-party websites. The Board believes, however, that space constraints on a non-proprietary website are not significantly different than those for a print advertisement. Thus, advertisements made electronically such as advertisements posted on the Internet are subject to Regulation DD's general advertising rules. Proposed comment 8(e)(1)(i)–1 contains this guidance.

Appendix B to Part 230—Model Clauses and Sample Forms

The Board solicits comment on three proposed model forms and two sample forms for use by depository institutions to aid compliance with the disclosure requirements of §§ 230.3(g)(3) and (g)(4). Model Forms B–10 and B–11 would implement § 230.3(g)(3), regarding the notice that depository institutions must give prior to using electronic communication to provide required disclosures. Model Form B–12 would implement § 230.3(g)(4), regarding notices to consumers about the availability of electronic disclosures at locations such as the depository institution's website. Use of any modified version of these forms would be in compliance as long as the institution does not delete information required by the regulation or rearrange the format so as to affect the substance, clarity, or meaningful sequence of the disclosure. For example, institutions that combine Regulation E and Regulation DD disclosures on a deposit account can modify the model form to provide a single disclosure statement about electronic delivery of those disclosures.

Sample Form B–13 illustrates the disclosures under § 230.3(g)(3) for a deposit account. The sample assumes that the institution also offers paper disclosures for consumers who choose not to receive electronic disclosures. Sample Form B–14 assumes that consumers must accept electronic disclosures if they want to open the deposit account.

Additional Issues Raised by Electronic Communication

Preemption

A few commenters suggested that any final rule issued by the Board permitting electronic disclosures should explicitly preempt any state law requiring paper disclosures. Under Appendix C of the regulation, state laws are preempted if they are inconsistent with the act and regulation and only to the extent of the inconsistency. The proposed rule would provide depository institutions with the option of giving required disclosures by electronic communication as an alternative to paper. There is no apparent inconsistency with the act and regulation if state laws require paper disclosures. The Board, however, will review preemption issues that are brought to the Board's attention. Appendix C outlines the Board's procedures for determining whether a specific law is preempted, which will guide the Board in any determination requested by a state, depository institution, or other interested party following publication of a final rule regarding electronic communication.

IV. Form of Comment Letters

Comment letters should refer to Docket No. R–1044, and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch computer diskettes in any IBM-compatible DOS or Windows-based format.

V. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the proposed amendments to Regulation DD. Although the proposal would add disclosure requirements with respect to electronic communication, overall, the proposed amendments are not expected to have any significant impact on small entities. A depository institution's use of electronic communication to provide disclosures required by the regulation is optional. The proposed rule would give depository institutions flexibility in providing disclosures. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB number. The OMB control number is 7100–0271.

The collection of information requirements relevant to this proposed rulemaking are in 12 CFR Part 230. This information is mandatory (12 U.S.C. 4301 *et seq.*) to evidence compliance with the requirements of the Regulation DD and the Truth in Savings Act (TISA). The revised requirements would be used to ensure adequate disclosure of basic terms, costs, and rights relating to services affecting consumers holding deposit accounts and receiving certain disclosures by electronic communication. The respondents/recordkeepers are for-profit depository institutions, including small businesses. Institutions are also required to retain records for 24 months. This regulation applies to all types of depository institutions, not just state member banks; however, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The proposed revisions would allow institutions the option of using electronic communication (for example, via personal computer and modem) to provide disclosures required by the regulation. Although the proposal would add disclosure requirements with respect to electronic communication, the optional use of electronic communication would likely reduce the paperwork burden of depository institutions. With respect to state member banks, it is estimated that there are 988 respondents/recordkeepers and an average frequency of 87,071 responses per respondent each year. Therefore, the current amount of annual burden is estimated to be 1,464,216 hours. There is estimated to be no additional annual cost burden and no capital or start-up cost.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises; however, any information obtained by the Federal Reserve may be protected from disclosure under exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522(b)(4), (6) and (8)). The disclosures and information about error allegations are confidential between institutions and the customer.

The Federal Reserve requests comments from institutions, especially state member banks, that will help to estimate the number and burden of the various disclosures that would be made in the first year this proposed regulation would be effective. Comments are invited on: (a) the cost of compliance; (b) ways to enhance the quality, utility, and clarity of the information to be disclosed; and (c) ways to minimize the burden of disclosure on respondents, including through the use of automated disclosure techniques or other forms of information technology. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0271), Washington, DC 20503, with copies of such comments sent to Mary M. West, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

List of Subjects in 12 CFR Part 230

Advertising, Banks, banking, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth in savings.

Text of Proposed Revisions

Certain conventions have been used to highlight proposed changes to Regulation DD. New language is shown inside bold-faced arrows and deletions are shown in bold-faced brackets.

For the reasons set forth in the preamble, the Board proposes to amend Regulation DD, 12 CFR part 230, as set forth below:

PART 230—TRUTH IN SAVINGS (REGULATION DD)

1. The authority citation for part 230 continues to read as follows:

Authority: 12 U.S.C. 4301 *et seq.*

2. Section 230.3 is amended by adding a new paragraph (g) to read as follows:

§ 230.3 General disclosure requirements.

* * * * *

►(g) *Electronic communication.* (1) *Definition. Electronic communication* means a message transmitted electronically between a consumer and a depository institution in a format that allows visual text to be displayed on equipment such as a personal computer monitor.

(2) *Electronic communication between depository institution and consumer.* (i) *General.* Except as provided in paragraph (g)(2)(ii) of this section, a depository institution that has complied with paragraph (g)(3) of this section may provide by electronic communication any information required by this regulation to be in writing.

(ii) *In-person exception.* When a consumer opens a deposit account or requests a service in person, disclosures required under § 230.4(a)(1) shall be provided in paper form, unless the consumer previously initiated the process of opening the account by electronic communication and disclosures were provided in compliance with paragraphs (g)(3)(i) and (g)(3)(ii) of this section at or around that time. A depository institution shall also provide account disclosures in paper form to a consumer who makes a request in person pursuant to § 230.4(a)(2).

(3) *Disclosure notice.* The disclosure notice required by this paragraph shall be provided in a manner substantially similar to the applicable model form set forth in Appendix B of this part (Model Forms B–10 and B–11).

(i) *Notice by depository institution.* A depository institution shall:

(A) Describe the information to be provided electronically and specify whether the information is also available in paper form or whether the account is offered only with electronic disclosures;

(B) Identify the address or location where the information will be provided electronically; and if it is made available at a location other than the consumer's electronic address, how long the information will be available, and how it can be obtained once that period ends;

(C) Specify any technical requirements for receiving and retaining information sent electronically, and provide a means for the consumer to confirm the availability of equipment meeting those requirements; and

(D) Provide a toll-free telephone number and, at the institution's option, an address for questions about receiving electronic disclosures, for updating consumers' electronic addresses, and for seeking technical or other assistance related to electronic communication.

(ii) *Response by consumer.* A depository institution shall provide a means for the consumer to accept or reject electronic disclosures.

(iii) *Changes.* (A) A depository institution shall notify affected consumers of any change to the information provided in the notice required by paragraph (g)(3)(i) of this section. The notice shall include the effective date of the change and must be provided before that date. The notice shall also include a toll-free telephone number, and, at the institution's option, an address for questions about receiving electronic disclosures.

(B) In addition to the notice under paragraph (g)(3)(iii)(A) of this section, if the change involves providing additional disclosures by electronic communication, a depository institution shall provide the notice in paragraph (g)(3)(i) of this section and obtain the consumer's consent. A notice is not required under paragraph (g)(3)(i) of this section if the institution's initial notice states that additional disclosures may be provided electronically in the future and specifies which disclosures could be provided.

(4) *Address or location to receive electronic communication.* A depository institution that uses electronic communication to provide information required by this regulation shall:

(i) Send the information to the consumer's electronic address; or

(ii) Post the information for at least 90 days at a location such as a website, and send a notice to the consumer when the information becomes available. Thereafter the information shall be available upon request for a period of not less than two years from the date disclosures are required to be made. The notice required by paragraph (g)(4)(ii) shall identify the account involved, shall be sent to an electronic address designated by the consumer (or to a postal address, at the institution's option), and shall be substantially similar to the model form set forth in Appendix B of this part (Model Form B–12).◄

3. Section 230.4 is amended by revising paragraph (a)(1) and paragraph (a)(2)(i) to read as follows:

§ 230.4 Account disclosures

(a) *Delivery of account disclosures.* (1) *Account opening.* (i) ►General.◄ A depository institution shall provide account disclosures to a consumer before an account is opened or a service is provided, whichever is earlier. An institution is deemed to have provided a service when a fee required to be disclosed is assessed. ►Except as provided in paragraph (a)(1)(ii) of this section, if◄ [If] the consumer is not present at the institution when the account is opened or the service is provided and has not already received the disclosures, the institution shall mail or deliver the disclosures no later than 10 business days after the account

is opened or the service is provided, whichever is earlier.

►(ii) *Electronic communication.* If a consumer is not present at the institution and uses electronic communication to open an account or request a service, the disclosures required under paragraph 4(a)(1) of this section must be provided before an account is opened or a service is provided.◄

(2) *Requests.* (i) A depository institution shall provide account disclosures to a consumer upon request. If the consumer is not present at the institution when a request is made, the institution shall mail or deliver the disclosures within a reasonable time after it receives the request ►and may provide the disclosures in paper form or electronically at the consumer's electronic address. The requirements of § 230.3(g)(3) shall not apply.◄

* * * * *

4. Appendix B to Part 230 is amended by:

a. Adding entries for appendices B–10 through B–14 to the table of contents at the beginning of the appendix; and

b. Adding new Appendices B–10, B–11, B–12, B–13, and B–14.

The additions read as follows:

Appendix B to Part 230—Model Disclosure Clauses and Sample Forms

* * * * *

►B–10—Model Disclosures for Electronic Communication (§ 230.3(g)(3)) (Disclosures Available in Paper Form or Electronically)
B–11—Model Disclosures for Electronic Communication (§ 230.3(g)(3)) (Disclosures Available Only Electronically)
B–12—Model Notice for Delivery of Information Posted at Certain Locations (§ 230.3(g)(4))
B–13—Sample Form for Electronic Communication (§ 230.3(g)(3)) (Disclosures Available in Paper Form or Electronically)
B–14—Sample Form for Electronic Communication (§ 230.3(g)(3)) (Disclosures Available Only Electronically)◄

►B–10 MODEL DISCLOSURES FOR ELECTRONIC COMMUNICATION (§ 230.3(g)(3)) (Disclosures Available in Paper or Electronically)

You can choose to receive important information required by the Truth in Savings Act in paper or electronically.

Read this notice carefully and keep a copy for your records.

• You can choose to receive the following information in paper form or electronically: (description of specific disclosures to be provided electronically).

How would you like to receive this information

☐ I want paper disclosures.

☐ I want electronic disclosures.

• [We may provide the following additional disclosures electronically in the future: (description of specific disclosures).]

• [If you choose electronic disclosures, this information will be available at: (specify location) for ____ days. After that, the information will be available upon request (State how the consumer can obtain the information). When the information is posted, we will send you a message at the electronic mail address you designate here: (consumer's electronic mail address).]

[If you choose electronic disclosures this information will be sent to the electronic mail address that you designate here: (consumer's electronic mail address).]

• To receive this information you will need: (list hardware and software requirements).

Do you have access to a computer that satisfies these requirements?

☐ Yes ☐ No

• Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

☐ Yes ☐ No

• To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, contact us at (telephone number).

B–11 MODEL DISCLOSURES FOR ELECTRONIC COMMUNICATION (§ 230.3(g)(3)) (Disclosures Available Only Electronically)

You will receive important information required by the Truth in Savings Act electronically.

Read this notice carefully and keep a copy for your records.

• The following information will be provided electronically: (description of specific disclosures to be provided electronically).

• This deposit account is not available unless you accept electronic disclosures.

• [We may provide the following additional disclosures electronically in the future: (description of specific disclosures).]

• [If you choose electronic disclosures, this information will be available at: (specify location) for ____ days. After that, the information will be available upon request (state how the consumer can obtain the information). When the information is posted, we will send you a message at the electronic mail address you designate here: (consumer's electronic mail address).]

[If you choose electronic disclosures this information will be sent to the electronic mail address that you designate here: (consumer's electronic mail address).]

• To receive this information you will need: (list hardware and software requirements).

Do you have access to a computer that satisfies these requirements?

☐ Yes ☐ No

• Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

☐ Yes ☐ No

Do you want this deposit account with electronic disclosures?

☐ Yes ☐ No

• To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, contact us at (telephone number).

B–12 MODEL NOTICE FOR DELIVERY OF INFORMATION POSTED AT CERTAIN LOCATIONS (§ 230.3(g)(4))

Information about your (identify account) is now available at [website address or other location]. The information discusses (describe the disclosure). It will be available for ____ days.

BILLING CODE 6210–01–P

B-13 SAMPLE FORM FOR ELECTRONIC COMMUNICATION (§ 230.3(g)(3))
(Disclosures Available in Paper or Electronically)

You will receive important information required by the Truth in Savings Act electronically.

Read this notice carefully and keep a copy for your records.

- You can choose to receive the following information in paper form or electronically: Annual percentage yields, fees and other terms of our deposit accounts; monthly statements; and change-in-terms.
- Please indicate how you would like to receive this information:

  ☐ I want paper disclosures ☐ I want electronic disclosures
- Information about your account will be available at our Internet website: *http://www.*_____*.com* for 90 days After that, the information will be available upon request by contacting us at *1-800-xxx-xxxx*. When the information is posted on our website, we will send you a message at your e-mail address:

  insert address
- To receive this information electronically, you will need: a minimum web browser version of (Browser name). Do you have access to a computer that satisfies these requirements?

  ☐ Yes ☐ No
- Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

  ☐ Yes ☐ No
- Do you want this electronic fund transfer service with electronic disclosures?

  ☐ Yes ☐ No
- To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, you may contact us by telephone at *1-800-xxx-xxxx* or by electronic mail at_____*.help@isp.com*.

B-14 SAMPLE FORM FOR ELECTRONIC COMMUNICATION (§ 230.3(g)(3))
(Disclosures Available Only Electronically)

You will receive important information required by the Truth in Savings Act electronically.

Read this notice carefully and keep a copy for your records.

- The following account information is available electronically: Annual Percentage Yields, fees and other terms of our deposit accounts; monthly statements; and change-in-terms notices.
- This account is available only if you accept these disclosures electronically.
- Information about your account will be available at our Internet website: *http://www._____.com* for 90 days After that, the information will be available upon request by contacting us at *1-800-xxx-xxxx*. When the information is posted on our website, we will send you a message at your e-mail address:

  insert address

- To receive this information electronically, you will need: a minimum web browser version of (Browser name). Do you have access to a computer that satisfies these requirements?

  ☐ Yes ☐ No

- Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

  ☐ Yes ☐ No

- Do you want this electronic fund transfer service with electronic disclosures?

  ☐ Yes ☐ No

- To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, you may contact us by telephone at *1-800-xxx-xxxx* or by electronic mail at_____*.help@isp.com.*

BILLING CODE 6210-01-C-

5. In Supplement I to Part 230 in Section 230.2—Definitions, under *(q) Periodic Statement*, paragraph 1.ii. is removed and paragraph 1.iii. is redesignated as paragraph 1.ii.

6. In Supplement I to Part 230, under Section 230.3— General disclosure requirements, a new paragraph *(g) Electronic communication*, is added to read as follows:

Supplement I to Part 230—Official Staff Interpretations

* * * * *

Section 230.3 General disclosure requirements

* * * * *

(g) Electronic communication

(g)(1) Definition

1. *Coverage.* Information transmitted by facsimile may be received in paper form or electronically, although the party initiating the transmission may not know at the time the disclosures are sent which form will be used. A depository institution that provides disclosures by facsimile should comply with the requirements for electronic communication unless the depository institution knows that the disclosures will be received in paper form.

(g)(2) Electronic communication between depository institution and consumer

1. *Disclosures provided on institution's equipment.* Institutions that control equipment providing electronic disclosures to consumers (for example, computer terminals in an institution's lobby or kiosks located in public places) must ensure that the equipment satisfies the regulation's requirements to provide disclosures in a clear and conspicuous format and in a form the consumer may retain. A depository institution that controls the equipment may provide a printer for the consumers' use in lieu of sending the information to the consumer's electronic mail address or posting the information at another location such as the institution's website.

2. *Retainability.* Institutions must provide electronic disclosures in a retainable format (for example, they can be printed or downloaded). Consumers may communicate electronically with depository institutions through a variety of means and from various locations. Depending on the location (at home, at work, in a public place such as a library), a consumer may not have the ability at a given time to preserve TISA disclosures presented on-screen. To ensure that consumers have an adequate opportunity to retain the disclosures, the institution also must send them to the consumer's designated electronic mail address or to another location, for example, on the institution's website, where the information may be retrieved at a later date.

3. *Timing and delivery.* When a consumer opens an account on the Internet or by other electronic means, in order to meet the timing and delivery requirements, institutions must ensure that disclosures applicable at that time appear on the screen and are in a retainable format. The delivery requirements would not be met if disclosures do not either appear on the screen or if the consumer is allowed to open an account before receiving the disclosures. For example, an institution can provide a link to electronic disclosures appearing on a separate page as long as consumers cannot bypass the link and they are required to access the disclosures before completing the opening of the account.

(g)(2)(ii) In-person exception

1. *Account-opening disclosures in paper form.* If a consumers opens a deposit account in person, the depository institution generally must provide account-opening disclosures in paper form. For example, if a consumer visits a depository institution's branch office to open a deposit account, account-opening disclosures are required before the consumer opens an account or a service is provided and they must be provided in paper form; directing the consumer to disclosures posted on the institution's website would not be sufficient. If, however, a consumer makes a request on the Internet to open an account, a depository institution may send disclosures electronically at or around that time even though the depository institution's procedures require the consumer to visit a branch office at a later time to complete the agreement (for example, to execute a signature card).

(g)(3) Disclosure notice

1. *Consumer's affirmative responses.* Even though a consumer accepts electronic disclosures in accordance with § 230.3(g)(3)(ii), a depository institution may deliver disclosures by electronic communication only if the consumer provides an electronic address where one is required, and responds affirmatively to questions about technical requirements, access to a printer or the ability to download information; (see sample forms B–13 and B–14 in appendix B to this part).

(g)(3)(i) Notice by depository institution

1. **TOLL-FREE TELEPHONE NUMBER.** The number must be toll-free for nonlocal calls made from an area code other than the one used in the institution's dialing area. Alternatively, a depository institution may provide any telephone number that allows a consumer to call for information and reverse the telephone charges.

2. *Institution's address.* Depository institutions have the option of providing either an electronic or postal address for consumers' use in addition to the toll-free telephone number.

3. *Discontinuing electronic disclosures.* Consumers may use the toll-free number (or optional address) if they wish to discontinue receiving electronic disclosures. In such cases, the institution must inform consumers whether the account is also available with disclosures in paper form.

(g)(3)(ii) Response by consumer

1. *Nature of consent.* Consumers must agree to receive disclosures by electronic communication knowingly and voluntarily. An agreement to receive electronic disclosures is not implied from consumers' use of an account or acceptance of general account terms.

(g)(3)(iii) Changes

1. *Examples.* Examples of changes include a change in technical requirements, such as upgrades to software packages affecting the institution's disclosures provided on the Internet.

2. *Timing for notices.* A notice of a change must be sent a reasonable period of time before the effective date of the change. The length of a reasonable notice period may vary, depending on the type of change involved; however fifteen days is a reasonable time for providing notice in all cases.

3. *Delivery of notices.* An institution meets the delivery requirements if the notice of a change is sent to the address provided by the consumer for receiving other disclosures. For example, if the consumer provides an electronic address to receive notices about periodic statements posted at the institution's website, the same electronic address may be used for the change notice. The consumer's postal address must be used, however, if the consumer consented to additional disclosures by electronic communication when receiving the notice under § 230.3(g)(3)(i) but provided a postal address to receive periodic statements in paper form.

4. *Toll-free number.* See comment 3(g)(3)(i)–1.

5. *Institution's address.* See comment 3(g)(3)(i)–2

6. *Consumer inquiries.* Consumers may use the toll-free telephone number (or optional address) for questions or assistance with problems related to a change, such as an upgrade to computer software that is not provided by the institution. Consumers may also use the toll-free number if they wish to discontinue receiving electronic disclosures; in such cases, the institution must inform consumers whether the account is also available with disclosures in paper form.

(g)(4) Address or location to receive electronic communication

(g)(4)(i)

1. *Electronic address.* A consumer's electronic address is an electronic mail address that may be used by the consumer for receiving communications transmitted by parties other than the depository institution.

(g)(4)(ii)

1. *Identifying account involved.* A depository institution is not required to identify an account by reference to the account number. For example, where the consumer does not have multiple accounts, and no confusion would result, the institution may refer to "your checking account," or when the consumer has multiple accounts the institution may use a truncated account number.

2. *Availability.* Information that is not sent to a consumer's electronic mail address must be available for at least 90 days from the date the information becomes available or from the date the notice required by § 230.3(g)(4)(ii) is sent to the consumer, whichever occurs later.◄

7. In Supplement I to Part 230, under § 230.8—Advertising, the following amendments are made:

a. Under *(a) Misleading or inaccurate advertisements,* a new paragraph 9. is added;

b. Under *(b) Permissible rates,* a new paragraph 4. is added; and

c. Under *(e)(1) Certain Media,* a new heading *(e)(1)(i),* and a new paragraph 1. are added.

The additions read as follows:

* * * * *

Section 230.8 Advertising

(a) Misleading or inaccurate advertisements

* * * * *

►9. *Electronic advertising.* A depository institution that provides a multi-page advertisement electronically may display a triggering term (such as a bonus or an annual percentage yield) at one location, as long as the consumer is clearly referred—for example, by clicking an icon that directly connects the consumer—to the location that sets forth clearly and conspicuously the additional disclosures required by the regulation. For example, the icon could instruct the consumer to "click here for additional cost information."◄

* * * * *

(b) Permissible rates

* * * * *

►4. *Electronic communication.* An interest rate may be stated in conjunction with, but not more conspicuously than, the annual percentage yield to which it relates. In an advertisement using electronic communication, both rates must appear in the same location so that both rates may be viewed simultaneously. This requirement is not satisfied if the annual percentage yield can be viewed only by use of a link that connects the consumer to information appearing at another location.◄

* * * * *

(e)(1) Certain media.

►*(e)(1)(i)*

1. *Internet advertisements.* The exemption for advertisements made through broadcast or electronic media does not extend to advertisements made by electronic communication, such as advertisements posted on the Internet.◄

* * * * *

By order of the Board of Governors of the Federal Reserve System, August 31, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–23140 Filed 9–13–99; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–207–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dornier Model 328–100 series airplanes. This proposal would require replacement of a flight attendant panel and modification of its associated wiring. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent the disabling of the "Fasten Seat Belt" and "No Smoking" signs when they are required to be illuminated. Such disabling could result in the inability to instruct the passengers to extinguish their cigarettes and fasten their seat belts when required, which may contribute to passenger injury should a hard landing or in-flight turbulence be experienced.

DATES: Comments must be received by October 14, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–207–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Dornier Luftfahrt GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–207–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–207–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, notified the FAA that an unsafe condition may exist on certain Dornier Model 328–100 series airplanes. The LBA advises that, when the reading light switches that are located on the flight attendant panel are in the OFF position, the seat belt warning light switch and the no smoking warning light switch that are located on the flight deck overhead panel are inhibited from operating the passenger cabin "Fasten Seat Belt" and "No Smoking" warning lights. This condition, if not corrected, could result in the inability to instruct the passengers to extinguish their cigarettes and fasten their seat belts when required, which may contribute to passenger injury should a hard landing or in-flight turbulence be experienced.

Explanation of Relevant Service Information

Dornier has issued Service Bulletin SB–328–33–271, dated September 17, 1998, which describes procedures for replacement of a flight attendant panel with a new or modified panel and modification of its associated wiring. The LBA classified this service bulletin as mandatory and issued German airworthiness directive 1999–053, dated February 25, 1999, in order to assure the continued airworthiness of these airplanes in Germany.

FAA's Conclusions

This airplane model is manufactured in Germany and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LBA has kept the FAA informed of the situation described above. The FAA has examined the findings of the LBA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacement of a flight attendant panel and modification of its associated wiring. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 51 Model 328–100 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be supplied by the airplane manufacturer free of charge. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $3,060, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dornier Luftfahrt GmbH: Docket 99–NM–207–AD.

Applicability: Model 328–100 series airplanes, serial numbers 3005 through 3093 inclusive and 3095 through 3111 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that passengers are properly instructed to extinguish their cigarettes and fasten their seat belts when required, and to prevent consequent passenger injury should a hard landing or in-flight turbulence be experienced, accomplish the following:

Panel Replacement

(a) Within 120 days after the effective date of this AD, replace the existing flight attendant panel 19VE with a new or modified panel, part number 328–0100, Amendment D, and modify the wiring associated with it; in accordance with Dornier Service Bulletin SB–328–33–271, dated September 17, 1998.

Spares

(b) As of the effective date of this AD, no person shall install on any airplane a flight attendant panel 19VE, unless it has been modified in accordance with Dornier Service Bulletin SB–328–33–271, dated September 17, 1998.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on [date 35 days after date of publication of final rule in the **Federal Register**].

Note 3: The subject of this AD is addressed in German airworthiness directive 1999–053, dated February 25, 1999.

Issued in Renton, Washington, on September 7, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–23744 Filed 9–13–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 71

[Airspace Docket No. 99–AGL–46]

Modification of Class E Airspace; Fort Wayne, IN Correction

AGENCY: Federal Aviation Administration (FAA, DOT).

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This action corrects an error in the notice of proposed rulemaking that was published in the **Federal Register** on Friday, August 27, 1999 (64 FR 46868), Airspace Docket No. 99–AGL–46. The notice of proposed rulemaking modified Class E Airspace at Fort Wayne, IN.

DATES: Comments must be received on or before October 11, 1999.

FOR FURTHER INFORMATION CONTACT: Annette Davis, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone: (847) 294–7477.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 99–22062, Airspace Docket No. 99–AGL–46, published on August 27, 1999 (64 FR 46868), modified Class E Airspace at Fort Wayne, IN. An incorrect latitude and longitude was published for the Smith Field Airport in this airspace notice of proposed rulemaking. This action corrects that error.

Correction to Notice of Proposed Rulemaking

Accordingly, pursuant to the authority delegated to me, the error for the Class E airspace, Fort Wayne, IN, as published in the **Federal Register** August 27, 1999 (64 FR 46868), (FR Doc. 99–22062), is corrected as follows:

On page 46869, Column 1, change the latitude and longitude for the Fort Wayne, Smith Field Airport, IN, to the following:

(Lat. 41° 08′ 26″N., long. 85° 09′ 10″W.)

Issued in Des Plaines, IL on September 1, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–23943 Filed 9–13–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–50]

Proposed modification of Class D airspace and establishment of Class E airspace; Dayton, Wright-Patterson AFB, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class D airspace at Dayton, Wright-Patterson AFB, OH. This action would amend the effective hours of the Class D surface area to coincide with the airport traffic control tower (ATCT) hours of operation for Wright-Patterson AFB. The purpose of this action is to clarify when two-way radio communication with the ATCT is required. This action also proposes to create a Class E surface area for those times when the ATCT is closed.

DATES: Comments must be received on or before October 29, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–50, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Annette Davis, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–50." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class D airspace at Dayton, Wright-Patterson AFB, OH, by amending the effective hours to coincide with the ATCT hours of operation for Wright-Patterson AFB, and by creating Class E airspace for those times when the ATCT is closed. Controlled airspace extending upward from the surface is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class D airspace designations are published in paragraph 5000, and Class E airspace designations for a surface area are published in paragraph 6002, of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class D designations and Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

AGL OH D Dayton, Wright-Patterson AFB, OH [Revised]

Dayton, Wright-Patterson AFB, OH
(Lat. 39° 39′34″ N., long 84° 02′54″ W.)
Patterson VORTAC
(Lat. 39° 49′06″ N., long 84° 03′16″ W.)

That airspace extending upward from the surface to and including 3,400 feet MSL within an 4.6-mile radius of Wright-Patterson AFB, and within 1.3 miles each side of the Patterson VORTAC 046° radial extending from the 4.6-mile radius to 5.6 miles northeast of the VORTAC, excluding that airspace within the James M. Cox Dayton International Airport, OH, Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace designated as a surface area.

* * * * *

Dayton, Wright-Patterson AFB, OH
(Lat. 39° 49′34″ N., long 84° 02′54″ W.)
Patterson VORTAC
(Lat. 39° 49′06″ N., long 84° 03′16″ W.)

That airspace extending upward from the surface to and including 3,400 feet MSL within an 4.6-mile radius of Wright-Patterson AFB, and within 1.3 miles each side of the Patterson VORTAC 046° radial extending from the 4.6-mile radius to 5.6 miles northeast of the VORTAC, excluding that airspace within the James M. Cox Dayton International Airport, OH, Class C airspace area. This Class E airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on August 30, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–23942 Filed 9–13–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–49]

Proposed Modification of Class E Airspace; Caledonia, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Caledonia, MN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 31 has been developed for Houston County Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to remove the extension to the existing controlled airspace for this airport.

DATES: Comments must be received on or before October 29, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–49, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Annette Davis, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–49." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each

substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of a Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Caledonia, NM, to accommodate aircraft executing the proposed GPS Rwy 31 SIAP at Houston County Airport by modifying the existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approaches. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface on the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendment are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Caledonia, MN [Revised]

Caledonia, Houston County Airport, MN
(Lat. 43° 35′ 47″N., long. 91° 30′ 14″W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Houston County Airport.

* * * * *

Issued in Des Plaines, Illinois on August 30, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–23944 Filed 9–13–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 151

RIN 1076–AD90

Acquisition of Title to Land in Trust

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule; Reopening of comment period.

SUMMARY: This notice reopens the comment period for the proposed rule published at 64 FR 17574–17588, April 12, 1999 on the Acquisition of title to land in trust.

DATES: Comments must be received on or before October 12, 1999.

ADDRESSES: You may mail comments to the Office of Trust Responsibilities, Bureau of Indian Affairs, 1849 C Street, NW, MS–4513–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Terry Virden, Director, Office of Trust Responsibilities, Bureau of Indian Affairs, MS–4513, Main Interior Building, 1849 C Street, NW, Washington, DC 20240; by telephone at (202) 208–5831; or by telefax at (202) 219–1065.

SUPPLEMENTARY INFORMATION: On Monday, April 12, 1999, the Bureau of Indian Affairs published a proposed rule, 64 FR 17574–17588, concerning the Acquisition of title to land in trust. The deadline for receipt of comments was July 12, 1999, which was extended to September 12, 1999. The comment period is extended for an additional thirty days to allow additional time for comment on the proposed rule. Comments must be received on or before October 12, 1999.

Dated: September 7, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–23815 Filed 9–13–99; 8:45 am]

BILLING CODE 4310–02–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6438–4]

Assessment of Visibility Impairment at the Grand Canyon National Park: Advance Notice of Proposed Rulemaking; Extension of Public Comment Period

AGENCY: Environmental Protection Agency.

ACTION: Advance notice of proposed rulemaking; extension of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is extending the comment period for an advance notice of proposed rulemaking, published June 17, 1999 (64 FR 32458), regarding visibility impairment at the Grand Canyon National Park (GCNP) and the possibility that the Mohave Generating Station (MGS) in Laughlin, Nevada may contribute to that impairment. In the June 17 document, EPA requests information that it should consider in determining whether visibility problems at the GCNP can be reasonably attributed to MGS, and if so, what, if any, pollution control requirements should be applied.

The public comment period for the advance notice of proposed rulemaking was originally due to expire on August 16, 1999. On August 6, 1999, at the request of Southern California Edison Company, EPA published a document extending the public comment period for 30 days (64 FR 42891). At the request of the Grand Canyon Trust, EPA is now extending the public comment period for an additional 15 days.

DATES: The comment period on the advance notice of proposed rulemaking is extended until September 30, 1999.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to: EPA Region IX, 75 Hawthorne Street (AIR2), San Francisco, CA 94105, Attn: Regina Spindler.

FOR FURTHER INFORMATION CONTACT: Regina Spindler (415) 744–1251, Planning Office (AIR2), Air Division, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Dated: September 3, 1999.

Felicia Marcus,

Regional Administrator, Region 9.

[FR Doc. 99–23917 Filed 9–13–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 272

[FRL–6422–2]

Hazardous Waste Management Program: Final Authorization and Incorporation by Reference of State Hazardous Waste Management Program for Texas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to incorporate by reference in part 272 of Title 40 of the Code of Federal Regulations (CFR) EPA's approval of the Texas Natural Resource Conservation Commission's (TNRCC) hazardous waste regulations for Resource Conservation and Recovery Act Clusters II, III and IV and to approve its revisions to that program submitted by the State of Texas. The EPA will incorporate by reference into the CFR those provisions of the State statutes and regulations that are authorized and federally enforceable. In the "Rules and Regulations" section of this **Federal Register** (FR), the EPA is codifying and incorporating by reference the State's hazardous waste program as an immediate final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the immediate final rule. If the EPA does not receive adverse written comments, the immediate final rule will become effective and the Agency will not take further action on this proposal. If the EPA receives adverse written comments, a second FR document will be published before the time the immediate final rule takes effect. The second document may withdraw the immediate final rule or identify the issues raised, respond to the comment and affirm that the immediate final rule will take effect as scheduled. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments on this proposed rule must be received on or before October 14, 1999.

ADDRESSES: Written comments may be mailed to Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD-G), Multimedia Planning and Permitting Division, at the address shown below. Copies of the materials submitted by TNRCC may be examined during normal business hours at the following locations: EPA Region 6 Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444; or the Texas Natural Resource Conservation Commission, 1700 N. Congress Avenue, Austin, TX 70711–3087, (512) 239–1000.

FOR FURTHER INFORMATION CONTACT: Alima Patterson at (214) 665–8533.

SUPPLEMENTARY INFORMATION:

For additional information see the immediate final rule published in the rules section of this **Federal Register**.

Dated: June 24, 1999

Jerry Clifford,

Deputy Regional Administrator, Region 6.

[FR Doc. 99–22182 Filed 9–13–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Parts 212, 225, and 252

[DFARS Case 99–D301]

Defense Federal Acquisition Regulation Supplement; Domestic Source Restrictions—Commercial Items

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to address requirements pertaining to the applicability of domestic source restrictions to contracts and subcontracts for the acquisition of commercial items and commercial components.

DATES: Comments on the proposed rule should be submitted in writing to the address specified below on or before November 15, 1999, to be considered in the formation of the final rule.

ADDRESSES: Interested parties should submit written comments on the proposed rule to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–3050. Please cite DFARS Case 99–D301.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil.

Please cite DFARS Case 99–D301 in all correspondence related to this issue. E-mail correspondence should cite DFARS Case 99—D301 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0288. Please cite DFARS Case 99–D301.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes amendments to DFARS 212.503, 212.504, 225.7019–2, and 252.225–7016 to address the applicability of domestic source restrictions to contracts and subcontracts for the acquisition of commercial items and commercial components. The rule specifies that the domestic source restrictions in 10 U.S.C. 2534 and annual defense appropriations acts are inapplicable if the restricted foreign goods are components of commercial items or commercial components being acquired. The rule also removes the Trade Agreements Act (19 U.S.C. 2512) and the Buy American Act (41 U.S.C. 10) from the list of laws that are inapplicable to subcontracts for the acquisition of commercial items, since the Trade Agreements Act and the Buy American Act apply to end items only.

This proposed rule supersedes the proposed rule published at 62 FR 59641 on November 4, 1997 (DFARS Case 97–D028), pertaining to commercial ball or roller bearings that are components of

noncommercial items. No public comments were received on that proposed rule, which is hereby withdrawn.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory flexibility Act, 5 U.S.C. 601, *et seq.*, because the primary effect of the rule is a restriction on the acquisition of ball and roller bearings manufactured in the United Kingdom. The clause at DFARS 252.225–7016 presently permits the acquisition of commercial ball and roller bearings manufactured in the United Kingdom, regardless of whether the bearings are acquired as end items or components. The proposed rule would no longer permit the acquisition of commercial ball and roller bearings from the United Kingdom if the bearings are acquired as end items. This change is not expected to have a significant impact on U.S. firms. Therefore, an initial regulatory flexibility analysis has not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 99–D301 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 212, 225, and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 212, 225, and 252 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 212, 225, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

2. Section 212.503 is amended by revising paragraph (a)(xi) to read as follows:

212.503 Applicability of certain laws to Executive Agency contracts for the acquisition of commercial items.

(a) * * *

(xi) Section 8099, Public Law 104–61, Restriction on Acquisition of Ball and Roller Bearings, and similar sections in subsequent defense appropriations acts, if ball or roller bearings are components of the commercial items being acquired.

* * * * *

3. Section 212.504 is amended by revising paragraphs (a) (xviii) and (xxvi) and removing and reserving paragraphs (a) (xxiii) and (xxiv) to read as follows:

212.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

(a) * * *

(xviii) 10 U.S.C. 2534, Miscellaneous Limitations on the Procurement of Goods Other Than United States Goods, if the restricted foreign goods are components of—

(A) The commercial items being acquired; or

(B) The commercial components being acquired.

* * * * *

(xxiii) [Reserved.]

(xxiv) [Reserved.]

* * * * *

(xxvi) Section 8099, Public Law 104–61, Restriction on Acquisition of Ball and Roller Bearings, and similar sections in subsequent defense appropriations acts, if ball or roller bearings are components of—

(A) The commercial items being acquired; or

(B) The commercial components being acquired.

* * * * *

PART 225—FOREIGN ACQUISITION

4. Section 225.7019–2 is amended by revising paragraph (b) to read as follows:

225.7019–2 Exceptions.

* * * * *

(b) The restriction in 225.7019–1(b) does not apply to—

(1) Contracts for the acquisition of commercial items incorporating ball or roller bearings (see 212.503(a)(xi); or

(2) Subcontracts for the acquisition of—

(i) Commercial items incorporating ball or roller bearings; or

(ii) Commercial components incorporating ball or roller bearings (see 212.504(a)(xxvi)).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 252.225–7016 is amended by revising the clause date and paragraphs (c)(1) and (d) to read as follows:

252.225–7016 Restriction on acquisition of ball and roller bearings.

* * * * *

Restriction on Acquisition of Ball and Roller Bearings (XXX 1999)

* * * * *

(c)(1) The restriction in paragraph (b) of this clause does not apply to the extent that the end items containing ball or roller bearings or components containing ball or roller bearings are commercial items.

* * * * *

(d) The restriction in paragraph (b) of this clause may be waived upon request from the Contractor in accordance with subsection 225.7019–3 of the Defense Federal Acquisition Regulation Supplement (DFARS). If the restriction is waived for miniature and instrument ball bearings, the Contractor agrees to acquire a like quantity and type of domestic manufacture for nongovernmental use, unless the miniature and instrument ball bearings being acquired are manufactured in the United Kingdom or an exception applies in accordance with DFARS 225.7019–2(a).

* * * * *

[FR Doc. 99–23729 Filed 9–13–99; 8:45 am]

BILLING CODE 5000–04–M

Notices

Federal Register

Vol. 64, No. 177

Tuesday, September 14, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Request for Approval for an Addendum to a Currently Approved Information Collection

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Farm Service Agency (FSA) to amend a current information collection. To facilitate payment to vendors, invoice and payment forms (KC–269, Notice to Deliver and KC–269–A, Forwarding Notice) previously cleared by the Office of Management and Budget (OMB), are being amended to include a self-certification form concerning delivery of commodities. These commodities are purchased for use in domestic food assistance programs, which are operated through a cooperative effort of the Commodity Credit Corporation (CCC) and three agencies within the Department of Agriculture: FSA, the Food and Nutrition Service (FNS) and the Agriculture Marketing Service (AMS).

DATES: Comments on this notice must be received on or before November 15, 1999 to be assured consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Greg Borchert, Chief, Planning and Analysis Division, Kansas City Commodity Office, 9200 Ward Parkway, Kansas City, Missouri 64114, telephone (816) 926–3536, fax (816) 926–6767.

SUPPLEMENTARY INFORMATION:

Title: Offer Forms and Shipment Information Log—5 CFR 1320.

OMB Control Number: 0560–0177.

Expiration Date: 1/31/01.

Type of Request: Approval of an Addendum to a Currently Approved Information Collection.

Abstract: FSA and AMS purchase commodities for FNS's domestic food assistance programs for delivery to warehouses operated for, or under contract with, State agencies. Under an agreement among FSA, CCC, AMS, and FNS, each agency agrees to perform a certain function in order to carry out the domestic food assistance programs. One of the FSA's functions is to handle billing documents and make payments. Until now, FSA has solely relied upon consignee receipts to provide sufficient proof of delivery to allow payments to vendors. Because these receipts were handled by several parties, including State Governments and warehouses, the amount of time it took for such receipts to reach the FSA payment office because quite lengthy. To shorten the payment process, FSA is allowing vendors to self-certify to the quantity of commodity delivered and to the date of delivery. Self-certification will ease the burden on small business' cash flow by allowing payments for commodities to be issued more timely. The self-certification will be included in the package of forms previously approved by OMB under 0560–0052. The use of self-certification provides reasonable and proper financial controls and accountability for program funds. Procurement agencies will also amend purchase announcements and transportation contracts to allow for the self-certification. FNS will still require the submission of an FNS–57 (Report of Shipment Received Over, Short, and/or Damaged (OSD)), when necessary.

Regulations governing paperwork burdens on the public require that before an agency collects information from the public, the agency must receive approval from OMB. In accordance with those regulations, FSA is seeking approval for these forms to provide for delivery self-certification.

Estimate of Burden: Public reporting burden for collecting information under this notice is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: Business and other for-profit organizations.

Estimated Number of Respondents: 176 for form KC–269, and 30 for form KC–269–A.

Estimated Number of Annual Responses per Respondent: 100 for form KC–269, and 150 for form KC–269–A.

Estimated Total Annual Burden on Respondents: 1,467 hour for form KC–269, and 375 hours for form KC–269–A.

Proposed topics for comment included: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility, (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments regarding this information collection requirement should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Agriculture, Washington, DC 20503, and to Greg Borchert, Chief, Planning and Analysis Division, Kansas City Commodity Office, 9200 Ward Parkway, Kansas City, Missouri 64114, telephone (816) 926–3536, fax (816) 926–6767.

OMB is required to make a decision concerning the collection of information contained in this notice between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of consideration if OMB receives it within 30 days of publication of this notice. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC., on September 8, 1999.

Parks Shackelford,

Acting Administrator, Farm Service Agency.

[FR Doc. 99–23952 Filed 9–13–99; 8:45 am]

BILLING CODE 3410–05–M

DEPARTMENT OF AGRICULTURE

Forest Service

Lemhi Pass Management Plan, Beaverhead-Deerlodge National Forest, Beaverhead County, Montana, and Salmon-Challis National Forest, Lemhi County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to develop recreation facilities at Lemhi Pass, and manage the Lemhi Pass National Historic Landmark.

DATES: Comments concerning the scope of the analysis should be received in writing by October 15, 1999.

ADDRESSES: Send written comments to Dillon Ranger District, Beaverhead-Deerlodge National Forest, 420 Barrett St., Dillon, MT 59725.

FOR FURTHER INFORMATION CONTACT: Katie R. Bump, Lemhi Pass project coordinator, (406) 683–3900.

SUPPLEMENTARY INFORMATION: Lemhi Pass, on the Continental Divide between Idaho and Montana, is a National Historic Landmark, on the Lewis and Clark National Historic Trail. With the approaching bicentennial of Lewis and Clark's expedition (2003–2006), the Beaverhead-Deerlodge and Salmon-Challis National Forests are studying ways to preserve the historic, natural landscape of Lemhi Pass, and accommodate increased numbers of visitors. The decision to be made is selection of the facilities and management standards and guidelines appropriate to preserve the historic value of the site in the bicentennial years and for the long term, and accommodate visitors at Lemhi Pass. The general direction for management at Lemhi Pass comes from the two Forest Plans, and from the Comprehensive Management Plan for the Lewis and Clark Trail, developed by the National Park Service; this decision will determine specific management actions at the site.

Scoping will include a public meeting to be held at Lemhi Pass on September 25, 1999, at 10:30 am. The Forests will also use a mailing list of interested parties, and news releases to local media to ensure public involvement. The Forests are working to develop and analyze the effects of a range of alternatives. An initial alternative has been prepared, and is available for public review and comment. This initial alternative addresses proposed facilities including parking areas, picnic sites, road and trail improvements, and interpretation, along with management standards for the site. Issues that have been identified include protection of the historic values associated with the natural landscape and scenic qualities of the area, accommodation for visitors including physically challenged people, concern for public safety, and effects on the Continental Divide National Scenic Trail, Roadless area, recreation opportunities, livestock grazing, wildlife, fisheries and vegetation.

The joint lead agencies are the Beaverhead-Deerlodge and Salmon-Challis National Forests, USDA Forest Service. The responsible officials are David Fallis, Dillon District Ranger, Beaverhead-Deerlodge National Forest, 420 Barrett St., Dillon, MT 59725, and Richard Ward, Leadore District Ranger, Salmon-Challis National Forest, P.O. Box 180, Leadore, ID 83464. Written comments and suggestions are invited.

The draft EIS is tentatively planned for filing in January 2000, with the final EIS filed by May 2000. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

It is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.).

Dated: September 2, 1999.

David S. Fallis,

District Ranger.

[FR Doc. 99–23957 Filed 9–13–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

BA–3c Naomi Siphon Outfall Management Project/PBA–12a Barataria Bay Waterway West Bank Protection Project; Jefferson and Plaquemines Parishes, LA

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Naomi Siphon Outfall Management Project and the Barataria Bay Waterway East Bank Protection Project, Jefferson and Plaquemines Parishes, Louisiana.

FOR FURTHER INFORMATION CONTACT: Donald W. Gohmert, State Conservationist, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302; telephone (318) 473–7751.

SUPPLEMENTARY INFORMATION: The environmental assessment of the federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, State Conservationist, has determined that preparation and review of an environmental impact statement is not needed for this project.

The project will evaluate potential impacts attributed to management of the Naomi Siphons outfall and the evaluation of potential impacts attributed to bank protection measures along the east bank of Barataria Bay Waterway. The project area encompasses approximately 26,603 acres of marsh and open water habitat. Project features include the construction of a fixed crested weir with a boat bay on the Goose Bayou Canal, construction of a fixed crested weir with a barge bay on Bayou Dupont Canal, and construction of approximately 17,600 linear feet of rock bankline protection.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data collected during the environmental assessment are on file and may be reviewed by contacting Donald W. Gohmert.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

Donald W. Gohmert,

State Conservationist.

[FR Doc. 99–23831 Filed 9–13–99; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Offsets in Military Reports.

Agency Form Number: n/a.

OMB Approval Number: 0694–0084.

Type of Request: Renewal of an existing collection of information.

Burden: 1,000 hours.

Average Time Per Response: 10 hours per response.

Number of Respondents: 100 respondents.

Needs and Uses: The Defense Production Act Amendments of 1992, Section 123 (Pub.L. 102558), which amended Section 309 or the Defense Production Act of 1950, requires United States firms to furnish information regarding offset agreements exceeding $5,000,000 in value associated with sales of weapon systems or defense-related items to foreign countries. The information collected on offset transactions will be used to assess the cumulative effect of offset compensation practices on U.S. trade and competitiveness, as required by statute.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, Office of the Chief Information Officer, (202) 482–3272, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: September 8, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 99–23852 Filed 9–13–99; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Request for Nominations of Members To Serve on the Census Advisory Committee on the African American Population

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of request for nominations.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, as amended by Pub. L. 94–409, Pub. L. 96–523, and Pub. L. 97–375), the Census Bureau invites and requests nominations of individuals for appointment by the Secretary of Commerce to the Census Advisory Committee on the African American Population. The terms of some of the members of the Committee will soon expire. The Census Bureau will consider nominations received in response to this notice for appointment to the Committee in addition to nominations already received. The Supplementary Information section for this notice provides information about the objectives and duties of the Advisory Committee and membership criteria.

DATES: Please submit nominations on or before September 29, 1999.

ADDRESSES: Please submit nominations to Nampeo R. McKenney, Senior Research and Technical Advisor, Department of Commerce, Bureau of the Census, Room 3631, Federal Building 3, Washington, DC 20233, telephone 301–457–2070. Nominations may also be submitted via FAX to 301–457–2642 or by e-mail to Nampeo.R.McKenney@ccmail.census.gov.

FOR FURTHER INFORMATION CONTACT: Nampeo R. McKenney, Senior Research and Technical Advisor, at the above address or via e-mail.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the Federal Advisory Committee Act, (Title 5, United States Code (U.S.C.), Appendix 2) in 1995. The following provides information about the Committee, membership, and the nomination process.

Objectives and Duties

1. The Committee provides an organized and continuing channel of communication between the African American community and the Bureau of the Census on efforts to reduce the differentials in totals for all population groups during Census 2000 and on ways census data can be disseminated for maximum usefulness of the African American population and other users.

2. The Committee draws on the experience of its members with the 1990 census process and procedures, results of evaluation and research studies, test censuses, and the expertise and insight of its members to provide advice and recommendations on data collection, processing, promotional, and evaluation activities during the implementation phase of Census 2000. The Committee provides advice regarding the tabulation plans for race and ethnic data.

3. The Committee functions solely as an advisory body under the Federal Advisory Committee Act.

4. The Committee reports to the Director of the Bureau of the Census.

Membership

The Committee consists of nine members who are appointed for three-year terms by, and serve at the discretion of, the Secretary of Commerce. Committee members are selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidelines. The Committee aims to have a balanced representation, considering factors such as geography, gender, and ethnic diversity of Committee membership and the expertise and knowledge of census procedures and activities. The Committee aims to include members from academic, media, research, community-based, and religious organizations, the business community, and local governments. No employee of the Federal Government can serve as a member of the Committee. Consideration for reappointment of membership after a term is contingent upon the individual's satisfactory attendance and participation in the activities of the advisory committee as well as criteria established for input and advice from the advisory committee.

Miscellaneous

1. Members of the Committee serve without compensation, but the Census Bureau will, upon request, reimburse travel expenses as authorized by 5 U.S.C. 5701 *et seq.*

2. The Committee meets at least once a year, but additional meetings may be held as deemed necessary by the Director or Designated Federal Official. Meetings are one to two days in duration.

3. Committee meetings are open to the public.

Nomination Information

1. Nominations are sought as described above.

2. Nominees should have expertise and knowledge of the cultural patterns and issues and/or data needs of their communities to provide advice and recommendations to the Census Bureau on the best ways to use census operations and procedures to obtain complete and accurate data on their population. The experience that qualifies the candidate for membership should be outlined in the nomination letter. Nominations may come from individuals or organizations. A summary of the candidate's qualifications should be included with the nomination. Nominees should be able to actively participate in good faith in the tasks of the Committee. Besides participation in the Committee meetings, active participation may include review of materials and participation in conference calls, working groups, and observation trips.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Committee membership.

Dated: September 8, 1999.

Kenneth Prewitt,

Director, Bureau of the Census.

[FR Doc. 99–23903 Filed 9–13–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Request for Nominations of Members To Serve on the Census Advisory Committee on the American Indian and Alaska Native Populations

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of request for nominations.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, as amended by Pub. L. 94–409, Pub. L. 96–523, and Pub. L. 97–375), the Census Bureau invites and requests nominations of individuals for appointment by the Secretary of Commerce to the Census Advisory Committee on the American Indian and Alaska Native Populations. The terms of some of the members of the Committee will soon expire. The Census Bureau will consider nominations received in response to this notice for appointment to the Committee in addition to nominations already received. The Supplementary Information section for this notice provides information about the objectives and duties of the Advisory Committee and membership criteria.

DATES: Please submit nominations on or before September 29, 1999.

ADDRESSES: Please submit nominations to Nampeo R. McKenney, Senior Research and Technical Advisor, Department of Commerce, Bureau of the Census, Room 3631, Federal Building 3, Washington, DC 20233, telephone 301–457–2070. Nominations may also be submitted via FAX to 301–457–2642 or by e-mail to Nampeo.R.McKenney@ccmail.census.gov.

FOR FURTHER INFORMATION CONTACT: Nampeo R. McKenney, Senior Research and Technical Advisor, at the above address or via e-mail.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the Federal Advisory Committee Act (Title 5, United States Code (U.S.C.), Appendix 2) in 1995. The following provides information about the Committee, membership, and the nomination process.

Objectives and Duties

1. The Committee provides an organized and continuing channel of communication between the American Indian and Alaska Native communities and the Bureau of the Census on efforts to reduce the differentials in totals for all population groups during Census 2000 and on ways census data can be disseminated for maximum usefulness of the American Indian and Alaska Native populations, their tribal governments, and other users.

2. The Committee draws on the experience of its members with the 1990 census process and procedures, results of evaluation and research studies, test censuses, and the expertise and insight of its members to provide advice and recommendations on data collection, processing, promotional, and evaluation activities during the implementation phase of Census 2000. The Committee provides advice regarding the tabulation plans for race and ethnic data.

3. The Committee functions solely as an advisory body under the Federal Advisory Committee Act.

4. The Committee reports to the Director of the Bureau of the Census.

Membership

The Committee consists of nine members who are appointed for three-year terms by, and serve at the discretion of, the Secretary of Commerce. Committee members are selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidelines. The Committee aims to have a balanced representation, considering factors such as geography, gender, and ethnic diversity of Committee membership and the expertise and knowledge of census procedures and activities. The Committee aims to include members from academic, media, research, community-based, and religious organizations, the business community, and tribal and local governments. No employee of the Federal Government can serve as a member of the Committee. Consideration for reappointment of membership after a term is contingent upon the individual's satisfactory attendance and participation in the activities of the advisory committee as well as criteria established for input and advice from the advisory committee.

Miscellaneous

1. Members of the Committee serve without compensation, but the Census Bureau will, upon request, reimburse travel expenses as authorized by 5 U.S.C. 5701 *et seq.*

2. The Committee meets at least once a year, but additional meetings may be held as deemed necessary by the Director or Designated Federal Official. Meetings are one to two days in duration.

3. Committee meetings are open to the public.

Nomination Information

1. Nominations are sought as described above.

2. Nominees should have expertise and knowledge of the cultural patterns and issues and/or data needs of their American Indian and Alaska Native tribal governments and communities to provide advice and recommendations to the Census Bureau on the best ways to use census operations and procedures to obtain complete and accurate data on their population. The experience that qualifies the candidate for membership should be outlined in the nomination letter. Nominations may come from individuals or organizations. A summary of the candidate's qualifications should be included with the nomination. Nominees should be able to actively participate in good faith in the tasks of the Committee. Besides participation in the Committee meetings, active participation may include review of materials and participation in conference calls, working groups, and observation trips.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Committee membership.

Dated: September 8, 1999.

Kenneth Prewitt,

Director, Bureau of the Census.

[FR Doc. 99–23902 Filed 9–13–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Request for Nominations of Members To Serve on the Census Advisory Committee on the Asian and Pacific Islander Populations

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of request for nominations.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, as amended by Pub. L. 94–409, Pub. L. 96–523, and Pub. L. 97–375), the Census Bureau invites and requests nominations of individuals for appointment by the Secretary of Commerce to the Census Advisory Committee on the Asian and Pacific Islander Populations. The terms of some of the members of the Committee will soon expire. The Census Bureau will consider nominations received in response to this notice for appointment to the Committee in addition to nominations already received. The **SUPPLEMENTARY INFORMATION** section for this notice provides information about the objectives and duties of the Advisory Committee and membership criteria.

DATES: Please submit nominations on or before September 29, 1999.

ADDRESSES: Please submit nominations to Nampeo R. McKenney, Senior Research and Technical Advisor, Department of Commerce, Bureau of the Census, Room 3631, Federal Building 3, Washington, DC 20233, telephone 301–457–2070. Nominations may also be submitted via FAX to 301–457–2642 or by e-mail to Nampeo.R.McKenney@ccmail.census.gov.

FOR FURTHER INFORMATION CONTACT: Nampeo R. McKenney, Senior Research and Technical Advisor, at the above address or via e-mail.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the Federal Advisory Committee Act, (Title 5 United States Code (U.S.C.), Appendix 2) in 1995. The following provides information about the Committee, membership, and the nomination process.

Objectives and Duties

1. The Committee provides an organized and continuing channel of communication between the Asian and Pacific Islander communities and the Bureau of the Census on efforts to reduce the differentials in totals for all population groups during Census 2000 and on ways census data can be disseminated for maximum usefulness of the Asian and Pacific Islander populations and other users.

2. The Committee draws on the experience of its members with the 1990 census process and procedures, results of evaluation and research studies, test censuses, and the expertise and insight of its members to provide advice and recommendations on data collection, processing, promotional, and evaluation activities during the implementation phase of Census 2000. The Committee provides advice regarding the tabulation plans for race and ethnic data.

3. The Committee functions solely as an advisory body under the Federal Advisory Committee Act.

4. The Committee reports to the Director of the Bureau of the Census.

Membership

The Committee consists of thirteen members who are appointed for three-year terms by, and serve at the discretion of, the Secretary of Commerce. The Committee is divided into two Subcommittees—the "Asian" Population with eight members and the "Native Hawaiian and Other Pacific Islander Populations" with five members. Committee members are selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidelines. The Committee aims to have a balanced representation, considering factors such as geography, gender, and ethnic diversity of Committee membership and the expertise and knowledge of census procedures and activities. The Committee aims to include members from academic, media, research, community-based, and religious organizations, the business community, and local governments. No employee of the Federal Government can serve as a member of the Committee. Consideration for reappointment of membership after a term is contingent upon the individual's satisfactory attendance and participation in the activities of the advisory committee as well as criteria established for input and advice from the advisory committee.

Miscellaneous

1. Members of the Committee serve without compensation, but the Census Bureau will, upon request, reimburse travel expenses as authorized by 5 U.S.C. 5701 *et seq.*

2. The Committee meets at least once a year, but additional meetings may be held as deemed necessary by the Director or Designated Federal Official. Meetings are one to two days in duration.

3. Committee meetings are open to the public.

Nomination Information

1. Nominations are sought as described above.

2. Nominees should have expertise and knowledge of the cultural patterns and issues and/or data needs of their communities to provide advice and recommendations to the Census Bureau on the best ways to use census operations and procedures to obtain complete and accurate data on their population. The experience that qualifies the candidate for membership should be outlined in the nomination letter. Nominations may come from individuals or organizations. A summary of the candidate's qualifications should be included with the nomination. Nominees should be able to actively participate in good faith in the tasks of the Committee. Besides participation in the Committee meetings, active participation may include review of materials and participation in conference calls, working groups, and observation trips.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Committee membership.

Dated: September 8, 1999.

Kenneth Prewitt,

Director, Bureau of the Census.

[FR Doc. 99–23901 Filed 9–13–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Request for Nominations of Members to Serve on the Census Advisory Committee on the Hispanic Population

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Request for Nominations.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463, as amended by Pub. L. 94–409, Pub. L. 96–523, and Pub. L. 97–375), the Census Bureau invites and requests nominations of individuals for appointment by the Secretary of Commerce to the Census Advisory Committee on the Hispanic Population. The terms of some of the members of the Committee will soon expire. The Census Bureau will consider nominations received in response to this notice for appointment to the Committee in addition to nominations already received. The Supplementary Information section for this notice provides information about the objectives and duties of the Advisory Committee and membership criteria.

DATES: Please submit nominations on or before September 29, 1999.

ADDRESSES: Please submit nominations to Nampeo R. McKenney, Senior Research and Technical Advisor, Department of Commerce, Bureau of the Census, Room 3631, Federal Building 3, Washington, DC 20233, telephone 301–457–2070. Nominations may also be submitted via FAX to 301–457–2642 or by e-mail to Nampeo.R.McKenney@ccmail.census.gov.

FOR FURTHER INFORMATION CONTACT: Nampeo R. McKenney, Senior Research and Technical Advisor, at the above address or via e-mail.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the Federal Advisory Committee Act, (Title 5, United States Code (U.S.C.), Appendix 2) in 1995.

Objectives and Duties

1. The Committee provides an organized and continuing channel of communication between the Hispanic community and the Bureau of the Census on efforts to reduce the differentials in totals for all population groups during Census 2000 and on ways census data can be disseminated for maximum usefulness of the Hispanic population and other users.

2. The Committee draws on the experience of its members with the 1990 census process and procedures, results of evaluation and research studies, test censuses, and the expertise and insight of its members to provide advice and recommendations on data collection, processing, promotional, and evaluation activities during the implementation phase of Census 2000. The Committee provides advice regarding the tabulation plans for race and ethnic data.

3. The Committee functions solely as an advisory body under the Federal Advisory Committee Act.

4. The Committee reports to the Director of the Bureau of the Census.

Membership

The Committee consists of nine members who are appointed for three-year terms by, and serve at the discretion of, the Secretary of Commerce. Committee members are selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidelines. The Committee aims to have a balanced representation, considering factors such as geography, gender, and ethnic diversity of Committee membership and the expertise and knowledge of census procedures and activities. The Committee aims to include members from academic, media, research, community-based, and religious organizations, the business community, and local governments. No employee of the Federal Government can serve as a member of the Committee. Consideration for reappointment of membership after a term is contingent upon the individual's satisfactory attendance and participation in the activities of the advisory committee as well as criteria established for input and advice from the advisory committee.

Miscellaneous

1. Members of the Committee serve without compensation, but the Census Bureau will, upon request, reimburse travel expenses as authorized by 5 U.S.C. 5701 et. seq.

2. The Committee meets at least once a year, but additional meetings may be held as deemed necessary by the Director or Designated Federal Official. Meetings are one to two days in duration.

3. Committee meetings are open to the public.

Nomination Information

1. Nominations are sought as described above.

2. Nominees should have expertise and knowledge of the cultural patterns and issues and/or data needs of their communities to provide advice and recommendations to the Census Bureau on the best ways to use census operations and procedures to obtain complete and accurate data on their population. The experience that qualifies the candidate for membership should be outlined in the nomination letter. Nominations may come from individuals or organizations. A summary of the candidate's qualifications should be included with the nomination. Nominees should be able to actively participate in good faith in the tasks of the Committee. Besides participation in the Committee meetings, active participation may include review of materials and participation in conference calls, working groups, and observation trips.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Committee membership.

Dated: September 8, 1999.

Kenneth Prewitt,

Director, Bureau of the Census.

[FR Doc. 99–23900 Filed 9–13–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

President's Export Council Subcommittee on Encryption; Notice of Partially Closed Meeting

The President's Export Council Subcommittee on Encryption (PECSENC) will meet on September 29, 1999, at the U.S. Department of Commerce, Herbert C. Hoover Building, Room 4832, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC. The meeting will begin in open session at 9:00 a.m. The open session is scheduled to adjourn at 2:30 p.m. The closed session will begin at 2:45 p.m. The Subcommittee provides advice on matters pertinent to policies regarding commercial encryption products.

Open Session: 9:00 a.m.–2:30 p.m.

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Update on Bureau of Export Administration initiatives.
4. Issue briefings.
5. Open discussion.

Closed Session: 2:45 p.m.–5:00 p.m.

6. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

The meeting is open to the public and a limited number of seats will be available. Reservation are not required.

To the extent time permits, member of the public may present oral statements to the PECSENC. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to pecsence members, the PECSENC suggests that public presentation materials or comments be forwarded before the meeting to the address listed below: Ms. Lee Ann Carpenter, Advisory Committees MS: 3876, U.S. Department of Commerce, 14th St. & Pennsylvania Ave., NW, Washington, DC 20230.

A Notice of Determination to close meetings, or portions of meetings, of the Subcommittee to the public on the basis of 5 U.S.C. 522(c)(1) was approved May 7, 1998, in accordance with the Federal Advisory Committee Act. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For more information, contact Ms. Lee Ann Carpenter on (202) 482–2583.

Dated: September 8, 1999.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 99–23891 Filed 9–13–99; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–704]

Final Results of Expedited Sunset Review: Brass Sheet and Strip From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review: Brass Sheet and Strip from Japan.

SUMMARY: On February 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping order on brass sheet and strip from Japan (64 FR 4840) pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act"). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the "Final Result of Review" section of this notice.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

EFFECTIVE DATE: September 14, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752(c) of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise subject to this order is brass sheet and strip, other than leaded and tinned, from Japan. The chemical composition of the covered products is currently defined in the Copper Development Association ("C.D.A.") 200 Series or the Unified Numbering System ("U.N.S.") C2000. This review does not cover products with chemical compositions that are defined by anything other than either the C.D.A. or U.N.S. series. In physical dimensions, the products covered by this review have a solid rectangular cross section over .0006 inches (.15 millimeters) through .1888 inches (4.8 millimeters) in finished thickness or gauge, regardless of width. Coiled, wound-on-reels (traverse wound), and cut-to-length products are included. The merchandise is currently classified under the Harmonized Tariff Schedule ("HTS") item numbers 7409.21.00 and 7409.29.00. The HTS numbers are provided for convenience and U.S. Customs purposes. The written description remains dispositive.

History of the Order

The antidumping duty order on brass sheet and strip from Japan was published in the **Federal Register** on August 12, 1988 (53 FR 30454). In that order, the Department estimated that the weighted-average dumping margins for Nippon Mining Co., Ltd. ("Nippon"), Sambo Copper Alloy Co., Ltd. ("Sambo"), Mitsubishi Shindoh Co., Ltd. ("Mitsubishi"), Kobe Steel ("Kobe") (hereinafter collectively referred to as "respondent interested parties"), and "all-others" were 57.98, 13.20, 57.98, 57.98, and 45.72 percent, respectively. Since that time, the Department has completed no administrative review.[1] The order remains in effect for all manufacturers and exporters of the subject merchandise.

Background

On February 1, 1999, the Department initiated a sunset review of the antidumping duty order on brass sheet and strip from Japan (64 FR 4840), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate for each of these findings on behalf of Heyco Metals, Inc. ("Heyco"), Hussey Copper Ltd. ("Hussey"), Olin Corporation—Brass Group ("Olin"), Outokumpu American Brass ("OAB"), PMX Industries, Inc. ("PMX"), Revere Copper Products, Inc. ("Revere"), the International Association of Machinists and Aerospace Workers, the United Auto Workers (Local 2367), and the United Steelworkers of America (AFL/CIO) (collectively "the domestic interested parties") on February 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. The domestic interested parties claimed interested party status under sections 771(9)(C) and 771(9)(D) of the Act as U.S. brass mills, rerollers, and unions whose workers are engaged in the production of subject brass sheet and strip in the United States.

We received a complete substantive response from the domestic interested parties on March 3, 1999 within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). In their substantive response, the domestic interested parties indicate that most of their members were parties to the original investigation with a few exceptions: Heyco did not participate in the original investigation but fully supports the instant review, and PMX was

[1] On one occasion, the Department initiated an administrative review upon a request by respondent interested parties. The said review, however, was terminated because respondent interested parties subsequently withdrew their request for review. Consequently, the Department terminated the review, see *Brass Sheet and Strip from Japan; Termination of Antidumping Duty Administrative Review*, 55 FR 5641 (February 16, 1990).

established after the original petitions were filed. The domestic party also notes that OAB was formerly known as American Brass Company.

We did not receive a substantive response from any respondent interested parties in this proceeding. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of this order.[2]

On June 7, 1999, the Department extended the time limit for completion of the final results of this review until not later than August 30, 1999, in accordance with section 751(c)(5)(B) of the Act, based upon its finding under section 751(c)(5)(C)(v) that, as a transition order (*i.e.*, an order in effect on January 1, 1995), the sunset review of the order on Brass Sheet and Strip from Japan is extraordinarily complicated.[3]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, domestic interested parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

In their substantive response, the domestic interested parties argue that revocation of the order will likely lead to continuation or recurrence of dumping of brass sheet and strip from Japan (*see* March 3, 1999 Substantive Response of the domestic interested parties at 40–41). In support of their argument, domestic interested parties compare three-year averages of import volumes of the subject merchandise before and after the issuance of the order: during 1984–1986, imports of the subject merchandise averaged 20 million pounds; whereas, during 1989–1991, the import volumes reached, on the average, just 1.3 million pounds; *i.e.*, average annual imports of the subject merchandise declined by 93.5 percent after the imposition of the order. Furthermore, domestic interested parties argue, the import volumes of the subject merchandise continue to remain very low: since the imposition of the order, annual Japanese exports of the subject merchandise have never reached one-quarter of the volume of 1986.

In addition, domestic interested parties point out that since the inception of the order, the margins found in the original investigation have continued to prevail because no administrative review of the order has been completed.[4] In other words, as domestic interested parties further state, dumping of the subject merchandise is continuing above the *de minimis* level.

In conclusion, the domestic interested parties argue that the Department should determine that continuation or recurrence of dumping is likely if the order is revoked because dumping margins have existed over the life of the order and continue to exist at above *de minimis* levels for all producers/exporters of the subject merchandise, and because imports of the subject merchandise have declined dramatically since the imposition of the order. The domestic interested parties denote, these two factors are probative of the fact that the Japanese producers/exporters are unable to sell in the United States without dumping.

As indicated in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, the Department considers whether dumping continued at any level above *de minimis* after the issuance of the order. If companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue were the discipline removed. Because there is no published findings with respect to weighted-average dumping margins in previous administrative reviews, the Department agrees with the domestic interested parties that weighted-average dumping margins at a level above *de minimis* have persisted over the life of the order and currently remain in place for all Japanese producers and exporters of brass sheet and strip.[5]

Consistent with section 752(c) of the Act, the Department also considered the volume of imports before and after issuance of the order. The data supplied by the domestic interested parties and those of the United States Census Bureau (reported in form IM146) and the United Stated International Trade Commission indicate that, since the imposition of the order, the import volumes of the subject merchandise have declined substantially. Namely, the import volumes of the subject merchandise declined substantially immediately following the imposition of the order'a drop of 93.5 percent. Moreover, for the entire period of 1989–1998, annual imports of the subject merchandise have never reached one-quarter of the 1986 volume. Therefore, the Department determines that the import volumes of the subject merchandise decreased significantly after the issuance of the order.

Given that dumping has continued over the life of the order; that the import volumes of the subject merchandise decreased significantly after the issuance of the order; that respondent interested parties have waived their right to participate in this review, and that there are no arguments and/or evidence to the contrary, the Department agrees with the domestic interested parties' contention that respondent interested parties are incapable of selling the subject merchandise in the United States at fair value. Consequently, the Department determines that dumping is likely to continue if the order is to be revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The Department, in its final determination of sales at less than fair value, published weighted-average dumping margins for four Japanese producers/exporters of the subject merchandise: Nippon Mining—57.98, Sambo Copper Alloy—13.30, Mitsubishi Shindo—57.98, and Kobe Steel—57.98, all-others—45.72 percent (53 FR 23296, June 21, 1988). We note that, to date, the Department has not issued any duty absorption findings in this case.

In its substantive response, citing the SAA at 890 and the *Sunset Policy Bulletin*, the domestic interested parties state that the Department normally will provide the Commission with the dumping margins from the investigation because those are the only calculated margins that reflect the behavior of exporters without the discipline of the order in place. (*See* the March 3, 1999 Substantive Response of the domestic interested parties at 45–46.) Therefore, the domestic interested parties urge that the Department should abide by its practice, as set forth in the regulations, and should provide to the Commission the margins set forth in the original investigation.

The Department agrees with the domestic interested parties' suggestion pertaining to the margins that are likely to prevail if the order were revoked. As correctly noted by the domestic interested parties, the Department normally will provide to the Commission the margins found in the original investigation. Moreover, since there has been no administrative review of this order, the margins from the original investigation are the only ones available to the Department. Absent argument and evidence to the contrary, the Department sees no reason to change its usual practice of selecting the rate from the original investigation. We will report to the Commission the company-specific and all others rates contained in the Final Results of Review section of this notice.

Final Results of Review

As a result of these reviews, the Department finds that revocation of the antidumping orders would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
Nippon Mining Co	57.98
Sambo Copper Alloy Co., Ltd	13.30
Mitsubishi Shindoh Co., Ltd	57.98
Kobe Steel, Ltd	57.98
All Others	45.72

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 30, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–23041 Filed 9–13–99; 8:45 am]

BILLING CODE 3510–DS–P

[2] The domestic interested parties filed comments pertaining to the Department's decision to conduct a expedited (120-day) sunset review for the present review, in which the domestic party concurred with the Department's decision. *See* May 12, 1999 domestic interested parties' comments on the Adequacy of Responses and the Appropriateness of Expedited Sunset Review at 2.

[3] *See Porcelain-on-Steel Cooking Ware From the People's Republic of China, Porcelain-on-Steel Cooking Ware From Taiwan, Top-of-the-Stove Stainless Steel Cooking Ware From Korea (South) (AD & CVD), Top-of-the-Stove Stainless Steel Cooking Ware From Taiwan (AD & CVD), Standard Carnations From Chile (AD & CVD), Fresh Cut Flowers From Mexico, Fresh Cut Flowers From Ecuador, Brass Sheet and Strip From Brazil (AD & CVD), Brass Sheet and Strip From Korea (South), Brass Sheet and Strip From France (AD & CVD), Brass Sheet and Strip From Germany, Brass Sheet and Strip From Italy, Brass Sheet and Strip From Sweden, Brass Sheet and Strip From Japan, Pompon Chrysanthemums From Peru: Extension of Time Limit for Final Results of Five-Year Reviews*, 64 FR 30305 (June 7, 1999).

[4] *See* footnote 1, supra.

[5] *See* footnote 1, supra.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–602]

Final Results of Expedited Sunset Review: Brass Sheet and Strip From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: brass sheet and strip from Germany.

SUMMARY: On February 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping order on brass sheet and strip from Germany (64 FR 4840) pursuant to section 751(c) of the Tariff Act of 1930, as amended (the "Act"). On the basis of a notice of intent to participate and adequate substantive response filed on behalf of domestic interested parties and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the "Final Result of Review" section of this notice.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

EFFECTIVE DATE: September 14, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752(c) of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-Year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset*

Regulations"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

This order covers shipments of brass sheet and strip, other than leaded and tinned, from Germany. The chemical composition of the covered products is currently defined in the Copper Development Association ("C.D.A.") 200 Series or the Unified Numbering System ("U.N.S.") C2000. This review does not cover products with chemical compositions that are defined by anything other than either the C.D.A. or U.N.S. series. In physical dimensions, the products covered by this review have a solid rectangular cross section over .0006 inches (.15 millimeters) through .1888 inches (4.8 millimeters) in finished thickness or gauge, regardless of width. Coiled, wound-on-reels (traverse wound), and cut-to-length products are included. The merchandise is currently classified under Harmonized Tariff Schedule ("HTS") item numbers 7409.21.00 and 7409.29.00. The HTS numbers are provided for convenience and U.S. Customs purposes. The written description remains dispositive.

History of the Order

The antidumping duty order on brass sheet and strip from Germany was published in the **Federal Register** on March 6, 1987 (52 FR 6997).[1] In that order, the Department indicated that the weighted-average dumping margins of brass sheet and strip from Germay were as follows:

Manufactures/producers/exporters	Weighted-average Margins (percent)
Wieland-Werke AG ("Wieland-AG")	3.81
Langenberg Kupfer-und Messingwerke GmbH KG	16.18
All-others	7.30

The Department has completed numerous administrative reviews since that time.[2] Also, in one administrative review, the Department found that Wieland did not circumvent the antidumping duty order.[3] The order remains in effect for all manufacturers and exporters of the subject merchandise.

Background:

On February 1, 1999, the Department initiated a sunset review of the antidumping order on brass sheet and strip from Germany (64 FR 4840), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of Heyco Metals, Inc. ("Heyco"), Hussey Copper Ltd. ("Hussey"), Olin Corporation—Brass Group ("Olin"), Outokumpu American Brass ("OAB"), PMX Industries, Inc. ("PMX"), Revere Copper Products, Inc. ("Revere"), the International Association of Machinists and Aerospace Workers, the United Auto Workers (Local 2367), and the United Steelworkers of America (AFL/CIO) (collectively "the domestic interested parties") on February 16, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. The domestic interested parties claimed interested party status under sections 771(9)(C) and 771(9)(D) of the Act as U.S. brass mills, rerollers, and unions whose workers are engaged in the production of subject brass sheet and strip in the United States.

We received a complete substantive response from the domestic interested parties on March 3, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). In their substantive response, the domestic interested parties indicate that most of their members were parties to the original investigation with a few exceptions: Heyco did not participate in the original investigation but fully supports the instant review, and PMX was established after the original petitions were filed. The domestic parties also note that OAB was formerly known as American Brass Company.

We did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of this order.[4]

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order—an order which was in effect on January 1, 1995. *See* section 751(c)(6)(C) of the Act. The Department determined that the sunset review of the antidumping duty order on brass sheet and strip from the Germany is extraordinarily complicated. Therefore, on June 7, 1999, the Department extended the time limit for completion of the preliminary results of this review until not later than August 30, 1999, in accordance with section 751(c)(5)(B) of the Act.[5]

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, the domestic interested parties' comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.2). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) dumping continued at any level above de minimis after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to considering the guidance on likelihood cited above, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

In their substantive response, the domestic interested parties claim that revocation of the order will likely lead to continuation or recurrence of dumping of brass sheet and strip from Germany (*see* March 3, 1999 Substantive Response of the domestic interested parties at 38). To illustrate their contention, the domestic interested parties point out a drastic decline of import volumes of the subject merchandise since the issuance of the order. Also, the domestic interested parties submit an argument that, since the imposition of the order, dumping of the subject merchandise has continued and is presently persisting above the de minimis level. *Id.* at 39–40.[6] As a result, the domestic interested parties conclude that dumping of the subject merchandise will continue were the order revoked.

With respect to import volumes of the subject merchandise, the domestic interested parties compare a three-year (1983–1985) average import volume prior to the issuance of the order with a three-year (1987–1989) average import volume subsequent to the order: 56.8 million pounds verses 25.4 million pounds—a 55.2 percent decline. *Id.* In addition, the domestic interested parties note that imports of the subject merchandise continued to fall: 7.4 million pounds in 1992, 4.9 million pounds in 1993, and 2.6 million pounds in 1994. *Id.* Finally, the domestic interested parties emphasize that, during 1995–1998, the import volumes of the subject merchandise have never exceeded 10 percent of the pre-order volumes. *Id.*

While acknowledging that the weighted-average dumping margin for Wieland-AG had, at one point, been de minimis for three consecutive years, the domestic interested parties contend that this is not indicative of what will happen if the order is revoked. The domestic interested parties suggest that Wieland-AG had achieved zero or de minimis margin by further reducing its exports of the subject merchandise during the period. In addition, the domestic interested parties direct our attention to the Department's previous decision in which the Department, despite Wieldand-AG's de minimis margins in three consecutive administrative reviews, refused to grant revocation on behalf of Wieland-AG because, the Department could not determine that Wieland-AG will be able to export the subject merchandise priced at or above fair value.[7]

In conclusion, the domestic interested parties urge that the Department should find dumping would be likely to continue if the order is revoked because dumping margins have existed significantly above the de minimis level over the life of the order for all producers/exporters of the subject merchandise, and because imports of the subject merchandise have declined dramatically since the imposition of the order. The aforementioned two circumstances, according to the domestic interested parties, provide a strong indication that the German producers/exporters are unable to sell in the United States without dumping.

As indicated in section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and House Report at 63–64, the Department considered whether dumping continued at any level above de minimis after the issuance of the order. If companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue were the discipline removed. After examining the published findings with respect to weighted-average dumping margins in previous administrative reviews, the Department agrees with the domestic interested parties that weighted-average dumping margins at a level above de minimis have persisted over the life of the order, at least for some German producers and exporters of brass sheet and strip and currently remain in place.[8]

Continued

[1] See *Antidumping Duty Order; Brass Sheet and Strip From the Federal Republic of Germany*, 52 FR 6997 (March 6, 1987), as amended, *Final Determination of Sales at Less Than Fair Value and Amendment to Antidumping Duty Order: Brass Sheet and Strip From Germany*, 52 FR 35750 (April 8, 1987).

[2] *See Brass Sheet and Strip From the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review*, November 27, 1991 (56 FR 60087); *Brass Sheet and Strip From the Federal Republic of Germany; Amendment to Final Results of Antidumping Duty Administrative Review*, January 3, 1992 (57 FR 276); *Brass Sheet and Strip From Germany; Final Results of Antidumping Duty Administrative Review*, July 25, 1995 (60 FR 38031); *Brass Sheet and Strip From Germany; Final Results of Antidumping Duty Administrative Reviews*, July 27, 1995 (60 FR 38542); *Brass Sheet and Strip From Germany; Amendment of Final Results of Antidumping Duty Administrative Reviews*, April 29, 1996 (61 FR 18720); *Brass Sheet and Strip From Germany; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke in Part*, September 23, 1996 (61 FR 49727); *Brass Sheet and Strip From Germany; Amended Final Results of Antidumping Duty Administrative Review*, July 17, 1997 (62 FR 38256); *Brass Sheet and Strip From Germany; Final Results of Antidumping Duty Administrative Review*, August 11, 1998 (63 FR 42823); *Final Results of Antidumping Duty Administrative Review: Brass Sheet and Strip From Germany*, 64 FR 43342 (August 10, 1999).

[3] See *Brass Sheet and Strip From Germany; Negative Final Determination of Circumvention of Antidumping Duty Order*, 56 FR 65884 (December 19, 1991). The Department determined that C.D.A. 667-series manganese brass was not a minor alteration of brass sheet and strip of the C.D.A. 200-series, and consequently, that Wieland did not circumvent the order.

[4] The domestic interested parties filed comments, pertaining to the Department's decision to conduct a expedited (120–day) sunset review for the present review, in which they concurred with the Department's decision. *See* May 12, 1999, domestic interested parties' comments on the Adequacy of Responses and the Appropriateness of Expedited Sunset Review at 2.

[5] *See Porcelain-on-Steel Cooking Ware From the People's Republic of China, Porcelain-on-Steel Cooking Ware From Taiwan, Top-of-the-Stove Stainless Steel Cooking Ware From Korea (South) (AD & CVD), Top-of-the-Stove Stainless Steel Cooking Ware From Taiwan (AD & CVD), Standard Carnations From Chile (AD &CVD), Fresh Cut Flowers From Mexico, Fresh Cut Flowers From Ecuador, Brass Sheet and Strip From Brazil (AD & CVD), Brass Sheet and Strip From Korea (South), Brass Sheet and Strip From France (AD & CVD), Brass Sheet and Strip From Germany, Brass Sheet and Strip From Italy, Brass Sheet and Strip From Sweden, Brass Sheet and Strip From Japan, Pompon Chrysanthemums From Peru: Extension of Time Limit for Final Results of Five-Year Reviews, 64 FR 30305 (June 7, 1999).*

[6] The Department, in its first review, determined that Langenberg Kupfer-und Messingwerke GmbH KG and Metallwerke Schwarwald GmbH are wholly-owned subsidiaries of Wieland-AG. *See Brass Sheet and Strip From the Federal Republic of Germany; Final Results of Antidumping Duty Administrative Review*, November 27, 1991 (56 FR 60087). For the investigated period of 1986–1988, the Department found dumping margins for Wieland-AG of 14.65 percent (*see Brass Sheet and Strip From Germany; Amended Final Results of Antidumping Duty Administrative Review*, July 17, 1997 (62 FR 38256)) (this is a third and final amendment of the final results of the first review, 56 FR 60087), and for William Prym and Schwermetall Halbzeugwerke of 23.49 percent (*see Brass Sheet and Strip From the Federal Republic of Germany; Amendment to Final Results of Antidumping Duty Administrative Review*, January 3, 1992 (57 FR 276)) (this is the first amendment of the first review, 56 FR 60087). Since that time the Department has dealt exclusively with Wieland-AG as a lone respondent interested party in subsequent administrative reviews. For subsequent administrative reviews, Wieland-AG's dumping margins were 2.57 percent for 1990–1991, 2.37 percent for 1991–1992, 0.37 percent for 1992–1993, 0.495 percent for 1993–1994, 0 percent for 1994–1995, 16.18 percent for 1996–1997, and 16.18 percent for 1997–1998. *See* footnote 2, supra.

[7] *See Brass and Strip From Germany; Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke in Part*, 61 FR 49727 (September 23, 1996).

[8] *See* supra footnote 2, for the list of final determinations of administrative reviews in which the Department found above de minimis weighted-average margins for, at least, some German

Consistent with section 752(c) of the Act, the Department also considered the volume of imports before and after issuance of the order. The data supplied by the domestic interested parties and those of the United States Census Bureau IM146s and the United States International Trade Commission indicate that, since the imposition of the order, import volumes of the subject merchandise have declined substantially. Namely, the import volumes of the subject merchandise declined substantially immediately following the imposition of the order. In addition, the Department's findings of either zero or de minimis margins coincide with further decline of import volumes of the subject merchandise. Moreover, for the period 1995–1998, annual import volumes never rose to even 10 percent of the pre-order volumes. Therefore, the Department determines that the import volumes of the subject merchandise have decreased significantly after the issuance of the order.

Given that dumping has continued over the life of the order, import volumes of the subject merchandise decreased significantly after the issuance of the order, respondent interested parties have waived their right to participate in this review, that there are no arguments and/or evidence to the contrary, the Department agrees with the domestic interested parties' contention that dumping is likely to continue if the order is revoked.

Magnitude of the Margin

In the *Sunset Policy Bulletin*, the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin*.) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin*.)

The Department, in its final determination of sales at less than fair value, published weighted-average dumping margins for Wieland-AG and all others of 3.81 and 7.30 percent, respectively (52 FR 822, January 9, 1987), as amended, (52 FR 35750, September 23, 1987). We also note that the Department has found duty absorption in the most recently completed administrative review.[9]

In its substantive response, the domestic interested parties urge that the Department should choose more recently calculated margins rather than those determined in the original investigation. (*See* March 3, 1999 Substantive Response of the domestic interested parties at 47–48.) The domestic interested parties stress that when companies increase dumping in order to maintain or enhance their market share, increasing margins may be more representative of a company's behavior in the absence of an order. Since Wieland-AG was found dumping at higher margins (than original margins) in two most recent administrative reviews, and since Wieland-AG has been historically able to dump at even higher rates with the order in place, the domestic interested parties assert, the more recently calculated rate of 16.18 percent should be used for Wieland-AG.

The Department disagrees with the domestic interested parties' argument as to why the Department should select a more recently calculated margin for Wieland-AG from the most recent administrative review. The continuous and rather consistent decline of the import volumes of the subject merchandise since the issuance of the order evinces that Wieland-AG has not really attempted to enhance their market share in the United States by increasing dumping. Furthermore, the fluctuations that have occurred in import volumes since the imposition of the order simply manifest a downward trend rather than illustrate a concerted attempt by Wieland-AG to expand market share by increasing dumping. Therefore, but for the reason discussed below, the Department would not deviate from its normal policy of selecting the rate from the original investigation and, consequently, determines that the rate from the original investigation, as amended, is the proper one to report to the Commission as the rate that is likely to prevail if the order is revoked.

Specifically, section II.B.3.b of the *Sunset Policy Bulletin*, the SAA, at 885, and the House Report at 60, provide that the Department normally will provide to the Commission the higher of the margin that the Department otherwise would have reported to the Commission or the most recent margin for that company adjusted to account for the Department's findings on duty absorption if the Department has found duty absorption. The Department explained that it normally will adjust a company's most recent margin to reflect its findings on duty absorption by incorporating the amount of duty absorption on those sales for which the Department found duty absorption. In the most instant review, the Department found duty absorption exists on "all" of Wieland-AG's exports to the United States. Consistent with the *Sunset Policy Bulletin*, we are adjusting the most recent margin to account for duty absorption. Because the adjusted margin for Wieland-AG is higher than rates from the original investigation, we will report to the Commission a recently calculated margin that takes into account the recent duty absorption finding as contained in the Final Results of Review section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping order would likely lead to continuation or recurrence of dumping at the margins listed below:

Manufacturer/exporter	Margin (percent)
Wieland-AG	32.36
All others	7.30

This notice serves as the only reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: August 30, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

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producers/exporters in all periods of investigation. Also, see supra footnote 6 for a history of weighted-average dumping margins found for the subject merchandise.

[9] In its latest review, noting that it determined a margin exists for Wieland-AG on adverse facts available and, lacking other information, the Department found that duty absorption exists on all sales. *See Final Results of Antidumping Duty Administrative Reviews: Brass Sheet and Strip From Germany*, 64 FR 43342 (August 10, 1999).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–602]

Industrial Phosphoric Acid From Belgium; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review of Industrial Phosphoric Acid from Belgium.

SUMMARY: On May 7, 1999, the Department of Commerce ("the Department") published the preliminary results of its administrative review of the antidumping order on industrial phosphoric acid ("IPA") from Belgium. This review covers imports of IPA from one producer, Societe Chimique Prayon-Rupel S.A. ("Prayon") and the period of review (POR) is August 1, 1997, through July 31, 1998.

We gave interested parties an opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have revised the results from those presented in the preliminary results of review.

EFFECTIVE DATE: September 14, 1999.

FOR FURTHER INFORMATION CONTACT: Frank Thomson or Jim Terpstra, AD/CVD Enforcement, Office IV, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4793, and 482–3965, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 20, 1987, the Department published in the **Federal Register** (52 FR 31439) the antidumping duty order on IPA from Belgium. On August 11, 1998, the Department published in the **Federal Register** (63 FR 42821) a notice of opportunity to request an administrative review of this antidumping duty order. On August 27, 1998, in accordance with section 751(a)(1) of the Tariff Act of 1930, as amended ("the Act") and 19 CFR 351.213(b), FMC Corporation ("FMC"), and Albright & Wilson Americas, Inc. ("Wilson"), both domestic producers of the subject merchandise, requested that the Department conduct an administrative review of Prayon's exports of subject merchandise to the United States. We published the notice of initiation of this review on September 29, 1998 (63 FR 51893). On May 7, 1999, the Department published the *Notice of Preliminary Results of Antidumping Duty Administrative Review of Industrial Phosphoric Acid from Belgium*, 64 FR 24574 (Preliminary Results). On May 12, 1999, Prayon submitted a response to our supplemental questionnaire of April 21, 1999, in which we asked for certain additional information regarding Prayon's reported home market and U.S. market commissions. We gave interested parties an opportunity to comment on the preliminary results. We received case and rebuttal briefs from Prayon and the domestic producers on June 9, 1999, and June 16, 1999, respectively. We did not receive any request from interested parties for a hearing. The Department has now completed this review in accordance with section 751 of the Act.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions as of January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified at 19 CFR Part 351 (1998).

Scope of the Review

The products covered by this review include shipments of IPA from Belgium. This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item numbers 2809.2000 and 4163.0000. The HTS item number is provided for convenience and U.S. Customs Service (Customs Service) purposes. The written description remains dispositive.

Analysis of Comments Received

Comment 1: Sales commissions

Prayon argues that the Department erroneously treated its home and U.S. market commission payments to affiliated parties as arm's-length transactions. Prayon claims that the commission it paid to its affiliated sales agent in the United States, Quadra Corporation (USA) ("Quadra"), is not comparable to the commissions it paid to its non-affiliated sales agents in third countries.

Specifically, Prayon asserts that the commission paid to Quadra was significantly higher than those paid to non-affiliated sales agents in all other countries except one. According to Prayon, the only commission rate comparable to the one it pays Quadra is the rate it pays to Quadra Chimie Limite ("QCL"), with which Prayon claims to be affiliated. Prayon asserts that this is not an appropriate comparison, and thus, the Department does not have an appropriate basis for concluding that the commission to Quadra was made at arm's-length. Prayon concludes that the Department should find that its commission payment to Quadra was not at arm's-length.

Regarding commission payments in the home market, Prayon points out that its home-market sales agent (Zinchem Benelux) is virtually wholly owned by Prayon, and that the Department has, in past segments of this proceeding, treated this commission as not being at arm's-length (*see Industrial Phosphoric Acid from Belgium; Final Results of Antidumping Duty Administrative Review*, 63 FR 55087 (October 14, 1998) (*Final Results 1996–1997*); *Industrial Phosphoric Acid from Belgium; Final Results of Antidumping Duty Administrative Review*, 62 FR 41359 (August 1, 1997) (*Final Results 1995–1996*); *Industrial Phosphoric Acid from Belgium; Final Results of Antidumping Duty Administrative Review*, 61 FR 51424 (October 2, 1996) (*Final Results 1994–1995*); *Industrial Phosphoric Acid from Belgium; Final Results of Antidumping Duty Administrative Review*, 61 FR 20227 (May 6, 1996) (*Final Results 1993–1994*)). Prayon also points to the original investigation, where the Department determined that these payments were not made at arm's-length (*see Notice of Final Determination of Sales at Less Than Fair Value: Industrial Phosphoric Acid from Belgium*, 52 FR 25436 (July 7, 1987) (*LTFV*)). Prayon asserts that since the completion of those segments, there has been no change in the circumstances of this commission arrangement, and thus no reason for the Department's reversal of its treatment in the current review.

The domestic producers agree with the Department's treatment of these commissions in the preliminary results of review, and assert that the commission Prayon paid to QCL represents a valid basis for comparison and, furthermore, is consistent with the commission paid to Quadra. The domestic producers disagree with Prayon's contention that these commission payments were not at arm's-length. First, the domestic producers assert that the Department's comparison of commission payments using QCL is valid because QCL received them for sales made directly to specific customers on its own, not for sales jointly made with Quadra. Second, QCL ran its business operation

independently from Prayon, also an indication of the arm's-length nature of the commission payments, according to the domestic producers.

In further support for finding that the commission paid to Quadra was at arm's-length, the domestic producers point out that Prayon, as a minority shareholder in Quadra, is not in a position to freely set commission rates to Quadra, benefit from paying out unduly high commissions to it, or have negotiating power over Quadra. The domestic producers conclude that the commission payment in question reflects an open market rate negotiation.

Finally, the domestic producers assert that, even were the Department to disregard the commission paid to QCL, the commissions paid by Prayon to non-affiliated sales agents in other countries are sufficiently similar to that paid to Quadra to support the Department's finding of the arm's-length nature of this commission.

Department's position: During the POR, Prayon used an affiliated sales agent in the home market and a different affiliated sales agent in the United States. For the preliminary results, we compared the commission rates Prayon submitted for its affiliated sales agents in both the home and U.S. market, with the rates paid to unaffiliated parties in other markets. Since the preliminary results were published, Prayon submitted additional documentation regarding these commission rates. As discussed in the preliminary results of review, we have applied the Department's guidelines for determining whether affiliated party commissions are paid on an arm's-length basis. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Final Results of Antidumping Duty Administrative Reviews and Revocation in Part of an Antidumping Finding*, 61 FR 57629 (November 7, 1996). Accordingly, because Prayon did not use an unaffiliated sales agent in either the U.S. or home market, we compared the affiliated commission rates with rates Prayon paid to unaffiliated parties in other markets. Based on our comparison of commission rates for affiliated and unaffiliated parties, we find that Prayon's affiliated commission rates in all markets are reasonably similar to the range of commission rates Prayon paid to unaffiliated sales agents, such that we conclude that the affiliated commissions were arm's-length transactions.

As to Prayon's assertion that the Department, in the four previous reviews, treated Prayon's commissions to its affiliated sales agent in the home market as not being at arm's-length, we agree. However, in those reviews the Department found that Prayon did not use unaffiliated sales agents. Thus, no information existed that would allow the Department to establish a benchmark against which to compare the arm's-length nature of the commission payments from Prayon to its affiliated home market sales agent. The Department was therefore unable to carry out an analysis as to the arm's-length nature of Prayon's commission payments. Accordingly, the Department's treatment of home market commissions in those reviews is not dispositive of the arm's-length nature of the transactions. *See Final Results 1996–1997; Industrial Phosphoric Acid From Belgium; Preliminary Results of Antidumping Duty Administrative Review*, 63 FR 25830, 25832 (May 11, 1998); *Final Results 1995–1996; Industrial Phosphoric Acid From Belgium; Preliminary Results of Antidumping Duty Administrative Review*, 62 FR 31073, 31074 (June 6, 1997); *Final Results 1994–1995; Industrial Phosphoric Acid From Belgium; Preliminary Results of Antidumping Duty Administrative Review*, 61 FR 26160, 26161 (May 24, 1996); *Final Results 1993–1994; Industrial Phosphoric Acid From Belgium; Preliminary Results of Antidumping Duty Administrative Review*, 60 FR 57398 (November 15, 1995). Prayon's reliance on the previous reviews, therefore, is misplaced.

As to Prayon's assertion that the Department, in the original investigation, determined that Prayon's commissions to its affiliated sales agent in the home market were not at arm's-length, our analysis indicates otherwise. At the time of the investigation, the Department considered Prayon's commission payments to be "part of the general expenses of the company, and [thus] not costs directly related to particular sales." *See LTFV* at 25439. In addition, at the time of the *LTFV* investigation, the Department did not have a practice or policy with respect to considering commissions paid to unaffiliated sales agents in other (*i.e.*, third country) markets in determining whether a respondent's affiliated commission rates were at arm's-length, since we considered such transactions to be intracompany transfers of funds. *Id.* Consequently, Prayon's argument is not supported by the *LTFV*.

Since the time of the investigation, the Department has changed its practice regarding the arm's-length nature of commissions paid to affiliated selling agents. Under guidelines the Department subsequently developed, the Department compares the commission paid to affiliated selling agents with the commission paid by the respondent to any unaffiliated selling agents in the same market, (*i.e.*, home or U.S.) or in any third country market to determine the arm's-length nature of the affiliated commissions. *See Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from the United Kingdom*, 56 FR 56403, 56405–06 (November 4, 1991) (*Paper from United Kingdom*); *see also Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Finland*, 56 FR 56363, 56371–72 (November 4, 1991) (*Paper from Finland*); *Final Determination of Sales at Less Than Fair Value: Coated Groundwood Paper from Germany*, 56 FR 56385, 56389 (November 4, 1991) (*Paper from Germany*). Pursuant to the current practice, the Department will make an adjustment for commissions between affiliated parties where we find the commissions paid to such parties to be at arm's-length. *See Paper from United Kingdom*, 56 FR at 56406; *Paper from Finland*, 56 FR at 56372; *Paper from Germany, 56 FR at 56389*.

In the present review, Prayon used the services of unaffiliated agents and provided detailed information on the record regarding the commission rates it paid to these unaffiliated sales agents, (*see* "Background" section, above). Consequently, in this review, the Department does have information appropriate for use as a benchmark in establishing the arm's-length nature of Prayon's affiliated commission rates.

Since the Department has determined that the commissions paid to affiliated selling agents are comparable to the commissions paid by the respondent to unaffiliated selling agents in third country markets, for purposes of these final results we continue to find that the affiliated commissions in both the home and U.S. market are made at arm's-length and, for these final results, we are accepting Prayon's reported home and U.S. market commissions. Accordingly, we have continued to make a circumstance of sale adjustment for commissions in both markets.

Comment 2: Prayon argues that, even were the Department to continue to treat its U.S. market commission payments as having been made at arm's-length, the Department committed a clerical error in deducting U.S. commission expense from U.S. price, instead of adding it to normal value (NV).

The domestic producers disagree with Prayon and assert that in conducting an administrative review, the Department considers individual U.S. sales, and thus it is proper that the commission expense associated with each U.S. sale be deducted from U.S. price.

Department's position: We agree with Prayon that this was a clerical error. For the final results we have added U.S. commissions to NV as is our normal practice in the treatment of circumstances of sale adjustments for export price (EP) transactions.

Final Results of Review

As a result of our review, we have determined that the following weighted-average dumping margin exists for the period August 1, 1997 through July 31, 1998:

Manufacturer/exporter	Margin (percent)
Prayon	3.92

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated an importer-specific duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the importer-specific sales to the total entered value of the same sales. The rate will be assessed uniformly on all entries by that particular importer made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

Further, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of IPA from Belgium entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a) of the Act: (1) for the company named above, the cash deposit rate will be the rate listed above; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous segment of this proceeding, the cash deposit rate will continue to be the company-specific rate published in the most recent final results which covered that manufacturer or exporter; (3) if the exporter is not a firm covered in this review or in any previous segment of this proceeding, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review or in the most recent final results which covered that manufacturer; and (4) if neither the exporter nor the manufacturer is a firm covered in this review or in any previous segment of this proceeding, the cash deposit rate will be 14.67 percent, the "all others" rate established in the *LTFV*.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review. This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.306 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 1, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–23954 Filed 9–13–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–401–040]

Stainless Steel Plate From Sweden: Notice of Recission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Recission of Antidumping Duty Administrative Review.

SUMMARY: In response to a request from petitioners, the Department of Commerce ("the Department") initiated an administrative review of Uddeholm Tooling AB on July 29, 1999. The review covered one manufacturer/exporter of the subject merchandise to the United States, Uddeholm Tooling AB and its U.S. sales subsidiary (Bohler-Uddeholm Corporation). The period of review is June 1, 1998 through May 31, 1999. The Department received a timely request for withdrawal on August 10, 1999 from petitioners. In accordance with 19 CFR 351.213(d)(1), the Department is now terminating this review because the petitioner has withdrawn their request for review and no other interested parties have requested a review.

EFFECTIVE DATE: September 14, 1999.

FOR FURTHER INFORMATION CONTACT: Jonathan Lyons or Chris Cassel, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0374 or 482–0194, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations as codified at 19 CFR Part 351 (1998).

Background

The Department of the Treasury published an antidumping finding on stainless steel plate from Sweden on June 8, 1973 (38 FR 15079). The Department of Commerce published a notice of "Opportunity To Request Administrative Review" of the antidumping finding for the 1998–1999 review period on June 9, 1999 (64 FR 30962). On June 30, 1999, the petitioners, Allegheny Ludlum Steel Corp., G.O. Carlson, Inc., and Lukens, Inc. filed a request for review of Uddeholm Tooling AB ("Uddeholm"). No other interested party requested review of this antidumping duty order. We initiated the review on July 29, 1999 (64 FR 41075). On August 10, 1999 petitioners withdrew their request for review.

Section 19 CFR 351.213(d)(1) of the Department's regulations stipulates that the Secretary may permit a party that requests a review to withdraw the request not later than 90 days after the date of publication of the notice of initiation of the requested review. In this case, petitioners have withdrawn their request for review within the 90-

day period. No other interested party requested a review and we have received no other submissions regarding petitioner's withdrawal of their request for review. Therefore, we are terminating this review of the antidumping duty order on stainless steel plate from Sweden.

This notice is published in accordance with section 751 of the Act and section 19 CFR 351.213(d)(1) of the Department's regulations.

Dated: September 8, 1999.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–23955 Filed 9–13–99; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Korea

September 9, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 15, 1999.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, carryover, carryforward and recrediting unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 56005, published on October 20, 1998.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 9, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 14, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Korea and exported during the period which began on January 1, 1999 and extends through December 31, 1999.

Effective on September 15, 1999, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
Group I	
200–223, 224–V [2], 224–O [3], 225, 226, 227, 300–326, 360–363, 369pt. [4], 400–414, 464, 469pt. [5], 600–629, 666, 669–P [6], 669pt. [7], and 670–O [8], as a group.	419,066,390 square meters equivalent.
Sublevels within Group I	
200	544,724 kilograms.
201	2,348,699 kilograms.
611	4,339,204 square meters.
619/620	104,534,265 square meters.
624	9,333,255 square meters.
625/626/627/628/629	18,018,024 square meters.
Group II	
237, 239pt. [9], 331–348, 350–352, 359–H [10], 359pt. [11], 431, 433–438, 440–448, 459–W [12], 459pt. [13], 631, 633–652, 659–H [14], 659–S [15] and 659pt. [16], as a group.	584,701,106 square meters equivalent.
Sublevels within Group II	
333/334/335	313,817 dozen of which not more than 160,396 dozen shall be in Category 335.
336	66,932 dozen.
338/339	1,369,820 dozen.
340	725,268 dozen of which not more than 370,795 dozen shall be in Category 340–D [17].
341	201,639 dozen.
342/642	250,060 dozen.
345	136,751 dozen.
347/348	511,444 dozen.
350	19,467 dozen.
351/651	267,430 dozen.
352	208,107 dozen.
359–H	2,777,955 kilograms.
433	15,019 dozen.
434	7,703 dozen.
435	38,570 dozen.
436	16,492 dozen.
438	64,906 dozen.
442	55,732 dozen.
443	344,600 numbers.
444	59,616 numbers.
445/446	56,342 dozen.
447	95,227 dozen.
448	39,207 dozen.
459–W	106,058 kilograms.
631	351,386 dozen pairs.
633/634/635	1,369,588 dozen of which not more than 157,830 dozen shall be in Category 633 and not more than 588,183 dozen shall be in Category 635.
636	302,379 dozen.
638/639	5,498,535 dozen.
640–D [18]	3,190,923 dozen.
640–O [19]	2,659,102 dozen.
641	1,126,577 dozen of which not more than 42,553 dozen shall be in Category 641–Y [20].
643	795,254 numbers.
644	1,196,425 numbers.
645/646	3,655,166 dozen.
647/648	1,436,136 dozen.
650	28,487 dozen.
659–H	1,465,444 kilograms.
659–S	209,498 kilograms.
Sublevel within Group III	
835	31,617 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[3] Category 224–O: all remaining HTS numbers in Category 224.

[4] Category 369pt.: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091, 6307.90.9905, (Category 369–L); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700.

[5] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[6] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[7] Category 669pt.: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[8] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[9] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[10] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060.

[11] Category 359pt.: all HTS numbers except 6505.90.1540, 6505.20.2060 (Category 359–H); and 6406.99.1550.

[12] Category 459–W: only HTS number 6505.90.4090.

[13] Category 459pt.: all HTS numbers except 6505.90.4090 (Category 459–W); 6405.20.6030, 6405.20.6060, 6405.20.6090, 6405.99.1505 and 6406.99.1560.

[14] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[15] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[16] Category 659pt.: all HTS numbers except 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S); 6406.99.1510 and 6406.99.1540.

[17] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030.

[18] Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[19] Category 640–O: only HTS numbers 6203.23.0080, 6203.29.2050, 6205.30.1000, 6205.30.2050, 6205.30.2060, 6205.30.2070, 6205.30.2080 and 6211.33.0040.

[20] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–23909 Filed 9–13–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE/The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Pharmacy Redesign Demonstration

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of two-site implementation of the Pharmacy Redesign Demonstration.

SUMMARY: This notice is to advise interested parties of a two-site implementation of the Pharmacy Redesign Demonstration for certain military health system (MHS) beneficiaries who are 65 years of age or older, pursuant to the requirements in the Strom Thurmond National Defense Authorization Act for fiscal Year 1999. Specifically, Section 723 of this act mandates the pharmacy redesign to incorporate private sector "best business practices" in providing pharmacy services in the MHS, including both military medical treatment facilities (MTFs) and the mail-order and retail pharmacy benefit under TRICARE. It is projected that participation in this demonstration will extend access to a system-wide drug benefit for up to 6,000 over-age 65 DoD eligible beneficiaries that has not been available until now. In the past, Medicare-eligible MHS beneficiaries' access to pharmacy benefits has generally been limited to the MTFs; therefore, the purpose of this pharmacy redesign demonstration is to assess the feasibility and cost of a system-wide pharmacy benefit for Medicare eligible MHS beneficiaries. The demonstration is limited to two sites where up to three thousand eligible beneficiaries will be enrolled at each site. A random selection process resulted in Fleming, Kentucky and Okeechobee, Florida as the pilot sites.

The pharmacy benefit under this demonstration will require an annual $250 enrollment fee. The TRICARE retail network pharmacies will provide up to a 30-day supply of medications for a 20% co-payment with each prescription. The beneficiaries will also have access to the National Mail-Order Pharmacy Program (NMOP) where quantities up to a 90-day supply will be dispensed for a flat fee of $8 for each prescription.

The pharmacy redesign demonstration is projected to last for three (3) years and will be evaluated by an independent entity outside the Department of Defense.

EFFECTIVE DATE: Enrollment in the demonstration is projected to begin on or after March 1, 2000 with Delivery of services on April 1, 2000.

FOR FURTHER INFORMATION CONTACT: CAPT Charles Hostettler, Office of the Assistant Secretary of Defense (Health Affairs), TRICARE Management Activity, (703) 681–1740.

SUPPLEMENTARY INFORMATION:

A. Background

In June 1998, the General Accounting Office (GAO) testified before the Subcommittee on Military Personnel, Committee on Armed Services, House of Representatives, that over the past several years, concern about the costs and quality of DoD's pharmacy benefit has surfaced. GAO recommended that DoD establish a more system-wide approach to managing its pharmacy benefit by establishing a uniform, incentive-based formulary across its pharmacy programs. Furthermore, GAO recommended that a system-wide pharmacy benefit be granted to Medicare-eligible retirees who are excluded from the contractor retail network and NMOP pharmacy systems.

In response to the June 1998 GAO report, the FY 1999 Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105–261) directed DoD to develop a system-wide pharmacy redesign plan and to implement the system-wide redesigned benefit at two sites for Medicare-eligible beneficiaries.

An eligible beneficiary for the pharmacy redesign demonstration is a member or former member of the uniformed services as described in section 1074(b) of title 10; a dependent of the member described in section 1076(a)(2)(B) or 1076(b) of title 10; or a dependent of a member of the uniformed services who died while on active duty for a period of more than 30 days, who meets the following requirements: (a) 65 years of age or older, (b) entitled to Medicare Part A, (c) enrolled in Medicare Part B, and (d) resides in an implementation area.

The pharmacy redesign implementation will be evaluated by an independent entity outside the Department of Defense. The evaluation shall include: (a) An analysis of the cost of the pharmacy redesign implementation under TRICARE, and also to the eligible individuals who participate in the demonstration, (b) an assessment of the eligible beneficiaries' satisfaction with the redesigned pharmacy benefit, (c) an assessment of the effect, if any, on military medical readiness, (d) a description of the rate of participation, and (e) an evaluation of any other matters that the Department considers appropriate.

The DoD component responsible for the conduct of this project is the TRICARE Management Activity.

Dated: September 8, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison, Department of Defense.

[FR Doc. 99–23818 Filed 9–18–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Advisory Council on Dependents' Education

AGENCY: Department of Defense Education Activity (DoDEA), DOD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given that a meeting of the Advisory Council on Dependents' Education (ACDE) is scheduled to be held from 1 p.m. to 5 p.m. on Thursday, October 7, and 8 a.m. to 4:30 p.m. on Friday, October 8, 1999. The meeting will be open to the public and will be held in the Ederle Conference Center in Vicenza, Italy. The meeting will be preceded by visits by ACDE members and DoDEA representatives to DoD overseas schools in Italy, Turkey, and Bahrain from October 4–6. The purpose of the Council is to recommend to the Director, Department of Defense Dependents Schools (DoDDS), general policies for the operation of the DoDDS; to provide the Director with information about effective educational programs and practices that should be considered by DoDDS; and to perform other tasks as may be required by the Secretary of Defense. The focus of this meeting will be on the role of school counselors, in addition to other educational issues. For further information contact Ms. Polly Purser, at 703–696–4235, extension 1911.

Dated: September 8, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–23819 Filed 9–13–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Joint Advisory Committee on Nuclear Weapons Surety; Meeting

ACTION: Notice of advisory committee meeting.

SUMMARY: The Joint Advisory Committee on Nuclear Weapons Surety will conduct a closed session on September 24, 1999 at the Institute for Defense Analyses, Alexandria, Virginia.

The Joint Advisory Committee is charged with advising the Secretaries of Defense and Energy, and the Joint Nuclear Weapons Council on nuclear weapons systems surety matters. At this meeting the Joint Advisory Committee will receive classified briefings on nuclear weapons operations, sustainment, and Department of Defense nuclear readiness.

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended Title 5, U.S.C. App. II, (1988)), this meeting concerns matters sensitive to the interests of national security, listed in 5 U.S.C. 552b(c)(1) and accordingly this meeting will be closed to the public.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–23820 Filed 9–13–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense Wages Committee; Notice of Closed Meeting

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that the closed meetings of the Department of Defense Wage Committee will be held on October 5, 1999, October 12, 1999, October 19, 1999, and October 26, 1999, at 10 a.m. in Room A105. The Nash Building 1400 Key Boulevard, Rossyln, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington DC 20301–4000.

Dated: September 8, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–23821 Filed 9–13–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Defense Security Service

Privacy Act of 1974; System of Records

AGENCY: Defense Security Service, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Security Service is proposing to consolidate two existing exempt systems of records (V8–01, Industrial Personnel Security Clearance File into V5–03, Case Control Management System (CCMS)) under one notice. This consolidation also requires that the existing exemption rule for V5–03 be altered to add a "(k)(5)" exemption for the records formerly under V8–01.

DATES: This proposed action will be effective without further notice on October 14, 1999, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to Office of the General Counsel, Defense Security Service, 1340 Braddock Place, Alexandria, VA 22314–1651.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie Blake (703) 325–9450.

SUPPLEMENTARY INFORMATION: The Defense Security Service systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available for the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on August 30, 1999, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: September 8, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

V5–03

SYSTEM NAME:

Defense Integrated Management System (DIMS) *(February 22, 1993, 58 FR 10904).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with "Case Control Management System (CCMS)."

SYSTEM LOCATION:

Delete entry and replace with "Primary location: Defense Security Service, Operation Center—Baltimore, 881 Elkridge Landing Road, Linthicum, MD 21090–2902.

Decentralized locations: Remote terminals processing CCMS data are located at DSS's twelve Operating Locations (OL) and Operation Center—Columbus. Operating Locations addresses can be obtained from the Primary location."

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with "Any person who is the subject or co-subject of an ongoing or completed Defense Security Service (DSS) investigation to include employees and major stockholders of DoD affiliated government contractors who have been issued, now possess, are, or have been in process for personnel security clearance eligibility determinations."

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with "CCMS is composed of investigations conducted by DSS and clearance actions taken for contractors. Information may include investigative assignment records, which may serve as the basis for the investigation, or which serve to guide and facilitate investigative activity; information used to open and conduct the investigation; records on the type of investigation, on the type and number of leads assigned to DSS field elements and leads sent to National Agencies for investigations in progress and the results of those leads received from the National Agencies. The system also identifies the current status of an investigative request (open/closed) and the status of individual leads being conducted, to include additions to, deletion of or amendment to those leads. The system also consists of records pertaining to clearance information on contractors, which may include name, Social Security Number, case number, date and level of security clearance granted, results of interim or final eligibility determinations, clearance applications, record of clearance, foreign clearance and travel information, clearance processing information, adverse information and other internal and external correspondence and administrative memoranda relative to the clearance."

* * * * *

PURPOSE(S):

Delete entry and replace with "To determine the existence, location, and status of subject cases; to control workload and prepare statistical reports; to inform federal agencies or requesters of the status of on-going investigative or personnel security action request and to manage the granting of interim and final clearances for contractor personnel."

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "File data composed of the Official Reports of Investigation (ROIs) and associated material (clearance applications/forms) on closed investigations completed by DSS are transferred to the Personnel Security Investigative File Automation Subsystem (V5–01) and will be retained for a period corresponding to the retention of investigative files described in V5–01. Clearance data on contractors reflecting the existence of an open case, record of a National Agency Check (NAC) in progress/completed, record of clearance, are entered into the DCII data base and retained for a period corresponding to the retention of DCII files described V5–02. Data pertaining to favorable adjudicative actions on contractors will be retained for 2 years following the termination of employment. Unfavorable adjudicative actions (clearance denied/suspended/revoked) will be retained for 5 years following the termination of the clearance. In cases involving the death of an individual holding a clearance, the clearance data will be retained until the subject would have attained the age of 80 years. Data released in accordance with the Privacy Act or Freedom of Information Act (FOIA) will be retained for 5 years. Historical data (non-personal statistical data on numbers of cases opened/closed, number of leads, types of investigations, number of clearances granted/denied, etc.) will be retained indefinitely."

Paper records are destroyed by burning or shredding; electronic records are deleted."

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Subject's of DSS investigations and DSS investigative reports; records of other DoD activities and components, federal, state, county and municipal records.'

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Add to the entry 'Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.'

V5–03

SYSTEM NAME:

Case Control Management System (CCMS).

SYSTEM LOCATION:

Primary location: Defense Security Service, Operation Center-Baltimore, 881 Elkridge Landing Road, Linthicum, MD 21090–2902.

Decentralized locations: Remote terminals processing CCMS data are located at DSS's twelve Operating Locations (OL) and Operation Center-Columbus. Operating Locations addresses can be obtained from the Primary location.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any person who is the subject or co-subject of an ongoing or completed Defense Security Service (DDS) investigation to include employees and major stockholders of DoD affiliated government contractors who have been issued, now possess, are, or have been in process for personnel security clearance eligibility determinations.

CATEGORIES OF RECORDS IN THE SYSTEM:

CCMS is composed of investigations conducted by DSS and clearance actions taken for contractors. Information may include investigative assignment records, which may serve as the basis for the investigation, or which serve to guide and facilitate investigative activity; information used to open and conduct the investigation; records on the type of investigation, on the type and number of leads assigned to DSS field elements and leads sent to National Agencies for investigations in progress and the results of those leads received from the National Agencies. The system also identifies the current status of an investigative request (open/closed) and the status of individual leads being conducted, to include

additions to, deletion of or amendment to those leads. The system also consists of records pertaining to clearance information on contractors, which may include name, Social Security Number, case number, date and level of security clearance granted, results of interim or final eligibility determinations, clearance applications, record of clearance, foreign clearance and travel information, clearance processing information, adverse information and other internal and external correspondence and administrative memoranda relative to the clearance.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; DoD Directive 5105.42, Defense Security Service (32 CFR part 361); DoD Regulation 5200.2, Personnel Security Program (32 CFR part 156); and E.O. 9397 (SSN).

PURPOSE(S):

To determine the existence, location, and status of subject cases; to control workload and prepare statistical reports; to inform federal agencies or requester of the status of on-going investigative or personnel security action request and to manage the granting of interim and final clearances for contractor personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of DSS' compilation of systems of records, notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

CCMS is stored on disk as part of a central database that has a mirrored structure (duplicate file) to provide immediate recovery in case of disk failure. It is regularly backed up onto magnetic tape for storage as a contingency in case of system or disk failure.

RETRIEVABILITY:

CCMS records are retrieved by name or Social Security Number. History file records may also contain a case control number (CCN), which can be used to retrieve records.

SAFEGUARDS:

Generalized validation is provided through online and batch edit criteria that must be honored before an information request or update will occur. Remote terminals must pass through the DSS Firewall or equivalent access controls, both of which have encryption that exceeds the DES standard. All data transfers and information retrievals that use remote communication facilities are encrypted to at least the DES standard. The DSS computer facility housing the CCMS is protected by security guards at all times and access to the computer room is controlled by a combination lock to prevent unauthorized access. Organizations that receive our information and provide responses are responsible for ensuring that only individual's in their organizations who have appropriate authority and need-to-know gain access to CCMS data.

RETENTION AND DISPOSAL:

File data composed of the Official Reports of Investigation (ROIs) and associated material (clearance applications/forms) on closed investigations completed by DSS are transferred to the Personnel Security Investigative File Automation Subsystem (V5–01) and will be retained for a period corresponding to the retention of investigative files described in V5–01. Clearance data on contractors reflecting the existence of an open case, record of a National Agency Check (NAC) in progress/completed, record of clearance, are entered into the DCII data base and retained for a period corresponding to the retention of DCII files described V5–02. Data pertaining to favorable adjudicative actions on contractors will be retained for 2 years following the termination of employment. Unfavorable adjudicative actions (clearance denied/suspended/revoked) will be retained for 5 years following the termination of the clearance. In cases involving the death of an individual holding a clearance, the clearance data will be retained until the subject would have attained the age of 80 years. Data released in accordance with the Privacy Act or Freedom of Information Act (FOIA) will be retained for 5 years. Historical data (non-personal statistical data on numbers of cases opened/closed, number of leads, types of investigations, number of clearances granted/denied, etc.) will be retained indefinitely.

Paper records are destroyed by burning or shredding; electronic records are deleted.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Operations Center-Baltimore, 881 Elkridge Landing Road, Linthicum, MD 21090–2902.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314–1651.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Defense Security Service, Privacy Branch, PO Box 46060, Baltimore, MD 21240–6060.

Individual should provide full name and all maiden and alias names under which files may be maintained. For verification purposes, the Social Security Number may be necessary for positive identification of certain records.

Personal visits will require a valid driver's license or other picture identification and are limited to the Defense Security Service, 881 Elkridge Landing Road, Linthicum, MD 21090–2902.

CONTESTING RECORD PROCEDURES:

DSS' rules for accessing records, contesting contents, and appealing initial agency determinations are contained in DSS Regulation 01–13: 32 CFR part 321; or may be obtained from the Defense Security Service, Office of FOI and PA, 1340 Braddock Place, Alexandria, VA 22314–1651.

RECORD SOURCE CATEGORIES:

Subject's of DSS investigations and DSS investigative reports; records of other DoD activities and components, federal, state, county and municipal records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 321. For additional information contact the system manager.

[FR Doc. 99–23825 Filed 9–13–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army

One-Time-Only (OTO) Personal Property Solicitation and Award Procedures

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice.

SUMMARY: The Military Traffic Management Command (MTMC) will solicit and award personal property One-Time-Only shipments for all household goods, unaccompanied baggage, volume movements, mobile homes, international and domestic boats via Electronic Transportation Acquisition accessed through MTMC's homepage.

DATES: Effective date of this program will be 1 October 99.

ADDRESSES: Headquarters, Military Traffic Management Command, ATTN: MTPP–HS, Room 625, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Ms. Gail Collier (703) 681–9577.

SUPPLEMENTARY INFORMATION: Currently One-Time-Only rates are processed via Easylink message system. The transition to the internet, will expedite the processing of rates and reduce costs for soliciting and awarding One-Time-Only shipments.

William G. Balkus,

Col, GS, DCS Passenger and Personal Property.

[FR Doc. 99–23934 Filed 9–13–99; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to delete systems of records.

SUMMARY: The Department of the Army is deleting two systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on October 14, 1999, unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, Army Records Management and Declassification Agency, ATTN: TALC–PAD–RP, Stop C, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: September 8, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0725–1 AMC

SYSTEM NAME:

Small Arms Sales Record Files (*November 6, 1997, 62 FR 60073*).

Reason: The responsibility for these records now exists with the Corporation for the Promotion of Rifle Practice and Firearms Safety, Inc. Therefore, the Department of the Army no longer maintains these records.

A0920–15 SFDM

SYSTEM NAME:

Civilian Marksmanship Program (*February 22, 1993, 58 FR 10002*).

Reason: The responsibility for these records now exists with the Corporation for the Promotion of Rifle Practice and Firearms Safety, Inc. Therefore, the Department of the Army no longer maintains these records.

[FR Doc. 99–23823 Filed 9–13–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Boards Membership

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of the Performance Review Boards for the Department of the Army.

EFFECTIVE DATE: September 14, 1999.

FOR FURTHER INFORMATION CONTACT: Marilyn D. Ervin, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army (Manpower and Reserve Affairs), 111 Army Pentagon, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the U.S. Army Corps of Engineers are:

1. MG Russell Fuhrman, Deputy Chief of Engineers/Deputy Commander, Office of the Chief of Engineers, Headquarters, U.S. Army Corps of Engineers (HQ USACE).
2. MG Milton Hunter, Director of Military Programs, HQ USACE.
3. MG Phillip Anderson, Commanding General, United States Army Engineer Division, Mississippi Valley Division, USACE.
4. BG Carl Strock, Commanding General, United States Army Engineer Division, Northwestern Division, USACE.
5. Dr. Susan Duncan, Director of Human Resources, HQ USACE.
6. Ms. Kristine Allaman Director, U.S. Army Center for Public Works, HQ USACE.
7. Mr. Thomas Ushijima, Director of Programs Management, Pacific Ocean Division, USACE.
8. Mr. William Dawson, Director of Programs Management, Southwestern Division, USACE.
9. Dr. Michael O'Connor, Director, U.S. Army Construction Engineering

Research Lab, Engineering Research and Development Center.

The members of the Performance Review Board for The Surgeon General are:

1. Mr. James C. Reardon, Executive Director, Defense Medical Information Management, Office of the Assistant Secretary of Defense (Health Affairs).

2. Ms. Sandra R. Riley, Deputy Administrative Assistant to the Secretary of the Army, Office of the Secretary.

3. MG Patrick D. Sculley, Deputy The Surgeon General/Chief, Dental Corps.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–23932 Filed 9–13–99; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend a record system.

SUMMARY: The Defense Logistics Agency proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The action will be effective on October 14, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Defense Logistics Agency proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems report. The record system being amended is set forth below, as amended, published in its entirety.

Dated: September 8, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S500.40 DLA-I

SYSTEM NAME:

Police Force Records *(February 22, 1993, 58 FR 10854).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'S500.40 CAAS'.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'File contains name, Social Security Number, and documents relating to operation and use of security police, their security clearances, weapons qualification, training, uniforms, weapons, shift assignments and related papers.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; Section 21 of the Internal Security Act of 1950 (50 U.S.C. 797); and E.O. 9397 (SSN).'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Records are maintained in areas accessible only to DLA security supervisory personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during nonduty hours.'

* * * * *

S500.40 CAAS

SYSTEM NAME:

Police Force Records.

SYSTEM LOCATION:

Security offices of the Defense Logistics Agency Primary Field Activities (PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Defense Logistics Agency (DLA) Security Police personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains name, Social Security Number, and documents relating to operation and use of security police, their security clearances, weapons qualification, training, uniforms, weapons, shift assignments and related papers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; Section 21 of the Internal Security Act of 1950 (50 U.S.C. 797); and E.O. 9397 (SSN).

PURPOSE(S):

Information is maintained and used by DLA Security Officers and Police Supervisors to maintain control of property, weapons and ammunition; to ensure proper training; to develop schedules and procedures to improve efficiency. Records are used to determine if an individual is qualified in the use of firearms and if he/she has a security clearance which would authorize him/her to handle classified information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are in paper and electronic form.

RETRIEVABILITY:

Retrieved by name and Social Security Number.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA security supervisory personnel who must use the records to perform their duties. The computer files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during nonduty hours.

RETENTION AND DISPOSAL:

Destroy after 1 year or when superseded or obsolete, as applicable.

SYSTEM MANAGER(S) AND ADDRESS:

Security Officers of the Defense Logistics Agency Primary Level Field Activities (PLFAs) who are responsible for the operation of base or facility security forces. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221, or the Privacy Act Officer of the particular DLA PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221, or the Privacy Act Officer of the particular DLA PLFA involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

DLA Security Officers and Security Police personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–23822 Filed 9–13–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability of the Draft Environmental Impact Statement (DEIS) for the Daniel Island Terminal Located in the City of Charleston, Berkeley County, South Carolina and Notice of Public Hearing

AGENCY: U.S. Army Corps of Engineers, Charleston District, DoD.

ACTION: Notice of Availability and Public Hearing.

SUMMARY: The U.S. Army Corps of Engineers, Charleston District has prepared a Draft Environmental Impact Statment (DEIS) for the proposed Daniel Island Terminal that will be located in the City of Charleston, Berkeley County, South Carolina. A public hearing will be held to receive oral and written comments on the DEIS. Federal, state and local agencies and interested parties are invited to be present at the hearing.

DATES: The public hearing will be held on Wednesday, November 17, 1999. The time and place will be advertised locally via public notice.

FOR FURTHER INFORMATION CONTACT: For further information and/or questions about the proposed action and DEIS, please contact Ms. Tina Hadden, Project Manager, telephone (843) 727–4330 or 1–800–208–2054, CESAC–TS–RP, 334 Meeting Street, Charleston, South Carolina.

SUPPLEMENTARY INFORMATION: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Charleston District has prepared a DEIS on the proposed marine cargo terminal on Daniel Island which is located in the City of Charleston, Berkeley County, South Carolina. This project is proposed by the South Carolina State Ports Authority (SPA).

1. Description of Proposed Project

The proposed project is the creation by the South Carolina State Ports Authority (SCSPA) of a marine cargo terminal compex at Daniel Island in the City of Charleston, Berkeley County, South Carolina, which includes the following components: approximately 1,300 acres of port terminal development at the south end of Daniel Island to include cargo marshaling areas, cargo processing areas, cargo-handling facilities, intermodal rail facilities, and related terminal operating facilities; approximately 7,000 feet of wharf and berthing area on the Cooper River and approximately 5,000 feet of wharf and berthing area of the Wando River; approximately 37 acres of dredged berthing area; associated improvements to the Wando River Federal Channel; approximately 2.5 miles of multi-lane roadway construction between the proposed terminal site and Interstate I–526; approximately 13 miles of rail connecting the proposed terminal facilities to the East Cooper and Berkeley Railroad; and a rail bridge and road bridge over Beresford Creek.

2. Alternatives

The following alternatives were evaluated in the DEIS: No Action; the Proposed Project; a combination of the Wando River side of Daniel Island and a portion of the former Naval Base; a combination of the Cooper River side of Daniel Island, a portion of the Naval Base, and the existing Columbus Street Terminal. Multiple alternative road and rail corridors to serve the alternative terminal locations were also evaluated, as were design alternatives for each of the facilities.

3. Scoping and Public Involvement Process

Two scoping meetings were held on June 24, 1997, in order to gather information on the subjects to be studied in detail in the DEIS, one specifically for the Federal and State agencies with regulatory responsibilities and one for the general public. Four public information meetings were held in order to provide an arena for the exchange of information regarding the proposed project and the EIS. These meetings were held in September 1997, December 1997, March 1998 and September 1998. Five community outreach meetings were held. These meetings were held at the request of the community to address specific issues and concerns.

4. Significant Issues

Issues associated with the proposed facilities which received a significant level of analysis in the DEIS include, but are not limited to, the potential impacts of the proposed dredging, placement of fill, construction and operation of the proposed terminal and surface transportation facilities, and of induced developments on: wetland resources; upland and aquatic biotic communities; water quality; fish and wildlife values including threatened and endangered species; noise and light levels in areas adjoining the proposed facilities; air quality; land forms and geologic resources; community cohesion; environmental justice; roadway traffic; socioeconomic environment; archaeological and cultural resources; recreation and recreational resources; Section 4(f) and Section 6(f) properties (parks and/or sites of cultural significance); public infrastructure and services; energy supply and natural resources; hazardous wastes and materials; land use; aesthetics; public health and safety; parklands; prime farmlands; ecologically critical areas; navigation;

flood plain values; shoreline erosion and accretion; Essential Fish Habitat; and the needs and welfare of the people.

5. Cooperating Agencies

The U.S. Forest Service, the U.S. Environmental Protection Agency, the Surface Transportation Board, and the U.S. Coast Guard were cooperating agencies in the development of the DEIS.

6. Additional Review and Consultation

Additional review and consultation which was incorporated into the DEIS includes: compliance with the South Carolina Coastal Zone Management Act; protection of cultural resources under Section 106 of the Historic Preservation Act; protection of water quality under Section 401 of the Clean Water Act; coordination under Section 103 of the Marine Protection, Resource, and Sanctuaries Act; and protection of endangered and threatened species under Section 7 of the Endangered Species Act.

7. Availability of the DEIS

The Draft Environmental Impact Statement will be available on September 17, 1999.

Mark S. Held,

Lieutenant Colonel, U.S. Army, District Engineer.

[FR Doc. 99–23933 Filed 9–13–99; 8:45 am]

BILLING CODE 3710–CH–M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for Large Scale Developments in Coastal Mississippi

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The Mobile District, U.S. Army Corps of Engineers (Corps), intends to prepare a Draft Environmental Impact Statement (DEIS) to address the potential impacts associated with the construction of large scale developments in sensitive areas of coastal Mississippi, including Harrison, Hancock, and a portion of Jackson Counties. The Corps will be evaluating permit applications for any proposed work in waters of the United States under the authority of Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act. The EIS will be used as a basis for permit decisions and to ensure compliance with the National Environmental Policy Act (NEPA).

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and the DEIS should be addressed to Mr. John McFadyen, Regulatory Branch, phone (334) 690–3261, or Dr. Susan Ivester Rees, Coastal Environment Team, phone (334) 694–4141, Mobile District, U.S. Army Corps of Engineers, P.O. Box 2288, Mobile, AL 36628.

SUPPLEMENTARY INFORMATION:

1. Development in coastal Mississippi has increased significantly since the approval of gaming activities in 1992. Initially this development was small scale and localized to the areas immediately adjacent to Mississippi Sound. Recently, however development activities in coastal Mississippi have taken on a much broader scope both geographically and spatially. To ensure adequate evaluation of the cumulative impacts of development, especially in those areas considered to be sensitive from an environmental standpoint, the Mobile District has decided to undertake a comprehensive environmental impact analysis of both past development activities and foreseeable future development activities. Sensitive areas are those designated for "General Use" and "Preservation" in the Mississippi Coastal Program, including the interior shoreline of the Bay of St. Louis, Back Bay of Biloxi, west of Interstate Highway 110, the marsh island east of this highway and Deer Island. The extent of geographical coverage will include those portions of Hancock and Harrison counties from approximately 1 mile north of Interstate Highway 10 south to the Mississippi Sound shoreline. The western portion of Jackson County, bordering on the Back Bay of Biloxi, will also be included. The analysis process will: evaluate impacts of identified projects, both those requiring U.S. Army Corps of Engineers permits and not requiring permits, constructed since 1992; identify project development trends and project these trends over the next 25 years; and evaluate the impact of likely future large development projects. Past projects which would be evaluated include: 12 operating casinos, 5 casinos permitted but not built, 2 large shopping centers, new subdivisions, large apartment complexes, a port expansion project, and wasterwater plant expansions. Future projects which may be included are Destination Broadwater, Deer Island and Biloxi Resorts, other proposed casino developments, Turkey Creek development, Greater Gulfport Properties development, proposed new subdivisions, and city master plan revisions.

2. Alternative scenarios which may be considered include random development (No action); clustered development; development based on local planning and economic forces.

3. Scoping:

a. The Corps invites full public participation to promote open communication on the issues surrounding the proposal. All Federal, State, and local agencies, and other persons or organizations that have an interest are urged to participate in the NEPA scoping process. Public meetings will be held to help identify significant issues and to receive public input and comment.

b. The DEIS will analyze the potential social, economic, and environmental impacts to the local area resulting from proposed future development. Specifically, the following major issues will be analyzed in depth in the DEIS: hydrologic and hydraulic regimes, threatened and endangered species, essential fish habitat and other marine habitat, air quality, cultural resources, wasterwater treatment capacities and discharges, transportation systems, alternatives, secondary and cumulative impacts, socioeconomic impacts, environmental justice (effect on minorities and low-income groups), and protection of children (Executive Order 13045).

c. The Corps will serve as the lead Federal agency in the preparation of the DEIS. It is anticipated that the following agencies will be invited and will accept cooperating agency status for the preparation of the DEIS: U.S. Environmental Protection Agency, U.S. Department of the Interior—Fish and Wildlife Service, U.S. Department of Commerce—National Marine Fisheries Service, U.S. Department of Transportation—Federal Highway Administration.

4. It is anticipated that the first scoping meeting will be held in the October time frame in the local area. Actual time and place for the meeting and subsequent meetings or workshops will be announced by the Mobile District by issuance of a Public Notice and/or local media.

5. It is anticipated that the DEIS will be made available for public review in May 2000.

John B. McFadyen,

Acting Chief, Regulatory Branch.

[FR Doc. 99–23935 Filed 9–13–99; 8:45 am]

BILLING CODE 3710–CR–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Joint Supplemental Environmental Impact Statement/ Supplemental Environmental Impact Report (SEIS/SEIR) for the Port of Los Angeles Channel Deepening Project Feasibility Study; Los Angeles County, CA

AGENCY: U.S. Army Corps of Engineers (Corps), DOD.

ACTION: Notice of intent.

SUMMARY: The Corps and the Port of Los Angeles (POLA) propose to deepen the Main Channel of the Port of Los Angeles from −45′ Mean Lower Low Water (MLLW) to between −50′ MLLW and −55′ MLLW dredging and disposing of approximately 3.7 to 7.8 million cubic yards (mcy).

ADDRESSES: Commander, U.S. Army Corps of Engineers, Los Angeles District, Attn: CESPL–PD–RN, P.O. Box 532711, Los Angeles, California, 90053–2325.

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. Larry Smith, phone (213) 452–3846; or E-mail: lsmith@spl.usace.army.mil.

SUPPLEMENTARY INFORMATION: .

1. *Authorization:* The study was authorized by the Water Resources Development Act of 1986 (P.L. 99–662) Section 203.

2. *Background:* The SEIS/SEIR supplements the Deep Draft Navigation Improvements, Los Angeles and Long Beach Harbors, San Pedro Bay, California Environmental Impact Statement/Environmental Impact Report (SEPT 1992) and the Channel Deepening Project Port of Los Angeles Environmental Impact Report (JAN 1998).

3. *Proposed Action:* The Corps and the POLA are proposing to deepen the main navigation channel into the Port of Los Angeles in order to accommodate the larger deeper draft generation of container ships now entering the shipping service. The proposed project would deepen the Main Channel from its current depth of −45′ MLLW to a propose depth of either −50′, −52′, or −55′ MLLW. This would require the dredging of between 3.7 to 7.8 mcy of harbor sediments. Disposal options include offshore, near/onshore and upland sites. Potential disposal sites being investigated are the Pier 300 Expansions Site, the Pier 400 Submerged Storage Site, the Pier 400 Upland Site, the Southwest Slip Fill Site, the Cabrillo Shallow Water Habitat Expansion Site, a local Upland Disposal site, and/or Ocean Disposal Sites LA–2 and/or LA–3.

4. *Alernatives:* Alternative depths being considered are −50′ MLLW, −52′ MLLW and −55′ MLLW. Alternative disposal sites are listed above. Each site will be evaluated for its full storage potential. A combination of sites will be selected based on the chosen channel depth alternative, and thus dredge disposal volume, and potential impacts from the use of each disposal site. The proposed plan, viable project alternatives, and the "no action" plan will be carried forward for detailed analysis pursuant to the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, as amended) and the California Environmental Quality Act (CEQA) of 1970 (Public Resources Code, Sections 21000–21177).

5. *Scoping Process:* a. Potential impacts associated with the proposed action will be fully evaluated. Resource categories that will be analyzed are: biology, air quality, water quality, cultural resources, land use, geology, recreational, aesthetics, ground and vessel transportation, noise, public health and safety, and utilities.

b. The Corps and the POLA are preparing a joint Supplemental Environmental Impact Statement/Report (SEIS/SEIR) to address potential impacts associated with the proposed project. The Corps is the Lead Federal Agency for compliance with NEPA for the project, and the POLA is the Lead State Agency for compliance with the CEQA for the non-Federal aspects of the project. The Draft SEIS/SEIR (DSEIS/SEIR) document will incorporate public concerns in the analysis of impacts associated with the Proposed Action and associated project alternatives. The DSEIS/SEIR will be sent out for a 45-day public review period, during which time both written and verbal comments will be solicited on the adequacy of the document. The Final SEIS/SEIR (FSEIS/SEIR) will address the comments received on the DSEIS/SEIR during public review, and will be furnished to all who commented on the DSEIS/SEIR, and is made available to anyone that requests a copy during the 30-day public comment period. The final step involves, for the federal SEIS, preparing a Record of Decision (ROD) and, for the state SEIR, certifying the SEIR and adopting a Mitigation Monitoring and Reporting Plan. The ROD is a concise summary of the decisions made by the Corps from among the alternatives presented in the FSEIS/SEIR. The ROD can be published immediately after the FSEIS public comment period ends. A certified SEIR indicates that the environmental document adequately assesses the environmental impacts of the proposed project with respect to CEQA.

c. The public, as well as Federal, State, and local agencies are encouraged to participate in the scoping process by attending the scoping meeting and/or submitting data, information, and comments identifying relevant environmental and socioeconomic issues to be addressed in the environmental analysis. Useful information includes other environmental studies, published and unpublished data, historical photos of the area, alternatives that should be addressed in the analysis, and potential environmental enhancement and restoration opportunities that exist along the creek. Individuals and agencies may offer information or data relevant to the proposed study and provide comments by attending the public scoping meeting, or by mailing the information to Mr. Larry Smith before 15 September, 1999. Requests to be placed on the mailing list for announcements and the DSEIS/SEIR should also be sent to Mr. Larry Smith.

6. *Location and time:* A formal scoping meeting to solicit public comment and concerns on the proposed action and alternatives will be held on September 15, 1999 at 3:00 P.M., in the Port Plaza Building of the Port Los Angeles, 425 South Palos Verdes Street, San Pedro, California.

Dated: September 10, 1999.

John P. Carroll,

Colonel, Corps of Engineers District Engineer.

[FR Doc. 99–23936 Filed 9–13–99; 8:45 am]

BILLING CODE 3710–KF–M

DEPARTMENT OF DEFENSE

Department of the Navy

Public Hearing for the Draft Overseas Environmental Impact Statement/Draft Environmental Impact Statement (DOEIS/DEIS) for the Operational Employment of the Surveillance Towed Array Sensor System Low Frequency Active (SURTASS LFA) Sonar

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency a DOEIS/DEIS for the operational employment of the SURTASS LFA sonar. Public hearings will be held for the purpose of receiving oral and written comments on the DOEIS/DEIS. Federal, state and local agencies, and

interested individuals are invited to be present or represented at the hearings.

DATES AND ADDRESSES: Hearing dates and locations are as follows:

1. September 29, 1999, 7:00 p.m., Nauticus–The National Maritime Center (Theater), 1 Waterside Drive, Norfolk, VA 23510.

2. October 12, 1999, 7:00 p.m., Marina Village Conference Center, 1960 Quivira Way, Building E, Suite 5, San Diego, CA 92109.

3. October 14, 1999, 7:00 p.m., University of Hawaii-Monoa Campus, Hawaii Imin International Conference Center Jefferson Hall, Keoni Room, 2600 Campus Road, Honolulu, HI.

FOR FURTHER INFORMATION CONTACT: Mr. Clayton H. Spikes, telephone (703) 465–8404.

SUPPLEMENTARY INFORMATION: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency a DOEIS/DEIS for the operational employment of the SURTASS LFA sonar.

A Notice of Intent for this EIS was published in the **Federal Register** on July 18, 1996. Public Scoping meetings were held in Norfolk, Virginia, on August 6, 1996; in San Diego, California, on August 8, 1996; and in Honolulu, Hawaii, on August 13, 1996.

The U.S. Navy proposes to operate up to four SURTASS LFA sonar systems worldwide. The SURTASS LFA sonar employs long-range sound propagation to detect return echoes from objects on and under the sea. The LFA system will provide the U.S. Navy an improved detection capability in support of its national defense mission. The Navy proposes to make the SURTASS LFA system available to Fleet Commanders for worldwide employment to enhance antisubmarine capabilities.

The U.S. Navy has analyzed the environmental effects resulting from the operational employment of up to four SURTASS LFA sonar systems worldwide. Alternatives developed and analyzed in the DOEIS/DEIS include: the No Action Alternative, in which no operational deployment of SURTASS LFA sonar would occur; Alternative 1, which provides for geographic restrictions and monitoring to prevent injury to potentially affected species; and Alternative 2, which provides for unrestricted operation of the system. The Navy currently prefers Alternative 1 because it best meets the program purpose and need and satisfies Navy operational requirements.

Environmental resource areas addressed in the DOEIS/DEIS include the acoustic environment, marine environment, and socioeconomic environment. Issue analysis includes an evaluation of the direct, indirect, short-term, and cumulative impacts; and irreversible and irretrievable commitment of resources associated with the proposed action.

No decision on the proposed action will be made until the National Environmental Policy Act process has been completed and the Secretary of the Navy, or a designated representative, releases the Record of Decision.

The DOEIS/DEIS has been distributed to various federal, state, and local agencies, elected officials, and special interest groups and public libraries. The DOEIS/DEIS is also available for public review at the following libraries:

—Los Angeles Library, 2801 Wabash Avenue, Los Angeles, CA.
—San Diego County Library, Building 15, 5555 Overland Avenue, San Diego, CA.
—San Diego Public Library, 820 E Street, San Diego, CA.
—San Diego Society of Natural History Library, P.O. Box 1390, San Diego, CA.
—California State Library Sutro Library, 480 Winston Drive, San Francisco, CA.
—San Francisco Public Library, Larkin and McAllister Streets, San Francisco; CA.
—Hawaii Documents Center Hawaii State Library, 478 South King Street, Honolulu, HI.
—Kaneohe Regional Library, 45–829 Kamehameha Highway, Kaneohe, HI.
—Hilo Regional Library, 300 Waianuenue, Hilo, HI.
—Wailuku Regional Library, 251 High Street, Wailuku, HI.
—Lihue Regional Library, 4344 Hardy Street, Lihue, HI.
—Boston Public Library, 700 Boylston Street, Boston, MA.
—Norfolk Public Library Kirn Memorial Library, 301 East City Hall Avenue, Norfolk, VA.
—Virginia Beach Public Library, 4100 Virginia Beach Boulevard, Virginia Beach, VA.
—Fred C. Schmidt Documents Dept-KS, The Libraries Colorado State University, Fort Collins, CO.
—Seattle Public Library, 1000 4th Avenue, Seattle, WA.
—Martin Luther King Memorial Library, 901 G Street NW, Floor 4, Washington, DC.

The Navy will conduct three public hearings to receive oral and written comments concerning the DOEIS/DEIS. A brief presentation will precede a request for public information and comments. Navy representatives will be available at each hearing to receive information and comments from agencies and the public regarding issues of concern. Federal, state, and local agencies, and interested parties are invited and urged to be present or represented at the hearings. Those who intend to speak will be asked to submit a speaker card (available at the door). Oral comments will be heard and transcribed by a stenographer.

To assure accuracy of the record, all statements should be submitted in writing. All statements, both oral and written, will become part of the public record in the study. Equal weight will be given to both oral and written comments. In the interest of available time, each speaker will be asked to limit oral comments to three minutes. Longer comments should be summarized at the public hearings and submitted in writing either at the hearing or mailed to the Office of the Chief of Naval Operations, Code N874, c/o Clayton H. Spikes (703) 465–8404, Marine Acoustics, Inc., Suite 708, 901 North Stuart Street, Arlington, Virginia 22203. Written comments are requested not later than Saturday, November 13, 1999.

Dated: September 9, 1999.

J. L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 99–23911 Filed 9–13–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Invention for Licensing; Government-Owned Invention

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

U.S. Patent Application Serial No. 09/313,577 entitled "Tissue Diagnostics Using Evanescent Spectroscopy" Navy Case No. 79,047.

ADDRESSES: Requests for copies of the patent application cited should be directed to the Naval Research Laboratory, Code 3008.2, 4555 Overlook Avenue, SW, Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320, telephone (202) 767–7230.

Authority: 35 U.S.C. 207, 37 CFR part 404.

Dated: September 1, 1999.

J. L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 99–23833 Filed 9–13–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Availability of Government-Owned Inventions for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy.

Patent 5,840,572: BIOLUMINESCENT BIOASSAY SYSTEM; filed 29 July 1996; patented 24 November 1998.//Patent 5,840,592: METHOD OF IMPROVING THE SPECTRAL RESPONSE AND DARK CURRENT CHARACTERISTICS OF AN IMAGE GATHERING DETECTOR; filed 5 July 1994; patented 24 November 1998.//Patent 5,844,860: CONTINUOUS STRENGTH MEMBER; filed 23 May 1990; patented 1 December 1998.//Patent 5,846,889: INFRARED TRANSPARENT SELENIDE GLASSES; filed 14 March 1997; patented 8 December 1998.//Patent 5,855,179: MID SHIPS TOW POINT FOR SINGLE LINE AND MULTI LINE TOWED ARRAYS; filed 1 October 1997; patented 5 January 1999.//Patent 5,858,104: SYSTEM FOR FOCUSED GENERATION OF PRESSURE BY BUBBLE FORMATION AND COLLAPSE; filed 21 December 1995; patented 12 January 1999.//Patent 5,859,064: CHEMICAL WARFARE AGENT DECONTAMINATION SOLUTION; filed 11 December 1997; patented 12 January 1999.//Patent 5,859,535: SYSTEM FOR DETERMINING SIZE AND LOCATION OF DEFECTS IN MATERIAL BY USE OF MICROWAVE RADIATION; filed 12 February 1997; patented 12 January 1999.//Patent 5,859,812: SELF POWERED UNDERWATER ACOUSTIC ARRAY; filed 14 October 1997; patented 12 January 1999.//Patent 5,859,919: METHOD AND SYSTEM FOR MEASURING SURFACE ROUGHNESS USING FRACTAL DIMENSION VALUES; filed 12 August 1996; patented 12 January 1999.//Patent 5,862,262: METHOD OF ENCODING A DIGITAL IMAGE USING ADAPTIVE PARTITIONING IN AN INTEGRATED TRANSFORMATION SYSTEM; filed 30 March 1992; patented 19 January 1999./ /Patent 5,864,166: BISTABLE PHOTOCONDUCTIVE SWITCHES PARTICULARLY SUITED FOR FREQUENCY-AGILE, RADIO-FREQUENCY SOURCES; filed 24 January 1997; patented 26 January 1999.//Patent 5,866,244: CERAMIC STRUCTURE WITH BACKFILLED CHANNELS; filed 20 December 1996; patented 2 February 1999.//Patent 5,867,329: MULTIPLE-PASS REFLECTION FILTER; filed 31 May 1996; patented 2 February 1999.//Patent 5,869,762: MONOLITHIC PIEZOELECTRIC ACCELEROMETER; filed 27 November 1996; patented 9 February 1999.//Patent 5,870,054: MOVING TARGET INDICATOR WITH NO BLIND SPEEDS; filed 10 December 1982; patented 9 February 1999.//Patent 5,872,318: METHOD AND APPARATUS FOR INDUCING FULLY-REVERSED THREE-DIMENSIONAL LOADING ON A NON-ROTATING BEAM; filed 14 March 1997; patented 16 February 1999.//Patent 5,872,324: TRIMODE FUZE; filed 7 July 1997; patented 16 February 1999.//Patent 5,872,368: METHOD OF CONTROLLING A SUPER CONDUCTOR; filed 30 November 1995; patented 16 February 1999.//Patent 5,873,262: DESALINATION THROUGH METHANE HYDRATE; filed 30 June 1997; patented 23 February 1999.// Patent 5,874,126: MAKING AGGREGATES AND ARTICLES MADE THEREFROM; filed 26 March 1997; patented 23 February 1999.//Patent 5,874,514: SILOXANE UNSATURATED HYDROCARBON BASED POLYMERS; filed 9 May 1995; patented 23 February 1999.//Patent 5,874,807: LARGE AREA PLASMA PROCESSING SYSTEM (LAPPS); filed 27 August 1997; patented 23 February 1999.//Patent 5,875,154: BARREL STAVE FLEXTENSIONAL PROJECTOR; filed 13 November 1997; patented 23 February 1999.//Patent 5,876,480: SYNTHESIS OF UNAGGLOMERATED METAL NANO-PARTICLES AT MEMBRANE INTERFACES; filed 20 February 1996; patented 2 March 1999.//Patent 5,876,682: NANOSTRUCTURED CERAMIC NITRIDE POWDERS AND A METHOD OF MAKING THE SAME; filed 25 February 1997; patented 2 March 1999.//Patent 5,877,392: PHOTON CONTROLLED DECOMPOSITION OF NONHYDROLYZABLE AMBIENTS; filed 7 June 1995; patented 2 March 1999.//Patent 5,877,612: AMPLIFICATION OF SIGNALS FROM HIGH IMPEDANCE SOURCES; filed 24 March 1997; patented 2 March 1999.// Patent 5,877,967: SITE AND WORKSPACES LAYOUT PROCESS EMPLOYING MDS AND A PDI FORMULA IN WHICH DENSITY IS CALCULATED USING A UNIT LATTICE SUPERPOSED OVER CIRCUMSCRIBING-CONVEX-HULLS; filed 28 March 1996; patented 2 March 1999.//Patent 5,877,998: RECURSIVE METHOD FOR TARGET MOTION ANALYSIS; filed 18 November 1996; patented 2 March 1999.//Patent 5,878,000: ISOLATED SENSING DEVICE HAVING AN ISOLATION HOUSING; filed 1 October 1997; patented 2 March 1999.//Patent 5,878,778: ELASTOMERIC CUT-OFF VALVE; filed 9 October 1997; patented 9 March 1999.//Patent 5,878,799: PENCIL DRAIN FIXTURE FOR AIRCRAFT DEFUELING; filed 15 September 1997; patented 9 March 1999.//Patent 5,879,426: PROCESS FOR MAKING OPTICAL FIBERS FROM CORE AND CLADDING GLASS RODS; filed 12 August 1996; patented 9 March 1999.//Patent 5,880,078: NON-SOLVENT, GENERAL USE EXTERIOR AIRCRAFT CLEANER; filed 4 September 1997; patented 9 March 1999.//Patent 5,880,552: DIAMOND OR DIAMOND LIKE CARBON COATED CHEMICAL SENSORS AND A METHOD OF MAKING SAME; filed 27 May 1997; patented 9 March 1999.// Patent 5,881,818: FOAM FREE TEST SYSTEM FOR USE WITH FIRE FIGHTING VEHICLES; filed 6 October 1997; patented 16 March 1999.//Patent 5,882,785: NONLINEAR OPTICAL FILMS FROM PAIR-WISE-DEPOSITED SEMI-IONOMERIC SYNDIOREGIC POLYMERS; filed 23 January 1997; patented 16 March 1999.//Patent 5,882,805: CHEMICAL VAPOR DEPOSITION OF II/VI SEMICONDUCTOR MATERIAL USING TRIISOPROPYLINDIUM AS A DOPANT; filed 18 May 1994; patented 16 March 1999.//Patent 5,883,548: DEMODULATION SYSTEM AND METHOD FOR RECOVERING A SIGNAL OF INTEREST FROM AN UNDERSAMPLED, MODULATED CARRIER; filed 10 November 1997; patented 16 March 1999.//Patent 5,884,650: SUPPRESSING CAVITATION IN A HYDRAULIC COMPONENT; filed 26 February 1997;

patented 23 March 1999.//Patent 5,884,872: OSCILLATING FLAP LIFT ENHANCEMENT DEVICE; filed 30 August 1995; patented 23 March 1999.//Patent 5,884,877: ROLLER EXCITATION DEVICE; filed 29 September 1997; patented 23 March 1999.//Patent 5,885,007: ADJUSTABLE BEARING SYSTEM WITH SELECTIVELY OPTIMIZED INSTALLATIONAL CLEARANCES; filed 30 June 1997; patented 23 March 1999.//Patent 5,885,086: INTERACTIVE VIDEO DELIVERY SYSTEM; filed 12 September 1990; patented 23 March 1999.//Patent 5,885,321: PREPARATION OF FINE ALUMINUM POWDERS BY SOLUTION METHODS; filed 22 July 1996; patented 23 March 1999.//Patent 5,885,367: RETRACTABLE THIN FILM SOLAR CONCENTRATOR FOR SPACECRAFT; filed 7 March 1997; patented 23 March 1999.//Patent 5,886,283: DESENSITIZED FIRING CIRCUIT; filed 25 May 1971; patented 23 March 1999.//Patent 5,886,284: MISSILE SAFETY SYSTEM FOR ASSURING MINIMUM SAFE DISTANCE; filed 28 December 1964; patented 23 March 1999.//Patent 5,886,285: VARIABLE RANGE TIMER IMPACT SAFETY SYSTEM; filed 28 December 1964; patented 23 March 1999.//Patent 5,886,286: MONITORING SAFETY SYSTEM; filed 26 July 1965; patented 23 March 1999.//Patent 5,886,287: GUIDANCE INFORMATION ANALYZER; filed 26 May 1965; patented 23 March 1999.//Patent 5,886,339: MISSILE ATTITUDE SAFING SYSTEM; filed 28 December 1964; patented 23 March 1999.//Patent 5,886,525: APPARATUS AND METHOD FOR PERFORMING NMR SPECTROSCOPY ON SOLID SAMPLE BY ROTATION; filed 17 March 1997; patented 23 March 1999.//Patent 5,886,661: SUBMERGED OBJECT DETECTION AND CLASSIFICATION SYSTEM ; filed 16 April 1993; patented 23 March 1999.//Patent 5,886,700: THREE-DIMENSIONAL VOLUME SELECTION TOOL; filed 24 July 1997; patented 23 March 1999.//Patent 5,886,951: METHOD FOR ENHANCING SIGNAL-TO-NOISE RATIO AND RESOLUTION OF AMPLITUDE STABLE SIGNALS; filed 27 August 1997; patented 23 March 1999.//Patent 5,887,198: PROGRAMMABLE STAND-ALONE DRIVE APPARATUS FOR INTERFACING A HOST COMPUTER WITH PCMCIA MEMORY CARDS HAVING MULTIPLE FORMATS; filed 7 April 1997; patented 23 March 1999.//Patent 5,887,983: BEARING ASSEMBLY FOR RADAR MAST; filed 19 December 1997; patented 30 March 1999.//Patent 5,889,289: HIGH TEMPERATURE SUPERCONDUCTOR/INSULATOR COMPOSITE THIN FILMS WITH JOSEPHSON COUPLED GRAINS; filed 28 August 1997; patented 30 March 1999.//Patent 5,889,871: SURFACE-LAMINATED PIEZOELECTRIC-FILM SOUND TRANSDUCER; filed 18 October 1993; patented 30 March 1999.//Patent 5,890,101: NEURAL NETWORK BASED METHOD FOR ESTIMATING HELICOPTER LOW AIRSPEED; filed 22 October 1997; patented 30 March 1999.//Patent application 09/034,771: AMPLIFIED SHEAR TRANSDUCER; filed 2 March 1998.//Patent application 09/114,250: BELLMOUTH EXIT ANGLE ADAPTER; filed 6 July 1998.//Patent application 09/137,869: filed 12 August 1998.//Patent application 09/152,465: AUTOMATIC MESSAGE FILING SYSTEM; filed 8 September 1998.//Patent application 09/152,466: APPARATUS FOR ACOUSTICALLY ISOLATING A HIGH PRESSURE STEAM PIPE IN A FLOODED STRUCTURE; filed 8 September 1998.//Patent application 09/152,467: ISOLATION SYSTEM FOR A HIGH PRESSURE STEAM PIPE IN A FLOODED STRUCTURE; filed 8 September 1998.//Patent application 09/152,468: TEST FIXTURE FOR SIMULTANEOUS EVALUATION OF STEAM PIPE HYDROSEALING METHODS; filed 8 September 1998.//Patent application 09/152,470: VELOCITY REDUCTION METHOD TO REDUCE THE FLOW-INDUCED NOISE OF TOWED SENSOR SYSTEMS; filed 9 September 1998.//Patent application 09/152,472: COUNTERMEASURE FLEXIBLE LINE ARRAY; filed 9 September 1998.//Patent application 09/152,473: MULTIPLE-FREQUENCY SONAR SYSTEM; filed 9 September 1998.//Patent application 09/152,474: DEPLOYABLE HULL ARRAY SYSTEM; filed 11 September 1998.//Patent application 09/152,476: RECONFIGURABLE MULTIPLE COMPONENT LOAD MEASURING DEVICE; filed 11 September 1998.//Patent application 09/154,475: ALIGNMENT LIFTING FIXTURE; filed 11 September 1998.//Patent application 09/173,610: WIDEBAND ANTENNA FOR TOWED LOW-PROFILE SUBMARINE BUOY; filed 8 October 1998.//Patent application 09/173,613: TORPEDO NOSE LIFT DEVICE: filed 13 October 1998.//Patent application 09/203,934: GEODETIC POSITION ESTIMATION FOR UNDERWATER ACOUSTIC SENSORS; filed 2 December 1998.//Patent application 09/206,939: AIR-SAFED UNDERWATER FUZE SYSTEM FOR LAUNCHED MUNITIONS; filed 8 December 1998.//Patent application 09/206,940: MECHANICAL WATER SENSOR; filed 8 December 1998.//Patent application 09/208,155: MOUNTING ASSEMBLY FOR RIGIDLY INTEGRATING A COMPONENT THEREWITH; filed 1 December 1998.//Patent application 09/211,002: BALL LOCK MECHANISM; filed 15 December 1998.//Patent application 09/252,592: BULK CUBIC GALLIUM NITRIDE; FILED 9 February 1999.//Patent application 09/272,733: METHOD FOR MEASURING INTRAMOLECULAR FORCES BY ATOMIC FORCE MICROSCOPY; filed 27 January 1999.//

ADDRESSES: Copies of patents cited are available from the Commissioner of Patents and Trademarks, Washington, DC 20231, for $3.00 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, VA 22161, for $6.95 each ($10.95 outside North American Continent). Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the copies of patent applications sold to avoid premature disclosure.

FOR FURTHER INFORMATION CONTACT: Mr. John G. Wynn, Staff Patent Attorney, Office of Naval Research (Code 00CC), Arlington, VA 22217–5660, telephone (703) 696–4004.

Authority: 35 U.S.C. 207; 37 CFR part 404.

Dated: September 1, 1999.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 99–23834 Filed 9–13–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 14, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 8, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Title: Consolidated State Performance Report and State Self-Review Guide.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 53.

Burden Hours: 138,926.

Abstract: This information collection package contains two related parts: the Consolidated State Performance Report (CSPR) and the State Self-Review (SSR). The Elementary and Secondary Education Act (ESEA), in general, and its provision for submission of consolidated plans, in particular (see section 14301 of the ESEA), emphasize the importance of cross-program coordination and integration of federal programs into educational activities carried out with State and local funds. States would use both instruments for reporting on activities that occur during the 1999–2000 school year and, if the ESEA, when reauthorized, does not become effective for the 2000–2001 school year, for that year as well. The proposed CSPR requests essentially the same information as in 1999–2000, in a more concise and accessible format. The proposed SSR replaces informal data collections performed by each program review team in advance of site visits to states (approximately 14 each year), now conducted as integrated program reviews of all ESEA and Goals 2000 programs. This document and the associated visits promotes the Department's interests in (1) gathering essential information on how States have implemented their approved consolidated State plans and (2) identifying federal assistance to States on how to use federal funds most effectively. The State responses to the SSR will complement their responses to the CSPR by providing specific information on program implementation that is needed for an effective integrated review. When the ESEA is reauthorized the Department intends to work actively with the public to revise the content of these documents and develop an integrated information collection system that responds to the new law, uses new technologies, and better reflects how federal programs help to promote State and local reform efforts.

Written comments and requests for copies of this information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov, or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Patrick Sherrill at 202–708–8196 or by e-mail at *PatSherrill@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Quarterly Cumulative Caseload Report.

Frequency: Quarterly.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 82.

Burden Hours: 328.

Abstract: State vocational rehabilitation (VR) agencies who administer vocational programs provide key caseload indicator data on this form, including numbers of persons who are applicants, determined eligible/ineligible, waiting for services, and also their program outcomes. This data is used for program planning, management, budgeting and general statistical purposes.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *OCIO_IMG_Issues@ed.gov* or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Sheila Carey at 202–708–6287 or electronically mail her at internet address sheila_carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Office of Special Education and Rehabilitative Services (OSERS) Peer Review Qualifications Statement.

Frequency: Biennially.

Affected Public: Individuals or households.

Reporting and Recordkeeping Hour Burden:

Responses: 5,000.

Burden Hours: 1,250.

Abstract: In order for OSERS to conduct a review of its discretionary grant applications, it must be able to select qualified reviewers. This selection is based on the information from the OSERS Peer Reviewer Qualifications Statement that is entered into the OSERS Peer Review System. The potential peer reviewers come from the rehabilitation and special education fields.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Sheila Carey at 202–708–6287 or electronically mail her at internet address sheila__carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–23841 Filed 9–13–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.264A and 84.264B]

Rehabilitation Continuing Education Programs (RCEP); Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

Purpose of Program: To support training centers that serve either a Federal region or another geographical area and provide for a broad, integrated sequence of training activities throughout a multi-State geographical area.

Eligible Applicants: State and public or nonprofit agencies and organizations, including Indian tribes and institutions of higher education.

Deadline for Transmittal of Applications: November 12, 1999.

Deadline for Intergovernmental Review: January 11, 2000.

Applications Available: September 15, 1999.

Estimated Available Funds: $2,510,927.

Estimated Range of Awards: $499,801—$510,412.

Estimated Average Size of Awards:
CFDA No. 84.264A—$500,850
CFDA No. 84.264B—$500,000

Maximum Awards By Rehabilitation Services Administration (RSA) Region: In no case does the Secretary make an initial award greater than the amount listed for each of the following RSA regions for a single budget period of 12 months. The Secretary rejects and does not consider an application that proposes a budget exceeding this amount.

Maximum Level of Awards By RSA Region:
CFDA No. 84.264A
Region V—$500,850
CFDA No. 84.264B
Region I—$499,957
Region III—$499,801
Region VI—$510,412
Region VIII—$499,907

Estimated Number of Awards: CFDA No. 84.264A–1, CFDA No. 84.264B–4.

Note: Applications under CFDA No. 84.264A (General RCEP competition) are invited for the provision of training for Department of Education Region V only. Applications under CFDA No. 84.264B (Community Rehabilitation Program RCEP competition) are invited for the provision of training for Department of Education Regions I, III, VI, and VIII only. The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Page Limit: Part III of the application, the application narrative, is where you, the applicant, address the selection criteria used by reviewers in evaluating the application. You must limit Part III to the equivalent of no more than 45 pages, using the following standards:

(1) A page is 8.5 inches by 11 inches, on one side only with 1 inch margins at the top, bottom, and both sides.

(2) You must double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

If you use a proportional computer font, you may not use a font smaller than a 12-point font or an average character density greater than 18 characters per inch. If you use a nonproportional font or a typewriter, you may not use more than 12 characters per inch.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

If, in order to meet the page limit, you use print size, spacing, or margins smaller than the standards specified in this notice, we will not consider your application for funding.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 385 and 389.

Selection Criteria: In evaluating an application for a new grant under these competitions, the Secretary uses selection criteria chosen from the general selection criteria in 34 CFR 75.210 of EDGAR. The selection criteria to be used for these competitions will be provided in the application package for these competitions.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734. You may also contact ED Pubs via its web site (http://www.ed.gov/pubs/edpubs.html) or its E-mail address (edpubs@inet.ed.gov).

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8351. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

For Information Contact: Mary C. Lynch, U.S. Department of Education, 400 Maryland Avenue, SW., room 3322 Switzer Building, Washington, DC 20202–2649. Telephone: (202) 205–8291. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of a document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Program Authority: 29 U.S.C. 771a.

Dated: September 9, 1999.

Katherine D. Seelman,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–23889 Filed 9–13–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4286–000]

Allegheny Power Service Corporation, on Behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power); Notice of Filing

September 8, 1999.

Take notice that on August 27, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 40 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of July 30, 1999, to Electric Clearinghouse, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23862 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4288–000]

Allegheny Power Service Corporation, on Behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power); Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, Allegheny Power service Corporation on behalf of Monongahela Power Company, the Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 61 to add New Energy Partners, L.L.C., to Allegheny Power Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreement is August 27, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23863 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4289–000]

Allegheny Power Service Corporation, on Behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power); Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 41 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirement to make service available as of July 31, 1999, to American Municipal Power-Ohio, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://

www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23864 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4293–000]

Allegheny Power Service Corporation, on Behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power); Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 42 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of July 30, 1999, to Duquesne Light Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23864 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4282–000]

Athens Generating Company, L.P.; Notice of Filing

September 8, 1999.

Take notice that on August 27, 1999, Athens Generating Company, L.P. (Athens) tendered for filing, pursuant to Section 205 of the Federal power Act, and Part 35 of the Commission's Regulations, a Petition for authorization to make sales of capacity, energy, and certain Ancillary Services at market-based rates and to reassign transmission capacity. Athens is constructing a 1,080 MW natural gas-fired, combined cycle power plant located in the Town of Athens in Greene County, New York.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23861 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4258–000]

Avista Corp; Notice of Filing

September 8, 1999.

Take notice that on August 26, 1999, Avista Corp. (AVA), tendered for filing with the Federal Energy Regulatory Commission an executed Service Agreement for Short-Term Firm and Non-Firm Point-To-Point Transmission Service under AVA's Open Access Transmission Tariff—FERC Electric Tariff, Volume No. 8, with Pend Oreille County.

AVA requests the Service Agreement be given the respective effective date of August 3, 1999.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23887 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL92–33–007]

Barton Village, Inc., et al. v. Citizens Utilities Company; Notice of Filing

September 8, 1999.

Take notice that on September 2, 1999, Citizens Utilities Company (Citizens) a compliance filing in accordance with the Commission's order issued on April 5, 1999 in the above-referenced docket.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before October 4, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23884 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4379–000]

Black Hills Corporation; Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, Black Hills Corporation (Black Hills), tendered for filing a service agreement between Black Hills as the power sales provider and PacifiCorp Power Marketing, Inc., as the customer. The short-term service agreement (for transactions of one year or less) provides for Market-Based Rate Wholesale Power Sales under Black Hills' Market-Based Rate Wholesale Power Sales Tariff, FERC Electric Tariff, Original Volume No. 3 (the Market-Rate Tariff) Black Hills requests an effective date of August 12, 1999.

Black Hills Corporation states that copies of the filing have been served upon the affected customer.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23881 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4297–000]

Boston Edison Company; Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, Boston Edison Company (Boston Edison) tendered for filing two service agreements between Boston Edison as the transmission provider and Entergy Power Marketing Corp. (Entergy) as the transmission customer. One service agreement provides for non-firm point-to-point transmission service; the other provides for firm point-to-point transmission service. Both services are to be provided under Boston Edison's Open-Access Transmission Tariff, FERC Volume No. 8.

Boston Edison requests an effective date of October 19, 1999.

Boston Edison states that copies of the filing have been served upon the affected customer and the Massachusetts Department of Telecommunications and Energy.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23872 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4281–000]

Central Vermont Public Service Corporation; Notice of Filing

September 8, 1999.

Take notice that on August 26, 1999, Central Vermont Public Service Corporation (Central Vermont), tendered for filing a Service Agreement with Central Maine Power Company under its FERC Electric Tariff No. 8.

Central Vermont requests waiver of the Commission's regulations to permit the service agreement to become effective on August 26, 1999.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23886 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4290–000]

Commonwealth Edison Company; Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, Commonwealth Edison Company

(ComEd), tendered for filing an unexecuted Service Agreement for Network Integration Transmission Service (Service Agreement) between ComEd and the City of Rochelle, Illinois (Rochelle), and an unexecuted Network Operating Agreement (Operating Agreement) between ComEd and Rochelle. These two agreements will govern ComEd's provision of network service to serve Rochelle under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of August 1, 1999, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of this filing were served on Rochelle.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23865 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4296–000]

Commwealth Edison Company; Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, Commonwealth Edison Company (ComEd) tendered for filing a Short-Term Firm Service Agreement with Energy Power Marketing Corporation (EPMC) under the terms of ComEd's Open Access Transmission Tariff (OATT).

ComEd requests an effective date of August 16, 1999 for the service agreement, and accordingly, seeks waiver of the Commission's notice requirements.

Copies of this filing were served on EPMC.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with rules 211 and 214 of the Commission's rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23871 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4299–000]

Consolidated Edison Company of New York, Inc; Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Public Service Electric & Gas Company (PSE&G).

Con Edison states that a copy of this filing has been served by mail upon PSE&G.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23875 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4300–000]

Consolidated Edison Company of New York, Inc.; Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, Consolidated Edison Company of New York, Inc., (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Public Service Electric & Gas Company (PSE&G).

Con Edison states that a copy of this filing has been served by mail upon PSE&G.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23874 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4301–000]

Consolidated Edison Company of New York, Inc., Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Public Service Electric & Gas Company (PSE&G).

Con Edison states that a copy of this filing has been served by mail upon PSE&G.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23877 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4303–000]

Consolidated Edison Company of New York, Inc., Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to the New York Power Authority (NYPA).

Con Edison states that a copy of this filing has been served by mail upon NYPA.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23878 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4302–000]

Consolidated Edison Company of New York, Inc., Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Public Service Electric & Gas Company (PSE&G).

Con Edison states that a copy of this filing has been served by mail upon PSE&G.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23876 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–499–000]

East Tennessee Natural Gas Company; Notice of Tariff Filing

September 8, 1999.

Take notice that on September 1, 1999, East Tennessee Natural Gas Company (East Tennessee), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, original and revised tariff sheets pertaining to its pro forma Electronic Data Interchange (EDI) Trading Partner Agreement (TPA).

East Tennessee States that this filing will remove its existing pro forma EDI TPA and instead incorporate the Model TPA of the Gas Industry Standards Board (GISB) which GISB filed with the Commission on November 3, 1998 (November 3, 1998 Model TPA). Additionally, the filing will modify East Tennessee's Agency Authorization Agreement for EDI to list the relevant data sets and include space for additional GISB data sets.

East Tennessee further states that the purpose of these changes is to reduce the number of material deviation filing that East Tennessee would be required to file under 18 CFR 154.1(d).

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 99–23840 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4261–000]

Erie Boulevard Hydropower, L.P.; Notice of Filing

September 8, 1999.

Take notice that on August 26, 1999, Erie Boulevard Hydropower, L.P. (Applicant), with its principal office at c/o Orion Power Holdings, Inc., 7 E. Redwood Street, 10th Floor, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission (Commission) a long-term service agreement with Niagara Mohawk Power Corporation for the sale of energy and capacity under its market-based rate tariff, FERC Electric Rate Tariff, Original Volume No. 1.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23859 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–463–001]

High Island Offshore System, L.L.C.; Notice of Tariff Sheet Filing

September 8, 1999.

Take notice that on September 2, 1999 High Island Offshore System, L.L.C. (HIOS), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to be effective August 1, 1999.

Second Revised Sheet No. 170
Second Revised Sheet No. 171

HIOS states that such tariff sheets are being submitted to comply with the Office of Pipeline Regulation's August 26, 1999, Letter Order that accepted HIOS' tariff filing in compliance with Commission's Order No. 587–K in Docket No. RM96–1–011.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23839 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4305–000]

Illinois Power Company; Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, Illinois Power Company (Illinois Power), 500 south 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which DukeSolutions, Inc., will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of September 1, 1999.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23879 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3206–000]

ISO New England Inc.; Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, ISO New England Inc., tendered for filing revisions to Appendix 6–A of Market Rule 6 in compliance with Commission's July 30, 1999 Order in the above-referenced docket.

Copies of said filing have been served upon all parties to this proceeding, and upon NEPOOL Participants, as well as upon the utility regulatory agencies of the six New England States.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23857 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4291–000]

Louisville Gas and Electric Company/ Kentucky Utilities Company; Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, Louisville Gas and Electric Company/ Kentucky Utilities (LG&E/KU), tendered for filing unexecuted Netting Agreements between LG&E/KU and the following entities: Enron Power Marketing, Inc. and Western Resources, Inc.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23866 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4292–000]

Louisville Gas and Electric Company/ Kentucky Utilities Company; Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, Louisville Gas and Electric Company/ Kentucky Utilities (LG&E/KU), tendered for filing unexecuted Netting Agreements between LG&E/KU and the following entities: AES Power, Inc., DTE Energy, El Paso Power Services Company and Rainbow Energy Marketing Corporation.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23867 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4264–000]

Niagara Mohawk Power Corporation; Notice of Filing

September 8, 1999.

Take notice that on August 27, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed, amended transmission Service Agreement between Niagara Mohawk and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's FitzPatrick Plant to a point where Niagara Mohawk's transmission system connects to its retail distribution system West of Niagara Mohawk's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission tariff and filed in Docket No. OA96–194–000.

Niagara Mohawk request an effective date of August 1, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown. Niagara Mohawk has served copies of the filing upon New York Public Service Commission and NYPA.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 16, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/

online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23860 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4322–000]

North American Electric Reliability Council; Notice of Filing

September 8, 1999.

Take notice that on August 27, 1999, North American Electric Reliability Council (NERC), tendered for filing notice of additional implementation procedures for market redispatch pilot program. NERC informs the Commission that these additional procedures are to be effective immediately.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23880 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3589–000]

Puget Sound Energy, Inc.; Notice of Filing

September 8, 1999.

Take notice that on August 26, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Notice of Cancellation of a Service Agreement filed under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Destec Power Services, Inc. (Destec).

PSE states that a copy of the filing was served upon Dynegy Marketing and Trade, as successor to Destec.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23858 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4259–000]

Puget Sound Energy, Inc., Notice of Filing

September 8, 1999.

Take notice that on August 26, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Dynegy Marketing and Trade (Dynegy).

A copy of the filing was served upon Dynegy.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23885 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4044–000]

Sandia Resources Corporation; Notice of Filing

September 8, 1999.

Take notice that on August 31, 1999, Sandia Resources Corporation (Sandia) tendered for filing an amendment to its petition of August 10, 1999 to the Commission for acceptance of Sandia Rate Schedule FERC No. 1, the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Sandia intends to engage in wholesale electric power and energy purchases and sales as a marketer. Sandia is not in the business of generating or transmitting electric power. Sandia has no affiliates.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23882 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP89–629–034]

Tennessee Gas Pipeline Company; Notice of Amendment

September 8, 1999.

Take notice that on August 26, 1999, Tennessee Gas Pipeline Company (Tennessee), filed in Docket No. CP89–629–034, an application pursuant to Section 7(c) of the Natural Gas Act for an amendment of the certificate issued in Docket Nos. CP89–629–000, *et al.*, on November 14, 1990,[1] and amended in an order issued on October 9, 1991.[2] Tennessee requests that the Commission authorize a reduction in the primary term of its Rate Schedule NET firm transportation agreement with Commonwealth Gas Company (Commonwealth) by 12 months so that the agreement expires on December 1, 2011. Tennessee also requests that, in the event that the Commission finds that such an amendment agreement would materially deviate from the *pro forma* NET firm transportation agreement, the Commission "pre-approve" the amended agreement, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Tennesse states that Commonwealth has executed an agreement, for 4,500 Dth/d of firm transportation service under Tennessee's Rate Schedule NET, which has a primary term that expires on November 30, 2012. Tennessee indicates that Commonwealth has an agreement for upstream transportation with Iroquois Gas Transmission System, L.P. (Iroquois) that has a termination date of December 1, 2011. Tennessee states that Commonwealth has requested that Tennessee reduce the term of their agreement so that the termination date would coincide with the termination date of Commonwealth's agreement with Iroquois, and that Commonwealth, as consideration, has agreed to a long-term extension of a certain FT–A transportation agreement with Tennessee.

Tennessee requests that the Commission grant the requested authorizations by October 15, 1999, so that all issues related to Commonwealth's NET service can be resolved prior to the deadline by which Commonwealth must provide notice to Tennessee regarding its decision to extend or terminate certain transportation agreements.

Any question regarding this amendment should be directed to David E. Maranville, Counsel, Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, Texas 77252 at (713) 420–3525.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 29, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party in any proceeding herein must file a motion to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Tennessee to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23837 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

[1] 53 FERC ¶ 61,194 (1990).

[2] 57 FERC ¶ 61,047 (1991).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4294–000]

Virginia Electric and Power Company; Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service with El Paso Power Services Company under the Company's Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide Firm Point-to-Point Transmission Service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of August 30, 1999, the date of filing of the Service Agreement

Copies of the filing were served upon El Paso Power Services Company, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23869 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4295–000]

Virginia Electric and Power Company; Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing the Service Agreement between Virginia Electric and Power Company and ONEOK Power Marketing Company. Under the Service Agreement, Virginia Power will provide services to ONEOK Power Marketing Company under the terms of the Company's Revised Market-Based Rate Tariff designated as FERC Electric Tariff (Second Revised Volume No. 4), which was accepted by order of the Commission dated August 13, 1998 in Docket No. ER98–3771–000.

Virginia Power requests an effective date of August 30, 1999.

Copies of the filing were served upon ONEOK Power Marketing Company, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secreary.

[FR Doc. 99–23870 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4298–000]

Virginia Electric and Power Company; Notice of Filing

September 8, 1999.

Take notice that on August 30, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing an executed Service Agreement for Long Term Firm Point-to-Point Transmission Service with PECO Energy Company under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. The executed Service Agreement will supersede the unexecuted Service Agreement accepted in Docket No. ER99–1884–000 on June 2, 1999. Under the tendered Service Agreement, Virginia Power will provide Long Term Firm Point-to-Point Transmission Service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of January 1, 2000.

Copies of the filing were served upon PECO Energy Company, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before September 17, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23873 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–67–000]

Williston Basin Interstate Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 8, 1999.

Take notice that on September 1, 1999, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Fourth Revised Sheet No. 175, with an effective date of September 1, 1999.

Williston Basin states that the revised tariff sheet is being filed simply to reflect the deletion of Receipt Point ID No. 03120 (Garland (Voyager)) and Receipt Point ID No. 03130 (Garland (Texaco Plant)) from its list of pooling points.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://wws.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–23838 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4262–000, et al.]

EML Power, L.L.C., et al. Electric Rate and Corporate Regulation Filings

September 7, 1999.

Take notice that the following filings have been made with the Commission:

1. EML Power, L.L.C.

[Docket No. ER99–4262–000]

Take notice that on August 27, 1999, EML Power, L.L.C. (EML Power), tendered for filing an application with the Federal Energy Regulatory Commission (Commission) requesting acceptance of EML Power FERC Electric Rate Schedule No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations. EML Power is seeking authorization to sell electric energy and capacity at market-based rates to Florida Power Corporation under EML Power FERC Electric Rate Schedule No. 1.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Molinos de Viento del Arenal, S.A.

[Docket No. EG99–216–000]

Take notice that on August 26, 1999, Molinos de Viento del Arenal, S.A., a corporation (sociedad anónima) organized under the laws of Costa Rica (Applicant), with its principal place of business at Sabana oeste, 50m sur y 50 m oeste de Teletica Canal 7, Edificio Multicentro Sabana, 3er Piso, San Jose, Costa Rica, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant owns and operates an approximately 20 megawatt (net), wind powered electric power production facility located in north central Costa Rica.

Comment date: September 28, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. P.H. Don Pedro, S.A.

[Docket No. EG99–217–000]

Take notice that on August 26, 1999, P.H. Don Pedro, S.A., a corporation (sociedad anónima) organized under the laws of Costa Rica (Applicant), with its principal place of business at Sabana Oeste, 50m sur y 50m oeste de Teletica Canal 7, Edificio Multicentro Sabana, 3er Piso, San Jose, Costa Rica, filed with the Federal Energy Regulatory Commission an application for redetermination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant owns and operates an approximately 14 megawatt (net), hydroelectric power production facility located in the District of Sarapiquí, Canton of Alajuela, Province of Alajuela, Costa Rica.

Comment date: September 28, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. P.H. Río Volcán, S.A.

[Docket No. EG99–218–000]

Take notice that on August 26, 1999, P.H. Río Volcán, S.A., a corporation (sociedad anónima) organized under the laws of Costa Rica (Applicant), with its principal place of business at Sabana Oeste, 50m sur y 50m oeste de Teletica Canal 7, Edificio Multicentro Sabana, 3er Piso, San Jose, Costa Rica, filed with the Federal Energy Regulatory Commission an application for redetermination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Applicant owns and operates an approximately 17 megawatt (net), hydroelectric power production facility located in the District of Sarapiquí, Canton of Alajuela, Province of Alajuela, and the District of La Virgen, Canton of Sarapiqui, Province of Heredia, Costa Rica.

Comment date: September 28, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Ohio Valley Electric Corporation and Indiana-Kentucky Electric Corporation

[Docket No. ER99–4280–000]

Take notice that on August 27, 1999, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC), tendered for filing a Service Agreement for Short-Term Firm Point-To-Point Transmission Service, dated August 12, 1999 (the Service Agreement) between American Electric Power Service Corporation (AEP) and OVEC. The Service Agreement provides for short-term firm transmission service by OVEC to AEP. In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Open Access Transmission Tariff.

OVEC proposes an effective date of August 12, 1999 and requests waiver of the Commission's notice requirement to allow the requested effective date.

Copies of this filing were served upon the Ohio Public Utilities Commission, Indiana Utility Regulatory Commission, Kentucky Public Service Commission, Michigan Public Service Commission, Tennessee Regulatory Authority, Virginia State Corporation Commission, West Virginia Public Service Commission and AEP.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. The Montana Power Company

[Docket No. ER99–4277–000]

Take notice that on August 27, 1999, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 an unexecuted Firm and unexecuted Non-Firm Point-To-Point Transmission Service Agreements with Western Area Power Administration under Montana's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Western Area Power Administration.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Avista Corp.

[Docket No. ER99–4278–000]

Take notice that on August 27, 1999, Avista Corp., tendered for filing, pursuant to § 35.12 of the Commission's Regulations, 18 CFR 35.12, an executed service agreement with Sovereign Power, Inc., for Dynamic Capacity and Energy Service at cost-based rates under Avista Corp.'s FERC Electric Tariff, Original Volume No. 10.

Avista Corp. requests that the Commission waive its prior notice requirement, pursuant to Section 35.11 of the Commission's Regulations, 18 CFR 35.11, and accept the service agreement for filing effective August 1, 1999.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Idaho Power Company

[Docket No. ER99–4279–000]

Take notice that on August 27, 1999, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission Service Agreements for Non-Firm Point-to-Point Transmission Service and Firm Point-to-Point Transmission Service between Idaho Power Company and Entergy Power Marketing Corp.

IPC requests that the Commission accept these service agreements for filing, designate an effective date of August 27, 1999, and a rate schedule number.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4275–000]

Take notice that on August 27, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Con Edison Solutions (CES).

Con Edison states that a copy of this filing has been served by mail upon CES.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4274–000]

Take notice that on August 27, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to PG&E Energy Trading—Power, L.P. (PG&E).

Con Edison states that a copy of this filing has been served by mail upon PG&E.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4276–000]

Take notice that on August 27, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Con Edison Solutions (CES).

Con Edison states that a copy of this filing has been served by mail upon CES.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Cinergy Services, Inc.

[Docket No. ER99–4270–000]

Take notice that on August 27, 1999, Cinergy Services, Inc. (Cinergy) on behalf of its operating company, PSI Energy, Inc. (PSI), tendered for filing pursuant to the Service Agreement between Jackson County REMC and PSI a revised Exhibit "A" (Service Specifications).

Said Exhibit "A" provides for revised service characteristics at the REMC's delivery point(s).

Copies of the filing were served on Jackson County REMC and the Indiana Utility Regulatory Commission.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Duquesne Light Company

[Docket No. ER99–4273–000]

Take notice that on August 27, 1999, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000), executed Service Agreement at Market-Based Rates with Carolina Power & Light Company (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of August 25, 1999.

Copies of this filing were served upon Customer.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Minnesota Power, Inc.

[Docket No. ER99–4287–000]

Take notice that on August 27, 1999, Minnesota Power, Inc., tendered for filing a signed Service Agreement with Willmar Municipal Utilities Commission, Northern States Power Company, Northwestern Wisconsin Electric Company, and North Central Power Company, Inc., under its market-based Wholesale Coordination Sales Tariff (WCS–2) to satisfy its filing requirements under this tariff.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. California Independent System Operator Corporation

[Docket No. ER99–4267–000]

Take notice that on August 27,.1999, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for Scheduling Coordinators between the ISO and Strategic Energy, L.L.C. (Strategic Energy) for acceptance by the Commission.

The ISO states that this filing has been served on Strategic Energy and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective as of August 20, 1999.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Duquesne Light Company

[Docket No. ER99–4268–000]

Take notice that on August 27, 1999, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000), an executed Service Agreement at Market-Based Rates with Coral Power, L.L.C., (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of August 25, 1999.

Copies of this filing were served upon Customer.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Niagara Mohawk Power Corporation

[Docket No. ER99–4263–000]

Take notice that on August 27, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed, amended Transmission Service Agreement between Niagara Mohawk and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's FitzPatrick Plant, Bid Process Suppliers and Substitute Suppliers to the points where Niagara Mohawk's transmission system connects to its retail distribution system East of Niagara Mohawk's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

Niagara Mohawk requests an effective date of August 1, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Niagara Mohawk Power Corporation

[Docket No. ER99–4265–000]

Take notice that on August 27, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and the Power Authority of the State of New York (NYPA) to permit NYPA to deliver power and energy from NYPA's Bid Process Supplier to a point where Niagara Mohawk's transmission system connects to its retail distribution system West of Niagara Mohawk's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

Niagara Mohawk requests an effective date of August 1, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Monroe Power Company

[Docket No. ER99–4269–000]

Take notice that on August 27, 1999, Monroe Power Company (MPC), tendered for filing executed Service Agreements with The Energy Authority, Inc., and Southern Company Services, Inc., under the provisions of MPC's Market-Based Rates Tariff, FERC Electric Tariff No. 1.

MPC is requesting an effective date of August 2, 1999, for the agreement with The Energy Authority and an effective date of August 18, 1999, for the agreement with Southern Company Services, Inc.

Copies of the filing were served upon the North Carolina Utilities Commission, the South Carolina Public Service Commission and the Georgia Public Service Commission.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Maine Yankee Atomic Power Company

[Docket No. ER98–570–002]

Take notice that on August 27, 1999, Maine Yankee Atomic Power Company (Maine Yankee), tendered for filing a compliance filing pursuant to the Commission's letter order issued June 1, 1999, in Docket No. ER98–570–000. The compliance filing contains a report detailing the decommissioning refund amounts and calculations, including a summary of the refund amounts in total for the refund period, and revenue data to reflect prior, present and settlement rates in total and by individual customer. As required by the FERC order of June 1, 1999, the company has furnished copies of such report to the affected wholesale customers, and to each state commission within whose jurisdiction the wholesale customers distribute and sell electric energy at retail.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Cleco Utility Group, Inc.

[Docket No. ER99–4283–000]

Take notice that on August 27, 1999, Cleco Utility Group, Inc. (Cleco), tendered for filing a service agreement under which Cleco will make market based power sales under its MR–1 tariff with Associated Electric Cooperative, Inc.

Cleco states that a copy of the filing has been served on Associated Electric Cooperative, Inc.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Cleco Utility Group, Inc.

[Docket No. ER99–4284–000]

Take notice that on August 27, 1999, Cleco Utility Group, Inc. (Cleco), tendered for filing a service agreement under which Cleco will make market based power sales under its MR–1 tariff with Virginia Electric & Power Company.

Cleco states that a copy of the filing has been served on Virginia Electric & Power Company.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Cleco Utility Group, Inc.

[Docket No. ER99–4285–000]

Take notice that on August 27, 1999, Cleco Utility Group, Inc. (Cleco), tendered for filing a service agreement under which Cleco will make market based power sales under its MR–1 tariff with DTE Energy Trading, Inc.

Cleco states that a copy of the filing has been served on DTE Energy Trading, Inc.

Comment date: September 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–23836 Filed 9–13–99; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6437–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, New Source Performance Standard (NSPS) for Surface Coating of Metal Coils

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: New Source Performance Standard (NSPS) for Surface Coating of Metal Coils, 40 CFR part 60, subpart TT, OMB Number 2060–0107, expiration 10/31/99. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before October 14, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 0660.07.

SUPPLEMENTARY INFORMATION:

Title: New Source Performance Standard (NSPS) for Surface Coating of Metal Coils, 40 CFR part 60, subpart TT, OMB Number 2060–0107, EPA ICR Number 0660.07 expiration 10/31/99. This is a request for extension of a currently approved collection.

Abstract: The NSPS for Surface Coating of Metal Coils were proposed on January 5, 1981, and promulgated on November 1, 1982. These standards

apply to each metal coil surface coating operation in which organic coatings are applied that commenced construction, modification or reconstruction after January 5, 1981. Approximately 150 sources are currently subject to the standard, and it is estimated that 6 sources per year will become subject to the standard. Volatile Organic Compounds (VOCs) are the pollutants regulated under this subpart, and this information is being collected to assure compliance with 40 CFR part 60, subpart TT.

Owners or operators of the affected facilities described must make initial reports when a source becomes subject, conduct and report on a performance test, demonstrate and report on continuous monitor performance, and maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility. Semiannual reports of excess emissions are required. These notifications, reports, and records are essential in determining compliance; and are required, in general, of all sources subject to NSPS.

Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least 2 years following the date of such measurements, maintenance reports, and records. All reports are sent to the delegated State or Local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on June 4, 1999: no comments were received.

Burden Statement: The annual reporting and record keeping burden for this collection of information is estimated to average 26 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/Operators of Metal Coil Surface Coating Plants.

Estimated Number of Respondents: 156.

Frequency of Response: Initial, Quarterly, and Semiannual Reports.

Estimated Total Annual Hour Burden: 15,335 hours.

Estimated Total Annualized Capital, O & M Cost Burden: $398,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0660.07, and OMB Control No. 2060–0107 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503

Dated: September 7, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–23919 Filed 9–13–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[RK001; FRL–6435–9]

Prevention of Significant Deterioration Delegation of Authority to Kern County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of delegation of authority.

SUMMARY: The Regional Administrator for EPA Region 9 has delegated full authority to the Kern County Air Pollution Control District (KCAPCD) to implement and enforce the federal Prevention of Significant Deterioration (PSD) program.

EFFECTIVE DATE: The effective date of the delegation is August 12, 1999.

ADDRESSES: Kern County Air Pollution Control District, 2700 "M" St., Suite 302, Bakersfield, CA 93301–2370.

FOR FURTHER INFORMATION CONTACT: Roger Kohn, Permits Office [AIR–3], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. Telephone: (415) 744–1238. E-mail: kohn.roger@epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to 40 CFR 52.21(u), "delegation of authority," the EPA has delegated authority to KCAPCD to implement and enforce the prevention of significant deterioration of air quality ("PSD") program. Sections 160–169 of the Clean Air Act, and 40 CFR 52.21. Under the PSD program, major stationary sources of air pollutants must apply for and receive a permit prior to construction of new facilities or certain modifications to existing facilities. EPA has reviewed KCAPCD's request for delegation and determined that KCAPCD has the necessary authority and resources to implement and enforce the program. While KCAPCD has been delegated the authority to implement and enforce the PSD program, nothing in the delegation agreement shall prohibit EPA from enforcing the PSD provisions of the Clean Air Act, the PSD regulations, or the conditions of any PSD permit issued by KCAPCD.

A copy of the delegation agreement between EPA and KCAPCD is available from Roger Kohn, Permits Office (AIR–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901. Telephone: (415) 744–1238. E-mail: kohn.roger@epa.gov.

The PSD Delegation of Authority is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by [Insert date 60 days from date of publication in the **Federal Register**].

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: September 1, 1999.

David P. Howekamp,

Director, Air Division, Region IX.

[FR Doc. 99–23709 Filed 9–13–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6435–3]

Notice of Proposed Cashout Settlement Agreement Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), 42 U.S.C. 9622(g)(4), Strother Field Industrial Park Superfund Site, Cowley County, Kansas, Docket No. CERCLA–7–99–0028

AGENCY: Environmental Protection Agency.

ACTION: Notice of Proposed Cashout Settlement Agreement, Strother Field Industrial Park Superfund Site, Cowley County, Kansas.

SUMMARY: Notice is hereby given that a proposed cashoout settlement agreement regarding the Strother Field Industrial Park Superfund Site, was signed by the United States Environmental Protection Agency (EPA) on July 26, 1999, and approved by the U.S. Department of Justice on August 5, 1999.

DATES: EPA will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed cashout settlement agreement.

ADDRESSES: Comments should be addressed to J.D. Stevens, Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas 66101 and should refer to *Strother Field Industrial Park Superfund Site, Proposed Cashout Settlement Agreement, EPA Docket No. CERCLA–7–99–0028.*

The proposed agreement may be examined or obtained in person or by mail at the office of the United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, KS 66101, (913) 551–7322.

SUPPLEMENTARY INFORMATION: The proposed agreement concerns the Strother Field Industrial Park Superfund Site ("Site"), located in Cowley County, Kansas. The property leased by Energy Plus ("Settling Party") constitutes a portion of the property that was formerly occupied and operated by Struthers Thermo-Flood Corporation and is located within the Site boundaries. A Remedial Investigation ("RI") was completed for the Site and the report was issued in May of 1992. The RI concluded that two former drum storage areas and a drum loading area and a drum loading area at the former Strother Thermo-Flood Corporation property were source areas of hazardous substances released at the Site. The hazardous substances released at the former Struthers Thermo-Flood Corporation property include trichloroethene, dichlorothene and percholoroethene.

The cashout agreement provides for the payment of $10,000 to the Superfund by Settling Party. The $10,000 will be applied as reimbursement toward EPA's costs and will allow Settling Party to get a convenant not to sue from EPA and contribution protection. This agreement will constitute a final settlement of the case with respect to Settling Party absent misrepresentations made by Settling Party to EPA or the United States, noncompliance with the agreement, or as otherwise provided in the cashout agreement.

It is estimated that the total costs expended in connection with the Site by both EPA and the responsible parties (EPA will seek to recover from the responsible parties) will exceed $7.2 million. The estimated costs incurred by the responsible parties include the responsible parties' estimates of the respective amounts they had expended on site cleanup activities. The cleanup of the Site will continue with EPA's continuing enforcement activities against the PRP's that have not been cashed out.

Dated: August 19, 1999.

Dennis Grams,

Regional Administrator, Region VII.

[FR Doc. 99–23584 Filed 9–13–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6437–7]

Notice of Availability of Letters From EPA to the States of Indiana, Michigan and Ohio Pursuant to Section 118 of the Clean Water Act and the Water Quality Guidance for the Great Lakes System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Notice is hereby given of letters written from Region 5 of the Environmental Protection Agency (EPA) to the States of Indiana, Michigan and Ohio finding that certain provisions adopted as part of the States' water quality standards and National Pollutant Discharge Elimination System (NPDES) permits programs are inconsistent with section 118(c) of the Clean Water Act (CWA) and 40 CFR part 132. EPA's findings are described in letters dated June 30, 1999 and August 16, 1999 to Michigan and Ohio and in a letter dated August 16, 1999 to Indiana. EPA invites public comment on all aspects of those letters, particularly on the findings in the letters and on the course of action that EPA proposes to take if the States fail to adequately address EPA's findings.

DATES: Comments must be received in writing by October 29, 1999.

ADDRESSES: Written comments on EPA's findings as described in the June 30, 1999 and August 16, 1999 letters may be submitted to Joan M. Karnauskas, Chief, Standards and Applied Sciences Branch (WT–15J), Water Division, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604. In the alternative, EPA will accept comments electronically. Comments should be sent to the following Internet E-mail address: karnauskas.joan@epamail.epa.gov. Electronic comments must be submitted in an ASCII file avoiding the use of special characters and any form of encryption. EPA will print electronic comments in hard-copy paper form for the official administrative record. EPA will attempt to clarify electronic comments if there is an apparent error in transmission. Comments provided electronically will be considered timely if they are submitted electronically by 11:59 p.m. (Eastern time) October 29, 1999.

FOR FURTHER INFORMATION CONTACT: Joan M. Karnauskas, Standards and Applied Sciences Branch (WT–15J), Water Division, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, or telephone her at (312) 886–6090.

Copies of the June 30, 1999 and August 16, 1999 letters described above are available upon request by contacting Ms. Karnauskas. Those letters and materials submitted by the States in support of their submission that EPA relied upon in preparing those letters (i.e., the docket) are available for review by appointment at: EPA, Region 5, 77 W Jackson Boulevard, Chicago, Illinois (telephone 312–886–3717); the Indiana Department of Environmental Management, Indiana Government Center North, 100 N. Senate, Indianapolis, Indiana (telephone 317–233–8903); the Michigan Department of Environmental Quality, 300 S. Washington Square, Lansing, Michigan (telephone 517–335–4198); and, the Ohio Environmental Protection Agency, Lazarus Government Center, 122 S.

Front Street, Columbus, Ohio (telephone 614–644–3075). To access the docket material in Chicago, call Ms. Mery Willis at (312) 886–3717 between 8 a.m. and 4:30 p.m. (central time) (Monday–Friday); in Indiana, call Ms. Kari Simonelic at (317) 233–8903 between 8 a.m. and 4:30 p.m. (central time); in Michigan, call Ms. Brenda Sayles at (517) 335–4198 between 8 a.m. and 4:30 p.m. (eastern time); and, in Ohio, call Mr. Robert Heitzman at (614) 644–3075 between 8 a.m. and 4:30 p.m. (eastern time).

SUPPLEMENTARY INFORMATION: On March 23, 1995, EPA published the Final Water Quality Guidance for the Great Lakes System (Guidance) pursuant to section 118(c)(2) of the Clean Water Act, 33 U.S.C. 1268(c)(2). (March 23, 1995, 60 FR 15366). The Guidance, which was codified at 40 CFR part 132, requires the Great Lakes States to adopt and submit to EPA for approval water quality criteria, methodologies, policies and procedures that are consistent with the Guidance. 40 CFR 132.4 and 132.5. EPA is required to approve of the State's submission within 90 days or notify the State that EPA has determined that all or part of the submission is inconsistent with the Clean Water Act or the Guidance and identify any necessary changes to obtain EPA approval. If the State fails to make the necessary changes within 90 days, EPA must publish a document in the **Federal Register** identifying the approved and disapproved elements of the submission and a final rule identifying the provisions of part 132 that shall apply for discharges within the State.

EPA reviewed the submittals from Indiana, Michigan and Ohio for consistency with the Guidance in accordance with 40 CFR 131 and 132.5. EPA determined that certain parts of each submittal are inconsistent with the requirements of the CWA or 40 CFR part 132 and will be subject to EPA disapproval if not corrected. On June 30, 1999 and August 16, 1999, in letters from EPA Region 5 to the Indiana Department of Environmental Management, the Michigan Department of Environmental Quality and the Ohio Environmental Protection Agency, EPA described in detail those provisions determined to be inconsistent with the Guidance and subject to disapproval if not remedied by the State. The inconsistencies relate to the following components of the State's submittals in conformance with section 118(c) of the CWA and 40 CFR part 132: in Indiana, variances, the procedures for evaluating the need for permit limits on specific chemicals, and the procedures for evaluating the need for limits on whole effluent toxicity; in Michigan, the procedures for evaluating the need for limits on whole effluent toxicity; and, in Ohio, the biocriteria narrative provisions and the procedures for evaluating the need for limits on whole effluent toxicity. Based on our review to date, EPA believes that, with the above exceptions, the submissions by these States are consistent with the Guidance. Today, EPA is soliciting public comment regarding all aspects of those letters. In particular, EPA solicits comments on the provisions identified in the June 30, 1999 and August 16, 1999 letters as being inconsistent with the CWA and the Guidance, on EPA's proposed course of action if a State fails to remedy those inconsistencies, and on EPA's belief that the remainder of the States' submissions are consistent with the Guidance.

During the next 90 days, EPA intends to continue working with Indiana, Michigan and Ohio to address the inconsistencies identified in the June 30, 1999 and August 16, 1999 letters. If a State fails to remedy any of the inconsistencies identified in the letter, EPA will publish a notice in the **Federal Register** identifying the disapproved elements and the corresponding portions of part 132 that will apply to waters within the Great Lakes Basin in each of the States.

Dated: September 3, 1999.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 99–23916 Filed 9–13–99; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

September 8, 1999.

FCC TO HOLD OPEN COMMISSION MEETING: Wednesday, September 15, 1999.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, September 15, 1999, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, S. W., Washington, D.C.

Item No.	Bureau	Subject
1	Common Carrier	Title: Implementation of the Local Competition Provisions of the Telecommunications Act of 1996 (CC Docket No. 96–98). Summary: The Commission will consider a Memorandum Opinion and Order concerning unbundled network elements pursuant to Section 251(c)(3) of the Communications Act.
2	International	Title: Direct Access to the INTELSAT System (IB Docket No. 98–192, File No. 60–SAT–ISP–97). Summary: The Commission will consider a Report and Order concerning direct access to the INTELSAT system.
3	International	Title: Lockheed Martin Corporation Regulus, LLC and Comsat Corporation; Application for Transfer of Control of COMSAT Government Systems, Inc., Holder of an International Section 214 Authorization and Earth Station Licenses E960186 and E960187 (File Nos. SE5–T/C/–19981016–01388(2)ITC–T/C–19981016–00715); and Lockheed Martin Corporation/ Regulus, LLC; and Application for authority to Purchase and Hold Shares of Stock in COMSAT Corporation (File No. SAT–ISP–19981016–00072). Summary: The Commission will consider a Memorandum, Order and Authorization concerning applications for transfer of control of a subsidiary of Comsat Corporation to Lockheed Martin Corporation and for authority for Lockheed Martin Corporation to acquire up to 49 percent of Comsat's stock.

Item No.	Bureau	Subject
4	Wireless Tele-Communications	Title: 1998 Biennial Regulatory Review Spectrum Aggregation Limits for Wireless Tele-communications Carriers (WT Docket No. 98–205); Cellular Telecommunications Industry Association's Petition for Forbearance from the 45 MHz CMRS Spectrum Cap; Amendment of Parts 20 and 24 of the Commission's Rules—Broadband PCS Competitive Bidding and Commercial Mobile Radio Service Spectrum Cap (WT Docket No. 96–59); and Implementation of Sections 3(n) and 332 of the Communications Act and Regulatory Treatment of Mobile Services (GN Docket No. 93–252). Summary: The Commission will consider a Report and Order concerning the Commercial Mobile Radio Service spectrum cap and cellular cross-interest rules.
5	Wireless Tele-Communications	Title: Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems (CC Docket No. 94–102, RM–8143). Summary: The Commission will consider a Third Report and Order concerning its rules for the deployment by wireless carriers of Phase II Automatic Location Identification technologies.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its_inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection on a delayed basis. The meeting will be aired following the conclusion of the press conference. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–24015 Filed 9–10–99; 12:33 pm]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 28, 1999.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. BostonFed Bancorp, Inc., Burlington, Massachusetts; to acquire Diversified Ventures, Inc. (d/b/a Forward Financial Company), Northborough, Massachusetts, and thereby engage in the origination of consumer installment loans, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, September 8, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–23843 Filed 9–13–99; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Record of Decision; Volunteer Army Ammunition Plant (VAAP) Proposed Disposal; Chattanooga, TN

Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and GSA Order PBS P 1095.4E,F,2, PBS 1096.4C, ADM 1020.1, GSA has prepared an Environmental Impact Statement (EIS) for this Proposal Disposal Action. The purpose of the EIS was to:

Identify the alternatives considered including the Proposed Disposal Alternative;

Solicit public comments through scoping and incorporate comments into the analysis and decision process;

Identify potential impacts of the alternatives considered including direct, indirect and cumulative impacts;

Disclose all potential impacts resulting from the alternatives considered;

Identify measures to mitigate adverse impacts; and

Incorporate the impacts from the alternatives considered and mitigation into the decision process.

This Record of Decision (ROD) will communicate GSA's decision on implementing the Proposed Action, the basis for that decision, and identify mitigation measures to be implemented as part of the decision. The Draft and

Final EIS documents are incorporated into this ROD by reference, and are available upon request from GSA.

Action

This is the Record of Decision for the General Services Administration (GSA) Proposed Disposal of the 6,372-acre (approximate acreage) Volunteer Army Ammunition Plant (VAAP), also known as Volunteer, located in the City of Chattanooga, Tennessee. Special legislation will permit conveyance of 1033 acres directly to Hamilton County. GSA's action is the administrative act of transferring ownership of this property through one, or a combination of, disposal mechanisms. The Proposed Action does not include GSA control of the reuse of any property other than certain deed restrictions that GSA may record for the protection of human health and the environment or the protection of historical and archaeological resources. Some of the property may be transferred under early transfer authority and this would require approval from the Governor of Tennessee. Disposal mechanisms available to GSA include; transferring property to other Federal agencies; conveying property to state or local governments and institutions; and conveying the property to private entities.

Disposal of the property by GSA would remove the property from Federal ownership except for any parcel that may be transferred to another Federal Agency. The property after transfer becomes subject to the City of Chattanooga and Hamilton County land use plans and taxing authority. All future development after transfer will be subject to local land-use controls. GSA has evaluated two alternatives as part of the EIS including the No-Action Alternative, and the Disposal Alternative.

Purpose and Need

The purpose of the Proposed Action is to better utilize assets. The need for the Proposed Action is to eliminate Federal expenses on unneeded property, to free capital for higher priorities, and to return property to the private sector and the local taxing authority for beneficial reuse.

The Department of Defense (DOD) screened the property against the needs of other DOD agencies and has determined Volunteer to be excess to the Department's needs. Having been determined to be excess by the DOD, the Army executed a Memorandum of Agreement (MOA) with GSA for the disposal of VAAP in accordance with the Federal Property and Administrative Services Act of 1949. GSA has screened the property for use by Federal civilian agencies and determined that the property is surplus to the needs of the Federal government.

The property is currently underutilized, and under the Proposed Action, would become a productive asset for future growth and development within the local community. As part of the NEPA process, GSA consulted with the local community to promote a smooth transfer and productive reuse of the property.

GSA issued a Draft EIS in April with publication in the Federal Register, and provided a 45-day public comment period that began on April 15, 1999. A final Public Meeting was held in Chattanooga on April 29 soliciting comments on the Draft EIS.

The Final EIS addressed comments received on the Draft and was released on July 30 for final comment. This comment period closed on August 30. GSA provided written notices of availability of these documents in the Federal Register, the Chattanooga Free Press, and through local libraries. GSA distributed approximately 250 copies of the Draft and Final EIS to Federal agencies, state and local governments, elected officials, the business community, and to interested parties.

GSA made diligent efforts to solicit input from all potentially impacted parties, and GSA also made diligent efforts to keep the community fully informed during the NEPA process. This was accomplished using newspaper Public Notices, newsletter direct mailings, community meetings, written correspondence, Public Meetings, and through maintaining an open dialogue with representatives of the City of Chattanooga and Hamilton County. GSA communicated regularly and openly with the community to keep all parties fully informed during the process. The chronology of the scoping events is outlined in the Draft EIS I–C.

Alternatives Considered

No-Action Alternative

Under the No-action Alternative, the Federal Government would retain the property with continuing Federal ownership and maintenance responsibilities. However, because Volunteer is no longer operational or needed for its original purpose, this alternative would maintain the majority of the property as undeveloped. Existing leases would continue, and new leases would likely be negotiated. Tenant leases would remain in the industrial area of the site with access to the existing utility infrastructure and the transportation network. There are currently 21 tenant leases at Volunteer, which employ approximately 300 people. Federal responsibilities would include the provision of a caretaker and expenses of upkeep for grounds and building maintenance, security, and utility services. In the absence of a productive Federal use for the property, the costs for continuous upkeep would represent an expense to the taxpayer, although some of this cost would be offset by tenant rents. However, the local community would not realize the benefits of this property returning to the local taxing authority for beneficial reuse.

Disposal Alternative

General Considerations

The Disposal Alternative is the proposed action by the Federal Government. This is the GSA preferred alternative. The conveyance to local governments or institutions for reuse or sale would be accomplished in accordance with the Federal Property and Administrative Services Act. The Disposal Alternative would result in indirect and longer-term impacts that would occur over time. Indirect impacts are those that are "reasonably foreseeable" as long range consequences of the action. As defined in 40 CFR 1508.8, indirect impacts may include environmental impacts attributable to changes in population density and land uses that are induced by the Proposed Action.

Land use scenarios (A, B, C and D) were developed in the preparation of the Draft and Final EIS in partnership with the City and County to provide a mechanism by which potential impacts from future site reuse could be evaluated. GSA worked closely with stakeholders that included the City of Chattanooga, Hamilton County, the Regional Planning Agency, Tennessee Department of Transportation, (TDOT), Tennessee Wildlife Resources Agency (TWRA) and other interested agencies to assess potential uses for the site. Because the local community will ultimately determine the use of this property through zoning ordinance, their input was critical to this process. The City of Chattanooga annexed the entire Volunteer site in April 1998.

As part of GSA's analysis, land use scenarios were developed to provide likely combinations of land uses reflecting the needs of the community communicated during the NEPA scoping process. Land use Scenario D was developed for the Final EIS in response to both agency and public comments made on the Draft. Although the analysis of direct impacts from the Disposal Alternative is relatively straightforward and consistent regardless of the potential land use scenarios, the analysis of indirect impacts requires consideration of each respective scenario.

Identifying and evaluating potential indirect impact for each scenario involves a certain amount of speculation and assumptions because type, timetable, and location of future development at Volunteer is not known. To conduct a thorough analysis of reasonably foreseeable impacts resulting from disposal and development, GSA established criteria to identify and evaluate potential impacts as discussed below.

It will take several decades for the entire property to achieve complete reuse, and it is not possible to evaluate impacts accurately over such a timeframe. GSA in consultation with the local governments determined that a five to fifteen-year timeframe was a "reasonably foreseeable" period within which impacts would be identified and assessed. This decision was based on reasonably foreseeable land uses that could be implemented near the latter part of this timeframe. For example, two of the development scenarios include a municipal landfill that would not be opened for 10 to 12 years.

The local governments will develop zoning for the Volunteer property and will be the legal authority for reviewing and approving plans for future development after Federal disposal. Therefore, the local and state governments were determined to be the guiding source for data and assumptions related to potential future activity during the five to fifteen-year time frame.

It is important to note that GSA's role in the disposal process is strictly to conduct the real estate transaction(s) and perform the various related functions required under Federal law. The GSA has no financial, material, or other interest in the future use of the land after disposal. More expressly, GSA is not advocating any particular conceptual or proposed reuse options for Volunteer. GSA analyzed competing land use proposals and the issues associated with these potential uses through the development of potential land use scenarios.

Key Land Use Proposals

The VAAP property consists of two dissimilar halves. The western half is a broad valley where the bulk of the former TNT manufacturing facilities was located. The eastern half of the property is primarily undeveloped with the exception of earthen covered ammunition bunkers dispersed throughout the hilly terrain. Due to the constraints imposed on future uses of the western half and existing contamination in this area, all three potential land use scenarios proposed by the local community generally include the same set of compatible uses (primarily industrial) for the western half. Potential land use scenarios for the eastern half of VAAP offer greater diversity in future uses.

The three initial land use scenarios are summarized in Chapter II Section 3 of the DEIS. Scenario D is summarized in Appendix F–3 of the Final. Each of the scenarios calls for a particular mix of future land uses. However, because of specific expressions of interest by the local Cooperating Agencies, key features have been identified which are included in one or more of the potential scenarios developed. These key features, or proposed uses, include the following: a large premiere industrial site; industrial development areas; a new I–75 interchange and access roads; mixed use sites; educational facilities; Army Reserve facilities; Police/Fire Training Center; a solid waste municipal landfill; residential areas; active recreation areas; an Equestrian Center; opportunity sites; open spaces; passive recreation; wildlife habitat; and public use areas. These key features are summarized in Chapter II Section B.2. of the DEIS and Appendices F–3 and F–4.

Four Potential Land Use Scenarios Developed

Three potential land use scenarios (A, B, and C) are illustrated in Exhibits II–2 through II–4 of the Draft EIS, with the legend for all three in Exhibit II–1 of the Draft. Scenario D was developed for the Final and is discussed in text and tables. Exhibit E–2 of the Final summarizes the acreage allocated to proposed uses for each scenario, and the percentage of the site devoted to each land use.

In order to evaluate traffic impacts and the need for transportation improvements, a phasing plan was developed for 5, 10, and 15 year planning horizons for each land use scenario. In general, the four scenarios are illustrated in the Draft and Final EIS with key features are summarized as follows:

Scenario A

Scenario A does not include residential development areas or the Equestrian Center. It provides a 490-acre site for a proposed sanitary landfill. It also provides the second largest amount of acreage for open space and passive recreation in the eastern half of VAAP among the four scenarios.

Scenario B

Scenario B does not include the landfill, the Police/Fire Training Center, the Equestrian Center, or the opportunity sites. It provides the largest amount of space for residential development located in the eastern half of the site.

Scenario C

Scenario C includes a 490-acre landfill site, the Police/Fire Training Center, the Equestrian Center, with only about half the acreage for residential development compared to Scenario B.

Scenario D

Scenario D does not include residential use areas, the landfill, opportunity sites, the Police/Fire Training Center, or the Equestrian Center. It provides the largest amount of open space for passive recreation among the four scenarios, retaining the entire eastern half of VAAP in its current state.

Scenarios A, B, and C assume that a new I–75 interchange would be constructed to serve VAAP and as a connector to State Route 58. Scenario D does not include the interchange and therefore development opportunities for the site are severely limited. This is clearly demonstrated by the tables in Appendix F–4 of the Final, which show that the absorption rates for the industrial land are less than 40% for Scenario D, as compared to Scenarios A, B, and C. Scenario D is very similar to the No Action Alternative because of the limitations to potential reuse if additional access to I–75 is not provided.

Environmental Consequences and Mitigation

Based on the analysis contained in the EIS, there were no potentially significant environmental impacts identified from either the Proposed Action or the No Action except for those discussed in this ROD. The primary mitigation measures for the impacts from this action were identified during the scoping process and the preparation of the EIS. The partnership formed between the City and County governments and GSA during the planning for this disposal provided ongoing input for the preparation of the EIS. This EIS process solicited ideas from the community for the property's reuse and facilitated the development of combinations of proposed uses from which to analyze potential impacts. The result was the development of four basic land use plans that will provide the

local community a long-range planning tool for use as it develops its reuse strategy.

Three additional site considerations and potential impacts will be mitigated through processes required as discussed below. First, the entire Volunteer property is listed as a State of Tennessee Superfund Site. The Army is currently investigating and cleaning the contaminated areas as part of their legal responsibility under the Installation Restoration (IR) program and under RCRA as described in Chapter III.B.7 in the Draft. This process requires close coordination with regulatory agencies and with the public. A Restoration Advisory Board has been established and is holding regular meetings that are open to the public. GSA's proposed disposal would have no effect on the status of the site investigation and cleanup efforts being conducted under the IR and RCRA programs. Some of this property may be transferred under early transfer authority and would require approval of the Governor. This process is explained in detail in the Draft EIS pages 1–11 to 1–12.

Secondly, two of the proposed scenarios include a 490-acre site for a sanitary landfill. Should the local community elect to proceed with this option, an extensive permitting process and public notification process would be mandatory. This would require extensive engineering and design studies, a closure plan, and permitting under Tennessee Rule 1200–1–7 Solid Waste Processing and Disposal Facilities. This required process would solicit additional community participation and the permitting requirements would serve to mitigate potential adverse impacts to the natural and human environment.

Third, three of the scenarios developed propose a new I–75 traffic interchange at VAAP. An Interchange Justification Report for this interchange would be required pursuant to Federal Highway Administration (FHA) regulations. This report would be prepared by Tennessee Department of Transportation (TDOT) and submitted to FHA for approval. An environmental assessment would be required along with site-specific studies and public involvement, which would serve to mitigate impacts from the development of a new interchange at VAAP.

The NEPA process itself and the joint development of a series of land use scenarios became the major mitigation measure that will serve to minimize the impacts to the natural and human environment. GSA consulted with other State and Federal Agencies to identify impacts and develop mitigation measures. Neither the disposal alternative nor the no-action alternative was considered to be environmentally preferred over the other. Potential impacts to the natural and human environment were found to be not significant after mitigation. This is documented in both the Draft and the Final EIS by reference, and a summary of mitigation by the Agency is attached as part of this ROD.

Rationale for Decision

1. As part of GSA's environmental review, GSA conducted extensive public scoping with the local community to identify potential impacts and concerns that would result from proceeding with the proposed disposal action.

2. Issues that were identified by the community through Public Meetings and correspondence and were addressed in both the Draft and the Final Environmental Impact Statements released for public comment and review. Issues were addressed in the NEPA documents and all comments and GSA responses are incorporated into the documents as part of the official record.

3. GSA consulted with other government agencies including local, State, and Federal Agencies, to solicit their input on the proposed disposal. All issues identified and responses provided are presented in the Draft and Final documents.

4. The development of proposed reuses for the Volunteers property enabled potential uses to be identified and impacts to be analyzed. The EIS process provided a tool by which potential impacts were identified and mitigation measures developed. No significant impacts to the natural or human environment were identified from this proposed disposal action.

5. Potential impacts have been identified and mitigation measures selected that will minimize the impacts from this disposal action. GSA has consulted with other Agencies in the development of mitigation measures. GSA will institute the identified mitigation measures and will consult with other Agencies to insure that mitigation measures are implemented.

6. Should potentially significant impacts be later identified that may reach significant levels, GSA will prepare supplementary documentation as mitigation as required by the National Environmental Policy Act.

Therefore, having given consideration to all of the factors discovered during the 12 month environmental review process, it is GSA's decision to proceed with the Proposed Action: Disposal of the Volunteer Army Ammunition Plant based on the Federal Property and Administrative Services Act of 1949 as amended.

Dated: August 30, 1999.

Phil Youngberg,

Regional Environmental Manager, Southeast Sunbelt Region, General Services Administration.

[FR Doc. 99–23808 Filed 9–13–99; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Grant to Allegheny County Department of Human Services

AGENCY: Office of Planning, Research and Evaluation, ACF, DHHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that a noncompetitive grant award is being made to the Allegheny County Department of Human Services Under the title "Allegheny County Family Support System Expansion Project," the project proposes to expand family support center activities to two additional sites in Allegheny County: Mon View Heights and Lincoln Park. Based on the results learned from their Data Integration Project in 25 existing family support centers in Allegheny County, the proposed project will address significant service gaps in providing services to members of these communities

This project is being funded noncompetitively. The project will expand the existing network of family support centers, and will contribute to the estalishment of greater access to county services in a concentrated neighborhood environment. Funding in the amount of $200,000 is being awarded for a 12-month project period, beginning October 1, 1999 and ending September 30, 2000.

FOR FURTHER INFORMATION CONTACT: K.A. Jagannathan, Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW, Washington, D.C. 20447, Phone: 202–205–4829.

Dated: September 7, 1999.

Howard Rolston,

Director, Office of Planning, Research and Evaluation.

[FR Doc. 99–23810 Filed 9–13–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93612–002]

Cancel Availability of Financial Assistance for the Mitigation of Environmental Impacts to Indian Lands Due to Department of Defense (DOD) Activities

AGENCY: Administration for Native Americans (ANA), ACF, DHHS.

ACTION: Cancel grant program announcement, remaining application deadlines and competitions to assist on environmental problems and impacts from DOD activities to Indian Lands. Additional information to follow.

SUMMARY: On January 22, 1999, in Vol. 64, No. 14 of the **Federal Register**, pages 3594 to 3601, the Administration for Native Americans announced the "Availability of Finance Assistance for the Mitigation of Environmental Impacts to Indian Lands due to Department of Defense Activities". Indian land was defined as all lands used by American Indian tribes and Alaska Native villages. Three deadline dates for submission of applications were published in that announcement: March 12, 1999, November 5, 1999 and November 4, 2000. This notice cancels the two remaining competitions under the program announcement; i.e., November 5, 1999 and November 4, 2000 deadlines are canceled. The Administration for Native Americans will publish additional information on the grant program as soon as possible.

Dated: August 31, 1999.

Gary N. Kimble,

Commissioner, Administration for Native Americans.

[FR Doc. 99–23899 Filed 9–13–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Privacy Act of 1974; Amended Systems of Records Notice

AGENCY: Office of Child Support Enforcement (OCSE), ACF, DHHS.

ACTION: Notice.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974 (5 U.S.C. 552a), the Office of Child Support Enforcement (OCSE) is publishing an advisement concerning its system of records entitled "The Location and Collection System", DHHS/OCSE No. 09–90–0074.

The purpose of this notice is to advise the public about a pilot that OCSE and the Social Security Administration (SSA) will be conducting to determine the benefits and risks of allowing SSA to use a real time read only query to read limited information in the National Directory of New Hires (NDNH) for the purposes of verifying eligibility and/or payment amounts under the Supplemental Security Income (SSI) program. The query gives SSA read only ability to look at limited wage, new hire and unemployment information ONLY to those social security numbers that have a payment or entitlement issue under the SSI program. No decision on whether to implement the proposed pilot on a permanent basis will be made until completion of the pilot and data analysis.

The goals of the pilot are to enable SSA to access which factors are most important for determining a SSI applicant's eligibility and payment amount on a pre-allowance (decisional) basis. Current means of verification are done on a post-entitlement basis, after individuals are in pay status. Pre-decisional information about entitlement and eligibility is expected to improve payment accuracy for SSA, reducing both overpayments and underpayments to beneficiaries and reduce the number of overpayment recovery activities SSA must take. The pilot will demonstrate the extent to which these expectations are realized, and provide a basis for deciding which data is most useful for improving payment accuracy.

DATES: The amendments described in this notice are effective September 14, 1999.

FOR FURTHER INFORMATION CONTACT: Donna Bonar, Director, Division of Program Operations, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, SW, 4th Floor East, Washington, DC 20447, (202) 401–4963.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Office of Child Support Enforcement (OCSE) is amending one of its System of Records, "The Location and Collection System," DHHS/OCSE No. 09–90–0074, last published at 64 FR 11015 on March 8, 1999. This amendment will allow the Social Security Administration (SSA) to use its Real-time Query Access (RQA) process to obtain information contained in the National Directory of New Hires (NDNH) for the purposes of verifying eligibility and/or payment amounts under the Supplemental Security Income (SSI) program. Section 453(j)(4) of the Social Security Act (the Act) authorized OCSE to provide SSA with information in the NDNH. The NDNH contains new hire, quarterly wage, and unemployment insurance information provided pursuant to sections 453(n), 453A(b) and 453A(g)(2) by the 50 States, the District of Columbia, U.S. territories and possessions, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and Federal agencies and instrumentalities. This amendment will allow SSA to have limited RQA to information in the NDNH database for the purpose of establishing or verifying eligibility and/or payment amounts under the Supplemental Security Income (SSI) Program. Specifically, data elements to be used from the Quarterly Wage portions of the NDNH database are: For employees—SSN, SSN verification indicator and any corrected SSN, first name, middle name, last name, wage amount, quarter paid, and reporting period; for employers—name of employer, Federal (or optional State if no Federal) Employer Identification Number or Federal Information Processing System Code, address(es), State or Federal agency reporting the data; date the report was processed. Data elements to be used from the New Hire portions of the NDNH database are: For employees—employees' SSN, SSN verification indicator and any corrected SSN; employees' first name, middle name, last name, address(es), date of birth (optional), date of hire (optional), State of hire (optional); for employers—name of employer, Federal (or optional State if no Federal) Employer Identification Number or Federal Information Processing System Code, address of employer. Data elements to be used from the Unemployment Insurance portions of the NDNH database are: Unemployment insurance record identifier, SSN, SSN verification indicator and any corrected SSN; employee's first name, middle name, last name, address, unemployment insurance benefit amount, reporting period, quarter paid, payer State, date report processed. SSA anticipates that RQA access to the NDNH will facilitate earlier overpayment detection, reduce the number of incorrect entitlements, and reduce the number of overpayment recovery actions. Fifty field offices within the SSA will participate in a pilot program during which they will utilize RQA data retrieval. If the pilot is determined to be successful, a national rollout will follow.

Privacy Safeguards:

OCSE and SSA have taken steps to ensure that the read only query will sustain the protections provided in all statues relating to agency use, collection and disclosure of personal information. These include: (1) Notice to applicants and beneficiaries. SSA routinely advises SSI applicants and beneficiaries that SSA verifies eligibility. This is done via the application process, publications and letters to beneficiaries; (2) Query Is Informational Only. SSA will not take any action to reduce, suspend, or terminate an individual's SSI payment based on data read from the query; (3) Independent Verification. SSA will independently verify information read from the query, as required by Federal statue; (4) Limited Information. The pilot gives SSA the ability to read limited information on a restricted basis. The query can only read records that have a payment or entitlement issue under the SSI program; (5) Read Only. The information the query can read in the NDNH is the same information SSA currently obtains on a post-entitlement, paper based process; (6) Authorized Users. The pilot is limited in the number of field offices participating and the number of employees with read only query ability which is restricted to certain recognizable job classifications within SSA; (7) Anti-browsing Technology. SSA can only read information for those social security numbers that have a payment or entitlement issue under the SSI program; (8) Anomaly Detection and Audit Trails. SSA will monitor use of the query; and (9) Training and Sanctions for Misuse. SSA employees have been trained to work with sensitive information and routinely do so. Sanctions for misuse are found in 5 U.S.C. 552a(i) and Part 401 CFR, Privacy and Disclosure of Official Records and Information, and appendix A to part 401, Employee Standards of Conduct.

Dated: September 7, 1999.

David Gray Ross,

Commissioner, Office of Child Support Enforcement.

OCSE's Location and Collection System is hereby amended to read as follows:

09–90–0074

SYSTEM NAME:

Location and Collection System (LCS), HHS, OCSE.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Office of Child Support Enforcement, 370 L'Enfant Promenade, SW, 4th Floor East, Washington, DC 20447;

Social Security Administration, 6200 Security Boulevard, Baltimore, Maryland 21235.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records will be maintained to locate individuals for the purpose of establishing parentage, establishing, setting the amount of, modifying, or enforcing child support obligations, or enforcing child custody or visitation orders and may include (1) information on, or facilitate the discovery of, or the location of any individuals: (a) Who are under an obligation to pay child support or provide child custody or visitation rights; (b) against whom such an obligation is sought; (c) to whom such an obligation is owed including the individual's social security number (or numbers), most recent address, and the name, address, and employer identification number of the individual's employer; and (d) who have or may have parental rights with respect to a child; (2) information on the individual's wages (or other income) from, and benefits of, employment (including rights to enrollment in group health care coverage); (3) information on the type, status, and amount of any assets or debts owed to or by such an individual; and (4) information on certain Federal disbursements payable to a delinquent obligor which may be offset for the purpose of collecting past-due child support.

CATEGORIES OF RECORDS IN THE SYSTEM:

Specific records retained in the LCS system are: the name of noncustodial or custodial parent or child, Social Security number (when available), date of birth, place of birth, sex code, State case identification number, local identification number (State use only), State or locality originating request, date of origination, type of case (TANF, non-TANF full-service, non-TANF locate only, parental kidnapping); home address, mailing address, type of employment, work location, annual salary, pay rate, quarterly wages, medical coverage, benefit amounts, type of military service (Army, Navy, Marines, Air Force, not in service), retired military (yes or no), Federal employee (yes or no), recent employer's address, known alias (last name only), date requests sent to Federal agencies or departments (SSA, Treasury, DoD/OPM, VA, USPS, FBI, and SESAs), dates of Federal agencies' or departments' responses, date of death, record identifier; employee's SSN, SSN verification indicator and any corrected SSN, employee first name, middle name, last name, employee address(es), date of birth (optional), employee date of hire (optional), employee State of hire, wage amount, quarter paid, reporting period; employer name, Federal Employer Identification Number or Federal Information Processing System Code, State Employee Identification Number of Federal Information Processing System Code, employer address, employer foreign address, employer optional address, and employer optional foreign address; multistate employer name, address and Federal Identification Number; employee SSN, employee first name, middle name, last name, employee address(es), date of birth (optional), data of hire (optional), State of hire (optional), employee wage amount, quarter paid, reporting period; unemployment insurance record identifier, claimant SSN, SSN verification indicator and any corrected SSN; claimant first name, middle name, claimant address, SSA/VA benefit amount, unemployment insurance benefits amount, reporting period, quarter paid, payer State, date report processed; State code, local code, case number, arrearage amount, collection amount, adjustment amount, return indicator, transfer State, street address, city and State, zip code, zip code 4, total debt, number of adjustments, number of collections, net amount, adjustment year, tax period for offset, type of offset, offset amount, submitting State FIPS, locate code, case ID number, case type, and court/administrative order indicator. Records used to aid State Child Support Enforcement Agencies in obtaining information from multistate financial institutions may include institution name(s), name control, Taxpayer Identification Number(s), year, month, service bureau indicator, transfer agent indicator, foreign corporation indicator, reporting agent/transmitter, address(es), file indicator, record type, payee last name control, SSN(s), payee account number, account full legal title (optional), payee foreign country indicator (optional), payee names, addresses, account balances (optional), trust fund indicator, account balance indicator (optional), account update indicator, account type, date of birth.

Individuals will be fully informed of the uses and disclosures of their records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Legal authority for maintenance of the system is contained in sections 452 and 453 of the Social Security Act that requires the Secretary of the Department of Health and Human Services to establish and conduct the Federal Parent Locator Service, a computerized national location network which provides address and social security number information to authorized persons, primarily for the purposes of establishing and collecting child support obligation.

PURPOSE(S):

The primary purpose of the Location and Collection System is to improve State's abilities to locate parents and collect child support.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The routine uses of records maintained in the LCS are as follows: (1) Request the most recent home and employment addresses and SSN of the noncustodial or custodial parents from any State or Federal government department, agency or instrumentality which might have such information in its records; (2) provide the most recent home and employment addresses and SSN to State Child Support Enforcement (CSE) agencies under agreements covered by section 463 of the Social Act (42 U.S.C. 663) for the purpose of locating noncustodial parents or children in connection with activities by State courts and Federal attorneys and agents charged with making or enforcing child custody determinations or conducting investigations, enforcement proceedings or prosecutions concerning the unlawful taking or restraint of children; (3) provide the most recent home and employment addresses and SSN to agents and attorneys of the United States, involved in activities in States which do not have agreements under section 463 of the Act for purposes of locating noncustodial parents or children in connection with Federal investigations, enforcement proceedings or prosecutions involving the unlawful taking or restraint of children; (4) provide to the State Department the name and SSN of noncustodial parents in international child support cases, and in cases involving the Hague Convention on the Civil Aspects of International Child Abduction; (5) provide to State agencies data in the NDNH portion of this system for the purpose of administering the Child Support Enforcement Program and the Temporary Assistance for Needy Families (TANF) program; (6) provide to the Commissioner of Social Security information for the purposes of verifying reported SSNs, verifying eligibility and/or payment amounts under the Supplemental Security Income (SSI) program, and for other purposes; (7) provide to the Secretary of the Treasury information in the NDNH portion of this system for purposes of administering advance payments of the earned income tax credit and verifying a claim with respect to employment in a tax return; (8) provide to researchers new hire data for research efforts that would contribute to the TANF and CSE programs. Information disclosed may not contain personal identifiers; (9) provide to State CSE agencies, or any agent of an agency that is under contract with the State CSE agency, information which will assist in locating individuals for the purposes of establishing paternity and for establishing, modifying, and enforcing child support obligations; (10) disclose to authorized persons as defined in section 453(c) of the Act (42 U.S.C. 653(c)) records for the purpose of locating individuals and enforcing child custody and visitation orders; (11) disclose to the State agency administering the Medicaid, Unemployment Compensation, Food Stamp, SSI and territorial cash assistance programs new hire information for income eligibility verification; (12) disclose to State agencies administering unemployment and worker's compensation programs new hire information to assist in determining the allowability of claims; (13) disclose information to the Treasury Department in order to collection past due child support obligation via offset of tax refunds and certain Federal payments such as: Federal salary, wage and retirement payments; vendor payments; expense reimbursement payments, and travel payments; (14) disclose to the Secretary of State information necessary to revoke, restrict, or deny a passport to any person certified by State CSE agencies as owing a child support arrearage greater than $5,000; and (15) disclose to States information pertaining to multistate financial institutions which has been provided by such institutions in order to aid State Child Support Enforcement Agencies.

DISCLOSURE TO CONSUMER REPORTING AGENCIES: None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Location and Collection System records are maintained on disc and computer tape, and hard copy.

RETRIEVABILITY:

SSA will access and use the information obtained by the real time query access only for the period of time required for any processing related to the access program.

SAFEGUARDS:

1. *Authorized users:* Access to the records accessed and to any records created by the Real Time Query Access (RQA) will be restricted to only those authorized employees who need it to perform their official duties in connection with the use of the information. All personnel who have access to the NDNH records accessed or the records created by the RQA will be: (1) Advised of the confidential nature of the information, (2) advised of the safeguards required to protect the information; and (3) advised of the civil and criminal sanctions for noncompliance contained in the applicable Federal laws.

2. *Physical safeguards:* The records accessed and any records created by the RQA will be handled and stored in an area that is physically safe from access by unauthorized persons at all times. The records accessed will be transported under appropriate safeguards.

3. *Procedural and technical safeguards:* The records accessed and the data created by the RQA will be processed under the immediate supervision and control of authorized personnel in a manner that will protect the confidentiality of the records. System security measures will be implemented that will protect records in such a way that unauthorized persons cannot retrieve any such records by means of computer, remote terminal, or any other means.

These practices are in compliance with the standards of Chapter 45–13 of the HHS General Administration Manual, " Safeguarding Records Contained in Systems of Records," and the Department's Automated Information System Security Program Handbook.

RETENTION AND DISPOSAL:

SSA will retain identifiable records received from the NDNH database only for the period of time required for any processing related to the RQA and will destroy the records. Electronic files will be erased.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Division of Program Operations, Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, SW., 4th Floor East, Washington, DC 20447.

NOTIFICATION PROCEDURES:

To determine if a record exists, write to the Systems Manager at the address listed above. The Privacy Act provides that, except under certain conditions specified in the law, only the subject of the records may have access to them. All requests must be submitted in the following manner: identify the system of records you wish to have searched, have your request notarized to verify your identify, indicate that you are aware that the knowing and willful request for or acquisition of a Privacy Act record under false pretenses is a criminal offense subject to a $5,000 fine. Your letter must also provide sufficient particulars to enable OCSE to distinguish between records on subject individuals with the same name.

RECORD ACCESS PROCEDURES:

Write to the Systems Manager specified above to attain access to records. Requesters should provide a detailed description of the records contents they are seeking.

CONTESTING RECORD PROCEDURE:

Contact the official at the address specified under System Manager above, and identify the record and specify the information to be contested and corrective action sought with supporting justification to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

Information is obtained from departments, agencies, or instrumentalities of the United States or any State and from multi-state financial institutions.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 99–23809 Filed 9–13–99; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0572]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Collection of Letters of Interest and Food Safety Data in a Voluntary Pilot Program Using HACCP Principles for Retail Food Operations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by October 14, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Collection of Letters of Interest and Food Safety Data in a Voluntary Pilot Program Using HACCP Principles for Retail Food Operations

Section 402 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 342) enables FDA to regulate the safety of foods in interstate commerce. In addition, under authority granted in the Public Health Service Act (the PHS Act) (42 U.S.C. 241, 243, and 264), the agency engages in a range of activities intended to ensure the safety of the nation's food supply, from regulating food when it can be a vector of disease to assisting, and cooperating with, the States to ensure effective State and local food safety programs. FDA endeavors to assist the more than 3,000 Federal, tribal, State, and local regulatory agencies that have primary responsibility for monitoring retail food establishments to ensure that consumers are protected.

FDA is proposing to collect information, through a voluntary pilot program, on how hazard analysis critical control points (HACCP) principles might be implemented in the retail food industry. The pilot program is designed to provide insight into the problems, costs, and benefits of developing and implementing HACCP principles for food service, retail food stores, and other retail food establishments, in order to improve and provide direct guidance to both the retail industry and regulatory authorities for the implementation of HACCP principles in the retail food sector. FDA will select candidates with a goal of ensuring that the participants in the program cross the spectrum of retail activities, have a range of scientific capabilities, have facilities of varying sizes, and have a range of HACCP experience. FDA has been approached by State and local governments to provide guidance for applying HACCP principles at retail; therefore, the agency intends to collect information through the pilot program to develop and enhance guidance. The agency intends to make a summary of the results of the retail pilot program publicly available.

The agency will request retail food establishments and regulatory agencies interested in participating in the pilot program to send to FDA a letter of interest. Letters from regulatory agencies need only state an interest in participating. FDA requests that the letters of interest from retail food establishments describe their menu, the location and size of their facility, the type of techniques they use to prepare their products, and the extent to which, and how, they employ HACCP; identify area government officials with whom they have worked to implement or reinforce the system; identify which State, local, and/or tribal government officials they would like to work with in the pilot program; and identify trade associations they would like to work with in the pilot. FDA will review the letters of interest from retail applicants and identify a limited number of individual establishments that represent a broad spectrum of the retail food industry and that, in the judgment of the agency, are best suited to participate in the pilot program. The retail pilot participants will maintain a food safety program based upon HACCP principles for the duration of the pilot. FDA will study the information and data the pilot participants use to maintain their food safety programs.

In the **Federal Register** of July 30, 1998 (63 FR 40716), the agency requested comments on the proposed collection of information. The agency received one comment from a trade association that represents one segment of the retail food industry. The comment recommended that FDA not pursue the pilot program as currently planned. Instead, the comments suggested that the agency solicit industry and academic input into the development of a "new, more inclusive" HACCP pilot program. The comment's recommendation was based on several concerns.

First, the comment expressed concern that a mandatory information collection regulation may mark the end of cooperative industry development of HACCP programs.

The voluntary retail HACCP pilot program is neither mandatory, nor is it a regulation. The purpose of the pilot program is to enhance understanding and implementation of HACCP principles through cooperation among industry, FDA, and participating State and local regulatory authorities. Any participant may leave the program at any time. The agency hopes that the pilot will promote rather than curtail the cooperative efforts toward building HACCP into retail. The agency agrees with the statement in the comment that "There are many problems to overcome before HACCP can be fully implemented in the retail industry and clearly cooperation and inclusion will provide the answers to those problems." This is exactly why industry is being invited to participate; the agency recognizes that industry involvement is critical to furthering a cooperative relationship.

Second, the comment expressed concern about the disclosure of proprietary information and cautioned that access to voluntary HACCP plans, including records and customer complaints, must be restricted. The comment also stressed that the records must remain the property of the establishment.

The information collected at individual establishments will be held as proprietary, and contracts are to be signed by all parties involved limiting the use of the proprietary information. The agency intends to review the systems implemented by the retail establishment, including records, in order to document how the system works, but the records will remain the property of the establishment. After the pilot, the data collected at individual establishments will be generalized, and a collective retail HACCP pilot report will be publicly disseminated. The names and locations of the participating firms will be held as proprietary unless authorized for release by the participant.

Third, the comment raised several issues relating to consultation, participation, and fairness. The comment expressed concern that FDA is duplicating efforts by the restaurant industry and asserted that FDA has not consulted with developers of existing HACCP programs or evaluated these ongoing programs. The comment also charged that FDA intends to exclude universities and trade associations from direct participation in the pilot to prevent them from having input into any final recommendations resulting from the pilot. More generally, the comment expressed the view that FDA lacks the knowledge and detachment to select participants in the pilot on an objective basis.

The agency believes these concerns are unfounded. FDA intends to build on retail industry efforts through the retail HACCP pilot program by studying ongoing HACCP systems and documenting activities used by the retail industry to fully implement a HACCP system. During the design of the program, industry representatives shared their views on how an effective pilot program should proceed and provided feedback and guidance on this effort of collecting information. This information was used in designing the retail HACCP pilot program.

With regard to selection of participants, the design and intent of the pilot is inclusive, not exclusionary. The pilot seeks to include establishments that represent a broad spectrum of retail activities, geographic locations, sizes, and levels of experience with HACCP. Since each participant has the right, within the limits of the law, to control access to its proprietary information, each participant has the right to invite entities such as State, local, and tribal regulatory agencies, universities, and trade associations to work with it during the pilot, and it also has the right not to work with any such entities (although participants will, of course continue to be subject to applicable food safety laws and regulations in all jurisdictions during the pilot).

FDA will involve the pilot participants in the summary of results and formation of conclusions at the end of the pilot program, and will make the summary report publicly available. The pilot is designed to encourage voluntary evolution of retail HACCP plans with the involvement of all stakeholders: Government, industry, academia, and trade associations.

Fourth, the comment expressed doubts about the need for the pilot program. The comment stated that the retail food industry has used HACCP for many years with great success. According to the comment, FDA should remain only an evaluator of the success of HACCP programs, and should not attempt to institute or mandate such programs.

FDA disagrees with the comment. The PHS Act provides that the agency shall assist States and political subdivisions in the prevention and suppression of communicable diseases, and with respect to other public health matters, shall cooperate with and aid State and local authorities in the enforcement of their health regulations, and shall advise the States on matters relating to the preservation and improvement of the public health. FDA is also entrusted with regulating food safety under the act. Therefore, the agency is responsible for carrying out these functions and intends to do so. The retail HACCP pilot program is one of many elements necessary to enable FDA to perform these statutory responsibilities.

Fifth, the comment expressed concern about the recordkeeping burdens that the retail HACCP pilot program would create for participants. The comment asserted that massive recordkeeping paperwork for the hundreds of items on restaurant menus would be required. The comment expressed hope that the pilot does not move to apply a single, "one-size-fits-all" FDA recordkeeping system.

The agency is seeking information through the pilot program on the amount and extent of recordkeeping that retail establishments have determined necessary to effectively implement and manage their HACCP systems. To be part of the voluntary pilot, the only recordkeeping requirement is a letter to FDA expressing interest to participate in the pilot program. The agency will not determine the amount or type of records needed during the pilot; rather, each industry participant will determine the amount and type of records it needs to effectively verify that its system is working. Thus, the pilot program will not create an undue burden and will not impose a single recordkeeping system on all establishments.

The comment also expressed the belief that FDA's burden estimate did not account for all the time that would be required by the smallest participants in this program to learn about and institute a HACCP program. The comment further stated that FDA has not shown a willingness to encourage or assist vital small restaurant operator participation in this pilot.

The agency will select candidates with a goal of ensuring that the participants in the program cross the spectrum of retail activities, have a range of scientific capabilities, have facilities of varying sizes, and have a range of HACCP experience. The pilot program will encompass the challenges unique to the retail environment, such as multiple menu items, size of the facility, and employee turnover. The agency intends to work with establishments with preexisting HACCP programs and those establishments intending to start designing their HACCP systems. The agency is seeking information that will document the costs and time necessary for developing and implementing a HACCP system.

FDA will also provide guidance and counseling upon request to those participating establishments that are in the process of developing HACCP systems, although the agency will not write HACCP plans.

Finally, the comment expressed concern that agencies could make use of prior establishment records as the basis for enforcement action.

In order to deal with this concern, the agency intends to provide clear direction to the pilot site teams to separate HACCP activities, such as the establishment's performance of corrective action, from system failures when risk factors are uncontrolled and enforcement action may be necessary. FDA has initiated and intends to further train the pilot site teams on how to evaluate a HACCP system and identify items that are important. The establishment has the primary responsibility to ensure the food is safe by fully implementing its HACCP system, and the pilot site teams will evaluate the effectiveness of that program.

FDA estimates the burdens of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Letters of interest from State/local/tribal authorities [2]	50	1	50	1	50
Letters from interested retail firms [2]	50	1	50	1	50
Total					100

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] One time activity.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Activity	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
Plan development	40	1	40	100	4,000
Plan implementation documents	40	7,000	280,000	.05	14,000
Implementation review	40	4	160	4	640
Total					18,640

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on FDA's experience with other pilot programs and on comments received through the Conference for Food Protection, public meetings, and through retail industry advice. This information was utilized to design the pilot program with the least amount of burden to the retail industry.

Because only one letter of interest need be submitted per prospective participant in the pilot, submitting the letter will create only a minimal one time burden. Once the pilot program begins, FDA estimates that the burden of collecting and maintaining food safety information based upon HACCP principles will vary considerably across the wide spectrum of retail activities and establishments, the types, and numbers of products involved, and the nature of the equipment or instruments required by the retail establishment for monitoring. The recordkeeping burden to each retail participant would involve maintaining a food safety plan based upon HACCP principles, generating the necessary records to implement that plan, and checking the records to verify implementation. Those participants who do not already have a HACCP plan in place would also have to develop such a plan.

Since the publication of the July 1998 **Federal Register** notice seeking comment on the pilot program, FDA has learned from conversations with potential participants that approximately 20 percent of these potential participants are already using HACCP plans in the normal course of their business activities. The PRA regulations (5 CFR 1320.3(b)(2)) provide that the time, effort, and financial resources that would be incurred by persons in the normal course of usual and customary activities are excluded from the burden of a collection of information. Therefore, the agency has revised its estimates to reflect the fact that the pilot program would impose no additional recordkeeping burden on the establishments that are already using HACCP.

Dated: September 8, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 99–23811 Filed 9–13–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Data Collection; Comment Request; American Stop Smoking Intervention Study for Cancer Prevention (ASSIST) Final Evaluation: "Tobacco Use Supplement to the 1998–2000 Current Population Survey"

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection

Title: American Stop Smoking Intervention Study for Cancer Prevention (ASSIST) Final Evaluation: "Tobacco Use Supplement to the 1998–2000 Current Population Survey". *Type of Information Request:* OMB #0925–0368, Exp. 12/31/99, REVISION. *Need and Use of Information Collection:* The "Tobacco Use" supplement to the Current Population Survey conducted by the Bureau of the Census collected data in September 1998 and January and May 1999 from the civilian non-institutionalized population on tobacco use and smoking prevalence, smoking intervention dissemination of workplace smoking policies and cessation programs as well as medical and dental advice to stop smoking, and changes in smoking norms and attitudes. Due to an administrative error, in January and May 1999 data collection included a small set of incorrect questions which does not permit an accurate estimate of total tobacco use. The proposed information collection will ask the correct set of questions (comparable to the correctly fielded set in September 1998) for other tobacco usage (cigars, pipes, chewing tobacco and snuff), along with the standard cigarette smoking prevalence questions in order to estimate total tobacco usage. This survey will provide valuable information to Government agencies and to the general public necessary for tobacco control research. The data will be used by the National Cancer Institute to evaluate the effectiveness of the American Stop Smoking Intervention Study for Cancer Prevention (ASSIST), a large scale 17 state demonstration project. The survey will allow state specific estimates to be made. Data will be collected in January 2000 and May 2000 from approximately 170,000 respondents. *Frequency of Response:* One-time study. *Affected Public:* Individuals or households. *Type of Respondents:* Persons 15 yrs. of age or older. The annual reporting burden is as follows: *Estimated Number of Respondents:* 170,000; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours per Response:* 0.0113; and *Estimated Total Annual Burden Hours Requested:* 1921. The annualized cost to respondents is estimated at: $19,210. There are no Operating or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms on information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Anne Hartman, Health Statistician, National Cancer Institute, Executive Plaza North, Room 313, Bethesda, Maryland 20892–7344, or call non-toll free number (301) 496–4970, or FAX your request to (301) 435–3710, or E-mail your request, including your address, to *ah42t@nih.gov* or Anne__Hartman@nih.gov.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before November 15, 1999.

Date: September 7, 1999.

Reesa L. Nichols,

NCI Project Clearance Liaison.

[FR Doc. 99–23844 Filed 9–13–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closing Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group Diabetes, Endocrinology and Metabolic Diseases B Subcommittee.

Date: October 29, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Ned Feder, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Building 45, Room 6AS25S, 9000 Rockville Pike, Bethesda, MD 20892.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group Digestive Diseases and Nutrition C Subcommittee.

Date: October 29, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Dan Matsumoto, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37B, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group Kidney, Urologic and Hematologic Diseases D Subcommittee.

Date: October 29, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Ann A. Hagan, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Building 45, Bethesda, MD 20892, (301) 594–8886.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: September 3, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–23846 Filed 9–13–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning

individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

Date: October 5, 1999.

Time: 10:30 am to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: Executive Plaza South, Room 400C, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Melissa Stick, PHD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, NIDCD/NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: September 3, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–23847 Filed 9–13–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel Alzheimer's Disease Core Centers.

Date: October 4–6, 1999.

Time: 6:00 pm to 1:00 pm.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Rd., Bethesda, MD 20814.

Contact Person: Jeffrey M. Chernak, Gateway Building, 7201 Wisconsin Avenue/ Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 3, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–23848 Filed 9–13–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, RFA: LM–99–001; Internet Connection for Health Institutions.

Date: September 23–24, 1999.

Time: September 23, 1999, 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Pooks Hill Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Time: September 24, 1999, 8:30 am to 12:00 pm.

Agenda: To review and evaluate grant applications.

Place: Pooks Hill Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Frances E. Johnson, Program Officer, Office of Extramural Programs, National Library of Medicine, Rockledge One, Suite 301, 6705 Rockledge Drive, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Programs Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: September 3, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–23845 Filed 9–13–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4446–N–06]

Notice of Proposed Information Collection: Comment Request; Annual Progress Report (APR) for Competitive Homeless Assistance Programs

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* November 15, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Shelia E. Jones, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room 7232, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: John Garrity (202) 708–4300 (this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are responding; including

through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposals: Annual Progress Report for Competitive Homeless Assistance Programs (APR).

OMB Control Number, if applicable: 2506–0145.

Description of the need for the information and proposed use: The APR provides information to HUD necessary for program monitoring and evaluation.

Agency form numbers, if applicable: HUD–40118.

Members of affected public: Grantees that have received HUD funding from 1987 to the present.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Activity	Number of respondents	Frequency of response (annually)	Response hours	Burden hours
Record-keeping	4,000	1	40	160,000
Report preparation	4,000	1	10	40,000
				200,000

Status of the proposed information collection: Information is currently being collected.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 27, 1999.

Joseph D'Agosta,

General Deputy, Assistant Secretary for Community Planning and Development.

[FR Doc. 99–23923 Filed 9–13–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4456–N–05]

Privacy Act of 1974; Notice of Planned Large-Scale Implementation of Computer Matching Program: Matching Tenant Data in Assisted Housing Programs

AGENCY: The Real Estate Assessment Center, HUD.

ACTION: Notice.

SUMMARY: During the fourth quarter of calendar year 1999, the Real Estate Assessment Center (REAC) plans to implement the computer matching program, Privacy Act of 1974; Notice of Matching Program: Matching Tenant Data in Assisted Housing Programs, published in the **Federal Register** on December 9, 1998, for all tenants included in HUD's tenant databases. This computer matching program primarily involves identifying potential income discrepancies, i.e., income that tenants did not report as required when applying for initial or continued rental assistance. Further, the program involves initiating administrative or legal actions to resolve income discrepancies and any excess rental assistance tenants received. The Secretary of HUD has assigned the REAC with responsibility for the computer matching program and the related income verification program.

FOR FURTHER INFORMATION CONTACT: Additional information regarding the large-scale computer matching and income verification program can be obtained from David L. Decker, U.S. Department of Housing and Urban Development, Real Estate Assessment Center, 451 Seventh Street, SW., Room 5156, Washington, DC 20410–5000.

SUPPLEMENTARY INFORMATION: Since 1996 HUD has used Federal tax return data received from the Social Security Administration and the Internal Revenue Service to conduct various computer matching and income verification projects. Those projects identified income discrepancies, i.e., income that tenants did not report as required when applying for initial or continued rental assistance. Further, the projects involve initiating administrative or legal actions to resolve income discrepancies. The most recent computer matching notice, Privacy Act of 1974; Notice of Matching Program: Matching Tenant Data in Assisted Housing Programs, published in the **Federal Register** on December 9, 1998, describes techniques used. The matching program covers rental assistance programs of HUD's Office of Housing and Office of Public and Indian Housing. To date, HUD has limited the computer matching to random samples of selected households and to 100 percent matching to tenants receiving rental assistance from specific public housing agencies.

To detect and deter abuses so that resources may be used to serve needy families, HUD plans to implement the computer matching nationwide during the fourth quarter of calendar year 1999. Computer matching results will be sent to tenants with potentially significant income discrepancies. Letters sent to tenants will request the tenants to disclose income data shown in the letter to their local rental assistance program administrators. A list of households with income discrepancies will be sent to the local administrators. HUD is precluded by law from disclosing the Federal tax return data to anyone other than the tenant. The REAC plans to publish instructions for administrators of HUD's rental assistance programs. The instructions will describe the processes to be used in resolving income discrepancies noted in the computer matching, and reporting on the same. HUD published a notice of proposed information collection on July 27, 1999.

Dated: August 9, 1999.

Barbara L. Burkhalter,

Deputy Director, Real Estate Assessment Center.

[FR Doc. 99–23922 Filed 9–13–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permits Issued

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of permits issued for the months of August 1998–August 1999.

Notice is hereby given that the U.S. Fish and Wildlife Service, Region 3, has taken the following action with regard to permit applications duly received in accordance with section 10 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1539, *et seq.*). Each permit listed as issued was granted only after it was determined that it was applied for in good faith, that by

granting the permit it will not be to the disadvantage of the endangered species, and that it will be consistent with the purposes and policy set forth in the Endangered Species Act of 1973, as amended.

Name	Permit number	Date issued
Stacey Halpern	TE 011591	7/15/99
Hey and Associates	TE 011563	6/18/99
Hey and Associates	TE 011563–1**	7/15/99
WDH Ecological Services	TE 011301	7/6/99
Missouri Department of Conservation	TE 010442	8/11/99
Amy Arnett & Svata Louda	TE 009673	5/20/99
Leon Hinz, Jr.	TE 009168	5/28/99
The Raptor Resource Project	TE 009163	5/18/99
The Nature Conservancy—MI Chapter	TE 007350–1*	4/27/99
The Nature Conservancy—MI Chapter	TE 007350–2**	6/8/99
The Nature Conservancy—MI Chapter	TE 007350–3**	7/28/99
The Nature Conservancy—MI Chapter	TE 007350–4**	8/26/99
Wolf Timbers	TE 007824	5/6/99
Steven Taylor	TE 006012	3/11/99
Steven Taylor	TE 006010	3/11/99
Julian Lewis	TE 006007	3/11/99
Timothy Krynak	TE 004812	3/9/99
Corps of Engineers—Rock Island Dist	TE 003872	2/16/99
Corps of Engineers—St. Paul Dist	TE 003379–1	2/26/99
Voyageurs National Park	TE 002722	1/22/99
Davey Resource Group	PRT 842849	8/12/98
Davey Resource Group	TE 842849–1**	5/6/99
Davey Resource Group	TE 842849–2**	7/8/99
The Organization for Bat Conservation	TE 842503*	8/7/98
The Organization for Bat Conservation	TE 842503–1**	3/26/99
Richard ffrench-Constant	PRT 842392–1**	3/26/99
The Raptor Resource Project	TE 842366–1**	5/3/99
The Raptor Resource Project	TE 842366–2**	5/19/99
Mark McGimsey	PRT 842312	8/7/98
Mark O'Brien	PRT 842309	8/4/98
Lynn W. Robbins	TE 840524–1*	3/4/99
Don R. Helms	PRT 839777–1**	9/10/98
Don R. Helms	TE 839777–2**	6/4/99
Don R. Helms	TE 839777–3**	8/10/99
John Schwegman	TE 839764–1**	3/24/99
John Whitaker	TE 839763–1*	5/17/99
John Whitaker	TE 839763–2**	7/19/99
Zambrana Engineering	PRT 838713	8/4/98
Ecological Specialists	PRT 838055–1**	9/8/98
Ecological Specialists	PRT 838055–2**	2/25/99
Ecological Specialists	TE 838055–3**	5/20/99
Ecological Specialists	TE 838055–4**	7/8/99
BHE Environmental, Inc	TE 834596–1*	5/6/99
R.D. Zande & Associates	TE 834589–1*	5/10/99
R.D. Zande & Associates	TE 834589–2**	7/22/99
Herbert M. Jones	TE 831781*	5/20/99
Cynthia Rebar	PRT 825177–1*	8/25/98
Daniel Hombach	TE 811008–2*	5/7/99
Francesca Cuthbert	TE 810834–2**	5/19/99
Francesca Cuthbert	TE 810834–3**	7/22/99
The Raptor Center	PRT 810396–2*	2/16/99
BHE Environmental, Inc	PRT 809227–10**	8/4/98
BHE Environmental, Inc	TE 809227–11**	5/17/99
BHE Environmental, Inc	TE 809227–12**	7/7/99
Daniel Soluk	PRT 805269–3**	9/1/98
Daniel Soluk	TE 805269–4**	6/16/99
Malacological Consultants	PRT 801471–8**	10/29/98
Malacological Consultants	TE 801471–9*	7/15/99

*Indicates permit renewal and amendment.
**Indicates permit amendment.

Additional information on these permit actions may be requested by contacting the U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, telephone 612/713–5343, during normal business hours (7:30am–4:00pm) weekdays.

Dated: September 8, 1999.

T.J. Miller,

Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 99–23958 Filed 9–13–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Information Collection for Part 13, Tribal Reassumption of Jurisdiction Over Child Custody Proceedings

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of emergency clearance and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) this notice announces that the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs approved an information collection request for emergency clearance under 5 CFR 1320.13. The information collection, Tribal Reassumption of Jurisdiction over Child Custody Proceedings, is cleared under OMB Control Number 1076–0112 through December 31, 1999. We are seeking comments from interested parties to renew the clearance.

DATES: Written comments must be submitted on or before November 15, 1999.

ADDRESSES: Comments should be sent to the Bureau of Indian Affairs, Division of Social Services, 1849 C Street, NW, MS–4660–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Interested persons may obtain copies of the information collection requests without charge by contacting Mr. Larry Blair, (202) 208–2479, Facsimile number (202) 208–5113.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Department has issued regulations prescribing procedures by which an Indian tribe may reassume jurisdiction over Indian child proceedings when a state asserts any jurisdiction. Tribes have the right to pursue this alternative because this action is authorized by the Indian Child Welfare Act, Public Law 95–608, 92 Stat. 3069, 25 U.S.C. 1918.

II. Request for Comments

The Department invites comments on:

(1) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility;

(2) The accuracy of the Bureau's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and,

(4) Ways to minimize the burden of the information collection on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other collection techniques or forms of information technology. Please note that your comments must include your name and address. The list of commentors will be available upon request in compliance with the Freedom of Information Act. If you wish this information withheld you must state it prominently at the beginning of your comments. We will protect your privacy to the extent regulations allow.

III. Data

(1) *Title of the Information Collection:* Tribal Reassumption of Jurisdiction Over Child Custody Proceedings.

(2) *Summary of Collection of Information:* The collection of information will ensure that the provisions of Pub. L. 95–608 are met.

(3) *Affected Entities:* Federally recognized tribes who submit tribal reassumption petitions for review and approval by the Secretary of the Interior.

(4) *Frequency of Response:* Annually.

(5) *Estimated Number of Annual Responses:* 2.

(6) *Estimated Time Per Application:* 8 hours.

(7) *Estimated Total Annual Burden Hours:* 16 hours.

Dated: August 30, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–23898 Filed 9–13–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proclaiming Certain Lands as Reservation for the Pueblo of Nambe Indians in New Mexico

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of reservation proclamation.

SUMMARY: The Assistant Secretary—Indian Affairs proclaimed approximately 44.00 acres, more or less, as an addition to the reservation of the Pueblo of Nambe Indians on September 3, 1999. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

FOR FURTHER INFORMATION CONTACT: Larry E. Scrivner, Bureau of Indian Affairs, Chief, Division of Real Estate Services, MS–4510/MIB/Code 220, 1849 C Street, NW, Washington, D.C. 20240, telephone (202) 208–7737.

SUPPLEMENTARY INFORMATION: A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), for the tract of land described below. The land was proclaimed to be an addition to and part of the reservation of the Pueblo of Nambe Indians for the exclusive use of Indians on that reservation who are entitled to reside at the reservation by enrollment or tribal membership.

Reservation of the Pueblo of Nambe Indians

Santa Fe County, New Mexico

All that part of the Cuyamungue Grant, projected Section 28, Township 19 North, Range 9 East, New Mexico Principal Meridian, Santa Fe County, New Mexico, which said part may be more particularly described as follows:

Beginning at a Brass Cap marking the Southwest corner of the Nambe Pueblo Grant, thence S. 50° 34′ 12″ W., 227.01 feet; thence, N. 26° 41′ 45″ W., 193.88 feet; thence, N. 23° 44′ 43″ W., 24.76 feet; thence, S. 58° 47′ 12″ W., 375.86 feet; thence, N. 19° 19′ 05″ W., 285.97 feet; thence, N. 70° 52′ 46″ E., 162.97 feet; thence, N. 18° 54′ 09″ W., 300.75 feet; thence, N. 54° 26′ 16″ W., 232.13 feet; thence, N. 63° 23′ 49″ W., 330.82 feet; thence, N. 19° 18′ 16″ W., 136.88 feet; thence, N. 76° 23′ 41″ E., 5.56 feet; thence, N. 52° 18′ 37″ W., 4.58 feet; thence, N. 50° 36′ 13″ W., 269.58 feet; thence, N. 73° 06′ 30″ W., 137.86 feet; thence, N. 19° 07′ 33″ W., 551.44 feet; thence, N. 70° 52′ 26″ E., 30.00 feet; thence, N. 19° 07′ 33″ W., 200.00 feet; thence, S. 70° 52′ 26″ W., 30.00 feet; thence, N. 19° 07′ 33″ W., 484.80 feet; thence, N. 84° 40′ 48″ E., 331.86 feet; thence, S. 30° 42′ 08″ E., 232.84 feet; thence, S. 35° 15′ 06″ E., 437.54 feet; thence, S. 71° 49′ 06″ E., 243.61 feet; thence, S. 89° 54′ 06″ E., 90.32 feet; thence, N. 86° 12′ 19″ E., 221.26 feet; thence, S. 00° 01′ 55″ E., 107.03 feet; thence, S. 89° 41′ 25″ E., 660.00 feet; thence, S. 00° 03′ 00″ W., 903.88 feet; thence, S. 00° 08′ 40″ E., 657.55 feet to the point and place of beginning. Being and intended to be "Tract 1" as shown on plat of survey entitled "Lot Line Adjustment Plat Prepared for Pueblo of Pojoaque Showing Lands within the Cuyamungue Grant, Projected Section 28, T19N, R9E, N.M.P.M. Santa Fe County, New Mexico," prepared by Edward M. Trujillo, N.M.P.L.S. #12352, dated 15 February 1996, as File #2843/DIV2, and recorded as Document No. 935,672 in Plat Book 327, Page 033, records of Santa Fe County, New Mexico. Containing 44 acres, more or less.

This proclamation does not affect title to the land described above, nor does it affect any valid existing easements for public roads and highways, for public utilities and for railroads and pipelines and any other rights-of-way or reservations of record.

Dated: September 3. 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–23896 Filed 9–13–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–160–7122–00–7509; COC–63006]

Notice of Realty Action; Non-Competitive Sale of Lands

AGENCY: Department of the Interior, Bureau of Land Management.

ACTION: Notice: designation of public lands located in Gunnison County, Colorado as suitable for disposal.

SUMMARY: Approximately .4 acres of public land located in Gunnison County, Colorado have been determined to be suitable for disposal by sale utilizing noncompetitive procedures, at not less than the fair market value. Fair market value is to be determined by an appraisal completed by a Federal or independent appraiser using the principals contained in the "Uniform Appraisal Standards for Federal Land Acquisitions". Authority for the sale is Section 203 and Section 209 of Public Law 94–579, the Federal Land Policy and Management Act of 1976.

FOR FURTHER INFORMATION: Additional information about this sale is available for review at the Bureau of Land management, Gunnison Field Office, 216 North Colorado, Gunnison, Colorado 81230, and attention: Barry Tollefson. Comments shall be submitted by October 30, 1999 to the Gunnison Field Office Manager. The Field Office Manager will review any adverse comments, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: The following described land has been determined to be suitable for disposal by sale utilizing non-competitive procedures.

New Mexico Principal Meridian, Colorado

T. 46 N., R. 2 W.,
Sec. 23, Lot 2
Containing approximately .40 acres more or less.

This land is being offered as a direct non-competitive sale to Mr. and Mrs. J.M. Schoenmakers, as private individuals. The Bureau of Land Management has determined a direct sale is necessary as the Schoenmakers own adjoining private property. Because of an error in a private survey conducted over 25 years ago, the Schoenmakers house is located on the adjoining public lands that have been surveyed to create the above described Lot 2. The direct sale will resolve this inadvertent unauthorized occupancy of said land. The land will not be offered for sale until at least 60 days after the publication of this notice in the **Federal Register**.

In the event of a sale, the mineral interest shall be conveyed simultaneously with the surface interest. The mineral interest being offered for conveyance has no known mineral value. Upon acceptance of a direct sale offer, the purchaser shall be required to make application for conveyance of those mineral interests. Upon publication of this notice in the **Federal Register**, the land will be segregated from all forms of appropriation under the public land laws, including the general mining laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication.

The patent, when issued would contain a reservation of a right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945. Any patent would also be subject to an existing overhead power line right-of-way authorization, COC–39175, currently held by Gunnison County Electric Association, a buried telephone cable right-of-way authorization, COC–48606, currently held by U.S. West and a second buried telephone cable right-of-way authorization, COC–54329 currently held by U.S. West.

Signed: September 3, 1999.

Barry A. Tollefson,

Gunnison Field Manager.

[FR Doc. 99–23832 Filed 9–13–99; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Environmental Impact Statement, Tonto National Monument, Arizona

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of intent to prepare an environmental impact statement for the General Management Plan, Tonto National Monument.

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service is preparing an environmental impact statement for the General Management Plan for Tonto National Monument. This statement will be approved by the Regional Director, Intermountain Region.

The plan is needed to guide the protection and preservation of the natural and cultural environments considering a variety of interpretive and recreational visitor experiences that enhance the enjoyment and understanding of the park resources.

The effort will result in a comprehensive general management plan that encompasses preservation of natural and cultural resources, visitor use and interpretation, roads, and facilities. In cooperation with local and national interests, attention will also be given to resources outside the boundaries that affect the integrity of park resources. Alternatives to be considered include a no-action and alternatives addressing the following:

To clearly describe specific resource conditions and visitor experiences in various management units throughout the park and To identify the kinds of management, use, and development that will be appropriate to achieving and maintaining those conditions.

A scoping brochure has been prepared outlining the issues identified to date. After, September 30, 1998, copies of that information can be obtained at the general management plan website: *http://www.nps.gov/planning/tont* or from, Superintendent, Tonto National Monument, HC02, Box 4602, Roosevelt, AZ 85545. Public workshop information is also available on the website. Comments on this notice must be received by October 30, 1999.

FOR FURTHER INFORMATION CONTACT: Contact Superintendent Lee Baiza, Tonto National Monument, HC02, Box 4602, Roosevelt, AZ 85545 520–467–2241.

Dated: September 3, 1999.

John A. King,

Act. Director, Intermountain Region.

[FR Doc. 99–23956 Filed 9–13–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to renew authority for the collection of information under 30 CFR part 800, Bond and insurance requirements for surface coal mining and reclamation operations under regulatory programs. The collection described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by October 14, 1999, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783, or electronically to jtreleas@osmre.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OSM has submitted a request to OMB to renew approval of the collection of information in 30 CFR part 800, Bond and insurance requirements for surface coal mining and reclamation operations under regulatory programs. OSM is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1029–0043, and is identified in 30 CFR 800.10.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on June 23, 1999 (64 FR 33505). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: Bond and Insurance Requirements for surface Coal Mining and Reclamation Operations Under Regulatory Programs—30 CFR 800.

OMB Control Number: 1029–0043.

Summary: The regulations at 30 CFR part 800 primarily implement section 509 of the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act0, which requires that persons planning to conduct surface coal mining operations first post a performance bond to guarantee fulfillment of all reclamation obligations under the approved permit. The regulations also establish bond release requirements and procedures consistent with section 519 of the Act, liability insurance requirements pursuant to section 507(f) of the Act, and procedures for bond forfeiture should the permittee default on reclamation obligations.

Bureau Form Number: None.

Frequency of Collection: On Occasion.

Description of Respondents: Surface coal mining and reclamation permittees and State regulatory authorities.

Total Annual Responses: 16,974.

Total Annual Burden Hours: 188,736 hours.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to OMB control number 1029–0043 in all correspondence.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210—SIB, Washington, DC 20240, or electronically to jtreleas@osmre.gov.

Dated: September 9, 1999.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 99–23856 Filed 9–13–99; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: September 15, 1999 at 2:00 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–857–858 (Preliminary) (Certain Paintbrushes from China and Indonesia)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on September 16, 1999.)
5. Inv. Nos. 104–TAA–7; AA1921–198–200; and 731–TA–3 (Review) (Sugar from the European Union; Sugar from Belgium, France, and Germany; and Sugar and Syrups from Canada)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on September 27, 1999.)
6. Outstanding action jackets: 1. Document No. EC–99–015: Approval of final report in Inv. No. 332–406 (Overview and Analysis of the Economic Impact of U.S. Sanctions with Respect to India and Pakistan).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: September 8, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–24037 Filed 9–10–99; 1:06 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 99–19]

William D. Levitt, D.O.; Revocation of Registration

On February 10, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to William D. Levitt, D.O. (Respondent) of Albuquerque, New Mexico. The Order to Show Cause notified Respondent of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BL1242750 pursuant to 21 U.S.C. 824(a)(2), 824(a)(3), and 824(a)(4), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that he has been convicted of a felony involving controlled substances, he is not authorized to handle controlled substances in New Mexico, and his continued registration is inconsistent with the public interest.

By letter dated March 26, 1999, Respondent, through counsel, filed a request for a hearing and the matter was docketed before Administrative Law Judge Gail A. Randall. On March 31, 1999, Judge Randall issued an Order for Prehearing Statements. In lieu of filing a prehearing statement, the Government filed a Motion for Summary Disposition on April 8, 1999, and on April 26, 1999, Respondent filed his response to the Government's motion.

On May 3, 1999, Judge Randall issued her Opinion and Recommended Decision, finding that Respondent lacks authorization to handle controlled substances in the State of New Mexico; granting the Government's Motion for Summary Disposition; and recommending that Respondent's DEA Certificate of Registration should be revoked if DEA precedent remains viable under the circumstances of this case. Neither party filed exceptions to her opinion, and on June 15, 1999, Judge Randall transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth.

The Deputy Administrator finds that the Government alleged in its Motion for Summary Disposition that Respondent is currently registered with DEA to handle controlled substances in the State of New Mexico, however he is currently without state authority to handle controlled substances in that state. According to the Government, Respondent's New Mexico controlled substance registration expired on March 31, 1998, and has not been renewed. As a result, the Government contended that DEA cannot maintain Respondent's DEA registration in New Mexico.

In its response to Government's motion, Respondent argued that although his New Mexico controlled substance registration has expired, he has filed a renewal application, but the New Mexico Board has failed to Act upon the application. Respondent asserted that he has filed a civil action in a New Mexico court requesting that the court order the New Mexico Board to act upon his application. Accordingly, Respondent argued that this administrative proceeding should be stayed pending the outcome of the state proceedings. However, Respondent did not deny that he was not currently authorized to handle controlled substances in New Mexico.

As Judge Randall noted, DEA has consistently held that it does not have the statutory authority under the Controlled Substances Act to issue a registration for a practitioner unless that practitioner is authorized by the state in which it practices to handle controlled substances. Pursuant to 21 U.S.C. 823(f), DEA is authorized to register a practitioner to dispense controlled substances only if the applicant is authorized to dispense controlled substances under the laws of the state in which it conducts business. Further, pursuant to 21 U.S.C. 802(21), a practitioner is defined as "a physician * * * or other person licensed, registered, or otherwise permitted, by the United States or the jurisdiction in which he practices * * * to distribute, [or] dispense * * *. controlled substance[s] in the course of professional practice."

Judge Randall further noted that DEA has also consistently held that a DEA registration may not be maintained if the applicant or registration lacks state authority to dispense controlled substances, even if such lack of state authorization was a result of the expiration of his/her state registration without further action by the state. See, e.g., Mark L. Beck, D.D.S., 64 FR 40899 (1999); Gary D. Benke, M.D., 58 FR 65734 (1993); Carlyle Balgobin, D.D.S., 58 FR 46992 (1993); Charles H. Ryan, M.D., 58 FR 14430 (1993); James H. Nickens, M.D., 57 FR 59847 (1992).

However, Judge Randall expressed concern regarding the Government's reliance on 21 U.S.C. 824(a)(3) to support the summary revocation of a registration if the registrant's state authorization has expired. This section states that:

> A registration pursuant to section 823 of this title to * * * dispense a controlled substance * * * may be suspended or revoked * * * upon a finding that the registration (3) has had his State License or registration suspended, revoked, or denied by competent State authority and is no longer authorized by State law to engage in the * * * dispensing of controlled substances * * * or has had the suspension, revocation, or denial of his registration recommended by competent State authority.

21 U.S.C. 824(a)(3).

As Judge Randall noted, New Mexico has not suspended, revoked, or denied Respondent's state authority to handle controlled substances, nor is there any evidence that a competent state authority has recommended that such action be taken against Respondent's state authorization. Rather, Respondent's state controlled substance registration has expired, and the state has failed to act upon his renewal application. Judge Randall concluded that "under these circumstances, the statutory provisions do not seem to be met."

Therefore, Judge Randall stated that:

> [A]lthough contrary to current DEA precedent, I have difficulty concluding that the Government has triggered section 824(a)(3) under these circumstances. Consistent with the plain language of the statute, the more viable resolution would be to deny the Government's motion due to the state's failure to act in this case, and to order the reinstatement of the Order for Prehearing Statements. In that way, this case would continue to hearing on all alleged bases for revocation. However, such a resolution would be contrary to current DEA precedent. Accordingly, the Deputy Administrator would need to intervene and order such an outcome here.

As a result, Judge Randall found that consistent with DEA precedent, the only relevant issue is whether Respondent is authorized to handle controlled substances in New Mexico; that it is undisputed that Respondent is not currently authorized to handle controlled substances in New Mexico; and that as a result, a Motion for Summary Disposition is properly granted.

It is well settled that where there is no material question of fact involved, or when the facts are agreed upon, there is no need for a plenary, administrative hearing. Congress did not intend for administrative agencies to perform meaningless tasks. See Gilbert Ross, M.D., 61 FR 8664 (1996); Dominick A. Ricci, M.D., 58 FR 51104 (1993); Philip E. Kirk, M.D., 48 FR 32887 (1983), aff'd sub nom Kirk v. Mullen, 749 F.2d 297 (6th Cir. 1984).

Consequently, Judge Randall recommended that if the Deputy Administrator determines that the DEA precedent remains viable, Respondent's DEA Certificate of Registration should be revoked.

The Deputy Administrator agrees with Judge Randall that the plain language of U.S.C. 824(a)(3) states that a DEA registration may be revoked if a registrant's state authorization is revoked, suspended, or denied by competent state authority. However, this leaves DEA in a dilemma since pursuant to 21 U.S.C. 823(f), DEA can only register a practitioner if he is authorized by the state to handle controlled substances, and there is no provision in the statute to deal with situations where a practitioner is no longer authorized by the state, yet his state registration was not revoked, suspended, or denied.

Since state authorization was clearly intended to be a prerequisite to DEA registration, Congress could not have intended for DEA to maintain a registration if a registrant is no longer authorized by the state in which he practices to handle controlled substances due to the expiration of his state license. Therefore, it is reasonable for DEA to interpret that 21 U.S.C. 824(a)(3) would allow for the revocation of a DEA Certificate of Registration where, as here, a registrant's state authorization has expired.

Therefore, the Deputy Administrator concludes that Respondent is not currently authorized to handle controlled substances in New Mexico, and that consistent with DEA precedent, DEA cannot maintain his registration in that state.

Since DEA does not have the authority to maintain Respondent's DEA registration because he is not currently authorized to handle controlled substances in New Mexico, the Deputy Administrator concludes that it is unnecessary to determine whether Respondent's DEA registration should be revoked based upon the other grounds alleged in the Order to Show Cause.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BL 1242750, previously issued to William D. Levitt, D.O., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration, be, and they hereby are, denied. This order is effective October 14, 1999.

Dated: August 24, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–23668 Filed 9–13–99; 8:45 am]

BILLING CODE 4410–09–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meetings

TIME AND DATE: 2:30 p.m., Thursday, September 16, 1999.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed Amendment to IRPS 99–1: Establishing Low-Income Member Service Requirement.
2. Two (2) Requests from Federal Credit Unions to Convert to Community Charters.
3. Request from a Corporate Federal Credit Union for a National Field of Membership Amendment.
4. Request for a Merger of Two Corporate Federal Credit Unions.
5. Proposed Rule: Amendment to Part 701, NCUA's Rules and Regulations, Share Overdraft Accounts.
6. Proposed Rule: Amendments to Parts 724 and 745, NCUA's Rules and Regulations, Individual Retirement Accounts in Puerto Rico Federal Credit Unions.
7. Board Resolution to Clarify Board Policy and Agency Procedures on Community Charter Conversions as per IRPS 99–1.

RECESS: 3:45 p.m.

TIME AND DATE: 4:00 p.m., Thursday, September 16, 1999.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Action under Part 704 of NCUA's Rules and Regulations. Closed pursuant to exemption (8).
2. Two (2) Personnel Matters. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 99–24036 Filed 9–10–99; 1:01 pm]

BILLING CODE 7535–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–7580]

Notice of Consideration of Amendment Request for Construction of a Containment Cell at Fansteel Facility in Muskogee, Oklahoma and Opportunity for Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of consideration of amendment request for construction of a containment cell at Fansteel Facility in Muskogee, Oklahoma and opportunity for hearing.

The U.S. Nuclear Regulatory Commission (the NRC) is considering an amendment to Source Material License No. SMB–911, issued to Fansteel, Inc. (the licensee), for construction of a low-level, radioactive waste (LLW) disposal cell (containment cell) onsite at Fansteel's facility in Muskogee, Oklahoma. The containment cell would be used for permanent disposal of Fansteel's own LLW, i.e., contaminated soil and soil-like materials, generated from past and current metal recovery operations at the Muskogee, Oklahoma facility. The licensee requested the amendment in a letter dated August 13, 1999.

The Fansteel site is in active operation for the recovery of tantalum, niobium, scandium, uranium, thorium, and other metals of commercial value from process waste residues. Process waste residues and contaminated soil at the Fansteel site are the result of past operations involving acid digestion of foreign and domestic ores and slags containing natural uranium and thorium. The licensee is not scheduled to terminate License SMB–911 until after 10 to 12 years of additional waste residue reprocessing.

The contaminated soil onsite consists of over 0.68 million cubic feet of soil and soil-like material, e.g., building rubble, that are contaminated with natural uranium and thorium. Metal recovery operations are not feasible on this large volume of dilute, contaminated soil; therefore, these materials require disposal at an appropriate LLW disposal facility. The licensee has proposed to construct a containment cell, located at the southwest of the Fansteel property for disposal of its LLW. In accordance with the NRC's criteria for license termination (10 CFR 20.1403), the containment cell area would, after completion of disposal, be released for restricted use and be subject to long-

term monitoring, maintenance, and surveillance.

The proposed containment cell is to be buried beneath the surface and is comprised of a monolith and an engineered cover. The monolith consists of solidified, contaminated soil and rubble. The solidification process involves mixing the contaminated materials with cement and hydrated calcium chloride, forming a solid, concrete-like monolith. The monolith is to be protected from the surface environment by means of an engineered cover, comprising layers of sand, gravel, riprap (crushed stone), and soil.

Approval of the proposed action would permit Fansteel to excavate the cell area, create the waste monolith, cover the monolith, and release the site area for restricted use under 10 CFR 20.1403.

Prior to the issuance of the proposed action, the NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and the NRC's regulations. These findings will be documented in a Safety Evaluation Report and an Environmental Assessment or Environmental Impact Statement (if necesssary). If the proposed action is approved, it will be documented in an amendment to SMB–911.

The NRC hereby provides that this is a proceeding on an application for amendment of a license falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules and practice for domestic licensing proceedings in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of the **Federal Register** notice.

The request for a hearing must be filed with the Office of Secretary either:

1. By delivery to the Docketing and Service Branch of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45am and 4:15pm, federal workdays; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemaking and Adjudication Staff.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How the interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h).

3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail to:

1. The applicant, Fansteel, Inc., Number Ten Tantalum Place, Muskogee, OK, 74403–9296; Attention: Mr. John J. Hunter; and

2. The NRC staff, by delivering to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Questions with respect to this action should be referred to NRC's project manager for Fansteel, Inc., Michael Adjodha, at (301) 415–8147 or by electronic mail at mea1@nrc.gov.

For further details with respect to this action, the application for amendment request is available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 8th day of September, 1999.

Theodore S. Sherr,

Chief, Licensing and International Safeguards Branch, Division of Fuel Cycle Safety and Safeguards, NMSS.

[FR Doc. 99–23905 Filed 9–13–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Applications for Licenses To Export Nuclear Material

Pursuant to 10 CFR 110.70 (b) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following application for an export license. Copies of the application are on file in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, NW, Washington, DC.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the applications for licenses to export nuclear grade graphite and heavy water as defined in 10 CFR part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning the application follows.

NRC EXPORT LICENSE APPLICATION

Name of Applicant, date of application, date received, application no.	Description of items to be exported	Country of destination
Cambridge Isotope Laboratories, Inc., 08/30/99, 08/31/99, XMAT0398.	Heavy Water to Canada for upgrading.	Canada.

Dated this 8th day of September 1999, at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Janice Dunn Lee,

Director, Office of International Programs.

[FR Doc. 99–23904 Filed 9–13–99; 8:45 am]

BILLING CODE 7590–01–P

POSTAL RATE COMMISSION

[Docket No. C99–4; Order No. 1260]

Complaint Concerning Bulk Parcel Return Service Fee

AGENCY: Postal Rate Commission.

ACTION: Notice of a new complaint docket.

SUMMARY: The Commission is instituting a docket to consider a complaint regarding the consistency of the $1.75 fee for Bulk Parcel Return Service (BPRS) fee with postal law and policies. It is also authorizing settlement discussions and discovery. These steps will foster expeditious consideration of issues raised in the complaint.

DATES: Participants may explore the potential for settlement until September 17, 1999. If settlement discussions are not productive, complainant shall file, on or about September 17, 1999, an estimate of time needed to prepare its case. Discovery may be initiated through September 17, 1999.

ADDRESSES: Send comments regarding this document to the attention of Margaret P. Crenshaw, Secretary, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001, 202–789–6824.

SUPPLEMENTARY INFORMATION: In order no. 1260, issued September 3, 1999, the Commission denied the motion of the United States Postal Service to dismiss a complaint and instituted formal proceedings. The complaint had been filed June 9, 1999, by the Continuity Shippers Association (CSA) against the Postal Service pursuant to 39 U.S.C. 3662. *See* Complaint Concerning Charges and Practices Applied to Ancillary Services for Standard (A) Merchandise Mail (Complaint). The complaint contends that the rate charged for undeliverable merchandise returned to the sender under Bulk Parcel Return Service (BPRS) is excessive and inconsistent with the cost and non-cost criteria of the Postal Reorganization Act (Act). Id. at 1. The complaint further maintains that BPRS offered to Standard (A) mailers does not conform to title 39 policies. Ibid.

In response, the Postal Service argues that the attributable costs and mark-up for BPRS accurately reflect both the underlying costs and the special service provided to mailers by BPRS. Answer of United States Postal Service (Answer), July 9, 1999, at 4–5. The Service suggests that the complainant has reached erroneous conclusions based in part on a misunderstanding of the cost methodology of a BPRS cost study. Id. at 4. Accordingly, the Postal Service requests that the Commission dismiss the complaint. Id. at 5. Although the Postal Service has not filed a formal motion to dismiss the complaint, it does request dismissal of the complaint in its answer, primarily based on the argument that complainant's allegations of discrimination and other violations of the Act are unsupported. Answer at 5. As such, the Commission construes the Postal Service's answer as effectively a motion to dismiss the complaint. For the reasons discussed herein, the Commission denies the Service's motion and initiates formal proceedings to consider the complaint.

Background

Under the Domestic Mail Classification Schedule (DMCS), the Postal Service will return to the sender properly endorsed merchandise which has been ordered by consumers but is undeliverable as addressed. For merchandise mail pieces weighing less than one pound that are mailed at bulk Standard (A) rates, qualifying senders may choose to have the merchandise returned via Bulk Parcel Return Service (BPRS). Prior to institution of BPRS, senders could have Standard (A) merchandise returned at the Standard (A) single piece rate. BPRS was implemented on October 12, 1997, and charges the flat fee of $1.75 for each eligible Standard (A) parcel.

Substance of the Complaint

This complaint concerns the Postal Service's return service for merchandise mailed at the bulk Standard (A) rates and electing to use BPRS at the rate of $1.75 per piece. Complainant CSA alleges that the BPRS rate is excessive and in contravention of the Act. Complaint at 1. (CSA states that it is an interested party representing Standard (A) mailers who use BPRS. Complaint at 2. In its answer, the Postal Service characterizes the complainant as "one of a small subset of Standard (A) mailers with particular types of mail, mailing practices, business needs, and experience with the Postal Service, which may differ from those of other Standard (A) mailers." Answer at 2.) CSA bases its allegations in substantial part on a comparison of the BPRS rate (and cost coverage) with the generally lower Special Standard (B) rates. According to CSA, this comparison is valid as: (1) Special Standard (B) and Standard (A) parcels share several significant characteristics, including the manner in which the Postal Service processes, transports and delivers these mail pieces; (2) certain mail pieces which are eligible for the BPRS rate also are eligible to be returned to sender at the lower Special Standard (B) rates; and (3) the Special Standard (B) attributable cost was used by the Postal Service as a proxy for the BPRS attributable cost in setting the BPRS rate. Id. at 2–3. (Special Standard (B) mail need not weigh more than 16 ounces. CSA claims that many parcels that weigh less than one pound and are eligible for Special Standard (B) rates are mailed initially at bulk Standard (A) rates, but are returned to the sender under the lower, single-piece Special Standard (B) rates.) Complaint at 2.

In support of its claim that the rates charged by BPRS are not "fair and equitable" and therefore contravene 39 U.S.C. 3622(b)(1) and 3623(c)(1), CSA cites the October 1998 Postal Service cost study on BPRS. Id. at 4–5. That study, which was completed as a requirement of the original BPRS classification case (docket no. MC97–4) indicated a BPRS attributable cost of $0.93 per piece. Id. at 4. With a per piece rate of $1.75 and a per piece attributable cost of $0.93, the mark-up for BPRS would be $0.82 or 188 percent cost coverage, which CSA argues is unjustifiably higher than the current cost coverage of 106 percent for Special Standard (B) mail. Id. at 4–5.

Note: CSA alleges that, on or around January 1999, the Postal Service announced that the BPRS cost study was flawed, as the attributable cost had been determined using an incorrect methodology. Complaint at 4, n. 1. The Service further stated that application of the correct methodology yields an attributable cost of $1.07 for BPRS mail pieces. Ibid. CSA maintains that this revised attributable cost figure, which remains undocumented despite requests, is the same as that calculated for Special Standard (B) in the Docket No. R97–1 rate case, and results in a BPRS cost coverage of 164 percent. Ibid. CSA argues that the widely divergent rates imposed for the BPRS and Special Standard (B) when the costs are the same are in contravention of 39 U.S.C. 3622(b)(3), which requires that each mail type bear only its direct and indirect attributable costs, plus a reasonable allocation of institutional costs. Complaint at 5.

As relief, CSA requests that the Commission institute proceedings to review the adequacy and accuracy of the cost studies underlying the BPRS rate and to consider whether the BPRS rate properly reflects the service's costs and its value to the sender and recipient. Id. at 5–6; CSA's Request for Permission to File a Response Opposing the Postal Service's Suggestion Not to Hold Hearings on the Complaint Regarding the Charges for the BPRS (CSA Opposition), August 18, 1999, at 2.

Postal Service Answer and Motion To Dismiss

The Postal Service's answer denies complainant's allegations that the BPRS rate violates the Act, and also disputes the legitimacy of CSA's comparison of BPRS and Special Standard (B) services. Answer of United States Postal Service (Answer) at 1–4. The answer further asserts that the complaint should be dismissed as complainant: (1) Misunderstands the original BPRS cost study's methodology, which ultimately results in the erroneous conclusion that the costs of the two subclasses are the same; (2) makes the incorrect assumption that BPRS and Special Standard (B) cost coverages should be

equivalent, which ignores the differences between the two mail types and the correct application of the non-cost factors of the Act; and (3) fails to consider "the import of differences between the Postal Service's volume variable analysis and the Commission's attributable cost methodology with respect to the BPRS fee," where a recalculation of the October cost study using Commission R97–1 methodology results in a cost coverage very close to the Commission's original recommended figure (163.5 versus 156 percent). Id. at 4–5.

The answer presents arguments against the validity of complainant's claim, and requests that the Commission dismiss the complaint. The Commission construes the answer to include a Postal Service motion to dismiss the Complaint, and accepts the responsive CSA Opposition.

Statutory Authority To Consider Complaint and Procedural Process

Section 3662 of title 39 of the United States Code provides in relevant part:

> Interested parties who believe the Postal Service is charging rates which do not conform to the policies set out in this title * * * may lodge a complaint with the Postal Rate Commission in such form and in such manner as it may prescribe. The Commission may in its discretion hold hearings on such complaint.

Section 3001.82 of the Commission's regulations, which addresses the scope and nature of complaints, indicates that the Commission shall entertain complaints which clearly raise an issue concerning whether or not rates or services contravene the policies of the Postal Reorganization Act.

In the instant docket, CSA has filed a complaint alleging that the current BPRS rate contravenes title 39 policies. While the Postal Service offers varying explanations for why complainant is mistaken in its assertion, the Service has failed to provide adequate justification for dismissal of the complaint without hearings. Accordingly, the Commission will consider the complaint, although it notes that the recent establishment of the BPRS rate through a settlement agreed to by CSA, and the expectation that an omnibus rate request will be submitted in the near future, would seem to provide a situation where it may be possible for the parties to pursue resolution and settlement of the complaint through informal procedures, as provided for in rule 85 of the Commission's rules of practice.

The Commission will allow until September 17, 1999 for participants to explore the potential for settlement. Discovery may be initiated during this period. If settlement discussions are not productive, complainant is directed to provide a statement, on or about September 17, 1999, estimating the amount of time it will require to develop and file a case-in-chief. A procedural schedule and special rules of practice, if any, will be considered after this estimate has been submitted.

Directives

Accordingly, the Commission orders that proceedings in conformity with 39 U.S.C. 3624 shall be held in this matter. It also denies the Service's suggestion (included within the answer of United States Postal Service, filed on July 9, 1999) that the complaint should be dismissed. The Commission will sit *en banc* in this proceeding. Ted P. Gerarden, director of the Commission's office of the consumer advocate, is designated to represent the interests of the general public in docket no. C99–4. Mr. Gerarden is also charged with acting as settlement coordinator, and in this capacity shall encourage parties to reach settlement on this complaint, as provided for under rule 85 of the Commission's rules of practice and procedure. Complainant shall provide a statement, on or about September 17, 1999, estimating the amount of time it will require to develop and file a direct case in this proceeding. The Commission also directs the Secretary of the Commission to arrange for publication of this notice and order in the **Federal Register** in a manner consistent with applicable requirements.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 99–23674 Filed 9–13–99; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Pension Plan Reports.

(2) *Form(s) submitted:* G–88p, G–88r, G–88r.1.

(3) *OMB Number:* 3220–0089.

(4) *Expiration date of current OMB clearance:* 11/30/1999.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Business or other-for-profit.

(7) *Estimated annual number of respondents:* 500.

(8) *Total annual responses:* 2,240.

(9) *Total annual reporting hours:* 300.

(10) *Collection description:* The Railroad Retirement Act provides for payment of a supplemental annuity to a qualified railroad retirement annuitant. The collection obtains information from the annuitant's employer to determine (a) the existence of a railroad employer pension plans and whether such plans, if they exist, require a reduction to supplemental annuities paid to the employer's former employees and (b) the amount of supplemental annuities due railroad employees.

Additional Information or Comments

Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and the OMB reviewer, Laurie Schack (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 99–23835 Filed 9–13–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41838; File No. ATS–EXEMPT–99–01]

Notice of Order Granting BondNet an Exemption From Compliance With Regulation ATS Until October 21, 1999

September 7, 1999.

On May 7, 1999 the Commission issued an Order granting BondNet, an alternative trading system operated as a division of the Bank of New York, an exemption from Regulation ATS until October 21, 1999 pursuant to Rule 301(a)(5) of the Securities Exchange Act of 1934. The Order is attached as Exhibit A.

Margaret H. McFarland,

Deputy Secretary.

Exhibit A

SECURITIES AND EXCHANGE COMMISSION

[File No. ATS–EXEMPT–99–01]

May 7, 1999.

Order Granting BondNet an Exemption From Compliance With Regulation ATS Until October 21, 1999

BondNet, an alternative trading system operated as a division of the Bank of New York, filed an application for a temporary exemption from Regulations ATS pursuant to Rule 301(a)(5) of the Securities Exchange Act of 1934 ("Exchange Act").

Under the new regulatory framework applicable to exchanges and alternative trading systems, BondNet is required to register as an exchange, or register as a broker-dealer and comply with Regulation ATS. The Commission notes that the Bank of New York is currently operating subject solely to regulation by banking authorities, and consequently, BondNet must undertake the registration process with the Commission and the National Association of Securities Dealers, Inc. to comply with Regulation ATS. Under Rule 301(a)(5) of the Exchange Act, the Commission may, by order, grant an exemption from the requirements of Regulation ATS after determining that such an order is consistent with the public interest, the protection of investors, and the removal impediments to, and perfection of the mechanisms of, a national market system.

The Commission has reviewed BondNet's application for a temporary exemption from Regulation ATS to allow it time to fully comply with that rule's requirements. The Commission finds that such an exemption is consistent with the public interest, the protection of investors, and the removal of impediments to, and perfection of the mechanisms of, a national market system and has determined to grant BondNet an exemption from Regulation ATS until October 21, 1999.

The Commission finds good cause to grant BondNet's request for confidential treatment for 120 days from the date of issuance of this Order.

It is therefore ordered, pursuant to Rule 301(a)(5) of the Exchange Act, that BondNet's exemption from Regulation ATS until October 21, 1999, be granted.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–23826 Filed 9–13–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23998; No. 812–11512]

Ohio National Life Insurance Company, et al.; Notice of Application

September 8, 1999.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order pursuant to Section 26(b) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: Applicants seek an order approving the substitution of: (a) Shares of Small Cap Growth Portfolio of Ohio National Fund, Inc. ("ON Small Cap Growth Portfolio") for shares of Montgomery Variable Series: Small Cap Opportunities Fund ("Montgomery Small Cap Fund"); and (b) shares of Lazard Retirement Emerging Markets Portfolio ("Lazard Emerging Markets Portfolio") for shares of Montgomery Variable Series: Emerging Markets Fund ("Montgomery Emerging Markets Fund").

APPLICANTS: The Ohio National Life Insurance Company ("Ohio National"), Ohio National Variable Account A ("Variable Account A"), Ohio National Life Assurance Corporation ("ONLAC"), and Ohio National Variable Account R ("Variable Account R").

FILING DATES: The application was filed on February 17, 1999, and amended and restated on July 26, 1999, and August 27, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission no later then 5:30 p.m. on September 29, 1999, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants, Ohio National Life Insurance Company, One Financial Way, Cincinnati, Ohio 45242.

FOR FURTHER INFORMATION CONTACT: Paul G. Cellupica, Senior Counsel, or Kevin M. Kirchoff, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel (202) 942–8090).

Applicants' Representations

1. Ohio National was organized as a stock company under the laws of Ohio in 1909. It issues annuities in 47 states, the District of Columbia and Puerto Rico. ONLAC, a wholly-owned subsidiary of Ohio National, is a stock life insurance company organized under the laws of Ohio in 1979.

2. Variable Account A was established in 1969 by Ohio National as a separate account under Ohio law for the purpose of funding variable annuity contracts issued by Ohio National. Five of the variable annuity contracts are affected by the application ("VA Contracts"). Variable Account R was established in 1985 for the purpose of funding variable life insurance contracts issued by ONLAC. One of the variable life insurance contracts is affected by this application ("VLI Contract," collectively with the VA Contracts, the "Contracts"). Variable Account A and Variable Account R are registered as unit investment trusts under the Act.

3. Purchase payments for the Contracts are allocated to one or more subaccounts of Variable Account A or Variable Account R ("Subaccounts"). The Contracts permit allocations of accumulation value to up to 10 of the available Subaccounts that invest in specific investment portfolios ("Portfolios") of Underlying mutual funds ("Underlying Funds").

4. The Contracts permit transfers of accumulation value from one Subaccount to another at any time prior to annuitization. No sales charge applies to a transfer of accumulation value among the Subaccounts. For three of the VA Contracts, the first transfer in any calendar month is free; each additional transfer in a calendar month is subject to a $10 charge. For the two remaining VA Contracts and the VLI Contract, the first four transfers during each contract year are free; each additional transfer is subject to a $3 charge. Although there currently is no limit on the number of transfers that may be made, the Contracts permit Ohio National or ONLAC, as applicable, to limit the number, frequency, method or amount of transfers. Transfers from any Subaccount on any one day may be

limited to 1% of the previous day's total net assets of the Portfolio if Ohio National, ONLAC or the Underlying Fund believe that the Portfolio might otherwise be damaged.

5. Applicants propose the following substitutions: (a) The substitution of shares of ON Small Cap Growth Portfolio for shares of Montgomery Small Cap Fund and (b) the substitution of shares of Lazard Emerging Markets Portfolio for shares of Montgomery Emerging Markets Fund.

6. Montgomery Small Cap Fund is a separate investment portfolio of The Montgomery Funds III ("Montgomery Funds"), an open-end management investment company registered under the Act, and is currently an investment option under three of the VA Contracts. Montgomery Small Cap Fund is managed by Montgomery Asset Management, LLC ("Montgomery"), a subsidiary of Commerzbank AG.

7. Montgomery Small Cap Fund's investment objective is to seek capital appreciation by investing primarily in equity securities, usually common stock, of domestic companies having market capitalizations of less than $1 billion. The expense ratio of Montgomery Small Cap Fund for 1998 was 1.50%. Absent voluntary fee waivers by Montgomery, that expense ratio would have been 3.71%. Absent voluntary fee waivers by Montgomery, that expense ratio would have been 3.71%. The total return of Montgomery Small Cap Fund (exclusive of Contract or Subaccount charges) was −7.20% for the period since its inception on May 1, 1998, through December 31, 1998.

8. Montgomery and Montgomery Funds intend to cease offering shares of Montgomery Small Cap Fund due to the small amount of assets and the corresponding absence of economies of scale. Montgomery has indicated that the small size of Montgomery Small Cap Fund makes it difficult to manage successfully and makes it difficult to comply with diversification requirements applicable to variable insurance products under the Internal Revenue Code of 1986, as amended, and to mutual funds under the Act. On May 1, 1999, Ohio National and ONLAC ceased permitting allocations by new contractowners of accumulation value to the Subaccounts that invest in Montgomery Small Cap Fund.

9. ON Small Cap Growth Portfolio is another investment option currently available under the VA Contracts which also offer Montgomery Small Cap Fund. The investment adviser of ON Small Cap Growth Portfolio is Ohio National Investments, Inc. The sub-adviser that manages the investments of ON Small Cap Growth Portfolio is Robertson Stephens Investment Management, L.P.

10. The investment objective of ON Small Cap Growth Portfolio is capital appreciation. ON Small Cap Growth Portfolio invests in an actively managed portfolio of equity securities, principally common stocks, of companies that in the opinion of its sub-adviser have the potential, based on superior products or services, operating characteristics, and financing capabilities, for more rapid growth than the over-all economy. Up to 30% of its assets may be invested in foreign securities. The expense ratio of ON Small Cap Growth Portfolio for 1998 was 1.30%. The total return of ON Small Cap Growth Portfolio (exclusive of Contract or Subaccount charges) was 4.62% for the period since its inception on May 1, 1998, through December 31, 1998.

11. Montgomery Emerging Markets Fund (collectively with Montgomery Small Cap Fund, the "Eliminated Portfolios") is a separate investment portfolio of Montgomery Funds and is currently an investment option under the Contracts. Montgomery Emerging Markets Fund is managed by Montgomery.

12. Montgomery Emerging Markets Fund's investment objective is to seek capital appreciation by investing primarily in equity securities of companies in countries having economies and markets generally considered by the World Bank or the United Nations to be emerging or developing. The expense ratio of Montgomery Emerging Markets Fund for 1998 was 1.75%. Absent voluntary deferral of fees and absorption of expenses by Montgomery, that expense ratio would have been 1.80%. The total return of Montgomery Emerging Markets Fund (exclusive of Contract or Subaccount charges) was −37.53% for the year ended December 31, 1998, and the average annual total return since its inception on February 2, 1996, through December 31, 1998, was −13.15%.

13. On May 1, 1999, Ohio National and ONLAC ceased permitting allocations by new contractowners of accumulation value to the Subaccounts that invest in Montgomery Emerging Markets Fund.

14. Lazard Emerging Markets Portfolio (collectively with ON Small Cap Growth Portfolio, the "Substitute Portfolios") is a separate investment portfolio of Lazard Retirement Series, Inc., an open-end management investment company registered under the Act. The Lazard Emerging Markets Portfolio has been available under the Contracts since May 1, 1999. Lazard Emerging Markets Portfolio is managed by Lazard Asset Management ("Lazard"), a division of Lazard Freres & Co. LLC.

15. Lazard Emerging Market Portfolio's investment objective is to seek capital appreciation. It invests primarily in equity securities of non-United States issuers located, or doing significant business, in emerging market countries that Lazard considers inexpensively priced relative to the return on total capital or equity. The expense ratio of Lazard Emerging Markets Portfolio for 1998 was 1.80%. Absent voluntary expense reductions, that expense ratio would have been 14.37%. The total return of Lazard Emerging Markets Portfolio for the year ended December 31, 1998 was −22.85%. Its average annual total return since its inception on November 4, 1997, through December 31, 1998, was −26.48%.

16. Applicants represent that each substitution will take place at the relative asset values determined on the date of the substitution in accordance with Section 22 of the Act and Rule 22c–1 thereunder. There will be no financial impact to any contractowner. Each substitution will be effected by having each Subaccount that invests in the Eliminated Portfolio redeem its shares of the Eliminated Portfolio at the net asset value calculated on the date of the substitutions and purchase shares of the substitute Portfolio at net asset value on the same date.

17. Immediately following the substitutions, Ohio National and ONLAC will combine: (a) The Montgomery Small Cap and ON Small Cap Growth Subaccounts that each hold shares of the ON Small Cap Growth Portfolio after the substitution; and (b) the Montgomery Emerging Markets and Lazard Emerging Markets Subaccounts that each hold shares of the Lazard Emerging Markets Portfolios after the substitution. Ohio National and ONLAC will reflect this treatment in disclosure documents for Variable Account A and Variable Account R, respectively, and in the financial statements and Form N–SAR annual report filed by Variable Account A and Variable Account R.

18. Applicants represent that the proposed substitutions were described in supplements to the prospectus for the Contracts ("Stickers") filed with the Commission and mailed to contractowners. The Stickers gave contractowners notice of the substitutions and describe the reasons for engaging in the substitutions. The Stickers also informed contractowners that no additional amounts may be allocated to the Subaccounts that invest in the Eliminated Portfolios on or after the date of substitution. In addition, the Stickers informed affected contractowners that they will have one opportunity to reallocate accumulation value:

(a) Prior to the substitutions, from the Subaccounts investing in the Eliminated Portfolios; or

(b) For 30 days after the substitutions, from the Subaccounts investing in the Substitute Funds, to Subaccounts investing in other Portfolios available under the Contracts, without the imposition of any transfer charge or limitation.

19. A transfer out of the Subaccounts investing in the Eliminated Portfolios from the date of the notice through the date of the substitutions will not: (a) Be assessed a transfer fee; (b) count as a free transfer; or (c) be subject to any limitation relating to transfers that result in more than a reduction of an Underlying Fund's assets by 1% or more.

20. Similarly, for a period of 30 days after the substitutions, a transfer out of a Subaccount that invests in a Substitute Portfolio of accumulation value moved to that Subaccount as a result of the substitutions will not: (a) Be assessed a transfer fee; (b) count as a free transfer; or (c) be subject to any limitation relating to transfers that result in more than a reduction of an Underlying Fund's assets by 1% or more.

21. Applicants represent that the prospectuses for the Contracts reflect the substitutions. Each contractowner will have been provided prospectuses for the Substitute Portfolios before the substitutions. Within five days after the substitutions, Ohio National and ONLAC will send to contractowners written confirmation that the substitutions have occurred.

22. Applicants represent that Ohio National and ONLAC will pay all fees and expenses of the substitutions, including legal, accounting, brokerage commissions and other fees and expenses; none will be borne by contractowners. Affected contractowners will not incur any fees or charges as a result of the substitutions, nor will their rights or the obligations of Ohio National or ONLAC under the Contracts be altered in any way. The proposed substitutions will not cause the fees and charges under the Contracts currently being paid by contractowners to be greater after the substitutions than before the substitutions.

23. Applicants state that their request satisfies the standards for relief of Section 26(b) because:

(a) The substitutions involve Portfolios with substantially similar investment objectives;

(b) After each substitution, affected contractowners will be invested in a Portfolio whose performance has been better on a historical basis; and

(c) After each substitution affected contractowners will be invested in a Portfolio whose expenses have been less on a historical basis.

Applicants' Legal Analysis

1. Applicants request an order pursuant to Section 26(b) of the Act approving the substitutions. Section 26(b) of the Act makes it unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission approves the substitution. The Commission will approve such a substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants assert that the purposes, terms and conditions of the substitutions are consistent with the principles and purposes of section 26(b) and do not entail any of the abuses that section 26(b) is designed to prevent. Applicants represent that substitution is an appropriate solution to the unfavorable relative performance and higher relative expenses of the Portfolios to be eliminated. Applicants believe that each Substitute Portfolio will better serve contractowner interests because its performance has been significantly better than the performance of, and its expenses have been lower than the expenses of, the corresponding Eliminated Portfolio. Moreover, Ohio National and ONLAC have each reserved this right in the Contracts and disclosed this reserved right in the prospectuses for the Contracts.

3. Applicants represent that the substitutions will not result in the type of costly forced redemption that section 26(b) was intended to guard against and, for the following reasons, are consistent with the protection of investors and the purposes fairly intended by the Act:

(a) Each Substitute Portfolio has investment objectives, policies and restrictions substantially similar to those of the corresponding Eliminated Portfolio, and permits contractowners continuity of their investment objectives and expectations.

(b) The costs of the substitutions will be borne by Ohio National and ONLAC and will not be borne by contractowners. No charges will be assessed to effect the substitutions.

(c) The substitutions will, in all cases, be at net asset values of the respective shares, without the imposition of any transfer or similar charge and with no change in the amount of any contractowner's accumulation value.

(d) The substitutions will not cause the fees and charges under the Contracts currently being paid by contractowners to be greater after the substitutions than before the substitutions.

(e) The contractowners will be given notice prior to the substitutions and will have an opportunity to reallocate accumulation value among other available Subaccounts without the imposition of any transfer charge or limitation. No transfer:

(i) From a Subaccount investing in an Eliminated Portfolio from the date of the notice through the date of the substitutions, or

(ii) For 30 days after the substitutions, of accumulation value that had been transferred to a Subaccount that invests in a Substitute Portfolio as a result of the substitutions, will count as one of the limited number of transfers permitted in a contract year free of charge.

(f) Within five days after the substitutions, Ohio National and ONLAC will send to contractowners written confirmation that the substitutions have occurred.

(g) The substitutions will in no way alter the insurance benefits to contractowners or the contractual obligations of Ohio National or ONLAC.

(h) The substitutions will in no way alter the tax benefits to contractowners.

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the substitutions should be granted.

For the Commission, by the Division of Investment Management pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23888 Filed 9–13–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24003; No. 812–11688]

Select Ten Plus Fund, LLC

September 9, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: Applicant seeks an order pursuant to Section 6(c) of the Act exempting Applicant from the provisions of Section 12(d)(3) of the Act to the extent necessary to permit Applicant's portfolios to invest up to 10% of their total assets in securities of issuers that derive more than 15% of their gross revenues from securities related activities.

APPLICANT: Select Ten Plus Fund, LLC.

FILING DATE: The application was filed on July 12, 1999, and amended on September 9, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicant with a copy of the request, personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on September 29, 1999, and should be accompanied by proof of service on Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicant, 515 West Market Street, Louisville, Kentucky 40202–3319.

FOR FURTHER INFORMATION CONTACT: Ann L. Vlcek, Senior Counsel, or Susan M. Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0102, (202) 942–8090.

Applicant's Representations

1. Applicant is a registered, open-end management investment company (File No. 811–09179). It consists of four non-diversified investment portfolios, Select Ten Plus Portfolio—March, Select Ten Plus Portfolio—June, Select Ten Plus Portfolio—September, and Select Ten Plus Portfolio—December (the "Portfolios"). Applicant was organized under the laws of Delaware as a limited liability company on September 30, 1998. Under Delaware law, a limited liability company does not issue shares of stock. Instead, ownership rights are contained in membership interests. Each membership interest of Applicant ("Interest") represents an undivided interest in the stocks held in one of the Portfolios.

2. The Interests are not offered directly to the public. The only direct owner of the Interests is National Integrity Life Insurance Company ("National Integrity") through its separate accounts. Those of National Integrity's variable annuity owners who have contract values allocated to any of the Portfolios have indirect beneficial rights in the Interests and have the right to instruct National Integrity with regard to how it votes the Interests that it holds in its separate accounts.

3. Integrity Capital Advisors, Inc. (the "Adviser"), a wholly owned subsidiary of ARM Financial Group, Inc., is Applicant's investment adviser. National Asset Management Corporation ("National Asset") serves as sub-adviser to each Portfolio.

4. Applicant states that each of the Portfolios invests contributions on the last business day of the month for which the Portfolio is named (the "Investment Date"). Applicant states that each Portfolio invests approximately 10% of its assets in the common stock of each of the ten companies in the Dow Jones Industrial Average (the "DJIA") having the highest dividend yield as of the close of business on the business day prior to the Investment Date. These ten companies are popularly known as the "Dogs of the Dow."

5. The DJIA consists of 30 stocks selected by Dow Jones & Company, Inc. as representative of the New York Stock Exchange and of American industry. Applicant states that Dow Jones & Company Inc. is not affiliated with Applicant and has not participated, and will not participate, in any way in the creation or management of the Portfolios or the selection of the stocks included in the Portfolios.

6. Applicant states that the Portfolios seek total return by investing in shares of the ten highest dividend yielding common stocks in the DJIA in equal weights and holding them for twelve months. The Portfolios may or may not achieve that objective. At the end of a Portfolio's twelve-month period, the Portfolio will restructure its investment portfolio to invest in the ten stocks with the highest current dividend yield in the DJIA for another twelve months. The dividend yield for each stock is calculated by annualizing the last quarterly or semi-annual ordinary dividend distributed on that stock and dividing the result by the market value of that stock as of the close of the New York Stock Exchange on the business day prior to the Investment Date. This yield is historical and there is no assurance that any dividends will be declared or paid in the future on the stocks in the Portfolios.

7. Applicant states that Interests may be purchased by separate accounts of National Integrity on the Investment Date. Applicant states that the weights of the individual stock positions are not rebalanced during a Portfolio's twelve-month holding period nor are additional contributions accepted. On the day a dividend from a stock in a Portfolio's investment portfolio is received it is reinvested in the form of additional shares of the stock. Interests may be redeemed at any time. Upon receipt of a redemption request, approximately equal dollar amounts of shares of each of the ten stocks are sold, such that the total dollar amount sold equals the amount of the redemption. Applicant states that the ten stocks held in a Portfolio are not expected to reflect the entire index nor are the prices of Interests intended to parallel or correlate with movements in the DJIA.

8. Applicant states that the Adviser and National Asset will try, to the extent practicable, to maintain a minimum cash position at all times. Applicant represents that normally the only cash items held will represent amounts expected to be deducted as charges and amounts too small to purchase additional proportionate round lots of the ten stocks.

9. Applicant states that it is not a regulated investment company under Subchapter M of the Internal Revenue Code of 1986, as amended (the "Code"). However, as a limited liability company whose interests are sold only to National Integrity, Applicant states that it is disregarded as an entity for purposes of federal income taxation. Applicant states that it does not pay federal income tax on its interest income, dividend income or capital gains. Applicant represents that instead, National Integrity, through its separate accounts, is treated as owning the assets of Applicant directly and its tax obligations thereon are computed pursuant to Subchapter L of the Code (which governs the taxation of insurance companies). Applicant states that, under current tax law, interest income, dividend income and capital gains of Applicant are not currently taxable to National Integrity or to contract owners when left to accumulate within a variable annuity contract.

10. Section 817(h) of the Code provides that in order for a variable contract that is based on a segregated asset account to qualify as an annuity contract under the Code, the investments made by that account must be "adequately diversified" in accordance with Treasury regulations.

11. Applicant states that each Portfolio must comply with the Section 817(h) diversification requirements. Therefore, Applicant states that the Adviser and National Asset may depart from the Portfolios' investment strategy, if necessary, in order to satisfy these Section 817(h) diversification requirements. Applicant represents that, under all circumstances, except in order to meet Section 817(h) diversification requirements, the common stocks purchased for each Portfolio are chosen solely according to the formula described above and are not based on the research opinions or buy or sell recommendations of the Adviser or National Asset. Applicant asserts that neither the Adviser nor National Asset has any discretion as to which common stocks are purchased. Applicant states that securities purchased for each Portfolio may include securities of issuers in the DJIA that derived more than 15% of their gross revenues in their most recent fiscal year from securities related activities.

Applicant's Legal Analysis

1. Section 12(d)(3) of the Act prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter or investment adviser, with exceptions not relevant here. Rule 12d3–1 under the Act exempts from Section 12(d)(3) purchases by an investment company of securities of an issuer, except its own investment adviser, promoter or principal underwriter or their affiliates, that derived more than 15% of its gross revenues in its most recent fiscal year from securities related activities, provided that, among other things, immediately after any such acquisition the acquiring company has invested not more than 5% of the value of its total assets in the securities of the issuer. Applicant represents that each of the Portfolios undertakes to comply with all of the requirements of Rule 12d3–1, except the condition in subparagraph (b)(3) prohibiting an investment company from investing more than 5% of the value of its total assets in securities of a securities related issuer.

2. Section 6(c) of the Act provides that the Commission by order upon application may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes thereof, from any provision of the Act or any rule or regulation thereunder, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicant states that Section 12(d)(3) was intended (i) to prevent investment companies from exposing their assets to the entrepreneurial risks of securities related businesses, (ii) to prevent potential conflicts of interest, (iii) to eliminate certain reciprocal practices between investment companies and securities related businesses, and (iv) to ensure that investment companies maintain adequate liquidity in their portfolios.

4. Applicant states that a potential conflict could occur, for example, if an investment company purchased securities or other interests in a broker-dealer to reward that broker-dealer for selling fund shares, rather than solely on investment merit. Applicant argues that this concern does not arise in this situation. Applicant represents that, generally, none of Applicant, the Adviser or National Asset has discretion in choosing the common stock or amount purchased. Applicant states that the stock must first be included in the DJIA (which is unaffiliated with Applicant, the Adviser or National Asset), and must also qualify as that of one of the ten companies in the DJIA that have the highest dividend yield as of the close of business on the business day prior to the Investment Date.

5. Applicant states that identical exemptive relief from Section 12(d)(3) has been granted to open-end management investment companies with the same limited liability company structure as Applicant. Applicant also asserts that identical exemptive relief from Section 12(d)(3) has been granted to management investment companies with a different structure that also involves investment options underlying variable annuities. In addition, Applicant states that Section 12(d)(3) relief has been granted to unit investment trusts with no discretion to choose the portfolio securities or the amount purchased, but with discretion to sell portfolio securities to the extent necessary to meet redemptions.

6. Applicant states that the Adviser and National Asset are obligated to follow the investment formula described above as nearly as practicable. Applicant represents that, like prior applicants for Section 12(d)(3) relief, securities purchased for each Portfolio are chosen with respect to the specified formula. Applicant states that the only time any deviation from the formula would be permitted would be where circumstances were such that the investments of a particular Portfolio would fail to be "adequately diversified" under the Section 817(h) diversification requirements, and would thus cause the annuity contracts to fail to qualify as an annuity contract under the Code. Applicant argues that the likelihood of this exception arising is extremely remote. In such a situation, Applicant states that it must be permitted to deviate from the investment strategy in order to meet the Section 817(h) diversification requirements and then only to the extent necessary to do so. Applicant asserts that this limited discretion does not raise the concerns that Section 12(d)(3) is aimed at since it does not give rise to the potential conflicts of interest or to the possible reciprocal practices between investment companies and securities related businesses that Section 12(d)(3) is designed to prevent.

7. Applicant states that the liquidity of a Portfolio is not a concern here since each common stock selected is a component of the DJIA, listed on the New York Stock Exchange, and among the most actively traded securities in the United States.

8. In addition, Applicant asserts that the effect of a Portfolio's purchase of the stock of parents of broker-dealers would be de minimis. Applicant states that the common stocks of securities related issuers represented in the DJIA are widely held and have active markets. Applicant states that potential purchases by a Portfolio represent an insignificant amount of the outstanding common stock and trading volume of any of these issuers. Therefore, Applicant argues that it is almost inconceivable that these purchases would have any significant effect on the market value of any of these securities related issuers.

9. Applicant states that another possible conflict of interest is where broker-dealers may be influenced to recommend certain investment company funds which invest in the stock of the broker-dealer or any of its affiliates. Applicant represents that, because of the large market capitalization of the DJIA issuers and the small portion of these issuers' common stock and trading volume that are purchased by a Portfolio, it is extremely unlikely that any advice offered by a broker-dealer to a customer as to which investment company to invest in would be influenced by the possibility that a Portfolio is invested in the broker-dealer or a parent thereof.

10. Finally, Applicant states that another potential conflict of interest could occur if an investment company directed brokerage to an affiliated broker-dealer in which the company has invested to enhance the broker-dealer's

profitability or to assist it during financial difficulty, even though the broker-dealer may not offer the best price and execution. To preclude this type of conflict, Applicant agrees, as a condition of this application, that no company whose stock is held in any Portfolio, nor any affiliate of such a company, will act as broker or dealer for any Portfolio in the purchase or sale of any security.

11. Applicant represents that the relief requested is substantially the same as that previously granted in other applications. Applicant represents that the relief requested is consistent with the standards set forth in Section 6(c) of the Act.

Applicant's Conditions

Applicant agrees that any order granting the requested relief from Section 12(d)(3) of the Act shall be subject to the following conditions:

1. The common stock is included in the DJIA as of the business day prior to the investment Date;

2. The common stock represents one of the ten companies in the DJIA that have the highest dividend yield as of the close of business on the business day prior to the Investment Date;

3. As of the Investment Date, the value of the common stock of each securities related issuer represents approximately 10% of the value of any Portfolio's total assets, but in no event more than 10.5% of the value of the Portfolio's total assets; and

4. No company whose stock is held in any Portfolio, nor any affiliate thereof, will act as broker or dealer for any Portfolio in the purchase or sale of any security for that Portfolio.

Conclusion

For the reasons summarized above, Applicant asserts that granting the requested relief is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23953 Filed 9–13–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of September 13, 1999.

A closed meeting will be held on Thursday, September 16, 1999, at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Johnson, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, September 16, 1999, at 11:00 a.m. will be:

Institution and settlement of injunctive actions

Institution and settlement of administrative proceedings of an enforcement nature

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: September 9, 1999.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–24016 Filed 9–10–99; 12:30 pm]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegation of Authority

This statement amends Part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Chapter S2 covers the Deputy Commissioner, Operations (DCO). Notice is hereby given that Chapter S2, The Office of the Deputy Commissioner, Operations and Subchapter S2D, the Office of the Regional Commissioner, and Subchapter S2R, Office of Central Operations are being amended to reflect responsibility for assisting the Office of Hearings and Appeals in providing support in processing backlogged cases. This revision also reflects responsibility for assisting State Disability Determination Services in providing support regarding disability claims backlogs. The changes are as follows:

Section S2.00 The Office of the Deputy Commissioner, Operations—(Mission)

Amend as follows:

The Office of the Deputy Commissioner, Operations (ODCO) directs and manages central office and geographically dispersed operations installations. It oversees regional operating program, technical, assessment and program management activities. It directs studies and actions to improve the operational effectiveness and efficiency of its components. It promotes systems and operational integration and defines user needs in the strategic planning process. It determines automation support needs for Operations components. This Office defines user concerns in the development of operational and programmatic specifications for new and modified systems, including the evaluation and implementation phases. When mutually agreed, provides support to the Office of Hearings and Appeals and/or specific State Disability Determination Services.

Section S2.20 The Office of the Deputy Commissioner, Operations—(Functions)

Amend as follows:

D. The Office of Central Operations (OCO) (S2R) provides executive direction and leadership for the nationwide establishment and maintenance of basic records supporting Social Security programs, foreign claims operations and OCO disability operations. It manages centralized records operations and a stand alone data operations center (DOC). The Office receives and processes Social Security earnings reports from private and governmental employers and adjustments or corrections to posted earnings. The Office maintains Social Security enumeration and earnings records in various media and conducts an ongoing data exchange with the Treasury Department to compile and verify individual earnings data. It directs the OCO processing of claims under disability benefits programs and maintains beneficiary rolls. It directs the OCO initial adjudication and reconsideration of disability claims excluded from State agency jurisdiction and directs the OCO authorization of disability and auxiliary claims not authorized by Field Offices (FOs) at the initial, reconsideration and appeal levels. It determines whether and when eligibility or payments should be terminated, suspended, continued, increased or reduced in amount. It recovers or waives recovery of amounts incorrectly paid to beneficiaries. It directs the development, adjudication and authorization of payments or disallowance of claims for Retirement, Survivors and Disability Insurance (RSDI) benefits filed by person in foreign countries; determines eligibility for Medicare on related claims; and determines entitlement to benefits based on international Social Security agreements. It serves as liaison on operational issues which affect the administration of the United States Social Security program abroad, with the Department of State, other Federal agencies, agencies of foreign governments and private organizations. When arranged by mutual agreement, assists the Office of Hearings and appeals in processing case backlogs including writing draft decisions on cases decided by Administrative Law Judges. Also, assists State Disability Determination Services by developing and adjudicating backlogged disability claims as arranged by mutual agreement.

Section S2D.00 The Office of the Regional Commissioner—(Mission)

Amend as follows:

The Office of the Regional Commissioner (ORC) serves as the principal SSA component at the regional level and assures effective SSA interaction with other Federal agencies in the regions; State welfare agencies; State Disability Determination Services (DDSs); and other regional and local organizations. The office provides leadership for regional planning, implementation and evaluation of Agency goals and objectives and is accountable for the delivery of service in the administration of SSA's Retirement, Survivors and Disability (RSDI) programs, the Black Lung Benefits program and the Supplemental Security Income (SSI) program. It issues regional operating policy and procedures for these programs and evaluates program effectiveness. It implements national operational and management plans for providing SSA service to the public and directs a region-wide network of field offices (FOs), Teleservice Centers (TSCs) and where present, Processing Centers (PCs). It facilitates integration and coordination of SSA programs with other Federal and State programs in the region. It provides overall management direction for the provision of personnel services and administrative priorities and issues policy directives consistent with national program objectives, operational requirements and systems and implements a regional SSA public affairs program. The office maintains a broad overview of administrative operations of the regional offices (ROs) of SSA's Office of Hearings and Appeals and a data operations center to ensure effective coordination of SSA activities at the regional level. When mutually agreed, provides support to the Office of Hearings and Appeals and/or specific State Disability Determination Services.

Section S2D.20 The Office of the Regional Commissioner—(Functions)

G. The Office of the Assistant Regional Commissioner for Processing Center Operations (S2D25,35,45,55,75,95) (located in the six regions containing PCs)

Add:

8. When arranged by mutual agreement, assists the Office of Hearings and Appeals in processing case backlogs including writing draft decisions for cases decided by Administrative Law Judges. Also, assists State Disability Determination Services by developing and adjudicating backlogged disability claims as arranged by mutual agreement.

Section S2R.00 Office of Central Operations—(Mission)

Amend as follows:

The Office of Central Operations (OCO) (S2R) provides executive direction and leadership for: the nationwide establishment and maintenance of basic records supporting Social Security programs, foreign claims operations and OCO disability operations. It manages centralized record operations and a stand alone DOC. The office receives and processes Social Security earnings reports from private and governmental employers and adjustments or corrections to posted earnings. The Office maintains Social Security enumeration and earnings records in various media and conducts an ongoing data exchange with the Treasury Department to compile and verify individual earnings data. It directs the OCO processing of claims under disability benefits programs and maintains beneficiary rolls. It directs the OCO initial adjudication and reconsideration of disability claims excluded from State agency jurisdiction and directs the OCO authorization of disability and auxiliary claims not authorized by FOs at the initial, reconsideration and appeal levels. It determines whether and when eligibility should be terminated, suspended or continued; or payments increased or reduced in amount. It recovers or waives recovery of amounts incorrectly paid to beneficiaries. It directs the development, adjudication and authorization of payment or disallowance of claims for RSDI benefits filed by persons in foreign countries; determines eligibility for Medicare on related claims; and determines entitlement to benefits abased on international Social Security agreements. It serves as liaison on operational issues which affect the administration of the United States Social Security program abroad, with the Department of State, other Federal agencies, agencies of foreign governments and private organizations. When mutually agreed, provides support to the Office of Hearings and Appeals and/or specific State Disability Determination Services.

Section S2R.20 Office of Central Operations—(Functions)

C. The Immediate Office of the Associate Commissioner, OCO (S2R) provides internal operations and management support and assistance to the Associate Commissioner and all OCO components.

Amend as follows:

1. The Assistant Associate Commissioner for Disability Operations (S2RA) is responsible for planning and directing a major portion of the operations administered by OCO. He/she is responsible for the planning and direction of four divisions which review, adjudicate and reconsider claims for Social Security disability and auxiliary benefits, and a fifth division, which provides OCO service to the public by telephone and applies and evaluates proposed alternative ways of performing OCO functions. When mutually agreed, provides support to the Office of Hearings and Appeals and/or specific State Disability Determination Services.

b. The Division of Direct Service Operations (S2RA5):

Amend as follows:

1. When arranged by mutual agreement, assists the Office of Hearings and Appeals in processing case backlogs including writing draft decisions for cases decided by Administrative Law Judges. Also assists State Disability Determination Services by developing and adjudicating backlogged disability claims as arranged by mutual agreement.

Dated: August 31, 1999.

Kenneth S. Apfel,

Commissioner of Social Security.

[FR Doc. 99–23807 Filed 9–13–99; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice 3121]

Notice of a Public Meeting Regarding Government Activities on International Harmonization of Chemical Classification and Labeling Systems

AGENCY: Bureau of Oceans and International Environmental and Scientific Affairs (OES).

SUMMARY: This public meeting will provide an update on current activities related to international harmonization since the previous public meeting, conducted May 27, 1999 (See Department of State Public Notice 3024 on page 17435 of the **Federal Register** of April 9, 1999.) The meeting will also offer interested organizations and individuals the opportunity to provide information and views for consideration in the development of United States Government policy positions. For more complete information on the harmonization process, please refer to State Department Public Notice 2526, pages 15951–15957 of the **Federal Register** of April 3, 1997.

The meeting will take place from 1:00–3:00 pm on Wednesday, October 6, 1999, in Room N 4437 C–D, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, DC. Attendees should use the entrance at C and Third Streets NW. To facilitate entry, please have a picture ID available and/or a U.S. Government building pass if applicable. No advance registration is necessary.

FOR FURTHER INFORMATION CONTACT: For further information or to submit written comments or information, please contact Eunice Mourning, U.S. Department of State, OES/ENV, Room 4325, 2201 C Street NW, Washington, DC 20520, telephone (202) 647–9266, fax (202) 647–5947. A public docket is also available for review at the Department of Labor (OSHA docket H–022H).

SUPPLEMENTARY INFORMATION: The Department of State is announcing a public meeting of the interagency committee concerned with the international harmonization of chemical hazard classification and labeling systems (an effort referred to as the "globally harmonized system" or GHS). The purpose of the meeting is to provide interested groups and individuals with an update on activities since the May 27, 1999, public meeting, a preview of upcoming international meetings, and an opportunity to submit additional information and comments for consideration in developing U.S. Government positions. Representatives of the following agencies participate in the interagency group: the Department of State, the Environmental Protection Agency, the Department of Transportation, the Occupational Safety and Health Administration, the Consumer Product Safety Commission, the Food and Drug Administration, the Department of Commerce, the Department of Agriculture, the Office of the U.S. Trade Representative, and the National Institute of Environmental Health Sciences.

The Agenda of the public meeting will include:

1. Introduction

2. Reports on Recent International Meetings

—Third Meeting of the Inter-Organization Program for the Sound Management of Chemicals (IOMC)/ International Labour Organisation Working Group on Hazard Communication, June 21–23, 1999, Dublin, Ireland.

—Fourteenth Consultation of Coordinating Group for the Harmonization of Chemical Classification Systems, June 24–25, 1999, Dublin, Ireland.

—Fourth Meeting of the Organization for Economic Cooperation and Development Expert Group on Classification Criteria for Mixtures, June 28–29, 1999, Dublin, Ireland.

—UN Subcommittee of Experts on the Transport of Dangerous Goods, July 5–15, 1999, Geneva, Switzerland.

3. Preparation for Upcoming Meetings

—Fourth Meeting of the Inter-Organization Program for the Sound Management of Chemicals (IOMC)/ International Labour Organisation Working Group of Hazard Communication, November 1–4, 1999, Washington, DC. This group will consider issues relating to hazard communication label elements for the public and specialized audiences, and material safety data sheets for workers.

—Fifteenth Consultation of Coordinating Group for the Harmonization of Chemical Classification Systems, November 5, 1999, Washington, DC. This group will consider long and short term implementation issues and more detailed terms of reference for a joint committee on transport of dangerous goods and the GHS and a GHS subcommittee.

—Fifth Meeting of the Organization for Economic Cooperation and Development Expert Group on Classification Criteria for Mixtures, November 8–9, 1999, Washington, DC. This group will focus on approaches and options for classifying mixtures according to their health and environmental hazards.

—UN Subcommittee on Experts on the Transport of Dangerous Goods, December 6–17, 1999, Geneva, Switzerland. Among the issues under consideration will be classification criteria for flammable aerosols.

4. Public Comments

5. Concluding Remarks

Interested parties are invited to submit their comments as soon as possible for consideration in the development of U.S. positions and to present their views orally and/or in writing at the public meeting. Participants may address other topics relating to harmonization of chemical classification and labeling systems and are particularly invited to identify issues of concern to specific sectors that may be affected by the GHS. Participants who attended and participated in recent international sessions may also offer their observations on the results of the sessions.

All written comments will be placed in the public docket (OSHA docket H–022H). The docket is open from 10 am until 4 pm, Monday through Friday, and is located at the Department of Labor, Room 2625, 200 Constitution Avenue NW, Washington, DC. (Telephone: 202–219–7894; Fax: 202–219–5046). The public may also consult the docket to review previous **Federal Register** notices, comment received, Questions and Answers about the GHS, a response to comments on the April 3, 1997. **Federal Register** notice, and other relevant documents.

Dated: September 1, 1999.

Daniel T. Fantozzi,

Director, Office of Environmental Policy, Bureau of Oceans and International Environmental and Scientific Affairs.

[FR Doc. 99–23817 Filed 9–13–99; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–5482]

Commercial Fishing Industry Vessel Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The Commercial Fishing Industry Vessel Advisory Committee (CFIVAC) will meet to discuss the Coast Guard's proposed safety initiatives that resulted from the Fishing Vessel Casualty Task Force Report and input from CFIVAC and Coast Guard Fishing Vessel Coordinators. The meeting is open to the public.

DATES: CFIVAC will meet on Monday, October 4, 1999, from 8:30 a.m. to 4:30 p.m. and Tuesday, October 5, 1999, from 8:30 a.m. to 4:30 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before September 20, 1999. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before September 17, 1999.

ADDRESSES: On Monday, October 4, 1999, CFIVAC will meet at Coast Guard Headquarters, 2100 2nd Street, SW, Room 2415, Washington, DC, and on Tuesday, October 5, 1999, CFIVAC will meet at the Department of Transportation, NASSIF Building, 400 7th Street, Room 3328, Washington, DC. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Commander Mark A. Prescott, Executive Director of CFIVAC, or Lieutenant Commander Randy Clark, Assistant to the Executive Director, telephone 202–267–1181, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. As the result of an alarming death rate in the commercial fishing industry in late 1998 and early 1999 the Coast Guard chartered a Task Force to conduct a fast track study to determine the circumstances of these casualties; examine these incidents in the context of historical data; review the current fishing vessel safety program and past recommendations; recommend the most significant measures that have the greatest potential for reducing the loss of life and property and provide quick feedback to the commercial fishing industry. The Task Force completed its report in March 1999 and it was presented to CFIVAC and Coast Guard Fishing Vessel Coordinators for their review in April 1999. The report is available at http://www.get.to/thefishingreport or at Commandant (G–MOA), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, 202–267–1430. The Coast Guard consolidated only those recommendations that were commonly supported by these groups and developed a draft proposal of future safety initiatives to be undertaken. The final proposal will be available at the October 4–5 meeting. The Coast Guard is seeking further feedback on these safety initiatives and their implementation from CFIVAC. Interested parties, including members of Congress, have been advised of this meeting.

Draft Agenda of Meeting

Monday, 4 October

Report from Coast Guard on casualty statistics and implementation of new safety initiatives since the Task Force Report

Presentation from Coast Guard on proposed safety initiatives

Discuss with CFIVAC specific details on how to implement these proposals

Tuesday, 5 October

Continue working on details of new initiative development

Progress report—wrap up

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. Due to security procedures, members of the public must produce a photo ID to enter the Coast Guard Headquarters and Department of Transportation, NASSIF buildings. At the Chairperson's discretion, members of the public may make oral presentations during the meetings. Persons wishing to make oral presentations at the meetings should notify the Executive Director no later than September 20, 1999. Written material for distribution at a meeting should reach the Coast Guard no later than September 17, 1999. If a person submitting material would like a copy distributed to each member of a subcommittee in advance of a meeting, that person should submit 20 copies to the Executive Director no later than September 17, 1999.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: September 2, 1999.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 99–23947 Filed 9–13–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular; Instructions for Continued Airworthiness

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of issuance of Advisory Circular (AC) on Instructions for Continued Airworthiness.

SUMMARY: This notice announces the issuance of Advisory Circular (AD), No. 33.4, Instructions for Continued Airworthiness. This AC may be used to prepare Instructions for Continued Airworthiness (ICA) under § 33.4. This AC is meant to provide information and guidance concerning an acceptable method, but not the only method, for compliance. This AC neither changes any regulatory requirements nor authorizes changes in or deviations from the regulatory requirements.

DATES: Advisory Circular No. 33.4, was issued by the Engine and Propeller Directorate, Aircraft Certification Service, on August 27, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Chung Hsieh, Engine and Propeller Standards Staff, ANE–110, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7114, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Background

This AC is on the subject of continued airworthiness of aircraft engines type certificated under part 33 of Title 14 of the Code of Federal Regulations (14 CFR Part 33). The information and guidance presented in this AC would provide a method that can be used to demonstrate compliance with the requirements of § 33.4 and Appendix A to part 33—Instructions for Continued Airworthiness.

Interested parties were given the opportunity to review and comment on the draft AC during the proposal and development phases. Notice was published in the **Federal Register** on April 5, 1999 (64 FR 16515), to announce the availability of, and comment to the draft AC.

This advisory circular, published under the authority granted to the Administrator by 49 U.S.C. 106(g), 40113, 44701–44702, 44704, provides guidance for these new requirements that were published in the **Federal Register** on September 11, 1980 (45 FR 60154).

Issued in Burlington, Massachusetts, on August 27, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–23946 Filed 9–13–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Riverside County, California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this Notice of Intent to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Riverside County, California.

FOR FURTHER INFORMATION CONTACT: C. Glenn Clinton, Team Leader, Program Delivery Team-South, Federal Highway Administration, 980 9th Street, Suite 400, Sacramento, CA 95814–2724, *Telephone:* (916) 498–5037.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation, will prepare an EIS on a proposal to replace the existing seismic deficient River Road Bridge over the Santa Ana River. The proposed bridge would be constructed on approximately the same alignment but at a higher elevation to avoid local flooding.

Alternatives under consideration include (1) taking no action, (2) alternatives reflecting various lengths of structure and fill, and (3) alternatives on or adjacent to the existing crossing. Within the limits of the study area for this project, various environmental resources and issues are known to exist. These include, but are not limited to: cultural, parkland, wetlands, floodway and floodplain, wildlife habitat, noise, seismic exposure, hazardous waste, and irrigation/drain systems.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. At least one public meeting will be held to solicit input from the local citizens on alternatives. In addition, a public hearing will be held. Public Notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Document Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: September 1, 1999.

C. Glenn Clinton,

Team Leader, Program Delivery Team-South, Sacramento, California.

[FR Doc. 99–23951 Filed 9–13–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–6021; Notice 1]

Explorer Van Company, Receipt of Application for Decision of Inconsequential Noncompliance and Safety-Related Defect

Explorer Van Company (Explorer), a division of the Bodor Corporation, is a corporation organized under the laws of the State of Indiana and is located in Warsaw, Indiana. Explorer has determined that it manufactured conversion vans that are in noncompliance with the agency's Federal Motor Vehicle Safety Standard (FMVSS) No. 120, Tire selection and rims for motor vehicles other than passenger cars, and 49 CFR Part 567, Certification, and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Explorer has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance and defect are inconsequential to motor vehicle safety.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

First, from February 1, 1998 to May 31, 1998, Explorer manufactured approximately 2,416 conversion vans that do not meet the requirements stated in FMVSS No. 120, "Tire selection and rims for vehicles other than passenger cars." The certification label affixed to these Explorer's units pursuant to 49 CFR part 567 failed to comply with S5.3 of FMVSS No. 120 because of the omission of metric measurements, and the failure of Explorer to separately provide the metric measurements on another label, an alternative allowed by FMVSS No. 120.

Second, from January 1998 to August 1998, Explorer manufactured approximately 187 conversion vans that do not meet the requirements stated in FMVSS No. 120. On the vehicles' certification labels provided by Explorer, the tires on the rear axle have a specified inflation pressure of 41 psi, while the maximum inflation pressure indicated on the tires is 35 psi. Therefore, the maximum inflation pressure specified on the certification label exceeds the inflation pressure molded on the sidewall of the standard load tires. Per the safety standard, a vehicle manufacturer must not specify a higher inflation pressure for a tire than the maximum inflation pressure molded on that tire. This problem occurred because these vans were equipped with the wrong tires. To properly accommodate the weight of the conversion van, the vans were supposed to be equipped with extra load rated tires; however, they were equipped with standard load tires. Hence, each van has an inflation pressure specified on its certification label for extra load tires, but not for the standard load tires that are actually on it.

Third, from 1997 to 1999, Explorer manufactured approximately 68 conversion vans that do not meet the requirements stated in 49 CFR Part 567. On the vehicles' certification label, the GVWR of the vehicle was indicated to be 7,000 pounds; however, the vehicles' actual GVWR was found to be 7,214 pounds, which exceeds the specified GVWR by 214 pounds. Failure to provide a proper GVWR may constitute a safety-related defect.

Explorer supports its application for inconsequential noncompliance with the following statements:

1. METRIC AND ENGLISH INFORMATION: "All certification labels now in use by Bodor Corporation's Explorer Vans correctly specify the weights and pressures in metric and English, as required. There were a small number of "old style" labels remaining in inventory which were to have been destroyed and were inadvertently used by the production staff during a short period when the error was discovered . . . the language is inconsequential to motor vehicle safety and should be exempted."

2. TIRE PRESSURE INFORMATION: "Due to a programming error, not more than 187 vehicles may potentially have incorrect tire pressure." "The tires are each individually clearly marked with the tire pressure information."

3. GVWR LABELING: "Bodor Corporation undertook a materials weight reduction program, and, further, no longer utilizes the [Ford] E–150 chassis for high-top conversions, favoring instead the E–250 model with an initial higher weight GVWR. The E–250 was previously not made available in [a] large enough quantity by Ford Motor Company for conversion purposes."

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, D.C., 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: October 14, 1999.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: September 8, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–23906 Filed 9–13–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 32–12]

Restrictions on Lobbying for Federal Grants, Cooperative Agreements, Loans, and Commitments To Insure or Guarantee a Loan

September 1, 1999.

1. *Purpose.* This directive establishes policy, procedures and responsibilities for implementing Office of Management and Budget (OMB) guidance on restrictions on lobbying for Federal grants, cooperative agreements, loans, and commitments to insure or guarantee a loan.

2. *Scope.* This directive applies to all bureaus, Departmental Offices (DO), the Office of Inspector General (IG) and the Treasury Inspector General for Tax Administration.

3. *Policy.* It is the policy of the Department of the Treasury that persons, including those who represent corporations, partnerships, and other entities, who request or receive a covered Federal grant, cooperative agreement, loan or commitment to insure or guarantee a loan (see paragraph 6.a., below) must file the certification and disclosure forms on lobbying activities required by law.

4. *Background.*

a. 31 U.S.C. 1352 prohibits recipients of Federal contracts, grants, loans, or cooperative agreements from using appropriated funds to influence, or attempt to influence, Government employees, and members of Congress or their staffs. The law specifies penalities for

b. Treasury has codified OMB's guidance on lobbying restrictions at 31 CFR part 21.

c. Treasury procedures on restrictions on lobbying for contracts are covered in Department of the Treasury Acquisition Regulation, subpart 1003.8, "Limitation on the Payment of Funds to Influence Federal Transactions."

5. *Definitions.*

a. *Cooperative Agreement.* A legal instrument between a bureau or office and a person to work together for a common purpose. Substantial involvement is expected between the bureau or office and the person.

b. *Direct Loan.* This occurs when a bureau or office disburses funds to a borrower and enters into a contract with the borrower for repayment.

c. *Grant.* An award of financial assistance in the form of money, or property in lieu of money, by a bureau or office, or a direct appropriation made by law to any person.

d. *Guaranteed or Insured Loans.* This occurs when a third party lender makes a direct loan to a borrower; the bureau or office agrees to repay the lender all or a portion of the loan in case the borrower defaults.

e. *Person.* An individual, corporation, company, association, authority, firm, partnership, society, and State or local government, regardless of whether such entity is operated for profit or not for profit.

6. *Procedures.*

a. The certification and disclosure requirements in 31 U.S.C. 1352 apply to:

(1) A Federal grant or cooperative agreement from Treasury in excess of $100,000.

(2) A Federal loan or commitment to insure or guarantee a loan from Treasury in excess of $150,000.

b. A person who requests or receives a covered Federal grant, cooperative agreement, or loan from Treasury must certify (*see* 31 CFR part 21 appendix A that the person has not made and will not make any payment prohibited by 31 U.S.C. 1352. Such a person must file SF LLL, "Disclosure of Lobbying Activities" (*see* 31 CFR part 21 appendix B) if that person has made or has agreed to make any payment from nonappropriated funds which would be prohibited under 31 U.S.C. 1352 if paid for with appropriated funds.

c. A person who requests or receives a covered commitment providing for the United States to insure or guarantee a loan must certify (*see* 31 CFR part 21 appendix A) as to whether the person has made or agreed to make any payment prohibited by 31 U.S.C. 1352. Such a person must file SF LLL, "Disclosure of Lobbying Activities" (*see* 31 CFR part 21 appendix B) if that person has made or has agreed to make any payment to influence or attempt to influence a Government officer or employee in connection with that loan insurance or guarantee.

d. The appropriate certification and, if required, disclosure form shall be filed with each submission that initiates agency consideration for, and upon award of, a grant, cooperative agreement, loan, or commitment to insure or guarantee a loan described above. Certifications and disclosure forms shall be filed with the appropriate bureau or office.

7. *Responsibilities.*

a. *The Deputy Assistant Secretary (Administration), Heads of Bureaus, the Inspector General and the Treasury Inspector General for Tax Administration* as it relates to their respective bureaus and offices, shall ensure that each person who requests or receives a Federal grant, cooperative agreement, loan, or commitment to insure or guarantee a loan, is required to file the required certification and, if required, disclosure forms with the appropriate bureau or office.

b. *Treasury's Director of Procurement* will issue procedures to bureaus concerning lobbying for contracts.

8. *Authorities.*

a. 31 U.S.C. 1352, "Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions."

b. OMB Interim Final Rule, 55 FR 6736 (1990).

c. 31 CFR part 21, "New Restrictions on Lobbying."

9. *References.*

a. Department of the Treasury Acquisition Regulation, subpart 1003.8, "Limitations on the Payment of Funds to Influence Federal Transactions."

10. *Supply of Forms.* Copies of the "Certification Regarding Lobbying" and OMB Standard Form LLL, "Disclosure of Lobbying Activities" are available from the Office of Treasury's Deputy Chief Financial Officer.

11. *Cancellation.* Treasury Directive 32–12, "Restrictions on Lobbying for Treasury Grants, Loans and Cooperative Agreements", dated January 6, 1992, is superseded.

12. *Office of Primary Interest.* Office of Accounting and Internal Control, Office of the Deputy Chief Financial Officer, Office of the Assistant Secretary for Management and Chief Financial Officer.

Nancy Killefer,

Assistant Secretary for Management and Chief Financial Officer.

[FR Doc. 99–23827 Filed 9–13–99; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Explosives Delivery Record.

DATES: Written comments should be received on or before Novemeber 15, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Michael Bouchard, Chief, Arson & Explosives Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7930.

SUPPLEMENTARY INFORMATION:

Title: Explosives Delivery Record.

OMB Number: 1512–0133.

Form Number: ATF F 5400.8.

Abstract: This information collection activity is used to verify distributors' compliance with Federal laws and regulations, thereby documenting the flow of explosives in commerce and as a tracing tool to prevent misuse and traffic in stolen explosives. The record retention period for this information collection is 5 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for profit.

Estimated Number of Respondents: 25,000.

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 2,500.

Request for Comments:

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 3, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–23924 Filed 9–13–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Usual and Customary Business Records Relating to Wine.

DATES: Written comments should be received on or before November 15, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marjorie Ruhf, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8202.

SUPPLEMENTARY INFORMATION:

Title: Usual and Customary Business Records Relating to Wine.

OMB Number: 1512–0298.

Recordkeeping Requirement ID Number: ATF REC 5120/1.

Abstract: Usual and customary business records relating to wine are routinely inspected by ATF officers to ensure the payment of alcohol taxes due to the Federal Government. The record retention period for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposed only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,650.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 165.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 3, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–23925 Filed 9–13–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Beer for Exportation.

DATES: Written comments should be received on or before November 15, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Marjorie Ruhf, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8202.

SUPPLEMENTARY INFORMATION:

Title: Beer for Exportation.

OMB Number: 1512–0096.

Form Number: ATF F 5130.12.

Abstract: ATF collects this information in order to monitor export activities by brewers. Certification as to type and quantity of beer exported is analyzed by brewers' operational reports to ensure compliance with tax laws enforced by ATF. The record retention period for this information collection is 3 years.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 392.

Estimated Time Per Respondent: 1 hour and 39 minutes.

Estimated Total Annual Burden Hours: 38,808.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the informaion shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 3, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–23926 Filed 9–13–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Notification to Fire Marshal and Chief, Law Enforcement Officer of Storage of Explosive Materials.

DATES: Written comments should be received on or before November 15, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Michael Bouchard, Chief, Arson & Explosives Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7930.

SUPPLEMENTARY INFORMATION:

Title: Notification to Fire Marshal and Chief, Law Enforcement Officer of Storage of Explosive Materials.

OMB Number: 1512–0536.

Abstract: ATF requires all persons who store explosives to notify local law enforcement officials and fire departments orally before the end of the day on which storage of the explosive materials commenced and in writing within 48 hours from the time such storage commenced. The information is necessary for the safety of emergency response personnel responding to fires at sites where explosives are stored.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, individuals or households, farms, State, Local or Tribal Government.

Estimated Number of Respondents: 10,057.

Estimated Time Per Respondent: 90 minutes.

Estimated Total Annual Burden Hours: 60,342.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 3, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–23927 Filed 9–13–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Bond for Drawback Under 26 U.S.C. 5131.

DATES: Written comments should be received on or before November 15, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Steve Simon, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8183.

SUPPLEMENTARY INFORMATION:

Title: Bond for Drawback Under 26 U.S.C. 5131.

OMB Number: 1512–0537.

Form Number: ATF F 5154.3.

Abstract: ATF F 5154.3 is required pursuant to 26 U.S.C. 5131 from all persons who claim, on a monthly basis, drawback of tax on distilled spirits used in the manufacture of approved nonbeverage products. The form is used to establish eligibility to file drawback claims on a monthly basis and, when necessary, to enforce collection of money owed to the Government.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 60.

Estimated Time Per Respondent: 12 minutes.

Estimated Total Annual Burden Hours: 12 hours.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: September 3, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–23928 Filed 9–13–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 880]

Commerce in Explosives; List of Explosive Materials

Pursuant to the provisions of section 841(d) of title 18, U.S.C., and 27 CFR 55.23, the Director, Bureau of Alcohol, Tobacco and Firearms, must revise and publish in the **Federal Register** at least annually a list of explosives determined to be within the coverage of 18 U.S.C. Chapter 40, Importation, Manufacture, Distribution and Storage of Explosive Materials. This chapter covers not only explosives, but also blasting agents and detonators, all of which are defined as explosive materials in section 841(c) of title 18, U.S.C. Accordingly, the following is the 1999 List of Explosive Materials subject to regulation under 18 U.S.C. Chapter 40; it includes both the list of explosives (including detonators) required to be published in the **Federal Register** and blasting agents.

The list is intended to include any and all mixtures containing any of the materials on the list. Materials constituting blasting agents are marked by an asterisk. While the list is comprehensive, it is not all inclusive. The fact that an explosive material may not be on the list does not mean that it is not within the coverage of the law if it otherwise meets the statutory definitions in section 841 of title 18, U.S.C. Explosive materials are listed alphabetically by their common names, followed by chemical names and synonyms in brackets.

This revised list supersedes the List of Explosive Materials dated May 1, 1998 (Notice No. 360; 63 FR 24207) and will be effective as of the date of publication in the **Federal Register**.

List of Explosive Materials

A

Acetylides of heavy metals.
Aluminum containing polymeric propellant.
Aluminum ophorite explosive.
Amatex.
Amatol.
Ammonal.
*Ammonium nitrate explosive mixtures (cap sensitive).

*Ammonium nitrate explosive mixtures (non cap sensitive).
Aromatic nitro-compound explosive mixtures.
Ammonium perchlorate explosive mixtures.
Ammonium perchlorate composite propellant.
Ammonium picrate [picrate of ammonia, Explosive D] .
Ammonium salt lattice with isomorphously substituted inorganic salts.
*ANFO [ammonium nitrate-fuel oil].

B

Baratol.
Baronol.
BEAF [1, 2-bis (2, 2-difluoro-2-nitroacetoxyethane)].
Black powder.
Black powder based explosive mixtures.
*Blasting agents, nitro-carbo-nitrates, including non cap sensitive slurry and water gel explosives.
Blasting caps.
Blasting gelatin.
Blasting powder.
BTNEC [bis (trinitroethyl) carbonate].
Bulk salutes.
BTNEN [bis (trinitroethyl) nitramine].
BTTN [1,2,4 butanetriol trinitrate].
Butyl tetryl.

C

Calcium nitrate explosive mixture.
Cellulose hexanitrate explosive mixture.
Chlorate explosive mixtures.
Composition A and variations.
Composition B and variations.
Composition C and variations.
Copper acetylide.
Cyanuric triazide.
Cyclotrimethylenetrinitramine [RDX].
Cyclotetramethylenetetranitramine [HMX].
Cyclonite [RDX].
Cyclotol.

D

DATB [diaminotrinitrobenzene].
DDNP [diazodinitrophenol].
DEGDN [diethyleneglycol dinitrate].
Detonating cord.
Detonators.
Dimethylol dimethyl methane dinitrate composition.
Dinitroethyleneurea.
Dinitroglycerine [glycerol dinitrate].
Dinitrophenol.
Dinitrophenolates.
Dinitrophenyl hydrazine.
Dinitroresorcinol.
Dinitrotoluene-sodium nitrate explosive mixtures.
DIPAM.
Dipicryl sulfone.
Dipicrylamine.
Display fireworks.
DNPD [dinitropentano nitrile].
DNPA [2,2-dinitropropyl acrylate].
Dynamite.

E

EDDN [ethylene diamine dinitrate].
EDNA.
Ednatol.
EDNP [ethyl 4,4-dinitropentanoate].
Erythritol tetranitrate explosives.
Esters of nitro-substituted alcohols.
EGDN [ethylene glycol dinitrate].
Ethyl-tetryl.
Explosive conitrates.
Explosive gelatins.
Explosive mixtures containing oxygen-releasing inorganic salts and hydrocarbons.
Explosive mixtures containing oxygen-releasing inorganic salts and nitro bodies.
Explosive mixtures containing oxygen-releasing inorganic salts and water insoluble fuels.
Explosive mixtures containing oxygen-releasing inorganic salts and water soluble fuels.
Explosive mixtures containing sensitized nitromethane.
Explosive mixtures containing tetranitromethane (nitroform).
Explosive nitro compounds of aromatic hydrocarbons.
Explosive organic nitrate mixtures.
Explosive liquids.
Explosive powders.

F

Flash powder.
Fulminate of mercury.
Fulminate of silver.
Fulminating gold.
Fulminating mercury.
Fulminating platinum.
Fulminating silver.

G

Gelatinized nitrocellolose.
Gem-dinitro aliphatic explosive mixtures.
Guanyl nitrosamino guanyl tetrazene.
Guanyl nitrosamino guanylidene hydrazine.
Guncotton.

H

Heavy metal azides.
Hexanite.
Hexanitrodiphenylamine.
Hexanitrostilbene.
Hexogen (RDX).
Hexogene or octogene and a nitrated N-methylaniline.
Hexolites.
HMX [cyclo-1,3,5,7-tetramethylene 2,4,6,8-tetranitramine; Octogen].
Hydrazinium nitrate/hydrazine/aluminum explosive system.
Hydrazoic acid.

I

Igniter cord.
Igniters.
Initiating tube systems.

K

KDNBF [potassium dinitrobenzo-furoxane].

L

Lead azide.
Lead mannite.
Lead mononitroresorcinate.
Lead picrate.
Lead salts, explosive.
Lead styphnate [styphnate of lead, lead trinitroresorcinate].
Liquid nitrated polyol and trimethylolethane.
Liquid oxygen explosives.

M

Magnesium ophorite explosives.
Mannitol hexanitrate.
MDNP [methyl 4,4-dinitropentanoate].
MEAN [monoethanolamine nitrate].
Mercuric fulminate.
Mercury oxalate.
Mercury tartrate.
Metriol trinitrate.
Minol-2 [40% TNT, 40% ammonium nitrate, 20% aluminum].
MMAN [monomethylamine nitrate]; methylamine nitrate.
Mononitrotoluene-nitroglycerin mixture.
Monopropellants.

N

NIBTN [nitroisobutametriol trinitrate].
Nitrate sensitized with gelled nitroparaffin.
Nitrated carbohydrate explosive.
Nitrated glucoside explosive.
Nitrated polyhydric alcohol explosives.
Nitrates of soda explosive mixtures.
Nitric acid and a nitro aromatic compound explosive.
Nitric acid and carboxylic fuel explosive.
Nitric acid explosive mixtures.
Nitro aromatic explosive mixtures.
Nitro compounds of furane explosive mixtures.
Nitrocellulose explosive.
Nitroderivative of urea explosive mixture.
Nitrogelatin explosive.
Nitrogen trichloride.
Nitrogen tri-iodide.
Nitroglycerine [NG, RNG, nitro, glyceryl trinitrate, trinitroglycerine].
Nitroglycide.
Nitroglycol (ethylene glycol dinitrate, EGDN).
Nitroguanidine explosives.
Nitroparaffins Explosive Grade and ammonium nitrate mixtures.
Nitronium perchlorate propellant mixtures.

Nitrostarch.
Nitro-substituted carboxylic acids.
Nitrourea.

O

Octogen [HMX].
Octol [75 percent HMX, 25 percent TNT].
Organic amine nitrates.
Organic nitramines.

P

PBX [RDX and plasticizer].
Pellet powder.
Penthrinite composition.
Pentolite.
Perchlorate explosive mixtures.
Peroxide based explosive mixtures.
PETN [nitropentaerythrite, pentaerythrite tetranitrate, pentaerythritol tetranitrate].
Picramic acid and its salts.
Picramide.
Picrate of potassium explosive mixtures.
Picratol.
Picric acid (manufactured as an explosive).
Picryl chloride.
Picryl fluoride.
PLX [95% nitromethane, 5% ethylenediamine].
Polynitro aliphatic compounds.
Polyolpolynitrate-nitrocellulose explosive gels.
Potassium chlorate and lead sulfocyanate explosive.
Potassium nitrate explosive mixtures.
Potassium nitroaminotetrazole.
Pyrotechnic compositions.
PYX [2,6-bis(picrylamino)]-3,5-dinitropyridine.

R

RDX [cyclonite, hexogen, T4, cyclo-1,3,5,-trimethylene-2,4,6,-trinitramine; hexahydro-1,3,5-trinitro-S-triazine].

S

Safety fuse.
Salutes (bulk).
Salts of organic amino sulfonic acid explosive mixture.
Silver acetylide.
Silver azide.
Silver fulminate.
Silver oxalate explosive mixtures.
Silver styphnate.
Silver tartrate explosive mixtures.
Silver tetrazene.
Slurried explosive mixtures of water, inorganic oxidizing salt, gelling agent, fuel, and sensitizer (cap sensitive).
Smokeless powder.
Sodatol.
Sodium amatol.
Sodium azide explosive mixture.
Sodium dinitro-ortho-cresolate.
Sodium nitrate-potassium nitrate explosive mixture.
Sodium picramate.
Special fireworks.
Squibs.
Styphnic acid explosives.

T

Tacot [tetranitro-2,3,5,6-dibenzo-1,3a,4,6a tetrazapentalene].
TATB [triaminotrinitrobenzene].
TEGDN [triethylene glycol dinitrate].
Tetrazene [tetracene, tetrazine, 1(5-tetrazolyl)-4-guanyl tetrazene hydrate].
Tetranitrocarbazole.
Tetryl [2,4,6 tetranitro-N-methylaniline].
Tetrytol.
Thickened inorganic oxidizer salt slurried explosive mixture.
TMETN [trimethylolethane trinitrate].
TNEF [trinitroethyl formal].
TNEOC [trinitroethylorthocarbonate].
TNEOF [trinitroethylorthoformate].
TNT [trinitrotoluene, trotyl, trilite, triton].
Torpex.
Tridite.
Trimethylol ethyl methane trinitrate composition.
Trimethylolthane trinitrate-nitrocellulose.
Trimonite.
Trinitroanisole.
Trinitrobenzene.
Trinitrobenzoic acid.
Trinitrocresol.
Trinitro-meta-cresol.
Trinitronaphthalene.
Trinitrophenetol.
Trinitrophloroglucinol.
Trinitroresorcinol.
Tritonal.

U

Urea nitrate.

W

Water-bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates (cap sensitive).
Water-in-oil emulsion explosive compositions.

X

Xanthamonas hydrophilic colloid explosive mixture.

FOR FURTHER INFORMATION CONTACT: Tom Hogue, ATF Specialist, Arson and Explosives Programs Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226 (202–927–7930).

Approved: September 2, 1999.

John W. Magaw,

Director.

[FR Doc. 99–23929 Filed 9–13–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Customs Service

Marking of Certain Silk Products and Their Containers

AGENCY: U.S. Customs Service, Department of the Treasury

ACTION: General notice.

SUMMARY: This document gives notice of Customs interpretation and application of subsection 304(h) of the Tariff Act of 1930, as amended, which became effective June 25, 1999. The newly enacted subsection 304(h) excepts certain silk products from the country of origin marking requirements of subsections 304 (a) and (b) of the Tariff Act of 1930, as amended. This document also gives notice of the types of marking that are required by the Federal Trade Commission to comply with the Textile Fiber Products Identification Act.

EFFECTIVE DATE: Applicable to goods entered, or withdrawn from warehouse, for consumption, on and after June 25, 1999.

FOR FURTHER INFORMATION CONTACT: Stephen Ecklund (202) 326–3553, Federal Trade Commission (regarding questions concerning acceptable methods of labeling); Monika Brenner (202) 927–1254 or Robert Dinerstein (202) 927–1454, Office of Regulations and Rulings, U.S. Customs Service (regarding questions concerning the marking exception under section 304).

SUPPLEMENTARY INFORMATION:

Background

Sections 304 (a) and (b) of the Tariff Act of 1930, as amended (19 U.S.C. 1304 (a) and (b)), require imported articles of foreign origin or their containers, unless excepted, to be marked in a manner that indicates to an ultimate purchaser in the United States the name of the country of origin of the article. On June 25, 1999, the President signed into law the "Miscellaneous Trade and Technical Corrections Act of 1999" (Pub. L. 106–36, 113 Stat. 127). Section 2423 of the Miscellaneous Trade and Technical Corrections Act of 1999 added a new subsection (h) to section 304 of the Tariff Act of 1930 to except certain silk products from the country of origin marking requirements of subsections (a) and (b).

Under the newly enacted subsection 304(h), articles provided for in subheading 6214.10.10 of the Harmonized Tariff Schedule of the United States (HTSUS) as in effect on January 1, 1997, or containers of articles provided for in these HTSUS provisions, are excepted from the requirement to be marked to indicate to an ultimate purchaser in the United States that they are of foreign origin. Subheading 6214.10.10, HTSUS (1997), provided for: "Shawls, scarves, mufflers, mantillas, veils and the like: of silk or silk waste: Containing 70 percent or more by weight of silk or silk waste." Heading 5007, HTSUS (1997), provided for: "Woven fabrics of silk or of silk waste."

Notwithstanding that articles provided for in subheading 6214.10.10 and heading 5007, HTSUS (1997), are excepted from the foreign country of origin marking requirements of subsections 304 (a) and (b), other laws enforced by Customs, including 15 U.S.C. 1125, prohibit importations of goods bearing false or misleading descriptions of fact. In addition, these articles are subject to the marking requirements of the Textile Fiber Products Identification Act, 15 U.S.C. 70, *et seq.*, and the Federal Trade Commission's (FTC) implementing rules (16 CFR Part 303) as administered by the FTC and enforced by the U.S. Customs Service with respect to imported articles. The general legal requirement is that textile products carry labels or tags to inform consumers of, among other things, the name of the country where such imported product was processed or manufactured as provided in 16 CFR 303.33.

Accordingly, in order to provide information to importers on how articles of subheading 6214.10.10 and heading 5007, HTSUS, shall be labeled and to explain the meaning of these labels to consumers, the following guidance is provided:

Under the rules of origin for textile and apparel products codified at 19 U.S.C. 3592 and as implemented by 19 CFR 102.21, the country of origin of articles of subheading 6214.10.10 and heading 5007, HTSUS, is the country where the fabric of the article was formed by a fabric-making process. Since the textile and apparel rules of origin are still applicable, the article may not be labeled "MADE IN (name of country)", unless the designated country is the country of origin (where the fabric of the article was formed by a fabric-making process).

However, articles bearing the descriptive terms "CRAFTED IN (Country B)", "CRAFTED BY (name of designer and printer) IN (Country B)", "CREATED IN (Country B)", or "CREATED BY (name of designer and printer) IN (Country B)", will not be deemed to bear false or misleading descriptions of fact under 15 U.S.C. 1125, notwithstanding that the fabric-making process occurs in country A, provided (1) all cutting, sewing, and printing or dyeing operations, or (2) all dyeing, printing, and at least one finishing operation, such as those listed in 19 CFR 12.130(e)(1)(i), occur in Country B for articles of subheading 6214.10.10, HTSUS; or if all dyeing and printing operations occur in Country B for articles of heading 5007, HTSUS.

In addition to the foregoing, while the FTC's Rules and Regulations under 16 CFR 303.33(a)(1) state that "[e]ach imported textile fiber product shall be labeled with the name of the country where such imported product was processed or manufactured", the rules do not require that any particular words describe the processing or manufacturing operations, so long as the information given is accurate and not presented in a confusing manner. Accordingly, in addition to the terms "Crafted in" or "Created in" permitted above, where the fabric-making process takes place in country A, any of the following designations would also be acceptable for the silk products that are the subject of this notice, provided the information is truthful:

DESIGNED IN (Country B)
DYED AND PRINTED IN (Country B)
CUT AND SEWN IN (Country B)
FASHIONED IN (Country B)
(Name of designer and printer) of (Country B)
DESIGNED AND PRINTED BY (name of designer) IN (Country B)

Questions concerning the proper labeling of articles covered in these tariff provisions that involve operations performed in the United States, other than those described above, should be addressed to the Federal Trade Commission, Division of Enforcement, 601 Pennsylvania Ave., N.W., Washington, DC. 20580.

Conclusion

Section 2423 of the Miscellaneous Trade and Technical Corrections Act of 1999, which amended section 304 of the Tariff Act of 1930 by adding a new subsection (h), provides that articles classified in subheading 6214.10.10 and heading 5007, HTSUS (1997), are excepted from the country of origin marking requirements of subsections 304 (a) and (b). However, these articles are subject to the marking requirements of the Textile Fiber Products Identification Act, 15 U.S.C. 70, *et seq.* and 16 CFR Part 303, and may not bear any false descriptions under 15 U.S.C. 1125. Articles labeled in accordance with the guidance provided above will be considered to satisfy the labeling requirements of the Textile Fiber Products Identification Act, 15 U.S.C. 70, *et seq.* and 16 CFR Part 303, and will not be considered to bear any false descriptions.

Dated: September 8, 1999.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 99–23853 Filed 9–13–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

United States Secret Service

ACTION: Appointment of performance review board (PRB) members.

This notice announces the appointment of members of the Senior Executive Service Performance Review Boards in accordance with 5 U.S.C. 4314(c)(4) for the rating period beginning October 1, 1998, and ending September 30, 1999. Each PRB will be composed of at least three of the Senior Executive Service members listed below:

Name and Title

Bruce J. Bowen: Deputy Director (USSS)
Jane E. Vezeris: Assistant Director, Administration (USSS)
H. Terrence Samway: Assistant Director, Government Liaison and Public Affairs (USSS)
Gordon S. Heddell: Assistant Director, Inspection (USSS)
Kevin T. Foley: Assistant Director, Investigations (USSS)
Carlton D. Spriggs: Assistant Director, Protective Operations (USSS)
Barbara S. Riggs: Assistant Director, Protective Research (USSS)
Charles N. DeVita: Assistant Director, Training (USSS)
John J. Kelleher: Chief Counsel (USSS)

FOR ADDITIONAL INFORMATION CONTACT: Sheila M. Lumsden, Chief, Personnel Division, 950 H Street, Suite 7300, Washington, DC 20001, Telephone No. (202) 406–5635.

Jane E. Vezeris,

Acting Director.

[FR Doc. 99–23342 Filed 9–13–99; 8:45 am]

BILLING CODE 4810–42–M

Corrections

Federal Register
Vol. 64, No. 177
Tuesday, September 14, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

THE PRESIDENT

3 CFR

[Proclamation 7219 of September 2, 1999]

Contiguous Zone of the United States

Correction

In Presidential document 99–23460 beginning on page 48701 in the issue of Wednesday, September 8, 1999, the line with the Proclamation number and date should read as set out above, and the date in the running heads should read "September 8, 1999."

[FR Doc. C9–23460 Filed 9–13–99; 8:55 am]
BILLING CODE 1505–01–D

GENERAL SERVICES ADMINISTRATION

48 CFR Chapter 5

RIN 3090–AE90

General Services Administration Acquisition Regulation

Correction

In rule document 99–15961 beginning on page 37200 in the issue of Friday, July 9, 1999, make the following corrections:

552.216–70 [Corrected]

1. On page 37237, in the third column, in 552.216–70(c), remove the second paragraph.

570.502–2 [Corrected]

2. On page 37270, in the third column, in 570.502–2, in the last line, "(3)" should read "(e)".

[FR Doc. C9–15961 Filed 9–13–99; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Migratory Bird Hunting; Environmental Impact Statement on White Goose Management; Notice

Correction

In notice document 99–22382 appearing on page 47332 in the issue of Monday, August 30, 1999, make the following correction:

On page 47332, under **ADDRESSES**, in the ninth line "white–goose–eis@fws.gov" should read "white__goose__eis@fws.gov".

[FR Doc. C9–22382 Filed 9–13–99; 8:45 am]
BILLING CODE 1505–01–D

federal register

Tuesday
September 14, 1999

Part II

Federal Reserve System

12 CFR Part 230
Truth in Savings; Final Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R–1003]

Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule.

SUMMARY: The Board is publishing an interim rule amending Regulation DD, which implements the Truth in Savings Act. The interim rule allows depository institutions to deliver Regulation DD disclosures on periodic statements in electronic form if the consumer agrees. This interim rule is adopted in response to comments received on a proposed rule issued in March 1998, allowing depository institutions to provide all disclosures under Regulation DD in electronic form. Elsewhere in today's **Federal Register**, the Board is publishing, for further comment, a modified proposal covering all Regulation DD disclosures.

EFFECTIVE DATE: September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Jane Ahrens, Senior Counsel, or Michael Hentrel, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–3667 or 452–2412. Users of Telecommunications Device for the Deaf (TDD) *only*, contact Diane Jenkins at (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

The Truth in Savings Act (TISA), 12 U.S.C. 4301 *et seq.*, requires depository institutions to disclose to consumers yields, fees, and other terms concerning deposit accounts at account opening, upon request, when changes in terms occur, and in periodic statements. It also includes rules about advertising for deposit accounts. The Board's Regulation DD (12 CFR part 230) implements the act. Credit unions are governed by a substantially similar regulation issued by the National Credit Union Administration.

The TISA and Regulation DD require a number of disclosures to be provided in writing, presuming that institutions provide paper documents. Under many laws that call for information to be in writing, information in electronic form is considered to be "written." Information produced, stored, or communicated by computer is also generally considered to be a writing, where visual text is involved.

In May 1996, the Board proposed to amend Regulation E (Electronic Fund Transfers) to permit disclosures to be provided electronically (61 FR 19696, May 2, 1996). Based on the comments received on that proposal and further analysis, in March 1998 the Board proposed to amend four of its other regulations to allow institutions to provide disclosures electronically: Regulation DD (63 FR 14533, March 25, 1998), Regulation B (Equal Credit Opportunity; 63 FR 14552), Regulation M (Consumer Leasing; 63 FR 14538), and Regulation Z (Truth in Lending; 63 FR 14548) (collectively, the "March 1998 proposed rules"). In March 1998 the Board also issued an interim rule under Regulation E so that financial institutions could implement systems, such as home-banking programs, to provide account information electronically (63 FR 14528, March 25, 1998).

The March 1998 proposed rules and the interim rule permitted financial institutions to provide disclosures electronically if the consumer agreed, with few other requirements. The rule was intended to provide flexibility and did not specify any particular method for obtaining a consumer's agreement. Whether the parties had an agreement would be determined by state law. The proposals and the interim rule did not preclude a financial institution and a consumer from entering into an agreement electronically, nor did they prescribe a formal mechanism for doing so.

The Board received approximately 200 written comments on the interim rule and the March 1998 proposed rules. The majority of comments were submitted by financial institutions and their trade associations. Industry commenters generally supported the use of electronic communication to deliver information required by the TISA and Regulation DD. Nevertheless, many sought specific revisions and additional guidance on how to comply with the disclosure requirements in particular transactions and circumstances.

Industry commenters were especially concerned about the condition that the consumer had to "agree" to receive information by electronic communication, because the rule did not specify a method for establishing that an "agreement" was reached. These commenters believed that relying on state law created uncertainty about what constitutes an agreement and, therefore, potential liability for noncompliance. To avoid uncertainty over which state's laws apply, some commenters urged the Board to adopt a federal minimum standard for agreements or for informed consent to receive disclosures by electronic communication. These commenters believed that such a standard would avoid the compliance burden associated with tailoring legally binding "agreements" to the contract laws of all jurisdictions where electronic communications may be sent.

Consumer advocates generally opposed the March 1998 interim rule and the proposed rules. Without additional safeguards, they believed, consumers may not be provided with adequate information about electronic communication before an "agreement" is reached. They also believed that promises of lower costs could induce consumers to agree to receive disclosures electronically without a full understanding of the implications. To avoid such problems, they urged the Board, for example, either to require institutions to disclose to consumers that their account with the institution will not be adversely affected if they do not agree to receive electronic disclosures, or to permit financial institutions to offer electronic disclosures only to consumers who initiate contact with the institution through electronic communication. They also noted that some consumers will likely consent to electronic disclosures believing that they have the technical capability to retrieve information electronically, but might later discover that they are unable to do so. They questioned consumers' willingness and ability to access and retain disclosures posted on Internet websites, and expressed their apprehension that the goals of federally mandated disclosure laws will be lost.

After careful consideration of the comments and further analysis, the Board is requesting comment on a modified rule under Regulation DD as well as the other four regulations (including Regulation E). The proposed amendments to Regulation DD and the other four regulations are published elsewhere in today's **Federal Register**.

The Board is also issuing this interim rule under Regulation DD, pursuant to its authority under section 269 of the TISA, permitting depository institutions to deliver Regulation DD disclosures on periodic statements in electronic form, as discussed below.

II. Regulatory Revisions

Some depository institutions are prepared to offer on-line banking programs that would include the electronic delivery of periodic statements and other material now provided in paper form. These institutions have urged the Board to move forward with the electronic communication rulemakings, to facilitate the development of electronic commerce and enable them to realize cost savings by reducing or eliminating paper disclosures. Institutions have also requested that, pending the issuance of final rules, the Board adopt interim rules.

Based on the comments received and further analysis, the Board is issuing an interim rule allowing the issuance of periodic statements under Regulation DD. The electronic delivery of periodic statements for consumer asset accounts is already permissible under the Regulation E interim rule issued in March 1998. Institutions commonly provide a single periodic statement that complies with Regulation E and Regulation DD; thus, the issuance of a comparable interim rule for periodic statements under Regulation DD should allow institutions to implement electronic delivery of deposit account statements with a single set of procedures, and avoid the cost of printing and mailing the information in paper form. In addition to reducing paperwork and costs for institutions, the interim rule may benefit many consumers by allowing them to receive their periodic account statements, including required disclosures, more quickly and in a more convenient form. In addition to reducing paperwork and costs for institutions, the interim rule may benefit many consumers by allowing them to receive their periodic account statements, including required disclosures, more quickly and in a more convenient form. The Regulation DD interim rule follows the approach of the Regulation E interim rule.

Electronic delivery of periodic statements for open-end consumer credit accounts is currently permitted under the Board's Official Staff Commentary to Regulation Z, comment 5(b)(2)(ii)–3. Thus, an institution that issues combined periodic statements, covering deposit accounts along with open-end credit accounts (such as for overdrafts), can use electronic delivery for the combined statements and be in compliance with Regulations E, DD, and Z.

The interim rule under Regulation DD is limited to the electronic delivery of periodic statements. Other disclosures required by Regulation DD, such as account-opening disclosures and change-in-terms notices, are addressed in the modified proposals being published for comment. Additional public comment would be useful before a rule is issued permitting electronic delivery more generally. Institutions that opt to deliver periodic statements electronically are encouraged to test the approach outlined in the modified proposals; this may be helpful in assessing how well the modified proposals will work in practice.

The interim rule for Regulation DD incorporates various requirements set forth in the March 1998 proposed rule and in the Regulation E interim rule. For example, the periodic statement must be provided in a form that can be displayed as visual text, and must be clear and conspicuous and in a form that the consumer can retain. With regard to the rule that the consumer must agree to electronic delivery, the reference to state law is not intended to require a formal contract. The Board believes, however, that consumers should be clearly informed when they are consenting to the electronic delivery of Regulation DD periodic statements.

Comment 2(q)–1(ii) in the Regulation DD Official Staff Commentary states that a periodic statement does not include "information provided by computer through home banking services." Prior to the adoption of this interim rule, if a depository institution provided account information electronically that might be deemed to constitute a periodic statement as defined in Regulation DD, the institution could not comply with the regulation by including the disclosures required by § 230.6 in the information provided electronically; rather, it would have to send paper periodic statements including the required disclosures. The comment was intended to avoid this result. Because electronic delivery of statements, including the required disclosures, will now be permissible, the comment appears to be unnecessary. In the modified proposal under Regulation DD, published elsewhere in today's **Federal Register**, the Board proposes to delete the comment.

III. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the interim rule to Regulation DD. Overall, the amendments are not expected to have any significant impact on small entities. A depository institution's use of electronic communication to provide disclosures required by the regulation is optional. The rule will relieve compliance burden by giving depository institutions flexibility in providing disclosures.

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the interim rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB number. The OMB control number for this interim rule is 7100–0271.

The collection of information requirements that are relevant to this interim rule are found in 12 CFR part 230. This information is mandatory (15 U.S.C. 4301 *et seq.*) to ensure adequate disclosure of basic terms, costs, and rights relating to services affecting consumers holding deposit accounts and receiving certain disclosures by electronic communication. (12 CFR 230.6). Institutions are also required to retain records for 24 months. The respondents/recordkeepers are for-profit depository institutions, including small businesses. This regulation applies to all types of depository institutions, not just state member banks; however, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies imposed by this regulation.

Since the interim amendments provide an alternative method for delivering periodic statements, it is anticipated that the requirements will not be burdensome. The use of electronic communication will likely reduce the paperwork burden of depository institutions. Institutions will be able to use electronic communication to provide periodic statements rather than having to print and mail the information in paper form. There is estimated to be no additional annual cost burden and no capital or start-up cost.

With respect to the existing requirements of Regulation DD as they apply to state member banks, it is estimated that there are 988 respondents/recordkeepers and an average frequency of about 87,100 responses per respondent each year, and the current amount of annual burden is estimated to be roughly 1,464,000 hours.

Because the information is not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises; however, the information may be protected from disclosure under exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522(b)(4), (6), and (8)). The disclosures are confidential between institutions and the customer.

The Board has a continuing interest in the public's opinions of the Federal Reserve's collections of information. At

any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0271), Washington, DC 20503, with copies of such comments sent to Mary M. West, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

List of Subjects in 12 CFR Part 230

Advertising, Banks, banking, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth in savings.

Text of Revisions

For the reasons set forth in the preamble, the Board amends Regulation DD, 12 CFR part 230, as set forth below:

PART 230—TRUTH IN SAVINGS (REGULATION DD)

1. The authority citation for part 230 continues to read as follows:

Authority: 12 U.S.C. 4301 *et seq.*

2. Under § 230.6, a new paragraph (c) is added to read as follows:

§ 230.6 Periodic statement disclosures.

* * * * *

(c) *Electronic communication.* (1) *Definition.* The term *electronic communication* means a message transmitted electronically between a consumer and a depository institution in a format that allows visual text to be displayed on equipment such as a personal computer monitor.

(2) *Electronic communication between depository institution and consumer.* A depository institution and a consumer may agree that the institution will send by electronic communication periodic-statement disclosures required by § 230.6. Periodic-statement disclosures sent by electronic communication to a consumer must comply with § 230.3 and any applicable timing requirements contained in this part.

By order of the Board of Governors of the Federal Reserve System, August 31, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–23136 Filed 9–13–99; 8:45 am]

BILLING CODE 6210–01–P

federal register

Tuesday
September 14, 1999

Part III

Department of Defense

Department of the Navy

32 CFR Part 701

Availability of Records and Publication of Documents Affecting the Public; Final Rule

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

RIN 0703–AA53

Availability of Records and Publication of Documents Affecting the Public

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: This rule amends regulations on the Department of the Navy's Freedom of Information Act (FOIA) Program. This rule reflects changes in the Secretary of the Navy's procedures.

DATES: Effective September 14, 1999.

ADDRESSES: Department of the Navy PA/FOIA Policy Branch, Office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris M. Lama, Head, DON PA/FOIA Policy Branch, Office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000, Telephone: (202) 685–6545.

SUPPLEMENTARY INFORMATION: Pursuant to the authority cited below, the Department of the Navy amends 32 CFR part 701, subparts A, B, C, and D derived from the Secretary of the Navy Instruction 5720.42 series, which implements within the Department of the Navy the provisions of Department of Defense Directives 5400.7 and 5400.7–R series, Department of Defense Freedom of Information Act Program (32 CFR part 286). This rule is being published by the Department of the Navy for guidance and interest of the public in accordance with 5 U.S.C. 552(a)(1). It has been determined that invitation of public comment on these changes to the Department of the Navy's implementing instruction prior to adoption would be impracticable and unnecessary, and it is therefore not required under the public rulemaking provisions of 32 CFR parts 286 and 701, subpart E, and 5 U.S.C. 553(b). Interested persons, however, are invited to comment in writing on this amendment. All written comments received will be considered in making subsequent amendments or revisions to 32 CFR part 701, subparts A, B, C, and D, or the instruction upon which it is based. Changes may be initiated on the basis of comments received. Written comments should be addressed to Mrs. Doris M. Lama, Head, DON PA/FOIA Policy Branch, Office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000. It has been determined that this final rule is not a "significant regulatory action" as defined in Executive Order 12866.

List of Subjects in 32 CFR Part 701

Administrative practice and procedure, Freedom of Information, Privacy.

Accordingly, the Department of the Navy revises 32 CFR part 701 to read as follows:

PART 701—AVAILABILITY OF DEPARTMENT OF THE NAVY RECORDS AND PUBLICATION OF DEPARTMENT OF THE NAVY DOCUMENTS AFFECTING THE PUBLIC

Subpart A—Department of the Navy Freedom of Information Act (FOIA) Program

Sec.

701.1 Purpose.
701.2 Navy FOIA website/FOIA handbook.
701.3 Applicability.
701.4 Responsibility and authority.
701.5 Policy.
701.6 Reading rooms.
701.7 Relationship between the FOIA and PA.
701.8 Processing FOIA requests.
701.9 Referrals.
701.10 Processing requests received from governmental officials.
701.11 Processing specific kinds of records.
701.12 FOIA appeals/litigation.

Subpart B—FOIA Definitions and Terms

701.13 5 U.S.C. 552(a)(1) materials.
701.14 5 U.S.C. 552(a)(2) materials.
701.15 5 U.S.C. 552(a)(3) materials.
701.16 Administrative appeal.
701.17 Affirmative information disclosure.
701.18 Agency record.
701.19 Appellate authority.
701.20 Discretionary disclosure.
701.21 Electronic record.
701.22 Exclusions.
701.23 *Executive Order 12958.*
701.24 Federal agency.
701.25 *5 U.S.C. 552, Freedom of Information Act (FOIA).*
701.26 FOIA exemptions.
701.27 FOIA terms location.
701.28 FOIA request.
701.29 Glomar response.
701.30 Initial Denial Authority (IDA).
701.31 Mosaic or compilation response.
701.32 Perfected request.
701.33 Public domain.
701.34 Public interest.
701.35 Reading room.
701.36 Release authorities.
701.37 Reverse FOIA.
701.38 Technical data.
701.39 Vaughn index.

Subpart C—FOIA Fees

701.40 Background.
701.41 FOIA fee terms.
701.42 Categories of requesters—applicable fees.
701.43 Fee declarations.
701.44 Restrictions.
701.45 Fee assessment.
701.46 Aggregating requests.
701.47 FOIA fees must be addressed in response letters.
701.48 Fee waivers.
701.49 Payment of fees.
701.50 Effect of the Debt Collection Act of 1982.
701.51 Refunds.
701.52 Computation of fees.
701.53 FOIA fee schedule.
701.54 Collection of fees and fee rates for technical data.
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Subpart D—FOIA Exemptions

701.56 Background.
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701.59 A brief explanation of the meaning and scope of the nine FOIA exemptions.

Authority: 5 U.S.C. 552.

Subpart A—Department of the Navy Freedom of Information Act (FOIA) Program

§ 701.1 Purpose.

Subparts A, B, C, and D of this part issue policies and procedures for implementing the Freedom of Information Act (5 U.S.C. 552), and Department of Defense Directives 5400.7 and 5400.7–R series [1] ,Department of Defense Freedom of Information Act Program, (See 32 CFR part 286) and promote uniformity in the Department of the Navy Freedom of Information Act (FOIA) Program.

§ 701.2 Navy FOIA website/FOIA handbook.

(a) The Navy FOIA website (http://www.ogc.secnav.hq.navy. mil/foia/index.html) is an excellent resource for requesters and FOIA coordinators. It provides connectivity to the Navy's official website, to other FOIA and non/FOIA websites, and to the Navy's electronic reading rooms.

(b) FOIA requesters are encouraged to visit the Navy FOIA website prior to filing a request. It features a FOIA Handbook which provides: guidance on how and where to submit requests; what's releasable/what's not; addresses for frequently requested information; time limits and addresses for filing appeals, etc. FOIA requesters may also use the electronic FOIA request form on the website to seek access to records originated by the Secretary of the Navy (SECNAV) or the Chief of Naval Operations (CNO).

§ 701.3 Applicability.

(a) Subparts A, B, C, and D of this part apply throughout the Department of the Navy (DON) and take precedence over

[1] Copies may be obtained if needed from the Navy FOIA Website at http://www.ogc.secnav.hq.navy.mil/foia/index.html

other DON instructions, which may serve to supplement it [i.e., Public Affairs Regulations, Security Classification Regulations, Navy Regulations, Marine Corps Orders, etc.]. Further, issuance of supplementary instructions by DON activities, deemed essential to the accommodation of perceived requirements peculiar to those activities, may not conflict.

(b) The FOIA applies to "records" maintained by "agencies" within the Executive Branch of the Federal government, including the Executive Office of the President and independent regulatory agencies. It states that "any person" (U.S. citizen; foreigner, whether living inside or outside the United States; partnerships; corporations; associations; and foreign and domestic governments) has the right enforceable by law, to access Federal agency records, except to the extent that such records (or portions thereof) are protected from disclosure by one or more of the nine FOIA exemptions or one of three special law enforcement exclusions.

(c) Neither Federal agencies nor fugitives from justice may use the FOIA to access agency records.

(d) The Department of Defense (DoD) FOIA directive states that the FOIA programs of the U.S. Atlantic Command and the U.S. Pacific Command fall under the jurisdiction of the Department of Defense and not the Department of the Navy. This policy represents an exception to the policies directed under DoD Directive 5100.3, "Support of the Headquarters of Unified, Specified, and Subordinate Commands."

§ 701.4 Responsibility and authority.

(a) The Head, DON PA/FOIA Policy Branch [CNO (N09B30)] has been delegated the responsibility for managing the DON's FOIA program, which includes setting FOIA policy and administering, supervising, and overseeing the execution of the 5 U.S.C. 552 and Department of Defense Directives 5400.7 and 5400.7-R series, Department of Defense Freedom of Information Act Program (see 32 CFR part 286).

(1) As principal DON FOIA policy official, CNO (N09B30) issues SECNAV Instruction 5720.42; oversees the administration of the DON FOIA program; issues and disseminates FOIA policy; oversees the Navy FOIA website; represents the DON at all meetings, symposiums, and conferences that address FOIA matters; writes the Navy's FOIA Handbook; serves on FOIA boards and committees; serves as principal policy advisor and oversight official on all FOIA matters; prepares the DON Annual FOIA Report for submission to the Attorney General; reviews all FOIA appeals to determine trends that impact on the DON; reviews all FOIA litigation matters involving the DON and apprises the Director, Freedom of Information and Security Review, DoD of same; responds to depositions and litigation regarding DON FOIA policy Secretary of the Navy Instruction 5820.8A, Release of Information for Litigation Purposes and Testimony by DON Personnel; reviews/analyzes all proposed FOIA legislation to determine its impact on the DON; develops a Navy-wide FOIA training program and serves as training oversight manager; conducts staff assistance visits/reviews within the DON to ensure compliance with 5 U.S.C. 552 and this part; reviews all SECNAV and Operations Navy instructions/forms that address FOIA; and oversees the processing of FOIA requests received by SECNAV and Chief of Naval Operations (CNO), to ensure responses are complete, timely, and accurate. Additionally, N09B30 works closely with other DoD and DON officials to ensure they are aware of highly visible and/or sensitive FOIA requests being processed by the DON.

(2) SECNAV has delegated Initial Denial Authority (IDA) to N09B30 for requests at the Secretariat and OPNAV level.

(b) The Commandant of the Marine Corps is delegated responsibility for administering and supervising the execution of this instruction within the Marine Corps. To accomplish this task, the Director of Administrative Resource Management (Code ARAD) serves as the FOIA Coordinator for Headquarters, U.S. Marine Corps, and assists CNO (N09B30) in promoting the Department of the Navy FOIA Program by issuing a Marine Corps FOIA Handbook; utilizing the Marine Corps FOIA website to disseminate FOIA information; consolidating its activities Annual FOIA Reports and submitting it to CNO (N09B30); maintaining a current list of Marine Corps FOIA coordinators, etc.

(c) The DON Chief Information Officer (DONCIO) is responsible for preparing and making publicly available upon request an index of all DON major information systems and a description of major information and record locator systems maintained by the Department of the Navy as required by 5 U.S.C. 552 and DoD 5400.7–R, "DoD Freedom of Information Act Program."

(d) FOIA coordinators will:

(1) Implement and administer a local FOIA program under this instruction; serve as principal point of contact on FOIA matters; issue a command/activity instruction that implements SECNAVINST 5740.42F by reference and highlights only those areas unique to the command/activity (i.e., designate the command/activity's FOIA Coordinator and IDA; address internal FOIA processing procedures; and address command/activity level FOIA reporting requirements); receive and track FOIA requests to ensure responses are made in compliance with 5 U.S.C. 552 and DoD Directives 5400.7 and 5400.7–R and this part; provide general awareness training to command/activity personnel on the provisions of 5 U.S.C. 552 and this instruction; collect and compile FOIA statistics and submit a consolidated Annual FOIA Report to Echelon 2 FOIA coordinator for consolidation; provide guidance on how to process FOIA requests; and provide guidance on the scope of FOIA exemptions.

(2) Additionally, CMC (ARAD) and Echelon 2 FOIA coordinators will:

(i) Ensure that reading room materials are placed in the activity's electronic reading room and that the activity's website is linked to the Navy FOIA website and the activity's reading room is linked to the Navy's FOIA reading room lobby. Documents placed in the reading room shall also be indexed as a Government Information Locator Service (GILS) record, as this will serve as an index of available records.

(ii) Review proposed legislation and policy recommendations that impact the FOIA and provide comments to CNO (N09B30).

(iii) Review SECNAVINST 5720.42F and provide recommended changes/comments to CNO (N09B30).

(iv) Routinely conduct random staff assistance visits/reviews/self-evaluations within the command and lower echelon commands to ensure compliance with FOIA.

(v) Collect and compile command and feeder reports for the Annual FOIA Report and provide a consolidated report to CNO (N09B30).

(vi) Maintain a listing of their subordinate activities' FOIA coordinators to include full name, address, and telephone (office and fax) and place on their website.

(Note to paragraph (d)(2)(vi): Do not place names of FOIA coordinators who are overseas, routinely deployable or in sensitive units on the website. Instead just list "FOIA Coordinator")

(vii) Notify CNO (N09B30) of any change of name, address, office code and zip code, telephone and facsimile number, and/or e-mail address of Echelon 2 FOIA Coordinators.

(viii) Conduct overview training to ensure all personnel are knowledgeable

of the FOIA and its requirements. See § 701.12.

(ix) Work closely with the activity webmaster to ensure that information placed on the activity's website does not violate references in paragraphs (a), (c) and (f).

(e) *Initial Denial Authorities (IDAs).* The following officials are delegated to serve as Initial Denial Authorities, on behalf of SECNAV (see § 701.30 for definition):

(1) Under Secretary of the Navy; Deputy Under Secretary of the Navy; Assistant Secretaries of the Navy (ASNs) and their principal deputy assistants; Assistant for Administration (SECNAV); Director, Administrative Division (SECNAV); Special Assistant for Legal and Legislative Affairs (SECNAV); Director, Office of Program Appraisal (SECNAV); DONCIO; Director, Small and Disadvantaged Business Utilization (SECNAV); Chief of Information (CHINFO); Director, Navy International Programs Office; Chief of Legislative Affairs; CNO; Vice CNO; Director, Naval Nuclear Propulsion Program (NOON); Director, Navy Staff (N09B); Head, DON PA/FOIA Policy Branch (N09B30); Director of Naval Intelligence (N2); Director of Space, Information Warfare, Command and Control (N6); Director of Navy Test & Evaluation & Technology Requirements (N091); Surgeon General of the Navy (N093); Director of Naval Reserve (N095); Oceanographer of the Navy (N096); Director of Religious Ministries/Chief of Chaplains of the Navy (N097); all Deputy Chiefs of Naval Operations; Chief of Naval Personnel; Director, Strategic Systems Programs; Chief, Bureau of Medicine and Surgery; Director, Office of Naval Intelligence; Naval Inspector General; Auditor General of the Navy; Commanders of the Naval Systems Commands; Chief of Naval Education and Training; Commander, Naval Reserve Force; Chief of Naval Research; Director, Naval Criminal Investigative Service; Deputy Commander, Naval Legal Service Command; Commander, Navy Personnel Command; Director, Naval Center of Cost Analysis; Commander, Naval Meteorology and Oceanography Command; Director, Naval Historical Center; heads of DON staff offices, boards, and councils; Program Executive Officers; and all general officers.

(2) Within the Marine Corps: CMC and his Assistant, Chief of Staff, Deputy Chiefs of Staff; Director, Personnel Management Division; Fiscal Director of the Marine Corps; Counsel for the Commandant; Director of Intelligence; Director, Command, Communications and Computer Systems Division; Legislative Assistant to the Commandant; Director, Judge Advocate Division; Inspector General of the Marine Corps; Director, Manpower, Plans, and Policy Division; Head, Freedom of Information and Privacy Acts Section, HQMC; Director of Public Affairs; Director of Marine Corps History and Museums; Director, Personnel Procurement Division; Director, Morale Support Division; Director, Human Resources Division; Director of Headquarters Support; commanding generals; directors, Marine Corps districts; commanding officers, not in the administrative chain of command of a commanding general or district director. For each official listed above, the deputy or principal assistant is also authorized denial authority.

(3) JAG and his Deputy and the DON General Counsel (DONGC) and his deputies are excluded from this grant of authorization, since SECNAV has delegated them to serve as his appellate authorities. However, they are authorized to designate IDA responsibilities to other senior officers/officials within JAG and DONGC. DONGC has delegated IDA responsibilities to the Assistant General Counsels and the Associate General Counsel (Litigation).

(4) For the shore establishment and operating forces: All officers authorized by Article 22, Uniform Code of Military Justice (UCMJ) or designated in section 0120, Manual of the Judge Advocate General (JAGINST 5800.7C) to convene general courts-martial.

(5) IDAs must balance their decision to centralize denials for the purpose of promoting uniform decisions against decentralizing denials to respond to requests within the FOIA time limits. Accordingly, the IDAs listed in paragraphs (e)(1) through (4) are authorized to delegate initial denial authority to subordinate activities for the purpose of streamlining FOIA processing. They may also delegate authority to a specific staff member, assistant, or individuals acting during their absence if this serves the purpose of streamlining and/or complying with the time limits of FOIA.

(Note to paragraph (e)(5): Such delegations shall be limited to comply with DoD Directive 5400.7, "DoD Freedom of Information Act Program".)

(6) Delegations of IDA authority should be reflected in the activity's supplementing FOIA instruction or by letter, with a copy to CNO (N09B30) or CMC (ARAD), as appropriate.

(f) Release authorities. Release authorities are authorized to grant requests on behalf of the Office of the Secretary of the Navy for agency records under their possession and control for which no FOIA exemption applies; to respond to requesters concerning refinement of their requests; to provide fee estimates; and to offer appeal rights for adequacy of search or fee estimates to the requester.

(g) Appellate authorities are addressed in § 701.12.

§ 701.5 Policy.

(a) *Compliance with the FOIA.* DON policy is to comply with the FOIA as set forth in the Department of Defense's FOIA Directives 5400.7 and 5400.7–R, and this instruction in this part in both letter and spirit; conduct its activities in an open manner consistent with the need for security and adherence to other requirements of law and regulation; and provide the public with the maximum amount of accurate and timely information concerning its activities.

(b) *Prompt action.* DON activities shall act promptly on requests when a member of the public complies with the procedures established in the instruction in this part (i.e., files a "perfected request") and the request is received by the official designated to respond. See § 701.11 for minimum requirements of the FOIA.

(c) *Provide assistance.* DON activities shall assist requesters in understanding and complying with the procedures established by the instruction in this part, ensuring that procedural matters do not unnecessarily impede a requester from obtaining DON records promptly.

(d) *Grant access.* (1) DON activities shall grant access to agency records when a member of the public complies with the provisions of the instruction in this part and there is no FOIA exemption available to withhold the requested information (see subpart D of this part).

(2) In those instances where the requester has not cited FOIA, but the records are determined to be releasable in their entirety, the request shall be honored without requiring the requester to invoke FOIA.

(e) *Create a record.* (1) A record must exist and be in the possession and control of the DON at the time of the request to be considered subject to the instruction in this part and the FOIA. Accordingly, DON activities need not process requests for records which are not in existence at the time the request is received. In other words, requesters may not have a "standing FOIA request" for release of future records.

(2) There is no obligation to create, compile, or obtain a record to satisfy a FOIA request. However, this is not to be confused with honoring form or format requests (see § 701.8). A DON activity, however, may compile a new record when so doing would result in a more useful response to the requester, or be less burdensome to the agency than providing existing records, and the requester does not object. Cost of creating or compiling such a record may not be charged to the requester unless the fee for creating the record is equal to or less than the fee which would be charged for providing the existing record. Fee assessments shall be in accordance with subpart C of this part.

(3) With respect to electronic data, the issue of whether records are actually created or merely extracted from an existing database is not always readily apparent. Consequently, when responding to FOIA requests for electronic data where creation of a record, programming, or particular format are questionable, DON activities should apply a standard of reasonableness. In other words, if the capability exists to respond to the request, and the effort would be a business as usual approach, then the request should be processed. However, the request need not be processed when the capability to respond does not exist without a significant expenditure of resources, thus not being a normal business as usual approach. As used in this sense, a significant interference with the operation of the DON activity's automated information system would not be a business as usual approach.

(f) *Disclosures.* (1) *Discretionary Disclosures.* DON activities shall make discretionary disclosures whenever disclosure would not foreseeably harm an interest protected by a FOIA exemption. A discretionary disclosure is normally not appropriate for records clearly exempt under exemptions (b)(1), (b)(3), (b)(4), (b)(6), (b)(7)(C) and (b)(7)(F). Exemptions (b)(2), (b)(5), and (b)(7)(A), (b)(7)(B), (b)(7)(D) and (b)(7)(E) are discretionary in nature and DON activities are encouraged to exercise discretion whenever possible. Exemptions (b)(4), (b)(6), and (b)(7)(C) cannot be claimed when the requester is the "submitter" of the information. While discretionary disclosures to FOIA requesters constitute a waiver of the FOIA exemption that may otherwise apply, this policy does not create any legally enforceable right.

(2) *Public domain.* Non-exempt records released under FOIA to a member of the public are considered to be in the public domain. Accordingly, such records may also be made available in reading rooms, in paper form, as well as electronically to facilitate public access.

(3) *Limited disclosures.* Disclosure of records to a properly constituted advisory committee, to Congress, or to other Federal agencies does not waive a FOIA exemption.

(4) *Unauthorized disclosures.* Exempt records disclosed without authorization by the appropriate DON official do not lose their exempt status.

(5) *Official versus personal disclosures.* While authority may exist to disclose records to individuals in their official capacity, the provisions of the instruction in this part apply if the same individual seeks the records in a private or personal capacity.

(6) *Distributing information.* DON activities are encouraged to enhance access to information by distributing information on their own initiative through the use of electronic information systems, such as the Government Information Locator Service (GILS).

(g) *Honor form or format requests.* DON activities shall provide the record in any form or format requested by the requester, if the record is readily reproducible in that form or format. DON activities shall make reasonable efforts to maintain their records in forms or formats that are reproducible. In responding to requests for records, DON activities shall make reasonable efforts to search for records in electronic form or format, except when such efforts would significantly interfere with the operation of the DON activities' automated information system. Such determinations shall be made on a case-by-case basis.

(h) *Authenticate documents.* Records provided under the instruction in this part shall be authenticated with an appropriate seal, whenever necessary, to fulfill an official Government or other legal function. This service, however, is in addition to that required under the FOIA and is not included in the FOIA fee schedule. DON activities may charge for the service at a rate of $5.20 for each authentication.

§ 701.6. Reading rooms.

The FOIA requires that (a)(2) records created on or after 1 November 1996, be made available electronically (starting 1 November 1997) as well as in hard copy, in the FOIA reading room for inspection and copying, unless such records are published and copies are offered for sale. DoD 5400.7–R, "DoD Freedom of Information Act Program," requires that each DoD Component provide an appropriate facility or facilities where the public may inspect and copy or have copied the records held in their reading rooms. To comply, the Navy FOIA website includes links that assist members of the public in locating Navy libraries, online documents, and Navy electronic reading rooms maintained by SECNAV/CNO, CMC, OGC, JAG and Echelon 2 commands. Although each of these activities will maintain their own document collections on their own servers, the Navy FOIA website provides a common gateway for all Navy online resources. To this end, DON activities shall:

(a) Establish their reading rooms and link them to the Navy FOIA Reading Room Lobby which is found on the Navy FOIA website.

(b) Ensure that responsive documents held by their subordinate activities are also placed in the reading room.

(Note to paragraph (b): SECNAV/ASN and OPNAV offices shall ensure that responsive documents are provided to CNO (N09B30) for placement in the reading room.)

(c) Ensure that documents placed in a reading room are properly excised to preclude the release of personal or contractor-submitted information prior to being made available to the public. In every case, justification for the deletion must be fully explained in writing, and the extent of such deletion shall be indicated on the record which is made publicly available, unless such indication would harm an interest protected by an exemption under which the deletion was made. If technically feasible, the extent of the deletion in electronic records or any other form of record shall be indicated at the place in the record where the deletion was made. However, a DON activity may publish in the **Federal Register** a description of the basis upon which it will delete identifying details of particular types of records to avoid clearly unwarranted invasions of privacy, or competitive harm to business submitters. In appropriate cases, the DON activity may refer to this description rather than write a separate justification for each deletion. DON activities may remove (a)(2)(D) records from their electronic reading room when the appropriate officials determine that access is no longer necessary.

(d) Should a requester submit a FOIA request for FOIA-processed (a)(2) records, and insist that the request be processed, DON activities shall process the FOIA request. However, DON activities have no obligation to process a FOIA request for 5 U.S.C. 552(a)(2)(A), (B), and (C) [5 U.S.C. 552] records because these records are required to be made public and not FOIA-processed under paragraph (a)(3) of the FOIA.

(e) DON activities may share reading room facilities if the public is not unduly inconvenienced. When appropriate, the cost of copying may be imposed on the person requesting the

material in accordance with FOIA fee guidelines (see subpart C of this part).

(f) DON activities shall maintain an index of all available documents. A general index of FOIA-processed (a)(2) records shall be made available to the public, both in hard copy and electronically by 31 December 1999. To comply with this requirement, DON activities shall establish a GILS record for each document it places in a reading room. No (a)(2) materials issued or adopted after 4 July 1967, that are not indexed and either made available or published may be relied upon, used or cited as precedent against any individual unless such individual has actual and timely notice of the contents of such materials. Such materials issued or adopted before 4 July 1967, need not be indexed, but must be made available upon request if not exempted under the instruction in this part.

(g) An index and copies of unclassified Navy instructions, forms, and addresses for DON activities (i.e., the Standard Navy Distribution List (SNDL) are located on the Navy Electronics Directives System (http://neds.nebt.daps.mil/).

(h) DON material published in the **Federal Register**, such as material required to be published by Section 552(a)(1) of the FOIA, shall be made available by JAG in their FOIA reading room and electronically to the public.

(i) Although not required to be made available in response to FOIA requests or made available in FOIA Reading Rooms, "(a)(1)" materials may, when feasible, be made available to the public in FOIA reading rooms for inspection and copying, and by electronic means. Examples of "(a)(1)" materials are: descriptions of an agency's central and field organization, and to the extent they affect the public, rules of procedures, descriptions of forms available, instruction as to the scope and contents of papers, reports, or examinations, and any amendment, revision, or report of the aforementioned.

§ 701.7 Relationship between the FOIA and PA.

Not all requesters are knowledgeable of the appropriate statutory authority to cite when requesting records. In some instances, they may cite neither Act, but will imply one or both Acts. For these reasons, the following guidelines are provided to ensure requesters receive the greatest amount of access rights under both Acts:

(a) If the record is required to be released under the FOIA, the PA does not bar its disclosure. Unlike the FOIA, the PA applies only to U.S. citizens and aliens admitted for permanent residence. Subpart F of this part implements the DON's Privacy Act Program.

(b) Requesters who seek records about themselves contained in a PA system of records and who cite or imply only the PA, will have their requests processed under the provisions of both the PA and the FOIA. If the PA system of records is exempt from the provisions of 5 U.S.C. 552a(d)(1) and the records, or any portion thereof are exempt under the FOIA, the requester shall be so advised with the appropriate PA and FOIA exemption. Appeals shall be processed under both Acts.

(c) Requesters who seek records about themselves that are not contained in a PA system of records and who cite or imply the PA will have their requests processed under the provisions of the FOIA, since the PA does not apply to these records. Appeals shall be processed under the FOIA.

(d) Requesters who seek records about themselves that are contained in a PA system of records and who cite or imply the FOIA or both Acts will have their requests processed under the provisions of both the PA and the FOIA. If the PA system of records is exempt from the provisions of 5 U.S.C. 552a(d)(1), and the records, or any portion thereof are exempt under the FOIA, the requester shall be so advised with the appropriate PA and FOIA exemption. Appeals shall be processed under both Acts.

(e) Requesters who seek access to agency records that are not part of a PA system of records, and who cite or imply the PA and FOIA, will have their requests processed under FOIA, since the PA does not apply to these records. Appeals shall be processed under the FOIA.

(f) Requesters who seek access to agency records and who cite or imply the FOIA will have their requests and appeals processed under the FOIA.

(g) Requesters shall be advised in final responses which Act(s) was (were) used, inclusive of appeal rights.

(h) The time limits for responding to the request will be determined based on the Act cited. For example, if a requester seeks access under the FOIA for his or her personal records which are contained in a PA system of records, the time limits of the FOIA apply.

(i) Fees will be charged based on the kind of records being requested (i.e., FOIA fees if agency records are requested; PA fees for requesters who are seeking access to information contained in a PA system of record which is retrieved by their name and/or personal identifier).

§ 701.8 Processing FOIA requests.

Upon receipt of a FOIA request, DON activities shall:

(a) Review the request to ensure it meets the minimum requirements of the FOIA to be processed.

(1) *Minimum requirements of a FOIA request.* A request must be in writing; cite or imply FOIA; reasonably describe the records being sought so that a knowledgeable official of the agency can conduct a search with reasonable effort; and if fees are applicable, the requester should include a statement regarding willingness to pay all fees or those up to a specified amount or request a waiver or reduction of fees.

(2) If a request does not meet the minimum requirements of the FOIA, DON activities shall apprise the requester of the defect and assist him/her in perfecting the request.

(Note to paragraph (a)(2): The statutory 20 working day time limit applies upon receipt of a "perfected" FOIA request.)

(b) When a requester or his/her attorney requests personally identifiable information in a record, the request may require a notarized signature or a statement certifying under the penalty of perjury that their identity is true and correct. Additionally, written consent of the subject of the record is required for disclosure from a Privacy Act System of records, even to the subject's attorney.

(c) *Review description of requested record(s).* (1) The FOIA requester is responsible for describing the record he/she seeks so that a knowledgeable official of the activity can locate the record with a reasonable amount of effort. In order to assist DON activities in conducting more timely searches, a requester should endeavor to provide as much identifying information as possible. When a DON activity receives a request that does not reasonably describe the requested record, it shall notify the requester of the defect in writing. The requester should be asked to provide the type of information outlined in this paragraph. DON activities are not obligated to act on the request until the requester responds to the specificity letter. When practicable, DON activities shall offer assistance to the requester in identifying the records sought and in reformulating the request to reduce the burden on the agency in complying with the FOIA. The following guidelines are provided to deal with generalized requests and are based on the principle of reasonable effort. Descriptive information about a record may be divided into two broad categories.

(i) Category I is file-related and includes information such as type of record (for example, memorandum), title, index citation, subject area, date the record was created, and originator.

(ii) Category II is event-related and includes the circumstances that resulted in the record being created or the date and circumstances surrounding the event the record covers.

(2) Generally, a record is not reasonably described unless the description contains sufficient Category I information to permit the conduct of an organized, non random search based on the DON activity's filing arrangements and existing retrieval systems, or unless the record contains sufficient Category II information to permit inference of the Category I elements needed to conduct such a search.

(3) The following guidelines deal with requests for personal records: Ordinarily, when personal identifiers are provided solely in connection with a request for records concerning the requester, only records in Privacy Act system of records that can be retrieved by personal identifiers need be searched. However, if a DON activity has reason to believe that records on the requester may exist in a record system other than a PA system, the DON activity shall search the system under the provisions of the FOIA. In either case, DON activities may request a reasonable description of the records desired before searching for such records under the provisions of the FOIA and the PA. If the records are required to be released under the FOIA, the PA does not bar its disclosure.

(4) The guidelines in paragraph (c)(3) notwithstanding, the decision of the DON activity concerning reasonableness of description must be based on the knowledge of its files. If the description enables the DON activity personnel to locate the record with reasonable effort, the description is adequate. The fact that a FOIA request is broad or burdensome in its magnitude does not, in and of itself, entitle a DON activity to deny the request on the ground that it does not reasonably describe the records sought. The key factor is the ability of the staff to reasonably ascertain and locate which records are being requested.

(d) *Review request to determine if FOIA fees may be applicable.* (1) FOIA fee issues shall be resolved before a DON activity begins processing a FOIA request.

(2) FOIA fees shall be at the rates prescribed at subpart C of this part.

(3) If fees are applicable, a requester shall be apprised of what category of requester he/she has been placed and provided a complete breakout of fees to include any and all information provided before fees are assessed (e.g., first two hours of search and first 100 pages of reproduction have been provided without charge.)

(4) Forms DD 2086 (for FOIA requests) and 2086–1 (for FOIA requests for technical data) serve as an administrative record of all costs incurred to process a request; actual costs charged to a requester (i.e., search, review, and/or duplication and at what salary level and the actual time expended); and as input to the Annual FOIA Report. Requesters may request a copy of the applicable form to review the time and costs associated with the processing of a request.

(5) Final response letters shall address whether or not fees are applicable or have been waived. A detailed explanation of FOIA fees is provided at subpart C of this part.

(e) *Control FOIA Request.* Each FOIA request should be date stamped upon receipt; given a case number; and entered into a formal control system to track the request from receipt to response. Coordinators may wish to conspicuously stamp, label, and/or place the request into a brightly colored folder/cover sheet to ensure it receives immediate attention by the action officer.

(f) *Enter request into multitrack processing system.* When a DON activity has a significant number of pending requests that prevents a response determination being made within 20 working days, the requests shall be processed in a multitrack processing system, based on the date of receipt, the amount of work and time involved in processing the requests, and whether the request qualifies for expedited processing.

(1) DON activities may establish as many queues as they wish, however, at a minimum three processing tracks shall be established, all based on a first-in, first-out concept, and rank ordered by the date of receipt of the request: one track for simple requests, one track for complex requests, and one track for expedited processing. Determinations as to whether a request is simple or complex shall be made by each DON activity.

(2) DON activities shall provide a requester whose request does not qualify for the fastest queue (except for expedited processing), an opportunity to limit in writing by hard copy, facsimile, or electronically the scope of the request in order to qualify for the fastest queue.

(3) This multitrack processing system does not obviate the activity's responsibility to exercise due diligence in processing requests in the most expeditious manner possible.

(4) Referred requests shall be processed according to the original date received by the initial activity and then placed in the appropriate queue.

(5) Establish a separate queue for expedited processing. A separate queue shall be established for requests meeting the test for expedited processing. Expedited processing shall be granted to a requester after the requester requests such and demonstrates a compelling need for the information. Notice of the determination as to whether to grant expedited processing in response to a requester's compelling need shall be provided to the requester within 10 calendar days after receipt of the request in the office which will determine whether to grant expedited access. Once the determination has been made to grant expedited processing, DON activities shall process the request as soon as practicable. Actions by DON activities to initially deny or affirm the initial denial on appeal of a request for expedited processing, and failure to respond in a timely manner shall be subject to judicial review.

(i) Compelling need means that the failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual.

(ii) Compelling need also means that the information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity. An individual primarily engaged in disseminating information means a person whose primary activity involves publishing or otherwise disseminating information to the public. Representatives of the news media would normally qualify as individuals primarily engaged in disseminating information. Other persons must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public.

(iii) Urgently needed means that the information has a particular value that will be lost if not disseminated quickly. Ordinarily this means a breaking news story of general public interest. However, information of historical interest only, or information sought for litigation or commercial activities would not qualify, nor would a news media publication or broadcast deadline unrelated to the news breaking nature of the information.

(iv) A demonstration of compelling need by a requester shall be made by a statement certified by the requester to be

true and correct to the best of his/her knowledge. This statement must accompany the request in order to be considered and responded to within the 10 calendar days required for decisions on expedited access.

(v) Other reasons that merit expedited processing by DON activities are an imminent loss of substantial due process rights and humanitarian need. A demonstration of imminent loss of substantial due process rights shall be made by a statement certified by the requester to be true and correct to the best of his/her knowledge. Humanitarian need means that disclosing the information will promote the welfare and interests of mankind. A demonstration of humanitarian need shall also be made by a statement certified by the requester to be true and correct to the best of his/her knowledge. Both of these statements must accompany the request in order to be considered and responded to within the 10 calendar days required for decisions on expedited access. Once the decision has been made to expedite the request for either of these reasons, the request may be processed in the expedited processing queue behind those requests qualifying for compelling need.

(6) These same procedures also apply to requests for expedited processing of administrative appeals.

(g) *Respond to request within FOIA time limits.* Once an activity receives a "perfected" FOIA request, it shall inform the requester of its decision to grant or deny access to the requested records within 20 working days. Activities are not necessarily required to release records within the 20 working days, but access to releasable records should be granted promptly thereafter and the requester apprised of when he/she may expect to receive a final response to his/her request. Naturally, interim releases of documents are encouraged if appropriate. Sample response letters are provided on the Navy FOIA website.

(1) If a significant number of requests, or the complexity of the requests prevents a final response determination within the statutory time period, DON activities shall advise the requester of this fact, and explain how the request will be responded to within its multitrack processing system. A final response determination is notification to the requester that the records are released, or will be released by a certain date, or the records are denied under the appropriate FOIA exemption(s) or the records cannot be provided for one or more of the "other reasons" (see § 701.8(n)). Interim responses acknowledging receipt of the request, negotiations with the requester concerning the scope of the request, the response timeframe, and fee agreements are encouraged; however, such actions do not constitute a final response determination under FOIA.

(2) *Formal extension.* In those instances where a DON activity cannot respond within the 20 working day time limit, the FOIA provides for extension of initial time limits for an additional 10 working days for three specific situations: the need to search for and collect records from separate offices; the need to examine a voluminous amount of records required by the request; and the need to consult with another agency or agency component. In such instances, naval activities shall apprise requesters in writing of their inability to respond within 20 working days and advise them of their right to appeal to the appellate authority.

(Note to paragraph (g)(2): Formal extension letters require IDA signature.)

(3) *Informal extension.* A recommended alternative to taking a formal extension is to call the requester and negotiate an informal extension of time with the requester. The advantages include the ability to agree on a mutually acceptable date to respond that exceeds a formal extension of an additional 10 working days, and the letter of confirmation does not require the signature of an IDA. Additionally, it does not impact on the additional days the appellate authority may take when responding to a FOIA appeal.

(h) *Conduct a search for responsive records.* (1) Conduct a search for responsive records, keeping in mind a test for reasonableness (i.e., file disposition requirements set forth in SECNAVINST 5212.5D, "Navy and Marine Corps Records Disposal Manual"). This includes making a manual search for records as well as an electronic search for records. Do not assume that because a document is old, it does not exist. Rather, ensure that all possible avenues are considered before making a determination that no record could be found (i.e., such as determining if the record was transferred to a federal records center for holding).

(2) Requesters can appeal "adequacy of search." To preclude unnecessary appeals, you are encouraged to detail your response letter to reflect the search undertaken so the requester understands the process. It is particularly helpful to address the records disposal requirements set forth in SECNAVINST 5212.5D, "Navy and Marine Corps Records Disposal Manual" for the records being sought.

(i) *Review documents for release.* Once documents have been located, the originator or activity having possession and control is responsible for reviewing them for release and coordinating with other activities/agencies having an interest. The following procedures should be followed:

(1) Sort documents by originator and make necessary referrals (see § 701.9).

(2) Documents for which the activity has possession and control should be reviewed for release. If the review official determines that all or part of the documents requested require denial, and the head of the activity is an IDA, he/she shall respond directly to the requester. If, however, the activity head is not an IDA, then the request, a copy of the responsive documents (unexcised), proposed redacted copy of the documents, and a detailed explanation regarding their release must be referred to the IDA for a final release determination and the requester shall be notified in writing of the transfer.

(3) Documents for which the activity does not have possession and control, but has an interest, should be referred to the originator along with any recommendations regarding release (see § 701.9).

(j) *Process non-responsive information in responsive documents.* DON activities shall interpret FOIA requests liberally when determining which records are responsive to the requests, and may release non-responsive information. However, should DON activities desire to withhold non-responsive information, the following steps shall be accomplished:

(1) Consult with the requester, and ask if the requester views the information as responsive, and if not, seek the requester's concurrence to deletion of non-responsive information without a FOIA exemption. Reflect this concurrence in the response letter.

(2) If the responsive record is unclassified and the requester does not agree to deletion of non-responsive information without a FOIA exemption, release all non-responsive and responsive information which is not exempt. For non-responsive information that is exempt, notify the requester that even if the information were determined responsive, it would likely be exempted (state the appropriate exemption(s).) Advise the requester of the right to request this information under a separate FOIA request. The separate request shall be placed in the same location within the processing queue as the original request.

(3) If the responsive record is classified, and the requester does not agree to deletion of non-responsive information without a FOIA exemption, release all unclassified responsive and non-responsive information which is not exempt. If the non-responsive information is exempt, follow the procedures provided. The classified, non-responsive information need not be reviewed for declassification at this point. Advise the requester than even if the classified information were determined responsive, it would likely be exempt under 5 U.S.C. 552 (b)(1) and other exemptions if appropriate. Advise the requester of the right to request this information under a separate FOIA request. The separate request shall be placed in the same location within the processing queue as the original request.

(k) *Withholding/excising information.* (1) DON records may only be withheld if they qualify for exemption under one or more of the nine FOIA exemptions/three exclusions and it is determined that a foreseeable harm to an interest protected by those exemptions would result if the information is released. There are nine FOIA exemptions. See subpart D of this part for the scope of each exemption.

(2) Although a FOIA exemption may apply, DON activities are encouraged to consider discretionary disclosures of information when an exemption permits such disclosure (see § 701.5(f).)

(3) *Excising documents.* The excision of information within a document should be made so that the requester can readily identify the amount of information being withheld and the reason for the withholding. Accordingly, ensure that any deletion of information is bracketed and all applicable exemptions listed. In those instances, where multiple pages of documents are determined to be exempt from disclosure in their entirety, indicate the number of pages being denied and the basis for the denial.

(l) *Reasonably segregable information.* DON activities must release all "reasonably segregable information" when the meaning of these portions is not distorted by deletion of the denied portions, and when it reasonably can be assumed that a skillful and knowledgeable person could not reasonably reconstruct excised information. When a record is denied in whole, the response to the requester will specifically state that it is not reasonable to segregate portions of the record for release.

(m) *Making a discretionary disclosure.* A discretionary disclosure to one requester may preclude the withholding of similar information under a FOIA exemption if subsequently requested by the same individual or someone else. The following suggested language should be included with the discretionary disclosure of any record that could be subject to withholding: "The information you requested is subject to being withheld under section (b)(__) of the FOIA. The disclosure of this material to you by the DON is discretionary and does not constitute a waiver of our right to claim this exemption for similar records in the future."

(n) *Other reasons.* There are 10 reasons for not complying with a request for a record under FOIA:

(1) *No record.* The DON activity conducts a reasonable search of files and fails to identify records responsive to the request.

(Note to paragraph (n)(1): Requester must be advised that he/she may appeal the adequacy of search and provided appeal rights. Response letter does not require signature by IDA.)

(2) *Referral.* The request is referred to another DoD/DON activity or to another executive branch agency for their action.

(Note to paragraph (n)(2): Referral does not need to be signed by IDA.)

(3) *Request withdrawn.* The requester withdraws request.

(Note to paragraph (n)(3): Response letter does not require signature by IDA.)

(4) *Fee-related reason.* Requester is unwilling to pay fees associated with the request; is past due in payment of fees from a previous request; or disagrees with the fee estimate.

(Note to paragraph (n)(4): Requester must be advised that he/she may appeal the fee estimate. Response letter does not require signature by IDA.)

(5) *Records not reasonably described.* A record has not been described with sufficient particularity to enable the DON activity to locate it by conducting a reasonable search.

(Note to paragraph (n)(5): Response letter does not require signature by IDA.)

(6) *Not a proper FOIA request for some other reason.* When the requester fails unreasonably to comply with procedural requirements, other than those fee-related issues described in paragraph (n)(4), imposed by the instruction in this part and/or other published rules or directives.

(Note to paragraph (n)(6): Response letter does not require signature by IDA.)

(7) *Not an agency record.* When the requester is provided a response indicating that the requested information was "not an agency record" within the meaning of the FOIA and the instruction in this part.

(Note to paragraph (n)(7): Response letter does not require signature by IDA.)

(8) *Duplicate request.* When a request is duplicative of another request which has already been completed or currently in process from the same requester.

(Note to paragraph (n)(8): Response letter does not require signature by IDA.

(9) *Other (specify).* When a FOIA request cannot be processed because the requester does not comply with published rules, other than for those reasons described in paragraphs (n) (1) through (8). DON activities must document the specific discrepancy.

(Note to paragraph (n)(9): Response letter does not require signature by IDA.)

(10) *Denial of request.* The record is denied in whole or in part in accordance with procedures set forth in 5 U.S.C. 552, DoD 5400.7–R, and the instruction in this part.

(Note to paragraph (n)(10): The requester is advised that he/she may appeal the determination and response letter must be signed by IDA.)

(o) *Writing a response letter.* FOIA response letters should contain the following information:

(1) The date of the request; when it was received; if records were not located, where the search was conducted and what the records disposal requirements are for those records.

(2) Cut-off dates. Normally, DON activities shall consider the date of receipt of a FOIA request as the cut-off date for a records search. Where a DON activity employs a particular cut-off date, however, it should give notice of that date in the response letter to the requester.

(3) If a request is denied in whole or in part, the denial response letter should cite the exemption(s) claimed; if possible, delineate the kinds of information withheld (i.e., social security numbers, date of birth, home addresses, etc.) as this may satisfy the requester and thus eliminate an appeal; provide appeal rights, and be signed by an IDA. However, there is no requirement that the response contain the same documentation necessary for litigation (i.e., FOIA requesters are not entitled to a Vaughn index (see definition in § 701.39 during the administrative process).

(4) The fees charged or waived; if fees were charged, what category was the requester placed in and provide a breakout of the fees charged (i.e., the first 2 hours of search were waived and so you are being charged for the remaining 4 hours of search at $25 per hour, or $100; the first 100 pages of reproduction were waived and the remaining 400 pages being provided

were charged at $.15 per page, resulting in $60 in reproduction fees, for a total of $160). These figures are derived from Form DD 2086 (FOIA Fees) or Form DD 2086–1 (Technical Data Fees).

(5) Sample response letters are provided on the Navy FOIA website.

(p) *Press responses.* Ensure responses being made to the press are cleared through public affairs channels.

(q) *Special mail services.* DON activities are authorized to use registered mail, certified mail, certificates of mailing and return receipts. However, their use should be limited to instances where it appears advisable to establish proof of dispatch or receipt of FOIA correspondence.

§ 701.9 Referrals.

(a) The DoD/DON FOIA referral policy is based upon the concept of the originator of a record making a release determination on its information. If a DON activity receives a request for records originated by another DoD/DON activity, it should contact the activity to determine if it also received the request, and if not, obtain concurrence to refer the request. In either situation, the requester shall be advised of the action taken, unless exempt information would be revealed.

(b) While referrals to originators of information result in obtaining the best possible decision on release of the information, the policy does not relieve DON activities from the responsibility of making a release decision on a record should the requester object to referral of the request and the record. Should this situation occur, DON activities should coordinate with the originator of the information prior to making a release determination.

(c) A request received by a DON activity having no records responsive to a request shall be referred routinely to another DoD/DON activity, if the other activity has reason to believe it has the requested record. Prior to notifying a requester of a referral to another DoD/DON activity, the DON activity receiving the initial request shall consult with the other DoD/DON activity to determine if that activity's association with the material is exempt. If the association is exempt, the activity receiving the initial request will protect the association and any exempt information without revealing the identity of the protected activity. The protected activity shall be responsible for submitting the justifications required in any litigation.

(d) Any DON activity receiving a request that has been misaddressed shall refer the request to the proper address and advise the requester. DON activities making referrals of requests or records shall include with the referral, a point of contact by name, a telephone number (commercial and DSN), and an e-mail address (if available).

(e) A DON activity shall refer a FOIA request for a record that it holds but was originated by another Executive Branch agency, to them for a release determination and direct response to the requester. The requester shall be informed of the referral, unless it has been determined that notification would reveal exempt information. Referred records shall only be identified to the extent consistent with security requirements.

(f) A DON activity may refer a request for a record that it originated to another activity or agency when the activity or agency has a valid interest in the record, or the record was created for the use of the other agency or activity. In such situations, provide the record and a release recommendation on the record with the referral action. DON activities should include a point of contact and telephone number in the referral letter. If that organization is to respond directly to the requester, apprise the requester of the referral.

(g) Within the DON/DoD, a DON activity shall ordinarily refer a FOIA request and a copy of the record it holds, but that was originated by another DON/DoD activity or that contains substantial information obtained from that activity, to that activity for direct response, after direct coordination and obtaining concurrence from the activity. The requester shall be notified of such referral. In any case, DON activities shall not release or deny such records without prior consultation with the activity, except as provided in paragraph (c) of this section.

(h) Activities receiving a referred request shall place it in the appropriate processing queue based on the date it was initially received by the referring activity/agency.

(i) *Agencies outside the DON that are subject to the FOIA.* (1) A DON activity may refer a FOIA request for any record that originated in an agency outside the DON or that is based on information obtained from an outside agency to the agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA. Otherwise, the DON activity must respond to the request.

(**Note:** DON activities shall not refer documents originated by entities outside the Executive Branch of Government (e.g., Congress, State and local government agencies, police departments, private citizen correspondence, etc.), to them for action and direct response to the requester, since they are not subject to the FOIA).

(2) A DON activity shall refer to the agency that provided the record any FOIA request for investigative, intelligence, or any other type of records that are on loan to the DON for a specific purpose, if the records are restricted from further release and so marked. However, if for investigative or intelligence purposes, the outside agency desires anonymity, a DON activity may only respond directly to the requester after coordination with the outside agency.

§ 701.10 Processing requests received from governmental officials.

(a) *Members of Congress.* Many constituents seek access to information through their Member of Congress. Members of Congress who seek access to records on behalf of their constituent are provided the same information that the constituent would be entitled to receive. There is no need to verify that the individual has authorized the release of his/her record to the Congressional member, since the Privacy Act's "blanket routine use" for Congressional inquiries applies.

(b) *Privileged release to U.S. Government officials.* DON records may be authenticated and released to U.S. Government officials if they are requesting them in their official capacity on behalf of Federal governmental bodies, whether legislative, executive, administrative, or judicial. To ensure adequate protection of these documents, DON activities shall inform officials receiving records under the provisions of this paragraph that those records are exempt from public release under FOIA. DON activities shall also mark the records as "Privileged" and "Exempt from Public Disclosure" and annotate any special handling instructions on the records. Because such releases are not made under the provisions of the FOIA, they do not impact on future decisions to release/deny requests for the same records to other requesters. Examples of privileged releases are:

(1) In response to a request from a Committee or Subcommittee of Congress, or to either House sitting as a whole.

(2) To the Federal Courts, whenever ordered by officers of the court as necessary for the proper administration of justice.

(3) To other Federal agencies, both executive and administrative, as determined by the head of a DON activity or designee.

(c) *State or local government officials.* Requests from State or local government officials for DON records are treated the same as any other requester.

(d) *Non-FOIA requests from foreign governments.* Requests from foreign governments that do not invoke the FOIA shall be referred to the appropriate foreign disclosure channels and the requester so notified. See § 701.11(c) regarding processing FOIA requests from foreign governments and/or their officials.

§ 701.11 Processing specific kinds of records.

DON activities that possess copies or receive requests for the following kinds of records shall promptly forward the requests to the officials named in this section and if appropriate apprise the requester of the referral:

(a) *Classified records.* Executive Order 12958 governs the classification of records.

(1) Glomar response. In the instance where a DON activity receives a request for records whose existence or nonexistence is itself classifiable, the DON activity shall refuse to confirm or deny the existence or non-existence of the records. This response is only effective as long as it is given consistently. If it were to be known that an agency gave a "Glomar" response only when records do exist and gave a "no records" response otherwise, then the purpose of this approach would be defeated. A Glomar response is a denial and exemption (b)(1) is cited and appeal rights are provided to the requester.

(2) Processing classified documents originated by another activity. DON activities shall refer the request and copies of the classified documents to the originating activity for processing. If the originating activity simply compiled the classified portions of the document from other sources, it shall refer, as necessary, those portions to the original classifying authority for their review and release determination and apprise that authority of any recommendations they have regarding release. If the classification authority for the information cannot be determined, then the originator of the compiled document has the responsibility for making the final determination. Records shall be identified consistent with security requirements. Only after consultation and approval from the originating activity, shall the requester be apprised of the referral. In most cases, the originating activity will make a determination and respond directly to the requester. In those instances where the originating activity determines a Glomar response is appropriate, the referring agency shall deny the request.

(b) *Courts-martial records of trial.* The release/denial authority for these records is the Office of the Judge Advocate General (Code 20), Washington Navy Yard, Building 111, Washington, DC 20374–1111. Promptly refer the request and/or documents to this activity and apprise the requester of the referral.

(c) *Foreign requests/information.* (1) FOIA requests received from foreign governments/foreign government officials should be processed as follows:

(i) When a DON activity receives a FOIA request for a record in which an affected DoD/DON activity has a substantial interest in the subject matter, or the DON activity receives a FOIA request from a foreign government, a foreign citizen, or an individual or entity with a foreign address, the DON activity receiving the request shall provide a copy of the request to the affected DON activity.

(ii) Upon receiving the request, the affected activity shall review the request for host nation relations, coordinate with Department of State as appropriate, and if necessary, provide a copy of the request to the appropriate foreign disclosure office for review. Upon request by the affected activity, the DON activity receiving the initial request shall provide a copy of releasable records to the affected activity. The affected activity may further release the records to its host nation after coordination with Department of State if release is in the best interest of the United States Government. If the record is released to the host nation government, the affected DON activity shall notify the DON activity which initially received the request of the release to the host nation.

(iii) Such processing must be done expeditiously so as not to impede the processing of the FOIA request by the DON activity that initially received the request.

(2) Non-U.S. Government Records (i.e., records originated by multinational organizations such as the North Atlantic Treaty Organization (NATO), the North American Air Defense (NORAD) and foreign governments) which are under the possession and control of DON shall be coordinated prior to a final release determination being made. Coordination with foreign governments shall be made through the Department of State.

(d) *Government Accounting Office (GAO) documents.* (1) On occasion, the DON receives FOIA requests for GAO documents containing DON information, either directly from requesters or as referrals from GAO. Since the GAO is outside of the Executive Branch and therefore not subject to FOIA, all FOIA requests for GAO documents containing DON information will be processed by the DON under the provisions of the FOIA.

(2) In those instances when a requester seeks a copy of an unclassified GAO report, DON activities may apprise the requester of its availability from the Director, GAO Distribution Center, ATTN: DHISF, P.O. Box 6015, Gaithersburg, MD 20877–1450 under the cash sales program.

(e) *Judge Advocate General Manual (JAGMAN) investigative records.* These records are no longer centrally processed. Accordingly, requests for investigations should be directed to the following officials:

(1) JAGMAN Investigations conducted prior to 1 Jul 95—to the Judge Advocate General (Code 35), Washington Navy Yard, Suite 3000, 1322 Patterson Avenue, SE, Washington, DC 20374–5066.

(2) Command Investigation—to the command that conducted the investigation.

(3) Litigation-Report Investigation—to the Judge Advocate General (Code 35), Washington Navy Yard, Suite 3000, 1322 Patterson Avenue, SE, Washington, DC 20374–5066.

(4) Court or Board of Inquiry—to the Echelon 2 commander over the command that convened the investigation.

(f) *Mailing lists.* Numerous FOIA requests are received for mailing lists of home addresses or duty addresses of DON personnel. Processing of such requests is as follows:

(1) Home addresses are normally not releasable without the consent of the individuals concerned. This includes lists of home addresses and military quarters' addresses without the occupant's name (i.e., exemption (b)(6) applies).

(2) Disclosure of lists of names and duty addresses or duty telephone numbers of persons assigned to units that are stationed in foreign territories, routinely deployable, or sensitive, has also been held by the courts to constitute a clearly unwarranted invasion of personal privacy and must be withheld from disclosure under 5 U.S.C. 552(b)(6). General officers and public affairs officers information is releasable. Specifically, disclosure of such information poses a security threat to those service members because it reveals information about their degree of involvement in military actions in support of national policy, the type of Navy and/or Marine Corps units to which they are attached, and their presence or absence from households. Release of such information aids in the

targeting of service members and their families by terrorists or other persons opposed to implementation of national policy. Only an extraordinary public interest in disclosure of this information can outweigh the need and responsibility of the DON to protect the tranquility and safety of service members and their families who repeatedly have been subjected to harassment, threats, and physical injury. Units covered by this policy are:

(i) Those located outside of the 50 States, District of Columbia, Commonwealth of Puerto Rico, Guam, U.S. Virgin Islands, and American Samoa.

(ii) Routinely deployable units—Those units that normally deploy from homeport or permanent station on a periodic or rotating basis to meet operational requirements or participate in scheduled exercises. This includes routinely deployable ships, aviation squadrons, operational staffs, and all units of the Fleet Marine Force (FMF). Routinely deployable units do not include ships undergoing extensive yard work or those whose primary mission is support of training, e.g., yard craft and auxiliary aircraft landing training ships.

(iii) Units engaged in sensitive operations. Those primarily involved in training for or conduct of covert, clandestine, or classified missions, including units primarily involved in collecting, handling, disposing, or storing of classified information and materials. This also includes units engaged in training or advising foreign personnel. Examples of units covered by this exemption are nuclear power training facilities, SEAL Teams, Security Group Commands, Weapons Stations, and Communications Stations.

(3) Except as otherwise provided, lists containing names and duty addresses of DON personnel, both military and civilian, who are assigned to units in the Continental United States (CONUS) and U.S. territories shall be released regardless of who has initiated the request.

(4) Exceptions to this policy must be coordinated with CNO (N09B30) or CMC (ARAD) prior to responding to requests, including those from Members of Congress. The policy in paragraphs (f)(1) through (3) should be considered when weighing the releasability of the address or telephone number of a specifically named individual.

(5) DON activities are reminded that e-mail addresses that identify an individual who is routinely deployable, overseas, or assigned to a sensitive unit should not be made available. Additionally, organizational charts for these kinds of units and activities that identify specific members should not be placed on the Internet.

(g) *Medical quality assurance documents.* The Chief, Bureau of Medicine and Surgery (BUMED) is the release/denial authority for all naval medical quality assurance documents as defined by Title 10, United States Code, Section 1102. Requests for medical quality assurance documents shall be promptly referred to BUMED and the requester notified of the referral.

(h) *Mishap investigation reports (MIRs).* The Commander, Naval Safety Center (NAVSAFECEN) is the release/denial authority for all requests for mishap investigations or documents which contain mishap information. All requests or documents located which apply shall be promptly referred to the Commander, Naval Safety Center, Code 503, 375 A Street, Norfolk, VA 23511–4399 for action. Telephonic liaison with NAVSAFECEN is encouraged. The requester shall be notified of the referral.

(i) *National Security Council (NSC)/White House.* (1) DON activities that receive requests for records of NSC, the White House, or the White House/Military Office (WHMO) shall process the requests.

(2) DON records in which the NSC or the White House has a concurrent reviewing interest, and NSC, White House, or WHMO records discovered in DON activity files, shall be forwarded to CNO (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000. N09B30, in turn, will coordinate the request directly with DFOISR, so DFOISR can coordinate the request with NSC, White House, or WHMO. After coordination, the records will be returned to the DON activity for their direct response to the requester. During the interim, DON activities should notify the requester that they are coordinating their request and a response will therefore be delayed.

(j) *Naval attache documents/information.* The Director, Defense Intelligence Agency (DIA) has the responsibility for reviewing for release/denial any naval attache-originated documents/information. Accordingly, FOIA requests for naval attache documents or copies of the documents located in DON files or referred in error to a DON activity shall be promptly referred to the Chief, Freedom of Information Act Staff, Defense Intelligence Agency (SVI–1), Washington, DC 20340–5100 for action and direct response to the requester. Ensure that the requester is notified in writing of the transfer to DIA.

(k) *Naval Audit Service reports.* The Director, Naval Audit Service is the release/denial authority for their reports. All requests or documents located which apply shall be promptly referred to the Director, Naval Audit Service, 5611 Columbia Pike, NASSIF Building, Falls Church, VA 22041–5080 for action. The requester shall be notified of the referral.

(l) *Naval Criminal Investigative Service (NCIS) reports.* The Director, NCIS is the release/denial authority for all NCIS reports/information. All requests for and copies of NCIS reports located in DON activity files shall be promptly referred to the Director, NCIS (Code OOJF), Washington Navy Yard, Building 111, 716 Sicard Street, SE, Washington, DC 20388–5380 for action and, if appropriate, the requester so notified. Telephonic liaison with NCIS Headquarters is strongly encouraged.

(m) *Naval Inspector General (NAVINSGEN) reports.* (1) NAVINSGEN is the release/denial authority for all investigations and inspections conducted by or at the direction of NAVINSGEN and for any records held by any command that relate to Navy hotline complaints that have been referred to the NAVINSGEN. Accordingly, such actions shall be promptly referred to the Naval Inspector General (Code OOL), Building 200, Room 100, Washington Navy Yard, 901 M Street, SE, Washington, DC 20374–5006 for action and, if appropriate, the requester so notified.

(2) Requests for local command inspector general reports which have not been referred to NAVINSGEN should be processed by the command that conducted the investigation and NAVINSGEN advised as necessary.

(3) The Deputy Naval Inspector General for Marine Corps Matters (DNIGMC) is the release/denial authority for all investigations conducted by the DNIGMC. Requests for local Marine Corps command Inspector General reports shall be coordinated with the DNIGMC.

(n) *Naval Nuclear Propulsion Information (NNPI).* The Director, Naval Nuclear Propulsion Program (CNO (NOONB)/NAVSEA (08)) is the release/denial authority for all information and requests concerning NNPI. Naval activities receiving such requests are responsible for searching their files for responsive records. If no documents are located, the naval activity shall respond to the requester and provide CNO (NOONB) with a copy of the request and response. If documents are located, the naval activity shall refer the request, responsive documents, and a recommendation regarding release to the Director, Naval Nuclear Propulsion Program (NOONB), 2000 Navy Pentagon, Washington, DC 20350–2000, who will make the final release determination to the requester, after coordinating the release through DoD activities.

(o) *Naval Telecommunications Procedures (NTP) publications.* The Commander, Naval Computer and Telecommunications Command is the release/denial authority for NTP publications. All requests or documents located which apply shall be promptly referred to the Commander, Naval Computer and Telecommunications Command (Code NOOJ), 4401 Massachusetts Avenue, NW, Washington, DC 20394–5460 for action and direct response to the requester.

(p) *News media requests.* (1) Respond promptly to requests received from news media representatives through public information channels, if the information is releasable under FOIA. This eliminates the requirement to invoke FOIA and may result in timely information being made available to the public.

(2) In those instances where records/information are not releasable, either in whole or in part, or are not currently available for a release consideration, Public Affairs Officers shall promptly advise the requester of where and how to submit a FOIA request.

(3) DON activities receiving and processing requests from members of the press shall ensure that responses are cleared through their public affairs channels.

(q) *Records originated by other government agencies.* (1) A DON activity may refer a FOIA request for any record that originated in an agency outside the DON or that is based on information obtained from an outside agency to the cognizant agency for direct response to the requester after coordination with the outside agency, if that agency is subject to FOIA. Otherwise, the DON activity must respond to the request.

(2) A DON activity shall refer to the agency that provided the record any FOIA request for investigative, intelligence, or any other type of records that are on loan to the DON for a specific purpose, if the records are restricted from further release and so marked. However, if for investigative or intelligence purposes, the outside agency desires anonymity, a DON activity may only respond directly to the requester after coordination with the outside agency.

(r) *Submitter documents.* (1) When a request is received for a record containing confidential commercial information that was submitted to the Government, the requirements of Executive Order 12600 shall apply. Specifically, the submitter shall be notified of the request (telephonically, by letter, or by facsimile) and afforded a reasonable amount of time (anywhere from 2 weeks to a month depending on the circumstances) to present any objections concerning release, unless it is clear there can be no valid basis for objection. For example, the record was provided with actual or presumptive knowledge of the submitter that it would be made available to the public upon request.

(2) The DON activity will evaluate any objections and negotiate with the submitter as necessary. When a substantial issue has been raised, the DON activity may seek additional information from the submitter and afford the submitter and requester reasonable opportunities to present their arguments in legal and substantive issues prior to making an agency determination.

(3) The final decision to disclose information claimed to be exempt under exemption (b)(4) shall be made by an official at least equivalent in rank to the IDA and the submitter advised that he or she may seek a restraining order or take court action to prevent the release. The submitter is given 10 days to take action.

(4) Should the submitter take such action, the requester will be notified and no action will be taken on the request until the outcome of the court action is known.

(s) Technical Documents Controlled by Distribution Statements B, C, D, E, F, or X shall be referred to the controlling DoD office for review and release determination.

§ 701.12. FOIA appeals/litigation.

(a) *Appellate authorities.* SECNAV has delegated his appellate authority to the JAG and the DONGC to act on matters under their cognizance. Their responsibilities include adjudicating appeals made to SECNAV on: denials of requests for copies of DON records or portions thereof; disapproval of a fee category claim by a requester; disapproval of a request to waive or reduce fees; disputes regarding fee estimates; reviewing determinations not to grant expedited access to agency records, and reviewing "no record" determinations when the requester considers such responses adverse in nature. They have the authority to release or withhold records, or portions thereof; to waive or reduce fees; and to act as required by SECNAV for appeals under 5 U.S.C. 552 and this instruction. The JAG has further delegated this appellate authority to the Assistant Judge Advocate General (Civil Law). The DONGC has further delegated this appellate authority to the Principal Deputy General Counsel, the Deputy General Counsel, and the Associate General Counsel (Management).

(1) In their capacity, appellate authorities will serve as principal points of contact on DON FOIA appeals and litigation; receive and track FOIA appeals and ensure responses are made in compliance with 5 U.S.C. 552, DoD 5400.7 and 5400.7–R, and the instruction in this part; complete responsive portions of the Annual FOIA Report that addresses actions on appeals and litigation costs during the fiscal year and submit to CNO (N09B30); provide CNO (N09B30) with a copy of all appeal determinations as they are issued; and keep CNO (N09B30) informed in writing of all FOIA lawsuits as they are filed against the DON. Appellate authorities shall facsimile a copy of the complaint to CNO (N09B30) for review and provide updates to CNO (N09B30) to review and disseminate to DFOISR.

(2) OGC's cognizance: Legal advice and services to SECNAV and the Civilian Executive Assistants on all matters affecting DON; legal services in subordinate commands, organizations, and activities in the areas of business and commercial law, real and personal property law, intellectual property law, fiscal law, civilian personnel and labor law, environmental law, and in coordination with the JAG, such other legal services as may be required to support the mission of the Navy and the Marine Corps, or the discharge of the General Counsel's responsibilities; and conducting litigation involving the areas enumerated above and oversight of all litigation affecting the DON.

(3) JAG's cognizance: In addition to military law, all matters except those falling under the cognizance of the DONGC.

(b) Appellants may file an appeal if they have been denied information in whole or in part; have been denied a waiver or reduction of fees; have been denied/have not received a response within 20 working days; or received a "no record" response or wish to challenge the "adequacy of a search" that was made. Appeal procedures also apply to the disapproval of a fee category claim by a requester, disputes regarding fee estimates, review of an expedited basis determination not to grant expedited access to agency records, or any determination found to be adverse in nature by the requester.

(c) *Action by the appellate authority.* (1) Upon receipt, JAG (34) or Assistant to the General Counsel (FOIA) will

promptly notify the IDA of the appeal. In turn, the IDA will provide the appellate authority with the following documents so that a determination can be made: a copy of the request, responsive documents both excised and unexcised, a copy of the denial letter, and supporting rationale for continued withholding. IDAs shall respond to the appellate authority within 10 working days.

(2) Final determinations on appeals normally shall be made within 20 working days after receipt. When the appellate authority has a significant number of appeals preventing a response determination within 20 working days, the appeals shall be processed in a multitrack processing system based, at a minimum, on the three processing tracks established for initial requests.

(3) If the appeal is received by the wrong appellate authority, the time limits do not take effect until it is received by the right one. If, however, the time limit for responding cannot be met, the appellate authority shall advise the appellant that he/she may consider his/her administrative remedies exhausted. However, he/she may await a substantive response without prejudicing his/her right of judicial remedy. Nonetheless, the appellate authority will continue to process the case expeditiously, whether or not the appellant seeks a court order for release of records. In such cases, a copy of the response will be provided to the Department of Justice (DOJ).

(d) *Addresses for filing appeals.* (1) General Counsel of the Navy, 720 Kennon Street, SE, Room 214, Washington Navy Yard, Washington, DC 20374–5012, or

(2) Judge Advocate General, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 3000, Washington, DC 20374–5066.

(e) *Appeal letter requirements.* The appellant shall file a written appeal with the cognizant appellate authority (i.e., DONGC or JAG). The appeal should include a copy of the DON response letter and supporting rationale on why the appeal should be granted.

(f) *Consultation/coordination.* (1) The Special Assistant for Naval Investigative Matters and Security (CNO (N09N)) may be consulted to resolve inconsistencies or disputes involving classified records.

(2) Direct liaison with officials within DON and other interested Federal agencies is authorized at the discretion of the appellate authority, who also coordinates with appropriate DoD and DOJ officials.

(3) SECNAV, appropriate Assistant or Deputy Assistant Secretaries, and CNO (N09B30) shall be consulted and kept advised of cases with unusual implications. CHINFO shall be consulted and kept advised on cases involving public affairs implications.

(4) Final refusal involving issues not previously resolved or that the DON appellate authority knows to be inconsistent with rulings of other DoD components ordinarily should not be made before consultation with the DoD Office of General Counsel (OGC).

(5) Tentative decisions to deny records that raise new and significant legal issues of potential significance to other agencies of the Government shall be provided to the DoD OGC.

(g) *Copies of final appeal determinations.* Appellate authorities shall provide copies of final appeal determinations to the activity affected and to CNO (N09B30) as appeals are decided.

(h) *Denying an appeal.* The appellate authority must render his/her decision in writing with a full explanation as to why the appeal is being denied along with a detailed explanation of the basis for refusal with regard to the applicable statutory exemption(s) invoked. With regard to denials involving classified information, the final refusal should explain that a declassification review was undertaken and based on the governing Executive Order and implementing security classification guides (identify the guides), the information cannot be released and that information being denied does not contain meaningful portions that are reasonably segregable. In all instances, the final denial letter shall contain the name and position title of the official responsible for the denial and advise the requester of the right to seek judicial review.

(i) *Granting an appeal.* The appellate authority must render his/her decision in writing. When an appellate authority makes a determination to release all or a portion of records withheld by an IDA, a copy of the releasable records should be promptly forwarded to the requester after compliance with any procedural requirements, such as payment of fees.

(j) *Processing appeals made under PA and FOIA.* When denials have been made under the provisions of PA and FOIA, and the denied information is contained in a PA system of records, the appeal shall be processed under both PA and FOIA. If the denied information is not maintained in a PA system of records, the appeal shall be processed under FOIA.

(k) *Response letters.* (1) When an appellate authority makes a final determination to release all or portion of records withheld by an IDA, a written response and a copy of the records so released should be forwarded promptly to the requester after compliance with any preliminary procedural requirements, such as payment of fees.

(2) Final refusal of an appeal must be made in writing by the appellate authority or by a designated representative. The response at a minimum shall include the following:

(i) The basis for the refusal shall be explained to the requester in writing, both with regard to the applicable statutory exemption or exemptions invoked under the provisions of the FOIA, and with respect to other issues appealed for which an adverse determination was made.

(ii) When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the cited criteria and rationale of the governing Executive Order, and that this determination is based on a declassification review, with the explanation of how that review confirmed the continuing validity of the security classification.

(iii) The final denial shall include the name and title or position of the official responsible for the denial.

(iv) In the case of appeals for total denial of records, the response shall advise the requester that the information being denied does not contain meaningful portions that are reasonably segregable.

(v) When the denial is based upon an exemption (b)(3) statute, the response, in addition to citing the statute relied upon to deny the information, shall state whether a court has upheld the decision to withhold the information under the statute, and shall contain a concise description of the scope of the information withheld.

(vi) The response shall advise the requester of the right to judicial review.

(l) *Time limits/requirements.* (1) A FOIA appeal has been received by a DON activity when it reaches the appellate authority having jurisdiction. Misdirected appeals should be referred expeditiously to the proper appellate authority.

(2) The requester shall be advised to file an appeal so that it is postmarked no later than 60 calendar days after the date of the initial denial letter. If no appeal is received, or if the appeal is postmarked after the conclusion of the 60 day period, the case may be considered closed. However, exceptions may be considered on a case-by-case basis.

(3) In cases where the requester is provided several incremental determinations for a single request, the time for the appeal shall not begin until the date of the final response. Requests and responsive records that are denied shall be retained for a period of 6 years to meet the statute of limitations requirement.

(4) Final determinations on appeals normally shall be made within 20 working days after receipt. When a DON appellate authority has a significant number of appeals preventing a response determination within 20 working days, the appeals shall be processed in a multitrack processing system, based at a minimum on the three processing tracks established for initial requests. (See § 701.8(f)).

(5) If additional time is needed due to unusual circumstances, the final decision may be delayed for the number of working days (not to exceed 10) that were not used as additional time for responding to the initial request.

(6) If a determination cannot be made and the requester notified within 20 working days, the appellate authority shall acknowledge to the requester, in writing, the date of receipt of the appeal, the circumstances surrounding the delay, and the anticipated date for substantive response. Requesters shall be advised that, if the delay exceeds the statutory extension provision or is for reasons other than the unusual circumstances, they may consider their administrative remedies exhausted. They may, however, without prejudicing their right of judicial remedy, await a substantive response. The appellate authority shall continue to process the case expeditiously.

(m) *FOIA litigation.* The appellate authority is responsible for providing CNO (N09B30) with a copy of any FOIA litigation filed against the DON and any subsequent status of the case. CNO (N09B30) will, in turn, forward a copy of the complaint to DFOISR for their review.

Subpart B—FOIA Definitions and Terms

§ 701.13 5 U.S.C. 552(a)(1) materials.

Section (a)(1) of the FOIA requires publication in the **Federal Register** of descriptions of agency organizations, functions, substantive rules, and statements of general policy.

§ 701.14 5 U.S.C. 552(a)(2) materials.

Section (a)(2) of the FOIA requires that certain materials routinely be made available for public inspection and copying. The (a)(2) materials are commonly referred to as "reading room" materials and are required to be indexed to facilitate public inspection. (a)(2) materials consist of:

(a) *5 U.S.C. 552(a)(2)(A) records.* Final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases, as defined in 5 U.S.C. 551, that may be cited, used, or relied upon as precedents in future adjudications.

(b) *5 U.S.C. 552(a)(2)(B) records.* Statements of policy and interpretations that have been adopted by the agency and are not published in the **Federal Register**.

(c) *5 U.S.C. 552(a)(2)(C) records.* Administrative staff manuals and instructions, or portions thereof, that establish DON policy or interpretations of policy that affect a member of the public. This provision does not apply to instructions for employees on tactics and techniques to be used in performing their duties, or to instructions relating only to the internal management of the DON activity. Examples of manuals and instructions not normally made available are:

(1) Those issued for audit, investigation, and inspection purposes, or those that prescribe operational tactics, standards of performance, or criteria for defense, prosecution, or settlement of cases.

(2) Operations and maintenance manuals and technical information concerning munitions, equipment, systems, and foreign intelligence operations.

(d) *5 U.S.C. 552(a)(2)(D) records.* Those (a)(2) records, which because of the nature of the subject matter, have become or are likely to become the subject of subsequent requests for substantially the same records. These records are referred to as FOIA-processed (a)(2) records. DON activities shall decide on a case-by-case basis whether records fall into this category based on the following factors: previous experience of the DON activity with similar records; particular circumstances of the records involved, including their nature and the type of information contained in them; and/or the identity and number of requesters and whether there is widespread press, historic, or commercial interest in the records.

(1) This provision is intended for situations where public access in a timely manner is important and it is not intended to apply where there may be a limited number of requests over a short period of time from a few requesters. DON activities may remove the records from this access medium when the appropriate officials determine that access is no longer necessary.

(2) Should a requester submit a FOIA request for FOIA-processed (a)(2) records and insist that the request be processed under FOIA, DON activities shall process the FOIA request. However, DON activities have no obligation to process a FOIA request for (a)(2)(A), (B) and (C) records because these records are required to be made public and not FOIA-processed under paragraph (a)(3) of the FOIA.

(e) However, agency records that are withheld under FOIA from public disclosure, based on one or more of the FOIA exemptions, do not qualify as (a)(2) materials and need not be published in the **Federal Register** or made available in a library reading room.

§ 701.15 5 U.S.C. 552(a)(3) materials.

Agency records which are processed for release under the provisions of the FOIA.

§ 701.16 Administrative appeal.

A request made by a FOIA requester asking the appellate authority (JAG or OGC) to reverse a decision to: withhold all or part of a requested record; deny a fee category claim by a requester; deny a request for expedited processing due to demonstrated compelling need; deny a request for a waiver or reduction of fees; deny a request to review an initial fee estimate; and confirm that no records were located during the initial search. FOIA requesters may also appeal a non-response to a FOIA request within the statutory time limits.

§ 701.17 Affirmative information disclosure.

This is where a DON activity makes records available to the public on its own initiative. In such instance, the DON activity has determined in advance that a certain type of records or information is likely to be of such interest to members of the public, and that it can be disclosed without concern for any FOIA exemption sensitivity. Affirmative disclosures can be of mutual benefit to both the DON and the members of the public who are interested in obtaining access to such information.

§ 701.18 Agency record.

Agency records are either created or obtained by an agency and under agency control at the time of the FOIA request. Agency records are stored as various kinds of media, such as:

(a) Products of data compilation (all books, maps, photographs, machine readable materials, inclusive of those in electronic form or format, or other documentary materials), regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in

connection with the transaction of public business and in Department of the Navy possession and control at the time the FOIA request is made.

(b) Care should be taken not to exclude records from being considered agency records, unless they fall within one of the following categories:

(1) Objects or articles, such as structures, furniture, paintings, three-dimensional models, vehicles, equipment, parts of aircraft, ships, etc., whatever their historical value or value as evidence.

(2) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(3) Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use. Personal papers fall into three categories: those created before entering Government service; private materials brought into, created, or received in the office that were not created or received in the course of transacting Government business, and work-related personal papers that are not used in the transaction of Government business.

(4) A record must exist and be in the possession and control of the DON at the time of the request to be considered subject to this instruction and the FOIA. There is no obligation to create, compile, or obtain a record to satisfy a FOIA request.

(5) Hard copy or electronic records, which are subject to FOIA requests under 5 U.S.C. 552(a)(3), and which are available to the public through an established distribution system, or through the **Federal Register**, the National Technical Information Service, or the Internet, normally need not be processed under the provisions of the FOIA. If a request is received for such information, DON activities shall provide the requester with guidance, inclusive of any written notice to the public, on how to obtain the information. However, if the requester insists that the request be processed under the FOIA, then process the request under FOIA.

§ 701.19 Appellate authority.

SECNAV has delegated the OGC and JAG to review administrative appeals of denials of FOIA requests on his behalf and prepare agency paperwork for use by the DOJ in defending a FOIA lawsuit. JAG is further authorized to delegate this authority to a designated Assistant JAG. The authority of OGC is further delegated to the Principal Deputy General Counsel, the Deputy General Counsel, and the Associate General Counsel (Management).

§ 701.20 Discretionary disclosure.

The decision to release information that could qualify for withholding under a FOIA exemption, but upon review the determination has been made that there is no foreseeable harm to the Government for releasing such information. Discretionary disclosures do not apply to exemptions (b)(1), (b)(3), (b)(4), (b)(6) and (b)(7)(C).

§ 701.21 Electronic record.

Records (including e-mail) which are created, stored, and retrieved by electronic means.

§ 701.22 Exclusions.

The FOIA contains three exclusions (c)(1), (c)(2) and (c)(3) which expressly authorize Federal law enforcement agencies for especially sensitive records under certain specified circumstances to treat the records as not subject to the requirements of the FOIA.

§ 701.23 Executive Order 12958.

Revoked Executive Order 12356 on October 14, 1995 and is the basis for claiming that information is currently and properly classified under (b)(1) exemption of the FOIA. It sets forth new requirements for classifying and declassifying documents. It recognizes both the right of the public to be informed about the activities of its government and the need to protect national security information from unauthorized or untimely disclosure.

§ 701.24 Federal agency.

A Federal agency is any executive department, military department, Government corporation, Government-controlled corporation, or other establishment in the executive branch of the Government (including the Executive Office of the President), or any independent regulatory agency.

§ 701.25 5 U.S.C. 552, Freedom of Information Act (FOIA).

An access statute that pertains to agency records of the Executive Branch of the Federal Government, including the Executive Office of the President and independent regulatory agencies.

(**Note to § 701.25:** Records maintained by State governments, municipal corporations, by the courts, by Congress, or by companies and private citizens do not fall under this Federal statute)

§ 701.26 FOIA exemptions.

There are nine exemptions that identify certain kinds of records/information that qualify for withholding under FOIA. See subpart D of this part for a detailed explanation of each exemption.

§ 701.27 FOIA fee terms location.

The FOIA fee terms can be found in subpart C of this part.

§ 701.28 FOIA request.

A written request for DON records, made by "any person" including a member of the public (U.S. or foreign citizen/entity), an organization, or a business, but not including a Federal agency or a fugitive from the law that either explicitly or implicitly invokes the FOIA by citing DoD FOIA regulations or the instruction in this part. FOIA requests can be made for any purpose whatsoever, with no showing of relevancy required. Because the purpose for which records are sought has no bearing on the merits of the request, FOIA requesters do not have to explain or justify their requests. Written requests may be received by postal service or other commercial delivery means, by facsimile or electronically.

§ 701.29 Glomar response.

Refusal by the agency to either confirm or deny the existence or non-existence of records responsive to a FOIA request. See exemptions (b)(1), (b)(6), and (b)(7)(C) at subpart D of this part.

§ 701.30 Initial Denial Authority (IDA).

SECNAV has delegated authority to a limited number of officials to act on his behalf to withhold records under their cognizance that are requested under the FOIA for one or more of the nine categories of records exempt from mandatory disclosure; to deny a fee category claim by a requester; to deny a request for expedited processing due to demonstrated compelling need; to deny or grant a request for waiver or reduction of fees when the information sought relates to matters within their respective geographical areas of responsibility or chain of command; fees; to review a fee estimate; and to confirm that no records were located in response to a request. IDAs may also grant access to requests.

§ 701.31 Mosaic or compilation response.

The concept that apparently harmless pieces of information when assembled together could reveal a damaging picture. See exemption (b)(1) at subpart D of this part.

§ 701.32 Perfected request.

A request which meets the minimum requirements of the FOIA to be processed and is received by the DON activity having possession and control over the documents/information.

§ 701.33 Public domain.

Agency records released under the provisions of FOIA and the instruction in this part to a member of the public.

§ 701.34 Public interest.

The interest in obtaining official information that sheds light on a DON activity's performance of its statutory duties because the information falls within the statutory purpose of the FOIA to inform citizens what their government is doing. That statutory purpose, however, is not fostered by disclosure of information about private citizens accumulated in various governmental files that reveals nothing about an agency's or official's own conduct.

§ 701.35 Reading room.

Location where (a)(2) materials are made available for public inspection and copying.

§ 701.36 Release authorities.

Commanding officers and heads of Navy and Marine Corps shore activities or their designees are authorized to grant requests on behalf of SECNAV for agency records under their possession and control for which no FOIA exemption applies. As necessary, they will coordinate releases with other officials who may have an interest in the releasability of the record.

§ 701.37 Reverse FOIA.

When the "submitter" of information, usually a corporation or other business entity, that has supplied the agency with data on its policies, operations and products, seeks to prevent the agency that collected the information from revealing the data to a third party in response to the latter's FOIA request.

§ 701.38 Technical data.

Recorded information, regardless of form or method of the recording, of a scientific or technical nature (including computer software documentation).

§ 701.39 Vaughn index.

Itemized index, correlating each withheld document (or portion) with a specific FOIA exemption(s) and the relevant part of the agency's nondisclosure justification. The index may contain such information as: date of document; originator; subject/title of document; total number of pages reviewed; number of pages of reasonably segregable information released; number of pages denied; exemption(s) claimed; justification for withholding; etc. FOIA requesters are not entitled to a Vaughn index during the administrative process.

Subpart C—FOIA Fees

§ 701.40 Background.

(a) The DON follows the uniform fee schedule developed by DoD and established to conform with the Office of Management and Budget's (OMB's) Uniform Freedom of Information Act Fee Schedule and Guidelines.

(b) Fees reflect direct costs for search; review (in the case of commercial requesters); and duplication of documents, collection of which is permitted by the FOIA. They are neither intended to imply that fees must be charged in connection with providing information to the public in the routine course of business, nor are they meant as a substitute for any other schedule of fees, which does not supersede the collection of fees under the FOIA.

(c) FOIA fees do not supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records. For example, 5 U.S.C. 552 (a)(4)(A)(vi) enables a Government agency such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set and collect fees. DON activities should ensure that when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs, such as GPO or NTIS, they inform requesters of the steps necessary to obtain records from those sources.

§ 701.41 FOIA fee terms.

(a) *Direct costs* means those expenditures a DON activity actually makes in searching for, reviewing (in the case of commercial requesters), and duplicating documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits), and the costs of operating duplicating machinery. These factors have been included in the fee rates prescribed in this subpart. Not included in direct costs are overhead expenses such as costs of space, heating or lighting the facility in which the records are stored.

(b) *Duplication* refers to the process of making a copy of a document in response to a FOIA request. Such copies can take the form of paper copy, microfiche, audiovisual, or machine readable documentation (e.g., magnetic tape or disc), among others. Every effort will be made to ensure that the copy provided is in a form that is reasonably usable, the requester shall be notified that the copy provided is the best available, and that the activity's master copy shall be made available for review upon appointment. For duplication of computer tapes and audiovisual, the actual cost, including the operator's time, shall be charged. In practice, if a DON activity estimates that assessable duplication charges are likely to exceed $25.00, it shall notify the requester of the estimate, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with activity personnel with the object of reformulating the request to meet his or her needs at a lower cost.

(c) *Review* refers to the process of examining documents located in response to a FOIA request to determine whether one or more of the statutory exemptions permit withholding. It also includes processing the documents for disclosure, such as excising them for release. Review does not include the time spent resolving general legal or policy issues regarding the application of exemptions. It should be noted that charges for commercial requesters may be assessed only for the initial review. DON activities may not charge for reviews required at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable.

(d) *Search* refers to time spent looking, both manually and electronically, for material that is responsive to a request. Search also includes a page-by-page or line-by-line identification (if necessary) of material in the record to determine if it, or portions thereof are responsive to the request. DON activities should ensure that searches are done in the most efficient and least expensive manner so as to minimize costs for both the activity and the requester. For example, activities should not engage in line-by-line searches when duplicating an entire document known to contain responsive information would prove to be the less expensive and quicker method of complying with the request. Time spent reviewing documents in order to determine whether to apply one or more of the statutory exemptions is not search time, but review time.

(1) DON activities may charge for time spent searching for records, even if that

search fails to locate records responsive to the request.

(2) DON activities may also charge search and review (in the case of commercial requesters) time if records located are determined to be exempt from disclosure.

(3) In practice, if the DON activity estimates that search charges are likely to exceed $25.00, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with activity personnel with the object of reformulating the request to meet his or her needs at a lower cost.

§ 701.42 Categories of requesters—applicable fees.

(a) Commercial requesters refers to a request from, or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, DON activities must determine the use to which a requester will put the documents requested. More over, where an activity has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, it should seek additional clarification before assigning the request to a specific category.

(1) Fees shall be limited to reasonable standard charges for document search, review and duplication when records are requested for commercial use. Requesters must reasonably describe the records sought.

(2) When DON activities receive a request for documents for commercial use, they should assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Commercial requesters (unlike other requesters) are not entitled to 2 hours of free search time, nor 100 free pages of reproduction of documents. Moreover, commercial requesters are not normally entitled to a waiver or reduction of fees based upon an assertion that disclosure would be in the public interest. However, because use is the exclusive determining criteria, it is possible to envision a commercial enterprise making a request that is not for commercial use. It is also possible that a non-profit organization could make a request that is for commercial use. Such situations must be addressed on a case-by-case basis.

(b) Educational Institution refers to a pre-school, a public or private elementary or secondary school, an institution of graduate high education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(1) Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by an educational institution whose purpose is scholarly research. Requesters must reasonably describe the records sought.

(2) Requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for commercial use, but in furtherance of scholarly research.

(3) Fees shall be waived or reduced in the public interest if criteria of § 701.58 have been met.

(c) Non-commercial Scientific Institution refers to an institution that is not operated on a "commercial" basis and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(1) Fees shall be limited to only reasonable standard charges for document duplication (excluding the first 100 pages) when the request is made by a non-commercial scientific institution whose purpose is scientific research. Requesters must reasonably describe the records sought.

(2) Requesters must show that the request is being made under the auspices of a qualifying institution and that the records are not sought for commercial use, but in furtherance of or scientific research.

(d) *Representative of the news media.* (1) Refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not meant to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but DON activities may also look to the past publication record of a requester in making this determination.

(2) To be eligible for inclusion in this category, a requester must meet the criteria established in paragraph (d)(1), and his or her request must not be made for commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. For example, a document request by a newspaper for records relating to the investigation of a defendant in a current criminal trial of public interest could be presumed to be a request from an entity eligible for inclusion in this category, and entitled to records at the cost of reproduction alone (excluding charges for the first 100 pages).

(3) Representative of the news media does not include private libraries, private repositories of Government records, information vendors, data brokers or similar marketers of information whether to industries and businesses, or other entities.

(4) Fees shall be limited to only reasonable standard charges for document duplication (excluding charges for the first 100 pages) when the request is made by a representative of the news media. Requesters must reasonably describe the records sought. Fees shall be waived or reduced if the fee waiver criteria have been met.

(e) All other requesters. DON activities shall charge requesters who do not fit into any of the categories described in paragraph (a) through (d) fees which recover the full direct cost of searching for and duplicating records, except that the first 2 hours of search time and the first 100 pages of duplication shall be furnished without charge. Requesters must reasonably describe the records sought. Requests from subjects about themselves will continue to be treated under the fee provisions of the Privacy Act of 1974, which permit fees only for duplication. DON activities are reminded that this category of requester may also be eligible for a waiver or reduction of fees if disclosure of the information is in the public interest.

§ 701.43 Fee declarations.

Requesters should submit a fee declaration appropriate for the categories in paragraphs (a) through (c) of this section, if fees are expected to exceed the minimum fee threshold of $15.00.

(a) Commercial. Requesters should indicate a willingness to pay all search, review and duplication costs.

(b) Educational or noncommercial scientific institution or news media. Requesters should indicate a willingness to pay duplication charges in excess of 100 pages if more than 100 pages of records are desired.

(c) All others. Requesters should indicate a willingness to pay assessable search and duplication costs if more than 2 hours of search effort or 100 pages of records are desired.

(d) If the conditions in paragraphs (a) through (c) are not met, then the request need not be processed and the requester shall be so informed.

§ 701.44 Restrictions.

(a) No fees may be charged by any DON activity if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee. With the exception of requesters seeking documents for a commercial use, activities shall provide the first 2 hours of search time, and the first 100 pages of duplication without charge. For example, for a request (other than one from a commercial requester) that involved 2 hours and 10 minutes of search time, and resulted in 105 pages of documents, an activity would determine the cost of only 10 minutes of search time, and only five pages of reproduction. If this processing cost was equal to, or less than, the cost to the activity for billing the requester and processing the fee collected, no charges would result.

(b) Requesters receiving the first 2 hours of search and the first 100 pages of duplication without charge are entitled to such only once per request. Consequently, if a DON activity, after completing its portion of a request, finds it necessary to refer the request to a subordinate office, another DON activity, or another Federal agency to action their portion of the request, the referring activity shall inform the recipient of the referral of the expended amount of search time and duplication cost to date.

(c) The elements to be considered in determining the "cost of collecting a fee" are the administrative costs to the DON activity of receiving and recording a remittance, and processing the fee for deposit in the Department of Treasury's special account. The cost to the Department of Treasury to handle such remittance is negligible and shall not be considered in activity determinations.

(d) For the purposes of the restrictions in this section, the word "pages" refers to paper copies of a standard size, which will normally be "8½×11" or "11×14." Thus, requesters would not be entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout however, might meet the terms of the restriction.

(e) In the case of computer searches, the first 2 free hours will be determined against the salary scale of the individual operating the computer for the purposes of the search. As an example, when the direct costs of the computer central processing unit, input-output devices, and memory capacity equal $24.00 (2 hours of equivalent search at the clerical level), amounts of computer costs in excess of that amount are chargeable as computer search time. In the event the direct operating cost of the hardware configuration cannot be determined, computer search shall be based on the salary scale of the operator executing the computer search.

§ 701.45 Fee assessment.

(a) Fees may not be used to discourage requesters, and to this end, FOIA fees are limited to standard charges for direct document search, review (in the case of commercial requesters) and duplication.

(b) In order to be as responsive as possible to FOIA requests while minimizing unwarranted costs to the taxpayer, DON activities shall analyze each request to determine the category of the requester. If the activity's determination regarding the category of the requester is different than that claimed by the requester, the activity shall:

(1) Notify the requester to provide additional justification to warrant the category claimed, and that a search for responsive records will not be initiated until agreement has been attained relative to the category of the requester. Absent further category justification from the requester, and within a reasonable period of time (i.e., 30 calendar days), the DON activity shall render a final category determination, and notify the requester of such determination, to include normal administrative appeal rights of the determination.

(2) Advise the requester that, notwithstanding any appeal, a search for responsive records will not be initiated until the requester indicates a willingness to pay assessable costs appropriate for the category determined by the activity.

(c) Estimate of fees. DON activities must be prepared to provide an estimate of assessable fees if desired by the requester. While it is recognized that search situations will vary among activities, and that an estimate is often difficult to obtain prior to an actual search, requesters who desire estimates are entitled to such before committing to a willingness to pay. Should the activity's actual costs exceed the amount of the estimate or the amount agreed to by the requester, the amount in excess of the estimate or the requester's agreed amount shall not be charged without the requester's agreement.

(d) Advance payment of fees. DON activities may not require advance payment of any fee (i.e., before work is commenced or continued on a request) unless the requester has failed to pay fees in a timely fashion (i.e., 30 calendar days from the date of the assessed billing in writing), or the activity has determined that the fee will exceed $250.00.

(e) When a DON activity estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00, the activity shall notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payments, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no payment history.

(f) Where a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 calendar days from the date of the billing), the DON activity may require the requester to pay the full amount owed, plus any applicable interest, or demonstrate that he or she has paid the fee, and to make an advance payment of the full amount of the estimated fee before the DON activity begins to process a new or pending request from the requester. Interest will be at the rate prescribed by 31 U.S.C. 3737 and confirmed with respective finance and accounting offices.

(g) After all the work is completed on a request, and the documents are ready for release, DON activities may require payment before forwarding the documents, particularly for those requesters who have no payment history, or for those requesters who have failed to previously pay a fee in a timely fashion (i.e., within 30 calendar days from the date of the billing).

(h) DON activities may charge for time spent searching for records, even if that search fails to locate records responsive

to the request. DON activities may also charge search and review (in the case of commercial requesters) time if records located are determined to be exempt from disclosure. In practice, if the DON activity estimates that search charges are likely to exceed $25.00, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his or her willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with activity personnel with the object of reformulating the request to meet his or her needs at a lower cost.

§ 701.46 Aggregating requests.

Except for requests that are for a commercial use, a DON activity may not charge for the first 2 hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When an activity reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of avoiding the assessment of fees, the activity may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period in which the requests have occurred. For example, it would be reasonable to presume that multiple requests of this type made within a 30-day period had been made to avoid fees. For requests made over a longer period however, such a presumption becomes harder to sustain and activities should have a solid basis for determining that aggregation is warranted in such cases. DON activities are cautioned that before aggregating requests from more than one requester, they must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may an activity aggregate multiple requests on unrelated subjects.

§ 701.47 FOIA fees must be addressed in response letters.

DON activities shall ensure that requesters receive a complete breakout of all fees which are charged and apprised of the "Category" in which they have been placed. For example: "We are treating you as an 'All Other Requester.' As such, you are entitled to 2 free hours of search and 100 pages of reproduction, prior to any fees being assessed. We have expended an additional 2 hours of search at $25.00 per hour and an additional 100 pages of reproduction, for a total fee of $65.00."

§ 701.48 Fee waivers.

Documents shall be furnished without charge, or at a charge reduced below fees assessed to the categories of requesters, when the DON activity determines that waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the DON/DoD and is not primarily in the commercial interest of the requester. When assessable costs for a FOIA request total $15.00 or less, fees shall be waived automatically for all requesters, regardless of category. Decisions to waive or reduce fees that exceed the automatic waiver threshold shall be made on a case-by-case basis, consistent with the following factors:

(a) Disclosure of the information "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government."

(b) The subject of the request. DON activities should analyze whether the subject matter of the request involves issues that will significantly contribute to the public understanding of the operations or activities of the DON/DoD. Requests for records in the possession of the DON which were originated by non-government organizations and are sought for their intrinsic content, rather than informative value, will likely not contribute to public understanding of the operations or activities of the DON/DoD. An example of such records might be press clippings, magazine articles, or records forwarding a particular opinion or concern from a member of the public regarding a DON/DoD activity. Similarly, disclosures of records of considerable age may or may not bear directly on the current activities of the DON/DoD, however, the age of a particular record shall not be the sole criteria for denying relative significance under this factor. It is possible to envisage an informative issue concerning the current activities of the DON/DoD, based upon historical documentation. Requests of this nature must be closely reviewed consistent with the requester's stated purpose for desiring the records and the potential for public understanding of the operations and activities of the DON/DoD.

(c) The informative value of the information to be disclosed. This factor requires a close analysis of the substantive contents of a record, or portion of the record, to determine whether disclosure is meaningful, and shall inform the public on the operations or activities of the DON. While the subject of a request may contain information that concerns operations or activities of the DON, it may not always hold great potential for contributing to a meaningful understanding of these operations or activities. An example of such would be a previously released record that has been heavily redacted, the balance of which may contain only random words, fragmented sentences, or paragraph headings. A determination as to whether a record in this situation will contribute to the public understanding of the operations or activities of the DON must be approached with caution and carefully weighed against the arguments offered by the requester. Another example is information already known to be in the public domain. Disclosure of duplicative or nearly identical information already existing in the public domain may add no meaningful new information concerning the operations and activities of the DON.

(d) The contribution to an understanding of the subject by the general public likely to result from disclosure. The key element in determining the applicability of this factor is whether disclosure will inform, or have the potential to inform, the public rather than simply the individual requester or small segment of interested persons. The identity of the requester is essential in this situation in order to determine whether such requester has the capability and intention to disseminate the information to the public. Mere assertions of plans to author a book, researching a particular subject, doing doctoral dissertation work, or indigence are insufficient without demonstrating the capacity to further disclose the information in a manner that will be informative to the general public. Requesters should be asked to describe their qualifications, the nature of their research, the purpose of the requested information, and their intended means of dissemination to the public.

(e) The significance of the contribution to public understanding. In applying this factor, DON activities must differentiate the relative significance or impact of the disclosure against the current level of public knowledge, or understanding which exists before the disclosure. In other words, will disclosure on a current subject of wide public interest be unique in contributing previously unknown facts, thereby enhancing public knowledge, or will it basically duplicate what is already known by the general public? A decision regarding significance requires objective judgment, rather than subjective determination, and must be applied carefully to determine whether disclosure will likely lead to a significant public understanding of the issue. DON activities shall not make value judgments as to whether the information is important enough to be made public.

(f) Disclosure of the information "is not primarily in the commercial interest of the requester."

(1) The existence and magnitude of a commercial interest. If the request is determined to be of a commercial interest, DON activities should address the magnitude of that interest to determine if the requester's commercial interest is primary, as opposed to any secondary personal or non-commercial interest. In addition to profit-making organizations, individual persons or other organizations may have a commercial interest in obtaining certain records. Where it is difficult to determine whether the requester is of a commercial nature, DON activities may draw inference from the requester's identity and circumstances of the request. Activities are reminded that in order to apply the commercial standards of the FOIA, the requester's commercial benefit must clearly override any personal or non-profit interest.

(2) The primary interest in disclosure. Once a requester's commercial interest has been determined, DON activities should then determine if the disclosure would be primarily in that interest. This requires a balancing test between the commercial interest of the request against any public benefit to be derived as a result of that disclosure. Where the public interest is served above and beyond that of the requester's commercial interest, a waiver or reduction of fees would be appropriate. Conversely, even if a significant public interest exists, and the relative commercial interest of the requester is determined to be greater than the public interest, then a waiver or reduction of fees would be inappropriate. As examples, news media organizations have a commercial interest as business organizations; however, their inherent role of disseminating news to the general public can ordinarily be presumed to be of a primary interest. Therefore, any commercial interest becomes secondary to the primary interest in serving the public. Similarly, scholars writing books or engaged in other forms of academic research may recognize a commercial benefit, either directly, or indirectly (through the institution they represent); however, normally such pursuits are primarily undertaken for educational purposes, and the application of a fee charge would be inappropriate. Conversely, data brokers or others who merely compile government information for marketing can normally be presumed to have an interest primarily of a commercial nature.

(g) The factors and examples used in this section are not all inclusive. Each fee decision must be considered on a case-by-case basis and upon the merits of the information provided in each request. When the element of doubt as to whether to charge or waive the fee cannot be clearly resolved, DON activities should rule in favor of the requester.

(h) The following additional circumstances describe situations where waiver or reduction of fees are most likely to be warranted:

(1) A record is voluntarily created to prevent an otherwise burdensome effort to provide voluminous amounts of available records, including additional information not requested.

(2) A previous denial of records is reversed in total, or in part, and the assessable costs are not substantial (e.g. $15.00–$30.00).

§ 701.49 Payment of fees.

(a) Normally, fees will be collected at the time of providing the documents to the requester when the requester specifically states that the costs involved shall be acceptable or acceptable up to a specified limit that covers the anticipated costs, and the fees do not exceed $250.00.

(b) However, after all work is completed on a request, and the documents are ready for release, DON activities may request payment before forwarding the documents, particularly for those requesters who have no payment history, or for those requesters who have failed previously to pay a fee in a timely fashion (i.e., within 30 calendar days from the date of the billing).

(c) When a DON activity estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250.00, the activity shall notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payments, or require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment.

(d) Advance payment of a fee is also applicable when a requester has previously failed to pay fees in a timely fashion (i.e., 30 calendar days) after being assessed in writing by the activity. Further, where a requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 calendar days from the date of the billing), the DON activity may require the requester to pay the full amount owed, plus any applicable interest, or demonstrate that he or she has paid the fee, and to make an advance payment of the full amount of the estimated fee before the activity begins to process a new or pending request from the requester. Interest will be at the rate prescribed in 31 U.S.C. 3717 and confirmed with respective finance and accounting offices.

§ 701.50 Effect of the Debt Collection Act of 1982.

The Debt Collection Act of 1982 (Pub. L. 97–365) provides for a minimum annual rate of interest to be charged on overdue debts owed the Federal Government. DON activities may levy this interest penalty for any fees that remain outstanding 30 calendar days from the date of billing (the first demand notice) to the requester of the amount owed. The interest rate shall be as prescribed in 31 U.S.C. 3717. DON activities should verify the current interest rate with respective finance and accounting offices. After one demand letter has been sent and 30 calendar days have lapsed with no payment, DON activities may submit the debt to respective finance and accounting offices for collection.

§ 701.51 Refunds.

In the event that a DON activity discovers that it has overcharged a requester or a requester has overpaid, the DON activity shall promptly refund the charge to the requester by reimbursement methods that are agreeable to the requester and the activity.

§ 701.52 Computation of fees.

(a) It is imperative that DON activities compute all fees to ensure accurate reporting in the Annual FOIA Report, but ensure that only applicable fees be charged to the requester. For example, although we calculate correspondence and preparation costs, these fees are not recoupable from the requester.

(b) DD 2086, Record of Freedom of Information (FOI) Processing Cost, should be filled out accurately to reflect all processing costs, as requesters may solicit a copy of that document to ensure accurate computation of fees. Costs shall be computed on time actually spent. Neither time-based nor dollar-based minimum charges for search, review and duplication are authorized.

§ 701.53 FOIA fee schedule.

The following fee schedule shall be used to compute the search, review (in the case of commercial requesters) and duplication costs associated with processing a given FOIA request. The appropriate fee category of the requester shall be applied before computing fees.

(a) Manual search.

Type	Grade	Hourly rate
Clerical	E9/GS8 and below.	$12.00
Professional	O1–O6/GS9–GS15.	25.00
Executive	O7/GS16/ES1 and above.	45.00

(b) *Computer search.* Fee assessments for computer search consist of two parts; individual time (hereafter referred to as human time) and machine time.

(1) *Human time.* Human time is all the time spent by humans performing the necessary tasks to prepare the job for a machine to execute the run command. If execution of a run requires monitoring by a human, that human time may be also assessed as computer search. The terms "programmer/operator" shall not be limited to the traditional programmers or operators. Rather, the terms shall be interpreted in their broadest sense to incorporate any human involved in performing the computer job (e.g. technician, administrative support, operator, programmer, database administrator, or action officer).

(2) *Machine time.* Machine time involves only direct costs of the central processing unit (CPU), input/output devices, and memory capacity used in the actual computer configuration. Only this CPU rate shall be charged. No other machine-related costs shall be charged. In situations where the capability does not exist to calculate CPU time, no machine costs can be passed on to the requester. When CPU calculations are not available, only human time costs shall be assessed to requesters. Should DON activities lease computers, the services charged by the lessor shall not be passed to the requester under the FOIA.

(c) Duplication.

Type	Cost per page
Pre-Printed material	$.02
Office copy	.15
Microfiche	.25
Computer copies (tapes, discs or printouts).	Actual cost of duplicating the tape, disc or printout (includes operator's time and cost of the medium).

(d) *Review time (in the case of commercial requesters, only).*

Type	Grade	Hourly rate
Clerical	E9/GS8 and below.	$12.00
Professional	O1–O6/GS9–GS15.	25.00
Executive	O7/GS16/ES1 and above.	45.00

(e) *Audiovisual documentary materials.* Search costs are computed as for any other record. Duplication cost is the actual direct cost of reproducing the material, including the wage of the person doing the work. Audiovisual materials provided to a requester need not be in reproducible format or quality.

(f) *Other records.* Direct search and duplication cost for any record not described in this section shall be computed in the manner described for audiovisual documentary material.

(g) *Costs for special services.* Complying with requests for special services is at the discretion of the DON activity. Neither the FOIA nor its fee structure cover these kinds of services. Therefore, DON activities may recover the costs of special services requested by the requester after agreement has been obtained in writing from the requester to pay for such fees as certifying that records are true copies, sending records by special methods such as express mail, etc.

§ 701.54 Collection of fees and fee rates for technical data.

(a) Technical data, other than technical data that discloses critical technology with military or space application, if required to be released under the FOIA, shall be released after the person requesting such technical data pays all reasonable costs attributed to search, duplication and review of the records to be released. Technical data, as used in this section, means recorded information, regardless of the form or method of the recording of a scientific or technical nature (including computer software documentation). This term does not include computer software, or data incidental to contract administration, such as financial and/or management information.

(b) DON activities shall retain the amounts received by such a release, and it shall be merged with and available for the same purpose and the same time period as the appropriation from which the costs were incurred in complying with request. All reasonable costs as used in this sense are the full costs to the Federal Government of rendering the service, or fair market value of the service, whichever is higher. Fair market value shall be determined in accordance with commercial rates in the local geographical area. In the absence of a known market value, charges shall be based on recovery of full costs to the Federal Government. The full costs shall include all direct and indirect costs to conduct the search and to duplicate the records responsive to the request. This cost is to be differentiated from the direct costs allowable under information released under FOIA.

(c) Waiver. DON activities shall waive the payment of costs required in paragraph (a) of this section which are greater than the costs that would be required for release of this same information under the FOIA if:

(1) The request is made by a citizen of the United States or a United States corporation and such citizen or corporation certifies that the technical data requested is required to enable it to submit an offer or determine whether it is capable of submitting an offer to provide the product to which the technical data relates to the United States or a contractor with the United States. However, DON activities may require the citizen or corporation to pay a deposit in an amount equal to not more than the cost of complying with the request, which will be refunded upon submission of an offer by the citizen or corporation;

(2) The release of technical data is requested in order to comply with the terms of an international agreement; or,

(3) The DON activity determines in accordance with § 701.48 that such a waiver is in the interest of the United States.

(d) Fee rates. (1) Manual search.

Type	Grade	Hourly rate
Clerical	E9/GS8 and below.	$13.25
Clerical (Minimum Charge).		8.30
Professional	01 to 06/GS9 to GS15.	(**)
Executive	07/GS16/ES–1 and above.	(**)

(**) Rate to be established at actual hourly rate prior to search. A minimum charge will be established at ½ Minimum Charge)

(2) Computer search is based on the total cost of the central processing unit, input-output devices, and memory capacity of the actual computer configuration. The wage (based upon the scale for manual search) for the computer operator and/or programmer determining how to conduct, and subsequently executing the search will be recorded as part of the computer search.

(3) Duplication.

Type	Cost
Aerial photograph, maps, specifications, permits, charts, blueprints, and other technical engineering documents	$2.50
Engineering data (microfilm):	
Aperture cards:	
Silver duplicate negative, per card	.75
When key punched and verified, per card	.85
Diazo duplicate negative, per card	.65
When key punched and verified, per card	.75
35mm roll film, per frame	.50
16mm roll film, per frame	.45
Paper prints (engineering drawings), each	1.50
Paper reprints of microfilm indices, each	.10

(4) Review Time.

Type	Grade	Hourly rate
Clerical	E9/GS8 and below.	$13.25
Clerical Minimum Charge.	E9/GS8 and below.	8.30
Professional	01 to 06/GS9 to GS15.	(**)
Executive	07/GS16/ES1 or higher.	(**)

(**) Rate to be established at actual hourly rate prior to search. (A minimum charge will be established at ½ Minimum Charge)

(5) Other technical data records. Charges for any additional services not specifically provided in paragraph (d) of this section, consistent with Volume 11A of DoD 7000.14–R (NOTAL) shall be made by DON activities at the following rates:

Minimum charge for office copy up to six images)—$3.50
Each additional image—$ .10
Each typewritten page—$3.50
Certification and validation with seal, each—$5.20
Hand-drawn plots and sketches, each hour or fraction Thereof—$12.00

§ 701.55 Processing FOIA fee remittances.

(a) Payments for FOIA charges, less fees assessed for technical data or by a Working Capital Fund or a Non-Appropriated Fund (NAF) activity, shall be made payable to the U.S. Treasurer and deposited in Receipt Account Number 172419.1203.

(b) Payments for fees assessed for technical data shall be made payable to the DON activity that incurred the costs and will be deposited directly into the accounting line item from which the costs were incurred.

(c) Payments for fees assessed by Working Capital Fund or Non-Appropriated Fund (NAF) activities shall be made payable to the DON activity and deposited directly into their account.

Subpart D—FOIA Exemptions

§ 701.56 Background.

The FOIA is a disclosure statute whose goal is an informed citizenry. Accordingly, records are considered to be releasable, unless they contain information that qualifies for withholding under one or more of the nine FOIA exemptions. The exemptions are identified as 5 U.S.C. 552 (b)(1) through (b)(9).

§ 701.57 Ground rules.

(a) *Identity of requester.* In applying exemptions, the identity of the requester and the purpose for which the record is sought are irrelevant with the exception that an exemption may not be invoked where the particular interest to be protected is the requester's interest. However, if the subject of the record is the requester for the record and the record is contained in a Privacy Act system of records, it may only be denied to the requester if withholding is both authorized in systems notice and by a FOIA exemption.

(b) *Reasonably segregable.* Even though a document may contain information which qualifies for withholding under one or more FOIA exemptions, FOIA requires that all "reasonably segregable" information be provided to the requester, unless the segregated information would have no meaning. In other words, redaction is not required when it would reduce the balance of the text to unintelligible gibberish.

(c) *Discretionary release.* A discretionary release of a record to one requester shall prevent the withholding of the same record under a FOIA exemption if the record is subsequently requested by someone else. However, a FOIA exemption may be invoked to withhold information that is similar or related that has been the subject of a discretionary release.

(d) *Initial Denial Authority (IDA) actions.* The decision to withhold information in whole or in part based on one or more of the FOIA exemptions requires the signature of an IDA. See listing of IDAs in § 701.4.

§ 701.58 In-depth analysis of FOIA exemptions.

An in-depth analysis of the FOIA exemptions is addressed in the DOJ's annual publication, "Freedom of Information Act Guide & Privacy Act Overview." A copy is available on the DOJ's FOIA website (see Navy FOIA website at http://www.ogc.secnav.hq.navy.mil/foia/index.html for easy access).

§ 701.59 A brief explanation of the meaning and scope of the nine FOIA exemptions.

(a) 5 U.S.C. 552 (b)(1): Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by Executive Order and implemented by regulations.

(1) Although material is not classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified based on the Executive Order on classification (i.e., Executive Order 12958) and/or a security classification guide. The procedures for reclassification are addressed in the Executive Order.

(2) If the information qualifies as exemption (b)(1) information, there is no discretion regarding its release. In addition, this exemption shall be invoked when the following situations are apparent:

(i) Glomar response: The fact of the existence or nonexistence of a record would itself reveal classified information. In this situation, DON activities shall neither confirm nor deny the existence or nonexistence of the record being requested. A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no record" response when a record does not exist, and a "refusal to confirm or deny" when a record does exist will itself disclose national security information.

(ii) Compilation: Compilations of items of information that are individually unclassified may be classified if the compiled information reveals additional association or relationship that meets the standard for classification under an existing executive order for classification and is not otherwise revealed in the individual items of information.

(b) 5 U.S.C. 552 (b)(2): Those related solely to the internal personnel rules and practices of the DON and its

activities. This exemption is entirely discretionary and has two profiles, high (b)(2) and low (b)(2):

(1) High (b)(2) are records containing or constituting statutes, rules, regulations, orders, manuals, directives, instructions, and security classification guides, the release of which would allow circumvention of these records thereby substantially hindering the effective performance of a significant function of the DON. For example:

(i) Those operating rules, guidelines, and manuals for DON investigators, inspectors, auditors, or examiners that must remain privileged in order for the DON activity fulfill a legal requirement;

(ii) Personnel and other administrative matters, such as examination questions and answers used in training courses or in the determination of the qualifications of candidates for employment, entrance on duty, advancement, or promotion;

(iii) Computer software, the release of which would allow circumvention of a statute or DON rules, regulations, orders, manuals, directives, or instructions. In this situation, the use of the software must be closely examined to ensure a circumvention possibility exists.

(2) Discussion of low (b)(2) is provided for information only, as DON activities may not invoke the low (b)(2). Low (b)(2) records are those matters which are trivial and housekeeping in nature for which there is no legitimate public interest or benefit to be gained by release, and it would constitute an administrative burden to process the request in order to disclose the records. Examples include rules of personnel's use of parking facilities or regulation of lunch hours, statements of policy as to sick leave, and administrative data such as file numbers, mail routing stamps, initials, data processing notations, brief references to previous communications, and other like administrative markings.

(c) 5 U.S.C. 552 (b)(3): Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or referring to particular types of matters to be withheld. A few examples of (b)(3) statutes are:

(1) 10 U.S.C. 128, Physical Protection of Special Nuclear Material, Limitation on Dissemination of Unclassified Information.

(2) 10 U.S.C. 130, Authority to Withhold From Public Disclosure Certain Technical Data.

(3) 10 U.S.C. 1102, Confidentiality of Medical Quality Assurance Records.

(4) 10 U.S.C. 2305(g), Protection of Contractor Submitted Proposals.

(5) 12 U.S.C. 3403, Confidentiality of Financial Records.

(6) 18 U.S.C. 798, Communication Intelligence.

(7) 35 U.S.C. 181–188, Patent Secrecy—any records containing information relating to inventions that are the subject of patent applications on which Patent Secrecy Orders have been issued.

(8) 35 U.S.C. 205, Confidentiality of Inventions Information.

(9) 41 U.S.C. 423, Procurement Integrity.

(10) 42 U.S.C. 2162, Restricted Data and Formerly Restricted Data.

(11) 50 U.S.C. 403 (d)(3), Protection of Intelligence Sources and Methods.

(d) 5 U.S.C. 552 (b)(4): Those containing trade secrets or commercial or financial information that a DON activity receives from a person or organization outside the Government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets, or commercial or financial records, the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information; impair the Government's ability to obtain necessary information in the future; or impair some other legitimate Government interest. Commercial or financial information submitted on a voluntary basis, absent any exercised authority prescribing criteria for submission is protected without any requirement to show competitive harm. If the information qualifies as exemption (b)(4) information, there is no discretion in its release. Examples include:

(1) Commercial or financial information received in confidence in connection with loans, bids, contracts, or proposals set forth in or incorporated by reference in a contract entered into between the DON activity and the offeror that submitted the proposal, as well as other information received in confidence or privileged, such as trade secrets, inventions, discoveries, or other proprietary data. Additionally, when the provisions of 10 U.S.C. 2305(g) and 41 U.S.C. 423 are met, certain proprietary and source selection information may be withheld under exemption (b)(3).

(2) Statistical data and commercial or financial information concerning contract performance, income, profits, losses, and expenditures, if offered and received in confidence from a contractor or potential contractor.

(3) Personal statements given in the course of inspections, investigations, or audits, when such statements are received in confidence from the individual and retained in confidence because they reveal trade secrets or commercial or financial information normally considered confidential or privileged.

(4) Financial data provided in confidence by private employers in connection with locality wage surveys that are used to fix and adjust pay schedules applicable to the prevailing wage rate of employees within the DON.

(5) Scientific and manufacturing processes or developments concerning technical or scientific data or other information submitted with an application for a research grant, or with a report while research is in progress.

(6) Technical or scientific data developed by a contractor or subcontractor exclusively at private expense, and technical or scientific data developed in part with Federal funds and in part at private expense, wherein the contractor or subcontractor has retained legitimate proprietary interests in such data in accordance with 10 U.S.C. 2320–2321 and DoD Federal Acquisition Regulation Supplement (DFARS), chapter 2 of 48 CFR, subparts 227.71 and 227.72. Technical data developed exclusively with Federal funds may be withheld under Exemption (b)(3) if it meets the criteria of 10 U.S.C. 130 and DoD Directive 5230.25 of 6 November 1984.

(7) Computer software which is copyrighted under the Copyright Act of 1976 (17 U.S.C. 106), the disclosure of which would have an adverse impact on the potential market value of a copyrighted work.

(8) Proprietary information submitted strictly on a voluntary basis, absent any exercised authority prescribing criteria for submission. Examples of exercised authorities prescribing criteria for submission are statutes, Executive Orders, regulations, invitations for bids, requests for proposals, and contracts. Submission of information under these authorities is not voluntary.

(e) 5 U.S.C. 552(b)(5): Those containing information considered privileged in litigation, primarily under the deliberative process privilege. For example: internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in deliberative records pertaining to the decision-making process of an agency, whether within or among agencies or within or among DON activities. In order to meet the test of this exemption, the record must be both deliberative in nature, as

well as part of a decision-making process. Merely being an internal record is insufficient basis for withholding under this exemption. Also potentially exempted are records pertaining to the attorney-client privilege and the attorney work-product privilege. This exemption is entirely discretionary. Examples of the deliberative process include:

(1) The nonfactual portions of staff papers, to include after-action reports, lessons learned, and situation reports containing staff evaluations, advice, opinions, or suggestions.

(2) Advice, suggestions, or evaluations prepared on behalf of the DON by individual consultants or by boards, committees, councils, groups, panels, conferences, commissions, task forces, or other similar groups that are formed for the purpose of obtaining advice and recommendations.

(3) Those non-factual portions of evaluations by DON personnel of contractors and their products.

(4) Information of a speculative, tentative, or evaluative nature or such matters as proposed plans to procure, lease or otherwise acquire and dispose of materials, real estate, facilities or functions, when such information would provide undue or unfair competitive advantage to private personal interests or would impede legitimate government functions.

(5) Trade secret or other confidential research development, or commercial information owned by the Government, where premature release is likely to affect the Government's negotiating position or other commercial interest.

(6) Those portions of official reports of inspection, reports of the Inspector Generals, audits, investigations, or surveys pertaining to safety, security, or the internal management, administration, or operation of one or more DON activities, when these records have traditionally been treated by the courts as privileged against disclosure in litigation.

(7) Planning, programming, and budgetary information that is involved in the defense planning and resource allocation process.

(8) If any such intra- or inter-agency record or reasonably segregable portion of such record hypothetically would be made available routinely through the discovery process in the course of litigation with the agency, then it should not be withheld under the FOIA. If, however, the information hypothetically would not be released at all, or would only be released in a particular case during civil discovery where a party's particularized showing of need might override a privilege, then the record may be withheld. Discovery is the formal process by which litigants obtain information from each other for use in the litigation. Consult with legal counsel to determine whether exemption 5 material would be routinely made available through the discovery process.

(9) Intra- or inter-agency memoranda or letters that are factual, or those reasonably segregable portions that are factual, are routinely made available through discovery, and shall be made available to a requester, unless the factual material is otherwise exempt from release, inextricably intertwined with the exempt information, so fragmented as to be uninformative, or so redundant of information already available to the requester as to provide no new substantive information.

(10) A direction or order from a superior to a subordinate, though contained in an internal communication, generally cannot be withheld from a requester if it constitutes policy guidance or a decision, as distinguished from a discussion of preliminary matters or a request for information or advice that would compromise the decision-making process.

(11) An internal communication concerning a decision that subsequently has been made a matter of public record must be made available to a requester when the rationale for the decision is expressly adopted or incorporated by reference in the record containing the decision.

(f) 5 U.S.C. 552(b)(6): Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to a requester, other than the person about whom the information is about, would result in a clearly unwarranted invasion of personal privacy. Release of information about an individual contained in a Privacy Act System of records that would constitute a clearly unwarranted invasion of privacy is prohibited, and could subject the releaser to civil and criminal penalties. If the information qualifies as exemption (b)(6) information, there is no discretion in its release. Examples of other files containing personal information similar to that contained in personnel and medical files include:

(1) Those compiled to evaluate or adjudicate the suitability of candidates for civilian employment or membership in the Armed Forces, and the eligibility of individuals (civilian, military, or contractor employees) for security clearances, or for access to particularly sensitive classified information.

(2) Files containing reports, records, and other material pertaining to personnel matters in which administrative action, including disciplinary action, may be taken.

(3) Home addresses, including private e-mail addresses, are normally not releasable without the consent of the individuals concerned. This includes lists of home addressees and military quarters' addressees without the occupant's name. Additionally, the names and duty addresses (postal and/or e-mail) of DON/DoD military and civilian personnel who are assigned to units that are sensitive, routinely deployable, or stationed in foreign territories can constitute a clearly unwarranted invasion of personal privacy.

(4) Privacy interest. A privacy interest may exist in personal information even though the information has been disclosed at some place and time. If personal information is not freely available from sources other than the Federal Government, a privacy interest exists in its nondisclosure. The fact that the Federal Government expended funds to prepare, index and maintain records on personal information, and the fact that a requester invokes FOIA to obtain these records indicates the information is not freely available.

(5) Names and duty addresses (postal and/or e-mail) published in telephone directories, organizational charts, rosters and similar materials for personnel assigned to units that are sensitive, routinely deployable, or stationed in foreign territories are withholdable under this exemption.

(6) This exemption shall not be used in an attempt to protect the privacy of a deceased person, but it may be used to protect the privacy of the deceased person's family if disclosure would rekindle grief, anguish, pain, embarrassment, or even disruption of peace of mind of surviving family members. In such situations, balance the surviving family members' privacy against the public's right to know to determine if disclosure is in the public interest. Additionally, the deceased's social security number should be withheld since it is used by the next of kin to receive benefits. Disclosures may be made to the immediate next of kin as defined in DoD Directive 5154.24 of 28 October 1996 (NOTAL).

(7) A clearly unwarranted invasion of the privacy of third parties identified in a personnel, medical or similar record constitutes a basis for deleting those reasonably segregable portions of that record. When withholding third party personal information from the subject of the record and the record is contained

in a Privacy Act system of records, consult with legal counsel.

(8) This exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal personally private information, and the public interest in disclosure is not sufficient to outweigh the privacy interest. In this situation, DON activities shall neither confirm nor deny the existence or nonexistence of the record being requested. This is a Glomar response, and exemption (b)(6) must be cited in the response. Additionally, in order to insure personal privacy is not violated during referrals, DON activities shall coordinate with other DON activities or Federal agencies before referring a record that is exempt under the Glomar concept.

(i) A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no records" response when a record does not exist and a "refusal to confirm or deny" when a record does exist will itself disclose personally private information.

(ii) Refusal to confirm or deny should not be used when the person whose personal privacy is in jeopardy has provided the requester a waiver of his or her privacy rights; the person initiated or directly participated in an investigation that led to the creation of an agency record seeks access to that record; or the person whose personal privacy is in jeopardy is deceased, the Agency is aware of that fact, and disclosure would not invade the privacy of the deceased's family.

(g) 5 U.S.C. 552(b)(7). Records or information compiled for law enforcement purposes; i.e., civil, criminal, or military law, including the implementation of Executive Orders or regulations issued under law. This exemption may be invoked to prevent disclosure of documents not originally created for, but later gathered for law enforcement purposes. With the exception of (b)(7)(C) and (b)(7)(F), this exemption is discretionary. This exemption applies, however, only to the extent that production of such law enforcement records or information could result in the following:

(1) 5 U.S.C. 552(b)(7)(A): Could reasonably be expected to interfere with enforcement proceedings.

(2) 5 U.S.C. 552(b)(7)(B): Would deprive a person of the right to a fair trial or to an impartial adjudication.

(3) 5 U.S.C. 552(b)(7)(C): Could reasonably be expected to constitute an unwarranted invasion of personal privacy of a living person, including surviving family members of an individual identified in such a record.

(i) This exemption also applies when the fact of the existence or nonexistence of a responsive record would itself reveal personally private information, and the public interest in disclosure is not sufficient to outweigh the privacy interest. In this situation, Components shall neither confirm nor deny the existence or nonexistence of the record being requested. This is a Glomar response, and exemption (b)(7)(C) must be cited in the response. Additionally, in order to insure personal privacy is not violated during referrals, DON activities shall coordinate with other DON/DoD activities or Federal Agencies before referring a record that is exempt under the Glomar concept. A "refusal to confirm or deny" response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a "no records" response when a record does not exist and a "refusal to confirm or deny" when a record does exist will itself disclose personally private information.

(ii) Refusal to confirm or deny should not be used when the person whose personal privacy is in jeopardy has provided the requester with a waiver of his or her privacy rights; or the person whose personal privacy is in jeopardy is deceased, and the activity is aware of that fact.

(4) 5 U.S.C. 552(b)(7)(D): Could reasonably be expected to disclose the identity of a confidential source, including a source within the DON; a State, local, or foreign agency or authority; or any private institution that furnishes the information on a confidential basis; and could disclose information furnished from a confidential source and obtained by a criminal law enforcement authority in a criminal investigation or by an agency conducting a lawful national security intelligence investigation.

(5) 5 U.S.C. 552(b)(7)(E): Would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

(6) 5 U.S.C. 552(b)(7)(F): Could reasonably be expected to endanger the life or physical safety of any individual.

(7) Some examples of exemption 7 are: Statements of witnesses and other material developed during the course of the investigation and all materials prepared in connection with related Government litigation or adjudicative proceedings; the identity of firms or individuals being investigated for alleged irregularities involving contracting with the DoD when no indictment has been obtained nor any civil action filed against them by the United States; information obtained in confidence, expressed or implied, in the course of a criminal investigation by a criminal law enforcement agency or office within a DON activity or a lawful national security intelligence investigation conducted by an authorized agency or office within the DON; national security intelligence investigations include background security investigations and those investigations conducted for the purpose of obtaining affirmative or counterintelligence information.

(8) The right of individual litigants to investigative records currently available by law (such as, the Jencks Act, 18 U.S.C. 3500), is not diminished.

(9) *Exclusions.* Excluded from the exemption in paragraph (g)(8) are the following two situations applicable to the DON:

(i) Whenever a request is made that involves access to records or information compiled for law enforcement purposes, and the investigation or proceeding involves a possible violation of criminal law where there is reason to believe that the subject of the investigation or proceeding is unaware of its pendency, and the disclosure of the existence of the records could reasonably be expected to interfere with enforcement proceedings, DON activities may, during only such times as that circumstance continues, treat the records or information as not subject to the FOIA. In such situation, the response to the requester will state that no records were found.

(ii) Whenever informant records maintained by a criminal law enforcement organization within a DON activities under the informant's name or personal identifier are requested by a third party using the informant's name or personal identifier, the DON activity may treat the records as not subject to the FOIA, unless the informant's status as an informant has been officially confirmed. If it is determined that the records are not subject to 5 U.S.C. 552(b)(7), the response to the requester will state that no records were found.

(iii) DON activities considering invoking an exclusion should first consult with the DOJ's Office of Information and Privacy.

(h) 5 U.S.C. 552(b)(8): Those contained in or related to examination, operation or condition reports prepared by, on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions.

(i) 5 U.S.C. 552(b)(9): Those containing geological and geophysical information and data (including maps) concerning wells.

Dated: August 30, 1999.

J. L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

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August 14, 1999

Part IV

National Counterintelligence Center

32 CFR Part 1800, et al.
Freedom of Information Act; Privacy Act; and Executive Order 12958; Implementation; Interim Rule

NATIONAL COUNTERINTELLIGENCE CENTER

32 CFR Parts 1800, 1801, 1802, 1803, 1804, 1805, 1806 and 1807

Freedom of Information Act; Privacy Act; and Executive Order 12958; Implementation

AGENCY: National Counterintelligence Center (NACIC).

ACTION: Interim rule.

SUMMARY: The National Counterintelligence Center (NACIC) is hereby promulgating interim rules and soliciting comments prior to adoption of final rules to implement its obligations under the Freedom of Information Act, the Privacy Act, and Executive Order 12958 (or successor Orders) provisions relating to classification challenges by authorized holders, requests for mandatory declassification review, and access by historical researchers.

DATES: The interim rules are effective September 14, 1999. Public comments are solicited for the interim rules on or before November 15, 1999.

ADDRESSES: Comments may be submitted to the Information and Privacy Coordinator, Executive Secretariat Office, National Counterintelligence Center, 3W01 NHB, Washington, DC 20505.

FOR FURTHER INFORMATION CONTACT: Information and Privacy Coordinator, Executive Secretariat Office, National Counterintelligence Center, 3W01 NHB, Washington, DC 20505; telephone (703) 874–4121 facsimile (703) 874–5844.

SUPPLEMENTARY INFORMATION: This document promulgates interim rules for access under the Freedom of Information Act (FOIA), the Privacy Act (PA), Executive Order (E.O.) 12958, and seeks public comment prior to adoption of a final rule.

Part 1800 Public Access to NACIC Records Under the Freedom of Information Act (FOIA)

This part is issued under the authority of and in order to implement the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552); and section 102 of the National Security Act of 1947, as amended (50 U.S.C. 403). It prescribes procedures for requesting information on available NACIC records, or NACIC administration of FOIA, or estimates of fees that may become due as a result of a request, requesting records pursuant to FOIA, and filing an administrative appeal of an initial adverse decision under FOIA.

Part 1801 Public Rights Under the Privacy Act of 1974

This part is issued under the authority of and in order to implement the Privacy Act of 1974(5 U.S.C. 552a) and § 102 of the National Security Act of 1947, as amended (50 U.S.C. 403). This part implements procedures governing a request for notification that the NACIC maintains a record concerning requestor in any non-exempt portion of a system of records or any non-exempt system of records, to request a copy of all non-exempt records or portions of records; to request records be amended or augmented, or to file an administrative appeal related to initial adverse determinations.

Part 1802 Challenges to Classification of Documents by Authorized Holders Pursuant § 1.9 of Executive Order 12958

This part is intended to implement the provisions of § 1.9 of Executive Order (E.O.) 12958 which permits authorized holders of classified information to challenge the classified status of that information. This provision and these regulations confer no rights upon members of the general public who shall continue to request reviews of classification under the Mandatory Declassification Review provisions set forth at § 3.6 of E.O. 12958 and at 32 CFR part 1803.

Part 1803 Public Request for Mandatory Declassification Review of Classified Information pursuant to § 3.6 of Executive Order 12958

This part is intended to implement the provisions of § 3.6 of Executive Order (E.O.) 12958 which permits members of the public to request a declassification review of any information classified under this or predecessor orders. It includes sections addressing the right of appeal to the new Interagency Security Classification Appeals Panel which was established pursuant to § 5.4 of E.O. 12958. This Executive Order provision and these regulations do not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, or employees.

Part 1804 Access by Historical Researchers and Former Presidential Appointees Provision of Executive Order 12958

This part is issued under the authority of and in order to implement § 4.5 of E.O. 12958 (or successor Orders). It prescribes procedures for requesting access to NACIC records for purposes of historical research or requesting access to NACIC records as a former Presidential appointee.

Part 1805 Production of Official Information or Disclosure of Official Information in Proceedings Before Federal State or Local Government Entities of Competent Jurisdiction

Part 1806 Procedures Governing Acceptance of Service of Process

Part 1807 Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities Conducted by the National Counterintelligence Center

This part is intended to implement the provisions of § 4.5 of Executive Order (E.O.) 12958 which provides a waiver of the need-to-know principle in limited circumstances for historical researchers and former Presidential appointees. These rules do not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, or employees. The decision of NACIC in this regard is final.

List of Subjects

32 CFR Part 1800

Freedom of information, National Counterintelligence Center

32 CFR Part 1801

National Counterintelligence Center, Privacy

32 CFR Parts 1802 and 1803

Administrative practice and procedure, Classified information, Executive Order, National Counterintelligence Center

32 CFR Part 1804

Administrative practice and procedure, National Counterintelligence Center, Research–Historian, Presidential appointees

32 CFR Part 1805

Administrative practice and procedure, Information disclosure

32 CFR Part 1806

Buildings, Federal, Law–process servers

32 CFR Part 1807

Civil rights, Federal programs, Persons with disabilities

Dated: August 25, 1999.

Michael Waguespack,

Director, National Counterintelligence Center.

For the reasons set forth in the preamble, NACIC hereby adds Chapter XVIII consisting of Parts 1800, 1801, 1802, 1803, 1804, 1805, 1806, and 1807 to read as follows:

Chapter XVIII—National Counterintelligence Center

PART 1800—PUBLIC ACCESS TO NACIC RECORDS UNDER THE FREEDOM OF INFORMATION ACT (FOIA)

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Sec.
1800.1 Authority and purpose.
1800.2 Definitions.
1800.3 Contact for general information and requests.
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Subpart B—Filing of FOIA Requests

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1800.42 Right of appeal and appeal procedures.
1800.43 Determination(s) by Office Chief(s).
1800.44 Action by appeals authority.
1800.45 Notification of decision and right of judicial review.

Authority: 5 U.S.C. 552.

Subpart A—General

§ 1800.1 Authority and purpose.

This part is issued under the authority of and in order to implement the Freedom of Information Act (FOIA), as amended (5 U.S.C. 552); and section 102 of the National Security Act of 1947, as amended (50 U.S.C. 403). It prescribes procedures for:

(a) Requesting information on available NACIC records, or NACIC administration of the FOIA, or estimates of fees that may become due as a result of a request;

(b) Requesting records pursuant to the FOIA; and

(c) Filing an administrative appeal of an initial adverse decision under the FOIA.

§ 1800.2 Definitions.

For purposes of this part, the following terms have the meanings indicated:

NACIC means the United States National Counterintelligence Center acting through the NACIC Information and Privacy Coordinator;

Days means calendar days when NACIC is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any time limit imposed on a requester by this part if responding by U.S. domestic mail; otherwise ten (10) days may be added if responding by international mail;

Control means ownership or the authority of NACIC pursuant to federal statute or privilege to regulate official or public access to records;

Coordinator means the NACIC Information and Privacy Coordinator who serves as the NACIC manager of the information review and release program instituted under the Freedom of Information Act;

Direct-costs means those expenditures which an agency actually incurs in the processing of a FOIA request; it does not include overhead factors such as space; it does include:

(1) *Pages* means paper copies of standard office size or the dollar value equivalent in other media;

(2) *Reproduction* means generation of a copy of a requested record in a form appropriate for release;

(3) *Review* means all time expended in examining a record to determine whether any portion must be withheld pursuant to law and in effecting any required deletions but excludes personnel hours expended in resolving general legal or policy issues; it also means personnel hours of professional time;

(4) *Search* means all time expended in looking for and retrieving material that may be responsive to a request utilizing available paper and electronic indices and finding aids; it also means personnel hours of professional time or the dollar value equivalent in computer searches;

Expression of interest means a written communication submitted by a member of the public requesting information on or concerning the FOIA program and/or the availability of documents from NACIC;

Federal agency means any executive department, military department, or other establishment or entity included in the definition of agency in 5 U.S.C. 552(f);

Fees means those direct costs which may be assessed a requester considering the categories established by the FOIA; requesters should submit information to assist NACIC in determining the proper fee category and NACIC may draw reasonable inferences from the identity and activities of the requester in making such determinations; the fee categories include:

(1) *Commercial* means a request in which the disclosure sought is primarily in the commercial interest of the requester and which furthers such commercial, trade, income or profit interests;

(2) *Non-commercial educational or scientific institution* means a request from an accredited United States educational institution at any academic level or institution engaged in research concerning the social, biological, or physical sciences or an instructor or researcher or member of such institutions; it also means that the information will be used in a specific scholarly or analytical work, will contribute to the advancement of public knowledge, and will be disseminated to the general public;

(3) *Representative of the news media* means a request from an individual actively gathering news for an entity that is organized and operated to publish and broadcast news to the American public and pursuant to their news dissemination function and not their commercial interests; the term *news* means information which concerns current events, would be of current interest to the general public, would enhance the public understanding of the operations or activities of the U.S. Government, and is in fact disseminated to a significant element of the public at minimal cost; freelance journalists are included in this definition if they can demonstrate a solid basis for expecting publication through such an organization, even though not actually employed by it; a publication contract or prior publication record is relevant to such status;

(4) *All other* means a request from an individual not within categories (h)(1), (2), or (3) of this section;

Freedom of Information Act or "*FOIA*" means the statutes as codified at 5 U.S.C. 552;

Interested party means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of NACIC, has a subject matter or physical interest in the documents or information at issue;

Originator means the U.S. Government official who originated the document at issue or successor in office or such official who has been delegated

release or declassification authority pursuant to law;

Potential requester means a person, organization, or other entity who submits an expression of interest;

Reasonably described records means a description of a document (record) by unique identification number or descriptive terms which permit a NACIC employee to locate documents with reasonable effort given existing indices and finding aids;

Records or agency records means all documents, irrespective of physical or electronic form, made or received by NACIC in pursuance of federal law or in connection with the transaction of public business and appropriate for preservation by NACIC as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of NACIC or because of the informational value of the data contained therein; it does not include:

(1) Books, newspapers, magazines, journals, magnetic or printed transcripts of electronic broadcasts, or similar public sector materials acquired generally and/or maintained for library or reference purposes; to the extent that such materials are incorporated into any form of analysis or otherwise distributed or published by NACIC, they are fully subject to the disclosure provisions of the FOIA;

(2) Index, filing, or museum documents made or acquired and preserved solely for reference, indexing, filing, or exhibition purposes; and

(3) Routing and transmittal sheets and notes and filing or destruction notes which do not also include information, comment, or statements of substance;

Responsive records means those documents (i.e., records) which NACIC has determined to be within the scope of a FOIA request.

§ 1800.3 Contact for general information and requests.

For general information on this part, to inquire about the FOIA program at NACIC, or to file a FOIA request (or expression of interest), please direct your communication in writing to the Information and Privacy Coordinator, Executive Secretariat Office, National Counterintelligence Center, 3W01 NHB, Washington, DC 20505. Such inquiries will also be accepted by facsimile at (703)874–5844. For general information or status information on pending cases only, the telephone number is (703)874–4121. Collect calls cannot be accepted.

§ 1800.4 Suggestions and complaints.

NACIC welcomes suggestions or complaints with regard to its administration of the Freedom of Information Act. Letters of suggestion or complaint should identify the specific purpose and the issues for consideration. NACIC will respond to all substantive communications and take such actions as determined feasible and appropriate.

Subpart B—Filing of FOIA Requests

§ 1800.11 Preliminary information.

Members of the public shall address all communications to the NACIC Coordinator as specified at § 1800.03 and clearly delineate the communication as a request under the Freedom of Information Act and this regulation. NACIC employees receiving a communication in the nature of a FOIA request shall expeditiously forward same to the Coordinator. Requests and appeals on requests, referrals, or coordinations received from members of the public who owe outstanding fees for information services at this or other federal agencies will not be accepted and action on all pending requests shall be terminated in such circumstances.

§ 1800.12 Requirements as to form and content.

(a) *Required information.* No particular form is required. A request need only reasonably describe the records of interest. This means that documents must be described sufficiently to enable a professional employee familiar with the subject to locate the documents with a reasonable effort. Commonly this equates to a requirement that the documents must be locatable through the indexing of our various systems. Extremely broad or vague requests or requests requiring research do not satisfy this requirement.

(b) *Additional information for fee determination.* In addition, a requester should provide sufficient personal identifying information to allow us to determine the appropriate fee category. A requester should also provide an agreement to pay all applicable fees or fees not to exceed a certain amount or request a fee waiver.

(c) *Otherwise.* Communications which do not meet these requirements will be considered an expression of interest and NACIC will work with, and offer suggestions to, the potential requester in order to define a request properly.

§ 1800.13 Fees for record services.

(a) *In general.* Search, review, and reproduction fees will be charged in accordance with the provisions below relating to schedule, limitations, and category of requester. Applicable fees will be due even if our search locates no responsive records or some or all of the responsive records must be denied under one or more of the exemptions of the Freedom of Information Act.

(b) *Fee waiver requests.* Records will be furnished without charge or at a reduced rate whenever NACIC determines:

(1) That, as a matter of administrative discretion, the interest of the United States Government would be served, or

(2) That it is in the public interest because it is likely to contribute significantly to the public understanding of the operations or activities of the United States Government and is not primarily in the commercial interest of the requester; NACIC shall consider the following factors when making this determination:

(i) Whether the subject of the request concerns the operations or activities of the United States Government; and, if so,

(ii) Whether the disclosure of the requested documents is likely to contribute to an understanding of United States Government operations or activities; and, if so,

(iii) Whether the disclosure of the requested documents will contribute to public understanding of United States Government operations or activities; and, if so,

(iv) Whether the disclosure of the requested documents is likely to contribute significantly to public understanding of United States Government operations and activities; and

(v) Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(vi) Whether the disclosure is primarily in the commercial interest of the requester.

(c) *Fee waiver appeals.* Denials of requests for fee waivers or reductions may be appealed to the Director, NACIC via the Coordinator. A requester is encouraged to provide any explanation or argument as to how his or her request satisfies the statutory requirement set forth in paragraph (b) of this section.

(d) *Time for fee waiver requests and appeals.* It is suggested that such requests and appeals be made and resolved prior to the initiation of processing and the incurring of costs. However, fee waiver requests will be accepted at any time prior to the release of documents or the completion of a case, and fee waiver appeals within forty-five (45) days of our initial decision subject to the following condition: if processing has been initiated, then the requester must agree to be responsible for costs in the event of an adverse administrative or judicial decision.

(e) *Agreement to pay fees.* In order to protect requesters from large and/or unanticipated charges, NACIC will request specific commitment when it estimates that fees will exceed $100.00. NACIC will hold in abeyance for forty-five (45) days requests requiring such agreement and will thereafter deem the request closed. This action, of course, would not prevent an individual from refiling his or her FOIA request with a fee commitment at a subsequent date.

(f) *Deposits.* NACIC may require an advance deposit of up to 100 percent of the estimated fees when fees may exceed $250.00 and the requester has no history of payment, or when, for fees of any amount, there is evidence that the requester may not pay the fees which would be accrued by processing the request. NACIC will hold in abeyance for forty-five (45) days those requests where deposits have been requested.

(g) *Schedule of fees*—(1) *In general.* The schedule of fees for services performed in responding to requests for records is established as follows:

(i) Personnel Search and Review

Clerical/Technical__Quarter hour__$ 5.00__Professional/Supervisory__Quarter hour__ 10.00____Manager/Senior Professional__Quarter hour__18.00

(ii) Computer Search and Production

Search (on-line)__Flat rate__10.00__Search (off-line)__Flat rate__30.00__Other activity__Per minute__10.00__Tapes (mainframe cassette)__Each__9.00__Tapes (mainframe cartridge)__Each__9.00__Tapes (mainframe reel)__Each__20.00__Tapes (PC 9mm)__Each__25.00__Diskette (3.5″) __Each__4.00__CD (bulk recorded)__Each__10.00__CD (recordable)__Each__20.00__ Telecommunications __Per minute__.50__ Paper (mainframe printer)__Per page__.10__Paper (PC b&w laser printer)__Per page__.10__Paper (PC color printer)__Per page__1.00

(iii) Paper Production

Photocopy (standard or legal)__Per page__.10__Microfiche__Per frame__.20__Pre-printed (if available)__Per 100 pages__5.00__Published (if available)__Per item__NTIS__

(2) *Application of schedule.* Personnel search time includes time expended in either manual paper records searches, indices searches, review of computer search results for relevance, personal computer system searches, and various reproduction services. In any event where the actual cost to NACIC of a particular item is less than the above schedule (e.g., a large production run of a document resulted in a cost less than $5.00 per hundred pages), then the actual lesser cost will be charged.

(3) *Other services.* For all other types of output, production, or reproduction (e.g., photographs, maps, or published reports), actual cost or amounts authorized by statute. Determinations of actual cost shall include the commercial cost of the media, the personnel time expended in making the item to be released, and an allocated cost of the equipment used in making the item, or, if the production is effected by a commercial service, then that charge shall be deemed the actual cost for purposes of this part.

(h) *Limitations on collection of fees*—(1) *In general.* No fees will be charged if the cost of collecting the fee is equal to or greater than the fee itself. That cost includes the administrative costs to NACIC of billing, receiving, recording, and processing the fee for deposit to the Treasury Department and, as of the date of these regulations, is deemed to be $10.00.

(2) *Requests for personal information.* No fees will be charged for requesters seeking records about themselves under the FOIA; such requests are processed in accordance with both the FOIA and the Privacy Act in order to ensure the maximum disclosure without charge.

(i) *Fee categories.* There are four categories of FOIA requesters for fee purposes: "commercial use" requesters, "educational and non-commercial scientific institution" requesters, "representatives of the news media" requesters, and "all other" requesters. The categories are defined in § 1800.2, and applicable fees, which are the same in two of the categories, will be assessed as follows:

(1) "Commercial use" requesters: Charges which recover the full direct costs of searching for, reviewing, and duplicating responsive records (if any);

(2) "Educational and non-commercial scientific institution" requesters as well as "representatives of the news media" requesters: Only charges for reproduction beyond the first 100 pages;

(3) "All other" requesters: Charges which recover the full direct cost of searching for and reproducing responsive records (if any) beyond the first 100 pages of reproduction and the first two hours of search time which will be furnished without charge.

(j) *Associated requests.* A requester or associated requesters may not file a series of multiple requests, which are merely discrete subdivisions of the information actually sought for the purpose of avoiding or reducing applicable fees. In such instances, NACIC may aggregate the requests and charge the applicable fees.

§ 1800.14 Fee estimates (pre-request option).

In order to avoid unanticipated or potentially large fees, a requester may submit a request for a fee estimate. Pursuant to the Electronic Freedom of Information Act Amendments of 1996, NACIC will endeavor within twenty (20) days to provide an accurate estimate, and, if a request is thereafter submitted, NACIC will not accrue or charge fees in excess of our estimate without the specific permission of the requester.

Subpart C—NACIC Action On FOIA Requests

§ 1800.21 Processing of requests for records.

(a) *In general.* Requests meeting the requirements of §§ 1800.11 through 1800.13 shall be accepted as formal requests and processed under the Freedom of Information Act, 5 U.S.C. 552, and these regulations. Pursuant to the Electronic Freedom of Information Act Amendments of 1996, upon receipt, NACIC shall within twenty (20) days record each request, acknowledge receipt to the requester in writing, and thereafter effect the necessary taskings to the NACIC components reasonably believed to hold responsive records.

(b) *Database of "officially released information."* As an alternative to extensive tasking and as an accommodation to many requesters, NACIC maintains a database of "officially released information" which contains copies of documents released by NACIC. Searches of this database can be accomplished expeditiously. Moreover, requests that are specific and well-focused will often incur minimal, if any, costs. Requesters interested in this means of access should so indicate in their correspondence. Consistent with the mandate of the Electronic Freedom of Information Act Amendments of 1996, on-line electronic access to these records is available to the public. Detailed information regarding such access is available from the point of contact specified in § 1800.3.

(c) *Effect of certain exemptions.* In processing a request, NACIC shall decline to confirm or deny the existence or nonexistence of any responsive records whenever the fact of their existence or nonexistence is itself classified under Executive Order 12958 and may jeopardize intelligence sources or methods protected pursuant to section 103(c)(6) of the National Security Act of 1947. In such circumstances, NACIC, in the form of a final written response, shall so inform

the requester and advise of his or her right to an administrative appeal.

(d) *Time for response.* Pursuant to the Electronic Freedom of Information Act Amendments of 1996, NACIC will utilize every effort to determine within the statutory guideline of twenty (20) days after receipt of an initial request whether to comply with such a request. However, should the volume of requests require that NACIC seek additional time from a requester pursuant to § 1800.33, NACIC will inform the requester in writing and further advise of his or her right to file an administrative appeal of any adverse determination.

§ 1800.22 Action and determination(s) by originator(s) or any interested party.

(a) *Initial action for access.* (1) NACIC components tasked pursuant to a FOIA request shall search all relevant record systems within their cognizance. They shall:

(i) Determine whether a record exists;

(ii) Determine whether and to what extent any FOIA exemptions apply;

(iii) Approve the disclosure of all non-exempt records or portions of records for which they are the originator; and

(iv) Forward to the Coordinator all records approved for release or necessary for coordination with or referral to another originator or interested party.

(2) In making these decisions, the NACIC component officers shall be guided by the applicable law as well as the procedures specified at § 1800.31 and § 1800.32 regarding confidential commercial information and personal information (about persons other than the requester).

(b) *Referrals and coordinations.* As applicable and within twenty (20) days, pursuant to the Electronic Freedom of Information Act Amendments of 1996, of receipt by the Coordinator, any NACIC records containing information originated by other NACIC components shall be forwarded to those entities for action in accordance with paragraph (a) of this section and return. Records originated by other federal agencies or NACIC records containing other federal agency information shall be forwarded to such agencies within twenty (20) days of our completion of initial action in the case for action under their regulations and direct response to the requester (for other agency records) or return to NACIC (for NACIC records).

§ 1800.23 Payment of fees, notification of decision, and right of appeal.

(a) *Fees in general.* Fees collected under this part do not accrue to the National Counterintelligence Center and shall be deposited immediately to the general account of the United States Treasury.

(b) *Notification of decision.* Upon completion of all required review and the receipt of accrued fees (or promise to pay such fees), NACIC will promptly inform the requester in writing of those records or portions of records which may be released and which must be denied. With respect to the former, NACIC will provide copies; with respect to the latter, NACIC shall explain the reasons for the denial, identify the person(s) responsible for such decisions by name and title, and give notice of a right of administrative appeal.

(c) *Availability of reading room.* As an alternative to receiving records by mail, a requester may arrange to inspect the records deemed releasable at a NACIC "reading room" in the metropolitan Washington, DC area. Access will be granted after applicable and accrued fees have been paid. Requests to review or browse documents in our database of "officially released records" will also be honored in this manner to the extent that paper copies or electronic copies in unclassified computer systems exist. All such requests shall be in writing and addressed pursuant to § 1800.3. The records will be available at such times as mutually agreed but not less than three (3) days from our receipt of a request. The requester will be responsible for reproduction charges for any copies of records desired.

Subpart D—Additional Administrative Matters

§ 1800.31 Procedures for business information.

(a) *In general.* Business information obtained by NACIC by a submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section. For purposes of this section, the following definitions apply:

Business information means commercial or financial information in which a legal entity has a recognized property interest;

Confidential commercial information means such business information provided to the United States Government by a submitter which is reasonably believed to contain information exempt from release under exemption (b)(4) of the Freedom of Information Act, 5 U.S.C. 552, because disclosure could reasonably be expected to cause substantial competitive harm;

Submitter means any person or entity who provides confidential commercial information to the United States Government; it includes, but is not limited to, corporations, businesses (however organized), state governments, and foreign governments; and

(b) *Designation of confidential commercial information.* A submitter of business information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers to be confidential commercial information and hence protected from required disclosure pursuant to exemption (b)(4). Such designations shall expire ten (10) years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(c) *Process in event of FOIA request.*—(1) *Notice to submitters.* NACIC shall provide a submitter with prompt written notice of receipt of a Freedom of Information Act request encompassing business information whenever:

(i) The submitter has in good faith designated the information as confidential commercial information, or

(ii) NACIC believes that disclosure of the information could reasonably be expected to cause substantial competitive harm, and

(iii) The information was submitted within the last ten (10) years unless the submitter requested and provided acceptable justification for a specific notice period of greater duration.

(2) *Form of notice:* This notice shall either describe the exact nature of the confidential commercial information at issue or provide copies of the responsive records containing such information.

(3) *Response by submitter.* (i) Within seven (7) days of the above notice, all claims of confidentiality by a submitter must be supported by a detailed statement of any objection to disclosure. Such statement shall:

(A) Specify that the information has not been disclosed to the public;

(B) Explain why the information is contended to be a trade secret or confidential commercial information;

(C) Explain how the information is capable of competitive damage if disclosed;

(D) State that the submitter will provide NACIC and the Department of Justice with such litigation defense as requested; and

(E) Be certified by an officer authorized to legally bind the corporation or similar entity.

(ii) It should be noted that information provided by a submitter pursuant to this provision may itself be subject to disclosure under the FOIA.

(4) *Decision and notice of intent to disclose.* (i) NACIC shall consider carefully a submitter's objections and specific grounds for nondisclosure prior to its final determination. If NACIC decides to disclose a document over the objection of a submitter, NACIC shall provide the submitter a written notice which shall include:

(A) A statement of the reasons for which the submitter's disclosure objections were not sustained;

(B) A description of the information to be disclosed; and

(C) A specified disclosure date which is seven (7) days after the date of the instant notice.

(i) When notice is given to a submitter under this section, NACIC shall also notify the requester and, if NACIC notifies a submitter that it intends to disclose information, then the requester shall be notified also and given the proposed date for disclosure.

(5) *Notice of FOIA lawsuit.* If a requester initiates a civil action seeking to compel disclosure of information asserted to be within the scope of this section, NACIC shall promptly notify the submitter. The submitter, as specified above, shall provide such litigation assistance as required by NACIC and the Department of Justice.

(6) *Exceptions to notice requirement.* The notice requirements of this section shall not apply if NACIC determines that:

(i) The information should not be disclosed in light of other FOIA exemptions;

(ii) The information has been published lawfully or has been officially made available to the public;

(iii) The disclosure of the information is otherwise required by law or federal regulation; or

(iv) The designation made by the submitter under this section appears frivolous, except that, in such a case, NACIC will, within a reasonable time prior to the specified disclosure date, give the submitter written notice of any final decision to disclose the information.

§ 1800.32 Procedures for information concerning other persons.

(a) *In general.* Personal information concerning individuals other than the requester shall not be disclosed under the Freedom of Information Act if the proposed release would constitute a clearly unwarranted invasion of personal privacy. See 5 U.S.C. 552(b)(6). For purposes of this section, the following definitions apply:

Personal information means any information about an individual that is not a matter of public record, or easily discernible to the public, or protected from disclosure because of the implications that arise from Government possession of such information.

Public interest means the public interest in understanding the operations and activities of the United States Government and not simply any matter which might be of general interest to the requester or members of the public.

(b) *Determination to be made.* In making the required determination under this section and pursuant to exemption (b)(6) of the FOIA, NACIC will balance the privacy interests that would be compromised by disclosure against the public interest in release of the requested information.

(c) *Otherwise.* A requester seeking information on a third person is encouraged to provide a signed affidavit or declaration from the third person waiving all or some of their privacy rights. However, all such waivers shall be narrowly construed and the Coordinator, in the exercise of his discretion and administrative authority, may seek clarification from the third party prior to any or all releases.

§ 1800.33 Allocation of resources; agreed extensions of time.

(a) *In general.* NACIC components shall devote such personnel and other resources to the responsibilities imposed by the Freedom of Information Act as may be appropriate and reasonable considering:

(1) The totality of resources available to the component,

(2) The business demands imposed on the component by the Director of NACIC or otherwise by law,

(3) The information review and release demands imposed by the Congress or other governmental authority, and

(4) The rights of all members of the public under the various information review and disclosure laws.

(b) *Discharge of FOIA responsibilities.* Components shall exercise due diligence in their responsibilities under the FOIA and must allocate a reasonable level of resources to requests under the Act in a strictly "first-in, first-out" basis and utilizing two or more processing queues to ensure that smaller as well as larger (i.e., project) cases receive equitable attention. The Information and Privacy Coordinator is responsible for management of the NACIC-wide program defined by this part and for establishing priorities for cases consistent with established law. The Director, NACIC shall provide policy and resource direction as necessary and render decisions on administrative appeals.

(c) *Requests for extension of time.* When NACIC is unable to meet the statutory time requirements of the FOIA, it will inform the requester that the request cannot be processed within the statutory time limits, provide an opportunity for the requester to limit the scope of the request so that it can be processed within the statutory time limits, or arrange with the requester an agreed upon time frame for processing the request, or determine that exceptional circumstances mandate additional time in accordance with the definition of "exceptional circumstances" per section 552(a)(6)(C) of the Freedom of Information Act, as amended, effective October 2, 1997. In such instances NACIC will, however, inform a requester of his or her right to decline our request and proceed with an administrative appeal or judicial review as appropriate.

§ 1800.34 Requests for expedited processing.

(a) *In general.* All requests will be handled in the order received on a strictly "first-in, first-out" basis. Exceptions to this section will only be made in accordance with the following procedures. In all circumstances, however, and consistent with established judicial precedent, requests more properly the scope of requests under the Federal Rules of Civil or Criminal Procedure (or other federal, state, or foreign judicial or quasi-judicial rules) will not be granted expedited processing under this or related (e.g., Privacy Act) provisions unless expressly ordered by a federal court of competent jurisdiction.

(b) *Procedure.* Requests for expedited processing will be approved only when a compelling need is established to the satisfaction of NACIC. A requester may make such a request with a certification of "compelling need" and, within ten (10) days of receipt, NACIC will decide whether to grant expedited processing and will notify the requester of its decision. The certification shall set forth with specificity the relevant facts upon which the requester relies and it appears to NACIC that substantive records relevant to the stated needs may exist and be deemed releasable. A "compelling need" is deemed to exist:

(1) When the matter involves an imminent threat to the life or physical safety of an individual; or

(2) When the request is made by a person primarily engaged in disseminating information and the information is relevant to a subject of public urgency concerning an actual or alleged Federal government activity.

Subpart E–NACIC Action On FOIA Administrative Appeals

§ 1800.41 Appeal authority.

The Director, NACIC will make final NACIC decisions from appeals of initial adverse decisions under the Freedom of Information Act and such other information release decisions made under parts 1801, 1802, and 1803 of this chapter. Matters decided by the Director, NACIC will be deemed a final decision by NACIC.

§ 1800.42 Right of appeal and appeal procedures.

(a) *Right of Appeal.* A right of administrative appeal exists whenever access to any requested record or any portion thereof is denied, no records are located in response to a request, or a request for a fee waiver is denied. NACIC will apprise all requesters in writing of their right to appeal such decisions to the Director, NACIC through the Coordinator.

(b) *Requirements as to time and form.* Appeals of decisions must be received by the Coordinator within forty-five (45) days of the date of NACIC's initial decision. NACIC may, for good cause and as a matter of administrative discretion, permit an additional thirty (30) days for the submission of an appeal. All appeals shall be in writing and addressed as specified in § 1800.3. All appeals must identify the documents or portions of documents at issue with specificity and may present such information, data, and argument in support as the requester may desire.

(c) *Exceptions.* No appeal shall be accepted if the requester has outstanding fees for information services at this or another federal agency. In addition, no appeal shall be accepted if the information in question has been the subject of a review within the previous two (2) years or is the subject of pending litigation in the federal courts.

(d) *Receipt, recording, and tasking.* NACIC shall promptly record each request received under this part, acknowledge receipt to the requester in writing, and thereafter effect the necessary taskings to the office(s) which originated or has an interest in the record(s) subject to the appeal.

(e) *Time for response.* NACIC shall attempt to complete action on an appeal within twenty (20) days of the date of receipt. The volume of requests, however, may require that NACIC request additional time from the requester pursuant to § 1800.33. In such event, NACIC will inform the requester of the right to judicial review.

§ 1800.43 Determination(s) by Office Chief(s).

Each Office Chief in charge of an office which originated or has an interest in any of the records subject to the appeal, or designee, is a required party to any appeal; other interested parties may become involved through the request of the Coordinator when it is determined that some or all of the information is also within their official cognizance. These parties shall respond in writing to the Coordinator with a finding as to the exempt status of the information. This response shall be provided expeditiously on a "first-in, first-out" basis taking into account the business requirements of the parties and consistent with the information rights of members of the general public under the various information review and release laws.

§ 1800.44 Action by appeals authority.

(a) *Preparation of docket.* The Coordinator shall provide a summation memorandum for consideration of the Director, NACIC; the complete record of the request consisting of the request, the document(s) (sanitized and full text) at issue, and the findings of concerned Office Chiefs or designee(s).

(b) *Decision by the Director, NACIC.* The Director, NACIC shall personally decide each case; no personal appearances shall be permitted without the express permission of the Director, NACIC.

§ 1800.45 Notification of decision and right of judicial review.

The Coordinator shall promptly prepare and communicate the decision of the Director, NACIC to the requester. With respect to any decision to deny information, that correspondence shall state the reasons for the decision, identify the officer responsible, and include a notice of a right to judicial review.

PART 1801—PUBLIC RIGHTS UNDER THE PRIVACY ACT OF 1974

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Authority: 5 U.S.C. 552a.

Subpart A–General

§ 1801.1 Authority and purpose.

(a) *Authority.* This part is issued under the authority of and in order to implement the Privacy Act of 1974 (5 U.S.C. 552a) and section 102 of the National Security Act of 1947, as amended (50 U.S.C. 403).

(b) *Purpose in general.* This part prescribes procedures for a requester, as defined herein:

(1) To request notification of whether the National Counterintellingence Center (NACIC) maintains a record concerning them in any non-exempt portion of a system of records or any non-exempt system of records;

(2) To request a copy of all non-exempt records or portions of records;

(3) To request that any such record be amended or augmented; and

(4) To file an administrative appeal to any initial adverse determination to deny access to or amend a record.

(c) *Other purposes.* This part also sets forth detailed limitations on how and to whom NACIC may disclose personal information and gives notice that certain actions by officers or employees of the United States Government or members of the public could constitute criminal offenses.

§ 1801.2 Definitions.

For purposes of this part, the following terms have the meanings indicated:

NACIC means the United States National Counterintelligence Center acting through the NACIC Information and Privacy Coordinator;

Days means calendar days when NACIC is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any time limit imposed on a requester by this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

Control means ownership or the authority of NACIC pursuant to federal statute or privilege to regulate official or public access to records;

Coordinator means the NACIC Information and Privacy Coordinator who serves as the NACIC manager of the information review and release program instituted under the Privacy Act;

Federal agency means any executive department, military department, or other establishment or entity included in the definition of agency in 5 U.S.C. 552(f);

Interested party means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of NACIC, has a subject matter or physical interest in the documents or information at issue;

Maintain means maintain, collect, use, or disseminate;

Originator means the U.S. Government official who originated the document at issue or successor in office or such official who has been delegated release or declassification authority pursuant to law;

Privacy Act or *PA* means the statute as codified at 5 U.S.C. 552a;

Record means an item, collection, or grouping of information about an individual that is maintained by NACIC in a system of records;

Requester or *individual* means a citizen of the United States or an alien lawfully admitted for permanent residence who is a living being and to whom a record might pertain;

Responsive record means those documents (records) which NACIC has determined to be within the scope of a Privacy Act request;

Routine use means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which the record is maintained;

System of records means a group of any records under the control of NACIC from which records are retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to that individual.

§ 1801.3 Contact for general information and requests.

For general information on this part, to inquire about the Privacy Act program at NACIC, or to file a Privacy Act request, please direct your communication in writing to the Information and Privacy Coordinator, Executive Secretariat Office, National Counterintelligence Center, 3W01 NHB, Washington, DC 20505. Requests with the required identification statement pursuant to § 1801.13 must be filed in original form by mail. Subsequent communications and any inquiries will be accepted by mail or facsimile at (703) 874–5844 or by telephone at (703) 874–4121. Collect calls cannot be accepted.

§ 1801.4 Suggestions and complaints.

NACIC welcomes suggestions or complaints with regard to its administration of the Privacy Act. Letters of suggestion or complaint should identify the specific purpose and the issues for consideration. NACIC will respond to all substantive communications and take such actions as determined feasible and appropriate.

Subpart B—Filing Of Privacy Act Requests

§ 1801.11 Preliminary information.

Members of the public shall address all communications to the contact specified at § 1801.3 and clearly delineate the communication as a request under the Privacy Act and this regulation. Requests and administrative appeals on requests, referrals, and coordinations received from members of the public who owe outstanding fees for information services at this or other federal agencies will not be accepted and action on existing requests and appeals will be terminated in such circumstances.

§ 1801.12 Requirements as to form.

(a) *In general.* No particular form is required. All requests must contain the identification information required at § 1801.13.

(b) *For access.* For requests seeking access, a requester should, to the extent possible, describe the nature of the record sought and the record system(s) in which it is thought to be included. Requesters may find assistance from information described in the Privacy Act Issuances Compilation which is published biennially by the **Federal Register**. In lieu of this, a requester may simply describe why and under what circumstances it is believed that NACIC maintains responsive records; NACIC will undertake the appropriate searches.

(c) *For amendment.* For requests seeking amendment, a requester should identify the particular record or portion subject to the request, state a justification for such amendment, and provide the desired amending language.

§ 1801.13 Requirements as to identification of requester.

(a) *In general.* Individuals seeking access to or amendment of records concerning themselves shall provide their full (legal) name, address, date and place of birth, and current citizenship status together with a statement that such information is true under penalty of perjury or a notarized statement swearing to or affirming identity. If NACIC determines that this information is not sufficient, NACIC may request additional or clarifying information.

(b) *Requirement for aliens.* Only aliens lawfully admitted for permanent residence (PRAs) may file a request pursuant to the Privacy Act and this part. Such individuals shall provide, in addition to the information required under paragraph (a) of this section, their Alien Registration Number and the date that status was acquired.

(c) *Requirement for representatives.* The parent or guardian of a minor individual, the guardian of an individual under judicial disability, or an attorney retained to represent an individual shall provide, in addition to establishing the identity of the minor or individual represented as required in paragraph (a) or (b) of this section, evidence of such representation by submission of a certified copy of the minor's birth certificate, court order, or representational agreement which establishes the relationship and the requester's identity.

(d) *Procedure otherwise.* If a requester or representative fails to provide the information in paragraph (a), (b), or (c) of this section within forty-five (45) days of the date of our request, NACIC will deem the request closed. This action, of course, would not prevent an individual from refiling his or her Privacy Act request at a subsequent date with the required information.

§ 1801.14 Fees.

No fees will be charged for any action under the authority of the Privacy Act, 5 U.S.C. 552a, irrespective of the fact that a request is or may be processed under the authority of both the Privacy Act and the Freedom of Information Act.

Subpart C–Action On Privacy Act Requests

§ 1801.21 Processing requests for access to or amendment of records.

(a) *In general.* Requests meeting the requirements of § 1801.11 through § 1801.13 shall be processed under both the Freedom of Information Act, 5 U.S.C. 552, and the Privacy Act, 5 U.S.C. 552a, and the applicable regulations, unless the requester demands otherwise in writing. Such requests will be processed under both Acts regardless of whether the requester cites one Act in the request, both, or neither. This action is taken in order to ensure the maximum possible disclosure to the requester.

(b) *Receipt, recording and tasking.* Upon receipt of a request meeting the requirements of §§ 1801.11 through 1801.13, NACIC shall within ten (10) days record each request, acknowledge receipt to the requester, and thereafter effect the necessary taskings to the office(s) reasonably believed to hold responsive records.

(c) *Effect of certain exemptions.* In processing a request, NACIC shall decline to confirm or deny the existence or nonexistence of any responsive records whenever the fact of their existence or nonexistence is itself classified under Executive Order 12958 and that confirmation of the existence of a record may jeopardize intelligence sources and methods protected pursuant to section 103(c)(6) of the National Security Act of 1947. In such circumstances, NACIC, in the form of a final written response, shall so inform the requester and advise of his or her right to an administrative appeal.

(d) *Time for response.* Although the Privacy Act does not mandate a time for response, our joint treatment of requests under both the Privacy Act and the FOIA means that the NACIC should provide a response within the FOIA statutory guideline of ten (10) days on initial requests and twenty (20) days on administrative appeals. However, the volume of requests may require that NACIC seek additional time from a requester pursuant to § 1801.33. In such event, NACIC will inform the requester in writing and further advise of his or her right to file an administrative appeal.

§ 1801.22 Action and determination(s) by originator(s) or any interested party.

(a) *Initial action for access.* NACIC offices tasked pursuant to a Privacy Act access request shall search all relevant record systems within their cognizance. They shall:

(1) Determine whether responsive records exist;

(2) Determine whether access must be denied in whole or part and on what legal basis under both Acts in each such case;

(3) Approve the disclosure of records for which they are the originator; and

(4) Forward to the Coordinator all records approved for release or necessary for coordination with or referral to another originator or interested party as well as the specific determinations with respect to denials (if any).

(b) *Initial action for amendment.* NACIC offices tasked pursuant to a Privacy Act amendment request shall review the official records alleged to be inaccurate and the proposed amendment submitted by the requester. If they determine that NACIC's records are not accurate, relevant, timely or complete, they shall promptly:

(1) Make the amendment as requested;

(2) Write to all other identified persons or agencies to whom the record has been disclosed (if an accounting of the disclosure was made) and inform of the amendment; and

(3) Inform the Coordinator of such decisions.

(c) *Action otherwise on amendment request.* If the NACIC office records manager declines to make the requested amendment (or declines to make the requested amendment) but agrees to augment the official records, that manager shall promptly:

(1) Set forth the reasons for refusal; and

(2) Inform the Coordinator of such decision and the reasons therefore.

(d) *Referrals and coordinations.* As applicable and within ten (10) days of receipt by the Coordinator, any NACIC records containing information originated by other NACIC offices shall be forwarded to those entities for action in accordance with paragraphs (a), (b), or (c) of this section and return. Records originated by other federal agencies or NACIC records containing other federal information shall be forwarded to such agencies within ten (10) days of our completion of initial action in the case for action under their regulations and direct response to the requester (for other NACIC records) or return to NACIC (for NACIC records).

(e) *Effect of certain exemptions.* This section shall not be construed to allow access to systems of records exempted by the Director, NACIC pursuant to subsections (j) and (k) of the Privacy Act or where those exemptions require that NACIC can neither confirm nor deny the existence or nonexistence of responsive records.

§ 1801.23 Notification of decision and right of appeal.

Within ten (10) days of receipt of responses to all initial taskings and subsequent coordinations (if any), and dispatch of referrals (if any), NACIC will provide disclosable records to the requester. If a determination has been made not to provide access to requested records (in light of specific exemptions) or that no records are found, NACIC shall so inform the requester, identify the denying official, and advise of the right to administrative appeal.

Subpart D—Additional Administrative Matters

§ 1801.31 Special procedures for medical and psychological records.

(a) *In general.* When a request for access or amendment involves medical or psychological records and when the originator determines that such records are not exempt from disclosure, NACIC will, after consultation with the Director of Medical Services, CIA, determine:

(1) Which records may be sent directly to the requester and

(2) Which records should not be sent directly to the requester because of possible medical or psychological harm to the requester or another person.

(b) *Procedure for records to be sent to physician.* In the event that NACIC determines, in accordance with paragraph (a)(2) of this section, that records should not be sent directly to the requester, NACIC will notify the requester in writing and advise that the records at issue can be made available only to a physician of the requester's designation. Upon receipt of such designation, verification of the identity of the physician, and agreement by the physician:

(1) To review the documents with the requesting individual,

(2) To explain the meaning of the documents, and

(3) To offer counseling designed to temper any adverse reaction, NACIC will forward such records to the designated physician.

(c) *Procedure if physician option not available.* If within sixty (60) days of paragraph (a)(2) of this section, the requester has failed to respond or designate a physician, or the physician fails to agree to the release conditions, NACIC will hold the documents in abeyance and advise the requester that this action may be construed as a technical denial. NACIC will also advise the requester of the responsible official and of his or her rights to administrative appeal and thereafter judicial review.

§ 1801.32 Requests for expedited processing.

(a) All requests will be handled in the order received on a strictly "first-in, first-out" basis. Exceptions to this rule will only be made in circumstances that NACIC deems to be exceptional. In making this determination, NACIC shall consider and must decide in the affirmative on all of the following factors:

(1) That there is a genuine need for the records; and

(2) That the personal need is exceptional; and

(3) That there are no alternative forums for the records sought; and

(4) That it is reasonably believed that substantive records relevant to the stated needs may exist and be deemed releasable.

(b) In sum, requests shall be considered for expedited processing only when health, humanitarian, or due process considerations involving possible deprivation of life or liberty create circumstances of exceptional urgency and extraordinary need. In accordance with established judicial precedent, requests more properly the scope of requests under the Federal Rules of Civil or Criminal Procedure (or equivalent state rules) will not be granted expedited processing under this or related (e.g., Freedom of Information Act) provisions unless expressly ordered by a federal court of competent jurisdiction.

§ 1801.33 Allocation of resources; agreed extensions of time.

(a) *In general.* NACIC components shall devote such personnel and other resources to the responsibilities imposed by the Privacy Act as may be appropriate and reasonable considering:

(1) The totality of resources available to the component,

(2) The business demands imposed on the component by the Director, NACIC or otherwise by law,

(3) The information review and release demands imposed by the Congress or other governmental authority, and

(4) The rights of all members of the public under the various information review and disclosure laws.

(b) *Discharge of Privacy Act responsibilities.* Offices shall exercise due diligence in their responsibilities under the Privacy Act and must allocate a reasonable level of resources to requests under the Act in a strictly "first-in, first-out" basis and utilizing two or more processing queues to ensure that smaller as well as larger (i.e., project) cases receive equitable attention. The Information and Privacy Coordinator is responsible for management of the NACIC-wide program defined by this part and for establishing priorities for cases consistent with established law. The Director, NACIC shall provide policy and resource direction as necessary and shall render decisions on administrative appeals.

(c) *Requests for extension of time.* While the Privacy Act does not specify time requirements, our joint treatment of requests under the FOIA means that when NACIC is unable to meet the statutory time requirements of the FOIA, NACIC may request additional time from a requester. In such instances NACIC will inform a requester of his or her right to decline our request and proceed with an administrative appeal or judicial review as appropriate.

Subpart E—Action On Privacy Act Administrative Appeals

§ 1801.41 Appeal authority.

The Director, NACIC will make final NACIC decisions from appeals of initial adverse decisions under the Privacy Act and such other information release decisions made under 32 CFR parts 1800, 1802, and 1803 of this chapter. Matters decided by the Director, NACIC will be deemed a final decision by NACIC.

§ 1801.42 Right of appeal and appeal procedures.

(a) *Right of Appeal.* A right of administrative appeal exists whenever access to any requested record or any portion thereof is denied, no records are located in response to a request, or a request for amendment is denied. NACIC will apprise all requesters in writing of their right to appeal such decisions to the Director, NACIC through the Coordinator.

(b) *Requirements as to time and form.* Appeals of decisions must be received by the Coordinator within forty-five (45) days of the date of NACIC's initial decision. NACIC may, for good cause and as a matter of administrative discretion, permit an additional thirty (30) days for the submission of an appeal. All appeals to the Director, NACIC shall be in writing and addressed as specified in § 1801.3. All appeals must identify the documents or portions of documents at issue with specificity, provide the desired amending language (if applicable), and may present such information, data, and argument in support as the requester may desire.

(c) *Exceptions.* No appeal shall be accepted if the requester has outstanding fees for information services at this or another federal agency. In addition, no appeal shall be accepted if the information in question has been the subject of an administrative review within the previous two (2) years or is the subject of pending litigation in the federal courts.

(d) *Receipt, recording, and tasking.* NACIC shall promptly record each administrative appeal, acknowledge receipt to the requester in writing, and thereafter effect the necessary taskings to the office chief in charge of the office(s) which originated or has an interest in the record(s) subject to the appeal.

§ 1801.43 Determination(s) by Office Chiefs.

Each Office Chief in charge of an office which originated or has an interest in any of the records subject to the appeal, or designee, is a required party to any appeal; other interested parties may become involved through the request of the Coordinator when it is determined that some or all of the information is also within their official cognizance. These parties shall respond in writing to the Coordinator with a finding as to the exempt or non-exempt status of the information including citations to the applicable exemption and/or their agreement or disagreement as to the requested amendment and the reasons therefore. Each response shall be provided expeditiously on a "first-in, first-out" basis taking into account the business requirements of the parties and consistent with the information rights of members of the general public under the various information review and release laws.

§ 1801.44 Action by appeals authority.

(a) *Preparation of docket.* The Coordinator shall provide a summation memorandum for consideration of the Director, NACIC; the complete record of the request consisting of the request, the document(s) (sanitized and full text) at issue, and the findings of any concerned office chiefs or designee(s).

(b) *Decision by the Director, NACIC.* The Director, NACIC shall personally decide each case; no personal appearances shall be permitted without the express permission of the Director, NACIC.

§ 1801.45 Notification of decision and right of judicial review.

(a) *In general.* The Coordinator shall promptly prepare and communicate the decision of the Director, NACIC to the requester. With respect to any decision to deny information or deny amendment, that correspondence shall

state the reasons for the decision, identify the officer responsible, and include a notice of the right to judicial review.

(b) *For amendment requests.* With further respect to any decision to deny an amendment, that correspondence shall also inform the requester of the right to submit within forty-five (45) days a statement of his or her choice which shall be included in the official records of NACIC. In such cases, the applicable record system manager shall clearly note any portion of the official record which is disputed, append the requester's statement, and provide copies of the statement to previous recipients (if any are known) and to any future recipients when and if the disputed information is disseminated in accordance with a routine use.

Subpart F—Prohibitions

§ 1801.51 Limitations on disclosure.

No record which is within a system of records shall be disclosed by any means of communication to any individual or to another agency, except pursuant to a written request by, or with the prior written consent of, the individual to whom the record pertains, unless disclosure of the record would be:

(a) To those officers and employees of NACIC which maintains the record who have a need for the record in the performance of their duties;

(b) Required under the Freedom of Information Act, 5 U.S.C. 552;

(c) For a routine use as defined in § 1801.02(m), as contained in the Privacy Act Issuances Compilation which is published biennially in the **Federal Register**, and as described in sections (a)(7) and (e)(4)(D) of the Act;

(d) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of U.S.C. Title 13;

(e) To a recipient who has provided NACIC with advance adequate written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(f) To the National Archives and Records Administration as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Archivist of the United States or designee to determine whether the record has such value;

(g) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of that agency or instrumentality has made a written request to NACIC specifying the particular information desired and the law enforcement activity for which the record is sought;

(h) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if upon such disclosure notification is transmitted to the last known address of such individual;

(i) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress or subcommittee of any such joint committee;

(j) To the Comptroller General or any of his authorized representatives in the course of the performance of the duties of the General Accounting Office; or

(k) To any agency, government instrumentality, or other person or entity pursuant to the order of a court of competent jurisdiction of the United States or constituent states.

§ 1801.52 Criminal penalties.

(a) *Unauthorized disclosure.* Criminal penalties may be imposed against any officer or employee of NACIC who, by virtue of employment, has possession of or access to NACIC records which contain information identifiable with an individual, the disclosure of which is prohibited by the Privacy Act or by these rules, and who, knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive same.

(b) *Unauthorized maintenance.* Criminal penalties may be imposed against any officer or employee of NACIC who willfully maintains a system of records without meeting the requirements of section (e)(4) of the Privacy Act, 5 U.S.C. 552a. The Coordinator and the Director of NACIC are authorized independently to conduct such surveys and inspect such records as necessary from time to time to ensure that these requirements are met.

(c) *Unauthorized requests.* Criminal penalties may be imposed upon any person who knowingly and willfully requests or obtains any record concerning an individual from NACIC under false pretenses.

Subpart G—Exemptions

§ 1801.63 Specific exemptions.

Pursuant to authority granted in section (k) of the Privacy Act, the Director, NACIC has determined to exempt from section (d) of the Privacy Act those portions and only those portions of all systems of records maintained by NACIC that would consist of, pertain to, or otherwise reveal information that is:

(a) Classified pursuant to Executive Order 12958 (or successor or prior Order) and thus subject to the provisions of 5 U.S.C. 552(b)(1) and 5 U.S.C. 552a(k)(1);

(b) Investigatory in nature and compiled for law enforcement purposes, other than material within the scope of section (j)(2) of the Act; provided however, that if an individual is denied any right, privilege, or benefit to which they are otherwise eligible, as a result of the maintenance of such material, then such material shall be provided to that individual except to the extent that the disclosure would reveal the identity of a source who furnished the information to the United States Government under an express promise of confidentiality, or, prior to the effective date of this section, under an implied promise of confidentiality;

(c) Maintained in connection with providing protective services to the President of the United States or other individuals pursuant to 18 U.S.C. 3056;

(d) Required by statute to be maintained and used solely as statistical records;

(e) Investigatory in nature and compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the United States Government under an express promise of confidentiality, or, prior to the effective date of this section, under an implied promise of confidentiality;

(f) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the federal service the disclosure of which would compromise the objectivity or fairness of the testing or examination process; or

(g) Evaluation material used to determine potential for promotion in the armed services, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the United States Government under an express promise of confidentiality, or, prior to the effective date of this section, under an implied promise of confidentiality.

PART 1802—CHALLENGES TO CLASSIFICATION OF DOCUMENTS BY AUTHORIZED HOLDERS PURSUANT TO SECTION 1.9 OF EXECUTIVE ORDER 12958

Subpart A—General

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Subpart D—Right of Appeal

1802.31 Right of Appeal.

Authority: Executive Order 12958, 60 FR 19825, 3 CFR 1996 Comp., p. 333–356 (or successor Orders).

Subpart A—General

§ 1802.1 Authority and purpose.

(a) *Authority.* This part is issued under the authority of and in order to implement § 1.9 of Executive Order (E.O.) 12958 and section 102 of the National Security Act of 1947.

(b) *Purpose.* This part prescribes procedures for authorized holders of information classified under the various provisions of E.O. 12958, or predecessor Orders, to seek a review or otherwise challenge the classified status of information to further the interests of the United States Government. This part and § 1.9 of E.O. 12958 confer no rights upon members of the general public, or authorized holders acting in their personal capacity, both of whom shall continue to request reviews of classification under the mandatory declassification review provisions set forth at § 3.6 of E.O. 12958.

§ 1802.2 Definitions.

For purposes of this part, the following terms have the meanings as indicated:

NACIC means the United States National Counterintelligence Center acting through the NACIC Information and Privacy Coordinator;

Authorized holders means any member of any United States executive department, military department, the Congress, or the judiciary (Article III) who holds a security clearance from or has been specifically authorized by NACIC to possess and use on official business classified information, or otherwise has Constitutional authority pursuant to their office;

Days means calendar days when NACIC is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any requirement of this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

Challenge means a request in the individual's official, not personal, capacity and in furtherance of the interests of the United States;

Control means ownership or the authority of NACIC pursuant to federal statute or privilege to regulate official or public access to records;

Coordinator means the NACIC Information and Privacy Coordinator acting in the capacity of the Director of NACIC;

Information means any knowledge that can be communicated or documentary material, regardless of its physical form, that is:

(1) Owned by, produced by or for, or under the control of the United States Government, and

(2) Lawfully and actually in the possession of an authorized holder and for which ownership and control has not been relinquished by NACIC;

Interested party means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of NACIC, has a subject matter or physical interest in the documents or information at issue;

Originator means the NACIC officer who originated the information at issue, or successor in office, or a NACIC officer who has been delegated declassification authority for the information at issue in accordance with the provisions of this Order;

This Order means Executive Order 12958 of April 17, 1995, or successor Orders.

§ 1802.3 Contact for general information and requests.

For information on this part or to file a challenge under this part, please direct your inquiry to the Director, National Counterintelligence Center, Washington, DC 20505. The commercial (non-secure) telephone is (703) 874–4117; the classified (secure) telephone for voice and facsimile is (703) 874–5829.

§ 1802.4 Suggestions and complaints.

NACIC welcomes suggestions or complaints with regard to its administration of the Executive Order. Letters of suggestion or complaint should identify the specific purpose and the issues for consideration. NACIC will respond to all substantive communications and take such actions as determined feasible and appropriate.

Subpart B—Filing Of Challenges

§ 1802.11 Prerequisites.

Prior to reliance on this part, authorized holders are required to first exhaust such established administrative procedures for the review of classified information. Further information on these procedures is available from the point of contact, § 1802.3.

§ 1802.12 Requirements as to form.

The challenge shall include identification of the challenger by full name and title of position, verification of security clearance or other basis of authority, and an identification of the documents or portions of documents or information at issue. The challenge shall also, in detailed and factual terms, identify and describe the reasons why it is believed that the information is not protected by one or more of the § 1.5 provisions, that the release of the information would not cause damage to the national security, or that the information should be declassified due to the passage of time. The challenge must be properly classified; in this regard, until the challenge is decided, the authorized holder must treat the challenge, the information being challenged, and any related or explanatory information as classified at the same level as the current classification of the information in dispute.

§ 1802.13 Identification of material at issue.

Authorized holders shall append the documents at issue and clearly mark those portions subject to the challenge. If information not in documentary form is in issue, the challenge shall state so clearly and present or otherwise refer with specificity to that information in the body of the challenge.

§ 1802.14 Transmission.

Authorized holders must direct challenge requests to NACIC as specified in § 1802.3. The classified nature of the challenge, as well as the appended documents, require that the holder transmit same in full accordance with established security procedures. In general, registered U.S. mail is approved for SECRET, non-compartmented

material; higher classifications require use of approved Top Secret facsimile machines or NACIC-approved couriers. Further information is available from NACIC as well as corporate or other federal agency security departments.

Subpart C—Action On Challenges

§ 1802.21 Receipt, recording, and tasking.

The Coordinator shall within ten (10) days record each challenge received under this part, acknowledge receipt to the authorized holder, and task the originator and other interested parties. Additional taskings, as required during the review process, shall be accomplished within five (5) days of notification.

§ 1802.22 Challenges barred by res judicata.

The Coordinator shall respond on behalf of the Director, NACIC and deny any challenge where the information in question has been the subject of a classification review within the previous two (2) years or is the subject of pending litigation in the federal courts.

§ 1802.23 Response by originator(s) and/or any interested party.

(a) *In general.* The originator of the classified information (document) is a required party to any challenge; other interested parties may become involved through the request of the Director, NACIC or the originator when it is determined that some or all of the information is also within their official cognizance.

(b) *Determination.* These parties shall respond in writing to the Director, NACIC with a mandatory unclassified finding, to the greatest extent possible, and an optional classified addendum. This finding shall agree to a declassification or, in specific and factual terms, explain the basis for continued classification including identification of the category of information, the harm to national security which could be expected to result from disclosure, and, if older than ten (10) years, the basis for the extension of classification time under §§ 1.6 and 3.4 of this Order. These parties shall also provide a statement as to whether or not there is any other statutory, common law, or Constitutional basis for withholding as required by § 6.1(c) of this Order.

(c) *Time.* The determination(s) shall be provided on a first in, first out basis with respect to all challenges pending under this section and shall be accomplished expeditiously taking into account the requirements of the authorized holder as well as the business requirements of the originator including their responsibilities under the Freedom of Information Act, the Privacy Act, or the mandatory declassification review provisions of this Order.

§ 1802.24 Designation of authority to hear challenges.

The Director, NACIC is the NACIC authority to hear and decide challenges under this part.

§ 1802.25 Action on challenge.

Action by Coordinator. The Coordinator shall provide a summation memorandum for consideration of the Director, NACIC; the complete package consisting of the challenge, the information at issue, and the findings of the originator and interested parties shall also be provided. The Director, NACIC shall personally decide each case; no personal appearances shall be permitted without the express permission of the Director, NACIC.

§ 1802.26 Notification of decision and prohibition on adverse action.

The Coordinator shall communicate the decision of NACIC to the authorized holder, the originator, and other interested parties within ten (10) days of the decision by the Coordinator. That correspondence shall include a notice that no adverse action or retribution can be taken in regard to the challenge and that an appeal of the decision may be made to the Interagency Security Classification Appeals Panel (ISCAP) established pursuant to § 5.4 of this Order.

Subpart D—Right of Appeal

§ 1802.31 Right of appeal.

A right of appeal is available to the ISCAP established pursuant to § 5.4 of this Order. Action by that body will be the subject of rules to be promulgated by the Information Security Oversight Office (ISOO).

PART 1803—PUBLIC REQUESTS FOR MANDATORY DECLASSIFICATION REVIEW OF CLASSIFIED INFORMATION PURSUANT TO § 3.6 OF EXECUTIVE ORDER 12958

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Subpart E–Further Appeals

1803.41 Right of further appeal.

Authority: Section 3.6 of Executive Order 12958 (or successor Orders) and Section 102 of the National Security Act, as amended (50 U.S.C. 403).

Subpart A–General

§ 1803.1 Authority and purpose.

(a) *Authority.* This part is issued under the authority of and in order to implement § 3.6 of Executive Order (E.O.) 12958 (or successor Orders); and Section 102 of the National Security Act of 1947, as amended (50 U.S.C. 403).

(b) *Purpose.* This part prescribes procedures, subject to limitations set forth below, for members of the public to request a declassification review of information classified under the various provisions of this or predecessor Orders. Section 3.6 of E.O. 12958 and these regulations do not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, or employees.

§ 1803.2 Definitions.

For purposes of this part, the following terms have the meanings as indicated:

NACIC means the United States National Counterintelligence Center acting through the NACIC Information and Privacy Coordinator;

Days means calendar days when NACIC is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any requirement of this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

Control means ownership or the authority of NACIC pursuant to federal statute or privilege to regulate official or public access to records;

Coordinator means the NACIC Information and Privacy Coordinator who serves as the NACIC manager of the information review and release program instituted under the mandatory declassification review provisions of Executive Order 12958;

Federal agency means any executive department, military department, or other establishment or entity included in the definition of agency in 5 U.S.C. 552(f);

Information means any knowledge that can be communicated or documentary material, regardless of its physical form that is owned by, produced by or for, or under the control of the United States Government; it does not include information originated by the incumbent President, White House Staff, appointed committees, commissions or boards, or any entities within the Executive Office that solely advise and assist the incumbent President;

Interested party means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of NACIC, has a subject matter or physical interest in the documents or information at issue;

NARA means the National Archives and Records Administration;

Originator means the NACIC officer who originated the information at issue, or successor in office, or a NACIC officer who has been delegated declassification authority for the information at issue in accordance with the provisions of this Order;

Presidential libraries means the libraries or collection authorities established by statute to house the papers of former Presidents Hoover, Roosevelt, Truman, Eisenhower, Kennedy, Johnson, Nixon, Ford, Carter, Reagan, Bush and similar institutions or authorities as may be established in the future;

Referral means coordination with or transfer of action to an interested party;

This Order means Executive Order 12958 of April 17, 1995 or successor Orders;

§ 1803.3 Contact for general information and requests.

For general information on this part or to request a declassification review, please direct your communication to the Information and Privacy Coordinator, National Counterintelligence Center, 3W01 NHB, Washington, DC 20505. Such inquiries will also be accepted by facsimile at (703) 874–5844. For general or status information only, the telephone number is (703) 874–4121. Collect calls cannot be accepted.

§ 1803.4 Suggestions and complaints.

NACIC welcomes suggestions or complaints with regard to its administration of the mandatory declassification review program established under Executive Order 12958. Letters of suggestion or complaint should identify the specific purpose and the issues for consideration. NACIC will respond to all substantive communications and take such actions as determined feasible and appropriate.

Subpart B—Filing of Mandatory Declassification Review (MDR) Requests

§ 1803.11 Preliminary information.

Members of the public shall address all communications to the point of contact specified above and clearly delineate the communication as a request under this part. Requests and appeals on requests received from members of the public who owe outstanding fees for information services under this Order or the Freedom of Information Act at this or another federal agency will not be accepted until such debts are resolved.

§ 1803.12 Requirements as to form.

The request shall identify the document(s) or material(s) with sufficient specificity (e.g., National Archives and Records Administration (NARA) Document Accession Number or other applicable, unique document identifying number) to enable NACIC to locate it with reasonable effort. Broad or topical requests for records on a particular subject may not be accepted under this provision. A request for documents contained in the various Presidential libraries shall be effected through the staff of such institutions who shall forward the document(s) in question for NACIC review. The requester shall also provide sufficient personal identifying information when required by NACIC to satisfy requirements of this part.

§ 1803.13 Fees.

Requests submitted via NARA or the various Presidential libraries shall be responsible for reproduction costs required by statute or regulation. Requests made directly to NACIC will be liable for costs in the same amount and under the same conditions as specified in part 1800 of this chapter.

Subpart C—NACIC Action on MDR Requests

§ 1803.21 Receipt, recording, and tasking.

The Information and Privacy Coordinator shall within ten (10) days record each mandatory declassification review request received under this part, acknowledge receipt to the requester in writing (if received directly from a requester), and shall thereafter task the originator and other interested parties. Additional taskings, as required during the review process, shall be accomplished within ten (10) days of notification.

§ 1803.22 Requests barred by res judicata.

The Coordinator shall respond to the requester and deny any request where the information in question has been the subject of a classification review within the previous two (2) years or is the subject of pending litigation in the federal courts.

§ 1803.23 Determination by originator or interested party.

(a) *In general.* The originator of the classified information (document) is a required party to any mandatory declassification review request; other interested parties may become involved through a referral by the Coordinator when it is determined that some or all of the information is also within their official cognizance.

(b) *Required determinations.* These parties shall respond in writing to the Coordinator with a finding as to the classified status of the information including the category of protected information as set forth in § 1.5 of this Order, and, if older than ten (10) years, the basis for the extension of classification time under §§ 1.6 and 3.4 of this Order. These parties shall also provide a statement as to whether or not there is any other statutory, common law, or Constitutional basis for withholding as required by § 6.1(c) of this Order.

(c) *Time.* This response shall be provided expeditiously on a first-in, first-out basis taking into account the business requirements of the originator or interested parties and consistent with the information rights of members of the general public under the Freedom of Information Act and the Privacy Act.

§ 1803.24 Notification of decision and right of appeal.

The Coordinator shall communicate the decision of NACIC to the requester within ten (10) days of completion of all review action. That correspondence shall include a notice of a right of administrative appeal to the Director, NACIC pursuant to § 3.6(d) of this Order.

Subpart D–NACIC Action on MDR Appeals

§ 1803.31 Requirements as to time and form.

Appeals of decisions must be received by the Coordinator within forty-five (45) days of the date of mailing of NACIC's initial decision. It shall identify with specificity the documents or information to be considered on appeal and it may, but need not, provide a factual or legal basis for the appeal.

§ 1803.32 Receipt, recording, and tasking.

The Coordinator shall promptly record each appeal received under this part, acknowledge receipt to the requester, and task the originator and other interested parties. Additional taskings, as required during the review process, shall be accomplished within ten (10) days of notification.

§ 1803.33 Determination by NACIC Office Chiefs.

Each NACIC Office Chief in charge of an office which originated or has an interest in any of the records subject to the appeal, or designee, is a required party to any appeal; other interested parties may become involved through the request of the Coordinator when it is determined that some or all of the information is also within their official cognizance. These parties shall respond in writing to the Coordinator with a finding as to the classified status of the information including the category of protected information as set forth in § 1.5 of this Order, and, if older than ten (10) years, the basis for continued classification under §§ 1.6 and 3.4 of this Order. These parties shall also provide a statement as to whether or not there is any other statutory, common law, or Constitutional basis for withholding as required by § 6.1(c) of this Order. This response shall be provided expeditiously on a "first-in, first-out" basis taking into account the business requirements of the parties and consistent with the information rights of members of the general public under the Freedom of Information Act and the Privacy Act.

§ 1803.34 Appeal authority.

The Director, NACIC will make final NACIC decisions from appeals of initial denial decisions under E.O. 12958. Matters decided by the Director, NACIC will be deemed a final decision by NACIC.

§ 1803.35 Action by appeals authority.

Action by the Director, NACIC. The Coordinator shall provide a summation memorandum for consideration of the Director, NACIC; the complete record of the request consisting of the request, the document(s) (sanitized and full text) at issue, and the findings of the originator and interested parties. The Director, NACIC shall personally decide each case; no personal appearances shall be permitted without the express permission of the Director, NACIC.

§ 1803.36 Notification of decision and right of further appeal.

The Coordinator shall communicate the decision of the Director, NACIC to the requester, NARA, or the particular Presidential Library within ten (10) days of such decision. That correspondence shall include a notice that an appeal of the decision may be made to the Interagency Security Classification Appeals Panel (ISCAP) established pursuant to § 5.4 of this Order.

Subpart E–Further Appeals

§ 1803.41 Right of further appeal.

A right of further appeal is available to the ISCAP established pursuant to § 5.4 of this Order. Action by that Panel will be the subject of rules to be promulgated by the Information Security Oversight Office (ISOO).

PART 1804—ACCESS BY HISTORICAL RESEARCHERS AND FORMER PRESIDENTIAL APPOINTEES PURSUANT TO § 4.5 OF EXECUTIVE ORDER 12958

Subpart A—General

Sec.

1804.01 Authority and purpose.
1804.02 Definitions.
1804.03 Contact for general information and requests.
1804.04 Suggestions and complaints.

Subpart B—Requests for Historical Access

1804.11 Requirements as to who may apply.
1804.12 Designations of authority to hear requests.
1804.13 Receipt, recording, and tasking.
1804.14 Determinations by tasked officials.
1804.15 Action by hearing authority.
1804.16 Action by appeal authority.
1804.17 Notification of decision.
1804.18 Termination of access.

Authority: Section 4.5 of Executive Order 12958 (or successor Orders) and Presidential Decision Directive/NSC 24 "U.S. Counterintelligence Effectiveness," dated May 3, 1994.

Subpart A—General

§ 1804.1 Authority and purpose.

(a) *Authority.* This part is issued under the authority of and in order to implement § 4.5 of Executive Order 12958 (or successor Orders); and Presidential Decision Directive/NSC 24, U.S. Counterintelligence Effectiveness, dated May 3, 1994.

(b) *Purpose.* (1) This part prescribes procedures for:

(i) Requesting access to NACIC records for purposes of historical research, or

(ii) Requesting access to NACIC records as a former Presidential appointee.

(2) Section 4.5 of Executive Order 12958 and this part do not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, officers, or employees.

§ 1804.2 Definitions.

For purposes of this part, the following terms have the meanings indicated:

NACIC means the United States National Counterintelligence Center acting through the NACIC Information and Privacy Coordinator;

Days means calendar days when NACIC is operating and specifically excludes Saturdays, Sundays, and legal public holidays. Three (3) days may be added to any requirement of this part if responding by U.S. domestic mail; ten (10) days may be added if responding by international mail;

Control means ownership or the authority of NACIC pursuant to federal statute or privilege to regulate official or public access to records;

Coordinator means the NACIC Information and Privacy Coordinator who serves as the NACIC manager of the historical access program established pursuant to Section 4.5 of this Order;

Federal agency means any executive department, military department, or other establishment or entity included in the definition of agency in 5 U.S.C. 552(f);

Former Presidential appointee means any person who has previously occupied a policy-making position in the executive branch of the United States Government to which they were appointed by the current or former President and confirmed by the United States Senate;

Historian or historical researcher means any individual with professional training in the academic field of history (or related fields such as journalism) engaged in a research project leading to publication (or any similar activity such as academic course development) reasonably intended to increase the understanding of the American public into the operations and activities of the United States government;

Information means any knowledge that can be communicated or documentary material, regardless of its physical form that is owned by, produced by or for, or is under the control of the United States Government;

Interested party means any official in the executive, military, congressional, or judicial branches of government, United States or foreign, or U.S. Government contractor who, in the sole discretion of NACIC, has a subject matter or physical interest in the documents or information at issue;

Originator means the NACIC officer who originated the information at issue, or successor in office, or a NACIC officer who has been delegated declassification authority for the information at issue in accordance with the provisions of this Order;

This Order means Executive Order 12958 of April 17, 1995 or successor Orders.

§ 1804.3 Contact for general information and requests.

For general information on this part, to inquire about historical access to NACIC records, or to make a formal request for such access, please direct your communication in writing to the Information and Privacy Coordinator, Executive Secretariat, 3W01 NHB, National Counterintelligence Center, Washington, DC 20505. Inquiries will also be accepted by facsimile at (703) 874–5844. For general information only, the telephone number is (703) 874–4121. Collect calls cannot be accepted.

§ 1804.4 Suggestions and complaints.

NACIC welcomes suggestions or complaints with regard to its administration of the historical access program established pursuant to Executive Order 12958. Letters of suggestion or complaint should identify the specific purpose and the issues for consideration. NACIC will respond to all substantive communications and take such actions as determined feasible and appropriate.

Subpart B—Requests for Historical Access

§ 1804.11 Requirements as to who may apply.

(a) *Historical researchers:*—(1) *In general.* Any historian engaged in a historical research project as defined above may submit a request in writing to the Coordinator to be given access to classified information for purposes of that research. Any such request shall indicate the nature, purpose, and scope of the research project.

(2) *Additional considerations.* In light of the very limited resources for NACIC's various historical programs, it is the policy of NACIC to consider applications for historical research privileges only in those instances where the researcher's needs cannot be satisfied through requests for access to reasonably described records under the Freedom of Information Act or the mandatory declassification review provisions of Executive Order 12958 and where issues of internal resource availability and fairness to all members of the historical research community militate in favor of a particular grant.

(b) *Former Presidential appointees.* Any former Presidential appointee as defined herein may also submit a request to be given access to any classified records which they originated, reviewed, signed, or received while serving in that capacity. Such appointees may also request approval for a research associate but there is no entitlement to such enlargement of access and the decision in this regard shall be in the sole discretion of NACIC. Requests from appointees shall be in writing to the Coordinator and shall identify the records of interest.

§ 1804.12 Designations of authority to hear requests.

The Director, NACIC has designated the Coordinator, as the NACIC authority to decide requests for historical and former Presidential appointee access under Executive Order 12958 (or successor Orders) and this part.

§ 1804.13 Receipt, recording, and tasking.

The Information and Privacy Coordinator shall within ten (10) days record each request for historical access received under this part, acknowledge receipt to the requester in writing and take the following action:

(a) *Compliance with general requirements.* The Coordinator shall review each request under this part and determine whether it meets the general requirements as set forth in § 1804.11; if it does not, the Coordinator shall so notify the requester and explain the legal basis for this decision.

(b) *Action on requests meeting general requirements.* For requests which meet the requirements of § 1804.11, the Coordinator shall thereafter task the originator(s) of the materials for which access is sought and other interested parties. Additional taskings, as required during the review process, shall be accomplished within ten (10) days of notification.

§ 1804.14 Determinations by tasked officials.

(a) *Required determinations.* The tasked parties as specified below shall respond in writing to the Coordinator with recommended findings to the following issues:

(1)That a serious professional or scholarly research project by the requester is contemplated;

(2) That such access is clearly consistent with the interests of national security (by originator and interested party, if any);

(3) That a non-disclosure agreement has been or will be executed by the requester (or research associate, if any) and other appropriate steps have been taken to assure that classified information will not be disclosed or otherwise compromised;

(4) That a pre-publication agreement has been or will be executed by the requester (or research associate, if any) which provides for a review of notes and any resulting manuscript by the Deputy Director of NACIC;

(5) That the information requested is reasonably accessible and can be located and compiled with a reasonable effort (by the Deputy Director of NACIC and the originator);

(6) That it is reasonably expected that substantial and substantive government documents and/or information will be amenable to declassification and release and/or publication (by the Deputy Director of NACIC and the originator);

(7) That sufficient resources are available for the administrative support of the researcher given current mission requirements (by the Deputy Director of NACIC and the originator); and,

(8) That the request cannot be satisfied to the same extent through requests for access to reasonably described records under the Freedom of Information Act or the mandatory declassification review provisions of Executive Order 12958 (by the Coordinator, the Deputy Director of NACIC and the originator).

(b) *Time.* These responses shall be provided expeditiously on a first-in, first-out basis taking into account the business requirements of the tasked offices and consistent with the information rights of members of the general public under the Freedom of Information Act and the Privacy Act. NACIC will utilize its best efforts to complete action on requests under this part within thirty (30) days of date of receipt.

§ 1804.15 Action by hearing authority.

Action by Coordinator. The Coordinator shall provide a summation memorandum for consideration of the Director, NACIC, the complete record of the request consisting of the request and the findings of the tasked parties. The Director, NACIC shall decide requests on the basis of the eight factors enumerated at § 1804.14(a). The Director, NACIC shall personally decide

each case; no personal appearances shall be permitted without the express permission of the Director, NACIC.

§ 1804.16 Action by appeal authority.

The record compiled (the request, the memoranda filed by the originator and interested parties, and the previous decision(s)) as well as any memorandum of law or policy the referent desires to be considered, shall be certified by the Coordinator and shall constitute the official record of the proceedings and must be included in any subsequent filings. In such cases, the factors to be determined as specified in § 1804.14(a) will be considered by the Director, NACIC de novo and that decision shall be final.

§ 1804.17 Notification of decision.

The Coordinator shall inform the requester of the decision of the Director, NACIC within ten (10) days of the decision and, if favorable, shall manage the access for such period as deemed required but in no event for more than two (2) years unless renewed by the Director, NACIC in accordance with the requirements of § 1804.14(a).

§ 1804.18 Termination of access.

The Coordinator shall cancel any authorization whenever the security clearance of a requester (or research associate, if any) has been canceled or whenever the Director, NACIC determines that continued access would not be in compliance with one or more of the requirements of § 1804.14(a).

PART 1805–PRODUCTION OF OFFICIAL RECORDS OR DISCLOSURE OF OFFICIAL INFORMATION IN PROCEEDINGS BEFORE FEDERAL, STATE OR LOCAL GOVERNMENT ENTITIES OF COMPETENT JURISDICTION

Sec.
1805.1 Scope and purpose.
1805.2 Definitions.
1805.3 General.
1805.4 Procedures for production.

Authority: 5 U.S.C. 104; Presidential Decision Directive/NSC 24 "U.S. Counterintelligence Effectiveness, dated May 3, 1994; 50 U.S.C. 403g; United States ex rel. Touhy v. Ragen, 340 U.S. 462 (1951); E.O. 12333; E.O. 12356; U.S. v. Snepp 444 U.S. 507 (1980).

§ 1805.1 Scope and purpose.

This part sets forth the policy and procedures with respect to the production or disclosure of:

(a) Material contained in the files of NACIC,

(b) Information relating to or based upon material contained in the files of NACIC,

(c) Information acquired by any person while such person is an employee of NACIC as part of the performance of that person's official duties or because of that person's association with NACIC.

§ 1805.2 Definitions.

For the purpose of this part:

NACIC means the National Counterintelligence Center and includes all staff elements of the NACIC.

Demand means any subpoena, order or other legal summons (except garnishment orders) that is issued by a federal, state or local government entity of competent jurisdiction with the authority to require a response on a particular matter, or a request for appearance of an individual where a demand could issue.

Employee means any officer, any staff, contract or other employee of NACIC, any person including independent contractors associated with or acting on behalf of NACIC; and any person formerly having such relationships with NACIC.

Production or produce means the disclosure of:

(1) Any material contained in the files of NACIC; or

(2) Any information relating to material contained in the files of NACIC, including but not limited to summaries of such information or material, or opinions based on such information or material; or

(3) Any information acquired by persons while such persons were employees of NACIC as a part of the performance of their official duties or because of their official status or association with NACIC; in response to a demand upon an employee of NACIC.

NACIC Counsel is the NACIC employee designated to manage legal matters and regulatory compliance.

§ 1805.3 General.

(a) No employee shall produce any materials or information in response to a demand without prior authorization as set forth in this part. This part also applies to former employees to the extent consistent with applicable non-disclosure agreements.

(b) This part is intended only to provide procedures for responding to demands for production of documents or information, and is not intended to, does not, and may not be relied upon to, create any right or benefit, substantive or procedural, enforceable by any party against the United States.

§ 1805.4 Procedure for production.

(a) Whenever a demand for production is made upon an employee, the employee shall immediately notify NACIC Counsel, who will follow the procedures set forth in this section.

(b) NACIC Counsel and the Office Chiefs with responsibility for the information sought in the demand shall determine whether any information or materials may properly be produced in response to the demand, except that NACIC Counsel may assert any and all legal defenses and objections to the demand available to NACIC prior to the start of any search for information responsive to the demand. NACIC may, in its sole discretion, decline to begin any search for information responsive to the demand until a final and non-appealable disposition of any such defenses and objections raised by NACIC has been made by the entity or person that issued the demand.

(c) NACIC officials shall consider the following factors, among others, in reaching a decision:

(1) Whether production is appropriate in light of any relevant privilege;

(2) Whether production is appropriate under the applicable rules of discovery or the procedures governing the case or matter in which the demand arose; and

(3) Whether any of the following circumstances apply:

(i) Disclosure would violate a statute, including but not limited to the Privacy Act of 1974, as amended, 5 U.S.C. 552a;

(ii) Disclosure would reveal classified information;

(iii) Disclosure would improperly reveal trade secrets or proprietary confidential information without the owner's consent; or

(iv) Disclosure would interfere with the orderly conduct of NACIC's functions.

(d) If oral or written testimony is sought by a demand in a case or matter in which the NACIC is not a party, a reasonably detailed description of the testimony sought, in the form of an affidavit or, if that is not feasible, a written statement, by the party seeking the testimony or by the party's attorney must be furnished to the NACIC Counsel.

(e) The NACIC Counsel shall be responsible for notifying the appropriate employees and other persons of all decisions regarding responses to demands and providing advice and counsel as to the implementation of such decisions.

(f) If response to a demand is required before a decision is made whether to provide the documents or information sought by the demand, NACIC Counsel, after consultation with the Department of Justice, shall appear before and furnish the court or other competent authority with a copy of this part and

state that the demand has been or is being, as the case may be, referred for the prompt consideration of the appropriate NACIC officials, and shall respectfully request the court or other authority to stay the demand pending receipt of the required instructions.

(g) If the court or any other authority declines to stay the demand pending receipt of instructions in response to a request made in accordance with § 1805.4(g) or rules that the demand must be complied with regardless of instructions rendered in accordance with this Part not to produce the material or disclose the information sought, the employee upon whom the demand has been made shall, if so directed by NACIC Counsel, respectfully decline to comply with the demand under the authority of *United States ex. rel. Touhy v. Ragen*, 340 U.S. 462 (1951), and this part.

(h) With respect to any function granted to NACIC officials in this part, such officials are authorized to delegate in writing their authority in any case or matter or category thereof to subordinate officials.

(i) Any non-employee who receives a demand for the production or disclosure of NACIC information acquired because of that person's association or contacts with NACIC should notify NACIC Counsel, (703) 874–4121, for guidance and assistance. In such cases, the provisions of this part shall be applicable.

PART 1806—PROCEDURES GOVERNING ACCEPTANCE OF SERVICE OF PROCESS

Sec.
1806.1 Scope and Purpose.
1806.2 Definitions.
1806.3 Procedures governing acceptance of service of process.
1806.4 Notification to NACIC Counsel.
1806.5 Authority of NACIC Counsel.

Authority: 5 U.S.C. 104; Presidential Decision Directive/NSC 24 "U.S. Counterintelligence Effectiveness", dated May 3, 1994; 50 U.S.C. 403g; E.O. 12333.

§ 1806.1 Scope and purpose.

(a) This part sets forth the authority of NACIC personnel to accept service of process on behalf of the NACIC or any NACIC employee.

(b) This part is intended to ensure the orderly execution of the NACIC's affairs and not to impede any legal proceeding.

(c) NACIC regulations concerning employee responses to demands for production of official information before federal, state or local government entities are set out in part 1805 of this chapter.

§ 1806.2 Definitions.

NACIC means the National Counterintelligence Center and include all staff elements of NACIC.

Process means a summons complaint, subpoena, or other official paper (except garnishment orders) issued in conjunction with a proceeding or hearing being conducted by a federal, state, or local government entity of competent jurisdiction.

Employee means any NACIC officer, any staff, contract, or other employee of NACIC, any person including independent contractors associated with or acting for or on behalf of NACIC, and any person formerly having such a relationship with NACIC.

NACIC Counsel refers to the NACIC employee designated by NACIC to manage legal issues and regulatory compliance.

§ 1806.3 Procedures governing acceptance of service of process.

(a) *Service of Process Upon the NACIC or a NACIC Employee in an Official Capacity.*—(1) *Personal Service.* Unless otherwise expressly authorized by NACIC Counsel, or designee, personal service of process may be accepted only by NACIC Counsel, Director, NACIC, or Deputy Director, NACIC, located at Central Intelligence Agency Headquarters, Langley, Virginia.

(2) *Mail Service.* Where service of process by registered or certified mail is authorized by law, unless expressly directed otherwise by the NACIC Counsel or designee, personal service of process may be accepted only by NACIC Counsel, Director, NACIC, or Deputy Director, NACIC. Process by mail should be addressed as follows: NACIC Counsel, National Counterintelligence Center, Washington, DC 20505.

(b) *Service of Process Upon a NACIC Employee Solely in An Individual Capacity.*—(1) *General.* NACIC will not provide the name or address of any current or former NACIC employee to individuals or entities seeking to serve process upon such employee solely in his or her individual capacity, even when the matter is related to NACIC activities.

(2) *Personal Service.* Subject to the sole discretion of appropriate officials of the CIA, where NACIC is physically located, process servers generally will not be allowed to enter CIA Headquarters for the purpose of serving process upon any NACIC employee solely in his or her individual capacity. Subject to the sole discretion of the Director, NACIC, process servers will generally not be permitted to enter NACIC office space for the purpose of serving process upon a NACIC employee solely in his or her individual capacity. The NACIC Counsel, the Director, NACIC, and the Deputy Director, NACIC are not permitted to accept service of process on behalf of a NACIC employee in his or her individual capacity.

(3) *Mail Service.* Unless otherwise expressly authorized by the NACIC Counsel, or designee, NACIC personnel are not authorized to accept or forward mailed service of process directed to any NACIC employee in his or her individual capacity. Any such process will be returned to the sender via appropriate postal channels.

(c) *Service of Process Upon a NACIC Employee in a Combined Official and Individual Capacity.*—Unless expressly directed otherwise by the NACIC Counsel, or designee, any process to be served upon a NACIC employee in his or her combined official and individual capacity, in person or by mail, can be accepted only by NACIC Counsel, Director, NACIC, or Deputy Director, NACIC, National Counterintelligence Center, Langley, Virginia.

(d) *Service of Process Upon a NACIC Counsel.* The documents for which service is accepted in official capacity only shall be stamped "Service Accepted in Official Capacity Only." Acceptance of Service of Process shall not constitute an admission or waiver with respect to jurisdiction, propriety of service, improper venue, or any other defense in law or equity available under the laws or rules applicable to the service of process.

§ 1806.4 Notification to NACIC Counsel.

A NACIC employee who receives or has reason to expect to receive service of process in an individual, official, or combined individual and official capacity, in a matter that may involve or the furnishing of documents and that could reasonably be expected to involve NACIC interests, shall promptly notify the NACIC Counsel. Such notification should be given prior to providing the requestor, personal counsel or any other representative, any NACIC information and prior to the acceptance of service of process.

§ 1806.5 Authority of NACIC Counsel.

Any questions concerning interpretation of this part shall be referred to the NACIC Counsel for resolution

PART 1807—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE NATIONAL COUNTERINTELLIGENCE CENTER

Sec.

1807.101 Purpose.
1807.102 Application.
1807.103 Definitions.
1807.104–1807.110 [Reserved]
1807.111 Notice.
1807.112–1807.129 [Reserved]
1807.130 General prohibitions against discrimination.
1807.131–1807.139 [Reserved]
1807.140 Employment.
1807.141–1807.148 [Reserved]
1807.149 Program accessibility: Discrimination prohibited.
1807.150 Program accessibility: Existing facilities.
1807.151 Program accessibility: New construction and alterations.
1807.152–1807.159 [Reserved]
1807.160 Communications.
1807.161–1807.169 [Reserved]
1807.170 Compliance procedures.

Authority: 5 U.S.C. 104, Presidential Decision Directive/NSC 24 U.S. Counterintelligence Effectiveness, dated May 3, 1994, 29 U.S.C. 794.

§ 1807.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of disability in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 1807.102 Application.

This part applies to all programs or activities conducted by the NACIC.

§ 1807.103 Definitions.

For purposes of this part, the following terms means—

Assistant Attorney General means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

Auxiliary aids means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the NACIC. For example, auxiliary aids useful for persons with impaired vision include readers, materials in Braille, audio recordings, and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials, and other similar services and devices. The CIA, where NACIC is physically located, may prohibit from any of its facilities any auxiliary aid, or category of auxiliary aid that the Center for CIA Security (CCS) determines creates a security risk or potential security risk. CCS reserves the right to examine any auxiliary aid brought into the NACIC facilities at CIA Headquarters.

Complete complaint means a written statement that contains the complainant's name and address and describes the NACIC's alleged discriminatory action in sufficient detail to inform the NACIC of the nature and date of the alleged violation of section 504. It must be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties must describe or identify (by name, if possible) the alleged victims of discrimination.

Director means the Director of NACIC or an official or employee of the NACIC acting for the Director under a delegation of authority.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances or other real or personal property.

Individual with disabilities means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase—

(1) Physical or mental impairment includes—

(i) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Cardiovascular; Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(ii) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(2) Major life activities includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working;

(3) Has a record of such an impairment means has a history of, or has been misclassified as having a mental or physical impairment that substantially limits one or more major life activities.

(4) Is regarded as having an impairment means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the NACIC as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward the impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the NACIC as having such an impairment.

Qualified individual with disabilities means—

(1) With respect to any NACIC program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with a handicap who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the NACIC can demonstrate would result in a fundamental alteration in its nature;

(2) With respect to any other NACIC program or activity, an individual with disabilities who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(3) Qualified individual with a disability as that term is defined for purposes of employment in 29 CFR 1614.203(a)(6), which is made applicable to this part by § 1807.140.

Section 504 means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112, 87 Stat. 394 (29 U.S.C. 794), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93–516, 88 Stat. 1617); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95–002, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99–506, 100 Stat. 1810). As used in this part, section 504 applies only to programs or activities conducted by the NACIC and not to federally assisted programs.

§§ 1807.104—1807.110 [Reserved]

§ 1807.111 Notice.

The NACIC shall make available to employees, applicants, participants, beneficiaries, and other interested persons, such information regarding the provisions of this part and its applicability to the programs or activities conducted by the NACIC, and make that information available to them in such manner as the Director finds necessary to apprise those persons of the protections against discrimination assured them by section 504 and the regulations in this part.

§§ 1807.112—1807.129 [Reserved]

§ 1807.130 General prohibitions against discrimination.

(a) No qualified individual with disabilities shall, on the basis of disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under, any program or activity conducted by the NACIC.

(b)(1) The NACIC, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability:

(i) Deny a qualified individual with disabilities the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Deny a qualified individual with disabilities an opportunity to obtain the same result, to gain the same benefit, to reach the same level of achievement as that provided to others;

(iii) Provide a qualified individual with disabilities with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless that action is necessary to provide qualified individuals with disabilities with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with disabilities the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with disabilities in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The NACIC may not deny a qualified individual with disabilities the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) The NACIC may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would:

(i) Subject qualified individuals with disabilities to discrimination on the basis of disability; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(4) The NACIC may not, in determining the site or location of a facility, make selections the purpose or effect of which would:

(i) Exclude individuals with disabilities from, deny them the benefits of, or otherwise subject them to discrimination under, any program or activity conducted by the NACIC; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(5) The NACIC, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(6) The NACIC may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may the NACIC establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. However, the programs or activities of entities that are licensed or certified by the NACIC are not, themselves, covered by this part.

(c) The exclusion of persons without disabilities from the benefits of a program limited by Federal statute or Executive Order to individuals with disabilities or the exclusion of a specific class of individuals with disabilities from a program limited by Federal statute or Executive Order to a different class of individuals with disabilities is not prohibited by this part.

(d) The NACIC shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

§§ 1807.131—1807.139 [Reserved]

§ 1807.140 Employment.

No qualified individual with disabilities shall, solely on the basis of disability, be subjected to discrimination in employment under any program or activity conducted by the NACIC. The definitions, requirements, and procedures of section 501 of the Rehabilitation Act of 1979 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1614, shall apply to employment in federally conducted programs or activities.

§§ 1807.141—1807.148 [Reserved]

§ 1807.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 1807.150, no qualified individual with disabilities shall, because the NACIC's facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the NACIC.

§ 1807.150 Program accessibility: Existing facilities.

(a) *General.* The NACIC shall operate each program or activity so that the program or activity, viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This program does not:

(1) Necessarily require the NACIC to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2)(i) Require the NACIC to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens.

(ii) The NACIC has the burden of proving that compliance with § 1807.150(a) would result in that alteration or those burdens.

(iii) The decision that compliance would result in that alteration of those burdens must be made by the Director after considering all of the NACIC's resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion.

(iv) If an action would result in that alteration or those burdens, the NACIC shall take any other action that would not result in the alteration of burdens but would nevertheless ensure that individuals with disabilities receive the

benefits and services of the program or activity.

(b) *Methods.* (1) The NACIC may comply with the requirements of this section through such means as redesign of equipment, delivery of services at alternate accessible sites, alteration of existing facilities, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with disabilities.

(2) The NACIC is not required to make structural changes in existing facilities if other methods are effective in achieving compliance with this section.

(3) In choosing among available methods for meeting the requirements of this section, the NACIC shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate.

§ 1807.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of, the NACIC shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with disabilities in compliance with the definitions, requirements, and standards of the Americans with Disabilities Act Accessibility Guidelines, 36 CFR part 1191.

§§ 1807.152—1807.159 [Reserved]

§ 1807.160 Communications.

(a) The NACIC shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public as follows:

(1)(i) The NACIC shall furnish appropriate auxiliary aids if necessary to afford an individual with disabilities an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the NACIC.

(ii) In determining what type of auxiliary aid is necessary, the NACIC shall give primary consideration to the requests of the individual with disabilities.

(2) Where the NACIC communicates with applicants and beneficiaries by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used to communicate with persons with impaired hearing.

(b) The NACIC shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) This section does not require the NACIC to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where NACIC personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the NACIC has the burden of proving that compliance with § 1807.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the NACIC head or his or her designee after considering all NACIC resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the NACIC shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits and services of the program or activity.

§§ 1807.161—1807.169 [Reserved]

§ 1807.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of disability in programs and activities conducted by the NACIC.

(b) The NACIC shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1614 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) The Director, Office of Equal Employment Opportunity, is responsible for coordinating implementation of this section. Complaints may be sent to NACIC, Director, Washington, DC 20505.

(d) The NACIC shall accept and investigate all complete complaints for which it has jurisdiction. All complete complaints must be filed within 180 days of the alleged act of discrimination. The NACIC may extend this time period for good cause.

(e) If the NACIC receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) The NACIC shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Americans with Disabilities Act Accessibility Guidelines is not readily accessible to and usable by individuals with disabilities.

(g) Within 180 days of the receipt of a complete complaint for which it has jurisdiction, The NACIC shall notify the complainant of the results of the investigation in a letter containing:

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the NACIC of the letter required by paragraph (g) of this section. The NACIC may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Director.

(j) The NACIC shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the NACIC determines that it needs additional information from the complainant, it shall have 60 days from the date it receives the additional information to make its determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended with the permission of the Assistant Attorney General.

(l) The Director may delegate the authority for conducting complaint investigations to other Federal agencies, except that the authority for making the final determination may not be delegated.

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Part V

Department of Housing and Urban Development

24 CFR Part 761

Public Housing Drug Elimination Program Formula Allocation; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 761

[Docket No. FR–4451–F–04]

RIN 2577–AB95

Public Housing Drug Elimination Program Formula Allocation

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD regulations to replace the competitive distribution of HUD's Public and Indian Housing Drug Elimination Program (PHDEP) funds with a formula allocation funding system. The purpose of this amendment is to provide a more timely, predictable and equitable allocation of PHDEP funds, and to improve program quality, effectiveness and accountability. The competitive distribution of funding through the Assisted Housing component of the Drug Elimination Program is not affected by this rule.

DATES: *Effective Date:* October 14, 1999.

Application Due Date: (for eligible PHAs listed in the preamble who have not yet submitted an application for funding): October 14, 1999.

ADDRESSES: Eligible PHAs listed in the preamble who have not yet submitted an application for funding must submit an original and two copies of the information requested in the Notice Withdrawing and Reissuing FY 1999 Notice of Funding Availability (NOFA) for the FY 1999 Public Housing Drug Elimination Program (PHDEP), published on May 12, 1999 (64 FR 25746) to the local Field Office with delegated public housing responsibilities: Attention: Director, Office of Public Housing. For a listing of Field Offices, please see the application kit, or the Appendix published in the February 26, 1999 SuperNOFA at 64 FR 9767.

FOR FURTHER INFORMATION CONTACT: Bertha M. Jones, Program Analyst, Community Safety and Conservation Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–1197 x.4237; or Tracy C. Outlaw, National Office of Native American Programs, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202, telephone (303) 675–1600 (these are not toll-free numbers). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339. Also, please see HUD's website at http://www.hud.gov/pih/legis/titlev.html for additional PHDEP information.

SUPPLEMENTARY INFORMATION:

I. Background

Section 586 of the Quality Housing and Work Responsibility Act of 1998 (Pub.L. 105–276, 112 Stat. 2461, approved October 21, 1998) (Public Housing Reform Act) makes certain amendments to the Public and Assisted Housing Drug Elimination Act of 1990, including authorizing HUD to make renewable grants to continue or expand eligible drug elimination activities.

On February 18, 1999 (64 FR 8210), HUD published an Advance Notice of Proposed Rulemaking (ANPR) to solicit comments on possible methods and elements of a need-based formula and performance criteria. HUD received 60 comments in response to the ANPR, which were considered in the development of a proposed rule on formula funding for PHDEP. The proposed rule was published on May 12, 1999 (64 FR 25736). HUD received 26 comments on the proposed rule, which are discussed in the following section.

II. Public Comment on the Proposed Rule

This final rule takes into consideration the comments received on the proposed rule, as discussed below.

Formula Funding

Comment: Allocation of funding on formula basis is good, however factors used (applicant's share of total number of units of all applicants that qualify for funding) will result in agency experiencing a $100,000 loss of funding. Recommend a "hold harmless" provision for successful PHA performers for no less than the average funding they received in FY 96, 97, or 98. A minimum or "hold harmless" annual PHDEP funding level must be established to do adequate planning.

HUD response: As HUD discussed in the preamble to the proposed rule in response to similar comments submitted on the ANPR published on February 18, 1999, the certainty of funding over a five-year period provides compensation for problems resulting from a drop in funding from higher, though less certain, levels. Crime is a widespread problem, and one of HUD's goals in revising the funding distribution process is to make assistance to address this problem more widely available. HUD is also attempting to strike an appropriate balance to maximize the effective use of limited funds. The available funding can address only a fraction of the need across all PHAs. Increasing funding for one group decreases funding available for those outside the group, and HUD is concerned that the suggested "hold harmless" level of funding would result in a program that, overall, would be less effective.

Comment: The proposed rule assumes that drug activity and related crime in preference category applicants will remain static, not changing character or increasing over the 5-year period. This locks an applicant into a funding level that cannot be adjusted to deal with unforeseen changes.

HUD response: The certainty of funding under the formula distribution system in this rule provides a greater level of flexibility to address unforeseen changes than the previous competitive funding system did. Eligible applicants are required to submit a plan for each year of funding, and it is anticipated that each year's grant would normally cover a two year grant period, the same as under the previous funding system. Unforeseen changes arising in one year could be addressed in the next year's plan, for which funding could be used over a one-year grant period, if necessary to address the unforeseen changes. The certainty of renewable funding, combined with a PHA's ability to plan for one-or two-year grant terms, provides a wide latitude for PHAs to address their crime problems.

Comment: The proposed rule assumes that public housing in every PHA in the preference category is of a similar size, type, and geographic distribution. PHAs with higher numbers of scattered site units require different, more costly, law enforcement strategies. A formula distribution according to unit count does not adequately capture the severity of crime and related issues in and around the developments of eligible PHAs. A multiplier, directly proportional to the number of drug related crimes reported by the local police department to be related to the activity generated in or around targeted public housing units, divided by the number of drug-related crimes in the surrounding police district, would have the effect of increasing the number of units in specific developments.

HUD response: Not only the number of scattered site units, but their geographic distribution, could be considered a factor in a formula to distribute funds. This one example demonstrates the complexity that each new factor introduces to a formula and the difficulty of addressing each factor completely and fairly. HUD is opting to follow the simplified per unit approach that many of the comments on the ANPR and proposed rule favored. If experience demonstrates that this approach is not appropriate or can be significantly improved, HUD will undertake additional rulemaking.

Comment: Although many comments favored the simplified per unit approach to the formula, several comments complained about the reduction in the per unit amount that results under the formula.

HUD response: As noted above, this rule makes the amount of assistance available to fight crime more widely available. This necessarily results in a reduction of the per unit amount that was formerly available to successful applicants, but as also noted above, this reduction in funding for a particular year is balanced by the certainty of funding over a number of years.

Minimum and Maximum Allocation

Comment: There were several comments that addressed maximum and minimum allocations, with some supporting $25,000 as the minimum funding allocation, and others recommending that the minimum amount of funding should be retained at $50,000. There was a suggestion that all PHAs that have received funding at some time in the last three years should be capped at 105 percent to prevent windfalls. One comment stated the funding cap per PHA should remain $35 million per year.

HUD response: The comments were not opposed, but were concerned with the fairness of the maximum and minimum allocations. This final rule makes one adjustment to the proposed $25,000 funding minimum. PHAs with less than 50 units are capped at $500 per unit. HUD is following this approach to prevent the unfairness of a small number of eligible PHAs being awarded up to $2,000 per unit under a $25,000 minimum.

Formula Funding and Performance Measures

Comment: There were numerous comments on performance measures and what their impact should be on formula funding: the formula should be flexible to allow for an increase in funding with demonstrated program success or innovation; measurable goals should be tailored to the local plan and not national in scope; tailoring the program evaluation and monitoring to the local level will more accurately measure its success; not only reduction of violent crime and drug use should be demonstrated, but also prevention should be considered a measurable goal; local diversity in PHDEP programs should be supported instead of a mandated set of criteria established in Washington; highly effective drug elimination and prevention programs may achieve crime levels so low that they cannot demonstrate further reductions from year to year—they might instead be asked to show that their program has reduced the overall level of violent crime and drug use in public housing to below the level of the surrounding community; HUD should include prevention activities in "measurable goals" even though we recognize the difficulty in quantifying them short term.

HUD response: The issue of increasing funding for demonstrated success or innovation raises practical difficulties, and ties in with the issue of performance measures. HUD agrees that the use of crime rates alone is not the most reliable or effective measure of a grantee's performance. HUD is also aware that reporting and analysis of crime rates lag behind the implementation of program activities, and such data may not reflect current conditions. A rise or fall in crime rates is also not an absolute measure of success or failure, as one can argue that successful implementation of activities may not have caused a decline in the crime rate, but did result in a less steep increase.

A more reliable indicator of performance results from an examination of both crime rates and implementation performance—the extent to which a grantee performs all proposed activities within the budget and timetable included in its approved Drug Elimination Program (DEP) plan. HUD will compare a grantee's implementation performance to the crime rates reported by the grantee to see if valid patterns of correspondence are present or can be developed, such as a good implementation performance corresponding to a decrease in crime rates, and a poor implementation performance corresponding to increased crime rates. Even though such a correspondence will not always be the case, this comparison would provide valuable information to improve the DEP program and measure a grantee's performance. Good implementation performance and reduced crime rates would tend to identify successful best practices and activities. Good implementation performance but increased crime rates would require additional analysis to determine if the chosen activities are not effective or appropriate to a grantee's particular circumstances. Poor performance and increased crime rates would indicate a category of grantees that would require the most immediate and highest level of increased attention and technical assistance. Poor performance and decreasing crime rates would identify a second tier of attention and assistance, but would also call into question the necessity of continued funding.

Any record of performance on this basis would have to be considered and analyzed over a period of several funding cycles before it could identify factors that would validly serve for adjusting funding levels. HUD believes, however, that such factors will emerge, and they will be the subject of future rulemaking.

Eligibility for Funding

Comment: Using "prior funding status" as a threshold of eligibility does not support a pragmatic needs-based interpretation of QHWRA. HUD only considers PHAs who actually received PHDEP funding versus all agencies that were eligible (based on need in past years) but did not receive funding. Support increasing the threshold to include as many agencies as are eligible and for whom funds are available.

HUD response: HUD agrees to expand the "needs" category of eligible applicants to include those PHAs that applied under the PHDEP competitive NOFAs for Fiscal Years (FYs) 1996, 1997, or 1998 and received scores above the threshold to qualify for funding (70 points), but were not funded because of lack of available funds. The participation of this category of PHAs in the complex and difficult process of preparing applications under the NOFAs, which would not be undertaken but for the urgency of these PHA's need for assistance, and the finding that these applications were meritorious, provide a sufficient showing to prevent them from being excluded from funding under the new process.

Comment: Several comments suggested additional or different factors to consider to determine "needs" eligibility for funding: use percentage of victimization of residents by Part I and II crimes; include assumption that family developments have higher crime rates and should receive a higher rate of funding; compare the public housing crime rates in each community to the larger community's rate, and select PHAs with rates 10% or more higher than the community's; require that crime levels within the city in which the PHA is located must exceed the state crime levels by 20% and the national crime levels by 50%; determine whether the PHA has established a self-

sufficiency program to assist in creating jobs and preventing crime; determine whether the PHA has additional unique characteristics (such as cultural demographic shifts or additional expenses); look at the changes in a community's crime statistics over a given period of time; consider that the FBI's violent crime rates are not a highly reliable measurement for making funding eligibility distinctions between cities. In addition, applicants in the "preference" category should be eligible for additional funding under the "needs" category.

HUD response: While acknowledging that the FBI statistics used in the eligibility determination formula have flaws, HUD also acknowledges them to be the only source of verified, nationwide (and therefore fairly comparable) data available. As discussed above, this rule expands the "needs" category of eligible applicants to include applicants that would have qualified for funding in FYs 1996, 1997 or 1998, but were not funded because of the unavailability of funds. HUD declines at this time to further refine or complicate the process for identifying eligible applicants. HUD believes that the eligible applicants included by the funding categories under this rule—the previously funded "preference" category, and the "formula" and "previously qualified but not funded" needs categories—constitute virtually every PHA with a serious need for this program funding.

Scope of Activities

Comment: Supports the expansion of the program scope to include violent crime. HUD should also publish a list of eligible activities that specifically meet criteria for addressing violent crime.

HUD response: Although the section 586 of the Public Housing Reform Act expanded the scope of PHDEP to specifically include a focus on violent crime, HUD has always encouraged grantees to take a broader approach to address drug-related crime and related problems under PHDEP. The current guidance, accordingly, is broad enough to provide initial guidance for addressing violent crime. As HUD and its grantees develop their expertise in this specific area, additional guidance will be developed.

Comment: The proposed rule does not take into account the additional cost of law enforcement services and accreditation for PHAs with their own police departments.

Those PHAs with police departments need additional funding to accredit and maintain this needed resource. Large PHAs spend upwards of 6 times as much per unit on security than small PHAs.

HUD response: The rule does not allocate funds on the basis of the activities an applicant chooses to undertake. Any funding system established on such a basis would soon have to be revised to prevent all of the funding from going to the applicants that proposed the most costly activities.

Set-asides

Comment: Several comments opposed the set-aside of funds appropriated for PHDEP for other programs, pointing out, for example, that set-asides decrease the amount of money available to PHAs who have consistently demonstrated need and implemented successful local programs.

HUD response: The Department is required to follow the mandates established by Congress, and where legislation directs HUD to use funds for a particular purpose, HUD must comply.

Plan Submission

Comment: Some Moving To Work (MTW) agencies were exempt from the Public Housing Assessment System (PHAS) under 24 CFR part 901 and submission of a PHA plan—this rule requires a DEP plan to be submitted with the Agency plan—need for clarification of process.

HUD response: While some (not all) MTW agencies are exempt from the PHA plan, they must submit an MTW plan that is comparable to the PHA Plan. Such agencies should submit the DEP plan required information with their MTW plan, and this rule is amended to so provide. HUD will also clarify this requirement directly with the affected agencies.

Compliance with MTCS

Comment: Until HUD fixes its internal (MTCS) data collection and reporting problems, HUD should not threaten the funding of agencies, which the Department assumes have not correctly submitted their data. The requirement that PHAs "maintain a level of compliance with MTCS reporting that is satisfactory to HUD" is arbitrary and not specific enough. It also overlooks the flaws in the MTCS reporting system.

HUD response: MTCS is a fully functional system. It is HUD's primary data system for information on public housing and Section 8 family characteristics and occupancy events. PHAs are required to submit Forms HUD–50058 for every public housing and Section 8 tenant-based assistance family. HUD issued Notice PIH 99–2 on January 28, 1999, to clarify the minimum reporting requirements and to establish a system of monitoring and technical assistance, semi-annual assessment, and formal review and sanctions. Under the Notice, HUD may impose sanctions on PHAs that do not meet the minimum 85 percent reporting level, which is determined at the semi-annual assessments (following the June and December MTCS Delinquency reports). PHAs may request forbearance from sanctions in writing. The request must include an explanation of why the PHA has not attained the minimum reporting level, steps that it plans to take to improve reporting, and monthly milestones. PHAs that do not meet the minimum reporting level and do not obtain forbearance are subject to sanction. For PHDEP, the relevant reporting rate is for public housing only. PHDEP grantees that do not meet the minimum reporting level and do not obtain forbearance from sanctions are subject to a review of their operations that would affect MTCS reporting, as well as sanctions, which may include the PHA's inability to draw down grant funds. HUD will work with PHAs to help them meet the minimum reporting rate.

Resident Survey

Comment: Formula funding was intended to reduce the cost incurred by agencies for grant writing and data gathering—however, the required (resident) survey will increase costs to agencies. Agencies in wide geographic areas will have difficulty administering and processing the survey. Housing Authorities with 400 or fewer eligible units do not have the resources to conduct the required 400-interview resident survey. They should be allowed to survey 20–30 percent of their population.

HUD response: HUD will modify the reporting requirement to require a percent, rather than an absolute number, that smaller PHAs will be responsible for surveying.

Clarification of Unit Count

Comment: The rule implies that an approved demolition/disposition unit is excluded as a source of crime. In fact, the complex process that precedes the actual removal of these units from a PHA's responsibility can take months. During this time the partially or fully vacated buildings are at greater risk.

HUD response: The final rule clarifies the unit count process by specifically stating what units will be counted and by providing that units approved for demolition/disposition continue to be counted for funding purposes until actual demolition/disposition of the unit.

Financial Incentive for Consortia

Comment: Providing a financial incentive only for consortia ignores agencies that serve broad geographic areas with diverse population and demographic needs.

HUD response: Because there were no additional comments or recommendations pertaining to consortia, this rule makes no changes from the proposed rule on this issue.

III. Separate Issues and Funding for NAHASDA Recipients

The May 12, 1999, proposed rule specifically invited comment on separate funding options for NAHASDA recipients, including the establishment of a separate funding pool to address the particular circumstances of Indian country. As a result, a substantial percentage of the comments received on the proposed rule were from Indian Tribes or Tribal Organizations. These comments unanimously supported a separate pool for Indian Country, stating such an approach was warranted because of the differences in PHAs and Indian Country. The lack of FBI data on Indian Country, for example, would penalize NAHASDA recipients because the formula uses crime statistics to determine eligibility for funding.

The comments include a number of recommendations for administering a separate funding pool, including that unit counts should reflect current unit counts under the NAHASDA funds plan, including 1937 Act units and additional units added to the inventory; that HUD apply the requirements in 24 CFR 1000.317 and 1000.327 of the NAHASDA regulations to the Indian set-aside; and that NAHASDA recipients should be allowed to use Tribal police data, court data, child welfare data, educational attainment indicators, or other comparable data when reporting activities.

HUD is conducting an ongoing consultation with the Tribes on the particulars of an appropriate DEP funding process and has forwarded information on a number of proposals for comment to each Tribe. HUD expects to implement a Drug Elimination Program with requirements that specifically address Tribal concerns and issues through a rule to be published separately in the near future.

IV. Changes in This Final Rule

As discussed below in this section and in sections II. and III., above, of this preamble, only a limited number of changes are made to the proposed rule by this final rule, as follows:

The references to NAHASDA recipients are taken out, except where they would be applicable in any subsequent rule, such as retaining the definition of "NAHASDA recipient" in § 761.10. DEP funding for NAHASDA recipients will be added by a separate rule as discussed above in section III. of this preamble.

Section 761.13(a)(1) is amended to include the cap of $500 per unit for PHAs with less than 50 units and to specifically state what units are counted, including providing that units approved for demolition/disposition continue to be counted for funding purposes until actual demolition/disposition of the unit.

Section 761.13(a)(3) is amended to make explicit the link between funding adjustments and sanctions by adding language that funding and meeting performance requirements are subject to the existing sanctions in § 761.30(f).

Section 761.15(a)(3) is amended to include the new needs funding category of PHAs that submitted FY 1996, 1997 or 1998 applications that qualified for funding but were not funded because of the unavailability of funds.

Section 761.15(a)(5) is amended to require MTW agencies to submit the DEP plan required information with their MTW plan.

V. Distribution of FY 1999 PHDEP Funding and List of PHAs Eligible for Funding

The following tables lists all of the PHAs determined to be currently eligible for PHDEP funding in accordance with this final rule. The third column, "Eligibility," gives the basis on which the PHA is eligible for funding. A designation of "N1" in the first column means the PHA was designated eligible on the basis of need as determined under the formula in § 761.15(a)(3). A designation of "N2" means the PHA is eligible on the basis of need as a PHA that qualified for funding under FYs 1996, 1997 or 1998, but was not funded because of the unavailability of funds, in accordance with § 761.15(a)(4). A designation of "R" means the PHA is eligible for funding as a "preference PHA" under § 761.15(a)(2).

An "X" in the fourth column, "Application Received," identifies PHAs that have submitted their PHDEP applications in response to the May 12, 1999, Notice Withdrawing and Reissuing the FY 1999 PHDEP NOFA (64 FR 25746). These PHAs are not required to make any additional submissions to receive FY 1999 PHDEP funding. Any PHA included in the list that has not yet submitted an application in accordance with the May 12, 1999 notice must do so within the next 30 days, up to and including the effective date of this final rule, or it will not receive FY 1999 PHDEP funding.

The total amount to be distributed is approximately $231,750,000 in FY 1999 funding. The amount to be distributed to each listed PHA that has applied or will apply within the next 30 days will be computed in accordance with the formula in § 761.13 of this final rule.

PHA code	PHA name	Eligibility	Application received
AR006	CONWAY HOUSING AUTHORITY	R	
AR015	TEXARKANA	R	
AR016	CAMDEN HOUSING AUTHORITY	R	X
AR017	PINE BLUFF HOUSING AUTHORITY	R	
AR018	MAGNOLIA	R	X
AR031	HOT SPRINGS HOUSING AUTHORITY	R	
AR037	PRESCOTT	R	
AR051	CLARKSVILLE	R	X
AR065	STEPHENS	R	X
AK001	ALASKA HOUSING FINANCE CORPORATION	R	
AL001	BIRMINGHAM	R	X
AL002	MOBILE	R	X
AL004	ANNISTON	R	X
AL005	PHENIX CITY	R	X
AL006	MONTGOMERY	R	X
AL007	DOTHAN	R	X
AL008	SELMA	R	X

PHA code	PHA name	Eligibility	Application received
AL010	FAIRFIELD	R	X
AL012	JASPER	R	X
AL014	GUNTERSVILLE	R	X
AL047	HUNTSVILLE	R	X
AL048	DECATUR	R	X
AL049	GREATER GADSDEN	R	X
AL050	AUBURN	R	X
AL054	FLORENCE	R	X
AL056	HALEYVILLE	R	
AL057	SYLACAUGA	R	X
AL060	RUSSELLVILLE	R	X
AL061	OPELIKA	R	X
AL062	LANETT	R	X
AL064	CARBON HILL	R	X
AL068	SHEFFIELD	R	X
AL069	LEEDS	R	X
AL071	GUIN	R	X
AL073	OZARK	R	X
AL077	TUSCALOOSA	R	X
AL086	JEFFERSON COUNTY	R	X
AL088	LUVERNE	R	X
AL094	GEORGIANA	R	X
AL098	ALICEVILLE	R	X
AL099	SCOTTSBORO	R	X
AL105	TALLADEGA	R	X
AL110	PIEDMONT	R	
AL112	OPP	R	X
AL114	LINEVILLE	R	X
AL115	ENTERPRISE	R	
AL116	YORK	R	X
AL118	EUFAULA	R	X
AL122	CHILDERSBURG	R	X
AL125	BESSEMER	R	X
AL128	SAMSON	R	X
AL129	WALKER COUNTY	R	X
AL131	PRATTVILLE	R	X
AL132	GOODWATER	R	
AL136	ASHLAND	R	
AL139	JACKSONVILLE	R	X
AL147	BRIDGEPORT	R	X
AL152	NORTHPORT	R	X
AL155	GREENVILLE	R	X
AL157	GREENSBORO	R	X
AL160	TUSKEGEE	R	X
AL165	FOLEY	R	X
AL166	CHICKASAW	R	X
AL167	STEVENSON	R	X
AL169	PRICHARD	R	X
AL171	UNIONTOWN	R	X
AL172	TALLASSEE	R	X
AL173	MONROEVILLE	R	X
AL174	ALEXANDER CITY	R	X
AL175	LIVINGSTON	N2	
AL177	TROY	R	X
AL178	DADEVILLE	R	
AL179	DALEVILLE	R	X
AL181	EVERGREEN	R	X
AL182	TRIANA	R	X
AL190	GREENE COUNTY	R	X
AL192	SO CENTRAL ALABAMA REGIONAL	R	
AL199	VALLEY	R	X
AL202	MOBILE COUNTY	R	
AR002	NORTH LITTLE ROCK HOUSING AUTHORITY	R	X
AR003	FORT SMITH	R	X
AR004	LITTLE ROCK HOUSING AUTHORITY	R	
AR094	MALVERN HOUSING AUTHORITY	R	
AR099	FORREST CITY	R	
AR131	JONESBORO URBAN RENEWAL HA	R	X
AR148	ENGLAND	N2	X
AZ001	PHOENIX	R	X
AZ003	GLENDALE	R	
AZ004	TUCSON	R	X
AZ006	FLAGSTAFF	R	X

PHA code	PHA name	Eligibility	Application received
AZ008	WINSLOW	R	
AZ009	MARICOPA COUNTY	R	X
AZ010	PINAL COUNTY	R	X
AZ013	YUMA COUNTY	N2	
AZ021	ELOY	R	X
AZ023	NOGALES	R	
AZ025	SOUTH TUCSON	R	X
AZ028	CHANDLER	R	X
AZ035	YUMA CITY	R	X
AZ038	PEORIA	N1	
AZ041	WILLIAMS	R	
CA001	SAN FRANCISCO HSG AUTH	R	X
CA002	LOS ANGELES COUNTY (HACOLA)	R	X
CA003	OAKLAND HOUSING AUTHORITY	R	X
CA004	LOS ANGELES CITY (HACLA)	R	X
CA005	CITY OF SACRAMENTO	R	X
CA006	CITY OF FRESNO HSG AUTH	R	X
CA007	COUNTY OF SACRAMENTO	R	
CA008	KERN COUNTY	R	X
CA009	UPLAND HOUSING	N1	
CA010	CITY OF RICHMOND HSG AUTH	R	
CA011	COUNTY OF CONTRA COSTA HSG AUT	R	X
CA019	SAN BERNARDINO COUNTY	R	X
CA021	SANTA BARBARA COUNTY	R	X
CA023	COUNTY OF MERCED HOUSING AUTHO	R	X
CA024	COUNTY OF SAN JOAQUIN HOUSING	R	X
CA025	CITY OF EUREKA HSG AUTH	R	
CA026	COUNTY OF STANISLAUS HOUSING A	R	X
CA027	RIVERSIDE COUNTY	R	X
CA028	COUNTY OF FRESNO HSG AUTH	R	X
CA030	TULARE COUNTY HOUSING AUTH	N1	
CA031	OXNARD	R	X
CA033	COUNTY OF MONTEREY HSG AUTH	R	X
CA035	SAN BUENAVENTURA CITY	N1	X
CA039	CALEXICO CITY	R	X
CA044	YOLO COUNTY HSG AUTHORITY	R	X
CA052	COUNTY OF MARIN HOUSING AUTHOR	R	X
CA058	CITY OF BERKELEY HOUSING AUTHO	N1	
CA059	COUNTY OF SANTA CLARA HOUSING	N1	
CA062	CITY OF ALAMEDA HOUSING AUTHOR	R	X
CA063	SAN DIEGO HOUSING COMMISSION	R	X
CA064	SAN LUIS OBISPO	R	
CA067	ALAMEDA COUNTY HSG AUTH	N2	
CA069	CITY OF MADERA HOUSING AUTHORI	R	X
CA076	SANTA BARBARA CITY	R	X
CA092	VENTURA COUNTY	R	X
CA108	SAN DIEGO COUNTY	N1	X
CA142	DUBLIN	N1	
CA143	IMPERIAL VALLEY HOUSING AUTHORITY	R	X
CO001	DENVER	R	X
CO002	PUEBLO	R	X
CO014	WELLINGTON	N1	
CO016	BOULDER CITY	R	X
CO028	COLORADO SPRINGS	N1	
CO035	GREELEY	N1	
CO041	FORT COLLINS	N1	
CO049	LAKEWOOD	N1	
CO052	AURORA	N1	
CO059	LOUISVILLE	N1	
CO061	BOULDER COUNTY	N1	
CT001	BRIDGEPORT HOUSING AUTHORITY	R	X
CT002	NORWALK HOUSING AUTHORITY	R	X
CT003	HARTFORD HOUSING AUTHORITY	R	X
CT004	NEW HAVEN HOUSING AUTHORITY	R	X
CT005	NEW BRITAIN HOUSING AUTHORITY	R	X
CT006	WATERBURY HOUSING AUTHORITY	R	X
CT007	STAMFORD HOUSING AUTHORITY	R	X
CT009	MIDDLETOWN HOUSING AUTHORITY	R	X
CT011	MERIDEN HOUSING AUTHORITY	R	X
CT013	EAST HARTFORD HOUSING AUTHORITY	R	X
CT015	ANSONIA HOUSING AUTHORITY	R	X
CT018	NORWICH HOUSING AUTHORITY	R	X
CT019	GREENWICH HOUSING AUTHORITY	R	X

PHA code	PHA name	Eligibility	Application received
CT020	DANBURY HOUSING AUTHORITY	R	X
CT023	BRISTOL HOUSING AUTHORITY	R	
CT026	MANCHESTER HOUSING AUTHORITY	R	X
CT027	STRATFORD HOUSING AUTHORITY	R	X
CT029	WEST HAVEN HOUSING AUTHORITY	R	X
DC001	D.C HOUSING AUTHORITY	R	X
DE001	WILMINGTON HOUSING AUTHORITY	R	
DE002	DOVER HOUSING AUTHORITY	R	X
DE004	DELAWARE STATE HSNG AUTH	R	X
FL001	JACKSONVILLE	R	
FL002	ST. PETERSBURG	R	X
FL003	TAMPA	R	X
FL004	ORLANDO	R	X
FL005	MIAMI-DADE	R	
FL006	PENSACOLA (AHC)	R	X
FL007	DAYTONA BEACH	R	X
FL008	SARASOTA	R	
FL009	WEST PALM BEACH	R	
FL010	FT. LAUDERDALE	R	X
FL011	LAKELAND	R	X
FL013	KEY WEST	R	X
FL015	NW FLORIDA REGIONAL	R	
FL016	SANFORD	R	X
FL017	MIAMI BEACH	N1	
FL018	PANAMA CITY	R	X
FL019	COCOA	R	
FL020	BREVARD COUNTY	R	
FL022	NEW SMYRNA BEACH	R	X
FL023	BRADENTON	R	X
FL025	TITUSVILLE	R	X
FL028	POMPANO BEACH	R	
FL032	OCALA	R	X
FL041	FT. PIERCE	R	X
FL046	CRESTVIEW	R	X
FL047	FT. MYERS	R	X
FL055	ARCADIA	R	
FL056	MELBOURNE	R	
FL057	PALATKA	R	X
FL060	PUNTA GORDA	R	
FL061	DUNEDIN	N1	
FL062	PINELLAS COUNTY	N1	
FL063	GAINESVILLE	R	X
FL066	HIALEAH	R	X
FL069	FORT WALTON BEACH	R	X
FL070	ALACHUA COUNTY	R	X
FL071	LAKE WALES	R	X
FL072	DELAND	R	
FL073	TALLAHASSEE	R	X
FL075	CLEARWATER	R	X
FL076	RIVIERA BEACH	R	X
FL079	BROWARD COUNTY	R	
FL080	PALM BEACH COUNTY	R	
FL081	DEERFIELD BEACH	R	
FL083	DELRAY BEACH	R	X
FL104	PASCO COUNTY	R	X
FL119	BOCA RATON	N1	
FL136	HOLLYWOOD	N1	
FL139	WINTER HAVEN	R	X
FL144	MONROE COUNTY	R	
GA001	TIFTON	R	X
GA002	SAVANNAH	R	X
GA003	ATHENS	R	X
GA004	COLUMBUS	R	X
GA005	ROME	R	X
GA006	ATLANTA	R	X
GA007	MACON	R	X
GA009	BRUNSWICK	R	X
GA010	MARIETTA	R	X
GA011	DECATUR	R	X
GA023	ALBANY	R	X
GA025	CEDARTOWN	R	X
GA028	WAYCROSS	R	X
GA059	GAINESVILLE	R	X

PHA code	PHA name	Eligibility	Application received
GA060	MOULTRIE	R	X
GA062	AMERICUS	R	X
GA063	CORDELE	R	X
GA065	WEST POINT	R	X
GA066	JESUP	R	X
GA069	DUBLIN	R	X
GA072	EATONTON	R	
GA073	MONROE	R	X
GA074	ELBERTON	R	X
GA075	TOCCOA	R	X
GA076	DOUGLAS CITY	R	X
GA077	COCHRAN	R	
GA078	EAST POINT	R	X
GA080	EASTMAN	R	X
GA081	HARTWELL	N2	
GA085	QUITMAN	R	
GA090	ROYSTON	R	X
GA093	LAWRENCEVILLE	R	X
GA094	LAVONIA	R	X
GA095	NEWNAN	R	X
GA096	CAMILLA	R	X
GA098	PELHAM	R	X
GA100	VALDOSTA	R	X
GA102	ROCKMART	R	X
GA115	CLAYTON	R	X
GA116	CARROLLTON	R	X
GA119	CALHOUN	R	X
GA120	LYONS	R	X
GA129	LEE COUNTY	N1	
GA133	ALMA	R	X
GA134	BLACKSHEAR	R	X
GA145	VIDALIA	R	X
GA147	SOCIAL CIRCLE	R	X
GA148	DALLAS	R	X
GA153	SUMMERVILLE	R	X
GA160	WARNER ROBINS	R	X
GA161	HARRIS COUNTY	N1	
GA171	LOGANVILLE	R	X
GA179	BUENA VISTA	N1	
GA182	MCDONOUGH	R	X
GA183	WINDER	R	X
GA193	MADISON	R	X
GA200	MILLEDGEVILLE	R	X
GA201	JASPER	N2	
GA204	SENOIA	R	X
GA213	CANTON	R	X
GA214	ELLAVILLE	N1	
GA226	CUTHBERT	R	
GA232	COLLEGE PARK	R	X
GA247	THOMASTON	R	
GA254	BREMEN	R	X
GA264	FULTON COUNTY	R	X
GA280	FLINT AREA CONSOLIDATED	R	X
GA281	ETOWAH AREA	R	X
GQ001	GUAM	R	X
HI001	HAWAII HOUSING AND COMMUNITY DEVELOPMENT CORPORATI	R	
IA018	SIOUX CITY	N1	
IA020	DES MOINES	R	
IA023	COUNCIL BLUFFS	N1	
IA045	DAVENPORT	N1	
IA050	WATERLOO	N1	
IA107	FORT DODGE	N2	
IA131	CENTRAL IOWA	N1	
ID013	BOISE CITY	N1	
ID020	IHFA	N1	
ID021	ADA	N1	
IL001	EAST ST. LOUIS HSG AUTH	R	X
IL002	CHICAGO HOUSING AUTHORITY	R	X
IL003	PEORIA HOUSING AUTHORITY	R	X
IL004	SPRINGFIELD HOUSING AUTHORITY	R	X
IL006	CHAMPAIGN COUNTY HSG AUTH	R	X
IL007	ALEXANDER COUNTY HSG AUTH	R	X
IL009	HENRY COUNTY HSG AUTH	R	

PHA code	PHA name	Eligibility	Application received
IL011	DANVILLE HOUSING AUTHORITY	R	X
IL012	DECATUR HOUSING AUTHORITY	R	X
IL014	LASALLE COUNTY HSG AUTH	R	X
IL015	MADISON COUNTY HSG AUTH	R	X
IL018	ROCK ISLAND CITY HSG AUTH	R	
IL022	ROCKFORD HOUSING AUTH	R	X
IL024	JOLIET HOUSING AUTHORITY	R	X
IL025	COOK COUNTY HSG AUTH	R	X
IL026	WAUKEGAN HSG AUTH	R	X
IL029	FREEPORT HOUSING AUTHORITY	R	X
IL030	ST. CLAIR CY HSG AUTH	R	X
IL039	KANKAKEE CTY HSG AUTH	R	X
IL051	BLOOMINGTON HSG AUTH	R	X
IL052	RANDOLPH CTY HSG AUTH	R	X
IL053	JACKSON CTY HSG AUTH	R	X
IL055	ALTON HSG AUTH	R	X
IL056	LAKE CTY HSG AUTH	R	X
IL059	JEFFERSON CTY HSG AUTH	R	X
IL061	FRANKLIN CTY HSG AUTH	R	X
IL078	BOND CTY HSG AUTH	R	
IL083	WINNEBAGO CTY HSG AUTH	R	X
IL085	KNOX CTY HSG AUTH	R	X
IL090	AURORA HSG AUTH	R	X
IL091	WARREN CTY HSG AUTH	R	X
IL092	ELGIN HSG AUTH	R	X
IL802	HABITAT CORP.	N1	
IN003	FORT WAYNE HOUSING AUTHORITY	R	X
IN004	DELAWARE COUNTY HOUSING AUTHORITY	N1	
IN005	MUNCIE HOUSING AUTHORITY	R	X
IN007	KOKOMO HOUSING AUTHORITY	R	X
IN010	HAMMOND HOUSING AUTHORITY	R	X
IN011	GARY HOUSING AUTHORITY	R	X
IN015	SOUTH BEND HOUSING AUTHORITY	R	
IN016	EVANSVILLE HOUSING AUTHORITY	R	X
IN017	INDIANAPOLIS HOUSING AGENCY	R	X
IN019	MICHIGAN CITY HOUSING AUTHORITY	R	X
IN020	MISHAWAKA HOUSING AUTHORITY	N1	
IN021	TERRE HAUTE HOUSING AUTHORITY	N1	
IN023	JEFFERSONVILLE HOUSING AUTHORITY	R	X
IN026	ELKHART HOUSING AUTHORITY	R	X
IN029	EAST CHICAGO HOUSING AUTHORITY	R	
KS001	KANSAS CITY, KS	R	
KS002	TOPEKA	R	
KS004	WICHITA	N1	
KS017	ATCHISON	R	X
KS038	SALINA	N1	
KS043	OLATHE	N1	
KS053	LAWRENCE	R	X
KS062	CHANUTE	R	
KS063	MANHATTAN	R	
KS068	LEAVENWORTH	N1	
KY001	HA LOUISVILLE	R	X
KY002	HA COVINGTON	R	X
KY003	HA FRANKFORT	R	X
KY004	HA LEXINGTON	R	X
KY006	HA PADUCAH	R	X
KY011	HA HOPKINSVILLE	R	X
KY012	HENDERSON H/R	R	X
KY014	DANVILLE	R	X
KY015	HA NEWPORT	N2	
KY016	RICHMOND	R	X
KY017	HA MAYSVILLE	R	X
KY020	MT STERLING	R	
KY021	HA CYNTHIANA	R	X
KY022	HA LEBANON	R	X
KY025	LYON COUNTY	R	X
KY027	HA PAINTSVILLE	R	X
KY029	CUMBERLAND	R	X
KY030	MURRAY	R	X
KY031	WILLIAMSBURG	R	X
KY033	CATLETTSBURG	R	X
KY037	HICKMAN	R	X
KY038	MARTIN	R	X

PHA code	PHA name	Eligibility	Application received
KY041	MORGANTOWN	R	X
KY043	FULTON	R	X
KY047	CAMPBELLSVILLE	R	X
KY059	FALMOUTH	R	X
KY061	HA GEORGETOWN	R	X
KY063	BOWLING GREEN	R	X
KY064	COLUMBIA	R	X
KY070	CENTRAL CITY	R	X
KY072	PRINCETON	R	X
KY099	FRANKLIN	R	X
KY105	HOUSING AUTH OF JEFFERSON COUN	R	
KY107	HA PIKEVILLE	R	X
LA001	NEW ORLEANS HOUSING AUTHORITY	R	
LA002	SHREVEPORT HSG AUTHORITY	N1	
LA003	EAST BATON ROUGE HSG AUTHORITY	R	
LA004	LAKE CHARLES HOUSING AUTHORITY	R	
LA005	LAFAYETTE (CITY) HOUSING AUTHORITY	R	
LA006	MONROE HOUSING AUTHORITY	R	X
LA012	KENNER HOUSING AUTHORITY	R	
LA023	ALEXANDRIA HOUSING AUTHORITY	N1	
LA027	NEW IBERIA HOUSING AUTHORITY	R	
LA029	CROWLEY	N2	
LA030	VILLE PLATTE HOUSING AUTHORITY	R	X
LA036	MORGAN CITY HOUSING AUTHORITY	R	X
LA042	BOSSIER CITY HOUSING AUTHORITY	N1	
LA045	ARCADIA HOUSING AUHTORITY	R	X
LA054	RUSTON HOUSING AUTHORITY	R	X
LA055	OPELOUSAS HOUSING AUTHORITY	N2	
LA070	PATTERSON HOUSING AUTHORITY	R	X
LA080	LAFOURCHE PARISH HOUSING AUTHORITY	R	X
LA086	DERIDDER HOUSING AUTHORITY	R	X
LA089	HOMER HOUSING AUTHORITY	R	X
LA090	HOUMA HOUSING AUTHORITY	N1	
LA092	ST JAMES PARISH HOUSING AUTHORITY	R	
LA095	ST. JOHN THE BAPTIST PARISH HOUSING AUTHORITY	R	X
LA103	SLIDELL HOUSING AUTHORITY	N2	
LA106	DEQUINCY HOUSING AUTHORITY	R	
LA115	NATCHITOCHES CITY HOUSING AUTHORITY	R	X
LA118	JENNINGS HOUSING AUTHORITY	R	X
LA123	WINNFIELD HOUSING AUTHORITY	N2	
LA166	NATCHITOCHES PARISH HOUSING AUTHORITY	R	X
MA001	LOWELL HOUSING AUTHORITY	R	X
MA002	BOSTON HOUSING AUTHORITY	R	X
MA003	CAMBRIDGE HOUSING AUTHORITY	R	X
MA005	HOLYOKE HOUSING AUTHORITY	R	X
MA006	FALL RIVER HOUSING AUTHORITY	R	X
MA007	NEW BEDFORD HOUSING AUTHORITY	R	X
MA008	CHICOPEE HOUSING AUTHORITY	R	
MA010	LAWRENCE HOUSING AUTHORITY	R	X
MA012	WORCESTER HOUSING AUTHORITY	R	X
MA014	REVERE HOUSING AUTHORITY	R	X
MA015	MEDFORD HOUSING AUTHORITY	R	X
MA016	CHELSEA HOUSING AUTHORITY	R	X
MA017	TAUNTON HOUSING AUTHORITY	R	
MA019	WOBURN HOUSING AUTHORITY	R	X
MA020	QUINCY HOUSING AUTHORITY	N1	X
MA022	MALDEN HOUSING AUTHORITY	R	X
MA023	LYNN HOUSING AUTHORITY	R	X
MA024	BROCKTON HOUSING AUTHORITY	R	X
MA025	GLOUCESTER HOUSING AUTHORITY	R	X
MA028	FRAMINGHAM HOUSING AUTHORITY	R	X
MA031	SOMERVILLE HOUSING AUTHORITY	R	X
MA033	BROOKLINE HOUSING AUTHORITY	R	X
MA035	SPRINGFIELD HOUSING AUTHORITY	R	X
MD001	ANNAPOLIS HOUSING AUTHORITY	R	X
MD002	BALTIMORE CITY HOUSING AUTHORITY	R	X
MD003	FREDERICK HOUSING AUTHORITY	R	X
MD004	MONTGOMERY CO HOUSING AUTHORITY	R	X
MD005	CUMBERLAND HOUSING AUTHORITY	R	X
MD006	HAGERSTOWN HOUSING AUTHORITY	R	X
MD007	ROCKVILLE HOUSING AUTHORITY	R	X
MD012	HAVRE DE GRACE HOUSING AUTHORITY	R	
MD013	ST. MICHAELS HOUSING AUTHORITY	R	X

PHA code	PHA name	Eligibility	Application received
MD015	PRINCE GEORGES COUNTY HOUSING AUTHORITY	R	
MD018	ANNE ARUNDEL COUNTY HOUSING AU	R	
ME003	PORTLAND HOUSING AUTHORITY	R	X
ME005	LEWISTON HOUSING AUTHORITY	R	X
ME006	BRUNSWICK HOUSING AUTHORITY	R	X
MI001	DETROIT HC	R	X
MI003	DEARBORN HC	N1	
MI004	HAMTRAMCK HC	R	
MI005	PONTIAC HC	R	X
MI006	SAGINAW HC	R	
MI007	ECORSE HC	R	X
MI008	RIVER ROUGE HC	R	X
MI009	FLINT HC	R	X
MI010	BENTON HARBOR HSG COMM	R	
MI014	ALBION HGS COMM	R	
MI026	YPSILANTI HC	R	X
MI027	INKSTER HC	R	X
MI028	MOUNT CLEMENS HC	R	
MI031	MUSKEGON HEIGHTS	R	
MI035	BATTLE CREEK HSG COMMISSION	N1	
MI039	PORT HURON HC	R	X
MI055	LIVONIA HC	N1	
MI058	LANSING HOUSING COMMISSION	R	X
MI064	ANN ARBOR HC	R	X
MI072	ROMULUS HC	R	X
MI073	GRAND RAPIDS HOUSING COMM	R	
MI089	TAYLOR HC	N1	
MI157	STERLING HEIGHTS HC	N1	
MN001	ST PAUL PHA	R	X
MN002	MINNEAPOLIS PHA	R	X
MN003	DULUTH HRA	R	X
MN151	OLMSTED COUNTY HRA	N2	
MN152	BLOOMINGTON HRA	N1	
MO001	ST. LOUIS HOUSING AUTHORITY	R	X
MO002	KANSAS CITY, MO	R	X
MO003	ST JOSEPH	N1	
MO004	ST. LOUIS COUNTY HOUSING AUTHO	R	X
MO005	KINLOCH HA	R	X
MO006	ST CHARLES HOUSING AUTHORITY	N1	
MO007	COLUMBIA HOUSING AUTHORITY	R	X
MO009	JEFFERSON CITY HOUSING AUTHORI	R	X
MO010	MEXICO HOUSING AUTHORITY	R	X
MO011	MOBERLY HA	R	X
MO012	CHARLESTON HA	R	X
MO014	FULTON HOUSING AUTHORITY	R	X
MO017	INDEPENDENCE	R	X
MO030	LEE'S SUMMIT	N1	
MO031	CLINTON	R	
MO058	SPRINGFIELD	R	X
MO068	RICHLAND	R	X
MO070	RICHMOND	R	
MO111	MACON HOUSING AUTHORITY	R	X
MO129	HANNIBAL HOUSING AUTHORITY	R	X
MO132	OLIVETTE HA	N1	
MO138	WELLSTON HA	R	X
MO218	PAGEDALE HA	N1	X
MO220	HILLSDALE HA	N1	X
MS001	HATTIESBURG	R	X
MS002	LAUREL	R	X
MS003	MCCOMB	R	X
MS004	MERIDIAN	R	X
MS005	HA BILOXI	R	X
MS007	CLARKSDALE	R	X
MS019	MISS REG HSG AUTH IV	R	X
MS030	HA MISSISSIPPI REGIONAL NO V	R	X
MS040	MISS REGIONAL H/A VIII	R	X
MS047	STARKVILLE	R	X
MS058	MISS REGIONAL H/A VI	R	X
MS059	WEST POINT	R	X
MS060	BROOKHAVEN	R	X
MS062	HOLLY SPRINGS	R	X
MS063	YAZOO CITY	R	X
MS064	BAY ST. LOUIS	R	X

PHA code	PHA name	Eligibility	Application received
MS066	PICAYUNE	R	X
MS071	ABERDEEN	R	X
MS072	CORINTH	R	X
MS076	COLUMBUS	R	X
MS077	TUPELO	R	X
MS079	LOUISVILLE	R	X
MS082	WINONA	R	X
MS086	VICKSBURG	R	X
MS090	SENATOBIA	R	X
MS093	OXFORD	R	X
MS099	LUMBERTON	R	X
MS101	WAVELAND	R	X
MS103	JACKSON	R	X
MS105	NATCHEZ	R	X
MS107	HSG AUTH CITY OF GREENWOOD MS	R	X
MS117	ATTALA COUNTY	R	X
MS121	ITTA BENA	R	X
MT0001	BILLINGS	R	
MT0002	GREAT FALLS	R	
MT0003	BUTTE	N2	
MT0004	HELENA	R	X
NC001	HA WILMINGTON	R	X
NC002	RALEIGH HA	R	X
NC003	HA CHARLOTTE	R	X
NC004	KINSTON H/A	R	X
NC005	NEW BERN	R	X
NC006	HA HIGH POINT	R	X
NC007	HA ASHEVILLE	R	X
NC008	CITY OF CONCORD	R	X
NC009	FAYETTEVILLE METROPOLITAN H/A	R	X
NC010	EASTERN CAROLINA REGIONAL	R	X
NC011	HA GREENSBORO	R	X
NC012	HA WINSTON-SALEM	R	X
NC013	HA DURHAM	R	X
NC014	HA LUMBERTON	R	X
NC015	HA GOLDSBORO	R	X
NC016	SALISBURY	R	X
NC017	REDEVELOPMENT COMM TARBORO	N2	
NC018	HA LAURINBURG	R	X
NC019	HA ROCKY MOUNT	R	X
NC020	HA WILSON	R	X
NC022	H/A CITY OF GREENVILLE	R	X
NC025	HA ROCKINGHAM	R	X
NC026	ELIZABETH CITY	R	X
NC027	HENDERSONVILLE	R	X
NC028	BENSON	R	X
NC031	HERTFORD	R	X
NC032	HA WASHINGTON	R	X
NC035	HA SANFORD	R	X
NC036	SELMA	R	X
NC039	HA LEXINGTON	R	X
NC040	SMITHFIELD	R	X
NC043	TROY	R	X
NC046	CHAPEL HILL	R	X
NC047	FAIRMONT	R	X
NC048	MAXTON	R	X
NC049	MORGANTON	R	X
NC052	SOUTHERN PINES	R	X
NC053	HAMLET	R	X
NC056	HA HICKORY	R	X
NC057	GASTONIA H/A	R	X
NC059	H A GRAHAM	R	
NC060	ROXBORO	R	X
NC061	BEAUFORT	R	X
NC065	HA MONROE	R	X
NC066	BURLINGTON	R	X
NC069	NORTH WILKESBORO	R	
NC070	HA LINCOLNTON	R	X
NC071	HA THOMASVILLE	R	X
NC072	HA STATESVILLE	R	X
NC073	OXFORD	R	X
NC074	LENOIR	R	X
NC075	HA ALBEMARLE	R	

PHA code	PHA name	Eligibility	Application received
NC076	FARMVILLE	R	X
NC077	HA WILLIAMSTON	R	
NC079	DUNN	R	X
NC081	HA ASHEBORO	R	X
NC082	AYDEN	R	X
NC084	ROBESON COUNTY	R	X
NC085	AHOSKIE	R	
NC088	BELMONT	R	X
NC095	FOREST CITY	R	
NC102	HA ROWAN COUNTY	R	X
NC114	PEMBROKE	R	X
NC117	ROANOKE RAPIDS	R	
NC174	VANCE COUNTY	R	
ND014	FARGO	N1	
NE001	OMAHA HOUSING AUTHORITY	R	X
NE002	LINCOLN HOUSING AUTHORITY	N1	
NE003	HALL COUNTY HOUSING AUTHORITY	R	X
NE078	SCOTTS BLUFF HOUSING AUTHORITY	R	
NE125	NORTH PLATTE HOUSING AUTHORITY	N1	
NE153	DOUGLAS COUNTY HOUSING AUTHORI	N1	
NE174	BELLEVUE HOUSING AUTHORITY	N1	
NH001	MANCHESTER HOUSING AUTHORITY	R	X
NH002	NASHUA HOUSING AUTHORITY	R	X
NH003	DOVER HOUSING AUTHORITY	R	X
NH005	CONCORD HOUSING AUTHORITY	R	X
NH007	LACONIA HOUSING & REDEVELOPMENT AUTHORITY	R	X
NH009	LEBANON HOUSING AUTHORITY	R	X
NJ002	NEWARK HA	R	X
NJ003	ELIZABETH HA	R	X
NJ004	NORTH BERGEN HA	R	X
NJ005	TRENTON H A	R	X
NJ006	PERTH AMBOY HA	R	X
NJ007	ASBURY PARK HA	R	X
NJ008	LONG BRANCH HA	R	X
NJ009	JERSEY CITY HA	R	X
NJ010	CAMDEN H A	R	X
NJ012	BAYONNE HA	R	X
NJ013	PASSAIC HA	R	X
NJ014	ATLANTIC CITY HA	R	X
NJ015	HOBOKEN HA	R	X
NJ016	HARRISON H A	R	X
NJ021	PATERSON HA	R	X
NJ022	NEW BRUNSWICK HA	R	X
NJ023	MORRISTOWN HA	R	X
NJ025	ORANGE CITY HA	R	X
NJ026	UNION CITY HA	R	X
NJ030	WEST NEW YORK HA	R	X
NJ032	RAHWAY HA	R	X
NJ033	WOODBRIDGE HA	R	X
NJ034	GARFIELD H A	R	X
NJ037	IRVINGTON HA	R	X
NJ039	PLANFIELD HA	R	X
NJ041	HIGHLANDS H A	R	X
NJ042	FRANKLIN H A	R	X
NJ043	EDISON HA	R	X
NJ045	HIGHTSTOWN H A	R	X
NJ047	CARTERET HA	R	X
NJ048	NEPTUNE HA	R	X
NJ049	BRIDGETON HA	R	X
NJ050	EAST ORANGE HA	R	X
NJ051	GLASSBORO HA	R	X
NJ054	LAKEWOOD HA	R	X
NJ058	SALEM HA	R	X
NJ059	PLEASANTVILLE H A	R	X
NJ061	MILLVILLE HA	R	X
NJ063	VINELAND HA	R	X
NJ080	WILDWOOD H A	R	
NM001	ALBUQUERQUE HOUSING AUTHORITY	R	X
NM003	LAS CRUCES HOUSING AUTHORITY	R	X
NM004	ALAMOGORDO HOUSING AUTHORITY	R	X
NM007	LAS-VEGAS HOUSING AUTHORITY	R	X
NM009	SANTA FE CIVIC HOUSING AUTHORITY	R	X
NM020	TRUTH OR CONSEQUENCES HOUSING AUTHORITY	R	X

PHA code	PHA name	Eligibility	Application received
NM035	BERNALILLO (TOWN OF) HOUSING AUTHORITY	R	X
NM038	TAOS COUNTY HOUSING AUTHORITY	R	
NM050	SANTA FE COUNTY HSG AUTHORITY	R	X
NM057	BERNALILLO COUNTY HOUSING AUTHORITY	N1	
NM062	DONA ANA COUNTY HOUSING AUTHORITY	N1	
NM063	REGION VI HOUSING AUTHORITY	N1	
NV001	CITY OF RENO HSG AUTHORITY	R	
NV002	CITY OF LAS VEGAS HSG AUTH	R	X
NV007	NORTH LAS VEGAS HOUSING AUTHOR	R	X
NV013	COUNTY OF CLARK HOUSING AUTHOR	R	X
NY001	SYRACUSE HA	R	X
NY002	BUFFALO MUNICIPAL HA	R	X
NY003	YONKERS HA, CITY OF	R	X
NY005	NEW YORK CITY HA	R	X
NY006	UTICA HA	R	X
NY008	TUCKAHOE HA	R	X
NY009	ALBANY HA	R	X
NY011	NIAGARA FALLS HA	R	X
NY012	TROY HA	R	X
NY014	PORT CHESTER HA	R	X
NY016	BINGHAMT0ON HA	R	X
NY018	PLATTSBURGH HA	R	X
NY019	HERKIMER HA	R	
NY020	SARATOGA SPRINGS HA	R	X
NY022	COHOES HA	R	X
NY023	FREEPORT HA	R	X
NY025	WATERVLIET HA	R	X
NY028	SCHENECTADY HA	R	X
NY029	LACKAWANNA HA	R	
NY031	MASSENA HA	R	X
NY032	CATSKILL HA	R	
NY033	RENSSELAER HA	R	
NY041	ROCHESTER HA	R	X
NY044	GENEVA HA	R	X
NY045	KINGSTON HA	R	X
NY046	HEMPSTEAD HA, TOWN OF	R	X
NY050	LONG BEACH HA	R	X
NY054	ITHACA HA	R	X
NY056	SPRING VALLEY HA	R	X
NY057	GREENBURGH HA	R	X
NY059	ILION HA	R	
NY060	AMSTERDAM HA	R	X
NY061	HUDSON HA	R	
NY062	POUGHKEEPSIE HA	R	X
NY069	GLEN COVE HA	R	
NY071	MONTICELLO HA	R	X
NY077	ISLIP HA, TOWN OF	N2	
NY082	PEEKSKILL HA	R	X
NY085	HEMPSTEAD HA, VILLAGE OF	N2	
NY088	NEW ROCHELLE HA	R	X
NY089	NEWARK HA	R	X
OH001	COLUMBUS MHA	R	X
OH002	YOUNGSTOWN MHA	R	X
OH003	CUYAHOGA MHA	R	X
OH004	CINCINNATI MHA	R	X
OH005	DAYTON MHA	R	X
OH006	LUCAS MHA	R	X
OH007	AKRON MHA	R	X
OH008	TRUMBULL MHA	R	X
OH009	ZANESVILLE MHA	R	X
OH010	PORTSMOUTH MHA	R	X
OH012	LORAIN MHA	R	X
OH014	JEFFERSON MHA	R	X
OH015	BUTLER MHA	R	X
OH018	STARK MHA	R	X
OH021	SPRINGFIELD MHA	R	X
OH023	LONDON MHA	R	
OH024	CHILLICOTHE MHA	R	X
OH026	COLUMBIANA MHA	R	X
OH029	ASHTABULA MHA	R	X
OH031	PORTAGE MHA	N2	
OH037	COSHOCTON MHA	R	X
OH044	ALLEN MHA	R	X

PHA code	PHA name	Eligibility	Application received
OK002	OKLAHOMA CITY	R	X
OK004	IDABEL	R	X
OK005	LAWTON	R	X
OK044	HUGO	R	X
OK062	MC ALESTER	R	X
OK073	TULSA	R	X
OK095	SHAWNEE	R	X
OK099	MUSKOGEE	R	X
OK139	NORMAN	R	X
OK146	STILLWATER	R	X
OR001	CLACKAMAS	R	
OR002	HAP	R	
OR005	LINCOLN	R	
OR006	LANE	R	
OR009	NORTH BEND	R	X
OR011	SALEM	R	
OR014	MARION	N1	
OR015	JACKSON	N1	
PA001	HOUSING AUTH CITY OF PITTSBURG	R	
PA002	PHILADELPHIA HOUSING AUTHORITY	R	X
PA003	SCRANTON HOUSING AUTHORITY	R	
PA004	ALLENTOWN HOUSING AUTHORITY	R	
PA005	MCKEESPORT HOUSING AUTHORITY	R	X
PA006	ALLEGHENY COUNTY HOUSING AUTHO	R	X
PA007	CHESTER HOUSING AUTHORITY	R	X
PA008	HARRISBURG HOUSING AUTHORITY	R	X
PA009	READING HOUSING AUTHORITY	R	X
PA011	BETHLEHEM HOUSING AUTHORITY	R	X
PA012	MONTGOMERY COUNTY HOUSING AUTH	R	X
PA013	ERIE CITY HOUSING AUTHORITY	R	X
PA014	BEAVER COUNTY HOUSING AUTHORIT	R	X
PA015	FAYETTE COUNTY HOUSING AUTHORI	R	X
PA017	WASHINGTON COUNTY HOUSING AUTH	R	
PA018	WESTMORELAND COUNTY HSG AUTHOR	R	X
PA019	JOHNSTOWN HOUSING AUTHORITY	R	X
PA020	MERCER COUNTY HOUSING AUTHORIT	R	X
PA022	YORK CITY HOUSING AUTHORITY	R	X
PA023	DELAWARE COUNTY HOUSING AUTHOR	R	
PA024	EASTON HOUSING AUTHORITY	R	X
PA026	HOUSING AUTH CO OF LAWRENCE	R	
PA031	ALTOONA HOUSING AUTHORITY	N2	X
PA036	LANCASTER HOUSING AUTHORITY	R	X
PA038	LACKAWANNA COUNTY HOUSING AUTH	R	
PA044	HAZLETON HOUSING AUTHORITY	R	X
PA046	HOUS AUTH OF THE CO OF CHESTER	R	X
PA047	WILKES BARRE HOUSING AUTHORITY	R	
PA051	BUCKS COUNTY HOUSING AUTHORITY	R	X
PA052	LEBANON COUNTY HOUSING AUTHORI	N2	
PA057	LUZERNE COUNTY HOUSING AUTHORI	R	X
PA071	BERKS COUNTY HOUSING AUTHORITY	N1	
PA088	CENTRE COUNTY HOUSING AUTHORIT	R	X
RI001	PROVIDENCE HOUSING AUTHORITY	R	X
RI002	PAWTUCKET HOUSING AUTHORITY	R	X
RI003	WOONSOCKET HOUSING AUTHORITY	R	X
RI005	NEWPORT HOUSING AUTHORITY	R	X
RI011	WARWICK HOUSING AUTHORITY	N1	
RQ005	PRPHA	R	X
SC001	CHARLESTON	R	X
SC002	COLUMBIA	R	X
SC003	SPARTANBURG	R	X
SC004	GREENVILLE	R	X
SC007	AIKEN	R	X
SC008	SOUTH CAROLINA REGION NO 1	R	X
SC017	GAFFNEY	R	X
SC022	ROCK HILL	R	X
SC024	SOUTH CAROLINA REGION NO 3	R	X
SC025	CONWAY	R	X
SC026	BEAUFORT	R	X
SC027	FLORENCE	R	X
SC028	GEORGETOWN	R	X
SC031	CHERAW	R	
SC036	FORT MILL	R	X
SC037	ANDERSON	R	X

PHA code	PHA name	Eligibility	Application received
SC046	YORK	R	X
SC056	CHARLESTON COUNTY	N1	
SC057	NORTH CHARLESTON	R	X
SC061	CAYCE	N1	
SD016	SIOUX FALLS	N1	
SD045	PENNINGTON COUNTY	N1	
TN001	MEMPHIS	R	
TN002	JOHNSON CITY HOUSING AUTHORITY	R	X
TN003	KNOXVILLE COMMUNITY DEVEL CORP	R	X
TN004	CHATTANOOGA HOUSING AUTHORITY	R	X
TN005	MDHA	R	X
TN006	KINGSPORT HOUSING AND REDEVELOPMENT AUTHORITY	R	X
TN007	JACKSON	R	X
TN008	PARIS	N2	
TN010	CLARKSVILLE	R	X
TN011	PULASKI	R	
TN013	BROWNSVILLE	R	X
TN014	FAYETTEVILLE	R	X
TN020	MURFREESBORO	R	X
TN024	TULLAHOMA	R	X
TN027	HUMBOLDT	R	X
TN029	GALLATIN	R	
TN033	COOKEVILLE	R	X
TN035	FRANKLIN	R	X
TN036	SPRINGFIELD	R	X
TN039	SHELBYVILLE	R	X
TN041	COVINGTON	N2	
TN042	CROSSVILLE HOUSING AUTHORITY	R	X
TN048	LAWRENCEBURG	R	X
TN053	MCMINNVILLE	R	X
TN054	CLEVELAND HOUSING AUTHORITY	R	X
TN057	RIPLEY	R	X
TN065	MARYVILLE HOUSING AUTHORITY	R	X
TN075	NEWBERN	R	X
TN076	ELIZABETHTON HOUSING AND DEVELOPMENT AGENCY	N2	
TN088	OAK RIDGE HOUSING AUTHORITY	R	X
TN095	SHELBY COUNTY	N1	
TN111	KNOX COUNTY HOUSING AUTHORITY	N1	
TX001	AUSTIN HOUSING AUTHORITY	R	X
TX003	EL PASO	R	X
TX004	FORT WORTH	R	X
TX005	HOUSTON HOUSING AUTHORITY	R	X
TX006	SAN ANTONIO HOUSING AUTHORITY	R	X
TX007	BROWNSVILLE HOUSING AUTHORITY	R	X
TX008	CORPUS CHRISTI HOUSING AUTHORITY	R	X
TX009	DALLAS	R	X
TX010	WACO	R	X
TX011	LAREDO HOUSING AUTHORITY	R	
TX012	BAYTOWN HOUSING AUTHORITY	R	X
TX014	TEXARKANA	R	X
TX015	WAXAHACHIE	N2	
TX016	DEL RIO HOUSING AUTHORITY	R	
TX017	GALVESTON HOUSING AUTHORITY	R	X
TX018	LUBBOCK	R	X
TX019	EAGLE PASS HOUSING AUTHORITY	N2	X
TX020	BRYAN HOUSING AUTHORITY	N1	
TX022	WICHITA FALLS	R	X
TX023	BEAUMONT	R	X
TX024	COMMERCE	R	X
TX025	SAN BENITO HOUSING AUTHORITY	R	X
TX026	DENISON	R	
TX027	MCKINNEY	R	
TX028	MC ALLEN HOUSING AUTHORITY	R	
TX029	MERCEDES HOUSING AUTHORITY	R	X
TX030	TEMPLE	R	X
TX032	TEXAS CITY HOUSING AUTHORITY	R	
TX034	PORT ARTHUR	R	X
TX037	ORANGE	R	X
TX038	BONHAM	N2	
TX046	MISSION HOUSING AUTHORITY	R	X
TX048	PARIS	R	X
TX051	WESLACO HOUSING AUTHORITY	R	
TX054	NEW BOSTON	R	X

PHA code	PHA name	Eligibility	Application received
TX062	EDINBURG HOUSING AUTHORITY	R	
TX064	ALAMO HOUSING AUTHORITY	R	X
TX065	HARLINGEN HOUSING AUTHORITY	R	X
TX073	PHARR HOUSING AUTHORITY	R	X
TX078	SHERMAN	R	X
TX079	KILLEEN	N1	X
TX085	VICTORIA HOUSING AUTHORITY	R	
TX087	SAN MARCOS HOUSING AUTHORITY	R	X
TX092	LADONIA	N2	
TX113	ORANGE COUNTY	N2	X
TX114	KINGSVILLE HOUSING AUTHORITY	R	X
TX128	PLANO	R	X
TX163	ROBSTOWN HOUSING AUTHORITY	R	X
TX173	PORT ISABEL HOUSING AUTHORITY	N2	
TX177	DONNA HOUSING AUTHORITY	R	
TX257	SLATON	R	
TX300	CARRIZO SPRINGS HOUSING AUTHORITY	N2	X
TX327	ABILENE	R	X
TX355	EL CAMPO HOUSING AUTHORITY	R	X
TX379	MIDLAND	N1	
TX395	PORT LAVACA HOUSING AUTHORITY	R	
TX406	HUNTSVILLE HOUSING AUTHORITY	R	
TX408	MONAHANS	R	X
TX439	ANTHONY	R	
TX448	LA JOYA HOUSING AUTHORITY	R	X
TX449	ROMA HOUSING AUTHORITY	R	X
TX452	BEXAR COUNTY HOUSING AUTHORITY	N1	
TX455	ODESSA	R	X
TX470	SAN ANGELO	R	X
TX480	TRAVIS COUNTY HOUSING AUTHORITY	N1	
TX486	NACOGDOCHES	R	X
TX509	CAMERON COUNTY HOUSING AUTHORITY	R	X
TX538	EL PASO COUNTY	R	
UT002	OGDEN	N1	
UT003	SALT LAKE COUNTY	R	X
UT004	SALT LAKE CITY	R	X
UT007	PROVO CITY	R	X
UT011	UTAH COUNTY	N1	
UT025	WEST VALLEY CITY	N1	
VA001	PORTSMOUTH REDEVELOPMENT & H/A	R	X
VA002	BRISTOL REDEVELOPMENT HOUSING	R	
VA003	NEWPORT NEWS REDEVELOPMENT & H	R	X
VA004	ALEXANDRIA REDEVELOPMENT & H/A	R	X
VA005	HOPEWELL REDEVELOPMENT & H/A	R	X
VA006	NORFOLK REDEVELOPMENT & H/A	R	X
VA007	RICHMOND REDEVELOPMENT & H/A	R	X
VA010	DANVILLE REDEVELOPMENT AND H/A	R	X
VA011	ROANOKE REDEVELOPMENT & H/A	R	X
VA012	CHESAPEAKE REDEVELOPMENT & H/A	R	X
VA013	LYNCHBURG REDEVELOPMENT & H/A	N1	
VA015	NORTON REDEVELOPMENT & H/A	R	
VA017	HAMPTON REDEVELOPEMENT & HSG A	R	X
VA019	FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY	R	X
VA020	PETERSBURG REDEVELOPMENT & H/A	R	
VA022	WAYNESBORO REDEVELOPMENT & H/A	R	X
VA025	SUFFOLK REDEVELOPMENT & H/A	R	X
VA029	CUMBERLAND PLATEAU REGIONAL H/	R	X
VQ001	VIHA	R	X
VT005	BARRE HOUSING AUTHORITY	R	
WA001	SEATTLE HA	R	X
WA002	KING CO HA	R	X
WA003	BREMERTON HA	R	X
WA004	CLALLAM CO HA	R	X
WA005	TACOMA HA	R	X
WA006	EVERETT HA	N1	
WA008	VANCOUVER	R	
WA021	PASCO HA	R	X
WA025	BELLINGHAM HA	R	
WA030	SEDRO WOOLLEY HA	N1	
WA036	KITSAP CO HA	R	X
WA039	SNOHOMISH CO HA	R	X
WA041	WHATCOM CO HA	N1	
WA042	YAKIMA HA	R	

PHA code	PHA name	Eligibility	Application received
WA054	PIERCE CO HA	N1	
WA055	SPOKANE HA	N1	
WI001	SUPERIOR HA	R	X
WI002	MILWAUKEE HA	R	X
WI003	MADISON HA	R	X
WI074	GREEN BAY HA	N1	
WI183	RACINE COUNTY HA	N1	
WV001	CHARLESTON HOUSING AUTHORITY	R	X
WV003	WHEELING HOUSING AUTHORITY	R	X
WV004	HUNTINGTON HOUSING AUTHORITY	R	X
WV005	PARKERSBURG HOUSING AUTHORITY	R	X
WV006	MARTINSBURG HOUSING AUTHORITY	R	
WV008	WILLIAMSON HOUSING AUTHORITY	R	
WV009	FAIRMONT HOUSING AUTHORITY	N2	
WV011	MOUNDSVILLE HOUSING AUTHORITY	R	
WV014	BENWOOD HOUSING AUTHORITY	R	
WV018	BLUEFIELD HOUSING AUTHORITY	R	
WV022	SOUTH CHARLESTON HOUSING AUTHORITY	R	
WV027	CLARKSBURG HOUSING AUTHORITY	R	
WV036	KANAWHA COUNTY HOUSING AUTHORITY	R	X

VI. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0124. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*, issued by the President on September 30, 1993. Any changes made in this rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities because all small entities previously funded under the program affected by this rule will continue to be funded at comparable levels. The rule will also have no adverse or disproportionate economic impact on small businesses.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel. Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW, Washington, DC 20410.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

List of Subjects in 24 CFR Part 761

Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Grant programs—low and moderate income housing, Indians, Public housing, Reporting and recordkeeping requirements.

Catalog of Domestic Assistance Numbers

The Catalog of Domestic Assistance numbers for the Public Housing Drug Elimination Program is 14.854.

Accordingly, for the reasons stated in the preamble, part 761 of title 24 of the Code of Federal Regulations is amended as follows:

PART 761—DRUG ELIMINATION PROGRAMS

1. The authority citation for 24 CFR part 761 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11901 *et seq.*

PART 761—[AMENDED]

2. In part 761, all references to "drug-related crime" are revised to read "drug-related and violent crime" and all references to "Indian housing authorities (IHAs)" are removed.

3. In § 761.1, the introductory text is revised to read as follows:

§ 761.1 Purpose and scope.

This part 761 contains the regulatory requirements for the Assisted Housing Drug Elimination Program (AHDEP) and the Public Housing Drug Elimination Program (PHDEP). The purposes of these programs are to:

* * * * *

4. Section 761.5 is revised to read as follows:

§ 761.5 Public housing; encouragement of resident participation.

For the purposes of the Public Housing Drug Elimination Program, the elimination of drug-related and violent crime within public housing developments requires the active

involvement and commitment of public housing residents and their organizations. To enhance the ability of PHAs to combat drug-related and violent crime within their developments, Resident Councils (RCs), Resident Management Corporations (RMCs), and Resident Organizations (ROs) will be permitted to undertake management functions specified in this part, notwithstanding the otherwise applicable requirements of part 964 of this title.

5. In § 761.10, the introductory text is revised, the definition of *Recipient of assistance under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA recipient)* is added in alphabetical order, and the definition of *Resident Management Corporation (RMC)* is revised, to read as follows:

§ 761.10 Definitions.

The definitions *Department, HUD,* and *Public Housing Agency (PHA)* are defined in part 5 of this title.

* * * * *

Recipient of assistance under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA recipient) shall have the same meaning as *recipient* provided in section 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*).

* * * * *

Resident Management Corporation (RMC), for purposes of the Public Housing Program, means the entity that proposes to enter into, or that enters into, a management contract with a PHA under part 964 of this title in accordance with the requirements of that part.

* * * * *

6. The heading of subpart B is revised to read as follows:

Subpart B—Grant Funding

7. A new § 761.13 is added to read as follows:

§ 761.13 Amount of funding.

(a) *PHDEP formula funding.* (1) *Funding share formula.* (i) *Per unit amount.* Subject to the availability of funding, the amount of funding made available each FFY to an applicant that qualifies for funding in accordance with § 761.15(a) is based upon the applicant's share of the total number of units of all applicants that qualify for funding, with a maximum award of $35 million and a minimum award of $25,000, except that qualified applicants with less than 50 units will not receive more than $500 per unit.

(ii) *Calculation of number of units.* For purposes of determining the number of units counted for purposes of the PHDEP formula, HUD shall count as one unit each existing rental and Section 23 bond-financed unit under the ACC. Units that are added to a PHA's inventory will be added to the overall unit count so long as the units are under ACC amendment and have reached DOFA by the date HUD establishes for the Federal Fiscal Year in which the PHDEP formula is being run (hereafter called the "reporting date"). Any such increase in units shall result in an adjustment upwards in the number of units under the PHDEP formula. New units reaching DOFA after this date will be counted for PHDEP formula purposes as of the following Federal Fiscal Year. Federalized units that are eligible for operating subsidy will be counted for PHDEP formula purposes based on the unit count reflected on the PHA's most recently approved Operating Budget (Form HUD–52564) and/or subsidy calculation (Form HUD–52723), or successor form submitted for that program. Units approved for demolition/disposition continue to be counted for PHDEP formula funding purposes until actual demolition/disposition of the unit.

(2) *Consortium funding.* The amount of funding made available to a consortium will be the total of the amounts that each individual member would otherwise qualify to receive under the PHDEP funding formula in accordance with paragraph (a)(1) of this section.

(3) *Adjustments to funding.* The amount of funding made available each FFY to an applicant in accordance with paragraphs (a)(1) and (a)(2) of this section may be adjusted as follows:

(i) An applicant must submit a PHDEP plan that meets the requirements of § 761.21, as required by § 761.15(a)(5), each FFY year to receive that FFY's funding. An applicant that does not submit a PHDEP plan for a FFY as required will not receive that FFY's funding.

(ii) Ineligible activities, described at § 761.17(b), are not eligible for funding. Activities proposed for funding in an applicant's PHDEP plan that are determined to be ineligible will not be funded, and the applicant's funding for that FFY may be reduced accordingly.

(iii) In accordance with § 761.15(a)(6), an applicant that does not meet the performance requirements of § 761.23 will be subject to the sanctions listed in § 761.30(f)(2).

(iv) Both the amount of and continuing eligibility for funding is subject to the sanctions in § 761.30(f).

(v) Any amounts that become available because of adjustments to an applicant's funding will be distributed to every other applicant that qualifies for funding in accordance with paragraphs (a)(1) and (a)(2) of this section.

(b) *AHDEP funding.* Information concerning funding made available under AHDEP for a given FFY will be contained in Notices of Funding Availability (NOFAs) published in the **Federal Register**.

8. Section 761.15 is revised to read as follows:

§ 761.15 Qualifying for funding.

(a) *Qualifications for PHDEP funding.* (1) *Eligible applicants.* The following are eligible applicants for PHDEP funding:

(i) A PHA;

(ii) An RMC; and

(iii) A consortium of PHAs.

(2) *Preference PHAs.* A PHA that successfully competed for PHDEP funding under at least one of the PHDEP NOFAs for FFY 1996, FFY 1997 or FFY 1998 qualifies to receive PHDEP funding.

(3) *Needs qualification for funding.* An eligible applicant that does not qualify to receive PHDEP funding under paragraph (a)(2) of this section must be in one of the following needs categories to qualify for funding:

(i) The eligible applicant must be in the top 50% of the unit-weighted distribution of an index of a rolling average rate of violent crimes of the community, as computed for each Federal Fiscal Year (FFY). The crime rate used in this needs determination formula is the rate, from the most recent years feasible, of FBI violent crimes per 10,000 residents of the community (or communities). If this information is not available for a particular applicant's community, HUD will use the average of data from recipients of a comparable State and size category of PHA (less than 500 units, 500 to 1249 units, and more than 1250 units). If fewer than five PHAs have data for a given size category within a State, then the average of PHAs for a given size category within the census region will be used; or

(ii) The eligible applicant must have qualified for PHDEP funding, by receiving an application score of 70 or more points under any one of the PHDEP NOFAs for FFY 1996, FFY 1997 or FFY 1998, but not have received an award because of the unavailability of funds.

(4) *Consortium of eligible applicants.* Eligible applicants may join together and form a consortium to apply for funding, whether or not each member would individually qualify for PHDEP funding under paragraphs (a)(2) or (a)(3) of this section. The act of two or more eligible applicants joining together to form a consortium, and identifying related crime problems and eligible activities to address those problems pursuant to a consortium PHDEP plan, qualifies the consortium for PHDEP funding of an amount as determined under § 761.13(a)(2).

(5) *PHDEP plan requirement.* (i) *PHAs.* Except as provided in paragraph (a)(5)(ii), below, of this section, to receive PHDEP funding, a PHA that qualifies to receive PHDEP funding for Federal Fiscal Year 2000 and beyond must include a PHDEP plan that meets the requirements of § 761.21 with its PHA Plan submitted pursuant to part 903 of this title for each Federal Fiscal Year for which it qualifies for funding.

(ii) To receive PHDEP funding, a PHA that qualifies to receive PHDEP funding and is operating under an executed Moving To Work (MTW) agreement with HUD must submit a PHDEP plan that meets the requirements of § 761.21 with its required MTW plan for each Federal Fiscal Year for which it qualifies for funding.

(iii) *RMCs.* To receive PHDEP funding, an RMC operating in an PHA that qualifies to receive PHDEP funding must submit a PHDEP plan for the units managed by the RMC that meets the requirements of § 761.21 to its PHA. Upon agreement between the RMC and PHA, the PHA must submit to HUD, with its PHA Plan submitted pursuant to part 903 of this title, the RMC's PHDEP plan. The RMC will implement its plan as a subrecipient of the PHA.

(iv) *Consortia.* To receive PHDEP funding, the consortium members must prepare and submit a consortium PHDEP plan that meets the requirements of § 761.21, including the additional requirements that apply to consortia. Each member must submit the consortium plan with its PHA plan, submitted pursuant to part 903 of this title, or IHP, submitted pursuant to subpart C of part 1000 of this title, as appropriate.

(6) An otherwise qualified recipient PHA, RMC or consortium may not be funded if HUD determines, on a case-by-case basis, that it does not meet the performance requirements of § 761.23.

(b) *Qualifications for AHDEP funding.* Under AHDEP, eligible applicants are owners of federally assisted low-income housing, as the term *Federally assisted low-income housing* is defined in § 761.10. Notices of Funding Availability (NOFAs) published in the **Federal Register** will contain specific information concerning funding requirements and eligible and ineligible applicants and activities.

9. A new § 761.17 is added to subpart B to read as follows:

§ 761.17 Eligible and ineligible activities for funding.

(a) *Eligible activities.* One or more of the eligible activities described in 42 U.S.C. 11903 and in this § 761.17(a) are eligible for funding under PHDEP or AHDEP, as further explained or limited in paragraph (b) of this section and, for AHDEP, in separate annual Notices of Funding Availability (NOFAs). All personnel funded by these programs in accordance with an eligible activity must meet, and demonstrate compliance with, all relevant Federal, State, tribal, or local government insurance, licensing, certification, training, bonding, or other similar law enforcement requirements.

(1) *Employment of security personnel,* as provided in 42 U.S.C. 11903(a)(1), with the following additional requirements:

(i) *Security guard personnel.* (A) Contract security personnel funded by this program must perform services not usually performed by local law enforcement agencies on a routine basis. The applicant must identify the baseline services provided by the local law enforcement agency.

(B) The applicant, the provider (contractor) of the security personnel and, only if the local law enforcement agency is receiving any PHDEP funds from the applicant, the local law enforcement agency, are required, as a part of the security personnel contract, to enter into and execute a written agreement that describes the following:

(*1*) The activities to be performed by the security personnel, their scope of authority, and how they will coordinate their activities with the local law enforcement agency;

(*2*) The types of activities that the security personnel are expressly prohibited from undertaking.

(ii) *Employment of HA police.* (A) If additional HA police are to be employed for a service that is also provided by a local law enforcement agency, the applicant must undertake and retain a cost analysis that demonstrates the employment of HA police is more cost efficient than obtaining the service from the local law enforcement agency.

(B) Additional HA police services to be funded under this program must be over and above those that the existing HA police, if any, provides, and the tribal, State or local government is contractually obligated to provide under its Cooperation Agreement with the applying HA (as required by the HA's Annual Contributions Contract). An applicant seeking funding for this activity must first establish a baseline by describing the current level of services provided by both the local law enforcement agency and the HA police, if any (in terms of the kinds of services provided, the number of officers and equipment and the actual percent of their time assigned to the developments proposed for funding), and then demonstrate that the funded activity will represent an increase over this baseline.

(C) If the local law enforcement agency is receiving any PHDEP funds from the applicant, the applicant and the local law enforcement agency are required to enter into and execute a written agreement that describes the following:

(*1*) The activities to be performed by the HA police, their scope of authority, and how they will coordinate their activities with the local law enforcement agency;

(*2*) The types of activities that the HA police are expressly prohibited from undertaking.

(2) *Reimbursement of local law enforcement agencies for additional security and protective services,* as provided in 42 U.S.C. 11903(a)(2), with the following additional requirements:

(i) Additional security and protective services to be funded must be over and above those that the tribal, State, or local government is contractually obligated to provide under its Cooperation Agreement with the applying HA (as required by the HA's Annual Contributions Contract). An application seeking funding for this activity must first establish a baseline by describing the current level of services (in terms of the kinds of services provided, the number of officers and equipment, and the actual percent of their time assigned to the developments proposed for funding) and then demonstrate that the funded activity will represent an increase over this baseline.

(ii) Communications and security equipment to improve the collection, analysis, and use of information about drug-related or violent criminal activities in a public housing community may be eligible items if used exclusively in connection with the establishment of a law enforcement substation on the funded premises or scattered site developments of the applicant. Funds for activities under this section may not be drawn until the

grantee has executed a contract for the additional law enforcement services.

(3) *Physical improvements to enhance security*, as provided in 42 U.S.C. 11903(a)(3). For purposes of PHDEP, the following provisions in paragraphs (a)(3)(i) through (a)(3)(iv) of this section apply:

(i) An activity that is funded under any other HUD program shall not also be funded by this program.

(ii) Funding is not permitted for physical improvements that involve the demolition of any units in a development.

(iii) Funding is not permitted for any physical improvements that would result in the displacement of persons.

(iv) Funding is not permitted for the acquisition of real property.

(4) *Employment of investigating individuals*, as provided in 42 U.S.C. 11903(a)(4). For purposes of PHDEP, the following provisions in paragraphs (a)(4)(i) and (a)(4)(ii) of this section apply:

(i) If one or more investigators are to be employed for a service that is also provided by a local law enforcement agency, the applicant must undertake and retain a cost analysis that demonstrates the employment of investigators is more cost efficient than obtaining the service from the local law enforcement agency.

(ii) The applicant, the investigator(s) and, only if the local law enforcement agency is receiving any PHDEP funds from the applicant, the local law enforcement agency, are required, before any investigators are employed, to enter into and execute a written agreement that describes the following:

(A) The nature of the activities to be performed by the investigators, their scope of authority, and how they will coordinate their activities with the local law enforcement agency;

(B) The types of activities that the investigators are expressly prohibited from undertaking.

(5) *Voluntary tenant patrols*, as provided in 42 U.S.C. 11903(a)(5). For purposes of PHDEP, the following provisions in paragraphs (a)(5)(i) through (a)(5)(iv) of this section apply:

(i) The provision of training, communications equipment, and other related equipment (including uniforms), for use by voluntary tenant patrols acting in cooperation with officials of local law enforcement agencies is permitted. Grantees are required to obtain liability insurance to protect themselves and the members of the voluntary tenant patrol against potential liability for the activities of the patrol. The cost of this insurance will be considered an eligible program expense.

(ii) The applicant, the members of the tenant patrol and, only if the local law enforcement agency is receiving any PHDEP funds from the applicant, the local law enforcement agency, are required, before putting the tenant patrol into effect, to enter into and execute a written agreement that describes the following:

(A) The nature of the activities to be performed by the tenant patrol, the patrol's scope of authority, and how the patrol will coordinate its activities with the local law enforcement agency;

(B) The types of activities that a tenant patrol is expressly prohibited from undertaking, to include but not limited to, the carrying or use of firearms or other weapons, nightsticks, clubs, handcuffs, or mace in the course of their duties under this program;

(C) The type of initial tenant patrol training and continuing training the members receive from the local law enforcement agency (training by the local law enforcement agency is required before putting the tenant patrol into effect).

(iii) Tenant patrol members must be advised that they may be subject to individual or collective liability for any actions undertaken outside the scope of their authority and that such acts are not covered under a HA's or RMC's liability insurance.

(iv) Grant funds may not be used for any type of financial compensation for voluntary tenant patrol participants. However, the use of program funds for a grant coordinator for volunteer tenant foot patrols is permitted.

(6) *Drug prevention, intervention, and treatment programs*, as provided in 42 U.S.C. 11903(a)(6).

(7) *Funding resident management corporations (RMCs), resident councils (RCs), and resident organizations (ROs).* For purposes of the Public Housing Program, funding may be provided for PHAs that receive grants to contract with RMCs and incorporated RCs and ROs to develop security and drug abuse prevention programs involving site residents, as provided in 42 U.S.C. 11903(a)(7).

(8) *Youth sports.* Sports programs and sports activities that serve primarily youths from public or other federally assisted low-income housing projects and are operated in conjunction with, or in furtherance of, an organized program or plan designed to reduce or eliminate drugs and drug-related problems in and around such projects, as provided in 42 U.S.C. 11903(a)(8).

(9) *Eliminating drug-related and violent crime in PHA-owned housing*, under the Public Housing Program, as provided in 42 U.S.C. 11903(b).

(b) *Ineligible activities.* For purposes of PHDEP, funding is not permitted:

(1) For activities not included under paragraph (a) of this section;

(2) For costs incurred before the effective date of the grant agreement;

(3) For the costs related to screening or evicting residents for drug-related crime. However, investigators funded under this program may participate in judicial and administrative proceedings;

(4) For previously funded activities determined by HUD on a case-by-case basis to be unworthy of continuation.

10. Section 761.20 is revised to read as follows:

§ 761.20 Selection requirements.

(a) *PHDEP selection.* Every PHA, RMC and consortium that meets the requirements of § 761.15 in a FFY will be selected for funding in that FFY and, subject to meeting the performance requirements of § 761.23, for four additional FFYs.

(b) *AHDEP selection.* HUD will publish specific Notices of Funding Availability (NOFAs) in the **Federal Register** to inform the public of the availability of AHDEP grant amounts under this part 761. The NOFAs will provide specific guidance with respect to the grant process, including identifying the eligible applicants; deadlines for the submission of grant applications; the limits (if any) on maximum grant amounts; the information that must be submitted to permit HUD to score each of the selection criteria; the maximum number of points to be awarded for each selection criterion; the contents of the plan for addressing drug-related and violent crime that must be included with the application; the listing of any certifications and assurances that must be submitted with the application; and the process for ranking and selecting applicants. NOFAs will also include any additional information, factors, and requirements that HUD has determined to be necessary and appropriate to provide for the implementation and administration of AHDEP under this part 761.

11. A new § 761.21 is added to read as follows:

§ 761.21 Plan requirement.

(a) *General requirement.* To receive funding under this part, each PHDEP qualified recipient or AHDEP applicant must submit to HUD, for Federal Fiscal Year (FFY) 2000 and each following FFY, a plan for addressing the problem of drug-related and violent crime in and around the housing covered by the plan. If the plan covers more than one development, it does not have to address each development separately if the same activities will apply to each development. The plan must address each development separately only where program activities will differ from one development to another. The plan must include a description of the planned activity or activities, a description of the role of plan partners and their contributions to carrying out the plan, a budget and timetable for implementation of the activities, and the funding source for each activity, identifying in particular all activities to be funded under this part. In addition, the plan must set measurable performance goals and interim milestones for the PHDEP-supported activities and describe the system for monitoring and evaluating these activities. Measurable goals must be established for each category of funded activities, including drug prevention, drug intervention, drug treatment, tenant patrols, and physical improvements. The plan under this section serves as the application for PHDEP funding, and an otherwise qualified recipient that does not submit a PHDEP plan as required will not be funded. For AHDEP funding, NOFAs published in the **Federal Register** may provide additional information on plan requirements for purposes of this section. Plans must meet the requirements of this section before grant funds are distributed. HUD will review the submitted plans for a determination of whether they meet the requirements of this section.

(b) *Additional requirements for consortia.* In addition to meeting the requirements of paragraph (a) of this section, to receive funding under this part, a consortium's plan must include a copy of the consortium agreement between the PHAs which are participating in the consortium, and a copy of the payment agreement between the consortium and HUD.

12. A new § 761.23 is added to read as follows:

§ 761.23 Grantee performance requirements.

(a) *Basic grantee requirements.* (1) *Compliance with civil rights requirements.* Grantees must be in compliance with all fair housing and civil rights laws, statutes, regulations, and executive orders as enumerated in 24 CFR 5.105(a). Federally recognized Indian tribes must comply with the Age Discrimination Act of 1975 and the Indian Civil Rights Act.

(2) *Adherence to the grant agreement.* The grant agreement between HUD and the grantee incorporates the grantee's application and plan for the implementation of grant-funded activities.

(3) *Compliance with "baseline" funding requirement.* Grantees may not use grant funds to reimburse law enforcement agencies for "baseline" community safety services. Grantees must adhere to § 761.17(a)(2)(i), reimbursement of local law enforcement agencies for additional security and protective services. In addition, grantees must provide to HUD a description of the baseline of services for the unit of general local government in which the jurisdiction of the agency is located.

(4) *Partnerships.* Grantees must provide HUD with evidence of partnerships—in particular, firm commitments by organizations providing funding, services, or other in-kind resources for PHDEP-funded activities (e.g., memorandum of agreement, letter of firm commitment). The partnership agreement must cover the applicable funding period.

(5) *MTCS reporting.* Grantees must maintain a level of compliance with MTCS reporting requirements that is satisfactory to HUD.

(b) *Planning and reporting requirements.* (1) *Planning consistency.* PHDEP funded activities must be consistent with the most recent HUD-approved PHA Plan or Indian Housing Plan, as appropriate. AHDEP funded activities must be consistent with the most recent Consolidated Plan under part 91 of this title for the community.

(2) *Demonstration of coordination with other law enforcement efforts.* Each grantee must consult with local law enforcement authorities and other local entities in the preparation of its plan for addressing the problem of drug-related and violent crime under § 761.21 and must maintain documentation of such consultation. Furthermore, a grantee must coordinate its grant-funded activities with other anti-crime and anti-drug programs, such as Operation Safe Home, Operation Weed and Seed, and the Safe Neighborhoods Action Program operating in the community, if applicable and maintain documentation of such coordination.

(3) *Compliance with reporting requirements.* Grantees must provide periodic reports consistent with this part at such times and in such form as is required by HUD.

(4) *Reporting on drug-related and violent crime.* Grantees must report any change or lack of change in crime statistics—especially drug-related crime and violent crime—or other relevant indicators drawn from the applicant's or grantee's evaluation and monitoring plan, IHP or PHA Plan. The grantee must also indicate, if applicable, how it is adequately addressing any recommendations emanating from other anti-crime and anti-drug programs, such as Operation Safe Home, Operation Weed and Seed, and the Safe Neighborhoods Action Program, operating in the community and is taking appropriate actions, in view of available resources, such as post-enforcement measures, to take full advantage of these programs.

(c) *Funding and evaluation requirements.* (1) *Timely obligation and expenditure of grant funds.* The HA must obligate and expend funds in compliance with all funding notifications, regulations, notices, and grant agreements. In addition, the HA must obligate at least 50 percent of funds under a particular grant within 12 months of the execution of the grant agreement, and must expend at least 25 percent of funds under a particular grant within 12 months of the execution of the grant agreement.

(2) *Operational monitoring and evaluation system.* The grantee must demonstrate that it has a fully operational system for monitoring and evaluating its grant-funded activities. A monitoring and evaluation system must collect quantitative evidence of the number of persons and units served, including youth served as a separate category, types of services provided, and the impact of such services on the persons served. Also, the monitoring and evaluation system must collect quantitative and qualitative evidence of the impact of grant-funded activities on the public housing or other housing, the community and the surrounding neighborhood.

(3) *Reduction of violent crime and drug use.* The grantee must demonstrate that it has established, and is attaining, measurable goals including the overall reduction of violent crime and drug use.

(d) *Other requirements.* HUD reserves the right to add additional performance factors consistent with this rule and other related statutes and regulations on a case-by-case basis.

(e) *Sanctions.* A grantee that fails to satisfy the performance requirements of this section will be subject to the sanctions listed in § 761.30(f)(2).

13. In § 761.40, paragraphs (f) and (g) are revised to read as follows:

§ 761.40 Other Federal requirements.

* * * * *

(f) *Intergovernmental Review.* The requirements of Executive Order 12372 (3 CFR, 1982 Comp., p. 197) and the regulations issued under the Order in part 52 of this title, to the extent provided by **Federal Register** notice in

accordance with 24 CFR 52.3, apply to these programs.

(g) *Environmental review.* Certain eligible activities under this part 761 are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and are not subject to review under related laws, in accordance with 24 CFR 50.19(b)(4), (b)(12), or (b)(13). If the PHDEP plan proposes the use of grant funds to assist any non-exempt activities, HUD will perform an environmental review to the extent required by 24 CFR part 50, prior to grant award.

Dated: September 8, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–23698 Filed 9–13–99; 8:45 am]

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federal register

Tuesday
September 14, 1999

Part VI

Department of Housing and Urban Development

24 CFR Part 905

Allocation of Funds Under the Capital Fund; Capital Fund Formula; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 905

[Docket No. FR–4423–P–06]

RIN 2577–AB87

Allocation of Funds under the Capital Fund; Capital Fund Formula; Proposed Rule

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement, as required by statute, a new formula system for allocation of funds to public housing agencies for their capital needs. As also required by statute, this proposed rule was developed through negotiated rulemaking procedures.

DATES: *Comments Due Date.* October 14, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Room 10276, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying during regular business hours at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: William Flood, Director, Office of Capital Improvements, Public and Indian Housing, Room 4134, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500; telephone (202) 708–1640 ext. 4185 (this telephone number is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Section 519 of the Quality Housing and Work Responsibility Act of 1998 (Pub.L. 105–276, approved October 21, 1998) (referred to as the "Public Housing Reform Act") amends section 9 of the U.S. Housing Act of 1937 to provide a "Capital Fund," to be established by HUD for the purpose of making assistance available to public housing agencies (PHAs) to carry out capital and management activities. Amended section 9 requires HUD to develop a formula for determining the amount of assistance provided to PHAs from the Capital Fund for a Federal fiscal year, and the formula is to include a mechanism to reward performance. The statute also requires that the Capital Fund formula is to be developed through negotiated rulemaking procedures.

On March 19, 1999 (64 FR 13533), HUD published a notice of its intent to establish a negotiated rulemaking committee for the Capital Fund, and in this notice identified a list of possible interested individuals and organizations to serve on the negotiated rulemaking committee. The list of possible interested individuals and organizations included public housing agencies, national organizations representing public housing agencies, residents organizations, advocates for low-income housing, and other housing experts.

On April 26, 1999 (64 FR 20234), HUD published the list of members of the negotiated rulemaking committee and announced its first set of meetings. The members participating in the negotiated rulemaking procedure for the Capital Fund formula are:

- *National Housing Associations*

Council of Large Public Housing Authorities (CLPHA)
National Association of Housing and Redevelopment Officials (NAHRO)
Public Housing Authorities Directors Association (PHADA)
National Organization of African Americans in Housing (NOAAH)
National Low Income Housing Coalition

- *Housing Authorities*

Philadelphia Housing Authority, Philadelphia, PA
Chicago Housing Authority, Chicago, IL
Dallas Housing Authority, Dallas, TX
Puerto Rico Public Housing Administration, San Juan, PR
Seattle Housing Authority, Seattle, WA
New York City Housing Authority, New York, NY
Dayton Metropolitan Housing Authority, Dayton, OH
Jersey City Housing Authority, Jersey City, NJ
San Diego Housing Commission, San Diego, CA
Macon Housing Authority, Macon, GA
Sanford Housing Authority, Sanford, ME
Housing Authority of the City of San Benito, San Benito, TX
City of La Junta Housing Authority, La Junta, CO
Housing Authority of the Town of Laurinburg, Laurinburg, NC
Madison Housing Authority, Madison, NJ

- *Tenant and Community Organizations*

Guinotte Manor Tenant Association, Kansas City, MO
Center for Community Change, Washington, DC
Hillside Family Resource Center, Milwaukee, WI
Mount Pleasant Estates Tenant Association, Newark, NJ

- *Other Groups*

National Housing Conference
Fannie Mae

- *Federal Government*

U.S. Department of Housing and Urban Development

The negotiated rulemaking committee ("the committee") first convened on April 28 and 29, 1999. Additional committee meetings were held on May 11–12, May 25–26, June 17–18, June 23–24, July 8–9, July 26–27, and August 3–4, 1999.

As part of its deliberation of formula models and formula components, the committee considered at length a study conducted on capital needs in public housing by a consulting firm. The study included physical inspections of public housing at 219 PHAs throughout the country including 684 developments containing 229,973 units. The study found that the existing modernization needs of public housing remain well over twenty billion dollars.

The formula proposed by the committee in this rule is based, in part, on this study. The study, however, contained some limitations in scope, required inspector judgment regarding the necessity of modest upgrades, was not designed to cover some aspects of modernization such as the reconfiguration of units where needed, necessarily had to estimate future needs based on experience with respect to other housing stock rather than direct observations, and could not, in itself, answer the question how the formula should address differences in needs among individual housing authorities. Given the limitations of the study, the committee decided to limit any funding reductions in going from the old to the new formula to six percent of a PHA's Federal Fiscal Year 1999 formula share for comparable units.

The Capital Fund formula proposed in this rule fulfills the statute's mandate of including a mechanism to reward performance. The proposed formula also provides for a replacement housing factor, in recognition that funding for this purpose will facilitate demolition of obsolete housing and allow some of the remaining housing needs in the affected communities to be addressed.

In its development of the proposed formula, the committee discussed at substantial length the importance of resident participation to the success of public housing, including a PHA's capital programs. The committee noted that the Public Housing Reform Act places value on resident participation by requiring at least one resident on the PHA Board of Commissioners, resident involvement in the PHA Plan process (through Resident Advisory Boards) and additional involvement as reflected in HUD's resident participation regulations (24 CFR part 964). Accordingly, measures to promote more effective resident participation will be categorized as eligible Capital Fund management improvement expenses, and also will be categorized as eligible public housing operating expenses under the appropriate regulations. Examples of eligible capital fund management improvement expenses include but are not limited to reasonable: staff support, outreach, training, meeting and office space, childcare, transportation, access to computers, provided all such expenses are directly related to Capital Fund activities. HUD may provide more specifics in further regulations or notices.

The Committee went further and recommended the need for additional standards for resident participation which can be enforced by HUD. Additional standards need to be adopted through a separate rule. HUD has committed to undertake a rulemaking process regarding additional standards for resident participation and promulgate any necessary rules during the coming fiscal year. To further promote effective public housing programs including resident participation, HUD will: conduct training for resident organizations and housing authorities on the new Public Housing Reform Act; and clarify in the PHA Plan regulation that reasonable resources for the Resident Advisory Boards must provide reasonable means for them to become informed on programs covered by the PHA Plan, to communicate in writing and by telephone with assisted families and hold meetings with those families, and to access information regarding covered programs on the internet, taking into account the size and resources of the PHA.

II. Overview of the Capital Fund Formula

The following provides an overview of the key components of the Capital Fund Formula.

(1) The proposed Capital Fund formula contains a provision for emergency funding, as did the formula for allocation of funds under section 14 of the U.S. Housing Act of 1937 (USHA) (section 14 funds). Section 519(k) of the Public Housing Reform Act (section 9(k) of the USHA) provides for a set-aside of up to two percent of the available Capital Fund and Operating Fund dollars for emergencies, other disasters, and housing needs related to the settlement of litigation, and additional funds that the Secretary may reserve for purposes specified in section 9(k). (See § 905.10(b) of proposed rule.)

(2) The proposed rule also provides for formula allocation based on relative need, similar to that provided by the formula for allocation of section 14 funds. (See § 905.10(c) of proposed rule.)

(3) The formula for allocation of section 14 funds included allocation for "backlog needs." The proposed Capital Fund formula contains an allocation for "existing modernization needs." (See § 905.10(d) of proposed rule.)

(4) The proposed Capital Fund formula contains an allocation for "accrual needs," which is modeled on the "accrual needs" provision of the section 14 formula. (See § 905.10(e) of proposed rule.)

(5) The proposed Capital Fund formula provides for calculation of the number of units, as did the prior formula for allocation of section 14 funds. (See § 905.10(f) of the proposed rule.)

(6) The proposed Capital Fund formula sets out the method for computation of formula shares under the CFF. (See § 905.10(g) of the proposed rule.)

(7) The proposed Capital Fund formula provides for a limit or "cap" on the amount of capital funding that a PHA may lose as a result of the transition to the new CFF from the former formula for section 14 funds. The proposed rule provides that for comparable units, no PHA can lose more than 6% of its formula share in going from the old to the new formula. (See § 905.10(h) of the proposed rule.)

(8) The proposed Capital Fund formula also provides a replacement housing factor. The proposed rule provides that for units that are lost from the formula system because of demolition, disposition or conversion, these units will be funded only for purposes of replacement housing for 5 years and then for another 5 years if the planning, leveraging, obligation and expenditure requirements are met. The proposed rule provides that as a prior condition of a PHA's receipt of additional funds for replacement housing, provided for the second 5-year period or any portion of the second 5-year period, the PHA must obtain a firm commitment of substantial additional funds other than public housing funds for replacement housing. (See § 905.10(i) of the proposed rule.)

The proposed rule provides that PHAs are required to obligate assistance received for replacement housing within: (1) 24 months from the date that funds become available to the PHA; or (2) with specific HUD approval, 24 months from the date that the PHA accumulates adequate funds to undertake replacement housing. The proposed rule also provides that to the extent the PHA has not obligated any funds provided as a result of the replacement housing factor within the times specified by the rule or expended such funds within a reasonable time, the amount of funds to be provided to the PHA as a result of the application of the second 5 years of the replacement housing factor shall be reduced. (See § 905.10(i)(7) of the proposed rule.)

(9) Under the proposed CFF, the results of the new formula (the CFF) and the old formula (the formula for section 14 funds), the capping, and the replacement housing factor yield a base formula amount. The base formula for each PHA is then adjusted depending on whether the PHA is a high performer. The proposed rule includes a performance reward factor that provides PHAs that are designated high performers under the Public Housing Assessment System (PHAS) will receive 3% above their base formula amount in the first five years these performance rewards are given, and 5% above their base formula amount in future years. This methodology anticipates that any new performance measurement system will mature over time. This increase above the base formula amount is subject to the condition that for each year a performance reward increase is provided, non-high performers lose no more than 5% of their base formula amount in the redistribution of formula funds from non-high performers to high performers. (See § 905.10(j) of the proposed rule.)

III. Justification for Reduced Public Comment Period

It is the general practice of the Department to provide a 60-day public comment period on all proposed rules. The Department, however, is reducing its usual 60-day public comment period to 30 days for this proposed rule. The Public Housing Reform Act contemplates that the new Capital Fund formula will be effective Federal Fiscal

Year 2000. In an effort to have a final formula in place as close to beginning of that fiscal year as possible, and given that the formula was developed through the negotiated rulemaking process, in which representatives of all affected parties participated, the Department believes that a 30-day public comment period is justified under these circumstances.

IV. Findings and Certifications

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Regulatory Planning and Review

The Office of Management and Budget has reviewed this proposed rule under Executive Order 12866 (captioned "Regulatory Planning and Review") and determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m.) at the Office of the General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

Regulatory Flexibility Act

The Secretary has reviewed this proposed rule before publication and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule would implement a new system for formula allocation of funds to PHAs for their capital needs. The new system is established to provide minimum impact on all PHAs, small and large. The new formula provides that no PHA can lose more than 6% of its formula share for comparable units in going from the old to the new formula. Accordingly, the formula will not have a significant economic impact on any PHA. Notwithstanding HUD's determination that this proposed rule would not have a significant economic impact on small entities, HUD specifically invites comments regarding alternatives to this proposed rule that would meet HUD's objectives as described in this preamble.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this proposed rule would not have substantial direct effects on States or their political subdivisions, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. This proposed rule would provide a new system of formula allocation of assistance to PHAs for their capital needs. As a result, the proposed rule is not subject to review under the Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This proposed rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or tribal governments or on the private sector.

List of Subjects in 24 CFR Part 905

Grant programs—housing and community development, Modernization, Public housing, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, part 905 is proposed to be added to title 24 of the Code of Federal Regulations as follows:

PART 905—THE PUBLIC HOUSING CAPITAL FUND PROGRAM

Authority: 42 U.S.C. 1437g and 3535(d).

§ 905.10 Capital Fund formula (CFF).

(a) *General.* This section describes the formula for allocation of capital funds to PHAs. The formula is referred to as the Capital Fund formula (CFF).

(b) *Emergency reserve and use of amounts.* (1) In each Federal fiscal year after Federal Fiscal Year (FFY) 1999, from amounts approved in the appropriation act for funding under this part, HUD shall reserve an amount not to exceed that authorized by 42 U.S.C. 1437g(k), for use for assistance in connection with emergencies and other disasters, and housing needs resulting from any settlement of litigation, and may reserve such other amounts for other purposes authorized by 42 U.S.C. 1437g(k).

(2) Amounts set aside under paragraph (b) of this section may be used for assistance for any eligible use under the Capital Fund, Operating Fund, or tenant-based assistance in accordance with section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f).

(3) The use of any amounts as provided under paragraph (b) of this section relating to emergencies (other than disasters and housing needs resulting from settlement of litigation) shall be announced through **Federal Register** notice.

(c) *Formula allocation based on relative needs.* After determining the amounts to be reserved under paragraph (b) of this section, HUD shall allocate the amount remaining in accordance with the CFF. The CFF measures the existing modernization needs and accrual needs of PHAs.

(d) *Allocation for existing modernization needs under the CFF.* HUD shall allocate half of the available Capital Fund amount based on the relative existing modernization needs of PHAs, determined in accordance with this paragraph (d) of this section.

(1) *Determination of existing modernization need.* (i) *Statistically reliable data are available.* Where HUD determines that statistically reliable data concerning the existing modernization need identified in paragraph (d) of this section are available for individual PHAs, HUD will base its allocation of the Capital Fund amount on direct estimates of the existing modernization need, based on the most recently available, statistically reliable data. The PHAs of the cities of New York City and Chicago are covered by paragraph (d)(1)(i) of this section.

(ii) *Statistically reliable data are unavailable.* Where HUD determines that statistically reliable data concerning the existing modernization need identified in paragraph (d) of this section are not available for individual PHAs, HUD will base its allocation on estimates of the existing modernization need using the factors described in paragraph (d)(2) of this section.

(2) *For PHAs greater than or equal to 250 or more units in FFY 1999,* estimates of the existing modernization need will be based on the following:

(i) Objective measurable data concerning the following PHA, community and development characteristics applied to each development:

(A) The average number of bedrooms in the units in a development. (Equation co-efficient: 4604.7);

(B) The total number of units in a development as of FFY 1999. (Equation co-efficient: 10.17);

(C) The proportion of units in a development in buildings completed in 1978 or earlier. In the case of acquired developments, HUD will use the Date of Full Availability (DOFA) date unless the PHA provides HUD with the actual date of construction. When provided with the actual date of construction, HUD will use this date (or, for scattered sites, the average dates of construction of all the buildings), subject to a 50-year cap. (Equation co-efficient: 4965.4);

(D) The rolling three-year average of the cost index of rehabilitating property in the area. (Equation co-efficient: −10608);

(E) The extent to which the units of a development were in a non-metropolitan area as defined by the Census Bureau during FFY 1996. (Equation co-efficient: 2703.9);

(F) The PHA is located in the southern census region, as defined by the Census Bureau. (Equation co-efficient: −269.4);

(G) The PHA is located in the western census region, as defined by the Census Bureau. (Equation co-efficient: −1709.5);

(H) The PHA is located in the midwest census region as defined by the Census Bureau. (Equation co-efficient: 246.2)

(ii) An equation constant of 13851.

(A) *Newly constructed units.* Units with a DOFA date of October 1, 1999, or thereafter, will be considered to have a zero existing modernization need.

(B) *Acquired developments.* Developments acquired by a PHA with a DOFA date of October 1, 1999, or thereafter, will be considered by HUD to have a zero existing modernization need.

(3) *For PHAs with less than 250 units in FFY 1999,* estimates of the existing modernization need will be based on the following:

(i) Objective measurable data concerning the following PHA, community and development characteristics applied to each development:

(A) The average number of bedrooms in the units in a development. (Equation co-efficient: 1427.1);

(B) The total number of units in a development as of FFY 1999. (Equation co-efficient: 24.3);

(C) The proportion of units in a development in buildings completed in 1978 or earlier. In the case of acquired developments, HUD will use the DOFA date unless the PHA provides HUD with the actual date of construction, in which case HUD will use the actual date of construction (or, for scattered sites, the average dates of construction of all the buildings), subject to a 50-year cap. (Equation co-efficient: −1389.7);

(D) The rolling three-year average of the cost index of rehabilitating property in the area. (Equation co-efficient: −20163);

(E) The extent to which the units of a development were in a non-metropolitan area as defined by the Census Bureau during FFY 1996. (Equation co-efficient: 6157.7);

(F) The PHA is located in the southern census region, as defined by the Census Bureau. (Equation co-efficient: 4379.2);

(G) The PHA is located in the western census region, as defined by the Census Bureau. (Equation co-efficient: 3747.7);

(H) The PHA is located in the midwest census region as defined by the Census Bureau. (Equation co-efficient: −2073.5)

(ii) An equation constant of 24762.

(A) *Newly constructed units.* Units with a DOFA date of October 1, 1999, or thereafter, will be considered to have a zero existing modernization need.

(B) *Acquired developments.* Developments acquired by a PHA with a DOFA date of October 1, 1999, or thereafter, will be considered by HUD to have a zero existing modernization need.

(4) *Calibration of existing modernization need for the rolling three-year average of the cost index of rehabilitating property in the area.* The estimated existing modernization need, as determined under paragraphs (d)(1) (d)(2) or (d)(3) of this section, shall be adjusted by the values of the rolling three-year average of the cost index of rehabilitating property in the area.

(e) *Allocation for accrual needs under the CFF.* HUD shall allocate the other half remaining under the Capital Fund based upon the relative accrual needs of PHAs, determined in accordance with paragraph (e) of this section.

(1) *Determination of accrual need.* (i) *Statistically reliable data are available.* Where HUD determines that statistically reliable data concerning accrual need identified in paragraph (e) of this section are available for individual PHAs, HUD will base its allocation of the Capital Fund amount on direct estimates of accrual need, based on the most recently available, statistically reliable data. The PHAs of the cities of New York City and Chicago are covered by paragraph (e)(1)(i) of this section.

(ii) *Statistically reliable data are unavailable.* Where HUD determines that statistically reliable data concerning accrual need identified in paragraph (e) of this section are not available for individual PHAs, HUD will base its allocation on estimates of accrual need using the factors described in paragraph (e)(2) of this section.

(2) *For PHAs greater than or equal to 250 or more units,* estimates of the accrual need will be based on the following:

(i) Objective measurable data concerning the following PHA, community and development characteristics applied to each development:

(A) The average number of bedrooms in the units in a development. (Equation co-efficient: 324.0);

(B) The extent to which the buildings in a development average fewer than 5 units. (Equation co-efficient: 93.3);

(C) The age of a development as of FFY 1998, as determined by the DOFA date (date of full availability). In the case of acquired developments, HUD will use the DOFA date unless the PHA provides HUD with the actual date of construction, in which case HUD will use the actual date of construction (or, for scattered sites, the average dates of construction of all the buildings), subject to a 50-year cap. (Equation co-efficient: −7.8);

(D) Whether the development is a family development. (Equation co-efficient: 184.5);

(E) The rolling three-year average of the cost index of rehabilitating property in the area. (Equation co-efficient: −252.8);

(F) The extent to which the units of a development were in a non-metropolitan area as defined by the Census Bureau during FFY 1996. (Equation co-efficient: −121.3);

(G) PHA size of 6600 or more units in FFY 1999. (Equation co-efficient: −150.7);

(H) The PHA is located in the southern census region, as defined by the Census Bureau. (Equation co-efficient: 28.4);

(I) The PHA is located in the western census region, as defined by the Census Bureau. (Equation co-efficient: −116.9);

(J) The PHA is located in the midwest census region as defined by the Census Bureau. (Equation co-efficient: 60.7)

(ii) An equation constant of 1371.9.

(3) *For PHAs with less than 250 units,* estimates of the accrual need will be based on the following:

(i) Objective measurable data concerning the following PHA, community and development

characteristics applied to each development:

(A) The average number of bedrooms in the units in a development. (Equation co-efficient: 325.5);

(B) The extent to which the buildings in a development average fewer than 5 units. (Equation co-efficient: 179.8);

(C) The age of a development as of FFY 1998, as determined by the DOFA date (date of full availability). In the case of acquired developments, HUD will use the DOFA date unless the PHA provides HUD with the actual date of construction. When provided with the actual date of construction, HUD will use this date (or, for scattered sites, the average dates of construction of all the buildings), subject to a 50-year cap. (Equation co-efficient: −9.0);

(D) Whether the development is a family development. (Equation co-efficient: 59.3);

(E) The rolling three-year average of the cost index of rehabilitating property in the area. (Equation co-efficient: −1570.5);

(F) The extent to which the units of a development were in a non-metropolitan area as defined by the Census Bureau during FFY 1996. (Equation co-efficient: −122.9);

(G) The PHA is located in the southern census region, as defined by the Census Bureau. (Equation co-efficient: −564.0);

(H) The PHA is located in the western census region, as defined by the Census Bureau. (Equation co-efficient: −29.6);

(I) The PHA is located in the midwest census region as defined by the Census Bureau. (Equation co-efficient: −418.3)

(ii) An equation constant of 3193.6.

(4) *Calibration of accrual need for the rolling three year average of the cost index of rehabilitating property in the area.* The estimated accrual need, as determined under either paragraph (e)(2) or (e)(3) of this section, shall be adjusted by the values of the rolling three-year average of the cost index of rehabilitation.

(f) *Calculation of number of units.* (1) *General.* For purposes of determining the number of a PHA's public housing units, and the relative modernization needs of PHAs, HUD shall count as one unit each public housing and section 23 bond-financed unit under the ACC, except that it shall count as one-fourth of a unit each existing unit under Turnkey III program. In addition, HUD shall count as one unit each existing unit under the Mutual Help program. Units that are added to an PHA's inventory will be added to the overall unit count so long as the units are under ACC amendment and have reached DOFA by the date HUD establishes for the Federal Fiscal Year in which the CFF is being run (hereafter called the "reporting date"). Any such increase in units shall result in an adjustment upwards in the number of units under the CFF. New units reaching DOFA after the reporting date will be counted for CFF purposes as of the following Federal Fiscal Year.

(2) *Conversion of units.* (i) Increases in the number of units resulting from the conversion of existing units will be added to the overall unit count so long as the units are under ACC amendment by the reporting date;

(ii) For purposes of calculating the number of converted units, HUD shall regard the converted size of the unit as the appropriate unit count (e.g., a unit that originally was counted as one unit under paragraph (f)(1) of this section, but which later was converted into two units, shall be counted as two units under the ACC);

(iii) For purposes of calculating the number of converted units, HUD shall make no adjustments prior to the first 10 units lost or gained as a result of conversion in a development.

(3) *Reduction of units.* For developments losing units as a result of demolition, disposition or conversion, the number of units on which capital funding is based will be the number of units reported as eligible for capital funding as of the reporting date. Units are eligible for funding until they are removed due to demolition, disposition or conversion in accordance with a schedule approved by HUD.

(g) *Computation of formula shares under the CFF.* (1) *Total estimated existing modernization need.* The total estimated existing modernization need of a PHA under the CFF is the result of multiplying for each development the PHA's total number of formula units by its estimated existing modernization need per unit, as determined by paragraph (d) of this section, and calculating the sum of these estimated development needs.

(2) *Total accrual need.* The total accrual need of a PHA under the CFF is the result of multiplying for each development the PHA's total number of formula units by its estimated accrual need per unit, as determined by paragraph (e) of this section, and calculating the sum of these estimated accrual needs.

(3) *PHA's formula share of existing modernization need.* A PHA's formula share of existing modernization need under the CFF is the PHA's total estimated existing modernization need divided by the total existing modernization need of all PHAs.

(4) *PHA's formula share of accrual need.* A PHA's formula share of accrual need under the CFF is the PHA's total estimated accrual need divided by the total existing accrual need of all PHAs.

(5) *PHA's formula share of capital need.* A PHA's formula share of capital need under the CFF is the average of the PHA's share of existing modernization need and its share of accrual need (by which method each share is weighted 50%).

(h) *CFF capping.* (1) For units that are eligible for funding under the CFF (including replacement housing units discussed below) a PHA's CFF share will be its share of capital need, as determined under the CFF, subject to the condition that no PHA's CFF share for units funded under CFF can be less than 94% of its formula share had the FFY 1999 formula system been applied to these CFF eligible units. The FFY 1999 formula system is based upon the FFY 1999 Comprehensive Grant formula system for PHAs that were 250 or more units in FFY 1999 and upon the FFY 1999 Comprehensive Improvement Assistance Program (CIAP) formula system for PHAs that were less than 250 units in FFY 1999.

(2) For a Moving to Work PHA whose agreement provides that its capital formula share is to be calculated in accordance with the previously existing formula, the PHA's CFF share, during the term of the agreement, may be the formula share that the PHA would have received had the FFY 1999 formula funding system been applied to the CFF eligible units.

(i) *Replacement housing factor to reflect formula need for developments with demolition, disposition, or conversion occurring on or after October 1, 1998.* (1) *Replacement housing factor generally.* PHAs that have a reduction in units attributable to demolition, disposition, or conversion of units during the period (reflected in data maintained by HUD) that lowers the formula unit count for the CFF calculations qualify for application of a replacement housing factor, subject to satisfaction of criteria stated in paragraph (i)(5) of this section.

(2) *When applied.* The replacement housing factor will be added, where applicable, for the first 5 years after the reduction in units described in paragraph (i)(1) of this section, and will be added for an additional 5 years if the planning, leveraging, obligation and expenditure requirements are met. As a prior condition of a PHA's receipt of additional funds for replacement housing, provided for the second 5-year period or any portion thereof, a PHA must obtain a firm commitment of substantial additional funds other than public housing funds for replacement housing, as determined by HUD.

(3) *Computation of replacement housing factor.* The replacement housing factor consists of the difference between the CFF share without the CFF share reduction of units attributable to demolition, disposition or conversion, and the CFF share that resulted after the reduction of units attributable to demolition, disposition or conversion.

(4) *Replacement housing funding in FFY 1998 and 1999.* Units that received replacement housing funding in FFY 1998 will be treated as if they had received two years of replacement housing funding by FFY 2000. Units that received replacement housing funding in FFY 1999 will be treated as if they had received one year of replacement housing funding as of FFY 2000.

(5) *PHA eligibility for replacement housing factor.* A PHA is eligible for application of this factor only if the PHA satisfies the following criteria:

(i) The PHA requests the application of the replacement factor;

(ii) The PHA will use the funding in question only for replacement housing;

(iii) The restored funding that results from the use of the replacement factor is used to provide replacement housing in accordance with the PHA's five-year PHA plan, as approved by HUD in accordance with part 903 of this chapter;

(iv) The PHA has not received funding for public housing units that will replace the lost units under the public housing development, Major Reconstruction of Obsolete Public Housing, HOPE VI programs, or programs that otherwise provide for replacement with public housing units;

(v) A PHA that has been determined by HUD to be troubled that is not already under the direction of HUD or a court-appointed receiver, in accordance with part 902 of this chapter, must use an Alternative Management Entity as defined in part 902 of this chapter for development of replacement housing and must comply with any applicable provisions of its Memorandum of Agreement executed with HUD under that part; and

(vi) Any development of replacement housing by any PHA must be done in accordance with applicable HUD requirements and regulations.

(6) *Failure to provide replacement housing in a timely fashion.* If the PHA does not use the restored funding that results from the use of the replacement housing factor to provide replacement housing in a timely fashion, as outlined in paragraph (i)(7)(i) of this section and in accordance with applicable HUD requirements and regulations, and make reasonable progress on such use of the funding, in accordance with HUD requirements and regulations, HUD will require appropriate corrective action under these regulations; may recapture and reallocate the funds; or may take other appropriate action.

(7) *Requirement to obligate and expend replacement housing factor funds within specified period.* (i) In addition to the requirements otherwise applicable to obligation and expenditure of funds, PHAs are required to obligate assistance received as a result of the replacement housing factor within:

(A) 24 months from the date that funds become available to the PHA; or

(B) With specific HUD approval, 24 months from the date that the PHA accumulates adequate funds to undertake replacement housing.

(ii) To the extent the PHA has not obligated any funds provided as a result of the replacement housing factor within the times required by this paragraph, or expended such funds within a reasonable time, the amount of funds to be provided to the PHA as a result of the application of the second 5 years of the replacement housing factor shall be reduced.

(j) *Performance reward factor.* PHAs that are determined as high performers under the Public Housing Assessment System (PHAS) for their most recent fiscal year can receive 3% in the first five years these awards are given (for any year in this 5-year period in which the performance reward is earned), and 5% above their base formula amount in future years (for any year in which the performance reward is earned), subject only to the condition each year that no PHA will lose more than 5% of its base formula amount as a result of the redistribution of funding from non-high performers to high performers. The first performance awards will be given based upon PHAS scores for PHA fiscal years ending December 31, 1999, March 31, 2000, June 30, 2000, and September 30, 2000, with PHAs typically having received those PHAS scores within approximately 3 months after the end of those fiscal years.

Dated: September 8, 1999.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

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federal register

Tuesday
September 14, 1999

Part VII

Department of Housing and Urban Development

24 CFR Part 906
Public Housing Homeownership Programs; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 906

[Docket No. FR–4504–P–01]

RIN 2577–AC15

Public Housing Homeownership Programs

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would set forth the requirements and procedures governing a new statutory homeownership program to be administered by public housing agencies (PHAs). Under this rule, a PHA makes public housing dwelling units, public housing projects, and other housing projects available for purchase by low-income families as their principal residences.

DATES: *Comments Due Date:* Comments on the proposed rule are due on or before November 15, 1999.

ADDRESSES: Interested persons are invited to submit written comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Facsimile (FAX) comments will not be accepted.

FOR FURTHER INFORMATION CONTACT: David Sowell, Office of Public Housing Investments, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4138, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 401–8812, ext. 4641 (this is not a toll-free number). Hearing or speech impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Section 536 of the Quality Housing and Work Responsibility Act of 1998 (Title V of Public Law 105–276, 112 Stat. 2461, approved October 21, 1998) ("Public Housing Reform Act") amended Title I of the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) (1937 Act) by adding a new section 32, which authorized a new public housing homeownership program. The new homeownership program replaces the public housing agency homeownership program that was authorized under section 5(h) of the 1937 Act. Section 518 of the Public Housing Reform Act repealed the 5(h) homeownership program, and section 566 of the Public Housing Reform Act added a new section 5(h) that deals with audit requirements.

This rule would revise 24 CFR part 906, which currently contains the regulations for the 5(h) homeownership program. Many of the 5(h) program requirements would be retained under the new section 32 (of the 1937 Act) homeownership program. The authorizing statutory language for the 5(h) program was very brief, and the regulatory requirements at part 906 substantially fleshed out the program. Section 32, which provides many more explicit statutory requirements than section 5(h) did, adopted several of the regulatory requirements promulgated at part 906 for the 5(h) program. For example, section 32 addresses the protection of nonpurchasing residents and the use of the proceeds from a sale. Similar provisions were provided in the 5(h) regulation. In addition, the 5(h) regulation permitted sales to residents through another entity, rather than directly from the PHA, and section 32 permits sales directly to residents or to another entity for resale to residents.

There is legislative history that indicates the similarities between the new, statutory section 32 program requirements and the section 5(h) program requirements at part 906 are deliberate. In reporting out S. 462, a bill entitled, "The Public Housing Reform and Responsibility Act of 1997", which was the model for the Public Housing Reform Act, the Senate Committee on Banking, Housing, and Urban Affairs stated: "The Committee patterned the new homeownership provision according to the section 5(h) program which has proven to be a highly successful program for assisting public housing residents in becoming homeowners." (S. Rept. 105–21, at 28). This statement supports the retention of the 5(h) program requirements that HUD is proposing in this rulemaking.

Part 906 is reorganized by this rule into five subparts according to the subjects covered: a general statement of the program; basic program requirements; purchaser requirements; program administration; and program submission and approval. The new statutory homeownership requirements are integrated with the 5(h) requirements that HUD has determined are appropriate to retain, such as proposed § 906.39, which is based upon § 906.20 of the 5(h) rule and covers what must be contained in a homeownership program.

In order to make the new program more flexible than the 5(h) program, we have omitted some of the 5(h) program requirements, including the detailed eligibility and affordability requirements for purchasers found in § 906.8, the nonroutine maintenance reserve requirement of § 906.11, and the purchase price and financing provisions of § 906.12. We specifically invite comments on whether HUD should specify underwriting standards or the types of documents to be used to secure that HUD's investment in a property ultimately serves program purposes.

Section 32 gives a right of first refusal to the resident or residents occupying a public housing unit. The statute does not give that right to residents of other housing that is to be sold under the homeownership program. Section 906.13 implements this right of first refusal, noting that a prospective purchaser still must satisfy other program requirements.

Section 32 provides for three categories of eligible purchasers: (1) Low-income families assisted by a PHA; (2) other low-income families; and (3) entities formed to purchase units for re-sale to low-income families. This rule clarifies, at § 906.15, that a family purchasing a property under a PHA homeownership program must be a low-income family, as defined in section 3 of the 1937 Act, at the time the contract to purchase the property is executed. This provision eliminates the need to re-establish eligibility at the time of closing, and places no limitations on a family's future income as a condition of homeownership.

Please note that the low-income eligibility requirement applies to public housing residents, thereby making public housing residents who earn more than 80 percent of area median income ineligible to participate in the homeownership program. The Department welcomes comment on this eligibility requirement.

Section 32 also includes provisions for the protection of nonpurchasing public housing residents. One of these provisions requires that each public housing resident displaced by the sale of a unit will be offered comparable housing that is located in an area that is generally not less desirable than the location of the displaced resident's housing. (Relocation of residents of other housing that would be displaced by a homeownership program would be covered by the Uniform Relocation Act and part 42 of this title, as stated in § 906.24.) In a Senate colloquy before

passage of the Public Housing Reform Act, Senator Mack directly addressed this provision, and the way in which it was to be interpreted. The Senator stated:

> For purposes of this provision, the phrase "location of the displaced resident's housing" may be construed to mean the public housing development from which the family was vacated, rather than a larger geographic area. (Congressional Record of October 8, 1998, S.11840)

Consistent with this guidance, this proposed rule provides, in § 906.24, which deals with protections available to nonpurchasing residents, that "comparable housing" means housing that (among other factors) is located in an area that is generally not less desirable than the displaced resident's original development.

Findings and Certifications

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule provides the parameters for the use of public housing properties to create homeownership opportunities for low-income residents of public housing and other low-income families should a public housing agency choose to do so with, at most, an incidental effect on small entities.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement Section 102(2)(C) of the National Environmental Policy Act of 1969. This finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this proposed rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule's major effects would be on individuals; any involvement of States or their political subdivisions is limited to their cooperative efforts in promoting homeownership among public and housing residents and other low-income families.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Paperwork Reduction Act Statement

The information collection requirements contained in this rule, as described in §§ 906.17, 906.19, 906.23, 906.27, 906.33, 906.39, 906.41, and 906.49 have been submitted to the Office of Management and Budget for review under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Estimates of the total reporting and recordkeeping burden that will result from the collection of information are as follows:

REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of parties	Annual freq. of requirement	Est. avg. time for requirement (hours)	Est. annual burden (hrs.)
906.17	5,000	1	4	20,000
906.19	30	1	40	1,200
906.23	2,000	1	1	2,000
906.27	50	1	.50	25
906.33	50	1	10	500
906.39	50	1	40	2,000
906.41	50	1	20	1,000
906.49	50	1	.25	12
Total Reporting and Recordkeeping Burden (Hours)				25,737

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within sixty (60) days from the date of this proposal. Comments must refer to the proposal by name and docket number (FR–4504) and must be sent to:

Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

and

Millie Hamman, Reports Liaison Officer, Office of the Assistant Secretary for Public and Indian Housing, Department of Housing & Urban Development, 451—7th Street, SW, Room 4238, Washington, DC 20410

List of Subjects in 24 CFR Part 906

Grant programs—housing and community development, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, HUD proposes to revise part 906 of title 24 to read as follows:

PART 906—PUBLIC HOUSING HOMEOWNERSHIP PROGRAMS

Subpart A—General

Sec.
906.1 What is the purpose of this part?
906.3 What requirements are applicable to homeownership programs previously approved by HUD?

Subpart B—Basic Program Requirements

906.5 What dwelling units and what types of assistance may a PHA make available under a homeownership program under this part?
906.7 What physical requirements must a property offered for sale meet?
906.9 What effect do existing restrictions and encumbrances have on the sale of a property?

Subpart C—Purchaser Requirements

906.11 Who is eligible to purchase housing under a homeownership program?
906.13 Do current residents have a right of first refusal on units made available for sale?
906.15 What requirements apply to a family purchasing a property under a homeownership program?
906.17 How does a family apply to purchase a unit under a homeownership program?
906.19 What requirements apply to a PRE (purchase and resale entity), an entity formed for the purpose of purchasing units for resale to low-income families?

Subpart D—Program Administration

906.23 What protections are available to nonpurchasing public housing residents?
906.24 What protections are available to nonpurchasing residents of housing other than public housing?
906.25 What ownership interest is conveyed to a purchaser?
906.27 What limitations apply to net proceeds on the sale of a property acquired through a homeownership program?
906.31 What requirements are applicable to net proceeds?
906.33 What reporting and recordkeeping requirements apply to homeownership programs?
906.35 Are the disposition provisions of section 18 of the United States Housing Act of 1937 applicable to a homeownership program?
906.37 What Davis-Bacon and HUD wage rate requirements apply to homeownership programs?

Subpart E—Program Submission and Approval

906.38 Does a PHA require HUD approval to implement a homeownership program under this part?
906.39 What must a homeownership program include?
906.40 What requirements apply to acquisition of non-public housing?
906.41 What supporting documentation must be submitted to HUD with the homeownership program?
906.43 Where does a PHA submit a homeownership program for HUD approval?
906.45 What criteria will HUD use to review a homeownership program?
906.47 What environmental provisions apply?
906.49 How is HUD approval and authorization indicated?

Authority: 42 U.S.C. 14372–4 and 3535(d).

Subpart A—General

§ 906.1 What is the purpose of this part?

(a) This part sets forth the requirements and procedures governing public housing homeownership programs carried out by public housing agencies (PHAs), as authorized by (42 U.S.C. 1437z–4) section 32 of the United States Housing Act of 1937 ("1937 Act"). A PHA may only transfer public housing units for homeownership under a homeownership program approved by HUD under this part, except as provided under § 906.3.

(b) Under a public housing homeownership program, a PHA makes available for purchase by low-income families for use as their principal residences public housing dwelling units, public housing projects, and other housing units or projects owned, assisted, or operated, or otherwise acquired by the PHA for sale under a homeownership program in connection with the use of assistance provided under the 1937 Act ("1937 Act funds"). A PHA may sell all or a portion of a property for purposes of homeownership in accordance with a HUD-approved homeownership program, and in accordance with the PHA's annual plan under part 903 of this title.

§ 906.3 What requirements are applicable to homeownership programs previously approved by HUD?

(a) Any existing section 5(h) or Turnkey III homeownership program continues to be governed by the requirements of part 906 or part 904 of this title, respectively, as it existed before [*effective date of Homeownership Program final rule*] (contained in the April 1, 1999 edition of 24 CFR, parts 700 to 1699). The use of other program income for homeownership activities continues to be governed by agreements executed with HUD.

(b) A PHA may convert an existing homeownership program to a homeownership program under this part with HUD approval.

Subpart B—Basic Program Requirements

§ 906.5 What dwelling units and what types of assistance may a PHA make available under a homeownership program under this part?

(a) A homeownership program under this part may provide for sale of:

(1) Units that are public housing units; and

(2) Other units owned, operated, assisted, or acquired for homeownership sale that have received the benefit of 1937 Act funds or are to be sold with the benefit of 1937 Act funds ("non-public housing units").

(b) A homeownership program under this part may provide for financing to eligible families (see § 905.15) purchasing dwelling units under the program, or for acquisition of housing units or projects by the PHA for sale under the program.

(1) Under this part, a PHA may use assistance from amounts it receives under the Capital Fund under section 9(d) of the 1937 Act or from other income earned from its 1937 Act programs to provide financing assistance to public housing residents only. Public housing residents may use such assistance to purchase the unit in which they reside, another public housing unit, or a residence not located in a public housing development.

(2) A PHA may provide financing assistance for other eligible purchasers from other income, i.e., income not from 1937 Act programs, such as proceeds from selling public housing units, loan repayments, and public housing debt forgiveness funding not already committed to another purpose.

(c) A PHA must not use 1937 Act funds to rehabilitate units that are not public housing units.

§ 906.7 What physical requirements must a property offered for sale meet?

A property offered for sale under a homeownership program must meet local code requirements (or, if no local code exists, the housing quality standards established by HUD for the Section 8 Housing Assistance Payments Program for Existing Housing, under part 882 of this title) and the requirements for elimination of lead-based paint hazards in HUD-associated housing, under part 35, subpart C of this title. When a prospective purchaser with disabilities requests accessible features, the features must be added in accordance with part 8 of this title. Further, the property must be in good repair, with the major components having a remaining useful life that is sufficient to justify a reasonable expectation that homeownership will be affordable by the purchasers. These standards must be met as a condition for conveyance of a dwelling to an individual purchaser.

§ 906.9 What effect do existing restrictions and encumbrances have on the sale of a property?

(a) If the property is subject to indebtedness under the Annual Contributions Contract (ACC), HUD will continue to make any debt service contributions for which it is obligated under the ACC, and the property sold will not be subject to the encumbrance of that indebtedness.

(b) Upon sale of a public housing unit, in accordance with the HUD-approved homeownership program, HUD will execute a release of the title restrictions prescribed by the ACC. Because the property will no longer be subject to the ACC after sale, it will cease to be eligible for public housing Operating Fund or Capital Fund payments.

Subpart C—Purchaser Requirements

§ 906.11 Who is eligible to purchase housing under a homeownership program?

Low-income families and entities that purchase units from the PHA for resale to low-income families ("purchase and resale entities" or PREs) are eligible to purchase properties made available for sale under a PHA homeownership program.

§ 906.13 Do current residents have a right of first refusal on units made available for sale?

(a) Yes, in selling a public housing unit under a homeownership program, the PHA must initially offer the unit to the resident occupying the unit, if any, or to an organization serving as a conduit for sales to any such resident. (See § 906.19.) The resident must qualify to purchase the unit under the requirements specified by the PHA, in accordance with § 906.15.

(b) No, this program does not require the PHA, when selling a unit that is a non-public housing unit, to offer the unit for sale first to the current resident under the program.

§ 906.15 What requirements apply to a family purchasing a property under a homeownership program?

(a) *Low-income requirement.* A family purchasing a property under a PHA homeownership program must be a low-income family, as defined in section 3 of the 1937 Act (42 U.S.C. 1437a), at the time the contract to purchase the property is executed.

(b) *Principal residence requirement.* The dwelling unit sold to an eligible family must be used as the principal residence of the family.

(c) *Financial capacity requirement.* Eligibility must be limited to families who are capable of assuming the financial obligations of homeownership, under minimum income standards for affordability, taking into account the unavailability of public housing operating subsidies and modernization funds after conveyance of the property by the PHA. A homeownership program may, however, take account of any available subsidy from other sources.

(d) *Down payment requirement.* (1) Each family purchasing housing under a homeownership program must provide a downpayment in connection with any loan for acquisition of the housing, in an amount determined by the PHA or PRE, in accordance with an approved homeownership program. Except as provided in paragraph (d)(2) of this section, the PHA or PRE must permit the family to use grant amounts, gifts from relatives, contributions from private sources, and other similar amounts in making the downpayment.

(2) The family must use its own resources other than grants, gifts, contributions, or similar amounts, to contribute an amount of the downpayment that is not less than one percent of the purchase price of the housing. The PHA or PRE must take reasonable steps, and maintain records, that are verifiable by HUD through audits to verify the source of this one percent contribution.

(e) *Other requirements established by the PHA.* A PHA may establish requirements or limitations for families to purchase housing under a homeownership program, including requirements or limitations regarding:

(1) Employment or participation in employment counseling or training activities;

(2) Criminal activity;

(3) Participation in homeownership counseling programs;

(4) Evidence of regular income; and

(5) Other requirements.

§ 906.17 How does a family apply to purchase a unit under a homeownership program?

Families who are interested in purchasing a unit must submit applications to the PHA or PRE for that specific purpose, and those applications must be handled separately from applications for other PHA programs. Application for homeownership must not affect an applicant's place on any other PHA waiting list for rental units.

§ 906.19 What requirements apply to a PRE (purchase and resale entity), an entity formed for the purpose of purchasing units for resale to low-income families?

(a) *In general.* In the case of a purchase of units for resale to low-income families by a PRE, the PHA must have an approved homeownership program that describes the use of a PRE to sell the units to low-income families within 5 years from the date of the PRE's acquisition of the units.

(b) *PRE requirements.* The PHA must demonstrate in its homeownership program that the PRE has the necessary legal capacity and practical capability to carry out its responsibilities under the program. The PHA's homeownership program also must contain a written agreement that specifies the respective rights and obligations of the PHA and the PRE and which include:

(1) Assurances that the PRE will comply with all provisions of the HUD-approved homeownership program;

(2) Assurances that the PRE will be subject to a title restriction providing that the property may be resold or otherwise transferred only by conveyance of individual dwellings to eligible families, in accordance with the HUD-approved homeownership program, or by reconveyance to the PHA, and that the property will not be encumbered by the PRE without the written consent of the PHA;

(3) Protection against fraud or misuse of funds or other property on the part of the PRE, its employees, and agents;

(4) Assurances that the resale proceeds will be used only for the purposes specified by the HUD-approved homeownership program;

(5) Limitation of the PRE's administrative and overhead costs, and of any compensation or profit that may be realized by the PRE, to amounts that are reasonable in relation to its responsibilities and risks;

(6) Accountability to the PHA and residents for the recordkeeping, reporting and audit requirements of § 906.33;

(7) Assurances that the PRE will administer its responsibilities under the plan on a nondiscriminatory basis, in accordance with the Fair Housing Act and implementing regulations; and

(8) Adequate legal remedies for the PHA and residents, in the event of the PRE's failure to perform in accordance with the agreement.

(c) *Sale to low-income families.* The requirement for a PRE to sell units

under a homeownership program only to low-income families must be recorded as a deed restriction at the time of purchase by the PRE.

(d) *Resale within five years.* A PRE must agree that, with respect to any units it acquires under a homeownership program under this part, it will transfer ownership to the PHA if the PRE fails to resell the unit to a low-income family within 5 years of the PRE's acquisition of the unit.

(e) *Required notices to families.* A PRE must provide the notices to purchasing families that are required by the PHA, in accordance with the environmental and other requirements referenced in § 906.47.

Subpart D—Program Administration

§ 906.23 What protections are available to nonpurchasing public housing residents?

(a) If a public housing resident does not exercise the right of first refusal under § 906.13, the PHA:

(1) Must notify the resident residing in the unit 90 days prior to the displacement date, except in cases of imminent threat to health or safety, that:

(i) The public housing unit will be sold;

(ii) The transfer of possession of the unit will not occur until the resident is relocated; and

(iii) Each resident displaced by such action will be offered comparable housing (as defined in paragraph (b) of this section);

(2) Must provide for the payment of the actual costs and reasonable relocation expenses of the resident to be displaced;

(3) Must ensure that the resident is offered comparable housing under paragraph (a)(1)(iii) of this section;

(4) Must provide counseling for displaced residents of their rights to comparable housing, including their rights under the Fair Housing Act to choice of a unit on a nondiscriminatory basis, without regard to race, color, religion, national origin, disability, age, sex, or familial status; and

(5) Must not transfer possession of the unit until the resident is relocated.

(b) For purposes of this section, the term "comparable housing" means housing:

(1) That meets housing quality standards;

(2) That is located in an area that is generally not less desirable than the displaced resident's original development; and

(3) Which may include:

(i) Tenant-based assistance (tenant-based assistance must only be provided upon the relocation of the resident to the comparable housing);

(ii) Project-based assistance; or

(iii) Occupancy in a unit owned, operated, or assisted by the PHA at a rental rate paid by the resident that is comparable to the rental rate applicable to the unit from which the resident is vacated.

§ 906.24 What protections are available to nonpurchasing residents of housing other than public housing?

Residents of non-public housing that would be displaced by a homeownership program are eligible for assistance under the Uniform Relocation Act and part 42 of this title. For purposes of this part, a family that was over-income at the time of admission to public housing and was admitted in accordance with section 3(a)(5) of the 1937 Act, is treated as a nonpurchasing resident of non-public housing.

§ 906.25 What ownership interest is conveyed to a purchaser?

A homeownership program may provide for sale to the purchasing family of any ownership interest that the PHA considers appropriate under the homeownership program, including:

(a) Ownership in fee simple;

(b) A condominium interest;

(c) An interest in a limited dividend cooperative; or

(d) A shared appreciation interest with a PHA providing financing.

§ 906.27 What limitations apply to net proceeds on the sale of a property acquired through a homeownership program?

(a) A PHA must establish such limitations (by an appropriate form of title restriction) on the resale of property acquired through a homeownership program as the PHA considers appropriate for the PHA to recapture:

(1) Some or all of the economic gain derived from any such resale (i.e., appreciation) occurring during the 5-year period beginning upon purchase of the dwelling unit by the eligible family, in addition to some or all of the assistance provided under the homeownership program to the family; and

(2) After the expiration of such 5-year period, only such amounts as are equivalent to the assistance provided under the homeownership program to the family.

(b) In establishing the limitations described in paragraph (a)(1) of this section, the PHA may consider:

(1) The aggregate amount of assistance provided under the homeownership program to the family;

(2) The contribution of equity by the purchasing family;

(3) The period of time elapsed between purchase by the homebuyer under the homeownership program and resale by the homebuyer;

(4) The reason for resale;

(5) Any improvements made by the family purchasing under the homeownership program;

(6) Any appreciation in the value of the property; and

(7) Any other factors that the PHA considers appropriate.

(c) For the purposes of this section, the value of the property must be determined by a certified appraiser within one month before the resale.

§ 906.31 What requirements are applicable to net proceeds?

(a) *PHA use of net proceeds.* The PHA must use any net proceeds of any sales under a homeownership program remaining after payment of all costs of the sale for purposes relating to low-income housing and in accordance with the PHA plan of the PHA carrying out the program.

(b) *PRE use of resale net proceeds.* The PHA may require the PRE to return the net proceeds from the resale and from managing the units to the PHA. If the PHA permits the PRE to retain the net proceeds, the PRE must use these proceeds for low-income housing purposes.

§ 906.33 What reporting and recordkeeping requirements apply to homeownership programs?

The PHA is responsible for the maintenance of records (including sale and financial records) for all activities incident to implementation of the HUD-approved homeownership program. Where a PRE is responsible for the sale of units, the PHA must ensure that the PRE's responsibilities include proper recordkeeping and accountability to the PHA, sufficient to enable the PHA to monitor compliance with the approved homeownership program and to meet its audit responsibilities. All books and records must be subject to inspection and audit by HUD and the General Accounting Office (GAO). The PHA must report annually to HUD on the progress of each program approved under this part.

§ 906.35 Are the disposition provisions of section 18 of the United States Housing Act of 1937 applicable to a homeownership program?

The provisions of section 18 of the United States Housing Act of 1937 (42 U.S.C. 1437p) do not apply to disposition of public housing dwelling units under a homeownership program approved by HUD.

§ 906.37 What Davis-Bacon and HUD wage rate requirements apply to homeownership programs?

(a) *Type of activities covered.* Rehabilitation, repairs and accessibility modifications performed pursuant to § 906.7 are subject to Davis-Bacon or HUD-determined wage rate requirements when involving units that are:

(1) Public housing units that will be sold under a homeownership program; and

(2) Non-public housing units owned or acquired by a PHA with the intent to use 1937 Act funds to rehabilitate the units, finance the sale of the units, or otherwise provide assistance to purchasers of the units.

(b) *Type of workers covered.* These prevailing wage requirements cover laborers and mechanics involved in the construction work and technical workers, such as architects, technical engineers, draftsmen, and technicians. See §§ 968.110(e) and 968.105 of this title for further guidance concerning Davis-Bacon and HUD-determined wage rates.

Subpart E—Program Submission and Approval

§ 906.38 Does a PHA require HUD approval to implement a homeownership program under this part?

A PHA must obtain HUD approval before implementing a homeownership program. A homeownership program must be carried out in accordance with the requirements of this part and the PHA's plan submitted under part 903 of this title.

§ 906.39 What must a homeownership program include?

A homeownership program must include the following matters, as applicable to the particular factual situation:

(a) *Property description.* (1) If the program involves only financing assistance to the family purchasing the unit, the PHA need not specify property addresses, but it must describe the area in which the assistance is to be used.

(2) If the PHA is selling existing public housing, it must describe the property, including identification of the property by project number, or street address if there is no project number, and the specific dwellings to be sold, with bedroom distribution by size and type broken down by project.

(3) If the PHA is acquiring units with 1937 Act funds to sell under the program, it must comply with the provisions of § 906.40 concerning this element of the program.

(b) *Repair or rehabilitation.* If applicable, a plan for any repair or rehabilitation required under § 906.7, based on the assessment of the physical condition of the property that is included in the supporting documentation.

(c) *Purchaser eligibility and selection.* The standards and procedures to be used for homeownership applications and the eligibility and selection of purchasers, consistent with the requirements of § 906.15. If the homeownership program allows application for purchase of units by families who are not presently public housing or Section 8 residents and not already on the PHA's waiting lists for those programs, the program must include an affirmative fair housing marketing strategy for such families, including specific steps to inform them of their eligibility to apply, and to solicit applications from those in the housing market who are least likely to apply for the program without special outreach.

(d) *Sale and financing.* Terms and conditions of sale and financing.

(e) *Consultation with residents and purchasers.* A description of resident input obtained during the resident consultation process required by the PHA plan under part 903 of this title, and a plan for consultation with purchasers during the implementation stage to help insure program solvency.

(f) *Counseling.* Counseling, training, and technical assistance to be provided to purchasers.

(g) *Sale via PRE.* If the plan contemplates sale to residents by an entity other than the PHA, a description of that entity's responsibilities and information demonstrating that the requirements of § 906.19 have been met or will be met in a timely fashion.

(h) *Nonpurchasing residents.* If applicable, a plan for nonpurchasing residents, in accordance with § 906.23.

(i) *Sale proceeds.* An estimate of the sale proceeds and an explanation of how they will be used, in accordance with § 906.31.

(j) *Administration.* An administrative plan, including estimated staffing requirements and a listing of staff positions that will be responsible for the day-to-day implementation and monitoring of the program, the percentage of time each staff member will spend on homeownership activities and the funding source for staff salaries.

(k) *Records, accounts and reports.* A description of the recordkeeping, accounting and reporting procedures to be used, including those required by § 906.33.

(l) *Budget.* A budget estimate, showing any rehabilitation or repair cost, any financing assistance, and the costs of implementing the program, and the sources of the funds that will be used.

(m) *Timetable.* An estimated timetable for the major steps required to carry out the plan.

§ 906.40 What requirements apply to acquisition of non-public housing?

(a) *Proposal contents.* The PHA must submit an acquisition proposal to the HUD Field Office for review and approval before its homeownership plan containing acquisition of non-public housing can be approved. This proposal must contain the following:

(1) *Project description.* A description of the housing, including the number of units, unit types and number of bedrooms, and any nondwelling facilities of the project to be acquired;

(2) *Certification.* Certification by the PHA that the property was not constructed or is not being constructed with the intent that it would be sold to the PHA;

(3) *Site information.* A description of the proposed general location of the property to be acquired, or where specific properties have been identified, street addresses of the properties;

(4) *Project costs.* The detailed budget of costs for acquiring the project, including relocation and closing costs, and an identification of the sources of funding;

(5) *Appraisal.* An appraisal of the proposed property by an independent, state-certified appraiser (when the sites have been identified);

(6) *Project acquisition schedule.* A copy of the PHA acquisition schedule;

(7) *Environmental information.* All available environmental information on the properties to be acquired (when sites have been identified), to expedite the environmental review under part 58 of this title (if a responsible entity has assumed environmental responsibility for the project) or under part 50 of this title (if HUD is performing the environmental review);

(8) *Additional HUD-requested information.* Any additional information that may be needed for HUD to determine whether it can approve the proposal.

(b) *Cost limit.* The acquisition cost of the project is limited by the housing cost cap limit, as described in HUD Notice PIH 99–17, issued on March 15, 1999.

§ 906.41 What supporting documentation must be submitted to HUD with the homeownership program?

The following supporting documentation must be submitted to

HUD with the proposed homeownership program, as appropriate for the particular program:

(a) *Property value estimate.* An estimate of the fair market value of the property, including the range of fair market values of individual dwellings, with information to support the reasonableness of the estimate. (The purpose of this data is merely to assist HUD in determining whether, taking into consideration the estimated fair market value of the property, the plan adequately addresses any risks of fraud and abuse and of windfall profit upon resale, pursuant to § 906.27. A formal appraisal need not be submitted with the proposed homeownership program.)

(b) *Physical assessment.* An assessment of the physical condition of the property, based on the standards specified in § 906.7.

(c) *Workability.* An itemized statement demonstrating the practical workability of the program, based on analysis of data on such elements as purchase prices, costs of repair or rehabilitation, homeownership costs, family incomes, availability of financing, and the extent to which there are eligible residents who are expected to be interested in purchase. (See § 906.45(a).)

(d) *PHA performance in homeownership.* A statement of the commitment and capability of the PHA (and any other entity with substantial responsibility for implementing the homeownership program) to successfully carry out the homeownership program. The statement must describe the PHA's (and other entity's) past experience in carrying out homeownership programs for low income families, and (if applicable) its reasons for considering such programs to have been successful. A PHA that has not previously implemented a homeownership program for low income families instead must submit a statement describing its experience in carrying out public housing modernization and development projects under parts 941 and 968 of this title, respectively.

(e) *Nondiscrimination certification.* The PHA's or PRE's certification that it will administer the plan on a nondiscriminatory basis, in accordance with the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Executive Order 11063, and implementing regulations, and will assure compliance with those requirements by any other entity that may assume substantial responsibilities for implementing the program.

(f) *Legal opinion.* An opinion by legal counsel to the PHA, stating that counsel has reviewed the program and finds it consistent with all applicable requirements of Federal, State, and local law, including regulations as well as statutes. At a minimum, the attorney must certify that the documents to be used will fully implement the sale to a low-income family restriction of § 906.41(e), the resale reverter of § 906.41(d), and the restriction of use of resale proceeds of § 906.27.

(g) *Board resolution.* A resolution by the PHA's Board of Commissioners, evidencing its approval of the program.

(h) *Other information.* Any other information that may reasonably be required for HUD review of the program. Except for the PHA-HUD implementing agreement under § 906.49, HUD approval is not required for documents to be prepared and used by the PHA in implementing the program (such as contracts, applications, deeds, mortgages, promissory notes, and cooperative or condominium documents), if their essential terms and conditions are described in the program. Consequently, those documents need not be submitted as part of the program or the supporting documentation.

§ 906.43 Where does a PHA submit a homeownership program for HUD approval?

A PHA must submit its proposed homeownership program together with supporting documentation, in a format prescribed by HUD, to the Special Applications Center, 77 W. Jackson Street, Chicago, Illinois, with a copy to the appropriate HUD Field Office.

§ 906.45 What criteria will HUD use to review a homeownership program?

HUD will use the following criteria in reviewing a homeownership program:

(a) *Workability.* The program must be practically workable, with sound potential for long-term success. Financial viability, including the capability of purchasers to meet the financial obligations of homeownership, is a critical requirement.

(b) *Legality.* The program must be consistent with law, including the requirements of this part and any other applicable Federal, State, and local statutes and regulations, and existing contracts. Subject to the other two criteria stated in this section, any provision that is not contrary to those legal requirements may be included in the program, at the discretion of the PHA, whether or not expressly authorized in this part.

(c) *Documentation.* The program must be clear and complete enough to serve as a working document for implementation, as well as a basis for HUD review.

(d) *PHA performance in homeownership.* The PHA (and any other entity with substantial responsibility for implementing the homeownership program) must have demonstrated the commitment and capability to successfully implement the homeownership program based upon the criteria stated in 906.41(d).

§ 906.47 What environmental provisions apply?

(a) Generally, the environmental provisions applicable to HUD-financed programs are found in part 58 of this title (if a responsible entity has assumed environmental review responsibility for the project) and part 50 of this title (if HUD is performing the environmental review).

(b) Where the PHA's homeownership program involves no acquisition or rehabilitation of units in anticipation of the sale but assistance to the homebuyer will be provided with 1937 Act funds, an environmental review is not required under part 58 or part 50 of this title. However, the requirements of § 58.6 or § 50.19(b)(15) of this title are still applicable.

§ 906.49 How is HUD approval and authorization indicated?

HUD may approve a homeownership program as submitted or return it to the PHA for revision and resubmission. Upon HUD notification to the PHA that the homeownership program is approvable (in final form that satisfies all applicable requirements of this part), the PHA and HUD will execute a written implementing agreement, in a form prescribed by HUD, to evidence HUD approval and authorization for implementation. The program itself, as approved by HUD, must be incorporated in the implementing agreement. Any of the items of supporting documentation may also be incorporated, if agreeable to the PHA and HUD. The PHA is obligated to carry out the approved homeownership program and other provisions of the implementing agreement without modification, except with written approval by HUD.

Dated: August 27, 1999.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–23700 Filed 9–13–99; 8:45 am]

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September 14, 1999

Part VIII

Department of Housing and Urban Development

24 CFR Part 943

Consortia of Public Housing Agencies and Joint Ventures; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 943

[Docket No. FR–4474–P–01]

RIN 2577–AC00

Consortia of Public Housing Agencies and Joint Ventures

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a new statutory provision specifically authorizing public housing agencies (PHAs) to administer any or all of their housing programs through a consortium of PHAs. It also authorizes PHAs to use subsidiaries, joint ventures, partnerships or other business arrangements to administer its housing programs or to provide supportive or social services. The proposed rule specifies minimum requirements relating to formation and operation of consortia and minimum contents of consortium agreements, as required by the statute.

DATES: *Comments Due Date:* November 15, 1999.

ADDRESSES: Submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Rod Solomon, Deputy Assistant Secretary for Policy, Program, and Legislative Initiatives, Office of Public and Indian Housing, U.S. Department of Housing and Urban Development, at (202) 708–0713 or e-mail him at the following address: RodSolomon@hud.gov. The preceding telephone number is not toll-free. Persons with hearing or speech impairments may access the above telephone number via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Statutory Basis

Section 515 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, 112 Stat. 2549, approved October 21, 1998) (Public Housing Reform Act) repealed the existing section 13 of the United States Housing Act of 1937 (42 U.S.C. 1437k) dealing with energy conservation, replacing it with a new section 13 authorizing PHAs to operate in consortia and joint ventures. The statute requires that HUD specify minimum requirements relating to the formation and operation of consortia and minimum contents of consortium agreements.

New section 13 provides authority for PHAs to form consortia, joint ventures, affiliates, and subsidiaries for the purposes set out in the statute. Before enactment of section 13, some PHAs had established cooperative arrangements for carrying out some of their responsibilities. A principal difference between such arrangements and consortia as authorized under section 13, is that under section 13 funding may be directed to a representative of the consortium on behalf of several PHAs instead of being paid to the PHAs separately. Another major difference is that under a section 13 consortium, a joint PHA plan is submitted on behalf of participating PHAs. Enactment of section 13, however, does not restrict the ability of PHAs to continue to establish cooperative arrangements under which they receive funding separately and submit separate PHA plans.

II. Regulatory Interpretations

A. Consortia

1. HUD Programs Covered

Generally, this rule covers the public housing program, PHA-administered Section 8 housing assistance programs, and related programs. Programs not covered are other housing owned by the PHA and two categories of project-based Section 8 projects:

- PHA-administered project-based section 8 under the Request for Proposals published on May 19, 1999, 64 FR 27358 (HUD invited response by specially created consortia that could qualify as PHAs.); and
- Section 8 projects that are the subject of financing restructuring under the finance restructuring "Mark to Market" program, where Participating Administrative Entities are designated to administer the program (see 42 U.S.C. 1437f note).

2. General

HUD encourages PHAs to take advantage of the new authority to create consortia to operate their programs. This type of coordination may be particularly helpful for PHAs with small programs or ones whose location is not convenient to access planning resources. Acting together, PHAs should be able to access expertise not otherwise readily available and obtain significant cost savings. In addition, joint planning by PHAs in adjacent geographic areas will permit a metropolitan or regional perspective to be set out in a single PHA Annual Plan. This may facilitate reaching deconcentration and mobility goals for very low income families. Consequently, HUD has placed very few limits on the exercise of PHA discretion in implementing this statutory provision. Nothing in this rule, however, precludes PHAs from making other contractual arrangements for administration of their programs, consistent with program regulations and provisions of their Annual Contributions Contracts (ACCs) with HUD.

This rule provides for reporting by the consortium to HUD on behalf of participating PHAs (see § 943.124). HUD invites comments on whether all reports should be combined reports.

Under the Section 8 Voucher program, program regulations (24 CFR 982.4) already provide for using a consortium of PHAs and having a separate ACC with an entity authorized to act as legal representative of the consortium.

3. PHA Inclusion of Programs in a Consortium

The statute specifies that "any or all of the housing programs of [the PHAs]" may be administered by a consortium. HUD interprets the coverage to include a PHA's public housing and Section 8 programs, and related programs, such as the drug elimination program. When a PHA participates, it must decide which categories of its programs to include. For this purpose, the categories are as follows:

- Public housing;
- Section 8 voucher;
- Section 8 Moderate Rehabilitation, including Single Room Occupancy;
- All project-based Section 8 programs administered by a PHA under an ACC with HUD, except for Moderate Rehabilitation and Certificates and Vouchers;
- Grant programs associated with public housing and Section 8 housing programs (such as drug elimination)—unless use of a consortium would be inconsistent with the terms of the grant program.

The participating PHAs will designate a lead agency in the consortium agreement. The consortium agreement will specify the responsibilities of the lead PHA and other participating PHAs for administration of the consortium and for administration of the covered programs. To assure competency in the operation of the consortium, the rule requires that the lead agency for the consortium may not be one designated as troubled by HUD or one that fails the funding threshold on satisfaction of civil rights requirements.

4. Relationship of PHAs in Consortium

The period of existence of a consortium and the terms under which a PHA may withdraw from it before the end of that period must be specified in the consortium agreement. To provide for orderly transition, a PHA's withdrawal from a consortium or its natural termination date must take effect at the end of the consortium's fiscal year. Nothing in this rule affects HUD's authority to intervene, as necessary, to enforce its rights under the Annual Contributions Contract, if the actions of a consortium result in a default by a PHA.

5. HUD's Relationship to Consortium

The relationship between HUD and the consortium is to be specified in a payment agreement with the lead agency and the other participating PHAs. This agreement will specify the agreement for direct payment of program funds to the lead agency on behalf of the consortium and requirements for use of the funds in accordance with HUD regulations and requirements, and remedies for any breach of the obligation of the lead agency and participating PHAs to administer the combined program in accordance with HUD requirements.

B. Joint Ventures, Partnerships, Affiliates, and Subsidiaries

1. HUD Programs Covered

Although section 13 authorizes joint ventures, partnerships, affiliates, subsidiaries, and other business arrangements for all of a PHA's programs, this rule covers only the public housing program. PHAs engaged in Section 8 program administration are free to engage in such arrangements without any new regulatory restrictions. (In the Section 8 programs, the PHA is paid a fixed fee for administration of assistance to owners and is responsible for delivering the contract administration services, without either increase or reduction of the fixed fee). In the public housing program, special protections are imposed where physical assets are at risk, as in Part 941, Subpart F, for mixed finance development. This rule does not override those protections.

Section 13 authorizes the use of joint ventures, partnerships, or other business arrangements with persons or entities "with respect to administration of the programs of the [PHA]." In this proposed rule, HUD has chosen to limit the applicability of the joint venture subpart (Subpart C) and its associated special procurement flexibility to the public housing program. PHAs do not need the flexibility granted by this subpart for their Section 8 operations because they already have it. For example, Section 8 operations are not subject to the procurement provisions of 24 CFR part 85.

2. Procurement Provisions

To encourage PHAs to select the most qualified partners for joint ventures in administration of public housing, the rule clarifies the applicability of public housing procurement requirements (found in 24 CFR part 85) to these partners. For procurement of (a) supportive and social services, and (b) administrative functions, this rule provides that the standard requirements are applicable to the procurement of goods and services, but a PHA may consider factors other than price in selecting a partner under the conditions that would warrant sole source selection. (See § 943.150(b)). The rule also clarifies that a joint venture partner is not subject to standard procurement requirements in its activities unless the partner is a subsidiary, affiliate, or identity of interest party of the PHA. In that case, HUD may exempt the joint venture partner from compliance with the standard procurement requirements if the joint venture partner has an acceptable alternative procurement plan. A wholly owned subsidiary or affiliate of a PHA is not exempt in any way.

3. Impact on Existing Joint Venture Authority

This statute does not attempt to regulate a PHA's use of joint ventures, as may be permitted under State law, when using non-1937 Act funds. The rule (§ 943.140(c)) makes that clear.

Findings and Certifications

Public Reporting Burden

The proposed information collection requirements contained in §§ 943.124, 943.126, and 943.128 have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Submit comments on the information collections by November 15, 1999, referring to the title and docket number of the rule. Comments should be addressed to Mildred Hamman, Reports Liaison Officer, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

Comments are solicited from members of the public and affected entities concerning the proposed collection of information specifically to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

The burden of information is estimated as follows:

Section of CFR	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total annual hours
943.124 Consortium Agreement	40	1	40	8	320
943.126 Payment Agreement	40	1	40	4	160
943.126(a) Consolid. Plan;	Already included in burden estimates for PHA Plan under Part 903				

Section of CFR	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total annual hours
943.128(b) Consortium Reporting	40	1	40	8	320
Total					800

Impact on Small Entities

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that an agency analyze the impact of a rule on small entities whenever it determines that the rule is likely to have a significant impact on a substantial number of small entities. Based on HUD's experience and contacts with representatives of PHAs and HUD field offices, we expect a relatively small number of PHAs to form consortia—certainly fewer than 100. While there would be savings and efficiencies in the long run for small PHAs, forming a consortium also would require some work for these PHAs—to enter consortium agreements—and would required them to overcome resistance to giving up local control of their programs. Consequently, we conclude that the rule will not have a significant impact on a substantial number of small entities. We encourage small entities to submit comments, however, on ways that the impact of the rule on them could be made more advantageous.

Environmental Finding

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Regulations Division at the above address.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose a Federal mandate that will result in the expenditure by State, local, or tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year. On the contrary, it adds new options for PHA operations.

Regulatory Review

The Office of Management and Budget (OMB) has reviewed this proposed rule under Executive Order 12866, *Regulatory Planning and Review*, issued by the President on September 30, 1993. OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made in this proposed rule after its submission to OMB are identified in the docket file, which is available for public inspection during regular business hours in the Regulations Division, Office of General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

Catalog

The Catalog of Federal Domestic Assistance number for the programs covered by this rule are 14.850, 14.855, and 14.857.

List of Subjects in 24 CFR 943

Low and moderate income housing, Reporting and recordkeeping requirements.

Accordingly, HUD proposes to add a new part 943 to title 24 of the Code of Federal Regulations as follows:

PART 943— PUBLIC HOUSING AGENCY CONSORTIA AND JOINT VENTURES

Sec.

Subpart A—General

943.100 What is the purpose of this part?

Subpart B—Consortia

943.115 What programs are covered under this subpart?
943.118 What is a consortium?
943.120 What programs of a PHA are included in a consortium's functions?
943.122 How is a consortium organized?
943.124 What elements must a consortium agreement contain?
943.126 What is the relationship between HUD and a consortium?
943.128 How does a consortium carry out planning and reporting functions?
943.130 What are the responsibilities of participating PHAs?

Subpart C—Subsidiaries, Affiliates, Joint Ventures in Public Housing

943.140 What programs and activities are covered by this subpart?
943.142 In what types of operating organizations may a PHA participate?
943.144 What financial impact do operations of a subsidiary, affiliate, or joint venture operations have on a PHA?
943.146 What impact does the use of a subsidiary, affiliate, or joint venture have on financial accountability to HUD and the Federal government?
943.148 What procurement standards apply to PHAs selecting partners for a joint venture?
943.150 What procurement standards apply to a PHA's joint venture partner?
943.151 What procurement standards apply to a joint venture itself?

Authority: 42 U.S.C. 1437k and 3535(d).

Subpart A—General

§ 943.100 What is the purpose of this part?

This part authorizes public housing agencies (PHAs) to form consortia, joint ventures, affiliates, subsidiaries, partnerships, and other business arrangements under section 13 of the United States Housing Act of 1937 (42 U.S.C. 1437k). Under this authority, participating PHAs submit joint PHA plans to HUD and combine their funding and program administration. This part does not preclude a PHA from entering cooperative arrangements to operate its programs under other authority, as long as they are consistent with other program regulations and requirements.

Subpart B—Consortia

§ 943.115 What programs are covered under this subpart?

(a) Except as provided in paragraph (b) of this section, this subpart applies to the following:

(1) PHA administration of public housing or Section 8 programs under an ACC with HUD; and

(2) PHA administration of grants to the PHA in connection with its public housing or Section 8 programs.

(b) This subpart does not apply to the following:

(1) PHA administration of Section 8 projects assigned to a PHA for contract administration pursuant to an ACC entered under the Request for Proposals published May 19, 1999 (64 FR 27358);

(2) Section 8 contract administration of a restructured subsidized multifamily project by a Participating Administrative Entity in accordance with part 401 of this title; or

(3) A PHA in its capacity as owner of a Section 8 project.

§ 943.118 What is a consortium?

A consortium consists of two or more PHAs that join together to perform planning, reporting, and other administrative functions for participating PHAs, as specified in a consortium agreement. The lead agency collects the assistance funds from HUD that would be paid to the participating PHAs for the elements of their operations that are administered by the consortium and allocates them according to the consortium agreement. A consortium also submits a joint PHA plan.

§ 943.120 What programs of a PHA are included in a consortium's functions?

(a) A PHA may enter a consortium under this subpart for administration of any of the following program categories:

(1) The PHA's public housing program;

(2) The PHA's Section 8 voucher and certificate program (including the project-based certificate and voucher programs);

(3) The PHA's Section 8 Moderate Rehabilitation program, including Single Room Occupancy program;

(4) All other project-based Section 8 programs administered by the PHA under an Annual Contributions Contract (ACC) with HUD, except for Moderate Rehabilitation and Certificates and Vouchers; and

(5) Any grants to the PHA in connection with its Section 8 or public housing programs, to the extent not inconsistent with the terms of the governing documents for the grant's funding source.

(b) If a PHA elects to enter a consortium with respect to a program category specified in paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this section, the consortium must cover the PHA's whole program under the ACC with HUD for that program category, including all dwelling units and all funding for that program under the ACC with HUD.

§ 943.122 How is a consortium organized?

(a) PHAs that elect to form a consortium enter into a consortium agreement among the participating PHAs, specifying a lead agency (see § 943.124). HUD enters into a payment agreement with the lead agency and the other participating PHAs (see § 943.126).

(b) The lead agency must not be a PHA that is designated as a "troubled PHA" by HUD or that has been determined by HUD to fail the civil rights compliance threshold for new funding. The lead agency is designated to receive HUD program payments on behalf of participating PHAs, to administer HUD requirements for administration of the funds, and to apply the funds in accordance with the consortium agreement and HUD regulations and requirements.

§ 943.124 What elements must a consortium agreement contain?

(a) The consortium agreement among the participating PHAs governs the formation and operation of the consortium. It must be consistent with the consortium's payment agreement with HUD and must specify the following:

(1) The names of the participating PHAs and the program categories each PHA is including under the consortium agreement;

(2) The name of the lead agency;

(3) The functions to be performed by the lead agency and the other participating PHAs during the term of the payment agreement;

(4) The allocation of funds among participating PHAs and responsibility for administration of funds paid to the consortium under the payment agreement; and

(5) The period of existence of the consortium and the terms under which a PHA may withdraw from it before the end of that period. To provide for orderly transition, the consortium's termination date or a PHA's withdrawal from the consortium must take effect at the end of the consortium's fiscal year.

(b) The agreement must acknowledge that the participating PHAs are subject to the requirements of the joint PHA Plan.

(c) The agreement must be signed by an authorized representative of each participating PHA.

§ 943.126 What is the relationship between HUD and a consortium?

(a) HUD has a direct relationship with the consortium through a payment agreement, executed in the form prescribed by HUD. The payment agreement specifies the conditions under which HUD agrees to pay program funds to the lead agency on behalf of the participating PHAs. It specifies the requirements for use of the funds in accordance with HUD regulations and requirements.

(b) Under the payment agreement, the participating PHAs agree that HUD will pay the consortium all assistance payments otherwise payable to the PHAs for the program categories they have included under the consortium agreement. The combined amount is paid to the lead agency on behalf of the consortium.

§ 943.128 How does a consortium carry out planning and reporting functions?

(a) During the term of the payment agreement, the consortium must complete a joint five-year Plan and a joint Annual Plan for all participating PHAs, in accordance with part 903 of this chapter.

(b) The consortium must submit reports to HUD, in accordance with HUD regulations and requirements, for all of the participating PHAs. All PHAs will be bound by plans and reports submitted to HUD by the consortium for programs covered by the consortium.

(c) Each PHA must keep a copy of the consortium agreement on file for inspection.

§ 943.130 What are the responsibilities of participating PHAs?

Despite participation in a consortium, each participating PHA remains responsible for its own obligations under its ACC with HUD. This means that it has an obligation to assure that all program funds, including funds paid to the lead agency for administration by the consortium, are used in accordance with HUD regulations and requirements, and that the PHA program is administered in accordance with HUD regulations and requirements. Any breach of program requirements with respect to a program covered by the consortium agreement is a breach of the ACC with each of the participating PHAs, so each PHA is responsible for the performance of the consortium.

Subpart C—Subsidiaries, Affiliates, Joint Ventures in Public Housing

§ 943.140 What programs and activities are covered by this subpart?

(a) This subpart applies to the provision of a PHA's public housing administrative functions, and to the provision (or arranging for the provision) of supportive and social services in connection with public housing. It does not apply to activities of a PHA that are subject to the

requirements of part 941, subpart F, of this title.

(b) For purposes of this subpart, the term "joint venture partner" means a participant (other than a PHA) in a joint venture, partnership, or other business arrangement or contract for services with a PHA.

(c) This part does not affect a PHA's authority to use joint ventures, as may be permitted under State law, when using non-1937 Act funds.

§ 943.142 In what types of operating organizations may a PHA participate?

(a) A PHA may create and operate a wholly owned or controlled subsidiary or other affiliate; may enter into joint ventures, partnerships, or other business arrangements with individuals, organizations, entities, or governmental units. A subsidiary or affiliate may be a nonprofit corporation. It may be an organization controlled by the same persons who serve on the governing board of the PHA or who are employees of the PHA.

(b) The purpose of any of these operating organizations would be to administer programs of the PHA.

§ 943.144 What financial impact do operations of a subsidiary, affiliate, or joint venture have on a PHA?

Income generated by subsidiaries, affiliates, or joint ventures formed under the authority of this subpart is to be used for low-income housing or to benefit the residents assisted by the PHA. This income will not cause a decrease in funding provided under the public housing program except as otherwise provided under the Operating Fund and Capital Fund formulas.

§ 943.146 What impact does the use of a subsidiary, affiliate, or joint venture have on financial accountability to HUD and the Federal government?

None. The subsidiary, affiliate, or joint venture is subject to the same authority of HUD, HUD's Inspector General, and the General Accounting Office to audit its conduct.

§ 943.148 What procurement standards apply to PHAs selecting partners for a joint venture?

(a) The requirements of part 85 of this title (generally requiring a request for proposals or "RFP") are applicable to a PHA's procurement of goods and services under this subpart in connection with the PHA's public housing program.

(b) A PHA may use competitive proposal procedures for qualifications-based procurement (request for qualifications or "RFQ") or may solicit a proposal from only one source ("sole source") to select a joint venture partner to perform an administrative function of its public housing program or to provide or arrange to provide supportive or social services covered under this part under the following circumstances:

(1) The proposed joint venture partner has under its control and will make available to the partnership substantial, unique and tangible resources or other benefits that would not otherwise be available to the PHA on the open market (e.g., planning expertise, program experience, or financial or other resources). In this case, the PHA must maintain documentation to substantiate both the cost reasonableness of its selection of the proposed partner and the unique qualifications of the partner: or

(2) A resident group or a PHA subsidiary is willing and able to act as the PHA's partner in performing administrative functions or to provide supportive or social services. This entity must comply with the requirements of part 85 of this title with respect to its selection of the members of the team and the members must be paid on a cost-reimbursement basis only.

§ 943.150 What procurement standards apply to a PHA's joint venture partner?

(a) *General.* A joint venture partner is not a grantee or subgrantee and, accordingly, is not required to comply with part 85 of this title in its procurement of goods and services under this part. The partner must comply with all applicable State and local procurement and conflict of interest requirements with respect to its selection of entities to assist in PHA program administration.

(b) *Exception.* If the joint venture partner is a subsidiary, affiliate, or identity of interest party of the PHA, it is subject to the requirements of part 85 of this title. HUD may, on a case-by-case basis, exempt such a joint venture partner from the need to comply with requirements under part 85 of this title if it determines that the joint venture has developed an acceptable alternative procurement plan.

(c) *Contracting with identity-of-interest parties.* A joint venture partner may contract with an identity-of-interest party for goods or services, or a party specified in the selected bidder's response to a RFP or RFQ (as applicable), without the need for further procurement if:

(1) The PHA can demonstrate that its original competitive selection of the partner clearly anticipated the later provision of such goods or services;

(2) Compensation of all identity-of-interest parties is structured to ensure there is no duplication of profit or expenses; and

(3) The PHA can demonstrate that its selection is reasonable based upon prevailing market costs and standards, and that the quality and timeliness of the goods or services is comparable to that available in the open market. For purposes of this paragraph (c), an "identity-of-interest party" means a party that is wholly owned or controlled by, or that is otherwise affiliated with, the partner or the PHA. The PHA may use an independent organization experienced in cost valuation to determine the cost reasonableness of the proposed contracts.

§ 943.151 What procurement standards apply to a joint venture itself?

(a) When the joint venture as a whole is controlled by the PHA or an identity of interest party of the PHA, the joint venture is subject to the requirements of part 85 of this title.

(b) If a joint venture is not controlled by the PHA or an identity of interest party of the PHA, then the rules that apply to the other partners apply. See § 943.150.

Dated: August 27, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–23701 Filed 9–13–99; 8:45 am]

BILLING CODE 4210–33–P

federal register

Tuesday
September 14, 1999

Part IX

Department of Housing and Urban Development

Notice of Opportunity To Apply To Serve on the U.S.-China Residential Building Council; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4534–N–01]

Notice of Opportunity to Apply to Serve on the U.S.-China Residential Building Council

AGENCY: Office of International Affairs, HUD.

ACTION: Notice.

SUMMARY: In June, 1998, President Clinton announced the formation of the U.S.-China Residential Building Council to support the U.S.-China Housing Initiative. This notice announces the opportunity for individuals to apply to serve on the U.S.-China Residential Building Council and announces the Council's selection and eligibility requirements.

DATES: In order to receive full consideration, requests must be received by HUD no later than September 24, 1999.

ADDRESSES: Please send your requests for consideration to U.S.-China Residential Building Council, U.S. Department of Housing and Urban Development, Office of International Affairs, Room 8118, 451 Seventh Street, SW, Washington, DC 20410. You may fax your request to (202) 708–5536 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Daisy Gordon or John Geraghty, U.S. Department of Housing and Urban Development, Office of International Affairs, Room 8118, 451 Seventh Street, SW, Washington, DC 20410, (202) 708–0770 telephone, (202) 708–5536 fax (these are not toll-free numbers). Hearing or speech-impaired persons may access the above telephone number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Background

The U.S.-China Housing Initiative was designed to facilitate cooperation between U.S. and Chinese housing practitioners in the privatization and development of the Chinese housing sector. To guide and support the U.S.-China Housing Initiative, President Clinton announced the formation of the U.S.-China Residential Building Council during the U.S. China Presidential Summit in June of last year. Since that announcement, U.S. and Chinese officials have agreed on a structure for the Council and on the mutually beneficial areas of cooperation.

The Department of Housing and Urban Development is seeking individuals who would like to serve on the U.S.-China Residential Building Council. Applicants may represent U.S. companies, associations or non-governmental organizations actively engaged in the housing industry. The Council will be made up of U.S. and Chinese representatives of the housing policy, finance, and construction sectors. The work of the Council will focus on the development of residential housing markets, construction and mortgage industries, and housing finance systems, and on formulating innovative policies and practices in the areas of community development and urban design.

Members will serve on the Council for a two-year term at the discretion of the appointing officials. Members are expected to participate fully in defining the agenda for the Initiative and in implementing its work programs. It is expected that individuals chosen for the Council will attend at least 75 percent of Council meetings, which will be held in the United States and China. Members are fully responsible for travel, accommodation, and personal expenses associated with their participation in the Residential Building Council. The members will serve in a representative capacity presenting the views and interests of the particular business or housing sector in which they operate.

The U.S.-China Residential Building Council encourages the development of a housing industry in China and increased bilateral educational exchange, trade and investment including, but not limited to, the following:

—Implementing housing finance, planning, design, and building technology seminars, technical exchange, and pilot tests to support reform efforts.
—Adopting sectoral or project oriented approaches to support China's residential housing reform efforts.
—Implementing trade/business development and promotion programs including trade missions, technical assistance, conferences, exhibits, seminars, and other events.

Selection and Eligibility Requirements

There are twelve available positions on the U.S. side of the Residential Business Council. This notice is seeking individuals to fill all twelve positions. The number of Council positions may be expanded, should the need arise.

Applicants must:

—Be a U.S. citizen residing in the United States or a permanent United States resident;
—Be a CEO or other senior management employee of a U.S. company, association, or nonprofit organization involved in the residential housing construction, supply, finance, community development, or urban planning sectors; and
—Not be a registered foreign agent under the Foreign Agents Registration Act of 1938.

In reviewing eligible applicants, the Department of Housing and Urban Development will consider:

—The applicant's expertise in construction building materials, housing policy, mortgage finance, urban planning or community development;
—Readiness to initiate and be responsible for the activities the Council proposes to take on;
—An ability to contribute in light of overall Council composition; and
—Diversity of company or organization size, type, location, and demographics.

To be considered for membership, please provide the following:

—Name and title of the individual requesting consideration;
—Name and address of the company or association that the individual will represent;
—The company or organization's specific product or service area;
—Size of the company or organization; and
—The company or organization's international expertise and major countries of operation.

Please also provide:

—A brief statement on why each candidate should be considered for membership on the Council;
—The individual's international expertise and major countries of operation;
—The particular segment of the housing industry each candidate would represent;
—A personal resume; and
—A statement that the applicant is not a registered foreign agent under the Foreign Agents Registration Act.

This notice supplements the application process initiated by the **Federal Register** notice of March 5, 1999 (64 FR 10621). Applications from individuals who applied to the Council in response to that notice remain active, and those individuals do not need to re-apply.

Dated: September 9, 1999.

Xavier Briggs,

Deputy Assistant Secretary for Research, Evaluation, and Monitoring.

[FR Doc. 99–23894 Filed 9–13–99; 8:45 am]

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federal register

Tuesday
September 14, 1999

Part X

Department of Defense General Services Administration National Aeronautics and Space Administration

48 CFR Parts 8 and 38
Federal Acquisition Regulation; Federal Supply Schedules Small Business Opportunities; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 8 and 38

[FAR Case 98–609]

RIN 9000–AI48

Federal Acquisition Regulation; Federal Supply Schedules Small Business Opportunities

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to enhance the participation of small business concerns under the Federal Supply Schedules Program.

DATES: Comments should be submitted on or before November 15, 1999 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Address e-mail comments submitted via the Internet to farcase.98–609@gsa.gov.

Please cite FAR case 98–609 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501–1900. Please cite FAR case 98–609.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule recommends amending FAR Part 8 to encourage ordering offices to consider small businesses when conducting evaluations before placing an order. The rule also recognizes the recent change made by the Small Business Administration whereby agencies are required, beginning in fiscal year 1999, to include in their procurement base and goals, the dollar value of orders expected to be placed against the General Services Administration's (GSA) Federal Supply Service (FSS) Schedules, and to report accomplishments against these goals. The rule also proposes to amend FAR Part 38 to reaffirm that the General Services Administration and agencies delegated the authority to establish a Federal Supply Schedule must comply with all statutory and regulatory requirements before a solicitation is issued. In addition, the rule proposes several minor revisions.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This proposed rule is expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because more orders placed against Federal Supply Schedules may be awarded to small business concerns. Since this may result in a positive impact on small entities, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

The objective of the rule is to ensure that small business concerns have the maximum practicable opportunity to compete in Federal Supply Schedule acquisitions. According to statistical data maintained by the General Services Administration's Federal Supply Service, there are 4,900 Federal Supply Schedule contracts that are in effect with small business concerns out of a population of 7,000 national scope schedule contracts. Approximately 70 percent of the schedule contractors are small business concerns. In fiscal year 1998, small business schedule contractors received approximately $2.5 billion, or 33 percent, of total schedule sales. The proposed rule encourages ordering offices to consider the availability of small business concerns under the schedule and encourages the consideration of such firms when conducting evaluations before placing an order.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR Subparts 8 and 38 in accordance with 5 U.S.C. 610. Comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 98–609), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 8 and 38:

Government procurement.

Dated: September 7, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR Parts 8 and 38 be amended as set forth below:

1. The authority citation for 48 CFR parts 8 and 38 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Revise section 8.402 to read as follows:

8.402 Applicability.

Procedures in this subpart apply to orders placed against Federal Supply Schedules. Occasionally, GSA may establish special ordering procedures. The affected Federal Supply Schedules will outline these procedures.

3. In section 8.404—

a. Revise paragraph (a);

b. Remove from paragraph (b)(1) "Ordering Offices can place" and add "Place" in its place;

c. Revise the introductory text of paragraph (b)(2);

d. Revise paragraph (b)(2)(i);

e. Remove from the introductory text of paragraph (b)(3) ", ordering offices shall";

f. Revise paragraph (b)(3)(i);

g. Revise the first sentence in paragraph (b)(3)(iii); and

h. Revise paragraphs (b)(4), (b)(5), and (b)(6) to read as follows:

§ 8.404 Using schedules.

(a) General. Parts 13 and 19 do not apply to orders placed against Federal Supply Schedules, except for the provision at 13.303–2(c)(3). Orders placed against a Multiple Award Schedule (MAS), using the procedures in this subpart, are considered to be issued using full and open competition (see 6.102(d)(3)). Therefore, ordering offices need not seek further competition, synopsize the requirement, make a separate determination of fair and reasonable pricing, or consider small business programs. GSA has already determined the prices of items under schedule contracts to be fair and reasonable. By placing an order against a schedule using the procedures in this section, the ordering office has concluded that the order represents the best value and results in the lowest overall cost alternative (considering price, special features, administrative costs, etc.) to meet the Government's needs.

(b) * * *

(2) *Orders exceeding the micro-purchase threshold but not exceeding the maximum order threshold.* Place orders with the schedule contractor that can provide the supply or service that represents the best value. Consider reasonably available information about the supply or service offered under MAS contracts by using the "GSA Advantage!" on-line shopping service, or by reviewing the catalogs or pricelists of at least three schedule contractors (see 8.404(b)(6)). Select the delivery and other options available under the schedule that meet the agency's needs. When selecting the supply or service representing the best value, consider—

(i) Special features of the supply or service required for effective program performance;

* * * * *

(3) * * *

(i) Review additional schedule contractors' catalogs or pricelists, or use the "GSA Advantage!" on-line shopping service;

* * * * *

(iii) After seeking price reductions, place the order with the schedule contractor that provides the best value and results in the lowest overall cost alternative (see 8.404(a)). * * *

(4) *Blanket purchase agreements (BPAs).* Agencies may establish BPAs (see 13.303–2(c)(3)) when following the ordering procedures in this subpart. All schedule contracts contain BPA provisions. Ordering offices may use BPAs to establish accounts with contractors to fill recurring requirements. BPAs should address ordering frequency, invoicing, discounts, and delivery locations and times.

(5) *Price reductions.* In addition to the circumstances in paragraph (b)(3) of this section, there may be other reasons to request a price reduction. For example, seek a price reduction when the supply or service is available elsewhere at a lower price or when establishing a BPA to fill recurring requirements. The potential volume of orders under BPAs, regardless of the size of the individual order, offer the opportunity to secure greater discounts. Schedule contractors are not required to pass on to all schedule users a price reduction extended only to an individual agency for a specific order.

(6) *Small business.* When conducting evaluations and before placing an order, consider including, if available, one or more small, small women-owned and or small disadvantaged business schedule contractor(s). Orders placed against the schedules may be credited toward the ordering agency's small business goals. For orders exceeding the micro-purchase threshold, ordering offices should give preference to the items of small business concerns when two or more items at the same delivered price will satisfy the requirement.

* * * * *

PART 38—FEDERAL SUPPLY SCHEDULE CONTRACTING

4. Revise section 38.101 to read as follows:

38.101 General.

(a) The Federal Supply Schedule program, pursuant to 41 U.S.C. 259(b)(3), provides Federal agencies with a simplified process of of acquiring commonly used supplies and services in varying quantities while obtaining volume discounts. Indenfinite-delivery contracts (including requirements contracts) are awarded using competitive procedures to commercial firms. The firms provide supplies and services at stated prices for given periods of time, for delivery within a stated geographic area such as the 48 continguous states, the District of Columbia, Alaska, Hawaii, and overseas. The schedule contracting office issues Federal Supply Schedules that contain information needed for placing orders.

(b) Each schedule identifies agencies that are required to use the contracts as primary sources of supply.

(c) Federal agencies not identified in the schedules as mandatory users (see 8.404–2) may issue orders under the schedules. Contractors are encouraged to accept the orders.

(d) Although GSA awards most Federal Supply contracts, it may authorize other agencies to award schedule contracts and publish schedules. For example, the Department of Veterans Affairs awards schedule contracts for certain medical and nonperisable subsistence items.

(e) When establishing Federal Supply Schedules, GSA, or an agency delegated that authority, is responsible for complying with all applicable statutory and regulatory requirements (*e.g.*, parts 5, 6, and 19). The requirements of parts 5, 6, and 19 apply at the acquisition planning stage prior to issuing the schedule soliciation and do not apply to orders and BPAs placed under resulting schedule contracts (see 8.404).

[FR Doc. 99–23828 Filed 9–13–99; 8:45 am]

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federal register

Tuesday
September 14, 1999

Part XI

Department of Justice

28 CFR Part 32

Public Safety Officers' Educational Assistance Program; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Justice Assistance; Public Safety Officers' Educational Assistance Program

28 CFR Part 32

[OJP(BJA)–1216f]

RIN 1121–AA51

AGENCY: Office of Justice Programs, Bureau of Justice Assistance, Public Safety Officers' Benefits Office, Justice.

ACTION: Final rule.

SUMMARY: The Bureau of Justice Assistance (BJA) is amending the regulation on Federal Law Enforcement Dependents Assistance (FLEDA) to effectuate changes made to FLEDA's underlying statutory authority by the Police, Fire, and Emergency Officers' Educational Assistance Act of 1998. These amendments expand the FLEDA program to authorize financial educational assistance to the dependents of all public safety officers whose deaths or permanent disabilities resulted in the payment of benefits under the Public Safety Officers' Benefits (PSOB) Program.

EFFECTIVE DATE: September 14, 1999.

FOR FURTHER INFORMATION CONTACT: Ashton Flemmings, Chief, Public Safety Officers' Benefits Office, 810 7th Street, N.W., Washington, D.C. 20531. Telephone: (202) 307–0635 or toll free at 1–888–744–6513.

SUPPLEMENTARY INFORMATION:

The Bureau of Justice Assistance (BJA) is amending the regulation governing the Federal Law Enforcement Dependents' Assistance (FLEDA) program, found at 28 CFR Part 32, Subpart B, to comply with the amendments to Title I of the Omnibus Crime Control and Safe Streets Act its authorizing statute, 42 U.S.C. 3796 *et seq.*, by the Police, Fire, and Emergency Officers' Educational Assistance Act of 1998, Public Law 104–238, 112 Stat. 3495, (November 13, 1998), (hereinafter the Public Safety Officers' Educational Assistance Act or PSOEA Act). On May 25, 1999, in 64 FR 28123, BJA proposed these amendments, and invited comments from the public, asking that they be submitted no later than July 9, 1999. Only one comment was received. One State's Department of Corrections wrote in to offer its strongest support for the passage of the PSOEA Act. Consequently, these proposed amendments are being adopted as final with no further change.

The PSOEA Act expands the scope of eligibility for financial assistance for higher education to the dependents of all public safety officers, including Federal firefighters and state and local officers, who are killed or permanently and totally disabled in the line of duty. Previously, the FLEDA program only made available financial assistance for higher education to the dependents of Federal law enforcement officers who were killed or permanently and totally disabled in the line of duty. The amendments to this subpart, in accordance with the PSOEA Act, will allow the spouses and children of all public safety officers who are killed or permanently and totally disabled in the line of duty, and with respect to whom a claim has been approved under the Public Safety Officers' Benefits (PSOB) program, to receive these educational benefits.

This program will continue to recognize the sacrifices and invaluable contributions made to the nation's safety by all public safety officers through the availability of this assistance. The program authorizes the payment of benefits to eligible dependents for attendance only at an approved program of education at institutions for higher education. The standards regarding eligible institutions and the calculation of education benefits remain unchanged from the standards currently used under the FLEDA program, and readers are encouraged to consult the preamble to the FLEDA final rule at 62 FR 37713, July 15, 1997, for a detailed discussion of the operation and mechanics of the program.

Below is an explanation of how the regulation is changed by these amendments:

1. To reflect the expansion of the program, the name of the program is being changed from the "Federal Law Enforcement Dependents' Assistance" (FLEDA) program to the "Public Safety Officers' Educational Assistance" (PSOEA) program.

2. All references in subpart B to "Civilian federal law enforcement" or "Federal law enforcement" are changed to "public safety."

3. Section 32.37 of the regulation is changed to comply with the mandate of section 2(4) of the PSOEA Act, which requires the issuance of regulations regarding the use of "sliding scale based on financial need to ensure that an eligible dependent who is in financial need receives priority in receiving funds" under this program. In accordance with this section, BJA will calculate the amount of assistance, if needed, in such a manner so to ensure those applicants who are in the greatest financial need, *i.e.*, would be unable to attend a program of study at a qualified institution of higher education in the absence of some measure of assistance, receive an amount that would allow them to do so and to which they would otherwise be entitled to under this provision. While the PSOEA Act requires, if needed, reduction of the total amount of assistance by the amount calculated using the sliding scale, it is anticipated that no such reduction will be necessary, and that all eligible dependents will be able to receive the total amount of benefits for which they qualify. In order to do this, applicants may submit a statement of financial need, with documentation of such need, including information regarding all assets and sources of income, such as the Internal Revenue Service's form 1040. If the student is dependent on his or her parents for support, information regarding the parents' income and assets may be required. This information will only be used to give priority in awarding funds in the event that it appears that amounts appropriated for the program are not sufficient to allow for all eligible applicants to receive the total amount for which they qualify.

4. Retroactive eligibility to on or after May 1, 1992 will continue for the dependents of Federal law enforcement officers killed in the line of duty. The dependents of Federal law enforcement officers, who were permanently and totally disabled in the line of duty, are entitled to receive benefits under this program if the disability occurred on or after October 1, 1996, the date of the enactment of the original authorizing legislation for FLEDA. The dependents of all other public safety officers, consistent with the authorization, will be eligible for benefits on a retroactive basis if the public safety officer was killed in the line of duty on or after October 1, 1997. The regulations are being amended at section 32.35(a) to reflect this allowance.

Executive Order 12866

This regulation has been written and reviewed in accordance with Executive Order 12866, Sec. 1(b), Principles of Regulation. The Office of Justice Programs has determined that this rule is not a "significant regulatory action" under Executive Order 12866, Sec. 3(f), Regulatory Planning and Review, and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Administrative Procedure Act

This rule expands the scope of eligibility for financial educational assistance to dependents under the PSOB program. Further, this rule imposes no new restrictions. Accordingly, the Bureau of Justice Assistance finds good cause for exempting this rule from the provision of the Administrative Procedure Act, 5 U.S.C. 553, requiring delay in effective date.

Regulatory Flexibility Act

The Office of Justice Programs, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: The FLEDA program will be administered by the Office of Justice Programs, and any funds distributed under it shall be distributed to individuals, not entities, and the economic impact is limited to the Office of Justice Program's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private section, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by Sec. 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act

The collection of information requirements contained in the regulation have been approved by the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (44 U.S.C. 3504(h)). In accordance with 5 CFR 1320.5(b), the OMB control number pertaining to the collection of information is 1121–0220.

List of Subjects in 28 CFR Part 32

Administrative practice and procedure, Claims, Disability benefits, Law enforcement officers.

For the reasons set out in the preamble, the Bureau of Justice Assistance amends 28 CFR part 32 as follows:

PART 32—PUBLIC SAFETY OFFICER'S DEATH AND DISABILITY BENEFITS

1. The authority citation for Part 32 continues to read as follows:

Authority: Part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (42 U.S.C. § 3711 *et seq.*)

Subpart B—[Amended]

2. The heading of Subpart B is amended by revising "Federal Law Enforcement Dependents" to read "Public Safety Officers' Educational".

3. Section 32.31 is revised to read as follows:

§ 32.31 Purpose.

This subpart implements the Federal Law Enforcement Dependents Assistance Act of 1996, as amended by the Police, Fire, and Emergency Assistance Act of 1998, which authorizes the payment of financial assistance for the purpose of higher education to the dependents of public safety officers who are found, under the provisions of subpart A of this part, to have died as a direct and proximate result of a personal injury sustained in the line of duty, or to have been permanently and totally disabled as the direct result of a catastrophic injury sustained in the line of duty.

4. Section 32.32 is amended by revising paragraphs (a), (b)(3), (c), (d), and (f) to read as follows:

§ 32.32 Definitions.

* * * * *

(a) The *Act* means the Federal Law Enforcement Dependents Assistance Act of 1996, Public Law 104–238, Oct. 3, 1996, as amended by the Police, Fire, and Emergency Assistance Act of 1998, Public Law 104–238, codified as Subpart 2 of Part L of title I of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3796d *et seq.*

(b) * * *

(3) *PSOEA* means the Public Safety Officers' Educational Assistance program administered by the Bureau under this subpart.

(c) *Public safety officer* is an officer as defined in § 32.2(j), with respect to whom PSOB benefits have been approved under subpart A of this part on account of the officer's death or disability in the line of duty.

(d) *Child* means any person who was the biological, adopted, or posthumous child, or the stepchild, of a public safety officer at the time of the officer's death or disabling injury with respect to which PSOB benefits were approved under subpart A of this part. A step-child must meet the provisions set forth in § 32.15.

* * * * *

(f) *Dependent* means the child or spouse of any eligible public safety officer.

* * * * *

5. Section 32.33 is amended by revising paragraph(a)(1) to read as follows:

§ 32.33 Eligibility for assistance.

(a) * * *

(1) The child of any public safety officer with respect to whom PSOB benefits have been approved under subpart A of this part;

* * * * *

6. Section 32.34 is amended by revising paragraph (b)(2) to read as follows:

§ 32.34 Application for assistance.

* * * * *

(b) * * *

(2) In the case of a disabled public safety officer approved for PSOB benefits under subpart A of this part, applicants for assistance under this subpart must submit birth or marriage certificates or other proof of relationship consistent with §§ 32.12 (spouse) and 32.13 (child), if such evidence had not been submitted with respect to the PSOB claim.

* * * * *

7. Section 32.35 is amended by revising paragraph (a) to read as follows:

§ 32.35 Retroactive benefits.

(a) Each dependent of a Federal law enforcement officer killed in the line of duty on or after May 1, 1992, or permanently and totally disabled in the line of duty on or after October 3, 1996, and each dependent of a public safety officer killed in the line of duty on or after October 1, 1997, shall be eligible for assistance, on the same basis and subject to the limitations of this subpart,

for each month in which the dependent had pursued a program of education at an eligible educational institution.

* * * * *

8. Section 32.37 is amended by revising paragraph (c) and adding a new paragraph (d) to read as follows:

§ 32.37 Determination of benefits.

* * * * *

(c) Benefits payable under this subpart shall be in addition to any other benefit that may be due from any other source, except that, if the PSOEA assistance in combination with other benefits would exceed the total approved costs for the applicant's program of education, the assistance under this subpart will be reduced by the amount of such excess.

(d) Benefits will be calculated in such a manner so as to ensure those applicants who qualify for benefits, and who are in financial need, i.e. would be unable to attend a program of study at a qualified institution of higher education in the absence of the total benefit for which they qualify, receive priority in receiving the authorized assistance. Those qualified applicants who are in financial need, as determined by BJA, will receive an amount of benefits to which they are entitled, and which allow them to attend the approved program of study. Those qualified applicants whose attendance at a program of study at an institution of higher education is not contingent on the award of benefits under this part, may receive a reduced amount of benefits in the event that funds appropriated under this program are not sufficient to award all qualified applicants the total amount of benefits to which they are otherwise entitled.

Nancy Gist,

Director, Bureau of Justice Assistance.

[FR Doc. 99–23854 Filed 9–13–99; 8:45 am]

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federal register

Tuesday
September 14, 1999

Part XII

Department of Housing and Urban Development

24 CFR Part 203

Sources of Homeowner Downpayment; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 203

[Docket No. FR–4469–P–01]

RIN 2502–AH38

Sources of Homeowner Downpayment

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: HUD proposes to establish specific standards regarding the mortgagor's investment in the mortgaged property when a gift is provided by a charitable or other nonprofit organization. A gift could not be used for the mortgagor's investment if the organization received funds for the gift—directly or indirectly—from the seller of the property. The proposed rule is intended to prevent a seller from providing funds to an organization as a quid pro quo for that organization's downpayment assistance for purchases of one or more homes from the seller. In addition, HUD proposes to redraft in a more readable, accurate and up-to-date form, without substantive change in policy, the current regulation on the mortgagor's investment in the property.

DATES: *Comments Due Date:* November 15, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Vance Morris, Director, Home Mortgage Insurance Division, Room 9266, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000, (202) 708–2700 (this is not a toll-free number). For hearing- and speech-impaired persons, this number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

This proposed rule would accomplish two purposes. Its primary purpose is to publish for public comment a proposal to establish specific standards regarding the use of gifts by charitable or other nonprofit organizations as a source of the mortgagor's investment in the mortgaged property. Gifts could not be made from funds that the organization received—directly or indirectly—from the seller of the property. In addition, we propose to take this opportunity to redraft in a more readable, accurate and up-to-date form, without substantive change in policy, current § 203.19 on the mortgagor's investment in the property.

Section 203(b)(9) of the National Housing Act requires mortgagors (with narrow exceptions) to pay on account of the property at least 3 percent of the cost of acquisition in order for the mortgage to be eligible for insurance by FHA. The statute, and the implementing regulation at 24 CFR 203.19, are silent about permissible and/or impermissible sources of the mortgagor's investment, except that some loans are permitted sources under the statute and other sources (by implication) are not permitted sources. For example, legislation was enacted in 1996 to amend section 203(b)(9) of the National Housing Act to permit family members to provide gifts and loans to other family members.

FHA has specified through its handbooks and mortgagee letters a broad range of other permissible sources of the mortgagor's investment beyond the homebuyer's own cash savings, none of which include the seller of the property. In addition to loans permitted by statute, permissible sources include gifts from family members, the borrower's employer or labor union, governmental agencies and public entities engaged in the provision of homeownership assistance, and charitable organizations. It is this last group that is of concern.

Proposed Substantive Change

Although FHA has attempted to preclude downpayment funding derived from the seller of the property, either directly or indirectly, some charitable organizations have been able to circumvent these restrictions in various ways, including the establishment of a fund that provides the "gift" to the homebuyer. However, the fund is immediately replenished by the seller providing a "charitable donation" or paying a "service fee" to the nonprofit from the proceeds of the sale of the house and does so only if the homebuyer is using the charitable organization's downpayment assistance program. There is a clear quid pro quo between the homebuyer's purchase of the property and the seller's "contribution" or payment to the nonprofit organization.

FHA has several concerns with these programs. First, borrowers with limited cash investments into the sale transactions represent significantly greater risk to the insurance fund. In many cases, homebuyers using these downpayment assistance programs need only one percent of their own money for the downpayment. In some programs, they are not required to invest any cash at all. While many States and public entities may have similar programs regarding the homebuyer's cash investment requirements, those programs generally carry with them substantive underwriting criteria above and beyond FHA's minimum standards as well as program eligibility requirements (usually restrictions on the borrower's maximum income so that the program benefits low- and moderate-income clients); these are generally missing in the programs of the nonprofits recently reviewed by FHA. FHA's second concern is that the sales price is often increased so that the seller's net proceeds are not diminished. This increases FHA's risk that it will not recover the full amount owed if forced to acquire and resell a home purchased by a participating borrower who then defaults on the loan.

The proposed rule generally permits a mortgagor's minimum investment to come from gifts from charitable organizations and other non-profit organizations, if HUD has approved the organizations as sources of gifts. Despite HUD's approval, an organization's gift may not be used for the mortgagor's minimum investment if the organization receives from the seller of the property at any time, directly or indirectly, either the gift funds, or other consideration or reimbursement for making the gift, including service fees. This prohibition would apply to sales of existing homes by private sellers as well as sales by builders, developers, etc., involved in new construction, or any party with an identity of interest with them. HUD would not allow any form of downpayment assistance in any of its programs if those funds are derived, partially or in whole, in any manner from sellers of the property being purchased with the assistance.

The proposed rule is intended to prevent a seller from providing funds to an organization as a quid pro quo for that organization's downpayment assistance for purchases of one or more homes from the seller. The proposed rule is not intended to preclude sellers such as builders from contributing to charitable and other nonprofit organizations that provide downpayment assistance unrelated to properties sold by the seller or that otherwise further affordable housing.

Proposed Non-Substantive Redrafting of § 203.19

The current § 203.19, entitled "Mortgagor's minimum investment", is a combination of section 203(b)(9) of the National Housing Act (as it existed before the 1996 amendment) and additional regulatory policy in two areas. First, § 203.19(a) includes a $200 minimum investment in two cases where section 203(b)(9) does not apply, due either to an express exclusion (for veterans) or an implicit exclusion (for disaster victims receiving a 100 percent mortgage under section 203(h) of the National Housing Act and § 203.18(e) of the regulations). Second, § 203.19(b) provides detailed guidance regarding the type of loan for cases (other than family member loans) where section 203(b)(9) expressly permits loans for the mortgagor's minimum investment. Regarding loans, § 203.19 does not currently recognize either family member loans or loans under State or local housing assistance programs (impliedly permitted by section 528 of the National Housing Act) although both forms of loans are recognized in FHA's mortgage credit handbook. There is nothing regarding downpayment assistance in the form of gifts in the current § 203.19. Therefore, we have considered it preferable to redraft and update § 203.19, in a non-substantive manner, instead of simply adding a new substantive discussion of restrictions for a particular type of gift.

As redrafted, § 203.19 has the following organization. Paragraph (a) requires a mortgagor to have the funds needed to complete the transaction (payment of purchase price and settlement costs) in addition to the funds provided by the insured mortgage itself. This basic policy was previously stated only in a handbook rather than a regulation, but it is a basic requirement of mortgage lending and does not represents a new substantive policy.

Paragraph (b) corresponds to the current § 203.19(a)(1) and the first part of section 203(b)(9) of the National Housing Act by stating the basic rule for a 3 percent mortgagor cash investment. The statute and the current regulation give HUD the discretion to require more than 3 percent, but it is no longer necessary to reserve this discretion in regulations. In practice, HUD has not demanded more than 3 percent except as needed to satisfy the basic requirement for cash sufficient to close the transaction (as stated in proposed new paragraph (a)). Both the statute and the current regulation except from the 3 percent requirement for veterans (who can qualify for 100 percent mortgage financing for a $ 25,000 loan under section 203(b)(2) of the Act) and disaster victims (who can qualify for 100 percent mortgage financing under section 203(h) of the National Housing Act). However, the current § 203.19(a)(2) imposes a $200 minimum cash investment requirement for those mortgagors. That $ 200 requirement is no longer meaningful in relation to vast increases in home values and mortgage amounts since the $200 requirement was adopted, and HUD proposes to delete it from the regulations in the interests of simplifying mortgage processing.

Paragraph (c) of the proposed rule would state what has long been a basic HUD policy: the mortgagor's required funds should not come from the seller of the property. This is necessary to achieve meaningful application of statutory loan-to-value requirements. Otherwise, there could be a tendency for sellers to advance funds for closing costs while inflating the purchase price to recoup the costs, with a higher mortgage amount being based on the inflated price. Using the lesser of appraised price or purchase price to determine mortgage amount can control this tendency to a degree, but additional measures are prudent. On the other hand, HUD has recognized local market practices in which sellers customarily agree to pay some of the buyer's closing costs. Beginning in the mid-1980's, HUD's administrative policies reflected in Mortgagee Letters and handbooks have permitted some seller contributions, consistent with local market practices that would be reflected in local appraisal practices, but never more that 6 percent of the purchase price. Proposed paragraph (c) would permit HUD to continue this administrative policy and make any needed adjustment without rulemaking, as long as the seller does not ever provide the statutory 3 percent mortgagor's cash investment. Funds from the seller would be broadly defined as any funds derived directly or indirectly from any gift or loan made by the seller or any party with an identity of interest with the seller.

Paragraph (d) states the general policy that funds from loans or gifts may not be used for any part of the mortgagor's minimum investment, unless otherwise provided in the rule. Paragraph (e), like current § 203.19(b), is intended to identify certain loan sources authorized by statute. The paragraph states clearly HUD's historical understanding of the Congressional intent behind section 203(b)(9) of the National Housing Act: loans are a forbidden source of the 3 percent minimum investment unless a statute provides otherwise, explicitly or implicitly. Paragraph (e) includes certain statutory authorizations that HUD relies on but which are currently not stated or referenced in regulations (family loans and government loan programs). It also handles by general reference, instead of the more specific language in current § 203.19(b), certain little-used or unused loan sources authorized by section 203(b)(9) of the National Housing Act (e.g., HOPE 3).

Although paragraph (e) only restricts the use of loans for the 3 percent minimum cash investment and does not apply to the rest of the required investment, readers should note that § 203.32 contains restrictions on secondary financing that is unsecured or secured by the home. Paragraph (e) would not supersede anything in § 203.32. Paragraph (e) omits the detail regarding the acceptable form of loan that currently appears in § 203.19(b), because these are matters more suitable for a handbook.

Finally, paragraph (f) contains the new substantive policy proposal regarding gifts discussed above, while also setting forth other acceptable gift sources permitted by current policy.

Findings and Certifications

Environmental Review

A Finding of No Significant Impact is not required for this proposed rule because it is covered by the exclusion in 24 CFR 50.19(b)(6).

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and by approving it certifies that this proposed rule is not anticipated to have a significant economic impact on a substantial number of small entities. The primary purpose of this rule, as noted in the preamble, is to establish standards regarding the use of gifts by charitable or other nonprofit organizations as a source of an FHA's mortgagor's investment in the mortgaged property. Specifically, the standards would provide that gifts could not be made from funds that the organization received, directly or indirectly, from the seller of the property. While HUD recognizes that many nonprofit or charitable organizations may be small entities, HUD does not believe that this rule would have a significant economic impact on a substantial number of small entities. HUD's proposed rule does not

preclude gifts from charitable or other nonprofit organizations. This proposed rule only precludes these gifts if these organizations receive from the seller of the property at any time, directly or indirectly, either the gift funds, or other consideration or reimbursement for making the gift, including service fees. The purpose of this restriction is to prevent a seller from providing funds to an organization as a quid pro quo for that organization's downpayment assistance for purchase of one or more homes of the seller.

While this restriction is an important one to place on the use of gifts as a source of downpayment, HUD believes that few entities, large or small, would be affected by this restriction. Nevertheless, HUD is sensitive to the fact that uniform application of requirements on entities of differing sizes often places a disproportionate burden on small entities. Therefore, small entities are specifically invited to comment on whether this proposed rule will significantly affect them, and to make any recommendations on alternatives for compliance the requirements of this rule. Comments should be submitted in accordance with the instructions in the **DATES** and **ADDRESSES** sections in the preamble of this proposed rule.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this proposed rule would not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government. This proposed rule solely addresses requirements under HUD's FHA mortgage insurance programs.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995, Pub.L. 104–4, established requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of Unfunded Mandates Reform Act of 1995.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number for the principal FHA single family mortgage insurance is 14.117. This proposed rule would also apply through cross-referencing to FHA mortgage insurance for condominium units (14.133), and other smaller single family programs.

List of Subjects in 24 CFR Part 203

Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, the Department proposes to amend 24 CFR part 203 as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for part 203 continues to read:

Authority: 12 U.S.C. 1709, 1710, 1715b, 1715u; 42 U.S.C. 3535(d).

2. Section 203.19 is revised to read as follows:

§ 203.19 Mortgagor's investment in the property.

(a) *Required funds.* The mortgagor must have available funds equal to the difference between:

(1) The sum of the purchase price of the home and settlement costs acceptable to the Secretary; and

(2) The amount of the insured mortgage.

(b) *Minimum cash investment.* The required funds under paragraph (a) of this section must include an investment in the property by the mortgagor, in cash or cash equivalent, equal to at least 3 percent of the cost of acquisition as determined by the Secretary, unless the mortgagor is:

(1) A veteran meeting the requirements of § 203.18(a)(3); or

(2) A disaster victim meeting the requirements of § 203.18(e).

(c) *Restrictions on seller funding.* None of the required funds under paragraph (a) of this section may be provided by the seller, except as approved by the Secretary, notwithstanding paragraphs (e) and (f) of this section. For purposes of this paragraph and paragraph (f), funds are provided by the seller if they are derived directly or indirectly from any gift, loan or other payment, including a service charge, made by the seller or by any party with an identity of interest with the seller.

(d) *Gifts and loans usually prohibited for minimum cash investment.* A mortgagor may not use funds for any part of the minimum cash investment under paragraph (b) of this section if the funds were obtained through a gift or a loan from any person, except as provided in paragraphs (e) and (f) of this section.

(e) *Permissible sources of loans.* (1) *Statutory authorization needed.* A statute must authorize a loan as a source of the mortgagor's minimum cash investment under paragraph (b) of this section. The authority may be explicit or implicit.

(2) *Examples.* The following loans are authorized (explicitly or implicitly) by statute as a source for the minimum investment:

(i) A loan from a family member, a loan to a mortgagor who is at least 60 years old when the mortgage is accepted for insurance, or a loan that is otherwise expressly authorized by section 203(b)(9) of the National Housing Act;

(ii) A loan made by, or insured by, a State or local government agency or instrumentality under terms and conditions approved by the Secretary; and

(iii) A Federal disaster relief loan.

(f) *Permissible sources of gifts.* (1) *General.* The following are permissible sources of gifts or grants used for the mortgagor's minimum cash investment under paragraph (b) of this section:

(i) Family members and governmental agencies and instrumentalities that may make loans under paragraphs (e)(2)(i) and (ii) of this section;

(ii) An employer or labor union of the mortgagor;

(iii) Charitable organizations or other nonprofit organizations approved by the Secretary as a source of gifts, subject to paragraph (2) of this section;

(iv) Disaster relief grants; and

(v) Other sources approved by the Secretary.

(2) *Charitable organization and other nonprofit organization.* A gift from a charitable organization or other nonprofit organization may not be used for the minimum investment if the organization receives from the seller at any time, directly or indirectly, either the gift funds, or other consideration or reimbursement for making the gift, including service fees.

Dated: August 23, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 99–23921 Filed 9–13–99; 8:45 am]

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H.R. 211/P.L. 106–48
To designate the Federal building and United States courthouse located at 920 West Riverside Avenue in Spokane, Washington, as the "Thomas S. Foley United States Courthouse", and the plaza at the south entrance of such building and courthouse as the "Walter F. Horan Plaza". (Aug. 17, 1999; 113 Stat. 230)

H.R. 1219/P.L. 106–49
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H.R. 2465/P.L. 106–52
Military Construction Appropriations Act, 2000 (Aug. 17, 1999; 113 Stat. 259)

S. 507/P.L. 106–53
Water Resources Development Act of 1999. (Aug. 17, 1999; 113 Stat. 269)

S. 606/P.L. 106–54
For the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical, LLC (successor to Kerr-McGee Chemical Corporation), and for other purposes. (Aug. 17, 1999; 113 Stat. 398)

S. 1546/P.L. 106–55
To amend the International Religious Freedom Act of 1998 to provide additional administrative authorities to the United States Commission on International Religious Freedom, and to make technical corrections to that Act, and for other purposes. (Aug. 17, 1999; 113 Stat. 401)

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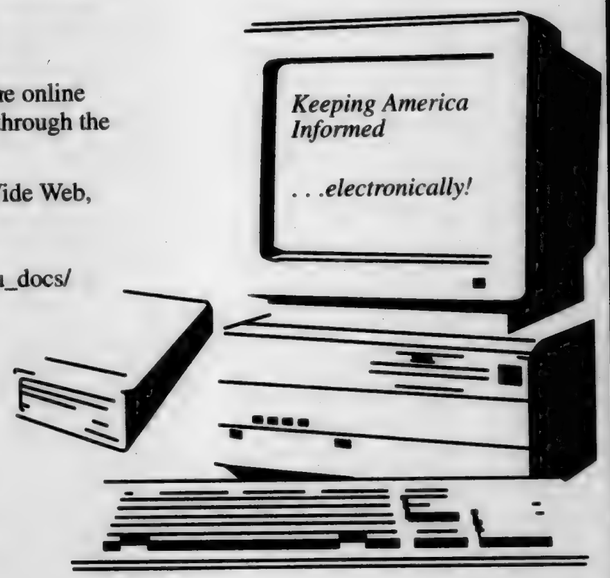

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Federal Register
Vol. 64, No. 178
Wednesday, September 15, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AB80

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; FCB Assistance to Associations

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: In this final rule, we amend the Farm Credit Administration regulation currently entitled "Additional investments of Farm Credit Banks." We remove the requirement that Farm Credit Banks and agricultural credit banks (collectively referred to as banks) obtain our prior approval before making certain transfers of capital to affiliated associations. Instead, we require banks to take into account certain considerations, and to notify bank shareholders and us, before making such transfers. This amendment benefits banks and their associations because it provides clear guidelines and streamlined procedures for banks to follow when they wish to transfer capital to associations. It also enables them to transfer the capital in a more timely manner.

EFFECTIVE DATE: This regulation will become effective 30 days after publication in the **Federal Register** during which either one or both houses of Congress are in session. We will publish a notice of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:
Dale L. Aultman, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444, or
Jennifer A. Cohn, Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Background

On February 18, 1999, we proposed an amendment to § 615.5171, which implements the authority of banks to purchase nonvoting stock in and to pay in surplus to affiliated associations (64 FR 8018). In the proposed amendment, we termed such purchases and payments "financial assistance." We proposed replacing the requirement that banks obtain our prior approval before providing financial assistance to affiliated associations with a prior notification requirement. In addition, we defined and provided examples of financial assistance, set forth various considerations that banks must take into account before providing financial assistance, and required banks to notify their shareholders within a reasonable time of providing the assistance. We proposed this amendment as part of our commitment to keep regulatory prior approvals in our regulations only when the Farm Credit Act of 1971, as amended (Act), requires them or when safety and soundness concerns exist.

We received two comments on the proposed amendment. One comment was from the Farm Credit Council (Council), representing its member banks and associations, and the other comment was from CoBank, ACB (CoBank). Both commenters generally supported the proposed amendment, although they both suggested some changes. We considered these comments in making changes to our final rule.

II. Scope of Rule

We change the title of this final regulation to "Transfers of capital from banks to associations." In the rule text, we clarify that the rule applies to "preferential transfers of capital" and "nonroutine transfers of capital." We make these changes from the proposed amendment, which covered "financial assistance," in response to the Council's concern that the term "financial assistance" appears limited to transfers made to assist distressed associations. These changes confirm that the rule applies to all transfers of capital that are preferential or nonroutine, not just to transfers made to assist distressed associations.

III. Definitions in this Regulation

In our proposed amendment, we provided examples of the transfers of capital that the rule covers. The final rule includes these examples and adds definitions of the terms "transfer of capital," "preferential transfer of capital," and "nonroutine transfer of capital."

A. Transfer of Capital

We define "transfer of capital" as any payment or forbearance by a bank to an affiliated association. We add this definition to clarify that the term is not limited to the examples of transfers listed in the regulation. These examples include:

- The purchase of nonvoting stock or participation certificates;
- The payment of cash;
- Debt forgiveness or reduction;
- Interest rate concessions or interest-free loans;
- The transfer of loans at other than fair market value;
- The reduction or elimination of standard loan servicing or other fees; and
- The assumption of operating or other expenses, such as legal fees or insurance premiums.

B. Preferential Transfer of Capital

We define "preferential transfer of capital" as a transfer of capital that is not available to all "similarly situated" affiliated associations. We add this definition in response to a comment by the Council. The Council recommended the term "similarly situated" to recognize that the rule does not apply if a bank treats associations differently based on differences in size, asset quality, management, financial performance, and the like, provided that the different treatment has a rational basis. The rule does apply if a bank treats associations differently when those associations are of similar size, asset quality, management, and financial performance. For example, the rule would apply if a bank made an interest rate concession to one association but not to other associations that were similarly situated.

C. Nonroutine Transfer of Capital

We define "nonroutine transfer of capital" as a transfer of capital that is not available in the ordinary course of business. We add this definition in

response to the Council's concern that, without a definition, the rule might be construed to cover transfers made in the ordinary course of business. This definition clarifies that transfers in the ordinary course of business are not subject to this regulation. Transfers in the ordinary course of business may include bank payment of dividends or patronage, normal adjustments to interest rates, bank equalization of purchased equities, and other similar transfers. Routine transfers are often, but not always, addressed in bylaws, General Financing Agreements, loan participation agreements, and loan servicing agreements.

In the preamble to our proposed amendment, we noted that we would consider loss-sharing agreement transfers to be subject to this rule. The Council expressed concern that we would consider transfers made under "endorsement liability" agreements also to be subject to this rule. The Council pointed out that banks and associations make transfers under these agreements, which allocate risks and benefits associated with specific assets, in the ordinary course of business. We agree, and clarify that the rule covers only those loss-sharing agreement transfers that are based on the troubled financial condition of the association receiving the transfer. Banks make transfers under these latter agreements infrequently, and therefore, these transfers are nonroutine.

IV. Considerations for Preferential or Nonroutine Transfers

In our final regulation, we require that, before authorizing a preferential or nonroutine transfer of capital, a bank's board of directors must take into account and document the following considerations:

- Whether the transfer is in the best interests of all of the bank's shareholders;
- Whether the bank will be able to achieve its capital adequacy and business plan goals after making the transfer; and
- Whether the transfer is the "least cost" alternative available and will enable the association to maintain sound, adequate, and constructive service to borrowers.

These considerations contain changes, made in response to comments from the Council, from our proposed amendment.

The Council provided both general comments on the applicability of the considerations and specific comments on individual considerations. In its general comments, the Council agreed that the first and second considerations are relevant, and should apply, to all preferential or nonroutine transfers. The Council asserted, however, that the third consideration is relevant, and should apply, only to transfers made to assist distressed associations. We believe, however, that all three of these considerations are relevant to most preferential or nonroutine transfers. In fact, under the current prior approval regulation, we have applied the third consideration in approving transfers to nondistressed associations. Accordingly, in the final rule we keep these three considerations, with some changes.

Our proposed amendment included a fourth consideration that would have required the bank board to take into account and document whether the transfer was necessary, feasible, and the "least cost" alternative available. We remove the necessary and feasible consideration in the final rule because a bank will make these determinations when it reviews the remaining three considerations. We continue to believe that in deciding whether to make a transfer, a bank should take into account whether that transfer is less costly than other alternatives. Accordingly, we retain "least cost" and move it to the third consideration.

The Council also made two specific comments on individual considerations. First, the Council expressed concern that our proposed consideration requiring the bank board to take into account whether the bank will continue to be financially sound and maintain adequate capital after the transfer was too subjective. We understand this concern, and we change the consideration to require the bank board to take into account whether the transfer will prevent the bank from achieving its capital adequacy or business plan goals, as the Council suggested. We emphasize that the bank's capital adequacy and business plan goals must ensure that the bank will be financially sound and maintain adequate capital.

Second, the Council commented that the proposed consideration requiring the bank board to take into account whether the transfer would "enable the association to maintain service to borrowers" was not objective enough, because it did not set standards on the service. We agree and clarify that the bank must take into account whether the transfer will enable the association to maintain "sound, adequate, and constructive" service in accordance with section 1.1 (a) of the Act.

We point out that the rule requires that a bank board "take into account and document" whether the transfer satisfies these considerations. The rule does not, however, require that banks satisfy these considerations in all cases. The rule does not, for example, require that the transfer be the "least cost" alternative available, merely that the bank board take into account and document its rationale in selecting the best solution - taking into account all considerations, not just this consideration. Moreover, the rule does not set out the manner in which the bank board must take into account and document the considerations. In some cases, board minutes could provide satisfactory documentation of the considerations. Where appropriate, a bank board may decide that a particular consideration is not applicable. If so, the board must document why it believes the consideration is not applicable.

V. Notification Requirements

The final rule requires banks to provide their shareholders and us, before making a preferential or nonroutine transfer, with: (1) A description of the transfer, and (2) the banks' documentation of the three considerations discussed in section IV of this preamble. The proposed amendment would have required banks to notify their shareholders within a reasonable time after the transfer. The Council requested that we require banks to notify shareholders in advance so the shareholders can evaluate transfers before they are made. We agree with the Council and change the rule to include the same notification requirement to shareholders (at least 30 days before a transfer) as we require for notification to us. While a bank may disclose the name of the association receiving a transfer, it need not do so if, after considering the specific circumstances, it determines the disclosure would be inappropriate.

CoBank agreed that when it makes a preferential or nonroutine transfer to an affiliated association, it should be required to notify its affiliated associations. CoBank asserted, however, that when it makes such a transfer it should not be required to notify its approximately 2,000 cooperative association equityholders (including farmer cooperatives, rural utilities and international customers) who borrow under title III of the Act. CoBank argued that such notification would be "somewhat burdensome" and that it would be difficult to explain the transfer to its title III equityholders. We believe, however, that CoBank's title III equityholders have the same interests as association shareholders in being able to evaluate transfers made to affiliated associations. Accordingly, the rule continues to require that all banks (including CoBank) notify all shareholders before they make preferential or nonroutine transfers to affiliated associations.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, amend part 615 of chapter VI, title 12 of the Code of Federal Regulations to read as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for part 615 continues to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12; 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.3A, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.3, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act (12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2154a, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–3, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12); sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

2. Revise the heading of subpart F to read as follows:

Subpart F—Property, Transfers of Capital, and Other Investments

3. Revise § 615.5171 to read as follows:

§ 615.5171 Transfer of capital from banks to associations.

(a) *Definitions for this section.*

(1) *Transfer of capital* means any payment or forbearance by a Farm Credit Bank or agricultural credit bank (collectively, bank) to an affiliated association, including but not limited to:

(i) The purchase of nonvoting stock or participation certificates;

(ii) The payment of cash;

(iii) Debt forgiveness or reduction;

(iv) Interest rate concessions or interest-free loans;

(v) The transfer of loans at other than fair market value;

(vi) The reduction or elimination of standard loan servicing or other fees; and

(vii) The assumption of operating or other expenses, such as legal fees or insurance premiums.

(2) *Preferential transfer of capital* means a transfer of capital that is not available to all similarly situated affiliated associations.

(3) *Nonroutine transfer of capital* means a transfer of capital that is not available in the ordinary course of business.

(b) *Considerations for preferential or nonroutine transfers of capital.* Before authorizing a preferential or nonroutine transfer of capital, a bank board of directors must take into account and document whether:

(1) The transfer of capital is in the best interests of all of the shareholders;

(2) The bank will be able to achieve its capital adequacy and business plan goals after making the transfer of capital; and

(3) The transfer of capital is the "least cost" alternative available and will enable the association to maintain sound, adequate, and constructive service to borrowers.

(c) *Notification requirements.* At least 30 days before making a preferential or nonroutine transfer of capital to an affiliated association, banks must provide shareholders and the Chief Examiner of the Farm Credit Administration with a description of the transfer and the documentation required by paragraph (b) of this section.

Dated: September 8, 1999.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 99–23966 Filed 9–14–99; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–28–AD; Amendment 39–11290, AD 99–19–01]

RIN 2120–AA64

Airworthiness Directives; Teledyne Continental Motors O–470, IO–470, TSIO–470, IO–520, TSIO–520, LTSIO–520, GTSIO–520, IO–550, TSIO–550, and TSIOL–550 Series Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Teledyne Continental Motors (TCM) O–470, IO–470, TSIO–470, IO–520, TSIO–520, LTSIO–520, GTSIO–520, IO–550, TSIO–550, and TSIOL–550 series reciprocating engines. This action supersedes priority letter AD 99–09–17 that currently requires a one-time visual and ultrasonic (UT) inspection of the No. 2 and No. 5 crankshaft cheeks for cracks. All crankshafts found with a cracked cheek must be replaced with a serviceable crankshaft prior to further flight. This action adds to the applicability TCM GTSIO–520 series engines and additional engines, identified by serial numbers (S/Ns), of currently affected engine series; references a revised service bulletin that clarifies snap ring installation; increases to 500 hours time-in-service (TIS) the cutoff for engines that require a more immediate inspection; and corrects the contact telephone number for TCM. This amendment is prompted by inspection results from the current priority letter AD. The actions specified by this AD are intended to prevent crankshaft failure due to crankshaft cheek cracks, which could result in total engine power loss, in-flight engine failure, and possible forced landing.

DATES: Effective September 30, 1999 .

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 30, 1999.

Comments for inclusion in the Rules Docket must be received on or before November 15, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–28–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Teledyne Continental Motors, PO Box 90, Mobile, AL 36601; telephone toll free (888) 200–7565. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, GA 30349; telephone (770) 703–6096, fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: On April 22, 1999, the Federal Aviation Administration (FAA) issued priority letter airworthiness directive (AD) 99–09–17, applicable to Teledyne Continental Motors (TCM) O–470, IO–470, TSIO–470, IO–520, TSIO–520,

LTSIO–520, IO–550, TSIO–550 and TSIOL–550 series new and rebuilt reciprocating engines, manufactured between January 1, 1998, and December 31, 1998, inclusive, listed by serial number (S/N) in TCM Critical Service Bulletin (CSB) 99–3, dated April 19, 1999, and any other engine from the above series that has had a crankshaft installed that was newly manufactured or rebuilt between January 1, 1998, and December 31, 1998, inclusive. That priority letter AD requires a one-time visual and ultrasonic (UT) inspection of the No. 2 and No. 5 crankshaft cheeks for cracks. All crankshafts found with a cracked cheek must be replaced with a serviceable crankshaft prior to further flight. All inspections must be performed by TCM representatives, since it is a new procedure that only TCM-trained personnel are currently authorized to perform.

Background

Priority letter AD 99–09–17 was prompted by reports of crankshaft failures. Since December 1998, the FAA obtained information regarding seven crankshaft failures. The investigation revealed that the crankshafts failed due to cracks through the No. 2 or No. 5 cheeks. Analysis indicated that the crankshaft failures occurred early in the life of a new or rebuilt crankshaft, from 80 to 175 hours time-in-service (TIS). In addition, one crankshaft was found which had not failed but which had a crack initiation. TCM advised the FAA that all of the fractures were due to a discrepancy in the counterweight bushing installation process, involving a tool that can damage the nitride surface of the cheek sufficient to create a crack which will propagate through the nitride layer. The tool has been repaired. Such a crack will always result in failure of the crankshaft. All of the fractures were grouped around certain crankshaft manufacturing dates between January 1998 and December 1998, inclusive. Review of the manufacturing processes, basic metallurgy, nitride characteristics, dimensional characteristics, and supplier practices did not identify any other contributing causes. That condition, if not corrected, could result in crankshaft failure due to crankshaft cheek cracks, which could result in total engine power loss, in-flight engine failure, and possible forced landing.

Events Since the Priority Letter AD

Since the issuance of that priority letter AD, the FAA received results from the inspections mandated by priority letter AD 99–09–17. One crankshaft was found with a significant crack. This crankshaft had 340 hours TIS, which is outside the range of the previous known cracks. Since this crack was found outside the hours TIS range of the previous known cracks, the cutoff for engines that require a more immediate inspection has been raised to 500 hours TIS. This additional TIS range should not introduce a significant hardship as approximately 3,000 of the original 3,200 crankshafts have already been inspected.

In addition, the FAA received a report of a TCM GTSIO–520 crankshaft failure. The crack initiated on cheek No. 2, occurring within 45 hours TIS since the crankshaft was rebuilt. Based upon this report, the FAA determined the need to add the TCM GTSIO–520 series engines to the AD's applicability. The GTSIO–520 crankshaft is of a different design, with three cheeks that have counterweights; therefore, three cylinders, three connecting rods, and six counterweights must be removed versus two cylinders, two connecting rods, and four counterweights for the other engines affected. This AD requires inspecting crankshaft cheeks No. 2, 5, and 8 on the geared engines in accordance with TCM CSB 99–6A, dated July 21, 1999.

Also, TCM has published Mandatory Service Bulletin (MSB) 99–3C dated July 27, 1999, that adds additional engines, identified by serial numbers (S/Ns), of currently affected engine series and clarifies snap ring installation.

Finally, this AD corrects the contact telephone number for TCM.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NE–28–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–19–01 Teledyne Continental Motors: Amendment 39–11290. Docket No. 99–NE–28–AD. Supersedes AD 99–09–17.

Applicability: Teledyne Continental Motors (TCM) O–470, IO–470, TSIO–470, IO–520, TSIO–520, LTSIO–520, IO–550, TSIO–550, TSIOL–550, series new and rebuilt engines manufactured between January 1, 1998, and December 31, 1998, listed by serial number (S/N) in TCM Mandatory Service Bulletin (MSB) 99–3C, dated July 27, 1999. Also, GTSIO–520 series engines, listed by S/N in TCM Critical Service Bulletin (CSB) 99–6A dated July 21, 1999. This airworthiness directive (AD) is also applicable to any other TCM O–470, IO–470, TSIO–470, IO–520, TSIO–520, LTSIO–520, IO–550, TSIO–550, TSIOL–550, and GTSIO–520 series engines that were overhauled by facilities other than TCM, and that have had replacement crankshafts installed that were sold individually by TCM and were manufactured or rebuilt between January 1, 1998, and December 31, 1998.

Note 1: Engine S/Ns can be found in logbooks or other maintenance records. For those engines that were overhauled in the field with factory new crankshafts, crankshaft S/Ns should be shown in work orders, log books or other maintenance records.

Note 2: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent crankshaft failure due to crankshaft cheek cracks, which could result in total engine power loss, in-flight engine failure, and possible forced landing, accomplish the following:

(a) For those engines listed by S/N on pages 3 through 12 of TCM MSB 99–3C, dated July 27, 1999, or on pages 2 and 3 of TCM CSB 99–6A, dated July 21, 1999, with 500 hours or less time-in-service (TIS) on the effective date of this AD, perform visual and ultrasonic (UT) inspections of the crankshaft for cracks within 10 hours TIS after the effective date of this AD, in accordance with sections A and B of TCM 99–3C, dated July 27, 1999, or for the GTSIO–520 series engines, in accordance with sections A and B of TCM CSB 99–6A dated July 21, 1999. These inspections must be performed by TCM representatives. Disposition the crankshaft as follows:

(1) If a crack is found, replace the crankshaft with a serviceable crankshaft of the same part number (P/N) prior to further flight.

(2) If no crack is found, reassemble the engine and return it to service.

(3) If inspections have been previously accomplished in accordance with earlier revision levels of TCM MSB 99–3 (previously CSB 99–3) or CSB 99–6, no further action is required.

Note 3: The engines and crankshafts that are the subject of this AD were manufactured or rebuilt by TCM during 1998. The dates that engines and crankshafts were delivered, however, may not coincide with their dates of manufacture. For the engines identified in paragraphs (a) and (b) of this AD, TCM has already determined which engines have either a new or rebuilt suspect crankshaft installed, and identified those engines by engine S/N. Only for those engines identified in paragraphs (c) and (d) of this AD does crankshaft serial number play a role in determining the need for visual and UT inspections.

Note 4: The engine S/Ns listed in TCM MSB 99–3C and TCM CSB 99–6A contain only the numerical portion of the S/N. Rebuilt engines will have the letter "R" at the end of the six digit numerical portion. This letter "R" should be disregarded and only the six digit numerical sequence should be used for determination of applicability. Only TCM is authorized to rebuild TCM engines and they have not approved any other agency to perform that function.

(1) If a crack is found, replace the crankshaft with a serviceable crankshaft of the same part number (P/N) prior to further flight.

(2) If no crack is found, reassemble the engine and return it to service.

(3) If inspections have been previously accomplished in accordance with earlier revision levels of TCM MSB 99–3 (previously CSB 99–3) or CSB 99–6, no further action is required.

(b) For those engines listed by S/N on pages 3 through 12 of MSB 99–3C, dated July 27, 1999, or on pages 2 and 3 of TCM CSB 99–6A dated July 21, 1999, with more than 500 hours TIS on the effective date of this AD, perform visual and UT inspections of the crankshaft for cracks at the next maintenance event, or within 50 hours TIS after the effective date of this AD, whichever comes first, in accordance with sections A and B of TCM MSB 99–3C, dated July 27, 1999, or for the GTSIO–520 series engines, in accordance with sections A and B of TCM CSB 99–6A, dated July 21, 1999. These inspections must be performed by TCM representatives. Disposition the crankshaft as follows:

(1) If a crack is found, replace the crankshaft with a serviceable crankshaft of the same P/N prior to further flight.

(2) If no crack is found, reassemble the engine and return it to service.

(3) If inspections have been previously accomplished in accordance with earlier revision levels of TCM MSB 99–3 (previously CSB 99–3) or CSB 99–6, no further action is required.

(c) For any other engine that was overhauled at a facility other than TCM, and that has a crankshaft installed that was manufactured or rebuilt between January 1, 1998, and December 31, 1998, with 500 hours or less TIS on the effective date of this AD, perform visual and UT inspections of the crankshaft for cracks within 10 hours TIS after the effective date of this AD, in accordance with sections A and B of TCM MSB 99–3C, dated July 27, 1999, or for the GTSIO–520 series engines, in accordance with sections A and B of TCM CSB 99–6A, dated July 21, 1999. These inspections must be performed by TCM representatives. Disposition the crankshaft as follows:

(1) If a crack is found, replace the crankshaft with a serviceable crankshaft of the same P/N prior to further flight.

(2) If no crack is found, reassemble the engine and return it to service.

(3) If inspections have been previously accomplished in accordance with earlier revision levels of TCM MSB 99–3 (previously CSB 99–3) or CSB 99–6, no further action is required.

Note 5: The crankshaft manufacture date may be determined from the crankshaft serial number, which consists of eight characters, arranged as follows:

	Position				
	1	2,3	4,5	6,7	8
Content	Letter A–L representing month of manufacture.	Day of month manufactured.	Year of manufacture	Sequence number of crankshaft manufactured on that day.	Always "N"
Example	C	22	98	05	N

The example crankshaft, with a serial number of "C229805N", indicates a date of manufacture of March 22, 1998.

(d) For any other engine that was overhauled at a facility other than TCM, and that has a crankshaft installed that was manufactured or rebuilt between January 1, 1998, and December 31, 1998, with more than 500 hours TIS on the effective date of this AD, perform visual and UT inspections of the crankshaft for cracks at the next

maintenance event, or within 50 hours TIS after the effective date of this AD, whichever comes first, in accordance with sections A and B of TCM MSB 99–3C, dated July 27, 1999, or for the GTSIO–520 series engines, in accordance with sections A and B of TCM CSB 99–6A dated July 21, 1999. These inspections must be performed by TCM representatives. Disposition the crankshaft as follows:

(1) If a crack is found, replace the crankshaft with a serviceable crankshaft of the same P/N prior to further flight.

(2) If no crack is found, reassemble the engine and return it to service.

(3) If inspections have been previously accomplished in accordance with earlier revision levels of TCM MSB 99–3 (previously CSB 99–3) or CSB 99–6, no further action is required.

(e) After the effective date of this AD, installation of a crankshaft that was manufactured or rebuilt between January 1, 1998, and December 31, 1998, is prohibited, unless it has been inspected and reidentified in accordance with section C of TCM MSB 99–3C, dated July 27, 1999, or, for the GTSIO–520 series engines, in accordance with section C of TCM CSB 99–6A, dated July 21, 1999. These inspections must be performed by TCM.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 6: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Atlanta ACO.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the inspection requirements of this AD can be accomplished.

(h) The actions required by this AD shall be accomplished in accordance with the following TCM SBs:

Document No.	Page	Date
MSB 99–3C ..... Total pages: 26.	1–26	July 27, 1999.
CSB 99–6A ..... Total pages: 13.	1–13	July 21, 1999.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Teledyne Continental Motors, PO Box 90, Mobile, AL 36601; telephone toll free (888) 200–7565. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) This amendment supersedes priority letter AD 99–09–17, issued April 22, 1999.

(j) This amendment becomes effective on September 30, 1999.

Issued in Burlington, Massachusetts, on August 30, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–23125 Filed 9–14–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–220–AD; Amendment 39–11310; AD 99–19–21]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes, that requires repetitive inspections to detect cracking around certain fastener holes and adjacent areas of the front spar of the horizontal stabilizers; and corrective actions, if necessary. This amendment also requires repetitive x-ray inspections, cold working of certain fastener holes of the front spar of the horizontal stabilizers, and follow-on actions; and installation of new fasteners, which constitutes terminating action for the repetitive inspections required by this AD. This amendment is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the front spar due to fatigue cracking around certain fastener holes of the front spar of the horizontal stabilizers, which could result in reduced structural integrity of the airplane.

DATES: Effective October 20, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 20, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on July 15, 1999 (64 FR 38150). That action proposed to require repetitive inspections to detect cracking around certain fastener holes and adjacent areas of the front spar of the horizontal stabilizers; and corrective actions, if necessary. That action also proposed to require cold working of certain fastener holes of the front spar of the horizontal stabilizers, and follow-on actions; and installation of new fasteners, which would constitute terminating action for the repetitive inspections. That action also proposed to add repetitive x-ray inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Explanation of Change Made to Final Rule

The FAA has added a note to the final rule to clarify the definition of a detailed visual inspection.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 279 airplanes of U.S. registry will be affected by this AD.

It will take approximately 4 work hours per airplane to perform the required detailed visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $66,960, or $240 per airplane, per inspection cycle.

It will take approximately 6 work hours per airplane to accomplish the required eddy current and x-ray inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections required by this AD on U.S. operators is estimated to be $100,440, or $360 per airplane, per inspection cycle.

It will take approximately 42 work hours to accomplish the cold working of the fastener holes, at an average labor rate of $60 per work hour. Required parts will cost approximately $400 per airplane. Based on these figures, the cost impact of the cold work required by this AD on U.S. operators is estimated to be $814,680, or $2,920 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–19–21 SAAB Aircraft AB: Amendment 39–11310. Docket 98–NM–220–AD.

Applicability: Model SAAB SF340A series airplanes, manufacturer's serial numbers –004 through –159 inclusive; and SAAB 340B series airplanes, manufacturer's serial numbers –160 through –439 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the front spar due to fatigue cracking around certain fastener holes of the front spar of the horizontal stabilizers, which could result in reduced structural integrity of the airplane, accomplish the following:

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

Initial and Repetitive Inspections

(a) For Model SAAB SF340A series airplanes with manufacturer's serial numbers –004 through –159 inclusive: Perform the inspections (detailed visual, eddy current, and x-ray) specified in paragraph 2.D. of the Accomplishment Instructions of Saab Service Bulletin 340–55–033, Revision 04, dated December 1, 1998, to detect cracking around certain fastener holes and adjacent areas of the front spar of the horizontal stabilizer, in accordance with the service bulletin, at the time specified in paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable. Thereafter, repeat only the eddy current and x-ray inspections at intervals not to exceed 12,000 flight cycles until the requirements of paragraph (d) of this AD are accomplished.

(1) For airplanes that have accumulated less than 22,000 total flight cycles as of the effective date of this AD: Perform an eddy current and an x-ray inspection prior to the accumulation of 22,000 total flight cycles, or within 2,000 flight cycles after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated 22,000 or more total flight cycles and less than 30,000 total flight cycles as of the effective date of this AD: Accomplish the requirements of paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Perform a detailed visual inspection within 800 flight cycles after the effective date of this AD; and

(ii) Perform an eddy current and an x-ray inspection within 2,000 flight cycles after the effective date of this AD.

(3) For airplanes that have accumulated 30,000 or more total flight cycles as of the effective date of this AD: Accomplish the requirements of paragraphs (a)(3)(i) and (a)(3)(ii) of this AD.

(i) Perform a detailed visual inspection within 400 flight cycles after the effective date of this AD; and

(ii) Perform an eddy current and an x-ray inspection within 1,200 flight cycles after the effective date of this AD.

Initial and Repetitive Inspections

(b) For Model SAAB 340B series airplanes with manufacturer's serial numbers –160 through –439 inclusive: Perform the inspections (detailed visual, eddy current, and x-ray) specified in paragraph 2.D. of the Accomplishment Instructions of Saab Service Bulletin 340–55–033, Revision 04, dated December 1, 1998, to detect cracking around certain fastener holes and adjacent areas of the front spar of the horizontal stabilizer, in accordance with the service bulletin, at the time specified in paragraph (b)(1), (b)(2), or (b)(3) of this AD, as applicable. Thereafter, repeat only the eddy current and x-ray inspections at intervals not to exceed 6,000 flight cycles until the requirements of paragraph (d) of this AD are accomplished.

(1) For airplanes that have accumulated less than 12,000 total flight cycles as of the effective date of this AD: Perform an eddy current and an x-ray inspection prior to the accumulation of 12,000 total flight cycles, or within 2,000 flight cycles after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated 12,000 or more total flight cycles and less than 16,000 total flight cycles as of the effective date of this AD: Accomplish the requirements of paragraphs (b)(2)(i) and (b)(2)(ii) of this AD.

(i) Perform a detailed visual inspection within 800 flight cycles after the effective date of this AD; and

(ii) Perform an eddy current and an x-ray inspection within 2,000 flight cycles after the effective date of this AD.

(3) For airplanes that have accumulated 16,000 or more total flight cycles as of the effective date of this AD: Accomplish the requirements of paragraphs (b)(3)(i) and (b)(3)(ii) of this AD.

(i) Perform a detailed visual inspection within 400 flight cycles after the effective date of this AD; and

(i) Perform a detailed visual inspection within 400 flight cycles after the effective date of this AD; and (ii) Perform an eddy current and an x-ray inspection within 1,200 flight cycles after the effective date of this AD.

Corrective Actions

(c) If any cracking is detected during any inspection required by paragraph (a) or (b) of this AD, prior to further flight, either repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Luftfartsverket (LFV) (or its delegated agent); or accomplish the requirements of paragraph (d) of this AD.

Note 3: Inspections to detect cracking around certain fastener holes and adjacent areas of the front spar of the horizontal stabilizers that have been accomplished prior to the effective date of this AD in accordance with Saab Service Bulletin 340–55–033, Revision 03, dated January 22, 1998, are considered acceptable for compliance with the applicable action specified by this AD.

Terminating Action

(d) For all airplanes: Except as provided by paragraph (e) of this AD, accomplish cold working of certain fastener holes of the front spar of the horizontal stabilizers, and follow-on actions; and install new fasteners; in accordance with Saab Service Bulletin 340–55–034, dated October 16, 1998; at the time specified in paragraph (d)(1), (d)(2), or (d)(3) of this AD, as applicable. Accomplishment of this action constitutes terminating action for this AD.

(1) For all airplanes that have accumulated less than 26,000 total flight cycles as of the effective date of this AD: Within 10,000 flight cycles after the effective date of this AD.

(2) For all airplanes that have accumulated 26,000 or more total flight cycles and less than 30,000 total flight cycles as of the effective date of this AD: Within 6,000 flight cycles after the effective date of this AD.

(3) For all airplanes that have accumulated 30,000 or more total flight cycles as of the effective date of this AD: Within 3,000 flight cycles after the effective date of this AD.

(e) If any crack is detected during the accomplishment of paragraph (d) of this AD, and if the service bulletin listed in paragraph (d) of this AD specifies to contact the manufacturer for an appropriate corrective action: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, or the LFV (or its delegated agent).

Alternative Method of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) Except as provided by paragraphs (c) and (e) of this AD, the actions shall be done in accordance with Saab Service Bulletin 340–55–033, Revision 04, dated December 1, 1998; and Saab Service Bulletin 340–55–034, dated October 16, 1998; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in Swedish airworthiness directives 1–110R2, dated December 7, 1998, and 1–133, dated October 20, 1998.

(i) This amendment becomes effective on October 20, 1999.

Issued in Renton, Washington, on September 1, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–23352 Filed 9–14–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–249–AD; Amendment 39–11313; AD 99–19–26]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A300 and A300–600 series airplanes, that currently requires inspections to detect cracks in Gear Rib 5 of the main landing gear (MLG) attachment fittings at the lower flange, and repair, if necessary. This amendment establishes repetitive inspection intervals for certain inspections required by the existing AD. This amendment also adds a requirement to modify Gear Rib 5 of the MLG attachment fittings, which constitutes terminating action for the repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent fatigue cracking of the MLG attachment fittings, which could result in reduced structural integrity of the airplane.

DATES: Effective October 20, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 20, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–03–06, amendment 39–10298 (63 FR 5224, February 2, 1998), which is applicable to certain Airbus Model A300 and A300–600 series airplanes, was published in the **Federal Register** on November 23, 1998 (63 FR 64661). The action proposed to continue to require inspections to detect cracks in Gear Rib 5 of the main landing gear (MLG) attachment fittings at the lower flange, and repair, if necessary. That action also proposed to establish repetitive inspection intervals for certain inspections required by the existing AD. That action also proposed to add a requirement to modify Gear Rib 5 of the MLG attachment fittings, which constitutes terminating action for the repetitive inspections.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter, an operator, expresses no objection to the inspections or modification required by the proposed AD.

Request to Remove Requirement for Terminating Modification

One commenter, the manufacturer, states that, according to the damage-tolerance methodology of design and evaluation, safety is maintained by adequate repetitive inspections because crack initiation and propagation can be anticipated with sufficient precision to allow inspection programs to safely detect and repair metal fatigue or other structural damage before safety is affected (without accomplishing modifications). Therefore, the commenter does not see the need to mandate structural modifications in general, or in the specific case of this proposed AD.

The commenter notes that if inspection results are considered in specific cases to be unreliable due to access difficulty or human factor considerations, the Airworthiness Assurance Working Group (AAWG) of the Aviation Rulemaking Advisory Committee has established three major criteria for determining when a terminating modification should be mandated. The commenter further states that these criteria were developed industry-wide in the context of general aging aircraft activities, but do apply in general to aircraft structures and provide adequate guidance for such a determination. The commenter requests that general guidelines for mandating structural modifications be established in line with the criteria already set forth by the AAWG.

The FAA does not agree that the damage tolerance methodology, and the continuance of long-term repetitive inspections, provide adequate continued operational safety in many cases. Following a structure-related accident in 1988, FAA policy transitioned to a more stringent assessment of whether modifications should be mandated, and worked with the AAWG in development of criteria for such evaluation. The FAA considers this policy necessary to counteract the reduced efficacy of inspection resulting from the increased likelihood of damage as airplanes age.

The FAA agrees that general guidelines should be established that are in line with the criteria set forth by the AAWG. In the case of this AD, the FAA did utilize the AAWG criteria as a general guideline in making the decision to require accomplishment of the modification. The FAA infers that the commenter is requesting that the requirement to accomplish the terminating modification be removed from the proposed AD. The FAA does not concur in this case. In making the determination that the terminating modification should be mandated, several factors were considered, as discussed below.

- *Consequence of Failure:* As noted by the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, in its corresponding airworthiness directive, the propagation of cracks in the area of concern could affect the structural integrity of the airplane. Although not stated specifically in the proposed AD, the FAA considers that such reduced integrity could cause permanent deformation of the surrounding structure that could lead to fuel leaks. Further, cracking of Gear Rib 5 of the main landing gear (MLG) attachment fitting could precipitate failure of the fitting, which could possibly lead to failure of the MLG during landing, rupture of the fuel tank, and fire. These factors led the FAA to determine that a significant unsafe condition exists.
- *Probability of Occurrence:* The referenced Airbus service bulletins document eleven in-service occurrences of cracking, detected on airplanes which had accumulated between 20,959 and 29,023 total flight cycles. The likelihood of cracking therefore appears high for airplanes on which 21,000 total flight cycles or more have been accumulated. Since a number of airplanes exist today in the world with this amount of service, the FAA proposed 21,000 total flight cycles as the compliance time for the modification. Additionally, due to the age of affected airplanes, the FAA considers it possible that other adjacent damage may exist, which could aggravate the seriousness of the cracking.
- *Access/Inspection Difficulty:* The FAA judges the difficulty of both access to the inspection area and accomplishment of the inspection itself to be above average. Cracks are not evident without a directed inspection, and approximately 3 work hours are required to gain access to the inspection area. Additionally, some cracks found during inspections were already of a substantial length, indicating that such cracking may have existed without detection for some time. Therefore, the FAA concludes that there is a certain level of difficulty in continued access and accomplishment of this inspection.

In consideration of the factors described above, and using the general criteria established by the AAWG, the FAA has determined that accomplishment of the terminating modification is justified.

Request To Revise Applicability

One commenter requests that the applicability of the proposed AD be revised to exclude those airplanes on which Airbus Modification 11912 has been installed in production. The commenter notes that this production modification is equivalent to the retrofit solution described in Airbus Service Bulletins A300–57–6088 and A300–57–0235, both dated August 5, 1998, which are referenced in the proposed AD as appropriate terminating action for the repetitive inspection requirements of this AD. The FAA concurs that airplanes on which the production modification or the retrofit modification has been installed may be excluded from the requirements of this AD, and has revised the applicability of the final rule accordingly.

Service Bulletin Revisions

Airbus has issued Service Bulletins A300–57–6088, Revision 01 (for Model A300–600 series airplanes), and A300–57–0235, Revision 01 (for Model A300 series airplanes), both dated February 1, 1999. These revisions clarify work procedures, add Figures, and update the cost and materials information. The FAA has determined that these later revisions of the service bulletins are substantially equivalent to the original issue of the bulletins. Therefore, the FAA has revised paragraph (d) of the final rule to cite Revision 01 of the applicable service bulletins as the appropriate source of service information. A **Note 3** also has been added to the final rule to provide credit for operators who may have accomplished the modification in accordance with the previously cited service bulletins prior to the effective date of this AD.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has

determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 164 airplanes of U.S. registry that will be affected by this AD.

The inspection currently required by AD 98–03–06, and retained in this new AD, takes approximately 6 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspection on U.S. operators is estimated to be $59,040, or $360 per airplane, per inspection cycle.

The modification required by this new AD will take approximately 62 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $10,270 per airplane. Based on these figures, the cost impact of the new actions required by this AD on U.S. operators is estimated to be $2,294,360, or $13,990 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10298 (63 FR 5224, February 2, 1998), and by adding a new airworthiness directive (AD), amendment 39–11313, to read as follows:

98–19–26 Airbus Industrie: Amendment 39–11313. Docket 98–NM–249–AD. Supersedes AD 98–03–06, Amendment 39–10298.

Applicability: Model A300 series airplanes, as listed in Airbus Service Bulletin A300–57–0234, Revision 01, dated March 11, 1998; and Model A300–600 series airplanes, as listed in Airbus Service Bulletin A300–57–6087, Revision 01, dated March 11, 1998; except airplanes on which Airbus Modification 11912 has been installed in production, or on which Airbus Modification 11932 has been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the main landing gear (MLG) attachment fittings, which could result in reduced structural integrity of the airplane, accomplish the following:

Restatement of Requirements of AD 98–03–06

Inspections and Repair

(a) For Model A300 series airplanes that have accumulated more than 27,000 flight cycles as of March 9, 1998 (the effective date of AD 98–03–06, amendment 39–10298): Except as provided by paragraph (b) of this AD, within 40 flight cycles after March 9, 1998, perform a detailed visual inspection to detect cracks in Gear Rib 5 of the MLG attachment fittings at the lower flange, in accordance with Airbus Service Bulletin A300–57–0234, Revision 01, dated March 11, 1998. Thereafter, repeat the inspection at intervals not to exceed 40 flight cycles, until the initial inspections required by paragraph (b) are accomplished.

(b) For all airplanes: Perform a detailed visual and a high frequency eddy current (HFEC) inspection to detect cracks in Gear Rib 5 of the MLG attachment fittings at the lower flange, in accordance with Airbus Service Bulletin A300–57–6087, Revision 01, dated March 11, 1998 (for Model A300–600 series airplanes); or A300–57–0234, Revision 01, dated March 11, 1998 (for Model A300 series airplanes); as applicable; at the time specified in paragraph (b)(1) or (b)(2) of this AD, as applicable. Repeat the inspections thereafter at intervals not to exceed 1,500 flight cycles. Accomplishment of the inspections required by this paragraph terminates the inspections required by paragraph (a) of this AD.

(1) For airplanes that have accumulated 20,000 or more total flight cycles as of March 9, 1998: Inspect within 500 flight cycles after March 9, 1998.

(2) For airplanes that have accumulated less than 20,000 total flight cycles as of March 9, 1998: Inspect prior to the accumulation of 18,000 total flight cycles, or within 1,500 flight cycles after March 9, 1998, whichever occurs later.

Note 2: Accomplishment of the initial detailed visual and HFEC inspections in accordance with Airbus Service Bulletin A300–57A0234 or A300–57A6057, both dated August 5, 1997, as applicable, is considered acceptable for compliance with the initial inspections required by paragraph (a) or (b) of this AD.

(c) If any crack is detected during any inspection required by this AD, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Direction Générale de l'Aviation Civile (or its delegated agent).

New Requirements of This AD

Terminating Modification

(d) Prior to the accumulation of 21,000 total flight cycles, or within 2 years after the effective date of this AD, whichever occurs later: Modify Gear Rib 5 of the MLG attachment fittings at the lower flange in accordance with Airbus Service Bulletin A300–57–6088, Revision 01, including Appendix 01 (for Model A300–600 series airplanes), or A300–57–0235, Revision 01, including Appendix 01 (for Model A300 series airplanes), all dated February 1, 1999, as applicable. Accomplishment of this modification constitutes terminating action for the repetitive inspection requirements of this AD.

Note 3: Accomplishment of the modification required by paragraph (d) of this AD prior to the effective date of this AD in accordance with Airbus Service Bulletin A300–57–6088 or A300–57–0235, both dated August 5, 1998; as applicable; is acceptable for compliance with the requirements of that paragraph.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) Except as provided by paragraph (c) of this AD, the actions shall be done in accordance with Airbus Service Bulletin A300–57–6087, Revision 01, dated March 11, 1998; Airbus Service Bulletin A300–57–0234, Revision 01, dated March 11, 1998; Airbus Service Bulletin A300–57–6088, Revision 01, dated February 1, 1999, including Appendix 01, dated February 1, 1999; and Airbus Service Bulletin A300–57–0235, Revision 01, dated February 1, 1999, including Appendix 01, dated February 1, 1999; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in French Airworthiness directive 98–151–247(B), dated April 8, 1998.

(h) This amendment becomes effective on October 20, 1999.

Issued in Renton, Washington, on September 2, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–23476 Filed 9–14–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–11–AD; Amendment 39–11311; AD 99–19–24]

RIN 2120–AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 900, Falcon 900EX, and Falcon 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Dassault Model Mystere-Falcon 900, Falcon 900EX, and Falcon 2000 series airplanes, that requires replacement of the elevator auxiliary artificial feel unit (AFU) with a new elevator auxiliary AFU. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the elevator auxiliary AFU. Failure of an AFU, coupled with a control linkage disconnection upstream of the servo actuator and downstream of the main AFU, could result in reduced controllability of the airplane.

DATES: Effective October 20, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 20, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dassault Model Mystere-Falcon 900, Falcon 900EX, and Falcon 2000 series airplanes was published in the **Federal Register** on June 28, 1999 (64 FR 34584). That action proposed to require replacement of the elevator auxiliary artificial feel unit (AFU) with a new elevator auxiliary AFU.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request to Revise Statement of Unsafe Condition

One commenter, the manufacturer, requests that the FAA clarify the unsafe condition by adding the words, "upstream of the servo actuator and downstream of the main AFU" to the language specified in certain sections of the proposed AD. The commenter states that the single loss of elevator auxiliary AFU or the loss of elevator auxiliary AFU coupled with a control linkage disconnection upstream of the main AFU will have no direct consequences on the airworthiness of an airplane. However, the loss of an auxiliary AFU coupled with the control linkage disconnection upstream of the servo actuator and downstream of the main AFU is a failure with consequences considered to be catastrophic.

The FAA concurs with the request. The FAA agrees that further clarification in regard to the unsafe condition is necessary and has added the words suggested by the commenter to this final rule. (The FAA acknowledges that the Discussion section of the proposed AD also needs clarification in regard to the unsafe condition, however, because the Discussion section is not restated in the final rule, no change to this final rule is necessary in this regard.)

Request to Revise Relevant Service Information

The same commenter requests that the relevant service information of the proposed AD be revised to reference the applicable Airplane Maintenance Manual (AMM) revisions. In support of this request, the commenter notes that after investigations and discussion with the Direction Générale de l'Aviation Civile (DGAC), the bushing of the AFU, part number (P/N) 105045–10, is considered to be a 2,000-landing safe-life part. Furthermore, the commenter notes that the AMM revisions were required by French airworthiness directives 98–429–023(B) and 98–428–007(B), each dated November 4, 1998.

The FAA does not concur with the commenter's request. The FAA acknowledges that the AMM's have

been revised to include safe-life limits for the elevator auxiliary AFU having P/N 105045–10. However, this AD requires that operators install a new AFU, P/N 105045–13, that does not have life limits. Additionally, paragraph (b) of this AD does not allow operators to install the old AFU's referenced by the commenter, as of the effective date of this AD. The FAA has determined that there is no need to refer to the AMM revisions that include the life limits of the old part. Therefore, no change to the final rule in this regard is necessary.

Request to Revise the Compliance Time

The same commenter, the manufacturer, requests that the compliance time of the proposed AD be revised to read, "The elevator auxiliary AFU P/N 105045–10 which have reached or exceeded 2,000 landings must be replaced within 6 months after the effective date of this AD." The commenter states that the current compliance time would penalize operators whose airplanes are far from 2,000 landings. The commenter also states that spare parts availability has been determined according to the French airworthiness directives 98–429–023(B) and 98–428–007(B), each dated November 4, 1998.

The FAA does not concur. The FAA acknowledges the comment, but points out that the commenter fails to recognize the last phrase in the compliance sentence, "whichever occurs later." Therefore, an airplane that has accumulated very few landings as of the effective date of this AD will have until 2,000 total landings to comply with the requirements of this AD. The compliance time of this AD as written, aligns with the French airworthiness directives. Therefore, no change to the final rule in this regard is necessary.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 186 airplanes of U.S. registry will be affected by this required AD, that it will take approximately 3 work hours per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the required AD on U.S. operators is estimated to be $33,480, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–19–24 Dassault Aviation: Amendment 39–11311. Docket 99–NM–11–AD.

Applicability: Model Mystere-Falcon 900, Falcon 900EX, and Falcon 2000 series airplanes, equipped with an elevator auxiliary artificial feel unit (AFU), part number 105045–10; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the elevator auxiliary AFU, coupled with a control linkage disconnection upstream of the servo actuator and downstream of the main AFU, which could result in reduced controllability of the airplane, accomplish the following:

Replacement

(a) Prior to the accumulation of 2,000 total landings, or within 6 months after the effective date of this AD, whichever occurs later, replace the elevator auxiliary AFU, part number 105045–10, with an elevator auxiliary AFU, part number 105045–13, in accordance with Dassault Service Bulletin F900–235, dated October 13, 1998 (for Model Mystere-Falcon 900 series airplanes); F900EX–88, dated October 20, 1998 (for Model Falcon 900EX series airplanes); or F2000–175, dated October 20, 1998 (for Model Falcon 2000 series airplanes); as applicable.

Spares

(b) As of the effective date of this AD, no person shall install an elevator auxiliary AFU, part number 105045–10, on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The replacement shall be done in accordance with Dassault Service Bulletin F900–235, dated October 13, 1998; Dassault Service Bulletin F900EX–88, dated October 20, 1998; or Dassault Service Bulletin F2000–175, dated October 20, 1998; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directives 98–429–023(B) and 98–428–007(B), both dated November 4, 1998.

(f) This amendment becomes effective on October 20, 1999.

Issued in Renton, Washington, on September 2, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–23475 Filed 9–14–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–251–AD; Amendment 39–11314; AD 99–19–27]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, that requires a one-time inspection of the main landing gear (MLG) wheel assemblies to determine whether certain parts are installed, and follow-on corrective actions, if necessary. For certain airplanes, this amendment also requires eventual modification of MLG wheel assemblies, which terminates the requirements of this AD. This amendment is prompted by incidents of multiple tie bolt failures on certain BFGoodrich wheel assemblies. The actions specified by this AD are intended to prevent failure of multiple tie bolts of MLG wheel assemblies, which could result in failure of the wheel rim, rapid release of tire pressure, and possible consequent damage to the airplane and injury to passengers and flightcrew.

DATES: Effective October 20, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 20, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from BFGoodrich Aerospace, Aircraft Wheels and Brakes, P.O. Box 340, Troy, Ohio 45373. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Don Kurle, Senior Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2798; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 737–100, –200, –300, –400, and –500 series airplanes was published in the **Federal Register** on November 18, 1998 (63 FR 64013). That action proposed to require a one-time inspection of the main landing gear (MLG) wheel assemblies to determine whether certain parts are installed, and follow-on corrective actions, if necessary. For certain airplanes, that action also proposed to require eventual modification of MLG wheel assemblies, which would terminate the requirements of this AD.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter has no objection to the proposed AD.

Explanation of Change Made to Proposal

The FAA has clarified the inspection requirement contained in the proposed AD. Whereas the proposed specified a visual inspection, the FAA has revised paragraphs (b)(2)(i) and (b)(2)(ii) of this final rule to clarify that its intent is to require a detailed visual inspection. Additionally, Note 2 has been added to the final rule to define that inspection.

Request to Revise Applicability

One commenter requests that the applicability of the proposed AD be revised to read, "All Model 737–100, –200, –300, –400, and –500 series airplanes certificated in any category, having wheel assemblies manufactured by BFGoodrich installed." In support of its request, the commenter states that the current applicability does not exclude airplanes that do not have BFGoodrich wheel and brake assemblies installed.

The FAA does not concur. The purpose of the AD is to assure that all operators verify part numbers, determine if BFGoodrich wheel assemblies are installed, and if so, take appropriate action. No change to the applicability section of the AD is made in this regard. However, the FAA recognizes that a records review can verify part numbers, and as discussed below, paragraph (a) of the AD has been revised to essentially accomplish the result sought by the commenter.

Request to Revise Inspection Procedures

Several commenters request that the proposed inspection procedures of the main landing gear (MLG) wheel assemblies be revised to allow for a records review in lieu of a visual inspection to determine whether certain parts are installed. In support of this request, the commenters noted that other wheel assemblies (AlliedSignal) are not interchangeable with BFGoodrich wheel assemblies, and since it is not necessary to determine the type of wheel assemblies that are installed, a review of records would be less expensive than a visual inspection.

The FAA concurs with the commenters' request to revise the inspection procedures required by paragraph (a) of this AD. The FAA recognizes that a visual inspection is not necessary to determine the type of wheel assemblies that are installed. In light of this, the FAA has revised paragraph (a) of this final rule to

require, "an inspection of the MLG wheel assemblies or perform other verifications (such as a records review) to determine the part number (P/N) of each assembly."

Request for Clarification of Discussion Section

One commenter requests that the FAA clarify the description in the Discussion Section of the proposed AD of the tie bolt failures to indicate that they occurred only on certain BFGoodrich wheel assemblies that are installed on the main landing gear (MLG) of Boeing Model 737–300 and –400 series airplanes.

The FAA agrees that the Discussion section of the proposed rule may have been unclear regarding the incidents of tie bolt failures on certain BFGoodrich wheel assemblies. The FAA acknowledges that no reports of failures have been reported for Boeing Model 737–100, –200, or –500 series airplanes. However, because the Discussion section is not restated in the final rule, no change to this final rule is necessary in this regard.

Request for Revision of Cost Impact Information

One commenter requests that the cost impact information of the proposed AD be revised to clarify the usage of parts should an operator elect to accomplish the replacement. The commenter requests adding a phrase to clarify that if the same part number steel tie bolt fasteners were used, such replacement will require no additional work hours if accomplished during a regularly scheduled tire change.

The FAA concurs with the commenter's request. The cost impact information, below, has been revised accordingly.

The same commenter requests that the cost impact information of the proposed AD be revised to clarify the types of parts to be used. The commenter requests adding a phrase to clarify that the modification of the wheel assembly be accomplished by installing improved, Inconel tie bolt fasteners, and that it would require no additional work hours per airplane if the modification is accomplished during a regularly scheduled tire change.

The FAA concurs with the commenter's request. The cost impact information, below, has been revised accordingly.

Request for Clarification of Requirements

One commenter requests that the proposed rule be revised to clarify certain requirements. The commenter suggests that additional information be provided to clarify the visual inspections, replacements, and terminating action.

The FAA does not concur. The FAA acknowledges the comment, however, the commenter did not make any specific recommendations. Therefore, no change to the final rule in this regard is necessary.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 460 Model 737–100, –200, –300, –400, and –500 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 118 airplanes of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required one-time inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the one-time inspection required by this AD on U.S. operators is estimated to be $7,080, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the repetitive visual inspection, it would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the repetitive inspections, if accomplished, is estimated to be $60 per airplane, per inspection cycle.

Should an operator elect to accomplish the replacement using the same part number steel tie bolt fasteners, such replacement would require no additional work hours if accomplished during a regularly scheduled tire change. Required parts would cost $2,840 per airplane ($710 per wheel). Based on these figures, the cost impact of the replacement, if accomplished, is estimated to be $2,840 per airplane, per replacement cycle.

Should an operator elect to accomplish the revisions to the FAA-approved maintenance program, it would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the maintenance program revision, if accomplished, is estimated to be $60 per airplane.

Should an operator be required to accomplish the necessary modification of the wheel assembly by installing improved Inconel tie bolt fasteners, it would require no additional work hours per airplane, if the modification is accomplished during a regularly scheduled tire change. Required parts would cost $4,848 per airplane ($1,212 per wheel). Based on these figures, the cost impact of any necessary modification is estimated to be $4,848 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–19–27 Boeing: Amendment 39–11314. Docket 98–NM–251–AD.

Applicability: Model 737–100, –200, –300, –400, and –500 series airplanes, certificated in any category;

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of multiple tie bolts of main landing gear (MLG) wheel assemblies, which could result in failure of the wheel rim, rapid release of tire pressure, and possible consequent damage to the airplane and injury to passengers and flightcrew, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform an inspection of the MLG wheel assemblies or perform other verifications (such as a records review) to determine the part number (P/N) of each assembly. If no wheel assembly manufactured by BFGoodrich Aerospace and having P/N 3–1398–1, 3–1439–2, or 3–1439–3 is installed on the airplane, no further action is required by this AD.

(b) Except as provided by paragraph (d) of this AD, if any MLG wheel assembly manufactured by BFGoodrich Aerospace and having P/N 3–1398–1, 3–1439–2, or 3–1439–3 is installed on the airplane, within 60 days after the effective date of this AD, accomplish the actions specified by paragraph (b)(1) or (b)(2) of this AD.

(1) Accomplish the actions specified by (b)(1)(i) or (b)(1)(ii) of this AD.

(i) Replace all tie bolts, nuts, and washers of the MLG wheel assembly with parts having the same P/N's, in accordance with the BFGoodrich component maintenance manual. Thereafter, repeat the replacement of tie bolts, nuts, and washers, at intervals not to exceed 5 tire changes, until the actions specified by paragraph (b)(2) or paragraph (c) of this AD have been accomplished. Or

(ii) Perform a detailed visual inspection to detect fractures of any of the 16 tie bolts on each MLG wheel assembly, in accordance with the Boeing 737 airplane maintenance manual. Thereafter, repeat the inspection at intervals not to exceed 100 flight cycles until the actions specified by paragraph (b)(2) or paragraph (c) of this AD have been accomplished. If any fracture of any tie bolt is found during any inspection performed in accordance with this requirement, prior to further flight, replace the tie bolt, nut, and washer, in accordance with the BFGoodrich component maintenance manual, with new parts having the same P/N's.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

(2) Revise the FAA-approved maintenance program as specified in paragraph (b)(2)(i) or (b)(2)(ii) of this AD.

(i) Revise the FAA-approved maintenance program to require replacement of all tie bolts, nuts, and washers of the MLG wheel assembly with parts having the same P/N's, in accordance with the BFGoodrich component maintenance manual, at intervals not to exceed 5 tire changes. Or

(ii) Revise the FAA-approved maintenance program to require a detailed visual inspection to detect fractures of any of the 16 tie bolts on each MLG wheel assembly, in accordance with the Boeing 737 airplane maintenance manual, at intervals not to exceed 100 flight cycles. If any fracture of any tie bolt is found during any inspection performed in accordance with this requirement, prior to further flight, replace the tie bolt, nut, and washer, in accordance with the BFGoodrich component maintenance manual, with new parts having the same P/N's.

Note 3: After the maintenance program has been revised to include the procedures specified in paragraph (b)(2)(i) or (b)(2)(ii) of this AD, operators are not required to subsequently record AD compliance each time the replacement or inspection is performed.

(c) If any MLG wheel assembly manufactured by BFGoodrich Aerospace and having P/N 3–1398–1, 3–1439–2, or 3–1439–3 is installed on the airplane: Except as provided by paragraph (d) of this AD, within 2 years after the effective date of this AD, modify any BFGoodrich Aerospace wheel assembly, having P/N 3–1398–1, 3–1439–2, or 3–1439–3; by replacing all existing tie bolts, nuts, and washers, with new, improved parts; and by converting the P/N of the MLG wheel assembly to 3–1398–2 (for BFGoodrich wheel assemblies having the old P/N 3–1398–1), 3–1439–5 (for BFGoodrich wheel assemblies having the old P/N 3–1439–2), or 3–1439–6 (for BFGoodrich wheel assemblies having the old P/N 3–1439–3), as applicable; in accordance with BFGoodrich Aerospace Service Bulletin 3–1439–32–13, or BFGoodrich Aerospace Service Bulletin 3–1398–32–16, both dated August 20, 1993, as applicable. Such modification constitutes terminating action for the requirements of this AD, and the FAA-approved maintenance program procedures specified by paragraph (b)(2) of this AD may be removed following accomplishment of the requirements of this paragraph.

(d) Airplanes on which the modification required by paragraph (c) of this AD is accomplished within the compliance time specified in paragraph (b) of this AD are not required to accomplish the actions required by paragraph (b).

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) The modification shall be done in accordance with BFGoodrich Aerospace Service Bulletin 3–1439–32–13, dated August 20, 1993; or BFGoodrich Aerospace Service Bulletin 3–1398–32–16, dated August 20, 1993, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from BFGoodrich Aerospace, Aircraft Wheels and Brakes, P.O. Box 340, Troy, Ohio 45373. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on October 20, 1999.

Issued in Renton, Washington, on September 2, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–23474 Filed 9–14–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–261–AD; Amendment 39–11315; AD 99–19–28]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120RT and –120ER Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain EMBRAER Model EMB–120RT and –120ER series airplanes, that requires repetitive detailed visual inspections to detect discrepancies of the brake assemblies on the main landing gear (MLG), and replacement of the brake assemblies with new or serviceable brake assemblies, if necessary. This amendment is prompted by reports of fatigue cracking or splitting of the brake stator disk at the thermal expansion slots. The actions specified by this AD are intended to prevent failure of the brake assemblies of the MLG due to cracking or splitting of the stator disk, which could result in loss of brake effectiveness and could cause the airplane to leave the runway surface.

DATES: Effective October 20, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 20, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from BFGoodrich, Aircraft Wheels and Brakes, P.O. Box 340, Troy, Ohio, 45373. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rob Capezzuto, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6071; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–120RT and –120ER series airplanes was published in the **Federal Register** on October 14, 1998 (63 FR 55059). That action proposed to require repetitive visual inspections to detect discrepancies of the brake assemblies on the main landing gear (MLG), and replacement of the brake assemblies with new brake assemblies, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the four comments received.

Request to Withdraw Proposed AD

• One commenter, the manufacturer, states that it discussed with the Brazilian airworthiness authority the "cracked/splitted stator brakes" that were impairing the expected service life of the brakes of Model EMB–120 series airplanes. Upon request by the Brazilian airworthiness authority, the manufacturer incorporated the inspections specified by BFGoodrich Service Bulletins 2–1585–32–1 and 2–1479–32–2 into the "EMB–120 Maintenance Review Board (MRB)" document, temporary revision No. 3. The commenter contends that, since the MRB is an FAA-approved document applicable to all U.S.-registered airplanes and includes the same inspection procedures as the service bulletins, issuance of the proposed AD would be a duplication and, therefore, is unnecessary.

The FAA does not concur. Although the MRB is an FAA-approved document, the procedures specified in that document are recommended (rather than mandatory) for U.S. operators. The FAA finds that accomplishment of the inspections as part of a recommended action in the MRB report would not ensure an acceptable level of safety. In light of this and the identified unsafe condition, the FAA has determined that issuance of this AD is necessary in order to mandate repetitive detailed visual inspections for discrepancies of the brake assemblies on the MLG in paragraph (a) of this AD.

• One commenter states that the proposed rule is not justified because the actions required do not effectively prevent brake rotor failure or promote safety. The commenter suggests that additional research needs to be accomplished to determine answers to the following questions. Why are some operators having problems with brake rotors when others, such as the largest operator of Model EMB–120 series airplanes in the world, are not? Is the problem of rotor breakage associated with landing cycles, or is it associated with brake rotor over-temperature situations? Have there been any runway excursions or passenger injuries as a result of brake rotor failure on Model EMB–120 series airplanes?

The FAA does not concur that the proposed AD is not justified. BFGoodrich's investigation of the brake stator rotors indicates that fatigue cracking began to occur between 600 and 1,000 flight hours, which clearly shows that a service difficulty does exist with the rotors. To address this problem, BFGoodrich issued Service Bulletins 2–1585–32–1 and 2–1479–32–2, both Revision 1, dated June 17, 1998. Although the exact cause of the cracking is unknown at this time, BFGoodrich has informed the FAA that the cracking and splitting [of the brake stator disks] are due to overheat and thermal distortion of the stator disks. The FAA considers that the number of landing cycles and over-temperature conditions are related to the identified unsafe condition. Although no runway excursions or passenger injuries have been reported as a result of the identified unsafe condition to date, the FAA has determined that the procedures required by this AD are necessary to prevent an unsafe condition from occurring and to ensure continued operational safety. No change to the final rule is necessary in this regard.

Request to Increase the Compliance Time for the Inspections

Three commenters request that the compliance times for the initial and repetitive inspections be increased.

One commenter requests revising the initial inspection in paragraph (a) of the proposed AD to "within 400 hours after the effective date of this AD" and repeating the inspections thereafter "at an interval not to exceed 400 hours." The commenter contends that such an extension of the compliance time would allow accomplishment of these inspection requirements during an operator's regularly scheduled "A" checks. The commenter adds that some operators do not have certified inspectors at remote line stations to support a mandatory inspection requirement to accomplish the repetitive inspections at each wheel change, although it is preferred to have line mechanics inspect the brakes at each wheel removal.

Another commenter states that the repetitive inspection interval required by the proposed AD of "300 landings" would require very labor intensive and costly tracking and planning, which would make operators prone to "overfly" errors. The commenter contends that repetitive inspection intervals should include the option of using airframe hours and should be based on an operator's existing maintenance/inspection program, as determined by each operator's continuing analysis and surveillance system. Based on a sampling of COEX brake removal data due to stator/disc breakage, an "A-check" interval of 400 hours would provide an equivalent level of safety for our fleet.

Another commenter states that a "300 cycle re-inspection requirement" is impractical and does not increase safety. There is no documented time at which cracks appear, nor is there any documentation of crack propagation rates. In addition, the "300 cycle interval" at each wheel change required by the proposed AD appears to be arbitrary with no supporting data.

The FAA concurs with the commenters' requests to extend the compliance time for the inspections. Based on information provided by one of the commenters, the FAA recognizes that "400 flight hours" corresponds more closely to the interval representative of most of the affected operators' normal maintenance schedules, where special equipment and trained maintenance personnel will be available if necessary. The FAA does not consider that this extension will adversely affect safety. Paragraph (a) of the final rule has been changed to specify the compliance times for the initial detailed visual inspection as: "Within 400 flight hours after the effective date of this AD," and the repetitive inspections [in paragraphs (a) and (b)] as: "at an interval not to exceed 400 flight hours."

Request to Change Brake Replacement Requirement

Three commenters request changing the proposed AD to require replacement of the brake assembly with a "serviceable" rather than a "new" brake assembly. One commenter contends that it is doubtful the brake manufacturer can maintain production levels to support Model EMB–120 series airplanes with new replacement units. Another commenter contends that there is no justification for requiring a new part to be installed as a replacement because, in every instance, a "serviceable" part should be acceptable for replacement.

The FAA concurs that the replacement of discrepant brake assemblies with serviceable parts is acceptable. The FAA has provided operators with the option of replacing any discrepant brake assemblies with either a new or serviceable brake assembly. This option provides greater flexibility to the operators in meeting the requirements of this AD and alleviates any problems regarding parts availability, while still providing an acceptable level of safety for the fleet. The FAA has revised the preamble and paragraph (b) of the final rule accordingly.

Request to Consider Adding Brake Assemblies to the Applicability

One commenter requests that the FAA consider whether the applicability of the proposed AD should include brake assemblies, part numbers (P/N) 2–1585 and 2–1479–1, that have been modified with parts manufacturer approval (PMA) heat sink components.

The FAA finds that this AD would apply to airplanes equipped with brake assemblies having part number (P/N) 2–1585 or 2–1479–1, if those assemblies have been modified with PMA heat sink components and if the PMA approval was based on identicality. Such components are identical to the original part in materials and dimensions and, therefore, may be subject to the same identified unsafe condition. However, investigation reveals that the only known PMA's to these brake assemblies were obtained through test and computation. Because there are no known PMA's to these brake assemblies that have been obtained through identicality, no change to the applicability of the final rule is necessary.

Request to Revise the Preamble of the Proposal

One commenter requests revising the Summary of the proposed AD by clarifying that the brake stator disk is located at the "thermal expansion slots" rather than at the "cut-out slots." The FAA concurs and has changed the Summary of the final rule accordingly.

That same commenter also requests revising the "Discussion" paragraph of the proposed AD to clarify that the cause of the cracking and splitting are the result of overheat and thermal distortion of the stator disks, although the exact cause of these conditions have not been determined at this time. The FAA recognizes that the suggested change provides improved technical accuracy. However, since the "Discussion" paragraph of the preamble to the NPRM is not restated in the final rule, no change to the final rule is necessary.

That same commenter also requests revising the "Explanation of Relevant Service Information" paragraph of the proposed AD to change one of the discrepancies listed in that paragraph from "wear of plates" to "excessive distortion of the wear plates." The FAA acknowledges that the suggested change improves technical accuracy. Even though the referenced paragraph does not appear in the final rule, the FAA considers that the suggested change is appropriate for paragraph (a) of the final rule and has changed that paragraph accordingly.

Request to Revise the Cost Impact in the Proposed AD

One commenter requests revising the Cost Impact paragraph of the proposed AD. The commenter states that the referenced service bulletins estimate that the inspection at a tire change would be 15 minutes per brake, or one hour per airplane. However, if the inspections were not accomplished at a tire change, additional time and cost (approximately 2 hours per airplane) would be required to jack the airplane and remove the wheel/tire assembly to enable the inspection.

The FAA does not concur. As explained earlier in this AD, no additional time would be required for the inspections because the compliance times are extended in the final rule, which should allow the operator to perform the inspection during a tire change. No change to the final rule was necessary in this regard.

Differences Between Service Bulletin and This AD

Operators should note that BFGoodrich Service Bulletins 2–1585–32–1 and 2–1479–32–2, both Revision 1, dated June 17, 1998, specify an "examination" of the brake assembly and a "visual examination" of each stator disk expansion slot. However, this final rule requires a "detailed visual inspection" to determine the existence of any discrepancies of the brake assemblies on the MLG. A note has been added to the final rule to define that inspection.

Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will

neither increase the economic burden on any operator nor increase the scope of the AD.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 227 Model EMB–120RT and –120ER series airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $13,620, or $60 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–19–28 Empresa Brasileira De Aeronautica S.A. (EMBRAER): Amendment 39–11315. Docket 98–NM–261–AD.

Applicability: Model EMB–120RT and –120ER series airplanes, equipped with BFGoodrich brake assemblies having part number (P/N) 2–1585 or 2–1479–1; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the brake assemblies of the main landing gear (MLG) due to cracking or splitting of the stator disk, which could result in loss of brake effectiveness and could cause the airplane to leave the runway surface, accomplish the following:

(a) Within 400 flight hours after the effective date of this AD, perform a detailed visual inspection for discrepancies (e.g., locking or hanging up, broken or damaged stators, and excessive distortion of the wear plates) of the brake assemblies on the MLG, in accordance with paragraph (a)(1) or (a)(2) of this AD, as applicable. Repeat the inspections thereafter at intervals not to exceed 400 flight hours.

(1) For airplanes equipped with BFGoodrich main brake assemblies having P/N 2–1479–1: Inspect in accordance with BFGoodrich Service Bulletin 2–1479–32–2, Revision 1, dated June 17, 1998.

(2) For airplanes equipped with BFGoodrich main brake assemblies having P/N 2–1585: Inspect in accordance with BFGoodrich Service Bulletin 2–1585–32–1, Revision 1, dated June 17, 1998.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(b) If any discrepancy is detected during any inspection required by paragraph (a) of this AD, prior to further flight, replace the brake assembly with a new or serviceable brake assembly, in accordance with section 32–41–05 of EMBRAER EMB–120 Brasilia Maintenance Manual, dated April 30, 1992. Repeat the inspections required by paragraph (a) of this AD thereafter at intervals not to exceed 400 flight hours.

(c) Within 10 days after accomplishing any inspection required by this AD, if a discrepant brake assembly is detected, submit a report of the inspection results to BFGoodrich, Aircraft Wheels and Brakes, P.O. Box 340 Troy, Ohio, 45373. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Except as provided by paragraph (b) of this AD, the inspections and replacement shall be done in accordance with BFGoodrich Service Bulletin 2–1479–32–2, Revision 1, dated June 17, 1998, and BFGoodrich Service Bulletin 2–1585–32–1, Revision 1, dated June 17, 1998, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from BFGoodrich, Aircraft Wheels and Brakes, P.O. Box 340, Troy, Ohio 45373. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(g) This amendment becomes effective on October 20, 1999.

Issued in Renton, Washington, on September 2, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–23473 Filed 9–14–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–278–AD; Amendment 39–11316; AD 99–19–29]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that requires repetitive inspections of certain H–11 tension bolts at each side-of-body kick-load fitting and on the lower splice plate (both located on the wing rear spar) to detect damaged or broken bolts; and follow-on actions, if necessary. This amendment also requires eventual replacement of the existing bolts with new, improved bolts, which constitutes terminating action for the repetitive inspections. This amendment is prompted by a report that an operator found two broken H–11 tension bolts on the side-of-body kick-load fitting on one airplane. The actions specified by this AD are intended to prevent cracking of the bolts due to stress corrosion, which could result in reduced structural integrity of the wing-to-body joint structure.

DATES: Effective October 20, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 20, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James G. Rehrl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2783; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes was published in the **Federal Register** on November 23, 1998 (63 FR 64657). That action proposed to require repetitive inspections of certain H–11 tension bolts at each side-of-body kick-load fitting and on the lower splice plate (both located on the wing rear spar) to detect damaged, broken, or improperly sealed bolts; and follow-on actions, if necessary. That action also proposed to require eventual replacement of the existing bolts with new, improved bolts, which constitutes terminating action for the repetitive inspections.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the four comments received.

Two commenters support the proposed rule, and one commenter does not object to the proposed rule.

Editorial Changes to the Final Rule

The FAA has determined that it is necessary to clarify the detailed visual inspection of paragraph (a)(1) of the requirements of this AD. The FAA has added the words "of the bolts," to further clarify the inspection area. The final rule has been changed accordingly.

Request to Delete Certain Descriptive Language

One commenter, the manufacturer, requests that the FAA delete the words "improperly sealed" from paragraphs (a) and (b) of the proposed AD. The commenter states that because the most significant influence of the H–11 bolt fracture is the presence of high pre-load, which cannot be determined by inspection, any anomalies in the bolt sealant will have no effect on the bolt fracture, unless the bolt is highly pre-loaded. The commenter also suggests that using the condition of the H–11 bolt sealant as a guide for bolt replacement will cause unnecessary, unscheduled airplane down time and confusion, as it is likely that improperly sealed bolts will be found. The commenter further adds that a clear definition of an "improperly sealed bolt" is not provided in either the Boeing Service Bulletin or the Notice of Proposed Rulemaking (NPRM).

The FAA concurs with the request to delete certain descriptive language of the AD, as requested by the commenter. The FAA has revised this language throughout the final rule..

Request to Revise the Compliance Time for the Terminating Action

One commenter requests that the FAA revise the proposed compliance time for the terminating action from 6,000 flight cycles to 9,000 flight cycles. The commenter states that the issue of H–11 bolts fracture is more dependent on calendar time rather than flight cycles. This additional allowance of time would provide high cycle usage operators an equivalent of 48 months calendar time that is provided for low cycle usage operators.

The FAA concurs with this request, and has revised paragraph (c) of the final rule accordingly.

Explanation of Change Made to Proposal

The FAA has added a note to the final rule to clarify the definition of a detailed visual inspection.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 177 Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 70 airplanes of U.S. registry will be affected by this AD.

It will take approximately 2 work hours per airplane to accomplish the required inspection of the kick-load fitting, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection of the kick-load fitting required by this AD on U.S. operators is estimated to be $8,400, or $120 per airplane, per inspection cycle.

It will take approximately 23 work hours per airplane to accomplish the required inspection of the splice plate, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection of the splice plate required by this AD on U.S.

operators is estimated to be $96,600, or $1,380 per airplane, per inspection cycle.

It will take approximately 140 work hours per airplane to accomplish the required replacement, at an average labor rate of $60 per work hour. Parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be $588,000, or $8,400 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–19–29 Boeing: Amendment 39–11316. Docket 98–NM–278–AD.

Applicability: Model 767 series airplanes, line positions 1 through 177 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking of the H–11 tension bolts on the side-of-body kick-load fitting due to stress corrosion, which could result in reduced structural integrity of the wing-to-body joint structure, accomplish the following:

(a) Within 90 days after the effective date of this AD: Perform a detailed visual inspection of the four H–11 tension bolts at each side-of-body kick-load fitting located on the wing rear spar to detect damaged or broken bolts; and accomplish the requirements in either paragraph (a)(1) or (a)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–57A0064, Revision 1, dated July 9, 1998.

(1) *Option 1:* Repeat the detailed visual inspection of the bolts at each side-of-body kick-load fitting thereafter at intervals not to exceed 90 days, until accomplishment of the actions specified in paragraph (c) of this AD. Or

(2) *Option 2:* Perform a detailed visual inspection of the four H–11 tension bolts on the lower splice plate located on the wing rear spar to detect damaged or broken bolts. Repeat the detailed inspection of each side-of-body kick-load fitting and the lower splice plate thereafter at intervals not to exceed 18 months, until accomplishment of the actions specified in paragraph (c) of this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

(b) If evidence of any damaged or broken bolt is detected, prior to further flight, replace the discrepant bolt with a new, improved bolt in accordance with Boeing Service Bulletin 767–57A0064, Revision 1, dated July 9, 1998. Thereafter, repeat the detailed inspection in either paragraph (a)(1) or (a)(2) of this AD, as applicable, until accomplishment of the actions specified in paragraph (c) of this AD.

(c) Within 9,000 flight cycles or 48 months after the effective date of this AD, whichever occurs first, replace all four H–11 tension bolts at each side-of-body kick-load fitting with new, improved bolts, and perform a detailed visual inspection to detect any damaged or broken bolt of the lower splice plate located on the wing rear spar, in accordance with Boeing Service Bulletin 767–57A0064, Revision 1, dated July 9, 1998. If any damaged or broken bolt is detected during the inspection, prior to further flight, replace the discrepant bolt with a new, improved bolt in accordance with Boeing Service Bulletin 767–57A0064, Revision 1, dated July 9, 1998. Accomplishment of the actions specified in this paragraph constitutes terminating action for the repetitive inspection requirements of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The inspections and replacements shall be done in accordance with Boeing Service Bulletin 767–57A0064, Revision 1, dated July 9, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on October 20, 1999.

Issued in Renton, Washington, on September 2, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–23471 Filed 9–14–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–159–AD; Amendment 39–11312; AD 99–19–25]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A340 series airplanes. This action requires a one-time inspection of all gland nuts supplied with certain shock struts of the center landing gear (CLG) to verify that the gland nuts have the correct thread profile, and replacement of any defective gland nut with a new gland nut. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent the failure of the CLG, and subsequent damage to the airplane structure or injury to airplane occupants.

DATES: Effective September 30, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 30, 1999.

Comments for inclusion in the Rules Docket must be received on or before October 15, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–159–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A340 series airplanes. The DGAC advises that, during take-off, the center landing gear (CLG) shock strut of an in-service airplane disengaged from the CLG main fitting because of a defective gland nut. Inspection of the defective gland nut revealed that the thread profile of the gland nut was incorrect. This condition, if not corrected, could result in the failure of the CLG, and subsequent damage to the airplane structure or injury to airplane occupants.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A340–32–4111, Revision 01, dated May 28, 1998, which describes procedures for a one-time inspection of all gland nuts supplied with certain shock struts of the CLG to verify that the gland nuts have the correct thread profile. For any defective gland nut, the service bulletin describes procedures for replacement of the gland nut with a new part.

Accomplishment of the actions specified in Airbus Service Bulletin A340–32–4111 is intended to adequately address the identified unsafe condition. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 98–153–088(B), dated April 8, 1998, in order to assure the continued airworthiness of these airplanes in France.

Airbus Service Bulletin A340–32–4111 refers to Messier-Dowty Service Bulletin No. M–DT SB18000–32–8, dated October 30, 1997, which provides the criteria for acceptability of the gland nut and is an additional source of service information for accomplishment of the inspection and replacement.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.19) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent the failure of the CLG, and subsequent damage to the airplane structure or injury to airplane occupants. This AD requires accomplishment of the actions specified in Airbus Service Bulletin A340–32–4111, described previously.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 4 work hours to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD would be $240 per airplane.

Determination of Rule's Effective Date

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments

as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–159–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–19–25 Airbus Industrie: Amendment 39–11312. Docket 99–NM–159–AD.

Applicability: Model A340 series airplanes, certificated in any category, on which Airbus Modification 43028 (reference Airbus Service Bulletin A340–32–4083, dated September 19, 1996) has been incorporated.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent the failure of the center landing gear (CLG), and subsequent damage to the airplane structure or injury to airplane occupants, accomplish the following:

Inspection

(a) Within one month after the effective date of this AD, perform a detailed visual inspection of all gland nuts supplied with the 18000 series shock struts, part numbers 18100–1001 through 18100–1061 and part numbers 18105–1001 through 18105–1061, on the CLG to verify that the gland nuts have the correct thread profile, in accordance with Airbus Service Bulletin A340–32–4111, Revision 01, dated May 28, 1998. For any gland nut thread profile that is not acceptable, as specified by the service bulletin: Prior to further flight, replace that gland nut with a new part, in accordance with the service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Note 3: Accomplishment of the inspection in accordance with Airbus Service Bulletin A340–32–4111, dated November 27, 1997, is acceptable for compliance with the requirements of paragraph (a) of this AD.

Note 4: Airbus Service Bulletin A340–32–4111 refers to Messier-Dowty Service Bulletin No. M–DT SB18000–32–8, dated October 30, 1997, as an additional source of service information for the inspection, the replacement of any defective gland nut, and the criteria for acceptability of the gland nut thread profile.

Spares

(b) As of the effective date of this AD, no person shall install an 18000 series shock strut, part numbers 18100–1001 through 18100–1061 and part numbers 18105–1001 through 18105–1061, on the CLG of any airplane, unless that shock strut has been inspected and applicable corrective actions have been performed in accordance with Airbus Service Bulletin A340–32–4111, dated November 27, 1997, or Airbus Service Bulletin A340–32–4111, Revision 01, dated May 28, 1998.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Airbus Service Bulletin A340–32–4111, Revision 01, dated May 28, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 6: The subject of this AD is addressed in French airworthiness directive 98–153–088(B), dated April 8, 1998.

(f) This amendment becomes effective on September 30, 1999.

Issued in Renton, Washington, on September 2, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–23470 Filed 9–14–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–16]

Removal of Class E Airspace; Arlington, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the geographic coordinates of a final rule that was published in the **Federal Register** on August 24, 1999, (64 FR 46116), Airspace Docket No. 99–ASO–16.

EFFECTIVE DATE: 0901 UTC, November 4, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

Federal Regiser Docket DOCID: fr24au99–4, Airspace Docket NO. 99–ASO–16, published on August 24, 1999, (64 FR46116), revoked Class E airspace at Arlington Municipal Airport, Arlington, TN. Errors were discovered in the geographic coordinates of the Memphis NAS/Millington Municipal Airport, Millington, TN. This action corrects those errors.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the geographic coordinates for the Memphis NAS/Millington Municipal Airport for the Class E airspace at, Millington, TN, as published in the **Federal Register** on August 24, 1999, (64 FR46116), (**Federal Register** Document DOCID: fr24au99–4; page 46116), are corrected as follows:

§ 71.71 [Corrected]

* * * * *

ASO TN E Memphis NAS/Millington, TN [Corrected]

By removing "Lat. 35°21'20" N, long. 89°40'22" W and substituting "Lat. 35°21'24", long. 89°52'13" W".

* * * * *

Issued in College Park, Georgia, on September 1, 1999.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–23939 Filed 9–14–99; 8:45 am]

BILLING CODE 4910–13–M]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 121

Operating Requirements: Domestic, Flag, and Supplemental Operations

CFR Correction

In Title 14 of the Code of Federal Regulations, parts 60 to 139, revised as of Jan. 1, 1999, page 433, § 121.339 is corrected by inserting the words "beyond the rated capacity" between the words "capacity" and "of" in the last sentence in paragraph (a)(2).

[FR Doc. 99–55531 Filed 9–14–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 99F–0299]

Secondary Direct Food Additives Permitted in Food for Human Consumption

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of acidified sodium chlorite solutions as an antimicrobial agent on raw agricultural commodities (RAC's). This action is in response to a petition filed by Alcide Corp.

DATES: This regulation is effective September 15, 1999; written objections and requests for a hearing by October 15, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–418–3074.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 3, 1999 (64 FR 10302), FDA announced that a food additive petition (FAP 9A4648) had been filed by Alcide Corp., 8561 154th Ave. NE., Redmond, WA 98052. The petition proposed to amend the food additive regulation in § 173.325 to provide for the safe use of aqueous solutions of acidified sodium chlorite as an antimicrobial agent on RAC's.

The petitioner is proposing to limit the use of this additive to RAC's in preparing, packing, or holding of such commodities for commercial purposes, consistent with section 201(q)(1)(B)(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(q)(1)(B)(i)), as amended by the Antimicrobial Regulation Technical Corrections Act of 1998 (ARTCA) (Public Law 105–324). The petitioner is not proposing that the additive be intended for use for any application under section 201(q)(1)(B)(i)(I), (q)(1)(B)(i)(II), or (q)(1)(B)(i)(III) of the act, which use would be subject to regulation by the Environmental Protection Agency (EPA) as a pesticide chemical. The proposed use of the additive is to reduce the microbial contamination on RAC's. Under ARTCA, the use of acidified sodium chlorite solutions as an antimicrobial agent on RAC's in preparing, packing, or holding of such RAC's for commercial purposes, consistent with section 201(q)(1)(B)(i) of the act, and not otherwise included within the definition of "pesticide chemical" under section 201(q)(1)(B)(i)(I), (q)(1)(B)(i)(II), or (q)(1)(B)(i)(III), is subject to regulation by FDA as a food additive.

Although this use of acidified sodium chloride solutions as an antimicrobial agent on raw agricultural commodities is regulated under section 409 of the act (21 U.S.C. 348) as a food additive, the intended use may nevertheless be subject to regulation as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Therefore, manufacturers intending to market acidified sodium chlorite solutions for such use should contact the EPA to determine whether this use requires a pesticide registration under FIFRA.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive is safe, that the additive will achieve its intended technical effect, and, therefore, that the regulation in § 173.325 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

In the notice of filing, FDA gave interested parties an opportunity to submit comments on the petitioner's environmental assessment. FDA received no comments in response to that notice.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before October 15, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 173

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 173 is amended as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 173 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

2. Section 173.325 is amended by redesignating paragraph (e) as paragraph (f) and by adding new paragraph (e) to read as follows:

§ 173.325 Acidified sodium chlorite solutions.

* * * * *

(e) The additive is used as an antimicrobial agent on raw agricultural commodities in the preparing, packing, or holding of the food for commercial purposes, consistent with section 201(q)(1)(B)(i) of the act, and not applied for use under section 201(q)(1)(B)(i)(I), (q)(1)(B)(i)(II), or (q)(1)(B)(i)(III) of the act, in accordance with current industry standards of good manufacturing practice. Applied as a dip or a spray, the additive is used at levels that result in chlorite concentrations of 500 to 1200 parts per million (ppm), in combination with any GRAS acid at levels sufficient to achieve a pH of 2.3 to 2.9. Treatment of the raw agricultural commodities with acidified sodium chlorite solutions shall be followed by a potable water rinse, or by blanching, cooking, or canning.

* * * * *

Dated: September 8, 1999.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–23969 Filed 9–14–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

21 CFR Part 1308

[DEA–182F]

Schedules of Controlled Substances: Placement of Zaleplon Into Schedule IV

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: With the issuance of this final rule, the Deputy Administrator of the Drug Enforcement Administration (DEA) places the substance, zaleplon, including its salts, into Schedule IV of the Controlled Substances Act (CSA). As a result of this rule, the regulatory controls and criminal sanctions of Schedule IV will be applicable to the manufacture, distribution, importation and exportation of zaleplon and products containing zaleplon.

EFFECTIVE DATE: September 15, 1999.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Zaleplon is a central nervous system (CNS) depressant that will be marketed under the trade name SONATA™ for the short-term treatment of insomnia.

On March 31, 1999, the Assistant Secretary for Health and Surgeon General, Department of Health and Human Services (DHHS), sent the Deputy Administrator of DEA letter recommending that zaleplon, and its salts, be placed into Schedule IV of the CSA (21 U.S.C. 801 *et seq.*). Enclosed with the March 31, 1999, letter was a document prepared by the Food and Drug Administration (FDA) entitled "Basis for the Recommendation for Control of Zaleplon in Schedule IV of the Controlled Substances Act (CSA)." The document contained a review of the factors which the CSA requires the Secretary to consider [21 U.S.C. 811 (b)].

The correspondence from the Assistant Secretary for Health and Surgeon General to the DEA dated March 31, 1999, confirmed that FDA had determined that the New Drug Application (NDA) for zaleplon was "approvable" and had issued an approvable letter to the NDA sponsor on January 6, 1999. According to the March 31, 1999, letter from DHHS, "upon full approval of the NDA, zaleplon will have a currently accepted medical use in treatment in the United States."

After a review of the available data, including the DHHS recommendation, the Deputy Administrator of the DEA, in a May 5, 1999, **Federal Register** Notice (63 FR 24094), proposed placement of zaleplon into Schedule IV of the CSA, if and when the zeleplon NDA is approved by the FDA. The notice provided an opportunity for all interested persons to submit their comments, objections, or requests for hearing in writing to be received by the DEA on or before June 4, 1999. The DEA did not receive any comments regarding the proposal.

On August 16, 1999, the FDA notified the DEA that the zaleplon NDA was approved by the FDA on August 13, 1999. Relying on the scientific and medical evaluation and the recommendation of the DHHS Assistant Secretary for Health and Surgeon General received in accordance with section 201(b) of the Act [21 U.S.C. 811(b)], and the independent review of the DEA, the Deputy Administrator of the DEA, pursuant to sections 201(a) and 201(b) of the Act [21 U.S.C. 811(a) and 811(b)], finds that:

(1) Based on information now available, zaleplon has a low potential for abuse relative to the drugs or other substances in Schedule III;

(2) Zaleplon has a currently accepted medical use in treatment in the United States; and

(3) Abuse of zaleplon may lead to limited physical dependence and psychological dependence relative to the drugs or other substances in Schedule III.

Based on these findings, the Deputy Administrator of the DEA concludes that zaleplon, including its salts, warrants control in Schedule IV of the CSA.

In order to make zaleplon pharmaceutical products available for medical use as soon as possible, the Schedule IV controls of zaleplon will be effective September 15, 1999. In the event that the regulations impose special hardships on the registrants, the DEA will entertain any justified request for an extension of time to comply with the Schedule IV regulations regarding zaleplon. The applicable regulations are as follows:

1. Registration. Any person who manufactures, distributes, dispenses, imports or exports zaleplon or who engages in research or conducts instructional activities with zaleplon, or who proposes to engage in such activities, must be registered to conduct such activities in accordance with Part 1301 of Title 21 of the Code of Federal Regulations.

2. Security. Zaleplon must be manufactured, distributed and stored in accordance with §§ 1301.71, 1301.72(b), (c), and (d), 1301.73, 1301.74, 1301.75(b) and (c) and 1301.76 of Title 21 of the Code of Federal Regulations.

3. Labeling and Packaging. All labels on commercial containers of, and all labeling of, zaleplon shall comply with the requirements of §§ 1302.03–1302.07 of Title 21 of the Code of Federal Regulations.

4. Inventory. Registrants possessing zaleplon are required to take inventories pursuant to §§ 1304.03, 1304.04 and 1304.11 of Title 21 of the Code of Federal Regulations.

5. *Records.* All registrants must keep records pursuant to §§ 1304.03, 1304.04 and 1304.21–1304.23 of Title 21 of the Code of Federal Regulations.

6. *Prescriptions.* All prescriptions for zaleplon are to be issued pursuant to §§ 1306.03–1306.06 and 1306.21–1306.26 of Title 21 of the Code of Federal Regulations.

7. *Importation and Exportation.* All importation and exportation of zaleplon shall be in compliance with Part 1312 of Title 21 of the Code of Federal Regulations.

8. *Criminal Liability.* Any activity with zaleplon not authorized by, or in violation of, the CSA or the Controlled Substances Import and Export Act shall be unlawful.

In accordance with the provisions of the CSA [21 U.S.C. 811(a)], this action is a formal rulemaking on the record after opportunity for a hearing. Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order (E.O.) 12866, Section 3(d)(1).

The Deputy Administrator, in accordance with the Regulatory Flexibility Act [5 U.S.C.. 605(b)], has reviewed this final rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities. Zaleplon is a new drug in the United States; recent approval of the product and its labeling by the FDA will allow it to be marketed once it is placed into Schedule IV of the CSA. This final rule will allow these entities to have access to a new pharmaceutical product.

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescriptions drugs, Reporting and recordkeeping requirements.

Under the authority vested in the Attorney General by section 201(a) of the CSA [21 U.S.C. 811(a)], and delegated to the Administrator of the DEA by the Department of Justice regulations (28 CFR 0.100), and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby amends 21 CFR part 1308 as follows:

PART 1308—[AMENDED]

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. Section 1308.14 is amended by redesignating the existing paragraph (c)(48) to (c)(49) and by adding a new paragraph (c)(48) to read as follows:

§ 1308.14 Schedule IV

* * * * *

(c) * * *

(48) Zaleplon 2781

* * * * *

Dated: September 7, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–23968 Filed 9–14–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 1

[T.D. ATF–416]

RIN 1512–AB94

Delegation of Authority (99R–159P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Treasury Decision, final rule.

SUMMARY: This final rule places most ATF authorities contained in part 1, title 27 Code of Federal Regulations (CFR), with the "appropriate ATF officer" and requires that persons file documents required by part 1, title 27 Code of Federal Regulations (CFR), with the "appropriate ATF officer" or in accordance with the instructions on the ATF form. Also, this final rule removes the definitions of, and references to, specific officers subordinate to the Director. Concurrently with this Treasury Decision, ATF Order 1130.6 is being published. Through this order, the Director has delegated most of the authorities in 27 CFR part 1 to the appropriate ATF officers and specified the ATF officers with whom applications, notices and other reports that are not ATF forms are filed.

DATES: This rule is effective September 15, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW, Washington, DC 20226 (202–927–8210).

SUPPLEMENTARY INFORMATION:

Background

Pursuant to Treasury Order 120–01 (formerly 221), dated June 6, 1972, the Secretary of the Treasury delegated to the Director of the Bureau of Alcohol, Tobacco and Firearms (ATF), the authority to enforce, among other laws, the provisions of the Federal Alcohol Administration (FAA) Act. The Director has subsequently redelegated certain of these authorities to appropriate subordinate officers by way of various means, including by regulation, ATF delegation orders, regional directives, or similar delegation documents. As a result, to ascertain what particular officer is authorized to perform a particular function under the FAA Act, each of these various delegation instruments must be consulted. Similarly, each time a delegation of authority is revoked or redelegated, each of the delegation documents must be reviewed and amended as necessary.

ATF has determined that this multiplicity of delegation instruments complicates and hinders the task of determining which ATF officer is authorized to perform a particular function. ATF also believes these multiple delegation instruments exacerbate the administrative burden associated with maintaining up-to-date delegations, resulting in an undue delay in reflecting current authorities.

Accordingly, this final rule rescinds all authorities of the Director in part 1 that were previously delegated and places those authorities with the "appropriate ATF officer." Most of the authorities of the Director that were not previously delegated are also placed with the "appropriate ATF officer." Along with this final rule, ATF is publishing ATF Order 1130.6, Delegation Order—Delegation of the Director's Authorities in Part 1, Basic Permit Requirements Under the Federal Alcohol Administration Act, Nonindustrial Use of Distilled Spirits and Wine, Bulk Sales and Bottling of Distilled Spirits, which delegates certain of these authorities to the appropriate organizational level. The effect of these changes is to consolidate all delegations of authority in part 1 into one delegation instrument. This action both simplifies the process for determining what ATF officer is authorized to perform a particular function and facilitates the updating of delegations in the future. As a result, delegations of authority will be reflected in a more timely and user-friendly manner.

In addition, this final rule also eliminates all references in the regulations that identify the ATF officer with whom an ATF form is filed. This is because ATF forms will indicate the officer with whom they must be filed. Similarly, this final rule also amends part 1 to provide that the submission of documents other than ATF forms (such as letterhead applications, notices and reports) must be filed with the "appropriate ATF officer" identified in ATF Order 1130.6. These changes will facilitate the identification of the officer with whom forms and other required submissions are filed.

This final rule also makes three various technical amendments to Subpart A—Scope of 27 CFR part 1. First, a new section is added to recognize the authority of the Director to delegate regulatory authorities in part 1 and to identify ATF Order 1130.6 as the instrument reflecting such delegations. Second, § 1.3 is amended to provide that the instructions for an ATF form identify the ATF officer with whom it must be filed. Third, references to ATF Form 5100.18 are amended to remove its previous form number cited in parentheses.

ATF has begun to make similar changes in delegations to other parts of Title 27 of the Code of Federal Regulations through separate rulemakings. By amending the regulations part by part, rather than in one large rulemaking document and ATF Order, ATF minimizes the time expended in notifying interested parties of current delegations of authority.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no new or revised recordkeeping or reporting requirements.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. A copy of this final rule was submitted to the Chief Counsel for Advocacy of the Small Business Administration in accordance with 26 U.S.C. 7805(f). No comments were received.

Executive Order 12866

It has been determined that this rule is not a significant regulatory action because it will not: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Administrative Procedure Act

Because this final rule merely makes technical amendments and conforming changes to improve the clarity of the regulations, it is unnecessary to issue this final rule with notice and public procedure under 5 U.S.C. 553(b). Similarly it is unnecessary to subject this final rule to the effective date limitation of 5 U.S.C. 553(d).

Drafting information. The principal author of this document is Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 1

Administrative practices and procedures, Alcohol and alcoholic beverages, Authority delegations, Imports, Liquors, Warehouses, Wine.

Authority and Issuance

Title 27, part 1 of the Code of Federal Regulations is amended as follows:

PART 1—BASIC PERMIT REQUIREMENTS UNDER THE FEDERAL ALCOHOL ADMINISTRATION ACT, NONINDUSTRIAL USE OF DISTILLED SPIRITS AND WINE, AND BULK SALES AND BOTTLING OF DISTILLED SPIRITS

1. The authority citation for part 1 continues to read as follows:

Authority: 27 U.S.C. 203, 204, 206, and 211 unless otherwise noted.

2. In Section 1.3 paragraph (a) is amended by removing the word "Director" and adding, in substitution, the phrase "appropriate ATF officer", and by adding a sentence at the end of paragraph (a) and paragraph (b) is revised to read as follows:

§ 1.3 Forms prescribed.

(a)* * * The form will be filed in accordance with the instructions for the form.

(b) Forms may be requested from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22153–5190, or by accessing the ATF web site (http://www.atf.treas.gov/).

3–4. Redesignate § 1.4 as § 1.10.

5. A new § 1.4 is added to Subpart A and reads as follows:

§ 1.4 Delegations of the Director.

Most of the regulatory authorities of the Director contained in this part 1 are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.6, Delegation Order—Delegation of the Director's Authorities in Part 1, Basic Permit Requirements Under the Federal Alcohol Administration Act, Nonindustrial Use of Distilled Spirits and Wine, Bulk Sales and Bottling of Distilled Spirits. ATF delegation orders, such as ATF Order 1130.6, are available to any interested person by mailing a request to the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5190, or by accessing the ATF web site (http://www.atf.treas.gov/).

6. Section 1.10 is amended by removing the definitions of "ATF officer" and "Regional director (compliance)", by revising the definitions of "Applicant" and "Basic permit", and by adding a new definition of "Appropriate ATF officer" to read as follows:

§ 1.10 Meaning of terms.

* * * * *

Applicant. Any person who has filed an application for a basic permit under the Federal Alcohol Administration Act with the appropriate ATF officer.

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.6, Delegation Order—Delegation of the Director's Authorities in 27 CFR Part 1, Basic Permit Requirements Under the Federal Alcohol Administration Act, Nonindustrial Use of Distilled Spirits and Wine, Bulk Sales and Bottling of Distilled Spirits.

* * * * *

Basic permit. A document issued under the Act authorizing a person to engage in activities at a particular location.

* * * * *

§§ 1.24, 1.27, 1.31, 1.42, 1.50, 1.51, 1.52, and 1.55

7. In part 1 remove the words "regional director (compliance)" each place it appears and add, in substitution, the words "appropriate ATF officer" in the following places:

(a) Section 1.24 introductory text;
(b) Section 1.27;
(c) Section 1.31;
(d) Section 1.42;
(f) Section 1.50;
(g) Section 1.51;
(h) Section 1.52; and
(i) Section 1.55.

8. Section 1.25 is revised to read as follows:

§ 1.25 General.

Applications for basic permits to engage in any of the operations set forth in §§ 1.20 to 1.22 must be made on ATF Form 5100.24, 5170.4 or 5100.18, verified as required by § 1.56, and will be accompanied by such affidavits, documents, and other supporting data, as the appropriate ATF officer may require. The application will include all data, written statements, affidavits, documents, or other evidence submitted in support of the application, or upon a hearing.

9. Section 1.29 is revised to read as follows:

§ 1.29 Individual plant or premises.

An application for a basic permit must be filed, and permit issued, to cover each individual plant or premises where any of the businesses specified in section 103 of the Act is engaged in.

10. The last sentence of § 1.30 is amended by removing the comma after "(1534)" and "in triplicate, and submitted to the regional director (compliance)" and by adding in its place a period.

11. Section 1.35 is revised to read as follows:

§ 1.35 Authority to issue, amend, deny, suspend, revoke, or annul basic permits.

The authority and power of issuing, amending, or denying basic permits, or amendments thereof, is conferred upon the appropriate ATF officer except as to agency initiated curtailment. The Director, upon consideration of appeals on petitions for review in part 200 of this chapter, may order the appropriate ATF officer to issue, deny, suspend, revoke, or annul basic permits.

§§ 1.40, 1.41 Amended

12. Part 1 is further amended by removing "(1643), with the regional director (compliance)," each place it appears in the following places:

(a) Section 1.40; and

(b) Section 1.41.

13. Section 1.56 is revised to read as follows:

§ 1.56 Oaths and affirmations.

A document must be verified by an oath or affirmation taken before a person authorized by the laws of the United States or by State or local law to administer oaths or affirmations in the jurisdiction where the document is executed when required by:

(a) Regulation; or

(b) An appropriate ATF officer.

14. Section 1.58 is amended by adding the word "appropriate" before the words "ATF officers."

15. The introductory text and paragraph (c) of § 1.59 are amended by removing the words "regional director (compliance)" and "regional director's (compliance)" each place they appear and adding, in substitution, the words "appropriate ATF officer" and "appropriate ATF officer's", respectively.

Signed: July 7, 1999.

John W. Magaw,

Director.

Approved: August 13, 1999.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 99–23618 Filed 9–14–99; 8:45 am]

BILLING CODE 4810–31–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the regulation to adopt interest assumptions for plans with valuation dates in October 1999. Interest assumptions are also published on the PBGC's web site (http://www.pbgc.gov).

EFFECTIVE DATE: October 1, 1999.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Asses in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

Among the actuarial assumptions prescribed in part 4044 are interest assumptions. These interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Two sets of interest assumptions are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefit to be paid as lump sums. This amendment adds to appendix B to part 4044 the annuity and lump sum interest assumptions for valuing benefits in plans with valuation dates during October 1999.

For annuity benefits, the interest assumptions will be 6.30 percent for the first 20 years following the valuation date and 5.25 percent thereafter. The annuity interest assumptions are unchanged from those in effect for September 1999. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 5.00 percent for the period during which a benefits is in pay status, 4.25 percent during the seven-year period directly preceding the benefit's placement in pay status, and 4.00 percent during any other years preceding the benefit's placement in pay status. The lump sum interest assumptions are unchanged from those in effect for September 1999.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for valuation of benefits in plans with valuation dates during October 1999, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, a new entry is added to Table I, and Rate Set 72 is added to Table II, as set forth below. The introductory text of each table is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 4044—Interest Rates Used to Value Annuities and Lump Sums

TABLE I.—ANNUITY VALUATIONS

[This table sets forth, for each indicated calendar month, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * *	*	*	*	*	*	*
October 1999	.0630	1–20	.0525	>20	N/A	N/A

TABLE II.—LUMP SUM VALUATIONS

[In using this table: (1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply; (2) For benefits for which the deferral period is y years (where y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years, and thereafter the immediate annuity rate shall apply; (3) For benefits for which the deferral period is y years (where y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply; (4) For benefits for which the deferral period is y years (where y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply.]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*	*	*
72	10–1–99	11–1–99	5.00	4.25	4.00	4.00	7	8

Issued in Washington, DC, on this 7th day of September 1999.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 99–23849 Filed 9–14–99; 8:45 am]

BILLING CODE 7708–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–6437–3]

Notice of Direct Final Rule Revisions to Emissions Budgets Set Forth in EPA's Finding of Significant Contribution and Rulemaking for Purposes of Reducing Regional Transport of Ozone for the States of Connecticut, Massachusetts and Rhode Island

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On October 27, 1998, EPA published a final action requiring 22 States and the District of Columbia to submit State implementation plan (SIP) revisions to prohibit specified amounts of emissions of oxides of nitrogen (NO_X)—one of the precursors to ozone (smog) pollution—for the purpose of reducing NO_X and ozone transport across State boundaries in the eastern half of the United States. This action is referred to as the NO_X SIP Call.

Subsequent to that rulemaking, three States, Connecticut, Massachusetts and Rhode Island, approached EPA with concerns about the distribution of the emission reduction requirements to the three States. While the States agreed that the amount of the overall emission reductions that EPA was requiring from the three State region was appropriate, the States had concerns about the specific emission reductions that EPA was requiring from each of the three individual States. In particular, the States were concerned that the emission reduction requirements were inconsistent with the emission reductions that those States were requiring in connection with an existing multi-state effort to reduce NO_X and ozone transport across State boundaries in the northeastern portion of the United States.

In response to these concerns, EPA and the States of Connecticut, Massachusetts and Rhode Island signed a memorandum of understanding (MOU) in February 1999. This MOU required EPA to take action to redistribute the NO_X emission reduction requirements among the three States. In the MOU, the three States and EPA agreed that EPA would propose a specific redistribution of the combined electric generating stationary source (EGU) portion of the budget for the three States.

Subsequent to the signing of the MOU, EPA took a final action that changed the EGU portion of the budget for the three States in a Technical Amendment to the NO_X SIP Call published on May 14, 1999. EPA is now taking direct final action to redistribute the States' budgets. The final redistribution that EPA is promulgating is slightly different than the redistribution as stated in the MOU to reflect and remain consistent with the May 14, 1999 changes to the budgets.

DATES: This rule is effective on November 1, 1999 without further notice, unless EPA receives adverse comment by Ocotber 5, 1999. If such comments are received, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Any written comments must be identified with Docket No. A–99–13, must be identified as comments on the direct final rule and companion proposal and must be submitted in duplicate to: EPA Air Docket (6102), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. The docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the address given above. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Kathryn Petrillo, Acid Rain Division (6204J) U.S. Environmental Protection Agency, 401 M Street SW, Washington DC 20460, telephone number (202) 564–9093; e-mail: petrillo.kathryn@epa.gov.

SUPPLEMENTARY INFORMATION: EPA is publishing this rule without prior proposal because EPA views this redistribution of the EGU portions of Connecticut, Massachusetts and Rhode Island's NO_X budgets as noncontroversial and anticipates no adverse comment. EPA believes this rule is not controversial for the following reasons: (1) Connecticut, Massachusetts, Rhode Island and EPA signed an MOU agreeing to the action taken by this rule; (2) the rule does not result in an overall increase in NO_X emissions; (3) the rule is consistent with the final State budgets published in the May 14, 1999 Technical Amendment to the NO_X SIP Call; and (4) the rule is consistent with the goals of the NO_X SIP Call. However, in the "Proposed Rules" section of today's **Federal Register** EPA is publishing a separate document that will serve as a proposed rule to redistribute the EGU portions of these States' budgets if EPA receives any timely adverse comment. If EPA receives timely adverse comment, EPA will publish a withdrawal in the **Federal Register** informing the public that the direct final rule will not take effect. EPA will then address all significant public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action.

Any parties interested in commenting must do so at this time.

The information in this preamble is organized as follows:

I. Background
II. Determination of Budgets
III. Changes to the EGU Budgets for the States of Connecticut, Massachusetts and Rhode Island
IV. Administrative Requirements
A. Executive Order 12866: Regulatory Impact Analysis
B. Regulatory Flexibility Act: Small Entity Impacts
C. Unfunded Mandates Reform Act
D. Paperwork Reduction Act
E. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
F. Executive Order 12898: Environmental Justice
G. Executive Order 12875: Enhancing the Intergovernmental Partnerships
H. Executive Order 13016: Consultation and Coordination with Indian Tribal Governments
I. National Technology Transfer and Advancement Act
J. Judicial Review
K. Congressional Review Act

I. Background

On October 27, 1998, EPA published a final action finding that NO_X emissions from emitting activities (sources) in 23 jurisdictions (22 States, including the States of Connecticut, Massachusetts and Rhode Island, and the District of Columbia) significantly contribute to nonattainment of the 1-hour and 8-hour ozone NAAQS or will interfere with maintenance of the 8-hour NAAQS, in one or more downwind States throughout the Eastern United States (63 FR 57356, October 27, 1998). Each of these jurisdictions (referred to hereinafter as "States") is required to adopt and submit a SIP revision containing control measures that will assure that sources in the State reduce their NO_X emissions sufficiently to eliminate the amounts of NO_X emissions that contribute significantly to nonattainment or that will interfere with maintenance in a downwind State. By eliminating these amounts of NO_X emissions, the control measures will assure that the remaining NO_X emissions will meet the States' NO_X emissions budget, as prescribed to each State in the amended May 14, 1999 Technical Amendments to the State's budgets. *See* 64 FR 26298, May 14, 1999. In today's action, EPA is promulgating adjusted State NO_X emissions budgets for Connecticut, Massachusetts and Rhode Island. While this adjustment will lead to different emission budgets for each of the three States, the combined budgets for the three States will remain the same as the combined budgets for the three States finalized in the May 14, 1999 Technical Amendments to the NO_X SIP Call.

Following EPA's finalization of the NO_X SIP Call in the fall of 1998, numerous parties filed petitions for review of the rule with the D.C. Circuit. The petitions were consolidated into case no. 98–1497 and briefing of the case is now under way. On May 25, 1999, the D.C. Circuit issued a stay of the requirement that States submit revised SIPs in accordance with the NO_X SIP call. That stay continues pending further order of the Court. EPA is taking action today to revise the budgets of Connecticut, Massachusetts, and Rhode Island in anticipation of the lifting of the stay at some time in the future.

II. Determination of Budgets

The EPA determined the overall NO_X emission budgets for each State by projecting the total amount of NO_X emissions that sources in each covered State would emit, in light of expected growth, in 2007 taking into account measures required under the CAA. The EPA then projected the total amount of NO_X emissions that all of the sources in each of those States would emit in 2007 if each such State applied control measures that EPA determined to be highly cost effective. The total amount of NO_X emissions remaining after application of EPA's assumed control measures is the State's "budget." Each State budget consists of smaller sector budgets, including budgets for mobile sources, area sources, EGUs, and non-EGU stationary sources. The smaller sector budgets exist only for purposes of calculating the larger State budget; they are not enforceable against a State. The specific methodologies used to calculate these budgets are explained in section III of the final NO_X SIP Call rule. (63 FR 57405–439)

III. Changes to the EGU Budgets for the States of Connecticut, Massachusetts and Rhode Island

After finalization of the NO_X SIP Call, the State of Connecticut approached EPA with concerns about the size of the EGU portion of its State budget under the NO_X SIP Call. These concerns related to differences between the State's EGU budget under the NO_X SIP Call and the State's budget under Phase III of the Qzone Transport Region's (OTR) program.

The OTR is comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Consolidated Metropolitan Statistical Area that includes the District of Columbia. The OTR was created in 1990, under section 184 of the Clean Air Act, to address the problems associated with ozone transport in the Northeast. On September 27, 1994, 11 of the States in the OTR and the District of Columbia signed a Memorandum of Understanding agreeing to a regional strategy to reduce NO_X from power plants and other large fuel combustion sources. This strategy involved a multi-phased approach and allowed sources to demonstrate compliance through the use of a region-wide trading program. Phase II of the program began on May 1, 1999, and Phase III is scheduled to begin on May 1, 2003. Under Phase III of the OTR strategy, Connecticut's budget for sources similar to the EGU sources under the NO_X SIP Call is larger than it is under the EGU portion of the State's NO_X SIP Call budget. Conversely, the budgets for Massachusetts and Rhode Island are smaller under Phase III of the OTR than the budgets are under the NO_X SIP Call.

The following table shows for the three States: the OTC Phase III budgets, EGU budgets for sources similar to EGUs; the EGU budgets under the NO_X SIP call; the EGU budgets under the February 1999 MOU, and the EGU budgets under today's rule; and the compliance supplement pool (a pool of 200,000 tons divided among the 23 affected States according to their emission reduction responsibilities under the NO_X SIP Call) under the NO_X SIP call and today's rule.

TABLE 1

	OTC phase III budget	5/14/99 EGU portion of the NO_X SIP call budget	EGU budget under MOU	EGU budget under direct final rule	5/14/99 compliance supplement pool	Compliance supplement pool under direct final rule
CT	4,477	2,652	4,549	4,564	549	473

TABLE 1—Continued

	OTC phase III budget	5/14/99 EGU portion of the NO_X SIP call budget	EGU budget under MOU	EGU budget under direct final rule	5/14/99 compliance supplement pool	Compliance supplement pool under direct final rule
MA	13,789	15,145	13,203	13,245	397	473
RI	626	997	982	985	15	15
CT, MA and RI	18,892	18,794	18,734	18,794	961	961

Because Connecticut raised concerns, EPA and Connecticut, Massachusetts and Rhode Island initiated discussions about reallocating the EGU budgets for all three States. All parties agreed that any reallocation of the budgets should not result in a higher combined overall EGU budget for the three States. In fact, Connecticut, Massachusetts and Rhode Island agreed that any reallocation of the budget should actually be accompanied by an agreement among the three States to meet a more stringent budget. In February 1999, the parties signed an MOU.

In that MOU, EPA committed to propose a rulemaking to change the EGU portion of the budgets for the three States. EPA also committed to propose changes to the size of the compliance supplement pools for the three States. In the MOU, EPA and the States agreed upon EGU budgets and the compliance supplement pools for all three States. This agreement was based on redistributing, among the three States, the EGU portion of the combined budget for the three States and the combined compliance supplement pool for the three States. These redistributions were based upon the budgets and the compliance supplement pool as finalized on October 27, 1998. In the October 27, 1998 action, the final combined EGU budget for the three States was 18,734 tons and the combined compliance supplement pool was 844 tons. On May 14, 1999, EPA promulgated a Technical Amendment to the NO_X SIP Call amending the State budgets and the compliance supplement pool (64 FR 26298–306). The combined EGU budget for the three States in this amendment was 18,794 tons and the combined compliance supplement pool was 961 tons. In redistributing both the combined EGU budgets and the combined compliance supplement pool, EPA started by distributing to each of the three States, the number of tons agreed to in the MOU. This resulted in State EGU budgets of 4,549 tons for Connecticut, 13,203 tons for Massachusetts and 982 tons for Rhode Island. EPA then redistributed the remaining 60 tons in the combined States EGU budgets using the same percentages used to distribute the original EGU portion of the budget in the MOU (i.e., 24.3% for Connecticut, 70.5% for Massachusetts and 5.2% for Rhode Island). EPA used a similar methodology in redistributing the compliance supplement pool. First, EPA distributed 422 tons to both Connecticut and Massachusetts because this was what was agreed to in the MOU. Then EPA distributed 15 tons to Rhode Island. EPA did this because Rhode Island did not receive any compliance supplement pool allowances under the original budgets promulgated on October 27, 1998 notice or in the MOU, but Rhode Island did receive 15 tons of compliance supplement pool allowances under the amended budgets finalized on May 14, 1999. Finally, EPA distributed the remaining 102 tons based on the percentages used to distribute the original compliance supplement pool in the MOU (50% for Connecticut and 50% for Massachusetts). The redistributed budgets and the redistributed compliance supplement pools are also found in Table 1. Furthermore, all three States agreed to further reduce their combined EGU budgets by at least 5% and to retire that 5% to the benefit of the environment.

EPA believes that these revisions are consistent with the goals of the NO_X SIP Call. The NO_X SIP Call specifically allows, and in fact encourages, States to consider emissions trading as a cost-effective means of achieving NO_X reductions from EGUs. The effect of the redistribution of the EGU portion of the overall budget being promulgated in today's rule is no different than the effect of a redistribution of similar magnitude of the EGU portion of the budget that could occur if a State chose to participate in a multi-State trading program. Furthermore, the magnitude of the changes in the EGU budgets for the three States (i.e., 1,912 tons for Connecticut, −1,900 tons for Massachusetts and −12 tons for Rhode Island) is within a range that EPA found did not interfere with the goal of the NO_X SIP Call to reduce transport of significant amounts of NO_X to downwind non-attainment areas when analyzing whether inter-State trading was an effective tool to use under the NO_X SIP Call. In that analysis, EPA saw fluctuations of up to 9,500 tons for a given State (Docket # A–96–56).

In addition, as noted in the MOU, Connecticut, Massachusetts and Rhode Island all belong to the same power pool. Since dispatch is determined on the power pool level rather than the State level, dispatch itself may result in redistribution of generation and resulting emissions among the States in the power pool. EPA therefore believes that a redistribution, based on the MOU, of budgets within that power pool is appropriate if the same overall budget results. Finally, the additional reductions that the three States have committed to result in an additional reduction of 940 tons, which represents 0.17% of the region-wide EGU budget.

IV. Administrative Requirements

A. Executive Order 12866: Regulatory Impact Analysis

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: 1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA determined that the October 27, 1998 NO_X SIP Call rulemaking was significant. Therefore, EPA submitted

the final rulemaking to OMB for review and prepared a Regulatory Impact Analysis (RIA) entitled "Regulatory Impact Analysis for the Regional NO_X SIP Call (September 1998)." *See* 63 FR 57477.

This RIA assesses the costs, benefits, and economic impacts associated with potential State implementation strategies for complying with the NO_X SIP Call rulemaking. Any written comments from OMB to EPA and any written EPA response to those comments are included in the NO_X SIP Call docket (A–96–56 and A–9–35). The RIA is available in hard copy by contacting the EPA Library at the address under **ADDRESSES**.

Today's direct final rule requires the same overall emission reductions as under the October 27, 1998 NO_X SIP Call. Because the direct final rule does not impose any new regulatory burdens and makes only minor changes to the October 27, 1998 NO_X SIP Call, the direct final rule is not significant.

B. Regulatory Flexibility Act: Small Entity Impacts

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (Pub. L. No. 104–121) (SBREFA), provides that whenever an agency is required to publish a general notice of proposed rulemaking, the agency must prepare and make available an initial regulatory flexibility analysis, unless it certifies that the final direct rule, if promulgated, will not have "a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). Courts have interpreted the RFA to require a regulatory flexibility analysis only when small entities will be subject to the requirements of the rule. *See Motor and Equip. Mfrs. Ass'n* v. *Nichols*, 142 F.3d 449 (D.C. Cir. 1998); *United Distribution Cos.* v. *FERC*, 88 F.3d 1105, 1170 (D.C. Cir. 1996); *Mid-Tex Elec. Co-op, Inc.* v. *FERC*, 773 F.2d 327, 342 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the rule).

EPA determined that the October 27, 1998 NO_X SIP Call does not establish requirements applicable to small entities. Instead, the NO_X SIP Call requires States to develop, adopt, and submit SIP revisions that will achieve the necessary NO_X emissions reductions, and leaves to the States the task of determining how to obtain those reductions, including which entities to regulate. Moreover, because affected States have discretion to choose which sources to regulate and how much emissions reductions each selected source has to achieve, EPA could not predict the effect of the rule on small entities.

For these reasons, EPA certified that the October 27, 1998 NO_X SIP Call would not have a significant impact on a substantial number of small entities. Nevertheless, the Agency conducted a more general analysis of the potential impact on small entities of possible State implementation strategies. This analysis is documented in the RIA. *See* 63 FR 57478.

Since today's direct final rule does not change the regulatory burdens under, and makes only minor changes to, the October 27, 1998 NO_X SIP Call, the RIA analysis and the basis for the NO_X SIP Call certification are applicable to the final direct rule. Therefore, I certify that this action will not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (P.L. 104–4) (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule that "includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more * * * in any one year." A "Federal mandate" is defined under section 421(6), 2 U.S.C. 658(6), to include a "Federal intergovernmental mandate" and a "Federal private sector mandate." A "Federal intergovernmental mandate," in turn, is defined to include a regulation that "would impose an enforceable duty upon State, local, or tribal governments," section 421(5)(A)(i), 2 U.S.C. 658(5)(A)(i), except for, among other things, a duty that is "a condition of Federal assistance," section 421(5)(A)(i)(I). A "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector," with certain exceptions, section 421(7)(A), 2 U.S.C. 658(7)(A).

Before promulgating an EPA rule for which a written statement is needed under section 202 of the UMRA, section 205, 2 U.S.C. 1535, of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

For several reasons, EPA did not reach a final conclusion as to the applicability of the requirements of UMRA to the October 27, 1998 NO_X SIP Call. First, EPA stated that it is questionable whether a requirement to submit a SIP revision would constitute a federal mandate in any case. The obligation for a state to revise its SIP that arises out of sections 110(a) and 110(k)(5) of the CAA is not legally enforceable by a court of law and at most is a condition for continued receipt of highway funds. Therefore, it is possible to view an action requiring such a submittal as not creating any enforceable duty within the meaning of section 421(5)(9a)(I) of UMRA (2 U.S.C. 658 (a)(I)). Even if it did, the duty could be viewed as falling within the exception for a condition of Federal assistance under section 421(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I)).

However, notwithstanding these issues, EPA prepared the statement that would be required by UMRA if its statutory provisions applied to the October 27, 1998 NO_X SIP Call and consulted with governmental entities as would be required by UMRA for the NO_X SIP Call. Consequently, EPA determined that it is not necessary to reach a conclusion as to the applicability of the UMRA requirements to the October 27, 1998 NO_X SIP Call. *See* 63 FR 57478.

Today's direct final rule does not change the regulatory burdens under, and makes only minor changes to, the October 27, 1998 NO_X SIP Call. Further, the written statement prepared for, and the consultations conducted in connection with, the October 27, 1998 NO_X SIP Call are fully applicable to the final direct rule. Consequently, for the reasons set forth in the preamble of the October 27, 1998 NO_X SIP Call, it is not necessary to reach a conclusion as to the applicability of the UMRA requirements.

D. Paperwork Reduction Act

Today's direct final rule does not impose any new information collection burden subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The three States subject to this rule, Connecticut, Massachusetts and Rhode Island, will be subject to the same reporting requirements that they are subject to under the October 27, 1998 NO_X SIP Call.

E. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The Executive Order 13045 applies to any rule that EPA determines (1) "economically significant" as defined under Executive Order 12866 and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. EPA determined that the October 27, 1998 NO_X SIP Call is not subject to Executive Order 13045 because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children. However, the Agency conducted a general analysis of the potential changes in ozone and particulate matter levels experienced by children as a result of the October 27, 1998 NO_X SIP Call; these findings are presented in the RIA. *See* 63 FR 57479.

Today's direct final rule does not change the overall emission reductions under the October 27, 1998 NO_X SIP Call. Consequently, the determination concerning Executive Order 13045 and the RIA analysis are fully applicable to the final direct rule.

F. Executive Order 12898: Environmental Justice

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations. The Agency conducted a general analysis of the potential changes in ozone and particulate matter levels that may be experienced by minority and low-income populations as a result of the October 27, 1998 NO_X SIP Call; these findings are presented in the RIA. *See* 63 FR 57479.

Today's direct final rule does not change the overall emission reductions under the October 27, 1998 NO_X SIP Call. Consequently, the RIA analysis is fully applicable to the final direct rule.

G. Executive Order 12875: Enhancing The Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. As explained in the discussion of UMRA, the direct final rule does not impose an enforceable duty on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

H. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. The rule applies only to certain States and does not require Indian tribal governments to take any action. Moreover, EPA does not, by today's rule, call on States to regulate NO_X sources located on tribal lands. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (Pub L. No. 104–113, section 12(d), 15 U.S.C. 272 note) (NTTAA), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's direct final rule does not include any environmental monitoring and measurement provisions. Therefore, section 12(d) of the NTTAA does not apply.

J. Judicial Review

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final actions by EPA. This Section provides, in part, that petitions for review must be filed in the Court of Appeals for the District of Columbia Circuit if (i) the agency action consists of "nationally applicable regulations promulgated, or final action taken, by the Administrator," or (ii) such action is locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination."

As discussed in the preamble to the NO_X SIP Call, any final action related to the NO_X SIP Call is "nationally applicable" and "of nationwide scope or effect" within the meaning of section 307(b)(1). *See* 63 FR 57480. Thus, any petitions for review of final actions regarding the NO_X SIP Call must be filed in the Court of Appeals for the District of Columbia Circuit within 60 days from the date final action is published in the **Federal Register**.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement

Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective November 1, 1999.

List of Subjects in 40 CFR Part 51

Environmental protection, Air pollution control, Administrative practice and procedure, Carbon monoxide,, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Transportation, Volatile organic compounds.

Dated: September 7, 1999.

Carol M. Browner,

Administrator.

40 CFR part 51 is amended as follows:

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7410, 7414, 7421, 7470–7479, 7491, 7492, 7601, 7602.

Subpart G—Control Strategy [Amended]

2. Section 51.121 is amended to revise paragraphs (e)(2) and (e)(3)(iii) to read as follows:

§ 51.121 Findings and requirements for submission of State implementation plan revisions relating to emissions of oxides of nitrogen.

* * * * *

(e) * * *

(2) The State-by-State amounts of the NO_X budget, expressed in tons, are as follows:

State	Budget
Alabama	172,037
Connecticut	44,993
Delaware	22,789
District of Columbia	6,672
Georgia	189,634
Illinois	274,799
Indiana	238,970
Kentucky	155,619
Maryland	81,625
Massachusetts	83,396
Michigan	224,582
Missouri	128,146
New Jersey	100,133
New York	240,123
North Carolina	168,373
Ohio	250,930
Pennsylvania	257,441
Rhode Island	9,798
South Carolina	124,211
Tennessee	197,664
Virginia	185,027
West Virginia	91,216
Wisconsin	136,172
Total	3,384,350

(3) * * *

(iii) The State-by-State amounts of the compliance supplement pool are as follows:

State	Compliance supplement pool (tons of NO_X)
Alabama	11,350
Connecticut	473
Delaware	127
District of Columbia	0
Georgia	11,179
Illinois	17,586
Indiana	20,390
Kentucky	14,495
Maryland	3,840
Massachusetts	473
Michigan	11,103
Missouri	10,783
New Jersey	1,479
New York	2,370
North Carolina	10,544
Ohio	22,320
Pennsylvania	15,662
Rhode Island	15
South Carolina	5,122
Tennessee	10,557
Virginia	6,914
West Virginia	16,410
Wisconsin	6,808
Total	200,000

* * * * *

[FR Doc. 99–23914 Filed 9–14–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–6432–1]

Regulation of Fuel and Fuel Additives: Extension of California Enforcement Exemptions for Reformulated Gasoline Beyond December 31, 1999

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: With this direct final rule the EPA continues to exempt refiners, importers, and blenders of gasoline subject to the State of California's reformulated gasoline regulations from certain enforcement provisions in the Federal reformulated gasoline regulations. Current exemptions applicable under the Federal Phase I reformulated gasoline program will expire after December 31, 1999, when the Federal Phase II reformulated gasoline program begins. Today's direct final rule extends the California enforcement exemptions beyond that date. The Agency is publishing this action as a direct final rule because it does not expect it to be controversial. An accompanying notice of proposed rulemaking is being published in today's **Federal Register**.

DATES: This final rule is effective on January 1, 2000 unless adverse or critical comments are received by October 15, 1999. If adverse comments are received, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Any person wishing to submit comments should send them (in duplicate, if possible) to the docket address listed and to Anne Pastorkovich, Attorney/Advisor, U.S. Environmental Protection Agency, Fuels and Energy Division, 401 M Street, SW (6406J), Washington, D.C. 20460. Materials relevant to this direct final rule have been placed in docket [A–99–04] located at U.S. Environmental Protection Agency, Air Docket Section, Room M–1500, 401 M Street, SW, Washington, D.C. 20460. The docket is open for public inspection from 8:00 a.m. until 5:30 p.m., Monday through Friday, except on Federal holidays. A reasonable fee may be charged for photocopying services.

FOR FURTHER INFORMATION CONTACT: For further information about this direct final rule, contact Anne Pastorkovich, Attorney/Advisor, Fuels & Energy Division, at (202) 564–8987. To notify EPA of an intent to submit an adverse comment or public hearing request, contact Anne Pastorkovich, (202) 564–8987.

SUPPLEMENTARY INFORMATION: The remainder of this direct final rule is organized in the following sections:

I. Background
  A. Regulated Entities
  B. Current Status and Basis for California Exemptions
II. Applicability of Exemptions Beginning in 2000 (Description of This Rule)
III. Administrative Designation and Regulatory Analysis
  A. Executive Order 12866
  B. Executive Order 12875: Enhancing Intergovernmental Partnerships
  C. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments
  D. Regulatory Flexibility
  E. Paperwork Reduction Act
  F. Unfunded Mandates Reform Act
  G. Submission to Congress and the General Accounting Office
  H. Children's Health Protection
  I. National Technology Transfer and Advancement Act of 1995 (NTTAA)
  J. Statutory Authority

I. Background

A. Regulated Entities

Regulated categories and entities potentially affected by this action include:

Category	Examples of regulated entities
Industry	Refiners, importers, and oxygenate blenders of California gasoline.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether an entity is regulated by this action, one should carefully examine the RFG provisions at 40 CFR Part 80, particularly § 80.81 dealing specifically with California gasoline. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Current Status and Basis for California Exemptions

Section 211(k) of the Federal Clean Air Act (the Act) directs the EPA to establish requirements for reformulated gasoline (RFG) to be used in specified ozone nonattainment areas, as well as "anti-dumping" requirements for conventional gasoline used in the rest of the country, beginning in January 1995. The areas covered by the Federal RFG program in California are Los Angeles, San Diego, and Sacramento.[1] The Act requires EPA to reduce the emissions of ozone forming volatile organic compounds (VOCs) and toxic air pollutants from motor vehicles through the RFG program. It also requires that there be no increase in the emission of oxides of nitrogen (NO_X) as a result of the RFG program. Finally, RFG must meet certain content standards for oxygen, benzene and heavy metals.

The RFG program is implemented in two phases. The Phase II program, which will begin on January 1, 2000, is similar to the Phase I program, but will require even greater emissions benefits. The relevant regulations for RFG and conventional gasoline may be found at 40 CFR Part 80, Subparts D, E, and F.[2]

On September 18, 1992, the California Air Resources Board (CARB) adopted regulations requiring reformulation of California "Phase 2" gasoline.[3] The CARB regulations established a comprehensive set of gasoline specifications designed to achieve reductions in emissions of VOCs, NO_X, carbon monoxide (CO), sulfur dioxide, and toxic air pollutants from gasoline-fueled vehicles. The CARB regulations set standards for eight gasoline parameters—sulfur, benzene, olefins, aromatic hydrocarbons, oxygen, Reid vapor pressure (RVP), and distillation temperatures for the 50 percent and 90 percent evaporation points (T–50 and T–90, respectively). These regulations became effective on March 1, 1996 for all gasoline in the California distribution network (except for gasoline being exported from California). The CARB regulations also provide for the production and sale of alternative gasoline formulations, with certification under the CARB program based on a predictive model or on vehicle emission testing.

During the Federal RFG rulemaking, and in response to comments by California refiners, we concluded (1) that VOC and toxics emission reductions resulting from the California Phase 2 standards would be equal to or greater than the Federal Phase I RFG standards (applicable from January 1, 1995 through December 31, 1999), (2) that the content standards for oxygen and benzene under California Phase 2 would be equivalent in practice to the Federal Phase I content standards,[4] and (3) that the CARB's compliance and enforcement program was designed to be sufficiently rigorous to ensure that Federal Phase I requirements would be met.[5] Consequently, while the Federal RFG and conventional gasoline standards continue to apply in California, refiners, importers, and oxygenate blenders of gasoline sold in California (referred to collectively as "California refiners") are exempt in most cases from various enforcement-related provisions, including the following:

Requirement exempted	Citation at 40 CFR § 80.xx
Compliance Surveys[6]	80.68
Independent Sampling & Testing	80.65(f).
Designation of Gasoline	80.65(d).
Marking of Conventional Gasoline	80.65(g) and 80.82.
Downstream Oxygenate Blending	80.69.
Recordkeeping	80.74 and 80.104.
Reporting	80.75 and 80.105.
Product Transfer Documents	80.77.
Parameter Value Reconciliation Requirements	80.65(e)(2).
Reformulated Gasoline and Reformulated Gasoline Blendstock for Oxygenate Blending (RBOB) Compliance Requirements.	80.65(c).
Annual Compliance Audit Requirements	80.65(h).

[1] *See* 40 CFR § 80.70 for a complete list of covered areas.

[2] See 59 FR 7812 (February 16, 1994), as amended at 59 FR 36964 (July 20, 1994); 60 FR 2699 (January 11, 1995); 60 FR 35491 (July 10, 1995); 60 FR 65574 (December 20, 1995); and 62 FR 68196 (December 31, 1997).

[3] See Title 13, California Code of Regulations §§ 2250–2272 (as last amended December 11, 1998). California has amended its regulations since they were first promulgated in September, 1992. The most recent amendments, adopted December 11, 1998, raise the oxygen "cap" limit for California gasoline from 2.7 weight % to 3.5 weight %. As discussed below, this direct final rule is based on the current state of California's Phase 2 gasoline program, including the December 11, 1998 amendments.

[4] As is discussed in the section entitled "Oxygen Standard", below, this is not now the case.

[5] See 59 FR 7758, 7759 (February 16, 1994) and 40 CFR § 80.81.

[6] 40 CFR § 80.81(e)(2) was amended to include a limited oxygen survey provision. *See* "Fuels and Fuel Additives; Amendments to the Enforcement Exemptions for California Gasoline Refiners—Final Rule," 63 FR 34818 (June 26, 1998).

Requirement exempted	Citation at 40 CFR § 80.xx
Compliance attest Engagement Requirements	subpart F.

California refiners are not exempt from these Federal enforcement requirements with regard to gasoline that is delivered for use outside California, because the California Phase 2 standards and the CARB enforcement program do not cover RFG exported from California. EPA has made reasonable allowances to minimize complications for gasoline exported from California, including permitting the use of California test methods for conventional gasoline that is produced in California for sale outside the state.[7]

II. Description of the Direct Final Rule

The enforcement exemptions which expire on December 31, 1999 were based on a comparison of California Phase 2 gasoline and Federal Phase I RFG. The enforcement exemptions, which were included in the final RFG rule (see fn. 5), were only applicable during the Phase I RFG program. It would have been premature for EPA to have made an equivalency determination comparing California Phase 2 and Federal Phase II gasolines upon publication of the final RFG rule. However, we indicated in the rulemaking that, if an appropriate and timely demonstration was made in the future, showing that California Phase 2 gasoline could be expected to provide emission benefits equivalent to Federal Phase II RFG, then we might extend the enforcement exemptions beyond December 31, 1999. For the reasons discussed below, we believe that California Phase 2 gasoline provides emissions benefits equivalent to Federal Phase II RFG, and that it is appropriate for us to extend the California enforcement exemptions to Federal Phase II RFG. Specifically, the Agency believes that:

(1) VOC, toxics, and NO_X emission reductions resulting from the California Phase 2 standards would be equal to or greater than the reductions from the Federal Phase II RFG standards,

(2) The content standards for oxygen and benzene under California Phase 2 would be equivalent in practice to the Federal Phase II content standards, and

(3) The CARB's compliance and enforcement program is designed to be sufficiently rigorous.

We have received a detailed comparison of California Phase 2 and Federal Phase II blends, entitled, "Comparing the Equivalency of California and Federal Reformulated Gasoline," from the Western States Petroleum Association (hereafter referred to as "the WSPA analysis"). A copy of the WSPA analysis, and an EPA staff memorandum describing the Agency's evaluation of the WSPA analysis, has been placed in public docket at the location listed in the **ADDRESSES** section of this notice[8].

The WSPA analysis evaluated the performance of the California program (1) by comparing the average performance of actual California RFG to the averaged parameter limits of federal RFG, and (2) by analyzing the performance of a set of "virtual fuels" using computer modeling. While the average fuel performance analysis establishes that the overall air quality objective of the federal RFG program will be met, the virtual fuels analysis provides assurances that there will be no temporal spikes in the emission of ozone forming VOCs.

The WSPA analysis utilized data from two separate surveys of actual California gasoline to compare the emissions performance of California gasoline with the EPA Phase II complex model averaging standards. *See* 40 CFR § 80.41(f). One survey was prepared by the California Energy Commission (CEC).[9] The other survey was prepared by the American Petroleum Institute/National Petroleum Refiners Association (API/NPRA).[10] Both surveys collected data on the properties of RFG actually produced by California refiners in an effort to evaluate the emissions performance of actual, in use California gasoline. The API/NPRA and CEC surveys represented about 85% and 100% of the RFG produced in California, respectively. The surveys each occurred over periods of about four months during the summertime, and were weighted by production volume. Producers were not aware that the surveys were being conducted.

Both surveys support the conclusion that average fuel property values and average emissions reductions of in-use California gasolines comply with Federal Phase II averaged standards. Additionally, the two surveys, performed one year apart, were remarkably consistent. The results of the surveys are shown in the following table:[11]

Properties	Federal phase II averaged standards	1990 Baseline fuel	California survey results	
			API–96	CEC–97
Oxygen (wt%)	>=2.1 average, 1.5 per gal. min	0	2.1	2.1
SULFUR (ppm)		339	20	19
RVP (psi)		8.7	6.8	6.8
E200 (%)		41	51.3	50.5
E300 (%)		83	88.8	88.4
AROMATICS (vol%)		32	23.0	23.0
OLEFINS (vol%)		9.2	3.9	4.1
BENZENE (vol%)	<=0.95 average, 1.3 per gal. max.	1.53	0.55	0.57

[7] *See* 40 CFR 80.81(h)(1).

[8] The WSPA analysis and an EPA staff memorandum entitled "Equivalency Determination of California and Federal Reformulated Gasoline," (March 8, 1999) have been placed in docket A–99–04.

[9] Final Report, 1996 American Petroleum Institute/National Petroleum Refiners Association Survey of Refining Operations and Product Quality (July, 1996).

[10] California Energy Commission, Supply and Cost of Alternatives to MTBE in Gasoline—Technical Appendices, Refinery Modeling—Task 2 Calibration of Refinery Model, Table 5.3.

[11] WSPA analysis, at 7.

Properties	Federal phase II averaged standards	1990 Baseline fuel	California survey results	
			API–96	CEC–97
Phase II Complex Model Absolute emissions Calculations		Absolute emissions (milligrams/mile)		
Exhaust VOC		907.0	733.0	734.2
Nonexhaust VOC		559.3	294.1	294.1
Total VOC		1466.3	1027.2	1028.4
Exhaust benzene		53.5	28.8	28.9
Nonexhaust benzene		6.2	1.3	1.4
Acetaldehyde		4.4	3.6	3.6
Formaldehyde		9.7	11.8	11.8
Butadiene		9.4	6.4	6.5
POM		3.0	2.5	2.5
Total exhaust toxics		80.1	53.0	53.2
Total toxics		86.3	54.3	54.6
NO_X		1340.0	1144.5	1143.2
Phase II Complex Model Reductions from 1990 Baseline		Percent change from baseline emissions		
Total VOC	>=29.0% average, 25.0% per gal. min.	−29.9	−29.9	
Total toxics	21.5% average		−37.1	−36.8
NO_X	6.8% average		−14.6	−14.7

The WSPA analysis also compares the emissions performance of the survey average in-use fuel with the emissions performance of fuels that meet California's "regulatory recipe". The regulatory recipe specifies limits for various emission-related fuel parameters (e.g. sulfur content, aromatics content).

Certain of these parameters in the regulatory recipe have two sets of limits; a "flat" (per gallon) limit and an average limit with a cap. A California refiner may choose, on a property by property basis, to produce a blend that complies with a flat or an average (with cap) regulatory recipe limit. However, a refiner may produce a blend with parameters that differ from the regulatory recipe specifications if they can demonstrate, using the predictive model, that the emissions performance of their blend is comparable. In order to use the predictive model to compare the emissions performance of its blend to the performance of the regulatory recipe, refiners must decide whether certain parameters in their blend will be averaged or flat-limited.

The WSPA analysis compares the survey results to the regulatory recipe by plugging the average survey data into the predictive model and generating emissions numbers. These numbers are then compared against an all-average and all-flat emissions baseline. The results demonstrate that the emissions performance of in-use gasoline approximates the emissions performance of a fuel with average regulatory recipe limits. Therefore, it is reasonable to use the average, rather than the flat, regulatory recipe limits to determine which of the computer-generated virtual fuels meet California standards under the predictive model. This virtual fuels analysis, discussed later, demonstrates compliance of California fuel with the Federal VOC per-gallon minimum performance requirement.

Finally, the WSPA analysis demonstrates that the fuels represented by the two surveys meet the average performance requirements of the federal RFG program. To make this determination the WSPA analysis evaluates the averaged fuels from the two surveys using the federal Complex Model.[12]

The WSPA analysis also examined a computer-generated set of emissions data to evaluate the performance of a large number of possible California gasoline blends against the Federal per-gallon minimum reduction requirements for VOCs. This set of virtual fuels consisted of fuels whose properties vary discretely within ranges constrained by California or Federal regulations. Specifically, the virtual fuels analysis defined the properties of the virtual fuels using the appropriate limits of California Phase 2—for RVP, sulfur, aromatics, olefins, T50, T90, and benzene, the upper and lower limits are defined by California's regulations. For oxygen, the lower limit is defined by the Federal RFG program[13] and the upper limit is defined by the California regulations.

For VOC compliance, the virtual fuels analysis looked at possible combinations of fuel properties within the limits of what could be certified under the California predictive model. Although the virtual fuels analysis does not reflect each and every possible fuel formulation, the discrete properties chosen accurately approximate the full range of possible, "real world" fuels. These virtual fuel formulations were then submitted to the EPA's complex model. In all there were 18,048 virtual fuels that met the California standards. Of these fuels, all met the 25% minimum Federal Phase II VOC reduction requirement.

As discussed in greater detail in the staff paper, the virtual fuels analysis supports the conclusion that any possible "real world" fuel will comply with the Federal Phase II complex model minimum VOC reduction requirement.

We are satisfied that the CARB enforcement program, which employs several full-time inspectors and a mobile laboratory facility, and which conducts year round inspections of retail facilities, terminals, and refineries, is designed to be sufficiently stringent to ensure the emissions benefits and content requirements of the program are met.

In the absence of the enforcement exemptions at 40 CFR § 80.81, California refiners would be required to comply with duplicative enforcement requirements at a significant added cost. We believe that California Phase 2 gasoline, as required by the current regulations (see footnote 3), and as

[12] *Id.* at 9.

[13] The limited oxygen survey option was added to 40 CFR § 80.81 (e)(2)(ii) to ensure that compliance with a 2.0 wt % standard is met in Federally covered areas, as defined by § 80.70. Since for an averaging party, the minimum oxygen content of any gallon of gasoline is 1.5 wt % (with all production over the compliance period meeting 2.1 wt%, on average), the appropriate minimum oxygen content for analysis purposes is 1.5 wt %.

described in this analysis, will achieve VOC, toxic and NO_X emission reductions that are equal to or greater than those achieved by Federal Phase II gasoline, and will comply with the oxygen and benzene content requirements of the Federal program. We also believe that the CARB enforcement program is sufficiently stringent to ensure that the expected benefits will continue to be met. Therefore, we are proposing to extend the California enforcement exemptions at 40 CFR § 80.81 beyond December 31, 1999.

On March 26, 1999, California Governor Gray Davis issued Executive Order D–5–99, which directed that methyl tertiary butyl ether (MTBE) be phased out of gasoline as soon as possible. Because, California refiners must still provide gasoline in the state that complies with the federal oxygen content requirement, the appropriateness of extending the enforcement exemptions is preserved. A copy of the executive order has been placed in the public docket at the location indicated in the **ADDRESSES** section of this notice.

On April 12, 1999, Governor Davis submitted a letter to EPA Administrator Carol Browner, requesting that EPA grant a waiver from the Federal 2.0 weight % oxygen requirement for all California areas covered by the Federal RFG program. The governor's request is currently being evaluated by EPA, but is outside the scope of today's direct final rule. Today's action, in finding that the emission reduction benefits of California gasoline are equivalent to Federal Phase II RFG based on a comparison of current California Phase 2 gasoline and Federal Phase II RFG, includes an analysis demonstrating that such California gasoline will comply with the Federal content standards, including the 2.0 weight % oxygen standard. If California amends its current reformulated gasoline regulations (or issues new regulations), EPA will re-examine these regulations to determine whether enforcement exemptions continue to be appropriate.

III. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a Serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this rule is not a significant regulatory action under the terms of Executive Order 12866 and is therefore not subject to OMB review. The Agency has determined that this regulation would result in none of the economic effects set forth in Section 1 of the Order because it does not impose any mandatory obligations on the regulated community beyond those specified in the current regulations.

B. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Today's direct final rule does not create a mandate for any tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this direct final rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

This action does not add any new requirements involving the collection of information as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget (OMB) has approved the information collection requirements contained in the final RFG/anti-dumping rulemaking (See 59 FR 7716, February 16, 1994) and has assigned OMB control number 2060–0277 (EPA ICR No. 1951.08).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's direct final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector. Today's direct final rule extends the existing exemption for California gasoline from many of the regulatory compliance requirements of the RFG program, relieving potentially duplicative obligations.

G. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2).

H. Executive Order 13045: Children's Health Protection

Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

I. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub L. No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This direct final rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Statutory Authority

Sections 114, 211, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, California exemptions, Gasoline, Motor vehicle pollution, Reformulated gasoline.

Dated: August 27, 1999.

Carol M. Browner,

Administrator.

For the reasons described in the preamble, part 80 of title 40, chapter I of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 80 continues to read as follows:

Authority: Secs.114, 211 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7414, 7545, and 7601(a)).

§ 80.81 [Amended]

2. Section 80.81 is amended by removing paragraph (i).

[FR Doc. 99–23707 Filed 9–14–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6437–9]

Tennessee: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Tennessee has applied for Final authorization of the revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Tennessee's revision consists of the provisions contained in rules promulgated between July 1, 1994 through June 30, 1995, otherwise known as RCRA Cluster V and July 1, 1996 through June 30, 1997, otherwise known as RCRA Cluster VI. The EPA has reviewed Tennessee's application and determined that its hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. EPA is authorizing the state program revision through this immediate final action. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial action and does not anticipate adverse comments. However, in the proposed rules section of this **Federal Register**, EPA is publishing a separate document that will serve as a proposal to authorize the revision should the Agency receive adverse comment. Unless EPA receives adverse written comments during the review and comment period, the decision to authorize Tennessee's hazardous waste program revision will take effect as provided below.

DATES: This Final authorization for Tennessee will become effective without further notice on November 15, 1999, unless EPA receives adverse comment by October 15, 1999. Should EPA receive such comments, EPA will publish a timely withdrawal informing the public that the rule will not take effect.

ADDRESSES: Send written comments to Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104; (404) 562–8440. Copies of the Tennessee program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8:00 a.m. to 4:30 p.m. at the following addresses: Tennessee Department of Environment and Conservation, Division of Solid Waste Management, 5th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243–1535; and EPA Region 4, Library, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104; (404) 562–8190.

FOR FURTHER INFORMATION CONTACT: Narinda Kumar, (404) 562–8440.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of the RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. As the Federal hazardous waste program changes, the States must revise their programs and apply for authorization of the revisions. Revisions to State hazardous waste programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must revise their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. Tennessee

Tennessee initially received Final Authorization on January 22, 1985, effective February 5, 1985 (*50* FR *2820*) to implement its base hazardous waste management program. Tennessee received authorization for revisions to its program on January 30, 1998, effective March 31, 1998 (*63* FR *4587*), on May 23, 1996, effective July 22, 1996 (*61* FR *25796*), on August 24, 1995, effective October 23, 1995 (*60* FR *43979*), on May 8, 1995, effective July 7, 1995 (*60* FR *22524*), on June 1, 1992, effective July 31, 1992 (*57* FR *23063*), and on June 12, 1987, effective August 11, 1987 (*52* FR *22443*).

On May 15, 1998, Tennessee submitted a final complete program revision application, seeking authorization of its program revision in accordance with 40 CFR 271.21. The EPA reviewed Tennessee's application, and now makes an immediate final decision, subject to receipt of adverse written comment, that Tennessee's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final Authorization. Consequently, EPA intends to grant Tennessee Final Authorization for the program modifications contained in the revision. Today, Tennessee is seeking authority to administer the following Federal requirements promulgated between July 1, 1994 and June 30, 1996:

Description of Federal requirement	Federal Register date and page	Analogous State authority [1]
135—Recovered Oil Exclusion	07/28/94, 59 FR 38536	Tennessee Code Annotated (TCA) 68–212–104(7), 86–212–106(a)(1), and 68–212–107(d)(1), Tennessee Revised Code (TRC) 1200–1–11–.02(1)(c)3(ii)(II)II, .02(1)(d)1(xii), .02(1)(f)1(iii)(III)–(V), .09(8)(a)2(iii).
136—Removal of the Conditional Exemption for Certain Slag Residues.	08/24/94, 59 FR 43496	Tennessee Code Annotated (TCA) 68–212–04(7), 68–212–106(a)(1), 68–212–107(a), (d)(1), and (d)(9), Tennessee Revised Code (TRC) 1200–1–11–09(3)(a)3, .10(3)(a).
137—Universal Treatment Standards and Treatment Standards for Organic Toxicity Characteristic Wastes and Newly Listed Wastes.	09/19/94, 59 FR 47982	Tennessee Code Annotated (TCA) 68–212–106(a)(1), 68–212–107(d)(1) and (3).

Description of Federal requirement	Federal Register date and page	Analogous State authority [1]
	01/03/95, 60 FR 242	Tennessee Code Annotated (TCA) 68–212–104(7), 68–212–106(a)(1), 68–212–107(d)(1), (d)(6), and (d)(9) .01(4)(a) intro., .01(4)(a)2, .01(4)(b)1, .01(5)(a) intro., .01(5)(b) intro., .01(5)(b)1–2, .02(1)(b)5(i)(III), .06(1)(b)2(v)–(vi), .09(3)(d)1, .09(8)(a)3(i) and (iii), .09(8)(a)3(iii)(I), .09(8)(a)3(iii)(I)I,.09(8)(a)3 (iii)(II), .09(9) Appendix XIII, .10(1)(a)3(iii)(II)–(III), .10(1)(a)5(iv)–(v), .10(1)(b)7 and 9, .10(1)(g)1, .10(1)(g)1(i), .10(1)(g)1(i)(I)–(VI), .10(1)(g)1(ii), .10(1)(g)1(ii)(I), .10(1)(g)1(ii)(I)I–IV , .10(1)(g)1(ii)(II), .10(1)(g)1(iii), .10(1)(g)1(iii)(I)–(V), .10(1)(g)1(iii)(V)I–II, .10(1)(g)1(iii)(VI)–(VII), .10(1)(g)1(iv), .10(1)(g)1(iv)(I)–(III), .10(1)(g)1(v)–(x), .10(1)(g)2(iv)(II).
139—Testing and Monitoring Activities Amendment I.	01/13/95, 60 FR 3089	Tennessee Code Annotated (TCA) 68–212–104(7), 68212–106(a)(1), and 68–212–107(d)(1) and Tennessee Revised Code (TRC) 1200–1–11–.01(2)(b).
140—Carbamate Production Identification and Listing of Hazardous Waste.	02/09/95, 60 FR 7824	Tennessee Code Annotated (TCA) 68–212–104(7), 68–212–106(a)(1), and 68–212–107 (d)(1); Tennessee Revised Code (TRC) 1200–1–11–.02(1)(c)1(ii)(IV)V–VII, .02(1)(c)3(ii)(II)IV, .02(4)(c), .02(4)(d)5–6, .02(5) Appendix VII–VIII.
141—Testing and Monitoring Amendment II.	04/04/95, 60 FR 17001	Tennessee Code Annotated (TCA) 68–212–104(7), 68–212–106(a)(1), and 68–212–107 (d)(1); Tennessee Revised Code (TRC) 1200–1–11–.01(2)(b)1.
142A—Universal Waste: General Provisions.	05/11/95, 60 FR 25492	Tennessee Code Annotated (TCA) 68–212–104(7) and 18, 68–212–106(a)(1), and 68–212–107 (a) and (d); Tennessee Revised Code (TRC) 1200–1–11–.01(2)(a), .02(1)(e)3, .02(1)(e)3(i)–(vi), .02(1)(e)6(iii), .02(1)(e)6(iii)(I)–(V), .02(1)(e)6(iii)(V)I–II, .02(1)(e)6(iii)(VI), .02(1)(e)7(iii), .02(1)(e)7(iii)(I)–(V), .02(1)(e)7(iii)(I)–(V)I–II, and VI, .02(1)(j) intro., .03(1)(a)2–7, .03(1)(b)4, .06(1)(b)2(x)–(xii), .10(1)(a)5(vi), .07(1)(b)4(ix), .12(1)(a)–(b), .12(1)(e)1, .12(1)(e)1(i)–(ii), .12(1)(e)2, .12(1)f, .12(2)(a), .12(2)(b)intro, .12(2)(b)1–2, .12(2)(c), .12(2)(e) intro, .12(2)(f)1–3, .12(2)9f)3(i)–(vi), .12(2)(g), .12(2)(h)1–2, .12(2)(i)1–5, .12(2)(i)5(i)–(ii), .12(2)(i)6, .12(2)(i)6(i)–(ii), .12(2)(i)7–8, .12(2)(j)–(k), .12(2)(k)1–3, .12(3)(a), .12(3)(b)1–2, .12(3)(c)1(i)–(ii), .12(3)(c)2, .12(3)(c)2(i)–(v), .12(3)(e) intro, .12(3)(f)1–3, .12(3)(f)3(i)–(vi), .12(3)(g), .12(3)(h)1–2, .12(3)(i)1–5,.12(3)(i)5(i)–(ii), .12(3)(i)6, .12(3)(i)6(i)–(ii), .12(3)(i)7–8, .12(3)(j)1, .12(3)(j)1(i)–(iii), .12(3)(j)2, .12(3)(j)2(i)–(iii), .12(3)(j)3(i)–(ii), .12(3)(k)intro, .12(3)(k)1–3, .12(4)(a), .12(4)(b), .12(4)(b)1–2, .12(4)(b)1–2, .12(4)(c)1–2, .12(4)(d)1–2, .12(4)(e)1–2, .12(4)(f)1–2, .12(4)(g)intro, .12(4)(g) 1–2. .12(5)(a)1–2, .12(5)(b)1–2, .12(5)(b)2(i)–(ii), .12(5)(b)3–4, .12(5)(c)1, .12(5)(c)1(i)–(iii), .12(5)(c)2, .12(6)(a) intro, .12(6)(a)1–3.
142B—Universal Waste Rule: Specific Provisions for Batteries.	05/11/95, 60 FR 25492	Tennessee Code Annotated (TCA) 68–212–104(7) and 18, 68–212–106(a)(1), and 68–212–107 (a) and (d), Tennessee Revised Code (TRC) 1200–1–11–.01(2)(a), .02(1)(f)1(iii)(II)–(V), .02(1)(j)1, .06(1)(b)2(x)(I), .05(1)(b)2(xii)(I), .09(7)(a)1–2, .10(1)(a)5(vi)(I), .07(1)(b)4(ix)(I), .12(1)(a)1, .12(1)(b)1(i)–(ii), .12(1)(b)2, .12(1)(b)2(i)–(iii), .12(1)(b)3(i)–(ii), .12(1)(f), .12(2)(d)1, .12(2)(d)1(i)–(ii), .12(2)(d)1(ii)(I)–(VII), .12(2)(d)1(iii), .12(2)(d)1(iii)(I)–(II).12(2)(e), .12(3)(d)1, .12(3)(d)1(i)–(ii), .12(3)(d)1(ii)(I)–(VII), .12(3)(d)1(iii), .12(3)(d)1(iii)(I)–(II), .12(3)(e)1.
142C—Universal Waste Rule: Specific Provisions for Pesticides.	05/11/95, 60 FR 25492	Tennessee Code Annotated (TCA) 68–212–104(7) and 18, 68–212–106(a)(1), and 68–212–107 (a) and (d); Tennessee Revised Code (TRC) 1200–1–11–.01(2)(a), .02(1)(j)2,.12(1)(c)1(ii), .12(1)(c)2, .12(1)(c)2(i)–(iv), .12(1)(c)3(i), .12(1)(c)3(i)(I)–(II), .12(1)(c)3(ii), .12(1)(c)4, .12(1)(c)4(i), .12(1)(c)4(i)(I)–(II), .12(1)(c)4(ii), .12(1)(f), .12(2)(d)2, .12(2)(d)2(i)–(iv), .12(2)(e)2, .12(2)(e)2(i)–(ii), .12(2)(e)3, .12(2)(e)3(i)(I)–(III), .12(2)(e)3(ii), .12(3)(c)1(i) and (iii), .12(3)(d)2, .12(3)(d)2(i)–(iv), .12(3)(e)2, .12(3)(e)2(i)–(ii), .12(3)(e)3, .12(3)(e)3(i)(I)–(III), .12(3)(e)(3)(ii) .10(1)(a)5(vi)(II), .07(1)(b)4(ix)(ii), .12(1)(a)1(ii), .12(1)(c)1, .12(1)(c)1(i), .12(1)(c)1(i)(I)–(II).
142D—Universal Waste Rule: Specific Provisions for Thermostats.	05/11/95, 60 FR 25492	Tennessee Code Annotated (TCA) 68–212–104(7) and 18, 68–212–106(a)(1), and 68–212–107 (a) and (d); Tennessee Revised Code (TRC) 1200–1–11–.01(2)(a), .02(1)(j)3, .06(1)(b)2(x)(III), .05(1)(b)2(xii)(III), .10(1)(a)5(vi)(III), .07(1)(b)4(ix)(III), .12(1)9a)1(iii), .12(1)(d)1–2, .12(1)(d)2(i)–(ii), .12(1)(d)3(i)–(ii), .12(1)(f)/.01(2)(a), .12(2)(d)3, .12(2)(d)3(i)–(ii), .12(2)(d)3(ii)(I)–(VIII), .12(2)(d)3(iii)(I), .12(2)(d)3(iii)(I)I, .12(2)(d)3(iii)(I)(II), .12(2)(d)3(iii)(II)–(III), .12(2)(e)4, .12(3)(d)3, .12(3)(d)3(i)–(ii), .12(3)(d)3(ii)(I)–(VIII), .12(3)(d)3(iii)(I), .12(3)(d)3(iii)(I)I–II, .12(3)(d)3(iii)(II)–(III), .12(3)(e)4.

Description of Federal requirement	Federal Register date and page	Analogous State authority [1]
142E—Universal Waste Rule: Petition Provisions to Add a New Universal Waste.	05/11/95, 60 FR 25492	Tennessee Code Annotated (TCA) 68–212–104(7) and 18, 68–212–106(a)(1), and 68–212–107 (a) and (d); Tennessee Revised Code (TRC) 1200–1–11–.01(3)(a)1, .01(3)(d)1–4, .12(7)(a)1–3, .12(7)(b)1–8.
144—Removal of Legally Obsolete Rules.	06/29/95, 60 FR 33912	Tennessee Code Annotated (TCA) 68–212–104(2), (7), and (11), 68–212–107(a) and (d)(3), and 68–212–108(a)(1); Tennessee Revised Code (TRC) 1200–1–11–.2(4)(b), .09(8)(d)3(v), .09(8)(e)6–8, .07(2)(b)5, .07(2)(c)2, .07(2)(d)1, .07(2)(d)1(i)–(ii).
145—Liquids in Landfills III	07/11/95, 60 FR 35703	Tennessee Revised Code (TRC) 1200–1–11–.06(14)(o)5(ii)(II)and (III), .05(14)(o)6(ii)(II) and (III).
148—RCRA Expanded Public Participation.	12/11/95, 60 FR 63417	Tennessee Code Annotated (TCA) 68–212–106(a)(2), 68–212–107(d)(4) and (6), 68–212–108(a)(1) and (e); TRC 1200–1–11–.07(2)(c)3(i)(I)–(IV),.07(2)(c)3(i)(IV)I, .07(2)(c)3(i)(IV)I(A)–(D),.07(2)(c)3(i)(IV)II, .07(2)(c)3(i)(IV)II.A–E,.07(7)(e)4(iv)(I)–(II), .07(5)(a)1(xxii), .07(8)(a)13, .07(1)(d)2(v)–(vi), .07(1)(e)2(vi)(I)–(II), .07(1)(e)2(vi)(II)(I)–(IV), .07(1)(e)2(vii)–(xi), .07(1)(e)4, .07(1)(j)4(iii). .07(1)(j)4(iii)(I)–(II), .07(1)(j)4(iii)(II)I–IV, .07(1)(j)4(iv)–(vi), .07(1)(j)7.
150—Amendments to the Definition of Solid Waste; Amendment II.	03/26/96, 61 FR 13103	Tennessee Revised Code 1200–1–11 –.02(1)(d)1(xii).
151—Land Disposal Restrictions Phase III—Decharacterized Wastewaters, Carbamate Wastes, and Spent Potliners.	04/08/96; 04/30/96; 06/28/96; 07/10/96; 08/26/96; 02/19/97, 61 FR 15566.	TCA 68–212–104(7) and (16), 68–212–106(a)(1) and (2), 68–212–107(a) and (d)(1), (3), and (9); Tennessee Revised Code (TRC) 1200–1–11–.10(1)(a)(3)(iii), .10(1)(a)(3)(iii)(I) –(II), .10(1)(a)3(iv), .10(1)(a)3(iv)(I)–(VI), .10(1)(a)5(iii)–(iv), .10(1)(b)6, .10(1)(b)9–12, .10(1)(c)1–3, .10(1)(c)3(i)–(vi), .10(1)(g)1, .10(1)(g)1(i)(II)–(V), .10(1)(g)1(ii)(I)II, .10(1)(g)1(iii)(II), .10(1)(g)2(iv)(II), .10(1)(g)2(v)(IV)–(V), .10(1)(h), .10(1)(i)1, .10(1)(i)4, .10(1)(i)4(i)(I)–(II), .10(1)(i)4(iii)(I)–(IV), .10(2)(j)1–6, .10(2)(j)6(i)–(iv), .10(2)(j)7, .10(3)(a)1, 5 and (7), .10(3)(a)Table, .10)(c)Table 1, .10(3)(i)1 Table UTS, .10(5) App. XI .10(1)(c)3(i)–(vi), .10(1)(g)1, .10(1)(g)1(i)(II)–(V), .10(1)(g)1(ii)(I)II, .10(1)(g)1(iii)(II), .10(1)(g)2(iv)(II), .10(1)(g)2(v)(IV)–(V), .10(1)(h), .10(1)(i)1, .10(1)(i)4.
152—Imports and Exports of Hazardous Waste: Implementation of OECD Council Decision.	04/12/96, 61 FR 16290	Tennessee Revised Code (TRC) 1200–1–11–.03(1)(a)5–8, .03(6)(d)2, .03(6)(g)2, .04(3)(a)1, .06(2)(c)1(i), .05(2)(c)1(i), .09(6)(a)2(ii), .12(2)(k), .12(3)(k), .12(4)(g), .12(6)(a).

[1] The Tennessee provisions are from the Tennessee Hazardous Waste Management Regulations adopted December 6, 1994, August 6, 1996, June 3, 1997, and February 3, 1998.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the Federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

The State of Tennessee's Hazardous Waste Management Program is not being authorized to operate in Indian Country.

EPA is publishing this rule without prior proposal because we view this as a noncontroversial program revision and do not anticipate adverse comment . However, in the Proposed Rules' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposal to authorize the revision if we receive adverse comments. This authorization will become effective without further notice on November 15, 1999, unless EPA receives adverse comment by October 15, 1999. Should EPA receive such comments it will publish a timely withdrawal informing the public that the rule will not take effect. We will address all public comments in a subsequent final action based on the proposed rule. EPA may not provide additional opportunity for comment. Any parties interested in commenting must do so at this time.

The public may submit written comments on EPA's immediate final decision until October 15, 1999. Copies of Tennessee's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document. The **ADDRESSES** section also indicates where to send written comments on this action.

C. Decision

I conclude that Tennessee's application for program revision authorization meets all of the statutory and regulatory requirements established by RCRA. Accordingly, EPA grants Tennessee Final Authorization to operate its hazardous waste program as revised. Tennessee now has responsibility for permitting treatment, storage, and disposal facilities within its borders (except in Indian country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Tennessee also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

D. Codification in Part 272

The EPA uses 40 CFR part 272 for codification of the decision to authorize Tennessee's program and for incorporation by reference of those provisions of its statutes and regulations that EPA will enforce under sections 3008, 3013 and 7003 of RCRA. EPA reserves amendment of 40 CFR part 272, subpart RR until a later date.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. EPA has determined that sections 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the Tennessee program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action because this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, they are already subject to the regulatory requirements under the existing State laws that are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Certification Under the Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the regulatory requirements under the existing State laws that are now being authorized by EPA. The EPA's authorization does not impose any significant additional burdens on these small entities. This is because EPA's authorization would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Pursuant to the provision at 5 U.S.C. 605(b), the Agency hereby certifies that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Compliance With Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies with consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. The State administers its hazardous waste program voluntarily, and any duties on other State, local or tribal governmental entities arise from that program, not from this action. Accordingly, the requirements of Executive Order 12875 do not apply to this rule.

Compliance With Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," applies to any rule that: (1) the Office of Management

and Budget determines is "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

Compliance With Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies with consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule is not subject to E.O. 13084 because it does not significantly or uniquely affect the communities of Indian tribal governments. Tennessee is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that EPA implements in Indian country within the State.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 271

Environmental Protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–23912 Filed 9–14–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 43 and 64

[CC Docket No. 98–81, ASD File No. 98–64, CC Docket No. 96–150, RM–9341, FCC 99–106]

1998 Biennial Regulatory Review—Review of Accounting and Cost Allocation Requirements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document streamlines the accounting requirements for mid-sized incumbent local exchange carriers (LECs) whose aggregate annual revenues are less than $7 billion by allowing these companies, currently required to use Class A accounts, to use the more streamlined Class B accounts. The Commission also permits the mid-sized incumbent LECs to submit their cost allocation manuals (CAMs) based on the Class B system of accounts. In addition, mid-sized incumbent LECs will now only be required to obtain an attestation every two years, instead of an annual financial audit requiring a positive opinion. The Commission also eliminates several accounting requirements for all incumbent LECs. The Commission's objective in modifying the accounting and cost allocation rules is to minimize the reporting burden on incumbent LECs and improve the quality of the reported information.

DATES: This rule is effective November 15, 1999, except § 32.2000(b) which contains information collection requirements and will not become effective until approved by the Office of Management and Budget. The Commission will publish a document announcing the effective date of this section.

ADDRESSES: Federal Communications Commission, 445–12th Street, SW, TW–A325, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Mika Savir, Legal Branch, Accounting Safeguards Division, Common Carrier Bureau at (202) 418–0384 or Andy Mulitz, Chief, Legal Branch, Accounting Safeguards Division, Common Carrier Bureau at (202) 418–0827.

SUPPLEMENTARY INFORMATION: This *Report and Order* in CC Docket No. 98–81, ASD File No. 98–64, CC Docket No. 96–150, RM–9341, adopted on May 18, 1999 and released on June 10, 1999, is available for inspection and copying during normal business hours in the FCC Reference Information Center (RIC), 445 12th Street, SW, TW–A325, Washington, D.C. 20554. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857–3800.

Synopsis of Report and Order

I. Background

1. As part of the biennial review under section 11 of the Communications Act, the Commission proposed to raise the threshold significantly for required Class A accounting, allowing mid-sized incumbent LECs currently required to use Class A accounts to use the more streamlined Class B accounts. In addition, the Commission proposed to establish less burdensome CAM procedures for the mid-sized incumbent LECs and to reduce the frequency with which independent audits of the cost allocations based upon the CAMs are required. The Commission also proposed several changes to the Uniform System of Accounts (USOA) to reduce accounting requirements and to eliminate or consolidate accounts for all carriers. Finally, the Commission sought proposals for other accounts or filing requirements that could be reduced or eliminated.

II. Report and Order

A. Revenue Threshold for Determining Level of Reporting for Mid-Sized Incumbent LECs

2. Under the Commission's rules there are two classes of incumbent LECs for accounting purposes: Class A and Class B. Carriers with annual operating revenues from regulated telecommunications operations equal to or above a designated indexed revenue threshold, currently $112 million, are classified as Class A; those with annual operating revenues below the threshold are considered Class B. Generally, Class A accounts provide more detailed records of investment, expense, and revenue than the Class B accounts. In the *Notice of Proposed Rulemaking* (NPRM), 63 FR 45208 (Aug. 25, 1998), the Commission proposed to streamline accounting requirements for certain mid-sized incumbent LECs based on the aggregate revenues of the LEC and any LEC that it controls, is controlled by, or with which it is under common control. The Commission proposed that if the aggregate revenues of these affiliated incumbent LECs are less than $7 billion, then each incumbent LEC within that group would be eligible for Class B accounting, even if the annual operating revenue of any individual incumbent LEC equals or exceeds $112 million. The Commission adopts the proposal in the *NPRM*. Among incumbent LECs, this revision would limit Class A accounting to the Bell operating companies (BOCs) and GTE. All other incumbent LECs may use the Class B system of accounts. Carriers that qualify for Class B accounting may, at their discretion, maintain a Class A accounting structure upon the submission of written notification to the Commission. *See* 47 CFR 32.11.

3. *Pole Attachment Fees.* In reviewing the rates charged by incumbent LEC owners of poles, ducts, conduits and rights-of-way, the Commission applies data taken from the Automated Reporting Management Information Systems (ARMIS) reports. Under the Class B accounting structure adopted for mid-sized incumbent LECs, detailed accounts needed to calculate pole attachment fees using the pole attachment formulas would no longer be reported in their ARMIS reports. Mid-sized incumbent LECs are therefore required to maintain subsidiary record categories to provide the pole attachment data currently provided in the Class A accounts, and must report the information necessary for the Commission to calculate pole attachment rates based on their ARMIS reports.

4. *Application of Threshold.* In the *NPRM*, the Commission proposed eliminating the difference between the application of the indexed revenue threshold for Parts 32 and 64 because the difference provided unnecessary complexity. The Commission adopts the proposal and eliminates the difference between the application of the indexed revenue threshold for Part 32 and 64 cost allocation purposes. Carriers will be classified as Class A or Class B at the start of the calendar year following the first time their annual operating revenues equal or exceed the indexed revenue threshold. The $7 billion threshold will not be indexed for inflation annually, but instead will be a fixed threshold that the Commission will monitor on a regular basis. If the Commission determines that the $7 billion threshold is no longer appropriate due to inflation or any other change in market conditions, it will revise the threshold to reflect those changes.

B. Reduced Cost Allocation Manual Procedures for Mid-Sized Incumbent LECs

5. In the *NPRM*, the Commission proposed to reduce CAM requirements for mid-sized incumbent LECs. The proposal would allow these companies to submit their CAMs based upon the Class B system of accounts and would relax the current annual audit requirements for cost allocations related to the CAM by permitting mid-sized incumbent LECs to obtain an attestation every two years. Each such attestation would cover the previous two years. The Commission adopts this proposal. Mid-sized incumbent LECs may submit their CAMs based upon the Class B system of accounts. The Commission also concludes that mid-sized incumbent LECs may obtain an audit every two years, instead of an annual financial audit requiring a positive opinion.

C. Revising the Uniform System of Accounts for All Carriers

6. *Combining Accounts 2114, 2115, and 2116, 47 CFR 32.2114–32.2116.* In the *Notice*, the Commission proposed combining Account 2114, Special purpose vehicles, Account 2115, Garage work equipment, and Account 2116, Other work equipment, into a single new account. The assets recorded in these accounts are similar in nature, have similar prescribed depreciation rates, and are treated identically under the jurisdictional separations rules set forth in Part 36 of the Commission's rules. The Commission adopts this proposal and combines these accounts into a single account entitled Account 2114, Tools and other work equipment.

7. *Combining Accounts 6114, 6115, and 6116, 47 CFR 32.6114–32.6116.* In the *Notice*, the Commission proposed combining Account 6114, Special purpose vehicles expense, Account 6115, Garage work equipment expense, and Account 6116, Other work equipment expense, into a single new account entitled Account 6114, Tools and other work equipment expense. The Commission concludes that these accounts should be combined into a single account because combining these accounts would reduce the carriers' accounting and reporting burdens, would not affect the amounts separated between the interstate and intrastate jurisdictions, and would not affect our ability to protect the public interest. The Commission adopts this proposal and combines these accounts into a single account entitled Account 6114, Tools and other work equipment expense.

8. *Accounting for Nonregulated Revenues.* In the *Notice*, the Commission proposed amending §§ 32.23(c) and 32.5280, 47 CFR 32.23(c) and 32.5280, to allow carriers to record revenues from all nonregulated activities in Account 5280, Nonregulated operating revenue. Such an amendment would modify the current rule that instructs carriers to record revenue from nonregulated activities in Account 5280 only if there is no other operating revenue account to which the revenue relates. The Commission concludes that combining revenues for all nonregulated activities into one account would continue to protect the public interest by ensuring that nonregulated revenues are segregated from the carriers' regulated revenues. Therefore, the Commission eliminates Account 5010 and revises the language in sections 32.23(c) and 32.5280(a), to require that all

nonregulated revenues be recorded in Account 5280.

9. *Revision to Section 32.16, Changes in Accounting Standards.* Section 32.16 of the Commission's rules, 47 CFR 32.16, requires carriers to revise their records and accounts to reflect new accounting standards prescribed by the Financial Accounting Standards Board (FASB). This section provides that Commission approval of a change in an accounting standard shall automatically take effect 90 days after a carrier notifies the Commission of its intention to follow a new standard. In the notification to the Commission, carriers are required to provide a revenue requirement study that analyzes the effects of the accounting change for the current year and a projection for three years into the future. In the *Notice*, the Commission proposed to relieve carriers of the requirement to file the projected future effects of an accounting change in their notifications. The Commission adopts this proposal. If projections are needed in the future, the Commission will obtain them on an *ad hoc* basis.

10. *Revision to Section 32.2000(b), Telecommunications Plant Acquired.* Section 32.2000(b)(4) of the Commission's rules, 47 CFR 32.2000(b)(4), requires carriers to submit for Commission approval the journal entries made to record acquisitions from other entities of telecommunications plant that cost more than $1 million for Class A carriers and $250,000 for Class B carriers. In the *NPRM*, the Commission proposed to eliminate this filing requirement. The Commission concludes that this requirement, which was established to ensure that plant acquired from other carriers is recorded at original cost as required in section 32.2000(b), is no longer necessary. The Commission adopts the proposal in the *NPRM* and eliminates the requirement for routine filing of these journal entries.

D. Order on Reconsideration in CC Docket No. 96–150—Section 274(f) Reporting Requirements

11. In the *Accounting Safeguards Order*, the Commission addressed the accounting safeguards necessary to satisfy the requirements of sections 260 and 271 through 276 of the Communications Act. Section 274(a) prohibits any "Bell operating company or any affiliate [from] engag[ing] in the provision of electronic publishing that is disseminated by means of such Bell operating company's or any of its affiliates' basic telephone service," other than through "a separated affiliate or electronic publishing joint venture." 47 U.S.C. 274(a). Section 274(f) establishes a reporting requirement for separate electronic publishing affiliates created pursuant to section 274. 47 U.S.C. 274(f). In the *Accounting Safeguards Order*, the Commission concluded that those section 274 affiliates that already file an SEC Form 10–K must file a copy with this Commission and section 274 affiliates that were not required to file a Form 10–K with the SEC, must file an identical form with this Commission. SBC Communications, Inc. (SBC) filed a Petition for Reconsideration of the *Accounting Safeguards Order*, asserting, among other things, that a simplified report for "separated entities" not already subject to the SEC's Form 10–K requirements will satisfy the intent of section 274(f) because the phrase "substantially equivalent," as used in the statute, does not mean "identical."

12. The SEC Form 10–K is a voluminous report that contains a description of the company filing the report and its operations, financial statements with supporting financial data and major legal and financial disclosures concerning the company. The SEC Form 10–K is comprised of the following items: Item 1, Business; Item 2, Properties; Item 3, Legal Proceedings; Item 4, Submission of Matters to a Vote of Security Holders; Item 5, Market for Registrant's Common Equity and Related Stockholder Matters; Item 6, Selected Financial Data; Item 7, Management's Discussion and Analysis of Financial Condition and Results of Operations; Item 8, Financial Statements and Supplementary Data; Item 9, Changes in and Disagreements with Accountants on Accounting and Financial Disclosure; Item 10, Directors and Executive Officers of the Registrant; Item 11, Executive Compensation; Item 12, Security Ownership of Certain Beneficial Owners and Management; Item 13, Certain Relationships and Related Transactions; and Item 14, Exhibits, Financial Statement Schedules and Reports on Form 8–K. The SEC also has a limited version of the Form 10–K for wholly owned subsidiaries. The limited version of the Form 10–K omits Items 4, 10, 11, 12, and 13. The limited version also streamlines Items 6 and 7.

13. The Commission concludes that the information contained in the limited version of SEC Form 10–K, with certain modifications, is sufficient to monitor the electronic publishing affiliate's compliance with the section 274 requirements. The Commission modifies the limited Form 10–K filing requirements to exclude Item 5 and include Item 10. Item 5 is related to stockholder matters that are not relevant to section 274. The Commission retains Item 10 for section 274 affiliates because Item 10 contains information on directors and officers that would assist in monitoring the prohibition against sharing directors and officers.

E. Accounting for Computer Software Costs

14. *Generally accepted accounting principles (GAAP).* Since 1985, the Commission has followed a policy of conforming regulatory accounting for carriers to GAAP, unless the principle or practice conflicts with the Commission's regulatory objectives. Accordingly, several parties have taken the Commission up on its request for the submission of additional proposals for accounting changes by suggesting the adoption of GAAP accounting in lieu of current Commission accounting for various purposes. While a wholesale replacement of the Commission's accounting rules with GAAP is not warranted at this time, the Commission modifies the accounting rules relating to the use of GAAP in one respect in this Report and Order. On March 4, 1998, the American Institute of Certified Public Accountants issued Statement of Position 98–1 ("SOP 98–1") to provide authoritative guidance on accounting for the costs of computer software effective for financial statements for fiscal years beginning after December 15, 1998. *See* American Institute of Certified Public Accountants (AICPA) Statement of Position 98–1, Accounting for the Costs of Computer Software Developed or Obtained for Internal Use, Issued by the Accounting Standards Executive Committee, March 4, 1998, at Summary. SOP 98–1 generally requires the capitalization of software costs. SOP 98–1 also requires the cost of upgrades and enhancements to be capitalized if they result in additional functionality. Petitioners requested that the Commission amend the existing Part 32 rules in order to accommodate this recent change in GAAP and change its rules governing the treatment of software costs to conform with SOP 98–1. The Commission concludes that the facts and circumstances differ in each situation regarding types of software, and thus, it would not be appropriate to adopt a rule strictly requiring all software costs to be capitalized to a plant account or an intangible account. Instead, the Commission finds that SOP 98–1 and current authoritative accounting guidance (*i.e.*, GAAP) are sufficient to determine whether capitalizable software costs should be treated as an intangible asset recorded in the intangible asset account or treated as a tangible asset classified to the same account as the associated hardware. Accordingly, the Commission holds that all carriers must now account for computer software costs in accordance with GAAP.

15. In order to monitor the recording and reporting of capitalizable software costs in the intangible asset account for regulatory purposes, the Commission requires that carriers establish and maintain subsidiary record categories for general purpose computer ("GPC") software and network software within the intangible asset account. The cost of software upgrades and enhancements will continue to be expensed or capitalized in accordance with GAAP. The Commission will also allow non-price cap carriers to capitalize software upgrades and enhancements that may cause large one-time expense "spikes" regardless of whether such upgrades or enhancements result in additional functionality required for capitalization under SOP 98–1.

III. Conclusion

16. In this Report and Order, the Commission streamlines the accounting requirements for mid-sized incumbent LECs whose aggregate revenues are less than $7 billion. The Commission also permits mid-sized incumbent LECs to submit their CAMs based on the Class B system of accounts. Mid-sized incumbent LECs will also be required to obtain an attestation every two years instead of an annual financial audit requiring a positive opinion. The Commission reduces or eliminates a number of accounting requirements for all carriers subject to the Commission's accounting rules. In addition, the Commission modifies the holding in the *Accounting Safeguards Order* and concludes that the information contained in the limited version of the SEC Form 10–K, with certain modifications, is sufficient to monitor electronic publishing affiliates' compliance with the section 274 requirements. Finally, the Commission amends the requirements regarding the accounting for computer software costs: the cost of all software must be recorded in conformance with GAAP.

IV. Procedural Issues

A. Regulatory Flexibility Act

17. *Final Regulatory Flexibility Certification—Report and Order in CC Docket No. 98–81, RM–9341.* The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA), requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). In the *NPRM*, 1998 Biennial Regulatory Review—Review of Accounting and Cost Allocation Requirements, CC Docket No. 98–81, *Notice of Proposed Rulemaking*, 63 FR 45208 (Aug. 25, 1998) (*NPRM*), the Commission certified that the proposed rules would not have a significant economic impact on a substantial number of small entities because such rules would reduce certain reporting requirements for mid-sized incumbent local exchange carriers (ILECs) and the changes would be easy and inexpensive for mid-sized ILECs to implement. With respect to the Petition for Rulemaking filed by Bell Atlantic and BellSouth to amend the Commission's existing part 32 rules in order to accommodate recent changes in generally accepted accounting principles (GAAP), see Petition for Rulemaking to Amend Part 32 of the Commission's Rules, Uniform System of Accounts for Class A and Class B Telephone Companies, to Adopt the Accounting for Software Required by Statement of Position 98–1, filed August 3, 1998, the Commission concluded in the Report and Order that all carriers must account for computer software costs in accordance with GAAP. *See* 47 CFR 32.12(a), requiring financial records to be "kept in accordance with generally accepted accounting principles to the extent permitted by this system of accounts." This rule modification does not impose any additional compliance burden on small entities. No comments were received concerning this certification. The Commission now reaffirms this certification with respect to the rules adopted in this Report and Order. The Commission anticipates that the rule changes adopted here will reduce regulatory and procedural burdens on small entities. The rule modifications do not impose any additional compliance burden on persons dealing with the Commission, including small entities. Accordingly, the Commission certifies, pursuant to section 605(b) of the RFA, that the rules adopted herein will not have a significant economic impact on a substantial number of small business entities, as defined by the RFA.

18. *Supplemental Final Regulatory Flexibility Analysis—Order on Reconsideration in CC Docket No. 96–150.* As required by the Regulatory Flexibility Act (RFA), as amended, 47 U.S.C. 603, a Final Regulatory Flexibility Analysis (FRFA) was incorporated into Accounting Safeguards under the Telecommunications Act of 1996, CC Docket No. 96–150, *Report and Order*, 62 FR 02918 (Jan. 21, 1997) (*Accounting Safeguards Order*).

19. In the RFA, the Commission certified that the rules adopted in the *Accounting Safeguards Order* would not have a significant economic impact on a substantial number of small entities. For the reasons stated below, the Commission certifies that the rule adopted herein in this Order on Reconsideration will not have a significant economic impact on a substantial number of small entities. This Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) conforms to the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). 5 U.S.C. 601–611.

20. *Need for, and Objectives of, this Order on Reconsideration:* In this Order on Reconsideration the Commission grants, in part, a petition for reconsideration regarding filing a "substantially equivalent" report for electronic publishing affiliates not already subject to Security and Exchange Commission (SEC) Form 10–K requirements. The Commission finds that the reporting requirements can be streamlined for such entities, and concludes that the information contained in the limited version of SEC Form 10–K, with certain modifications, will enable monitoring of electronic publishing affiliate's compliance with section 274 of the Communications Act. The Commission therefore permits the limited SEC Form 10–K, with the exclusion of Item 5 and inclusion of Item 10, to satisfy the section 274 requirements for electronic publishing affiliates not already subject to SEC Form 10–K requirements.

21. *Summary of Significant Issues Raised by Reconsideration Petitions.* No petitions were received in direct response to the FRFA in the *Accounting Safeguards Order*, nor were small business issues raised.

22. *Description and Estimate of the Number of Small Entities to which the Rules Will Apply.* The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. § 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in Small Business Act, 15 U.S.C. 632). A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field

of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Small Business Act, 15 U.S.C. 632. Section 121.201 of the SBA regulations defines a small telecommunications entity in SIC code 4812 (Telephone Companies Except Radio Telephone) as any entity with 1,500 or fewer employees at the holding company level. 13 CFR 121.201. As explained below, the terms "small entities" and "small businesses" do not encompass the Bell operating companies (BOCs), the parties affected by this Order in Reconsideration.

23. As noted in the associated Final Regulatory Flexibility Certification in CC Docket No. 96–150, the RFA directs agencies to provide a Regulatory Flexibility Analysis in notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The Commission's action on reconsideration in CC Docket No. 96–150 affects only BOCs' affiliate entities engaged in electronic publishing. These rules do not apply to small entities because all entities subject to this rule are BOCs or entities associated or affiliated with BOCs. None of the BOCs is a small entity, since each BOC is an affiliate of a Regional Holding Company (RHC), and all the BOCs or their RHCs have more than 1,500 employees. Moreover, the entities affected by this rule that are associated or affiliated with the BOCs are not independently owned and operated, and therefore do not meet the definition of small entities. The Commission therefore certifies that the SEC Form 10–K filing requirement adopted in this Order on Reconsideration will not have a significant economic impact on a substantial number of small entities.

24. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* As discussed above, in this Order on Reconsideration the Commission concludes that the information contained in the limited version of SEC Form 10–K, with the exclusion of Item 5 and inclusion of Item 10, will satisfy the section 274 requirements for electronic publishing affiliates not already subject to SEC Form 10–K requirements. This reduces the reporting burden for BOC affiliates while providing sufficient information to the Commission to satisfy section 274 of the Communications Act.

25. *Report to Congress.* The Commission's Office of Public Affairs, Reference Operations Division, shall provide a copy of this certification and Supplemental Final Regulatory Flexibility Analysis to the Chief Counsel for Advocacy of the SBA, and include it in the report to Congress. The certification and Supplemental Final Regulatory Flexibility Analysis will also be published in the **Federal Register**.

B. Paperwork Reduction Act

26. *Final Paperwork Reduction Act Analysis.*

C. Authority

This action is authorized under sections 1, 4, 11, 201–205, 215, 218, 228, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 161, 201–205, 215, 218, 219, 220 and 403.

D. Ordering Clauses

27. Accordingly, *It is Ordered* that, pursuant to Sections 1, 2, 4, 11, 201–205, and 218–220 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, 154, 161, 201–205, and 218–220, Parts 32 and 64 of the Commission's rules, 47 CFR Parts 32 and 64, is *Amended*, as shown below. With the exception of 47 CFR 32.2000(b), these rule changes are effective six months after date of publication in the **Federal Register**. Affected parties may elect to implement the changes with respect to accounting for computer software costs effective January 1, 1999.

28. *It is further ordered* that, pursuant to Sections 1, 4, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, and 220, and Section 1.401 of the Commission's rules, 47 CFR 1.401, the Petition for Rulemaking of the United States Telephone Association is *Granted* to the extent indicated herein.

29. *It is further ordered* that, pursuant to Sections 1, 4, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, and 220, and Section 1.401 of the Commission's rules, 47 CFR 1.401, the Petition for Reconsideration of the *Accounting Safeguards Order* of SBC Communications, Inc. is *granted* in part and *denied* in part. This rule change regarding compliance with 47 U.S.C. 274 Electronic publishing by Bell Operating Companies is effective November 15, 1999.

30. *It is further ordered* that, pursuant to Sections 1, 4, and 220 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, and 220, and Section 1.401 of the Commission's rules, 47 CFR 1.401, the Petition for Rulemaking of Bell Atlantic and BellSouth is *granted* in part, to the extent indicated herein, and *denied* in part.

31. It is further ordered that the Office of Public Affairs, Reference Operations Division, shall send a copy of this Report and Order, including this Final Regulatory Flexibility Certification and supplemental Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 32

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform system of accounts.

47 CFR Part 64

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Parts 32 and 64 of Title 47 of the CFR are amended to read as follows:

PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for Part 32 continues to read as follows:

Authority: 47 U.S.C. 154(i), 154(j) and 220 as amended, unless otherwise noted.

2. Section 32.11 is amended by revising paragraphs (b), (c), (d), and (e) to read as follows:

§ 32.11 Classification of companies.

* * * * *

(b) Class A companies, except mid-sized incumbent local exchange carriers, as defined by § 32.9000, shall keep all the accounts of this system of accounts which are applicable to their affairs and are designated as Class A accounts. Class A companies which include mid-sized incumbent local exchange carriers shall keep Basic Property Records in compliance with the requirements of §§ 32.2000(e) and (f) of this part.

(c) Class B companies shall keep all accounts of this system of accounts which are applicable to their affairs and are designated as Class B accounts. Class B companies shall keep Continuing Property Records in compliance with the requirements of §§ 32.2000(e)(7)(A) and 32.2000(f) of this part.

(d) Class B companies and mid-sized incumbent local exchange carriers, as defined by § 32.9000 of this part, that desire more detailed accounting may adopt the accounts prescribed for Class A companies upon the submission of a written notification to the Commission. Mid-sized incumbent local exchange carriers shall maintain subsidiary record categories necessary to provide the pole attachment data currently provided in the Class A accounts.

(e) The classification of a company shall be determined at the start of the calendar year following the first time its annual operating revenue from regulated operations equals, exceeds, or falls below the indexed revenue threshold.

3. Section 32.16 is amended by revising paragraph (a) to read as follows:

§ 32.16 Changes in accounting standards.

(a) The company's records and accounts shall be adjusted to apply new accounting standards prescribed by the Financial Accounting Standards Board or successor authoritative accounting standard-setting groups, in a manner consistent with generally accepted accounting principles. The change in an accounting standard will automatically take effect 90 days after the company informs this Commission of its intention to follow the new standard, unless the Commission notifies the company to the contrary. Concurrent with informing this Commission of its intent to adopt an accounting standards change, the company shall also file a revenue requirement study for the current year analyzing the effects of the accounting standards change. Furthermore, any change subsequently adopted shall be disclosed in annual reports to this Commission.

* * * * *

4. Section 32.23 is amended by revising paragraph (c) to read as follows:

§ 32.23 Nonregulated activities.

* * * * *

(c) When a nonregulated activity does involve the joint or common use of assets and resources in the provision of regulated and nonregulated products and services, carriers shall account for these activities within accounts prescribed in this system for telephone company operations. Assets and expenses shall be subdivided in subsidiary records among amounts solely assignable to nonregulated activities, amounts solely assignable to regulated activities, and amounts related to assets and expenses incurred jointly or in common, which will be allocated between regulated and nonregulated activities. Carriers shall submit reports identifying regulated and nonregulated amounts in the manner and at the times prescribed by this Commission.

Nonregulated revenue items not qualifying for incidental treatment as provided in § 32.4999(l) of this part, shall be recorded in separate subsidiary record categories of Account 5280, Nonregulated operating revenue. Amounts assigned or allocated to regulated products or services shall be subject to part 36 of this chapter.

5. Section 32.2000 is amended by revising paragraph (a)(4) and removing and reserving paragraph (i) to read as follows:

§ 32.2000 Instructions for telecommunications plant accounts.

(a) * * *

(4) The cost of the individual items of equipment, classifiable to Accounts 2112, Motor vehicles; 2113, Aircraft; 2114, Special purpose vehicles; 2115, Garage work equipment; 2116, Other work equipment; 2122, Furniture; 2123, Office equipment; 2124, General purpose computers, costing $2,000 or less or having a life of less than one year shall be charged to the applicable expense accounts, except for personal computers falling within Account 2124. Personal computers classifiable to Account 2124, with a total cost for all components of $500 or less, shall be charged to the applicable Plant Specific Operations Expense accounts. If the aggregate investment in the items is relatively large at the time of acquisition, such amounts shall be maintained in an applicable material and supplies account until items are used.

§ 32.2000 [Amended]

6. Section 32.2000(b)(4) is removed.

7. Section 32.2000(j) is amended by revising the table entry "Special Purpose vehicles" to read "Tools and other work equipment" under the heading of Telecommunications Plant In Service (TPIS) and by removing the entries "Garage work equipment 2115 and other work equipment 2116."

8. Section 32.2003(a) is revised to read as follows:

§ 32.2003 Telecommunications plant under construction.

(a) This account shall include the original cost of construction projects (note also § 32.2000(c)) of this part and the cost of software development projects that are not yet ready for their intended use.

* * * * *

9. Section 32.2114 is revised to read as follows:

§ 32.2114 Tools and other work equipment.

This account shall include the original cost of special purpose vehicles and the original cost of tools and equipment used to maintain special purpose vehicles and items included in Accounts 2112 and 2113. This account shall also include the original cost of power-operated equipment, general purpose tools, and other items of work equipment.

§ 32.2115 [Removed]

10. Section 32.2115 is removed.

§ 32.2116 [Removed]

11. Section 32.2116 is removed.

12. Section 32.2124 is amended by removing and reserving paragraph (c) and revising paragraph (d) as follows:

§ 32.2124 General purpose computers.

* * * * *

(d) This account does not include the cost of computers and their associated peripheral devices associated with switching, network signaling, network operations, or other specific telecommunications plant. Such computers and peripherals shall be classified to the appropriate switching, network signaling, network expense, or other plant account.

13. Section 32.2311(d) is revised to read as follows:

§ 32.2311 Station apparatus.

* * * * *

(d) Operator head sets and transmitters in central offices and at private branch exchanges, and test sets such as those used by wire chiefs, outside plant technicians, and others, shall be included in Account 2114, Tools and other work equipment, Account 2220, Operator systems, or Account 2341, Large Private Branch Exchanges, as appropriate.

* * * * *

14. Section 32.2690(c) is revised to read as follows:

§ 32.2690 Intangibles.

* * * * *

(c) The cost of other intangible assets, not including software, having a life of one year or less shall be charged directly to Account 6564, Amortization Expense—Intangible. Such intangibles acquired at small cost may also be charged to Account 6564, irrespective of their term of life. The cost of software having a life of one year or less shall be charged directly to the applicable expense account with which the software is associated.

15. Section 32.3500 is amended by revising paragraph (c) and adding paragraph (d) as follows:

§ 32.3500 Accumulated amortization—intangible.

* * * * *

(c) When any item carried in Account 2690, other than software, is sold, relinquished, or otherwise retired from service, this account shall be charged with the cost of the retired item. Remaining amounts associated with the item shall be debited to Account 7360, Other Nonoperating Income.

(d) When software that is classified to Account 2690 is sold, relinquished, or otherwise retired from service, this account shall be credited, and Account 6564, Amortization expense—intangible, shall be charged with the unamortized cost of the existing software.

16. Section 32.4999(l) is revised and the table in paragraph (n) is amended by removing the entry "Public telephone revenue 5010" under the heading Local Network Services Revenues to read as follows:

§ 32.4999 General.

* * * * *

(l) *Nonregulated revenues.* The nonregulated revenue account shall be used for nonregulated operating revenues when a nonregulated activity involves the common or joint use of assets or resources in the provision of regulated and nonregulated products or services as required in § 32.23(c) of this subpart. Revenues from nontariffed activities offered incidental to tariffed services may be accounted for as regulated revenues, provided the activities are outgrowths of regulated operations and the revenues do not exceed, in the aggregate, one percent of total revenues for three consecutive years. Such activities must be listed in the Commission-approved Cost Allocation Manual for any company required to file a Cost Allocation Manual.

§ 32.5010 [Removed]

17. Section 32.5010 is removed.

18. Section 32.5280 is amended by revising paragraph (a) as follows:

§ 32.5280 Nonregulated operating revenue.

(a) This account shall include revenues derived from a nonregulated activity involving the common or joint use of assets or resources in the provision of regulated and nonregulated products or services.

* * * * *

19. Section 32.5999 is amended by revising the first sentence in paragraph (f)(5) and paragraph (h) is amended by revising the table entry "Special purpose vehicles expense" to "Tools and other work equipment expense" and removing the table entries "Garage work equipment expense" and "Other work equipment expense" under the Account title of Income Statement Accounts to read as follows:

§ 32.5999 General.

* * * * *

(f) * * *

(5) *Clearances.* This subsidiary record category shall include amounts transferred to Construction accounts (see § 32.2000(c)(2)(iii)), other Plant Specific Operations Expense accounts and/or Account 3100, Accumulated Depreciation (cost of removal; see § 32.2000(g)(1)(iii)), as appropriate, from Accounts 6112, Motor Vehicles Expense, 6114, Tools and Other Work Equipment Expense, 6534, Plant Operations and Administration Expense, and 6535, Engineering Expense.

* * * * *

20. Section 32.6110 is amended by revising paragraph (a) as follows:

§ 32.6110 Network support expenses.

(a) This account number shall be used by Class A telephone companies to summarize for reporting purposes the contents of Accounts 6112 through 6114. Class B telephone companies shall use this account for expenses of the type and character required of Class A companies in Accounts 6112 through 6114.

* * * * *

21. Section 32.6114 is revised to read as follows:

§ 32.6114 Tools and other work equipment expense.

(a) This account shall include costs incurred in connection with special purpose vehicles, garage work equipment and other work equipment included in Account 2114, Tools and other work equipment. This account shall be charged with costs incurred in connection with the work equipment itself. This account shall also include such costs as fuel, licenses and inspection fees, washing, repainting and minor accessories. The costs of using garage work equipment to maintain motor vehicles shall be charged to Account 6112, Motor vehicles expense. This account shall not be charged with the costs of operators of special purpose vehicles and other work equipment. The costs of operators of this equipment shall be charged to accounts appropriate for the activities performed.

(b) Credits shall be made to this account for amounts related to special purpose vehicles and other work equipment transferred to Construction and/or to other Plant Specific Operations Expense accounts. These amounts shall be computed on the basis of direct labor hours. (See also § 32.5999(f)(5).

§ 32.6115 [Removed]

22. Section 32.6115 is removed.

§ 32.6116 [Removed]

23. Section 32.6116 is removed.

24. Section 32.6124 revised to read as follows:

§ 32.6124 General purpose computers expense.

This account shall include the costs of personnel whose principal job is the physical operation of general purpose computers and the maintenance of operating systems. This excludes the cost of preparation of input data or the use of outputs which are chargeable to the accounts appropriate for the activities being performed. Also excluded are costs incurred in planning and maintaining application systems and databases for general purpose computers. (See also § 32.6724, Information management.) Separately metered electricity for general purpose computers shall also be included in this account.

25. Section 32.6724 is revised to read as follows:

§ 32.6724 Information management.

This account shall include costs incurred in planning and maintaining application systems and databases for general purpose computers.

26. Section 32.9000 is amended by adding the following definition in alphabetical order.

§ 32.9000 Glossary of terms.

* * * * *

Mid-sized incumbent local exchange carrier is a carrier whose operating revenue equals or exceeds the indexed revenue threshold and whose revenue when aggregated with the revenues of any local exchange carrier that it controls, is controlled by, or with which it is under common control is less than $7 billion. Each of these local exchange carriers would be eligible for Class B accounting, except as noted in § 32.11(b) and (d), even if the annual operating revenue of any individual local exchange carrier exceeds the indexed revenue threshold (see definition for indexed revenue threshold in this section).

* * * * *

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

27. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 10, 201, 218, 226, 228, 332, unless otherwise noted.

28. Section 64.904 is amended by revising paragraph (a) and by redesignating paragraph (b) as paragraph (c) and a new paragraph (b) is added to read as follows:

§ 64.904 Independent audits.

(a) With the exception of mid-sized local exchange carriers each local exchange carrier required to file a cost allocation manual, by virtue of having annual operating revenues that equal or exceed the indexed revenue threshold for a given year or by order by the Commission, shall have an audit performed by an independent auditor on an annual basis, with the initial audit performed in the calendar year after the carrier is first required to file a cost allocation manual. The audit shall provide a positive opinion on whether the applicable data shown in the carrier's annual report required by § 43.21(e)(2) of this chapter present fairly, in all material respects, the information of the carrier required to be set forth therein in accordance with the carrier's cost allocation manual, the Commission's Joint Cost Orders issued in conjunction with CC Docket No. 86–111 and the Commission's Accounting Safeguards proceeding in CC Docket No. 96–150 and the Commission's rules and regulations including §§ 32.23 and 32.27 of this chapter and §§ 64.901 and 64.903 in force as of the date of the auditor's report. The audit shall be conducted in accordance with generally accepted auditing standards, except as otherwise directed by the Chief, Common Carrier Bureau.

(b) A mid-sized incumbent local exchange carrier, as defined in § 32.9000, required to file a cost allocation manual, shall have an attest engagement performed by an independent auditor every two years covering the two year period, with the initial engagement performed in the calendar year after the carrier is first required to file a cost allocation manual. The attest engagement shall be an examination engagement and shall provide a written communication that expresses an opinion that the results reported pursuant to § 43.21(e)(2) of this chapter are an accurate application of the Commission's Joint Cost orders issued in conjunction with CC Docket No. 86–111 and the Commission's Accounting Safeguards proceeding in CC Docket No. 96–150 and the Commission's rules and regulations including §§ 32.23 and 32.27 of this chapter and §§ 64.901 and 64.903 in force as of the date of the auditor's written report. The written communication shall also express an opinion that the cost methodologies in place are in conformance with the cost allocation manual filed with the Commission. The attest engagement shall be conducted in accordance with the attestation standards established by the American Institute of Certified Public Accountants, except as otherwise directed by the Chief, Common Carrier Bureau.

* * * * *

[FR Doc. 99–23304 Filed 9–14–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1791; MM Docket No. 99–210; RM–9629]

Radio Broadcasting Services; Flagstaff, AZ

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 279C3 to Flagstaff, Arizona, as that community's fifth local FM transmission service in response to a petition for rule making filed by Mountain West Broadcasting. *See* 64 FR 31172, June 10, 1999. Coordinates used for Channel 279C3 at Flagstaff are 35–17–19 NL and 111–38–26 WL.

DATES: Effective October 18, 1999. A filing window for Channel 279C3 at Flagstaff, Arizona, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–210, adopted August 25, 1999, and released September 3, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY-A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arizona, is amended by adding Channel 279C3 at Flagstaff.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–23972 Filed 9–14–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1791; MM Docket No. 99–213; RM–9641]

Radio Broadcasting Services; Kootenai, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 294A to Kootenai, Idaho, as that community's first local aural transmission service in response to a petition for rule making filed by Mountain West Broadcasting. *See* 64 FR 31174, June 10, 1999. Coordinates used for Channel 294A at Kootenai are 48–18–37 NL and 116–30–45 WL. With this action, the proceeding is terminated.

DATES: Effective October 18, 1999. A filing window for Channel 294A at Kootenai, Idaho, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–213, adopted August 25, 1999, and released September 3, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

47 PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by adding Kootenai, Channel 294A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division,Mass Media Bureau.

[FR Doc. 99–23973 Filed 9–14–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1791; MM Docket No. 99–205; RM–9624]

Radio Broadcasting Services; Hazelton, ID

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 232C3 to Hazelton, Idaho, as that community's first local aural transmission service in response to a petition for rule making filed by Mountain West Broadcasting. *See* 64 FR 31175, June 10, 1999. Coordinates used for Channel 232C3 at Hazelton are 42–35–54 NL and 114–07–54 WL. With this action, the proceeding is terminated.

DATES: Effective October 18, 1999. A filing window for Channel 232C3 at Hazelton, Idaho, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–205, adopted August 25, 1999, and released September 3, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY-A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Idaho, is amended by adding Hazelton, Channel 232C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–23974 Filed 9–14–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1791; MM Docket No. 99–203; RM–9621]

Radio Broadcasting Services; Dove Creek, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 273C3 to Dove Creek, Colorado, as that community's first local aural transmission service in response to a petition for rule making filed by Mountain West Broadcasting. *See* 64 FR 31174, June 10, 1999. Coordinates used for Channel 273C3 at Dove Creek are 37–45–54 NL and 108–54–18 WL. With this action, the proceeding is terminated.

DATES: Effective October 18, 1999. A filing window for Channel 273C3 at Dove Creek, Colorado, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–203, adopted August 25, 1999, and released September 3, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street,NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 reads as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Colorado, is amended by adding Dove Creek, Channel 273C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–23975 Filed 9–14–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 99–1793; MM Docket No. 99–155; RM–9606]

Radio Broadcasting Services; Elgin, OR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Gary Noel, allots Channel 290A to Elgin, OR, as the community's first local aural service. *See* 64 FR 28131, May 25, 1999. Channel 290A can be allotted to Elgin in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates 45–33–54 NL; 117–55–00 WL. With this action, this proceeding is terminated.

DATES: Effective October 18, 1999. A filing window for Channel 290A at Elgin, OR, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–155, adopted August 25, 1999, and released September 3, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Oregon, is amended by adding Elgin, Channel 290A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–23977 Filed 9–14–99; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 64, No. 178
Wednesday, September 15, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1630

Privacy Act Regulations; Implementation

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed rule with request for comments.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing a proposed amendment to the Board's Privacy Act regulations. Under the proposed amendment, procedures will be added to cover records maintained for spouses, former spouses, and beneficia-ries of Thrift Savings Plan (TSP) participants.

DATES: Comments must be received on or before November 15, 1999.

ADDRESSES: Comments may be sent to Thomas L. Gray, Federal Retirement Thrift Investment Board, 1250 H Street, NW, Washington, DC 20005. FAX (202) 942–1676.

FOR FURTHER INFORMATION CONTACT: Thomas L. Gray, (202) 942-1662.

SUPPLEMENTARY INFORMATION: The Board administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Pub. L. 99–335, 100 Stat. 514. The provisions governing the TSP are codified, as amended, largely at 5 U.S.C. 8351 and 8401–8479 (1994). The TSP is a taxdeferred retirement savings plan for Federal employees which is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code. Sums in a participant's TSP account are held in trust for the participant. 5 U.S.C. 8437(g).

The Board is an independent agency established in the executive branch of the United States Government that is subject to the Privacy Act, 5 U.S.C. 552a. On May 7, 1990, initial Board regulations implementing the Privacy Act were published in the **Federal Register** at 55 FR 18851. An amendment to these regulations was published in the May 20, 1994, **Federal Register** at 59 FR 26409, to allow the disclosure of participant records in response to a copy of an authorization signed by the subject of the records, instead of an original signed statement.

In addition to records similar to other Federal agencies, the Board maintains FRTIB–1, Thrift Savings Plan Records, which is a Government-wide system of records of participants in the TSP. For purposes of this part, the definition of TSP participant includes former participants, *i.e.*, participants whose accounts have been closed, unless otherwise noted. The TSP records system may be maintained for the Board by a private contractor or by a Federal agency (record keeper or TSP record keeper). The current record keeper is the National Finance Center, U.S. Department of Agriculture, New Orleans, LA 70161–1500. In addition to writing or calling the TSP record keeper, participants may also determine whether this system contains records about them and may access those records through the TSP Web site and the ThriftLine (the TSP's automated telephone system). Because these features require the use of the participant's TSP Personal Identification Number (PIN), as well as the participant's Social Security number (SSN), they are not available to former participants, whose PINs are canceled when their accounts are closed.

This proposed amendment to the Board's rules is necessary because the Board is updating its computerized data base for the TSP record keeping system. Under the new TSP record keeping system, in addition to records on participants, FRTIB–1 will include records on spouses, former spouses, and beneficiaries of participants. The Privacy Act defines a record as "any item, collection, or grouping of information about an individual that is maintained by an agency * * *." 5 U.S.C. 552a(a)(4). A system of records is defined as "a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual." *Id.* 552a(a)(5).

A spouse or former spouse may be entitled to a payment from a participant's account as the result of an award made under a qualifying domestic relations court order. Under the new TSP record keeping system, a record that is retrieved by the Social Security number (SSN) of the spouse or former spouse will be created in the FRTIB–1 system of records at the same time that the decision letter is mailed, if the SSN is known. If the individual's SSN is not known, a record will be created as soon thereafter as the SSN is provided to the TSP record keeper.

In addition, following a participant's death, the amount remaining in the account will be paid as a death benefit payment to the participant's beneficiary or beneficiaries in accordance with 5 U.S.C. 8424(d). A record that is retrieved by the SSN of the beneficiary or beneficiaries will be created in the FRTIB–1 system of records at the same time that a notice of pending Thrift Savings Plan payment and tax withholding information is mailed, if the SSN is known (or as soon thereafter as the SSN is provided to the TSP record keeper).

Proposed rule changes to 5 CFR 1630 establish procedures for granting access to records regarding a spouse, former spouse, or beneficiary. In addition, technical changes have been made to conform the regulations to this change and to remove, except where necessary for mailing purposes, the name of the TSP Service Office as the record keeper. This latter change will mean that the regulations do not have to be amended if a new record keeper is appointed.

Regulatory Flexibility Act

I certify that this amendment will not have a significant economic impact on a substantial number of small entities. It will affect only spouses, former spouses, and beneficiaries of TSP participants.

Paperwork Reduction Act

I certify that this regulation does not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, section 201, Pub. L. 104–4, 109 Stat. 48, 64, the effect of this regulation on State, local, and tribal governments and on the private sector has been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by any State, local, and tribal governments in the aggregate, or by the private sector. Therefore, a statement under section 202, 109 Stat. 48, 64–65, is not required.

List of Subjects in 5 CFR Part 1651

Employee benefit plans, Government employees, Pensions, Privacy, Retirement.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

For the reasons set forth in the preamble, part 1630 of chapter VI of title 5 of the Code of Federal Regulations is amended as follows:

PART 1630—PRIVACY ACT REGULATIONS

1. The authority citation for part 1630 continues to read as follows:

Authority: 5 U.S.C. 552a.

2. Section 1630.2 is amended as follows:

a. In paragraph (e) by adding the words "or the record keeper" after the word "Board"; and

b. By redesignating paragraphs (f), (g), (h), (i), (j), (k), (l), (m), and (n) as paragraphs (g), (h), (i), (j), (k), (l), (n), (o), and (p), respectively, and by adding paragraphs (f) and (m) to read as follows:

§ 1630.2 Definitions.

* * * * *

(f) *Record keeper* means the entity that is engaged by the Board to perform record keeping services for the TSP;

* * * * *

(m) *TSP participant* means any individual for whom a TSP account has been established. This includes former participants, *i.e.*, participants whose accounts have been closed;

* * * * *

3. Section 1630.4 is amended by revising paragraph (a)(1) and the chart which follows that paragraph, by redesignating paragraphs (a)(2), (a)(3), and (a)(4) as paragraphs (a)(3), (a)(4) and (a)(5), and by adding a new paragraph (a)(2) to read as follows:

§ 1630.4 Request for notification and access.

(a) *TSP records.* (1) Records on TSP participants and the spouses, former spouses, and beneficiaries of TSP participants are maintained in the Governmentwide system of records, FRTIB–1, Thrift Savings Plan Records. A participant or a spouse, former spouse, or beneficiary of a participant must make his or her inquiry in accordance with the chart set forth in this paragraph. The mailing address of the Thrift Savings Plan Service Office is: National Finance Center, PO Box 61500, New Orleans, LA, 70161–1500. Telephone inquiries are subject to the verification procedures set forth in § 1630.7. A written inquiry must include the name and Social Security number of the participant or of the spouse, former spouse, or beneficiary of the participant, as appropriate.

To obtain information about or gain access to TSP records about you

If you want:	If you are a participant who is a current Federal employee:	If you are a participant who has separated from Federal employment or a spouse, former spouse, or beneficiary:
To make inquiry as to whether you are a subject of this system of records.	Call or write to your employing agency in accordance with agency procedures for personnel or payroll records.	Call or write to TSP record keeper.
To gain access to a record about you	Call or write to your employing agency to request access to personnel and payroll records regarding the agency's and the participant's contributions, and adjustments to contributions. Call or write to the TSP record keeper to gain access to loan status and repayments, earnings, contributions allocation elections, interfund transfers, and withdrawal records.	Call or write to TSP record keeper.
To learn the history of disclosures of records about you to entities other than the participant's employing agency or the Board or auditors see § 1630.4(a)(4).	Write to TSP record keeper	Write to TSP record keeper.

(2) Participants may also inquire whether this system contains records about them and access certain records through the account access section of the TSP Web site and the ThriftLine (the TSP's automated telephone system). The TSP Web site is located at *www.tsp.gov*. To use the TSP ThriftLine, the participant must have a touch-tone telephone and call the following number (504) 255–8777. The following information is available on the TSP Web site and the ThriftLine: Account balance; available loan amount; the status of a monthly withdrawal payment; the current status of a loan or withdrawal application; and an interfund transfer request. To access these features the participant will need to provide his or her SSN and PIN.

* * * * *

§ 1630.5 [Amended]

4. Section 1630.5 is amended in paragraphs (a) and (b) by adding the words "or the TSP record keeper" after the word "Board".

§ 1630.6 [Amended]

5. Section 1630.6 is amended in paragraph (a) by removing at the end of the first sentence the phrase "by the Board".

6. Section 1630.7 is amended as follows:

a. In paragraph (a), by adding the words "or record keeper designee," after the words "Privacy Act Officer" in the third sentence;

b. In paragraph (b), by adding the words "or record keeper designee," after the words "Privacy Act Officer" in the second sentence; and

c. By revising paragraph (c) to read as follows:

§ 1630.7 Identification requirements.

* * * * *

(c) *By telephone.* (1) Telephone identification procedures apply only to requests from participants and spouses, former spouses, or beneficiaries of participants for information in FRTIB–1,

Thrift Savings Plan Records, which is retrieved by their respective Social Security numbers.

(2) A participant or a spouse, former spouse, or beneficiary of a participant must identify himself or herself by providing to the record keeper designee his or her name, Social Security number, and any other information requested. If the record keeper designee determines that any of the information provided by telephone is incorrect, the requester will be required to submit a request in writing.

(3) A participant may also access the TSP Web site or call the TSP ThriftLine to obtain account information. These systems require the participant's Social Security number and PIN. Because a PIN is required to use these features, they are not available to former participants, whose PINs are canceled when their accounts are closed.

§ 1630.8 [Amended]

7. Section 1630.8 is amended as follows:

a. In paragraph (a), by removing the second sentence;

b. In paragraph (b)(1), by adding the words "or the record keeper" after the word "Board"; and

c. In paragraph (b)(5), by adding the words "or the record keeper" after the word "Board" in the first sentence, and by adding the words "or record keeper designee" after the words "Privacy Act Officer" in the second sentence.

§ 1630.11 [Amended]

8. Section 1630.11 is amended as follows:

a. In paragraph (a)(1), by adding the following sentence at the beginning of the paragraph:

(a) * * * (1) A spouse, former spouse or beneficiary of a TSP participant who wants to correct or amend his or her record must write to the TSP record keeper. * * *

b. In paragraph (a)(1) by revising the chart to read as follows:

To correct or amend a TSP record

If the type of record is:	If you are a participant who is a current Federal employee write to:	If you are a participant who has separated from Federal employment write to:
Personnel or personal records (e.g., age, address, Social Security number, date of birth).	Write to your employing agency	Write to TSP record keeper.
The agency's and the participant's contributions, and adjustments to contributions.	Write to your employing agency	Write to your former employing agency.
Earnings, investment allocation, interfund transfers, loans, loan repayments, and withdrawals.	Write to TSP record keeper	Write to TSP record keeper.

c. In paragraph (a)(3), by removing the following language from the first sentence, "the procedures set forth for agencies and the Board (including the TSP Service Office which is the Board's record keeper) in"; and

d. In paragraph (a)(5), by revising the last two sentences to read as follows:

(a) * * *

(5) * * * The employing agency also has custody of the election form (which is maintained in the Official Personnel Folder). Requests for amendment or correction of records described in this paragraph should be made to the employing agency.

* * * * *

§ 1630.14 [Amended]

9. Section 1630.14 is amended in paragraph (c) by adding the words "or the record keeper" after the word "Board" in the first sentence.

§ 1630.16 [Amended]

10. Section 1630.16 is amended in paragraph (d)(1) by adding the words "to be" after the word "amount".

§ 1630.2, 1630.4, 1630.6, 1630.11, 1630.12 and 1630.16 [Amended]

11. The words "Thrift Savings Plan Service Office", "TSP Service Office" and "Head, TSP Service Office" are revised to read "record keeper" in the following sections:

1630.2(n);
1630.4(a)(2) in all three sentences;
1630.6(a) in sentence two;
1630.11(a)(2);
1630.12(a) in sentences one and two; and
1630.16(c).

§ 1630.6 and 1630.10 [Amended]

12. The words "Head, TSP Service Office, or designee" are revised to read "record keeper designee" in the following sections:

1630.6(a) in sentence one;
1630.10(a); and
1630.10(a)(1).

* * * * *

[FR Doc. 99–23829 Filed 9–14–99; 8:45 am]
BILLING CODE 6760–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 98–095–2]

Pork and Pork Products From Mexico Transiting the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; and notice of extension of comment period.

SUMMARY: In a proposed rule published in the **Federal Register** on July 19, 1999, we proposed to amend the regulations to allow fresh (chilled or frozen) pork and pork products from the Mexican States of Baja California Sur, Coahuila, Nuevo Leon, Tamaulipas, Sinaloa, Campeche, and Quintana Roo to transit the United States, under certain conditions, for export to another country. Although we proposed to allow in-transit movements of pork from the above States under the same conditions currently required under 9 CFR part 94 for pork from the Mexican States of Sonora, Chihuahua, Yucatan, and Baja California, it was also our intent to propose that such movements be allowed via land border ports only. This document amends our proposal accordingly.

DATES: We invite you to comment on Docket No. 98–095–1 as amended by this docket. We will consider all comments that we receive by November 15, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 98–095–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238

Please state that your comment refers to Docket No. 98–095–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Michael David, Senior Staff Veterinarian, Animals Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) allow fresh (chilled or frozen) pork and pork products from the Mexican States of Sonora, Chihuahua, Yucatan, and Baja California to transit the United States, under certain conditions, for export to another country. The transit provisions are contained in § 94.15(b) of the regulations. In a proposed rule published in the **Federal Register** on July 19, 1999 (64 FR 38599–38603, Docket No. 98–095–1), we proposed to amend the regulations to allow fresh (chilled or frozen) pork and pork products from additional Mexican States (Baja California Sur, Coahuila, Nuevo Leon, Tamaulipas, Sinaloa, Campeche, and Quintana Roo) to transit the United States under the conditions set forth in § 94.15(b) of the regulations.

Although we did not specify that the transit provisions in § 94.15(b) are intended to apply only to pork and pork products that transit the United States via land border ports, it was our intent to do so. Therefore, this document amends our original proposed rule to clarify that the transit provisions in § 94.15(b) would apply only to pork and pork products that transit the United States via land border ports.

The regulations in § 94.15(d) currently allow for the transit of animal products, including fresh (chilled or frozen) pork and products from Mexico, via maritime and air ports, under certain conditions. The conditions in 94.15(d)(3) specify that animal products transiting the United States via maritime or air ports may not be moved overland outside the airport terminal or dock area of the maritime port. We do not allow such overland movements from maritime and land ports because we do not have the resources available to ensure that such movements are properly documented and that proper safeguards are applied. The provisions in § 94.15(b) are intended to provide safe procedures for overland transit of the United States.

Comments sent to us on our July 19, 1999, proposed rule (Docket No. 98–095–1) were required to be received on or before September 17, 1999. To allow the public enough time to comment on this amendment as it relates to the proposed rule, we are extending the period during which we will accept comments on Docket No. 98–095–1 until November 15, 1999.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 94.15, paragraph (b) introductory text would be revised to read as follows:

§ 94.15 Animal products and materials; movement and handling.

* * * * *

(b) Pork and pork products from Baja California, Baja California Sur, Campeche, Chihuahua, Coahuila, Nuevo Leon, Quintana Roo, Sinaloa, Sonora, Tamaulipas, and Yucatan, Mexico, that are not eligible for entry into the United States in accordance with this part may transit the United States via land border ports for immediate export if the following conditions are met:

* * * * *

Done in Washington, DC, this 9th day of September 1999.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–24050 Filed 9–14–99; 8:45 am]
BILLING CODE 3410–34–U

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

Contractor Meeting on Technical Assessments Related to Clearance of Materials and Equipment From Regulatory Control

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) staff will meet with contractors who are providing technical assistance related to a potential rulemaking addressing clearance of materials and equipment from regulatory control. A portion of the meeting will be opened for the public to observe the processes used for the development of technical information. As space permits, all interested parties may attend as observers. Time will be allocated for brief statements from the public.

DATES: September 23 and 24, 1999, from 8:30 a.m. to 4 p.m.

ADDRESSES: Nuclear Regulatory Commission, Room T10–A1, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Robert A. Meck; e-mail: *ram2@nrc.gov*, telephone: (301) 415–6205; Office of Nuclear Regulatory Research, USNRC, Washington DC 20555–0001.

SUPPLEMENTARY INFORMATION: The NRC previously announced in a **Federal Register** notice (FRN) on June 30, 1999 (64 FR 35090), that it is considering a rulemaking that would set specific requirements for the release of solid materials. That notice also indicated that NRC is supplementing its standard rulemaking process by conducting enhanced public participatory activities, including facilitated public meetings, before the start of any formal rulemaking process. These public participatory activities are to solicit early and active public input on major issues associated with the release of solid materials, including whether the NRC should proceed with such a rulemaking. The NRC staff is holding a planning meeting with contractors

preparing dose assessments and analyzing trade-offs (benefits and costs) of various potential regulatory actions. As space permits, all interested parties are invited to the portion of the contractor meeting that will summarize the technical approaches and coordination among contractors. Opening this meeting to the public is intended to clarify for interested parties the NRC's development of technical information and to allow observers to comment on the planned development of technical information.

The public meeting will be held at the Nuclear Regulatory Commission offices in Rockville, Maryland, on September 23 and 24, 1999, from 8:30 a.m. to 4:00 p.m. in Room T10–A1, Two White Flint North, 11545 Rockville Pike. For planning purposes, observers from the public are requested to notify Juanda Fletcher at (301) 415–6238 if they plan to attend.

Dated at Rockville, Maryland, this 9th day of September 1999.

For the Nuclear Regulatory Commission.

Cheryl A. Trottier,

Chief, Radiation Protection, Environmental Risk & Waste Management Branch, Office of Nuclear Regulatory Research.

[FR Doc. 99–24057 Filed 9–14–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–124–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Boeing Model 757–200 series airplanes. This proposal would require repetitive clearing of the drain passage at the aft end of the main landing gear truck beam to ensure moisture and contaminants within the truck beam can properly drain. This proposal is prompted by reports of fracture of main landing gear truck beams. The actions specified by the proposed AD are intended to prevent stress corrosion cracking, leading to fracture of a main landing gear truck beam during ground operations, which could result in either reduced controllability of the airplane or a fire.

DATES: Comments must be received by November 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–124–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–124–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–124–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that the main landing gear truck beam on Boeing Model 757–200 series airplanes has fractured due to stress corrosion cracking originating at corrosion pits on the surface of the inside diameter of the truck beam. The inner surface of the truck beam is protected from corrosion by several methods, including coatings over the metal surface and a gravity drain hole in the aft end of the truck beam inner surface that allows any moisture that enters the area to drain out. The drain holes on the fractured truck beams were found to be plugged with coating material, preventing moisture from draining out of the inside of the truck beam, which may result in increased corrosion on the inner surface of the truck beam. The primary cause of the condition may be inadequate adhesion of the coating to the inner surface of the truck beam during manufacture. This condition, if not corrected, could result in stress corrosion cracking, leading to fracture of a main landing gear truck beam during ground operations, which could result in either reduced controllability of the airplane or a fire.

Explanation of Relevant Service Information

The FAA has reviewed Boeing Service Letter 757–SL–32–060, dated March 31, 1999, which describes procedures for repetitive clearing of the drain passage at the aft end of the main landing gear truck beam to ensure moisture and contaminants within the truck beam can properly drain. Accomplishment of the actions specified in the service letter is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service letter described previously, except as discussed below.

Differences Between Proposed Rule and Service Letter

Operators should note that, although the service letter recommends accomplishing the clearing procedure at the next convenient maintenance opportunity, and at planned maintenance intervals thereafter (such as "C" checks), the FAA has determined that the next convenient maintenance opportunity and at "C" checks thereafter would not address the identified unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection (less than one hour). In light of all of these factors, the FAA finds a compliance time of 4 years since the last overhaul of the main landing gear or since the date of manufacture of the main landing gear (for main landing gear that has not been overhauled), or within 90 days after the effective date of this AD, whichever occurs latest, for initiating the required actions to be warranted. For the repetitive clearing procedures, the FAA finds an interval of 6 months, if the drain was previously found to be clogged, or 18 months, if the drain was previously found to be unclogged, to be warranted. The FAA finds that these intervals are warranted in that they represent appropriate intervals of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 750 airplanes of the affected design in the worldwide fleet. The FAA estimates that 300 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $18,000, or $60 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 99–NM–124–AD.

Applicability: All Model 757–200 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent stress corrosion cracking, leading to fracture of a main landing gear truck beam during ground operations, which could result in either reduced controllability of the airplane or a fire, accomplish the following:

Inspection

(a) Within 4 years since the last overhaul of the main landing gear or since the date of manufacture of the main landing gear (for main landing gear which have not been overhauled), or within 90 days after the effective date of this AD, whichever occurs latest: Insert a wooden probe, or similar non-metallic object, into the aft drain hole of the main landing gear truck beam, to clear the drain passage and ensure it can properly drain, in accordance with Boeing Service Letter 757-SL–32–060, dated March 31, 1999.

(1) If the aft drain hole is found unclogged, repeat the clearing procedure thereafter at intervals not to exceed 18 months.

(2) If the aft drain hole is found clogged, repeat the clearing procedure thereafter at intervals not to exceed 6 months.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 8, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–23997 Filed 9–14–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–176–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Model BAe.125 Series 1000A and 1000B, and Model Hawker 1000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Raytheon Model BAe.125 Series 1000A and 1000B, and Model Hawker 1000 series airplanes. This proposal would require inspection of P1 pitot pipes for chafing or damage, and various follow-on actions. This proposal is prompted by reports of P1 pitot pipes chafing against adjacent flight control cables. The actions specified by the proposed AD are intended to prevent a hole in the P1 pitot pipes, which would lead to erroneous input to the instrumentation and warning systems associated with the pilot's instruments.

DATES: Comments must be received by November 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–176–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, 9709 East Central, Wichita, Kansas 67206. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

FOR FURTHER INFORMATION CONTACT: Paul C. DeVore, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4142; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–176–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–176–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that the P1 pitot pipes have been found chafing against adjacent flight control cables on Raytheon Model BAe.125 Series 1000A and 1000B, and Model Hawker 1000 series airplanes. Such chafing has been attributed to installation with inadequate clearance during manufacture. This condition, if not corrected, could wear a hole through the P1 pitot pipes, which would result in erroneous input to the instrumentation and warning systems associated with the pilot's instruments.

Explanation of Relevant Service Information

The FAA has reviewed and approved Raytheon Service Bulletin SB.34–3028, dated January 1998, which describes procedures for inspection of P1 pitot pipes for chafing or damage, and various follow-on actions. If no chafing or damage is detected, follow-on actions consist of ensuring that a minimum clearance of 0.25 inch exists between the flight control cables and the adjacent P1 pitot pipes, and repositioning the P1 pitot pipes as necessary to achieve this clearance. If any chafing or damage is detected, follow-on actions include replacing discrepant parts with new parts; ensuring that a minimum clearance of 0.25 inch exists between the flight control cables and the adjacent P1 pitot pipes; inspecting the flight control cables in the area of wear for damage; and testing the P1 pitot system to ensure proper function. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require inspection of P1 pitot pipes for chafing or damage, and replacement of discrepant parts with new parts; and checking the installation to ensure a minimum clearance of 0.25 inch exists between the flight control cables and the adjacent pipe, and corrective actions, if necessary. If evidence of chafing is found, the proposed AD also would require a test of the P1 pitot system to ensure proper function, and inspection of the adjacent flight control cables for any sign of damage. The actions would be required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

If the test of the P1 pitot system fails, or if any damage to the flight control cables is found, this proposed AD would require corrective actions in accordance with the Aircraft Maintenance Manual.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin recommends accomplishing the inspection of P1 pitot pipes for damage, and follow-on actions, if necessary, during the next scheduled hourly airframe inspection, the FAA has determined that a compliance time of 150 flight hours after the effective date of this AD for initiating the required actions is warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection (one hour). The FAA finds that a compliance time of 150 flight hours after the effective date of this AD would also closely correspond to the time of the next scheduled hourly airframe inspection.

Cost Impact

There are approximately 52 airplanes of the affected design in the worldwide fleet. The FAA estimates that 39 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $2,340, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Raytheon Aircraft Company: Docket 99–NM–176–AD.

Applicability: All Model BAe.125 Series 1000A and 1000B, and Model Hawker 1000 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent a hole in the P1 pitot pipes, which would lead to erroneous input to the instrumentation and warning systems associated with the pilot's instruments, accomplish the following:

Inspections and Corrective Actions

(a) Within 150 flight hours after the effective date of this AD, perform a one-time general visual inspection to detect chafing or damage of the P1 pitot pipes, in accordance with Raytheon Service Bulletin SB.34–3028, dated January 1998.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If no chafing or damage is found, prior to further flight, ensure a clearance of 0.25 inch or more exists between the P1 pitot pipes and flight control cables. If clearance is less than 0.25 inch, prior to further flight, reposition the P1 pitot pipes to achieve 0.25-inch clearance, in accordance with the service bulletin.

(2) If a pitot pipe is found to be chafed or damaged, prior to further flight, accomplish the requirements of paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) of this AD.

(i) Replace the discrepant pitot pipe with a new pipe, and ensure that a clearance of 0.25 inch or more exists between the flight control cables and the new pitot pipe, in accordance with the service bulletin. If clearance is less than 0.25 inch, reposition the P1 pitot pipes to achieve 0.25-inch clearance, in accordance with the service bulletin.

(ii) Perform a general visual inspection for damage of the flight control cables adjacent to the area of chafing or damage of the P1 pitot pipes, in accordance with the service bulletin. If damage is found, replace the damaged flight control cables with new cables in accordance with Chapter 20–10–31 of the Aircraft Maintenance Manual.

(iii) Perform a test of the P1 pitot system to ensure proper function, in accordance with the service bulletin. If the P1 pitot system fails the test, perform the corrective actions specified in Chapter 34–11–00 of the Aircraft Maintenance Manual.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 8, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–23996 Filed 9–14–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–ANE–76–AD]

RIN 2120–AA64

Airworthiness Directives; International Aero Engines AG V2500–A1 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of two existing airworthiness directives (ADs), applicable to International Aero Engines AG (IAE) V2500–A1 series turofan engines, one of which, AD 98–20–18, currently requires removal from service of affected high pressure turbine (HPT) disks, identified by part number and serial number in the applicability paragraph of that AD, and replacement with a serviceable part. The other current AD, 99–05–05, requires initial and repetitive inspections of certain HPT stage 1 and stage 2 disks utilizing an improved ultrasonic method when the disks are exposed during a normal shop visit, and is a subsurface anomaly is found, removal from service and replacement with a serviceable part. This action would require the initial inspection required by AD 99–05–05 to be completed at the next shop visit regardless of the planned maintenance or the reason for shop removal. The repetitive inspection interval would also be redefined to eliminate the cyclic limit and thus be less restrictive. This proposal is prompted by results from further investigation subsequent to the publication of AD 98–20–18 that have revealed that the HPT disks affected by that AD are part of the population addressed by AD 99–05–05. These HPT disks can be safely reintroduced into service after completing the initial inspection requirements mandated by this proposed AD. This proposal is also prompted by further analysis which indicates a reduction in risk if the initial inspection required by AD 99–05–05 is completed sooner and that the subsequent required inspections can be redefined to eliminate the cyclic limit creating less burden on operators.

The actions specified by the proposed AD are intended to prevent HPT disk fracture, which could result in an uncontained engine failure and damage to the airplane.

DATES: Comments must be received by October 15, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–76–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov." Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Rolls-Royce Commercial Aero Engine Limited, P.O. Box 31, Derby, England, DE2488J, Attention: Publication Services ICL–TP; telephone +44–1–33–22–4653, fax +44–1–33–22–46302. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Diane Cook, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7133, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments, as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. Al comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–ANE–76–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–ANE–76–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On November 4, 1998, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 98–20–18, Amendment 39–10871 (63 FR 63398, November 13, 1998), applicable to International Aero Engines AG (IAE) V2500–A1 series turbofan engines, to require removal from service of affected high pressure turbine (HPT) disks, identified by part number (P/N) and serial number (S/N) in the applicability paragraph of that AD, and replacement with a serviceable part. That action was prompted by a report of an uncontained HPT disk failure. That condition, if not corrected, could result in an HPT disk fracture, an uncontained engine failure, and damage to the airplane.

On February 19, 1999, the FA issued AD 99–05–05, Amendment 39–11053 (64 FR 9910, March 1, 1999), applicable to IAE V2500–A1 series turbofan engines, to require initial and repetitive inspections of certain HPT stage 1 and stage 2 disks utilizing an improved ultrasonic method when the disks are exposed during a normal shop visit, and if a subsurface anomaly is found, removal from service and replacement with a serviceable part. That action was prompted by the results of a stage 1 HPT disk fracture investigation which has identified a population of HPT stage 1 and 2 disks that may have subsurface anomalies formed as a result of the processes used to manufacture the part. That condition, if not corrected, could result in HPT disk fracture, which could result in an uncontained engine failure and damage to the airplane.

Since the issuance of AD 98–20–18, further investigation have revealed that the HPT disks affected by that AD are part of the population addressed by AD 99–05–05. These HPT disks can be safely reintroduced into service after completing the initial inspection requirements mandated by this proposed AD.

In addition, the manufacturer has performed analysis which indicates a reduction in risk if the initial inspection required by AD 99–05–05 is completed sooner and that the subsequent inspections can be redefined to eliminate the cyclic limit creating less burden on operators.

Service Information

Subsequent to the publication of AD 99–05–05, IAE has issued Revision 1 to Service Bulletin (SB) No. V2500–ENG–72–0344, dated February 12, 1999, that describes procedures for ultrasonic inspections for subsurface anomalies. For the purpose of this AD, the original issue of that SB, dated December 18, 1998, is also acceptable for performing the required inspections.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede ADs 98–20–18 and 99–05–05 to require the initial ultrasonic inspection to be completed at the next shop visit regardless of the planned maintenance or the reason for shop removal. However, the repetitive inspection interval would become less restrictive by eliminating the cyclic limit and requiring inspections whenever the HPT stage 1 or stage 2 disks are dissembled from the HPT module.

In addition, this AD allows the disks identified by S/N that were retired by AD 98–20–18 to be reintroduced into service following an initial ultrasonic inspection required by this AD.

Cost Impact

Since this AD only adjusts the timing of inspections already required, there is no additional adverse economic impact.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10871 (63 FR 63398, November 13, 1998) and amendment 39–11053 (6 FR 9910, March 1, 1999) and by adding a new airworthiness directive to read as follows:

International Aero Engines AG: Docket No. 98–ANE–76–AD. Supersedes AD 98–20–18, Amendment 39–10871, and AD 99–05–05, Amendment 39–11053.

Applicability: International Aero Engines AG (IAE) V2500–A1 series turbofan engines, installed on but not limited to Airbus Industrie A320 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent high pressure turbine (HPT) disk fracture, which could result in an uncontained engine failure and damage to the airplane, accomplish the following:

(a) Perform initial and repetitive ultrasonic inspections of HPT stage 1 and 2 disks for subsurface anomalies, identified by serial numbers (S/Ns) in Table 1 of IAE Service Bulletin (SB) V2500–ENG–72–0344, Revision 1, dated February 12, 1999, in accordance with the Accomplishment Instructions of SB V2500–ENG–72–0344, dated December 18, 1998, or Revision 1, dated February 12, 1999, as follows:

(1) Initially inspect at the first opportunity when the engine is at a maintenance base after the effective date of this AD regardless of the planned maintenance or the reason for engine removal.

(2) Thereafter, inspect whenever the HPT stage 1 or stage 2 disks are dissembled from the HPT module.

(3) Remove disks from service if a subsurface anomaly is found, and replace with serviceable parts.

(b) HPT stage 1 disks, part number (P/N) 2A1801, S/Ns P100421, P100430, P100618, and P100621, may return to service following a successful inspection in accordance with paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the inspection requirements of this AD can be accomplished. Issued in Burlington, Massachusetts, on September 8, 1999.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 99–24092 Filed 9–14–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–114–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400 and 767 Series Airplanes Powered by Pratt & Whitney PW4000 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747–400 and 767 series airplanes. This proposal would require replacement of the existing deactivation pin, pin bushing, and insert flange on each thrust reverser half, with new, improved components. This proposal is prompted by reports of partial deployment of deactivated thrust reversers during landing. The actions specified by the proposed AD are intended to prevent failure of the thrust reverser deactivation pins, which could result in deployment of the thrust reverser in flight and consequent reduced controllability of the airplane.

DATES: Comments must be received by November 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–114–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dorr Anderson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2684; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–114–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–114–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of partial deployments of deactivated thrust reversers during landing on Boeing Model 767 series airplanes powered by Pratt & Whitney PW4000 series engines. Subsequent investigation revealed that, in each event, the thrust reverser had been improperly deactivated. This allowed hydraulic pressure to be available to the actuators when the reverse thrust levers were activated on landing. The pin insert for the deactivation pin was not able to withstand the load of a powered deployment and failed. The deactivation pin, as well as the pin insert flange, are subject to adverse tolerance stack-up, which minimizes their load carrying capability, and the pin and insert flanges may not prevent a deactivated thrust reverser sleeve from moving during a powered deployment. This condition, if not corrected, could result in deployment of the thrust reverser in flight and consequent reduced controllability of the airplane. The deactivation pins, pin bushings, and insert flanges on Model 747–400 series airplanes powered by Pratt & Whitney PW4000 series engines are the same as those on the affected Model 767 series airplanes. Therefore, those Model 747–400 series airplanes may be subject to the same unsafe condition.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 747–78A2165, Revision 1, dated May 13, 1999, which describes procedures for replacement of the existing deactivation pin, pin bushing, and insert flange on each thrust reverser half, with new, improved components, on Model 747–400 series airplanes powered by Pratt & Whitney PW4000 series engines. The FAA has also reviewed and approved Boeing Alert Service Bulletin 767–78A0080, dated February 25, 1999, which describes procedures for replacement of the existing deactivation pin, pin bushing, and insert flange on each thrust reverser half, with new, improved components, on Model 767 series airplanes powered by Pratt & Whitney PW4000 series engines.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as described below.

Differences Between The Proposed AD and the Service Bulletins

Boeing Service Bulletin 747–78A2165, Revision 1, and Boeing Alert Service Bulletin 767–78A0080 recommend incorporation of the specified actions on airplanes with the additional thrust reverser locks at the earliest opportunity where facilities and manpower are available. For airplanes without additional thrust reverser locks, the service bulletins recommend incorporation at the earliest opportunity where facilities and manpower are available but no later than 24 months. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the replacement. In light of all of these factors, the FAA finds a 24-month compliance time for accomplishing the required actions on all affected airplanes to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

There are approximately 201 airplanes of the affected design in the worldwide fleet. The FAA estimates that 39 Model 747–400 series airplanes and 54 Model 767 series airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 6 work hours per engine to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would cost approximately $3,956 per engine. Based on these figures, the cost impact of the proposed AD on U.S. operators of Model 747–400 series airplanes (4 engines per airplane) is estimated to be $673,296, or $17,264 per airplane. The cost impact of the proposed AD on U.S. operators of Model 767 series airplanes (2 engines per airplane) is estimated to be $466,128, or $8,632 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 99–NM–114–AD.

Applicability: Model 747–400 series airplanes powered by Pratt & Whitney PW4000 series engines, as listed in Boeing Service Bulletin 747–78A2165, Revision 1, dated May 13, 1999; and Model 767 series airplanes powered by Pratt & Whitney PW4000 series engines, as listed in Boeing Alert Service Bulletin 767–78A0080, dated February 25, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the thrust reverser deactivation pins, which could result in deployment of the thrust reverser in flight and consequent reduced controllability of the airplane, accomplish the following:

Replacement

(a) Within 24 months after the effective date of this AD, replace the existing deactivation pin, pin bushing in the aft cascade mounting ring, and insert flange on each thrust reverser half, with new, improved components, in accordance with Boeing Service Bulletin 747–78A2165, Revision 1, dated May 13, 1999 (for Model 747–400 series airplanes); or Boeing Alert Service Bulletin 767–78A0080, dated February 25, 1999 (for Model 767 series airplanes); as applicable.

Note 2: The new, improved insert flange and pin bushing does not preclude use of a deactivation pin having P/N 315T1604–2 or –5. However, use of deactivation pins having P/N 315T1604–2 or –5 may not prevent the thrust reversers from deploying in event of a full powered deployment. Therefore, thrust reversers modified per this AD require installation of the new, longer deactivation pins having P/N 315T1604–6, as specified in the applicable service bulletin.

Note 3: Replacements accomplished prior to the effective date of this AD in accordance with Boeing Alert Service Bulletin 747–78A2165, dated February 25, 1999, are considered acceptable for compliance with the applicable action specified in this amendment.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on September 9, 1999.

Dorenda D. Baker,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–24091 Filed 9–14–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–31–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAC 1–11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all British Aerospace Model BAC 1–11 200 and 400 series airplanes. This proposal would require replacing the thrust reverser control unit selector valve with a new or modified valve and inspecting for proper rigging of the thrust reverser cable drums and thrust reverser control unit selector valve detent, and corrective actions, if necessary. This proposal also would require revising the Airplane Flight Manual to provide the flight crew with procedures to address uncontrolled operation of the thrust reverser system. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to provide the flight crew with procedures in the event of uncommanded deployment of the thrust reverser, and to prevent uncommanded deployment of the thrust reverser in flight or on the ground, which could result in reduced controllability of the airplane.

DATES: Comments must be received by October 15, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–31–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace, Service Support, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–31–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–31–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all British Aerospace Model BAC 1–11 200 and 400 series airplanes. The CAA advises that two uncommanded thrust reverser deployments on the ground have been reported. The cause of the deployments was control cable failure. The control cable in both incidents had been incorrectly routed over a guard pin and had worn through. Also, during investigations of the thrust reverser rigging, instances have been found where the thrust reverser selector valve detent was not rigged properly and was not in the forward idle position. Misrigging of the thrust reverser control pulleys or the thrust reverser selector valve detent could result in uncommanded deployment of the thrust reverser in flight or on the ground, which could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

British Aerospace has issued Alert Service Bulletin 76–A–PM6043, Issue No. 1, dated September 18, 1998, which describes procedures for inspecting the thrust reverser cable drums and pulleys for proper rigging, and adjustment, if necessary.

British Aerospace also has issued Service Bulletin 78–PM6047, Issue No. 1, dated November 27, 1998, which describes procedures for replacing the thrust reverser control unit selector valve with a new or modified selector valve.

British Aerospace also has issued BAC 1–11 Airplane Flight Manual (AFM) Advance Amendment Bulletins No. 12 and No. 16, both dated August 19, 1997, which describe procedures for revising the Emergency and Abnormal Procedure Sections of the British Aerospace BAC 1–11 AFM to provide the flight crew with procedures in the event of thrust reverser uncommanded deployment in flight and when the thrust reverser is indicated to be in the unlocked position during flight.

Rolls-Royce Spey Aero Engine has issued Service Bulletin Sp78–131, dated September 1998, which describes procedures for inspecting the thrust reverser control unit selector valve detent for proper rigging, and adjustment, if necessary.

Accomplishment of the actions specified in the service bulletins and advance amendment bulletins is intended to adequately address the identified unsafe condition. The CAA classified these service bulletins as mandatory and issued British airworthiness directives 002–09–08 and 005–11–98 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins and advance amendment bulletins described previously.

Differences Between Proposed Rule and the Foreign Airworthiness Directive

The proposed AD would differ from the parallel British airworthiness directives in that it would require incorporation of BAC–1–11 AFM Advance Amendment Bulletins No. 12 and No. 16 dated August 19, 1997 into the AFM. The British airworthiness directives do not provide for such a requirement. The FAA has determined that, because of the safety implications, it is necessary to revise the AFM to provide emergency procedures to address uncommanded operation of the thrust reverser system.

Cost Impact

The FAA estimates that 16 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 6 work hours per airplane to accomplish the proposed inspections, and at average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections proposed by this AD on U.S. operators is estimated to be $5,760, or $360 per airplane.

It would take approximately 1 work hour per airplane to accomplish the proposed replacement, and an average labor rate of $60 per work hour. Required parts would cost approximately $16,000 per airplane. Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators is estimated to be $256,960, or $16,060 per airplane.

It would take approximately 1 work hour per airplane to accomplish the proposed AFM revision, and at average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $960, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

British Aerospace Airbus Limited (Formerly British Aerospace Commercial Aircraft Limited, British Aerospace Aircraft Group): Docket 99–NM–31–AD.

Applicability: All Model BAC 1–11 200 and 400 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To provide the flight crew with procedures in the event of uncommanded deployment of the thrust reverser and to prevent uncommanded deployment of the thrust reverser in flight or on the ground, which could result in reduced controllability of the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform an inspection for proper rigging of the thrust reverser cable drums, in accordance with British Aerospace Alert Service Bulletin 76–A–PM6043, Issue No. 1, dated September 18, 1998. If any drum is found to be improperly rigged, prior to further flight, accomplish the adjustments specified in paragraph 3, "Adjustments," of the service bulletin.

(b) Prior to further flight after accomplishing the inspection required by paragraph (a) of this AD, perform an inspection for proper rigging of the thrust reverser selector valve detent, in accordance with Rolls-Royce Spey Service Bulletin Sp78–131, dated September 1998. If any discrepancy is found, prior to further flight, accomplish the adjustments specified in paragraph 3, "Adjustments," of the service bulletin.

(c) Within 30 days after the effective date of this AD, revise the Emergency and Abnormal Procedures Sections of the FAA-approved Airplane Flight Manual (AFM) by inserting British Aerospace Advance Amendment Bulletins No. 12 and No. 16, both dated August 19, 1997, into the applicable sections of the AFM.

(d) Within 12 months after the effective date of this AD, replace the thrust reverser control unit selector valve with a new or modified selector valve in accordance with British Aerospace Service Bulletin 78–PM6047, Revision 1, dated November 27, 1998.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197

and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in British airworthiness directives 002–09–98 and 005–11–98.

Issued in Renton, Washington, on September 9, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–24090 Filed 9–14–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106004–98]

RIN 1545–AW71

Guidance Under Section 355(d); Recognition of Gain on Certain Distributions of Stock or Securities; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to recognition of gain on certain distributions of stock or securities of a controlled corporation, which would affect corporations and their shareholders.

DATES: The public hearing originally scheduled for Tuesday, September 21, 1999, at 10 a.m., is canceled.

FOR FURTHER INFORMATION CONTACT: Guy Traynor of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and/or notice of public hearing that appeared in the **Federal Register** on May 3, 1999, (64 FR 23554), announced that a public hearing was scheduled for September 21, 1999, at 10 a.m., room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC 20224. The subject of the public hearing is proposed regulations under section 355 of the Internal Revenue Code. The public comment period for these proposed regulations expired on August 2, 1999.

The notice of proposed rulemaking and/or notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of September 3, 1999, no one has requested to speak. Therefore, the public hearing scheduled for September 21, 1999, is canceled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99–23988 Filed 9–14–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 206

RIN 1010–AC59

Workshop on Valuation of Federal Geothermal Resources

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of public workshop.

SUMMARY: The Minerals Management Service (MMS) will hold a public workshop on valuing Federal geothermal resources in preparation for proposing amendments to its current royalty valuation rules. The purpose of the workshop is to provide an open forum for discussion of methods to value geothermal resources that are not subject to sales transactions (that is, the "no sales" resources). MMS announced its intent to amend the current valuation rules in the **Federal Register** on August 19, 1999 (Advance Notice of Proposed Rulemaking, 64 FR 45213).

DATES: The workshop will be held on October 7, 1999, beginning at 8:30 a.m. and ending by 5:00 p.m., Pacific Time.

ADDRESSES: The workshop will be held at the Holiday Inn Capitol Plaza, 300 J Street, Sacramento, California 95814; telephone (916) 446–0100.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Brook, Royalty Valuation Division, Minerals Management Service, P.O. Box 25165, MS 3152, Denver, Colorado 80225–0165; telephone (303) 275–7250; or e-mail charles.brook@mms.gov.

SUPPLEMENTARY INFORMATION: The workshop is open to the public to discuss alternative methods of valuing, for royalty purposes, those Federal geothermal resources that are not subject to sales transactions, the so-called "no sales" resources. The workshop is being held in conjunction with MMS's advance notice of proposed rulemaking, which was published in the **Federal Register** on August 19, 1999 (64 FR 45213), announcing our intent to amend the current Federal geothermal valuation regulations in 30 CFR part 206.

We are specifically seeking dialogue on alternatives to the netback procedure currently used to value "no sales" electrical generation resources. In the **Federal Register** notice, we offered three alternatives as a starting point for discussion: (1) Modification of the existing netback valuation procedure, (2) a "rate-of-return" method, and (3) a "percentage-of-revenue" method. In addition to these alternatives, we would like to explore other, new and different valuation methods offered by attendees during the course of the workshop. We are also asking for comments on options to the "alternative fuel" method used to value the "no sales" direct utilization resources. Alternative valuation methods should derive a value for the resource that reflects its market value and should be easy to apply and readily verifiable.

We encourage a workshop atmosphere where attendees can openly discuss alternative valuation methods. Please bring any written descriptions of alternative methods to share with MMS and other workshop attendees. Because space is limited, attendees should make reservations with Charles Brook at (303) 275–7250 or Shelia Dean at (303) 275–7201. We will post minutes of the workshop on the Internet at http://www.rmp.mms.gov.

Dated: September 8, 1999.

R. Dale Fazio,

Acting Associate Director for Royalty Management.

[FR Doc. 99–24075 Filed 9–14–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

[SPATS No. IN–146–FOR; State Program Amendment No. 98–3]

Indiana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Indiana regulatory program (Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Indiana proposes to add a new section to its rules. The new section requires coal mine operators to submit an annual report of affected areas to the director of the Indiana Department of Natural Resources (IDNR). Indiana intends to revise its program to improve operational efficiency.

This document gives the times and locations that the Indiana program and amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4:00 p.m., e.s.t., October 15, 1999. If requested, we will hold a public hearing on the amendment on October 12, 1999. We will accept requests to speak at the hearing until 4:00 p.m., e.s.t. on September 30, 1999.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Andrew R. Gilmore, Director, Indianapolis Field Office, at the address listed below.

You may review copies of the Indiana program, the amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Indianapolis Field Office.

Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, IN 46204, Telephone: (317) 226–6700.

Indiana Department of Natural Resources, Bureau of Mine Reclamation, 402 West Washington Street, Room W–295, Indianapolis, Indiana 46204, Telephone: (317) 232–1291.

Indiana Department of Natural Resources, Division of Reclamation, R.R. 2, Box 129, Jasonville, Indiana 47438–9517, Telephone: (812) 665–2207.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office. Telephone: (317) 226–6700. Internet: INFOMAIL@indgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program

On July 29, 1982, the Secretary of the Interior conditionally approved the Indiana program. You can find background information on the Indiana program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the July 26, 1982, **Federal Register** (47 FR 32107). You can find later actions on the Indiana program at 30 CFR 914.10, 914.15, 914.16, and 914.17.

II. Description of the Proposed Amendment

By letter dated August 31, 1999 (Administrative Record No. IND–1668), Indiana sent us an amendment to its program under SMCRA. Indiana sent the amendment at its own initiative. Indiana proposes to amend the Indiana Administrative Code (IAC) by adding 310 IAC 12–5–159. Below is a summary of the new section proposed by Indiana. The full text of the proposed program amendment is available for your inspection at the locations listed above under **ADDRESSES**.

310 IAC 12–5–159 Annual Report

Indiana proposes the following definition of "mined land" at subsection (a):

> As used in this section, "mined land" means the following:
> (1) Land from which coal has been extracted.
> (2) Land from which overburden has been removed.
> (3) Land upon which overburden or spoil has been deposited to facilitate surface coal mining activities. Mined land does not include land where only auger mining has occurred as reported in subsection (c)(3)(D).

Indiana proposes to define "surface disturbed land" at subsection (b). As used in 310 IAC 12–5–159, "surface disturbed land" means land, other than mined land, that is disturbed by surface coal mining and reclamation operations. It includes areas where only topsoil is removed. Various examples of surface disturbed land are listed. When the surface disturbance will be reaffected by future overburden removal or deposition, the permittee need not report surface disturbed land in advance of the highwall.

At subsection (c), permittees must submit an annual report of affected areas for each permit for surface coal mining and reclamation operations. The reporting period is from November 1 through October 31 of each year. The report must be submitted to the Director of IDNR no later than 90 days after October 31 of each year. The report must document the acres affected annually as of October 31 of the reporting year. It must include the name and address of the permittee and, if different from the permittee, the name and address of the person or persons conducting the mining. It must also include the permit number and a summary of acres mined and disturbed during the reporting period. The acreage summary must include acres of mined land, acres of surface disturbed land, total permit acres, and acres of auger mining and highwall mining.

At subsection (d), Indiana requires a dated aerial photograph of the surface coal mining and reclamation operation taken between September 1 and December 31 of the reporting year to be included with the report. The photograph must be of the same scale as the permit maps. The photograph or a certified map must show the location of the permit boundary; acres reported; section, township, and range lines; all public roads within the permit area that are not permanently closed; all areas where coal has been removed by surface, auger, or highwall mining methods; and the highwall face as of November 1 of the reporting year.

At subsection (e), Indiana requires that the last report, after the permittee has completed all mining, include a summary of pre-mining land use acreage for the mined and surface disturbed area when the acres are available on a computer-aided design (CAD) or other digital data format.

At subsection (f), any associated map, whether separate from or created upon the photograph, must be prepared by or under the direction of and certified by a qualified registered professional engineer or certified professional geologist with assistance from experts in related fields such as land surveying or landscape architecture.

At subsection (g), permits issued and land affected before the effective date of 310 IAC 12–5–159 and for which a Report of Affected Area has not been filed, the initial photograph must show all areas disturbed since permit issuance. No distinction between mined land and surface disturbed land is required on the report form, photograph, or map. When available, the extent of auger areas must be shown.

At subsection (h), no report is necessary after the initial report is submitted if no additional acres have been disturbed during the reporting year.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are requesting comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Indiana program.

Written Comments

Our practice is to make comments, including names and home addresses of

respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Your written comments should be specific and pertain only to the issues proposed in this rulemaking. You should explain the reason for any recommended change. In the final rulemaking, we will not necessarily consider or include in the Administrative Record any comments received after the time indicated under **DATES** or at locations other than the Indianapolis Field Office.

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS No. IN–146–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Indianapolis Field Office at (317) 226–6700.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., e.s.t. on September 30, 1999. We will arrange the location and time of the hearing with those persons requesting the hearing. If you are disabled and need special accommodations to attend a public hearing, contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The hearing will not be held if no one requests an opportunity to speak at the public hearing.

You should file a written statement at the time you request the hearing. This will allow us to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

Public Meeting

If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the amendment, request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We also make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: September 8, 1999.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 99–24061 Filed 9–14–99; 8:45 am]

BILLING CODE 4310–05–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1228

Agency Records Center Rule

AGENCY: National Archives and Records Administration.

ACTION: Initial Regulatory Flexibility Analysis.

SUMMARY: The National Archives and Records Administration (NARA) is publishing this initial regulatory flexibility analysis to aid the public in commenting upon the small business impact of its proposed rule revising and updating the standards that records center storage facilities must meet to store Federal records.

DATES: Written comments must be received at the address shown in the **ADDRESSES** section on or before October 15, 1999. Comments received after this date will not be considered.

ADDRESSES: Submit comments to Regulation Comment Desk (NPOL), Room 4100, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Alternatively, comments may be faxed to 301–713–7270.

FOR FURTHER INFORMATION CONTACT: Nancy Allard at (301) 713–7360, ext. 226.

SUPPLEMENTARY INFORMATION: This notice supplements NARA's initial notice of proposed rulemaking published on April 30, 1999, at 64 FR 23504, to revise and update records storage facility standards in 36 CFR part 1228, subpart K. NARA's notice of proposed rulemaking did not include an initial regulatory flexibility analysis pursuant to the Regulatory Flexibility Act (5 U.S.C. 603), based on a certification that the proposed rule will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605). *See* 64 FR at 23505. The certification statement in the proposed rule inadvertently omitted the phrase "a substantial number of", although NARA intended that phrase to be part of the statement.

Background

The proposed rule would apply to all records storage facilities Federal agencies use to store, service, and dispose of their records, including records centers operated by NARA and other Federal agencies and those commercial records storage facilities that Federal agencies use to store Federal records. NARA based its certification statement on the following unstated assumptions:

- The proposed rule relies on voluntary industry standards and industry recommended practices as the basis for most of the requirements. NARA made a reasonable assumption that most commercial facilities that would be likely to store Federal records would already conform to the industry standards and recommended practices. Thus, there would not be a significant cost to existing small businesses to upgrade their facilities to meet the proposed general facility standards.
- Environmental control requirements for storage of microfilm, audiovisual, and/or electronic permanent and unscheduled records have been in force elsewhere in NARA regulations for three or more years. Thus re-stating them in this proposed rule was not changing the existing burden on storage facilities. Moreover, at the time the proposed rule was developed, permanent records comprise only about five to six percent of the NARA's total records center holdings. Because only the specific records storage areas that contain permanent or unscheduled Federal records will require the NARA environmental controls, we assumed that it was unlikely that a significant number of commercial centers, small or large, would need to add air-conditioning equivalent to that required for office space to more than one storage module.
- Certain proposed requirements are imposed by authorities outside NARA: The building security requirements are those established by the Department of Justice for Level III Federal facilities. Seismic safety provisions are required by Executive orders and an integrated pest management program is mandated for Federal agencies by the Food Protection Act of 1996. Any economic burden for complying with these requirements would exist independently of NARA's proposed rule.
- NARA would continue to store Federal records for some agencies, although other agencies might choose private sector or other Federal agency centers to store their records after NARA's records center program becomes fully reimbursable in Fiscal Year 2000. Security classified records and IRS records containing restricted taxpayer information would continue to be stored in NARA or agency records centers, not commercial records storage facilities. As of the end of FY 1998, NARA centers held more than 6 million c.f. in these categories. NARA also expected that the National Personnel Records Center in St. Louis would retain 2.02 million c.f. of military personnel files and 1.4 million c.f. of civilian files, as evidenced in a related proposed rule published the same day (64 FR 23510), Storage of Federal Records.
- Two commercial records storage companies, Iron Mountain and Pierce Leahy, are currently the predominant private sector providers of records storage services to Federal agencies. NARA had no evidence that a substantial number of records centers that qualify as small businesses store Federal records for agencies, or that storage of Federal records comprises a significant percentage of their business receipts.

Accordingly, NARA believed that its certification statement in the proposed rule was appropriate. In response to a request from PRISM International, a not-for-profit trade association that includes off-site storage company members, NARA published a June 7, 1999, notice of a public meeting on the proposed rule, and extended the comment period to July 7, 1999 (64 FR 30276). At that public meeting on June 18, 1999, several attendees questioned NARA's certification statement. NARA staff stated that NARA had not done any formal cost analysis to support this certification and invited attendees to provide comments on the adequacy of that statement. In response to this invitation, NARA received several comments that the regulation would have a significant impact on small business. Additionally, some records storage facilities wrote to their members of Congress stating that the proposed rule would have a significant impact on them, and those letters were forwarded to NARA for consideration.

The comments on the economic impact appear to be based on two provisions of the proposed rule: A requirement in proposed § 1228.230(b) that records storage areas not exceed 250,000 c.f. of records to protect against catastrophic files and a misinterpretation of § 1228.234(a) that NARA would not allow commercial facilities to store records higher than 15 feet. (Section 1228.234 describes one optional alternative for an acceptable fire detection and suppression system, and is the alternative NARA uses in its own records centers. It is not a mandatory requirement. NARA intends to clarify this further in the final rule by moving the description of this alternative to an appendix and reiterating that other alternatives are acceptable.)

NARA has decided to publish this notice, which includes the following initial regulatory flexibility analysis, to provide further information and opportunity for public comment on the small business impact, if any, of the proposed rule.

Initial Regulatory Flexibility Analysis

Description of the reasons that action by the agency is being considered. Current records center standards were last issued in 1982. Based upon advancements in technical knowledge and experience gained over the past two decades, NARA believes it is time to update the standards for the storage of Federal records in the legal custody of Federal agencies. Moreover, as more agencies are turning to the private sector for off-site storage, NARA believes that it is necessary to require agencies to ensure that records in their legal custody are stored in appropriate space wherever the records are stored.

Succinct statement of the objectives of, and legal basis for, the proposed rule. Federal records provide essential

documentation of the Federal Government's policies and transactions and protect rights of individuals. These records must be stored in appropriate space to ensure that they remain available for their scheduled life.

NARA is authorized, under 44 U.S.C. 2907, to establish, maintain and operate records centers for Federal agencies. NARA is authorized, under 44 U.S.C. 3103, to approve a records center that is maintained and operated by an agency. NARA is also authorized to promulgate standards, procedures, and guidelines to Federal agencies with respect to the storage of their records in commercial records storage facilities. See 44 U.S.C. 2104(a), 2904 and 3102.

Description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply. The proposed rule will apply to NARA, to Federal agencies that operate their own records centers, and to any individual commercial records center facilities that a Federal agency uses to store its records. The proposed rule will apply to both aboveground and underground facilities. NARA is unable to estimate the number of small entities to which the proposed rule will apply for the following reasons:

- Under current regulations, agencies do not report to NARA or obtain NARA approval to store their records in commercial records storage facilities. Therefore, NARA has no information on the number of current or past agency contracts with small business records centers. We specifically invite comments from agencies that have such contracts and from records centers that are small businesses on this point.
- At present, the General Services Administration's Multiple Award Schedule (MAS) for Records Center Services (FSS–36–IV sin 51 504) has listed only two qualified companies, both of which are large businesses. The procurement process that an agency must follow when using an MAS or when entering into an interagency agreement with NARA or another Federal agency to provide records center services is much simpler than the process it must use when seeking open market services. For this reason, NARA cannot estimate the volume of records center contracts that agencies may consider awarding to small businesses. We specifically invite comments from agencies on any plans that they have to contract with small businesses for records center services in the next 2 years.

Although we are unable to provide an estimate of the number of small entities to which the proposed rule will apply, we do have estimates of the universe of small entities. NARA considered records center vendors to be small entities if they met the Small Business Administration (SBA) definition of a small business under Standard Industrial Code (SIC) 4226, Special Warehousing and Storage, Not Elsewhere Classified. For SIC 4226, an SBA small business must have annual gross receipts of $18.5 million or less. According to census figures furnished to NARA by SBA, there are 1,230 firms in SIC 4226. Most of these firms do not have multiple establishments (the number of SIC 4226 establishments is 1,547).

Description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

Reporting/recordkeeping requirements: The proposed rule does not directly mandate reporting or recordkeeping within the meaning of the Paperwork Reduction Act. All reporting requirements are placed on Federal agencies, which must secure NARA approval before moving Federal records to a commercial records center. NARA anticipates that the Federal agencies would include 36 CFR part 1228, subpart K (the facility standards) in their contracts with commercial records centers. Proposed § 1228.240(e) states that agency may submit to NARA "a copy of the agency's contract that incorporates this subpart in its provisions or a statement from the agency records officer that certifies that the facility meets the standards in this subpart."

Other compliance requirements: All records centers that store Federal records, including commercial records centers operated by small businesses, must comply with the facility requirements in the proposed rule. Certain specific requirements differ for newly constructed facilities and existing facilities. Also, existing facilities are allowed a 10-year period to become compliant with some of these requirements. The facility compliance requirements are found in the proposed §§ 1228.228, 1228.230, and 1228.236. (See 64 FR 23506–23510.)

Professional skills necessary for preparation of report or record: If the records center owner has maintained the facility design records, no special professional skills would be necessary to provide documentation to the contracting agency that the facility meets the NARA standards. If the design records are not available, the center would have need for the services of a licensed Fire Protection Engineer to inspect the facility and prepare a report on a one-time basis. We estimate that the inspection and preparation of a report would take no more than 8 hours total.

An identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule. At the June 18, 1999, public meeting, attendees pointed out that underground storage facilities are subject to regulations issued by the Mine Safety and Health Administration in 30 CFR Chapter I for any working mine. We intend to add a provision to our final rule that if any of the provisions of NARA's regulation conflict with mandatory life safety or ventilation requirements imposed on underground storage facilities by 30 CFR chapter I, 30 CFR chapter I applies.

Also at the public meeting, attendees pointed out that the proposed NARA regulations might conflict with local or regional building codes with which commercial facilities must comply. We stated at the meeting that we intend to add a provision to our final rule that resolves such conflicts by specifying that, following normal rules of precedence, the more stringent fire protection and life-safety provision will apply. If a mandatory NARA requirement cannot be reconciled with a mandatory local or regional requirement, the local or regional code will apply.

Description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as—(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; (4) any exemption from coverage of the rule, or any part thereof, for such small entities. To the extent possible, the proposed rule specifies performance standards and incorporates by reference industry consensus standards. NARA chose this alternative over the other possible regulatory approach—extending the coverage of the existing regulation that governed agency records centers—to provide as much flexibility as possible to all commercial and agency records centers, including small businesses.

We did not believe that we could adopt any of the other alternatives [(1), (2) or (4)] for minimizing the impact of the proposed rule on small entities, given the objective of ensuring appropriate protection for Federal records when they leave agency office space. We believe that the 10-year period we will provide for complying with certain requirements will moderate the impact on small businesses since they will be able to plan for the necessary modifications and implement them during normal maintenance, e.g., removing roof-mounted equipment when roof repairs or replacement is done. However, we do not believe that it is appropriate to exempt or delay small businesses' compliance with basic fire detection and suppression requirements. It is also not feasible to exempt or delay small businesses' compliance with requirements imposed by other authorities, e.g., DOJ building security requirements.

Questions for Comment To Assist Regulatory Flexibility Analysis

1. Please provide comment on any or all of the provisions in the proposed rule with regard to
   - The impact of the provision(s) including the benefits and costs, if any, on small entities, and
   - Other alternatives, if any, NARA should consider, as well as the costs and benefits of those alternatives to small entities.
2. Please identify any Federal rules, other than the MSHA regulations discussed in this notice, that may duplicate, overlap, or conflict with the proposed rule. In addition, please identify any industry standards not cited in NARA's proposed rule that would be more appropriate. Please identify such industry standards by name of the organization establishing the standard, formal title, and edition date, and state how the public can get copies of the standard.
3. Please discuss the extent to which existing commercial records centers, especially those that qualify as a small business, have incorporated either the requirements of National Fire Protection Association (NFPA) 232, Standard for the Protection of Records (1995 Edition) for facilities smaller than 50,000 c.f. or the guidance in NFPA 232A, Guide for Fire Protection of Archives and Records Centers (1995 Edition) for larger facilities.
4. How many records centers that are small businesses presently store records for Federal agencies or would be interested in such future business opportunity? Please include the basis for your response to this question (e.g., industry survey).

Dated: September 10, 1999.

John W. Carlin,

Archivist of the United States.

[FR Doc. 99–24013 Filed 9–14–99; 8:45 am]

BILLING CODE 7515–01–P

POSTAL RATE COMMISSION

39 CFR Part 3001, 3002, and 3004

[Docket No. RM99–2; Order No. 1253]

Freedom of Information Act Administrative Rulemaking

AGENCY: Postal Rate Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission proposes changes to its rules of practice to implement the Electronic Freedom of Information Act and to reflect improved methods of information management. The proposed changes will establish consistency with current law. They also will improve the Commission's administration of related responsibilities and the public's ability to exercise rights to obtain or review certain information.

DATES: Comments will be accepted until September 30, 1999.

ADDRESSES: Send comments regarding this document to the attention of Margaret P. Crenshaw, Secretary, Postal Rate Commission, 1333 H Street NW., Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, 1333 H Street NW, Washington, DC 20268–0001, 202–789–6824.

SUPPLEMENTARY INFORMATION: The Commission's rules implementing the requirements of the Freedom of Information Act (FOIA), 5 U.S.C. 552, have not been amended since 1993. Consequently, they do not incorporate changes in applicable law since that time, most notably the requirements added by the Electronic FOIA, Pub. L. 104–231. Additionally, the current rules do not reflect recent changes in the Commission's methods of information management, which have become increasingly computer-based, as well as other administrative changes affecting access to information at the Commission. The proposed rules are intended to address and accommodate these interim changes. They also incorporate a major structural change—transfer of all provisions describing FOIA access and processes at the Commission to a new part 3004—for the convenience of persons interested in obtaining information by various means.

A. Compliance With Public Inspection and Copying Requirements as Modified by the Electronic FOIA Amendments

Subsection (a)(2) of the FOIA [5 U.S.C. 552(a)(2)] requires an agency to make available for public inspection and copying its final opinions in adjudicated cases, policy statements and interpretations not published in the **Federal Register**, and administrative staff manuals and instructions to staff that affect members of the public. The 1996 Electronic FOIA amendments extended this requirement by directing agencies to make such records created on or after November 1, 1996 available by computer telecommunications or other electronic means.

The proposed rules reflect the actions the Commission has taken to achieve compliance with the amended public inspection and copying requirements. Beginning in 1996, the Commission has operated a website linked to the Internet for the purpose of telecommunication and publication of official information. Recently, the Commission has expanded the material available on its website to include all its decisions issued on or after January 1, 1996; orders, notices and other documents issued in proceedings pending before the Commission; the domestic mail classification schedule, which is a compilation of all provisions that define the categories of mail and postal services available in the national postal system; and the rules of practices which govern the conduct of proceedings before the Commission. All these materials are now available for viewing and downloading from the Commission's website at www.prc.gov. Accordingly, proposed 3004.2(c) identifies that domain as the location of the Commission's electronic reading room, and describes generally the categories of information available from the website.

B. Transfer of FOIA Procedural Rules to New Part 3004

Currently, the rules describing public information available at the Commission and procedures for obtaining access are contained in 39 CFR 3001.42 and 3001.42a, within the rules of general applicability included in part 3001, which is a compilation of all the Commission's rules of practice and procedure. For the convenience of persons interested primarily in obtaining access to public information, the Commission proposes rules which incorporate a major structural change.

Rules describing the procedures for obtaining access to public information at the Commission, fees associated with some retrieval and copying services, and procedures relating to the submission and disclosure of sensitive business information would be transferred to a new part 3004, to be entitled "Freedom of Information Rules." Rules describing the Commission's public information resources generally would be retained in § 3001.42, with additional detailed information in part 3002, the organizational description of the Commission.

In addition, the rules proposed for inclusion in the new part 3004 would revise and update the provisions transferred from 3001.42 and 42a to conform to current FOIA legal requirements and practices. Proposed 3004.1 and 3004.2 describe the purpose of the rules and the sources of the Commission's public information, including the physical and electronic reading rooms. Proposed 3004.3 provides both for regular FOIA requests and requests for expedited processing based on a demonstration of compelling need. The time limit specified in proposed 3004.4 for responding to requests would be changed from 10 days to 20 days, in accordance with the 1996 amendments. The period for filing an appeal of a denial of a request with the Commission, currently 20 days, would be extended to one year under proposed 3004.4(a)(2).

C. Provisions Relating to Submission of Sensitive Business Information

Proposed 3004.8 would adopt procedures for the Commission's treatment of materials containing sensitive business information that are considerably more detailed than those incorporated in current 3001.42a. Proposed 3004.8(a) would direct any person who submits information believed to be exempt from disclosure under 5 U.S.C. 552(b)(4) to designate the exempt information by appropriate markings, and provide a brief written statement explaining why the information is exempt. Any such designation would expire 10 years after the date of submission, unless the submitter requests and justifies a longer duration.

Should the Commission receive an FOIA request seeking business information that has been properly designated under 3004.9(a), or that the Commission believes may be exempt from disclosure under 552(b)(4), under proposed 3004.8(b) the Commission would notify the submitter that such a request has been made, and provide a copy of the notice to the requester. Under proposed 3004.8(c), the submitter would have 7 days to submit written objections to the information's disclosure, specifying the grounds for withholding it under the FOIA. The submitter would be considered to have no objection to disclosure if it submits no response by the end of the 7-day period.

If the submitter has objected to disclosure, the Commission would then decide whether to disclose the information. If the Commission decides to disclose, under 3004.8(d) it would provide the submitter written notice of that decision and a brief explanation for not sustaining its objections. Actual disclosure would not be made until 5 days after the submitter's receipt of the notice. Proposed 3004.8(e) provides that the Commission may not notify the submitter if it determines not to disclose the information; if the information has been lawfully published or officially made publicly available; or if disclosure is required by a regulation or statute other than the FOIA.

Finally, proposed 3004.8(f) would specify that protection of business information made available in formal Commission proceedings, and under the periodic reporting requirements in subpart G of 39 CFR part 3001, is provided under the terms of 3001.31a. Thus, the procedures to be adopted in proposed 3004.8 would not apply to the potential disclosure of commercially sensitive materials in the course of the Commission's performance of its primary jurisdictional responsibilities.

D. Updated Information Responsive to Publication Requirements

Subsection (a)(1) of the FOIA specifies five categories of information that agencies are required to "currently publish in the **Federal Register** for the guidance of the public." The proposed rules are designed to comply fully with these publication requirements, and also to carry out the intent of the Electronic FOIA Amendments of 1996 to increase the public availability of information through computer telecommunications.

The proposed rules address the Act's publication requirements by incorporating several amendments to existing rules that would enhance the information provided regarding the Commission's docket room, physical reading room, and electronic reading room on its website, as directed in 5 U.S.C. 552(a)(1)(A). Proposed § 3002.4(e) would provide additional detail concerning the information available on the Commission's website, as well as clarifying the responsibility of the Commission's administrative office to maintain it and the other public information resources of the agency. Proposed § 3002.2 would add a description of the Commission's statutory functions, including its jurisdictional responsibilities and the means by which the public may participate in Commission proceedings, in response to 5 U.S.C. 552(a)(1)(B).

Ordering paragraphs. Ordering paragraph No. 1 directed interested persons to submit comments on the proposed revisions, which were set out in Appendix A to this order, no later than July 26, 1999. [Changes set out in the referenced appendix appear in this **Federal Register** notice in a style that conforms to Office of the Federal Register publication requirements.] Ordering paragraph No. 2 directed the Secretary of the Commission to arrange for publication of the notice and order in the **Federal Register** in a manner consistent with applicable requirements. [The order was distributed to the Docket No. R97–1 service list upon issuance (June 15, 1999).

List of Subjects in 39 CFR Parts 3001, 3002 and 3004

Administrative practice and procedure, Archives and records, Freedom of information, Organization, Privacy, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, 39 CFR chapter III is proposed to be amended as follows:

PART 3001—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b), 3603, 3622–3624, 3661, 3662.

2. In § 3001.42, remove paragraph (c) in its entirety, and redesignate paragraph (d) as (c).

3. Remove § 3001.42a in its entirety.

PART 3002—ORGANIZATION

4. The authority citation for part 3002 continues to read as follows:

Authority: 39 U.S.C. 3603; 5 U.S.C. 552.

5. Redesignate §§ 3002.2, 3002.3 and 3002.4 as §§ 3002.3, 3002.4 and 3002.5, respectively.

6. In redesignated § 3002.3, add a new paragraph (c) to read as follows:

§ 3002.3 The Commission and its offices.

* * * * *

(c) The Commission's offices are located at 1333 H Street, NW., Suite 300, Washington, DC 20268. On these premises, the Commission maintains offices for Commissioners and the staff components described in 3002.4, 3002.5, 3002.6 and 3002.7; a docket room where documents may be filed with the Commission pursuant to 3001.9 and examined by interested persons; a public reading room where the Commission's public records are available for inspection and copying; a library containing legal and technical reference materials; and a hearing room where formal evidentiary proceedings are held on matters before the Commission. The Commission also maintains an electronic reading room accessible through the Internet, on its website at www. prc.gov.

7. In redesignated § 3002.4, add new paragraph (e) to read as follows:

§ 3002.4 Administrative Office.

* * * * *

(e) The Administrative Office is also responsible for the maintenance of the Commission's public information resources, including the docket room, the physical reading room, and the library on the premises of the Commission's offices, as well as the electronic reading room accessible on the Commission's website at www.prc.gov. The information available on the Commission's website is, in general, coextensive with that available from the Commission's docket room and physical reading room, and includes: Commission decisions, rules, orders and notices; testimony, pleadings and reference materials filed in Commission proceedings; and current information concerning Commission activities, employment opportunities, and a calendar of upcoming events.

8. Add new § 3002.2 to read as follows:

§ 3002.2 Statutory functions.

(a) *Areas of jurisdiction.* The Commission has jurisdiction over changes in postal rates and fees under 39 U.S.C. 3622, and over mail classifications under 39 U.S.C. 3623. It issues recommended decisions to the Governors of the Postal Service on these matters. It also acts on postal patrons' appeals from Postal Service decisions to close or consolidate post offices under 39 U.S.C. 404(b). Further, the Commission investigates complaints of substantial national scope concerning postal rates, fees, mail classifications or services under 39 U.S.C. 3662. It also responds to requests of the Postal Service for advisory opinions on changes in the nature of postal services under 39 U.S.C. 3661. Because of the Commission's expertise, Congress occasionally asks it to undertake special studies on postal issues.

(b) *Public participation.* Interested persons may elect to participate in Commission rate and mail classification proceedings as formal intervenors (§ 3001.20), limited participators (§ 3001.20a), or commenters (§ 3001.20b). Interested parties who believe the Postal Service is charging rates which do not conform with the policies of the Postal Reorganization Act, or who believe that they are not receiving postal service in accordance with the policies of title 39, may lodge a complaint with the Commission under § 3001.82. Persons served by post offices that the Postal Service decides to close or consolidate with other post offices may appeal such determinations under § 3001.111.

9. Part 3004 is added to read as follows:

PART 3004—FREEDOM OF INFORMATION RULES

Sec.

3004.1 Purpose.
3004.2 Reading room.
3004.3 Requests for records and for expedited processing.
3004.4 Response to requests.
3004.5 Appeals.
3004.6 Fees.
3004.7 Aggregation of requests.
3004.8 Submission of business information.

Authority: 39 U.S.C. 3603; 5 U.S.C. 552, 552a.

§ 3004.1 Purpose.

(a) This part is published pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552, to describe the procedures by which a person can request copies of Commission records. It also describes how a submitter of trade secrets or confidential business information can identify information that the submitter believes to be exempt from disclosure under 5 U.S.C. 552(b)(4).

(b) An individual seeking access to a record about himself or herself that is subject to the Privacy Act of 1974 should also consult the Commission's Privacy Act rules in part 3003 for the procedures that apply to requests for records under that Act. Requests for first-party access can be made under both the FOIA and the Privacy Act of 1974.

(c) Information required to be published or made available pursuant to 5 U.S.C. 552(a)(1) and (a)(2) may be found in part 3002, elsewhere in this chapter, in the **Federal Register**, or on the Commission's website at www.prc.gov. The Commission's guide to the FOIA, all required FOIA indexes, and any available annual FOIA reports, are also available at the website in the electronic reading room or elsewhere on the site.

(d) Section 3001.42(b) of this chapter identifies records that the Commission has determined to be public.

§ 3004.2 Reading room.

(a) The Commission maintains a public reading room at its offices at 1333 H Street NW., Washington, DC 20268. The reading room is open from 8 a.m. until 4:30 p.m. during business days.

(b) The records available for public inspection and copying in the reading room include: final opinions, statements of policy, administrative staff manuals and instructions that affect a member of the public, copies of selected records released under the FOIA, and indexes required to be maintained under the FOIA, and records described in 39 CFR 3001.42(b) relating to any matter or proceeding before the Commission.

(c) The Commission's electronic reading room is maintained at its website at www.prc.gov. Commission decisions, orders, rules of practice, and other directives affecting the public are available from the electronic reading room. To the extent practicable, other documents available in the reading room are also posted and available on the website.

§ 3004.3 Requests for records and for expedited processing.

(a) A request for records must be in writing and must reasonably describe the records sought. A request should be addressed or delivered to the Secretary of the Commission at the offices of the Commission at 1333 H Street NW., Washington, DC 20268. A request should be clearly identified as "Freedom of Information Act Request" both in the text of the request and on the envelope. A requester should include a daytime telephone number.

(b) A request for expedited processing may be made in cases in which the requester demonstrates a compelling need as defined in 5 U.S.C. 552(a)(6)(E)(v). The Commission may otherwise grant requests for expedited processing at its discretion. A request for expedited processing should be clearly identified as "Expedited Freedom of Information Act Request" both in the text of the request and on the envelope.

(c) A demonstration of compelling need by a requester seeking expedited processing must be made by a statement certified by the requester to be true and correct to the best of the requester's knowledge and belief. At its discretion, the Commission may waive the requirement for certification.

(d) A request for expedited processing may be made at the time of an initial request (or appeal) or at a later time.

§ 3004.4 Response to requests.

(a) Within 20 days (excluding Saturdays, Sundays, and legal public holidays) after receipt of a request for a Commission record, the Secretary of the Commission will:

(1) Determine to comply with the request and immediately notify the requester of the determination and of any fees that must be paid; or

(2) Deny the request in writing. The denial letter will explain the reason for the denial, including each exemption used as a basis for withholding of the records sought. The denial letter will include an estimate of the volume of requested matter that was denied. If disclosure of a record has been partially denied, the amount of information deleted will be indicated on the released portion if technically feasible. If revealing the amount or location of a denied record will harm an interest protected by an exemption, then the description of the amount or location of deleted information may be withheld. The denial letter will inform the requestor that he/she may, within one year, appeal the denial to the Commission.

(b) A denial is any form of adverse determination, including: A determination to withhold any requested record in whole or in part; a determination that a requested record does not exist or cannot be located; a determination that a record is not readily reproducible in the form or format sought by the requester; a determination that what has been requested is not a record subject to the FOIA; an adverse decision on any disputed fee matter, including a denial of a requested fee waiver; and a denial of a request for expedited treatment.

(c) Within ten days after the receipt of a request for expedited processing, the Secretary will:

(1) Grant the request for expedited processing and process the request for records as soon as practicable; or

(2) Deny a request for expedited processing in writing. Any request for records that has been denied expedited processing will be processed in the same manner as a request that did not seek expedited processing. The denial letter will inform the requestor that he/she may, within five days, appeal the denial to the Commission.

(d) If warranted by the unusual circumstances specified in 5 U.S.C. 552(a)(6)(B)(iii), the Secretary may extend the time for a response for up to ten working days. The Secretary will notify the requester of any extension, and the reason for the extension, in writing. The Secretary will also provide the requester with an opportunity to limit the scope of the request or to arrange an alternative time frame for processing the request or a modified request.

§ 3004.5 Appeals.

(a) A requester who seeks to appeal any denial must file an appeal in writing with the Commission. The Commission may review any decision of the Secretary on its own initiative. The Commission will grant or deny the appeal in writing, within 20 days (excluding Saturdays, Sundays and legal public holidays) of the date the appeal is received. If on appeal the denial of the request for records is upheld, the Commission will notify the person making such request of the provisions for judicial review of that determination pursuant to 5 U.S.C. 552(c). The Commission will expeditiously consider an appeal of a denial of expedited processing.

(b) If warranted by the unusual circumstances specified in 5 U.S.C. 552(a)(6)(B)(iii), the Commission may extend the time for a response to an appeal for up to ten working days. The Commission will notify the requester of any extension, and the reason for the extension, in writing. The Commission will also provide the requester with an opportunity to limit the scope of the request or to arrange an alternative time frame for processing the request or a modified request.

§ 3004.6 Fees.

(a) Definitions pertaining to fees:

(1) *Direct costs* means expenditures the Commission actually incurs in searching for, duplicating, and, where applicable, reviewing documents to respond to a request. They include (without limitation) the salary of the employee performing work (the basic pay rate of such employee plus 16 percent to cover benefits) and the cost of operating required machinery.

(2) *Search* includes all time spent looking for material responsive to a request, including identification of pages or lines within documents. The term covers both manual and computerized searching.

(3) *Duplication* means making copies of documents necessary to respond to a request. Such copies may be paper, microform, audiovisual, or machine-readable.

(4) *Review* means examining documents located in response to a commercial-use request to determine whether any portion is exempt from mandatory disclosure, and processing or preparing documents for release, but not determination of general legal or policy issues regarding application of exemptions.

(5) *Commercial use request* means a request from or on behalf of one seeking information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or person on whose behalf the request is made. In determining the applicability of this term, the use to which a requester will put the document is considered first; where reasonable doubt exists as to the use, the Commission may seek clarification before assigning the request to a category.

(6) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of graduate or undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(7) *Noncommercial scientific institution* means an institution, not operated on a "commercial" basis (as referenced in paragraph (a)(5) of this section), which is operated solely for the purpose of conducting scientific research whose results are not intended to promote any particular product or industry.

(8) *Representative of the news media* means any person actively gathering news for an entity organized and operated to publish or broadcast news to the public. News means information about current events or that would be of current interest to the public. Freelance journalists will be regarded as working for a news medium if they demonstrate (for example, by a publication contract or a past record of publication) a solid basis for expecting publication through such organization even though not actually employed by it.

(b) Except in the case of commercial-use requesters, the first 100 pages of duplication and the first two hours of search time are provided without charge. A *page* for these purposes is a letter-or legal-size sheet, or the equivalent amount of information in a medium other than paper copy. *Search time* for these purposes refers to manual searching; if the search is performed by computer, the amount not charged for will be the search cost equivalent to two hours' salary of the person performing the search. No requester will be charged a fee when the Commission determines that the cost of collecting the fee would equal or exceed the fee itself. In determining whether cost of collection would equal or exceed the fee, the allowance for two hours' search or 100 pages of duplication will be made before comparing the remaining fee and the cost of collection.

(c) Fees will be charged in accordance with the following provisions:

(1) The level of fee charged depends on the category of requester:

(i) A request appearing to be for commercial use will be charged the full direct costs of searching for, reviewing, and duplicating the records sought.

(ii) A request from an educational or noncommercial scientific institution will be charged for the cost of duplication only (excluding charges for the first 100 pages). To be eligible for this category, a requester must show that the request is made under the auspices of a qualifying institution and that the records are not sought for commercial use but are in furtherance of scholarly (in the case of educational institutions) or scientific (in the case of noncommercial scientific institutions) research.

(iii) A request from a representative of the news media will be charged the cost of duplication only (excluding charges for the first 100 pages).

(iv) A request from any other requester will be charged the full direct cost of searching for and duplicating records responsive to the request, except that the first 100 pages of duplication and the first two hours of search will be furnished without charge.

(v) A request from a record subject for records about himself or herself filed in a Commission Privacy Act system of records will be charged fees as provided under the Commission's Privacy Act regulations in part 3003 of this chapter.

(2) Fees will be calculated as follows:

(i) Manual search: At the salary rate (basic pay plus 16 percent) of the employee(s) making the search. Search time may be charged for even if the Commission fails to locate records or if records located are exempt from disclosure.

(ii) Computer search: At the actual direct cost of providing the search, including computer search time directly attributable to searching for records responsive to the request, runs, and operator salary apportionable to the search.

(iii) Review (commercial-use requests): At the salary rate (basic pay plus 16 percent) of the employee(s) conducting the review. Charges are imposed only for the review necessary at the initial administrative level to determine the applicability of any exemption, and not for review at the administrative appeal level of an exemption already applied.

(iv) Duplication: At 15 cents per page for paper copy, which the Commission has found to be the reasonable direct cost thereof. For copies of records prepared by computer (such as tapes or printouts), the actual cost of production, including operator time, will be charged.

(v) Additional services: Postage, insurance, and other additional services that may be arranged for by the requester will be charged at actual cost.

(d) Interest at the rate prescribed in 31 U.S.C. 3717 will be charged on unpaid fee bills, starting on the 31st day after the bill was sent. Receipt of a fee by the Commission, whether processed or not, will stay the accrual of interest.

(e) Advance payment may be required only when the allowable fees are likely to exceed $250, in which case advance payment in part or in full may be required of requesters with no history of prompt payment, and satisfactory assurance of payment from requesters with such history; or when the requester has previously failed to pay a fee timely (within 30 days of the billing date), in which case the Commission may require full payment of the amount owed, plus applicable interest, or a demonstration that the fee has in fact been paid, together with full advance payment of the estimated fee. When advance payment is required, the administrative time limits prescribed in subsection (a)(6) of the Freedom of Information Act begin only after such payment has been received.

(f) Records will be provided without charge or at a reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

§ 3004.7 Aggregation of requests.

Should the Secretary or the Commission reasonably believe that a requester or a group of requesters acting in concert, have attempted to evade fees or to seek a procedural advantage over other requesters by breaking down a request into a series of requests, the Commission may aggregate the separate requests and treat them as a single request. Multiple requests involving unrelated subjects will not be aggregated.

§ 3004.8 Submission of business information.

(a) Any person who submits to the Commission a trade secret or commercial or financial information that the submitter reasonably believes to be exempt from disclosure under 5 U.S.C. 552(b)(4) must designate the exempt information by appropriate markings at the time of submission or at a reasonable time after submission. The submission should be accompanied by a brief written statement explaining why the information is exempt. Any designation will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer period.

(b) Before disclosing, in response to a FOIA request, any information properly designated under this part, the Commission will provide the submitter with written notice that a request seeks disclosure of the information. The Commission may also provide notice when it has reason to believe that business information possibly exempt from disclosure may fall within the scope of any FOIA request. The requester will be provided a copy of any notice sent to the submitter.

(c) A submitter has seven days to submit written objections to the disclosure specifying all grounds for withholding the information under the FOIA. If the submitter fails to respond to the notice, the submitter will be considered to have no objection to the disclosure of the information.

(d) If, after considering the submitter's objections to disclosure, the Commission decides to disclose the information, it will give the submitter written notice of the decision and a brief explanation of the reasons for not sustaining the submitter's objections. The actual disclosure will not be made before five days after the submitter has received the notice.

(e) A submitter may not receive notice if the Commission determines that the information should not be disclosed; if the information has been lawfully published or officially made available to the public; or if a statute (other than the FOIA) or a regulation requires disclosure.

(f) Protection of information made available pursuant to proceedings subject to the rules in 39 CFR part 3001, including information provided pursuant to that subpart requiring the filing of periodic reports, is provided upon request to the Commission as described in 39 CFR 3001.31a.

Dated: August 31, 1999.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 99–23135 Filed 9–14–99; 8:45 am]

BILLING CODE 7710–FW–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–6437–4]

Notice of Proposed Rule Revisions to Emissions Budgets Set Forth in EPA's Finding of Significant Contribution and Rulemaking for Purposes of Reducing Regional Transport of Ozone for the States of Connecticut, Massachusetts and Rhode Island

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On October 27, 1998, EPA published a final action requiring 22 States and the District of Columbia to submit State implementation plan (SIP) revisions to prohibit specified amounts of emissions of oxides of nitrogen (NO_X)—one of the precursors to ozone (smog) pollution—for the purpose of reducing NO_X and ozone transport across State boundaries in the eastern half of the United States. This action is referred to as the NO_X SIP Call.

Subsequent to that rulemaking, three States, Connecticut, Massachusetts and Rhode Island, approached EPA with concerns about the distribution of the emission reduction requirements to the three States. While the States agreed that the amount of the overall emission reductions that EPA was requiring from the three State region was appropriate, the States had concerns about the specific emission reductions that EPA was requiring from each of the three individual States. In particular, the States were concerned that the emission reduction requirements were inconsistent with the emission reductions that those States were requiring in connection with an existing multi-state effort to reduce NO_X and ozone transport across State boundaries in the northeastern portion of the United States.

In response to these concerns, EPA and the States of Connecticut, Massachusetts and Rhode Island signed a memorandum of understanding (MOU) in February 1999. This MOU required EPA to take action to redistribute the NO_X emission reduction requirements among the three States. With this rule EPA is proposing to redistribute the total combined electricity generating stationary source (EGU) budget for the three States.

Subsequent to the signing of the MOU, EPA took a final action that changed the EGU portion of the budgets for the three States in a Technical Amendment to the NO_X SIP Call published on May 14, 1999. EPA is now proposing action to redistribute the States' budgets. The redistribution that EPA is proposing is slightly different than the redistribution stated in the MOU to reflect and remain consistent with the May 14, 1999 changes to the budgets.

DATES: *Comments:* Written comments must be received by October 5, 1999.

ADDRESSES: Any written comments must be identified with Docket No. A–99–13, must be identified as comments on the direct final rule and companion proposal and must be submitted in duplicate to: EPA Air Docket (6102), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. The docket is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the address given above. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Kathryn Petrillo, Acid Rain Division (6204J) U.S. Environmental Protection Agency, 401 M Street SW, Washington DC 20460, telephone number (202) 564–9093; e-mail: petrillo.kathryn@epa.gov.

SUPPLEMENTARY INFORMATION: EPA is proposing to redistribute the EGU portions of the Connecticut, Massachusetts and Rhode Island NO_X Budgets in accordance with the Memorandum of Understanding that was signed by the three States and EPA in February 1999. In a direct final action that is located in the "Rules and Regulations" section of today's **Federal Register**, we are promulgating the revisions to the State budgets of Connecticut, Massachusetts and Rhode Island without prior proposal because we view the revisions as noncontroversial and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule. If we receive no timely adverse comment, we will not take further action on this proposed rule. If we receive timely adverse comment, we will withdraw the direct final rule, and the direct final rule will not take effect.

We will then address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the direct final action that is located in the "Rules and Regulations" section of today's **Federal Register**.

Dated: September 7, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–23915 Filed 9–14–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–6431–9]

Regulation of Fuel and Fuel Additives: Extension of California Enforcement Exemptions for Reformulated Gasoline Beyond December 31, 1999

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: With this document, EPA proposes to continue to exempt refiners, importers, and blenders of gasoline subject to the State of California's reformulated gasoline regulations from certain enforcement provisions in the Federal reformulated gasoline regulations. Current exemptions applicable under the Federal Phase I reformulated gasoline program will expire after December 31, 1999, when the Federal Phase II reformulated gasoline program begins. Today's proposed rule would extend the California enforcement exemptions beyond that date. The Agency is publishing a separate direct final rule in today's **Federal Register**, because it does not expect this action to be controversial.

DATES: Comments must be received by October 15, 1999.

ADDRESSES: Any person wishing to submit comments should send them (in duplicate, if possible) to the docket address listed and to Anne Pastorkovich, Attorney/Advisor, U.S. Environmental Protection Agency, Fuels and Energy Division, 401 M Street, SW. (6406J), Washington, DC 20460. Materials relevant to this have been placed in docket [A–99–04] located at U.S. Environmental Protection Agency, Air Docket Section, Room M–1500, 401 M Street, SW., Washington, DC 20460. The docket is open for public inspection from 8:00 a.m. until 5:30 p.m., Monday through Friday, except on Federal holidays. A reasonable fee may be charged for photocopying services.

FOR FURTHER INFORMATION CONTACT: For further information about this proposed rule, contact Anne Pastorkovich, Attorney/Advisor, Fuels & Energy Division, at (202) 564–8987. To notify EPA of an intent to submit an adverse comment or public hearing request, contact Anne Pastorkovich, (202) 564–8987.

SUPPLEMENTARY INFORMATION: The remainder of this proposed rule is organized in the following sections:

I. Background
  A. Regulated Entities
  B. Current Status and Basis for California Exemptions
II. Applicability of Exemptions Beginning in 2000 (Description of This Proposed Rule)
III. Administrative Designation and Regulatory Analysis
  A. Executive Order 12866
  B. Executive Order 12875: Enhancing Intergovernmental Partnerships
  C. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments
  D. Regulatory Flexibility
  E. Paperwork Reduction Act
  F. Unfunded Mandates Reform Act
  G. Children's Health Protection
  H. National Technology Transfer and Advancement Act of 1995 (NTTAA)
  I. Statutory Authority

I. Background

A. Regulated Entities

Regulated categories and entities potentially affected by this action include:

Category	Examples of regulated entities
Industry	Refiners, importers, and oxygenate blenders of California gasoline.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could be potentially regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether an entity is regulated by this action, one should carefully examine the RFG provisions at 40 CFR Part 80, particularly § 80.81 dealing specifically with California gasoline. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Current Status and Basis for California Exemptions

Section 211(k) of the Federal Clean Air Act (the Act) directs the EPA to establish requirements for reformulated gasoline (RFG) to be used in specified ozone nonattainment areas, as well as "anti-dumping" requirements for conventional gasoline used in the rest of the country, beginning in January 1995. The areas covered by the Federal RFG program in California are Los Angeles, San Diego, and Sacramento.[1] The Act requires EPA to reduce the emissions of ozone forming volatile organic compounds (VOCs) and toxic air pollutants from motor vehicles through the RFG program. It also requires that there be no increase in the emission of oxides of nitrogen (NO_X) as a result of the RFG program. Finally, RFG must meet certain content standards for oxygen, benzene and heavy metals.

The RFG program is implemented in two phases. The Phase II program, which will begin on January 1, 2000, is similar to the Phase I program, but will require even greater emissions benefits. The relevant regulations for RFG and conventional gasoline may be found at 40 CFR Part 80, Subparts D, E, and F.[2]

On September 18, 1992, the California Air Resources Board (CARB) adopted regulations requiring reformulation of California "Phase 2" gasoline.[3] The CARB regulations established a comprehensive set of gasoline specifications designed to achieve reductions in emissions of VOCs, NO_X, carbon monoxide (CO), sulfur dioxide, and toxic air pollutants from gasoline-fueled vehicles. The CARB regulations set standards for eight gasoline parameters—sulfur, benzene, olefins, aromatic hydrocarbons, oxygen, Reid vapor pressure (RVP), and distillation temperatures for the 50 percent and 90 percent evaporation points (T–50 and T–90, respectively). These regulations became effective on March 1, 1996 for all gasoline in the California distribution network (except for gasoline being exported from California). The CARB regulations also provide for the production and sale of alternative gasoline formulations, with certification under the CARB program based on a predictive model or on vehicle emission testing.

During the Federal RFG rulemaking, and in response to comments by California refiners, we concluded (1) that VOC and toxics emission reductions resulting from the California Phase 2 standards would be equal to or greater than the Federal Phase I RFG standards (applicable from January 1, 1995 through December 31, 1999), (2) that the content standards for oxygen and benzene under California Phase 2 would be equivalent in practice to the Federal Phase I content standards,[4] and (3) that the CARB's compliance and enforcement program was designed to be sufficiently rigorous to ensure that Federal Phase I requirements would be met.[5] Consequently, while the Federal RFG and conventional gasoline standards continue to apply in California, refiners, importers, and oxygenate blenders of gasoline sold in California (referred to collectively as "California refiners") are exempt in most cases from various enforcement-related provisions, including the following:

Requirement exempted	Citation at 40 CFR § 80.xx
Compliance Surveys[6]	80.68.
Independent Sampling & Testing	80.65(f).
Designation of Gasoline	80.65(d).
Marking of Conventional Gasoline	80.65(g) and 80.82.
Downstream Oxygenate Blending	80.69.
Recordkeeping	80.74 and 80.104.
Reporting	80.75 and 80.105.
Product Transfer Documents	80.77.
Parameter Value Reconciliation Requirements	80.65(e)(2).

[1] *See* 40 CFR 80.70 for a complete list of covered areas.

[2] *See* 59 FR 7812 (February 16, 1994), as amended at 59 FR 36964 (July 20, 1994); 60 FR 2699 (January 11, 1995); 60 FR 35491 (July 10, 1995); 60 FR 65574 (December 20, 1995); and 62 FR 68196 (December 31, 1997).

[3] *See* Title 13, California Code of Regulations §§ 2250–2272 (as last amended December 11, 1998). California has amended its regulations since they were first promulgated in September, 1992. The most recent amendments, adopted December 11, 1998, raise the oxygen "cap" limit for California gasoline from 2.7 weight % to 3.5 weight %. As discussed below, this direct final rule is based on the current state of California's Phase 2 gasoline program, including the December 11, 1998 amendments.

[4] As is discussed in the section entitled "Oxygen Standard", below, this is not now the case.

[5] *See* 59 FR 7758, 7759 (February 16, 1994) and 40 CFR § 80.81.

[6] 40 CFR § 80.81(e)(2) was amended to include a limited oxygen survey provision. *See* "Fuels and Fuel Additives: Amendments to the Enforcement Exemptions for California Gasoline Refiners—Final Rule," 63 FR 34818 (June 26, 1998).

Requirement exempted	Citation at 40 CFR § 80.xx
Reformulated Gasoline and Reformulated Gasoline Blendstock for Oxygenate Blending (RBOB) Compliance Requirements	80.65(c).
Annual Compliance Audit Requirements	80.65(h).
Compliance attest Engagement Requirements	Subpart F.

California refiners are not exempt from these Federal enforcement requirements with regard to gasoline that is delivered for use outside California, because the California Phase 2 standards and the CARB enforcement program do not cover RFG exported from California. EPA has made reasonable allowances to minimize complications for gasoline exported from California, including permitting the use of California test methods for conventional gasoline that is produced in California for sale outside the state.[7]

II. Description of This Proposed Rule

The enforcement exemptions which expire on December 31, 1999 were based on a comparison of California Phase 2 gasoline and Federal Phase I RFG. The enforcement exemptions which were included in the final RFG rule (see fn. 5) were only applicable during the Phase I RFG program. It would have been premature for EPA to have made an equivalency determination comparing California Phase 2 and Federal Phase II upon publication of the final RFG rule. However, we indicated in that rulemaking that, if an appropriate and timely demonstration was made in the future, showing that California Phase 2 gasoline could be expected to provide emission benefits equivalent to Federal Phase II RFG, then we might extend the enforcement exemptions beyond December 31, 1999. For the reasons discussed below, we believe that California Phase 2 gasoline provides emissions benefits equivalent to Federal Phase II RFG, and that it is appropriate for the us to extend the California enforcement exemptions to Federal Phase II RFG. Specifically, the Agency believes that:

(1) VOC, toxics, and NO_X emission reductions resulting from the California Phase 2 standards would be equal to or greater than the reductions from the Federal Phase II RFG standards,

(2) the content standards for oxygen and benzene under California Phase 2 would be equivalent in practice to the Federal Phase II content standards, and

(3) the CARB's compliance and enforcement program is designed to be sufficiently rigorous.

We have received a detailed comparison of California Phase 2 and Federal Phase II blends from the Western States Petroleum Association ("WSPA"), entitled "Comparing the Equivalency of California and Federal Reformulated Gasoline" (hereafter referred to as "the WSPA analysis"). A copy of the WSPA analysis, and an EPA staff memorandum describing the Agency's evaluation of the WSPA analysis, has been placed in public docket at the location listed in the **ADDRESSES** section of this notice.[8]

The WSPA analysis evaluated the performance of the California program (1) by comparing the average performance of actual California RFG to the averaged parameter limits of federal RFG, and (2) by analyzing the performance of a set of "virtual fuels" using computer modeling. While the average fuel performance analysis establishes that the overall air quality objective of the federal RFG program will be met, the virtual fuels analysis provides assurances that there will be no temporal spikes in the emission of ozone forming VOCs.

The WSPA analysis utilized data from two separate surveys of actual California gasoline to compare the emissions performance of California gasoline with the EPA Phase II complex model averaging standards. *See* 40 CFR § 80.41(f). One survey was prepared by the California Energy Commission (CEC).[9] The other survey was prepared by the American Petroleum Institute/National Petroleum Refiners Association (API/NPRA).[10] Both surveys collected data on the properties of RFG actually produced by California refiners in an effort to evaluate the emissions performance of actual, in use California gasoline. The API/NPRA and CEC surveys represented about 85% and 100% of the RFG produced in California, respectively. The surveys each occurred over periods of about four months during the summertime, and were weighted by production volume. Producers were not aware that the surveys were being conducted.

Both surveys support the conclusion that average fuel property values and average emissions reductions of in-use California gasolines comply with Federal Phase II averaged standards. Additionally, the two surveys, performed one year apart, were remarkably consistent. The results of the surveys are shown in the following table: [11]

Properties	Federal phase II averaged standards	1990 baseline fuel	California survey results	
			API–96	CEC–97
Oxygen (wt%)	>=2.1 average, 1.5 per gal. min	0	2.1	2.1
SULFUR (ppm)		339	20	19
RVP (psi)		8.7	6.8	6.8
E200 (%)		41	51.3	50.5
E300 (%)		83	88.8	88.4
AROMATICS (vol%)		32	23.0	23.0
OLEFINS (vol%)		9.2	3.9	4.1

[7] *See* 40 CFR 80.81(h)(1).

[8] The WSPA analysis and an EPA staff memorandum entitled "Equivalency Determination of California and Federal Reformulated Gasoline," (March 8, 1999) have been placed in docket A–99–04.

[9] Final Report, 1996 American Petroleum Institute/National Petroleum Refiners Association Survey of Refining Operations and Product Quality (July, 1996).

[10] California Energy Commission, Supply and Cost of Alternatives to MTBE in Gasoline—Technical Appendices, Refinery Modeling—Task 2 Calibration of Refinery Model, Table 5.3.

[11] WSPA analysis, at 7.

Properties	Federal phase II averaged standards	1990 baseline fuel	California survey results	
			API–96	CEC–97
BENZENE (vol%)	<=0.95 average, 1.3 per gal. max.	1.53	0.55	0.57
Phase II Complex Model Absolute Emissions Calculations		Absolute emissions (milligrams/mile)		
Exhaust VOC		907.0	733.0	734.2
Nonexhaust VOC		559.3	294.1	294.1
Total VOC		1466.3	1027.2	1028.4
Exhaust benzene		53.5	28.8	28.9
Nonexhaust benzene		6.2	1.3	1.4
Acetaldehyde		4.4	3.6	3.6
Formaldehyde		9.7	11.8	11.8
Butadiene		9.4	6.4	6.5
POM		3.0	2.5	2.5
Total exhaust toxics		80.1	53.0	53.2
Total toxics		86.3	54.3	54.6
NO_X		1340.0	1144.5	1143.2
Phase II Complex Model Reductions from 1990 Baseline		Percent change from baseline emissions		
Total VOC	>=29.0% average, 25.0% per gal. min..		−29.9	−29.9
Total toxics	21.5% average		−37.1	−36.8
NO_X	6.8% average		−14.6	−14.7

The WSPA analysis also compares the emissions performance of the survey average in-use fuel with the emissions performance of fuels that meet California's "regulatory recipe". The regulatory recipe specifies limits for various emission-related fuel parameters (e.g. sulfur content, aromatics content).

Certain of these parameters in the regulatory recipe have two sets of limits; a "flat" (per gallon) limit and an average limit with a cap. A California refiner may choose, on a property by property basis, to produce a blend that complies with a flat or an average (with cap) regulatory recipe limit. However, a refiner may produce a blend with parameters that differ from the regulatory recipe specifications if they can demonstrate, using the predictive model, that the emissions performance of their blend is comparable. In order to use the predictive model to compare the emissions performance of its blend to the performance of the regulatory recipe, refiners must decide whether certain parameters in their blend will be averaged or flat-limited.

The WSPA analysis compares the survey results to the regulatory recipe by plugging the average survey data into the predictive model and generating emissions numbers. These numbers are then compared against an all-average and all-flat emissions baseline. The results demonstrate that the emissions performance of in-use gasoline approximates the emissions performance of a fuel with average regulatory recipe limits. Therefore, it is reasonable to use the average, rather than the flat, regulatory recipe limits to determine which of the computer-generated virtual fuels meet California standards under the predictive model. This virtual fuels analysis, discussed later, demonstrates compliance of California fuel with the Federal VOC per-gallon minimum performance requirement.

Finally, the WSPA analysis demonstrates that the fuels represented by the two surveys meet the average performance requirements of the federal RFG program. To make this determination the WSPA analysis evaluates the averaged fuels from the two surveys using the federal Complex Model.[12]

The WSPA analysis also examined a computer-generated set of emissions data to evaluate the performance of a large number of possible California gasoline blends against the Federal per-gallon minimum reduction requirements for VOCs. This set of virtual fuels consisted of fuels whose properties vary discretely within ranges constrained by California or Federal regulations. Specifically, the virtual fuels analysis defined the properties of the virtual fuels using the appropriate limits of California Phase 2—for RVP, sulfur, aromatics, olefins, T50, T90, and benzene, the upper and lower limits are defined by California's regulations. For oxygen, the lower limit is defined by the Federal RFG program [13] and the upper limit is defined by the California regulations.

For VOC compliance, the virtual fuels analysis looked at possible combinations of fuel properties within the limits of what could be certified under the California predictive model. Although the virtual fuels analysis does not reflect each and every possible fuel formulation, the discrete properties chosen accurately approximate the full range of possible, "real world" fuels. These virtual fuel formulations were then submitted to the EPA's complex model. In all there were 18,048 virtual fuels that met the California standards. Of these fuels, all met the 25% minimum Federal Phase II VOC reduction requirement.

As discussed in greater detail in the staff paper, the virtual fuels analysis supports the conclusion that any possible "real world" fuel will comply with the Federal Phase II complex model minimum VOC reduction requirement.

We are satisfied that the CARB enforcement program, which employs several full-time inspectors and a

[12] *Id.* at 9.

[13] The limited oxygen survey option was added to 40 CFR § 80.81 (e)(2)(ii) to ensure that compliance with a 2.0 wt % standard is met in Federally covered areas, as defined by § 80.70. Since for an averaging party, the minimum oxygen content of any gallon of gasoline is 1.5 wt % (with all production over the compliance period meeting 2.1 wt %, on average), the appropriate minimum oxygen content for analysis purposes is 1.5 wt %.

mobile laboratory facility, and which conducts year round inspections of retail facilities, terminals, and refineries, is designed to be sufficiently stringent to ensure the emissions benefits and content requirements of the program are met.

In the absence of the enforcement exemptions at 40 CFR § 80.81, California refiners would be required to comply with duplicative enforcement requirements at a significant added cost. We believe that California Phase 2 gasoline, as required by the current regulations (see footnote 3), and as described in this analysis, will achieve VOC, toxic and NO_X emission reductions that are equal to or greater than those achieved by Federal Phase II gasoline, and will comply with the oxygen and benzene content requirements of the Federal program. We also believe that the CARB enforcement program is sufficiently stringent to ensure that the expected benefits will continue to be met. Therefore, we are proposing to extend the California enforcement exemptions at 40 CFR § 80.81 beyond December 31, 1999.

On March 26, 1999, California Governor Gray Davis issued Executive Order D–5–99, which directed that methyl tertiary butyl ether (MTBE) be phased out of gasoline as soon possible. Because California refiners must still provide gasoline in the state that complies with the federal oxygen requirement, the appropriateness of extending the enforcement exemptions is preserved. A copy of the executive order has been placed in the public docket at the location indicated in the **ADDRESSES** section of this notice.

On April 12, 1999, Governor Davis submitted a letter to EPA Administrator Carol Browner, requesting that EPA grant a waiver from the Federal 2.0 weight % oxygen requirement for all California areas covered by the Federal RFG program. The governor's request is currently being evaluated by EPA, but is outside the scope of today's direct final rule. Today's action, in finding that the emission reduction benefits of California gasoline are equivalent to Federal Phase II RFG based on a comparison of current California Phase 2 gasoline and Federal Phase II RFG, includes an analysis demonstrating that such California gasoline will comply with the Federal content standards, including the 2.0 weight % oxygen standard. If California amends its current reformulated gasoline regulations (or issues new regulations), EPA will re-examine these regulations to determine whether enforcement exemptions continue to be appropriate.

III. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that this proposed rule is not a significant regulatory action under the terms of Executive Order 12866 and is therefore not subject to OMB review. The Agency has determined that this regulation would result in none of the economic effects set forth in Section 1 of the Order because it does not impose any mandatory obligations on the regulated community beyond those specified in the current regulations.

B. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's proposed rule does not create a mandate on State, local or tribal governments. The proposed rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this proposed rule.

C. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. Today's proposed rule does not create a mandate for any tribal governments. The proposed rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

D. Regulatory Flexibility

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this proposed rule. EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities.

E. Paperwork Reduction Act

This action does not add any new requirements involving the collection of information as defined by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The Office of Management and Budget (OMB) has approved the information collection requirements contained in the final RFG/anti-dumping rulemaking (See 59 FR 7716, February 16, 1994) and has assigned OMB control number 2060–0277 (EPA ICR No. 1951.08).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. The proposed rule would impose no enforceable duty on any State, local or tribal governments or the private sector. Today?s proposed rule would extend the existing exemption for California gasoline from many of the regulatory compliance requirements of the RFG program, relieving potentially duplicative obligations.

G. Executive Order 13045: Children's Health Protection

Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks (62FR19885, April 23, 1997) applies to any rule that: (1) Is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to E.O. 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62FR19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

H. National Technology Transfer and Advancement Act of 1995 (NTTAA)

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub L. No. 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule does not involved technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. Statutory Authority

Sections 114, 211, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7414, 7545, and 7601(a)).

List of Subjects in 40 CFR Part 80

Environmental protection, Air pollution control, California exemptions, Gasoline, Motor vehicle pollution, Reformulated Gasoline.

Dated: August 27, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–23708 Filed 9–14–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 97

[FRL–6439–5]

Notice of Availability of Unit-Specific Information for Affected Sources Under Section 126 and Proposed Section 110 FIP Rulemakings; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability and request for comment; reopening of comment period.

SUMMARY: EPA is reopening the comment period for the Notice of Availability of Unit-Specific Information for Affected Sources Under Section 126 and Proposed Section 110

FIP Rulemakings, published on August 9, 1999, regarding three sets of data related to the proposed Federal NO_X Budget Trading Program. The August 9, 1999 notice established a 30-day comment period, which ended on September 8, 1999. EPA is reopening the comment period for all information contained within the data files, which were referenced by the notice, to September 24, 1999. In particular, EPA continues to solicit comment on 1997 heat input data for all Electric Generating Units (EGUs), including those EGUs reporting under EPA's Acid Rain Program.

We may use the data in the data files in the future to allocate NO_X allowances under the Federal NO_X Budget Trading Program. We proposed the program in rulemakings under Sections 126 and 110 of the Clean Air Act. The program aims to reduce interstate transport of ozone by controlling emissions of nitrogen oxides (NO_X). NO_X emissions significantly contribute to violations of the National Ambient Air Quality Standard for ozone in downwind states.

Readers should note that we will only consider comments about the data discussed in this notice and the August 9, 1999 notice. We are not soliciting comments on any other topic. In particular, we are not reopening the comment period for the October 21, 1998 proposed rule on the Section 126 rulemaking or the October 21, 1998 proposed rule on the Section 110 Federal Implementation Plans (FIPs) through this Notice of Data Availability. Neither are we soliciting comments on inventory data for 1995 and 1996 that we used to develop Statewide emission budgets.

DATES: The EPA is reopening the comment period to end on September 24, 1999.

ADDRESSES: Comments may be submitted to the Air and Radiation Docket and Information Center (6102), Attention: Docket Nos. A–97–43 (section 126 rulemakings) and A–98–12 (section 110 FIP rulemakings), U.S. Environmental Protection Agency, 401 M Street SW, room M–1500, Washington, DC 20460, telephone (202) 260–7548. Identify your comments with these docket numbers. Submit two originals and exact duplicates of your comments to each docket. Please submit your comments on paper, not in electronic format. We request this so that we do not receive multiple versions of the same comment that might contradict each other.

Documents relevant to this action are available for inspection at the Docket Office, at the above address, between 8:00 a.m. and 5:30 p.m., Monday though Friday, excluding legal holidays. A reasonable copying fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: General questions concerning today's action should be addressed to Margaret Sheppard, Acid Rain Division, EPA, Mail Code 6204 J, 401 M Street SW, Washington DC, 20460; telephone 202–564–9163, email address sheppard.margaret@epa.gov. For technical questions concerning heat input data, contact Kevin Culligan at telephone 202–564–9172, email address culligan.kevin@epa.gov.

SUPPLEMENTARY INFORMATION:

Outline

1. *What is today's action?*
2. *Why is EPA reopening the public comment period?*
3. *When are my comments due?*
4. *What data should I comment on?*
5. *What things is EPA not requesting comment on?*
6. *Where are the data files?*

1. What Is Today's Action?

Today, we are reopening the public comment period on the August 9, 1999 notice of data availability (64 FR 43124), entitled "Notice of Availability of Unit-Specific Information for Affected Sources Under Section 126 and Proposed Section 110 FIP Rulemakings." The public comment period for that notice ended on September 8, 1999. Today's notice reopens the public comment period through September 24, 1999.

In addition, we are emphasizing that you may comment on heat input data for 1997 for units reporting under the Acid Rain Program, as well as the other data in the files referenced in the August 9, 1999 notice.

For further information and background on the data referenced by this notice and EPA's rulemakings related to NO_X transport under Sections 126 and 110 of the Clean Air Act, see the August 9, 1999 notice (64 FR 43124).

2. Why Is EPA Reopening the Public Comment Period?

Just before the September 8, 1999 deadline for submission of comments, we received several requests to extend the public comment period. Some commenters requested more time to understand potential discrepancies between company records and the data in EPA's data files. Further, although EPA has received comments on heat input data for 1997 for units reporting under the Acid Rain Program, some commenters said that it was not clear whether there had been an opportunity to comment on such heat input data.

EPA agrees that it may improve the quality of the data to provide some additional time to compare the values with company records. Further, EPA notes that many commenters submitted comments on heat input data for 1997 for units under the Acid Rain Program in response to the August 9, 1999 notice of data availability or prior notices. However, because some commenters claim that they were unclear about whether EPA was requesting comment on the 1997 heat input data, we emphasize that they may comment on such data, in addition to the other data in the data files.

Most commenters requesting an extension asked for a thirty-day extension. We are instead reopening the public comment period for approximately two weeks. Many of the commenters requesting the extension are checking data (*e.g.*, 1997 and 1998 heat input data) that they previously reported to EPA or to the Energy Information Administration (EIA). Under the Acid Rain Program, the designated representative for the affected source has certified that the data reported to EPA are accurate. The data we have provided for comment in the data files differ from the original reports in that: (1) we calculated heat input and electric generation values for the ozone season for each year from hourly or monthly data in the reports to EPA or EIA, and (2) we apportioned electric generation data for an entire plant to individual units that would receive NO_X allowance allocations. Reopening the public comment period for approximately two weeks will provide a reasonable, additional period for checking the original reports and submitting any resulting comments. This also provides a reasonable, additional period for commenters to submit any other comments.

3. When Are My Comments Due?

Postmark your comments no later than Friday, September 24, 1999.

4. What Data Should I Comment On?

Comment on any data in the data files "eguburn.txt," "egunonox.txt" and "nonegu.txt" in the compressed file labeled "allodata.zip". We are particularly interested in comments that may change data that we could use to determine NO_X allowance allocations under the Federal NO_X Budget Trading Program. These data include, among other things:

- Electric generation data from EGUs from May through September for the years 1995 through 1998.

- Electric generation data from electric generators that do not burn fuel from May through September for the years 1995 through 1998.
- Nameplate capacity data for electric generators that do not burn fuel.
- Heat rate data for EGUs.
- Heat input data for May through September for the years 1997 and 1998 for EGUs.
- Heat input data for May through September for the year 1995 for non-EGUs. In addition, if you find that the heat input for your non-EGU during May through September for the year 1995 is not representative of your unit's operation over the last several years, then you may comment and provide us heat input data for May through September for the years 1996, 1997, and/or 1998.

See the section entitled "What supporting documentation do I need to provide with my comments?" in the August 9, 1999 notice of data availability for further details on information you should provide with your comments.

If you have already submitted comments on the August 9, 1999 notice of data availability, you may submit supplementary comments.

5. What Things Is EPA Not Requesting Comment On?

EPA is requesting comment only on the data in the data files referenced here and in the August 9, 1999 notice of data availability. We are not requesting comment on any other issue or data.

6. Where Are the Data Files?

The data files are available on the Regional Transport of Ozone webpage at http://www.epa.gov/ttn/rto/. You will find links to the data under the "Related Documents and Data" subheadings under the "Transport FIPs" and "Section 126 Petitions" headings on the Regional Transport of Ozone webpage. Look for a WinZip file labeled "a WinZip file containing heat input and electric generation data that EPA or States could use for determining NOx allowance allocations. EPA requests comment on these data." In addition to the data files, the WinZip file also contains a text file describing the fields in the data files, "readme.txt," and a text file describing EPA's method for preparing the electric generation data, "outmethd.txt". In addition, these data are in Docket Nos. A–97–43 (Section 126 rulemaking) and A–98–12 (Section 110 FIP rulemaking).

Dated: September 9, 1999.

Paul Stolpman,

Director, Office of Atmospheric Programs.

[FR Doc. 99–24038 Filed 9–14–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300913; FRL–6098–7]

RIN 2070–AB78

Cyromazine; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish tolerances for residues of cyromazine (CAS No. 66215–27–8) in or on mango at 0.3 parts per million (ppm); onion, green at 2.0 ppm; onion, dry bulb at 0.1 ppm; potato at 0.8 ppm; corn, sweet, (kernels plus cob with husks removed) at 0.5 ppm; corn, sweet, forage at 0.5 ppm; corn, sweet, stover at 0.5 ppm; radish, roots at 0.5 ppm; radish, tops at 0.5 ppm; lima beans at 1.0 ppm; cotton, undelinted seed at 0.1 ppm; milk at 0.05 ppm; and meat, fat and meat byproducts (of cattle, goats, hogs, horses and sheep) at 0.05 ppm. EPA also proposes to remove melamine, a metabolite of cyromazine from the tolerance expression since it is no longer considered a residue of concern. The Interregional Research Project (IR-4) and Novartis Crop Protection, Inc., requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: Comments, identified by the docket control number "OPP–300913," must be received by EPA on or before November 15, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300913], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. In person, bring comments to Rm. 100, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300913]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Linda DeLuise, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 202, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703–305–5428; e-mail: deluise.linda@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 11, 1997 (62 FR 37246) (FRL–5723–1), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of pesticide petitions (PP) for tolerances by Novartis Crop Protection, Inc., 410 Swing Road, Greensboro, NC 27419. The notice included summaries of the petitions prepared by Novartis Crop Protection, Inc., the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.414 be amended by establishing tolerances for residues of the insecticide cyromazine and its metabolite melamine, in or on various food commodities as follows:

1. Novartis Corporation PP5E4450 proposes the establishment of a tolerance for mangoes at 0.3 ppm.
2. Norvartis Corporation PP5F4576 proposes the establishment of a tolerance for onion, green at 3.0 ppm and onion, dry bulb at 0.3 ppm.
3. Novartis Corporation PP6F4613 proposes the establishment of a tolerance for potato at 1.5 ppm.
4. Novartis Corporation PP5F4546 proposes establishment of a tolerance for cotton, undelinted seed at 0.2 ppm.
5. Novartis Corporation PP6F3332 proposes establishment of tolerances for sweet corn, (kernels plus cob with husks removed), forage and stover at 0.5 ppm; radish roots, and tops at 0.5 ppm; and milk at 0.04 ppm for cyromazine and 0.02 ppm melamine.
6. Novartis Corporation PP6F3332 proposes establishment of a tolerance for meat, fat and meat byproducts (of cattle, goats, hogs, horses and sheep) at 0.05 ppm.

7. IR-4 PP7E4905 proposes the establishment of a tolerance for lima beans at 3.0 ppm.

The tolerance requests for cotton, corn and radish are for indirect or inadvertent residues when these commodities are planted as rotational crops. The tolerance request for mangoes is for a tolerance to enable the importation of mangoes treated in Mexico with cyromazine. There are no U.S. registrations for use of cyromazine on mangoes as of the date of this publication.

There currently exists separate tolerances in 40 CFR 180.414(a) for cyromazine on celery at 10.0 ppm and lettuce, head at 5.0 ppm. Since the crop group leafy vegetables (except Brassica) includes celery and lettuce, (head) these individual tolerances under 40 CFR 180.414(a) are being removed.

EPA has concluded that only residues of the parent compound cyromazine need to be regulated and used for risk assessment and is proposing that melamine, a metabolite of cyromazine, be removed from the tolerance expression as a residue of toxicological concern.

Melamine was initially included in the tolerance expression for cyromazine because of limited evidence of its carcinogenic potential in laboratory animals. At that time EPA agreed with FDA's Cancer Assessment Committee that melamine was not a carcinogen, *per se*, but was indirectly responsible for the induction of urinary bladder neoplasia through production of stones in the bladder. A detailed discussion of the initial risk of melamine can be found in the **Federal Register** of April 27, 1984 (49 FR 18120). Since then EPA has reassessed the weight-of-the evidence for both cyromazine and melamine with particular reference to their carcinogenic potential. Cyromazine is classified as a group "E" carcinogen (no evidence of carcinogenicity) with an chronic RfD of 0.0075 milligram/kilogram/day (mg/kg/day) with an uncertainty factor (UF) of 100 using a no observed adverse effect level (NOAEL) of 0.75 mg/kg/day and a lowest observed adverse effect level (LOAEL) of 7.5 mg/kg/day.

Melamine is a chemical intermediate in the manufacture of amino resins and plastics as well as a contaminate and/or a metabolite of several pesticides including cyromazine. Melamine produced bladder tumors only in the male rat urinary bladder at very high doses i.e., at a threshold effect > 10,000 ppm in the diet. These tumors were due to the accumulation of stones (hard crystalline solids) which caused irritation and secondarily resulted in the formation of tumors; therefore melamine is not considered to be a direct carcinogen by the Agency.

In addition, only about 10% of cyromazine is converted to melamine *in vivo*. Anticipated human dietary and occupational exposure to the parent compound cyromazine from its current pesticide usage is estimated to result in melamine concentrations far below the NOAEL in rats (500 mg/kg/day) that led to formation of stones in rats. Thus, EPA does not have any toxicological concerns for the minimal amount of melamine residues that could result from the use of the pesticide cyromazine. Also, melamine has been removed from the World Health Organization as a residue of concern for cyromazine, and Codex limits are established for the parent cyromazine only.

EPA determined that the requested tolerances for potatoes at 0.8 ppm, green onions at 2.0 ppm, onion, dry bulb at 0.1 ppm, cotton, undelinted seed at 0.1 ppm, and lima beans at 1.0 ppm are too high based upon the magnitude of the residue studies and removal of the metabolite melamine from consideration. Therefore, EPA is proposing that the tolerance be set at 0.8 ppm, 2.0 ppm, 0.1 ppm, 0.1 ppm, and 1.0 ppm respectively. As a result of the animal feed items, processed potato waste, potato culls and sweet corn forage and stover being added to the animal diet at this time, EPA concluded that the requested milk tolerance of 0.04 ppm was too low and is proposing it be increased to 0.05 ppm. Likewise, as a result of the animal feed items, EPA is proposing establishment of tolerances in meat, fat and meat byproducts of cattle, goats, hogs, horses and sheep at 0.05 ppm.

EPA has reassessed the established cyromazine tolerances in order to determine the tolerance levels without melamine residues. As a result, EPA is proposing the tolerances be adjusted as follows: cucurbit vegetables from 2.0 to 1.0 ppm; leafy vegetables (except Brassica) from 10.0 to 7.0 ppm; mushrooms from 10.0 to 1.0 ppm; pepper from 4.0 to 1.0 ppm and tomato from 1.0 to 0.5 ppm. The tolerances for Chinese cabbage and Chinese mustard should remain at 3.0 ppm since the available field trial data do not support a lowering of the established tolerances. Since melamine is being removed from the tolerance expression EPA is proposing to remove 40 CFR 180.414(a)(2) because it is for melamine only on chicken byproducts.

Cyromazine is an insect growth regulator currently proposed for control of leafminers on lima beans, Colorado potato beetle and leafminers on potatoes and seed treatment for control of onion maggots on onions.

EPA is issuing this action as a proposal (rather than a final) because after review of the initial petitions and Notices of Filing the Agency has determined that:

1. The metabolite melamine should be removed from the tolerance expression.
2. The proposed tolerance in milk needs to be raised.
3. Additional tolerances on animal commodities (meat, fat and milk byproducts of cattle, goats, hogs, horses and sheep) are needed.
4. A notice of filing was not initially published after receipt of the petition for lima beans.

Interested persons are invited to submit comments on the proposed regulation. Comments must bear a notation indicating the docket control number "OPP–300913."

I. Background and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of cyromazine and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of cyromazine in or on mangoes at 0.3 ppm; onion, green at 2.0 ppm; onion, dry bulb at 0.1 ppm; potato at 0.8 ppm; corn, sweet (kernels plus cob with husks removed) at 0.5 ppm; corn, sweet, forage at 0.5 ppm; corn, sweet, stover at 0.05 ppm; radish, root at 0.5 ppm; radish, tops at 0.05 ppm; lima beans at 1.0 ppm; cotton, undelinated seed at 0.1 ppm; milk at 0.05 ppm; and meat, fat and meat byproducts (of beef, goat, hogs, horses and sheep) at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by technical cyromazine are discussed in this unit.

A rat acute oral toxicity study with a LD_{50} of approximately 3,387 milligrams/kilogram (mg/kg). Toxicity Category III (Moderately Toxic).

A rat acute dermal toxicity study with an LD_{50} greater than 3,100 mg/kg. Toxicity Category III (Moderately Toxic).

A rat acute inhalation study with an LC_{50} greater than 2.9 mg/kg. Toxicity Category IV (Slightly Toxic).

A primary eye irritation study in the rabbit that showed no eye irritation.

A primary dermal irritation study in the rabbit that showed mild irritation. Toxicity Category IV.

A dermal sensitization study in the guinea pig that showed no sensitization.

In a 6-month feeding study in dogs the NOAEL was 30 ppm (0.75 mg/kg). The LOAEL was 300.0 ppm (7.5 mg/kg) based upon decreased hematocrit and decreased hemoglobin. Groups of male and female beagle dogs (4/sex/dose) were fed diets containing cyromazine at 0, 30, 300, or 3,000 ppm (0, 0.75, 7.5, or 75 mg/kg/day, respectively) for 6-months. No treatment related effects were observed in survival, clinical signs or body weight parameters. Pronounced effects on hematologic parameters, were manifested as decreases in hematocrit and hemoglobin levels at 300 and 3,000 ppm.

In a 24-month feeding study in rats the NOAEL for the study was 30 ppm (1.5 mg/kg/day). The LOAEL was 300.0 ppm (15.0 mg/kg) based on decreased body weight.

In a 24-month mouse chronic feeding carcinogenicity study the NOAEL was 50 ppm (7.5 mg/kg/day). The LOAEL was 1,000.0 ppm (150.0 mg/kg) based upon decreased body weight. There was no evidence of carcinogenicity at 3,000.0 ppm (450.0 mg/kg).

In a 24-month rat chronic feeding carcinogenicity study the NOAEL was greater than 3,000.0 ppm (150.0 mg/kg), highest dose tested. There was no evidence of carcinogenicity at 3,000 ppm.

In a rat developmental toxicity study the maternal NOAEL was 100 mg/kg/day. The maternal LOAEL was 300.0 mg/kg based on decreased body weight gain and clinical observations. The developmental NOAEL was 300.0 ppm. The developmental LOAEL was 600.0 mg/kg based upon an increase of minor skeletal variations.

In a rabbit developmental toxicity study the maternal NOAEL was 10.0 mg/kg. The maternal LOAEL was 30.0 mg/kg based upon decreased body weight gain and food consumption. The developmental NOAEL/LOAEL was greater than or equal to 60.0 mg/kg.

In a multi-generation study in rats the systemic NOAEL was 30.0 ppm (1.5 mg/kg). The systemic LOAEL was 1,000.0 ppm (50.0 mg/kg) based upon decreased body weights associated with decreased food consumption. The developmental/offspring systemic NOAEL was 1,000.0 ppm. The developmental/offspring systemic LOAEL was 3,000.0 ppm (150.0 mg/kg) based upon decreased body weight at birth thru weaning. There were no effects on reproductive parameters at the highest dose tested (3,000 ppm).

Studies on gene mutation and other genotoxic effects showed no evidence of point mutation in an Ames test; no indication of mutagenic effects in a dominant lethal test; and no evidence of mutagenic effects in a nucleus anomaly test in Chinese hamsters.

In a dermal absorption study, rats received dermal application of $_{14}C$ cyromazine (75W, formulation) in an aqueous solution at 0.10, 1.0 or 10 mg/rat. Absorption was measured at 10 and 24 hours post treatment. Cyromazine was rapidly absorbed into the skin (no peak discernible) in an inverse dose-related manner. The absorption into the skin was followed by a slower release into the body. There was no evidence that the compound was sequestered in the skin permanently. The main route of excretion was via the urine. At 10 hours post treatment, the absorption was 7.57, 5.06 and 1.84% for the low, mid and high doses, respectively. At 24 hours post exposure, the absorption was 6.87, 2.78 and 2.63% for the low, mid and high doses, respectively. For the 24–hour animals with 48–hour depletion period, the absorption was 16.07, 12.45 and 9.10% for the low, mid and high doses, respectively.

B. Toxicological Endpoints

1. *Acute toxicity*. (1-day) There was no toxicological effects attributable to a single exposure (dose) observed in oral toxicity studies including the developmental toxicity studies in rats or rabbits. Therefore, a dose and an endpoint was not selected for this acute dietary risk assessment.

2. *Short- and intermediate-term toxicity*. The Agency selected short- and intermediate-term dermal and inhalation endpoints from the 6-month oral toxicity study in dogs, in which pronounced effects on hematological parameters were manifested as decreases in hematocrit and hemoglin levels at 7.5 (LOAEL) and 75 mg/kg/day. The hematological effects began during the first week of the study and continued throughout the study. The NOAEL is 0.75 mg/kg/day. A margin of exposure (MOE) of 100 or greater is adequate. For dermal inhalation exposure adsorption rates of 8% for dermal and 100% for inhalation are appropriate.

3. *Chronic toxicity*. The Agency selected a chronic RfD for cyromazine of 0.0075 mg/kg/day (NOAEL = 0.75 mg/kg/day; UF = 100). This RfD is based on a 6-month oral toxicity in dogs, in which pronounced effects on hematological parameters were manifested as decreases in hematocrit and hemoglobin levels at 7.5 (LOAEL) and 75 mg/kg/day.

4. *Carcinogenicity*. Cyromazine has been classified a Group E (evidence of non-carcinogenicity for humans) chemical by the Cancer Peer Review Committee.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.414) for the residues of cyromazine, in or on a variety of raw agricultural commodities at levels ranging from 1.0 ppm in tomatoes to 10 ppm in leafy vegetables and including poultry feed. In addition, EPA proposes to establish tolerances for mangoes at 0.3 ppm; onion, green at 2.0 ppm; onion, dry bulb at 0.1 ppm; potato at 0.8 ppm; cotton, undelinted seed at 0.1 ppm; corn, sweet, (kernels plus cob with husks removed) at 0.5 ppm; corn, sweet, forage at 0.5 ppm; corn, sweet, stover at 0.5 ppm; radish, root at 0.5 ppm; radish,

tops at 0.5 ppm; lima beans at 1.0 ppm; milk at 0.05 ppm and meat, fat and meat byproducts (of cattle, goat, hogs, horses and sheep) at 0.05 ppm. Risk assessments were conducted by EPA to assess dietary exposures from cyromazine as follows:

The Agency used Dietary Exposure Evaluation Model (DEEM™) software for conducting a Tier 3 chronic (non-cancer) dietary (food only) exposure analysis. The following assumptions were used in the assessment: (i) Percent crop-treated (PCT) estimates were utilized for cucurbit vegetables, leafy vegetables (except Brassica), onions, peppers and tomatoes; (ii) all other crops 100% crop-treated was assumed; (iii) anticipated residue estimates were used for milk, meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep; and (iv) all other commodities tolerance level residues were assumed. This assessment is considered to be somewhat refined. The chronic DEEM™ analysis indicates that the most highly exposed population subgroup is children (1 to 6 years old), which occupies 34% of the chronic RfD or chronic population adjusted dose (PAD)

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) states that the Agency may use data on the actual PCT for assessing chronic dietary risk only if the Agency can make the following findings: That the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; that the exposure estimate does not underestimate exposure for any significant subpopulation group; and if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency believes that the three conditions, discussed in section 408(b)(2)(F) in this unit concerning the Agency's responsibilities in assessing chronic dietary risk findings, have been met. With respect to PCT, estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of the crop treated, the Agency is reasonably certain that the percentage of the food treated is not likely to be underestimated. As to regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensure's that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which cyromazine may be applied in a particular area.

a. *Acute exposure and risk.* A food-use pesticide is presumed to pose an acute risk if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. There were no toxicological effects attributed to a single exposure (dose) observed in oral toxicity studies including the developmental toxicity studies in rats and rabbits. Therefore, the Agency concludes that there is a reasonable certainty of no harm from acute dietary exposure.

b. *Chronic exposure and risk.* The chronic and/or chronic PAD RfD used for the chronic dietary analysis is 0.0075 milligram/kilogram/body weight/day (mg/kg/bwt/day). The following assumptions were used in the dietary risk assessment: (i) PCT estimates were utilized for cucurbit vegetables, leafy vegetables (except Brassica), onions, peppers and tomatoes. All other crops 100% crop-treated was assumed; (ii) anticipated residue estimates were used for milk, meat, fat, and meat byproducts of cattle, goats, hogs, horses, and sheep; and (iii) all other commodities tolerance level residues were assumed. The proposed and established cyromazine tolerances result in an exposure estimate that is equivalent to the following percents of the RfD: U.S. population (17% of RfD), non-nursing infants, (1 year old) (13% of RfD), children (1–6 years old) (34%), and children (7–12 years old) 26%. EPA is generally concerned with chronic exposures that exceed 100% of the RfD or PAD.

This chronic analysis for cyromazine is an over-estimate of dietary exposure from food due to the use of tolerance level residues for some commodities and the assumption that 100% of the crop would be treated for some of the commodities in this dietary exposure analysis. Thus in making a safety determination for these tolerances, EPA is taking into account this conservative exposure assessment.

2. *From drinking water.* The Agency has calculated drinking water levels of comparison (DWLOCs) for chronic (non-cancer exposure) to cyromazine in surface and ground water.

i. *Acute exposure and risk.* Because no acute dietary endpoint was determined, EPA does not expect exposure to cyromazine through drinking water to pose an acute risk.

ii. *Chronic exposure and risk.* EPA has calculated DWLOCs for chronic (non-cancer) exposure to cyromazine in surface and ground water. A human health DWLOC is the concentration of a pesticide in drinking water which would result in an acceptable aggregate risk after having factored in all food exposures and other non-occupational exposures for which EPA has reliable data. The DWLOCs are 220, 190, 50, and 210 parts per billion (ppb) for the U.S. population, females 13+, children, and others respectively. To calculate the DWLOCs for chronic (non-cancer) exposure relative to a chronic toxicity endpoint, the chronic dietary food exposure from DEEM™ was subtracted from the RfD to obtain the acceptable chronic (non-cancer) exposure to cyromazine in drinking water. DWLOCs were then calculated using default body weights and drinking water consumption figures. Although cyromazine may be commercially applied to landscape ornamentals and around residences, EPA believes these uses will not result in any exposure through the oral route; therefore, aggregate exposure is limited only to food plus water.

Estimated maximum concentrations of cyromazine in surface and ground water are 28.9 and 1.6 ppb, respectively. The modeling conducted was based on the environmental profile and the maximum seasonal application rate proposed for cyromazine (6 applications at 0.125 lbs/A). The estimated average concentrations of cyromazine in surface and ground water are less than the Agency's levels of comparison for cyromazine in drinking water as a contribution to chronic aggregate exposure. Thus, the Agency concludes that there is reasonable certainity of no harm from chronic exposure from drinking water.

The Agency bases this determination on a comparison of estimated concentrations of cyromazine in surface waters and ground waters to back-calculated "levels of comparison" for cyromazine in drinking water. These levels of comparison in drinking water were determined after the Agency has considered all other non-occupational human exposures for which it has reliable data, including all current uses, and uses considered in this action. The estimates of cyromazine in surface and ground waters are derived from water quality models that use conservative assumptions (health-protective) regarding the pesticide transport from the point of application to surface and ground water. Because the Agency considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses (including crop or residential) are added in the future, the Agency will reassess the potential impacts of cyromazine on drinking water as a part of the aggregate risk assessment process.

3. *From non-dietary exposure.* Cyromazine is currently registered for commercial outdoor use on landscape ornamentals and commercial interiorscapes. There are no lawn or indoor residential uses. Although cyromazine could be commercially applied to ornamentals around residences based upon the large MOE's calculated for occupational use (i.e. > 1,900) and minimal contact anticipated with the active ingredient after application, significant residential exposure is not expected.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Cyromazine is a member of the triazine class of pesticides. Other members of this class include atrazine, simizine, cyanazine, prometin, propazine, metribuzin, prometryn, and ametryn.

EPA does not have, at this time, available data to determine whether cyromazine has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, cyromazine does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that cyromazine has a common mechanism of toxicity with other substances.

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* There were no toxicological effects attributable to a single exposure (dose) observed in oral toxicity studies including the developmental toxicity studies in rats or rabbits.

2. *Chronic risk (food + water).* Using the exposure assumptions described above, EPA has concluded that aggregate exposure to cyromazine from food will utilize 17% of the chronic RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is 34% for children (1–6 years old). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Based on the chronic dietary (food only) exposures and using default body weights and water consumption figures, chronic DWLOCs for drinking water were calculated. For chronic exposure, based on an adult body weight of 70 kg and 2L consumption of water per day, EPA's level of comparison from chronic dietary exposure in drinking water is 220 µg/L. For children (10 kg and consuming 1 liter water/day) the level of comparison for drinking water is 50 µg/L. The estimated chronic drinking water exposure for cyromazine is 28.9 µg/L. Thus the potential residues in drinking water are not greater the EPA's level of comparison. Therefore, the combined exposure of chronic dietary food and drinking water exposure to cyromazine would be no greater than 100% of the RfD for children or the general U.S. population. Due to the nature of the non- dietary use, EPA believes that the commercial use of cyromazine on landscape ornamentals will not result in any significant residential exposure. Therefore the chronic risk is the sum of food and water. The Agency concludes that there is reasonable certainty that no harm will result from aggregate exposure to cyromazine residues.

3. *Short- and intermediate-term risk.* These aggregate risk assessments take into account chronic dietary exposure from food and water (considered to be a background exposure level) plus (acute, intermediate, or chronic, as applicable) indoor and outdoor residential exposure. The Agency selected a dose and toxicological endpoint for assessments of short- and intermediate-term dermal and inhalation risk. However, since there are no significant residential uses for cyromazine (either established or pending) at this time, these risk assessments are not currently required.

4. *Aggregate cancer risk for U.S. population.* The Cancer Peer Review Committee determined that there is no evidence of carcinogenicity in studies in either the mouse or rat. Based upon this determination it can be concluded that cyromazine does not pose a cancer risk.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to cyromazine residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of cyromazine, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard MOE and uncertainty factor (usually 100 for combined interspecies and intraspecies variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or

children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In the rabbit developmental study, the maternal (systemic) NOAEL was 10 mg/kg/day, the highest dose tested. In the rat developmental study, the developmental NOAEL was identified at 300 mg/kg/day, while the maternal NOAEL was 100 mg/kg/day. Although there were developmental findings at 600 mg/kg/day in rat fetuses, these findings were not severe effects and only occurred in the presence of maternal toxicity.

iii. *Reproductive toxicity study.* In the multi-generation study in rats the systemic NOAEL was 30.0 ppm (1.5 mg/kg). The systemic LOAEL was 1,000.0 ppm (50.0 mg/kg) based upon decreased body weights associated with deceased food consumption. The developmental/offspring systemic NOAEL was 1,000.0 ppm. The developmental/offspring systemic LOAEL was 3,000.0 ppm (150.0 mg/kg) based upon decreased body weight at birth thru weaning. There were no effect on reproductive parameters at the highest dose tested (3,000 ppm).

iv. *Prenatal and postnatal sensitivity.* The results of the rat and rabbit developmental studies did not demonstrate any potential for additional prenatal sensitivity. In the rat reproduction study, the parental and reproductive/developmental NOAELs were established at 1.5 and 50 mg/kg/day respectively which suggests that there is no special postnatal sensitivity to cyromazine.

v. *Conclusion.* Based on the completeness and reliability of the toxicity data and the conservative exposure assessment, the Agency concludes that an additional safety factor of 10 is not necessary to be protective of infants and children.

2. *Acute risk.* There were no toxicological effects attributable to a single exposure (dose) observed in oral toxicity studies including the developmental toxicity studies in rats or rabbits.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to cyromazine from food will utilize a maximum 34% of the RfD for children 1–6 years old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. As noted above potential exposure from drinking water is at a level below EPA's level of comparisons. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to cyromazine residues.

4. *Short- and intermediate-term risk.* These aggregate risk assessments take into account chronic dietary exposure from food and water (considered to be a background exposure level) plus (acute, intermediate, or chronic, as applicable) indoor and outdoor residential exposure. The Agency selected a dose and toxicological endpoint for assessments of short- and intermediate-term dermal and inhalation risk. However, since there are no significant residential uses for cyromazine (either established or pending) at this time, these risk assessments are not currently required.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to cyromazine residues.

III. Other Considerations

A. Metabolism in Plants and Animals

EPA has reviewed the results of plant metabolism studies (celery, lettuce and tomato) and livestock metabolism studies (goat and hen). The metabolism of cyromazine in plants and animals is adequately understood for the purposes of these tolerances. The major residues in plants, milk, meat and meat byproducts (except liver and kidney) are cyromazine and melamine. The major residues in liver and kidney are cyromazine, melamine and 1-methylcyromazine. EPA concluded (see background) that the metabolite melamine was no longer a residue of concern and the metabolite 1-methhylcyromazine was only found in ruminants. Provided the dietary burden to animals remains low only the parent compound cyromazine needs to be included in the tolerance expression and used for dietary risk assessment.

B. Analytical Enforcement Methodology

Methods AG–408 and AG–417A are the tolerance enforcement methods as published in PAM, Vol II. These methods combined, and with minor modifications is Method AG–621. The residue data on the treated crops was analyzed by these methods. The limit of quantitation is 0.05 ppm for cyromazine and 0.05 ppm for melamine expressed as cyromazine equivalents. These extraction and cleanup procedures are similar to the Methods AG–408 and AG–417, but AG–621 uses a gas chromatography for analysis, while the other methods use high pressure liquid chromatography for determination of cyromazine and melamine levels in the crop matrix.

Methods AG–408 and AG–417 as listed in FDA's Pesticide Analytical Manual (PAM), Vol-II are adequate to enforce the proposed tolerance. AG–621 is acceptable to support the crop field trial residue data for cyromazine on RAC's.

The PAM II enforcement method for the determination of cyromazine residues limit of quantitation (LOQ) is 0.05 ppm in meat, fat, and meat byproducts.

C. Magnitude of Residues

Adequate residue data were provided to support permament tolerances of mangoes at 0.3 ppm; onion, green at 2.0 ppm; onion, dry blub at 0.1 ppm; potato at 0.8 ppm; corn, sweet (kernels plus cob with husks removed) at 0.5 ppm; corn, sweet, forage at 0.5 ppm; corn, sweet, stover at 0.5 ppm; radish, root at 0.5 ppm; radish, tops at 0.5 ppm; lima beans at 1.0 ppm; milk at 0.05 ppm; meat, fat and meat byproducts (of beef, goat, hogs, horses and sheep) at 0.05 ppm and in cotton, undelinted seed at 0.1 ppm. There were no data available for cotton gin products (commonly called cotton gin trash). The petitioner has committed to conduct the additional residue trials and obtain data for cotton gin byproducts. Although residue data for lima beans were conducted per the EPA guidance that was in effect at the time of the field trials, EPA now requires residue data for the succulent beans without the pods. EPA will issue a conditional registration for these uses while the petitioner generates the additional data.

Processing data provided for potatoes did not show any concentration of residues for potato chips above the tolerance level. For potato granules the concentration factor is below 1.5x value that is generally used for setting tolerances for processed commodities. Thus no tolerances are required for processed potato commodities.

The only significant animal feed items from either published or proposed tolerances are potato culls, processed potato waste and sweet corn forage and stover. Since none of these items are fed to poultry the established poultry tolerances are adequate.

A ruminant feeding study was submitted. Based upon the results of this study the data support permanent tolerances in milk at 0.05 ppm and meat, fat and meat byproducts (of cattle, goat, hogs, horses and sheep) at 0.05 ppm resulting from the feeding of animal commodities indicated above.

D. International Residue Limits

With deletion of the metabolite melamine there are no longer any compatibility problems between Codex limits, Mexican limits and proposed U.S. tolerances. There are currently no Codex, Canadian or Mexican limits for residues of cyromazine on potatoes and lima beans. There is a Codex limit of 0.01 ppm in milk which is less than the proposed tolerance of 0.05 ppm. Although residues in milk would most likely be below 0.05 ppm, this level is the limit of quatitation (LOQ) used for enforcement purposes for determination of cyromazine residues.

E. Rotational Crop Restrictions

Rotational crop tolerances are being requested for cotton, undelinated seed, sweet corn (kernels plus cob with husks removed), sweet corn forage and stover as well as radish, roots and tops (leaves). When these crops are planted as rotational crops, cyromazine is persistent in soils and residues can be present in crops that are rotated to treated crops. For those crops with no tolerances established, a 1 year plant back interval is specified on the label.

IV. Conclusion

Tolerances are being proposed for residues of cyromazine in mangos at 0.3 ppm; onion, green at 2.0 ppm; onion, dry bulb at 0.1 ppm; potato at 0.8 ppm; corn, sweet, (kernels plus cob with husks removed) at 0.5 ppm; corn, sweet, forage at 0.5 ppm; corn, sweet, stover at 0.5 ppm; radish, root at 0.5 ppm; radish, tops at 0.5 ppm; lima beans at 1.0 ppm; cotton, undelinted seed at 0.1 ppm; milk at 0.05 ppm; and meat, fat and meat byproducts (of cattle, goat, hogs, horses and sheep) at 0.05 ppm. Conditional Registration for use of cyromazine on succulent lima beans and cotton are being proposed to allow for development and review of additional residue field studies. The analysis for cyromazine using tolerance level residues shows that the proposed uses will not cause exposure to exceed levels at which EPA believes there is an appreciable risk. All population subgroups examined by EPA are exposed to cyromazine residues at levels below 100% of the RfD for chronic effects. Based on the information and data considered, EPA concludes that the proposed tolerances will be safe. Therefore, these tolerances are being proposed as set forth below.

V. Public Comment Procedures

EPA invites interested persons to submit written comments, information, or data in response to this proposed rule. After consideration of comments, EPA will issue a final rule. Such rule will be subject to objections. Failure to file an objection within the appointed period will constitute waiver of the right to raise in future proceedings issues resolved in the final.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300913] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of comments received electronically into printed, paper form as they are received and will place the paper copies in the official record. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

This action proposes to establish tolerance under FFDCA section 408(e). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). In addition this proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specficed by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 26, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180 [AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. Section 180.414, is revised to read as follows:

§ 180.414 Cyromazine; tolerances for residues.

(a) *General.* (1) Tolerances are established for residues of the insecticide cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6 triamine) in or on the following raw agricultural commodities:

Commodity	Parts per million
Cattle, fat	0.05
Cattle, meat	0.05
Cattle, meat byproduct	0.05
Cucurbit vegetables	1.0
Eggs	0.25

Commodity	Parts per million
Goats, fat	0.05
Goats, meat	0.05
Goats, meat byproduct	0.05
Hogs, fat	0.05
Hogs, meat	0.05
Hogs, meat byproduct	0.05
Horses, fat	0.05
Horses, meat	0.05
Horses, meat byproduct	0.05
Leafy vegetables (except Brassica)	7.0
Lima beans	1.0
Mango[1]	0.3
Milk	0.05
Mushrooms	1.0
Onion, dry bulb	2.0
Onion, green	0.1
Peppers	1.0
Potato	0.8
Poultry, fat (from chicken layer hens and chicken breeder hens only)	0.05
Poultry, meat byproduct (from chicken layer hens and chicken breeder hens only)	0.05
Poultry, meat (from chicken layer hens and chicken breeder hens only)	0.05
Sheep, fat	0.05
Sheep, meat	0.05
Sheep, meat byproduct	0.05
Tomato	0.5

1There are no U.S. registrations on mango as of (insert date of publication).

(2) The additive cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) may be safely used in accordance with the following prescribed conditions:

(i) It is used as a feed additive only in the feed for chicken layer hens and chicken breeder hens at the rate of not more than 0.01 pound of cyromazine per ton of poultry feed.

(ii) It is used for control of flies in manure of treated chicken layer hens and chicken breeder hens.

(iii) Feeding of cyromazine-treated feed must stop at least 3 days (72 hours) before slaughter. If the feed is formulated by any person other than the end user, the formulator must inform the end user, in writing, of the 3-day (72 hours) preslaughter interval.

(iv) To ensure safe use of the additive, the labeling of the pesticide formulation containing the feed additive shall conform to the labeling which is registered by the U.S. Environmental Protection Agency, and the additive shall be used in accordance with this registered labeling.

(v) Residues of cyromazine are not to exceed 5.0 parts per million (ppm) in poultry feed.

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for the combined residues of the insecticide cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) and its metabolite, melamine (1,3,5-triazine-2,4,6-triamine), in connection with use of the pestiicde under section 18 emergency exemption granted by EPA. The tolerances are specified in the following table. These tolerances expire and are revoked on the date specified in the table.

Commodity	Parts per million	Expiration/ revocation date
Turkey, fat	0.05	4/1/00
Turkey, meat	0.05	4/1/00
Turkey, meat byproduct	0.05	4/1/00

(c) *Tolerances with regional registrations.* As defined in 180.1(n), are established for the residues of cyromazine (*N*-cyclopropyl-1,3,5-triazine-2,4,6-triamine) in or on the following raw agricultural commodities:

Commodity	Parts per million
Cabbage, Chinese	3.0
Mustard, Chinese	3.0

(d) *Indirect or inadvertent residues.* Tolerances are established for the indirect or inadvertent residues of cyromazine (*N*-cyclopropyl- 1,3,5-triazine-2,4,6-triamine), in or on the raw agricultural commodities when present therein as a result of the application of cyromazine to growing crops listed in paragraphs (a)(1) of this section.

Commodity	Parts per million
Cotton, undelinted seed	0.1
Corn, sweet, (kernels plus cob with husks removed)	0.5
Corn, sweet, forage	0.5
Corn, sweet, stover	0.5
Radish, root	0.5
Radish, tops (leaves)	0.5

[FR Doc. 99–24047 Filed 9–14–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6437–8]

Tennessee: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to grant final authorization to the hazardous waste program revisions submitted by Tennessee. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the State's program revisions as an immediate final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. The Agency has explained the reasons for this authorization in the preamble to the immediate final rule. If EPA does not receive adverse written comments, the immediate final rule will become effective and the Agency will not take further action on this proposal. If EPA receives adverse written comments, EPA will withdraw the immediate final rule and it will not take effect. EPA will then address public comments in a later final rule based on this proposal. EPA may not provide further opportunity for comment. Any parties interested in commenting on this action must do so at this time.

DATES: Written comments must be received on or before October 15, 1999.

ADDRESSES: Mail written comments to Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104; (404) 562–8440. You can examine copies of the materials submitted by Tennessee during normal business hours at the following locations: EPA Region 4, Library, The Sam Nunn Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, Georgia 30303–3104, Phone number: (404) 562–8190; or Tennessee Department of Environment and Conservation, Division of Solid Waste Management, 5th Floor, L & C Tower, 401 Church Street, Nashville, Tennessee 37243–1535, Phone number: (615) 532–0850.

FOR FURTHER INFORMATION CONTACT: Narindar Kumar, Chief, RCRA Programs Branch, Waste Management Division, U.S. Environmental Protection Agency at the above address and phone number.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the **RULES AND REGULATIONS** section of this **Federal Register**.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 99–23913 Filed 9–14–99; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 301–11 and 301–74

[FTR Proposed Rule 3]

RIN 3090–AH02

Federal Travel Regulation; Conference Planning

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is proposing to amend the Federal Travel Regulation (FTR) governing conference planning. Because conferences have different requirements than routine temporary duty (TDY) travel, GSA is proposing to provide specific guidance to minimize overall Government expenses associated with conferences.

DATES: Comments must be received on or before November 15, 1999.

ADDRESSES: Written comments should be sent to: Ms. Sharon Kiser, Regulatory Secretariat (MVR), Office of Governmentwide Policy, General Services Administration, 1800 F Street, NW., Washington, DC 20405.

E-mail comments may be sent to *RIN.3090–AH02@gsa.gov*.

FOR FURTHER INFORMATION CONTACT: Jim Harte, Travel Team Leader, Travel Management Policy Division (MTT), telephone 202–501–0483.

SUPPLEMENTARY INFORMATION:

A. Background

Significant changes have been undertaken in the Federal travel management area over the past three years. One aspect particularly impacted has been the lodging portion of the per diem rate setting process. The process of establishing per diem rates has changed to reflect more accurately the marketplace for TDY travel. Taxes are treated separately from the room rate. More locations have market specific rates. GSA has taken a more customer responsive approach in formulating travel policies.

The per diem rate setting process involves determining the market room rate for transient travelers by surveying properties and averaging the reported rates. However, not all properties have adequate facilities and meeting rooms to host a conference. As a result, it is often difficult to find a conference facility that meets the lodging rate.

Lodging costs are only a part of total conference costs. Other costs include, but are not limited to, facility/meeting room accommodations, transportation, computer and telephone access fees, audio-visual and other equipment, light refreshments, printing, postage, and man-hours. Agencies need guidance as to how to handle conferences from both a per diem and an overall cost perspective to ensure the best value for the Government. This proposed rule focuses on the total costs involved in employee travel to conferences.

B. Executive Order 12866

GSA has determined that this proposed rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993.

C. Regulatory Flexibility Act

This proposed rule is not required to be published in the **Federal Register** for notice and comment; therefore, the Regulatory Flexibility Act does not apply.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed rule does not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 501 *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This proposed rule is also exempt from congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Parts 301–11 and 301–74

Government employees, Travel and transportation expenses.

For the reasons set forth in the preamble, it is proposed that 41 CFR parts 301–11 and 301–74 be amended as follows:

PART 301–11—PER DIEM EXPENSES

3. The authority citation for part 301–11 continues to read as follows:

Authority: 5 U.S.C. 5707.

4. Section 301–11.5 is revised to read as follows:

§ 301–11.5 How will my per diem expenses be reimbursed?

(a) Lodgings-plus per diem method;

(b) Reduced per diem method;

(c) Conference lodging allowance method (see § 301–74.23 of this chapter); or

(d) Actual expense method.

5. Part 301–74 is revised to read as follows:

PART 301–74—CONFERENCE PLANNING

Subpart A—Agency Responsibilities

Sec.

301–74.1 What policies must we follow in planning a conference?
301–74.2 What costs should be considered when planning a conference?
301–74.3 What must we do to determine which conference expenditures result in the greatest advantage to the Government?
301–74.4 What should cost comparisons include?
301–74.5 How should we select a location and a facility?
301–74.6 What can we do if we cannot find an appropriate conference facility at the chosen locality per diem rate?
301–74.7 What is the conference lodging allowance?
301–74.8 May we exceed 25 percent and still be covered by the conference lodging allowance?
301–74.9 May we provide light refreshments at an official conference?
301–74.10 May we use both the conference lodging allowance method and the actual expense method of reimbursement concurrently?
301–74.11 May we include conference administrative costs in an employee's per diem allowance payment for attendance at a conference?
301–74.12 Are there any special requirements for sponsoring or funding a conference at a hotel, motel or other place of public accommodation?
301–74.13 May we waive the requirement in § 301–74.12?
301–74.14 What must be included in any advertisement or application form relating to conference attendance?
301–74.15 What special rules apply when a conference is held in the District of Columbia?
301–74.16 What policies and procedures must we establish to govern the selection of conference attendees?
301–74.17 What records must we maintain to document the selection of a conference site?

Subpart B—Conference Attendees

301–74.21 What governs the selection of conference attendees?
301–74.22 What is the applicable M&IE rate when meals or light refreshments are furnished at nominal or no cost by the Government or are included in the registration fee?
301–74.23 When may a Federal traveler, attending a conference, be authorized the conference lodging allowance?
301–74.24 What if the cost of lodging at a conference facility exceeds the maximum prescribed lodging allowance under the per diem rate method?
301–74.25 Is the adjustment in § 301–74.24 an actual expense reimbursement?
301–74.26 When should actual expense reimbursement be authorized for conference attendees?

Authority: 5 U.S.C. 5707.

Note to Part 301–74: Use of pronouns "we", "you", and their variants throughout this part refers to the agency.

Subpart A—Agency Responsibilities

§ 301–74.1 What policies must we follow in planning a conference?

You must:

(a) Minimize conference administrative costs, conference attendees' travel costs, and conference attendees' time costs;

(b) Maximize the use of Government-owned or Government provided conference facilities as much as possible; and

(c) Identify opportunities to save costs in selecting a particular conference site (e.g., through the availability of lower rates during the off-season at a site with seasonal rates).

(d) Develop and establish internal policies to ensure these standards are met.

§ 301–74.2 What costs should be considered when planning a conference?

You should consider all direct and indirect conference costs paid by the Government, whether paid directly by agencies or reimbursed by agencies to travelers or others associated with the conference. Some examples of such costs are:

(a) Authorized travel and per diem expenses.

(b) Hire of rooms for official business.

(c) Audiovisual and other equipment usage.

(d) Computer and telephone access fees.

(e) Light refreshments.

(f) Printing.

(g) Registration fees.

(h) Ground transportation.

(i) Employees' time at the conference and on en route travel.

§ 301–74.3 What must we do to determine which conference expenditures result in the greatest advantage to the Government?

You must:

(a) Assure there is appropriate management oversight of the conference planning process.

(b) Always do cost comparisons of the size, scope, and location.

(c) Determine if a Government facility is available at a cheaper rate than a commercial facility.

(d) Consider alternatives to a conference, e.g. teleconferencing.

(e) Maintain written documentation of the alternatives considered and the selection rationale used.

§ 301–74.4 What should cost comparisons include?

Cost comparisons should include, but not be limited to, a determination of adequacy of lodging rooms at the established per diem rates, overall convenience, fees, availability of meeting space, equipment, and supplies, and commuting or travel distance of most attendees. (See Appendix E to Chapter 301, Guidance for Conference Planning.)

§ 301–74.5 How should we select a location and a facility?

Site selection is a final decision as to where to hold your conference. The term "site" refers to both the geographical location and the specific facility(ies) selected. In determining the best site in the interest of the Government, you should exercise strict fiscal responsibility to minimize costs. The actions in § 301–74.3 must be followed. Cost comparisons must cover factors such as those listed in § 301–74.4. As part of the cost comparison, initial selection of a location must be based upon the established per diem rate.

§ 301–74.6 What can we do if we cannot find an appropriate conference facility at the chosen locality per diem rate?

While it is always desirable to obtain lodging facilities at the chosen locality per diem rate, it may not always be possible. In negotiating rates with the properties in the chosen location, you may exceed the established lodging portion of the per diem rate by up to 25 percent, if necessary. This will provide flexibility in selecting an appropriate property at the most advantageous location. It will also permit attending agencies to reimburse their travelers' subsistence expense by using the conference lodging allowance (a variation of the per diem allowance (see § 301–74.7)) rather than the actual expense reimbursement method.

§ 301–74.7 What is the conference lodging allowance?

A pre-determined allowance of up to 25 percent of the applicable locality lodging per diem rate that is not considered to be an actual expense allowance.

§ 301–74.8 May we exceed 25 percent and still be covered by the conference lodging allowance?

No.

§ 301–74.9 May we provide light refreshments at an official conference?

Yes. Agencies sponsoring a conference may provide light refreshments to agency employees attending an official conference.

§ 301–74.10 May we use both the conference lodging allowance method and the actual expense method of reimbursement concurrently?

No. You must only use one of them at a time.

§ 301–74.11 May we include conference administrative costs in an employee's per diem allowance payment for attendance at a conference?

No. Per diem is intended only to reimburse the attendee's subsistence expenses. You must pay conference fees/registration separately, either directly or by reimbursing employees who pay such expenses and voucher for them.

§ 301–74.12 Are there any special requirements for sponsoring or funding a conference at a hotel, motel or other place of public accommodation?

Yes. When you sponsor or fund (see 15 U.S.C. 2225a), in whole or in part, a conference at a place of public accommodation (e.g. hotel, motel, bed and breakfast, etc.) in the United States, you must use a FEMA-approved accommodation, except as provided in § 301–74.13. This provision also applies to the government of the District of Columbia when it expends Federal funds for a conference and any non-Federal entity which uses Government funds to sponsor or fund a conference.

§ 301–74.13 May we waive the requirement in § 301–74.12?

Yes, if the head of your agency makes a written determination on an individual case basis that waiver of the requirement to use FEMA-approved accommodations is necessary in the public interest for a particular event. Your agency head may delegate this waiver authority to a senior agency official or employee who is given waiver authority with respect to all conferences sponsored or funded, in whole or in part, by your agency.

§ 301–74.14 What must be included in any advertisement or application form relating to conference attendance?

(a) Any advertisement or application for attendance at a conference described in § 301–74.12 must include:

(1) Notice of the prohibition against using a non-FEMA approved place of public accommodation for conferences; and

(2) Notice that the conference lodging allowance applies to Federal attendees, if applicable.

(b) In addition, any executive agency, as defined in 5 U.S.C. 105, shall notify all non-Federal entities to which it provides Federal funds of this prohibition.

§ 301–74.15 What special rules apply when a conference is held in the District of Columbia?

In addition to the general rules provided in this part, the following special rules apply:

(a) You may not directly procure lodging facilities in the District of Columbia without specific authorization and appropriation from Congress (see 40 U.S.C. 34); and

(b) Any short-term conference meeting space you obtain in the District of Columbia must be procured under 41 CFR 101–17.101–4.

Note to § 301–74.15(a): This provision does not prohibit payment of per diem to an employee authorized to obtain lodging in the District of Columbia while performing official business travel.

§ 301–74.16 What policies and procedures must we establish to govern the selection of conference attendees?

You must establish policies that reduce the overall cost of conference attendance. The policies and procedures must:

(a) Limit your agency's representation to the minimum number of attendees necessary to accomplish your agency's mission; and

(b) Provide for the consideration of travel expenses when selecting attendees.

§ 301–74.17 What records must we maintain to document the selection of a conference site?

For each conference you sponsor or fund, in whole or in part, you must maintain a record of the cost of each alternative conference site considered. You must consider at least three sites. You must make these records available for inspection by your Office of the Inspector General or other interested parties.

Subpart B—Conference Attendees

§ 301–74.21 What governs the selection of conference attendees?

To reduce the overall costs of a conference, you should limit your agency's representation to the minimum number of attendees necessary to accomplish your agency's mission.

§ 301–74.22 What is the applicable M&IE rate when meals or light refreshments are furnished at nominal or no cost by the Government or are included in the registration fee?

(a) If meals are furnished the appropriate deduction from the M&IE rate must be made (see § 301–11.18 of this chapter).

(b) If light refreshments are furnished they are a separate administrative expense. Consequently no deduction of the M&IE is allowance required.

§ 301–74.23 When may a Federal traveler, attending a conference, be authorized the conference lodging allowance?

When the traveler is:

(a) Notified by the conference sponsor that the conference lodging allowance is necessary; and/or

(b) Authorized or approved by the traveler's agency.

§ 301–74.24 What if the cost of lodging at a conference facility exceeds the maximum prescribed lodging allowance under the per diem method?

You may authorize reimbursement of up to a 25 percent increase (rounded to the next highest dollar) in the lodging portion of the applicable per diem allowance under the conference lodging allowance method. The M&IE portion of the per diem allowance is the same as under the lodging plus per diem method.

§ 301–74.25 Is the adjustment in § 301–74.24 an actual expense reimbursement?

No. The conference lodging allowance is a separate method of per diem reimbursement.

§ 301–74.26 When should actual expense reimbursement be authorized for conference attendees?

If the conference lodging allowance still is inadequate, you may authorize actual expense reimbursement under § 301–11.300 of this chapter in lieu of conference lodging allowance method.

6. Chapter 301 is amended by adding Appendix E to read as follows:

Appendix E to Chapter 301—Guidance for Conference Planning

Terms

Conference: A meeting, retreat, seminar, symposium or event that involves attendee travel. The term "conference" also applies to training activities that are considered to be conferences under 5 CFR 410.404.

Conference lodging allowance: The rate that is up to 25 percent above the established lodging per diem rate.

Milestone schedule: Deadlines, which need to be reached in a progressive and orderly manner.

Planner: The person designated to oversee the conference.

Planning committee: Operational group significantly contributing to a conference's overall success and able to fully reflect the needs of both the agency and the attendees.

Getting Started

Depending on the size, type, and intended effect of the conference, start planning a minimum of one year in advance. Designate a planner and a planning committee.

Planning Committee

Functions typically include, but are not limited to:

- Establishing a set of objectives.
- Developing a theme.
- Making recommendations for location, agenda, dates, and logistics, *e.g.*, schedule, exhibits, speaker.
- Making suggestions as to who should attend.
- Serving as communications link between planners and participants.
- Evaluation and follow-up.

Milestone Schedule

(a) Develop a milestone schedule, which is essential to conference planning, by working backward from the beginning date of the conference to include each major step. Examples include:

- Planning committee meetings.
- Preparation of mailing lists.
- Letters of invitation.
- Designation of speakers.
- Confirmation letters to speakers.
- Confirmation with site selection official.
- Preparation of agenda.
- Preparation of specification sheet.
- Location and date selection.
- Exhibits.
- Budget.
- Printing requirements.
- Signage.
- Conference information packages.
- Scheduling photographer (if planned).
- Use of agency seal and conference logo.
- Handicapped requirements.
- Planning of meals and refreshments, if appropriate.

(b) Establish completion dates for each major step.

(c) Update and revise the schedule as needed.

Specification Sheet

A detailed specification sheet is necessary to:

(a) Identify essential elements of a conference which typically include, but are not limited to:

- Sleeping rooms and on-site food services. It is generally best to estimate on the low side for the number of sleeping rooms and meals to be prepared. Facilities, unless there is only limited available space, are usually prepared to increase the number of

sleeping rooms and meals; however, they discourage—and in some cases penalize—you if the sleeping room and meal guarantees are not met.

- Meeting rooms.
- Exhibit facilities.
- Audio-visual equipment and support services.
- Miscellaneous support services.

(b) Determine costs:

- *Procurement.* Bring contracting officer into the process early. All agreements and decisions should be written and agreed to by the agency-contracting officer before being sent to the facility.
- *Government Per Diem Rates.* The government per diem rate applies to Federal attendees. Application of it to non-Federal attendees is at the discretion of the property and conference negotiator.
- *Registration fee.* Generally, the registration fee covers all direct expenditures of agency funds for planning and organization of a conference, *e.g.*, meeting room accommodations, meals, light refreshments (if appropriate), speaker fees, publications, and materials. Anything directly relating to the conference, except liquor, can be included in the fee. To estimate the registration fee, divide the proposed budget by the estimated number of attendees.

Budgeting

Decide how the conference expenses (other than sleeping room accommodations and individual meals) will be paid, *i.e.*, by the attendee from a training or registration fee, or directly by the agency.

Conference Site Selection

Minimize total costs, all factors considered.

Geographic Location

In determining where to locate the conference, consider:

- Targeted audience.
- Total costs, including per diem, transportation, and other.
- Accessibility by car or air.
- Whether recreational activities are necessary.
- The expense of desired facility (significant savings can be achieved in off-season periods).

Types of Facilities

- *Federal Government.* Use Government-owned or Government-provided conference facilities to the maximum extent possible.
- *Convention centers.* Excellent for very large meetings, trade shows and exhibits; usually located near a large number of hotels.
- *Conference centers.* Dedicated meeting facilities; good for smaller meetings when numerous breakout sessions are planned.
- *Colleges and universities.* Many have good meeting facilities and can offer sleeping accommodations when school is not in session.
- *Hotels.* Commercial facilities that may be used to meet all conference needs or just the room night needs.

Date Selection

For availability and economical reasons, the best months are April, May, September, October, and November. You should book the facility as early as possible to increase the chances of getting the date you want. However pay particular attention to commitments for September or October due to fiscal year budget considerations.

Considerations When Choosing a Site

(a) Is the facility:

- Cost effective, *e.g.*, are Government rates honored?
- Safe, *e.g.*, FEMA-approved?
- Is there on-site security personnel?
- Easily reached from an airport or by car?
- Clean?
- Well run, *e.g.*, does the staff seem to be competent and responsive?
- Laid out in a functional way?
- Large enough to supply the number of sleeping rooms required?
- Set up to provide necessary conference registration equipment?
- Handicapped accessible?

(b) Parking:

- Is it adequate?
- How close to the facility is it?
- Is it secure and safe?
- Is the cost separate?

(c) Sleeping rooms:

- Will the facility make the reservations, or are you responsible for making the reservations for participants?
- What are the facility's registration rules?
- What are departure rules?

(d) Functionality of meeting rooms:

- Is appropriate space available?
- What costs are involved?
- Is needed equipment available (i.e., for conference registration, faxes, phones, computers, copiers)? Do not rent equipment unless it is absolutely unrealistic to bring your own.
- Are rooms designated for agency use for the duration of the conference?
- Are there columns that can block views?
- Are ceilings high enough for audio-video equipment?
- Are rooms suitable for both classroom and/or theatre setups?
- Are there windows? Shades?
- Are there manually-controlled thermostats?
- Are rooms handicapped accessible?
- Where are electrical outlets?
- Can the rooms be darkened?
- Would it be more economical to bring audio-visual equipment?
- Does the facility want meeting schedules and room layouts in writing in advance of the conference?
- If necessary, can the rooms be entered the evening before for an early setup?
- Will the facility arrange for room setup if given a layout?
- What set-up costs are included?
- What are departure rules?

(e) Exhibits:

- If exhibits are planned, is suitable exhibit space available?
- Are easels available at no cost?
- What are the put-up and takedown times?
- What costs are involved?
- What about pre-delivery and after-conference arrangements?
- If exhibits are shipped, know where and to whom they are to be sent.
- If you are bringing large exhibits, determine location of loading dock, appropriate entrances and elevators.
- Are there additional handling fees?
- Check hotel policy on posting, size and appearance of signs.

Food and Drink

Meals

- You can not generally use appropriated funds to pay for meals for employees at their official duty stations.
- Employees on TDY travel may be served meals but cannot be reimbursed for those provided at government expense.
- You should clarify in advance the appropriate per diem reduction(s) of meal(s) allowance(s) for TDY travel.
- You may pay, or reimburse an employee for meals as necessary expenses incident to an authorized training program (under the Government Employees Training Act (GETA) at 5 U.S.C. § 4104(4)), if a determination has been made that essential training will be conducted during the meal.
- Work closely with the hotel to plan quality menus that fit within authorized per diem rates.
- Clarify and agree in advance to the number of meal guarantees.
- Ensure that gratuities and service charges are added to the cost of each meal, and determine the method of billing to be used (e.g., signed guarantee, collected meal tickets, or actual quantities consumed).
- Confirm menus.

Breaks and Refreshments

Breaks should last no longer than 30 minutes and take place between meeting sessions. The following should also be considered when planning for refreshments:

- Keep in mind that everyone does not drink coffee or tea.
- You should clarify and agree in advance that coffee and pastries, if appropriate, are purchased by the gallon and dozen.
- Try to avoid a per person charge.
- Negotiate the cost into the contract.
- Be conservative in your estimates. There are seldom 100 percent of the conference participants attending any one function.
- If coffee, soft drinks, and water are not included in the fee, are they available "at cost" to the attendee?

Account Reconciliation

It is important to request that the hotel bill be prepared in a logical and chronological sequence, and that backup data accompany the bill. Generally, the hotel will complete its accounting of the conference within two weeks of the conclusion.

Notification

Announcement and/or Invitations

Announcement of the planned conference should be made as early as possible, even one year in advance; invitation letters, 8 weeks in advance. They should include, but are not limited to:

- Point of contact name and telephone number.
- Registration form, card, or Internet address (include space for identifying handicapped requirements).
- Registration instructions.
- Registration deadline date.
- Detailed area map and driving instructions.
- Information on traffic patterns to avoid rush hour delays.
- Promotional brochures from the facility.
- Layout of facility including telephone numbers.
- Breakdown of costs showing any difference from travel versus training object classes, particularly meal costs, so that proper reimbursement can be made.
- Agenda with a list of speakers and topics.
- Activity schedule for spouses and guests (all charges or costs attributed to spouses or guests must be borne by the individual attendee (not reimbursable by the Government)).
- Provide a sample travel voucher.
- Notice that conference lodging allowance applies if applicable.

Confirmations

You should:

- Decide on the speaker(s) and the message you wish to be conveyed and obtain early commitment(s) in writing.
- Confirm conference dates/times/topics/arrival and departure times with speaker(s) and any other special guests at least 30 days in advance.
- Conduct a final planning committee meeting to confirm all plans.
- Confirm photographer's schedule.
- Confirm hotel plans at least one day in advance.

Facility Process

Check-In and -Out

Streamline the process:

- Will the facility need additional personnel?
- Is electronic one-stop processing available?
- Is luggage storage and shuttle service available?
- Arrange parking for any special guests.
- Provide signage.

Registration Process

Registration is generally the attendees' introduction to the conference. Give it special attention by:

- Using directional signs.
- Placing especially attractive or important exhibits nearby.
- Planning for late arrivals.
- Using state-of-the-art processing.
- Checking out the registration capabilities of using GSA's electronic SmartPay System.
- Providing for handicapped attendees.

Conference Information Package

Each registrant should be given a conference information package. Used regularly during the conference, the conference information package should be accurate, beneficial, and reflect detailed information on a daily/hourly basis. You should finalize the package and send it to the printer at least 4 weeks in advance of the starting date. The program will be widely used, so you may want to print twice as many copies of the program as you have expected attendees. The information package, for example, may contain:

- A list of everything in the package.
- A "welcome" letter.
- A schedule.
- Workshop agendas.
- Discussion of exhibits.
- Panelists' information.
- Photos and biographies of speakers/special guests.
- Facility layout and list of services available.
- Identify designated smoking areas.
- Special events.
- Message center information.
- Area map.
- Other pertinent material.

Note: Use of agency seal and conference logo may be considered for the conference package. However, the decision to use such items is strictly the judgement of agency officials.

Miscellaneous

Suggested Room Coordination

Plan ahead to setup:

- Staff room to handle core of activities;
- Meal functions;
- Exhibit rooms, and
- Meeting rooms—

Theatre or auditorium for lectures;
Facing speaker when note taking is important;
Square or U-shaped style for discussion/interaction; and
Banquet or roundtable for discussion.

Keeping in Touch

Plan for:

- A message center to be set up in a central location for special announcements and telephone messages.
- How to reach whomever at all times—use beepers and walkie-talkies.
- Clear identification of conference staff.
- Accommodation of physically impaired attendees with sign language or other special needs.

Mementos

Appropriations are not available to purchase memento items for distribution to conference attendees as a remembrance of an event. Two notable exceptions to the memento or gift prohibition are under training and awards. Work closely with appropriate agency officials to make final determinations.

Resources

The following resources may be of assistance in planning a conference:

- An agency contracting officer;
- Travel Management Centers;
- Interagency Travel Management Committee (a forum of agency travel policy managers);
- State chambers of Commerce or Visitors Bureaus;
- Local chapters of the Society of Government Meeting Professionals; and
- Private industry conference planners.

Conclusion

Process

- Questionnaires, which may provide invaluable feedback about the success of your conference.
- Training certificates.
- Thank you notes to participants, facility personnel, speakers, printers, photographers, and other special contributors.
- Summary to acknowledge the accomplishments, and to convey the information discussed to a wider audience, may be an excellent promotional tool.

Note to Appendix E: Use of pronouns "we", "you", and their variants throughout this appendix refers to the agency.

Dated: September 9, 1999.

Becky Rhodes,

Deputy Associate Administrator for Transportation and Personal Property.

[FR Doc. 99–23967 Filed 9–14–99; 8:45 am]

BILLING CODE 6820–34–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–277, RM–9666]

Digital Television Broadcast Service; Corpus Christi, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Channel 3 of Corpus Christi, Inc., licensee of station KIII, NTSC Channel 3, Corpus Christi, Texas, proposing the substitution of DTV Channel 8 for station KIII's assigned DTV Channel 47. DTV Channel 8 can be substituted and allotted to Corpus Christi, Texas, as proposed, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 27–39–30 N. and 97–36–04 W. However, since the community of Corpus Christi is located within 275 kilometers of the U.S.-Mexican border, concurrence by the Mexican government must be obtained for this allotment. As requested, we also propose to modify KIII's authorization to specify operation on the alternate DTV Channel 8 at Corpus Christi, Texas, with a power of 160 (kW) and a height above average terrain (HAAT) of 289 meters.

DATES: Comments must be filed on or before November 1, 1999, and reply comments on or before November 16, 1999.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC

20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert B. Jacobi, Esq., Cohn and Marks, 1920 N Street, NW, Suite 300, Washington DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–277, adopted September 3, 1999, and released September 8, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex* parte contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital Television Broadcasting.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 99–23685 Filed 9–14–99; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 64, No. 178

Wednesday, September 15, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Availability of the Final Report on the Joint Institute for Food Safety Research

AGENCY: Under Secretary for Research, Education, and Economics, USDA; Office of the Assistant Secretary for Planning and Evaluation, DHHS.

ACTION: Notice of Availability of Final Report on the Joint Institute for Food Safety Research.

SUMMARY: The United States Department of Agriculture and the Department of Health and Human Services announce the availability of the final report on the Joint Institute for Food Safety Research on the web address http://www.foodsafety.gov/dms/jifsrrp2.html.

SUPPLEMENTARY INFORMATION: On July 3, 1998, President Clinton directed the Department of Health and Human Services (DHHS) and the Department of Agriculture (USDA) to develop a plan to create a Joint Institute for Food Safety Research (the Institute or JIFSR). The Institute is to (1) coordinate planning and priority setting for food safety research among the two Departments, other government agencies, and the private sector and (2) foster effective translation of research results into practice along the farm-to-table continuum. The ultimate goal of the Institute is to coordinate food safety research such that the incidence of foodborne illness is reduced to the greatest extent feasible. These coordinated and expanded efforts will strive for more efficient delivery of the scientific information needed to develop effective food safety guidance, policies, and regulations in support of public health goals. DHHS and USDA will have joint leadership of the Institute and will use existing resources to support it. This acknowledgment of the critical need to coordinate and expand food safety research also emphasizes the companion needs to strengthen and expand public-private partnerships and to augment collaboration among state, local, and other Federal agencies, thereby providing effectively the scientific information required to help achieve public health goals. The full report as submitted to the President on July 2, 1999 is available at the Internet address http://www.foodsafety.gov/dms/jifsrrp2.html.

FOR FURTHER INFORMATION CONTACT: William C. Wagner, Interim Executive Director, (202) 401–4952, (202) 401–4888 (fax), email: wwagner@reeusda.gov.

Dated: September 3, 1999.

Eileen Kennedy

Deputy Under Secretary, Research, Education and Economics Department of Agriculture.

William Raub

Dated: September 3, 1999.

Deputy Assistant Secretary for Science Policy, Department of Health and Human Services.

[FR Doc. 99–24049 Filed 9–14–99; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed Interim Flat Fee Policy for Outstanding and Guiding Activities; Alaska National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice of availability; extension of public comment period.

SUMMARY: The Regional Forester, Alaska Region is seeking comments on a proposed interim flat fee policy for outfitting and guiding activities on National Forest System land in the Alaska Region. Developed in response to an order from the federal district court in Alaska arising from a lawsuit filed by the Tongass Conservancy, the proposed interim flat fee policy is designed to charge fees that are fair and equitable to the federal government and the Alaska outfitter and guide industry. A notice of availability was published in the **Federal Register** on July 21, 1999. Copies of the proposed interim flat fee schedule and policy were then sent with a request for comments to holders of National Forest outfitting and guiding permits in Alaska and other potentially interested parties. In addition, notice of and request to comment on the proposal was published in the local newspapers of record, and the policy and fee schedule is being posted on the World Wide Web. In response to requests from the outfitting and guiding industry and individual citizens we are extending the initial comment period ending September 7 an additional 25 days to October 1, 1999. The purpose of this notice is to advise people who may have an interest in this interim fee policy of the availability of the proposal and the extended opportunity to comment.

DATES: Comments must be received in writing by October 1, 1999.

ADDRESSES: For copies of the proposed interim flat fee policy, write to the Regional Forester, Attention: Public Services—Arn Albrecht, Alaska Region, P.O. Box 21628, Juneau, AK 99802–1628 or access the document online at http://www.fs.fed.us/r10/what's__hot/hot.htm. Send written comments to the post office listed under this heading or to webmaster/r10@fs.fed.us or by facsimile to (907) 586–7843. All comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. The public may inspect comments received on this proposed interim policy in the Office of the Public Services Staff, Room 501D, Federal Office Building, 709 West 9th Street, Juneau, AK 99801–1807 between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: The local Forest Service Ranger District, Supervisor's Office, or Arn Albrecht, (907) 586–7886, or Don Fisher, (970) 586–7861, in the Alaska Regional Office.

Dated: September 7, 1999.

Rick D. Cables,

Regional Forester.

[FR Doc. 99–24000 Filed 9–14–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC.

Docket Number: 99–020. Applicant: National Institutes of Health, National Institute on Deafness and Other Communication Disorders, 9000 Rockville Pike, Bethesda, MD 20892. *Instrument:* Electron Microscope, Model JEM–1010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument is intended to be used for ultrastructural analyses of animal tissues using electron microscopy preparative techniques such as fixation, embedding and ultrathin sectioning and immunogold and other immunocytochemical techniques to localize cellular components and antigens and computerized imaging quantitation. In addition, the instrument will be used for training postdoctoral fellows and to some extent pre-IRTAs and students. *Application accepted by Commissioner of Customs:* August 25, 1999.

Docket Number: 99–021. *Applicant:* University of Kentucky, 177 Anderson Hall, Lexington, KY 40506–0046. *Instrument:* Electron Microscope, Model JEM–2010F. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* The instrument is intended to be used in the study of the structure and chemistry of a wide variety of materials in the solid state (e.g., polymers, ceramics, metals, superconductors, carbon nanotubes) with emphasis on the structure of material defects. Experiments will include: (1) Quantification of interfacial segregation in oxide ceramics and correlation of segregation with interface crystallography, (2) high-resolution imaging of carbon nanotubes, and (3) phase identification of catalysts. In addition, the instrument will be used to train graduate students in the theory of electron microscopy in the courses MSE 858 Material Characterization Techniques and MSE 666 Diffraction Methods in Materials Science. *Application accepted by Commissioner of Customs:* August 25, 1999.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 99–24074 Filed 9–14–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Overseas Trade Missions

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to participate in the following overseas trade missions to be held between September 1999 and April 2000. For a more complete description of the trade mission, obtain a copy of the mission statement from the Project Officer indicated below. The recruitment and selection of private sector participants for these missions will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions announced by Secretary Daley on March 3, 1997.

Coal Trade Mission, Los Angeles Export Terminal, Los Angeles, CA, Comision Federal de Electricidad, Mexico City, Mexico, Petacalco Power Plant, Lazaro Cardenas, Mexico, September 28–October 2, 1999, Recruitment closes September 17, 1999, For further information contact: Helen Burroughs, U.S. Department of Commerce, Tel: 202–482–4931, Fax: 202–482–0170 or 202–482–5361.

Agricultural Trade Mission—PERU, November 29–December 3, 1999, Recruitment closes November 10, 1999, For further information contact: U.S. Department of Commerce, Eduardo Torres, Tel: 559–325–1619, Fax: 559–325–1647 or Dale Wright, Tel: 916–498–5155, Fax: 916–498–5923.

Pet Products Trade Mission, Mexico City and Guadalajara, Mexico, December 1–7, 1999, Recruitment closes November 15, 1999, For further information contact: Edward Kimmel, U.S. Department of Commerce, Tel: 202–482–3640, Fax: 202–482–3422.

Healthcare Technologies Matchmaker, Milan, Italy and Madrid, Spain, February 28–March 3, 2000, Recruitment closes January 7, 2000, For further information contact: Yvonne Jackson, U.S. Department of Commerce, Tel: 202–482–2675, Fax: 202–482–0178.

Medical and Dental Devices, Medical Device Components, and Laboratory Instruments, Trade Mission to China, March 19–28, 2000, Recruitment closes February 15, 2000, For further information contact: Lauren Saadat, U.S. Department of Commerce, Tel: 202–482–4431, Fax: 202–482–0975.

Used Equipment Trade Mission, Peru and Ecuador, April 10–15, 2000, Recruitment closes March 1, 2000, For further information John Bodson, U.S. Department Commerce, Tel: 202–482–0601, Fax: 202–482–0304. For further information contact: Reginald Beckham, U.S. Department of Commerce, Tel: 202–482–5478, Fax: 202–482–1999.

Dated: September 8, 1999.

Tom Nisbet,

Director, Promotion Planning and Support Division, Office of Export Promotion Coordination.

[FR Doc. 99–23979 Filed 9–14–99; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 970725180–9196–03]

RIN No. 0693–ZA16

Request for Comments on the Finalist (Round 2) Candidate Algorithms for the Advanced Encryption Standard (AES)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: A process to develop a Federal Information Processing Standard (FIPS) for an Advanced Encryption Standard (AES) specifying an Advanced Encryption Algorithm (AEA) has been initiated by the National Institute of Standards and Technology (NIST). In the Fall of 1998, NIST announced fifteen publicly submitted algorithms as candidates for the AES, and invites public review, comment, and analysis in order to narrow the field of candidates to (approximately) five or fewer finalists. During the Round 1 technical evaluation period, these fifteen candidates were subjected to extensive analysis and testing by the cryptographic community.

At the conclusion of Round 1, NIST took the following information into consideration: (1) The submitted (official) versions of the AES candidate algorithms, (2) Round 1 public comments, (3) papers and discussions at the Second AES Candidate Conference, (4) results of NIST efficiency and statistical analysis, and (5) other relevant data (e.g., presentations at the Sixth Fast Software Encryption Workshop, discussions on NIST's AES Electronic Discussion Forum, etc.). Using this information, NIST has selected the AES finalist candidate algorithms ("finalists"), which will be subjected to further analysis during Round 2 of the AES development effort. A list of the finalists, along with specifications and intellectual property information, is available at the AES home page, *http://www.nist.gov/aes.*

This notice announces the beginning of the Round 2 technical evaluation period for the AES finalists. Additionally, the notice solicits comments on the finalists from the general public, academic and research communities, manufacturers, voluntary standards organizations, and Federal, state, and local government organizations. NIST will use these comments to select one or more of the finalists for inclusion in a draft Federal Information Processing Standards Publication (FIPS PUB), on which public comments will be invited via a future **Federal Register** announcement.

NIST's goal is that the AES will specify one or more unclassified, publicly disclosed encryption algorithm(s) available royalty-free worldwide that is (are) capable of protecting sensitive government information well into the next century.

DATES: Public comments for Round 2 are due May 15, 2000. Paper proposals for the Third AES Candidate Conference (which are also considered as public comments) are due to NIST by January 15, 2000. The Third AES Candidate Conference (AES3) is scheduled for April 13–14, 2000.

ADDRESSES: Comments and paper proposals should be sent electronically to *AESround2@nist.gov.* Alternatively, they may be sent to: Information Technology Laboratory Attn: AES Finalist Comments (Bldg. 820, Room 423), National Institute of Standards and Technology, 100 Bureau Drive, STOP 8930, Gaithersburg, MD 20899–8930, U.S.A.

AES-related comments received in response to this notice will be made part of the public record. Papers proposed for presentation at AES3 will be posted on the AES home page *http://www.nist.gov/aes* prior to the beginning of AES3. All additional Round 2 comments will be made available at the AES home page shortly after the Round 2 comments period closes.

FOR FURTHER INFORMATION CONTACT: The AES home page *http://www.nist.gov/aes* has all current NIST information pertaining to the AES development effort. Recent results and ongoing discussions regarding the finalists and AES-related issues takes place at the AES Electronic Discussion Forum, *http://aes.nist.gov/aes/default.htm.* General questions may be directed to Edward Roback at (301) 975–3696, or *eroback@nist.gov.*

Technical questions may be made by contacting Jim Foti at (301) 975–5237, *jfoti@nist.gov,* or Elaine Barker at (301) 975–2911, *ebarker@nist.gov.*

Algorithm-specific questions should be directed to the algorithm's submitter. Contact information for the submitters is located on the AES home page.

SUPPLEMENTARY INFORMATION:

1. AES Finalist Candidate Algorithms

NIST has selected the AES finalists for Round 2. The list of finalists, along with their specifications and intellectual property statements, is available electronically at the AES home page. At that same location, NIST is also making available a document that presents the rationale for NIST's selection of the finalists.

The Round 1 candidate algorithms that were not selected for Round 2 are no longer part of the AES development effort, and, therefore, will not be selected for inclusion in the AES FIPS. Those algorithms (including the specifications and reference and optimized code) may or may not be in the public domain (this includes using the code for testing and research purposes), so algorithm implements, users, and others should be aware of the intellectual property status of each individual algorithm. When the algorithms were initially submitted before the start of Round 1, each submitter signed an intellectual property statement, part of which states that

> * * * If my algorithm * * * is not selected for inclusion in the FIPS (including those not selected for second round of public evaluation), I understand that all rights, including use rights of the reference and mathematically optimized implementations, revert back to the submitter (and other owner[s] as appropriate).

Please note that the selection of an algorithm as a finalist does *not* constitute endorsement by NIST of the algorithm or it security. Similarly, the non-selection of an algorithm is not necessarily to be taken as a statement about the algorithm's quality, security, efficiency, or other characteristics. Algorithms selected as finalists were determined to be more suitable for the proposed FIPS. For specific details on an algorithm and its particular security characteristics, one should consult the various Round 1 public comments that were submitted to NIST (available on the AES home page).

Although no formal process has been established to address minor modifications of the finalists that may become necessary, NIST reserves the right to work with the submitters of the finalists regarding any such modifications. NIST intends to do this in the most open and public manner possible. This is consistent with the made in the original call for candidate algorithms, to which all submitters agreed that

> * * * the U.S. Government may, during the course of the lifetime of the AES or during the FIPS public review process, modify the algorithm's specifications (e.g., to protect against a newly discovered vulnerability).

2. Availability of AES CD–3

All persons with AES CD–1 and CD–2 should be aware of potential intellectual property issues with implementing and using algorithms on those CDs, especially for those algorithms that were not selected for Round 2. Please see the note in Section 1, above.

In addition to making specifications available on the AES home page, during Round 2 NIST will make a CD–ROM available (to be designatede "AES CD–3") which contains the algorithm specifications, supporting documentation, and submitted code for the AES finalists. It is anticipated that this code will be different from the code provided before the start of Round 1 (e.g., updated to be more efficient, additional code for various platforms, etc.). The submitters of the AES finalists are being given one month from the start of Round 2 to provide NIST with any updated code.

AES CD–3 should be available approximately 2–3 months after the beginning of Round 2. When it is ready for distribution, NIST will re-activate the AES CD Request Form at *http://csrc.nist.gov/encryption/aes/round1/cdreq.htm.* To those people in the U.S. and Canada who received AES CD–2, *NIST will automatically send a copy of AES CD–3.* So, for those people, there will be no need to provide NIST with an additional CD–ROM request.

Since AES CD–3 will contain algorithm code, it will be subject to export control, and NIST will handle export requests approriately. For those people *outside* of the U.S. and Canada who received AES CD–2 (for whom an export license was granted), AES CD–3 will automatically be distributed *only after a new export license is granted and their copy of AES CD–2 is returned to NIST, as required by the conditions of the original export license.* Information on where to send AES CD–2 is posted on the AES CD Request Form mentioned above.

3. Comments Solicited on the AES Finalists

Written comments on the finalists are solicited by NIST in this Round 2 technical evaluation in order to help NIST select one or more algorithms for specification in a draft AES FIPS. To facilitate the review of the comments, NIST asks the submitters of comments to clearly indicate the algorithm(s) to which their comments apply. Also, as guidance to comment submitters, the original Evaluation Criteria published on September 12, 1997, are reproduced in Section 4 below.

NIST will accept both general comments and formal analyses/papers that will be considered for presentation at the Third AES Candidate Conference (see Section 5 below).

Since submitted comments will be made available to the public, the comments must not contain proprietary information.

Comments and analysis are sought on any aspect of the candidate algorithms, including—but not limited to—the following topics.

3.1 Cryptanalysis

Since *security* will be the most important characteristic of the selected algorithm(s), NIST strongly encourages and welcomes cryptanalysis of the finalists.

3.2 Intellectual Property of the AES Finalists

NIST seeks detailed comments regarding any intellectual property—particularly any patent not already identified by the finalists' submitters—that may be infringed by the practice of any of the finalists algorithms. This also includes comments from all parties—including submitters—regarding specific claims that the practice of a finalist algorithm infringes on their patent(s). Claims regarding infringement of copyrighted software are also particularly solicited. NIST views this input as a critical factor in the eventual widespread adoption and implementation of the algorithm(s) specified in the FIPS.

NIST reminds all interested parties that the adoption of AES is being conducted as an open standards-setting activity. Specifically, NIST has requested that all interested parties identify to NIST any patents or inventions that may be required for the use of AES. NIST hereby gives public notice that it may seek redress under the antitrust laws of the United States against any party in the future who might seek to exercise patent rights against any user of AES that have not been disclosed to NIST in response to this request for information.

3.3 Cross-Cutting Analyses of All of the AES Finalists

Public analysis comparing the entire field of finalists in a consistent manner for particular characteristics will be very useful. Examples of this type of analysis might include comparisons of the finalists regarding: (1) Performance on various smart cards, when the implementations are constructed to defend against timing and power analysis attacks, (2) performance and/or memory use measurements, when written in the same programming language, (3) relative performance on 64-bit processors, (4) performance of assembly language implementations on various platforms, and (5) performance of hardware implementations or simulations.

Additionally, surveys, analyses, and comments are invited regarding prospective future platforms and applications that will implement the AES FIPS algorithm(s).

During Round 2, NIST may take into consideration the issue of having "variable rounds" in the AES finalists. Therefore, NIST invites comments on how NIST should address the "variable rounds" issue during and after Round 2.

3.4 Overall Recommendations Regarding the Selection of the Algorithm(s) for the Proposed FIPS

When all factors are considered, which candidate algorithm(s) should be selected for inclusion in the FIPS? Also, conversely, NIST seeks the identification and justification of which algorithms should *not* be selected by NIST. Such comments (with supporting justifications) will be of great use to NIST and help assure timely progress of the AES selection process.

3.5 Related Recommendations Regarding Implementation of the AES FIPS

In addition to selecting the algorithm(s) to be included in the proposed FIPS, issues regarding the implementation requirements of the standard will also need to be addressed. Therefore, NIST is seeking comments (with rationale) on what requirements should be included in the FIPS. For example, if NIST selects multiple algorithms for inclusion in the proposed FIPS, should the standard require that products conforming to the FIPS implement (1) one algorithm, (2) two (or more) algorithms, (3) all algorithms, or (4) a varying number of algorithms, depending on the type of implementation (e.g., require all algorithms in software implementations, only one in hardware implementations, etc.)?

Also, upon final publication as a FIPS, NIST intends to provide validation testing for implementations of the AES algorithm(s), as it does with other FIPS-approved cryptographic algorithms. Comments pertaining to such validation testing are also welcome.

4. Evaluation Criteria

In the call for AES candidate algorithms (**Federal Register**, September 12, 1997, [Volume 62, Number 177], pages 48051–48058), NIST published evaluation criteria for use in reviewing candidate algorithms. For reference purposes, these criteria are reproduced below:

[Beginning of Excerpt]

Security (i.e., the effort required to cryptanalyze).

The security provided by an algorithm is the most important factor in the evaluation.

Algorithms will be judged on the following factors:

i. Actual security of the algorithm compared to other submitted algorithms (at the same key and block size).

ii. The extent to which the algorithm output is indistinguishable from a random permutation on the input block.

iii. Soundness of the mathematical basis for the algorithm's security.

iv. Other security factors rasied by the public during the evaluation process, including any attacks that demonstrate that the actual security of the algorithm is less than the strength claimed by the submitter.

Claimed attacks will be evaluated for practicality.

Cost

i. Licensing requirements: NIST intends that when the AES is issued, the algorithm(s) specified in the AES shall be available on a worldwide, non-exclusive, royalty-free basis.

ii. Computational efficiency: The evaluation of computational efficiency will be applicable to both hardware and software implementations. Round 1 analysis by NIST will focus primarily on software implementations and specifically on one key-block size combination (128–128); more attention will be paid to hardware implementations and other supported key-block size combinations (particularly those required in the "Minimum Acceptability Requirements" section) during Round 2 analysis.

Computational efficiency essentially refers to the speed of the algorithm. NIST's analysis of computational efficiency will be made using each submission's mathematically optimized implementations on the platform specified under "Round 1 Technical Evaluation" below. Public comments on each algorithm's efficiency (particularly for various platforms and applications) will also be taken into consideration by NIST.

iii. Memory requirements: The memory required to implement a candidate algorithm—for both hardware and software implementations of the algorithm—will also be considered during the evaluation process. Round 1 analysis by NIST will focus primarily on software implementations; more attention will be paid to hardware implementations during Round 2.

Memory requirements will include such factors as gate counts for hardware implementations, and code size and RAM requirements for software implementations.

Testing will be performed by NIST using the mathematically optimized implementations provided in the submission package. Memory requirement estimates (for different platforms and environments) that are included in the submission package will also be taken into consideration by NIST. Input from public evaluations of each algorithm's memory requirements (particularly for various platforms and applicants) will also be taken into consideration by NIST.

Algorithm and Implementation Characteristics

i. Flexibility: Candidate algorithms with greater flexibility will meet the needs of more users than less flexible ones, and, therefore, inter alia, are preferable. However, some extremes of functionality are of little practical application (e.g., extremely short key lengths)—for those cases, preference will not be given.

Some examples of "flexibility" may include (but are not limited to) the following:

a. The algorithm can accommodate additional key- and block-sizes (e.g., 64-bit block sizes, key sizes other than those specified in the Minimum Acceptability Requirements section, [e.g., keys between 128 and 256 that are multiples of 32 bits, etc.]).

b. The algorithm can be implemented securely and efficiently in a wide variety of platforms and applications (e.g., 8-bit processors, ATM networks, voice & satellite communications, HDTV, B-ISDN, etc.).

c. The algorithm can be implemented as a stream cipher, Message Authentication Code (MAC) generator, pseudo-random number generator, hashing algorithm, etc.

ii. Hardware and software suitability: A candidate algorithm shall not be restrictive in the sense that it can only be implemented in hardware. If one can also implement the algorithm efficiency in firmware, then this will be an advantage in the area of flexibility.

iii. Simplicity: A candidate algorithm shall be judged according to relative simplicity of design.

[End of excerpt]

5. Initial Planning for the Third AES Candidate Conference (AES3)

Near the end of Round 2, NIST will sponsor the Third AES Candidate Conference (AES3)—another open, public forum that will be used to discuss analyses of the AES finalists. Additionally, submitters of the AES finalists will be invited to attend and engage in discussions regarding comments on their algorithms.

AES3 will be held April 13–14, 2000, at the Hilton New York and Towers, in New York City. The AES home page contains registration and logistical information, in addition to information on other nearby hotels. As for AES2 (March 22–23, 1999), AES3 will be held during the same week and at the same location as the Fast Software Encryption (FSE) Workshop (a link to FSE information will be available on the AES home page).

Paper submissions for AES3 should be sent to *AESround2@nist.gov* as an official comment, with a note indicating that the paper is being submitted for AES3. The deadline for AES3 submissions is January 15, 2000. All papers must be submitted in one of the following formats: Adobe PDF, Postscript, Rich Text Format (RTF), or Microsoft Word97. (For Adobe PDF and Postscript submissions, please embed all necessary fonts within the document.) All papers received for AES3—regardless of their acceptance for presentation at AES3—will be made available on the AES home page prior to the conference.

Appreciation

NIST extends its appreciation to *all* AES candidate algorithm submitters—both those submitters whose algorithms did and did not quality for Round 2—and those people providing public comments during the AES development process.

Dated: September 9, 1999.

Karen Brown,

Deputy Director, NIST.

[FR Doc. 99–24014 Filed 9–14–99; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Marine Sanctuary Program

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: NOAA is withdrawing the Northwest Straits from consideration as an Active Candidate for designation as a National Marine Sanctuary. The Northwest Straits are located north of Puget Sound, and encompass marine waters surrounding the San Juan Islands, north to the Canadian border, U.S. waters west to the entrance of the Strait of Juan de Fuca, Haro and Rosario Straits and the lower portion of the Strait of Georgia. The Northwest Straits site was identified by NOAA for evaluation as a national marine sanctuary by being listed on the National Marine Sanctuary Program's Site Evaluation List (SEL) in 1983 (as "Washington State Nearshore"). Congress directed NOAA to prepare a designation prospectus on Northwest Straits in 1988 and the site became an Active Candidate. For reasons related to designation guidance contained in the 1996 reauthorization of the National Marine Sanctuary Act (NMSA), the findings of a Congressionally-convened Northwest Straits Citizens Advisory Commission, and limited agency resources, NOAA is discontinuing consideration of the site for possible designation as a national marine sanctuary.

FOR FURTHER INFORMATION CONTACT: Debra Malek, NOAA Marine Sanctuaries Division, 1305 East-West Highway, N/ORM2, Silver Spring, Maryland 20910 or at (301) 713–3141 Ext. 162.

SUPPLEMENTARY INFORMATION:

I. Background

The NMSA (16 U.S.C. 1431 *et seq.*) authorizes the Secretary of Commerce to designate discrete areas of the marine environment as national marine sanctuaries to fulfill the purposes and policies of the NMSA (set forth in section 301(b) (16 U.S.C. 1431(b)), and if: (1) the area proposed for designation is of special national significance due to its resource or human-use values; (2) existing state and federal authorities are inadequate or should be supplemented to ensure coordinated and comprehensive conversation and management of the area, including resource protection, scientific research, and public education; (3) designation of the area as a national marine sanctuary will facilitate the coordinated and comprehensive conservation and management of the area; and (4) the area is of a size and nature that will permit comprehensive and coordinated conservation and management (16

U.S.C. 1433(a)). The NMSA is administered by NOAA through the Office of Ocean and Coastal Resource Management of the National Ocean Service.

II. Administrative History

In January 1982, NOAA published a Program Development Plan (PDP) for the National Marine Sanctuary Program (NMSP), describing the Program's mission and goals, site identification and selection criteria, and the nomination and designation process. Based on the PDP and Program regulations, NOAA published a proposed SEL recommended to NOAA by regional resource evaluation teams. On August 4, 1983, NOAA published the final SEL (48 FR 35568). The SEL is described in the regulations for the National Marine Sanctuary Program at 15 CFR 922.10.

The Northwest Straits appeared on the SEL in 1983 as "Washington state Nearshore" (48 FR 35568). It was made an Active Candidate under the name of Northern Puget Sound by the 1988 reauthorization of the Marine Protection, Research, and Sanctuaries Act of 1972 (Pub. L. No. 100–627 section 205) (54 FR 41481). This notice expanded the study area beyond that initially recognized in the SEL. A Discussion Paper presenting the rationale for a federal Sanctuary entirely in state waters, a description of some of the threats to the marine resources, and suggestions for ways in which the Sanctuary could address those threats was drafted for public review in 1993. NOAA, in conjunction with the State Department of Ecology, held 24 focus group meetings throughout the study area in March 1995 to ensure accurate information was considered for developing a Draft Environmental Impact Statement/Management Plan (DEIS/MP). Three public focus group meetings were held in May 1995, followed by two workshops in summer 1995 dedicated to discussing issues of education and research within the proposed sanctuary.

Throughout Fiscal Year 1996, NOAA worked with the State Department of Ecology to synthesize information gathered during the 1995 meetings and workshops, in anticipation of releasing a DEIS/MP, which was not completed. The 1996 reauthorization of the NMSA and subsequent Congressional instructions gave NOAA specific guidance as to the designation process for the proposed Northwest Straits NMS. Section 10 of Public Law 104–283 provided that, "No designation of an area in the Northwest Straits in the State of Washington as a national marine sanctuary under the National Marine Sanctuaries Act shall take effect unless that designation is specifically authorized by a law enacted after the date of enactment of this Act." Accompanying statements by Senator Murray and Representative Metcalf resulted in the formation of an independent Citizen's Advisory Commission (CAC) comprised of 15 members representing local governments, tribes, users, ports, and environmentalists, and two facilitators. The statements instructed NOAA to act as "technical advisors" to the CAC and to include recommendations from the CAC in any decision document regarding the Northwest Straits.

The CAC initiated meetings in May 1997, and completed a final report in August 1998. In reaching a consensus on how best to address protection in the region, the CAC recommended the creation of a federally-funded regional, voluntary program for the seven counties adjacent to the waters of the Northwest Straits. The CAC did not recommend that a National Marine Sanctuary be established or considered further and explicitly proposed that no new regulatory authority be created or introduced.

III. Action

In consideration of the designation guidance in the 1996 NMSA reauthorization; the direction from Senator Murray and Representative Metcalf that NOAA consider recommendations put forward by local committees or commissions; the CAC's failure to recommend designation or further consideration of a national marine sanctuary for the Northwest Straits; the CAC's recommendation that no new regulatory authority be introduced for management and protection of the resources of the Northwest Straits at this time; and limited agency personnel and budgetary resources (which the NMSP has determined are necessary to devote to existing rather than new sites at this time), NOAA is withdrawing the site from Active Candidate status. Further consideration of the Northwest Straits for designation as a National Marine Sanctuary is discontinued.

NOAA will publish a final report of fundings and recommendations to provide a tool to assist ongoing or new efforts for marine resource protection in the Northwest Straits. The report and additional materials and information about the Northwest Straits will be maintained at the NOAA Seattle Regional Library located at 7600 Sand Point Way NE, Seattle, Washington. In addition, the Northwest Straits web site will include a downloadable version of the final report, and links to other relevant information. The web site address is http://www.nwsnms.noaa.gov/ and will be on-line in October 1999.

(Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program)

Dated: September 10, 1999.

Ted I. Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 99–24093 Filed 9–14–99; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Modernization Transition Committee

ACTION: Notice of public meeting.

TIME AND DATE: September 28–29, 1999, beginning at 8 a.m. each day.

PLACE: National Interagency Fire Center, 3833 S. Development Avenue, Boise, Idaho 83705–5354.

STATUS: The meeting will be open to the public. On September 28, the time between 9:45 a.m. and 10:15 a.m. will be set aside for public comments regarding the proposed certifications of the Los Angeles (aviation), Redding, and Riverside, California, offices; the time between 1:15 p.m. and 1:45 p.m. will be set aside for public comments regarding the proposed certifications of the Fort Smith, Arkansas, office; and the time between 3 p.m. and 3:30 p.m. will be set aside for public comments regarding the Evansville, Indiana, office. On September 29, the time between 10:30 a.m. and 11 a.m. will be set aside for public comments regarding the proposed certifications of the Huntsville, Alabama, office. Approximately 50 seats will be available to the public on a first-come first-served basis.

MATTERS TO BE CONSIDERED: On September 28, consultation on the proposed closure of the Olympia and Wenatchee, Washington, and Salem, Oregon, fire weather offices, the Los Angeles (aviation), Redding, and Riverside, California, weather offices, and the Fort Smith, Arkansas, weather office; and consultation on the Evansville Area Action Plan. On September 29, consultation on the proposed closure of the Huntsville, Alabama, office and review of the remaining National Weather Service (NWS) offices proposed for modernization.

FOR FURTHER INFORMATION CONTACT: Nicholas Scheller, NWS, Modernization Staff, 1325 East-West Highway, Silver Spring, Maryland 20910–3283. Telephone: 301–713–0454.

Dated: September 9, 1999.

John J. Kelly, Jr.,

Assistant Administrator for Weather Services.

[FR Doc. 99–24009 Filed 9–14–99; 8:45 am]

BILLING CODE 3510–KE–M

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Science and Technology Panel on Munitions will meet at Eglin AFB, Florida on November 15–19, 1999 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to review the quality of the Air Force Science and Technology Program.

The meeting will be closed to the public in accordance with Section 552b(c) of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Janet A. Long,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–23980 Filed 9–14–99; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 15, 1999.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: September 9, 1999.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: Reinstatement.

Title: Vocational Technical Education Annual Performance and Financial Reports.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs and LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 54. Burden Hours: 6,400.

Abstract: The information contained in the Annual Performance Reports for Vocational Technical Education is needed to monitor the performance of the activities and services funded under the Carl D. Perkins Vocational and Technical Education Act of 1998, Report to Congress on the Levels of Performance Achieved on the core indicators of performance, provide necessary outcome information to meet the Office of Vocational and Adult Education's (OVAE's) Government Performance and Results Act (GPRA) goals for Vocational Technical Education, and provide documentation for incentive awards under Title V of the Workforce Investment Act. The respondents include eligible agencies in 59 states and insular areas.

Written comments and requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *OCIO IMG Issues@ed.gov* or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Sheila Carey at 202–708–6287 or electronically at her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–23985 Filed 9–14–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before October 15, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its

statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: September 9, 1999.

William E. Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: New.

Title: Application for New Grants under the English Literacy and Civics Education Demonstration Grants Program.

Frequency: Annually.

Affected Public: Businesses or other for-profits; Not-for-profit institutions; State, local or Tribal Gov't, SEAs and LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 800. Burden Hours: 32,000.

Abstract: The application package includes the information needed to apply for grants under the English Literacy and Civics Education Demonstration Grants Program.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grants Information Collections (1890–0001). Therefore, this 30-day public comment notice will be the only public comment notice published for this information collection.

Written comments and requests for copies of the proposed information collection request should be addressed to Danny Werfel, Office of Management and Budget, New Executive Office Building, 725 17th Street, NW, Room 10235, Washington, DC 20503, or should be electronically mailed to the internet address *werfel d@al.eop.gov* or should be faxed to 202–708–9346.

For questions regarding burden and/or the collection activity requirements, contact Sheila Carey at 202–708–6287or electronically at her internet address Sheila__Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 99–23986 Filed 9–14–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Board of the Fund for the Improvement of Postsecondary Education, Department of Education

ACTION: Notice of meeting.

SUMMARY: This notice provides the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under section 10 (a)(2) of the Federal Advisory Committee Act.

DATE AND TIME: October 7, 1999 from 9 a.m. to 4 p.m.

ADDRESSES: Omni Shoreham Hotel, 2500 Calvert Street, N.W., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sandra Newkirk, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 3100, ROB #3, Washington, D.C. 20202–5175. Telephone: (202) 708–5750. Individuals who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday).

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education is established under Title VII, Part B, section 742 of the Higher Education Amendments of 1998 (20 U.S.C. 1138a). The National Board of the Fund is authorized to recommend to the Director of the Fund and the Assistant Secretary for Postsecondary Education priorities for funding and procedures for grant awards.

The meeting of the National Board is open to the public. The National Board will meet on Thursday, October 7, from 9 a.m. to 4 p.m. to provide an overview of the Fund's program status and special initiatives.

The meeting site is accessible to individuals with disabilities. An individual with a disability who will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device or materials in an alternate format) should notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although the Department will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

Records are kept of all Board proceedings, and are available for public inspection at the office of the Fund for the Improvement of Postsecondary Education, Room 3100, Regional Office Building #3, 7th & D Streets, S.W., Washington, D.C. 20202 from the hours of 8 a.m. to 4:30 p.m.

Dated: September 9, 1999.

Claudio Prieto,

Acting Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 99–24070 Filed 9–14–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Programmatic Environmental Impact Statement for Accomplishing Expanded Civilian Nuclear Energy Research and Development and Isotope Production Missions in the United States, Including the Role of the Fast Flux Test Facility (DOE/EIS–0310)

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent (NOI).

SUMMARY: DOE's civilian nuclear research and isotope production infrastructure has diminished significantly since the early 1990s. As a result, DOE is no longer able to accommodate new and expanding missions for nuclear research and development and isotope production. The Department does not have sufficient steady-state neutron resources to meet all of its projected irradiation needs for: (1) The production of isotopes for medical and industrial uses, (2) the production of plutonium-238 for use in advanced radioisotope power systems for future National Aeronautics and Space Administration (NASA) space missions, and 3) the Nation's nuclear research and development needs.

Therefore, pursuant to the National Environmental Policy Act (NEPA), the Secretary of Energy recently announced DOE's intent to prepare a programmatic environmental impact statement (PEIS) on accomplishing these new missions through the proposed enhancement of the existing infrastructure, including the possible role of the Fast Flux Test Facility (FFTF), located at DOE's Hanford Site near Richland, Washington.

This PEIS will analyze the potential environmental impacts of alternative ways to meet the projected irradiation needs for the next 35 years by enhancing the existing infrastructure as follows: (1) Resuming FFTF operation, (2) constructing and operating a research reactor at a generic DOE site, and (3) constructing and operating one or more neutron accelerators at a generic DOE site. In addition, the PEIS will analyze the potential environmental impacts of meeting the projected mission needs to the extent possible using existing reactor and neutron accelerator facilities.

The FFTF, DOE's largest operable reactor, is currently maintained in a standby mode with no fuel in the reactor vessel. The PEIS will include sufficient project-specific analyses of the FFTF to enable DOE to support a restart decision. In addition, since DOE may decide not to restart FFTF to meet the projected irradiation needs evaluated in this PEIS, the environmental impacts of deactivating the FFTF reactor will also be analyzed.

Consistent with the Council on Environmental Quality's NEPA regulations, a No Action alternative, i.e., maintaining the status quo, will be evaluated in this PEIS. Under No Action, DOE would continue to rely on the existing infrastructure for production of isotopes and nuclear research and development within the current operating envelope. No domestic capability to produce plutonium-238 for future space missions would be established.

DOE is now canceling the Plutonium-238 Production EIS, announced in the **Federal Register** on October 5, 1998 (63 FR 53398) and integrating the plutonium-238 production analyses into this PEIS. All oral and written comments received by DOE on the proposed scope of the Plutonium-238 Production EIS will be considered in preparing this PEIS.

DOE invites individuals, organizations, and agencies to submit oral and/or written comments regarding the scope of this PEIS, including the environmental issues and alternatives that the PEIS should analyze.

DATES: The public scoping period begins with the publication of this Notice in the **Federal Register** and will continue until October 31, 1999. Comments submitted by mail, facsimile (FAX), electronic mail (e-mail), or telephone will be considered in preparation of this PEIS. Comments received after this date will be considered to the extent practicable. DOE will conduct public scoping meetings to assist in defining the scope of this PEIS including the significant environmental issues to be addressed. DOE will hold scoping meetings in Seattle and Richland, Washington; Portland and Hood River, Oregon; Oak Ridge, Tennessee; Idaho Falls, Idaho; and in the Washington D.C. area. The dates, times, and locations of these meetings are as follows:

- Oak Ridge, Tennessee, October 13, 1999, registration at 6 p.m., presentation at 7 p.m., at the American Museum of Science & Energy, 300 South Tulane Avenue
- Idaho Falls, Idaho, October 15, 1999, registration beginning at 6 p.m., presentation at 7 p.m., at the Shilo Inn, 780 Lindsay Boulevard
- Seattle, Washington, October 18, 1999, registration beginning at 6 p.m., presentation at 7 p.m., at the Seattle Center, 305 Harrison Street
- Portland, Oregon, October 19, 1999, registration beginning at 6 p.m., presentation at 7 p.m., at the Marriott Hotel-Downtown Portland, 1401 SW Front Avenue
- Hood River, Oregon, October 20, 1999, registration beginning at 6 p.m., presentation at 7 p.m., at the Hood River Inn, 1108 E. Marina Way
- Richland, Washington, October 21, 1999, registration beginning at 6 p.m., presentation at 7 p.m., at the Best Western Tower Inn & Conference Center, 1515 George Washington Way
- Arlington, Virginia, October 26, 1999, registration beginning at 2 p.m., presentation at 2:30 p.m., at the Hyatt Regency Crystal City, 2799 Jefferson Davis Highway

ADDRESSES: Written comments on the scope of the PEIS, requests to speak at the public scoping meetings, requests for special arrangements to enable participation at the meetings (e.g., interpreter for the hearing-impaired), and questions concerning the project review, should be addressed to the DOE NEPA Document Manager: Ms. Colette E. Brown, Office of Nuclear Energy, Science and Technology (NE–50), U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874.

Electronic mail (e-mail): *Nuclear.Infrastructure-PEIS@hq.doe.gov;* toll-free facsimile (FAX): 1–877–562–4592; or leave a message, toll-free, at telephone number 1–877–562–4593.

FOR FURTHER INFORMATION CONTACT: To request information about this PEIS, or to be placed on the PEIS document distribution list, contact Colette E. Brown at the above mailing/e-mail addresses or toll-free telephone/FAX numbers. For general information on the DOE NEPA process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue S.W., Washington, DC 20585–0119.

Telephone: 202–586–4600 or leave a message at 1–800-472–2756.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Agency Action

DOE recognizes that increased nuclear research, technology development, and educational programs are essential to support national nuclear energy programs and international collaboration. DOE believes that the availability of nuclear research reactor and accelerator facilities is necessary to implement a successful nuclear energy program. Under the authority of the Atomic Energy Act of 1954, as amended, DOE is responsible for serving the national need for a reliable supply of isotope products and services for medicine, industry, research, and space exploration. An adequate nuclear research and isotope production facility infrastructure is needed to continue these national services into the future at projected increased demand levels.

DOE's nuclear technology infrastructure is dwindling while the demand for steady-state neutron sources continues to increase to explore the use of nuclear science for analyzing and testing materials, nuclear fuels, electronic circuits, and other components; creating isotopes required by medical clinicians, researchers, government, and industry for a wide range of applications; and to produce plutonium-238 required to power deep space probes. Current supplies of isotopes are limited and the demand is projected to increase dramatically, particularly as research points toward additional medical applications for many radioisotopes . Resuming operations at the FFTF, building a new research reactor, or building new accelerator facilities, in conjunction with the existing DOE neutron sources, would provide adequate neutron source capacity to serve the nation's foreseeable nuclear research and development and isotope production needs. Therefore, DOE is proceeding with a NEPA evaluation (i.e., a Programmatic Environmental Impact Statement, [PEIS]) of potential enhancement to the nation's nuclear research and technology infrastructure to assure that the United States can support future nuclear research and isotope production activities.

This PEIS will analyze the potential environmental impacts resulting from accomplishing these new nuclear research and development and isotope production missions with (1) The existing operational DOE infrastructure; (2) the existing operational DOE infrastructure supplemented by the operation of the FFTF; (3) the existing operational DOE infrastructure supplemented by the construction and operation of a research reactor and supporting facilities at a generic DOE site; and (4) the existing operational DOE infrastructure supplemented by the construction and operation of one or more neutron-producing accelerators and supporting facilities at a generic DOE site. Impacts from the No Action alternative, as discussed below, will also be analyzed.

Background

DOE's nuclear research and isotope production infrastructure has diminished significantly since the early 1990s. The Department does not have sufficient steady-state neutron sources to meet all of its projected irradiation needs for: (1) The production of isotopes for medical and industrial uses, (2) the production of plutonium-238 for use in advanced radioisotope power systems for future NASA space missions, and (3) the Nation's nuclear research and development needs. On August 18, , 1999, the Secretary of Energy announced DOE's intent to prepare a PEIS on accomplishing these new and expanded missions through the proposed enhancements of the existing infrastructure, including the possible role of the FFTF.

FFTF, the largest research reactor in the world, is a sodium-cooled research reactor located in the 400 Area of the Hanford Site, near the City of Richland, in southeastern Washington State. FFTF is currently defueled and usable fuel is stored on site in sodium fuel storage pools or in the secure vault at the Plutonium Finishing Plant at the Hanford Site. The reactor is in standby mode with the main cooling system operating at approximately 200°C (400°F), to keep the sodium coolant liquid and circulating. Essential systems, staffing, and support services are being maintained in a manner that will support either timely deactivation of the reactor or its restart. With minor modification, (*e.g.*, the installation of a system to insert and remove irradiation targets while at power), the FFTF is capable of accomplishing new and expanded mission requirements discussed above.

Alternatively, all or most of the new and expanded mission requirements can be achieved by the addition of a new research reactor or new neutron-producing accelerators to the existing infrastructure. The environmental impacts of the proposed new facilities (including support facilities) will be analyzed at a generic DOE site.

The Department does not have sufficient steady-state neutron generation capacity to meet all of the projected needs without impacting current missions at existing operating facilities. However, some of the mission objectives can be achieved with surplus capacity available at these existing operating facilities. The plutonium-238 mission objectives could be achieved at existing DOE research reactors or commercial light water reactor (CLWR) facilities. Surplus capacity exists at the Advanced Test Reactor (ATR) at the Idaho National Engineering and Environmental Laboratory and at the High Flux Isotope Reactor (HFIR) at the Oak Ridge National Laboratory. Implementation of plutonium-238 production at ATR and HFIR would consume nearly all of the available surplus capacity. Surplus capacity in these facilities and existing neutron-producing accelerators could be used to support medical and industrial isotope production and nuclear research and development missions to the extent possible without impacting existing missions. CLWRs cannot support most isotope production and research and development mission objectives without significantly impacting their primary mission, the production of electrical power. CLWRs were therefore dropped from further consideration for these missions.

This PEIS will analyze the environmental impacts of operating existing and new steady-state irradiation facilities, including both reactors and neutron accelerators, and existing and new support processing facilities to meet the mission objectives. In evaluating these alternatives the Department assumes:

(1) None of these proposed missions is defense-related; and

(2) The mission activities currently pursued at existing facilities (*i.e.*, isotope production, nuclear research, etc.) are not changed in any of the alternatives.

Following is a brief discussion of the proposed new and expanded mission areas:

(1) Medical and Industrial Isotope Production

Medical isotopes are produced in the United States by the Department of Energy in nuclear accelerators and reactors, and by extracting them from existing radioactive materials. These isotopes can be used for diagnosis or therapy. Diagnostic isotopes are used for imaging internal organs. Unlike conventional radiology, imaging with radioisotopes reveals organ function and structure, providing more accurate diagnostics data and early detection of abnormalities. In ongoing clinical testing, therapeutic isotopes have proven effective in the treatment of cancer and other illnesses by cell-directed localized radiation therapy (*i.e.*, deploying antibodies or carriers of radioisotopes to seek and destroy invasive cancer cells). This directed therapy can minimize adverse side effects (*e.g.*, healthy tissue damage, nausea, hair loss) making it an effective and attractive alternative to traditional chemotherapy or radiation treatments. An Expert Panel convened by the Department last year reviewed several industry projections relating to the future demand growth of medical isotopes. The Expert Panel believes that the growth rate of medical isotope usage could be significant over the next 20 years.

Industrial applications of radioisotopes fall into three broad categories, including nucleonic instrumentation, irradiation and radiation processing, and technologies that use radioactive tracers. Examples of nucleonic instrumentation include gauges for measuring physical parameters, such as: detection systems for pollutants, explosives, drugs, ores, petroleum, and natural gases; nondestructive testing by gamma radiography; and smoke detectors. Irradiation and radiation processing technologies include radiation sterilization of food and medical products, and the curing of plastics. Radioactive tracer applications include studies on chemical synthesis reactions; monitoring of mass transfer in industrial plants; analysis of transport and uptake of nutrients, fertilizers, herbicides, and waste materials in plants, soil, and groundwater; and laboratory-based studies on the properties of materials.

In supporting these mission activities, the Department does not expect to engage the commercial market itself. Rather, consistent with current isotope activities, the Department will work with the private sector to support private sector production and sale of isotopes. The Department prefers to provide irradiation services for the private sector using an appropriate fee structure and allow the private sector to take responsibility for producing and processing targets.

(2) Plutonium-238 Production

Under the Atomic Energy Act of 1954, as amended, DOE and its predecessor agencies have been developing radioisotope power systems and radioisotope heater units and supplying them to the National Aeronautics and Space Administration (NASA) for more than 30 years. The radioisotope used in these systems is plutonium-238. These systems have repeatedly demonstrated their value as enabling technologies in various NASA missions. DOE has projected that over the next 20 to 35 years, NASA will continue to conduct missions that require or would be enabled or enhanced by radioisotope power systems fueled with plutonium-238.

Under the National Space Policy issued by the Office of Science and Technology Policy in September 1996, and in accordance with its nuclear charter under the Atomic Energy Act, as amended, DOE has responsibility to assure that it maintains the capability to provide the nuclear infrastructure, including the plutonium-238, needed to support these missions. The Intersector Guidelines section of the National Space Policy state that "The Department of Energy will maintain the necessary capability to support space missions which may require the use of space nuclear power systems." DOE has estimated that up to 5 kilograms per year of plutonium-238 is required to support NASA requirements for future space missions.

Historically, the reactors and chemical processing facilities at DOE's Savannah River Site (SRS) were used to produce plutonium-238 by the irradiation of targets containing neptunium-237. The irradiated targets were moved from the reactor site to a chemical processing facility where the targets were processed and the plutonium-238 was recovered as an oxide powder. The remaining neptunium-237 was recovered for recycling into additional targets. The plutonium-238 oxide powder was then shipped to facilities for producing pellets that were in turn shipped to another DOE site to make the radioisotope power systems. As a result of the downsizing of the DOE nuclear weapons complex at the end of the Cold War, the reactors used to produce plutonium-238 at SRS were shut down. The radiochemical processing facilities at SRS are also planned to be shut down in the near future after existing supplies of radioactive materials no longer needed to support DOE's missions have been processed into a form suitable for long-term storage or disposal.

In 1992, DOE signed a contract to purchase plutonium-238 from Russia allowing the U.S. to purchase up to 40 kilograms of plutonium-238. Under this contract, DOE has purchased 9 kilograms of plutonium-238, and in 1997, extended the contract for another five years. This option, therefore, continues to be viable until at least 2002. However, the long-term viability of this option is unclear once the end of the current contract is reached. The political and economic climate in Russia creates uncertainties about the reliability of this source of plutonium-238 to satisfy future NASA space mission requirements. Moreover, limited information exists regarding the extent of the Russian supply, Russian plans on how they would satisfy future demand, and nuclear safety and nonproliferation implications of Russian production methods. Therefore, DOE proposes to reestablish a reliable domestic capability for producing and processing plutonium-238 to satisfy these foreseeable space mission requirements. Since the facilities previously used at SRS are no longer available for the production of plutonium-238, DOE needs to evaluate other existing DOE and commercial light water reactors and chemical processing facilities for target irradiation and separation of plutonium-238. The environmental impacts of purchasing plutonium-238 from Russia are evaluated and documented in the *Environmental Assessment of the Import of Russian Plutonium-238* (DOE/EA–0841, June 1993), prepared by DOE's Office of Nuclear Energy, Science and Technology.

On October 5, 1998, DOE published a Notice of Intent in the **Federal Register** (63 FR 53398) to prepare an EIS on the proposed production of plutonium-238 for use in advanced radioisotope power systems for future space missions. Since then, DOE has been preparing the draft EIS, giving consideration to the numerous comments submitted by the public during the scoping period last fall. During the public scoping of this EIS, DOE announced that FFTF would not be considered a reasonable alternative for that mission unless the facility was proposed to be restarted for other reasons. With the Secretary's recent announcement to prepare a PEIS which includes the possible restart of FFTF, the scope of the Plutonium-238 Production EIS has been consolidated into the scope of this PEIS. This PEIS will include the environmental impacts of re-establishing a domestic plutonium-238 production capability for future space missions. The Plutonium-238 Production EIS has been terminated as a separate NEPA review. However, all comments and input received from the public during the scoping period will be considered in the preparation of the draft PEIS to be prepared pursuant to this Notice.

(3) Support of Nuclear Research and Development

Materials Testing: Researchers from many different countries have used DOE's high flux research reactor facilities for nuclear materials testing and fuels research. These facilities, with the capability to maintain a high density of neutrons in a given test volume for materials testing, shorten the time needed for such testing, tailor the flux to simulate different reactors and reactor conditions, and instrument the core for close monitoring of tests. There is particular interest in materials testing related to commercial nuclear power plant license renewal, cooperative international fusion energy, space power technology, and transmutation of wastes as a means to destroy long-lived isotopes from commercial spent nuclear fuel. Activities considered within the scope of this PEIS will include those arising from international cooperation.

Nonproliferation Programs: Since October 1976, when President Gerald Ford issued a Nuclear Policy Statement prohibiting the export of reprocessing and other nuclear technologies that could contribute to proliferation of fissile materials, all U.S. Administrations have adopted policies aimed at minimizing the prospects that civilian plutonium separation would be adopted in other countries. At the same time, the U.S. has refrained from the commercial development of reprocessing and plutonium separation technologies. The U.S. policy is to advance global non-proliferation technology, while at the same time supporting the development of advanced, ultra-high burnup nuclear fuels. DOE's high flux research reactor facilities are ideally suited for the study, research, testing, development, and demonstration of technologies necessary to safely convert plutonium-based materials for disposition and use as proliferation-resistant fuels.

Alternatives To Be Evaluated

This PEIS will analyze the potential environmental impacts of using irradiation and processing facilities to meet projected irradiation service mission needs for 35 years, *i.e.*, (1) production of isotopes for medical and industrial uses, (2) production of up to five kilograms per year of plutonium-238 for use in advanced radioisotope

power systems for future NASA space missions, and (3) to support the Nation's nuclear research and development needs. This PEIS will not re-examine current missions conducted at existing, operating facilities, but rather assumes that these current activities will continue while new or expanded missions are pursued.

When applicable, the impacts of transporting radioactive feedstock material to the processing facility for storage, transporting radioactive material between the irradiation facility and the processing facility, and transporting the product to the user will be analyzed in this PEIS.

No Action

Under this alternative, DOE would maintain the *status quo*. The Department would not restart the FFTF and would maintain it in a standby mode. Production of isotopes for medical and industrial uses and existing irradiation services missions currently conducted at operating facilities would continue within the existing mission envelope. No domestic capability to produce plutonium-238 would be established. DOE would rely on its remaining inventory of plutonium-238 inventory to meet the power requirements of near-term space missions and would seek to negotiate for additional purchases from Russia to enable future space missions. The PEIS would evaluate two scenarios with respect to the neptunium-237 currently stored at the Savannah River Site: (a) The neptunium-237 aqueous nitrate solution stored at the Savannah River Site would be converted to a solid form suitable for disposal as evaluated in the *Final Environmental Impact Statement Interim Management of Nuclear Materials, Savannah River Site* (DOE/EIS–0220, October 1995); or (b) the neptunium-237, converted to an oxide form, would be transferred from the Savannah River Site to a new storage site to maintain a future option to produce plutonium-238. The three alternative facilities for the storage of the neptunium-237 are the Radiochemical Engineering Development Center in Oak Ridge, Tennessee; the Fluorinel Dissolution Process Facility near Idaho Falls, Idaho; and the Fuels and Materials Examination Facility in Hanford, Washington. The impacts of transporting neptunium-237 to the candidate storage facilities from the Savannah River Site will be evaluated.

Alternative 1—Restart FFTF

Under this alternative, the PEIS will analyze the potential environmental impacts of resuming operation of FFTF to accomplish the identified missions. The FFTF is designed to operate at a maximum power level of 400 megawatts, but can achieve all the projected new and expanded mission requirements anticipated under this PEIS while operating at the 100 megawatt power level. This PEIS will analyze the FFTF for operations at the 100 megawatt power level. The FFTF has an onsite supply of mixed oxide (MOX) fuel (*i.e.*, plutonium-uranium) to support approximately 6 years of operation at the 100 megawatt level. When the onsite fuel is depleted the FFTF may continue to use MOX fuel or switch to a reactor core of highly-enriched uranium (HEU) fuel. The Department believes that an additional 15-year supply of MOX fuel is available from Germany under very favorable terms (*i.e.*, no charge for the fuel). This PEIS will evaluate 35 years of FFTF operation for two reactor core configurations: (1) MOX core for approximately 21 years followed by 14 years of operation with a HEU core, and (2) MOX core for approximately 6 years followed by 29 years of operation with a HEU core. The impacts of spent fuel produced by FFTF operation and for transporting German fuel to FFTF will be evaluated in the PEIS. The PEIS will include sufficient project-specific analyses of the FFTF to enable DOE to support a restart decision.

This PEIS will also analyze the impacts of performing medical, industrial, and plutonium-238 isotope processing operations associated with the identified missions in hot cell facilities in the DOE complex. Processing operations include storage of target and process feedstock material, fabrication of targets for irradiation, processing irradiated targets to separate the product and recycling the unconverted feedstock material for the fabrication of new targets.

The processing operations portion of this alternative includes three options. Because space is not available in currently operating facilities on the Hanford site to support all of the processing requirements for the identified missions, new or off-site facilities will be needed to support activities conducted using the FFTF. The first option incorporates the use of a large existing and never used hot cell facility located near the FFTF to support all process facility operations for the identified missions. The second and third options incorporate the use of off site processing facilities to support the plutonium-238 production mission in conjunction with the use of existing operational processing facilities at the Hanford Site to support the FFTF in the remaining missions.

Option 1 will assess the impact of using the Fuels and Materials Examination Facility (FMEF) located near the FFTF in the 400 Area of the Hanford Site to support the FFTF missions.

Option 2 will assess the impact of using the Radiochemical Engineering Development Center (REDC) located in the Oak Ridge National Laboratory at Oak Ridge, Tennessee, in support of FFTF for the production of plutonium-238 and other existing facilities located in the 300 and 400 Areas of the Hanford Site to support the FFTF in the remaining mission areas (i.e., production of medical and industrial isotopes and nuclear research and development).

Option 3 will assess the impact of using the Fluorinel Dissolution Process Facility (FDPF) located in the Idaho National Engineering and Environmental Laboratory near Idaho Falls, Idaho, in support of FFTF for the production of plutonium-238 and other existing facilities located in the 300 Area and 400 Area of the Hanford Site to support the FFTF in the remaining mission areas (i.e., production of medical and industrial isotopes and nuclear research and development).

Alternative 2—Use Only Existing Operational Facilities to the Extent Possible

Under this alternative, the PEIS will analyze the potential environmental impacts of meeting the projected mission needs to the extent possible using only existing operational facilities (without FFTF). The Department's analyses indicate that the plutonium-238 production objectives can be met using existing facilities. However, should plutonium-238 production be conducted at existing facilities, significant new medical and industrial isotope production and nuclear research and development mission objectives cannot be achieved without impacting current missions at these facilities. This PEIS will analyze the impact of the continuing, existing isotope production and nuclear research and development missions at current levels as part of the No Action alternative. The cumulative impacts from operating the affected facilities for all missions will be addressed under this alternative. This PEIS will evaluate the potential impacts of nine options for plutonium-238 production, that is, the combinations of three reactor sites (for the irradiation of targets) with three different processing facilities (for the storage of neptunium-237, fabrication of neptunium-237 targets for irradiation, and the processing of irradiated targets to separate plutonium-238). The three reactor sites are the Advanced Test Reactor located at the Idaho National Engineering and Environmental Laboratory near Idaho Falls, Idaho; the High Flux Isotope Reactor located at the Oak Ridge National Laboratory, Oak Ridge, Tennessee; and a commercial light water reactor located at an undefined generic site. The three processing facilities, previously discussed under Alternative 1, are REDC, FDPF, and FMEF. The impacts of transporting neptunium-237 to the storage facility from the Savannah River Site (SRS); unirradiated and irradiated targets between the irradiation facilities and processing facilities; and plutonium-238 from the processing facilities to the Los Alamos National Laboratory in Los Alamos, New Mexico where it is processed for use in advanced radioisotope power systems, will be evaluated for each combination.

Alternative Sites for Plutonium-238 Production Target Irradiation

Advanced Test Reactor (ATR) at the Idaho National Engineering and Environmental Laboratory: Under this alternative, DOE would irradiate targets (fabricated from neptunium-237 currently stored at SRS) in the ATR to produce up to 5 kilograms per year of plutonium-238, the maximum annual production requirement for the plutonium-238 production mission under current planning. ATR is an operating test reactor with a primary programmatic mission to support the Naval Reactor Fuels Program. A prerequisite of applying this alternative is that no impacts to the primary mission of the reactor would be allowed. In addition, nuclear research and isotope production missions at the ATR would also continue within the facility's current mission envelope.

High Flux Isotope Reactor (HFIR) at the Oak Ridge National Laboratory: Under this alternative, DOE would irradiate neptunium-237 targets in HFIR to produce up to 2 kilograms per year of plutonium-238. HFIR is an operating research reactor with its main programmatic mission to support DOE's Office of Science. A prerequisite of applying this alternative is that no impacts to the primary mission of the reactor would occur. Nuclear research and isotope production missions at the HFIR would also continue within the facility's current mission envelope. The use of HFIR for production of small quantities of plutonium-238 is compatible with the primary neutron scattering and radioisotope production mission of that reactor. Production of plutonium-238 at a rate higher than two kilograms per year would disrupt experimental programs currently being conducted at HFIR. Use of HFIR for the plutonium-238 production would need to be supplemented by the ATR to meet the 5 kilograms per year production objective.

Commercial Light Water Reactor (CLWR) at a generic site location: Under this alternative, DOE would irradiate neptunium-237 targets in an existing CLWR to produce up to five kilograms per year of plutonium-238. A CLWR is an operating reactor with a primary mission to deliver electric power to the local power grid. A prerequisite of applying this alternative is that no impacts to the primary mission of the reactor would be allowed.

Under Alternative 2, the PEIS will also analyze the potential environmental impacts of meeting projected medical and industrial isotope production and nuclear research and development mission needs, to the extent possible (i.e., without impacting existing missions), using existing neutron spallation sources (i.e., neutron-producing accelerators), such as, for example, the Brookhaven LINAC Isotope Producer at Brookhaven National Laboratory in Upton, New York, or the Isotope Production Facility at Los Alamos National Laboratory in Los Alamos, New Mexico). The FFTF would be deactivated under Alternative 2.

Alternative 3—Construct New Accelerator(s)

Under this alternative, the PEIS will analyze the potential environmental impacts of constructing and operating one or more (if necessary, depending on power level requirements) new neutron-producing accelerators and new process facility at a generic DOE site for all identified missions. The role of the process facility is the same as in Alternative 1. Under Alternative 3, the FFTF would be deactivated.

Alternative 4—Construct New Research Reactor

Under this alternative, the PEIS will analyze the potential environmental impacts of constructing and operating a new research reactor and new process facility at a generic DOE site for all identified missions. The role of the process facility is the same as in Alternative 1. Under Alternative 4, the FFTF would be deactivated.

Environmental Impact Areas To Be Analyzed

The following areas have been tentatively identified for analysis in the PEIS. This list is neither intended to be all inclusive nor is it a predetermination of potential environmental impacts. The list is presented to facilitate comments on the scope of this PEIS. Additions to or deletions from this list may occur as a result of the public scoping process:

- Health and Safety: Potential public and occupational consequences from construction, routine operation, transportation, and credible accident scenarios;
- Waste Management/Pollution Prevention: Types of wastes expected to be generated, handled, and stored; pollution prevention opportunities and the potential consequences to public safety and the environment;
- Hazardous Materials: Handling, storage, and use; both present and future;
- Background Radiation: Cosmic, rock, soil, water, and air and the potential addition of radiation;
- Water Resources: Surface and groundwater hydrology, water use and quality, and the potential for degradation;
- Air Quality: Meteorological conditions, ambient background, sources, and potential for degradation;
- Earth Resources: Physiography, topography, geology, and soil characteristics;
- Land Use: Plans, policies, and controls;
- Noise: Ambient, sources, and sensitive receptors;
- Ecological Resources: Wetlands, aquatic, terrestrial, economically and recreationally important species, and threatened and endangered species;
- Socioeconomic: Demography, economic base, labor pool, housing, transportation, utilities, public services/facilities, education, recreation, and cultural resources;
- Natural Disasters: Floods, hurricanes, tornadoes, and seismic events;
- Cumulative Effects: Including impacts from past, present, and reasonably foreseeable actions at and in the vicinity of the sites;
- Unavoidable Adverse Impacts;
- Natural and Depletable Resources: Requirements and conservation potential; and
- Environmental Justice: Any potential disproportionately high and adverse impacts to minority and low income populations.

Pending Decisions

This PEIS is only one of many inputs required for a decision to be made relating to the infrastructure to support new nuclear research and development and isotope production missions. Other elements that will provide major inputs into the decision process include:

- DOE's Nuclear Science and Technology Long-Range Research and Development Plan;
- DOE's Nuclear Science and Technology Infrastructure Road Map;
- Nonproliferation Study, a review of potential impacts to the U.S. nonproliferation policy from the

alternatives under consideration in the PEIS;

• Cost Study, a review of costs for the alternatives under consideration in the PEIS; and

• Implementation schedule for the alternatives under consideration in the PEIS.

The primary decision is related to the ability of DOE to support the future missions evaluated in the PEIS. DOE will make a decision whether its infrastructure should be enhanced to support these missions.

• If the decision is for enhancement, then subsequent decisions will be made relating to Alternatives 1, 3, and 4.

► If Alternative 1 (FFTF Restart) is selected for implementation, subsequent decisions will be made relating to the support facilities. The FMEF could support FFTF for all of the missions or existing operational onsite facilities in combination with either the REDC in the Oak Ridge National Laboratory or the FDPF at the Idaho National Engineering and Environmental Laboratory could support FFTF for all the missions.

► If Alternative 3 (New Accelerator(s)) or Alternative 4 (New Research Reactor) is selected, subsequent NEPA review would be required for site selection, construction, and operation of the facility(ies).

• If the decision is not to enhance or expand the infrastructure, then subsequent decisions will be made relating to No Action or Alternative 2 (Use Only Existing Facilities).

► If No Action Scenario 1 is selected, a subsequent decision would be required to determine if Russian plutonium-238 should be purchased to support future NASA space missions.

► If No Action Scenario 2 is selected, a subsequent decision would be required to determine if Russian plutonium-238 should be purchased to support future NASA space missions. In addition, the site for the storage of the neptunium-237 would be selected.

► If Alternative 2 is selected, a series of decisions are required: (1) The selection of neutron accelerator sites to support, to the extent possible, the medical and industrial isotope production and research and development missions; (2) the selection of the reactor option to support the plutonium-238 mission; and (3) the selection of the processing facility site to support the plutonium-238 mission.

DOE, in its Record of Decision (ROD), may elect to implement a combination of the pathways and/or individual elements within the outlined pathways.

Scoping Meetings

The purpose of this Notice is to encourage public involvement in the PEIS process and to solicit public comments on the proposed scope and content of this PEIS. Through this notice, DOE formally invites Federal, state, tribal, and other government agencies, as well as the public to comment on the scope of this PEIS. DOE will hold scoping meetings in Seattle, Washington, Portland, Oregon, Hood River, Oregon, Richland, Washington, Oak Ridge, Tennessee, Idaho Falls, Idaho, and Washington DC. The dates, times, and locations of these meetings are identified under **DATES** above.

In order to facilitate an understanding of the program's objectives, DOE personnel will also be available at the scoping meetings to explain the program to the public and answer any questions. DOE will designate a facilitator for the scoping meetings. At the opening of each meeting, the facilitator will establish the order of speakers and will announce any additional procedures necessary for conducting the meetings. To ensure that all persons wishing to make a presentation are given the opportunity, each speaker may be limited to five minutes except for public officials and representatives of groups, who will each be allotted ten minutes. DOE encourages those providing oral comments to also submit them in writing. Comment cards will also be available for those who prefer to submit their comments in written form. Speakers may be asked clarifying questions, but the scoping meetings will not be conducted as evidentiary hearings.

Toll-free telephone and facsimile (FAX) numbers have been established to receive public comments. Interested parties may call 1–877–562–4593 and leave a detailed message with their comments or FAX their comments to 1–877–562–4592. Comments will also be accepted by electronic mail. Interested parties may e-mail their comments to: Nuclear.Infrastructure-PEIS@hq.doe.gov

DOE will make transcripts of the scoping meetings and project-related materials available for public review in the following reading rooms:

U.S. Department of Energy, Freedom of Information Public Reading Room, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585, Telephone: (202) 586–3142

Idaho National Engineering and Environmental Laboratory, DOE—Idaho Operations Office Public Reading Room, 1776 Science Center Drive, Idaho Falls, ID 83415, Telephone: (208) 526–1144

Portland State University, Branford Price Millar Library, Government Documents Section, 951 Southwest Hall, Portland, OR 97207, Telephone: (503) 725–3690

U.S. Department of Energy, Oak Ridge Operations Office, Oak Ridge Public Reading Room, 230 Warehouse Road, Building 1916–T–2, Suite 300, Oak Ridge, TN 37830, Telephone: (423) 241–4780

Richland Public Library, 955 Northgate Drive, Richland, WA 99352, Telephone: (509) 942–7457

U.S. Department of Energy, Richland Operations Office, DOE Public Reading Room, 2770 University Drive CIC, Room 101L, Richland, WA 99352, Telephone: (509) 372–7443

University of Washington, Suzzallo Library, Government Publications Room, Seattle, WA 98195, Telephone: (206) 543–1937

Gonzaga University, Foley Center Library, East 502 Boone, Spokane, WA 99258, Telephone: (509) 323–6532

NEPA Process

The Programmatic Environmental Impact Statement for Accomplishing Expanded Civilian Nuclear Energy Research and Development and Isotope Production Missions in the United States, Including the Role of the Fast Flux Test Facility will be prepared in accordance with the National Environmental Policy Act of 1969, the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and DOE's NEPA Regulations (10 CFR part 1021).

A 45-day comment period on the draft PEIS is planned, and public hearings to receive comments will be held approximately 3 to 4 weeks after distribution of the draft PEIS. The draft PEIS is expected to be issued during the Spring 2000. Availability of the draft PEIS, the dates of the public comment period, and information about the public hearings will be announced in the **Federal Register** and in the local news media when the draft PEIS is distributed.

The final PEIS, which will consider the public comments received on the draft PEIS, is expected to be published during the Fall 2000. No sooner than 30 days after the U.S. Environmental Protection Agency's notice of availability of the final PEIS is published in the **Federal Register**, DOE will issue its Record of Decision and publish it in the **Federal Register**.

Signed in Washington, D.C., this 10th day of September 1999.

David Michaels, PhD,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 99–24086 Filed 9–14–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[FE Docket Nos. 92–109–NG; 99–56–NG; 99–55–NG; 99–57–NG; 93–34–NG; 99–54–NG; 99–59–NG; 99–58–NG; 96–47–NG and 96–48–NG]

Kamine/Besicorp Beaver Falls L.P. et al.; Orders Granting, Amending and Vacating Authorizations to Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued Orders granting, amending and vacating natural gas import and export authorizations. These Orders are summarized in the attached appendix.

These Orders may be found on the FE web site at http://www.fe.doe.gov., or on the electronic bulletin board at (202) 586–7853.

They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on September 8, 1999.

Clifford P. Tomaszewski,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.

Appendix

ORDERS GRANTING, AMENDING AND VACATING IMPORT/EXPORT AUTHORIZATIONS

DOE/fe authority

Order No.	Date issued	Importer/exporter FE docket No.	Import volume	Export volume	Comments
746–A	8–11–99	Kamine/Besicorp Beaver Falls L.P. 92–109–NG.			Vacating long-term authority.
1504	8–13–99	Barrington Petroleum LTD. 99–56–NG	3.65 Bcf		Import from Canada over a two-year term beginning on September 1, 1999, and extending through August 31, 2001.
1505	8–16–99	Sunoma Energy Corp. 99–55–NG	3.65 Bcf		Import from Canada over a two-year term beginning on September 1, 1999, and extending through August 31, 2001.
1506	8–17–99	Conoco Inc. 99–57–NG	100 Bcf		Import and export from and to Canada and Mexico up to a combined total beginning on August 27, 1999, and extending through August 26, 2001.
795–A	8–19–99	TransCanada PipeLines Limited 93–34–NG			Amending long-term authorization to increase volumes from 1,405,000 Mcf per day to 1,717,000 Mcf per day for the remaining term through November 1, 2005.
1508	8–27–99	Reliant Energy Services, Inc. 99–54–NG	292 Bcf 292Bcf.	292 Bcf 292 Bcf.	Import and export from and to Canada, and import and export from and to Mexico, over a two-year term beginning on the date of first import or export.
1509	8–27–99	El Paso Energy Marketing Company 99–59–NG.	200 Bcf	Import from Mexico over a two-year term beginning on the date of first delivery after August 30, 1999..	
1510	8–27–99	El Paso Energy Marketing Company 99–58–NG.		200 Bcf 200 Bcf	Export to Canada and export to Mexico over a two-year term beginning on the date of first delivery after September 30, 1999.
1188–A	8–31–99	Cinergy Marketing & Trading, LLC (Formerly Producers Energy Marketing, LLC) 96–47–NG.			Name change.
1189–A	8–31–99	Cinergy Marketing & Trading, LLC (Formerly Producers Energy Marketing, LLC) 96–48–NG.			Name change.

[FR Doc. 99–24084 Filed 9–14–99; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Energy Information Administration, DOE.

ACTION: Agency information collection activities: proposed collection; comment request.

SUMMARY: The Energy Information Administration (EIA) is soliciting comments on the proposal to change the data collection frequency of the Form EIA–820, Biennial Refinery Report, from biennial to annual.

DATES: Written comments must be submitted by November 15, 1999. If you anticipate difficulty in submitting comments within that period, contact the person identified below as soon as possible.

ADDRESSES: Send comments to Stacey Ungerleider, Energy Information Administration, EI–42, Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Alternatively, Stacey Ungerleider may be reached by phone at (202) 586–5130, by e-mail stacey.ungerleider@eia.doe.gov, or by FAX (202) 586–5846.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Stacey Ungerleider at the address listed above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

The Federal Energy Administration Act of 1974 (Pub. L. 93–275, 15 U.S.C. 761 *et seq.*) and the Department of Energy Organization Act (Pub. L. 95–91, 42 U.S.C. 7101 *et seq.*) require the Energy Information Administration (EIA) to carry out a centralized, comprehensive, and unified energy information program. This program collects, evaluates, assembles, analyzes, and disseminates information on energy resource reserves, production, demand, technology, and related economic and statistical information. This information is used to assess the adequacy of energy resources to meet near and longer term domestic demands.

The EIA, as part of its effort to comply with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35), provides the general public and other Federal agencies with opportunities to comment on collections of energy information conducted by or in conjunction with the EIA. Any comments received help the EIA to prepare data requests that maximize the utility of the information collected, and to assess the impact of collection requirements on the public. Also, the EIA will later seek approval by the Office of Management and Budget (OMB) of the collections under section 3507(h) of the Paperwork Reduction Act of 1995.

The Form EIA–820 is used to collect data on the following items: Fuels consumed for all purposes at the refinery; refinery receipts of crude oil by method of transportation; current and projected capacities for refineries, specifically operable atmospheric crude oil distillation capacity, downstream charge capacity, and production capacity; and working and shell storage capacities.

Federal, State, and local governments as well as the private sector use these data to conduct research and to provide relevant and timely analysis on the refinery industry. Data from this survey is published by the Energy Information Administration in the Petroleum Supply Annual Volume I.

II. Current Actions

The Energy Information Administration is requesting a change in the frequency of collection for the Form EIA–820, Biennial Refinery Report. EIA proposes to use the Form EIA-820 to collect data on an annual basis in order to maintain a more accurate, up-to-date database for refinery capacity activity. Annual collection of this data will provide internal and external customers with the data to perform more extensive and accurate trend and feasibility costs analysis. Also, pending new environmental standards for motor gasoline and distillate fuel oil will impact the capability of U.S. refineries to produce new quality products in sufficient volumes to meet consumer demand. EIA's ability to assess this impact requires the most timely data available on refinery capacity. Data on a biennial basis is inadequate to meet this need.

III. Request for Comments

Prospective respondents and other interested persons are invited to comment on the actions discussed in item II. The following guidelines are provided to assist in the preparation of comments.

General Issues

A. Is the proposed collection of information necessary for the proper performance of the functions of the agency and does the information have practical utility? Practical utility is defined as the actual usefulness of information to or for an agency, taking into account its accuracy, adequacy, reliability, timeliness, and the agency's ability to process the information it collects.

B. What enhancements can be made to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can information be submitted by the due date?

C. Public reporting burden for this collection is estimated to average 2 hours per response. The estimated burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose and provide the information.

Please comment on (1) The accuracy of the agency's estimate and (2) how the agency could minimize the burden of collecting this information, including the use of information technology.

D. The agency estimates respondents will incur no additional costs for reporting other than the hours required to complete the collection. What is the estimated: (1) Total dollar amount annualized for capital and start-up costs; and (2) recurring annual costs of operation and maintenance, and purchase of services associated with this data collection?

E. Does any other Federal, State, or local agency collect similar information? If so, specify the agency, the data element(s), and the method(s) of collection.

As a Potential User

A. Is the information useful at the levels of detail indicated on the form?

B. For what purpose(s) would the information be used? Be specific.

C. Are there alternate sources for the information and are they useful? If so, what are their weaknesses and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form. They also will become a matter of public record.

Statutory Authority: Sec. 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35).

Issued in Washington, DC, September 9, 1999.

Jay H. Casselberry,

Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 99–24085 Filed 9–14–99; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP99–500–000, CP96–178–012 and CP96–809–010

Maritimes & Northeast Pipeline, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

September 9, 1999.

Take notice that on September 2, 1999, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) filed to place into effect FERC Gas Tariff, First Revised Volume No. 1 as listed in the form attached as Appendix B to its filing.

Maritime states that it proposes to place its complete FERC Gas Tariff, First Revised Volume No. 1 into effect on November 1, 1999, which is consistent with the in-service date specified in the certificate for the Maritimes Phase II facilities. The tariff will allow Maritimes to provide firm or interruptible services to those customers desiring such services at this time as contemplated by the Orders of the Federal Energy Regulatory Commission dated July 31, 1998, (84 FERC 61,130 (1998)), and April 14, 1999, (87 FERC 61,061 (1999)).

Maritimes states that with the introduction of Rate Schedule MNLFT, additional conforming tariff changes are required. Specifically, Maritimes proposes to clarify that the MNIT rate for service on the lateral facilities shall be the 100% load factor rate of the applicable rate for the applicable Incremental Lateral. Also, Maritimes proposes to clarify that service under a firm mainline rate schedule does not include service on incrementally priced lateral facilities.

Maritimes states that complete copies of this filing are being mailed to potential customers and interested state commissions. Maritimes states that due to the voluminous nature of Appendix B, copies of this filing with Appendix B deleted are being mailed to all other parties on the Commission's Official Service Lists in the above referenced dockets. Copies of Appendix B will be made available upon request.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 24, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–24026 Filed 9–14–99; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–613–000]

Natural Gas Pipeline Company of America and Transcontinental Gas Pipe Line Corporation; Notice of Application

September 9, 1999.

Take notice that on September 7, 1999, Natural Gas Pipeline Company of America (Natural), 747 East 22nd Street, Lombard, Illinois 60148, and Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed a joint application with the commission in Docket No. CP99–613–000 pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon four natural gas exchange services, all as more fully set forth in the application which is open to the public for inspection. This filing may be viewed on the web at http:www.ferc.fed.us./online/rims.htm (call 202–208–2222 for assistance).

Natural and Transco, jointly, propose to abandon three natural gas exchange service performed under (1) Natural's FERC Rate Schedule X–59 and Transco's FERC Rate Schedule X–87; (2) Natural's Rate Schedule X–117 and Transco's Rate Schedule X–230; and (3) Natural's Rate Schedule X–135 and Transco's Rate Schedule X–247. Natural also proposes to abandon its portion of a natural gas exchange service with Transco performed under Natural's Rate Schedule X–71. Transco has already abandoned in Docket No. CP98–236–000 its portion of the exchange service performed under Transco's Rate Schedule X–94. Natural and Transco state that they no longer require these four exchange services and that by letter agreements dated August 25, 1999, they have agreed to terminate the 1975, 1976, 1980, and 1981 agreements which resulted in the above Rate Schedules.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 30, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in the subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGS and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. if a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Natural and Transco to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–24020 Filed 9–14–99; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–502–000]

Nautilus Pipeline Co., L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

September 9, 1999.

Take notice that on September 3, 1999, Nautilus Pipeline Company, L.L.C. (Nautilus) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, tariff sheets listed in Appendix A to the filing, proposed to become effective October 3, 1999.

Nautilus states that the purpose of this filing is to request authority to create a new rate schedule for service on Nautilus' Plant Discharge Facility. Nautilus proposes this service as a Preferred Short-Haul (PSH) Transportation Service that will be subordinate to service provided by Nautilus under Rate Schedules FT–1, FT–2 and FT–3, but higher in priority than interruptible service provided under Rate Schedule IT–1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–24028 Filed 9–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–496–001]

Southern Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

September 9, 1999.

Take notice that on September 3, 1999, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 2A, the following revised tariff sheets to become effective October 1, 1999:

Twenty-first Revised Sheet No. 94

On August 31, 1999, Southern submitted for filing certain tariff sheets in the above-reverenced proceeding. Southern states that the tariff sheets revise rates for jurisdictional service in order to reflect current and projected costs and changes in demand on Southern's interstate natural gas pipeline system. It has come to Southern's attention that a tariff sheet was inadvertently omitted from the August 31 filing. Southern files herewith such tariff sheet and requests that the Commission grant waivers as necessary to place the tariff sheet in effect on October 1, 1999.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims./htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–24025 Filed 9–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–68–000]

Tennessee Gas Pipeline Company; Notice of Gas Transportation Agreement

September 9, 1999.

Take notice that on August 31, 1999, Tennessee Gas Pipeline Company (Tennessee) tendered for filing an amended version of their Gas Transportation Agreement between Tennessee and Pemex y Petroquimica Basica originally filed on August 11, 1999 in Docket No. GT99–64–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before September 16, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–24019 Filed 9–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–380–002]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

September 9, 1999.

Take notice that on September 3, 1999, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing in the referenced docket a revised tariff sheet to its FERC Gas Tariff, Third Revised Volume No. 1. The effective date for the tariff sheet is August 1, 1999.

Transco states that the Commission's July 26 order granted Transco an extension of time until June 1, 2000 to revise several specified GISB standards to Version 1.3 while Transco was developing its new computer system. On August 6, Transco filed to incorporate the Version 1.3 standards not covered by the extension of time. On August 20 the Commission issued an order approving Transco's August 6 compliance filing and directed Transco to incorporate standards 1.4.2, 1.4.5 and 2.4.5 as Version 1.3 which were omitted in the August 6 compliance filing.

Transco states that it is serving copies of the instant filing to its affected customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–24027 Filed 9–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL99–90–000]

City of Wichita, Kansas v. Western Resources, Inc.; Notice of Filing

September 9, 1999.

Take notice that on September 7, 1999, the City of Wichita, Kansas (Wichita) tendered for filing a "Complaint And Request For Enforcement Of Contract Terms And Cost Equalization" against Western Resources, Inc. (Western Resources). Wichita's Complaint alleges that Western Resources has priced certain affiliate power sales in a manner that is unjust, unreasonable, and unduly discriminated, and therefore unlawful under the Federal Power Act. Wichita seeks cost equalization within the Western Resources system as a remedy.

Copies of the Complaint were served, simultaneous with filing with the Commission, on Western Resources and on the Kansas Corporation Commission.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before September 27, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202)–208–2222) for assistance. Answers to the complaint shall also be due on or before September 27, 1999.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–24022 Filed 9–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulation Commission

[Docket No. RP99–501–000]

Transcontinental Gas Pipe Line Corporation; Notice for Limited Waiver of Tariff Provision

September 9, 1999.

Take notice that on September 2, 1999, Transcontinental Gas Pipe Line Corporation (Transco), filed a Request for Limited Waiver of Tariff, Orders and Regulations in Docket No. RP99–501–000.

Transco states that it is seeking a limited waiver of the Commission's regulations and orders, as well as a limited waiver of certain provisions of Transco's FERC Gas Tariff related to Transco's nomination, scheduling and capacity release requirements, all to the extent necessary to assist in the orderly provision of transportation services on Transco's system for the first week of the Year 2000, and all as more fully described therein.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed on or before September 16, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–24024 Filed 9–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–4315–000, et al.]

The Montana Power Company, et al.; Electric Rate and Corporate Regulation Filings

September 9, 1999.

Take notice that the following filings have been made with the Commission:

1. The Montana Power Company

[Docket No. ER99–4315–000]

Take notice that on August 31, 1999, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 an unexecuted Network Integration Transmission Service Agreement and Network Operating Agreement with Louisiana-Pacific Corporation under Montana's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Louisiana-Pacific Corporation.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. The Connecticut Light and Power Company, Northeast Utilities Service Company, NRG Energy, Inc., Montville Power LLC, Middletown Power LLC, Devon Power LLC, Norwalk Power LLC and Connecticut Jet Power LLC

[Docket Nos. EC99–111–000 and ER99–4353–000]

Take notice that on September 1, 1999, The Connecticut Light and Power Company (CL&P), Northeast Utilities Service Company, NRG Energy, Inc.

Montville Power LLC, Middletown Power LLC, Devon Power LLC, Norwalk Power LLC and Connecticut Jet Power LLC (collectively, Applicants) tendered for filing an application under section 203 of the Federal Power Act for approval of the transfer of certain jurisdictional facilities associated with the sale of certain CL&P generating facilities. The Applicants also tendered for filing under section 205 of the Federal Power Act an interconnection agreement, a related Tariff No. 9 service agreement and a wholesale sales contract with respect to sales from certain generating units being sold by CL&P.

The Applicants state that copies of this filing have been sent to the Connecticut Department of Public Utility Control, the Massachusetts Department of Telecommunications and Energy and the New Hampshire Public Utilities Commission.

Comment date: October 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Western Resources, Inc.

[Docket No. ER99–4316–000]

Take notice that on August 31, 1999, Western Resources, Inc. (Western Resources), tendered for filing an agreement between Western Resources and Public Service Electric & Gas. Western Resources states that the purpose of the agreement is to permit the customer to take service under Western Resources' market-based power sales tariff on file with the commission.

This agreement is proposed to become effective August 27, 1999.

Copies of the filing were served upon Public Service Electric & Gas and the Kansas Corporation Commission.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Allegheny Energy Supply Company, West Penn Power Company, and AYP Energy, Inc.

[Docket No. EC99–112–000]

Take notice that on September 2, 1999, Allegheny Energy Supply Company (AE Supply), West Penn Power Company (West Penn) and AYP Energy, Inc. (AYP) filed a Joint Application Under Section 203 Of The Federal Power Act For The Disposition Of Jurisdictional Facilities. The Applicants request Commission approval of the transfer to, and acquisition by, AE Supply of the following: (1) The portions of the step-up transformers associated with West Penn's shares of the generating facilities identified on Schedule 1 of the Application, (2) the portion of the step-up transformer associated with AYP's 50 percent share of Fort Martin Unit 1, (3) West Penn's interests in two power supply agreements, (4) West Penn's share of the securities of Allegheny Generating Company, and (5) West Penn's pollution control notes listed on Schedule 2 of the Application which are associated with West Penn's transferred generating facilities.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: October 4, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Maine Yankee Atomic Power Company

[Docket No. EC99–113–000]

Take notice that on September 3, 1999, Maine Yankee Atomic Power Company filed an application requesting authorization to dispose of certain jurisdictional facilities pursuant to section 203 of the Federal Power Act. The application involves the proposed sale of two 600 MVA main generator step-up transformers.

Comment date: September 23, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. PSEG Tongzhou Cogen Power Ltd.

[Docket No. EG99–222–000]

Take notice that on September 3, 1999, PSEG Tongzhou Cogen Power Ltd. (PSEG Tongzhou) with its principal office at Clarendon House, Church Street, Hamilton HMCX, Bermuda filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

PSEG Tongzhou is a company organized under the laws of Bermuda. PSEG Tongzhou will be engaged, directly or indirectly through an affiliate as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, exclusively in owning, or both owning and operating a coal-fired, co-generation, electric generating facility consisting of three pulverized 75 ton coal-fired boilers and two 15 megawatts steam turbine generators and incidental facilities located within the Tongzhou Development Zone, outside Tongzhou City, Jiangsu Province, PRC; selling electric energy at wholesale and engaging in project development activities with respect thereto.

Comment date: September 30, 1999, in accordance with Standard Paragraph E at the end of this notice. The commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. PSEG Zuojiang Hydropower Ltd.

[Docket No. EG99–223–000]

Take notice that on September 3, 1999, PSEG Zuojiang Hydropower Ltd. (PSEG Zuojiang) with its principal office at 608 St. James Court, St. Denis Street, Port Louis, Mauritius filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

PSEG Zuojiang is a company organized under the laws of Mauritius. PSEG Zuojiang will be engaged, directly or indirectly through an affiliate as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, exclusively in owning, or both owning and operating a hydropower electric generating facility consisting of three 24 megawatt hydro-turbine generators and incidental facilities located along the Zuojiang River, Nanning Prefecture, Guangxi Zhuang Autonomous Region, PRC; selling electric energy at wholesale and engaging in project development activities with respect thereto.

Comment date: September 30, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

8. Pacific Gas and Electric Company

[Docket No. EL99–91–000]

Take notice that on September 8, 1999, Pacific Gas and Electric Company (PG&E) tendered for filing, a Petition for Declaratory Order. This petition for declaratory relief requests a declaratory order from the Commission providing guidance on whether it is appropriate for PG&E to use a proposed revenue-sharing for certain categories of products and services which utilize PG&E's jurisdictional transmission assets. The subject product and services are outside the scope of PG&E's traditional tariffed FERC-jurisdictional products and services.

Copies of this petition have been served upon the California Public Utilities Commission.

Comment date: October 8, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Illinois Power Company

[Docket No. ER99–4352–000]

Take notice that on September 1, 1999, Illinois Power Company filed its quarterly report for the quarter ending June 30, 1999.

Comment date: September 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Ellen V. Futter

[Docket No. ID–3082–001]

Take notice that on August 31, 1999, Ellen V. Futter filed an Application for Authority to Hold Interlocking Positions pursuant to Section 305(b) of the Federal Power Act and Part 45 of the Commission's regulations.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. J. Douglas Divine and J. Christopher Allen, Sr.

[Docket Nos. ID–3416–000 and ID–3417–000]

Take notice that on August 27, 1999, the following officer and director of El Dorado Energy, LLC tendered for filing with the Federal Energy Regulatory Commission (Commission) abbreviated applications pursuant to Section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b) (1994), and the Commission's Order in El Dorado Energy, LLC, 85 F.E.R.C. (CCH) ¶ 61,006 (1998), to hold jurisdictional interlocks:

J. Douglas Divine
J. Christopher Allen, Sr.

Comment date: September 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. The Dayton Power and Light Company

[Docket Nos. OA96–64–005 and ER96–1552–002]

Take notice that on September 1,1999, The Dayton Power and Light Company (Dayton) tendered for filing a refund compliance report in accordance with the Commission's Order approving the settlement in Docket Nos. OA96–64–004 and ER96–1552–001.

Comment date: October 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Mid-Continent Area Power Pool

[Docket Nos. OA97–163–005, ER97–1162–004 and OA97–658–005]

Take notice that on September 1, 1999, the Mid-Continent Area Power Pool (MAPP) tendered for filing a supplemental compliance filing in the above-reference dockets, regarding elimination of border system tariff charges associated with service under MAPP's Schedule F.

Comment date: October 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Mid-Continent Area Power Pool

[Docket Nos. OA97–163–006, ER97–1162–005 and OA97–658–006]

Take notice that on September 1, 1999, the Mid-Continent Area Power Pool (MAPP) tendered for filing its compliance filing to the Commission's order in *Mid-Continent Area Power Pool*, 88 FERC ¶ 61,157 (1999), regarding MAPP's Schedule F.

Comment date: October 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Mobile Energy LLC

[Docket No. QF96–103–002]

Take notice that on August 31, 1999, Mobile Energy LLC located at Edens Corporate Center, 650 Dundee Road, Suite 350, Northbrook, IL 60062 filed with the Federal Energy Regulatory Commission (Commission) Notice of Certification of a facility as a qualifying cogeneration facility pursuant to 292.207(b) of the Commission's regulations. No determination has been made by the Commission that the submittal constitutes a complete filing.

The facility located at the Hob Bayou Energy Center, formerly known as the Mobile Energy Center, is a gas turbine combined cycle cogeneration facility that uses natural gas as its fuel source. The facility includes one combustion turbine generator, with a rated capacity of approximately 168,300 kW at ISO conditions, a heat recovery steam generator, and a condensing steam turbine generator rated at approximately 75,000 kW. The facility will be located at the Hob Bayou Energy Center in Mobile County, Mobile Alabama.

The Facility will interconnect directly with the transmission system of Alabama Power Company located in Birmingham, Alabama, and will sell its useful output at wholesale to various qualified buyers.

Comment date: September 30, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Minnesota Power, Inc.

[Docket No. ER99–4306–000]

Take notice that on August 30, 1999, Minnesota Power, Inc., tendered for filing a signed Service Agreement with TransAlta Energy Marketing (U.S) Inc., under its market-based Wholesale Coordination Sales Tariff (WCS–2) to satisfy its filing requirements under this tariff.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. California Independent System Operator Corporation

[Docket No. ER99–4307–000]

Take notice that on August 31, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities (Meter Service Agreement) between the ISO and East Bay Municipal Utility District for acceptance by the Commission.

The ISO states that this filing has been served on East Bay Municipal Utility District and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective as of August 19, 1999.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric & Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and Power Authority of the State of New York; New York Power Pool

[Docket Nos. ER97–1523–015, OA97–470–014 and ER97–4234–012 (not consolidated)]

Take notice that on September 1, 1999, the Member Systems of the New York Power Pool (Member Systems), tendered for filing certain revised tariff sheets to their ISO Open Access Transmission and ISO Services Tariffs. The Member Systems state that these tariff sheets contain errata to the tariffs accepted by the Commission in its July 29 Order in these dockets. *Central Hudson Gas & Electric Corp., et al.*, 88 FERC ¶ 61,138 (1999).

The Member Systems request that the above-referenced tariff sheets become effective October 12, 1999.

A copy of this filing was served upon all persons on the Commission's official service list(s) in the captioned proceeding(s), and the respective electric utility regulatory agencies in New York, New Jersey and Pennsylvania.

Comment date: September 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. New England Power Pool

[Docket No. ER98–3853–006]

Take notice that on September 1, 1999, the New England Power Pool (NEPOOL) Participants Committee tendered for filing the Forty-Third Agreement Amending New England

Power Pool Agreement. The NEPOOL Participants Committee states that the changes are to comply with the Commission's June 22, 1999 order in the captioned docket to remove the enhanced interconnection study option from Section 49 of the NEPOOL Tariff.

The NEPOOL Participants Committee states that copies of these materials were sent to the participants in the New England Power Pool, and to the New England state governors and regulatory commissions.

Comment date: September 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4304–000]

Take notice that on August 30, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to the New York Power Authority (NYPA).

Con Edison states that a copy of this filing has been served by mail upon NYPA.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Georgia Power Company

[Docket No. ER99–4308–000]

Take notice that on August 31, 1999, Georgia Power Company (Georgia Power), tendered for filing Notice of Cancellation of its FERC Electric Tariff, First Revised Volume No. 3 (Transmission Service). Georgia Power proposes to cancel this rate schedule because it now provides transmission service under Southern's open access transmission tariff. Georgia Power's action has no effect on its Integrated Transmission Service Agreements with Georgia Transmission Corporation, Municipal Electric Authority of Georgia and the City of Dalton, Georgia.

Since no customers would be affected by this action, Georgia Power requests that the cancellation be made effective August 31, 1999.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Puget Sound Energy, Inc.

[Docket No. ER99–4309–000]

Take notice that on August 31, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with PacifiCorp.

A copy of the filing was served upon PacifiCorp.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. American Electric Power Service Corporation

[Docket No. ER99–4310–000]

Take notice that on August 31, 1999, the American Electric Power Service Corporation (AEPSC), tendered for filing executed Firm and Non-Firm Point-to-Point Transmission Service Agreements for Reliant Energy Services, Inc. Both of these agreements are pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT). The OATT has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996.

AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after August 1, 1999.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Puget Sound Energy, Inc.

[Docket No. ER99–4311–000]

Take notice that on August 31, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with City of Pasadena Department of Water & Power (Pasadena).

A copy of the filing was served upon Pasadena.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Puget Sound Energy, Inc.

[Docket No. ER99–4312–000]

Take notice that on August 31, 1999, Puget Sound Energy, Inc. (PSE), tendered for filing a Service Agreement under the provisions of PSE's market-based rates tariff, FERC Electric Tariff, First Revised Volume No. 8, with Pacific Northwest Generating Cooperative (PNGC).

A copy of the filing was served upon PNGC.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Puget Sound Energy, Inc.

[Docket No. ER99–4313–000]

Take notice that on August 31, 1999, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Long Term Firm Point-To-Point Transmission Service with Power Resources Cooperative (PRC), as Transmission Customer.

A copy of the filing was served upon PRC.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Public Service Electric and Gas Company

[Docket No. ER99–4314–000]

Take notice that on August 31, 1999, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to GPU Advanced Resources, Inc. (GPU), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of August 2, 1999.

Copies of the filing have been served upon GPU and the New Jersey Board of Public Utilities.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. The Detroit Edison Company

[Docket No. ER99–4317–000]

Take notice that on August 31, 1999, The Detroit Edison Company (Detroit Edison), tendered for filing a Service Agreement for wholesale power sales transactions (the Service Agreement) under Detroit Edison's Wholesale Power Sales Tariff (WPS–2), FERC Electric Tariff No. 3 (the WPS–2 Tariff), between Detroit Edison and Constellation Power Source, Inc.

Detroit Edison requests that the Service Agreement be made effective as of August 31, 1999.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Entergy Services, Inc.

[Docket No. ER99–4318–000]

Take notice that on August 31, 1999, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc. (EGS), Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies), tendered for filing a Letter Agreement between Entergy Services, Inc. and Cajun Electric Power Cooperative, Inc., for the installation of the Holton delivery point off of Entergy's Line No. 114 (69kV).

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Public Service Electric and Gas Company

[Docket No. ER99–4319–000]

Take notice that on August 31, 1999, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to The Mack Services Group (Mack) pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of August 2, 1999.

Copies of the filing have been served upon Mack and the New Jersey Board of Public Utilities.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. Public Service Electric and Gas Company

[Docket No. ER99–4320–000]

Take notice that on August 31, 1999, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to UGI Utilities, Inc. (UGI), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of August 2, 1999.

Copies of the filing have been served upon UGI and the New Jersey Board of Public Utilities.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. Public Service Electric and Gas Company

[Docket No. ER99–4321–000]

Take notice that on August 31, 1999, Public Service Electric and Gas Company (PSE&G) of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to Cleco Corporation (Cleco), pursuant to the PSE&G Wholesale Power Market Based Sales Tariff, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of August 2, 1999.

Copies of the filing have been served upon Cleco and the New Jersey Board of Public Utilities.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

33. Pacific Gas and Electric Company

[Docket No. ER99–4323–000]

Take notice that on September 1, 1999, Pacific Gas and Electric Company (PG&E), tendered for filing proposed changes in its Transmission Owner Tariff (TO Tariff) and Cost Support for PG&E specific rates associated with the TO Tariff.

This filing proposes changes to PG&E's transmission access charges, which are calculated in accordance with the rate methodology set forth in PG&E's TO Tariff. PG&E provides cost support for PG&E's proposed transmission access charges and PG&E requests that the Commission establish the transmission revenue requirement to be used in designating wholesale and retail transmission access charges, but that it defer to the California Public Utilities Commission (CPUC) on the allocation of costs among retail classes and the design of retail access charges based on the allocated costs.

PG&E requests that its filing be made effective upon the end of the 60-day prior notice period specified in Section 35.3 (18 CFR 35.3).

Copies of this filing have been served upon the CPUC and the California Independent System Operator Corporation.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

34. GreenMountain.com

[Docket No. ER99–4324–000]

Take notice that on August 30, 1999, Green Mountain Energy Resources, L.L.C., tendered for filing pursuant to the Commission's June 2, 1999 Order issued in Docket No. ER99–2489–000, notification of change in status. Green Mountain Energy Resources advises that Green Mountain Energy Resources, L.L.C., merged into GreenMountain.com Company a Delaware Corporation. The company's ownership, affiliate status, operation, and assets were unaffected by the merger. GreenMountain.com does not have the ability to engage in anti-competitive actions, does not won or control generation or transmission facilities, and does not have an affiliation with any entity that owns generation or transmission facilities nor has a franchised service area. In addition GreenMountain.com notes that the company has not engaged in wholesale sales with a wholesale company.

GreenMountain.com hereby adopts, ratifies, and makes its own in every respect rate schedule FERC No. 1, previously filed by Green Mountain Energy Resources L.L.C.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

35. New England Power Pool

[Docket No. ER99–4325–000]

Take notice that on August 31, 1999, the New England Power Pool (NEPOOL or Pool) Participants Committee filed a request for termination of membership in NEPOOL, with an effective date of September 1, 1999, of Columbia Energy Power Marketing Corporation (CEPM). Such termination is pursuant to the terms of the NEPOOL Agreement dated September 1, 1971, as amended, and previously signed by CEPM. The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that termination of CEPM's membership with an effective date of September 1, 1999 would relieve this entity, at CEPM's request, of the obligations and responsibilities of Pool membership and would not change the NEPOOL Agreement in any manner, other than to remove CEPM from membership in the Pool.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

36. New England Power Pool

[Docket No. ER99–4326–000]

Take notice that on August 31, 1999, the New England Power Pool Participants Committee filed for acceptance a signature page to the New England Power Pool (NEPOOL) Agreement dated September 1, 1971, as amended, signed by Northeast Generation Company (Northeast Generation). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of Northeast Generation's signature page would permit NEPOOL to expand its membership to include Northeast Generation. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Northeast Generation a member in NEPOOL.

The Participants Committee requests an effective date of November 1, 1999,

for commencement of participation in NEPOOL by Northeast Generation.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

37. Southwest Power Pool, Inc.

[Docket No. ER99–4327–000]

Take notice that on August 31, 1999, Southwest Power Pool, Inc. (SPP), tendered for filing changes to its Open Access Transmission Tariff intended to replace the use of a megawatt-mile pricing structure for determining the rates for short-term and non-firm point-to-point transmission services with the use of a zone-based structure.

SPP requests an effective date of November 1, 1999 for these changes.

Copies of this filing were served upon members and customers of SPP, and on all affected state commissions.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

38. Pennsylvania Power Company

[Docket No. ER99–4328–000]

Take notice that on August 31, 1999, Pennsylvania Power Company (Penn Power), tendered for filing a supplement to its Electric Service Agreement (Agreement) with the Borough of Wampum, Pennsylvania (Borough), designated as Penn Power's Rate Schedule FERC No. 48. Penn Power states that the supplement extends service under the Agreement for an additional five-year period beginning September 1, 1999.

Penn Power requests an effective date of September 1, 1999, for the supplement.

Penn Power states that it has served a copy of the filing upon the Borough and the Pennsylvania Public Utility Commission.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

39. California Independent System Operator Corporation

[Docket No. ER99–4329–000]

Take notice that on August 31, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Participating Generator Agreement between the ISO and East Bay Municipal Utility District for acceptance by the Commission.

The ISO states that this filing has been served on East Bay Municipal Utility District and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective August 19, 1999.

Comment date: September 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

40. Consolidated Edison Company of New York, Inc.

[Docket No. ER99–4339–000]

Take notice that on September 1, 1999, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing a service agreement to provide firm transmission service pursuant to its Open Access Transmission Tariff to Constellation Power Source, Inc., (CPS).

Con Edison states that a copy of this filing has been served by mail upon CPS.

Comment date: September 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–24018 Filed 9–14–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11460–001, Alaska]

Haida Corporation; Notice of Availability of Draft Environmental Assessment

September 9, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for an original license for Haida Corporation's proposed Reynolds Creek Hydroelectric Project, and has prepared a Draft Environmental Assessment (DEA). The project would be located about 10 miles east of Hydaburg, Alaska on Prince of Wales Island. The DEA contains the Commission staff's analysis of the potential future environmental impacts of the project and has concluded that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

Copies of the DEA are available for review in the Commission's Public Reference Room, Room 2A, at 888 First Street, NE., Washington, DC 20426, and on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Any comments to this DEA should be filed within 45 days from the date of this notice and addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For further information, please contact Nan Allen, Project Coordinator, at (202) 219–2938.

Linwoond A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–24021 Filed 9–14–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Declaration of Intention and Soliciting Comments, Motions To Intervene, and Protests

September 9, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* D199–9–000.

c. *Date Filed:* August 11, 1999.

d. *Applicant:* San Juan Guest Ranch.

e. *Name of Project:* Coal Creek Hydro Project.

f. *Location:* In Ouray County, at the MacTierman's San Juan Guest Ranch, 2882 County Road 23, Ridgeway, CO 814324. The project does not utilize Federal or tribal lands.

g. *Filed Pursuant to:* Section 23(b)(1) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Scott MacTiernan, San Juan Guest Ranch, 2882 County Road 23, Ridgeway, CO 814324, telephone number (970) 626–5360, or E–Mail address: sjgr@rmi.net.

i. *FERC Contact:* Any questions on this notice should be addressed to Diane M. Murray at (202) 219–2682, or E-mail address: Diane.murray@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* October 18, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Please include the docket number (DI99–9–000) on any comments or motions filed.

k. *Description of Project:* The site consists of: (1) An intake; (2) a 2,300-foot-long penstock; (3) a powerhouse with a total generating capacity of 100 kW; and appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commence would be affected by the project. The Commission also determines whether or not to project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room located at 888 First Street, NE., Room 2A Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the approprate action to take, the Commission will consider all protests or other cmments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Dos. 99–24023 Filed 9–14–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00617; FRL–6096–5]

Application for an Experimental Use Permit to Ship and Use a Pesticide for Experimental Purposes Only; Renewal of Information Collection and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is seeking public comment on the following Information Collection Request (ICR): "Application for an Experimental Use Permit (EUP) to Ship and Use a Pesticide for Experimental Purposes Only (OMB Control No. 2070–0040; EPA No. 0276.09)." This is a request to renew an existing ICR that is currently approved and is due to expire November 30, 1999. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket control number "OPP–00617," must be received on or before November 15, 1999.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION" section of this notice.

FOR FURTHER INFORMATION CONTACT: Cameo Smoot, Office of Pesticide Programs, Mail Code 7506C, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone: 703–305–5454, fax: 703–305–5884, e-mail: smoot.cameo@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does This Notice Apply to Me?

An application for an EUP may be submitted by any company or person wishing to generate information necessary to register a product under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) in accordance with the regulations found in 40 CFR 172.2(a). The applicant may be a potential registrant, an independent researcher or testing laboratory, or any similar agent or consultant of a manufacturer.

Potentially affected categories and entities may include, but are not limited to the following:

Category	NAICS Code	SIC Codes	Examples of Potentially Affected Entities
Pesticide and other agricultural chemical manufacturing	325320	286—Industrial organic chemicals	Persons seeking an experimental use permit

Category	NAICS Code	SIC Codes	Examples of Potentially Affected Entities
		287—Agricultural chemicals	

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. You or your business are affected by this action if you have a conditional pesticide registration with the Agency. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information or Copies of This Document or Other Support Documents?

A. Electronic Availability

Electronic copies of this document and the ICR are available from the EPA Home Page at the **Federal Register** - Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/). You can easily follow the menu to find this **Federal Register** notice using the publication date or the **Federal Register** citation for this notice.

B. Fax-on-Demand

Using a faxphone call 202–401–0527 and select item 6075 for a copy of the ICR.

C. In Person or By Phone

If you have any questions or need additional information about this notice or the ICR referenced, please contact the person identified in the "FOR FURTHER INFORMATION CONTACT" section.

In addition, the official record for this notice, including the public version, has been established under docket control number OPP–00617, (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as Confidential Business Information (CBI), is available for inspection in the Office of Pesticide Programs (OPP) Public Docket, Rm. 119, CM2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The OPP Public Docket telephone number is 703–305–5805.

III. How Can I Respond to This Notice?

A. How and to Whom Do I Submit the Comments?

You may submit comments through the mail, in person, or electronically. Be sure to identify the appropriate docket control number, OPP–00617, in your correspondence.

1. *By mail.* Submit written comments to: OPP Public Docket, Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver written comments to: OPP Public Docket, Public Information and Records Integrity Branch, Rm. 119, CM2, 1921 Jefferson Davis Highway, Arlington, VA, Telephone: 703–305–5805.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: opp-docket@epa.gov. Please note that you should not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPP–00617. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information That I Want to Submit to the Agency?

You may claim information that you submit in response to this notice as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must also be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult with the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section.

C. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

D. What Should I Consider When I Prepare My Comments for EPA?

We invite you to provide your views on the estimates provided, new approaches we haven't considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of the final action. You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide solid technical information and/or data to support your views.
- If you estimate potential burden or costs, explain how you arrived at the estimate.
- Provide specific examples to illustrate your concerns.
- Offer alternative ways to improve the collection activity.
- Make sure to submit your comments by the deadline in this notice.
- At the beginning of your comments (e.g., as part of the "Subject" heading), be sure to properly identify the document you are commenting on. You can do this by providing the docket control number assigned to the notice, along with the EPA and OMB ICR numbers, if available.

IV. What Information Collection Activity or ICR Does This Notice Apply to?

EPA is seeking comments on the following ICR:

Title: Application for an Experimental Use Permit (EUP) to Ship and Use a Pesticide for Experimental Purposes Only.

ICR numbers: EPA ICR No. 0276.09; OMB No. 2070–0040.

ICR status: This is a renewal of an existing ICR that is currently approved by OMB and is due to expire November 30, 1999. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that is subject to approval under the PRA, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

Abstract: This information collection program provides the EPA with the data necessary to determine whether to issue an EUP under section 5 of FIFRA, as amended. FIFRA requires that before a pesticide product may be distributed or sold in the U.S. it must be registered by EPA. However, section 5 authorizes EPA to issue EUP's which allow pesticide companies to temporarily ship pesticide products for experimental use for the purpose of gathering data necessary to support the application for registration of a pesticide product. In general, EUP's are either issued for a pesticide not registered with the Agency or for a registered pesticide for a use not registered with the Agency.

The information collected and reported under an EUP is a summary of that which is routinely submitted in connection with registration. The EUP allows for large scale field testing, if necessary, in order to collect sufficient data to support registration. An EUP is not required if the person conducting the tests does not expect to receive benefits in pest control.

EPA Form 8570–17, Application for an Experimental Use Permit to Ship and Use a Pesticide for Experimental Purposes Only, is filed by the prospective registrant for a permit to generate information or data necessary to register a pesticide under section 3 of FIFRA. This information from the applicant is necessary in order to grant and effectively monitor the EUP. Beyond the information as supplied on EPA Form 8570–17, is a final report on the results of the experimental program which includes information such as: Amount of the product applied; the crops or sites treated; any observed adverse effects; any adverse weather conditions which may have inhibited the program; the goals achieved; and the disposition of containers, unused pesticide material, and affected food/feed commodities. If the food/feed commodities treated under the terms of an experimental use permit are to be shipped in commerce, the applicant must also submit a petition for temporary tolerance pursuant to the Federal Food, Drug, and Cosmetic Act (FFDCA).

V. What are EPA's Burden and Cost Estimates for This ICR?

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for the Application for an Experimental Use Permit (EUP) to Ship and Use a Pesticide for Experimental Purposes Only program is estimated to average 10.10 hours per application. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: EUP applicants.

Estimated total number of potential respondents: 75.

Frequency of response: Only when an application is made.

Estimated total/average number of responses for each respondent: 1.

Estimated total annual burden hours: 757.5.

Estimated total annual burden costs: $61,297.50.

VI. Are There Changes in the Estimates from the Last Approval?

Yes. The change in respondent burden hours, from 1,262.50 to 757.50 hours per year is a result of the estimated reduction in the number of annual respondents, from 125 to 75. The change in annual respondent cost is a result of the estimated increase in hourly rates.

VII. What is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

List of Subjects

Environmental protection, Information collection requests.

Dated: September 2, 1999.

Susan H. Wayland,

Deputy Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 99–23710 Filed 9–14–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6439–4]

Request for Applications for Essential Use Exemptions to the Production and Import Phaseout of Ozone Depleting Substances Under the Montreal Protocol

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Through this notice, the Environmental Protection Agency (EPA) is requesting applications for consideration at the Twelfth Meeting of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer (the Protocol) to be held in 2000, for exemptions to the production and import phaseout in 2001 and subsequent years for ozone-depleting substances (including halons 1211 and 1301, CFC–11, CFC–12, CFC–113, CFC–114, CFC–115, CFC–13, CFC–111, CFC–112, CFC–211, CFC–212, CFC–213, CFC–214, CFC–215, CFC–216, CFC–217, carbon tetrachloride, and methyl chloroform).

DATES: Applications for essential use exemptions must be submitted to EPA no later than November 1, 1999 in order for the United States (U.S.) government to complete its review and to submit nominations to the United Nations Environment Programme (UNEP) and the Protocol Parties in a timely manner.

ADDRESSES: Send three copies of application materials to: Erin Birgfeld, Stratospheric Protection Division (6205J), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. If submitting applications by courier, the office address is 501 3rd Street, NW, Washington, DC 20001. Send one copy of application materials to: Air Docket A-93–39, 401 M Street, S.W. (6102), Room M1500, Washington, D.C. 20460.

Confidentiality: Applications should not contain confidential or proprietary information. Such information should be submitted under separate cover and should be identified by placing on (or attaching to) the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," "proprietary," or "company confidential." Information covered by a claim of business confidentiality will be disclosed by EPA only to the extent, and by means of the procedures, set forth at 40 CFR Part 2, Subpart B (41 FR 36902). If no claim of confidentiality accompanies the information when it is received by EPA, the information may be made available to the public by EPA without further notice to the company (40 CFR 2.203).

FOR FURTHER INFORMATION CONTACT: Erin Birgfeld at the above address or at (202) 564–9079 telephone, (202) 565–2095 fax, or birgfeld.erin@epa.gov. General information may be obtained from the Stratospheric Ozone Hotline at 1–800–296–1996.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background—The Essential Use Nomination Process
II. Information Required for Essential Use Applications for Production or Importation of Class I Substances in 2001 and Subsequent Years

I. Background—The Essential Use Nomination Process

As described in previous **Federal Register** (FR) notices (58 *FR* 29410, May 20, 1993; 59 *FR* 52544, October 18, 1994; 60 *FR* 54349, October 23, 1995; 61 *FR* 51110, 0 30, 1996, 62 *FR* 51655, October 2, 1997; and 63 *FR* 42629, August 10, 1998), the Parties to the Protocol agreed during the Fourth Meeting in Copenhagen on November 23–25, 1992, to accelerate the phaseout schedules for Class I ozone-depleting substances. Specifically, the Parties agreed that non-Article 5 Parties (developed countries) would phase out the production and consumption of halons by January 1, 1994, and the production and consumption of other Class I substances, except methyl bromide, by January 1, 1996. The Parties also reached decisions and adopted resolutions on a variety of other matters, including the criteria to be used for allowing "essential use" exemptions from the phaseout of production and importation of controlled substances. Language regarding essential uses was added to the Protocol provisions in Article 2 governing the control measures. Decision IV/25 of the Fourth Meeting of the Parties details the specific criteria and review process for granting essential use exemptions.

Decision IV/25 states that "* * * a use of a controlled substance should qualify as "essential" only if: (i) it is necessary for the health, safety or is critical for the functioning of society (encompassing cultural and intellectual aspects); and (ii) there are no available technically and economically feasible alternatives or substitutes that are acceptable from the standpoint of environment and health". In addition, the Parties agreed "that production and consumption, if any, of a controlled substance, for essential uses should be permitted only if: (i) all economically feasible steps have been taken to minimize the essential use and any associated emission of the controlled substance; and (ii) the controlled substance is not available in sufficient quantity and quality from the existing stocks of banked or recycled controlled substances. * * *"

At the Eighth Meeting of the Parties in 1996, the Parties established a new timetable for nomination of essential uses. Pursuant to Decision VIII/9, Parties may nominate a controlled substance for an exemption from the production and consumption phaseout by January 31 of each year to the Ozone Secretariat. Further detail on the essential use process is provided later in this section.

Each year, the Parties to the Protocol have approved an unlimited, global essential use exemption for the production and consumption of high purity ozone depleting substances for use in laboratory and analytical techniques. EPA has implemented this exemption domestically through regulation. However, beginning January 1, 2000 EPA will no longer be able to allow laboratory essential use exemptions for CFCs and carbon tetrachloride for the following reasons. The Clean Air Act (the Act) provides for specific exemptions to the phaseout of ozone-depleting substances, while the Protocol does not specify exemptions but establishes a process for the parties to determine what are essential uses beyond the phaseout dates. Thus, a use that is permitted under the Protocol may or may not be permitted under the Act. The phaseout schedule for class I substances in section 604 of the Act is less stringent than the Protocol phaseout schedule. For the past several years, EPA has been able to modify its regulations to authorize production of ozone-depleting substances for essential uses allowed under the Protocol, without regard to whether the Act contains exceptions for those uses, as long as the total authorized production did not exceed the amount permitted under section 604 of the Act. However, January 1, 2000 is the phaseout date under section 604 of the Act for all class I substances with the exception of methyl chloroform and methyl bromide. The phaseout dates for methyl chloroform and methyl bromide are January 1, 2002 and January 1, 2005, respectively. After the phaseout date for a particular substance has passed, EPA will no longer be able to authorize production of that substance unless the Act specifically authorizes it do so.

The Act's specific exemption provisions include the following. Section 604 (d)(2) of the Act states that notwithstanding the phaseout, EPA shall, to the extent consistent with the Montreal Protocol, authorize production of limited quantities of class I substances for use in medical devices, if FDA, in consultation with EPA, determines that such production is necessary. Section 604(d) (3) states that EPA may, to the extent consistent with the Montreal Protocol, authorize production of limited quantities of halon-1211, halon-1301, and halon-2402 solely for the purpose of aviation safety, if the Federal Aviation Administration, in consultation with EPA, determines that no safe and effective substitute has been developed and that such authorization is necessary for aviation safety purposes. Section 604(d)(1) provides that during the period from January 1, 2002 to January 1, 2005, EPA may, to the extent consistent with the Montreal Protocol, authorize the production of limited quantities of methyl chloroform solely for use in essential applications for which no safe and effective substitute is available. EPA cannot use any of these three exemptions to authorize any person to produce a class I substance in annual quantities greater than 10 percent of that person's baseline. Section 604(g)(3) of the Act provides that EPA may, to the extent consistent with the Montreal Protocol, authorize the production of limited quantities of halon-1211, halon-1301, and halon-2402 after December 31, 1999 and before December 31, 2004 for use in fire suppression and explosion prevention in association with domestic production of crude oil and natural gas energy supplies on the North Slope of Alaska, if EPA, in consultation with the U.S. Fire Administration, determines that no safe and effective substitute has been developed and that such authorization is necessary for fire suppression or explosion prevention purposes. EPA cannot use this exemption to authorize any person to produce any of these halons in an amount greater than 3 percent of that person's baseline. Finally, section 604(f) states that the President may, to the extent consistent with the Montreal Protocol, provide an exemption for production of CFC–114, halon-1211, halon-1301, and halon-2402 as necessary to protect U.S. national security interests, if the President finds that adequate substitutes are not available and that the production and use of the substance are necessary to protect national security interests.

Since the Act does not specifically list laboratory uses as an exemption to the ban on production and consumption of class I substances, EPA cannot exempt CFCs and carbon tetrachloride for laboratory use after January 1, 2000. The exemptions for laboratory use of methyl chloroform and methyl bromide will cease on January 1, 2002, and January 1, 2005 respectively.

Applicants should be aware that essential use exemptions granted to the U.S. for the year 2000 under the Protocol were limited to chlorofluorocarbons (CFCs) for metered dose inhalers (MDIs) to treat asthma and chronic obstructive pulmonary disease, and methyl chloroform for use in manufacturing solid rocket motors.

The first step in the process to qualify a use as essential under the Protocol is for the user to consider whether the use of the controlled substance meets the Decision IV/25 criteria. The user should then notify EPA of the candidate use and provide information for U.S. government agencies and the Protocol Parties to evaluate that use according to the criteria under Decision IV/25. A full description of the application process is given in section II.

Upon receipt of the essential use exemption application, EPA reviews the information provided and works with other interested Federal agencies to determine whether it meets the essential use criteria and warrants being nominated by the United States for an exemption. In the case of multiple exemption requests for a single use, EPA aggregates exemption requests received from individual entities into a single U.S. request. An important part of the EPA review of requests for CFCs is to determine that the aggregate request for a particular out-year adequately reflects the market penetration potential and expected availability of CFC substitutes by that point in time. If the sum of individual requests does not incorporate such assumptions, the U.S. government may adjust the aggregate request to better reflect true market needs.

Nominations submitted to the Ozone Secretariat by the U.S. and other Parties are then forwarded to the UNEP Technical and Economic Assessment Panel (TEAP) and its Technical Options Committees (TOCs), which review the submissions and make recommendations to the Parties for essential use exemptions. Those recommendations are then considered by the Parties at their annual meeting for final decision. If the Parties declare a specified use of a controlled substance as essential and issue the necessary exemption from the production phaseout, EPA may propose regulatory changes to reflect the decisions by the Parties, but only to the extent such action is consistent with the Act.

The timing of the reviews is such that in any given year the Parties review nominations for exemption from the production phaseout intended for the following year and any subsequent years. This means that, if nominated, applications submitted in response to today's notice for production in 2001 and beyond will be considered by the Parties in 2000 for final action.

II. Information Required for Essential Use Applications for Production or Importation of Class I Substances in 2001 and Subsequent Years

Through this notice, EPA requests applications for essential use exemptions for all Class I substances, except methyl bromide, for 2001 and subsequent years. This is the last opportunity to submit applications for 2001; applicants will have an opportunity to submit applications for 2002 and beyond next year. All requests for exemptions submitted to EPA must present the information relevant to the application as prescribed in the TEAP "Handbook on Essential Use Nominations" (Handbook) as last published in 1997. The Handbook is available electronically on the web at *www.teap.org*. As noted earlier, the TEAP handbook was revised to incorporate Decision VIII/10 adopted by the Parties at their Eighth Meeting, in November 1996. Decision VIII/10 requires applicants to expand on information provided in previous nominations as well as provide new information. Since the U.S. government does not forward incomplete or inadequate nominations to the Ozone Secretariat, it is important for applicants to provide all information requested in the Handbook, including the information specified in the supplemental research and development form (page 43) and the accounting framework matrix (page 41). Applicants should also note that reformulation information is required from all drug sponsors, irrespective of whether they manufacture their own product or contract with a filler to produce their product.

The accounting framework matrix in the Handbook is titled, "IV. Reporting Accounting Framework for Essential Uses Other Than Laboratory and Analytical Applications." The data requested in column H, On Hand Start of Year, is the total quantity of each controlled substance that an applicant has on hand as of January 1st of the year in question, whether the material is held for the applicant under contract or is on-site at the facility, and whether the material was produced prior to the phaseout or obtained after the phaseout. The data requested in column J, Used for Essential Use, is the gross total quantity of the controlled substance that was used in the essential-use process, including amounts emitted, used in cleaning equipment, recycled or destroyed. Parties have been asked to request this information from companies, and these forms will assist the EPA in preparing a complete and comprehensive nomination. In brief, the TEAP Handbook states that applicants must present information on:

- Role of use in society
- Alternatives to use, including education programs on alternatives
- Steps to minimize use, including development of CFC-free alternatives
- Steps to minimize emissions
- Amount of substance available through recycling and stockpiling
- Quantity of controlled substances requested by year.

EPA anticipates that the 2000 review by the Parties of MDI essential use requests will focus extensively on research efforts underway to develop alternatives to CFC MDIs, on education programs to inform patients and providers of the phaseout and the transition to alternatives, and on steps

taken to minimize CFC use and emissions including efforts to recapture or reprocess the controlled substance. Accordingly, applicants are strongly advised to present detailed information on these points, including the scope and cost of such efforts and the medical and patient organizations involved in the work. Applicants can strengthen their exemption requests by submitting a complete set of education materials and including copies of printed, electronic or audio-visual tools. Applicants are given notice that exemption requests without adequate information on research and education will not be considered complete.

Applicants should submit their exemption requests to EPA as noted in the Addresses section at the beginning of today's notice.

Dated: September 9, 1999.

Robert D. Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 99–24046 Filed 9–14–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6438–9]

Draft Guidance for Improving Air Quality Through Economic Incentive Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: Today EPA announces the availability of draft guidance for States that wish to use an economic incentive program (EIP) to achieve air quality improvements. The draft guidance—"Draft Economic Incentive Program Guidance (EPA–452/D–99–001, July 1999)"—is a comprehensive update of EPA's 1994 EIP rule and guidance. (59 FR 16690), with regard to discretionary EIPs. It also incorporates some components of EPA's 1995 proposed model rule for open market trading (60 FR 39668), as well as the comments received on that proposed rule. With this guidance, EPA seeks to encourage cost effective and innovative approaches for achieving air quality requirements, and at the same time, maintain the enforceability and accountability of more traditional air quality management approaches.

DATES: The EPA is establishing a 60-day comment period, ending on November 15, 1999.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6101), Attention: Docket No. A–99–27, U.S. Environmental Protection Agency, 401 M Street SW, Room M–1500, Washington, DC 20460, telephone (202) 260–7548, between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying. Comments and data may also be submitted electronically by following the instructions under **SUPPLEMENTARY INFORMATION** of this document. No confidential business information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: For specific questions and comments on this guidance, contact Ms. Nancy Mayer, U.S. EPA, MD–15, Research Triangle Park, NC 27711, telephone (919) 541–5390, e-mail "mayer.nancy@epa.gov"; or Mr. Eric Crump, U.S. EPA, MD–15, Research Triangle Park NC 27711, telephone (919) 541–4719, e-mail "crump.eric@epa.gov".

SUPPLEMENTARY INFORMATION: The EIP guidance will have no direct regulatory consequences when finalized. The proposed draft outlines a variety of economic incentive programs, and provides advice to States on choosing the best type of program to meet their objectives. States can then develop or revise their implementation plans to incorporate an EIP that will meet national air quality objectives, and achieve an overall benefit to the environment.

Electronic Availability—A World Wide Web (WWW) site has been developed so that you can obtain a copy of the draft EIP guidance for review and comment. The Uniform Resource Location (URL) for the home page of the web site is http://www.epa.gov/ttn/oarpg. You can find the draft EIP guidance on this web site under the heading titled "What's New." If you need additional assistance with these web sites, call the TTN Helpline at (919) 541–5384. If you lack access to the World Wide Web, you may request a copy of the draft EIP guidance from the individuals listed above under **FOR FURTHER INFORMATION CONTACT.**

The EPA has established an official record for this draft guidance (which will include the draft guidance, plus any public comments and data submitted) under docket number A–99–27. A public version of this record, including printed, paper versions of electronic comments—but excluding any information claimed as CBI—is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in **ADDRESSES** at the beginning of this document. Electronic comments can be sent directly to EPA at: A-and-R-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect in 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–99–27. Electronic comments on this proposed rule may be filed online at many Federal Depository Libraries.

Dated: September 3, 1999.

John S. Seitz,

Director, Office of Air Quality, Planning and Standards.

[FR Doc. 99–24045 Filed 9–14–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6438–9]

Proposed Agreement Pursuant to Sections 122(g) and (h) of the Comprehensive Environmental Response, Compensation, and Liability Act for the Zionsville Third Site Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment on proposed *de minimis* settlement.

SUMMARY: In accordance with section 122(I)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1984, as amended ("CERCLA"), notification is hereby given of a proposed administrative agreement concerning the Zionsville Third Site hazardous waste site located approximately 150 feet east of U.S. Route 421 in Zionsville, Indiana (the "Site"). EPA proposes to enter into this agreement under the authority of sections 122 (g) and (h) and 107 of CERCLA. In addition to the review by the public pursuant to this document, the agreement has been approved by the United States Department of Justice. The proposed agreement has been executed by the following de minimis parties: A.E. Staley Manufacturing Company; Advance Circuits, Inc.; Nilfisk-Advance, Inc. (Formerly Advance Machine Company); AlliedSignal, Inc. and Sinclair & Valentine Company; Allina Health System (United Hospital, Mount Sinai Hospital, Metropolitan Medical Center); American Industrial Corp.; American Packaging Corporation;

American Printing House for the Blind, Inc.; AMF Incorporated; AlliedSignal Inc. on behalf of Amphenol Corporation; Amphenol Corporation (Bendix; Allied); Diamond Chain Company division of AMSTED Industries Incorporated; Aristech Chemical Corporation; ATEC Associates, Inc.; AWB Division of Magnode Corporation (Wright Manufacturing Corporation); Ball Corporation; Best Access Systems; HealthEast Bethesda Hospital (formerly known as Bethesda Lutheran Hospital); Bliley Electric Company; Blissfield Mfg. Co. (Berne Tube Products); Bootz Mfg. Company; Bowes Industries, Inc.; Brown Printing Company; Bruce Fox, Inc.; Bruner Engineering & Mfgr.; Cabot Corporation; Carrier Corporation on behalf of BDP Company division of Carrier Corp.; Casket Shells, Inc.; Century Mfg. Co.; Cerden and Son Mfg., Inc.; CHEMCENTRAL Corporation; Cissell Mfg. Co.; City Machine Tool & Die Co., Inc.; CMW Inc.; Coca-Cola Foods ("The Minute Maid Company," a division of The Coca-Cola Company); Crucible Materials Corporation; Collwell/General, Inc.; Sybron International Corp. (Sybron Corporation, Taylor Instruments Division, Combustion Engineering, Inc.); Parker-Hannifin Corporation (including Commercial Filters Division); Conco Inc.; Conoco, Inc.; Jefferson Smurfit Corporation (U.S.) (formerly known as Container Corporation of America); Crown Beverage Packaging, Inc. (For Continental Can Company); Corning Incorporated (f/k/a Corning Glass Works); Cosco, Inc.; The Courier-Journal Co.; Bestfoods (formerly CPC International Inc.); CTS Corporation; D & L Paint Co.; Da-Lite Screen Co.; Dana Corporation; Dealers Mfg. Co.; Dehart Paint & Varnish Company, Inc.; Dellen Oldsmobile, Inc.; Delta Faucet; Deluxe Corporation (f/k/a Deluxe Check Printers); Dennis Chemical Company; DePauw University; Dimensional Designs, Inc.; Nordson Corporation (Domain, Inc.); Donaldson Company, Inc.; Halliburton (formerly Dresser Industries (Elec. Mach.; McGraw-Edison)); Inverness Casting Group (formerly Du-Well Products); Ed Tutwiler Cadillac, Inc.; Edco Products, Inc.; Amerace Corporation; Fairmont Railway Motors (a Division of Harsco Corporation); Fire King International, Inc.; Flint Ink Corporation; FMC Corporation; Fort Snelling State Park; Franklin Electric Co., Inc.; Gemtron Corporation; General Alum & Chemical Corporation; Ex-GPHC Liquidating Trust on behalf of itself and on behalf of General Polymers Corporation; Georgia-Pacific Corporation; GK Technologies, Inc.; Gould Inc.; Graco Inc.; Great Dane Trailers; Grote Industries, Inc.; The Glidden Company (successor to Grow Group, Inc.); Pulse Engineering (formerly known as GTI Corporation); B&B Leathers, Inc. (formerly known as Gunnison Bros. Tannery); Robertson-Ceco Corporation (formerly H.H. Robertson Co.); Haas Cabinet Co., Inc.; Hansen Mfg. Co.; Harmenson Mfg. Co., Inc. (now The Kay Company, Inc.); Hella North America, Inc.; Henkel Corporation; Hiawatha Rubber Co.; National Service Industries, Inc. (d/b/a Lithonia Lighting d/b/a Hi-Tek); Holcomb & Hoke Mfg. Co. Inc.; Home Crest Corp.; Hoover Universal, Inc.; Schwitzer, Inc. (formerly the Schwitzer Division of Household Manufacturing, Inc., c/o Borg-Warner Automotive, Inc.); Hudson Machine Tool Inc.; Huffy Corporation; AC Humko (Kraft, Inc.) n/k/a Kraft Foods, Inc.; Huot Manufacturing Company; Hurco Companies, Inc.; Hyster Company; ICI Americas n/k/a Zeneca Inc.; Indiana University; City of Indianapolis—Department of Public Works; Indianapolis Star News; Industrial Sewer Service, Inc.; Ingersoll-Rand Company; International Paper Company; Introl c/o Hartzell Corporation Liquidating Trust; ITT Industries, Inc. f/k/a ITT Corporation; IVC Industrial Coating, Inc.; Jefferson Products Company; Johnson Controls, Inc. (Globe-Union); Kauffman Engineering, Inc.; Kelley Technical Coatings, Inc.; Kettering Medical Center; Kidde Merchandising Equipment Group, Inc.; The Scott Fetzer Company (Kingston Products); Kraft General Foods (Battery Properties) n/k/a Kraft Foods, Inc.; Leader Industries Inc.; Lexington Standard Corporation; Loranger Manufacturing Corp.; Lord Corporation; Madison Chemical Co., Inc.; Magnavox; Mallinckrodt, Inc.; Manus Products, Inc.; Masco Corp. (Electra); Mayhill Publications, Inc.; MCB Manufacturing c/o EM Industries, Incorporated; McCord Heat Transfer Corporation; McCord Heat—Textron, Inc.; McCormick & Company, Inc.; McGill/Jensen Inc.; Mercury Minnesota Inc.; Midmark Corp.; Minnesota Department of Transportation; City of Minneapolis; Minnesota Rubber; MVE, Inc. a/k/a Minnesota Valley Engineering; Minnesota Department of Corrections; Moorfeed Corp.; Murray Ohio Mfg./Tomkins Industries, Inc.; National Latex Products; IFC–YP, Inc. on behalf of National Metals Products (Amedco); Navistar International Transportation Corp. (f/k/a International Harvester); NCR Corporation; New Idea Farm Equipment—Textron, Inc.; The New York Blower Co.; Nice-Pak Products, Inc.; Northern States Power Company; Northern Telecom Inc.; Northland Aluminum Products, Inc.; Nortronics Co., Inc.; Northrup King Co. (n/k/a Novartis Seeds, Inc.); O.K.P., Inc. (Kyanize Paints); Oglebay Norton Company; Northrop Grumman Corporation as successor to Olson Bodies (Grumman); Olson Bodies (Grumman); Orchard Corp. (Borden Inc.); Osborne Coinage Co.; Owens-Illinois (Brockway); Owens-Illinois (Glass Container); P.B.& S. Chemical Company, Inc.; Packaging Products Corporation; Paper Corp. of America n/k/a Unisource Worldwide, Inc.; Paper, Calmenson and Co.; Paulo Products Company; Perma-Fix of Dayton, Inc.; Perry Chemical & Mfg. Co.; Cadbury Beverages Inc. on behalf of Peter Paul Cadbury; Phelps Dodge Industries, Inc.; Philips Industries, Inc. (Lau Industries)/Tomkins Industries, Inc.; Pioneer Metal Finishing; Potlatch Corporation; Queens Group, Inc. c/o Shorewood Packaging Corp.; Raygo (Caterpillar); Reclaimed Energy Co. Inc.; Reichold, Inc. f/k/a Reichold Chemicals, Inc.; The Sam Miller Corporation, formerly Sam Miller Bag Company; Sears Roebuck, and Co.; Seaway Manufacturing Corp.; Selec-Tron Ind. Inc.; SERCO Laboratories; Shell Oil Company; Sheller-Globe Corporation and Sheller-Globe Corporation, successor in interest for City Machine Tool and Die Co., Inc.; Sherwood Medical Company c/o The Kendall Company; Smith System Manufacturing Co.; Snap-Tite, Inc.; SnyderGeneral Corp. n/k/a AAF-McQuay Inc.; Sommer Metalcraft Corporation; Dura Operating Corp. for Sparton Corporation; Spill Recovery of Indiana, Inc.; Standard Gravure Corporation; The Standard Products Company; Stant Inc.; Stewart Warner South Wind Corporation; Stone Container Corporation (formerly known as National Packaging Company and Great Plains Bag Company); Sullair Corporation; Summit Finishing Company, Inc.; Sunnen Products Company; Talon-Textron, Inc.; Thermoset Plastics, Inc./Lord Corporation; Thanks Fred, Inc. (formerly Thermoset Plastics); Hasbro, Inc. and Tonka Corporation; Triangle Pacific Corporation; Tuchman Cleaners, Inc.; Ulrich Chemical, Inc.; United Parcel Service, Inc.; Ritrama, Inc. (formerly Universal Coating Co.); Grassland Holding, Inc. (formerly Universal Woods, Inc.); University of Minnesota; Van Waters & Rogers Inc.; Vermont American Corporation; Windway Capital Corp. (f/k/a The Vollrath Company); West Publishing Company;

Westvaco Corporation; Weyerhauser Co.; Wintek Corporation; Woodall Paint/Aeroquip Corporation; Yenkin-Majestic Paint Corp.; York International Corporation; U.S. Postal Service; and U.S. Department of Veterans Affairs.

Under the proposed agreement, the Settling Parties will pay a total of approximately $1,512,012 into an escrow account to be used for response costs incurred and to be incurred at the Site. A group of non-de minimis settlors under this agreement will perform an Engineering Evaluation/Cost Analysis ("EE/CA") for the Site, pay $28,102.59 in response costs incurred by EPA at the Site, and pay EPA's costs of overseeing the EE/CA. EPA incurred response costs overseeing response activities conducted to mitigate an imminent and substantial endangerment to human health or the environment present or threatened by hazardous substances present at the Site. The non-de minimis settlors under this proposed agreement are: A.O. Smith Corporation; Ahlstrom Filtration Inc.; Alco Industries, Inc. (Synthane-Taylor); Alcoa, Inc. (f/k/a Aluminum Company of America); Allen-Bradley Company/Rockwell International Corporation; American National Can Co.; American Recovery Company, Inc. c/o The Union Corporation; American Waste Processing, Ltd.; Anderson Development Company; Arvin Industries, Inc.; Ashland Chemical Company, a division of Ashland Inc.; Lucent Technologies Inc. for AT&T Corp.; Batesville Casket Corp.; Beazer East, Inc.; Bemis Company, Inc.; Bridgestone/Firestone, Inc.; Brulin & Company, Inc.; Carlisle Tire & Wheel Company; Champion Int'l (St. Regis); Chase Packaging Corp.; IWD Waste Inc. and Chemical Waste Management; Kewanee Industries, Inc. for Bruning Pain Company c/o Chevron Environmental Management Company; Cintech Industrial Coatings, Inc.; Printpack, Inc. (Cloudsley Co.); Commercial Sewer Cleaning Co., Inc.; Belden Wire & Cable Company (for Cooper Industries); Cummins Engine Company, Inc.; Dertex Corporation; Egyptian Lacquer Mfg. Co., Inc.; Emhart Industries, Inc. (on behalf of its former Mallory, USM, Bailey and Bostik subsidiaries and divisions); Ericsson, Inc., successor in interest to Anaconda-Ericsson/Wire & Cable; Federal-Mogul Corporation; Ford Motor Company; Freightline Corporation; Freudenberg-NOK General Partnership; Davis-Frost, Inc. (formerly Frost Paint & Oil Co.); GenCorp., Inc.; General Electric Company and its subsidiary RCA; General Motors Corporation; HC Industries Inc.; Muellar Copper Tube Products, Inc. f/k/a Halstead Industries, Inc.; Hill-Rom Company, Inc.; Honeywell, Inc. and Alliant Techsystems Inc.; Fort James Corporation (James River II—Crown Zellerbach); Jeffboat LLC; Jenn—Air, a division of Maytag Corporation; JCI Jones Chemicals, Inc.; The Kendall Company; Kimberly-Clark Corporation; King Adhesives Corporation; Knauf Fiber Glass; Tru Serv Corporation, successor in interest to Kurfees Coatings; Lilly Industries, Inc.; Ludlow Corporation; Seagate Technology, Inc. (Magnetic Peripherals, Inc.); Marathon Oil Company; Marathon Oil Company on behalf of Marathon Pipe Line Company; Marcus Paint Company; Marisol, Inc.; McDonnell Douglas Corporation; McLaughlin Gormley King Company; Mobil Oil Corporation; National Railroad Passenger Corporation (Amtrak); North American Philips Corp.; Onan Corporation; Porter Paint Co./Courtaulds; Potter Paint Co. of Indiana Inc.; Pratt & Lambert Inc.; R.R. Donnelley & Sons Company; Red Spot Paint & Varnish Co., Inc.; Reliance Electric Company; RHI Holdings, Inc., successor to Rexnord Holdings, Inc.; Marathon Oil Company (successor to Rock Island Refining Corporation); S.C. Johnson & Son, Inc.; Sequa Corporation; Modine Manufacturing Company (successor in interest to Signet Systems, Inc.); Child Craft Industries, Inc. (Smith Cabinet Mfg. Co. Inc.); SRS of New Jersey; David L. Wade, Inc.; Standard Paints, Inc.; Stolle Corporation; Superior Oil Company (Superior Solvents & Chemicals); Devro-Teepak, Inc.; the Timken Company; TRW Inc.; Union Carbide Corporation; Unisys Corp. (Sperry Univac; Amer. Div.); United Technologies Corporation (for Essex Group, Inc.); United Technologies Corporation (for BASF as successor to Inmont Corporation); United Technologies Automotive, Inc. on behalf of Alma Plastic Company); US Gypsum Company, on behalf of the former Durabond Products Company; The Valspar Corporation; Wabash Products Co.; Borg-Warner Automotive, Inc. on behalf of Warner Gear Division (Borg-Warner); Waste Research & Reclamation; CBS Corporation f/k/a Westinghouse Electric Corporation; Thermo King Corporation; Whirlpool Corporation; White Consolidated Industries, Inc.; Whittaker Corporation; Heatcraft, Inc.; as related to Wickes Mfg.; World Color Press, Inc.; Federal Bureau of Prisons; U.S. Navy; Buckbee Mears Company (now known as BMC Industries, Inc.); Champion International Corporation as successor to Hoerner Waldorf Corp and St. Regis Corp. as well as Champion Pkg.; Chemical Manufacturing Corp. (Chemart); Electro-Spec, Inc.; Farm Credit Services; Federal-Mogul Corporation (Switches, Inc.); H.B. Fuller Company; Herff Jones, Inc.; Valhi, Inc. as successor to Impex and Mid-States Steel & Wire Company; IWD Waste, Inc.; KCL Corporation; Liberty Solvents & Chemicals; Moormann Bros. Mfg.; PPG Industries, Inc.; Radio Materials Corporation; Robbie Manufacturing, Inc.; Rockwell International Corporation; The Sherwin-Williams Company; and Wyandotte Paint Co. (dba: Akzo Nobel Coatings Inc.). Approximately $1,360,811 of the funds paid by the de minimis parties under this proposed agreement will be held in escrow until needed to help fund the performance of the further response actions to be required by EPA based on the results of the EE/CA.

For thirty days following the date of publication of this document, the EPA will receive written comments relating to this proposed agreement. EPA will consider all comments received and may decide not to enter this proposed agreement if comments disclose facts or considerations which indicate that the proposed agreement is inappropriate, improper or inadequate.

DATES: Comments on the proposed agreement must be received by EPA on or before October 15, 1999.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590, and should refer to: In the Matter of Zionsville Third Site, Zionsville, Indiana, U.S. EPA Docket No. V–W–99C–545.

FOR FURTHER INFORMATION CONTACT: Thomas J. Krueger, U.S. Environmental Protection Agency, Office of Regional Counsel, C–14J, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590, (312) 886–0562.

A copy of the proposed administrative settlement agreement may be obtained in person or by mail from the EPA's Region 5 Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590. Additional background information relating to the settlement is available for review at the EPA's Region 5 Office of Regional Counsel.

Authority: The Comprehensive Environmental Response, Compensations,and Liability Act, as amended, 42 U.S.C. 9601–9675.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 99–24043 Filed 9–14–99; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

September 9, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 15, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, SW, Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0057.

Title: Application for Equipment Authorization 47 CFR 2.911, 2.963(a), 2.983, 2.1033(a).

Form Number: FCC 731.

Type of Review: Extension of an Existing Collection.

Respondents: Business or other for profit.

Number of Respondents: 5,600.

Estimated Time Per Response: 18–30 hours.

Total Annual Burden: 134,400 hours.

Total Annual Cost: $200 per respondent.

Needs and Uses: Commission rules require approval prior to marketing of equipment regulated under certain Part 15 and Part 18 rule sections, based on showing of compliance with technical standards established in the Rules for each device operated under the applicable Rule part. Rules governing certain equipment operating the licensed service also require equipment authorization as established in the procedural Rules in Part 2. Such a showing of compliance aids in controlling potential interference to radio communications, and the data gathered, as is necessary may be used for investigating complaints of harmful interference.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–24033 Filed 9–14–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

September 9, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before November 15, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1 A–804, 445 Twelfth Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0178.

Title: Section 73.1560 Operating Power and Mode Tolerances.

Form Number: None.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 280.

Estimated Time per Response: 1 hour.

Frequency of Response: Reporting, on occasion.

Annual Burden: 280 hours.

Annual Costs: $0.

Needs and Uses: Section 73.1560(d) requires that licensees of AM, FM or TV stations file a notification with the FCC in Washington, DC when operation at reduced power will exceed ten consecutive days and upon restoration of normal operations. If causes beyond the control of the licensee prevent restoration of authorized power within a 30 day period, an informal written request must be made for any additional time as may be necessary to restore normal operations. The data is used by FCC staff to maintain accurate and complete technical information about a station's operation. In the event that a complaint is received from the public regarding a station's operation, this information is necessary to provide an accurate response.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 99–24034 Filed 9–14–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2357]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding; Correction

September 8, 1999.

Petitions for Reconsideration and Clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by September 30, 1999. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.49b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Replacement of part 90 by part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them (PR Docket No. 92–235) and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Radio Services.

Number of Petitions Filed: 8.

Federal Communications Commission.
Magalie Roman Sales,
Secretary.
[FR Doc. 99–23978 Filed 9–14–99; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

AGENCY: Federal Election Commission.
DATE AND TIME: Wednesday, September 22, 1999 at 10:00 a.m.
PLACE: 999 E Street, N.W., Washington, D.C.
STATUS: This meeting will be closed to the Public.
ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, September 23, 1999 at 10:00 a.m.
PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).
STATUS: This meeting will be open to the public.
ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 1999–22: J. Blair Richardson, Jr. on behalf of Aristotle Publishing, Inc.

Status of PricewaterhouseCoopers (PwC) Recommendations.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.
Mary W. Dove,
Acting Secretary of the Commission.
[FR Doc. 99–24204 Filed 9–13–99; 3:02 pm]
BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 217–011676.

Title: CCNI/CTE Space Charter Agreement.

Parties: Compania Chilena de Navegacion, Interoceanica S.A. (CCNI), Compania Transatlantica Espanola S.A. (CTE).

Synopsis: The proposed agreement would authorize CCNI to charter space to CTE in the trade between Puerto Rico and both Europe and the Mediterranean.

By order of the Federal Maritime Commission.
Ronald D. Murphy,
Assistant Secretary.
[FR Doc. 99–24082 Filed 9–14–99; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

U.S. Brokers Inc., 331–333 Northern Avenue, Boston, MA 02210, Officers: Steven M. Wilson, Export Manager, (Qualifying Individual), Louise Mailly, President

Mishi International, Inc., 2800 N.W. 112th Avenue, Miami, FL 33172, Officers: Isabel C. Montejo, President, (Qualifying Individual), Loida Montejo, Secretary

Professional Services International Inc., 1850 Airport Exchange Blvd., Suite 600, Erlanger, KY 41018, Officers: Pam Stapleton, President, Stephen J. Stapleton, Vice President, (Qualifying Individual)

Ronald D. Murphy,
Assistant Secretary.
[FR Doc. 99–24083 Filed 9–14–99; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 8, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Lakes Bancorporation, Inc., Storm Lake, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of First Security Banshares, Inc., Lake Park, Iowa, and thereby indirectly acquire Security State bank, Lake Park, Iowa, and Security State Bank, Milford, Iowa.

2. Commercial Financial Corp., Storm Lake, Iowa; to acquire 100 percent of the voting shares of Lakes Bancorporation, Inc., Storm Lake, Iowa, and First Security Banshares, Inc., Lake Park, Iowa, and thereby indirectly acquire Security State Bank, Lake Park, Iowa, and Security State Bank, Milford, Iowa.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Overton Financial Corporation, Overton, Texas, and Overton Delaware Corporation, Dover, Delaware; to acquire an additional 4.13 percent of the voting shares of Longview Financial Corporation, Longview Financial Corporation, Longview, Texas, and thereby indirectly acquire Longview Bank & Trust Company, Longview, Texas, and First State Bank, Van, Texas.

2. TransPecos Financial Corporation, San Antonio, Texas; to acquire 100 percent of the voting shares of The Security State Bank of Pecos, Pecos, Texas.

Board of Governors of the Federal Reserve System, September 9, 1999.
Robert deV. Frierson,
Associate Secretary of the Board.
[FR Doc. 99–24011 Filed 9–14–99; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR part 225), to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 29, 1999.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. PNC Bank Corp., Pittsburgh, Pennsylvania; to acquire First Data Investor Services Group, Inc., Westborough, Massachusetts; and thereby indirectly acquire Actuarial Computer Technology, Inc., Westborough, Massachusetts; Applied Mailing Systems, Inc., Westborough, Massachusetts; First Data Distributors, Inc., Westborough, Massachusetts; and United States Pension Services, Inc., Westborough, Massachusetts, and thereby engage in various administrative service activities as previously approved in Board Orders (*see Bankers Trust New York Corp.*, 83 Fed. Res. Bull. 780 (1997) and *Commerzbank AG*, 83 Fed. Res. Bull. 679 (1997)) and in financial and investment advisory services, pursuant to § 225.28(b)(6) of Regulation Y; agency transactional services, pursuant to § 225.28(b)(7) of Regulation Y; employee benefits consulting services, pursuant to § 225.28(b)(9)(ii) of Regulation Y; support services, pursuant to § 225.28(b)(10) of Regulation Y; data processing services, pursuant to § 225.28(b)(14) of Regulation Y; and in serving as a transfer agent to investment companies, pursuant to § 225.28(b)(5) of Regulation Y.

In addition to this application, Applicant also has applied to acquire NA Insurance Services, Inc., Seal Beach, California, and thereby engage in operating as a necessary incident to retirement plan services, (see *Mellon Bank Corp./Buckeye Consultants*, (83 Fed. Res. Bull. 681 (1997)) and section 225.28(b)(5) of Regulation Y.

Board of Governors of the Federal Reserve System, September 9, 1999.
Robert deV. Frierson,
Associate Secretary of the Board.
[FR Doc. 99–24012 Filed 9–14–99; 8:45 am]
BILLING CODE 6210–01–F

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Government in the Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System
TIME AND DATE: 11:00 a.m., Monday, September 20, 1999.
PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.
STATUS: Closed.
MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.
SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: September 10, 1999.
Robert deV. Frierson,
Associate Secretary of the Board.
[FR Doc. 99–24095 Filed 9–10–99; 4:24 pm]
BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Privacy Act of 1974; System of Records

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Proposed alteration to record system.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is proposing to alter the Government-wide system of records, FRTIB–1, Thrift Savings Plan Records. Under the proposed alteration, new categories of records will be added to cover records maintained for spouses, former spouses, and beneficiaries of Thrift Savings Plan (TSP) participants to state routine uses which may be made of records on these individuals, and to clarify that the term "participant" includes a former participant.

DATES: Comments must be received on or before November 15, 1999.

ADDRESSES: Comments may be sent to Thomas L. Gray, Federal Retirement Thrift Investment Board, 1250 H Street, NW, Washington, DC 20005. FAX (202) 942–1676.

FOR FURTHER INFORMATION CONTACT: Thomas L. Gray, (202) 942–1662.

SUPPLEMENTARY INFORMATION: The Board was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Pub. L. 99–335, 100 Stat. 514, which has been codified, as amended, largely at 5 U.S.C. 8351 and 8401–8479 (1994), to administer the Thrift Savings Plan (TSP). The TSP is a tax-deferred retirement savings plan for Federal employees that is similar to cash or deferred arrangements established under section 401(k) of the Internal Revenue Code. There are over two million TSP participants, and funds are held in trust for each participant. 5 U.S.C. 8437(g).

The Board is an independent agency established in the executive branch of the United States Government which is subject to the Privacy Act, 5 U.S.C. 552a. On May 7, 1990, initial notice of the Board's systems of records, including FRTIB–1, was published in the **Federal Register** at 55 FR 18949. A minor amendment to FRTIB–1 was published in the May 20, 1994, **Federal Register** at 59 FR 26469, to delete routine use provisions allowing disclosure to the Department of Veterans Affairs, the Federal Housing Administration, and private financial institutions, because disclosure to those entities could be made at the written request of the participant. The provision allowing disclosure to beneficiaries of deceased participants was also deleted as unnecessary.

This alteration is necessary because the Board is updating its computerized data base for the TSP record keeping system. FRTIB–1 currently lists TSP participants as the only category of individuals covered by this system of records. Under the new TSP record keeping system, spouses, former spouses, and beneficiaries of participants will be added to this system of records.

The TSP Service Office processes domestic relations court orders and legal process for the enforcement of a participant's obligation to pay alimony or child support or for child abuse to determine if these orders qualify to award funds from a participant's account. The decision whether or not a spouse or former spouse is entitled to a payment from the participant's account is mailed to the address provided for that individual. A record that is retrieved by the Social Security number (SSN) of the participant's spouse or former spouse will be created at the same time that the decision letter is mailed, if the SSN is known. If that individual's SSN is not known, a record will be created as soon as the SSN is provided to the TSP Service Office.

In addition, following a participant's death, the amount remaining in the account will be paid as a death benefit payment to the participant's beneficiary or beneficiaries in accordance with the order of precedence set forth in 5 U.S.C. 8424(d). A record that is retrieved by the SSN of the participant's beneficiary or beneficiaries will be created at the same time that a notice of pending Thrift Savings Plan payment and tax withholding information is mailed, if the SSN is known (or as soon as the SSN is provided thereafter). This notice is sent to the beneficiary or beneficiaries following a determination that the beneficiary(ies) is entitled to receive the death benefit payment.

A further change is being made to clarify that the term "participant" includes former participants, *i.e.*, participants whose accounts have been closed. While the current list of covered individuals names only current participants, the record system also covers former participants on whom TSP records are maintained. The system notice now specifically includes them in the record system.

Further changes are being made to the routine uses for which information may be disclosed. Routine use (a) is revised to specify that the address of the subject of the record may be provided to tax enforcement agencies. Routine use (d) is revised to provide for disclosure to the attorney for the participant's current or former spouse, and to state that the disclosure is made to allow those individuals to protect spousal rights and receive benefits to which they may be entitled. Routine use (l) is revised to clarify the circumstances under which disclosure may be made to a Federal, state, or local agency. Routine use (q) is added to allow for disclosure to contractors engaged by the Board.

Two other minor changes are also being made. In the system location, the subsets for records located at the system manager's address have been eliminated, because all records will be maintained at the location of the TSP record keeper. In addition, the category of records in the system has been rewritten for clarity, and minor grammatical changes have been made throughout this record system notice.

Roger W. Mehle,

Executive Director, Federal Retirement Thrift Investment Board.

FRTIB–1

SYSTEM NAME:

Thrift Savings Plan Records.

SYSTEM LOCATION:

These records are located at the offices of the entity engaged by the Board to perform record keeping services for the TSP. Currently, the TSP record keeper is the National Finance Center, Department of Agriculture, whose mailing address is TSP Service Office, National Finance Center, PO Box 61500, New Orleans, Louisiana 70161–1500.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All participants (which term includes former participants, *i.e.*, participants whose accounts have been closed), as well as spouses, former spouses, and beneficiaries of TSP participants. Participants in the TSP consist of present and former Members of Congress and Federal employees covered by the Federal Employees' Retirement System Act of 1986, (FERSA) as amended, 5 U.S.C. chapter 84; all present and former Members of Congress and Federal employees covered by the Civil Service Retirement System who elect to contribute to the TSP; Supreme Court Justices, Federal judges, and magistrates who elect to contribute; certain union officials, those individuals described in 5 CFR part 1620, and any other individual for whom an account has been established.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain the following kinds of information: Records of TSP account activity, including account balances, employee contributions, agency automatic (one percent) and agency matching contributions, earnings, interfund transfers, contribution allocation elections, investment status by fund, loan and withdrawal information, employment status, retirement code and whether employee is vested, error correction information, participant's date of birth and designated beneficiary; records of spousal waivers and consents; powers of attorney and conservatorship and guardianship orders; participant's name, current or former employing agency, and servicing payroll and personnel office; records of Social Security number and home address for participants, spouses, former spouses, and beneficiaries and potential beneficiaries; records of bankruptcy actions; information regarding domestic relations court orders to divide the account; child support, child abuse, and alimony orders; information on payments to the participant's spouse, former spouse, or children and their attorneys; information on notices sent to participants, spouses, former spouses, and beneficiaries; and general correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 8474.

PURPOSE(S):

The purpose of this system of records is to ensure the integrity of the Plan, to record activity concerning the TSP account of each Plan participant, to communicate with the participant, spouse, former spouse, and beneficiary concerning the account, and to make certain that he or she receives a correct payment from the Plan.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records and information in these records may be used:

a. To disclose financial data and addresses to Federal, state, and local governmental tax enforcement agencies so that they may enforce applicable tax laws.

b. To disclose to the designated annuity vendor in order to provide TSP participants who have left Federal service with an annuity.

c. To disclose to sponsors of eligible retirement plans for purposes of transferring the funds in the participant's account to an Individual Retirement Arrangement or into another eligible retirement plan.

d. To disclose to current and former spouses and their attorneys in order to protect spousal rights under FERSA and to receive benefits to which they may be entitled.

e. When a participant to whom a record pertains dies, to disclose the following types of information to any potential beneficiary and anyone handling the decedent's estate: Information in the participant's record which could have been properly disclosed to the individual when living and the name and relationship of any other person who claims the benefits or who is entitled to share the benefits payable.

f. To disclose information to any person who is named by the participant, spouse, former spouse, or beneficiary of the participant in a power of attorney and to any person who is responsible for the care of the participant or the spouse, former spouse, or beneficiary of the participant to whom a record pertains, and who is found by a court to be incompetent or under other legal disability, information necessary to manage the participant's account and to ensure payment of benefits to which the participant, spouse, former spouse or beneficiary of the participant is entitled.

g. To disclose information to a congressional office from the record of a participant or of the spouse, former spouse, or beneficiary of a participant in order for that office to respond to a communication from that person.

h. To disclose to agency payroll or personnel offices in order to calculate benefit projections for individual participants, to calculate error corrections, to reconcile payroll records, and otherwise to ensure the effective operation of the Thrift Savings Plan.

i. To disclose to the Department of the Treasury information necessary to issue checks from accounts of participants in accordance with withdrawal or loan procedures or to make a payment to a spouse, former spouse, child, or his or her attorney, or to a beneficiary.

j. To disclose to the Department of Labor and to private sector audit firms so that they may perform audits as provided for in FERSA.

k. To disclose to the Parent Locator Service of the Department of Health and Human Services, upon its request, the address of a participant, spouse, former spouse, or beneficiary of the participant for the purpose of enforcing child support obligations against that individual.

l. To disclose pertinent information to the appropriate Federal, foreign, state, local, or tribal agency, or to other public authority responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, upon its request, when presented with an indication that the information is relevant to any enforcement, regulatory, investigative, or prosecutorial responsibility of that agency or authority.

m. To disclose information to the Office of Management and Budget at any stage of the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

n. To disclose to a Federal agency, in response to its request, the address of a participant, spouse, former spouse, or beneficiary of the participant and any other information the agency needs to contact that individual concerning a possible threat to his or her health or safety.

o. To disclose information to the Department of Justice, where:

(1) The Board or any component of it, or

(2) Any employee of the Board in his or her official capacity, or

(3) Any employee of the Board in his or her individual capacity, where the Department of Justice has agreed to represent the employee; or

(4) The United States (where the Board determines that litigation is likely to affect the agency or any of its components) is a party to litigation or has an interest in such litigation, and the Board determines that use of such records is relevant and necessary to the litigation. However, in each such case, the Board must determine that disclosure of the records to the Department of Justice is a use of the information contained in the records which is compatible with the purpose for which the records were collected.

p. In response to a court subpoena, or to appropriate parties engaged in litigation or preparing for possible litigation. Examples include disclosure to potential witnesses for the purpose of securing their testimony to courts, magistrates, or administrative tribunals, to parties and their attorneys in connection with litigation or settlement of disputes, or to individuals seeking information through established discovery procedures in connection with civil, criminal, or regulatory proceedings.

q. To disclose to contractors and their employees who have been engaged to assist the Board in performing a contract service or agreement, or who have been engaged to perform other activity related to this system of records and who need access to the records in order to perform the activity. Recipients of TSP records are required to comply with the requirements of the Privacy Act.

POLICIES AND PRACTICES OF STORING, RETRIEVING, SAFEGUARDING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained on electronic or magnetic media, on microfilm, or in folders.

RETRIEVABILITY:

These records are retrieved by SSN and other personal identifiers of the individual to whom they pertain.

SAFEGUARDS:

Hard copy records are kept in metal file cabinets in a secure facility, with access limited to those whose official duties require access. Personnel are screened to prevent unauthorized disclosure. Security mechanisms for automatic data processing prevent unauthorized access to the electronic or magnetic media.

RETENTION AND DISPOSAL:

TSP documents are retained for 99 years. Manual records are disposed of by compacting and burning; data on electronic or magnetic media are obliterated by destruction or reuse, or are returned to the employing agency.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director, Federal Retirement Thrift Investment Board, 1250 H Street, NW, Washington, DC 20005.

RECORD ACCESS PROCEDURES:

Individuals who want notice of whether this system of records contains information pertaining to them and to obtain access to their records may contact the TSP Service Office or their employing agency, as follows:

a. Participants who are current Federal employees may call or write their employing agency for personnel or payroll records regarding the agency's and the participant's contributions and adjustments to contributions. A request to the employing agency must be made in accordance with that agency's Privacy Act regulations or that agency's procedures. For other information regarding their TSP accounts, participants who are Federal employees may call or write the TSP Service Office.

b. Participants who have separated from Federal employment and spouses, former spouses, and beneficiaries of participants may call or write the TSP Service Office.

Individuals calling or writing the TSP Service Office must furnish the following information for their records to be located and identified:

a. Name, including all former names;

b. Social Security number; and

c. Other information, if necessary. For example, a participant may need to provide the name and address of the agency, department, or office in which he or she is currently or was formerly employed in the Federal service. A spouse, former spouse, or beneficiary of a participant may need to provide information regarding his or her communications with the TSP Service Office or the Board.

Participants may also inquire whether this system contains records about them and access certain records through the account access section of the TSP Web site and the ThriftLine (the TSP's automated telephone system). The TSP Web site is located at *www.tsp.gov*. To use the TSP ThriftLine, the participant must have a touch-tone telephone and call the following number (504) 255–8777. The following information is available on the TSP Web site and the ThriftLine: Account balance; available loan amount; the status of a monthly withdrawal payment; the current status of a loan or withdrawal application; and an interfund transfer request. Because a PIN is required to use these features, they are not available to former participants.

CONTESTING RECORD PROCEDURE:

Individuals who want to amend TSP records about themselves must submit a detailed written explanation as to why information regarding them is inaccurate or incorrect, as follows:

a. Participants who are current Federal employees must write their employing agency to request amendment of personnel records regarding employment status, retirement coverage, vesting code, and TSP service computation date, or payroll records regarding the agency's and the participant's contributions and adjustments to contributions. A request to the employing agency must be made in accordance with that agency's Privacy Act regulations or that agency's procedures. For other information regarding their TSP accounts, participants who are Federal employees must submit a request to the TSP Service Office.

b. Participants who have separated from Federal employment and spouses, former spouses, and beneficiaries of participants must submit a request to the TSP Service Office.

c. Individuals must provide their Social Security number and name, and they may also need to provide other information for their records to be located and identified.

The employing agency or the TSP Service Office will follow the procedures set forth in 5 CFR part 1605, Error Correction Regulations, in responding to requests to correct contribution errors.

RECORD SOURCE CATEGORIES:

The information in this system is obtained from the following sources:

a. The individual to whom the information pertains;

b. Agency payroll and personnel records;

c. Court orders; or

d. Spouses, former spouses, other family members, beneficiaries, legal guardians, and personal representatives (executors, administrators).

[FR Doc. 99–23830 Filed 9–14–99; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of a Cooperative Agreement With Minority Health Professions Foundation

AGENCY: Office of the Secretary

ACTION: Notice of a cooperative agreement with Minority Health Professions Foundation.

The Office of Minority Health (OMH), Office of Public Health and Science (OPHS), announces its intent to continue support of the umbrella cooperative agreement with the Minority Health Professions Foundation (MHPF), the educational arm of the Association of Minority Health Professions Schools (AMHPS). This cooperative agreement will continue the broad programmatic framework in which specific projects can be supported by various agencies during the project period.

The purpose of this cooperative agreement is to: (1) Foster cooperation and collaboration among the minority health professions schools, and (2) to assist the AMHPS member institutions in expanding and enhancing their educational and research opportunities, with the ultimate goal of improving the health status of minorities and disadvantaged people.

The OMH will provide technical assistance and oversight as necessary for the implementation, conduct, and assessment of the project activities. On an as-needed basis, OMH will assist in arranging consultation from other government agencies and non-government agencies.

Authority: This cooperative agreement is authorized under Section 1707(e)(1) of the Public Health Service Act, as amended.

Background

Assistance will continue to be provided to the MHPF. During the last 5 years, through the collective efforts of its member institutions, the MHPF has successfully demonstrated the ability to work with its academic institutions and official health agencies on mutual education, service and research endeavors. The MHPF is uniquely qualified to continue to accomplish the purposes of this cooperative agreement because it has the following combination of factors:

- It is the only national organization whose member institutions are all predominately minority health professions institutions with excellent professional performance records;
- It has the ability to provide continuity for AMHPS educational and research endeavors through its infrastructure and expertise;
- It has an established comprehensive data base related to teaching and other activities of all African-American medical, dental, pharmacy and veterinary schools;
- It has an inventory of essential disease prevention and health promotion activities for students and its member institutions;
- It has demonstrated leadership in attracting minority students to health professions careers; and,
- It has an inventory of critical knowledge, skills and abilities related to instruction in medical and health professional preparation.

This cooperative agreement will be continued for an additional five-year project period with 12-month budget periods. Depending upon the types of projects and availability of funds, it is anticipated that this cooperative agreement will received approximately $250,000 per year. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this cooperative agreement, contact Ms. Cynthia Amis, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, Maryland 20852 or telephone (301) 594–0769.

OMB Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number for this cooperative agreement is 93.004.

Dated: September 3, 1999.

Nathan Stinson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 99–23987 Filed 9–14–99; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 DAY–23–99]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

1. National Birth Defects Prevention Study (Formerly called Metro Atlanta Birth Defects and Risk Factor Surveillance System)—(0920–0010)—Revision—National Center for Environmental Health (NCEH). The Division of Birth Defects and Pediatric Genetics (DBDPG), NCEH has been monitoring the occurrence of serious birth defects and genetic diseases in Atlanta since 1967 through the Metropolitan Atlanta Congenital Defects Program (MACDP). The MACDP is a population-based surveillance system for birth defects in the 5 counties of Metropolitan Atlanta. Its primary purpose is to describe the spatial and temporal patterns of birth defects occurrence and serve as an early warning system for new teratogens. Since 1993, the DBDPG has also been conducting the Birth Defects Risk Factor Surveillance (BDRFS) now called the National Birth Defects Prevention Study (and formerly called the Metro Atlanta Birth Defect and Risk Factor Surveillance System), a case-control study of risk factors for selected birth defects. Infants with birth defects are identified through the MACDP and maternal interviews. Clinical/laboratory tests are conducted on approximately 300 cases and 100 controls per year. Controls are selected from among normal births in the same population. OMB approval (OMB 0920–0010) for MACDP and BDRFS which is now called the National Birth Defects Prevention Study (and formerly called the Metro Atlanta Birth Defects and Risk Factor Surveillance System) was renewed in 1996 and will expire 30 September 1999.

This request is for a 3-year renewal with two changes listed below including a change in the study name:

A. In 1996, MACDP was still obtaining assistance from more than 10 Atlanta hospitals to conduct birth defects surveillance. Therefore, MACDP renewed its OMB approval at that time. In 1997, however, the State of Georgia exercised its option to require the reporting of birth defects under the state's disease reporting regulations, which list birth defects as a condition whose reporting is required by law. The Georgia Division of Health authorized the CDC to serve as its agent in the collection of these case reports. MACDP findings are shared with the state. Since birth defects surveillance in Atlanta is now a state requirement, the CDC is no longer requesting OMB clearance for this activity. Therefore, the Division of Birth Defects and Pediatric Genetics is not seeking renewal of its OMB clearance for the surveillance activities involved in MACDP.

B. The BDRFS is now called the National Birth Defects Prevention Study (and formerly called the Metro Atlanta Birth Defects and Risk Factor Surveillance Program). The major components of this study have not changed. Infants with birth defects are identified through MACDP. Control infants are selected from birth hospitals in the same population. Mothers of case and control infants are interviewed by phone about their medical history, pregnancies, environmental exposures and lifestyle. The interview still takes about 1 hour, but it is now a computer-based interview and answers are entered directly into the database instead of recorded on paper. Another change from the BDRFS is that we are no longer asking participants to come to a clinic for blood drawing. Instead of using blood to study genetic risk factors for birth defects, we will be studying DNA from cheek cells. After completing the interview, participants are sent a packet in the mail and are asked to collect cheek cells using small brushes from the mother, father, and infant. The brushes containing cheek cells are then sent back to the lab by mail. The cheek cell kits will include $20.00 as an incentive to complete them and send them back. The total annual burden hours are 600.

Forms	Number of respondents	No. of responses/respondents	Avg. burden/response (in hrs.)
NBDPS case/control interview	400	1	1
Biologic specimen collection	1,200	2	.1666

2. Case-Control Study of Lifetime Exposure to Drinking Water Disinfection By-products (DBPs) and Bladder Cancer in Pet Dogs—New—National Center for Environmental Health (NCEH). Current drinking water treatment practices in the U.S. typically include disinfection to control the pathogenic organisms responsible for waterborne diseases. Chlorine is the most commonly used chemical for drinking water disinfection; however, chlorine reacts with other drinking water contaminants to generate compounds that may cause cancer (e.g., bladder cancer) in people. The long latency period for the development of bladder cancer and the difficulty in reconstructing water consumption and exposure history make it difficult to verify the association between DBPs exposure and bladder cancer occurrence that has been reported in human epidemiologic studies. It would be useful to have an alternative method to examine this association. We propose to conduct a case-control study of pet dogs to test the hypothesis that consumption of water containing chlorination DBPs increases the dogs' risk for canine bladder cancer in a dose-dependent manner. Specifically, we are interested in examining the type of water disinfection treatment (chlorination, chloramination, or no disinfection) of the tap water consumed by dogs with and without bladder cancer. The total annual burden hours are 309.

Respondents	Number of respondents	Responses/respondents	Avg. burden per respondent (in hrs.)
Recruiting Project Participants	430	1	.26666
Telephone Interview	400	1	.08333

Dated: September 9, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–24001 Filed 9–14–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 DAY–24–99]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

1. National Hospital Discharge Survey—(0920–0212)—Extension—National Center for Health Statistics (NCHS)—The National Hospital Discharge Survey (NHDS), which has been conducted continuously by the National Center for Health Statistics, CDC, since 1965, is the principal source of data on inpatient utilization of short-stay, non-Federal hospitals and is the only annual source of nationally representative estimates on the characteristics of discharges, the lengths of stay, diagnoses, surgical and non-surgical procedures, and the patterns of use of care in hospitals in various regions of the country. It is the benchmark against which special programmatic data sources are compared. Data collected through the NHDS are essential for evaluating health status of the population, for the planning of programs and policy to elevate the health status of the Nation, for studying morbidity trends, and for research activities in the health field. NHDS data have been used extensively in the production of goals for the Year 2000 Health Objectives and the subsequent monitoring of these goals. In addition, NHDS data provide annual updates for numerous tables in the Congressionally-mandated NCHS report, Health, United States. Data for the NHDS are collected annually on approximately 300,000 discharges from a nationally representative sample of noninstitutional hospitals, exclusive of Federal, military and Veterans' Administration hospitals. The data items collected are the basic core of variables contained in the Uniform Hospital Discharge Data Set (UHDDS). Data for approximately fifty-five percent of the responding hospitals are abstracted from medical records while the remainder of the hospitals supply data through commercial abstract service organizations, state data systems, in-house tapes or printouts. There is no actual cost to respondents since hospital staff who actively participate in the data collection effort are compensated by the government for their time. The total annual burden hours are 2,465.

Respondents (hospitals)	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs)
Medical Record Abstracts:			
Primary Procedure Hospitals	73	250	.08333
Alternate Procedure Hospitals	189	250	.01667

Respondents (hospitals)	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs)
In-House Tape or Printout Hospitals	37	12	.18333
Update Form (Abstract Service Hospitals)	175	2	.03333
Quality Control Forms	50	40	.01667
Induction Forms	15	1	2

Dated: September 9, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–24002 Filed 9–14–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 DAY–25–99]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

1. National Sexually Transmitted Disease Morbidity Surveillance System—Extension—(0920–0011)—The National Center for HIV, STD, and TB Prevention (NCHSTP)—The reports used for this surveillance system provide ongoing surveillance data on national sexually transmitted disease morbidity. The data are used by health care planners at the national, state, and local (including selected metropolitan and territorial health departments) levels to develop and evaluate STD prevention and control programs. In addition, there are many other users of the data including scientists, researchers, educators, and the media. STD data gathered in these reports are used to produce national statistics published in the annual STD Surveillance Report, MMWR articles, and serve as a progress report to meet objectives in *Healthy People 2000: Midcourse Review and 1995 Revisions.* It is important to note that these reporting forms are in the process of being phased out and replaced by electronic, line-listed STD data collected in the *National Electronic Telecommunications System for Surveillance* (NETSS).

Costs are covered by way of cooperative agreements to the project areas. The total annual burden hours are 828.

Forms	No. of respondents	No. of responses/respondent	Avg. burden (in hrs.)
CDC 73.688*	36	4	1
CDC 73.688**	27	4	1
CDC 73.998	36	12	0.5833
CDC 73.2638	36	3	3

* *State-level reporting:* Respondents for the state-specific CDC 73.688 forms now include 26 state health departments (Originally, respondents included 50 states, but 24 states have now discontinued hardcopy reporting and send all STD data as electronic line-listed records through NETSS), seven large city health departments and three outlying areas.

** *City-level reporting:* The health departments for the 26 states and one of the outlying regions (Puerto Rico) also prepare and submit reports for additional large cities within their jurisdictions.

Dated: September 9, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–24003 Filed 9–14–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 DAY–26–99]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

Training Intervention Effectiveness Research of Vocational Education Safety and Health Instructional Materials—New—The National Institute for Occupational Safety and Health (NIOSH) is proposing to study the effectiveness of safety and health curricula to be made available for secondary vocational schools. Studies conducted by NIOSH suggest that over half of all young workers injured on-the-job believe that they did not receive adequate safety and health training in school or from their employers. The National Safety Council estimates that nearly one-half (48.1%) of all occupational injuries are sustained by employees with less than one year of work experience. Further-more, feedback from end-users of past NIOSH vocational education materials indicates that these materials do not adequately meet the needs of vocational teachers and students. Given these considerations, further training intervention effectiveness research is

needed to identify those educational approaches that are most effective in shaping the attitudes and behaviors of new workers.

Trade-specific safety and health materials will be tested for two vocations: electrical trades and cosmetology. Both sets of instruction are designed for vocational secondary school students enrolled in courses on either of these subjects. These curricula cover the following topics: hazard recognition and control, personal protection, safe work practices, and safe working environments. This instruction is expected to improve students' knowledge and attitudes in the area of occupational safety and health, thereby reducing the incidence of illness, injury, and death in tomorrow's workplace. Students will receive this instruction in a pedagogically conceived manner, within the classroom setting, as part of their overall vocational training. A variety of instructional approaches are available to convey information and affect attitudes. The purpose of this study is to identify approaches that readily and consistently produce desired outcomes among vocational students. The electrical safety curriculum, which contains a videotaped program, will be used to explore the effectiveness of television as a delivery mechanism. The cosmetology safety curriculum will be used to examine the effectiveness of problem solving exercises, especially with regard to group size.

The time-line for this study is approximately one year. In May of the 1998–99 school year, a baseline assessment of safety knowledge and attitudes of vocational secondary school students will be performed. The NIOSH training materials will not be used with this group of students. For the Fall of 1999, participating schools will each be assigned one of the instructional approaches under investigation. At the beginning of the 1999–2000 school year, knowledge and attitude pretests for both trades will be administered to students. During the school year, as the prescribed safety topics are taught, knowledge and attitudes will be assessed. Teachers and students will be surveyed regarding their perceptions of the instructional materials and their cognitive and attitudinal impacts. During this phase of the study, the most effective approaches will emerge.

A final assessment will be administered to all students in May 2000, allowing comparison with the assessments taken the previous May of students who had not been exposed to any of the curricular elements under study.

The identities and performances of individual students, teachers, and schools will be held in confidence. The total annual burden hours are 2,964.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden per response
Electrical teachers	80	1	1.00
Electrical students:			
Baseline data	1600	1	.50
Early video	800	4	.25
Late video	800	4	.25
Cosmetology teachers	80	1	1.00
Baseline data:			
All discussion groups	1600		.50
	1600		.33
		1	
		3	

Dated: September 9, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–24004 Filed 9–14–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 DAY–27–99]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

1. Aggregate report of follow-up for contacts of tuberculosis, and aggregate report of screening and preventive therapy for tuberculosis infection: two revised tuberculosis program management reports—New—National Center for HIV, STD, and TB Prevention (NCHSTP)—To ensure the elimination of tuberculosis in the United States, key program activities such as finding tuberculosis infections in recent contacts of cases and in other persons likely to be infected, and providing prevention therapy, must be monitored. The Division of Tuberculosis Elimination (DTBE), is implementing two revised program management reports for annual submission: Aggregate report of follow-up for contacts of tuberculosis, and aggregate report of screening and preventive therapy of tuberculosis infection. The respondents for these reports are the 68 state and local tuberculosis control programs receiving federal cooperative agreement funding through (DTBE). The revised reports phase out two, twice-yearly program management reports in the Tuberculosis Statistics and Program Evaluation Activity (OMB 0920–0026): *Contact Follow-up* (CDC 72.16) and *Completion of Preventive Therapy* (CDC 72.21). The revised reports, which are being submitted for an OMB approval outside of OMB 0920–0026, have several improvements over the old reports for the respondents and for DTBE, such as the emphasis on preventive therapy outcomes, the focus on high-priority target populations vulnerable to tuberculosis, and programmed electronic report generation and submission through the Tuberculosis Information Management System. The old reports, CDC 72.16 and CDC 72.21, which have been submitted at least in some form by the respondents since 1961, are tabulated by hand.

Three program management reports in the previous series already have been phased out. They are Bacteriologic Conversion of Sputum (CDC 72.14), Case Register (CDC 72.15), and Drug Therapy (CDC 72.20). These three reports have been superseded by integrated reporting in Tuberculosis Statistics and Program Evaluation Activity (OMB 0920–0026). The discontinuation of these reports has resulted in an estimated reduction in the annual response burden of 159 hours. The total annual burden hours are 136–340.

Report	No. of respondents	No of responses per respondent	Average burden per response (in hrs.)
Aggregate report of follow-up for contacts of tuberculosis	68	1	2.5
Aggregate report of screening and preventive therapy for TB infection	68	1	2.5

Date: September 9, 1999.

Nacy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–24005 Filed 9–14–99; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30 DAY–25–99]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer on (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

1. Proposed Project

Evaluating the Effectiveness of Tailored Occupational Safety and Health Information on the World Wide Web: Increasing Knowledge and Changing Behavior of Residential Building Construction Contractors—New—The National Institute for Occupational Safety and Health (NIOSH)—Workers in the construction industry face higher than normal risks of fatal injury, nonfatal injury, and illness resulting from on-the-job exposures. According to the NIOSH, during the period from 1980 through 1992, construction had the highest number of deaths resulting from workplace injury—over 14,000 deaths, or more than 1,000 deaths per year. According to the Bureau of Labor Statistics (BLS) and the Center to Protect Workers' Rights (CPWR), construction had the highest number of deaths resulting from injury (1,039) and the third highest rate of fatal injury (13.9 deaths per 100,000 workers) in 1996.

The majority of construction companies are very small. According to Dun and Bradstreet, 96% of residential building contractors employ less than 15 workers on average; over 80% employ less than 5 workers. In general, small companies have insufficient resources to identify and apply risk and prevention information relevant to their operations. According to a recent study (conducted by NIOSH), lack of tailored, relevant, and timely occupational safety and health information is a major barrier identified by small construction contractors.

The goals of this investigation are to: (1) explore the effectiveness of tailored safety and health information that is developed based on the individual contractor's construction specialties and specific operations, as well as the contractor's psychosocial factors; and (2) explore the effectiveness of the Internet World Wide Web as a mechanism for delivering tailored safety and health information. Specifically, the goal of this data collection is to compare the effectiveness of tailored Internet messages (based on interactive Internet and computer-tailoring technologies), non-tailored Internet messages (based on current static, menu-driven, non-interactive models), tailored print messages delivered by direct mail, and non-tailored print messages delivered by direct mail in influencing changes in safety-and health-related knowledge, intentions, and behaviors. Messages will address two leading cases of injuries and illnesses in construction: Falls and silicosis.

The data collected in this study will be used to further current understanding of tailoring safety and health information utilizing the Internet and the relative effectiveness of this approach when compared to traditional and current mechanisms of communicating safety and health information. The data collected in this study will also be used to provide a basis for developing industry-specific occupational safety and health information systems that provide relevant, timely risk and prevention information, especially to small business owners. The total annual burden hours are 249.

Respondents	No. of respondents	No. of responses/respondent	Average burden/response (in hrs.)
Residential Building Construction Contractors	250	2	.33

2. The development and implementation of a theory-based health communications intervention to decrease silica dust exposure among masonry workers—New—The National Institute of Occupational Safety and Health (NIOSH)—Construction is the most frequently recorded industry on death certificates with mention of silicosis. Overexposure to crystalline silica is well documented in the construction industry, especially in brick laying and masonry. According to 1993 BLS data, there are 136,139 (at 24,362 establishments) masonry and

brick laying workers in the U.S., and according to a recent study, approximately 17,400 masonry and plastering workers are exposed to at least five times the NIOSH recommended exposure limit (REL for crystalline silica), and of these workers, an estimated 80 percent of them are exposed to at least 10 times the NIOSH REL.

To effectively prevent silicosis, not only must control measures be improved, but workers must be persuaded to protect themselves and employers must be motivated to provide workers with proper engineering controls and training. Previous research has too often focused on the behaviors and attitudes of workers and not on employers. Since employers have a tremendous influence on the health of workers and since their motivations may differ from workers'', it is important to focus on them as well. Well-designed and theory-driven communication interventions have the capacity to promote protective health behaviors. To develop messages that will have the greatest success at motivating workers to protect themselves and employers to protect their workers from silicosis, information on workers' and employers' beliefs, attitudes, and behaviors regarding silicosis must be determined. A recently completed pilot-study indicated a need to motivate employers to provide appropriate engineering controls and respiratory protection and a need to persuade workers to protect themselves.

The goal of this project is to develop a health communication intervention program targeting both masonry contractors and workers that will increase the use of engineering controls (specifically, wet-sawing) and respiratory protection. The aforementioned pilot study will serve as a foundation upon which the intervention will be developed. The effectiveness of the intervention will be evaluated using a pre-post test questionnaire.

The study results will provide a basis for intervention programs that masonry contractors can use to educate their workers regarding risk of exposure to silica dust on masonry work sites. The methodology could be applied to other construction procedures such as jack hammering, sand blasting, and similar dust producing procedures to produce similar intervention programs. Eventually we would hope, silica exposures among construction workers would decrease significantly. The total annual burden hours are 146.

Respondents	No. of respondents	No. of responses/ respondent	Average burden/ response (in hrs.)	Total burden (in hrs.)
Workers	200	2	0.33	132
Contractors	20	2	0.33	13.2
Total				145.2

Dated: September 9, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–24006 Filed 9–14–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Ethics Subcommittee of the Advisory Committee to the Director, Centers for Disease Control and Prevention Meeting: Change of Time

Federal Register *Citation of Previous Announcement:* August 20, 1999, Volume 64, Number 161, Page 45552.

Summary: Notice is given that the meeting time of the Ethics Subcommittee of the Advisory Committee to the Director, CDC has changed. The meeting date, status, purpose, and matters to be discussed announced in the original notice remain unchanged.

There will be no change in the meeting location of the Advisory Committee to the Director, CDC, which will be meeting at Center for Disease Control and Prevention, 1600 Clifton Road, NE, Building 16, Room 5126, Atlanta, Georgia 30333.

Original Time and Date: 8:30 a.m.–5 p.m., September 23, 1999.

New Time and Date: 10 a.m.–4 p.m., September 23, 1999.

Contact Person for More Information: Kathy Cahill, Executive Secretary, Advisory Committee to the Director, CDC, 1600 Clifton Road, NE, M/S D–24, Atlanta, Georgia 30333. Telephone 404/639–7060.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: September 9, 1999.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office Centers for Disease Control and Prevention.

[FR Doc. 99–24007 Filed 9–14–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Call for Public Comment: Changing the Conversation—A National Plan To Improve Substance Abuse Treatment

AGENCY: Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, DHHS.

ACTION: Request for public comment on five issues (domains) of concern to the substance abuse treatment field when assessing substance abuse treatment.

SUMMARY: This notice announces that the Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) is formally inviting public comment on five issues (domains) that are of concern to the substance abuse treatment field and require development and exploration. Via several mechanisms, including public hearings, CSAT intends that findings from the exploration of individual domains will ultimately be synthesized into a coherent national strategy to guide substance abuse treatment program and policy development for the future. Individuals and organizations are encouraged to comment in one of several ways: (1) In writing, by submission through the U.S. Mail or courier service; (2) via the National Treatment Plan web site (http://www.NaTxPlan.org); or (3) in person at one of the remaining three public hearings scheduled at locations across the country. The final cutoff date for comments is December 1, 1999. This notice discusses the public hearings at which interested individuals/organizations may testify regarding the five substance abuse treatment domains discussed below.

DATES/LOCATIONS: In addition to the public hearings held on July 8 in Hartford, Connecticut, and on September 16 in Chicago, Illinois, CSAT plans to conduct three more public hearings in 1999—October 18 in Washington, DC; October 26 in Portland, Oregon; and November 9 (tentative date) in Tampa/St. Petersburg, Florida. The next hearing will be held at the Metropolitan Washington Council of Governments, 777 N. Capitol Street, NE, Washington, DC 20002–4226, on October 18, 1999, between the hours of 8:30 a.m. and 5 p.m. Specific details regarding subsequent hearings will be published in the **Federal Register** approximately one month prior to each hearing.

Requests to testify at the Washington, DC, public hearing must be submitted to the addressee indicated below by October 12, 1999. Seating is limited. In the event that interpretive services for the hearing-impaired are required, please indicate these special needs to the addressee.

FOR INFORMATION CONTACT: Requests for additional information regarding the hearing and/or testimonies, as well as requests to testify must be addressed to: Cynthia Graham, [Tele: (301) 443–8390; e-mail: cgraham@samhsa.gov; Fax: (301) 480–6077] Center for Substance Abuse Treatment, SAMHSA, Rockwall II Building, Suite 618, 5600 Fishers Lane, Rockville, Maryland 20857.

Written comments (without a request to personally testify) will also be accepted by the above addressee. Written testimonies are limited to five (5) typed pages using 1.5 line spacing and 12 point font.

SUPPLEMENTARY INFORMATION:

Background

Building on recent advances and studies, CSAT has initiated plans to focus on how to apply its extensive knowledge to the practical objective of improving treatment outcomes. The plans include synthesizing current knowledge and recommendations about treatment, service systems, application of best practices, diffusion methods, and organization and financing of substance abuse treatment services. Federal Government and outside experts, as well as the interested public, will explore the current state of the knowledge, resources, needs, and service and organizational capacity. The objective is the culling of priorities for action by the government and by others in the substance abuse treatment field. As noted above, CSAT is inviting the public to comment on five domains as part of the initial step of the plan. The domains, as well as some initial questions for exploration, include:

(1) Closing the Treatment Gap: Where are the gaps? How big are they for different populations? For different types of settings and treatment modalities? How big are gaps in other related systems of care, e.g., welfare, child welfare, housing? What are the policy, organization, and financing issues that must be addressed in the private and public systems, including Medicaid and Medicare, to close the treatment gap?

(2) Reducing Stigma and Changing Attitudes: What are the nature, causes and consequences of addiction stigma? What can CSAT, the treatment field, consumers and families do to address stigma related to addiction, substance abuse treatment and individuals with substance abuse disorders? How do other stigmas impact/compound the stigma of addiction?

(3) Improving and Strengthening Treatment Systems: What are the clinical and organizational challenges facing treatment organizations in the public and private sectors? What can CSAT, the treatment field, consumers and families do to improve and strengthen treatment organizations so that they can adapt to the new imperatives of the changing treatment system, and to improve the relationship between the general health care system and the specialty substance abuse treatment system? What should be done at the State, county and/or local levels to improve and strengthen substance abuse treatment?

(4) Connecting Services and Research: What are the best methods by which CSAT, the treatment field, consumers and families can foster and support evaluation of proven research findings in community-based settings and identification and adoption of best practices?

(5) Addressing Workforce Issues: What are the issues facing clinicians treating addictions? What can CSAT, the treatment field, consumers and families, and professional associations do to foster training, appropriate credentialing, and licensure in all settings in which treatment occurs, and to support treatment organizations in developing appropriate policies for clinical training?

Hearing Format

The hearings will be divided into five segments (*i.e.*, the five domains described above) of approximately 60 minutes each. Each individual/organization participant will be limited to three (3) minutes of oral testimony and five (5) pages of typed testimony per domain. All oral testimonies must be accompanied by a written testimony of no more than five (5) typed pages using 1.5 line spacing and 12 point font. Five copies of written testimonies may either be submitted before the hearing to the addressee listed above or to the registrar at the hearing. As the hearing schedule allows, unscheduled testimonies will be accommodated. All testimonies (recorded and written) will become a part of the public domain.

Dated: September 3, 1999.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–23971 Filed 9–14–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–4210–05; N–63112]

Notice of Realty Action: Lease/Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management.

ACTION: Recreation and Public Purpose Lease/conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The City of Las Vegas proposes to use the land for a public park.

Mount Diablo Meridian, Nevada

T. 19 S., R. 60 E., Sec. 24
E½ NE¼ SE¼
Containing 20 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under

applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement 60 feet in width along the East boundary, 30 feet in width along the South boundary, and 30 feet in width along the North boundary in favor of the City of Las Vegas for roads, public utilities and flood control purposes.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Field Manager, Las Vegas Field Office, Las Vegas, Nevada 89108.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a public park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a public park.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: August 31, 1999.

Rex Wells,

Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 99–23746 Filed 9–14–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–350–1492–01]

Firearms Use Restrictions; Lassen County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Emergency area closure to discharge of firearms, Lassen County, California.

SUMMARY: Under the authority of 43 CFR 8364.1(a), notice is hereby given that an emergency area closure to the discharge of firearms is in effect on BLM-managed public lands, in Lassen County, described as T.30N., R.12E., Sec: 21, E½SE, Sec. 22, N½, SE, W½SW, Sec. 27, NW, Sec. 28, E½NE, containing 880.00 acres more or less. The emergency area closure shall remain in effect until the official end of fire season as authorized by the California Department of Forestry and Fire Protection. Exceptions to this are as follows: Federal, State and local law enforcement officers in the performance of their official duties.

EFFECTIVE DATE: The emergency area closure, effective September 9, 1999, shall remain in effect until the official end of the 1999 fire season as authorized by the California Department of Forestry and Fire Protection.

FOR FURTHER INFORMATION CONTACT: Linda D. Hansen, Field Manager, Eagle Lake Field Office, BLM, 2950 Riverside Drive, Susanville, CA 96130 (530) 257–0456.

SUPPLEMENTALRY INFORMATION: The discharge of firearms on the aforementioned public lands poses a significant threat to the public land resources, public safety, and adjacent private property, including residences. The threat determination was based on the following factors: (1) The existence of high and extreme fire danger in this area, and (2) the close proximity of private residences, and outbuildings to the area where discharge of firearms is occurring on public lands, causing projectiles to potentially strike power/phone lines, personal property and persons. Act of 1976 (43 U.S.C. 1716):

Mount Diablo Meridian, California

T.30N., R.12E., Sec: 21, E½SESE, Sec. 27, NW, Sec. 28, E½NE,

containing 260.00 acres more or less.

Dated: September 9, 1999.

Linda D. Hansen,

Field Office Manager.

[FR Doc 99–24008 Filed 9–14–99; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Federal Oil and Gas Royalty-In-Kind Pilot Programs

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Intent; notice of extension of public comment period.

SUMMARY: The Minerals Management Service (MMS) hereby gives notice that it is extending the public comment period on a Notice of Intent that was published in the **Federal Register** on July 13, 1999 (64 FR 37809), in connection with MMS's royalty-in-kind projects. The Notice of Intent addressed practices to which MMS plans to adhere in exercising the options available to the Secretary of the Interior to take the government's royalty share of production in kind from Federal oil and gas leases. In response to industry requests for additional time to submit comments, MMS will extend the comment period 14 days, from September 13 to September 27.

DATES: Comments must be submitted on or before September 27, 1999.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to Bonn Macy, Special Assistant to the Director, Minerals Management Service, 1849 C Street, NW., MS 4230, Washington, DC 20225. You may also comment via the Internet (E-mail) to Bonn.Macy@mms.gov. Please submit Internet comments as a WordPerfect 6.0 or an MS Word 97 document (earlier versions of these formats are acceptable) avoiding the use of special characters and any form of encryption. Please also include your name and return address and phone number in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact Bonn Macy directly at (202) 208–3827.

FOR FURTHER INFORMATION CONTACT: Bonn Macy, Special Assistant to the Director, Minerals Management Service, 1849 C Street, NW., MS 4230,

Washington, DC 20225, telephone number (202) 208–3827.

Dated: September 10, 1999.

Walter D. Cruickshank,

Associate Director for Policy and Management Improvement.

[FR Doc. 99–24087 Filed 9–14–99; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Criteria for Evaluating Water Management Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: To meet the requirements of the 1992 Central Valley Project Improvement Act (CVPIA) of 1992 and the Reclamation Reform Act of 1982, the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Conservation Plans, dated April 30, 1993. In September 1996, Reclamation revised the document and renamed it to Criteria for Evaluating Water Management Plans (Criteria).

James Irrigation District has developed a water management plan which Reclamation has evaluated and preliminarily determined to meet the requirements of the Criteria.

The 1996 Criteria were developed based on information provided during public scoping and public review sessions held throughout Reclamation's Mid-Pacific (MP) Region. Reclamation uses these Criteria to evaluate the adequacy of all water management plans developed by Central Valley Project contractors. The Criteria were developed and the plans have been evaluated for the purpose of promoting the most efficient water use reasonably achievable by all MP Region contractors. Reclamation made a commitment (stated within the Criteria) to publish a notice of its draft determination of the adequacy of each contractor's water management plan in the **Federal Register** to allow the public a minimum of 30 days to comment on its preliminary determinations.

DATES: All public comments must be received by October 15, 1999.

ADDRESSES: Please mail comments to Lucille Billingsley, Bureau of Reclamation, 2800 Cottage Way, MP–410, Sacramento CA 95825.

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Lucille Billingsley at the address above, or by telephone at (916) 978–5215 (TDD 978–5608).

SUPPLEMENTARY INFORMATION: Under provision of Section 3405(e) of the CVPIA (Title 34 Public Law 102–575), "The Secretary [of the Interior] shall establish and administer an office on Central Valley Project water conservation best management practices that shall * * * develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982." Also, according to Section 3405(e)(1), these criteria will be developed "* * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices".

The Criteria states that all parties (districts) that contract with Reclamation for water supplies (municipal and industrial contracts over 2,000 irrigable acre-feet and agricultural contracts over 2,000 irrigable acres) will prepare water management plans which will be evaluated by Reclamation based on the following required information detailed in the steps listed below to develop, implement, monitor, and update their water management plans. The steps are:

1. Describe the district.

2. Inventory water resources available to the District.

3. Best Management Practices (BMP's) for Agricultural Contractors.

4. BMP's for Urban Contractors.

5. Exemption Process.

Public comment on Reclamation's preliminary (i.e., draft) determinations of James Irrigation's water management plan is invited at this time. A copy of the plan will be available for review at Reclamation's MP Regional Office located in Sacramento, California, and MP's South-Central California Area Office located in Fresno, California. If you wish to review a copy of the plan, please contact Ms. Billingsley to find the office nearest you.

Dated: August 30, 1999.

Robert F. Stackhouse,

Regional Resources Manager, Mid-Pacific Region.

[FR Doc. 99–23982 Filed 9–14–99; 8:45 am]

BILLING CODE 4310–09–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–856 (Preliminary)]

Certain Ammonium Nitrate From Russia

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Russia of solid fertilizer grade ammonium nitrate (as defined by the Department of Commerce (Commerce)), provided for in subheading 3102.30.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Commencement of Final Phase Investigation

Pursuant to § 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigation. The Commission will issue a final phase notice of scheduling which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules upon notice from Commerce of an affirmative preliminary determination in the investigation under section 733(b) of the Act, or, if the preliminary determination is negative, upon notice of an affirmative final determination in that investigation under section 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigation need not enter a separate appearance for the final phase of the investigation. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Background

On July 23, 1999, a petition was filed with the Commission and Commerce by the ad hoc Committee for Fair Ammonium Nitrate Trade (COFANT)

[1] The record is defined in § 207.2(f) of the Commission's rules of practice and procedure (19 CFR § 207.2(f)).

(consisting of Air Products & Chemicals, Inc., Allentown, PA; Mississippi Chemical Corp., Yazoo City, MS; El Dorado Chemical Co., Oklahoma City, OK; Nitram, Inc., Tampa, FL; LaRoche Industries, Inc., Atlanta, GA; and Wil-Gro Fertilizer, Inc., Celina, TX), alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of the subject ammonium nitrate from Russia. Accordingly, effective July 23, 1999, the Commission instituted antidumping investigation No. 731–TA–856 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 2, 1999 (64 FR 41948). The conference was held in Washington, DC, on August 13, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on September 7, 1999. The views of the Commission are contained in USITC Publication 3232 (September 1999), entitled "Certain Ammonium Nitrate from Russia: Investigation No. 731–TA–856 (Preliminary)."

By order of the Commission.

Issued: September 8, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–24063 Filed 9–14–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–387–391 (Final) and 731–TA–816–821 (Final)]

Certain Cut-to-Length Steel Plate From France, India, Indonesia, Italy, Japan, and Korea

AGENCY: International Trade Commission.

ACTION: Scheduling of the final phase of countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigations Nos. 701–TA–387–391 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the Act) and the final phase of antidumping investigations Nos. 731–TA–816–821 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of subsidized imports from France, India, Indonesia, Italy, and Korea and less-than-fair-value imports from France, India, Indonesia, Italy, Japan, and Korea of certain cut-to-length steel plate, provided for in headings 7208, 7210, 7211, 7212, 7225, and 7226 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: July 23 (CVD) and July 26 (AD), 1999.

FOR FURTHER INFORMATION CONTACT: Jeff Clark (202–205–3195), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in France, India, Indonesia, Italy, and Korea of certain cut-to-length steel plate, and that such products from France, India, Indonesia, Italy, Japan, and Korea are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigations were requested in a petition filed on February 16, 1999, by Bethlehem Steel Corp. (Bethlehem, PA); U.S. Steel Group, a unit of USX Corp. (Pittsburgh, PA); Gulf States Steel, Inc. (Gadsden, AL); IPSCO Steel, Inc. (Muscatine, IA); Tuscaloosa Steel Co. (Tuscaloosa, AL); and the United Steelworkers of America (Pittsburgh, PA).[1]

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on December 1, 1999, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on December 14, 1999, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 7, 1999. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on December 10, 1999, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is December 8, 1999. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.25 of the Commission's rules. The deadline for filing posthearing briefs is December 21, 1999; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before December 21, 1999. On January 11, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before January 13, 2000, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: September 8, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–24064 Filed 9–14–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–432 (Review)]

Drafting Machines From Japan

AGENCY: International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on drafting machines from Japan.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to § 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on drafting machines from Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: September 3, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On September 3, 1999, the Commission determined that the domestic interested party group response to its notice of institution (64 FR 29339, June 1, 1999) was adequate and the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff report.—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on October 12, 1999, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in § 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before October 15, 1999, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by October 15, 1999. If comments contain business proprietary information (BPI), they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will

[1] Gulf States Steel, Inc., is not a petitioner with respect to France. Tuscaloosa Steel Co. is not a petitioner with respect to France and Italy.

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

[2] The Commission found the response submitted by Vemco Drafting Machines Corp. to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

not accept a document for filing without a certificate of service.

Determination.—The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. § 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: September 9, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–24066 Filed 9–14–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 303–TA–18; 701–TA–276; and 731–TA–328, 331, and 333 (Review)]

Certain Fresh-Cut Flowers From Chile, Ecuador, Mexico, and Peru

AGENCY: United States International Trade Commission.

ACTION: Termination of five-year reviews.

SUMMARY: The subject five-year reviews were initiated in February 1999 to determine whether revocation of the existing countervailing and antidumping duty orders would be likely to lead to continuation or recurrence of subsidization and/or dumping and of material injury to a domestic industry. On September 3, 1999, the Department of Commerce published notice that it was revoking the orders because the domestic interested parties had withdrawn, in full, their participation in the ongoing sunset reviews (64 FR 48346 and 48347). Accordingly, pursuant to § 207.69 of the Commission's rules of practice and procedure (19 CFR 207.69), the subject reviews are terminated.

EFFECTIVE DATE: September 3, 1999.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Authority: These reviews are being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.69 of the Commission's rules (19 CFR 207.69).

By order of the Commission.

Issued: September 8, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–24062 Filed 9–14–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–413–415 and 419 (Review)]

Certain Industrial Belts From Germany, Italy, Japan, and Singapore

AGENCY: International Trade Commission.

ACTION: Notice of Commission determinations to conduct full five-year reviews concerning the antidumping duty orders on certain industrial belts from Germany, Italy, Japan, and Singapore.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty orders on certain industrial belts from Germany, Italy, Japan, and Singapore would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B); a schedule for the reviews will be established and announced at a later date.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the rules of practice and procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: September 3, 1999.

FOR FURTHER INFORMATION CONTACT: Bonnie Noreen (202–205–3167), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On September 3, 1999, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act.

With regard to industrial belts from Japan and Singapore, the Commission found that both the domestic interested party group responses [1] and the respondent interested party group responses to its notice of institution [2] were adequate and voted to conduct full reviews.

With regard to industrial belts from Germany and Italy, the Commission found that the domestic interested party group responses were adequate [3] and the respondent interested party group responses were inadequate. The Commission also found that other circumstances warranted conducting full reviews.

A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

Issued: September 9, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–24069 Filed 9–14–99; 8:45 am]

BILLING CODE 7020–02–U

[1] Chairman Bragg and Commissioners Crawford and Askey determined that the domestic interested party group response with respect to all power transmission belts other than V-type and synchronous-type from Japan was inadequate.

[2] The notice of institution for all of the subject reviews was published in the **Federal Register** on June 1, 1999 (64 FR 29342).

[3] Chairman Bragg and Commissioners Crawford and Askey determined that the domestic interested party group response with respect to industrial belts from Germany was inadequate.

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–96 and 439–445 (Review)]

Industrial Nitrocellulose From Brazil, China, France, Germany, Japan, Korea, United Kingdom, and Yugoslavia

AGENCY: International Trade Commission.

ACTION: Notice of Commission determinations to conduct full five-year reviews concerning the antidumping duty orders on industrial nitrocellulose from Brazil, China, France, Germany, Japan, Korea, United Kingdom, and Yugoslavia.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty orders on industrial nitrocellulose from Brazil, China, France, Germany, Japan, Korea, United Kingdom, and Yugoslavia would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B); a schedule for the reviews will be established and announced at a later date.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the rules of practice and procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: September 3, 1999.

FOR FURTHER INFORMATION CONTACT: Robert Carpenter (202–205–3172), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On September 3, 1999, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act.

With regard to industrial nitrocellulose from France, Germany, and United Kingdom, the Commission found that both the domestic interested party group responses and the respondent interested party group responses to its notice of institution [1] were adequate and voted to conduct full reviews.

With regard to industrial nitrocellulose from Brazil, China, Japan, Korea, and Yugoslavia, the Commission found that the domestic interested party group responses were adequate and the respondent interested party group responses were inadequate. The Commission also found that other circumstances warranted conducting full reviews.[2]

A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: September 9, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–24067 Filed 9–14–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Investigation No. 731–TA–429 (Review)

Mechanical Transfer Presses from Japan

AGENCY: International Trade Commission.

ACTION: Notice of Commission determination to conduct a full five-year review concerning the antidumping duty order on mechanical transfer presses from Japan.

SUMMARY: The Commission hereby gives notice that it will proceed with a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty order on mechanical transfer presses from Japan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B); a schedule for the review will be established and announced at a later date.

For further information concerning the conduct of this review and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the rules of practice and procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: September 3, 1999.

FOR FURTHER INFORMATION CONTACT: George Deyman (202–205–3197), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On September 3, 1999, the Commission determined that it should proceed to a full review in the subject five-year review pursuant to section 751(c)(5) of the Act. The Commission found that both domestic and respondent interested party group responses to its notice of institution (64 FR 29347, June 1, 1999) were adequate. A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: September 9, 1999.

[1] The notice of institution for all of the subject reviews was published in the **Federal Register** on June 1, 1999 (64 FR 29344).

[2] Commissioner Crawford dissenting.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–24068 Filed 9–14–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–297 (Review) and 731–TA–422 (Review)]

Steel Rails From Canada

AGENCY: International Trade Commission.

ACTION: Scheduling of expedited five-year reviews concerning the countervailing and antidumping duty orders on steel rails from Canada.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the countervailing and antidumping duty orders on steel rails from Canada would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the rules of practice and procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: September 3, 1999.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On September 3, 1999, the Commission determined that the domestic interested party group responses to its notice of institution (64 FR 29353, June 1, 1999) were adequate and the respondent interested party group responses were inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act.

Staff report.—A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on October 25, 1999, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to these reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to these reviews may file written comments with the Secretary on what determination the Commission should reach in these reviews. Comments are due on or before October 28, 1999, and may not contain new factual information. Any person that is neither a party to these five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by October 28, 1999. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to these reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

Issued: September 9, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–24065 Filed 9–14–99; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

[2] The Commission found the responses submitted by Pennsylvania Steel Technologies and Rocky Mountain Steel Mills to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Proposed Rescission of Various Policy Letters

AGENCY: Office of Management and Budget, Office of Federal Procurement Policy.

ACTION: Proposed rescission of Office of Federal Procurement Policy (OFPP) Policy Letters 77–2, 78–2, 78–3, 78–4, 79–1, 79–2, 80–3, 80–6, 80–8, 81–1, 81–2, 82–1, 83–1, 83–2, 83–3, 84–1, 85–1, 89–1, 91–2, 91–4, 92–5, and 95–1.

SUMMARY: OMB is undertaking a thorough review of its government-wide procurement issuances. Based on this review, OMB requests comments on the proposed rescission of the following Office of Federal Procurement Policy (OFPP) Policy Letters: 77–2, Section 502(c) of P.L. 95–89; 78–2, Preventing "Wage Busting" for Professionals: Procedures for Evaluating Contractor Proposals for Service Contracts; 78–3, Requests for Disclosure of Contractor-Supplied Information Obtained in the Course of a Procurement; 78–4, Field Contract Support Cross-Servicing Program; 79–1, Implementation of Section 15(k) of the Small Business Act, as amended: Office of Small and Disadvantaged Business Utilization; 79–2, Boards of Contract Appeals: Position Allocation Pursuant to Public Law 95–563; 80–3, Regulatory Guidance on P.L. 95–563, the Contract Disputes Act of 1978; 80–6, Regulatory Guidance on Section 221 of Public Law 95–507; 80–8, Establishment of Procurement Data Reporting Requirements to Comply with Public Law 96–39 (as amended by Transmittal Memoranda Nos. 1, 2, and 3); 81–1, Procurement Procedures, Advance Procurement Planning, and Review of End-of-Year Purchases; 81–2, Policy Guidance for the Labor Surplus Area Programs; 82–1, Policy Guidance Concerning Government-wide Debarment, Suspension, and Ineligibility; 83–1, Withholding of Funds from Construction Contract Progress Payments; 83–2, Publicizing the Development of Procurement Policies and Regulations; 83–3, Procurement of Architect-Engineer Services; 84–1, Federally Funded Research and Development Centers; 85–1, Federal Acquisition Regulations System; 89–1, Conflict of Interest Policies Applicable to Consultants; 91–2, Service Contracting; 91–4, Use of Irrevocable Letters of Credit; 92–5, Past Performance Information; and 95–1, Subcontracting Plans for Companies Supplying Commercial Items.

There have been substantial changes to the body of acquisition law and regulations since many of these policy documents were issued. As indicated in the **SUPPLEMENTARY INFORMATION** below, the requirements and provisions of the OFPP Policy Letters listed above have been incorporated in the Federal Acquisition Regulation (FAR), 48 CFR 1, or for other reasons have either been superseded or are no longer necessary.

DATES: Persons who wish to comment on the proposed rescission of any of the OFPP Policy Letters should submit their comments no later than November 24, 1999.

ADDRESSES: Comments should be addressed to Michael Gerich, Office of Federal Procurement Policy, Room 9013, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Michael Gerich, Office of Federal Procurement Policy, 202–395–3501. Copies of the OFPP Policy Letters can be obtained at the ARNet world wide website, http://www.arnet.gov/References/Fwd__Index.html.

SUPPLEMENTARY INFORMATION: OFPP has been a leader in overall acquisition reform. One theme of acquisition reform is less reliance on regulation and more reliance on streamlined, customer-oriented, acquisition practices to improve support for agency missions. In keeping with this overall theme, OFPP is reviewing all of its policy letters, memoranda, and other issuances with the intent to: rescind those that are essentially covered by other regulations or policy documents; issue new policy letters and similar documents sparingly and only when necessary; and issue "best practices" instead. There have been substantial changes to the body of acquisition law and regulations since many of these policy documents were issued.

OFPP has recently completed a review of all of its policy issuances for possible rescission, by comparing them with relevant statutory provisions and sections of the Federal Acquisition Regulation (FAR). The rescissions proposed in this notice reflect OFPP's preliminary conclusion that the FAR, as written, contains the current policy. Any policy embodied in the policy letters proposed for rescission by this notice that is not reflected in the current FAR has been either superseded by subsequent statutory changes or is otherwise no longer necessary. No substantive FAR change is required by this action.

Earlier this year, OFPP rescinded Policy Letter 79–4, Contracting for Motion Picture Productions and Videotape Productions. 64 FR 8631 (February 22, 1999). On April 2, 1999, OFPP published notice in the **Federal Register** requesting comments on two proposed policy letters: Policy Letter 99–X, Policy on Promoting Subcontracting Opportunities and Administering Subcontracting Plans (64 FR 16001); and Policy Letter 99–1, Government-Wide Small Business, HUBZone Small Business, Small Disadvantaged Business, and Women-Owned Small Business Goals for Procurement Contracts (64 FR 16003). Those two proposed policy letters would supersede OFPP Policy Letters 80–1, 80–2, 80–4, and 91–1. In this notice, OFPP is proposing to rescind an additional 22 policy letters, for the reasons explained below.

OFPP Policy Letter 77–2, Section 502(c) of P.L. 95–89

Section 502(c) of Public Law 95–89 amended the Small Business Act (15 U.S.C. 631 *et seq.*) to allow certain nonprofit agencies employing people who are blind or severely disabled to compete for agency procurements conducted during fiscal year 1978 that would otherwise have been reserved exclusively for competition among small businesses. Policy Letter 77–2 implemented section 502(c). Similar statutory provisions were enacted in subsequent years. For example, section 133 of Public Law 100–590 (November 3, 1988) (102 Stat. 3005) authorized such nonprofit agencies to compete in procurements otherwise set aside for small businesses in fiscal years 1989 through 1993. Section 305 of Public Law 103–403, the Small Business Administration Reauthorization and Amendments Act of 1994, revived this authority to compete for fiscal year 1995. The statutory authority has expired.

OFPP Policy Letter 78–2, Preventing "Wage Busting" for Professionals: Procedures for Evaluating Contractor Proposals for Service Contracts

OFPP Policy Letter 78–2 addressed "wage busting" practices of government contractors who employ professional employees who traditionally have not been represented by union collective bargaining agreements. 78–2 required contracting agencies to evaluate applicable proposals from offerors by taking into account the cost realism of the contractor's proposed personnel compensation plan. Unrealistically low labor rates proposed for professional employees could indicate a lack of understanding of the resources required to perform high quality contract work on an uninterrupted basis. 78–2 was superseded, in purpose, by the provisions of 10 U.S.C. 2331 (Contracts for professional and technical services) which is implemented in FAR 37.115 (Uncompensated overtime) and FAR 52.237–10 (Identification of Uncompensated Overtime).

OFPP Policy Letter 78–3, Requests for Disclosure of Contractor-Supplied Information Obtained in the Course of a Procurement

OFPP Policy Letter 78–3 prescribed a uniform approach to handling requests filed under the Freedom of Information Act for information disclosed by government contractors and offerors. 78–3 was superseded, in purpose, by FAR Subpart 24.2, which implements statutory provisions at 10 U.S.C. 2305(g) and 41 U.S.C. 253b(m).

OFPP Policy Letter 78–4, Field Contract Support Cross-Servicing Program

Policy Letter 78–4 encouraged agencies that require contract support services (e.g., contract administration, audit services) from field offices to use cross-servicing arrangements with existing contract administration and contract audit organizations of other agencies. The Policy Letter was intended to treat contractors more consistently and, where possible, preclude duplication of effort attributable to multiple agency reviews, inspections, and examination of contractor records. The provisions of the Policy Letter were incorporated in FAR Subpart 42.1.

OFPP Policy Letter 79–1, Implementation of Section 15(k) of the Small Business Act, as Amended: Office of Small and Disadvantaged Business Utilization

Section 15(k) of the Small Business Act (15 U.S.C. 644(k)) established an Office of Small and Disadvantaged

Business Utilization (OSDBU) in each contracting agency to implement and execute the functions and duties under sections 8 and 15 of the Small Business Act which relate to such agency. Policy Letter 79–1 provided guidance on the organization and function of the OSDBUs. The provisions of Policy Letter 79–1 were incorporated in FAR subsections 19.201(c) and (d).

OFPP Policy Letter 79–2, Boards of Contract Appeals: Position Allocation Pursuant to Public Law 95–563

Policy Letter 79–2 made an initial allocation of positions for agency boards of contract appeals pursuant to Public Law 95–563, the Contract Disputes Act of 1978. Section 8(a) of the Contract Disputes Act of 1978, as amended, (41 U.S.C. 607(a)) states that a board of contract appeals may be established within an executive agency, when the agency head, after consultation with the Administrator for Federal Procurement Policy, determines from a workload study that the volume of contract claims justifies the establishment of a full-time agency board. Since issuance of Policy Letter 79–2 over 20 years ago, there has been little need for guidance in this area. OFPP will issue new guidance, if necessary.

OFPP Policy Letter 80–3, Regulatory Guidance on P.L. 95–563, the Contract Disputes Act of 1978

Policy Letter 80–3 provided guidance on developing regulations to implement provisions of the Contract Disputes Act of 1978, including resolution of contract claims, contractor certification requirements, payment of interest on contractor claims, and a contract disputes clause. The provisions of Policy Letter 80–3 were incorporated in FAR Subpart 33.2 and the contract disputes clause at FAR 52.233–1.

OFPP Policy Letter 80–6, Regulatory Guidance on Section 221 of Public Law 95–507

Policy Letter 80–6 provided regulatory guidance on section 15(j) of the Small Business Act (15 U.S.C. 644(j)), which set aside small purchase procurements for small businesses. Section 15(j) was amended to apply the set aside provisions to agency purchase of goods or services that have an anticipated value greater than $2,500 but not greater than $100,000. The regulatory guidance in Policy Letter 80–6, as amended by the statutory changes, is implemented by the provisions of FAR 19.502–2.

OFPP Policy Letter 80–8, Establishment of Procurement Data Reporting Requirements to Comply with Public Law 96–39 (as amended by Transmittal Memoranda Nos. 1, 2, and 3)

Policy Letter 80–8 established procurement data reporting requirements. Transmittal Memoranda Nos. 1, 2, and 3 amended those reporting requirements. The provisions of Policy Letter 80–8 and the Transmittal Memoranda are implemented in FAR Subpart 4.6 and the FPDS Reporting Manual described therein.

OFPP Policy Letter 81–1, Procurement Procedures, Advance Procurement Planning, and Review of End-of-Year Purchases

Policy Letter 81–1 required agencies to establish advance procurement planning procedures to allow sufficient lead time to prepare procurement solicitations, obtain and evaluate bids or proposals, audit, negotiate, and make contract awards in an orderly manner. The Policy Letter also required agencies to develop procedures for review of procurements, particularly major procurements, made in the last quarter to assure they are consistent with advance procurement plans. The provisions of Policy Letter 81–1 were essentially incorporated in FAR Part 7 and partially superseded by procedures found in Part 3 of OMB Circular A–11, Planning, Budgeting, and Acquisition of Capital Assets, and the Capital Programming Guide which further integrate the budget and procurement processes.

OFPP Policy Letter 81–2, Policy Guidance for the Labor Surplus Area Programs (as amended by Supplement No. 1)

Policy Letter 81–2, as amended by Supplement No. 1, provided guidance on implementing subsections 15(d), (e), and (f) of the Small Business Act (as amended and added by section 117 of Public Law 96–302, July 2, 1980) that gave priority in awarding contracts and subcontracts to firms performing in areas of unemployment or underemployment known as labor surplus areas. Subsection 7101(a) of the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355, October 13, 1994) deleted subsections 15(e) and (f) from the Small Business Act, thus removing the labor surplus area set-aside and subcontracting programs. The statutory changes were implemented in FAR Part 19. For more information, see the final rule amendment to the FAR published in the **Federal Register** on September 18, 1995 (60 FR 48258).

OFPP Policy Letter 82–1, Policy Guidance Concerning Government-wide Debarment, Suspension, and Ineligibility

Policy Letter 82–1 established policies and procedures for debarment and suspension of persons from contracting with Federal Departments and agencies. The provisions of Policy Letter 82–1 are implemented in FAR Subpart 9.4.

OFPP Policy Letter 83–1, Withholding of Funds from Construction Contract Progress Payments

Policy Letter 83–1 provided guidance on retention or withholding of funds from progress payments made under Federal construction contracts. The provisions of the Policy Letter are implemented in FAR section 32.103.

OFPP Policy Letter 83–2, Publicizing the Development of Procurement Policies and Regulations

Policy Letter 83–2 established uniform criteria and procedures for soliciting the views of all interested parties in the development by executive Departments and agencies of procurement policies, regulations, procedures and forms. The provisions of Policy Letter 83–2 were codified in section 22 of the OFPP Act, as amended (41 U.S.C. 418b), and implemented in FAR Subpart 1.5.

OFPP Policy Letter 83–3, Procurement of Architect-Engineer Services

Policy Letter 83–3 provided guidance on procurement of architect-engineer services under the Brooks Architect-Engineers Act (Public Law 92–582, 40 U.S.C. 541 *et seq.*). The Policy Letter delineated the type of services to be procured using source selection procedures prescribed by the Brooks Architect-Engineers Act versus using standard source selection procedures. The provisions of Policy Letter 83–3 were implemented by FAR section 36.601.

OFPP Policy Letter 84–1, Federally Funded Research and Development Centers

Policy Letter 84–1 established policy for the establishment, use, periodic review, and termination of sponsorship of Federally Funded Research and Development Centers (FFRDCs). The provisions of Policy Letter 84–1 were implemented by FAR section 35.017.

OFPP Policy Letter 85–1, Federal Acquisition Regulations System

Policy Letter 85–1 implemented provisions of the OFPP Act (Public Law 93–400 as amended, 41 U.S.C. 401 *et seq.*) concerning the single system of simplified Government-wide procurement regulations now known as the Federal Acquisition Regulation (FAR) (48 CFR 1). The Policy Letter covered establishment of the FAR System, FAR maintenance, and resolution of differences among executive agencies in development of FAR provisions. The provisions of Policy Letter 85–1 were codified in sections 6 and 25 of the OFPP Act (41 U.S.C. 405 and 41 U.S.C. 421, respectively) and incorporated in FAR Subparts 1.1, 1.2, and 1.3.

OFPP Policy Letter 89–1, Conflict of Interest Policies Applicable to Consultants

Policy Letter 89–1 established policy and procedures on applying conflict of interest standards to persons who provide consulting services to the government, pursuant to section 8141 of the 1989 Department of Defense Appropriations Act, Public Law 100–463, 102 Stat. 2270–47 (October 1, 1988). The provisions of Policy Letter 89–1 were incorporated in FAR Subpart 9.5.

OFPP Policy Letter 91–2, Service Contracting

OFPP Policy Letter 91–2 established policy for acquiring services by contract. It encouraged the use of "performance-based contracting," which uses standards to measure quality and timeliness of contractor performance and surveillance plans to assure that the standards are met. Policy Letter 91–2 is implemented in FAR Subpart 37.6. For more information on this subject, see OFPP's "A Guide to Best Practices for Performance-Based Service Contracting" (October 1998) at the ARNet world wide website, http://www.arnet.gov/BestP/PPBSC/BestPPBSC.html.

OFPP Policy Letter 91–4, Use of Irrevocable Letters of Credit

OFPP Policy Letter 91–4 established policy for use of irrevocable letters of credit in lieu of sureties for Federal construction contracts requiring Miller Act bonds. The Miller Act (40 U.S.C. 270a *et seq.*) requires the use of performance and payment bonds for Federal construction contracts in excess of $25,000. Policy Letter 91–4 determined that: irrevocable letters of credit serve much of the same function and provide the same redeemable value as bonds, postal orders, and certified checks; Federal agencies are authorized to accept such letters; and their usage in lieu of sureties would help to achieve greater access by small and small disadvantaged businesses to Federal construction contracts. The Policy Letter permitted agencies to use irrevocable letters of credit in lieu of sureties for Federal construction contracts requiring Miller Act bonds. Policy Letter 91–4 is implemented in FAR section 28.204–3.

OFPP Policy Letter 92–5, Past Performance Information

Policy Letter 92–5 established requirements for evaluating contractor performance and for using past performance information in the contractor selection process. The provisions of Policy Letter 92–5 have been implemented in FAR Subpart 42.15 and FAR sections 15.304 and 15.305. For more information on this subject, see "A Guide to Best Practices for Past Performance" (May 1995) at the ARNet world wide website, http://www.arnet.gov/BestP/BestPract.html.

OFPP Policy Letter 95–1, Subcontracting Plans for Companies Supplying Commercial Items

Section 8(d) of the Small Business Act (15 U.S.C. 637(d)) requires that each contract that exceeds $500,000 ($1 million in the case of construction) and that offers subcontracting opportunities include a requirement that the apparently successful offeror negotiate a subcontracting plan which shall become a material part of the contract. Policy Letter 95–1 revised the policy on subcontracting plans to reduce the burden of government-unique requirements on prime contractors and subcontractors that supply commercial items. The Policy Letter allows such contractors and subcontractors to meet the requirements of Section 8(a) of the Small Business Act by submitting an annual "commercial plan" rather than an individual contract-by-contract or subcontract-by-subcontract plan. A commercial plan is a subcontracting plan that covers a contractor's or subcontractor's fiscal year and that applies to the entire production of commercial items sold by either the entire company or a portion thereof (e.g., division, plant, or product line). The provisions of Policy Letter 95–1 were implemented in FAR sections 19.701, 19.704(d), and 19.705–7.

OFPP requests comments on these proposed rescissions.

Deidre A. Lee,

Administrator.

[FR Doc. 99–23998 Filed 9–14–99; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–110)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 15, 1999.

FOR FURTHER INFORMATON CONTACT: Mr. Kent N. Stone, Patent Attorney, John H. Glenn Research Center at Lewis Field, Mail Stop 500–118, Cleveland, Ohio 44135–3191; telephone (216) 433–8855.

NASA Case No. LEW 16,682–1: Rare Earth Optical Temperature Sensor;

NASA Case No. LEW 15,805–2: Soft Tissue Implants with Microscopic Surface Roughness;

NASA Case No. LEW 16,644–1: Wave Augmented Diffuser for Centrifugal Compressor;

NASA Case No. LEW 16,684–1: Provisional Thermal Barrier Braided Rope Seal.

Dated: September 1, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–23813 Filed 9–14–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–111)]

Government-Owned Inventions, Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Availability of Inventions for Licensing.

SUMMARY: The inventions listed below are assigned to the National Aeronautics and Space Administration, have been filed in the United States Patent and Trademark Office, and are available for licensing.

DATES: September 15, 1999.

FOR FURTHER INFORMATON CONTACT: Patent Counsel, Langley Research Center, Mail Stop 212, Hampton, VA 23681–0001; telephone (757) 864–9260.

NASA Case No. LAR 15449–1: A Method to Prepare Processable Polyimides with Reactive Endgroups Using 1,3–Bis (3–Aminophenyoxyl) Benzene;

NASA Case No. LAR 15459–1: A Method to Prepare Processable Polyimides with Non-Reactive Endgroups Using 1,3–Bis (3–Aminophenyoxyl) Benzene;

NASA Case No. LAR 15612–1–SB: System for Multiplexing Acoustic Emission (AE) Instrumentation;

NASA Case No. LAR 15849–1: Process to Fabricate a Full-Consolidated Fiber Reinforced Composite Tape/Ribbon From Solution-Coated Prepreg for Automated Tow/Tape Placement;

NASA Case No. LAR 15712–1–CU: Catalytic Oxidation Sensor for Hydrocarbons and Volatile Organic Compounds;

NASA Case No. LAR 15817–1: A Method of Encouraging Physiological Self-Regulation through Modulation of an Operator's Control Input to a Video Game or Training Simulator;

NASA Case No. LAR 15894–1: Versatile Software Package for Near Real-Time Analysis of Experimental Data;

NASA Case No. LAR 15922–1: An Active Noise Control System with Reduced Actuator Force and Control Processing Requirements;

NASA Case No. LAR 15926–1: Reference Sample Technique to Measure Material Non-Linearity;

NASA Case No. LAR 15936–1: Laser Diode Ultrasound Generation System;

NASA Case No. LAR 15938–1: A Method for the Reduction of Signal-Induced Noise in Photomultiplier Tubes Using an External Electrode;

NASA Case No. LAR 15962–1–CU: Poly (Aryl Ether Ketones) Bearing Alkylated Side Chains.

Dated: September 1, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–23814 Filed 9–14–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–113]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Structure and Evolution of the Universe Advisory Subcommittee

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Space Science Advisory Committee, Structure and Evolution of the Universe Subcommittee.

DATES: Thursday, September 23, 1999, 8:30 a.m. to 5:00 p.m., and Friday, September, 24, 1999, 8:30 a.m. to 4:00 p.m.

ADDRESSES: NASA Headquarters, Conference Room 6H46, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Alan N. Bunner, Code S, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0364.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting is as follows:

—Membership Changes
—Report from the Theme Director
—Report from the Associate Administrator for Space Science
—Status of Chandra Observatory
—Report from the Structure and Evolution of the Universe Forum
—Status of Office of Space Science Strategic Planning Effort
—Review of Structure of Evolution of the Universe Effort

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: September 8, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–23964 Filed 9–14–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–114]

NASA Advisory Council (NAC), Aero-Space Technology Advisory Committee (ASTAC); Propulsion Systems Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aero-Space Technology Advisory Committee, Propulsion Systems Subcommittee meeting.

DATES: Tuesday, September 28, 1999, 8:00 a.m. to 5:00 p.m. and Wednesday, September 29, 1999, 8:00 a.m. to 4:00 p.m.

ADDRESSES: National Aeronautics and Space Administration, John H. Glenn Research Center at Lewis Field, Building 86, Room 100, 21000 Brookpark Road, Cleveland, OH 44135.

FOR FURTHER INFORMATION CONTACT: Dr. Carol J. Russo, National Aeronautics and Space Administration, John H. Glenn Research Center at Lewis Field, 21000 Brookpark Road, Cleveland, OH 44135, 216/433–2965.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Overview
—Propulsion Systems Base R&T Program Review
—GPRA Milestones Review

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: September 8, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–23965 Filed 9–14–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–112)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Nicholson Manufacturing Company, with headquarters in Seattle, Washington, and MTS Corporation, with headquarters in Eden Prairie, Minnesota, have both applied for co-exclusive licenses to practice the invention described and claimed in U.S. Patent No. 5,893,507 entitled "Auto-Adjustable Pin Tool for Friction Stir Welding," which is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to the Marshall Space Flight Center.

DATES: Responses to this notice must be received by November 15, 1999.

FOR FURTHER INFORMATON CONTACT: Fred Schramm, Technology Transfer Office, Mail Code CD30, Marshall Space Flight Center, Huntsville, AL 35812.

Dated: September 3, 1999.

Edward A. Frankle,

General Counsel.

[FR Doc. 99–23963 Filed 9–14–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting Notice

Agenda; National Transportation Safety Board

TIME AND DATE: 9:30 a.m., Tuesday, September 21, 1999.

PLACE: NTSB Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

7010A—Highway Special Investigation Report: Bus Crashworthiness.

7120A—Hazardous Materials Accident Report: Overflow of Gasoline and Fire at a Service Station-Convenience Store, Biloxi, Mississippi on August 9, 1998.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

Individuals requesting specific accommodation should contact Mrs. Barbara Bush at (202) 314–6220 by Friday, September 17, 1999.

FOR MORE INFORMATION CONTACT: Rhonda Underwood, (202) 314–6065.

Dated: September 10, 1999.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 99–24094 Filed 9–10–99; 4:21 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

In the Matter of Florida Power Corporation et al. (Crystal River Unit 3); Order Approving the Transfer of License and a Conforming Amendment

I

Florida Power Corporation (FPC), owner of 90.4473 percent of Crystal River Unit 3 (CR–3), has exclusive responsibility and control over the physical construction, operation, and maintenance of the facility as reflected in Operating License DPR–72. The City of Tallahassee (the City), one of the several joint owners of the facility, holds a 1.3333-percent ownership interest in CR–3. The Nuclear Regulatory Commission (NRC or Commission) issued License No. DPR–72 on December 3, 1976, pursuant to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR part 50). The facility is located in Citrus County, Florida.

II

By application dated December 29, 1998, as supplemented on June 18, 1999 (collectively hereinafter referred to as the application), FPC requested approval of the proposed transfer of the City's rights under the Operating License for CR–3 to FPC. FPC also requested approval of a conforming amendment to reflect the transfer.

According to the application, the City has agreed to sell its 1.3333-percent ownership interest in CR–3 to FPC, subject to obtaining all necessary regulatory approvals. FPC would continue to have exclusive responsibility for the management, operation, and maintenance of CR–3. The conforming amendment would remove the City from the Facility Operating License and indicate that the City is no longer a licensee.

Approval of the transfer and conforming license amendment was requested pursuant to 10 CFR 50.80 and 50.90. Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on February 26, 1999 (64 FR 9544). No hearing requests were filed.

Under 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information submitted in the application, the NRC staff has determined that FPC is qualified to hold the license with respect to the additional ownership interest of the City, and that the transfer of the license, to the extent it is held by the City, to FPC is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission.

The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations set forth in 10 CFR Ch. I; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed license amendment is in accordance with 10 CFR part 51 of the Commission's regulations, and all applicable requirements have been satisfied. The findings previously set forth herein are supported by a Safety Evaluation dated September 8, 1999.

III

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234, and 10 CFR 50.80, *it is hereby ordered* that the license transfer referenced above is approved, subject to the following conditions:

(a) The use of assets in the City's existing non-qualified decommissioning trust fund for CR–3 (Decommissioning Trust Fund) shall be limited to the expenses related to decommissioning of CR–3 as defined by the NRC in its regulations and issuances, and as provided in the CR–3 license and any amendments thereto.

(b) Decommissioning Trust Fund investments in the securities or other obligations of the City or FPC, or affiliates thereof, or their successors or assigns, shall be prohibited. In addition, except for investments tied to market indexes or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants shall be prohibited.

(c) No disbursements or payments from the Decommissioning Trust Fund shall be made by the trustee until the trustee has first given the NRC thirty (30) days notice of payment. No disbursements or payments from the Decommissioning Trust Fund shall be made if the trustee receives prior written notice of objection from the Director, Office of Nuclear Reactor Regulation, NRC.

(d) The agreement governing the Decommissioning Trust Fund shall be amended, to the extent necessary, to be consistent with this Order. It then shall not be modified in any material respect without prior written consent of the Director, Office of Nuclear Reactor Regulation, NRC.

(e) FPC shall take all necessary steps to ensure that the maintenance of, and disbursal of funds from, the Decommissioning Trust Fund is in accordance or consistent with the application, this Order, and the supporting safety evaluation.

(f) After receipt of all required regulatory approvals of the transfer of the City's interest in CR–3 to FPC, FPC shall inform the Director, Office of Nuclear Reactor Regulation, in writing, of such receipt within five business

days, and of the date of the closing of the sale and transfer of the City's interest to FPC no later than seven business days prior to the date of closing. Should the transfer not be completed by December 31, 1999, this Order shall become null and void, provided, however, on application and for good cause shown, such date may be extended.

It is further ordered that, consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject license transfer is approved. Such amendment shall be issued and made effective at the time the proposed license transfer is completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated December 29, 1998, and supplement dated June 18, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Dated at Rockville, Maryland, this 8th day of September 1999.

or the Nuclear Regulatory Commission.

Roy P. Zimmerman,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99–24056 Filed 9–14–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Licensing Support Network Advisory Review Panel

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meeting.

SUMMARY: The Licensing Support Network Advisory Review Panel (LSNARP) will hold a meeting on October 13, 1999, at the Embassy Suites Hotel, 4315 Swenson St., Las Vegas, Nevada. The meeting will be open to the public pursuant to the Federal Advisory Committee Act (Pub. L. 94–463, 86 Stat. 770–776).

AGENDA: The meeting will begin at 8:30 a.m. on Wednesday, October 13, 1999, and continue that day until completed. The purpose of the meeting is to discuss issues relating to the design, development, and operation of the Licensing Support Network (LSN), the Internet-based successor to the Licensing Support System (LSS).

As was explained in the final rule establishing the LSN, which was published in the **Federal Register** on January 29, 1999 (63 FR 71729), the LSN is intended to provide a pre-application discovery database consisting of Internet-accessible sites that would be operated by the potential parties to the proceeding, including the United States Department of Energy (DOE) and the NRC. The pre-application availability of these discovery materials is intended to ensure compliance with the schedule for a decision on the construction authorization for the high-level nuclear waste (HLW) repository contained in Section 114(d) of the Nuclear Waste Policy Act.

SUPPLEMENTARY INFORMATION: In 1999, the NRC re-established the LSNARP as a successor to the LSS Advisory Review Panel (LSSARP). Like the LSSARP, the LSNARP is to provide advice and recommendations to the NRC, including the LSN Administrator, concerning the design, development, and operation of an LSN electronic information management system for the storage and retrieval of information relevant to the Commission's future licensing proceeding for a geologic repository for HLW disposal. When the NRC Rules of Practice in 10 CFR part 2, Subpart J, recently were modified to provide an Internet-based technological solution to the submission and management of records and documents relating to the licensing of a HLW repository, pursuant to 10 CFR 2.1011(e) the LSNARP was re-established to provide advice on such issues as the type of computer system necessary to comply with the requirements for electronic document production and service; the operation, maintenance, and compliance monitoring of the electronic document databases established for the potential participants to the HLW repository licensing proceeding; and solutions to improve the LSN functioning once it is operational.

FOR FURTHER INFORMATION CONTACT: U.S. Nuclear Regulatory Commission, Atomic Safety and Licensing Board Panel, Mail Stop T–3–F23, Washington, DC 20555 Attn: John C. Hoyle (telephone 301–415–7467; fax 301–415–5599; e-mail JCH@NRC.GOV) or Jack G. Whetstine (telephone 301–415–7391; fax 301–415–5599; e-mail JGW@NRC.GOV).

Public Participation

Prior to the LSNARP meeting, the LSN Administrator will make available to interested persons materials that outline policies and issues relating to LSN design, development, and operation. Interested persons may make oral presentations to the LSNARP or file written statements regarding these matters. Requests for oral presentations should be made to one of the contact persons listed above as far in advance as practicable so that appropriate arrangements can be made. Any person having a written statement that they wish to have before the LSNARP at the time of the meeting should provide that statement so that it is received electronically, by facsimile transmission, or by mail by one of the contacts listed above on or before Wednesday, October 6, 1999.

A number of HLW repository-related meetings and conferences are being held in the Las Vegas, Nevada area in October 1999. Nonetheless, interested persons should be aware that LSN design options will be developed based on the input from those attending this LSNARP meeting and any written statements provided by interested persons in connection with this meeting. Accordingly, all interested persons are urged to attend the October 13, 1999 meeting at which these matters will be discussed and/or to submit written statements providing their views on these matters.

Dated: September 9, 1999.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 99–24052 Filed 9–14–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Stakeholder Meeting Concerning the Revision of the Safety Inspection Program for Nuclear Fuel Cycle Facilities

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of meeting.

SUMMARY: The NRC published a meeting notice in the **Federal Register** on September 9, 1999 (64 FR 49031). The location of that meeting has been changed to the NRC's Commissioner's Hearing Room (see **ADDRESSES** section). The meeting is necessary to provide the public, those regulated by the NRC, and other stakeholders, with information about and an opportunity to provide views on how NRC plans to revise its safety inspection program for nuclear fuel cycle facilities. Similar to the revisions of the inspection and oversight program for commercial nuclear power plants, NRC has initiated an effort to improve its programs for nuclear fuel cycle facilities. This is described in SECY–99–188 titled, Evaluation and Proposed Revision of the Nuclear Fuel Cycle Facility Safety Inspection Program. SECY–99–188 is available in the Public Document Room and on the NRC Web Page at http://www.nrc.gov/NRC/COMMISSION/SECYS/index.html.

PURPOSE: To explain the planned revision of the fuel cycle safety inspection program and obtain stakeholder's views. The baseline safety inspection program applies to nuclear fuel cycle facilities regulated under 10 CFR parts 40, 70 and 76. The facilities currently include gaseous diffusion plants, highly enriched uranium fuel fabrication facilities, low-enriched uranium fuel fabrication facilities, and a uranium hexafluoride (UF_6) production facility. These facilities possess large quantities of materials that are potentially hazardous (i.e., radioactive, toxic, and/or flammable) to the workers, public, or environment. In revising the inspection program, the goals are to have an inspection program that: (1) Provides earlier and more objective indications of acceptable and changing safety performance, (2) increases stakeholder confidence in the NRC, and (3) increases regulatory effectiveness and efficiency. In this regard, the NRC desires the revised inspection program to be more risk-informed and performance-based and more focused on significant risks. Where practicable, the program will use more objective safety performance indicators (PIs) with accompanying performance thresholds.

DATES: This meeting is scheduled for Thursday, September 16, 1999, from 9 am to 4 pm and is open to the public.

ADDRESSES: NRC's Commissioner's Hearing Room, 1st Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Visitor parking around the NRC building is limited; however, the meeting site is located adjacent to the White Flint Station on the Metro Red Line.

FOR FURTHER INFORMATION CONTACT: Walter Schwink, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–7253, e-mail *wss@nrc.gov.*

Dated at Rockville, Maryland this 2nd day of September, 1999.

For the Nuclear Regulatory Commission.

Philip Ting,

Chief, Operations Branch, Division of Fuel Cycle Safety and Safeguards.

[FR Doc. 99–24054 Filed 9–14–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on September 29, 1999, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, September 29, 1999—1 p.m. until the conclusion of business

The Subcommittee will discuss proposed ACRS activities and related matters. It may also discuss the status of appointment of a new member to the ACRS. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: September 7, 1999.

Richard P. Savio,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–24053 Filed 9–14–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of September 13, 20, 27, October 4, and October 18, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of September 13

There are no meetings scheduled for the Week of September 13.

Week of September 20—Tentative

Tuesday, September 21

9:25 a.m.
Affirmation Session (Public Meeting) (if needed).

9:30 a.m.
Briefing by DOE on Draft Environmental Impact Statement (DEIS) for a Proposed HLW Geologic Repository (Public Meeting).

Wednesday, September 22

9:00 a.m.
Meeting on Center for Strategic and International Studies Report, "The Regulatory Process for Nuclear Power Reactors—a Review" (Public Meeting).

Week of September 27—Tentative

There are no meetings scheduled for the Week of September 27.

Week of October 4—Tentative

There are no meetings scheduled for the Week of October 4.

and

Week of October 18—Tentative

Thursday, October 21

9:30 a.m.
Briefing on Part 35—Rule on Medical Use of Byproduct Material (Contact: Cathy Haney, 301–415–6825) (SECY–99–201, *Draft Final Rule—10 CFR Part 35, Medical Use of Byproduct Material,* is available in the NRC Public Document Room or

on NRC web site at "www.nrc.gov/NRC/COMMISSION/SECYS/index.html". Download the *zipped version* to obtain all attachments.)

The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: September 10, 1999.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 99–24169 Filed 9–13–99; 1:12 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Memorandum of Understanding Between the Nuclear Regulatory Commission and the National Science Foundation

AGENCY: Nuclear Regulatory Commission.

ACTION: Memorandum of Understanding Between the Nuclear Regulatory Commission and the National Science Foundation.

SUMMARY: The Nuclear Regulatory Commission (NRC) and the National Science Foundation (NSF) have entered into a Memorandum of Understanding (MOU) to ensure the protection of the public health and safety and the environment from the hazards of radioactive materials that may be used in Antarctica pursuant to the Antarctic Treaty, the Protocol on Environmental Protection to the Antarctic Treaty, and the Antarctic Conservation Act. The MOU is intended to clarify the responsibilities of the NSF and the NRC with respect to the safe use of radioactive materials in Antarctica to avoid any duplication of effort and ensure efficient management of those materials. The text of the MOU between the Nuclear Regulatory Commission and the National Science Foundation follows.

FOR FURTHER INFORMATION CONTACT: Trip Rothschild, Office of the General Counsel, telephone (301) 415–1611, e-mail tbr@nrc.gov.

Dated at Rockville, Maryland, this 9th day of September 1999.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

Memorandum of Understanding Between the National Science Foundation and the Nuclear Regulatory Commission Concerning the Management of Radioactive Material in Antarctica

I. Introduction

This Memorandum of Understanding (MOU) describes the responsibilities of the National Science Foundation (NSF) and the U.S. Nuclear Regulatory Commission (NRC) in ensuring the protection of the public health and safety and the environment from the hazards of radioactive materials that may be used in Antarctica pursuant to the Antarctic Treaty, the Protocol on Environmental Protection to the Antarctic Treaty, and the Antarctic Conservation Act.

II. Purpose and Scope

The purpose of this MOU is to clarify the responsibilities of the NSF and the NRC with respect to the safe use of radioactive materials in Antarctica in order to avoid any duplication of effort and ensure efficient management of those materials. Radioactive materials within the scope of this MOU mean byproduct, source, and special nuclear materials as defined in Sections 11e., 11z., and 11aa. of the Atomic Energy Act of 1954 ("AEA"), as amended, and the NRC's regulations thereunder. Antarctica is defined as that area of the world south of 60° South latitude, as described in the International Antarctic Treaty (1959) and the Antarctic Conservation Act (16 U.S.C. 2401 et seq.)

III. Authority and Regulatory Program

A. NSF

Presidential Memorandum #6646, dated February 2, 1982, designates NSF as the executive Federal manager for the United States Antarctic Program, assigning the entire management responsibility to the NSF. The Antarctic Conservation Act (ACA) of 1978, as amended (16 U.S.C. 2401 et seq.) implements the Antarctic Treaty and the Protocol on Environmental Protection to the Antarctic Treaty and recognizes NSF as the lead civilian agency with responsibility for overseeing United States scientific activities in Antarctica. These include activities involving the use of source, byproduct, and special nuclear material. Under the ACA, NSF is directed to issue regulations as are necessary and appropriate to implement the Treaty, the Protocol and the ACA, including its waste management and disposal requirements. NSF requires U.S. citizens to obtain an NSF permit for the use of certain materials in Antarctica, including radioactive materials, in accordance with NSF's implementing regulations at 45 CFR Part 671. Within its regulatory framework, the NSF has adopted as policy the radiation protection standards for byproduct, source, and special nuclear material set forth in the NRC regulations at 10 CFR Part 20 and the Department of Transportation regulations for packaging and transport of such radioactive materials; and it ensures that the disposal of radioactive waste generated in Antarctica (but returned to the U.S. for disposal) is consistent with NRC, EPA and Agreement State requirements. NSF's "authorized user" review/approval process includes protocol review, certification of training, utilization of appropriate standard operating procedures/facilities, waste management procedures, and periodic surveys and inventory control of radioactive material. The NSF will continue to ensure that any use of source, byproduct, and special nuclear materials within the NSF's jurisdiction in Antarctica requires the NSF's authorization through the issuance of permits or other approvals.

B. NRC

Under the Atomic Energy Act of 1954 (AEA) as amended, the NRC is responsible for regulating the use of byproduct, source, and special nuclear material within the United States and its territories, consistent with its mission to ensure adequate protection of the public health and safety, to promote the common defense and security, and to protect the environment. This MOU reflects the understanding of both parties that the NRC will not exercise any authority under the AEA to regulate the use of byproduct, source, or special nuclear material in Antarctica and recognizes the NSF's regulatory oversight, as described in 45 CFR Part 671 and Foundation policies. The NRC or its Agreement States, as appropriate, will resume regulatory authority over any byproduct, source, or special nuclear material that is regulated by the NSF in Antarctica if and when such material re-enters the United States or its territories.

IV. Agency Responsibilities

The following are the offices responsible for this agreement:

For the National Science Foundation: Director, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230

For the Nuclear Regulatory Commission: Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Each agency shall designate the agency organizational unit responsible for the coordination and management of activities covered by this MOU. Each agency shall designate the individual(s) who will serve as the respective coordination officer(s) or point(s) of contact (POC). The coordination officers or POCs will coordinate and facilitate actions required by their respective agencies.

V. Elements of Coordination

Both agencies agree to exchange information with respect to relevant programs and lessons learned, resources permitting. The purpose of these exchanges is to provide expert technical assistance to both agencies. The NSF may send designated individuals to NRC-sponsored training, on a space-available basis, so that NSF staff is familiar with the NRC programs and its regulatory interpretations. As appropriate and necessary, the NSF may consult with the NRC for guidance regarding the interpretation or application of the NRC's regulations.

VI. Other Laws and Matters

Nothing in this MOU shall be deemed to restrict, modify, or otherwise limit the application or enforcement of any laws of the United States with respect to matters specified herein, nor shall anything in the MOU be construed as modifying the existing authority of either agency.

VII. Effective Date, Modification, and Termination of MOU

This MOU will take effect when it has been signed and dated by the authorized representatives of the NSF and the NRC. It may be modified by mutual written consent, or terminated by either agency upon 60 days advance written notice to the other agency.

Approved and accepted for the National Science Foundation

Date: August 30, 1999.

By:

Karl A. Erb

Director, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230, Tel: (703) 306–1030

By:

William A. Bryant

Contracting Officer, Division of Contracts, Policy and Oversight, Office of Budget, Finance and Award Management, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230

Approved and accepted for the Nuclear Regulatory Commission

By:

Carl J. Paperiello

Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Tel: (301) 415–7357

[FR Doc. 99–24058 Filed 9–14–99; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–213].

Connecticut Yankee Atomic Power Co.; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation, has issued a Director's Decision concerning a petition dated March 11, 1997, filed by Rosemary Bassilakis pursuant to Title 10 of the Code of Federal Regulations, § 2.206 (10 CFR 2.206), on behalf of the Citizens Awareness Network and the Nuclear Information Resource Service (Petitioners). The petition requested that the NRC (1) commence enforcement action against the Connecticut Yankee Atomic Power Company (CY) by means of a large civil penalty to assure compliance with safety-based radiological control routines; (2) modify CY's license for the Haddam Neck Plant, pursuant to 10 CFR 2.202, to prohibit any decommissioning activity, which would include decontamination or dismantling, until CY manages to conduct routine maintenance at the facility without the occurrence of any contamination events for at least 6 months; and (3) place the Haddam Neck Plant on the NRC Watch List.

The Director, Office of Nuclear Reactor Regulation, determined that a decision on the first request listed above should be deferred and that the second and third requests should be denied for the reasons stated in Partial Director's Decision DD–97–19, issued on September 3, 1997. Subsequently, the Director has determined that the first request listed above should be granted in part and denied in part for the reasons stated in the "Director's Decision Under 10 CFR 2.206" (DD–99–11) the complete text of which follows this notice and is available for public inspection and copying at the Commission's Public Document Room, the Gelman Building, 2210 L Street, NW, Washington, DC, and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut.

A copy of the decision will be filed with the Secretary of the Commission for the Commission's review. As provided by 10 CFR 2.206(c), this decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 9th day of September 1999.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

Director's Decision Under 10 CFR 2.206 Completion of Previously Issued Partial Director's Decision

I. Introduction

On March 11, 1997, Rosemary Bassilakis submitted a petition pursuant to Title 10 of the Code of Federal Regulations, Section 2.206 (10 CFR 2.206), on behalf of the Citizens Awareness Network and the Nuclear Information Resource Service (Petitioners) requesting that the NRC (1) commence enforcement action against the Connecticut Yankee Atomic Power Company (CY, or licensee) by means of a large civil penalty to assure compliance with safety-based radiological control routines; (2) modify CY's license for the Haddam Neck Plant, pursuant to 10 CFR 2.202, to prohibit any decommissioning activity, which would include decontamination or dismantling, until CY manages to conduct routine maintenance at the facility without any occurrence of contamination events for at least 6 months; and (3) place the Haddam Neck Plant on the NRC Watch List. The Petitioners stated that their particular concern was the inability of CY management to maintain proper radiological controls at the Haddam Neck Plant.

In support of their requests, the Petitioners noted three radiological deficiencies that occurred at the Haddam Neck Plant. The first occurred on various dates in 1996 and involved inadequate calibration of various

detectors in the radiation monitoring system. The second occurred in November 1996 and involved two individuals who received an unplanned exposure while working in the fuel transfer canal. The third occurred in February 1997 and involved the release of contaminated video equipment to a nonlicensed vendor.

The Petitioners' requests and the NRC's evaluation and conclusions are discussed in the sections below. The Background section provides relevant information on NRC oversight and enforcement activities at Haddam Neck and briefly describes the Partial Director's Decision sent to the Petitioners in September 1997. The Discussion section describes the enforcement actions taken in response to the events noted in the petition and explains the purpose of assessing civil penalties. The Conclusion section presents the Director's Decision.

II. Background

CY submitted certifications of permanent cessation of operations at the Haddam Neck Plant and permanent defueling of its reactor on December 5, 1996. Prior to that date, the NRC identified a number of significant regulatory concerns regarding the licensee's performance. The NRC took a number of actions over the next few months to bring the licensee into compliance with applicable regulations. The actions most relevant to the Petitioners' requests and concern were the issuance of Confirmatory Action Letter (CAL) No. 1–97–007 on March 4, 1997, a civil penalty of $650,000 on May 12, 1997, and a supplement to the CAL on November 17, 1997. The CAL was issued in response to weakness in managing and controlling radiological work at the Haddam Neck Plant. The three events noted in the petition were identified in the CAL as examples of radiological weaknesses. The civil penalty did not specifically address radiological issues, but did identify programmatic weaknesses that required prompt and comprehensive correction of violations. In the November 17, 1997, supplement to the CAL, the NRC found, after conducting several inspections, that CY had achieved radiation program improvement in several areas. Subsequently, on May 5, 1998, the NRC found that the licensee had completed all the commitments listed in the CAL and that it could safely conduct significant radiological work.

The NRC issued a Partial Director's Decision (DD–97–19) on September 3, 1997, in response to the three requests contained in the petition. The first request, to take enforcement action and impose a large civil penalty on the licensee, was deferred until inspections and investigations could be completed and enforcement actions evaluated for the deficiencies noted. The Partial Director's Decision did not consider the May 12, 1997, civil penalty to be a response to the Petitioners' first request because radiological issues were not included in the notice of violation. The second request, to impose a 6-month moratorium on decommissioning activities, was denied because (1) on the basis of experience, there was no reason to expect that 10 CFR Part 20 dose limits would be exceeded at the Haddam Neck Plant, (2) a senior resident inspector was on site to monitor and inspect the licensee's performance on a day-to-day basis, and (3) a confirmatory action letter was issued to CY on March 4, 1997, to document the licensee's commitments to improve its radiation protection program. The third request, to place Haddam Neck on the NRC Watch List, was denied on the basis that the inspection program in place at the plant was sufficient to monitor licensee performance at a permanently shutdown and defueled reactor.

III. Discussion of Petitioners' Deferred Request

The three radiological deficiencies noted by the Petitioners have been inspected and investigated. In considering the Petitioners' deferred request, the NRC determined whether violations of NRC requirements occurred. Identified violations were then dispositioned in accordance with the NRC's Enforcement Policy.

The first deficiency, involving inadequate calibration of various detectors in the radiation monitoring system (RMS) during 1996, was identified as a violation by NRC letter dated January 15, 1998. The NRC determined that a violation of regulatory requirements occurred in that the licensee failed to establish and implement RMS test procedures as required by Technical Specification 6.8. Such programmatic deficiency on the part of a licensee would normally be subject to escalated enforcement action. However, the NRC determined that the provisions of Section VII.B.2, "Violations Identified During Extended Shutdowns or Work Stoppages," of the Enforcement Policy applied, and it decided to exercise enforcement discretion in this case. Therefore, the NRC did not issue a notice of violation or propose a civil penalty. This decision was made on the basis that (1) the events leading to the violation took place before the permanent shutdown of the plant in December 1996 and (2) the licensee had already been issued a $650,000 civil penalty on May 12, 1997, for technical and safety review program inadequacies that led to the inadequate RMS calibrations and other violations.

The second deficiency, involving an unplanned radiation exposure, resulted in a notice of violation issued to the licensee on April 5, 1999. The NRC identified several violations that occurred during the event and classified them in the aggregate as a Severity Level III violation. In accordance with the Enforcement Policy, a civil penalty is normally considered for a Severity Level III violation or problem. However, the NRC determined that Section VII.B.6 of the Enforcement Policy, "Violations Involving Special Circumstances," applied to the event, and it exercised enforcement discretion to not impose a civil penalty in this case. Therefore, the NRC did not propose a civil penalty because (1) the violations occurred before CY's decision, in December 1996, to permanently shut down and defuel the Haddam Neck facility and (2) CY had already been issued a $650,000 civil penalty on May 12, 1997, to address poor performance that existed before the decision was made to permanently shut down the reactor.

The third deficiency, involving release of contaminated equipment, was the subject of two enforcement actions, both issued on May 12, 1999. The first enforcement action was issued as a notice of violation to an individual on the basis that he attempted to conceal the release of contaminated video equipment to a nonlicensed vendor. The NRC classified the violation as Severity Level III. The NRC considered issuing an Order to the individual to prevent him from engaging in licensed activities at NRC licensed facilities. The NRC did not issue an Order to the individual because, among other factors, he was not in a management or supervisory position at the facility, and was no longer employed in, nor seeking work in, the nuclear industry. The second enforcement action was issued to CY for failure to perform an adequate survey, with subsequent loss of control of material. However, CY promptly achieved compliance by retrieving the contaminated equipment. CY then investigated the cause of the release and took corrective actions to prevent recurrence. Therefore, because the release of the contaminated material and the resultant loss of control of material were not willful on the part of the licensee, the NRC classified the violation as Severity Level IV and treated it as a noncited violation in accordance with Appendix C of the Enforcement Policy. Violations treated in this manner are not subject to a civil penalty.

As discussed above, although the events noted by the Petitioners constituted violations of the NRC's regulations and certain enforcement actions were taken, a civil penalty was not assessed on the licensee. This result partially fulfills the Petitioners' request to take enforcement action against the licensee. With regard to imposing a civil penalty, the NRC Enforcement Policy (NUREG–1600, Revision 1, Section VI.B) states, "Civil penalties are used to encourage prompt identification and prompt and comprehensive correction of violations, to emphasize compliance in a manner that deters future violations, and to serve to focus licensees' attention on violations of significant regulatory concern." Based on numerous inspections, the NRC has concluded that the licensee has taken timely and comprehensive corrective actions to improve its radiation protection program, has achieved adequate compliance in the time after the events occurred, and has focused its attention on maintaining adequate radiological controls. An additional civil penalty is unnecessary in light of the improvement in the licensee's performance. Consequently, consistent with the Enforcement Policy, discretion was exercised to not impose civil penalties for these violations. Therefore, the request to take enforcement action by means of a large civil penalty on CY in response to the events noted in the petition is granted in part, in that enforcement action has been taken against the licensee, and denied in part, since no civil penalty was imposed.

IV. Decision

For the reasons stated above and in Director's Decision DD–97–19, issued September 3, 1997, the petition is granted in part and denied in part. The decision and the documents cited in the decision are available for public inspection and copying in the Commission's Public Document Room, the Gelman Building, 2210 L Street, NW., Washington, DC.

In accordance with 10 CFR 2.206(c), a copy of the decision will be filed with the Secretary of the Commission for the Commission's review. As provided by this regulation, the decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 9th day of September 1999.

For The Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99–24059 Filed 9–14–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Issuance of Revised NRC Form 3, Notice to Employees

The Nuclear Regulatory Commission has issued a revised NRC Form 3, "Notice to Employees", dated August 1999, effective September 15, 1999. The form has been revised to include information that the Occupational Safety and Health Administration (OSHA) promulgated in 29 part CFR 24. The inclusion of this information into NRC Form 3 and OSHA's endorsement of the form simplifies the existing process in which interested parties were advised to copy the 29 CFR part 24 notice from OSHA's Internet website. The notice will still be available on OSHA's Internet website. All licensees will receive an administrative letter explaining the revisions with a copy of the revised form attached.

A copy of NRC Form 3 has been placed in the NRC's Public Document Room in the Gelman Building, 2120 L Street, NW (Lower Level), Washington, DC 20037, for review and copying by interested persons. A copy of the form will be mailed to interested parties who request the form from the NRC Forms Manager, Beverly Martin, at (301) 415–5877, by e-mail *BAM1@NRC.gov*, or by mail at NRC—Washington, DC 20555, Mail Stop T–4 E16.

Dated at Rockville, Maryland this 9th day of September 1999.

For the Nuclear Regulatory Commission.

Edward T. Baker, III,

Agency Allegation Advisor, Office of the Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99–24055 Filed 9–14–99; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's web site (http://www.pbgc.gov).

DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in September 1999. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in October 1999.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the "applicable percentage" (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in September 1999 is 5.16 percent (*i.e.*, 85 percent of the 6.07 percent yield figure for August 1999).

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between October 1998 and September 1999.

For premium payment years beginning in:	The assumed interest rate is:
October 1998	4.42
November 1998	4.26
December 1998	4.46

For premium payment years beginning in:	The assumed interest rate is:
January 1999	4.30
February 1999	4.39
March 1999	4.56
April 1999	4.74
May 1999	4.72
June 1999	4.94
July 1999	5.13
August 1999	5.08
September 1999	5.16

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in October 1999 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 7th day of September, 1999.

David M. Strauss,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 99–23850 Filed 9–14–99; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

Request Under Review by Office of Management and Budget

Upon Written Request, Copies Available From: Securities and Exchange Commission Office of Filings and Information Services Washington, DC 20549

Extension:
Form N–17D–1, SEC File No. 270–231, OMB Control No. 3235–0229

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (Commission) has submitted to the Office of Management and Budget (OMB) a request for extension and approval of the collections of information discussed below.

Section 17(d) [15 U.S.C. 80a–17(d)] of the Investment Company Act of 1940 (the Act) authorizes the Commission to adopt rules that protect companies and their security holders from overreaching by affiliated persons where the investment company and the affiliated person participate jointly or a jointly and severally in a transaction. Rule 17d–1 under the Act [17 CFR 270.17d–1] prohibits any such participation, unless an application regarding the transaction has been filed with and approved by the Commission. The rule provides an exemption from this requirement for any loan or advance of credit to, or acquisition of securities or other property of, a small business concern, or any agreement to do any of the foregoing (investments) made by a affiliated bank and a small business investment company (SBIC), provided that reports about the investments are made on such forms as the Commission may prescribe. For this purpose, Rule 17d–2 [17 CFR 270.17d–2] prescribes Form N–17D–1.

Form N–17D–1 is used by SBICs and their affiliated banks to report any investments in a small business concern. The form provides shareholders and persons seeking to make an informed decision about investing in an SBIC an opportunity to learn about transactions of the SBIC that have a high potential for overreaching at the expense of shareholders.

Form N–17D–1 requires SBICs to report identifying information about the small business concern and the affiliated bank. SBICs must list, among other things, the outstanding investments in the small business concern, the use of the proceeds of the investments made during the reporting period, any changes in the nature and amount of the bank's investment, the name of any affiliated person of the SBIC or the affiliated bank (or any affiliated person of such person) who has any interest in the transactions, the basis of the affiliation, the nature of the interest, and the consideration received or to be received by the affiliate.

The Commission estimates that up to 5 SBICs may use the form annually. The estimated burden of filling out the form is approximately 5 hours per response and would likely be completed by an accountant or other professional. At $114 per hour of time, completion of the form will cost approximately $570 per filer. The total annual hour burden would be 25 hours with a total annual cost of $2,850.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study. An agency may not conduct or sponsor, and a person is not required to respond to, a collection or information unless it displays a currently valid OMB control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 9, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23989 Filed 9–14–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:
Rule 10a–1, SEC File No. 270–413, OMB Control No. 3235–0475

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (Commission) has submitted to the Office of Management and Budget a request for approval of an extension of a collection of information on the following rule: 17 CFR 240.10a–1.

Rule 10a–1 (17 CFR 240.10a–1) under the Securities Exchange Act of 1934 (Exchange Act) is designed to limit short selling of a security in a declining market, by requiring, in effect, that each successive lower price be established by a long seller. The price at which short sales may be effected is established by reference to the last sale price reported in the consolidated system or on a particular marketplace. Rule 10a–1 requires each broker or dealer that effects any sell order for a security registered on or admitted to unlisted trading privileges on, a national securities exchange to mark the relevant order ticket either "long" or "short."

There are approximately 1,500 brokers and dealers registered with the national securities exchanges. The Commission has considered each of these responses for the purposes of calculating the reopening burden under Rule 10a–1. Each of these approximately 1,500 registered broker-dealers effects sell orders for securities registered on, or admitted to unlisted trading privileges, on a national securities exchange. In addition, each respondent makes an estimated 60,933 annual responses, for an aggregate total of 91,400,000 responses per year. Each response takes approximately .000139 hours (.5 seconds) to complete. Thus, the total compliance burden per year is 12,705 burden hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Deck Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 8, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23990 Filed 9–14–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Local Financial Corporation, Common Stock, $.01 Par Value) File No. 1–13949

September 9, 1999.

Local Financial Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the security specified above ("Security") from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The reasons cited in the application for withdrawing the Security from listing and registration on the Amex include the following:

The Security of the Company has been listed on the Amex since April 22, 1998. The Company now believes that it might realize a more diverse ownership of its Security through the variety of market makers available on the NASDAQ National Market ("Nasdaq") than through the auction system of the Exchange. On January 27, 1999, the company's Board of Directors voted to authorize the filing of applications to withdraw the Security from listing and registration on the Exchange and to have the Security quoted on the Nasdaq. Shares of the Security subsequently began trading on the Nasdaq on July 15, 1999.

The Company has complied with the rules of the Amex by filing with the Exchange a certified copy of the resolutions adopted by the Company's Board of Directors authorizing the withdrawal of its Security from listing on the Amex and by setting forth in detail to the Exchange the reasons for the proposed withdrawal, and the facts in support thereof. In making the decision to withdraw its Security from listing on the Amex, the Company wished to avoid the duplicative costs associated with registering its Security for trading in two different markets. The Amex has informed the Company that it has no objection to the withdrawal of the Company's Security from listing and registration on the Exchange.

The Company's application relates solely to the withdrawal of the Security from listing and registration on the Amex and shall have no effect upon the continued listing on the Amex of the Company's 11.0% Senior Notes due September 8, 2004. By reason of Sections 12(b) and (g) of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports under Section 13 of the Act with the Commission.

Any interested person may, on or before September 30, 1999, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 99–24035 Filed 9–14–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–23997; File No. 812–11730]

Transamerica Occidental Life Insurance Company, et al.

AGENCY: Securities and Exchange Commission (the "Commission" or "SEC").

ACTION: Notice of application for an order pursuant to Section 26(b) of the Investment Company Act of 1940 (the "1940 Act") approving certain substitutions of securities.

SUMMARY OF APPLICATION: Applicants request an order to permit a registered unit investment trust to substitute securities issued by two portfolios of Transamerica Variable Insurance Fund, Inc., a registered open-end investment company, and two portfolios of EQ Advisors Trust, a registered open-end investment company, for securities issued by four portfolios of The Hudson River Trust, a registered open-end investment company, currently held by the unit investment trust.

APPLICANTS: Transamerica Occidental Life Insurance Company and Separate Account VL of Transamerica Occidental Life Insurance Company (collectively, the "Applicants").

FILING DATE: The application was filed on July 29, 1999, and amended and restated on September 7, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 29, 1999, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street,

NW, Washington, D.C. 20549–0609. Applicants: Transamerica Occidental Life Insurance Company, 1150 South Olive Street, Los Angeles, California 90015, Attn: Regina M. Fink, Esq.

FOR FURTHER INFORMATION CONTACT: Kevin P. McEnery, Senior Counsel, or Susan M. Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington D.C. 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Transamerica Occidental Life Insurance Company ("Transamerica Occidental") is a California stock life insurance company. It principally engages in the sale of life insurance and annuity policies, and is registered as an investment adviser under the Investment Advisers Act of 1940, as amended ("Advisers Act"). Transamerica Occidental serves as depositor for Separate Account VL of Transamerica Occidental Life Insurance Company ("Separate Account VL").

2. Transamerica Occidental is an indirect wholly-owned subsidiary of Transamerica Corporation. On February 18, 1999, Transamerica Corporation announced that it had signed a merger agreement with AEGON N.V. ("AEGON")', an international insurance group, providing for AEGON's acquisition of all of Transamerica Corporation's outstanding common stock. The transaction closed in July 1999.

3. Separate Account VL is a segregated asset account of Transamerica Occidental and is registered with the Commission as a unit investment trust under the 1940 Act. Separate Account VL is divided into four sub-accounts. Separate Account VL funds certain variable life insurance policies issued by Transamerica Occidental (the "Policies"). The Policies consist of flexible premium individual variable life insurance policies. Transamerica Occidental no longer offers the Policies, but the Policies are still outstanding and net premiums are still accepted.[1]

4. The Hudson River Trust ("HRT") is organized as a Massachusetts business trust. It is registered as an open-end management investment company under the 1940 Act, and its shares are registered under the Securities Act of 1933 (the "1933 Act"). HRT is a series investment company, as defined by Rule 18f–2 under the 1940 Act, and currently offers shares of 14 separate portfolios. HRT sells shares to Separate Account VL to serve as an investment medium for the Policies.[2] The shares of four of the HRT portfolios are currently held by Separate Account VL and would be involved in the proposed substitutions (collectively referred to as the "Current Funds"). The HRT shares held by Separate Account VL currently account for less than 1% of HRT's total assets. HRT currently offers two classes of shares, Class 1A and Class 1B shares, which differ only in that the Class 1B shares are subject to a distribution plan adopted and administered pursuant to Rule 12b–1 under the 1940 Act. Separate Account VL holds only Class 1A shares. Each Current Fund is advised by Alliance Capital Management L.P. ("Alliance"), an investment adviser registered under the Advisers Act. As HRT's investment adviser, Alliance is responsible for managing the day-to-day investment operations of HRT and exercises responsibility for the investment and reinvestment of HRT's assets.

5. Transamerica Variable Insurance Fund, Inc. ("TVIF") is organized as a Delaware business trust. It is registered as an open-end management investment company under the 1940 Act, and its shares are registered under the 1933 Act on Form N–1A. TVIF is a series investment company, as defined by Rule 18f–2 under the 1940 Act, and currently has nine separate portfolios of shares registered with the Commission. TVIF currently sells shares to certain registered separate accounts ("Transamerica Separate Accounts") used as the underlying investment options for certain variable annuity contracts and/or variable life insurance policies issued by Transamerica Occidental and two of its affiliates. Two of the TVIF portfolios (the "TVIF Funds") would be involved in the proposed substitutions. Transamerica Occidental serves as the investment adviser for each of the TVIF Funds, and it has engaged Transamerica Investment Services, Inc. to act as the sub-adviser providing day-to-day portfolio management services to the TVIF Funds. TVIF is not a "multi-manager" company and has not applied for or received any exemptive order from the Commission that would permit a change of an investment adviser or sub-adviser, or a change in the terms of any advisory agreement, without the approval of shareholders.

6. EQ Advisors Trust ("EQAT") is organized as a Delaware business trust. It is registered as an open-end management investment company under the 1940 Act, and its shares are registered under the 1933 Act on Form N–1A. EQAT is a series investment company, as defined by rule 18f–2 under the 1940 Act, and currently offers 25 separate portfolios of shares. EQAT currently sells shares to certain registered and unregistered separate accounts ("Equitable Separate Accounts") used as the underlying investment options for certain variable annuity contracts and/or variable life insurance policies issued by The Equitable Life Assurance Society of the United States ("Equitable"). EQAT currently offers two classes of shares, Class IA and Class IB shares, which differ only in that the Class IB shares are subject to a distribution plan adopted and administered pursuant to Rule 12b–1 under the 1940 Act. EQ Financial Consultants, Inc. ("EQ Financial"), an indirect wholly-owned subsidiary of Equitable, serves as investment manager of each of the current 25 portfolios of EQAT under an investment management agreement with EQAT.[3] EQ Financial is an investment adviser registered under the Advisers Act and a broker-dealer registered under the Securities Exchange Act of 1934, as amended. Pursuant to the investment management agreement, the investment manager ("Manager") is responsible for the general management and administration of EQAT, including selecting the investment advisers for each of EQAT's portfolios ("Advisers"), monitoring their investment programs and results, reviewing brokerage matters, overseeing compliance issues, and carrying out the directives of the

[1] Applicants represent that, in reliance on a no-action letter that they received in 1990 (Transamerica Life Insurance Company Separate Account VL, pub. avail. March 16, 1990), they provide certain information to Policy owners about their Policies, Separate Account VL, and the underlying fund in lieu of filing post-effective amendments to the registration statement relating to the Policies and delivering updated prospectuses to Policy owners. Applicants further represent that their no-action letter is a predecessor to, and substantially the same as, Great-West Life Insurance Company (pub. avail. Oct. 23, 1990).

[2] The Commission issued an exemptive order granting exemptions from the 1940 Act to permit shares of HRT to be offered to separate accounts of affiliated and unaffiliated insurance companies that offer either variable life insurance policies or variable annuity contracts. *See* Equitable Variable Life Insurance Company, Investment Company Act Rel. Nos. 14899 (Jan. 14, 1986) (order) and 14860 (Dec. 18, 1985) (notice).

[3] On July 12, 1999, the Board of Trustees of EQAT approved a transfer of the Investment Management Agreement to Equitable. That transfer of the Investment Management Agreement is expected to occur prior to October 1, 1999.

Board of Trustees. EQAT has received an exemptive order from the Commission ("Multi-Manager Order") that permits EQ Financial, or any entity controlling, controlled by, or under common control (within the meaning of Section 2(a)(9) of the 1940 Act) with EQ Financial, subject to certain conditions, including approval of the Board of Trustees of EQAT, and without the approval of shareholders, to: (a) employ a new Adviser or Advisers for any portfolio pursuant to the terms of a new Investment Advisory Agreement, in each case either as a replacement for an existing Adviser or as an additional Adviser; (b) change the terms of any Investment Advisory Agreement; and (c) continue the employment of an existing Adviser on the same contract terms where a contract has been assigned because of a change of control of the Adviser.[4] In such circumstances, Policy owners would receive notice of any such action, including information concerning any new Adviser, that normally is provided in proxy materials.

7. EQAT has filed a post-effective amendment to its registration statement on Form N–1A in order to register 14 new portfolios for which Alliance will provide the day-to-day investment advisory services ("Alliance Funds"), including the two portfolios (the "EQAT Funds") that the Applicants propose to substitute for two of the Current Funds. The Applicants represent that the Manager of the 25 current portfolios of EQAT will also serve as Manager of the EQAT funds and that Alliance will serve as the portfolio manager (adviser) to each of the EQAT Funds, just as it serves as portfolio manager to each of the corresponding Current Funds. EQAT intends to sell shares of the EQAT Funds to, among others, the Equitable Separate Accounts, as well as the Separate Account VL and other insurance company separate accounts.[5]

8. The prospectus describing the Policies expressly reserves to Transamerica Occidental the right, subject to compliance with applicable law, to substitute shares of another portfolio for shares of the Current Funds held by Separate Account VL.

9. Applicants represent that they are not affiliates of HRT, EQAT or Equitable.

10. The Applicants propose to substitute the securities issued by the TVIF Funds (Growth and Money Market) for Class IA shares issued by two of the Current Funds (Common Stock and Money Market) and to substitute Class IA shares issued by the EQAT Funds (Aggressive Stock and Balanced) for Class IA shares issued by the other two Current Funds (Aggressive Stock and Balanced). The substitutes of the two TVIF Funds will be cash transactions. Equitable, directly or through the Equitable Separate Accounts, owns over 99% of the shares of the Current Funds. Equitable and each Equitable Separate Account that is registered under the 1940 Act that currently invests in HRT have filed an application with the Commission ("Equitable Application") requesting, *inter alia*, an order pursuant to Section 26(b) of the 1940 Act, approving the substitution of securities issued by the Alliance Funds for the securities issued by the 14 portfolios of HRT.[6] If approved, Equitable will redeem more than 99% of HRT's assets in connection with those substitutions. Applicants state that, given the very small position that Separate Account VL holds in the Current Funds and especially considering that the Policies are no longer offered, it is their belief that it is reasonable to conclude that, following the proposed substitutions by Equitable: (1) The expense level of the Current Funds will increase dramatically as a percentage of net assets due to the smaller asset base, which is highly unlikely to increase; (2) the Current Funds will be difficult to manage in conformity with the applicable diversification regulations under the Internal Revenue Code of 1986, as amended ("Code"); and (3) the asset levels of the Current Funds will be small enough to raise concerns as to whether the Current Funds will remain viable investment options Applicants submit that, therefore, it is imperative (and in the best interest of the Policy owners) that the shares of other comparable funds be substituted for shares of HRT held by Separate Account VL.

11. The Applicants represent that the TRIF Funds and the EQAT Funds will have investment objectives, policies and anticipated risks that are either reasonably comparable (in the case of the TVIF Funds) or identical in all material respects (in the case of the EQAT Funds) to the corresponding Current Funds. The Applicants also state that, since the TVIF funds are Transamerica Occidental advised portfolios, the quality of reports and service to Policy owners investing in those portfolios should improve. The investment objectives of the four Current Funds and the corresponding TVIF Funds and EQAT Funds (together with the TVIF Funds, the "New Funds") are as follows:

Current fund	Investment objective	New fund	Investment objective
HRT Common Stock	Seeks long-term growth of its capital and increase in income.	TVIF Growth	Seeks to maximize long-term growth.
HRT Money Market	Seeks to obtain a high level of current income, preserve its assets and maintain liquidity.	TVIF Money Market	Seeks to maximize current income consistent with liquidity and preservation of principal.
HRT Aggressive Stock	Seeks to achieve long-term growth of capital.	EQAT Aggressive Stock	Seeks to achieve long-term growth of capital.
HRT Balanced	Seeks to achieve a high return through both appreciation of capital and current income.	EQAT Balanced	Seeks to achieve a high return through both appreciation of capital and current income.

12. The Applicants state that, with respect to the EQAT Funds, it is expected that the management fees (*i.e.*, total paid to the investment manager and day-to-day investment advisers) will be the same as the management fees

[4] *See* EQ Advisors Trust and EQ Financial Consultants, Inc., Investment Company Act Rel. Nos. 23128 (April 24, 1998) (order) and 23–093 (March 30, 1998) (notice). Before an Alliance Fund many rely on the Multi-Manager Order, the operation of that Alliance fund as a multi-manager fund, as described in the application for the Multi-Manager Order, will be approved, following the substitutions proposed in the application, by a majority of that Alliance Fund's outstanding voting securities in a manner consistent with the EQAT Shared Funding Order. *See* note 5.

[5] The Commission has issued an order granting exemptions for the 1940 Act to permit EQAT shares to be offered to separate accounts of affiliated and unaffiliated insurance companies that offer either variable life insurance policies or annuity contracts ("EQAT Shared Funding Order"). *See* EQ Advisors Trust, Investment Company Act Rel. Nos. 22651 (April 30, 1997) (order) and 22602 (April 4, 1997) (notice).

[6] File No. 812–11602 (filed Apr. 30, 1999, amended and restated August 12, 1999).

currently applicable to the corresponding Current Funds. EQ Financial currently anticipates that there may be a slight increase in the total expense ratios of certain of the EQAT Funds as compared to those of the corresponding Current Funds. The Applicants represents that the chart below shows: (a) the management fees and total expenses for Class IA shares of each of the Current Funds for the year ending December 31, 1998, (b) the management fees and total expenses of TVIF Growth and Money Market Portfolios for the year ended December 31, 1998 (after fee waivers and/or expense reimbursements); and (c) the anticipated management fees and other expenses for the Class IA shares of the EQAT Aggressive Stock and Balanced Portfolios for their first year of operations. Anticipated management fees and other expenses for the EQAT Funds are presented on a pro forma basis and are based on the audited financial statements of HRT for the year ended December 31, 1998.

Current fund expenses	Management fees (percentage of average daily net assets)	Total expenses (percentage of average daily net assets)	New fund expenses	Management fees (percentage of average daily net assets)	Total expenses (percentage of average daily net assets) (after waivers and/or reimbursement*)
HRT Common Stock	0.36	0.39	TVIF Growth	0.64	0.85
HRT Money Market	0.35	0.37	TVIF Money Market	0.00	0.60
HRT Aggressive Growth	0.54	0.56	EQAT Aggressive Stock (pro forma)	0.54	0.57
HRT Balanced	0.41	0.45	EQAT Balanced (pro forma)	0.41	0.46

*Without such waivers/reimbursements, total expenses would have been 0.96% for TVIF Growth, and 3.03% for TVIF Money Market (consisting of 0.35% for TVIF Money Market management fees and 2.68% of other expenses). TVIF's investment adviser has agreed to waiver its management fee and/or reimbursement expenses for the two New Funds so the total fees and expenses do not exceed these total figures for at least one year. Such waivers or reimbursements are voluntary but are expected to continue beyond one year.

13. The Applicants state that the TVIF Funds (Growth and Money Market) have enjoyed investment performance that is better than, or comparable to, that of the Current Funds (Common Stock and Money Market). The Applicants represent that the tables below show the past investment performance (after expenses) of the Class IA shares of the two Current Funds (Common Stock and Money Market), and the past performance (after expenses) of the TVIF Funds (Growth and Money Market). In addition to the investment performance information below, the Applicants represent that the 7-day yield as of July 31, 1999, for the HRT Money Market Portfolio was 4.33% and 4.60% for the TVIF Money Market Portfolio.

CURRENT FUNDS—AVERAGE ANNUAL TOTAL RETURNS (PERIODS ENDED 12/31/98)

Current fund	One year (percent)	Five years (percent)	Ten years (percent)
HRT Common Stock	29.39	21.95	18.65
HRT Money Market	5.34	5.17	5.58

TVIF FUNDS—AVERAGE ANNUAL TOTAL RETURNS (PERIODS ENDED 12/31/98)

TVIF fund	One year (percent)	Five years (percent)	Ten years (percent)
TVIF Growth	43.28	34.37	26.05
TVIF Money Market*	4.93	N/A	N/A

*Inception date, January 2, 1998.

14. The Applicants state that, as soon as practicable after the application is noticed, they will send a notice to all Policy owners. The notice will describe each of the New Funds, identify each Current Fund that is being replaced and disclose the anticipated impact of the substitutions on fees and expenses at the underlying fund level. The Applicants state that a prospectus for the New Funds will be sent to all Policy owners before the substitutions are effected. Confirmation of the substitutions will be sent to affected Policy owners within five days after the substitutions are effected.

15. The Applicants state that the substitutions will be effected by redeeming shares of the Current Funds on the effective date of the substitutions proposed herein and in the Equitable Application ("Substitution Date") at net asset value and using the proceeds to purchase shares of the New Funds at net asset value on the same date. The transactions involving the TVIF Funds will be cash transactions. Based on the Equitable Application and information otherwise provided by Equitable, Applicants expect that the substitutions involving the EQAT Funds will be effected by redeeming shares of the corresponding Current Funds in-kind and contributing those assets in-kind to the corresponding New Fund to purchase shares of the New fund ("in-kind transactions"). In-kind transactions will be done in a manner consistent with the investment objectives, policies and diversification requirements of each corresponding New Fund. The Manager of each New Fund will review the in-kind transactions to assure that the assets are suitable for the New Fund. All assets subject to in-kind redemption and repurchase will be valued based on the normal valuation procedures of the redeeming and repurchasing funds, as set forth in the HRT and EQAT registration statements. No transfer or similar charges will be imposed on Policy owners by the Applicants and, on the Substitution Date, all Policy values will remain unchanged and fully invested.

16. The significant terms of the substitutions described above include:

a. The New Funds have investment objectives, investment policies, and anticipated risks that are either reasonably comparable or identical in all material respects to those of the Current Funds, and have been selected to satisfy the Policy owners' objectives in choosing their Current Funds. The Applicant note that the EQAT Funds will continue to employ the same portfolio managers currently employed by the corresponding Current Funds, and are intended to mirror the investment options provided by the corresponding Current Funds.

b. The fees and expenses of the EQAT funds will in all cases be substantially similar to those of the corresponding Current Funds, assuming that the asset levels of the EQAT Funds do not decrease significantly from the Current Funds' present asset levels. The Applicants note in this regard that given the substantial similarity of the EQAT Funds and the corresponding Current Funds, Applicants do not expect there to be a reduction in the asset levels of the EQAT Funds as a result of the substitutions.

c. Policy owners may transfer assets the subaccounts available under their Policy without the imposition of any fee, charge, or other penalty that might otherwise be imposed from the date of the initial notice through a date at least 30 days following the Substitution Date.

d. The substitutions, in all cases, will be effected at the net asset value of the respective shares of the Current Fund and the corresponding New Fund in conformity with Section 22(c) of the 1940 Act and Rule 22c-1 thereunder, without the imposition of any transfer or similar charge by the Applicants, and with no charge in the amount of any Policy owner's Policy value.

e. Policy owners will not incur any fees or charges as a result of the proposed substitutions, nor will their rights or Transamerica Occidental's obligations under the Policies be altered in any way. Equitable and/or Transamerica Occidental will bear all expenses incurred in connection with the proposed substitutions and related filings and notices, including legal, accounting, brokerage and other fees and expenses. There will be not tax consequences to Policy owners. The proposed substitutions will not cause the fees and charges currently being paid by existing Policy owners to be greater after the proposed substitutions than before the proposed substitutions.

f. Redemptions in-kind and contributions in-kind will be done in a manner consistent with the investment objectives, policies and diversification requirements, of the applicable Current and New Funds, and the Manger will review the in-kind transactions to assure that the assets are suitable for the New Fund. Consistent with Rule 17a-7(d) under the 1940 Act, no brokerage commissions, fees (except customary transfer fees) or other remuneration will be paid in connection with the in-kind transactions.

g. The Applicants will not count the substitutions as new investment selections in determining the limit, if any, on the total number of funds that Policy owners can select during the life of a Policy.

h. The substitutions will not alter in any way the life insurance benefits, tax benefits or any Policy obligations of the Applicants under the Policies.

i. Policy owners may withdraw amounts under the Policies or terminate their interest in a Policy, under the conditions that currently exist, including payment of any applicable withdrawal or surrender charge.

j. Policy owners affected by the substitutions will be sent written confirmation of the substitutions that identify each substutition made on behalf of that Policy owner within five days following the Substition Date.

k. Before an EQAT Fund may rely on the Multi-Manager Order, the operation of that EQAT Fund as a multi-manager fund, as described in the application for the Multi-Manager Order, will be approved, following the substitutions proposed herein, by a majority of that EQAT Fund's outstanding voting securities in a manner consistent with the terms of the EQAT Shared Funding Order.

17. The Applicants state that they will not complete the substitutions as described in the application unless all of the following conditions are met:

a. The Commission will have issued an order approving the substitutions under Section 26(b) of the 1940 Act.

b. The Commission will have issued an order approving the Equitable Application.

c. Each Policy owner will have been mailed: (1) the disclosure of the proposed substitutions shortly after notice of the application has been published; and (2) an effective prospectus for the New Funds and relevant information about the proposed substitutions prior to the Substitution Date.

d. The Applicants will have satisfied themselves that the Policies allow the substitution of portfolios as described in the application, and that the transactions can be consummated as described herein under applicable insurance laws and under the Policies.

e. The Applicants will have complied with any regulatory requirements they believe are necessary to complete the transactions in each jurisdiction where the Policies have been sold.

Applicants' Legal Analysis

1. Section 26(b) of the 1940 Act provides that it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. Section 26(b) further provides that the Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

2. The Applicants submit that the prospectus describing the Policies expressly reserves to Transamerica Occidental the right, subject to compliance with applicable law, to substitute shares of another portfolio for shares of the Current Funds held by Separate Account VL. Transamerica Occidental asserts that it has reserved this right of substitution both to protect itself and its Policy owners in situations where either might be harmed or disadvantaged by events beyond their control, affecting the issuer of the securities held by a Separate Account and to preserve the opportunity to replace such shares in situations where a substitution could benefit itself and its Policy owners. The Applicants assert that Equitable's decision to close down HRT has forced Transamerica Occidental to use this reserved right to protect its Policy owners.

3. The Applicants maintain that the proposed substitutions protect Policy owners by: (1) providing an underlying investment option for such subaccounts that is comparable to the current investment option; and (2) eliminating Current Funds that will not be viable due to the extremely low level of assets following the proposed substitutions by Equitable.

4. The Applicants further submit that the proposed substitutions meet the standards that the Commission and its staff generally have applied to other substitutions that have been approved. In addition, the Applicants contend that none of the proposed substitutions is the type of substitution that Section 26(b) was designed to prevent. Unlike traditional unit investment trusts, the

Policies provide each Policy owner with the right to exercise his own judgment and transfer Policy values into any other available variable and/or fixed investment options. Additionally, the Applicants state that the proposed substitutions will not, in any material manner, reduce the number, nature, or quality of the available investment options. The Applicants assert that the Policy owners will be offered the opportunity to transfer amounts among the available subaccounts without any cost or other penalty that may otherwise have been imposed until thirty days after the Substitution Date. For these reasons, the Applicants maintain that the proposed substitutions will not result in the type of costly forced redemptions and sales loads that Section 26(b) was designed to prevent.

5. The Applicants further submit that the proposed substitutions also are unlike the type of substitution that Section 26(b) was designed to prevent in that by purchasing a Policy, Policy owners select much more than a particular underlying fund in which to invest their Policy values. The Policy owners also select the specific type of insurance coverage offered by the Applicants under the applicable Policy, as well as numerous other rights and privileges set forth in the Policy. The Applicants state that it is likely that, in choosing to purchase a Policy from Transamerica Occidental, the Policy owner also may have considered the company's size, financial condition, and reputation for service in selecting the Policy, and that none of these considerations and factors will change as a result of the proposed substitutions.

6. Applicants state that the investment performance of the two proposed TVIF Funds is better than, or at least comparable to, that of the relevant HRT Portfolios. The average annual returns of the TVIF Growth Portfolio for one, five, and ten-year periods are substantially higher than the returns of the HRT Growth Portfolio. With respect to the TVIF Money Market Portfolio, Applicants state that its 7-day yield of 4.60% and effective yield of 4.71% as of July 31, 1999, are substantially better than the yield figures of the HRT Money Market Portfolio for the same period (4.33% and 4.42%, respectively). The average annual total returns for the one-year period ended December 31, 1998, for the HRT Money Market and TVIF Money Market portfolios was 5.34% and 4.93%, respectively.

7. The annual operating expenses of the two TVIF Funds have historically been higher than the expenses of the comparable HRT Portfolios. Applicants argue that the superior performance of the TVIF Growth Portfolio overwhelms the minor differences in operating expenses and that, as of July 31, 1999, the TVIF Money Market Portfolio's yield substantially exceeds the yield of the HRT Money Market Portfolio.

8. Applicants submit that past operating expense levels may or may not be the same in future years, especially for new portfolios like TVIF Money Market, which commenced operations on January 2, 1998. Applicants state that as its assets increase (increased from $6.1 million on January 31, 1999, to $10.7 million on July 1, 1999) operating expenses are likely to decrease.

9. Applicants also submit that Section 26(b) was intended for situations where the depositor of the unit investment trust initiated the substitution (and where investors would directly or indirectly, be forced to bear additional sales charges). Here, Applicants state that Transamerica Occidental did not initiate or instigate the proposed substitutions; rather Equitable instigated it. In response to that, Applicants argue that Transamerica Occidental is taking prudent, appropriate steps to protect its Policy owners, and to continue to fulfill the Policy owner's objectives in purchasing their variable life insurance policies from Transamerica Occidental and making their original investment selections.

10. Applicants submit that, for all the reasons summarized above, the proposed substitutions of two portfolios of TVIF and two portfolios of EQAT are good choices, and consistent with the protection of investors and the purposes fairly intended by the policy and purposes of the 1940 Act in general, and Section 26(b) in particular.

Conclusion

Applicants assert that, for the reasons summarized above, the requested order approving the substitutions should be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23992 Filed 9–14–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41843]

Securities Exchange Act of 1934; Application Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934; Order

September 8, 1999.

Notice is hereby given that the American Stock Exchange LLC ("AMEX"), the Chicago Board Options Exchange, Inc. ("CBOE"), the Pacific Exchange Inc. ("PCX"), and the Philadelphia Stock Exchange, Inc. ("PHLX") have sought an order pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934 (the "Act")[1] expressly authorizing them and the New York Stock Exchange ("NYSE"), by and through their members, affiliated member associations, the Securities Industry Automation Corp. ("SIAC"),[2] the Options Price Reporting Authority ("OPRA"),[3] and the International Securities Exchange ("ISE") ("Participants"),[4] to act jointly in planning, developing and discussing approaches and strategies with respect to options quote message traffic to (1) recommend and propose, individually or jointly, self-regulatory organization or Commission rules or plan amendments in connection therewith, or (2) undertake other options quote message traffic mitigation strategies.

[1] Section 11A(a)(3)(B) authorizes the Commission, in furtherance of its statutory directive, to facilitate the establishment of a national market system, by rule or order, "to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under [the Act] in planning, developing, operating or regulating a national market system (or a subsystem thereof) or one or more facilities thereof."

[2] SIAC is a registered exclusive securities information processor and is owned by the AMEX and the NYSE. Securities Exchange Act Release No. 12035 (Jan. 22, 1976), 41 FR 4372.

[3] OPRA is an association governed by a committee consisting of representatives of the four national securities exchanges authorized by the Commission to list options for trading (the AMEX, the CBOE, the PCX, and the PHLX) and the NYSE (which no longer lists options for trading and whose role in these matters accordingly may be limited). In 1976, the Commission granted its registration as a securities information processor. Securities Exchange Act Release No. 12035 (Jan. 22, 1976), 41 FR 4372. OPRA was formed and operates pursuant to a plan approved by the Commission on March 18, 1981, as amended. Securities Exchange Act Release No. 17638, *as amended. See, e.g,* Securities Exchange Act Release No. 40767 (Dec. 16, 1998), 63 FR 69354.

[4] The ISE, which has filed an application with the Commission to register as a national securities exchange, also will be participating in the SRI study. Securities Exchange Act Release No. 41439 (May 24, 1999), 64 FR 29367 (Jun. 1, 1999).

I. Background

SIAC, which manages the gathering, processing, and dissemination of option exchanges' bid and quote information for OPRA, and Stanford Research, Inc. Consulting ("SRI") are conducting a study to address issues raised by an anticipated increase in options message traffic. OPRA has experienced substantial and accelerating growth in peak message rates. SIAC and SRI attribute this growth to the listing of new options (including the listing of new options series), the development of new products, and the growth in on-line trading.

There also are a number of anticipated market events that OPRA believes and SIAC and SRI estimate could result in a seven-fold increase in peak message traffic above normal baseline forecasts. These market events include decimalization and the increase in multiple listings, as well as the anticipated entry into the options markets of the ISE and the related increase in multiple listings.

This anticipated increase in options quote message traffic has implications for the options industry and the continued maintenance of fair and orderly markets for investors. For example, it creates issues for OPRA concerning its data management and processing capacity. It also creates issues for OPRA's data recipients and vendors concerning whether they have the infrastructure to receive and disseminate OPRA data. Finally, it creates issues concerning the quality of the market data OPRA likely will be able to generate.

The SIAC and SRI project study is intended to: (1) Identify potential options quote message traffic mitigation strategies and quote triage approaches; (2) gauge the feasibility of those strategies through options industry interviews; and (3) analyze and evaluate various approaches.

The project structure includes a Project Steering Committee with representatives of self-regulatory organizations, as well as other participants in the securities markets or industry, and the Commission staff. It is expected that SIAC and SRI will gather information from the membership of the Project Steering Committee and that self-regulatory organizations will work together to assist SRI in conducting the study.

By letter dated August 26, 1999, the AMEX, CBOE, PCX, and PHLX have asked the Commission to authorize expressly by order such joint discussions and joint action by the Participants, consistent with Section 11A of the Act.[5]

II. Discussion

Section 11A(a)(2) of the Act directs the Commission, having due regard for the public interest, the protection of investors and the maintenance of fair and orderly markets, to use its authority under the Act to facilitate the establishment of a national market system for securities. In exercising its authority to facilitate the establishment of a national market system, the Commission must protect the public interest in maintaining fair and orderly markets in the face of new technology and other significant market developments.[6] As part of its authority to facilitate the establishment of a national market system, Congress gave the Commission the authority to authorize or require by order the self-regulatory organizations "to act jointly * * * in planning, * * * operating, or regulating a national market system."[7] This authority is intended, among other things, to enable the Commission to require joint activity that otherwise might be asserted to have an impact on competition, where the activity serves the public interest and the interests of investors. Pursuant to its Section 11A(a)(2) and Section 11A(a)(3)(B) authority, on March 18, 1981, the Commission approved the OPRA Plan.

The Commission is concerned about the increase of options quote message traffic that may result from various anticipated events in the options markets. The proposed SICA/SRI study will provide important information about how to address this increase in options quote message traffic. To achieve the goals of the study, it will be essential for the Participants to work jointly with each other and with SIAC and SRI to provide relevant information and to discuss the feasibility of strategies to avoid quote traffic congestion, including quote mitigation strategies and increasing capacity, and individual or joint action with respect to such strategies for ultimate approval and implementation. The Commission believes that such joint discussions and joint action are unlikely to have adverse effects on competition and that any incidental effects on competition will be outweighed by their benefits to the public interest and the interests of investors. In this respect, the Commission notes that the parties seeking this Order have represented that the joint discussions contemplated by this Order will be limited to strategies to avoid quote traffic congestion, including quote mitigation strategies and strategies to increase capacity, in response to the increase in options quote message traffic. In addition, this Order covers only discussions in the presence of Commission staff or actions that are approved by the Commission. For that reason, the Commission staff will attend all joint discussions and will participate in developing approaches in response to anticipated increases in options quote message traffic.

The Commission finds that the public interest in maintaining fair and orderly markets is furthered by requiring the Participants to work jointly to evaluate issues resulting from increased message traffic and to develop and recommend strategies to address problems resulting from that increase. The Commission notes that there are various contexts in which market participants are required by law to cooperate to achieve certain national market system objectives. The Commission expects that this cooperation will continue and does not require additional authorization by the Commission. The Commission is issuing this Order only because of recent and expected changes in the options markets, the need for prompt development of appropriate response to those changes, and the concerns expressed by some Participants about their ability to meet collectively to address this situation.

Accordingly, the Commission has determined to issue an order directing the Participants to cooperate with each other and to conduct joint discussions and to take such joint action as is necessary or advisable to plan and develop recommended strategies and approaches with respect to anticipated increases in options quote message traffic.[8]

It is hereby ordered, pursuant to Section 11A(a)(3)(B) of the Act, that the AMEX, CBOE, NYSE, PCX, and PHLX, on their own behalf and acting through their members, affiliated member associations, SIAC, and OPRA, are directed to act jointly in planning, developing, and discussing approaches and strategies with respect to options quote message traffic (including, in particular, by participating in the SRI study) to (1) recommend and propose,

[5] Letter from Colleen Mahoney to Jonathan Katz, dated August 26, 1999, attached as Exhibit A.

[6] *See generally,* Section 11A(a)(1)(B) of the Act, 15 U.S.C. 78k–1(a)(1)(B) and Section 11A(a)(1)(C) of the Act, 15 U.S.C. 78k–1(a)(1)(C).

[7] Section 11A(a)(3)(B) of the Act, 15 U.S.C. 78k–1(a)(3)(B).

[8] The Commission reaches this conclusion without in any way considering or deciding whether the conduct expressly authorized by this Order is within the scope of the Commission's March 1981 Order approving the OPRA plan, as amended.

individually or jointly, self-regulatory organization or Commission rules or plan amendments in connection therewith, or (2) undertake other strategies to avoid quote traffic congestion, including options quote traffic mitigation strategies and strategies to increase capacity. To the extent this Order may be construed as reflecting a Commission finding that a particular discussion or action has no adverse effect on competition, or that any such adverse effect is outweighed by the benefits to the public interest and the interests of investors, that finding is limited to discussions in the presence of the Commission staff or actions formally approved by the Commission.[9]

It is hereby further ordered that this Order will be effective until such time as the Commission adopts such rules or plan amendments or September 1, 2000, whichever is earlier.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Exhibit A

August 26, 1999.

Jonathan Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549

Dear Mr. Katz: The Securities Industry Automation Corp. ("SIAC") and Stanford Research, Inc. Consulting ("SRI") have been asked to conduct a study at the request of the Options Price Reporting Authority ("OPRA") to address issues raised by an anticipated increase in options message traffic.

On behalf of the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the Pacific Exchange, Inc. and the Philadelphia Stock Exchange, Inc., all of which are participants in OPRA, we hereby request that the Securities and Exchange Commission exercise its authority under Section 11A of the Securities Exchange Act of 1934 (the "Act") to issue an order expressly authorizing the self-regulatory organizations, including without limitation the OPRA participants, on their own behalf and through their members and member associations, to act jointly with each other and with SIAC in planning, developing and discussing applications and strategies with respect to options quote message traffic, in order to individually or jointly recommend and propose individual or joint self-regulatory organization or Commission rules or plan amendments in connection therewith or to undertake other options traffic mitigation strategies.

On March 18, 1981 the Commission approved the OPRA Plan. *See* Securities Exchange Act Release No. 17638 (March 18, 1981). The OPRA Plan, as amended, was developed:

in response to directives of the Securities and Exchange Commission that provision be made for the consolidated reporting of transactions in eligible options contracts * * * and in response to the finding set forth in [the Act], that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities.

The OPRA Plan was designed to enable the OPRA participants, through OPRA, to "make all policy decisions under the Plan, including, but not limited to * * * setting standards governing the method and format for reporting options last sale reports and quotation information by [the national exchanges, among others]." *See* Securities Exchange Act Release No. 34–40767 (Dec. 16, 1998), 63 Fed. Reg. 69354. The SIAC/SRI conducted study is intended to address strategies for dealing with the anticipated increase in options quote message traffic, and, accordingly, will require consideration of policies and standards for managing quotation message traffic.

The OPRA participants believe that their joint action in connection with the SIAC/SRI study is encompassed by the approved OPRA Plan. Nonetheless, we request that the Commission authorize expressly, by separate order, such joint discussions and joint action by the self-regulatory organizations, including without limitation the OPRA participants, on their own behalf and through their members and member associations, consistent with Section 11A of the Act, in order to eliminate any possible question that might arise as to the authority of the OPRA participants on their own behalf and through their members to cooperate with each other and with SIAC and SRI to conduct joint discussions and to take such joint action as is necessary or advisable to plan and develop recommended strategies and approaches with respect to anticipated increases in options quote message traffic or undertake other options traffic mitigation strategies.

We have enclosed a draft order that has been the subject of discussions with Commission staff.

Sincerely,

Colleen P. Mahoney

Enclosure

[FR Doc. 99–23991 Filed 9–14–99; 8:45 am]

BILLING CODE 8010–01–M

[9] In issuing this Order, the Commission intends to address only the circumstances the Order expressly discusses. The Commission believes that it would be inappropriate to draw any inference from this Order concerning the Commission's views as to any conduct or circumstance not addressed by the Order. In particular, other than as described in this Order, the Commission expresses no conclusion on any issue concerning joint conduct, whether occurring before or after the date of this Order, or concerning the circumstances under which the Commission would view such joint conduct as in the public interest and the interests of investors.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41840; File No. SR–Amex–99–31]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange LLC Relating to Publication of Certain Membership, Corporate Governance, and Disciplinary Information in the Amex Weekly Bulletin

September 7, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 13, 1999, the American Stock Exchange LLC ("Amex or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The text of the proposed rule change is available at the Office of the Secretary, the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to eliminate references in its Constitution and Rules to the requirement that certain membership, corporate governance, and disciplinary information be published in the Weekly Bulletin. The Weekly Bulletin contains information which includes the offering price of a membership sold by the Board, the list of meetings of stockholders after proxy material has been reviewed by the Exchange, notice of proposed admission to membership of proposed members and member organizations, and publication of Exchange disciplinary decisions. Such information is now posted on the Nasdaq Trader web site, thereby reaching a wider audience. Existing references in the Constitution and Rules to the Exchange's bulletin board, located on the trading floor of the Exchange, will remain unchanged. All information contained in the Weekly Bulletin will be available to Amex members and others involved in trading on the Exchange trading floor, and will become available to the general public through the Nasdaq Trader web site. Moreover, information posted on the Nasdaq Trader web site will be available by mail for individuals who do not frequent the trading floor or who do not have access to a computer.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)[2] of the Act in general and furthers the objectives of section 6(b)(5)[3] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investor and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number in the caption above and should be submitted by October 8, 1999.

IV. Commission's Findings and Order Granting Accelerated Approval of Rule Change

The Commission has reviewed carefully the Amex's proposed rule change and believes, for the reasons set forth below, finds that the proposal is consistent with the requirements of Section 6 of the Act[4] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds the proposal is consistent with Section 6(b)(5) of the Act[5] because it will reduce duplication in the circulation of information and will facilitate the dissemination of information to a wider audience.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that such information is available on the Internet and on the trading floor, so changing the content of the Weekly Bulletin should have no adverse impact on exchange members. In addition, information posted on the Internet will be available by mail for those individuals without access to a computer. By approving the proposed rule change prior to the thirtieth day after the date of publication in the **Federal Register**, the Exchange will immediately reduce the costs associated with making such information available in the Weekly Bulletin. The Commission believes, therefore, that granting accelerated approval of the proposed rule change is appropriate and consistent with Section 6 of the Act.[6]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[7] that the proposed rule change (SR–Amex–99–31) is hereby approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–23993 Filed 9–14–99; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78f(b).

[3] 15 U.S.C. 78f(b)(5).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78s(b)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41834; File No. SR–NYSE–99–17]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2 and 3 to the Proposed Rule Change Permanently Approving the Pilot Program for the Listing Standards for Domestic and Non-U.S. Companies

September 3, 1999.

I. Introduction

On April 22, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the Exchange's original listing standards. On May 19, 1999, the Exchange submitted Amendment No. 1 to its proposal.[3]

The proposed rule change and Amendment No. 1 were published for comment in the **Federal Register** on June 4, 1999,[4] and the Commission granted accelerated approval to the pilot program relating to an alternative listing eligibility criteria for U.S. and non-U.S.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from James Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated May 18, 1999 ("Amendment No. 1").

[4] Securities Exchange Act Release No. 41459 (May 27, 1999), 64 FR 30088 (June 4, 1999).

companies ("Pilot") until September 3, 1999, or until the Commission approves the Exchange's request for permanent approval of the Pilot. On July 15, 1999, the Exchange filed Amendment No. 2[5] to the proposal and on August 30, 1999, the Exchange filed Amendment No. 3.[6] The Commission received one comment letter regarding the proposal.[7] This notice and order approves the proposed rule change, as amended, and solicits comments from interested person on Amendment Nos. 2 and 3.

II. Description of the Proposal

The purpose of the proposed rule change is to add a new original listing standard to the Exchange's domestic and non-U.S. numerical listing criteria and to modify its current original listing criteria applicable to non-U.S. issuers. The Exchange's numerical listing criteria currently include requirements regarding size, earnings and share distribution of a company. The Exchange is proposing to add a new alternative standards that focuses on global market capitalization and revenues for large, global companies.

The specific proposed amendments to the Exchange's original listing criteria are:

1. The Exchange is proposing a Capitalization Standard alternative to its other financial listing eligibility criteria. Under the proposed amendment to Paragraphs 102.01 and 103.01 of the NYSE's Manual, a company with a total global market capitalization of $1 billion and revenues of $250 million in its most recent fiscal year would be eligible for listing on the Exchange without satisfying any additional financial eligibility requirements. However, the company would have to meet the Exchange's other original listing criteria. The Exchange believes that companies of this magnitude would be appropriate for listing and trading on the NYSE even if they do not have earnings because the lack of earnings could be indicative of the company's stage of development, or the transitional nature of its home economy, or the fact that a company could be undergoing short-term variations in profitability. This listing standard is proposed for both domestic and non-U.S. companies.

For companies listing in connection with an initial public offering ("IPO"), the valuation of the company's market capitalization would need to be demonstrated by a written representation from the underwriter (or, in the case of a spin-off, by the parent company's investment banker, other financial advisor, or transfer agent, if applicable) of the size of the offering as it pertains to the total market capitalization of the company upon completion of the offering (or distribution). For all other companies, the average market capitalization over the preceding six months would be used to determine the market capitalization of the company. In computing the six month average, the Exchange proposes to take advantage of the daily figures (*i.e.*, share price and shares outstanding) over the preceding six-months.

2. The Exchange currently has alternative numerical listing criteria for non-U.S. companies with limited U.S. distribution.[8] The Exchange proposes to amend its pre-tax earnings standard for these companies by requiring $25 million in pre-tax income in each of the two most recent fiscal years. Currently, the company need only have pre-tax earnings of $25 million in any one of the three most recent years. Thus, to qualify under the proposed criteria, a non-U.S. issuer would need to demonstrate pre-tax income of $100 million in the aggregate for the last three fiscal years together with a minimum of $25 million of pre-tax income in each of the two most recent fiscal years.

The Exchange notes that its past experience indicates that non-U.S. companies tend to follow U.S. GAAP/SEC disclosure guidelines, which only require U.S. GAAP reconciliation for the most recent two years and any relevant interim period. Thus, the third year back is generally reported only in local GAAP and, therefore, is of little quantitative value to the Exchange without reconciliation to U.S. GAAP. As a result the proposed rule change would obviate the need to reconcile the third year back to U.S. GAAP except where the Exchange determines that that information is necessary to assure the Exchange that the aggregate $100 million threshold has been satisfied.

III. Summary of Comments

The Commission received one comment letter from the National Association of Securities Dealers, Inc. ("NASD"), which opposed the proposal.[9] The Exchange responded to this letter.[10]

In its letter, the NASD opposed the adoption of new listing criteria that would increase the number of large Nasdaq issuers eligible for listing on the NYSE, while the NYSE retains rules restricting companies from voluntarily delisting from the NYSE[11] and restricting off-board trading activity by NYSE members.[12] The NASD contends that the proposal, in conjunction with NYSE Rules 500 and 390, provides the NYSE with an unfair competitive advantage. Therefore, the NASD contends that the NYSE should not be allowed to adopt any rule change that increases the Exchange's ability to obtain or retain issuer listings while NYSE Rules 500 and 390 remain in effect.

In response, the Exchange argued that the NASD's argument is unrelated to the current proposal and further, that the proposed rule change is principally an additional listing standard to allow large companies to list on the Exchange. The Exchange noted that the decision whether to list on the Exchange is a decision made by the issuer.

IV. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[14] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and in general, to protect investors and the public. The Commission believes that the Exchange's alternative financial listing standard for companies with $1 billion in market capitalization and $250 million in revenues in the most recent fiscal year is an acceptable standard for listing very large companies that the Exchange believes will prove to be financially successful, although they may not have been profitable in recent years. The Commission believes that the proposed rule change is consistent with the Exchange's obligation to remove impediments to and perfect the mechanism of a free and open market by providing issuers another alternative for trading in the U.S. marketplace without undermining the NYSE's listing standards, which play an important role in protecting investors.

The Commission also believes that it is reasonable for the Exchange to accept a written representation from an underwriter (or, in the case of a spin-off, by a written representation from the parent company's investment banker or other financial advisor) for an IPO or spin-off, since by definition it could not satisfy the requisite market capitalization standard.

With respect to the "pre tax earnings" standard, the proposal amends its standard by requiring $25 million in pre-tax income in each of the two most recent fiscal years. Thus, a non-U.S. issuer would need to demonstrate pre-tax income of $100 million in the aggregate for the last three fiscal years together with a minimum of $25 million of pre-tax income in each of the two most recent fiscal years. Reconciliation to U.S. GAAP of the third year back is required only if the Exchange determines that reconciliation is necessary to demonstrate that the aggregate $100 million threshold is satisfied. The Commission believes that the proposed change appropriately simplifies the non-U.S. company listing criteria because its parallels the benchmark applied in the "adjusted cash flow" standard for non-U.S. companies.[15]

The Commission carefully considered the concerns expressed by the NASD in its letter opposing the proposal. Without taking a position in this Order on the continued propriety of NYSE rules 390 and 500, the Commission was not persuaded by the NASD's contention that in light of those rules a proposal such as the current one that could reduce the burden for companies to list on the NYSE is by its nature inappropriately anti-competitive.

The Commission finds that Amendment Nos. 2 and 3 are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes Amendment Nos. 2 and 3 are consistent with the Section 6(b)(5)[16] requirements that the rules of an exchange be designed to remove impediments to and perfect the mechanisms of a free and open market and a national market system by conforming the proposed rule language with the text of the NYSE rule language recently approved by the Commission.[17]

The Commission finds good cause for approving Amendments Nos. 2 and 3 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Amendments merely conform the proposed rule language to the Exchange's actual rule language and do not make substantive changes to the text of the rule. In addition, accelerated approval will enable the Exchange to simultaneously make all relevant modifications to its *Listed Company Manual* and avoid any potential confusion due to recent rule revisions. Accordingly, the Commission finds that granting accelerated approval of Amendments No. 2 and 3 is appropriate and consistent with Sections 6(b)(5) and 19(b)(2) of the Act.[18]

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether Amendments 2 and 3 are consistent with the Act. Persons making written statements should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–99–17 and should be submitted by October 6, 1999.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (File No. SR–NYSE–99–17), as amended, relating to the listing criteria for U.S. and non-U.S. companies, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc 99–23994 Filed 9–14–99; 8:45 am]

BILLING CODE 8010–01–M

[5] In Amendment No. 2, the Exchange made technical changes to conform its proposed rule language to reflect the Exchange's rule language, as amended by a previously submitted rule proposal. *See* Letter from Daniel Parker Odell, Assistant Secretary, NYSE, to Richard Strasser, Assistant Director, Division, Commission, dated July 14, 1999 ("Amendment No. 2).

[6] In Amendment No. 3, the Exchange made technical changes to conform its proposed rule language to reflect the Exchange's rule language, as amended by a previously submitted rule proposal. *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division, Commission, dated August 26, 1999 ("Amendment No. 3).

[7] *See* Letter from Frank G. Zarb, Chairman and Chief Executive Officer, NASD, to Jonathan G. Katz, Secretary, Commission, dated July 19, 1999 ("NASD Letter").

[8] The Exchange applies the general financial listing standards in Paragraph 102.01 of its Manual both to domestic companies and to non-U.S. companies that have the required distribution and trading volume in the United States (or North America, for North American companies). However, the section and paragraph headings in the Manual suggest that those standards apply only to U.S. companies. The Exchange is proposing to change the non-U.S. heading to remove that implication by incorporating the word "alternative."

[9] *See* NASD Letter, *supra* note 7.

[10] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary Commission, dated September 2, 1999.

[11] NYSE Rule 500.

[12] NYSE Rule 390.

[13] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

[15] *See* Securities Exchange Act Release No. 41502 (June 9, 1999) 64 FR 32588 (June 17, 1999).

[16] 15 U.S.C. 78f(b)(5).

[17] *See* Securities Exchange Release No. 41502 (June 9, 1999) 64 FR 32588 (June 17, 1999). In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before October 15, 1999. If you intend to comment but cannot prepare comments properly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: *Agency Clearance Officer*, Jacqueline White, Small Business Administration, 409 3rd Street, S.W., 5th Floor, Washington, D.C. 20416; and *OMB Reviewer*, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–6629.

SUPPLEMENTARY INFORMATION:

Title: "HUBZone Empowerment Contracting Program Application".

Form No.: 2103.

Frequency: On Occasion.

Description of Respondents: SBA Businesses Seeking Certification as Qualified HUBZone Small Business Concern.

Annual Responses: 20,000.

Annual Burden: 20,000.

Dated: September 8, 1999.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc 99–24032 Filed 9–14–99; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3203]

State of Minnesota (Amendment #4)

In accordance with a notice from the Federal Emergency Management Agency dated September 2, 1999, the above-numbered Declaration is hereby amended to include Beltrami County, Minnesota as a disaster area due to damages caused by severe storms, winds, and flooding beginning on July 4, 1999 and continuing through August 2, 1999.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Clearwater, Lake of the Woods, Marshall, Pennington, and Roseau in the State of Minnesota may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the deadline for filing applications for physical damage is September 25, 1999 and for economic injury the deadline is April 28, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 3, 1999.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 99–24031 Filed 9–14–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3209]

Commonwealth of Pennsylvania

As a result of the President's major disaster declaration on September 1, 1999, I find that McKean County, Pennsylvania constitutes a disaster area due to damages caused by severe storms and flooding that occurred on August 20—21, 1999. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 30, 1999, and for loans for economic injury until the close of business on June 1, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South, 3rd Floor, Niagara Falls, NY 14303.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Cameron, Elk, Forest, Potter, and Warren Counties in Pennsylvania, and Allegany and Cattaraugus Counties in New York.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	7.250
Homeowners Without Credit Available Elsewhere	3.625
Businesses With Credit Available Elsewhere	8.000
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.000
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 320906. For economic injury the numbers are 9E4400 for Pennsylvania and 9E4500 for New York.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: September 3, 1999.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 99–24030 Filed 9–14–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3208]

State of Texas

As a result of the President's major disaster declaration on August 22, 1999 for Public Assistance only, and an amendment thereto on August 30 adding Individual Assistance, I find that the following Counties in the State of Texas constitute a disaster area due to damages from severe storms and flooding caused by Hurricane Bret that occurred August 21–26, 1999: Aransas, Brooks, Cameron, Duval, Hidalgo, Jim Wells, Kenedy, Kleberg, Nueces, Webb, and Willacy. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 20, 1999, and for loans for economic injury until the close of business on May 30, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties in Texas may be filed until the specified date at the above location: Dimmit, Jim Hogg, LaSalle, Live Oak, Maverick, McMullen, Refugio, San Patricio, Starr, and Zapata.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	7.250%
Homeowners Without Credit Available Elsewhere	3.625%
Businesses With Credit Available Elsewhere	8.000%
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000%
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	7.000%
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000%

The number assigned to this disaster for physical damage is 320808 and for economic injury the number is 9E4300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 2, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–24029 Filed 9–14–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. FTA–99–6204]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of a currently approved collection. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on June 4, 1999, [FR 64 pages 30096–30097].

DATES: Comments must be submitted on or before October 15, 1999. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Sylvia L. Barney, Office of Administration, Office of Management Planning, (202) 366–6680.

SUPPLEMENTARY INFORMATION:

Title: Rail Fixed Guideway Systems; State Safety Oversight (*OMB Number: 2132–0558*).

Abstract: 49 U.S.C. Section 5330 requires each State to designate a State Safety Oversight agency to oversee the safety and security operations of "a rail fixed guideway system" within the State's jurisdiction. The information collected will enable the State oversight agency to monitor effectively the safety of the rail fixed guideway system.

Estimated Total Annual Burden: 37,158 hours.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, N.W., Washington, D.C. 20503, Attention: FTA Desk Officer.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued: September 10, 1999.

Dorrie Y. Aldrich,

Associate Administrator for Administration.

[FR Doc. 99–24060 Filed 9–14–99; 8:45 am]

BILLING CODE 4910–57–U

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–20951]; [STB Docket No. MC–F–20952]

Coach USA, Inc., and Coach USA South Central, Inc.—Control—Fun Time Tours, Inc.; Coach USA, Inc., and Coach USA North Central, Inc.—Control—G.W. Transportation, Inc., and Sam Van Galder, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice tentatively approving finance transactions.

SUMMARY: Coach USA, Inc. (Coach), a noncarrier, and its wholly owned noncarrier management subsidiaries, Coach USA South Central, Inc. (South Central), and Coach USA North Central, Inc. (North Central) (collectively, applicants), filed an application under 49 U.S.C. 14303 for Coach and South Central to acquire control of Fun Time Tours, Inc. (Fun Time), and for Coach and North Central to acquire control of G.W. Transportation, Inc., d/b/a Greatway Transportation (Greatway) and Sam Van Galder, Inc. (Van Galder). In addition, Stagecoach Holdings plc (Stagecoach) and its subsidiaries, SUS 1 Limited, SUS 2 Limited, Stagecoach General Partnership and SCH US Holdings Corp., noncarriers that control Coach and Coach's various regional management subsidiaries and operating motor passenger carriers, seek authority to control Fun Time, Greatway and Van Galder.[2] The Board has tentatively approved the transactions, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by November 1, 1999. Applicants may file a reply by November 15, 1999. If no comments are filed by November 1, 1999, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20951 *et al.* to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, send one copy of comments to applicants' representatives: Betty Jo Christian, Steptoe & Johnson LLP, 1330 Connecticut Avenue, N.W., Washington, DC 20036 and William C. Sippel, Oppenheimer, Wolff & Donnelly, Two Prudential Plaza, 45th Floor, 180 North Stetson Avenue, Chicago, IL 60601–6710.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Coach is a noncarrier that currently controls 79 motor carriers of passengers. In previous Board decisions, Coach management subsidiaries, including South Central and North Central, have obtained authority to control motor passenger carriers jointly with Coach, with the latter retaining indirect control through its ownership of those management subsidiaries.[3] In STB Docket No. MC–F–20951, Coach and South Central seek control of Fun Time.[4] In STB Docket No. MC–F–20952, Coach and North Central seek control of Greatway[5] and Van

[1] These proceedings are not consolidated. A single decision is being issued for administrative convenience.

[2] When applicants filed their application on August 16, 1999, Stagecoach and its subsidiaries were not yet in control of Coach, the regional management subsidiaries and the operating motor passenger carriers. The tentative control authority granted in *Stagecoach Holdings plc—Control—Coach USA, Inc., et al.*, STB Docket No. MC–F–20948 (STB served July 22, 1999) became final on September 7, 1999, when no comments were filed in response to the notice of the tentative grant. Thus, Stagecoach and its subsidiaries are now applicants seeking control of Fun Time, Greatway and Van Galder.

[3] *See Coach USA, Inc. and Coach USA North Central, Inc.—Control—Nine Motor Carriers of Passengers*, STB Docket No. MC–F–20931 *et al.* (STB served July 14, 1999).

[4] Fun Time is a Texas corporation. It holds federally issued operating authority in Docket No. MC–176329, which authorizes it to provide charter and special operations beginning and ending at points in Texas, and extending to points in the United States (except Hawaii). It specializes in operations in the Corpus Christi, TX area, where it provides charter and tour services. Fun Time operates a fleet of 3 buses, employs 11 persons, and earned annual revenues for the 12-month period ending May 31, 1999, of approximately $500,000.

[5] Greatway is an Illinois corporation. It holds federally issued operating authority in Docket No. MC–243414, which authorizes it to engage in charter and special operations between points in the United States (except Alaska and Hawaii) and to operate as a motor contract carrier under continuing contracts with persons requiring passenger service. It also holds authority issued by the Illinois Commerce Commission to conduct intrastate operations. Greatway's federal operating authority was obtained in a transaction, recently approved by the Federal Highway Administration,

Continued

Galder.[6] The acquisition of control of Fun Time, Greatway and Van Galder would be accomplished by a transfer of ownership of all of the outstanding stock of Fun Time to South Central and the outstanding stock of Greatway and Van Galder to North Central. According to applicants, the stock of these three carriers is presently being held in separate, independent voting trusts pending such transfer. Upon completion of the transfer, Coach, Stagecoach and its subsidiaries would obtain indirect control of the three carriers through their ownership of South Central and North Central.

Applicants submit that the three carriers to be acquired will continue to operate in the same general manner as they are operated presently. They will continue to provide bus services pursuant to the federal operating authorities held by each. No certificates or other operating permits will be transferred from one entity to another in consequence of the proposed control transaction.

Applicants also submit that the proposed acquisition of control will not materially reduce competitive transportation options available to the traveling public. Each of the carriers faces substantial competition from other bus companies and transportation modes.

According to applicants, the transactions will produce, or continue to produce, substantial benefits, including interest cost savings from the restructuring of debt and reduced operating costs from Coach's enhanced volume purchasing power. As a specific example, the Coach companies benefit from the lower insurance premiums that Coach has been able to negotiate as well as from Coach's ability to achieve volume discounts on the purchase of equipment and fuel. The advantages that have accrued to the motor passenger carriers as a consequence of their control by Coach are allegedly further enhanced by Stagecoach's acquisition of Coach, due to Stagecoach's greater financial resources and its significant management expertise. Applicants also indicate that the management subsidiaries will provide each of the carriers with services such as centralized legal and accounting functions and coordinated purchasing services. In addition, applicants state that vehicle sharing arrangements will be facilitated through Coach and its regional subsidiaries to ensure maximum utilization and operational efficiency of equipment. South Central and North Central each plan to maintain a database of the assets, including the motorcoach vehicles operated by the carriers. Access to the database will allow the carriers to deploy vehicles more effectively, resulting in more timely and efficient service to the traveling public. Coach's management subsidiaries will also coordinate the safety and compliance programs of the carriers, including driver training, to maintain and improve safety performance levels. Finally, Coach's management subsidiaries will develop financial plans and coordinate operational strategies.

Applicants assert that the proposed transactions will have no adverse impacts on the employees of Fun Time, Greatway and Van Galder and that their collective bargaining agreements will be honored.

Applicants certify that: (1) The jurisdictional threshold has been met with respect to the transactions that are the subject of the applications;[7] (2) none of the subject carriers holds an unsatisfactory rating from the U.S. Department of Transportation; (3) each of the subject carriers has sufficient insurance coverage for the motor passenger service it provides and that evidence of such insurance has been, or by the time of any action on this application will be, filed with the Federal Highway Administration; (4) none of the subject carriers is domiciled in Mexico nor owned or controlled by persons of that country; and (5) approval of the transactions will not significantly affect either the quality of the human environment or the conservation of energy resources, and that environmental regulation pursuant to 49 CFR 1105.7 is unnecessary. Additional information may be obtained from the applicants' representatives.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

On the basis of the applications, we find that the proposed acquisitions of control are consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the applications.[8] If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed acquisitions of control are approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.

3. This decision will be effective on November 1, 1999, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Office of Motor Carriers-HIA 30, 400 Virginia Avenue, S.W., Suite 600, Washington, DC 20004; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, S.W., Washington, DC 20590.

Decided: September 9, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 99–24078 Filed 9–14–99; 8:45 am]

BILLING CODE 4915–00–P

with a carrier known as Contemporary Shuttle, Inc. Greatway operates a fleet of approximately 25 buses, employs approximately 50 persons, and earned annual revenues for the 12-month period ending February 28, 1999, of approximately $3.9 million.

[6] Van Galder, which operates the Gray Line trade name with respect to certain of its services, focuses its operations on providing service between points in Wisconsin and O'Hare International Airport as well as providing charter, tour and school bus services in Wisconsin and nearby states. It holds federally issued operating authority in Docket No. MC–112422, which authorizes it to provide regular route passenger service between specified points in Wisconsin and Illinois and to provide charter and special services passenger transportation between points in the United States (except Hawaii). Van Galder focuses its operations on providing service between points in Wisconsin and O'Hare International Airport as well as providing charter, tour and school bus services in Wisconsin and nearby states and operates under the Gray Line trade name with respect to certain of its services. It operates a fleet of approximately 110 vehicles, employs approximately 185 persons, and earned annual revenues for the 12-month period ending May 31, 1999, of approximately $11.3 million.

[7] *See* 49 CFR 1182.2(a)(5).

[8] Under revised 49 CFR 1182.6(c), a procedural schedule will not be issued if we are able to dispose of opposition to the application on the basis of comments and the reply.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 8, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before October 15, 1999, to be assured of consideration.

Bureau of the Public Debt (PD)

OMB Number: New.

Form Number: None.

Type of Review: New collection.

Title: Treasury Retail Securities Marketing Strategy Study.

Description: This survey will focus on savings bond and Treasury Direct™ issues.

Respondents: Individuals or households.

Estimated Number of Respondents: 830.

Estimated Burden Hours Per Respondent: 23 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden Hours: 319 hours.

Clearance Officer: Vicki S. Thorpe (304) 480–6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, West VA 26106–1328.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–24072 Filed 9–14–99; 8:45 am]

BILLING CODE 4810–40–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 8, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before October 15, 1999, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1652.

Revenue Procedure Number: Revenue Procedure 99–27.

Type of Review: Extension.

Title: Uniform Closing Agreement—Modified Endowment Contracts.

Description: This revenue procedure allows issuers (life insurance companies) to remedy inadvertent non-egregious failures to comply with the modified endowment rules set forth in section 7702A of the Internal Revenue Code.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 200.

Estimated Burden Hours Per Respondent: 100 hours.

Frequency of Response: Other (one-time).

Estimated Total Reporting Burden: 20,000 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 99–24073 Filed 9–14–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco, and Firearms

Order ATF O 1130.6

Delegation Order—Delegation of the Director's Authorities in 27 CFR Part 1, Basic Permit Requirements, Nonindustrial use of Distilled Spirits and Wine, and Bulk Sales and Bottling of Distilled Spirits Under the Federal Alcohol Administration Act

1. *Purpose.* This order delegates certain authorities of the Director to subordinate ATF officers and prescribes the subordinate ATF officers with whom persons file documents which are not ATF forms.

2. *Cancellation.* ATF O 1100.101A, Delegation Order—Delegation to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR Part 1, Basic Permit Requirements Under the FAA Act, dated 9/17/84, is canceled.

3. *Background.* Under current regulations, the Director has authority to take final action on matters relating to basic permit requirements, nonindustrial use of distilled spirits and wine, and bulk sales and bottling of distilled spirits under the Federal Alcohol Administration Act. We have determined that certain of these authorities should, in the interest of efficiency, be delegated to a lower organizational level.

4. Delegations. Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Order No. 120–1 (formerly 221), dated June 6, 1972, and by 26 CFR 301.7701–9, this ATF order delegates certain authorities to take final action prescribed in 27 CFR Part 1 to subordinate officials. Also, this ATF order prescribes the subordinate officials with whom applications, notices, and reports required by 27 CFR Part 1, which are not ATF forms, are filed. The following table identifies the regulatory sections, authorities and documents to be filed, and the authorized ATF officials. The authorities in the table may not be redelegated. An ATF organization chart showing the directorates involved in this delegation order has been attached.

John W. Magaw,

Director.

TABLE OF AUTHORITIES AND OFFICERS AUTHORIZED TO ACT OR RECEIVE DOCUMENTS

Regulatory section	Officer(s) authorized to act or receive document
§ 1.3	Chief, Regulations Division.
§ 1.24	Unit Supervisor, National Revenue Center (NRC), or Technical Section Supervisor to issue a permit or to amend a permit (by affixing the signature of the Director) upon the recommendation of the area supervisor for an application for a permit or a permit to wholesale or import other than in Puerto Rico.
§ 1.24	Section Chief, NRC, or Chief, Technical Services to issue a permit or to amend a permit (by affixing the signature of the Director) upon the recommendation of the area supervisor for an application a permit or a permit other than to wholesale or import other than in Puerto Rico.
§ 1.24	Chief, Puerto Rico Operations to issue a permit or to amend a permit (by affixing the signature of the Director) for an application for a permit or a permit in Puerto Rico.
§ 1.25	Area Supervisor, Chief, Puerto Rico Operations, Unit Supervisor, NRC, or Technical Section Supervisor.
§ 1.27	Unit Supervisor, NRC, or Technical Section Supervisor for a permit or a permit to wholesale or import other than in Puerto Rico.
§ 1.27	Chief, Puerto Rico Operations for a permit in Puerto Rico.
§ 1.31	Director of Industry Operations.
§ 1.35	Unit Supervisor, NRC, or Technical Section Supervisor to issue a permit or to amend a permit (by affixing the signature of the Director) upon the recommendation of the area supervisor for an application for a permit or a permit to wholesale or import other than in Puerto Rico.
§ 1.35	Section Chief, NRC, or Chief, Technical Services to issue a permit or to amend a permit (by affixing the signature of the Director) upon the recommendation of the area supervisor for an application a permit or a permit other than to wholesale or import and other than in Puerto Rico.
§ 1.35	Chief, Puerto Rico Operations to issue a permit or to amend a permit (by affixing the signature of the Director) for an application for a permit or a permit in Puerto Rico.
§ 1.35	Director of Industry Operations to deny an application for a permit or to suspend, revoke or annul a permit.
§ 1.42	Unit Supervisor, NRC, or Technical Section Supervisor for a permit other than in Puerto Rico for filing notice.
§ 1.42	Chief, Puerto Rico Operations, for a permit in Puerto Rico for filing notice.
§ 1.42	Area Supervisor, Chief, Puerto Rico Operations, Unit Supervisor, NRC, or Technical Section Supervisor to require supplemental data.
§ 1.50	Director of Industry Operations.
§ 1.51	Director of Industry Operations.
§ 1.52	Area Supervisor or Chief, Puerto Rico Operations.
§ 1.55	Area Supervisor, Chief, Puerto Rico Operations, Unit Supervisor, NRC, or Technical Section Supervisor.
§ 1.56(b)	Director of Industry Operations.
§ 1.58	Inspector, Specialist or Special Agent.
§ 1.59	Section Chief, NRC, Chief, Technical Services, or Chief, Puerto Rico Operations.

BILLING CODE 4810–31–P

BILLING CODE 4810–31–P

ATF Organization

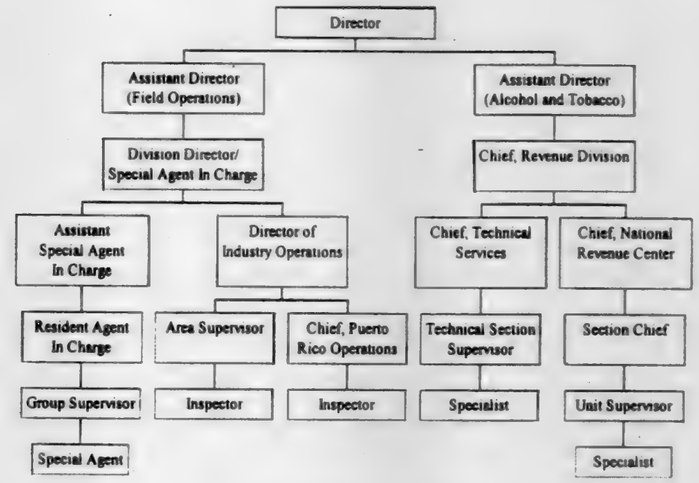

This is not a complete organization chart of ATF.

[FR Doc. 99–23897 Filed 9–14–99; 8:45 am]

BILLING CODE 4810–31–C

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Cemeteries and Memorials, Notice of Rechartering

This gives notice under the Federal Advisory Committee Act, as amended (Public Law 92–463; 5 U.S.C. App.), that the Department of Veterans Affairs' Advisory Committee on Cemeteries and Memorials has been rechartered for a 2-year period beginning September 5, 1999, through September 5, 2001.

By direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 99–23983 Filed 9–14–99; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Former Prisoners of War, Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act, as amended (Public Law 92–463; 5 U.S.C. App.), that the Department of Veterans Affairs' Advisory Committee on Former Prisoners of War has been renewed for a 2-year period beginning September 4, 1999, through September 4, 2001.

By Direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 99–23984 Filed 9–14–99; 8:45 am]

BILLING CODE 8320–01–M

federal register

Wednesday
September 15, 1999

Part II

Department of Housing and Urban Development

24 CFR Part 35, et al.

Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 35, 91, 92, 200, 203, 206, 280, 291, 511, 570, 572, 573, 574, 576, 582, 583, 585, 761, 881, 882, 883, 886, 891, 901, 906, 941, 965, 968, 970, 982, 983, 1000, 1003, and 1005

[Docket No. FR–3482–F–06]

RIN 2501–AB57

Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance

AGENCY: Office of the Secretary-Office of Lead Hazard Control, HUD.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to ensure that housing receiving Federal assistance and federally owned housing that is to be sold does not pose lead-based paint hazards to young children. It implements sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, which is Title X of the Housing and Community Development Act of 1992. The requirements of this rule are based on the practical experience of cities, states and others who have been controlling lead-based paint hazards in low-income privately-owned housing and public housing through HUD assistance. It also reflects the results of new scientific and technological research and innovation on the sources, effects, costs, and methods of evaluating and controlling lead hazards. With today's action, HUD's lead-based paint requirements for all Federal programs are now consolidated in one part of title 24 of the Code of Federal Regulations.

DATES: *Effective Dates:* Section 35.140 is effective on November 15, 1999. All other provisions of the rule are effective on September 15, 2000.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, call (202) 755–1785, ext. 104 (this is not a toll-free number) or e-mail your inquiry to lead_regulations@hud.gov. For lead-based paint program information, contact Steve Weitz, Office of Lead Hazard Control, Department of Housing and Urban Development, 451 7th Street, SW, Room B–133, Washington, DC 20410–0500. For legal questions, contact John B. Shumway, Office of General Counsel, Room 9262, Department of Housing and Urban Development. Hearing and speech-impaired persons may access the above telephone number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

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I. Background

A. Lead Poisoning

Childhood lead poisoning causes reduced intelligence, low attention span, reading and learning disabilities, and has been linked to juvenile delinquency, behavioral problems, and many other adverse health effects. Over the past 20 years, the removal of lead from gasoline, food canning and other sources has been successful in reducing population blood lead levels by over 80 percent. Nearly 1 million children, however, still have excessive levels of lead in their blood, making lead poisoning a major childhood environmental disease (See CDC 1997a). Lead-based paint in housing is the major remaining source of exposure and is responsible for most cases of childhood lead poisoning today.

HUD estimates that over 60 million occupied homes, or approximately 80 percent of all homes built before 1980, have some lead-based paint. Many of those 60 million homes have only small amounts of such paint, however; generally, the older the home, the greater the amount of lead-based paint. The use of lead in paint was highest in housing built before 1960. It was completely banned for residential use in 1978 by the Consumer Product Safety Commission.

Higher childhood blood lead levels are associated with lower household income, residence in large urban areas, non-Hispanic African American race, and living in older homes. Recent data from the period 1991–1994 indicate that over 16 percent of young children of less than 6 years of age from low income families had blood levels above the level of concern set by the Centers for Disease Control and Prevention (CDC), compared with only one percent for young children from high income families. Over 8 percent of all young children living in housing built before 1946 had blood lead levels over the CDC level of concern compared to only 1.6 percent for those living in housing built after 1973. Over 11 percent of non-Hispanic African American children were above the CDC level of concern compared to 2.3 percent for non-Hispanic white children. Twenty-two percent of non-Hispanic African American children living in pre-1946 housing were over the CDC level of concern.

Childhood lead poisoning is "the most common environmental disease of young children," (CDC 1990) eclipsing all other environmental health hazards found in the residential environment (ATSDR 1988). Lead is highly toxic and affects virtually every system of the body. At high exposure levels, lead poisoning can cause coma, convulsions, and death. While adults can suffer from excessive lead exposures, the groups most at risk are fetuses, infants, and children under age 6. At low levels, the neurotoxic effects of lead have the greatest impact on children's developing brains and nervous systems, causing reductions in IQ and attention span, reading and learning disabilities, hyperactivity, and behavioral problems. These effects have been identified in many carefully controlled research studies (National Academy of Sciences 1993; HUD 1997). The vast majority of childhood lead-poisoning cases, however, go undiagnosed and untreated, since most poisoned children have no obvious symptoms.

The Residential Lead-Based Paint Hazard Reduction Act of 1992 (Pub. L. 101–550; 42 U.S.C. 4851 *et seq.*), which hereafter is referred to as "Title X" because it is Title X of the Housing and Community Development Act of 1992, redefines the concept of "lead-based paint hazards." Under prior Federal legislation, a lead-based paint hazard was defined as any paint greater than or equal to one milligram of lead per square centimeter (mg/cm^2), regardless of its condition or location. Title X states that a lead-based paint hazard is "any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil or lead-contaminated paint that is deteriorated or present in chewable surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects." Thus, under this definition, intact lead-based paint on most surfaces is not considered a "hazard," although the condition of the paint should be monitored and maintained to ensure that it does not become deteriorated.

Title X defines two methods of "evaluating" lead-based paint hazards or lead-based paint. One method, "risk assessment," includes dust wipe sampling and other environmental sampling to identify lead-based paint hazards. The other, "inspection" (or "lead-based paint inspection"), determines the presence only of lead-based paint. Evaluation may also be accomplished by a combination of the two methods. The combination approach results in an identification of all lead-based paint and lead-based paint hazards. Title X provides for three types of lead-based paint "hazard reduction": Interim controls, abatement of lead-based paint hazards, and complete abatement of all lead-based paint. Interim controls are "measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards." Abatement means "a set of measures designed to permanently eliminate lead-based paint hazards" or lead-based paint. To ensure that evaluation and hazard reduction are carried out safely and effectively, Title X authorizes new requirements for consistency and quality control.

B. Legislative and Regulatory History

The existing lead-based paint regulations pertaining to the Department's programs, as well as to all federally owned residential property at the time of sale, were written pursuant to the passage of the Lead-Based Paint Poisoning Prevention Act of 1971, as amended prior to 1992 (42 U.S.C. 4821 *et seq.*). This legislation required the Secretary to "establish procedures to eliminate as far as practicable the hazards of lead-based paint poisoning

with respect to any existing housing which may present such hazards and which is covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary." HUD interpreted the phrase "housing assistance payments" broadly and therefore in 1976 drafted regulations to eliminate the hazards of lead-based paint for virtually all of its programs. Part 35 of the Department's regulations in title 24 of the Code of Federal Regulations was promulgated setting forth general procedures for the inspection and treatment of defective paint surfaces in HUD-associated housing. The regulation at 24 CFR 35.5(c), however, gave each Assistant Secretary the authority to develop regulations pertaining to their specific areas of responsibility, and varying program regulations concerning lead-based paint now exist throughout title 24.

The Department's lead-based paint regulations have been amended from time to time in response to changes in the law, court orders and increased knowledge about the hazards and treatment of lead-based paint. The most recent Department-wide regulatory revisions pertaining to lead-based paint were made in 1986, 1987 and 1988. Some additional revisions specific to the public and Indian housing programs were issued in 1991, and important changes were made in 1995 to the Housing Quality Standards (HQS) that apply to Section 8 tenant-based rental assistance and certain other HUD programs.

Title X represents a new and sweeping approach to the problem of lead-based paint poisoning of children, necessitating a comprehensive revision of HUD's lead-based paint regulations. Title X amends what had previously been general language contained in the Lead-Based Paint Poisoning Prevention Act and sets out specific requirements for federally owned residential property and housing receiving Federal assistance. Title X stresses identification of hazards, notification to occupants of the existence of these hazards, and control of those hazards. This final rule also reflects current knowledge of the causes of lead poisoning and current lead-based paint hazard evaluation and reduction technologies and practices. The presence of lead-based paint will be more accurately identified, with fewer false negatives or false positives. Likewise, the existence, nature, severity and location of lead-based paint hazards (in dust, soil and deteriorated paint) will be more accurately identified and reported. By improving lead-based paint hazard evaluation, decisions about hazard reduction activities will be more fully informed, and available resources will be better targeted to reduce exposure to occupants and to the environment.

C. HUD Reinvention

The Department has launched a major restructuring to meet the changing housing and development needs of communities across the country. The restructuring includes program consolidation, organizational changes within the Department, and relocation of some cross-cutting functions outside of Washington, D.C. HUD's reinvention efforts are taking place in the context of a broader, government-wide reinvention process, the National Performance Review, initiated by President Clinton and Vice-President Gore. The goal of the reinvention is to give State, tribal and local decisionmakers maximum flexibility to tailor Federal resources in response to local circumstances, needs and priorities.

In order to keep pace with the changes HUD is undertaking, the Department's program regulations must also change. Although this lead-based paint rule was developed to implement the statutory requirements of Title X for federally owned residential property and housing receiving Federal assistance, the Department saw this as an opportunity to revise all of its lead-based paint regulations to keep pace with changes in the scientific understanding of how childhood lead poisoning occurs, lead-based paint technology and in HUD service delivery.

The rule consolidates numerous lead-based paint regulations found throughout HUD's program regulations into part 35 of title 24 of the Code of Federal Regulations. This eliminates redundant lead-based paint regulations and achieves consistency among the lead-based paint requirements for different HUD programs. Before this rule, many HUD clients received funding from several HUD programs with separate and sometimes inconsistent sets of program regulations.

This rule groups HUD programs by the type of assistance provided to make it easier to understand and implement. For instance, a client receiving HUD funds for rehabilitation will find only one rehabilitation subpart. In addition, grouping HUD programs by type of assistance allows greater flexibility for local governments and recipients of HUD funds.

Finally, the rule reflects HUD's efforts to balance the practical need for cost-effective, affordable lead-based paint hazard notification, evaluation and reduction measures with the statutory requirements of Title X as well as with HUD's duty to protect children living in a residential property that is owned or assisted by the Federal government.

D. Public Input on Rulemaking

Consistent with Executive Order 12866, Regulatory Planning and Review, and with Executive Order 13045 on Protection of Children From Environmental Health Risks and Safety Risks, HUD has increased public participation in the regulatory development process, with attention to the special needs of children. Because of the magnitude of the changes required in HUD's lead-based paint regulations and the potential impact of these changes, public involvement was crucial to the rulemaking process. The three main avenues for public involvement in the development of the proposed rule were the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (June 1995) (HUD Guidelines), the recommendations from the Task Force on Lead-Based Paint Hazard Reduction and Financing (Task Force), and three major meetings of HUD clients to seek input on the implementation of Title X. In addition to these three methods of public involvement, there was, of course, the opportunity for public comment on the proposed rule.

1. *HUD Guidelines.* The HUD Guidelines were mandated by section 1017 of Title X. They were developed by housing, public health and environmental professionals with broad experience in lead-based paint hazard identification and control. The HUD Guidelines form the basis for many of the lead-based paint evaluation and reduction methods described in subpart R, and are intended to help property owners, government agencies and private contractors sharply reduce children's exposure to lead-based paint hazards, without adding unnecessarily to the cost of housing.

2. *Title X Task Force.* The Task Force on Lead-Based Paint Hazard Reduction and Financing (Task Force) was mandated by section 1015 of Title X. The Task Force submitted its report with recommendations, Putting the Pieces Together: Controlling Lead Hazards in the Nation's Housing, to then-HUD Secretary Henry Cisneros and EPA Administrator Carol Browner in July 1995. Members of the Task Force included representatives from Federal agencies, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the building and construction industry, landlords, tenants, primary lending institutions, private mortgage insurers, single family and multifamily real estate interests, nonprofit housing developers, property liability insurers, public housing agencies, low-income housing advocacy organizations, lead-poisoning prevention advocates and community-based organizations serving communities at high-risk for childhood lead poisoning. The mandate of the Task Force was to address sensitive issues related to lead-based paint hazards in private housing, including standards of evaluation and control, financing, and liability and insurance for rental property owners and hazard control contractors. Methods found in this rule for ongoing lead-based paint maintenance and the option for standard treatments are drawn from the Task Force recommendations. Further discussion of ways the Department used the Task Force recommendations in developing this rule is provided below under "Other General Issues."

3. *Meetings with HUD Clients.* Prior to the development of the proposed rule, the Department held three meetings with HUD clients on the potential implications of Title X on HUD programs. The meetings involved HUD constituents, grantees, and field staff of the Offices of Public and Indian Housing (PIH), Community Planning and Development (CPD), and Housing, as well as advocacy and tenant representatives. Participants shared their thoughts on several Title X issues including: Risk assessment and interim controls, hazard reduction activities during the course of rehabilitation, occupant notice of evaluation and hazard reduction activities, and responding to children with elevated blood-lead levels. Additional written comments were accepted from participants after the meetings.

4. *Comments on Proposed Rule.* Under the authority of Title X, HUD published a proposed rule in the **Federal Register** of June 7, 1996 (61 FR 29170). The proposed rule set forth new requirements for lead-based paint hazard notification, evaluation, and reduction for federally owned residential property and housing receiving Federal assistance. Comments on the proposed rule were requested on or before September 5, 1996.

Most of the 93 comments were from persons representing organizations that would be directly affected by the rule. More than a third of the comments (34) came from agencies of State or local government: Community development agencies, public housing authorities, planners, mayors, health departments and other organizations directly or indirectly involved with federally assisted programs involving housing. Groups representing the housing and community development industry, or segments of it, accounted for an additional nine comments.

Fourteen Federal agencies submitted comments on the rule, including 11 agencies affected by it as potential regulated entities, and three others with their own regulatory role in some aspect of health and safety regulations associated with lead poisoning. Four comments were received from hospitals, physicians or health agencies other than those included in the count of State or local agencies, above. Four lead poisoning prevention advocacy groups submitted comments, along with three more broadly based environmental groups and five law firms or legal aid organizations.

Housing developers, or representatives of developers, accounted for five comments. Eight others were received from persons identifying themselves as consultants or experts on some aspect of the rule, or individuals who did not explain the basis of their interest in the rule. In addition, two comments were received from standards-setting entities, and one each from a bank, a secondary mortgage market organization, a coalition of tenant action groups, a child welfare group, and an advocacy group representing industries that manufacture or use lead.

Comments are summarized below in Section II of this preamble and described in more detail in Section III of this preamble.

E. Related Actions by EPA and HUD

Title X requires EPA and HUD to take other very important actions that are complementary to and in some cases binding on this final rule. Five such actions are: (1) The HUD–EPA regulation on notification and disclosure during real estate transactions; (2) the EPA standards for certification of firms and individuals performing lead-based paint activities, and associated work practices standards; (3) EPA standards for determining hazardous levels of lead in paint, dust and soil; (4) the EPA program for the accreditation of laboratories for analysis of lead in paint, dust and soil; and (5) EPA requirements applying to renovation and remodeling activities.

1. *Disclosure Rule.* Section 1018 of Title X (42 U.S.C. 4852d) directs EPA and HUD to issue joint regulations requiring disclosure of known lead-based paint or lead-based paint hazards by persons selling or leasing most housing built before 1978. Under that authority, the two agencies published a final rule on March 6, 1996, which became effective on September 6, 1996 for owners of more than four dwelling units and on December 6, 1996 for owners of four or fewer dwelling units. The rule requires that, before completing the transaction, sellers and lessors of applicable housing must: (1) Provide purchasers and lessees (tenants) with the lead hazard information pamphlet approved by EPA; (2) disclose all known information about the presence of lead-based paint or lead-based paint hazards; (3) provide purchasers and lessees with any available records or reports pertaining to the presence of lead-based paint or lead-based paint hazards; (4) include, as an attachment to the contract or lease, certain disclosure and acknowledgement language and a warning statement about the dangers of lead-based paint; and (5) include certain disclosure and acknowledgment language in the contract or lease. In addition, sellers must allow purchasers a ten-day opportunity to inspect the dwelling for lead-based paint or lead-based paint hazards. Purchasers and sellers are free to negotiate another mutually-agreeable time period and all other aspects of the inspection or risk assessment. Agents must ensure compliance with these requirements. Section 1018 does not require either the buyer or the seller to conduct an inspection, nor does it require either the buyer or the seller to take action to reduce any lead-based paint or lead-based paint hazards. Also, with lease agreements, neither the landlord nor the tenant is required by section 1018 to conduct any type of inspection or hazard reduction.

Section 1012 of Title X (42 U.S.C. 4822) directs HUD to require that tenants and purchasers of "target housing" receiving Federal assistance be provided the same EPA-approved pamphlet that must be used in compliance with the section 1018 notification and disclosure regulation. ("Target housing" is a statutorily defined term in Title X that means housing constructed before 1978, except housing for the elderly and persons with disabilities unless a child of less than 6 years of age resides or is expected to reside in the housing, and except any zero-bedroom dwelling.) As described below, HUD has avoided duplication of pamphlet dissemination requirements if the pamphlet has already been provided in compliance with the disclosure rule.

2. *EPA Certification Requirements and Work Practices Standards.* Title IV of the Toxic Substances Control Act (TSCA, 15 U.S.C. 2681–2692), as

amended by Title X, section 402(a) (15 U.S.C. 2682(a)) requires EPA to establish a regulatory framework governing lead-based paint activities that will ensure that individuals engaged in risk assessments, inspections and abatement are properly trained, that contractors are certified (licensed), and that training programs are accredited. TSCA section 404 (15 U.S.C. 2684) mandates a process under which EPA will approve State programs for training and certification of individuals and firms under section 402. In States lacking their own programs, EPA must establish, administer and enforce Federal programs. EPA published a final rule on August 29, 1996 (40 CFR part 745, subparts L and Q, 61 FR 45777–45830) implementing sections 402 and 404 as they pertain to target housing and "child-occupied facilities" (generally, certain facilities regularly visited by children under 6 years). The regulations contain the following requirements: Training and certification to ensure the proficiency of individuals who offer to conduct lead-based paint inspections, risk assessments or abatement services; accreditation requirements to ensure that training programs provide quality instruction; work practice standards to ensure that lead-based paint activities are conducted safely, reliably and effectively; and procedures for States and Tribes to apply to EPA for authorization to administer these elements. It is expected that many States and Tribes will have EPA-authorized certification programs in place prior to the effective date for the 402/404 rule, which is August 29, 1999. Regardless of the status of EPA authorizations, however, after that time, all lead-based paint inspections, risk assessments and abatements must be conducted by individuals and contractors certified in accordance with the EPA rule and the work must be in accordance with the work practice standards contained in that rule.

HUD requires that lead-based paint inspections, risk assessments and abatements done in compliance with its final rule on lead-based paint activities in federally owned and assisted housing be conducted in accordance with the EPA rule implementing TSCA sections 402 and 404, i.e., that individuals and firms be certified and the work be done in accordance with the work practices standards. It should be noted that the EPA regulation is not applicable to interim controls. It has been necessary, therefore, for HUD to include basic standards for such procedures in this rule.

3. *EPA Standards for Hazardous Levels of Lead in Paint, Dust and Soil.* TSCA section 403 (15 U.S.C. 2683) requires EPA to issue regulations identifying, for the purposes of Title X, levels of lead in paint, dust and soil that are considered hazardous. EPA published a proposed rule on June 3, 1998. When promulgated and effective, the final rule implementing section 403 will contain standards that affect the risk assessments required in this rule. In the meantime, the interim levels of lead in paint, dust and soil set forth in this rule issued by HUD shall be followed in housing covered by the rule. When the TSCA 403 rule is effective, HUD will issue any technical amendments that are needed to make clear what standards are applicable to this rule at that time.

4. *EPA Laboratory Accreditation Program.* Under TSCA section 405(b) (15 U.S.C. 2685(b)), EPA has established the National Lead Laboratory Accreditation Program (NLLAP). NLLAP recognizes laboratories which have demonstrated the ability to accurately analyze lead in paint, dust, and soil samples. To be NLLAP recognized, laboratories must successfully participate in the Environmental Lead Proficiency Analytical Testing (ELPAT) program and undergo a systems audit. EPA has recognized the American Association for Laboratory Accreditation (A2LA) and the American Industrial Hygiene Association (AIHA) as NLLAP accrediting organizations. The National Lead Information Center Clearinghouse (1–800–424-LEAD) provides the public with a continually updated list of NLLAP recognized laboratories. In this rule on lead-based paint requirements in housing receiving Federal assistance and federally owned housing, HUD is requiring the use of NLLAP recognized laboratories for laboratory-based analysis of lead in paint, dust and soil samples.

5. *Possible EPA Regulations Pertaining to Renovation and Remodeling.* TSCA section 402(c) (15 U.S.C. 2682(c)) requires EPA to study the extent to which various types of renovation activities create a lead-based paint exposure hazard for workers or occupants where the work is being conducted. The same section directs EPA to revise the regulations implementing section 402(a) to apply to renovation and remodeling activities or to determine that such regulations are not required. EPA has not yet made the determination as to whether regulatory revision is necessary. If EPA does decide to issue such regulations, it is possible that they would apply to interim controls, which are a type of hazard reduction activity commonly required in this HUD rule but not currently regulated by EPA. Other types of work may also be affected. Until EPA promulgates and makes effective a new regulation under TSCA section 402(c), the requirements in this rule issued by HUD shall be followed in housing covered by the rule.

II. Summary of Public Comments on Proposed Rule

A. Diversity of Comments

With only a few exceptions, commenters on the proposed rule agreed that lead-based paint hazards are a serious health problem deserving to be addressed. There was, however, an extraordinary diversity of views regarding how best to control lead-based paint and its associated risks. Additionally, commenters varied widely on the question of what relative priority lead-based paint control efforts should enjoy, given the shortage of resources for the provision of housing services generally, and the costs associated with lead hazard control measures.

Commenters also perceived the proposed rule in different ways. Some considered it biased in favor of lead-based paint abatement as opposed to less expensive interim control procedures. Several argued that in recent years interim controls have become accepted as a wiser response to lead hazards than more elaborate abatement processes. Other commenters, however, warned against what they saw as undue readiness in the proposed rule to undertake limited measures to control hazards in circumstances where, *these* commenters believed, such measures would be inadequate and would afford only temporary solutions of unknown duration.

Spokespersons for State and local funded agencies, despite providing many comments on ways to make the rule more effective, were concerned that the cost of compliance with the rule would severely affect their housing programs.

Most, although not all, of the commenters representing the health industry or environmental concerns pleaded for a stronger rule, for more rapid effectiveness, and for a more strenuous program of hazard control than the proposed rule required.

Regulated Federal agencies, like their State and local counterparts, worried about costs and often advocated wider discretion. Many State and Federal commenters advocated more deference on HUD's part to hazard control programs, present or future, that have been or will be developed elsewhere.

Commenters from varying backgrounds suggested that HUD's rule was likely to become the nationwide "standard" for compliance, i.e., that courts (through tort litigation) and lending institutions (through underwriting standards) eventually would establish a standard of care applicable to *private* housing suppliers that was closely patterned after the standards set out in this rule. Most often, this observation was accompanied by expressions of concern that the proposed rule was not adequate to provide the appropriate standard of care for the nation's housing stock.

B. Commenters' Broad Concerns

Following is a brief description of the most common concerns expressed by the commenters. The Department's response to these concerns is described and explained in Section IV of this preamble below.

1. *"Missed Opportunities".* Some argued that the proposed rule was misdirected, set the wrong priorities, spent limited resources less wisely than they could be spent, or failed to take important additional considerations into account. Most typical are comments suggesting that the rule:

(1) Should stress abatement more (or less);

(2) Is inadequately focused on controlling lead in units currently occupied by small children;

(3) Pays insufficient attention to soil-related hazards;

(4) Pays too little deference to EPA and/or private-sector standards-setters;

(5) Stresses liability risk-management over health-based hazard control measures; or

(6) Otherwise misses an opportunity to apply the most effective possible rule to an acknowledged problem.

2. *Cost of Compliance.* A very large number of commenters expressed concerns about costs. Cost-related comments took many forms, but the most frequently raised assertions were variations on the following:

(1) The cost-benefit analysis in the Economic Analysis is inaccurate and grossly underestimates the impact the rule will have on the ability of federally funded entities to carry out their programs.

(2) Because of high costs, the regulation will divert resources that could be better used to meet other critical housing needs.

(3) Costs will be so extreme that many housing programs currently in existence will be forced to close down or drastically curtail their productivity.

(4) The rule will cause existing housing to deteriorate as it becomes too expensive to rehabilitate, or will distort local selection processes by steering them away from older dwellings most in need of rehabilitation.

(5) Landlords in HUD's tenant-based rental assistance program will not accept the additional financial burden of participating in the program.

3. *Legality of Portions of the Rule.* Two of the issues presented raised challenges to the legitimacy of portions of the rule, asserting that:

(1) Lead hazard controls in the tenant-based subsidy programs and controls on properties receiving less than $5,000 in project-based assistance are beyond the scope of the statute.

(2) The rule's soil-testing and soil-abatement/control provisions are outside the scope of HUD's authority, to the extent they fail to differentiate the *sources* of lead in dust.

4. *Perceived HUD Overreaching.* Beyond the aforementioned legal challenges, some commenters thought that the rule exceeded proper bounds. They asserted that:

(1) The rule is an "unfunded mandate," in that it would require expensive undertakings by those regulated, without the offer of a new source of financial assistance.

(2) The rule, by imposing new risk assessment requirements and/or new obligations to control hazards, would endanger existing contracts.

(3) The underlying statute makes no distinction between HUD-assisted and other housing receiving Federal assistance, while the rule provides for this dichotomy without providing any justification.

(4) The rule fails to provide real support to local hazard control efforts, instead imposing requirements that fail to recognize important community concerns.

III. Response to Public Comments and Final Rule Provisions

A. Scope and Applicability

This rule implements the requirements of the Lead-Based Paint Poisoning Prevention Act (LPPPA), as amended by section 1012 and section 1013 of Title X.

Throughout this rule, lead-based paint hazard notification, evaluation, and reduction requirements represent the minimum activities required. Parties may voluntarily undertake more extensive lead-based paint activities if appropriate or permitted under the specific housing program with which the dwelling unit or residential property is associated.

If the requirements of this rule for a dwelling unit or residential property differ from those of the State, tribal or local government, the more protective requirement applies.

Section 302 of the LPPPA requires HUD "to establish procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to any existing housing which may present such hazards and which is covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary or otherwise receives more than $5,000 in project-based assistance under a Federal housing program." In addition, the LPPPA requires HUD to establish procedures for the inspection and reduction of lead-based paint hazards in Federally owned housing at disposition. Accordingly, this final rule covers all target housing that: (1) HUD is associated with; (2) receives more than $5,000 in project-based assistance under a program of an agency other than HUD; and (3) is being disposed of by the Federal government.

Since 1975, when it first proposed regulations implementing section 302, HUD has taken a broad interpretation of the phrase "covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary." The scope of HUD's lead-based paint regulations has always included all HUD-associated housing, and this final rule continues that policy. The phrase, "or otherwise receives more than $5,000 in project-based assistance under a Federal housing program," was added to section 302 by Title X in 1992. HUD's interpretation of that phrase is explained below.

1. *Housing Receiving Less Than $5,000 in Project-Based Rental Assistance.* Section 1012(a) amends the first sentence of the Lead-Based Paint Poisoning Prevention Act to add the phrase "or otherwise receives more than $5,000 in project-based assistance under a Federal housing program" so that 42 U.S.C. 4822(a) now reads as follows: "The Secretary of Housing and Urban Development * * * shall establish procedures to eliminate as far as practicable the hazards of lead-based paint poisoning with respect to any existing housing which may present such hazards and which is covered by an application for mortgage insurance or housing assistance payments under a program administered by the Secretary or otherwise receives more than $5,000 in project-based assistance under a Federal housing program."

One commenter asserted that HUD is "clearly outside of its statutory authority" in imposing requirements on multifamily properties receiving less than $5,000 in project-based assistance. Quoting the 1992 amendments, the

commenter declared that despite HUD's imposing only minimal procedures on these under-$5,000 properties, the rule would result in additional costs and regulatory burdens on property owners that the Congress "never intended to regulate."

HUD disagrees. The statute does not prohibit the Department from establishing lead-based paint hazard reduction requirements for housing receiving less than $5,000 in project-based assistance under a program administered by the Secretary of HUD. The legislative history makes this clear. The Senate committee report accompanying the bill states, "Title X would expand the coverage of the LPPPA to include pre-1978 housing suitable for occupancy by families * * * which is covered by an application for mortgage insurance or housing assistance payments *under a HUD program* or receives more than $5,000 in housing assistance *through another federal program*" (emphasis added, Senate Report 102–332, page 117).

Although the statute gives HUD authority to impose the same requirements on HUD assisted housing receiving less than $5,000 as on that receiving more than $5,000, the Department recognizes that the Congress intended that the stringency of the requirements would be related generally to the amount of financial assistance from the Government. HUD is not requiring, therefore, housing receiving multifamily project-based rental assistance of $5,000 or less per unit per year to comply with the statutorily specified requirements for multifamily housing receiving project-based rental assistance of more than $5,000 per unit per year. Instead, the rule requires such housing to comply with the less stringent procedures established for tenant-based rental assistance.

2. *Tenant-Based Rental Assistance.* Some commenters thought that the Congress never intended for the rule to impose duties on landlords in the tenant-based rental assistance programs. This group argued that there exists a "statutory, program-wide exemption for housing receiving tenant-based Section 8 assistance."

The statute is silent on whether the new minimum procedures for lead-based paint hazard notification, evaluation and reduction apply to tenant-based rental assistance. Congress did not amend the first sentence of the Lead-Based Paint Poisoning Prevention Act, set out above, to delete or amend the phrase "housing assistance payments." HUD has historically interpreted this general phrase to cover virtually all types of housing assistance, including tenant-based rental assistance—the type of assistance that it seems to cover most obviously. The legislative history for Title X states, however, that housing receiving tenant-based rental assistance would be exempt from the Lead-Based Paint Poisoning Prevention Act, as amended by Title X. Congress was concerned that, due to the tendency of residential properties to pass in and out of tenant-based Federal assistance programs, it would be unworkable and inequitable to impose greater burdens on owners of such properties than on other private landlords (Senate Report 102–332, page 117).

Clearly, Congress did not intend for HUD to apply the new minimum procedures set out in section 1012(a) of Title X to tenant-based rental assistance. HUD does not believe, however, that Congress intended to abolish HUD's current procedures, which serve to protect, in a minimal way, the children in families receiving this type of housing assistance. Rather, HUD infers that Congress intended for the Department to effectively retain its present lead-based paint requirements for tenant-based rental assistance. In its current regulations, HUD requires units with tenant-based rental assistance occupied by families with children under 6 to meet the minimal standard for lead-based paint found in its Housing Quality Standards (HQS) (see 24 CFR 982.401). In this rule, then, HUD continues to require tenant-based rental property to meet HQS. To streamline requirements, HUD has modified the lead-based paint requirements in the current HQS slightly, in order to be consistent with recent scientific information on how to protect children who are exposed to lead-based paint hazards. The requirements in this rule for tenant-based rental assistance continue to apply only to units in which children of less than 6 years of age reside. HUD does not believe Congress intended that Federal funds be used to subsidize housing that can poison children.

3. *Federally Owned Housing and the Availability of Appropriations.* Section 1013 of Title X amends the Lead-Based Paint Poisoning Prevention Act at section 302 to modify existing requirements for the sale (disposition) of all residential property constructed before 1978 and owned by a Federal agency. Section 302(a)(3)(C) (42 U.S.C. 4822(a)(3)(C)) states that:

> "To the extent that subparagraphs (A) and (B) (which contain evaluation and abatement requirements for pre-1960 housing, and evaluation and notification requirements for housing constructed between 1960 and 1978) increase the cost to the Government of outstanding direct loan obligations or loan guarantee commitments, such activities shall be treated as modifications under section 504(e) of the Federal Credit Reform Act of 1990 and shall be subject to the availability of appropriations. To the extent that paragraphs (A) and (B) impose additional costs to the Resolution Trust Corporation and the Federal Deposit Insurance Corporation, its requirements shall be carried out only if appropriations are provided in advance in an appropriations Act. In the absence of appropriations sufficient to cover the costs of subparagraphs (A) and (B), these requirements shall not apply to the affected agency or agencies."

In the proposed rule, the Department interpreted this language to mean that HUD (and other Federal agencies that own residential property) need not comply with the requirements set out in section 302(a)(3) if sufficient funds are not appropriated to the agency for this purpose. The Department then proposed in the absence of sufficient appropriations to include requirements to identify and treat deteriorated paint in HUD-owned properties (similar to current procedures), even if funding is not made available to the Department to carry out more extensive lead-based paint evaluation and reduction.

Commenters expressed strong objections to basing the rule's requirements on the adequacy of appropriations. Several commenters questioned whether a determination that appropriations were "inadequate" would or could ever be made. There was also sentiment against using such a two-pronged system for determining regulatory responsibility at all: "Letting our standards be set by appropriation levels is dreadful public policy when the health of children [is] at stake."

A commenter urged HUD to retain high standards in the regulations and "let the legislative process deal with the fiscal responsibility [for] this community health issue." If more costly requirements are optional, money will not be appropriated, predicted another commenter. Others agreed, saying that since adequate (separate) appropriations are not at all likely to be forthcoming for each program, contemplating them confuses "an already complex regulation."

State and local funded agencies and others expressed their resentment concerning the "adequate appropriations" approach taken in the subparts affecting HUD and other Federal agency responsibilities in the proposed rule: "HUD has two standards, depending on whether there is a Federal appropriation. We find this interesting as HUD has *refused* to seek an appropriation since the legislation was passed in 1992. Instead, subpart G (HUD without appropriations) will be used."

Two commenters posed the question, "may CDBG and HOME recipients ignore *their* regulations if there is not additional or sufficient funding to properly do the work?"

Another commenter roundly condemned the appropriations-based dichotomy as "seriously misguided":

> "* * * There will never be explicit 'sufficient' appropriations, and the Secretary is unlikely ever to make an explicit pronouncement that appropriations are 'insufficient.' HUD should be adopting a single set of requirements that stipulate minimum levels of hazard controls as part of the price of doing business, not as a matter of fiscal convenience."

An environmental health advocacy group discussed the statutory exception that is provided for the disposition of certain federally owned housing—where inspection and risk assessment is called for (under section 302(a)(3)) *except* when compliance would increase the cost to the Government of outstanding direct loan obligations or loan guarantee commitments (or would impose additional costs on RTC or FDIC)—*and* there are no appropriations to fund those increased costs.

The described exception, the commenter maintained, was the *only* such exception/exemption in the statute:

> "* * * Absolutely no evidence exists to support the contention that Congress implied or otherwise intended that HUD should be able to grant federal agencies broad discretion to opt out of lead hazard evaluation and control requirements. Such an interpretation would allow federal agencies such as the General Services Administration and the Department of Defense to simply dispose of their properties without paying heed to their condition or habitability * * *."

The group urged that, in its final property disposition regulations, HUD clearly limit waiver availability only to those agencies that qualify, based on the cited statutory exemptions. The commenter also urged that HUD revise the regulation to describe "minimum steps" that even agencies entitled to the waiver must undertake. A "sweeping exemption" is clearly unacceptable, the group declared, and HUD "must not condone such an irresponsible policy and must instead set some floor of minimum requirements with which all federal agencies must comply, regardless of appropriations."

HUD acknowledges the validity of many of these comments. In the final rule, the Department includes single subparts for HUD-owned single family property and HUD-owned multifamily property, rather than providing separate subparts for when HUD has sufficient appropriations and when HUD does not have sufficient appropriations. An additional subpart is included for residential property owned by Federal agencies other than HUD; the requirements in this subpart are identical to those in Title X. Each affected agency must decide whether the requirements of Title X apply to it; HUD feels that it is inappropriate for the Department to decide this issue for other agencies.

HUD maintains, however, that the language of section 302(a)(3)(C) makes the lead-based paint requirements for HUD-owned residential property conditional on the sufficiency of appropriated funds to be used to conduct inspections and abate lead-based paint hazards in HUD-owned residential property. HUD has never received such an appropriation for these purposes and it did not receive such a line item in the most recent appropriations act. Therefore, in the Department's view, "appropriations" are not presently sufficient to conduct the lead-based paint activities required under section 302(a)(3)(A) and (B) and HUD is not required to implement these procedures. If sufficient appropriations become available at a later time, this final rule may have to be amended.

It should be noted that HUD interprets the first sentence of section 302(a)(3)(C) to apply only to HUD programs where the cost of conducting lead-based paint evaluation or abatement activities under section 302(a)(3)(A) and (B) increase HUD's outstanding direct loan obligations or loan guarantee commitments. Since appropriations are not sufficient for the Department to conduct inspections and abatement of lead-based paint hazards in accordance with section 302(a)(3)(A) and (B), a determination of the effect of such activities on HUD's direct loan obligations or loan guarantee commitments is unnecessary.

Although HUD has made the determination for purposes of section 302(a)(3) that it does not have "sufficient appropriations" and therefore, the Department is not required to implement the procedures set out in section 302(a)(3) for its HUD-owned properties, the Department nevertheless has included lead-based paint procedures in this final rule which the Department can afford to implement and which, in HUD's view, are fully protective. While Congress under Title X did not require the Department to carry out the requirements in section 302(a)(3)(A) and (B) in the absence of sufficient appropriations, Congress was silent concerning what activities the Department should carry out to reduce lead-based paint hazards in HUD-held properties in the absence of appropriations. This created a "gap" for HUD's interpretation. Under *Chevron U.S.A., Inc.* v. *National Resources Defense Council*, 467 U.S. 837 (1984), where a statute is silent or ambiguous on a specific issue, the Department's interpretation of the statute will be upheld if it is based on a permissible or reasonable construction of the statute. The Department believes that Congress did not intend for HUD to ignore lead-based paint in its properties, even in the absence of sufficient appropriations. As a consequence, HUD has developed procedures for HUD-owned properties, as set forth in subparts F and I, which it believes are reasonable.

4. *Soil and Dust Standards.* a. *Legal Issues.* A legal question raised by commenters had to do with the Department's authority to regulate in the area of dust and soil. Two basic questions were raised: authority to regulate in the asserted absence of a nexus with lead-based paint, and authority to regulate in the absence of EPA regulations defining hazardous levels of lead in dust and soil under section 403 of the Toxic Substances Control Act.

One commenter claimed that HUD is exceeding its authority and has moved "arbitrarily and capriciously" by setting interim controls and abatement levels for lead in soil and dust without reference to the risk posed by the *type* of lead contained in soil or dust, or to the bioavailability of the lead. Because HUD's action is in advance of EPA's statutorily mandated determinations of soil cleanup levels, HUD is overreaching, in the commenter's opinion, because the Congress intended that EPA's regulatory action—identifying what are hazardous levels of lead in dust and soil—was to be the "first step" in rulemaking on that subject matter. According to the commenter, the Congress gave HUD and EPA authority to implement interim controls and abatement with respect to hazards from lead-based *paint*, including the dust *from lead-based paint and soil contaminated by lead-based paint.* Thus, HUD set *ad hoc* standards for lead dust and soil in the absence of any EPA study results *and* without any nexus to lead-based paint.

Further, the commenter stated that HUD was attempting to "decouple" dust and soil testing and abatement from any necessary relation to lead-based paint itself. The "unstated premise" of HUD's rule would be that all lead in dust is

assumed to come from paint, although this is not the case. HUD's approach would unfairly burden property owners with the costs of cleaning up soil and dust which may have become contaminated from "sources not under the property owner's control." This regulatory requirement, the commenter asserted, would raise the constitutional questions of a "taking without just compensation and deprivation of property without due process of law under the Fifth Amendment * * *"

The commenter concluded that HUD should not "decouple" lead found in dust and soil from the *source* of that lead, and should reconsider its imposition of a single dust-lead standard unrelated to the source of the lead or its bioavailability. Where there is a source of dust related to lead paint, HUD's standards may be workable, the commenter acknowledged, although waiting for EPA's upcoming standards under section 403 of the 1992 Act "would have been more consistent with Congress' intent." HUD's proposed standards, however, would be "unfair" to the extent there are other sources of lead involved, because the Department assertedly lacks authority to regulate lead that is from non-paint sources, and because the regulations would bear "no relationship to cause or risk."

HUD and EPA, after careful consideration, do not agree with the commenter's argument. EPA, which has the relevant regulatory authority under TSCA section 403, has concluded that the language of Title X supports an interpretation that dust and soil lead are covered regardless of the source of the lead. Definitions in Title X do not limit the source of lead in soil or dust to lead from lead-based paint. The definitions of "lead-contaminated dust" and "lead-contaminated soil" do not specify that the source of lead in the dust or soil must be lead-based paint. In fact, the definition of "lead-based paint hazard" specifies lead-contaminated dust and soil as sources of lead contamination separate from and not explicitly linked to lead-contaminated paint.

Furthermore, as a practical matter, it is not possible to determine through routine chemical analysis the source of the lead in the dust and soil at any given site, not to mention every site of pre-1978 housing in the nation. Also, it is well known that the scientific literature has determined that lead in dust is an important source of childhood lead exposure and that dust lead is well correlated with paint lead (Lanphear, 1996). It is unlikely, therefore, that the Congress meant to curtail the reduction of lead in dust at each individual property covered by this regulation until it is established that paint is the source of the lead in dust at the site.

HUD acknowledges, however, that owners cannot be expected to have protected their properties from dust-lead deriving from such sources as gasoline combustion, nearby bridge repainting, or nearby industrial activity. It is reasonable that this final rule should give the highest priority to the reduction of lead in old residential paint that may cause lead exposure in children. As explained below in Section III.A.5.b of this preamble, HUD has exempted from the requirements of this final rule residential properties that are found not to contain lead-based paint or that have had all lead-based paint removed. (This exemption is consistent with a similar exemption in the real estate notification and disclosure rule that was issued jointly by HUD and EPA on March 6, 1996.) Thus, in this final rule, dust-lead hazards and soil-lead hazards are regulated only in properties in which lead-based paint is known or presumed to be present.

b. *Coordination With EPA Rulemaking.* With regard to coordination with EPA rulemaking on hazardous levels of lead in dust and soil, HUD agrees that the standards set forth in final regulations promulgated and made effective by EPA pursuant to TSCA section 403 will be relevant to this rule. The final rule states that the section 403 standards shall be referenced when such standards are promulgated and effective. There may be a period of time, however, between the effective date of this final rule and the 403 regulations. Therefore, the Department is including in this final rule interim standards for levels of lead in dust and soil that are based on a recently-completed, peer-reviewed, pooled analysis of virtually all available epidemiological studies that directly measure the relationship between lead in children's blood and lead in dust and soil (Lanphear et al. 1998). This ensures that HUD's interim standards are scientifically valid. The interim standards promulgated in this rule are reasonably consistent with the standards recently proposed by EPA. For further discussion of the interim standards, see Sections III.E.15.a and b of this preamble, below.

The Department does not agree with the comment (cited above in Section III.A.4.a of this preamble) that it should delay all regulatory action pertaining to lead in dust and soil until final 403 regulations are promulgated. HUD has previously established standards for dust lead and soil lead to ensure that hazard controls are properly targeted and are effective in the housing it assists or owns. Such standards were published in Lead-Based Paint: Interim Guidelines for Hazard Identification and Abatement in Public and Indian Housing, September 1990 (Interim Guidelines); and again in Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing, June 1995 (HUD Guidelines). These standards have already been widely used in HUD programs. The scientific literature has confirmed that lead in dust and soil are important pathways to childhood lead exposure, as discussed below in Section III.E.15.b of this preamble.

When EPA regulations implementing TSCA section 403 are final and effective, they will apply to this HUD rule and will supersede most of the HUD interim standards for dust and soil. If the final section 403 rule does not establish a standard for an activity or situation that is covered by the HUD interim standards, there may be a question as to whether that aspect of the interim standards is retained. HUD expects that, after the section 403 rule is published, the Department will publish a technical amendment to this rule or engage in additional rulemaking to make clear what the applicable standards are.

5. *Exemptions.* a. *Housing for the Elderly.* This rule applies most broadly to "target housing," which is defined in Title X as housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in the unit) or any 0-bedroom dwelling unit. As in the proposed rule, HUD interprets the exemptions for elderly and disabled housing to apply only to residential property which is designated exclusively for elderly or disabled use.

Some commenters complained about this restrictive interpretation and urged that it should be enough that elderly or disabled persons reside in a dwelling unit and that no young children are expected to reside there. After careful consideration, HUD has decided to retain the interpretation of the exemption that was adopted in the proposed rule. This is consistent with the definition of target housing used in all regulations issued pursuant to Title X. The statute has never been interpreted as providing an exemption for each dwelling that happens to be occupied by elderly or disabled persons. Such a policy, in the judgment of the Department, would be contrary to the intent of the statute, which is to eliminate as far as practicable lead-based paint hazards in all housing receiving Federal assistance and in federally owned housing at disposition.

Most dwellings currently occupied by elderly persons or persons with disabilities will probably be occupied by a child in the future.

The Department defines the phrase "expected to reside" in the statutory definition of target housing as meaning that there is actual knowledge that a child is expected to reside, rather than a general presumption that a child will probably reside in the dwelling unit sometime in the future. If a woman residing in the dwelling unit is known to be pregnant, there is actual knowledge that a child is expected to reside in that unit. However, in the context of most residential real estate transactions it is not advisable to inquire as to whether a woman is pregnant. The term "expected to reside" is used in the statutory definition of "target housing" in Title X, but it is not defined there. It would not be unreasonable for people seeking to comply with the law to think that the term might refer to the distant future, that is "expected to reside at some time, however far in the future." That uncertain potentiality is not part of HUD's interpretation of statutory intent. Therefore HUD is providing this tightened definition to minimize confusion.

b. *Absence of Lead-Based Paint, or Prior Hazard Reduction.* The proposed rule provided exemptions from certain requirements if a residential property was found to contain no lead-based paint, but such exemptions did not apply to all programs. To streamline the final rule, exemptions are provided for properties found not to have lead-based paint by a certified lead-based paint inspector and for properties in which all lead-based paint has been identified and removed in accordance with procedures established by an EPA-authorized State or tribal program or by EPA in accordance with 40 CFR part 745, subparts L and Q. If the method of abatement is enclosure or encapsulation, this exemption does not apply because lead-based paint is still present.

An owner or recipient of Federal assistance hoping to qualify for this exemption may question whether correcting for possibly incorrect (or outdated) positive findings during lead-based paint inspections is permissible. In the rule, the owner or recipient always retains the option of having additional tests performed by a certified lead-based paint inspector. Nothing in the regulation is intended to revoke or restrict that option. An additional test can sometimes clarify whether lead-based paint is or is not present. Actions may be taken based on the results of the most recent inspection by a certified lead-based paint inspector, provided appropriate technology is used. Laboratory analysis of a properly taken paint sample is a more reliable method of measurement than the use of a portable X-ray fluorescence (XRF) analyzer on site. Therefore a new laboratory analysis of a paint sample can overturn either an old portable XRF reading or an old laboratory test, but a new portable XRF reading can overturn only an old portable XRF reading.

These general exemptions are intended to apply only if the entire residential property is free of lead-based paint or has had all lead-based paint removed. The term "residential property" is defined in the rule as including such things as outbuildings, fences, and play equipment affixed to the property as well as dwelling units and common areas.

HUD is providing this exemption to assure that the highest priority in the use of scarce lead-based paint hazard control resources is given to residential properties with lead-based paint. The Department recognizes that some properties have dust-lead hazards and/or soil-lead hazards but do not have any lead-based paint. These properties are expected to be a small proportion of the total affected stock, however.

c. *Housing To Be Demolished.* In response to questions from various sources, the rule provides that housing to be demolished is exempt, provided the housing remains unoccupied until demolition. Owners should be aware, of course, that other local, State and Federal regulations pertaining to environmental protection and occupational safety and health may apply to demolitions.

d. *Nonresidential Property.* The final rule also states explicitly that property that is not and will not be used for human habitation is exempt. In the case of a mixed use property, HUD intends that only those parts of the property normally associated with residential use shall be covered by this rule. For example, retail and office establishments in an apartment building would not be covered, but hallways leading to such uses would be covered if the hallways also service dwelling units that are covered by the rule.

e. *Rehabilitation Disturbing Little or No Painted Surface.* Commenters also complained that existing exemptions in HUD rules for weatherization, emergency repairs, water/sewer hookups, installation of security devices, and other special work were no longer included in the rule, even though, the commenters said, these were "realistic and necessary" exemptions. The commenters were concerned primarily with rehabilitation activities funded under the Community Development Block Grant or HOME programs.

With regard to weatherization, the Department believes this is too broad a category on which to base an exemption from this rule. Weatherization often includes window replacement, which can generate lead dust and therefore should be performed with safe work practices. With regard to such activities as water and sewer hookups and installation of security devices, HUD has provided in subpart B of the final rule an exemption for rehabilitation that does not disturb a painted surface. Also, activities that disturb painted surfaces of no more than a "de minimis" amount of 2 square feet in any one interior room, 20 square feet on exterior surfaces, or 10 percent of the total surface area on an interior or exterior component with a small surface area are not required to use "safe work practices," and worksite clearances are not required for such work. (This de minimis is stated in the section on safe work practices in subpart R of the rule.) Therefore, installation of security devices under rehabilitation assistance will generally not require special precautions usually associated with lead-based paint hazard reduction. Furthermore, in situations in which security devices are being installed as a part of the operation and maintenance of a residential property that is required under this rule to incorporate ongoing lead-based paint maintenance as a part of the everyday maintenance of the property, the same "de minimis" exemption applies.

f. *Emergency Actions and Natural Disasters.* The proposed rule provided a general exemption for properties undergoing emergency repairs in response to natural disaster. The Department believes that there are circumstances in which the time required for compliance could adversely affect life or property and, consequently, an appropriately tailored exemption is needed.

Two commenters requested additional exemptions beyond the "natural disaster" exemption set out in the proposed rule. They believed it was too narrow in scope, arguing that *any* form of disaster should be the basis for an exemption from the rule's requirements. On the other hand, others claimed that no justification existed for exempting damaged properties. At a minimum, these properties need risk assessment and full disclosure before any sale, one commenter said.

In the final rule, HUD has provided in subpart B a more carefully worded provision that provides an exception for "emergency actions immediately necessary to safeguard against an imminent danger to human life, health or safety, or protect property from further structural damage (such as when a property has been damaged by a natural disaster, fire, or structural collapse) * * *" The exemption states, however, that in such cases "occupants shall be protected from exposure to lead in dust and debris generated by such emergency actions to the extent practicable." It is HUD's intent that such protection would include a thorough cleanup. The exemption extends only to the completion of repairs necessary to respond to the emergency; after that, the requirements of the rule apply.

g. *Law Enforcement Seized Property.* A spokesperson for the Treasury Department's Asset Forfeiture Program urged that law enforcement agencies seizing real properties should be able to dispose of those properties without the financial burden of compliance with the rule, with only a duty to warn potential transferees or purchasers of the possible presence of a lead-based paint hazard. The Justice Department's U.S. Marshals Service made similar comments, adding that the regulations will create "an economic disincentive to seizing and forfeiting pre-1978 residential property."

In view of the special nature of law enforcement, HUD has added a provision in subpart B of the final rule that exempts seized properties owned for 270 days or less from the evaluation and hazard reduction requirements of subpart C of this rule, which sets requirements for the disposition of residential properties owned by Federal agencies other than HUD. For seized properties owned longer than 270 days, the requirements of subpart C will apply. Ownership begins upon receipt of a judicial order of forfeiture. Approximately 400 seized, pre-1978 dwelling units are disposed of annually by the Department of the Treasury and the Federal Marshals Service of the Department of Justice combined. HUD expects that the Federal law enforcement agencies, in exercising their managerial responsibilities over seized residential property, will make every reasonable effort to maintain the property in a lead-safe condition.

h. *Emergency Rental and Foreclosure Prevention Assistance.* Some State and local agencies urged that programs providing emergency rental assistance or foreclosure prevention assistance be exempted. The final rule provides a limited exemption for such programs subject to subpart K, Acquisition, Leasing, Support Services, or Operation. The exemption for any specific dwelling unit expires after 100 days. HUD does not intend that multiple households receiving emergency assistance can be recycled through a unit without subjecting the unit to the requirements of subpart K.

i. *Adverse Weather.* In the proposed rule, the subparts covering disposition of HUD-owned single family property included an exception allowing delay of repainting if weather conditions make such work infeasible. In the final rule, the concept behind this exception has been broadened to apply to evaluation and reduction activities under all subparts, allowing delay "for a reasonable time during a period when weather conditions are unsuitable for conventional construction activities." HUD intends that this exception will allow reasonable delay only and will not be an excuse for noncompliance.

j. *Historic Properties.* The National Park Service commented that HUD should provide greater flexibility to allow a balance to be achieved in specific cases between the objectives of the National Historic Preservation Act and those of the Lead-Based Paint Poisoning Prevention Act. Conflicts between the two goals, the protection of historically significant buildings and the creation of lead-safe housing, may occur where abatement is required. For example, the use of artificial siding and the replacement of historic trim and doors is generally not appropriate for historic buildings. In response, HUD has added a general exception in subpart B that allows designated parties to use interim controls instead of abatement methods, if requested by the State Historic Preservation Office, on properties listed or determined to be eligible for listing in the National Register of Historic Places or contributing to a National Register Historic District. If interim controls are conducted, ongoing maintenance and reevaluation shall be conducted as required by the applicable subpart. For comprehensive guidance on eliminating lead-based paint hazards from historic housing without removing historically significant features, see Chapter 18 of the HUD Guidelines or the National Parks Service publication, "Preservation Brief 37: Appropriate Methods for Reducing Lead Paint Hazards in Historic Housing," by S.C. Park and D.C. Hicks, National Parks Service, Washington, DC 20013–7127 (1995).

k. *Insufficient Appropriations.* In the proposed rule, the Department included in the subpart covering disposition of residential property by a Federal agency other than HUD an exemption from that subpart if a Federal agency determines that sufficient funds are not appropriated to carry out the requirements of the subpart. In the final rule, this exemption, which implements a provision of section 1013 Title X, has been moved to the Exemptions section of subpart B (See Section III.A.3 of this preamble).

6. *Deference to Other Agencies.* Commenters sought, in varying forms, "exemptions" providing for deference to State or local agencies or other Federal agencies based on State lead-control laws or an agency's demonstrated performance.

In the final rule, the Department has provided such deference in specific situations. First, HUD is requiring that inspections, risk assessments and abatements be conducted in accordance with the work practices standards of a State or Indian Tribe with a program authorized by EPA under subpart Q of 40 CFR part 745 or, in the absence of such a program, with EPA's standards at 40 CFR part 745, subpart L. Therefore HUD is in effect incorporating the opportunity that is built into the EPA regulations for States to determine, within the EPA framework, procedures for evaluation and reduction. With regard to the policies of Federal agencies other than HUD, the final rule gives such agencies the authority to determine whether appropriations are sufficient to implement the requirements of section 1013 of Title X. (See further discussion of this matter in Section III.A.3 of this preamble, above.)

One agency suggested that high-performing public housing agencies with good property maintenance records should be exempt from the additional evaluations provided in the rule. Because the current performance rating instrument used by HUD and public housing agencies does not include a specific grade for lead-based paint activities, HUD does not believe it has a valid way to identify "high-performing public housing agencies" for the purposes of this rule. It is not possible, therefore, to provide such a broad exemption at this time.

7. *Changes and Deletions to Current HUD Regulations.* In the proposed rule, HUD did not include specific provisions for the deletion of existing part 35 provisions being replaced by this rule or the numerous lead-based paint requirements set out in various program regulations in Title 24. It was stated, however, in the preamble to the proposed rule that such deletions would be made, and this final rule provides such changes and deletions.

8. *Indian Housing Programs.* In the proposed rule, two subparts were applicable to Indian housing programs: the one pertaining to rehabilitation (which was to apply to the Indian Community Development Block Grant Program), and the one pertaining to public and Indian housing programs (which was to apply to housing owned and operated by Indian housing authorities under public and Indian housing programs). With the enactment of the Native American Housing Assistance and Self Determination Act of 1996 (NAHASDA, Pub. L. 104–330, 25 U.S.C. 4101 *et seq.*), it has been necessary to revise the way this rule applies to Indian housing programs. NAHASDA separated Indian housing from public housing and made funding for Indian housing under the United States Housing Act of 1937 unavailable. The primary program created by NAHASDA is the Indian Housing Block Grant Program, which can be used for many different forms of housing assistance. Therefore the following subparts have been made applicable to the Indian Housing Block Grant program: Subpart H, Project-Based Rental Assistance; subpart J, Rehabilitation (also applicable to the Indian Community Development Block Grant program); subpart K, Acquisition, Leasing, Support Services, or Operation (also applicable to the Indian Community Development Block Grant Program); and subpart M, Tenant-Based Rental Assistance. Tribes and tribally designated housing entities receiving funds from the Indian Housing Block Grant and Indian Community Development Block Grant programs must determine which subpart of this final rule applies based on the type of activity being conducted or assistance being provided to a particular dwelling unit or residential property. If more than one type of assistance is being provided, the most protective requirements apply.

9. *Applicability of Subparts to Programs and Dwelling Units.* Subparts C, D, and F through M of the final rule each set forth requirements for a specific type of Federal housing activity or assistance, such as mortgage insurance, rehabilitation assistance, project-based rental assistance, tenant-based rental assistance, or public housing. Each of these subparts applies to more than one program. For example, there are at least five HUD programs that provide tenant-based rental assistance, so all five are therefore subject to subpart M, which states the lead-based paint requirements for housing receiving tenant-based rental assistance.

In the proposed rule, HUD listed in the applicability section of each subpart the programs to which the subpart was to be applicable. This led to concern within the Department that such lists may be incomplete or go out of date. Therefore, in the final rule these lists have been removed from the applicability sections. In the applicability sections, care has been taken to try to describe clearly what types of housing assistance is and is not covered by each subpart. A current list of programs covered by each subpart is available on the internet at www.hud.gov, or by mail from the National Lead Information Center at 1–800–424–LEAD.

Several HUD housing assistance programs have more than one type of eligible activity, so some programs are subject to more than one subpart of this rule, as was mentioned above in regard to the Indian Housing Block Grant program. In fact, there are at least nine such programs at the time of this writing. These programs, with the subpart designations in parentheses, are as follows: Indian Housing Block Grant program (H, J, K, and M), Indian Community Development Block Grant program (J and K), Home Investment Partnerships program (HOME) (J, K, and M), Community Development Block Grant program (J and K), Supportive Housing Program (H, J, and K), Shelter Plus Care (H and M), Housing Opportunities for Persons With AIDS (HOPWA) (J and M), Homeownership of Multifamily Units (HOPE 2) (J and K), and HOPE for Homeownership of Single Family Homes (HOPE 3) (J and K). Grantees, participating jurisdictions, Indian tribes and other entities administering these flexible programs must decide which subpart or section of this rule applies to the type of assistance being provided to a particular dwelling unit or residential property. If more than one subpart or section applies, the one with the most protective requirements applies. To assist in making this judgment, HUD is providing in subpart B of the rule a table listing subparts and sections in order from the most to least protective initial hazard reduction requirements. In some cases, more than one program as well as more than one subpart or section may apply to a property or dwelling unit. In this case also the most protective requirements apply.

A multifamily residential property may have some dwelling units subject to one set of requirements and other units subject to other requirements. In this case, the owner has the choice of either operating the property with different sets of requirements or operating the entire property at the most protective level. An example of this situation is provided in subpart B of the rule.

B. Structure of the Rule

1. *Organization.* In the interests of simplicity and streamlining, all of the Department's lead-based paint requirements, including the disclosure rule, are now located in part 35. The proposed rule set forth lead-based paint requirements in three parts, including new parts 36 and 37 that, together with part 35, subpart H, were to comprise all of HUD's regulatory requirements for lead-based paint in a single place. Part 36 was to describe the lead-based paint requirements for each program covered under the Lead-Based Paint Poisoning Prevention Act, grouped in subparts according to the agency or office responsible and the type of assistance. Part 37 was to describe the standards and procedures for conducting the lead-based paint evaluation and hazard reduction activities required in part 36, with different activities described in different subparts.

In the preamble to the proposed rule, however, HUD indicated that it was considering consolidating parts 36 and 37 in the final rule. This has been done. The entire rule consists of 12 subparts (B, C, D, F through M, and R, with E and N through Q reserved), all in part 35. Subpart A of part 35 is the rule requiring disclosure of known lead-based paint hazards upon sale or lease of residential property (disclosure rule), which was promulgated on March 6, 1996. EPA published the same rule at 40 CFR part 745, subpart F. In this current rulemaking, HUD is moving the location of the disclosure rule from subpart H to subpart A of 24 CFR part 35. No text or section number changes are being made to the disclosure rule. The general requirements found in subpart A of the proposed rule are located under subpart B of today's final rule.

Subpart B of the final rule provides all the general requirements, definitions, exemptions, and options that apply to subparts B, C, D, F through M, and R. Subpart B does not apply to the Disclosure Rule in subpart A. All residential properties and dwelling units subject to this final rule are also subject to the Disclosure Rule. Subparts C, D, and F through M set forth the requirements for each program or type of assistance. Subpart R of the final rule contains the required standards and methods for conducting evaluation and hazard reduction activities formerly found in part 37 of the proposed rule. The provisions of subpart R are referenced in subparts B, C, D, and F through M. As explained below, the standards and methods requirements of

this rule have been streamlined considerably.

One commenter suggested that the requirements for notice to residents of the results of evaluation and hazard reduction be located at the beginning of the rule so that they need not be repeated for each program or type of housing. This has been done. The notice requirements are found in subpart B at § 35.125 and are referenced in the program-specific subparts.

2. *Simplicity and Overall Strategy.* Several commenters complained that, despite the effort to consolidate lead-paint regulations in a single rule, the format of the proposed rule remained "program specific". Others called it "cumbersome". Because community development and housing administrators must work with a variety of programs, they will be required to operate under different subparts. Calling the rule lengthy and technical, one commenter said it would be helpful if it could be organized "in a more user-friendly fashion," using cross-references. Several commenters regarded the rule as "confusing" or in need of further consolidation.

One commenter complained that there remained "at least 14 different requirements," based on the program authority or on the amount of assistance provided.

In the final rule there are seven evaluation and hazard reduction strategies for HUD housing programs. These strategies vary in stringency, costliness, and lasting effectiveness in preventing childhood lead poisoning. They are applied to the various forms of housing assistance, based generally on: (1) The amount, nature and duration of financial assistance provided under the program; (2) the risk of childhood lead poisoning in the housing (based on year of construction); and (3) whether the housing is generally rental or owner-occupied.

There are two primary differences between the strategies of the final rule and those of the proposed rule: (1) Paint repair has been replaced by paint stabilization; and (2) clearance is required in the final rule after paint stabilization, and the clearance requirement has replaced the dust-testing requirement for pre-1950 housing with tenant-based rental assistance.

In order from least to most stringent, the seven strategies are:

(1) Safe work practices during rehabilitation;

(2) Ongoing lead-based paint maintenance practices to assure that paint is maintained so that it remains intact, and that safe work practices are used (similar to the "essential maintenance practices" recommended by the Task Force);

(3) Visual assessment and paint stabilization;

(4) Risk assessment and interim controls (with the option of performing specified standard treatments);

(5) Lead-based paint inspection and risk assessment, and interim controls;

(6) Risk assessment and abatement of lead-based paint hazards; and

(7) Lead-based paint inspection, and abatement of all lead-based paint.

These strategies include the following fundamental principles. Whenever hazard reduction methods are employed (except for disturbances of only a small area of paint surface) clearance is required to ensure that the job is done properly. Second, ongoing lead-based paint maintenance practices are required in rental housing whenever HUD has a continuing relationship with the property. Third, to ensure that the controls are still intact and effective over time, reevaluation is required whenever a risk assessment and interim controls are required and there is a continuing HUD subsidy or ownership of rental housing. Fourth, special procedures are required in programs with a continuing subsidy or HUD ownership of rental housing whenever a child is identified with a blood lead level that calls for environmental assessment and intervention (called an "environmental intervention blood lead level" in the rule).

The first strategy, safe work practices during rehabilitation, is applied only to rehabilitation assistance of no more than $5,000 per unit. This is a "do no harm" policy that is intended to assure that low-cost rehabilitation does not generate lead-based paint hazards. It allows low-cost rehabilitation to go forward without costly lead-based paint requirements; but it does not necessarily determine whether or not the entire dwelling unit or property is "lead safe," because, for this strategy, clearance must be conducted only for the worksite, which may not include the entire unit.

The goal of the second strategy, ongoing lead-based paint maintenance only, is to ensure that paint is kept stabilized and that the work is done in a safe manner. Clearance is required only of the worksite. This strategy does not provide full assurance that a property is free of lead-based paint hazards, but it will minimize such hazards over time. It is applied to properties that are subject to an application for multifamily mortgage insurance and were built between 1960 and 1977. These are rental properties with no subsidy, only mortgage insurance, but there is a continuing relationship between the Department, the borrower and the lender through the insurance agreement. These properties were built toward the end of the period when lead-based paint was used in housing and are less likely to have lead-based paint hazards than older housing. This strategy is also applied as a transitional requirement for multifamily properties receiving project-based assistance during the phase-in period before a risk assessment is conducted.

The third strategy, visual assessment, paint stabilization and clearance, provides assurance that the housing to which it is applied is "lead safe." To provide such assurance, HUD intends that clearance be unit-wide, not just for the worksite. It should be noted that clearance is required only if paint stabilization is performed, so a unit that passes the initial visual assessment (i.e. no deteriorated paint is identified) undergoes no dust testing. Also, if the housing is in poor physical condition, or if there are high levels of lead in the soil, lead-based paint hazards may reappear. Therefore, ongoing maintenance is required whenever HUD has a continuing relationship with rental property. The final rule applies this strategy to HUD-owned single family housing that is sold with a mortgage insured by HUD; properties with acquisition, leasing, support services, or operation assistance; tenant-based rental assistance programs where a child of less than 6 years of age resides; multifamily housing receiving up to and including $5,000 per unit per year in project-based rental assistance; and single family properties assisted under the project-based certificate or voucher program, the moderate rehabilitation program, or another HUD-funded project-based rental assistance program.

The fourth strategy, risk assessment and interim controls, with the option to conduct standard treatments, provides assurance that all lead-based paint hazards have been eliminated. Unit-wide clearance is always required. Ongoing maintenance of painted surfaces is required whenever HUD has a continuing relationship with the property; and reevaluation is required if HUD is the owner, if there is project-based rental assistance in a multifamily property exceeding $5,000 per unit per year, and in public housing. This strategy is applied to properties that are subject to an application for multifamily mortgage insurance and were built before 1960, housing receiving multifamily project-based assistance of more than $5,000 per unit annually, and housing receiving rehabilitation assistance of $5,000—$25,000 per unit. A risk assessment and interim controls are also required in public housing developments that have lead-based paint that has not yet been abated.

The fifth strategy, lead-based paint inspection, risk assessment, and interim controls, is applied only to HUD-owned multifamily housing. It differs from the fourth strategy in that it requires a lead-based paint inspection as well as a risk assessment. Most of these properties are being sold, frequently without HUD mortgage insurance, so HUD will not have a continuing relationship with them and thus will not be able to ensure that ongoing lead-based paint maintenance practices and reevaluation are practiced. With a lead-based paint inspection, HUD will provide the buyer with information on the location of any remaining lead-based paint on the property that the buyer and later owners can use to avoid generating dust-lead hazards in the future.

The sixth strategy involves risk assessment and abatement of lead-based paint hazards. This strategy is used when Federal rehabilitation assistance is greater than $25,000 per unit. When Federal funds are used to make such a substantial investment in a property, it is logical that long-term hazard control measures be implemented at a time when substantial concurrent rehabilitation is being done. Paint testing of surfaces to be disturbed during rehabilitation is called for to ensure that new lead-based paint hazards are not inadvertently created, but the designated party has the option to presume the presence of lead-based paint on such surfaces.

The objective of the seventh strategy, lead-based paint inspection and abatement of lead-based paint, is abatement of all lead-based paint. This strategy applies to public housing and to properties that are being converted from nonresidential to residential use or are subject to major rehabilitation and are being financed with HUD/FHA multifamily mortgage insurance. This is not a new requirement for public housing. Current public housing regulations require a lead-based paint inspection and, at the time of modernization, abatement of all lead-based paint. However, because complete modernization (and therefore complete abatement) may not occur for many years in some housing developments, and because modernization (and therefore abatement of lead-based paint) can occur on a piecemeal basis (e.g., kitchens one year, bathrooms another), the final rule, like the proposed rule, adds the requirements of strategy four, risk assessment and interim controls, during the period prior to completion of abatement to assure that all public housing occupied by families will be free of lead-based paint hazards. The requirement for conversions and major rehabilitations financed with multifamily mortgage insurance is new, however. HUD believes that such properties, after undergoing such substantial renovation, should be as free as reasonably possible of any future lead-based paint hazards.

3. *Prescriptiveness.* There were several comments to the effect that the rule was too prescriptive. These commenters generally recommended a movement toward "performance-based" requirements, arguing that a performance-based rule would stand up better to future technical innovations.

One commenter recognized that adopting performance-based standards was not always a simple matter. Decisions to do so must be made "requirement-by-requirement," but the commenter urged looking for means to use such standards wherever feasible, and cautioned against "locking in" requirements which new technology or research may well show to be inappropriate in the future. For example, the commenter recommended against specifying HEPA vacuuming in the rule, indicating that research underway may suggest that in some cases less specialized equipment or less extensive procedures can be just as effective. Another commenter suggested basing requirements on performance, but including a more prescriptive "safe harbor" optional alternative. Sometimes, the commenter observed, performance-based standards are simply unhelpful to those regulated due to lack of clarity or information about the method of obtaining the desired performance.

Several commenters recommended against "too rigid" regulatory requirements that would require "full-blown" future rule making proceedings to overturn. Some suggested incorporation of guidelines into the rule by reference.

Although the proposed rule included prescriptive requirements, § 37.1(b) of the proposed rule stated that those requirements did *not* apply to lead-based paint inspections, risk assessments and abatements performed by inspectors, risk assessors, abatement supervisors and workers certified in accordance with EPA regulations under the Toxic Substances Control Act (TSCA). Rather, the prescriptive standards in proposed part 37 were to apply only when such activities were performed by individuals who were not certified in accordance with EPA requirements, should certification mechanisms not be in place.

The effective date of the EPA certification requirements and the EPA work practices standards is August 31, 1999. By that date, individuals conducting inspections, risk assessments and abatement must be certified and all such activities must be performed pursuant to the work practices standards in that regulation or in requirements of EPA-authorized State or Tribal programs. There is no need for HUD to issue detailed requirements for risk assessment, inspection and abatement. They have been omitted, therefore, from the final rule, except for interim dust and soil standards.

This leaves the question of whether the proposed requirements for interim controls and related procedures that are not covered by the EPA regulations are too prescriptive. Related procedures include standard treatments, occupant protection and worksite preparation, clearance, ongoing lead-based paint maintenance, reevaluation, and safe work practices. In the final rule, HUD has tried to strike a balance between the need to assure that the procedures will be effective in preventing childhood lead poisoning and the goal of providing flexibility and avoiding rigidity.

C. Effective Date

The proposed rule included an effective date of 12 months after publication of the final rule, and the Department explained in the preamble that this time period was chosen to allow all affected parties time to prepare for implementation of the new requirements.

Some commenters urged that the effective dates in the rule be moved up in whole or in part, while others asked for a further delay to allow affected parties to secure expert assistance or training opportunities. One commenter urged waiting to make the rule effective until EPA's upcoming rule on health-based standards for lead in dust and soil was promulgated and made effective.

Advocates of rapid effectiveness pointed out that the rule already was "overdue," and claimed that important health benefits could be realized by the regulation's becoming operational sooner rather than later. Several commenters advocated immediate effectiveness for portions of the rule dealing with occupant protection, worksite preparation and the prohibitions against unsafe practices.

HUD considered imposing an immediate effective date because the statutory effective date of January 1, 1995 had already passed and because of the risk to the health of children from

a further delay in implementing these requirements. On the other hand, HUD noted that program administrators at all levels of government, as well as property owners and contractors performing lead-based paint activities, would not have adequate time for education, training, planning and budgeting to implement fully the new technical standards, requirements and procedures with an effective date earlier than proposed.

After thorough consideration of these varying points of view HUD has decided to retain the proposed 12-month time period following publication for a phasing in of the effective date of the final rule, with one exception: the prohibition of certain methods of paint removal or surface preparation set forth in § 35.140 shall be effective 60 days after publication of this final rule. In addition, designated parties may choose to comply with the requirements of this final rule before the effective date, instead of complying with existing requirements, if they desire and provided there is not a programmatic limitation that would preclude such an action.

The exception to the 12-month phase-in policy is appropriate for prohibited practices. These are already well known; many are in HUD's current regulations and guidance and are prohibited by the EPA final rule on training and certification, which was published on August 29, 1996. Many States already prohibit these practices, and other safer paint removal methods are well known. (See Section III.E.2.g. of this preamble.)

One commenter requested clarification of the effective date's impact on pre-rule lead-based paint control activities already undertaken and partially completed, and urged that it be made clear that this ongoing work could be carried forward after the effective date "without revision." The Department's policy on this matter varies somewhat from program to program, because of differences in regulations and administrative procedures. Therefore the applicability sections of subparts F through M include statements specific to each program. In subpart F, pertaining to HUD-owned single family housing, any property to be sold with a HUD-insured mortgage and which is offered for sale on or after the effective date of this final rule must comply with the requirements of the rule. In the case of subpart G, pertaining to multifamily mortgage insurance, any property for which a HUD or FHA commitment is made on or after the effective date must comply with the rule. With regard to subpart H, project-based rental assistance, properties that are receiving Section 8 assistance on or after the effective date of this rule must comply. In the case of competitively awarded grants under the HOPWA, Supportive Housing, and Shelter Plus Care programs, the requirements apply to grants awarded pursuant to NOFAs issued on or after October 1, 1999. For formula grants under HOPWA, the requirements apply to activities for which program funds are first obligated on or after September 15, 2000. Subpart I states that HUD-owned multifamily properties and properties for which HUD is mortgagee-in-possession must comply with the rule if they are offered for sale or held or managed by HUD on or after the effective date of this rule. Subpart J, pertaining to rehabilitation assistance, includes program-specific information on the effective date for projects funded under the HOME program, the Community Development Block Grant (CDBG) programs, the Indian Housing Block Grant (IHBG) program, HUD-administered homelessness assistance programs, and the Indian Community Development Block Grant program. Project-specific effective date policies for housing subject to subpart K, Acquisition, Leasing, Support Services, or Operation, are the same as for subpart J. With regard to public housing, subpart L states that all housing to which the subpart applies is covered by the rule as of the effective date of this final rule. Finally, subpart M, which pertains to tenant-based rental assistance, states that housing receiving such assistance becomes subject to the requirements of this rule at the time of an initial or periodic inspection that occurs on or after the effective date of this final rule. (The initial or periodic inspection referred to in the previous sentence is the inspection conducted by the public housing agency (PHA) or other administering agency to determine whether the housing unit meets the requirements of the program. It is not a lead-based paint inspection.)

D. Other General Issues

1. *Policy on Abatement.* Some commenters saw in the proposed rule an undue emphasis on abatement, as opposed to more limited lead hazard control measures. "As such," one organization declared, "the rule appears inadequately protective of children's health, and unlikely to realize the full benefits predicted by the Economic Analysis as justification for the costs of compliance." Abatement should not be a defined term in the rule, nor used at all, this commenter stated. The recommended term was "hazard abatement," used to mean "any set of measures to permanently eliminate lead-based paint hazards." This should be the "maximum requirement" of the rule. While abatement of intact lead-based paint would always remain an option, it need not and should not be required, the commenter urged.

The same commenter urged that the definition of abatement should *not* include reference to lead-based paint (i.e., intact paint). By doing so, there is a deviation from the definition of abatement in Title X itself. Failing to make the distinction between intact LBP and lead hazards is likely to "recreate * * * the scenarios that Title X was supposed to end: Paralyzed non-compliance because of the costs and burdens of performing abatement of non-hazardous intact LBP."

A commenter who felt the rule didn't stress abatement enough was "troubled by the rule's implicit acceptance that it is infeasible to abate lead paint from housing." Arguing that the societal returns more than justified the cost, the commenter declared that the obstacles to abatement as a predominant policy were "not economic, but political."

HUD agrees that abatement should be targeted toward hazards, not the mere presence of lead-based paint, except in public housing, where lead-based paint abatement is required by statute, and for conversions and major rehabilitation projects seeking HUD/FHA multifamily mortgage insurance. The final rule defines abatement accordingly but retains the existing lead-based paint abatement requirements for public housing. The legislative history of Title X shows that Congress did not intend for the existing public housing program requirements to be changed.

2. *Cost of Compliance.* Many commenters—particularly State and local funded agencies, housing developers, and their national and regional spokespersons—expressed serious concerns about the rule's cost.

While many suggestions for change in details of the rule were provided by these commenters, the tenor of their comments was not so much against the rule as against the idea of carrying out its mandate without separate funds earmarked solely for that purpose.

Some commenters felt that HUD had grossly underestimated the costs of compliance and that these costs, in many circumstances, would divert already-limited funding from its principal purpose of providing shelter. Rural housing suppliers, especially, lamented the anticipated problems the rule would bring. One commenter expressed the fear that the rule would "severely hamper rehabilitation in rural, small communities and would potentially drive the cost of doing business so high that many communities may decide that it is simply not worth it to try and repair existing, older substandard housing."

Some commenters suggested that the dangers of lead paint were exaggerated or that local health department controls were adequate to locate children with high blood lead levels and cope with the problem on a case-by-case basis.

Other public agency commenters were more positively disposed toward the goal of preventing childhood lead poisoning *before* a child is poisoned, instead of waiting until the damage has already been done, but still worried about funding. Typical of these comments was that of a middle sized city with an active lead-hazard control program. Calling the rule (and Title X) an "unfunded mandate," the commenter cited the staff costs associated with the rule's monitoring expectations, calling them unrealistic: "If additional funds were provided for hard and soft rehabilitation as well as staff costs, this [rule] would be a good policy initiative that we could fully support and implement. However, without additional funds, * * * it presents a major problem for cities trying to address an overall need for affordable housing."

A frequent suggestion was that the rule would cause "redundant and unnecessary" lead-based paint work to be performed. The focus, these commenters argued, should be on reducing and controlling lead hazards in units occupied by small children or children who had already been lead poisoned.

A major housing industry organization asserted that the proposal contains unnecessary impediments to the performance of paint repair work and interim control tasks by employees of owners and managers, or by the owners themselves, and urged the Department to eliminate these wherever feasible.

One commenter, a municipal health department lead poisoning prevention program, predicted that the proposed rule's changes would "seem daunting" to community-based agencies at first. The commenter generally agreed with the rule's approach and predicted that compliance costs would be "minimal." The commenter said, however, that "government support and leadership to ensure that training, inspection/risk assessment services, and dust wipe resources are available and sometimes subsidized could prove to be instrumental in effective implementation."

In response to these comments, HUD does not believe that the childhood lead poisoning problem has been "overblown," in light of the results of the National Health and Nutrition Evaluation Survey (described in Section II.A of this preamble, above) showing that approximately 900,000 children still have blood lead levels equal to or greater than 10 µg/dL, the CDC level of concern. HUD also disagrees that the rule should impose requirements only on units housing young children. HUD believes that it is not practical in most housing programs to expect managers to know when children are or are not residing in particular units, especially in light of the significant resident turnover rates and inconsistencies in program administration among comparable units receiving comparable Federal assistance. Title X holds that it is far better to identify and correct lead-based paint hazards before a child is poisoned. Such prevention is especially important, because some effects of lead poisoning appear to be irreversible. The one exception to this policy is in the tenant-based rental assistance programs, in which income certification requirements facilitate the determination of childhood occupancy and for which there is legislative history indicating Congressional concern that lead-based paint requirements could deter landlords from program participation.

With regard to the cost of the rehabilitation requirements, it is important to note that the requirements of the rule are limited for housing receiving up to and including $5,000 per unit in rehabilitation assistance. Also, the option to perform standard treatments instead of a risk assessment and interim controls may reduce costs in certain situations. (See further discussion below in Section III.E.10 of this preamble.) HUD intends to work closely with local housing and community development agencies to further develop ways to efficiently meld lead-based paint hazard reduction with rehabilitation.

With regard to the public housing program, HUD does not believe that long-term annual cost increases will be significant, although there will be one-time risk assessment and interim control costs in the short term for some housing agencies. HUD encourages public housing agencies to schedule completion of abatement of lead-based paint in order to put this issue behind them.

3. *TUse of Task Force Recommendations.* Numerous commenters called upon HUD to assure that the rule maintain consistency with the 1995 report of the Task Force on Lead-Based Paint Hazard Reduction and Financing (Task Force), which was a Federal advisory committee appointed by the Secretary of HUD pursuant to section 1015 of Title X.

Two recommendations of particular interest are the standards or procedures referred to as "essential maintenance practices" and "standard treatments." These procedures were directed toward rental housing. Essential maintenance practices are the steps the recommended steps that a landlord should take to reduce the risk of childhood lead poisoning in pre-1978 dwelling units and associated common areas. Standard treatments are more aggressive measures to assure that possible lead-based paint hazards are controlled in older housing. These procedures were not incorporated by name in the proposed rule, although many of their elements or concepts were included.

In the final rule, HUD is requiring that all rental housing which has a continuing financial or regulatory involvement with HUD must be maintained in a manner similar to that recommended in the Task Force's essential maintenance practices. Also, the Department has adopted the concept of standard treatments, as set forth in the Task Force report, as an option to the basic requirement of a risk assessment and interim controls. This option is set forth in § 35.120(a). Clearance testing is required after standard treatments as well as interim controls.

Another Task Force recommendation mentioned favorably by some commenters is the "lead hazard control plan," which is a plan to be developed by a property owner that lays out when and where certain hazard control measures will be conducted within a residential property. The plan allows an owner to prioritize the work and undertake the most important tasks or dwelling units first, followed by lower priority work later, as for example at apartment turnover. The proposed rule did provide for a hazard reduction plan for multifamily properties receiving more than $5,000 per unit in HUD project-based assistance.

Although the lead hazard control plan was intended to provide property owners with flexibility in scheduling lead-hazard control work, many commenters perceived the plan requirement as "red tape" of limited value and questioned whether HUD would have the staff resources and expertise to review and approve such plans on a timely basis. HUD shares these concerns and, in the interests of regulatory streamlining, has decided to

delete the plan requirement. The Department continues to believe that it would be a useful document for property managers, especially those with responsibility for large multifamily developments, and encourages owners to develop such plans. The American Society for Testing and Materials (ASTM, West Conshohocken, PA 19428–2959) has developed a Standard Guide for Evaluation, Management, and Control of Lead Hazards in Facilities, and is developing an accompanying user guidebook. These materials can provide the basis for developing a lead hazard control plan. They are particularly appropriate for owners of multifamily dwellings.

4. *De Minimis Exceptions.* The proposed rule included de minimis levels of paint deterioration, consistent with the HUD Guidelines, below which no action would be required. These de minimis levels were defined as not more than 10 square feet of deteriorated paint on an exterior wall; not more than 2 square feet on an interior component with a large surface area including, but not limited to, interior walls, ceilings, floors and doors; or not more than 10 percent of the total surface area on an interior or exterior component with a small surface area including, but not limited to, window sills, baseboards and trim.

Commenters objected to the de minimis levels on four grounds: (1) That the de minimis exception is arbitrary and not supported by science; (2) that the levels are too large, potentially allowing a total of over ten square feet of defective paint per room (counting four walls plus a ceiling plus small components); (3) that some owners or inspectors may use the de minimis exception as an excuse for overlooking hazardous conditions; and (4) that it is likely to shift the attention of workers from the importance of practicing lead hazard control and maintaining painted surfaces in a lead-safe manner to measuring the size of defective paint surfaces in order to document that surfaces fall above or below the de minimis level.

HUD acknowledges the merit of these comments, and after careful consideration has decided to eliminate the de minimis exception for deteriorated paint from the final rule. All deteriorated lead-based paint (either known or presumed to be lead-based paint) must be addressed. This will simplify the rule's implementation considerably. HUD *did* retain, however, a de minimis exemption for safe work practices and clearance, which is consistent with the EPA provision at 40 CFR 745.227(e) that allows dry scraping during abatement on surfaces totaling no more than 2 square feet per room or 20 square feet on exterior surfaces. This de minimis exemption is separate from the safety-related exception allowing dry scraping in conjunction with the use of heat guns or within 1 foot of electrical outlets; that is, the area covered by the safety-based exception is not part of the area covered by the safe work practices de minimis exemption).

5. *Distinction Between HUD Programs and Those of Other Federal Agencies.* Several commenters asserted that the rule distinguishes between HUD-assisted housing and that assisted by other Federal agencies without any statutory basis and without providing any justification. The Department's response is that, although the Secretary is given authority to develop regulations for other agencies (with respect to project-based assistance and Federally-owned property), HUD cannot and should not make lead-based paint policy decisions for other agencies beyond what is set forth in Title X. HUD does not have the knowledge of other agencies' housing programs that is necessary to draft detailed lead-based paint regulations for all other Federal agencies, and achieving consensus among all agencies on such regulations is unlikely. The sections concerning HUD project-based assistance and HUD-owned property, therefore, should remain separate from the sections provided for other agencies. Other Federal agencies can be expected to develop their own regulations or guidance, using HUD's regulations as a starting point.

6. *Response to Children with Lead Poisoning.* The Department's primary focus in this rule is on prevention of childhood lead poisoning, not on case management of children who have already been poisoned. Title X specifically calls for the identification and correction of hazards in all housing. Nevertheless, HUD feels special requirements are needed for lead-poisoned children who have already been poisoned by lead-based paint hazards. HUD cannot ignore the possible connection between a child's blood lead level and the condition of the dwelling unit where the child lives, particularly in view of research on the relation of dust-lead to blood-lead levels (see Section III.E.15.b of the preamble, below). Therefore, in housing where the Federal Government maintains a continuing financial or ownership relationship, requirements were included in the proposed rule to evaluate and reduce lead-based paint hazards when a child with an elevated blood lead level (EBL) is identified. Such requirements have existed in current HUD regulations for many years. In the final rule, as in the proposed rule, they are included in the subparts pertaining to project-based rental assistance, disposition of HUD-owned and mortgagee-in-possession multifamily housing, public housing, and tenant-based rental assistance.

Commenters addressing EBL-related requirements raised several different concerns: The measurement standards that trigger environmental intervention, the terminology used to refer to such a level, information exchange requirements between housing authorities and health departments, hazard control requirements for units occupied by young children with an EBL condition, reoccupancy requirements for dwelling units that were previously occupied by an EBL child but have not undergone evaluation or hazard reduction, relocation requirements, and the potential for discrimination by landlords against families with young children generally and EBL children in particular.

In the proposed rule, HUD defined "elevated blood lead level (EBL) (requiring the evaluation of lead hazards)" as meaning "an excessive absorption of lead that is a confirmed concentration of lead in whole blood of 20 µg/dL (micrograms of lead per deciliter of whole blood) for a single venous test or of 15–19 µg/dL in two consecutive venous tests taken 3 to 4 months apart." One commenter argued that HUD should not use a standard other than 10 µg/dL, which is the basic CDC level of concern, because it is "illogical to take no action when we know a child is poisoned * * * but instead to wait until the child is more poisoned," and because defining an EBL at a level higher than that known to cause adverse effects will create potential liability for public housing authorities and assisted owners.

HUD has consulted again with CDC and has concluded, as it did prior to issuance of the proposed rule, that CDC did not and does not intend to recommend a full home inspection or assessment in response to blood lead levels below 15 µg/dL. CDC advises that a blood lead level of 10–14 µg/dL should trigger monitoring, certain parental actions, and perhaps community-wide education, but not hazard control in an individual child's home. CDC recommends follow-up blood lead testing of such children in about 3 months, the provision of information to parents on lead hazards, nutrition and housekeeping if appropriate, and the taking of an environmental history to try to identify an obvious source of lead exposure (CDC 1997).

EPA noted that it is confusing to define the term "elevated blood lead level" or "EBL" differently than normal usage. The agency pointed out that CDC, in their 1997 screening guidelines, uses the term to refer 10 µg/dL or greater and that most public health agencies and others in the field of lead poisoning prevention do the same. HUD agrees that this is potentially confusing and has therefore substituted in the final rule the term "environmental intervention blood lead level" to replace "elevated blood lead level" or "EBL" when the latter terms refer to the blood lead level requiring evaluation and hazard reduction of the child's home.

One State public health department urged HUD to modify the rule's standards for determining when environmental intervention is needed. Requiring tests showing *two* blood lead levels of 15–19 micrograms per deciliter in consecutive tests three to four months apart is "problematic," the commenter said, because many children do not get follow-up tests at the required three-four month interval, but rather more frequently—or less. Two tests showing levels of 15 or higher, *whether or not consecutive, and whether or not at a fixed time interval,* should be adequate to identify the child, and it is important that the rule not define the test intervals too strictly. It is not in the best interests of the child to recognize test results that come in only at precise intervals, the commenter said. A child may have two tests of 15–19 µg/dL, but because of seasonal variations in lead exposure, the high-level results may not be consecutive. At least two commenters recommended that this standard should be consistent with CDC guidance.

HUD agrees. In the final rule, the Department has defined environmental intervention blood lead level to conform to the new guidelines by CDC issued in 1997 (CDC 1997b). The revised definition is "a confirmed concentration of lead in whole blood equal to or greater than 20 µg/dL (micrograms of lead per deciliter) for a single test or of 15–19 µg/dL in two tests taken at least 3 months apart." This revision removes the word, "consecutive," and allows for nonconsecutive readings that are more than 3 months apart. The final rule has also removed the requirement that blood lead levels be determined only by venous blood specimens. This decision is best left to the child's health care provider, and may be affected by technological advances. HUD expects housing agencies, grantees, property owners, and other parties to which this rule applies to rely on medical health care providers where judgment is required in interpreting this definition.

Another issue is how best to make housing agencies aware of when there is a child with an environmental intervention blood lead level living in a dwelling unit under tenant-based rental assistance or under another program to which the requirements of subpart M of this rule apply. The proposed rule required that, to the extent practicable, the housing agency or other administering agency would attempt to obtain annually from the State or local health department the names and addresses of children less than age 6 identified with environmental intervention blood lead levels. The housing agency was then required to match this information with the names and addresses of families receiving Federal assistance. If a match occurred, the agency was to require a risk assessment and interim controls in the child's home. These requirements are similar to those currently in HUD regulations pertaining to tenant-based rental assistance. They were issued in response to the United States General Accounting Office report entitled "Children in Section 8 Tenant-Based Housing are not Adequately Protected" (GAO/RCED–94–137, May 13, 1994). The intent of this requirement is to ensure that families with young children that receive tenant-based rental assistance are obtaining housing free of lead-based paint hazards. At the same time, the CDC is urging local public health departments to provide environmental intervention blood lead level-related information to housing agencies.

A few commenters indicated that they had encountered difficulty in securing the cooperation of health authorities in making these records available because of the authorities' concerns about the privacy of medical information. While these access problems can be overcome, one commenter said, by securing a release signed by the child's parent or guardian, there are other concerns besides the question of invasion of privacy. If the agency administering the tenant-based assistance program has information concerning the environmental intervention blood lead level status of a family's children and the information is disclosed to potential landlords, the information "becomes a barrier for the family in its housing search," because some landlords may illegally refuse to rent to the family.

Several other commenters expressed concern about the potential for housing discrimination against families with children in general, and those with children with identified environmental intervention blood lead levels in particular. These comments ranged from suggestions to penalize the landlords involved to indications that, in the absence of funding assistance, it was unfair to "penalize (owners) for participating in the Section 8 (Voucher and Certificate) Program in a way *not required of owners in the private market.*" (Emphasis in original.) In response, HUD believes that the environmental intervention blood lead level requirements in this rule are *not* in fact fundamentally different than those covering private-sector owners who do not receive subsidies. Local ordinances often permit health or housing departments to order lead hazard control work in any home where an environmental intervention blood lead level child is identified. For an explanation of the antidiscrimination provisions of the Fair Housing Act, see Section IV.D.7 of this preamble.

The Department has concluded that it is very important that local housing agencies know when there is a child with an environmental intervention blood lead level residing in an assisted unit and that owners comply with requirements designed to make the units free of lead-based paint hazards. It is well known that, while local health departments are able to identify poisoned children, they often do not have the resources to correct the cause.

HUD is making, therefore, the following changes to the requirements pertaining to exchange of information on environmental intervention blood lead level conditions:

(1) The housing agency or other local agency administering tenant-based rental assistance must attempt at least quarterly (instead of annually as in the proposed rule) to obtain from the State or local public health department, or the Indian Health Service as applicable, the names and/or addresses of children of less than 6 years of age with environmental intervention blood lead levels. This change is being made to assure that poisoned children will receive help on a more timely basis. The Department encourages health departments and housing agencies to voluntarily enter into agreements to exchange information more frequently, e.g., monthly, especially in jurisdictions in which childhood lead poisoning is a frequent occurrence in housing occupied by families receiving tenant-based rental assistance.

(2) Also on a quarterly basis, the housing agency or other local agency administering the tenant-based rental assistance must provide health departments with addresses of assisted units (as well as attempt to obtain

addresses of environmental intervention blood lead level children from the health department), except that such a report to the health department is not required if the health department states that it does not wish to receive it.

(3) The address match may be done by either the housing or the health agency. HUD's intent is to encourage workable cooperative arrangements between the two types of agencies for the purpose of matching environmental intervention blood lead level and housing assistance information on a timely basis.

With regard to the evaluation and hazard reduction that must be done if a child with an environmental intervention blood lead level is found to be residing in a HUD-assisted or HUD-owned unit, the final rule sets one uniform requirement for all programs: risk assessment and interim controls, followed by ongoing lead-based paint maintenance. One commenter complained that the proposed rule failed to require anything beyond interim controls—a standard, the commenter said, that is "too low and ineffective in the face of a poisoned child." Current information shows that interim controls are as effective as abatement methods in the short term and will continue to provide adequate protection if continuing maintenance standards are met (National Center 1998). In the final rule, ongoing lead-based paint maintenance is required in all HUD housing programs for which there is also a requirement that interim controls be conducted in response to a case of a child with an environmental intervention blood lead level. To ensure that these requirements are not avoided, the rule states that the requirements apply regardless of whether the child with the environmental intervention blood lead level is or is not still living in the assisted unit. Furthermore, it is HUD's intent that the requirements apply to the unit even if no child of less than six years of age resides in the unit, because the requirements were triggered when a child was in residence. Also, if a public health department performs the evaluation of the dwelling unit or, after the hazard reduction work is performed, certifies the unit to be lead safe, it is not necessary for the housing agency or other designated party to perform those functions. Finally, in the case of housing to which subpart M (tenant-based rental assistance) applies, if the hazard reduction is not performed, the unit does not meet Housing Quality Standards.

Some local housing agencies have asked for guidance on what their response should be to information on a child's blood lead level if the information is brought to the agency by a party other than a medical health care provider. In response, the Department is including a provision requiring verification of such data with the public health department or other medical health care provider. If it is verified that a child has an environmental intervention blood lead level, the agency, owner, or HUD (as the case may be) must complete a risk assessment and conduct interim controls of identified hazards.

7. *Fair Housing Requirements.* Several commenters expressed concern about the potential for housing discrimination against families with children in general, and those with children with environmental intervention blood lead levels in particular. Therefore HUD is providing the following discussion of the application of the Fair Housing Act and other laws pertaining to persons with disabilities to lead-based paint issues.

The Fair Housing Act prohibits discrimination in housing based on race, color, national origin, religion, sex, disability, and familial status. Familial status, for purposes of the Fair Housing Act, includes children under 18 (regardless of age or number), pregnant women, and people seeking custody of children under 18. Only providers of housing that meets the specific definition of housing for older persons may refuse to rent to families with children. Children with elevated blood lead levels and persons with Multiple Chemical Sensitivity (MCS) may fall under the definition of persons with disabilities. Among the actions prohibited under the Fair Housing Act are any action which differentiates on a prohibited basis for any of the following: Refusal to rent or sell housing; refusal to negotiate for housing; making a dwelling unavailable; denying a dwelling; providing different housing services or facilities; falsely stating that housing is not available for inspection, sale, or rental; refusing to make a mortgage loan; imposing different terms or conditions on a loan; setting different terms, conditions, or privileges for sale or rental of a dwelling; segregating a portion of the population into special buildings or areas; maintaining different lease conditions; and advertising or making any statement that indicates a limitation or preference based on any prohibited basis of the Fair Housing Act.

Based on this law, it is illegal for owners of housing to discriminate against families with children, or EBL children, even if the unit is known to have lead-based paint hazards. The prohibitions of the Fair Housing Act would further make it inadvisable to ask questions about EBL status, pregnancy, or intentions to become pregnant. Restrictive covenants against children, including EBL children, are also illegal. Therefore, no renter or buyer may be asked to sign a statement that a child, or EBL child, is not expected to reside in the dwelling. Owners of rental housing may eliminate lead-based paint hazards in a percentage of units and hold those units available for families with children and affirmatively market them to appropriate families. An owner may also tell families of the danger of moving into a unit which has not been treated and recommend an alternative comparable unit. In no case may an owner refuse to allow a family to occupy the unit, however, because of the presence of a child or require that a family move because lead is found. Laws against discrimination will be enforced by HUD.

Title II of the Americans With Disabilities Act (ADA) establishes a clear and comprehensive prohibition against discrimination on the basis of disability in State and local government services. Section 504 of the Rehabilitation Act of 1973 provides for nondiscrimination against persons with disabilities in Federally-assisted housing. Both laws define a person with a disability as any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of an impairment, or is regarded by others as having such an impairment. Under both laws, EBL children and persons with MCS may fall under the definition of persons with disabilities. Among the actions prohibited under Title II of the ADA and Section 504 are those which discriminate, on the basis of disabilities, in Federally-assisted programs, services, and activities. Such actions include a refusal to (1) allow participation in a program, service, or activity; (2) provide programs, services and activities in an integrated setting, unless separate or different measures are necessary to ensure equal opportunity; (3) eliminate unnecessary eligibility standards or rules that deny an equal opportunity to enjoy a program, service or activity unless "necessary" for the provisions of the program, service or activity; (4) make reasonable modifications in policies, practices, and procedures that deny equal access, unless a fundamental alteration in the program would result; (5) make reasonable accommodations, unless an undue burden or fundamental alteration would result, e.g., furnish auxiliary aids and services when necessary to ensure effective communication (e.g., interpreters, or accessible formats, such as braille, large print, or audio cassette) and/or provide notice to and relocate residents with MCS prior to removing lead-based paint hazards with harmful toxic chemicals; and (6) operate programs so that, when viewed in their entirety, they are readily accessible to, and usable by, individuals with disabilities. A covered housing provider must not impose special charges to pay for measures necessary to ensure nondiscriminatory treatments, such as relocation expenses when necessary to remove lead-based paint hazards, or making modifications to provide accessibility. Finally, it is unlawful under these laws for a covered housing provider to make inquiries into the nature and severity of a person's disability, although that information may be volunteered when a reasonable accommodation is requested.

8. *Qualification Requirements.* The proposed rule required that most lead-based paint inspections, risk assessments and abatements be conducted by individuals or firms that are certified in accordance with national EPA requirements for lead-based paint activities developed pursuant to sections 402 and 404 of the Toxic Substances Control Act (TSCA). EPA published a final rule on August 29, 1996 that takes full effect on August 29, 1999. After that time, all lead-based paint inspections, risk assessments, and abatements nationwide will have to be conducted in accordance with the EPA work practices standards at 40 CFR 745.227 or State or tribal standards that have been authorized by EPA under procedures set forth at 40 CFR part 745, subpart Q. Recognizing that there might be temporary limitations on the supply of certified personnel, HUD proposed to provide for the possibility of temporary qualifications.

The proposed rule included two apparent exceptions to this general certification requirement. Public and Indian housing agencies ("HAs") conducting dust and soil testing for public and Indian housing were not required to be certified in accordance with the EPA requirements. The Department pointed out that HAs were required to complete lead-based paint inspections by December 6, 1994, and that many HAs have already taken the initiative to conduct risk assessments in housing projects. Further, HUD did not extend the certification requirement to dust testing conducted by HAs for the Section 8 tenant-based rental assistance program. The Department, however, did require that a risk assessment conducted in response to an identified environmental intervention blood lead level child be conducted by a certified risk assessor.

Certification requirements in the proposed rule were somewhat different for interim controls than for abatement. Recognizing that the EPA regulations do not cover interim controls, HUD proposed that all workers performing interim controls be trained in accordance with the basic Occupational Safety and Health Administration (OSHA) hazard communication standard at 29 CFR 1926.59 and supervised by a certified abatement supervisor.

Comments on the qualifications requirements dealt with five issues: (1) Whether housing agency personnel had to be certified to perform dust and soil testing; (2) the availability of qualified personnel and firms, and temporary qualifications in case of an inadequate supply of certified personnel; (3) qualification requirements for interim controls; (4) the independence of the clearance examiner; and (5) the authority of a trained technician to perform clearance examinations.

EPA objected to the exemption of public and Indian housing authorities from certification requirements related to dust and soil testing. EPA did not accept HUD's rationale for suggesting that noncertified personnel could perform lead-based-paint-related functions for public and Indian housing agencies, other than under emergency circumstances. On the other hand, another commenter said he was "pleased" that dust testing would be permitted in that program by non-licensed Housing Quality Standards (HQS) inspectors trained in lead-hazard evaluation. The commenter recommended that "non-licensed, but trained" rehabilitation inspectors similarly be allowed to accomplish clearance testing in the funded rehabilitation programs. A public interest commenter remarked that "HUD should begin the process of educating these workers at once, so that a qualified work force is available when the requirements go into effect."

A local funded agency indicated that its State law would not allow Section 8 housing inspectors to perform inspections requiring dust wipes, and the agency went on to say that licensure for inspectors costs $250, renewable every two years, and that risk assessment training ran to $300 per person. Costs to housing authorities, and to landlords, for importing licensed personnel to perform inspections and assessments were regarded as prohibitive by the commenter.

The Department has decided to require in the final rule that dust and soil testing in public housing be conducted by personnel certified in accordance with an EPA-authorized State or tribal program or EPA regulations, a provision that is also in accordance with many State laws. Also, dust testing in housing assisted through tenant-based rental assistance will not be required at the evaluation stage, so the qualification issue for that function is no longer relevant; but clearance of the dwelling unit (or, in some cases, only the worksite) will be required if paint stabilization, interim controls or abatement is required. See the discussion below of the authority of trained technicians to perform clearance examinations.

There was much concern among commenters about the availability of a qualified (and affordable) work force of persons certified (or otherwise adequately trained) to perform the necessary work called for in the rule. Rural housing suppliers claimed such trained people would have to be imported from far away—and at premium rates. There were also calls for reciprocity for State-approved training programs until the EPA-approved programs are implemented.

HUD expects that most States will have EPA authorized certification programs by the effective date of this rule. Those that do not will be covered by the EPA certification program directly. After August 29, 1999, inspections, risk assessments and abatements must be done in accordance with the standards of EPA or an authorized State or tribal program. While this fact does not in itself eliminate the possibility that there will be shortages in the supply of certified personnel for inspections, risk assessments and abatements in some parts of the country, it increases the likelihood that the certification mechanisms will be in place in most of the nation when this rule becomes effective. At the time of this writing, 37 States have already enacted lead-based paint hazard control laws. In the final rule, the Department has made one change to the qualifications requirements that may result in increased availability of persons qualified to perform clearances. See the discussion below of the authority of technicians to perform clearance examinations.

The Department intends to monitor the availability of qualified personnel. One source of information is likely to be the "Lead Listing," a nationwide listing of inspectors and risk assessors developed by the National Lead Assessment and Abatement Council (NLAC) with HUD assistance. The

"Lead Listing" can be accessed by calling 1–888-LEADLIST (this is a toll-free number) or can be found on the Internet at www.leadlisting.org. HUD notes the constructive suggestion by one commenter that such monitoring should be done in cooperation with the States, as is being done with the development and maintenance of the Lead Listing. HUD would also expect to coordinate with EPA in the development of such information and in determining whether any further Federal response is needed.

One national organization questioned the requirement that workers performing "interim control treatments" be supervised by a certified abatement supervisor. Arguing that the definition of "interim controls" was too broad, the commenter recommended breaking the definition down so that "painting, maintenance and similar routine tasks" could be performed without a certified supervisor. Such a change, the commenter said, would be in accord with Congress' intent that certification requirements not be imposed on interim control workers, and the change would decrease routine property maintenance costs. A similar complaint was directed at the requirement that the appropriate worksite preparation be determined by a certified risk assessor, abatement supervisor or planner/designer. The commenter feared that the rule could be construed as requiring professional worksite design for "mere paint repair work and for such basic interim control tasks as rehanging of doors. . ." and asked that the rule be clarified to eliminate the worksite preparation requirement for interim control work.

Noting that the Task Force had recommended a one-day training course for maintenance supervisors, one commenter advocated HUD/EPA cooperation in developing a short course geared for maintenance workers that is inexpensive, requires one day or less to complete, and is frequently offered. Other commenters endorsed the short training course idea. The idea was a popular one, not only among cost-conscious funded agencies, but with public interest organizations as well.

A national environmental group disagreed with the emphasis on limiting the occasions for use of expert personnel. All hazard control activities, *including* paint repairs, should be conducted by trained personnel, the organization declared. A landlord who has permitted paint to become deteriorated to the point that it presents a lead hazard is "unlikely to have the skills or inclination to perform a paint repair in a manner that does not increase exposure," the group said.

HUD agrees that persons performing interim controls should be prepared to protect themselves and the occupants from exposure to lead, should know how to protect interior and exterior environments from contamination and how to clean up the worksite, and should understand the importance of an independent clearance examination. In the final rule, HUD is requiring that persons performing interim controls, including paint stabilization, be trained in lead hazards in accordance with OSHA regulations at 29 CFR 1926.59 and either be supervised by a certified abatement supervisor (the requirement of the proposed rule) or successfully complete one of the following training courses: (1) An accredited abatement supervisor course; (2) an accredited lead-based paint worker course; (3) the Lead-Based Paint Maintenance Training Program, developed by the National Environmental Training Association for EPA and HUD; (4) the Remodeler's and Renovator's Lead-Based Paint Training Program, prepared by HUD and the National Association of the Remodeling Industry (NARI); or (5) another course approved for this purpose by HUD after consultation with EPA. HUD intends that any person performing hands-on, interim controls work on the worksite in compliance with the final rule must have satisfied one of the optional requirements. With regard to the OSHA training requirements, OSHA regulations at 29 CFR 1926.62 require that workers exposed to airborne lead below the OSHA action level of 30 µg/cu.m. be trained under the hazard communication construction standard, which is at 29 CFR 1926.59. If airborne lead is at or above the action level, OSHA requires a more complete training program. Workers performing interim controls of lead-based paint hazards are not expected to be exposed to airborne lead above 30 µg/cu.m. Therefore the final rule states that the required training must be in accordance with 29 CFR 1926.59.

A national housing organization questioned the language barring a clearance examiner from being "affiliated with, paid, employed or otherwise compensated by the entity performing the hazard reduction and cleanup." The provision assumes, the commenter said, that the hazard reduction work has been performed by an independent contractor. In the case of paint stabilization and interim controls, this assumption will often be incorrect. Where only paint stabilization and simple interim controls are required, it was argued, the rule should permit owners and their employees to perform the work themselves. The "independence" provision would make this impossible. The commenter recommended, first, eliminating the clearance testing requirement for hazard reduction work involving only "basic interim controls." A second solution would be to remove from the quoted provision the words "paid" and "or otherwise compensated", so that clearance testing by employees and affiliates of a contractor would be prohibited, but the owner could retain an independent, certified risk assessor to perform the clearance testing work.

HUD agrees that a property owner or manager should be able to employ both hazard reduction and clearance personnel. The final rule requires that clearance examinations and hazard reduction activities be conducted by entities that are independent of each other unless the owner or designated party uses qualified in-house employees to conduct clearance. The final rule, however, does not permit the same individual employee to conduct both hazard reduction and clearance, due to the clear conflict of interest this would pose.

As mentioned, HUD has made a change in the final rule that may increase the availability of persons qualified to perform clearance examinations, and thus may reduce the cost. The proposed rule required that clearances be performed by either a certified risk assessor or a certified lead-based paint inspector. One group of commenters urged that a technician with less training than a risk assessor or inspector be authorized to perform clearances in situations where interim controls of lead-based paint hazards or ongoing lead-based paint maintenance has been conducted. These commenters argued that the skills needed for the clearance function are modest compared to those required for lead-based paint inspections or risk assessments and, further, that the speed and affordability of clearance is of critical importance to the practical workability of the system of requirements to be set forth in the rule.

In the conference report on the VA–HUD–Independent Agencies Appropriations Act for FY 1999, the Congress urged EPA "to develop a relevant one-day sampling technician training course and to encourage the recognition of this discipline." As of this writing, it is HUD's understanding that EPA plans to develop such a course and that an important purpose of the course will be to train people to perform clearance examinations. Therefore, anticipating that trained clearance technicians may be available, HUD is providing in the final rule two ways they could perform clearances following interim controls or maintenance: first, as a technician who is uncertified or unlicensed and whose work must be approved in writing by a certified risk assessor or lead-based paint inspector; or, second, as a technician who is certified or licensed to perform clearance examinations without the approval of a risk assessor or inspector. Uncertified or unlicensed clearance technicians must have successfully completed a training course on clearance examinations (or similar title) that is developed or accepted by EPA or by a State or tribal program authorized by EPA pursuant to 40 CFR part 745, subpart Q (the EPA regulations implementing TSCA section 404). The course must be given by a training provider accredited by a State, Indian tribe or the EPA for training in lead-based paint inspection or risk assessment. HUD assumes that certified or licensed clearance technicians would also be required to complete such training. Certification or licensing of clearance technicians must be by a State or Indian tribe or EPA.

With regard to the training course taken by an unlicensed or uncertified clearance technician, there are several possible arrangements that are acceptable to HUD under this rule. The course can be developed by EPA, or it can be developed by a State or Indian tribe with a program authorized by EPA pursuant to TSCA section 404. A State or Indian tribe may adopt or accept a course prepared by another EPA authorized State or tribe. While the training provider from whom the course is taken must be accredited by EPA or an EPA-authorized State or tribal program, it is not necessary from HUD's point of view that the technician be trained within the State or Indian nation where the clearance is being performed or by a training provider accredited by that State or tribe. The ultimate responsibility for quality control rests with the certified lead-based paint inspector or risk assessor who approves the work of the technician and signs the clearance report.

Under this policy, an unlicensed or uncertified but properly trained clearance technician could perform a clearance examination on site, prepare the report, and send the report (by e-mail, fax, or other method) to a certified risk assessor or certified lead-based paint inspector, who may be located in another area. The risk assessor or inspector could review and sign the report and forward it to the client, taking responsibility for the quality of the clearance examination and report. The Department assumes that the risk assessor or lead-based paint inspector would require the technician to work as an apprentice until the inspector or assessor is satisfied that the technician's work is of satisfactory quality, but HUD leaves that process and decision to the risk assessor or inspector. In the rule, HUD places no restrictions on the scope or scale of clearance examinations that could be performed in this manner.

HUD is setting a limitation, however, on the authority of a certified or licensed technician who is taking full responsibility for the clearance examination without written approval of a risk assessor or lead-based paint inspector. In this case, the authority extends, under the HUD rule, only to clearances of single family units or individual units and associated common areas in a multi-unit property. The authority does not extend to clearance examinations of multifamily properties, or parts thereof, in which the clearance examiner engages in random sampling of dwelling units and common areas. In the opinion of the Department, it is unlikely that a one-day course will be adequate to teach all the techniques, procedures and judgments required to conduct random sampling of dwelling units and common areas in large multifamily clearance examinations. Under the HUD final rule, however, clearance technicians may perform multifamily clearances involving random sampling with the written approval of a certified risk assessor or lead-based paint inspector. Furthermore, certified clearance technicians may, without written approval of an inspector or risk assessor, conduct clearance examinations of any number of individual dwelling units and associated common areas in multifamily properties, provided results from the units and areas in which clearance examinations are conducted are not used to represent units and areas for which no examination or testing has been conducted.

Under this policy on technicians, people can prepare themselves to perform clearances with less investment in training and equipment than is required to become a risk assessor or lead-based paint inspector. HUD is hopeful, therefore, that the policy will contribute to an increased availability of persons authorized to perform clearances and a reduction in the cost of clearances. The policy retains the reliance on a certification or licensing process. Certification by a State or other entity provides a way to take action against fraudulent or otherwise unprofessional clearance examiners.

HUD recognizes that performance of clearance examinations by a certified or uncertified technician may not be permissible under some State or tribal regulations, even with the written approval of a risk assessor or lead-based paint inspector. Where that is the case, the State or tribal regulation would apply. HUD also recognizes that EPA may, in the future, establish certification procedures for clearance technicians (or a similar discipline) and, at that time, may make it illegal nationwide for uncertified technicians to perform the on-site work of a clearance examination. However, HUD thinks it will be efficient to have trained technicians, certified or not, working with higher level certified personnel and encourages other regulatory entities to permit it.

9. *Paint Stabilization vs. Paint Repair.* The proposed rule established a procedure called "paint repair," which was a repainting of a deteriorated paint surface using safe work practices to minimize the generation of dust, protect occupants and the environment, and leave the site clean. The procedure was widely used in the subparts or sections applicable to single family mortgage insurance, disposition of HUD-owned single family property (without sufficient appropriations), multifamily insured property, disposition of HUD-owned and mortgagee-in-possession property (without sufficient appropriations), residential property receiving an average of less than $5,000 per unit in Federal rehabilitation assistance, CPD non-rehabilitation, and tenant-based rental assistance.

Many commenters questioned this procedure. The most common position was a caution against leaving anything in the rule that implied that "mere overpainting" of surfaces, without addressing the substrate, could ever be considered an appropriate course of action. A typical comment was the following: "HUD's final regulations should require that whenever deteriorated paint is repaired, the cause of the deterioration must be corrected and the substrate stabilized." Another commenter argued that paint repair, by itself, was "inconsistent with the HUD Guidelines."

HUD agrees that it can be ineffective to try to put paint on a damaged substrate, such as crumbling plaster. Old lead-based paint on such a surface could shortly become deteriorated again after repainting. On the other hand, HUD is aware that substrate stabilization requires case-by-case judgment in the field as to when substrate repair is necessary and what extent and method of repair is

appropriate. There is reason to be concerned that cautious administrators may sometimes insist on repairs that are overly expensive or that others will not correct the underlying problem.

After careful consideration, the Department has eliminated "paint repair" throughout the final rule and instead is requiring "paint stabilization," which calls for the repair of any physical defect in the substrate of a painted surface or component that is causing deterioration of the surface or component. It should be noted that the purpose of this requirement is not complete renovation but merely to try to assure that the integrity of the repainting will survive for a reasonable period of time. Also, if a substrate is being damaged because of a water leak, repair of the leak would be necessary in any case to meet housing or building codes. In situations in which a costly repair may be necessary to stabilize a damaged substrate, designated parties should always determine through paint testing whether or not the surface has lead-based paint. Frequently the paint will not be leaded at the Federal standard of 1.0 mg/sq.cm., so paint stabilization will not be required under this rule. If the deteriorated paint is lead-based paint, the designated party may consider alternative methods for controlling the hazard, such as enclosure of the surface.

E. Subparts

1. *Subpart A—Disclosure of Known Lead-Based Paint Hazards Upon Sale or Lease of Residential Property.* This subpart contains the requirements for disclosure of known lead-based paint and/or lead-based paint hazards in the sale or lease of target housing. This joint HUD/EPA regulation was promulgated as required by section 1018 of Title X (42 U.S.C. 4852d), and was originally published at 24 CFR part 35, subpart H. Subpart H has been transferred unchanged to this subpart A, so the regulations implementing sections 1012 and 1013 of Title X can be published in consecutive subparts B, C, D, F through M, and R.

2. *Subpart B—General Lead-Based Paint Requirements and Definitions For All Programs.* This subpart sets out general requirements for federally owned residential property and housing receiving Federal assistance.

a. *Definitions.* In the proposed rule, HUD used the definitions, where possible, that were included in section 1004 of Title X (42 U.S.C. 4851b). In cases where the statute either failed to define terms, or where the definition was inadequate for the purpose of a regulation, the Department drew definitions from the HUD Guidelines, existing HUD or EPA regulations, and from definitions compiled and set forth by the American Society for Testing and Materials (ASTM), West Conshohocken, PA 19428–2959, in a document entitled "Standard Terminology Relating to Abatement of Hazards from Lead-Based Paint in Buildings and Related Structures" (ASTM Standard E 1605–94).

In most cases public comments on definitions concerned the scope of the definition rather than the meaning, and the commenters wanted the scope to be either expanded or limited. In response to comments, the definition of *residential property* was revised in the final rule to more precisely define its scope to "a dwelling unit, common areas, building exterior surfaces, and any surrounding land, including outbuildings, fences, and play equipment affixed to the land belonging to an owner and available for use by residents but not including land used for agricultural, commercial, industrial, or other non-residential purposes, and not including paint on the pavement of parking lots, garages, or roadways" rather than the proposed rule language of "a dwelling unit, common areas and any surrounding land belonging to an owner and accessible to occupants." Paint striping on parking lots, garages, and roadways will not be covered by this rule. *Common area* was expanded in scope to mean "a portion of a residential property that is available for use by occupants of more than one dwelling unit" rather than "generally accessible to occupants of all dwelling units". Throughout the final rule, HUD has avoided using the term "accessible" if its meaning might be confused with that in regulations implementing the Americans With Disabilities Act. *Hazard reduction* was expanded to include standard treatments. *Paint testing* was added, replacing the proposed-rule's *limited paint inspection* for reasons explained below in the discussion of options in Section III.E.2.c.(4) of this preamble.

The publication of the EPA regulation at 40 CFR part 745, subparts L and Q, significantly affected the definitions section as it did the remainder of this regulation. The definitions of several technical terms have been deleted from the final rule, since they were associated with the evaluation and hazard reduction activities now covered by the EPA regulation.

In the definition of *abatement*, the statement that "permanent means at least 20 years effective life" was relocated to a separate definition of "permanent." This was done to conform the definition of abatement more closely to that in Title X. Also the terms "lead-contaminated dust" and "lead-contaminated soil" were changed to "dust-lead hazard" and "soil-lead hazard" respectively to conform with terminology being used by EPA in their proposed regulation implementing TSCA section 403, which was published on June 3, 1998 (63 FR 30301–55). The latter change of terminology has been made throughout this final rule; the definitions of *lead-contaminated dust* and *lead-contaminated soil* have been replaced with definitions of *dust-lead hazard* and *soil-lead* hazard respectively, and the same substitution of terms has been made in the definition of *lead-based paint hazard.* In the proposed section 403 rule, EPA has adopted the position that "lead-contaminated dust" and "lead-contaminated soil" are general terms referring to dust and soil with varying levels of lead concentration but not necessarily to levels that are considered hazardous. In the definition of "soil-lead hazard" in this final rule, HUD is including a de minimis area of bare soil outside of play areas that is not considered a hazard. To be considered a soil-lead hazard according to this definition, spots or areas of bare soil outside of play areas must total more than 9 square feet per residential property and have a lead concentration of an average of equal to or exceeding 2000 micrograms per gram.

The term *accessible (chewable) surface* has been replaced with *chewable surface.* This was done for two reasons: (1) It avoids confusion with the use of the word "accessible" in regulations and guidance implementing the Americans With Disabilities Act (ADA), which is an important law affecting residential real estate; and (2) it substitutes an easily understood term, "chewable," for a somewhat ambiguous term, "accessible," that might imply "reachable" as well as "chewable." The substitution of "chewable" for "accessible" was also made in the definition of "lead-based paint hazard." In response to many requests for further clarity as to what constitutes a chewable surface, HUD has added to the definition of "chewable surface" a statement that, "Hard metal substrates and other materials that cannot be dented by the bite of a young child are not considered chewable." In most homes, the only chewable surfaces are likely to be protruding, interior wooden window sills.

A new term, *designated party*, has been added to simplify and reduce the length of the rule. It means "a Federal agency, grantee, subrecipient, participating jurisdiction, housing agency, CILP recipient, tribe, tribally designated housing entity (TDHE), sponsor, or property owner responsible for complying with applicable requirements." The definition of the term *dwelling unit* has been changed to conform to the Title X definition of "residential dwelling." The substantive meaning does not change. As in the proposed rule, HUD prefers to use "dwelling unit" instead of "residential dwelling" because the former term is more commonly used and understood and is more distinct from a related term used in the rule, "residential property." As explained in Section III.D.6 of this preamble above, in the discussion of policy on responding to children with elevated blood lead levels, the defined term *elevated blood lead level (EBL)* has been changed to *environmental intervention blood lead level*, and the definition has been changed slightly to conform to CDC guidance. The term *emergency repair* has been removed from the definitions section, because it is only used once in the rule, in the section later in subpart B setting forth the exception for emergency actions; and its meaning there is clear.

The definition of *evaluation* has been changed. Title X defines this important term as meaning a risk assessment, inspection, or combination of the two. The proposed rule added "visual evaluation" and made the determination of the presence of deteriorated paint one of the purposes of evaluation as well as the determination of the presence of lead-based paint hazards and lead-based paint. In the final rule, HUD has removed "visual evaluation" from the definition of "evaluation," has removed the related purpose of identifying deteriorated paint, and has added "lead hazard screen" and "paint testing" as evaluation methods. "Visual evaluation" was removed because it is quite different from the activities mentioned in the statutory definition of "evaluation." It does not involve any testing of paint, dust or soil for lead concentration, nor does it determine the presence or absence of lead-based paint hazards or lead-based paint. Therefore it does not produce "evaluation" results that, in the opinion of the Department, have to be reported to occupants. For additional clarity, HUD has changed the term *visual evaluation* to *visual assessment.* A "lead hazard screen" and "paint testing," however, do involve testing and produce reportable results. *Lead hazard screen* means a limited risk assessment that involves paint testing, dust testing and soil testing. If a property passes a screen using the criteria in subpart R, it is not necessary to conduct a full risk assessment. This term was not defined or used in the proposed rule, but HUD now believes that the option to conduct such a screen should be available, because it is potentially less costly than and often as effective as a full risk assessment, especially in housing built after 1959 that is in good condition. The term *paint testing* replaces the proposed-rule term *limited paint inspection* in response to a comment from EPA that it would be helpful to differentiate more clearly between a full "inspection," as specified in the EPA rule implementing TSCA section 402, and a more limited procedure to determine the presence of lead-based paint only on deteriorated paint surfaces or surfaces to be disturbed by rehabilitation.

Title X exempts housing for the elderly and persons with disabilities unless a child of less than 6 years of age resides or is expected to reside in such housing. Believing that *expected to reside* requires interpretation, the Department is introducing in this final rule a definition stating that "expected to reside" means there is actual knowledge that a child will reside and that if a resident woman is known to be pregnant there is actual knowledge that a child will reside in the dwelling unit. (As mentioned, it is not advisable to inquire as to pregnancy status in most real estate transactions. See Section III.D.7 of this preamble, above, on fair housing requirements.)

Firm commitment, a term used only in subpart G, Multifamily Mortgage Insurance, is defined for purposes of clarity to mean a valid commitment issued by HUD or the Federal Housing Commissioner setting forth the terms and conditions upon which a mortgage will be insured or guaranteed. In this rule, *grantee* is a term used only in subparts J, Rehabilitation, and K, Acquisition, Leasing, Support Services or Operation. It is defined to mean any State or local government, Indian tribe, IHBG recipient, or insular area that has been designated by HUD to administer Federal housing assistance under a program covered by subparts J and K, except the HOME program or the Flexible Subsidy-Capital Improvement Loan Program (CILP). The defined term *participating jurisdiction* is used in the HOME program, and *CILP recipient* is the defined term used to mean an owner of a multifamily property which is undergoing rehabilitation funded by the CILP program. The definition of *hard costs of rehabilitation* has been changed, in response to comments requesting greater clarity, to add the following statement: "Hard costs do not include administrative costs (e.g., overhead for administering a rehabilitation program, processing fees, etc.)."

The definition of *HEPA vacuum* has been made more precise. The proposed rule definition was "a vacuum with an attached high-efficiency particulate air (HEPA) filter capable of removing particles of 0.3 microns or larger from air at 99.97 percent efficiency." The final definition requires that a HEPA filter be integral to the vacuum cleaner and gives an actual-performance, rather than potential-performance, definition of HEPA filter. Both definitions use performance measures of filter collection efficiency, with values common in the hazardous dust standard setting, e.g., EPA in asbestos rules (40 CFR 763.83, 763.121), OSHA in a lead rule (29 CFR 1926.62(f)(3)), and DOE in a HEPA filter specification (DOE-STD–3020–97). Current technology for assessing personal respirator filter performance is used by NIOSH in its respirator rule (42 CFR 84.181), by OSHA in citing the NIOSH rule (63 FR 1297, January 8, 1998), and by DOE in the specification cited above.

The technological precision reflected in the regulations just cited is not seen in the HEPA vacuum industry, however, so the rule can not specify the procedure for testing conformance. Performance and operational criteria of the manufacturer(s) of the filter and the vacuum unit as a whole are to be used for filter efficiency and particle size criteria. HUD is promoting research and development of standards on collection efficiency measurement applicable to HEPA vacuums. For example, it supports research at the University of Cincinnati (Cincinnati, OH 45267–0056) on vacuum cleaner dust penetration. HUD staff participates on the American Society for Testing and Materials' (West Conshohocken, PA 19428–2959) Task Force F11.23.01 on vacuum cleaner system filtration efficiency working on a vacuum dust penetration measurement standard. HUD is aware of the American Society of Mechanical Engineers' (New York, NY 10017–2392) Air and Gas Cleaning Group work on protocols to assess HEPA filter application performance. DOE cites the testing procedures of ASME Code AG–1, Section FC, HEPA Filters. Because the standards above are not yet directly applicable to fully assessing HEPA vacuums, HUD will monitor and support research and standards development, and revise its definition as needed. HUD welcomes data on research and measurement criteria for HEPA vacuums and HEPA filters.

The proposed-rule definition of *HUD-owned property* has been changed to

conform to the definition of *federally owned property* that is in Title X. The definition in the final rule is "residential property owned or managed by HUD, or for which HUD is a trustee or conservator." The Department acknowledges, however, that although this definition conforms word for word to the Title X definition, it does not represent common usage. For practical and programmatic purposes, HUD considers property it owns to be only that to which it has title; it distinguishes between owned and managed property. However, this distinction does not affect the application of the rule. The rule covers both HUD-owned and HUD-managed property. Subpart I of the rule applies to multifamily property that is HUD-owned or for which HUD is "mortgagee-in-possession." A property for which HUD is mortgagee-in-possession is one for which title has not passed to HUD but which is being managed by HUD prior to foreclosure.

The definition of *Indian tribe (tribe)* has been changed to conform to the Native American Housing Assistance and Self Determination Act of 1996 (Pub. L. 104–330). The proposed rule term "paint inspection" has been changed to *lead-based paint inspection* in the final rule to avoid confusion with inspections of paint that are conducted for purposes other than determining the presence of lead-based paint. The definition of *project-based assistance* is changed for purposes of clarity to indicate that the term applies to *rental* assistance and that it does not include Federal rehabilitation assistance or assistance to public housing developments. In the proposed rule, the definition of *risk assessment* was identical to that in Title X. In the final rule, the specificity of this definition has been reduced to minimize regulatory rigidity and to avoid potential conflict with EPA regulatory definitions and work practices standards.

Finally, the definition of *lead-based paint* has been edited somewhat. Although no substantive change has been made, one modification is worthy of note. The definition in the proposed rule, after the phrase "equal to or exceeding 1.0 milligram per square centimeter or 0.5 percent by weight or 5,000 parts per million," included the phrase "or another level that may be established by the Secretary." The latter phrase has been removed from the definition in the final rule to avoid possible confusion that might result from the absence of such a phrase in other recent regulations promulgated pursuant to Title X. Its inclusion in the proposed rule was based on the statutory provision found in section 302(c) of the Lead-Based Paint Poisoning Prevention Act, which states that "the Secretary (of HUD) shall periodically review and reduce the level below 1.0 milligram per centimeter squared or 0.5 percent by weight to the extent that reliable technology makes feasible the detection of a lower level and medical evidence supports the imposition of a lower level." While HUD has no plans to propose a lower level, the statutory responsibility remains whether it is mentioned in the rule or not.

b. *Exemptions.* A detailed discussion of the exemptions provided in subpart B is found in Section III.A.5 of this preamble, above.

c. *Options.* In addition to exemptions, the final rule provides several options that HUD believes will provide owners and other parties with flexibility and thus greater efficiency in carrying out evaluation and hazard reduction activities.

(1) *Standard treatments.* Where interim controls are required, the designated party has the option to presume that lead-based paint or lead-based paint hazards or both are present throughout the property, omit the risk assessment or lead-based paint inspection or both, and conduct standard treatments in accordance with requirements set forth in subpart R of part 35 in lieu of interim controls. Standard treatments are: (a) Stabilization of all deteriorated paint, interior and exterior; (b) the provision of smooth and cleanable horizontal hard surfaces; (c) the correction of dust-generating conditions (i.e., conditions causing rubbing, binding, or crushing of surfaces known or presumed to be coated with lead-based paint); and (d) treatment of bare soil to control known or presumed soil-lead hazards. Safe work practices and clearance are required. Individuals performing standard treatments must be trained in how to control lead-based paint hazards. The training requirement is identical to that for interim controls. This option, which was not provided in the proposed rule, derives from a recommendation by the Task Force on Lead-Based Paint Hazard Reduction and Financing. The Task Force recommended standard treatments as an option to the risk assessment/interim control approach because standard treatments "offer the advantage of devoting resources directly to hazard control—and their cost may be minimal for units in good condition." Also, the Task Force noted that standard treatments can be carried out by "in-house maintenance staff who have sufficient knowledge of lead-based paint hazards." On the other hand, because no risk assessment is done, standard treatments may be implemented in some units that have no lead-based paint hazards, and resources may be expended unnecessarily. HUD is including the standard treatments option in the final rule in response to public comments that certified risk assessors may be in short supply in some parts of the nation, that the cost of risk assessments may be excessive, and because the decision to test is best left to the discretion of the designated party.

(2) *Presumption in the case of abatement.* Where abatement is required, the designated party may presume that lead-based paint or lead-based paint hazards or both are present throughout the property, omit the evaluation, and conduct abatement on *all* painted surfaces. This option, however, is not available in public housing, because a lead-based paint inspection has been a statutory requirement for all target housing that is public housing since 1994.

(3) *Lead hazard screen.* Where a risk assessment is required by this rule, the designated party may choose to first conduct a lead hazard screen to determine whether a full risk assessment is necessary. The lead hazard screen is a limited risk assessment activity that involves dust sampling and soil sampling, and may include paint testing on deteriorated paint surfaces (if present). The screen must be conducted in accordance with State or tribal work practices standards under an EPA-authorized program or in accordance with EPA standards at 40 CFR part 745, subpart L. Because EPA regulations do not include specific standards for dust lead in lead hazard screens, HUD, in this final rule, is setting such standards at approximately one-half those of a full risk assessment (see Section III.E.15.a and b of this preamble, below). The standards for soil are the same for a lead hazard screen as for a risk assessment. If State or tribal standards for a lead hazard screen are more stringent than those in this rule, the State or tribal standards prevail. If they are less stringent, the standards of this rule apply. The standard for lead-based paint is the same for the screen as for a risk assessment or lead-based paint inspection. If a dust sample is found to be positive, i.e. have a level of lead equal to or greater than the dust-lead standards for the lead hazard screen, or there is lead-based paint on a deteriorated paint surface, a full risk assessment must be performed. If the lead hazard screen is negative, the risk assessment is not required. The lead hazard screen option was not provided in the proposed rule because the cost differential between a full risk assessment and a screen was perceived to be small (essentially the cost of soil testing and a somewhat more elaborate report) and because HUD felt that a certified risk assessor would be empowered by EPA and/or State or tribal regulations to use a screen anyway. HUD is including explicit mention of the screen in the final rule to assure that all parties will be aware that the option is available to try to achieve cost savings, which are most likely in post-1959 properties in good condition.

(4) *Paint testing.* Under the proposed rule the requirements of certain subparts of the rule would not apply for a specific deteriorated paint surface to be disturbed if a "limited paint inspection" indicated the absence of lead-based paint on that surface. EPA objected to the proposed rule's definition of "limited paint inspection," noting that EPA work practices standards for inspections (40 CFR 745.227) do not include or envision a "limited" paint inspection or any other inspection activity not including a "comprehensive inventory of all of the lead-painted surfaces in a residential dwelling." Accordingly, a "limited" paint inspection would be a violation of EPA work practice standards. If a similar procedure is retained, EPA said, the use of the word "inspection" in the definition should be dropped, and HUD should identify the circumstances under which this "limited" activity would be conducted, set out procedures and requirements for conducting it, and state the qualifications required for individuals who would conduct the activity. Another comment from a legal services organization recommended elimination from the regulation of the "limited paint inspection" option.

In the final rule, the term "limited paint inspection" has been replaced with the term "paint testing." Where paint stabilization or interim controls of a deteriorated paint surface is required by this rule, paint testing of non-intact paint surfaces may be conducted to determine the presence of lead-based paint instead of conducting a complete lead-based paint inspection or presuming the presence of lead-based paint. Paint testing may also be employed to determine if intact paint on a surface to be disturbed during rehabilitation contains lead-based paint. If the paint testing indicates the absence of lead-based paint, paint stabilization, interim controls or abatement of that surface is not required. Paint testing must be performed by a certified lead-based paint inspector or risk assessor.

d. *Notice of Evaluation and Hazard Reduction Activities.* Title X requires the provision of notice to occupants describing the nature and scope of any risk assessment, lead-based paint inspection, or hazard reduction activities undertaken. In general, the Department believes that detailed matters of notice, format and distribution are best determined by the property owner or other recipient of Federal housing assistance, under the general framework provided in this rule. In the final rule as well as the proposed rule, the Department has interpreted this provision to require the following: (1) Within 15 calendar days of receiving a risk assessment, lead-based paint inspection, or paint testing report, a written notice must be provided to occupants containing a summary of the nature, scope and results of the evaluation and a contact for more information or access to the actual reports; and (2) within 15 calendar days of completing hazard reduction activities, a notice must be provided to occupants of actual hazard reduction activities conducted. The notice must contain a summary of the nature, scope and results of the hazard reduction activities, a contact for more information, and information on any identified remaining lead-based paint on a surface-by-surface basis. This notice shall be updated, based on any reevaluation of the dwelling unit or if additional lead-based paint hazard reduction work is conducted. The notices must be posted in centrally located common areas or distributed to each occupied dwelling unit, must be of a size and type that are easily read by occupants, and must be made available in a format accessible to persons with disabilities, to the extent practicable. The proposed rule required that, if possible, the notice must be provided in the occupant's primary language. The final rule, in response to comments that some apartment projects may have more than a dozen primary languages represented, deleted the "if possible" phrase and added the option to provide the notice in the language of the occupant's contract or lease.

The statute does not specifically require that separate notices be provided to occupants after an evaluation has been conducted and again after hazard reduction activities have been undertaken. In the Department's view, however, withholding information of the results of an evaluation until after hazard reduction activities have been performed poses a potential risk to occupants. The sooner occupants are provided with this information, the better they can protect their children and themselves.

The Department requested comment on the content, format and distribution of the notices. One commenter suggested that the notice be provided both when evaluation has taken place, and then again before hazard reduction activities are undertaken. HUD has not adopted this suggestion, because it believes it should not regulate tenant-landlord relations this closely. This comment was made to insure that occupants can prepare their units for hazard reduction activities. Actually, all hazard reduction activities require occupant protection by the owner (or contractor), who would coordinate these actions with the occupant even if no separate notice is provided.

Some commenters recommended that the notice be given to each occupant. HUD continues to believe that it is reasonable to expect that occupants can read the notice if it is posted in central locations. In the final rule, this decision is left to the discretion of the owner or other designated party, except that the notice must be distributed to the dwelling unit of a head of a tenant household if the owner knows that the head of household is a person with a disability that would make a posted notice inaccessible to that person.

One commenter asked for more time to provide occupants with the notice of evaluation results. The commenter felt that 15 days is not enough time for management to digest the evaluation and prepare the documentation needed to explain the results to residents. In response, HUD has added to the final rule a strong recommendation, but not a requirement, that paint inspectors and risk assessors provide summary statements of inspections and risk assessments suitable for posting or distribution. This provision is located in § 35.1320, in subpart R. For further discussion and sample formats, see Section III.E.15.c, of this preamble below, and appendices B through E of the rule.

One commenter noted that the proposed rule did not include notice requirements for HUD-owned properties. In the final rule, HUD has included notice requirements for HUD-owned properties that are similar to those for other housing programs, even though such a requirement is not called for by statute.

e. *Lead Hazard Information Pamphlet.* Title X requires that the lead hazard information pamphlet developed by EPA, CPSC and HUD pursuant to TSCA section 406(a) be provided to purchasers

and tenants of housing affected by section 1012 of the statute. Provision of the pamphlet is not required for housing affected only by section 1013 of Title X.
In response to comments, the Department has made three types of changes to the pamphlet-provision requirement that was in the proposed rule. The first change is largely editorial and is intended to increase policy consistency across programs and to reduce the length of the rule. HUD has provided a statement of the general requirement in subpart B, § 35.130, and referenced that section in each of the program-specific subparts where pamphlet provision is required. Section 35.130 states that the designated party shall provide the pamphlet to each occupied dwelling unit.
Acknowledgment of receipt is not required, but it is recommended. The program-specific subparts of the rule state more explicitly who shall provide the pamphlet—e.g., the public housing agency, the owner, the sponsor, the grantee, or the participating jurisdiction.

Second, HUD has made substantive changes to further minimize duplicative requirements for the provision of the pamphlet. Section 1012 is one of three different sections of Title X that call for provision of the pamphlet. The other two are section 1018 (which requires provision of the pamphlet and disclosure of known lead-based paint hazards prior to sale or lease), and TSCA section 406(b) (which requires persons performing renovation for compensation to provide the pamphlet before beginning the renovation). The proposed rule recognized potential overlap with the HUD-EPA rule implementing section 1018 (the disclosure rule) but did not discuss EPA's then-proposed rule implementing section 406(b) (the renovation rule).

For most rental housing, HUD's proposed rule required that the pamphlet be provided only if the tenant had taken residence before the effective date of the disclosure rule (which was either September or December 1996, depending on the number of housing units owned by the landlord). This policy did not address the case of a tenant who took residence before the effective date of the disclosure rule but received the pamphlet at the time of renewal or revision of the lease. The proposed-rule policy also did not address the case of a landlord who, acting as a renovator's designated representative, provided the pamphlet to a tenant before renovation in compliance with the renovation rule. Therefore, to allow landlords the flexibility to minimize duplication of pamphlet provision, the final rule, in § 35.130, states simply that it is not necessary to provide the pamphlet if it can be demonstrated that it has already been provided in accordance with the disclosure rule or the section 406(b) renovation rule. Prior provision of the pamphlet is best demonstrated by retaining an acknowledgement by the occupant of receipt of the pamphlet. Such acknowledgment is required by the disclosure rule and, with some exceptions, by the renovation rule.

In the proposed rule, the two subparts pertaining, respectively, to rehabilitation assistance and to CPD non-rehabilitation programs required provision of the pamphlet to the tenant, owner occupant or purchaser regardless of whether the pamphlet had been provided under the disclosure rule. In the final rule, this has been changed to conform with the general policy in § 35.130. HUD expects that most local and State rehabilitation programs will be administered so that provision of the pamphlet by the renovator in compliance with the renovation rule will also meet the requirements of this final rule.

Third, some commenters requested that EPA-approved State equivalents to the pamphlet be specifically permitted. In the interest of streamlining and simplicity, the final rule includes such a provision.

f. *Use of Paint Containing Lead.* The final rule continues the prohibition against use of new paint containing more than 0.06 percent by weight of lead in federally owned or assisted housing. This provision has been in HUD regulations since the late 1970's and is based on the 1977 regulation promulgated by the Consumer Product Safety Commission (16 CFR Part 1303).

If a State or local jurisdiction banned the residential use of paint containing lead before 1978, the rule allows the Secretary to apply a date earlier than 1978 to activities covered by this rule in that jurisdiction.

g. *Prohibited Methods of Paint Removal.* The final rule includes the same prohibited practices as in the proposed rule (open flame burning, machine sanding without HEPA exhaust control, abrasive blasting without HEPA local exhaust control, heat guns operating above 1100 degrees Fahrenheit, dry scraping or sanding except in certain situations), plus one addition: paint stripping using a hazardous volatile substance in a poorly ventilated space. OSHA says that adults exposed to methylene chloride "are at increased risk of developing cancer, adverse effects on the heart, central nervous system and liver, and skin or eye irritation. Exposure may occur through inhalation, by absorption through the skin, or through contact with the skin."(62 FR 1493, January 10, 1997).

The Consumer Product Safety Commission/EPA consumer notice, What You Should Know About Using Paint Strippers (CPSC Document 4423, EPA document EPA 747-F–95–002), recommends to persons who "use paint strippers frequently, (that) it is particularly important that you...Never use any paint stripper in a poorly ventilated area. If work must be done indoors under low ventilation conditions, consider having the work done professionally instead of attempting it yourself." This is of particular importance in lead-based paint removal work larger than the de minimis level (such as 2 sq. ft. per room). CPSC and EPA recommend that persons who strip paint "cross-ventilate (the worksite) by opening all doors and windows (and m)ake sure there is fresh air movement throughout the room." This practice deviates from the worksite protection for larger lead-based paint stripping projects, which typically involves protecting the work area and occupants from dispersal of lead debris and dust by sealing off ventilation systems and/or erecting barriers between the work area and the rest of the residence to reduce ventilation (see the HUD Guidelines, chapter 8). The CPSC/EPA notice also recommends precautions for firesafety, eye protection, skin protection, and waste disposal for paint strippers.

Some paint strippers are hazardous, and are addressed as such by regulatory agencies. HUD has considered the type of work in identifying the applicable definition to consider. The definition of "hazardous substance" used by the CPSC (see 16 CFR 1500.3), based on the Federal Hazardous Substances Act (15 U.S.C. 1261–74), applies to paint stripping work that does not involve employment, such as paint stripping by the owner of HUD-assisted housing who performs the work personally. The definition of "hazardous chemical" used by the Occupational Safety and Health Administration, and based on the Occupational Safety and Health Act (29 U.S.C. 655(a)), applies to paint stripping that does involve employment. OSHA's definition for the general industry at 29 CFR 1910.1200 currently applies to building maintenance, custodial, or construction work, because OSHA's hazard communication standard for the construction industry, at 29 CFR 1926.59, is identical to that for general industry.

Employers of paint removal workers are expected to know that OSHA recently reduced its permissible exposure limit for methylene chloride in air from 500 to 25 parts per million (29 CFR 1910.1052 for general industry, and the identical 29 CFR 1926.1152 for construction, 62 FR 1492–1619, January 10, 1997). Methylene chloride can not be detected by odor at the permissible exposure limit, and organic vapor cartridge negative pressure respirators are generally ineffective for personal protection against it. Alternative paint strippers may be safer but have their own safety and/or health concerns, as indicated in the CPSC/EPA notice, so caution in the selection and use of any paint stripper is prudent. Paint stripping in a poorly ventilated space using a volatile substance that is hazardous should be done in accordance with CPSC regulations (16 CFR 1500.3), and/or OSHA's hazard communications standards (29 CFR 1010.1200 or 29 CFR 1926.59, which are currently identical), and with any substance-specific standards applicable to the work.

h. *Compliance With Other State, Tribal, and Local Laws.* In response to comments urging deference to State, tribal and local laws and regulations, HUD has added a provision to the final rule that makes it clear that HUD may modify or waive requirements of subparts B, C, D, F through M, and R, if the Department determines that a State, tribal, or local law provides a comparable level of protection and that such a modification or waiver will promote efficiency.

The final rule also indicates that this regulation is not intended to relieve program participants from compliance with State, tribal or local law.

i. *Minimum Requirements.* The final rule retains the policy included in the proposed rule that the requirements of subparts B, C, D, F through M, and R, are intended to be minimum requirements. Nothing in this rulemaking is intended to preclude designated parties from conducting a more protective method than the one required. Thus, for example, if the requirement is interim controls, a designated party may choose to use an abatement method instead.

Similarly, where more than one requirement covers a condition or activity, the most protective shall apply.

j. *Waivers.* Also retained from the proposed rule is the authority of the Secretary of HUD to waive any provision of this rulemaking, subject to statutory limitations. This conforms to, and cites, § 5.110, the general waiver section for HUD programs under title 24.

k. *Prior Evaluation or Hazard Reduction.* Some commenters requested clarification as to the validity under HUD's rule of lead-based paint activities conducted prior to the effective date of the rule. In the final rule, conditions under which a prior evaluation or hazard reduction meets the requirements of the rule have been specified.

Section 1013 of Title X gives the Secretary authority to waive the lead-based paint inspection and risk assessment requirement for federally owned housing built between 1960 and 1978 if a federally funded risk assessment by a certified contractor shows an absence of lead-based paint hazards. The Department believes case-by-case waivers to be inefficient and inappropriate and therefore has developed a broader policy on prior activities that covers all properties for which an acceptable risk assessment, lead-based paint inspection, abatement, or clearance has been performed. The Department believes that the conditions set forth in this section provide the necessary quality control measures for prior lead-based paint activities while avoiding unnecessary duplication.

A lead-based paint inspection or a risk assessment conducted at a residential property or dwelling unit prior to the property or unit becoming subject to the requirements of subparts C, D, F through M, and R, need not be repeated if it was conducted in the following manner or under the following circumstances:

(1) If the lead-based paint inspection or risk assessment was conducted prior to August 30, 1999 (the effective date of the EPA regulations at 40 CFR 745.227), results of the evaluation may be used if it was conducted in accordance with 40 CFR 745.227 or by an individual or firm otherwise certified under a State or Indian tribal lead-based paint inspector or risk assessor certification program, except that the risk assessment must be no more than 12 months old to be considered current; and furthermore a lead-based paint inspection of public or Indian housing meets the requirements of this rule if it was accepted by the housing agency in fulfillment of the lead-based paint inspection requirement of the public and Indian housing program prior to the effective date of this rule.

(2) If the inspection or risk assessment was conducted after August 29, 1999, the results of the evaluation may be used if it was conducted in accordance with 40 CFR part 745, subparts L and/or Q, except that the risk assessment must have been completed no more than 12 months prior to the date of reference.

The provisions in subpart B regarding prior risk assessments do not apply in cases where a risk assessment is required in response to the identification of a child under 6 years of age with an environmental intervention blood lead level. In such cases the risk assessment must be conducted in the child's dwelling unit shortly after the child's blood was last sampled.

Interim controls conducted prior to a property or unit becoming subject to the requirements of subparts B, C, D, F through M, and R, need not be repeated if such controls were conducted in accordance with a risk assessment that meets the requirements of this rule; however, ongoing lead-based paint maintenance and reevaluation must be conducted as required by this final rule.

Abatements conducted before August 30, 1999 and before the property or unit becomes subject to the requirements of subparts B, C, D, F through M, and R, need not be repeated if conducted by an abatement supervisor approved by a State or Indian tribe to perform abatement of lead-based paint or lead-based paint hazards. It is not necessary that the State or tribal approval program had EPA authorization. Abatements conducted after August 29, 1999, must have been conducted by a lead-based paint abatement supervisor certified by a State or Indian tribe with an EPA-authorized lead-based paint certification program or by EPA in accordance with 40 CFR 745.226. State law may impose different requirements. A lead-based paint abatement project meets the requirements of this rule if it was accepted by the housing agency in fulfillment of the abatement requirement of the public or Indian Housing program prior to the effective date of this rule.

With regard to the policy on prior lead-based paint inspections in public and Indian housing, it should be explained that in the late 1980's, pursuant to a statutory requirement, HUD began requiring public and Indian housing agencies to conduct lead-based paint inspections in all pre-1978 family developments. All inspections had to be completed by December 1994. Abatement of any lead-based paint was required at the time of modernization. HUD estimates that by 1998, virtually all of the pre-1978 family developments have been inspected, representing approximately 900,000 dwelling units. Also, HUD estimates that housing agencies have completely abated lead-based paint in over 200,000 units. The Department does not think it would be acceptable now to require that all lead-based paint inspections be redone. However, the rule does recommend that housing agencies conduct quality

assurance testing for all inspections that might be questionable.

l. *Enforcement.* Every commenter who addressed the question of enforcement of the rule remarked that penalties for noncompliance needed to be spelled out in the rule. The Lead-Based Paint Poisoning Prevention Act does not provide any independent enforcement provisions. Remedies will vary based on which program's requirements have been violated. For example, a designated party that is not in compliance with this rule may be considered in default of the regulatory agreement or housing assistance payments contract with the Department, may be debarred from receiving assistance from the Department or denied future participation in HUD programs, may be forced to surrender grant funds or may be otherwise subject to civil money penalties or other sanctions. Recipients of assistance under the Community Development Block Grant program will find enforcement provisions at 24 CFR 570.910, 570.911 and 570.913; those for other programs are found in other parts and sections of the CFR. HUD does not think it necessary to restate each program's sanctions in this lead-based paint rule but has included a general provision under § 35.160 that states the consequences of noncompliance with this regulation. HUD intends to vigorously enforce all requirements of this regulation.

m. *Records.* HUD has retained a record keeping requirement in this final rule for designated parties conducting lead-based paint activities. The Department strongly recommends that designated parties keep for the life of the property a copy of each notice to occupants of the results of evaluation and hazard reduction (including clearance) and each report from a certified individual or firm performing lead-based paint inspections, risk assessments, abatement, or clearance. Such notices and reports document compliance in case of a legal or administrative question; and evaluation and hazard reduction reports provide information on where lead-based paint may remain on the property so it can be managed safely, or, if such reports document that there is no lead-based paint remaining on the property, they can be used to support exemption from the requirements of this rule and the disclosure rule. At a minimum, the Department requires that such documentation be retained for three years. Records applicable to a portion of a residential property for which ongoing maintenance and/or reevaluation activities are required shall be kept until at least three years after such activities are no longer required. This policy is designed to provide a basis for helping ensure that Federal funds have been expended properly.

3. *Subpart C—Disposition of Residential Property Owned by a Federal Agency Other than HUD.* This subpart establishes minimum lead-based paint requirements for residential property built before 1978 that is owned and to be sold by a Federal agency other than HUD and is consequently subject to the requirements of section 1013 of Title X. The subpart basically restates the requirements set out in section 1013 of Title X, with minimal elaboration. The Department believes that the details of how another Federal agency should carry out the requirements of section 1013 are best determined by the affected agency.

The proposed rule required that for residential property built before 1960, the Federal agency shall conduct a lead-based paint inspection and a risk assessment, and shall abate all lead-based paint hazards. In the case of a purchaser who is not to be an owner occupant, the agency could make abatement a condition of sale with sufficient funds escrowed. For properties built after 1959 and before 1978, the proposed rule required that the agency conduct a risk assessment and a lead-based paint inspection. Under the disclosure rule implementing section 1018 of Title X, the agency would be required to provide the results of the risk assessment and inspection to the purchaser.

The Department of the Navy commented that the requirement that both a risk assessment and a lead-based paint inspection be conducted appeared to exceed the statutory requirement. Section 1013 calls for "the inspection and abatement of lead-based paint hazards" in pre-1960 housing and "an inspection for lead-based paint and lead-based paint hazards" in housing built between 1960 and 1978. HUD is calling for both an inspection and a risk assessment because the statutorily defined term "inspection" refers to a procedure that identifies the location of lead-based paint, if any, on a property but does not identify the location of "lead-based paint hazards," as that term is defined in the statute. Identification of lead-based paint hazards is the function of a risk assessment. Thus, because lead-based paint hazards must be identified to comply with section 1013, a risk assessment must be conducted as well as an inspection. HUD expects that the two evaluation procedures will be performed concurrently.

The Air Force, Army and the General Services Administration (GSA) all asked for greater flexibility to permit negotiation with transferees regarding hazard control requirements "built into the contract of sale." These agencies argued that, while the proposed rule allowed abatement to be made a condition of sale, it required the escrow of sufficient funds, and it may not be feasible for a bidder on large blocks of units to escrow large sums for long periods of time. It was pointed out that purchasers do not always know at the time of transfer what the reuse of a property, or a part thereof, will be. It was recommended that other conditions be permitted to be attached to the sale—for example, certification and indemnification requirements not requiring escrow deposits, and deed restrictions. GSA also complained that limiting an agency's authority to make abatement a condition of sale to when the purchaser is not an owner occupant could cause unnecessary complications in the bidding process. Bidders intending not to be owner occupants might discount their bids to account for the cost of the evaluation, while those intending to be owner occupants would not.

HUD believes that allowing the Federal agency a choice of conducting the abatement itself or making it a condition of sale facilitates efficiency and timeliness in the disposition process. The Department finds the agencies' comments about making abatement a condition of sale in pre-1960 properties to be reasonable and has changed the relevant provision to allow that "where abatement of lead-based paint hazards is not completed before the closing of the sale, the Federal agency *shall be responsible for assuring that the abatement is carried out by the purchaser before occupancy* of the property as target housing" (emphasis added) and in accordance with the requirements of either a State or tribal program authorized by EPA under subpart Q of 40 CFR part 745 or EPA's requirements at subpart L of 40 CFR part 745. This revised wording is intended to provide agencies more choice, while retaining their responsibility to assure compliance with the statute; and it eliminates the potential for confusion and complications in the bidding process by removing the provision that confined the authority to make abatement a condition of sale only to those sales in which the purchasers will not be owner occupants of the property. Further, it should be noted that it is HUD's interpretation that abatement will not be required if the reuse is not to be target housing.

With regard to disposal of military property, HUD recognizes that there are several statutory, regulatory and policy requirements pertaining to the cleanup, disposal and reuse of BRAC (base realignment and closure) properties and that agencies of the Department of Defense are using provisions in contracts for sale and deeds to assure that lead-based paint hazards in target housing built before 1960 will be abated prior to occupancy. Typical of such contract or deed provisions is the following: "Purchaser agrees that purchaser will be responsible for the abatement of any lead-based paint hazards (as defined in Title X and implementing regulations) by a certified contractor in accordance with Title X and implementing regulations before the use and occupancy of such improvements as a residential dwelling (as defined in Title X)." To document compliance with such a provision, HUD recommends that Federal agencies include as a contractual condition the requirement that the purchaser send a copy of the certified abatement report, including clearance, to the agency.

The Department of the Army recommended that the rule be changed to allow the lead-based paint inspection and risk assessment, as well as the abatement, to be conducted following the sale of the property. HUD is of the opinion that evaluation must be conducted by the Government before the sale for two reasons: (1) Unless the evaluation is done prior to bidding, bidders will be unable to estimate the cost of abatement in pre-1960 properties and to consider that amount in calculating their bids; and (2) for properties built after 1959 and before 1978, the statute explicitly states that "the results of such inspections shall be made available to prospective purchasers."

One advocacy organization argued that the regulations should do away with the artificial distinction they create between HUD-owned property and housing owned by some other Federal agency stating that "the Federal government must provide consistent leadership in ensuring that all housing it sells or * * * disposes of is free of lead hazards." HUD's rationale for distinguishing between HUD Programs and those of other Federal agencies is discussed under Section III.D.5 of this preamble, above.

As mentioned above, in Section III.A.3 of this preamble, the statute states that the requirements of section 1013 do not apply "in the absence of appropriations sufficient to cover the costs." Therefore this final rule provides in subpart B, at § 35.115, that each Federal agency other than HUD must determine whether appropriations are sufficient.

With regard to a sale of housing owned by Federal agencies other than HUD and in which more than one Federal agency is party to the sale, HUD leaves to the agencies involved the responsibility to determine which Federal agency is responsible for compliance with this subpart.

4. *Subpart D—Project-Based Assistance Provided by a Federal Agency Other Than HUD.* This subpart sets out minimum requirements, consistent with section 1012, for Federal agencies other than HUD that have housing programs and provide more than $5,000 of project-based assistance. The subpart basically restates the minimum requirements set out in section 1012. Few comments were received on this subpart of the proposed rule and therefore, the requirements remain largely unchanged.

HUD has modified the proposed-rule requirements for notification of occupants about the results of evaluation and hazard reduction. In the final rule, the notification requirements that apply to this subpart are basically the same as those that apply to HUD-assisted housing instead of the more general proposed version. The Department believes that this change will result in more uniform and complete notification practices among all federally owned and assisted housing, consistent with government-wide regulatory streamlining.

In response to a question from the Department of Agriculture regarding how the "more than $5,000" figure is to be applied, HUD is indicating in the final rule that the requirements apply to housing that receives annually more than $5,000 *per project.*

5. *Subpart E reserved.* This subpart is reserved for possible future rulemaking on lead-based paint poisoning prevention requirements in single family housing covered by an application for HUD mortgage insurance or guarantee. Existing requirements at 24 CFR part 200, subpart O, as revised by this final rule, shall continue to apply to housing covered by an application for single family mortgage insurance.

6. *Subpart F—HUD-Owned Single Family Property.* This subpart sets out the requirements for HUD-owned single family property. In the proposed rule, two subparts addressed HUD-owned single family property; one subpart set out the requirements when sufficient appropriations were available, and another set out the requirements for such property in the absence of sufficient appropriations. In the case of sufficient appropriations, the requirements were identical to those of section 1013 of Title X: for housing built before 1960, a risk assessment and lead-based paint inspection followed by abatement of lead-based paint hazards; for housing built between 1960 and 1978, a risk assessment and lead-based paint inspection, followed by disclosure as required under the disclosure law. In the case of insufficient appropriations, the requirements were a visual-assessment for deteriorated paint followed by paint repair and cleanup. The Department has removed the appropriations distinction, and set forth a single policy under subpart F, as explained in Section III.A.3 of this preamble, above.

A childhood lead poisoning prevention advocacy group argued for stronger protection in both the single-family and multifamily subparts, asserting that HUD and other Federal agencies selling residential properties have a "particular responsibility" to ensure that sold properties contain no lead-based paint hazards. The commenter declared, "HUD has complete discretion and ample existing authority to require the evaluation and control of lead hazards before the sale of federally owned housing." An environmental organization joined in all these points, and remarked that "one of the most obvious opportunities for lead hazard control is during turnover, such as that accompanying change of ownership. HUD can, and should, be a leader in assuring that hazards are corrected at the time of sale * * *" The groups called for revisions to include the requirement of a risk assessment and hazard identification and control for any older structure.

In the final rule, the requirements for HUD-owned single family properties being purchased with a mortgage insured by HUD are: a visual assessment to identify deteriorated paint, paint stabilization, and unit-wide clearance. HUD has added the clearance requirement to provide assurance that the work is done properly and that no hazards remain after paint stabilization. Clearance is required only if paint stabilization is conducted. The Department has the option to test deteriorated paint and to confine paint stabilization only to those surfaces with deteriorated lead-based paint. No requirements are established for properties being purchased without a HUD-insured mortgage, except for the requirements of the disclosure rule. Many of the properties purchased

without HUD-insured mortgages are in need of major rehabilitation. The cost of paint stabilization and cleanup would be substantial relative to the value of the property, and there is a high likelihood that subsequent rehabilitation would negate the effectiveness of the cleanup in removing dust-lead hazards. HUD will acquaint purchasers of the risks of generating lead-based paint hazards during rehabilitation; this will occur during the notification and disclosure required by subpart A of 24 CFR part 35. Approximately one-half of all HUD-owned single family properties are purchased with HUD-insured mortgages.

This subpart does not require specific action regarding an environmental intervention blood lead level child. Less than 1 percent of single family properties are occupied when HUD acquires ownership, and, in most cases, HUD-owned single family property is vacant within three months of the transfer of ownership to HUD. Further, HUD-owned single family properties are generally sold within six months after acquisition. Because of the limited occupancy and relatively short HUD involvement with these properties, the Department finds it impracticable to impose environmental intervention blood lead level requirements.

7. *Subpart G-Multifamily Mortgage Insurance.* This subpart sets out the requirements for the Department's multifamily mortgage insurance programs. As in the proposed rule, applications for mortgage insurance in connection with a refinancing transaction are excluded from coverage if an appraisal is not required under the applicable procedures established by HUD. This exemption, which affects applications under section 223(a)(7) of the National Housing Act, is sensible because the properties are already under mortgage insurance, the mortgage amount is not being changed, there is no equity-take out, and the processing is very streamlined, often involving no on-site inspection by HUD.

The proposed rule required visual assessment for deteriorated paint, paint repair and cleanup for these programs. One commenter said that the HUD regulation will serve as "a model standard of care for the private mortgage insurance industry" and asked that HUD require the implementation of essential maintenance practices, risk assessments and lead hazard controls in all pre-1960 multifamily insured properties, and essential maintenance practices and risk assessments in all other federally insured properties. HUD agrees that rental housing must receive greater protection from lead-based paint hazards than owner-occupied housing because tenants have less ability than owners to make the repairs necessary to reduce hazards. The Department has revised, therefore, the procedures of the proposed rule to ensure, to the extent HUD considers practicable, that pre-1960 units are free of lead-based paint hazards and that the risk of lead exposure is minimized in housing built after 1959.

A major housing industry organization pointed out that it would not be practicable to implement the proposed-rule requirement that deteriorated paint in a multifamily property be repaired "before the issuance of a firm commitment," because it would compel a mortgagor to expend sums on paint repair "based on chance and speculation." Other factors could prevent issuance of the commitment, or market conditions might prevent closing on the commitment's terms. It was suggested that HUD escrow 125–150% of the estimated cost of the repair work, and permit the paint to be repaired within 90 days after closing, using a repair escrow. The Department has addressed this comment by providing for a repair escrow in the final rule.

In the final rule, a multifamily insured property constructed before 1960 must have a risk assessment before the issuance of a firm commitment, and interim controls of identified lead-based paint hazards must be completed before firm commitment or made a condition of the sale and insurance agreement with sufficient funds escrowed. Also, there must be notices to occupants regarding the results of the evaluation and hazard reduction. The sponsor must also agree to incorporate ongoing lead-based paint maintenance into regular building operations. Ongoing maintenance activities in this final rule are comprised of many of the same elements as the essential maintenance practices recommended by the Task Force. The Department is not requiring reevaluation in housing covered by this subpart, because there is no continuing Federal subsidy. For a multifamily insured property constructed after 1959 and before 1978, no evaluation or hazard reduction is required in the final rule; but for these properties, the sponsor must agree to incorporate ongoing lead-based paint maintenance practices into regular building operations. Due to the limited relationship between the purchaser and the Federal government, HUD deemed it impracticable to include in this subpart requirements for responding to a child with an environmental intervention blood lead level. In cases where multifamily mortgage insurance is combined with another HUD program (e.g., project-based assistance), the environmental intervention blood lead level requirements for that program would apply.

A new section has been added to this subpart of the final rule to clarify Departmental mortgage insurance policy on lead-based paint in buildings being converted from nonresidential use to multifamily residential use (conversions) and in multifamily residential properties undergoing major rehabilitation. Major rehabilitation is defined as rehabilitation that is estimated to cost more than 50 percent of the estimated replacement cost after rehabilitation. The requirement for both types of property is that all lead-based paint be abated and that the abatement methods be, to the extent practicable, paint removal or component replacement. Enclosure or encapsulation may be used if paint removal or component replacement are not practicable, as for example if they would damage substrate material considered architecturally significant. If the building is an historic property, interim controls can be used at the request of the State Historic Preservation Office (as explained in Section III.E.2.b of this preamble, above).

HUD considers conversions and major rehabilitations a special case because they usually involve major renovation of the interior, including new partitioning, new heating, ventilating, mechanical and electrical systems, plus new windows and doors. Also, conversions are, in effect, newly built housing. Such major construction activity provides an opportunity to remove lead-based paint and thus assure that such properties will be free of any possibility that lead-based paint hazards will be generated in the future as a result of the disturbance of paint during building operations, maintenance or future renovations. The incremental cost of abatement of all lead-based paint relative to the total conversion or rehabilitation cost will, in most cases, be modest, and, once done, the properties will be free of lead-based paint requirements, except to monitor any encapsulation or enclosure treatments or to engage in ongoing lead-based paint maintenance if interim controls are used in an historic property.

8. *Subpart H-Project-Based Rental Assistance.* This subpart sets out the requirements for the Department's project-based rental assistance programs. The Indian Housing Block Grant Program has been added as a covered program under this subpart.

The legislative history of Title X indicates that it was the intent of Congress that the requirements of a risk assessment and interim controls would apply to housing receiving project-based assistance. Therefore these procedures are required in the final rule, as they were in the proposed rule. The final rule also requires ongoing maintenance and reevaluation to assure that the housing remains lead safe, which is similar to the monitoring requirement in the proposed rule, and it has additional requirements to respond to a case of a child with an environmental intervention blood lead level, as did the proposed rule.

There is ample evidence, however, in the statute and in legislative history that Congress felt that evaluation and hazard reduction requirements should be reasonably related to the level of Federal financial assistance. Therefore, as in the proposed rule, the requirements of a risk assessment and interim controls apply only to multifamily properties receiving more than $5,000 per dwelling unit annually in project-based rental assistance, calculated as an average of per assisted unit. For all other properties receiving project-based rental assistance under a HUD program, the initial evaluation and hazard reduction requirements are: A visual assessment to identify deteriorated paint, stabilization of deteriorated paint, and clearance (if paint stabilization is required). This less stringent requirement applies to multifamily properties receiving an average of up to and including $5,000 per assisted dwelling unit annually in project-based rental assistance and all single family properties receiving Section 8 Moderate Rehabilitation or Project-Based Certificate assistance or project-based rental assistance from another HUD program. The stringency of the requirement is less for these properties because the amount of financial assistance is less and because the Department wanted to relieve owners of single family rental property with limited financial resources from the more extensive lead-based paint requirements that apply to owners of large multifamily projects with a high level of rental assistance. On average, the costs per dwelling unit of evaluation and hazard reduction are significantly higher for single family than for multifamily housing.

A commenter believed that the rule's definition of "project-based assistance" could be read to include assistance delivered by local governments using HUD's Community Planning and Development (CPD) program funds. It is the Department's expectation and intent that most housing-related programs using CPD program funds will be covered by subparts J (rehabilitation), K (acquisition, leasing, support services, and operation), and M (tenant-based rental assistance). However, a CPD-funded program may be covered by subpart H if it is providing rental assistance that is tied to a particular property through contract or agreement.

The Department has decided that the term "project-based" should be given its traditional meaning of housing assistance payment programs where the funding is tied to the residential property and not to the tenant. Further, the requirement for risk assessment only makes sense when it is applied to traditionally "project-based" housing assistance payment programs, where HUD maintains an ongoing relationship with the owner and is able to require a phase-in of risk assessment requirements.

Section 1012 of Title X (at 42 U.S.C. 4822(a)(1)(B)) sets out a schedule in which risk assessments and interim controls must be performed, i.e., all pre-1960 dwelling units before January 1, 1996; 25 percent of 1960–1978 dwelling units by January 1, 1998; not less than 50 percent of 1960–1978 dwelling units by January 1, 2000; and the remainder by January 1, 2002. The Department is not issuing a final lead-based paint rule in time to meet the January 1, 1996 deadline. Therefore, the Department has delayed the start of the risk assessment schedule but is establishing an expedited phase-in schedule that is somewhat simpler than that in the statute: September 17, 2001, for properties constructed before 1960, and September 15, 2003, for properties constructed after 1959 and before 1978.

This risk assessment phase-in schedule applies only to multifamily properties receiving more than $5,000 per unit annually in project-based rental assistance. The schedule for all other properties covered by subpart H is based on the schedule of initial or periodic inspections.

The revised schedule for risk assessments is based on the comments received on the proposed rule's risk assessment schedule, and it also takes into account the delay in meeting the deadlines established by the Congress. It is HUD's view that the revised schedule still provides adequate time for education and training in order to implement the new technical standards, requirements and procedures. The proposed rule provision that allows the Secretary to develop an alternative schedule, if necessary, remains in this subpart. The provision was included to provide the Department with flexibility in working with HUD clients whose housing assistance payment contracts are due to expire close to the required date for completing risk assessments—an issue raised by commenters.

The final rule does not include the proposed rule's requirement that an owner develop a hazard reduction plan. The hazard reduction plan, a concept suggested by the Task Force, was intended to provide the owner with flexibility to design his or her own schedule for completing interim controls. However, it was perceived by commenters and by the Department to be a paperwork requirement that could be a burden for owners and an unsolvable administrative problem for the Department. HUD has established, therefore, the following schedule for interim controls: Dwelling units occupied by families with children under 6 years of age and common areas servicing those units shall have interim controls completed no later than 90 days after the completion of the risk assessment for those units. Dwelling units not occupied by families with children under 6 years of age, common areas servicing those units, shall have interim controls completed within 12 months of the completion of the risk assessment for those units. If the owner chooses to conduct standard treatments rather than a risk assessment and interim controls (see "Options" above), standard treatments for units occupied by children of less than 6 years of age must be completed no later than 90 days after the final date for completion of a risk assessment, and for other units no later than 12 months following the final date for completion of a risk assessment. Completion of standard treatments as well as interim controls includes clearance testing.

These policies regarding interim controls and the standard treatment option must be complied with only by owners of properties receiving more than $5,000 per unit annually in project-based rental assistance. Other properties must complete paint stabilization and clearance, if needed, within 30 days of receiving notification of the results of the visual assessment.

HUD assumed in drafting the proposed rule that multifamily properties receiving more than $5,000 per unit annually in project-based rental assistance would be subject to the same lead-based paint requirements that currently apply until they are required to comply with this new regulation. Commenters pointed out that more clarity and precision is needed on requirements during the phase-in period. Therefore the Department is adding to this subpart a paragraph on transitional requirements that will be

effective on September 15, 2000. Until the phase-in date that is applicable to a property, or until the owner conducts a risk assessment, whichever is first, the owner must practice ongoing lead-based paint maintenance. This consists mainly of three activities: (1) Visually assessing, at least once a year, the condition of painted surfaces to identify deteriorated paint; (2) stabilizing any deteriorated paint; and (3) using safe work practices when performing any maintenance or renovation that disturbs paint that may be lead-based paint.

As explained in Section III.D.6 of this preamble, above, environmental intervention blood lead level requirements that apply to this subpart have been revised.

9. *Subpart I-HUD-Owned and Mortgagee-in-Possession Multifamily Property.* In the proposed rule, two subparts addressed the disposition of HUD-owned multifamily property; one subpart set out the requirements that would apply when sufficient appropriations were available to comply with the statutory requirements of section 1013, and another set out the requirements in the absence of sufficient appropriations. The section 1013 requirements are: for pre-1960 properties, an inspection and risk assessment followed by abatement of lead-based paint hazards, and, for properties built after 1959 and before 1978, an inspection and risk assessment followed by disclosure. In the absence of sufficient appropriations, the proposed rule called for a visual evaluation to identify deteriorated paint followed by repair of deteriorated paint and cleanup of the worksite. Additional requirements were included in the case of a child with an environmental intervention blood lead level, and monitoring of paint conditions was required for properties retained in the HUD-owned inventory for more than one year. No distinction was made for the period of construction, e.g., before or after 1960.

In the final rule, the Department has removed the appropriations distinction, and set forth a single policy under this subpart, as discussed under Section III.A.3 of this preamble, above. The Department's intent in setting lead-based paint policy for HUD-owned and mortgagee-in-possession multifamily property in this final rule is to make the requirements similar to those for multifamily properties receiving more than $5,000 per unit annually in project-based rental assistance while recognizing the intent of Congress as expressed in section 1013 of Title X. HUD finds no reason to require of itself a less stringent standard than it requires of private owners of assisted multifamily housing. The Department must conduct a lead-based paint inspection and risk assessment before publicly advertising the property for sale, followed by interim controls of all identified lead-based paint hazards. A lead-based paint inspection is required as well as a risk assessment so information on the location of lead-based paint can be given to the purchaser pursuant to the disclosure rule at subpart A of 24 CFR part 35, who can then use it to assure that lead-based paint hazards are not generated inadvertently during future maintenance or renovation work. For dwelling units occupied by families with children of less than 6 years of age and common areas servicing such units, interim controls shall be completed no later than 90 days after the completion of the risk assessment; while dwelling units not occupied by families with children younger than 6 and associated common areas must have interim controls and clearance completed no later than 12 months after the risk assessment. If a unit becomes newly occupied by a family with a child of less than 6 years of age or such a child moves into a unit, interim controls must be completed within 90 days after said move-in if they have not already been completed. The schedule for completion of standard treatments is also the same as for multifamily housing receiving more than $5,000 per unit annually in project-based rental assistance. The Department must provide a notice to occupants if evaluation or hazard reduction is undertaken.

If conveyance of the title by the Department at a sale of a HUD-owned property or a foreclosure sale caused by the Secretary when HUD is mortgagee-in-possession occurs before the required schedule for completion of interim controls or standard treatments, the Department must complete the hazard reduction before conveyance or foreclosure sale, or the Department shall be responsible for assuring that interim controls are carried out by the purchaser according to the following schedule: (1) In units occupied by families with children of less than 6 years of age and common areas servicing such units, no less than 90 days after the date of closing of the sale or 90 days after a family with a child less than 6 moves in; and (2) in all other units and associated common areas, no later than 180 days after the closing of the sale. The schedule for completion of hazard reduction by the purchaser is keyed to the closing date, because it is only at that time that the purchaser can begin to make firm arrangements to conduct the treatments; but the duration of time from the closing date is somewhat less than that which HUD must meet in relation to the risk assessment date because of concern that the risk assessment may go out of date. Similar to requirements for multifamily properties receiving project-based assistance, ongoing maintenance and reevaluation are required under this subpart if the Department retains ownership of the property for more than 1 year.

This subpart requires specific actions in response to a child with an environmental intervention blood lead level; the requirements are similar to those for housing receiving project-based rental assistance.

10. *Subpart J–Rehabilitation.* This subpart sets out the requirements for the Department's programs which provide assistance for housing rehabilitation. The majority of this assistance is provided through programs administered by the Office of Community Planning and Development (CPD), principally the Community Development Block Grant program and the HOME program. Other rehabilitation assistance is provided under the Flexible Subsidy-Capital Improvement Loan Program (CILP) and the Mark-to-Market Program for multifamily property. Rehabilitation assistance may also be provided under the Indian Community Development Block Grant Program and the Indian Housing Block Grant Program. This subpart does not apply to the following HUD programs that may have rehabilitation activities: Mortgage insurance programs, the Section 8 Moderate Rehabilitation program, and the public housing modernization programs. Those programs are covered by other subparts.

The requirements of Title X pertaining to federally assisted residential rehabilitation are quite specific. The statute sought to take advantage of the rehabilitation event as a cost-effective opportunity to sharply reduce lead-based paint hazards in the assisted stock. Many types of rehabilitation, such as window replacement or installation of new walls or doors, often reduce lead-based paint hazards. Section 1012 requires at a minimum: (1) Inspection for the presence of lead-based paint prior to federally-funded renovation or rehabilitation that is likely to disturb painted surfaces; (2) interim controls of lead-based paint hazards in housing receiving less than $25,000 per unit in Federal rehabilitation assistance; and (3) abatement of lead-based paint hazards

in housing receiving more than $25,000 per unit.

Among those commenters on the proposed rule who directed their remarks towards specific HUD programs, the rehabilitation programs drew by far the most attention, largely because compliance was perceived as complex and costly. Some commenters felt that the rule would reduce the impact that rehabilitation assistance funds can have on the community and would make smaller communities determine that rehabilitation projects are "not worth it." Pointing out that some local rehabilitation assistance is provided in the form of a loan, local agencies feared that they would have difficulty getting homeowners to borrow the additional funds needed to comply with the lead-based paint hazard reduction requirements. As a long time proponent and funder of housing rehabilitation, the Department understands and shares these concerns and has attempted to provide local agencies with ways to incorporate as efficiently as possible the statutory requirements of Title X into their rehabilitation programs.

At the outset, it should be noted that rehabilitation that does not disturb a painted surface is exempt from this rule. Thus, for example, roof repairs or heating system improvements are likely to be exempt unless such activities disturb painted surfaces.

In both the proposed rule and the final rule, HUD has interpreted the statutory requirement of a lead-based paint inspection to apply only to surfaces to be disturbed by rehabilitation. In the proposed rule this procedure was called a "limited paint inspection." In response to concerns of EPA regarding possible confusion if the word "inspection" is used differently than in EPA regulations, HUD is using the term "paint testing" instead (see Section III.E.2.c. of this preamble, above). Furthermore, HUD provides the option of either conducting paint testing of the painted surfaces to be disturbed or replaced during rehabilitation or presuming that all such painted surfaces are coated with lead-based paint. Paint testing is not necessary if a complete lead-based paint inspection has been conducted of the property.

In the final rule as well as in the proposed rule, the Department has added a category of housing receiving up to and including $5,000 per unit in Federal rehabilitation assistance to allow a lower level of lead-based paint treatment for rehabilitation of modest expenditure. HUD's intent in setting requirements for housing in this category of assistance is to allow low level rehabilitation to occur without incurring the full expense of the statutory lead-based paint requirements but at the same time to minimize the possibility of exposure to lead-based paint hazards as a result of the assisted rehabilitation work. This has been referred to as a "do-no-harm" policy. The impact of this policy is significant. HUD estimates that the average amount of rehabilitation assistance per unit from the Community Development Block Grant program is between $5,000 and $6,000. The proposed rule would have required visual assessment to identify deteriorated paint on surfaces to be disturbed by rehabilitation, repair of such deteriorated paint surfaces, and cleanup of the worksite. The final rule requires paint testing of surfaces to be disturbed or presumption of lead-based paint, and, if the paint is found or presumed to be lead-based paint, the following are required: safe work practices (as specified in subpart R of the final rule) during rehabilitation, repair of any paint disturbed during rehabilitation, and clearance of the worksite. The main differences between the proposed and final rules are (1) the more explicit emphasis on safe work practices during rehabilitation as the way to avoid causing exposure to lead-based paint hazards, and (2) the clearance requirement, which assures that no lead-based paint hazards are left at the worksite. The worksite consists of only those rooms or areas where the rehabilitation is conducted. Safe work practices include the following: Not using prohibited practices of paint removal, occupant protection and worksite preparation, and specialized cleaning. These practices were included in the requirements of the proposed rule for paint repair. HUD estimates that the average cost per unit of complying with today's rule for housing receiving no more than $5,000 in Federal rehabilitation assistance will be approximately $150 for single family and $115 for multifamily units.

For housing receiving more than $5,000 and up to and including $25,000 in Federal rehabilitation assistance, the final rule makes one significant change to the requirements in the proposed rule (which derive directly from the statute), and that is the standard treatment option. This option allows the use of standard treatments (as suggested by the Task Force; see Section III.D.3 of this preamble, above) instead of conducting a risk assessment and interim controls. If standard treatments are used, no evaluation is required. Standard treatments include stabilization of deteriorated paint, the provision of smooth and cleanable horizontal surfaces, the correction of conditions causing rubbing, binding or crushing of painted surfaces, and the treatment of bare soil—all using safe work practices and followed by clearance. When conducted as a part of rehabilitation, standard treatments must include stabilization of paint disturbed as a result of the rehabilitation work, and clearance must be conducted after completion of rehabilitation, as is the case if interim controls are conducted. Standard treatments may be an appropriate option in housing in which experience indicates there is a high likelihood of extensive lead-based paint hazards. In such housing the risk assessment would just confirm what is expected. Standard treatments may also be appropriate in housing that is otherwise in good condition but is undergoing rehabilitation in one or more confined areas, in which case the extent of deteriorated paint, surfaces that are not smooth and cleanable, and dust-generating conditions might be minor. Another potential advantage of standard treatments is that they are a known and limited group of activities that crews can be trained to perform efficiently. A possible disadvantage is that such treatments may be performed unnecessarily on surfaces without lead-based paint, because no testing is conducted.

In Title X, the statutory requirement for hazard reduction in properties receiving more than $25,000 per unit in Federal rehabilitation assistance is "abatement of lead-based paint hazards in the course of substantial rehabilitation projects." In the proposed rule, the statutory phrase "in the course of * * * rehabilitation" was interpreted to mean that lead-based paint hazards on surfaces to be disturbed by rehabilitation were to be abated (i.e. permanently eliminated), while hazard reduction (which includes less costly, but more temporary, interim controls as a minimum) could be conducted on lead-based paint hazards on other surfaces. This interpretation was questioned by those who thought the Congress meant that all lead-based paint hazards should be abated in these major rehabilitation projects, regardless of whether the surface was or was not being disturbed by the rehabilitation. Supporters of the proposed-rule interpretation claimed that the cost of abating lead-based paint hazards on the exterior of old houses with wood siding would be exorbitant. In the final rule, the Department has revised the proposed-rule requirement to require abatement of all lead-based hazards

identified by paint testing and/or a risk assessment and any lead-based paint hazards created as a result of the rehabilitation work, *except* that interim controls are acceptable on exterior surfaces that are not disturbed by rehabilitation.

HUD believes that the exemptions and options in this rule provide designated parties with enough flexibility to achieve the statutory objectives with maximum efficiency. For instance, in very old housing with a high likelihood of extensive lead-based paint and undergoing Federally assisted rehabilitation of between $5,000 and $25,000 per unit, the grantee, participating jurisdiction or CILP recipient may find it most efficient to forego the evaluation, presume the presence of lead-based paint and lead-based paint hazards, and conduct standard treatments using trained and efficient crews. Conversely, if the presence of lead-based paint or lead-based paint hazards is questionable, a grantee, participating jurisdiction or CILP recipient may choose to test the paint and conduct a risk assessment to determine whether it is necessary to treat all, some or any of the paint as lead-based paint.

Beyond the broad objections regarding the cost impact of the rule, commenters had many questions and concerns. A frequent complaint among commenters was their inability to determine, from the proposed rule, "exactly what rehabilitation is, what are rehab soft costs, and exactly what activities are to be used to determine the various types of costs." In the final rule, HUD has adopted the policy that the determination of the category of assistance (up to and including $5,000, more than $5,000 and up to and including $25,000, or more than $25,000) will be based on the hard costs of ordinary rehabilitation, not including the additional costs of complying with this rule. The Department has made efforts to clarify the definition of hard and soft rehabilitation costs through the use of examples.

A commenter also questioned the Department's decision not to include additional provisions for dwellings occupied by children with environmental intervention blood lead levels under rehabilitation-related rules. In general, the requirements for units receiving rehabilitation assistance of more than $5,000 (risk assessment and either interim controls or abatement of lead-based paint hazards) are similar to or more stringent than the activities that would be required in the case of an environmental intervention blood lead level child. Also, rehabilitation assistance is usually provided at one point in time, so there is often no continuing financial involvement of HUD with the property. However, in the case of a multifamily property receiving Federal rehabilitation assistance under the HOME program or the Flexible-Subsidy-CILP program, the grantee, participating jurisdiction or CILP recipient must require the property owner to incorporate ongoing lead-based paint maintenance activities into regular building operations. Ongoing lead-based paint maintenance practices are designed to ensure that new lead-based paint hazards do not occur in the property.

A commenter representing developers noted that "subrecipient" was defined to exclude an owner or developer receiving rehabilitation assistance. "Thus the responsibility of performing subrecipient duties must fall on the local government grantee. * * *" The commenter urged that the final rule permit duties to be delegated to the owner or developer, with only monitoring and oversight functions necessarily remaining with local government grantees. Although many of the requirements under this subpart refer to the grantee or participating jurisdiction, as is the case with many CPD programs, it is the Department's intent that the grantee or participating jurisdiction may require virtually all of these functions to be performed by a subrecipient or other designated party. The exclusion of an owner or developer, however, from the definition is retained in the final rule to permit at least some degree of independent oversight of the use of public funds.

Another funded agency commenter said that the rule's requirements would "cripple" the agency's ancillary programs. The commenter stated that the agency provides funds to an organization that implements an emergency rehabilitation program for county residents. This program, the commenter argued, is staffed by volunteers, and will not be able to comply with the extensive lead-based paint requirements. The Department has attempted to respond to this concern by tailoring the requirements to the amount of Federal assistance. While even the minimum requirements of the $5,000-or-less category may require workers to undergo a modest amount of training, such training may be necessary to protect children who may live in the unit, and it should not be inefficient where such workers are volunteers who work on multiple projects.

In the final rule, the Department has established separate requirements for insular areas operating rehabilitation programs under the HOME and Community Development Block Grant (CDBG) programs. Insular areas include the U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa. The requirements for insular areas are less stringent than the regular requirements for properties receiving more than $5,000 per dwelling unit in Federal rehabilitation assistance. There is no difference in requirements for properties receiving up to $5,000 per unit in rehabilitation assistance. The rationale for the lesser requirements is that insular areas do not currently have the capacity to comply with more stringent requirements applicable to other CDBG grantees and HOME participating jurisdictions, nor is it likely that capacity can be developed in the foreseeable future. The remote location of the insular areas, their small populations and the limited volume of HOME- and CDBG-funded housing activity makes the development of a competitive lead "industry" (i.e., certified lead inspectors, risk assessors and contractors) unlikely.

For properties receiving more than $5,000 per unit in rehabilitation assistance, the final rule requires, in insular areas, stabilization of all deteriorated paint and paint being disturbed by rehabilitation instead of the normal requirements of a risk assessment and interim controls or abatement of lead-based paint hazards. (As is always the case, stabilization is not required of paint found by a certified lead-based paint inspector not to be lead-based paint.) Safe work practices must be used, including occupant protection, worksite preparation and clearance. HUD believes that clearance is very important and that, if laboratory analysis of dust samples is not available on an island, it can be obtained at reasonable cost through air mail of samples and electronic response by the laboratory, as is often the practice elsewhere in the United States.

These separate requirements for rehabilitation assistance of more than $5,000 per unit in insular areas are protective of children and other occupants. They are the same as those in the final rule for units receiving tenant-based rental assistance (subpart M), assistance for acquisition, leasing, support services or operation (subpart K), and HUD-owned single family properties at disposition (subpart F). However, when undertaking Federally-funded rehabilitation, the Department encourages insular areas to use, to the maximum extent feasible and in consultation with their respective Field Office, the more rigorous and thorough methods and procedures required of other grantees and participating jurisdictions in subpart J.

Finally, subpart J requires that all occupants shall be provided with the lead hazard information pamphlet by the grantee, participating jurisdiction or CILP recipient (or their representative). In all cases where evaluation or hazard reduction or both are undertaken, each grantee, participating jurisdiction or CILP recipient shall post or distribute a notice to occupants of the results of the evaluation. The grantee, participating jurisdiction or CILP recipient shall also post or distribute a notice of the results of the hazard reduction activities.

11. *Subpart K—Acquisition, Leasing, Support Services, or Operation.* This subpart sets out the requirements for certain CPD programs and the Indian Community Development Block Grant program and the Indian Housing Block Grant program when such programs are providing Federal funding for acquisition, leasing, operating or support services for a residential property. In the proposed rule, this subpart was entitled "Community Planning and Development (CPD) Non-Rehabilitation Programs." The title has been changed because of the addition of Indian programs to the coverage of the subpart and because the new title is more descriptive than the term, "non-rehabilitation," used in the proposed rule. The main CPD programs that fund activities covered by this subpart are the HOME program, the Community Development Block Grant program, the Supportive Housing program, the Emergency Shelter Grant program, and Housing Opportunities for Persons with AIDS (HOPWA). Persons with AIDS are considered persons with disabilities, so assisted housing for them is exempt from the rule except when there is a child of less than 6 years of age who resides or is expected to reside in the dwelling unit.

Examples of the types of housing assistance to which subpart K applies are acquisition or leasing of a homeless facility, downpayment assistance, mortgage and utility payments for persons with AIDS (if a child under 6 resides), and payment of security deposits. Other examples are payment of the day-to-day operating expenses of housing for the homeless and assistance for various support services that are provided on site at a residential facility, such as child care, employment assistance, outpatient health care including drug treatment or counseling, case management, nutritional counseling, security arrangements, and assistance in getting permanent housing.

For properties built between 1950 and 1978, the lead-based paint requirements for these activities in the proposed rule were visual assessment, paint repair and cleanup. For properties built before 1950, the requirements were visual assessment, dust testing for the presence of dust-lead hazards, paint repair, cleanup of the dwelling unit if the dust testing finds dust-lead hazards, or cleanup only of the paint-repair worksite if the dust testing does not find dust-lead hazards. In certain instances, ongoing monitoring of paint conditions was required. For all activities, provision of the pamphlet developed by EPA under TSCA section 406 was required.

Some commenters expressed concern regarding the adverse impact that these requirements would have on small-grant acquisition assistance programs. The Department believes that families receiving such assistance should be able to move into lead-safe housing. HUD has a statutory responsibility under the Lead-Based Paint Poisoning Prevention Act to establish procedures that achieve that objective to the extent practicable.

In the final rule, as in the proposed rule, HUD has set requirements for this subpart that are the same in most aspects as those for tenant-based rental assistance, which is covered by subpart M. The basic strategy set forth in the final rule consists of a visual assessment to identify deteriorated paint, stabilization of deteriorated paint, clearance of the dwelling unit, and, where there is a continuing and active financial relationship with the property, ongoing lead-based paint maintenance. This procedure is the minimum needed to assure that the housing is lead-safe. Many of the households inhabiting residential properties assisted through programs covered by subpart K include young children. Many of the assisted households are homeless. A basic level of protection against exposure to lead-based paint hazards is essential.

In the final rule, HUD has changed the proposed rule's requirement of paint repair to paint stabilization, as it has throughout the final rule. This is explained above in Section III.D.9 of this preamble. Also, the dust testing requirement in pre-1950 housing has been eliminated, and in its place the Department has required clearance of the dwelling unit, as it has for all other HUD-assisted and HUD-owned housing. Clearance is required, however, only if paint stabilization is required. Also, the final rule eliminates the proposed rule's distinction between pre-1950 and post-1949 housing. In the interest of regulatory streamlining, a single set of requirements applies to all pre-1978 housing. As in the proposed rule, the grantee or participating jurisdiction must provide the lead hazard information pamphlet to all occupants except those who have received the pamphlet under the disclosure rule. Also, each grantee or participating jurisdiction must provide a notice to occupants describing the results of the clearance examination. The notice requirement does not apply to the visual assessment but does apply to clearance results after paint stabilization, because the clearance report provides known information about the presence or absence of lead-based paint hazards. Finally, the final rule requires that ongoing maintenance of painted surfaces and safe work practices be incorporated into regular building operations, where appropriate under HUD-administered programs.

The Department has given the grantee or participating jurisdiction the discretion to determine whether the cost of paint stabilization and clearance is to be borne by the owner/developer, the grantee or a combination of the owner/developer and the grantee, based on program requirements and local program design. This helps to ensure maximum flexibility for local authorities and is consistent with HUD's reinvention initiative. Because the relationship between the HUD grantee or participating jurisdiction and the property owner or developer is often a one-time event, HUD deemed it impracticable to include special requirements in the case of a child with an environmental intervention blood lead level.

12. *Subpart L—Public Housing Programs.* This subpart sets forth requirements for eliminating lead-based paint hazards in public housing. The proposed rule included Indian housing under this subpart, but, as explained above in Section III.A.8 of this preamble, Indian housing programs are now covered under other subparts of this rule. Section 1012 of Title X does not specifically add new requirements to public housing. The Senate Committee Report states that Congress did not intend the changes to the Lead-Based Paint Poisoning Prevention Act introduced by Title X to pose a barrier to ongoing efforts by public and Indian housing agencies to conduct risk assessments, lead-based paint inspections and abatement activities. According to the Report, "the changes made by Title X to the public housing provision of the LPPPA are intended merely to conform the terminology of Title X's definition of terms" (Senate Report 102–332, page 118). Nevertheless, in order to consolidate all

of the lead-based paint requirements for HUD in a single place, the Department is including subpart L for public housing in this rulemaking. This subpart implements the requirements set out in 42 U.S.C. 4822(d)(1)(3) prior to Title X; where necessary, however, the Department has modified these requirements in order to be consistent with the intent of Title X. Such modifications are noted below.

The Lead-Based Paint Poisoning Prevention Act requires PHAs to complete lead-based paint inspections of all pre-1978 family developments by December 6, 1994. This statutory requirement has existed since 1987. HUD has data indicating that most developments have been inspected, as mandated by Congress. Those that have not must be inspected no later than the effective date of this final rule, which is September 15, 2000. Where a PHA has not complied with the statutory requirement to complete lead-based paint inspections of pre-1978 family units, the PHA is eligible only for Emergency Modernization or work needed to complete the inspections as described in 24 CFR 968.210. The Lead-Based Paint Poisoning Prevention Act also has required for many years that PHAs abate all lead-based paint found in the inspections. This is a continuing activity conducted at the time of modernization.

The Department's primary concern in developing this rule is with the safety of occupants of housing developments that have lead-based paint but have not yet been abated. In such cases, modernization (and hence abatement) may be years or decades away, and nothing is required in the interim to control lead-based paint hazards. In the proposed rule, HUD set forth the following additional requirements for these developments with the goal of assuring that they are lead-safe: visual assessment for deteriorated paint, matching the visual assessment with the lead-based paint inspection to identify the locations of deteriorated lead-based paint, dust and soil testing to determine the presence of dust-lead hazards or soil-lead hazards, and interim controls of lead-based hazards found.

A principal concern of commenters was the financial burden, the asserted "unfunded requirement," the rule would place on public housing agencies. Based on these financial hardships, a group representing public housing agency interests recommended eliminating the rule's new requirements (dust and soil testing and interim controls) as they pertained to public and Indian housing. Acknowledging the need for addressing the issue of lead in the environment, one commenter asserted that most local housing agencies already had made a good faith effort to comply with the requirement to complete lead-based paint inspections by the end of 1994.

A more specific issue addressed by some commenters was the acceptance by the proposed rule of dust and soil testing by non-certified personnel. Some commenters objected to this because it appeared to violate the requirements of EPA's regulations implementing TSCA sections 402 and 404. Others urged HUD to establish a major training activity to assure that public housing maintenance staff would be able to conduct such sampling properly and interpret the results accurately.

In the final rule, HUD is requiring that, instead of soil and dust testing by non-certified personnel, risk assessments must be conducted by certified risk assessors in developments with lead-based paint that has not yet been abated. The Department has concluded after careful consideration that it would be wasteful and ineffective to allow PHAs to skirt the EPA certification requirements for dust and soil testing. For further discussion of this issue, see Section III.D.8 of this preamble, above.

Another question has to do with the reliability of the lead-based paint inspections that have already been conducted. In a study of prior inspections in public housing, HUD has found that approximately 13 percent of the inspections were of questionable accuracy. In the proposed rule HUD, therefore, encouraged PHAs to engage in quality control activities to determine whether a lead-based paint inspection is reliable. The final rule continues this policy. HUD's Office of Public and Indian Housing issued a detailed Notice in 1995 (PIH 95–8(HA)) explaining how quality control can be implemented for lead-based paint inspections that have already occurred.

The final rule also continues the proposed rule requirement that occupants be informed of the results of all evaluation and hazard reduction activities, and it continues the additional requirements that are triggered if a child with an environmental intervention blood lead level is identified in a public housing development. The basic requirement is that a risk assessment and interim controls be completed in the dwelling unit quickly. A more detailed explanation of the requirements for response to a child with an environmental intervention blood lead level is provided above in Section III.D.6 of this preamble.

Under this subpart the Department has included references to the liability insurance provisions found in the pubic housing program requirements. Also, the rule describes the circumstance under which a PHA may use financial assistance received under the modernization program for the evaluation and reduction of lead-based paint hazards, and references sections of the public housing regulations for additional information on eligible costs.

13. *Subpart M—Tenant-Based Rental Assistance.* This subpart sets out lead-based paint requirements for the Department's tenant-based rental assistance programs, including those operated under the HOME, Housing Opportunities for Persons With AIDS (HOPWA), Shelter Plus Care, and Indian Housing Block Grant programs as well as Section 8. Because there are different types of local organizations that administer tenant-based rental assistance under HUD programs, this subpart uses the general term "designated party" to refer to housing agencies, grantees, participating jurisdictions or Indian Housing Block Grant recipients. Unlike other subparts, this subpart applies only to housing occupied by families with children of less than 6 years of age.

The lead-based paint requirements for tenant-based rental assistance in the proposed rule were virtually the same as those proposed for the subpart now titled Acquisition, Leasing, Support Services, or Operation (formerly CPD Non-Rehabilitation). For properties built between 1950 and 1978, visual assessment, paint repair and cleanup; for properties built before 1950, visual evaluation, dust testing for the presence of dust-lead hazards, paint repair, cleanup of the dwelling unit if the dust testing finds dust-lead hazards, or cleanup only of the paint repair worksite if the dust testing does not find dust-lead hazards.

Comments ranged from declarations that it was illegal under the statute to apply the rule to tenant-based programs to assertions that stringent lead-control standards must be applied, *especially* in the case of the tenant-based programs. Commenters opposed to the requirements argued that there exists a "statutory, program-wide exemption for housing receiving tenant-based Section 8 assistance." One commenter asserted that only landlords agreeing to accept assistance under a section 1011 grant (i.e., the HUD Lead-Based Paint Hazard Control Grant program) are required to adhere to requirements associated with lead-based paint testing and control. HUD disagrees. The Department's response to the question of the legality of imposing lead-based paint requirements on tenant-based rental assistance programs is discussed above, under Section III.A.2. of this preamble.

Many commenters discussed the fair housing implications of the rule because of its focus on families with young children. Some commenters advocated simply relocating a family to another unit upon discovery of a lead hazard (leaving the unit available for other families without small children). Others advocated making special funding available in pilot programs for particular localities, to finance any necessary control or abatement activities, or providing tax or other special incentives to owners faced with unexpected repair costs arising out of the discovery of a lead hazard. Still other commenters advocated coverage for all tenant-based units without regard to family makeup.

The Department believes limiting the requirements of subpart M to dwelling units in which a family with a child less than age 6 resides is a reasonable policy because of the unique ability of designated parties to identify changes in the composition of an assisted family through the income certification process. In addition, the designated parties are able to monitor the property owner's compliance with lead-based paint requirements through initial and periodic dwelling unit inspections. These two safeguards will help to ensure that a designated party will know whether a child of less than 6 years of age resides in a dwelling unit. An owner who refuses to rent a dwelling unit to a family with a child under the age of 6 may be in violation of the provisions of the Fair Housing Act prohibiting discrimination on the basis of familial status. The same possibility applies to a designated party that requires that a family with a young child make an involuntary relocation. (See the discussion of the requirements of anti-discrimination statutes in Section III.D.7 of this preamble above.)

Comments included repeated expressions of fear that the cost of compliance with this subpart would result in a "shortfall" of housing available to families with tenant-based rental assistance, and assertions that new contractual duties were being imposed on owners that were not a part of the owners' existing agreements with the designated party. Landlords will be discouraged from participating, commenters claimed, and the rule will drive up their operating costs, without any certainty of additional compensation. Both rural housing authorities and agencies in the largest cities worried about tight rental markets and the inability of participating families to locate lead-safe units.

Taking the more protective point of view, other commenters noted that the rule's requirements for tenant-based programs were less demanding than those set out for project-based programs and advocated applying the stricter standards uniformly. Some commenters urged that HUD impose the same protection that the Task Force on Lead-Based Paint Hazard Reduction and Financing recommended for all private units. A health department believed that because housing assistance programs were shifting toward tenant-based assistance, "the most stringent of requirements probably should be on this (type) of housing."

In considering how to respond to these comments, HUD took into account the recommendations of the Task Force. In their report, the Task Force recognized most of the concerns expressed by commenters on the proposed rule, not the least of which was the fear that expensive standards could reduce participation in the program by private landlords. It is noteworthy that the Task Force concluded that lead-based paint requirements for tenant-based assistance programs should be similar to the standards recommended by the Task Force for rental housing in general.

Under current regulations, HUD requires that designated parties administering tenant-based rental assistance programs visually inspect pre-1978 dwelling units that are to be occupied by children under the age of 6 to identify defective paint, and that owners correct any defective paint surfaces and clean up the worksite carefully. Except for the explicit cleanup requirement, which was issued in 1995, these requirements have been part of the Housing Quality Standards (HQS) for over ten years.

In the final rule, as in the proposed rule, HUD is retaining the requirement of a visual assessment to identify deteriorated paint to be performed usually by a housing quality inspector at initial and periodic inspections. (There is no effective difference between the meaning of "defective paint," the term used in the current regulations, and "deteriorated paint," which is the term used in Title X.) Also, the final rule retains the proposed rule requirement that such inspectors be trained to perform the activities required of them by this rule. The Department is developing a training course that will enable such inspectors to meet this requirement. The purpose of the course is to assure that persons performing the visual assessment understand why they are doing it, what they should look for, and why deteriorated paint should be stabilized. The course was pilot tested in 1998 and will be available well before the effective date of this final rule.

The basic concept of treating defective paint is being retained, but the final rule modifies the details of the standard applying to that requirement. First, as explained above in Section III.D.4 of this preamble, the minimum area of defective paint that must be treated has been changed. The minimum that was promulgated in the Housing Quality Standards in 1995, and was included in the proposed rule, is being withdrawn at the request of many housing agencies, health departments and other commenters who found it complicated, difficult to administer, and contrary to the purpose of the regulations. As was the case before 1995, all deteriorated paint must be treated.

Second, the painted surfaces that are subject to the rule have changed.

Current requirements apply to all interior surfaces within the dwelling unit, the entrance and hallway serving the unit in a multi-unit building, and exterior surfaces up to five feet from the floor or ground that are readily accessible to children under 6 years of age, but excluding outbuildings. The proposed rule was the same as the current regulations, except for the addition of playground equipment and fences surrounding an exterior play area. The final rule sets no limits to the surfaces covered by the requirement, saying only that the designated party shall conduct a visual assessment of "all painted surfaces." It is HUD's intent that such surfaces shall include all surfaces within the dwelling unit, all surfaces on the exterior of the structure regardless of height from the ground, and all common areas servicing the dwelling unit. The definition of "common area" in the rule includes all areas on the property available for use by occupants of more than one unit, including outbuildings such as garages.

Third, in the final rule the details regarding the method of treatment are somewhat different than those in current regulations and in the proposed rule. Current regulations require removal of defective paint (using specified acceptable methods) and covering surfaces "with durable materials with joints and edges sealed and caulked as needed to prevent escape of dust." The proposed rule called for "paint repair", which was repainting with proper surface preparation using safe practices and including occupant protection and cleanup. The final rule requires "paint stabilization," which is the same as

paint repair except that it includes the additional requirement that any physical defect in the substrate that is causing deterioration be repaired. Such defects include dry-rot, rust, moisture, crumbling plaster, and missing siding or other components that are not securely fastened. As discussed above in Section III.D.9 of this preamble, HUD is uniformly requiring paint stabilization across this final rule, because otherwise the treatment of the deteriorated paint will be ineffective.

The fourth change to the standard for treating deteriorated paint is the requirement in the final rule that there be clearance of the dwelling unit if paint stabilization is conducted. As explained above, this is also a uniform requirement across this rule whenever hazard reduction is conducted. It does not exist in current regulations nor was it required for tenant-based rental assistance programs in the proposed rule. HUD believes unit-wide clearance is an essential factor in establishing that a dwelling unit is lead safe, and therefore is requiring that clearance tests be conducted by certified risk assessors or certified lead-based paint inspectors. The final rule eliminates the dust testing requirement for pre-1950 housing that was in the proposed rule and the distinction between pre-1950 and post-1949 housing. In the interest of regulatory streamlining, a single set of requirements applies to all pre-1978 housing.

All occupants shall be provided the lead hazard information pamphlet by the owner, except that a pamphlet does not have to be provided if it has already been provided by the owner or other designated party pursuant to the disclosure rule. Also, the owner must provide a notice to occupants describing the results of the clearance examination. Finally, the final rule requires that ongoing maintenance of painted surfaces and safe work practices be incorporated into regular building operations, where appropriate under HUD-administered programs.

HUD estimates in the Economic Analysis for this rule that the average cost of the new requirements imposed by this subpart will be approximately $250 per unit in single family units and $100 per unit in multifamily units during the first year after the effective date. In subsequent years, costs will doubtless be less. Net benefits are clearly positive. For single family units, the estimated average net benefit (benefits minus costs) is $850 per unit using a discount rate of three percent for increased lifetime earnings and $125 per unit using a seven percent rate. For multifamily units, the comparable net benefits are $840 and $150. For further information on costs and benefits of the rule, see Section VI. of this preamble, below.

Another subject of public comment was the policy on responding to the existence of an environmental intervention blood lead level child in the home of a family receiving tenant-based rental assistance. Some commenters felt that the proposed policy of requiring a risk assessment and interim controls would reduce participation in the program by property owners. HUD believes that compliance with the basic policy of paint stabilization and unit clearance, combined with ongoing maintenance is so inexpensive and will so reduce the likelihood of environmental intervention blood lead level cases in these dwellings that landlords will not leave the program. To ensure that the designated party is aware of environmental intervention blood lead level cases in assisted families, the final rule clarifies the requirements of the proposed rule for exchanging information between public health departments and designated parties and matching environmental intervention blood lead level addresses with those of assisted families. (See further discussion in Section III.D.6 of this preamble, above.) Also, for purposes of clarity, the rule states that if a dwelling unit does not comply with the requirements of this rule, the unit does not meet Housing Quality Standards (HQS). If a family is occupying a unit that is out of compliance, the designated party may offer the family the right to move to another unit. If the family refuses to move, the designated party may curtail assistance.

14. *Subparts N–Q reserved.*

15. *Subpart R—Methods and Standards for Lead—Based Paint Hazard Evaluation and Reduction Activities.* This subpart replaces part 37 of the proposed rule. It is shorter than the proposed part 37 because it references methods and standards established by EPA-authorized State or tribal programs or by EPA itself for risk assessment, lead-based paint inspection and abatement. Revised, streamlined sections are provided on interim controls (including paint stabilization), occupant protection and worksite preparation, and ongoing lead-based paint maintenance and reevaluation (called "monitoring" in the proposed rule). New sections are provided on standard treatments and safe work practices, concepts recommended by the Task Force (see Section I.D.2 of this preamble, above).

a. *Standards.* Although HUD defers to a large extent to methods and standards set by States, Indian tribes or EPA for lead-based paint inspections, risk assessments, lead-hazard screens and abatements, the Department is requiring that Federal standards for lead-based paint, dust-lead hazards and soil-lead hazards be used when conducting evaluations and hazard reductions in housing covered by this final rule unless a State, tribal or local government requirement is more protective.

As explained above in Section III.D.4 of this preamble, above, the standard for deteriorated paint in the proposed rule contained de minimis areas that are not included in the final rule. The definition of lead-based paint, however, is the same. HUD is including interim standards for dust-lead hazards and soil-lead hazards pending effective EPA standards pursuant to TSCA section 403. The interim standard for soil-lead hazards, and the concentration for abating bare soil, are unchanged from the proposed rule; but the interim dust-lead standards have changed. The proposed dust-lead standard for risk assessments and reevaluations was 100 µg/sq.ft (micrograms per square foot) for interior floors (both hard and carpeted) and 500 µg/sq.ft for interior window sills; there was no proposed standard for window troughs (sometimes called window wells); the standards for clearance were the same as for risk assessments; and there was no standard for lead hazard screens, which were not recognized in the proposed rule. In the final rule, the interim dust-lead standard for risk assessments and reevaluations is 40 µg/sq.ft for interior floors (both hard and carpeted) and 250 µg/sq.ft for interior window sills. Risk assessments and reevaluations do not have a standard for window troughs. Standards for clearance and lead hazard screens are also provided. Exterior floors, such as unenclosed porches, and patios, do not have a standard; the floor standard applies to enclosed porches. A complete discussion of dust-lead standards is provided below in Section III.E.15.b of this preamble, "Adequacy of Dust-Lead Standards."

One commenter questioned the advisability of HUD specifying a dust standard in the proposed rule for carpets, arguing that there is no consensus about how to test for dust hazards in carpets or what level of lead is dangerous. HUD agrees with the commenter that research on this question is needed, and it initiated such studies in 1997. It is known, however, that carpeting can be a dust reservoir with significant amounts of lead (Battelle 1997). The Department believes that it would be wrong to do nothing to protect children in this situation. The effect of failing to provide a standard for carpeted floors would mean that the children who happen to be living in homes that are covered by the rule and have wall-to-wall carpeting would remain unprotected from floor dust-lead hazards, and the children living with area rugs would be only partially protected. Preliminary data from the HUD Evaluation of the Lead-Based Paint Hazard Control Grant program indicate that about 25–30 percent of the bedrooms and living rooms in the study had carpeting, with the percentage much higher in certain areas.

HUD acknowledges that the proposed EPA rule implementing TSCA section 403 did not include a dust-lead standard for carpets because EPA felt that currently available data are insufficient for establishing a health-based standard and because it is not clear what hazard reduction methods are effective. EPA acknowledged that "the lack of a standard for carpeted floors is a significant limitation" and requested comment on the impact of not having a standard and on information that would be helpful in setting such a standard.

As explained below under "Adequacy of Dust-Lead Standards," a study by the University of Rochester (Lanphear 1996) shows a significant correlation between dust lead in carpets and children's blood lead. Furthermore, HUD provides in subpart R of the rule a method for dust-lead hazard control in carpets or rugs. This method relies on thorough vacuuming and is based on the HUD Guidelines and on recent data from the Evaluation of the HUD Lead-Based Paint Hazard Control Grant program. The feasibility of removing dust lead from carpets to achieve the interim standard is discussed below in Section III.E.15.b. of this preamble. Therefore, HUD is including in the final rule an interim standard for dust lead in carpeting using a wipe sampling method, pending the issuance by EPA of a health-based standard pursuant to TSCA section 433.

The HUD interim standard for clearance in the final rule is the same as for risk assessments on floors and interior window sills, but a clearance standard of 800 µg/sq.ft is added for window troughs. The Department's intent in setting a clearance standard for window troughs is to encourage their cleaning. It is not unusual for window troughs to have very high loadings of lead in dust, perhaps because they are perceived as an exterior surface and are rarely cleaned, and perhaps because lead-based paint on window friction surfaces contributes to the dust lead loading in the trough. In the evaluation of HUD's Lead-Based Paint Hazard Control Grant Program, the median pre-intervention dust-lead loading on troughs for occupied dwelling units was over 11,500 µg/sq.ft, and 10 percent of the units had loadings over 100,000 µg/sq.ft. Comments were both for and against sampling troughs. A large city housing agency agreed with the policy on troughs in the proposed rule. A State agency disagreed, pointing out that, in the Rochester study of the relationship between dust lead and childhood blood lead, dust lead in troughs correlated well with blood lead.

In the final rule HUD has included an option to conduct a lead hazard screen, and, as in the HUD Guidelines, the dust-lead standard is set at approximately one-half the risk assessment standard: 25 µg/sq.ft. for floors and 125 µg/sq.ft. for interior window sills. The floor standard for the lead hazard screen was set at 25 µg/sq.ft. instead of 20, reflecting practical laboratory detection limits.

Several commenters addressed aspects of the proposed rule's treatment of soil-lead standards or soil treatments. EPA questioned HUD's interpretation of the soil-lead levels in EPA's guidance on lead in soil (60 FR 47248, September 11, 1995). In its guidance, EPA recommended that when lead levels in bare soil exceed 400 ppm at "areas expected or intended to be used by children," interim controls be undertaken to change use patterns and/or create barriers between children and contaminated soil. "Where bare soil-lead levels are found to be 2,000 ppm or more, interim controls should be implemented even if the area is not frequented by children." At 5,000 ppm or more, EPA recommended abatement of bare soil. In the proposed rule, HUD applied the 400 ppm standard to bare soil "in play areas;" the 2,000 ppm standard was applied to bare soil in "other areas." EPA called this interpretation incorrect, indicating that permitting 2000 ppm levels anywhere near areas occupied by children "may present an unreasonable risk." The Agency recommended that the 400 ppm standard apply to the entire yard. HUD believes that its interpretation of the guidance is reasonable and also that it reflects the guidance on this matter given in the HUD Guidelines, which is referenced in the EPA regulation. In the final rule, HUD has retained, therefore, the same interpretation as in the proposed rule. The standard for soil-lead hazards addresses bare soil in play areas frequented by children under 6 years of age. HUD intends that these play areas include those intended for these children's routine use, as demonstrated by such evidence as the presence of play equipment or similar attractions, collections of toys or other children's possessions, or observations of children's play patterns.

EPA questioned the basis for the proposed rule standard of no more than 200 µg/g for material used to cover soil-lead hazards. While conclusive scientific data on which to base the standard are not available, HUD believes that a standard is needed and that making it one-half of the level considered to be a soil-lead hazard in children's play areas is reasonable.

Throughout the rule, units of measurement are provided in metric forms as well as corresponding conventional unit values, in accordance with the Metric Conversion Act of 1975, as amended by Public Law 100–418, at 15 U.S.C. 205b; and Executive Order 12770, "Metric Usage in Federal Government Programs" (56 FR 35801, July 25, 1991). Persons covered by the rule should consistently apply the units they use routinely in their work. For example, lead-based paint professionals who use conventional units (such as feet) in their work should use the risk assessment standards of micrograms per square foot (µg/ft^2); professionals who use metric units (such as meters) in their work should use the fully metric standards of micrograms per square meter (µg/m^2).

HUD is aware of efforts by voluntary consensus standards bodies to develop private-sector standards in the lead-based paint hazard evaluation, management and control areas, and on related subjects. HUD has been supportive of, and participated in, some of these efforts. For example, over a dozen standards of the American Society for Testing and Materials (ASTM, West Conshohocken, PA 19428–2392) are cited in the HUD Guidelines. The Guidelines, in turn, are cited by subpart R itself and in the EPA rule on lead hazard control work practices (40 CFR 745.227(a)(3)), which is cited by subpart R. ASTM and other committees are continuing to develop standards in the lead-based paint hazard field (such as occupant notices with more detail). The Department will review these standards, when issued, for their applicability to and practicality for the programs covered by this rule.

b. *Adequacy of Dust-Lead Standards.* One commenter stated that the permissible levels of lead in dust referenced in the proposed rule would not be sufficiently protective of children and cited several recent scientific studies as evidence. Other commenters stated that HUD failed to require clearance testing in all programs to determine if housing units undergoing lead hazard reduction activities were

safe to reoccupy. The proposed rule contained standards for lead in dust of 100 μg/ft² on floors and 500 μg/ft² on window sills for both risk assessment and clearance purposes. The proposed rule eliminated an earlier standard of 800 μg/ft² for window troughs. In preparing the final rule, HUD considered the health benefits and feasibility of lead dust standards for both clearance and risk assessment purposes.

(1) *Health Benefits.* Clark and coworkers reported a study of 23 homes in Cincinnati where the floor dust-lead level required to prevent 95% of the children from exceeding a blood lead level of 10 μg/dL was found to be almost an order of magnitude lower than the existing standard of 100 μg/ft ² (Clark 1996). In a study of 205 children in Rochester, NY, Lanphear et al. found that approximately 20% of children exposed to a floor dust-lead level of 40 μg/ft ² had blood lead levels greater than 10 μg/dL (Lanphear 1996).

Earlier studies have demonstrated the importance of establishing adequate dust-lead standards. From data collected in 1990, Ashengrau reported an *increase* in blood lead level of 6.5 μg/dL (p=0.05) in children who had baseline blood lead levels below 20 μg/dL and whose houses were treated for lead-based paint hazards using a floor clearance standard of 200 μg/ft² (Ashengrau 1997). These houses were also treated mainly through extensive dry scraping, which under this rule is now a prohibited method of paint removal in federally-assisted or federally-owned housing.

In a study conducted between 1987 and 1990 where clearance testing may not have been conducted at all and where children had baseline blood lead levels less than 20 μg/dL, only 35% of the children had lower blood lead levels following hazard control work. The mean blood lead level *increased* significantly from 16.8 μg/dL to 19.3 μg/dL (p<0.05) (Swindell 1990).

These studies demonstrate that without clearance testing and without adequate dust-lead standards, children's blood lead levels may worsen as a result of lead-based paint hazard control work in housing. Therefore, HUD has provided for clearance testing when lead hazard control work is done in housing covered by this rule.

Although each of the studies cited above have limitations, it is clear that the weight of the scientific evidence suggests that children may not be adequately protected under the dust-lead standards in HUD's proposed rule. As a result of such studies, HUD has progressively lowered its dust-lead standard over the years. In 1990, HUD used a floor dust-lead standard of 200 μg/ft² in its Interim Guidelines, based primarily on a standard adopted by the State of Maryland and research conducted at Johns Hopkins University (Farfel 1990).

At that time, the Centers for Disease Control and Prevention (CDC) had established a blood lead level of concern of 25 μg/dL. In 1991, CDC adopted a new multi-tier blood lead level response system. That system indicated that blood lead levels of 10–14 μg/dL in many children in a community should trigger community-wide childhood lead poisoning prevention activities. A blood lead level of 15–19 μg/dL that persists in an individual child should result in an environmental investigation and intervention. Higher blood lead levels require more intensive medical evaluation and pharmacologic treatment. Because CDC lowered the blood lead level of concern, it is logical that dust-lead standards would also need to be reduced. Consequently, HUD reduced its floor dust-lead standard to 100 μg/ft² in its 1994 draft Guidelines, which was released in final form in 1995. EPA adopted the same guidance dust-lead level in 1994 and published it the next year (60 FR 47248, September 11, 1995).

Dust-lead standards in this rule will be used in risk assessments to determine whether hazard reduction should be conducted and in clearance examinations to determine whether dust in housing units, common areas and/or work sites has been properly cleaned and removed after hazard reduction activities. The goal of these activities is to protect children from exposure to lead at or above the CDC level of concern, 10 μg/dL. As explained below, HUD has considered both cost and feasibility in setting the interim standards.

To better understand the existing science, HUD conducted a study pooling the data from virtually all available epidemiological studies that examined the relationship between dust-lead and blood-lead levels, taking into account differences across the studies (Lanphear et al. 1998). After combining data sets from each study, a cohort of 1,861 children aged 6 to 36 months was created. This age group has been found to have the clearest relationship between dust lead and blood lead. The pooled analysis excluded children who had been individually selected for study on the basis of high blood lead, due to the bias this could introduce. Environmental lead measurements and other variables (season, presence of industrial sources of exposure, year of study, race, sex, socioeconomic status and measurement error) were standardized across all studies.

The pooled analysis of epidemiological studies estimated the expected prevalence rate of blood lead levels greater than or equal to 10 and 15 μg/dL in young children using a number of different candidate dust-lead standards and holding all other environmental variables and other covariates at their national averages. Table 1 shows the results of this analysis.

TABLE 1.—FLOOR DUST LEAD AND CHILDREN'S BLOOD LEAD LEVELS

Floor dust-lead loading (μg/ft²)	Percentage of children with blood lead levels greater than or Equal to 10 μg/dL (95% confidence intervals)	Percentage of children with blood lead levels greater than or equal to 15 μg/dL (95% confidence intervals)
1	1.0 (0.3–3.8)	0.1 (0.0–0.6)
5	4.4 (1.7–11.0)	0.7 (0.4–2.6)
10	7.4 (3.1–16.5)	1.4 (0.4–4.6)
20	12 (5–24)	2.7 (0.9–7.8)
25	14 (6–27)	3.2 (1–9)
40	18 (9–33)	4.7 (2–13)
70	24 (12–42)	7.2 (3–18)

TABLE 1.—FLOOR DUST LEAD AND CHILDREN'S BLOOD LEAD LEVELS—Continued

Floor dust-lead loading (μg/ft²)	Percentage of children with blood lead levels greater than or Equal to 10 μg/dL (95% confidence intervals)	Percentage of children with blood lead levels greater than or equal to 15 μg/dL (95% confidence intervals)
100	28 (14–48)	9.3 (4–23)

The pooled analysis indicates that, using the old standard (i.e., 100 μg/sq.ft. on floors), 28 percent of young children may have a blood lead level greater than or equal to 10 μg/dL, and nearly 10 percent may have a blood lead level equal to or greater than 15 μg/dL. Using a floor dust-lead standard of 40 μg/sq.ft., 18 percent of young children may have a blood level of 10 μg/dL or greater, and less than 5 percent will be a 15 μg/dL or greater. To achieve a prevalence of only 5 percent of young children with blood levels at 10 μg/dL or greater, the analysis indicates that dust-lead loadings on floors would have to be at 5 μg/sq.ft.

For reasons of feasibility, HUD is setting an interim dust-lead standard for floors of 40 μg/sq.ft. The feasibility issues are discussed in the following paragraphs. It is noteworthy that, based on Table 1, a standard of 40 μg/sq.ft. is expected to protect more than 95 percent of young children against exposure to lead in blood equal to or greater than 15 μg/dL, which is the level recommended by CDC at which environmental intervention should be conducted. This is also the environmental intervention blood lead level used in this rule, as explained above in Section III.D.6 of this preamble.

With regard to carpeted floors, Lanphear *et al.* found a significant correlation between dust lead in carpets (using wipe sampling) and children's blood lead levels (Lanphear 1996). Furthermore, the study showed that about 19.8 percent of children would have blood lead levels at or above 10 μg/dL with carpeted floors at 40 μg/sq.ft., a percentage that is not significantly different from the 18 percent found with hard-floor dust lead at 40 μg/sq.ft. Therefore HUD is setting an interim dust lead standard for carpeted floors that is the same as that for hard floors.

(2) *Feasibility.* There are two issues that affect the feasibility and cost of any given dust-lead standard: (1) The ability of cleaning techniques to meet a given level of cleanliness and the percentage of houses that can be expected to pass and maintain a given dust-lead standard; and (2) the ability to measure dust-lead levels in the range of interest using readily available analytical techniques (and the increased cost of using more sensitive detection methods if needed).

The largest study of residential lead hazard control conducted to date is HUD's on-going evaluation of its first 14 grantees under the Lead-Based Paint Hazard Control Grant program. These grantees are State and local governments receiving grants to address lead-based paint hazards in low-income, privately owned dwelling units. Almost 3,000 dwelling units are enrolled in this evaluation. Using modern hazard control techniques, this study provides important insights into the degree of cleanliness that is feasible using current measurement, cleaning and hazard reduction technologies. The final report will not be issued until after the year 2000 due to on-going evaluation of the dwellings and the children who live in them.

Interim results show that, on average, initial floor dust-lead levels are below 20 μg/ft² (National Center 1998). Furthermore, the data show that dust-lead levels on floors do not reaccumulate continuously, as assumed in the Economic Analysis for the proposed rule, which was prepared before these reaccumulation data were available. The new data show that median dust-lead levels on floors continue to drop for at least the first year following the hazard control work, from 19 μg/ft² to 14 μg/ft² twelve months later. The average dwelling unit undergoing lead hazard control had a median floor dust-lead level of 17 μg/ft² immediately following hazard control work. That level declined to 14 μg/ft² six months later and remained at the same level one year following the work. Therefore, it is feasible to reach and maintain a floor dust-lead standard of 40 μg/ft².

The pooled epidemiological analysis also shows that a floor dust-lead standard of 5 μg/ft² would be required to ensure that 95 percent of children do not have a blood lead level greater than or equal to 10 μg/dL. However, modern hazard reduction techniques do not appear to be capable of reaching a floor dust-lead level of 5 μg/ft² routinely, since the median level following hazard control work is three to four times greater (see also the discussion below about detection limits).

Importantly, many of the units treated under the HUD lead hazard control grant program are high-risk houses and often initially contain children with seriously elevated blood lead levels. In more typical dwelling units, it is likely that even lower dust-lead levels can be achieved. Indeed, HUD's 1990 National Survey of Lead-Based Paint Hazards in Private Housing found that the average dust-lead loading on floors (converted to wipe sampling) was estimated to be only 5 μg/ft². This survey did not include houses where lead hazard reduction had occurred.

The HUD Evaluation Study data show that 17.4 percent of these high risk houses have floor dust-lead levels above 100 μg/ft² (the existing standard). A dust-lead standard of 40 μg/ft² would increase the percentage of "high risk" houses above the standard to about 26 percent. This is fairly consistent with the blood lead levels found in this population, because 28.9% of the children enrolled had environmental intervention blood lead levels.

More typical houses that are served by other HUD programs are likely to have a far lower percentage failing the reduced dust-lead interim standard, because these programs do not target housing with lead-poisoned children. For example, data from HUD's National Survey show that the percentage of all U.S. housing exceeding a floor dust-lead level of 100 μg/ft² is 7.6 percent in "dry" rooms (i.e., rooms without plumbing fixtures). The percentage exceeding a floor dust-lead level of 40 μg/ft² is 10.2 percent in dry rooms. In short, the lower floor dust-lead interim standard of 40 μg/ft² will increase the percentage of houses requiring hazard control by a modest 2.6 percent.

With regard to carpeted floors, preliminary data from the HUD Evaluation indicate that only 15 percent of carpeted entry areas and 8 percent of

other carpeted rooms had dust-lead loadings equal to or greater than 40 μg/sq.ft. based on wipe sampling. The Evaluation data also indicate that grantees were able to reduce dust-lead loadings in carpets, but the data are limited by the fact that grantees were working with a clearance standard of 100 μg/sq.ft. instead of 40 μg/sq.ft.

(3) *Detection Limits.* Detection limits of dust wipe analysis also have an effect on the feasibility of lower dust-lead standards. A standard cannot be set at a level that cannot be measured reliably. Many analytical laboratories currently report method detection limits of 25 μg/wipe. For floors, this means a method detection limit of 25 μg/ft², since a one square foot area is typically sampled. A method detection limit at least 4 times lower than the regulatory standard is desirable to ensure reliable results.

For all laboratories in the HUD Evaluation Study, the average method detection limit is currently 11 μg/wipe. Therefore, HUD believes that laboratories will be able to report detection limits of 10 μg/wipe without having to resort to more sensitive and more expensive types of analytical procedures. In short, no increase in analytical cost is expected in order to achieve a detection limit of 10 μg/wipe, which is one-fourth the new floor dust-lead standard of 40 μg/ft². This will ensure that reliable measures of dust-lead loading can be made.

A floor dust-lead standard of 5 μg/ft² is well below method detection limits reported by most laboratories and is therefore not feasible to implement.

(4) *Window Dust Standards.* For interior window sills and window troughs, epidemiological data are less available than for floors, because only a few studies have collected samples from these areas. For interior window sills, the final rule establishes a dust-lead standard of 250 μg/ft², which is based on a study in Rochester, NY (Lanphear 1996). This standard also should protect virtually all children from developing an environmental intervention blood lead level. In the high risk houses enrolled in the HUD Evaluation Study, 47.5 percent of the units had baseline window sill dust lead levels below 250 μg/ft², which is close to the percentage of children who had blood lead levels below 10 μg/dL in the evaluation (54.3 percent). At clearance following lead hazard control work, the median dust-lead level on window sills was 44 μg/ft² at the time of clearance, 83 μg/ft² six months later, and 88 μg/ft² 12 months later. For more typical houses, the HUD National Survey found that the percentage of interior window sills failing a new dust-lead standard of 250 μg/ft² would increase by a modest 5.4 percent (compared to the current standard of 500 μg/ft²).

In short, the window sill standard is both feasible and health-based. It is feasible because dust-lead levels at the new interim standard can be reached and maintained and because the increase in the percentage of houses failing the new standard is small. It is health-based because the percentage of houses failing the standard is about the same as the percentage of children with blood lead levels greater than 10 μg/dL in the HUD Evaluation Study.

In the proposed rule, HUD did not include the window trough standard of 800 μg/ft² it had established in the HUD Guidelines and the 1990 Interim Guidelines. However, several commenters indicated that a window trough standard should be retained for clearance purposes, as a way of ensuring that window troughs are cleaned and/or treated during hazard reduction work. The HUD Evaluation Study shows that median dust-lead levels in window troughs immediately following hazard reduction work is 72 μg/ft², indicating that it is feasible to implement a window trough clearance standard of 800 μg/ft².

On the other hand, development of a feasible window trough risk assessment standard is more problematic, because nearly all pre-1978 dwellings have very high window trough dust-lead levels. For example, data from HUD's Evaluation Study indicate that the median window trough dust-lead level for occupied dwelling units prior to hazard control work is more than 11,500 μg/ft². Because HUD believes it is important to have a reliable way to determine whether or not window troughs were cleaned during hazard reduction work, and because window trough lead dust does appear to contribute to children's exposure, HUD has reestablished a window trough clearance standard of 800 μg/ft² in the final rule. Because most dwelling units have window trough levels above 800 μg/ft², HUD believes it is not feasible to establish a window trough dust-lead standard for risk assessment and reevaluation purposes at this time. Therefore, the window trough dust standard of 800 μg/ft² is used for clearance purposes only. To meet this clearance requirement, window troughs should be cleaned as a routine part of all lead hazard control work.

(5) *Lead Hazard Screen Standards.* The lead hazard screen levels for floor and interior window sill dust lead in this rule are 25 μg/ft² and 125 μg/ft², respectively. These are about half of the standards used for risk assessment purposes. This ensures that the screen will be sufficiently sensitive to uncover those houses that should have a full risk assessment.

Lead hazard screens are a form of risk assessment applied to housing in good condition where lead-based paint hazards are unlikely to be present. The protocol for a lead hazard screen referenced in the HUD Guidelines involves (among other things) collection of two composite dust samples: one from floors and a second from window troughs. Each composite sample consists of 4 individual samples collected from a like surface. If a level found in the screen is more than one half of the applicable risk assessment dust-lead standard, then a full risk assessment is to be conducted to determine if lead-based paint hazards are actually present.

In this final regulation, HUD has modified slightly the lead hazard screen protocol of the HUD Guidelines regarding dust. In the final rule, interior window sills are sampled instead of window troughs for three reasons: (1) Interior window sills are easier to wipe-sample than troughs; (2) dust-lead loadings on troughs may reflect exterior sources not related to the residential structure itself; and (3) dust-wipe loadings on sills and troughs are highly correlated (the correlation coefficient of the logarithms of the loadings is 0.60, which is higher than that for any other pairs of paint- or dust-lead measurements (Lanphear 1995)). EPA made a similar judgment in deciding not to propose a window trough dust-lead hazard standard in the proposed regulations pursuant to TSCA section 403 (63 FR 30335–6, June 3, 1998). Future research or technological advances may result in different recommendations, which the Department will review.

Similarly, HUD is noting that single-wipe samples may be used instead of composite samples as part of the lead hazard screen. When two or more single-wipe samples are used for a single building component type (such as two or more interior widow sills), the dust loadings for that component type are averaged to give the equivalent composite sample result. Users may wish to take single-wipe samples, rather than composite samples, as part of lead hazard screens for several reasons: the cost of laboratory analyses is low enough for many users that they may perceive little economic benefit to analyzing composite samples instead of single-wipe samples, and the EPA's National Lead Laboratory Accreditation Program (NLLAP) does not, at the time of issuance of this rule, have a formal quality assurance program for composite dust samples. EPA is working on this latter issue, and will advise NLLAP participants and others if and when such a program becomes available. Potential users of composite dust wipe analyses may contact the National Lead Information Center Clearinghouse toll-free at 1–800–424–LEAD for information on this subject.

If less than 125 μg/ft² (half of 250 μg/ft²) of lead dust is detected on the composite interior window sill sample, and the composite floor sample shows that less than 25 μg/ft² is present, the screen shows that lead-based paint hazards are not present. In this case, a full risk assessment is not needed. Conversely, if a lead hazard screen shows that dust-lead is present at a level equal to or greater than 125 μg/ft² on interior window sills or equal to or greater than 25 μg/ft² on floors, a lead-based paint hazard may be present and a full risk assessment should be conducted to confirm or reject the results of the screen.

HUD has also modified slightly the lead hazard screen protocol of the HUD Guidelines regarding soil. In the final rule, soil is to be sampled and analyzed, and the analyses evaluated, using the same protocol as for a risk assessment. With analytical costs having dropped since the publication of the HUD Guidelines, the cost of performing soil analyses as part of lead hazard screens for single family housing in good condition undergoing rehabilitation above $5,000 per unit (the cases where the lead hazard screens are likely to be used) has become insignificant; the additional time associated with the samples, for lead professionals already at the site, is also insignificant.

To summarize, the final rule establishes the dust-lead standards in Table 2. The dust-lead standards in this rule are interim standards until EPA promulgates and makes effective dust-lead hazard standards under TSCA section 403. When the TSCA 403 rule is effective, HUD will issue any technical amendments that are needed to make clear what standards are applicable to this rule at that time.

TABLE 2.—INTERIM DUST-LEAD STANDARDS

Evaluation method	Surface		
	Floors (μg/ft²)	Interior Window Sills (μg/ft²)	Window troughs (μg/ft²)
Risk Assessment Screen	25	125	Not Applicable.
Risk Assessment	40	250	Not Applicable.
Reevaluation	40	250	Not Applicable.
Clearance	40	250	800.

Note: "Floors" includes carpeted and uncarpeted interior floors.

c. *Summary Notice Formats.* Subparts D, and F through M of the final rule require that occupants be notified of the results of evaluations and hazard reduction activities (including clearance examinations). Also, if lead-based paint or lead-based paint hazards are presumed to exist, notification must be made. The major elements of these notices are described in Subpart B.

Subpart B places responsibility for any required occupant notification on the designated party. HUD recognizes that many designated parties may not have the expertise from staff or consultants to extract the pertinent information from the inspection, risk assessment or clearance reports to prepare the notices. As a result, the Department, in subpart R, makes a strong recommendation that the lead-based paint professional who prepares such a report provide the designated party with the summary notice of the results suitable for posting or distribution to occupants.

Sample (i.e., non-mandatory) notice formats that can be used are provided in Appendix A for a lead-based paint inspection, Appendix B for a risk assessment, Appendix C for presumption of the presence of lead-based paint or lead-based paint hazards, and Appendix D for completion of hazard reduction activities (including clearance). These formats include the information described in Subpart B and are based on: (1) The sample formats developed by HUD and EPA for the disclosure rule (see 61 FR 9074–5, March 6, 1998, in the preamble to the final rules implementing section 1018 of Title X, 24 CFR 35.80–98 and 40 CFR 745.100–119); and (2) formats developed by the California Department of Health Services (Emeryville, CA 94608–1939) for notices of abatement of lead hazards (DHS form 8551) and lead hazard evaluation (DHS form 8552).

Requirements for reports of evaluation or abatement clearance used to develop the corresponding notices to occupants are found in EPA's TSCA section 402/404 rule (40 CFR 745.227) and are cited by subpart R. Requirements for reports on hazard reduction activities other than abatement are in subpart R itself. Guidance on preparing these reports is found in the HUD Guidelines, chapters 5 (risk assessment), 7 (inspection), and 15 (clearance). There are currently no detailed standards for preparing these reports, and HUD-funded research on lead-based paint inspection reports has found considerable variability in them, in both format and measures of completeness and accuracy (HUD 1998). ASTM committee work developing detailed voluntary consensus standard protocols for report preparation is beginning; HUD will evaluate any standards, when issued, for their applicability to, and practicality for, the programs covered by this rule.

d. *Interim Controls.* The section on interim controls in the final rule is similar to that of the proposed rule. As mentioned above in Section III.D.8 of this preamble, the proposed rule required that workers performing interim controls be supervised by a certified abatement supervisor, and this was met with criticism by several commenters. In response to these comments, in the final rule HUD is following the Task Force recommendation that such workers be trained in the basic requirements of safe lead-based paint hazard reduction, and several choices of acceptable training courses are mentioned. All such training is designed to meet OSHA requirements; several choices meet EPA requirements as well.

Another significant modification of the proposed-rule section on interim controls is the addition of explicit factors that must be present for interim controls to be required under this rule for friction, impact and chewable surfaces. HUD developed these factors in response to comments that greater specificity is needed to prevent unnecessary, ineffective and wasteful hazard reduction actions. Friction

surfaces are required to be treated only if: (1) Dust-lead levels on the nearest horizontal surface (i.e., the surface on which the dust settles that is nearest to the friction surface) are greater than the risk assessment dust-lead standards; (2) there is evidence that the surface is subject to abrasion; and (3) lead-based paint is known or presumed to be present on the surface. Impact surfaces are required to be treated only if: (1) Paint on the surface is damaged; (2) the damaged paint is caused by impact from a related building component (such as a door knob that knocks into a wall, or a door that knocks against its door frame); and (3) lead-based paint is known or presumed to be present on the surface. HUD intends that impact as a result of misuse by occupants is not necessarily an acceptable basis for requiring treatment. Chewable surfaces are required to be treated only if: (1) There is evidence that a child of less than 6 years of age has chewed on the surface; and (2) lead-based paint is known or presumed to be present on the surface.

As in the proposed rule, interim control methods, when required, must be selected from among those identified as acceptable in a current risk assessment report. (As noted in subpart B, abatement is also acceptable when interim controls are required.) When interim controls are required and no risk assessment has been done or no risk assessment that has been done is current, a new risk assessment must be conducted (except when only paint stabilization of deteriorated paint is required, because the response has been specified in the rule). Techniques for repairing physical defects in a substrate before performing paint stabilization are discussed in the HUD Guidelines, chapter 11.

The proposed rule required a minimum two-stage cleaning process for the control of dust-lead hazards on hard surfaces: first HEPA vacuuming, then wet cleaning. Also, HEPA vacuuming was required for surfaces covered by carpeting or rugs. One commenter noted that recent research has indicated that a variety of cleaning methods may achieve clearance levels, and that one of the critical variables affecting the difficulty of cleaning is the condition of the surface. To avoid rigidity, HUD has modified the dust-lead hazard control requirements in the interim controls section of subpart R of the final rule in three ways. First, the two-stage process is no longer required; second, if hard surfaces are rough and pitted, they must be made smooth and cleanable; and third, rather than requiring HEPA vacuuming, HUD is requiring the use of a "HEPA vacuum or other method of equivalent efficacy." One of the main reasons for revision of required cleaning methods is that the final rule requires clearance after all hazard reduction activities, whereas the proposed rule omitted the clearance requirement for some housing programs. In the context of this rule, the goal of cleaning should be to achieve clearance, not to comply with prescriptive regulations on how to clean. Making surfaces smooth and cleanable is an important objective, because it makes it possible for occupants to maintain their dwellings safe from dust-lead hazards in the future. Revision of the HEPA filter requirement will facilitate the application of advances in technology resulting from ongoing research on cleaning lead-contaminated surfaces. Information on the status of this field of technology is provided in Section III.E.2.a of this preamble, in the discussion of HEPA vacuums.

A commenter recommended that clearance not be required after "basic interim controls," because many interim controls are like routine maintenance activities that will be performed frequently by in-house staff. In the final rule, the Department has retained the clearance requirement for initial interim controls, because clearance is the only method of determining whether a dwelling unit is free of lead-based paint hazards. HUD, however, is not requiring clearance after ongoing lead-based paint maintenance activities that are conducted after interim controls and that do not disturb painted surfaces of a total area greater than 20 square feet on exterior surfaces, 2 square feet in any one interior room or space, or 10 percent of the total surface area on an interior or exterior component with a small surface area such as window sills, baseboards and other trim.

e. *Standard Treatments.* As explained above in Section III.E.2.c of this preamble, standard treatments, when used, must include: (1) Stabilization of all deteriorated paint, interior and exterior; (2) the provision of smooth and cleanable horizontal hard surfaces; (3) the correction of dust-generating conditions (i.e., conditions causing rubbing, binding, or crushing of surfaces known or presumed to be coated with lead-based paint); and (4) treatment of bare soil to control known or presumed soil-lead hazards. Safe work practices and clearance are required. Individuals performing standard treatments must be trained in how to control lead-based paint hazards. The training requirement is identical to that for interim controls.

f. *Clearance.* Methods and standards for clearance in this rule refer to the EPA requirements for clearance after abatement at 40 CFR 745.227(e) but also specify the dust-lead loading levels to be used for clearance. To pass clearance, dust-lead levels, using wipe sampling, must be less than 40 $\mu g/ft^2$ for interior floors, 250 $\mu g/ft^2$ for interior window sills, and 800 $\mu g/ft^2$ for window troughs. The rule also specifies the content of clearance reports that must be prepared for clearances after hazard reduction activities other than abatement. For clearance of the worksite only, which is required in subpart J after rehabilitation receiving no more than $5,000 per unit and also in some ongoing maintenance activities, dust samples must be taken from the floor and windows (if available) that represent the area within the dust containment area of the worksite. Worksite clearance is not required if the rehabilitation or maintenance does not disturb painted surfaces totaling more than the safe work practices de minimis levels (see Section III.D.4 of this preamble, above). For a discussion of qualification requirements for persons performing clearance, see Section III.D.8 of this preamble, above.

While subpart R allows recleaning immediately after a clearance failure, owners, designated parties and contractors are urged to consider the cause of the failure, and to address the cause, if identified, before recleaning the affected area.

A commenter recommended that property owners (or other designated parties) be allowed to retain a certified inspector or risk assessor to perform the clearance examinations. In the final rule, HUD has allowed this, provided the clearance examiner is independent from any contractor used to perform the hazard reduction work. The property owners (or other designated parties) may, however, use in-house employees for both hazard reduction and clearance examination, provided that the same employee does not do hazard reduction and clearance.

After clearance, a report is to be prepared that documents the hazard reduction or maintenance activity as well as the results of the clearance examination. It is the responsibility of the designated party to ensure that this report is prepared, signed, and kept for at least three years. For an abatement activity, the report is an abatement report as described in EPA regulations at 40 CFR 745.227(e)(10). The abatement report includes the results of the clearance examination as well as a detailed written description of the abatement, and its preparation is the responsibility of the abatement supervisor. For another hazard reduction activity requiring a clearance report (including interim controls, paint stabilization, standard treatments, lead-based paint maintenance, or rehabilitation), the EPA rule does not apply; so the final rule provides an outline of the required report that parallels the EPA abatement report outline. However, the designated party must make sure: (1) That a report describing the hazard reduction activity is prepared; and (2) that the clearance examiner provides a signed clearance report with the information required by the rule.

Designated parties should also bear in mind that HUD has requirements in subparts D, and F through M for occupant notification following hazard reduction activities. The major elements of this notice are described in Subpart B. A sample (i.e., non-mandatory) format that can be used for notification of the completion of hazard reduction activities, including clearance, is provided in Appendix D (see discussion, above, in Section III.E.15.c of this preamble).

g. *Occupant Protection and Worksite Preparation.* Requirements for occupant protection and worksite preparation in this final rule are similar to those in the proposed rule, which were based largely on the HUD Guidelines.

Many hazard reduction activities can be completed in one work shift. As a result, the Department has streamlined the requirements for occupant relocation for work that will be completed within one period of 8 daytime hours. For work lasting longer, the rule provides for either occupant relocation or, for work lasting up to five days, occupancy of parts of the dwelling unit outside the worksite. The five-day de minimis criterion is used in chapter 8 of the HUD Guidelines; the regulation closely parallels, but streamlines the guidance in tables 8.1, 8.2, and 8.3 of the Guidelines.

At rooms where hazard reduction activities are conducted when occupants are present; or buildings from which occupants have been relocated, a warning sign shall be posted at each entry. For exterior hazard reduction activities, the sign placement is based on the HUD Guidelines, chapter 8, but the rule is somewhat more flexible, in that the position of the sign for exterior work is not specified beyond the performance requirement of its being easily read at 20 feet (6 meters) from the edge of the worksite. The wording of the sign is that of the four-line warning sign in the OSHA lead in construction standard (29 CFR 1926.62(m)), "WARNING / LEAD WORK AREA / POISON / NO SMOKING OR EATING." The OSHA wording is used by HUD for interagency regulatory consistency. Based on the approach used in subpart B for occupant notification, the warning sign is to be provided in the occupants' primary language or in the language of the occupants' lease or contract.

h. *Safe Work Practices.* A section on safe work practices has been added to this final rule to specify the practices to be observed during paint stabilization, ongoing lead-based paint maintenance, and rehabilitation receiving no more than $5,000 per unit in Federal rehabilitation assistance. Safe work practices include occupant protection and worksite preparation, specialized cleanup, and the prohibition of certain methods of paint removal (see Section III.E.2.g of this preamble, above). Safe work practices are not required if the total area of paint surfaces being disturbed is no more than the de minimis exemption levels of 20 square feet on exterior surfaces, or 2 square feet in any one interior room or space, or 10 percent of the total surface area on an interior or exterior component with a small surface area (such as window sills, baseboards, and other trim).

i. *Ongoing Lead-Based Paint Maintenance and Reevaluation.* The proposed monitoring of housing after interim controls was the subject of several comments. Commenters expressed doubts about the efficacy of the proposed monitoring requirements, regarded them as expensive to maintain and enforce, and questioned the ability of designated parties to assure, into the future, that monitoring responsibilities assigned to owners would be carried out. Monitoring, as proposed, consisted of a visual survey by the owner at least annually, repair of any deteriorated paint, and a professional reevaluation by a risk assessor for the presence of lead-based paint on a schedule based on the hazards found and the action taken.

In the final rule, the monitoring requirement has been changed in several ways. The term, "monitoring," is no longer used in the rule; the visual assessment by the owner is now part of the ongoing maintenance requirement, which has been patterned after the "essential maintenance practices" recommended by the Task Force; and the reevaluation schedule has been simplified so that all reevaluations are on the same schedule. The new schedule calls for reevaluation at intervals of two years, plus or minus 60 days. If two consecutive reevaluations at two-year intervals find no lead-based paint hazards, no further reevaluation is required. Similarly, if the initial risk assessment found no lead-based paint hazards, no reevaluation is required.

Ongoing lead-based paint maintenance is required in specified situations in subparts F through M. This can involve such activities as visual assessment, stabilizing deteriorated paint, standard treatments, interim controls, repair of failed lead-based paint hazard controls, and notifications of evaluation and hazard reduction activities. (Sample formats and language requirements for notices are discussed above in Sections III.E.15.c and g of this preamble, respectively.)

Reevaluation is required for housing receiving project-based assistance greater than $5,000 per unit per year and for public housing. The strategy for selecting portions of residential properties to reevaluate considers two factors: How many dwelling units and common areas are present, and at how many worksites hazard reduction activities were performed previously. The selection and reevaluation procedures for dwelling units and common areas are the same as for risk assessment, as provided in subpart R, and as detailed in the HUD Guidelines, chapter 5. Similar dwelling units are grouped, and the number to be reevaluated in each such group is determined from tables in the Guidelines.

For a targeted sample of units with the highest likelihood for finding lead-based paint hazards, there is a table in chapter 5; for a random sample of units, chapter 5 refers users to a table in chapter 7. Separately, the number of worksites of previous hazard reduction activities to be reevaluated is determined using the same procedure as for selecting the number of units. Specifically, worksites are grouped on the basis of similarities of their original lead-based paint hazards (e.g., similarities in the type of location, original condition and, as applicable, building component type, of the lead-based paint hazards), and types of hazard reduction activities performed on them. The number of such similar worksites to be reevaluated is determined using the tables in chapters 5 or 7, and worksites are selected. Reevaluations are not to be duplicated in locations selected by both processes (that is, selecting units and common areas, and selecting worksites).

When a risk assessor performing a reevaluation finds deteriorated paint or deteriorated or failed interim controls, encapsulations or enclosures, the designated party shall respond, selecting from among the acceptable options for controlling the hazard identified in the risk assessor's report of the reevaluation. When the risk assessor reports newly-identified lead-based

paint hazards, the designated party shall treat each dust-lead hazard by cleaning or hazard reduction measures, and each soil-lead hazard by hazard reduction measures.

IV. Deletions of Current Regulations

Most of the regulatory changes in parts of title 24 other than part 35 consist, as noted in Section III.A.7 of this preamble, above, of replacing explicit descriptions of lead-based paint requirements with references to part 35. Retaining mention of lead-based paint in each HUD program's part of title 24 maintains the visibility of the lead-based paint requirements, and promotes compliance with requirements under Title X and the Lead-Based Paint Poisoning Prevention Act. Consolidating references in affected program parts will help program managers, property owners and other users recognize that they can apply the same procedures to the same situations, even if they arise under different HUD programs. The consolidation also shortens these other parts of title 24.

To aid users, the relevant program-oriented subpart of part 35 is identified in the other parts of title 24, as is subpart A, the Disclosure Rule. Each program-oriented subpart in part 35 describes and cites applicable requirements elsewhere in that part.

References to Title X are added to the existing references to the Lead-Based Poisoning Prevention Act, as bases for the regulations in part 35. The terminology of Title X regarding evaluation and hazard reduction replaces previous wording regarding inspection and abatement, respectively, which were used in accordance with the earlier LPPPA.

For public housing, the regulations on liability insurance coverage found at § 965.215 fit better in their original location than they would in part 35, and their substantive text remains in place. The section has been modified, as described above for other sections, to reflect Title X terminology and requirements.

V. Additional Public Comment

As noted earlier in this preamble, the rule will not take effect for a period of one year. If in the review of this rule, there are questions, concerns or other comments, HUD welcomes these questions, concerns and comments. It is HUD's intention that the rule achieve the objectives of the statute in the least burdensome manner. If there are any serious inconsistencies or deficiencies in the rule, HUD will make every effort to correct these before the rule takes effect. Comments should be submitted to the Office of Lead Hazard Control, Department of Housing and Urban Development, 451 Seventh Street, SW, Room P–3206, Washington, DC 20410–0500.

VI. Regulatory Assessment

A. Economic Analysis

An Economic Analysis (EA) has been prepared that examines the costs and benefits of this final rule. This document fulfills the requirements of Executive Order 12866, which requires HUD to prepare an EA for all significant rulemakings. A discussion of public comments on the EA of the proposed rule is provided below in Section VI.A.6 of this preamble.

1. *Summary and Methodology of Cost-Benefit Analysis.* HUD estimates the costs associated with this rule to be $253.2 million for the first year, and the benefits to be $1,143.3 million using a three percent discount rate for increased lifetime earnings and $324.2 million using a seven percent discount rate (see discussion of discount rates below). The analysis in the EA reflects costs and benefits associated with the first year of hazard evaluation and reduction activities in housing units affected under the final rule. The estimated annual number of HUD-assisted and HUD-owned units affected reflect an annual flow of units under HUD programs (e.g., insurance and rehabilitation programs), except in the case of project-based assistance and public housing, for which the affected units are divided by the number of years allowed under the final rule for completion of required activities. The costs and benefits for each year's activities include the present value of future costs and benefits associated with first year hazard reduction activities. For example, the costs associated with first year activities include the present value of future reevaluation costs. Similarly, the benefits of first year activities include the present value of lifetime earnings benefits for children living in or visiting the affected unit during the first year, and for children living in or visiting that unit during the second and subsequent years after hazard reduction activities.

After the first year, the number of units for which initial hazard evaluation and reduction must be done will decline significantly because some large housing assistance programs, such as public housing and project-based assistance, have a relatively stable stock and do not experience a large annual inflow of new units. In these programs, owners will need only to engage in ongoing maintenance and reevaluation after initial hazard evaluation and reduction is completed. There is a two-year phase-in of requirements in the public housing program and a four-year phase-in for housing with project-based assistance of more than $5,000 per unit per year. HUD estimates that the total number of dwelling units newly covered by the rule will be approximately 1,289,000 in the first year, 513,000 in the second year, 341,000 in years three and four, and 314,000 per year after the fourth year. The estimated present value of costs associated with the first five years of the rule is $564.2 million. Using a seven percent discount rate for increased lifetime earnings, HUD estimates the present value of total benefits associated with the first five years to be $715.6 million, with net benefits for the same period at $151.4 million. Using a three percent discount rate, total benefits over five years are $2.65 billion, and net benefits are $2.08 billion.

The primary monetized benefit of childhood lead poisoning prevention is increased lifetime earnings associated with the higher cognitive abilities of persons not lead poisoned as children. The present value of lifetime earnings benefits is particularly sensitive to discount rate assumptions in the analysis, because these benefits reflect lifetime earnings many decades into the future. The EA presents estimated benefits using two different discount rates for lifetime earnings—three percent and seven percent. For all other benefit and cost estimates, the EA uses only a seven percent rate. The analysis assumes that preventing a one μg/dL increase in a one-year old child's blood lead level saves $2,367 in lifetime earnings discounted at three percent, and $544 at seven percent.

While the Office of Management and Budget (OMB) specifies seven percent as the appropriate discount rate for most regulatory analyses, a special social rate of time preference is appropriate when conducting intergenerational analysis. HUD believes that an intergenerational discount rate is applicable to the final rule because the costs will be borne by adult taxpayers, and lifetime earnings benefits will be realized by the children and grandchildren of these adult taxpayers. The analysis of this issue by the Environmental Protection Agency, in the 1996 EA for the regulations implementing sections 402(a) and 404 of the Toxic Substances Control Act, concluded that a three percent discount rate best reflects the social rate of time preference for annualized, non-capital costs and benefits.

An intermediate approach, not quantified in the EA, could have used a real discount rate based on the long-term borrowing costs of the Federal government. The seven percent rate used in most regulatory analyses is intended to reflect OMB's estimate of the opportunity cost of capital, based on the average real rates of return on private investments. This rate is appropriate for most regulatory analyses because most regulations impose costs on the private sector. The final rule, however, imposes costs on federally assisted housing. Most of these costs will be funded directly or indirectly by Federal expenditures. If these expenditures increase the national debt, then the real cost of that debt to future generations will compound at the real long-term Federal rate. The Internal Revenue Service's Applicable Federal Rate (AFR) measures the nominal cost of government borrowing over obligations with different maturities. The long-term AFR adjusted for the implicit price deflator results in real AFRs of approximately four to five percent over recent years. Therefore, benefits could be discounted at this real AFR rate (i.e., 4 to 5 percent).

By presenting results using both three and seven percent, HUD is providing the broadest view of costs and benefits. Additional information on the methodology and results of the cost-benefit analysis is provided below.

The methodology used in this analysis to estimate annual costs and benefits for the final rule is based on the following simple formulas:

Regulatory Costs = (dwelling unit cost) × (unit cost frequency) × (number of affected units); and

Regulatory Benefits = (dwelling unit benefit) × (unit benefit frequency) × (number of affected units).

The unit cost estimates reflect the average costs associated with specific hazard evaluation and reduction activities in a single housing unit.

The unit benefit estimates are the benefits achieved by conducting hazard reduction activities in a single housing unit. Unit cost frequencies reflect the extent of required hazard evaluation activities under the final rule, and the occurrence frequencies of different lead-based paint hazards that trigger hazard reduction requirements. Unit benefit frequencies are also determined by the occurrence frequencies of lead-based paint hazards, because benefits are realized by hazard reduction activities. Frequencies are estimated by three periods of construction: Pre-1940, 1940–1959, and 1960–1977. The affected units, for regulatory costs and benefits, are federally assisted and federally owned units affected by the final rule.

2. *Regulatory Costs.* The cost estimates used in the EA reflect the estimated average cost per unit for LBP hazard evaluation and reduction activities in single and multifamily units affected by the final rule. In the case of rehabilitation programs, the regulatory cost estimates for paint stabilization and LBP hazard abatement activities reflect only the incremental costs of the final rule. For example, the unit cost of stabilizing paint that would not otherwise have been repaired is significantly greater than the incremental cost of safe work practices and cleanup to reduce lead-based paint hazards in the course of scheduled repainting. The full cost of lead-based paint hazard abatement includes a variety of activities that are also associated with housing rehabilitation activities. Therefore, housing rehabilitation programs affected by the final rule incur only incremental costs for paint stabilization and abatement.

Under non-rehabilitation programs, the full costs of paint stabilization are recognized as regulatory costs, but these costs are substantially offset by the market value of housing-related benefits for paint stabilization. The EA assumes that the full market value of paint stabilization is realized whenever paint stabilization is required under the final rule. Therefore, the incremental costs of paint stabilization (e.g., safe work practices) are the only costs of these activities that are not offset by market value benefits.

Although the final rule only requires hazard abatement in rehabilitation units receiving more than $25,000 of Federal assistance, the EA anticipates that some units subject to interim control requirements will find it economical to treat friction impact surfaces in part by replacing old windows with new energy efficient (low-e) windows. In such cases, the EA recognizes the market value of new windows based on the present value of estimated fuel savings (discounted at seven percent). It is possible, however, that the market value estimates for painting and window replacement may overstate the market benefits of the final rule. For example, the market value of paint stabilization required for HUD-owned housing may not be fully recovered when these repainted units are sold by HUD. Therefore, the cost-benefit analysis for non-rehabilitation programs explicitly separates the estimated market value benefits of the final rule from the monetized health benefits of LBP hazard reduction to facilitate recalculations of net benefits under alternative market value assumptions. The EA details the basis for unit cost estimates and associated market values and explains the available data on occurrence frequencies and the number of housing units affected by the final rule.

3. *Monetized Benefits.* Although many benefits of lead-based paint hazard reduction cannot be quantified or monetized, the EA does provide monetized estimates of the benefits of preventing children from developing elevated blood lead levels (EBLs). Such benefits include avoiding the costs of special education and medical treatment for EBL children, as well as increasing lifetime earnings associated with higher IQs for children with lower blood lead levels. The monetized benefit of increased lifetime earnings due to lower blood lead levels accounts for 99 percent of all monetized health benefits of the rule.

The benefits quantified in this analysis reflect the benefits of preventing EBLs in children rather than the benefits of lowering the blood lead levels of children already affected by lead poisoning. As shown in the analysis, the benefits associated with avoiding childhood lead poisoning substantially exceed the benefits of reducing hazards for children already affected by lead poisoning. The EA details the basis for the health benefit estimates.

4. *Monetized Net Benefits.* The analysis of net benefits in the EA reflects costs and benefits associated with the first year of hazard evaluation and reduction activities under the final rule. These costs and benefits, however, include the present value of future costs and benefits associated with first year hazard reduction activities.

Tables 3a and 3b present net benefits or costs by housing program at three percent and seven percent discount rates respectively for increased lifetime earnings. All programs have a net benefit at three percent. The following programs have a net cost at seven percent: HUD-owned single family and multifamily housing, housing with project-based assistance, single family housing receiving rehabilitation assistance of more than $5,000 per unit, and housing receiving assistance for acquisition, leasing, support services or operation. The specificity of statutory requirements limits the Department's ability to devise policies with net benefits for these programs at a seven percent discount rate.

Table 3c presents a summary of the costs, benefits, and net benefits of the first year activities under the final rule, using a three percent and seven percent discount rate for lifetime earnings. The total cost of first year hazard evaluation and reduction activities is $253.2

million. The total benefit of first year activities is $1.14 billion using a three percent discount rate, and $324 million using a seven percent discount rate. Net benefits of first year activities are therefore either $890 million or $71 million, depending on the discount rate used. The EA details the costs and benefits of the final rule by subpart of the rule and by period of construction.

The individual rows of Table 3c detail the components of hazard evaluation and reduction costs and monetized hazard reduction benefits. Although the components of hazard reduction costs and monetized benefits are often identified by the same brief descriptors (e.g., paint stabilization, soil cover, dust cleanup) the cost components are not directly comparable to the benefit components. For example, dust-cleanup costs reflect only the costs of cleanup. Cleanup benefits, however, reflect the assumption that low dust-lead levels have a benefit duration of five years with paint stabilization and ten years with lead-based paint hazard abatement.

The duration of dust removal benefits reflects the anticipated benefits over five or ten years to a new population of young children, associated with births and unit turnover. This estimated duration of benefits could not be realized without the hazard reduction activities of paint stabilization or abatement, friction/impact work, and soil cover, to the extent required by the rule. The monetized benefits in the table for paint stabilization and abatement reflect only the health benefits of avoided paint chip ingestion. The cost of paint stabilization includes the incremental cost for rehabilitation programs, and the full cost for non-rehab programs. Paint stabilization market value benefits reflect the estimated market value for non-rehabilitation programs. Subtracting paint stabilization market value benefits from paint stabilization costs yields the incremental cost of all paint stabilization required under the rule.

TABLE 3a.—NET BENEFIT (COST) BY PROGRAM FOR FIRST YEAR ACTIVITIES

[Three percent discount rate for lifetime earnings]

Subparts	Pre-1940	1940–1959	1960–1977	Total for subpart
Single Family Insured Housing (E)	$0	$0	$0	$0
HUD-Owned Single Family Housing (F)	804,349	(104,790)	(267,451)	432,108
Multifamily Insured Housing (G)	3,712,523	2,981,836	0	6,694,360
Multifamily Housing With Project-Based Assistance > 5K (Hm1)	7,858,982	6,284,595	4,395,518	18,539,094
Multifamily Housing With Project-Based Assistance > 5K (Hm2)	22,150,600	7,055,126	4,798,460	34,004,186
Single Family Housing With Project-Based Assistance (Hs)	5,359,054	1,570,456	848,160	7,777,670
HUD-Owned and Mortgagee-in-Possession Multifamily Housing (I)	221,666	551,460	316,903	1,090,029
Single Family Rehab <5K (J1s)	26,705,720	19,813,315	3,103,588	49,622,624
Single Family Rehab 5K–25K (J2s)	40,365,551	29,115,276	4,186,525	73,667,352
Single Family Rehab 25K (J3s)	3,192,504	8,466,423	421,773	12,080,700
Multifamily Rehab <5K (J1m)	3,103,001	2,488,518	491,894	6,083,413
Multifamily Rehab 5K–25K (J2m)	12,303,357	9,541,269	3,316,929	25,161,554
Multifamily Rehab >25K (J3m)	8,536,151	6,932,896	1,504,944	16,973,991
Single Family Acquisition, Leasing, Operating, and Support (Ks)	318,545	124,334	20,862	463,741
Multifamily Acquisition, Leasing, Operating, and Support (Km)	608,761	146,925	47,221	802,907
Multifamily Public Housing (Lm)	58,623,013	188,764,843	34,665,629	282,053,485
Single Family Public Housing (Ls)	13,930,634	44,625,006	7,001,718	65,557,359
Single Family Tenant-Based Rental Assistance (Ms)	68,354,171	31,214,436	15,578,130	115,146,737
Multifamily Tenant-Based Rental Assistance (Mm)	102,509,490	46,573,257	24,862,934	173,945,681
Total Net Benefit	378,658,072	406,145,182	105,293,738	890,096,991

TABLE 3b.NET BENEFIT (COST) BY PROGRAM FOR FIRST YEAR ACTIVITIES

[Seven percent discount rate for lifetime earnings]

Subparts	Pre-1940	1940–1959	1960–1977	Total for Subpart
Single Family Insured Housing (E)	$0	$0	$0	$0
HUD-Owned Single Family Housing (F)	(1,927,841)	(689,268)	(539,603)	(3,156,712)
Multifamily Insured Housing (G)	246,690	176,627	0	423,317
Multifamily Housing With Project-Based Assistance > 5K (Hm1)	391,267	240,304	(3,053,108)	(2,421,537)
Multifamily Housing With Project-Based Assistance < 5K (Hm2)	(2,093,138)	(2,104,432)	(5,644,938)	(9,842,508)
Single Family Housing With Project-Based Assistance (Hs)	(1,667,495)	(1,102,037)	(3,184,370)	(5,953,901)
HUD-Owned and Mortgagee-in-Possession Multifamily Housing (I)	(15,690)	(40,308)	(368,895)	(424,892)
Single Family Rehab <5K (J1s)	3,659,065	2,291,784	(2,361,222)	3,589,628
Single Family Rehab 5K–25K (J2s)	332,951	(564,095)	(4,419,314)	(4,650,458)
Single Family Rehab >25K (J3s)	(202,701)	(259,968)	(467,775)	(930,445)
Multifamily Rehab <5K (J1m)	506,967	370,441	(153,853)	723,554
Multifamily Rehab 5K–25K (J2m)	1,820,172	1,315,448	(76,463)	3,059,158
Multifamily Rehab >25K (J3m)	1,191,958	963,529	(42,968)	2,112,520
Single Family Acquisition, Leasing, Operating, and Support (Ks)	(99,117)	(87,249)	(78,325)	(264,691)
Multifamily Acquisition, Leasing, Operating, and Support (Km)	(57,525)	(43,825)	(55,551)	(156,902)
Multifamily Public Housing (Lm)	8,942,287	27,902,848	(1,523,858)	35,321,277
Single Family Public Housing (Ls)	1,380,411	4,213,020	(2,151,524)	3,441,908
Single Family Tenant-Based Rental Assistance (Ms)	11,717,061	4,619,772	1,484,946	17,821,779
Multifamily Tenant-Based Rental Assistance (Mm)	19,667,574	7,933,157	4,751,523	32,352,254

TABLE 3b.NET BENEFIT (COST) BY PROGRAM FOR FIRST YEAR ACTIVITIES—Continued

[Seven percent discount rate for lifetime earnings]

Subparts	Pre-1940	1940–1959	1960–1977	Total for Subpart
Total Net Benefit	43,792,895	45,135,748	(17,885,295)	71,043,348

TABLE 3c.—COST-BENEFIT SUMMARY FOR FIRST YEAR ACTIVITIES USING A THREE PERCENT AND A SEVEN PERCENT DISCOUNT RATE FOR LIFETIME EARNINGS

[$ millions]

	Three percent	Seven percent
Hazard Evaluation Costs	$ 99.5	$ 99.5
Hazard Reduction Costs:		
Paint Stabilization	75.7	75.7
Window Replacement	4.6	4.6
Friction/Impact Work	8.5	8.5
Soil Cover	2.3	2.3
Paint Hazard Abatement	2.0	2.0
Dust Cleanup	60.5	60.5
Total First Year Costs	253.2	253.2
Monetized Benefits:		
Paint Stabilization	71.2	20.3
Paint Hazard Abatement	1.1	0.3
Soil Cover	88.0	20.2
Dust Cleanup	908.6	209.0
Paint Stabilization Market Value	70.2	70.2
Window Replacement	4.2	4.2
Total First Year Benefits	1,143.3	324.2
Total First Year Net Benefits	890.1	71.0

5. *Data Sources.* The following data sources are referenced extensively in the EA:

- The HUD national survey of lead-based paint in housing, conducted in 1989 and 1990.
- "Comprehensive and Workable Plan for the Abatement of Lead-Based Paint in Privately Owned Housing: a Report to Congress," prepared by HUD, December 7, 1990.
- "TSCA Title IV, Sections 402(a) and 404: Target Housing and Child-Occupied Facilities Final Rule Regulatory Impact Analysis," prepared by Abt Associates for EPA, August 1996.
- The Evaluation of the HUD Lead-Based Paint Hazard Control Grant program—interim data collected through March 1998.
- National Academy of Sciences, National Research Council Committee on Measuring Lead in Critical Populations, "Measuring Lead Exposure in Infants, Children, and Other Sensitive Populations," October 1993.
- Third National Health and Nutrition Examination Survey, as reported in "Blood Lead Levels in the U.S. Population" and "The Decline in Blood Lead Levels in the United States," Journal of the American Medical Association, July 27, 1994; and "Update Blood Lead Levels—United States, 1991–1994," MMWR, February 21, 1997; and additional detail obtained from NHANES III data on CD–ROM.

6. *Public Comments.* An industry group criticized the EA for the proposed rule on several grounds. The group stated that population blood lead levels may have declined further since the NHANES III Phase 1 data were released. For the final rule, HUD has used the most current data available, which is the NHANES III, Phase 2 data covering the years 1992–1994.

The group also suggested that HUD's conclusion that declining dust lead levels will reduce blood lead levels in children is not supportable because it is based on a single study. In fact, there are at least 18 epidemiological studies which have estimated the blood lead/dust lead relationship; HUD has not relied on a single study in developing the final EA, but has conducted an extensive pooled analysis of virtually all available epidemiological data (Lanphear 1998).

The group stated that HUD's EA relied on a 1991 CDC finding that 10 µg/dL represents a threshold level, below which there are no adverse effects, and that therefore the EA should not have calculated benefits below 10 µg/dL. This is an incorrect interpretation of CDC's position. In fact, the 1991 CDC guidance document indicated that there was evidence of adverse health effects below 10 µg/dL. Neither HUD nor CDC have stated that 10 µg/dL is a "threshold." The conclusion that it is reasonable to assume cognitive benefits to reducing childhood blood lead levels, including below 10 µg/dL, has been approved by EPA, the EPA external peer review process, CDC, the HHS internal peer review process and the National Academy of Sciences. It is clear that HUD's analysis is consistent with the consensus of the scientific community.

The group also stated that the EA cited the correlation between blood lead and low IQ, but erred in suggesting that correlation could be used to establish causality and that the available scientific studies failed to control for a variety of confounding variables. HUD agrees that correlation alone cannot establish causality. The idea that lead exposure causes a reduction in IQ is supported by not only correlation, but also by time precedence, biological plausibility, dose-effect relationship, and animal studies. When taken together, HUD believes that all these factors establish conclusively that lead exposure does in fact cause reductions in IQ. Time precedence has been established by those studies that measure blood lead level at birth, showing that the cause exists before the consequence. Biological plausibility has been established by the studies showing anatomical, physiological, and biochemical changes in the brain due to lead exposure. Dose-response has also been clearly established in the literature. Finally, all modern lead studies have in fact controlled for confounding variables, such as socio-economic status, parent's education and race.

The group also suggested that the lead studies upon which the EA relied used imprecise or incomplete methods of measuring IQ. However, if IQ was in fact measured inappropriately, one would expect to see the studies equally distributed between those showing no effect and those that did. In fact, virtually all of the studies on lead show the same IQ effect. While the size of the effect and degree of statistical significance may vary from one study to another, the basic conclusion remains the same: increased lead exposure is related to reduced IQ.

Another industry group suggested that HUD's EA for the proposed rule had overestimated the benefits, because children living in HUD-assisted housing will grow up to earn less than the average income, and thus the calculated loss in lifetime earnings was too great.

First, HUD does not believe it is appropriate to declare that the value of damage to children in one socioeconomic group is less than the value of damage to children in another socioeconomic group. Furthermore, there is evidence that earnings may have in fact been underestimated, because per capita productivity has increased in recent years, which often results in increased wages. HUD used data covering the past 20 years to estimate growth in real wages, which has been low. If in fact the country returns to the growth rate over the past century, HUD's EA would underestimate the size of the lost lifetime earnings. HUD has used an updated estimate of the size of the lost lifetime earnings benefit (Salkever 1995) in the EA for this final rule to respond to this criticism. Salkever updated the analysis of labor force participation and other pathways by which lead can reduce expected future earnings. Finally, HUD's EA assumed that there would be no benefit to reducing lead exposure in adults, even though a number of studies have demonstrated that lead can increase blood pressure and cause a decline in both kidney function and cognition in adults. In short, HUD's EA is likely to underestimate the total benefit involved, not overestimate it.

An industry group suggested that HUD should use the lower confidence bound of the scientific studies, which would reduce the benefits of the proposed rule. HUD agrees that this would reduce the benefits, but notes that if it chose to use the upper bound as a health protective measure, the benefit would increase. On balance, HUD believes that measures of central tendency appear to be best when faced with the need to make public policy in the face of scientific uncertainty, which is always present to some extent. HUD encourages public comment on the EA and the final rule and will make revisions to both documents as new evidence comes to light.

B. Paperwork Reduction Act Statement

The information collection requirements contained in this final rule have been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 2501–3520), and have been assigned OMB control number 2539–0009. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

C. Regulatory Flexibility Act—Final Regulatory Flexibility Analysis

When the proposed rule was published on June 7 1996, HUD certified that the proposed regulatory requirements would not have a significant economic impact on a substantial number of small entities. On October 9, 1998 (63 FR 54422), HUD published a Notice in the **Federal Register** containing additional information about its determination that the proposed rule would not have a significant impact on a substantial number of small entities. HUD has concluded, upon further consideration, that its certification that the rule will not have a significant economic impact on a substantial number of small entities could reasonably be questioned. Although the Department continues to believe that the certification was reasonable and justified, the degree of uncertainty as to what constitutes a "significant" impact and a "substantial" number of small entities in the housing industry has led to the decision not to make such a certification at this time. HUD is seeking to comply fully with the intent of the Regulatory Flexibility Act and is publishing this Final Regulatory Flexibility Analysis to describe the likely impact. This analysis expands on the analysis published on October 9, 1998 and summarizes and responds to public comments. HUD requests written public comment on this analysis of the impact of the rule on small entities. The final rule does not take effect until one year after publication, so there is time for the Department to arrange for responses to economic impacts that it believes would significantly diminish the effectiveness of its housing assistance programs in providing affordable housing to families of low and moderate income.

Comments on this notice must be received on or before November 1, 1999. Interested persons are invited to submit comments to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–0500. Comments should refer to the above docket number and title. A copy of each comment submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address. Facsimile (FAX) comments are *not* acceptable. For further information, contact: Steve Weitz, Office of Lead Hazard Control, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410–0500. Telephone: (202) 755–1785, ext. 106 (this is not a toll-free number). E-Mail: stevenson__p.__weitz@hud.gov. Hearing or speech-impaired persons may access the above telephone number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

1. *Need For and Objectives of the Final Rule.* The Lead-Based Paint Poisoning Prevention Act of 1971, as amended, directs the U.S. Department of Housing and Urban Development (HUD) to establish procedures to eliminate to the extent practicable lead-based paint hazards in federally associated housing. HUD issued implementing regulations in 1976 and made Department-wide revisions in 1986, 1987, and 1988. In 1992, Congress passed the Residential Lead-Based Paint Hazard Reduction Act, which was Title X of the Housing and Community Development Act of 1992 (Title X). Sections 1012 and 1013 of Title X amend the Lead-Based Paint Poisoning Prevention Act to require specific new procedures for lead-based paint notification, evaluation, and hazard reduction activities in housing receiving Federal assistance (section 1012) and federally owned housing at the time of sale (section 1013).

In enacting Title X, the Congress found that low-level lead poisoning is widespread among American children, with minority and low-income communities disproportionately affected. The Congress also found that, at low levels, lead poisoning in children causes IQ deficiencies, reading and learning disabilities, impaired hearing, reduced attention span, hyperactivity, and behavior problems. In addition the Congress found that the health and development of children living in as many as 3.8 million homes is endangered by chipping or peeling lead paint or excessive amounts of lead-contaminated dust in their homes.

Among the stated purposes of Title X are to implement, on a priority basis, a broad program to evaluate and reduce lead-based paint hazards in the Nation's housing stock; to ensure that the existence of lead-based paint hazards is taken into account in the development of Government housing policies and in the sale, rental, and renovation of homes and apartments; and to reduce the threat of childhood lead poisoning in housing owned, assisted, or transferred by the Federal Government.

The final rule sets forth new requirements for lead-based paint hazard notification, evaluation, and reduction for federally owned residential property and housing receiving Federal assistance. The rule takes into consideration the substantial advancement of lead-based paint remediation technologies and the improved understanding of the causes of childhood lead poisoning by the scientific and medical communities. Perhaps the most important results of research on this subject during the last 10–12 years have been: (1) The finding that lead in house dust is the most common pathway of childhood lead exposure; and (2) the measurement of the statistical relationship between levels of lead in house dust and lead in the blood of young children. The final rule updates the existing HUD regulations to reflect this knowledge, giving importance to procedures that identify and remove dust-lead hazards as well as chipping, peeling or flaking lead-based paint.

The rule also offers a consolidated, uniform approach to addressing lead-based paint hazards. Currently, each individual HUD program has a separate set of lead-based paint requirements incorporated into its program regulations. The final regulation consolidates the HUD lead-based paint regulations and groups requirements by type of housing assistance, rather than by individual program. For example, the rule contains subparts that address multifamily mortgage insurance; project-based assistance; rehabilitation assistance; assistance for acquisition, leasing, support services and operation; public housing; and tenant-based assistance. Moreover, the final rule uses a clear and consistent set of terms to specify notification, evaluation, and hazard reduction requirements. Organizing the requirements by the type of housing assistance and using new terminology will avoid subjecting properties receiving assistance from more than one program to inconsistent or redundant HUD lead-based paint requirements. These changes will also ease the burden on HUD clients in locating and understanding the applicable requirements and help ensure that lead hazards are identified and safely reduced.

2. *Public Comments.* The Notice published in the **Federal Register** on October 9, 1998 outlined the impact of the proposed rule on small entities. Eight comments were received. Following is a summary of the significant issues raised by the comments and a description of the Department's assessment of and response to such issues.

a. *Information Not Adequate.* Two commenters requested additional information. One commenter said they were unable to assess the impact of the proposed regulations with the information provided in the published Notice and requested that the Department extend the comment period on the Notice until supporting materials are available for public review. Another requested that HUD prepare a more detailed analysis and submit it for comment before publishing a final rule.

In response, HUD is providing more detailed information in this analysis and welcomes further comment. However, HUD is not delaying further the publication of this important regulation, which is expected to significantly reduce lead poisoning among children living in Federally owned housing that is sold and in housing that receives Federal assistance.

b. *Capital vs. Operating Costs.* One commenter stated that the analysis was "confusing," because it compared the cost of lead-based paint hazard reduction to current rent revenue. According to this commenter, lead-based paint activities are major capital improvement costs that would be financed from reserves or through a loan.

HUD agrees that some property managers may budget the required work out of reserves, some may have to finance it through a loan, while others will be able to handle it as an operating expense. Regardless of how the work is budgeted and financed, HUD believes that comparison to annual rent revenues is a reasonable method of gaining a general understanding of the significance of the costs. However, Section 3 of this Notice includes additional financial statistics for HUD-insured multifamily housing with project-based rental assistance; these statistics are net annual cash flow per unit before income taxes, total reserves per unit, and backlog of physical needs per unit.

c. *Costs Will Be Higher Than HUD Assumes.* Three commenters thought HUD underestimated the cost of complying with the requirements. All of these commenters were concerned primarily with rehabilitation programs. One commenter stated that the cost would be between $2,000 and $4,000 per unit, while the others claimed that rehabilitation costs are 35–50 percent more when lead-based paint is involved.

While it is possible that the costs in some jurisdictions may exceed those estimated for this analysis, HUD believes it has estimated the national average costs of the requirements in the rule as accurately as possible, given available data. It is important to remember that *average* costs may be much lower than costs one may have heard reported for heavily contaminated housing. Even in older housing, some structures have a great deal of lead-based paint while others have only a small amount, and the condition of the paint varies as well. Also, the anecdotal costs reported in some jurisdictions may not be for the same activities as those required in this rule. Furthermore, the costs used in the analysis for rehabilitation are incremental costs. For example, if it is estimated that rehabilitation will replace windows for other reasons, that cost is not charged to lead-based paint hazard reduction. Finally, HUD believes that the cost of lead-based paint hazard evaluation and reduction will decline as program managers learn how to administer the requirements efficiently and as staff and contractors become experienced in the work.

HUD has estimated unit costs for lead-based paint hazard evaluation and reduction based on interviews with contractors and data from the ongoing Evaluation of HUD's Lead-Based Paint Hazard Control Grant Program (National Center 1998). It has estimated the frequencies of hazard occurrence based on both the Evaluation and the 1990 National Survey of Lead-Based Paint in Housing (EPA 1995). Also, it used American Housing Survey data to estimate the frequency with which rehabilitation involves activities like repainting or window replacement that overlap the requirements of lead-based paint hazard reduction. These estimates are explained in the HUD EA for the final rule (HUD 1999).

d. *There Will Be a Significant Impact.* Many commenters stated or implied that HUD was incorrect in its determination that the rule will not have a significant economic impact on a substantial number of small entities. While the Department has chosen not to make such a determination for this final rule, it continues to think that the cost of compliance, and therefore the impact, will not be as significant as many commenters believe.

As explained below, in section 4 of this Analysis, HUD has written provisions into the rule, consistent with Title X, designed to alleviate the impact of the lead-based paint evaluation and reduction requirements on entities receiving limited Federal assistance. For example, for most housing affected by this regulation, all that is required is stabilization of deteriorated paint, if any is present, followed by cleanup and clearance.

In multifamily housing, HUD estimates that compliance with this requirement costs only about $100 per unit more than routine repainting, and less if only a small amount of deteriorated paint is present. This requirement pertains to housing that receives tenant-based rental assistance and is occupied by children of less than

six years of age, and it applies to housing receiving project-based rental assistance averaging less than $5,000 per unit per year (which includes most housing that is affected by this rule and is receiving project-based assistance). The requirements are greater for multifamily housing receiving project-based assistance of more than $5,000 per unit per year; but that is a relatively small percentage of the assisted stock that was built before 1978, and most of it is professionally managed, in relatively good physical and financial condition, and not expected to have a high prevalence of lead-based paint hazards. For housing receiving Federal rehabilitation assistance of $5,000 per unit or less (which is almost one-half of the housing receiving such assistance), the rule requires only that the rehabilitation be done in a lead-safe manner so that it causes no contamination.

For these reasons and because there currently exist lead-based paint regulations for virtually all HUD programs prescribing notice, evaluation and treatment procedures, HUD continues to believe that the economic impact of the rule will be much less than many of the commenters believe.

e. *Owners Whose Entire Portfolio Is Affected May Be Impacted Especially Hard.* One organization stated that "small property owners whose portfolio may only contain target properties and will have to bear this additional expense throughout their portfolio, may well be forced out of business by such extreme financial requirements."

HUD agrees that the impact on an owner may depend to some extent on the percentage of his or her portfolio that is affected by the rule. However, many if not most housing owned by small entities will be only partially affected by the rule. A dwelling unit is not covered if it was built after 1977, or designated exclusively for the elderly or persons with disabilities (unless a child of less than 6 years of age resides or is expected to reside), or is a zero bedroom dwelling (e.g., efficiency, studio, or single-room occupancy unit), or is found to be free of lead-based paint, or all lead-based paint has been removed. Many residential properties, especially those built after 1960, have little or no lead-based paint hazards. If a unit has no deteriorated paint or no lead-based paint hazards (depending on the housing program), no hazard reduction is required. Thus, owners can minimize the cost effect of the rule through good maintenance of paint surfaces and careful cleanup at turnover. In the case of units with tenant-based assistance, the rule applies only to units occupied by families with children of less than six years of age. Many properties with project-based assistance have only part of their units under housing assistance payments contracts. For all of these reasons, the total annual rental revenue for affected small entities may substantially exceed the total annual rental revenue associated with just those units subject to the rule.

3. *Impact on Small Entities.* a. *Number of Small Entities Affected by the Rule.* For this analysis, HUD defines a small entity as one with less than $5 million in total revenues per year. This standard is based on the report, "Small Business Administration Standard Industrial Code (SIC) Size Standards," dated January 1998.

Table 4 provides, for each program group, an estimate of the number of small entities that will be affected by the first effective year of the rule. Although some additional housing units and ownership entities will become subject to the rule after the first effective year, focusing on the first year facilitates analysis of impact on an annual basis. Estimates are given for the same program groups used in the EA for the rule, and the number of housing units for each program is taken from the EA. For all program groups, it is estimated that approximately 203,000 small entities will be affected in the first year of the rule. Of these, about 122,000, or 60 percent, are owners of single-family housing being rehabilitated with HUD rehabilitation assistance.

The vast majority of these owners are expected to be individuals who are rehabilitating their own residences. They are not businesses, organizations or units of local government, which are the entities of concern under the Regulatory Flexibility Act. Nevertheless data are provided for these owners for completeness of analysis. Of the remaining 81,000 small entities, the great majority will be owners of rental housing; and, of those, about 56,000 will be owners of housing with tenant-based rental assistance, 17,000 will be owners of housing with project-based rental assistance, 1,500 will own multifamily housing receiving rehabilitation assistance, and about 1,400 will be local public housing authorities. HUD believes that the great majority of local public housing authorities are not covered by the Regulatory Flexibility Act, because they are not agencies of local governments with populations of less than 50,000. Nevertheless, public housing data are included in this analysis for completeness.

(1) *Housing With Multifamily Mortgage Insurance and/or Project-Based Rental Assistance.* The first and second rows of Table 4 pertain to multifamily housing that has HUD mortgage insurance but not HUD subsidies. For this program group, the rule will apply only to properties built before 1978 that are covered by a new application for mortgage insurance. These properties tend to be relatively large, with an average of 160 units per property. Twenty-one percent of the properties have more than 200 units (Abt Associates 1999). Average annual total revenues for unassisted HUD-insured multifamily properties are assumed for purposes of this analysis to be $8,000 per unit. (This assumption is based on Abt Associates 1999, Exhibit 3–1, which reports a mean average annual total revenue for all unassisted insured properties of $7,978.) To earn $5 million per year in total revenues, a property with per unit annual revenue of $8,000 would have to have 625 housing units. Few projects are of this size. However, it is well known that many of these projects are part of multiproperty portfolios. Of all rental housing in properties with 50 or more units, 25 percent of the properties and 50 percent of the units are owned by limited partnerships, general partnerships, real estate corporations or other corporations, or joint ventures (HUD 1996). Therefore it is assumed for this analysis that 25 percent of the unassisted multifamily properties with HUD mortgage insurance are owned by large entities and 75 percent are owned by small entities. It is also assumed that none of the properties owned by small entities are part of a multiproperty portfolio. This assumption may overstate the number of small entities somewhat. Based on this analysis, it is estimated that each year 70 applicants for unassisted multifamily mortgage insurance will be small entities.

TABLE 4.—NUMBER OF SMALL ENTITIES AFFECTED BY THE FIRST YEAR OF THE HUD LEAD-BASED PAINT REGULATIONS, FINAL RULE

Program group	Number of units	Units per property	Number of properties	Small owner entities as percent of number of properties	Number of small ownership entities
Pre-1960 Housing w/Multifamily (MF) Mortgage Insurance	3,750	160	23	75	17
Post-1959 Housing w/ MF Mortgage Insurance	11,250	160	70	75	53
MF Housing w/ Project-Based Assistance, >$5K/Unit	35,750	115	311	75	233
MF Housing w/ Project-Based Assistance, <$5K/Unit	408,690	115	3,554	85	3,021
Single Family (SF) Housing w/ Project-Based Assistance	134,280	2	67,140	20	13,428
MF Housing w/ Tenant-Based Assistance	207,050	7	29,579	99	29,283
SF Housing w/ Tenant-Based Assistance	134,500	1	134,500	20	26,900
Public Housing	164,000	N/A	1,500	96	1,440
SF Housing w/ Rehab Assistance, <$5K/Unit	66,836	1	66,836	100	66,836
MF Housing w/ Rehab Assistance, <$5K/Unit	7,834	20	392	99	388
SF Housing w/ Rehab Assistance, $5K–$25K	48,998	1	48,998	100	48,998
MF Housing w/ Rehab Assistance, $5K–$25K	15,877	20	794	98	778
SF Housing w/ Rehab Assistance, >$25K	5,817	1	5,817	100	5,817
MF Housing w/ Rehab Assistance, >$25K	7,306	20	365	98	358
SF Housing w/ Acquisition, Leasing, etc. Assistance	5,093	1	5,093	100	5,093
MF Housing w/ Acquisition, Leasing, etc. Assistance	6,103	20	305	99	302
Total	1,263,134		365,277		202,945

The third and fourth rows of Table 4 present estimates for multifamily housing with project-based rental assistance. These are somewhat smaller properties, with an average of 115 units per project; only 13 percent have more than 200 units (Abt Associates 1999). For this analysis it is assumed that average annual total revenues are $10,000 per unit for properties receiving an average of more than $5,000 in rental assistance per unit per year and $6,000 for those with less than $5,000. (The Abt Associates 1999 report estimates that mean annual total revenues were $5,868 in 1995 for all "older assisted" multifamily properties and $10,057 for "newer assisted" properties. Older assisted properties receive either mortgage interest subsidies (under section 236 or 221(d)(3) Below Market Interest Rate insurance programs) or rental assistance under the Section 8 Loan Management Set Aside, Rent Supplement, Rental Assistance Payment, Section 8 Property Disposition, or Preservation programs. Newer assisted properties receive rental assistance under one of the following Section 8 programs: New Construction, Substantial Rehabilitation, or Moderate Rehabilitation. Older assisted properties had mean assistance payments of $2,576 per unit per year, with a median of $2,310. Newer assisted properties had mean assistance payments of $7,448, with a median of $7,106. Thus HUD assumes for purposes of this Regulatory Flexibility Analysis that virtually all of the housing receiving more than $5,000 per unit per year in project-based assistance are in the newer assisted properties and that virtually all of the housing receiving less than $5,000 are in the older assisted category.) A project with $10,000 in annual revenue per unit would have to have 500 units to earn $5 million in total revenue. A project with $6,000 in annual revenue per unit would need 834 units. It is assumed that 75 per cent of the owners of properties receiving more than $5,000 per unit in assistance will be small entities—the same as for unassisted insured properties. However, recognizing the sharp difference in average revenues between properties receiving more than and less than $5,000 per unit per year, it is assumed that 85 percent of the less-than-$5,000 group will be small entities. Based on this analysis, it is estimated that 3,254 small entities will own multifamily properties with project-based assistance that will be affected by the rule in its first year. All of these should complete initial work in the first year, with only ongoing maintenance and some reevaluation required after that. In each of the second, third and fourth years, it is expected that 233 additional small entities will be affected.

The fifth row in Table 4 presents estimates for all *single family* housing receiving project-based assistance. HUD assumes for the purposes of this analysis of ownership that there is an average of two units per property in this inventory. This assumption derives from American Housing Survey data which indicates that there are a large number of three-and four-unit properties with project-based assistance as well as single unit properties. (The HUD-FHA definition of "single family property" is one-to-four units.) It is further assumed that owners of single-family housing with project-based assistance own an average of five properties. This assumption recognizes that it requires a certain additional amount of managerial knowledge to participate in project-based assistance programs compared to owning an unassisted rental unit, and that such owners tend to try to maximize the benefits of such knowledge by owning several homes. HUD also assumes, however, that 100 percent of the owners of such housing are small entities. It is estimated that 13,428 small entities will own single family housing with project-based assistance that is affected by the first year of the rule. After that, only ongoing maintenance is required. No additional entities are expected to be affected in later years.

(2) *Tenant-Based Rental Assistance.* Families assisted by tenant-based rental assistance programs are living in housing that is similar in size and age to the nation's entire non-luxury rental housing stock. Therefore HUD assumes that the average number of units per multifamily property is 20, which is much smaller than the projects with mortgage insurance and project-based assistance. However, in the tenant-based assistance programs, HUD lead-based paint regulations apply only to housing occupied by children of less than 6 years of age. Therefore, based on occupancy data from a subsample of the American Housing Survey, it is assumed that 35 percent of the 20 units (or seven) are occupied by such children. Because

of the small average property size, HUD assumes that only one percent of the owners of multifamily housing assisted under tenant-based programs are large entities.

For single-family housing with tenant-based assistance, it is assumed that an average of one unit per property will house families with children of less than six years of age, that owners will own an average of five properties, and that 100 percent of the properties are owned by small entities.

Counting owners of both multifamily and single family housing, it is estimated that 56,183 small entities will own housing with tenant-based assistance affected by the first year of the rule. In future years, because of housing turnover in these programs, it is expected that about 20,000 small entities will become newly affected each year.

(3) *Public Housing.* HUD estimates that approximately 1,500 public housing agencies will be affected by the rule. Although HUD believes that the Regulatory Flexibility Act does not apply to the vast majority of public housing authorities, data are presented here for completeness. Many public housing agencies own both multifamily and single family units, so no attempt is made in Table 1 to distinguish between agencies owning one or the other. Although rents paid by tenants of public housing are relatively low, HUD estimates that subsidies boosted public housing agency revenues to an average of approximately $7,400 per unit per year in 1995. A public housing agency with average revenues per unit would have to have 676 units to have revenues of $5 million. Only about 2 percent of public housing agencies have that many units. However, many housing agencies have revenues from sources other than the public housing program, including the project-based and tenant-based rental assistance programs. Therefore HUD assumes for this analysis that 4 percent of the public housing agencies are large entities and that 96 percent, or 1,440, are small entities.

(4) *Rehabilitation Assistance.* There are at least three types of entities that will be affected by the lead-based paint requirements for housing receiving rehabilitation assistance. They are: (1) The State and local governmental agencies and tribal agencies that are the grantees and participating jurisdictions that receive funding from HUD; (2) nonprofit organizations that are subrecipients or funded directly by HUD and that operate housing development and rehabilitation programs; and (3) private owners of housing being rehabilitated. Of these three, the greatest concern of those commenting on the proposed rule was with the potential economic impact on private owners. Therefore this analysis focuses on that group.

The number of small-owner entities participating in the rehabilitation programs is estimated to be large, because many local programs concentrate on the rehabilitation of single family, owner-occupied homes. HUD assumes for purposes of this analysis that in any given year all single family units assisted by rehabilitation programs are individually owned, i.e., that the number of owners equals the number of units. While this may produce an overestimate of the actual number of owners, the error is expected to be small. For multifamily units, the same average number of 20 units per property is used as was used in the tenant-based assistance programs; and 98 to 99 percent of the owners are assumed to be small entities. In total, it is estimated that 125,028 small-owner entities will be affected by the rehabilitation assistance programs each year.

(5) *Acquisition, Leasing, Support Services, or Operation.* Assumptions for the Acquisition, Leasing, Support Services or Operation group are the same as for Rehabilitation. The number of small entities affected is estimated to be 5,395.

b. *Economic Impact.* This section examines, for each program group, the financial impact of the rule on small entities.

(1) *Housing With Multifamily Mortgage Insurance, Project-Based Rental Assistance, Tenant-Based Rental Assistance, or Public Housing.* Table 5 provides a comparison of the incremental cost of compliance with total revenues for most of the rental housing programs affected by the rule. Table 6 provides the following additional financial statistics that are available from a study of the insured multifamily inventory: annual net cash flow, total reserves, and backlog of physical needs—all per unit (Abt Associates 1999, exhibits 2–2, 3–3, and 3–7). Annual net cash flow equals revenues less expenses before income taxes. Expenses include deposits to reserve accounts and debt service as well as operating expenses. Total reserves include replacement reserves and, for some properties, residual receipts accounts. The physical needs backlog is the estimated cost of repairs and replacements beyond ordinary maintenance required to restore a property to its original condition. The financial statistics in Table 6 are available only for the multifamily HUD-insured stock that is unassisted or assisted with project-based subsidies; they are not available for housing receiving tenant-based assistance or for public housing.

Two sets of compliance cost estimates are provided for each program group in Table 5. The first column is the mean incremental cost per unit for all properties. Incremental costs are new costs incurred in compliance with this rule over and above the costs of compliance with existing regulations. There is a great deal of variation around this mean that is associated with the age, size and condition of the housing. Many properties will have no cost at all. Therefore, the second column of Table 5 provides the estimated incremental cost per unit for "high-cost properties." This is an approximation of the average cost that may be incurred by properties that have all the hazards for which the rule requires remediation for a given program. The frequency of such high-cost cases is not known but is expected to be between one and eight percent of all properties, depending on the program group. All compliance cost estimates are incremental, i.e., over and above the costs of current HUD lead-based paint regulations. The cost estimates are derived from the EA, which in turn is based on data collected from discussions with lead-based paint inspectors and hazard reduction contractors in 1995 and the evaluation of the HUD Lead-Based Paint Hazard Control Grant Program (data collected 1994–1997). No cost estimates are shown for post-1959 unassisted housing with HUD multifamily mortgage insurance because the rule requires only that sponsors agree to conduct ongoing lead-based paint maintenance.

Estimates of mean annual total revenues per unit are based on a 1995 survey of HUD-insured multifamily rental housing (Abt Associates 1999, exhibit 3–1) and estimates by HUD staff. As with Table 4, all estimates pertain to housing affected by the first year of the rule.

In comparing compliance costs with revenue or with other financial data, it is important to remember that the compliance costs are not continuing annual costs. Rather they are one-time costs of hazard evaluation and control, after which the owner must simply maintain the paint surfaces and conduct maintenance and repair activities in a lead-safe manner. For some program groups, owners will have to conduct at least two reevaluations in two-year intervals after the initial hazard reduction activity to assure that lead-based paint hazards have not reoccurred. Also, many owners have properties that are not covered by the rule as well as those that are affected. The financial impact on such owners will be less than on those whose portfolios consist solely of pre-1978 HUD-associated housing.

Table 5 indicates that, in the first effective year of the rule, the mean incremental cost of compliance is expected to vary from 1.0 to 6.9 percent of total annual revenues for the insured multifamily stock and housing receiving project-based rental assistance. Public housing and unassisted insured multifamily housing built before 1960 have the highest average costs and the highest percentage of revenue, because of the stringency of the requirements and the age of the stock. High-cost properties have ratios of cost to revenue of 9.0 to 28 percent; but these percentages should be used only as rough indicators, because the universe of the revenue estimate (all properties) does not correspond to that of the high-cost properties.

Table 6 provides additional financial statistics from the Abt Associates report on the multifamily insured stock. Data from the Abt study for unassisted properties are not included in this table, because they are not necessarily representative of properties that will apply for mortgage insurance when the rule becomes effective. For newer assisted properties (defined as properties receiving Section 8 New Construction, Substantial Rehabilitation, or Moderate Rehabilitation), the average (mean) cash flow was a substantial $1,105 per unit. This compares to lead-based paint regulatory compliance costs of $255 (average for all properties) and $1,120 (high-cost properties) for housing with project-based assistance of more than $5,000 per unit. While reserves also appeared respectable for most of these newer assisted properties, the mean backlog of physical needs was $3,214 compared to a median of $1,324, indicating that a few properties had very high backlog needs. Also, 13 percent of the newer assisted properties had negative cash flow, again indicating that some properties are in financial distress.

For the older assisted properties, which correspond to housing with project-based assistance of less than $5,000 per unit, mean annual net cash flow per unit was $283, compared with compliance costs of $60–$82 per unit (average for all properties) and $570–$870 (high-cost properties). The Abt study found that 33 percent of the older assisted properties had a negative cash flow and that another 42 percent had a cash flow of $0–$500 per unit. Further, the study found $3,929 in average (mean) backlog of physical needs per unit, with a median of $2,096, indicating that some properties have very high deferred needs. Thus it appears that a certain percentage of this older stock is in financial distress, even more than with the newer assisted properties.

TABLE 5.—INCREMENTAL COST OF COMPLIANCE AS A PERCENTAGE OF ANNUAL REVENUE, BY PROGRAM GROUP: NONFEDERAL RENTAL HOUSING AFFECTED BY THE FIRST YEAR OF THE RULE

[Not including housing receiving assistance for rehabilitation or acquisition, leasing, support services or operation. Cost and revenue data as of 1995–1996]

Program group	Average incremental compliance cost per unit, all properties	Average incremental compliance cost per unit, high-cost properties	Average annual total revenue per unit, all properties	Average incremental compliance cost as a percent of revenue, all properties	Average incremental compliance cost as a percent of revenue, high-cost properties
Pre-1960 Housing w/Multifamily (MF) Mortgage Insurance	$414	$1,120	$8,000	5.2	14
Post-1959 Housing w/MF Mortgage Ins.	0	0	8,000	0	0
MF Housing w/Project-Based Assistance, >$5K/Unit	255	1,120	10,000	2.6	11
MF Housing w/Project-Based Assistance, <$5K/Unit	60	570	6,000	1.0	9.5
SF Housing w/Project-Based Assistance	82	870	6,500	1.3	13
MF Housing w/Tenant-Based Rental Assistance	59	560	6,200	1.0	9.0
SF Housing w/Tenant-Based Rental Assistance	103	870	6,200	1.7	14
MF Public Housing	311	1,120	7,400	4.2	15
SF Public Housing	511	2,095	7,400	6.9	28

TABLE 6.—FINANCIAL STATISTICS FOR MULTIFAMILY PROPERTIES WITH HUD-INSURED MORTGAGES 1995

[In 1995 dollars per 2-bedroom equivalent unit]

	Newer assisted properties	Older assisted properties
Annual Net Cash Flow Per Unit:		
Mean	$1,105	$283
Median	$742	$162
Percentage of Properties With Negative Cash Flow	13%	33%
Percentage of Properties With Cash Flow of $0–$500	22%	42%
Total Reserves Per Unit:		
Mean	$1,924	$1,766
Median	$1,163	$1,240
Backlog of Physical Needs Per Unit:		
Mean	$3,214	$3,929
Median	$1,324	$2,096

It is apparent from these statistics that some properties will not be able to fund lead-based paint compliance out of current income. HUD estimates that no more than half of the housing with project-based assistance will be able to obtain an adjustment in assistance levels to finance the cost of the lead-based paint requirements. For projects that do not qualify for a rent adjustment and do not have sufficient income to cover the cost of compliance with the rule, HUD will work with owners to find funds from other sources. Depending on the property, this process may include the financial restructuring known as Mark to Market. Mark-to-Market processing will address lead-based paint requirements in the restructuring commitment. Other possible sources of funds include replacement reserves, grants, and Community Development Block Grant funds.

(2) *Housing Receiving Rehabilitation Assistance.* For housing receiving rehabilitation assistance, Table 7 compares the cost of compliance to an assumed average total cost of rehabilitation. Assumed average total rehabilitation costs are $4,000 for projects receiving $5,000 or less in rehabilitation assistance, $15,000 for those receiving between $5,000 and $25,000 in assistance, and $30,000 for those receiving more than $25,000 in assistance. Average compliance costs vary from 1.1 to 4.2 percent of these total project costs. Costs for high-compliance-cost projects vary from 3.3 to 9.3 percent of total rehabilitation cost. Single family properties tend to have a higher cost impact than multifamily, because they are larger units on average and usually require more exterior work.

Virtually all HUD rehabilitation assistance is administered by State, local and tribal agencies, and many, if not most, of these programs are operated as low-interest loans. If property owners are unable to finance loans for the incremental cost of lead hazard control, the administering agencies have the option to finance such costs with a grant out of program funds.

TABLE 7.—INCREMENTAL COST OF COMPLIANCE AS A PERCENTAGE OF AVERAGE REHABILITATION COST, BY PROGRAM GROUP HOUSING RECEIVING FEDERAL REHABILITATION ASSISTANCE

[Cost data as of 1995–1996]

Program group	Average incremental compliance cost per unit, all properties	Average incremental compliance cost per unit, high-cost properties	Average cost of rehabilitation, all properties	Average incremental compliance cost as a percentage of average rehab cost, all properties	Average incremental compliance cost as a percentage of average rehab cost, high-cost properties
Single Family (SF) Housing w/ Rehab Assistance, <$5K/Unit	$153	$170	$4,000	3.8	4.3
Multifamily (MF) Housing w/ Rehab Assistance, <$5K/Unit	113	130	4,000	2.8	3.3
SF Housing w/ Rehab Assistance, $5K–$25K	627	1,275	15,000	4.2	8.5
MF Housing w/ Rehab Assistance, $5K–$25K	265	720	15,000	1.8	4.8
SF Housing w/ Rehab Assistance, >$25K/Unit	891	2,775	30,000	3.0	9.3
MF Housing w/ Rehab Assistance, >$25K/Unit	342	1,140	30,000	1.1	3.8

(3) *Acquisition, Leasing, Support Services, and Operation.* This program group does not appear on Table 5, because HUD has no aggregate financial information for the housing affected by this subpart of the rule. For single family properties, the average cost of compliance is estimated at $251 per unit for all properties; the high cost is $870. For multifamily properties, the average cost per unit is $122 for all properties and $460 for high-cost properties. These costs are similar to those of housing with tenant-based assistance, and the financial impact is likely to be similar also.

4. *Final Rule Requirements.* The final rule establishes the following types of lead-based paint requirements: (1) Distribution of a lead hazard information pamphlet; (2) notice to occupants of evaluation and hazard reduction activities; (3) evaluation of lead-based paint hazards; (4) reduction of lead-based paint hazards; (5) ongoing monitoring and reevaluation; (6) response to a child with an elevated blood lead level; and (7) record keeping.

a. *Lead Hazard Information Pamphlet.* The rule, in accordance with the statute, requires the distribution of the EPA pamphlet entitled, "Protect Your Family From Lead in Your Home" to all existing tenants or owner-occupants who have not already received it in compliance with the lead-based paint disclosure rule (24 CFR part 35, subpart H) or the EPA rule implementing TSCA section 406(b) (40 CFR part 745, subpart E). Since the disclosure rule was effective in the Fall of 1996, HUD expects that most tenants will have already received the pamphlet when the rule becomes effective in year 2000 (see discussion of effective date below). Current HUD regulations require provision of information similar to that in the EPA pamphlet, so this is not a totally new requirement.

b. *Resident Notice.* The rule, in accordance with Title X, requires that occupants of rental housing receiving Federal assistance be provided written notice of risk assessments, paint inspections, or hazard reduction activities required by this regulation and undertaken at the property. This is a new requirement in HUD regulations. The required notice following risk assessment or inspection provides information to occupants about the nature, scope, and results of the evaluation and a name and phone number to contact for more information or for access to the actual evaluation reports. Notices to tenants regarding hazard reduction activities must contain information about the treatments performed and the location of any remaining lead-based paint. HUD is providing a sample format for resident notices in the final rule.

c. *Evaluation.* The rule establishes four types of evaluation procedures: (1) A lead-based paint inspection, which is a surface-by-surface investigation to determine the presence of lead-based paint on painted surfaces of a dwelling, typically through the use of a portable X-ray fluorescence (XRF) analyzer; (2) paint testing, which is a limited form of lead-based paint inspection aimed at determining the lead content of deteriorated paint or paint to be disturbed by rehabilitation; (3) a risk assessment, which is an on-site investigation to determine and report the existence, nature, severity, and location of lead-based paint hazards, which, in accordance with Title X, include dust-lead and soil-lead hazards as well as deteriorated lead-based paint, as well as lead-based paint on friction, impact and chewable surfaces; and (4) clearance, which is an examination conducted after hazard reduction, rehabilitation, or maintenance activities (a) to visually determine that deteriorated surfaces that are known or presumed to be lead-based paint have been controlled or abated and that visible dust, debris, paint chips, or other residue have been cleaned up; and (b) to collect samples of settled dust and test them for lead content to determine that no dust-lead hazards remain. A risk assessment includes limited dust wipe sampling or other environmental sampling techniques, identification of hazard reduction options, and a report explaining the results of the investigation. In some housing programs, the rule calls for a visual assessment instead of a lead-based paint inspection or risk assessment. A visual assessment does not require environmental sampling but requires the visual examination of interior and exterior painted surfaces for signs of deterioration. The rule requires different types of evaluation for different types of housing assistance programs and different ages of housing. The differences in the requirements largely reflect the extent of Federal involvement in the property or the availability of funding.

Existing HUD lead-based paint regulations require a visual inspection for defective paint surfaces and, in some cases, testing of and abatement of any lead-based paint on chewable paint surfaces. These methods are similar in kind to the visual assessment and paint testing requirements under the proposed rule.

d. *Hazard Reduction Activities.* Three types of hazard reduction activities are required in the rule: (1) Abatement, which is a set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards through removal, permanent enclosure or encapsulation, replacement of components, or removal or covering of lead-contaminated soil; (2) interim controls, which are designed to reduce temporarily human exposure to lead-based paint hazards through repairs, maintenance, painting, temporary containment, specialized cleaning, and ongoing monitoring; and (3) paint stabilization, which is the removal of deteriorated paint, repair of any physical defect in the substrate that may be causing paint deterioration, and repainting. Specialized cleanup and clearance are required after all these activities.

As with the requirements for evaluation, the final rule requires different types of hazard reduction activities for different types of housing assistance programs and different periods of construction. In the case of public housing, abatement of lead-based paint and lead-based paint hazards is required during the course of modernization under the current regulation. Under the final rule, the public housing requirements would remain essentially the same, with the additional requirement of interim controls to reduce identified lead-based hazards before scheduled abatement can occur.

e. *Ongoing Lead-Based Paint Maintenance and Reevaluation.* If temporary hazard reduction measures are used and there is a continuing financial relationship between HUD and the residential property, the final rule requires that owners conduct an annual check to identify any new deteriorated paint and to ensure that prior hazard reduction treatments are still intact. If there is new deteriorated paint, it is to be repaired; if old treatments are failing, they are to be fixed. For some housing programs, the rule requires that a certified risk assessor conduct a reevaluation of the property at specified intervals to identify any reaccumulation of lead-contaminated dust and any failure of prior hazard reductions.

f. *Response To a Child With an Elevated Blood Lead Level.* In some HUD programs, existing regulations use the presence of a child under age seven with an elevated blood lead level (EBL) as a trigger to initiate testing for and abatement of lead-based paint on chewable surfaces. The final rule changes the cutoff age from seven to six, to conform to guidance from the Centers for Disease Control and Prevention (CDC). The rule also changes the response requirement to a risk assessment and interim controls of any identified lead-based paint hazards, and changes the definition of an elevated blood lead level for the purposes of this rule from equal to or exceeding 25 micrograms per deciliter (μg/dL) to 20 μg/dL for a single venous test or of 15–19 μg/dL in two tests taken at least 3 months apart. This definitional change was made in consultation with CDC to conform to their existing medical guidelines.

g. *Record Keeping.* Grantees, owners, public housing authorities, and other designated parties are responsible for keeping a copy of each notice, evaluation, clearance or hazard reduction report for at least three years. If ongoing lead-based paint maintenance and/or reevaluation is required, such records must be kept and made available for HUD review until at least three years after such ongoing activities are no longer required.

5. *Description of Alternatives and Minimization of Economic Impact.* The specificity of the statute left HUD with no alternative to issuing an implementing regulation. However, in developing the final rule, HUD considered several alternative policies related to minimizing the burden of the rule on grantees, property owners and other parties responsible for complying with its requirements. Other alternatives were suggested by commenters on the proposed rule. In many cases, the public comments on the proposed rule articulated the issues discussed within the Department and at meetings with interested parties.

a. *Effective Date.* One consideration pertained to the effective date of the rule. On the one hand, an early effective date (such as 30 or 60 days after publication) seemed appropriate because the health of young children was at stake and the rule was delayed relative to the statutory schedule. On the other hand, HUD was aware that property owners, State and local agencies and other responsible parties needed time to prepare for compliance. The Department has concluded that such preparation is essential for safe, effective compliance and therefore is setting the effective date as one year after publication.

Commenters also urged HUD to make it clear that projects for which financing had been committed prior to the effective date should not have to be redesigned or refinanced in midstream. In response, HUD is including in the rule provisions that clarify exactly when projects in the pipeline are affected by the new requirements.

In addition to the phase-in period of one year, the final rule, in accordance with the statute, provides a more extended phase-in period for multifamily housing receiving project-based assistance of more than $5,000 per unit per year and was constructed after 1959. For some housing, this phase-in could last for 4 years after publication of the final rule.

b. *Stringency of Requirements in Relation to Amount of Federal Assistance and Nature of Program.* The Department recognizes that the statute and the legislative history indicates a desire on the part of Congress to make

the stringency of requirements reasonable in relation to the amount of Federal assistance, the type and size of property, and the nature of the program. HUD considered various ways to achieve this goal and concluded with three important policies: (1) Multifamily properties receiving no more than $5,000 per unit per year in project-based assistance and all single family properties receiving project-based assistance have less stringent requirements than multifamily properties receiving more than $5,000 in project-based assistance; (2) housing receiving no more than $5,000 per unit in Federal rehabilitation assistance have much less stringent requirements than those receiving more than $5,000; and (3) the requirements for housing occupied by families with tenant-based rental assistance apply only to units occupied by families with children of less than 6 years of age. By applying the rule narrowly to tenant-based rental assistance programs, HUD has mitigated some of the cost and burden on small businesses, while still realizing significant benefits by targeting units that house families with young children.

c. *De Minimis Area of Deteriorated Paint.* In the proposed rule, in an attempt to make the requirements of the rule as cost-effective as possible, the Department proposed a certain area of deteriorated paint that had to be present before treatment was required under the rule. This "de minimis" was drawn from the HUD Guidelines, where it was established as a way to focus resources on the highest priority hazards while maintaining effectiveness in hazard reduction. The de minimis areas were as follows: More than 10 square feet on an exterior wall; more than two square feet on a component with a large surface area other than an exterior wall (such as interior walls, ceilings, floors and doors); or more than 10 percent of the total surface area on an interior or exterior component with a small surface area including, but not limited to window sills, baseboards, and trim. Comments on this proposal were mixed. Some commenters found it difficult to understand and put in practice, indicating that people would spend too much time measuring the exact areas of deteriorated paint instead of focusing on making housing lead safe. Others welcomed the proposal as a reasonable way to target hazard reduction resources. In preparing the final rule, HUD has removed the de minimis provision with regard to deteriorated paint, after concluding that experience in the tenant-based assistance programs (where the de minimis provision was made effective in 1995) indicates that it is a cause of confusion.

d. *Qualifications.* Another subject of concern to HUD and to commenters on the proposed rule was the qualifications of individuals performing the hazard evaluation and reduction activities required by the rule. The proposed rule allowed dust and soil testing by persons employed by local housing agencies that are trained but not certified. Two commenters felt that it would be a mistake to allow uncertified individuals to take dust and soil tests, indicating that this appeared to be an avoidance of the certification law established by EPA regulations. EPA agreed with this point of view. HUD concluded that, because of the importance of dust and soil testing to the effectiveness of the regulation, there must be an established set of qualifications for those doing such testing. At this time, the only such program is that administered by EPA under authority of sections 402 and 404 of the Toxic Substances Control Act. Therefore HUD requires in the final rule that all dust and soil testing, as well as lead-based paint inspections, risk assessments, clearances and abatements, be performed or approved by people certified in accordance with EPA regulations or a State or tribal program authorized by EPA. To increase the availability of persons qualified to perform clearance examinations, HUD allows certified clearance technicians to perform clearances; and HUD also allows uncertified but trained technicians to perform clearances, provided the clearance report is signed by a certified lead-based paint inspector or risk assessor.

The proposed rule also required workers performing interim controls to be supervised by a person who is certified under EPA procedures as an abatement supervisor. Some commenters felt that it was unnecessary to require that interim controls workers be supervised by a certified abatement supervisor, suggesting that such workers could simply be trained in safe work practices. HUD agrees and requires in the final rule that workers performing lead-based paint maintenance and interim controls, including paint stabilization, only be trained in safe work practices. A series of optional acceptable training programs is listed.

e. *Options to Provide Greater Flexibility.* Several commenters on the proposed rule urged that HUD allow greater flexibility in ways to meet the goals of the rule. In particular, it was suggested that options be provided, such as the standard treatments recommended by the Task Force on Lead-Based Hazard Reduction and Financing as an option to conducting a risk assessment and interim controls. Such options would allow owners to select the procedure that is most cost-effective for them to achieve the goal of lead-based paint hazard control. The standard treatments option has been incorporated into today's final rule.

In the proposed rule, HUD included a provision requiring owners of multifamily housing with project-based rental assistance to prepare a lead hazard reduction plan. The hazard reduction plan was a suggestion of the Task Force on Lead-Based Paint Hazard Reduction and Financing. Its purpose was to give owners flexibility in prioritizing hazard reduction work. Several commenters, however, noted that it would be a paperwork "nightmare," not only for the owners but for HUD as well. Therefore the final rule requires simply that the hazard reduction work be completed within 90 days after completion of the risk assessment report in units occupied by children of less than six years of age and within 12 months in all other units. HUD believes this change provides flexibility without unnecessary paperwork.

HUD recognizes that some States, tribes, or local governments may have established procedures for lead-based paint evaluation and hazard reduction that may be somewhat different than but as protective as those in this rule. Therefore the rule provides that HUD may waive or modify certain requirements if the Department determines that such local provisions are as protective as those of the HUD rule.

f. *Avoidance of Duplication.* The final rule was written with careful consideration of existing regulations developed by other Federal agencies, States, Indian tribes and localities. To minimize duplication and avoid confusion, HUD has explicitly stated that this rulemaking does not preclude States, Indian tribes or localities from conducting a more protective procedure than the minimum requirements set out in the proposed rule. Similarly, if more than one requirement covers a condition or activity, the most protective method shall apply. HUD has worked and continues to work closely with the EPA and CDC to ensure that regulations from two or more Federal agencies are consistent and not duplicative. Wherever possible, HUD has referenced relevant requirements established by EPA.

VII. Findings and Certifications

A. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This final rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of Unfunded Mandates Reform Act of 1995.

B. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

C. Executive Order 12866, Regulatory Planning and Review

This rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 on Regulatory Planning and Review, issued by the President on September 30, 1993. OMB determined that this rule is an economically significant regulatory action, as defined in section 3(f)(1) of the Order. As described in section VI of this preamble, an Economic Analysis (EA) has been prepared that examines the economic costs and benefits of the final rule. The EA is available for inspection and copying in the office of the Departments' Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410. Any changes made to the final rule subsequent to its submission to OMB are identified in the docket file, which is also available for public inspection in the office of the Rules Docket Clerk.

D. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule will not have federalism implications concerning the division of local, State, and Federal responsibilities. The purpose of this rule is to ensure that housing receiving Federal assistance and federally owned housing that is to be sold does not pose lead-based paint hazards to young children. It implements Title X of the Housing and Community Development Act of 1992. No programmatic or policy change will result from this rule that will affect the relationship between the Federal government and State and local governments.

E. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

This rule will not pose an environmental health risk or safety risk for children.

F. Congressional Review of Major Final Rules

This final rule is a "major rule" as defined in the Congressional Review Act (5 U.S.C. Chapter 8).

VIII. References

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List of Subjects

24 CFR Part 35

Grant programs—housing and community development, Lead poisoning, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 91

Aged, Grant programs—housing and community development, Homeless, Individuals with disabilities, Low and moderate income housing, Reporting and recordkeeping requirements.

24 CFR Part 92

Administrative practice and procedure, Grant programs—housing and community development, Grant programs—Indians, Indians, Low and moderate income housing, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 280

Community development, Grant programs—housing and community development, Loan programs—housing and community development, Low and moderate income housing, Nonprofit organizations, Reporting and recordkeeping requirements.

24 CFR Part 291

Community facilities, Conflict of interests, Homeless, Lead poisoning, Low and moderate income housing, Mortgages, Reporting and recordkeeping requirements, Surplus government property.

24 CFR Part 511

Administrative practice and procedure, Grant programs—housing and community development, Lead poisoning, Low and moderate income housing, Reporting and recordkeeping requirements, Technical assistance.

24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

24 CFR Part 572

Condominiums, Cooperatives, Fair housing, Government property, Grant programs—housing and community development, Low and moderate income housing, Nonprofit organizations, Reporting and recordkeeping requirements.

24 CFR Part 573

Condominiums, Fair housing, Government property, Grant programs—housing and community development, Low and moderate income housing, Nonprofit organizations, Reporting and recordkeeping requirements.

24 CFR Part 574

AIDS, Community facilities, Disabled, Emergency shelter, Grant programs—health programs, Grant programs—housing and community development, Grant programs—social programs, Homeless, Housing, Low and moderate income housing, Nonprofit organizations, Rent subsidies, Reporting and recordkeeping requirements, Technical assistance.

24 CFR Part 576

Community facilities, Emergency shelter grants, Grant programs—housing and community development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 582

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

24 CFR Part 583

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

24 CFR Part 585

Grant programs—housing and community development, Homeless, Low and very low-income families, Reporting and recordkeeping requirements.

24 CFR Part 761

Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—low- and moderate-income housing, Reporting and recordkeeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 882

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 883

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 891

Aged, Capital advance programs, Civil rights, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low- and moderate-income housing, Mental health programs, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 901

Administrative practice and procedure, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 906

Grant programs—housing and community development, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 941

Grant programs—housing and community development, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 965

Energy conservation, Government procurement, Grant programs—housing and community development, Lead poisoning, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements, Utilities.

24 CFR Part 968

Grant programs—housing and community development, Indians, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 970

Grant programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 982

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 983

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 1000

Aged, Community development block grants, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 1003

Alaska, Community development block grants, Grant programs—housing and community development, Indians, Reporting and recordkeeping requirements.

24 CFR Part 1005

Indians, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, HUD is amending title 24 of the Code of Federal Regulations as follows:

PART 35—LEAD–BASED PAINT POISONING PREVENTION IN CERTAIN RESIDENTIAL STRUCTURES

1. The authority citation for 24 CFR part 35 is revised to read as follows:

Authority: 42 U.S.C. 3535(d), 4821, and 4851.

2. Remove Subpart A and redesignate subpart H, consisting of §§ 35.80 through 35.98, as subpart A, consisting of §§ 35.1 through 35.19. The table of contents to redesignated subpart A is revised to read as follows:

Subpart A—Disclosure of Known Lead-Based Paint Hazards Upon Sale or Lease of Residential Property

Sec.
35.1 Purpose.
35.3 Scope and applicability.
35.5 Effective dates.
35.7 Definitions.
35.9 Disclosure requirements for sellers and lessors.
35.11 Opportunity to conduct an evaluation.
35.13 Certification and acknowledgement of disclosure.
35.15 Agent responsibilities.
35.17 Enforcement.
35.19 Impact on State and local requirements.

3. Revise subparts B through G and add subparts H through R to read as follows:

Subpart B—General Lead-Based Paint Requirements and Definitions for All Programs

35.100 Purpose and applicability.
35.105 Effective dates.
35.106 Information collection requirements.
35.110 Definitions.
35.115 Exemptions.
35.120 Options.
35.125 Notice of evaluation and hazard reduction activities.
35.130 Lead hazard information pamphlet.
35.135 Use of paint containing lead.
35.140 Prohibited methods of paint removal.
35.145 Compliance with Federal laws and authorities.
35.150 Compliance with other State, tribal, and local laws.
35.155 Minimum requirements.
35.160 Waivers.
35.165 Prior evaluation or hazard reduction.
35.170 Noncompliance with the requirements of subparts B through R.
35.175 Records

Subpart C—Disposition of Residential Property Owned by a Federal Agency Other Than HUD

35.200 Purpose and applicability.
35.205 Definitions and other general requirements.
35.210 Disposition of residential property constructed before 1960.
35.215 Disposition of residential property constructed after 1959 and before 1978.

Subpart D—Project-Based Assistance Provided by a Federal Agency Other Than HUD

35.300 Purpose and applicability.
35.305 Definitions and other general requirements.
35.310 Notices and pamphlet.
35.315 Risk assessments.
35.320 Hazard reduction.
35.325 Child with an environmental intervention blood lead level.

Subpart E [Reserved]

Subpart F—HUD-Owned Single Family Property

35.500 Purpose and applicability.
35.505 Definitions and other general requirements.
35.510 Required procedures.

Subpart G—Multifamily Mortgage Insurance

35.600 Purpose and applicability.
35.605 Definitions and other general requirements.
35.610 Exemption.
35.615 Notices and pamphlet.
35.620 Multifamily insured property constructed before 1960.
35.625 Multifamily Insured Property constructed after 1959 and before 1978.
35.630 Conversions and Major Rehabilitations

Subpart H—Project-Based Rental Assistance

35.700 Purpose and applicability.
35.705 Definitions and other general requirements.
35.710 Notices and pamphlet.
35.715 Multifamily properties receiving more than $5,000 per unit.
35.720 Multifamily properties receiving up to $5,000 per unit, and single-family properties.
35.725 Section 8 rent adjustments.
35.730 Child with an environmental intervention blood lead level.

Subpart I—HUD-Owned and Mortgages-in-Possession Multifamily Property.

35.800 Purpose and applicability.
35.805 Definitions and other general requirements.
35.810 Notices and pamphlet.
35.815 Evaluation.
35.820 Interim controls.
35.825 Ongoing lead-based paint maintenance and reevaluation.
35.830 Child with an environmental intervention blood lead level.

Subpart J—Rehabilitation

35.900 Purpose and applicability.
35.905 Definitions and other general requirements.
35.910 Notices and pamphlet.
35.915 Calculating rehabilitation costs, except for the CILP program.
35.920 Calculating rehabilitation costs for the Flexible-Subsidy—CILP Program.
35.925 Examples of determining applicable requirements.
35.930 Evaluation and hazard reduction requirements.
35.935 Ongoing lead-based paint maintenance activities.
35.940 Special requirements for insular areas.

Subpart K—Acquisition, Leasing, Support Services, or Operation.

35.1000 Purpose and applicability.
35.1005 Definitions and other general requirements.
35.1010 Notices and pamphlet.
35.1015 Visual assessment, paint stabilization, and maintenance.

35.1020 Funding for evaluation and hazard reduction.

Subpart L—Public Housing Programs

35.1100 Purpose and applicability.
35.1105 Definitions and other general requirements.
35.1110 Notices and pamphlet.
35.1115 Evaluation.
35.1120 Hazard reduction.
35.1125 Evaluation and hazard reduction before acquisition and development.
35.1130 Child with an environmental intervention blood lead level.
35.1135 Eligible costs.
35.1140 Insurance coverage

Subpart M—Tenant-Based Rental Assistance

35.1200 Purpose and applicability.
35.1205 Definitions and other general requirements.
35.1210 Notices and pamphlet.
35.1215 Activities at initial and periodic inspections.
35.1220 Ongoing lead-based paint maintenance activities
35.1225 Child with an environmental intervention blood lead level.

Subparts N–Q [Reserved]

Subpart R—Methods and Standards for Lead-Based Paint Hazard Evaluation and Hazard Reduction Activities.

35.1300 Purpose and applicability
35.1305 Definitions and other general requirements.
35.1310 References.
35.1315 Collection and laboratory analysis of samples.
35.1320 Lead-based paint inspections and risk assessments.
35.1325 Abatement.
35.1330 Interim controls.
35.1335 Standard treatments.
35.1340 Clearance.
35.1345 Occupant protection and worksite preparation
35.1350 Safe work practices.
35.1355 Ongoing lead-based paint maintenance and reevaluation activities.

Subpart B—General Lead-Based Paint Requirements and Definitions for All Programs.

§ 35.100 Purpose and applicability.

(a) *Purpose.* The requirements of subparts B through R of this part are promulgated to implement the Lead-Based Paint Poisoning Prevention Act, as amended (42 U.S.C. 4821 *et seq.*), and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 *et seq.*).

(b) *Applicability.*—(1) *This subpart.* This subpart applies to all target housing that is federally owned and target housing receiving Federal assistance to which subparts C, D, F through M, and R of this part apply, except where indicated.

(2) *Other subparts.*—(i) *General.* Subparts C, D, and F through M of this part each set forth requirements for a specific type of Federal housing activity or assistance, such as multifamily mortgage insurance, project-based rental assistance, rehabilitation, or tenant-based rental assistance. Subpart R of this part provides standards and methods for activities required in subparts B, C, D, and F through M of this part.

(ii) *Application to programs.* Most HUD housing programs are covered by only one subpart of this part, but some programs can be used for more than one type of assistance and therefore are covered by more than one subpart of this part. A current list of programs covered by each subpart of this part is available on the internet at www.hud.gov, or by mail from the National Lead Information Center at 1–800–424–LEAD. Examples of flexible programs that can provide more than one type of assistance are the HOME Investment Partnerships program, the Community Development Block Grant program, and the Indian Housing Block Grant Program. Grantees, participating jurisdictions, Indian tribes and other entities administering such flexible programs must decide which subpart applies to the type of assistance being provided to a particular dwelling unit or residential property.

(iii) *Application to dwelling units.* In some cases, more than one type of assistance may be provided to the same dwelling unit. In such cases, the subpart or section with the most protective initial hazard reduction requirements applies. Paragraph (c) of this section provides a table that lists the subparts and sections of this part in order from the most protective to the least protective. (This list is based only on the requirements for initial hazard reduction. The summary of requirements on this list is not a complete list of requirements. It is necessary to refer to the applicable subparts and sections to determine all applicable requirements.)

(iv) *Example.* A multifamily building has 100 dwelling units and was built in 1965. The property is financed with HUD multifamily mortgage insurance. This building is covered by subpart G of this part (see § 35.625—Multifamily mortgage insurance for properties constructed after 1959), which is at protectiveness level 5 in the table set forth in paragraph (c) of this section. In the same building, however, 50 of the 100 dwelling units are receiving project-based assistance, and the average annual assistance per assisted unit is $5,500. Those 50 units, and common areas servicing those units, are covered by the requirements of subpart H of this part (see § 35.715—Project-based assistance for multifamily properties receiving more than $5,000 per unit), which are at protectiveness level 3. Therefore, because level 3 is a higher level of protectiveness than level 5, the units receiving project-based assistance, and common areas servicing those units, must comply at level 3, while the rest of the building can be operated at level 5. The owner may choose to operate the entire building at level 3 for simplicity.

(c) *Table One.* The following table lists the subparts and sections of this part applying to HUD programs in order from most protective to least protective hazard reduction requirements. The summary of hazard reduction requirements in this table is not complete. Readers must refer to relevant subpart for complete requirements.

Level of protection	Subpart, section, and type of assistance	Hazard reduction requirements
1	Subpart L, Public housing. Subpart G, § 35.630, Multifamily mortgage insurance for conversions and major rehabilitations.	Full abatement of lead-based paint.
2	Subpart J, § 35.930(d), Properties receiving more than $25,000 per unit in rehabilitation assistance.	Abatement of lead-based paint hazards.
3	Subpart G, § 35.620, Multifamily mortgage insurance for properties constructed before 1960, other than conversions and major rehabilitations. Subpart H, § 35.715, Project-based assistance for multifamily properties receiving more than $5,000 per unit. Subpart I, HUD-owned multifamily property. Subpart J, § 35.930(c), Properties receiving more than $5,000 and up to $25,000 per unit in rehabilitation assistance.	Interim controls.
4	Subpart F, HUD-owned single family properties. Subpart H, § 35.720, Project-based rental assistance for multifamily properties receiving up to $5,000 per unit and single family properties. Subpart K, Acquisition, leasing, support services, or operation. Subpart M, Tenant-based rental assistance.	Paint stabilization.

Level of protection	Subpart, section, and type of assistance	Hazard reduction requirements
5	Subpart G, § 35.625, Multifamily mortgage insurance for properties constructed after 1959	Ongoing lead-based paint maintenance.
6	Subpart J, § 35.930(b), Properties receiving up to and including $5,000 in rehabilitation assistance	Safe work practices during rehabilitation.

§ 35.105 Effective dates.

The effective date for subparts B through R of this part is September 15, 2000, except that the effective date for prohibited methods of paint removal, described in § 35.140, is November 15, 1999. Subparts F through M of this part provide further information on the application of the effective date to specific programs. Before September 15, 2000, a designated party has the option of following the procedures in subparts B through R of this part, or complying with current HUD lead-based paint regulations.

§ 35.106 Information collection requirements.

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 2501–3520), and have been assigned OMB control number 2539–0009. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

§ 35.110 Definitions.

Abatement means any set of measures designed to permanently eliminate lead-based paint or lead-based paint hazards (see definition of "permanent"). Abatement includes:

(1) The removal of lead-based paint and dust-lead hazards, the permanent enclosure or encapsulation of lead-based paint, the replacement of components or fixtures painted with lead-based paint, and the removal or permanent covering of soil-lead hazards; and

(2) All preparation, cleanup, disposal, and post abatement clearance testing activities associated with such measures.

Act means the Lead-Based Paint Poisoning Prevention Act, as amended, 42 U.S.C. 4822 *et seq.*

Bare soil means soil or sand not covered by grass, sod, other live ground covers, wood chips, gravel, artificial turf, or similar covering.

Certified means licensed or certified to perform such activities as risk assessment, lead-based paint inspection, or abatement supervision, either by a State or Indian tribe with a lead-based paint certification program authorized by the Environmental Protection Agency (EPA), or by the EPA, in accordance with 40 CFR part 745, subparts L or Q.

Chewable surface means an interior or exterior surface painted with lead-based paint that a young child can mouth or chew. A chewable surface is the same as an "accessible surface" as defined in 42 U.S.C. 4851b(2)). Hard metal substrates and other materials that cannot be dented by the bite of a young child are not considered chewable.

Clearance examination means an activity conducted following lead-based paint hazard reduction activities to determine that the hazard reduction activities are complete and that no soil-lead hazards or settled dust-lead hazards, as defined in this part, exist in the dwelling unit or worksite. The clearance process includes a visual assessment and collection and analysis of environmental samples. Dust-lead standards for clearance are found at § 35.1320.

CILP recipient means an owner of a multifamily property which is undergoing rehabilitation funded by the Flexible Subsidy-Capital Improvement Loan Program (CILP).

Common area means a portion of a residential property that is available for use by occupants of more than one dwelling unit. Such an area may include, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, on-site day care facilities, garages and boundary fences.

Component means an architectural element of a dwelling unit or common area identified by type and location, such as a bedroom wall, an exterior window sill, a baseboard in a living room, a kitchen floor, an interior window sill in a bathroom, a porch floor, stair treads in a common stairwell, or an exterior wall.

Composite sample means a collection of more than one sample of the same medium (e.g., dust, soil or paint) from the same type of surface (e.g., floor, interior window sill, or window trough), such that multiple samples can be analyzed as a single sample.

Containment means the physical measures taken to ensure that dust and debris created or released during lead-based paint hazard reduction are not spread, blown or tracked from inside to outside of the worksite.

Designated party means a Federal agency, grantee, subrecipient, participating jurisdiction, housing agency, CILP recipient, Indian tribe, tribally designated housing entity (TDHE), sponsor or property owner responsible for complying with applicable requirements.

Deteriorated paint means any interior or exterior paint or other coating that is peeling, chipping, chalking or cracking, or any paint or coating located on an interior or exterior surface or fixture that is otherwise damaged or separated from the substrate.

Dry sanding means sanding without moisture and includes both hand and machine sanding.

Dust-lead hazard means surface dust that contains a dust-lead loading (area concentration of lead) at or exceeding the levels promulgated by the EPA pursuant to section 403 of the Toxic Substances Control Act or, if such levels are not in effect, the standards in § 35.1320.

Dwelling unit means a:

(1) Single-family dwelling, including attached structures such as porches and stoops; or

(2) Housing unit in a structure that contains more than 1 separate housing unit, and in which each such unit is used or occupied, or intended to be used or occupied, in whole or in part, as the home or separate living quarters of 1 or more persons.

Encapsulation means the application of a covering or coating that acts as a barrier between the lead-based paint and the environment and that relies for its durability on adhesion between the encapsulant and the painted surface, and on the integrity of the existing bonds between paint layers and between the paint and the substrate. Encapsulation may be used as a method of abatement if it is designed and performed so as to be permanent (see definition of "permanent").

Enclosure means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment. Enclosure may be used as a method of

abatement if it is designed to be permanent (see definition of "permanent").

Environmental intervention blood lead level means a confirmed concentration of lead in whole blood equal to or greater than 20 µg/dL (micrograms of lead per deciliter) for a single test or 15–19 µg/dL in two tests taken at least 3 months apart.

Evaluation means a risk assessment, a lead hazard screen, a lead-based paint inspection, paint testing, or a combination of these to determine the presence of lead-based paint hazards or lead-based paint.

Expected to reside means there is actual knowledge that a child will reside in a dwelling unit reserved for the elderly or designated exclusively for persons with disabilities. If a resident woman is known to be pregnant, there is actual knowledge that a child will reside in the dwelling unit.

Federal agency means the United States or any executive department, independent establishment, administrative agency and instrumentality of the United States, including a corporation in which all or a substantial amount of the stock is beneficially owned by the United States or by any of these entities. The term "Federal agency" includes, but is not limited to, Rural Housing Service (formerly Rural Housing and Community Development Service that was formerly Farmer's Home Administration), Resolution Trust Corporation, General Services Administration, Department of Defense, Department of Veterans Affairs, Department of the Interior, and Department of Transportation.

Federally owned property means residential property owned or managed by a Federal agency, or for which a Federal agency is a trustee or conservator.

Firm commitment means a valid commitment issued by HUD or the Federal Housing Commissioner setting forth the terms and conditions upon which a mortgage will be insured or guaranteed.

Friction surface means an interior or exterior surface that is subject to abrasion or friction, including, but not limited to, certain window, floor, and stair surfaces.

g means gram, *mg* means milligram (thousandth of a gram), and µg means microgram (millionth of a gram).

Grantee means any State or local government, Indian tribe, IHBG recipient, insular area or nonprofit organization that has been designated by HUD to administer Federal housing assistance under a program covered by subparts J and K of this part, except the HOME program or the Flexible Subsidy-Capital Improvement Loan Program (CILP).

Hard costs of rehabilitation means:

(1) Costs to correct substandard conditions or to meet applicable local rehabilitation standards;

(2) Costs to make essential improvements, including energy-related repairs, and those necessary to permit use by persons with disabilities; and costs to repair or replace major housing systems in danger of failure; and

(3) Costs of non-essential improvements, including additions and alterations to an existing structure; but

(4) Hard costs do not include administrative costs (e.g., overhead for administering a rehabilitation program, processing fees, etc.).

Hazard reduction means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls or abatement or a combination of the two.

HEPA vacuum means a vacuum cleaner device with an included high-efficiency particulate air (HEPA) filter through which the contaminated air flows, operated in accordance with the instructions of its manufacturer. A HEPA filter is one that captures at least 99.97 percent of airborne particles of at least 0.3 micrometers in diameter.

Housing for the elderly means retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or more, or other age if recognized as elderly by a specific Federal housing assistance program.

Housing receiving Federal assistance means housing which is covered by an application for HUD mortgage insurance, receives housing assistance payments under a program administered by HUD, or otherwise receives more than $5,000 in project-based assistance under a Federal housing program administered by an agency other than HUD.

HUD means the United States Department of Housing and Urban Development.

HUD-owned property means residential property owned or managed by HUD, or for which HUD is a trustee or conservator.

Impact surface means an interior or exterior surface that is subject to damage by repeated sudden force, such as certain parts of door frames.

Indian Housing Block Grant (IHBG) recipient means a tribe or a tribally designated housing entity (TDHE) receiving IHBG funds.

Indian tribe means a tribe as defined in the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*)

Inspection (See Lead-based paint inspection).

Insular areas means Guam, the Northern Mariana Islands, the United States Virgin Islands and American Samoa.

Interim controls means a set of measures designed to reduce temporarily human exposure or likely exposure to lead-based paint hazards. Interim controls include, but are not limited to, repairs, painting, temporary containment, specialized cleaning, clearance, ongoing lead-based paint maintenance activities, and the establishment and operation of management and resident education programs.

Interior window sill means the portion of the horizontal window ledge that protrudes into the interior of the room, adjacent to the window sash when the window is closed. The interior window sill is sometimes referred to as the window stool.

Lead-based paint means paint or other surface coatings that contain lead equal to or exceeding 1.0 milligram per square centimeter or 0.5 percent by weight or 5,000 parts per million (ppm) by weight.

Lead-based paint hazard means any condition that causes exposure to lead from dust-lead hazards, soil-lead hazards, or lead-based paint that is deteriorated or present in chewable surfaces, friction surfaces, or impact surfaces, and that would result in adverse human health effects.

Lead-based paint inspection means a surface-by-surface investigation to determine the presence of lead-based paint and the provision of a report explaining the results of the investigation.

Lead hazard screen means a limited risk assessment activity that involves paint testing and dust sampling and analysis as described in 40 CFR 745.227(c) and soil sampling and analysis as described in 40 CFR 745.227(d).

Mortgagee means a lender of a mortgage loan.

Mortgagor means a borrower of a mortgage loan.

Multifamily property means a residential property containing five or more dwelling units.

Occupant means a person who inhabits a dwelling unit.

Owner means a person, firm, corporation, nonprofit organization, partnership, government, guardian, conservator, receiver, trustee, executor, or other judicial officer, or other entity which, alone or with others, owns, holds, or controls the freehold or leasehold title or part of the title to property, with or without actually possessing it. The definition includes a vendee who possesses the title, but does not include a mortgagee or an owner of a reversionary interest under a ground rent lease.

Paint stabilization means repairing any physical defect in the substrate of a painted surface that is causing paint deterioration, removing loose paint and other material from the surface to be treated, and applying a new protective coating or paint.

Paint testing means the process of determining, by a certified lead-based paint inspector or risk assessor, the presence or the absence of lead-based paint on deteriorated paint surfaces or painted surfaces to be disturbed or replaced.

Paint removal means a method of abatement that permanently eliminates lead-based paint from surfaces.

Painted surface to be disturbed means a paint surface that is to be scraped, sanded, cut, penetrated or otherwise affected by rehabilitation work in a manner that could potentially create a lead-based paint hazard by generating dust, fumes, or paint chips.

Participating jurisdiction means any State or local government that has been designated by HUD to administer a HOME program grant.

Permanent means an expected design life of at least 20 years.

Play area means an area of frequent soil contact by children of less than 6 years of age, as indicated by the presence of play equipment (e.g. sandboxes, swing sets, sliding boards, etc.) or toys or other children's possessions, observations of play patterns, or information provided by parents, residents or property owners.

Project-based rental assistance means Federal rental assistance that is tied to a residential property with a specific location and remains with that particular location throughout the term of the assistance.

Public health department means a State, tribal, county or municipal public health department or the Indian Health Service.

Public housing development means a residential property assisted under the United States Housing Act of 1937 (42 U.S.C. 1437 *et seq.*), but not including housing assisted under section 8 of the 1937 Act.

Reevaluation means a visual assessment of painted surfaces and limited dust and soil sampling conducted periodically following lead-based paint hazard reduction where lead-based paint is still present.

Rehabilitation means the improvement of an existing structure through alterations, incidental additions or enhancements. Rehabilitation includes repairs necessary to correct the results of deferred maintenance, the replacement of principal fixtures and components, improvements to increase the efficient use of energy, and installation of security devices.

Replacement means a strategy of abatement that entails the removal of building components that have surfaces coated with lead-based paint and the installation of new components free of lead-based paint.

Residential property means a dwelling unit, common areas, building exterior surfaces, and any surrounding land, including outbuildings, fences and play equipment affixed to the land, belonging to an owner and available for use by residents, but not including land used for agricultural, commercial, industrial or other non-residential purposes, and not including paint on the pavement of parking lots, garages, or roadways.

Risk assessment means:

(1) An on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards; and

(2) The provision of a report by the individual or firm conducting the risk assessment explaining the results of the investigation and options for reducing lead-based paint hazards.

Single family property means a residential property containing one through four dwelling units.

Single room occupancy (SRO) housing means housing consisting of zero-bedroom dwelling units that may contain food preparation or sanitary facilities or both (see Zero-bedroom dwelling).

Soil-lead hazard means bare soil on residential property that contains lead equal to or exceeding levels promulgated by the U.S. Environmental Protection Agency pursuant to section 403 of the Toxic Substances Control Act or, if such levels are not in effect, the following levels: 400 µg/g in play areas; and 2000 µg/g in other areas with bare soil that total more than 9 square feet (0.8 square meters) per residential property.

Sponsor means mortgagor (borrower).

Subrecipient means any nonprofit organization selected by the grantee or participating jurisdiction to administer all or a portion of the Federal rehabilitation assistance or other non-rehabilitation assistance, or any such organization selected by a subrecipient of the grantee or participating jurisdiction. An owner or developer receiving Federal rehabilitation assistance or other assistance for a residential property is not considered a subrecipient for the purposes of carrying out that project.

Standard treatments means a series of hazard reduction measures designed to reduce all lead-based paint hazards in a dwelling unit without the benefit of a risk assessment or other evaluation.

Substrate means the material directly beneath the painted surface out of which the components are constructed, including wood, drywall, plaster, concrete, brick or metal.

Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless a child of less than 6 years of age resides or is expected to reside in such housing for the elderly or persons with disabilities) or any zero-bedroom dwelling. In the case of jurisdictions which banned the sale or use of lead-based paint prior to 1978, HUD may designate an earlier date.

Tenant means the individual named as the lessee in a lease, rental agreement or occupancy agreement for a dwelling unit.

Visual assessment means looking for, as applicable:

(1) Deteriorated paint;

(2) Visible surface dust, debris and residue as part of a risk assessment or clearance examination; or

(3) The completion or failure of a hazard reduction measure.

Wet sanding or *wet scraping* means a process of removing loose paint in which the painted surface to be sanded or scraped is kept wet to minimize the dispersal of paint chips and airborne dust.

Window trough means the area between the interior window sill (stool) and the storm window frame. If there is no storm window, the window trough is the area that receives both the upper and lower window sashes when they are both lowered.

Worksite means an interior or exterior area where lead-based paint hazard reduction activity takes place. There may be more than one worksite in a dwelling unit or at a residential property.

Zero-bedroom dwelling means any residential dwelling in which the living areas are not separated from the sleeping area. The term includes efficiencies, studio apartments, dormitory or single room occupancy housing, military barracks, and rentals of individual rooms in residential dwellings (see Single room occupancy (SRO)).

§ 35.115 Exemptions.

(a) Subparts B through R of this part do not apply to the following:

(1) A residential property for which construction was completed on or after January 1, 1978, or, in the case of jurisdictions which banned the sale or residential use of lead-containing paint prior to 1978, an earlier date as HUD may designate (see § 35.160).

(2) A zero-bedroom dwelling unit, including a single room occupancy (SRO) dwelling unit.

(3) Housing for the elderly, or a residential property designated exclusively for persons with disabilities; except this exemption shall not apply if a child less than age 6 resides or is expected to reside in the dwelling unit (see definitions of "housing for the elderly" and "expected to reside" in § 35.110).

(4) Residential property found not to have lead-based paint by a lead-based paint inspection conducted in accordance with § 35.1320(a) (for more information regarding inspection procedures consult the 1997 edition of Chapter 7 of the HUD Guidelines). Results of additional test(s) by a certified lead-based paint inspector may be used to confirm or refute a prior finding.

(5) Residential property in which all lead-based paint has been identified, removed, and clearance has been achieved in accordance with 40 CFR 745.227(b)(e) before September 15, 2000, or in accordance with §§ 35.1320, 35.1325 and 35.1340 on or after September 15, 2000. This exemption does not apply to residential property where enclosure or encapsulation has been used as a method of abatement.

(6) An unoccupied dwelling unit or residential property that is to be demolished, provided the dwelling unit or property will remain unoccupied until demolition.

(7) A property or part of a property that is not used and will not be used for human residential habitation, except that spaces such as entryways, hallways, corridors, passageways or stairways serving both residential and nonresidential uses in a mixed-use property shall not be exempt.

(8) Any rehabilitation that does not disturb a painted surface.

(9) For emergency actions immediately necessary to safeguard against imminent danger to human life, health or safety, or to protect property from further structural damage (such as when a property has been damaged by a natural disaster, fire, or structural collapse), occupants shall be protected from exposure to lead in dust and debris generated by such emergency actions to the extent practicable, and the requirements of subparts B through R of this part shall not apply. This exemption applies only to repairs necessary to respond to the emergency. The requirements of subparts B through R of this part shall apply to any work undertaken subsequent to, or above and beyond, such emergency actions.

(10) If a Federal law enforcement agency has seized a residential property and owns the property for less than 270 days, §§ 35.210 and 35.215 shall not apply to the property.

(11) The requirements of subpart K of this part do not apply if the assistance being provided is emergency rental assistance or foreclosure prevention assistance, provided that this exemption shall expire for a dwelling unit no later than 100 days after the initial payment or assistance.

(12) Performance of an evaluation or lead-based paint hazard reduction or lead-based paint abatement on an exterior painted surface as required under this part may be delayed for a reasonable time during a period when weather conditions are unsuitable for conventional construction activities.

(13) Where abatement of lead-based paint hazards or lead-based paint is required by this part and the property is listed or has been determined to be eligible for listing in the National Register of Historic Places or contributing to a National Register Historic District, the designated party may, if requested by the State Historic Preservation Office, conduct interim controls in accordance with § 35.1330 instead of abatement. If interim controls are conducted, ongoing lead-based paint maintenance and reevaluation shall be conducted as required by the applicable subpart of this part in accordance with § 35.1355.

(b) For the purposes of subpart C of this part, each Federal agency other than HUD will determine whether appropriations are sufficient to implement this rule. If appropriations are not sufficient, subpart C of this part shall not apply to that Federal agency. If appropriations are sufficient, subpart C of this part shall apply.

§ 35.120 Options.

(a) *Standard treatments.* Where interim controls are required by this part, the designated party has the option to presume that lead-based paint or lead-based paint hazards or both are present throughout the residential property. In such a case, evaluation is not required. Standard treatments shall then be conducted in accordance with § 35.1335 on all applicable surfaces, including soil. Standard treatments are completed only when clearance is achieved in accordance with § 35.1340.

(b) *Abatement.* Where abatement is required by this part, the designated party may presume that lead-based paint or lead-based paint hazards or both are present throughout the residential property. In such a case, evaluation is not required. Abatement shall then be conducted on all applicable surfaces, including soil, in accordance with § 35.1325, and completed when clearance is achieved in accordance with § 35.1340. This option is not available in public housing, where inspection is required.

(c) *Lead hazard screen.* Where a risk assessment is required, the designated party may choose first to conduct a lead hazard screen in accordance with § 35.1320(b). If the results of the lead hazard screen indicate the need for a full risk assessment (e.g., if the environmental measurements exceed levels established for lead hazard screens in § 35.1320(b)(2)), a complete risk assessment shall be conducted. Environmental samples collected for the lead hazard screen may be used in the risk assessment. If the results of the lead hazard screen do not indicate the need for a follow-up risk assessment, a risk assessment is not required.

(d) *Paint testing.* Where paint stabilization or interim controls of deteriorated paint surfaces are required by this rule, the designated party has the option to conduct paint testing of all surfaces with non-intact paint. If paint testing indicates the absence of lead-based paint on a specific surface, paint stabilization or interim controls are not required on that surface.

§ 35.125 Notice of evaluation and hazard reduction activities.

The following activities shall be conducted if notice is required by subparts D and F through M of this part.

(a) *Notice of evaluation or presumption.* When evaluation is undertaken and lead-based paint or lead-based paint hazards are found to be present, or if a presumption is made that lead-based paint or lead-based paint hazards are present in accordance with the options described in § 35.120, the designated party shall provide a notice to occupants within 15 calendar days of the date when the designated party receives the report or makes the presumption.

(1) The notice of the evaluation shall include:

(i) A summary of the nature, scope and results of the evaluation;

(ii) A contact name, address and telephone number for more information, and to obtain access to the actual evaluation report; and

(iii) The date of the notice.

(2) The notice of presumption shall include:

(i) The nature and scope of the presumption;

(ii) A contact name, address and telephone number for more information; and

(iii) The date of the notice.

(b) *Notice of hazard reduction activity.* When hazard reduction activities are undertaken, each designated party shall:

(1) Provide a notice to occupants no more than 15 calendar days after the hazard reduction activities have been completed. Notice of hazard reduction shall include, but not be limited to:

(i) A summary of the nature, scope and results (including clearance), of the hazard reduction activities.

(ii) A contact name, address and telephone number for more information; and

(iii) Available information on the location of any remaining lead-based paint in the rooms, spaces or areas where hazard reduction activities were conducted, on a surface-by-surface basis;

(2) Update the notice, based on reevaluation of the residential property and as any additional hazard reduction work is conducted.

(c) *Availability of notices of evaluation, presumption, and hazard reduction activities.* (1) The notices of evaluation, presumption, and hazard reduction shall be of a size and type that is easily read by occupants.

(2) To the extent practicable, each notice shall be made available, upon request, in a format accessible to persons with disabilities (e.g., Braille, large type, computer disk, audio tape).

(3) Each notice shall be provided in the occupants' primary language or in the language of the occupants' contract or lease.

(4) The designated party shall provide each notice to the occupants by:

(i) Posting and maintaining it in centrally located common areas and distributing it to any dwelling unit if necessary because the head of household is a person with a known disability; or

(ii) Distributing it to each occupied dwelling unit affected by the evaluation, presumption, or hazard reduction activity or serviced by common areas in which an evaluation, presumption or hazard reduction has taken place.

§ 35.130 Lead hazard information pamphlet.

If provision of a lead hazard information pamphlet is required in subparts D and F through M of this part, the designated party shall provide to each occupied dwelling unit to which subparts D and F through M of this part apply, the lead hazard information pamphlet developed by EPA, HUD and the Consumer Product Safety Commission pursuant to section 406 of the Toxic Substances Control Act (15 U.S.C. 2686), or an EPA-approved alternative; except that the designated party need not provide a lead hazard information pamphlet if the designated party can demonstrate that the pamphlet has already been provided in accordance with the lead-based paint notification and disclosure requirements at § 35.88(a)(1), or 40 CFR 745.107(a)(1) or in accordance with the requirements for hazard education before renovation at 40 CFR part 745, subpart E.

§ 35.135 Use of paint containing lead.

(a) *New use prohibition.* The use of paint containing more than 0.06 percent dry weight of lead on any interior or exterior surface in federally owned housing or housing receiving Federal assistance is prohibited. As appropriate, each Federal agency shall include the prohibition in contracts, grants, cooperative agreements, insurance agreements, guaranty agreements, trust agreements, or other similar documents.

(b) *Pre-1978 prohibition.* In the case of a jurisdiction which banned the sale or residential use of lead-containing paint before 1978, HUD may designate an earlier date for certain provisions of subparts D and F through M of this part.

§ 35.140 Prohibited methods of paint removal.

The following methods shall not be used to remove paint that is, or may be, lead-based paint:

(a) Open flame burning or torching.

(b) Machine sanding or grinding without a high-efficiency particulate air (HEPA) local exhaust control.

(c) Abrasive blasting or sandblasting without HEPA local exhaust control.

(d) Heat guns operating above 1100 degrees Fahrenheit or charring the paint.

(e) Dry sanding or dry scraping, except dry scraping in conjunction with heat guns or within 1.0 ft. (0.30 m.) of electrical outlets, or when treating defective paint spots totaling no more than 2 sq. ft. (0.2 sq. m.) in any one interior room or space, or totaling no more than 20 sq. ft. (2.0 sq. m.) on exterior surfaces.

(f) Paint stripping in a poorly ventilated space using a volatile stripper that is a hazardous substance in accordance with regulations of the Consumer Product Safety Commission at 16 CFR 1500.3, and/or a hazardous chemical in accordance with the Occupational Safety and Health Administration regulations at 29 CFR 1910.1200 or 1926.59, as applicable to the work.

§ 35.145 Compliance with Federal laws and authorities.

All lead-based paint activities, including waste disposal, performed under this part shall be performed in accordance with applicable Federal laws and authorities. For example, such activities are subject to the applicable environmental review requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the Toxic Substances Control Act, Title IV (15 U.S.C. 2860 *et seq.*), and other environmental laws and authorities (see, e.g., laws and authorities listed in § 50.4 of this title).

§ 35.150 Compliance with other State, tribal, and local laws.

(a) *HUD responsibility.* If HUD determines that a State, tribal or local law, ordinance, code or regulation provides for evaluation or hazard reduction in a manner that provides a comparable level of protection from the hazards of lead-based paint poisoning to that provided by the requirements of subparts B, C, D, F through M and R of this part and that adherence to the requirements of subparts B, C, D, F through M, and R of this part, would be duplicative or otherwise cause inefficiencies, HUD may modify or waive some or all of the requirements of the subparts in a manner that will promote efficiency while ensuring a comparable level of protection.

(b) *Participant responsibility.* Nothing in this part is intended to relieve any participant in a program covered by this subpart of any responsibility for compliance with State, tribal or local laws, ordinances, codes or regulations governing evaluation and hazard reduction. If a State, tribal or local law, ordinance, code or regulation defines lead-based paint differently than the Federal definition, the more protective definition (i.e., the lower level) shall be followed in that State, tribal or local jurisdiction.

§ 35.155 Minimum requirements.

(a) Nothing in subparts B, C, D, F through M, and R of this part is intended to preclude a designated party or occupant from conducting additional evaluation or hazard reduction measures bey. nd the minimum requirements established for each program in this regulation. For example, if the applicable subpart requires visual

assessment, the designated party may choose to perform a risk assessment in accordance with § 35.1320. Similarly, if the applicable subpart requires interim controls, a designated party or occupant may choose to implement abatement in accordance with § 35.1325.

(b) To the extent that assistance from any of the programs covered by subparts B, C, D, and F through M of this part is used in conjunction with other HUD program assistance, the most protective requirements prevail.

§ 35.160 Waivers.

In accordance with § 5.110 of this title, on a case-by-case basis and upon determination of good cause, HUD may, subject to statutory limitations, waive any provision of subparts B, C, D, F through M, and R of this part.

§ 35.165 Prior evaluation or hazard reduction.

If an evaluation or hazard reduction was conducted at a residential property or dwelling unit before the property or dwelling unit became subject to the requirements of subparts B, C, D, F through M, and R of this part, such an evaluation, hazard reduction or abatement meets the requirements of subparts B, C, D, F through M, and R of this part and need not be repeated under the following conditions:

(a) *Lead-based paint inspection.* (1) A lead-based paint inspection conducted before August 30, 1999, meets the requirements of this rule if:

(i) At the time of the inspection the lead-based paint inspector was approved by a State or Indian tribe to perform lead-based paint inspections. It is not necessary that the State or tribal approval program had EPA authorization at the time of the inspection.

(ii) Notwithstanding paragraph (a)(1)(i) of this section, the inspection was conducted and accepted as valid by a housing agency in fulfillment of the lead-based paint inspection requirement of the public and Indian housing program.

(2) A lead-based paint inspection conducted after August 29, 1999 must have been conducted by a certified lead-based paint inspector.

(b) *Risk assessment.* (1) A risk assessment must be no more than 12 months old to be considered current.

(2) A risk assessment conducted before August 30, 1999 meets the requirements of this part if at the time of the risk assessment the risk assessor was approved by a State or Indian tribe to perform risk assessments. It is not necessary that the State or tribal approval program had EPA authorization at the time of the risk assessment.

(3) A risk assessment conducted after August 29, 1999 must have been conducted by a certified risk assessor.

(4) Paragraph (b) of this section does not apply in a case where a risk assessment is required in response to the identification of a child with an environmental intervention blood lead level. In such a case, the requirements in the applicable subpart for responding to a child with an environmental intervention blood lead level shall apply.

(c) *Interim controls.* If a residential property is under a program of interim controls and ongoing lead-based paint maintenance and reevaluation activities established pursuant to a risk assessment conducted in accordance with paragraph (b) of this section, the interim controls that have been conducted meet the requirements of this part if clearance was achieved after such controls were implemented. In such a case, the program of interim controls and ongoing activities shall be continued in accordance with the requirements of this part.

(d) *Abatement.* (1) An abatement conducted before August 30, 1999 meets the requirements of this part if:

(i) At the time of the abatement the abatement supervisor was approved by a State or Indian tribe to perform lead-based paint abatement. It is not necessary that the State or tribal approval program had EPA authorization at the time of the abatement.

(ii) Notwithstanding paragraph (d)(1)(i) of this section, it was conducted and accepted by a housing agency in fulfillment of the lead-based paint abatement requirement of the public housing program or by an Indian housing authority (as formerly defined under the U.S. Housing Act of 1937) in fulfillment of the lead-based paint requirement of the Indian housing program formerly funded under the U.S. Housing Act of 1937.

(2) An abatement conducted after August 29, 1999 must have been conducted under the supervision of a certified lead-based paint abatement supervisor.

§ 35.170 Noncompliance with the requirements of subparts B through R of this part.

(a) *Monitoring and enforcement.* A designated party who fails to comply with any requirement of subparts B, C, D, F through M, and R of this part shall be subject to the sanctions available under the relevant Federal housing assistance or ownership program and may be subject to other penalties authorized by law.

(b) A property owner who informs a potential purchaser or occupant of lead-based paint or possible lead-based paint hazards in a residential property or dwelling unit, in accordance with subpart A of this part, is not relieved of the requirements to evaluate and reduce lead-based paint hazards in accordance with subparts B through R of this part as applicable.

§ 35.175 Records.

The designated party, as specified in subparts C, D, and F through M of this part, shall keep a copy of each notice, evaluation, and clearance or abatement report required by subparts C, D, and F through M of this part for at least three years. Those records applicable to a portion of a residential property for which ongoing lead-based paint maintenance and/or reevaluation activities are required shall be kept and made available for the Department's review, until at least three years after such activities are no longer required.

Subpart C—Disposition of Residential Property Owned by a Federal Agency Other Than HUD

§ 35.200 Purpose and applicability.

The purpose of this subpart C is to establish procedures to eliminate as far as practicable lead-based paint hazards prior to the sale of a residential property that is owned by a Federal agency other than HUD. The requirements of this subpart apply to any residential property offered for sale on or after September 15, 2000.

§ 35.205 Definitions and other general requirements.

Definitions and other general requirements that apply to this subpart are found in subpart B of this part.

§ 35.210 Disposition of residential property constructed before 1960.

(a) *Evaluation.* The Federal agency shall conduct a risk assessment and a lead-based paint inspection in accordance with 40 CFR 745.227 before the closing of the sale.

(b) *Abatement of lead-based paint hazards.* The risk assessment used for the identification of hazards to be abated shall have been performed no more than 12 months before the beginning of the abatement. The Federal agency shall abate all identified lead-based paint hazards in accordance with 40 CFR 745.227. Abatement is completed when clearance is achieved in accordance with 40 CFR 745.227. Where abatement of lead-based paint hazards is not completed before the closing of the sale, the Federal agency shall be responsible for assuring that abatement is carried out by the purchaser before occupancy of the property as target housing and in accordance with 40 CFR 745.227.

§ 35.215 Disposition of residential property constructed after 1959 and before 1978.

The Federal agency shall conduct a risk assessment and a lead-based paint inspection in accordance with 40 CFR 745.227. Evaluation shall be completed before closing of the sale according to a schedule determined by the Federal agency. The results of the risk assessment and lead-based paint inspection shall be made available to prospective purchasers as required in subpart A of this part.

Subpart D—Project-Based Assistance Provided by a Federal Agency Other Than HUD

§ 35.300 Purpose and applicability.

The purpose of this subpart D is to establish procedures to eliminate as far as practicable lead-based paint hazards in a residential property that receives more than $5,000 annually per project in project-based assistance on or after September 15, 2000, under a program administered by a Federal agency other than HUD.

§ 35.305 Definitions and other general requirements.

Definitions and other general requirements that apply to this subpart are found in subpart B of this part.

§ 35.310 Notices and pamphlet.

(a) *Notice.* A notice of evaluation or hazard reduction shall be provided to the occupants in accordance with § 35.125.

(b) *Lead hazard information pamphlet.* The owner shall provide the lead hazard information pamphlet in accordance with § 35.130.

§ 35.315 Risk assessment.

Each owner shall complete a risk assessment in accordance with 40 CFR 745.227(d). Each risk assessment shall be completed in accordance with the schedule established by the Federal agency.

§ 35.320 Hazard reduction.

Each owner shall conduct interim controls consistent with the findings of the risk assessment report. Hazard reduction shall be conducted in accordance with subpart R of this part.

§ 35.325 Child with an environmental intervention blood lead level.

If a child less than 6 years of age living in a federally assisted dwelling unit has an environmental intervention blood lead level, the owner shall immediately conduct a risk assessment in accordance with 40 CFR 745.227(d). Interim controls of identified lead-based paint hazards shall be conducted in accordance with § 35.1330. Interim controls are complete when clearance is achieved in accordance with § 35.1340. The Federal agency shall establish a timetable for completing risk assessments and hazard reduction when an environmental intervention blood lead level child is identified.

Subpart E [Reserved]

Subpart F—HUD-Owned Single Family Property

§ 35.500 Purpose and applicability.

The purpose of this subpart F is to establish procedures to eliminate as far as practicable lead-based paint hazards in HUD-owned single family properties that have been built before 1978 and are sold with mortgages insured under a program administered by HUD. The requirements of this subpart apply to any such residential properties offered for sale on or after September 15, 2000.

§ 35.505 Definitions and other general requirements.

Definitions and other general requirements that apply to this subpart are found in subpart B of this part.

§ 35.510 Required procedures.

(a) The following activities shall be conducted for all properties to which this subpart is applicable:

(1) A visual assessment of all painted surfaces in order to identify deteriorated paint;

(2) Paint stabilization of all deteriorated paint in accordance with § 35.1330(a) and (b); and

(3) Clearance in accordance with § 35.1340.

(b) Occupancy shall not be permitted until all required paint stabilization is complete and clearance is achieved.

(c) If paint stabilization and clearance are not completed before the closing of the sale, the Department shall assure that paint stabilization and clearance are carried out pursuant to subpart R of this part by the purchaser before occupancy.

Subpart G—Multifamily Mortgage Insurance

§ 35.600 Purpose and applicability.

The purpose of this subpart G is to establish procedures to eliminate as far as practicable lead-based paint hazards in a multifamily residential property for which HUD is the owner of the mortgage or the owner receives mortgage insurance, under a program administered by HUD.

§ 35.605 Definitions and other general requirements.

Definitions and other general requirements that apply to this subpart are found in subpart B of this part.

§ 35.610 Exemption.

An application for insurance in connection with a refinancing transaction where an appraisal is not required under the applicable procedures established by HUD is excluded from the coverage of this subpart.

§ 35.615 Notices and pamphlet.

(a) *Notice.* If evaluation or hazard reduction is undertaken, the sponsor shall provide a notice to occupants in accordance with § 35.125.

(b) *Lead hazard information pamphlet.* The sponsor shall provide the lead hazard information pamphlet in accordance with § 35.130.

§ 35.620 Multifamily insured property constructed before 1960.

Except as provided in § 35.630, the following requirements apply to multifamily insured property constructed before 1960:

(a) *Risk assessment.* Before the issuance of a firm commitment the sponsor shall conduct a risk assessment in accordance with § 35.1320(b).

(b) *Interim controls.* (1) The sponsor shall conduct interim controls in accordance with § 35.1330 to treat the lead-based paint hazards identified in the risk assessment. Interim controls are considered completed when clearance is achieved in accordance with § 35.1340.

(2) The sponsor shall complete interim controls before the issuance of the firm commitment or interim controls may be made a condition of the Federal Housing Administration (FHA) firm commitment, with sufficient repair or rehabilitation funds escrowed at initial endorsement of the FHA insured loan.

(c) *Ongoing lead-based paint maintenance activities.* Before the issuance of the firm commitment, the sponsor shall agree to incorporate ongoing lead-based paint maintenance into regular building operations and maintenance activities in accordance with § 35.1355(a).

§ 35.625 Multifamily insured property constructed after 1959 and before 1978.

Except as provided in § 35.630, before the issuance of the firm commitment,

the sponsor shall agree to incorporate ongoing lead-based paint maintenance practices into regular building operations, in accordance with § 35.1355(a).

§ 35.630 Conversions and major rehabilitations.

The procedures and requirements of this section apply when a nonresidential property constructed before 1978 is to be converted to residential use, or a residential property constructed before 1978 is to undergo rehabilitation that is estimated to cost more than 50 percent of the estimated replacement cost after rehabilitation.

(a) *Lead-based paint inspection.* Before issuance of a firm FHA commitment, the sponsor shall conduct a lead-based paint inspection in accordance with § 35.1320(a).

(b) *Abatement.* Prior to occupancy, the sponsor shall conduct abatement of all lead-based paint on the property in accordance with § 35.1325. Whenever practicable, abatement shall be achieved through the methods of paint removal or component replacement. If paint removal or component replacement are not practicable, that is if such methods would damage substrate material considered architecturally significant, permanent encapsulation or enclosure may be used as methods of abatement. Abatement is considered complete when clearance is achieved in accordance with § 35.1340. If encapsulation or enclosure is used, the sponsor shall incorporate ongoing lead-based paint maintenance into regular building operations maintenance activities in accordance with § 35.1355.

(c) *Historic properties.* Section 35.115(a)(13) applies to this section.

Subpart H—Project-Based Rental Assistance

§ 35.700 Purpose and applicability.

(a) This subpart H establishes procedures to eliminate as far as practicable lead-based paint hazards in residential properties receiving project-based assistance under a HUD program. The requirements of this subpart apply only to the assisted dwelling units in a covered property and any common areas servicing those dwelling units. This subpart does not apply to housing receiving rehabilitation assistance or to public housing, which are covered by subparts J and M of this part, respectively.

(b) For the purposes of competitively awarded grants under the Housing Opportunities for Persons with AIDS Program (HOPWA), the Supportive Housing Program (42 U.S.C. 11381–11389) and the Shelter Plus Care Program project-based rental assistance and sponsor-based rental assistance components (42 U.S.C. 11402–11407), the requirements of this subpart shall apply to grants awarded pursuant to Notices of Funding Availability published on or after October 1, 1999. For the purposes of formula grants awarded under the Housing Opportunities for Persons with AIDS Program (HOPWA) (42 U.S.C. 12901 *et seq.*), the requirements of this subpart shall apply to activities for which program funds are first obligated on or after September 15, 2000.

§ 35.705 Definitions and other general requirements.

Definitions and other general requirements that apply to this subpart are found in subpart B of this part.

§ 35.710 Notices and pamphlet.

(a) *Notice.* If evaluation or hazard reduction is undertaken, each owner shall provide a notice to occupants in accordance with § 35.125.

(b) *Lead hazard information pamphlet.* The owner shall provide the lead hazard information pamphlet in accordance with § 35.130.

§ 35.715 Multifamily properties receiving more than $5,000 per unit.

The requirements of this section shall apply to a multifamily residential property that is receiving an average of more than $5,000 per assisted dwelling unit annually in project-based assistance.

(a) *Risk assessment.* Each owner shall complete a risk assessment in accordance with § 35.1320(b). A risk assessment is considered complete when the owner receives the risk assessment report. Until the owner conducts a risk assessment as required by this section, the requirements of paragraph (d) of this section shall apply. After the risk assessment has been conducted the requirements of paragraphs (b) and (c) of this section shall apply. Each risk assessment shall be completed no later than the following schedule or a schedule otherwise determined by HUD:

(1) Risk assessments shall be completed on or before September 17, 2001, in a multifamily residential property constructed before 1960.

(2) Risk assessments shall be completed on or before September 15, 2003, in a multifamily residential property constructed after 1959 and before 1978.

(b) *Interim controls.* Each owner shall conduct interim controls in accordance with § 35.1330 to treat the lead-based paint hazards identified in the risk assessment. Interim controls are considered completed when clearance is achieved in accordance with § 35.1340. Interim controls shall be completed no later than the following schedule:

(1) In units occupied by families with children of less than 6 years of age and in common areas servicing those units, interim controls shall be completed no later than 90 days after the completion of the risk assessment. In units in which a child of less than 6 years of age moves in after the completion of the risk assessment, interim controls shall be completed no later than 90 days after the move-in.

(2) In all other dwelling units, common areas, and the remaining portions of the residential property, interim controls shall be completed no later than 12 months after completion of the risk assessment for those units.

(c) *Ongoing lead-based paint maintenance and reevaluation activities.* Effective immediately after completion of the risk assessment required in § 35.715(a), the owner shall incorporate ongoing lead-based paint maintenance and reevaluation into the regular building operations in accordance with § 35.1355, unless all lead-based paint has been removed. If the reevaluation identifies new lead-based paint hazards, the owner shall conduct interim controls in accordance with § 35.1330.

(d) *Transitional requirements*—(1) *Effective date.* The requirements of this paragraph shall apply effective September 15, 2000, and continuing until the applicable date specified in § 35.715(a) (1) or (2) or until the owner conducts a risk assessment, whichever is first.

(2) Definitions and other general requirements that apply to this paragraph are found in subpart B of this part.

(3) *Ongoing lead-based paint maintenance.* The owner shall incorporate ongoing lead-based paint maintenance activities into regular building operations, in accordance with § 35.1355(a), except that clearance is not required.

(4) *Child with an environmental intervention blood lead level.* If a child of less than 6 years of age living in a dwelling unit covered by this paragraph has an environmental intervention blood lead level, the owner shall comply with the requirements of § 35.730.

§ 35.720 Multifamily properties receiving up to $5,000 per unit, and single family properties.

Effective September 15, 2000, the requirements of this section shall apply to a multifamily residential property that is receiving an average of up to and including $5,000 per assisted dwelling unit annually in project-based assistance and to a single family residential property that is receiving project-based assistance through the Section 8 Moderate Rehabilitation program, the Project-Based Certificate program, or any other HUD program providing project-based assistance.

(a) *Activities at initial and periodic inspection.*—(1) *Visual assessment.* During the initial and periodic inspections, an inspector trained in visual assessment for deteriorated paint surfaces in accordance with procedures established by HUD shall conduct a visual assessment of all painted surfaces in order to identify any deteriorated paint.

(2) *Paint stabilization.* The owner shall stabilize each deteriorated paint surface in accordance with § 35.1330(a) and § 35.1330(b) before occupancy of a vacant dwelling unit or, where a unit is occupied, within 30 days of notification of the results of the visual assessment. Paint stabilization is considered complete when clearance is achieved in accordance with § 35.1340.

(3) *Notice.* The owner shall provide a notice to occupants in accordance with §§ 35.125(b) (1) and (c) describing the results of the clearance examination.

(b) *Ongoing lead-based paint maintenance activities.* The owner shall incorporate ongoing lead-based paint maintenance activities into regular building operations in accordance with § 35.1355(a), unless all lead-based paint has been removed.

(c) *Child with an environmental intervention blood lead level.* If a child of less than 6 years of age living in a dwelling unit covered by this section has an environmental intervention blood lead level, the owner shall comply with the requirements of § 35.730.

§ 35.725 Section 8 Rent adjustments.

HUD may, subject to the availability of appropriations for Section 8 contract amendments, on a project by project basis for projects receiving Section 8 project-based assistance, provide adjustments to the maximum monthly rents to cover the costs of evaluation for and reduction of lead-based paint hazards, as defined in section 1004 of the Residential Lead-Based Paint Hazard Reduction Act of 1992.

§ 35.730 Child with an environmental intervention blood lead level.

(a) *Risk assessment.* Within 15 days after being notified by a public health department or other medical health care provider that a child of less than 6 years of age living in a dwelling unit to which this subpart applies has been identified as having an environmental intervention blood lead level, the owner shall complete a risk assessment of the dwelling unit in which the child lived at the time the blood was last sampled and of common areas servicing the dwelling unit. The risk assessment shall be conducted in accordance with 35.1320(b) and is considered complete when the owner receives the risk assessment report. The requirements of this paragraph apply regardless of whether the child is or is not still living in the unit when the owner receives the notification of the environmental intervention blood lead level. The requirements of this paragraph (a) shall not apply if the owner conducted a risk assessment of the unit and common areas servicing the unit between the date the child's blood was last sampled and the date when the owner received the notification of the environmental intervention blood lead level. If a public health department has already conducted an evaluation of the dwelling unit, the requirements of this paragraph shall not apply.

(b) *Verification.* After receiving information from a person who is not a medical health care provider that a child of less than 6 years of age living in a dwelling unit covered by this subpart may have an environmental intervention blood lead level, the owner shall immediately verify the information with the public health department or other medical health care provider. If that department or provider verifies that the child has an environmental intervention blood lead level, such verification shall constitute notification, and the owner shall take the action required in paragraphs (a) and (c) of this section.

(c) *Hazard reduction.* Within 30 days after receiving the report of the risk assessment conducted pursuant to paragraph (a) of this section or the evaluation from the public health department, the owner shall complete the reduction of identified lead-based paint hazards in accordance with § 35.1325 or § 35.1330. Hazard reduction is considered complete when clearance is achieved in accordance with § 35.1340 and the clearance report states that all lead-based paint hazards identified in the risk assessment have been treated with interim controls or abatement or the public health department certifies that the lead-based paint hazard reduction is complete. The requirements of this paragraph do not apply if the owner, between the date the child's blood was last sampled and the date the owner received the notification of the environmental intervention blood lead level, already conducted a risk assessment of the unit and common areas servicing the unit and completed reduction of identified lead-based paint hazards.

(d) *Notice.* If evaluation or hazard reduction is undertaken, each owner shall provide a notice to occupants in accordance with § 35.125.

(e) *Reporting requirement.* The owner shall report the name and address of a child identified as having an environmental intervention blood lead level to the public health department within 5 working days of being so notified by any other medical health care professional.

Subpart I—HUD-Owned and Mortgagee-in-Possession Multifamily Property

§ 35.800 Purpose and applicability.

The purpose of this subpart I is to establish procedures to eliminate as far as practicable lead-based paint hazards in a HUD-owned multifamily residential property or a multifamily residential property for which HUD is identified as mortgagee-in-possession. The requirements of this subpart apply to any such property that is offered for sale or held or managed on or after September 15, 2000.

§ 35.805 Definitions and other general requirements.

Definitions and other general requirements that apply to this subpart are found in subpart B of this part.

§ 35.810 Notices and pamphlet.

(a) *Notices.* When evaluation or hazard reduction is undertaken, the Department shall provide a notice to occupants in accordance with § 35.125.

(b) *Lead hazard information pamphlet.* HUD shall provide the lead hazard information pamphlet in accordance with § 35.130.

§ 35.815 Evaluation.

HUD shall conduct a risk assessment and a lead-based paint inspection in accordance with § 35.1320(a) and (b). For properties to which this subpart applies on September 15, 2000, the lead-based paint inspection and risk assessment shall be conducted no later than December 15, 2000, or before publicly advertising the property for sale, whichever is sooner. For properties to which this subpart becomes

applicable after September 15, 2000, the lead-based paint inspection and risk assessment shall be conducted no later than 90 days after this subpart becomes applicable or before publicly advertising the property for sale, whichever is sooner.

§ 35.820 Interim controls.

HUD shall conduct interim controls in accordance with § 35.1330 to treat the lead-based paint hazards identified in the evaluation conducted in accordance with § 35.815. Interim controls are considered completed when clearance is achieved in accordance with § 35.1340. Interim controls of all lead-based paint hazards shall be completed no later than the following schedule:

(a) In units occupied by families with children of less than 6 years of age and in common areas servicing those units, interim controls shall be completed no later than 90 days after the completion of the risk assessment. In units in which a child of less than 6 years of age moves in after the completion of the risk assessment, interim controls shall be completed no later than 90 days after the move-in.

(b) In all other dwelling units, common areas, and the remaining portions of the residential property, interim controls shall be completed no later than 12 months after completion of the risk assessment for those units.

(c) If conveyance of the title by HUD at a sale of a HUD-owned property or a foreclosure sale caused by HUD when HUD is mortgagee-in-possession occurs before the schedule in paragraphs (a) and (b) of this section, HUD shall complete interim controls before conveyance or foreclosure, or HUD shall be responsible for assuring that interim controls are carried out by the purchaser. If interim controls are made a condition of sale, such controls shall be completed according to the following schedule:

(1) In units occupied by families with children of less than 6 years of age and in common areas servicing those units, interim controls shall be completed no later than 90 days after the date of the closing of the sale. In units in which a child of less than 6 years of age moves in after the closing of the sale, interim controls shall be completed no later than 90 days after the move-in.

(2) In all other dwelling units, in common areas servicing those units, and in the remaining portions of the residential property, interim controls shall be completed no later than 180 days after the closing of the sale.

§ 35.825 Ongoing lead-based paint maintenance and reevaluation.

HUD shall incorporate ongoing lead-based paint maintenance and reevaluation, in accordance with § 35.1355, into regular building operations if HUD retains ownership of the residential property for more than 12 months.

§ 35.830 Child with an environmental intervention blood lead level.

(a) *Risk assessment.* Within 15 days after being notified by a public health department or other medical health care provider that a child of less than 6 years of age living in a multifamily dwelling unit owned by HUD (or where HUD is mortgagee-in-possession) has been identified as having an environmental intervention blood lead level, HUD shall complete a risk assessment of the dwelling unit in which the child lived at the time the blood was last sampled and of common areas servicing the dwelling unit. The risk assessment shall be conducted in accordance with § 35.1320(b) and is considered complete when HUD receives the risk assessment report. The requirements of this paragraph apply regardless of whether the child is or is not still living in the unit when HUD receives the notification of the environmental intervention blood lead level. The requirements of this paragraph do not apply if HUD conducted a risk assessment of the unit and common areas servicing the unit between the date the child's blood was last sampled and the date when HUD received the notification of the environmental intervention blood lead level. If a public health department has already conducted an evaluation of the dwelling unit, the requirements of this paragraph shall not apply.

(b) *Verification.* After receiving information from a person who is not a medical health care provider that a child of less than 6 years of age living in a multifamily dwelling unit owned by HUD (or where HUD is mortgagee-in-possession) may have an environmental intervention blood lead level, HUD shall immediately verify the information with the public health department or other medical health care provider. If that department or provider verifies that the child has an environmental intervention blood lead level, such verification shall constitute notification, and HUD shall take the action required in paragraphs (a) and (c) of this section.

(c) *Hazard reduction.* Within 30 days after receiving the report of the risk assessment conducted pursuant to paragraph (a) of this section or the evaluation from the public health department, HUD shall complete the reduction of lead-based paint hazards identified in the risk assessment in accordance with § 35.1325 or § 35.1330. Hazard reduction is considered complete when clearance is achieved in accordance with § 35.1340 and the clearance report states that all lead-based paint hazards identified in the risk assessment have been treated with interim controls or abatement or the public health department certifies that the lead-based paint hazard reduction is complete. The requirements of this paragraph do not apply if HUD, between the date the child's blood was last sampled and the date HUD received the notification of the environmental intervention blood lead level, conducted a risk assessment of the unit and common areas servicing the unit and completed reduction of identified lead-based paint hazards.

(d) *Reporting requirement.* HUD shall report the name and address of a child identified as having an environmental intervention blood lead level to the public health department within 5 working days of being so notified by any other health professional.

(e) *Closing.* If the closing of a sale is scheduled during the period when HUD is responding to a case of a child with an environmental intervention blood lead level, HUD may arrange for the completion of the procedures required by § 35.830(a)–(d) by the purchaser within a reasonable period of time.

(f) *Extensions.* The Assistant Secretary for Housing-Federal Housing Commissioner or designee may consider and approve a request for an extension of deadlines established by this section for a lead-based paint inspection, risk assessment, hazard reduction, and reporting. Such a request may be considered, however, only during the first six months during which HUD is owner or mortgagee-in-possession of a multifamily property.

Subpart J—Rehabilitation

§ 35.900 Purpose and applicability.

(a) *Purpose and applicability.* (1) The purpose of this subpart J is to establish procedures to eliminate as far as practicable lead-based paint hazards in a residential property that receives Federal rehabilitation assistance under a program administered by HUD. Rehabilitation assistance does not include project-based rental assistance, rehabilitation mortgage insurance or assistance to public housing.

(2) The requirements of this subpart shall not apply to HOME funds which are committed to a specific project in accordance with § 92.2 of this title before September 15, 2000. Such projects shall be subject to the requirements of § 92.355 of this title that were in effect at the time of project commitment or the requirements of this subpart.

(3) For the purposes of the Indian Housing Block Grant program and the CDBG Entitlement program, the requirements of this subpart shall apply to all residential rehabilitation activities (except those otherwise exempted) for which funds are first obligated on or after September 15, 2000. For the purposes of the State, HUD-Administered Small Cities, and Insular Areas CDBG programs, the requirements of this subpart shall apply to all covered activities (except those otherwise exempted) for which grant funding is awarded to the unit of local government by the State or HUD, as applicable, on or after September 15, 2000. For the purposes of the Emergency Shelter Grant Program (42 U.S.C. 11371–11378) and the formula grants awarded under the Housing Opportunities for Persons with AIDS Program (HOPWA) (42 U.S.C. 12901 et. seq.), the requirements of this subpart shall apply to activities for which program funds are first obligated on or after September 15, 2000.

(4) For the purposes of competitively awarded grants under the HOPWA Program and the Supportive Housing Program (42 U.S.C. 11481–11389), the requirements of this subpart shall apply to grants awarded under Notices of Funding Availability published on or after September 15, 2000.

(5) For the purposes of the Indian CDBG program (§ 1003.607 of this title), the requirements of this subpart shall not apply to funds whose notice of funding availability is announced or funding letter is sent before September 15, 2000. Such project grantees shall be subject to the regulations in effect at the time of announcement or funding letter.

(b) The grantee or participating jurisdiction may assign to a subrecipient or other entity the responsibilities set forth in this subpart.

§ 35.905 Definitions and other general requirements.

Definitions and other general requirements that apply to this subpart are found in subpart B of this part.

§ 35.910 Notices and pamphlet.

(a) *Notices.* In cases where evaluation or hazard reduction or both are undertaken as part of federally funded rehabilitation, the grantee, participating jurisdiction, or CILP recipient, shall provide a notice to occupants in accordance with § 35.125.

(b) *Lead hazard information pamphlet.* The grantee, participating jurisdiction, or CILP recipient, shall provide the lead hazard information pamphlet in accordance with § 35.130.

§ 35.915 Calculating rehabilitation costs, except for the CILP Program.

(a) *Applicability.* This section applies to recipients of Federal rehabilitation assistance, except for CILP recipients, for which § 35.920 applies.

(b) *Rehabilitation assistance.* (1) Lead-based paint requirements for rehabilitation fall into three categories which depend on the amount of rehabilitation assistance provided. The three categories are:

(i) Assistance of up to and including $5,000 per unit;

(ii) Assistance of more than $5,000 per unit up to and including $25,000 per unit; and

(iii) Assistance of more than $25,000 per unit.

(2) For purposes of implementing §§ 35.930–35.935, the amount of rehabilitation assistance is the average per unit amount of Federal funds for the hard costs of rehabilitation, excluding lead-based paint hazard evaluation and hazard reduction activities. Costs of site preparation, occupant protection, relocation, interim controls, abatement, clearance and waste handling attributable to lead-based paint hazard reduction are not to be included in the hard costs of rehabilitation.

(c) *Calculating rehabilitation assistance.* For a residential property that includes both federally assisted and non-assisted units, the rehabilitation costs of non-assisted units are not included in the calculation.

(1) The average cost of rehabilitation for the assisted units is calculated as follows:

Per Unit Rehabilitation $ = (a/c) + (b/d)
Where:
a= Federal Rehabilitation Assistance for all assisted units
b= Federal Rehabilitation Assistance for common areas and exterior painted surfaces
c= Number of federally assisted units
d= Total number of units

(2) Eight out of 10 dwelling units in a residential property receive Federal rehabilitation assistance. The total amount of Federal rehabilitation assistance for the dwelling units is $90,000, and the total amount of Federal rehabilitation assistance for the common areas and exterior surfaces is $10,000. Based on the formula above, the average per unit amount of Federal rehabilitation assistance is $12,250. This is illustrated as follows: $12,250 = ($90,000/8) + ($10,000/10).

§ 35.920 Calculating rehabilitation costs for the Flexible Subsidy-CILP program.

All dwelling units and common areas in a residential property are considered to be assisted under the CILP program. The cost of rehabilitation is calculated as follows:

Per Unit Rehab $ = Federal Rehab Assistance / Total Number of Units.

§ 35.925 Examples of determining applicable requirements.

The following examples illustrate how to determine whether the requirements of §§ 35.930(b), (c), or (d) apply to a dwelling unit receiving Federal rehabilitation assistance (dollar amounts are on a per unit basis):

(a) If the total amount of Federal assistance for a dwelling is $2,000, and the hard costs of rehabilitation are $10,000, the lead-based paint requirements would be those described in § 35.930(b), because Federal rehabilitation assistance is up to and including $5,000.

(b) If the total amount of Federal assistance for a dwelling unit is $6,000, and the hard costs of rehabilitation are $2,000, the lead-based paint requirements would be those described in § 35.930(b). Although the total amount of Federal dollars is more than $5,000, only the $2,000 of that total can be applied to rehabilitation. Therefore, the Federal rehabilitation assistance is $2,000 which is not more than $5,000.

(c) If the total amount of Federal assistance for a unit is $6,000, and the hard costs of rehabilitation are $6,000, the lead-based paint requirements are those described in § 35.930(c), because the amount of Federal rehabilitation assistance is more than $5,000 but not more than $25,000.

§ 35.930 Evaluation and hazard reduction requirements.

(a) *Paint testing.* The grantee, participating jurisdiction, or CILP recipient shall either perform paint testing on the painted surfaces to be disturbed or replaced during rehabilitation activities, or presume that all these painted surfaces are coated with lead-based paint.

(b) *Residential property receiving an average of up to and including $5,000 per unit in Federal rehabilitation assistance.* Each grantee, participating jurisdiction, or CILP recipient shall:

(1) Conduct paint testing or presume the presence of lead-based paint, in accordance with paragraph (a) of this section. If paint testing indicates that the painted surfaces are not coated with lead-based paint, safe work practices and clearance are not required.

(2) Implement safe work practices during rehabilitation work in accordance with § 35.1350 and repair any paint that is disturbed.

(3) After completion of any rehabilitation disturbing painted surfaces, perform a clearance examination of the worksite(s) in accordance with § 35.1340. Clearance is not required if rehabilitation did not disturb painted surfaces of a total area more than that set forth in § 35.1350(b).

(c) *Residential property receiving an average of more than $5,000 and up to and including $25,000 per unit in Federal rehabilitation assistance.* Each grantee, participating jurisdiction, or CILP recipient shall:

(1) Conduct paint testing or presume the presence of lead-based paint, in accordance with paragraph (a) of this section.

(2) Perform a risk assessment in the dwelling units receiving Federal assistance, in common areas servicing those units, and exterior painted surfaces, in accordance with § 35.1320(b), before rehabilitation begins.

(3) Perform interim controls in accordance with § 35.1330 of all lead-based paint hazards identified pursuant to paragraphs (c)(1) and (c)(2) of this section and any lead-based paint hazards created as a result of the rehabilitation work.

(d) *Residential property receiving an average of more than $25,000 per unit in Federal rehabilitation assistance.* Each grantee, participating jurisdiction, or CILP recipient shall:

(1) Conduct paint testing or presume the presence of lead-based paint in accordance with paragraph (a) of this section.

(2) Perform a risk assessment in the dwelling units receiving Federal assistance and in associated common areas and exterior painted surfaces in accordance with § 35.1320(b) before rehabilitation begins.

(3) Abate all lead-based paint hazards identified by the paint testing or risk assessment conducted pursuant to paragraphs (d)(1) and (d)(2) of this section, and any lead-based paint hazards created as a result of the rehabilitation work, in accordance with § 35.1325, except that interim controls are acceptable on exterior surfaces that are not disturbed by rehabilitation.

§ 35.935 Ongoing lead-based paint maintenance activities.

In the case of a rental property receiving Federal rehabilitation assistance under the HOME program or the Flexible Subsidy-CILP program, the grantee, participating jurisdiction or CILP recipient shall require the property owner to incorporate ongoing lead-based paint maintenance activities into regular building operations, in accordance with § 35.1355(a).

§ 35.940 Special requirements for insular areas.

If a dwelling unit receiving Federal assistance under a program covered by this subpart is located in an insular area, the requirements of this section shall apply and the requirements of § 35.930 shall not apply. All other sections of this subpart J shall apply. The insular area shall conduct the following activities for the dwelling unit, common areas servicing the dwelling unit, and the exterior surfaces of the building in which the dwelling unit is located:

(a) *Residential property receiving an average of up to and including $5,000 per unit in Federal rehabilitation assistance.* (1) Implement safe work practices during rehabilitation work in accordance with § 35.1350 and repair any paint that is disturbed by rehabilitation.

(2) After completion of any rehabilitation disturbing painted surfaces, perform a clearance examination of the worksite(s) in accordance with § 35.1340. Clearance shall be achieved before residents are allowed to occupy the worksite(s). Clearance is not required if rehabilitation did not disturb painted surfaces of a total area more than that set forth in § 35.1350(b).

(b) *Residential property receiving an average of more than $5,000 per unit in Federal rehabilitation assistance.* (1) Before beginning rehabilitation, perform a visual assessment of all painted surfaces in order to identify deteriorated paint.

(2) Perform paint stabilization of each deteriorated paint surface and each painted surface being disturbed by rehabilitation, in accordance with §§ 35.1330(a) and (b).

(3) After completion of all paint stabilization, perform a clearance examination of the affected dwelling units and common areas in accordance with § 35.1340. Clearance shall be achieved before residents are allowed to occupy rooms or spaces in which paint stabilization has been performed.

Subpart K—Acquisition, Leasing, Support Services, or Operation.

§ 35.1000 Purpose and applicability.

(a) The purpose of this subpart K is to establish procedures to eliminate as far as practicable lead-based paint hazards in a residential property that receives Federal assistance under certain HUD programs for acquisition, leasing, support services, or operation. Acquisition, leasing, support services, and operation do not include mortgage insurance, sale of federally-owned housing, project-based or tenant-based rental assistance, rehabilitation assistance, or assistance to public housing. For requirements pertaining to those activities or types of assistance, see the applicable subpart of this part.

(b) The grantee or participating jurisdiction may assign to a subrecipient or other entity the responsibilities set forth in this subpart.

(c)(1) The requirements of this subpart shall not apply to HOME funds which are committed to a specific project in accordance with § 92.2 of this title before September 15, 2000. Such projects shall be subject to the requirements of § 92.355 of this title that were in effect at the time of project commitment, or the requirements of this subpart.

(2) For the purposes of the CDBG Entitlement program and the Indian Housing Block Grant program, the requirements of this subpart shall apply to all residential rehabilitation activities (except those otherwise exempted) for which funds are first obligated on or after September 15, 2000. For the purposes of the State, HUD-Administered Small Cities, and Insular Areas CDBG programs, the requirements of this subpart shall apply to all covered activities (except those otherwise exempted) for which grant funding is awarded to the unit of local government by the State or HUD, as applicable, on or after September 15, 2000. For the purposes of the Emergency Shelter Grant Program (42 U.S.C. 11371–11378) and the formula grants awarded under the Housing Opportunities for Persons with AIDS Program (HOPWA) (42 U.S.C. 12901 et. seq.), the requirements of this subpart shall apply to activities for which program funds are first obligated on or after September 15, 2000.

(3) For the purposes of competitively awarded grants under the HOPWA Program and the Supportive Housing Program (42 U.S.C. 11481–11389), the requirements of this subpart shall apply to grants awarded under Notices of Funding Availability published on or after September 15, 2000.

(4) For the purposes of the Indian CDBG program (§ 1003.607 of this title), the requirements of this subpart shall not apply to funds whose notice of funding availability is announced or funding letter is sent before September 15, 2000. Such project grantees shall be subject to the regulations in effect at the time of announcement or funding letter.

§ 35.1005 Definitions and other general requirements.

Definitions and other general requirements that apply to this subpart are found in subpart B of this part.

§ 35.1010 Notices and pamphlet

(a) *Notice.* In cases where evaluation or hazard reduction, including paint stabilization, is undertaken, each grantee or participating jurisdiction shall provide a notice to residents in accordance with § 35.125. A visual assessment is not considered an evaluation for purposes of this part.

(b) *Lead hazard information pamphlet.* The grantee or participating jurisdiction shall provide the lead hazard information pamphlet in accordance with § 35.130.

§ 35.1015 Visual assessment, paint stabilization, and maintenance.

If a dwelling unit receives Federal assistance under a program covered by this subpart, each grantee or participating jurisdiction shall conduct the following activities for the dwelling unit, common areas servicing the dwelling unit, and the exterior surfaces of the building in which the dwelling unit is located:

(a) A visual assessment of all painted surfaces in order to identify deteriorated paint;

(b) Paint stabilization of each deteriorated paint surface, and clearance, in accordance with §§ 35.1330(a) and (b), before occupancy of a vacant dwelling unit or, where a unit is occupied, immediately after receipt of Federal assistance; and

(c) The grantee or participating jurisdiction shall incorporate ongoing lead-based paint maintenance activities into regular building operations, in accordance with § 35.1355(a).

(d) The grantee or participating jurisdiction shall provide a notice to occupants in accordance with §§ 35.125(b)(1) and (c), describing the results of the clearance examination.

§ 35.1020 Funding for evaluation and hazard reduction.

The grantee or participating jurisdiction shall determine whether the cost of evaluation and hazard reduction is to be borne by the owner/developer, the grantee or a combination of the owner/developer and the grantee, based on program requirements and local program design.

Subpart L—Public Housing Programs

§ 35.1100 Purpose and applicability.

The purpose of this subpart L is to establish procedures to eliminate as far as practicable lead-based paint hazards in residential property assisted under the U.S. Housing Act of 1937 (42 U.S.C. 1437 *et seq.*) but not including housing assisted under section 8 of the 1937 Act.

§ 35.1105 Definitions and other general requirements.

Definitions and other general requirements that apply to this subpart are found in subpart B of this part.

§ 35.1110 Notices and pamphlet.

(a) *Notice.* In cases where evaluation or hazard reduction is undertaken, each public housing agency (PHA) shall provide a notice to residents in accordance with § 35.125.

(b) *Lead hazard information pamphlet.* The PHA shall provide the lead hazard information pamphlet in accordance with § 35.130.

§ 35.1115 Evaluation.

(a) A lead-based paint inspection shall be conducted in all public housing unless a lead-based paint inspection that meets the conditions of § 35.165(a) has already been completed. If a lead-based paint inspection was conducted by a lead-based paint inspector who was not certified, the PHA shall review the quality of the inspection, in accordance with quality control procedures established by HUD, to determine whether the lead-based paint inspection has been properly performed and the results are reliable. Lead-based paint inspections of all housing to which this subpart applies shall be completed no later than September 15, 2000. Revisions or augmentations of prior inspections found to be of insufficient quality shall be completed no later than September 17, 2001.

(b) If a lead-based paint inspection has found the presence of lead-based paint, or if no lead-based paint inspection has been conducted, the PHA shall conduct a risk assessment according to the following schedule, unless a risk assessment that meets the conditions of § 35.165(b) has already been completed:

(1) Risk assessments shall be completed on or before March 15, 2001, in a multifamily residential property constructed before 1960.

(2) Risk assessments shall be completed on or before March 15, 2002, in a multifamily residential property constructed after 1959 and before 1978.

(c) A PHA that advertises a construction contract (including architecture/engineering contracts) for bid or award or plans to start force account work shall not execute such contract until a lead-based paint inspection and, if required, a risk assessment, has taken place and any necessary abatement is included in the modernization budget, except for contracts solely for emergency work in accordance with § 35.115(a)(9).

(d) The five-year funding request plan for CIAP and CGP shall be amended to include the schedule and funding for lead-based paint activities.

§ 35.1120 Hazard reduction.

(a) Each PHA shall, in accordance with § 35.1325, abate all lead-based paint and lead-based paint hazards identified in the evaluations conducted pursuant to § 35.1115. The PHA shall abate lead-based paint and lead-based paint hazards in accordance with § 35.1325 during the course of physical improvements conducted under the modernization.

(b) In all housing where abatement of all lead-based paint and lead-based paint hazards required in paragraph (a) of this section has not yet occurred, each PHA shall conduct interim controls, in accordance with § 35.1330, of the lead-based paint hazards identified in the most recent risk assessment.

(1) Interim controls of dwelling units in which any child who is less than 6 years of age resides and common areas servicing those dwelling units shall be completed within 90 days of the evaluation under § 35.1330. If a unit becomes newly occupied by a family with a child of less than 6 years of age or such child moves into a unit, interim controls shall be completed within 90 days after the new occupancy or move-in if they have not already been completed.

(2) Interim controls in dwelling units not occupied by families with one or more children of less than 6 years of age, common areas servicing those units, and the remaining portions of the residential property shall be completed no later than 12 months after completion of the evaluation conducted under § 35.1115.

(c) The PHA shall incorporate ongoing lead-based paint maintenance and reevaluation activities into regular building operations in accordance with § 35.1355. In accordance with § 35.115(a) (6) and (7), this requirement does not apply to a development or part thereof if it is to be demolished or disposed of in accordance with disposition requirements in part 970 of this title, provided the dwelling unit will remain unoccupied until demolition, or if it is not used and will not be used for human habitation.

§ 35.1125 Evaluation and hazard reduction before acquisition and development.

(a) For each residential property constructed before 1978 and proposed to be acquired for a family project (whether or not it will need rehabilitation) a lead-based paint inspection and risk assessment for lead-based paint hazards shall be conducted in accordance with § 35.1320.

(b) If lead-based paint is found in a residential property to be acquired, the cost of evaluation and abatement shall be considered when making the cost comparison to justify new construction, as well as when meeting maximum total development cost limitations.

(c) If lead-based paint is found, compliance with this subpart is required, and abatement of lead-based paint and lead-based paint hazards shall be completed in accordance with § 35.1325 before occupancy.

§ 35.1130 Child with an environmental intervention blood lead level.

(a) *Risk assessment.* Within 15 days after being notified by a public health department or other medical health care provider that a child of less than 6 years of age living in a public housing development has been identified as having an environmental intervention blood lead level, the PHA shall complete a risk assessment of the dwelling unit in which the child lived at the time the blood was last sampled and of common areas servicing the dwelling unit, the provisions of § 35.1115(b) notwithstanding. The risk assessment shall be conducted in accordance with § 35.1320(b) and is considered complete when the PHA receives the risk assessment report. The requirements of this paragraph apply regardless of whether the child is or is not still living in the unit when the PHA receives the notification of the environmental intervention blood lead level. The requirements of this paragraph shall not apply if the PHA conducted a risk assessment of the unit and common areas servicing the unit between the date the child's blood was last sampled and the date when the PHA received the notification of the environmental intervention blood lead level. If the public health department has already conducted an evaluation of the dwelling unit, the requirements of this paragraph shall not apply.

(b) *Verification.* After receiving information from a person who is not a medical health care provider that a child of less than 6 years of age living in a public housing development may have an environmental intervention blood lead level, the PHA shall immediately verify the information with the public health department or other medical health care provider. If that department or provider verifies that the child has an environmental intervention blood lead level, such verification shall constitute notification, and the housing agency shall take the action required in paragraphs (a) and (c) of this section.

(c) *Hazard reduction.* Within 30 days after receiving the report of the risk assessment conducted pursuant to paragraph (a) of this section or the evaluation from the public health department, the PHA shall complete the reduction of lead-based paint hazards identified in the risk assessment in accordance with § 35.1325 or § 35.1330. Hazard reduction is considered complete when clearance is achieved in accordance with § 35.1340 and the clearance report states that all lead-based paint hazards identified in the risk assessment have been treated with interim controls or abatement or the local or State health department certifies that lead-based paint hazard reduction is complete. The requirements of this paragraph do not apply if the PHA, between the date the child's blood was last sampled and the date the owner received the notification of the environmental intervention blood lead level, already conducted a risk assessment of the unit and common areas servicing the unit and completed reduction of identified lead-based paint hazards.

(d) *Notice of evaluation and hazard reduction.* The PHA shall notify building residents of any evaluation or hazard reduction activities in accordance with § 35.125.

(e) *Reporting requirement.* The PHA shall report the name and address of a child identified as having an environmental intervention blood lead level to the public health department within 5 working days of being so notified by any other medical health care professional. The PHA shall also report each known case of a child with an environmental intervention blood lead level to the HUD field office.

(f) *Other units in building.* If the risk assessment conducted pursuant to paragraph (a) of this section identifies lead-based paint hazards and previous evaluations of the building conducted pursuant to § 35.1320 did not identify lead-based paint or lead-based paint hazards, the PHA shall conduct a risk assessment of other units of the building in accordance with § 35.1320(b) and shall conduct interim controls of identified hazards in accordance with the schedule provided in § 35.1120(c).

§ 35.1135 Eligible costs.

A PHA may use financial assistance received under the modernization program (CIAP or CGP) for the notice, evaluation and reduction of lead-based paint hazards in accordance with § 968.112 of this title. Eligible costs include:

(a) *Evaluation and insurance costs.* Evaluation and hazard reduction activities, and costs for insurance coverage associated with these activities.

(b) *Planning costs.* Planning costs are costs that are incurred before HUD approval of the CGP or CIAP application and that are related to developing the CIAP application or carrying out eligible modernization planning, such as planning for abatement, detailed design work, preparation of solicitations, and evaluation. Planning costs may be funded as a single work item. Planning costs shall not exceed 5 percent of the CIAP funds available to a HUD Field Office in a particular fiscal year.

(c) *Architectural/engineering and consultant fees.* Eligible costs include fees for planning, identification of needs, detailed design work, preparation of construction and bid documents and other required documents, evaluation, planning and design for abatement, and inspection of work in progress.

(d) *Environmental intervention blood lead level response costs.* The PHA may use its operating reserves and, when necessary, may request reimbursement from the current fiscal year CIAP funds, or request the reprogramming of previously approved CIAP funds to cover the costs of evaluation and hazard reduction.

§ 35.1140 Insurance coverage.

For the requirements concerning the obligation of a PHA to obtain reasonable insurance coverage with respect to the hazards associated with evaluation and hazard reduction activities, see § 965.215 of this title.

Subpart M—Tenant-Based Rental Assistance

§ 35.1200 Purpose and applicability.

(a) *Purpose.* The purpose of this subpart M is to establish procedures to eliminate as far as practicable lead-based paint hazards in housing occupied by families receiving tenant-based rental assistance. Such assistance includes tenant-based rental assistance under the Section 8 certificate program, the Section 8 voucher program, the HOME program, the Shelter Plus Care program, the Housing Opportunities for Persons With AIDS (HOPWA) program, and the Indian Housing Block Grant program. *Tenant-based rental assistance* means rental assistance that is not attached to the structure.

(b) *Applicability.* (1) This subpart applies only to dwelling units occupied or to be occupied by families or households that have one or more children of less than 6 years of age, common areas servicing such dwelling units, and exterior painted surfaces associated with such dwelling units or common areas. Common areas servicing a dwelling unit include those areas through which residents pass to gain access to the unit and other areas frequented by resident children of less than 6 years of age, including on-site play areas and child care facilities.

(2) For the purposes of the Section 8 tenant-based certificate program and the Section 8 voucher program:

(i) The requirements of this subpart are applicable where an initial or periodic inspection occurs on or after September 15, 200; and

(ii) The PHA shall be the designated party.

(3) For the purposes of formula grants awarded under the Housing Opportunities for Persons with AIDS Program (HOPWA) (42 U.S.C. 12901 *et seq.*):

(i) The requirements of this subpart shall apply to activities for which program funds are first obligated on or after September 15, 2000; and

(ii) The grantee shall be the designated party.

(4) For the purposes of competitively awarded grants under the HOPWA Program and the Shelter Plus Care program (42 U.S.C. 11402–11407) tenant-based rental assistance component:

(i) The requirements of this subpart shall apply to grants awarded pursuant to Notices of Funding Availability published on or after October 1, 1999; and

(ii) The grantee shall be the designated party.

(5) For the purposes of the HOME program:

(i) The requirements of this subpart shall not apply to funds which are committed in accordance with § 92.2 of this title before September 15, 2000; and

(ii) The participating jurisdiction shall be the designated party.

(6) For the purposes of the Indian Housing Block Grant program:

(i) The requirements of this subpart shall apply to activities for which funds are first obligated on or after September 15, 2000; and

(ii) The IHBG recipient shall be the designated party.

(7) The housing agency, grantee, participating jurisdiction, or IHBG recipient may assign to a subrecipient or other entity the responsibilities of the designated party in this subpart.

§ 35.1205 Definitions and other general requirements.

Definitions and other general requirements that apply to this subpart are found in subpart B of this part.

§ 35.1210 Notices and pamphlet.

(a) *Notice.* In cases where evaluation or paint stabilization is undertaken, the owner shall provide a notice to residents in accordance with § 35.125. A visual assessment is not an evaluation.

(b) *Lead hazard information pamphlet.* The owner shall provide the lead hazard information pamphlet in accordance with § 35.130.

§ 35.1215 Activities at initial and periodic inspection.

(a) (1) During the initial and periodic inspections, an inspector acting on behalf of the designated party and trained in visual assessment for deteriorated paint surfaces in accordance with procedures established by HUD shall conduct a visual assessment of all painted surfaces in order to identify any deteriorated paint.

(2) For tenant-based rental assistance provided under the HOME program, visual assessment shall be conducted as part of the initial and periodic inspections required under § 92.209(i) of this title.

(b) The owner shall stabilize each deteriorated paint surface in accordance with § 35.1330(a) and (b) before commencement of assisted occupancy. If assisted occupancy has commenced prior to a periodic inspection, such paint stabilization must be completed within 30 days of notification of the owner of the results of the visual assessment. Paint stabilization is considered complete when clearance is achieved in accordance with § 35.1340.

(c) The owner shall provide a notice to occupants in accordance with § 35.125(b)(1) and (c) describing the results of the clearance examination.

§ 35.1220 Ongoing lead-based paint maintenance activities.

The owner shall incorporate ongoing lead-based paint maintenance activities into regular building operations in accordance with § 35.1355(a).

§ 35.1225 Child with an environmental intervention blood lead level.

(a) Within 15 days after being notified by a public health department or other medical health care provider that a child of less than 6 years of age living in an assisted dwelling unit has been identified as having an environmental intervention blood lead level, the designated party shall complete a risk assessment of the dwelling unit in which the child lived at the time the blood was last sampled and of the common areas servicing the dwelling unit. The risk assessment shall be conducted in accordance with § 35.1320(b). When the risk assessment is complete, the designated party shall immediately provide the report of the risk assessment to the owner of the dwelling unit. If the child identified as having an environmental intervention blood lead level is no longer living in the unit when the designated party receives notification from the public health department or other medical health care provider, but another household receiving tenant-based rental assistance is living in the unit or is planning to live there, the requirements of this section apply just as they do if the child still lives in the unit. If a public health department has already conducted an evaluation of the dwelling unit, or the designated party conducted a risk assessment of the unit and common areas servicing the unit between the date the child's blood was last sampled and the date when the designated party received the notification of the environmental intervention blood lead level, the requirements of this paragraph shall not apply.

(b) *Verification.* After receiving information from a source other than a public health department or other medical health care provider that a child of less than 6 years of age living in an assisted dwelling unit may have an environmental intervention blood lead level, the designated party shall immediately verify the information with a public health department or other medical health care provider. If that department or provider verifies that the child has an environmental intervention blood lead level, such verification shall constitute notification to the designated party as provided in paragraph (a) of this section, and the designated party shall take the action required in paragraphs (a) and (c) of this section.

(c) *Hazard reduction.* Within 30 days after receiving the risk assessment report from the designated party or the evaluation from the public health department, the owner shall complete the reduction of identified lead-based paint hazards in accordance with § 35.1325 or § 35.1330. Hazard reduction is considered complete when clearance is achieved in accordance with § 35.1340 and the clearance report states that all lead-based paint hazards identified in the risk assessment have been treated with interim controls or

abatement or when the public health department certifies that the lead-based paint hazard reduction is complete. If the owner does not complete the hazard reduction required by this section, the dwelling unit is in violation of Housing Quality Standards (HQS).

(d) *Notice of evaluation and hazard reduction.* The owner shall notify building residents of any evaluation or hazard reduction activities in accordance with § 35.125.

(e) *Reporting requirement.* The designated party shall report the name and address of a child identified as having an environmental intervention blood lead level to the public health department within 5 working days of being so notified by any other medical health care professional.

(f) *Data collection and record keeping responsibilities.* At least quarterly, the designated party shall attempt to obtain from the public health department(s) with area(s) of jurisdiction similar to that of the designated party the names and/or addresses of children of less than 6 years of age with an identified environmental intervention blood lead level. At least quarterly, the designated party shall also report an updated list of the addresses of units receiving assistance under a tenant-based rental assistance program to the same public health department(s), except that the report(s) to the public health department(s) is not required if the health department states that it does not wish to receive such report. If it obtains names and addresses of environmental intervention blood lead level children from the public health department(s), the designated party shall match information on cases of environmental intervention blood lead levels with the names and addresses of families receiving tenant-based rental assistance, unless the public health department performs such a matching procedure. If a match occurs, the designated party shall carry out the requirements of this section.

Subparts N–Q—[Reserved]

Subpart R—Methods and Standards for Lead-Paint Hazard Evaluation and Hazard Reduction Activities

§ 35.1300 Purpose and applicability.

The purpose of this subpart R is to provide standards and methods for evaluation and hazard reduction activities required in subparts B, C, D, and F through M of this part.

§ 35.1305 Definitions and other general requirements.

Definitions and other general requirements that apply to this subpart are found in subpart B of this part.

§ 35.1310 References.

Further guidance information regarding evaluation and hazard reduction activities described in this subpart is found in the following:

(a) The HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (Guidelines);

(b) The EPA Guidance on Residential Lead-Based Paint, Lead-Contaminated Dust, and Lead Contaminated Soil;

(c) Guidance, methods or protocols issued by States and Indian tribes that have been authorized by EPA under 40 CFR 745.324 to administer and enforce lead-based paint programs.

§ 35.1315 Collection and laboratory analysis of samples.

All paint chip, dust, or soil samples shall be collected and analyzed in accordance with standards established either by a State or Indian tribe under a program authorized by EPA in accordance with 40 CFR part 745, subpart Q, or by the EPA in accordance with 40 CFR 745.227, and as further provided in this subpart.

§ 35.1320 Lead-based paint inspections and risk assessments.

(a) *Lead-based paint inspections.* Lead-based paint inspections shall be performed in accordance with methods and standards established either by a State or Indian tribe under a program authorized by EPA, or by EPA at 40 CFR 745.227(b), except that the definition of lead-based paint shall not include a loading (area concentration) or mass concentration greater than that in the definition at § 35.110 of this part.

(b) *Risk assessments.* (1) Risk assessments shall be performed in accordance with methods and standards established either by a State or Indian tribe under a program authorized by EPA, or by EPA at 40 CFR 745.227(d), and paragraph (b)(2) of this section.

(2) Risk assessors shall use levels defining dust-lead hazards and soil-lead hazards that are no greater than those promulgated by EPA pursuant to section 403 of the Toxic Substances Control Act (15 U.S.C. 2683), or, if such levels are not in effect, the following for dust or soil:

(i) *Dust.* A dust-lead hazard shall be a dust-lead level equal to or greater than the applicable loading (area concentration), based on wipe samples, in the following table:

INTERIM DUST LEAD STANDARDS

Evaluation method	Surface		
	Floors, µg/ft² (mg/m²)	Interior window sills, µg/ft² (mg/m²)	Window troughs, µg/ft² (mg/m²)
Lead Hazard Screen	25 (0.27)	125 (1.4)	Not Applicable.
Risk Assessment	40 (0.43)	250 (2.7)	Not Applicable.
Reevaluation	40 (0.43)	250 (2.7)	Not Applicable.
Clearance	40 (0.43)	250 (2.7)	800 (8.6).

Note: "Floors" includes carpeted and uncarpeted interior floors.

(ii) *Soil.* (A) A soil-lead hazard for play areas frequented by children under 6 years of age shall be bare soil with lead equal to or exceeding 400 micrograms per gram.

(B) For other areas, soil-lead hazards shall be bare soil that totals more than 9 square feet (0.8 square meters) per property with lead equal to or exceeding 2,000 micrograms per gram.

(3) Lead hazard screens shall be performed in accordance with the methods and standards established either by a State or Indian tribe under a program authorized by EPA, or by EPA at 40 CFR 745.227(c), and paragraph (b)(2) of this section. If the lead hazard screen indicates the need for a follow-up risk assessment (e.g., if dust-lead measurements exceed the levels established for lead hazard screens in this section), a risk assessment shall be conducted in accordance with paragraphs (b)(1) and (b)(2) of this section. Dust, soil, and paint samples collected for the lead hazard screen may be used in the risk assessment. If the lead hazard screen does not indicate the need for a follow-up risk assessment, no further risk-assessment is required.

(c) It is strongly recommended, but not required, that lead-based paint inspectors and risk assessors provide a summary of the results suitable for posting or distribution to occupants in compliance with § 35.125.

§ 35.1325 Abatement.

Abatement shall be performed in accordance with methods and standards established either by a State or Indian tribe under a program authorized by EPA, or by EPA at 40 CFR 745.227(e), and shall be completed by achieving clearance in accordance with § 35.1340. If encapsulation or enclosure is used as a method of abatement, ongoing lead-based paint maintenance activities shall be performed as required by the applicable subpart of this part in accordance with § 35.1355. Abatement of an intact, factory-applied prime coating on metal surfaces is not required unless the surface is a friction surface.

§ 35.1330 Interim controls.

Interim controls of lead-based paint hazards identified in a risk assessment shall be conducted in accordance with the provisions of this section. Interim control measures include paint stabilization of deteriorated paint, treatments for friction and impact surfaces where levels of lead dust are above the levels specified in § 35.1320, dust control, and lead-contaminated soil control. As provided by § 35.155, interim controls may be performed in combination with, or be replaced by, abatement methods.

(a) *General requirements.* (1) Only those interim control methods identified as acceptable methods in a current risk assessment report shall be used to control identified hazards, except that, if only paint stabilization is required in accordance with subparts F, H, K or M of this part, it shall not be necessary to have conducted a risk assessment.

(2) Occupants of dwelling units where interim controls are being performed shall be protected during the course of the work in accordance with § 35.1345.

(3) Clearance testing shall be performed at the conclusion of interim control activities in accordance with § 35.1340.

(4) A person performing interim controls must be trained in accordance with 29 CFR 1926.59 and either be supervised by an individual certified as a lead-based paint abatement supervisor or have successfully completed one of the following courses:

(i) A lead-based paint abatement supervisor course accredited in accordance with 40 CFR 745.225;

(ii) A lead-based paint abatement worker course accredited in accordance with 40 CFR 745.225;

(iii) The Lead-Based Paint Maintenance Training Program, "Work Smart, Work Wet, and Work Clean to Work Lead Safe," prepared by the National Environmental Training Association for EPA and HUD;

(iv) "The Remodeler's and Renovator's Lead-Based Paint Training Program," prepared by HUD and the National Association of the Remodeling Industry; or

(v) Another course approved by HUD for this purpose after consultation with EPA.

(b) *Paint stabilization.* (1) Interim control treatments used to stabilize deteriorated lead-based paint shall be performed in accordance with the requirements of this section. Interim control treatments of intact, factory applied prime coatings on metal surfaces are not required. Finish coatings on such surfaces shall be treated by interim controls if those coatings contain lead-based paint.

(2) Any physical defect in the substrate of a painted surface or component that is causing deterioration of the surface or component shall be repaired before treating the surface or component. Examples of defective substrate conditions include dry-rot, rust, moisture-related defects, crumbling plaster, and missing siding or other components that are not securely fastened.

(3) Before applying new paint, all loose paint and other loose material shall be removed from the surface to be treated. Acceptable methods for preparing the surface to be treated include wet scraping, wet sanding, and power sanding performed in conjunction with a HEPA filtered local exhaust attachment operated according to the manufacturer's instructions.

(4) Dry sanding or dry scraping is permitted only in accordance with § 35.140(e) (i.e., for electrical safety reasons or for specified minor amounts of work).

(5) Paint stabilization shall include the application of a new protective coating or paint. The surface substrate shall be dry and protected from future moisture damage before applying a new protective coating or paint. All protective coatings and paints shall be applied in accordance with the manufacturer's recommendations.

(6) Paint stabilization shall incorporate the use of safe work practices in accordance with § 35.1350.

(c) *Friction and impact surfaces.* (1) Friction surfaces are required to be treated only if:

(i) Lead dust levels on the nearest horizontal surface underneath the friction surface (e.g., the window sill, window trough, or floor) are equal to or greater than the standards specified in 35.1320(b);

(ii) There is evidence that the paint surface is subject to abrasion; and

(iii) Lead-based paint is known or presumed to be present on the friction surface.

(2) Impact surfaces are required to be treated only if:

(i) Paint on an impact surface is damaged or otherwise deteriorated;

(ii) The damaged paint is caused by impact from a related building component (such as a door knob that knocks into a wall, or a door that knocks against its door frame); and

(iii) Lead-based paint is known or presumed to be present on the impact surface.

(3) Examples of building components that may contain friction or impact surfaces include the following:

(i) Window systems;

(ii) Doors;

(iii) Stair treads and risers;

(iv) Baseboards;

(v) Drawers and cabinets; and

(vi) Porches, decks, interior floors, and any other painted surfaces that are abraded, rubbed, or impacted.

(4) Interim control treatments for friction surfaces shall eliminate friction points or treat the friction surface so that paint is not subject to abrasion. Examples of acceptable treatments include rehanging and/or planing doors so that the door does not rub against the door frame, and installing window channel guides that reduce or eliminate abrasion of painted surfaces. Paint on stair treads and floors shall be protected with a durable cover or coating that will prevent abrasion of the painted surfaces. Examples of acceptable materials include carpeting, tile, and sheet flooring.

(5) Interim control treatments for impact surfaces shall protect the paint from impact. Examples of acceptable treatments include treatments that eliminate impact with the paint surface, such as a door stop to prevent a door from striking a wall or baseboard.

(6) Interim control for impact or friction surfaces does not include covering such a surface with a coating or other treatment, such as painting over the surface, that does not protect lead-based paint from impact or abrasion.

(d) *Chewable surfaces.* (1) Chewable surfaces are required to be treated only if there is evidence that a child of less than 6 years of age has chewed on the painted surface, and lead-based paint is known or presumed to be present on the surface.

(2) Interim control treatments for chewable surfaces shall make the lead-based paint inaccessible for chewing by children of less than 6 years of age. Examples include enclosures or coatings that cannot be penetrated by the teeth of such children.

(e) *Dust-lead hazard control.* (1) Interim control treatments used to control dust-lead hazards shall be performed in accordance with the requirements of this section. Additional information on dust removal is found in the HUD Guidelines, particularly Chapter 11 (see § 35.1310).

(2) Dust control shall involve a thorough cleaning of all horizontal surfaces, such as interior window sills, window troughs, floors, and stairs, but excluding ceilings. All horizontal surfaces, such as floors, stairs, window sills and window troughs, that are rough, pitted, or porous shall be covered with a smooth, cleanable covering or coating, such as metal coil stock, plastic, polyurethane, or linoleum.

(3) Surfaces covered by a rug or carpeting shall be cleaned as follows:

(i) The floor surface under a rug or carpeting shall be cleaned where feasible, including upon removal of the rug or carpeting, with a HEPA vacuum or other method of equivalent efficacy.

(ii) An unattached rug or an attached carpet that is to be removed, and padding associated with such rug or carpet, located in an area of the dwelling unit with dust-lead hazards on the floor, shall be thoroughly vacuumed with a HEPA vacuum or other method of equivalent efficacy. Protective measures shall be used to prevent the spread of dust during removal of a rug, carpet or padding from the dwelling. For example, it shall be misted to reduce dust generation during removal. The item(s) being removed shall be wrapped or otherwise sealed before removal from the worksite.

(iii) An attached carpet located in an area of the dwelling unit with dust-lead hazards on the floor shall be thoroughly vacuumed with a HEPA vacuum or other method of equivalent efficacy if it is not to be removed.

(f) *Soil-lead hazards.* (1) Interim control treatments used to control soil-lead hazards shall be performed in accordance with this section.

(2) Soil with a lead concentration equal to or greater than 5,000 µg/g of lead shall be abated in accordance with 40 CFR 745.227(e).

(3) Acceptable interim control methods for soil lead are impermanent surface coverings and land use controls.

(i) Impermanent surface coverings may be used to treat lead-contaminated soil if applied in accordance with the following requirements. Examples of acceptable impermanent coverings include gravel, bark, sod, and artificial turf.

(A) Impermanent surface coverings selected shall be designed to withstand the reasonably-expected traffic. For example, if the area to be treated is heavily traveled, neither grass or sod shall be used.

(B) When loose impermanent surface coverings such as bark or gravel are used, they shall be applied in a thickness not less than six inches deep.

(C) The impermanent surface covering material shall not contain more than 200 µg/g of lead.

(D) Adequate controls to prevent erosion shall be used in conjunction with impermanent surface coverings.

(ii) Land use controls may be used to reduce exposure to soil-lead hazards only if they effectively control access to areas with soil-lead hazards. Examples of land use controls include: fencing, warning signs, and landscaping.

(A) Land use controls shall be implemented only if residents have reasonable alternatives to using the area to be controlled.

(B) If land use controls are used for a soil area that is subject to erosion, measures shall be taken to contain the soil and control dispersion of lead.

§ 35.1335 Standard treatments.

Standard treatments shall be conducted in accordance with this section.

(a) *Paint stabilization.* All deteriorated paint on exterior and interior surfaces located on the residential property shall be stabilized in accordance with § 35.1330(a)(b), or abated in accordance with § 35.1325.

(b) *Smooth and cleanable horizontal surfaces.* All horizontal surfaces, such as uncarpeted floors, stairs, interior window sills and window troughs, that are rough, pitted, or porous, shall be covered with a smooth, cleanable covering or coating, such as metal coil stock, plastic, polyurethane, or linoleum.

(c) *Correcting dust-generating conditions.* Conditions causing friction or impact of painted surfaces shall be corrected in accordance with § 35.1330(c)(4)–(6).

(d) *Bare residential soil.* Bare soil shall be treated in accordance with the requirements of § 35.1330, unless it is found not to be a soil-lead hazard in accordance with § 35.1320(b).

(e) *Safe work practices.* All standard treatments described in paragraphs (a) through (d) of this section shall incorporate the use of safe work practices in accordance with § 35.1350.

(f) *Clearance.* A clearance examination shall be performed in accordance with § 35.1340 at the conclusion of any lead hazard reduction activities.

(g) *Qualifications.* An individual performing standard treatments must meet the training and/or supervision requirements of § 35.1330(a)(4).

§ 35.1340 Clearance.

Clearance examinations required under subparts B, C, D, F through M, and R, of this part shall be performed in accordance with the provisions of this section.

(a) *Clearance following abatement.* Clearance examinations performed following abatement of lead-based paint or lead-based paint hazards shall be performed in accordance with 40 CFR 745.227(e) and paragraphs (c)–(f) of this section. Such clearances shall be performed by a person certified to perform risk assessments or lead-based paint inspections.

(b) *Clearance following activities other than abatement.* Clearance examinations performed following interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation shall be performed in accordance with the requirements of this paragraph (b) and paragraphs (c)–(g) of this section.

(1) *Qualified personnel.* Clearance examinations shall be performed by:

(i) A certified risk assessor;

(ii) A certified lead-based paint inspector;

(iii) A person who has successfully completed a training course for clearance technicians (or a discipline of similar purpose and title) that is developed or accepted by EPA or a State or tribal program authorized by EPA pursuant to 40 CFR part 745, subpart Q, and that is given by a training provider accredited by EPA or a State or Indian tribe for training in lead-based paint inspection or risk assessment, *provided* a certified risk assessor or a certified lead-based paint inspector approves the work of the clearance technician and signs the report of the clearance examination; or

(iv) A technician licensed or certified by EPA or a State or Indian tribe to perform clearance examinations without the approval of a certified risk assessor or certified lead-based paint inspector, *provided* that a clearance examination by such a licensed or certified technician shall be performed only for a single-family property or individual dwelling units and associated common areas in a multi-unit property, and provided further that a clearance examination by a such a licensed or certified clearance technician shall not be performed using random sampling of dwelling units or common areas in multifamily properties, except that a clearance examination performed by such a licensed or certified clearance technician is acceptable for any residential property if the clearance examination is approved and the report signed by a certified risk assessor or a certified lead-based paint inspector.

(2) *Required activities.* (i) Clearance examinations shall include a visual assessment, dust sampling, submission of samples for analysis for lead, interpretation of sampling results, and preparation of a report. Clearance examinations shall be performed in dwelling units, common areas and exterior areas in accordance with this section and the steps set forth at 40 CFR 745.227(e)(8). If clearance is being performed for more than 10 dwelling units of similar construction and maintenance, as in a multifamily property, random sampling for the purposes of clearance may be conducted in accordance with 40 CFR 745.227(e)(9).

(ii) The visual assessment shall be performed to determine if deteriorated paint surfaces and/or visible amounts of dust, debris, paint chips or other residue are still present. Both exterior and interior painted surfaces shall be examined for the presence of deteriorated paint. If deteriorated paint or visible dust, debris or residue are present in areas subject to dust sampling, they must be eliminated prior to the continuation of the clearance examination, except elimination of deteriorated paint is not required if it has been determined, through paint testing or a lead-based paint inspection, that the deteriorated paint is not lead-based paint. If exterior painted surfaces have been disturbed by the hazard reduction, maintenance or rehabilitation activity, the visual assessment shall include an assessment of the ground and any outdoor living areas close to the affected exterior painted surfaces. Visible dust or debris in living areas shall be cleaned up and visible paint chips on the ground shall be removed.

(iii) Dust samples shall be wipe samples and shall be taken on floors and, where practicable, interior window sills and window troughs. Dust samples shall be collected and analyzed in accordance with § 35.1315 of this part.

(iv) Clearance reports shall be prepared in accordance with paragraph (c) of this section.

(c) *Clearance report.* When clearance is required, the designated party shall ensure that a clearance report is prepared that provides documentation of the hazard reduction or maintenance activity as well as the clearance examination. When abatement is performed, the report shall be an abatement report in accordance with 40 CFR 745.227(e)(10). When another hazard reduction or maintenance activity requiring a clearance report is performed, the report shall include the following information:

(1) The address of the residential property and, if only part of a multifamily property is affected, the specific dwelling units and common areas affected.

(2) The following information on the clearance examination:

(i) The date(s) of the clearance examination;

(ii) The name, address, and signature of each person performing the clearance examination, including certification number;

(iii) The results of the visual assessment for the presence of deteriorated paint and visible dust, debris, residue or paint chips;

(iv) The results of the analysis of dust samples, in µg/sq.ft., by location of sample; and

(v) The name and address of each laboratory that conducted the analysis of the dust samples, including the identification number for each such laboratory recognized by EPA under section 405(b) of the Toxic Substances Control Act (15 U.S.C. 2685(b)).

(3) The following information on the hazard reduction or maintenance activity for which clearance was performed:

(i) The start and completion dates of the hazard reduction or maintenance activity;

(ii) The name and address of each firm or organization conducting the hazard reduction or maintenance activity and the name of each supervisor assigned;

(iii) A detailed written description of the hazard reduction or maintenance activity, including the methods used, locations of exterior surfaces, interior rooms, common areas, and/or components where the hazard reduction activity occurred, and any suggested monitoring of encapsulants or enclosures; and

(iv) If soil hazards were reduced, a detailed description of the location(s) of the hazard reduction activity and the method(s) used.

(d) *Standards.* The clearance standards in § 35.1320(b)(2) shall apply. If test results equal or exceed the standards, the dwelling unit, worksite, or common area represented by the sample fails the clearance examination.

(e) *Clearance failure.* All surfaces represented by a failed clearance sample shall be recleaned or treated by hazard reduction, and retested, until the applicable clearance level in § 35.1320(b)(2) is met.

(f) *Independence.* Clearance examinations shall be performed by persons or entities independent of those performing hazard reduction or maintenance activities, unless the designated party uses qualified in-house employees to conduct clearance. An in-house employee shall not conduct both a hazard reduction or maintenance activity and its clearance examination.

(g) *Worksite clearance.* When clearance is of an interior worksite, not an entire dwelling unit or residential property, dust samples taken for paragraph (b) of this section shall be taken from the floor and window (if available) to represent the area within the dust containment area. Clearance is not required if maintenance or hazard reduction activities in the worksite do not disturb painted surfaces of a total area more than that set forth in § 35.1350(d)

§ 35.1345 Occupant protection and worksite preparation.

This section establishes procedures for protecting dwelling unit occupants and the environment from contamination from lead-contaminated or lead-containing materials during hazard reduction activities.

(a) *Occupant protection.* (1) Occupants shall not be permitted to enter the worksite during hazard reduction activities (unless they are employed in the conduct of these activities at the worksite), until after hazard reduction work has been completed and clearance, if required, has been achieved.

(2) Occupants shall be temporarily relocated before and during hazard reduction activities to a suitable, decent, safe, and similarly accessible dwelling unit that does not have lead-based paint hazards, except if:

(i) Treatment will not disturb lead-based paint, dust-lead hazards or soil-lead hazards;

(ii) Only the exterior of the dwelling unit is treated, and windows, doors, ventilation intakes and other openings in or near the worksite are sealed during hazard control work and cleaned

afterward, and entry free of dust-lead hazards, soil-lead hazards, and debris is provided;

(iii) Treatment of the interior will be completed within one period of 8-daytime hours, the worksite is contained so as to prevent the release of leaded dust and debris into other areas, and treatment does not create other safety, health or environmental hazards (e.g., exposed live electrical wiring, release of toxic fumes, or on-site disposal of hazardous waste); or

(iv) Treatment of the interior will be completed within 5 calendar days, the worksite is contained so as to prevent the release of leaded dust and debris into other areas, treatment does not create other safety, health or environmental hazards; and, at the end of work on each day, the worksite and the area within at least 10 feet (3 meters) of the containment area is cleaned to remove any visible dust or debris, and occupants have safe access to sleeping areas, and bathroom and kitchen facilities.

(3) The dwelling unit and the worksite shall be secured against unauthorized entry, and occupants' belongings protected from contamination by dust-lead hazards and debris during hazard reduction activities. Occupants' belongings in the containment area shall be relocated to a safe and secure area outside the containment area, or covered with an impermeable covering with all seams and edges taped or otherwise sealed.

(b) *Worksite preparation.* (1) The worksite shall be prepared to prevent the release of leaded dust, and contain lead-based paint chips and other debris from hazard reduction activities within the worksite until they can be safely removed. Practices that minimize the spread of leaded dust, paint chips, soil and debris shall be used during worksite preparation.

(2) A warning sign shall be posted at each entry to a room where hazard reduction activities are conducted when occupants are present; or at each main and secondary entryway to a building from which occupants have been relocated; or, for an exterior hazard reduction activity, where it is easily read 20 feet (6 meters) from the edge of the hazard reduction activity worksite. Each warning sign shall be as described in 29 CFR 1926.62(m), except that it shall be posted irrespective of employees' lead exposure and, to the extent practicable, provided in the occupants' primary language.

§ 35.1350 Safe work practices.

(a) *Prohibited methods.* Methods of paint removal listed in § 35.140 shall not be used.

(b) *Occupant protection and worksite preparation.* Occupants and their belongings shall be protected, and the worksite prepared, in accordance with § 35.1345.

(c) *Specialized cleaning.* After hazard reduction activities have been completed, the worksite shall be cleaned using cleaning methods, products, and devices that are successful in cleaning up dust-lead hazards, such as a HEPA vacuum or other method of equivalent efficacy, and lead-specific detergents or equivalent.

(d) *De minimis levels.* Safe work practices are not required when maintenance or hazard reduction activities do not disturb painted surfaces that total more than:

(1) 20 square feet (2 square meters) on exterior surfaces;

(2) 2 square feet (0.2 square meters) in any one interior room or space; or

(3) 10 percent of the total surface area on an interior or exterior type of component with a small surface area. Examples include window sills, baseboards, and trim.

§ 35.1355 Ongoing lead-based paint maintenance and reevaluation activities.

(a) *Maintenance.* Maintenance activities shall be conducted in accordance with paragraphs (a)(2)–(6) of this section, except as provided in paragraph (a)(1) of this section.

(1) Maintenance activities need not be conducted in accordance with this section if both of the following conditions are met, as applicable:

(i) Either a lead-based paint inspection indicates that no lead-based paint is present in the dwelling units, common areas, and on exterior surfaces, or a clearance report prepared in accordance with § 35.1340(a) indicates that all lead-based paint has been removed; and

(ii) If a risk assessment is required by the applicable subpart of this part, a current risk assessment indicates that no soil-lead hazards and no dust-lead hazards are present.

(2) A visual assessment for deteriorated paint, bare soil, and the failure of any hazard reduction measures shall be performed at unit turnover and every twelve months.

(3) (i) *Deteriorated paint.* All deteriorated paint on interior and exterior surfaces located on the residential property shall be stabilized in accordance with § 35.1330(a)(b), except for any paint that an evaluation has found is not lead-based paint.

(ii) *Bare soil.* All bare soil shall be treated with standard treatments in accordance with § 35.1335(d) through (g), or interim controls in accordance with § 35.1330(a) and (f); except for any bare soil that a current evaluation has found is not a soil-lead hazard.

(4) Safe work practices, in accordance with sec. 35.1350, shall be used when performing any maintenance or renovation work that disturbs paint that may be lead-based paint.

(5) Any encapsulation or enclosure of lead-based paint or lead-based paint hazards which has failed to maintain its effectiveness shall be repaired, or abatement or interim controls shall be performed in accordance with §§ 35.1325 or 35.1330, respectively.

(6) Clearance testing of the worksite shall be performed at the conclusion of repair, abatement or interim controls in accordance with § 35.1340.

(7) Each dwelling unit shall be provided with written notice asking occupants to report deteriorated paint and, if applicable, failure of encapsulation or enclosure, along with the name, address and telephone number of the person whom occupants should contact. The language of the notice shall be in accordance with § 35.125(c)(3). The designated party shall respond to such report and stabilize the deteriorated paint or repair the encapsulation or enclosure within 30 days.

(b) *Reevaluation.* Reevaluation shall be conducted in accordance with this paragraph (b), and the designated party shall conduct interim controls of lead-based paint hazards found in the reevaluation.

(1) Reevaluation shall be conducted if hazard reduction has been conducted to reduce lead-based paint hazards found in a risk assessment or if standard treatments have been conducted, except that reevaluation is not required if any of the following cases are met:

(i) An initial risk assessment found no lead-based paint hazards;

(ii) A lead-based paint inspection found no lead-based paint; or

(iii) All lead-based paint was abated in accordance with § 35.1325, provided that no failures of encapsulations or enclosures have been found during visual assessments conducted in accordance with § 35.1355(a)(2) or during other observations by maintenance and repair workers in accordance with § 35.1355(a)(5) since the encapsulations or inclosures were performed.

(2) Reevaluation shall be conducted to identify:

(i) Deteriorated paint surfaces with known or suspected lead-based paint;

(ii) Deteriorated or failed interim controls of lead-based paint hazards or encapsulation or enclosure treatments;

(iii) Dust-lead hazards; and

(iv) Soil that is newly bare with lead levels equal to or above the standards in § 35.1320(b)(2).

(3) Each reevaluation shall be performed by a certified risk assessor.

(4) Each reevaluation shall be conducted in accordance with the following schedule if a risk assessment or other evaluation has found deteriorated lead-based paint in the residential property, a soil-lead hazard, or a dust-lead hazard on a floor or interior window sill. (Window troughs are not sampled during reevaluation). The first reevaluation shall be conducted no later than two years from completion of hazard reduction. Subsequent reevaluation shall be conducted at intervals of two years, plus or minus 60 days. To be exempt from additional reevaluation, at least two consecutive reevaluations conducted at such two-year intervals must be conducted without finding lead-based paint hazards or a failure of an encapsulation or enclosure. If, however, a reevaluation finds lead-based paint hazards or a failure, at least two more consecutive reevaluations conducted at such two year intervals must be conducted without finding lead-based paint hazards or a failure.

(5) Each reevaluation shall be performed as follows:

(i) Dwelling units and common areas shall be selected and reevaluated in accordance with § 35.1320(b).

(ii) The worksites of previous hazard reduction activities that are similar on the basis of their original lead-based paint hazard and type of treatment shall be grouped. Worksites within such groups shall be selected and reevaluated in accordance with § 35.1320(b).

(6) Each reevaluation shall include reviewing available information, conducting selected visual assessment, recommending responses to hazard reduction omissions or failures, performing selected evaluation of paint, soil and dust, and recommending response to newly-found lead-based paint hazards.

(i) *Review of available information.* The risk assessor shall review any available past evaluation, hazard reduction and clearance reports, and any other available information describing hazard reduction measures, ongoing maintenance activities, and relevant building operations.

(ii) *Visual assessment.* The risk assessor shall:

(A) Visually evaluate all lead-based paint hazard reduction treatments, any known or suspected lead-based paint, any deteriorated paint, and each exterior site, and shall identify any new areas of bare soil;

(B) Determine acceptable options for controlling the hazard; and

(C) Await the correction of any hazard reduction omission or failure and the reduction of any lead-based paint hazard before sampling any dust or soil the risk assessor determines may reasonably be associated with such hazard.

(iii) *Reaction to hazard reduction omission or failure.* If any hazard reduction control has not been implemented or is failing (e.g., an encapsulant is peeling away from the wall, a paint-stabilized surface is no longer intact, or gravel covering an area of bare soil has worn away), or deteriorated lead-based paint is present, the risk assessor shall:

(A) Determine acceptable options for controlling the hazard; and

(B) Await the correction of any hazard reduction omission or failure and the reduction of any lead-based paint hazard before sampling any dust or soil the risk assessor determines may reasonably be associated with such hazard.

(iv) *Selected paint, soil and dust evaluation.* (A) The risk assessor shall sample deteriorated paint surfaces identified during the visual assessment and have the samples analyzed, in accordance with 40 CFR 745.227(b)(3)(4), but only if reliable information about lead content is unavailable.

(B) The risk assessor shall evaluate new areas of bare soil identified during the visual assessment. Soil samples shall be collected and analyzed in accordance with 40 CFR 745.227(d)(8)–(11), but only if the soil lead levels have not been previously measured.

(C) The risk assessor shall take selected dust samples and have them analyzed. Dust samples shall be collected and analyzed in accordance with § 35.1320(b). At least two composite samples, one from floors and the other from interior window sills, shall be taken in each dwelling unit and common area selected. Each composite sample shall consist of four individual samples, each collected from a different room or area. If the dwelling unit contains both carpeted and uncarpeted living areas, separate floor samples are required from the carpeted and uncarpeted areas. Equivalent single-surface sampling may be used instead of composite sampling.

(7) The risk assessor shall provide the designated party with a written report documenting the presence or absence of lead-based paint hazards, the current status of any hazard reduction and standard treatment measures used previously and any newly-conducted evaluation and hazard reduction activities. The report shall include the information in 40 CFR 745.227(d)(11), and shall:

(i) Identify any lead-based paint hazards previously detected and discuss the effectiveness of any hazard reduction or standard treatment measures used, and list those for which no measures have been used.

(ii) Describe any new hazards found and present the owner with acceptable control options and their accompanying reevaluation schedules.

(iii) Identify when the next reevaluation, if any, must occur, in accordance with the requirements of paragraph (b)(4) of this section.

(c) *Response to the reevaluation.* (1) *Hazard reduction omission or failure found by a reevaluation.* The designated party shall respond in accordance with paragraph (b)(6)(iii)(A) of this section to a report by the risk assessor of a hazard reduction control that has not been implemented or is failing, or that deteriorated lead-based paint is present.

(2) *Newly-identified lead-based paint hazard found by a reevaluation.* The designated party shall treat each:

(i) Dust-lead hazard or paint lead hazard by cleaning or hazard reduction measures, which are considered completed when clearance is achieved in accordance with § 35.1340.

(ii) Soil-lead hazard by hazard reduction measures, which are considered completed when clearance is achieved in accordance with § 35.1340.

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

4. The authority citation for part 91 continues to read as follows:

Authority: 42 U.S.C 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, 12901–12912.

5. Revise § 91.2(b)(15) to read as follows:

§ 91.2 Applicability.

* * * * *

(b) * * *

(15) The "Lead-Based Paint Hazard Reduction Program (see 42 U.S.C. 4852(o));"

* * * * *

6. In § 91.5, revise the definition of "Lead-based paint hazards" to read as follows:

§ 91.5 Definitions.

* * * * *

Lead-based paint hazards means lead-based paint hazards as defined in part 35, subpart B of this title.

* * * * *

7. Revise § 91.225(b)(7) to read as follows:

§ 91.225 Certifications.

* * * * *

(b) * * *

(7) *Compliance with lead-based paint procedures.* The jurisdiction must submit a certification that its activities concerning lead-based paint will comply with the requirements of part 35, subparts A, B, J, K, and R of this title.

* * * * *

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

8. The authority citation for part 92 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

9. Revise § 92.206(a)(2)(ii) to read as follows:

§ 92.206 Eligible project costs.

* * * * *

(a) * * *

(2) * * *

(ii) To make essential improvements, including energy-related repairs or improvements, improvements necessary to permit use by persons with disabilities, and lead-based paint activities, as required by part 35 of this title.

* * * * *

10. Revise § 92.355 to read as follows:

§ 92.355 Lead-based paint.

Housing assisted with HOME funds is subject to the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, J, K, M and R of this title.

11. Revise § 92.504(c)(3)(iv) to read as follows:

§ 92.504 Participating jurisdiction responsibilities; written agreements; on-site inspection.

* * * * *

(c) * * *

(3) * * *

(iv) *Property standards.* The agreement must require the housing to meet the property standards in § 92.251 and the lead-based paint requirements in part 35, subparts A, B, J, K, M and R of this title, upon project completion. The agreement must also require owners of rental housing assisted with HOME funds to maintain the housing compliance with § 92.251 for the duration of the affordability period.

* * * * *

12. Revise § 92.508(a)(7)(vi) to read as follows:

§ 92.508 Recordkeeping.

* * * * *

(a) * * *

(7) * * *

(vi) Records demonstrating compliance with the lead-based paint requirements of part 35, subparts A, B, J, K, M and R of this title.

* * * * *

PART 200—INTRODUCTION TO FHA PROGRAMS

13. The authority citation for part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z–18; 42 U.S.C. 3535(d).

14. Revise subpart O to read as follows:

Subpart O—Lead-Based Paint Poisoning Prevention

Sec.

200.800 Lead-based paint.
200.805 Definitions.
200.810 Single family insurance and coinsurance.

Subpart O—Lead-Based Paint Prevention

§ 200.800 Lead-based paint.

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, F, G, I, and R of this title, apply to activities under these programs, except for single family mortgage insurance and guarantee programs. Sections 200.805 and 200.810 apply to single family mortgage insurance and guarantee programs administered by HUD.

§ 200.805 Definitions.

Applicable surface. All intact and nonintact interior and exterior painted surfaces of a residential structure.

Defective paint surface. Paint on applicable surfaces that is cracking, scaling, chipping, peeling or loose.

Lead-based paint surface. A paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm^2.

§ 200.810 Single family insurance and coinsurance.

(a) *General.* (1) The requirements of this section apply to any one-to four-family dwelling which was constructed before 1978 and is the subject of an application for mortgage insurance under section 203(b) or other sections of the National Housing Act relating to the insurance or coinsurance of mortgages on one-to-four-family dwellings. Such other sections include:

(i) Section 244 (coinsurance);

(ii) Section 213 (cooperative housing insurance);

(iii) Section 220 (rehabilitation and neighborhood conservation housing insurance);

(iv) Section 221 (housing for moderate income and displaced families);

(v) Section 222 (mortgagor insurance for servicemen);

(vi) Section 809 (armed services housing for civilian employees);

(vii) Section 810 (armed services housing in impacted areas);

(viii) Section 234 (mortgage insurance for condominiums);

(ix) Section 235 (mortgage assistance payments for home ownership and project rehabilitation);

(x) Section 237 (special mortgage insurance for low and moderate income families); and

(xi) Section 240 (mortgage insurance on loans for purchase of fee simple title from lessors).

(2) This section is also applicable to single family mortgage insurance on Indian reservations (12 U.S.C. 1715z–13) and loan guarantees for Indian housing (25 U.S.C. 4191).

(3) Applications for insurance in connection with a refinancing transaction where an appraisal is not required under the applicable procedures established by the Commissioner are excluded from the coverage of this section. Any housing assisted under the programs set out in this section for which no new activity is applied for or required is not covered by this section.

(b) *Appraisal.* The appraiser shall, when appraising a dwelling constructed prior to 1978, inspect the dwelling for defective paint surfaces.

(c) *Treatment of defective paint surfaces.* For defective paint surfaces, treatment shall be provided to defective areas. Treatment of hazards shall consist of covering or removing defective paint surfaces. Covering may be accomplished by such means as adding a layer of wallboard to the wall surface. Depending on the wall condition, wallcoverings which are permanently attached may be used. Covering or replacing trim surfaces is also permitted. Paint removal may be accomplished by such methods as scraping, heat treatment (infra-red or coil type heat guns) or chemicals. Machine sanding and use of propane or gasoline torches (open-flame methods) are not permitted. Washing and repainting without thorough removal or covering does not constitute adequate treatment. In the case of defective paint spots, scraping and repainting the defective area is considered adequate treatment. Treatment of a defective paint surface is not required if such a surface is found to not be a lead-based paint surface by a lead-based paint inspector certified pursuant to procedures of the U.S. Environmental Protection Agency at 40 CFR part 745.

(d) *Home equity conversion mortgage insurance.* The requirements of this section, as modified by the following sentence, apply to a dwelling which is the subject of an application for mortgage insurance under section 255 of the National Housing Act (home equity conversion insurance) unless the mortgagor provides the certification described in § 206.45(d) of this title. The defective paint surface may be treated after the mortgage is endorsed for insurance, provided that the defective paint surface is treated as expeditiously as possible in accordance with the repair work provisions contained in § 206.47 of this title

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

15. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b, and 1715u; 42 U.S.C. 3535(d).

16. In § 203.673, revise paragraphs (a) and (c) to read as follows:

§ 203.673 Habitability.

(a) For purposes of § 203.670, a property is habitable if it meets the requirements of this section in its present condition, or will meet these requirements with the expenditure of not more than five percent of the fair market value of the property. The cost of hazard reduction or abatement of lead-based paint hazards in the property, as required by the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations in part 35 of this title, is excluded from these repair cost limitations.

* * * * *

(c) If repairs, including lead-based paint hazard reduction or abatement, are to be made while the property is occupied, the occupant must hold the Secretary and the Department harmless against any personal injury or property damage that may occur during the process of making repairs. If temporary relocation of the occupant is necessary during repairs, no reimbursement for relocation expenses will be provided to the occupant.

PART 280—NEHEMIAH HOUSING OPPORTUNITY GRANTS PROGRAM

17. The authority citation for part 280 continues to read as follows:

Authority: 12 U.S.C. 1715l note; 42 U.S.C. 3535(d).

18. Revise § 280.25(e) to read as follows:

§ 280.25 Other Federal requirements.

* * * * *

(e) *Lead-based paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, K, and R, of this title apply to the program.

* * * * *

PART 291—DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY

19. The authority citation for part 291 continues to read as follows:

Authority: 12 U.S.C. 1701 *et seq.*; 42 U.S.C. 1441, 1441a, and 3535(d).

20. Revise § 291.100(g) to read as follows:

§ 291.100 General policy.

* * * * *

(g) *Lead-based paint poisoning prevention.* Properties constructed before 1978 are subject to the requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, F, and R, of this title.

* * * * *

21. Revise § 291.430 to read as follows:

§ 291.430 Elimination of lead-based paint hazards.

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, F, and R of this title, apply activities covered by this subpart.

PART 511—RENTAL REHABILITATION GRANT PROGRAM

22. The authority citation for 24 CFR part 511 continues to read as follows:

Authority: 42 U.S.C. 1437o and 3535(d).

23. Revise § 511.10(f)(1)(ii) to read as follows:

§ 511.10 General requirements.

* * * * *

(f) * * *

(1) * * *

(ii) Make essential improvements, as reasonably defined by the grantee or State recipient in its rehabilitation standards adopted under § 511.10(e), including energy-related repairs, improvements necessary to permit the use of rehabilitated projects by handicapped persons, and activities of lead based paint hazards, as required by part 35 of this title;

* * * * *

24. Revise § 511.15 to read as follows:

§ 511.15 Lead-based paint.

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this title apply to activities under these programs.

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

25. The authority citation for part 570 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5300–5320.

26. Revise § 570.202(f) to read as follows:

§ 570.202 Eligible rehabilitation and preservation activities.

* * * * *

(f) *Lead-based paint activities.* Lead-based paint activities as set forth in part 35 of this title.

27. Revise § 570.461 to read as follows:

§ 570.461 Post-preliminary approval requirements; lead-based paint.

The recipient may receive preliminary approval prior to the accomplishment of lead-based paint activities conducted pursuant to part 35, subparts A, B, J, K, and R of this title, but no funds will be released until such actions are complete and evidence of compliance is submitted to HUD.

28. Revise § 570.487(c) to read as follows:

§ 570.487 Other applicable laws and related program requirements.

* * * * *

(c) *Lead-Based Paint Poisoning Prevention Act.* States shall devise, adopt and carry out procedures with

respect to CDBG assistance that fulfill the objectives and requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this title.

* * * * *

29. Revise § 570.608 to read as follows:

§ 570.608 Lead-based paint.

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this part apply to activities under this program.

PART 572—HOPE FOR HOMEOWNERSHIP OF SINGLE FAMILY HOMES PROGRAM (HOPE 3)

30. The authority citation for part 572 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12891.

31. Revise § 572.100(d)(1) to read as follows:

§ 572.100 Acquisition and rehabilitation of eligible properties; rehabilitation standards.

* * * * *

(d) * * *

(1) The recipient is responsible to assure that rehabilitation of eligible property meets local codes applicable to rehabilitation of work in the jurisdiction (but not less than the housing quality standards established under the Section 8 rental voucher program, described in § 982.401 of this title). Rehabilitation must also include work necessary to meet applicable federal requirements, including lead-based paint requirements set forth at part 35, subparts A, B, J, K, and R of this title.

* * * * *

32. Revise § 572.215(e) to read as follows:

§ 572.215 Implementation grants-eligible activities.

* * * * *

(e) *Architectural and engineering work.* Architectural and engineering work, and related professional services required to prepare architectural plans or drawings, write-ups, specifications or inspections, including lead-based paint evaluation.

* * * * *

33. Revise § 572.420(h) to read as follows:

§ 572.420 Miscellaneous requirements.

* * * * *

(h) *Lead-based paint activities.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, J, K and R of this title apply to activities under these programs.

PART 573—LOAN GUARANTEE RECOVERY FUND

34. The authority citation for part 573 continues to read as follows:

Authority: Pub. L. 104–155, 110 Stat. 1392, 18 U.S.C. 241 note; 42 U.S.C. 3535(d).

35. Revise § 573.9(c) to read as follows:

§ 573.9 Other requirements.

* * * * *

(c) *Lead-based paint.* Housing assisted under this part is subject to the lead-based paint requirements described in part 35, subparts A, B, E, G, and R of this title.

* * * * *

PART 574—HOUSING OPPORTUNITIES FOR PEOPLE WITH AIDS

36. The authority citation for part 574 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 12901–12912.

37. Revise § 574.635 to read as follows:

§ 574.635 Lead-based paint.

The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, J, K, M, and R of this part apply to activities under this program.

PART 576—EMERGENCY SHELTER GRANTS PROGRAM: STEWART B. McKINNEY HOMELESS ASSISTANCE ACT

38. The authority citation for part 576 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11376.

39. Revise § 576.57(c) to read as follows:

§ 576.57 Other Federal Requirements.

* * * * *

(c) The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this title apply to activities under this program.

* * * * *

PART 582—SHELTER PLUS CARE

40. The authority citation for part 582 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11403–11407b.

41. Revise the first sentence of § 582.305(a) to read as follows:

§ 582.305 Housing quality standards; rent reasonableness.

(a) *Housing quality standards.* Housing assisted under this part must meet the applicable housing quality standards (HQS) under § 982.401 of this title—except that § 982.401(j) of this title does not apply and instead part 35, subparts A, B, K and R of this title apply—and, for SRO under § 882.803(b) of this title. * * *

* * * * *

PART 583—SUPPORTIVE HOUSING PROGRAM

42. The authority citation for part 583 continues to read as follows:

Authority: 42 U.S.C. 11389 and 3535(d).

43. Revise § 583.330(d) to read as follows:

§ 583.330 Applicability of other Federal requirements.

* * * * *

(d) *Lead-based paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this title apply to activities under this program.

* * * * *

PART 585—YOUTHBUILD PROGRAM

44. The authority citation for part 585 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 8011.

45. Revise § 585.305(d) to read as follows:

§ 585.305 Eligible activities.

* * * * *

(d) Rehabilitation of housing and related facilities to be used for the purposes of providing homeownership, residential rental housing, or transitional housing for the homeless and low- and very low-income persons and families, including lead-based paint activities; in accordance with part 35 of this title;

* * * * *

46. Revise § 585.502(h) to read as follows:

§ 585.502 Certifications.

* * * * *

(h) *Lead-based paint.* A certification that the applicant will comply with the requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, J, K, and R of this title.

* * * * *

PART 761—DRUG ELIMINATION PROGRAMS

47. The authority citation for part 761 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11901 *et seq.*

48. Revise § 761.40(c) to read as follows:

§ 761.40 Other Federal requirements.

* * * * *

(c) *Lead-based paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title.

* * * * *

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

49. The authority citation for part 881 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

50. Revise § 881.207(e) to read as follows:

§ 881.207 Property standards.

* * * * *

(e) The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title; and

* * * * *

PART 882—SECTION 8 MODERATE REHABILITATION PROGRAMS

51. The authority citation for part 882 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

52. Revise § 882.404(d) to read as follows:

§ 882.404 Physical condition standards; physical inspection requirements.

* * * * *

(d) *Lead-based paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title apply to the Section 8 moderate rehabilitation program.

53. Revise § 882.507(b)(2)(iv) to read as follows:

§ 882.507 Completion of rehabilitation.

* * * * *

(b) * * *

(2) * * *

(iv) The unit(s) are in compliance with part 35, subparts A, B, H, and R of this title.

* * * * *

54. Revise § 882.514(d)(1)(vi) to read as follows:

§ 882.514 Family participation.

* * * * *

(d) * * *

(1) * * *

(vi) The advisability and availability of blood lead level screening for children under 6 years of age and HUD's lead-based paint requirements in part 35, subparts A, B, H, and R of this title.

* * * * *

55. Revise § 882.803(b)(1) to read as follows:

§ 882.803 Project eligibility and other requirements.

* * * * *

(b)(1) *Physical condition standards.* Section 882.404 applies to this program.

* * * * *

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

56. The authority citation for part 883 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

57. Revise § 883.310(b)(5) to read as follows:

§ 883.310 Property standards.

* * * * *

(b) * * *

(5) The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title.

* * * * *

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

58. The authority citation for part 886 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f and 3535(d) and 13611–13619.

59. Revise § 886.113(i) to read as follows:

§ 886.113 Physical condition standard; physical inspection requirements.

* * * * *

(i) Lead based paint. The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title apply to activities under this program.

* * * * *

60. Revise § 886.307(i) to read as follows:

§ 886.307 Physical condition standards; physical inspection requirement.

* * * * *

(i) *Lead-based paint.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title apply to activities under this program.

* * * * *

61. Revise § 886.333(b)(2)(iv) to read as follows:

§ 886.333 Completion of rehabilitation.

* * * * *

(b) * * *

(2) * * *

(iv) The project was in compliance with applicable HUD lead-based paint regulations at part 35, subparts A, B, H, and R of this title.

* * * * *

PART 891—SECTION 8—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

62. The authority citation for part 891 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d) and 8013.

63. Revise § 891.155(g) to read as follows:

§ 891.155 Other Federal requirements.

* * * * *

(g) *Lead-based paint.* The requirements of the Lead-Based Paint

Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title apply to these programs.

64. Revise § 891.325 to read as follows:

§ 891.325 Lead-based paint requirements.

The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title apply to the Section 811 program and to projects funded under §§ 891.655 through 891.790.

PART 901—PUBLIC HOUSING MANAGEMENT ASSESSMENT PROGRAM

65. The authority citation for part 901 continues to read as follows:

Authority: 42 U.S.C. 1437d(j); 42 U.S.C. 3535(d).

66. In § 901.5, revise the definition of "*HQS*" to read as follows:

§ 901.5 Definitions.

* * * * *

HQS means Housing Quality Standards as set forth at § 982.401 of this title, except that § 982.401(j) of this title does not apply and instead part 35, subparts A, B, L, and R of this title apply.

* * * * *

PART 906—SECTION 5(h) HOMEOWNERSHIP PROGRAM

67. The authority citation for part 906 continues to read as follows:

Authority: 42 U.S.C. 1437c, 1437d and 3535(d).

68. Revise the first sentence of § 906.6(b) to read as follows:

§ 906.6 Property that may be sold.

* * * * *

(b) *Physical condition of property.* The property must meet local code requirements (or, if no local code exists, the housing quality standards established by HUD for the Section 8 Housing Assistance Payments Program for Existing Housing, under part 882 of this title) and the relevant requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations part 35, subparts A, B, L, and R of this title. * * *

PART 941—PUBLIC HOUSING DEVELOPMENT

69. The authority citation for part 941 continues to read as follows:

Authority: 42 U.S.C. 1437b, 1437c, 1437g and 3535(d).

70. Revise § 941.208(b) to read as follows:

§ 941.208 Other Federal requirements.

* * * * *

(b) *Lead-based paint.* The relevant requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, L, and R of this title apply to the program.

71. Revise the second sentence of § 941.606(m) to read as follows:

§ 941.606 Proposal.

* * * * *

(m) *New construction.* * * * This may be accomplished by the PHA's submission of a comparison of the cost of new construction in the neighborhood where the housing is proposed to be constructed and the cost of acquisition of existing housing (with or without rehabilitation) in the same neighborhood (including estimated costs of lead-based paint activities). * * *

* * * * *

PART 965—PHA-OWNED OR LEASED PROJECTS—GENERAL PROVISIONS

72. The authority citation for part 965 continues to read as follows:

Authority: 42 U.S.C. 1437, 1437a, 1437d, 1437g, and 3535(d). Subpart H is also issued under 42 U.S.C. 4821–4846.

73. Amend § 965.215 as follows:

a. Revise paragraph (a);

b. Revise the introductory text of paragraph (b); and

c. Revise paragraphs (b)(1), (c), and (d).

§ 965.215 Lead-based paint liability insurance coverage.

(a) *General.* The purpose of this section is to specify what HUD deems reasonable insurance coverage with respect to the hazards associated with lead-based paint activities that the PHA undertakes, in accordance with the PHA's ACC with HUD. The insurance coverage does not relieve the PHA of its responsibility for assuring that lead-based paint activities are conducted in a responsible manner.

(b) *Insurance coverage requirements.* When the PHA undertakes lead-based paint activities, it must assure that it has reasonable insurance coverage for itself for potential personal injury liability associated with those activities. If the work is being done by PHA employees, the PHA must obtain a liability insurance policy directly to protect the PHA. If the work is being done by a contractor, the PHA must obtain, from the insurer of the contractor performing this type of work in accordance with a contract, a certificate of insurance providing evidence of such insurance and naming the PHA as an additional insured; or obtain such insurance directly. Insurance must remain in effect during the entire period of lead-based paint activity and must comply with the following requirements:

(1) *Named insured.* If purchased by the PHA, the policy shall name the PHA as insured. If purchased by an independent contractor, the policy shall name the contractor as insured and the PHA as an additional insured, in connection with performing work under the PHA's contract pertaining to lead-based paint activities. If the PHA has executed a contract with a Resident Management Corporation (RMC) to manage a building/project on behalf of the PHA, the RMC shall be an additional insured under the policy in connection with the PHA's contract related to lead-based paint activities. (The duties of the RMC are similar to those of a real estate management firm.)

* * * * *

(c) *Exception to requirements.* Insurance already purchased by the PHA or contractor and enforced on the day this section is effective which provides coverage for lead-based paint activities shall be considered as meeting the requirements of this section until the expiration of the policy. This section is not applicable to architects, engineers or consultants who do not physically perform lead-based paint activities.

(d) *Insurance for the existence of lead-based paint hazards.* A PHA may also purchase special liability insurance against the existence of lead-based paint hazards, although it is not a required coverage. A PHA may purchase this coverage if, in the opinion of the PHA, the policy meets the PHA's requirements, the premium is reasonable and the policy is obtained in accordance with applicable procurement standards. (See part 85 of this title and § 965.205 of this title.) If this coverage is purchased, the premium must be paid from funds available under the Performance Funding System or from reserves.

74. Revise subpart H, consisting of § 965.701, to read as follows:

Subpart H—Lead-based Paint Poisoning Prevention

§ 965.701 Lead-based paint poisoning prevention.

The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, L, and R of this title apply to this program.

PART 968—PUBLIC HOUSING MODERNIZATION

75. The authority citation for part 968 continues to read as follows:

Authority: 42 U.S.C. 1437d, 1437*l*, and 3535(d).

76. Revise the first sentence of § 968.102(c) to read as follows:

§ 968.102 Special requirements for Turnkey III developments.

* * * * *

(c) *Other.* The homebuyer family must be in compliance with its financial obligations under its homebuyer agreement in order to be eligible for non-emergency physical improvements, with the exception of work necessary to meet statutory and regulatory requirements, (e.g., accessibility for persons with disabilities and lead-based paint activities) and the correction of development deficiencies. * * *

77. Revise § 968.110(k) to read as follows:

§ 968.110 Other program requirements.

* * * * *

(k) *Lead-based paint poisoning prevention.* The PHA shall comply with the relevant requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, L, and R of this title.

* * * * *

78. Revise § 968.112(i) to read as follows:

§ 968.112 Eligible costs.

* * * * *

(i) *Lead-based paint costs.* Eligible costs include lead-based paint activities, such as insurance coverage and cleanup and disposal, in accordance with part 35 of this title.

* * * * *

79. In § 968.205, revise the definition of the term "*Other modernization*" to read as follows:

§ 968.205 Definitions.

* * * * *

Other Modernization (modernization other than emergency). A type of modernization program for a development that includes one or more physical work items, where HUD determines that the physical improvements are necessary and sufficient to extend substantially the useful life of the development, and/or one or more development specific or PHA-wide management work items (including planning costs), and/or lead-based paint activities.

* * * * *

80. Revise § 968.210(e)(2)(ii) to read as follows:

§ 968.210 Procedures for obtaining approval of a modernization program.

* * * * *

(e) * * *

(2) * * *

(ii) *Lead-based paint inspection compliance.* Where a PHA has not complied with the statutory requirement to complete lead-based paint inspection of all pre-1978 family units, the PHA is eligible for processing only for Emergency Modernization or work needed to complete the lead-based paint inspection.

* * * * *

81. Revise the first sentence of § 968.315(e)(2)(i) to read as follows:

§ 968.315 Comprehensive Plan (including five-year action plan).

* * * * *

(e) * * *

(2) * * *

(i) *Requirements.* The physical needs assessment identifies all of the work that a PHA would need to undertake to bring each of its developments up to the modernization and energy conservation standards, as required by the Act, to comply with the lead-based paint requirements in part 35, subparts A, B, L, and R of this title, and to comply with other program requirements under § 968.110. * * *

* * * * *

82. Revise § 968.435(b) to read as follows:

§ 968.435 Other program requirements.

* * * * *

(b) Certify that activities undertaken within vacant units will bring the affected units into compliance with the Housing Quality Standards, as set forth in § 982.401 of this title, except that § 982.401(j) of this title shall not apply; the applicable lead-based paint requirements in part 35 subparts A, B, L and R, of this title shall apply.

* * * * *

PART 970—PUBLIC HOUSING PROGRAM—DEMOLITION OR DISPOSITION OF PUBLIC HOUSING PROJECTS

83. The authority citation for part 970 continues to read as follows:

Authority: 42 U.S.C. 1437p and 3535(d).

84. Revise § 970.13(d)(1)(i) to read as follows:

§ 970.13 Resident organization opportunity to purchase.

* * * * *

(d) * * *

(1) * * *

(i) An identification of the development, or portion of the development, in the proposed demolition or disposition, including the development number and location, the number of units and bedroom configuration, the amount of space and use for non-dwelling space, the current physical condition (e.g., fire damaged, friable asbestos, lead-based paint evaluation results), and occupancy status (e.g., percent occupancy).

* * * * *

PART 982—SECTION 8 TENANT-BASED ASSISTANCE: HOUSING CHOICE VOUCHER PROGRAM

85. The authority citation for part 982 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

86. Revise § 982.158(f)(5) to read as follows:

§ 982.158 Program accounts and records.

* * * * *

(f) * * *

(5) Lead-based paint records as required by part 35, subpart B of this title.

* * * * *

§ 982.301 [Amended]

87. In § 982.301, remove paragraph (b)(10) and redesignate paragraphs (b)(11) through (b)(16) as paragraphs (b)(10) through (b)(15), respectively.

88. Revise § 982.305(b)(3) to read as follows:

§ 982.305 PHA approval of assisted tenancy.

* * * * *

(b) * * *

(3) The lease is approvable and includes the lease addendum and the lead-based paint disclosure information as required in § 35.92(b) of this title.

* * * * *

89. Revise § 982.401(j) to read as follows:

§ 982.401 Housing quality standards (HQS).

* * * * *

(j) *Lead-based paint performance requirement.* The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, M, and R of this title apply to units assisted under this part.

* * * * *

PART 983—SECTION 8 PROJECT-BASED CERTIFICATE PROGRAM

90. The authority citation for part 983 continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

91. Revise § 983.1(b)(2)(vii) to read as follows:

§ 983.1 Purpose and applicability.

* * * * *

(b) * * *

(2) * * *

(vii) In subpart I of this part, § 982.401(j), § 982.402(a)(3), § 982.402(c) and (d) (effect of family unit size—subsidy and size of unit); and § 982.403 (termination of HAP contract when unit is too big or too small);

* * * * *

92. Revise § 983.5(c) to read as follows:

§ 983.5 Physical condition standards; physical inspection requirements.

* * * * *

(c) The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, and R of this title apply to units assisted under this part.

93. Revise § 983.104(b)(2)(iv) to read as follows:

§ 983.104 New construction or rehabilitation completion.

* * * * *

(b) * * *

(2) * * *

(iv) Units are in compliance with the lead-based paint requirements in part 35, subparts A, B, H, and R of this title; and

* * * * *

94. In § 983.203(d), revise the first sentence of the introductory paragraph to read as follows:

§ 983.203 Family participation.

* * * * *

(d) *Briefing of families.* When a family is selected to occupy a project-based unit, the PHA must provide the family with information concerning the tenant rent and any applicable utility allowance and a copy of the lead hazard information pamphlet, as required by part 35, subpart A of this title. * * *

* * * * *

PART 1000—NATIVE AMERICAN HOUSING ACTIVITIES

95. The authority citation for part 1000 continues to read as follows:

Authority: 12 U.S.C. 1715z–13a and 3535(d).

96. Revise § 1000.40 to read as follows:

§ 1000.40 Do lead-based paint poisoning prevention requirements apply to affordable housing activities under NAHASDA?

Yes, lead-based paint requirements apply to housing activities assisted under NAHASDA. The applicable requirements for NAHASDA are HUD's regulations at part 35, subparts A, B, E, G, H, K, M and R of this title, which implement the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4822–4846) and the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856).

PART 1003—COMMUNITY DEVELOPMENT BLOCK GRANTS FOR INDIAN TRIBES AND ALASKAN NATIVE VILLAGES

97. The authority citation for part 1003 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 5301 *et seq.*

98. Revise § 1003.202(b)(7)(iv) to read as follows:

§ 1003.202 Eligible rehabilitation and preservation activities.

* * * * *

(b) * * *

(7) * * *

(iv) Lead-based paint activities in part 35 of this title.

* * * * *

99. Revise § 1003.607 to read as follows:

§ 1003.607 Lead-based paint.

The requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations part 35, subparts A, B, J, K, and R of this title apply to activities conducted under this program.

PART 1005—LOAN GUARANTEES FOR INDIAN HOUSING

100. The authority citation for part 1005 continues to read as follows:

Authority: 12 U.S.C. 1715z–13a and 3535(d).

101. In § 1005.111, redesignate the existing text as paragraph (a) and add paragraph (b) to read as follows:

§ 1005.111 What safety and quality standards apply?

* * * * *

(b) The relevant requirements of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851–4856), and implementing regulations at part 35, subparts A, B, H, J, K, M, and R of this title apply to this part.

Dated: August 26, 1999.

Andrew Cuomo,

Secretary.

Appendix A—Sample Summary Inspection Notice Format

Note: The following appendix will not appear in the Code of Federal Regulations

Summary Notice of Lead-Based Paint Inspection

Address/location of property or structure(s) this summary notice applies to:

_____

_____

_____

Lead-based paint inspection description:

Date(s) of inspection: _____

Summary of inspection results (check all that apply):

(a) ____ No lead-based paint was found.

(b) ____ Lead-based paint was found.

(c) ____ A brief summary of the findings of the inspection is provided below (required if lead-based paint found).

Summary of where lead-based paint was found. List at least the housing unit numbers and common areas (for multifamily housing), and building components (including type of room or space, and the material underneath the paint):

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Contact person for more information about the inspection:

Printed name: _____

Organization: _____

Street and city: _____

State:____ ZIP: _____

Phone number: (____) _____

Person who prepared this summary notice:

Printed name: _____

Signature: _____

Date: _____

Organization: _____

Street and city: _____

State:____ ZIP:____ _____

Phone number: (____) _____

Appendix B—Sample Summary Risk Assessment Notice Format

Note: This following appendix will not appear in the Code of Federal Regulations

Summary Notice of Lead-Based Paint Risk Assessment

Address/location of property or structure(s) this summary notice applies to:

_____

_____

_____

Lead-based paint risk assessment description:

Date(s) of risk assessment: _____

Summary of risk assessment results (check all that apply):

(a) ____ No lead-based paint hazards were found.

(b) ____ Lead-based paint hazards were found.

(c) ____ A brief summary of the findings of the risk assessment is provided below (required if any lead-based paint hazards were found).

Summary of types and locations of lead-based paint hazards. List at least the housing unit numbers and common areas (for multifamily housing), bare soil locations, dust-lead locations, and/or building components (including type of room or space, and the material underneath the paint), and types of lead-based paint hazards found:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Contact person for more information about the risk assessment:

Printed name: _____

Organization: _____

Street and city: _____

State: ____ ZIP: ____ Phone number: (____)

Person who prepared this summary notice:

Printed name: _____

Signature: _____

Date: _____

Organization: _____

Street and city: _____

State: ____ ZIP: ____ Phone number: (____)

Appendix C—Sample Summary Presumption Notice Format

Note: The following appendix will not appear in the Code of Federal Regulations

Notice That Lead-Based Paint or Lead-Based Paint Hazards Are Presumed to be Present

Address/location of property or structure(s) this notice of presumption applies to:

_____

_____

_____

Type of presumption (check all that apply):

(a) ____ Lead-based paint is presumed to be present.

(b) ____ Lead-based paint hazard(s) is(are) presumed to be present.

Summary of presumption. List at least the housing unit numbers and common areas (for multifamily housing), bare soil locations, dust-lead locations, and/or building components (including type of room or space, and the material underneath the paint), and types of lead-based paint hazards presumed to be present:

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

_____

Contact person for more information about the presumption:

Printed name: _____

Organization: _____

Street and city: _____

State: ____ ZIP: ____ Phone number: (____)

Person who prepared this notice of presumption:

Printed name: _____

Signature: _____

Date: _____

Organization: _____

Street and city: _____

State: ____ ZIP: ____ Phone number: (____)

Appendix D—Sample Hazard Reduction Completion Notice Format

Note: The following appendix will not appear in the Code of Federal Regulations.

Summary Notice of Completion of Lead-Based Paint Hazard Reduction Activity

Address/location of property or structure(s) this summary notice applies to:

_____

_____

_____

Summary of the hazard reduction activity:

Start and completion date(s): _____

Activity locations and types. List at least the housing unit numbers and common areas (for multifamily housing), bare soil locations, dust-lead locations, and/or building components (including type of room or space, and the material underneath the paint), and types of hazard reduction activities performed at the locations listed:

_____

_____

_____

_____

_____

_____

Date(s) of clearance testing and/or soil analyses: ____

Locations of building components with lead-based paint remaining in the rooms, spaces or areas where activities were conducted:

_____

_____

_____

_____

_____

Summary of results of clearance testing and soil analyses:

(a) ____ No clearance testing was performed.

(b) ____ Clearance testing showed clearance was achieved.

(c) ____ Clearance testing showed clearance was not achieved.

Contact person for more information about the hazard reduction:

Printed name: _____

Organization: _____

Street and city: _____

State: ____ ZIP: _____

Phone number: (____) _____

Person who prepared this summary notice:

Printed name: _____

Signature: _____

Date: _____

Organization: _____

Street and city: _____

State: ____ ZIP: ____ Phone number: (____)

[FR Doc. 99–23016 Filed 9–14–99; 8:45 am]

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federal register

Wednesday
September 15, 1999

Part III

Department of Housing and Urban Development

Statutorily Mandated Designation of Difficult Development Areas, and Supplemental Designation of Qualified Census Tracts, for Section 42 of the Internal Revenue Code of 1986; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4401–N–03]

Statutorily Mandated Designation of Difficult Development Areas, and Supplemental Designation of Qualified Census Tracts, for Section 42 of the Internal Revenue Code of 1986

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: This document designates "Difficult Development Areas" and supplemental "Qualified Census Tracts" for purposes of the Low-Income Housing Tax Credit ("LIHTC") under section 42 of the Internal Revenue Code of 1986 ("the Code"). The United States Department of Housing and Urban Development ("HUD") makes new Difficult Development Area designations annually and makes supplemental designations of Qualified Census Tracts at this time because of changes in metropolitan area definitions.

FOR FURTHER INFORMATION CONTACT: For questions on how areas are designated and on geographic definitions: Kurt G. Usowski, Economist, Division of Economic Development and Public Finance, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–0426, e-mail Kurt_G._Usowski@hud.gov.

For specific legal questions pertaining to section 42 and this notice: Harold J. Gross, Senior Tax Attorney, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–3260, e-mail JERRY_GROSS@hud.gov.

For questions about the "HUBZones" program: Michael P. McHale, Assistant Administrator for Procurement Policy, Office of Government Contracting, Suite 8800, Small Business Administration, 409 Third Street, SW, Washington, DC 20416, telephone (202) 205–6731, fax (202) 205–7324, e-mail michael.mchale@sba.gov.

A text telephone is available for persons with hearing or speech impairments at (202) 708–9300. (These are not toll-free telephone numbers.) Additional copies of this notice are available through HUD User at (800) 245–2691 for a small fee to cover duplication and mailing costs.

Copies Available Electronically: This notice is available electronically on the Internet (World Wide Web) at http://www.huduser.org/ under the heading "Data Available from HUD User."

SUPPLEMENTARY INFORMATION:

This Document

The designations of Difficult Development Areas in this document are based on FY 1999 Fair Market Rents ("FMRs"), FY 1999 income limits, and 1990 census population counts as explained below. The designations of Qualified Census Tracts in newly designated metropolitan areas and the nonmetropolitan parts of States affected by the most recent metropolitan area designation are made necessary by the recently enacted "HUBZones" provisions of the Small Business Reauthorization Act of 1997, which incorporate section 42 Qualified Census Tracts by reference. These designations are made based on 1990 Census data. The corrected designations of Qualified Census Tracts published May 1, 1995, at 60 FR 21246, as amended by the supplemental designations of Qualified Census tracts published June 25, 1998, at 63 FR 34748, and December 9, 1998 at 63 FR 68115, are not affected by this Notice.

Background

The U.S. Treasury Department and the Internal Revenue Service ("IRS") thereof are authorized to interpret and enforce the provisions of the Internal Revenue Code of 1986 (the "Code"), including the Low-Income Housing Tax Credit ("LIHTC") found at section 42 of the Code (26 U.S.C. 42) as amended. The Secretary of HUD is required to designate Difficult Development Areas and Qualified Census Tracts by section 42(d)(5)(C) of the Code.

In order to assist in understanding HUD's mandated designation of Difficult Development Areas and Qualified Census Tracts for use in administering section 42 of the Code, a summary of section 42 is provided. The following summary does not purport to bind the Treasury or the IRS in any way, nor does it purport to bind HUD, as HUD has no authority to interpret or administer the Code, except in those instances where it has a specific delegation.

Summary of Low Income Housing Tax Credit

The LIHTC is a tax incentive intended to increase the availability of low income housing. Section 42 provides an income tax credit to owners of newly constructed or substantially rehabilitated low-income rental housing projects. The dollar amount of the LIHTC available for allocation by each state (the "credit ceiling") is limited by population. Each State is allocated credit based on $1.25 per resident. States may carry forward unused or returned credit derived from the credit ceiling for one year; if not used by then, credit goes into a national pool to be allocated to States as additional credit. State and local housing agencies allocate the State's credit ceiling among low-income housing buildings whose owners have applied for the credit. Besides Section 42 credits derived from the credit ceiling, States may also provide Section 42 credits to owners of buildings based upon the percentage of certain building costs financed by tax-exempt bond proceeds. Credits provided under the tax-exempt bond "volume cap" do not reduce the credit available from the credit ceiling.

The credit allocated to a building is based on the cost of units placed in service as low-income units under certain minimum occupancy and maximum rent criteria. In general, a building must meet one of two thresholds to be eligible for the LIHTC: either 20 percent of units must be rent-restricted and occupied by tenants with incomes no higher than 50 percent of the Area Median Gross Income ("AMGI"), or 40 percent of units must be rent restricted and occupied by tenants with incomes no higher than 60 percent of AMGI. The term "rent-restricted" means that gross rent, including an allowance for utilities, cannot exceed 30 percent of the tenant's imputed income limitation (i.e., 50 percent or 60 percent of AMGI). The rent and occupancy thresholds remain in effect for at least 15 years, and building owners are required to enter into agreements to maintain the low income character of the building for at least an additional 15 years.

The LIHTC reduces income tax liability dollar for dollar. It is taken annually for a term of ten years and is intended to yield a present value of either (1) 70 percent of the "qualified basis" for new construction or substantial rehabilitation expenditures that are not federally subsidized (i.e., financed with tax-exempt bonds or below-market federal loans), or (2) 30 percent of the qualified basis for the cost of acquiring certain existing projects or projects that are federally subsidized. The actual credit rates are adjusted monthly for projects placed in service after 1987 under procedures specified in section 42. Individuals can use the credit up to a deduction equivalent of $25,000. This equals $9,900 at the 39.6 percent maximum marginal tax rate. Individuals cannot use the credit against the alternative minimum tax. Corporations, other than S or personal service corporations, can use the credit against ordinary income tax. They cannot use the credit against the alternative minimum tax. These corporations can also deduct the losses from the project.

The qualified basis represents the product of the "applicable fraction" of the building and the "eligible basis" of the building. The applicable fraction is based on the number of low income units in the building as a percentage of the total number of units, or based on the floor space of low income units as a percentage of the total floor space of residential units in the building. The eligible basis is the adjusted basis attributable to acquisition, rehabilitation, or new construction costs (depending on the type of LIHTC involved). These costs include amounts chargeable to capital account incurred prior to the end of the first taxable year in which the qualified low income building is placed in service or, at the election of the taxpayer, the end of the succeeding taxable year. In the case of buildings located in designated Qualified Census Tracts or designated Difficult Development Areas, eligible basis can be increased up to 130 percent of what it would otherwise be. This means that the available credit also can be increased by up to 30 percent. For example, if the 70 percent credit is available, it effectively could be increased up to 91 percent.

Under section 42(d)(5)(C) of the Code, a Qualified Census Tract is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income less than 60 percent of the AMGI. There is a limit on the number of Qualified Census Tracts in any Metropolitan Statistical Area ("MSA") or Primary Metropolitan Statistical Area ("PMSA") that may be designated to receive an increase in eligible basis: all of the designated census tracts within a given MSA/PMSA may not together contain more than 20 percent of the total population of the MSA/PMSA. For purposes of HUD designations of Qualified Census Tracts, all non-metropolitan areas in a State are treated as if they constituted a single metropolitan area.

Section 42 of the Code defines a Difficult Development Area as any area designated by the Secretary of HUD as an area that has high construction, land, and utility costs relative to the AMGI. Again, limits apply. All designated Difficult Development Areas in MSAs/PMSAs may not contain more than 20 percent of the aggregate population of all MSAs/PMSAs, and all designated areas not in metropolitan areas may not contain more than 20 percent of the aggregate population of all non-metropolitan counties.

The following changes in MSA/PMSA definitions were made after HUD's last designation of Qualified Census Tracts:

New MSA (MSA No.)	Component counties
Auburn-Opelika, AL MSA (580).	Lee County, AL
Corvallis, OR MSA (1890).	Benton County, OR

Since these counties are no longer part of the nonmetropolitan areas of their respective States, the 20 percent population cap (see below) is applied to the populations of these counties individually. This results in the loss of 2 qualified census tracts in Lee County, AL (402.00 and 407.00), and 1 qualified census tract in Benton County, OR (11.00).

Explanation of HUD Designation Methodology

A. Qualified Census Tracts

In developing this revised list of LIHTC Qualified Census Tracts, HUD used 1990 Census data and the MSA/PMSA definitions established by the Office of Management and Budget ("OMB") in OMB Bulletin No. 99–04 on June 30, 1999. Beginning with the 1990 census, tract-level data are available for the entire country. Generally, in metropolitan areas these geographic divisions are called census tracts, while in most non-metropolitan areas the equivalent nomenclature is Block Numbering Area ("BNA"). BNAs are treated as census tracts for the purposes of this Notice.

The LIHTC Qualified Census Tracts were determined as follows:

1. A census tract must have 50 percent of its households with incomes below 60 percent of the AMGI to be eligible. HUD has defined 60 percent of AMGI as 120 percent of HUD's Very Low Income Limits (VLILs), which are based on 50 percent of area median family income, adjusted for high cost and low income areas. The 1999 income estimates were then deflated to 1989 dollars, so they would match the 1990 Census income data.

2. For each census tract, the percentage of households below the 60 percent income standard was determined by (a) calculating the average household size of the census tract, (b) applying the income standard after adjusting it to match the average household size, and (c) calculating the number of households with incomes below the income standard.

3. Qualified Census Tracts are those in which 50 percent or more of the households are income eligible and the population of all census tracts that satisfy this criterion does not exceed 20 percent of the total population of the respective area.

4. In areas where more than 20 percent of the population qualifies, census tracts are ordered from the highest percentage of eligible households to the lowest. Starting with the highest percentage, census tracts are included until the 20 percent limit is exceeded. If a census tract is excluded because it raises the percentage above 20 percent, then subsequent census tracts are considered to determine if one or more census tract(s) with smaller population(s) could be included without exceeding the 20 percent limit.

B. Difficult Development Areas

In developing the list of Difficult Development Areas, HUD compared incomes with housing costs. HUD used 1990 Census data and the MSA/PMSA definitions as published by the Office of Management and Budget in OMB Bulletin No. 99–04 on June 30, 1999, *with the exceptions described in section D., below.* The basis for these comparisons was the fiscal year ("FY") 1999 HUD income limits for Very Low Income households and Fair Market Rents ("FMRs") used for the section 8 Housing Assistance Payments Program. The procedure used in making these calculations follows:

1. For each MSA/PMSA and each non-metropolitan county, a ratio was calculated. This calculation used the FY 1999 two-bedroom FMR and the FY 1999 four-person VLIL. The numerator of the ratio was the area's FY 1999 FMR. The denominator of the ratio was the monthly LIHTC income-based rent limit calculated as 1/12 of 30 percent of 120 percent of the area's VLIL (where 120 percent of the VLIL was rounded to the nearest $50 and not allowed to exceed 80 percent of the AMGI in areas where the VLIL is adjusted upward from its 50 percent of AMGI base).

2. The ratios of the FMR to the LIHTC income-based rent limit were arrayed in descending order, separately, for MSAs/PMSAs and for non-metropolitan counties.

3. The Difficult Development Areas are those with the highest ratios cumulative to 20 percent of the 1990 population of all metropolitan areas and of all non-metropolitan counties.

C. Application of Population Caps to Difficult Development Area Determinations

In identifying Difficult Development Areas and Qualified Census Tracts, HUD applied various caps, or limitations, as noted above. The cumulative population of metropolitan Difficult Development Areas cannot exceed 20 percent of the cumulative population of all metropolitan areas and the cumulative population of nonmetropolitan Difficult Development Areas cannot exceed 20 percent of the cumulative population of all nonmetropolitan counties.

For Qualified Census Tracts, section 42(d)(5)(C)(ii)(II) of the Code specifies that the population of designated census tracts within a metropolitan area cannot exceed 20 percent of the population of that metropolitan area. Similarly, for census tracts/block numbering areas (BNAs) located outside metropolitan areas, the population of designated census tracts/BNAs cannot exceed 20 percent of the population of the non-metropolitan counties in a State or equivalent area.

In applying these caps, HUD established procedures to deal with how to treat small overruns of the caps. The remainder of this section explains the procedure. In general, HUD stops selecting areas when it is impossible to choose another area without exceeding the applicable cap. The only exceptions to this policy are when the next eligible excluded area contains either a large absolute population or a large percentage of the total population, or the next excluded area's ranking ratio as described above was identical (to four decimal places) to the last area selected, and *its* inclusion resulted in only a minor overrun of the cap. Thus for both the designated metropolitan and nonmetropolitan Difficult Development Areas there are minimal overruns of the caps.

HUD believes the designation of these additional areas is consistent with the intent of the legislation. Some latitude is justifiable because it is impossible to determine whether the 20 percent cap has been exceeded, as long as the apparent excess is small, due to measurement error. Despite the care and effort involved in a decennial census, it is recognized by the Census Bureau, and all users of the data, that the population counts for a given area and for the entire country are not precise. The extent of the measurement error is unknown. Thus, there can be errors in both the numerator and denominator of the ratio of populations used in applying a 20 percent cap. In circumstances where a strict application of a 20 percent cap results in an anomalous situation, recognition of the unavoidable imprecision in the census data justifies accepting *small* variances above the 20 percent limit.

D. Exceptions to OMB Definitions of MSAs/PMSAs and Other Geographic Matters

As stated in OMB Bulletin 99–04 defining metropolitan areas:

> OMB establishes and maintains the definitions of the [Metropolitan Areas] solely for statistical purposes * * *OMB does not take into account or attempt to anticipate any nonstatistical uses that may be made of the definitions* * * We recognize that some legislation specifies the use of metropolitan areas for programmatic purposes, including allocating Federal funds.

HUD makes exceptions to OMB definitions in calculating FMRs by deleting counties from metropolitan areas whose OMB definitions are determined by HUD to be larger than their housing market areas.

The following counties are assigned their own FMRs and VLILs and evaluated as if they were separate metropolitan areas for purposes of designating Difficult Development Areas.

Metropolitan Area and Counties Deleted

Chicago, IL: DeKalb, Grundy, and Kendall Counties.

Cincinnati–Hamilton, OH–KY–IN: Brown County, Ohio; Gallatin, Grant, and Pendleton Counties, Kentucky; and Ohio County, Indiana.

Dallas, TX: Henderson County.

Flagstaff, AZ–UT: Kane County, Utah.

New Orleans, LA: St. James Parish.

Washington, DC–MD–VA–WV: Clarke, Culpeper, King George, and Warren Counties, Virginia; and Berkely and Jefferson Counties, West Virginia.

Affected MSAs/PMSAs are assigned the indicator "(part)" in the list of Metropolitan Difficult Development Areas. Any of the excluded counties designated as difficult development areas separately from their metropolitan areas are designated by the county name.

Finally, in the New England states (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont) OMB defines MSAs/PMSAs according to county subdivisions or Minor Civil Divisions ("MCDs") rather than county boundaries. Thus, when a New England county is designated as a Nonmetropolitan Difficult Development Area, only that part of the county (the group of MCDs) not included in any MSA/PMSA is the Nonmetropolitan Difficult Development Area. Affected counties are assigned the indicator "(part)" in the list of Nonmetropolitan Difficult Development Areas.

For the convenience of readers of this notice, the geographic definitions of designated Metropolitan Difficult Development Areas and the MCDs included in Nonmetropolitan Difficult Development Areas in the New England states are included in the list of Difficult Development Areas.

Future Designations

Difficult Development Areas are designated annually as updated income and FMR data become available. Qualified Census Tracts will not be redesignated until data from the 2000 census become available unless changes in MSA/PMSA definitions are made by OMB in the interim.

Effective Date

The list of Difficult Development Areas and the supplemental list of Qualified Census Tracts is effective for allocations of credit made after December 31, 1999. In the case of a building described in section 42(h)(4)(B) of the Code, the list is effective if the bonds are issued and the building is placed in service after December 31, 1999. The corrected designations of Qualified Census Tracts published May 1, 1995, at 60 FR 21246, as amended by the supplemental designations of Qualified Census tracts published June 25, 1998, at 63 FR 34748, and December 9, 1998 at 63 FR 68115, are not affected by this Notice.

Interpretive Examples for Effective Date

For the convenience of readers of this Notice, interpretive examples are provided below to illustrate the consequences of the effective date in areas that gain or lose Difficult Development Area status with respect to projects described in section 42(h)(4)(B) of the Code. The examples are equally applicable to Qualified Census Tract designations.

(Case A) Project "A" is located in a newly-designated 2000 Difficult Development Area. Bonds are issued for Project "A" on November 1, 1999, and Project "A" is placed in service March 1, 2000. Project "A" IS NOT eligible for the increase in basis otherwise accorded a project in this location because the bonds were issued BEFORE January 1, 2000.

(Case B) Project "B" is located in a newly-designated 2000 Difficult Development Area. Project "B" is placed in service November 15, 1999. The bonds that will support the permanent financing of Project "B" are issued January 15, 2000. Project "B" IS NOT eligible for the increase in basis otherwise accorded a project in this location because the project was placed in service BEFORE January 1, 2000.

(Case C) Project "C" is located in an area that is a Difficult Development Area in 1999, but IS NOT a Difficult Development Area in 2000. Bonds are issued for Project "C" on October 30, 1999, but Project "C" is not placed in service until March 30, 2000. Project "C" is eligible for the increase in basis available to projects located in 1999 Difficult Development Areas because the first of the two events necessary for triggering the effective date for buildings described in section 42(h)(4)(B) of the Code (the two events being bonds issued and buildings placed in service) took place on October 30, 1999, a time when project "C" was located in a Difficult Development Area.

Other Matters

Environmental Impact

In accordance with 40 CFR 1508.4 of the CEQ regulations and 24 CFR 50.19(c)(6) of the HUD regulations, the policies and procedures contained in this notice provide for the establishment of fiscal requirements or procedures that do not constitute a development decision that affects the physical condition of specific project areas or building sites and therefore, are categorically excluded from the requirements of the National Environmental Policy Act, except for extraordinary circumstances, and no FONSI is required.

Regulatory Flexibility Act

In accordance with 5 U.S.C. section 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this notice does not have a significant economic impact on a substantial number of small entities. The notice involves the designation of "Difficult Development Areas" and "Qualified Census Tracts" as required by section 42 of the Code, as amended, for use by political subdivisions of the States in allocating the LIHTC. This notice places no new requirements on the States, their political subdivisions, or the applicants for the credit. This notice also details the technical methodology used in making such designations.

Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this notice will not have any substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the order. The notice merely designates "Difficult Development Areas" as required under section 42 of the Internal Revenue Code, as amended, for the use by political subdivisions of the States in allocating the LIHTC. The notice also details the technical methodology used in making such designations.

Dated: September 9, 1999.

Andrew Cuomo,

Secretary.

BILLING CODE 4210–32–P

2000 Internal Revenue Code Section 42(d)(5)(C) Metropolitan Difficult Development Areas

STATE	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components
AZ	YUMA, AZ Yuma County			
CA	CHICO-PARADISE, CA Butte County	LOS ANGELES-LONG BEACH, CA Los Angeles County	MERCED, CA Merced County	SALINAS, CA Monterey County
	SAN DIEGO, CA San Diego County	SAN FRANCISCO, CA San Francisco County Marin County San Mateo County	SAN LUIS OBISPO-ATASCADERO-PASO ROBLES, CA San Luis Obispo County	SANTA BARBARA-SANTA MARIA-LOMPOC, CA Santa Barbara County
	SANTA CRUZ-WATSONVILLE, CA Santa Cruz County	SANTA ROSA, CA Sonoma County	VALLEJO-FAIRFIELD-NAPA, CA Napa County Solano County	
FL	DAYTONA BEACH, FL Flagler County Volusia County	MIAMI, FL Dade County	ORLANDO, FL Lake County Osceola County Orange County Seminole County	PUNTA GORDA, FL Charlotte County
	SARASOTA-BRADENTON, FL Manatee County Sarasota County			
MA	BARNSTABLE-YARMOUTH, MA Barnstable city, Harwich town, Brewster town, Mashpee town, Chatham town, Orleans town, Dennis town, Sandwich town, Eastham town, Yarmouth town	BOSTON, MA-NH Berkley town, Bedford town, Belmont town, Dighton town, Boxborough town, Mansfield town, Burlington town, Norton town, Cambridge city, Taunton city, Carlisle town, Amesbury town, Concord town, Beverly city, Everett city, Danvers town, Framingham town, Essex town, Holliston town, Gloucester city, Hopkinton town, Hamilton town, Hudson town, Ipswich town, Lexington town, Lynn city, Lincoln town, Lynnfield town, Littleton town, Manchester-by-the-Sea, Malden city, Marlborough city, Middleton town, Maynard town, Nahant town, Medford city, Newbury town, Melrose city, Newburyport city, Natick town, Peabody city, Newton city, Rockport town, North Reading town, Rowley town, Reading town, Salem city, Sherborn town, Salisbury town, Shirley town, Saugus town, Somerville city, Swampscott town, Stoneham town, Topsfield town, Stow town, Wenham town, Sudbury town, Acton town, Townsend town, Arlington town, Wakefield town, Ashland town, Ayer town, Waltham city, Watertown city, Wayland town, Weston town, Wilmington town, Winchester town, Woburn city, Bellingham town, Braintree town, Brookline town, Canton town, Cohasset town, Dedham town, Dover town, Foxborough town, Franklin city, Holbrook town, Medfield town, Medway town, Millis town, Milton town, Needham town, Norfolk town, Norwood town, Plainville town, Quincy city, Randolph town, Sharon town, Stoughton town, Walpole town, Wellesley town, Westwood town, Weymouth town, Wrentham town, Carver town, Duxbury town, Hanover town, Hingham town, Hull town, Kingston town, Marshfield town, Norwell town, Pembroke town, Plymouth town, Rockland town, Scituate town, Wareham town, Boston city, Chelsea city, Revere city, Winthrop town, Berlin town, Blackstone town, Bolton town, Harvard town, Hopedale town, Lancaster town, Mendon town, Milford town, Millville town, Southborough town, Upton town, Seabrook town, NH, South Hampton town, NH	SPRINGFIELD, MA Sunderland town, West Springfield town, Agawam city, Wilbraham town, Chicopee city, Amherst town, East Longmeadow town, Belchertown town, Hampden town, Easthampton town, Holyoke city, Granby town, Longmeadow town, Hadley town, Ludlow town, Hatfield town, Monson town, Huntington town, Montgomery town, Northampton city, Palmer town, Southampton town, Russell town, South Hadley town, Southwick town, Ware town, Springfield city, Williamsburg town, Westfield city

2000 Internal Revenue Code Section 42(d)(5)(C) Metropolitan Difficult Development Areas

STATE	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components	METROPOLITAN AREA and Components
ME	BANGOR, ME Bangor city, Eddington town, Brewer city, Glenburn town	Hampden town, Holden town, Hermon town, Kenduskeag town	Milford town, Orono town, Old Town city, Orrington town	Penobscot Indian Island Indian Reservation, Veazie town, Winterport town
NH	PORTSMOUTH-ROCHESTER, NH-ME Brentwood town, Greenland town, East Kingston town, Hampton town, Epping town, Hampton Falls town, Exeter town, Kensington town	New Castle town, Newfields town, Newington town, Newmarket town, North Hampton town, Portsmouth city, Rye town, Stratham town	Barrington town, Dover city, Durham town, Farmington town, Lee town, Madbury town, Milton town, Rochester city	Rollinsford town, Somersworth city, Berwick town, ME, Eliot town, ME, Kittery town, ME, South Berwick town, ME, York town, ME
NJ	ATLANTIC-CAPE MAY, NJ Atlantic County Cape May County	JERSEY CITY, NJ Hudson County	MONMOUTH-OCEAN, NJ Monmouth County Ocean County	VINELAND-MILLVILLE-BRIDGETON, NJ Cumberland County
NY	DUTCHESS COUNTY, NY Duchess County	NASSAU-SUFFOLK, NY Nassau County Suffolk County	NEW YORK, NY Bronx County New York County Kings County Putnam County	Queens County Rockland County Richmond County Westchester County
OR	EUGENE-SPRINGFIELD, OR Lane County	MEDFORD-ASHLAND, OR Jackson County		
PA	STATE COLLEGE, PA Centre County			
PR	AGUADILLA, PR Aguada Municipio, Aguadilla Municipio, Moca Municipio	CAGUAS, PR Caguas Municipio, Gurabo Municipio, Cayey Municipio, San Lorenzo Mun., Cidra Municipio	MAYAGUEZ, PR Anasco Municipio, Mayaguez Municipio, Cabo Rojo Mun., Sabana Grande Mu., Hormigueros Mun., San German Mun.	SAN JUAN-BAYAMON, PR Aguas Buenas Mu., Corozal Municipio, Barceloneta Mun., Dorado Municipio, Bayamon Mun., Fajardo Municipio, Canovanas Mun., Florida Municipio, Carolina Municipio, Guaynabo Municipio, San Juan Mun., Humacao Municipio, Toa Alta Municipio, Juncos Municipio, Toa Baja Mun., Las Piedras Mun., Trujillo Alto Mun., Loiza Municipio, Vega Alta Mun., Luquillo Municipio, Vega Baja Mun., Manati Municipio, Yabucoa Municipio, Morovis Municipio, Catano Municipio, Naguabo Municipio, Ceiba Municipio, Naranjito Municipio, Comerio Municipio
TX	BROWNSVILLE-HARLINGEN-SAN BENITO, TX Cameron County		EL PASO, TX El Paso County	LAREDO, TX Webb County
WA	BELLINGHAM, WA Whatcom County	RICHLAND-KENNEWIXK-PASCO, WA Benton County Franklin County	YAKAMA, WA Yakima County	

2000 IRC Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas

STATE	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT
PI	PACIFIC ISLANDS			
AK	ALEUTIANS EAST BOROUGH	BETHEL CENSUS AREA	DILLINGHAM CENSUS AREA	FAIRBANKS NORTH STAR BOROUGH
	HAINES BOROUGH	JUNEAU BOROUGH	KENAI PENINSULA BOROUGH	KETCHIKAN GATEWAY BOROUGH
	KODIAK ISLAND BOROUGH	LAKE AND PENINSULA BOROUGH	MATANUSKA-SUSITNA BOROUGH	NOME CENSUS AREA
	NORTH SLOPE BOROUGH	NORTHWEST ARCTIC BOROUGH	PRINCE OF WALES-OUTER KETCHIKAN CENSUS AREA	SITKA BOROUGH
	VALDEZ-CORDOVA CENSUS AREA	WADE HAMPTON CENSUS AREA	WRANGELL-PETERSBURG CENSUS AREA	YUKON-KOYUKUK CENSUS AREA
AZ	APACHE COUNTY	COCHISE COUNTY	GILA COUNTY	GRAHAM COUNTY
	LA PAZ COUNTY	NAVAJO COUNTY	SANTA CRUZ COUNTY	YAVAPAI COUNTY
AR	BAXTER COUNTY	DREW COUNTY		
CA	ALPINE COUNTY	AMADOR COUNTY	CALAVERAS COUNTY	COLUSA COUNTY
	DEL NORTE COUNTY	GLENN COUNTY	HUMBOLDT COUNTY	IMPERIAL COUNTY
	INYO COUNTY	KINGS COUNTY	LAKE COUNTY	LASSEN COUNTY
	MARIPOSA COUNTY	MENDOCINO COUNTY	MODOC COUNTY	MONO COUNTY
	NEVADA COUNTY	PLUMAS COUNTY	SAN BENITO COUNTY	SIERRA COUNTY
	SISKIYOU COUNTY	TEHAMA COUNTY	TRINITY COUNTY	TUOLUMNE COUNTY
CO	ALAMOSA COUNTY	ARCHULETA COUNTY	BACA COUNTY	BENT COUNTY
	CHAFFEE COUNTY	CONEJOS COUNTY	COSTILLA COUNTY	CROWLEY COUNTY
	CUSTER COUNTY	DELTA COUNTY	DOLORES COUNTY	FREMONT COUNTY
	GARFIELD COUNTY	GRAND COUNTY	HINSDALE COUNTY	HUERFANO COUNTY
	JACKSON COUNTY	KIT CARSON COUNTY	LA PLATA COUNTY	LAKE COUNTY
	LAS ANIMAS COUNTY	LINCOLN COUNTY	LOGAN COUNTY	MINERAL COUNTY
	MONTEZUMA COUNTY	MONTROSE COUNTY	OTERO COUNTY	PARK COUNTY
	PHILLIPS COUNTY	PITKIN COUNTY	PROWERS COUNTY	RIO GRANDE COUNTY
	SAGUACHE COUNTY	SAN JUAN COUNTY	SAN MIGUEL COUNTY	SEDGWICK COUNTY
	SUMMIT COUNTY	WASHINGTON COUNTY	YUMA COUNTY	
CT	LITCHFIELD COUNTY (part) Canaan town, Kent town, Norfolk town, Sharon town Colebrook town, Litchfield town, North Canaan town, Torrington town Cornwall town, Morris town, Salisbury town, Warren town Goshen town		MIDDLESEX COUNTY (part) Chester town, Essex town Deep River town, Westbrook town	NEW LONDON COUNTY (part) Lyme town, Voluntown town
	TOLLAND COUNTY (part) Brooklyn town, Killingly town, Putnam town, Sterling town Eastford town, Pomfret town, Scotland town, Woodstock town Hampton town		WINDHAM COUNTY (part) Union town	
DE	SUSSEX COUNTY			

2000 IRC Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas

STATE	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT
FL	BAKER COUNTY	CALHOUN COUNTY	CITRUS COUNTY	COLUMBIA COUNTY
	DESOTO COUNTY	DIXIE COUNTY	FRANKLIN COUNTY	GILCHRIST COUNTY
	GLADES COUNTY	GULF COUNTY	HAMILTON COUNTY	HARDEE COUNTY
	HENDRY COUNTY	HIGHLANDS COUNTY	HOLMES COUNTY	INDIAN RIVER COUNTY
	JACKSON COUNTY	JEFFERSON COUNTY	LAFAYETTE COUNTY	LEVY COUNTY
	LIBERTY COUNTY	MADISON COUNTY	MONROE COUNTY	OKEECHOBEE COUNTY
	PUTNAM COUNTY	SUMTER COUNTY	SUWANNEE COUNTY	TAYLOR COUNTY
	UNION COUNTY	WAKULLA COUNTY	WALTON COUNTY	WASHINGTON COUNTY
GA	BUTTS COUNTY			
HI	HAWAII COUNTY	KAUAI COUNTY	MAUI COUNTY	
ID	BONNER COUNTY	KOOTENAI COUNTY		
KY	HARLAN COUNTY	KNOX COUNTY	LAUREL COUNTY	
LA	NATCHITOCHES PARISH	WEST FELICIANA PARISH		
ME	ANDROSCOGGIN COUNTY (part) Durham town, Livermore Falls town Leeds town, Minot town Livermore town	AROOSTOOK COUNTY	CUMBERLAND COUNTY (part) Baldwin town, Naples town Bridgton town, New Gloucester town Brunswick town, Pownal town Harpswell town, Sebago town Harrison town	FRANKLIN COUNTY
	HANCOCK COUNTY	KENNEBEC COUNTY	KNOX COUNTY	LINCOLN COUNTY
	OXFORD COUNTY	PISCATAQUIS COUNTY	SAGADAHOC COUNTY	SOMERSET COUNTY
	PENOBSCOT COUNTY (part) Alton town, Drew plantation, Lagrange town, Newport town Argyle unorg., East Central Penobscot unorg., Lakeville town, Passadumkeag town Bradford town, Lee town, Patten town Bradley town, East Millinocket town, Levant town, Plymouth town Burlington town, Edinburg town, Lincoln town, Prentiss plantation Carmel town, Enfield town, Lowell town, Seboeis plantation Carroll plantation, Etna town, Mattawamkeag town, Springfield town Charleston town, Exeter town, Maxfield town, Stacyville town Chester town, Garland town, Medway town, Stetson town Clifton town, Greenbush town, Millinocket town, Twombly unorg. Corinna town, Greenfield town, Mount Chase town, Webster plantation Corinth town, Howland town, Newburgh town, Whitney unorg. Dexter town, Hudson town, North Penobscot unorg., Winn town Dixmont town, Kingman unorg., Woodville town		WALDO COUNTY (part) Belfast city, Morrill town Belmont town, Northport town Brooks town, Palermo town Burnham town, Prospect town Frankfort town, Searsmont town Freedom town, Searsport town Islesboro town, Stockton Springs town Jackson town, Swanville town Knox town, Thorndike town Liberty town, Troy town Lincolnville town, Unity town Monroe town, Waldo town Montville town	YORK COUNTY (part) Acton town, Lyman town Alfred town, Newfield town Arundel town, North Berwick town Biddeford city, Ogunquit town Cornish town, Parsonsfield town Dayton town, Saco city Kennebunk town, Sanford town Kennebunkport town, Shapleigh town Lebanon town, Waterboro town Limerick town, Wells town
	WASHINGTON COUNTY			

2000 IRC Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas

STATE	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT
MA	BARNSTABLE COUNTY (part) Bourne town, Truro town, Falmouth town, Wellfleet town, Provincetown town	DUKES COUNTY	FRANKLIN COUNTY (part) Ashfield town, Erving town, Leyden town, Rowe town, Bernardston town, Gill town, Monroe town, Shelburne town, Buckland town, Greenfield town, Montague town, Shutesbury town, Charlemont town, Hawley town, New Salem town, Warwick town, Colrain town, Heath town, Northfield town, Wendell town, Conway town, Leverett town, Orange town, Whately town, Deerfield town	
	HAMPDEN COUNTY (part) Blandford town, Granville town, Brimfield town, Tolland town, Chester town, Wales town	HAMPSHIRE COUNTY (part) Chesterfield town, Pelham town, Cummington town, Plainfield town, Goshen town, Westhampton town, Middlefield town, Worthington town	NANTUCKET COUNTY	WORCESTER COUNTY (part) Athol town, New Braintree town, Hardwick town, Phillipston town, Hubbardston town, Royalston town, Petersham town, Warren town
MS	ISSAQUENA COUNTY	LAFAYETTE COUNTY	WASHINGTON COUNTY	
MT	BEAVERHEAD COUNTY	BIG HORN COUNTY	BLAINE COUNTY	BROADWATER COUNTY
	CARBON COUNTY	CARTER COUNTY	CHOUTEAU COUNTY	CUSTER COUNTY
	DANIELS COUNTY	FALLON COUNTY	FERGUS COUNTY	GALLATIN COUNTY
	GARFIELD COUNTY	GLACIER COUNTY	GOLDEN VALLEY COUNTY	GRANITE COUNTY
	JUDITH BASIN COUNTY	LAKE COUNTY	LINCOLN COUNTY	MADISON COUNTY
	MCCONE COUNTY	MEAGHER COUNTY	MINERAL COUNTY	MUSSELSHELL COUNTY
	PARK COUNTY	PETROLEUM COUNTY	PHILLIPS COUNTY	POWDER RIVER COUNTY
	POWELL COUNTY	PRAIRIE COUNTY	RAVALLI COUNTY	RICHLAND COUNTY
	ROOSEVELT COUNTY	SANDERS COUNTY	SHERIDAN COUNTY	TETON COUNTY
	TREASURE COUNTY	VALLEY COUNTY	WHEATLAND COUNTY	WIBAUX COUNTY
NC	WATAUGA COUNTY			
NH	BELKNAP COUNTY	CARROLL COUNTY	CHESHIRE COUNTY	GRAFTON COUNTY
	HILLSBOROUGH COUNTY (part) Antrim town, Lyndeborough town, Bennington town, New Boston town, Dearing town, Peterborough town, Francestown town, Sharon town, Greenfield town, Temple town, Hancock town, Windsor town, Hillsborough town	MERRIMACK COUNTY (part) Andover town, Danbury town, Boscawen town, Dunbarton town, Bow town, Epsom town, Bradford town, Franklin city, Canterbury town, Henniker town, Chichester town, Hill town, Concord city	Hopkinton town, Pittsfield town, Loudon town, Salisbury town, Newbury town, Sutton town, New London town, Warner town, Northfield town, Webster town, Pembroke town, Wilmot town	ROCKINGHAM COUNTY (part) Deerfield town, Nottingham town, Northwood town
	STRAFFORD COUNTY (part) Middleton town, Strafford town, New Durham town	SULLIVAN COUNTY		
NV	DOUGLAS COUNTY			
NM	CATRON COUNTY	CHAVES COUNTY	CIBOLA COUNTY	CURRY COUNTY
	DEBACA COUNTY	GRANT COUNTY	GUADALUPE COUNTY	HARDING COUNTY
	LINCOLN COUNTY	LUNA COUNTY	MCKINLEY COUNTY	MORA COUNTY
	QUAY COUNTY	RIO ARRIBA COUNTY	ROOSEVELT COUNTY	SAN JUAN COUNTY
	SAN MIGUEL COUNTY	SIERRA COUNTY	TAOS COUNTY	UNION COUNTY

2000 IRC Section 42(d)(5)(C) Nonmetropolitan Difficult Development Areas

STATE	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT	COUNTY OR COUNTY EQUIVALENT
NY	CLINTON COUNTY	COLUMBIA COUNTY	CORTLAND COUNTY	ESSEX COUNTY
	GREENE COUNTY	HAMILTON COUNTY	JEFFERSON COUNTY	SCHUYLER COUNTY
	SULLIVAN COUNTY	TOMPKINS COUNTY	ULSTER COUNTY	
OR	BAKER COUNTY	CLATSOP COUNTY	COOS COUNTY	CROOK COUNTY
	CURRY COUNTY	DESCHUTES COUNTY	DOUGLAS COUNTY	GILLIAM COUNTY
	GRANT COUNTY	HARNEY COUNTY	HOOD RIVER COUNTY	JEFFERSON COUNTY
	JOSEPHINE COUNTY	KLAMATH COUNTY	LAKE COUNTY	LINCOLN COUNTY
	LINN COUNTY	MALHEUR COUNTY	MORROW COUNTY	SHERMAN COUNTY
	TILLAMOOK COUNTY	UMATILLA COUNTY	UNION COUNTY	WALLOWA COUNTY
	WASCO COUNTY	WHEELER COUNTY		
PA	MONROE COUNTY	NORTHUMBERLAND COUNTY	UNION COUNTY	WAYNE COUNTY
PR	All			
RI	NEWPORT COUNTY (part) Middleton town, Portsmouth town, Newport city	WASHINGTON COUNTY (part) New Shoreham town		
SD	BUTTE COUNTY	LAWRENCE COUNTY	MEADE COUNTY	
TX	ARANSAS COUNTY	CAMP COUNTY	HUDSPETH COUNTY	KIMBLE COUNTY
	LLANO COUNTY	REAGAN COUNTY	VAL VERDE COUNTY	WALKER COUNTY
UT	DAGGETT COUNTY	IRON COUNTY	WASHINGTON COUNTY	
VA	CAROLINE COUNTY	WESTMORELAND COUNTY		
VI	ST. CROIX	ST. JOHN'S/ST. THOMAS		
VT	ADDISON COUNTY	BENNINGTON COUNTY	CALEDONIA COUNTY	ESSEX COUNTY
	CHITTENDEN COUNTY (part) Bolton town, Underhill town, Buels gore, Westford town, Huntington town	FRANKLIN COUNTY (part) Bakersfield town, Fairfield town, Berkshire town, Fletcher town, Enosburg town, Franklin town	Highgate town, Richford town, Montgomery town, Sheldon town	GRAND ISLE COUNTY (part) Alburg town, North Hero town, Isle La Motte town
	LAMOILLE COUNTY	ORANGE COUNTY	ORLEANS COUNTY	RUTLAND COUNTY
	WASHINGTON COUNTY	WINDHAM COUNTY	WINDSOR COUNTY	
WA	ADAMS COUNTY	ASOTIN COUNTY	CHELAN COUNTY	CLALLAM COUNTY
	COLUMBIA COUNTY	FERRY COUNTY	GARFIELD COUNTY	GRANT COUNTY
	GRAYS HARBOR COUNTY	JEFFERSON COUNTY	KITTITAS COUNTY	KLICKITAT COUNTY
	LEWIS COUNTY	LINCOLN COUNTY	MASON COUNTY	OKANOGAN COUNTY
	PACIFIC COUNTY	PEND OREILLE COUNTY	SAN JUAN COUNTY	SKAGIT COUNTY
	SKAMANIA COUNTY	STEVENS COUNTY	WAHKIAKUM COUNTY	
WV	RALEIGH COUNTY			

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57.....49548, 49636
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71.....49548, 49636

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

H.R. 211/P.L. 106–48
To designate the Federal building and United States courthouse located at 920 West Riverside Avenue in Spokane, Washington, as the "Thomas S. Foley United States Courthouse", and the plaza at the south entrance of such building and courthouse as the "Walter F. Horan Plaza". (Aug. 17, 1999; 113 Stat. 230)

H.R. 1219/P.L. 106–49
Construction Industry Payment Protection Act of 1999 (Aug. 17, 1999; 113 Stat. 231)

H.R. 1568/P.L. 106–50
Veterans Entrepreneurship and Small Business Development Act of 1999 (Aug. 17, 1999; 113 Stat. 233)

H.R. 1664/P.L. 106–51
Emergency Steel Loan Guarantee and Emergency Oil and Gas Guaranteed Loan Act of 1999 (Aug. 17, 1999; 113 Stat. 252)

H.R. 2465/P.L. 106–52
Military Construction Appropriations Act, 2000 (Aug. 17, 1999; 113 Stat. 259)

S. 507/P.L. 106–53
Water Resources Development Act of 1999. (Aug. 17, 1999; 113 Stat. 269)

S. 606/P.L. 106–54
For the relief of Global Exploration and Development Corporation, Kerr-McGee Corporation, and Kerr-McGee Chemical, LLC (successor to Kerr-McGee Chemical Corporation), and for other purposes. (Aug. 17, 1999; 113 Stat. 398)

S. 1546/P.L. 106–55
To amend the International Religious Freedom Act of 1998 to provide additional administrative authorities to the United States Commission on International Religious Freedom, and to make technical corrections to that Act, and for other purposes. (Aug. 17, 1999; 113 Stat. 401)

Last List August 18, 1999

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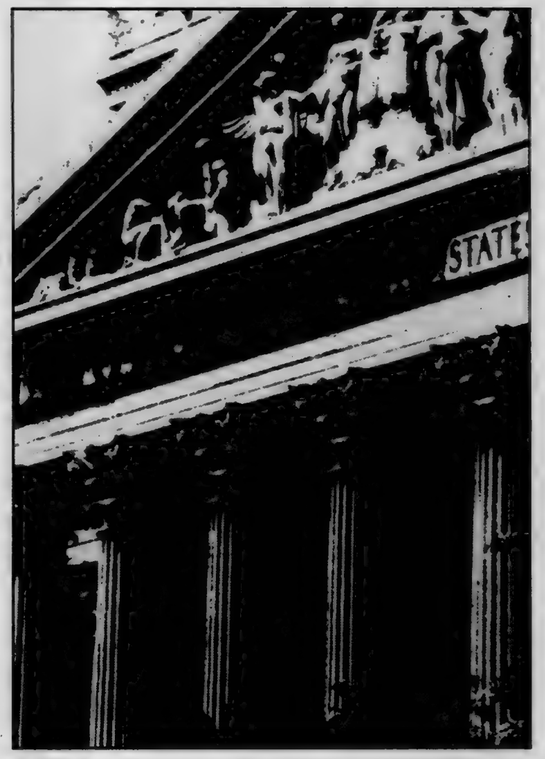

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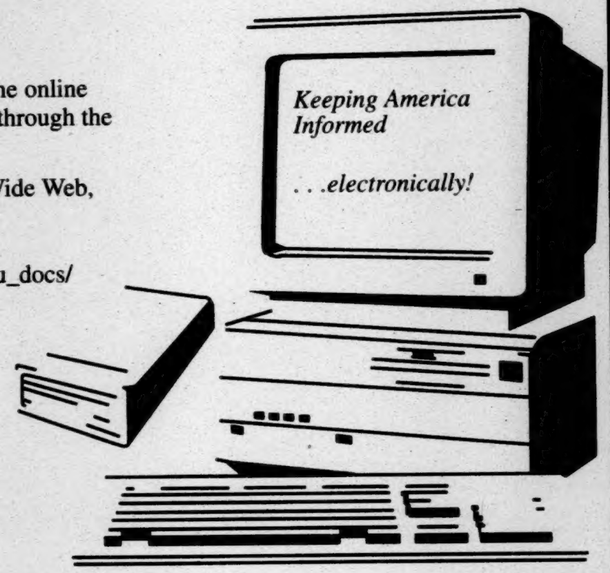

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